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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1998

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the interim rule published in the **Federal Register** on July 6, 1993 (58 FR 36120) and to adopt as final, without any changes, the interim rule published in the **Federal Register** on August 6, 1993 (58 FR 41995). This final rule sets forth regulations to implement the provisions of sections 359 b-j of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended, regarding marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose (CF) manufactured from corn, including appeal procedures, for the fiscal years 1992 through 1998.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), telephone: 202–720–3391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Could have an annual effect on the economy of more than $100 million;

(2) Could adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A Final Regulatory Impact Analysis determined that marketing allotments would reduce the quantity of domestically produced sugar that could be marketed in the United States but overall raise revenues of beet and cane producers, processors, and refiners through higher prices to users. Marketing allotments would cause supply disruptions and affect sugar-producing sectors, States, and local communities in different ways depending on their particular balance of sugar supply relating to allotments and allocations.

Other than the above impacts, this rule:

(1) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(2) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(3) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule. The Final Regulatory Impact Analysis determined that this regulation has no significant impact on a substantial number of small entities because the particular marketing allotment options considered do not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The Commodity Credit Corporation (CCC) thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this final rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Paperwork Reduction Act

The information collection requirements for sugar beet and sugarcane processors and raw cane sugar refiners have been approved by the Office of Management and Budget (OMB) through March 31, 1996, and assigned OMB no. 0560–0138.

The public reporting burden for the approved collections of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

Development of information collection requirements for sugarcane growers subject to proportionate shares has not been finalized. These information requirements will be submitted to OMB for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

Executive Order 12372 and Executive Order 12778

The program covered by this final rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State law to the extent such laws are inconsistent with the provisions of this final rule. This final rule is not retroactive. Before any action may be brought regarding the provisions of this final rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

Background

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the 1938 Act to provide for the establishment, under certain circumstances, of marketing allotments for sugar and CF for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991, which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Pub. L. 102–535, Certain Producers of Sugarcane, Provision for Equitable Treatment, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares. The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), which was enacted on August 10, 1993, amended section 359b of the 1938 Act by:

(1) Extending the marketing allotment provisions through fiscal year 1998,

(2) Allowing a processor of sugar beets or sugarcane to market sugar in excess of allocation in order to facilitate the exportation of such sugar,

(3) No longer counting sugar under loan as sugar marketed, and

(4) Imposing a civil penalty only if a processor knowingly violates its marketing allocation limit.

Summary of Comments

An interim rule to implement the 1938 Act's provisions for sugar marketing allotments was published July 6, 1993 (58 FR 36120) and an interim rule to implement the appeal regulations was published August 6, 1993 (58 FR 41995). Fifteen comments were received from interested persons regarding the interim regulations: four from cane industry trade associations, one from an independent sugarcane grower, three from sugar beet processing companies, two from farm bureaus, one from a sugar beet grower organization, one from a beet sugar trade association, one from a corn refining company, one signed by three members of Congress, and one from a State Commissioner of Agriculture.

Discussion of Comments

1. There were 10 comments addressing the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors.

Eight comments dealt with the weights assigned each of the criteria. Four commenters wanted past marketings to be the predominant or only criterion used to establish the percentage factors. Their recommendations for weighting past marketings ranged from 66 1/3 percent to 100 percent. Three commenters endorsed CCC's use of equal weights for all three criteria. One commenter called for flexibility in setting weights.

One commenter suggested that, when establishing the percentage factors, the Secretary not use the past marketing histories of defunct processors.

One commenter urged flexibility in the definition of "processing capacity" in times of drought. It was suggested that processing capacity be defined as the greater of:

(1) The maximum production during the 1985–1989 crop year period, or

(2) The maximum production during the immediately preceding five crop years.

The 1938 Act requires the use of the three-factor criteria for determining the percentage factors for overall beet and cane sugar allotments (7 CFR 1435.511), State cane sugar allotments (7 CFR 1435.512), and beet and cane processor marketing allotment allocations (7 CFR 1435.513). In each of these CFR sections, the regulations state: "Each of the three criteria * * * will be weighted equally, or as deemed appropriate by CCC for each year allotments are in effect.

CCC reaffirms its position that equal weighting for the three factors is generally appropriate for purposes of the marketing allotment statute, unless a different weighting is determined to be more appropriate for a particular fiscal year in light of the circumstances existing at such time. Equal weights were assigned to each of the three factors when allotments were instituted in FY 1993. An evaluation of the comments made and the effects of the FY 1993 allotments, and the experience gained during the administration of the allotments, confirms that such flexibility is necessary in order to avoid imposing disproportionate negative effects on a few processors, while having no effect on other processors that have also expanded production since the base period, or resulting in increased prices considerably more than necessary to achieve the objectives of the no cost price support program for sugar beets and sugarcane. CCC must carefully evaluate the weighting of the three factors in order to achieve the statutory goals of fairness, efficiency and equity in allocating market shares and to avoid causing excessive prices for consumers and industrial users of sugar. Moreover, in the abstract, it cannot be determined that differing weights would be appropriate under the conditions existing in each year in which the allotments might be imposed.

CCC also believes the definition of "processing capacity" should be retained. Qualifying the definition for drought opens up arguments for other crop problems, such as premature freezes, hurricane damage, flooding, disease problems, and so forth, and would require complicated determinations of relative degree of damage. Finally, the 1938 Act explicitly states that the percentage factors for establishing the overall beet and cane sugar allotments shall consider marketings of sugar during the 1985 through 1989 time period. Therefore, past marketings of recently defunct processors must be included in the calculations. Thus, the 3-factor criteria specified in the interim rule are adopted without change.

2. Nine comments were received concerning the treatment of sugar pledged for price-support loans when allotments were in effect.

The commenters were critical of defining marketing to include the pledging and repledging of sugar. These concerns were addressed by the Omnibus Budget Reconciliation Act of 1993, which amended the previous statute so that only loan forfeitures and sales may count against allocations.

Thus, §§ 1435.510, 1435.513, and 1435.528 are revised accordingly. Also, § 1435.513 is revised to require that a sale between processors to enable the purchasing processor to fulfill its allocation be reported to CCC within a week of the date of such sale. The interim rule had required that such sale be reported within 2 days. This earlier requirement resulted in an undue paperwork burden.

3. There were seven comments concerning allocations of the marketing allotments. Three comments concerned the reassignment of deficits. One commenter suggested that CCC set a specific timetable for assessing the need to reassign deficits and make the timetable known to the industry in advance. One commenter recommended reassignment of deficits after 20 days, and another after 30 days.

CCC acknowledges the need for prompt reassignment of deficits relative to marketing allocations, so as not to short the market. However, it is also important to allow deficit companies reasonable time to purchase sugar and fill the deficit. When allotments were announced during fiscal year 1993, the first reassignments were made 26 days later and related only to the cane sector. The next reassignments, which related to both the cane and beet sectors, occurred 56 days later. The timing of the second reassignment was partially impacted by delays in some processors' monthly reporting. Because the most recent data available are crucial for determining reassignments, and CCC cannot always be assured of timely receipt of processor data, CCC can only ensure that reassignments will be made as soon and as frequently as practicable.

Thus, § 1435.514 is revised accordingly.

Two commenters called for allowances for new processors. CCC once again notes that the sugar marketing allotment provisions of the 1938 Act do not provide for special treatment for new entrants. Such processors will be unable to acquire a past marketings status but may acquire processing capacity and the ability to market sugar.

Thus, CCC rejects the recommendation.

One commenter recommended that CCC be required to publish sugar marketing allotments at least 2 months before the beginning of the fiscal year, and if readjustments are needed, they should be announced in advance of each quarter. However, the statute requires that, before the beginning of each quarter, the CCC establish, adjust, or suspend marketing allotments depending on its assessment of appropriate factors. Therefore, CCC cannot impose allotments at the beginning of each fiscal year to be subsequently adjusted or suspended as needed. Furthermore, CCC requires flexibility in the time for announcing allotments and readjustments, balancing the need for up-to-date information and analysis with the need of companies for as much advance notice as possible.

Therefore, CCC rejects the recommendation.

One commenter recommended that the allocation of a facility closing or curtailing operations be transferred along with each grower's production history to other processors in the same State, and if that State cannot fulfill the allocation, to beet processors outside the State.

CCC reiterates that under the provisions of the 1938 Act, allocations are not made on a facility basis, but rather on a processor basis. At the processor level, a plant closing would have no effect on past marketings and would reduce processing capacity after five years, if the former production by the closed facility were not offset by increased production at other facilities owned by the processor. Once a facility is shut down, CCC would have to assess whether the processor's ability to market would be affected, and if the processor were placed in a "deficit" due to the closure of a facility, CCC would reassign the deficit.

Thus, CCC rejects the recommendation.

4. Three commenters questioned CCC's definition of sugar in its various forms. Two commenters wanted liquid fructose derived from sucrose to be excluded from the definition of sugar. CCC continues to maintain that, based on well established definitions of sugar and sucrose, fructose from sucrose is sugar, rather than a sugar product. Sugar products which are not subject to allotment would consist of products, other than sugar, whose majority content is not sucrose or which are not suitable for human consumption. Permitting liquid fructose derived from sucrose to be exempt from marketing allotments would be a circumvention of the purposes of the statute.

Thus, the definition of sugar as provided in the interim rule is adopted without change.

One commenter alleged inconsistency regarding to CCC's definitions for molasses, cane syrup, liquid sugar, and edible molasses, and referred to the need to conform with U.S. Customs definitions. CCC in the interim rule adopted the Customs definition of liquid sugar but also indicated the need to distinguish among liquid sugar, cane syrup, and sugar syrup. Regarding molasses, the Customs definition refers only to high-test or invert molasses which is not molasses but actually a sugar. CCC has found no universally accepted industry definition of molasses in terms of precise content of sucrose or sucrose-equivalent of invert sugars. Edible molasses is considered a sugar, with a sucrose-solids content of approximately over 60 percent. Sugar syrup has a higher sucrose content but its precise demarcation from edible molasses is not given. Both sugars are defined by CCC, for program purposes, in terms of sucrose-solids content. However, CCC does agree that the definition of sugar syrup, as contained in the interim rule, may be further clarified by stating that it is not principally of crystalline structure.

Thus, § 1435.502 is revised accordingly.

5. Two commenters urged USDA to reconsider imposing penalties on processors who had already exceeded their allocation prior to the announcement of allotments/allocations. The Omnibus Reconciliation Act of 1993 has amended the 1938 Act to exempt processors from penalties unless they "knowingly" marketed sugar in excess of allocation.

Thus, § 1435.528 is revised accordingly.

6. There were four comments concerning proportionate shares to producers. One commenter wanted clarification of the circumstances under which more than the average per acre yield for the preceding five years would be utilized in determining the State's per acre yield goal. The interim rule states in § 1435.521 that the State's per-acre yield goal will be at a level not less than the State average per-acre yield for the preceding 5 years, adjusted by the State average recovery rate. However, section 359f(b)(3)(A) of the 1938 Act actually states that the State's average per-acre yield goal shall be at a level (not less than the State average per-acre yield for the preceding 5 years, as determined by the Secretary) that will ensure an adequate net return per pound to producers, taking into consideration any available production research data that the Secretary deems relevant. Section 359f(b)(3)(B) of the 1938 Act also states that the Secretary shall adjust the per acre yield goal by the average recovery rate.

Thus, § 1435.521 is revised accordingly.

Another commenter wanted CCC to require Louisiana farmers to complete acreage reporting by July 1 and inform producers by August 15 of the acreage that may be planted to meet their proportionate shares for the following crop year. However, CCC is not able to determine whether allotments will be implemented that far in advance.

Thus, CCC rejects this recommendation.

The third comment concerned a recommendation that sugarcane acreage certified with ASCS by July be immediately figured into a farm base history for marketing allotment calculations for the following fiscal year when the crop is harvested. However, the 1938 Act specifically states that the acreage base for any farm is equal to the average of the acreage planted or considered planted for harvest for sugar or seed in each of the 5 crop years preceding the fiscal years that proportionate shares will be in effect. The acreage certified in July is considered the current crop year for the fiscal year that starts on the following October 1. Thus, the 1938 Act does not permit CCC to use the July data in determining proportionate shares.

The last comment concerned a request that any reduction in acreage eligibility as a result of proportionate shares not result in any reductions in future farm base levels. Under current policy, the acreage certified in July is used for calculating a farm's acreage base,

regardless of whether allotments (and proportionate shares) are subsequently instituted.

7. There were two comments concerning reasonable ending stocks in the trigger formula for marketing allotments. One commenter said USDA should choose a method to define reasonable stocks in order to give credibility to the process by which allotments are imposed. The other commenter supported flexibility in determining reasonable carry-over stocks, but suggested USDA use a range of stocks-to-use ratios in order to remain consistent.

CCC has consistently rejected a mechanical formula for determining reasonable ending stocks, and instead depends on a comprehensive analysis of the market situation, outlook, and prices. A purely statistical ratio cannot capture the full complexity of the sugar market.

Thus, CCC rejects the recommendation.

8. Two commenters recommended that CCC allow swaps between beet and quota or domestically produced sugar to facilitate exportation of surplus sugar. The current regulations do not address this issue of "swapping." Rather, this issue will have to be addressed in terms of further rulemaking i.e., a new proposed rule, followed by a comment period and final rule.

9. One commenter urged USDA to use the required monthly data submitted by the industry under section 359a of the 1938 Act for calculating all phases of allotments and allocations because these are the best data available. CCC agrees with the need to use the best available data for determining allotments and allocations. However, the rule is not changed for this comment because the data published by the World Outlook and Situation Board and the National Agricultural Statistics Service are deemed as "official" USDA estimates.

10. One commenter wanted the term "U.S. Market Value" for sugarcane to be defined as "the daily New York No. 14 contract settlement price for the nearest month less prevailing discounts for raw sugar."

CCC does not agree with this proposal because discounts to the No. 14 contract price vary continually over time and among the different refiners.

11. One commenter reiterated a previous contention that CF is a premium product to sugar, does not compete with sugar, and has value based on qualities lacking in sugar. The commenter wanted the calculation of CF equivalence to be revised to give CF credit for qualities that sugar does not possess. CCC maintains that if CF is a premium product to sugar, then less (not more) of CF would be equivalent to the sugar quantity of 200,000 tons. Furthermore, the price premium of CF depends not just on the inherent quality of CF relative to sugar but on transient market conditions, including variable competitive relationships among alternative sweeteners.

Thus, CCC rejects the recommendation.

12. The following comments are considered to be outside the limits of this rulemaking, or are clearly contrary to the provisions of the 1938 Act:

(1) Proportionate shares should be established for Florida independent growers,

(2) Imports of sugar from Canada should be reduced to traditional levels, and

(3) Allotments and allocations cannot be justified for fiscal 1994.

Thus, CCC does not address these matters.

13. No comments were received regarding appeal regulations published August 6, 1993 (58 FR 41995).

Thus, 7 CFR 1435.530 is adopted as provided in the interim rule.

Additional Changes

14. Two additional sections of the interim rule are revised to include the specific wording of the 1938 Act.

First, § 1435.507(a) is revised to say that CCC will make quarterly re-estimates "no later than the beginning" of each of the second through fourth quarters of the fiscal year, rather than "before the beginning of each quarter". This will bring the regulations into conformance with section 359b(2) of the 1938 Act.

Second, § 1435.520(b) is revised to say that a processor's allocation will be shared among producers in "a fair and equitable manner which adequately reflects" each producer's production history, rather than in "a fair and adequate manner". This will bring the regulations into conformance with section 359f(a) of the 1938 Act.

List of Subjects in 7 CFR Part 1435

Administrative practice and procedures, Appeals, Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, the interim rule amending 7 CFR part 1435, which was published on August 6, 1993, (58 FR 41995) is adopted as final without any changes, and the interim rule amending 7 CFR part 1435 which was published on July 6, 1993, (58 FR 36120) is adopted as final with the following changes:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. In § 1435.500, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1435.500 Applicability.

(a) * * *

(1) The marketing by processors, during fiscal years 1992 through 1998, of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1998, of crystalline fructose manufactured from corn;

* * * * *

3. In § 1435.502, the definition of "sugar syrup" is revised to read as follows:

§ 1435.502 Definitions.

* * * * *

Sugar syrup means a direct-consumption sugar, which is not principally of crystalline structure, that has a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

* * * * *

4. In § 1435.507, paragraph (a) introductory text is revised to read as follows:

§ 1435.507 Annual estimates and quarterly re-estimates.

(a) Before the beginning of each of the fiscal years 1993 through 1998, CCC will estimate, and no later than the beginning of each of the second through fourth quarters of such fiscal years, CCC will re-estimate, for such fiscal year

* * * * *

5. In § 1435.510, paragraph (d) is revised to read as follows:

§ 1435.510 Adjustment of overall allotment quantity.

* * * * *

(d) If the overall allotment quantity is reduced under paragraph (a)(1) of this section and the quantity of sugar and sugar products marketed, at the time of the reduction, exceeds the processors' reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's next allocation of an allotment, if any. The exceptions provided for in § 1435.513 shall be applicable in determining whether a processor has exceeded a reduced allocation.

* * * * *

6. In § 1435.513:

A. Paragraph (f) is revised,

B. Paragraph (g) is removed, and

C. Paragraph (h) is redesignated as paragraph (g) and redesignated paragraph (g) is revised to read as follows:

§ 1435.513 Allocation of marketing allotments to processors.

* * * * *

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the quantity of sugar and sugar products marketed by a processor shall not exceed the quantity of the allocation of the allotment made to the processor.

(g) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within a week of the date of any such sale.

7. In § 1435.514, paragraph (a) is revised to read as follows:

§ 1435.514 Reassignment of deficits.

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. These determinations will be made as soon and as frequently as practicable.

* * * * *

8. In § 1435.520, paragraph (b) is revised to read as follows:

§ 1435.520 Sharing processors' allocations with producers.

* * * * *

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and equitable manner which adequately reflects each producer's production history.

* * * * *

9. In § 1435.521, paragraph (c) (1) is revised to read as follows:

§ 1435.521 Proportionate shares for producers of sugarcane.

* * * * *

(c) * * *

(1) Establish the State's per-acre yield goal at a level (not less than the average per-acre yield in the State for the preceding 5 years) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data considered relevant;

* * * * *

10. In § 1435.528, paragraphs (a) and (b) are revised to read as follows:

§ 1435.528 Penalties and assessments.

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.513 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of CF who knowingly markets CF in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of CF involved in the violation.

* * * * *

Signed at Washington, DC, on February 2, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation

[FR Doc. 95–3288 Filed 2–8–95; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB28

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its deposit insurance regulations to require that: Upon request, an insured depository institution disclose in writing to depositors of employee benefit plan funds, its current Prompt Corrective Action (PCA) capital category, its capital ratios, and whether employee benefit plan deposits would be eligible for "pass-through" insurance coverage; upon opening an account comprised of employee benefit plan funds, an insured depository institution disclose in writing its PCA capital category, a description of the requirements for "pass-through" insurance coverage and whether, in the institution's judgment, the deposits are eligible for "pass-through" deposit insurance; and when employee benefit plan deposits placed with an insured depository institution would no longer qualify for "pass-through" insurance coverage, the institution disclose in writing to all existing employee benefit plan depositors within 10 business days the institution's PCA capital category and that new, rolled-over or renewed employee benefit plan deposits will not be eligible for "pass-through" deposit insurance coverage.

The FDIC is also making a number of technical amendments to its insurance regulations concerning commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

The intended effect of the final rule is to provide employee benefit plan depositors important information, not otherwise available, on "pass-through" deposit insurance which may be needed to prudently manage their funds. The technical amendments clarify the insurance rules involving commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

EFFECTIVE DATES: The amendments to 12 CFR 330.12 are effective on July 1, 1995 The amendments to 12 CFR 330.6, 330.7, 330.10 and 330.11 are effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, Division of Supervision (202/898–6912) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

In May 1993, the FDIC Board of Directors (Board) revised § 330.12 of the FDIC's regulations (12 CFR 330.12) (58 FR 29952 (May 25, 1993)) to reflect the new limitations imposed by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 199i

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(Pub. L. 102–242, 105 Stat. 2236) (FDICIA) on the "pass-through" deposit insurance provided for employee benefit accounts. ("Pass-through" insurance means that the insurance coverage passes through to each owner/beneficiary of the applicable deposit.) As required by section 311 of FDICIA, under the revised rules, whether an employee benefit plan deposit is entitled to "pass-through" deposit insurance coverage is based, in part, upon the capital status of an insured depository institution at the time the deposit is accepted.

Under §§ 330.12 (a) and (b), "pass-through" insurance shall not be provided if, at the time an employee benefit plan deposit is accepted, the institution may not accept brokered deposits pursuant to section 29 of the FDI Act (12 U.S.C. 1831f(a)) unless, at the time the deposit is accepted: (1) The institution meets each applicable capital standard; and (2) the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis.[1] The written statement required under this exception must be provided each time a deposit is made or additional employee benefit plan funds are placed with the insured institution. 58 *FR* 29957 (May 25, 1993).

Section 29 of the FDI Act prohibits insured depository institutions that are "adequately capitalized" but have not obtained a broker deposit waiver from the FDIC and "undercapitalized" institutions (or institutions in lower capital categories) from accepting brokered deposits.[2] A brokered deposit is defined in § 337.6 of the FDIC's regulations (12 CFR 337.6) as any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

On December 8, 1993, the FDIC published in the **Federal Register** a proposed rule (58 *FR* 64521) to impose several specific disclosure requirements upon insured depository institutions regarding the availability of "pass-through" insurance coverage for employee benefit plan deposits. In summary, the proposed rule would have required that: (1) Upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether or not, in the opinion of the institution, employee benefit plan deposits made with the institution would be entitled to "pass-through" insurance coverage; (2) upon the opening of any account comprised of employee benefit plan funds, an insured depository institution provide written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for "pass-through" insurance coverage; (3) within two business days after an insured depository institution's PCA capital category changes from "well capitalized" to "adequately capitalized", the institution provide written notice to all depositors of employee benefit plan funds of the institution's new PCA capital category and whether or not new, rolled-over or renewed employee benefit plan deposits would be eligible for "pass-through" insurance coverage; and (4) within two business days after an insured depository institution's PCA capital category changes to a category below "adequately capitalized", the institution provide written notice to all depositors of employee benefit plan funds indicating that new, rolled-over or renewed deposits of employee benefit plan funds made on or after the date the institution's PCA capital category changed to a category below adequately capitalized will not be eligible for "pass-through" insurance coverage.

The FDIC issued the proposed rule, in part, because of numerous comments it received from various sources on the difficulty of obtaining public information concerning an insured institution's capital levels and on its current PCA capital category—information necessary to determine whether employee benefit plan deposits would be eligible for "pass-through" insurance coverage.

Discussion of the Final Rule and Comments on the Proposed Rule

The FDIC received 67 comment letters on the proposed rule. Thirty-seven were from banks and savings associations, seventeen from bank or thrift holding companies, seven from trade associations, and six from other interested parties. Numerous suggestions and recommendations were made to revise the proposal.

Only three commenters expressed support for all aspects of the proposed rule. The majority of comments recommended various revisions to make the proposal less burdensome. Many commenters noted that most institutions presently do not have a system for identifying employee benefit plan accounts and that more time was needed to provide the required disclosures to affected depositors. They also expressed concern about the administrative cost of complying with all aspects of the proposal. Others commented that the proposed rule might create a potential liability for insured institutions and promote bank "runs." Most commenters suggested that the FDIC include optional sample disclosures in the regulation.

In issuing the proposed rule for comment the FDIC was cognizant of the attendant regulatory burden that would be imposed upon insured depository institutions. Thus, the FDIC attempted to balance the undesirability of imposing additional regulatory requirements on insured depository institutions with the importance of providing timely notice to existing and prospective employee benefit plan depositors of the extent of "pass-through" insurance coverage available for their deposits—information which is important to them and not otherwise generally available. In response to the public comments, the FDIC has modified the requirements of the proposed rule so that the final rule has fewer and less burdensome disclosure requirements than those proposed. The remaining requirements are believed to be essential, however, to ensure that the necessary deposit insurance information is provided to employee benefit plan depositors.

In FDICIA Congress for the first time linked deposit insurance coverage to the capital level of the insured depository institution. This relationship between the scope of deposit insurance and an institution's capital applies only to employee benefit plan deposits. This special category of deposit insurance coverage, therefore, requires special disclosure rules; otherwise, employee benefit plan depositors may be inappropriately disadvantaged. Given the nature of the statutory requirements for "pass-through" insurance coverage for employee benefit plan accounts, the Board believes the disclosure requirements are essential to safeguard the interests of employee benefit plan depositors and ultimately plan participants. As indicated below, however, the Board acknowledges that the disclosure requirements do not fully safeguard the interests of the owners of employee benefit plan deposits and believes that amendments to the insurance provisions of the FDI Act are needed to remedy the continuing potential exposure of those owners.

The following is a discussion of the comments received on the various aspects of the proposed rule including comments received on the specific issues raised in the proposed rulemaking:

A. Disclosures Upon Request

The proposed rule would have required that, upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether, in the opinion of the institution, employee benefit plan deposits placed with the institution would be eligible for "pass-through" insurance coverage. A majority of the commenters that specifically addressed this issue favored this provision. They cited the need for depositors to be able to obtain adequate information in order to make an informed decision about where to invest their funds. Those opposed to such a requirement cited the regulatory burden of developing policies and procedures, automation systems, training of customer service personnel and maintaining current capital-related information to ensure compliance with the requirement. Other commenters questioned the need to disclose this capital information because, in their view, the information would confuse most individuals.

A number of commenters also questioned the requirement that institutions make disclosures to prospective employee benefit plan depositors upon request. They indicated that individuals are free to take their business elsewhere if they are not satisfied with the information received. They suggested that market forces can address this issue and recommended that this requirement be deleted from the regulation.

The FDIC agrees that prospective customers are free to take their business elsewhere if they do not get the desired information. Existing customers, however, may have several reasons why they cannot easily move their accounts. Therefore, the final rule has been changed to require disclosures when requested by employee benefit plan customers that already have accounts at an insured institution.

The FDIC believes that the regulatory burden placed on institutions can be mitigated if adequate time is given to establish policies and procedures. Accordingly, the final rule contains a delayed effective date of July 1, 1995. In addition, the capital information to be disclosed is based on the most recently available data and need not be as of the date of the deposit. The FDIC believes that insured institutions should not have to develop any new, specific procedures to develop the capital information required by this portion of the rule. For example, institutions that are clearly "well capitalized" and have experienced only minor variations in their capital ratios since the filing of their last quarterly Consolidated Report of Condition and Income (Call Report) may use the capital ratios calculated at that time.

An institution's capital category and the availability of "pass-through" insurance are, in almost all cases, believed to be derived from financial information currently available. Further, only a very few insured depository institutions are not eligible for employee benefit plan "pass-through" deposit insurance coverage.[1] (Based on September 30, 1994 regulatory reporting data only 279 of 12,774 insured depository institutions were less than "well capitalized".) Therefore, it is estimated that the regulatory impact of this portion of the rule will be insignificant.

Some commenters recommended that depositor requests be in writing and be mailed to a central location. The FDIC believes that once procedures are developed it should be no more burdensome to honor an oral request than a written one. In addition, imposing restrictions on existing depositors that request this information would hamper the purpose of providing timely information. Therefore, the FDIC has decided that depositor requests can be made orally or in writing to designated bank employees.

B. Disclosure Upon Opening an Account

The proposed rule also would have required that, upon the opening of any employee benefit plan account, the insured depository institution provide a written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for "pass-through" insurance coverage. Commenters generally expressed support for this provision. Some, however, questioned whether disclosing capital information was meaningful to an employee benefit plan depositor.

The FDIC continues to believe that it is essential that an employee plan depositor be notified about whether "pass-through" coverage is available for deposits placed with a depository institution. Moreover, based on the comments received on this and related issues, the FDIC also believes that when opening an employee benefit plan account depositors should be informed (or reminded of) the basic requirements of the law and regulations regarding the availability of "pass-through" insurance coverage for employee benefit plan deposits. Thus, the FDIC has revised this provision of the final rule to require that the written notice provided to an employee benefit plan depositor include an accurate explanation of the requirements for "pass-through" deposit insurance coverage. (A sample disclosure of this information is provided below.) Therefore, the final rule retains the requirement that the written disclosure statement indicate the institution's PCA capital category and whether, in the institution's judgment, the funds being deposited are eligible for deposit insurance coverage. The sample disclosure also contains language informing employee benefit plan depositors that additional information on the institution's capital condition may be requested.

C. Timing of Disclosures

The proposed rule would have required that certain information be provided within two business days to current or prospective employee plan depositors in three different situations: (1) When an institution received a request for information from an employee benefit plan depositor; (2) when an institution's capital category changed from "well capitalized" to "adequately capitalized"; and (3) when an institution's capital category fell below "adequately capitalized". Regardless of whether or when notice is provided to the depositor, "pass-through" insurance coverage on new, rolled over or renewed deposits may cease immediately upon notice to the insured depository institution that its PCA capital category has been lowered. Thus, the proposed rule requested comments on the feasibility of compliance with the two-day notification requirement and, specifically, on whether a longer time frame might increase the period for which a depositor's employee benefit plan funds would be uninsured.

Of the 42 commenters that specifically addressed the time frame requirement, 40 stated that the two-business-day period was too short. The commenters recommended extending the time requirement from the proposed period of two business days to periods of time ranging from five days to 30 days. The most common recommendation was to extend the period to 10 business days, the same

[1] The recordkeeping requirements of § 330.4 of the FDIC's regulations also would have to be satisfied. 12 CFR 330.12(a) & 330.4.

[2] "Well capitalized" insured institutions can, in certain circumstances, avoid a lapse in eligibility for "pass-through" insurance of employee benefit plan deposits, should the institution's PCA capital category be reduced to "adequately capitalized", by obtaining a broker deposit waiver from the FDIC.

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period of time as required under the Federal Reserve's Regulation DD (12 CFR part 230), which implements the Truth in Savings Act. Seven commenters recommended five business days indicating that the required disclosures could be made within five business days once policies and procedures had been established to ensure compliance with the regulation.

Based on the comments received on this issue the Board has decided to require that the disclosures to be made upon request be made within five business days—the shortest period of time that it believes an institution could be expected to meet the time requirements. In arriving at this time period the FDIC attempted to balance the feasibility of complying with the requirement with the need for employee benefit plan depositors to know, on a timely basis, whether deposits are and will continue to be eligible for "pass-through" insurance coverage. Institutions are encouraged to provide the required disclosures sooner, if possible.

The five business day time frame begins upon the bank's receipt of the request and ends when the institution mails or delivers the required information to the depositor. "Receipt" means when an institution receives a request, not when it is received by a designated department of the institution.

Secondly, the FDIC has decided to extend to 10 business days the notification time frame when an insured institution must provide notice that new, renewed or roll-over employee benefit plan deposits placed with an institution will not be eligible for "pass-through" insurance coverage. The FDIC recognizes that this disclosure is more extensive than an individual request from an employee benefit plan depositor and generally will occur when an institution is experiencing financial problems. Institutions in this situation frequently have management deficiencies and weak internal controls. For these reasons, adoption of a slightly longer time frame is believed appropriate. Institutions are encouraged to provide disclosures sooner, if possible.

Despite its decision to extend the periods in which insured institutions must comply with the disclosure requirements of the final rule, the Board continues to be concerned about employee benefit plan funds that are deposited with an institution before the institution is required to notify depositors of the discontinuation of the availability of "pass-through" coverage on such deposits. An example would be where an institution becomes "undercapitalized" on Day 1 and a customer deposits employee benefit plan funds before the expiration of the 10 days within which the institution is required to notify employee benefit plan depositors that "pass-through" insurance will not be available for deposits placed after Day 1. Under the FDI Act and § 330.12, such deposits would not be eligible for "pass-through" coverage because at the time they were "accepted" the institution was undercapitalized—and, thus, not permitted to accept brokered deposits. The Board believes that Congress should consider amendments to the insurance provisions of the FDI Act to address this potential pitfall for employee benefit plan depositors and, particularly, the ultimate plan participants.

One commenter recommended that when an institution notifies existing employee benefit plan depositors that "pass-through" insurance coverage is no longer available, the affected depositors not be assessed a withdrawal penalty. This would pertain particularly to the situation where a depositor places employee benefit plan funds with an institution between the time that such deposits become ineligible for "pass-through" coverage and the time the institution notifies the depositor of the ineligibility of new deposits for such coverage. Because the "pass-through" coverage of only newly deposited funds is potentially affected by this time gap and then only if the institution fails, the FDIC has decided not to address the withdrawal penalty issue in the final rule. The institution and its employee benefit plan customers are free to negotiate this matter. The FDIC anticipates that insured institutions will waive any penalty fees in appropriate circumstances.

D. Disclosure When an Institution's PCA Capital Category Changes but "Pass-Through" Insurance Coverage Is Still Available

The proposed rule would have required an insured depository institution to provide a written notice to all employee benefit plan depositors when the institution's PCA capital category changed from "well capitalized" to "adequately capitalized", irrespective of whether employee benefit plan deposits still would be eligible for "pass-through" insurance coverage. The FDIC requested comment on whether a disclosure should be required upon such a reduction in an institution's PCA capital category but the institution had obtained a waiver from the FDIC under § 337.6 of the FDIC's regulations to accept brokered deposits, and thus, there would be no change in the availability of "pass-through" deposit insurance coverage for employee benefit plan deposits.

Of the 46 commenters that specifically addressed this issue, 40 were against requiring any disclosures if the availability of "pass-through" coverage had not changed. Commenters noted that providing disclosures would cause confusion among depositors, create an increased regulatory burden on the institution in having to explain to affected depositors why the notice was being sent even though the availability of "pass-through" insurance coverage had not changed, encourage disintermediation, promote financial instability within institutions, and encourage bank "runs". They also indicated that such a disclosure requirement would be contrary to the FDIC goals of promoting a safe and sound banking system and of limiting losses to the deposit insurance funds.

The FDIC concludes that this requirement would be an unnecessary burden and has decided to eliminate this provision from the final rule. Although a reduction in an institution's PCA capital category to "adequately capitalized" reflects a decline in an institution's capital level and, thus, may be helpful information for an employee benefit plan depositor, this change is only one of many factors that an employee benefit plan depositor should consider when monitoring the financial condition of an insured depository institution. In addition, the final rule requires that employee benefit plan depositors be notified if and when new, renewed or rolled-over employee benefit plan deposits will no longer be eligible for "pass-through" insurance coverage. Also, under the final rule, information on an institution's PCA capital category and whether "pass-through" coverage is available can be obtained from an institution under the "upon request" provision of the final rule.

E. Form of Disclosures

In the proposed rule the FDIC solicited specific comment on the form of disclosure. The five specific areas addressed were whether: (1) the required disclosures should have to be in a separate mailing; (2) a written acknowledgement from the intended recipient of the disclosure should be required; (3) the disclosure should be required to be prominent and conspicuous (for example, requiring bold type); (4) the disclosure should be part of the deposit agreement; and (5) other related information may be disclosed.

The FDIC received only a few comments on each of these areas. In general, commenters favored the option of using a separate mailing, the requirement that disclosures be "prominent and conspicuous", and the ability to include other related information in the disclosure—such as explaining why an institution had a capital deficiency. The respondents opposed requiring an institution to obtain a written acknowledgement from employee benefit plan depositors or requiring that the disclosures be part of the deposit agreement.

The FDIC has decided not to establish any specific forms or procedures on the required disclosures except for a general requirement that the required disclosures be "clear and conspicuous." This phrase is believed to be more representative of the standard that disclosures must be in a reasonably understandable form. It does not require that disclosures be segregated from other material or located in any particular place or be in any particular type size.

Institutions may, at their discretion, use any of the above or other disclosure methods as long as it meets the "clear-and-conspicuous" standard and the time requirements. For example, an institution that is opening an employee benefit plan account may provide a separate written disclosure statement to the customer or reference the specific section of the deposit agreement that contains the disclosure information.

A reasonableness standard will be used when reviewing compliance with this section of the regulation. Institutions should consider the level of sophistication of a depositor when providing required disclosures to assure that they are communicated in a clear and understandable fashion. The FDIC believes that, in general, managers and administrators of employee benefit plans are more sophisticated financial persons than the average depositor.

F. Discussion of Sample Disclosures

The FDIC requested comment on whether the final rule should include a specific notice that institutions would have to provide to employee benefit plan depositors when an institution's PCA capital category changed from "well capitalized" to "adequately capitalized" or to a level below "adequately capitalized." The majority of commenters specifically addressing this issue suggested that the FDIC provide sample language in the final rule but recommended that any sample disclosures be optional and that additional information be permitted to be disclosed to the employee benefit plan depositor—such as the reasons for an institution's capital deficiency. Other commenters expressed concern about the tone of the sample language included in the proposed rule while others suggested alternate language.

One commenter recommended that the FDIC also provide a sample disclosure when a depositor opens an employee benefit plan account. Other commenters suggested a disclosure that only informs the depositor whether employee benefit plan deposits would be eligible for "pass-through" coverage under the regulations.

Based on these comments, the FDIC has provided below two sample disclosure notices. One applies when a depositor opens an employee benefit plan account and includes a description of the requirements for "pass-through" insurance coverage. The other is when new, renewed or rolled-over employee benefit plan deposits would not be eligible for "pass-through" insurance coverage.

Additional information can be included with the disclosure as long as the overall disclosure statement meets the clear-and-conspicuous standard in the regulation. This may include, for example, additional information on an institution's capital deficiency and when, in the institution's opinion, the deficiency is expected to be corrected.

A few commenters noted that the sample disclosure statements indicate that the FDIC is not bound, in its insurance determinations, by information provided by insured institutions to depositors on the eligibility of the employee benefit plan deposits to "pass-through" insurance coverage. It is correct that the FDIC is not bound in its insurance determinations by information provided by an insured institution to its customers. The FDIC also is not responsible for or bound by a depository institution's failure to provide the required disclosure statements.

Although it may be helpful for an insured institution to inform employee benefit plan depositors that the FDIC is not bound by information provided by an insured institution to its customers, the Board believes the inclusion of that information in the required disclosure statements should be optional. The thrust of the disclosure requirements imposed by the final rule is to alert employee benefit plan depositors to the rules regarding "pass-through" insurance coverage and, in particular, to inform them when such coverage is no longer available. Requiring insured institutions to indicate whether the FDIC would be bound by incorrect information in the disclosure statements goes beyond the necessary scope of the required disclosure.

G. Separate Enforcement Provision

The FDIC requested comment on whether a free-standing enforcement and/or penalty provision should be included in the final rule. The few commenters that addressed this question requested that any sanctions imposed be limited to cases of intentional disregard or willful noncompliance and that civil money penalties should not be assessed. In the proposed rule, the FDIC indicated that violations of regulatory requirements would be subject to the full array of enforcement sanctions (including the imposition of civil monetary penalties) contained in section 8 of the FDI Act (12 U.S.C. 1818).

The FDIC has decided that separate enforcement provisions are not required to enforce the requirements of the final rule. The current provisions in section 8 of the FDI Act (12 U.S.C. 1818) are considered adequate and will be used to enforce compliance when deemed appropriate.

H. Inclusion of Information in Call Reports

The FDIC requested comment on whether the capital ratios and PCA category of an institution should be made a general disclosure requirement in, for example, quarterly Consolidated Reports of Condition and Income (Call Reports). In this way, existing and prospective employee benefit plan depositors and other interested parties would be able to obtain an official, publicly available statement of an institution which clearly indicates this important information.

Of the 15 commenters that addressed this issue, 12 favored adding the information to the Call Reports. Those in favor suggested that including this information would provide depositors with an efficient and independent means of obtaining relevant financial data on an insured institution. They also recognized that employee benefit plan administrators have a fiduciary obligation to determine the capital status of an insured institution. Two commenters also recommended that this information be disclosed on Thrift Financial Reports (TFRs). Two others suggested that this information be in lieu of the required disclosures in the proposed rule. One commenter specifically opposed any revision to the Call Report indicating that plan administrators had the sophistication to determine an institution's capital ratios and PCA capital category.

Two other commenters suggested that a "yes/no" box be included on the Call Report that would indicate whether "pass-through" coverage was available. They opined that this one disclosure would provide employee benefit plan depositors with an explicit statement on a quarterly basis on whether an institution could provide "pass-through" coverage and would avoid the question whether an institution classified as "adequately capitalized" was able to offer "pass-through" insurance coverage.

The FDIC does not have the authority to change the Call Report or the TFR on its own and has decided not to reach a conclusion at this time. Instead it will recommend to the Federal Financial Institutions Examination Council that it consider whether the Call Report and the TFR should be amended to include a line item for designating an institution's PCA capital category.

Although public disclosure of this information would be beneficial to the public, it also could be misleading without further information or investigation. For example, the continued availability of "pass-through" coverage would not be known in the case of institutions reporting an "adequately capitalized" condition, although this information would raise a "red flag" that depositors could investigate further. In addition, a Call Report disclosure is as of the date of the report and it may not reflect interim events between Call Report dates. Moreover, an institution's PCA capital category may not constitute an accurate representation of an institution's overall financial condition or future prospects—factors that employee benefit plan depositors also need to consider. Finally, it should be noted that the PCA rules do not prohibit an institution from disclosing its PCA capital category in response to inquiries from investors, depositors, or other third parties. However, such disclosures should include appropriate caveats in order to avoid misleading the public.

The FDIC considered the recommendation of including a "yes/no" box on the Call Report but does not favor this proposal out of a concern that the disclosure would be more prone to reporting error and would create a greater regulatory burden on institutions.

I. Definition of "Employee Benefit Plan Depositor"

The FDIC indicated in the preamble of the proposed rule that the required information may be provided to an employee benefit plan administrator or manager instead of to each participant in a plan. One commenter recommended that the final rule define the term "employee benefit plan depositor" to mean managers or administrators of such plans. Thus, it would make clear that the required disclosures only need be made to the administrator or manager of an employee benefit plan and not to each individual beneficiary of the plan. The FDIC has decided to include such a definition in the final rule. The final rule also specifies that, for purposes of the requirements of the final rule, the definition of the term "employee benefit plan" includes eligible deferred compensation plans described in section 457 of the Internal Revenue Code (26 U.S.C. 457).

J. Sample Disclosures

1. A sample disclosure that an insured depository institution may use when a depositor opens an account consisting of employee benefit plan deposits is as follows:

Under federal law, whether an employee benefit plan deposit is entitled to per-participant (or "pass-through") deposit insurance coverage is based, in part, upon the capital status of the insured institution at the time each deposit is made. Specifically, "pass-through" coverage is not provided if, at the time an employee benefit plan deposit is accepted by an FDIC-insured bank or savings association, the institution may not accept brokered deposits under the applicable provisions of the Federal Deposit Insurance Act. Whether an institution may accept brokered deposits depends, in turn, upon the institution's capital level. If an institution's capital category is either "well capitalized," or is "adequately capitalized" and the institution has received the necessary broker deposit waiver from the FDIC, then the institution may accept brokered deposits. If an institution is either "adequately capitalized" without a waiver from the FDIC or is in a capital category below "adequately capitalized," then the institution may not accept brokered deposits. The FDI Act and FDIC regulations provide an exception from this general rule on the availability of "pass-through" insurance coverage for employee benefit plan deposits when, although an institution is not permitted to accept brokered deposits, the institution is "adequately capitalized" *and* the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis. The availability of "pass-through" insurance coverage for employee benefit plan deposits also is dependent upon the institution's compliance with FDIC recordkeeping requirements.

[Name of institution]'s capital category currently is [insert prompt corrective action capital category]. Thus, in our best judgment, employee benefit plan deposits are currently eligible for "pass-through" insurance coverage under the applicable federal law and FDIC insurance regulations.

Under the FDIC's insurance regulations on employee benefit plan deposits, an insured bank or savings association must notify employee benefit plan depositors if new, rolled-over or renewed employee benefit plan deposits would be ineligible for "pass-through" insurance and must provide certain ratios on the institution's capital condition to employee benefit plan depositors who request such information. If you would like additional information on [name of institution]'s capital condition, please make a request [describe procedures for obtaining the additional capital information].

2. A sample disclosure that an insured depository institution may use when new, renewed or rolled-over employee benefit plan deposits will not be eligible for "pass-through" insurance coverage is as follows:

On [date] [name of institution]'s capital category changed from [previous PCA category] to [current PCA category]. Because of this change in [name of institution]'s capital category and the institution's inability otherwise to satisfy the applicable FDIC requirements in this regard, any employee benefit plan funds deposited, rolled-over or renewed with [name of institution] after [date] will NOT be eligible for "pass-through" (or per-participant) deposit insurance coverage under § 330.12 of the FDIC's regulations. Accordingly, plan deposits made, rolled-over or renewed after [date] will be aggregated and insured only up to $100,000. This unavailability of "pass-through" insurance coverage on new, rolled-over or renewed deposits will continue until the institution's capital category improves and/or other applicable requirements are satisfied. Deposits made over the period of time when "pass-through" insurance coverage is unavailable will not be eligible for "pass-through" coverage unless and until these deposits are rolled-over or renewed at a time when "pass-through" insurance coverage is again available. "Pass-through" insurance coverage on deposits made before [insert date when "pass-through" coverage no longer is available] is not affected.

K. Delayed Effective Date of the Disclosure Requirements

Four commenters recommended that the effective date of the final rule be delayed 150 to 180 days to permit institutions the time needed to develop automation systems, and policies and procedures to ensure compliance. Many commenters indicated they presently do not have a recordkeeping system that will identify employee benefit plan accounts. Some commenters indicated that they would have to notify all existing depositors in order to develop such a recordkeeping system.

As indicated in § 330.12 of the FDIC's regulations, in order for employee benefit plan deposits to be eligible for pass-through insurance coverage, among other things, the recordkeeping requirements of § 330.4 of the FDIC's regulations (12 CFR 330.4) must be satisfied. Under § 330.4, in order for pass-through insurance to be available for fiduciary-type accounts (in which one party has deposited funds for the benefit of others) the bank's deposit account records must disclose the existence of the fiduciary relationship, and the details of the relationship and the interests of the other party(ies) must be ascertainable from the deposit account records of the insured depository institution or records maintained by the depositor, or a third party who has contracted with the depositor to maintain such records on his/her behalf.

Some insured depository institutions that commented on the proposed rule stated that their records did not classify deposits specifically as employee benefit plan deposits; thus, they contended that it would be burdensome to develop and implement a new system for purposes of complying with the proposed disclosure requirements. The FDIC believes the final rule addresses this issue. A list can be maintained for new accounts going forward and a list of existing customers can be established over time. An event triggering the required disclosures when an institution no longer can offer "pass-through" insurance coverage is believed to be an infrequent occurrence.

The changes made by FDICIA to insurance coverage applicable to employee benefit plan deposits have been in effect since December 1992. Thus, institutions should be aware of the need to provide customers with timely disclosures on the availability of "pass-through" coverage for employee benefit plan deposits. We assume that this already has been done by a general or specific mailing by institutions to affected depositors.

Taking into consideration the period of time the revised "pass-through" insurance rules have been in effect but factoring in the "lead-time" several commenters said was needed to develop and implement the mechanisms required to comply with the "upon-request" disclosure provisions of the final rule, the Board has decided to delay the effective date of the revisions to § 330.12 until July 1, 1995. This should provide insured depository institutions a sufficient period of time to satisfy all of the disclosure requirements of the final rule. This delay in the effective date also takes into consideration section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) (RCDRIA), which states, in part, that any new regulations and amendments to existing regulations which impose reporting, disclosure, or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are met.

L. Explanation of the Disclosure Requirements Under § 330.12, Including the Requirement Affecting Existing Deposits on the Effective Date of the Final Rule That Are Not Eligible for "Pass-Through" Insurance Coverage

The final rule will apply with respect to employee benefit plan funds on deposit with an insured depository institution on the effective date of the final rule and such funds deposited on and after that date. Institutions with employee benefit plan deposits on the effective date of the final rule that, when deposited, were not eligible for "pass-through" insurance coverage (under § 330.12(a) and (b) of the FDIC's regulations) must provide to such existing depositors the disclosure statement and notice that ordinarily are required under § 330.12(h)(2) of the final rule when an employee benefit plan account is opened. This requirement encompasses employee benefit plan funds deposited between December 19, 1992 (the effective date of the applicable provisions of FDICIA) and the effective date of the final rule. These depositors otherwise would not come within the scope of the final rule and thus, would not receive the disclosures otherwise required. The disclosure documents referred to above must be provided within 10 business days after the effective date of the final rule.

After the effective date of the final rule, insured depository institutions that accept employee benefit plan deposits that are not eligible for "pass-through" insurance coverage are subject to the disclosure requirements contained in § 330.12(h)(3) of the final rule.

M. Coordination With Other Federal Agencies

The FDIC has consulted with the other federal banking and thrift regulators in developing the final rule and intends to continue to work with the other federal regulators to assure, among other things, consistent and minimally burdensome implementation of the final rule.

Technical Amendments to Part 330 Unrelated to the Proposed Amendments to § 330.12

The following is a discussion of the technical amendments to Part 330 made by the final rule that are unrelated to the proposed amendments to § 330.12. The amendments pertain to commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust. Because, as discussed below, the amendments merely clarify current rules applicable to deposit insurance coverage, they are outside the scope of section 302 of RCDRIA. Thus, they need not take effect on the first day of a calendar quarter; instead, the technical amendments will become effective 30 days after the final rule is published in the **Federal Register**.

A. Commingled Accounts of Bankruptcy Trustees

One technical amendment codifies the FDIC's long-standing staff interpretation of the insurance coverage available to a commingled bankruptcy trustee's account. For many years, the FDIC's staff has advised bankruptcy trustees and other interested parties that, when a bankruptcy trustee appointed under title 11 of the *United States Code* commingles the funds of two or more bankruptcy estates in the same trust account (such an account is viewed as the account of a statutory irrevocable trust created by one of the chapters of title 11 of the *United States Code*), the funds of each title 11 bankruptcy estate will receive pass-through coverage—that is, each bankruptcy estate will be separately insured for up to $100,000—provided that the recordkeeping requirements of 12 CFR 330.4(b) are met.[3] However, in spite of the FDIC's staff interpretation, the Department of Justice's Executive Office for United States Trustees (Executive Office), the organization charged with supervising the administration of bankruptcy estates and trustees, has declined to recognize that there is pass-through insurance for such accounts. In accordance with section 345 of the Bankruptcy Code, 11 U.S.C. 345, the Executive Office has required banks holding such bankruptcy trustee accounts to provide collateral for any such funds that are not insured by the FDIC. But because the Executive Office does not recognize pass-through insurance for such accounts, banks holding such accounts are being required to pledge more collateral than is actually necessary. The Executive Office has stated that it will recognize pass-through coverage, and reduce its

[3] FDIC Advisory Opinions published on this subject include FDIC–93–59 (August 17, 1993), FDIC 89–21 (June 13, 1989), FDIC–88–74 (November 9, 1988), FDIC 87–17 (October 9, 1987), and FDIC–82–8 (March 25, 1982).

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collateral requirements accordingly, provided that the FDIC Board takes formal action assuring such accounts pass-through coverage. For this reason, the Board has decided to include an amendment to the FDIC's insurance regulations, in the form of a new § 330.11(d), confirming that pass-through insurance coverage will be provided for such bankruptcy trustee accounts.

The technical amendment codifying the long-standing interpretation by FDIC staff of the insurance coverage available to the commingled account of a bankruptcy trustee qualifies as an interpretative rule; thus, it is exempt from the prior notice and comment requirements ordinarily imposed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A).

B. Joint Deposit Accounts

Another technical amendment clarifies the meaning of § 330.7(c) of the FDIC's regulations (12 CFR 330.7(c)), which specifies the requirements an account must meet to qualify for separate insurance coverage as a joint account. Section 330.7(c) exempts certain types of accounts, such as certificates of deposit, from the general requirement that each co-owner must sign a signature card, but the regulation states that "all such deposit accounts, must, in fact, be jointly owned". Contrary to the FDIC's long-standing interpretation, some courts have interpreted the quoted language to require the FDIC to consider state law and evidence outside the deposit account records of the insured institution to contradict otherwise unambiguous deposit account records, in connection with claims that what appear to be joint accounts are in fact individually-owned. The FDIC intended, however, that depositors be bound by its recordkeeping regulation at 12 CFR 330.4(a), which requires that the deposit account records be considered conclusive if they are unambiguous. Reliance on the deposit account records is critical if the FDIC is to fulfill its obligation to make insurance determinations and issue checks in a timely fashion after a bank fails. It is also critical in preventing fraudulent claims. Several courts have recognized the need for the FDIC to rely on such records in making insurance determinations. *Fouad & Sons* v. *FDIC*, 898 F.2d 482 (5th Cir. 1990), *In re Collins Securities Corp.*, 998 F.2d 551 (8th Cir. 1993), *Jones* v. *FDIC*, 748 F.2d 1400 (10th Cir. 1984).

For this reason, the amendment as presently proposed would remove the "but all such deposits must, in fact, be jointly owned" language from § 330.7(c), and add that all deposit accounts which meet the requirements for qualifying joint accounts, including those which are exempted from the requirement that every co-owner must sign a signature card, will be deemed to be jointly-owned if the FDIC determines that the deposit account records are clear and unambiguous. The signatures of two or more persons on a deposit account signature card or the names of two or more persons on a certificate of deposit shall be conclusive evidence of a joint account if the deposit account records are clear and unambiguous. Only if the deposit account records are found to be ambiguous on the issue of ownership will evidence outside the deposit account records be considered, in accordance with the recordkeeping provisions of § 330.4(a). After taking into account the comments received on this amendment, FDIC staff has revised the amendment proposed earlier (and published for comment at 58 FR 64525 (December 8, 1993)) to conform more closely to the long-standing FDIC practice articulated by § 330.4(a).

The technical amendment on joint account coverage was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The FDIC received two comments on the proposed amendment clarifying what evidence is necessary to determine the ownership of a joint account. An industry trade group opposed the amendment because of concern that it might permit the FDIC to ignore outside evidence of "fundamental claims" about the "viability" of a joint account under state law—for example, evidence that an account signature was forged, that one of the signers was incompetent when he signed, or that his signature was coerced. A savings association cited similar concerns but suggested that any outside evidence on such issues be considered under federal law, not state law.

It is important to emphasize that, when the FDIC says that it will rely on the deposit account records if they are clear and unambiguous, it will do so only to determine the appropriate ownership category for insurance purposes. Such reliance will not necessarily preclude a depositor from proving that a deposit account existed when the bank's deposit account records show no evidence of such an account, or that an account actually contained more funds than are reflected in the bank's deposit account records. When the FDIC determines that the deposit account records are ambiguous or unclear, it has the discretion to consider evidence beyond the deposit account records. Of course, the FDIC need not find such extrinsic evidence persuasive. However, while the FDIC understands that account records may not always accurately reflect the intent of the parties to the account, and that circumstances may sometimes render the accounts invalid under state law,[4] the FDIC believes that it is essential to make insurance determinations without considering outside evidence concerning the ownership category of accounts as long as the account records are clear.

The recordkeeping regulations, by requiring that the deposit account records be considered conclusive if they are unambiguous, serve several important purposes. When a bank fails, it is important that the FDIC be permitted to make insurance determinations and issue checks to depositors in a timely fashion, a timeliness made possible by the FDIC's reliance on those deposit account records that are clear. Reliance on unambiguous account records also permits the FDIC to determine the least cost resolution of a failed institution and to prevent fraudulent insurance claims. These purposes require that the deposit account records, even if they do not correctly reflect the parties' intent, be deemed conclusive if they are unambiguous. Of course, if the records are ambiguous or unclear, the FDIC may, in its discretion, rely on other evidence. Moreover, as the regulations already provide, state law concerning ownership of ambiguously-owned accounts are only the starting point for determining the ownership issue; federal law ultimately controls.

For this reason, the Board has decided to include as part of this final rule the proposed amendment to the FDIC's deposit insurance rules on joint accounts. The amendment clarifies that an account holder seeking to prove that what appears to be a joint account is actually an account held in a right and capacity other than joint ownership (for example, as an individually-owned account) must satisfy the requirements of § 330.4(a) of the FDIC's regulations

[4] On the subject of state law, § 330.3(h) of the FDIC's insurance regulations states that "while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage." Instead, "[d]eposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage" 12 CFR 330.3(h).

(12 CFR 330.4(a)) on the recognition of deposit ownership. Section 330.4(a) provides, in part, that, if the FDIC determines that the deposit account records of an insured depository institution are clear and unambiguous, no other records will be considered as to the manner in which those funds are owned. Section 330.5(a) of the FDIC's regulations (12 CFR 330.5(a)) already explicitly addresses the situation where more than one natural person has the right to withdraw funds from an account that is actually viewed as individually-owned. The amendment applies to situations involving deposits which appear to be jointly-owned but which are claimed to be held in other rights and capacities.

C. Accounts for Which an Insured Depository Institution Acts as an Agent, Nominee, Guardian, Custodian or Conservator

Another technical amendment concerns § 330.6(a) of the FDIC's regulations (12 CFR 330.6(a)), which governs the insurance coverage provided for agency or fiduciary accounts. Section 330.6(a) currently indicates that funds deposited by an insured depository institution acting in a fiduciary capacity are governed by § 330.10 of the insurance regulations. However, in May 1993 the FDIC amended § 330.10, along with several other sections of the insurance regulations, primarily to implement revisions to the insurance rules made by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236) (58 FR 29952 (May 25, 1993)). One of those required revisions limits, effective December 19, 1993, the separate insurance formerly applicable to an account held by an insured depository institution in a fiduciary capacity to an account held by an insured depository institution as a trustee of an irrevocable trust. However, the May 1993 amendment simply revised § 330.10; § 330.6 continued to refer to § 330.10 but was not revised, stating instead that "[w]hen such funds are deposited by an insured depository institution acting in a fiduciary capacity, the insurance coverage shall be governed by the provisions of § 330.10 of this part".

The present technical amendment conforms § 330.6(a) to section 311 of FDICIA. The first sentence of § 330.6(a) states the general rule—that funds owned by a principal or principals and deposited into one or more deposit accounts in the name of a fiduciary shall be insured as if deposited in the name of the principal or principals. The second sentence implements the FDICIA change by stating that, when such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage will be governed by the provisions of § 330.10.

Like the technical amendment on joint account coverage, this technical amendment was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The amendment proposed to state clearly, in § 330.6(a), that only funds deposited by an insured depository institution *acting as a trustee of an irrevocable trust* will be eligible for the separate insurance coverage described in § 330.10. Up until this time, § 330.6(a) had stated that funds deposited by an insured depository institution *acting in a fiduciary capacity* would be insured as provided by § 330.10, while § 330.10 stated that it pertains only to funds held by an institution acting as the trustee of an irrevocable trust. Thus, the amendment merely clarifies the language.

The FDIC received four comments on this technical amendment, all of which were favorable. Two, however, noted that the proposed regulatory language for § 330.6(a) seemed to except deposits held by insured depository institutions acting in a representative capacity from the general rule that all deposits held by fiduciaries are insured as if owned by the party represented by the fiduciary. Of course, even deposits held by insured depository institutions acting in a representative capacity follow this general rule. Thus, this final rule includes the proposed amendment to § 330.6(a), as revised to reflect the suggested clarification.

D. Accounts Held by Depository Institutions in Fiduciary Capacities

The final technical amendment further conforms the FDIC's regulations to section 311 of FDICIA, by changing the present title of § 330.10, "Accounts held by depository institutions in fiduciary capacities", to "Accounts held by a depository institution as the trustee of an irrevocable trust". This change conforms § 330.10 to section 311 of FDICIA and to the rest of § 330.10 itself. Because the amendment merely makes the title consistent with § 330.10, and because the text of § 330.10 was itself published for comment (57 FR 49026 (October 29, 1992)), it is unnecessary, under the Administrative Procedure Act, to publish this proposed change for comment. 5 U.S.C. 553(b)(3)(B).

Paperwork Reduction Act

The final rule is intended to reduce uncertainty about whether employee benefit plan deposits are eligible for "pass-through" insurance coverage and to require depository institutions to provide timely disclosure to employee benefit plan depositors when "pass-through" deposit insurance coverage is no longer available. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

The technical amendments do not require any collections of information pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Neither the final rule nor the technical amendments will have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends Part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

2. Section 330.6 is amended by revising paragraph (a) to read as follows:

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage

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shall be governed by the provisions of § 330.10 of this part.

* * * * *

3. Section 330.7 is amended by revising paragraph (c) to read as follows:

§ 330.7 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are natural persons; and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.4(a) of this part, the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

* * * * *

4. The heading of § 330.10 is revised to read as follows:

§ 330.10 Accounts held by a depository institution as the trustee of an irrevocable trust.

5. Section 330.11 is amended by adding a new paragraph (d) to read as follows:

§ 330.11 Irrevocable trust accounts.

* * * * *

(d) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the *United States Code* commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured for up to $100,000, separately from the funds of any other such estate.

6. Section 330.12 is amended by revising the heading and introductory text of paragraph (g), redesignating paragraphs (g)(1), (g)(2) and (g)(3) as paragraphs (g)(2), (g)(3) and (g)(4), respectively, and adding new paragraphs (g)(1) and (h) to read as follows:

§ 330.12 Retirement and other employee benefit plan accounts.

* * * * *

(g) *Definitions of "depositor", "employee benefit plan", "employee organizations" and "non-contingent interest".* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

* * * * *

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* (i) An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of: an accurate explanation of the requirements for pass-through deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for "pass-through" insurance coverage.

(ii) An insured depository institution shall provide the notice required in paragraph (h)(2)(i) of this section to depositors who have employee benefit plan deposits with the insured depository institution on July 1, 1995 that, at the time such deposits were placed with the insured depository institution, were not eligible for pass-through insurance coverage under paragraphs (a) and (b) of this section. The notice shall be provided to the applicable depositors within ten business days after July 1, 1995.

(3) *Disclosure when "pass-through" coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for "pass-through" insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for "pass-through" insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within 10 business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of "employee benefit plan".* For purposes of this paragraph, the term *employee benefit plan* has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 95-3178 Filed 2-8-95; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95N-0025]

Food Labeling; General Requirements for Nutrition Labeling of Dietary Supplements; General Requirements for Nutrient Content Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, given the need to modify its regulations on nutrition labeling and nutrient content claims for dietary supplements to respond to the 1994 Dietary Supplement Health and Education Act (the 1994 DSHEA), it does not intend to enforce those regulations until after December 31, 1996. FDA is issuing this notice of intent in response to inquiries from the dietary supplement industry.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5483.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act (the 1990 amendments) was enacted on November 8, 1990. This law amended the Federal Food, Drug, and Cosmetic Act (the act) to require that virtually all foods, including conventional foods and dietary supplements, bear nutrition labeling (section 403(q) of the act (21 U.S.C. 343(q)), and that if they bear claims about the level of nutrients that they contain, those claims be made in accordance with definitions adopted by FDA (see section 403(r) of the act). The 1990 amendments required that FDA issue proposed rules implementing these provisions within 12 months from the date of their enactment and final rules within 24 months (sections 2(b) and 3(b) of the 1990 amendments). The final rules were to be effective 6 months after they were issued, although FDA was authorized to delay application of the rules for up to 1 year if it found that compliance with the nutrition labeling and nutrient content claim provisions would cause undue economic hardship (section 10(a) of the 1990 amendments). FDA issued proposed rules on November 27, 1991 (see 56 FR 60366 and 60421). On October 29, 1992, however, shortly before the final rules were to be issued, the Dietary Supplement Act of 1992 (the 1992 DS act) (Title II of Pub. L. 102-571) was enacted. This law took dietary supplements out of the rulemaking schedule that had been established under the 1990 amendments. It provided that FDA issue new proposals on the nutrition labeling of, and nutrient content claims for, dietary supplements by June 15, 1993, and that the agency issue final rules by December 31, 1993. However, the provisions of the 1990 amendments that made the final rules effective 6 months after issuance, and that gave FDA discretion to delay their applicability for 1 year, continued to apply to dietary supplements.

Consistent with the 1990 amendments and the 1992 DS act, on June 18, 1993 (58 FR 33715 and 33731), FDA issued proposed rules on the nutrition labeling and nutrient content claims for dietary supplements. On January 4, 1994 (59 FR 354 and 378), FDA issued the final rules. As stated above, under the 1990 amendments, these final rules were to be effective 6 months from December 31, 1993, or on July 1, 1994. However, in conjunction with the publication of the final rules, FDA made a finding that requiring compliance by that date would cause dietary supplement manufacturers undue economic hardship (59 FR 350, January 4, 1994). Therefore, FDA stated that these manufacturers need not comply with the final rules on nutrition labeling and nutrient content claims until July 1, 1995.

Having completed these rulemakings, FDA anticipated that dietary supplement firms would begin taking steps to come into compliance with the new rules, and dietary supplement manufacturers have apparently done so. For example, in 1994, a number of dietary supplement trade associations held conferences about the new rules, and FDA received inquiries from a number of firms about what steps are required.

In October 1994, however, a significant ambiguity was introduced into the regulation of the labeling of dietary supplements. At that time, the 1994 DSHEA (Pub. L. 103-417) was enacted. This new law amended both the nutrition labeling and nutrient content claim provisions of the act (see sections 7(b) and (c) of the 1994 DSHEA). It made limited changes in how nutrition information is to be presented in the labeling of dietary supplements, although it made implementation of these changes subject to regulations adopted by the Secretary of Health and Human Services (and, by delegation, FDA) (section 403(q)(5)(F) of the act). It also limited in one respect the nutrient content claims for dietary supplements that must be defined by regulation by FDA (section 403(r)(2)(F) of the act).

With respect to the effective date of these amendments and to the other labeling provisions enacted as part of the new law, the 1994 DSHEA stated that dietary supplements may be labeled in accordance with its provisions after its date of enactment, and that they must be labeled in compliance with its provisions after December 31, 1996 (section 7(e) of the 1994 DSHEA). The new law was silent, however, with respect to its effect on the July 1, 1995, applicability date established under the 1990 amendments and the 1992 DS act for FDA's regulations on the nutrition labeling and nutrient content claim requirements for dietary supplements.

II. Statement

In the wake of the new law, FDA has received inquiries from the dietary supplement industry about how the agency intends to enforce the law. One trade association wrote that its members are making efforts to comply with the July 1, 1995, effective date established under the 1990 amendments and the 1992 DS act, but that, as a practical matter, that effective date should not be enforced to allow the process of implementing the 1994 DSHEA to proceed in a reasonable fashion. The trade association cautioned that if FDA did not follow such a course, companies would be put in the untenable position of needing to relabel in July 1995, only to relabel again by the end of 1996 (Ref. 1).

FDA believes that it is appropriate, in response to these inquiries, to issue a statement on how it intends to enforce its nutrition labeling and nutrient content claim regulations with respect to dietary supplements in light of the passage of the 1994 DSHEA (Ref. 2). In formulating this statement, FDA has carefully considered Congress' goals in passing the 1994 DSHEA and the 1990 amendments, as well as the needs of the companies that are required to label their products in accordance with the act and of consumers to whom the information in question is to be provided.

In the 1990 amendments, Congress required that food labels bear information that will help consumers to maintain healthy dietary practices and established timeframes for the implementation of the legislation to

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ensure that it would be given effect without undue delay. In the 1994 DSHEA, Congress, while embracing most of what FDA has done under the 1990 amendments with respect to dietary supplements, sought to provide for the inclusion of additional information on the nutrition label and to provide additional flexibility in how that information is presented. The dietary supplement industry is left facing an applicability date for FDA's nutrition labeling and nutrient content claim regulations for dietary supplements of July 1, 1995, without complete guidance on how the nutrition label is ultimately to be presented on these products. As for consumers, they are currently provided with nutrition information on many, but by no means all, dietary supplements, but that information is not being presented in a form that is consistent with the "Nutrition Facts" panel that appears on conventional foods.

Having considered these factors, FDA advises that, while the nutrition labeling and nutrient content claim regulations implementing the 1990 amendments for dietary supplements will go into effect on July 1, 1995, it does not intend to enforce those regulations until it has modified them to reflect the 1994 DSHEA, and until after dietary supplement manufacturers are required to label their products in accordance with the 1994 DSHEA; that is, not until after December 31, 1996.

FDA considers this course of action appropriate for several reasons. First, FDA recognizes the merit in the dietary supplement industry's argument that it should not be required to relabel its products until it has a full understanding of what its alternatives and obligations are. Enforcing the nutrition labeling and nutrient content claims regulations on July 1, 1995, would require dietary supplement manufacturers to choose between relabeling their products twice, the first time to come into compliance and the second to take advantage of the flexibility provided by the new law, or foregoing that flexibility. To force dietary supplement manufacturers to make such a choice would be a result that the agency does not believe Congress contemplated or would have intended in enacting the 1994 DSHEA.

The 1994 DSHEA provides for flexibility in the dietary ingredients that can be included in the "Nutrition Facts" box and in the presentation of ingredient information. FDA, pursuant to the 1994 DSHEA, is at work on regulations that define this flexibility. FDA agrees that industry should have an opportunity to take advantage of this flexibility without being forced to relabel twice to do so. FDA acknowledges that it will not be possible for the agency to have its regulations in place, nor for the industry to have adequate time to design its labeling in accordance with these regulations, by July of this year. Thus, the interests of industry and the policies embodied in the 1994 DSHEA will be advanced if FDA declines to enforce the nutrition labeling and nutrient content claim regulations that apply to dietary supplements until after December 31, 1996, when they will be fully modified to reflect the 1994 DSHEA.

While the purposes of the 1990 amendments will not be as clearly advanced by such a course of action, they will also not be contravened. Implementation of the 1994 DSHEA will move FDA forward toward its goal of full implementation of the 1990 amendments. Moreover, while Congress sought to rule out undue delay in implementation of the 1990 amendments, a delay caused by implementation of another law enacted by Congress can hardly be considered "undue."

Finally, it is true that consumers face an additional delay before dietary supplements bear nutrition information that is as consistent as possible, both in content and presentation, with that on other foods, and until there is full compliance by dietary supplements with the nutrient content claim provisions of the act. These facts are mitigated, however, by the fact that there is information listing nutrients and their levels on many dietary supplements, and that many dietary supplements do not bear nutrient content claims.

Thus, having fully considered these factors, the agency advises that it does not intend to enforce the nutrition labeling and nutrient content claims regulations that apply to dietary supplements until after December 31, 1996. The agency is at work developing a proposal that implements the labeling provisions of the 1994 DSHEA and expects to publish it in the near future.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cordaro, John, President, Council for Responsible Nutrition, letter to David A. Kessler, Commissioner, FDA, December 7, 1994.

2. Shank, Fred, R., Director, Center for Food Safety and Applied Nutrition, FDA, letter to John B. Cordaro, President, Council for Responsible Nutrition, January 30, 1995.

Dated: February 6, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–3294 Filed 2–8–95; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

Administration of Assistance Awards to U.S. Non-Governmental Organizations

AGENCY: Agency for International Development (USAID).

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to the interim final rule which was published Thursday, January 19, 1995 (60 FR 3743). The rule relates to the administration of assistance awards to U.S. Non-Governmental Organizations.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Joan Esposito, Office of Procurement, Procurement Policy and Evaluation (M/OP/P), USAID, SA–14 Rm. 1600I, 320 21st Street, Washington, DC 20523. Telephone 703 875–1529, Fax 703–875–1243.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1995, USAID issued an interim final rule at 22 CFR part 226 which implemented Office of Management and Budget (OMB) Circular A–110.

Need for Correction

As published, the preamble refers to a change that was not implemented in the interim final rule.

Correction of Publication

Accordingly, the publication on January 19, 1995 of the interim final rule, is corrected as follows:

Preamble [Corrected]

On page 3744, in the first column, at the paragraph beginning "Section 226.22(l) is revised to provide * * *" is corrected to read: "Section 226.22(l) is revised to provide that USAID may authorize recipients to retain all interest earned in accordance with USAID's statutory authority." The statement in the preamble that interest earned will be remitted to USAID has been deleted.

With this correction, the preamble and the rule at 226.22(l) are in agreement.

Dated: January 27, 1995.

Michael D. Sherwin,

Deputy Assistant Administrator for Management.

[FR Doc. 95–3271 Filed 2–8–95; 8:45 am]

BILLING CODE 6116–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–118–1–6083a; TN–101–1–5718a; TN–110–2–6569a; FRL–5146–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) for ozone. These revisions were submitted to EPA through the Tennessee Department of Environment and Conservation (TDEC) on November 5, 1992, May 18, 1993, and July 6, 1993, for the Nashville nonattainment area and revise regulations for Stage I vapor recovery (Stage I) in the Tennessee SIP and add regulations pertaining to Stage II vapor recovery (Stage II). These revisions regulate gasoline dispensing stations in Davidson, Rutherford, Sumner, Williamson, and Wilson counties. These regulations have been submitted by the TDEC to satisfy the requirement of section 182(b)(3) of the 1990 Clean Air Act, which requires all ozone nonattainment areas classified as moderate or above to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery systems. The revisions also make minor changes to the Nashville-Davidson County Rules regulating definitions and recordkeeping. The TDEC has also submitted this plan as an integral part of the program to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. These regulations meet all of EPA's requirements and therefore EPA is approving this SIP revision.

DATES: This final rule will be effective April 10, 1995 unless adverse or critical comments are received by March 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Alan W. Powell, at the EPA Regional Office listed.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region 4 Air Programs Branch, Environmental Protection Agency345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th floor, 401 Church Street, Nashville, Tennessee 37243.

Nashville-Davidson County Bureau of Environmental Health Services, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Alan W. Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The phone number is (404) 347–3555 ext.4209. Reference file TN–118–1–6083.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was determined by the ambient air quality data obtained for the three year period 1987 through 1989. The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications. Section 182(b)(3) requires areas classified as moderate to implement Stage II controls unless and until the EPA promulgates, On Board Vapor Recovery (OBVR) regulations pursuant to section 202(a)(6) of the CAA. On January 22, 1993, the United States Court of Appeals for the District of Columbia ruled that the EPA's previous decision not to require OBVR controls be set aside and that OBVR regulations be promulgated pursuant to section 202(a)(6) of the CAA. The EPA Administrator signed the OBVR final rule on January 24, 1994.

Subsequently, the EPA determined under section 182(b)(3) that moderate areas are not required to implement Stage II regulations. However, Tennessee has indicated that a Stage II program is necessary as a volatile organic compound (VOC) control measure to attain the ozone NAAQS in Nashville, which has been classified as a moderate nonattainment area for ozone. Stage II vapor recovery is included in the State's 15% Plan required by section 182 (b)(1) of the CAA. Under section 182 (b)(3), the EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, the EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA–450/3–91–022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs." In addition, on April 16, 1992, the EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498). The guidance documents and the General Preamble discuss Stage II statutory requirements and discuss what the EPA believes a State submittal needs to include to meet those requirements. The Tennessee regulations meet those requirements which are discussed below.

General Vapor Recovery Requirements

The CAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an Independent Small Business Marketer (ISBM), these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) two years for all other facilities. For ISBM's, section 324(a) of the Act provides that the time periods may be: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect, (2) 66 percent of such facilities by the end of the second year, and (3) 100 percent of such facilities after the third year. Both the

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State and County regulations are consistent with these guidelines.

Consistent with EPA's guidance, both the State and County regulations require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The State and County regulations require sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). The State and County regulations have also established an inspection program consistent with that described in EPA's guidance and has established procedures for enforcing violations of the Stage II requirements.

Rule 1200–3–18–.24, Gasoline Vapor Recovery, Stage II

The Nashville area is designated nonattainment for ozone and classified as moderate. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the CAA, Tennessee was required to submit Stage II vapor recovery rules for this area by November 15, 1992. On May 18, 1993, and July 6, 1993, the Tennessee Department of Environment and Conservation submitted to EPA Stage II vapor recovery rules that became effective by the State on June 21, 1993. The Tennessee regulation meets EPA requirements as discussed below. Additional information is located in the Technical Support Document (TSD) which is available for review in the EPA Region 4 office.

The provisions of section 182(b)(3) of the CAA include a requirement for owners or operators of gasoline dispensing systems to install and operate Stage II vapor recovery equipment at their facilities. The CAA specifies that the state regulation must apply to any facility that dispenses more that 10,000 gallons of gasoline per month or, in the case of an ISBM, any facility that dispenses more than 50,000 gallons of gasoline per month. The definition of an ISBM is included in the TSD and may also be found in section 324 of the CAA. The State has adopted a general applicability requirement of 10,000 and has provided an applicability requirement of 50,000 for ISBM's. The State definition of ISBM is consistent with the definition in the CAA.

Regulation 7, Section 7–13, Gasoline Dispensing Facility, Stage I and Stage II

On November 5, 1992, the Metropolitan Health Department of Davidson County through the TDEC submitted to the EPA Stage II vapor recovery rules that became State effective on September 15, 1992. The Stage I portion of the regulation was unchanged. This regulation, which is applicable for the Davidson County area, is more stringent than the State regulation in that the Stage II portion of this regulation does not provide separate applicability requirements for ISBM's. The TDEC has provided the Metropolitan Health Department with a certificate of exemption from enforcement of the State rule. As a consequence, the Davidson County area will not be subject to the State rule, but rather will be subject to enforcement from the rule submitted by the Metropolitan Health Department.

Regulation 7, Section 7–1, Definitions

Paragraph 11, the definition of volatile organic compounds (VOC), was amended for clarity.

Regulation 7, Section 7–25, Record Keeping and Recording Requirements

Subsection (b) was amended to add a general three year record retention requirement.

Final Action

EPA is approving the aforementioned amendments to the Tennessee SIP because they meet all requirements of the CAA. This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 10, 1995 unless, by March 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 10, 1995.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small non-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c) (116) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(116) The Tennessee Department of Environment and Conservation submitted a SIP revision that amended Rule 1200–3–18 which was submitted to EPA on May 18, 1993. These amendments add Stage II provisions to this rule.

(i) Incorporation by reference.

(A) Rule 1200–3–18–.24 which became State-effective June 21, 1993.

(B) Revisions to the Davidson County portion of the Tennessee SIP. Rule 7, Section 7–1 (11), Rule 7, Section 7–13, Rule 7, Section 7–25(b) which became state effective on November 4, 1992.

(ii) Other material. None.

* * * * * *

[FR Doc. 95–3211 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Part 52

[CA 96–1–6799; FRL–5151–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to direct final rule.

SUMMARY: This document contains corrections to the final regulation which was published Tuesday, January 3, 1995. The regulation concerned the inclusion of additional information to the California State Implementation Plan.

EFFECTIVE DATE: This correction is effective on February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995, at 60 FR 38, EPA published a final rulemaking action to approve two negative declarations submitted by the California Air Resources Board for the Mojave Desert Air Quality Management Distict. The two negative declaration were included as additional information to the California State Implementation Plan in the form of Negative Declarations submitted by the California Air Resources Board for the Mojave Desert Air Quality Management District.

Need for Correction

As published, subparagraph (c) (200) used in the amendatory language section for 40 CFR Subpart F, California, § 52.220 Identification of plan at 60 FR 40 was incorrect and needs to be changed.

Correction of Publication

Accordingly, the publication on January 3, 1995 of the direct final rule FR Doc. 94–32232 is corrected as follows:

§ 52.220 [Corrected]

On page 40, in the first column, amendatory instruction 2. is corrected to read:

"Section 52.220 is amended by adding paragraph (c)(198)(ii) to read as follows:"

Dated: January 31, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–3213 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–60–W

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–3, 201–9, 201–18, 201–20, 201–21, 201–23, and 201–39

RIN 3090–AE75

Amendment of Miscellaneous FIRMR Provisions; Correction

AGENCY: Information Technology Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document implements technical corrections to a final rule regarding updating General Services Administration (GSA) offices and symbols and clarifying various Federal Information Resources Management (FIRMR) provisions which were published on Wednesday, November 30, 1994, (59 FR 61281) and began on page 61281 in the **Federal Register**. This correction replaces the correction published in the **Federal Register** on Friday, January 6, 1995, (60 FR 2029), which contained typographical errors.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., GSA, Office of Information Resources Management Policy, telephone (202) 501–4469 (v) or (202) 501–0657 (tdd).

In 41 CFR Chapter 201 Amendment of Miscellaneous FIRMR provisions beginning on page 61281 in the issue of Wednesday, November 30, 1994, make the following corrections:

PART 201–3—[CORRECTED]

§ 201–3.402 [Corrected]

1. On page 61282, in the second column, in § 201–3.402, paragraph (b) is corrected by removing the correspondence symbol (KMR) and replacing it with the correspondence symbol "(KAR)".

PART 201–9—[CORRECTED]

§ 201–9.202–1 [Corrected]

2. On page 61282, in the second column, in § 201–9.202–1, paragraph (b)(7) is corrected by removing the correspondence symbol "(KMR)" and replacing it with the correspondence symbol "(KAR)".

§ 201–9.202–2 [Corrected]

3. On page 61282, in the second column, in § 201–9.202–2, paragraph (b)(1)(ix) is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

PART 201–18—[CORRECTED]

§ 201–18.003 [Corrected]

4. On page 61282, in the second column, in § 201–18.003, line five is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

PART 201–20—[CORRECTED]

§ 201–20.303 [Corrected]

5. On page 61282, in the third column, in § 201–20.303, paragraph

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(d)(2), line five is corrected by removing the correspondence symbol "(KMR)" and replacing it with the correspondence symbol "(KAR)".

§ 201–20.305 [Corrected]

6. On page 61282, in the third column, in § 201–20.305, paragraph (a)(7) is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

PART 201–21—[CORRECTED]

§ 201–21.403 [Corrected]

7. On page 61283, in the first column, in § 201–21.403, paragraph (a)(2)(ii), is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

§ 201–21.603 [Corrected]

8. On page 61283, in the first column, in § 201–21.603, paragraphs (d)(1) and (d)(3) are corrected by removing the correspondence symbols "(KMR)" and replacing them with the correspondence symbol "(KAR)" in both paragraphs.

§ 201–21.604 [Corrected]

9. On page 61283, in the first column, in § 201–21.604(a) is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

PART 201–23—[CORRECTED]

§ 201–23.003 [Corrected]

10. On page 61283, in the first column, in § 201–23.003, paragraphs (a) and (c) are corrected by removing the correspondence symbol "(KMA)" in both paragraphs and replacing them with the correspondence symbol "(KAA)" in both paragraphs.

PART 201–39—[CORRECTED]

§ 201–39.001 [Corrected]

11. On page 61283, in the third column, in § 201–39.001, paragraph (b) is corrected by removing the correspondence symbol "(KMR)" and replacing it with the correspondence symbol "(KAR)" and by removing the correspondence symbol "KML" and replacing it with the correspondence symbol "KAL".

§ 201–39.101–6 [Corrected]

12. On page 61283, in the third column, in § 201–39.101–6, paragraph (b) is corrected by removing the correspondence symbol "(KMR)" and replacing it with the correspondence symbol "(KAR)".

§ 201–39.104–1 [Corrected]

13. On page 61283, in the third column, the section numbering "201–37.104–1" should be corrected to read "§ 201–39.104–1" and paragraph (b)(3) is corrected by removing the correspondence symbol "(KMR)" and replacing it with the correspondence symbol "(KAR)".

§ 201–39.3304–1 [Corrected]

14. On page 61284, in the first column, in § 201–39.3304–1 is corrected by removing the correspondence symbol "(KMA)" and replacing it with the correspondence symbol "(KAA)".

Dated: February 1, 1995.

Margaret Truntich,

Director, Regulations Analysis.

[FR Doc. 95–3170 Filed 2–8–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4292; I.D. 020395A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: February 3, 1995, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook and line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone was reached on February 3, 1995. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 6:00 p.m., local time, February 3, 1995, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) The Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48′ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994

(59 FR 49356, September 28, 1994). Consequently, with this closure the only commercial king mackerel fishery remaining open in the Gulf of Mexico EEZ is the fishery in the Florida west coast sub-zone by vessels using hook-and-line gear.

During the closure, no person aboard a vessel that has been issued a gillnet endorsement may fish for or retain king mackerel in the EEZ in the Florida west coast sub-zone.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 3, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3210 Filed 2–6–95; 10:13 am]

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Proposed Rules

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–AWP–13]

Proposed Amendment to Restricted Area R–2504; Camp Roberts, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 6, 1992. The NPRM proposed to amend the boundaries and time of designation for Restricted Area R–2504, Camp Roberts, CA. The FAA has determined that withdrawal of the proposal at this time is warranted because the Department of the Army has temporarily halted action on the proposal.

DATES: This proposed rule is withdrawn February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION: On May 6, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to change the boundaries and time of designation for R–2504, Camp Roberts, CA (57 FR 19409).

The FAA has decided to withdraw the proposal at this time to provide the Department of the Army the opportunity to compile additional information regarding the proposal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, Airspace Docket No. 91–AWP–13, as published in the **Federal Register** on May 6, 1992 (57 FR 19409), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on January 26, 1995.

Nancy B. Kalinowski,
Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–2736 Filed 2–8–95; 8:45 am]
BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–35323; File No. S7–4–95]

RIN 3235–AG28

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new rules and amendments to existing rules concerning unlisted trading privileges ("UTP") in listed initial public offerings ("IPOs"). The proposed rules would reduce the period that exchanges have to wait before extending UTP to any listed IPO security, from the third trading day, to the first trade reported by the listing exchange to the Consolidated Tape. The proposed rules also would require exchanges to have rules and oversight mechanisms in place to ensure fair and orderly markets and the protection of investors with respect to UTP in the securities.

DATES: Comments should be submitted on or before March 13, 1995.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., D.C. 20549, and should refer to File No. S7–4–95. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room No. 1024, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Betsy Prout, 202/942–0170, Attorney, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5–1), 450 5th Street, N.W., Washington D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1994, the Unlisted Trading Privileges Act of 1994 ("UTP Act") became effective. The UTP Act amends Section 12(f) of the Securities Exchange Act of 1934 ("Exchange Act"). Section 12(f) governs when a national securities exchange ("exchange") may trade a security that is not listed and registered on that exchange, *i.e.* by extending unlisted trading privileges ("UTP") to the security. Pursuant to the UTP Act, the Commission today is proposing rules under Section 12(f).

A. Section 12(f) Prior to the UTP Act

Prior to the UTP Act, Section 12(f) required exchanges to apply to the Commission before extending UTP to a particular security.[1] An exchange application for the extension of UTP named the security (or frequently, securities) for which the applicant exchange sought Commission approval for UTP. The Commission was required to provide interested parties with at least ten days notice of the application, which the Commission accomplished by publishing each UTP application for comment in the **Federal Register** at least ten days prior to approving UTP for a security. In addition, prior to approving the UTP application, the Commission had to find that the extension of UTP to each security named, if listed and registered on another exchange ("listed security" on a "listing exchange"), would be consistent with the maintenance of fair and orderly markets and the protection of investors. If so, the Commission published an approval order in the **Federal Register**.

Section 12(f) gave interested parties an opportunity to comment and to participate in a hearing regarding the extension of UTP to any security. Pursuant to Section 12(f), the Commission processed hundreds of exchange applications for the extension of UTP each year, yet comments on the applications were extremely rare. Indeed, virtually no comments have been submitted to the Commission on a UTP application in over ten years.

As a consequence of the application, publication, and approval process, applicant exchanges had to wait several weeks before competing with listing exchanges that already were trading the securities. Moreover, while exchanges were required to await Commission approval before competing with the listing exchange, dealers trading off an exchange could trade any security immediately upon its effective registration with the Commission.[2]

As noted above, Section 12(f) also required the Commission to review each UTP application to ensure the maintenance of fair and orderly markets and the protection of investors with respect to the extension of UTP to the securities named in the application. Pursuant to this standard of review, the staff identified, over time, certain areas of particular concern as they relate to UTP. Accordingly, the staff reviewed each application to ensure, among other things, that the applicant exchange had proper trading rules in place to provide a fair and orderly market in each security named and had sufficient standards for regulatory oversight of each security to provide for the protection of investors. While Commission review of the applications led to occasional discoveries of material deficiencies and errors in the applications, the overwhelming majority of applications raised no substantive issues and over 99% of the applications were approved.

In response to the Concept Release that initiated the Market 2000 Study,[3] resulting in the Division of Market Regulation's ("Division") report, *Market 2000: An Examination of Current Equity Market Developments*, some commenters noted that the regulatory process for UTP could be a potential area for reform.[4] Shortly after publication of the Concept Release, the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce ("Subcommittee") began working on draft legislation to amend Section 12(f).[5] These efforts, along with the efforts and support of the various self-regulatory organizations, ultimately led to the UTP Act.

B. Statutory Changes Under Amended Section 12(f)

The UTP Act, among other matters, removes the application, notice, and Commission approval process from Section 12(f) of the Exchange Act, except in cases of Commission suspension of UTP in a particular security on an exchange. Thus, the amendment generally allows an exchange to extend UTP to any security when it becomes listed and registered on another exchange or included in Nasdaq,[6] subject to certain limitations.

First, the UTP Act contains special provisions for the extension of UTP to any listed security that is the subject of an initial public offering ("listed IPO security").[7] The amendment includes a temporary provision that requires exchanges to wait until the third day of trading in any listed IPO security on the listing exchange before they may allow their members to trade the security pursuant to UTP. This provision also requires the Commission to prescribe by rule or regulation, within 180 days of the enactment of the UTP Act (or before April 21, 1995), the mandatory delay (or, "duration of the interval"), if any, that should apply to UTP extensions to listed IPO securities.[8]

Second, Section 12(f)(1)(D) provides the Commission with rulemaking authority to prescribe, by rule or regulation, additional procedures or requirements for extending UTP to any security.

Third, new Section 12(f)(2) allows the Commission summarily to suspend UTP in a security at any time within 60 days of the commencement of trading on the relevant exchange pursuant to UTP. Upon suspension, the exchange must cease trading in the security. Pursuant to Section 12(f)(2)(A)(ii), an exchange seeking to reinstate its ability to extend UTP to the security, following a Commission suspension, must file an application with the Commission. The exchange must apply pursuant to procedures that the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the

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[1] When an exchange "extends UTP" to a security, the exchange allows its members to trade the security as if it were listed on the exchange. For discussions of the history of UTP in U.S. markets and Section 12(f) of the Exchange Act, *see, e.g.*, Stephen L. Parker & Brandon Becker, Unlisted Trading Privileges, 14 *Rev. Sec. Reg.* 853 (1981); and Walter Werner, Adventure in Social Control of Finance: The National Market System for Securities, 75 *Colum. L. Rev.* 1233 (1975).

[2] As a technical matter, Section 12(a) limits the trading of securities on an exchange to those securities that are listed and registered on that exchange. Section 12(f), both prior to and following this amendment, makes an exemption from this requirement for securities traded pursuant to UTP. Over-the-counter ("OTC") dealers are not subject to the Section 12(a) listing requirement because they do not transact business on an exchange.

[3] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FP 32587 ("Concept Release").

[4] *See* letter from William G. Morton, Jr., Boston Stock Exchange, John L. Fletcher, Midwest (currently Chicago) Stock Exchange, Leopold Korins, Pacific Stock Exchange, and Nicholas A. Giordano, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated December 11, 1992. *See* also, Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994).

[5] The Subcommittee held a hearing on the UTP Act on June 22, 1994, at which a Division representative and representatives of several self-regulatory organizations appeared and submitted written comments on the legislation. The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 2d Sess. (1994) ("UTP Hearing").

[6] Section 12(f), as amended, also removes the application and approval requirements for exchange UTP in securities that are registered under 12(g) of the Exchange Act (generally, "OTC securities"). Exchange extensions of UTP to OTC securities, and specifically to Nasdaq/National Market securities, are subject to limitations provided in Section 12(f) and provided in an on-going pilot program. *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103. While the UTP Act removed the relevant application procedures for Nasdaq stocks, UTP in OTC securities continues to be subject to the on-going pilot program and the limitations it provides. For that reason, the Commission will consider issues involved in UTP extensions to OTC securities as the Commission continues its on-going review of the operation of the pilot program.

[7] Section 12(f)(1)(B), read jointly with Section 12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, new subparagraphs 12(f)(1)(G)(i) and (ii) provide:

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

15 U.S.C. 78*l*(f)(1)(G).

[8] Specifically, amended Section 12(f)(1)(C) provides:

Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in this subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation, or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next trading day.

In short, this provision requires exchanges (until the earlier of the effective date of a Commission rule, or 240 days after the enactment of the UTP Act) to wait until the third trading day in a listed IPO security before trading the security pursuant to UTP.

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Exchange Act. New Section 12(f)(2) requires public notice and Commission review of applications to reinstate UTP that has been suspended summarily by the Commission. The procedures and Commission standard of review for approval of a reinstatement application are substantially similar to the application and review process that previously preceded an exchange's initial extension of UTP to a security under former Section 12(f) and the rules thereunder.

These amendments to Section 12(f) reduce the waiting period that previously delayed exchange extensions of UTP to securities listed on other exchanges, or to certain securities traded OTC. In addition, the amendments direct the Commission to prescribe rules for UTP in listed IPO securities, and otherwise empowers the Commission to establish rules for UTP generally as the Commission deems appropriate in furtherance of the purposes of the Exchange Act.

II. Proposed Rules and Amendments to Existing Rules Pursuant to Amended Section 12(f)

As described in more detail below, the Commission is proposing two new rules and amendments to and rescissions of existing rules. Specifically, the Commission is proposing new Rule 12f–2 concerning UTP in listed IPO securities, and is soliciting comment on alternatives to the proposed rule that would be consistent with the UTP Act. The Commission also is proposing and soliciting comment on new Rule 12f–5 regarding exchange rules to ensure the maintenance of fair and orderly markets and the protection of investors for all securities traded pursuant to UTP. To provide consistency between the amendments to Section 12(f) and the rules thereunder, the Commission also is proposing to amend existing Rules 12f–1 and 12f–3 and to rescind existing Rules 12f–2 and 12f–6. Finally, the Commission is soliciting comment on whether other Commission action concerning intermarket linkages, as they affect UTP in listed securities, is necessary to facilitate the operation of the UTP Act.

A. Listed Securities That Are the Subject of an Initial Public Offering (Proposed Rule 12f–2)

As discussed above, the UTP Act generally allows exchanges to extend UTP to securities when they become listed and registered on another exchange or included in Nasdaq, except in the case of listed IPO securities. In this regard, the UTP Act establishes a temporary provision that requires exchanges to wait until the third day of trading in the security on the listing exchange before extending UTP to the security. Before April 21, 1995, the Commission must prescribe by rule or regulation the appropriate waiting period, if any, that would apply before an exchange may extend UTP to any listed IPO security following the commencement of its IPO.

The Commission is proposing new Rule 12f–2 under the Exchange Act to establish the waiting period that would govern the extension of UTP to a security that is the subject of an IPO. Proposed Rule 12f–2 would provide that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1 under the Exchange Act.[9] The proposed rule, therefore, would shorten the mandatory waiting period (or "interval," as it is described in the UTP Act) for UTP in listed IPO securities from two trading days, as temporarily specified by amended Section 12(f), to the time that it takes to effect and report the initial trade in the security on a listing exchange.

Rule 12f–2 would define the term "subject security" to mean a security that is the subject of an initial public offering, as that term is defined in Section 12(f)(1)(G) of the Exchange Act. To ensure that the proposed rule would not provide any means to circumvent other Section 12(f) objectives and requirements, the proposed rule also would provide that the extension of UTP pursuant to the rule would be subject to all the provisions set forth in Section 12(f) of the Exchange Act, as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

The Commission preliminarily believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. Shortening the interval for UTP in listed IPO securities should enhance the ability of exchanges to compete for order flow in the subject securities, especially in light of the fact that OTC dealers may trade IPO securities immediately upon effective registration with the Commission. Accordingly, in the absence of a compelling reason to impose a restriction that would inhibit competition among exchanges, the Commission initially believes that competing exchanges should be able to extend UTP to a listed IPO security after the first trade in the security on the listing exchange has been effected and reported.

The Commission is proposing a one-trade interval before exchanges may extend UTP to a listed IPO security because the Commission preliminarily believes that the first transaction in an IPO, as disseminated on the consolidated tape, conveys essential information to the public concerning the pre-evaluated offering price of the security. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination involving the issuer, the listing exchange, and the underwriters of the public offering of the security. If competing exchanges were to allow their members to trade a listed IPO security before it initially trades on the listing exchange, it may be difficult to ensure that all the preparation for the IPO had been completed before public trading in the security commenced.

During the legislative process preceding the UTP Act, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for UTP in listed IPO securities. At the UTP Hearing, testimony and evidence were presented to show the negative impact that a mandatory waiting period for UTP has on competition.[10] At the same time, however, one interested party asserted that listed IPO securities should trade in a central location for a "short" period of time to help ensure market efficiency immediately following an IPO, and that immediate UTP in listed IPO securities could increase the cost of raising capital for issuers.[11]

In a report to Congress on the UTP Act, the House Committee on Energy and Commerce provided guidance concerning specific matters it considered relevant to the present Commission rulemaking and resolution of the above concerns:

> The Committee expects that, in undertaking the IPO rulemaking authorized under the bill, the Commission will seek comments on the benefits associated with streamlining the regulatory process and enhancing competitive opportunities among market centers with respect to UTP in IPOs, and the identification of the negative effects if any that granting immediate UTP might have on the distribution of these securities. The Committee further expects the Commission to consider the experience of the third market trading in listed IPOs in the course of its examination of these questions. Finally, the Committee expects the markets to cooperate in providing the Commission with data regarding the nature and effect of trading activity (including, for example, any volatility effects on the security) in connection with IPO listings in order to enable the Commission to determine whether the benefits of confining early trading in IPOs to one marketplace are outweighed by the benefits of removing regulatory delays that inhibit competition among market.[12]

The Commission seeks comment on each of these matters. The Commission believes that identification and analysis of the potential harms and benefits that would result from either no waiting period, or from a longer waiting period than that proposed by the Commission, would be particularly useful in its review.

The Commission also seeks comment on the one-trade waiting period as proposed. To the extent that commenters believe a waiting period is appropriate, the Commission requests that they provide data to illustrate the potential negative effects on the pricing of an IPO. Commenters also may wish to provide an analysis of the effects of the current two-day waiting period. Finally, the Commission would be interested in receiving alternative proposed rules from commenters who believe that either no waiting period or a longer waiting period is appropriate.

B. Exchange Rules for Securities to Which Unlisted Trading Privileges are Extended (Proposed Rule 12f–5)

Section 12(f)(1)(D), as amended, authorizes the Commission to prescribe, by rule or regulation, such additional procedures or requirements for extending UTP to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the Exchange Act. Pursuant to this authority, the Commission is proposing Rule 12f–5, which would prohibit an exchange from extending UTP to any security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP.

This rule is intended to preserve a benefit of Commission review of UTP applications prior to the UTP Act. Previously, the Commission reviewed each UTP application to ensure that the applicant exchange had rules in place to cover the trading of the product class of the security for which the exchange applied. In general, applicant exchanges had listing rules in place that provided for transactions for most product classes of securities. Occasionally, however, an exchange would submit a UTP application to the Commission to trade a new or unusual product class of securities that had been approved for trading on the listing exchange, but had not been approved for trading on the applicant exchange.[13]

For example, the Commission would approve a proposed rule change to the Commission, pursuant to Section 19(b) of the Exchange Act, by an exchange to list and trade a new type of security. The proposed rule change established exchange rules to ensure the maintenance of fair and orderly markets in the securities and sufficient mechanisms for regulatory oversight of the named securities to provide for the protection of investors. A regional stock exchange occasionally filed a UTP application for the security without submitting a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Commission's review procedures for UTP applications identified those instances so that necessary rules would be in place on the applicant exchange in order to ensure the maintenance of fair and orderly markets and the protection of investors.

The Commission is proposing Rule 12f–5 to require exchanges to ensure that these rules and oversight mechanisms exist on their exchanges for the relevant securities before extending UTP to the securities. The proposed rule reconfirms to exchanges their obligation to evaluate their extensions of UTP before allowing their members to trade the securities.

In soliciting comment on the proposed rule, the Commission is particularly interested in the views of market participants and other commenters concerning the need for the rule and whether it would, in practice, help ensure that an exchange has all the necessary rules in place to provide for fair and orderly markets in all securities to which the exchange extends UTP.

C. Proposed Amendments to Existing Rules 12f–1 and 12f–3, and Proposed Rescission of Existing Rules 12f–2 and 12f–6

Several of the rules prescribed under former Section 12(f) concerned the application process for extensions of UTP. The Commission is proposing to amend or rescind these rules to reflect statutory changes, and is soliciting comment on whether these proposed changes are appropriate.

First, the Commission is proposing to amend Rule 12f–1,[14] to limit its operation to an exchange's application to reinstate UTP after a Commission suspension. Section 12(f), as amended, requires an exchange to apply to the Commission for UTP if the Commission has suspended the exchange's extension of UTP to the security. The proposed amendment would require essentially the same format for applications to reinstate UTP as was required by the rule under former Section 12(f) for applications to extend UTP.

Second, the Commission is proposing to rescind existing Rule 12f–2 and remove Form 27 referred to in the rule.[15] This rule and form dealt with instances where an exchange might have been required to cease extending UTP, and to reapply for UTP, in a security that was "changed" immaterially for those purposes. The rule and form provide an exemption from reapplication for UTP in these cases. The Commission is proposing to rescind the rule because the application procedures, from which the rule provided an exemption, no longer exist.

Third, the Commission is proposing to rescind the last sentence of paragraph (b) of Rule 12f–3.[16] Rule 12f–3 allows the issuer of a security that is traded pursuant to UTP, or any broker or dealer who makes a market in the security, or any other person having a bona fide interest in the question of termination or suspension of UTP in the security, to apply to the Commission for the termination or suspension of UTP in the security. The Rule also identifies the categories of information that should be provided in the application, which includes the applicant's statement that it has sent a copy of the application to the exchange from which the suspension or termination is sought. Thereafter, the Rule provides that the exchange may terminate or suspend UTP in the security in accordance with its rules. Finally, the Rule requires the exchange, upon suspension or

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[9] 17 CFR 240.11Aa3–1 (1991).

[10] See prepared testimony of Nicholas A. Giordano, President and Chief Executive Officer, Philadelphia Stock Exchange, UTP Hearing, supra note 5.

[11] See prepared testimony of Edward A. Kwalwasser, Executive Vice President, Regulation, New York Stock Exchange, UTP Hearing, id.

[12] H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).

[13] Prior to the UTP Act, exchanges were not permitted to apply to the Commission for UTP in any security for which the applicant exchange had not adopted listing standards and proper trading rules, pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Proposed Rule 12f–5 would make explicit the obligation to have the necessary rules in place before extending UTP to a specific type of security.

[14] 17 CFR 240.12f–1 (1991).

[15] 17 CFR 240.12f–2 (1991).

[16] 17 CFR 240.12f–3 (1991).

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termination, promptly to file Form 28 with the Commission.

The Commission believes this final requirement no longer is necessary because exchanges are no longer required to apply to the Commission to extend UTP to a security. Thus, notifying the Commission of termination or suspension of UTP serves no purpose. The Commission, therefore, is proposing to rescind that last requirement from the Rule concerning Form 28, and to remove Form 28, in order to conform further with efforts to streamline the regulatory process concerning UTP.

Finally, the Commission is proposing to rescind Rule 12f–6.[17] This rule exempts a merged exchange from the UTP application process in certain circumstances. The exemption no longer is necessary because the waiting period that restrained exchanges from extending UTP to most securities has been eliminated by the UTP Act.

The Commission is soliciting comment on each of these proposed Commission rule changes. The Commission is interested in comments on whether the proposed amendments and rescissions accomplish the Commission's goals with respect to the amendments or rescissions. The Commission also is interested in receiving comments concerning the continued necessity of other provisions of the rules, given the recent amendment to Section 12(f) of the Exchange Act.

D. Solicitation of Comment on Structural Implications of Immediate UTP

The Commission is seeking comment on whether any Commission action is necessary under Section 12(f), in order to carry out the congressional objectives of linked markets as required by Section 11A(a)(1)(D),[18] to make changes to the consolidated quotation, trade reporting, and routing of customer and principal interest in securities that are traded pursuant to UTP, now that exchanges and linking facilities will have less time to prepare for multiple exchange market trading in the securities. The Commission is particularly interested in comments concerning any existing procedural delays that should be corrected by Commission action in order to ensure that the operation of amended Section 12(f) is not impeded.

III. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. § 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small businesses" adopted by the Commission for purposes of the Regulatory Flexibility Act ("RFA"). As described in Section II, above, the Commission is proposing rules and changes to existing rules under Section 12(f) to comply with the UTP Act directives and to further the objectives of this recent amendment. Proposed Rule 12f–2 would require exchanges to wait, before extending UTP to such a security, until the listing exchange effects and reports the first transaction in the security.

Proposed Rule 12f–2 primarily has an impact on competitive initiatives of the self-regulatory organizations, which are not small businesses for the purposes of the RFA.[19] The proposed rules also may have some economic effect on some businesses that may be, from time to time, small businesses for the purposes of the RFA. Specifically, the proposed rule may affect the order-routing choices available to broker-dealer firms and would designate the moment at which regional exchange specialist firms may compete for order flow in any listed IPO security. Some broker-dealers and some regional specialist firms may be small businesses. The Commission believes, however, that the economic impact of the rule may not be "significant" and the number of "small businesses" that would be affected by the rule may not be "substantial," as contemplated by the RFA. In this regard, the Commission notes, among other things, that listed IPO securities comprise only a fraction of the overall number of securities available for order-routing by broker-dealers and for trading by regional specialist firms, and only a small number of those firms are "small businesses." Furthermore, neither small nor large businesses would be subject to reporting, recordkeeping, or other compliance requirements under the proposal.

The other proposals would restate existing standards for exchange extensions of UTP, and would amend existing rules under Section 12(f) to conform to the UTP Act and, therefore, should have no economic impact for the purposes of the RFA.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Betsy Prout, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 942–0170.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act[20] requires the Commission, in adopting rules under the Exchange Act, to consider any anti-competitive effects of the rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Act. As discussed in more detail above, the extension of unlisted trading privileges allows exchanges to compete with the listing exchange, other exchanges, and with dealers for order flow in the relevant securities. The rules promulgated under Section 12(f), therefore, may directly affect competition among market centers and their members. In addition, firms sending orders to the market centers for execution may also be affected by limitations that the proposed rules may place on their order-routing practices. The Commission is soliciting comment on the effect the proposed rules, and the proposed changes to existing rules, may have on exchanges, associations, their members, and order-routing firms.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.12f–1 by revising the section heading and introductory text of paragraph (a), redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), adding paragraph (a)(5), and revising newly designated (a)(6), to read as follows:

§ 240.12f–1 Applications for permission to reinstate unlisted trading privileges.

(a) An application to reinstate unlisted trading privileges may be made to the Commission by any national securities exchange for the extension of unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A). One copy of such application, executed by a duly authorized officer of the exchange, shall be filed and shall set forth:

(1) * * *

(5) The date of the Commission's suspension of unlisted trading privileges in the security on the exchange;

(6) Any other information which is deemed pertinent to the question of whether the reinstatement of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

* * * * *

3. By revising § 240.12f–2 to read as follows:

§ 240.12f–2 Extending Unlisted Trading Privileges to a Security that is the Subject of an Initial Public Offering.

(a) *General provision*—A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan as defined in § 240.11Aa3–1.

(b) The extension of unlisted trading privileges pursuant to this section shall be subject to all the provisions set forth in Section 12(f) of the Act (15 U.S.C. 78l(f)), as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

(c) *Definition.* For purposes of this section, the term *subject security* shall mean a security that is the subject of an initial public offering, as that term is defined in section 12(f)(1)(G) of the Act (15 U.S.C. 78*l*(f)(1)(G)).

4. By amending § 240.12f–3 by revising paragraph (b) to read as follows:

§ 240.12f–3 Termination or suspension of unlisted trading privileges.

(a) * * *

(b) Unlisted trading privileges in any security on any national securities exchange may be suspended or terminated by such exchange in accordance with its rules.

5. By adding § 240.12f–5, to read as follows:

§ 240.12f–5 Exchange Rules for Securities to which Unlisted Trading Privileges are Extended.

A national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.

§ 240.12f–6 [Removed]

6. By removing and reserving § 240.12f–6.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

§ 249.27 and 249.28 [Removed]

8. By removing § 249.27 and § 249.28.

By the Commission.

Dated: February 2, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3175 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.12f–6 (1991).

[18] Section 11A(a)(1)(D) of the Exchange Act provides:

The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

[19] The relevant rule under the Act, 17 CFR 240.0–10, provides that, for the purposes of the RFA, "small business" (when referring to a broker or dealer) shall mean a broker or dealer that had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or if not required to be prepared, on the last business day of the preceding fiscal year. Also, "small business" does not include any entity that is affiliated with another entity that is not a small business.

[20] 15 U.S.C. 78w(a)(2).

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Notice of Proposed Rulemaking Concerning Post-Investigation Retention and Use of Confidential Business Information From Investigations on Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to amend two of its final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) to codify a proposed new policy of allowing counsel who are signatories to an administrative protective order (APO) to retain certain categories of confidential business information (CBI) from an investigation for prescribed periods and to use that CBI during the retention period for certain limited purposes.[1]

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether to adopt the proposed rules set forth in this notice.

DATES: Comments will be considered if received on or before April 10, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 eventually to replace the interim rules currently found in 19 CFR parts 210 and 211.[2] The interim rules in 19 CFR parts 210 and 211 (1994) apply to all pending investigations and related proceedings that were instituted before September 1, 1994. The final rules, which went into effect on August 31, 1994, and will be codified in 19 CFR part 210 in 1995, apply to all investigations and related proceedings instituted on or after September 1, 1994.[3] On January 1, 1995, certain final rules were amended on an interim basis to implement the amendments to section 337 contained in the Uruguay Round Agreements Act, Pub. L. No. 103–465, 108 Stat. 4809 (1994) (URAA).[4]

Neither the interim nor the final Commission rules contain provisions governing the retention of CBI by counsel who are signatories to a section 337 APO. The Commission's traditional policy, however, has been to issue

[1] Commissioners Rohr and Newquist dissent from the Commission majority's decision to consider revising the final rules as described in this notice. See *infra* n.9.

[2] See 59 FR 39020, Part II (Aug. 1, 1994).

[3] *Id.*

[4] See 59 FR 67622 (Dec. 30, 1994).

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section 337 APOs which (1) order the signatories to refrain from using CBI covered by the APO for any purpose other than the investigation, and (2) require signatories to destroy all CBI or return it to the suppliers after final termination of the investigation, (i.e., exhaustion of the appellate process), absent written consent from the suppliers to allow other uses of the CBI or to retain the CBI for a longer period). More recently, the Commission has allowed its administrative law judges (ALJs) to issue, after prior input from the parties, APOs which deviated from standard Commission practice by permitting outside counsel for the parties to retain certain CBI beyond the exhaustion of any appeals.[5]

As a result of the policy issues raised by those cases, the Commission published an advance notice of proposed rulemaking for 19 CFR part 210, on December 9, 1993.[6] The notice stated that the Commission was considering revising its rules for investigations and related proceedings under section 337 to address two subjects: (1) A prescribed policy of allowing counsel who are signatories to an APO to retain CBI from a particular investigation after that investigation has been finally terminated; and (2) the possible establishment and operation of a Commission repository for CBI, which would be accessible to counsel of record who signed the APO, in lieu of or in addition to permitting post-investigation retention of CBI by such counsel.

Comments Filed in Response to the Advance Notice of Proposed Rulemaking

In response to the advance notice of proposed rulemaking, the Commission received comments from the following organizations: (1) The ITC Trial Lawyers Association (ITCTLA); (2) the Section on International Law and Practice of the American Bar Association (ABA/SLIP); and (3) the U.S. Patent and Trademark Office (PTO). The Commission also received a joint submission from four bar groups—(1) the International Law Section of the District of Columbia Bar, (2) the ABA/SLIP, (3) the ITCTLA, and (4) the Customs and International Trade Bar Association.

No commenters favored the establishment and operation of a Commission repository in addition to or in lieu of permitting counsel to retain CBI for a prescribed period. The comments in opposition to a repository cited such factors as the cost to the taxpayers, the administrative burden to the Commission, and the lack of corresponding benefits to parties, the Commission, or the public at large.

The bar group commenters said that the rules should establish a fixed policy on post-investigation retention of CBI. They also indicated that the Commission's policy should be to permit such retention for various periods according to the nature of the document containing the CBI and the status of the investigation (or related proceeding) to which the document pertains. The bar group commenters also expressed the view that counsel should be permitted to retain all materials containing CBI at least until the date that all appeals are exhausted, since the information might be needed during the appeals and any Commission proceedings resulting from the appeals.

The joint recommendations of the bar group commenters concerning the retention of various categories of CBI were as follows:[7]

1. *All discovery materials*—Until two years after all appeals are exhausted. Thereafter, the materials would be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

2. *All CBI in the possession of expert witnesses*—Until all appeals are exhausted. Thereafter, the materials would be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

3. *The evidentiary record*—Until two years after all appeals are exhausted or all remedial orders have expired, whichever is later. Thereafter, the materials are to be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

4. *Pleadings*—Indefinitely.

5. *Copies of confidential notices, orders, recommendations, and opinions issued by an ALJ or the Commission*—Indefinitely.

6. *Working papers, briefs, and other documents created by counsel containing information subject to an APO*—Indefinitely.

The bar group commenters' joint recommendations on post-investigation retention of specific categories of CBI made no distinction between CBI submitted by a third party and that submitted by party to the investigation. Moreover, the ITCTLA specifically argued against such a distinction, noting that elimination of the injury requirement as an element of a section 337 violation in intellectual-property based cases has diminished the role of third-party CBI for the most part, except in cases involving motions for temporary relief. The ITCTLA also argued against the promulgation of a separate rule to cover cases in which a third party objects to counsel's post-investigation retention of the third party's CBI. In such cases, the ITCTLA argued, the third party should seek, by negotiation with the parties or through the ALJ, modification of the APO under which such retention is to be permitted.

The PTO's comments in response to the advance notice of proposed rulemaking consisted of advice concerning the length of time that CBI should be entitled to confidential treatment. Specifically, the PTO suggested that materials covered by an APO should be declassified and made available for public inspection according to a declassification schedule set forth in the Commission rules. The PTO suggested that the declassification schedule be based on the age of the CBI contained in the material, instead of how recently the material was submitted.

The Commission's Responses

The Commission does not agree with the PTO's comment that materials covered by an APO should be declassified and made available for public inspection according to a declassification schedule set forth in the Commission rules based on the age of the CBI contained in the material. The Commission notes that the age of CBI is a factor which may have a bearing on the continuing validity of its confidential designation. The Commission also is cognizant, however, that age may not be the only factor. Moreover, section 337(n) and its legislative history evince a clear Congressional intent that if business information is properly designated confidential by the supplier and is treated accordingly by the Commission, the Commission is not at liberty to release that information at a later date absent the submitter's consent.[8] The Commission thus believes that it would be inappropriate to make unilateral determinations on declassification of CBI without consulting the suppliers or to adopt a Commission rule that would mandate such declassification.

The Commission also has decided against the establishment and operation of a Commission repository in lieu of or in addition to allowing post-investigation retention of CBI by counsel. The Commission shares the bar group commenters' view that little would be gained from creating such a repository and that having a CBI access system based on a repository would further entangle the Commission in enforcing APOs and would increase the burdens of handling CBI.

The Commission is considering revising the final part 210 rules, as suggested by the bar group commenters, to establish a policy of permitting the post-investigation retention and use of CBI by counsel. The Commission notes, however, that for some categories of CBI, the bar group commenters suggested, without explanation, retention periods that were two years beyond exhaustion of the appeals process or expiration of the remedial orders. The Commission notes also that some of the uses which the bar group commenters have jointly or individually proposed for CBI during the prescribed retention periods encompass uses that appear to be outside of the limitations imposed by law.

As discussed in the next section of this notice, the Commission has drafted proposed rule provisions that incorporate a retention schedule with shorter deadlines for certain kinds of CBI than the deadlines listed in the bar group commenters' joint submission. The Commission also has drafted proposed rule provisions that limit the uses to which CBI may be put during the prescribed retention periods. The Commission, however, specifically invites bar associations and other interested persons who favor the bar group commenters' proposed schedule to file comments with the Commission on the following issues:

1. The justification for the extended retention periods (i.e., the additional two years) on the bar group commenters' proposed schedule for certain materials containing CBI; and

2. The use(s) to which the CBI in those materials would be put during the extended periods.[9]

Proposed Rule Changes

To codify the retention schedule, use restrictions, and other requirements which the Commission proposes to adopt, the Commission proposes to add new provisions to final rules 210.5 and 210.34, rather than creating new rules. That approach eliminates the need to renumber the existing final rules in part 210. The new provisions which the Commission proposes to add to final rules 210.5 and 210.34 are described below.

Final Rule 210.5

Final rule 210.5, entitled "Confidential business information," is the Commission's general rule for CBI in investigations and related proceedings under section 337. The Commission proposes to amend final rule 210.5 by adding a new paragraph (f) which states that materials containing CBI subject to an APO issued under final rule 210.34(a) shall be retained, used, expurgated, returned to the supplier, or destroyed as provided in final rule 210.34(e).

Final Rule 210.34

Final rule 210.34 is the general rule about APOs in section 337 investigations. The Commission proposes to amend final rule 210.34 by adding paragraph (e).

Paragraph (e)(1). Proposed paragraph (e)(1) of final rule 210.34 incorporates the following retention schedule:

1. *All discovery materials.* Until all appeals are exhausted and thereupon the materials would be subject to a return or destroy rule.

2. *All CBI in the possession of expert witnesses.* Same as for discovery materials.

3. *The evidentiary record.* Until all appeals are exhausted or all remedial orders have expired, whichever is later, and thereupon the materials would be subject to a return or destroy rule.

4. *Attorney work product.* Indefinitely, but see paragraph 7 below regarding third-party CBI. The Commission's APO enforcement responsibility would be subject to a five-year sunset rule, however. In general, the Commission would no longer be responsible for enforcing APOs five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If certain information, such as trade secrets, is still confidential, the supplier of the information could request that the Commission continue to enforce the APO even though the five-year period has expired. Such a request would have to be made before the five-year period expires.

5. *Pleadings.* Same retention period and APO enforcement provisions as attorney work product, but see paragraph 7 below regarding third-party CBI.

6. *Orders, notices, initial determinations, recommended determinations, opinions, and other documents issued by an ALJ or the Commission containing CBI.* Same retention period and APO enforcement provisions as attorney work product and pleadings, but see paragraph 7 below regarding third-party CBI.

7. *Third-party CBI.* Until all appeals are exhausted or all remedial orders have expired, whichever is later. The third-party CBI would then be subject to a return or destroy rule, even if the information is contained in pleadings or work product, if the third-party suppliers so requested at the time that they submit the information.

Proposed paragraph (e)(1) also imposes—

1. 30-day deadlines for the return, destruction, or expurgation of CBI when the prescribed retention period expires, and

2. A requirement that written certification of such return, destruction, or expurgation shall be provided to suppliers and the Commission.

The Commission believes that these requirements (and the custodian requirement set forth in proposed paragraph (e)(3) of final rule 210.34) will help ensure that APO signatories comply promptly with their obligations to expurgate, return, or destroy CBI in accordance with proposed paragraph (e)(1).

Proposed paragraphs (e)(1)(iv)–(vi) of final rule 210.34 impose a 60-day deadline for motions to extend the

[5] *See, e.g.*, Inv. No. 337–TA–334, Certain Condensers, Parts Thereof, and Products Containing Same, Including Air Conditioners for Automobiles, 58 FR 47286 (Sept. 8, 1993); Inv. No. 337–TA–331, Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same, 58 FR 47284 (Sept. 8, 1993). The Condensers APO permitted outside counsel for the complainant and the respondents to retain the evidentiary record—including materials containing CBI—until the expiration of any remedial order issued by the Commission. The Memory Controllers APO permitted counsel to retain all materials containing CBI until the expiration of any remedial order issued in that case. Both APOs also allowed counsel to retain for an indefinite period documents (including briefs and working papers) that contained CBI and were created by the Commission, the ALJ, or counsel.

[6] 58 FR 64711 (Dec. 9, 1993).

[7] The ITCTLA originally proposed shorter retention periods for certain items than the table in this memorandum indicates. The ITCTLA subsequently joined other bar groups in the filing of a joint submission explicitly advocating longer retention periods. The Commission thus assumes that the joint submission reflects the ITCTLA's current position on the issues presented.

[8] *See, e.g.*, H.R. Rep. No. 40, 100th Cong., 1st Sess. at 161–162 (1987); S. Rep. No. 71, 100th Cong., 1st Sess. at 133 (1987).

[9] Commissioner Rohr and Commissioner Newquist dissent from the majority's decision to consider adopting the proposed rules set forth in this notice.

Commissioner Rohr believes that the Commission should adhere to the traditional practice of issuing section 337 APOs which (1) order the signatories to refrain from using CBI covered by the APO for any purpose other than the investigation, and (2) require signatories to destroy all CBI or return it to the suppliers after final termination of the investigation, (i.e., exhaustion of the appellate process), absent written consent from the suppliers to allow other uses or a longer period). Commissioner Rohr also believes that the procedures contained in the proposed rules represent an unacceptable risk of unauthorized disclosure of the subject CBI.

In Commissioner Newquist's view, the Commission's rules should provide that post-investigation use and retention of CBI shall be determined by agreement of the parties, any non-party suppliers, and the presiding ALJ in each investigation.

Commission's five-year APO enforcement period (after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later) with respect to pleadings, documents issued by an ALJ or the Commission, and attorney work product documents containing CBI. Sixty days should be sufficient (1) to allow nonmoving parties to respond to the motion and (2) to allow the Commission to decide the motion on or before the expiration of the five-year period.

The Commission notes one potential problem with respect to applying the aforesaid sunset provisions to attorney work product. Submitters of CBI who want the Commission to extend its enforcement of the APO beyond the five-year period are not likely to know what CBI is contained in attorney work product such as a law firm's internal legal memoranda concerning the investigation. The Commission also thinks it understandable, however, that attorneys may want to retain their work product from an investigation for future reference in matters involving similar issues. The Commission therefore solicits comments on possible solutions to this potential problem.

Paragraph (e)(2). Proposed paragraph (e)(2) of final rule 210.34 restricts the uses to which CBI may be put during the prescribed retention periods. The bar groups who commented in response to the Commission's advance notice of proposed rulemaking (and the participants and commenters in the investigations that prompted this rulemaking) [10] urged the Commission to approve retention of CBI by counsel for one or more of the uses and purposes enumerated below:

1. To provide legal advice and other legal services to clients in connection with the following matters:

To comply with a remedial or other Commission order issued in connection with the investigation or related proceeding;

To initiate—or to defend against—administrative or judicial proceedings concerning enforcement, modification, or revocation of such orders or advisory opinion proceedings; or

To enforce or avoid infringement of an intellectual property right asserted in the investigation.

2. To reduce costs, save time, minimize duplication of effort, and facilitate participation in the following kinds of proceedings:

Commission proceedings to enforce, modify, or revoke a remedial order, a consent order, or other Commission order;

Commission advisory opinion proceedings;

U.S. Customs Service proceedings to enforce or monitor compliance with an exclusion order;

Commission or Customs proceedings for the forfeiture of a bond posted by a complainant or a respondent;

Civil actions involving some or all of the same parties and subject matter as the investigation (with a view toward asserting res judicata or collateral estoppel in some kinds of cases);

Civil actions against a section 337 complainant for the filing of unwarranted section complaint; or

Civil actions for attorney malpractice in an investigation or a related proceeding.

3. To have unrestricted use of legal research and nonconfidential information in working papers, briefs, and other documents created by counsel which contain CBI.

Although section 337(n)(1) and its 1987 legislative history explicitly discuss the "disclosure" or "release" of CBI, [11] there is an implicit restriction on the use of CBI (in the absence of consent from the submitter(s)), which appears to bar some uses that the current commenters and other interested persons have suggested—namely, use of CBI in civil actions. In the absence of consent from the submitter, section 337 (n)(1) prohibits disclosure of CBI to anyone other than (1) persons granted access under a Commission APO and (2) certain categories of Government employees listed in section 337(n)(2). The categories in section 337(n)(2) previously were limited to Commission, Customs Service, and other U.S. Government personnel who are involved in the subject investigation, Presidential review of a remedial order issued in that investigation, or the administration or enforcement of an exclusion order issued in the case.[12]

Amendments to section 337(n)(1) and title 28 of the United States Code were promulgated in the URAA. Section 337(n) was amended to broaden the categories of Government employees who may have access to CBI.[13] Title 28 of the United States Code was amended to include a new section requiring the Commission to forward the administrative records of section 337 investigations to district courts for use in some, but not all, civil actions involving the same parties and subject matter as the subject investigations.[14] The URAA amendments thus do not address most of the civil action uses of CBI advocated by the commenters and other interested persons.

Proposed paragraph (e)(2) of final rule 210.34 accordingly states that CBI which is retained pursuant to paragraph (e)(1) of final rule 210.34 shall not be used during the prescribed retention period for any purposes other than those relating to the subject investigation or a related proceeding under section 337,[15] except for additional uses that are permitted by law (e.g., the new section of title 28) or provided for in a written agreement with the supplier.

Paragraph (e)(3). Proposed paragraph (e)(3) of final rule 210.34 states that each law firm whose attorneys are signatories to an APO in an investigation or a related proceeding shall designate one attorney signatory from the firm as the custodian of the CBI and the person responsible for ensuring that the requirements of proposed paragraphs (e)(1)–(e)(2) of final rule 210.34 are satisfied. It is not uncommon for attorneys to change firms and for documents containing CBI to be shipped around firms. The Commission's concern is not that the documents are likely to be lost, but that the firms may lose sight of the obligations imposed by the APO. Requiring the firm to have a custodian will reduce the likelihood of that occurring.

The Commission is cognizant that there may come a time during the prescribed retention period(s) when a law firm's custodian is no longer willing or able to serve in that capacity. If that happens, the firm always has the option of promptly returning or destroying the CBI. However, if the firm wishes to continue to retain the CBI but to change custodians, the questions are whether a change of custodianship should be permitted and, if so, how the change should be effected.

Proposed paragraph (e)(3) final rule 210.34 currently does not contain provisions governing the changing of custodians. The Commission is considering whether to revise paragraph (e)(3), however, to include such provisions. One option would be to revise paragraph (e)(3) to provide as follows:

1. If the firm wishes to continue to retain the CBI but to change custodians, the proposed new custodian must be a attorney in the firm who is already a signatory to the APO. The change is to be effected by serving a notice on the parties, the appropriate third-party suppliers (if any), and the Secretary.

2. If there are no lawyers left in the firm who are signatories to the APO and the firm wishes to continue to retain the CBI but to change custodians, the firm must file a motion with the Commission and serve copies on the parties and third-party suppliers. The motion must request APO signatory status for the proposed new custodian as well as leave to designate that attorney as the firm's new custodian. The motion will not be granted unless information contained in the materials held by the firm is still entitled to confidential treatment and the Commission still has a duty to enforce the governing APO with respect to that information.

The Commission is particularly interested in receiving comments on (1) whether it should revise paragraph (e)(3) of final rule 210.34 to codify a procedure for changing custodians, and, (2) if so, whether that procedure should consist of the steps enumerated above or should entail different steps.

Paragraph (e)(4). Although proposed paragraph (e)(1) establishes prescribed periods for post-investigation retention of CBI, the Commission believes that parties and third-party suppliers should not be precluded from negotiating time limits or other conditions that are more strict than the maximums set by the Commission. The Commission also believes, however, that the proposed rules should avoid imposing unnecessary burdens on the Commission for monitoring APO compliance.

Proposed paragraph (e)(4) of final rule 210.34 accordingly states that parties and third-party suppliers may agree to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)–(e)(3). Paragraph (e)(4) goes on to say, however, that the Commission will not be responsible for policing the retention, uses, custodial arrangements, and other conditions relating to the subject CBI in accordance with such an agreement. That policy is consistent with Commission precedent.[16]

Paragraph (e)(4) further provides that when agreements are entered to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)–(e)(3), a copy of the agreement must be filed with the Commission or with the presiding ALJ (as the case may be). One purpose of this filing requirement is to give the Commission or the ALJ notice as to which of the APO provisions have been superceded by the agreement. Another purpose is to avoid placing the Commission or the ALJ in the position of having to adjudicate whether in fact an agreement was entered, if a dispute over that issue should arise at a later date.

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to amend § 210.5 by adding a new paragraph (f) which reads as follows:

§ 210.5 Confidential business information.

* * * * *

(f) *Disposition of confidential business information.* Materials containing confidential business information that are subject to a protective order issued under § 210.34(a) of this part shall be retained, used, expurgated, returned to the supplier, or destroyed as provided in § 210.34(e).

3. For the reasons set forth in the preamble, the Commission proposes to amend § 210.34 by adding paragraph (e) which reads as follows:

§ 210.34 Protective orders.

* * * * *

(e) *Disposition of confidential information.* (1) Unless the Commission or an administrative law judge orders or a written agreement between parties and suppliers states otherwise, confidential information acquired pursuant to a protective order issued under paragraph (a) of this section shall be expurgated, returned to the supplier, or destroyed as provided below.

(i) All discovery materials containing confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(ii) All materials in the possession of expert witnesses that contain confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to the supplier and the Commission.

(iii) All materials on the evidentiary record that contain confidential information may be retained until all appeals are exhausted or all remedial orders issued in the investigation or a related proceeding have expired, whichever is later. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(iv) Except as provided in paragraph (e)(1)(viii) of this section, all pleadings containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the pleadings for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the pleadings will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the pleadings beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(v) Except as provided in paragraph (e)(1)(viii) of this section, all notices, orders, initial determinations, recommended determinations, opinions, and other documents issued by an administrative law judge or the Commission that contain confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the aforesaid materials for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the materials will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the materials beyond the prescribed five-year period. Such

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[10] *Condensers* and Memory Controllers (See *supra* n.5.)

[11] *See* 19 U.S.C. 1337(n)(1) and n.8 *supra*.

[12] *See* 19 U.S.C. 1337(n)(2) (1988).

[13] *See* sec. 321(a)(7) of the URAA.

[14] *Id.* at sec. 321(b)(1)(A) regarding the new 28 U.S.C. 1659(b).

[15] As noted in final rule 210.3, the term "related proceedings" includes sanction proceedings for the possible issuance of sanctions that would not have a bearing on the adjudication of the merits of a complaint or a motion under 19 CFR part 210, bond forfeiture proceedings, proceedings to enforce, modify, or revoke a remedial or consent order, or advisory opinion proceedings. *See* 59 FR 39040–39041 (Aug. 1, 1994), as amended at 59 FR 67626 (Dec. 30, 1994) (to be codified at 19 CFR 210.3).

[16] *See, e.g.*, Inv. No. 337–TA–265, Certain Dental Prophylaxis Methods, Equipment, and Components Thereof, Initial Determination at 5–6 (Jan. 22, 1988), unreviewed by the Commission, 53 FR 6709 (Mar. 2, 1988); Certain Doxorubicin and Preparations Containing Same, Inv. No. 337–TA–300, Commission Memorandum Opinion at 7–8, (May 31, 1991); Electric Power Tools, Battery Cartridges, and Battery Chargers, Commission Memorandum Opinion (July 2, 1991) at 3–4.

motions must be filed at least 60 days before the five-year period expires.

(vi) Except as provided in paragraph (e)(1)(viii) of this section, all attorney work product containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the work product for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information that may be contained in the work product will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the work product beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(vii) All confidential information supplied by third parties may be retained until all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a document other than a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document shall be returned to the supplier or destroyed, and written certification of such return or destruction shall be provided to each supplier and the Commission within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document may be retained indefinitely in accordance with paragraph (e)(1)(iv), (e)(1)(v), or (e)(1)(vi) of this section. However, the third party may request that its information be expurgated from the document pursuant to paragraph (e)(1)(viii).

(viii) If the third-party supplier so requests at the time that its confidential information is supplied and if the third-party supplier's confidential information is contained in pleadings, documents issued by an administrative law judge or the Commission, or attorney work product, within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later, any law firm in possession of such pleadings, documents, or work product shall expurgate the third-party supplier's confidential information from the pleadings, documents, or work product and provide written certification of the expurgation to the third-party supplier and the Commission.

(2) Except as required by law or as provided in a written agreement with the supplier, the confidential information contained in the materials enumerated in paragraph (e)(1) of this section shall not be used during the retention periods specified in paragraph (e)(1) of this section for any purposes other than those relating to the subject investigation or a related proceeding under this part.

(3) On or before the commencement of the retention periods specified in paragraph (e)(1) of this section, each law firm whose attorneys are signatories to a protective order in an investigation or a related proceeding under this part shall designate one attorney signatory from the firm as the custodian of the information and the person responsible for ensuring that the requirements of paragraphs (e)(1)–(e)(2) of this section are satisfied. Notice of the designation shall be served on the parties, the appropriate third-party suppliers (if any) and the Secretary.

(4) Parties and suppliers may agree to retention time limits, uses, custodial arrangements, or other conditions that differ from those set forth in paragraphs (e)(1)–(e)(3) of this section. When such an agreement is reached, a copy must be filed with the Commission or the presiding administrative law judge (as the case may be). Neither the Commission nor the administrative law judge shall be responsible, however, for policing the retention, uses, custodial arrangements, and other conditions relating to the subject confidential information in accordance with the agreement.

Issued: February 3, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3140 Filed 2–8–95; 8:45 am]

BILLING CODE 7020–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB08

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to enable the Board to pay the following benefits without requiring additional applications therefor: (1) An accrued annuity due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record; and (2) a full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

DATES: Comment shall be submitted on or before March 13, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929 TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 217.8 of the Board's regulations specifies a list of benefits paid by the Board which may be paid based on a previously-filed application (*i.e.*, where a new application is not required). The proposed rule would add to that list the cases where an accrued annuity is due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record as the spouse or former spouse and where a full-time student's annuity is payable if the student was entitled to a child's annuity in the month before the month the child attained age 18. In those cases there is no additional information contained in the applications and there is no utility to the Board in requiring additional applications. Using the earlier application reduces paperwork and the burden on persons claiming benefits.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, part 217 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.8 is amended by adding paragraphs (t) and (u) to read as follows:

§ 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(t) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(u) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

Dated: January 31, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–3168 Filed 2–8–95; 8:45 am]

BILLING CODE 7905–01–P

20 CFR Parts 226 and 232

RIN 3220–AA58

Computing Employee, Spouse, and Divorced Spouse Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The Board's current regulations regarding the computation of these annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

DATES: Comments must be received by the Secretary to the Board on or before March 13, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The proposed revision to Part 226 (formerly "Computation of Annuity") provides the rules for computing the amount of the employee, spouse and divorced spouse annuity, under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is computed under social security rules based on the employee's earnings under both the railroad retirement and the social security systems and is reduced by the amount of any social security benefit payable. The second tier (tier II) is based solely on the employee's railroad earnings.

In limited circumstances the employee annuity may be increased by a "vested dual benefit". An employee who has completed 25 years of railroad service may also be eligible for a supplemental annuity.

The proposed rule is divided into seven (7) subparts:

Subpart A sets forth definitions and lists other regulations related to this part.

Subpart B describes the computation of the employee annuity which includes the social security level component (tier I) (proposed § 226.10), the component based solely on railroad service (tier II) (proposed § 226.11); the vested dual benefit (proposed § 226.12), and a supplemental annuity (proposed § 226.16). Proposed § 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (proposed §§ 226.30–226.35) parallels subpart B and describes the computation of the spouse and divorced spouse annuities. However, the divorced spouse is not entitled to a tier II benefit and no supplemental annuity or vested dual benefits are payable to spouses. Proposed § 226.31 explains how the spouse and divorced spouse annuity are reduced due to receipt of a public pension which was not based upon employment covered by the Social Security Act on the last day of employment.

Subpart D (proposed §§ 226.50–226.52) describes the Railroad Retirement Family Maximum which is a statutory "cap" placed upon the total benefits payable under the RRA. Proposed § 226.51 describes how the maximum is determined (the higher of $1,200 or an amount based upon the employee's final average monthly compensation (FAMC)). Proposed § 226.52 describes how the "reduction amount" is computed when the maximum is exceeded and proposed § 226.50 describes how the spouse, then the employee annuity is reduced until the total employee and spouse annuity equal the maximum. The railroad retirement maximum is computed at the employee's annuity beginning date but will be recomputed if the spouse later divorces the employee or the employee later becomes entitled to a vested dual benefit or supplemental annuity. A divorced spouse annuity is not counted in determining whether the RRA maximum is exceeded.

Subpart E (proposed §§ 226.60–226.63) explains how years of service and average monthly compensation (AMC) are determined. The tier II of the employee annuity is seven tenths of 1% (.007) times the product of an employee's years of service times his or her AMC. The spouse's tier II is 45% of the employee's tier II. See proposed § 226.11 and 226.32.

Subpart F (proposed §§ 226.70–226.74) describes the reduction required due to receipt of workers' compensation benefits. The tier I of an employee, spouse, or divorced spouse annuity is reduced if the employee is under age 65 and is entitled to a disability annuity and another periodic benefit based upon disability pursuant to some other Federal or state law or plan (proposed § 226.70). The reduction amount is first applied to the tier I of any spouse or divorced spouse annuity payable, then to the employee tier I (§ 226.71). Certain disability payments do not cause a reduction. These are listed in proposed § 226.72.

The formula for the reduction amount is found at proposed § 226.71. The reduction provided for in this part applies if the total tier I components payable to the employee and spouse (or divorced spouse) plus workers' compensation or public disability benefit exceed 80% of the employee's prior average current earnings. Proposed § 226.73 explains what events cause a change in the reduction amount. Proposed § 226.74 provides that "average current earnings" must be recomputed periodically to take into account inflation. The redetermined average current earnings are used only if it results in a lower reduction amount.

Subpart G of the proposed rule (§§ 226.90–226.92) explains how and when an annuity is recomputed to take into account railroad service and social security earnings after an annuitant retires.

Part 232—Spouses' Annuities is now obsolete; it is proposed to be removed.

The Board has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 226 and Part 232

Pensions, Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, Part 226 of Title 20 of the Code of Federal Regulations (formerly "Computation of Annuity") is proposed to be revised as follows:

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PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Subpart A—General

Sec.
226.1 Introduction.
226.2 Definitions.
226.3 Other regulations related to this part.

Subpart B—Computing an Employee Annuity

226.10 Employee tier I.
226.11 Employee tier II.
226.12 Employee vested dual benefit.
226.13 Cost-of-living increase in employee vested dual benefit.
226.14 Employee regular annuity rate.
226.15 Deductions from employee regular annuity rate.
226.16 Supplemental annuity.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

226.30 Spouse or divorced spouse tier I.
226.31 Reduction for public pension.
226.32 Spouse tier II.
226.33 Spouse regular annuity rate.
226.34 Divorced spouse regular annuity rate.
226.35 Deductions from regular annuity rate.

Subpart D—Railroad Retirement Family Maximum

226.50 General.
226.51 Maximum monthly amount.
226.52 Total annuity subject to maximum.

Subpart E—Years of Service and Average Monthly Compensation

226.60 General.
226.61 Use of military service.
226.62 Computing the average monthly compensation.
226.63 Determining monthly compensation.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State, or Local Law or Plan

226.70 General.
226.71 Initial reduction.
226.72 Benefits that do not cause a reduction.
226.73 Changes in reduction amount.
226.74 Redetermination of reduction.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

226.90 When recomputation applies.
226.91 How an employee annuity rate is recomputed.
226.92 Effect of recomputation on spouse and divorced spouse annuity.

Authority: 45 U.S.C. 231(f)(b)(5).

PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Subpart A—General

§ 226.1 Introduction.

This part explains how employee, spouse, and divorced spouse annuities are computed. It describes how to determine the years of railroad service and average monthly compensation used in computing the employee annuity rate. The railroad retirement family maximum, cost-of-living increases, and the recomputation of an annuity to include additional railroad earnings are also explained in this part.

§ 226.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Annuity means a payment due an entitled individual for a calendar month and payable to him or her on the first day of the following month.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as defined in part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Retirement age means, with respect to an employee, spouse or divorced spouse who attains age 62 before January 1, 2000, age 65. For an employee, spouse or divorced spouse who attains age 62, after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

§ 226.3 Other regulations related to this part.

This part is closely related to part 216 of this chapter, which describes when an employee, spouse, or divorced spouse is eligible for an annuity, part 225 of this chapter, which explains the primary insurance amounts used in computing the employee, spouse and divorced spouse annuity rates, and part 229 of this chapter, which describes when and how employee and spouse annuities can be increased under the social security overall minimum. The creditable service and compensation used in determining the years of service and average monthly compensation are explained in parts 210 and 211 of this chapter. The beginning and ending dates of annuities are explained in part 218 of this chapter.

Subpart B—Computing an Employee Annuity

§ 226.10 Employee tier I.

Tier I of an employee annuity is an amount similar to the social security benefit the employee would receive based on combined railroad and social security earnings. The tier I benefit is computed as follows:

(a) A tier I PIA is computed based on combined railroad and social security earnings, as shown in § 225.11 of this chapter. This PIA is adjusted for any delayed retirement credits or cost-of-living increases, as shown in subparts D and E of part 225 of this chapter, and is reduced for receipt of a pension based upon non-covered service in accordance with section 215(a)(7) of the Social Security Act. The tier I of a disability annuity may also be adjusted for other benefits based on disability, as shown in §§ 226.70–226.74 of this part. Except in the case of an employee who retires at age 60 with 30 years of service, if the result is not a multiple of $1, it is rounded to the next lower multiple of $1. In the case of an employee who retires with an age reduced annuity based upon 30 years of service (see § 216.31 of this chapter) the tier I is not rounded until all reductions have been made.

(b) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) of this section is multiplied by a fraction for each month the employee is under retirement age on the annuity beginning date. The result is subtracted from the rate in paragraph (a) of this section. At present the fraction is 5/9 of 1% [or 1/180]. If the employee retires before age 62 with at least 30 years of service, the employee is deemed age 62 for age reduction purposes and a 20% reduction is applied. This reduction remains in effect until the first full month throughout which the employee is 62, at which time the tier I is recomputed to reflect interim increases in the national wage levels and the age reduction factor is recomputed, if necessary, in accordance with this paragraph.

(c) The amount from paragraph (a) or (b) of this section is reduced by the amount of any monthly benefit payable to the employee under title II of the Social Security Act, including any social security benefit payable under a totalization agreement between the Social Security Administration and another country. The social security benefit used to reduce the tier I may be an age or disability benefit on the employee's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The amount of the social security benefit used to reduce tier I is before any deduction for excess earnings. It is after any reduction for other benefits based on disability. The result cannot be less than zero.

(d) The tier I is subject to automatic annual increases as provided for in subpart E of part 225 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an age annuity effective October 1, 1982. Retirement age for individuals born in 1919 is age 65. He has less than 30 years of service. His tier I PIA is $712.60, which is rounded down to $712. Since the employee is 25 months under age 65 when his annuity begins, $712 is multiplied by 25/180 (1/180 for each month under age 65), to produce an age reduction of $98.89, and a tier I rate after age reduction of $613.11. The employee is also entitled to a social security benefit of $190 a month. The employee's final tier I rate is $423.11.

§ 226.11 Employee tier II.

The tier II of an employee annuity is based only on railroad service. For annuities awarded after September 1981, the tier II benefit is computed as follows:

(a) The product obtained by multiplying the employee's creditable years of service by the average monthly compensation, determined as shown in subpart E of this part, is multiplied by seven-tenths of 1 percent (.007).

(b) If the employee is entitled to a vested dual benefit (see § 226.12 of this part), the result from paragraph (a) of this section is reduced by 25 percent of the vested dual benefit amount. This reduction is made before reduction of the tier II benefit for age. The result cannot be less than zero.

(c) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the amount from paragraph (a) or (b) of this section is reduced by the smaller of—

(1) The difference between the total railroad retirement maximum reduction amount and the reductions in the spouse and supplemental annuities; or

(2) The total tier II amount from paragraph (a) or (b) of this section.

(d) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraphs (a) through (c) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to a reduced age annuity (see § 216.31 of this chapter), the age reduction only applies to the tier I component; no age reduction applies to the tier II component.

(e) The total tier II amount (paragraphs (a) through (d)), is increased by 32.5 percent of the percentage increase in the cost of living increase to the tier I annuity component. Each cost-of-living increase is paid only to an employee whose annuity begins on or before the effective date of the increase. The increases are effective on the same date as any cost-of-living increase to the tier I annuity component.

§ 226.12 Employee vested dual benefit.

(a) *General.* An employee vested dual benefit is payable, in addition to tiers I and II, to an employee who meets one of the following requirements:

(1) *Employee worked in the railroad industry in 1974.* An employee who worked for a railroad in 1974 and retired after 1974 is considered vested if on December 31, 1974, he or she had both 10 years of railroad service and sufficient quarters of coverage under the Social Security Act to qualify for a social security benefit. An employee qualified on this basis is eligible for vested dual benefit amounts computed on his or her railroad and social security credits through December 31, 1974.

(2) *Employee who did not work for a railroad in 1974.* An employee who did not work in the railroad industry in 1974, but who had 25 or more years of railroad service before 1975 or a current connection with the railroad industry on December 31, 1974, as defined in part 216 of this chapter, or a current connection when he or she retired, is also considered vested under the same conditions as an employee who had worked in the railroad industry in 1974.

(3) *An employee who completed 10 years or more years of railroad service (but less than 25) before 1975 but left the industry before 1975 and did not have a current connection on December 31, 1974 or when he or she retired.* Such an employee is considered vested only if he or she had sufficient social security quarters of coverage to qualify for a social security retirement benefit as of the end of the year prior to 1975 in which he or she left the railroad industry. The vested dual benefit amount is based only on credits acquired through the last year of pre-1975 railroad service instead of through December 31, 1974.

(b) *Computation.* The employee vested dual benefit is computed as follows:

(1) The combined earnings dual benefit PIA is subtracted from the total of the railroad earnings dual benefit PIA and the social security earnings dual benefit PIA (see part 225 of this chapter for an explanation of these PIA's).

(2) The result from paragraph (b)(1) of this section is adjusted for any applicable cost-of-living increase, as shown in § 226.13 of this part.

(3) If the employee is entitled to a reduced age annuity (see § 216.1 of this chapter), the rate from paragraph (b)(2) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to an annuity reduced for age, the age reduction applies only to the tier I component; no age reduction applies to the vested dual benefit.

(4) The vested dual benefit payable in a given year may also be reduced for insufficient funding as shown in part 233 of this chapter.

Example: An employee born on November 3, 1919 becomes entitled to an annuity including a vested dual benefit on October 1, 1982. His combined earnings dual benefit PIA is $254.90, his railroad earnings dual benefit PIA is $93.80, and his social security earnings dual benefit PIA is $244.70. The vested dual benefit before cost-of-living increase is $83.60 ($93.80+244.70 − 254.90=83.60). A cost-of-living increase of $67.72 (81 percent of $83.60. See § 226.13 of this part) results in a vested dual benefit of $151.32. Retirement age for a person born in 1919 is age 65. Since the employee is 25 months under age 65 when the annuity begins, $151.32 is multiplied by 25/180, to produce an age reduction of $21.02 and a vested dual benefit rate after age reduction of $130.30.

§ 226.13 Cost-of-living increase in employee vested dual benefit.

If the employee's annuity begins June 1, 1975 or later, a cost-of-living increase is added to the total vested dual benefit amount. This increase is based on the cost-of-living increases in social security benefits during the period from January 1, 1975, to the earlier of the date the employee's annuity begins or January 1, 1982. The increases are effective on June 1 of each year through 1981. The percentage increase for annuities that begin June 1, 1981, or later is 81 percent.

§ 226.14 Employee regular annuity rate.

The regular annuity rate payable to the employee is the total of the employee tier I, tier II, and vested dual benefit amounts, from §§ 226.10–226.12.

§ 226.15 Deductions from employee regular annuity rate.

The employee annuity as computed under this subpart may be reduced by premiums required for supplemental medicare coverage, income tax withholding, recovery of debts due the Federal government, garnishment pursuant to part 350 of the chapter and

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property awards as provided for in part 295 of this chapter.

§ 226.16 Supplemental annuity.

A supplemental annuity is payable in addition to tiers I and II and the vested dual benefit to an employee who meets the requirements of § 216.41 of this chapter. The supplemental annuity is equal to $23 plus $4 for each full year of service, over 25 years of service, up to a maximum of $43. The supplemental annuity may be reduced by the railroad retirement family maximum as shown in §§ 226.50–226.52 of this part, or for the receipt of a private pension benefit as explained in part 227 of this chapter.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

§ 226.30 Spouse or divorced spouse tier I.

(a) *General.* The tier I of a spouse or divorced spouse annuity is an amount similar to the social security benefit the spouse or divorced spouse would receive based on the employee's combined railroad and social security earnings. In the case of an employee who retires before age 62 with 30 years of service, the spouse tier I is simply 50% of the employee tier I until the first month throughout which both the employee and spouse are age 62 at which time the tier I is an amount similar to the social security benefit on the employee's combined railroad and social security earnings.

(b) *Reduction for other disability benefits.* The spouse or divorced spouse tier I may be adjusted for other disability benefits received by a disabled employee, as shown in §§ 226.70–226.74 of this part.

(c) *Reduction for government pension.* The amount in paragraphs (a) or (b) of this section is reduced (but not below zero) by the amount of any government pension payable on the spouse's or divorced spouse's earnings record, as described in § 226.31 of this part.

(d) *Rounding.* The last tier I rate from paragraph (a), (b) or (c) of this section 5 if not a multiple of $1, is rounded to the next lower multiple of $1. However, in cases in which the spouse is in receipt of an age reduced 60/30 annuity or in which the employee with 30 years of service began a disability annuity July 1, 1984, or later, the spouse tier I is not rounded until all reductions have been made. See § 226.10(a).

(e) *Age reduction.* If the spouse or divorced spouse is entitled to a reduced age annuity (see §§ 216.51 and 216.52 of this chapter), the rounded tier I rate from paragraph (d) of this section is multiplied by a fraction for each month the spouse or divorced spouse is under retirement age on the date the annuity begins. The result is subtracted from the rate from paragraph (d) of this section. At present the fraction is $^{25}/_{36}$ of 1% (or $^{1}/_{144}$). In the case of an employee with 30 years of service who is awarded a disability annuity on July 1, 1984, or later, where the spouse does not have a child of the employee under age 18 in care, the spouse tier I is reduced for each month the spouse is under retirement age on the date the spouse annuity begins. If the spouse is age 60 or 61, he or she is deemed to be age 62 for purposes of the age reduction. The age reduction is applied before reduction for a government pension.

(f) *Reduction for social security benefit.* The previous tier I rate, from paragraph (d) or (e) of this section, is reduced by the amount of any monthly benefit payable to the spouse or divorced spouse under title II of the Social Security Act. The social security benefit used to reduce tier I may be an age or disability benefit on the spouse's or divorced spouse's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The result cannot be less than zero.

(g) *Reduction for employee annuity.* If the spouse or divorced spouse is entitled to an employee annuity on his or her own wage record, the spouse or divorced spouse tier I is reduced for the spouse's own employee annuity as follows:

(1) *Spouse.* If either the employee or the spouse had some railroad service before 1975, the previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the spouse's own employee tier I rate, as computed under § 226.10 of this part. If both the employee and spouse began railroad service after 1974, the spouse's total annuity rate, as shown in § 226.33, is reduced (but not below zero) by the spouse's own employee total annuity rate, as shown in § 226.14. These reductions are effective from the later of the date the employee or spouse annuity begins.

(2) *Divorced spouse.* The previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the divorced spouse's own employee total annuity rate as shown in § 226.14.

Example: The computation of the spouse tier I may be illustrated as follows: A railroad employee's wife who was born on September 16, 1920 becomes entitled to a spouse annuity on October 1, 1982. She is also entitled to a social security benefit of $190 a month effective October 1, 1982. Her husband's employee tier I PIA is $712.60. The spouse tier I is $356.30 (50 percent of $712.60). This is rounded down to $356. Since she is 35 months under age 65, the present retirement age when the annuity begins, $356 is multiplied by $^{35}/_{144}$, to produce an age reduction of $86.53 and a tier I rate after age reduction of $269.47. Her final tier I rate effective October 1, 1982, after reduction for social security benefits, is $79.47 ($269.47–$190.00).

§ 226.31 Reduction for public pension.

(a) The tier I annuity component of a spouse/divorced spouse annuity, as described in the preceding sections of this part, is reduced if the spouse/divorced spouse is in receipt of a public pension.

(b) *When reduction is required.* Unless the spouse or divorced spouse annuity meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the annuitant is receiving a monthly pension from a Federal, state, or local government agency (government pension), but excluding a pension paid by a government of a foreign country, for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security.

(c) *Payment in a lump sum.* If the government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly and then reduce the monthly railroad retirement annuity accordingly. The number of years covered by a lump-sum payment and thus the period when the annuity will be reduced, will generally be clear from the pension plan. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual basis.

(d) *Exceptions.* The reduction does not apply:

(1) If the annuitant is receiving a government pension based on employment for an interstate instrumentality; or

(2) If the annuitant receives or is eligible to receive a government pension

for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977 (even though he or she did not actually claim such benefits nor become entitled to such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If the annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If the annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If the annuitant has been eligible for a government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d)(2) and (d)(3) of this section. If the annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the spouse or divorced spouse annuity is based had a period of disability, as defined in part 220 of this chapter, which did not end before he or she became entitled to an age and service or disability annuity, the spouse/divorced spouse annuitant must have been receiving at least one-half support from the employee either—

(i) At the beginning of the employee's period of disability; or

(ii) At the time the employee became entitled to an age and service or disability annuity.

(2) If the employee upon whose compensation the spouse or divorced spouse annuity is based did not have a period of disability, as defined in part 220 of this chapter, at the time of his or her entitlement, the spouse or divorced spouse annuitant must have been receiving at least one-half support from the employee at the time the employee became entitled to an age and service or disability annuity.

(f) *Amount of reduction.* (1) If the spouse/divorced spouse annuitant becomes eligible for a government pension after June 1983, the Board will reduce (to zero, if necessary) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If the spouse/divorced spouse annuitant became eligible for a government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (to zero, if necessary) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) *Reduction not applicable.* This reduction is not applied to claimants who both filed and were entitled to a spouse benefit prior to December 1977.

§ 226.32 Spouse tier II.

The spouse tier II benefit is computed as follows:

(a) The employee's tier II amount as computed under § 226.11 of this part, after any reduction for entitlement to a vested dual benefit but before reduction for the railroad retirement family maximum, is multiplied by 45 percent. The spouse tier II is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit after the beginning date of the spouse annuity.

(b) If tier I of a spouse annuity is reduced for the spouse's employee annuity, as provided for in § 226.30(g) of this part, the reduction is restored in tier II. The restored amount is payable on the effective date of the spouse or the employee tier I benefit, whichever is later. The previous tier II rate is increased by the restored amount, which is determined as follows:

(1) *Initial restored amount.* The restored amount is the amount by which the spouse tier I was reduced by reason of receipt of an employee annuity on the date the restored amount is first payable. The restored amount is only payable if either the employee or spouse had railroad service prior to 1975.

(2) *Recomputation of restored amount.* The restored amount is recomputed if the spouse becomes entitled to a government pension, a social security benefit, or a different type of social security benefit after the date the initial restored amount is effective. The recomputed amount is the amount by which the spouse tier I is reduced by reason of receipt of an employee annuity on the effective date of the entitlement to a government pension or social security benefit.

(3) *Cost-of-living increase in restored amount.* If an initial or recomputed restored amount is effective before the effective date of the cost-of-living increase shown in paragraph (e) of this section, the restored amount is multiplied by the percentage increase that applies. The result is added to the restored amount on the effective date of the increase for each year that the increase is payable.

(c) If the employee's tier II has been reduced pursuant to section 3(g)(2) of the Railroad Retirement Act (takeback provision) the spouse tier II is reduced by one half of the "takeback" in the employee tier II.

(d) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the spouse tier II rate, as determined in paragraphs (a) through (c) of this section, is reduced by the smaller of—

(1) The total railroad retirement maximum reduction amount; or

(2) The previous spouse tier II rate.

(e) The tier II rate, from paragraphs (a) through (d) of this section, is increased by the same percentage as the employee tier II increase described in § 226.11(e) of this part.

(f) If the spouse is entitled to a reduced age annuity (see § 216.51 of this chapter), the tier II rate, as determined in paragraphs (a) through (e) of this section is reduced in the same manner as the tier I as provided for in § 226.30(e) of this part.

Example: An employee's tier II rate is $329.63 effective October 17, 1981. The spouse rate is $148.33 (45 percent × $329.63) effective October 17, 1981. This is increased to $151.89 effective June 1, 1982 by a cost-of-living increase of 2.4 percent. The spouse is 35 months under age 65, the present retirement age.

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when the annuity begins. The $151.89 rate is multiplied by $^{35}/_{144}$ to produce an age reduction of $36.92. This is subtracted from $151.89 to produce a final rate of $114.97.

§ 226.33 Spouse regular annuity rate.

The final tier I and tier II rates, from §§ 226.30 and 226.32, are added together to obtain the total spouse regular annuity rate.

§ 226.34 Divorced spouse regular annuity rate.

The regular annuity rate of a divorced spouse is equal to his or her tier I amount. The divorced spouse is not entitled to a tier II benefit.

§ 226.35 Deductions from regular annuity rate.

The regular annuity rate of the spouse and divorced spouse annuity may be reduced by premiums required for supplemental medicare coverage, income tax withholding (spouse annuity only), recovery of debts due the Federal government, and garnishment pursuant to part 350 of this chapter.

Subpart D—Railroad Retirement Family Maximum

§ 226.50 General.

There is a monthly ceiling on total family benefits which limits the amount of certain portions of the employee and spouse annuity. This railroad retirement family maximum amount varies according to the employee's earnings in the ten-year period that ends with the year in which his or her annuity begins. If the employee and spouse annuity amounts described in § 226.52 of this part are higher than the maximum from § 226.51 of this part, first the spouse tier II, then the supplemental annuity and, finally, the employee tier II are reduced until the total annuity amount is equal to the maximum or until the spouse tier II and the employee supplemental annuity and tier II have been reduced to zero, whichever comes first. The reduction for the railroad retirement family maximum is first computed from the date the employee's annuity begins. It is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit. It is also recomputed if a workers' compensation or other disability benefit begins or ends, or the employee's tier I benefit or supplemental annuity begins after the beginning date of the regular employee annuity. Finally, it is recomputed if a spouse who was entitled to an annuity divorces the employee or the spouse annuity entitlement ends.

§ 226.51 Maximum monthly amount.

The railroad retirement family maximum is equal to an employee's "final average monthly compensation" (FAMC) up to ½ of 1/12 of the annual maximum tier I earnings as shown in part 224 of this chapter in the year the annuity begins plus 80 percent of so much of his or her FAMC as exceeds ½ of 1/12 of the tier I maximum in the year the annuity begins. For this purpose, the FAMC is determined by dividing the individual's total earnings up to the tier II earnings limit as shown in part 211 of this chapter for the two highest-earnings years out of the last 10 calendar years, including the year of retirement, by 24. The railroad retirement maximum cannot be more than the FAMC and cannot be less than $1,200.

Example: An employee's annuity begins on December 2, 1982. He has yearly earnings that exceed the tier II annual maximum of $24,300 in 1982 and $22,200 in 1981. The FAMC is the sum of the tier II maximum for 1981 and 1982 divided by 24 [($24,300 + $22,200 + 24)] or $1,937.50. The maximum which may be credited to a month for tier I in 1982 is $2,700. The family maximum is $1,350 (½ of 1/12 of the annual tier I maximum) plus $470 (80% of the difference between $1,937.50 and $1,350) or $1,820.

§ 226.52 Total annuity subject to maximum.

The total annuity amount which is compared to the maximum monthly amount to determine if a reduction for the railroad retirement family maximum applies is determined by adding together the amounts in paragraphs (a) and (b) of this section. A hypothetical spouse annuity amount is included from the beginning date of the employee annuity if the spouse is not entitled to an annuity at the time the maximum calculation is made.

(a) *Employee annuity amounts.* The following amounts are added together—

(1) The employee tier I amount, effective on the date the employee's tier I benefit begins or, if later, on the date a reduction for other disability benefits begins or ends, as shown in § 226.71 of this part. This amount is before any reduction for age or social security benefits but after including any delayed retirement credits, after any reduction for other disability benefits, and after rounding; and

(2) The employee tier II rate before reduction for the railroad retirement family maximum, effective on the employee's annuity beginning date and, if later, on the date the tier II is first reduced for a vested dual benefit, as shown in § 226.11 of this part; and

(3) The initial supplemental annuity rate effective on the date the supplemental annuity begins, before any reduction for a private pension, as shown in part 227 of this chapter.

(b) *Spouse annuity amounts.* The following amounts are added together—

(1) The spouse tier I amount, which is or would be effective on the date the employee's annuity or tier I benefit begins, as shown in § 226.30. This amount is before any reduction for other disability benefits, age, or social security benefits, but after any reduction for a government pension or employee annuity; and

(2) The spouse tier II rate which is or would be effective on the employee's annuity beginning date, the date the employee's tier I benefit begins, or the date the employee's tier II rate is reduced for a vested dual benefit, as shown in § 226.11. This rate includes the restored amount but does not include any cost-of-living increase in the tier II original rate or restored amount. It is the rate before reduction for the railroad retirement family maximum or age minus any cost-of-living increases.

Subpart E—Years of Service and Average Monthly Compensation

§ 226.60 General.

The years of service and average monthly compensation used in computing an employee's tier II annuity rate are based on the employee's creditable railroad service and compensation as described in parts 210 and 211 of this chapter. In computing the average monthly compensation, the compensation for each year cannot be higher than twelve times the tier II monthly maximum creditable for that year, as described in part 211 of this chapter.

§ 226.61 Use of military service.

(a) *Claim for use of military service.* An employee is deemed to have filed a claim for the use of military service and earnings as service and compensation under the Railroad Retirement Act if—

(1) The employee indicates on the annuity application or another signed statement that he or she has military service;

(2) The employee does not specifically request that the military service be credited as wages under the Social Security Act;

(3) The military service is creditable under the Railroad Retirement Act, as shown in part 212 of this chapter; and

(4) Using the military service as railroad service and compensation would be to the employee's advantage

(the employee and his or her family would receive higher total benefits than if the military service were credited under the Social Security Act).

(b) *Effective date for use of military service.* Military service can be used as service and compensation under the Railroad Retirement Act starting with the date the annuity begins but no earlier than twelve months before the employee files an application or statement showing that he or she has military service.

§ 226.62 Computing average monthly compensation.

The employee's average monthly compensation is computed by first determining the employee's highest 60 months of railroad compensation (disregarding compensation in excess of the maximum creditable tier II compensation for that year). The total of the highest 60 months is then divided by 60 to determine the average monthly compensation.

§ 226.63 Determining monthly compensation.

(a) *Based on yearly compensation.* If Board records do not show monthly compensation for a year, the monthly compensation is determined by dividing the total compensation reported for the year by the number of months of service credited to the employee for that year.

(b) *For employee with government employment and no railroad service for 60 month period before annuity begins.*—(1) *General.* The compensation used in determining the average monthly compensation (AMC) for an employee who has not worked in the railroad industry for the 60 month period before the month the employee's annuity begins and whose major employment during that period was for a government agency listed in § 216.16 of this chapter is indexed. The compensation is indexed by multiplying it by the quotient obtained by dividing the average annual wage for the indexing year by the average annual wage for the year being indexed. If the month for which compensation is being indexed is before 1951, the average annual wage for 1951 is used.

(2) *Indexing year defined.* The indexing year is the second year before the year in which the annuity begins.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State or Local Law or Plan

§ 226.70 General.

For any month an employee disability annuitant is entitled to workers' compensation or a public disability benefit, the tier I benefit of the spouse or divorced spouse is reduced due to receipt of such benefits. (If both spouse and divorced spouse annuities are payable, the reduction amount is divided and applied in equal amounts to both the spouse and divorced spouse tier I benefits.) The employee tier I is reduced by the difference between the total reduction amount, described in § 226.71 of this part, and the reduction in the spouse and divorced spouse tier I benefits.

§ 226.71 Initial reduction.

(a) *When reduction is effective.* A reduction for other disability benefits begins with the first month the employee is receiving both a disability annuity and workers' compensation or a public disability benefit. The reduction ends with the month before the month in which the employee becomes 65 years old or with the month in which the workers compensation or public disability benefit ends.

(b) *Amount of reduction.* The reduction for other disability benefits equals the difference between—

(1) The total tier I rates of the employee, spouse, and divorced spouse, before any reductions (age, public pension, social security benefits, etc.) plus the monthly amount of the workers' compensation of public disability benefit; and

(2) The higher of—

(i) Eighty percent of the employee's average current earnings, as defined in this section; or

(ii) The total tier I rates, as described in paragraph (1) of this section.

Example 1: Harold is entitled to a monthly disability annuity with a tier I component of $507 and a monthly public disability benefit of $410 from the state. Eighty percent of Harold's average current earnings is $800. Because this amount is higher than Harold's tier I component, to determine the reduction for other disability benefits the Board subtracts this amount ($800) from the total of Harold's tier I component ($507) and public disability benefit ($410) which results in a reduction amount of $117 ($917–$800). This leaves Harold with a reduced tier I amount of $390 ($507–$117).

Example 2: Tom is entitled to a disability annuity with a tier I component of $560. His wife and divorced wife are both entitled to annuities with tier I components of $280 each. Total benefits are $1,120. Tom is receiving a monthly workers' compensation benefit of $500 from the state. Eighty percent of Tom's average current earnings is $820. Because the total benefit ($1,120) is higher than Tom's average current earnings, to determine the reduction for other disability benefits the Board subtracts this amount from $1,620 ($1,120 plus $500) which results in a reduction amount of $500. This means that the tier I of the spouse and divorced spouse annuity are each reduced by $250.

(c) *Average current earnings, defined.* An employee's "average current earnings" is the highest of—

(1) The average monthly wage (AMW) used to compute the tier I AMW PIA. (The earnings are not indexed, even if the tier I PIA which is being paid is based on average indexed monthly earnings. See part 225 of this chapter.); or

(2) One-sixtieth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the five consecutive years after 1950 in which the employee had the highest earnings. The result, if not multiple of $1, is rounded to the next lower multiple of $1; or

(3) One-twelfth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the year of highest earnings in the period which includes the year in which the employee became disabled and the five preceding years. The result, if not a multiple of $1, is rounded to the next lower multiple of $1.

§ 226.72 Benefits that do not cause a reduction.

The tier I is not reduced for the following types of benefits:

(a) A benefit paid under a law or plan that provided, on February 18, 1981, for reducing the benefit for entitlement to a disability insurance benefit under the Social Security Act.

(b) A Federal disability benefit based on service for other than a state or local government, if all or part of that service is covered under the Social Security Act.

(c) A disability benefit paid by the Federal government or a state or local government based on state or local employment, if all or substantially all of that employment is covered under the Social Security Act. "Substantially all" means 85 percent or more of the employment.

(d) A benefit paid by the Veteran's Administration.

(e) Private disability benefits.

(f) Amounts paid under the Federal Employers' Liability Act (FELA).

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(g) Benefits based on need, such as welfare benefits or supplementary security income.

§ 226.73 Changes in reduction amount.

The reduction amount is not changed when a tier I benefit increases because of a recomputation or a general adjustment in annuity rates, such as a cost-of-living increase. However, the reduction amount may change for the following reasons:

(a) *A spouse or divorced spouse becomes entitled to a tier I benefit after the effective date of the reduction.* The reduction amount is recomputed as if the spouse or divorced spouse were entitled to a tier I benefit on the date the reduction first applied. The new reduction amount applies beginning with the date the spouse or divorced spouse tier I benefit begins.

Example: An employee became entitled to an annuity with a tier I component of $500 on May 1, 1991. He was also receiving a state disability benefit of $300 a month based on employment not covered under the Social Security Act. On June 1, 1991, the employee's tier I increased to $520.70. On October 1, 1991, the employee's wife becomes entitled to an annuity with a tier I benefit of $260.00. The tier I amount ($250) that would have been payable to the wife on May 1, 1991 (assuming she had been eligible for a benefit at that time) is used to determine the reduction for other disability benefit beginning October 1, 1991.

(b) *The tier I benefit of a spouse or divorced spouse annuity ends after the effective date of the reduction.* The new reduction amount is computed using the tier I rate to which the employee was entitled when the reduction first applied. The new reduction amount applies beginning with the month after the month in which the spouse or divorced spouse tier I benefit ends.

(c) The average current earnings are redetermined, as shown in § 226.74.

(d) *The amount of the other disability benefit changes.* The reduction amount is recomputed to use the new benefit rate beginning with the date on which the new rate is payable. Any increases in the tier I amounts which were effective after the reduction first applied are not included in computing the new reduction amount.

Example: The employee's tier I benefit is $500 on May 1, 1991, when the annuity is first reduced for other disability benefits. The tier I increases to $520 effective June 1, 1991. When the amount of the disability benefit changes on October 1, 1991, $500, not $520, is used as the employee tier I amount in recomputing the reduction amount.

§ 226.74 Redetermination of reduction.

(a) *General.* The average current earnings are redetermined in the second year after the year the reduction for other disability benefits was first applied and every third year after that. The redetermined amount is used only if it results in a lower reduction amount. The new reduction amount is effective with January of the year after the redetermination is made.

(b) *Redetermined average current earnings.* The average current earnings are redetermined by multiplying the initial average current earnings amount by—

(1) The average of the total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year of redetermination, divided by the average of the total wages reported to the Secretary of the Treasury for 1977 or, if later, the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1; or

(2) If the reduction was first computed before 1978, the average of all taxable wages reported to the Secretary of Health and Human Service for the first quarter of 1977, divided by the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

§ 226.90 When recomputation applies.

An employee's annuity may be recomputed to include additional railroad service and compensation and social security wages which the employee earns after the beginning date of the employee annuity. The annuity is recomputed only if the recomputation increases the annuity rate by more than $1 a month or results in a lump-sum payment of more than $5. Before a recomputed rate can be paid, the employee must stop working in the railroad industry. A recomputed tier I component is payable beginning with January 1 of the year after the year in which the wages or compensation are earned or (provided the employee is age 62 or disabled), in the case of railroad compensation, in the year after the employee stops working in the railroad industry.

A recomputed tier II component is payable from the date the annuity is reinstated after the employee has ceased railroad work.

§ 226.91 How an employee annuity rate is recomputed.

(a) *Tier I.* A recomputation is made if any social security wages or railroad compensation for a year in which the employee returned to work are higher than the earnings for a year included in the previous computation of the tier I PIA, as shown in part 225 of this chapter. The higher earnings are used instead of the lower earnings for the earlier year to determine the average monthly wage or average indexed monthly earnings. Part 225 of this chapter describes how a PIA is recomputed.

(b) *Tier II.* The additional service is added to the years of service previously used in computing the tier II rate. The additional compensation is used to recompute the average monthly compensation, if the compensation for a month in which the employee returned to railroad service is higher than the compensation for a month used in the previous computation of the average monthly compensation. The higher monthly compensation is used instead of the lower compensation for a previous month to determine the new average monthly compensation as shown in § 226.62 of this part. The increased years of service and average monthly compensation are used in computing a new tier II rate, as shown in § 226.11 of this part.

Example: An employee receiving an annuity which began on January 1, 1992, returns to railroad service for 10 months in 1992 and 2 months in 1993. He stops work on February 20, 1993. He has earnings of $34,500.00 in 1992 and $5,200.00 in 1993. His tier II rate effective January 1, 1992, was based on 26 years (312 months) of service and an average monthly compensation of $2,995 ($179,700÷60). The additional 12 months of service increases the year of service used in computing the tier II rate to 27 (312 months+12 months=324 months÷12=27). The 1992 earnings of $34,500.00 are used instead of 1987 earnings of $32,700.00. The 1993 earnings are not used because they are lower than the earnings for previous months used in computing the average monthly compensation. The additional $1,800.00 in earnings increases the average monthly compensation to $3,025 ($179,100 +$1,800.00= $181,500.00÷ 60). The initial tier II amount is increased from $545.09 (26×$2,995×.007) to $571.73 (27×$3,025×.007), effective with the date of annuity reinstatement, March 1, 1993.

§ 226.92 Effect of recomputation on spouse and divorced spouse annuity.

The annuity of a spouse or divorced spouse is recomputed to use the employee's recomputed tier I PIA and tier II rate, if the recomputation results in a lump-sum payment of more than $5 or an increase in the spouse or divorced spouse annuity rate of more than $1 a month. The spouse or divorced spouse annuity rate is recomputed beginning with the same date the employee's annuity rate is recomputed.

PART 232—SPOUSES' ANNUITIES—[REMOVED]

2. For the reasons set out in the preamble, Part 232— Spouses' Annuities, is proposed to be removed.

Dated: February 1, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95-3278 Filed 2-8-95; 8:45 am]

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DEPARTMENT OF STATE

Bureau of International Narcotics Matters

22 CFR Part 140

[Public Notice 2159]

Prohibition on Assistance to Drug Traffickers

AGENCY: Bureau of International Narcotics Matters, Department of State.

ACTION: Proposed rule.

SUMMARY: The Bureau of International Narcotics Matters plans to issue regulations to implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). Section 487(a) directs the President to take all reasonable steps to ensure that assistance provided under the Foreign Assistance Act or the Arms Export Control Act is not provided to or through any individual or entity that the President knows or has reason to believe: (1) has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances; or (2) is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking of any such substance. The law further directs that regulations be issued to carry out the section and be submitted to Congress before they take effect. The proposed regulation will be set forth in a new part of the Code of Federal Regulations, 22 CFR part 140, which will establish a single governmentwide enforcement mechanism for Section 487. The proposed regulations seek to achieve rigorous statutory enforcement in a manner consistent with efficient foreign assistance program administration. They also seek to ensure protection of the procedural rights and interests of assistance recipients.

DATES: Comments due: April 10, 1995.

ADDRESSES: Send comments to: Bureau of International Narcotics and Law Enforcement Affairs, Room 7334, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: William R. Brownfield, Office of International Narcotics and Law Enforcement Affairs, Department of State, 202–647–0457, or Jo Brooks, Office of the Legal Adviser, Department of State, 202–647–7324.

SUPPLEMENTARY INFORMATION: This rule will implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). The requirements of Section 487 are described in the Summary, above.

The procedures prescribed by these regulations apply to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act. The regulations are set up in three Subparts: General (Subpart A, §§ 140.1–140.3); Applicability (Subpart B, § 104.4); and Enforcement (Subpart C, §§ 140.5–140.14).

The General Subpart (Subpart A) provides a statement of the regulations' purpose (§ 140.1), based upon the language of Section 487 of the Foreign Assistance Act; identifies the authorities for issuance of the regulations (§ 140.2); and defines key terms used in the regulations (§ 140.3). The broad coverage of the regulations is reflected in the definitions of drug trafficking (§ 140.3(b)), money laundering (§ 140.3(c)), and narcotics offense (§ 140.3(d)), which are intended to be comprehensive. As noted in the definition of drug trafficking, it encompasses drug-related money laundering.

Two of the key terms defined in the regulations are "covered country" (§ 140.3(e)) and "covered assistance" (§ 140.3(f)). The term "covered country" corresponds to those countries listed on the "majors list," i.e., the list of major illicit drug producing countries and major drug-transit countries, determined annually by the President and transmitted to the appropriate Congressional committees as required by Chapter 8 of Part I of the Foreign Assistance Act. The term "covered assistance" is defined broadly, while excluding assessed contributions to an international organization and assistance that by operation of law is not subject to Section 487. The definition further provides that assistance in amounts less than $100,000 is excluded unless it pertains to: recipients of scholarships, fellowships, or participant training; or a covered individual or entity reasonably suspected of being or having been involved in drug trafficking. These definitions are intended to ensure rigorous application of the statutory prohibition on assistance to drug traffickers, while fostering efficient program administration.

For ease of reference, the term "covered individual or entity" is defined in § 140.4, where it is used, rather than in the definition section. Likewise, the term "key individual" is described in § 140.6(a)(3), where it is introduced.

The Applicability Subpart (Subpart B) explains the scope of the regulations. Their applicability is keyed primarily to "covered individuals and entities" that receive or provide direct or first-tier "covered assistance" and are located or providing assistance within a "covered country." However, the regulations have been drafted carefully to ensure they are given their full statutory scope, i.e., that they are applied whenever an affected agency has reasonable grounds to suspect that a proposed recipient individual or entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense (see § 140.4(c); see also §§ 140.3(f)(2), 140.7(a), 140.9(a), and 140.11). They are also applicable where a government agency providing covered assistance has specifically designated a recipient beyond the first tier (see §§ 140.4(c), 140.7(b)). Additionally, the regulations apply to individuals who receive a scholarship, fellowship, or participant training (unless the assistance is provided through a multilateral institution or international organization and the recipient has not been designated by the agency providing assistance). Further assurance that drug traffickers will not receive assistance is provided by the requirement that where an agency providing covered assistance to a multilateral institution or international

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organization does not designate the assistance recipient, the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking (§ 140.7(c)).

The Enforcement Subpart (Subpart C) contains an overview (§ 140.5), which outlines the Subpart's scope. The applicable review procedures, criteria to be applied in deciding whether to withhold assistance or take other measures, and procedures concerning violations identified subsequent to the obligation of funds are set forth in the Enforcement Subpart. The applicability of these procedures varies depending on the nature of the proposed recipient. The general framework is set forth in § 140.6, in the context of covered assistance to foreign government entities. Variations of that framework are set forth in separate sections for: multilateral institutions and international organizations (§ 140.7); recipients of scholarships, fellowships, and participant training (§ 140.8); non-governmental entities (§ 140.9); and intermediate credit institutions (140.10). (Note: In § 140.9 the use of the phrase "non-governmental entity" is meant to encompass a broader category of organizations than might be encompassed by the term "non-governmental organization" or its acronym, "NGO." As explained in § 140.9, it includes not only private voluntary agencies and educational institutions, but also for-profit firms and any other non-governmental organization.)

The review procedures set forth in the regulations are applied by the Country Narcotics Coordinator (as defined in § 140.3(a)), who is responsible in the first instance for reviewing available information to determine whether a proposed assistance recipient is to be denied assistance or whether other measures are to be taken as a result of Section 487 of the Foreign Assistance Act (see § 140.6(a)). An agency proposing assistance is responsible for providing the Country Narcotics Coordinator with the name of each key individual within a prospective recipient entity who may be expected to control or benefit from assistance as well as other relevant information that is readily available (§ 140.6(a)(3)).

The regulations provide a two-week period, extendable if necessary for another two weeks, within which the Country Narcotics Coordinator, in consultation with the head of the agency proposing assistance or the agency head's designee, is to make a final determination whether to provide or withhold assistance or take other measures. Section 140.6(b) outlines the factors to be considered in determining whether to withhold assistance or take other measures.

Section 140.6(b)(4) further provides that it is the Assistant Secretary for International Narcotics Matters (rather than the Country Narcotics Coordinator), in consultation with affected bureaus and agencies, who shall make any decision to withhold assistance or take other measures based on information or allegations that a key individual who is a senior government official of a foreign government has been convicted of a narcotics offense or has been engaged in drug trafficking (§ 140.6(b)(4)). Personal involvement at the Assistant Secretary level is appropriate in such a case because it involves inherently sensitive foreign policy issues.

The enforcement procedures applicable to recipients of scholarships, fellowships, and participant training (§ 140.8) and U.S. and foreign non-governmental entities (§ 140.9) include a pre-approval certification process. The regulations specify that false certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001. (See §§ 140.8(b), 140.9(c).) Although this penalty is described in the regulations, it is established independently by the referenced statute. The identification of a penalty in the regulations is not meant to limit the application of any criminal or civil penalty otherwise applicable.

Section 140.10 concerns the procedures applicable to intermediate credit institutions. Such institutions are to be treated as either foreign government entities or non-governmental entities, depending on the nature of the particular institution. Section 140.10 also requires that agreements with such intermediate credit institutions include a contract clause concerning a refund procedure applicable to loans exceeding $1,000 made by any intermediate credit institution.

Section 140.11 clarifies that the enforcement procedures established by §§ 140.6–140.10 are not exhaustive, but represent only the minimum applicable procedures implementing Section 487 of the Foreign Assistance Act.

The remaining provisions of the regulations, §§ 140.11–140.14, establish notification and appeal procedures. Special care has been taken to ensure that notification will not be done in a manner that would interfere with any criminal investigation that may be ongoing (§ 140.13(b)). A Country Narcotics Coordinator's decision to withhold assistance or take other measures may be appealed by the agency proposing such assistance (§ 140.12). In addition, where the prospective assistance recipient is a U.S. entity, U.S. citizen, or permanent U.S. resident, a Country Narcotics Coordinator's preliminary decision to withhold assistance is referred to the Assistant Secretary of State for International Narcotics Matters for review and action. An adverse decision affecting a U.S. entity, U.S. citizen, or permanent U.S. resident may be contested in accordance with applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

This amendment involves a foreign affairs function of the United States. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. It is also excluded from the procedures of 5 U.S.C. Secs. 553 and 554.

List of Subjects in 22 CFR Part 140

Drug traffic control, Foreign aid.

For the reasons set out in the preamble, 22 CFR subchapter N is proposed to be amended by adding part 140 to read as follows:

PART 140—PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS

Subpart A—General

140.1 Purpose.
140.2 Authorities.
140.3 Definitions.

Subpart B—Applicability

140.4 Applicability.

Subpart C—Enforcement

140.5 Overview.
140.6 Foreign government entities.
140.7 Multilateral institutions and international organizations.
140.8 Recipients of scholarships, fellowships, and participant training.
140.9 Non-governmental entities.
140.10 Intermediate credit institutions.
140.11 Minimum enforcement procedures.
140.12 Interagency appeal procedures.
140.13 Notification to foreign entities and individuals.
140.14 Notification to and opportunity to contest for U.S. entities and individuals.

Authority: 22 U.S.C. 2651a.

Subpart A—General

§ 140.1 Purpose.

(a) These regulations implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f).

(b) Section 487(a) directs the President to "take all reasonable steps" to ensure that assistance under the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA) "is not provided to or through any individual or entity that the President knows or has reason to believe":

(1) has been "convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating [to] narcotic or psychotropic drugs or other controlled substances"; or

(2) "is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance."

§ 140.2 Authorities.

Authority to implement FAA Section 487 was delegated by the President to the Secretary of State by E.O. 12163, as amended, and further delegated by the Secretary to the Assistant Secretary for International Narcotics Matters by Delegation of Authority No. 145, dated Feb. 4, 1980 (45 FR 11655), as amended.

§ 140.3 Definitions.

The following definitions shall apply for purposes of these regulations:

(a) Country Narcotics Coordinator. The individual assigned by the chief of mission in each foreign country to coordinate United States government policies and activities within a country related to counternarcotics efforts. As determined by the State Department's Bureau of International Narcotics Matters, these responsibilities may, as necessary, be performed by another person.

(b) Drug trafficking. Any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or otherwise assist, abet, conspire, or collude with others in illicit activities relating to, narcotic or psychotropic drugs, precursor chemicals, or other controlled substances, including drug-related money laundering.

(c) Money laundering. The process whereby proceeds of criminal activity, are transported, transferred, transformed, converted, or intermingled with legally acquired funds, for the purpose of concealing or disguising the true nature, source, disposition, movement, or ownership of those proceeds. The goal of money laundering is to make funds derived from or associated with illicit activity appear legally acquired.

(d) Narcotics offense. A violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances.

(e) Covered country. A country that has been determined by the President to be either a "major illicit drug producing" or "major drug-transit" country under Chapter 8 of Part I of the FAA. The list of covered countries is maintained by the State Department's Bureau of International Narcotics matters.

(f) Covered assistance. Any assistance provided by an agency of the United States government under the FAA or AECA, except that it does *not* include:

(1) Assistance that by operation of the law is not subject to FAA Section 487, including:

(i) Disaster relief and rehabilitation provided under Chapter 9 of Part I of the FAA; and

(ii) Assistance provided to small farmers when part of a community-based alternative development program under Part I or Chapter 4 of Part II of the FAA;

(2) Assistance in an amount less than $100,000, except that the procedures in § 140.8 for recipients of scholarships, fellowships, and participant training shall apply regardless of amount. However, assistance shall be deemed covered assistance regardless of amount if the agency has reasonable grounds to suspect that a covered individual or entity may be or may have been involved in drug trafficking; or

(3) Assessed contributions to an international organization.

Subpart B—Applicability

§ 140.4 Applicability.

(a) Except as otherwise provided herein or as otherwise determined by the Secretary of State or the Secretary's designee, the procedures prescribed by these regulations apply to any "covered individual or entity," i.e., any individual or entity, including any foreign government entity and any U.S. or foreign non-governmental entity, that is:

(1) (i) Receiving or providing covered assistance under a direct or first-tier grant, loan, guarantee, cooperative agreement, contract, or other direct agreement with an agency of the United States; or

(ii) Receiving covered assistance in the form of a scholarship, fellowship, or participant training, except as provided in § 140.7(c); and

(2) Located in or providing assistance within a covered country.

Examples:

(1) Under a $500,000 project grant agreement with the Agency for International Development providing covered assistance, Government A enters into a $150,000 contract with Corporation X. Government A is a covered entity. However, Corporation X is *not* a covered entity because the contract is not a direct contract with an agency of the United States.

(2) Under a $1,000,000 grant from the Department of State providing covered assistance, Corporation B makes a $120,000 subgrant to University Y for the training of 12 individuals. Corporation B is a covered entity and the 12 individuals receiving participant training are covered individuals. University Y is *not* a covered entity.

(3) University C receives a $1 million regional assistance research project grant from the Agency for International Development, but only $80,000 is provided for research in covered countries. University C is not a covered entity. (However, if $100,000 or more were provided for research in a covered country or countries, then University C would be a covered entity.)

(b) For purposes of § 140.4(a), where a government agency providing covered assistance specifically designates a recipient of such assistance, the recipient shall be deemed a covered individual or entity.

(c) Unless otherwise determined by the Secretary of State or the Secretary's designee, these regulations do not apply to assistance to or through individuals and entities in non-covered countries. However, an affected agency shall apply these regulations if the agency has reasonable grounds to suspect that an individual or entity located in or providing covered assistance in a non-covered country may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense.

Subpart C—Enforcement

§ 140.5 Overview.

This subpart sets forth the enforcement procedures applicable pursuant to § 140.4 to the various types of covered individuals and entities with respect to covered assistance. Section 140.6 establishes the procedures applicable to foreign government entities, including any such entity that is covered by the definition of a "foreign state" set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a). Section 140.7 establishes the procedures applicable to multilateral institutions and international organizations. Section 140.8 establishes the procedures applicable to recipients of scholarships and fellowships and participant trainees. Section 140.9 establishes the procedures applicable to non-governmental entities. Section 140.10

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sets forth additional procedures applicable to intermediate credit institutions. Sections 140.11 through 140.14 contain general provisions related to the enforcement process.

§ 140.6 Foreign government entities.

(a) *Review procedures.* (1) The Country Narcotics Coordinator shall be responsible for establishing a system for reviewing available information regarding narcotics offense convictions and drug trafficking of proposed assistance recipients under this section and, except under the circumstances described in § 140.6(b)(4), determining whether a proposed recipient is to be denied such assistance or other measures are to be taken as a result of the application of FAA Section 487.

(2) Prior to providing assistance to or through a proposed recipient, the head of the agency providing the assistance, or the agency head's designee, shall provide the Country Narcotics Coordinator in the country in which the proposed recipient is located or, as appropriate, where assistance is to be provided, the information specified in § 140.6(a)(3) in order that the Country Narcotics Coordinator may carry out his or her responsibilities under these regulations.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the entity who may be expected to control or benefit from assistance as well as other relevant identifying information (e.g., address, date of birth) that is readily available. If a question arises concerning who should be included within the group of key individuals of an entity, the head of the agency providing the assistance, or the agency head's designee, shall consult with the Country Narcotics Coordinator, and the final decision shall be made by the Country Narcotics Coordinator.

(4) Within fourteen calendar days after receiving the name of a proposed recipient and other relevant information, the Country Narcotics Coordinator shall determine whether any available information may warrant withholding assistance or taking other measures under these regulations, based on the criteria set forth in § 140.6(b). If, during that period, the Country Narcotics Coordinator determines that available information does not so indicate, he or she shall notify the proposing agency that the assistance may be provided to the proposed recipient.

(5) If, during the initial fourteen-day period, the Country Narcotics Coordinator determines that information exists that may warrant withholding assistance or taking other measures under these regulations, then the Country Narcotics Coordinator shall have another fourteen calendar days to make a final determination whether to provide or withhold the assistance or take such other measures.

(b) *Criteria to be applied.* (1) A decision to withhold assistance or take other measures shall be based on knowledge or a reasonable belief that the proposed recipient individual or entity, or one or more key individuals within a proposed recipient entity, during the past ten years, has:

(i) Been *convicted* of a narcotics offense as defined in these regulations; or

(ii) Been *engaged* in drug trafficking, regardless of whether there has been a conviction.

(2) Factors that may support a decision to withhold assistance or take other measures based on the belief that the proposed recipient has been engaged in drug trafficking during the past ten years when there has been no conviction of such an offense may include, but are not limited to, the following:

(i) Admission of participation in such activities;

(ii) A long record of arrests for drug-trafficking with an unexplained failure to prosecute by the local government;

(iii) Several reliable and corroborative reports.

(3) If the Country Narcotics Coordinator determines that a key individual (as described in § 140.6(a)(3)) within a proposed recipient entity has been convicted of a narcotics offense or has been engaged in drug trafficking under the terms of these regulations, the Country Narcotics Coordinator must then decide whether withholding assistance or taking other measures in connection with the entity itself is warranted. This decision shall be made in consultation with the head of the agency proposing the assistance, or the agency head's designee. In making this determination, the Country Narcotics Coordinator shall take into account:

(i) The extent to which such individual would have control over assistance received;

(ii) The extent to which such individual could benefit personally from the assistance;

(iii) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and

(iv) Whether such individual has acted alone or in collaboration with others associated with the entity.

(4) A decision to withhold assistance or to take other measures based on information or allegations that a key individual who is a senior government official of the host nation has been convicted of a narcotics offense or has been engaged in drug trafficking shall be made by the Assistant Secretary for International Narcotics Matters in consultation with the affected bureaus and other interested agencies. For purposes of these regulations, "senior government official" includes host nation officials at or above the vice minister level, heads of host nation law enforcement agencies, and general or flag officers of the host nation armed forces. In making the decision whether to withhold assistance or take other measures because of information or allegations that a senior government official of the host nation has engaged in drug trafficking, the criteria set forth in §§ 140.6(b)(2) and (3) shall apply.

(c) *Violations identified subsequent to obligation.* The foregoing procedures require a review before funds are obligated. If, however, subsequent to an obligation of funds an assistance recipient is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking (e.g., the head of a recipient entity changes during the course of an activity and the new head is found to have been engaged in drug trafficking), appropriate action should be taken, including, if necessary, termination of the assistance. Agreements shall be written to permit termination of assistance in such circumstances.

§ 140.7 Multilateral institutions and international organizations.

Assistance provided to or through multilateral institutions or international organizations is subject to these regulations as follows:

(a) Where the government agency providing assistance has reasonable grounds to suspect that a recipient multilateral institution or international organization may be or may have been involved in drug trafficking, the agency shall apply the provisions of § 140.6.

(b) Where the government agency providing assistance designates the recipient of assistance from the multilateral institution or international organization and the designated recipient is a covered individual or entity, the agency shall apply the provisions of these regulations that would apply if the assistance were provided directly to the designated recipient.

(c) Where the government agency providing assistance does not designate the recipient of assistance from the multilateral institution or international organization, these regulations do not apply to such recipients of assistance, except that the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking.

Example:

The State Department provides $600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D receive $150,000 and Corporation E receive $60,000 for programs in a covered country. Individuals who will receive training are not specifically designated by the State Department. The United Nations is a covered entity based on § 140.4(a)(1)(i); Government D is a covered entity based on §§ 140.4(b) and 140.7(b); Corporation E is not a covered entity under §§ 140.4(b) and 140.7(b) because it has been designated to receive less than $100,000 in assistance. Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(1)(ii)).

§ 140.8 Recipients of scholarships, fellowships, and participant training.

(a) Procedures. Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the entity providing the assistance.

(b) Certifications. Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training shall also be required to certify prior to approval that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking, and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the assistance recipient to U.S. criminal prosecution under 18 U.S.C. Sec. 1001 and to withdrawal of assistance under these regulations.

§ 140.9 Non-governmental entities.

(a) Procedures. Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, or any other non-governmental entity. A non-governmental entity that is not organized under the laws of the United States shall be subject to the review procedures and criteria set forth in §§ 140.6(a) and (b). A non-governmental entity that is organized under the laws of the United States shall not be subject to such review procedures and criteria. However, an affected agency shall follow such procedures if the agency has reasonable grounds to suspect that a proposed U.S. non-governmental entity or a key individual of such entity may be or may have been involved in drug trafficking or may have been convicted, within the last ten years, of a narcotics offense. Procedures set forth in § 140.6(c) concerning violations identified subsequent to obligation shall apply to both U.S. and foreign non-governmental entities.

Examples:

(1) A $100,000 grant to a covered U.S. university for participant training would not be subject to the review procedures and criteria in §§ 140.6(a) and (b). However, a proposed participant would be subject to the review procedures and criteria in §§ 140.6 (a) and (b) as part of the agency's approval process.

(2) A $100,000 grant to a covered foreign private voluntary agency for participant training would be subject to the review procedures and criteria in §§ 140.6(a) and (b). In addition, each proposed participant would be subject to the review procedures and criteria in §§ 140.6(a) and (b) as part of the agency's approval process.

(b) Refunds. A clause shall be included in grants, contracts, and other agreements with both U.S. and foreign non-governmental entities requiring that assistance provided to or through such an entity that is found to have been engaged in drug trafficking, as defined in these regulations, shall be subject to refund.

(c) Certifications. Prior to approval of covered assistance, key individuals (as described in § 140.6(a)(3)) in both U.S. and foreign non-governmental entities shall be required to certify that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001.

§ 140.10 Intermediate credit institutions.

(a) Treatment as Non-Governmental Entity or as a Foreign Government Entity. Intermediate credit institutions ("ICIs") shall be subject to either the procedures applicable to foreign government entities or those applicable to non-governmental entities, depending on the nature of the specific entity. The Assistant Secretary for International Narcotics Matters or the Assistant Secretary's designee, in consultation with the head of the agency proposing the assistance or the agency head's designee, shall determine (consistent with the definition of "foreign state" set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a) and made applicable by § 140.5) whether the ICI will be treated as a non-governmental entity or a foreign government entity.

(b) Refunds. In addition to measures required as a consequence of an ICI's treatment as a non-governmental entity or a foreign government entity, a clause shall be included in agreements with all ICIs requiring that any loan greater than $1,000 provided to an individual or entity found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in these regulations, shall be subject to refund or recall.

§ 140.11 Minimum enforcement procedures.

Sections 140.6 through 140.10 represent the minimum procedures that each agency is required to apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

§ 140.12 Interagency appeal procedures.

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the head of the agency, or the agency head's designee, may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics Matters in coordination with other affected bureaus and agencies. The assistance shall continue to be withheld pending resolution of the appeal.

§ 140.13 Notification to foreign entities and individuals.

(a) Unless otherwise determined under § 140.13(b), if a determination has been made that assistance to a foreign entity or individual is to be withheld, suspended, or terminated under these regulations, the agency administering such assistance shall so inform the affected entity or individual. Except as the agency administering such assistance and the Country Narcotics Coordinator may otherwise determine, the entity or individual shall be notified solely of the statutory basis for withholding assistance.

(b) Before such notification, the Country Narcotics Coordinator shall be responsible for determining that notification would not interfere with an on-going criminal investigation. If an

investigation is underway, the Country Narcotics Coordinator, in consultation with the investigating agency, shall determine whether notification is appropriate or whether other action should be taken.

§ 140.14 Notification to and opportunity to contest for U.S. entities and individuals.

(a) If the Country Narcotics Coordinator makes a preliminary decision that evidence exists to justify withholding assistance to a U.S. entity, U.S. citizen, or permanent U.S. resident, the matter shall be referred immediately to the Assistant Secretary of State for International Narcotics Matters for appropriate action, to be taken in coordination with the agency proposing the assistance.

(b) If a determination has been made that assistance is to be withheld, suspended, or terminated under these regulations, the Assistant Secretary of State for International Narcotics Matters, or the Assistant Secretary's designee, shall notify the affected U.S. entity, U.S. citizen, or permanent U.S. resident and provide such entity or individual with an opportunity to contest the action in accordance with the provisions of applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants) (for example, regulations set forth in 22 CFR part 137 (State Department) or 22 CFR part 208 (Agency for International Development)).

Dated: February 1, 1995.

Robert S. Gelbard,

Assistant Secretary for International Narcotics Matters.

[FR Doc. 95–3279 Filed 2–8–95; 8:45 am]

BILLING CODE 4710–17–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–118–1–6083b; TN–101–1–5716b; TN–110–2–6569b; FRL–5151–7]

Approval and Promulgation of Implementation Plans: Approval of Revisions to Tennessee Regulations

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of adding Stage II vapor recovery regulations to the Nashville nonattainment area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 13, 1995.

ADDRESSES: Written comments should be addressed to:

Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243.

Nashville-Davidson County Bureau of Environmental Health Services, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The telephone number is 404/347–3555 extension 4209. Reference file TN118–1–6083.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–3212 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 761

[OPPTS–66019A; FRL–4935–5]

RIN 2070–AB20

Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Informal Hearing.

SUMMARY: On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule with respect to 19 petitions for exceptions to the general prohibitions on the manufacture, import, processing, and distribution in commerce of PCBs under the Toxic Substances Control Act (TSCA). EPA has received a request for a hearing on four of the petitions that seek an exemption to allow the importation of PCBs from Canada for disposal in the United States. EPA will hold a half-day informal public hearing in the Washington, DC area on the four petitions. This notice announces the time and location of that hearing.

DATES: The hearing will take place on Monday, March 6, 1995, from 9:00 a.m. to 1:00 p.m. Written requests to participate in the hearing must be received on or before February 24, 1995. If reply comments are submitted, they must be received on or before March 20, 1995.

ADDRESSES: The hearing will be held at EPA Headquarters, 401 M St., SW., Washington, DC, in the Washington Information Center (WIC), conference room number 17 from 9 am to 1 pm. Three copies of the request to participate in the informal hearing, identified with the docket number OPPTS–66019A must be submitted to: OPPT Document Control Officer. Attn: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. G–99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See SUPPLEMENTARY INFORMATION for the type of information that must be included in the request and who may participate. Requests for a waiver to participate in the informal hearing by those

organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 1900, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: TSCA section 3(c)(3) prohibits the manufacture, import, processing, and distribution in commerce of PCBs in most situations unless EPA grants an exemption from the prohibition by rulemaking. 15 U.S.C. 2605(e)(3). On December 6, 1994, EPA published a proposed rule addressing 19 petitions for exemptions from the TSCA section 6(e)(3) prohibition (59 FR 62875). EPA also announced that it would conduct an informal hearing upon request. EPA received a request for a hearing from S.D. Myers on EPA's proposed decision on their four petitions which seek an exemption from the prohibition on importing PCBs from Canada for disposal in the United States. EPA will hold an informal hearing on its proposed decision to deny these four petitions on March 6, 1995. In general, the procedures that govern rulemaking, including informal hearings, with respect to petitions for exemptions from the TSCA section 6(e)(3) prohibitions are specified in 40 CFR part 750, subparts A through C. Subpart B specifies the procedures that govern rulemaking for petitions seeking exemptions to manufacture and import PCBs. The procedures in that subpart govern the March 6 informal hearing and subsequent rulemaking activities involving the Myers' petitions. The following notice summarizes those procedures. Participants and commenters are advised to consult 40 CFR part 750, subpart B for greater detail.

Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer (see ADDRESSES above). The request shall be received on or before February 24, 1995 (40 CFR 750.18(a)).

The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required (not to exceed 15 minutes); and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Record and Hearing Clerk (see ADDRESSES above) or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.18(b)). A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination will normally not be permitted at this stage. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions (40 CFR 750.19). See 40 CFR 750.19 and 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons may contact the Environmental Assistance Division (see FOR FURTHER INFORMATION CONTACT above)). See 40 CFR 750.20 and 750.8 for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received on or before March 20, 1995, and shall be restricted to comments on: (1) other comments; (2) material in the hearing record; and (3) material which was not and could not possibly have been available to the commenting party a sufficient time before main comments were due on February 6, 1995. (40 CFR 750.15). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c).

Reply comments and a transcript of the hearing will be placed in the Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS–66019A). A full list of these materials is available for inspection and copying in the TSCA Nonconfidential Information Center from 12 noon to 4 p.m. However, any information claimed as Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection. The address for the TSCA Docket Receipts appears under the **ADDRESSES** section of this notice.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and Recordkeeping requirements.

Dated: February 2, 1995.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–3297 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[CA–050–1220–00–24–1A]

Supplemental Shooting Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Supplemental Shooting Regulations affecting developed recreational areas/sites and undeveloped Bureau of Land Management administered public lands (that are not closed to shooting) within the Ukiah District was published in the **Federal Register**, Volume 60, number 3, pages 1791 and 1792, Thursday January 5, 1995 with a 30-day comment period expiring on February 6, 1995.

In response to public requests, the comment period is being extended for an additional 30 days.

DATES: The period for the submission is hereby extended until March 6, 1995. Comments postmarked after this date will not be considered as part of the decision making process on issuance of the supplemental regulations.

ADDRESSES: Comments should be sent to the Ukiah District Manager, Bureau of Land Management, 2550 N. State Street, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Patrick Hagan, Ranger, Ukiah District Office, (707) 468–4000.

Dated: January 31, 1995.

Eric W. Natti,

Acting District Manager.

[FR Doc. 95–3273 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–40–P

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DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of public meeting.

SUMMARY: On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register**. The next public meeting is scheduled for March 9, 1995, and March 10, 1995. Prior to the public meeting, interested parties may obtain the agenda of discussion topics and drafts of the materials that will be discussed at the public meetings.

DATES: *Public Meetings.* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on March 9, 1995; and from 10:00 a.m. to 1:00 p.m., local time, on March 10, 1995.

Draft Materials. Drafts of the materials to be discussed at the public meetings on March 9 and 10 will be available at the Defense Acquisition Regulations Directorate by March 1, 1995.

Statements. Statements for presentation at the public meeting should be submitted to the address below on or before March 7, 1995.

ADDRESSES: *Draft Materials.* Interested parties may obtain drafts of the materials to be discussed at the March 9 and 10 public meetings from Linda W. Neilson, Defense Acquisition Regulations Directorate, Crystal Square 4, Suite 200, 1745 Jefferson Davis Highway, Arlington, Virginia, 22202

Public Meeting. The public meeting will be held in Suite 114, 1111 Jefferson Davis Highway, Crystal Gateway North (West Tower), Arlington, Virginia 22202. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topics scheduled for discussion, should contact Mrs. Linda W. Nelson, DAR Directorate, Attn: IMD 3D139, PDUSD (A&T)DP/DAR, 3062 Defense Pentagon, Washington DC 20301–3062. FAX (703) 602–0350. Please cite File 94–H028 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda W. Neilson, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing dated September 16, 1994 (59 FR 47583) invited interested parties to provide written suggestions or comments. Twenty-two commentors provided approximately 500 comments across a broad range of topics. As a result of discussions at the January 25, 1995, public meeting, the first seven discussion topics have been identified as follows—(1) draft deviation from current FAR tracking requirements for Government property valued at $1,500 or less; (2) draft revisions to the FAR Part 45 definitions; (3) legislative initiative to permit negotiated sales of low value Government property to holding contractors; (4) revisions to the current FAR policy on furnishing Government property; (5) revisions to FAR 52.245–17, Special Tooling; (6) issues relating to disposal of low value Government property; and (7) establishing the value of Government property for the purpose of determining appropriate rental charges. Additional discussion topics will be identified at future public meetings.

At the March 9 and 10 public meeting, interested parties are invited to present statements on (1) draft legislation permitting negotiated sales of low value Government property to holding contractors, (2) revisions to FAR 52.245–17, Special Tooling, (3) disposal of Government property, and (4) establishing the value of Government property for the purpose of determining appropriate rental charges.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 95–3221 Filed 2–8–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[I.D. 082694A]

Endangered and Threatened Species; Notice of Public Hearing On Reclassification of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: On December 28, 1994, NMFS issued a proposed rule to reclassify Snake River spring/summer and Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the previous threatened status, under the Endangered Species Act of 1973 (ESA). NMFS is announcing two public hearings on this proposed action.

DATES: The hearings are scheduled as follows:

1. February 23, 1995, 7 p.m. to 9:30 p.m., Boise, ID.

2. February 24, 1995, 7 p.m. to 9:30 p.m., Portland, OR.

ADDRESSES: Comments on the proposed rule should be sent to Garth Griffin at Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. The hearings will be held at the following locations:

1. Boise—National Interagency Fire Center, 3833 S. Development Ave., (basement of Training Center Building), Boise, ID 83705.

2. Portland—Federal Complex, 911 NE 11th Ave., (first floor, West Side), Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503/230-5430.

SUPPLEMENTARY INFORMATION: Department of Commerce ESA implementing regulations state that the Secretary of Commerce "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * *a species" (50 CFR 424.16 (c)(3)). A public hearing on the proposed listing provides the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties.

In response to a request by Mr. Mark Malkoski for a public hearing, NMFS

announces that hearings on the proposed reclassification of Snake River spring/summer and fall chinook salmon will be held. The public hearings will occur near the end of the public comment period for the proposed rule (February 26, 1995).

Dated: February 6, 1995.

P.A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–3330 Filed 2–7–95; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–139–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for cotton lines genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these genetically engineered cotton lines present a plant pest risk.

DATES: Written comments must be received on or before April 10, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–139–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–139–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Reding, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency contract will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville) or (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulation in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 4, 1994, APHIS received a petition (APHIS Petition No. 94–308–01p) from the Monsanto Company of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for a cotton line designated as 531, genetically engineered to produce an insecticidal protein for resistance to lepidopteran insect pests. On January 10, 1995, Monsanto amended the petition to add two additional lines designated as 757 and 1076. The three cotton lines, 531, 757, and 1076, are trademarked by Monsanto as Bollagard™ Cotton Lines. The Monsanto petition states that the subject cotton lines 531, 757, and 1076, should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, the subject cotton lines were developed to produce an insect control protein derived from the common soil bacterium Bacillus thuringiensis subsp. kurstaki (*Btk*). This genetically engineered insect control protein is nearly identical (differing in only 6 of 1,178 nonessential amino acids) to one of the proteins encoded by the cryIA(c) gene. This protein is naturally produced by *Btk* and found in commercial microbial *Btk* formulations registered as pesticides with the Environmental Protection Agency (EPA). According to Monsanto, the protein is highly selective in controlling such lepidopteran cotton pests as cotton bollworm, tobacco budworm, and pink bollworm, and is expressed at a consistent level in the cotton plant throughout the growing season. The expression of this insect control protein is regulated by a promoter and terminating sequence. The promotors were either the 35S sequence derived from the cauliflower mosaic virus or a promoter from an alternate source. Terminating sequences used were either the 7S 3′ non-translated region of the soybean alpha subunit of the beta-conglycinin gene or the E9 3′ sequence from the pea ribulose-1,5,-bisphosphate carboxylase, small subunit (rbcS).

The subject cotton lines also contain the nptII gene from the prokaryotic transposon Tn5 which encodes the enzyme neomycin phosphotransfease II. The expression of this gene in the subject cotton lines is regulated by the 35S promoter, as described above, and the nontranslated 3′ region of the nopaline synthase gene derived from the plant pathogen Agrobacterium tumefaciens. The expression of this enzyme in the subject cotton lines allows for selective growth of transgenic plant cells on the antibiotic kanamycin during plant tissue culture. These genes were stably transferred into the genome of cotton plants using A. tumefaciens-mediated transformation utilizing a binary, single-border plant expression vector.

Monsanto's cotton lines 531, 757, and 1076 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, promoters, and terminators) derived from plant pathogenic sources. In cotton growing locations throughout the United States, cotton line 531 was evaluated under 5 APHIS permits issued between 1991 and 1993, and cotton lines 757 and 1076 were tested under 6 APHIS permits or notifications in 1993 and 1994. After reviewing Monsanto's permit applications for field trials of cotton lines 531, 757, and 1076, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa et seq.), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

These genetically engineered cotton lines are also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Monsanto has submitted to EPA an application for a conditional registration for a transgenic plant pesticide containing the new active ingredient Btk delta endotoxin protein as produced by the cryIA(c) gene and its controlling sequences. On September 29, 1994, EPA announced receipt of this application (EPA File Symbol 524–UTI) in the **Federal Register** (59 FR 49663, OPP–30373; FRL–4913–5).

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA. Monsanto has also submitted to the EPA a pesticide petition (PP 4F4331) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient Btk delta endotoxin protein as produced by the cryIA(c) gene and its controlling sequences. On September 14, 1994, EPA announced receipt of this petition in the **Federal Register** (59 FR 47136–47137, PF–605; FRL–4904–7). Consistent with the "Coordinated Framework for Regulation of Biotechnology" (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their reviews of these genetically engineered cotton lines to avoid duplication and assure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's genetically engineered cotton lines and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 3rd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service

[FR Doc. 95–3290 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–34–M

[Docket 94–119–3]

Boll Weevil Control Program; Change of Public Hearing Site

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has changed the location and time of one of two public hearings scheduled to be held regarding an environmental assessment and preliminary finding of no significant impact for a proposed program to eradicate the boll weevil in the Lower Rio Grande Valley, Texas. The hearings were announced in a notice published in the **Federal Register** on January 30, 1995. We have changed the site and time of the second hearing in response to requests from the public.

DATES: Two public hearings will be held on February 16, 1995, in Weslaco, TX; one from 1 p.m. to 5:30 p.m., the other from 7:30 p.m. to 10:30 p.m. Pre-hearing registration for oral participation at a hearing may be made by mail (postmarked on or before February 8, 1995), or at the hearing site on the date of the hearings, beginning one hour prior to each hearing.

ADDRESSES: The first public hearing (1 p.m. to 5:30 p.m.) will be held in the Hoblitzelle Auditorium, Texas Agriculture Experiment Station, 2415 East Highway 83, Weslaco, TX. The second public hearing (7:30 p.m. to 10:30 p.m.) will be held at the Best Western Palm Air Motor Inn, 415 South International Boulevard (Highway 1015), Weslaco, TX. Registration for oral participation at either hearing may be mailed to Vicki Wickheiser, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Vicki Wickheiser at the address listed above or by telephone at (301) 436–8963.

SUPPLEMENTARY INFORMATION: On January 30, 1995, the Animal and Plant Health Inspection Service published in the **Federal Register** (60 FR 5617–5618, Docket No. 94–119–2) a notice that, in part, announced that two public

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hearings have been scheduled for February 16, 1995, in Weslaco, TX. The hearings are being held to explain the findings in an environmental assessment (EA) prepared for a proposed program to eradicate the boll weevil in the Lower Rio Grande Valley of Texas. The hearings are also intended to provide a forum for the public to present views and ask questions regarding the EA.

In response to requests received from the public, we have changed the site and time of the second hearing. The on-site pre-hearing registration and the hearing itself will be held at the Best Western Palm Air Motor Inn (see the **ADDRESSES** section of this notice). The time and place of the first hearing remain the same as announced in the January 30 notice (see the **DATES** section of this notice).

Persons who wish to speak at either hearing may register in advance by mail (see the **ADDRESSES** section of this notice), or in person at the hearing site. To register by mail, individuals should send a letter or postcard with their name and affiliation (e.g., farm worker, grower, or academician) and should specify which of the hearings they wish to attend, and the approximate length of time needed for their presentation and questions. On the day of the hearing, registration at the hearing site will begin at noon for the 1 p.m. hearing and at 6:30 p.m. for the 7:30 p.m. hearing. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. The presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

The substance of this notice will be published in newspapers (English and Spanish) serving the Lower Rio Grande Valley of Texas.

Done in Washington, DC, this 3rd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–3289 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Mount St. Helens National Volcanic Monument Boundary Modification

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to modify boundary.

SUMMARY: The Forest Service hereby gives notice of a proposed minor boundary modification for the Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Cowlitz County, Washington. The Act of August 26, 1982, establishing the Monument requires public notice of proposed boundary changes for a 60-day period prior to final approval by the Secretary of Agriculture.

DATES: The 60-day notice period expires April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248; or Bruce Watson, Assistant Lands Staff Officer, Gifford Pinchot National Forest, P.O. Box 8944, Vancouver, Washington 98668–8944, telephone: (206) 750–5103.

SUPPLEMENTARY INFORMATION: In accordance with section 1(b)(2) of the Act of August 26, 1982 (96 Stat. 301), establishing the Mount St. Helens National Volcanic Monument, the Secretary of Agriculture proposes a minor modification of the originally adopted boundary of the Monument. The modification will remove approximately 1.93 acres from the 111,500-acre Monument.

The current boundary of the Monument follows the east-west centerline of Section 35 to the south right-of-way line of State Route 504. The revision would delete a strip of land 100 feet wide containing Weyerhaeuser Company's access road to their lands north of the Monument.

The purpose of this boundary change is to recognize the newly created land ownership pattern in the area. During the negotiations with Weyerhaeuser Company for the acquisition of their property, it was agreed to exclude this 1.93 acre parcel. The acquisition of the Weyerhaeuser Company lands was completed in April of 1993, and a minor modification of the boundary is appropriate in this area.

The legal description of the boundary change is as follows: All descriptions are for the Willamette Meridian, Cowlitz County, Washington.

A strip of land 100 feet wide, 50 feet on each side of the following described centerline, as surveyed and filed in VOL. 12 PAGE 78, Cowlitz County, Washington. Beginning at the West ¼ corner of section 35, T. 10 N., R. 4 E., thence S 88° – 41′ – 06″ E, along the East-West centerline of section 35, a distance of 2483.41 feet to the intersection of the centerline of Weyerhaeuser road number 3500, and the true point of beginning; thence southerly with the centerline of Weyerhaeuser road number 3500, S 18° – 19′ – 24″ E a distance of 290.23 feet to the beginning of a curve concave to the West, having a radius of 247.03 feet, thence southerly 98.67 feet along said curve with a central angle of 22° – 53′ – 04″ to the end of said curve, thence S 4° – 33′ – 40″ W a distance of 114.01 feet to the beginning of a curve concave to the West, having a radius of 245.21 feet, thence southwesterly 206.80 feet along said curve with a central angle of 48° – 19′ – 21″ to the end of said curve, thence S 52° – 53′ – 01″ E a distance of 130.34 feet to the intersection with the Northerly right of way for State Highway number 504.

Maps showing this modification are available at the Office of the Forest Supervisor, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd, Vancouver, Washington, and at the Office of the Monument Manager, Chelatchie, Washington. Notice has also been given to congressional committees as required by the Act. A notice of final action on this boundary revision will be published in the **Federal Register** following the 60-day period.

Dated: February 2, 1995.

Sterling J. Wilcox,

Acting Associate Deputy Chief.

[FR Doc. 95–3161 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Thompson Creek Supplemental Plan of Operation Challis National Forest, Custer County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplemental environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to the October 1980, Environmental Impact Statement (EIS) for the Cyprus Thompson Creek Mine (CTC). The Supplement will disclose the environmental effects of a proposal submitted by Thompson Creek Mining Company (TCMC) to prevent, control and treat acid rock drainage (ARD) at the Thompson Creek Mine. The potential for acid rock drainage was evaluated in the 1980 EIS, however, the predictive modeling program did not project that acid generation would be sufficient to cause ARD. The occurrence of ARD is a new circumstance, relevant to environmental concerns and bearing on the impacts of the project, therefore, the 1980 EIS will be supplemented to disclose the effects of these new circumstances. The proposal, as submitted by CTC, identifies modifications to the operating plan which would eliminate or control acid rock drainage. The modifications to the plan would: (1) Identify and isolate waste rock that has the potential for ARD, (2) limit infiltration and migration of acid drainage within the identified waste rock and (3) modify the tailings disposal process by adding a pyrite reduction system to separate the residual pyrite from the tailings. The pyrite concentrate would be disposed of in a subaqueous environment where oxidation and acid generation would be prevented. The proposal also discusses measures to be taken should mining operations terminate prior to the construction of the pyrite reduction system outlined above. In that circumstance, TCMC proposes to place a cap of inert material on the tailings embankment and impoundment to alleviate acid generation.

There are approximately 525 acres of patented land in the project area, including the open pit. The remainder, approximately 2,500 acres, is land administered by the Challis National Forest or the Salmon District of the Bureau of Land Management. The mine is located in Custer County, five miles north of the Salmon River and 30 miles southwest of Challis, Idaho.

The proposal to develop and implement measures to prevent, control and treat ARD represents both connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purpose of the proposal is to continue the development of a mineral resource while minimizing or preventing adverse effects resulting from ARD that were not predicted in the 1980 Thompson Creek EIS or approved Plan of Operations. Forest Service policy is to facilitate the orderly exploration, development and production of mineral resources within the National Forest System on lands open to these activities. At the same time, the Forest Service is charged to ensure that these activities are conducted in an environmentally sound manner, and that once completed, reclamation of the land to a stable and usable condition is accomplished.

This supplement to the 1980 EIS will tier to the Challis National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (June 1987) which provide overall guidance of all land management activities on the Challis National Forest, including mineral exploration and development. This document also tiers to the 1980 Environmental Impact Statement for the Thompson Creek Molybdenum Project.

DATES: Written comments and suggestions must be submitted on or before March 13, 1995.

ADDRESSES AND FURTHER INFORMATION: Submit written comments and suggestions on the proposed activities to Liz McFarland, Project Coordinator, Salmon and Challis National Forests, Headquarters Building, P.O. Box 729, Salmon, Idaho, 83467, Phone (208) 756–5139. To be placed on the project mailing list or for additional information, contact the Project Coordinator identified above.

SUPPLEMENTARY INFORMATION: The Thompson Creek Mining Company submitted a Supplemental Plan of Operation for the Thompson Creek Molybdenum Mine to the Challis National Forest and the Salmon District of the Bureau of Land Management in February 1993. The Supplemental Plan was revised in February 1994. The Supplemental Plan was based on a sampling program initiated in 1990 to characterize ARD. The plan, as proposed by TCMC is summarized as follows:

1. Minimize the amount of water and air coming into contact with sulfide minerals by encapsulating waste rock (determined to have the potential to generate ARD) with compacted volcanic material within the existing waste dumps. Final reclamation of the waste dumps would consist of shaping and covering surfaces with materials designed to prevent upward diffusion of acidity, limit the infiltration of water, protect cover materials from freeze-thaw damage and support growth of a vegetative cover.

2. The existing milling process would be modified to remove a portion of the pyrite sufficient to produce an inert tailings. The pyrite removed would be disposed of in areas of the impoundment which will be saturated with water in order to limit exposure to oxygen. The inert tailings produced would be placed on the embankment, paddock and beach portion of the tailings facility. As proposed, this would result in approximately 140 feet of inert tailings, by close of mine. At final reclamation, the interior of the impoundment area would be regraded using inert material so that surface drainage is directed toward the west side of the embankment. This would produce a free water pond near the west side of the embankment and a minimum 10 foot layer of inert material over the interior of the impoundment. The remainder of the impoundment would be covered by 140 feet of inert tails or a low permeability soil cap or a layer of inert fill 15 to 30 feet thick.

3. Hydrologic investigations indicate that the pit would fill at least partially with water when mining ends. Hydrogeologic studies and geochemical analyses would be conducted prior to mine closure and appropriate measures to preserve in-pit water quality would be developed.

The Challis Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposal would occur within Management Areas 8 and 9. Management in these areas emphasize enhancement of fish and wildlife habitat, range administration, maintenance of water quality, timber production and dispersed recreation. It recognizes the potential for high-value, locatable mineral occurrence and probable development. It directs that exploration, location, leasing and development of energy and non-energy minerals resources be coordinated with other resources.

The decision to be made is what should be done in relation to the proposal submitted by TCMC: (a) Approve the project as proposed, (b) approve the project with mitigation measures to address the issues, (c) deny approval of the proposal. Under the United States mining Laws of May 10, 1872, as amended (30 U.S.C. 22), United States citizens and corporations have the right to search for and develop minerals upon public lands, including National Forest Systems lands, open to mineral entry. Forest Service regulations (36 CFR 228, Subpart A) require that the agency work with mineral operators to minimize or eliminate adverse environmental impacts from mineral activities on National Forest System lands.

The Supplement will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on private Bureau of Land Management and National Forest lands will be considered. The Supplement will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis process (40 CFR 1501.7). Scoping activities, to date, have included the following: Letter and scoping document, dated 2/15/94, to interested individuals, groups and organizations; press release and legal narrative in the "Challis Messenger" and the Salmon "Recorder-Herald," 2/17/94. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. In addition, the Forest Service is seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No

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additional public meetings are scheduled at this time.

Comments from the public and other agencies will be used to prepare the Draft Supplemental EIS. The scoping process to date has identified the following preliminary issues:

1. What is the potential for development of acid mine drainage and mobilization of heavy metals from geologic materials exposed by mining activities?

2. How would existing mine facilities and activities be changed to prevent, control or treat ARD? What are the long term maintenance requirements of these facilities along with their predicted long-term viability and stability and how would bonding reflect these changes?

3. What is the potential for adverse impacts to water quality downstream of project facilities due to ARD and how would water quality be maintained and beneficial uses protected?

4. Would fish and their habitat be affected by ARD discharges into area streams? What are the potential impacts to fish species listed as threatened or endangered under the Endangered Species Act?

5. Would water monitoring be adequate to detect and allow for the correction of any water quality problems resulting from the proposed action?.

This list may be verified, expanded, or modified based on additional scoping for this proposal.

In order to implement the project, the proponent, TCMC, must obtain approval or consultation of their proposed modification from other regulatory agencies including the Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Idaho Department of Lands (IDL), Idaho Department of Health and Welfare (IDHW) and the Idaho Department of Water Resources (IDWR). Implementation may take place through the selection of an alternative from the Supplemental EIS.

The Challis National Forest is the lead agency in this environmental analysis and Supplemental EIS. The Salmon District office of the Bureau of Land Management is a cooperating agency.

The Draft Supplemental EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in late July 1995. At that time, the EPA will publish a Notice of Availability of the Draft Supplemental EIS in the **Federal Register**. The comment period on the Draft Supplemental EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible. The Final Supplemental EIS is scheduled to be completed by December, 1995.

The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Ind.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Salmon and Challis National Forests, P.O. Box 729, Salmon, Idaho 83467.

Dated: February 3, 1995.

Charles C. Wildes,

Forest Supervisor, Challis National Forest.

[FR Doc. 95–3217 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on March 8, 1995. The purpose of the meeting is to review the draft river management plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. Interested members of the public may obtain copies of the draft plan from the Saco Ranger District office. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held March 8, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Assistant District Ranger, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Assistant District Ranger, Saco Ranger District, (603) 447–5448.

Dated: February 1, 1995.

Rick D. Cables,

Forest Supervisor

[FR Doc. 95–3264 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Forms Under Review by Office of Management and Budget

February 3, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form numbers(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250; (202) 690–2118.

Revision

- Food and Consumer Services

Model Food Stamps, Periodic Reporting, Notice of Late Incomplete Reporting, Adequate Notice, Sponsored Aliens, Duplication Participation, and Disqualified Recipient Report
FCS–385, 386, 387, 394, 441, 442
Individuals or households; State, local or tribal government; 111,008,185 responses; 36,964,654 hours
Patricia Maggi (703) 305–2468

- Agricultual Marketing Service

Reporting and Recordkeeping Requirements for 7 CFR Part 29
Forms TB–87 and TB–92
Business or other for-profit; 13,414 responses; 5,569 hours
Larry L. Crabtree (202) 205–0101

Extension

- Federal Crop Insurance Corporation

Field Inspection And Claim For Indemnity
FCI–74, FCI–74 T–P–C, FCI–63 Citrus, and FCI–63 Raisin
Individuals or households; Farms; 40,000 responses; 10,000 hours
Bonnie L. Hart (202) 254–8393

New Collection

- Animal & Plant Health Inspection Service

Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry
Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government; 45 responses; 21 hours
Dr. Christopher M. Groocock (301) 436–8240

- Food Safety and Inspection Service

Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems
Business or other for-profit; 10,662 responses; 14,371,901 hours
Lee Puricelli (202) 720–7163

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–3284 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON IMMIGRATION REFORM

Washington, D.C. Consultations

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of commission consultations.

This notice announces consultations to be held by the U.S. Commission on Immigration Reform in Washington, DC on February 23 and February 24, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. An interim report, U.S. Immigration Policy: Restoring Credibility, was issued on September 30, 1994; the final report is due in 1997.

The consultation participants will include the Commissioners, researchers, government officials, representatives of business, labor, community, ethnic, and religious organizations, and other interested parties. Panels on the first day will examine labor market and employment-based immigration issues. The Commission seeks to gain greater understanding of the effects of legal immigration on the labor market, the objectives and priorities for permanent and temporary workers and procedures for testing the labor market. Panels on the second day will focus on family reunification, including admission priorities, categories, numbers, backlogs, and likely future trends. Policies to be examined include the criteria used for determining who qualifies for family reunification and its impact on U.S. society and economy.

Date: February 23, 1995.

Time: 9:00 am–12:00 pm (Legal Immigration and the Labor Market); 2:00 pm–5:00 pm (Temporary Workers, Labor Certification and other means of Testing the Labor market).

Date: February 24, 1995.

Time: 9:00 am–1:00 pm (Family Reunification).

Address: Room 2226, Rayburn House Office Building, Independence Avenue and South Capitol Street, SW., Washington, DC.

For Further Information: Paul Donnelly (202) 673–5348.

Dated: February 2, 1995.

Susan Martin,

Executive Director

[FR Doc. 95–3166 Filed 2–8–95; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–830]

Notice of Antidumping Order: Coumarin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Scope of Order

The product covered by this order is coumarin. Coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H–1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2–Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the order, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (*i.e.* prior to purification or crystallization). Excluded from the scope of this order are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with sections 735(a) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") made its final determination that coumarin from the People's Republic of China ("PRC") is being sold at less than fair value (59 FR 66895, December 28, 1994). On February 1, 1995, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC.

In addition, three ITC Commissioners found that critical circumstances exist with regard to such products, and three Commissioners found that critical circumstances do not exist with regard to such imports from the PRC. The Commissioners do not agree as to whether three votes constitute an affirmative critical circumstances determination. There is no definition of or limitation on the meaning of the term "determination" in the statute or

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legislative history for purposes of the tie-vote rule. The statute refers to critical circumstances interchangeably as a determination or finding. Therefore, we conclude that Section 771(11) applies to critical circumstances determinations and that it is appropriate to treat the tie vote in this case as an affirmative critical circumstances determination.

All unliquidated entries of coumarin from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after May 6, 1994, the date 90 days prior to the publication of the Department's preliminary determination, except for imports by Jiangsu Native Import and Export Corporation (Jiangsu Native), are liable for the assessment of antidumping duties. In the case of Jiangsu Native, the effective date of suspension of liquidation is August 4, 1994, the date of publication of the Department's preliminary determination, (59 FR 39727).

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market exceeds the United States price for all relevant entries of coumarin from the PRC. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of PRC coumarin not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
Jiangsu Native Produce I/E Corp.	15.04	Negative.
Tianjin Native Produce I/E Corp.	50.35	Affirmative.
All others	160.80	Affirmative.

This notice constitutes the antidumping duty order with respect to coumarin from the PRC. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 95-3329 Filed 2-8-95; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 020295A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of two applications for scientific research permits (P45Q and P770#69) and receipt of an application for modification 1 to scientific research permit 914 (P770#67).

Notice is hereby given that the National Biological Survey in Corvallis, OR (NBS) and the Northwest Fisheries Science Center, NMFS in Seattle, WA (NWFSC) have applied in due form for scientific research permits (P45Q and P770#69) and that the Northwest Fisheries Science Center, NMFS in Seattle, WA (NWFSC) has applied in due form for Modification 1 to scientific research Permit 914 (P770#67) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

NBS requests authorization for a lethal take of juvenile, endangered, naturally produced Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to compare the physiological responses of wild chinook smolts with hatchery-produced chinook smolts when subjected to the bypass and collection facility at Lower Granite Dam on the Lower Snake River in Washington. A comparison of the physiological responses of wild and hatchery-produced chinook smolts may indicate what aspects of bypass and collection for downriver transportation past hydropower projects are most stressful to wild listed fish. The requested duration of the permit is April 15 to June 30, 1995.

NWFSC requests a permit to conduct research with a take of the following endangered species: Juvenile Snake River sockeye salmon (*Oncorhynchus nerka*), juvenile, naturally produced and artificially propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). NWFSC will capture, handle, and tag subyearling, endangered, fall chinook salmon at McNary Dam on the Columbia River as part of a study comparing the adult recoveries of run-of-river subyearling chinook salmon subjected to transport past hydropower dams versus those migrating inriver under as favorable passage conditions as possible. The other two listed species will be captured and handled incidental to the research. NWFSC will capture, handle, and tag the subyearling fish from June 15 to September 15 during each of 3 separate years, not necessarily in succession. The requested duration of the permit is 5 years.

Permit 914 authorizes NWFSC to capture, handle, and release juvenile, endangered, naturally produced and artificially propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as part of a study to assess the incidence of gas bubble disease (GBD) in selected aquatic biota of the Columbia River Basin during episodes of high spill volumes at Ice Harbor Dam on the Snake River and Bonneville Dam on the Columbia River in the Pacific Northwest. For Modification 1, NWFSC requests an increase in the take of the two listed species already authorized to be taken and authorization to capture, handle, and release juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) to carry out a new study objective. The purpose of the new objective is to compare the prevalence of signs of GBD in juvenile salmonids collected from the reservoir and tailrace of Ice Harbor Dam on the Snake River and the reservoir of McNary Dam on the Columbia River with the prevalence of signs of GBD in fish examined by Fish Passage Center Smolt Monitoring Program personnel at the same two dams. The requested duration for the new study objective is from April 15 to June 15, 1995. Permit 914 expires on December 31, 1998.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: February 3, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95-3214 Filed 2-8-95; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 012695A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit 942 to Jane Provancha (P576).

On December 16, 1994, notice was published (59 FR 65016) that an application had been filed by Jane Provancha of the Biomedical Operations and Research Office of Kennedy Space Center (P576) to take listed green and loggerhead sea turtles (*Chelonia mydas* and *Caretta caretta*), to determine population and distribution trends in Mosquito Lagoon, FL, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on February 3, 1995, as authorized by the provisions of the ESA, NMFS issued Permit No. 942 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813-893-3141).

Dated: February 3, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95-3216 Filed 2-8-95; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121294B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FSW), Interior.

ACTION: Issuance of scientific research permit no. 938 (P368D).

SUMMARY: Notice is hereby given that Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450, (Principal Investigators: Drs. James T. Harvey, Daniel P. Costa, John Calambokidis, and Ms. Dawn Goley) has been issued a permit to take marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Long Beach, CA 90802-4213 (310/980-4047).

SUPPLEMENTARY INFORMATION: On October 11, 1994, notice was published in the **Federal Register** (59 FR 51418) that a request for a scientific research permit to take several species of marine mammals had been submitted by the above-named organization and individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 2, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: February 2, 1995.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 95-3215 Filed 2-8-95; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage for Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries

February 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate implementation of the bilateral textile agreements and export visa arrangements based upon the

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Harmonized Tariff Schedule (HTS), for goods imported into the United States on or after January 1, 1995, the coverage of certain part-categories is being amended in all monitoring data, import limits and visa and certification arrangements for countries with these part-categories.

The attached directive contains HTS numbers which were published in the 1995 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements which include cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products produced or manufactured in various countries and imported into the United States on or after January 1, 1995.

Also, this directive amends, but does not cancel, all directives establishing visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on February 7, 1995, you are directed to make the changes shown below for all countries with the following part-categories. These changes also shall be made for all countries with these part-categories included in their visa and certification arrangement. These changes are effective for goods imported into the United States on or after January 1, 1995.

Category	Obsolete number	New number
338–B	6105.90.3010	6105.90.8010
	6110.90.0068	6110.90.9068
338–S	6105.90.3010	6105.90.8010
	6110.90.0068	6110.90.9068
339–B	6106.90.2010	6106.90.2510
	6110.90.0070	6110.90.9070
	6117.90.0022	6117.90.9020
339–S	6106.90.2010	6106.90.2510
	6110.90.0070	6110.90.9070
	6117.90.0022	6117.90.9020
340–O	6205.90.2010	6205.90.3010
341–O(other than 341–Y)	6217.90.0003	6217.90.9003
347–T	6103.19.4020	6103.19.9020
	6103.49.3010	6103.49.8010
	6113.00.0038	6113.00.9038
	6203.19.4020	6203.19.9020
	6203.49.3020	6203.49.8020
	6210.40.2033	6210.40.9033
	6211.20.3010	6211.20.3810
347–W	6203.19.4020	6203.19.9020
	6203.49.3020	6203.49.8020
	6210.40.2033	6210.40.9033
	6211.20.3010	6211.20.3810
348–T	6104.19.2030	6104.19.8030
	6104.69.3022	6104.69.8022
	6113.00.0042	6113.00.9042
	6117.90.0042	6117.90.9060
	6204.19.3030	6204.19.8030
	6204.69.3010	6204.69.6010
	6210.50.2033	6210.50.9060
	6211.20.6010	6211.20.6810
	6217.90.0050	6217.90.9050
348–W	6204.19.3030	6204.19.8030
	6204.69.3010	6204.69.6010
	6210.50.2033	6210.50.9060
	6211.20.6010	6211.20.6810
	6217.90.0050	6217.90.9050
359–C and 359(1)	6103.49.3034	6103.49.8034
	6104.69.3010	6104.69.8010
359–S	6211.11.2910	6211.11.8010
	6211.11.2020	6211.11.8020
	6211.12.3003	6211.12.8010
	6211.12.3005	6211.12.8020
359–V	6103.19.4030	6103.19.9030
	6104.19.2040	6104.19.8040
	6110.90.0044	6110.90.9044
	6110.90.0046	6110.90.9046
	6203.19.4030	6203.19.9030
	6204.19.3040	6204.19.8040
360–P	6302.21.1010	6302.21.3010
	6302.21.1020	6302.21.5010
	6302.21.2010	6302.21.7010
	6302.21.2020	6302.21.9010
	6302.31.1010	6302.31.3010
	6302.31.1020	6302.31.5010
	6302.31.2010	6302.31.7010
	6302.31.2020	6302.31.9010
360–O(other than 360–P)	6302.21.1050	6302.21.3030 and 6302.21.5030
	6302.21.2050	6302.21.7030 and 6302.21.9030
	6302.31.1050	6302.31.3030 and 6302.31.5030
	6302.31.2050	6302.31.7030 and 6302.31.9030
438–W	6106.90.2020	6106.90.2520
	6109.90.2035	6109.90.8020
	6110.90.0074	6110.90.9074
438–O(other than 438–W)	6105.90.3020	6105.90.8020
	6110.90.0072	6110.90.9072
	6117.90.0023	6117.90.9025
440–M	6205.90.2020	6205.90.3020
443–K	6103.19.4040	6103.19.9040
465(for India visa)	5701.10.2010	5701.10.4000
	5701.10.2090	5701.10.9000
634–W	6201.19.0030	6201.19.9030
	6201.99.0031	6201.99.9030
	6210.20.1020	6210.20.5000
	6210.40.1020	6210.40.5020
	6211.20.2030	6211.20.2820
634–K	6101.90.0030	6101.90.9030
	6113.00.0025	6113.00.9025
638–B	6105.90.3030	6105.90.8030
	6110.90.0076	6110.90.9076
639–B	6106.90.2030	6106.90.2530
	6110.90.0078	6110.90.9078
	6117.90.0026	6117.90.9030
640–O(other than 640–Y)	6205.90.2030	6205.90.3030
640–D	6205.90.2030	6205.90.3030
641–O(other than 641–Y)	6217.90.0010	6217.90.9010
643–K	6103.19.4050	6103.19.9050
643–W	6203.19.4050	6203.19.9050
644–K	6104.19.2060	6104.19.8060
644–W	6204.19.3060	6204.19.8060
647–K	6103.49.3014	6103.49.8014
	6113.00.0044	6113.00.9044
647–O(not knit)	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
647–T	6103.49.3014	6103.49.8014
	6113.00.0044	6113.00.9044
	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
647–W	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
648–K	6104.69.3026	6104.69.8026
	6113.00.0052	6113.00.9052
	6117.90.0046	6117.90.9070
648–O(not knit)	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
648–T	6104.69.3026	6104.69.8026
	6113.00.0052	6113.00.9052
	6117.90.0046	6117.90.9070
	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
648–W	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
659–C and 659(1)	6103.49.3038	6103.49.8038
	6104.69.3014	6104.69.8014
	6210.10.4015	6210.10.9010
659–V	6110.90.0052	6110.90.9052
	6110.90.0054	6110.90.9054
845(1)	6110.90.0024	6110.90.9024
	6110.90.0042	6110.90.9042
	6117.90.0021	6117.90.9015
845(2)	6110.90.0022	6110.90.9022
	6110.90.0040	6110.90.9040
846(1)	6110.90.0020	6110.90.9020
	6110.90.0038	6110.90.9038
	6117.90.0018	
846(2)	6110.90.0018	6110.90.9018
	6110.90.0036	6110.90.9036
847–T	6103.49.3017 and 6103.49.3024	6103.49.8024

Category	Obsolete number	New number
	6104.69.3034 and 6104.69.3038	6104.69.8038
	6117.90.0051	6117.90.9075
	6203.49.3040 and 6203.49.3045	6203.49.8045
	6204.69.3052	6204.69.6040
	6211.20.3040	6211.20.3830
	6211.20.6040	6211.20.6830
	6211.39.0040	6211.39.9030
	6211.49.0040	6211.49.9030
	6217.90.0070	6217.90.9070

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–3304 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*USA State and National Direct, Availability of Funds

AGENCY: Corporation for National and Community Service

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service announces the availability of approximately $160 million to support new and renewal grants to States, the District of Columbia, and Puerto Rico, through Corporation approved State Commissions, Alternative Administrative Entities (AAEs), or Transitional Entities (TEs). Approximately $80 million will support new and renewal grants through a population-based formula. Additionally, up to $80 million in program funds are available to States to support new and renewal grants on a competitive basis.

The Corporation also announces the availability of approximately $19 million to support new competitive program grants to national nonprofits, professional corps, Federal agencies, and programs operating in more than one state through the national direct competition. Approximately $55 million is also available through the national direct competition to support renewal and expansion grants.

The Corporation published in the **Federal Register** on October 27, 1994, and January 10, 1995, notices describing proposed changes to Corporation grant-making guidelines, policies and priorities for 1995 and inviting comments with regard to three of its main programs: AmeriCorps*USA, Learn & Serve America K–12, and Learn & Serve America Higher Education. The proposed changes applied to the FY 1995 grant cycle and were non-regulatory in nature. In response to those notices, the Corporation received comments from over 50 organizations and agencies, including states, primary and secondary schools, institutions of higher education, community-based organizations, federal agencies and non-profit organizations. The second section of this notice will address these comments.

DATES: All AmeriCorps*USA State applications must be received by 3:30 p.m., Daylight Savings Time, May 1, 1995, to be eligible. Applicants for new AmeriCorps*USA National Direct grants must be received by 3:30 p.m., Daylight Savings Time, May 9, 1995, to be eligible. Applications for renewal and expansion of existing AmeriCorps*USA National Direct grants must be received by 3:30 p.m., Daylight Savings Time, April 18, 1995, to be eligible.

ADDRESSES: Applications for AmeriCorps*USA State should be submitted to The Corporation for National Service, AmeriCorps State, 9th Floor, Box AS, 1201 New York Ave. N.W., Washington, D.C., 20525. Facsimiles will not be accepted. Applications for AmeriCorps*USA National Direct should be submitted to The Corporation for National Service, AmeriCorps Direct, 9th Floor, Box AD, 1201 New York Ave. N.W., Washington, D.C., 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Persons who have questions about the AmeriCorps*USA State application process may call or write the State Commission office in their state or the Corporation for National Service, AmeriCorps State, 1201 New York Ave. N.W., Washington, D.C., 20525. Phone: (202) 606–5000, ext. 474; TTD: (202) 565–2799. Persons who wish to receive an AmeriCorps*USA State application should contact the State Commission office in their state.

Persons who have questions about the AmeriCorps*USA National Direct application process, or who wish to receive a National Direct application, may call or write the Corporation for National Service, AmeriCorps Direct, 1201 New York Ave. N.W., Washington, D.C., 20525. Phone: (202) 606–5000, ext. 474; TTD: (202) 565–2799.

SUPPLEMENTARY INFORMATION:

I. Availability of Funds

*1. AmeriCorps*USA State*

Approximately $80 million in program funds are available for new and renewal grants to States through the population-based formula allotment and approximately $80 million in program funds are available to States on a competitive basis for renewals and new grants. The following chart details the amount of funding that each State is eligible to apply for under the population-based formula allotment. The chart also details the number of programs that a State may submit under the competitive funding:

State	Formula allotment	Small state priority	New competitive submission [1]	Total competitive submissions [2]
Alabama	$1,263,352		6	7
Alaska	181,554	$118,446	4	5
Arkansas	734,472		6	6
Arizona	1,220,307		5	7
California	9,412,178		10	17
Colorado	1,094,713		5	6
Connecticut	980,801		5	6
Delaware	211,523	88,477	5	5
D.C.	170,744	129,256	4	5
Florida	4,178,254		8	10
Georgia	2,112,778		6	8
Hawaii	352,931		4	5
Idaho	339,296		5	5
Illinois	3,519,164		6	9

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State	Formula allotment	Small state priority	New competitive submission [1]	Total competitive submissions [2]
Indiana	1,722,505		7	7
Iowa	847,243		6	6
Kansas	764,830		2	6
Kentucky	1,145,965		4	6
Louisiana	1,292,187		6	7
Maine	371,391		5	5
Maryland	1,499,167		4	7
Massachusetts	1,809,063		5	7
Michigan	2,843,698		8	9
Minnesota	1,367,705		4	7
Mississippi	799,287		6	6
Missouri	1,580,432		5	7
Montana	256,350	43,650	4	5
Nebraska	485,978		6	6
Nevada	436,319		6	6
New Hampshire	340,430		4	5
New Jersey	2,366,895		6	8
New Mexico	495,160		5	6
New York	5,440,870		9	12
North Carolina	2,117,120		6	8
North Dakota	191,051	108,949	5	5
Ohio	3,324,643		7	9
Oklahoma	975,655		6	6
Oregon	924,184		5	6
Pennsylvania	3,609,179		7	10
Puerto Rico	1,072,107		6	6
Rhode Island	298,487	1,513	3	5
South Carolina	1,097,210		5	6
South Dakota	215,958	84,042	5	5
Tennessee	1,549,768		5	7
Texas	5,503,497		7	12
Utah	571,347		6	6
Vermont	173,748	126,252	4	5
Virginia	1,961,907		7	7
Washington	1,600,032		6	7
West Virginia	545,619		6	3
Wisconsin	1,521,744		7	7
Wyoming	142,536	157,464	4	5

[1] This column reflects the maximum number of new programs a State may submit in their competitive application and does not include requests for renewals. However, States may substitute a new program if they decide not to submit a currently funded program for renewal.
[2] This column reflects the total number of programs, both new and renewal, that a State may submit under the competitive funding.

The Corporation has limited the number of programs a State may include in its application for competitive funding to five, plus an additional program for each full percentage point of the total State population (rounded to the nearest full percentage point) that State contains.

Approximately $4 million has been set aside from the formula funds for child care. This amount will be allocated to States on a formula basis, and paid directly as needed to the National Association for Child Care Resource and Referral Agencies (NACCRRA), the Corporations national grantee to cover child care costs, up to the States designated formula amount. Amounts from this fund which are not needed by the State for child care will be given to the State for other approved program costs.

For 1995, the Corporation is committed to renewing 1994 grants, if those programs meet quality standards. Renewal applications may request year-two funding to expand programs or to continue the same program as in year one. If an expansion request exceeds 25% of the year-one budget, the portion that exceeds 25% must be submitted as a new application following new application instructions. Given this commitment to renewals, the Corporation expects that the majority of the program funds available will be used for renewal grants. Program funds not committed for renewals will be made available to States for new grants in both the formula and competitive funding streams.

The Corporation is committed to supporting only high quality AmeriCorps programs, and formula allotments are not an entitlement for States. Program quality will be the most important criteria for considering both renewal requests and support for new programs. The Corporation's requirements for AmeriCorps are set forth in the Corporation's regulations and in the applications. In addition to being thoroughly familiar with the regulations, prospective applicants should read the application carefully because, in some cases, more specific information is provided there. The requirements apply to all programs that submit applications to States for funding. The regulations for AmeriCorps programs were published in the **Federal Register** on March 23, 1994 (45 CFR Parts 2510, 2513, et al.) and are available at your public library. You may also refer to the Principles for High Quality National Service Programs which includes program examples. For copies, contact the Corporation at (202) 606–5000, x474.

*2. AmeriCorps*USA National Direct*

Approximately $19 million is available for new competitive program grants and approximately $55 million is available to support renewal and

expansion grants, through the national direct competition. National nonprofits, Federal agencies, professional corps programs, and multi-state programs are eligible to apply directly to the Corporation for these funds. This allows the Corporation to fund multi-state and multi-site programs that are national in scope and build on existing networks of youth and service programs. Eligible applicants may apply for operating funds to establish AmeriCorps*USA programs, or for education awards only.

II. AmeriCorps*USA State and National Direct Grant Applications Guidelines

1. 1995 Issue Area Priorities

The Corporation received a number of comments suggesting changes to the 1995 priorities. Specifically, several comments expressed concern that an "urban bias" existed in the environment priority. Because that was not the Corporation's intent, we have revised the priority to read as follows: "Community/Neighborhood Environment—Initiate innovative programs in low-income areas that promote sustainable communities by reducing environmental risks and conserving natural resources." By changing the phrase "low-income neighborhoods" to "low-income areas" and by adding the word "community," the priority has been broadened to encompass rural environments and communities.

Other comments suggested that the Corporation include homelessness, health care, and/or adult literacy as a priority. The Corporation declined to add these as priorities because these issues were adequately addressed by 1994 programs, with many of these programs expected to be funded in 1995 as renewal programs. In addition, homelessness is an AmeriCorps*VISTA priority for 1995, approximately 15% of AmeriCorps*VISTA are doing health care projects, and approximately 25% of AmeriCorps*VISTA are doing adult literacy projects. A number of comments opposed the establishment of new priorities for the 1995 grant cycle and requested that the Corporation retain the 1994 priorities or allow programs to apply under either the 1994 or the 1995 priorities. The Corporation considered these comments but declined to make changes. The 1995 priorities were chosen because they address issues and needs that the Corporation believes were underrepresented in the 1994 grant competition. Programs funded in 1994 may continue to address areas covered by the 1994 priorities and need not change their focus to meet new priorities. However, new programs will be required to apply using the new 1995 priorities.

2. Grant Timeline

The Corporation received a number of comments suggesting that the application deadlines were too short, and that such short time lines would adversely affect the quality of the proposals submitted to the Corporation. Accordingly, the Corporation has extended the application due dates as far as possible and published the new dates in the January 23, 1995 **Federal Register**. For purposes of the AmeriCorps*USA State grant competition, May 1, 1995 is the new due date for the renewals and new applications. For purposes of the AmeriCorps*USA National Direct grant competition, new applications are due on May 9, 1995, and renewal and expansion applications are due on April 18, 1995.

3. Program Expansion

The Corporation initially proposed that an AmeriCorps*USA State program requesting expansion exceeding 25% of the year-one budget or expansion to base the program in two different cities would be considered a new program and would not receive a priority. In response to public comments, the Corporation has amended its language on this policy to clarify that if a program wants to expand beyond 25% of their year-one budget, only that portion that exceeds 25% must be submitted as a new application, following new application instructions. The Corporation's desire to moderate expansion remains for three reasons: (1) to stress quality before quantity, (2) to create a solid base for future replication, and (3) to ensure, because of the limited funds available to the Corporation, that funds remain to support programs that meet 1995 priorities.

The rule for AmeriCorps*USA Direct is similar to rule for AmeriCorps*USA State with one exception. Programs may expand up to 25% of their year-one budget or $500,000, which ever is greater. Only that portion that exceeds 25% or $500,000 must be submitted as a new application, following new application instructions.

4. Conversion of Planning Grants to Operating Grants

Several comments requested clarification of the Corporations policy on converting planning grants to operating grants. The Corporation, in the October 27, 1994 **Federal Register**, had proposed the following language: "The Corporation is recommending that State Commissions give priority to converting formula-funded planning grants to operational programs over new applications, if the proposals meet quality standards." In order to give greater clarity, the Corporation has amended the language to read as follows:

The Corporation recommends that State Commissions give a priority for funding to converting planning grants to operating programs. As in all other cases, this preference should apply only if the programs meet quality standards. The Corporation will consider these as new applications, and they will be evaluated by peer review panels. If they meet quality standards, they will receive preference over other new applications. Because they were approved under 1994 priorities, those planning grants that the state submits in the competitive pool may choose to meet 1994 or 1995 priorities. However, the Corporation strongly urges that both formula and competitive proposals meet 1995 priorities.

The changes allow flexibility for planning grants to apply under either the 1994 or the 1995 priorities and gives them preference over new applications.

5. Concentration

A number of comments recommended that the Corporation revise its policy on concentration, stating that the language initially proposed in the **Federal Register** discriminated against rural areas and was overly prescriptive. The preference for concentration is designed to achieve significant impacts from direct service activities, to create a strong sense of national identity with AmeriCorps, and to be cost-effective; it was never intended to be discriminatory or overly prescriptive. Accordingly, the language has been clarified as follows: "The Corporation is seeking applications that focus activities within a limited number of priorities and have a more narrow geographic focus or placement strategy. * * * This preference is not intended to discourage comprehensive approaches to community problem-solving or to discourage programs in rural areas. * * * In addition, programs can bring AmeriCorps Members together for training and service and can define program size to be consistent with the community." In other words, the Corporation has left it up to the applicant to define "community." For example, if the community is a rural one, then "concentration of Members" can be defined in proportion to the rural area. In addition, while the Corporation does not object to individual placement per se, it funded a disproportionate

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number of individual placement models in 1994 and, for this grant cycle, discourages programs that place AmeriCorps Members individually across many organizations without providing opportunities for them to meet, share experiences and reflection, and learn from one another to better understand the collective impact they have on their community.

6. Localities for Concentration

A number of comments recommended that the Corporation retain the policy of providing special consideration for projects in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands resulting in significant regional job losses and economic dislocation. Accordingly, the Corporation has adopted language to this end. "If empowerment zones and enterprise communities have been officially designated by HUD by February 28, 1995, the Corporation will give preference to applicants who propose to sponsor AmeriCorps service activities in those areas. The Corporation will also give preference to areas impacted by military downsizing." HUD has officially designated empowerment zones and enterprise communities. Programs proposing to operate in these areas will receive a preference.

7. Special Consideration for Past Corporation-Funded Programs

Several comments requested a change in Corporation policy regarding special consideration for past Corporation funded programs. The comments suggested that the Corporation allow the programs to apply as renewals and not new applicants, and that the Corporation waive the 15% local match. The Corporation has declined to make these changes. Accordingly, the policy reads as follows:

The following programs were funded previously, but are no longer eligible to apply directly to the Corporation. If these programs apply through the state process and if they are determined to be high quality, they will receive preference over other high quality programs during the Corporation selection process. Because their current funding is based upon 1994 priorities, they may apply under either 1994 or 1995 priorities, but are encouraged to address those for 1995. They must apply to the state using the application instructions for new programs.

- Defense Conversion Assistance Programs.
- Summer of Safety Continuation Programs.
- Subtitle D programs originally funded for two-year grants under the National and Community Service Act of 1990. These programs did not compete under the 1994 funding cycle.
- Subtitle H Programs of the National and Community Service Act of 1993 renewed from Subtitle E programs under the National and Community Service Act of 1990.

By way of further explanation, the requirement that Subtitle D programs funded with two-year grants apply as new applicants refers to those subtitle D programs that were funded by the former Commission on National and Community Service for the 1993 and 1994 funding cycles.

8. Other

A number of other comments concerned the following issues: Health Care Eligibility—Request to allow Members to include dependents on the AmeriCorps health plan at the cost of the Member. Child Care Eligibility—Request for a more inclusive policy that is not based on income levels, or pro-rating awards based on income. Education Awards Only Requirements—Request that the Corporation cover health care and child care costs for programs receiving Education Awards Only. These comments concern statutory provisions which cannot be changed by regulations. They can only be changed through amendments to the legislation. The Corporation is currently considering possible amendments to our legislation, and the above comments will be considered.

Authority: 42 U.S.C. 12501 et seq.

Dated: February 6, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–3301 Filed 2–8–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Combat Mission Panel of the USAF Scientific Advisory Board will meet on 3 March 1995 at Langley AFB, VA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to provide advice and guidance to the ACC Commander on air combat operations.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–3265 Filed 2–8–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of meeting: 9 March 1995.

Time of meeting: 0900–1600.

Place: Arlington, VA.

Agenda

The Army Science Board's (ASB) Independent Assessment Group on "Army Family Housing" will meet to review current AFH policies and issues and to examine new business and privatization initiatives. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 95–3260 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Name Change

AGENCY: U.S. Army, DOD.

ACTION: Notice.

SUMMARY: The name of the U.S. Army Tank-Automotive Command, Warren, Michigan 48397–5000 has been changed to U.S. Army-Automotive and Armaments Command, Warren, Michigan 48397–5000 .

ADDRESSES: U.S. Army Federal Register Liaison Officer, HQ USAPPC, Room 1050, Hoffman Building 1, Alexandria, VA 22331–0302.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Denton, (703) 325–6277.

SUPPLEMENTARY INFORMATION: Name change reflects the additional armament/chemical materiel management mission transferred from AMCCOM to TACOM via the Armament Research, Development and Engineering Center (ARDEC), and the Armament and Chemical Acquisition and Logistics Activity.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–3267 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Patent Availability for Exclusive or Partially Exclusive Licensing of U.S. Patent

AGENCY: U.S. Army Test and Evaluation Command, White Sands Missile Range—Electronic Proving Ground, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the following U.S. Patent for licensing. These patents are assigned to the United States of America as represented by the Secretary of the Army, Washington, DC. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404

U.S. Patent 5,341,146, titled "Covert Remote Electronic Warfare Simulator."

ADDRESSES: Commander, White Sands Missile Range, Electronic Proving Ground, ATTN: STEWS–EPG–TD, Fort Huachuca, AZ 85613–7110.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. O'Connor (602) 538–6068, or FAX (602) 538–6361.

SUPPLEMENTARY INFORMATION: This patent concerns a remotely controlled device which includes receiving and signal processing apparatus for simulating electromagnetic jamming signals. The simulator provides low power rf signals representative of a variety of jamming waveforms to a "victim" receiver. It includes variables representative of propagation effects and means to replay stored data representing the resulting signal(s) for detailed analysis. The technology is applicable to resting electronic systems that must work in a jamming environment and training operators of such equipment

Under authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army White Sands Missile Range—Electronic Proving Ground wishes to license the above mentioned United States Patent in a non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above-mentioned patent.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–3266 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare an Environmental Impact Statement for the Proposed Maple River Dam Project in Cass County, North Dakota

AGENCY: U.S. Army Corps of Engineers Omaha District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is to construct a 70-foot high zoned earth embankment dam on the Maple River in Cass County, North Dakota. The dam would be 1850 feet long with a top width of 30 feet and an emergency spillway consisting of a concrete chute to handle the 100-year events; a second stage emergency spillway consisting of a 1300-foot earthen cut in the right abutment which will handle the 200± year flows. The project would be operated essentially as a dry dam, with a very small pool. The proposed dam and spillways would be located primarily in the NE ¼ Sec 14, T 137N, R 54 W of Cass County. This location is approximately 8 miles northeast of Enderlin, North Dakota. The dam and reservoir would reduce the frequency of the full range of potential floods and thereby reduce the potential damage associated with these floods. Reduction in flood flows and damages would be the greatest in the Maple River and Sheyenne River valleys downstream of the project. The primary areas affected by the flooding are urban, agricultural, and environmental in nature. Approximately 15,000 acres are subject to flooding in addition to the urban areas of Durbin, and Mapleton, North Dakota as well as West Fargo and Harwood, North Dakota.

Alternatives which are anticipated to be evaluated include similar dam sites and combinations of multiple dam sites as well as "wet vs. dry" dam concepts. The "no action" alternatives will also be evaluated.

DATE OF SCOPING MEETING: Public Scoping Meeting, March 15, 1995, 7 p.m., Casselton Community Center, 701—1st Street North, Casselton, North Dakota.

ADDRESSES: Omaha District, Army Corps of Engineers, ATTN: CEMRO–PD–M, 215 North 17th Street, Omaha, Nebraska 68102–4978.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Nebel, Chief, Environmental Analysis Branch, Planning Division (402) 221–4598.

SUPPLEMENTARY INFORMATION:

Future Schedule

Following review of comments received during scoping, data collection and analysis will begin for the Draft Environmental Impact Statement (DEIS). The Corps anticipates that the DEIS will be released for public review in October 1995. A final Environmental Impact Statement is anticipated to be completed in early 1996

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–3261 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Finance Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: February 27, 1995, beginning at 9:00 a.m. and ending at 5:00 p.m.; and February 28, 1995, beginning at 9:30 a.m. and ending at 12:00 noon.

ADDRESSES: Dupont Plaza Hotel, 1500 New Hampshire Avenue NW Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Buildings, 1280 Maryland Avenue SW , Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and an in-depth study of student loan simplification. As

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a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, the Congress also directed the Advisory Committee to conduct an evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) and submit a report to Congress and the Secretary on not less than an annual basis on the operation of both programs.

The proposed agenda includes (a) a discussion session on legislative priorities in Congress; (b) an update on recent ED legislative proposals and regulatory relief initiatives; (c) an update on the progress of direct lending; and (d) an Advisory Committee regulatory update and planning session of the upcoming year's agenda.

The Advisory Committee will meet in Washington, D.C. on February 27, 1995, from 9:00 a.m. to 5:00 p.m., and on February 28, from 9:30 a.m. to 12:00 noon. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is February 22, 1995.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays except Federal holidays.

Dated: February 6, 1995.

Ruth Beer Bletzinger,

Associate Director, Advisory Committee, on Student Financial Assistance.

[FR Doc. 95–3200 Filed 2–8–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–149–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 1, the following tariff sheets, with a proposed effective date of February 1, 1995:

Fifth Revised Sheet No. 8
Seventh Revised Sheet No. 9
Seventh Revised Sheet No. 13
Seventh Revised Sheet No. 16
Seventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to commence recovery of approximately $22.2 million of pricing differential (PD) costs that have been incurred by ANR as a result of the implementation of Order Nos. 636, et seq. ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to recover ninety percent (90%) of the PD costs, and an adjustment to the maximum base tariff rates applicable to Rate Schedule ITS and overrun service rendered pursuant to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%).

ANR states that all of its Volume No. 1 FERC Gas Tariff customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3187 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–14–000 and GT95–14–001]

Columbia Gas Transmission Corp.; Notice of Refund Report

February 3, 1995.

Take notice that on December 28, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds in the amount of $385,035.98 made by Columbia on October 17, 1994, to disburse refunds received from Texas Eastern Transmission Corporation for Docket Nos. RP91–72, *et al.*

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–14–001. Columbia states that this filing is being tendered to report to the Federal Energy Regulatory Commission, and to all parties in this docket, additional information about the refund.

Columbia states that copies of the report are being mailed to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3199 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–13–000 and GT95–13–001]

Columbia Gas Transmission Corp.; Notice of Refund Report

February 3, 1995.

Take notice that on December 22, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds in the amount of $5,457,136.00 made by Columbia on September 23, 1994, to disburse refunds received from Texas Eastern Transmission Corporation attributable to rates charged under Docket Nos. RP91–72, *et al.*

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–13–001. Columbia states that this filing is being tendered to report to the Commission, and to all parties in this docket, additional information about the refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3198 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–3200 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–12–000 and GT95–12–001]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 3, 1995

Take notice that on December 20, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds made by Columbia on September 30, 1994, in the amount of $14,444,180.00 to disburse refunds received from Texas Gas Transmission Corporation for rates paid under Docket Nos. RP91–100, RP91–101, RP91–102, and RP91–134.

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–12–001 Columbia states that this filing is being tendered to report to the Commission, and to all parties in this docket, additional information about the refunds made on September 30, 1994.

Columbia states that copies of the report are being mailed to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 94–3201 Filed 2–8–94 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–174–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Semi-Annual Transporter's Use Report

February 3, 1995.

Take notice that on January 31, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed with the Federal Energy Regulatory Commission (Commission) its Semi-Annual Transporter's Use Report.

Great Lakes states that the purpose of its filing is to comply with Section 4.3 of Rate Schedules FT and IT of its FERC Gas Tariff, Second Revised Volume No 1 Great Lakes further states that the above-described tariff provisions require Great Lakes to file, each January 31 and July 31, workpapers setting forth the calculations of the monthly Transporter's Use percentages applicable during each month of the immediately preceding six-month period.

Great Lakes states that a copy of its filing was posted and that copies thereof were served on each of its customers, the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan, and on all remaining parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 10, 1995 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room

Lois D. Cashell,

Secretary.

[FR Doc. 95–3192 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–184–000]

Natural Gas Pipeline Company of America; Notice of Application

February 3 1995

Take notice that on January 30, 1995 Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–184–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided under Natural's Rate Schedule X–27 for Trident NGL, Inc. (Trident) which was authorized in Docket No. CP71–51, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states that pursuant to a gas transportation agreement dated August 14, 1970 (Agreement) between Natural and Trident (formerly Cities Service Oil Company) (Natural's Rate Schedule X–27), Natural received up to 500 Mcf of natural gas per day from the outlet of the Bluitt Gasoline Plant in Roosevelt County, New Mexico and delivered such gas to Trident at an interconnection also in Roosevelt County, New Mexico.

Natural further states that by a letter by Trident to Natural dated December 29 1994, Trident notified Natural that Natural's transportation of gas for Trident under the Agreement and Natural's Rate Schedule X–27 was no longer required. Therefore, Natural is requesting authority to abandon its transportation service for Trident performed under the Agreement and Natural's Rate Schedule X–27.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience

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and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3196 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–152–000]

NorAm Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 168, Original Sheet No. 168A and First Revised Sheet No. 233 and First Revised Sheet No. 233A, to become effective February 2, 1995.

NGT states that these revised tariff sheets modify Section 12.1 of NGT's General Terms and Conditions to provide that the compressor fuel assessment or retention percentage provisions of the FT, IT, or NNTS Rate Schedule, whichever is applicable, will not apply to transactions in which gas is both received from and delivered to points within the Perryville Hub and to which no compression is required to effectuate these transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3184 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–003]

NorAm Gas Transmission Co.; Notice of Filing

February 3, 1995.

Take notice that on January 31, 1995, NorAm Gas Transmission Company (NGT) moved to place into effect at the end of the suspension period the rates and tariff sheets in NGT's August 1, 1994 filing in this proceeding.

NGT states that its motion rate filing complies with the Commission's August 31, 1994 suspension order, and that it reflects the elections made by NGT's customers during the open season held to permit customers to select receipt points under NGT's zone rates. Pursuant to the Commission's August 31 Order, NGT's motion rate filing would become effective on February 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3189 Filed 2–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–190–000]

Northwest Pipeline Corp.; Notice of Application

February 3, 1995.

Take notice that on January 31, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–190–000 an application pursuant to Section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate certain pipeline loop facilities located in Whatcom County, Washington to enhance the reliability of service to its existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest proposes to construct and operate 550 feet of 30-inch pipeline loop and associated valves beginning at the outlet of its existing Sumas Meter Station and extending to the point of origin of the existing 30-inch mainline loop upstream of its Sumas Compressor Station "B" Plant compressors all located within its existing Sumas Compressor Station site (milepost 1484.5). Northwest states that the proposed pipeline looping will complete its 30-inch mainline loop between its Sumas Meter Station and its Sumas Compressor Station and will enhance the reliability of service to its shippers receiving Canadian gas supplies. Northwest estimates that the cost of the proposed facilities will be $553,200.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3197 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–353–001]

Questar Pipeline Co.; Notice of Amendment to Application

February 3, 1995.

Take notice that on February 1, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed an amendment to its original application in Docket No. CP94–353–000 which was filed pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon by reclassification to a nonjurisdictional gathering designation its Jurisdictional Lateral (J.L.) No. 21 and Lateral No. 495.

Questar states that it is amending its application pursuant to Section 7(b) of the Natural Gas Act by requesting authority to abandon, by sale, J.L. Nos. 21 and 495 to Luff Exploration Company (Luff). Questar states the sale to Luff will be made pursuant to the terms and conditions of a Facility Sales Agreement dated December 20, 1994. The net book value of the plant investment associated with the facilities proposed to be sold is approximately $18,550. Questar represents that Luff has stated it will enter into replacement-type gathering agreements with all existing customers to ensure the continuity of gathering services under reasonable terms, conditions and rates.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3195 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–67–018, and RP95–59–001]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

February 3, 1995.

Take notice that on January 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect changes to its FT/FT–NN GSR billing determinants effective for each month of 1994 and January 1, 1995:

Effective January 1, 1994
- Third Sub. First Revised Sheet No. 29
- Third Sub. First Revised Sheet No. 30
- Third Sub. First Revised Sheet No. 31

Effective March 1, 1994
- Second Sub. Third Revised Sheet No. 29
- Second Sub. Third Revised Sheet No. 30
- Second Sub. Third Revised Sheet No. 31

Effective April 1, 1994
- Second Sub. Fourth Revised Sheet No. 29
- Second Sub. Fourth Revised Sheet No. 30
- Second Sub. Fourth Revised Sheet No. 31

Effective May 1, 1994
- First Sub. Fifth Revised Sheet No. 29
- First Sub. Fifth Revised Sheet No. 30
- First Sub. Fifth Revised Sheet No. 31

Effective June 1, 1994
- First Sub. Sixth Revised Sheet No. 29
- First Sub. Sixth Revised Sheet No. 30
- First Sub. Sixth Revised Sheet No. 31

Effective July 1, 1994
- First Sub. Seventh Revised Sheet No. 29
- First Sub. Seventh Revised Sheet No. 30
- First Sub. Seventh Revised Sheet No. 31

Effective August 1, 1994
- First Sub. Eighth Revised Sheet No. 29
- First Sub. Eighth Revised Sheet No. 30
- First Sub. Eighth Revised Sheet No. 31

Effective September 1, 1994
- Second Sub. Ninth Revised Sheet No. 29
- Second Sub. Ninth Revised Sheet No. 30
- Second Sub. Ninth Revised Sheet No. 31

Effective October 1, 1994
- Second Sub. Tenth Revised Sheet No. 29
- Second Sub. Tenth Revised Sheet No. 30
- Second Sub. Tenth Revised Sheet No. 31

Effective November 1, 1994
- First Sub. Eleventh Revised Sheet No. 29
- First Sub. Eleventh Revised Sheet No. 30
- First Sub. Eleventh Revised Sheet No. 31

January 1, 1995
- Twelfth Revised Sheet No. 29
- Twelfth Revised Sheet No. 30
- Twelfth Revised Sheet No. 31

Southern states that the billing determinants are amended per the outcome of a Commission scheduled technical conference which developed proper procedures for developing such units.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commission's

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3190 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–63–000 RP95–64–000 RP95–88–000 RP95–112–000 RP93–148–004 RP95–62–000 RP95–62–001 RP94–276–000 (unconsolidated)]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

February 3, 1995.

Staff is convening a technical conference in the above dockets starting at 9:00 am on March 6, 1995, to explore and possibly resolve issues raised by the filings in the various dockets. Because of the large number of issues to be covered, staff is prepared for the conference to go through the entire week if necessary to cover the issues. An agenda and location for the conference will be announced in a subsequent notice. In order to have a sufficiently sized room, it is requested that any party planning to attend the conference, notify staff by February 15, 1995, that they will be attending and the number of representatives. Parties desiring to make presentations at the conference are encouraged to join with others sharing the same interest and inform staff of their requests as soon as possible. Any questions concerning the conference should be directed to Christopher Young at (202) 208–0620 or Robert McLean at (202) 208–1179.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3220 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–148–000]

Texas Gas Transmission Corp.; Notice of Cash-Out Report

February 3, 1995.

Take notice that on January 31, 1995, Texas Gas Transmission Corporation (Texas Gas), in compliance with the order of the Commission issued December 16, 1993 in Texas Gas's Order No. 636 restructuring proceeding, in

Docket No. RS92–24, *et al.*, submits for filing a report which compares its cash-out revenues with cash-out costs incurred for the annual period November 1, 1993 through October 31, 1994.

Texas Gas states that copies of the filing are being mailed to each of Texas Gas's customers, the parties in Docket No. RS92–24–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3188 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–7–29–001]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing Twentieth Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to supplement TGPL's FT–NT tracking filing on January 20, 1995 in Docket No. TM95–7–29–000 (January 20 Filing) which filing is proposed to be effective January 1, 1995. The instant filing is required in order that the revised Rate Schedule FT–NT rates reflected in TGPL's January 20 Filing be reflected on Sheet No. 50 effective February 1, 1995. In that regard, on December 30, 1994 TGPL filed in Docket No. RP95–113 (December 30 Filing) revised tariff sheets (including a revised Sheet No. 50) which, among other things, eliminated expired producer settlement payment recovery provisions effective February 1, 1995. The December 30 Filing was accepted to be effective February 1, 1995 by a letter order issued by the Office of Pipeline Regulation on January 23, 1995.

TGPL states that Tariff Sheet No. 50 included in the December 30 Filing reflects the FT–NT rates in effect prior to TGPL's January 20 Filing. Therefore, the instant filing is being made to integrate the revised FT–NT rates proposed effective January 1, 1995 in TGPL's January 20 Filing with the revisions approved in the December 30 Filing effective as of February 1, 1995.

TGPL states that copies of the instant filing are being mailed to its FT–NT customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3183 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–150–000]

Transcontinental Gas Pipe Line Corp.; Noticed of Tariff Filing

February 3, 1995.

Take notice that on January 31, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2, which tariff sheets are enumerated in the appendix attached to the filing. Such tariff sheets are proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to revise certain tariff sheets to eliminate expired producer settlement payment recovery provisions.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3186 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–5–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective on February 1, 1995.

TGPL states that the purpose of the instant filing is to revise currently effective tariff provisions to comport with the requirements of Order Nos. 566 and 566–A. TGPL has requested a waiver of the notice requirements of Section 154.22 of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective February 1, 1995.

TGPL states that copies of the filing are being mailed to each of its customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3185 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–122–003]

Trunkline LNG Co.; Notice of Annual Reconciliation Report

February 3, 1995.

Take notice that on January 31, 1995, Trunkline LNG Company (TLC) tendered for filing working papers reflecting its second annual reconciliation report.

TLC states that the information is submitted pursuant to Article VIII, Section 4 of the Stipulation and Agreement in the above-captioned proceeding which requires TLC to submit, on an annual basis, a report of the cost and revenues which result from the operation of the PLNG–2 tariff dated June 26,1987, as amended December 1, 1989.

TLC states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–3191 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–54–011]

Trunkline Gas Co.; Notice of Annual Reconciliation Report

February 3, 1995.

Take notice that on January 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing working papers reflecting its third annual take-or-pay volumetric surcharge reconciliation.

Trunkline states that the information is submitted pursuant to Article II, Section 8 of the Stipulation and Agreement in the above-captioned proceeding which requires Trunkline to submit, on an annual basis, a report of the take-or-pay volumetric surcharge amounts collected from its customers.

Trunkline states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1995 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary

[FR Doc. 95–3193 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–20–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective November 1, 1994, December 1, 1994 and January 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. Trunkline states that the revised tariff sheets reflects updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

[Docket No. RP95–151–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of March 3, 1995:

Second Revised Sheet No. 36
First Revised Sheet No. 57
First Revised Sheet No. 63
Third Revised Sheet No. 162
Second Revised Sheet No. 397

Trunkline states that these revised tariff sheets update Trunkline's tariff for personnel and telephone changes and provide for No Notice Service and Small Shipper Transportation service to be available to any party that qualifies for the service.

Trunkline states that copies of this filing are being mailed to all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3194 Filed 2–8–95; 8:45 am]

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available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-3198 Filed 2-8-95; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5150-7]

Public Water Supply Supervision Program; Program Revision for the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas are revising their approved State Public Water Supply Supervision Primacy Program. These States have adopted drinking water regulations for (1) synthetic organic chemicals, volatile organic chemicals, inorganic chemicals, and monitoring for unregulated contaminants that correspond to the National Primary and Secondary Drinking Water Regulations for synthetic organic chemicals, volatile organic chemicals, inorganic chemicals, monitoring for unregulated contaminants, and National Primary Drinking Water Regulations Implementation promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by March 13, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by March 13, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on March 13, 1995.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, at the following offices:

Arkansas Department of Health, Engineering Division, 4815 West Markham Street, Little Rock, AR 75205

Louisiana Department of Health and Hospitals, Office of Public Health—Engineering, 325 Loyola Avenue, New Orleans, LA 70112

New Mexico Environment Department, Drinking Water Bureau, 2052 Galisteo, Suite B, Santa Fe, NM 87501

Oklahoma Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, OK 73117

Texas Natural Resource Conservation Commission, Water Utilities Division, 12015 Park 35 Circle, Bldg F, Suite 3202, Austin, TX 78753

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Region 6, Water Supply Branch, at the Dallas address given above; telephone (214) 665-7150.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: January 26, 1995.

Allyn M. Davis,

Acting Regional Administrator

[FR Doc. 95-3293 Filed 2-8-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5150-8]

Office of Research and Development Office of Exploratory Research; Reducing Uncertainty in Risk Assessment and Improving Risk Reduction Approaches

AGENCY: Environmental Protection Agency.

ACTION: 1995 Grants for Research.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites research grant applications in four areas of special interest to its mission:

- Human health risk assessment.
- Indoor air quality in large office buildings.
- Air pollutants (particulate matter, tropospheric ozone, and toxics).
- Regional hydrologic vulnerability to global climate change.

This invitation provides relevant background information, summarizes EPA interests in the four topic areas, and describes the application and review process.

Background

EPA has increased funding for its investigator-initiated research grants in fiscal year 1995. EPA therefore is issuing two additional Requests for Applications (RFAs), of which this is one. The other is a joint solicitation with the National Science Foundation (NSF) that identifies three areas of interest to both agencies—water and watersheds; valuation and environmental policy; and technology for a sustainable environment (pollution prevention).

Information on the NSF/EPA solicitation can be obtained by contacting Dr. Penny Firth at NSF, (703) 306-1480, or Dr. Melinda McClanahan at EPA, (202) 260-7473.

EPA Mission and R&D Strategy

The mission of EPA—and its unique role—is the joint protection of environmental quality and human health through effective regulations and other policy decisions. Achievement of this mission requires the application of sound science to the assessment of environmental problems and evaluation of solutions. Moreover, a significant challenge is to support long-term research that anticipates future environmental problems and strives to fill significant gaps in knowledge relevant to meeting regulatory goals.

This Request for Applications and the joint EPA/NSF solicitation are important steps toward ensuring that EPA is positioned to provide national leadership as the country enters a new generation of environmental protection.

EPA recently reorganized its research programs to focus on major areas of uncertainty associated with assessment and reduction of risks to human health and ecosystems. Through its laboratories and through grants to universities and other not-for-profit institutions, EPA will conduct and support research in the subject matter areas where regulatory officials face the most significant gaps in knowledge about environmental risks. Because risk is a function of both hazard and exposure, EPA will promote research in both domains—according highest

priority to those areas where risk assessors are most in need of new concepts, data, and methods. At the same time, EPA will foster the development and evaluation of new risk reduction technologies across a spectrum, from pollution prevention through end-of-pipe controls, to remediation and monitoring.

Research Topics of Interest

1. Human Health Risk Assessment

As described in the recent NRC report entitled "Science and Judgement in Risk Assessment," EPA uses health risk assessments to establish exposure limits and set priorities for regulatory activities. However, EPA is hampered by gaps in methods, models, and data needed to support risk assessments. In many cases default assumptions are used to extrapolate from animals to humans, from high to low doses, from acute to chronic exposures, and from lowest effect levels to no-effect levels.

One of EPA's Office of Research and Development's major research goals is to reduce reliance on such assumptions. For example, EPA needs biologically and physiologically-based predictive models that will provide new concepts, data, and methods that can replace default assumptions.

Research is needed on the following areas.

- Methods for estimating dose from cumulative human exposure (e.g., via air, water, soil, and food) to significant and persistent environmental contaminants. This research is intended to support evaluation of cumulative exposure and dose apportionment and to demonstrate the application of the methods developed to estimate human health risks.
- Principles governing age-dependent responses to environmental contaminants and to improve capabilities for animal-to-human extrapolation of health risks. Neurotoxicity is a priority response to be evaluated, but other end points will be considered.
- Quantitative toxicokinetic and toxicodynamic interactions among chemicals in environmental mixtures of members of chemical classes that are significant environmental contaminants (e.g., PAHs, halogenated solvents, metals, chlorinated dioxins and furans, PCBs, and pesticides).
- Toxicological interactions such as additivity, synergism, and antagonism in such mixtures. To improve the ability to estimate risks from environmental exposures, a priority is research that is focused on realistic exposures to environmental contaminants.
- Methods for quantifying non-cancer risks, such as reproductive or developmental disorders. Of special interest are methods that are based on validated correlations between biochemical or physiological markers and clinical end-points.
- Inter-individual and intra-individual variability in factors that affect susceptibility to toxicity from environmental contaminants. Further, research is needed to elucidate relationships between such variability and disease outcome.
- Human and animal reproductive processes vulnerable to environmental contamination. This research is needed to identify keystone or sentinel species whose reproduction can be monitored to signal potential risk to other species, including humans.
- Major uncertainties in risk assessment for microbial pathogens in surface and drinking waters. For example, critical gaps in knowledge exist with respect to occurrence and levels of microbial waterborne pathogens, infectious dose, survival in the environment, and susceptibility to treatment processes.
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

Approximately $3.0 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

2. Indoor Air Quality in Large Office Buildings

The 1986 Superfund Amendments and Reauthorization Act (SARA) Title IV directs EPA to conduct and support research on indoor air quality. An important aspect of this research is improving the scientific understanding of, and reducing the uncertainties surrounding, the relationships among indoor air quality, human exposures, and large building design and operation. Of interest are cross-sectional and/or longitudinal studies of large office buildings in relatively large geographical regions across the United States that characterize the relationships among:

- The physical, mechanical and environmental factors that influence indoor air quality;
- Relevant human exposures to aerosols, micro-organisms, volatile organic compounds, and other parameters such as air exchange rate and pesticides;
- The pathways through which these exposures occur;
- Occupant perceptions of indoor air quality and occupant productivity;
- The extent to which human activity patterns, building system operating practices or design, and indoor or outdoor air quality affect these exposures; and
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

To provide high quality data necessary for intra- and inter-building comparisons, minimum data requirements and analytical protocols must be the same or equivalent to those recommended in the following two documents: "A Standardized EPA Protocol for Characterizing Indoor Air Quality in Large Office Buildings," (6/1/94) and "The United States Environmental Protection Agency's Large Building Studies Quality Assurance Overview Document," (11/1/94). Copies of these two documents can be obtained by contacting Ross Highsmith at (919) 541-3121, or pahl.dale@epamail.epa.gov.

Approximately $1.5 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

3. Air Pollutants (Particulate Matter, Tropospheric Ozone, and Toxics)

Certain widespread (criteria) air pollutants, such as ozone and particulate matter (PM), continue to pose serious public health risks for susceptible members of the U.S. population or risks to sensitive ecosystems. The Clean Air Act requires that EPA establish and periodically review and revise, as appropriate, criteria and National Ambient Air Quality Standards (NAAQS) for such pollutants. The Act also requires State Implementation Plans (SIPs) to be prepared, which describe control strategies that States and local authorities will employ to bring non-attainment areas into compliance with the NAAQS.

The EPA is seeking investigator-initiated grant proposals aimed at generating new knowledge to:

(1) Improve the scientific basis for future reassessment of the PM NAAQS;

(2) Reduce uncertainties in SIP modeling projections for tropospheric ozone and measurement of the effectiveness of SIPs in meeting the ozone NAAQS;

(3) Increase the understanding of transport and deposition of volatile and semi-volatile toxic pollutants, and the ultimate exposure of humans and ecosystems to them; and

(4) Other research areas as defined by proposers that contribute to the overall goals of this research topic.

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Of particular interest in relation to the first area are projects that will provide information useful in resolving controversies regarding epidemiologic analyses that suggest associations between increased mortality and morbidity, and particulate matter concentrations markedly below the current particulate matter NAAQS, including:

- Improving quantitative estimates of particulate matter exposure;
- Employment of epidemiologic analyses that more directly estimate potential effects; and
- Evaluation of potential confounding variables (e.g., weather).

Possible approaches may involve, but are not restricted to, alternative biostatistical models, coupling existing or refined epidemiologic analyses to improved exposure data, case-control or cross-sectional studies of mortality, indices of morbidity, and/or biomarkers of effects. The relative roles of fine versus coarse particles and of chemical composition are of particular interest.

Of interest in the second area is fundamental research in the atmospheric chemistry, modeling, emissions, and ambient measurement of tropospheric ozone contributing to strengthened control strategy development and improved assessment of SIP effectiveness, including:

- Kinetic and mechanistic studies of gas-phase reactions involving aromatic volatile organic compounds (VOCs), biogenic VOCs, long-chain alkenes and alkanes that participate in ambient photochemistry, and studies on the link between ozone and heterogeneous or aqueous-phase reactions;
- Studies to explore boundary layer turbulence and mixing, and their interaction with atmospheric chemistry, and studies of quantitative techniques for assessing the errors or uncertainties inherent in concentration estimates from ozone air quality modeling systems;
- Studies of large-scale fluxes of biogenic emissions of VOCs and NO_x for different landscapes;
- Studies that may lead to new techniques for ambient measurement, on short time scales, of chemically-significant trace gases participating in the photochemistry of ozone; and
- Both in-situ and remotely-sensed studies of innovative methods for using ambient concentration and meteorological measurements in assessing the potential ozone response to local changes in precursor emissions/concentrations.

Of interest in the third area are projects that address compounds, including aerosols, semi-volatile pollutants, and/or trace metals that travel through the air pathway, especially those that are persistent, mobile, or bioaccumulative. Also of interest are projects that investigate major uncertainties in:

- Transport and atmospheric phase equilibria;
- Composition versus particle size;
- Deposition to surfaces;
- Food chain uptake from atmospheric deposition; and/or
- Dermal exposure from atmospheric deposition.

Projects are encouraged that result in new or improved databases, algorithms, models, or modules for pre-existing models that can be used by the scientific community in the analysis of transport and fate of air toxics; the quantification of air and air-deposition pathways; and the assessment of risks for air toxics.

Approximately $2.5 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

4. Regional Hydrologic Vulnerability to Global Climate Change

Vulnerability research is a major responsibility of EPA's Global Climate Change Research Program. Understanding regional vulnerability to climate change is critically dependent on understanding how projected widespread climate change affects the hydrologic watershed at scales where water resources and related ecologic, economic, and socio-political impacts are manifested. In order to make informed decisions concerning the risks of global change, the public and policymakers need a better understanding of the hydrologic vulnerabilities of regional systems. This, in turn, requires improved methodologies that identify and quantify physical and economic regional vulnerabilities to competing hydrologic demands, under current climate patterns and under projected climate-change scenarios.

Attempts to quantify these types of vulnerabilities have been hampered by the absence of techniques for performing regional analyses using projected climate change. These regional analyses should include both direct hydrologic response (e.g., soil moisture, streamflow, stream temperature) as well as secondary impacts upon regional ecology and economics. Major sources of uncertainty in conducting regional hydrologic analyses are the sensitivities of regional hydrologic systems to changing climate and future demands for water. Accordingly, as part of EPA's interest in watershed research, this solicitation invites proposals that address climate change aspects of watershed hydrology in the following areas:

- Translation of climatic information into water availability (e.g., soil moisture and streamflow) and other ecologic variables as required by water resource and natural resource modelers.
- Linkage of water availability with water and natural resource response prediction.
- Linkage with economic activities in various sectors (e.g., agriculture and forestry) competing for the water resources, and associated feedbacks.
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

This solicitation seeks proposals that may include a range of innovative research approaches, from modeling to data analysis and observational and experimental approaches, singly or in combination. Proposals are encouraged without regard to specific location of any proposed hydrologic regional setting but should reflect the goal to reduce uncertainties in watershed hydrology as influenced by concerns about vulnerabilities to climate change.

Approximately $1.0 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

The Application

Proposed projects must be research designed to advance the state of knowledge in the indicated areas of environmental science and technology. Applications will not be accepted for routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or for the preparation of materials and documents, including process designs or instruction manuals.

Application forms and instructions are available in the EPA Research Grants Application Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits can be obtained at the following address: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460, (202) 260–7474.

Each application for assistance must consist of the Application for Federal Assistance Forms (Standard Forms—SF 424 and 424A), separate sheets that provide the budget breakdown for each year of the project, the resumes for the principal investigator and co-workers, the abstract of the proposed project, and a project narrative that includes a quality assurance narrative. All certification forms (e.g., lobbying certification) must be signed and included with the application.

The closing date for application submission is April 17, 1995 at 4:00 p.m. est.

To be considered, the original and eight copies of the fully developed research grant application, prepared in accordance with instructions in the Application for Federal Assistance Forms, must be received by the EPA Office of Exploratory Research no later than the above closing date. Informal, incomplete, or unsigned proposals will not be considered. Completed applications should be sent via regular or express mail to: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460.

Applications sent via express mail should have the following telephone number listed on the express mail label: (202) 260–7445.

Special Instructions

The following special instructions apply to all applicants responding to this Request for Application.

- Applications must be unbound and clipped or stapled. The SF–424 must be the first page of the application. Budget information should immediately follow the SF–424. All certification forms should be placed at the end of the application.
- Applicants must be identified by printing "OER–95" in block 10 of the SF–424. This will facilitate proper assignment and review of the application.
- A one-page abstract must be included with the application.
- The "project narrative" section of the application must not exceed 25, consecutively-numbered, 8½ × 11 inch pages of standard type (i.e., 12 point), including tables, graphs, and figures. For purposes of this limitation, the "project narrative" section of the application consists of the following six items:

1. Description of Project
2. Objectives
3. Results or Benefits Expected
4. Approach
5. General Project Information
6. Quality Assurance

Any attachments, appendices, and other references for the narrative section may be included but must remain within the 25-page limitation. Appendices will not be considered an integral part of the narrative.

Items not included under the 25-page limitation are the SF–424 and other forms, budgets, resumes, and the abstract. Resumes must not exceed two consecutively-numbered pages for each investigator and should focus on education, positions held, and most recent or related publications.

Applications not meeting these requirements will be returned to the applicant without review.

Quality Assurance

Data sets resulting from EPA-funded environmental research often are used directly by regulatory officials when establishing standards or when making other policy decisions. Explicit indicators of data quality are essential for determining whether a particular data set is appropriate for use in a specific context. To that end, EPA regulations require that grant-funded projects address quality assurance.

The application must include a quality assurance narrative statement, not to exceed two pages, which for each item listed below, either presents the required information or provides justification as to why the item does not apply to the proposed research.

- The intended use of the data and the associated acceptance criteria for data quality (i.e., precision, accuracy, representativeness, completeness, and comparability).
- Project requirements for precision, accuracy, representativeness, completeness, and comparability, and how these will be determined.
- Procedures for selection of samples or sampling sites, and collection or preparation of samples.
- Procedures for sample handling, identification, preservation, transportation, and storage.
- Description of measurement methods or test procedures, with a statement of performance characteristics if methods are non-standard.
- Standard quality assurance/quality control procedures (e.g., American Society for Testing Materials, American Public Health Association, etc.) to be followed. Non-standard procedures must be documented.
- Data reduction and reporting procedures, including description of statistical analyses to be used.

Guidelines and Limitations

All recipients are required to provide a minimum of 1% of the total project cost, which may not be taken from Federal sources. Subcontracts for research to be conducted under the grant should not exceed 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project. Federal agencies and federal employees are not eligible to participate in this program. Potential applicants who are uncertain of their eligibility should contact EPA's Grants Operations Branch at (202) 260–9266.

Review and Selection

All grant applications are initially reviewed by EPA to determine their legal and administrative acceptability and responsiveness to this solicitation. Acceptable applications are then reviewed by an appropriate technical peer review group. This review is designed to evaluate and rank each proposal according to its scientific merit. Each review group is composed primarily of non-EPA scientists, engineers, social scientists, and/or economists who are experts in their respective disciplines. All reviewers are proficient in the technical areas that they are reviewing. The reviewers use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity);
- Qualifications of the principal investigator and staff, including knowledge of relevant subject areas;
- Potential contribution of the research to advancing scientific knowledge in the environmental area;
- Availability and adequacy of facilities and equipment; and
- Budget justification—justification for equipment will receive special attention.

A summary statement of the scientific review of the panel is provided to each applicant.

Funding decisions are the sole responsibility of EPA. Grants are selected on the basis of technical merit, relevancy to the research priorities outlined, program balance, and budget.

Proprietary Information

By submitting an application in response to this solicitation, the applicant grants EPA permission to share the application with technical reviewers both within and outside of the Agency.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

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Funding Mechanism

The funding mechanism for all awards issued under this solicitation will consist of a grant agreement between EPA and the recipient.

In accordance with Public Law 95–224, a grant is used to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition for the direct benefit of the Agency. In using a grant instrument rather than a cooperative agreement, EPA anticipates that there will be no substantial involvement during the course of the grant, between the recipient and the Agency.

Minority Institution Assistance

Pre-application assistance is available upon request for potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges or Universities (HBCUs), Hispanic Association of Colleges and Universities (HACUs), or Native American or Tribal Colleges. For further information on minority assistance, contact Charles Mitchell by telephone at (202) 260–7473, by faxing a written request to (202) 260–0211, or by mailing it to the above-listed address for EPA's Office of Exploratory Research.

Contacts

Additional general information on the grants program may be obtained by contacting: U.S. Environmental Protection Agency, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460, Phone: (202) 260–7474, Fax: (202) 260–0211.

Applicants with technical questions may contact the appropriate individual identified below.

Contacts for Research Topics of Interest

Human Health Risk Assessment

- Kevin Garrahan (202) 260–2588.

Indoor Air Quality in Large Office Buildings

- Ross V. Highsmith (919) 541–7828.
- Kevin Y. Teichman (202) 260–7669.

Air Pollutants (particulates, ozone, & toxics)

- Ila L. Cote (919) 541–3644 (particulates).
- James S. Vickery (919) 541–2184 (ozone).
- Larry T. Cupitt (919) 541–2454 (toxics).

Regional Hydrologic Vulnerability to Global Climate Change

- Barbara M. Levinson, (202) 260–5983.
- Joel D. Scheraga, (202) 260–4029.

Dated: February 1, 1995.

Approved:

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–3292 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

F & M National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 6, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F & M National Corporation, Winchester, Virginia; to acquire 100 percent of the voting shares of Bank of the Potomac, Inc., Herndon, Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Group, Inc., Chattanooga, Tennessee; to acquire 100 percent of the voting shares of Etowah Bancing Company, Etowah, Tennessee, and thereby acquire Southern United Bank of McMinn County, Etowah, Tennessee.

2. Greater Rome Bancshares, Inc., Rome, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Greater Rome Bank, Rome Georgia, a *de novo* bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. AMCORE Financial, Inc., Rockford, Illinois; to acquire 100 percent of the voting shares of NBM Bancorp, Inc., Mendota, Illinois, and thereby indirectly acquire First National Bank of Peru, Peru, Illinois, and National Bank of Mendota, Mendota, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation and Bremer Financial Corporation, both of St. Paul, Minnesota; to merge with Morris State Bancorporation, Morris, Minnesota, and thereby indirectly acquire Morris State Bank, Morris, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American State Bank ESOP, Broken Bow, Oklahoma; to become a bank holding company by acquiring 37.04 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire American State Bank, Broken Bow, Oklahoma.

2. Overland Bancorp, Inc., Belton, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Belton, Belton, Missouri.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Gulf Southwest Nevada Bancorp, Inc., Reno, Nevada; and Gulf Southwest Bancorp, Inc., Houston, Texas to acquire 100 percent of the voting shares of Texas Gulf Coast Bancorp, Inc., Houston, Texas, and thereby indirectly acquire First Bank Mainland, LaMarque, Texas; First Bank Pearland, Pearland, Texas; and Texas City Bank, Texas City, Texas.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3236 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

Charles L. Frickey, et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles L. Frickey, Trustee, Oberlin, Kansas; to acquire an additional 12.50 percent, for a total of 39.54 percent; as trustee of the Charles L. Frickey, Revocable Trust; trustee of Carl L. Frickey Revocable Trust, R.D. Jones, Trustee of R.D. Jones Trust No. 1, Oberlin, Kansas; to acquire an additional 8.54 percent for a total of 26.99 percent, of the voting shares of Farmers Bancshares of Oberlin, Inc., Oberlin, Kansas, and thereby indirectly acquire Farmers National Bank of Oberlin, Oberlin, Kansas,

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3237 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

HNB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. HNB Corporation, Arkansas City, Kansas; to engage *de novo* through its subsidiary Personal Finance Company, Inc., Arkansas City, Kansas, in making personal, consumer, and home equity loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Louisiana Capital Corporation, Vidalia, Louisiana; to engage *de novo* through its subsidiary Community Credit Centers, Inc., Lake Providence, Louisiana, in selling finance company credit property insurance including credit-life, accident and health insurance, property insurance, non filing fee insurance and vendor's single interest policy insurance pursuant to §§ 225.25(b)(8)(i) and (B)(8)(ii). The geographic scope of these activities is Concordia Parish, Louisiana, and Adams County, Mississippi.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3238 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 23, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Mortgage, Inc., Des Moines,

Iowa, to acquire the mortgage business of First National Bank of Kerrville, Kerrville, Texas, thereby engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, to acquire the mortgage business of Community State Bank of Alexandria, Alexandria, Minnesota, and thereby engage in the mortgage origination business, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

3. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Investment Services Inc., Minneapolis, Minnesota, proposes to acquire the brokerage services business of Texas National Bank, Midland, Texas, also an indirect subsidiary of Norwest Corporation, and thereby engage in full-service brokerage business, government securities, and limited underwriting activities, pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

4. Norwest Corporation, Minneapolis, Minnesota; through its wholly-owned subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, to acquire the mortgage business of Goldenbank, N.A., Golden, Colorado, and thereby engage in the mortgage business, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-3239 Filed 2-8-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the poverty guidelines are used in a particular program, contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but not for information about how they are used in a particular program), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, HHS—telephone: (202) 690-6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HHS—telephone: (301) 443-5656. The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine "greatest economic need" for Administration on Aging programs. For information about those programs, contact Donald Fowles, Administration on Aging, HHS—telephone: (202) 619-2614.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Josephine Nieves, Associate Assistant Secretary for Employment and Training, U.S. Department of Labor—telephone: (202) 219-6236.

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact Kathleen Short, Chief, Poverty and Wealth Statistics Branch, U.S. Bureau of the Census—telephone: (301) 763-8578.,

1995 POVERTY GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,560 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1995 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,340
2	12,540
3	15,740
4	18,940
5	22,140
6	25,340
7	28,540
8	31,740

For family units with more than 8 members, add $3,200 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1995 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,610
2	11,550
3	14,490
4	17,430
5	20,370
6	23,310
7	26,250
8	29,190

For family units with more than 8 members, add $2,940 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

The preceding figures are the 1995 update of the poverty guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97-35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI-U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA-1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program, while section 652 (42 U.S.C. 9847) requires the use of the poverty guidelines as an eligibility criterion for the Head Start program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). When such programs give an OBRA-1981 citation for the poverty guidelines, they cite section 673(2). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as "the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981."

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 1995 guidelines—reflect price changes through calendar year 1994, they are approximately equal to the poverty thresholds for calendar year 1994 which the Census Bureau will issue in late summer or autumn 1995.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of "income," "family," "family unit," or "household" that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question. The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60-185 and earlier reports in the same series) are made available for illustrative purposes only.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the "household" concept in determining income eligibility. A number of other programs use administrative variations of the "family" concept in determining income eligibility. Depending on the precise program definition used, programs using a "family" concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* "Family unit" is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of "income" (or "countable income") which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment

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(receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 6, 1995

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 95-3285 Filed 2-6-95; 8:45 am]

BILLING CODE 4150-04-P

Food and Drug Administration

[Docket No. 91F-0324]

Goodyear Tire & Rubber Co.; Filing of Food Additive Petition; Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 26, 1995 (60 FR 5184). The document amended the filing notice for a food additive petition filed by the Goodyear Tire & Rubber Co to indicate that the petitioned additive, alkylthiophenolics, acid-catalyzed condensation reaction products of *p*-nonylphenol, formaldehyde, and 1-dodecanethiol, is also intended for use in pressure-sensitive adhesives. The document was published with some editorial errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW. Washington, DC 20204, 202-418-3095.

In FR Doc. 95-2007, appearing on page 5184 in the **Federal Register** of Thursday, January 26, 1995, the following corrections are made:

On page 5184, in the second column, in the first full paragraph, in line 6, and in the third column, in line 13, the word "alkylthiophendics" is corrected to read "alkylthiophenolics"

Dated: February 3, 1995

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition

[FR Doc. 95-3300 Filed 2-8-95; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS

The Health Care Financing Administration (HCFA) Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96-511).

1. *Type of Information Collection* Reinstatement, *Type of Review Requested:* Regular submission; *Title of Information Collection:* Provider Reimbursement Manual Sections 2721, 2722, and 2725; *Form No.:* HCFA-9044; *Use:* The requirements in the Manual describe justification for submitting an exception request to ESRD composite rates for outpatient dialysis services; *Respondents:* Business or other for profit Federal agencies or employees/ Non-profit institutions and Small businesses or organizations; *Obligation to Respond:* Required to obtain or retain benefit; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours Requested:* 19,200.

2. *Type of Information Collection* Reinstatement, with change, of a previously approved collection; *Type of Review Requested:* Regular submission; *Title of Information Collection.* Medicare Home Health Agency Conditions of Participation; *Form No* HCFA-R-39; *Use:* Home Health Agencies to participate in Medicare are required to maintain this information to show compliance with published health and safety; *Respondents:* State or local governments and Business or other for-profit; *Obligation to Respond:* Required to obtain or retain benefit; *Number of Respondents:* 8,039; *Total Annual Responses:* 8,039; *Total Annual Hours Requested:* 69,498.

Additional Information or Comments. Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Dated: February 3 1995

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration

[FR Doc. 95-3286 Filed 2-8-95; 8:45 am]

BILLING CODE 4120-03-M

[HSQ-223-N]

CLIA Program; Approval of the College of American Pathologists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the College of American Pathologists (CAP) as an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it meet the conditions required by Federal law and regulations. Consequently, laboratories that voluntarily become accredited by CAP in lieu of receiving direct Federal oversight and continue to meet CAP requirements would meet the CLIA condition level requirements for laboratories and therefore are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period February 9, 1995 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Val Coppola (410) 597-5906.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100-578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS and Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. New section 353 requires HHS to establish certification requirements for any laboratory that performs tests on human specimens and certify through issuance of a certificate that those laboratories meet the certificate requirements established by HHS.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, amended the Social Security Act (the Act) to require that laboratories participating in the Medicare program meet the certificate requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs or both. Laboratories that are accredited by a private non-profit organization approved under section 353 of the PHSA will automatically be eligible for Medicare and Medicaid participation as long as they meet applicable State requirements.

On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002-7243) that implemented the amendments to section 353 of the PHSA. The technical and scientific portions of these rules were crafted by The Centers for Disease Control and Prevention (CDC) of the Public Health Service (PHS). Specifically, regulations were established at 42 CFR part 493 that:

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates (in a subsequent rule published January 19, 1993, 58 FR 5215, we added "certificate for physician-performed microscopy procedures") and to fund activities to determine compliance with our performance requirements;
- Specify the performance requirements that apply to laboratories subject to CLIA (some of which were amended by the January 19, 1993 rule) and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver; and
- Set forth the rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, HCFA issued additional final rules (57 FR 33992), under authority found in section 353(e)(2) of the PHSA, that establish that we may approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements of part 493 of our regulations. Therefore, a laboratory accredited by an approved organization that meets and continues to meet all of the accreditation organization's requirements would meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations listed in subpart E of part 493 specify the requirements an accreditation organization must meet in order to be approved. We may approve an accreditation organization under § 493.501(d) of our regulations for a period not to exceed six years.

In general, the accreditation organization must:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HCFA;
- Apply standards and criteria that are equal to or more stringent than those condition level requirements established by HHS when taken as a whole;
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HCFA, within 30 days, with the name of any laboratory that has had its accredited denied, suspended, withdrawn, limited, or revoked;
- Notify HCFA at least 30 days prior to changing its standards; and
- If HCFA withdraws its approval, notify its accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if it meets the standards of an approved accreditation body and authorizes the accreditation body to submit to HCFA records and other information HCFA may require.

Along with requiring the promulgation of criteria for approving an accreditation body and for withdrawing such approval, CLIA regulations require HCFA to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that HCFA determines appropriate. Under section 353(o) of the PHSA, the Secretary may, by agreement, use the services or facilities of any other Federal, State or local public agency, or any private, nonprofit organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of CAP as an Accrediting Organization

In this notice, we approve CAP as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements. HCFA has examined the CAP application, in which it requested deemed status for all specialties and subspecialties, and all subsequent submissions against the requirements under subpart E of part 493 that an accreditation organization must meet in order to be granted approved status under CLIA. We have determined that CAP has complied with the applicable CLIA requirements as of February 9, 1995 and grant CAP approval as an accreditation organization under this Subpart through December 31, 1998 for all specialty/subspecialty areas.

As a result of this determination, any laboratory that is accredited by CAP

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during this time period meets the CLIA requirements for laboratories found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal or State or local public agency or nonprofit private organization which acts in conformance to an agreement with the Secretary.

III. Evaluation of CAP

The following describes the process used to determine that CAP, as a private, nonprofit organization, provides reasonable assurance that those laboratories it accredits will meet the applicable requirements of the Federal law and regulations

A. Requirements for Approving an Accreditation Organization Under CLIA

To determine whether HCFA should grant approval to CAP as a private, nonprofit organization for accrediting laboratories under CLIA, HCFA and CDC conducted a detailed and in-depth comparison of CAP's requirements for its laboratories to those of CLIA and evaluated whether CAP's standards are at least as stringent as the requirements of 42 CFR part 493 when taken as a whole. In summary, we evaluated whether CAP:

• Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to or more stringent than the CLIA condition level requirements and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and

• Meets the requirements of § 493.506, which specify the Federal review and approval requirements of private, nonprofit accreditation organizations.

As specified in the regulations at § 493.506, our review of a private, nonprofit accreditation organization seeking deemed status under CLIA includes, but is not limited to, an evaluation of:

• Whether the organization's requirements for its accredited laboratories are equal to or more stringent than the condition level requirements of the CLIA regulations;

• The organization's inspection process to determine:

—The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors;

—The comparability of the organization's full inspection and complaint inspection processes to those of HCFA, including but not limited to inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories;

—The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements;

—The ability of the organization to provide HCFA with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process;

—The ability of the organization to provide HCFA with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in HCFA approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action;

—The ability of the organization to provide HCFA with electronic data for all its accredited laboratories and the areas of specialty and subspecialty of testing;

—The adequacy of numbers of staff and other resources; and

—The organization's ability to provide adequate funding for performing the required inspections.

• The organization's agreement with HCFA that requires it to:

—Notify HCFA of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

—Notify HCFA within 10 days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

—Notify HCFA of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days;

—Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of recognition of the organization's approval as an accrediting organization under CLIA;

—Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;

—Provide HCFA, the State survey agency or other HCFA agent with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in HCFA approved PT programs and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;

—Provide HCFA with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and

—Make available, on a reasonable basis, any laboratory's PT results upon the request by any person, with such explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by a HCFA approved accreditation organization must:

• Authorize the organization to release to HCFA all records and information required by HCFA as required at § 493.501;

• Permit inspections as required by the CLIA regulations at 42 CFR part 493 subpart Q;

• Obtain a certificate of accreditation as required by § 493.632; and

• Pay the applicable fees as required by §§ 493.638 and 493.645.

B. Evaluation of the CAP Request for Approval as an Accreditation Organization Under CLIA

CAP has formally applied to HCFA for approval as an accreditation organization under CLIA for all specialties and subspecialties. We have evaluated the CAP application to determine equivalency with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules. We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of 42 CFR part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

CAP has submitted a list of all specialties and subspecialties that it would accredit, a comparison of individual accreditation and condition level requirements, a description of its inspection process, PT monitoring process, and its data management and analysis system, a listing of the size, composition, education and experience of its inspection teams, its investigative

and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process. We have determined that CAP has complied with the general requirements under § 493.501, the applicable parts of § 493.506, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493.

Our evaluation identified areas of the CAP requirements that are more stringent than the CLIA requirements and apply to the laboratory as a whole. Rather than include them in the appropriate subparts multiple times, we list them here:

• CAP requires its accredited laboratories to possess documentation of all State laws and to follow them.

• CAP lists extensive requirements for the Laboratory Information System (LIS), which cover but are not limited to:

+ The preservation, storage, and retrieval of laboratory and patient data;

+ The review of LIS programs for appropriate content and testing before use when a new program is to be put in place or when changes are made to existing programming;

+ The maintenance of the LIS facility, which must be clean, well ventilated, and at proper temperature and humidity;

+ The protection of LIS against power interruptions and surges;

+ The protection of the LIS, its data, patient information, and programs from unauthorized use;

+ The entry of data and result reporting;

+ The verification and maintenance of LIS hardware and software;

+ The routine and emergency service and maintenance of the LIS; and

+ An evaluation from the laboratory director of the LIS performance as it pertains to patient and clinician needs.

+ In addition, the LIS operators must have procedure manuals readily available, be adequately trained in LIS operation, and know what must be done to preserve data and equipment in emergency situations such as software or hardware failure or in the event of fire;

• CAP accredits laboratories that perform testing for any of the following areas and sets specific standards with which their accredited laboratories must comply:

+ Athletic drug testing (for anabolic steroids, beta-blockers, cannabinoids, narcotics, and stimulants);

+ Forensic urine drug testing;

+ Parentage testing; and

+ Reproductive laboratory testing (embryology and andrology).

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

The CAP requirements for proficiency testing (PT) are in comformance with the CLIA law, which states that standards shall require all laboratories be tested by PT for each examination for which PT is available. The CAP PT requirements are more stringent than the CLIA regulations at subpart I, which list specific tests for which the laboratory must participate in a HCFA approved PT program. CLIA exempts waived testing from PT, whereas CAP requires its accredited laboratories to participate in its HCFA approved PT program for all testing, including procedures waived under CLIA.

We have determined that the actions taken by CAP to correct unsatisfactory (one failure) and unsuccessful (2 in a row or 2 out of 3 failures) PT performance of its laboratories is equivalent to those of CLIA; in the cases of unsatisfactory performance and the CLIA phase-in allowances, CAP is more stringent. CAP has initiated an on-going electronic monitoring process that flags both unsatisfactory and unsuccessful results for all PT performance, both CLIA required analytes and all other testing for which PT is available and is required by CAP. CAP accredited laboratories are allowed 15 days to respond in writing to each unsatisfactory result, indicating how the problem was investigated, the cause of the problem, the specific corrective action that was taken to prevent recurrence, and evidence that the problem was successfully corrected.

CLIA regulations state that the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with an unsatisfactory score, take remedial action and document it. Unsuccessful PT performance, when identified by CAP, initiates immediate communication with the laboratory director. A written response must be submitted to CAP, explaining why the adverse results occurred, a description of the investigation of the problem and the actions taken to correct the problem. The laboratory must submit this information within ten working days. If, after review by CAP, it is determined that the laboratory's approach is scientifically valid and PT performance is within acceptable limits, no further action is taken. If the laboratory does not respond, fails to address the problem seriously, or cannot bring performance into acceptable limits, the CAP would evaluate the situation and either request that the laboratory cease testing for the analyte or specialty or subspecialty in question, or, if warranted, revoke accreditation.

CLIA regulations allow a phase-in period for unsuccessful PT performance, which, for previously regulated laboratories (which includes most CAP accredited laboratories), impose no sanctions under § 493.803 (Condition: Successful Participation) until the end of 1994. As the phase-in period ends, the sanctions under CLIA and the actions taken by CAP become equivalent.

CAP also offers a voluntary continuing education and external quality assurance program for PAP smear cytology. The Interlaboratory Comparison Program in Cervicovaginal Cytopathology currently enrolls approximately 1,800 CAP accredited laboratories that perform cytology testing. The number of laboratories this program can enroll is dependent upon the availability of the referenced glass slide material (cervicovaginal smears). When CAP has sufficient quantities to accommodate all of its 2,600 accredited laboratories that perform gynecologic (GYN) cytology, it intends to offer this program as a cervicovaginal cytopathology pathology proficiency testing survey in which its accredited laboratories will be required to participate. Currently there is no HCFA approved cytology PT program capable of enrolling all CLIA certified laboratories that perform GYN cytology testing.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

The CAP has expanded and in some cases revised its requirements to be equivalent to the CLIA requirements at §§ 493.1101 through 493.1111, on an overall basis. We have determined that CAP's requirements for an accredited laboratory to include on report forms the dates and times of specimen collection (when appropriate) and the release of the report are more stringent than the requirements under CLIA as well as their requirement that reports must be legible. The CAP also requires its accreditated laboratories to use referral laboratories that are appropriately CLIA certified.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of CAP have been evaluated against the phased-in, complexity based

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requirements of the CLIA regulations. We have determined that after the additions and revisions made by CAP, the QC requirements of CAP are more stringent than the CLIA requirements, when taken as a whole. Some specific requirements of QC that are more stringent are:

- The CAP does not allow a two year phase-in for QC requirements and requirements are effective without delay;
- The CAP imposes QC requirements equally upon all testing performed by their accredited laboratories, including CLIA's waived procedures. All testing is considered high complexity by CLIA definition;
- The CAP laboratory safety requirements are specific and detailed. Environmental safety requirements address electrical voltage, facility ventilation, lighting, temperature, humidity, and emergency power source and require remedial actions to be taken when necessary. CAP also has requirements in place for handling and disposal of biohazardous materials, fire safety and prevention of fire hazards, as well as all OSHA regulations as they pertain to the laboratory;
- The CAP requires procedure manuals to include the principle and clinical significance for each test, and the procedure manuals must also include documentation of initial and annual reviews;
- CAP accredited laboratories that rely on manufacturers' quality control of microbiological media must have a copy of the National Committee for Clinical Laboratory Standards Document M–22–A (Quality Assurance for Commercially Prepared Microbiological Culture Media) and provide documentation that its media supplier carries out the quality assurance guidelines enumerated in Document M–22–A;
- CLIA regulations allow cytology slide preparations made using automated, semi-automated, or other liquid-based slide preparations that cover half or less of a slide to be counted as one half slide for cytology workload purposes. This allows a maximum of 200 such preparations to be examined by an individual in a 24 hour period. The CAP does not recognize these preparations as half slides, but rather as full slides to be included in an individuals's 100 slide, 24 hour maximum allowable workload;
- CAP requires its accredited laboratories to use the appropriate reagent grade water for the testing performed, stating which type of water (from type I through Type III) must be used in specific tests. Source water must also be evaluated for silicone levels;
- CAP accredited laboratories must verify all volumetric glassware and pipettes for accuracy and reproductability prior to use and recheck them periodically. These activities must be documented;
- CAP accredited laboratories that perform maternal serum alpha-fetoprotein and amniotic fluid alpha-fetoprotein have specific requirements that must be met. These include a qualitative specimen evaluation, requesting and reporting information necessary for interpretation of results; i.e., gestational age, maternal birth date, race, maternal weight, insulin-dependent diabetes mellitus, multiple gestations, median ranges calculated and recalculated yearly, results reported in multiples of the mean, etc;
- The CAP lists specific requirements for newer methodologies. Molecular pathology and flow cytometry standards are presented in separate checklists and immunohistochemistry has specific requirements within histology; and
- CAP record retention requirements are the same or longer than those of CLIA.

The CAP has made additions and revisions to its requirements to make them equivalent to the CLIA regulations. Some examples of these changes are:

- All reagents must be used within their indicated expiration date;
- The laboratory must use components of reagent kits only with other kits of the same lot number, unless otherwise specified by the manufacturer;
- Conforming revisions were made to the CAP standards for calibration and calibration;
- Qualitative and quantitative test control procedure requirements were revised to specify the following more clearly:
  + Control specimens must be tested in the same manner as patient specimens;
  + Reagent performance and adequacy must be verified before placing the material in service. The results of the verification checks must be recorded; and
  + Stains are checked for intended reactivity each day of use;
- CAP has imposed a 100 slide maximum number of cytology slides that an individual may evaluate in a 24 hour period;
- Records must be maintained of the number of cytology slides evaluated by each individual;
- The technical supervisor in cytology (pathologist) must establish each individual's slide limit and re-assess this limit every six months;
- Also, in cytology, CAP requires a minimum of ten percent of negative (GYN) cases be re-screened by a qualified individual and the results of these slides not be released until the rescreens are complete; and
- All previous negative cytology smears available within the past five years must be reviewed on a patient having a current positive smear.

Subpart M—Personnel for Moderate and High Complexity Testing

The Standards for Laboratory Accreditation of the CAP states at Standard I, Director and Personnel Requirements, under item D, Personnel, that all laboratory personnel must be in compliance with applicable federal, state, and local laws and regulations. This standard is implemented in the general laboratory requirement that there must be evidence in personnel records that all testing personnel have been evaluated against CLIA regulatory requirements for high complexity testing and that all individuals qualify. CAP has added requirements to all levels of laboratory personnel, most of which refer to the CLIA regulatory requirements. We have determined that the personnel requirements of the CAP are equal to or more stringent than the personnel requirements of CLIA.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that CAP's requirements are equal to or more stringent than the CLIA requirements of this subpart. CAP has made revisions to its checklist requirements for quality assurance to equate to the CLIA requirements. CAP also offers an educational program, Q-Probes, to its accredited laboratories, which provides further information on quality assurance to the large, full service laboratories; this program allows peer review and comparisons between facilities.

Subpart Q—Inspections

We have determined that the CAP inspection requirements, taken as a whole, are equivalent to the CLIA inspection requirements. CAP has made some program modifications pertinent to its overall inspection process, specifically involving the training of all inspectors. CAP has initiated a Laboratory Accreditation Programs Inspector Training Seminars program. Two seminars in each of the 13 CAP regions are presented currently, with 60 such seminars to be presented nationally per year beginning in 1995. Training seminar participants include inspection team leaders and team members.

Another program modification addresses the gathering of information needed to investigate complaints. CAP has discontinued its practice of notifying the laboratory director of the specific reason for contact or inspection when a complaint investigation is in process.

The CAP will continue its policy of conducting announced biennial on-site inspections. An unannounced inspection would be performed when a complaint, lodged against a CAP accredited laboratory, indicates that severe and major problems exist within that laboratory that are likely to have serious and immediate effects on patient care.

Some areas of the CAP inspection process are more stringent that those of CLIA:

- CAP requires a mid-cycle self-inspection of all accredited laboratories. All requirements must be responded to in writing and the responses submitted to CAP within a specified timeframe; and
- A written evaluation of the inspection process and the inspectors must be completed after each on-site inspection of an accredited laboratory. The director of the inspected laboratory must submit this evaluation to the CAP within a specified timeframe.

Subpart R—Enforcement Procedures for Laboratories

CAP meets the requirements of subpart R to the extent that it applies to accreditation organizations. CAP policy stipulates the actions it takes when laboratories it accredits do not comply with its requirements and standards for accreditation. CAP will deny accreditation to a laboratory when appropriate and report the denial to HCFA within 30 days. CAP also provides an appeals process for laboratories that have had accreditation denied.

Some specific actions CAP takes in response to non-compliance or violation of its requirements or standards for accreditation include:

- When an accredited laboratory has been identified as having intentionally referred a PT specimen to another laboratory for analysis prior to the PT program end-date for receipt of results, the CAP laboratory will be denied accreditation and be ineligible for CAP accreditation for one year. This action is similar to the HCFA action of denial of certification for 1 year.
- When a CAP accredited laboratory participates unsuccessfully in PT for an analyte, subspecialty, and/or specialty, the laboratory must initiate corrective actions. It must submit to CAP documentation of a detailed investigation of the problem causing the unsuccessful performance with a corrective action plan within ten working days. Specific educational activity or the retention of the services of a consultant may also be imposed. Failure to bring PT performance into acceptable limits or failure to address the PT problem seriously would cause CAP to request the laboratory to cease testing for the procedure(s) in question or, if warranted, revoke the laboratory's accreditation. This action is equal to the actions that HCFA may take under this subsection.
- When CAP becomes aware of a problem that is severe and extensive enough that it could cause a serious risk of harm (immediate jeopardy) situation in an accredited laboratory, an expedited evaluation is immediately undertaken by the Chair and Vice Chair of the Accreditation Committee, the regional Commissioner and the Director of the Laboratory Accreditation Program. If it is determined that an immediate jeopardy situation exists, the laboratory is required to remove the jeopardy situation immediately or accreditation would be revoked. An on-site focused re-inspection may be performed to verify that the immediate jeopardy no longer exists. These actions are similar to HCFA actions for immediate jeopardy.
- The CAP requires its accredited laboratories to correct all deficiencies within 30 days. CLIA deficiencies that are not condition level must be corrected in a timeframe that is acceptable to HCFA, but no longer than 12 months. CLIA deficiencies that are condition level but are not instances of immediate jeopardy must be corrected in an acceptable timeframe; however, HCFA may impose one or more alternate sanctions or a principal sanction to motivate laboratories to correct these deficiencies. The CAP timeframe for correction of deficiencies, when taken as a whole, is more stringent than CLIA.

We have determined that CAP's laboratory enforcement and policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of CAP accredited laboratories, as specified in § 493.507, may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (called complaint inspections). The outcome of those validation inspections, performed by HCFA, the State survey agency, or a HCFA agent, will be HCFA's principal means for verifying that the laboratories accredited by CAP remain in compliance with CLIA requirements. This Federal monitoring is an on-going process.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that the approval of an accreditation organization, such as that of CAP, may be removed by HCFA for cause, prior to the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described at § 493.509(a), HCFA will conduct a review of an accreditation organization's program. A review is also conducted when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systemic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If it is determined that CAP has failed to adopt requirements that are equal to or more stringent than the CLIA requirements, or systemic problems exist in its inspection process, a probationary period, not to exceed one year, may be given to allow CAP to adopt comparable requirements. Based on an evaluation of any of the items stipulated at § 493.511(d), we will determine whether or not CAP retains its approved status as an accreditation organization under CLIA. If we deny approved status, an accreditation organization such as CAP may resubmit its application when it has revised its program to address the rationale for the denial, demonstrated that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. If, however, an accrediting organization requests reconsideration of an adverse determination in accordance with Subpart D of part 488 of our regulations, it may not submit a new application until a final reconsideration determination is issued.

Should circumstances result in CAP having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

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Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: January 17 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95-3165 Filed 2-8-95; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, State	Effective date
Program-Related Convictions	
Alexis, Peter, Dallas, TX	02/16/95
Alfonso, Leonard, Fairhaven, MA	02/13/95
B and L Transport, Inc., Milwaukee, WI	02/13/95
Battle, Robert Wayne, Dillard, GA	02/16/95
Becker, Donna C., Spokane, WA	02/16/95
Bhatt, Harshad, Manhassat, NY	02/13/95
Bronshteyn, Boris, Lido Beach, NY	02/13/95
Brown, Ervin L., Spokane, WA	02/16/95
Brown, Eric P, Spokane, WA	02/16/95
Center Green Rest Home, Inc, Fairhaven, MA	02/13/95
Champion, Mackie, Blytheville, AR	02/16/95
Cole, Carl Edward, Granville, NY	02/16/95
Dunigan, James, Steele, MS	02/16/95
Fesler, Michael, Melbourne, AR	02/16/95
Gardners Grove Nursing Home, Fairhaven, MA	02/13/95
Hadley, Arthur R, Richmond, CA	02/16/95
Hamilton, Richard J, Woburn, MA	02/13/95
Hinton, Joseph L, Raymond, MS	02/16/95
Kelly, Michael, Brooklyn, NY	02/16/95
Melendez, Maria, M, Bronx, NY	02/13/95
Murray, April B, Winthrop, ME	02/13/95
Newman, Donald Mark, Grady, AR	02/16/95
Ortiz, Twila G, Hart, TX	02/08/95
Pelusi, Joseph F, Lynnfield, MA	02/13/95
Pomonis, Nick S, Orange, TX	02/08/95
Ruyle, David, Dania, FL	02/08/95
Schonbrun, David, Woodbridge, NY	02/16/95
Spielman, Michael, Hauppauge, NY	02/13/95
Strogov, Emilia, Scotch Plains, NJ	02/16/95
Thompson, Beverly K, Milwaukee, WI	02/13/95
Weeks, Edward H, Bonney Lake, WA	02/16/95
Yellow Cab of Woburn, Inc, Woburn, MA	02/13/95
Patient Abuse/Neglect Convictions	
Anyakora, Peter, Baltimore, MD	02/13/95
Bartholomew, Daryl, Denver, CO	02/15/95
Brewer, Sherry Denise, Birmingham, AL	02/12/95
Brown, Herman Jr, DeQueen, AR	02/08/95
Cadiz, Pat, Danbury, TX	02/16/95
Dickerson, Yulander, Talladega, AL	02/12/95
Gravdal, Georgene, Annandale, MN	02/13/95
Jasinski, Jeffrey R, West Seneca, NY	02/16/95
Paul, Joyce Jean, Greenbrier, AR	02/08/95
Ross, Darryl, Donaldsonville, LA	02/08/95
Siggers, Artedra, L, Ellisville, MS	02/08/95
Thatcher, James R, Chillcothe, OH	02/15/95
Controlled Substance Convictions	
Ekinci, Fevzi, Brooklyn, NY	02/13/95
Oliva, Phillip B, Boulder, CO	02/15/95
Straw, Michael F, Denver, CO	02/15/95
License Revocation/Suspension	
Altman, James Lloyd, Walterboro, SC	02/12/95
Amini, Mike, Jordan, UT	02/13/95
Baggett, Lynn D, Hugo, OK	02/08/95
Bottles, Kurt D, Yukon, OK	02/08/95
Boyd, Debra K, Belton, TX	02/16/95
Buckner, John W, San Diego, CA	02/12/95
Busby, Theresa P, West Memphis, AR	02/08/95
Cash, Barbara Lynn, Fayetteville, AR	02/08/95
Chastan, Pamela S, Denison, TX	02/08/95
Cranford, Vanessa Lynne, Perryville, AR	02/08/95
Daywood, Michael K, San Antonio, TX	02/08/95
Deming, Robin, Southbury, CT	02/13/95
DeVries, Edward J, Muskegon, MI	02/13/95
Edwards, Jerrie Dean, Little Rock, AR	02/08/95
Egbuchunam, Maureen I, Irving, TX	02/16/95
Evans, Billie Jean, Reyno, AR	02/08/95
Ewing, Jon R, Quitman, AR	02/08/95
Forbes, Janyce L, Saginaw, TX	02/08/95
Grace, Shirlee J, Belton, TX	02/16/95
Griffis, Michael S, Green Forest, AR	02/08/95
Hall, Gayla S, Mount Pleasant, TX	02/08/95
Hanus, Larry J, Waterloo, IA	02/13/95
Henningsgaard, Wayne, Stillwater, MN	02/13/95
Hobbs, William D, Frederick, OK	02/08/95
Jones, Z Joyce, Ft Worth, TX	02/16/95
Klein, Cathy Marie, Columbia, CT	02/13/95
Lanphere, Margaret Eleese, Krum, TX	02/08/95
Loutfi, Yaser Hasan, Panama City, FL	02/12/95
Marang, Boitshoko, Detroit, MI	02/15/95
Miller, Lynn J, Conway, AR	02/08/95
Mills, Judy Y, Lexington, OK	02/08/95
Morris, Sharon Ann, Springdale, AR	02/08/95
Muhammad, Taalib-Din Iqbal, New York, NY	02/16/95
Nyman, David W, Colorado Springs, CO	02/15/95
Oakley, Diane, Redbird, OK	02/08/95
Parker, Linda M, Hartford, CT	02/13/95
Raskewicz, Edward B, Bridgeport, PA	02/13/95
Reed, Guy D, Tulsa, OK	02/08/95
Robinson, Taylor, Lexington, MA	02/13/95
Samitier-Cardet, Richard, Miami, FL	02/12/95
Sands, Abel J, Oklahoma City, OK	02/08/95
Satterwhite, Linda L, Overton, TX	02/16/95
Sears, Phyllis Lana, Little Rock, AR	02/16/95
Sheehan, Timothy, Grand Rapids, MI	02/15/95
Soss, Burton Jay, Melbourne, FL	02/12/95
Thompson, Lewis E III, Little Rock, AR	02/08/95
Vaughans, Betty Jennell, Moss Point, MS	02/08/95
Welch, Susan E, Toronto, Ontario, CN	02/16/95
Willoughby, Deloris A, Crockett, TX	02/16/95
Young, Henry A, Baltimore, MD	02/13/95
Zatkowski, John R, Fairfield, CT	02/13/95
Federal/State Exclusion/Suspension	
Anthony, Shirelle, New Orleans, LA	02/16/95
Filoreto, Anthony R, West Hazelton, PA	02/13/95
Torres, Pedro Luis, New Rochelle, NY	02/16/95
Owned/Controlled by Convicted/Excluded	
Arora Clinics, Ltd, Grundy, VA	12/05/94
Hinton Pharmacy, Raymond, MS	02/16/95
Medcare City Pharmacy, Clover, SC	02/12/95
Medical Assistance SVC, Grady, AR	02/16/95
Northeast Arkansas Ambulance, Blytheville, AR	02/16/95
Northeast Arkansas Ambulance, Steele, MS	02/16/95
Default on Heal Loan	
Anthony, Melvin E, New York, NY	02/16/95
Bennett, Bonnie A, Point Lookout, NY	02/16/95
Blackwell, Michael L, Galveston, TX	02/08/95
Bond, Walter D, Sherman Oaks, CA	02/12/95
Bradley, Bruce S, Las Vegas, NV	02/16/95
Cienkus, Regina M, Berwyn, IL	02/15/95
Cortez, Eddie M, San Antonio, TX	02/08/95
Cutts, David P, Temecula, CA	02/16/95
Danczak, Michael E, Pottstown, PA	10/28/94
De Vastey, Gerard, East Orange, NJ	02/13/95
DeRosa, Arthur Jr, Scottsdale, AZ	02/12/95
Dolton, William A, Norman, OK	02/08/95
Dudley, Raynold R, Houston, TX	02/08/95
Eastman, Donald Wayne, Mesquite, TX	02/08/95
Eaves, Donald G, Houston, TX	02/08/95
Ernst, David J, East Brunswick, NJ	02/16/95
Etcheverry, John Charles, Pinole, CA	02/16/95
Farewell, Howard C, Garnerville, NY	02/13/95
Floyd, James P, Shreveport, LA	02/08/95
French, Robert C, St. Louis, MO	02/15/95
Frye, Mark A, Huntsville, TX	02/08/95
Gauthier, George W III, Wheaton, IL	02/15/95
Goodrich, Allyn P, Ely, NV	02/16/95
Goodrow, Andrew J, New Orleans, LA	02/08/95
Hales, Joyce M, Richmond, TX	02/08/95
Holt, Kenneth G, Canyon Lake, CA	02/12/95
Ittner, William F Jr, Seaside Park, NJ	02/13/95
Kahan, Robert M, Mission Viejo, CA	02/16/95
Kennedy, Grace L, Macon, MS	02/08/95
Kern, Arnold E, Livingston Manor, NY	02/13/95
Lall, Len L, Rockwall, TX	02/08/95
Langford-Ramkelawan, Cynthia, Rosepine, LA	02/08/95
Lodwig, Michael J, Walnut Creek, CA	02/12/95
Lorentzen, Peter E, Anchorage, AK	02/12/95
Lunceford, Glenn W, Norco, CA	02/12/95
Marinaro, Ronald, Studio City, CA	02/12/95
McCord, Allan R, Renton, WA	02/12/95
Mitchell, Jerry III, Pascagoula, MS	02/08/95
Molina, Robert, West Covina, CA	02/12/95
Munson, Kevin D, Huntington Woods, MI	02/15/95
Nayles, Lee C, Little Rock, AR	02/08/95
Neitzel, Shelly J, Ann Arbor, MI	02/15/95
Nwobi-Lazarus, Veronica, Santa Monica, CA	02/12/95
Pugatch, Bruce S, Potosi, MO	02/15/95
Rice, Greg W, Roma, Italy	02/12/95
Rogers, Guy A, Bakersfield, CA	02/12/95
Schaeffer, Darrell Ray, Phoenix, AZ	02/12/95
Schrag, Glenn P, Guthrie, OK	02/08/95
Smith, Ellison B, Jackson, MS	02/08/95
Starnes, Willis L, Irving, TX	02/08/95
Stevenson, Teresa M, Los Angeles, CA	02/12/95
Todd, Carolyn A, Pacific Grove, CA	02/12/95
Treadwell, Stephen M, Healdton, OK	02/08/95
Wallace, Owen, Honolulu, HI	02/12/95
Warner, Brent J, Portland, OR	02/12/95
Watkins, Thomas W, Campbellsville, KY	01/06/95
Weber, Richard L, Staten Island, NY	02/16/95
Weiss, Gwenn M, Cupertino, CA	02/12/95
Wolcat, Gregory J, Southfield, MI	02/15/95
Zalez-Simon, Carol M, Encino, CA	02/12/95
Zinke, Alan G, Nixa, MO	02/15/95
Section 1128Aa	
Bard, Robert D, Texarkana, TX	12/14/94
Red River Eye Associates, Texarakana, TX	12/14/94
Peer Review Organization Cases	
Flage, Lavern John, Independence, IA	12/16/94

Dated: February 3, 1995.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95-3270 Filed 2-8-95; 8:45 am]

BILLING CODE 4150-04-P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 2, 1995.

Time: 8 am to 5 pm.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD.

Contact Person: Mary Nekola, Ph.D, Scientific Review Administrator, NIH, NIDCD, EPS Suite 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892-7180, 301/496-8683.

Purpose/Agenda: To review and evaluate Small Grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-3180 Filed 2-8-95; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Vision Research Review Committee.

Date: February 21, 1995.

Time: 8:00 a.m. until adjournment at approximately noon.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652-2000

Contact Person: Lois DeNinno, Committee Management Officer, EPS 350, 6120 Executive Blvd. MSC 7164, Bethesda, MD 20892-7164.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health, HHS)

Dated: February 3, 1995

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 95-3182 Filed 2-8-95; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda:

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: February 21, 1995.
Time: 2:00 p.m.
Place: Holiday Inn Oldtown, Alexandria, VA.
Contact Person: Dr. Josephine Pelham, Scientific Review Admin., 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

Name of SEP: Biological and Physiological Sciences.
Date: March 9, 1995.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 418A, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 418A, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Behavioral and Neurosciences.
Date: March 6, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.
Date: March 10, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: March 16–17, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person, Dr. John Mathis, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10A, Bethesda, MD 20892, (301) 594–7243.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: February 3, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–3181 Filed 2–8–95; 8:45 am]
BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Acquiescence Ruling 87–3(9)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 87–3(9)-Hart *v.* Bowen, 799 F.2d 567 (9th Cir. 1986).

SUMMARY: In accordance with 20 CFR 416.1485(e) and 422.406(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87–3(9).

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 6, 1987, we issued Acquiescence Ruling 87–3(9) to reflect the holding in *Hart* v. *Bowen*, 799 F.2d 567 (9th Cir. 1986), that the current market value of an installment sales contract resulting from the sale of an individual's excluded home is part of the value of the replacement home and thus excluded from countable resources for Supplemental Security Income (SSI) purposes, provided the payments generated by the installment sales contract were reinvested in the excluded replacement home within three months of receipt of the payments.

On August 23, 1994, we published our final regulation (59 FR 43283), revising section 416.1212 of Social Security Regulations No. 16 (20 CFR 416.1212), to clarify when the proceeds from the sale of an excluded home, including the value of a promissory note or similar installment sales contract and other proceeds from the sale (the downpayment and monthly installment payments toward the principal), will be excluded from being considered SSI resources. Because this regulation addresses the Hart court's concerns and contains a thorough explanation concerning how we treat proceeds from the sale of an excluded home, we are rescinding Acquiescence Ruling 87–3(9).

(Catalog of Federal Domestic Assistance Programs No. 93.807 Supplemental Security Income.)

Dated: February 1, 1995.
Shirley S. Chater,
Commissioner of Social Security.
[FR Doc. 95–3240 Filed 2–8–95; 8:45 am]
BILLING CODE 4190–29–P

Rescission of Social Security Ruling (SSR) 80–36, Title XVI: Presumptive Disability and Presumptive Blindness Provision

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 80–36.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 80–36, issued in 1980, was published in the 1976–1980 Cumulative Edition of the Rulings on page 482. SSR 80–36 established procedures concerning the types of impairments subject to findings of presumptive disability and presumptive blindess by field office personnel under the supplemental security income (SSI) program. However, a number of regulations promulgated since the issuance of the Ruling and published at 56 FR 65682 (1991) and 58 FR 36059 (1993) have updated the presumptive disability and presumptive blindness provisions discussed in SSR 80–36. These regulations revised and expanded the procedures for making findings of presumptive disability to include additional categories of impairments, e.g., claims based on human immunodeficiency virus infection of listing-level severity. In addition, the time period for the payment of SSI benefits based on a finding of presumptive disability and presumptive blindness was expanded from 3 months, as stated in SSR 80–36, to 6 months by section 5038 of Pub. L. 101–508. Consequently, SSR 80–36, which was issued prior to these regulations and statutory changes, is now obsolete and is rescinded.

(Catalog of Federal Domestic Assistance, Program 93.807, Supplemental Security Income.)

Dated: February 1, 1995.
Shirley S. Chater,
Commissioner of Social Security.
[FR Doc. 95–3242 Filed 2–8–95; 8:45 am]
BILLING CODE 4190–29–P

Rescission of Social Security Ruling (SSR) 89–5p, Title XVI: Treatment of Installment Sales Contract in Home Replacement Situations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 89–5p.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

In September 1989, the Social Security Administration (SSA) changed its national practice regarding the treatment of promissory notes or similar installment sales contracts in home replacement situations and published SSR 89–5p (C.E., 1989, p. 71), effective September 6, 1989. The Ruling explained that the value of an installment sales contract that met certain conditions constituted a "proceed" from the sale of an excluded home and could be excluded from resources under the supplemental security income program. 20 CFR 416.1212(d). In addition to the value of the installment sales contract itself, any money proceeds of the sale of the home, including a down payment and the portion of any installment amount constituting payment against the principal, could be excluded resources under the conditions specified in the Ruling.

SSA regulations published on August 23, 1994, at 59 FR 43283, codify SSR 89–5p and reflect more completely SSA's policy on the treatment of proceeds from the sale of an excluded home. Consequently, SSR 89–5p is obsolete and is rescinded.

(Catalog of Federal Domestic Assistance, Program 93.807, Supplemental Security Income.)

Dated: February 1, 1995.
Shirley S. Chater,
Commissioner of Social Security.
[FR Doc. 95–3241 Filed 2–8–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990–01; N64–94–008P]

Notice of Intent to Prepare an Environmental Impact Statement for the Phoenix Project Mining Plan of Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Battle Mountain Gold Company Phoenix Project Plan of Operation for mining in Lander County, Nevada and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as amended, and to 43 CFR Part 3809, the Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement for the proposed development of a new mill facility, expanded heap leaching and tailings impoundment in Lander County, Nevada. The EIS will be prepared by contract and funded by the proponent, Battle Mountain Gold Company. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held on February 27, 1995, from 7–9 p.m. at the Battle Mountain District BLM Office conference room, 50 Bastian Rd., in Battle Mountain, Nevada; and on February 28, 1995, from 7–9 p.m. at the Airport Plaza Hotel, 1981 Terminal Way, in Reno, Nevada. The purposes of these meetings are to identify issues to be addressed in the EIS, and to encourage public participation in the NEPA process. Representatives of the BLM and Battle Mountain Gold Company will be summarizing the Plan of Operations and the anticipated environmental impacts resulting from the project and will be accepting comments from the audience. Additional briefing meetings will be held as appropriate. Written comments on the Plan of Operation and the scope of the EIS will be accepted until April 14, 1995. A Draft EIS is expected to be completed by November of 1995, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: BLM, Lynn Pettit, Phoenix Project EIS Project Manager, Battle Mountain District Manager, 50 Bastian Rd., P.O. Box 1420, Battle Mountain, NV 89820.

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FOR FURTHER INFORMATION CONTACT: Lynn Pettit, Project Manager, at (702) 635–4000.

SUPPLEMENTARY INFORMATION: Battle Mountain Gold Mining Company has recently submitted a proposal to develop a mining facility at the south end of the Battle Mountain Range, in Lander County, Nevada, approximately 15 miles southwest of Battle Mountain. The proposed mining development will involve an expansion of the current heap leaching and tailings facilities, and a new mill. Ore extracted from proposed open pits will be processed for gold recovery by milling and heap leaching processes. Dewatering will be necessary in order to mine several of the proposed open pits. To prevent anticipated pit lake quality problems due to the composition of the host rock in one of the pits, Battle Mountain Gold is proposing a permanent ground water conveyance system that would begin at an entry way within the pit, travel downgradient through an underground drainage system to a portal opening and from there travel via an above ground channel to a location that would serve as an infiltration basin and/or wetland. The majority of the waste rock will be partially, or completely, backfilled into open pits and used to cap existing copper leach run-of-mine dumps. The total land disturbance (private + public) over the life of the mine could reach 1,909 acres. Land previously disturbed by mining related activity would make up 1,278 of these acres.

Potentially significant and significant direct, indirect, cumulative and residual impacts from the proposal will be analyzed in the EIS. Significant issues to be addressed in the EIS include those relating to air quality, surface and ground water resources, geochemistry, reclamation, and social and economic values, and cumulative impacts. Additional significant issues to be addressed may arise during the scoping process. Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on this plan of operation are invited to participate in the scoping process.

Dated: January 30, 1995

Michael C. Mitchel,

Acting District Manager

[FR Doc. 95–3275 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–HC–M

[ID–056–1610–00]

Notice of Intent to Prepare a Supplement to the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan and Amendment to the Jarbridge Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: The Shoshone District Bureau of Land Management announces the intent to prepare a supplement to the Bennett Hills Draft Resource Management Plan/Draft Environmental Impact Statement, and Amendment to the Jarbridge Resource Management Plan.

SUMMARY: Pursuant to 40 CFR 1502.9(c) implementing the *National Environmental Policy Act of 1969*, the Bureau of Land Management's Idaho State Director has determined the need to prepare a supplement to the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan issued for public comment on April 1, 1994. This action is taken to allow the agency to fully consider and incorporate comments received on the draft.

DATES: No date has been set for the release of the Supplement. Notification of release will be made in the **Federal Register** and local news media. The Supplement will be circulated for an additional 90-day public comment period.

FOR FURTHER INFORMATION CONTACT: Project Manager William H. West, Shoshone District Bureau of Land Management, P.O. 2–B, Shoshone, Idaho 83352, telephone (208) 886–7203.

SUPPLEMENTARY INFORMATION: On September 20, 1990, the Shoshone District Bureau of Land Management published a Notice of Intent to prepare a Draft Resource Management Plan/Draft Environmental Impact Statement for the Bennett Hills Resource Area. On March 25, 1992, the Boise District of the Bureau of Land Management published a Notice of Intent to prepare an Amendment to the Jarbridge Resource Management Plan to be incorporated in the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan. On April 1 1994, a Notice of Availability of the Draft Environmental Impact Statement was published in the **Federal Register** and the public was invited to comment.

The public comment period ended on July 1, 1994, with 170 comment letters received containing over 400 individual comments. The comments identified new actions, standards and guidelines not contained in the Draft. The comments include specific suggestions for livestock management prescriptions in riparian areas, proposals for new Areas of Critical Environmental Concern, and land exchanges to accommodate recent community expansion needs that were not contained or analyzed in the Draft.

The comments also provided clarity and focus to the public's desires and needs not found in the original scoping for the Draft in 1990. At the time of the original scoping, five open houses were held at different locations in the valley however, less than 30 people attended and, despite concerted efforts to solicit public opinion, only 66 total comments were received during the formal scoping period. The scoping comments were very broad in nature and often dealt with general BLM policy questions not directed toward actions within the jurisdiction of the RMP. Comments received on the Draft were directed toward management actions on the planning area and within the scope of a Resource Management Plan decision. Additionally, because of the long lag time from the scoping to the publication of the Draft, the public's wishes for management of the public land had changed.

Dated: January 31, 1995.

Robert D. Cordell,

Area Manager, Bennett Hills Resource Area

[FR Doc. 95–3274 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–GG–M

[CO–056–1430–00]

Seasonal Road Closure

AGENCY: Bureau of Land Management, Interior

SUMMARY: Notice is hereby given in accordance with 43 CFR 8364.1(a) Closure and Restriction. Pursuant to 43 CFR 8364.1 the following Bureau of Land Management (BLM) roads in Conejos, Rio Grande, and Saquache Counties will be temporarily closed to motorized vehicle use to protect roads and fragile resources during the wet conditions of the spring thaw.

Conejos County: Cumbres Toltec Rd. (#5035), Bighorn Rd. (#5041), Las Mestas Rd. (#5048), Poso Loop Rd. (#5046), RaJadero Rd. (#5065), Posito Creek Rd. (#5075), Capulin Peak Rd. (#5060) and Cinder Pits Rd. (#5055).

Rio Grande County: Bronson Peak Rd (#5100), Spring Gulch Rd. (#5105), and the Nine Mile Road access onto BLM Rd #5100.

Saquache County: Poncha Loop Rd. (#5325), Clover Creek Rd. (#5330), Dorsey Creek Rd. (#5331), Noland Gulch Loop Rd. (#5305), Clayton Cone Rd. (#5310), Findley Gulch Rd. (#5290), Poison-Dry Loop Rd. (#5275), Cabin Draw Rd. (#5265), Ward Gulch Rd. (#5260), Antelope Creek Rd. (#5250), Trickle Mountain Rd. (#5255), Big Dry Gulch Rd. (#5242), Taylor Canyon Rd. (#5248), Decker Creek Rd. (#5335) and Squaw Creek Rd. (#5245).

DATES: This closure is in effect from March 1 through May 31 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, San Luis Resource Area, 1921 State Street, Alamosa, CO 81101 or District Manager, Canon City District Office, 3170 E. Main, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Julie Howard, Area Manager at (719) 589–4975.

SUPPLEMENTARY INFORMATION: Roads will be reopened to travel when dry soil conditions allow. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order will be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the San Luis Resource Area Office and the Canon City District Office.

Donnie R. Sparks,

District Manager.

[FR Doc. 95–3169 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–JB–M

[NM–930–1430–01;KSNM 94549]

Notice of Proposed Modification of Public Land Order (PLO) 5605; Transfer of Jurisdiction in Leavenworth County, Kansas

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The United States Department of Justice (DOJ) has requested a modification of PLO 5605 to formally change the use and benefitting agency of 24 acres from a part of a Federal correction facility for the DOJ to a Frontier Army Museum under the Department of Army. The land has been and remains closed to surface entry and mining but not from leasing under the mineral leasing laws.

DATES: Comments should be received by May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115, 505–438–7593.

SUPPLEMENTARY INFORMATION: The DOJ proposes to modify the withdrawal made by PLO 5605 dated October 13, 1976, which withdrew the following described land from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws:

Sixth Principal Meridian

T. 8 S., R. 23 E.,

A tract of land situated in the N½NE¼ of sec. 26, more particularly described as follows:

Beginning at a concrete monument (#29) located in the NE¼ of sec. 26 on the Fort Leavenworth Military Reservation; thence S. 19°45′13″ E., 657.44 ft. along the reservation boundary, which is contiguous to the easterly boundary of the Federal Penitentiary under the jurisdiction of the DOJ, to a 4-inch bolt in Grant Avenue, said bolt being in the easterly boundary of said Federal Penitentiary, from which said bolt the bearing and distance to a reference iron pin formally in the north boundary line of the City of Leavenworth is S. 19°45′13″ E., 104.28 ft.; thence Westerly, approximately 914 ft. along the north right-of-way line of Metropolitan Avenue to the east line of the Kansas Power and Light (KPL) easement; thence N. 01°14′34″ E., 461.11 ft. along the east line of said KPL easement; thence N. 86°25′25″ E., 48.09 ft. along the east line of said KPL easement; thence N. 05°27′41″ W., 388.76 ft. to a point in the old boundary of the Fort Leavenworth Military Reservation the same being the east line of the said KPL easement; thence N. 71°55′09″ W., 409.20 ft. along said KPL easement and along said old boundary of said reservation to a point; thence Northerly along said KPL easement approximately 1000 ft., parallel to the north line of Metropolitan Avenue, to a point in the present boundary of Fort Leavenworth Military Reservation, said point being in the center of Corral Creek; thence in a Southerly direction upstream, along the center of the ditch, approximately 643 ft. along the present reservation boundary to a point, said point being in the old reservation boundary; thence Southeasterly, approximately 161 ft., along the present reservation boundary to the point of beginning.

The area described contains 24 acres more or less, in Leavenworth County.

On October 13, 1976, 269.60 acres within the Fort Leavenworth Military Reservation were withdrawn and reserved for use of the DOJ for use by the Bureau of Prisons in connection with the operation of the Leavenworth Federal Penitentiary. The DOJ has determined that 24 acres of this withdrawal is no longer needed for the Federal correction facility and has agreed to a transfer of the 24 acres to the Department of Army for the Frontier Army Museum. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification of use and transfer of jurisdiction may present their views in writing to the Deputy State Director, Resource Planning, Use, and Protection, BLM, at the above address.

Dated: January 25, 1995.

Gilbert J. Lucero,

State Director.

[FR Doc. 95–3171 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Availability of a Habitat Conservation Plan, Environmental Assessment, and Receipt of an Application for an Incidental Take Permit of Desert Tortoise Related to the Use of the Tuacahn School and Performing Arts Center Access Road, Ivins, Washington County, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Heritage Arts Foundation (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973. The Applicant has been assigned Permit Number PRT–798634. The requested permit, which is for a period not to exceed 2 years, would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*). The proposed take would occur as a result of further improvement and continued use of an access road to the Tuacahn School and Performing Arts Center (Tuacahn Center) in Ivins, Washington County, Utah. The road was constructed by the Applicant but has been deeded to the city of Ivins. It is anticipated that the road will be paved and will serve employees, students, and visitors of the Tuacahn Center.

The Applicant has prepared a habitat conservation plan and an environmental assessment for the incidental take permit application. This notice is provided pursuant to section 10(c) of

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the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the habitat conservation plan, permit application, and environmental assessment must be received within 30 days of the date of this publication.

ADDRESSES: Requests for any of the above documents and comments or materials concerning them should be sent to the Assistant Field Supervisor, Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The documents and comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor (See **ADDRESSES** above) (telephone (801) 524–5001, facsimile (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits the "taking" of any threatened or endangered species, including the desert tortoise. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

The Heritage Arts Foundation, a nonprofit foundation, is currently constructing the Tuacahn School and Performing Arts Center (Tuacahn Center) on an 80-acre parcel in Padre Canyon in the city of Ivins, Washington County, Utah. There is a 2.1 kilometer (1.3 mile) graded access road to the Tuacahn Center that was constructed 2 years ago. The access road and the Tuacahn Center site are known to be inhabited by the desert tortoise, a threatened species.

Development of the Tuacahn Center site and access road has occurred over the last several years without formal section 7 consultation or a section 10(a)(1)(B) incidental take permit under the Act. In a December 24, 1991, letter to the Applicant regarding a desert tortoise "presence or absence" survey of the site for the Tuacahn Center, the Service noted that the survey did not find concrete evidence that desert tortoises inhabited the site proposed for development. No live desert tortoises, cover sites (such as dens and burrows), or tracks were found. The Service further stated in the letter that due to the proximity of the desert tortoise in this project area there would always be the chance that one or more individuals could move onto the property that was to be developed or construction activities may impact active tortoise habitat. Additionally, the Service stated that if a tortoise was found on the property at any time, all construction and any other activity that may harm the animal should stop and the Service's Salt Lake City Office be notified immediately. At that time the Service would determine the best course of action. A surveyor was contracted by the Applicant to complete a desert tortoise "presence or absence" survey along the then-proposed access road, but the road was constructed before the survey was started and the surveyor decided not to conduct the survey Therefore, a desert tortoise "presence or absence" survey was conducted only on the Tuacahn Center site and not on the access road.

Two desert tortoises were found dead in 1994 on the access road, crushed by construction vehicles. As agreed to in a Stipulated Settlement (Agreement) between the Applicant and the U.S. Department of Justice dated August 17, 1994, the Applicant prepared a habitat conservation plan and applied for an individual section 10(a)(1)(B) incidental take permit from the Service. The habitat conservation plan addresses the further improvement and continued use of the Tuacahn Center access road. The Applicant prepared an environmental assessment as part of the permit application.

The Applicant considered two other alternatives—a no action alternative and an alternate access road location alternative. The Applicant rejected the no action alternative because a habitat conservation plan would not be pursued and no section 10(a)(1)(B) incidental take permit would be issued. This would violate the Agreement signed by the Applicant and the Justice Department. In addition, the road has already been constructed and the Tuacahn Center is 90 percent completed. Vehicle use of the road continues and is expected to increase once the Tuacahn Center opens. Without a section 10(a)(1)(B) permit, a risk of further unauthorized take of desert tortoises is possible. The second alternative that was considered and rejected was to move the access road to further minimize potentially adverse impacts to the desert tortoise. The current location of the access road crosses an area of continuous desert tortoise habitat, yet it is economically feasible to construct underneath crossings in a small area. A possible alternate location would be to move the access road's intersection with Snow Canyon Road to the north at the base of the talus slope up the mouth of Padre Canyon. Taking the access road along the base of the cliffs would impact a much larger area crossed by tortoises and impact other candidate species such as the chuckwalla (*Sauromalus obesus*) and gila monster (*Helorderma suspectum*).

Since 1991, the Washington County Commission has been developing a regional habitat conservation plan and section 10(a)(1)(B) permit application for take of desert tortoise in Washington County for the Upper Virgin River Recovery Unit. When finalized, this proposed regional habitat conservation plan will incorporate the Tuacahn Center project area and access road. The proposed Washington County regional habitat conservation plan is expected to be released by June 1995.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 3, 1995

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 95–3244 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of revised Outer Continental Shelf Official Protraction Diagrams (OPD's).

SUMMARY: Notice is hereby given that effective with this publication, the following revised outer continental shelf (OCS) Official Protraction Diagrams (OPD's) for the Cook Inlet/Shelikof Strait area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect revisions to previously published OPD's to correct a computational problem occurring along the UTM Zone Boundary. These OPD's should be used for the Offshore Program within the Cook Inlet/Shelikof Strait area.

Description	Date
NO 04–06, Ugashik	January 4, 1995
NO 05–02, Seldovia	January 4, 1995
NO 05–04, Afognak	January 4, 1995.
NO 05–05, Karluk	January 4, 1995.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 603, Anchorage, Alaska 99508–4302, Attention: Library, (907) 271–6435.

FOR FURTHER INFORMATION CONTACT: Technical comments or questions pertaining to these maps should be directed to Leasing and Environment, Chief, Leasing Activities Section, at the address stated above, or at (907) 271–6691.

Dated: January 30, 1995.

Judith C. Gottlieb,

Regional Director, Alaska OCS Region.

[FR Doc. 95–3167 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–MR–M

National Biological Service

State Partnership Program

AGENCY: National Biological Service, Interior.

ACTION: Notice.

SUMMARY: The National Biological Service (NBS) is announcing the availability of funds to States for research, inventory and monitoring, and the dissemination of information relating to biological resources. This program is intended to encourage and reinforce cooperative working relationships between NBS and the States, and among States and their agencies. It is anticipated that the resulting cooperation and collaboration will produce and make available more and better biological information at less cost by leveraging public funds for greater efficiency.

DATES: Materials concerning this program, proposals, and applications for Federal assistance must be received by March 22, 1995. Decisions on the proposals will be made in April 1995.

ADDRESSES: Proposals should be sent to the National Biological Service State Partnership Program; Mail Stop 3070–MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Anne Young, Mail Stop 3070–MIB, 1849 C Street NW., Washington, DC 20240, telephone 202–482–3188, or on internet as YoungM@Mail.fws.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The NBS is developing a multi-dimensional State Partnership Program intended to build upon relationships between States and the Department of the Interior (DOI) bureau elements that have been transferred to NBS with the goals of (1) fostering collaborative efforts within and between States to increase the availability of sound ecological and biological science to decisionmakers; (2) producing information and products regarding biological and ecological resources useful for decisionmaking to all levels of government and the private sector; (3) promoting more efficient use of both NBS and State funding by fostering collaboration, and (4) promoting overall closer relationships with the States. This program is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e). NBS solicits applications for project funding.

B. Background

The NBS was created in November 1993, as an independent science bureau in DOI. The Secretary of the Interior issued Order No. 3185 on January 5, 1995, changing the name of "the National Biological Survey" to "the National Biological Service" to more accurately reflect the mission of the agency. Sec. 6.b. of Order No. 3185 reads: "States have significant resource management responsibilities, including species other than those entrusted to the Federal Government. Also, they hold much of the information necessary to understand important resource issues. The NBS will work with States to understand the biological resource issues and share data, working with them to establish common protocols and standards for data collection, analysis, and dissemination."

The National Academy of Sciences (NAS) 1993 report on the NBS, A Biological Survey for the Nation, stated that effective conservation and protection of the Nation's resources depended on strong partnerships between Federal and State agencies. The NBS concurs strongly and seeks to expand its interactions with States. A key to NBS success is the development of close collaboration between NBS and States, and among various State agencies.

States have diverse capabilities for collecting data useful to a variety of decisionmakers. Each State has legal mandates for conserving and managing its fish and wildlife resources for values including cultural, aesthetic, educational, scientific, economical, and recreational. The NBS inherited constructive working relationships with States through the Cooperative Fish and Wildlife Research Unit programs and a wide variety of programs and projects at the Fish and Wildlife Research Centers now generally referred to as Science Centers—and other field units. NBS therefore is keenly aware of the array of biological information and expertise available from State agencies, and how many of their missions and goals correlate well with NBS programs.

C. Availability of Funds

The NBS is inviting State agencies and institutions whose primary focus is on natural resources to submit applications for funding for Fiscal Year 1995. The total funding available for Fiscal Year 1995 is $600,000. These monies will be provided to successful applicants on a competitive basis. In order to maximize the number of States able to participate, there is no minimum project cost. The maximum project cost will be $150,000. Proposals showing matching funds and in-kind contributions are encouraged as are proposals that are submitted as collaborative projects among State entities or involving two or more States.

D. Eligibility Requirements

Any agency or instrumentality of the several States, The District of Columbia, and all Territories, Possessions and Commonwealths of the United States, that conducts natural resource identification, monitoring, or research, may apply.

E. Application Process

Any parties interested in obtaining more information from the NBS State Partnership program and/or information on how to apply for available funds should write to: The National Biological Service, State Partnership Information Request, Mail Stop 3070–MIB, 1849 C Street NW., Washington, D.C. 20240, Attn: Mr. Robin O'Malley; or Internet: O'MalleyR@Mail.fws.gov

All requestors will receive an information package with detailed application instructions including the proposal format, the criteria for funding, the methods by which proposals will be selected, a description of NBS programs and priorities for FY 1995, a list of NBS contacts for the specific areas, and an Application for Federal Assistance (Standard Form 424).

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F. Dates

Proposals and Applications for Federal Assistance must be submitted to the above address by March 22, 1995. Decisions on the proposals will be made in April 1995.

F. Eugene Hester,

Deputy Director, NBS.

[FR Doc. 95-3159 Filed 2-8-95; 8:45 am]

BILLING CODE 4310-DP-P

Success With Species at Risk Initiative

AGENCY: National Biological Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Biological Service (NBS), Office of Inventory and Monitoring, is establishing a Success With Species at Risk Initiative to develop scientific information on the status and trends of sensitive species and ecosystems, particularly with respect to the relationship of habitats to abundance and distribution, and with special emphasis on producing information needed by or useful to public and private land managers.

The goal of the initiative is to fund projects, on a wide range of taxa, that will generate information and alternatives that lead to the stabilization of declining populations of sensitive species, and special attention will be focused on the U.S. Fish and Wildlife Service Category 2 species list compiled under the authority of the Endangered Species Act. Information will be shared with the U.S. Fish and Wildlife Service for use in listing determinations. Information may also lead to removal of species from the candidate list.

DATES: Completed project proposals and Federal Assistance forms (Standard Form 424, etc.) must be received by the NBS within 45 days after publication of this notice in the **Federal Register**. Notification of project selection and funding will be made as early as April 26, 1995.

ADDRESSES: Parties interested in this initiative should request an information package from: National Biological Service, Mail Stop 3660–MIB, 1849 C Street NW, Washington, D.C. 20240, attn. John Mosesso or Wendy Kuhne.

FOR FURTHER INFORMATION CONTACT: John Mosesso or Wendy Kuhne, Mail Stop 3660–MIB, 1849 C Street NW, Washington, D.C. 20240, E-Mail: MosessoJ@mail.fws.gov or KuhneW@mail.fws.gov, or telephone 202–482–3774.

SUPPLEMENTARY INFORMATION:

A. Purpose

Notice is hereby given that the National Biological Service (NBS), Office of Inventory and Monitoring, is establishing a Success With Species at Risk Initiative to develop scientific information on the status and trends of sensitive species and ecosystems, particularly with respect to the relationship of habitats to abundance and distribution, and with special emphasis on producing information needed by or useful to public and private land managers.

This notice is to provide an opportunity for scientists, conservationists and land managers from academia, State agencies, private organizations and industry, and Native American Tribes and Nations to participate in this initiative through research, inventory and monitoring activities. The initiative involves short-term projects that generate information on sensitive species and particularly those presently listed on the U.S. Fish and Wildlife Service Category 2 species list.

The goal of the initiative is to fund projects, on a wide range of taxa, that will generate information and alternatives that lead to the stabilization of declining populations of sensitive species, and special attention will be focused on the U.S. Fish and Wildlife Service Category 2 species list compiled under the authority of the Endangered Species Act. Information will be shared with the U.S. Fish and Wildlife Service for use in listing determinations. Information may also lead to removal of species from the candidate list.

This initiative is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 USC 742a–742j, as amended) and the Fish and Wildlife Coordination Act (16 USC 661–667e, as amended).

B. Background

The NBS is an independent science bureau in the Department of the Interior (DOI) that gathers and analyzes biological information and serves as an information clearinghouse, providing broad access to the widest possible range of factual data on the status and trends of the Nation's biota and the potential effects of land management choices.

The Secretary of the Interior issued Order No. 3185 on January 5, 1995, changing the name of the "National Biological Survey" to the "National Biological Service" to more accurately reflect the mission of the agency. Sec. 4 of Order No. 3185 reads: "The primary role of the NBS is to meet the biological research needs of other organizations within the Department of the Interior, other Federal agencies, States, local entities, Tribes, and private and nonprofit users." The initiative addresses the role of NBS by gathering scientific information on sensitive species and their habitats. This information serves public and private landowners who are interested in sustaining biological resources. It also provides understanding to help avoid conflicts that can both stymie development and degrade natural habitats.

The Success With Species at Risk Initiative will develop scientific information and alternatives to assist Federal, State, and other land managers in their decisions regarding the protection of sensitive species and habitats and to allow the U.S. Fish and Wildlife Service to remove Category 2 species which do not merit further consideration.

C. Availability of Funds

Through this initiative, the NBS invites proposals for funding for Fiscal Year 1995. The total funding available for the fiscal year is up to $1 million. Monies will be provided to successful applicants on a competitive basis. In order to maximize the number of proposals there is no minimum project cost. The maximum project cost will be $100,000. When the biology of the study species dictates, monies awarded in Fiscal Year 1995 may be carried over into FY 1996, for the purposes of completing on-going field research.

D. Eligibility Requirements

The NBS will accept project proposals for this initiative from State agencies, private and industry groups, academic institutions, and Native American Tribes and Nations. Proposals will be evaluated by NBS scientists with respect to their scientific merit, partnership opportunities, quality of investigators and institutions, potential for providing useful information to resource managers, ecosystem and landscape benefits, potential for conservation agreements, possibilities for cost sharing, and demonstration of progress or successful completion in 1995.

E. Application Process

Parties interested in participating in this initiative should request an information package which will include detailed application forms, Federal Assistance forms (Standard Form 424, etc.), proposal format requirements, etc. from: National Biological Service, Mail Stop 3660–MIB, 1849 C. Street NW, Washington, D.C. 20240, attn. John Mosesso or Wendy Kuhne, or *E-Mail:* MosessoJ@mail.fws.gov KuhneW@mail.fws.gov or *Telephone:* 202–482–3774.

F. Dates

Completed project proposals and Federal Assistance forms (Standard Form 424 etc.) must be received by the NBS on or before March 27, 1995.

Notification of project selection and funding will be made as early as April 26, 1995.

F. Eugene Hester,

Deputy Director, National Biological Service.

[FR Doc. 95-3160 Filed 2-8-95; 8:45 am]

BILLING CODE 4310-DP-P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS, Room 930B, N.S., Washington, DC 20523.

Date Submitted: January 27, 1995.

Submitting Agency: U.S. Agency for International Development.

OMB Number: None.

Form Number: None.

Type of Submission: Existing collection in use without OMB Control Number.

Title: Agency for International Development Acquisition Regulations (AIDAR) Clause 752.70.26.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) of 1961 authorizes USAID to contract with any corporation, international organization, or other body or persons in or out of the United States in furtherance of the purposes and within the limitations of the FAA. USAID presently administers some 500 contracts for technical services with total estimated costs of approximately $10 billion dollars. To determine how well contractors are performing to meet the requirements of the contract, USAID requires periodic performance reports from contractors. The performance reporting requirements are contained in the USAID Acquisition Regulations (AIDAR) clause 752.70.26. USAID has recently revised this clause to be responsive to the National Performance Review's (NPR) procurement reform agenda which emphasizes outputs over inputs. Whereas the reports required by the AIDAR clause focused on the process and compliance with regulations, it now focuses on performance and progress toward meeting contract objectives.

Annual Reporting Burden: Respondents: 250, Annual responses: 1000; Annual burden hours: 4000.

Reviewer: Jellery Hill (202) 395–7340, Office of Management and Budget, Room 3201; New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1995.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 95-3272 Filed 2-8-95; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-368]

Notice of Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Yuasa Corporation and Yuasa-Exide, Inc.

In the Matter of Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 6, 1995.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, S.W., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 3, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-3295 Filed 2-8-95; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 394 (Sub-No. 14)]

Cost Ratio For Recyclables—1995 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Establishment of recyclables rate caps.

SUMMARY: The Commission has calculated proposed 1995 revenue-to-variable cost (r/vc) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The r/vc ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). Because URCS develops different variability percentages for

different railroads, the rules (49 CFR Part 1145) allow separate r/vc ratio ceilings for individual railroads. The proposed national average r/vc ratio for 1995 is 139.5%. Ratios are also proposed for individual class I railroads and for the Eastern region and the Western region. The Commission is deferring initiation of the fourth annual compliance proceeding.

EFFECTIVE DATE: March 1, 1995, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239; or H. Jeff Warren, (202) 927–6243. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423 or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

This decision will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant or adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321(a), 10731; 5 U.S.C. 553.

Decided: January 27, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3249 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 9; Notice of Proposed Revision of Procedural Schedule.

SUMMARY: The Commission is seeking public comments on the applicants' proposal to revise the procedural schedule adopted in Decision Nos. 4 and 5 in this proceeding, served October 5, 1994, and November 10, 1994, respectively, to provide for issuance of a final decision within 165 days from the date on which the Commission decision containing notice of shareholder approval is served. To facilitate meeting that deadline and to help narrow the focus to the relevant issues, the Commission is proposing page limitations for certain filings and is considering issuing a preliminary scoping order.

DATES: Written comments must be filed with the Commission no later than February 21, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to the Honorable Stephen L. Grossman, FERC, Office of Hearings, 825 North Capitol Street, NE, Washington, D.C. 20426 and to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon or Dugie Standeford, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On October 13, 1994, an application was filed for approval of Burlington Northern, Inc.'s (BNI) acquisition of, control of, and merger with Santa Fe Pacific Corporation (SFP), the resulting common control of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) by the merged company, the consolidation of BN and Santa Fe railroad operations and the merger of BN and Santa Fe. Applicants also seek exemption from regulation for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company [Finance Docket No. 32549 (Sub-No. 1)] and for 11 construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)]. We accepted the application in our Decision No. 5, served and published in the **Federal Register** on November 10, 1994 (59 FR 56089), and we set certain filing dates under the procedural schedule previously adopted in our Decision No. 4, served October 5, 1994.

In Decision No. 7, served December 5, 1994, we granted the requests of several parties and postponed the procedural schedule set forth in Decision Nos. 4 and 5 pending the outcome of an SFP shareholder vote. In Decision No. 7, we stated that upon approval of the proposed BNI/SFP merger by the shareholders, we would immediately issue a new schedule requiring the first comments to be filed 30 days later and adjusting other schedule dates accordingly. That shareholder vote has been postponed several times and is now scheduled for February 7, 1995.

In New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995) (60 FR 5890, January 31, 1995), we are seeking comments on our proposed establishment of more timely procedures for processing applications for major and significant rail combinations. In the January 26, 1995 Notice of Proposed Rulemaking, we gave all interested parties until March 2, 1995, to file written comments. We also served a copy of the notice on all parties on the service list in this merger proceeding and asked for comments on whether this case should be governed by the schedule originally adopted or the schedule proposed in Ex Parte No. 282 (Sub-No. 19).

By petition filed January 27, 1995, BNI, BN, SFP, and Santa Fe request that we adopt a modified, expedited procedural schedule which tracks the schedule proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19) in place of the original schedule. We are now seeking public comments on this proposal by the applicants to revise the procedural schedule previously established in this proceeding to provide for the service of a final decision no later than 165 days from the date the Commission serves its decision containing notice of shareholder approval of the proposed merger, as set out in Appendix A to this Notice. Additionally, to facilitate our meeting this deadline and to better focus the filings on relevant issues, we are proposing page limitations on all filings that should not require extensive evidentiary submissions. The specific limitations are set out in Appendix A to this notice. These limits would not extend to tables of contents, prefaces, tables of authorities, summaries of argument, and other introductory materials. Further, to help narrow the focus to relevant issues, we are considering issuing a preliminary scoping analysis immediately after the filings due on day N+30 in Appendix A. We seek public comments on the proposed page limitations and scoping order. Given that the procedural schedule proposed here tracks the procedural schedule we are proposing in Ex Parte No. 282 (Sub-No. 19) for all major and significant consolidations, we also seek comments from any interested person on whether we should impose similar page limitations and employ a preliminary scoping analysis for future transactions under those proposed rules as well.

In Ex Parte No. 282 (Sub-No. 19), we noted that a vital element in carrying out the proposed expedited merger procedures is strict compliance with the Commission's environmental rules at 49 CFR Part 1105. These rules provide that environmental assessments normally be prepared in mergers, consolidations or acquisitions of control involving significant changes in operation or rail line abandonments and construction. If a merger is likely significantly to affect the environment, the National Environmental Policy Act (NEPA) requires the Commission to prepare an environmental impact statement (EIS).

To expedite the NEPA environmental review process, we have proposed in Ex Parte No. 282 (Sub-No. 19) that applicants be required to consult with the Commission's Section of Environmental Analysis (SEA) with, or prior to, the filing of their prefiling notices for all mergers involving the preparation of environmental documentation. In the case of mergers involving an environmental assessment, the new merger procedures would require that the applicant submit, with its application, a preliminary draft environmental assessment (PDEA), to be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b) of our environmental rules. SEA would then use the PDEA to prepare a draft environmental assessment for public comment.

In their January 27, 1995 petition, applicants in this proceeding point out that they have already submitted a comprehensive environmental report. According to applicants, that report, prepared by the third-party consulting firm, fully complies with the Commission's proposed requirement for the submission of a PDEA. Applicants further claim an exemption from the requirements of filing historical reports under 49 CFR 1105.8 and have advised the Commission that no structure which is 50 years old or older will be affected by the proposed merger. According to the applicants, their environmental report shows that the proposed consolidation will not result in any significant environmental impacts sufficient to require the preparation of an EIS. Finally, applicants state that their third-party consultant, already at work under SEA's supervision, is engaged in a detailed review of the environmental aspects of the proposed merger and that the current workplan calls for completion of an environmental document, following public comment, by early July 1995. Applicants assert that there is no reason to deviate from the expedited schedule contemplated in Ex Parte No. 282 (Sub-No. 19) to ensure compliance with the NEPA review process.

The filing of a PDEA is a predicate to the expedited schedule we proposed in Ex Parte No. 282 (Sub-No. 19). We also cautioned that mergers that involve actions that significantly affect the environment may require the preparation of an EIS, and that such a requirement would make it impossible to follow a 180-day schedule. Rail construction is such an action and the application contains requests for approval of 11 construction projects. We solicit further comments from the applicants and the parties on these environmental questions and suggestions on how to complete the environmental review process for the merger within the limits of the schedule proposed by the applicants.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 2, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

APPENDIX A.—PROPOSED REVISED, EXPEDITED PROCEDURAL SCHEDULE

N	Date Commission serves decision containing notice of shareholder approval on all parties.
N+5	Discovery conference on application held.
N+30	Comments and protests due on the application (not to exceed 50 pages); requested conditions due; description of anticipated inconsistent and responsive applications due.
N+35	Discovery conference on comments, protests and conditions held.
N+60	Inconsistent and responsive applications due. Response to comments, protests, conditions and rebuttal in support of primary applications due (not to exceed 100 pages).
N+65	Discovery conference on inconsistent applications held.
N+75	Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
N+90	Response to inconsistent and responsive applications due (not to exceed 75 pages). Rebuttal in support of comments, protests, and conditions to the primary application due (not to exceed 50 pages).
N+100	Rebuttal in support of inconsistent and responsive applications due (not to exceed 50 pages).
N+110	Briefs due, all parties (not to exceed 50 pages).
N+125	Oral argument (at Commission's discretion).
N+135	Voting Conference (at Commission's discretion).
N+165	Date for service of decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 95–3251 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

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[Finance Docket No. 32636]

Baltimore and Annapolis Railroad Company—Acquisition and Operation Exemption—Mid Atlantic Railroad Co., Inc.

Baltimore and Annapolis Railroad Company (B&A), a non-operating entity,[1] has filed a notice of exemption to acquire and operate approximately 75.9 miles of rail line from Mid Atlantic Railroad Co., Inc. The lines extend: (1) From Mullins, SC (milepost AL 326.0) to Whiteville, NC (milepost AC 289.0); and (2) from Chadbourn, NC (milepost ACH 297.2) to Conway, SC (milepost ACH 336.1). B&A states that the acquired property will be operated by a division of B&A. Consummation was scheduled to take place on or before January 15, 1995.

Any comments must be filed with the Commission and served on: Kenneth Pippin, 100 West Maple Road, Linthicum, MD 21090.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3250 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 474X)]

CSX Transportation, Inc.—Abandonment Exemption—In Warren County, NC

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.28 miles of rail line extending (1) from milepost S–98.4 at Norlina to milepost S–100.9 at Ridgeway and (2) from milepost SA–115.55 at Norlina to the end of the track at milepost SA–114.77, in Warren County, NC.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 11, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 21, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 14, 1995. Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3253 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–397 (Sub-No. 3X)]

Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—In Tulare and Fresno Counties, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts Tulare Valley Railroad Company (TVR) from the prior approval requirements of 49 U.S.C. 10903 et seq. to abandon 55.7 miles of rail line between: (1) Milepost 51.0 near Lac Jac and milepost 67.0 near Calwa, in Fresno County, CA, a distance of 16 miles; (2) milepost 49.8 near Reedley and milepost 38.5 near Cutler, in Tulare County, CA, a distance of 11.3 miles; (3) milepost 19.0 near Cutler and milepost 38.0 near Exeter, in Tulare County, a distance of 19.0 miles; and (4) milepost 20.6 near Wyeth and milepost 11.2 near Orange Cove, in Tulare County, a distance of 9.4 miles. In addition, pursuant to 49 U.S.C. 10505, the Commission exempts TVR from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over 1.2 miles between milepost 51.0 near Lac Jac and milepost 49.8 at Manning Avenue in Reedley. The exemptions are subject to historic, environmental and standard labor protective conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on March 11, 1995. Formal expressions of intent to file financial assistance offers[1] under 49 CFR 1152.27(c)(2) must be filed by February 21, 1995. Petitions to stay must be filed by February 24, 1995. Requests for a public use condition must be filed by March 1, 1995. Petitions to reopen must be filed by March 6, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–397 (Sub-No. 3X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Mark H. Sidman, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, NW, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 26, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3254 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:00 a.m., Wednesday, March 1, 1995.

Place: Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

Status: Open.

Matters to be Considered: Office of Justice Programs briefing on the Violent Offender Incarceration Grant Program, the Crime Bill provision assigned to NIC, pending amendments to the Crime Bill, update on the jail mental health policy statement, NIC's budget and funding, NIC's FY 1996 goals and program plan recommendations, and a briefing on the National Institute of Justice's Corrections research agenda.

For Further Information Contact: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 95–3262 Filed 2–8–95; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Request for Proposals for OSHA Training Institute Education Centers; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of change of date.

SUMMARY: This notice changes the deadline date for receipt of applications for OSHA Training Institute Education Centers previously published in the **Federal Register** December 13, 1994 (59 FR 64213). The date for receipt of applications has been extended from February 24, 1995, to March 17, 1995.

Dated: February 3, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–3202 Filed 2–8–94; 8:45 am]

BILLING CODE 7500–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 95–1]

General Provisions—Copyright Restoration of Certain Berne and WTO Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Policy Decision and Public Meeting.

SUMMARY: The Copyright Office publishes this notice to inform the public about its obligations concerning restoration of certain copyrights under the Uruguay Round Agreements Act (URAA) signed into law on December 8, 1994. This Act restores copyright in certain works effective January 1, 1996, and requires the Copyright Office to establish procedures for filing notices of intent to enforce copyright and for registering works in which copyright has been restored. This notice summarizes the Act's copyright restoration provisions and informs the public that there will be an open meeting to solicit information and discuss implementation of the copyright provisions on March 20, 1995.

DATES: A public meeting will be held in Room 414 of the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., on March 20, 1995, beginning at 10:00 a.m. Interested parties should send a statement of interest and issues list to the address given below by March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION

I. Background

On December 8, 1994, President Clinton signed the Act which may be cited as the "Uruguay Round Agreements Act" (URAA), Pub. L. No. 103–465, 108 Stat. 4809. On December 15, 1993, the General Agreement on Tariffs and Trade (GATT) negotiators concluded the Uruguay Round which included an agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs). President Clinton signed on to the World Trade Organization Agreement (WTO Agreement) on April 15, 1994. The URAA was introduced on September 27, 1994.

The URAA is a complex and lengthy document covering many areas of United States trade. Title V, sections 501–534, of this Act contains several significant copyright amendments. They amend the software rental provision found in 17 U.S.C. 109(b) by eliminating the expiration or sunset date (October 1, 1995), amend Titles 17 and 18 to create civil and criminal remedies for "bootlegging" sound recordings of live musical performances and music videos, and add a new 17 U.S.C. 104A to restore copyright in certain foreign works.

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[1] On January 11, 1973, B&A filed an application in Docket No. AB–71 requesting permission to abandon operations over its entire line of track of 21.1 miles, extending from Clifford Junction in Baltimore City, MD, to the City of Annapolis, MD. In Baltimore and Annapolis R. Co. Abandonment, 348 I.C.C. 678 (1976), B&A was permitted to abandon operations over a portion of its line of railroad between Glen Burnie, MD, and Annapolis (approximately 15 miles).

On September 29, 1989, the Maryland Mass Transit Administration filed a notice of intent in Docket No. AB–71 (Sub-No. 2) (request for involuntary abandonment authority) to abandon the remaining portion of B&A's trackage between Clifford Junction and Glen Burnie (approximately 5.78 miles), for the purpose of constructing and operating a regional light rail transit system. B&A adds that in May 1991, the State took its right-of-way through a condemnation proceeding and constructed a passenger line (Central Light Rail Transit Line). As such, B&A presently holds no authority from the Commission.

[1] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

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II. Restoration of Copyright of Eligible Works

Section 514 of the URAA restores copyright protection in certain foreign works still under protection in a source country but in the public domain in the United States. It also grants protection to sound recordings fixed prior to February 15, 1972.[1] Copyrights in eligible foreign works are restored automatically from the "date of restoration." Since restoration is automatic, the owner of the restored copyright does not have to register this work. To qualify for restoration, a work must be an original work of authorship that is protected under subsection (a), is not in the public domain in the source country through expiration of the term of protection, and is in the public domain in the United States because of noncompliance with formalities, lack of subject matter protection in the case of a sound recording fixed before February 15, 1972, or lack of national eligibility. A further requirement to qualify is that, at the time the work was created, at least one author or rightholder (in the case of a sound recording) must have been a national or domiciliary of an eligible country; and if the work is published, it must not have been published in the United States within 30 days of first publication in the eligible country. Amended sec. 104A(h)(6).

An eligible country is one, other than the United States, that is a member of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or a member of the World Trade Organization (WTO) or is subject to a presidential proclamation that extends copyright restoration to works of that country on the basis of reciprocal treatment to the works of United States nationals or domiciliaries.

III. Effective Date of Restoration

Section 514(a) of the URAA provides that the initial date of restoration of a restored copyright is "the date on which the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the [URAA] enters into force with respect to the United States." Although questions have been raised about the actual date of copyright restoration established under section 514(a), in light of the entire URAA, the Statement of Administrative Action (SAA), the TRIPs Agreement, and other legislative history-related materials, the effective date of copyright restoration is January 1, 1996.

The SAA accompanying the legislation provides, in relevant part, that copyright will be restored on the date "when the TRIPs Agreement's obligations take effect for the United States."[2] The TRIPs Agreement states that no Member, including the United States, "shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Agreement Establishing WTO."[3] Since the WTO came into effect on January 1, 1995, the TRIPs Agreement's obligations take effect for the United States on January 1, 1996. Consequently, January 1, 1996, is the date on which copyright will be restored under the URAA.

This conclusion is amply supported by the legislative history of the URAA and the practical necessities surrounding implementation of the restoration provision. The Joint Report on the Senate version of the URAA bill specifically states that the "bill would automatically restore copyright protection for qualifying works * * * one year after the WTO comes into being."[4] Furthermore, the Justice Department predicated its memorandum to the General Counsel to the United States Trade Representative as to the constitutionality of the restoration provisions on the date of restoration being January 1, 1996.[5] Finally, the URAA requires the Copyright Office to publish rules governing the filing of notices of intent to enforce a restored copyright 90 days before the day that copyright restoration takes place.[6] Because this publishing requirement would have been impossible to accomplish if the effective date were January 1, 1995, the only reasonable interpretation of the URAA is that the effective date of restoration is January 1, 1996.

IV. Notification to Reliance Parties

Concern for Reliance Parties

Congress was concerned about the effect of restoring copyrights to works already in the public domain; some of which are being actively and legally exploited in the United States. The URAA refers to the businesses and individuals using such works as reliance parties and immunizes them for their acts prior to the date of automatic copyright restoration. Reliance parties must stop reproducing any work in which a copyright is restored and must not prepare new derivative works that reproduce significant elements of a work on the date these parties have effective notice that an owner intends to enforce the restored work. This effective notice date is either the date the Copyright Office publishes in the **Federal Register** the list identifying the works on which notices of intent to enforce have been filed or the date the reliance party received actual notice of the owner's intent to enforce the restored copyright.

Filing Notices of Intent to Enforce Copyright

The URAA gives copyright owners of restored copyrights two ways to serve notice of their intent to enforce the copyright on reliance parties. They may file an intent to enforce the restored copyright in the work with the Copyright Office or they may serve actual notice of the intent to enforce the restored copyright against a particular reliance party. If they choose the second way, they will have to notify each reliance party who may have used a work and identify the use. Consequently, it seems possible that many owners of copyright in restored works will choose to file notices of intent to enforce copyright with the Copyright Office. Based on the notices received, the Office will publish lists of notices of intent to enforce restored works beginning in May 1996 and continuing at regular intervals not to exceed four months thereafter.

The URAA specifies the minimum content of the notices of intent to enforce. It requires that the notice be signed by the owner or the owner's agent.[7] In addition to the signature, it must contain the title, including an English-language translation, and any other alternative titles known to the owner by which the restored work may be identified, the name of the owner, and an address and telephone number at which the owner can be located. Although the Office can ask for additional information, failure to provide such information will not invalidate the notice of intent.

Grace Period

Reliance parties have a 12 month grace period after they have been notified either by publication in the **Federal Register** or by actual notice to sell off previously manufactured stock, to publicly perform or publicly display the work, or to authorize others to conduct these activities. Except for reliance parties who created derivative works, reliance parties must cease using the work after the 12-month grace period unless they reach a licensing agreement with the copyright owner for continued use of the restored work. Subsection (d)(3) of amended section 104A contains special rules with respect to derivative works based on underlying foreign works in which copyright has been restored such as a translation of a foreign language work or a motion picture based on a book or a play.

Procedure for Notification

The Copyright Office will publish final regulations establishing the procedures for filing notices of intent to enforce by October 1, 1995. Owners of restored copyrights in eligible countries may begin filing notices of intent to enforce restored copyrights on January 1, 1996.

Registration of Restored Works

The URAA also directs the Copyright Office to establish procedures permitting the owners of restored copyright to file applications to register a claim to copyright simultaneously with the notice of intent. The Office will also publish these procedures by October 1, 1995.

V. Public Comment on Procedures for Notices of Intent to Enforce and Registration

The restoration provisions are complex, and we have a number of questions about their implementation. To assist us in identifying all of the issues and to move the process forward, we are soliciting public comment, including comment from both potential owners of restored works and potential reliance parties. We will hold a public meeting in Room 414 of the James Madison Memorial Building of the Library of Congress, 101 Independence Ave. S.E. at 10:00 a.m. on March 20. Parties wishing to attend the meeting should notify the Acting General Counsel by March 10, 1995, by writing to Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, calling (202) 707–8380, or via telefax: (202) 707–8366. Their notification should give the party's name, an indication of association, an address and telefax number and, if possible, identify the issues he or she wish to address. Since the Office will be publishing a Notice of Proposed Rulemaking after the March 20 meeting, it will accept comments on the implementation procedures through April 18, 1995. Any party who wishes to receive the Notice of Proposed Rulemaking should let the Office know.

With respect to the issues, we are focusing on the notices of intent to enforce and the registration procedures. For example, one question is what additional information should be included in the notices of intent to enforce? What should be the extent of the indexing record? Should the notices be integrated into the online files of the Copyright Office and made available on the Internet? Can, and should, the Office publish in the **Federal Register** at shorter intervals than the four months specified in the statute? Finally, what should the filing fee be?

With respect to registration, should there be a new registration form for restored copyrights? With respect to the author, for purposes of registration, should the author be the author as defined in section 201 of the United States copyright law or the author as determined by the law of the source country? Should the application form require a designation of the source country? Who should be listed as the claimant—the author as determined by the law of the source country (or, if the work is a sound recording, the rightholder) or the individual or entity that owns all of the restored rights in the United States on the date the application is submitted? If the answer is other than the party that the rights vested in, should a transfer statement be required? How detailed should a transfer statement be, that is, should it, for example, include the date of the transfer? What should the fee for registration be? With respect to the deposit of copies and phonorecords, should the current practices apply or should new provisions be crafted?

Dated: February 3, 1995.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–3255 Filed 2–8–95; 8:45 am]

BILLING CODE 1410–30–P

[1] URAA, title V, "Intellectual Property," sec. 514, "Restored Works." Further references to this section will be to the amended 104A.

[2] Congress specifically approved the Statement of Administrative Action (SAA). URAA sec. 101 (a)(2).

[3] Agreement on TRIPs, VI: Arrangements, Article 65.

[4] Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, Committee on Governmental Affairs of the United States Senate to accompany the Uruguay Round Agreements Act, S. 2467, S. Rep. No. 412, 103d Cong., 2d Sess. 225 (1994).

[5] See Memorandum from Chris Schroeder, Counsellor to the Assistant Attorney General, Office of Legal Counsel, United States Dept. of Justice, to Ira S. Shapiro, General Counsel, USTR, on Whether Certain Copyright Provisions in the Draft Legislation to Implement the Uruguay Round of Multilateral Trade Negotiations Would Constitute a Taking Under the Fifth Amendment (July 29, 1994).

[6] Amended sec. 104A(e)(1)(D)(i).

[7] Ownership of a restored work vests initially in the author or initial rightholder (if the work is a sound recording) of the work as determined by the law of the source country of the work. Amended sec. 104A(b).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–019]

Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of Draft Environmental Justice Strategy.

SUMMARY: Pursuant to EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, NASA has issued a Draft Environmental Justice Strategy (hereinafter referred to as the "Draft Strategy"). This Draft Strategy has been developed to ensure that environmental justice is made part of the Agency's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its actions on low-income populations and minority populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Riceo, and the Commonwealth of the Mariana Islands.

DATES: Comments on the Draft Strategy must be provided in writing to NASA on or before March 1, 1995.

ADDRESSES: Comments should be addressed to Mr. R.E. Hammond, Director, Environmental Management Division, NASA Headquarters, Code JE, 300 E Street SW., Washington, DC 20546. The Draft Strategy may be reviewed at the following location:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

In addition, the Draft Strategy may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(c) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(d) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(e) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(f) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(g) NASA, Kennedy Space Center, FL 32899 (407–867–2622).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

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(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(j) NASA, Marshall Space Flight Center, AL 35812 (205–544–4523).

(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Copies of the Draft Strategy are available free of charge by contacting Mr. R.E. Hammond, at the address or telephone number indicated herein or by contacting The National Center for Environmental Publications and Information, Post Office Box 42419, Cincinnati, Ohio 45202; Phone: 513–489–8190; FAX: 513–489–8695.

FOR FURTHER INFORMATION CONTACT: Mr. R.E. Hammond, 202–358–1095.

SUPPLEMENTARY INFORMATION: EO 12898 mandates that each Federal agency, to the maximum extent practicable, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on low-income populations and minority populations. An integral element of each agency's efforts to attain this goal is the development of an agencywide environmental justice strategy. NASA has requested that the National Environmental Justice Advisory Committee be afforded an opportunity to review and comment on the Agency's draft strategy before the NASA Final Environmental Justice Strategy is developed and issued. Similarly, to satisfy the intent of section 5–5(a) of the EO, public comments received will be taken into account in formulating the Agency's final strategy.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–3256 Filed 2–8–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–020)]

NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee.

DATES: Tuesday, February 28, 1995, 8:30 a.m. to 6 p.m.; and Wednesday and Thursday, March 1 and 2, 1995, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., February 28, 1995, Conference Room MIC 7, side A and B, and March 1 and 2, 1995, 9th floor Program Review Center, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities
—Program Reports for Magnetospheric Physics, Cosmic and Heliospheric Physics, Solar Physics, Ionospheric-Thermospheric-Mesospheric Physics
—Space Physics Research and Analysis Program.
—Suborbital Program
—Strategic Planning
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 3, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–3257 Filed 2–8–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: January 26, 1995.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–004

Form Number: NCUA 5300 and NCUA 5300S

Type of Review: Reinstatement, with change, of previously approved collection.

Title: Semiannual and Quarterly Financial and Statistical Report.

Description: The financial and operational information collected is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor federal credit unions and those credit unions, federal and state, whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Proposed changes to the 5300 Call Report are primarily in response to the increasing risks and complexity associated with today's investment environment and practices. On the Call Report Investment Schedule a new section has been added for reporting the aggregates of investments that are classified as *Held-to-Maturity, Available-for-Sale, and Trading.* These classifications are required for compliance with Statement of Financial Accounting Standards 115. To the Call Report balance sheet has been added a line for reporting *accumulated unrealized gains (losses) on available for sale securities.* Also, a new line has been added to the Investment Schedule, under the Miscellaneous section, for the amount of *investment in mortgage derivative products that are defined as high risk securities* per NCUA's Interpretive Ruling and Policy Statement 92–1.

Respondents: All credit unions.

Estimated Number of Respondents: 12,300

Estimated Burden Hours per Response: 8 hours.

Frequency of Response: Quarterly and semiannually.

Estimated Total Reporting Burden: 235,200 hours.

Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Milo Sunderhauf (202) 395–5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 95–3276 Filed 2–8–95; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Continued Management and Administration of a Stage Designer Fellows Project

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the continued management and administration of a Stage Designer Fellows program. The recipient of the Cooperative Agreement will be responsible for all aspects of the program including the solicitation of applications for a fellowship, convening of a panel for the selection process, the award of six fellowships of $15,000 each, the development and coordination of appropriate assignments for the Stage Designers, and the disbursement of funds to the fellows. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–04 in their written request and include two (2) self-addressed labels. Verbal request for the Solicitation will not be honored.

DATES: Program Solicitations PS 94–04 is scheduled for release approximately February 28, 1995 with proposals due March 28, 1995.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division

[FR Doc. 95–3277 Filed 2–8–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following 3 meetings:

Name: Special Emphasis Panel in Biological Science (1754).

Place: 4201 Wilson Boulevard, Arlington, VA 22230.

Date and time	Fellowship name	Room No.
February 28, 1995 8:30–5	Molecular Evolution	320
March 1, 1995 8:30–5		320
March 22, 1995 8:30–5	Biosciences Related to the Environment	330
March 23, 1995 8:30–5		330
March 24, 1995 8:30–5		360
March 29, 1995 8:30–5	Minority Postdoctoral	380
March 30, 1995 8:30–5	Research Fellowships	380

Agenda: To review and evaluate applications as part of the selection process for fellowships.

Type of Meeting: Closed.

Contact Person: Ms. Carter Kimsey, Program Manager, Biological Instrumentation & Resources, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 2230, (703) 306–1469.

Purpose of Meetings: To provide advice and recommendations on applications for postdoctoral fellowships submitted to NSF for financial support.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information and personal information on individuals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3225 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191)

Date and time: February 27–28, 1995, 8:00 a.m. to 5:00 p.m.

Place: Rooms 365, 370, 390, NSF, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Dr. Francis Wodarczyk, Program Director, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1856.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Faculty Early Career Development (CAREER) Program in Chemistry.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C.552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3226 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date and Time: February 27–28, 1995; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: William McHenry, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1632.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Research Careers for Minority Scholars.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

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Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3227 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information Robotics and Intelligent Systems

Date and Time: February 27–28, 1995, 8:00 a.m. to 5:00 p.m.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202

Type of Meeting: Closed

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge Models & Cognitive Systems, Robotics and Machine Intelligence, and Database & Expert Systems proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals, These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–3228 Filed 2–8–95; 8:45 am]

BILLING CODE 4555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: February 28, 1995, 8:30 am to 5:00 pm.

Place: National Science Foundation Conference Room 1060, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Amar Bhalla, Program Director, Ceramics, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning support for NSF Faculty Early Career Development (CAREER) Program.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act

Dated: February 6, 1995

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3229 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: March 2–3, 1995; 8:30 a.m til 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1020, Arlington VA 22230.

Type of Meeting: Closed.

Contact Person: Dr Keith Crank, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1885

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals concerning the University Industrial Cooperative Research Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–3230 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the Haddam Neck Technical Specifications (TS) to support Cycle 19 operation with the use of Westinghouse Vantage 5H fuel assemblies with up to 5.0 weight percent (w/o) nominal fuel into the reactor core. The proposed action is in accordance with the licensee's amendment request dated May 17, 1994, as supplemented September 9, 1994.

The Need for the Proposed Action

Beginning with Cycle 19, the fuel vendor for the licensee will change from Babcock & Wilcox Fuel Company (B&WFC) to Westinghouse (W). CYAPCO plans to operate Cycle 19 for 490 effective full power days (EFPD) with approximately one-third of the core containing Westinghouse Vantage 5H fuel assemblies. The use of the Westinghouse fuel will require the performance of various analyses to ensure safe operation of the plant. The TS change is necessary to allow the Haddam Neck Plant to load up to 5.0 weight percent (w/o) nominal fuel into the reactor core and to incorporate by reference the appropriate methodologies used for the fuel analyses into the TSs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The staff has concluded that the proposed TS changes involving the change in the linear heat generation rate (LHGR) uncertainties, use of the WRB-1 methodology, removal of cycle specific references and inclusion of additional references are primarily administrative in nature and support the use of the Westinghouse Vantage 5H fuel assemblies in the Haddam Neck reactor core. The plant will continue to be operated safely with the use of the 5.0 w/o nominal U–235 fuel with its slightly different length and weight and the changes in this package associated with the WRB-1 correlation, the limitation on void fraction, the uncertainties associated with LHGR, or the administrative changes to Section 5.0 and 6.9, since plant operation and fuel placement are still predicated on the limitations contained in the TSs, Technical Report for Supporting Cycle Operation and plant procedures. The use of the Westinghouse methodologies for Cycle 19 operation are an application of a generically approved methodology by the NRC. The staff has reviewed the plant specific application to assure that the cycle specific parameters have been chosen to ensure the plant is operated safely.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The environmental impacts of transportation resulting from the use of more highly enriched fuel and extended burnup rates have been discussed in the generic stafff assessment entitled "NRC Assessment of the Environmental Effects of transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322). As indicated therein, the environmental cost contribution of the proposed increase in fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated May 17, 1994, as supplemented September 9, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For The Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3231 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

Connecticut Yankee Atomic Power Co.; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–213]

The U.S. Nuclear Regulatory Commission (the "Commission") is considering issuance of an amendment to Facilitate Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise Technical Specifications (TS) 3.1.1.3, "Shutdown Margin," and TS 3.3.3.9, "Boron Dilution Alarm," and their associated Bases sections and add a new TS 3.1.1.4, "Shutdown Margin." TSs 3.1.2.2, 3.1.2.4, and 3.1.2.6, will be revised to reference TS 3.1.1.3 rather than specify the required shutdown margin at 200° F. In addition, editorial changes will be made to a reference on TS pages 3/4 1–13 and 14 to reletter surveillance specification 4.5.1.c.3 to 4.5.1.b.3. The proposed action is in accordance with the licensee's amendment request dated September 7, 1994.

The Need for Proposed Action

During the development of the core design for the upcoming Cycle 19, CYAPCO determined that the incore neutron sources would have to be relocated during the refueling outage due to mechanical considerations concerning the new fuel design. As part of the determination of the new locations for these sources, a review of the adequacy of the existing source locations was made. This review identified that the incore neutron sources were located too close to the excore detectors. As a result of the current incore neutron locations, the response of the excore detectors to a dilution event did not bound the response assumed in the safety analysis. The time allowed for operator action to terminate an inadvertent boron dilution event was less than the required 15 minutes from the time of the alarm to criticality. TS changes are being proposed to the shutdown margin requirements for Modes 4 and 5 and the boron dilution setpoint to assure that the required margin for operator action in a boron dilution accident is met. The associated Bases sections will be modified to reflect the new shutdown margin and boron dilution setpoint. In addition, an administrative change to three TSs will be made to reference the shutdown margin TS rather than provide the shutdown margin requirements and two editorial changes to correct two references to surveillance specifications 4.5.1.c.3 that had been

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related to 4.5.1.b.3 in a previous TS change.

Environmental Impacts to the Proposed Action

The proposed changes will provide additional time for operator action in a boron dilution event to assure that there is at least 15 minutes between the time to boron dilution alarm assuming an alarm penalty of 1.3 and the time to criticality for Modes 1 through 5 and 30 minutes for Mode 6 for operator action. The Commission has completed its evaluation of the proposed TS changes and concludes that the combination of the shutdown margin increases and the lower credited boron dilution alarm setpoint assuming an alarm penalty factor of 1.3 will provide assurance that the criteria for operator action will be met. In addition, the neutron sources will be moved further away from the excore detectors for the Cycle 19 startup (approximately March 1995). This will provide additional margin in the alarm setpoint as the need for any penalty factor will be significantly reduced or completely eliminated. In addition, the staff agrees that the change in references in TS 3.1.2.2, 3.1.2.4, and 3.1.2.6, and Surveillance Specifications 4.1.2.3.1 and 4.1.2.4.1 are editorial in nature.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official has no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated September 7, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06547.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3232 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) 3.5.2.a by granting a one-time extension of the allowable Residual Heat Removal (RHR) pump outage time for mechanical seal replacement and related modifications from 72 hours to 120 hours. This exception would only be used one time per pump and expire on April 30, 1995. The amendment would clearly define the times in which each RHR pump and associated RHR heat exchanger must be restored to an operable state.

The proposed action is in accordance with the licensee's application for amendment dated August 16, 1994, as supplemented by letter dated January 10, 1995.

The Need for the Proposed Action

The proposed action would reduce the potential for an unnecessary plant shutdown, thus, eliminating a source of unnecessary challenges to the plant's safety systems.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that one-time extension of the RHR pump outage time from 72 hours to 120 hours to acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 16, 1994, as supplemented by letter dated January 10, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3233 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–413]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–35 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Unit 1, located in York County, South Carolina.

The proposed amendment request would propose the renewal for Catawba Unit 1 Cycle 9 operation of the steam generator tube inspection bobbin probe voltage-based interim plugging criteria that had been previously approved for Cycle 8. Approval of this amendment will preclude unnecessary plugging or repairing tubes by sleeving due to the occurrence of outer diameter initiated stress corrosion cracking (ODSCC) at the tube support plate elevations in the Catawba Unit 1 steam generators. The interim plugging criteria approved for Cycle 8 and contained in the draft Generic Letter 94–XX, "Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," can be summarized as follows:

Flaw indications with a bobbin coil voltage less than or equal to 1.0 volt can remain in service without further action. For flaw indications in excess of 1.0 volt but less than 2.7 volts, the tube can remain in service provided an RPC inspection of the indication does not detect ODSCC or any other degradation mode. Crack indications above 2.7 volts will be plugged or repaired by sleeving, and do not require RPC confirmation.

This amendment request reflects the "Requested Actions: for a licensee that chooses to implement a steam generator tube interim plugging criteria, as stated in the draft NRC Generic Letter, 94–XX "Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking."

The changes being proposed to the Technical Specification (TS) do not alter the interim plugging criteria currently stated in the TS which was approved and utilized during Cycle 8. The primary change to the TS is to incorporate the guidance of draft Generic Letter 94–XX, "Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," which will allow removal of the cycle-specific limitation currently in the TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Catawba Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A single tube rupture is not anticipated during operation of Catawba Unit 1. Based on the existing data base, the limiting RG [Regulatory Guide] 1.121 criterion for tube burst capability of 3 times normal operating differential is satisfied with ¾" diameter tubing with bobbin coil indications with signal amplitudes less than 4.54 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% prediction bound of the data and using LTL material properties. A 1.0 volt plugging criteria compares favorably with the structural limit considering the previously calculated growth rates for ODSCC within the Catawba Unit 1 steam generators. Assuming a voltage increase of 0.4 volts, and adding a 14% NDE uncertainty of 0.14 volts (90% cumulative probability) to the interim plugging criteria [IPC] of 1.0 volt results in an EOC [end-of-cycle] voltage of approximately 1.6 volts. This end of cycle voltage compares favorably with the Structural Limit of 4.54 volts. The applicability of assumed growth rates for each cycle of operation will be confirmed prior to return to power of Catawba Unit 1 A similar structural margin is anticipated for subsequent cycles.

In addition, for an EOC voltage structural limit of 4.54 volts, applying the 40% growth allowance and the 14% NDE uncertainty results in a margin between the structural limit and the alternate repair limit (2.7 volts), which is well within the structural limit. This repair limit will be applied for IPC implementation to repair bobbin indications greater than 2.7 volts independent of RPC confirmation of the indication.

Concerning SLB [steamline break] leakage in support of implementation to the interim plugging criteria, it will be determined whether the distribution of cracking indications at the tube support plate intersections at the end of a cycle are projected to be such that primary to secondary leakage would result in site boundary doses within the pertinent 10 CFR 100 limits. The SLB leakage rate calculation methodology * * * will be used to calculate End of Cycle SLB leakage. Based on EOC 8 projections, it is calculated that leakage during a postulated SLB event at the EOC 8 will be limited to approximately 1.61 gpm which is shown to result in acceptable dose consequences. [An] SLB leakage of 17.5 gpm in the faulted loop results in dose consequences which are less than the pertinent 10 CFR 100 limits. Similar results are expected for subsequent cycles and confirmation of leak rates will be performed prior to placing the [s]team generators in service.

Therefore, renewal of the proposed 1.0 volt interim plugging criteria does not adversely affect steam generator tube integrity and results in acceptable dose consequences. The proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Catawba Unit FSAR [Final Safety Analysis Report].

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Renewal of the proposed steam generator tube interim plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plat elevations—no ODSCC is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions).

Upon application of the interim plugging criteria, no primary to secondary leakage during normal operation is anticipated during all plant conditions due to degradation at the tube support plate elevations in the Catawba Unit 1 steam generators. However, additional conservatism is built into the existing operating leakage limit with regard to protection against the maximum permissible single crack length which may be achieved during operation due, in large part, to the potential occurrence of through-wall cracks at locations other than the tube support plate intersections.

Application of the 1.0 volt interim steam generator tube plugging criteria at Catawba Unit 1 is not expected to result in tube burst during all plant conditions during operation. Tube burst margins are expected to meet RG 1.121 acceptance criteria. The limiting consequence of the application of the interim plugging criteria is a potential for SLB leakage. The methodology for calculating SLB leak rate uses a voltage-to-leakage correlation and this methodology has previously been reviewed and approved by the NRC. The SLB leakage value will be confirmed to be less than allowable levels prior to return to power of Catawba Unit 1 No unacceptable leakage is anticipated at normal operating or RCP locked rotor conditions.

Therefore, as the existing tube integrity criteria and accident analyses assumptions and results will continue to be met, the proposed license amendment does not create the possibility at a new or different kind of accident from any previously evaluated.

(3) The proposed license amendment does not involve a significant reduction in [a] margin of safety.

The use of the voltage based bobbin probe interim tube support plate elevation plugging criteria at Catawba Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. [Regulatory Guide] 1.121 describes a method acceptable to the NRC staff for meeting GDCs [General Design Criteria] 14, 15, 31, and 32, by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principle degradation as ODSCC. Even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions.

Based on the analyses for Cycle 8, the expected leakage values and the leakage conditions required to be confirmed during accidents creating high differential pressures across the steam generator tubes (e.g. SLB), dose analysis confirm the maximum permissible leakage will result in offsite dose consequences within the guideline values. [An] MSLB accident with assumed leakage growth in the faulted generator results in the EAB and LPZ doses remaining within 10% of the 10 CFR 100 values of 25 Rem whole body and 300 Rem thyroid for the accident-initiated iodine spike, and 10 CFR 100 values for the pre-accident iodine spike.

The distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

Renewal of the tube support plate elevation plugging criteria for operation at Catawba Unit 1 will decrease the number of tubes which must be repaired by sleeving or taken out of service by plugging. The installation of steam generator tube plugs reduce the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment requested does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any Bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act on a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission takes this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room T–6 D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Buidling, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 29, 1994, as supplemented January 12 and 27, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the New York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3234 Filed 2–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Company; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Power Company (the licensee) to withdraw its October 15, 1993, application for proposed amendment to Facility Operating License No. DPR–21 for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment would have modified the Unit 1 technical specifications to provide a maximum duration that radioactive effluent monitoring instrumentation could be out-of-service for the purpose of maintenance, performance of required tests, checks, calibrations, or sampling before the applicable action statement was entered.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 8, 1993 (58 FR 64611). However, by letter dated January 19, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 15, 1993, and the licensee's letter dated January 19, 1995, which withdrew the application for license amendment. The above documents are available for public

inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich , CT 06360.

Dated at Rockville, Maryland, this 2nd day of February 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3235 Filed 2–8–95; 8:45 am]

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Public Service Electric and Gas Company; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–272 and 50–311]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–70 and DPR–75, issued to the Public Service Electric and Gas Company, PECO Energy Company, Delmarva Power and Light Company, and Atlantic City Electric Company, licensees for the Salem Nuclear Generating Station, Units 1 and 2. The plants are located at the licensee's site in Salem County, New Jersey. The exemption was requested by the licensee by letter dated December 22, 1994.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the Salem Nuclear Generating Station, Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's current LTOP analysis, which removes the non-conservatism in a previous analysis by assuming one reactor coolant pump in operation, indicates that using the Appendix G safety margin to determine the PORV setpoint would result in a new pressure setpoint within the current operating window of Salem 1 and a new setpoint just outside the current operating window of Salem 2. In both cases, there would be no margin for normal operating pressure surges. Operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Salem, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated December 22, 1994, the licensee requested an exemption from 10 CFR 50.60.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Salem reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupation radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need to be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are equivalent.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Salem Nuclear Generating Station, dated April 1973.

Agencies and Persons Consulted

The NRC staff consulted with the state of Pennsylvania regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 22, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 7th day of February 1995.

For The Nuclear Regulatory Commission.

Chester Poslusny,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3366 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35327; File No. SR–AMEX–94–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDs")

February 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives ("BOUNDs"). As described in more detail below, BOUNDs are long term options which the Amex believes have the same economic characteristics as a covered call writing strategy. On December 23, 1994, the Exchange submitted Amendment No. 1 ("Amendment No. 1") to the filing to provide that BOUNDs will be listed with a maximum expiration date corresponding to the longest prescribed long term equity options ("LEAPs") then available for trading, which is currently 39 months.[1]

The text of the proposed rule change and Amendment No. 1 are available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1986, the Exchange began listing 26 unit investment trusts, each of which held shares of a single "blue-chip" equity security. Investors were offered an opportunity to separate their ownership interests in these trusts into two distinct trading components representing different economic characteristics of the individual stocks held in the trusts. These separate trading components were known as PRIMEs and SCOREs.

[1] Letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated Dec. 23, 1994. The Amex originally proposed listing BOUNDs with 60 month expirations and extending the maximum duration of LEAPs from 39 months to 60 months.

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PRIMEs were the enhanced income/limited capital gain component. The holder of a PRIME retained the dividends on the stock held by the trust and participated in the underlying stock's appreciation up to a fixed dollar amount. SCOREs were the capital appreciation component. The holder of a SCORE had the right to all capital appreciation above a fixed dollar amount, but did not receive the dividends on the underlying stock.

PRIMEs and SCOREs were extremely popular with investors, but the trusts from which they derived have now reached their five-year termination dates. Certain Internal Revenue Service regulations, moreover, effectively preclude the creation of new PRIMEs and SCOREs through the original trust mechanism.

The Exchange, for some time, has sought a replacement for the expired PRIMEs and SCOREs. During this process, the Exchange and other options exchanges began to list and trade LEAPs. Like SCOREs, LEAPs enable investors to receive the benefits of a stock's price appreciation above a fixed dollar amount over a long period of time. Currently, however, there is no generally available replacement for PRIMEs.

The Exchange, accordingly, proposes to list BOUNDs as a replacement for PRIMEs. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDs traded on the Exchange. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of such orders will increase the open interest in BOUNDs. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDs with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration and exercise price will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, should bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs except that the Exchange will list only a strike price that is at or very close to the price of the underlying stock at the time of listing, or that is below the price of the stock at that time. For example, at the time of initial listing, the strike prices for a BOUND with the underlying stock trading at $50 per share, would be set at $40 and $50. The Exchange would not list a BOUND with a strike price of $60 in this example.

The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. The Exchange has the current authority to list LEAPs with up to 39 months until expiration and, therefore, seeks to introduce BOUNDs with up to the same 39 month duration.[2]

Like PRIMEs, BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDs and credit all accounts with long positions in BOUNDs with an amount equal to the cash dividend on the underlying stock.

Like regular options, BOUNDs will trade in standardized contract units of 100 shares of underlying stock per BOUND so that at expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND contract holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. BOUND writers will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This settlement design is similar to the economic result that accrues to an investor who has purchased a covered call (*i.e.*, long stock, short call) and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of the XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy—write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, i.e., the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price (because the stock would be delivered to satisfy the settlement obligations created upon the exercise of the call option).

The settlement mechanism for the BOUNDs will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the short BOUND. If on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the $50 strike price at expiration, would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

An investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. Accordingly, the Exchange believes a covered writer's position is effectively closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDs are European-style.[3] The Exchange believes that it would be inappropriate for the BOUND holder to have an American-style exercise right since the BOUND will tend to trade at a discount to the stock and strike price.

Sales Practices. BOUNDs will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

Adjustments. BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of OCC.

Position Limits. BOUNDs will be subject to the position limits for equity options set forth in Exchange Rule 904. In addition, BOUNDs will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. According to the Exchange, since a BOUND to the holder is a bullish position (i.e., the equivalent of a short put position where the strike price has been prepaid), the Exchange proposes that long BOUNDs be aggregated with long call and short put positions in the related equity options. Similarly, since the Exchange believes the BOUND, from the perspective of the seller, is a "bearish" position (i.e., it is the equivalent of a long put position where the strike price has been prepaid), it proposes to aggregate short BOUNDs with short call and long put positions in the related equity options.

Customer Margin. The Exchange proposes to apply options margin treatment to BOUNDs as follows:

1. *Long BOUND Positions:* full payment required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

2. *Short BOUND Positions:* the BOUND seller receives full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to an "add-on" used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. For example:

A. Assume a stock rice of $50, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, i.e., $40 BOUND price plus 20% of $40.

B. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, i.e., $35 BOUND price plus 20% of $35.

3. *Covered Positions:* Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

4. *Spread Positions.* (i) *Same Expiration—Different Strike Prices:* There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

(ii) *Different Expiration—Same Strike Price:* No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

(iii) *Different Expiration—Different Strike Prices:* There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration where the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[2] See Amendment No. 1

[3] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

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available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3280 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20880; 811–7304]

Brookhollow Trust; Application for Deregistration

February 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Brookhollow Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on October 28, 1994, and amended on January 13, 1995, and January 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and a diversified open-end management investment company. On October 19, 1992, applicant filed a notification of registration on Form N–8A to register as an investment company under section 8(a) of the Act. On November 20, 1992, applicant filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares.

2. Applicant's registration statement was declared effective on May 7, 1993. The registration statement initially pertained only to applicant's Brookhollow Treasury Money Market Fund series. No public offering or sales of securities of such series were made.

3. An amendment to applicant's registration statement pertaining to the Brookhollow Short Duration U.S. Government Fund ("Short Duration Fund") series was declared effective on March 3, 1993. The public offering of the shares of such series commenced on April 2, 1993. No sales of such shares were completed.

4. On October 1, 1993, pursuant to an action by unanimous written consent, applicant's board of trustees adopted resolutions appoving applicant's liquidation. On October 29, 1993, applicant had outstanding 10,168.813 shares of beneficial interest of Short Duration Fund, with a net asset value of $9.93 per share and an aggregate net asset value of $100,977.79, which amount applicant distributed on that date to its sole securityholder of record (the seed capital investor).

5. Legal, accounting, printing, mailing, deregistration, termination, and other expenses incurred in connection with applicant's liquidation, totalling approximately $17,412, were paid by Signature Financial Group, Inc. ("Signature"). EBC Distributors, Inc., applicant's principal underwriter, is a wholly-owned subsidiary of Signature.

6. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant intends to make all legally required filings with the Massachusetts Secretary of State to terminate applicant.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3281 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26228]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc., et al.

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its nonutility subsidiary company, Columbia LNG Corporation ("Columbia LNG"), both of 20 Montchanin Road, Wilmington, Delaware 19807, have filed a post-effective amendment to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 43, 45, 46 and 51 thereunder.

By Commission order dated February 25, 1994 (HCAR 25993), Columbia and Columbia LNG were authorized through December 31, 1994 to proceed with a recapitalization of Columbia LNG to establish a 100% equity capital structure. To effect this recapitalization, Columbia and Columbia LNG were authorized to have Columbia make a capital contribution to Columbia LNG of up to $52.0 million, consisting of $48.1 million of installment promissory notes and short-term debt and up to $3.9 million of accrued interest to the effective date of the recapitalization, which was estimated to be mid-1994.

On December 21, 1994, Columbia and Columbia LNG proceeded with the recapitalization by having Columbia make a capital contribution of $52.0 million as described above. However, because the recapitalization was undertaken later than expected due to delays at the Federal Energy Regulatory Commission in receiving satisfactory certificates authorizing Columbia LNG's new business plan, the amount of accrued interest to the effective date of the recapitalization exceeded the $3.9 million authorized by $875,758.

Columbia and Columbia LNG state that the intent of the application-declaration originally filed with the Commission was to obtain authorization to contribute all of the outstanding debt and accrued interest so as to establish a 100% equity capital structure for Columbia LNG. Columbia now proposes to make an additional capital contribution to Columbia LNG which would consist of the remaining accrued interest.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. ("Columbia"), a registered holding company, seventeen wholly-owned distribution, transmission, exploration and development, and other subsidiary companies,[1] all of which are engaged in the natural gas business, and twelve subsidiary companies of TriStar Ventures ("TriStar Ventures Subsidiaries"),[2] have filed a post-effective amendment under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) ("Order"), Columbia, and fourteen of the subsidiary companies ("Subsidiaries"),[3] were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool ("Money Pool") through 1996.

The applicants now seek Commission authorization for the twelve TriStar Ventures Subsidiaries to invest in, but not to borrow from, the Money Pool.

The Order provided that sources of funds for the Subsidiaries will include their internal cash flow and Money Pool borrowings. The Order stated that no external sources are projected to be needed to fund their 1995 and 1996 financing programs while Columbia remains in bankruptcy.

The Order contemplated that the Subsidiaries finance part of their capital expenditure programs with funds generated from internal sources and through short-term borrowings from the Money Pool, to the extent Columbia subsidiaries have temporary excess funds. The Order authorized the Subsidiaries to borrow short-term funds from the Money Pool in amounts specified therein.

Under the Order, advances from the Money Pool will be limited to a maximum amount outstanding at any one time from January 1, 1995 through December 31, 1996. The Order authorized the Money Pool to be continued through December 31, 1996. It provided for all short-term borrowing to be through the Money Pool, with the Service Corporation as agent. It stipulated that Columbia may invest in the Money Pool but will not borrow from the Money Pool.

The Order contemplated that when Columbia and the subsidiaries generate cash in excess of their immediate cash requirements, such temporary excess cash may be invested in the Money Pool. Columbia and investing subsidiaries would be investors ("Investors") pursuant to a Money Pool evidence of a deposit. Loans to the Subsidiaries ("Borrowers") through the Money Pool will be made pursuant to a short-term grid note. Such short-term grid notes will be due upon demand by the Investors but not later than April 30, 1997. The loans will be allocated to the Investors based on the proportion of their relative investment in the Money Pool.

The Order also contemplated that the cost of money on all short-term advances from, and the investment rate for funds invested in, the Money Pool will be the interest rate per annum equal to its weighted average short-term investment rate. Should there be no Money Pool investments, the cost of money will be the average Federal Funds rate for the prior month published in the Federal Reserve Statistical Release. A default rate equal to 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The Southern Company, et al. (70–8563)

The Southern Company ("Southern"), a registered holding company, and The Southern Development and Investment Group, Inc. ("Development"), wholly owned nonutility subsidiary of Southern, both of 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

Development proposes to invest up to $5 million from time to time through December 31, 2002 to acquire an interest as a limited partner in EnviroTech Investment Fund I Limited Partnership,

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[1] Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. ("Columbia Ohio"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. ("Columbia Maryland"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. ("Columbia Gulf"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corp. ("Columbia Development"), One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc. ("Columbia Resources"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp. ("Columbia Coal"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. ("Columbia Services"), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. ("Service Corporation"), 20 Monchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. ("Columbia Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. ("Commonwealth Propane"), 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. ("TriStar Ventures"), 20 Monchanin Road, Wilmington, Delaware 19807, TriStar Capital Corp. ("TriStar Capital"), 20 Monchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. ("Columbia Atlantic"), 20 Monchanin Road, Wilmington, Delaware 19807; and Columbia LNG Corp ("Columbia LNG"), 20 Monchanin Road, Wilmington, Delaware 19807.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Monchanin Road, Wilmington, Delaware 19807

[3] Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

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a Delaware partnership ("EnviroTech Partnership"). The interest to be acquired by Development will represent not more than 9.9% of the interests of all limited partners of the EnviroTech Partnership. The sole general partner of the EnviroTech Partnership ("General Partner") will be Advent International Limited Partnership, a Delaware limited partnership, of which Advent International Corporation ("AIC") is the general partner. AIC is a venture capital investment firm.

In addition, Southern proposes to provide the funds needed by Development in order to acquire the interests in the EnviroTech Partnership. Such funds will be advanced to Development as cash capital contributions as and when contributions by the limited partners are called by the General Partner in accordance with the terms of the partnership agreement.

A key objective of the EnviroTech Partnership is to make investments in companies (each a "Portfolio Company") that will contribute to the reduction, avoidance or sequestering of greenhouse gas emissions; help utilities and their customers handle waste by-products more effectively or produce or manufacture goods or services more cost effectively; improve the efficiency of the production, storage, transmission, and delivery of energy; and provide investors with attractive opportunities relating to the evolving utility business climate which meet the above objectives.

In selecting suitable investments, the EnviroTech Partnership will focus on the following technology sectors, among others: Alternate and renewable energy technologies; environmental and waste treatment technologies and services; energy efficiency technologies, processes and services; electrotechnologies used in the reduction of medical waste; technologies and processes promoting alternative energy for transportation; and other technologies related to improving the generation, transmission and delivery of electricity.

The term of the EnviroTech Partnership is 10 years from the date of the partnership agreement, subject to extension for up to two years upon agreement of the General Partner and limited partners holding 66⅔ percent of the combined capital contributions of all limited partners. Subject to certain limitations set forth in the partnership agreement, the management, operation, and implementation of policy of the EnviroTech Partnership will be vested exclusively in the General Partner. Among other powers, the General Partner will have discretion to invest the partnership's funds in accordance with investment guidelines. The investment guidelines may be amended or modified only upon the affirmative vote of limited partners representing at least 75% of the commitments of all limited partners.

Under the terms of the partnership agreement the General Partner will be paid an annual management fee equal to 2½ percent of the total amount of the capital commitments of the partners through the first six years, thereafter declining by ¼ of 1% on each anniversary to 1.5% commencing on the ninth anniversary date. In addition, the General Partner shall be entitled to reimbursement for all reasonable expenses incurred in the organization of the EnviroTech Partnership up to $195,000, and for other third party expenses incurred on behalf of the EnviroTech Partnership.

All EnviroTech Partnership income and losses (including income and losses deemed to have been realized when securities are distributed in kind) will generally be allocated 80% to and among the limited partners and 20% to the General Partner. All cash distributions to the partners shall be made first to the limited partners until such time as the limited partners shall have received aggregate distributions equal to the aggregate of their respective capital contributions, and thereafter 20% to the General Partner and 80% to the limited partners. Distributions in kind of the securities of Portfolio Companies that are listed on or otherwise traded in a recognized over-the-counter or unlisted securities market may be made at the option of the General Partner.

The partnership agreement also provides that in the event it is likely that an investment by the EnviroTech Partnership would cause a limited partner ("Conflicted Partner") to violate, among other things, any law or regulation, under certain circumstances other limited partners (each, a "Purchasing Partner") may purchase from the Conflicted Partner a proportionate interest in such an investment by delivering to the Conflicted Partner a note in the principal amount of the Conflicted Partner's capital contributions attributable to the portion of such interest in the investment being purchased. Such note will be non-recourse to the Purchasing Partner and will bear interest at a rate equal to 200 basis points over comparable U.S. Treasury obligations having a five year maturity, such interest and principal being payable only to the extent that the Purchasing Partner receives distributions or payments attributable to the interest purchased.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3282 Filed 2-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20879; 812-9238]

Van Kampen Merritt Equity Opportunity Trust, Series 7, et al.; Notice of Application

February 3, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Van Kampen Merritt Equity Opportunity Trust, Series 7 and Van Kampen Merritt, Inc. (the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Van Kampen Merritt Equity Opportunity Trust, Series 7 and certain Subsequent Series (the "Rollover Trust") and the Sponsor seek an order permitting certain offers to exchange units of terminating series of the Rollover Trust for units of subsequently offered series of the Rollover Trust.

FILING DATES: The application was filed on September 22, 1994, and an amendment thereto was filed on January 25, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1995, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: One Parkview Plaza, Oakrook Terrace, Illinois 60181

FOR FURTHER INFORMATION CONTACT: H R. Hallock, Jr., Special Counsel, at (202) 942-0564 or Barry D. Miller Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Rollover Trust will consist of a registered unit investment trust having multiple series, each of which will be similar but separate and designated by a different name and/or series number.[1] Each series for which exemptive relief is being sought will have the characteristics described below (the "Trust Series"). Each Trust Series will pursue an investment objective that is consistent with a specified investment philosophy. The Sponsor will serve as the sponsor and depositor for each such Trust Series.

2. The first Trust Series of the Rollover Trust will contain the Strategic Ten Trust—United States Portfolio, United Kingdom Portfolio and Hong Kong Portfolio. Its objective will be to provide an above-average total return derived from dividend income and capital appreciation by investing in common stocks (the "Equity Securities") of ten companies in the Dow Jones Industrial Average, the Financial Times Industrial Ordinary Share Index and the Hang Seng Index, respectively, having the highest dividend yield as of the day prior to the initial date of deposit for such Trust Series. Future series of the Rollover Trust may be similar to the first Trust Series or may consist of Trust Series with a different investment philosophy, a different number of common stocks or a different duration.

3. The Sponsor will be permitted to deposit additional Equity Securities in a Trust Series subsequent to the initial date of deposit. Any such deposit will result in a corresponding increase in the number of units of such Trust Series outstanding. Such units will be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional Equity Securities deposited in the Trust Series in connection with the sale of additional units will maintain, as nearly as is practicable, the original proportionate relationship among the Equity Securities in the Trust Series as of the original date of deposit of such Trust Series. Although not obligated to do so, the Sponsor intends to maintain a secondary market for the units of each Trust Series.

4. Each Trust Series will terminate on a date (the "Mandatory Termination Date") which is a specified term (e.g., one, three or five years) after the initial date of deposit for such Trust Series. Commencing on the Mandatory Termination Date, Equity Securities will be sold in connection with termination of the Trust Series. The Sponsor will determine the manner, timing and execution of the sale of the Equity Securities. A specified number of days prior to the Mandatory Termination Date of the Trust, the trustee will provide notice thereof to all unitholders.

5. Absent another election, unitholders will receive a cash distribution evidencing their *pro rata* share of the proceeds from the liquidation of the Equity Securities in the Trust Series. Unitholders who own at least a specified number of units of a Trust Series (e.g., 2,500 units) may elect to receive a distribution of Equity Securities in connection with the termination of the Trust Series.

6. Alternatively, unitholders may elect to have all of their units redeemed in kind on a predetermined date which is prior to the Mandatory Termination Date, and to have the distributed Equity Securities sold by the trustee. The proceeds of such sale will be reinvested in the units of a new Trust Series (the "Reinvestment Trust Series"), if one is then being offered, at a reduced sales charge. (The option of unitholders to make such election is referred to as the "Rollover Option," and unitholders making such election are referred to as "Rollover Unitholders".) The portfolio of the Reinvestment Trust Series will contain a specified number of common stocks selected by the Sponsor pursuant to the same investment philosophy which was followed in selecting the common stocks in the terminating Trust Series. The number of common stocks in the Reinvestment Trust Series and the approximate duration of the Reinvestment Trust Series will be the same as those of the terminating Trust Series.

7 The applicable sales charge upon the initial investment in the Rollover Trust will not exceed 3.5% of the public offering price. The reduced sales charge applicable to Rollover Unitholders will be no more than 2.0% of the public offering price.

Applicants' Legal Analysis

1. Section 11(a) requires SEC approval of an offer to exchange securities between open-end investment companies if the exchange occurs on any basis other than the relative net asset values of the securities to be exchanged. Section 11(c) makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange. Applicants seek an order pursuant to sections 11(a) and 11(c) of the Act permitting them to offer the Rollover Option in connection with the Trust Series described above to the extent such option is deemed to be an offer of exchange under section 11 of the Act.

2. Applicants state that, in the absence of the Rollover Option, a unitholder of a terminating Trust Series would have to pay the full sales charge in connection with the investment in the Reinvestment Trust Series or in some other investment vehicle. Pursuant to the Rollover Option, however, the Sponsor will offer unitholders of a Trust Series which is currently terminating the opportunity to invest in a Reinvestment Trust Series at a reduced sales charge. Through the exercise of the Rollover Option, investors will be able to decrease their proportionate sales charge burden while remaining invested in a portfolio of common stocks selected pursuant to a particular investment philosophy determined on a relatively current basis.

3. Applicants state that unitholders of Rollover Trusts will not be induced or encouraged to participate in the Rollover Option through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and claims that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Rollover Option.

4. On the basis of the foregoing, and subject to the conditions set forth below Applicants submit that the Rollover Option is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

If the requested exemption from section 11 is granted, Applicants agree to the following conditions:

1 Whenever the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of

[1] Van Kampen Merritt Equity Opportunity Trust has been included in the Registration of Investors Corporate Income Trust, a taxable trust, on Form N-8B-2, File No. 811-2754.

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termination or the effective date of the amendment, provided that:

(a) No such notice need to be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of a rollover; and

(b) No notice need to be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of units of the Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) A Reinvestment Trust Series temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. The sales charge collected at the time of any rollover shall not exceed 2.0% of the public offering price of the unit being acquired on each rollover.

3. The prospectus of each Reinvestment Trust Series and any sales literature or advertising that mentions the existence of the Rollover Option will disclose that the Rollover Option is subject to modification, termination or suspension.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3283 Filed 2-8-95; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Notice of order Adjusting the Standard Foreign Fare Level Index

[Docket 37554]

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 94-12-15 established the currently effective two-month SFFL applicable through January 31, 1995.

In establishing the SFFL for the two-month period beginning February 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95-2-9 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3924
Latin America	1.4213
Pacific	1.7999
Canada	1.5129

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: February 3, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95-3223 Filed 2-8-95; 8:45 am]

BILLING CODE 4910-62-P

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94-12-16, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning February 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95-2-8 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1709
Western Hemisphere	1.1160
Pacific	1.3994

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: Dated: February 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95-3222 Filed 2-8-95; 8:45 am]

BILLING CODE 4910-62-P

National Highway Traffic Safety Administration

Denial of Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. § 30162 (formerly section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended).

By letter dated July 8, 1994, Mr. Kurt B. Chadwell petitioned NHTSA to reopen its closed defect investigation (Engineering Analysis, EA92-030) of power steering fluid leakage and resulting engine compartment fires in 1988 through 1990 Ford Taurus, Mercury Sable, and Lincoln Continental vehicles equipped with 3.8 liter engines. The petition also asked the NHTSA take all actions necessary to compel the Ford Motor Company (Ford) to initiate a safety recall of the 429,000 subject vehicles to remedy the alleged defect. By letter dated September 14, 1994, Mr. Chadwell provided additional information. By letter dated November 9, 1994, Mr. Chadwell requested that the investigation be expanded to include Taurus and Sable vehicles equipped with 2.5 liter and 3.0 liter engines.

The following are principal elements of the subject petition:

- The petitioner takes issue with NHTSA's decision to close the original investigation in October 1993.
- The petitioner states that Ford has followed an organizational practice of under-reporting to NHTSA the numbers of known failure incidents in this as well as in other investigations.
- The petitioner provides a document maintained by the U.S. Fire Administration in its National Fire Incident Reporting System (NFIRS), which lists engine compartment fires in Taurus, Sable, and Lincoln Continental vehicles equipped with 2.5 liter, 3.0 liter, and 3.8 liter engines. These data are presented as the basis for the petitioner's request that the investigation be expanded to include those vehicles with 2.5 liter and 3.0 liter engines.

In support of his claims, the petitioner discusses information taken from NHTSA's public record concerning EA92-030, other defect investigations, and other issues regarding compliance with Federal motor vehicle safety standards. In addition, he cites his personal experience as a former employee of Ford.

Regarding the specific petition elements as outlined above, the first represents a basic disagreement with NHTSA's conclusion in closing EA92-030. The EA closing report clearly states that "the evidence does not support a conclusion that a safety defect exists" and that "it does not appear that further investigation would result in an enforceable defect finding." NHTSA finds no information in the subject petition that demonstrates that these conclusions should be withdrawn or modified.

Petitioner's September 14, 1994, submission entitled "Supplemental Information Relevant to Safety Recall Petition" questions the accuracy of the number of incidents (230) reported by Ford to NHTSA during the pendency of EA92-030, in part on the basis of numbers of power steering system parts sales reported in the EA Closing Report, and in part on the basis of alleged under-reporting by Ford with respect to another ODI investigation (EA93-033). These allegations appear to be speculative, and seem to be based solely on petitioner's opinions, inferences, beliefs, and grossly unscientific extrapolations of data that, in and of themselves, are questionable. In the absence of factual and reliable information, NHTSA views these allegations of under-reporting by Ford to be without substance.

The data from the NFIRS listing does not provide compelling evidence that NHTSA should expand its investigation of this matter. While the incidents listed are identified as engine compartment fires, there is no evidence that the leakage and ignition of power steering fluid was in any way the cause of these incidents. On the contrary, NHTSA finds no apparent source of ignition of any such fluid that may leak in those vehicles equipped with 2.5 liter or 3.0 liter engines. Analyses of the NFIRS data discloses that the 3.0 liter models of the subject vehicles have experienced a relatively low engine compartment fire incidence, for all causes. In the case of the relatively small population of vehicles equipped with 2.5 liter engines, the incidence of engine compartment fires does appear to be high. The absence of an apparent source of ignition for power steering fluid that may leak, however, indicates that other failures or malfunctions are more likely to be the cause of the fires. On this basis, even if NHTSA were to consider this matter as a potential issue for investigation, it would be a separate investigation unrelated to the prior investigation of power steering fluid-fed fires in vehicles with 3.8 liter engines.

The petition fails to present any substantive, significant, or new information of NHTSA's consideration regarding the request to reopen EA92-030. Similarly, no new evidence has been discovered through any other source to justify reopening that investigation.

NHTSA recognizes that engine compartment fires create a serious safety problem. Manufacturers have consistently conducted safety recalls to remedy problems that lead to such fires, often in cases with a lower fire rate than that experienced by these Ford vehicles. Unfortunately, the available data indicates that the vast majority of these fires occurred after maintenance or repair work had been performed by Ford dealers or other maintenance facilities. NHTSA cannot compel dealers to conduct a safety recall and, under these circumstances, cannot compel Ford to remedy problems created by its dealers. Nevertheless, NHTSA has urged Ford on several occasions to take action to reduce the likelihood of engine compartment fires in these vehicles by notifying owners of the problem and bearing the expenses of repairs to correct the condition that can lead to such fires. To date, Ford has refused to do so.

In consideration of the available information, NHTSA has concluded that there is not a reasonable possibility that an order concerning recall and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to reopen this investigation does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 1, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95-3174 Filed 2-8-95; 8:45 am]

BILLING CODE 4910-59-M

Maritime Administration

[Docket S-917]

Notice of Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as amended; Waterman Steamship Corporation

Central Gulf Lines, Inc. (Central Gulf), a U.S. corporate affiliate of Waterman Steamship Corporation (Waterman), by letter of January 26, 1995, requests written permission pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act), and Waterman's Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-450, to operate the U.S.-flag S/S ENERGY INDEPENDENCE (Vessel), Official Number 657540, in the coastwise trade of the United States. Central Gulf states that it has agreed to purchase the Vessel from New England Power Company (New England Power) and, in turn, own and operate the Vessel beginning on or about May 1, 1995 under time charter to New Epgland Power for a term of fifteen years.

New England Power, which is headquartered in Westborough, Massachusetts, generates and transmits electricity to consumers in the New England area, including Vermont, New Hampshire, Rhode Island and Massachusetts. In addition, it regularly purchases coal for transportation by ship from east coast ports of the United States to its harbor side facilities located in Massachusetts.

According to Central Gulf, the Vessel will transport New England Power's proprietary cargo in the coastwise trade from points along the east coast of the United States to Brayton Point, Massachusetts or Salem, Massachusetts. At other times during the fifteen years, the Vessel may carry cargo in the coastwise trade of the United States for account of other clients of Central Gulf as yet undetermined. Central Gulf states that it may also operate the Vessel in the foreign trade from time to time for yet undetermined charterers.

The Vessel is a 38,234 long tons total deadweight capacity self-unloading bulk carrier with a coal and/or oil-fired steam turbine main engine and an inclined lift conveyor system. It was built by General Dynamics Corporation in Quincy, Massachusetts in 1983 and has been documented under the laws of the United States since that time. Central Gulf maintains that as a U.S. built, U.S. flag, U.S. owned and U.S. citizen-crewed vessel, the Vessel is coastwise-qualified within the meaning of section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), popularly known as the Jones Act. It is also uniquely capable of transporting New England Power's cargo requirements, Central Gulf adds.

Central Gulf emphasizes that it will continue to function as a discrete corporate entity having entirely separate financial records and accounts, and that the operating and accounting activities of Central Gulf are, and will continue to be, entirely separate from the operating and accounting activities of Waterman.

Central Gulf believes that its instant application clearly warrants MARAD approval and section 805(a) permission should be granted until the expiration date of Waterman's ODS contract, which expires on December 31, 1996.

The application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or

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corporation having any interest (within the meaning of section 805(a)) in Waterman's request and desiring to submit comments concerning the request must by 5:00 PM on February 22, 1995, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.805 (Operating-Differential Subsidies))

Dated: February 6, 1995.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 95–3302 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–007; Notice 1]

Antilock Brake Systems; Technical Report; Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report on its *Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars*. The principal goals of ABS are to prevent skidding and loss-of-control due to locked-wheel braking, and to allow a driver to steer the vehicle during hard braking. NHTSA's report evaluates the accident rates of the ABS-equipped cars currently on the road, and compares them to the accident rates of similar cars without ABS.

DATES: Comments must be received no later than May 10, 1995.

ADDRESSES: *Report:* Interested people may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Kahane, Acting Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2560).

SUPPLEMENTARY INFORMATION: Section 2507 of the NHTSA Authorization Act of 1991 directed NHTSA to publish an advance notice of proposed rulemaking (ANPRM) to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards. On January 2, 1994, NHTSA published an ANPRM in which the agency announced its plans to consider various regulatory actions to improve the brake performance of light vehicles, particularly the benefits and costs related to requiring antilock brake systems (ABS). (59 FR 281). ABS serves to prevent skidding and loss-of-control due to locked-wheel braking, particularly on wet surfaces, and to allow a driver to steer the vehicle during hard braking.

Along with that rulemaking notice, NHTSA has studied the effectiveness of ABS on passenger cars. NHTSA compared the accident involvement rates of passenger cars equipped with Antilock Brake Systems (ABS) to the rates of counterpart cars without ABS, based on 1990–92 Florida, Pennsylvania and Missouri data, and the 1989–93 Fatal Accident Reporting System. In general, the statistical analyses compared the accident involvements of passenger cars of the first 2 model years with ABS to cars of the same makes, models and subseries, but from the last 2 model years before ABS became standard equipment. The principal findings and conclusions from the statistical analyses of accident experience of cars currently equipped with ABS were the following:

- ABS significantly reduced the involvements of passenger cars in multivehicle crashes on wet roads. ABS reduced police-reported crash involvements by an estimated 14 percent, and fatal involvement by 24 percent. The finding is consistent with the outstanding performance of ABS in stopping tests on wet roads.
- ABS had little effect on multivehicle crashes on dry roads.
- The risk of fatal collisions with pedestrians and bicyclists was reduced by a statistically significant 27 percent in passenger cars with ABS. Unlike the effects for multivehicle crashes, this reduction was about equally large on wet and dry roads.
- All types of run-off-road crashes—rollovers, side impacts with fixed objects and frontal impacts with fixed objects—increased significantly with ABS. Nonfatal run-off-road crashes increased by an estimated 19 percent, and fatal run-off-road crashes by 28 percent. The increase in run-off-road crashes was about the same under wet and dry road conditions.
- The overall, net effect of ABS on fatal as well as nonfatal crashes was close to zero.

It is unknown to what extent the increase in run-off-road crashes is a consequence of ABS, or is due to other causes. In particular, it is unknown to what extent, if any, the increase is due to incorrect responses by drivers to their ABS systems, and, if so, whether the effect is likely to persist in the future. The increase may involve all types of ABS run-off-road ABS or only certain ABS designs.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data that could be used to expand or improve the analyses, especially any information about run-off-road crashes involving ABS-equipped cars or about factors that could be making current ABS-equipped cars more prone to running off the road. It is requested but not required that 10 copies of comments be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on February 6, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy

[FR Doc. 95–3224 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0007
Form Number: IRS Form T
Type of Review: Extension
Title: Forest Activities Schedules
Description: Form T is filed by individuals and corporations to report income and deductions from the timber business. The IRS uses Form T to determine if the correct amount of income and deductions are claimed.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 37,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—37 hr., 4 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—1 hr., 14 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,438,930 hours

OMB Number: 1545–0117
Form Number: IRS Form 1099–OID
Type of Review: Extension
Title: Original Issue Discount
Description: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Business or other for-profit
Estimated Number of Respondents: 9,185
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 765,000 hours

OMB Number: 1545–0183
Form Number: IRS Form 4789
Type of Review: Extension
Title: Currency Transaction Report
Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.
Respondents: Business or other for-profit
Estimated Number of Respondents. 788,871
Estimated Burden Hours Per Respondent: 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 2,185,805 hours

OMB Number: 1545–0199
Form Number: IRS Form 5306–SEP
Type of Review: Extension
Title: Application for Approval of Prototype Simplified Employee Pension-SEP
Description: This form is issued by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan to be used more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 650
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hr., 37 min.
Learning about the law or the form—1 hr., 4 min.
Preparing the form—2 hr., 11 min.
Copying, assembling and sending the form to the IRS—16 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,878 hours

OMB Number: 1545–1036
Form Number: IRS Form 8716
Type of Review: Extension
Title: Election to Have a Tax Year Other Than a Required Tax Year
Description: This form is filed by partnerships, S Corporations, personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign mater-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 40,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 23 min.
Learning about the law or the form—1 hr., 12 min.
Preparing and sending the form to the IRS—1 hr., 17 min.
Frequency of Response: Other
Estimated Total Reporting/ Recordkeeping Burden: 194,400 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–3172 Filed 2–8–95; 8:45 am]

BILLING CODE 4830–01–P

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VOL 60

ISS 27

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Public Information Collection Requirements Submitted to OMB for Review

January 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0112
Form Number: None
Type of Review: Extension
Title: Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds
Description: These regulations require that bidders in Treasury Auctions provide certain information needed to process their request.
Respondents: Individuals or households, Business or other for-profit, Non-profit institutions, State, Local or Tribal Government
Estimated Number of Respondents: 1
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–3173 Filed 2–8–95; 8:45 am]

BILLING CODE 4810–40–P

UNITED STATES INFORMATION AGENCY

Curriculum Development Project: Secondary School Civic Education for the Czech Republic

ACTION: Notice—request for proposals.

SUMMARY: The Advising, Teaching, and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to cooperate with USIA in the administration of a one-to two-year project to support the development and implementation of new curriculum units for ninth and tenth grade civic education courses in the Czech Republic. The grantee organization will work with the Institute for Educational Development, a Czech non-profit organization affiliated with Charles University and concerned with educational reform and teacher training in the Czech Republic. The Institute works closely with the Ministry of Education of the Czech Republic on curriculum and teacher training. The program will comprise three phases: (1) Preliminary consultations in Prague with a curriculum development team of five Czech educators; (2) a three-month U.S.-based curriculum development workshop in which the team will produce draft curriculum units; and (3) follow-up consultations in the Czech Republic to assist with the training of a larger group of Czech practitioners in the implementation and review of the draft curriculum units.

Upon the successful completion of Phases I–III, additional funds may be available to the grantee organization for a fourth phase of activity to cooperate with the Institute for Educational Development and the curriculum development team in further reviewing and revising the draft materials and to provide broader training for implementation of the revised curriculum units with Czech teachers and administrators.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. The cooperation with USIA will include regular consultation with USIA and with USIS officers in the Czech Republic with regard to program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in the Czech Republic as well as expertise in civic education and curriculum development. The funding authority for the program cited above is provided through the Support for East European Democracies Act (SEED). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AS–95–03.

DATES: *Deadline for proposals.* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, March 24, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 24, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs, Advising, Teaching and Specialized Programs Division, E/AS (room 256), U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone number 202–619–6038, telefax number 202–619–6790, e-mail: skux@usia.gov, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Academic Exchange Specialist Sally Kux on all inquiries and correspondences.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Advising, Teaching, and Specialized Programs Division (Dr. Kux) or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs, Advising, Teaching, and Specialized Programs Division may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 9 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AS-95–03, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political charter and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The goal of the project is to assist the Institute for Educational Development in Prague, Czech Republic, to develop up-to-date curriculum units to be taught within existing civic education courses at the ninth and tenth grade levels and to assist in training teachers for the implementation of these units. The rationale for this project is that improving citizenship education at the secondary school level will better prepare Czech students to participate actively in building a pluralistic, democratic society, and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents. Applicants may suggest topics to be developed by the curriculum team in their proposals; however, final determination of appropriate topics will be made by the curriculum development team and the Institute for Educational Development in cooperation with the grantee organization during the first phase of the project.

Program Description

A curriculum development team of five practitioners (e.g., classroom teachers, curriculum specialists, and Ministry officials) selected by the Institute of Educational Development in consultation with USIS Prague, will undertake preliminary work in Prague over a period of 3–6 months (Phase I). In this phase, members of the curriculum development team, in consultation with a specialist from the grantee organization, will familiarize themselves with civics curricula and teaching materials used in the U.S. and will select the topics to be explored in the draft curriculum units. In the second phase, members of the curriculum development team will spend approximately three months in a highly structured U.S.-based workshop sponsored and organized by the U.S. grantee organization, attending focused seminars, observing relevant aspects of the U.S. educational system, and drafting teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Czech team to leading U.S. civic educators and to a broad range of relevant resources. The workshop schedule should incorporate time for individual and group work on materials as well as intensive training on specific approaches to the teaching of civics topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools and professional associations). In the third phase, the curriculum development team will work in the Czech Republic with Czech teacher trainers and U.S. specialists from the grantee organization to provide introductory training for a larger group of practitioners in methods for implementing and reviewing the draft curriculum units in the civics classroom.

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Proposed Budget

Applicants must submit a comprehensive budget for the program, the award for which will not exceed $150,000. Applicants should note that Phase II (curriculum development workshop) is the key element of this program; proposed budgets should allocate resources accordingly. The budget submission should include summary budget, in addition to separate administrative and program budgets. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000, and budget submissions from such organizations should not exceed this amount. Please refer to the Solicitation Package for complete budget guidelines and formatting instruction.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs and USIS Prague. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and carry equal weight in the proposal evaluation:

1. Quality of the program idea. Proposals should exhibit originality, substance, precision, and relevance to Agency mission. Proposals should reflect an advanced, current understanding of relevant scholarly fields and disciplines;

2. Program planning. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity and should provide a clear picture of the program. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Institutional Capacity. Proposed personnel and institutional resources should be articulated clearly and should be adequate and appropriate to achieve the program or project's goals. The applicant organization should demonstrate a capacity to work cooperatively with Czech organizations and with USIA.

7. Institution's Record/Ability. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities. Proposals should provide a plan for continued follow-on activity (without USIA

support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation. Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost effectiveness. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations. Proposed projects will be assessed by USIA's geographic area desk and overseas officers with regard to program need, potential impact, and significance in the partner country.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 12, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 31, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95-2935 Filed 2-8-95; 8:45 am]

BILLING CODE 8230-01-M

Hubert H. Humphrey Fellowship Program

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Washington-based public and private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to assist USIA in the administration of the Hubert H. Humphrey Fellowship Program Washington Workshop. The organization shall plan and implement a seven-day conference for approximately 180 mid-career professionals from developing countries, Central/Eastern Europe, and the NIS during November 11–17, 1995.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement name and number: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASU–95–04.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, March 23, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 23 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Ms. Leigh Rieder or Ms. Carolyn Gabrielson, Specialized Programs Unit, E/ASU, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–5289, fax: (202) 401–1433, internet address: LRIEDER@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer, Leigh Rieder, on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Specialized Programs Unit or submitting their proposals. Once the RFP deadline has passed, the Specialized Programs Unit may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and six copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–95–04, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Hubert H. Humphrey Fellowship Program provides a year of non-degree, graduate level study and related professional experiences to mid-level professionals from developing countries, Central/Eastern Europe, and the NIS. Fellowships are granted competitively to public- and private-sector candidates with a commitment to public service in the fields of natural resources/environmental management, public policy analysis/administration, economic development, agricultural development/economics, finance/banking, human resource management/personnel, urban and regional planning, public health policy/management, technology policy/management, educational planning, and communications/journalism. Fellows are placed by professional field in groups of 10–12 at one of 15 participating host universities around

the country. The Agency is assisted in the administration of the program by the Institute of International Education (IIE) under a cooperative agreement with the Agency. Fellows are nominated for the program by USIA overseas posts or Fulbright Commissions based on their potential for national leadership, commitment to public service, and professional and academic qualifications. By providing these future leaders with exposure to U.S. society, and to current U.S. approaches to the fields in which they work, the program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

The objectives of the Washington Workshop are to:

* Enhance fellows' understanding of U.S. social, cultural, and political processes and institutions to provide a framework for interpreting the events of their fellowship year;
* Provide opportunities for professional networking among fellows and with Washington area peers;
* Introduce fellows to the unique resources available in Washington, D.C.

Guidelines

Non-profit organizations with key program staff based in the Washington, D.C. metropolitan area and available for frequent meetings with USIA staff are invited to submit proposals. Organizations also must have experience in conference management, professional exchanges, and international exchanges. Only organizations with at least four years of experience in international exchange activities are eligible to apply for this award.

The Agency encourages proposals from eligible organizations whose staffs reflect a broad variety of ethnic backgrounds, whose programs encompass a range of diversity interests, and/or whose mission includes furthering the interests of traditionally under-represented groups.

The recipient organization will be responsible for most arrangements associated with this workshop. These include organizing a coherent schedule of activities, making lodging and local transportation arrangements for participants, preparing all necessary support materials, working with Humphrey Coordinators from host universities and IIE staff to achieve maximum workshop effectiveness, conducting a final evaluation, and other details which are outlined in the Solicitation Package. Drafts of all printed materials developed for the workshop should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source.

Proposed Budget

The award for this project may not exceed $235,000, and cost sharing is strongly encouraged. Applicants must submit a comprehensive, line-item budget for the entire workshop. Specific guidance is contained in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines started herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality/responsiveness of the program idea. Proposals should exhibit originality, substance, precision, cultural sensitivity, and responsiveness to the material set forth herein and in the Solicitation Package. Proposals should clearly demonstrate how the institution will meet the workshop's objectives and plan.

2. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding and encourage collaboration among fellows and with U.S. counterparts after the fellowship year.

3. Support of Diversity. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

4. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the workshop's goals.

5. Institution's Record/Ability. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. Successful experience with organizing workshops for international participants is also very desirable. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Project Evaluation. Proposals should include a plan to evaluate the workshop's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original workshop objectives.

7. Cost-effectiveness. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Cost-sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 8, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 31, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95-2934 Filed 2-8-95; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From February 7th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the February 7, 1995, Open Meeting and previously listed in the Commission's Notice of January 31, 1995.

Item No, Bureau, and Subject

6—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266 and MM Docket No. 93–215). Summary: The Commission will consider providing local franchising authorities and small systems with additional methods of complying with cable rate regulations.

7—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266). Summary: The Commission will reconsider its actions, which prohibit small operators and low-price systems that have been provided with transition relief from adjusting their transition rates to reflect increases in inflation.

Dated: February 6, 1995.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3344 Filed 2–7–95; 10:43 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 95–2739.

PREVIOUSLY ANNOUNCED DATA AND TIME: Thursday, February 9, 1995 at 10: 00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Implementation of Computer Upgrade (continued from meeting of February 2, 1995).

DATE AND TIME: Thursday, February 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, February 15, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Oral Hearing Will Be Open to the Public.

MATTER BEFORE THE COMMISSION:

Public Hearing on Regulations Governing Publicly Financed Presidential Primary and General Election Candidates.

DATE AND TIME: Thursday, February 16, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–03: Don White on behalf of the Gramm '96 Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–3424 Filed 2–7–95; 2:31 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 6771, February 3, 1995]

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 3, 1995.

CHANGE IN THE MEETING: Deletion.

The following items will not be considered at an open meeting scheduled for Wednesday, February 8, 1995, at 10:00 a.m.:

Whether to adopt proposed rules 18f–3 and 6c–10 under the Investment Company Act of 1940, and related rule and form amendments. Rule 18f–3 would allow mutual funds to issue multiple classes of shares, and the form amendments would prescribe prospectus disclosure requirements for multiple class and master-feeder funds. Rule 6c–10 would allow mutual funds to impose back-end loads, including contingent deferred sales loads; the form amendment would clarify that prospectus disclosure requirements for deferred sales loads apply to all types of back-end loads.

Whether to propose for public comment amendments to rule 6c–10 to allow mutual funds to impose sales loads paid in one or more installments. Related form amendments would prescribe prospectus disclosure requirements for installment loads.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070

Dated: February 7, 1995

Jonathan G. Katz,

Secretary.

[FR Doc. 95–3367 Filed 2–7–95; 2:31 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19-000]

Project Cost and Annual Limits

Correction

In rule document 95–2707 beginning on page 6657 in the issue of Friday, February 3, 1995 make the following correction:

On page 6658, in the first column, in Table I, in the second column, the heading "Automobile projected cost limit (col. 1)" should read "Auto. Proj. Cost Limit (Col. 1)" and in the third column, the heading "Prior notice projected cost limit (col. 2)" should read "Prior Notice Proj. Cost Limit (Col. 2)".

BILLING CODE 1505–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-28]

Establishment of Class E Airspace; Chamberlain, SD, Chamberlain Municipal Airport

Correction

In rule document 95–1534 beginning on page 4079 in the issue of Friday, January 20, 1995, make the following correction:

§71.1 [Corrected]

On page 4080, in the first column, under the heading "**AGL SD E5 Chamberlain, SD (New)**", in the first line, "(Lat. 43°45'54x" N.," should read (Lat. 43°45'54" N.,"

BILLING CODE 1505–01–D

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federal register

Thursday
February 9, 1995

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste: Identification and Listing; Carbamate Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–5150–3]

RIN 2050–AD59

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to reduce hazards to human health and the environment from the ongoing manufacture of carbamate chemicals, which are formulated for use as pesticides and in the production of synthetic rubber. EPA is listing as hazardous six wastes generated during the production of carbamate chemicals. EPA is providing an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. EPA is also exempting from the definition of hazardous wastes biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity). The Agency is also adding 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based. EPA is deferring action on 12 specific chemicals and 4 generic categories.

This action is taken under the authority of sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of listing these wastes will be to subject them to regulation as hazardous wastes under subtitle C of RCRA; and the notification requirements of section 103 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

EFFECTIVE DATE: This final rule is effective August 9, 1995.

ADDRESSES: The official record of this rulemaking is identified by Docket Number F–95–CPLF–FFFFF and is located at the following address. EPA RCRA Docket Clerk Room 2616 (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the RCRA hazardous waste listings, contact John Austin, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (202) 260–4789.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this final rule are listed in the following outline:

I. Legal Authority
II. Background
III. Summary of Proposal
  A. Proposed New Hazardous Wastes
  B. Determinations Not To List Certain Carbamate Wastes as Hazardous Waste
  C. Exemptions
IV. Changes to the Proposed Rule
  A. Exemptions
  B. Appendix VII and Appendix VIII
  C. Listing of Commercial Chemical Products
V. Response to Comments
  A. Scope of Listing
  1. Definition of Carbamates
  2. Listing Obligations
  3. Specific Substances
  4. Definition of Production
  5. Requests for Additions to the Listings
  B. Listing Exemptions
  1. K157 Exemption
  2. K156 Exemption
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  C. Basis for Listing/No List
  D. Conflict with Other Regulatory Initiatives
  E. Constituents of Concern for Appendix VII
  F. Constituents of Concern for Appendix VIII
  G. P Listings
  H. U Listings
  I. Toxicity Information
  J. Risk Assessment
  1. Comments Asserting that the Risk Assessment Understates Risk
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  K. CERCLA RQs
  L. Regulatory Impact Analysis
  M. Impact on Recycling and Reuse
  N. Executive Orders
  O. Paperwork Reduction Act
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VI. Compliance and Implementation
  A. State Authority
  1. Applicability of Rules in Authorized States
  2. Effect on State Authorizations
  B. Effective Date
  C. Section 3010 Notification
  D. Generators and Transporters
  E. Facilities Subject to Permitting
  1. Facilities Newly Subject to RCRA Permit
  2. Interim Status Facilities
  3. Permitted facilities
  4. Units
  5. Closure
VII. CERCLA Designation and Reportable Quantities
VIII. Executive Order 12866
IX. Economic Analysis
  A. Compliance Costs for Listings
  1. Universe of Carbamate Production Facilities and Waste Volumes
  2. Method for Determining Cost and Economic Impacts
  3. P and U List Wastes
  4. Potential Remedial Action Costs
  5. Summary of Results
  B. Impacts
X. Regulatory Flexibility Act
XI. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of Sections 2002(a) and 3001 (b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), and 6921 (b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. Introduction

As part of its regulations implementing Section 3001(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), EPA published a list of hazardous wastes that includes hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In this action, EPA is amending this section to add six wastes generated during the production of carbamate chemicals. In addition, under the authority of section 3001 of RCRA, EPA maintains at 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. In this action, the Agency is amending 40 CFR 261.33 to add 58 specific materials to this list.

All hazardous wastes listed under RCRA and codified in 40 CFR §§ 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR Sections 261.21 through 261.24), are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is adding the newly identified wastes in its action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. EPA is not taking action at this time to adjust the one-pound statutory RQs for these substances.

III. Summary of Proposal

A. Proposed New Hazardous Wastes

In the March 1, 1994 proposed rule (59 FR 9808) the Agency proposed to list as hazardous six wastes generated during the production of carbamates:

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.

K159—Organics from the treatment of thiocarbamate wastes.

K160—Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

The Agency proposed adding K156, K157, K158, K159, K160, and K161 to 40 CFR 261.32 because the wastes satisfy the criteria in 40 CFR 261.11(a)(1–3) for listing hazardous wastes.

The Agency also proposed to add 70 substances and 4 generic classes of chemicals to 40 CFR 261.33. EPA maintains at 40 CFR 261.33 a list of discarded commercial chemical products, off specification species, container residues, and spill residues thereof, which are regulated as hazardous wastes. The Agency proposed to list 22 of the 70 substances as acutely hazardous under 40 CFR 261.33(e), because toxicological studies have found the substances to be fatal to humans in low doses or in the absence of data on human toxicity, it has been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal (rabbit) LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or is otherwise capable of causing or significantly contributing to serious illness (see 40 CFR 261.11(a)(2)). The remaining 48 substances and 4 generic classes of carbamate chemicals (i.e., carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) were proposed to be listed under 40 CFR 261.33(f) as toxic hazardous wastes pursuant to 40 CFR 261.11(a)(3). These substances were listed in Tables 5 and 6 of the proposed rule (59 FR 9812).

B. Determinations Not To List Certain Carbamate Wastes as Hazardous Waste

As a result of the Agency's studies, a number of generic groups of wastes produced from the manufacture of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates were not found by the Agency to require additional regulation as a listed hazardous waste under RCRA. The Agency proposed to not list as hazardous the following categories of wastes:

—Spent carbon and waste water treatment sludges from the production of carbamates and carbamoyl oximes

—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production

—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates

—Reactor vent scrubber water from the production of dithiocarbamates

—Organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates)

C. Exemptions

For wastewaters from the production of carbamate and carbamoyl oxime chemicals (Hazardous waste code K157), the Agency proposed to exempt from the definition of hazardous waste those wastewaters that do not exceed a total concentration of 5 parts per million by weight (ppmwt) of formaldehyde, methyl chloride, methylene chloride, and triethylamine. Under § 261.3(a)(2)(iv), the new exemptions to the definition of hazardous wastes, the exemption was proposed to read as follows:

§ 261.3(a)(2)(iv) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided, that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

The Agency also proposed to specifically exempt biological treatment sludges from the treatment of wastewaters from the production of carbamates and carbamoyl oximes from the definition of hazardous waste. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes is created for sludges from the biological treatment of these wastewaters. This new exemption was proposed to read as follows:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

IV. Changes to the Proposed Rule

A. Exemptions

The Agency is finalizing a regulatory strategy which allows for a concentration-based exemption from the K156 and K157 listings. In the March 1, 1994 proposed rule, a concentration-based exemption was specifically proposed only for K157. Using models to calculate the atmospheric concentrations of chemicals of concern resulting from the management of K157 and wastewaters derived from K156, the Agency found that for these wastewaters a total concentration of 5 parts per million by weight (ppmwt) would be protective for wastewaters containing formaldehyde, methyl chloride,

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methylene chloride, and triethylamine. Assuming further wastewater treatment as necessary before discharge, under the plausible mismanagement scenario of treatment in open tanks for K157 or wastewater derived from the treatment of K156, the Agency views this level as protective of human health and the environment. In addition, EPA notes that the 40 CFR Part 268 land disposal restrictions would not apply to wastes managed in tanks except to the extent the wastes were also managed in land-based units such as surface impoundments. Because the wastewaters from the treatment of K156 are similar to K157 wastes in composition and management, the Agency foresees no significant risks from the exemption of K156 wastes derived from K156 in the same manner as K157 and is finalizing a concentration-based exemption to the listing description of both K157 wastewaters, and wastewaters derived from the treatment of K156 organic wastes.

In response to comment, the Agency is modifying the exemption proposed to allow that portion of the chemicals of concern which is "destroyed through treatment" to be considered in the mass balance determination of exemption status. Under § 261.3(a)(2)(iv), new exemptions to the definition of hazardous wastes are created for these wastewaters. These new exemptions read (changes to proposal in **bold**):

§ 261.3(a)(2)(iv) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, **destroyed through treatment**, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; **or**

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

Under these exemptions, wastes which are calculated to contain less than a total concentration of 5 ppmwt for the sum of the four constituents of concern would not be hazardous wastes, and any sludges generated from further biological treatment would not be derived from hazardous wastes, assuming wastewaters are <5 ppmwt at the point of generation.

The Agency is not requiring that generators taking advantage of the K157 exemption actually monitor the concentration of the constituents of concern in untreated wastewater, but uses the same strategy used in other exemptions for wastewaters discharged into the headworks of a wastewater treatment system found at 40 CFR 261.3(a)(2)(4) (46 FR 56582, November 17, 1981). A generator must be able to demonstrate that the total amount of all constituents of concern that is discharged to the environment during the production week divided by the average weekly flow of the process unit discharge into the headworks of the final wastewater treatment step not exceed the standards.

This demonstration can be made through an audit of various records already maintained at most facilities, including invoices showing material purchases, lists including to whom and how much inventory was distributed and other, similar, operating records. A facility can exclude that portion of the constituents of concern not disposed to wastewaters. No portion of the material of concern which is volatilized may be excluded from the calculation. Under current regulations (40 CFR 262.11 and 268.7) generators are required to determine whether their wastes are hazardous. Facilities claiming the exemption would have to be able to demonstrate that they meet the exemption. Such information would be intended to verify compliance with this concentration standard. An EPA inspector would look to this information to verify the assessment made by the generator, and may employ direct analytical testing as further verification. If either measurement indicate a total concentration greater than 5 ppmwt for the sum of the concentrations of the four chemicals of concern, then the wastes is subject to regulation as K157 hazardous waste. In this manner, the Agency seeks to discourage and prevent air stripping or other technologies which would merely continue to volatilize these pollutants of concern.

Commenters argued and the Agency agrees that wastes derived from K156 are no longer hazardous wastes provided that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter. In the case of wastewaters derived from the treatment of K156 wastes, other wastes may be commingled for treatment. However, other hazardous wastes mixed with K156 or K157 wastes are not exempt. Records of incinerator feed rates and destruction efficiency can be used to support a facilities claim of exemption. A facility can demonstrate that it meets either of these exemptions only in part by direct effluent measurement at the headworks. In each case, the facility must also incorporate any emissions from the treatment system prior to the headworks in the overall determination of regulatory status.

The Agency is also expanding the proposed exemption of K157 wastewater treatment sludges to include sludges from the treatment of K156 wastes. The Agency is specifically exempting biological treatment sludges from the treatment of K156 and K157 wastes from the production of carbamates and carbamoyl oximes from the definition of hazardous waste, because it has characterized these sludges and found that they do not pose significant risks to human health or the environment in the advent of plausible mismanagement. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes is created for sludges from the biological treatment of these wastewaters. This new exemption would read (changes to proposal in **bold**):

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—**organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters** from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

Without exemption, a large volume of previously disposed wastes and sludge currently collecting within the various treatment systems would require management as hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)). However, in the case of the biological sludges from the treatment of carbamate and carbamoyl oxime wastewaters, the Agency could only identify risks resulting from the hazardous volatile air pollutants present in the wastewaters being treated. Neither these air pollutants nor other hazardous substances were found to be accumulating in the biological treatment sludges studied by the Agency. Therefore, the Agency finds that these sludges do not meet the definition of hazardous waste, and is exempting these sludges derived from K156 and K157 wastes from the definition of hazardous wastes, provided the wastes are not otherwise characteristically hazardous. EPA believes that this exemption is particularly appropriate because of the small number of facilities in this industry and the Agency's thorough investigation of carbamate wastes.

B. Appendix VII and Appendix VIII

In the March 1, 1994 proposed rule, the Agency had proposed the listing of acetone, hexane, methanol, methyl isobutyl ketone, and xylene as part of the basis for listing of one or more hazardous wastes in part 261 appendix VII and as hazardous constituents for addition to part 261 appendix VIII. Because these constituents were not significant in the Agency's multipathway risk assessment, the Agency is not finalizing the addition of acetone, hexane, methanol, methyl isobutyl ketone, and xylene to part 261 appendix VII. Furthermore, because these constituents are no longer significant to the carbamate industry, and their addition to appendix VIII could have far reaching impact, the Agency is also not adding these solvents to appendix VIII.

In reassessing the basis for listing, the Agency discovered that although formaldehyde in K156 wastes had demonstrated significant risks via the direct inhalation pathway (59 FR 9827) it was inadvertently omitted from the appendix VII basis of listing in the **Federal Register** notice for the proposed rule. The presence and risks attributed to formaldehyde in K156 waste are clearly documented in the proposal. The Agency has corrected this omission and added formaldehyde to the appendix VII basis for listing of K156. The Agency is also correcting the inadvertent omission of antimony and arsenic to the appendix VII basis of listing for K161 (see 59 FR 9830 and 9835).

Commenters also brought to the Agency's attention, that Agency had not listed the generic listings of carbamates, carbamoyl oximes, thiocarbamates, or dithiocarbamates, N.O.S. to appendix VIII. Based on either direct toxicological studies or the extrapolation of existing studies to the chemical group, the Agency finds each member of these groups may exhibit toxicological properties or degrade to other known toxic substances. As stated previously, the Agency is deferring the addition of the generic U360 through U363 listings until comment is taken of options to narrow their scope. This inadvertent omission of addition of these categories to appendix VIII will be corrected in the future rulemaking. Therefore, the Agency has not finalized the addition of these generic descriptions to appendix VII.

C. Listing of Commercial Chemical Products

The March 1, 1994 notice (59 FR 9808) proposed the addition of 22 substances to 40 CFR 261.33(e). This final action adds 18 of the 22 substances to the list of acutely hazardous wastes. After evaluation of comments received, four substances (bendiocarb, thiophanate-methyl, thiodicarb, and propoxur), proposed for addition to 40 CFR 261.33(e) as acutely hazardous, are instead being added to 40 CFR 261.33(f) as toxic wastes when discarded. In each case, the Agency found that these four substances did not meet the § 261.11(a)(2) criteria for listing in § 261.33(e).

In the case of propoxur, the Agency has examined the more current inhalation studies provided, as well as additional studies performed on propoxur concentrates, and finds that these more recent studies indicate a 1-hour inhalation LC50 near, but greater than, 2 mg/L. The Agency was unable to document the quality of the prior study or all study protocols. Therefore, the EPA is finalizing the listing of propoxur as a U-waste, rather than as a "P" list waste, and designating propoxur as U411.

In the case of bendiocarb, thiophanate-methyl, and thiodicarb, it was noted that the Agency had based its decision on 4-hour exposure studies rather than 1-hour exposure studies consistent with the toxicological criteria of 40 CFR 261.11(a)(2). The Agency has reevaluated each of the compounds LC50 (1-hour) inhalation toxicity and based on these and the other toxicological results presented in the proposal is finalizing these three substances as toxic rather than acute hazardous wastes.

TABLE 1.—LIST OF PROPOSED ACUTE HAZARDOUS WASTES BEING ADDED AS TOXIC HAZARDOUS WASTES

Hazardous waste No.	Toxic hazardous wastes—CAS name (common name in parentheses)	CAS No.
U278	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781–23–3
U409	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	23564–05–8
U410	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	59669–26–0
U411	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur)	114–26–1

The Agency believes that as proposed the generic listing descriptions may be overly broad. Therefore, the Agency is not finalizing at this time the four proposed generic U listings (U360 through U363). With regard to the generic listings, the Agency believes that each generic group exhibits significant toxicological properties either directly from the chemicals themselves or their potential degradation products and that the range of variability in these effects in each case may pose risks to human health and the environment. As a result, the Agency is not finalizing the generic U listings (U360 through U363) at this time, and will take comment at a future date on options to narrow the scope of the U360—U363 listings.

The Agency also evaluated the toxicological data for each waste proposed for addition to 40 CFR § 261.33(f). After review of the available toxicological data, 12 compounds were not considered to have adequate toxicological data or predicted toxicity values in the record to finalize these listings at this time. The Agency is deferring action on these 12 substances.

The Agency has performed a more rigorous quantitative structure activity relationship analysis (QSAR) to predict the aquatic toxicity of each of the 12 deferred chemicals. The results of the QSAR analysis supports the Agency's conclusion that carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates are highly toxic to aquatic species. The results of these studies are presented in Table 2 and included in the Docket (see **ADDRESSES**). The Agency will present these studies and the methodology used for public

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comment during a planned reproposal of the 12 deferred chemicals.

TABLE 2.—QSAR RESULTS FOR DEFERRED DISCARDED CHEMICAL PRODUCTS

Waste code	Toxic hazardous wastes CAS name (common name in parentheses)	CAS No.	Fish 96-h LD50 mg/L	Daphnid 48-h LC50 mg/L	Fish chronic value (ChV) mg/L	Daphnid chronic value (ChV) mg/L
U368	Antimony tris (dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate).	15890–25–2	0.09	0.35	0.004	0.01
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991–76–1			0.001	0.003
U370	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Bismuth tris(dimethyldithiocarbamate)).	21260–46–8	1.8	0.63	0.03	0.06
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086–85–3	190.0	30.0	20.0	3.0
U374	Carbamic acid, [[3-[(dimethylamino) carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006–94–7	870.0	1000.0	90.0	100.0
U380	Carbamodithioic acid, dibutyl-, methylene ester	10254–57–6			0.01	0.06
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785–20–2	3.9 0.46—Carp 28–d TSCA§8E 8379	3.9	0.40	0.40
U397	Lead, bis(dipentylcarbamodithioato-S,S')- (Lead, bis (dipentyldithiocarbamato)).	36501–84–5	0.07	0.29	0.003	0.008
U398	Molybdenum, bis(dibutylcarbamothioato)- di-.mu.-oxodioxodi-, sulfurized.	68412–26–0	4.0	1.7	0.20	0.25
U399	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).	13927–77–0	0.12	0.26	0.004	0.01
U405	Zinc, bis[bis (phenylmethyl) carbamodithioato-S,S']- (Zinc dibenzyldithiocarbamate).	14726–36–4	0.10	0.30	0.004	0.01
U406	Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram)	136–23–2	0.12	0.26 0.74—daphinid 48–h TSCA§8E 9739	0.004	0.01

V. Response to Comments

The Agency is responding in this preamble to the most significant comments received in response to both the notice of March 1, 1994 (59 FR 9808) and the single comment received on carbamates that were part of the "Michigan List" proposal [1] (49 FR 49784, December 21, 1984).

Other comments received by the Agency are addressed in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

A. Scope of Listing

1. Definition of Carbamates

Many commenters were confused by the scope of the listings and found it difficult to determine whether their production processes and discarded products were in the scope of wastes included in the listings. Many commenters believed that the definition of a carbamates was too vague and that any number of compounds could be considered carbamates. Commenters requested that EPA specifically define each of the four generic classes of carbamate compounds (carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) along with the scientific rationale for each definition and to footnote the regulation with those definitions.

In the March 1, 1994, proposal (59 FR 9808), the Agency included the definition of carbamate in the engineering background document (F–94–CPLF–S0001). In response to comments that the categories are not sufficiently defined, EPA is providing additional clarification of the chemical characteristics of each of the specific groups listed above. A discussion of the term carbamate follows.

Chemical Definitions

Carbamates are salts or esters of carbamic acid. Today's regulations impact the production of chemicals of four distinct functionalities: carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates. The production of chemicals in these four groups, comprise the "carbamate industry" studied by EPA in this rulemaking proceeding.

Carbamates

A carbamic acid ester is a compound that has the following structure:

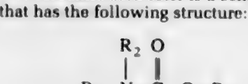

Where R_1 and R_2 can be identified as a hydrogen atom or any organic group beginning with a carbon sequence, and R_3 must be an organic group beginning with a carbon atom. The substitution of a metal cation at the R_3 position will result in a carbamate salt. Polyurethanes (i.e., polymers consisting of linked carbamate esters) are not within the scope of this rulemaking. Polyurethanes are large molecular structures which are unlikely to be bioavailable and which do not exhibit the toxicological properties of unlinked carbamate esters. For the purpose of this rulemaking, all salts or esters of carbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

[1] In response to a petition for rulemaking filed by the State of Michigan, the EPA proposed to add 109 chemicals to the list of commercial chemical products that are hazardous when discarded.

Carbamoyl Oximes

A carbamoyl oxime has the following chemical structure:

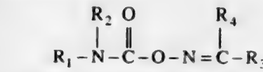

Carbamoyl oximes are a combination of the carbamate functionality and the oxime functionality. Oximes are characterized by the structure RO-N=C-R_1,R_2 where R_1 and R_2 can be a hydrogen or any organic group beginning with a carbon atom. The oxygen atom of the carbamate structure is used as a bonding point between the carbamate and oxime groups as shown in the following diagram:

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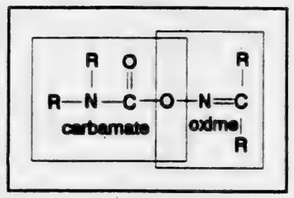

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For the purpose of this rulemaking, all salts or esters of carbamoyl oximes with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

Thiocarbamates

Thiocarbamates may be produced from the reaction of a carbamoyl chloride with a mercaptan and differ from carbamates by the substitution of either oxygen atom with a sulfur atom as shown in the following diagram:

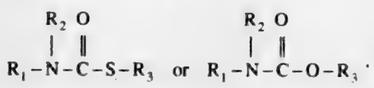

For the purpose of this rulemaking, all salts or esters of thiocarbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

Dithiocarbamates

The dithiocarbamate differ from carbamates in that each oxygen atom of the C(=O))O moiety is replaced with sulfur atoms. Dithiocarbamate esters have the following generic structure:

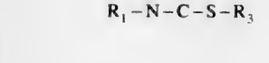

Dithiocarbamic acid is commercially important but is very unstable. As a result, it is often isolated as a metal salt. Usually, one or more hydrogen atoms on the amine function are replaced by an organic group. The following figure shows a typical reaction to produce a dithiocarbamic acid salt:

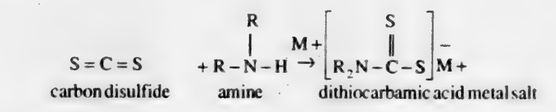

For the purpose of this rulemaking, all salts or esters of dithiocarbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.
Thiocarbamoylsulfenamides which are derivatives of dithiocarbamic acids are not subject to this rulemaking.

Both alkyl and ethylene dithiocarbamates can form salts with metal ions and both can be oxidized to the corresponding thiuram sulfides (bis(aminothiocarbonyl)sulfides). Mono, di, tri and tetra sulfides are known and are included in this rulemaking.
Thiuram sulfides have the following generic structure:

wheren = 1,2,3,4

These sulfides are the linkage of two dithiocarbamic acids and are classed as dialkyldithiocarbamates in this rule, because thiuram sulfides are known to

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decompose to carbon disulfide, dialkylamine, and dialkyldithiocarbamate.

2. Listing Obligations

Commenters also took issue with the inclusion of all the four chemical types of carbamates under the scope of the statutory obligation of HSWA and that of the proposed consent decree in *EDF v. Browner* (Civ.No. 89–0598, District of Columbia Circuit).[2] Specifically commenters believed that thiocarbamates and dithiocarbamates should not be included with carbamates and that the listing determination should have been limited to the specific compounds identified in the proposed consent decree. Several commenters believe EPA is obligated only to make hazardous waste listing determinations for production wastes from those specific dithiocarbamates, thiram, ziram and ferbam, listed in the proposed consent decree. Other commenters believe that the scope of the listings should be limited to pesticide products.

Sections 3001(e) and 3001(b) give the Agency the authority to list any waste as hazardous provided it satisfies 40 CFR 261.11. Furthermore, Section 3001(e)(2) of RCRA as amended mandates that the Agency make a determination whether or not to list as hazardous wastes from the manufacture of carbamates. Since the statute gives no further definition of carbamates, it is left to the Agency to determine the scope of the wastes subject to the mandate. The Agency believes that the mandate was to make hazardous waste listing determinations for wastes generated from the manufacture of carbamates. Neither the congressional mandate nor the EDF consent decree limited the Agency's authority to consider the range of wastes subject to this rulemaking.

One commenter suggested that EPA limit the scope of the listings to wastes from the manufacture of pesticide products. The Agency disagrees with the commenter. The Agency's industry study focused on the four distinct groups of chemicals. This study was designed to evaluate the wastes from the production of these chemicals and the potential of the products to pose a hazard to human health or the environment when discarded. Thus, the end use of the product was not considered to be relevant, only the wastes. For dithiocarbamates which are used as both pesticides and rubber processing chemicals, the Agency found that the processes used, the wastes generated, the management practices, and the mismanagement scenarios were similar regardless of the end use. The Agency thus feels that regulating wastes from the production of dithiocarbamates without regard to end use is appropriate. For P and U listings, the Agency considered the toxicity of the material. The Agency feels that the end use is not an appropriate consideration because these listings regulate the disposal of the chemical as a waste.

3. Specific Substances

Commenters requested specific guidance in determining whether a given product fell within the scope of the listing. Commenters noted that the chemical definition of carbamate includes all salts and esters of carbamic acid. As such, commenters stated that carbamates could be viewed to include such substances as ammonium carbamate (a carbamic acid salt) and polyurethanes (polymers of linked carbamate ester structures). In order to narrow the scope of the proposed listing to the particular carbamate structures studied, it was suggested the Agency either list specific products to which the listing would apply, or restrict the listing applicable to pesticide products.

In response, the Agency believes the toxicity of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates to be a function of the bioavailability and reactivity of the chemicals as a waste, and therefore product use should not be a limiting factor, as bioavailable and reactive carbamates used for industrial purposes other than pesticides are assumed to have the potential to exhibit toxicity. With regard to the specific chemicals mentioned above, polyurethanes are large biologically unavailable molecules not within the scope of this rulemaking. Isotoic anhydride contains a -N-(C=O)-O- sequence, but chemically the substance is an acid anhydride and is not within the scope of this rulemaking. Furthermore, carbamates that are not isolated during production (i.e., transient intermediates and not removed from a process) are not included in the scope of the listing. Processes which include the brief formation of a carbamate intermediate which is not separated from the process or transported to another facility or process train and is converted to a non-carbamate is not included in the scope of the listing.

In the case of ammonium carbamate, the material is sold or transferred as a product for use in the production of urea. The Agency believes that wastewaters from the production of ammonium carbamate fall under the K157 listing unless they meet the specified exemption. The Agency also notes that ammonium carbamate is currently regulated as a CERCLA hazardous substance with a final reportable quantity (RQ) of 5000 pounds.

4. Definition of Production

Several commenters stated that the definition of production should be clarified to limit the rule to the chemical synthesis of a carbamate, carbamoyl oxime, thiocarbamate or dithiocarbamate as an isolated product and propose a definition that does not include operations which isolate non-carbamate product for which there is otherwise a commercial market. Several commenters also wanted clarification on whether wastes from use or formulation were included in the scope of the proposed listings.

In studying the carbamate manufacturing industry, the Agency analyzed current carbamate manufacturing processes. In order to focus the study, the Agency determined the raw materials, processes and reactions that were unique to the carbamate manufacturing industry. The Agency concludes that carbamate production begins with the synthesis of non-carbamate intermediates, chemicals which have no other use except for the production of a carbamate product or carbamate intermediate, and includes all subsequent processes involved with the production of the respective carbamate. Therefore, wastes from chemical processes which produce non-carbamate basic or specialty chemicals, which have multiple uses, are not subject to the K156–K161 hazardous waste listings. For example, wastes from the production of phosgene or methyl isocyanate which are used in numerous chemical production activities would not be included in the scope of the listing. In the case of non-carbamate intermediates, which have no other use but the production of carbamate intermediates or final products, wastes from the production of such intermediates would be subject to the listing. Such wastes are properly classified as carbamate production wastes and within the scope of RCRA § 3001(e)(3), regardless of whether or not the production occurred at the ultimate site of manufacture of the carbamate chemical. Thus, wastes from the production of bendiocarb phenol, A–2213 (intermediate in oxamyl production), and carbofuran phenol, all of which are solely used for the production of carbamates, are within the scope of the listing.

Wastes from the use of carbamate products are not generated from the production of carbamates and, therefore, are not within the scope of the proposed listings. Also, wastewaters from the formulation of carbamate products into consumer products (i.e., the production of end use pesticide products) are not subject of the K156–K161 listings. The K listings regulate only wastes from the manufacture of the chemical ingredients.

5. Requests for Additions to the Listings

One commenter believed that the following wastes which EPA proposed not be listed should in fact be listed as hazardous:

Wastewater treatment sludges. The commenter believed that the wastewater treatment sludges from the production of carbamate and carbamoyl oximes contain high contaminant concentrations that warrant regulation. Specifically the commenter believed that concentrations of methylamine, trimethylamine and bis(2-ethylhexyl)phthalate, naphthalene, and 4-methylphenol were sufficiently high to warrant regulation of the sludges. The commenter believed that the risk modeling was flawed in that its exposure pathway assumptions understated the risks in the groundwater pathway and in the modeling techniques used.

Spent carbon. The commenter believes that chloroform is not the only constituent of concern in the spent carbons from the production of carbamates and states that the one sample taken by the Agency contained significant concentrations of methylene chloride, ethyl benzene and carbofuran. The commenter also believes that they should be listed because the listing criteria require EPA to list a waste as hazardous if it routinely exhibits a hazardous waste characteristic.

Wastewaters. The commenter believes that the Agency only considered mismanagement in tanks to result in only an air emission exposure pathway. The commenter believed that the Agency ignored spills or releases from tanks to surface waters or groundwater, and did not consider impacts to birds and other wildlife on direct contact with the wastewater, did not establish margins of safety to take into account lack of inhalation health-based standards, or take into account multiple sources of contaminants at carbamate facilities. They also believe that the surface impoundment should be considered a plausible management scenario because they are used at some carbamate facilities, and may be used in the future at new facilities. As well they believe that wastewaters from the production of thiocarbamates contain EPTC (Eptam) at greater than 100 times the health based level. They also state that process wastewaters from the production of dithiocarbamates contain levels of carbon disulfide that exceed applicable health standards and that scrubber waters prom the production of dithiocarbamates contain piperidine at significant concentrations.

Organic Wastes from Dithiocarbamate Production. The commenter disputes that fact that all of the organic wastes from Dithiocarbamate production are adequately managed as hazardous, because the F003 listing is not based on toxicity. The commenter maintains that these wastes should be listed as hazardous.

The Agency disagrees with the commenter on each the points raised. For wastewater treatment sludges, spent carbons, thiocarbamate and dithiocarbamate wastewaters, and dithiocarbamate organic wastes the Agency did not project significant human health or environmental risks as currently managed. EPA notes that the commenter did not provide accompanying exposure assessment and risk levels in their comment package. They merely state that high concentrations warrant regulation.

For wastewater treatment sludges, the Agency considered as plausible mismanagement the current management practices of management in tanks and subsequent disposal in landfills. No significant risks were attributable to these management scenarios. In the assessment of landfill management, model leachate concentrations were matched to analytical TCLP leachate concentrations. It is reasonable to calibrate model outputs to experimental measurements of actual leaching potential obtained using the Agency's Toxicity Characteristic Leaching Procedure (TCLP, 40 CFR 262, Appendix II), because these experimental measurements may more accurately predict the waste's leaching potential. This procedure was designed to approximate the leaching of wastes co-disposed with municipal wastes, therefore the Agency has utilized these experimental measurements in lieu of model projections of the leachate composition.

Based on the Agency's assessment, spent carbons from carbamate production where found to be characteristically hazardous as D022 (chloroform) and the risk assessment was dominated by risks attributed to chloroform. Absent the presence of chloroform, this waste would not satisfy the criteria for listing. While the commenter believes that all wastes which exhibit a characteristic should be listed, to implement hazardous waste management the Agency has put into place a two tiered system of characteristic and listed wastes. The U.S. Court of Appeals for the District of Columbia Circuit recently found in Natural Resources Defense Council v. EPA, 25 F.3d 1063 (District of Columbia Circuit 1994), that EPA is not compelled by its regulations to list a waste as hazardous because it exhibits a characteristic. The court found that EPA has the discretion to make a reasoned judgment as to under which system a waste should be managed. In this case, EPA has no information indicating that the current hazardous waste regulation of these spent carbons are inadequate. The Agency finds no need for redundant regulation, because risks are directly controlled by existing regulation.

In the case of wastewaters from thiocarbamate and dithiocarbamate production, the Agency determined that "plausible mismanagement" would be continued management in existing treatment systems comprised of tanks. The Agency does not view abandonment of existing treatment systems for unlined surface impoundments as "plausible." The Agency believes that since the carbamate manufactures have already made a considerable investment in wastewater treatment systems using tanks, they will continue to use them. Furthermore, the Agency also believes permitting authorities are strongly biased against the permitting of new surface impoundments, due to the potential for such units to contaminate groundwater resources. This bias considerably lessens the likelihood of future surface impoundments.

In the current management scenario of tanks, the Agency does not project significant risks, and does not view the replacement of these tanks with other treatment units as plausible. The Agency was able to survey all U.S. producers of carbamates and could only identify the use of surface impoundments as polishing ponds after aggressive biological treatment in tanks. EPA's analysis indicated that the carbamate industry is unlikely to experience rapid and significant expansion and thus the development of significant new manufacturing sites and increased waste disposal is low. The EPA has, therefore, not listed these wastes as hazardous.

[2] The Environmental Defence Fund (EDF) sued the Agency *for inter alia*, failing to meet the statutory deadlines of section 3001(e)(2) for making a hazardous waste listing determination for carbamates. The resulting consent decree (entered December 9, 1994) establishes a number of deadlines, including a January 31, 1995, deadline for this action.

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In response to the commenters claims that the Agency ignored spills or leaks from tanks, failed to consider wildlife impacts, establish safety margins to account for the lack of inhalation health-based standards or consider the multiple sources of contaminants, the Agency disagrees with each of the commenter's assertions. When assessing management of waste in surface impoundments, EPA included spills and overflows in the calculations. These were not accidental or catastrophic releases, but rather based on probabilities of overflows and spills. In the case of tanks, accidental release scenarios or catastrophic release scenarios were not considered as a potential basis for listing. Wastewater treatment tanks are excluded from RCRA permitting provisions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank are excluded under 40 CFR 261.4(c). Therefore, RCRA currently does not impose containment standards. However, the EPA Administrator has authority under RCRA section 7003 to bring suit on behalf of the United States as may be necessary to stop any imminent and substantial endangerment to health or the environment.

EPA performed a screening analysis of the potential impacts on terrestrial species. However, the Agency is still developing methodologies for characterizing risk to terrestrial wildlife and endangered species, and believes that the analysis presented in the risk background document (F–94–CPLP–S0003) needs to be further refined.

The Agency calculated risks for each exposure pathway of significance and considered the potential cumulative risks of multiple exposures to the same toxic contaminates via multiple pathways. The Agency acknowledges that there may be other exposures resulting from such pathways as facility air emissions or consumer product use, and has attempted to quantify only those risks associated with solid waste management.

The organic wastes from the production of dithiocarbamates were found by the Agency to be composed largely of solvents regulated by the F003 and F005 hazardous waste listings. While F003 is only listed because of the characteristic of flammability, the Agency acknowledges that additional toxicity concerns have since been reported in a number of scientific studies. However, these solvents were not found to present significant risks when managed in tanks or from residual incinerator emissions. The Agency concludes that the existing regulation of F003 wastes within the context of the carbamate industry are protective of human health and the environment and that a separate listing designation would be redundant.

B. Listing Exemptions

1. K157 Exemption

Many commenters supported the K157 exemption as proposed because they felt it provided operational flexibility, incentives for waste minimization and an opportunity to overcome some of the difficulties created by managing listed wastes under the current rules. Some commenters also wanted clarification on the point of application of the exemption (i.e., where in the treatment process the determination is made as to whether or not the exemption level is achieved). Several felt that the compliance point should be downstream of strippers and other treatment systems. Several commenters also requested that compliance with the exemption be demonstrated using analytical testing.

The Agency feels that the appropriate compliance point for application of the K157 exemption is the point of generation prior to aggregation with other carbamate and non-carbamate waste streams. The Agency feels that if the point of exemption were after aggregation of the listed wastes with other wastes it would provide some incentive to selectively mix wastewater streams to meet the exemption criteria. By applying the concentration limit at the point of generation, it is likely that only the wastewaters that meet the criteria will be exempted. In addition, if the compliance point is moved to the exit of steam strippers and incinerators, storage tank and other treatment unit emissions would no longer be considered in the exemption determination.

With regard to testing, the Agency does not preclude the direct measurement of the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine using quantitative analytical methods to demonstrate the exemption requirements are met. However, the Agency concludes that end-of-pipe analytical demonstrations alone do not prove compliance with the exemption criteria. All waste treatment emissions must be considered. For example, an end-of-pipe test prior to mixing with other sources provides a rapid determination of the concentration of constituents in the wastewater being disposed. However, this single point-of-compliance does not demonstrate that constituents were not evaporated to the environment. A mass balance demonstration requires the facility to account for all of the materials introduced to the process showing amounts reacted, treated, recycled, and disposed. The accuracy of the mass balance approach is largely dependent on the process material records and accurate flow measurements during the production week. It is incumbent upon those claiming the exemption to provide documentation supporting the claim.

One commenter, however, believes that K157 waste should not be allowed an exemption because they believe the wastes exhibited one or more hazardous waste characteristics requiring listing, that air emission risk was well documented, and that because carbamate facilities are largely all RCRA permitted facilities, Agency resources would not be taxed by a change in the current exemption of wastewater treatment tanks from RCRA permitting and hence RCRA air emission controls.

The Agency disagrees. To implement hazardous waste management the Agency has put into place a two tiered system of characteristic and listed wastes. As discussed above, the D.C. Circuit Court recently found that EPA has the discretion to make a reasoned judgement as to under which system a waste should be managed. In the case of K157, the Agency believes that the same models used to calculate air emissions risks can also be used to determine a concentration at which this risk pathway has been abated such that unrestricted wastewater treatment could proceed. Thus, the Agency believes that the K157 exemption is warranted for those wastes that do not exceed the exemption limits. The Agency views any change to the current wastewater treatment unit exemption to be beyond the narrow scope of this hazardous waste listing determination. The Agency will further evaluate the regulatory status of wastewater treatment tanks in development of the Phase Four Land Disposal Restrictions Rule.

One commenter believes that EPA's method for determining the concentration of the constituents of concern may have ignored the benefit offered from various control devices for the volatile constituents. The commenter agrees that uncontrolled volatilized constituents should be included in the calculations; however, the commenter believes that the use of appropriate control devices for volatile constituents to capture or destroy the constituent should be part of the mass balance determination of regulatory status (i.e., whether or not the waste is exempt or not). As a result the commenter believes that the exemption should be amended to state that only

those hazardous constituents that cannot be demonstrated to be reacted in the process, recovered, or otherwise controlled should be included in the exemption calculation. The commenter also suggests that EPA consider credits or an exemption allowance for leak detection and repair programs which are currently in place and are part of the control process for carbamate production and K157 wastewaters.

The Agency agrees control devices for volatile constituents should be considered in the K157 wastewater exemption mass balance because there are valid control measures that prevent the release of the constituents to the environment, through recycling, or treatment. As a result the Agency is modifying the exemption to include the mass destroyed through treatment in the mass balance. The Agency believes that, while leak detection systems and repair programs are necessary to the safe and efficient management of wastes, these should be standard operating practices. Thus, the Agency believes that a credit or allowance for these management practices is not warranted.

One commenter believes that wastes are differentiated by treatability groups (wastewater or non-wastewater) while exemptions are by listing code. The commenter notes that wastes can change treatability group as a result of treatment, and requests clarification of EPA's intentions concerning K157 non-wastewaters generated through permissible switching of treatability groups when steam stripping generates wastewater bottoms (<1% total organic carbon, <1% total suspended solids) and non-wastewater overheads (>1% TOC). The commenter wishes to determine if K157 nonwastewaters derived as a result of steam stripping and then incinerated generating a K157 derived from wastewaters (scrubber waters) still meets the exemption.

Waste meeting the hazardous wastes listing descriptions of K156 and K157 are differentiated by their treatability group at the point of generation. Carbamate process wastes less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS) are aqueous wastes designated as Hazardous Waste No. K157. Process wastes greater than 1% are designated as Hazardous Waste No. K156. Subsequent treatment does not change a waste's hazardous waste number. The commenter has described a case where K157 wastewaters are treated to separate an organic laden stream which is incinerated, and incinerator condensate returned for wastewater treatment. The Agency defines a hazardous wastes listing at the point of generation. In the case where wastewaters are removed from the process and subsequently treated, all the streams are derived from K157, and therefore all the streams are potentially exempt if a mass balance shows that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions does not exceed a total of 5 parts per million by weight. If the facility can demonstrate that the amount of these constituents discharged or volatilized is less than 5 ppm then the K157 waste is exempt.

2. K156 Exemption

Several commenters believe that the exemption outlined in the K157 exemption should be expanded to include organic wastes from the production of carbamates and carbamyl oximes (i.e. K156 wastes). As an option some commenters believe the same approach should be extended to other carbamate K-listed wastes (e.g., incinerator scrubber blowdown). Specifically, one commenter noted that K156 scrubber water and steam stripping bottoms generally no longer contain VOCs and the carbamate component has been treated. They therefore believe that the proposed exemption should be modified to include K156 wastes which contain <5 ppm of methyl chloride, formaldehyde, triethylamine, and/or methylene chloride) if the wastes are treated in biological treatment systems. This commenter believes that without the exemption, the mixture and derived-from rule will force manufacturers to collect incinerator scrubber waters or stripper bottoms derived from treatment of K156 wastes for off-site management or collect all K156 organic wastes for off-site management. The commenters also believe that the lack of an exemption for K156 non-wastewaters equivalent to that for K157 wastewaters would result in needless off-site shipments of wastes.

The Agency has considered the expansion of the exemptions for other wastes proposed for listing. For untreated K156 wastes the Agency does not believe that it is appropriate to provide an exemption similar to K157 wastes. K156 wastes typically contain high concentrations of organic solvents such as xylene, methanol, methyl isobutyl ketone, toluene, acetone, and triethylamine and significant concentrations of such compounds as benomyl, carbendazim, carbaryl, and carbofuran. The Agency used a multipathway risk assessment and found that the constituents found in these wastes presented a risk to human health and the environment if the waste is improperly managed. Thus, the Agency does not feel an exemption for untreated K156 wastes is warranted.

The Agency believes, however, that some K156 wastes deserve the same type of exemption as K157 wastewater. Wastes derived from the treatment of K156 wastes such as incinerator condensate waters and other dilute wastes present risks similar to those from K157 wastewaters. For example, a carbamate process unit may generate an organic stream (i.e., >1% TOC) that is identified as K156. This material then undergoes incineration or steam stripping generating a wastewater stream (e.g., scrubber blowdown) with <1 % TOC. This wastewater is very similar in constituent type and concentration as a K157 waste yet carries the K156 designation as a result of the derived-from rule (40 CFR 261.3(c)(2)).

Commenters noted that these derived from wastes are currently managed in the same treatment systems used for K157 wastes, and that these are the same treatment systems sampled and evaluated by the Agency during it multipathway risk assessment. Because wastewater "derived from" K156 wastes contain pollutant levels which would be safe to undergo biological treatment are currently managed with the K157 wastewaters the Agency studied, the Agency has considered the expansion of the wastewater exemption to include wastewaters derived from the treatment of K156. The risks of concern the Agency measured for these units were from the volatilization of waste contaminants. Since the K156 derived from wastewaters have such similar properties and constituent concentrations and continue to be treated in tanks, the Agency concludes that these derived-from wastes deserve to be provided the same regulatory coverage as K157 wastes. Furthermore, the Agency believes that the lack of a similar exemption for K156 may reduce the incentives for source reduction by facilities. Source reduction practices would result in the production of smaller volumes of more concentrated wastes and these wastes would likely be K156 rather than K157

The Agency has therefore added a concentration-based exemption for wastes derived from K156 wastes. The exemption reads:

§ 261.4(a)(2)(iv) * * *

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

Therefore, in order to be exempt, these K156 derived wastewaters would need to demonstrate that the emissions of formaldehyde, methyl chloride, methylene chloride, and triethylamine not exceed a total 5 ppm for environmental discharges and subsequent wastewater treatment. This exemption is different from the K157 exemption in that it is only for wastewaters (i.e., TSS<1% and TOC<1%) derived from the treatment of K156 and not for the generated K156 wastes themselves.

While in general commenters requested this extension of the exemption proposed for K157 wastes to also include similar wastewaters derived from the treatment of K156 wastes, one commenter did object to the proposed exemption, as noted above in section V.B.1. Because significant treatment will be necessary for these to meet the exemption criteria, and the Agency's sampling had included sludges derived from both K156 and K157 wastewaters, the Agency is confident that risks would not be increased by extending the exemption to wastes derived-from K156 wastes and is finalizing the above exemption in this rulemaking.

3. Wastewater Treatment Sludge Exemption

One commenter felt that since K156 scrubber water and steam stripping bottoms no longer contain VOCs and the carbamate component has been treated, that the K156 hazardous waste code should not apply to downstream biological treatment system sludges. The commenter therefore believes that the proposed biological treatment sludge exemption should be modified to include K156 wastes which contain <5 ppm of methyl chloride, formaldehyde, triethylamine, and/or methylene chloride) if the wastes are treated in biological treatment systems. The commenter believes that without the exemption, the mixture and derived-from rule will force manufacturers to collect incinerator scrubber waters or stripper bottoms derived from treatment of K156 wastes for off-site management or collect all K156 organic wastes for off-site management.

The Agency agrees with the commenter and has reevaluated its decision to exempt wastewater treatment sludges. During the industry study the Agency sampled wastewater treatment sludges that were derived from the treatment of K157 wastes as well as sludges derived from K156 wastes. The Agency performed a multipathway risk assessment on the sludges using the collected data and determined that they did not meet the criteria for listing presented in 40 CFR 261.11. The Agency is therefore expanding the scope of the exemption to include K156 derived from wastewaters. The exemption reads:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

As noted in Section A.5 above, one commenter believed that wastewater treatment sludges contain high contaminant concentrations that warrant regulation. Specifically the commenter believed that concentrations of methylamine, trimethylamine and bis(2-ethylhexyl)phthalate, naphthalene, and 4-methylphenol were sufficiently high to warrant regulation of the sludges. Specifically, the commenter believed that total bis (2-ethylhexyl) phthalate was recorded in one sample as 22 mg/kg, compared to the health-based concentration of 0.006 mg/L; the samples contain 3,320 mg/L, and 4,600 mg/kg total methylamine, compared with aquatic LC50 concentration of 150 mg/L and the lethal dose for mice (subcutaneous) of 2,500 mg/kg; and one sample contained an estimated 15,000 mg/kg total trimethylamine. Concentrations of naphthalene and 4-methylphenol in the sludges also exceed health-based concentrations. The commenter also believed that the risk modeling was flawed in that its exposure pathway assumptions understated the risks in the groundwater pathway and in the modeling techniques used.

For wastewater treatment sludges, the referenced constituents while present, were not present in mobile forms above health-based levels or aquatic LC50. Specifically, methylamine was detected in RP–09 at 4.6 mg/kg and not 4600 mg/kg as the commenter noted. As well trimethylamine was found at 15 mg/kg and not 15,000 mg/kg as reported by the commenter. While some constituents in the solid wastes exceeded the health-based numbers, the constituents were not found to leach from the matrices. Only one leachate sample had bis 2-(ethylhexyl)phthalate (DL–05 TCLP (2 times the HBL)) present at a concentration that exceeded the health based number.

The Agency used these concentrations in the multipathway risk assessment and considered as plausible mismanagement the current management pathways of management in tanks and subsequent disposal in landfills. No significant risks were attributed to these management scenarios. The Agency believes that the management scenarios used in the risk assessment were appropriate because the industry is currently managing the sludges in this manner. In the assessment of landfill management, model leachate concentrations were matched to analytical TCLP leachate concentrations. The Agency calibrated model outputs to experimental measurements of actual leaching potential, and believes that it has accurately assessed the leaching potential of this wastestream. As a result the Agency does not believe listing of the wastewater treatment sludges is warranted and that the exemptions provide for these sludges is appropriate

C. Basis for Listing and Decisions Not to List

One commenter believes that the K156 through K161 listings are based on mischaracterized waste streams. The commenter believes that in some cases identified constituents of concern come from non-carbamate processes and thus should not be used in evaluating the risk of carbamate waste streams. The commenter also believes that the Agency did not collect enough data to support this rulemaking and that EPA has based the proposed listing on constituents that are only proposed for addition to appendix VIII rather than those already on appendix VIII. Several commenters did not believe that the EPA demonstrated that the K156 through K161 wastes meet the listing criteria set out in 40 CFR 261.11. Commenters believe that the Agency misapplied the listing criteria by using inappropriate mismanagement scenarios to evaluate the hazards posed by the carbamate wastes. The commenters believed that the Agency should have used management scenarios which the waste would normally undergo. Specifically, the commenter believes that the Agency only used exposure

routes for pesticide use rather than routes for pesticide wastes.

In addition, several commenters believe that dithiocarbamates as a group and individual dithiocarbamates did not meet the listing criteria set out in 40 CFR 261.11. Specifically, several commenters felt the Agency has not demonstrated that dithiocarbamates meet the reactivity criteria of 40 CFR 261.23(a) (1), (2), (3), and (4) or the toxicity criteria of 40 CFR 262.11(a)(2).

The Agency believes that it has accurately characterized the waste streams generated by carbamate manufacturers. In some cases waste streams that resulted from the treatment of commingled streams from carbamate and non-carbamate streams were sampled and analyzed. This is because, at many facilities, carbamate manufacturing is only part of the production activities occurring. It is common (especially for wastewaters) at carbamate manufacturing facilities to commingle wastes prior to treatment and disposal. The Agency believes that when streams are commingled for the purpose of treating one with the other that it was appropriate to sample the commingled stream. For example, at Zeneca's Bucks, AL facility, the Agency analyzed several streams that result from the treatment of thiocarbamate wastes as well as other processes. These streams are derived from carbamate streams and it is appropriate to characterize these streams and consider them for listing as hazardous. Specifically, the benzene and toluene in the commingled streams from the non-carbamate processes at Zeneca are used to extract the thiocarbamates from the wastewater streams because thiocarbamates are extremely soluble in benzene and toluene. Thus, since the commingling of the waste streams also provides a treatment step for the thiocarbamate wastewaters, it was appropriate to include the commingled streams in the risk assessment and use this information during the listing determination. In addition, while some constituents of concern may not be from carbamate processes, these were never the sole driving force behind the listing decision. In the specific case of thiocarbamate wastes, high concentrations of thiocarbamate products are present and clearly pose the potential for damage to human health or the environment if not properly managed.

The Agency believes that it has collected sufficient information and data to support listing of the six K wastes. During the carbamate industry study, the Agency collected generation and management information from all carbamate manufacturers identified in the United States during 1991 using a RCRA Section 3007 survey. To supplement the data and information collected in the survey, the Agency visited nine carbamate facilities and collected waste samples at eight of these facilities. These facilities are representative of the carbamate industry and produce 55 percent by weight of all carbamates manufactured in the U.S. These eight facilities represent products that make up over 89 percent of overall carbamate production. The Agency collected and analyzed approximately 60 samples from these facilities. These samples were supplemented by 26 samples collected from carbamate facilities by the Office of Water during the development of the effluent guidelines for pesticide manufacturers. The Agency believes that the 86 samples are representative of the wastes generated by carbamate manufacturers and that these analyses, in addition to the information provided in the RCRA Section 3007 surveys, provide sufficient data to support this rulemaking.

The Agency also believes that it is acceptable to propose both additions to appendix VIII and appendix VII at the same time. The Agency believes that it has the basis for proposing additions to appendix VIII based on the presence of the constituents in carbamate wastes and their toxicity. In addition, the Agency took comments on the proposed additions to appendix VIII. There is nothing that prohibits the simultaneous hazardous waste listing and appendix VIII addition, provided that the Agency solicits and responds to public comment on both actions. The Agency believes that listing the wastes and making the additions to appendix VIII simultaneously is an efficient system for developing the regulations and allows for public participation. Simultaneous hazardous waste listing and addition to appendix VIII is a long-standing practice of the Agency. In addition, the Agency notes that the following constituents which are part of the basis for these hazardous waste listings were on appendix VIII at the time this rule was proposed: benzene, chloroform, methyl ethyl ketone, methylene chloride, pyridine, carbon tetrachloride, formaldehyde, and methyl chloride.

The Agency also believes that it has demonstrated that the K156 through K161 wastes meet the listing criteria of 40 CFR 261.11. The Agency considered each of the criteria outlined and determined that these wastes are capable of posing a substantial threat to human health and the environment when improperly treated stored, transported or disposed. The Agency disagrees with the commenter with regard to the management scenarios used in the listing determinations. The mismanagement scenarios that were used in the evaluation of carbamate wastes were not hypothetical, but were based on actual waste management practices currently used by the industry. Because these practices are, in fact, engaged in by the industry they are plausible management scenarios for these wastes. The Agency did not rely on pesticide use exposure routes and specific damage incidents as the sole basis for listing. Specific damage incidents involving pesticides were used as supporting documentation that carbamates can have a significant environmental impact if improperly disposed.

EPA believes that dithiocarbamate wastes pose significant risks to human health and the environment, because these materials are bioavailable and degradable and have the potential to exhibit significant aquatic toxicity, reproductive and neurological effects, and have the potential once released in the environment to form among other degradation products, carbon disulfide (a potent reproductive and neurological toxicant).

These risks specifically meet EPA's listing criteria as described in the preamble to the dyes and pigments listing determination (59 FR 66072, December 22, 1994). With regard to the toxicity of the dithiocarbamates, the Agency believes that in addition to the toxic effects of intact dithiocarbamates, the formation of toxic decomposition products is a major concern for dithiocarbamates. Dithiocarbamates exhibit risks as a result of the parent compound, metal ion, and daughter products. As presented in the proposed rule, dithiocarbamates exhibit acute aquatic toxicity in a narrow range for those compounds with available data (LC_{50} of 0.049 to 2.9 mg/L). As a chemical class dithiocarbamates exhibit reactive properties (i.e., react in water under ambient environmental pH conditions to form sufficient toxic gas, fumes, or vapors to either create a toxic or irritating atmosphere or to impart toxicity to the aqueous media are reactive wastes subject to existing hazardous waste regulation as Hazardous Waste No. D003 (40 CFR 261.23(a)(4))). Dithiocarbamates react under acidic conditions to form carbon disulfide, which has potent reproductive effects. One commenter supplied confidential studies showing that under pH 2 conditions over eight hours less than one percent of the dithiocarbamate products tested decomposed. The Agency calculates

from this data that the concentration of carbon disulfide formed in a hypothetical leaching test would be toxic even when assuming a 100 fold dilution/attenuation factor. Record sampling during the industry study has also found decomposition products such as methylisothiocyanate and n-nitrosodimethylamine in the wastes sampled. Methylisothiocyanate is reactive and toxic, and n-nitrosodimethylamine is a known carcinogen. In addition, once released into the environment dithiocarbamate metal salts degrade or exchange metal ions, producing free metals ions. Finally, the ability to form other toxic substituents was documented during a spill of metam sodium (a dithiocarbamate) that had catastrophic environmental impacts on the surrounding environment along a 45-mile stretch of the Sacramento River and portions of Lake Shasta. As a result, EPA believes that regulation of dithiocarbamate wastes as hazardous wastes is necessary because of the reactivity and aquatic toxicity of this class of chemicals.

D. Conflict With Other Regulatory Programs or Initiatives

Several commenters believe that EPA should not proceed with the listing because these wastes are, or will be regulated under Clean Water Act (CWA), Clean Air Act (CAA) and other provisions of RCRA. Furthermore, the commenters believe EPA should not add additional wastes to the listings until the issues regarding the definition of solid wastes resulting from the courts decision invalidating the mixture and derived-from rules in Shell Oil decision (Shell Oil v. EPA, 950 F.2d 751, D.C. Cir. 1991) have been resolved. Specifically, the commenter believes that the listings should be deferred until the rule resulting from the work of the Definition of Solid Waste Task Force and the Hazardous Waste Identification Committee are finalized because these may profoundly impact the regulatory classification of wastes. Another commenter believes residues from the treatment of listed wastes should be provided a de minimis exit from RCRA Subtitle C.

The Agency noted in the proposal that significant regulatory gaps currently exist between RCRA regulation of air emissions from hazardous waste management and the CAA regulation. Although future regulations are planned in these areas, the coverage and scope of future regulations is uncertain and does not act to mitigate existing risks. The Agency has determined that risks posed by carbamate waste management should be controlled through regulation under RCRA. Potential future regulation will be developed with consideration given to the then-existing regulatory scheme as well as the need to close any remaining regulatory gaps that are beyond the narrow scope of the carbamate listing determinations in this rulemaking. The Agency would also like to note that the HWIR rule is not designed to limit entry to the hazardous waste regulatory system but is a system where listed wastes may be able to be easily removed from the hazardous waste management system.

E. Constituents of Concern for Appendix VII

Some commenters believe that several constituents were included on appendix VII (i.e., the appendix that identifies the constituents of concern that are the basis for listing a waste) even though they were measured in the wastes at concentrations below health based levels in multipathway risk assessment. Commenters also believe that the format of listings is inconsistent with previous appendix VII listings. Specifically, the commenters believe that EPA has in the past listed only the metal or organic compounds directly related to the waste and none of the solvents which may be present. The commenters believe that appendix VII should only include the hazardous constituents that are specific carbamates, carbamoyl oximes, thiocarbamates and dithiocarbamates.

Wastes may be listed as hazardous if they contain toxic constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in section 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

To determine whether a waste is hazardous for toxicity under 40 CFR 261.11(a)(3), EPA determines the presence of an appendix VIII constituent, regardless of concentration. EPA then examines all the health effects data on that constituent, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3). Concentration of the hazardous constituent is among those factors (40 CFR 261.11(a)(3)(ii)). Other factors include the plausible types of mismanagement scenarios to which the wastes could be subjected and the potential of the constituent or any toxic degradation product to migrate from waste into the environment under the improper management scenarios (40 CFR 261.11(a)(3)(iii) and (vii). These factors are evaluated to decide whether to list the waste as a hazardous waste.

After determining that a waste should be listed as hazardous, EPA would then list in appendix VII the constituents that led to that listing. The Agency has reassessed each of the constituents listed as a basis of listing and has limited the hazardous constituents for the basis of listing to those constituents which were found to present health based or environmental risks in the multipathway analysis, and to toxic products present at percent levels which are potentially hazardous to human health and the environment. Therefore, the Agency has removed acetone, hexane, methanol, methyl isobutyl ketone, and xylene from the appendix VII basis of listing, because these substances were not significant in the risk analysis. The Agency has also corrected the basis of listing for K156 to include formaldehyde and the basis of listing K161 to include antimony and arsenic, because these constituents where significant in the risk assessment.

The commenters also believe that the terms thiocarbamates, Not Otherwise Specified (N.O.S.) and dithiocarbamates, N.O.S. are overly broad, include a variety of compounds for which EPA has not established health or environmental hazards, are not hazardous constituents on appendix VIII and are not proposed for inclusion on appendix VIII. Therefore, the commenter concludes that generic categories are inappropriate for inclusion in appendix VII listings. The Agency has deferred action on these generic categories, and may further address the addition of the generic categories to appendix VIII in a future proposal.

F. Constituents of Concern for Appendix VIII

Several commenters believe that many of the additions to appendix VIII (i.e., the appendix that contains a list of hazardous constituents to be evaluated for listing determinations (see 40 CFR 261.11)) were inappropriate. One commenter believes that the rule adds constituents to appendix VIII based on presence of a constituent rather than its concentration. Many commenters believe that constituents of concern should be limited to constituents that are present at concentrations that threaten human health and the environment. A commenter believes that constituents can only be added to appendix VIII if they are toxic, carcinogenic, mutagenic, or teratogenic to humans and other life forms and that the Agency has added constituents with

no toxicological data or incomplete toxicological data.

Waste constituent concentrations are not a factor in the addition of toxic substances to appendix VIII. The criteria for additions to appendix VIII (40 CFR 261.11(a)(xi)) direct the Agency to add substances "shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms." While the Agency has readily acknowledged some gaps in the available toxicity studies, the Agency need have but one scientific study meeting the § 261.11 criteria and in some cases developed empirical structural activity relationships (SAR) where direct toxicological testing was not available. Furthermore, the Agency views its SAR analysis as scientific studies for the purpose of adding substances to appendix VIII. Nevertheless, the Agency has reviewed the available toxicity data for each of the additions to appendix VIII and concludes that for 12 substances the toxicity data in the record is inadequate for final action. Final action on these 12 substances is being deferred to allow notice and comment on additional quantitative structure activity relationships (QSAR), developed for these chemicals. EPA plans to repropose these substances at a future date. The results of these new studies are presented in section IV.C.

Several commenters stated that EPA should not propose constituents for addition to appendix VIII at the same time that it is listing them as the constituents of concern for a hazardous waste listing. EPA believes it is proper to consider the expansion of appendix VIII and additional hazardous waste listings together. Constituents are added to appendix VIII if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on human or other life forms. The Agency feels that each of the constituents being added to appendix VIII meets at least one of these criteria. The Agency solicited and received comments on the proposed additions to appendix VIII, and after considering these comments has concluded that the additions being finalized are appropriate. There is no regulation or statute that prohibits the simultaneous hazardous waste listing and appendix VIII addition. The Agency believes that listing the wastes and making the additions to appendix VIII simultaneously is efficient system for implementing the hazardous waste program that allows for meaningful public participation. Simultaneous listing and addition to appendix VIII is a long-standing practice of the Agency.

Several commenters believed the Agency proposed various additions to appendix VIII (including acetone, hexane, methanol, methyl isobutyl ketone, and xylene) without considering the far reaching impact on numerous exempt waste streams. Commenters felt that inclusion of these solvents on appendix VIII may affect the regulatory status of wastes at facilities not involved in production of carbamates because these solvents are so widely used throughout the chemical manufacturing industry and believe that the Agency has not considered the wide ranging impact of this action. Commenters also felt that the addition of these solvents to appendix VIII based on their toxicity contradicts the original classification of these solvents as hazardous due solely to ignitability in the F003 listing. Commenters believe that adding the toxic label to these solvents causing them to be considered toxic in addition to ignitable will expand corrective action implementation and may expand state restrictions based on blanket application of appendix VIII.

With regard to the solvents acetone, hexane, methanol, methyl isobutyl ketone, and xylene, commenters specifically requested clarification of whether or not these solvents, when discarded as F003 spent solvents, which were originally listed only basis of their ignitability, would now be considered toxic and hence no longer able to be exempt under 40 CFR 261.3(a)(2)(iii). This section of the CFR specifies that a waste is not a hazardous waste if it is a mixture of a solid waste and hazardous waste that is listed solely for one or more of the characteristics and the resultant mixture no longer exhibits the any of a hazardous wastes characteristics. Commenters believed the F003 wastes would now be both toxic and ignitable should the above solvents be listed in appendix VIII.

The Agency believes the addition of these solvents to appendix VIII would not have directly changed the regulatory management of F003 wastes. One commenter, however, correctly noted that the addition of these solvents to appendix VIII would eliminate the 264.340(b) exemption of incinerators, which burn only characteristically hazardous wastes, from trial burn requirements. This exemption allows incinerators that burn only characteristically hazardous wastes such as ignitable wastes do not need to analyze for these constituents as required in 40 CFR 264.31 or meet the closure requirements of 264.351. As noted in the previous section, the Agency has finalized only those substances which presented a hazard in the multipathway analysis. As a result, the Agency has not finalized the addition of the solvents acetone, hexane, methanol, methyl isobutyl ketone, and xylene. The Agency believes that the additions to appendix VIII as amended do not have this impact. The Agency also believes that changes to the current regulatory structure for F003 solvents and characteristic waste incineration are beyond the narrow scope of the carbamate listing determinations.

With regard to the expansion of state restrictions based on blanket application of appendix VIII and other changes in state requirements resulting from this rule, states are free to impose more stringent regulations at any time. The potential for state action beyond the minimum federal RCRA requirements are not controlled by the Agency.

G. P Listings

Several commenters challenged the basis for including several wastes as acutely hazardous wastes and presented additional toxicity data to support their position. As well, some commenters believe that the proposed P and U listings were not adequately supported by the administrative record.

After evaluation of comments received, four wastes (bendiocarb, thiophanate-methyl, thiodicarb, and propoxur), proposed for addition to 40 CFR 261.33(e) as acutely hazardous wastes, are instead being added to 40 CFR 261.33(f) as toxic wastes. In each case, the Agency found that these four wastes did not meet the § 261.11(a)(2) criteria for listing in § 261.33(e). The Agency disagrees with the commenter's assertion regarding the administrative record. The Agency criteria for including a waste on 40 CFR 261.33(e) are based on toxicity benchmarks that are clearly presented in 40 CFR 261.11(a)(2). The applicable toxicity data for the proposed wastes was presented in the proposed rule (59 FR 9808). As a result, the Agency contends that all the information used to make the listing decisions regarding P wastes was presented in the public record.

Only one comment was received relative to the carbamate wastes proposed in response to the 1984 Michigan Petition. Eight carbamate waste listings were proposed in response to a petition by the State of Michigan to include 109 chemicals to the lists in 40 CFR § 261.33 (49 FR 49784, December 21, 1984). This rule was never finalized. The petitioner argued that bendiocarb should be listed as a P-waste based on an oral mammalian toxicity of 34–64 mg/kg. The Agency agrees that bendiocarb's

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toxicity is of concern. The Agency's benchmark for inclusion of a waste on 40 CFR § 261.33(e) is the oral LD50 for a rat of 50 mg/kg (see 40 CFR 261.11(a)(2)). The Agency has data that shows oral LD_{50} values of 64–119 mg/kg for female rat and 72–156 mg/kg for male rat. Based on these criteria the Agency is finalizing the listing of bendiocarb as U278.

H. U Listings

The criteria for designation of Acutely Hazardous Wastes found at 40 CFR 261.11(a)(2). While the listing criteria for these acutely hazardous wastes is clearly defined, commenters noted and requested a clear delineation of toxicological criteria for listing wastes as toxic under § 261.33(f).

While acute toxicity may be expressed in terms of numeric toxicological end points, such as oral LD50, inhalation LC50, and dermal LC50, the Agency does not have numeric criteria for listing commercial chemical products as toxic. However, the factors the Agency looks to in listing these materials are described in 40 CFR 261.11(a)(3). The Agency considered these factors including the toxicity of the various chemicals, in analyzing the potential to harm human and the environment. Based on this analysis, the Agency believes these discarded commercial chemical products meet the criteria expressed in § 261.11(a)(3) for listing a material as a hazardous waste. For further explanation, interested parties should refer to the background documents in the docket for this rulemaking. (See ADDRESSES section.)

In the case of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate chemicals, each class of compounds exhibits significant aquatic toxicity. Largely, the Agency's decision to list additional carbamate products was driven by available aquatic toxicity studies indicating LC50 values less than 50 mg/L. Because of the solubility, persistence, mobility, and toxicity of these classes of chemicals, the Agency concludes that they present a significant risk to the environment if mismanaged.

Several commenters believe that the generic listings for carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates are vague, overly broad, and ambiguous. They believe the generic listings capture substances that are not hazardous and cause unnecessary burdens on manufacturers, distributors, and end users. The commenters also believe that the generic categories are inconsistent with current Department of Transportation (DOT) hazardous materials listings and should be modified to be consistent with these regulations. They felt that these listings would include a variety of compounds for which EPA has not established health or environmental hazards, are not hazardous constituents on Appendix VIII and are not proposed for inclusion on Appendix VIII. The commenters also believe that EPA is obligated to evaluate each chemical and waste stream individually to determine whether they meet the listing criteria and thus should not list generic wastes.

The Agency believes that the definition of each chemical group as amended is very clear and consistent with chemical nomenclature, such that generators of these wastes will be able to determine easily whether they manufacture a specific carbamate. Thus, the Agency does not believe that the definitions are ambiguous. The Agency understands that the generic categories designated as N.O.S are not identical to the categories in DOT regulations. The DOT regulations refer only to carbamate pesticides and thiocarbamate pesticides. The Agency does not feel that DOT regulation preclude a broader definition for the purposes of hazardous waste listing. However as previously stated, the Agency believes that generic N.O.S. categories as proposed may be overly broad and will defer finalizing the generic listing descriptions until alternative listing descriptions have been proposed and commented on.

I. Toxicity Information

Several commenters believe that EPA did not have adequate toxicity information to perform its risk assessment and believe that EPA's use of surrogates in determining toxicity of compounds is inappropriate. The commenter also believes EPA had insufficient risk data to promulgate the U listings. As well, commenters discovered differences between published toxicity information and that presented by the Agency in the proposed notice.

The Agency has reevaluated the toxicity data for each waste proposed for addition to 40 CFR § 261.33(f). As noted by commenters, several compounds had limited toxicological data. After review of the available toxicological data, 12 compounds are not considered to have adequate toxicological or predicted values in the record to finalize these 12 listings at this time. See section IV.C. The Agency is deferring final action on the 12 compounds, and may repose these substances at a later date.

J. Risk Assessment

The Agency received numerous comments on the risk assessment. Some commenters believe that the risk assessment was extremely conservative, while other commenters believe that the risks from carbamate wastes were understated. The Agency has chosen to address the general concerns on both of these positions with regard to the risk assessment in this preamble. Detailed responses to specific comments on the appropriateness of model parameters, modeling assumptions, and exposure scenarios are provided in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

1. Comments Asserting That the Risk Assessment Understates Risk

Several commenters felt that the Agency's risk assessment substantially understated the risk posed by improper management of carbamate wastes because (1) some of the modeling parameters and data inputs are highly uncertain and (2) exposures from spills and other accidental releases were not considered.

The Agency believes that it's modeling approach addresses all of the most significant exposures to wastes from this industry. As described in the background document to this rule (F–CPLP–S0003) the risk assessment procedure for selecting modeling parameters and assumptions is designed to ensure that the high end of the distribution of the exposed population is protected.

With respect to spills and other accidental releases, the Agency did include spills and overflows from surface impoundments based on probabilities of these occurrences. For wastes managed in tanks and surface impoundments, the Agency did not evaluate the potential impacts of a single catastrophic release to nearby soil and surface waters. The Agency believes that the probability of these types of potential exposure events occurring are extremely low and are less determinative in the listing determination than the more likely exposure scenarios evaluated.

One commenter stated that EPA should not rely as much on information which is specific to the industry (such as waste disposal practices and location of facilities) in its risk assessment. Instead, according to this commenter, the Agency should conduct a more generic risk assessment which would consider a wider range of potential disposal practices and site parameters.

The Agency used a combination of generic risk assessment scenarios and information specific to this industry in characterizing risks for this listing determination. The Agency believes that the use of industry specific information is appropriate if that information is available and reliable. In this case, the carbamate manufacturing industry is relatively well defined and stable, and therefore the industry specific inputs are appropriate to use. The use of this information allows the Agency to more accurately characterize risks, since it better describes actual existing and potential conditions.

One commenter stated that the Agency did not adequately address the potential for impacts on endangered species and other terrestrial wildlife.

The Agency did conduct a screening assessment of potential impacts on terrestrial wildlife and concluded that risks were not likely to be significant. This assessment is presented in the risk assessment background document (F–CPLP–S0003). The Agency does recognize that risk assessment methodologies for terrestrial wildlife are still very much under development and that it cannot definitively conclude that risks will not exist.

One commenter believes that EPA should not rely on central tendency or average estimates of risk (as opposed to high end or conservative estimates) in its listing determination. This commenter states that this reliance violates both RCRA and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations).

The Agency relies primarily on high end risk estimates in its listing determinations. The central tendency estimates are used primarily to project overall population risks in some cases and to provide an indication of the variability in risk estimates.

2. Comments Asserting That the Risk Assessment Overstates Risk

Several commenters believe that the Agency's risk assessment overstated the risks presented by the carbamate waste streams. One commenter believes that EPA's use of a multi-pathway risk assessment methodology is premature.

The Agency believes that a multipathway approach is well established and is appropriate for this rulemaking. The Agency has been using multipathway analyses for a number of years in a number of its programs including the Superfund program, the sewage sludge regulations, pesticide risk assessments, risk assessments for hazardous waste combustion facilities, and previous listing determinations. As a result the Agency believes that the use of a multipathway approach is not premature and is appropriate for this rulemaking.

Another comment was that the Agency misapplied the listing criteria by using inappropriate mismanagement scenarios to evaluate the hazards posed by the carbamate wastes.

The Agency believes it has correctly selected plausible mismanagement scenarios to evaluate the hazards posed by the carbamate waste. Although not all wastes generated by the carbamate manufacturing industry are handled in the same way, by looking across the industry at all plausible management practices, the Agency selected both typical case and plausible mismanagement scenarios to represent possibilities for the management of carbamate wastes. It is possible that specific manufacturing facilities within the industry managed their wastes quite differently than the plausible mismanagement scenarios. However, in selecting the mismanagement scenarios, the Agency looked across the industry and identified practices which would present the highest risk and considered those as the mismanagement scenarios. All mismanagement scenarios used in this analysis are currently in use in the industry by at least one facility although not all.

Another comment was that the Agency used exaggerated or implausible exposure assumptions causing an overly conservative risk estimate which does not represent reality at any facility. The commenters suggest that the Agency should consider site specific risk assessments to support any regulatory action in this area.

The Agency disagrees that the risk assessment is based on inappropriate assumptions and that exposure scenarios are highly exaggerated. Specific parameter criticism are addressed in the comment response document available in the docket for this rule. (See Addresses.) In general, in identifying the location of receptors, the Agency collected land use data and well water use data around 8 carbamate manufacturing facilities believed to represent the range of different types and locations of facilities present in the United States. These data were then used to develop central tendency and high end estimates for where individuals may be exposed to releases of constituents from the waste stream managed. As pointed out in the risk assessment background document, even the high end risk calculations use average values for most parameters.

While the risk assessment results may not specifically apply to any particular facility, the Agency believes they are representative of potential high end risks. The Agency is unable to conduct full site specific risk assessments for all facilities because of the time and resources which would be required to collect and analyze all of the data which would be needed for each facility.

The Agency believes that the use of a generic risk assessment methodology combined with industry-specific information for parameter values is the best approach for determining whether or not a waste stream should be listed as hazardous. Site-specific assessments may mean that the Agency would list a waste stream as hazardous for one manufacturer while not hazardous for another. Such wastes may not be subject to hazardous waste control. The Agency is generally unable to predict and does not control how a waste will be managed and thus the waste may or may not be disposed at the point of generation and as such the exposure assumption may be very different than those at the specific site. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when making listing decisions. The Agency's delisting program was developed to provide industry the opportunity to show that, on a waste-specific basis, its waste do not pose a hazard to human health or the environment. The Agency believes that delisting is an adequate mechanism for those who feel that wastes do not meet the hazardous waste criteria and exclude them from the hazardous waste management system.

Another comment is that the proposed rule is based on misclassification/characterization of waste streams because the use of generic composites resulted in overestimation of risk. The commenter also believes that the assessment was based on limited data sometimes using a maximum constituent concentration value to represent both average and worst case scenarios, and that measured values for concentrations of constituents in waste streams at specific sites do not match numbers used in generic risk assessment.

The Agency disagrees with the commenter with regards to the characterization of waste streams. The Agency did not use a maximum constituent concentration value to represent both average and worse case scenarios in its risk assessment. For some constituents, only one measured value existed and this measured value was used in the risk assessment. The labeling of tables in the risk assessment background document (F-CPLP-S0003) shows that this one value was entered in both columns for average and high end values. The concentrations in the waste stream as measured by the Agency or reported by the facility were

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used in characterizing the waste. When there were several measured values for a constituent, the Agency averaged those values to get a central tendency value for characterizing the waste. It should be noted that the Agency did not characterize the waste streams on a site specific basis but developed generic characterizations for each waste stream based on data from several facilities. The Agency developed generic waste stream characterizations based on data from one or several facilities. These generic waste stream characterizations may not match on a one to one basis the constituents in any specific carbamate manufacturing facility's stream. However, the Agency believes that these generic characterizations provide a meaningful way of representing waste streams across an industry in which the waste will have high variability due to changes in manufacturing processes and products. The Agency believes that it will be infeasible to collect data on every waste stream generated by every carbamate manufacturing facility. Thus, the generic waste stream characterizations were used to capture the range of constituents that could exist in carbamate manufacturing wastes. The Agency also notes that the commenter did not provide any additional waste characterization data.

Another commenter believes that EPA fails to acknowledge the uncertainties associated with its risk conclusions. The Agency believes that it has adequately characterized the uncertainty in the risk analysis. The Agency attempted to characterize uncertainties in its risk assessment by providing both central tendency and a range of high end risk estimates for each pathway and exposure route for each waste group. The parameter uncertainties are presented as a range of values used for all input parameters.

One commenter believes that EPA did not provide sufficient record information to allow meaningful comment on the risk assessment assumptions. The Agency disagrees with the commenter's assertion that adequate documentation on the risk assessment was not available. All information on conducting the risk assessment and its assumptions are either included in the background document itself or in the reference cited, all of which are included in the docket.

K. CERCLA RQs

Several commenters believe that the Agency should have proposed adjusted RQs for the substances added to the CERCLA hazardous substances list instead of applying the statutory 1 lb RQ, and that adjusted RQs should be put in place at the same time that the final rule is promulgated. Commenters believe that the 1 lb RQ would cause unnecessary and expensive reporting requirements and that the Agency should suspend the effective date of this rule until RQs are adjusted. One commenter believed that the Agency should not place carbamate compounds on the U-list as a mechanism to achieve CERCLA listing and to trigger actions by emergency responders under CERCLA.

The Agency plans to propose adjusted RQs of the substances added to the CERCLA hazardous substances list. Section 102(b) of CERCLA requires that a 1 lb RQ be set for these newly identified hazardous substances. Until an adjustment is promulgated, the statutory 1 lb RQ for newly identified hazardous wastes will remain in effect. The Agency disagrees with the commenters assertion that the addition of carbamates to the U-list was designed to achieve CERCLA listing and trigger actions by emergency responders under CERCLA. The addition of substances to the U-list was governed solely by the concentration and toxicity of these materials and the criteria for listing at 40 CFR 261.11. Section 101(14) of CERCLA establishes that all newly identified RCRA hazardous wastes are also CERCLA hazardous substances. The Agency does, however view it as beneficial for emergency first responders to quickly identify the potential hazards of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate products and feels that quick identification of hazards may speed corrective measures to limit environmental damage or risks to human health.

L. Regulatory Impact Analysis

There were many commenters who felt that the Economic Impact Analysis (EIA) conducted was inadequate or flawed. In particular, commenters felt that the addition of the Appendix VIII constituents would have a much greater cost impact than shown in the EIA. Other commenters felt that the scope of the EIA underestimated the number of affected facilities in that it did not take into account suppliers, distributors and customers using the P, U and Appendix VIII materials. In addition, commenters felt that it did not account for costs associated with soil and debris remediation, indirect state and federal regulatory impacts and reporting requirements under CERCLA and EPCRA, and costs incurred due to the mixture and derived-from rules. Commenters also believed that the EIA assumed that wastes currently recycled would continue to be recycled. Others felt that the rules would cause competing non-carbamate chemicals to have a competitive advantage that would cause economic hardship to small carbamate manufacturers. Other commenters believe that the EIA was flawed because the Agency should have prepared an RIA.

In conducting its EIA, EPA examined all data submitted to it under its RCRA section 3007 survey of the carbamate production industry. EPA used this information to create a baseline scenario, or description of the current state of waste management in the industry. More important, EPA maintains that the 24 facilities analyzed for the EIA represents the entire universe of carbamate production facilities, and thus EPA is confident that its analysis is comprehensive. EPA then developed a post-regulatory scenario in which waste generators would comply with the RCRA regulations newly imposed as a result of this rule. In creating this post-regulatory scenario, EPA forecast the plausible, long-term management of the waste, and EPA calculated the waste management costs associated with this post-regulatory scenario. EPA maintains that it has correctly estimated the true, long-term costs associated with the management of carbamate production wastes resulting from the listing of new RCRA hazardous wastes even though compliance costs for any individual entity may be higher or lower than our estimate. The Agency does not consider the rule to have significant impacts and thus it does not require a full regulatory impact analysis.

EPA points out that the EIA was designed to assess the primary cost impacts associated with changes in management practices resulting from the RCRA hazardous listing of carbamate production waste. EPA believes that the addition of compounds to 40 CFR part 261 Appendix VIII will not materially affect the management of such wastes. All carbamate production facilities are currently permitted under RCRA. In addition, RCRA grants the Agency broad authority to respond to any imminent and substantial endangerment to human health and the environment posed by the past or present management of any solid waste (RCRA § 7003). In addition, because no other action has been taken by the Agency there will be no effect on the "mixture and derived from" exemption.

EPA acknowledges that there may be indirect effects as a result of this rulemaking. The EIA accounted for the costs of trial burns, monitoring equipment, personnel for monitoring, and other compliance related costs in incineration costs. In support of the final rule, EPA identified some potential incremental costs for closure of abandoned surface impoundments. EPA also included the costs of handling and disposal of P and U wastes in the revised EIA and is confident that its analysis is comprehensive. EPA believes, however, that designation of these carbamates as P and U wastes will not result in significant costs for suppliers and customers because of the infrequent nature of waste generation.

As for the commenter's concern about POTW operators no longer accepting such waste, EPA notes that currently RCRA listed wastewater is routinely accepted for treatment by POTW operators and other CWA systems. EPA does not expect any significant problems in this area for generators of carbamate production wastes.

EPA also believes that the long-term economic impacts of changes to markets and product distribution will be minimal. EPA also rejects the assertion that farmers and other small business owners will file unnecessary reports as a result of this listing. The Agency believes that the agricultural sector is as sophisticated about complying with environmental requirements as any other sector.

EPA also believes that carbamate wastes presently being recycled should be able to continue to be recycled under RCRA exemption following the listing and that any administrative cost impacts associated with the listing would be small compared to other waste management costs.

EPA also points out that the scope of its EIA is limited to the effects of the Federal RCRA program. In its rulemakings, EPA is not able to account for actions taken by the states, tribes, municipalities, or other governmental entities. States are free to impose more stringent regulations at any time. In its rulemakings, EPA is not able to account for the variances between the federal and state programs.

M. Impact on Recycling and Reuse

Several commenters believe that the K listings and P and U listings will have a negative impact on established reuse and recycling program. Commenters were also concerned that the rule will have an adverse impact on product stewardship programs, especially return for refill programs for containers. The commenters believe that the final listings should exclude all wastewater generated as part of recycling operations and all residue returned as part of recycling program and all wastewaters generated in cleaning recycled containers.

The Agency does not foresee any adverse impact of K, P or U listings on container recycling programs. The scope of the K listings is limited to wastes from the production of the carbamate chemicals and does not include product container wash waters. Product container wash waters are subject to the P or U waste listings if discarded or mixed with other listed wastes. However, when returned to either a formulation process or the chemical production process these wash waters would not be solid wastes, because the material is used in an industrial process to make a product (§ 261.2(e)(i)), or is being returned to the original process without first being reclaimed (§ 261.2(e)(iii)).

The EPA does not believe regulation of P and U wastes will adversely impact the recycling. Several carbamates are largely formulated in aerosol containers which may be recycled for their scrap metal value. As recyclable scrap metal, empty aerosol containers are exempted from RCRA regulation (§ 261.6(a)(3)(iii)). However, aerosol containers that are not empty in accordance with § 261.7 and have contained P or U listed substances would be subject to hazardous waste regulation when discarded.

The EPA also does not foresee significant adverse impacts to return for refill programs. Containers that have held P or U regulated substances are hazardous waste when discarded if the container is not empty in accordance with the provisions of § 261.7. EPA views hazardous waste disposal requirements to encourage the return of the container by the public to such refill programs. Should containers, other than those which are empty, be disposed full compliance with all RCRA requirements would be triggered.

N. Executive Orders

Several commenters believed that the Agency did not comply with Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993). EPA believes it has complied with all provisions of E.O. 12866. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record. See F–94–CPLP–0006.

One commenter believes EPA failed to measure additional sources of contaminants with potential risk factors, and that these omissions are inconsistent with Executive Order 12898 Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations, section 3–301(b), which provides that federal agencies should consider, whenever practicable and appropriate, multiple and cumulative exposures.

EPA believes it has complied with all provisions of E.O. 12898 (Environmental Justice). The Agency calculated risks for each exposure pathway of significance and considered the potential cumulative risks of multiple exposures to the same toxic contaminants via multiple pathways. The Agency acknowledges that there may be other exposures resulting from such pathways as facility air emissions or consumer product use, and has attempted to quantify only those risks associated with solid waste management.

O. Paperwork Reduction Act

One commenter believes that the Paperwork Reduction Act (PRA) requirements have not been met with respect to the proposed rule in that it believes the reporting requirements under CERCLA for releases constitutes information collection and this the rule should be submitted to OMB for review.

The proposed rule stated in error that this rule has no PRA requirements. However, this rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed wastestreams.

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

P. Compliance Schedule

Several commenters believed that EPA has not provided the regulated community with adequate time to comply with the rulemaking and should allow additional time for compliance which may require capital projects. This final rule allows for six months for compliance with this rule consistent and is consistent with RCRA § 3010(b). A period of six months from the publication date of the listing is generally adequate time for the industry

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to make arrangements for new waste management practices. The Agency realizes that some remedial activities such as the retrofit of surface impoundments may require a significantly longer compliance period. However, RCRA § 3004(j)(6)(A) allows a 4-year compliance period for surface impoundments to meet the Minimum Technology Requirement (MTR). The Agency views these as adequate periods for compliance to be implemented.

VI. Compliance and Implementation

A. State Authority

1. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013,and 7003 of RCRA, although authorized states have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a state with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that state. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities located in the state with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized states at the same time that they take effect in non-authorized states. EPA is directed to implement those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as State law to retain final authorization. HSWA applies in authorized States in the interim. Today's rule is promulgated pursuant to section 3001 of RCRA (42 U.S.C. 6921). Therefore this rule has been added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j) Table 1, as discussed in the following section.

2. Effect on State Authorizations

Because this rule (with the exception of the actions under CERCLA authority) is promulgated pursuant to the HSWA, a state submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the states must modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a state would not be authorized to implement these regulations as RCRA requirements until state program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, states with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized states are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows states to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their programs. See 40 CFR 271.1(i). This rule is neither less stringent than or a reduction in the scope of the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

B. Effective Date

The effective date of today's rule is August 9, 1995. As discussed above, since today's rule is issued pursuant to HSWA authority, EPA will regulate the management of the newly identified hazardous wastes until states are authorized to regulate these wastes. Thus, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized states.

C. Section 3010 Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes; and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by May 10, 1995.

D. Generators and Transporters

Persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number, if they do not already have one (as discussed in section VI.C, above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262.

These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). It should be noted that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in surface impoundments or other units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

E. Facilities Subject to Permitting

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status, might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to obtain interim status based on treatment, storage or disposal of such newly identified wastes, eligible facilities are required to provide notice under section 3010 and to submit a Part A permit application no later than August 9, 1995. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under section 3005(e)(3), not later than August 9, 1995, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on August 9, 1995.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than August 9, 1995. By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by August 9, 1995, the facility will not receive interim status for management of the newly listed wastes, and may not manage newly identified hazardous wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Under regulations promulgated by EPA on September 28, 1988, (see 53 FR 37912), a hazardous waste management facility that has received a permit pursuant to section 3005 of RCRA and is "in existence" as a hazardous waste facility on the date for the newly listed wastes are first subject to regulation, may be eligible to continue managing the new wastes under 40 CFR 270.42(g) while steps necessary to obtain a permit modification to allow the facility to manage the wastes are taken. To continue to manage the newly listed hazardous wastes, eligible facilities must be in compliance with 40 CFR Part 265 requirements with respect to management of the newly listed wastes and submit a Class 1 modification request no later than August 9, 1995. This modification is essentially a notification to the Agency that the facility is handling the waste. As part of the procedure, the permittee must also notify the public within 90 days of submittal to the Agency. See 40 CFR 270.42(a).

The permittee must then submit a Class 2 or 3 permit modification to the Agency by 180 days after the effective date of the listing. A Class 2 modification is required if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60 day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized. See 40 CFR 270.42(b).

A Class 3 modification is required if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involve. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will develop a draft permit modification, open a public comment period of 45 days, and hold a public hearing if requested. There is no default provision for Class 3 modifications. See 40 CFR 270.42(c).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements no later than August 9, 1995. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR 264 for permitted facilities or 40 CFR 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of subpart G of 40 CFR 264 and 265, and

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the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR 264 or 265 (e.g., subpart N for landfill units). Additionally, EPA recently promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113 (c) through (e) and 265.113 (c) through (e).

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in Sections 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA § 103. In this rule, the Agency is listing the wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. The RQ for each substance will be one pound as provided by statute for all newly designated hazardous substances until adjustment is made by regulation.

Reporting Requirements

Under section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by EPA regulation. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the NRC of the release as soon as that person has knowledge thereof. The toll free number of the NRC is 1–800–424–8802; in the Washington, DC metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA section 304 notification must be given immediately after the release of a RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

Releases equal to or greater than the one-pound statutory RQ are subject to the reporting requirements described above, unless and until the Agency adjusts the RQs for these substances in a future rulemaking.

The Agency is currently working on a proposed rule to adjust the RQ values for the constituents in this rule. This rulemaking is on an expedited schedule in order to minimize the time between the effective date of this listing and the publication of the adjusted RQs. The Agency anticipates that the adjusted RQs for many of the hazardous constituents in this rule will be higher than the statutory one-pound RQ. Once the RQ adjustment rule is proposed the Agency will take the proposed adjusted RQs into consideration when contemplating an enforcement action. It is important to note that while the Agency does not generally focus its enforcement resources on cases that involve statutory RQs where adjusted RQs are being promulgated, the Agency may pursue an enforcement action based on the specific facts of a situation in a case where an RQ for a hazardous constituent has been exceeded. In deciding upon an enforcement action under CERCLA for failure to report a release that equals or exceeds an RQ, the Agency generally considers the following factors: The quantity and relative toxicity of the released substance, the actual or threatened human health hazard or environmental damage, the egregious nature of the responsible party, the impact of the type of violation upon the regulatory program, the expected deterrent effort of prosecution, and the status of the proposed RQ adjustment rulemaking.

TABLE 3.—ONE-POUND STATUTORY RQS FOR K, P, AND U WASTES

Waste code	Constituent of concern	Statutory RQ (pounds)
K156	benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine	1
K157	carbon tetrachloride, chloroform, formaldehyde, methyl ethyl ketone, methyl chloride, methylene chloride, pyridine, triethylamine.	1
K158	benomyl, carbendazim, carbofuran, carbosulfan, methylene chloride	1
K159	benzene, butylate, eptc, molinate, pebulate, vernolate	1
K160	benzene, butylate, eptc, molinate, pebulate, vernolate	1
K161	arsenic, antimony, cadmium, metam-sodium, ziram	1
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)	1
U278	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	1
P188	Benzoic acid, 2-hydroxy-, compd. with (3as-cis)-1,2,3,3a,8,8a-hexahydro-l,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salioylate).	1
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	1
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
P191	Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan)	1
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan)	1
U409	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	1
P194	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	1
U410	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	1
P196	Manganese, bis(dimethylcarbamodithioato-S,S')- (Manganese dimethyldithiocarbamate)	1
P197	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
P198	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1

TABLE 3.—ONE-POUND STATUTORY RQS FOR K, P, AND U WASTES—Continued

Waste code	Constituent of concern	Statutory RQ (pounds)
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	1
P202	Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)	1
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)	1
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1
P205	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)- (Ziram)	1
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl- (Bendiocarb phenol)	1
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl- (Dazomet)	1
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	1
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	1
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	1
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl)	1
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (3-iodo-2-propynyl n-butylcarbamate)	1
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium, tetrakis(dimethyldithiocarbamate)).	1
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	1
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Potassium n-hydroxymethyl-n-methyldithiocarbamate).	1
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	1
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	1
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	1
U382	Carbamodithioic acid, dimethyl-, sodium salt (Sodium dimethyldithiocarbamate)	1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate)	1
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	1
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate)	1
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)	1
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate)	1
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC)	1
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	1
U393	Copper, bis(dimethylcarbamodithioato-S,S')- (Copper dimethyldithiocarbamate)	1
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	1
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Diethylene glycol, dicarbamate)	1
U396	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam)	1
U400	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis- (Bis(pentamethylene)thiuram tetrasulfide)	1
U401	bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	1
U402	Thioperoxydicarbonic diamide, tetrabutyl (Tetrabutylthiuram disulfide)	1
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	1
U407	Zinc, bis(diethylcarbamodithioato-S,S')- (Ethyl Ziram)	1

VIII. Executive Order 12866

Under Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

IX. Economic Impact Analysis

This section of the preamble summarizes the costs and the economic impact analysis (EIA) for the carbamate hazardous waste listings. Based upon the EIA, the Agency estimates that the listing of the six carbamate production wastes discussed above may result in nationwide annualized costs of at least $900,000. The previous EIA is available in the regulatory docket entitled "Economic Impact Analysis of the Identification and Listing of Carbamate Production Waste," January 27, 1994, (F–94–S0002). The EIA revised in response to comment is available in the regulatory docket and is entitled "Economic Impact Analysis of the Identification and Listing of Carbamate Production Wastes," October 26, 1994.

A. Compliance Costs for Listings

The remainder of this section briefly describes (1) the universe of carbamate production facilities and volumes of carbamate production wastes in the 6 waste groups listed, (2) the methodology for determining incremental cost and economic impacts to regulated entities,

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and (3) the regulatory flexibility analysis.

1. Universe of Carbamate Production Facilities and Waste Volumes

In order to estimate costs for the EIA, it was first necessary to estimate total annual generation of carbamate production wastes. The domestic carbamate production industry is composed of 64 chemical products produced by 20 manufacturers at 24 facilities. Total annual waste quantities generated by these facilities were derived from a 1990 survey of the carbamate production industry.

2. Method for Determining Cost and Economic Impacts

This section details EPA's approach for estimating the incremental compliance cost and the economic impacts attributable to the listing of carbamate production waste. Because the carbamate production industry is relatively small (only 20 manufacturers at 24 facilities in 1990), EPA was able to collect facility-specific information and estimate incremental costs at the waste stream level. The information used in this analysis was collected in 1990 under the authority of a RCRA section 3007 survey; the survey included engineering site visits, and sampling and analysis of waste streams.

Approach to the Cost Analysis

EPA's approach to the cost analysis for this rule was to compare the cost of current management practices, as reported in the 3007 survey of carbamate production facilities, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program. This difference in cost, when annualized, [3] represents the incremental annual compliance cost attributable to the rule.

Baseline or Current Management Scenario

Relying on survey responses and engineering site visits, EPA was able to determine the current (i.e., 1990) management practices for the handling and disposal of carbamate production wastes. Current management practices varied among facilities and waste streams, and included such practices as off-site incineration, deep-well disposal, on-site destruction in boilers, and off-site landfilling. These current management practices at each facility represent the baseline scenario of the analysis.

As part of the 3007 survey, EPA asked each facility to identify current costs for the management of carbamate production wastes. For this analysis, EPA has relied on and has not changed the industry's own waste-specific estimates concerning the cost of current management. EPA realizes that future events such as waste minimization efforts or increased demand for carbamate products may change waste generation volumes and, thus, future waste management costs.

Post-Regulatory Management Scenarios

In predicting how industry would comply with the listing of carbamate production waste as RCRA hazardous waste, EPA developed nine post-regulatory management scenarios, described below, that represent reasonable management reactions on the part of industry. EPA developed these post-regulatory management categories based on its knowledge of current waste management and the physical and chemical properties of the waste.

Unit costs for Subtitle C treatment (i.e., incineration) or land disposal, waste transportation between facilities, permit modifications, maintenance of contingency plans, manifesting and biannual reporting system (BRS) reporting are contained in Table 4 below. The total volume of waste affected by each waste management category described above are presented below in Table 5.

TABLE 4.—POST-REGULATORY WASTE MANAGEMENT UNIT COST ESTIMATES

	Cost (1992 $)	Source
Commercial hazardous waste incineration	$1,600 per metric ton	SAIC/ICF analysis.
Commercial hazardous waste landfill	$200 per metric ton	SAIC/ICF analysis.
Hazardous waste transportation	$0.27 per metric ton per mile if under 200 miles. $0.24 per metric ton per mile if over 200 miles.	SAIC analysis.
Class II on-site hazardous waste landfill permit modification [4]	$80,102	ICF analysis.
Class II on-site hazardous waste incinerator permit modification [5]	$40,585	ICF analysis.
Other class II on-site hazardous waste treatment permit modification	$7,476	ICF analysis.
Segregation of industrial Subtitle D waste	$10 per metric ton	EPA estimate.
Maintenance of contingency plan	$200 per facility per year	Source a.
Manifesting [5]	$36 per shipment	Sources b, c.
BRS reporting	$428 per facility per year	Sources c, d.

[4] Permit modification costs were assumed to be incurred no more than once for each type of treatment at each facility. These costs were annualized over 20 years using a discount rate of 7 percent.

[5] Manifest completion costs were assumed to be incurred once a year for each waste shipped off site. One shipment was assumed to equal one truckload of 20 tons.

Sources: a. "Estimating Costs for the Economic Benefits of RCRA Non-compliance," Draft Report prepared by DPRA for Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, May 1993.
b. ICF No. 801 "Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System," June 15, 1992.
c. Employment and Earnings, Bureau of Labor Statistics, March 1993.
d. "1991 Hazardous Waste Report," U.S. Environmental Protection Agency.

[3] Costs are discounted at a rate of 7 percent over a 20 year period.

TABLE 5.—TOTAL CARBAMATE PRODUCTION WASTE QUANTITIES AND TOTAL INCREMENTAL ANNUAL COST INCURRED BY EACH POST-REGULATORY WASTE MANAGEMENT CATEGORY

Post-regulatory waste management scenario	Total quantity of carbamate production waste affected (in metric tons)	Total annualized incremental cost incurred
MC 1	234,000	$25,600
MC 2	6,400	8,200
MC 3	1	700
MC 4	809,900	776,700
MC 5 and 6	2,700	200
MC 7	0	20
MC 8 and 9	240	68,100
MC 10	4,100	41,000
Total [a]	840,000	910,000

[a] Numbers may not add due to rounding.

Specific Analysis of K157 Wastewaters

EPA examined two scenarios for the post-regulatory management of K157 wastewaters that do not meet the concentration-based exemption. The first scenario assumed that K157 wastewaters would continue to be sent through NPDES-permitted discharges or to POTWs, but that (1) sludge would be managed as hazardous waste, and (2) surface impoundments would be closed and converted to tanks. The second scenario assumed that wastewaters would be treated by steam stripping before discharge into centralized wastewater treatment systems.

For the first K157 wastewater scenario, EPA reviewed the information collected as part of the RCRA section 3007 survey. The facility-specific information shows that only two facilities employ operational surface impoundments (as of 1990). EPA calculated the costs associated with the closure of the surface impoundments and conversion to tanks. The EIA technical background document contains details of these cost calculations. EPA estimated that the costs associated with the first scenario to be approximately $760,000 per year.

For the second K157 wastewater scenario, EPA explored the possibility of off-site steam stripping as well as constructing on-site steam stripping units. EPA calculated rough engineering cost estimates for the on-site systems, both for capital costs and annual operation and maintenance. For volumes generated by these facilities (approximately 400 tons), EPA estimated the total annualized cost of off-site steam stripping [6]. The total estimated annualized cost for scenario two is $6.4 million.

Because the K157 incremental annualized cost of scenario two is more than eight times that of scenario one, EPA assumed that industry would minimize its cost by adopting the lower-cost management [7]. The costs estimated for scenario one have been used in the total costs for K157 wastes reported below.

3. P and U List Wastes

EPA has obtained its estimate of the amount of P and U wastes generated annually by the carbamate producers from the 1990 RCRA Section 3007 Survey. The $10,000 cost associated with managing the 40 metric tons reported in the survey represents a lower-bound cost because it does not include wastes generated by pesticide formulators or distributors.

4. Potential Remedial Action Costs

In addition to carbamate process wastes, the carbamate hazardous waste listing could affect the management of soils, ground water, and other remedial materials. The Agency's "contained in" policy defines certain remediation wastes "containing" a listed hazardous waste as a RCRA hazardous waste (See *Chemical Waste Management* v. *EPA*, 869 F.2d 1526, D.C.C, 1989). Sites, where in newly identified hazardous wastes have been managed prior to the effective date of the new listings, may still have contaminant concentrations which exceed "contained in" levels. A person who actively manages such material could become a generator of RCRA hazardous waste. The likelihood of this imposing a significant additional burden is low since at least 22 of 24 carbamate production facilities are already permitted TSDFs. Releases from all solid waste management units at these TSDFs, including those that in the future would be found to contain a waste meeting the carbamate listing descriptions, are already covered by facility-wide corrective action under 40 CFR 264.101. These associated costs e.g., RCRA Facility Assessment have already been accounted for in the regulatory impact analysis of the corrective action rule.

One corrective action-related cost that should be accounted for is the possible clean up cost associated with the out-of-service surface impoundment that become solid waste management units following their replacement with tanks. In the worst-case, facilities generating K157 wastewaters will meet the concentration-based exemption and will abandon their surface impoundments following this listing. To calculate the corrective action costs, EPA has assumed clean closure in year one, with costs annualized over 20 years. To the clean closure costs, EPA has added the value of the abandoned land. Under these assumptions, annualized corrective action costs associated with this rule making total $472,000. If, however, the K157 wastewaters and all wastewaters derived from the treatment of K156 and comanaged with K157 wastes qualify for the concentration-based exemption, the corrective action costs are reduced to $12,000 annually

5. Summary of Results

Table 6 presents a summary of estimated national incremental annualized compliance costs, by newly identified hazardous waste number, associated with this rule.

TABLE 6.—ANNUALIZED INCREMENTAL COMPLIANCE COST FOR THE LISTING OF CARBAMATE PRODUCTION WASTES LISTED BY CORRESPONDING RCRA CODES

RCRA waste code	Annual incremental compliance cost
K156	$14,000
K157	10,000–770,000
K158	37,000
K159	1,200
K160	2,100
K161	61,000
P & U	10,000
Total	140,000–900,000 [a]

[a] Figures may not sum exactly because of rounding. Corrective action may add $12,000 to the lower bound costs and $472,000 to the upper bound costs.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered which mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and

[6] Recent vendor quotes of off-site steam-stripping showed a cost of $0.75 per gallon (approximately $200 per metric ton).

[7] EPA also considered facility specific comparisons between scenarios one and two. It should be noted that, under scenario one, given the worst possible case (conversion of three surface impoundments, one tank cover and sludge disposal) costs were still favorable to those that would be incurred by the same facility under scenario two.

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governmental jurisdictions subject to regulation."

If, however, the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required.

Table 7 presents the estimated annualized incremental compliance costs borne by the five small businesses[8] in the carbamate production industry. The annual incremental cost of the rule for the five facilities ranged from $628 to $772. The greatest ratio of compliance cost to sales is 0.01%, thus, EPA concluded that no small businesses are significantly affected by this rule.

TABLE 7.—RESULTS OF THE REGULATORY FLEXIBILITY ANALYSIS

Facility	Annual incremental cost of rule	Annual sales (millions)	Annual cost of compliance/annual sales (percent)
1	$772	$17.8	<0.01
2	628	110	<0.01
3	664	6.6	0.01
4	628	45	<0.01
5	736	19	<0.01

Of the 24 entities which are directly subject to this rule, 18 entities would incur incremental compliance costs. Of the 18 affected facilities, 4 entities fit the definition of a "small entity" as defined by the Regulatory Flexibility Act.[9] The annual incremental cost impact to these 4 entities ranges from $600 to $800. For each of the 4 facilities impacted, these annual costs constitute less than 1 percent of total annual sales. EPA believes that these costs do not represent a significant impact. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), "the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities."

XI. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR no. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050–0024 (ICR 976, Biennial Report).

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business infirmation, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, amend title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.3 is amended by removing the period at the end of paragraph (a)(2)(iv)(E) and adding a semi-colon and the word "or" and by adding paragraphs (a)(2)(iv)(F), (a)(2)(iv)(G) and (c)(2)(ii)(D) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(E) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

* * * * *

3. Section 261.32 is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup 'Organic chemicals' to read as follows.

§ 261.32 Hazardous waste from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Organic Chemicals:		
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes	(T)
K159	Organics from the treatment of thiocarbamate wastes	(T)
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.).	(R,T)

4. The tables in § 261.33(e) and (f) are amended by adding in alphabetic order (by the third column) the following substances to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

(e) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
P203	1646–88–4	Aldicarb sulfone.
P127	1563–66–2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P188	57–64–7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1).
P189	55285–14–8	Carbamic acid, [(dibutylamino)- thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester
P191	644–64–4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]- 5-methyl-1H- pyrazol-3-yl ester.
P192	119–38–0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H- pyrazol-5-yl ester.
P190	1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester.
P127	1563–66–2	Carbofuran.
P189	55285–14–8	Carbosulfan.
P202	64–00–6	m-Cumenyl methylcarbamate.
P191	644–64–4	Dimetilan.
P185	26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)- carbonyl]oxime.
P194	23135–22–0	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester.
P198	23422–53–9	Formetanate hydrochloride.

[8] A small business is defined by the Small Business Size Regulations (13 CFR part 121) as one with under 500 employees.

[9] According to "EPA Guidelines for Implementing the Regulatory Flexibility Act" (April, 1992), any producer of pesticides and agricultural chemicals (SIC 2879) with less than 500 employees constitutes a "small entity." None of the entities which would incur incremental compliance costs as a result of this proposal have less than 500 employees.

Hazardous waste No.	Chemical abstracts No.	Substance	
P197	17702-57-7	Formparanate.	
•	•	•	
P192	119-38-0	Isolan.	
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate.	
•	•	•	
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,	
P196	15339-36-3	Manganese dimethyldithiocarbamate.	
•	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride.	*1P198
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-	
P199	2032-65-7	Methiocarb.	
•	•	•	
P190	1129-41-5	Metolcarb.	
•	•	•	
P199	2032-65-7	Mexacarbate.	
•	•	•	
P194	23135-22-0	Oxamyl.	
•	•	•	
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).	
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	
•	•	•	
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate.	
•	•	•	
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate.	
•	•	•	
P204	57-47-6	Physostigmine.	
P188	57-64-7	Physostigmine salicylate.	
•	•	•	
P201	2631-37-0	Promecarb	
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime.	
•	•	•	
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.	
•	•	•	
P185	26419-73-8	Tirpate.	
•	•	•	
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-.	
•	•	•	
P205	137-30-4	Ziram.	

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
U394	30558-43-1	A2213.
•	•	•
U365	2212-67-1	H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester.
•	•	•
U280	101-27-9	Barban.
U278	22781-23-3	Bendiocarb
U364	22961-82-6	Bendiocarb phenol.
U271	17804-35-2	Benomyl.
•	•	•
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.

Hazardous waste No.	Chemical abstracts No.	Substance
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
•	•	•
U401	97-74-5	Bis(dimethylthiocarbamoyl) sulfide.
U400	120-54-7	Bis(pentamethylene)thiuram tetrasulfide.
•	•	•
U392	2008-41-5	Butylate.
•	•	•
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester.
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.
U375	55406-53-6	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester.
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester.
•	•	•
U379	136-30-1	Carbamodithioic acid, dibutyl, sodium salt.
U277	95-06-7	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester.
U381	148-18-5	Carbamodithioic acid, diethyl-, sodium salt.
U383	128-03-0	Carbamodithioic acid, dimethyl, potassium salt.
U382	128-04-1	Carbamodithioic acid, dimethyl-, sodium salt.
U376	144-34-3	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.
•	•	•
U378	51026-28-9	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt
U384	137-42-8	Carbamodithioic acid, methyl-, monosodium salt.
U377	137-41-7	Carbamodithioic acid, methyl,- monopotassium salt.
•	•	•
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U392	2008-41-5	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester.
U391	1114-71-2	Carbamothioic acid, butylethyl-, S-propyl ester.
U386	1134-23-2	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester.
U390	759-94-4	Carbamothioic acid, dipropyl-, S-ethyl ester.
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester.
U385	1929-77-7	Carbamothioic acid, dipropyl-, S-propyl ester.
U279	63-25-2	Carbaryl.
U372	10605-21-7	Carbendazim.
U367	1563-38-8	Carbofuran phenol.
•	•	•
U393	137-29-1	Copper, bis(dimethylcarbamodithioato-S,S')-,
U393	137-29-1	Copper dimethyldithiocarbamate.
•	•	•
U386	1134-23-2	Cycloate.
•	•	•
U366	533-74-4	Dazomet.
•	•	•
U395	5952-26-1	Diethylene glycol, dicarbamate.
•	•	•
U403	97-77-8	Disulfiram.
•	•	•
U390	759-94-4	EPTC.
•	•	•
U404	101-84-8	Ethanamine, N,N-diethyl-
•	•	•
U410	59669-26-0	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
•	•	•
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.

Hazardous waste No.	Chemical abstracts No.	Substance
U407	14324–55–1	Ethyl Ziram.
U396	14484–64–1	Ferbam.
U375	55406–53–6	3-Iodo-2-propynyl n-butylcarbamate.
U396	14484–64–1	Iron, tris(dimethylcarbamodithioato-S,S')-.
U384	137–42–8	Metam Sodium.
U365	2212–67–1	Molinate.
U279	63–25–2	1-Naphthalenol, methylcarbamate.
U391	1114–71–2	Pebulate.
U411	114–26–1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.
U400	120–54–7	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-
U383	128–03–0	Potassium dimethyldithiocarbamate.
U378	51026–28–9	Potassium n-hydroxymethyl- n-methyldi-thiocarbamate.
U377	137–41–7	Potassium n-methyldithiocarbamate.
U373	112–42–9	Propham.
U411	114–26–1	Propoxur.
U387	52888–80–9	Prosulfocarb.
U376	144–34–3	Selenium, tetrakis(dimethyldithiocarbamate).
U379	136–30–1	Sodium dibutyldithiocarbamate.
U381	148–18–5	Sodium diethyldithiocarbamate.
U382	128–04–1	Sodium dimethyldithiocarbamate.
U277	95–06–7	Sulfallate.
U402	1634–02–2	Tetrabutylthiuram disulfide.
U401	97–74–5	Tetramethylthiuram monosulfide.
U366	533–74–4	2H-1,3,5-Thiadiazine- 2-thione, tetrahydro-3,5-dimethyl-
U410	59669–26–0	Thiodicarb.
U402	1634–02–2	Thioperoxydicarbonic diamide, tetrabutyl.
U403	97–77–8	Thioperoxydicarbonic diamide, tetraethyl.
U409	23564–05–8	Thiophanate-methyl.
U389	2303–17–5	Triallate.
U404	101–44–8	Triethylamine.

Hazardous waste No.	Chemical abstracts No.	Substance
U385	1929–77–7	Vernolate.
U407	14324–55–1	Zinc, bis(diethylcarbamodithioato-S,S')-

5. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K160	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.

6. Appendix VIII of Part 261 is amended by adding the following hazardous constituents in alphabetical order to read as follows: The appropriate footnotes to Appendix VIII are republished without change.

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
A2213	Ethanimidothioic acid, 2- (dimethylamino) -N-hydroxy-2-oxo-, methyl ester	30558–43–1	U394
Aldicarb sulfone	Propanal, 2-methyl-2- (methylsulfonyl) -, O-[(methylamino) carbonyl] oxime	1646–88–4	P203
Barban	Carbamic acid, (3-chlorophenyl) -, 4-chloro-2-butynyl ester	101–27–9	U280
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781–23–3	U278
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961–82–6	U364
Benomyl	Carbamic acid, [1- [(butylamino) carbonyl]- 1H-benzimidazol-2-yl] -, methyl ester.	17804–35–2	U271
Bis (dibutylcarbamothioa to) dioxodimolydenum sulfurized.	Molybdenum, bis (dibutylcarbamothioato) dioxodi-, sulfurized	68412–26–0	U389
Bis (pentamethylene)-thiuram tetrasulfide.	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120–54–7	U400
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008–41–5	U392
Carbaryl	1-Naphthalenol, methylcarbamate	63–25–2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605–21–7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563–66–2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563–38–8	U367
Carbosulfan	Carbamic acid, [(dibutylamino) thio] methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester	55285–14–8	P189
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137–29–1	U393

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APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
m-Cumenyl methylcarbamate	Phenol, 3-(methylethyl)-, methyl carbamate	64-00-6	P202
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	U386
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533-74-4	U366
Diethylene glycol, dicarbamate	Ethanol, 2,2'-oxybis-, dicarbamate	5952-26-1	U395
Dimetilan	Carbamic acid, dimethyl-, 1- [(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester.	644-64-4	P191
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	U403
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	U390
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	U407
Ferbam	Iron, tris(dimethylcarbamodithioat-S,S')-,	14484-64-1	U396
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino) carbonyl]oxy]phenyl]-, monohydrochloride.	23422-53-9	P198
Formparanate	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino) carbonyl]oxy]phenyl]-.	17702-57-7	P197
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	U375
Isolan	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119-38-0	P192
Manganese dimethyldithiocarbamate	Manganese, bis(dimethylcarbamodithioato-S,S')-,	15339-36-3	P196
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	U384
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032-65-7	P199
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P190
Mexacarbate	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)	315-18-4	P128
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	U365
Oxamyl	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester.	23135-22-0	P194
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	U391

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Physostigmine	Pyrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.	57-47-6	P204
Physostigmine	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis) -1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1).	57-64-7	P188
Potassium dimethyldithiocarbamate	Carbamodithioc acid, dimethyl, potassium salt	128-03-0	U383
Potassium hyroxymethyl-n-methyl-dithiocarbamate.	Carbamodithioc acid, (hydroxymethyl)methyl-, monopotassium salt	51026-28-9	U378
Potassium n-methyldithiocarbamate	Carbamodithioc acid, methyl-monopotassium salt	137-41-7	U377
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631-37-0	P201
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9	U373
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114-26-1	U411
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	U387
Selenium, tetrakis (dimethyl-dithiocarbamate.	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.	144-34-3	U376
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	U379
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	U381
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	U382
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	U277
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	U402
Tetrabutylthiuram monosulfide	Bis (dimethylthiocarbamoyl) sulfide	97-74-5	U401
Thiodicarb	Ethanimidothioic acid, N,N'-[thiobis [(methylimino) carbonyloxy]] bis-, dimethyl ester.	59669-26-0	U410
Thiophanate-methyl	Carbamic acid, [1,2-phyenylenebis (iminocarbonothioyl)] bis-, dimethyl ester	23564-05-8	U409
Tirpate	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.	26419-73-8	P185
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303-17-5	U389
Triethylamine	Ethanamine, N,N-diethyl-	121-44-8	U404
Vernolate	Carbamothioc acid, dipropyl-, S-propyl ester	1929-77-7	U385
Ziram	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)-	137-30-4	P205

[1] The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6902; 33 U.S.C. 1321 and 1361.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
.	.	.	.
Feb. 9, 1995	Listing Wastes from the Production of Carbamates	[Insert Federal Register page numbers].	Aug. 9, 1995
.	.	.	.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

9. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

10. Section 302.4 is amended by adding the following entries in alphabetical order to Table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code+	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
.	.	.	.	.	.	.	.
1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212671		1*	4	U365		# #
.	.	.	.	.	.	.	.
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961826		1*	4	U364		# #
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781233		1*	4	U278		# #
.	.	.	.	.	.	.	.
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).	1563388		1*	4	U367		# #
.	.	.	.	.	.	.	.
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57647		1*	4	P188		# #
.	.	.	.	.	.	.	.
Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97745		1*	4	U401		# #
.	.	.	.	.	.	.	.
Carbamic acid, butyl-, 3-iodo-2-propynyl ester (3-iodo-2-propynyl n-butylcarbamate).	55406536		1*	4	U375		# #
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl).	17804352		1*	4	U271		# #
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605217		1*	4	U372		# #
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101279		1*	4	U280		# #
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285148		1*	4	P189		# #
Carbamic acid, dimethyl-,1- [(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644644		1*	4	P191		# #
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119380		1*	4	P192		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code+	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
.	.	.	.	.	.	.	.
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb) ...	1129415		1*	4	P190		# #
Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564058		1*	4	U409		# #
Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122429		1*	4	U373		# #
.	.	.	.	.	.	.	.
Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136301		1*	4	U379		# #
Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95067		1*	4	U277		# #
Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148185		1*	4	U381		# #
Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyldithiocarbamate).	128030		1*	4	U383		# #
Carbamodithioic acid, dimethyl-, sodium salt (Sodium dimethyldithiocarbamate).	128041		1*	4	U382		# #
Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium, tetrakis(dimethyldithiocarbamate)).	144343		1*	4	U376		# #
Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Potassium n-hydroxymethyl-n-methyldithiocarbamate).	51026289		1*	4	U378		# #
Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate).	137417		1*	4	U377		# #
Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137428		1*	4	U384		# #
.	.	.	.	.	.	.	.
Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008415		1*	4	U392		# #
.	.	.	.	.	.	.	.
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303175		1*	4	U389		# #
Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate) ...	1114712		1*	4	U391		# #
Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134232		1*	4	U386		# #
Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC)	759944		1*	4	U390		# #
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888809		1*	4	U387		# #
Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate)	1929777		1*	4	U385		# #
.	.	.	.	.	.	.	.
Copper, bis(dimethylcarbamodithioato-S,S')-(Cooper dimethyldithiocarbamate).	137291		1*	4	U393		# #
.	.	.	.	.	.	.	.
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419738		1*	4	P185		# #
.	.	.	.	.	.	.	.
Ethanimidothioci acid, 2-(dimethylamino-N-hydroxy-2-oxo-, methyl ester (A2213).	30558431		1*	4	U394		# #
.	.	.	.	.	.	.	.
Ethanimidothoic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135220		1*	4	P194		# #
.	.	.	.	.	.	.	.
Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-,dimethyl ester (Thiodicarb).	59669260		1*	4	U410		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
Ethanol, 2,2'-oxybis-, dicarbamate (Diethylene glycol, dicarbamate).	5952261		1*	4	U395		# #
Iron, tris(dimethylcarbamodithioato-S,S')-(Ferbam)	14484641		1*	4	U396		# #
Manganese, bis(dimethylcarbamodithioato-S,S')-(Manganese dimethyldithiocarbamate).	15339363		1*	4	P196		# #
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxylphenyl]-, monohydrochloride (Formetanate hydrochloride).	23422539		1*	4	P198		# #
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702577		1*	4	P197		# #
Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate).	64006		1*	4	P202		# #
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631370		1*	4	P201		# #
Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Bis(pentamenthylene)thiuram tetrasulfide).	120547		1*	4	U400		# #
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646884		1*	4	P203		# #
Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine.	57476		1*	4	P204		# #
2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533744		1*	4	U366		# #
Thioperoxydicarbonic diamide, tetrabutyl (Tetrabutylthiuram disulfide).	1634022		1*	4	U402		# #
Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	97778		1*	4	U403		# #
Zinc, bis(dimethylcarbomodithioato-S,S')-, (Ziram)	137304		1*	4	P205		# #
Zinc bis(diethylcarbamodithioato-S,S')-(Ethyl Ziram)	14324551		1*	4	U407		# #
K156 Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.			1*	4	K156		# #
K157 Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not include sludges derived from the treatment of these wastewaters).			1*	4	K157		# #
K158 Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.			1*	4	K158		# #
K159 Organics from the treatment of thiocarbamate wastes.			1*	4	K159		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
K160 Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.			1*	4	K160		# #
K160 Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust, and floor sweepings from the production of dithiocarbamate acids and their salts (This listing does not include K125 or K126.).			1*	4	K161		# #

†—Indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.
#—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

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Part III

Federal Election Commission

11 CFR Parts 100, 104, and 113
Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds; Final Rule

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FEDERAL ELECTION COMMISSION

[Notice 1995–5]

11 CFR Parts 100, 104 and 113

Expenditures; Reports by Political Committees; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission has revised its regulations governing the personal use of campaign funds. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The new rules insert a definition of personal use into the Commission's regulations. The rules also amend the definition of expenditure and the reporting requirements for authorized committees in the current regulations.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is today publishing the final text of revisions to its regulations at 11 CFR parts 100, 104 and 113. These revisions implement section 439a of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ["FECA" or "the Act"]. Section 439a states that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be converted by any person to any personal use, other than to defray and ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. The new rules insert a definition of personal use into Part 113 of the current regulations. The rules also amend the reporting requirements for authorized committees at 11 CFR 104.3, and the definition of expenditure at 11 CFR 100.8.

The final rules published today are the result of an extended rulemaking process. In August of 1993, the Commission published a Notice of Proposed Rulemaking ["NPRM"] seeking comment on proposed rules governing the conversion of campaign funds to personal use. 58 FR 45463 (August 30, 1993). The NPRM contained a proposed general definition of personal use, several enumerated examples, and other provisions for the administration of the personal use prohibition. The Commission subsequently granted a request for a 45 day extension of the comment period. 58 FR 52040 (Oct. 6, 1993). The Commission received 32 comments from 31 commenters in response to the NPRM. The Commission also held a public hearing on January 12, 1994, at which it heard testimony from five witnesses on the proposed rules.

After reviewing the comments received and the testimony given, Commission staff prepared draft final rules, which were considered at an open meeting held on May 19, 1994. The Commission also considered at that time several requests it had received for an additional opportunity to comment on the rules before they were finally promulgated. The Commission decided to seek additional comment on the rules, and published a Request for Additional Comments on August 17, 1994 ["RAC"]. 59 FR 42183 (August 17, 1994). The RAC contained a revised set of draft rules, including a revised definition of personal use that differed significantly from the general definition set out in the 1993 NPRM. The Commission received 31 comments from 34 commenters in response to the Request.

The comments received provided valuable information that serves as the basis for the final rules published today. Elements of both sets of draft rules have been incorporated into the final rules.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on February 3, 1995.

Explanation and Justification

The 1979 amendments to the Federal Election Campaign Act, Pub. L. No. 96–187, 93 Stat. 1339, 1366–67, amended 2 U.S.C. § 439a to prohibit the use of campaign funds by any person for personal use, other than an individual serving as a Member of Congress on January 8, 1980. Under this provision, the Commission must determine whether a disbursement of campaign funds is a campaign expenditure, a permissible expense connected to the duties of a holder of Federal office, or a conversion to personal use. The Commission undertook this rulemaking in an effort to provide additional guidance on these issues to the regulated community.

Some of the comments received contained general observations on the Commission's effort to promulgate personal use rules. Many commenters expressed general support for the Commission's efforts, but other commenters objected to Commission action in this area. One commenter expressed doubt that the Commission would be able to regulate personal use with these kinds of rules. A number of commenters argued that this entire area should be left to Congress. Two of these commenters objected to the rulemaking on the grounds that it is an expansion of Commission authority that is not mandated by Congressional action, one saying Congressional inaction does not confer jurisdiction on the Commission to take action.

However, this rulemaking is clearly within the Commission's jurisdiction and authority. Section 438(a)(8) of Title 2 states that "[t]he Commission shall prescribe rules, regulations and forms to carry out the provisions of [the Federal Election Campaign Act] * * *." This rulemaking is an effort by the Commission to carry out the provisions of section 439a by more clearly defining personal use. Thus, it is precisely the kind of rulemaking contemplated by Congress when it enacted section 438(a)(8).

In addition, this rulemaking is prompted, in large part, by more recent Congressional action, specifically, the Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716. Section 504 of the Ethics Reform Act repealed a "grandfather" provision that Congress included in section 439a when it enacted the personal use prohibition in 1979. This grandfather provision exempted any person who was a "Senator or Representative in, or Delegate or Resident Commissioner to, the Congress" on January 8, 1980 from the personal use prohibition. By repealing the grandfather provision, Section 504 of the Ethics Reform Act limited conversions to personal use by grandfathered Members and former Members to the unobligated balance in their campaign accounts on November 30, 1989. It also completely prohibited conversions of campaign funds by anyone serving in the 103rd or any later Congress. Thus, any grandfathered Members who returned to Congress in January, 1993 gave up the right to convert funds to personal use.

Many of the enforcement actions and advisory opinions the Commission addressed before the start of the 103rd Congress involved persons who, because they were Members of Congress on January 8, 1980, were eligible to convert campaign funds to personal use. Consequently, the question of whether a particular disbursement was a legitimate campaign expenditure or a conversion of campaign funds to personal use may not have been fully explored during that period. A few former Members of Congress may still be covered by the grandfather provision and so continue to be eligible to convert campaign funds to personal use. These former Members are not affected by the new rules published today.

However, the Commission expects that, in the future, most of the situations it will address will involve persons who are not eligible to convert funds to personal use. This increases the need for a clear distinction between permissible uses of campaign funds and impermissible conversions to personal use. In an effort to address this need, the Commission initiated this rulemaking. The Commission is hopeful that the promulgation of these rules will provide much needed guidance to the regulated community.

This Explanation and Justification departs from the Commission's usual practice of discussing the provisions of the final rules in numerical order. The amendments to Parts 100 and 104 are an outgrowth of the new rules inserted in part 113. Consequently, part 113 will be discussed first, in order to place the amendments to parts 100 and 104 in the proper context.

Part 113—Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities (2 U.S.C. 439a)

Section 113.1 Definitions (2 U.S.C. 439a)

The final rules insert a definition of personal use into § 113.1, which contains the definitions that apply to Part 113. Part 113 lists the permissible uses of excess campaign funds and states that excess funds cannot be converted to personal use. Under § 113.1(e), candidates can determine that a portion of their campaign funds are excess campaign funds. The final rules treat the use of campaign funds for personal use as a determination by the candidate that the funds used are excess campaign funds. The personal use definition is inserted as section 113.1(g).

Section 113.1(g) contains a general definition of personal use. Section 113.1(g)(1) expands on this general definition. Paragraph (g)(1)(i) contains a list of expenses that are *per se* personal use. Paragraph (g)(1)(ii) explains how the Commission will analyze situations not covered by the list of expenses in paragraph (g)(1)(i). The remaining provisions of § 113.1(g) set out specific exclusions from the definition of personal use, explain how the definition interacts with certain House and Senate rules, and describe the circumstances under which payments for personal use expenses by third parties will be considered contributions.

Section 113.1(g) General Definition

The general definition of personal use is set out in new paragraph 113.1(g). Personal use is any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder.

Under this definition, expenses that would be incurred even if the candidate was not a candidate or officeholder are treated as personal rather than campaign or officeholder related. This approach is based on Advisory Opinions 1980–138 and 1981–2, in which the Commission said that "expenses which would exist regardless of an individual's election to Federal office are not 'incidental' and may not be paid from campaign funds." Advisory Opinion 1981–2. Since not all cases that raise personal use questions can be specifically addressed in a rule, this standard provides a guideline for the Commission and the regulated community to use in determining whether a particular expense is permissible or prohibited.

The final rules supersede Advisory Opinion 1976–17, in which the Commission said that "any disbursements made and reported by the campaign as expenditures will be deemed to be for the purpose of influencing the candidate's election." A disbursement for campaign funds will not be deemed to be for the purpose of influencing an election if the disbursement is for an expense that is considered a personal use under these rules.

The rules supersede Advisory Opinion 1980–49, in which the Commission indicated that section 439a allows a campaign to pay the "personal living expenses" of the candidate. The use of campaign funds to pay the personal living expenses of the candidate is a prohibited personal use under these rules. Similarly, the rules supersede Advisory Opinions 1982–64 and 1976–53, to the extent that they allowed the use of campaign funds for living expenses incurred during the campaign. However, the rules do not prohibit the use of campaign funds for campaign or officeholder related meal expenses or subsistence expenses incurred during campaign or officeholder related travel. Generally, these uses are permissible under §§ 113.1(g)(1)(ii) (B) and (C). These sections will be discussed in detail below.

In approving the irrespective definition for inclusion in the final rules, the Commission returned to the definition set out in the 1993 NPRM. The Commission had proposed an alternative definition in the August 1994 Request for Additional Comments. Under the alternative definition, personal use would have been any use of funds that confers a benefit on a present or former candidate or a member of the candidate's family that is not primarily related to the candidate's campaign or the ordinary and necessary duties of a holder of Federal office. The Commission received numerous comments on both of these definitions.

Many commenters expressed strong support for the irrespective definition contained in the final rules. These commenters said the alternative definition is vague and would force the Commission to engage in piecemeal decisionmaking. Thus, the commenters said, the alternative definition would be difficult to enforce, and would not curtail any of the abuses taking place under current law. Consequently, the alternative version would not be an improvement over the current situation.

In contrast, the commenters who preferred the alternative version argued that it uses more established and well understood principles, and thus would reduce the likelihood of conflicts with other laws. They also said it more closely tracts the statute and more closely serves the purposes of the Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716 (1989). Two commenters criticized the irrespective definition, saying it does not provide enough guidance and leaves too much room for regulatory interpretation. These commenters said the alternative version would be flexible enough to accommodate a wide range of political and campaign activity, and would preserve the discretion recognized in the Commission's previous advisory opinions.

The irrespective definition is preferable to the alternative version because determining whether an expense would exist irrespective of candidacy can be done more objectively than determining whether an expense is primarily related to the candidacy. If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an

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officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.

In contrast, determining whether an expense is primarily related to a campaign or the duties of an officeholder, or instead is primarily related to some other activity, would force the Commission to draw conclusions as to which relationship is more direct or significant. The Commission has been reluctant to make these kinds of subjective determinations in the past. Moreover, any rule that requires these kinds of determinations can result in more *ad hoc* decisionmaking. The Commission initiated this rulemaking in order to reduce piecemeal resolution of personal use issues, and to provide more prospective guidance to the regulated community as to the kinds of uses that will be considered personal use. The Commission has concluded that the irrespective definition will more successfully achieve these goals.

The general definition of personal use originally proposed by the Commission in the 1993 NPRM applied to any use of campaign funds, regardless of whether the use benefited the candidate, a family member, a campaign employee or an unrelated party. However, under the revised draft rules set out in the RAC, the general definition would have been more limited. This definition would have covered only those uses of campaign funds that benefit the candidate or members of the candidate's family.

The final rules return to the original approach because this approach is more consistent with the FECA. Section 439a states that no campaign funds "may be converted by any person to any personal use." Thus, under the final rules, any use of campaign funds that would exist irrespective of the campaign or the duties of a Federal officeholder is personal use, regardless of whether the beneficiary is the candidate, a family member of the candidate, or some other person.

Paragraph (g)(1)(i)

Paragraph (g)(1)(i) of the final rules contains a list of expenses that are considered personal use. The list includes household food items, funeral expenses, clothing, tuition payments, mortgage, rent and utility payments, entertainment expenses, club dues, and salary payments to family members. The rule assumes that, in the indicated circumstances, these expenses would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Therefore, the rule treats the use of campaign funds for these expenses as *per se* personal use.

In adopting a *per se* list, the Commission rejected the alternative approach set out in the RAC. Under the alternative approach, the expenses on the list were not presumed to fall within the general definition of personal use. Instead, they were merely examples of expenses to which the "primarily related" standard would then be applied on a case by case basis.

Most of the commenters that addressed this issue preferred the list of *per se* personal uses that has been incorporated into the final rules. These commenters characterized the alternative version as a return to case by case review that would not provide any useful guidance to the regulated community and would not make it any easier to enforce the personal use prohibition. These commenters urged the Commission to use the *per se* approach and write whatever exceptions are necessary into the specific provisions of the list. The Commission used this approach in drafting the final rules.

However, two commenters went a step further. They urged the Commission to limit the rule to a list of specific uses that would be personal use, and eliminate the general definition of personal use that would apply to other situations. However, the Commission decided not to adopt this approach. It is doubtful that the agency could draft a complete list of the kinds of uses that raise personal use issues under section 439a. In addition, the Commission has identified some situations that warrant allocation between permissible and personal expenses. *See* section 5 of the discussion of paragraph (g)(1)(ii), below. Therefore, the rules would be incomplete without a general definition that could be applied to other situations.

One commenter argued that the *per se* list will reduce candidate flexibility in determining how to use campaign resources, and urged the Commission to adopt the alternative proposal because it strikes what the commenter believes is the appropriate balance.

However, a list of *per se* personal uses is preferable to a list of examples to which a "primarily related" test would be applied. By listing those uses that will be considered personal use and setting out the exceptions that apply, the *per se* list draws a clearer line and reduces the need or case by case review. A committee or a candidate can examine the rules and be much more certain about what constitutes personal use.

In contrast, the alternative approach undercuts the Commission's efforts to provide clearer guidance. Under the alternative approach, the Commission would have to examine the facts and circumstances of each situation in order to determine whether a particular use is personal use. Thus, the alternative approach would require more Commission involvement in the resolution of personal use issues.

1. Household Food Items and Supplies. Under paragraph (g)(1)(i)(A) of the final rules, the use of campaign funds for household food items and supplies is personal use. This provision covers any food purchased for day to day consumption in the home, and any supplies purchased for use in maintaining the household. The need for these items would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Therefore, the Commission regards them as inherently personal and subject to the personal use ban.

However, this provision would not prohibit the purchase of food or supplies for use in fundraising activities, even if the fundraising activities take place in the candidate's home. Items obtained for fundraising activities are not household items within the meaning of this provision. Similarly, refreshments for a campaign meeting would not be covered by this paragraph.

In addition, this provision does not apply to the use of campaign funds for meal expenses incurred outside the home. The use of campaign funds for these expenses is governed by section 113.1(g)(1)(ii)(B), which will be discussed further below. Similarly, this provision does not apply to the use of campaign funds for subsistence expenses, that is, food and shelter, incurred during travel. Section 113.1(g)(1)(ii)(C) specifically addressed this situation, and will be discussed in greater detail below.

2. Funeral, Cremation and Burial Expenses. Paragraph (g)(1)(i)(B) of the final rules indicates that the use of campaign funds to pay funeral, cremation or burial expenses is personal use. Campaign funds have been used for these expenses in the past by the estates of former Members of Congress who were covered by the grandfather provision and therefore could convert campaign funds to personal use. The Commission believes that these expenses are inherently personal in nature, and, under the current state of the law, should be covered by the personal use ban. The Commission received no comments on this provision.

Section 113.1(g)(4) of the final rules contains an exception to the personal use definition that is relevant here. Section 113.1(g)(4), which will be discussed further below, states that gifts and donations of nominal value made on special occasions are not personal use, unless they are made to a member of the candidate's family. Under this provision, campaign funds can be used to send flowers to a constituent's funeral as an expression of sympathy without violating section 439a. However, if campaign funds are used to pay for costs of the funeral, that use is personal use under paragraph (g)(1)(i)(B).

3. Clothing. Under paragraph (g)(1)(i)(C) of the final rules, the use of campaign funds to purchase clothing is generally personal use. However, the rule contains an exception for clothing items of *de minimis* value that are used in the campaign. Thus, if a campaign committee uses campaign funds to purchase campaign T-shirts and caps with campaign slogans, the purchase is not personal use. One commenter expressed support for this provision.

This rule supersedes Advisory Opinion 1985–22 to the extent that opinion can be read to allow the use of campaign funds for these purposes. In that opinion, the requester sought to use campaign funds to purchase "specialized attire" to wear at "politically related functions which [were] both social and official business." The Commission concluded that the requester's committee could use the funds for these purposes because the requester was grandfathered. However, the language of the opinion suggests that the use of campaign funds for these purposes would also have been permissible if the clothing was to be used in connection with the campaign. Under paragraph (g)(1)(i)(C), the use of campaign funds for these purposes is personal use.

4. Tuition Payments. Under paragraph (g)(1)(i)(D) of the final rules, the use of campaign funds for tuition payments is personal use. However, this provision contains an exception that allows a committee to pay the costs of training campaign staff members, including candidates and officeholders, to perform the tasks involved in conducting a campaign. The Commission received no comments on this provision.

The Commission has concluded that only those tuition payments that fall within the narrow exception set out in the rule are campaign related and should be payable with campaign funds. Other tuition costs, whether for members of the campaign staff or other persons, are subject to the personal use prohibition.

5. Mortgage, Rent and Utility Payments. Paragraph (g)(1)(i)(E) of the final rules addresses the use of campaign funds for mortgage, rent or utility payments on real or personal property owned by the candidate or a member of the candidate's family. In the past, the Commission has generally allowed campaigns to rent property owned by the candidate or a family member for use in the campaign, so long as the campaign did not pay rent in excess of the usual and normal charge for the kind of property being rented. See Advisory Opinions 1993–1, 1988–13, 1985–42, 1983–1, 1978–80, 1977–12, and 1976–53.

The new rule changes the Commission's policy with regard to rental of all or part of a candidate or family member's personal residence. Under paragraph (g)(1)(i)(E)(*1*), the use of campaign funds for mortgage, rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family is personal use, even if part of the personal residence is being used in the campaign. This paragraph supersedes Advisory Opinions 1988–13, 1985–42, 1983–1 and 1976–53, since they allow the use of campaign funds for these purposes.

In contrast, paragraph (g)(1)(i)(E)(*2*) continues the Commission's current policy in situations where the property being rented is not part of a personal residence of the candidate or a member of the candidate's family. Thus, a campaign committee can continue to rent part of an office building owned by the candidate for use in the campaign, so long as the committee pays no more than fair market value for the property usage.

Paragraph (g)(1)(i)(E)(*2*) is consistent with Advisory Opinions 1977–12 and 1978–80. It is also consistent with the result reached in Advisory Opinion 1993–1, in which the Commission allowed a candidate to rent a storage shed that was not part of his or her personal residence for use in the campaign. However, Advisory Opinion 1993–1 cites Advisory Opinions 1988–13, 1985–42, and 1983–1 as authority for this conclusion. As indicated above, these opinions are superseded by paragraph (*1*). Consequently, they should no longer be regarded as authority for the result reached in AO 1993–1.

The use of campaign funds to make mortgage, rent or utility payments on real or personal property that is not used in the campaign would be reviewed under the general definition of personal use. These expenses presumably would exist irrespective of the candidacy, so the use of campaign funds to pay these expenses would be personal use.

The Commission received a number of comments on its proposed rules in this area. Four commenters urged the Commission to prohibit all transactions between the campaign committee and the candidate, saying that the rules should require the committee to enter into arms length transactions with unrelated third parties. Two of these commenters said the prohibition should be extended to transactions with any member of the candidate's family unit. In contrast, four other commenters urged the Commission to continue to allow these transactions so long as they involve *bona fide* rentals at fair market value.

The Commission has adopted what is essentially a middle ground. The rule prohibits payments for use of a personal residence because the expenses of maintaining a personal residence would exist irrespective of the candidacy or the Federal officeholder's duties. Thus, the rule draws a clear line, and avoids the need to allocate expenses associated with the residence between campaign and personal use.

At the same time, the Commission believes it is unnecessary to change its current policy regarding payments for the use of other property. These arrangements more closely resemble arms length transactions in that the property in question is available on the open market. Also, these arrangements generally do not raise the same kinds of allocation issues. Consequently, so long as the campaign pays fair market value, these payments will not be considered personal use.

It is important to note that paragraph (g)(1)(i)(E)(*1*) does not prohibit the campaign from using a portion of the candidate's personal residence for campaign purposes. It merely limits the committee's ability to pay rent for such a use. The candidate retains the option of using his or her personal residence in the campaign, so long as it is done at no cost to the committee. The Commission specifically allowed such an arrangement in Advisory Opinion 1986–28. That opinion is not affected by the new rules.

Nor should this rule be read to prohibit a campaign committee from paying the cost of long distance telephone calls associated with the campaign, even if those calls are made on a telephone located in a personal residence of the candidate or a member of the candidate's family. Since these calls are separately itemized on the residential telephone bill, they can

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easily be attributed to the campaign without raising allocation issues.

6. Entertainment. Paragraph (g)(1)(i)(F) states that the use of campaign funds to pay for admission to a sporting event, concert, theater or other form of entertainment is personal use, unless the admission is part of a specific campaign or officeholder activity.

Several commenters urged the Commission to impose limits on the use of campaign funds for admission to these kinds of events. One suggested that these uses be prohibited unless they are part of a *bona fide* fundraising event, and said the Commission should require explicit solicitation of contributions in order to ensure that fundraising takes place. Another commenter recommended that the rule only allow the use of campaign funds if guests are present, and then only for the guests' admissions. A third commenter would require the candidate to show that the event was overwhelmingly campaign related in order to eliminate borderline cases. A fourth argued that these uses should only be allowed when the event is integral to campaign activity, and not when it is merely an event at which those present occasionally discuss campaign related subjects.

Other commenters took a different view. One commenter argued that meeting and mingling with supporters is a legitimate campaign activity, and that the expenses associated with that activity are a legitimate campaign expense. This commenter urged the Commission to allow the use of campaign funds for these purposes so long as the event takes place within the candidate's district. Another commenter said that the rules should allow committees to buy tickets for these events and give them to campaign workers, volunteers, and constituents.

The final rules require that the purchase of tickets be part of a particular campaign event or officeholder activity and not a leisure outing at which the discussion occasionally focuses on the campaign or official functions. This is not intended to include traditional campaign activity, such as attendance at county picnics, organizational conventions, or other community or civic occasions. This approach recognizes that these activities can be campaign or officeholder related. Moreover, the rules do not require an explicit solicitation of contributions or make distinctions based on who participates in the activity, since this would be a significant intrusion into how candidates and officeholders conduct campaign business.

7. Dues, Fees and Gratuities. Paragraph (g)(1)(i)(G) of the final rules provides that using campaign funds to pay dues, fees or gratuities to a country club, health club, recreational facility or other nonpolitical organization is personal use. Under this rule, membership dues, greens fees, court fees or other payments for access to these clubs are personal use, as are payments to caddies or professionals who provide services at the club, regardless of whether they are club employees or independent contractors. However, this rule contains an exception that allows a candidate holding a fundraising event on club premises to use campaign funds to pay the cost of the event. In this situation, the payments would be expenditures rather than personal use.

The Commission received a mix of comments on this provision. One commenter supported the rule, but urged the Commission to make it stronger by narrowing the exception for fundraising events. Another commenter took a different view, saying that a candidate's greens fees for golf with supporters or potential supporters is a legitimate campaign expense and should be allowed.

Once again, the rule charts a middle course. Playing a round of golf or going to a health club is often a social outing where the benefits received are inherently personal. Consequently, the use of campaign funds to pay for these activities will generally be personal use.

However, the rule is not so broad as to limit legitimate campaign related or officeholder related activity. The costs of a fundraising event held on club premises are no different under the FECA than the costs of a fundraiser held at another location, so the rule contains and exception that indicates that payments for these costs are not personal use. However, this exception does not cover payments made to maintain unlimited access to such a facility, even if access if maintained to facilitate fundraising activity. The exception is limited to payments for the costs of a specific fundraising event.

The rule also allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests. This would include community or civic organizations that a candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community. Even though these organizations are not considered political organizations under 26 U.S.C. § 527, they will be considered to have political aspects for the purposes of this rule.

8. Salary Payments to the Candidate's Family Members. The final rules also clarify the Commission's policy regarding the payment of a salary to members of the candidate's family. Under paragraph (g)(1)(i)(H), salary payments to a member of the candidate's family are personal use, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use. This rule is consistent with the Commission's current policy, as set out in Advisory Opinion 1992–4.

Several commenters urged the Commission to take a stricter approach. Two suggested that the Commission prohibit salary payments for any member of the candidate's household unit, because the salary could be used to pay the living expenses of the candidate. Other commenters urged the Commission to prohibit salary payments unless the family member was hired to perform services that he or she previously provided in a professional capacity outside the campaign. Some commenters expressed concern that the fair market value standard could be abused.

In contrast, a number of commenters urged the Commission to allow these payments. Two commenters questioned why family members should be treated any differently from other employees who provide legitimate services to the campaign. One commenter said the test should be whether the family member is actually working for the campaign. If so, salary payments should be allowed.

The Commission agrees with those commenters that argue that family members should be treated the same as other members of the campaign staff. So long as the family member is providing *bona fide* services to the campaign, salary payments to that family member should not be considered personal use. However, the Commission believes these payments should be limited to the fair market value of the services provided. Consequently, the final rules treat salary payments in excess of that amount as personal use.

9. Additional Issues. Both the Notice of Proposed Rulemaking and the Request for Additional Comments proposed to treat the use of campaign funds to pay the candidate a salary as personal use. This rule would have the effect of prohibiting candidate salaries, and would resolve an issue raised in Advisory Opinion 1992–1. The

Commission received numerous comments on this provision.

Several commenters objected to this provision and urged the Commission to allow candidate salaries. Most said that a prohibition would aggravate existing inequities between incumbents and challengers and would create a wealth test or property qualification for running for office. These commenters urged the Commission to allow candidate salaries in order to level the playing field and open up the election process to candidates of modest means. One commenter strongly believes a candidate should be able to receive a reasonable salary based on his or her experience and the services he or she renders to the campaign. Many different proposals for determining the amount of a candidate's salary were suggested.

Several other commenters questioned why full disclosure of salary payments would not adequately prevent any unfairness to campaign contributors. Another commenter argued that candidates are essentially employees of the party by whom they are nominated, and, as such, the party should be permitted to pay the candidate a salary.

In contrast, two commenters strongly supported a prohibition on candidate salaries, saying such a prohibition is required under section 439a. They urged the Commission to adopt a blanket rule prohibiting the use of campaign funds for this purpose, because permitting salaries effectively allows the candidate to use campaign funds to pay his or her personal living expenses and does away with the personal use prohibition. These commenters acknowledged that the inequities that exist between incumbents and challengers is a problem that needs to be rectified. Nevertheless, they said this inequity cannot be resolved in this rulemaking because nothing in section 439a requires a level playing field. They also argue that nothing in section 439a justifies distinguishing between incumbents and other candidates, and since Members of Congress would not be allowed to take a salary from their campaigns in addition to their Congressional salary, the statute requires a prohibition on salary payments to the candidate.

One of these two commenters also urged the Commission not to try to level the playing field by reversing what the commenter described as the Commission's policy of requiring corporate employees to take an unpaid leave of absence to campaign for office. This commenter also said that a means test for payment of candidate salaries would not work.

The Commission took up the candidate salary issue when it considered the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. § 437c(c). Consequently, this issue has not been addressed in the final rules.

Paragraph (g)(1)(ii)

Paragraph (g)(1)(ii) explains how the Commission will address other uses of campaign funds not covered by the *per se* list of examples. If an issue comes before the Commission as to whether a use not listed in paragraph (g)(1)(i) is personal use, the Commission will determine whether the use is for an expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. If so, it will be personal use unless some other specific exception applies. These determinations will be made on a case by case basis. Committees should look to the general definition for guidance in determining whether uses not listed in paragraph (g)(1)(i) are personal use.

Two commenters expressed concerns with this approach. One said that case by case review will cause great difficulty, and urged the Commission to allow candidates to explain the campaign relationship of any use that may appear to be personal. This commenter also argued that if the use reasonably appears to have a campaign relationship, it should not be personal use. The other commenter said that this provision leaves the question of personal use unsettled, and urged the Commission to affirm that candidates have wide discretion over the use of campaign funds and treat uses outside the categories contained in the rule as presumptively permissible.

In contrast, a third commenter expressed support for this provision if it is implemented in conjunction with a general definition of personal use that uses the irrespective standard.

The Commission is aware of the problems of case by case decisionmaking. It has sought to minimize these problems by incorporating a list of examples that specifically addresses the most common personal use issues into the final rules.

However, the Commission cannot anticipate every type of expense that will raise personal issues. Thus, the Commission cannot create a list that addresses every situation. Furthermore, some expenses that do raise personal use issues cannot be characterized as either personal or campaign related in the majority of situations, so they cannot be addressed in a *per se* list. Consequently, it is necessary to have a plan for addressing situations not covered by the *per se* list. The Commission is including paragraph (g)(1)(ii) in the rules to provide guidance to the regulated community as to how these situations will be handled. Should a personal use issue arise, the candidate and committee will have ample opportunity to present their views. The Commission, however, reaffirms its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

The Notice of Proposed Rulemaking sought comments on other uses of campaign funds that sometimes raise personal use issues. In particular, the Commission encouraged commenters to submit their views on when the use of campaign funds for legal expenses, meal expenses, travel expenses and vehicle expenses would be personal use.

Because the use of campaign funds for these expenses can raise serious personal use issues, the Commission attempted to draft specific provisions on these uses and incorporate them into section 113.1(g)(1)(i). However, the Commission's efforts to craft language that would distinguish permissible uses from those subject to the prohibition generated rules that could have proved very confusing for the regulated community. Consequently, the Commission opted for a simpler approach. The Commission will address any issues raised by the use of campaign funds for these expenses by applying the general definition on a case by case basis. Thus, the use of campaign funds for these expenses will be personal use if the expense would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

Legal, meal, travel and vehicle expenses are listed under paragraph (g)(1)(ii) as examples of uses that will be reviewed on a case by case basis. The Commission has inserted this list in the final rules in order to make it clear how issues involving the use of campaign funds for these expenses will be handled. These provisions, and the comments received in response to the NPRM, are discussed in detail below.

1. Legal expenses. Paragraph (g)(1)(ii)(A) indicates that issues regarding the use of campaign funds for legal expenses will be addressed on a case by case basis using the general definition of personal use. One commenter argued that legal expenses should be *per se* personal use except when they are incurred in ensuring compliance with the election laws. This commenter also urged the Commission

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to prohibit contributions to the legal defense funds of other candidates.

Treating legal expenses other than those incurred in ensuring compliance with the election laws as *per se* personal use is too narrow a rule. A committee or a candidate could incur other legal expenses that arise out of campaign or officeholder activities but are not related to compliance with the FECA or other election laws. For example, a committee could incur legal expenses in its capacity as the employer of the campaign staff, or in its capacity as a contracting party in its dealings with campaign vendors. Consequently, the Commission has decided that issues raised by the use of campaign funds for a candidate's or committee's legal expenses will have to be addressed on a case by case basis.

However, legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder's status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.

2. Meal Expenses. Paragraph (g)(1)(ii)(B) indicates that issues regarding the use of campaign funds for meal expenses will be addressed on a case by case basis using the general definition of personal use. One commenter thought payments for meals should be strictly limited, and recommended that the Commission prohibit the use of campaign funds to pay for meals that are not directly related to the campaign. Another commenter suggested the Commission follow the Internal Revenue Service approach for business meals, and allow the use of campaign funds if guests are present. Under this approach, family members would not qualify as guests, so campaign funds could not be used to pay for their meals.

A third commenter expressed doubt that persons who use campaign funds for entertainment actually discuss campaign business while the event is going on. The commenter said that, although these situations often involve face to face fundraising and therefore are campaign related, the Commission should require candidates to show that the event is overwhelmingly campaign related in order to eliminate borderline cases. A fourth commenter would require that the meal involve an explicit solicitation of contributions in order to allow use of campaign funds.

In contrast, two commenters objected to limits on the use of campaign funds for these purposes.

The Commission is aware of the potential for abuse in the use of campaign funds to pay for meal expenses. However, the Commission sought to establish a rule that would effectively curb these abuses without making it difficult to conduct legitimate campaign or officeholder related business. Consequently, the Commission has decided to address these situations on a case by case basis using the general definition of personal use.

Under this approach, the use of campaign funds for meals involving face to face fundraising would be permissible. Presumably, the candidate would not incur the costs associated with this activity if he or she were not a candidate. In contrast, the use of campaign funds to take the candidate's family out to dinner in a restaurant would be personal use, because the family's meal expenses would exist even if no member of the family were a candidate or an officeholder.

It should be noted that this provision applies to meal expenses incurred outside the home. It does not apply to the use of campaign funds for household food items, which are covered by section 113.1(g)(1)(i)(A). Nor does it apply to subsistence expenses incurred during campaign or officeholder related travel. These expenses will be considered part of the travel expenses addressed by paragraph (g)(1)(ii)(C).

3. Travel Expenses. Paragraph (g)(1)(iii)(C) indicates that the use of campaign funds for travel expenses, including subsistence expenses incurred during travel, will be addressed on a case by case basis using the general definition of personal use.

One commenter said that the rules should prohibit the use of campaign funds for expenses that are collateral to travel, such as greens fees, ski lift tickets and court time. This commenter also said the rules should prohibit the use the campaign funds for pleasure or vacation trips or extensions of campaign or officeholder related trips. Another commenter urged the Commission to adopt a two part test for travel expenses which would allow them only if the travel is predominantly for permissible purposes and the trip is necessary for the fulfillment of those purposes. This commenter also urged the Commission to prohibit the payment of per diems, since they allow campaigns to use campaign funds without disclosing how they are used.

As will be discussed further below (see section 5 on "mixed use"), the final rules do prohibit the use of campaign funds for personal expenses collateral to campaign or officeholder related travel by treating these uses as personal use unless the committee is reimbursed. However, the Commission has decided against adopting the two part test suggested, because it would require closer review of a candidate's or officeholder's travel to determine the predominant purpose or necessity of a particular trip. This approach has been rejected, and is a departure from the analysis under the irrespective standard.

The Commission has also decided against imposing limits on per diem payments, since the Commission has a long-standing policy of allowing these payments, see Advisory Opinion 1984–8, and because these limits would be impractical and would impose unreasonable burdens on candidates and committees. However, per diem payments must be used for expenses that meet the general standard. They cannot be converted to personal use.

4. Vehicle Expenses. Paragraph (g)(1)(ii)(D) indicates that issues regarding the use of campaign funds for vehicle expenses will be addressed on a case by case basis using the general definition of personal use. However, the rule contains an exception for vehicle expenses of a *de minimis* amount. Thus, vehicle expenses that would exist irrespective of the candidate's campaign or duties as a holder of Federal office will be personal use, unless they are a *de minimis* amount. If these expenses exceed a *de minimis* amount, the person(s) using the vehicle for personal purposes must reimburse the committee for the entire amount associated with the personal use. See section 5 on "mixed use," below.

One commenter urged the Commission to make the vehicle expense provision more specific by defining *de minimis* and setting a specific cents per mile reimbursement amount. This commenter also urged the Commission to include a limit on payments for the candidate's personal vehicle.

The Commission is sensitive to the difficulties that candidates and committees would face in completely eliminating all vehicle uses that confer a personal benefit. Consequently, the Commission has sought to carefully craft a rule that will provide a mechanism for addressing apparent abuses of campaign vehicles without imposing unrealistic burdens on candidates and committees. The Commission has decided not to impose the more specific requirements

suggested by the commenter. Instead, it will review the facts of a particular case in order to determine whether personal use has occurred. The Commission will make use of the *de minimis* concept by assessing whether the amount of expenses associated with personal activities is significant in relation to the overall vehicle use.

While the comments focused on the use of campaign funds to pay for expenses associated with the candidate's personal vehicle, the rule applies to the use of campaign funds for expenses associated with any vehicle, regardless of whether it is owned or leased by the committee or the candidate. Because the expenses associated with a personal vehicle usually exist irrespective of the candidacy or the officeholder's duties, the use of campaign funds for these expenses will generally be considered personal use.

5. Mixed Use. Paragraphs (g)(1)(ii) (C) and (D) also explain the Commission's policy regarding the use of campaign funds for travel and vehicle expenses associated with a mixture of personal and campaign or officeholder related activities.

Under paragraph (c), if a campaign committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign within thirty days for the amount of the incremental expenses.

Paragraph (D) contains a similar rule regarding vehicle expenses. However, this rule does not apply to vehicle expenses that are a *de minimis* amount. If the vehicle expenses associated with personal activities exceed a *de minimis* amount, the person(s) using the vehicle for personal activities must reimburses(s) the campaign within thirty days for the entire amount associated with the personal activities. Otherwise, the use of campaign funds for the vehicle expenses is personal use. This approach is consistent with Advisory Opinions 1984–59 and 1992–12.

For example, under paragraph (C), if a Member of Congress travels to Florida to make a speech in his or her official capacity, and stays an extra week there to enjoy a vacation, the Member's campaign committee can pay the Member's transportation costs and the subsistence costs necessary for making the speech. However, if the committee pays the cost of the entire trip, including the expenses incurred during the extra week of vacation, the Member is required to reimburse the committee for the expenses incurred during this extra week. This includes the hotel and meal expenses for the extra week along with any entertainment expenses incurred during this time that are included in the amount paid by the committee.

Of course, the reimbursement need only cover the incremental costs of the personal activities, that is the increase in the total cost of the trip that is attributable to the extra week of vacation. Thus, if the vacation and the speech take place in the same location, the Member is not required to reimburse the committee for any portion of the airfare, since that expense would have been incurred even if the trip had not been extended. See Advisory Opinion 1993–6.

On the other hand, if the Member travels to one location to make the speech, travels on to another location for the vacation, and then returns to his or her point of origin, the Member is required to reimburse the committee for the increase in transportation costs attributable to the vacation leg of the trip. The increased costs would be calculated by determining the cost of a fictional trip that includes only the campaign and officeholder related stops, that is, a trip that starts at the point of origin, goes to every campaign related or officeholder related stop, and returns to the point of origin. The difference between the transportation costs of this fictional, campaign related trip and the total transportation costs of the trip actually taken is the incremental cost attributable to the personal leg of the trip.

These rules apply to any Federal candidate or officeholder. Thus, challengers are also required to reimburse their committees for any personal travel expenses that are paid with campaign funds.

These principles also apply to vehicle expenses for a trip that involves both campaign or officeholder related activities and personal activities in excess of a *de minimis* amount. If the personal activities are more than a *de minimis* portion of the trip, the person using the vehicle is required to reimburse the committee for the difference between the total vehicle expenses incurred during the trip and the amount that would be incurred on a fictional trip that only includes the campaign or officeholder related stops. Section 106.3(b) of the Commission's regulations sets out a method for allocating campaign and non-campaign related vehicle expenses. Advisory Opinion 1992–34 contains an example of how this allocation mechanism works.

The Commission notes that if the person benefiting from the use of campaign funds for personal travel or vehicle expenses makes a timely reimbursement under this section, that reimbursement is not a contribution under the Act. However, if a reimbursement required under this section is made by a person other than the person benefiting, it may be a contribution under § 113.1(g)(6). Section 113.1(g)(6) will be discussed further below.

Section 113.1(g)(2) Charitable Donations

Section 113.1(g)(2) indicates that donations of campaign funds to organizations described in section 170(c) of the Internal Revenue Code are not personal use, so long as the candidate does not receive compensation from the recipient organization before it has expended the entire amount donated for purposes unrelated to the candidate's personal benefit. Compensation does not include reimbursements for expenses ordinarily and necessarily incurred on behalf of such organization by the candidate. This provision is based on the approach taken by the Commission in Advisory Opinion 1983–27, and is consistent with subsequent Commission treatment of charitable donations made with campaign funds. See Advisory Opinions 1986–39 and 1993–22. The Commission received no comments on this provision.

Section 113.1(g)(3) Transfers of Campaign Assets

Under § 113.1(g)(3), the sale or other transfer of a campaign asset is not personal use so long as the transfer is for fair market value. This provision seeks to limit indirect conversions of campaign funds to personal use. An indirect conversion occurs when a committee sells an asset for less than the asset's actual value, thereby essentially giving part of the asset to the purchaser at no charge. Section 113.1(g)(3) limits these conversions by requiring these transactions be for fair market value.

Section 113.1(g)(3) also seeks to limit indirect conversions to personal use by ensuring that any depreciation in the value of an asset being transferred is properly allocated between the committee and the purchaser. Many assets such as vehicles and office equipment depreciate dramatically immediately after they are purchased. If a campaign committee purchases an asset, uses it during a campaign season, and then sells it to the candidate at its

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depreciated fair market value, the candidate receives the asset at a substantially reduced cost but with significant time remaining in its useful life. Thus, the cost of the depreciation falls disproportionately upon the campaign committee. This would effectively be a conversion of campaign funds to personal use.

Section 113.1(g)(3) addresses this situation by requiring that any depreciation that takes place before the transfer be allocated between the committee and the purchaser based on the useful life of the asset. Thus, the committee should absorb only that portion of the depreciation that is attributable to the time period during which it uses the asset. This approach is consistent with Advisory Opinion 1992–12, in which the Commission required a Congressman who was assuming a lease of a van from his campaign committee to "accept a pro rata share of the financial obligations and charges attending the lease * * *." The Commission also noted that "the lease may provide for a discount on the purchase price of the van at the conclusion of the agreement. In that event, a portion of the discount may belong to the committee." Advisory Opinion 1992–12, n.3.

Two commenters expressed views on this provision. One commenter argued that, even if the asset's depreciation is allocated between the committee and the purchaser, the purchaser is still getting a bargain. This commenter urged the Commission to require the committee to sell its assets to third parties and use the proceeds to pay campaign debts or to make contributions to charities.

The Commission has decided not to require committees to sell their assets only to third parties, because such a requirement would not serve the purposes of the personal use prohibition. Section 439a prohibits conversions of campaign funds to any person's personal use. Thus, a violation of section 439a occurs whenever an asset is transferred for less than fair market value. It makes no difference whether the purchaser is the candidate or an unrelated third party. Consequently, a rule that requires that all transfers of campaign assets be for fair market value will fully serve the purposes of section 439a.

Section 113.1(g)(4) Gifts

As indicated above, the final rules generally apply with equal force to uses of campaign funds that benefit third parties as they do to uses of campaign funds that benefit the candidate or a member of the candidate's immediate family. However, the final rules also contain a provision that allows a committee to use campaign funds to benefit constituents or supporters on certain occasions without violating the personal use prohibition. Section 113.1(g)(4) indicates that gifts or donations of nominal value given on special occasions to persons other than family members of the candidate are not personal use. This will allow a committee to use campaign funds to send flowers to a constituent's funeral without violating the personal use prohibition.

The Commission recognizes that candidates and officeholders frequently send small gifts to constituents and supporters on special occasions as gestures of sympathy or goodwill, and that such an expense would not exist irrespective of the candidate's or officeholder's status. The Commission has included this provision in the rules to specifically indicate that the use of campaign funds for this purpose is permitted.

However, the exception does not cover gifts that are of more than nominal value. For example, using campaign funds for other expenses associated with special occasions, such as the funeral and burial expenses covered under section 113.1(g)(1)(i)(B), would be personal use. Nor does this exception allow the committee to use campaign funds to send gifts to members of the candidate's family. Presumably, the candidate would give such a gift irrespective of whether he or she were a candidate or Federal officeholder. Therefore, the use of campaign funds for such a gift would be personal use.

Section 113.1(g)(5) Political or Officially Connected Expenses

Section 113.1(g)(5) explains how the personal use rules interact with the rules of the U.S. House of Representatives and the United States Senate. Under House rules, a Member "shall convert no campaign funds to personal use * * * and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes." House Rule 43, clause 6. Senate Rule 38 also prohibits personal use, but allows a Member to use campaign funds to defray "expenses incurred * * * in connection with his official duties." Senate Rule 38, clause 1(a). Thus, these rules allow Members to use campaign funds for what are described as "political" and "officially connected" expenses. Several commenters have raised the question of how the personal use rules would apply to the use of campaign funds for these purposes.

Section 113.1(g)(5) indicates that the use of campaign funds for a political or officially connected expense is not personal use to the extent that it is an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. The rule also reiterates that any use of funds that would be personal use under § 113.1(g)(1) will not be considered an expenditure or an ordinary and necessary expense incurred in connection with the duties of a Federal officeholder.

One commenter urged the Commission to be consistent with House and Senate rules in this area, saying that, since House rules specifically allow Members to use campaign funds for political expenses, the Commission's rules should specifically exclude these uses from the definition of personal use. Two other commenters agreed, and urged the Commission not to introduce additional confusion into this area.

In contrast, two commenters rejected the suggestion that the Commission should defer to House and Senate rules in this area. They asserted that enforcement of the personal use ban is the Commission's responsibility, and that, since Congressional precedents are based on rules with different language than section 439a, the Commission should not look to those precedents for guidance.

Other commenters expressed their views on the specific language of the rule. One commenter urged the Commission to treat what the commenter referred to as campaign disbursements and political disbursements as synonymous, and to treat what the commenter referred to as political and officially connected expenses as permissible ordinary and necessary expenses under section 439a. Another commenter criticized the provision as tautological, and cited this as an area in which the Commission should reaffirm that candidates and officeholders have wide discretion.

Two commenters said the rule is an improvement over a previous draft that was read to have ceded authority for determining whether uses by incumbents are personal use to the House and Senate. However, one said that the rule still defers too much to Congress because it still says political and officially connected expenses are not personal use to the extent that they are expenditures or the ordinary and necessary expenses of a Federal officeholder. The other commenter said the rule is acceptable so long as the list of uses is truly a per se list.

The Commission recognizes that the existence of two sets of rules creates the potential for confusion. However, the Commission cannot create a blanket exclusion from personal use for all uses that qualify as a political or officially connected expense under Congressional rules. Congress has given the Commission the authority to interpret and enforce the personal use prohibition in section 439a. Creating an exclusion for all political or officially connected expenses would effectively be an abdication of that authority, particularly since section 439a uses different standards than House and Senate rules for determining whether a particular use of campaign funds is permissible.

Nevertheless, the Commission anticipates that, in most circumstances other than those specifically addressed in the rules, political and officially connected expenses will be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder, as that term is used under the FECA. As such, they will not be personal use under § 113.1(g)(1). In other circumstances, political and officially connected expenses may be expenditures under the Act, and therefore clearly permissible. In short, the Commission does not anticipate a significant number of conflicting results under these rules.

The Commission notes that the FY 1991 Legislative Branch Appropriations Act (Pub. L. 101–520) provides that "official expenses" may not be paid from excess campaign funds. Thus, even though 2 U.S.C. § 439a, House Rule 43, and Senate Rule 38 contemplate the use of campaign funds for "ordinary and necessary expenses," "political purposes," and expenses "in connection with" official duties, guidance regarding the scope of the Legislative Branch Appropriations Act provision referred to above should be sought by persons covered.

Section 113.1(g)(6) Third Party Payments of Personal Use Expenses

Section 113.1(g)(6) sets out Commission policy on payments for personal use expenses by persons other than the candidate or the candidate's committee. Generally, payments of expenses that would be personal use if made by the candidate or the candidate's committee will be considered contributions to the candidate if made by a third party. Consequently, the amount donated or expended will count towards the person's contribution limits. However, no contribution will result if the payment would have been made irrespective of the candidacy. The final rule contains three examples of payments that will be considered to be irrespective of the candidacy.

Several commenters expressed views on this provision. Three commenters objected to it, arguing that it is inconsistent to say that the use of campaign funds for certain expenses is personal use when those expenses are not campaign related, while at the same time saying that payments for those same expenses by third parties are contributions because they are being made for the purpose of influencing an election. Two of these commenters recommended that the Commission reverse its existing policy and allow corporate employers to pay employee-candidates a salary during the campaign in order to level the playing field.

Another commenter objected to this provision, saying that third parties should be allowed to pay the personal living expenses of a candidate who loses his or her salary upon becoming a full time candidate, subject to three conditions: (1) The payments are disclosed and limited as in-kind contributions under the FECA; (2) the payments are for essential living expenses; and (3) the total payments and the candidate's salary during the campaign period do not exceed his or her average monthly salary over the previous year, or that of an incumbent Member of Congress.

In contrast, one commenter approved of this provision. Another commenter urged the Commission to flatly prohibit these payments rather than treating them as contributions, saying that third parties should not be able to label as contributions payments that could not be made by the committee itself.

The Commission has decided to treat payments by third parties for personal use expenses as contributions subject to the limits and prohibitions of the Act, unless the payment would have been made irrespective of the candidacy. If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy. As such, it is appropriate to treat such a payment as a contribution under the Act. This rule follows portions of Advisory Opinions 1982–64, 1978–40, 1976–70 and the Commission's response to Advisory Opinion Request 1976–84. The Commission understands the concerns about the inequities between incumbents and challengers expressed by the commenters in relation to this provision and other aspects of this rulemaking. However, the FECA is not intended to level the playing field between incumbents and challengers. See *Buckley* v. *Valeo*, 424 U.S. 1, 48–49 (1976).

If the payment would have been made even in the absence of the candidacy, the payment should not be treated as a contribution. Section 113.1(g)(6) excludes payments that would have been made irrespective of the candidacy, and sets out three examples of such payments. These examples protect a wide range of payments of personal use expenses from being treated as contributions. Other situations will be examined on a case by case basis.

First, the final rule excludes payments to a legal expense trust fund established under House and Senate rules. House and Senate rules provide Members of Congress with a mechanism they can use to accept donations to pay for legal expenses. The final rule places donations to these funds outside the scope of the contribution definition of the FECA. Donations to other legal defense funds will be examined on a case by case basis.

Second, the final rule excludes payments made from the personal funds of the candidate, as defined in 11 CFR 110.10(b). Section 110.10 allows candidates for Federal office to make unlimited expenditures from personal funds, as defined in paragraph (b) of that section. Thus, if a payment by a third party is made with the candidate's personal funds, the payment will not be considered a contribution that is subject to the limits and prohibitions of the Act. Similarly excluded from contribution treatment under this provision are payments made from an account jointly held by the candidate and a member of the candidate's family.

Finally, the rule indicates that a third party's payment of a personal use expense will not be considered a contribution if payments for that expense were made by the third party before the candidate became a candidate. If the third party is continuing a series of payments that were made before the beginning of the candidacy, the Commission considers this convincing evidence that the payment would have been made irrespective of the candidacy, and therefore should not be considered a contribution. For example, if the parents of a candidate had been making college tuition payments for the candidate's children, the parents could continue to do so during the candidacy without making a contribution.

It should be noted, however, that the exclusion for payments made before the candidacy contains a caveat for

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compensation payments. Compensation payments that were made before the candidacy and continue during the candidacy will be considered contributions to the candidate unless three conditions are met: the compensation results from *bona fide* employment that is genuinely independent of the candidacy, the compensation is exclusively in consideration of services provided by the candidate as part of the employment, and the compensation does not exceed the amount that would be paid to a similarly qualified person for the same work over the same period of time. The Commission assumes that, when these three conditions exist, the compensation payment would have been made irrespective of the candidacy and should not be treated as a contribution. This rule is based on Advisory Opinion 1979–74, and is consistent with Advisory Opinions 1977–45, 1977–68, 1978–6 and 1980–115.

Section 113.1(g)(7) Members of the Candidate's Family

Section 113.1(g)(7) lists the persons who are members of the candidate's family for the purposes of §§ 113.1(g) and 100.8(b)(22). This list is significant for several provisions of the rules. Under § 113.1(g)(7), the candidate's family includes those persons traditionally considered part of an immediate family, regardless of whether they are of whole or half blood. Consistent with the laws of most states, the rules make no distinction between biological relationships and relationships that result from adoption or marriage. The grandparents of the candidate are also considered part of the candidate's family. Finally, the candidate's family also includes a person who has a committed relationship with the candidate, such as sharing a household and mutual responsibility for each other's welfare or living expenses. These persons will be treated as the equivalent of the candidate's spouse for the purposes of these rules.

Section 113.2 Use of Funds (2 U.S.C. 439a)

The final rules also contain an amendment to the list of permissible uses of excess campaign funds contained in 11 CFR 113.2. The amendment specifically indicates that certain travel costs and certain office operating expenditures will be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder.

The costs of travel for a Federal officeholder and an accompanying spouse who are participating in a function that is directly connected to *bona fide* official responsibilities will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(1). The rule cites fact-finding meetings and events at which the officeholder makes an appearance in an official capacity as examples of functions covered by the rule. Note that spouse travel for campaign purposes continues to be a permissible expense.

In addition, the costs of winding down the office of a former Federal officeholder for six months after he or she leaves office will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(2). Consequently, the use of excess campaign funds to pay for these expenses is permissible.

The Commission notes that the FY 1991 Legislative Branch Appropriations Act (Pub. L. 101–520) provides that "official expenses" may not be paid from excess campaign funds. Thus, even though 2 U.S.C. § 439a, House Rule 43, and Senate Rule 38 contemplate the use of campaign funds for "ordinary and necessary expenses," "political purposes," and expenses "in connection with" official duties, guidance regarding the scope of the Legislative Branch Appropriations Act provision referred to above should be sought by persons covered.

1. Travel Costs. Several commenters criticized the travel cost provision. One commenter thought Members of Congress received a stipend for these expenses, and argued that campaign funds should not be used for this purpose. Another commenter urged the Commission to only allow the use of campaign funds for travel between Washington, D.C. and the Member's district. A third commenter argued that the provision allowing travel expenses for a Member's spouse should be deleted because it creates confusion, and opens a loophole because it does not require the Member to demonstrate that the spouse participated in the official function.

One commenter urged the Commission to allow the use of campaign funds to defray expenses connected to officeholder duties, including travel, as permitted under House rules.

The Commission has concluded that the expenses of both the officeholder and the officeholder's spouse should be permitted. If an officeholder incurs expenses in traveling to a function that is directly connected to his or her *bona fide* official responsibilities, those expenses clearly would not exist irrespective of his or her duties as a Federal officeholder. As such, the use of campaign funds for those expenses would not be personal use under section 113.1(g)(1).

The Commission also recognizes that an officeholder's spouse is often expected to attend these functions with the officeholder. See Advisory Opinion 1981–25. In this context, the spouse's attendance alone amounts to a form of participation in the function, even if the spouse has no direct role in the activities that take place during the event. Consequently, the Commission has decided that the rule should specifically indicate that the expenses of an accompanying spouse can be paid with campaign funds when an officeholder travels to attend an official function.

This provision also helps to clarify the relationship between the personal use rules and the rules of the House and Senate on the use of campaign funds for travel. Although Members receive appropriated funds for certain travel expenses, House and Senate rules also allow them to pay for certain other expenses with campaign funds. The amendments to § 113.2 make it clear that, so long as the travel is for participation in a function connected to the Member's official responsibilities, the permissibility of this use is not affected by the personal use rules.

Advisory Opinion 1980–113 indicated that campaign funds could be used to defray expenses incurred in carrying out the duties of a state officeholder. That opinion also suggested that campaign funds could be used to defray the travel expenses of the spouse of such an officeholder if the spouse's expenses are incident to the duties of the state officeholder. However, in Advisory Opinion 1993–6, the Commission explicitly superseded Advisory Opinion 1980–113 to the extent that it allowed the use of campaign funds "for expenses related to that person's position as a holder of state office or any office which is not a Federal office as defined in the Act." Advisory Opinion 1993–6, n.3. The amendments to § 113.2 are consistent with Advisory Opinion 1993–6. As revised, § 113.2(a)(1) does not permit the use of campaign funds for travel expenses associated with official responsibilities other than those of a Federal officeholder.

Finally, the Commission has not limited this rule to expenses associated with travel between a Member's district and Washington, D.C. The Commission recognizes that travel to other locations may be directly connected to a Member's *bona fide* official responsibilities. So long as the travel is so connected, the use of campaign funds to pay the expenses of that travel will also be permissible.

2. Winding Down Costs. Six commenters expressed views on the provision regarding winding down costs. 11 CFR 113.2(a)(2). One commenter disagreed with the proposed rule, and argued that former officeholders should not be allowed to use campaign funds for this purpose. Another commenter agreed that a candidate should not be allowed to retain and use campaign funds beyond a certain reasonable period after the campaign to pay debts and operating expenses. This commenter suggested that any funds that remain unused after that time period should be returned to donors or taxed at one hundred percent.

A third commenter urged the Commission to allow these uses only for incumbents who lose their seat, and recommended against allowing Members of Congress to build up a large treasury and then use that treasury after voluntarily leaving Federal office.

Three commenters agreed these uses should be allowed, but urged the Commission to approve a rule that limits the time period to sixty days.

The Commission believes the costs of winding down the office of a former Federal officeholder are ordinary and necessary expenses within the meaning of section 439a. See Advisory Opinion 1993–6. Therefore, the use of campaign funds to pay these costs is permissible under the FECA. Furthermore, there is no basis in the Act for distinguishing between winding down costs incurred by officeholders who lose their seats and those incurred by officeholders who leave office for other reasons. The costs incurred by either kind of former officeholder are equally permissible.

The Commission initially proposed a sixty day time period. Since this process often takes longer than anticipated, the Commission is inclined to provide former officeholders with some leeway in the use of funds for these purposes. Consequently, the Commission has extended the period to six months to ensure that former officeholders have ample time to close down their offices. It should also be noted that, as written, this provision acts as a safe harbor. It does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after leaving office from using campaign funds to pay those expenses.

Part 100—Scope and Definitions

Section 100.8 Expenditure (2 U.S.C. 431(9))

Current § 100.8(b) of the Commission's regulations excludes certain disbursements from the definition of expenditure. Paragraph (b)(22) of that section specifically excludes payments by a candidate from his or her personal funds, as defined in 11 CFR 110.10(b), for routine living expenses which would have been incurred without candidacy. Thus, a candidate can pay his or her routine living expenses from personal funds without making an expenditure that must be reported under the Act.

New language has been added to § 100.8(b)(22) that indicates that payments for routine living expenses by a member of the candidate's family are not expenditures if made from an account held jointly with the candidate, or if the expenses were paid by the family member before the candidate became a candidate. The revised rule treats payments from an account jointly held by the candidate and a family member the same as payments made from the candidate's personal funds, and excludes them from the expenditure definition. Similarly, the rule assumes that payments by a family member that are a continuation of payments made before the candidacy are not in connection with the candidacy, and should not be treated as expenditures.

Under this section, payments from an account that contains only the candidate's personal funds will be exempt from the definition of expenditure even if the payment is made by another person such as a housekeeper or an accountant who has access to the account in order to pay the candidate's routine living expenses. These payments will also be exempt if the housekeeper makes the payment from an account jointly held by the candidate and a member of the candidate's family. The ability of a person who is not a family member to make payments from the account will not change otherwise exempt payments from the account into contributions.

However, if the account is jointly held by the candidate and someone who is not a member of the candidate's family, or contains the funds of such a person, the exemption in § 100.8(b)(22) does not apply, and payments from that account for the candidate's personal living expenses will be expenditures that have reporting consequences under the Act. These payments will also be in-kind contributions under section 113.1(g)(6), and will count towards the joint account holder's contribution limits. See 11 CFR 110.1.

This section has been revised to parallel new § 113.1(g)(6). One commenter expressed general support for this provision.

Part 104—Reports by Political Committees

Section 104.3 Contents of Reports (2 U.S.C. 434(b))

The Notice of Proposed Rulemaking invited commenters to submit their views on any other issues raised by this rulemaking. Several commenters suggested that the Commission amend its reporting requirements in order to administer the personal use prohibition. These commenters urged the Commission to require more detailed reporting of expenditures that would force committees to bear the burden of establishing a clear connection between each expenditure and a campaign event. One commenter cited meals as an example, saying that the Commission should require the candidate to explain how the meal was related to the campaign and why it was not personal use. Two of these commenters recommended that the Commission initiate a separate rulemaking to implement more detailed reporting requirements.

The Commission agreed that additional reporting may be useful in administering the personal use rules, and solicited comments in the RAC on how new reporting requirements could be crafted to be both useful and not overly burdensome. One commenter responded, recommending that the Commission require committees to provide a detailed description of the relationship between a use of campaign funds and the candidate's campaign or officeholder duties.

The Commission has concluded that any significant changes to the reporting requirements should be taken up as part of a comprehensive review of the recordkeeping and reporting regulations. Such a review is currently under way as a separate rulemaking.

Nevertheless, the Commission has identified one limited change that can be made now and will be useful in administering the personal use rules. Section 104.3 contains a new reporting requirement for authorized committees that itemize certain disbursements implicating the personal use prohibition. The new reporting requirement is set out in section 104.3(b)(4)(i)(B).

Revised section 104.3(b)(4)(i)(B) requires an authorized committee that itemizes a disbursement for which

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partial or total reimbursement is expected under new § 113.1(g)(1)(ii) (C) or (D) to briefly explain the activity for which reimbursement will be made. For example, when itemizing a disbursement of funds for travel expenses associated with a trip that was partially campaign related and partially a personal trip for the candidate, the committee is required to indicate that the trip includes the cost of the candidate's personal trip, for which the committee is anticipating reimbursement. This information would be included on schedule B of Form 3. Committees receiving reimbursements will report them as "other receipts" on the Detailed Summary Page of Form 3.

If an individual benefiting from the use of campaign funds for personal travel or vehicle expenses makes a reimbursement under this section, the reimbursement is not a contribution under the Act, and the individual is not required to report the reimbursement. However, if the reimbursement is made by a person other than the person benefiting from the use of the funds, it may be a contribution by the person making the reimbursement under § 113.1(g)(6). If so, it must be reported as a contribution.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the final rules are directed at individuals rather than small entities within the meaning of the Regulatory Flexibility Act. Therefore, no small entities will be significantly impacted.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Political candidates.

11 CFR Part 113

Campaign funds, Political candidates, Elections.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 is amended by revising paragraph (b)(22) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(22) Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the cost of food and residence, are not expenditures. Payments for such expenses by a member of the candidate's family as defined in 11 CFR 113.1(g)(7), are not expenditures if the payments are made from an account jointly held with the candidate, or if the expenses were paid by the family member before the candidate became a candidate.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 is revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

4. Section 104.3 is amended by revising the section heading and adding paragraph (b)(4)(i) (B) as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A) * * *

(B) In addition to reporting the purpose described in 11 CFR 104.3(b)(4)(i)(A), whenever an authorized committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii) (C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

5. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

6. Section 113.1 is amended by adding paragraph (g) as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(g) *Personal use. Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

(1)(i) *Personal use* includes but is not limited to the use of funds in a campaign account for:

(A) Household food items or supplies;

(B) Funeral, cremation or burial expenses;

(C) Clothing, other than items of *de minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans;

(D) Tuition payments, other than those associated with training campaign staff;

(E) Mortgage, rent or utility payments—

(*1*) For any part of any personal residence of the candidate or a member of the candidate's family; or

(*2*) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;

(F) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity;

(G) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises; and

(H) Salary payments to a member of the candidate's family, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.

(ii) The Commission will determine, on a case by case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use. Examples of such other uses include:

(A) Legal expenses;

(B) Meal expenses;

(C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses; and

(D) Vehicle expenses, unless they are a *de minimis* amount. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimus* amount and campaign or officerholder related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

(2) *Charitable donations.* Donations of campaign funds or assets to an organization described in section 170(c) of Title 26 of the United States Code are not personal use, unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.

(3) *Transfers of campaign assets.* The transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value. Any depreciation that takes place before the transfer must be allocated between the committee and the purchaser based on the useful life of the asset.

(4) *Gifts.* Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement, or death are not personal use, unless made to a member of the candidate's family.

(5) *Political or officially connected expenses.* The use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under 11 CFR 113.1(g)(1) will not be considered an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under 11 CFR 100.7 to the candidate unless the payment would have been made irrespective of the candidacy. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

(i) The payment is a donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United State House of Representatives;

(ii) The payment is made from funds that are the candidate's personal funds as defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a member of the candidate's family;

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation shall be considered contributions unless—

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

(7) *Members of the candidate's family.* For the purposes of section 113.1(g), the candidate's family includes:

(i) The spouse of the candidate;

(ii) Any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate or the candidate's spouse;

(iii) The spouse of any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate; and

(iv) A person who has a committed relationship with the candidate, such as sharing a household and having mutual responsibility for each other's personal welfare or living expenses.

7. In section 113.2, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide* official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office; or

* * * * *

Dated: February 3, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–3162 Filed 2–8–95; 8:45 am]

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February 9, 1995

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 2920

Procedures for Action on Use, Occupancy and Development; Unauthorized Use; and Cost Reimbursement for Processing and Monitoring Permits and Leases for Use of Public Lands; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2920

[WO-350-1430-00-24 1A]

RIN: 1004-AB51

Permits, Leases and Trespass; Procedures for Action on Use, Occupancy and Development; Unauthorized Use; and Cost Reimbursement for Processing and Monitoring Permits and Leases for Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Further proposed rule.

SUMMARY: This further proposed rule on permits and leases for use of public lands administered by the Bureau of Land Management (BLM) amends the proposed rule published in the **Federal Register** on November 21, 1990 (55 FR 48810). The 1990 rule proposed to amend the regulations on leases, permits, easements, and trespass in 43 CFR parts 2920 and 9230, currently in effect. This further proposed rule would create two categories of permits for proposed uses of public lands: "minimum impact permits" and "full permits." "Minimum impact permits" would be issued for activities that are likely to have a minimal impact on the public lands and their resources. BLM decisions to issue minimum impact permits would become effective immediately upon signature by the BLM authorized officer and would not be subject to the general appeals process provided in 43 CFR 4.21(a). "Full permit" decisions, by contrast, would not become effective until after a minimum period of 30 days during which a person may file an appeal under 43 CFR part 4.

In this further proposed rule, BLM invites public comment on the new minimum impact permit provisions, as well as on several other provisions that did not appear in the original proposed rule or have been substantially revised since that rule was published in 1990. These provisions concern rental and fee schedules for commercial filming and photography, hazardous materials, outdoor advertising, criminal penalties, and conformity of applications to land use planning. Finally, BLM requests suggestions and comments from the public on 5 specific issues relating to permits and rental schedules.

DATES: Comments on this further proposed rule must be submitted by April 10, 1995. No comments postmarked after this date will be considered in preparation of the final rule, nor will any additional comments be accepted on the original proposed rule published in 1990. The Department will consider all timely comments submitted on the further proposed rule, as well as the comments received in 1990–91 on the original proposed rule, in preparing the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1849 C Street NW., Washington, DC 20240. Comments on the further proposed rule will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, (307) 775-6306, or Ray Brady, (202) 452-7780.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Existing Regulations

The existing regulations in 43 CFR part 2920 establish the procedures for obtaining land use authorizations from the BLM in the form of permits, leases, and easements to use, occupy, and develop the public lands for activities not specifically covered by other authorizing regulations, such as grazing (43 CFR part 4100), recreation (43 CFR part 8300), and others. All land use authorizations in the existing regulations in part 2920 are now subject to the appeals process described in 43 CFR part 4, which includes a 30-day period in which a person adversely affected by BLM's decision may file a notice of appeal to the Interior Board of Land Appeals (IBLA). The land use authorization becomes effective at the end of the 30-day appeal period unless the appellant files a petition for a stay pending appeal. The IBLA has 45 days from the expiration of the 30-day appeal period to grant or deny the stay.

Under the existing regulations, the BLM may issue a type of permit called a "minimum impact permit" for activities that do not cause appreciable damage or disturbance to the public lands, their resources or improvements (43 CFR 2920.2-2). The BLM is not required to publish a Notice of Realty Action for minimum impact permits. Minimum impact permits are subject, however, to the 30-day appeal period before they can become effective. Examples of uses considered for minimum impact permits under the present regulations include apiary (bee hive) sites; temporary storage of hay, ranching and farming equipment, and dismantled drilling rigs; limited commercial filming and photography activities; special events and gatherings; and soil core sampling. The only written criteria to assist the BLM authorized officer in determining whether a particular use constitutes minimum impact are outlined in a BLM instruction memorandum, and currently apply only to commercial filming and photography.

B. The 1990 Proposed Rule

The original proposed rule published in the **Federal Register** on November 21, 1990, would substantially revise the existing regulations. It would eliminate the current "easement" category of land use authorizations, improve procedures for protecting public lands and resources from unauthorized use, and revise the procedures for administering, assigning, and terminating permits and leases. The original proposed rule would also dramatically change the existing appeals process for permits by making all permit decisions effective immediately upon signature by the authorized officer. The 30-day waiting period under 43 CFR 4.21 would not apply. The sole administrative review of a permit decision is provided in § 2924.1-1 in the original proposed rule. It allows parties adversely affected by an authorized officer's permit decision to request an administrative review by the authorized officer's immediate supervisor. No further administrative review is allowed in that rule. The 1990 proposed rule would not include a minimum impact permit category.

C. The Further Proposed Rule

This further proposed rule attempts to strike a balance between the permit appeals process under the existing regulations and that proposed in the 1990 rule. Under the current regulations, permit decisions do not become effective until after a minimum 30-day period in which an adversely affected person may file an appeal under 43 CFR 4.21(a) and 43 CFR 4.411(a). By contrast, the 1990 proposed rule would make all BLM permit decisions effective immediately.

This further proposed rule would create 2 categories of permits: "minimum impact permits" and "full permits." Only minimum impact permit decisions would become effective immediately. The criteria for determining when BLM should issue a minimum impact permit or a full permit are outlined in the rule.

The structure of the original 1990 proposed rule has been somewhat reorganized, and that reorganization is

reflected in this further proposed rule. For example, § 2921.8 on appeals, in this rule, appeared with different wording as subpart 2924 in the 1990 proposed rule. Subpart 2923 of the original proposed rule, regarding the administration of permits and leases, has been redesignated as subpart 2924. Section 2924.1-2 would be added to that subpart in this further proposed rule to introduce the proposed rental fee schedule for commercial filming and photography. Because that section number (2924.1-2) was contained in the original proposed rule, the amendatory language in this further proposed rule states that the section is "revised," but there is no connection between the original § 2924.1-2 on appeals and the new proposed § 2924.1-2 on fees, other than the section number itself. The reorganization of the original proposed rule does not affect any other section numbers in this further proposed rule. Other section number changes are only to accommodate the insertion of new sections.

Other subjects addressed in this further proposed rule are discussed in detail in the section-by-section analysis below. No provisions of 43 CFR part 9230 concerning trespass, which BLM proposed to amend in the original proposed rule, would be affected by this further proposed rule.

D. Commercial Filming on Public Lands

On September 13, 1993, the BLM met with representatives from the U.S. Forest Service, National Park Service, filming and photography industry, and environmental organizations to discuss filming on public lands. The film industry representatives urged BLM to adopt an expedited permit authorization process. Environmental group representatives favored written standards to ensure that an accelerated permit process would be carried out in a manner that would protect the public lands and their resources.

This further proposed rule establishes criteria for minimum impact permits intended to meet concerns of the film industry as well as environmental groups. These criteria would apply to all uses of public lands for which permits may be granted under part 2920, not just filming. The minutes of the September 1993 meeting are available for public review at each BLM State Office or may be obtained by contacting the Director (260), Bureau of Land Management, 1849 C Street, NW., Mail Stop 1000 LS, Washington, DC 20240.

II. Section-by-Section Analysis

Section 2920.0-5 Definitions

This further proposed rule would introduce some important definitions, including "full permit" and "minimum impact permit." These two terms are essential to an understanding of this further proposed rule, and are explained fully in the discussion of § 2921.7, below. Also added are definitions of "location" and "staging area" as they pertain to the film industry, a definition of "wetlands" (the presence of wetlands is a threshold criterion for requiring a full permit), and a definition of "hazardous material." Finally, the further proposed rule would revise the definition of "casual use" that appeared in the 1990 proposed rule. The new definition would emphasize the noncommercial and occasional nature of the activities that constitute casual use.

Section 2921.3 Prohibited Acts

This section of the 1990 proposed rule has been amended by adding a new paragraph (e) containing a list of prohibited acts in addition to the acts listed in other paragraphs of the section that constitute trespass. These new prohibited acts include failure to comply with terms and conditions imposed under the regulations, failure to comply with permit or lease stipulations required by the authorized officer, transfer of a lease to another party without approval by the authorized officer, use of a permit or lease after the expiration date or for purposes other than those specified in the permit, failure to comply with any BLM notice or temporary suspension order, failure to make any required payments, failure to comply with reclamation requirements, and subleasing. Also added are prohibited acts related to hazardous materials and the disposal of solid wastes. To accommodate this addition, the proposed paragraph (e) would be redesignated as (f), the original paragraph (f) becomes § 2921.4—Penalties, which would be revised as discussed below, and the original § 2921.4 becomes § 2921.5.

Section 2921.4 Penalties

This section would amend the original proposed rule to reflect amendments of the Sentencing Reform Act of 1984 that provide increased criminal penalties for violations of Federal law, including violations under section 303(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1733(a). The Criminal Fine Improvements Act of 1987 (Pub.L. 100-185, section 6, 101 Stat. 1279, 1280 (1987)) amends Title 18 of the United States Code (18 U.S.C. 3571) by increasing maximum fines for Class A misdemeanors under 18 U.S.C. 3559 (such as violations under section 303(a) of FLPMA) to $100,000 for individuals and $200,000 for organizations. Thus, this further proposed rule would make it clear that criminal penalties for violation of the regulations in part 2920 are not limited to the amounts specified in FLPMA.

Section 2921.6 Activities Requiring a Permit

This section would require all commercial users of the public lands, and noncommercial users whose activities exceed casual use, to apply for a permit. Casual use activities would not require a permit.

Paragraph (b) of § 2921.6 would specifically address permit requirements for professional still photographers and videotapers. Most professional and amateur photographers would be allowed to make still photographs and videos on public lands without permits or the payment of fees. Tourists and recreational photographers also are not required to obtain permits for taking pictures or making videos on public lands. Professional photographers taking pictures of public land users (such as those engaged in recreational activities) for the express purpose of selling the pictures to the land users would be required to obtain permits. Permits would also be required for photography performed under a sales contract (for example, a contract for photographs for postcards, calendars, or books), or photography using the public lands as a location or background for advertising commercial products. Finally, permits would be required for photography, if it is reasonably likely that public lands or resources, such as archaeological or historic artifacts or features, could be adversely affected. Permits are necessary in such cases as vehicles for enforceable conditions that would protect these resources.

Section 2921.7 Minimum Impact Permits and Full Permits

A new § 2921.7 would establish criteria to assist BLM in determining whether issuance of a minimum impact permit or a full permit would be appropriate for a proposed use of public lands. Minimum impact permits could be issued if the activity fit the definition in § 2920.0-5 and did not involve any of the conditions listed in § 2921.7(b) or (c). The BLM proposes to adopt these criteria for all types of land uses that are

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considered for minimum impact permits under the existing regulations.

A prospective applicant would have the opportunity to discuss these criteria with the authorized officer during the pre-application phase of the permitting process described in § 2922.1 of the 1990 proposed rule. During this discussion, the authorized officer would also inform prospective applicants of other possible resource management conflicts, legal approvals required, and other interested or affected public land users or interest groups. This would assist prospective applicants at the outset to assess the likelihood of obtaining a minimum impact permit, and would enable them to locate other available land quickly for the proposed activity, rather than seek a full permit with its attendant delays.

Section 2921.8 Appeals

Section 2921.8 in this further proposed rule supersedes subpart 2924, concerning appeals, in the 1990 proposed rule. The further proposed rule provides that all minimum impact permit decisions of an authorized officer would be effective immediately unless a person adversely affected appeals and demonstrates to the Interior Board of Land Appeals (IBLA) that the action should be stayed pending appeal. The general provisions of 43 CFR 4.21(a) would not apply to a decision or approval of the authorized officer for any minimum impact permit, except that parties eligible to maintain an appeal under 43 CFR 4.21(a) would also be able to file a request for a stay of decision with the IBLA. The IBLA could grant a stay if the petitioner demonstrated sufficient justification.

Section 2921.9 Outdoor Advertising

This new provision is a cross-reference to regulations of the Department of Transportation on outdoor advertising.

Section 2922.2–1 Applications Not Conforming to Land Use Plans

Section 2922.2–1 has been added to make clear that applications are required to conform to BLM land use plans, and that any applications that do not conform to BLM plans must be modified or they will be rejected. Applications so rejected due to nonconformance with BLM land use plans are subject to appeal pursuant to 43 CFR part 4.

Section 2922.2–3 Application Content

This provision was suggested in public comments on the original proposed rule. Provisions restricting the use, storage, or production of hazardous materials on lands subject to permits or leases would be added as § 2922.2–4(m). Related amendments are proposed in §§ 2921.3 and 2922.2–3 to prohibit treatment and disposal of hazardous materials and certain solid wastes on public lands, and requiring applications for permit or lease to disclose whether hazardous materials would be involved in the activity.

Section 2924.1–2 Rental and Fee Schedules for Film and Photography Permits

Rental and fee schedules for commercial filming and photography would be added in a new § 2924.1–2. The schedules are intended to be reasonable and easy to implement, and have been developed in consultation with other land managing agencies of the Department of the Interior and with the Forest Service. The schedules do not include recovery of the costs of processing an application. Cost recovery provisions for permits and leases were included in the original proposed rule. The rental payments are intended to reflect fair market value of the use of public lands and their resources for a specified period. In developing the rental schedule, the BLM considered comments from industry and other Federal agencies, and interviews with private property owners who rent land to film production companies. Private property owners take into account the nature of the activities to be conducted on their land, the number of people, and the duration of the use.

III. Request for Comments

To assist the public in the development of comment on this further proposed rule, copies of the original November 21, 1990, proposed rule (55 FR 48810) may be obtained by request to the office identified in **ADDRESSES**, above. However, the substance of this further proposed rule may be understood without reference to the 1990 proposed rule.

In addition to inviting comments on this further proposed rule, the BLM specifically requests responses to the following questions related to leases and permits:

1. Under the existing regulations, all permits and leases are subject to a 30-day appeal period before they become effective. The 1990 proposed rule would make all leases and permits effective immediately upon issuance by the BLM authorized officer. Under the current proposal, only minimum impact permits would be effective immediately; leases and other permits would remain subject to the 30-day waiting period prescribed in 43 CFR part 4. Which approach do you think is appropriate?

2. Should the BLM issue minimum impact permits for all types of activities authorized under 43 CFR part 2920 or only for filming or photography?

3. Are the standards set forth in § 2921.7 appropriate and sufficient for determining whether a proposed activity should require a full permit or a minimum impact permit?

4. Is the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average an appropriate index for adjusting rental schedules in future years?

5. Should free-lance professional still photography be considered a casual use activity that is exempt from the permit requirements, except in those situations listed in § 2921.6(b) of the further proposed rule, or should free-lance professional still photographers be required to obtain a permit in all cases and pay appropriate fees?

The principal authors of this further proposed rule are Jim Paugh, Wyoming State Office, David Cavanaugh, Chief Appraiser, and Ray Brady, Chief, Division of Lands, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

We have determined that this further proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The BLM has prepared an environmental assessment of the impacts of the rule and has determined that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The rule would merely simplify and streamline procedures for permit issuance. Each application for a permit or lease is, and under this rule would remain, subject to environmental analysis and, if determined necessary, an environmental impact statement.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group. The fee schedule imposed by the rule is graduated according to the size of the permittee, so that larger entities with more personnel and equipment using the public lands would pay larger fees. The costs would be minimized for those small entities that would cause less damage to the public lands being used

and less interference with other uses and users.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirement(s) contained in part 2920 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0009.

List of Subjects for 43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, the proposed rule published at 55 FR 48810, November 21, 1990, which would amend part 2920, group 2900, subchapter B, chapter II, Subtitle B, Title 43 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2920—PERMITS AND LEASES, PRINCIPLES AND PROCEDURES

1. The authority citation for part 2920 is revised to read as follows:

Authority: 43 U.S.C. 1740.

2. Section 2920.0–5 in the proposed rule is further amended by adding in alphabetical order definitions to read as follows:

§ 2920.0–5 Definitions.

* * * * *

Full permit means an authorization for an activity that would result in more than minimal impacts on public lands, or their resources or improvements, as measured by the criteria set forth in § 2921.7, or for which reclamation or restoration requires more than minimal effort.

Hazardous material means any substance that is listed as hazardous, toxic, or dangerous, or defined as nuclear or byproduct material, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, or the regulations issued under those laws. The term does not include petroleum, including crude oil or any fraction thereof, unless the substance is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14), nor does it include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Location means each place on public lands used for film production purposes.

Minimum impact permit means an authorization for an activity that would likely result in little or no damage to public lands, or their resources or improvements, as measured by the criteria set forth in § 2921.7, and which damaged resources can be easily reclaimed or restored.

Staging area means each place on public lands used for parking, catering, and off-set construction associated with film production.

Wetlands means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and which, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.

* * * * *

3. Section 2920.0–5 in the proposed rule is further amended by revising the definition of "casual use" to read as follows:

§ 2920.0–5 Definitions.

* * * * *

Casual use means noncommercial activities occurring on an occasional or irregular basis that ordinarily result in negligible disturbance of public lands, or their resources or improvements, and require no reclamation or restoration.

4. Section 2921.2 in the proposed rule is further amended by adding paragraph (c) to read as follows:

§ 2921.2 Terms and conditions.

* * * * *

(c)(1) The lessee or permittee must furnish to the authorized officer a copy of any report required or requested by any Federal, State, or local government agency regarding any release of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (CERCLA) in excess of the reportable quantity established by 40 CFR part 117.

(2) The lessee or permittee must report any release of a hazardous substance as defined in CERCLA in excess of the reportable quantity established by 40 CFR part 117, or any oil spill, as required under CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), and must send copies of such reports to the authorized officer within 5 days.

(3) The lessee or permittee must notify the authorized officer within 5 days if there is a significant variation from the authorized use with respect to hazardous materials and their use, generation, or storage.

5. Section 2921.4 of the proposed rule is redesignated as section 2921.5.

6. Section 2921.3 of the proposed rule is further amended by redesignating paragraph (f) as section 2921.4, redesignating paragraph (e) as paragraph (f), and adding paragraph (e) to read as follows:

§ 2921.3 Prohibited acts.

* * * * *

(e) Additional prohibited acts not related to trespass include but are not limited to:

(1) Failure to comply with any of the terms and conditions imposed under § 2921.2 of this part;

(2) Failure to comply with any permit or lease stipulations required by the authorized officer;

(3) Transfer of a lease to another party prior to written approval by the authorized officer;

(4) Use of a permit after the expiration date or for purposes other than those specified in the permit;

(5) Use of a lease after the expiration date or for purposes other than those specified in the lease without the written approval of the authorized officer;

(6) Failure to comply with any Bureau of Land Management notice or temporary suspension order;

(7) Failure to pay any required fee or payment;

(8) Failure to comply with requirements for restoration, revegetation, and curtailment of erosion of the land surface, or any other reclamation measure determined necessary by the authorized officer.

(9) Subleasing lands leased under this part.

(10) Treatment or disposal of hazardous materials on leased or permitted lands.

(11) Disposal of solid wastes as defined in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, and the regulations issued under that Act.

* * * * *

7. Section 2921.3(f) of the original proposed rule is redesignated as section 2921.4 and revised to read as follows:

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§ 2921.4 Penalties.

(a) In addition to the civilly enforceable penalties listed in this part, any person who knowingly and willfully violates any regulation in § 2921.3 may be tried before a designated United States magistrate and fined in accordance with Title 18 of the United States Code, or imprisoned for no more than 12 months, as provided by Section 303(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1733(a)), or both. Under the Sentencing Reform Act of 1984, as amended by the Criminal Fine Improvements Act of 1987, (18 U.S.C. 3571), an individual who has been found guilty of an offense under this part may be fined not more than $100,000, and an organization that has been found guilty of an offense under this part may be fined not more than $200,000.

(b) In addition to the criminal penalties for offenses under section 303(a) of the Federal Land Policy and Management Act, any person who willfully injures any property of the United States, or of any department or agency of the United States, may be punished in accordance with 18 U.S.C. 1361, as follows: If the property damage exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both. Under 18 U.S.C. 3559(a)(4), an offense under 18 U.S.C. 1361 is classified as a Class D felony. An individual who has been found guilty of a Class D felony may be fined not more than $250,000, and an organization may be fined not more than $500,000, under the Criminal Fine Improvements Act of 1987 (18 U.S.C. 3571).

8. Section 2921.6 is added to the original proposed rule to read as follows:

§ 2921.6 Activities requiring a permit.

(a) *General.* All commercial activities require a permit, unless they require a lease under § 2921.1(b). Noncommercial activities may require a permit or lease if the authorized officer determines that they are likely to result in more than casual use. Casual use activities do not require a permit or lease.

(b) *Still photography, or camcorders and other videotaping.* A permit is required for professional still photography, or the professional use of camcorders or other videotaping equipment, on public lands only under the following circumstances:

(1) If photographs or videos of public land users will be made with the express purpose of selling the photographs or videos to those same users;

(2) If photographs or videos are made under an existing contract to sell them;

(3) If photographs or videos of commercial products are made on public lands for advertising purposes; or

(4) If the photography or videotaping is reasonably likely to affect adversely the public lands or their resources.

6. Section 2921.7 is added to the original proposed rule to read as follows:

§ 2921.7 Minimum impact permits and full permits.

(a) In response to a permit application, the authorized officer may issue a minimum impact permit or a full permit based on the criteria in paragraphs (b) and (c) of this section, or based on the criteria in a validly adopted decision document referred to in paragraph (d)(1) of this section. Any permit application for an activity as to which the authorized officer determines that the criteria in paragraphs (b) and (c) of this section do not apply will be considered for a minimum impact permit.

(b) The authorized officer will not issue a minimum impact permit, but will consider issuing a full permit, when any of the following conditions apply:

(1) Any crucial or critical wildlife habitat (recognizing seasonal variations), or sensitive, threatened, or endangered species, may be affected.

(2) There is a reasonable likelihood that a Native American sacred site would be affected.

(3) There is a major use of pyrotechnics.

(4) There is a reasonable likelihood of more than minimal impact on soil, air, or water.

(5) Explosives will be used.

(6) Heavy equipment will be used in a manner likely to cause environmental damage.

(7) There is danger of introduction of exotic species into the area.

(8) There may be disturbance of resource values, including, but not limited to, any of the following:

(i) Historical, cultural, or paleontological sites;

(ii) Sensitive soils;

(iii) Relict environments, those surviving from an earlier period in a particular area;

(iv) Wetlands or riparian areas; or

(v) Areas of Critical Environmental Concern designated under § 1610.7–2 of this title;

(c) The authorized officer will not issue a minimum impact permit, but will consider issuing a full permit, if the activity meets the conditions of both paragraphs (c)(1) and (c)(2) of this section, as follows:

(1) The activity is located in any of the following:

(i) BLM-designated Wilderness Study Areas.

(ii) Areas proposed for wilderness designation in legislation currently in Congress;

(iii) Wild and Scenic River corridors;

(iv) Areas or sites on the National Register of Historic Places;

(v) Other sensitive areas as determined by the authorized officer; and

(2) One or more of the following activities will occur in the permit area:

(i) Vehicles will be used, except on roads that are mechanically constructed;

(ii) Facilities or film sets will be constructed;

(iii) There will be significant restriction of public access;

(iv) There will be significant use of domestic livestock;

(v) Aircraft will be used;

(vi) Fifteen (15) or more vehicles will be used;

(vii) Seventy five (75) or more people will be present at any one time; or

(viii) The activity will continue for more than 10 days.

(d)(1) The provisions of paragraphs (b) and (c) of this section do not apply if:

(i) The Bureau of Land Management has established criteria for minimum impact permits in a validly adopted decision document covering the proposed activity and the specific public lands that are the subject of the permit application;

(ii) The decision document was signed before (*30 days after publication of the final rule*); and

(iii) The decision document's rationale and supporting environmental analysis are valid at the time the permit is issued.

(2) If all of the requirements listed in paragraph (d)(1) of this section are met, the authorized officer will apply the minimum impact permit criteria established in the decision document to determine whether a minimum impact permit or a full permit is appropriate for the proposed activity.

(3) If, after (*30 days after publication of the final rule*), the Bureau of Land Management prepares or amends a decision document covering the activities and public lands that are the subject of a permit application, the authorized officer will apply the criteria in paragraphs (b) and (c) of this section to determine whether a minimum impact permit or a full permit is appropriate.

9. Section 2921.8 is added to the original proposed rule to read as follows:

§ 2921.8 Appeals.

(a) *Minimum impact permits.* All minimum impact permit decisions of the authorized officer will be effective immediately upon signature by the authorized officer and will remain effective during the pendency of an appeal unless the Interior Board of Land Appeals (IBLA) or the authorized officer determines that the decision should be stayed as provided in this paragraph. The provisions of § 4.21(a) of this title do not apply to any decision or approval of the authorized officer on a minimum impact permit under this part, except that a party who may properly maintain an appeal under 43 CFR 4.21(a) of this title may file a petition for a stay together with a timely notice of appeal. A petition for a stay of a decision or approval of the authorized officer must be filed with IBLA showing sufficient justification under the standards set forth in § 4.21(b) of this title. Nothing in this paragraph diminishes the discretionary authority of the authorized officer to stay a decision subject to appeal upon a request by an adversely affected party or on the authorized officer's own initiative.

(b) *Full permits and leases.* All decisions of the authorized officer approving or denying a full permit and all decisions approving or denying a lease will be subject to the appeal provisions in part 4 of this title.

10. Section 2921.9 is added to the proposed rule to read as follows:

§ 2921.9 Outdoor advertising.

Permits or leases for the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to Interstate Highways will be issued pursuant to the requirements of 23 U.S.C. 131 and the regulations at 23 CFR part 750.

10a. Section 2922.2–2 of the original proposed rule is redesignated as § 2922.2–3.

11. Section 2922.2–1 of the original proposed rule is redesignated as section 2922.2–2, and new section 2922.2–1 is added to the original proposed rule to read as follows:

§ 2922.2–1 Applications not conforming with land use plans.

An application for a permit or lease will be rejected if the proposed use does not conform with Bureau of Land Management land use plans, as provided in § 1610.5–3(a) of this title. If the proposed use does not conform with Bureau of Land Management land use plans, the authorized officer will reject the application and explain in writing why the proposal will not be approved. Rejected applications are subject to appeal pursuant to part 4 of this title.

12. Newly redesignated section 2922.2–3 is amended by revising paragraph (a), redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and adding paragraph (b), to read as follows:

§ 2922.2–3 Application content.

(a) *General.* Applications for a permit or lease must include sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use and determine whether the proposed use is in accordance with Bureau of Land Management plans, programs, and policies for the affected public lands. Applicants must disclose whether hazardous materials are to be used, stored, transported, or generated on the subject lands.

(b) *Commercial filming/photography permits.* Persons wishing to obtain a permit for motion picture filming or commercial still or video photography on public lands must submit an application containing the name, address, and telephone number of the applicant, the name of the applicant's agent, if any, and the following information:

(1) *Type of use.* (i) The application must state whether the use of the public lands will be for a commercial production, a nonprofit production, a community service production, or an educational production.

(ii) The application must state whether the use of the public lands will be for a feature film, an advertisement, a documentary, a still photograph, a video, or for some other purpose.

(2) *Duration of use.* The application must state the number of days that filming and related activities will continue on the land that is the subject of the permit.

(3) *Number of people.* The application must state the number of personnel to be involved in the filming activity subject to the permit.

(4) *Number and type of vehicles.* The application must state the number and type of vehicles to be used in the filming activity subject to the permit.

(5) *Staging areas.* The application must state the number and location of staging areas on public lands subject to the permit.

(6) *Other activities.* The application must state whether other activities are involved, including but not limited to:

(i) Temporary road closures;

(ii) Special effects or pyrotechnics;

(iii) Construction of sets;

(iv) Use of animals;

(v) Use of aircraft; or

(vi) Catering.

* * * * *

13. Section 2922.3 in the proposed rule is redesignated as section 2922.2–4 and further amended by adding paragraph (m) to read as follows:

§ 2922.2–4 Application processing.

* * * * *

(m) The authorized officer may allow the use, storage, and generation of hazardous materials in connection with the lessee's or permittee's use or occupancy of the public lands pursuant to this part only if consistent with applicable Federal, State, and local laws and regulations.

13. Section 2924.1–2 of the proposed rule is revised to read as follows:

§ 2924.1–2 Rental and fee schedule for film and photography permits.

(a) *Motion picture and video filming.* (1) Upon being issued either a minimum impact or full permit for commercial motion picture or video filming under § 2921.7, the permittee must pay a rental according to the following schedule:

MOTION PICTURE AND VIDEO FILMING RENTAL SCHEDULE

Number of people	Daily rate for each location	Daily rate for each staging area
1–10	$150	$75
11–30	250	125
31–60	450	225
61–100	600	300
101+	600 (or as determined by appraisal).	300 (or as determined by appraisal).

Note: The number of people includes actors, models, and filming and support crew. If the number of people exceeds 100, the authorized officer may order an appraisal to determine fair market value. Absent such an appraisal, the maximum daily rental is $600 for each location and $300 for each staging area for numbers of people exceeding 100.

(i) Total rent is calculated by adding the rate for each day authorized. The rent may vary from day to day depending on the number of people who are present and the number of locations and staging areas used. Permit applications must include a daily estimate of the number of people planned to be on location.

(ii) The permittee must pay rental for days in excess of 20 days at a rate of 85 percent of the daily rent per day, plus any additions required under paragraph (a)(2) of this section.

(2) In addition to the rental requirements of paragraph (a)(1) of this section, the permittee must pay daily fees, based on the type and amount of special treatment required, area used, or

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activity undertaken, according to the following schedule:

RENTAL FEE ADDITIONS

Activity	Daily fee
Traffic control (road closures, detours, etc.)	$150
Authorized use of Congressional or agency identified protected areas listed in § 2921.7(c)(1)	150
Authorized surface disturbances (grading, removal of rocks or vegetation, use of heavy earthmoving equipment or animals)	100
Special effects (crashes, large pyrotechnics, fire scenes, etc.)	100

(3) The proposed rental schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average published in July of each year.

(b) *Commercial still photography.* (1) Upon being issued a commercial still photography permit under § 2921.6(b), the permittee must pay a rental according to the following schedule:

COMMERCIAL STILL PHOTOGRAPHY RENTAL SCHEDULE

Number of people	Daily rate
1–3	No charge.
4–10	$100
11–30	150
31–49	250
50–100	300
101+	300 (or as determined by appraisal).

Note: The number of people includes actors, models, and photography and support crew. If the number of people exceeds 100, the authorized officer may order an appraisal to determine fair market value. Absent such an appraisal, the maximum daily rental is $300 for numbers of people exceeding 100.

(i) Total rent must be calculated by adding the rate for each day authorized. The rent may vary from day to day depending on the number of people who are present. Permit applications must include a daily estimate of the number of people planned to be on location.

(ii) Daily rent must be paid for each authorized location.

(2) The proposed rental schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average.

Dated: January 12, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–3305 Filed 2–8–95; 8:45 am]

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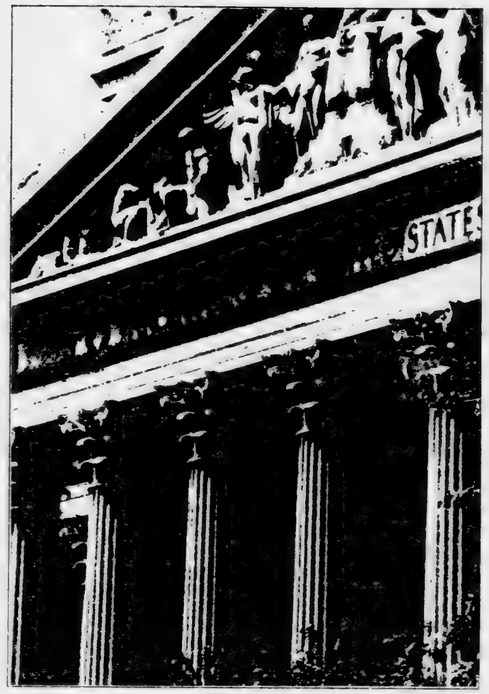

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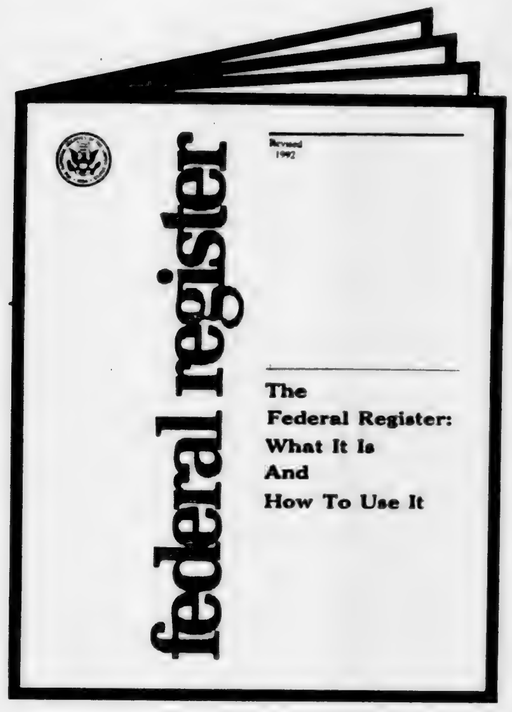

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Title 3—

The President

Memorandum of February 7, 1995

Deterring Illegal Immigration

Memorandum for the Heads of Executive Departments and Agencies

It is a fundamental right and duty for a nation to protect the integrity of its borders and its laws. This Administration shall stand firm against illegal immigration and the continued abuse of our immigration laws. By closing the back door to illegal immigration, we will continue to open the front door to legal immigrants.

My Administration has moved swiftly to reverse the course of a decade of failed immigration policies. Our initiatives have included increasing overall Border personnel by over 50 percent since 1993. We also are strengthening worksite enforcement and work authorization verification to deter employment of illegal aliens. Asylum rules have been reformed to end abuse by those falsely claiming asylum, while offering protection to those in genuine fear of persecution. We are cracking down on smugglers of illegal aliens and reforming criminal alien deportation for quicker removal. And we are the first Administration to obtain funding to reimburse States for a share of the costs of incarcerating criminal illegal aliens.

While we already are doing more to stem the flow of illegal immigration than has any previous Administration, more remains to be done. In conjunction with the Administration's unprecedented budget proposal to support immigration initiatives, this directive provides a blueprint of policies and priorities for this Administration's continuing work to curtail illegal immigration. With its focus on strong border deterrence backed up by effective worksite enforcement, removal of criminal and other deportable aliens and assistance to states, this program protects the security of our borders, our jobs and our communities for all Americans—citizens and legal immigrants alike.

COMPREHENSIVE BORDER CONTROL STRATEGY

A. *Deterring Illegal Immigration At Our Borders*

I have directed the Attorney General to move expeditiously toward full implementation of our comprehensive border control strategy, including efforts at the southwest border. To support sustained long-term strengthening of our deterrence capacity, the Administration shall seek funding to add new Border Patrol agents to reach the goal of at least 7,000 agents protecting our borders by the year 2000.

Flexible Border Response Capacity

To further this strategy, the Department of Justice shall implement the capacity to respond to emerging situations anywhere along our national borders to deter buildups of illegal border crossers, smuggling operations, or other developing problems.

Strategic Use of High Technology

Through the strategic use of sensors, night scopes, helicopters, light planes, all-terrain vehicles, fingerprinting and automated recordkeeping, we have freed many Border Patrol agents from long hours of bureaucratic tasks and increased the effectiveness of these highly-trained personnel. Because these tools are essential for the Immigration and Naturalization Service (INS) to do its job, I direct the Attorney General to accelerate to the greatest

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extent possible their utilization and enhancement to support implementation of our deterrence strategy.

Strong Enforcement Against Repeat Illegal Crossers

The Department of Justice shall assess the effectiveness of efforts underway to deter repeat illegal crossers, such as fingerprinting and dedicating prosecution resources to enforce the new prosecution authority provided by the Violent Crime Control and Law Enforcement Act of 1994.

The Department of Justice shall determine whether accelerated expansion of these techniques to additional border sectors is warranted.

B. *Deterring Alien Smuggling*

This Administration has had success deterring large ship-based smuggling directly to United States shores. In response, smugglers are testing new routes and tactics. Our goal: similar success in choking off these attempts by adjusting our anti-smuggling initiatives to anticipate shifting smuggling patterns.

To meet new and continuing challenges posed along transport routes and in foreign locations by smuggling organizations, we will augment diplomatic and enforcement resources at overseas locations to work with host governments, and increase related intelligence gathering efforts.

The Departments of State and Justice, in cooperation with other relevant agencies, will report to the National Security Council within 30 days on the structure of interagency coordination to achieve these objectives.

Congressional action will be important to provide U.S. law enforcement agencies with needed authority to deal with international smuggling operations. I will propose that the Congress pass legislation providing wiretap authority for investigation of alien smuggling cases and providing authorization to seize the assets of groups engaged in trafficking in human cargo.

In addition, I will propose legislation to give the Attorney General authority to implement procedures for expedited exclusion to deal with large flows of undocumented migrants, smuggling operations, and other extraordinary migration situations.

C. *Visa Overstay Deterrence*

Nearly half of this country's illegal immigrants come into the country legally and then stay after they are required by law to depart, often using fraudulent documentation. No Administration has ever made a serious effort to identify and deport these individuals. This Administration is committed to curtailing this form of illegal immigration.

Therefore, relevant departments and agencies are directed to review their policies and practices to identify necessary reforms to curtail visa overstayers and to enhance investigations and prosecution of those who fraudulently produce or misuse passports, visas, and other travel related documents. Recommendations for administrative initiatives and legislative reform shall be presented to the White House Interagency Working Group on Immigration by June 30, 1995.

REDUCING THE MAGNET OF WORK OPPORTUNITIES, WORKSITE ENFORCEMENT, AND DETERRENCE

Border deterrence cannot succeed if the lure of jobs in the United States remains. Therefore, a second major component of the Administration's deterrence strategy is to toughen worksite enforcement and employer sanctions. Employers who hire illegal immigrants not only obtain unfair competitive advantage over law-abiding employers, their unlawful use of illegal immigrants suppresses wages and working conditions for our country's legal workers. Our strategy, which targets enforcement efforts at employers and industries that historically have relied upon employment of illegal immigrants, will not only strengthen deterrence of illegal immigration, but better protect American workers and businesses that do not hire illegal immigrants.

Central to this effort is an effective, nondiscriminatory means of verifying the employment authorization of all new employees. The Administration fully supports the recommendation of the Commission on Legal Immigration Reform to create pilot projects to test various techniques for improving workplace verification, including a computer database test to validate a new worker's social security number for work authorization purposes. The Immigration and Naturalization Service (INS) and Social Security Administration are directed to establish, implement, monitor, and review the pilots and provide me with an interim report on the progress of this program by March 1, 1996.

In addition, the INS is directed to finalize the Administration's reduction of the number of authorized documents to support work verification for noncitizens. Concurrently, the Administration will seek further reduction legislatively in the number of documents that are acceptable for proving identity and work authorization. The Administration will improve the security of existing documents to be used for work authorization and seek increased penalties for immigration fraud, including fraudulent production and use of documents.

The Department of Labor shall intensify its investigations in industries with patterns of labor law violations that promote illegal immigration.

I also direct the Department of Labor, INS, and other relevant Federal agencies to expand their collaboration in cracking down on those who subvert fair competition by hiring illegal aliens. This may include increased Federal authority to confiscate assets that are the fruits of that unfair competition.

The White House Interagency Working Group on Immigration shall further examine the link between immigration and employment, including illegal immigration, and recommend to me other appropriate measures.

DETENTION AND REMOVAL OF DEPORTABLE ILLEGAL ALIENS

The Administration's deterrence strategy includes strengthening the country's detention and deportation capability. No longer will criminals and other high risk deportable aliens be released back into communities because of a shortage of detention space and ineffective deportation procedures.

A. *Comprehensive Deportation Process Reform*

The Department of Justice, in consultation with other relevant agencies, shall develop a streamlined, fair, and effective procedure to expedite removal of deportable aliens. As necessary, additional legislative authority will be sought in this area. In addition, the Department of Justice shall increase its capacity to staff deportation and exclusion hearings to support these objectives.

B. *National Detention and Removal Plan*

To address the shortage of local detention space for illegal aliens, the Administration shall devise a National Detention, Transportation, and Removal Policy that will permit use of detention space across the United States and improve the ability to remove individuals with orders of deportation. The Department of Justice, in consultation with other agencies as appropriate and working under the auspices of the White House Interagency Working Group on Immigration, shall finalize this plan by April 30, 1995.

The Administration will seek support and funding from the Congress for this plan and for our efforts to double the removal of illegal aliens with final orders of deportation.

C. *Identification and Removal of Criminal Aliens*

The Institutional Hearing Program is successfully expediting deportation of incarcerated criminal aliens after they serve their sentences.

To further expedite removal of criminal aliens from this country and reduce costs to Federal and State governments, the Department of Justice is directed to develop an expanded program of verification of the immigration status

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of criminal aliens within our country's prisons. In developing this program, the viability of expanding the work of the Law Enforcement Support Center should be assessed and all necessary steps taken to increase coordination and cooperative efforts with State, and local law enforcement officers in identification of criminal aliens.

TARGETED DETERRENCE AREAS

Many of the Administration's illegal immigration enforcement initiatives are mutually reinforcing. For example, strong interior enforcement supports border control. While there have been efforts over the years at piecemeal cooperation, this Administration will examine, develop, and test a more comprehensive coordinated package of deterrence strategies in selected metropolitan areas by multiple Federal, State, and local agencies.

The White House Interagency Working Group on Immigration shall coordinate the development of this interagency and intergovernmental operation.

VERIFICATION OF ELIGIBILITY FOR BENEFITS

The law denies most government benefits to illegal aliens. The government has a duty to assure that taxpayer-supported public assistance programs are not abused. As with work authorization, enforcement of eligibility requirements relies upon a credible system of verification. The INS, working with the White House Interagency Working Group on Immigration as appropriate, shall review means of improving the existing benefits verification program. In addition, we will seek new mechanisms—including increased penalties for false information used to qualify for benefits—to protect the integrity of public programs.

ANTI-DISCRIMINATION

Our efforts to combat illegal immigration must not violate the privacy and civil rights of legal immigrants and U.S. citizens. Therefore, I direct the Attorney General, the Secretary of Health and Human Services, the Chair of the Equal Employment Opportunity Commission, and other relevant Administration officials to vigorously protect our citizens and legal immigrants from immigration-related instances of discrimination and harassment. All illegal immigration enforcement measures shall be taken with due regard for the basic human rights of individuals and in accordance with our obligations under applicable international agreements.

ASSISTANCE TO STATES

States today face significant costs for services provided to illegal immigrants as a result of failed policies of the past. Deterring illegal immigration is the best long-term solution to protect States from growing costs for illegal immigration. This is the first Administration to address this primary responsibility squarely. We are targeting most of our Federal dollars to those initiatives that address the root causes that lead to increased burdens on States.

The Federal Government provides States with billions of dollars to provide for health care, education, and other services and benefits for immigrants. This Administration is proposing increases for immigration and immigration-related spending of 25 percent in 1996 compared to 1993 levels. In addition, this Administration is the first to obtain funding from the Congress to reimburse States for a share of the costs of incarcerated illegal aliens.

This Administration will continue to work with States to obtain more Federal help for certain State costs and will oppose inappropriate cost-shifting to the States.

INTERNATIONAL COOPERATION

This Administration will continue to emphasize international cooperative efforts to address illegal immigration.

Pursuant to a Presidential Review Directive (PRD), the Department of State is now coordinating a study on United States policy toward international

refugee and migration affairs. I hereby direct that, as part of that PRD process, this report to the National Security Council include the relationship of economic development and migration in the Western Hemisphere and, in particular, provide recommendations for further foreign economic policy measures to address causes of illegal immigration.

The Department of State shall coordinate an interagency effort to consider expanded arrangements with foreign governments for return of criminal and deportable aliens.

The Department of State also shall seek to negotiate readmission agreements for persons who could have sought asylum in the last country from which they arrived. Such agreements will take due regard of U.S. obligations under the Protocol Relating to the Status of Refugees.

The Department of State further shall implement cooperative efforts with other nations receiving smuggled aliens or those used as transhipment points by smugglers. In particular, we will look to countries in our hemisphere to join us by denying their territory as bases for smuggling operations.

The Department of State shall initiate negotiations with foreign countries to secure authority for the United States Coast Guard to board source country vessels suspected of transporting smuggled aliens.

This directive shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 7, 1995.

[FR Doc. 95–3554
Filed 2-8-95; 2:36 pm]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206–AF43

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing regulations to implement the Program Fraud Civil Remedies Act (PFCRA). Publication of these regulations will enable OPM to institute administrative proceedings against persons who have presented false claims or statements to OPM.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

SUPPLEMENTARY INFORMATION: On October 21, 1986, Congress enacted the Program Fraud Civil Remedies Act (PFCRA), Public Law 99–509, 31 U.S.C. 3801–3812. Public Law 99–509 provides a statutory right for the Federal Government to take direct action against fraud, provided that proper notification is provided and that the procedures provided for in this part are followed. On May 12, 1994, OPM published these regulations as a proposed rule. 59 FR 24661. OPM received several oral comments from officials of other Federal agencies who were unclear about the scope of OPM's PFCRA regulations, i.e., they did not know whether the proposed regulations had Government-wide applicability. These commenters were advised that the proposed regulations were limited to programs administered by OPM. One commenter noted that on November 5, 1990, Congress enacted section 101(c)(1)(A)(ii) of Public Law 101–509 which provides that any reference outside of title 5 of the United States Code to "the minimum rate of pay for grade GS–16 of the General Schedule" shall be considered a reference to the minimum rate payable under section 5376 of title 5 of the United States Code. We have amended the definition of *reviewing official* in section 185.102 of the proposed regulations to reflect this enactment. OPM also received a written comment from an employee organization in which the organization commented that the proposed regulations were inconsistent with judicial decisions which have held that actions may only be taken against bargaining unit members in accordance with negotiated grievance procedures. In response to this comment, OPM requested guidance from the Justice Department and was advised that in implementing the PFCRA, there was no need to make an exception for bargaining unit employees, and that unlike overtime pay disputes, PFCRA proceedings are not processed as grievances. The Department of Justice did confirm the organization's recommendation that proposed section 185.108(a) refer to Rule 4 of the Federal Rules of Civil Procedure rather than Rule 4(d). This change has been made in the final regulations.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the effects are limited primarily to federal employees and other entities who do business with QMB.

List of Subjects in 5 CFR Part 185

Claims.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is adding part 185 of title 5, Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES

Sec.

185.101 Purpose.
185.102 Definitions.
185.103 Basis for civil penalties and assessments.
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185.107 Complaint.
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185.109 Answer.
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185.112 Notice of hearing.
185.113 Location of hearing.
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185.123 Exchange of witness lists, statements and exhibits.
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185.143 Collection of civil penalties and assessments.
185.144 Right to administrative offset.
185.145 Deposit in Treasury of the United States.
185.146 Compromise or settlement.
185.147 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 185.101 Purpose.

This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), codified

at 31 U.S.C. 3801–3812. Section 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute. The subpart establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.

§ 185.102 Definitions.

For the purposes of this part—

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Office of Personnel Management (OPM).

Authority head means the Director of the Office of Personnel Management or the Director's designee.

Benefit is very broad, and is intended to cover anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing benefits, grants, loans or insurance);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority:

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 185.107.

Defendant means any person alleged in a complaint under § 185.107 to be liable for a civil penalty or assessment under § 185.103.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 185.110 or § 185.137, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General or the Inspector General's designee.

Knows or has reason to know means that a person, with respect to a claim or statement:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico or other individual designated in writing by the defendant.

Reviewing Official means the General Counsel of OPM or the General Counsel's designee. For the purposes of § 185.105 of these rules, the General Counsel personally, or members of the General Counsel's immediate staff, shall perform the functions of the reviewing official provided that such person or persons serve in a position for which the rate of basic pay is not less than the minimum rate payable under section 5376 of title 5 of the United States Code. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed on behalf of the General Counsel by members of the Office of the General Counsel.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for):

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 185.103 Basis for civil penalties and assessments.

(a) In addition to any other remedy that may be prescribed by law, any person shall be subject to a civil penalty of not more than $5,000, where the person makes a claim and knows or has reason to know that the claim:

(1) Is false, fictitious, or fraudulent;

(2) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(3) Includes, or is supported by, any written statement that:

(i) Omits a material fact;

(ii) Is false, fictitious, or fraudulent as a result of such omission; and

(iii) Is a statement in which the person making such statement has a duty to include such material fact; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(c) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(d) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(e) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section may also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(f) Any person who makes a written statement that:

(1) The person knows or has reason to know:

(i) Asserts a material fact which is false, fictitious, or fraudulent; or

(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement may be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(g) Each written representation, certification, or affirmation constitutes a separate statement.

(h) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(i) No proof of specific intent to defraud is required to establish liability under this section.

(j) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(k) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 185.104 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, he or she may issue a subpoena.

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 185.105 Review by the reviewing official.

If, based on the report of the investigating official under § 185.104(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 185.103, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to have a complaint issued under § 185.107. Such notice shall include:

(a) A statement of the reviewing official's reasons for issuing a complaint;

(b) A statement specifying the evidence that supports the allegations of liability;

(c) A description of the claims or statements upon which the allegations of liability are based;

(d) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 185.103;

(e) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(f) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 185.106 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 185.107 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in section 3803(b)(1) of title 31 of the United States Code, and

(2) In the case of allegations of liability under § 185.103(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 185.103(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 185.107 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with section 3803(b)(1) of title 31 of the United States Code, the reviewing official may serve a complaint on the defendant, as provided in § 185.108.

(b) The complaint shall state the following:

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer, including a specific statement of the defendant's right to request a hearing and to be represented by a representative; and

(4) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 185.110.

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(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 185.108 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 185.109 Answer.

(a) The defendant may request a hearing in the answer filed with the reviewing official within 30 days of service of the complaint.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 185.110. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. The ALJ shall decide expeditiously whether the dependent shall be granted an additional period of time to file such answer.

§ 185.110 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 185.109(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 185.108, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 185.103, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 185.138.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 185.111 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 185.112 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 185.108. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his or her designee.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 185.113 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the parties and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 185.114 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and OPM.

(b) Except where the authority head designates another, OPM shall be represented by the members of the Office of the General Counsel.

(c) Pursuant to section 3730(c)(5) of title 31, United States Code, a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 185.115 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under section 3806 of title 31, United States Code.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

§ 185.116 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 185.117 Disqualifications of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section.

(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 185.118 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery as provided under § 185.122;

(d) Agree to stipulations of fact or law, which shall be made a part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 185.119 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 185.120 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 185.121 Disclosure of documents.

(a) Upon written request to the reviewing official, generally prior to the filing of an answer, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 185.104(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant, may

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also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 185.105 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 185.109.

§ 185.122 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and § 185.123, the term *documents* includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures:

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 185.125.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) the burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 185.125.

(e) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 185.108.

(3) The deponent may file with the ALJ within 10 days of service a motion to quash the subpoena or a motion for a protective order.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 185.123 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 185.133(b). At the time the above documents are exchanged, any party that intends to rely on the transcript or deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 185.124 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 185.108. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 185.125 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a sealed deposition be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development,

commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 185.126 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g. to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 185.125.

§ 185.127 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 185.128 Form, filing and service of papers.

(a) *Form.* Documents filed with the ALJ shall include an original and two copies. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena). Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(b) *Filing.* Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 185.108 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 185.129 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 185.130 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose or all outstanding motions prior to the beginning of the hearing.

§ 185.131 Sanctions.

(a) The ALJ may sanction a person including any party or representative for the following reasons:

(1) Failure to comply with an order, rule, or procedure governing the proceeding;

(2) Failure to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 185.132 The hearing and burden of proof.

(a) Where requested in accordance with § 185.109 the ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 185.103 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

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(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise closed by the ALJ for good cause shown.

§ 185.133 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint;

(1) The number of false, fictitious or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the defendant and others from engaging in the same or similar misconduct; and

(17) The potential impact of the misconduct on the rights of others.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 185.134 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all others parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 185.123(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceedings without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 185.135 The record.

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 185.125.

§ 185.136 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 185.137 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 185.103.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 185.133.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 185.138 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 185 139.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 185.139.

§ 185.139 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 185.138, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal shall be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(b) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 185.138 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(c) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) The representative for OPM may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(e) There is no right to appear personally before the authority head.

(f) There is no right to appeal an interlocutory ruling by the ALJ.

(g) In reviewing the initial decision the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary

(h) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(i) The authority head may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ in any initial decision.

(j) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filed as provided in section 3805 of title 31, United States Code, after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 185.103 is final and not subject to judicial review.

§ 185.140 Stays ordered by the Department of Justice.

If, at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General or of the Assistant Attorney General who ordered the stay

§ 185.141 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 815.142 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties and/or assessments under this part and specifies the procedures for such review.

§ 185.143 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31 United States Code, authorize actions

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for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 185.144 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 185.142 or § 185.143, or any amount agreed upon in a compromise or settlement under § 185.146, may be collected by administrative offset under section 3716 of title 31, United States Code, except that an administrative offset may not be made under section 3716 against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 185.145 Deposit in Treasury of the United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in section 3806(g) of title 31, United States Code.

§ 185.146 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 185.142 or during the pendency of any action to collect penalties and assessments under § 185.143.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 185.142 or of any action to recover penalties and assessments under section 3806 to title 31, United States Code.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 185.147 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 185.108 within 6 years after the date on which such a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 185.110(b) shall be deemed a notice of hearing for purposes of this section.

(c) the statute of limitations may be executed by written agreement of the parties.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF08

Frequency of Medical Examinations for Use of Respiratory Protection Equipment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the frequency at which medical fitness determinations are required to ensure the safe use of respiratory protection equipment. Section 10 CFR 20.1703(a)(3)(v) currently requires the determination by a physician prior to initial fitting of respirators, and at least every 12 months thereafter, that the individual user is physically able to use the respiratory protection equipment. The amended rule requires determination by a physician prior to initial fitting of respirators and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment. The final rule reduces the burden on licensees without adversely impacting public health and safety.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6223.

SUPPLEMENTARY INFORMATION:

Background

The requirement for an annual medical examination to ensure safe use of respiratory equipment has been in the regulations for some time. The need for these examinations was reconfirmed by the American National Standards Institute (ANSI) in ANSI Z88.2–1992. However, considerable experience with implementation of the requirement has indicated that the annual frequency of medical examinations is costly and could be reduced significantly with no adverse impact on health and safety The NRC Regulatory Review Group reviewed the existing requirement and concluded that the frequency of medical examinations could be reduced without adverse impact on worker safety This change was recommended to the Commission as a candidate for licensee burden reduction in SECY–94–003 and supported by the Commission by memorandum from Samuel J. Chilk to James M. Taylor dated February 14, 1994.

The ANSI reviewed this issue and, in ANSI Z88.6 1984, published a recommendation that the frequency of medical examination should be determined by a physician and should be reduced based on age of the worker. ANSI recommended an examination every 5 years up to age 35, every 2 years up to age 45, and annually thereafter. ANSI also recommended special additional evaluations after prolonged absence from work for medical reasons or whenever a functional disability has been identified. These ANSI recommendations were reconfirmed in ANSI Z88.2–1992.

A proposed rule was published in the **Federal Register** on September 16, 1994 (59 FR 47565), for public comment. Ten letters of comment were received, all supporting the proposed rule. Consequently the NRC is codifying the rule as it was proposed.

The final rule provides for periodic medical examinations at either the 12-month interval as currently required or optionally at a frequency determined by a physician. Under this rule, licensees can elect to have the physician include in the initial medical examination or at the next 12-month reexamination, a determination of when each individual would need to be reexamined. Part 20 requires written procedures for use of respiratory protection equipment. Consequently, current procedures and license conditions likely include the annual frequency and a change in procedures or license conditions will be needed to implement a change in frequency of reexamination. The recommended frequencies contained in the ANSI standard may provide guidance on determining an appropriate frequency of reexamination which may be useful to physicians in determining frequency of reexamination. However, the Commission is not endorsing this standard. Rather the Commission believes that the frequency of reexamination should be determined by the examining physician.

The final rule uses the terminology "medically fit" rather than "physically able" to use a respirator. As indicated in the proposed rule, this terminology has been substituted because it more accurately reflects the purpose of the medical examination. None of the public commenters objected to this change.

ANSI Z88.6–1984 also provides guidelines for the scope of an examination which would demonstrate that a worker was medically fit to use respiratory protection devices. The guidelines include consideration of pulmonary function, cardiovascular factors, neurological and psychological conditions, among others. The NRC staff believes that these guidelines provide an acceptable working definition of the term "medically fit."

It should be noted that the NRC staff position is that a complete physical examination of each respirator user is not required, only an initial medical examination and annual or periodic review of medical status and that physicians need not administer each test personally, but may designate individuals such as office nurses as long as the physician is responsible for the program. It is also important to note that Occupational Safety and Health Administration (OSHA), State and other requirements regarding use of respirators and fitness evaluation for exposure to other toxic materials are not waived by this rulemaking.

Agreement States

The amendment applies to all NRC licensees. Agreement States must establish and maintain compatible regulations and programs. Most radiation protection provisions in 10 CFR part 20 are classified as Division I matters of compatibility. However, this rulemaking defines minimum procedures needed to ensure health and safety. As such, an Agreement State should have the flexibility to keep the 12-month frequency or to impose an alternate frequency of examinations if considerations in their State warrant such an approach. The rule is therefore a Division II matter of compatibility. This rulemaking was discussed with representatives of Agreement States at the Organization of Agreement State Managers Workshop and Public Meeting on Rulemaking in Herndon, VA, on July 12, 1994. No comments or objections were offered by the States. Although Agreement States had the opportunity to comment on this proposed change during the public comment period, none submitted comments.

Description

The provisions of 10 CFR 20.1703 (a)(3)(v) are changed to require determination by a physician prior to initial fitting of respirators, and periodically thereafter, either every 12 months or at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment. Frequency of reexamination is changed from "at least every 12 months," to "either every 12 months thereafter or periodically at a frequency determined by a physician," and the term "medically fit" is substituted for the current term "physically able," to make clearer the purpose of the medical determination.

Impact

The Commission believes that this change constitutes a reduction of regulatory burden and an increase in flexibility for licensees, without any significant reduction in worker health or safety. The medical profession contributed significantly to development of the reduced frequencies recommended by ANSI and it is therefore expected that physicians performing examinations will be guided by the ANSI recommendations. ANSI recommended a frequency of reexamination based on age: every 5 years up to age 35; every 2 years up to age 45; and annually thereafter. A change in procedures or license conditions will be needed to implement a change in frequency of reexamination.

The respiratory use medical examination is estimated to cost approximately $150 per examination. The number of examinations performed during an outage at a nuclear power plant is estimated to be 500. If 60 plants have outages each year, the current cost for annual medical examinations is at least $4,500,000. An examination of the demographics of the nuclear workforce (½ <35 years; ⅓ >35 but <45; ⅙ >45) suggests that the number of medical examinations could easily be halved thus saving $2.25 million each year just during maintenance or refueling outages at nuclear power plants. Clearly, considerable savings will be realized by this change freeing resources for more effective health and safety efforts.

Certain materials licensees such as fuel cycle facilities, some research facilities including broad scope academic licensees, and some manufacturing groups also have respiratory protection programs. The impacts on these licensees are minimal because the number of respirator users is small. The rule is expected to result in a reduction in costs due to a reduced frequency of medical reexamination for these licensees.

Although some costs will be incurred by licensees in making revisions to procedures and license conditions, these costs will be offset by the increased flexibility and savings resulting from reduced reexamination frequency.

Ten letters of public comment were received on the proposed rule: The Nuclear Energy Institute (NEI) and seven nuclear utilities including Tennessee Valley Authority (TVA), the University of Texas System, and the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health and Human Services (HHS).

NEI, the seven nuclear utilities, and the University of Texas System all supported the proposed rule. These commenters agreed that the proposed changes would constitute a reduction of regulatory burden and an increase in flexibility for licensees and Agreement States, without any significant reduction in worker health and safety. Several agreed that the recommended age-related frequencies for reexamination found in ANSI Z88.6–1984 should not be codified and should continue to provide useful guidance to physicians and other professionals in determining the suitability of individuals for respirator use. The proposed rule was characterized as appropriately performance-based and as not restricting the exercise of professional medical judgment.

Several commenters agreed that the initial determination by a physician should occur prior to initial fitting of respirators, rather than prior to first field use. These commenters observed that although this change would provide further reduction in burden, there is no clear evidence that such a change would not adversely impact the current level of protection of public health and safety. Others agreed that considerable liability would result if a worker were to experience an adverse reaction to a respirator during an initial fit-test without having had the requisite medical determination.

NIOSH supported the NRC goal of reducing the time and effort in the medical fitness determination process. They suggested however, that the NRC should use the word "evaluation" rather than "examination" when discussing the determination of medical fitness. NIOSH said that the content of an evaluation could include, medical history, questionnaire, physical examination, laboratory tests (such as dextrocardiogram, spirometry, or exercise testing) and results of a monitored worker trial period.

NIOSH recommended that a medical fitness evaluation be performed initially, and annually thereafter or after any significant illness, injury or surgery

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that might affect a worker's fitness to use respirators. However, the content of the reevaluations would be determined by a physician and would not necessarily include a physical examination. For example, a questionnaire could be used by a physician to determine whether or not more extensive reevaluations were necessary.

NOISH also recommended that the initial evaluation include at least a limited physical examination that could be performed by a physician or by a non-physician health professional.

The NRC staff believes that its intent is in substantial agreement with NIOSH. Several NRC staff documents have discussed the medical fitness determination in a manner consistent with the NIOSH suggestion. The NRC position continues to be that a complete physical examination of each respirator user is not required, only an initial medical examination and an annual review of medical status (or less frequently as determined by a physician).

The physician might or might not require a physical examination as part of the health assessment. The NRC staff believes that physicians need not administer each test personally, but that the physician may designate someone such as an office nurse to certify medical fitness as long as it is clear that the physician is ultimately responsible for the fitness determination. Likewise, the NRC staff believes that the physician should be involved in the supervision of the fitness program, the review of overall results and individual cases that fall outside certain physician determined parameters, and supervision of personal performing the tests.

The final rule retains the language "* * * determination by a physician prior to the initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment." The rule, as codified by this action, does not use the terms examination or evaluation. The NRC does not believe that the level of detail suggested by NIOSH is necessary in the regulations because all of the activities fall within the framework of the "determination" by a physician and would be considered as acceptable practice. The discussion in this statement of consideration makes it clear that the fitness determination can consist of several instruments and methods, as suggested by NIOSH.

Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required.

The NRC has not prepared a separate environmental assessment. The following discussion in conjunction with the regulatory analysis which follows constitutes the assessment. Performing a medical examination to determine that a worker is medically fit to use respiratory protection equipment generates minimal waste, results in small recordkeeping burden, and has no other identifiable environmental impact. The effect of this rulemaking is to allow a reduction in the frequency of such examinations, thus reducing any conceivable environmental impact even further. No comments on the draft assessment in the proposed rule notice were received.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

Regulatory Analysis

The regulatory analysis for this rulemaking is as follows:

1. Alternatives

No Action.

The annual medical examination requirement has been in place for a number of years, and is considered by the NRC staff to provide adequate health and safety to workers. However, the annual requirement consumes considerable resources with little demonstrated improvement in worker health or safety when compared to longer examination intervals. The ANSI committee and a peer review of the proposed standard Z88.6 (1984) found no reasons for not reducing the frequency of medical examination. Thus, it would appear that the frequency of medical examination can be significantly reduced at considerable savings and with no adverse impact on worker health and safety. The "no-action" alternative is not preferable in view of the cost of compliance relative to the minimal risk reduction observed.

Regulatory Guidance

The alternative of modifying the guidance in Regulatory Guide 8.15 is not considered a viable alternative for providing regulatory relief because the existing rule is very specific, and requirements in the regulations cannot be revised by modifying a regulatory guide.

Changes to Regulation

Because the problem is a specific requirement in a rule, the most effective solution providing regulatory relief is to modify the rule. Other alternatives such as issuance of an order, modifying license conditions or discretionary enforcement were considered. These alternatives are usually interim and are used when immediate action is deemed necessary. Because a permanent correction is desired and there is no reason for immediate action, these other alternatives were not selected.

2. Impact of Proposed Action

Licensees

Licensees that have respiratory protection programs will continue to be required to provide medical examinations to workers. The change is to permit reducing the frequency at which the examinations are required based on determination by a physician. This action constitutes a reduction in burden and costs. Although minor changes in procedures or license conditions will be needed, the related costs are a one time cost that will be offset by the savings in medical reexamination costs.

Workers

Workers will be subject to medical examinations for respirator use less frequently. As found by the ANSI review, experience with the annual respiratory medical examination requirement has shown that less frequent examinations for younger workers, with special examinations if conditions change, will be adequate to identify any medical reasons for not using respirators. The action does not impact medical examination requirements adopted by licensees for other reasons. Licensees will continue to be required to conduct medical examinations.

NRC Resources

It is estimated that 0.4 staff years of effort by NRC staff will have been expended to complete this rulemaking.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The amendments apply to all NRC and Agreement State licensees. Because these amendments reduce burden, they are considered to have no adverse economic impact on any large or small entities.

Backfit Analysis

Because 10 CFR part 20 applies to all NRC licensees, any changes to this part must be evaluated to determine if these changes constitute backfitting for reactor licensees such that the provisions of 10 CFR 50.109 apply. The following discussion addresses that evaluation.

The 10 CFR 50.109 definition of "Backfit" includes any modification of the procedures required to operate a facility resulting from an amended provision in the Commission's rules. Because this rule will permit but not require nuclear power reactor licensees to modify their procedures regarding the frequency of respiratory medical examinations, the NRC staff believes that the change does not constitute a backfit. In addition, the effect of these changes is to increase flexibility and reduce the frequency at which medical examinations for respiratory use are required. It is estimated that this rule change will save the nuclear power industry and other NRC and State licensees several million dollars per year with no adverse impact on worker health and safety.

Some minor changes in procedures or license conditions will be necessary if a more flexible frequency of examination is adopted. However, the costs will be offset by the savings in reduced frequency of examination. Thus, the NRC believes that the modifications are not backfits. No comments were received on this issue during the public comment period for the proposed rule.

List of Subjects 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2282); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.1703, the introductory text of paragraphs (a) and (a)(3) is restated and paragraph (a)(3)(v) is revised to read as follows:

§ 20.1703 Use of individual respiratory protection equipment.

(a) If the licensee uses respiratory protection equipment to limit intakes pursuant to § 20.1702—

* * * * *

(3) The licensee shall implement and maintain a respiratory protection program that includes—

* * * * *

(v) Determination by a physician prior to the initial fitting of respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment.

* * * * *

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–3372 Filed 2–9–95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–02]

RIN 1557–AB14

Capital Adequacy: Deferred Tax Assets

AGENCIES: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its capital adequacy rules with respect to deferred tax assets. This final rule limits the amount of certain deferred tax assets that a bank may include in Tier 1 capital for risk-based capital and leverage capital purposes.

The OCC, in consultation with the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Thrift Supervision (OTS) (banking agencies), developed this final rule in response to the Financial Accounting Standards Board's (FASB) issuance of Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (FAS 109), in February 1992. The banking agencies adopted the provisions of FAS 109 for reporting in quarterly Consolidated Reports of Condition and Income (Call Reports) beginning January 1, 1993. This reporting change increased the amount of net deferred tax assets that a bank may record on its balance sheet. This final rule will ensure that national banks do not place excessive reliance on deferred tax assets to satisfy the minimum capital adequacy requirements.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas G. Rees, Professional Accounting Fellow, Office of the Chief National Bank Examiner, (202) 874–5180; Eugene W. Green, Deputy Chief Accountant, Office of the Chief National Bank Examiner, (202) 874–5180; Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner, (202) 874–5070; Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

In February 1992, the FASB issued FAS 109. FAS 109 provides guidance on how to account for income taxes, including deferred tax assets, and was effective for fiscal years beginning on or after December 15, 1992. FAS 109 generally allows a bank to report certain deferred tax assets it could not previously recognize, which has the effect of increasing bank capital levels. Consequently, the OCC and the other banking agencies were concerned about the impact of the change on the financial institutions they regulate, especially regarding their reported capital levels.

FAS 109—Deferred tax assets are assets that reflect, for financial reporting purposes, the benefits of certain aspects of tax laws and rules. Under FAS 109, a bank reports deferred tax assets that arise from: (1) Tax carryforwards, and (2) deductible temporary differences. Tax carryforwards are deductions or credits that a bank cannot use for current tax purposes, but may carry forward to reduce taxable income or income taxes payable in a future period

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or periods. For example, when a bank's tax deductions exceed its tax revenues, the result is a net operating loss. Such losses may be used to recover taxes paid in prior years (the carryback period) or may be carried forward to reduce a bank's taxable income in a future period. The situation is similar for some tax credits that a bank cannot use in the current tax period. The bank will realize the benefit of deferred tax assets arising from tax carryforwards if it generates sufficient taxable income in the permissible carryforward period.

Temporary differences arise when a bank records financial events or transactions in one period on the bank's books and recognizes them in another period, or periods, on its tax return. There are two types of temporary differences—deductible and taxable. Deductible temporary differences reduce a bank's future taxable income. When a bank records an addition to its allowance for loan and lease losses, it records that amount as an expense on its books. However, the bank may be unable to take the tax deductions for such losses until it charges off the loans and realizes the losses. The chargeoffs typically occur in subsequent periods. Thus, a bank creates a deferred tax asset when it adds an amount to the allowance on the books, but charges it off in a future period.

Taxable temporary differences produce additional taxable income in future periods. For example, a bank may depreciate its bank building using an accelerated depreciation method on its tax return but may use a straight-line method when recording depreciation on its books. As a result, the bank's tax depreciation will be less than its book depreciation in certain future periods. This taxable temporary difference will cause the bank to have higher taxable income in those future periods.

A bank may only realize deferred tax assets arising from deductible temporary differences by: (1) Recovering taxes paid in prior years, (2) offsetting taxable temporary differences, or (3) earning sufficient future taxable income. Consequently, if deferred tax assets arise from deductible temporary differences and exceed the amount of recoverable taxes paid in prior years plus offsetting taxable temporary differences, the bank will only realize such deferred tax assets if it generates sufficient taxable income in the carryforward period. Hereafter, these deferred tax assets, and deferred tax assets arising from tax carryforwards, will be called "deferred tax assets that are dependent upon future taxable income."

FAS 109 allows a bank to record deferred tax assets that are dependent upon future taxable income. However, the bank must establish a reserve to adjust the recorded deferred tax asset to the amount that it is more likely than not (i.e., likelihood of more than 50 percent) to realize. A bank assesses the probability of realization based on its prospects of earning taxable income in the future. The statutory carryforward period of 15 years provides a limit on the amount of the assessment.

Supervisory Concerns Regarding Deferred Tax Assets

Before adoption of FAS 109, regulatory policy generally limited the recognition of net deferred tax assets to the bank's potential tax carryback amount. In other words, a bank could only record an asset to the extent it potentially could file for a tax refund if all book and tax timing differences reversed at the report date.

Because FAS 109 allows a bank to record a greater amount of deferred tax assets than under previous policy, the OCC and the other banking agencies were concerned about the effect of the accounting standard on bank capital adequacy. Specifically, the OCC was concerned that FAS 109 would allow banks to include excessive amounts of deferred tax assets that are dependent upon future taxable income as part of regulatory capital.

Whether a bank can realize such assets depends on whether it generates enough taxable income during the carryforward period. As new products evolve and market conditions change, a bank's current financial condition and outlook for future income can change rapidly. Such changes make predicting future taxable income more difficult. For many banks, including sound and well-managed banks, the judgment about the likelihood that the bank will realize deferred tax assets that are dependent upon future taxable income is highly subjective. Inaccurate estimates could cause a bank to overstate its deferred tax assets and its capital position. Therefore, allowing banks to recognize significant amounts of assets based on subjective estimates could pose a risk to the deposit insurance funds.

Additionally, the OCC is concerned about the effect of these changes on a bank that is experiencing financial difficulty. Such banks often have net operating loss carryforwards. As a result, these troubled institutions potentially could record deferred tax assets under FAS 109, even though their realistic prospects for generating sufficient future taxable income are uncertain. As a troubled bank's condition deteriorates, it is less likely to realize the financial benefit of deferred tax assets that are dependent upon future taxable income. In such instances, FAS 109 generally requires the bank to reduce its recorded net deferred tax asset by increasing the asset's valuation allowance. The result is a charge to earnings that will reduce the bank's regulatory capital at precisely the time it needs capital the most.

To address these concerns, on August 3, 1992, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the OCC, along with the other banking agencies requested public comment (57 FR 34135) on alternative approaches for the regulatory capital and reporting treatment of deferred tax assets. Based on the comments received, the FFIEC agreed to adopt FAS 109 for regulatory reporting effective January 1, 1993.

After discussing the comments and suggestions received, the OCC and the other banking agencies remained concerned about the impact of deferred tax assets that are dependent upon future taxable income on regulatory capital. The OCC believes that many financially sound banks will have net deferred tax assets arising from deductible temporary differences that exceed their taxable temporary differences and the bank's carryback potential. Since many of these deferred tax assets will be realized, the OCC agreed that banks should recognize some amount of these assets in regulatory capital. The OCC and the other banking agencies concluded they could adequately address their supervisory concerns by placing a limit on the amount of such assets that a bank could include in regulatory capital. This approach maintained consistency between generally accepted accounting principles (GAAP) and regulatory reporting.

Proposed Rule—In December 1993, the OCC issued a proposed rule to amend its capital adequacy rules with respect to deferred tax assets (58 FR 68065, December 23, 1993). The FRB (58 FR 8007, February 11, 1993), and the FDIC (58 FR 26701, May 5, 1993) published similar proposed rules.

The OCC proposed to limit the amount of deferred tax assets that are dependent upon future taxable income that a bank may include in regulatory capital to the lesser of:

(1) The amount of deferred tax assets expected to be realized within one year of the quarter-end report date, based on a bank's projection of future taxable income (exclusive of tax carryforwards and reversals of existing temporary differences) for that year, including the effect of tax-planning strategies

expected to be implemented during that year, or

(2) 10 percent of Tier 1 capital net of goodwill and other disallowed intangible assets.

Banks have been calculating and reporting the amount of "Deferred tax assets disallowed for regulatory capital purposes" in the Call Reports since March 31, 1993.

Comments Received on the Proposed Rule—The comment period for the OCC's proposed rule closed on January 24, 1994. The OCC received a total of 17 comments on the proposed rule. The commenters consisted of 13 banks, three trade groups, and one public accounting firm.

All but one commenter expressed opposition to some portion or all of the proposed rule. Eleven of the commenters indicated that a limit on the amount of deferred tax assets included in regulatory capital was unnecessary. However, six commenters agreed that some form of limit on deferred tax assets was appropriate.

The primary concern of the commenters is that the adoption of a deferred tax limit could increase regulatory burden because regulatory capital policy would be more restrictive than GAAP. Several commenters indicated that no limit on deferred tax assets is necessary because FAS 109 only permits the reporting of deferred tax assets that have a better than 50% probability of being realized. Other commenters indicated that the proposed one year limit was too restrictive because there is a 15-year carryforward period in which a bank could realize the deferred tax assets.

After carefully considering the comments, the OCC believes that a limit on deferred tax assets is necessary. Estimates of future taxable income are very subjective. If a bank does not realize these estimates, the bank insurance fund is exposed to losses because bank capital would be overstated. Moreover, unlike certain types of intangible assets that a bank can include in regulatory capital at a higher allowable percentage, a bank cannot sell deferred tax assets.

The GAAP standard allows a bank to record deferred tax assets that they may not realize for up to 15 years. The OCC believes that allowing deferred tax assets to constitute a significant portion of a bank's capital is inappropriate, since deferred tax assets may have only a slightly better than 50% possibility of realization. Furthermore, other than the likelihood of realization, there is no specific limit under GAAP on the amount of deferred tax assets that a bank can record. Without a limit on deferred tax assets, a bank could include significant amounts of deferred tax assets in capital.

In addition, the OCC believes that GAAP should guide rather than establish regulatory capital policy. When formulating GAAP, the accounting policy makers do not consider the safety and soundness objectives of the capital standards applicable to banks. Therefore, differences between the GAAP and regulatory capital definitions are justified.

Final Rule

The OCC believes that since banks can only realize deferred tax assets that are dependent upon future taxable income when they achieve positive taxable earnings, a limit based on estimated future earnings is rational. In general, a bank's projections up to 12 months into the future are reliable. However, the OCC believes the reliability of such projections decreases significantly for periods further in the future. Therefore, having a one year cutoff reduces the risk of a bank misstating its deferred tax assets because its estimate of future income is inaccurate. Furthermore, the one year cutoff increases the likelihood of a bank achieving the earnings required to realize the recorded deferred tax asset.

The OCC believes that this final rule will ensure that such deferred tax assets do not make up an unduly large portion of a bank's regulatory capital base. The upper limit of 10 percent of Tier 1 capital provides a "backstop" that addresses this concern. This requirement also reduces the risk that an overly optimistic estimate of future taxable income will cause the bank to significantly misstate the deferred tax asset.

The OCC believes that the combination of the one year future income approach and the 10% of Tier 1 capital approach will provide an effective and efficient limit on deferred tax assets. Consequently, under the final rule, the amount of deferred tax assets that are dependent upon future taxable income that a bank may include in its regulatory capital is limited to the lesser of:

(1) The amount of deferred tax assets the institution expects to realize within one year of the quarter-end report date, based on its projection of future taxable income (exclusive of tax carryforwards and reversal of existing temporary differences for that year), or

(2) 10 percent of Tier 1 capital, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships, and before any disallowed deferred tax assets are deducted.

Banks should note that under this final rule there is no limit on deferred tax assets that a bank can realize from taxes paid in prior carryback years and from reversals of existing taxable temporary differences. In addition, to determine the limit on deferred tax assets, a bank should assume that all temporary differences fully reverse as of the report date. Also, estimates of future taxable income should include the effect of tax planning strategies the bank is planning to implement within one year of the quarter-end report date to realize net operating loss or tax credit carryforwards that will otherwise expire during the year. With respect to the Call Reports, banks will continue to report deferred tax assets according to GAAP.

The OCC believes that the limit on deferred tax assets will pose little or no additional burden on banks. Banks already follow FAS 109 for Call Report purposes and already are making projections of taxable income. Additionally, the OCC has revised the 10 percent Tier 1 capital calculation to be more straightforward and less burdensome. Under the proposed rule, the 10 percent of Tier 1 capital calculation is based on Tier 1 capital net of goodwill and other disallowed intangible assets. As proposed, the 10 percent of Tier 1 capital calculation would have required banks to first determine the amount of disallowed intangible assets. After consideration of this matter, the OCC believes that this additional computation is not necessary. Consequently, the final rule requires that the 10 percent of Tier 1 capital calculation be based on Tier 1 capital net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships, and before any disallowed deferred tax assets are deducted. While this calculation may result in a slightly higher Tier 1 capital base, the OCC believes that this calculation is simpler and imposes less burden on banks.

In response to the comments received, the OCC has decided to incorporate the following additional provisions to reduce the regulatory burden of this final rule.

Method of Estimating Future Income—In Banking Bulletin 93–15, Supplement 1 (BB 93–15), the OCC specified a method of estimating future taxable income. BB 93–15 provided a specific method for treating originating and reversing tax timing differences in the calculation of one year's future taxable income. Several commenters

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stated that other less restrictive methods of estimating future taxable income, which are acceptable under GAAP, should also be allowed.

After considering these comments, the OCC concluded that banks may calculate one year's future taxable income based on either the specific method in BB 93–15 or another reasonable method that is consistent with GAAP. Since banks routinely make their own projections of future taxable income and have this information readily available, this modification reduces regulatory burden.

Gross-up of Intangibles—FAS 109 requires a bank to record higher amounts of intangible assets acquired in nontaxable purchase business combinations than they would record under previous GAAP for the same transaction. The OCC capital adequacy rules require banks to deduct certain intangible assets from regulatory capital. Consequently, under FAS 109, a bank acquiring such assets would reflect a lower amount of regulatory capital after deducting these disallowed intangibles than it would have under previous accounting standards even though there is no additional risk to capital.

Several commenters indicated that the OCC should not require banks to deduct the additional amounts of identifiable intangible assets required by FAS 109. The OCC agrees with these commenters. Since the higher intangible amounts occur simply because of an accounting rule change, the higher amounts do not present additional risk to capital. Therefore, because the increased value of the intangible assets pose no additional risk to capital adequacy, this final rule permits a bank to net the deferred tax liability associated with a disallowed intangible asset against that intangible asset in the calculation of its limit on deferred tax assets.

Under this approach, a bank would only deduct the net amount of the disallowed intangible from Tier 1 capital. Netting is not allowed against purchased mortgage servicing rights and purchased credit card receivables since a bank deducts these assets for capital adequacy purposes only if they exceed specified limits on intangible assets. Consequently, this final rule results in the same treatment for intangibles resulting from purchase business combinations as under previous GAAP. However, to ensure this benefit is not double counted, a deferred tax liability netted in this manner could not also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

Leveraged Leases—Similar to the "gross up of intangibles" issue, the OCC agrees with one commenter who recommended that the final rule include a specific provision relating to the accounting treatment for leveraged leases. The commenter noted the valuation of a leveraged lease acquired in a purchase business combination gives recognition to the estimated future tax effect of the remaining cash flows of the lease. Therefore, any future tax liabilities related to acquired leveraged leases are included in the valuation of the leveraged leases and are not shown on the balance sheet as deferred taxes payable. This artificially increases the amount of deferred tax assets for institutions that acquire a leveraged lease portfolio. The commenter suggested that banks treat the future taxes payable included in the valuation of a leverage lease portfolio as a reversing taxable temporary difference available to support the recognition of deferred tax assets.

Although this situation will not affect many banks, the OCC agrees with this commenter. Accordingly, when applying the limit on deferred tax assets, a bank may use the deferred tax liabilities embedded in the carrying value of a leveraged lease to reduce the amount of deferred tax assets subject to the limit.

Tax Jurisdictions—In a response to the proposed rule, a commenter suggested that a bank calculate one overall limit on deferred tax assets to cover all tax jurisdictions in which the bank operates. This provision would reduce burden on large banks that operate in numerous jurisdictions because they would not need to separately calculate a limit on deferred tax assets for each jurisdiction. FAS 109 already requires a jurisdiction-by-jurisdiction approach. The OCC agrees with the commenter that the separate tax jurisdiction requirement in the overall limit on deferred tax assets is unnecessary. Therefore, to reduce regulatory burden, a bank may calculate one overall limit on deferred tax assets that covers all tax jurisdictions in which the bank operates.

Timing—A bank may use the future taxable income projections for its closest fiscal year (adjusted for any significant changes that have occurred or are expected to occur) when applying the limit on deferred tax assets at a report date other than year-end. Therefore, a bank will not have to prepare a new projection each quarter. Several commenters requested this treatment because it reduces the frequency that a bank is required to revise their estimate of future taxable income.

Except for these provisions, banks should follow FAS 109 in determining regulatory capital. Net deferred tax assets included in bank Call Reports under FAS 109, that exceed the limit on deferred tax assets, should be deducted from Tier 1 capital. Banks should also deduct the amount of disallowed deferred tax assets from both total assets and from risk-weighted assets in determining their leverage capital and risk-based capital ratios. Deferred tax assets included in risk-based capital continue to have a risk weight of 100%.

Other Considerations

Separate Entity Method—Consistent with the policy of applying GAAP individually to banks of a holding company, each subsidiary bank must determine its limit on deferred tax assets separately from the holding company. Under this "separate entity method," a subsidiary of a holding company is treated as a separate taxpayer, and its tax provision is calculated on this basis.

In some cases, a bank's holding company may not have the financial capability to reimburse the bank for tax benefits derived from the bank's carryback of net operating losses or tax credits. In these cases, the amount of carryback potential the bank may consider in calculating the limit on deferred tax assets is limited to the amount which it could reasonably expect to have refunded by its parent.

Several commenters suggested that the OCC eliminate the separate entity approach because GAAP does not require it and because the approach ignores Federal tax law and binding intercompany tax settlement agreements. The OCC considered these comments. However, the banking agencies generally require banks to file regulatory reports using a separate entity approach, and consistency between the reports would be reduced if the OCC permitted a bank to use other methods for calculating deferred tax assets. Therefore, the OCC decided that banks must continue to report and calculate the limit on deferred tax assets under the separate entity method.

Tax Effects of Financial Accounting Standard 115 (FAS 115)—The OCC, along with the other banking agencies, adopted Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FAS 115), for regulatory reporting purposes effective January 1, 1994. FAS 115 requires net unrealized holding gains and losses on available-for-sale securities to be recorded net of taxes. Consequently, when a bank recognizes the FAS 115 unrealized holding gains and losses on available-for-sale securities in financial reports, it also must include any deferred tax effects of these unrealized gains and losses in its determination of the deferred tax asset.

For example, if a bank has an unrealized gain in the available-for-sale portfolio, it must record a deferred tax liability for the taxes that would be due if they sold the assets and realized the gain. On the other hand, if a bank has an unrealized loss in the available-for-sale portfolio, the bank should include the tax benefits from realizing that loss when it records its deferred tax asset.

The OCC and the other banking agencies recently agreed that banks should exclude the net unrealized holding gains and losses on available-for-sale debt securities from regulatory capital calculations. Therefore, it would be consistent to exclude the deferred tax assets and liabilities relating to the FAS 115 gains and losses on available-for-sale debt securities in the calculation of the allowable amount of deferred tax assets for regulatory capital.

It has been argued that failure to eliminate these FAS 115 deferred tax effects would cause a bank to overstate or understate the amount of deferred tax assets disallowed for regulatory capital purposes. For example, a bank with a net unrealized loss in its available-for-sale account would report a related deferred tax asset in its Call Report. If the bank does not remove the deferred tax asset relating to the net unrealized loss, and has net deferred tax assets that exceed the allowable amount stipulated in this final rule, the bank will overstate the amount of deferred tax assets that it must deduct from regulatory capital. Conversely, if the bank has a net unrealized gain on available-for-sale securities, and does not remove its deferred tax effect, the calculation of the limit on deferred tax assets will understate the amount of deferred tax assets the bank must deduct from regulatory capital.

The OCC believes that identifying and removing the deferred tax components that specifically relate to FAS 115 may be very complicated, and in some situations may place significant burden on banks. Therefore, the OCC has decided to allow, but not require, banks to eliminate the FAS 115 deferred tax items before calculating the limit on deferred tax assets. Consequently, a bank that does not want to deal with the complexity of the adjustment can reduce its implementation burden. On the other hand, a bank that wants to achieve greater precision may make such adjustments. Whether or not a bank chooses to adjust for the FAS 115 deferred tax effects, it must apply that approach consistently in future calculations of the limit on deferred tax assets.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. When considered with the change in the reporting of deferred tax assets in the Call Report, this final rule permits banks to include more deferred tax assets in regulatory capital than under previous policy. However, this change will not significantly impact banks of any size.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 3 of title 12, chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907, and 3909.

2. Paragraph (a) of § 3.2 is revised to read as follows:

§ 3.2 Definitions.

* * * * *

(a) *Adjusted total assets* means the average total assets figure required to be computed for and stated in a bank's most recent quarterly *Consolidated Report of Condition and Income* (Call Report) minus end-of-quarter intangible assets and deferred tax assets that are deducted from Tier 1 capital. The OCC reserves the right to require a bank to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when necessary to carry out the purposes of this part.

* * * * *

3. In appendix A to part 3, section 1, paragraphs (c)(9) through (c)(29) are redesignated as paragraphs (c)(10) through (c)(30) and a new paragraph (c)(9) is added to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1 Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(9) *Deferred tax assets* means the tax consequences attributable to tax carryforwards and deductible temporary differences. Tax carryforwards are deductions or credits that cannot be used for tax purposes during the current period, but can be carried forward to reduce taxable income or taxes payable in a future period or periods. Temporary differences are financial events or transactions that are recognized in one period for financial statement purposes, but are recognized in another period or periods for income tax purposes. Deductible temporary differences that result in a reduction of taxable income in a future period or periods.

* * * * *

4. In appendix A to part 3, section 2, paragraph (c)(1) is revised, a new paragraph heading is added to paragraph (c)(2), paragraph (c)(3) is redesignated as paragraph (c)(4) and a heading is added to newly designated paragraph (c)(4) and the introductory text is revised, and a new paragraph (c)(3) is added, to read as follows:

* * * * *

Section 2. Components of Capital.

* * * * *

(c) * * *

(1) *Deductions from Tier 1 capital.* The following items are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made:

(i) All goodwill subject to the transition rules contained in section 4(a)(1)(ii) of this appendix A;

(ii) Other intangible assets, except as provided in section 2(c)(2) of this appendix A; and

(iii) Deferred tax assets, except as provided in section 2(c)(3) of this appendix A, that are dependent upon future taxable income, which exceed thelesser of either:

(A) The amount of deferred tax assets that the bank could reasonably expect to realize within one year of the quarter-end call report, based on its estimate of future taxable income for that year; or

(B) 10% of Tier 1 capital, net of goodwill and all intangible assets other than purchased mortgage servicing rights and purchased credit card relationships, and before any disallowed deferred tax assets are deducted.

(2) *Qualifying intangible assets.* * * *

(3) *Deferred tax assets*—(i) Net unrealized gains and losses on available-for-sale securities. Before calculating the amount of deferred tax assets subject to the limit in section 2(c)(1)(iii) of this appendix A, a bank may eliminate the deferred tax effects of any net unrealized holding gains and losses on available-for-sale debt securities. Banks report these net unrealized holding gains and losses in their Call Reports as a separate component of equity capital, but exclude them from the definition of common stockholders' equity for regulatory capital

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purposes. A bank that adopts a policy to deduct these amounts must apply that approach consistently in all future calculations of the amount of disallowed deferred tax assets under section 2(c)(1)(iii) of this appendix A.

(ii) *Consolidated groups.* The amount of deferred tax assets that a bank can realize from taxes paid in prior carryback years and from reversals of existing taxable temporary differences generally would not be deducted from capital. However, for a bank that is a member of a consolidated group (for tax purposes), the amount of carryback potential a bank may consider in calculating the limit on deferred tax assets under section 2(c)(1)(iii) of this appendix A, may not exceed the amount that the bank could reasonably expect to have refunded by its parent holding company.

(iii) *Nontaxable Purchase Business Combination.* In calculating the amount of net deferred tax assets under section 2(c)(1)(iii) of this appendix A, a deferred tax liability that is specifically associated with an intangible asset (other than purchased mortgage servicing rights and purchased credit card relationships) due to a nontaxable purchase business combination may be netted against that intangible asset. Only the net amount of the intangible asset must be deducted from Tier 1 capital. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of net deferred tax assets that are dependent upon future taxable income.

(iv) *Estimated future taxable income* Estimated future taxable income does not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences expected to reverse within the year. A bank may use future taxable income projections for their closest fiscal year, provided it adjusts the projections for any significant changes that occur or that it expects to occur. Such projections must include the estimated effect of tax planning strategies that the bank expects to implement to realize net operating losses or tax credit carryforwards that will otherwise expire during the year.

(4) *Deductions from total capital.* The following items are deducted from total capital:

* * * * *

Dated: February 3, 1995.

Eugene A. Ludwig,

Comptroller of the Currency

[FR Doc. 95-3364 Filed 2-9-95; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF DEFENSE

Defense Mapping Agency

32 CFR part 320

[DMA Instruction 5400.11]

Privacy Program

AGENCY: Defense Mapping Agency, DOD

ACTION: Final rule.

SUMMARY: The Defense Mapping Agency is amending its Privacy Act Regulation by removing three exemption rules, updating request for information procedures, and the list of organizational addressees.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Sharetts-Sullivan at (703) 285-9315.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 320

Privacy

For reasons set forth in the Preamble, 32 CFR part 320 is amended as follows:

PART 320 - DEFENSE MAPPING AGENCY (DMA) PRIVACY PROGRAM

1. The authority citation for 32 CFR part 320 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. The heading of 32 CFR part 320 is revised to read as set forth above.

3. Section 320.3 is amended by revising paragraph (b), introductory text, paragraph (c), introductory text, paragraph (c)(2), and (e) to read as follows:

§ 320.3 Procedures for requests for information pertaining to individual records in a record system.

* * * * *

(b) Any individual requesting such information in person may present himself at HQ DMA or at the principal office of the DMA Component or Staff Office (please refer to the DMA address list at paragraph (e) of this section) thought to maintain the record in question and shall provide:

* * * * *

(c) Any individual requesting such information by mail shall address his request to the Director, Defense Mapping Agency, or to the Director of the DMA Component or Staff Office (refer to paragraph (e) of this section) thought to maintain the record in question and shall include in such request the following:

* * * * *

(2) A notarized statement or unsworn declaration in accordance with 28 U.S.C. 1746 to verify his identify, if, in the opinion of the DMA custodian of the record, the sensitivity of the material involved warrants.

* * * * *

(e) HQ DMA and Component address list:

(1) Director, ATTN: GCI St A-7, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

(2) DMA Aerospace Center, 3200 South Second Street, St. Louis, MO 63118-3399.

(3) DMA Hydrographic/Topographic Center, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(4) DMA Combat Support Center, 6001 MacArthur Boulevard, Bethesda, MD 20816-5501.

(5) DMA Reston Center, 12310 Sunrise Valley Drive, Reston, VA 22091-3414.

(6) DMA Systems Center, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(7) Comptroller, St A-4, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

(8) Deputy Director for Human Resources, St A-8, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

(9) Deputy Director for International Programs, St A-20, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137

(10) General Counsel, St A-7, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

(11) Deputy Director for Acquisition, St A-3, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

(12) Deputy Director for Command Information, St A-11, Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031-2137.

* * * * *

4. Section 320.11 is revised to read as follows:.

§ 320.11 Specific exemptions.

All systems of records maintained by the Defense Mapping Agency and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under Executive Order 12356 and that is required by that Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Dated: February 2, 1995.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3313 Filed 2-9-95; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis 95-001]

RIN 2115-AA97

Safety Zone; Mississippi River, mile 57.8 to mile 55.8

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Mississippi River. This regulation is needed to control vessel traffic in the regulated area to facilitate construction of stone filled weirs in or near the navigable channel to ensure the safety of the construction workers. The regulation will restrict navigation in the regulated area.

EFFECTIVE DATE: This regulation is effective on January 30, 1995 and will terminate on March 31, 1995.

FOR FURTHER INFORMATION CONTACT: LT Siddall, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG Andrew Cheney, Project Officer, Marine Safety Office, St. Louis, Missouri and LT S. M. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the construction of the weirs can only be undertaken below certain river stages and due to the dynamic nature of the river, insufficient time exists to publish a notice of proposed rulemaking. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The Army Corps of Engineers continues to improve channel maintenance through constructing passive channelizing structures. The construction of the stone filled weirs is necessary in this historically troublesome area. As a result of this construction this regulation is necessary to provide safe working conditions and navigation within the affected area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10E of the regulatory policies and procedures of DOT is unnecessary because the restrictions are anticipated to be of short duration. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539-3823 for current information.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02-027 is added, to read as follows:

§ 165.T02-027 Safety Zone: Mississippi River.

(a) *Location.* The Mississippi River between mile 57.8 and 55.8 is established as a safety zone.

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(b) *Effective Dates.* This section becomes effective on January 30, 1995 and will terminate on March 31, 1995.

(c) *Regualtions.* The general regulations under § 165.23 which prohibit entry into the described zone without the authority of the Captain of the Port, St. Louis, apply.

Dated: January 25, 1995.

S.P. Cooper,

Captain, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 95–3431 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Huntington 95–001]

RIN 2115–AA97

Safety Zone; Ohio River, Mile 308.0 to 310.0, Symmes Creek, Chesapeake, OH, and Adjacent Landside Areas

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River, at the entrance to Symmes Creek, Chesapeake, Ohio, and all adjacent landside areas within a 1,000 foot radius of each specific explosive detonation site. This regulation is needed to control vessel, vehicular, and pedestrian traffic in the regulated area to prevent potential safety hazards for transiting vessels and the general public resulting from the demolition of the 6th Street Bridge at mile 308.7, Ohio River, Huntington, West Virginia. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation.

EFFECTIVE DATES: This regulation is effective at 6 a.m. EST on February 1, 1995. It terminates on June 1, 1995 at 8 p.m. EDT, unless terminated sooner by the Captain of the Port Huntington.

FOR FURTHER INFORMATION CONTACT: LT Sean Moon, Chief of the Port Operations Department, Captain of the Port, Huntington, West Virginia at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Sean Moon, Project Officer, Marine Safety Office, Huntington, West Virginia and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would have been impracticable. Specifically, anticipated demolition operations, including explosive detonations, as part of a bridge removal project at mile 308.7, Ohio River, Huntington, West Virginia, have created a situation which presents an immediate hazard to navigation, life, and property. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The activity requiring this regulation is a bridge demolition undertaken as a part of the new bridge construction under United States Coast Guard Bridge Permit Number 4–90–2 dated May 25, 1990. The Captain of the Port Huntington did not receive notice of the explosive and demolition operations until January 18, 1995. C.J. Mahan Construction Company of Grove City, Ohio, working under contract for the State of West Virginia, completed construction of the new bridge on November 2, 1994. The bridge permit included the requirement that the old bridge be demolished within 180 days of completion of the new bridge. Landside dismantling of the old bridge began shortly after completion of the new bridge. Waterside demolition operations, involving the use of crane barges and explosives in and near the navigation channel, will begin on or about February 1, 1995 at mile 308.7 on the Ohio River. Completion of the bridge removal is expected to occur on or before June 1, 1995. Bridge spans and bridge piers will be removed in sections, one at a time, over a period of several months. In addition to the explosive hazard associated with several different detonations, the regular presence of a crane barge, tow boats and submerged steel will pose an obstructive hazard to waterborne traffic operating in the vicinity of the project work site. In order to provide for the safety of vessel and vehicular traffic and the general public, the Captain of the Port Huntington intends to regulate vessel traffic in that portion of the Ohio River and Symmes Creek where the explosives and steel removal operations will be taking place, and to work with local law enforcement officials to secure all landside areas within a 1,000 foot radius of each specific blast site until the hazard from the explosive detonations is mitigated.

During critical phases of the demolition project, the affected portions of the Ohio River, the entrance to Symmes Creek, and adjacent landside areas in proximity to the blast site will be subject to periodic closures. No vessels will be allowed to transit either waterway when blasting and steel removal operations will affect safe navigation. Additionally, local law enforcement officials will secure landside areas as appropriate to safeguard the general public from the explosive hazard during detonations.

Notification of river and creek closure will be made via Broadcast Notice to Mariners at periods 24 hours, 2 hours, and 5 minutes prior to each blast. Notification will be via VHF radio channel 16.

During all river and creek entrance closures, two boats will be available for the security of the closed river area. The boats will be placed up and down river of the blasting area. These boats will patrol and warn any recreational/commercial vessel traffic of the impending blast.

No blasting will be permitted unless all river and creek traffic is removed to a safe location outside of the blasting area. No blasting will take place when there is restricted visibility (the contractor must be able to see from bank to bank before blasting). No blasting will take place unless the river stage is at or below 5 feet above normal pool and falling.

Unless overtaken by circumstances, periodic river and creek closures will be less than 24 hours in duration. Closures of Symmes Creek will be very abbreviated, during blasting operations only. Closures of the Ohio River will be during blasting and clearing operations and will remain in effect until the river is cleared and the safety of transiting vessels is ensured. Local law enforcement officials will restrict access and secure landside areas as necessary to protect the public from explosive hazards. Road closures, evacuations, and other appropriate security measures will be imposed for abbreviated periods only.

When the blasting and obstructive hazards have been mitigated, the Captain of the Port Huntington will reopen the river and creek. Notification of the reopening of the river and creek will be via VHF radio on channel 16. The entrance to Symmes Creek will be reopened to vessel traffic entering the Ohio River upon the conclusion of each blasting operation. Vessels transiting to or from Symmes Creek must contact the on scene contractor vessels for passing instructions to ensure safe operation within the safety zone. Local law enforcement officials will reopen landside areas immediately upon conclusion of blasting operations.

Notice of this safety zone and updates on periodic closures will also be published in the Local Notice to Mariners.

The establishment of this safety zone regulation ensures that vessels will not transit on the Ohio River in the vicinity of the blasting area during explosive detonations or when the main channel is obstructed by submerged steel to eliminate attendant risks associated with these operations. The Captain of the Port will also work with local law enforcement officials to protect the safety of the general public in adjacent landside areas. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone during the non-critical phases of the demolition project. With proper communication between both parties, the contractor is assured of having ample time to comply with any request to relocate work boats temporarily to allow a vessel to navigate through the safety zone.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 an does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, due to the limited duration of actual river closures.

Small Entities

The Coast Guard finds that the impact on small entities is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart F of Part 165 or Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02–002 is added, to read as follows:

§ 165.T02–002 Safety Zone: Ohio River, Symmes Creek, and Adjacent Landside Areas

(a) *Location.* The Ohio River between 308.0 and 310.0, the entrance to Symmes Creek, Chesapeake, Ohio, and adjacent landside areas within 1,000 feet of each specific blast site are established as a safety zone.

(b) *Effective dates.* This section becomes effective on February 1, 1995 at 6 a.m. EST. It terminates on June 1, 1995 at 8 p.m. EDT, unless terminated sooner by the Captain of the Port Huntington.

(c) *Regulations.* (1) Except with the permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone during all periods of closure, as announced by Coast Guard Broadcast Notice to Mariners and as enforced on scene by personnel from the Coast Guard Marine Safety Office Huntington, WV.

(ii) Communicate with the contract vessel M/V MISS MAY or M/V MICHAEL D on channel 16 VHF–FM to arrange for safe passage through the safety zone at all other times, providing at least twenty (20) minutes advance notice prior to transiting through the regulated area.

(iii) Provide the contract vessel M/V MISS MAY or M/V MICHAEL D at least twenty (20) minutes advance notice to move/suspend operations in any case where the transiting vessel operator believes the safe passage of any vessel or tow is jeopardized by the presence/operation of the crane barge during operations not involving river closure.

(2) Except with the permission of the Captain of the Port, vessels involved with the 6th Street Bridge demolition operations must:

(i) M/V MISS MAY or M/V MICHAEL D: Communicate with and arrange safe passage through the safety zone for all vessels not involved in the demolition project.

(ii) M/V MISS MAY or M/V MICHAEL D: Initiate appropriate broadcast notices to local mariners over channel 16 VHF–FM 24 hours, 2 hours, and 5 minutes prior to initiation of blasting operations.

(iii) M/V MISS MAY or M/V MICHAEL D: Ensure that all vessel traffic is outside the area of the safety zone and the waterside blast area is secured prior to any explosive detonation, with that information effectively communicated to the contractors conducting the blasting.

(iv) M/V MISS MAY or M/V MICHAEL D: Monitor operations involving steel and debris removal after each detonation and, following clearance of the river, the conduct of subsequent subsurface sweeps of the main channel.

(v) M/V MISS MAY or M/V MICHAEL D: Notify the Coast Guard Captain of the Port Huntington once a successful sweep has determined that the Ohio River main shipping channel is clear (a minimum underwater clearance of 20 feet below normal river pool), with no obstructions to impede the safe navigation of vessels.

(vi) All other contract vessels: Relocate to a safe area prior to any blasting operations.

(3) Except with the permission of the Captain of the Port, C. J. MAHAN CONSTRUCTION COMPANY must:

(i) Not detonate explosives if a vessel not involved with the blasting operation is inside the safety zone, or if any contract vessel has not relocated to a safe distance away from the blast area, as verified and communicated by the M/V MISS MAY or M/V MICHAEL D.

(ii) Not initiate any blasting operations until local law enforcement officials have verified and communicated that landside security is established and that landside portions of the safety zone are clear.

(iii) Not initiate any blasting operations in periods of restricted visibility (operator must ensure there is clear bank-to-bank visibility)

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(4) Except with the permission of the Captain of the Port, all pedestrians and vehicular traffic must remain outside the affected landside portions of the safety zone, as enforced by local law enforcement officials.

(5) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(6) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: January 23, 1995, 5 pm e.s.t.

F.A. Nyhuis,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV

[FR Doc. 95–3429 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 20

Discontinuation of Authorization to Use Domestic Postal Money Orders Internationally

AGENCY: Postal Service

ACTION: Final rule.

SUMMARY: The Postal Service is discontinuing the Semidomestic Money Order Service. The domestic money order form is no longer being used for payments to Anguilla; Antigua and Barbuda; Bahamas; Barbados; Belize; British Virgin Islands; Canada; Dominica; Grenada; Jamaica; Montserrat; St. Christopher and Nevis; St. Lucia; St. Vincent and the Grenadines; and Trinidad and Tobago. In place of the domestic form, the Postal Service will use the international postal money order form (MP1) when issuing a money order for payment in these countries.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Al Gillum, (703) 905–3818.

SUPPLEMENTARY INFORMATION: The Postal Service has received numerous complaints from foreign postal administrations regarding the acceptance of domestic postal money orders by the banking system in those countries. This practice circumvents the policies and procedures regarding the acceptance of international postal money orders agreed to within the Universal Postal Union.

The Postal Service is committed to enforcing the agreements with its foreign partners. A concerted effort is being made to restrict the negotiation of domestic postal money orders to the United States and its possessions and territories, and the Freely Associated States (FAS). Possessions and territories are American Samoa (including Manua Island, Swain's Island, Tutuila Island); Baker Island; Guam; Howland Island; Jarvis Island; Johnston Island; Kingman Reef; Midway Island; Navassa Island; Northern Mariana Islands (including Rota Island; Saipan Island, Tinian Island); Palmyra Island; Puerto Rico; Sand Island; U.S. Virgin Islands (including St. Croix Island; St. John Island, St. Thomas Island); and Wake Island. The FAS are Marshall Islands (including Ebeye Island, Majuro Island); Palau (including Koror Island); and Micronesia (including Chuuk (Truk) Island, Kosrae Island, Pohnepi Island, Yap Island).

Semidomestic Money Order Service permits the negotiation of domestic postal money orders in the countries listed in the Summary. In order to restrict uniformly the negotiation of domestic postal money orders to the United States and its possessions and territories and to the FAS, it is necessary to discontinue Semidomestic Money Order Service.

In light of the foregoing, the Postal Service hereby adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 3 of the International Mail Manual is amended by revising subchapter 390 as follows:

CHAPTER 3—SPECIAL SERVICES

* * * * *

390 Supplementary Services

391 International Money Orders

* * * * *

[Revise section 391.11 by deleting "and Semi-Direct Service" to read as follows:]

International postal money order service is available to transfer funds to individuals or firms in countries that have entered into agreements with the United States Postal Service for the exchange of postal money orders. International postal money orders sent by Direct Service may be sent by letter mail or Express Mail International Service (EMS).

* * * * *

[Revise section 391.2 by replacing "three" in the first sentence with "two"; by deleting section 391.2a in its entirety and renumbering sections 391.2b and 391.2c to sections 391.2a and 391.2b, respectively; and by adding the countries in the Summary to the renumbered section 391.2b to read as follows:]

Postal money orders are exchanged with countries in one of two ways:

a. Standard international postal money orders. This method uses the Authorization to Issue an International Money Order form set. See Individual Country Listings.

b. Direct international postal money orders. This method uses the pink international postal money order form (MP1). The following countries accept this form: Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bolivia, British Virgin Islands, Canada, Cape Verde, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guyana, Honduras, Jamaica, Japan, Mali, Mexico, Montserrat, Nigeria, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Sierra Leone, and Trinidad and Tobago. Money orders issued by these countries in U.S. dollars, with the exception of Jamaica and Trinidad and Tobago, are negotiable in the United States. There will be no money orders issued in Bolivia, Cape Verde, Dominican Republic, Ecuador, Honduras, Mexico, Nigeria, Panama, and Sierra Leone for payment in the United States. The MP1 cards issued in Japan for payment in the United States must be shown in U.S. dollars preceded by the capital letters "USD."

Money orders issued in Mali for payment in the United States will be the standard international postal money order.

[Revise section 391.3 by replacing "three" with "two" in the first sentence; by deleting section 391.3a in its entirety and renumbering section 391.3c to section 391.3a; and by adding the countries in the Summary to the renumbered section 391.3a to read as follows:]

There are two separate fees for international money orders:

a. The fee for money orders payable in countries that accept the pink international postal money order form (MP1) is $3 per money order. These countries are:

Anguilla

Antigua and Barbuda
Bahamas
Barbados
Belize
Bolivia
British Virgin Islands
Canada
Cape Verde
Costa Rica
Dominica
Dominican Republic
Ecuador
El Salvador
Grenada
Guyana
Honduras
Jamaica
Japan
Mali
Mexico
Montserrat
Nigeria
Panama
St. Christopher and Nevis
St. Lucia
St. Vincent and the Grenadines
Sierra Leone
Trinidad and Tobago

* * * * *

[Delete section 391.411 in its entirety.]

[Renumber former section 391.412 as 391.411.]

[Renumber former section 391.413 as 391.412 and add the countries in the Summary to read as follows:]

Use the pink international money order form (MP1) for money orders payable in Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bolivia, British Virgin Islands, Canada, Cape Verde, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guyana, Honduras, Jamaica, Japan, Mali, Mexico, Montserrat, Nigeria, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Sierra Leone, and Trinidad and Tobago. Follow the issuance procedures in DMM S020.

Note: Money orders payable in Canada, the amount of the money order must be expressed in U.S. currency only. Issuing clerks must use the money order imprinter in the usual manner, printing the amount received in U.S. currency. Clerks must not write the word "Canadian," followed by the equivalent amount in Canadian currency, on the money order.

* * * * *

[Revise section 391.421 by deleting "the domestic money order or" from the first sentence to read as follows:]

When the international postal money order form (MP1) is used to send funds, the purchaser should complete the information requested on both the money order and the customer's receipt. The Postal Service is not liable for money orders that are lost before the purchaser completes this information. Money orders may be made payable to the purchaser, a person or a firm, or a payee by official title. (Example: Director of Publications, Canada.)

* * * * *

[Revise section 391.423 by deleting country names to read as follows:]

Follow the instructions for preparing domestic money orders in DMM S020 when using the pink international postal money order form (MP1).

* * * * *

[Revise section 391.431 by deleting "Domestic Postal Money Orders and" from the title and by deleting country names to read as follows:]

391.431 International Postal Money Order Form (MP1)

Follow the instructions for preparing domestic money orders in DMM S020 when issuing the pink international postal money order form (MP1).

* * * * *

[Delete section 391.721 in its entirety.]

[Renumber former section 391.722 to 391.721.]

[Revise former section 391.723 by renumbering to section 391.722 and by deleting country names to read as follows:]

Use Form 6401, Domestic Money Order Inquiry, in accordance with DMM S020.2.14 when filing inquiries or requests for replacement of international postal money order form (MP1). Only the purchaser may file and receive payment. Replacement will not be made before 6 months after the date of issuance.

* * * * *

[Delete sections 391.9, 391.91, and 391.92 in their entirety.]

* * * * *

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–3433 Filed 2–9–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–139–1–6667a; FRL–5140–9]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Revision to New Source Review, Construction and Operating Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on August 17, 1994. The submittal included revisions to the State's new source review (NSR) regulations, which were promulgated to bring the State's regulations into compliance with the 1990 amendments to the Clean Air Act and the Federal regulations. EPA finds that the revised State rules meet the Federal nonattainment NSR permitting requirements of the Clean Air Act as amended in 1990 (CAA) for the State's ozone (O_3) nonattainment areas.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, EPA notified the State of Tennessee that EPA had made a finding of failure to submit required programs for the nonattainment area. The revised State NSR rules satisfy those requirements for this area. Therefore, the sanctions clock was stopped by the complete submittal and the Federal implementation plan clock will be stopped at the time of this approval.

DATES: This final rule will be effective April 11, 1995 unless adverse or critical comments are received by March 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Ms. Karen Borel, at the Regional Office Address listed.

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

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Tennessee Division of Air Pollution Control, 701 Broadway, Customs House, 4th Floor, Nashville, Tennessee 37247–1531.

FOR FURTHER INFORMATION CONTACT: Ms Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, x4197. Reference file TN–139–1–6667a.

SUPPLEMENTARY INFORMATION:

A. Nonattainment NSR Requirements of the Amended Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the CAA. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those state submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this document and the supporting rationale. A brief discussion of the specific elements required in a state's NSR program also is included in section II.B. of this document.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments in the NSR provisions of parts C and D of title I of the CAA. EPA anticipates that the proposed rule will be published for public comment in the spring of 1995. If EPA has not taken final action on states' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes in early 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of the State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991, and September 3, 1992.

As explained in the March 11, 1991, memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992, memorandum addressed the situation where states did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, states may issue final permits under the prior NSR rules, assuming certain conditions in the September 3, 1992, memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the CAA where the source obtains, from the state, a permit that is consistent with the substantive new NSR part D provisions in the CAA. EPA believes this guidance continues to apply to permitting pending final action on Tennessee's NSR SIP submittal.

For O_3 nonattainment areas, section 182(a)(2)(C) of the CAA requires the states to submit to EPA by November 15, 1992, new or augmented NSR rules that meet the provisions of part D of title I of the CAA. The part D NSR permitting provisions applicable in O_3 nonattainment areas are generally in sections 172(c)(5), 173, 182, and 184 of the CAA. The State of Tennessee adopted regulatory revisions necessary to bring the State's NSR regulations in compliance with the CAA and amended Federal regulations, and submitted those revisions on August 17, 1994. The State also submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP on September 27, 1994. The only rule revisions being approved in this action are the revised statewide rules submitted on August 17, 1994. The EPA will take action on the Nashville/Davidson County rule revisions in a separate **Federal Register** document.

B. Federal Implementation Plan (FIP) Clock

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, EPA notified the State of Tennessee that EPA had made a finding of failure to submit required programs for the nonattainment area. The revised State NSR rules satisfy those requirements for this area. Therefore, the sanctions clock was stopped by the complete submittal and the FIP clock will be stopped at the time of this approval.

C. Procedural Background

Section 110(k) of the CAA sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565).

The State of Tennessee held a public hearing on February 22, 1994, on the proposed revisions to the SIP. Following the public hearing, the plan was adopted by the State and submitted by the Tennessee Department of Environment and Conservation on August 17, 1994, as a revision to the SIP.

Specifically, the State submitted revisions to its NSR permitting regulations in Tennessee's Chapter 1200–3 by submitting revised Paragraph 1200–3–9–.01(5) entitled Growth Policy. The revisions to the State's NSR regulations were made to bring the State's rules into compliance with the CAA, as amended in 1990, and Federal regulations.

The SIP revision was reviewed by EPA to determine completeness, and a letter of completeness, dated August 18, 1994, was forwarded to the State of Tennessee. EPA finds that the revisions provide for consistency with the CAA and corresponding Federal regulations, and that the revisions meet the new nonattainment NSR provisions for ozone nonattainment areas.

D. Nonattainment NSR Requirements of the CAA

The general statutory requirements for nonattainment NSR SIPs and permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the CAA. Tennessee currently has nonattainment areas for O_3, sulfur dioxide, and lead. These requirements apply in all nonattainment areas. The State of Tennessee's nonattainment NSR regulations, which had been approved prior to the 1990 Amendments, were written to be nonattainment area-specific. The NSR permitting requirements applied to new or modified sources proposing to locate in any nonattainment area in the State, including those designated pursuant to enactment of the 1990 Amendments. Thus, in order to meet the nonattainment NSR program submittal requirements, the State needed to address the new NSR requirements of the amended CAA.

Many of the revisions to sections 172 and 173 of the CAA as discussed in the General Preamble clarified previously existing Federal regulations and policy.

The following represents EPA's review of the State's submitted regulations for meeting the requirements of the amended CAA:

(1) The CAA repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions. No construction bans are currently imposed in Tennessee, so this provision is not applicable.

(2) Section 173(a)(1)(A) of the CAA requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area (e.g., greater than 1:1 emission offsets should insure no interference with RFP). In addition, calculations of emissions offsets must be based on the same emissions baseline used in the demonstration of RFP. In Section 1200–3–9–.01(5)(b)(2)(iv) the State has established provisions that adequately address the requirements of section 173(a)(1).

(3) Section 173(c)(1) of the CAA requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from other nonattainment areas if the following conditions are met: the area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a national ambient air quality standard (NAAQS) violation in the area in which the source would construct. In Chapter 1200–3–9–.01(5)(b)(2)(v)(1), the State has established provisions that adequately meet these requirements of section 173(c)(1).

(4) Section 173(c)(1) of the CAA requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation and that any emission increases from new or modified major stationary sources must be offset by reductions in actual emissions. In Chapter 1200–3–9–.01(5)(b)(2)(v), the State has established provisions that adequately meet these requirements of section 173(c)(1).

(5) Section 173(c)(2) of the CAA prohibits emissions reductions otherwise required by the CAA from being credited for purposes of satisfying the part D offset requirements. In Chapter 1200–3–9–.01(5)(b)(2)(v)(VII), the State has established provisions that adequately meet the requirements of section 173(c)(2).

(6) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the CAA limit or invalidate use of certain growth allowances in nonattainment areas. In Chapter 1200–3–9–.01(5)(b)(2)(iv)(1), the State has established provisions that adequately meet the requirements of sections 172(c)(4), 173(a)(1)(B), and 173(b).

(7) Revised section 173(a)(5) of the CAA requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source must be completed, which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. In Chapter 1200–3–9–.01(5)(b)(2)(vi), the State has established provisions that adequately meet the requirements of section 173(a)(5).

(8) Section 173(d) of the CAA requires States to submit control technology information from permits to EPA for the purposes of making such information available through the RACT/BACT/LAER clearinghouse. In Chapter 1200–3–9–.01 (5)(b)(2)(iii)(V), the State has established provisions that adequately meet the requirements of section 173.

(9) In Chapter 1200–3–9–.01(5)(b)(xviii) the State has submitted a revised definition for the lowest achievable emission rate (LAER). In the previously approved SIP, LAER is defined for the prevention of significant deterioration (PSD) in subparagraph 1200–3–9–.01(4)(o)(5)(b)(3), and for new sources in subparagraph 1200–3–9–.01(5)(b)(3). The same definition is used in both places. LAER is defined as that rate of emissions which reflects the most stringent emission limitation which is achieved in practice by such class or category of sources. In no event shall a new or modified source emit any pollutant in excess of the applicable New Source Performance Standards (NSPS).

Revisions to Tennessee's PSD regulations, which have been submitted to EPA, but not yet acted upon, delete the definition of LAER from paragraph 1200–3–9–.01(4) and add it to the general definitions for the issuance of construction permits, which will be found in subparagraph 1200–3–9–.01(2)(e). This section defines LAER, for any major stationary source or major modifications, as the more stringent rate of emissions based on the following: (1) The most stringent emissions limitation which is contained in the applicable standards under this Division 1200–3, or in any SIP for such class or category of stationary source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or (2) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any air contaminant in excess of the amount allowable under applicable new source standards of performance.

The State previously submitted revisions to their volatile organic compound (VOC) regulations on June 22, 1993, which included a request for the deletion of rule 1200–3–18–.03 Standard for New Sources. This rule includes a definition of LAER which means for any source, that rate of emissions which reflects the most stringent emission limitation which is achieved in practice by such class or category of source. In no event shall a new or modified source emit any pollutant in excess of the applicable NSPS. This deletion was previously disapproved by EPA (see 59 FR 18310) because Tennessee did not have federally approved NSR regulations which would apply to some of the sources covered by that chapter. In 59 FR 18310 EPA recommended that Tennessee submit the deletion of this rule with the submittal of their revised NSR regulations.

The revised NSR rules define LAER as the more stringent rate of emissions of the most stringent emissions limitation contained in Division 1200–3 of the state rules or in any SIP for such class or category of source. In no event may LAER be in excess of the applicable NSPS. This revised definition closely parallels the statutory definition of LAER in section 171(3) of the CAA and eliminates the previous discrepancy between the state definition and the statutory, and EPA approves the revision as satisfying part D requirements.

In addition to all of the general nonattainment NSR provisions mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the CAA, some of which supersede general NSR provisions. The following provisions are additional NSR provisions that apply in Tennessee's nonattainment areas.

1. Ozone Nonattainment Areas

The State has adopted the appropriate major source threshold in Rule 1200–3–9–.01(5)(b)(1)(iv), 100 tons per year (tpy).

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for the nonattainment areas in the state, including the ozone nonattainment areas, which are currently classified as marginal and moderate ozone nonattainment areas. Because it has not adopted the applicable lower major thresholds for serious, severe, and extreme ozone nonattainment areas, the State would be required to revise its rules if an ozone nonattainment area becomes classified as serious, severe, or extreme. In accordance with section 182 of the CAA, the State has adopted the applicable emissions offset ratios for increases in emissions of VOCs or NO_x in section 1200–3–9–.01(5)(b)(2)(v)(III), namely: marginal–at least 1.1 to 1, moderate–at least 1.15 to 1, serious–at least 1.2 to 1, severe–at least 1.3 to 1, and extreme–at least 1.5 to 1. The State has adopted provisions in Rule 1200–3–9–.01(5)(b)(1)(iv-v, x, and xxxiii) to ensure that any new or modified major source of NO_x satisfies the requirements applicable to any major source of VOCs, unless a special exemption is granted by the Administrator under section 182(f).

2. Carbon Monoxide Nonattainment Areas

The State of Tennessee had one carbon monoxide (CO) nonattainment area, which was designated as low moderate; this was the Memphis-Shelby County area. (See 40 CFR 81.343 for Tennessee's CO nonattainment area designations). However, this area was redesignated as an attainment area on August 31, 1994 (59 FR 44938); NSR is not required for the CO maintenance plan

3. Other Revisions to NSR Regulations

Other revisions to the State's regulations were made to bring the State's regulations into compliance with the CAA as amended in 1990. EPA is approving these revisions because they provide for clarity and consistency with the Federal requirements in the CAA and 40 CFR 51.165 and 51.166. For further information on the revisions addressed in this submittal, please see the Technical Support Document (TSD) accompanying this document

4. Deletion of Previous Disapproval to Delete Rule 1200–3–18–.03

The State previously submitted revisions to their VOC regulations on June 22, 1993, which included a request for the deletion of rule 1200–3–18–.03 Standard for New Sources. This deletion was disapproved by EPA (see 59 FR 18310) because Tennessee did not have federally approved NSR regulations that would apply to some of the sources covered by that rule. As recommended by EPA, Tennessee resubmitted the deletion of this rule together with their revised NSR regulations (see 59 FR 18310). The deletion of Rule 1200–3–18–.03 is approved, and the earlier EPA disapproval is deleted, in conjunction with the approval of the State's revised NSR regulations.

Rule 1200–3–18–.03 provided that: new or modified sources anywhere in the State which emit or have the potential to emit 100 tpy or more of VOCs must utilize LAER, as then defined; new or modified sources in Davidson, Shelby, and Hamilton Counties with the potential to emit less than 100 tpy must utilize BACT; and new or modified sources in other counties with the potential to emit less than 100 tpy must utilize reasonable and proper controls. The revised NSR rules for VOC sources, which would replace Rule 1200–3–18–.03, provides that: in ozone nonattainment areas, new or major modifications of sources which emit or have the potential to emit 100 tpy must utilize LAER, as defined in a revised definition; in ozone nonattainment areas, new or modified sources which have the potential to emit less than 100 tpy must utilize BACT; and in ozone attainment areas, the PSD rules, rather than the nonattainment NSR rules, apply.

Tennessee's revised NSR rules closely follow the statutory NSR requirements of part D, and provide additional protection in nonattainment areas by requiring BACT for minor sources and minor modifications. As discussed above, the revised definition of LAER also follows the CAA. Although the State will no longer impose a 100 tpy major source threshold for all source categories or require LAER in ozone attainment areas, based on a review of the deletion of rule 1200–3–18–.03 and the revised NSR rules, EPA concludes that the revisions satisfy the requirements of part D and the General Savings Clause in section 193 of the CAA. However, sources that were permitted under rule 1200–3–18–.03 will remain under the controls previously specified in their permits pursuant to that rule. Additionally, all sources located in attainment areas with the potential to emit 100 tpy or greater uncontrolled are required to implement Reasonably Available Control Technology (RACT)

Final Action

EPA is approving the revised Tennessee Chapter 1200–3–9–.01(5) Growth Policy, which is a replacement for the State's current federally approved Chapter 1200–3–9–.01(5). Specifically, EPA is approving the State's submittal as meeting the NSR requirements of the CAA as amended in 1990 for the State's ozone nonattainment areas. EPA is also rescinding the previous disapproval (59 FR 18310) of the deletion of rule 1200–3–18–.03 Standard for New Sources and is approving the deletion.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be submitted. This action will be effective on April 11, 1995 unless, by March 13, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 11, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

The Office of Management and Budget (OMB) has exempted these actions from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(124) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(124) On August 17, 1994, the Tennessee Department of Environment and Conservation submitted revisions to the new source review requirements in the Tennessee Division of Air Pollution Control Regulations. These revisions incorporate changes to Chapter 1200–3–9 by substituting for the present paragraph 1200–3–9–.01(5) of the Tennessee SIP with new requirements, which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

Tennessee Division of Air Pollution Control Regulations, Chapter 1200–3–9–.01(5) Growth Policy, effective August 15, 1994.

(ii) Other material. None.

3. Section 52.2228 is amended by adding a new paragraph (f) to read as follows:

§ 52.2228 Review of new sources and modifications.

* * * * *

(f) The State of Tennessee proposed to delete rule 1200–3–18–.03 "Standard for New Sources" from the Tennessee State Implementation Plan (SIP). In paragraph (e) of this section, EPA disapproved the deletion of this rule because Tennessee did not have federally approved New Source Review (NSR) regulations that applied to some of the sources in this chapter. EPA is hereby approving the deletion of section 1200–3–18–.03 of the Tennessee SIP, and is deleting EPA's earlier disapproval in paragraph (e) of this section.

[FR Doc. 95–3332 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 941249–4349; I.D. 020695B]

Groundfish of the Gulf of Alaska; Pollock in Area 62

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is terminating the closure to directed fishing for pollock in Statistical Area 62 in the Gulf of Alaska (GOA) to allow a 48–hour directed fishery. This action is necessary to fully utilize the total allowable catch (TAC) of pollock in that area.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), February 8, 1995, the closure to directed fishing for pollock in Statistical Area 62 of the GOA is terminated and the fishery is reopened. Effective 12 noon A.l.t., February 10, 1995, the closure to directed fishing for pollock in Statistical Area 62 of the GOA is reinstated and directed fishing is prohibited; this closure is effective until 12 noon, A.l.t., April 1, 1995, or until changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of the pollock TAC in Statistical Area 62 was established by interim specifications (59 FR 65975, December 22, 1994) as 3,827 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A). The directed fishery for pollock in Statistical Area 62 of the GOA was closed under § 672.20(c)(2)(ii) on January 24, 1995, (60 FR 5337, January 27, 1995). Therefore, NMFS is terminating the closure of January 24, 1995 (60 FR 5337, January 27, 1995).

The Director, Alaska Region, NMFS, (Regional Director) in accordance with § 672.20(c)(2)(ii), has determined that the remaining interim specification of pollock TAC in Statistical Area 62 is sufficient to allow a 48–hour directed fishery.

As the interim specification of pollock TAC catch in Statistical Area 62 of the GOA will be reached before the end of the year, the Regional Director, in accordance with § 672.20(c)(2)(ii), established a directed fishing allowance of 3,627 mt, with consideration that 200 mt will be taken as incidental catch in directed fishing for other species in that area. The Regional Director has determined that the directed fishing allowance of pollock in Area 62 will be reached within a 48–hour directed fishery. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 62 of the GOA, effective from 12 noon, A.l.t., February 10, 1995, until the end of the first quarter unless superseded by subsequent notification in the **Federal Register**.

Classification

This action is taken under § 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

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Dated: February 7, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-3458 Filed 2-7-95; 4:30 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 60, No. 28

Friday, February 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-CE-31-AD]

Airworthiness Directives; Beech Aircraft Corporation Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 91-24-15, which currently requires modifying the instrument air plumbing system on Beech Aircraft Corporation (Beech) Models 1900 and 1900C airplanes. The proposed action would require an additional modification to the plumbing of the instrument air system on the Models 1900 and 1900C airplanes, and would add the Model 1900D airplanes to the applicability. Eight reports of moisture freezing in this system on airplanes with the modification required by AD 91-24-15 incorporated prompted the proposed action. In addition, recent testing on the Model 1900D indicates that the design of the instrument air system on these airplanes is also conducive to moisture freeze-ups. The actions specified by the proposed AD are intended to prevent ice formation in the plumbing of the instrument air system, which, if not detected and corrected, could result in aerodynamic problems and subsequent loss of control of the airplane.

DATES: Comments must be received on or before April 21, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-31-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey E. Nero, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4137; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-CE-31-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-31-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91-24-15, Amendment 39-8173 (57 FR 3927, February 3, 1992), currently requires modifying the plumbing of the instrument air system on Beech Models 1900 and 1900C airplanes. Several reports of moisture freezing in the plumbing of the instrument air system on the affected airplanes prompted that AD.

Since issuance of AD 91-24-15, the FAA has received eight reports of moisture freezing in the plumbing of the instrument air system on airplanes in compliance with that AD. In addition, recent testing on the Beech Model 1900D indicates that the design of the instrument air systems on these airplanes is also conducive to moisture freeze-ups.

Beech has developed kits that, upon installation, make plumbing changes in the instrument air system, add additional insulation, and make wing leading edge core modifications. Installation of the applicable kit on an affected airplane will maintain the air temperatures in the instrument air system at 50 degrees or higher, and help eliminate the possibility of moisture freezing in this system in cold humid environments. The following presents each kit and the applicable airplane model each kit applies to:

Models	Kit No.
1900 and 1900C.	118-9003-1 or 118-9003-3.
1900D	129-9010-1 or 129-9010-3.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent ice formation in the plumbing of the instrument air system, which, if not detected and corrected, could result in aerodynamic problems and subsequent loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Model 1900, 1900C, and 1900D airplanes of the same type design, the proposed AD would supersede AD 91-24-15, Amendment 39-8173, with a new AD that would require modifying the plumbing of the

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instrument air system in accordance with the instructions provided with the kits specified above.

The FAA estimates that 370 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. The cost of the applicable kit ranges from $505 to $2,261 depending on the airplane model. Based on these figures (using a $2,261 part cost for all affected airplanes), the total cost impact of the proposed AD on U.S. operators is estimated to be $1,502,570.

Beech will provide parts free of charge until December 31, 1995. If all owners/operators would incorporate this modification by that date, then the cost impact of the proposed AD upon the public would be reduced by $836,570 (370 airplanes × $2,261) from $1,502,570 to $666,000.

In addition, Beech has informed the FAA that it has distributed approximately 18 kits. Assuming that each of these distributed kits is incorporated on one of the affected airplanes and that each of the remaining airplanes would have one of the kits incorporated by December 31, 1995, the cost of the proposed AD would be further reduced by $32,400 (30 workhours × $60 × 18 airplanes) from $666,000 to $633,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-24-15, Amendment 39-8173 (57 FR 3927, February 3, 1992), and by adding a new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 94-CE-31-AD; Supersedes AD 91-24-15, Amendment 39-8173.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial No.
1900	UA-2 and UA-3.
1900C	UB-1 through UB-74 and UC-1 through UC-174.
1900C (C12J)	UD-1 through UD-6.
1900D	UE-2 through UE-115.

Compliance: Required within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent ice formation in the plumbing of the instrument air system, which, if not detected and corrected, could result in aerodynamic problems and subsequent loss of control of the airplane, accomplish the following:

(a) Modify the plumbing of the instrument air system in accordance with the instructions provided with the following kits, as applicable:

Models	Kit No.
1900 and 1900C.	118-9003-1 or 118-9003-3.
1900D	129-9010-1 or 129-9010-3.

Note 1: Beech Service Bulletin (SB) No. 2539 and Beech SB No. 2591, both dated December 1994, reference the kits specified above.

Note 2: Beech will provide parts free of charge to the owner/operator until December 31, 1995.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment supersedes AD 91-24-15, Amendment 39-8173.

Issued in Kansas City, Missouri, on February 6, 1995.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-3359 Filed 2-9-95; 8:45 am]

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14 CFR Part 39

[Docket No. 92-CE-13-AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to reopen the comment period of an earlier proposed airworthiness directive (AD), which would have proposed to require modifying the shear fitting at the top of each escape hatch on certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. A report of interference between the shear fitting on an escape hatch and a ceiling panel found while removing the escape hatch on one of the affected airplanes prompted the earlier proposal. Since publication of that proposal, the Federal Aviation Administration (FAA) has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue (but not an urgent safety of flight issue). Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is allowing additional time for the public to comment on this action. The proposed actions are intended to prevent the inability to utilize an escape hatch during an emergency situation because of interference.

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-13-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44-292) 79888; facsimile (44-292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029; telephone (703) 406-1161; facsimile (703) 406-1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-13-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-13-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on March 30, 1992 (57 FR 10743). The action proposed to require modifying the shear fitting at the top of each escape hatch in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin 52-JM 7752, dated December 17, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since publication of the proposal, the FAA has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue, but is not considered an urgent safety of flight issue. Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is reopening the comment period to provide additional time for public comment.

The FAA estimates that 120 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Rework of existing parts would cost approximately $165 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $41,400. This figure is based on the assumption that no affected owner/operator has accomplished the proposed modification. The FAA has no way of determining how many airplanes have incorporated this modification (reworked the existing parts), but anticipates that numerous operators have already reworked the existing parts. This would reduce the cost impact of the proposed AD on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 92–CE–13–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (serial numbers 757 through 912), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent occupant injury during an emergency situation because of the inability to remove an escape hatch, accomplish the following:

(a) For both Models 3101 and 3201 airplanes, modify the shear fitting at the top of the right-hand escape hatch in accordance with PART A of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–JM 7752, dated December 17, 1991.

(b) For Model 3201 airplanes, modify the shear fitting at the top of the left-hand escape hatch in accordance with PART B of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–JM 7752, dated December 17, 1991.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 6, 1995.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3360 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–67–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document reopens the comment period for an earlier proposed airworthiness directive (AD) that proposed to supersede AD 90–13–12, which currently requires modifying the airplane electrical system and revising the emergency procedures section of the Airplane Flight Manual (AFM) on certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. The proposal would have retained the requirements of that AD for those airplanes that have not installed modified inverters and restored the inverted transfer function. Since publication of that proposal, the Federal Aviation Administration (FAA) has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue (but not an urgent safety of flight issue). Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is allowing additional time for the public to comment. The proposed actions are intended to prevent alternating current system failures, which, if not detected and corrected, could result in damage to the airplane navigational systems.

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–67–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–CE–67–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–67–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on March 30, 1992 (57 FR 10747). The action proposed to supersede AD 90–13–12 with a new AD that would (1) retain the requirements of modifying the airplane electrical system and revising the emergency procedures section of the AFM required by AD 90–13–12; and (2) require these modification and revisions only for those airplanes that have not installed modified inverters, P/N 1B350–1B1–3, in accordance with the instructions in Jetstream Service Bulletin (SB) 24–JM 7740, dated November 15, 1990, and have not restored the inverter transfer function in accordance with the instructions in Jetstream SB 24–JA 900941, dated November 14, 1990; or Jetstream SB 24–JA 900941, Revision 1, dated February 18, 1992. The proposed airplane electrical modifications would be accomplished in accordance with Jeistream Alert Service Bulletin (ASB) 24–A–JA 900443, Revision 1, dated May 1, 1990; and Jetstream ASB 24–A–JM 7708, Revision 1, dated May 22, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since publication of the proposal, the FAA has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue, but is not considered an urgent safety of flight issue. Since sufficient time has passed (more than 12 months) since the issuance of the original proposal, the FAA is reopening the comment period to provide additional time for public comment.

The FAA estimates that 180 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $108,000. This figure is based on the assumption that no affected owner/operator has accomplished the required modification.

Since AD 90–13–12, which would be superseded by this action, required the same actions (except for a limit in the airplane applicability), there is no additional cost of this AD on U.S. operators. The $28,800 cost difference between this AD (estimated $108,000) and superseded AD 90–04–04 (estimated $79,200) is a result of inflationary costs used in determining the costs of labor ($60 per hour as opposed to $40 per hour).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90–13–12, Amendment 39–6629 (55 FR 23890, June 13, 1990), and adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 90–CE–67–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (serial numbers 697 through 904), certificated in any category, that have not accomplished the following:

1. Installed two modified inverters, part number (P/N) 1B350–1B1–3, in accordance with the instructions in Jetstream Service Bulletin (SB) 24–JM 7740, dated November 15, 1990; and

2. Restored the inverter transfer function in accordance with the instructions in Jetstream SB 24–JA 900941, dated November 14, 1990; or Jetstream SB 24–JA 900941, Revision 1, dated February 18, 1992. Compliance: Required as indicated, unless already accomplished (compliance with superseded AD 90–13–12).

To prevent alternating current system failures, which, if not detected and corrected, could result in damage to the airplane navigational systems, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, modify the airplane electrical system and revise the emergency procedures section of the airplane flight manual in accordance with the instructions in Jetstream Alert Service Bulletin (ASB) 24–A–JA 900443, Revision 2, dated November 15, 1990, Section 2, ACCOMPLISHMENT INSTRUCTIONS; and APPENDIX C.

(b) Within the next 100 hours TIS after the effective date of this AD, modify the airplane electrical system in accordance with the instructions in Jetstream ASB 24–A–JM 7708, Revision 1, dated May 22, 1990, and revise the emergency procedures section of the airplane flight manual in accordance with the instructions in Jetstream ASB 24–A–JA 900443, Revision 2, dated November 15, 1990, APPENDIX C; or whichever of the following Advance Amendment Bulletins (AAB) is applicable:

Model	Publication
3101	AFM HP.4.10, Jetstream AAB number 6 with at least issue 1 status; and AFM HP.4.10, Jetstream AAB number 4 with at least issue 2 status.
3201	AFM HP.4.16, Jetstream AAB number 2 with at least issue 2 status, and removal of Jetstream AAB number 2, issue 1.

Note 1: Compliance with a previous revision level of the service bulletins referenced in this AD fulfills the applicable requirements of this AD and is considered "unless already accomplished".

(c) Replacement of both inverters, P/N 1B350–1B1–2, with modified inverters P/N 1B350–1B1–3 in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Jetstream SB 24–JM 7740, dated November 15, 1990, and restoration of the inverter transfer function in accordance with Jetstream ASB 24–JA 900941, dated November 14, 1990; or Jetstream ASB 24–JA 900941, Revision 1, dated February 18, 1992, is considered terminating action for the requirements of this AD.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that

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provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office ACO, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 90–13–12, Amendment 39–6629.

Issued in Kansas City, Missouri, on February 6, 1995.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3361 Filed 2–9–95, 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–70–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes. That action would have required modification of the fuel crossfeed dump shutoff system. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has determined that other means are in place that adequately address the unsafe condition. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Ray Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on July 27, 1994 (59 FR 38141). The proposed rule would have required modification of the fuel crossfeed dump shutoff system. That action was prompted by an FAA determination that, in the event of a failure of the number 2 bus tie relay and subsequent loss of the electrical power source of the number 2 engine, an all-engine flameout event could occur due to fuel starvation during or shortly after a fuel dumping operation. The proposed actions were intended to prevent loss of the fuel crossfeed dump shutoff system due to a failure of the number 2 DC bus electrical relay and subsequent loss of the electrical power source of the number 2 engine.

Interested persons have been afforded an opportunity to comment on the proposal. Due consideration has been given to the comments received.

The majority of commenters request that the proposed rule be withdrawn for several reasons:

First, the commenters reference AD 92–22–06, amendment 39–8392 (57 FR 47570, October 19, 1992), applicable to Model MD–11 and DC–10 series airplanes and Model KC–10A (military) airplanes, which was cited in the preamble to the notice. That AD requires revising the Airplane Flight Manual (AFM) to include information to specify that electrical malfunctions may render the automatic fuel dump termination feature inoperative. That AD was prompted by an incident in which the fuel crossfeed dump shutoff system became inoperative, and fuel was dumped below the minimum allowable level. The commenters point out that the event that prompted the issuance of that AD occurred on a Model MD–11 airplane, not a Model DC–10 series airplane. Because the design of the fuel shutoff system of the Model DC–10 is similar to that of the Model MD–11, the FAA concluded that the potential unsafe condition could exist with regard to those airplanes; however, there was no service history relevant to the Model DC–10.

Second, the commenters indicate that the proposed modification of the fuel crossfeed dump shutoff system, which is described in McDonnell Douglas DC–10 Service Bulletin 28–208, would do nothing more than add a third level of redundancy to the crossfeed low level shutoff relay. In fact, the manufacturer, in its comments to the proposal, calls this modification merely "a design enhancement" to the automatic shut-off features of the fuel dump system; the manufacturer does not consider that an AD to mandate the modification is justified.

Third, the commenters consider that the Model DC–10 already has adequate redundancy present by means of a third crew member (the flight engineer), who has specific required duties to monitor fuel quantity and associated fault indication systems during fuel dump operations. The commenters consider that, with this additional crew member in the cockpit directly managing the fuel dumping process, there is adequate protection against dumping fuel below the minimum level. The commenters also point out that, even though AD 94–07–07 [amendment 39–8865 (59 FR 15853, April 5, 1994)] mandated a similar modification of the Model MD–11, those airplanes are operated by a two-man crew and, therefore, do not have the same level of redundancy as the Model DC–10 with its three-man crew.

For these reasons, the commenters contend that mandatory modification in accordance with the requirements of the proposed rule is not justified for Model DC–10 series airplanes.

Upon further consideration, the FAA concurs. The FAA has reviewed the service history of Model DC–10 series airplanes with regard to the fuel crossfeed dump shutoff system and finds that the unsafe condition previously specified in the proposal is addressed adequately by:

1. the current AFM revisions required by AD 92–22–06, and

2. the flight engineer having specific duties associated with monitoring minimum fuel during dumping operations.

Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 94–NM–70–AD, published in the **Federal Register** on July 27, 1994 (59 FR 38141), is withdrawn.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3358 Filed 2–9–95, 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Early Warning Reporting Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On December 28, 1994, the Commodity Futures Trading Commission (Commission) published in the **Federal Register** a request for public comment on proposed rules to amend the early warning reporting requirements for futures commission merchants (FCMs) set forth in Commission Rule 1.12. The original comment period expired on January 27, 1995. 59 FR 66822.

The proposed rules would require an FCM to report in accordance with Commission Rule 1.12 whenever: There is a reduction in adjusted net capital in excess of 20 percent of the amount reported in the last financial report filed with the Commission;[1] a margin call that exceeds the FCM's excess adjusted net capital remains unanswered by the close of business on the day following the issuance of the call; or the FCM's excess adjusted net capital is less than six percent of the maintenance margin required to support proprietary and noncustomer positions carried by the FCM.

The Securities Industry Association requested a thirty-day extension of the comment period in order that its Capital Committee may have sufficient opportunity to consider these proposals. In order to ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period for an additional thirty days.

DATES: Comments must be received on or before February 27, 1995.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581; telephone (202) 254–8955.

Issued in Washington, DC on February 6, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–3362 Filed 2–9–95; 8:45 am]

BILLING CODE 6351–01–M

[1] When the Commission recently adopted rules concerning risk assessment for holding company systems, 59 FR 66674 (Dec. 28, 1994), it added a provision to Rule 1.12 requiring FCMs subject to the risk assessment rules to provide notice of adjusted net capital reductions in excess of 20 percent. The proposal would extend that requirement to all FCMs.

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804 and 805

Review and Approval of Projects; Special Regulations and Standards; Hearings; Enforcement Actions

AGENCY: Susquehanna River Basin Commission.

ACTION: Public hearing on rulemaking and addition to comprehensive plan.

SUMMARY: The Susquehanna River Basin Commission published in the **Federal Register** of June 8, 1994 (59 FR 29563) proposed rules on procedures for review of projects which also contained special review and approval requirements for consumptive uses of water, ground-water withdrawals and surface water withdrawals. Rules were also proposed setting special standards for water conservation and water use registration, and establishing hearing and enforcement procedures. A series of eight hearings were held during the summer of 1994 at various locations. This document announces: That the consumptive use portion of the proposed rulemaking action (§ 803.42) will be deferred pending further consultation with the regulated community; and that a final informal public hearing will be held on the non-consumptive use portion of the proposed rules.

DATES: The public hearing will be held on March 9, 1995, beginning at 9:00 a.m. Written comments on the non-consumptive use portion of the proposed rules should be submitted by March 9, 1995.

ADDRESSES: The public hearing will be held at the Radisson Penn Harris Hotel and Convention Center, room Keystone E, 1150 Camp Hill By-Pass, Camp Hill, PA. Comments should be addressed to Richard A. Cairo, General Counsel/Secretary, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary, SRBC, 717–238–0423.

SUPPLEMENTARY INFORMATION: The Susquehanna River Basin Commission will hold a final public hearing on the non-consumptive use portion of a proposed rulemaking action in conjunction with its regular meeting on March 9, 1995 at the Radisson Penn Harris Hotel and Convention Center, Room Keystone E, 1150 Camp Hill By-Pass, Camp Hill, PA., beginning at 9:00 a.m. This hearing will also cover a proposal to incorporate the proposed rules into the SRBC Comprehensive Plan. The proposed rules were published in the **Federal Register** on June 8, 1994 at p. 29563. Eight public hearings were held during the summer of 1994 at various locations throughout the basin.

In response to the comments received at these hearings, a number of changes have been made in the proposed rules, the most notable of which is the withdrawal of proposed § 803.42 on the consumptive use of water. In place of the proposed § 803.42, the Commission will substantially retain its present consumptive use regulation found in the Code of Federal Regulations at 18 CFR § 803.61. The Commission will continue the suspension of the consumptive use regulation with respect to agricultural consumptive uses while it works with representatives of the agricultural community to develop an appropriate approach to the management of agricultural related water use. Public water suppliers will also be consulted on the issue of consumptive use within their distribution systems.

The scope of this final public hearing will be limited to the non-consumptive use portion of the proposed rulemaking action. This portion of the regulation contains such items as a new surface water regulation, water use registration, approval durations, and new procedures for processing project applications. Procedures for notifying the public of pending applications and for holding public hearings are also strengthened.

The hearing will be informal in nature. *Comments should be limited to*

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the non-consumptive use portion of the proposed regulations. The Commission reserves the right to limit oral testimony in the interest of time. Written comments submitted at or before the hearing will also be accepted and made a part of the hearing record. All written comments should be submitted by March 9, 1995.

Copies of the latest version of the proposed rules and a responsiveness document explaining why changes were made area available upon request to the Commission at 1721 N. Front Street, Harrisburg, PA. 17102–2391, 717/238–0423. Written comments may be submitted to and further information obtained from Richard A. Cairo, General Counsel/Secretary, at the same address and phone number.

Dated: February 3, 1995

Paul O. Swartz,

Executive Director

[FR Doc. 95–3263 Filed 2–9–95; 8:45 am]

BILLING CODE 7040–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Navajo Nation AMLR plan (hereinafter referred to as the "Navajo Nation plan") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). The proposed amendment consists of the addition of interim program coal site provisions to the Navajo Nation's AMLR Code of 1987. The amendment is intended to revise the Navajo Nation plan to be consistent with SMCRA, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t., March 13, 1995. If requested, a public hearing on the proposed amendment will be held on March 7, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., February 27, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Navajo Nation plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102;

The Navajo Nation, P.O. Box 308, Window Rock, Arizona 86515, Telephone: (602) 871–4941.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and waters eligible for reclamation under Title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State and Tribal submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations at 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program. Approval granted the State or Tribe exclusive authority to administer its plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow and Hopi Tribes and Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approval plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Part 886.

II. Background on the Navajo Nation Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo Nation plan. General background information on the Navajo Nation plan, including the Secretary's findings, the disposition of comments, and the approval of the Navajo Nation plan can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo Nation plan is codified at 30 CFR 756.13. Subsequent actions concerning the Navajo Nation plan and plan amendments can be found at 30 CFR 756.14.

III. Proposed Amendment

By letter dated January 12, 1995, the Navajo Nation submitted the proposed amendment to its plan pursuant to SMCRA (administrative record No. NA–227). The Navajo Nation submited the proposed amendment at its own initiative and in response to the final rule **Federal Register** notice acknowledging that the Navajo Nation would amend its AMLR Code of 1987 to provide for the reclamation of interim program coal sites (59 FR 49178, 48181, finding No. 1(f), September 27, 1994; administrative record No. NA–225). The Navajo Nation proposes to add new language to its Code at section 404(b) to provide:

> Lands and waters also eligible for reclamation on the Navajo Nation are those which were damaged and abandoned after August 3, 1977 by coal mining processes if the Director finds in writing that:
>
> (1) They were mined for coal or affected by coal mining processes; and
>
> (2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and September 18, 1984; or
>
> (3) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide adequate reclamation or abatement at the site; and
>
> (4) The site qualifies as a priority site; and two site pursuant to section 403(a)(1) and (2) of SMCRA. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

IV. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Navajo Nation plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., February 27, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

V. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribe AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribe AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Abandoned mine land reclamation program, Indian lands.

Dated: February 2, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center

[FR Doc. 95–3314 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[CGD 94–100]

Withholding of Vessel Clearances or Permits; Identification of Satisfactory Sureties in Lieu of Clearance or Permit Denial

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is authorized, under several statutes, to request that the Customs Service refuse or revoke a vessel's clearance if the vessel's owner or operator may be subject to a penalty for violating the provisions of the authorizing statutes. These statutes also provide that the vessel may be cleared upon the filing of a bond or other surety satisfactory to the Coast Guard. However, because there are currently no uniform standards governing the form and terms of an acceptable surety, the policies applied have differed among the Coast Guard districts. The Coast Guard is requesting comments on what problems, if any, are created by these variations and what solutions, if any, are desirable. The Coast Guard may initiate rulemaking based upon the comments received.

DATES: Comments must be received on or before April 11, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–100),

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U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR David Dickman, Maritime and International Law Division (G–LMI), (202) 267–0095.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this request (CFD 94–100), and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Discussion of Issues

The following statutes authorize the Coast Guard to request that the Customs Service refuse or revoke the clearance required by 46 App. U.S.C. 91 of a vessel the owner or operator of which may be subject to a civil penalty for violation of these statutes:

(a) Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(b) (12)).

(b) Act to Prevent Pollution from Ships (APPS) (33 U.S.C. 1908(e)).

(c) Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1232(f).

(d) Tank vessel operating or inspection requirements (46 U.S.C. 3718(e)).

(e) Inland Navigation Rules (33 U.S.C. 2072(d)).

In addition to the provisions that apply to potential liability for civil penalties, the Coast Guard has authority to request that the Customs Service withhold clearance to a vessel when the owner, operator, or person in charge may be liable for criminal fines for violations of APPS, which implements the provisions of MARPOL.

Clearance from the Customs Service is required before a U.S. or foreign flag vessel may proceed from a port or place in the United States to a foreign port or place, to another port or place in the United States, or to a hovering vessel outside the territorial sea or to receive or deliver merchandise outside the territorial sea. Clearance is not required for a U.S. vessel proceeding from a port or place in the United States to another port or place in the United States if the vessel does not have on board bonded merchandise or foreign merchandise for which entry has not been made (46 App. U.S.C. 91(a)(2)).

All of these statutes provide that the necessary clearance can be granted upon the posting of a bond or other surety satisfactory to the Coast Guard. Historically, the Coast Guard has accepted, as satisfactory, surety bonds, letters of undertaking, and cash placed in escrow in an amount equal to the maximum penalty or fine that could be assessed if a violation of the statute is found. However, the form and terms of the bonds and letters of undertaking have varied among Coast Guard marine safety offices and districts. This has resulted occasionally in some confusion among the marine industry, shipping agents, Protection and Indemnity clubs, and other entities that normally post the required sureties.

Based on these problems, the Coast Guard seeks comments, particularly on the following issues:

(a) Is it desirable to provide for nationwide uniformity in the format and content of bonds or other forms of surety accepted by the Coast Guard?

(b) Is there a need for regulations on this subject and, if so, what should be covered? If regulations are not needed, what alternative methods might be employed to remove the confusion noted above?

(c) What procedures should be incorporated in regulations or other methods for providing bonds or other forms of surety?

(d) What types of bonds or other forms of surety should be accepted and why?

(e) Should the Coast Guard develop standard forms for the sureties to be accepted or should only the basic necessary terms be identified, as in the regulations for Customs bonds under 19 CFR part 113?

(f) Should an option be provided to allow consideration to be given, on an ad hoc basis, to satisfactory sureties on terms not specified in the regulations? Alternatively, should the specified sureties or terms be exclusive?

(g) Should a letter of undertaking, as issued traditionally by P&I Clubs, continue to be accepted as a form of surety? If so, is the form used in general admiralty practice sufficient or are additional terms necessary to protect the interests of the government and vessel owners or operators? If letters of undertaking are acceptable, which individuals or entities should be liable in the event of a default in payment of the assessed penalty or fine?

(h) Are different terms required for acceptable forms of surety depending upon whether or not the statute establishes "in rem" liability of the vessel for civil penalties?

(i) If the owner or operator of the vessel may be subject to a criminal fine, would a letter of undertaking be an appropriate form of surety in light of the fact that, in general admiralty practice, letters of undertaking are used solely for civil liability purposes?

(j) If a letter of undertaking or other surety is determined by the Coast Guard to be acceptable for the purposes described, should the Coast Guard provide a list of acceptable corporate providers, similar to the listing for surety bonds published by the Department of the Treasury in Treasury Department Circular 570? Alternatively, should minimal qualifications for corporate providers of letters of undertaking or other satisfactory sureties be published without specifically listing acceptable providers?

(k) Should individuals or partnerships be authorized to provide bonds or other forms of surety? If so, what minimum qualifications should these providers be required to meet?

The Coast Guard may initiate rulemaking based upon the comments received.

Dated: February 3, 1995.

J.E. Shkor,

Chief Counsel.

[FR Doc. 95–3428 Filed 2–9–95; 8:45 am]

BILLING CODE 4810–14–M

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33 CFR Part 117

[CGD11–95–002]

RIN 2115–AE47

Drawbridge Operation Regulations; Little Potato Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the California Department of Transportation, the Coast Guard is considering amending the regulation for the Highway 12 Swing Bridge crossing over Little Potato Slough, mile 0.1 at Terminous, near Stockton, California. The existing regulation provides that the draw open upon demand from May 1 through October 31 from 6 a.m. to 10 p.m., and upon four hours advance notice at all other times. The proposed regulation provides that the draw open on four hours advance notice at all times. This amendment will allow the bridge owner to reduce operating expenses, and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before April 11, 1995.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA 94501–5100, or may be delivered to Room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christian G. Cerles, Bridge Section, Eleventh Coast Guard District, Alameda; telephone (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD11–95–002) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (oan-br), Eleventh Coast Guard District, at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this regulation are Christian G. Cerles, Project Manager, Bridge Section, Eleventh Coast Guard District, and Lieutenant Robin Barber, Project Attorney, Eleventh Coast Guard District Legal Office

Background and Purpose

The Little Potato Slough Bridge was built in 1991 to replace the swing bridge built at that location in 1936.

The old swing bridge had a vertical clearance of nine feet above Mean High Water (MHW) in a closed position. The present bridge has a vertical clearance of 35 feet above MHW when in the closed position.

Because of this greater vertical clearance, the number of bridge openings has dropped significantly with the present bridge, allowing most vessels to pass under the new bridge while the bridge was in a closed position. In 1982, the bridge opened 2300 times, with an annual growth rate of four percent prior to the reconstruction (an estimated 3145 openings in 1990). In 1993, the first full year of operation after reconstruction, the bridge opened 239 times. All but three of the openings were for recreational vessels. By further comparison, the nearby Mokelumne River Bridge, which crosses another recreational waterway and has a vertical clearance of seven feet, opened 3518 times in 1993.

Discussion of Proposed Regulation

The current regulation requires that the draw open on signal from 6 a.m. to 10 p.m. May 1 through October 31. The remainder of the time, the draw shall open upon signal provided that at least four hours notice to the drawtender at the Rio Vista bridge has been given. The proposed regulation would require a four-hour advance notice at all times. Because the vessel traffic requirements of the waterway are limited, requiring advance notice to request draw openings appears reasonable. This proposed amendment would allow the bridge owner to reduce operating expenses while still ensuring that all draw opening requests are accommodated and still provide for the reasonable needs of navigation.

Notice to open the draw would continue be given to the drawtender at the Rio Vista bridge. The Rio Vista bridge has a drawtender on duty at all times.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, the proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 is also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

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2. Section 117.167 is revised to read as follows:

§ 117.167 Little Potato Slough.

The draw of the California Department of Transportation highway bridge, mile 0.1 at Terminous, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

Dated: January 20, 1995.

D.D. Polk,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 95-3430 Filed 2-9-95; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD05-94-116]

RIN 2115-AE47

Drawbridge Operation Regulations; Wicomico River, Salisbury, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the State Highway Administration, Maryland Department of Transportation, the Coast Guard is proposing to change the regulations that govern the operation of the Main Street and the US 50 drawbridges across the North Prong of the Wicomico River, mile 22.4, in Salisbury, Maryland. This proposal would extend the current rush hour restrictions by one hour in the morning and one hour in the afternoon, and require a three hour advance notice for commercial vessels needing a bridge opening during the hours of closure due to emergency situations. The existing 12 noon to 1 p.m. closure period would remain unaffected by this proposed change.

These changes to the drawbridge regulations are intended to reduce motor vehicle delays and congestion, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before May 11, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398-6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05-94-116) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C.A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The State Highway Administration, Maryland Department of Transportation (MDOT), has requested that openings of the Main Street and US 50 drawbridges across the North Prong of the Wicomico River, mile 22.4, at Salisbury, Maryland, be further restricted during the morning and evening rush hours. This would help to reduce highway traffic congestion problems and relieve public safety and welfare concerns associated with frequent bridge openings caused by commercial boat traffic. Currently, these drawbridges open on signal except from 8 a.m. to 9 a.m., 12 noon to 1 p.m., and 4:30 p.m. to 5:30 p.m. during which time both remain closed to navigation. MDOT's request is to change the hours of bridge closures to 7 a.m. to 9 a.m. in the morning and to 4 p.m. to 6 p.m. in the afternoon. The existing 12 noon to 1 p.m. closure would remain the same.

A review of the bridge logs provided by MDOT revealed that the bridge openings during 1992-1993 from 7 a.m. to 8 a.m. in the morning and from 4-4:30 p.m. to 5:30-6 p.m. in the evening were caused by tugs and tugs with tows. These openings are frequent enough to cause highway traffic to back up on each side of the bridge resulting in congestion and delays.

This request is based on an analysis MDOT conducted on highway traffic and marine traffic data, along with a waterway user and property owner survey that was conducted in 1993. Adjacent property owners had no objection to the extended morning and evening rush hours. According to DELMARVA Water Transport Committee, Inc., only two commercial businesses are located upstream of the bridge and one of these businesses has expressed concern over extending the periods of closure for these bridges. Based on this concern, DELMARVA has requested that the Coast Guard include in the proposed rule a three hour advance notice requirement for commercial vessels needing passage through the bridge during the hours of restriction. This advance notice requirement would only apply to tugs and barges unable to reach the bridges except during the hours of closure due to severe inclement weather or other emergency or unforeseen circumstances.

DELMARVA also contacted MDOT with this request and MDOT agreed that this provision should be added to the proposed rule, provided commercial vessels adhere to the "emergency only" requirement when taking advantage of the three hour advance notice exception. Based on DELMARVA's request and MDOT's approval of this request, the proposed rule will include a provision requiring commercial vessels to provide a three hour advance notice for a bridge opening during the hours of closure only if their transit is delayed by inclement weather or other emergency or unforeseen circumstances. Other than this, commercial vessels will be required to transit through these bridges during the open-on-demand hours.

The Administrative Director of Wicomico County, Maryland notified the Coast Guard that the county supports MDOT's request because of the increase in highway traffic crossing these bridges as a result of substantial residential growth. The Salisbury Area Chamber of Commerce also supports these changes to the operating schedule of the Main Street and US 50 drawbridges.

This proposed change to the existing regulations is intended to establish a schedule that will meet the reasonable needs of the waterway users and, at the same time, diminish delays to and improve the flow of motor vehicles crossing the bridge.

Based on this information, the Coast Guard believes these proposed regulations will not unduly restrict recreational and commercial vessels passage through these bridges since they can plan their transits around the periods of closures.

Regulatory Evaluation

This proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their fieid and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.E.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05-1(g)

2. Section 117.579 is revised to read as follows:

§ 117.579 Wicomico River (North Prong).

The draws of the Main Street and US 50 bridges, mile 22.4, at Salisbury, Maryland shall open on signal, except:

(a) From 7 a.m. to 9 a.m., from 12 noon to 1 p.m., and from 4 p.m. to 6 p.m., the draw need not be opened for the passage of vessels, except

(b) for tugs with tows, if at least three hours advance notice is given, and the reason for opening during a closure period described in paragraph (a) of this section is due to delays caused by inclement weather or other emergency or unforeseen circumstances.

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95-3432 Filed 2-9-95; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-5153-2]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. The purpose of the meeting is to continue identification and discussion of issues, discuss interests of committee members, and hear reports from task groups.

DATES: The committee will meet on February 21 and 22, 1995 from 10 a.m. to 6 p.m.

ADDRESSES: The location of the meeting will be the Holiday Inn East, 3750 Washtenaw, Ann Arbor, MI 48104, (313) 971-2000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical and substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668-4344. Persons needing further information on committee procedes should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260-5495, or the Committee's facilitator, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982-9805.

Dated: February 6, 1995

Chris Kirtz,

Acting Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 95-3462 Filed 2-9-95; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[OAQPS CA 102-4-6757; FRL-5152-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from light

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and medium duty motor vehicle assembly plants, from the surface coating of large appliances and metal furniture, from wood coating operations, and from air stripping and soil vapor extraction operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before March 13, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Bay Area Air Quality Management District (BAAQMD), Regulation 8, Rule 13 (Rule 8–13), Light and Medium Duty Motor Vehicle Assembly Plants; Regulation 8, Rule 14 (Rule 8–14), Surface Coating of Large Appliances and Metal Furniture; Regulation 8, Rule 23 (Rule 8–23), Coating of Flat Wood Paneling and Wood Flat Stock; and Regulation 8, Rule 47 (Rule 8–47), Air Stripping and Soil Vapor Extraction Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 28, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964; 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222) On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco Bay Area is classified as moderate;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 28, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for BAAQMD's Rules 8–13, 8–14, 8–23, and 8–47. BAAQMD adopted Rule 8–14 on June 1, 1994, and adopted Rules 8–13, 8–23 and 8–47 on June 15, 1994. These submitted rules were found to be complete on November 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

Rule 8–13 controls VOC emissions from light and medium duty motor vehicle assembly plants. Rule 8–14 controls VOC emissions from the surface coating of large appliances and metal furniture. Rule 8–23 controls VOC emissions from the coating of flat wood paneling and wood flat stock. Rule 8–47 limits VOC emissions from new and modified air stripping and soil vapor extraction equipment used for the treatment of contaminated groundwater and soil. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the District's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to BAAQMD's Rule 8–13 is entitled "Control of Volatile Organic Emissions from Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks", EPA–450/2–77–008. The CTGs applicable to BAAQMD's Rule 8–14 are entitled "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances", EPA–450/2–77–034, and "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture", EPA–450/2–77–032. The CTG applicable to BAAQMD's Rule 8–23 is entitled "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling", EPA–450/2–78–032. Rule 8–47 controls emissions from a source category for which EPA has not developed a CTG. Consequently, Rule 8–47 was evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, and other EPA policy including the EPA Region IX/CARB document entitled, *Guidance Document for Correcting VOC Rule Deficiencies*, April 1991. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8–13 includes the following significant changes from the current SIP:

- deletes exemptions for miscellaneous coatings and constrained coating lines,
- incorporates applicable coating limits from two other BAAQMD rules (Rules 8–19 and 8–31) into Rule 8–13,
- establishes VOC limits on a "solids-applied basis",
- adds and changes several definitions,
- develops a new compliance schedule,
- revises recordkeeping section to require monthly records instead of annual records,
- adds recordkeeping requirements for air pollution abatement equipment,
- includes EPA Test Methods 24 and 24A as test methods that can be used to determine compliance.

BAAQMD's submitted Rule 8–14 includes the following significant changes from the current SIP

- reduces low usage coating exemption amount to 55 gallons,
- adds a definition for key system operating parameter,
- adds recordkeeping requirements for air pollution abatement equipment,
- includes EPA suggested language referencing EPA Test Methods 25 and 25A as test methods that can be used to determine compliance.

BAAQMD's submitted Rule 8–23 includes the following significant changes from the current SIP:

- mandates that air pollution abatement equipment have an abatement device efficiency of at least 90% and meet the requirements of Regulation 2, Rule 1,
- requires persons operating air pollution abatement equipment to record key system operating parameters on a daily basis,
- includes EPA suggested language referencing EPA Test Methods 25 and 25A as test methods that can be used to determine compliance.

BAAQMD's Rule 8–47 is a new rule which was adopted to limit the VOC emissions from air stripping and soil vapor extraction equipment used for the treatment of contaminated groundwater and soil. The rule strengthens the SIP by:

- regulating a previously unregulated source,
- requiring any air stripping and soil vapor extraction operations which emit benzene, vinyl chloride, perchloroethylene, methylene chloride and/or trichloroethylene to be vented to a control device which reduces emissions to the atmosphere by at least 90% by weight,
- mandating that any air stripping and soil vapor extraction operations with a total organic compound emission greater than 15 pounds per day be vented to a control device which reduces emissions to the atmosphere by at least 90% by weight,
- requiring sources to apply for permits and/or to provide written notification of intention to operate and to maintain records of water analysis and vapor monitoring results,
- providing test methods for air stripper water samples, organic compound concentration in the water, and the determination of emissions.
- exempting small operations, air stripping and soil vapor extraction operations with total emissions of less than one pound per day, sewage treatment facilities, and industrial wastewater treatment facilities.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Rule 8–13, Light and Medium Duty Motor Vehicle Assembly Plants, Rule 8–14, Surface Coating of Large Appliances and Metal Furniture, Rule 8–23, Coating of Flat Wood Paneling and Wood Flat Stock, and Rule 8–47, Air Stripping and Soil Vapor Extraction Operations, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The San Francisco Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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Dated: February 1, 1995.

John Wise,

Acting Regional Administrator

[FR Doc. 95–3376 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–139–1–6667b; FRL–5141–1]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Revision to New Source Review, Construction and Operating Permit Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the purpose of bringing the State's new source review (NSR) regulations into compliance with the 1990 amendments to the Clean Air Act (CAA) and the Federal regulations. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 13, 1995.

ADDRESSES: Written comments should be addressed to: Ms. Karen Borel, at the Regional Office Address listed.

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Division of Air Pollution Control, 701 Broadway, Customs House 4th floor, Nashville, Tennessee 37247–1531.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext 4197. Reference file TN–139–1–6667b.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 95–3333 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5152–2]

National Oil and Hazardous Substance Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Wilson Concepts Site from the National Priorities List (NPL); request for comments.

SUMMARY: EPA, Region IV, announces its intent to delete the Wilson Concepts Superfund Site (Site) in Pompano Beach, Broward County, Florida, from the NPL and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida (State) have determined that all appropriate response actions under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that the remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments on the proposed deletion from the NPL should be submitted no later than March 13, 1995.

ADDRESSES: Comments may be mailed to Olga Perry, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.

Comprehensive information on this Site is available through the EPA Region IV public docket, which is located at EPA's Region IV office and is available for viewing by appointment from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region IV docket office.

The address for the regional docket office is Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone No.: (404) 347–5059, ext. 6217.

Background information from the regional public docket is also available for viewing at the Site information repository located at the Broward County Main Library, Government Documents, 100 South Andrews Avenue NE., Fort Lauderdale, Florida 33301.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Perry, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–2643, ext. 6249.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA, Region IV, announces its intent to delete the Site from the NPL, which constitutes Appendix B of the NCP, and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments concerning this Site until March 13, 1995.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

EPA Region IV will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA, Region IV, has recommended deletion and has prepared the relevant documents. (2) The State has concurred with deletion decision. (3) Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state, and local officials, and other interested parties. (4) The Region has made all relevant documents available in the Regional Office and local site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist Agency management. As mentioned in Section II of this document, 40 CFR 300.425(e)(3) provides that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs when the EPA Regional Administrator publishes a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the intent to delete this Site from the NPL.

The Wilson Concepts Site occupies approximately two acres in a highly industrialized section of northeastern Broward County, Pompano Beach, Florida. Associated operations at the facility included precision machining, drilling, and milling of metal parts, vibratory deburring, degreasing, steam cleaning, and spray coating of parts. A variety of chemicals were used, including organic solvents, chlorinated solvents, petroleum products, paints, cyanides, acids, and bases.

From 1976 through 1989, several inspections were conducted by Broward County Environmental Quality Control Board (BCEQCB) which documented poor waste handling practices, including discharge of industrial wastes onto the ground. Raw materials usage at the Site was documented on two occasions over a period of 10 years. In the early 1980's, possibly as early as 1981, Wilson Concepts submitted a hazardous materials inventory list to the BCEQCB. The chemicals used at the Site included a variety of hydraulic and lubricating oils, metal protection agents, water coolants, methylene chloride, methyl ethyl ketone, and chemical cleaners (possibly corrosives). In August 1985, EPA conducted a Preliminary Assessment of the Site and in July 1986 requested its contractor, NUS, to perform a Sampling Investigation. The results of this sampling caused the Site to be proposed for the NPL in July 1988. In March 1989, the Wilson Concepts Site, of Florida, was formally included on the NPL.

The Remedial Investigation (RI) was conducted in two phases, phase I in 1990 and phase II in 1991. The groundwater contaminant levels detected at the Site during the RI were much lower than those detected during the Site Listing Investigation (SLI). Most of the contamination consisted of organic compounds which easily evaporate and/or naturally degrade. Trichloroethylene was detected in two monitoring wells during the first sampling event but was not detected above groundwater standards in phase II, indicating that no distinct groundwater contaminant plume existed. Chromium and strontium along with low levels of orgainics including toluene were detected in Site soils. Chromium was observed in two locations in subsurface soils at elevated levels. Though similar organic contaminants were detected during the RI, the concentrations were much lower than previously detected and were within the range considered by EPA to be safe for human exposure. It is possible that the organic contamination was reduced by natural attenuation.

The Record of Decision (ROD), issued by EPA, Region IV, on September 22, 1992 selected alternatives consistent with the recommendation in the Feasibility Study. The remedy is a "No Action" remedy which included monitoring of on-site ground water, quarterly, for a one-year period to confirm the appropriateness of the no action remedy.

The EPA community relations activities at the Site included a public meeting in July 28, 1992 to present to the public the Agency's Proposed Plan for Remediation at the Site. Public comments received during a 30-day comment period were received and addressed in the Responsiveness Summary. The major concerns included the Site's affect on local wells and water bodies, residual dangers from the Site, what has happened to the contaminant concentrations that allowed the Site to be placed on the National Priorities List, how the monitoring will be conducted and what will happen when the monitoring is completed. The Responsiveness Summary was included as an appendix to the ROD.

A Post ROD Project Operations Plan for the Site was completed on May 25, 1993. Field work for Post ROD ground water monitoring begin on June 21, 1993, and was completed on July 18, 1994. Post ROD ground water monitoring confirmed that Site related contaminants had declined in concentration and are below maximum contaminant levels (MCLs). Sporadic detections of iron, manganese and aluminum do not appear site related During the Remedial Investigation drums were left on the Site. Those drums since have been sampled. No contaminants of concern were detected in either the drummed soil or aqueous samples. The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the Site in May, 1990. ATSDR reviewed the surface water and ground water data and recommended that the Site should not be considered for follow-up health studies due to no present exposure to population.

No institutional controls are necessary for the Site. A five-year ground water review will not be conducted because contaminants of concerns have achieved levels below MCLs, which was verified

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through Post ROD monitoring. These levels indicated that no future threats to the public health or environment exist. EPA and the State find that the remedy continues to provide adequate protection of human health and the environment. Therefore, EPA proposes to delete the Site from the NPL.

EPA, with concurrence of the State of Florida, has determined that all appropriate Fund-financed responses under CERCLA at the Wilson Concepts Site have been completed, and that no further cleanup by responsible parties is appropriate.

Dated: February 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

[FR Doc. 95-3291 Filed 2-9-95; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650 and 651

[I.D. 020395B]

New England Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meetings and hearings.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting and hearing to consider actions affecting the New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings are scheduled as follows:

1. February 15, 1995, 10 a.m.
2. February 16, 1995, 8:30 a.m.

ADDRESSES: The meetings will be held at King's Grant Inn, Route 128 and Trask Lane, Danvers, MA 01923; telephone: 508-774-6800.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, telephone: 617-231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, February 15, 1995

The meeting will begin with a report on the 19th Northeast Regional Stock Assessment Workshop. Information concerning Gulf of Maine cod and Gulf of Maine/Georges Bank white hake will be presented. Following the stock assessment report, the Council's Northeast Multispecies Groundfish Committee (Groundfish Committee) will present an update on the development of Framework Adjustment 9 to the Fishery Management Plan (FMP) for the Northeast Multispecies Fishery that would permanently extend the groundfish emergency rule and its amendment, which are currently in effect, with some modifications (see below).

As part of Amendment 7 to the FMP for the Northeast Multispecies Fishery, the Council will discuss the recommendations of the Groundfish Committee to protect overfished groundfish stocks. These may include time/area closures, catch quotas, the impacts of fishing effort displacement, Canadian harvest of transboundary stocks, and other measures. The discussion of Amendment 7 may continue through the afternoon.

If time is available during the afternoon reports will be given by the Council Chairman; Council Executive Director; Director, Northeast Region, NMFS (Regional Director); Northeast Fisheries Science Center Liaison; Mid-Atlantic Fishery Management Council Liaison; and a representative from the U.S. Coast Guard.

Any remaining reports will be covered on Thursday, February 16, 1995, in the morning.

Thursday, February 16, 1995

The Lobster Committee will present recommendations on the management strategies drafted by its Effort Management Teams for inclusion in Amendment 6 to the FMP for the American Lobster Fishery. The Lobster Committee will also initiate action on a framework adjustment to address criteria for limited access permits (see below).

The Sea Scallop Committee will finalize a framework adjustment to the FMP for the Atlantic Sea Scallop Fishery in which the Council proposes to allow only limited use of nets to harvest sea scallops and to restrict the size of twine tops used in sea scallop dredges. Any other relevant business will be addressed at the end of the discussion on the framework adjustment for sea scallops.

Abbreviated Rulemaking Action—Northeast Multispecies

The Council will consider final action on Framework Adjustment 9 to the FMP for the Northeast Multispecies Fishery under the framework procedure for abbreviated rulemaking contained in 50 CFR 651.40. At its December 7 and 8, 1994, meetings, the Council announced that it would initiate a framework adjustment that would permanently implement the emergency interim rule and the amendment to the emergency interim rule now in place for 3 months, with some modifications. These emergency actions close areas of Georges Bank and southern New England to all fishing and scalloping, with some stated exceptions, prohibit the possession of regulated multispecies finfish, and limit the possession of certain other species when using small-mesh nets. The public is invited to comment. If the Regional Director concurs with the Council's recommendations on Framework Adjustment 9, he could publish them as a proposed or a final rule in the **Federal Register**.

Abbreviated Rulemaking Action—Atlantic Sea Scallops

The Council will consider final action on an adjustment to the FMP for the Atlantic Sea Scallop fishery under the framework procedure for abbreviated rulemaking contained in 50 CFR 650.40. The Council proposes to allow only limited use of nets to harvest sea scallops and to restrict the size of twine tops used in sea scallop dredges. There will be final decisions on the issues of continued fishing during the permit appeals process, the use of nets while fishermen are not in the days-at-sea program, and final specification of the twine top restriction. This framework was reviewed at the December 7 and 8, 1994, and January 11 and 12, 1995, Council meetings, but comments from the public will again be accepted on February 16, 1995. If the Regional Director concurs with the Council's recommendations on this framework adjustment, he could publish them as a proposed or a final rule in the **Federal Register**.

Abbreviated Rulemaking Action—American Lobster

The Council will consider initial action on an adjustment to the American Lobster FMP under the framework procedure for abbreviated rulemaking contained in 50 CFR 649.43. At its January 11 and 12, 1995, meeting, the Council announced that it would initiate a framework adjustment that would modify eligibility criteria for lobster limited access permits to address the following circumstances: (1) The eligibility of fishermen who fished for lobsters in the EEZ prior to the January 9, 1991, control date, but who did not have a Federal lobster permit; (2) permit holders who leased their federally endorsed lobster permits to another person; (3) a captain with a federally endorsed lobster permit who operated a vessel for an individual who did not have a permit; (4) transfers of federally endorsed state lobster permits that occurred some time between the control date and the implementation date of Amendment 5 to the FMP for the American lobster fishery; (5) holders of federally endorsed lobster permit who fished on the same vessel together; and (6) a person who inherits a vessel once owned by an individual with a federally endorsed permit. Final action is expected at the March 29 and 30, 1995, Council meeting. The public will be encouraged to attend these meetings and provide comments or submit them in writing. If the Regional Director concurs with Council's recommendations on this framework adjustment, he could publish them as a proposed or a final rule in the **Federal Register**.

Special Accommodations

The meetings on February 15-16, 1995, are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall at 617-231-0422, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 6, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-3416 Filed 2-7-95; 4:29 pm]

BILLING CODE 3510-22-F

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[FR Doc. 95-3291 Filed 2-9-95; 8:45 am]

BILLING CODE 6560-60-P

DEPARTMENT OF COMMERCE

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50 CFR Parts 649, 650 and 651

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Dated: February 6, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95-3416 Filed 2-7-95; 4:29 pm]

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Notices

Federal Register
Vol. 60, No. 28
Friday, February 10, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cedar Gulch Timber Sale, Kootenai National Forest; Sanders County; Montana

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement (original notice of intent published 3/25/94, 59 FR 14134).

SUMMARY: Due to personnel changes, the DEIS for the Cedar Gulch Timber Sale is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by June 15, 1995 instead of the September 1994 date published in the original Notice of Intent. Accordingly, the FEIS is re-scheduled for completion by September 30, 1995. All other information provided at 59 FR 14134 is still accurate. Additional comments on the project should be received within 30 days from the date this notice is published to receive timely consideration in preparation of the Draft EIS.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: James I. Mershon, District Ranger, Cabinet Ranger District, Kootenai National Forest, 2693 Highway 200, Trout Creek, MT 59874.

Dated: January 31, 1995.

James I. Mershon,

Cabinet District Ranger, Kootenai National Forest.

[FR Doc. 95-3258 Filed 2-9-95; 8:45 am]

BILLING CODE 3410-11-M

CENTRAL INTELLIGENCE AGENCY

Sources Sought for Advanced Information Technologies and New Information and Data Sources

AGENCY: Central Intelligence Agency.

ACTION: Notice of Government/Industry Conference.

SUMMARY: To expand their knowledge of vendor capabilities and to open communication about federal information management requirements, the federal, scientific and technical information community through CENDI, (the interagency group composed of Commerce, Energy, NASA, National Library of Medicine and Defense Information managers), in collaboration with Community Open Source Program Office (COSPO), among others, will sponsor a government-industry conference in May or June 1995 in the Washington, DC area. The purpose of the conference is to discuss government user needs, exchange ideas and demonstrate off-the-shelf tools, methods, technologies and information products suitable to meet these needs.

The meeting will focus on available off the shelf technologies, and information and data sources. Technologies for working with sources of information located outside the United States and in non-English languages are a particular focus for part of the federal audience at this conference. A secondary focus is mid-term technology development efforts. Products that will not be available within five years are beyond the scope of this meeting. Interested private and public sector organizations are invited to submit proposal to make a formal presentation and/or participate through exhibits or poster sessions at the conference. The event will present an opportunity to showcase developments. This is not a procurement action, nor does the U.S. Government intend to pay for the supplied information.

Offerings should be compatible with existing platforms and open systems, e.g. UNIX and DOS.

The areas of immediate interest include but are not limited to the following:

Interest Areas

Technical Infrastructure for Information Distribution

Security

* Fire-walls and secure protocols
* Assurance for simultaneous connection of a single workstation to classified and unclassified networks (R&D to permit a policy determination)
* Products that prevent data-driven attacks
* Protection for transfer of sensitive information via the Internet (e.g., credit card, limited proprietary data)
* Encryption on the Internet
* Monitoring unauthorized access attempts

Communications (Telecommunications and Networking)

* Wireless communications
* Enabling devices that operate in a carrier's geographic coverage area

—Technology to support tariffs and billing
—Capabilities beyond existing switching technology
—Technology to resolve regulatory issues

* Technology to connect wireless to terrestrial systems
* Bandwidth to transmit multimedia information
* Compression technologies for multimedia delivery
* Electronic billing via Internet
* Audiovisual (video conference) technology, including file sharing during sessions

Information Collection/Acquisition/Discovery/Retrieval

"Smart" search techniques for automation-aided information retrieval

* Gateways and directory navigation ("pull technologies") operating over a WAN

—Information locators worms, web crawlers, etc.
—Intelligence software agents (knowbots, drones, "probots" (proactive knowbots), etc.)
—Knowledge discovery to extract implicit, previously unknown, and potentially useful information from data

- Dependency detection
- Analysis of changes
- Detection of anomalies

—Data summarization
—Clustering, (i.e., grouping of related items for browsing of multimedia data, (e.g. images, video)

* Navigating and searching across distributed, multiple heterogeneous databases
* Presentation of integrated result sets of heterogeneous data types

Information Processing (Post-[Retrieval, Pre-analysis] Processing)

Conversion/Integration Technologies

* Hardcopy conversion concept of operations
* Data fusion, integration (text, data, images) and presentation
* Automatic generation of metadata (i.e., data about data) and other automation-aided indexing
* Media conversion (microfiche to electronic form, using scanning and OCR)
* Tagging (e.g., SGML) of multi-media (especially images) data
* Integration of geographic information systems (GIS) technology
* Scanning technology—OCR and other
* Multi-lingual OCR with high accuracy for poor print and copy test
* Automated correction tools for OCR errors for multiple languages

—Tools using syntax, linguistics, and grammars
—Lexicons for spell checking and keyword extraction in specialized areas of interest

Machine Translation

* Machine-aided translation
* Translation of languages (other than Russian, German, Romance)

Document management in a full-text electronic (digital library) environment, including input, storage, retrieval, and dissemination.

* "Push" technologies
* Publishing (including multi-media authoring and presentation)
* CD-ROM production (low-cost, in-house, one copy)
* Multi-format support (conversion technologies)
* Compound documents
* Client/server compatibility
* Support for object technology (including object linking and embedding capabilities)
* Archiving
* Massive digital data storage (optical disk and other technology)
* Compression technologies for multimedia products
* Workflow management

Exploitation Tools for Production/Analysis/Use

Tools sets and capabilities

* Scalability (upwards in terms of volume and complexity of material) for current profiling tools, retrieval, and filtering algorithms
* Hardware for advance visualization, summarization, or input
* Intergrating visualization tools with language-based tools
* Robust speech and language understanding technology
* User-friendly/GUI interfaces and human-computer interfaces for all of the above exploitation technologies
* Natural language understanding, especially to extract names, places, and relationships
* Natural language queries in English on foreign language databases (response in English)

Sources of Information and Data

There is also interest in expanding the acquisition and utilization of open source data on foreign subjects from domestic and foreign sources. To that end, information is sought on new sources for all geographic and topical subjects. Specific areas of interest include foreign developments dealing with:

* National, bilateral, and multi-lateral economic trends and activities
* National political events and organizations
* Environmental developments and governments actions
* Scientific and technology developments and breakthroughs
* Military and security forces organizations, capabilities and locations
* National infrastructures (air, land, sea, communications)
* Industries and their products/customers
* Political, industrial, economic, social and governmental information on Africa and Latin America

Technology providers or information providers who work with technology providers are encouraged to respond to this announcement with product information.

Audience

The audience will be composed primarily of Federal Managers and major operating contractors who have information-related responsibilities and who are able to commit resources to address their information needs, and acquire appropriate solutions. They will represent components engaged in acquiring information in a multi-media environment, providing intermediary information processing services, and using the information for analysis/research, support to policy and decision makers, and operations.

If you are interested, send two abstracts of your offerings with a set of three to six key terms or phrases that categorize your presentation or exhibit subject. You should use the phrases listed above in the noted interest areas or offer additional, but relevant concepts. With the abstract sent two copies of more detailed descriptions of offerings including duplicate copies of attachment to:

MITRE Corporation, 7525 Colshire Drive, McLean, Virginia 22102, Attention: Open Source Industry Day (Mail Stop Z-160)

Your response must arrive no later than 15 March 1995.

Depending on the responses received, the length of the meeting, and the specific session structure will be determined. All respondents will be contracted as the planning of the conference proceeds.

FOR FURTHER INFORMATION CONTACT: Paul F. Wallner, Deputy Director, Community Open Source Program Office, Central Intelligence Agency, Washington, DC 20505; Telephone: (703) 281-8920.

Approved: February 6, 1995.

Frank J. Ruocco,

Deputy Director for Administration

[FR Doc. 95-3365 Filed 2-9-95; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2-95]

Proposed Foreign-Trade Zone—Sebring, Florida; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Sebring Airport Authority requesting authority to establish a general-purpose foreign-trade zone in Sebring, Florida, adjacent to the Port Manatee Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 2, 1995. The applicant is authorized to make the proposal under § 288.36, Florida Statutes Annotated (1993).

The proposed zone would be the second general-purpose zone in the Port Manatee Customs port of entry area. The existing zone is FTZ 169 in Palmetto, Florida (Grantee: Manatee County Port Authority, Board Order 492, 55 FR 50339, 12/6/90).

The proposed zone site is located at the Sebring Regional Airport complex (1,893 acres), 128 Authority Lane, Sebring. The complex includes airport facilities, an industrial park, and the Sebring International Raceway, owned by the applicant. The airport is a general-purpose regional airport and the industrial park can accommodate a variety of operations ranging from warehousing activities to heavy

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manufacturing. The Sebring International Raceway is used for automotive and automotive parts research, testing, and demonstration activities.

The application contains evidence of the need for additional zone services in the Sebring area. Several firms have indicated an interest in using zone procedures within the proposed project for warehousing/distribution of such items as automobiles and automotive parts and accessories, wood, pulp and paper products, caladium tubers, and light aircraft engine parts and accessories. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on March 8, 1995, at 9 a.m., Sebring Regional Airport, Board Room, 128 Authority Lane, Sebring, Florida.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 11, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 26, 1995).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Sebring Regional Airport, Administrative Offices, 128 Authority Lane, Sebring, Florida 33870;

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 3, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–3427 Filed 2–9–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

University of Wisconsin-Madison, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–134. *Applicant.* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Heating and Cooling Stage for Petrographic Microscope, Model THMSG 600. *Manufacturer:* Linkam Scientific Instruments Ltd., United Kingdom. *Intended Use:* See notice at 59 FR 63762, December 9, 1994.

Comments: None received. *Decision* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) operation without glass in the microscope beam path (no infrared absorption) for FTIR spectroscopy, (2) temperature range from -196°C to 600°C and (3) computer control for precise regulation of temperature and generation of video text overlay on data images. The U.S. Geological Survey advised on January 17, 1995 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 95–3435 Filed 2–9–95; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket No. 950117016–5016–01; I.D. 010995C]

RIN 0648–ZA13

Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and off the U.S. South Atlantic Coastal States; MARFIN

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed areas of program emphasis; request for comments.

SUMMARY: Funds are expected to be available for the fiscal year (FY) 1996 Marine Fisheries Initiative (MARFIN) financial assistance program to assist persons in carrying out research projects that optimize the use of the U.S. fishing industry (recreational and commercial), in the Gulf of Mexico (Gulf) and South Atlantic (North Carolina to Florida), including fishery biology, resource assessment, social-economic assessment, management and conservation, selective harvesting methods, and fish handling and processing. Emphasis is on research that will enhance social and economic benefits from living marine resources. NMFS issues this notice to solicit public comments on proposed emphasis areas for the FY 1996 financial assistance program. This is not a solicitation for proposals.

DATES: Public comment on the proposed areas of program emphasis for the FY 1996 MARFIN solicitation will be accepted until March 13, 1995.

ADDRESSES: Send comments to Ms. Ellie Roche, Competitive Programs Manager Cooperative Programs Division, Southeast Regional Office, National Marine Fisheries Service, 9721 Executive Center Drive North, St. Petersburg, FL 33702. For availability of documents referenced in this notice, contact the Southeast Regional Office

FOR FURTHER INFORMATION CONTACT: Ms Ellie Roche, 813–570–5324.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to enter into cooperative agreements for research and development addressed to all aspects of U.S. fisheries. Funding is expected to be available in FY 1996 for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf and off the South Atlantic States of North Carolina, South Carolina, Georgia and Florida. U.S. fisheries include any marine fishery that is or may be engaged in by U.S. citizens and citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. This program is described in the Catalog of Federal Domestic Assistance under program number 11.433 Marine Fisheries Initiative. (See **ADDRESSES** for document availability.)

A notice of availability of financial assistance for the FY 1996 MARFIN program is expected to be published in the **Federal Register** after public comments have been received on the proposed areas of emphasis in this notice.

II. Proposed Areas of Emphasis for the FY 1996 MARFIN Program

Research needs identified in fishery management plans (FMPs) and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included. For availability of these and other documents referenced here, see **ADDRESSES**. Proposed areas of special emphasis for FY 1996 include:

A. Bycatch.

The bycatch of biological organisms by various fishing gears can have wide-reaching impacts from a fisheries management and an ecological standpoint, with the following major concerns:

1. *Shrimp trawl bycatch.* Studies are needed to contribute to the regional shrimp trawler bycatch program (including the rock shrimp fishery) being conducted by NMFS in cooperation with state fisheries management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Regional Bycatch Plan available from NMFS. In particular, the studies should address:

a. Data collection and analyses to expand and update current bycatch estimates temporally and spatially from offshore, nearshore, and inshore waters, emphasizing areas of greatest impact by shrimping. Sampling effort should include estimates of numbers, weight and random samples of size (age) structure of associated bycatch complex with emphasis on those overfished species under the jurisdiction of the Councils.

b. Assessment of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils. Other sources of fishing and nonfishing mortality should be considered and quantified as well.

c. Identification, development, and evaluation of gear, non-gear and tactical fishing options to reduce bycatch.

d. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

e. Social and economic impacts of management options to reduce shrimp fishery bycatch.

2. *Pelagic longline fisheries.* A number of pelagic longline fisheries exist in the Gulf and South Atlantic, targeting highly migratory species such as tunas, sharks, billfish and swordfish. Priority areas include:

a. Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles, marine mammals and overfished finfish species/stocks.

b. Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

3. *Reef fish fisheries.* The reef fish complex is exploited by a variety of fishing gear and tactics. The following research on bycatch of reef fish species is needed:

a. Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

b. Characterization and assessment of the impact of longline, bandit gear and trap bycatch of undersized target species, including release mortality.

4. *Finfish trawl fisheries.* Studies are needed to quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

5. *Gillnet fisheries.* Studies are needed on quantification and qualification of the bycatch in coastal and shelf gillnet fisheries for sciaenids, scombrids, bluefish, dogfish, clupeids and sharks of the South Atlantic area (particularly interaction with sea turtles and marine mammals), and sea turtle bycatch for the coastal gillnet fishery off Louisiana.

B. Reef Fish.

Some species within the reef fish complex are showing signs of being overfished, either through directed efforts or because they are bycatch of other fisheries. The ecology of reef fish makes them vulnerable to overfishing, because they tend to concentrate over specific types of habitat with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

1. Collection of basic biological data for species in commercially and recreationally important fisheries.

a. Age and growth of reef fish.

(1) Description of age and growth patterns, especially for red, vermilion, gray, and cubera snappers; gray triggerfish; gag; black grouper; spottail pinfish; hogfish; red porgy and other less dominant forms in the management units for which data are lacking.

(2) Contributions to the development of annual age-length keys and description of age structures for exploited populations for all species in the complex addressed in the Reef Fish Management Plans for the Gulf and South Atlantic, prioritized by importance in the total catch.

(3) Design of sampling systems to provide a production-style aging program for the reef fish fishery. Effective dockside sampling programs are needed over a wide geographic range, especially for groupers, to collect information on reproductive state, size, age, and sex. These research needs are discussed in the report of the workshop on grouper reproduction held in Panama City, FL, in November 1993.

b. Reproduction studies of reef fish.

(1) Maturity schedules, fecundity and sex ratios of commercially and recreationally important reef fish, especially gray triggerfish, gag, and red porgy in the Gulf and South Atlantic.

(2) Studies of all species to characterize the actual reproductive contribution of females, by age.

(3) Identification and characterization of spawning aggregations by species, area, size group and season. Information on the effects of fishing on changes of sex ratios for gag, red grouper, and scamp, and disruption of aggregations is especially needed.

(4) Investigations of the reproductive biology of gag, red grouper and other grouper species as addressed in the recommendations of the workshop on grouper reproduction held in Panama City, FL, in November 1993.

c. Recruitment of reef fish.

(1) Source of recruitment in Gulf and South Atlantic waters, especially for snappers, groupers and amberjacks.

(2) Annual estimation of the absolute or relative recruitment of juvenile gag, gray snapper and lane snapper to estuarine habitats off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight; development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

(3) Research to evaluate the contribution of live-bottom habitat and the habitat areas of particular concern (*Oculina* banks) off Fort Pierce, FL, to reef fish recruitment.

d. Stock structure of reef fish.

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(1) Movement and migration patterns of commercially and recreationally valuable reef fish species, especially gag in the Gulf and South Atlantic and greater amberjack between the South Atlantic and Gulf.

(2) Biochemical/immunological techniques to allow field separation of lesser amberjack, almaco jack, and banded rudderfish from greater amberjack to facilitate accurate reporting of catch.

(3) Stock structure for wreckfish in the South Atlantic, and for greater amberjack in the Gulf and South Atlantic.

2. Population assessment of reef fish.

a. Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

b. Source and quantification of natural and human-induced mortalities, including release mortality estimates for charter, headboat and private recreational vessels, especially for red snapper and the grouper complex.

c. Determination of the habitat and limiting factors for important reef fish resources in the Gulf and South Atlantic.

d. Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

e. Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf, especially red grouper, jewfish and Nassau grouper.

f. Assessment of tag performance on reef fish species, primarily snappers and groupers. Characteristics examined should include shedding rate, effects on growth and survival, and ultimately, the effects of these characteristics on estimations of vital population parameters.

g. Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

h. Fishery-independent assessments of spawning aggregations of gag, scamp, yellowedge and other groupers, using hydroacoustic and underwater video technology.

i. Assessment of Florida Bay recovery actions on reef fish recruitment and survival.

3. Management of reef fish.

a. Research in direct support of management, including catch-and-release mortalities, by gear and depth.

b. Evaluation of the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic. Field studies should focus on the Experimental Oculina Reef Reserve and Florida Keys National Marine Sanctuary sites and contrast these with control open sites.

c. Characterization and evaluation of the biological, economic, and social impacts.

d. Evaluation of vessel logs and log data for monitoring the fishery; for providing biological, economic, and social information for management; and matching log data to Trip Information Program samples for indices of effort.

C. Sharks.

The Secretarial fishery management plan (FMP) for sharks identifies a number of research needs, including:

1. Characterization of the commercial and recreational fisheries from historical and current databases. Emphasis should be on species composition, bycatch, stock identification, size, sex ratios and catch-per-unit-effort by season, area, and gear type.

2. Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age structure and reproduction parameters. These data are of particular importance for blacktip and sandbar sharks.

3. Determination of baseline cost and returns for commercial fisheries that land sharks, and estimations of demand curves for shark products and recreational shark fisheries.

4. Development of species profiles and stock assessments for sharks taken in significant quantities by commercial, recreational, and bycatch fisheries. Assessments can be species-specific or for species groups, following those identified in the Atlantic Sharks FMP.

5. Identification of coastal sharks using laboratory methodologies.

6. Identification of nursery area and methods to protect young sharks.

7. Evaluation of present regulations and improvement of methods to determine landings.

D. Coastal Migratory Pelagic Fisheries.

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species, including some stocks of king and Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and may ultimately demand international management attention. Current high priorities include:

1. Recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources.

2. Assessment and management models for coastal pelagic resources that are dominated by single year classes, such as Spanish mackerel, dolphin, and bluefish.

3. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel.

4. Release mortality data for all coastal pelagic species.

5. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length-frequency and life history information.

6. Information on populations of coastal pelagics overwintering off Gulf of Mexico and the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida, especially concerning population size, age and movement patterns.

7. Development of a practical method for aging dolphin.

8. Basic biostatistics for cobia and dolphin to develop age-length keys and maturation schedules for stock assessments.

9. Impact of bag limits on total catch and landings of king and Spanish mackerel.

10. Demand and supply functions for recreational and commercial king mackerel fisheries. Emphasis should be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required.

11. Determination of the stock structure of king mackerel from South Atlantic and Gulf waters.

12. Sociological and anthropological surveys of coastal pelagic fisheries.

13. Economic surveys of coastal pelagic fisheries.

E. Highly Migratory Pelagic Species.

A number of pelagic fisheries exist in the Gulf and South Atlantic that target highly migratory species such as tunas, sharks, and swordfish. Changes in the temporal and spatial components of fishing effort, and fishing gear and tactics need to be characterized and the effects quantified. Priority areas include:

1. Characterization of specific longline fisheries, including targeted species, stock identification, catch-per-unit- effort, and biological parameters (e.g., sex ratios and reproductive state) by gear type, area and season.

2. Evaluation of vessel log data for monitoring the fisheries.

3. Dependence of vessels and persons engaged in pelagic longlining on other fisheries. Particular emphasis should be placed on the extent to which the capital and/or labor engages in other fisheries at particular times of the year and reasons for this switching behavior.

F. Groundfish and Estuarine Fishes.

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and life history is needed. General research needs are:

1. Red drum.

a. Size and age-structure of the offshore adult stock in the Gulf.

b. Life history parameters and stock structure for the Gulf and the South Atlantic. Research should include determination of migratory patterns, long-term changes in abundance, growth rates and age structure. Specific research needs for Atlantic red drum are fecundity estimates, as a function of length and weight, and improved coastwide coverage for age-length keys.

c. Catch-and-release mortality rates from inshore and nearshore waters.

2. Life history and stock structure for weakfish, menhaden, spot and croaker in the Gulf and the South Atlantic. Research should include determination of migratory patterns, long-term changes in abundance, growth rates and age structure, and comparisons of the inshore and offshore components of recreational and commercial fisheries.

3. Improved catch and effort statistics from recreational and commercial fisheries, including development of age-length keys for size and age structure of the catch, to develop production models.

G. Coastal Herrings.

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data are generated from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks; their importance as prey, and in some instances, as predator species; their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

1. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, bycatch, and environmental relationships.

2. Description and quantification of predator-prey relationships between coastal herring species and carnivores such as mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

H. Crabs and Lobsters.

1. Monitoring of fecundity and sex/size frequencies for examination of spawning potential in relation to overfishing criteria for stone crab and spiny lobster.

2. Development of recruitment, population assessment and management models for stone crab and spiny lobster.

3. Determination of the relationship between the reproductive cycle characteristics of spiny lobster in Florida and those in the Gulf.

4. Re-evaluation of spiny lobster short mortality to determine changes since effort restrictions were implemented.

5. Estimation of stone crab regenerated claw production versus new recruits to the fishery from landings observations.

6. Evaluation of spiny lobster catches from North Carolina, South Carolina, and Georgia.

I. Sea Turtle Conservation.

The conservation of endangered and threatened sea turtles in the Southeast Region requires further investigation into life history parameters and ecological requirements. The interaction of sea turtles, fishing gear (excluder devices) and inshore/offshore fisheries also needs further refinement.

J. General.

There are many other areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and better conservation. Examples of high-priority research needs include:

1. Assessment of the changes in recreational and commercial values that have resulted from past management practices for red drum, shrimp, mackerel, and reef fish.

2. Development of improved methods and procedures for transferring technology and educating of constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

3. Compilation of baseline socio-demographic data for describing the social and cultural framework of managed fisheries.

4. Design and evaluation of innovative approaches to fishery management with special attention given to those approaches that control access to specific fisheries.

Authority: 15 U.S.C. 713C–3(d)

Dated: February 2, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–3331 Filed 2–9–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 16, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 65026) of proposed addition to the Procurement List. Comments were received from the current contractor for this service in response to a request for sales data. The contractor indicated that addition of the service to the Procurement List would have a severe financial impact on the company and would cause the displacement of several workers.

The Committee has been informed that if the Committee did not add this service to the Procurement List, the Government contracting activity intended to set it aside for performance by a small disadvantaged business under the Small Business Administration's 8(a) program. The

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current contractor is not eligible to participate in that program. Consequently, any impact on the contractor would occur whether or not the service was added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial
U.S. Coast Guard Air Station
Cape Cod
Otis ANGB, Massachusetts

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–3419 Filed 2–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Side Rack, Vehicle
2510–00–179–7093
NPA: Tuscola County Community Mental Health Services Caro, Michigan

Corrosion Preventive Compound
8030–00–262–7358
8030–00–260–1053
NPA: Lighthouse for the Blind, St. Louis, Missouri at its facility in Berkeley, MO

Services

Commissary Shelf Stocking, Custodial and Warehousing
Naval Station Everett
Smoky Point Commissary
Marysville, Washington
NPA: Custom Industries, Bellevue, Washington

Grounds Maintenance
Woodford U.S. Army Reserve Center
1635 Armor Road
Akron, Ohio
NPA: Weaver Industries, Inc., Akron, Ohio

Grounds Maintenance
Schaffner U.S. Army Reserve Center
1011 Gorge Boulevard
Akron, Ohio
NPA: Weaver Industries, Inc., Akron, Ohio

Grounds Maintenance
Scouten U.S. Army Reserve Center
271 Hedges Street
Mansfield, Ohio
NPA: Richland County Board of Mentral Retardation and Developmental Disabilities, Mansfield, Ohio

Grounds Maintenance
Pennington Memorial U.S. Army Reserve Center
2164 Harding Higway East
Marion, Ohio
NPA: MARCA Industries, Inc., Marion, Ohio

Janitorial/Custodial
National Weather Service Office
520 N. Elevar Street
Oxnard, California
NPA: Association for Retarded Citizens—Ventura County, Inc., Camarillo, California

Janitorial/Custodial
Eisenhower Hall
Fort Leavenworth, Kansas
NPA: The Helping Hand of Goodwill Industries Extended Employment Sheltered Workshop, Inc., Kansas City, Missouri

Janitorial/Custodial
Buildings 844, 850, 862, 863, 867, 868 & 869
Fort Campbell, Kentucky
NPA: Progressive Directions, Inc., Clarksville, Tennessee

Janitorial/Custodial
Buildings 595 and 472
Kirtland Air Force Base, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico

Janitorial/Custodial

Schaffner U.S. Army Reserve Center
1011 Gorge Boulevard
Akron, Ohio
NPA: Weaver Industries, Inc., Akron, Ohio

Janitorial/Custodial
Woodford U.S. Army Reserve Center
1635 Armor Road
Akron, Ohio
NPA: Weaver Industries, Inc., Akron, Ohio

Janitorial/Custodial
AMSA #3 U.S. Army Reserve Center
6830 Erie Avenue
Canal Fulton, Ohio
NPA: The Sheltered Workshop Foundation of Stark County, Canton, Ohio

Janitorial/Custodial
Hastings U.S. Army Reserve Center
3120 Parkway Drive N.W.
Canton, Ohio
NPA: The Sheltered Workshop Foundation of Stark County, Canton, Ohio

Janitorial/Custodial
Jacob Parrott U.S. Army Reserve Center
1025 S. Main Street
Kenton, Ohio
NPA: Harco Industries, Inc., Kenton, Ohio

Janitorial/Custodial
Scouten U.S. Army Reserve Center
271 Hedges Street
Mansfield, Ohio
NPA: Richland County Board of Mental Retardation and Developmental Disabilities, Mansfield, Ohio

Janitorial/Custodial
Pennington Memorial U.S. Army Reserve Center
2164 Harding Highway East
Marion, Ohio
NPA: MARCA Industries, Inc., Marion, Ohio

Operation of Administrative Support Office
U.S. Department of Energy
Idaho Falls, Idaho
NPA: Development Workshop, Inc., Idaho Falls, Idaho

Recycling Service
Basewide
Kelly Air Force Base, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–3420 Filed 2–9–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: March 13, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 15, August 19, 26, October 21, November 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 36168, 42822, 44133, 53141 and 59758) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Shelter, Complete
8340–00–NSH–0002 (Rainfly-Olive Drab)
8340–00–NSH–0003 (Rainfly-Tan)
8340–00–NSH–0005 (Spare Parts Kit)
(Requirements of the U.S. Marine Corps, Quantico, Virginia)

Tea Mix, Instant
8955–00–823–7016

Service

Grounds Maintenance
Vandenberg Air Force Base, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Pallet, Wood
3990–00–NSH–0069

Test Set, Lead
6625–00–553–1442

Services

Cardboard and Paper Scrap Recovery
New Cumberland Army Depot, Pennsylvania

Commissary Shelf Stocking and Custodial
Lowry Air Force Base, Colorado

Janitorial/Custodial
Defense Logistics Agency
Defense National Stockpile Zone
HMW-New Haven Depot
State Route 14, 3 Miles East of New Haven
New Haven, Indiana

Janitorial/Custodial
U.S. Army Reserve Center
200 Baker Road
Pittsfield, Massachusetts

Janitorial/Custodial
U.S. Army Reserve Center
Anderson, South Carolina

Janitorial/Custodial
Federal Building
130 East Main Street
Carthage, Tennessee

Janitorial/Custodial
Federal Building

118 East Locust Street
Lafayette, Tennessee
Janitorial/Custodial
Social Security Administration Building
1891 South 3rd Street
Memphis, Tennessee
Janitorial/Custodial
U.S. Army Reserve Center
2501 Fraiser
Conroe, Texas
Microfilm Reproduction
Mare Island Naval Shipyard
Vallejo, California
Repacking
Mare Island Naval Shipyard
Vallejo, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 95-3418 Filed 2-9-95; 8:45 am]

BILLING CODE 6820-33-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0014]

Clearance Request for Statement and Acknowledgment (Standard Form 1413)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0014).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Statement and Acknowledgment (Standard Form 1413).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgment, will be used by all Executive Agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgment of the inclusion of those clauses in the subcontract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.15* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *2,000*; responses per respondent, *1.5*; total annual responses, *3,000*; preparation hours per response, *.15*; and total response burden hours, *450*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0014, Statement and Acknowledgment, Standard Form 1413, in all correspondence.

Dated: February 6, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95-3393 Filed 2-9-95; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0094]

Clearance Request for Debarment and Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0094).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Debarment and Suspension.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification would require the disclosure of this information.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per subcontractor and 5 minutes per prime contractor per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

The annual reporting burden is estimated as follows: Respondents, *1,244,301*; responses per respondent, *1*; total annual responses, *1,244,301*; preparation hours per response, *30 min. sub., 5 min. prime*; and total response burden hours, *103,942*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0094, Debarment and Suspension, in all correspondence.

Dated: February 6, 199.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95-3394 Filed 2-9-95; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on March 16-17, 1995, at the Science Applications International Corporation (SAIC), San Diego, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will receive classified briefings on the capability of the DoD to maintain nuclear readiness, the status of the Stockpile Stewardship program and conduct an independent review of the role of the Nevada Test Site (NTS) in supporting Defense programs.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. section 552b (c)(1) and accordingly this meeting will be closed to the public.

Dated: February 6, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3312 Filed 2-9-95; 8:45 am]

BILLING CODE 5000-04-M

Department of the Army

Notice of Availability of the Final Environment Impact Statement for Disposal and Reuse of Fort Benjamin Harrison, Indiana

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 and the President's Council on Environmental Quality, the Army has prepared a Final Environmental Impact Statement (FEIS) for disposal of lands that will become surplus at Fort Benjamin Harrison, Indiana. The Primary Army action analyzed in the FEIS is the disposal of 2,357 acres of surplus property at Fort Benjamin Harrison (FBH). In addition, the FEIS analyzes impacts associated with potential reuse activities as a secondary action to be accomplished by other (non-Army) entities.

The Army disposal action is evaluated in the context of three alternatives: (1) the No Action Alternative (NAA) which analyzes the effects of maintaining the installation in caretaker status after closure; (2) the Encumbered Disposal (ED) Alternative which analyzes the effects of the Army disposing property with certain reuse constraints (encumbrances) on future owners as a condition of disposal and reuse; and (3) the Unencumbered Disposal (UD) Alternative which analyzes the effects of removing existing constraints to allow property disposal with less or no Army-imposed restrictions to future use. The EIS identifies the Encumbered Disposal Alternative as the preferred Army action. No significant adverse impacts are anticipated as a result of this Army action.

The Army does not have a preference regarding the reuse of FBH excess lands, nor does it have the ability to maintain direct control of the ultimate use of any property disposed. Therefore, surplus property reuse is analyzed as a secondary, non-Army action resulting from property disposal. The EIS evaluates three reuse alternatives that represent a range of reuse actions that could occur at FBH. The EIS identifies the type and relative magnitude of impacts that are expected to occur under each of the intensity-based reuse alternatives. In addition, the Fort Harrison Transition Task Force (FHTTF) submitted a Preliminary Community Concept Plan (PCCP) for reuse to the Army as part of their comments on the Draft EIS. A copy of the PCCP Executive Summary has been included as Appendix F of the FEIS; and an analysis of the impacts associated with the PCCP has been included as Appendix G. The FHTTF final reuse plan is not expected to change significantly from the PCCP.

DATES: The FEIS on the disposal and reuse of Fort Benjamin Harrison was distributed to interested agencies and the public prior to or simultaneously with filing of this Notice of Availability for the FEIS with the U.S. Environmental Protection Agency. Following a 30 day post-filing waiting period, the Department of the Army will prepare a Record of Decision which will become part of the environmental documentation presented for the final decision.

ADDRESSES: Questions regarding the FEIS, or a request for copies of the document may be directed to Mr. William Ray Haynes, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201-0059, or call (502) 582-6475.

Dated: January 26, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95-2940 Filed 2-9-95; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Recognition of an Accrediting Agency

AGENCY: Department of Education.

ACTION: Request for Comments on an Agency applying to the Secretary for a Change in the Agency's Requested Scope of Recognition. The Agency has also undergone a name change.

DATES: Commentors should submit their written comments by March 27, 1995 to the address below.

FOR FURTHER INFORMATION CONTACT: Carl S. Person, Chief, Accrediting Agency Evaluation Branch, U.S. Department of Education, 600 Independence Avenue SW., Room 3036 ROB-3, Washington, DC 20202-5171, telephone: (202) 708-7417.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agency listed in this notice which has applied for continued recognition.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet May 24-26, 1995 in Washington, DC. All written comments received regarding the agency listed in this Notice will be considered by both the Advisory Committee and the Secretary.

The following agency will be reviewed during the May 1995 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Request to Expand the Agency's Current Scope of Recognition

1. Commission on Occupational Education Institutions of the Council on Occupational Education [formerly the Southern Association of Colleges and Schools, Commission on Occupational

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Education Institutions] (requested scope of recognition: for recognition with a national scope, instead of regional, for the accreditation and preaccreditation ("Candidate for Accreditation") of postsecondary, pre-baccalaureate, (degree granting and non degree-granting), vocational education institutions).

An earlier request for comments regarding this agency was published in the **Federal Register** on Thursday, December 22, 1994 Vol. 59, No. 245, pp. 66009–66011. The December **Federal Register** Notice, however, listed the agency under its former name and did not include the agency's request for expansion of scope of recognition.

Public Inspection of Petitions and Third-Party Comments

Third-party comments received in advance of the meeting will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3036, 7th and D Streets SW., Washington, DC 20202–5171, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–3343 Filed 2–9–95; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This meeting will be closed to the public.

DATES AND TIME: February 23–24, 1995 from 9:00 a.m. to 5:00 p.m. daily.

ADDRESSES: The meeting will be held at the Quality Inn Capitol Hill, 415 New Jersey Avenue NW, Washington, DC; (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: John W. Cheek, Acting Director, National Advisory Council on Indian Education, 330 C Street, SW, Room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Title V, Part C, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to Federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342 of the Indian Education Act of 1988, the Council is directed to make recommendations to the Secretary of Education for filling the position of Director, Office of Indian Education, whenever a vacancy occurs. The purpose of the meeting will be to interview candidates for the position.

Subsequently, the Council will submit recommendations to the Secretary of Education for filling such vacancy. Interviews with the candidates and discussions held in conjunction with the selection process will involve matters which relate solely to the internal personnel rules and practices of an agency and are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

The public is being given less than 15 days notice due to problems in scheduling this meeting.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Indian Education, located at 330 C Street SW, Room 4072, Washington, DC 20202–7556 from the hours of 9:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. A summary of activities of this closed meeting which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available for public inspection within 14 days of the meeting.

Dated: February 7, 1995.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 95–3508 Filed 2–9–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–28–000 et al.]

Dominion Energy Services Co. Inc., et al.; Electric Rate and Corporate Regulation Filings

February 3, 1995.

Take notice that the following filings have been made with the Commission:

1. Dominion Energy Services Company, Inc.

[Docket No. EG95–28–000]

On January 30, 1995, Dominion Energy Services Company, Inc. (DESCO), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

DESCO, a Virginia corporation, is a wholly-owned subsidiary of Dominion Energy, Inc., which is a wholly-owned subsidiary of Dominion Resources, Inc.

DESCO will operate a hydroelectric generating station consisting of three 8.4 MW turbogenerators and a concrete diversion structure (the "Facility"). The Facility is located on the Macal River in Cayo District, Belize, Central America.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. EDC Power Marketing, Inc.

[Docket No. ER94–1538–001]

Take notice that on January 17, 1995, EDC Power Marketing, Inc. tendered its quarterly informational filing pursuant to the above-captioned docket.

3. Dayton Power and Light Company

[Docket No. ER95–83–000]

Take notice that on January 27, 1995, Dayton Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER95–251–000]

Take notice that on January 17, 1995, Wisconsin Electric Power Company tendered filing an amendment in the above-referenced docket:

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER95–491–000]

Take notice that on January 31, 1995, New England Power Company (NEP), in accordance with the Commission's Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates (Docket No. PL95–1–000), tendered for filing amendments to its coordination transaction rate schedules and tariffs which permit the recovery of incremental or out-of-pocket costs. According to NEP, its filing complies in all respects with the Commission's guidelines for abbreviated filings pursuant to the Policy Statement and Interim Rule. NEP has certified that it has served notice of its filing on all parties affected thereby.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER95–492–000]

Take notice that on January 30, 1995, Southern California Edison Company (Edison) tendered for filing the following Interruptible Transmission Service Agreement (Agreement) with Rainbow Energy Marketing Corporation (Rainbow) as an initial rate schedule:

Edison-Rainbow Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company And Rainbow Energy Marketing Corporation

This Agreement sets forth the terms and conditions under which Edison shall provide Rainbow with interruptible transmission service between various points of delivery and receipt for the delivery of power to various wholesale customers of Rainbow.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER95–493–000]

Take notice that on January 30, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Dairyland Power Cooperative under MGE's Power Sales Tariff. MGE requests an effective date of February 1, 1995.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Indianapolis Power & Light Co.

[Docket No. ER95–495–000]

Take notice that on January 30, 1995, Indianapolis Power & Light Company (IPL), tendered for filing amendments to existing Interconnection Agreements providing for cost recovery of SO_2 emissions allowances in energy sales. These amendments are limited to coordination sales tariffs contained in the agreements.

Copies of this filing were sent to Indiana Michigan Power Company, PSI Energy, Inc., Southern Indiana Gas & Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Indiana Municipal Power Agency, and the Indiana Utility Regulatory Commission.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Appalachian Power Co.

[Docket No. ER95–496–000]

Take notice that on January 30, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing on behalf of Appalachian Power Company (APCO): (1) a transmission service agreement (TSA), dated January 1, 1995, and (2) an amendment to an electric service agreement (ESA) between APCO and the City of Danville, Virginia (Danville), previously designated as APCO Rate Schedule FERC No. 124. The TSA provides for transmission service to be made available to Danville pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. The ESA accommodates the power and energy to be transmitted pursuant to the TSA. An effective date of January 1, 1995, was requested for both agreements.

A copy of the filing was served upon the Danville and Virginia State Corporation Commission.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corp.

[Docket No. ER95–497–000]

Take notice that on January 30, 1995, the American Electric Power Service Corporation (AEPSC), tendered for filing, a Rate Schedule Supplement, for the AEP System Operating Companies which unilaterally amends: 1) 26 interconnection agreements between the AEP Companies and their interconnected neighboring utilities, 2) eight agreements pursuant to which the AEP Companies provide short term transmission service to power marketers, and 3) one network transmission and interchange agreement with an interconnected public power authority.

The Rate Schedule Supplement details the AEP companies' method for recovery of emission allowance costs in coordination power sales. AEPSC requests an effective date of January 1, 1995.

A copy of the filing was served upon the affected companies listed in Exhibit I of the filing and the state regulatory commissions of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. The Toledo Edison Co.

[Docket No. ER95–498–000]

Take notice that on January 30, 1995, The Toledo Edison Company (Toledo), tendered for filing an amendment to the coordinated sales agreements between Toledo and Ohio Power Company, American Municipal Power-Ohio, the parties to the Operating Agreement with the Michigan Companies (namely, Consumers Power Company and Detroit Edison Company), Ohio Valley Electric Corporation, and the parties to the CAPCO Basic Operating Agreement (namely, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and The Cleveland Electric Illuminating Company).

This is an abbreviated filing limited to an amendment to a coordination rate to reflect the cost of emissions allowances incurred by Toledo in compliance with the requirements of Title IV of the Clean Air Act Amendments of 1990.

Toledo will commence recovery of emissions allowance costs in rates effective January 1, 1995 subject to refund pending the Commission's order accepting the filing.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. The Cleveland Electric Illuminating Co.

[Docket No. ER95–499–000]

Take notice that on January 30, 1995, The Cleveland Electric Illuminating Company (CEI), tendered for filing an amendment to the coordinated sales agreements between CEI and Ohio Power company, American Municipal Power-Ohio, Cleveland Public Power, Pennsylvania-New Jersey-Maryland Interconnection, the City of Painesville, and the parties to the CAPCO Basic Operating Agreement (namely, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power

Company and The Toledo Edison Company).

This is an abbreviated filing limited to an amendment to a coordination rate to reflect the cost of emissions allowances incurred by CEI in compliance with the requirements of Title IV of the Clean Air Act Amendments of 1990.

CEI will commence recovery of emissions allowance costs in rates effective January 1, 1995 subject to refund pending the Commission's order accepting the filing.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Atlantic City Electric Co.

[Docket No. ER95–500–000]

Take notice that on January 30, 1995, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Citizens Power and Light Corporation. ACE requests that the Agreement be accepted to become effective January 31, 1995. Copies of the filing were served on the New Jersey Board of Regulatory Commissioners.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (the APS Companies)

[Docket No. ER95–510–000]

Take notice that on January 31, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Standard Generation Service Rate Schedule under which the APS Companies will offer standard generation and emergency service to customers on an hourly, daily, weekly, monthly or yearly basis.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Co.

[Docket No. ER95–513–000]

Take notice that on January 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the NU System Companies), a Third Amendment to System Power Sales Agreement (Amendment) and Bozrah Light and Power Company (BL&P) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction extends the System Power Sale from February 1, 1995 through March 31, 1995.

NUSCO requests that the rate schedule become effective on February 1, 1995. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Amendment.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Service Co.

[Docket No. ER95–515–000]

Take notice that on January 31, 1995, New England Power Company (NEP), tendered for filing a notice of termination of transmission services provided under NEP's FERC Electric Tariff, Original Volume No. 3, from CPC Lowell Cogeneration Unit to Commonwealth Electric Company.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Service Co.

[Docket No. ER95–516–000]

Take notice that on January 31, 1995, New England Power Service Company, tendered for filing a revised Service Agreement between New England Power Service Company and UNITIL Power Corporation for transmission service under NEPS's FERC Electric Tariff, Original Volume No. 3.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Southwestern Public Service Co.

[Docket No. ER95–517–000]

Take notice that Southwestern Public Service Company (Southwestern), on January 31, 1995, tendered for filing the proposed amendments to its rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The proposed amendments relate to agreements between Southwestern and Cap Rock in connection with Southwestern's guarantee of certain finance arrangements obtained by Cap Rock. The agreements will be used by Cap Rock to construct additional transmission facilities on its system to increase its reliability and to facilitate purchases of full requirements power and energy from Southwestern.

The two amendments reallocate funding available to different construction segments and increases the overall guarantee of the loan.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Tucson Electric Power Co.

[Docket No. ER95–518–000]

Take notice that on January 31, 1995, Tucson Electric Power Company (Tucson), tendered for filing a Wholesale Power Supply Agreement, dated January 9, 1995 (the Agreement) between Tucson and Citizens Utilities Company (Citizens). The Agreement provides for the sale by Tucson to Citizens of firm capacity and energy in amounts not to exceed Citizens loads in a specified service area of southern Arizona. The Agreement provides for service beginning February 1, 1995 and ending on the date that Citizens places in service certain distribution facilities. Tucson requests an effective date of February 1, 1995 and therefore requests waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Co.

[Docket No. ER95–519–000]

Take notice that on January 31, 1995, Commonwealth Edison Company (ComEd), submitted addenda, dated January 31, 1995, to Com Ed's interconnection agreements with Central Illinois Light Company (CILCO), Central Illinois Public Service Company (CIPS), Illinois Power Company (IP), Indiana and Michigan Electric Company (I&M), Iowa-Illinois Gas and Electric Company (IIGE), Northern, Indiana Public Service Company (NIPSCO) and Commonwealth Edison Company of Indiana, Inc. (CECI), Wisconsin Electric Power Company (WEPCO) and Wisconsin Power and Light Company (WP&L). The addenda change ComEd's transmission adder for purchase and resale transactions to "up to" rates, the ceiling being the existing approved rate.

Edison requests an effective date of January 30, 1995 and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon CILCO, CIPS, IP, I&M, IIGE, NIPSCO and CECI, WEPCO, WP&L and the Illinois Commerce Commission.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Co.

[Docket No. ER95–520–000]

Take notice that on January 31, 1995, Commonwealth Edison Company (ComEd), submitted an abbreviated rate filing to amend ComEd's rate for coordination sales, as permitted by the Commission's "Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emission Allowances in Coordination Rates." Com Ed proposes to include the incremental cost of sulfur dioxide emission allowances in coordination rates for those rates which already provide for the recovery of other variable costs on an incremental basis.

As contemplated by the Interim Rule, ComEd requests an effective date of January 1, 1995, and accordingly, requests waiver of the Commission's notice requirements. ComEd agrees that revenues collected with respect to allowance-related charges, assessed between January 1, 1995 and the date the Commission issues an order accepting this filing without investigation or hearing, will be subject to refund.

Copies of this filing were served upon all of ComEd's coordination sales service customers and the Illinois Commerce Commission.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Delmarva Power & Light Co.

[Docket No. ER95–521–000]

Take notice that on January 31, 1995, Delmarva Power & Light Company (Delmarva), of Wilmington, Delaware, filed under the provisions of Section 205 of the Federal Power Act an eight year power supply contract (the Service Agreement) under which Delmarva will provide requirements service to the City of Seaford, Delaware (Seaford). Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule No. 62 under which Seaford currently receives service.

Delmarva, with Seaford's concurrence, requests an effective date of February 1, 1995.

The Service Agreement provides for the continuation of the requirements service previously furnished Seaford under Rate Schedule No. 62, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 62 are that the Service Agreement establishes a new rate for Seaford which is below the level of the rate currently charged Seaford and provides for future adjustments to the Seaford rate based on changes in the level of Delmarva's retail rates. The Service Agreement has an eight-year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Central Maine Power Co.

[Docket No. ER95–522–000]

Take notice that on January 31, 1995, Central Maine Power Company (CMP), tendered for filing an Amendment to Second Amended Transmission Service Agreement between CMP and Maine Public Service Company, Inc., (MPS) dated as of January 26, 1995 (the Agreement). The amendment is designed to allow MPS to wheel non-firm energy to MPS from energy suppliers south of the CMP transmission system.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Tex-La Electric Coop. of Texas, Inc.

[Docket No. TX94–4–000]

Take notice that on January 4, 1995, Tex-La Electric Coop. of Texas, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. American Municipal Power-Ohio, Inc. v. Ohio Edison Company

[Docket No. TX95–4–000]

On January 24, 1995, American Municipal Power-Ohio, Inc. (AMP-Ohio), 601 Dempsey Road, P.O. Box 549, Westerville, Ohio, filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Ohio Edison Company to provide transmission services pursuant to Section 211 of the Federal Power Act.

Specifically, AMP-Ohio requests that the Commission order Ohio Edison to improve the reliability of the transmission service it provides to AMP-Ohio and its members—rendering such service comparable with service Ohio Edison provides to itself. AMP-Ohio requests that the Commission order Ohio Edison (1) to establish additional delivery points for certain AMP-Ohio members, and (2) to modify its filed tariff to permit the addition of delivery points in the future upon request.

Comment date: March 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3348 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL95–24–000, et al.]

Golden Spread Electric Cooperative Inc., et al.; Electric Rate and Corporate Regulation Filings

February 2, 1995

Take notice that the following filings have been made with the Commission:

1. Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Co.

[Docket No. EL95–24–000]

Take notice that on January 25, 1995, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing a complaint alleging that Southwestern Public Service Company (SPS), has failed and is failing to properly calculate credits to Golden Spread pursuant to a Coordination Sales Benefit Credit Rider that is part of SPS' filed rate for wholesale sales to Golden Spread.

Comment date: March 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Potomac Edison Co.

[Docket No. ER95–39–001]

Take notice that on January 25, 1995, Potomac Edison Company, tendered for

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filing its compliance filing in the above-referenced docket.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER95–329–000]

Take notice that on January 24, 1995, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Baltimore Gas and Electric Co.

[Docket No. ER95–466–000]

Take notice that on January 23, 1995, Baltimore Gas and Electric Company (BGE), tendered for filing as an initial rate schedule an agreement (Agreement) between Public Service Electric and Gas Company (PSE&G) and BGE. The Agreement provides for the sale by BGE of energy from its system (system energy) to PSE&G on a daily, weekly, or monthly basis (transaction). Each transaction is fully interruptible. BGE states that the timing of the transactions cannot be accurately estimated but that BGE will provide the system energy to PSE&G at a negotiated rate upon which the parties will agree prior to each transaction when it is economical for each party to do so. PSE&G will pay a Reservation Charge to BGE for each transaction in an amount equal to the megawatthours of system energy reserved for PSE&G by BGE during a transaction multiplied by a Reservation Charge Rate negotiated prior to each transaction. The Reservation Charge Rate will be subject to a cost justified ceiling. PSE&G will pay an Energy Charge for each transaction in an amount equal to the megawatthours delivered by BGE during such transaction multiplied by an Energy Charge Rate. The Energy Charge Rate will be BGE's estimated incremental cost to supply the transaction, to be charged for each hour of the transaction in which BGE supplies energy.

Pursuant to § 35.11 of the Commission's regulations, BGE requests that the Commission waive the prior notice requirement and allow the Agreement to become effective January 25, 1995. PSE&G has concurred with this rate schedule by its execution of the Agreement.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Co.

[Docket No. ER95–467–000]

Take notice that on January 23, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Louis Dreyfus Electric Power Inc. (Dreyfus) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Dreyfus.

NUSCO requests that the Service Agreement become effective on January 16, 1995.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER95–477–000]

Take notice that on January 26, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Service Agreement between Niagara Mohawk and Gulfstream Energy, LLC under Niagara Mohawk's FERC Electric Tariff Original Volume No. 2.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER95–478–000]

Take notice that on January 26, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Service Agreement between Niagara Mohawk and Electric Clearinghouse, Inc. under Niagara Mohawk's FERC Electric Tariff Original Volume No. 2.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER95–479–000]

Take notice that on January 26, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Service Agreement between Niagara Mohawk and Coastal Electric Services Company under Niagara Mohawk's FERC Electric Tariff Original Volume No. 2.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. The Montana Power Co.

[Docket No. ER95–481–000]

Take notice that on January 26, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Form of Service Agreement with Associated Power Services, Inc. (APSI) under FERC Electric Tariff, Second Revised Volume No. 1 (M–1 Tariff), as well as a revised Index of Purchasers under said Tariff and a Certificate of Concurrence from APSI.

A copy of the filing was served upon APSI.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Co.

[Docket No. ER95–482–000]

Take notice that on January 26, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated December 28, 1994, establishing MidCon Power Services Corp. as a customer under the terms of WP&L's Transmission Tariff T–2.

WP&L requests an effective date of December 28, 1994, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corp.

[Docket No. ER95–483–000]

Take notice that on January 26, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12, as an initial rate schedule, an agreement with Louis Dreyfus Electric Power Inc. (LDEP). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to LDEP and LDEP will purchase form NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on January 27, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and LDEP.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Pennsylvania Power & Light Co.

[Docket No. ER95–484–000]

Take notice that on January 27, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission an Electrical Output Sales Agreement (Agreement) between PP&L and PECO Energy Company (PECO) dated January 10, 1995. The Agreement provides for the sale by PP&L to PECO of electrical output solely for PECO's use in wholesale bulk power transactions.

PP&L has requested an effective date of January 28, 1995 for the Agreement. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty day notice period in 18 CFR 35.2(e).

PP&L states that a copy of its filing was provided to PECO and to the Pennsylvania Public Utility Commission.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Co.

[Docket No. ER95–485–000]

Take notice that on January 27, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission an Electrical Output Sales Agreement (Agreement) between PP&L and Catex Vitol Electric Inc. (Catex), dated January 25, 1995. The Agreement provides for the sale by PP&L to Catex of electrical output solely for Catex's use in wholesale bulk power transactions.

PP&L has requested an effective date of January 28, 1995 for the Agreement. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty day notice period in 18 CFR 35.2(e).

PP&L states that a copy of its filing was provided to Catex and to the Pennsylvania Public Utility Commission.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Co.

[Docket No. ER95–487–000]

Take notice that on January 27, 1995, Union Electric Company tendered for filing an Interchange Agreement dated June 10, 1994, between the United States of America, as represented by the Administrator, Southwestern Power Administration (SPA) and Union Electric Company (UE). UE asserts that the agreement provides for the exchange of power and energy between the parties.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–488–000]

Take notice that on January 27, 1995, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing an agreement with CNG Energy Services Corporation Agent and Attorney in Fact for R.J. Dahnke and Associates ("CNG"), to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by CNG the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon CNG.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–489–000]

Take notice that on January 27, 1995, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing an agreement with Louis Dreyfus Electric Power, Inc. ("LDEP"), to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. For energy and capacity sold by LDEP the rates will be market based.

Con Edison states that a copy of this filing has been served by overnight delivery upon LDEP.

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Iowa-Illinois Gas and Electric Co.

[Docket No. ER95–490–000]

Take notice that on January 30, 1995, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 205 of the Federal Power Act and §§ 2.25, 35.13 and 35.23 of the Commission's Rules and Regulations, an abbreviated filing consisting of a rate schedule change to provide a mechanism to recover the incremental costs of emissions allowances in coordination rates as authorized by the Commission's Policy Statement and Interim Rule issued on December 15, 1994 in Docket No. PL95–1–000.

Iowa-Illinois states that this rate schedule change applies to various coordination agreements entered into by Iowa-Illinois with Commonwealth Edison Company, Illinois Power Company, Union Electric Company, City of Genesseo (Illinois), Illinois Municipal Electric Agency, Wisconsin Power & Light Company, Waverly Municipal Electric Utility, City of Tipton (Iowa), City of Pella (Iowa), Eldridge Electric and Water Utility Board and the members of the Mid-Continent Area Power Pool.

Iowa-Illinois proposes to make the rate schedule change effective on January 1, 1995. Pursuant to the Commission's statements on page 33 of the Policy Statement and Interim Rule issued on December 15, 1994 in Docket No. PL95–1–000, Iowa-Illinois requests a waiver of the Commission's 60-day notice period required for the filing of rate changes and, in return for the Commission's grant of such waiver, Iowa-Illinois agrees that revenues collected pursuant to the rate schedule change based on assessments for the period from January 1, 1995 through the date on which the Commission issues an order accepting the rate schedule change shall be subject to refund.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission, Mid-Continent Area Power Pool, Enerex, Commonwealth Edison Company, Illinois Power Company, Union Electric Company, City of Genesseo (Illinois), Illinois Municipal Electric Agency, Wisconsin Power & Light Company, Waverly Light and Power, City of Tipton (Iowa), City of Pella (Iowa), City of Eldridge (Iowa) and the members of the Mid-Continent Area Power Pool

Comment date: February 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-3349 Filed 2-9-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. CP93-258-000 et al.]

Mojave Pipeline Co.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Mojave Northward Expansion Project

February 6, 1995.

The staffs of the Federal Energy Regulatory Commission (FERC) and California State Lands Commission (SLC) have prepared this draft environmental impact report/environmental impact statement (EIR/EIS) on the natural gas pipeline facilities proposed by Mojave Pipeline Operating Company (Mojave) in the above dockets.

The draft EIR/EIS was prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The staffs of the FERC and SLC believe, subject to public comment, that approval of the proposed project, with appropriate mitigation measures and receipt of necessary permits and approvals, has the potential to significantly impact the environment. The draft EIR/EIS includes an evaluation of the proposal.

The FERC and SLC staffs assessed the potential environmental effects of the construction and operation of the proposed Mojave Northward Expansion Project, which consists of between 660 and 681 miles of pipeline, depending on final project configuration, including the following facilities:

- A North Mainline about 290 miles long from near Bakersfield northward to Martinez.
- A Sacramento Mainline about 63 miles long from Ripon to southwest Sacramento.
- Shorter segments, which may include segments to Lindsay, Famoso, Coalinga, Kingsburg, Sanger, Livingston, Turlock, Ceres, Modesto, Tracy, Oakland, Antioch, Fremont, McFarland, Malaga, Madera, Fairmead, Ripon, Lathrop, Hunters Point, and San Francisco.
- A maximum of about 100 miles of pipeline loops on the existing Mojave Mainline, Mojave-Kern River East Side Lateral, and Mojave-Kern River Commonline.
- A total of 62,588 to 78,758 horsepower (hp) of compression at three new compressor stations in California at Amboy, Daggett, and either Famoso or Lindsay plus the addition of 24,470 hp of compression to Mojave's existing compressor station at Topock, Arizona.
- Either 55 or 58 new meter stations depending on the final project configuration.

The draft EIR/EIS has been placed in the public files of the FERC and SLC and is available for public inspection at the following locations:

Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., Room 3104, Washington, DC 20426, (202) 208-1371

California State Lands Commission, 1807—13th Street, Sacramento, CA 95814, (916) 322-0530.

Copies have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, public libraries, newspapers, and parties to this proceeding.

A limited number of copies of the draft EIR/EIS are available from either of the following individuals:

Mr. Michael Boyle, Federal Energy Regulatory Commission, Environmental Project Manager, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0839

Ms. Mary Griggs, California State Lands Commission, Environmental Project Manager, 1807-13th Street, Sacramento, CA 95814 (916) 322-0354.

Any person wishing to comment on the draft EIR/EIS may do so. Written comments must reference Docket Nos. CP93-258-000 *et al.* Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Comments should be filed as soon as possible but must be received no later than March 27, 1995, to ensure consideration prior to a FERC and SLC decision on this proposal. A copy of any comments should also be sent to either Mr. Michael Boyle, FERC Environmental Project Manager, or Ms. Mary Griggs, SLC Environmental Project Manager at their respective addresses given above.

Comments will be considered by the FERC and SLC but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the FERC's Rules of Practice and Procedure (18 CFR 385.214).

In addition to asking for written comments, we invite you to attend any of the public meetings that will be held at the times and locations listed below. The meetings will be designed to provide you with more detailed information and another opportunity to offer your comments on the draft EIR/EIS. Those wanting to speak at the meetings can call the FERC and SLC Environmental Project Managers to preregister their names on the speakers' list. Those people on the speakers' list prior to the date of the meeting will be allowed to speak first. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

Additional information about this project is available from Mr. Michael Boyle, FERC Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208-0839 on from Ms. Mary Griggs, SLC, at (916) 322-0354.

Lois D. Cashell,

Secretary.

Schedule for Draft EIR/EIS Public Meetings

San Francisco, California, February 27, 1995; 3:00 pm to 7:00 pm
Earl P. Mills Community Center, 100 Whitney Young Circle, San Francisco, California

Livermore, California, February 28, 1995; 7:00 pm
Junction Middle School, 298 Junction Avenue, Livermore, California

Fresno, California, March 1, 1995; 7:00 pm
Holiday Inn—Fresno Airport, 5090 E. Clinton Way @ Gateway, Fresno, California

Barstow, California, March 2, 1995; 7:00 pm
Holiday Inn—Barstow, 1511 East Main Street, Barstow, California.

[FR Doc. 95-3317 Filed 2-9-95; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 11181-002, et al.]

Hydroelectric Application [Energy Storage Partners, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Major License (Tendering Notice).
b. Project No.: 11181-002.
c. Date filed: November 28, 1994.
d. Applicant: Energy Storage Partners.
e. Name of Project: Lorella Pumped Storage.
f. Location: On Bureau of Land Management land, near the towns of Lorella and Malin, in Klamath County, Oregon. T39S, R11E, section 35, T40S, R12E, section 2, T40S, R12E, section 1, T40S, R12E, section 12, T40S, R12E, section 11, T40S, R12E section 14, T40S, R12E, section 22.
g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)-825(r).
h. Applicant Contact: Mr. Douglas Spaulding, Energy Storage Partners, c/o Independent Hydro Developers, 5402 Parkdale Drive, Minneapolis MN 55416, (612) 525-1445.
i. FERC Contact: Michael Spencer at (202) 219-2846.
j. Description of Project: The proposed pump storage project would consist of: (1) an upper storage reservoir formed behind two 178-foot-high embankment dams, with a maximum surface area of 199 acres, a total reservoir capacity of 16,519 acre-feet, and a maximum surface elevation of 5,523 feet msl; (2) a 24-foot-diameter, 4,526-foot-long tunnel, joining a penstock mainfold which divides the power tunnel into 4 penstocks; (3) each penstock will have a 12-foot-diameter, and 355-foot-length; (4) a powerhouse/pump station containing 4 motor/generator and pump/turbine units with a total installed capacity of 1,000 MW and producing an estimated average annual generation of 1,927 Gwh; (5) a 1,500-foot-long, 38-foot-square D-shaped concrete tailrace tunnel; (6) a lower storage reservoir formed behind a 57-foot-high embankment dam, with a maximum surface area of 405 acres, a total reservoir capacity of 18,646 acre-feet, and a maximum surface elevation of 4,191 feet msl; (7) an 4-mile-long, 500-Kv transmission line interconnecting with the existing area transmission system; and (8) appurtenant facilities. Water for the project would be supplied by three wells. The cost of the project is estimated at $1,174,249,000.
k. With this notice, we are initiating consultation with the *STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory council on Historic Preservation, 36 CFR § 800.4.
l. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date of this notice, and must serve a copy of the request on the applicant.

2 a. Type of Application: Surrender of Exemption (5MW of Less).
b. Project No: 10325-005.
c. Date Filed: November 17, 1994.
d. Applicant: Draper Irrigation Company.
e. Name of Project: Big Willow Creek Project.
f. Location: Big Willow Creek in Salt Lake County, Utah.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).
h. Applicant Contact: W. S. Mickelsen, Draper Irrigation Company 12421 South 800 East, P. O. Box 275, Draper, UT 84 020, (801) 571-2232.
i. FERC Contact: Tom Papsidero, (202) 219-2715.
j. Comment Date: February 28, 1995.
k. Description of Proposed Action: The project is entirely unconstructed and was proposed to consist of a powerhouse at elevation 4,990 feet m.s.l. containing a single generating unit with an installed capacity of 550 Kw. Water discharged from the powerhouse was to enter the Draper Irrigation Company water treatment facility. The average annual energy production was estimated by the applicant to be 2,107 Mwh.

The exemptee is requesting surrender of the exemption because the project is not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

3 a. Type of Application: Preliminary Permit.
b. Project No.: 11510-000.
c. Date filed: December 6, 1994.
d. Applicant: Alaska Business and Industrial Development Corp.
e. Name of Project: Allison Lake.
f. Location: On Allison Lake, near the town of Valdez, in the Third Judicial District, Alaska.
g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)-825(r).
h. Applicant Contact: Mr. Fred G. Brown, AK BIDCORP, 1459 Holy Cross Drive, Fairbanks, AK 99701, (907) 451-2898.
i. FERC Contact: Michael Spencer at (202) 219-2846.
j. Comment Date: April 14, 1995.
k. Description of Project: The proposed project would consist of: (1) a lake tap on the state of Alaska's Allison Lake, which has a surface area of 258 acres and 19,980 acre-feet of useable storage; (2) a 10,200-foot-long, 8-foot-diameter power tunnel; (3) a 2,450-foot-long, 48-inch-diameter penstock; (4) a powerhouse containing two generating units with a combined capacity of 8.0 MW and an average annual generation of 37.25 Gwh; and (5) a 3.5-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $50,000.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Revised Recreation Plan.
b. Project No: 2310-073.
c. Date Filed: January 6, 1995.
d. Applicant: Pacific Gas & Electric Company.
e. Name of Project: Drum-Spaulding Hydroelectric Project.
f. Location: In Placer and Nevada Counties, California, including the following water bodies: Carr Lake; Upper Feeley Lake; Middle and Lower Lindsey Lakes; Culbertson Lake; Upper and Lower Rock Lakes; Lake Spaulding; Fuller Lake; Rucker Lake; Blue Lake; Lake Valley Reservoir; Kelly Lake; Meadow Lake; Lake Fordyce; Lake Sterling; White Rock Lake; Halsey Forebay; Rock Creek Reservoir; Halsey Afterbay; Alta Forebay; Drum Forebay; and Deer Creek Forebay.
g. Filed Pursuant to: 18 CFR 4.200.
h. Applicant Contact: Ms. Rhonda Shiffman Pacific Gas & Electric Company, 201 Mission Street, Room 1012, San Francisco, CA 94177, (415) 973-5310.
i. FERC Contact: Steve Hocking (202) 219-2656.
j. Comment Date: March 17, 1995.
k. Description of Amendment: Pacific Gas & Electric Company (PG&E) filed a revised recreation plan for the Drum-Spaulding Hydroelectric Project. PG&E requests Commission approval of the plan which would allow PG&E to construct new, and improve existing, facilities at many recreation sites throughout the Drum-Spaulding project area. The plan includes the following type of proposed changes: new dispersed camping areas; added trailhead parking; rehabilitation of existing campgrounds; added signage, fencing, and fishing access. For complete information on the proposed changes to individual recreation sites, please call the applicant or FERC contact listed above.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of Application: Major License.
b. Project No.: 11080-003.
c. Date filed: April 29, 1994.
d. Applicant: Eagle Crest Energy Company.
e. Name of Project: Eagle Mountain.

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f. Location: On lands administered by the Bureau of Land Management in Riverside County, California. Township 4 S Range 14 E.

g. Filed Pursuant to: Federal Power Act 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Art Lowe, Eagle Crest Energy Company, 19800 Macarthur Blvd., Irvine, CA 92715, (714) 222–2820.

i. FERC Contact: Michael Spencer at (202) 219–2846.

j. Deadline Date for Protests and Interventions: April 14, 1995.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The proposed pump storage project would consist of: (1) an upper storage reservoir formed behind two embankments, one a 77-foot-high dam and the other a 27-foot-high dam, with a maximum surface area of 157 acres, a total reservoir capacity of 14,200 acre-feet, and a maximum surface elevation of 2,446 feet msl; (2) a 29-foot-diameter, 5,700-foot-long tunnel, joining a 33-foot-diameter, 1,500-foot-long tunnel; (3) a powerhouse/pump station containing 3 motor/generator and pump/turbine units with a total installed capacity of 1,000 MW and producing an estimated average annual generation of 1,752 Gwh; (4) a 29-foot-diameter, 7,200-foot-long tailrace tunnel; (5) a lower storage reservoir formed within the east pit of the Eagle Mountain Mine, with a maximum surface area of 107 acres, a total reservoir capacity of 15,700 acre-feet, and a maximum surface elevation of 1,044 feet msl; (6) an 83-mile-long, 500–Kv transmission line interconnecting with the existing area transmission system; and (7) appurtenant facilities. Water for the project would be supplied by three wells using a 12-inch-diameter pipeline. The cost of the project is estimated at $691,000,000.

m. Purpose of Project: Project power would be sold.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D7.

6 a. Type of Application: Amendment of License.

b. Project No: 10551–045.

c. Date Filed: 12/15/94.

d. Applicant: City of Oswego.

e. Name of Project: High Dam Project.

f. Location: On the Oswego River, in Oswego County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Paul Nolan, Esq. 5515 North 17th Street, Arlington, VA 22205, (703) 534–5509.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: March 23, 1995.

k. Description of Amendment: Licensee proposes to install a new 100 cfs, 150–Kw unit within an existing bay adjacent to the powerhouse. The new unit would use flow releases required by the license for attraction of fish into the project's fish passage facility. At the intake, licensee proposes a trashrack using ¼-inch thick wedge-bar with ½-inch clear spacing on the upstream face.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file aa motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: February 2, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3316 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–181–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

February 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP95–181–000]

Take notice that on January 27, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed an application with the Commission in Docket No. CP95–181–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for authorization to abandon approximately 15.7 miles of deteriorating pipeline facilities and for authorization pursuant to Section 7(c) of the NGA to construct and operate approximately 10.9 miles of storage pipelines and appurtenant facilities (which would replace the abandoned facilities) at the Coco "A" Storage Field in Kanawha County, West Virginia, all as more fully set forth in the application which is open to the public for inspection.

Columbia proposes to abandon approximately 0.2 mile of 16-inch diameter pipe, 0.8 mile of 14-inch diameter pipe, 2.8 miles of 10-inch diameter pipe, 2.3 miles of 8-inch diameter pipe, 3.4 miles of 6-inch diameter pipe, and 6.2 miles of 4-inch pipe within the Coco "A" Storage Field.

Columbia proposes to replace its abandoned facilities by constructing and operating 3.1 miles of 20-inch diameter pipe, 1.4 miles of 10-inch diameter pipe, 0.9 mile of 8-inch diameter pipe, 2.9 miles of 6-inch diameter pipe, and 2.7 miles of 4-inch pipe within the Coco "A" Storage Field. Columbia states that it would cost approximately $11,937,000 to construct the proposed replacement facilities.

Columbia states that it does not request authorization for any new or additional service. Columbia also states that the pipeline segments to be replaced have become physically deteriorated to the extent that replacement would be advisable.

Comment date: February 23, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP95–182–000]

Take notice that on January 30, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–182–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point for its firm transportation customer, Loudon Utilities Gas Department (Loudon) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point at M.P. 3218D–101+7.39 in Loudon County, Tennessee as requested by Loudon. East Tennessee will install, own, operate, and maintain a 3-inch hot tap assembly and interconnecting pipe on its existing right-of-way. Further, East Tennessee will install, own, operate, and maintain a meter station and DAC equipment on a site provided by Loudon adjacent to East Tennessee's right-of-way.

Comment date: March 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP95–183–000]

Take notice that on January 30, 1995, Florida Gas Transmission company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP95–183–000 a request pursuant to §§ 157.205 and 157.212 of

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the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point and appurtenant facilities in San Patricio County, Texas to accommodate natural gas deliveries to Onyx Gathering Company, L.C. (onyx), under the blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT asserts that the proposed delivery point will permit FGT to accommodate natural gas deliveries on an interruptible basis, pursuant to Part 284 of the Commission's Regulations. FGT states that the proposed delivery point will be constructed on its existing 12-inch Encinal Channel Lateral. FGT asserts that the proposed delivery point will include a new 6-inch tap, a 6-inch valve assembly, and any other necessary appurtenant facilities necessary to deliver up to 15,000 MMBtu per day to Onyx. FGT states that Onyx will provide the surface site for the proposed delivery point.

FGT estimates that the total cost of the proposed construction will be $41,487, inclusive of tax gross-up. FGT claims that Onyx will reimburse FGT for all costs directly and indirectly incurred by FGT for the construction of the proposed delivery point. Additionally, FGT states that Onyx will construct and FGT will own and operate a meter tube, electronic flow measurement equipment, telemetry instrumentation, and approximately 100 feet of 6-inch connecting pipe, as well as any other necessary facilities for Onyx to receive up to 15,000 MMBtu per day. FGT states that the proposed gas deliveries will not have an impact on FGT's peak day delivery, however, annual deliveries could be affected, up to 5,475,000 MMBtu. FGT notes that the ultimate end-use of the gas will be primarily commercial and industrial.

Comment date: March 20, 1995, in accordance with Standard Paragraph G at the end of this notice.

4. K N Interstate Gas Transmission Company

[Docket No. CP95–187–000]

Take notice that on January 31, 1995, K N Interstate Gas Transmission Company (K N Interstate), P. O. Box 281304, 370 Van Gordon Street, Lakewood Colorado 80228 filed, in Docket No. CP95–187–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon three of its gas storage fields: The pipeline, compressor, and appurtenant facilities constituting its Adolph Storage Field in Rush and Barton Counties, Kansas; its Big Springs Storage Field in WP County, Nebraska; and its Springdale Storage Field in Logan County, Colorado (Excess Gas Storage Facilities), all by transfer to K N Natural Gas, Inc. (KNNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N Interstate states, that, as a result of its corporate reorganization and restructuring of service pursuant to Order No. 636, it no longer has sufficient storage demand to fully utilize all of its existing storage capacity. K N Interstate claims that its Huntsman Storage Field has sufficient capacity to meet its storage requirements and that, by abandoning the storage fields proposed herein, it will eliminate the expenses and inefficiencies associated with the operation of excess storage capacity. K N Interstate asserts that, by abandoning the storage facilities proposed herein, and removing all of their associated costs from its jurisdictional cost of service, its gas storage service rate and the storage component of no-notice and small customer service rates will be reduced by 29 percent. K N Interstate further states that the abandonment of the excess storage facilities will not adversely affect the services or rates to any shipper or other customer on its system.

K N Interstate states that the Excess Gas Storage Facilities would be abandoned by transfer at net book cost to KNNG, a subsidiary of K N Energy, Inc., and KNNG would become responsible for all associated costs.

K N Interstate explains that abandonment authorization will return the Excess Gas Storage Facilities to their original state as a producing field, and therefore, they would be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA. K N Interstate says it recognizes that, after abandonment, no gas could be injected for storage purposes without first obtaining certificate authorization from the Commission.

K N Interstate states it does not propose to recover, now or in any future Commission proceedings, any stranded storage costs related to the abandoned Excess Gas Storage Facilities pursuant to the recovery mechanisms provided under FERC Order No. 636, *et seq.* K N Interstate further states that approval of this application will remove from K N Interstate and its customers all expenses, risk, and uncertainty related to the realignment and disposition of the Excess Gas Storage Facilities and will place that responsibility and incentive on KNNG.

K N Interstate states that, within 30 days of the date of issuance of a final Commission order approving this abandonment application, it will make a limited NGA Section 4 compliance filing to put into effect the rates and tariff sheets which are consistent with the *pro forma* sheets attached to the application.

K N Interstate indicates that when abandonment approval is received, some continued gas withdrawals may be required in order to redeliver customer-owned working gas from the abandoned facilities. K N Interstate requests such limited authorization as may be required to operate the Excess Gas Storage Facilities after abandonment approval to the extent necessary to withdraw any customer-owned working gas quantities remaining in the facilities at the time of abandonment. K N Interstate asserts this will not affect the immediate implementation of the rate reductions.

Comment date: February 23, 1995, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP95–188–000]

Take notice that on January 31, 1994 El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–188–000 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon by sale to Leapartners, L.P. (Leapartners), two segments of pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that, as a part of its ongoing review of its interstate transmission system, it has determined that approximately 12.9 miles of its 16-inch Jal-El Paso "B" Line located in Culbertson County, Texas and Eddy County, New Mexico and approximately 46.4 miles of its 16-inch Jal Plant-Pecos River Line located in Lea and Eddy Counties, New Mexico are no longer required for interstate transmission service. It is indicated that, based upon this determination, Leapartners has agreed to purchase the two facilities for use a part of its integrated non-jurisdictional gathering system at a price of $236,000. El Paso states that the proposed abandonment would not result in or cause any interruption, reduction, or termination of service currently rendered by El Paso.

Comment date: February 23, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3350 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–73–004]

ANR Pipeline Co.; Notice of Refund Report

February 6, 1995.

Take notice that on January 6, 1995, ANR Pipeline Company (ANR), tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made pursuant to the Commission's letter dated September 30, 1994, in Docket No. RP94–73–003.

ANR states that it made a refund totalling $64,380.05, including $2,047.18 in interest, to High Island Offshore System (HIOS) for services at the Grand Chenier facilities under Rate Schedule X–64 for the period of January 1, 1994 through December 31, 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3318 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–153–000]

East Tennessee Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

February 6, 1995.

Take notice that on February 2, 1995, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets and requested effective dates:

Tariff sheet	Effective date
Third Substitute Original Sheet No. 4.	Nov. 1, 1993.
Second Substitute First Revised Sheet No. 4.	Jan. 1, 1994
Substitute Second Revised Sheet No. 4.	Oct. 1, 1994
Substitute Third Revised Sheet No. 4.	Nov. 1, 1994.

East Tennessee states that it is making this filing pursuant to its Rate Schedule LMS–MA, Section 1.5 which requires East Tennessee to reflect in its no-notice, Daily Demand Service (DDS) rates changes in the Daily Demand Service rates of its upstream transporter, Tennessee Gas Pipeline Company (Tennessee). East Tennessee further states that consistent with that language, East Tennessee seeks to revise its Daily Variance Charge. The revised tariff sheets reflect the increase in Tennessee's Rate Schedule LMS–MA Daily Demand Service and Daily Variance Charge rates pursuant to Tennessee's implementation of its cost of service settlement in Docket Nos. RP91–203, RP92–132 and RS92–23 (consolidated).

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before February 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3319 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1488–000]

Excel Energy Services; Correction to Notice of Succession

February 6, 1995.

Take notice that the following paragraph was omitted from the Notice of Succession issued on January 25,

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1995, (60 FR 6078, February 1, 1995), in the above-referenced docket:

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3320 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–192–000]

Gas Transport, Inc.; Notice of Application

February 6, 1995.

Take notice that on February 1, 1995, Gas Transport, Inc. (Gas Transport), 109 N. Broad Street, Lancaster, OH 43130 filed in Docket No. CP95–192–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a gas transportation and exchange service between Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Gas Transport proposes to abandon its Rate Schedule X–2, which represents the transportation and exchange service between Columbia. Gas Transport and Columbia have not transported volumes under this agreement since July 1991, as the exchange services are no longer utilized or needed by the parties.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 27, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3321 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–6–000]

K N Interstate Gas Transmission Co.; Notice of Change in Order No. 497 Compliance Information

February 6, 1995.

Take notice that on February 1, 1995, K N Interstate Gas Transmission Company (KNI), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–B, Fourth Revised Sheet No. 53, to update information concerning its Order No. 497 compliance information.

Specifically, KNI filed revised tariff sheets updating the list of marketing affiliates that conduct transportation on the pipeline to include Anthem Energy Company, L.P.

KNI states that copies of the filing have been served on all of KNI's customers.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before February 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3322 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–47–000, et al.]

National Fuel Gas Supply Corp.; Notice of Compliance Filing

February 6, 1995.

Take notice that on February 1, 1995, National Fuel Gas Supply Corporation (National), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Original Sheet No. 215B.

National states that this tariff sheet is filed in compliance with the order issued by the Federal Energy Regulatory Commission (Commission) on May 4, 1994. National states that the May 4 Order requires that it submit an allocation methodology to reallocate the take-or-pay (TOP) costs billed to National by its former pipeline-supplier CNG Transmission Corporation (CNG).

National further states that it proposes to allocate to its customers their share of the fixed TOP charges from CNG using the 1988 WRQ components which approximates the CNG flowthrough methodology.

Any person desiring to protest said compliance filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before February 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3323 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–000]

NorAm Gas Transmission Co.; Notice of Informal Settlement Conference

February 6, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on February 23, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Irene Szopo at (202) 208–1602.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3324 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–514–000]

Northeast Utilities Service Company; Filing

February 3, 1995.

Take notice that on January 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P), a Fourth Amendment to Capacity, Transmission and Energy Service Agreement with Green Mountain Power Corporation (GMP). The Amendment provides for changes necessary to accommodate GMP's termination of its contract with Rochester Gas and Electric.

NUSCO requests that the rate schedule become effective on January 31, 1995. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Fourth Amendment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 17, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3325 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–405–000]

The Toledo Edison Co.; Notice Rescinding Published Notice

February 3, 1995.

On January 19, 1995 the above-docketed notice of filing was issued by the Commission and published in the **Federal Register** on January 26, 1995 (60 FR 5173), under the group heading of Northern States Power Company (NM), *et al.*, Docket No. ER95–403–000, *et al.*

On January 27, 1995 (60 FR 5377), the same notice was inadvertently published in the **Federal Register** under the group heading of Southwestern Public Service Company, *et al.*, Docket No. EL93–53–000, *et al.*

Please disregard the January 27, 1995 **Federal Register** notice.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3351 Filed 2–9–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5151–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 13, 1995.

FOR FURTHER INFORMATION CONTACT OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Recordkeeping and Reporting Requirements for Compliance with the 40 CFR Part 258 solid Waste Disposal Facility Criteria (EPA No. 1381.04). This ICR is a renewal of an approved collection (OMB No. 2050–0122).

Abstract: This ICR details the information collection activities associated with the revised solid waste disposal facility criteria promulgated on October 9, 1991, as provided in 40 CFR Part 258. The revised criteria establish minimum federal standards for owners and operators of municipal solid waste landfills (MSWLFs) to ensure that such facilities are designed and operated in a manner that is protective of human health and the environment, as well as recordkeeping and notification requirements for MSWLF owners and operators to ensure compliance with the revised criteria.

Specifically, MSWLF owners/operators must record and maintain in an operating record, and make available to the States upon request: Location restriction demonstrations; inspection records, training and notification procedures; gas monitoring results and remediation plans; unit design documentation for leachate and gas condensate recirculation; monitoring, testing or analytical data; closure/post-closure care plans; and cost estimates and financial assurance documentation.

Notification requirements for MSWLF owners/operators include notifying the State when: A regulated hazardous waste or PCB waste is discovered at the facility; methane gas concentrations exceed specified limits; and when ground-water contamination is detected.

The information collected will be used to regulate and insure that MSWLFs are complying with the Part 258 Criteria. The program is administered by the States and all information is submitted to the States. State burden consists of MSWLF notifications, MSWLFs demonstrations review, and requirements certification. EPA has enforcement authority in States where EPA has made a determination that the State is not approved and may request information from the MSWLFs owner or operator.

Burden Statement: The public reporting burden for this collection of information is estimated to average 109 hours per response and includes time for reviewing instructions, searching existing information sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and Operators of Municipal Solid Waste Landfills, States.

Estimated Number of Respondents: 4,000.

Frequency of Collection: On occasion, annually.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 438,100 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: February 6, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–3381 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5152–6]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of the 1995 EPA SO_2 allowance auctions.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the third annual SO_2 allowance auctions. The regulations governing the auctions and sales were promulgated on December 17, 1991 (40 CFR part 73, subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulations cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1995 auctions will consist of one "spot" auction and two "advance" auctions. Allowances sold in the spot auction are useable for compliance beginning in 1995. Allowances sold in the 6-year advance auction are useable for compliance beginning in 2001; allowances sold in the 7-year advance auction are useable for compliance beginning in 2002. 25,000 allowances will be sold in the 6-year advance auction, which are the unsold allowances from the 1994 direct sale. 50,000 spot allowances will be sold in the spot auction and 100,000 allowances will be sold in the 7-year advance auction. Bid Forms for the 1995 auctions must be received by the CBOT by the close of business on March 21, 1995. The auctions themselves will be conducted on March 27, 1995, with the results announced the next day.

CBOT will also sell in the 1995 auctions any spot, 6-year advance, or 7-year advance allowances that are offered by others holding allowances in EPA's Allowance Tracking System. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. To offer allowances in the EPA auctions, owners of allowances must submit a SO_2 Allowance Offer Form to EPA by the close of business on March 3, 1995. The auction and sale regulations require that offer forms be received by EPA no later than 15 business days prior to the date of the auctions.

ADDRESSES:

U.S. EPA Acid Rain Division (6204J). Attn: Auctions and Sales, 401 M St., S.W., Washington, DC 20460.

Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., Suite 2240, Chicago, IL 60604.

Forms needed to participate in the EPA auctions are available from the Acid Rain Division. To obtain forms, call the Acid Rain Hotline at (202) 233–9620.

FOR FURTHER INFORMATION CONTACT: Information on bidding in the 1994 EPA auctions can be found in the brochure "How to Bid in the EPA SO_2 Allowance Auctions, Third Annual Auctions—March 27, 1995;" general information on the EPA auctions can be found in the "Acid Rain Program Allowance Auctions and Direct Sales" fact sheet. These publications can be obtained by calling the Acid Rain Hotline or by writing to EPA at the address listed above.

Dated: February 1, 1995.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 95–3382 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5152–4]

Public Water System Supervision Program; Program Revision for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Hawaii is revising its approved State Public Water System Supervision Program. Hawaii has adopted new regulations to address new/revised organic and inorganic compounds in drinking water. The state regulations correspond to National Primary Drinking Water Regulations promulgated by EPA on January 30, 1991 (56 FR 3583) and on July 1, 1991 (56 FR 30277). EPA has determined that the state program revision is no less stringent than the corresponding Federal rules. Therefore, EPA has tentatively decided to approve the state program revision.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by March 13, 1995 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become effective March 13, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and ofinformation that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Hawaii Department of Health, Safe Drinking Water Branch, 919 Ala Moana Blvd., room 308, Honolulu, Hawaii 96814; and EPA, Region IX, Water Management Division, Drinking Water Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1858.

(Section 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: January 30, 1995.

John Wise,

Acting Regional Administrator.

[FR Doc. 95–3383 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4720–1]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

ACTION: Weekly receipt of Environmental Impact Statements Filed January 20, 1995 Through February 03, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 940532, DRAFT EIS, AFS, ID, Boise River Wildfire Recovery Project, Implementation, North Fork Boise River and Mores Creek Drainages, Boise National Forest, Idaho City and Mountain Home Ranger Districts, Boise and Elmore Counties, ID, Due: February 06, 1995, Contact: Terry Padilla (208) 364–4330.

Due to an Administrative oversight in the forwarding of the above EIS the Notice of Availability did not appear in the 12–23–94 **Federal Register**. All requirements under Sections 1506.9 and 1506.10 of the CEQ Regulations were satisfied and have been certified by the Regional Forester for Region 4. For further information contact Mr. Glenn Casamassa at (801) 625–5763.

EIS No. 950035, DRAFT EIS, AFS, ID, Hobo Cornwall Project Area Timber Sale and Ecosystem Management Plan, Implementation, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: March 27, 1995, Contact: Tracy Gravelle (208) 245–2531.

EIS No. 950036, FINAL EIS, FHW, NB, Omaha Northwest Connector/ Sorensen Parkway Improvements, Construction between 72nd Street and Blair High Road and south of I–680, Funding and COE Section 404 Permit, City of Omaha, Douglas County, NB, Due: March 13, 1995, Contact: Philip Barnes (402) 437–5521.

EIS No. 950037, FINAL EIS, USA, IN, Fort Benjamin Harrison Disposal and Reuse, Implementation, City of Lawrence, Marion County, IN, Due: March 13, 1995, Contact: William Ray Haynes (502) 582–6475.

EIS No. 950038, FINAL EIS, FHW, WV, US 19/Corridor L Improvements from Nicholas County High School to I–79, Funding and COE Section 404 Permit, Nicholas and Braxton Counties, WV, Due: March 13, 1995, Contact: Bobby W. Blackman (304) 348–3093.

EIS No. 950039, DRAFT EIS, FRC, CA, Mojave Natural Gas Pipeline Northward Expansion Project, Construction and Operation, Approvals and Permits Issuance, San Joaquin Valley, San Francisco Bay Area and Sacramento, CA, Due: March 27, 1995, Contact: Michael Boyle (202) 208–0839.

EIS No. 950040, DRAFT EIS, AFS, CA, California Spotted Owl Habitat Management Plan, Implementation, Sierra Nevada National Forests, CA, Due: May 10, 1995, Contact: Janice Gauthier (916) 979–2020.

EIS No. 950041, DRAFT EIS, SFW, NV, Desert Tortoises (Gopherus agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV, Due: March 27, 1995, Contact: Sherry Barrett (702) 784–5227.

EIS No. 950042, FINAL SUPPLEMENT, UAF, MA, Westover Air Force Base, Air Force Reserve Mission Change/ Aviation Operation, Updated Information on Military (C–5) and Civil Aircraft Operations, Hampden County, MA March 13, 1995, Contact: Ms. Toni Thorne (912) 327–1073.

Dated: February 7, 1995.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 95–3390 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4720–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 9, 1995 through January 13, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–NPS–E64015–TN

Rating EC2, Obed Wild and Scenic River, General Management Plan and Development Concept Plan, Implementation, Morgan and Cumberland Counties, TN.

Summary: EPA expressed environmental concerns about adverse effects from cumulative impacts from trail expansions and the potential impairment of the free-flowing condition and resource value of the OBED WSR. EPA encouraged a basin-wide regional comprehensive water resources plan be conducted concurrently with the OBED designation.

ERP No. D–NRC–A09822–00

Rating EC2, 10 CFR Part 20: Support of Rulemaking on Radiological Criteria for Decommissioning of NRC-Licensed Nuclear Facilities (NUREG–1496), Implementation, Generic EIS.

Summary: EPA expressed environmental concerns with the level of detail in the proposed rule regarding the scope of material covered, assurance requirement, public participation requirements and ground water protection.

ERP No. DS–AFS–L65208–AK

Rating EC2, Shamrock Timber Sales, Timber Harvesting and Road Construction, Updated Information, Stikine Area, Kupreanof Island, Tongass National Forest, Implementation, AK.

Summary: EPA expressed environmental concerns with this draft supplemental EIS based on EPA's previous review and the additional information provided. EPA encouraged increased use of alternative silviculture techniques and additional information on cumulative effects and monitoring.

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ERP No. DS–NRC–E06008–TN

Rating EC2, Watts Bar Nuclear Plant, Unit 1 and 2, Updated Information, Related to the Operations, Approval for Application for a Facility Operating License and NPDES Permit, Rhea County, TN.

Summary: EPA expressed environmental concerns regarding low level waste disposal pollution prevention and noise. Additional information on these issues was requested.

Final EISs

ERP No. F–BLM–A60116–00

Rangeland Reform 1994 Program, Implementation, Land Acquisition and Permits Approval.

Summary: EPA expressed environmental concerns over the Forest Service's reluctance to implement national standards and guidelines (S&Gs), inadequate information on how to include state and private lands, lack of detail on monitoring and instituting adaptive management, the use of range betterment funds and the need for a specific S&G to fully evaluate air quality consequences. However, the final EIS was responsive to many of EPA's comments made on the draft EIS.

ERP No. F–DOE–E09800–SC

F-Canyon Plutonium Solutions Stabilization Project, Implementation, Savannah River Site, Aiken and Barnwell Counties, SC.

Summary: EPA's issues were addressed except in the F-Canyon area where EPA expects minimal impacts.

Dated: February 7, 1995.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 95–3389 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5152–6]

Office of Research and Development

Pacific Northwest Ecosystem Management Research Program

AGENCY: Environmental Protection Agency, Environmental Research Laboratory, Corvallis, Oregon.

ACTION: Notice of Request for Pre-applications.

SUMMARY: The United States Environmental Protection Agency (USEPA), Environmental Research Laboratory at Corvallis, Oregon, is requesting assistance pre-applications for a cooperative agreement on ecosystem management research in the Pacific Northwest (primarily Oregon and Washington).

DATES: Pre-applications will be due April 7, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Baker, USEPA, Environmental Research Laboratory, 200 SW 35th Street, Corvallis, Oregon 97333, (503) 754–4517, FAX (503) 754–4716, or internet joan@mail.cor.epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of this cooperative agreement is to stimulate the broad range of ecological research needed to improve the scientific information, understanding, analyses, and methods required to implement ecosystem management effectively in the region. Important parts of the agreement will be the integration of research across scientific disciplines, ecosystem types, spatial scales, and geographic areas and the active involvement of the broad ecological research component with relevant expertise. Research areas include regional biodiversity, watershed/ecoregion-scale assessments, ecological functions of riparian areas, coastal estuaries, extrapolation, integrated monitoring design, and ecological/socioeconomic linkages. USEPA scientists will collaborate with the recipient on the design, conduct, and interpretation of research funded through this agreement.

The cooperative agreement will have a period of performance up to five years. Annual funding will range between $1,000,000 and $3,000,000 per year. Pre-applications must be received by April 7, 1995. An independent peer review panel will evaluate all assistance pre-aplications. Based on this review, one or more applicants will be requested to submit full assistance applications. A single applicant will be selected for funding based on peer review of these full assistance applications. Eligible applicants include members of academic and nonprofit institutions located in the United States.

Federal grant regulation 40 CFR 30.307 requires that all recipient institutions provide a minimum of 5 percent of the total project cost, which shall not be from Federal sources. Statutory authority for EPA funding of the specified research is authorized in the Clean Water Act, Sections 104 (a), (b), (g), (h), and (i). Interested applicants must be eligible to receive Federal Assistance under these statutory authorities and 40 CFR 30—General Regulation for Assistance Programs, and 40 CFR 40—Research and Demonstration Grants. Only nonprofit research institutions of higher education or nonprofit research organizations eligible to receive Federal assistance under these acts should submit applications.

To obtain a more detailed statement of the research and instructions for assistance pre-applications, contact Dr. Joan Baker, at the address listed above. An optional information meeting, to answer questions about this solicitation, will be held March 1 at the USEPA Environmental Research Laboratory in Corvallis. If you plan to attend this meeting (in person or via teleconferencing), call Patricia Hawk at (503) 754–4504 to reserve a space and receive directions.

Dated: February 6, 1995.

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–3378 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5152–8]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss improvements to the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, February 28, from 8:30 am to 5:00 pm, and Wednesday, March 1, 1995, from 8:30 am to 3:00 pm.

ADDRESSES: The meeting will take place at the Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shelia Frace, Acting Effluent Guidelines Task Force Staff Director, Office of Water (4303), 401 M Street SW., Washington, DC 20460; telephone 202–260–7120, fax 202–260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial

wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting agenda will include a presentation on the Task Force accomplishments to date, and a discussion of life-cycle analysis and effluent guidelines regulations. Much of the meeting time will be set aside as working time for the three work groups initiated at the last meeting: selecting industries for regulation; co-regulation (cross-media); and pretreatment (pass-through determination).

The meeting will be open to the public. Limited seating for the public is available on a first-come, first served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Sheila Frace at the above address. Comments submitted by February 21 will be considered by the Task Force at or subsequent to the meeting.

Eric Strassler,

Designated Federal Official

[FR Doc. 95–3379 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5152–7]

Acid Deposition Standard Feasibility Study

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Draft Report for Public Comment.

SUMMARY: EPA announces availability of the draft report entitled *The Acid Deposition Standard Feasibility Study* for public comment. The report is required by Section 404, Appendix B of the Clean Air Act (CAA). A 30 day public comment period commences today for this draft report. The study addresses the environmental effectiveness and feasibility of an acid deposition standard or standards to protect critically sensitive aquatic and terrestrial resources.

The technical methodologies and tools (models) used in this report have been peer reviewed. A peer review on the comprehensive draft report will also occur to consider the use of the models as they relate to the integration of the study components.

DATES: The draft Acid Deposition Standard Feasibility Study will be available for review and comment for 30 days after publication in the **Federal Register**. Delivery of this report to Congress is under a court-ordered deadline making it particularly important that comments be received within the 30 day period.

ADDRESSES: *Availability:* To obtain a copy of the draft Report to Congress contact the Office of Air and Radiation Docket and Information Center at 202–260–7548 or 202–260–7549 or by fax at 202–260–4400. Refer to Docket # AR–95–01.

Comments: Written statements should be submitted (in duplicate if possible) to: Rona Birnbaum, Acid Rain Division (6204–J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rona Birnbaum, Acid Rain Division (6204–J), Office of Atmospheric Programs, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Telephone (202) 233–9076.

Dated: February 6, 1995.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 95–3380 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5153–1]

Coast Wood Preserving Site; Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given of the proposed administrative cost recovery settlement entered into by EPA Region IX and the Respondents listed in Appendix A, set forth below. The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that the Respondents will reimburse the EPA $161,000.00 of the costs incurred at, or in connection with, response actions conducted at the Coast Wood Preserving Superfund Site, located in Ukiah, California, through February 28, 1994.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA. 94105, Attention: Steve Armsey, Regional Hearing Clerk.

ADDRESSES: A Copy of the proposed settlement may be obtained from Steve Armsey, U.S. EPA Region IX Hearing Clerk (RC–1), 75 Hawthorne St., San Francisco, CA. 94105. Comments should reference the Coast Wood Preserving Superfund Site and EPA Docket No. 95–06.

FOR FURTHER INFORMATION CONTACT: David Rabbino, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105, Telephone: (415) 744–1336

Dated: February 1, 1995

David Jones,

Acting Director, Hazardous Waste Management Division.

[FR Doc. 95–3377 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5152–5]

Proposed Administrative Order on Consent; Lowry Landfill Site, Arapahoe County, CO

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed *de minimis* settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed *de minimis* settlement under section 122(g) concerning the Lowry Landfill Site in Arapahoe County, Colorado (the Site). The proposed Administrative Order on Consent (AOC) requires potentially responsible party (PRP) Rockwell International (Rockwell) to pay a total of $314,587.65 to resolve its liability to the USEPA related to response actions taken or to be taken at the Site.

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DATES: Comments must be submitted on or before March 13, 1995.

ADDRESSES: Comments should be addressed to Marc Herman (8HWM–SR), Remedial Project Manager, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Lowry Landfill Site *De Minimis* Settlement, EPA Docket No. CERCLA VIII–94–26.

FOR FURTHER INFORMATION CONTACT: Jessie Goldfarb (8RC), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 294–7592.

SUPPLEMENTARY INFORMATION: Notice of section 122(g) *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by settling party Rockwell International.

By the terms of the proposed AOC, Rockwell International will pay $314,587.65 to the EPA Hazardous Substance Superfund. In exchange for payment, USEPA will provide Rockwell with a covenant not to sue for liability under sections 106 and 107(a) of CERCLA, and section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act (RCRA)).

The amount that Rockwell International will pay was determined by dividing the original estimated response costs for the Site ($536,000,000) by the original estimated volume of waste disposed of at the Site (142,295,420 gallons). This per gallon charge of $3.77 was then multiplied by the volume of waste Rockwell sent to the Site from the Rocky Flats Plant (55,630 gallons), resulting in a Base Amount ($209,725.10). The premium selected by Rockwell (50% of the Base Amount) was then added to the Base Amount to derive Rockwell's total settlement payment of $314,587.65.

Because the proposed settlement is an extension of the previous Lowry Landfill Site *de minimis* settlements, and to ensure consistency with those settlements, the original estimated response costs for the Site and original estimated volume of waste disposed of at the Site were retained from the previous settlements.

USEPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed *de minimis* settlement.

A copy of the proposed AOC may be obtained in person or by mail from Marc Herman (8HWM–SR), Remedial Project Manager, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2466, (303) 293–1625. Additional background information relating to the *de minimis* settlement is available for review at the Superfund Records Center at the above address, and at the Aurora Central Public Library located at 14949 East Alameda Drive, Aurora, Colorado.

Dated: January 24, 1995.

William P. Yellowtail,

Regional Administrator

[FR Doc. 95–3384 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–83002O; FRL–4935–2]

Receipt of Request for Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver from testing.

SUMMARY: Regulations issued by EPA under section 4 of the Toxic Substances Control Act require that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-*p*-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received a request for a waiver from these requirements from Hoechst Celanese and will accept comments on this request. EPA will publish another **Federal Register** notice announcing its decisions on this request.

DATES: Submit written comments on or before February 27, 1995.

ADDRESS: Submit written comments in triplicate, identified with the document control number OPPTS–83002O, to: TSCA Public Docket Office, Att: TSCA Docket Receipt, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. G–99, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 (52 FR 2112, June 5, 1987), EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs. Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes.

Under 40 CFR 766.32(b), a request for a waiver must be made 60 days before resumption of manufacture or importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987

Hoechst Celanese requests a waiver under 40 CFR 766.32(a)(2)(i). Hoechst Celanese plans to import chloranil (CAS No. 118–75–2), a substance subject to testing under 40 CFR part 766, to provide samples of its products to its customers for research and development. Hoechst Celanese will limit its import of chloranil to 100 kilograms per calendar year.

A public version of the record for this action, from which confidential business information has been deleted, is available for inspection in the TSCA Nonconfidential Information Center, Monday through Friday, excluding legal holidays, in Rm. NE B607, 401 M St., SW., Washington, DC 20460 from 12 p.m. to 4 p.m.

Dated: February 2, 1995

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics

[FR Doc. 95–3388 Filed 2–9–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Implementation Issues Arising from FASB Statement No. 114, "Accounting by Creditors for Impairment of a Loan"

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final action.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) [1] has decided that the portion of an institution's allowance established pursuant to Statement of Financial Accounting Standards No. 114, "Accounting by Creditors for Impairment of a Loan" (FAS 114).

[1] The FFIEC consists of representatives from the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) (referred to as the "agencies"), and the National Credit Union Administration. However this guidance is not directed to credit unions. Section 1006(c) of the Federal Financial Institutions Examination Council Act requires the FFIEC to develop uniform reporting standards for federally supervised financial institutions

should be reported as part of the general allowance, which is includible in Tier 2 capital subject to current limitations. In concluding that the FAS 114 allowance is general in nature, the FFIEC has also reaffirmed existing regulatory reporting policies that require banks to promptly charge-off identified losses. Similarly, savings associations are required to promptly charge-off identified losses, or create specific allowances which are reported separately from general allowances. With respect to impaired collateral-dependent loans, any portion of the loan balance that exceeds the amount that is adequately secured by the fair value of the collateral is generally classified as loss by examiners. Consequently, such losses on collateral-dependent loans are excluded from the general allowance and Tier 2 capital. Because of the conclusions on the treatment of FAS 114 allowances, no changes are required in the federal banking agencies' regulatory capital rules. In addition, the FFIEC has decided to maintain its existing regulatory nonaccrual standards.

EFFECTIVE DATE: For regulatory reports prepared as of March 31, 1995, unless an institution has elected to adopt FAS 114 and the guidance in this notice as of an earlier date.

FOR FURTHER INFORMATION CONTACT: At the FRB: Gerald A. Edwards, Jr., Assistant Director (202) 452–2741 or Charles H. Holm, Project Manager (202) 452–3502. For questions pertaining to regulatory capital issues, Rhoger H. Pugh, Assistant Director (202) 728–5883, or Kevin M. Bertsch, Supervisory Financial Analyst (202) 452–5265.

At the FDIC: Doris L. Marsh, Examination Specialist, Accounting Section, Division of Supervision (202) 898–8905, or Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898–8906.

At the OCC: Eugene W. Green, Deputy Chief Accountant, (202) 874–4933, or Frank Carbone, National Bank Examiner (202) 874–5170.

At the OTS: Timothy Stier, Deputy Chief Accountant (202) 906–5699.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of FAS 114

FAS 114 was adopted in May 1993 by the Financial Accounting Standards Board (FASB). The statement applies to all creditors and to all loans that are identified for evaluation of collectibility, except: (1) large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment (such as credit card, residential mortgage, and consumer installment loans), (2) loans that are measured at fair value or at the lower of cost or fair value (such as loans held for sale), (3) leases, and (4) debt securities. FAS 114 does not specify how an institution should identify loans that are to be evaluated for collectibility. An institution should apply its normal loan review procedures in making that judgment.

Under FAS 114, a loan is impaired when it is probable that a creditor will be unable to collect all amounts due (including interest and principal) according to the contractual terms of the loan agreement. When a loan is impaired, a creditor must measure the extent of that impairment by determining the present value of expected future cash flows discounted at the loan's effective interest rate. However, as practical expedients, the creditor may measure impairment based on either the loan's observable market price, or the fair value of the collateral for the loan if the loan is collateral dependent. Although under FAS 114 a creditor is generally allowed to use any of these three measurement methods to determine the amount of impairment, a creditor must measure impairment based on the fair value of collateral when the creditor determines that foreclosure is probable.

FAS 114 does not address when a creditor should record a charge-off of an impaired loan. Furthermore, FAS 114, as amended by Statement of Financial Accounting Standards No. 118, "Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures" (FAS 118), in October 1994, does not address how a creditor should recognize interest income on an impaired loan.

B. FFIEC Guidance on FAS 114 Announced in May 1994

The May 17, 1994, **Federal Register** (59 FR 25656) stated that "the FFIEC and the agencies are requiring institutions to adopt FAS 114 as of its effective date for purposes of reporting on the Call Report and TFR. Furthermore, the agencies will permit early adoption." This regulatory reporting treatment is consistent with the requirements of Section 37 of the Federal Deposit Insurance Act (12 U.S.C. 1831n).

While institutions are required to adopt FAS 114 for regulatory reporting purposes, the "Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans," issued on November 7, 1991, will remain in effect. Therefore, impaired, collateral-dependent loans must be reported at the fair value of collateral in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of the type of collateral.

The FFIEC and the agencies also announced that they do not plan to automatically require additional allowances for credit losses on impaired loans over and above what is required on these loans under FAS 114.[2] However, an additional allowance on impaired loans may be necessary based on consideration of institution-specific factors, such as historical loss experience compared with estimates of such losses, concerns about the reliability of cash flow estimates, or the quality of an institution's loan review function and controls over its process for estimating its FAS 114 allowance.

C. Issues on Which the FFIEC Sought Public Comment

In the May 17, 1994, **Federal Register**, the FFIEC sought public comment on two primary reporting issues and certain other matters related to FAS 114.

1. The Character of the FAS 114 Allowance

Should that portion of an institution's allowance established pursuant to FAS 114 be reported and considered as a specific allowance and, thus, not be eligible for inclusion in Tier 2 capital under the agencies' current capital rules? Alternatively, should the FAS 114 allowance be regarded as a general allowance which would be eligible for inclusion in Tier 2 capital subject to existing limits?[3]

2. Maintenance of Nonaccrual Reporting Requirements

Should regulatory nonaccrual standards be maintained for loans subject to FAS 114?

3. Other Issues

a. Comment was sought on (i) how much the adoption of FAS 114 is expected to change overall allowance

[2] FAS 114 does not address the overall adequacy of the ALLL. However, in addition to requiring an allowance for credit losses on impaired loans, FAS 114 requires each institution to continue to maintain an overall allowance that complies with Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies." Thus, consistent with existing regulatory policy, the ALLL should be adequate to cover all estimated credit losses arising from the loan and lease portfolio, including losses on loans that do not meet FAS 114's impairment criterion.

[3] Under the agencies' risk-based capital rules, general allowances includible in Tier 2 capital are limited to 1.25 percent of gross risk-weighted assets and an institution's Tier 2 capital cannot exceed its Tier 1 capital.

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levels, and (ii) what portion of total overall allowances are expected to be related to impaired loans evaluated pursuant to FAS 114.

b. Comment was sought on implementation issues arising from FAS 114 to the extent they relate to U.S. branches and agencies of foreign banks. These entities are required to file quarterly the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (002 Report), which in many respects is similar to the bank Call Report. The 002 Report requires U.S. branches and agencies of foreign banks to report the amount of nonaccrual loans (see issue 2, "Maintenance of Nonaccrual Reporting Requirements").

c. Comment was sought on how FAS 114 might affect an institution's internal loan review process and its internal loan classification system for loans subject to FAS 114. In this regard, the FFIEC noted that, according to the December 21, 1993, Interagency Policy Statement on the Allowance for Loan and Lease Losses, each institution should ensure that it has a formal credit grading system that can be reconciled with the classification framework used by the agencies.

II. Public Comments

The FFIEC received 85 comment letters concerning the regulatory implementation issues arising from FAS 114. Seventy letters came from banking and thrift institutions. Eight financial institution trade associations, one professional association for accountants, three state banking departments, a state banking supervisors' conference, and two accounting firms also offered comments.

A. The Character of the FAS 114 Allowance

58 of the 70 commenters who addressed this issue indicated that an institution's allowance established pursuant to FAS 114 should be reported as a general allowance and be eligible for inclusion in Tier 2 capital. Many commenters stated that they believe that the FAS 114 allowance is a general allowance because of its availability to absorb any losses in the loan portfolio. Others noted that the banking agencies' current policy of requiring prompt charge-offs supports the idea that an institution's allowance for loan and lease losses (ALLL) does not contain identified losses and that any FAS 114 allowances included in the ALLL would be general. Respondents also indicated that the methodology required by FAS 114 is similar to that recommended in the agencies' current policies for determining an adequate ALLL and that other allocations of the ALLL for analytical purposes are currently disclosed in documents filed with the Securities and Exchange Commission without implying that they are specific allowances.

12 of the commenters recommended that the FAS 114 allowance be considered a "specific allowance" and not be eligible for inclusion in Tier 2 capital. These commenters indicated that they believe that FAS 114 relates to identified losses of particular loans and groups of loans. One commenter stated that, because of the current limit on the amount of the ALLL that may be included in Tier 2 capital (i.e., 1.25 percent of gross risk-weighted assets), the current impact on institutions of a decision to treat the FAS 114 allowance as a specific allowance would be minimal. At the same time, this commenter noted that considering the FAS 114 allowance to be specific would promote consistency in the application and analysis of financial accounting, regulatory reporting, and capital standards. In addition, the commenter suggested that viewing the FAS 114 allowance as specific would add discipline to the loan review process.

B. Maintenance of Nonaccrual Reporting Requirements

51 of the 60 commenters addressing this reporting issue agreed that the agencies should maintain existing nonaccrual policies for regulatory reporting purposes. Many respondents stated that, since nonaccrual policies are widely recognized, used, and understood, no change in these policies was needed. Some respondents indicated that institutions should not be required to modify their accounting systems until a change in income recognition methods for loans, if any, is made by FASB.

9 of the commenters did not believe the agencies should retain existing nonaccrual policies. One respondent stated that the agencies' nonaccrual policies did not improve the safety and soundness of institutions, but rather forced the cost recovery method of accounting for all funds collected on these loans. Some commenters suggested modifications to the current nonaccrual policies.

C. Specific Questions Raised by the Agencies

1. Allowance Levels

Commenters were asked how much the adoption of FAS 114 was expected to change overall allowance levels. Of the 41 commenters who responded, almost all stated that there would be little change in their allowance level. Other respondents indicated that they had not yet studied the impact of FAS 114.

Thirteen respondents answered the question about what portion of the overall ALLL is expected to be related to impaired loans evaluated pursuant to FAS 114. Several commenters simply indicated that they expected the FAS 114 portion of their ALLL to be small, while three provided separate specific estimates of less than 25 percent, 10 percent, and 5 percent. One stated that the FAS 114 allowance would be less than its existing ALLL and another indicated that its size would depend on the types of loans in portfolio. One commenter suggested that the FAS 114 allowance would be larger if assessed during an economic downturn.

2. U.S. Branches and Agencies of Foreign Banks

Four of nine commenters on this subject suggested that nonaccrual standards should be maintained for these branches and agencies. Three suggested that the same rules should apply to all institutions operating in the U.S. so that institutions chartered in the U.S. are not placed at a competitive disadvantage. Two commenters stated that branches and agencies of foreign banks should not have to record an ALLL at the branch. One commenter also requested that the agencies make no changes to the 002 Report.

3. Internal Review Systems

About half of the 55 institutions commenting on how FAS 114 might affect an institution's internal loan review process and its internal loan classification system said that FAS 114 will have little or no effect. Another third indicated that it will cause some operating and reporting changes with accompanying cost, but little or no perceived benefit. Changes that may be needed include more analysis and monitoring of loans, more time estimating cash flows and reviewing cash flow estimates, and more time estimating cash flows and reviewing cash flow estimates, and more documentation of the work performed

III. Decisions on FAS 114 Implementation Issues

After review of the comments received and further consideration of the issues involved, the FFIEC has made the following decision on implementation issues arising from FAS 114.

A. The Character of the FAS 114 Allowance

The FFIEC has concluded that FAS 114 sets forth a method for estimating a portion of an institution's allowance for loan and lease losses. Therefore, the regulatory capital treatment of the ALLL for institutions will not be affected by the adoption of FAS 114 for regulatory reporting purposes. Consistent with this determination, the ALLL of institutions will continue to be reported net of any identified losses and will be includible in Tier 2 capital, subject to current limits.

In concluding that the portion of the allowance established pursuant to FAS 114 is general in nature, the FFIEC notes that FAS 114 in no way affects regulatory charge-off policies and is reiterating that these policies require banks to promptly charge-off all identified losses and require thrifts to either promptly charge-off identified losses or provide for them using separate, specific allowances that may not be included in regulatory capital. With respect to impaired collateral-dependent loans, any portion of the loan balance that exceeds the amount that is adequately secured by the fair value of the collateral is generally classified as loss by examiners. Consequently, the FFIEC notes that such losses on collateral-dependent loans are excluded from the general allowance and Tier 2 capital. Because of the conclusions on the treatment of FAS 114 allowances, no changes are required in the agencies' regulatory capital rules. The FFIEC further notes that the portion of the allowance established pursuant to FAS 114 is available to meet losses in any part of the loan and lease portfolio and that institutions currently use a number of techniques in estimating the overall adequacy of their ALLL.

B. Nonaccrual Policies

The FFIEC has also decided to retain its existing nonaccrual policies governing the recognition of interest income. As noted above, FASB has amended FAS 114 by issuing FAS 118 to remove the provisions describing how income on an impaired loan should be reported. Thus, the agencies' nonaccrual standards are not inconsistent with GAAP. Furthermore, as noted in the request for comment included in the **Federal Register** of May 17, 1994, the agencies' nonaccrual policies also provide many supervisory benefits, and retention of nonaccrual policies reduces regulatory burden by permitting institutions to continue their current reporting systems.

Consistent with its determinations with respect to the Call Report, the FFIEC is not recommending any changes to regulatory nonaccrual standards in the 002 Report as a result of FAS 114. Accordingly, current regulatory nonaccrual standards will continue to apply to U.S. branches and agencies of foreign banks.

Dated: February 7, 1995.

Keith J. Todd,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 95–3392 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 20, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 20, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a further pickup in economic growth in recent months. Nonfarm payroll employment rose sharply in November, and the civilian unemployment rate declined to 5.6 percent. Industrial production registered another large increase in November and capacity utilization moved up further from already high levels. Retail sales have continued to rise rapidly. Housing starts increased appreciably in November. Orders for nondefense capital goods point to a continued strong expansion in spending on business equipment; permits for nonresidential construction have been trending higher. The nominal deficit on U.S. trade in goods and services widened somewhat in October from its average rate in the third quarter. Prices of many materials have continued to move up rapidly, but broad indexes of prices for consumer goods and services have increased moderately on average over recent months.

On November 15, 1994, the Board of Governors approved an increase from 4 to 4-3/4 percent in the discount rate, and in line with the Committee's decision the increase was allowed to show through fully to interest rates in reserve markets. In the period since the November meeting, short-term interest rates have risen considerably while long-term rates have declined slightly. The trade-weighted value of the dollar in terms of the other G-10 currencies recovered further over the intermeeting period.

Growth of M2 resumed in November after several months of decline, while M3 expanded moderately further. For the year through November, M2 grew at a rate at the bottom of the Committee's range for 1994 and M3 at a rate in the lower half of its range for the year. Total domestic nonfinancial debt has continued to expand at a moderate rate in recent months and for the year-to-date it has grown at a rate in the lower half of its monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was maintained at 4 to 8 percent for the year For 1995, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1994 to the fourth quarter of 1995, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the associated monitoring range for growth of domestic nonfinancial debt at 3 to 7 percent for 1995. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 20, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

reserve conditions are expected to be consistent with modest growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, February 6, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95–3337 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–F

Albert Bowman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Albert Bowman, Rhame, North Dakota; Lorraine Bowman, Rhame, North Dakota; Roger Berglund, Bowman, North Dakota; Susan Berglund, Bowman, North Dakota; Gwenn Jones, Bowman, North Dakota; Wendy Jorgenson, Bismarck, North Dakota; Bruce Bowman, Rhame, North Dakota; and Dakota Western Bank Profit Sharing Plan, Bowman, North Dakota (collectively, the Bowman Group), to acquire an additional 46.45 percent, for a total of 100 percent, of the voting shares of Dakota Western Bankshares, Inc., Bowman, North Dakota, and thereby indirectly acquire Dakota Western Bank, Bowman, North Dakota.

Board of Governors of the Federal Reserve System, February 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3338 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–F

David Randall Martin Trust No.1, W. Scott Martin, Trustee; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-2417) published on page 6120 of the issue for Wednesday, February 1, 1995.

Under the Federal Reserve Bank of Dallas heading, the entry for David Randall Martin Trust No.1, W. Scott Martin, Trustee, is revised to read as follows:

1. David Randall Martin Trust No.1, W. Scott Martin, Trustee,Tulsa, Oklahoma; to acquire an additional 7.8 percent, for a total of 21 percent; Timothy Christopher Martin Trust No. 1, W. Scott Martin, Trustee, Tulsa, Oklahoma, to acquire an additional 6.8 percent, for a total of 21 percent; and Julie Catherine Martin Trust No. 1, W. Scott Martin, Trustee, Tulsa, Oklahoma, to acquire an additional 5.7 percent, for a total of 21 percent, of the voting shares of First Burkburnett Bancshares, Inc., Burkburnett, Texas, and thereby indirectly acquire First National Bank in Burkburnett, Burkburnett, Texas.

Comments on this application must be received by February 15, 1995.

Board of Governors of the Federal Reserve System, February 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3339 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–F

Foxdale Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Foxdale Bancorp, Inc., South Elgin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Foxdale Bank (in organization), South Elgin, Illinois, a *de novo bank*.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CRB Financial Corp., San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Camino Real Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Camino Real Bancshares, Inc., San Antonio, Texas, and Camino Real Bank, N.A., Eagle Pass, Texas.

Board of Governors of the Federal Reserve System, February 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3340 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–F

North Fork Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bancorporation, Inc., Mattituck, New York; to acquire 19.9 percent of the voting shares of Suffolk Bancorp, Riverhead, New York, and thereby indirectly acquire Suffolk County National Bank, Riverhead, New York.

In connection with this application, Applicant also has applied to acquire Island Computer Corporation of New York, Inc., Bohemia, New York, a subsidiary of Suffolk Bancorp, and thereby engage *de novo* in data processing actitivites, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3341 Filed 2–9–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL SERVICE IMPASSES PANEL

Information Collection Under OMB Review

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: The Federal Service Impasses Panel submits the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATE: February 10, 1995.

This document lists the following information: (1) The title of the information collection, and the Agency's form number; (2) identification of the parties and individuals authorized to act on their behalf; (3) statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; (4) a description of the bargaining unit along with the number of employees included; (5) the expiration date of the parties' labor agreement; (6) the number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized; (7) if approval of binding arbitration is requested, a statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; (8) a description of the arbitration procedures to be used; (9) the name and signature of the party or parties filling the request; and (10) an estimate of the total annual reporting hours, and recordkeeping burden.

Additional information or comments: Copies of the proposed forms and supporting documents may be obtained from Linda A. Lafferty, Executive Director, 607 14th Street, NW., Suite 220, Washington, DC 20424–0001. (202) 482–6670.

Linda A. Lafferty,

Executive Director.

[FR Doc. 95–3334 Filed 2–9–95; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 011795 AND 012795

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Blackstone Capital Partners II Merchant Banking Fund, LP, Union Carbide Corporation, UCAR International Inc	95–0726	01/18/95
Blackstone Offshore Capital Partners II, L.P., Union Carbide Corporation, UCAR International Inc	95–0727	01/18/95
Heilig-Meyers Company, Florencio Berrios, Berrios Realty, Inc	95–0753	01/18/95
Greenfield Industries, Inc., Cincinnati Milacron Inc., American Mine Tool Division	95–0758	01/18/95
Consolidated Hydro, Inc., Hydro Development Group Inc., Hydro Development Group Inc	95–0720	01/20/95
K–III Communications Corporation, Edward S. Rogers, Rogers–MHI Publishing Inc	95–0741	01/20/95
Mahendra Parekh, Rohm and Haas Company, Rohm and Haas Delaware Valley, Inc	95–0769	01/20/95
CAI Partners and Company, Limited Partnership, NBS Technologies Inc., NBS Technologies Inc	95–0789	01/20/95

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 011795 AND 012795—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Micky Arison 1994 "B" Trust, CHC International, Inc., CHC International, Inc	95–0718	01/21/95
K–III Communications Corporation, McGraw-Hill, Inc., McGraw-Hill Professional Book Clubs Division	95–0740	01/23/95
General Electric Company, Westinghouse Electric Corporation, Station Partners	95–0809	01/23/95
Westinghouse Electric Corporation, General Electric Corporation, General Electric Corporation	95–0810	01/23/95
Kubota Corporation, Maxtor Corporation, Maxoptix Corporation	95–0812	01/23/95
Mr. A. Richard Benedek, Chemical Banking Corporation, Dothan Holdings II Inc	95–0824	01/23/95
Georges Marciano, Yes Clothing Co., Yes Clothing Co	95–0829	01/23/95
Common, S.A.C.A., Standard Brands Paint Company, Standard Brands Paint Company	95–0831	01/23/95
Ashland Oil, Inc., United Meridian Corporation, UMC Petroleum Corporation	95–0836	01/23/95
Otto Happel, The Long-Term Credit Bank of Japan, Ltd., Crescent Associates	95–0837	01/23/95
Clayton & Dubilier Private Equity Fund IV LP, Philip Morris Companies Inc., KFS Holding, Inc	95–0839	01/23/95
Golder, Thoma, Cressey, Rauner Fund IV, L.P., CIC I Acquisition Corp., Coinmach Industries Co	95–0852	01/23/95
The Quaker Oats Company, Nadim Spahi, Nile Spice Foods, Inc	95–0872	01/23/95
J.C. Penney Company, Banks D. Kerr, Kerr Drug Stores, Inc	95–0802	01/24/95
NIKE, Inc., Canstar Sports Inc., Canstar Sports Inc	95–0821	01/24/95
Philip T. Cunningham, Artisoft, Inc., Eagle Technology Division	95–0833	01/24/95
Express America Holdings Corporation, Ms. Palomba Weingarten, Pilgrim Group, Pilgrim Mgt. & Pilgrim Distribution Cos	95–0838	01/24/95
American Premier Underwriters, Inc., American Financial Corporation, American Financial Corporation	95–0844	01/24/95
American Financial Corporation, American Premier Underwriters, inc., American Premier Underwriters, inc	95–0845	01/24/95
American Premier Underwriters, Inc., Citicasters Inc., Citicasters inc	95–0847	01/24/95
Carl H. Linder III, American Premier Group, Inc., American Premier Group, Inc	95–0848	01/24/95
Keith E. Linder, American Premier Group, Inc., American Premier Group, Inc	95–0849	01/24/95
S. Craig Linder, American Premier Group, Inc., American Premier Group, Inc	95–0850	01/24/95
American Premier Underwriters, Inc., Chiquita Brands International, Inc., Chiquita Brands International, Inc	95–0851	01/24/95
Carl H. Linder, American Premier Group, Inc., American Premier Group, Inc	95–0853	01/24/95
Charter Medical Corporation, Magellan Health Services, Inc., Megellan Health Services, inc	95–0763	01/26/95
McDermott International, Offshore Pipelines, Inc., Offshore Pipelines, Inc	95–0777	01/26/95
Frank C. Wade, McDermott International, Inc., J. Ray McDermott, S.A	95–0780	01/26/95
Quorum Health Group, Inc., Carolinas Hospital System, Inc., Carolinas Hospital System Enterprises, Inc	95–0765	01/27/95
Kelso Partners IV, L.P., New Vision TV, L.P., New Vision Television of Tuscon L.P	95–0817	01/27/95
International Business Machines Corporation, Chrysler Corporation, Chrysler Systems Inc., et al	95–0823	01/27/95
Century Communication Corp., Sterling Cellular Holdings Limited Partnership, Michigan 6 Cellular Limited Partnership	95–0841	01/27/95
Indiana Secondary Market for Education Loans, Inc., EFS, Inc., EFS, Inc	95–0842	01/27/95
EFS, Inc., Indiana Secondary Market for Education Loans, Inc., Indiana Secondary Market for Education Loans, Inc	95–0843	01/27/95
John Hancock Mutual Life Insurance Company, Enron Corp., Enron Equity Corp	95–0846	01/27/95
International Paper Company, Seaman-Patrick Holding Company, Seaman-Patrick Holding Company/Seaman-Patrick Paper Co	95–0867	01/27/95
Charterhouse Equity Partners II, L.P., CableSouth, Inc., CableSouth, Inc	95–0870	01/27/95
AT&T Corp., AT&T Corp., Interchange Network Company, L.P	95–0882	01/27/95
Rush Presbyterian-St. Luke's Medical Center, Lake Forest Hospital Foundation	95–0883	01/27/95
Brake Associates L.P., American Industrial Partners Capital Fund, L.P., Neway Anchorlok International, Inc	95–0884	01/27/95
Loews Corporation, Alexander & Alexander Services inc., Alexis, Inc. Alexisis Risk Mgt. Services, Inc	95–0885	01/27/95

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Renee A. Horton, Contact Representatives

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–3415 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fernald Dosimetry Reconstruction Project: Public Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Fernald Dosimetry Reconstruction Project.

Time and Date: 10 a.m.–5 p.m., February 25, 1995.

Place: The Plantation, Oak Room, 9660 Dry Fork Road, Harrison, Ohio 45020.

Status: Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 75 people.

Purpose: The department of Health and Human Services (HHS) and the Department of Energy (DOE) have two Memoranda of Understanding (MOU) for public health activities and research at DOE sites. One transferred the responsibility for the management and conduct of energy-related analytic epidemiologic research to HHS. HHS has delegated program responsibility to CDC.

The Office of Environmental Restoration and Waste Management and the Office on Environment, Safety, and Health within DOE have a separate MOU with ATSDR. This MOU addresses ATSDR public health responsibilities around DOE sites. In addition, ATSDR is required by law (Sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act) to conduct public health assessments and where appropriate other health activities (for example, health studies, health surveillance, exposure registries), many of which are conducted at DOE sites.

Implementing these MOUs requires significant interaction with communities living in proximity to DOE sites. Community involvement is a critical part of the HHS energy-related research and activities. With an environmental dose reconstruction for DOE's Feeds Material Production Center near Fernald, Ohio, as well as a worker study at the same site, the availability of a formal site-specific advisory committee is necessary. On December 1, 1994, the "Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites" was chartered. This charter is in response to the requests by representatives of the communities surrounding DOE sites to provide consensus advice and recommendations on community concerns related to CDC's and ATSDR's activities related to the sites. Members will be selected from individuals knowledgeable of community, Native American Tribal, and labor concerns and from diverse community viewpoints and interests.

CDC and ATSDR are holding a series of public meetings to begin developing operational guidelines at specific DOE sites. The purpose of these public meetings is to update the public on the status of CDC's and ATSDR's community involvement plans and to seek individual advice and recommendations from interested parties concerning operational guidelines.

Agenda items are subject to change as priorities dictate.

Contact person for a Copy of the Charter or for More Information: Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040, FAX 404/488–7044.

Dated: February 3, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–3352 Filed 2–9–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Board of Tea Experts; Rechartering

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing the rechartering of the Board of Tea Experts by the Commissioner of Food and Drugs or designee. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. App. 2).

DATES: Authority for this board will expire on January 3, 1997, unless the Commissioner or designee formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–443–2765.

Dated: February 6, 1995.

Lireka P. Joseph,

Acting Interim Deputy Commissioner for Operations.

[FR Doc. 95–3438 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–01–F

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Technical Electronic Product Radiation Safety Standards Committee; Recharter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the rechartering of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), by the Commissioner of Food and Drugs or designee. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. App. 2).

DATES: The new charter for this committee will extend to December 24, 1996.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–443–2765.

Dated: February 6, 1995.

Lireka P. Joseph,

Acting Interim Deputy Commissioner for Operations.

[FR Doc. 95–3437 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0021]

M & G Ricerche S.p.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that M & G Ricerche S.p.A. has filed a petition proposing that the food additive regulations be amended to provide for the safe food contact use of ethylene terephthalate-isophthalate copolymers prepared with pyromellitic dianhydride such that the finished copolymers contain at least 95 weight percent of polymer units derived from ethylene terephthalate.

DATES: Written comments on the petitioner's environmental assessment by March 13, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B4444) has been filed by M & G Ricerche S.p.A., c/o 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposes to amend the food additive regulations in § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) to provide for the safe food contact use of ethylene terephthalate-isophthalate copolymers prepared with pyromellitic dianhydride such that the finished copolymers contain at least 95 weight percent of polymer units derived from ethylene terephthalate.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promuigated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 13, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–3436 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0029]

Drug Export; Chloraprep Frepp® and Chloraprep Sepps® (Chlorhexidine Gluconate 0.5% w/v Isopropyl Alcohol 70% w/v)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Medi-Flex Hospital Products, Inc., has filed an application requesting approval for The export of the human drug ChloraPrep Frepp® and ChloraPrep Sepps® (chlorhexidine gluconate 0.5% w/v Isopropyl Alcohol 70% w/v) to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval.Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Medi-Flex Hospital Products, Inc., 19 Butterfield Trial Blvd., El Paso, TX 79906, has filed an application requesting approval for the export of the human drug ChloraPrep Frepp® and ChloraPrep Sepps® (chlorhexidine gluconate 0.5% w/v Isopropyl Alcohol 70% w/v) to Canada. This product is indicated for the topical use on peripheral, central venous and arterial catheter sites and other surgical procedures as a film forming skin preparation with persistent broad spectrum antimicrobial activity. The application was received and filed in the Center for Drug Evaluation and Research on October 21, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 31, 1995.

Kathy P. Miracco,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–3441 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0028]

Drug Export; Colgate Total™ (Sodium Fluoride USP 0.24%, Triclosan 0.30%) Toothpaste

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Colgate-Palmolive Co. has filed an application requesting approval for the export of the human drug Colgate TOTAL™ (sodium fluoride USP 0.24%, triclosan 0.30%) toothpaste to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Colgate-Palmolive Co., 300 Park Ave., New York, NY 10022–7499, has filed an application requesting approval for the export of the human drug Colgate TOTAL™ (sodium fluoride USP 0.24%, triclosan 0.30%) toothpaste to Canada. This product is indicated for fighting cavities, plaque, tarter, and gingivitis. The application was received and filed in the Center for Drug Evaluation and Research on October 12, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 31, 1995.

Kathy P. Miracco,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–3439 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0030]

Drug Export; Remydrial® Two Component System Containing Dapiprazole Hydrochloride 50 Milligram (mg) in 260 mg Lyophilized Powder and Solvent Containing 1.0 mg Benzalkonium Chloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Angelini Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Remydrial® two component system containing Dapiprazole Hydrochloride 50 milligram (mg) in 260 mg Lyophilized powder and solvent containing 1.0 mg Benzalkonium Chloride in 10 milliliter (mL) bottle to Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register**

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within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Angelini Pharmaceuticals, Inc., 70 Grand Ave., River Edge, NJ 07661, has filed an application requesting approval for the export of the human drug Remydrial® two component system containing Dapiprazole Hydrochloride 50 mg in 260 mg Lyophilized powder and solvent containing 1.0 mg Benzalkonium Chloride in 10 mL bottle to Germany. The firm currently holds an approved new drug application for this product, however, this preparation contains modifications which consists of a formulation change in the solvent for isotonicity, a change in the package size and design for ease of use, and a change in the manufacturer. This product is used for the reversal of medicine-induced pupil dilation. The application was received and filed in the Center for Drug Evaluation and Research on November 22, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period. This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 31, 1995

Kathy P. Miracco,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research

[FR Doc. 95-3440 Filed 2-9-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95N-0031]

Drug Export; Valacyclovir Hydrochloride Bulk Drug Substance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Burroughs Wellcome Co. has filed an application requesting conditional approval for the export of the bulk drug substance valacyclovir hydrochloride to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709, has filed an application requesting conditional approval for the export of the bulk drug substance valacyclovir hydrochloride to the United Kingdom. The product is indicated for the treatment of herpes zoster (shingles). The application was received and filed in the Center for Drug Evaluation and Research on October 13, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 31, 1995.

Kathy P. Miracco,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95-3442 Filed 2-9-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95N-0032]

Drug Export; Visipaque™ (Iodixanol) Injection 270 Milligrams Iodixanol/Milliliter (mg I/mL) and 320 mg I/mL Supplied in 50 mL Vial, 100 mL, 150 mL, and 200 mL Bottle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nycomed, Inc., has filed an application requesting approval for the export of the human drug Visipaque™ (iodixanol) Injection 270 milligrams iodixanol/milliliter (mg I/mL) and 320 mg I/mL supplied in 50 mL vial, 100 mL, 150 mL, and 200 mL bottle to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Nycomed, Inc., 1250 South Collegeville Rd., P.O. Box 5000, Collegeville, PA 19426-0900, has filed an application requesting approval for the export of the human drug Visipaque™ (iodixanol) Injection 270 mg I/mL and 320 mg I/mL supplied in 50 mL vial, 100 mL, 150 mL, and 200 mL bottle to Canada. The product is used in angiocardiography (left ventriculography, aortic root injections, and selective coronary arteriography) and can be used in the diagnosis of coronary artery disease as well as evaluation of the function of the chambers of the heart and heart valves. The application was received and filed in the Center for Drug Evaluation and Research on December 28, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 21, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 31, 1995.

Kathy P. Miracco,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95-3443 Filed 2-9-95; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1995 Funding Opportunities for Grants From the Center for Mental Health Services

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS

ACTION: Notice of funding availability

SUMMARY: The Center for Mental Health Services (CMHS), SAMHSA, announces that FY 1995 funds are available for grants for the following activities. These activities are discussed in more detail under Section 4 of this notice.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period (years)
AIDS Provider Educ	05/10/95	$980,000	5-6	3
Innovative Child Services	05/10/95	$2.6 million	6-8	3
Consumer/Family Networks	05/10/95	$750,000-1.2 million	5-8	3
Consumer TA Center(s)	05/10/95	$350,000-700,000	1-2	3

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 3 years in duration. FY 1995 funds for mental health services and demonstration programs are appropriated by the Congress under Public Law 103-333. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Center's mental health services and demonstration activities address issues related to Healthy People 2000 objectives: to promote the physical, social, psychological and economic well-being of adults with mental disorders and children and adolescents with or at risk for a serious emotional, behavioral, or mental disorder.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: (202) 783-3238).

GENERAL INSTRUCTIONS: Applicants for grants must use application form PHS 5161-1 (Rev. 7/92; OMB No. 0937-0189). The Application Kit contains the PHS 5161-1, Standard Form 424 (Face Page) and *complete instructions* for preparing and submitting applications. The Kit may be obtained from the contact person identified for each activity covered by this notice (see Section 4).

When requesting an Application Kit, the applicant must specify the particular activity(ies) for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

APPLICATION SUBMISSION: Applications must be submitted to: Center for Mental Health Services Programs, Division of Research Grants, NIH, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above.

Competing applications must be received by the indicated receipt dates to be accepted for review. An

* If an overnight carrier or express mail is used, the Zip Code is 20816.

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application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a national holiday, it will be extended to the following work day.

Applications received after the receipt date(s) or those sent to an address other than the address specified above *will be returned to the applicant without review.*

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the contact person identified for each activity covered by this notice (see Section 4). Requests for information concerning business management issues should be directed to: Grants Management Office, Center for Mental Health Services, 5600 Fishers Lane, Room 15C–05, Rockville, Maryland 20857, (301) 443–4456.

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information in this section has been organized, as outlined in the Table of Contents below In addition, the discussion of the specific FY 1995 funding activities is presented under the following headings:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Amounts.
- Catalog of Federal Domestic Assistance Number.
- Program Contact.

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7 Executive Order 12372

1. Program Background and Objectives

The Center for Mental Health Services (CMHS) has been given a statutory mandate to take a national leadership role in the development and demonstration of improved mental health services. Toward that end, Center activities involve facilitating the application of scientifically established findings and practice-based knowledge to prevent and treat mental disorders, improving access, reducing barriers and promoting high quality, effective programs and services for people with, or at risk for, these disorders.

2. Special Concerns

The CMHS will address a number of special concerns in 1995. Particular emphasis will be placed on helping localities design and implement comprehensive approaches to service delivery, networking, and coordination with other Federal and non-Federal programs. Special emphasis will be given to providing assistance for individuals in varied racial and ethnic groups; adolescents; early intervention programs; rural populations; adolescents involved in the juvenile justice system; and individuals with, or at risk for, HIV/AIDS.

3. Criteria for Review and Funding

Competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Applications will be recommended for approval or disapproval on the basis of technical merit. Applications recommended for approval will be assigned scores according to level of merit.

Notification of the IRG's recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications over $50,000 will undergo a second level of review by the CMHS National Advisory Council, whose review may be based on policy considerations, as well as technical merit. Only applications recommended for approval by the Council may be considered for funding by CMHS.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Approved Applications

Applications recommended for approval by the peer review group and the CMHS National Advisory Council (if applicable) will be considered for funding on the basis of their overall technical merit as determined through the review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1995 Mental Health Service Activities

Project activities are grouped in this notice under one section: Grants.

4.1 Grants

Four major activities for CMHS grant programs are discussed below.

4.1.1 Mental Health Care Provider Education In HIV/AIDS

- Application Deadline May 10, 1995.
- Purpose: The goal of the program is to enhance the Nation's ability to have an impact upon the HIV/AIDS epidemic by training the traditional mental health care providers and other health care workers who often are front-line providers of mental health services, such as medical students, primary care physicians, and the clergy and other spiritual providers.

Applicants will be expected to propose a comprehensive training program that addresses the mental health needs of people with HIV/AIDS. The program is to train traditional mental health providers (psychiatrists, psychologists, nurses, social workers, counselors, and marriage and family counselors), other first line providers of mental health services (e.g., medical students, primary care physicians), and nontraditional providers (e.g., the clergy and other spiritual providers, alternative health care workers). Training programs proposed must target at least 5 provider groups. The program must address the neuropsychiatric and the psychosocial aspects of HIV/AIDS; coping with HIV/AIDS; and approaches to prevent the spread the of HIV infection. Applicants shall make appropriate use of existing curricula.

- Priorities: None.
- Eligible Applicants: Applications may be submitted by any public or private nonprofit organization.
- Grants/Amounts: 5 to 6 awards, with individual awards varying from $125,000 to $200,000 for the first year
- Catalog of Federal Domestic Assistance Number: 93.244.
- Program Contact: For programmatic or technical information contact: Barbara J. Silver, Ph.D., Director, HIV/AIDS Provider Education Program, Center for Mental Health Services, 5600 Fishers Lane, Room 15–81, Rockville, Maryland 20857, (301) 443–7817.
- Application kits and complete instructions for submitting an application may be obtained from: Global Exchange, Inc., 7910 Woodmont Avenue, Suite 400, Bethesda, Maryland 20814–3015, (301) 656–3100.

4.1.2 Evaluating Innovative Children's Mental Health Services

- Application Deadline: May 10, 1995.
- Purpose: The purpose of this announcement is to encourage demonstrations which focus on evaluating the effectiveness of innovative models of organizing, delivering, and financing mental health service systems of care for children and adolescents with or at risk for serious emotional, behavioral or mental disturbances and their families, especially those systems that include community-based services and interagency coordination.
- Priorities: None.
- Eligible Applicants: Centralized state assistance is often helpful in obtaining continued support for successful intervention projects. Therefore, State mental health authorities may choose to be direct applicants. Direct application for funding may also be made by political subdivisions of a State, and private nonprofit organizations such as community-based organizations, universities, colleges, and hospitals. In the case where an applicant is not the State mental health authority, the applicant will be required to obtain a letter of support from the State mental health authority.
- Grants/Amounts: 6 to 8 awards, with individual awards varying from $300,000 to $400,000 for the first year.
- Catalog of Federal Domestic Assistance Number: 93.125.
- Program Contact: For application kit and/or programmatic or technical information contact: Ms. Diane L. Sondheimer, Child, Adolescent and Family Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–17, Rockville, Maryland 20857, (301) 443–1333.

4.1.3 Demonstration Grants for Consumer and Family Networks

- Application Deadline: May 10, 1995.
- Purpose: The goals for these demonstration grants are to implement and evaluate strategies to: (1) Empower consumer and family networks and strengthen their ability to participate in State and local mental health service planning and health care reform policy activities related to improving community-based services for the target population; and (2) foster the financial self-sufficiency of consumer and family organizations.
- Priorities: None.
- Eligible Applicants: CMHS is limiting potential applicants for projects under this announcement to State mental health authorities. Multiple organizations are generally involved in implementing these initiatives; and the State mental health authorities are uniquely qualified to undertake the coordination function, since they work directly with the major consumer and family groups and oversee a wide range of mental health service providers.

Due to funding limitations, only States and territories that do not have a current, active Community Support Programs (CSP) Service Systems Improvement Demonstration (SSID) grant, or those that have an active CSP SSID grant with a project period that ends on or before August 31, 1995, excluding no-cost extensions, are eligible to apply.

- Grants/Amounts: 5 to 8 awards, with individual awards varying from $125,000 to $150,000 for the first year.
- Catalog of Federal Domestic Assistance Number: 93.125.
- Program Contact: For application kit and/or programmatic or technical information contact: Mr. Neal Brown, Chief, Community Support Programs Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–22, Rockville, Maryland 20857, (301) 443–3653.

4.1.4 National Consumer Technical Assistance Centers

- Application Deadline: May 10, 1995.
- Purpose: The goals of these Centers are to: (1) Serve as a resource center for consumers involved in the Community Support Programs (CSP) Service System Improvement Demonstration (SSID) grants, with a special emphasis on assisting the groups to achieve financial self-sufficiency; (2) operate a national resource center for consumers involved in developing consumer-operated services by reaching out to racial and ethnic minorities, assisting in planning, providing, and evaluating mental health services, and in planning for health care reform activities; and (3) facilitate the development of a coalition of national or multi-state consumer organizations involved in self-help and system improvement efforts.
- Priorities: It is CMHS's expectation that the TA Center(s) will be planned, directed, and operated by primary mental health consumers.
- Eligible Applicants: Applications may be submitted by States, political subdivisions of States, and private non-profit agencies, as well as current CMHS/CSP TA Center grantees.
- Grants/Amounts: 1 to 2 awards, with individual amounts varying from $300,000 to $350,000 for the first year
- Catalog of Federal Domestic Assistance Number: 93.125.
- Program Contact: For application kit and/or programmatic or technical information contact: Mr. Neal Brown, Chief, Community Support Programs Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–22, Rockville, Maryland 20857, (301) 443–3653.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

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b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1995 activity described above is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how the Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7 Executive Order 12372

Applications submitted in response to most, if not all, of the FY 1995 activities listed above are subject to the intergovernmental review requirements of Executive Order (E.O.) 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration (SAMHSA), 5600 Fishers Lane, Room 13C–06, Rockville, Maryland 20857, ATTN: SPOC.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. The CMHS does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Application guidance materials will specify if a particular FY 1995 activity described above is not subject to the provisions of Executive Order 12372.

Dated: February 3, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–3342 Filed 2–9–95; 8:45 am]

BILLING CODE 4162–20–P

Fiscal Year (FY) 1995 Funding Opportunities for Grants and Cooperative Agreements From the Center for Substance Abuse Prevention

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of funding availability.

SUMMARY: The Center for Substance Abuse Prevention (CSAP), SAMHSA, announces that FY 1995 funds are available for grants and cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice.

Activity	Application deadline	Estimated funds available (000's)	Estimated No. of awards	Project period (years)
Knowledge Dissemination Conference Grants	05/10/95 09/10/95	$1,000	20	1
High-Risk Youth Demonstration Grants:				
High Risk Youth	05/10/95	11,478	36	3
Adolescent Females	05/10/95	4,079	13	3
Replications	05/10/95	4,000	12	3
Community Prevention Coalition Demonstration Grants	05/10/95	33,000	100–125	3
Faculty Development Grants	05/10/95	2,000	8	3
Communications Cooperative Agreements	05/10/95	2,300	11	3

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 3 years in duration. FY 1995 funds for services demonstration activities are appropriated by the Congress under Public Law 103–333. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126, page 35962) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Center's services demonstration activities address issues related to Healthy People 2000 objectives for reducing the risk for using and abusing alcohol, tobacco and other drugs.

Additional themes include community empowerment; changes in the services delivery system to effect closer collaboration among substance abuse prevention activities, mental health services and the health care system; prevention and reduction of violent actions; cultural competence of prevention strategies; and encouragement to reach out to female adolescents at risk for substance abuse and not generally served by traditional programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–783–3238).

GENERAL INSTRUCTIONS: Applicants for grants and cooperative agreements must use application form PHS 5161–1 (Rev. 7/92; OMB No. 0937–0189). The Application Kit contains the PHS 5161–1, Standard Form 424 (Face Page) and

complete instructions for preparing and submitting applications. The Kit may be obtained from: National Clearinghouse for Alcohol and Drug Information P.O. Box 2345, Rockville, Maryland 20847–2345, 1–800–729–6686, 1–800–468–2600 (local calls), 1–800–487–4889 TDD, Internet: telnet ncadi.health.org user-id:new,

When requesting an Application Kit, the applicant must specify the particular activity(s) for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

APPLICATION SUBMISSION: Applications must be submitted to: Center for Substance Abuse Prevention Programs, Division of Research Grants, NIH, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual categories of grants and cooperative agreements.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a national holiday, it will be extended to the following work day.

Applications received after the receipt date(s) or those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to: Mary Lou Dent, Grants Management Office, Center for Substance Abuse Prevention, Rockwall II Building, Room 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3958.

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized, as outlined in the Table of Contents below. Grants and cooperative agreements are discussed separately and, for each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Amounts
- Catalog of Federal Domestic Assistance Number
- Program Contact

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 4.2 Cooperative Agreements
 4.2.1 Communications Programs for Demonstrating the Prevention of Alcohol, Tobacco, and Other Drug Problems
5. Public Health System Reporting Requirements
6. PHS Non-Use of Tobacco Policy Statement
7. Executive Order 12372

1. Program Background and Objectives

The Center for Substance Abuse Prevention (CSAP) in the Substance Abuse and Mental Health Services Administration (SAMHSA) was legislatively authorized to conduct a full range of activities directed toward reducing the incidence and prevalence of alcohol, tobacco and other drug (ATOD) use/abuse. The etiology of ATOD use/abuse is complex and multifaceted. From the research on correlates of ATOD use/abuse, it has become clear that the factors that place individuals at risk for ATOD use/abuse may be found at the individual, family, school, peer group, workplace, neighborhood/community, and society levels. The ubiquitous nature of these risk factors calls for a multi-level, all-pervasive prevention response.

CSAP's substance abuse prevention program is designed to develop such a multi-level, all pervasive prevention response. Thus, CSAP supports demonstration grants, conference grants, training grants, and cooperative agreements in an effort to generate new knowledge and share and disseminate what is known about effective strategies for preventing ATOD use/abuse. CSAP's approach is comprehensive and multifaceted whether it is from the perspective of the individual, the community, training of health providers, or in designing its communication messages for targeted populations. Recognizing that substance abuse has a pervasive impact on education, violence, delinquency, teenage pregnancy, health care, school dropouts, mental health, homelessness, and other social problems, CSAP's orientation is to foster linkages with the human service providers in these related fields and to ask its grantees to explore mechanisms for linking with managed care providers in their area.

2. Special Concerns

SAMHSA's CSAP will address a number of special concerns in FY 1995. Emphasis is placed on comprehensive approaches to prevention and coordination with other programs and organizations in the public and private sectors that attend to the human service needs of populations at high risk for substance use/abuse. Emphasis is also placed on quality evaluation design and implementation so as to add to knowledge of what strategies are effective and ineffective in preventing substance use/abuse. For individual-focused (in contrast to community focused) approaches, emphasis is placed on using a well-conceptualized risk factor approach in designing and evaluating prevention strategies. Under two activities, special consideration will be given to applicants serving communities characterized by high levels of poverty and other forms of socio-economic distress and who are located in formally designated Empowerment Zones or Enterprise Communities.

Populations that have been targeted for grants or cooperative agreements include high risk youth, adolescent females and Native Americans. Of particular interest is the effectiveness of strategies designed to deal with the impact of victimization and physical and sexual abuse that places females at particular high risk for self-destructive disorders such as substance abuse, eating disorders, and suicide. With respect to the Native American population, a major interest is the development of strategies to reach and reduce the high rate of babies with Fetal Alcohol Syndrome (FAS) or Fetal Alcohol Effects (FAE) born to Native American women.

From the perspective of community strategies, a special area of concern

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involves ascertaining the efficiency and effectiveness of developing coalitions of community partnerships to eliminate duplication of services, fill gaps in services, and generally improve the comprehensiveness and cost efficiency of community partnerships. Of additional interest is how such coalitions and partnerships can relate to managed care organizations.

3. Criteria for Review and Funding

Competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts.

Applications will be recommended for approval or disapproval on the basis of technical merit. Applications recommended for approval will be assigned scores according to the level of merit.

Notification of the IRG's recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications over $50,000 will undergo a second level of review by the CSAP National Advisory Council whose review may be based on policy considerations as well as technical merit. Only applications recommended for approval by the Council may be considered for funding by CSAP.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126, page 35962), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Approved Applications

Applications recommended for approval by the peer review group and the appropriate Advisory Council (if applicable) will be considered for funding on the basis of their overall technical merit as determined through the review process.

Other funding criteria will include:

- Availability of funds and geographic distribution of grants throughout the United States.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1995 Substance Abuse Prevention Activities

Project activities are grouped in this notice under two sections: Grants and Cooperative Agreements.

4.1 Grants

Four major activities for CSAP grant programs are discussed below.

4.1.1 Knowledge Dissemination Conference Grants

◆ Application Deadlines: May 10 and September 10, 1995.

◆ Purpose: To provide support for conferences relating to the prevention of alcohol, tobacco and other drug use/abuse and related problems such as violence, HIV/AIDS among multiple high risk populations (including gay/lesbian/bisexual youth, persons with disabilities, etc.) for the purpose of increasing awareness, conveying knowledge, improving prevention activities in communities and the workplace, and exchanging and disseminating new research findings and effective prevention strategies to the field, communities and the general public.

◆ Priorities: Conference planners are encouraged to be creative in linking with existing regional efforts, relevant grassroots organizations and agencies, CSAP Community Partnerships and High Risk Youth grantees in the region, the Regional Alcohol and Drug Awareness Resource Network (RADAR) liaisons, and representation from the target population on which the conference is focused.

◆ Eligible Applicants: Public and private nonprofit and for-profit organizations including existing CSAP grantees for the purpose of disseminating the results of their projects.

◆ Grants/Amounts: Approximately 20 awards during FY 1995. Individual awards may not exceed $50,000 in direct costs. Indirect costs are not allowable under this announcement.

◆ Catalog of Federal Domestic Assistance Number: 93.174.

◆ Program Contact: Luisa del Carmen Pollard, Division of Public Education and Dissemination, Center for Substance Abuse Prevention, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0377.

4.1.2 Substance Abuse Prevention Demonstration Grants for High Risk Populations

The High-Risk Youth Demonstration Grants are divided into the following 3 modules:

Module A: High-Risk Youth
Module B: Adolescent Females
Module D: Replications

A description of each module follows.

[Note: Module C, Alcohol and other Drug Related Violence, is not included because this program did not receive funds for new starts in FY 1995.]

♦ Application Deadline: May 10, 1995.

♦ Purpose:

Module A: High-Risk Youth. To ascertain the effectiveness of multifaceted interventions that address multiple factors in at least three of six important life areas or "domains" (individual, family, school, peer group, neighborhood/community and society) that place youth at risk for or protect them from using alcohol, tobacco, and other drugs (ATOD).

Module B: Adolescent Females. To ascertain the effectiveness of multifaceted interventions that address factors more specific to adolescent females ages 10–21 such as sexual abuse, victimization, post traumatic stress syndrome, and depression that places them at risk for ATOD use/abuse as well as other self-destructive behaviors such as eating disorders, suicide, and prostitution.

Module D. Replications. To ascertain whether a program of prevention strategies that has been shown to be promising in modifying ATOD use on a given population in one location can be replicated by the original program developer (self-replication) or another investigator, using a similar population in another location. Please note that Module D is designed as a cooperative agreement.

♦ Priorities.

In making award decisions, CSAP will consider applications recommended for approval by the IRG and the CSAP National Advisory Council. Other award considerations will include:

Prevention projects that are directed at children of substance abusers, latchkey children, children at risk of abuse or neglect, preschool children eligible for services under the Head Start Act, children at risk of dropping out of school, children at risk of becoming adolescent parents, and children who do not attend school and who are at risk of being unemployed.

Applicants from communities characterized by high levels of poverty and other forms of socio-economic distress; who are engaged in a community strategic planning process as evidenced by the preparation or submission of an Empowerment Zone/Enterprise Community application to the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture; or who provide services to communities that have been designated as Empowerment Zones or Enterprise Communities.

Applications From Community Based Organizations

♦ Eligible Applicants.

Modules A and B: Public and private non-profit organizations e.g., units of State or local governments, community-based organizations, universities, hospitals, colleges, and Indian Tribes/Tribal organizations.

Module D: In order for CSAP to fully inform the public on what type of prevention programs work among high risk youth, it must assess the program's replicability. Five projects were selected for replication because, on the basis of an initial evaluation, these projects appear particularly promising for preventing ATOD use among high risk youth. Self-replication is limited to only those 5 CSAP projects selected for replication. This is to permit a comparison of the project as implemented by the original and new project leadership in order to ascertain whether the positive outcomes are a function of the prevention strategies employed or the designers and leadership of the project. Replication of any one of these 5 programs by other investigators is open to the same categories of eligible applicants identified above for Modules A and B.

♦ Grants/Amounts.

Approximately $19.6 million will be available to support approximately 60 awards in FY 1995 under this program as follows:

Module A. High Risk Youth. Approximately 36 awards averaging about $300,000 for a total cost of about $11.478 million

Module B. Adolescent Females. Approximately 13 grants averaging about $300,000 for a total cost of about $4.079 million.

Module D. Replications. Three (3) awards for self-replication of any one of the CSAP designated replication models, averaging about $330,000, for a total cost of about $1 million; Nine (9) awards for the replication of any one of the CSAP designated replication models by another investigator, averaging about $330,000, for a total cost of $3 million.

♦ Catalog of Federal Domestic Assistance Number: 93.144.

♦ Program Contacts:

Module A: F. Tommie Johnson, Deputy Chief, High Risk Youth Branch, (301) 443–0353

Module B: Ulonda B. Shamwell, M.S.W., Chief, Perinatal Addiction Prevention Branch, (301) 443–4564

Module D: Judy Coulter, High Risk Youth Branch, (301) 443–0353

Address: Division of Demonstrations for High Risk Populations Center for Substance Abuse Prevention Rockwall II Building, Room 9B–03 5600 Fishers Lane Rockville, Maryland 20857

4.1.3 Community Prevention Coalitions Demonstration Grant Program

♦ Application Deadline: May 10, 1995.

♦ Purpose: To ascertain the feasibility and effectiveness of establishing and developing coalitions of multiple community partnerships that would work effectively to develop, implement, and coordinate programs directed toward: reducing the incidence and prevalence of ATOD use and abuse in their communities as well as the problems accompanying such behavior such as violence, adolescent pregnancy, infants born with FAS/FAE, drug related mortality and morbidity, HIV/AIDs, drug related injuries in the workplace, substance abuse related crime, mental illness, and in general, improve the health and safety of the communities under the aegis of the coalition.

♦ Priorities: In making award decisions, CSAP will consider applications recommended for approval by the IRG and the CSAP National Advisory Council. Other award considerations will include: applicants from communities characterized by high levels of poverty and other forms of socio-economic distress; who are engaged in a community strategic planning process as evidenced by the preparation or submission of an Empowerment Zone/Enterprise Community application to the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture; or who provide services to communities that have been designated as Empowerment Zones or Enterprise Communities.

♦ Eligible Applicants: Public agencies such as local, State and Tribal Governments; community-based or state-wide private non-profit organizations/agencies. In either case, the applicant must be part of an existing community partnership and must be designated to act on behalf of the larger evolving coalition of multiple partnerships proposed in the grant application.

♦ Grants/Amounts: Approximately $33 million will be available to support approximately 100–125 awards. CSAP generally will expect grants not to exceed $300,000 (for both direct and indirect costs). Actual funding levels will depend upon the program design and availability of appropriated funds.

♦ Catalog of Federal Domestic Assistance Number: 93.194.

♦ Program Contact:

David Robbins, Chief, Community Prevention and Demonstration Branch, (301) 443–2068

Dan Fletcher, Chief, Western Section, (301) 443–5660

Adrienne Terry Goode, Chief, Eastern Section, (301) 443–0532

Address: Division of Community Prevention and Training, Center for Substance Abuse Prevention, Rockwall II Building, Room 9D–18, 5600 Fishers Lane, Rockville, Maryland 20857.

4.1.4 Faculty Development Grants for Preventing Alcohol, Tobacco, and Other Drug Abuse

♦ Application Deadline: May 10, 1995.

♦ Purpose: To support training in substance abuse prevention for health care professionals (faculty fellows) located in academic institutions.

♦ Priority: The recruitment of minority faculty candidates and women and the inclusion of ethnic and cultural diversity issues in the training curriculum.

♦ Eligible Candidates: Because previously developed alcohol, tobacco, and drug abuse curriculum guidelines and materials can be readily adapted for use by the following health professions training programs, CSAP is limiting potential applicants to: accredited schools of medicine, osteopathy, public health, nursing, and dentistry; schools or departments of social work offering accredited master's/doctoral programs; university based departments or schools of psychology with appropriate accreditation for doctoral level training in clinical and/or counseling psychology. These materials were developed through (1) the joint National Institute on Alcohol Abuse and Alcoholism and the National Institute

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on Drug Abuse Curriculum Models Program; and (2) the preceding Faculty Development Program. CSAP encourages applications from Historically Black Colleges and Universities and other health profession schools, as described above, which can show an enrollment of 25% or higher of minority students.

♦ Grants/Amounts. Approximately 8 grants averaging about $250,000 each for a total cost of approximately $2 million.

♦ Catalog of Federal Domestic Assistance Number: 93.274.

♦ Program Contact: Lucille C. Perez, M.D., Associate Director, Medical and Clinical Affairs, Center for Substance Abuse Prevention, Rockwall II Building, Room 9D–10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9351.

Note: Complete guidelines for preparing and submitting an application under this activity will be available on February 24, 1995.

4.2 Cooperative Agreements

CSAP's Communications cooperative agreement program is discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings) and on steering committees. Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.2.1 Communications Programs for Demonstrating the Prevention of Alcohol, Tobacco, and Other Drug Problems

♦ Application Deadline: May 10, 1995.

♦ Purpose: To demonstrate that alcohol, tobacco, and other drug problems can be reduced through effective communication strategies.

♦ Priorities: CSAP has identified two (2) priority populations: (1) adolescent females ages 12–20 and (2) Native Americans, particularly in relation to reducing the incidence of FAS/FAE among the infants of Native American women. In addition, other field identified and justified high-risk populations may be targeted for the development and evaluation of communications strategies in response to this cooperative agreement.

♦ Eligible Candidates: Public organizations such as units of State or local governments and private nonprofit and for-profit organizations such as universities, colleges, hospitals, and community-based organizations. Indian Tribes/tribal organizations are eligible applicants.

♦ Grants/Amounts: Approximately $1 million has been designated for female adolescents to support up to five (5) cooperative agreements averaging $200,000 each;

Approximately $500,000 has been designated for up to two (2) cooperative agreements for Native Americans;

Approximately $800,000 has been designated for up to five (5) cooperative agreements, averaging $160,000 each, for field-specified target population.

♦ Catalog of Federal Domestic Assistance Number: 93.901.

♦ Program Contact: Bob Vollinger, Linda Bass, or Javier Cordova, Division of Public Education and Dissemination Center for Substance Abuse Prevention, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–9936.

Note: Complete guidelines for preparing and submitting an application under this activity will be available on February 17, 1995.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Specific application guidance materials may include more detailed guidance as to how the Center will implement SAMHSA's policy on promoting the non-use of tobacco.

7. Executive Order 12372

Applications submitted in response to most, if not all, of the FY 1995 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to:

Office of Review, Substance Abuse and Mental Health Services Administration, Rockwall II Building, suite 630, 5600 Fishers Lane, Rockville, Maryland 20857

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. The CSAP does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Application guidance materials will specify if a particular FY 1995 activity described above is not subject to the provisions of Executive Order 12372.

Dated: February 7, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–3421 Filed 2–9–95; 8:45 am]

BILLING CODE 4162–20–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on 202–690–7100.

The following requests have been submitted for review since the list was last published on Friday, February 3.

1. Physician and Patient Surveys to Evaluate the AHCPR Sponsored Clinical Practice Guidelines for Benign Prostatic Hyperplasia—0935–0088 (Reinstatement)—Data are needed to evaluate physician and patient awareness of and attitudes toward AHCPR-sponsored guidelines for benign prostastic hyperplasia (BPH) and quality and utilization review criteria based on the guidelines. A mail survey will be conducted. Respondents: Individuals or households; Number of Respondents: 850; Number of Responses per Respondent: 1; Average Burden per Response: .66 hour; Estimated Annual Burden: 561 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

2. Hanford Thyroid Disease Study—0920–0296 (Reinstatement)—An epidemiologic study will be conducted to determine whether thyroid disease is increased among persons exposed as young children to radioactive iodine release from the Hanford Nuclear Site. Following an expanded Pilot Study, this study will collect data on past residences, work and medical history of persons born during 1940–1946 near the Hanford site. Respondents: Individuals or households; Number of Respondents: 1,274; Number of Responses per Respondent: 1; Average Burden per Response: 1.8 hours; Estimated Annual Burden: 2,296 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

3. Cardiovascular Health Study—0925–0334 (Extension)—A random sample of 5,888 men and women aged 65 and older have been selected from four communities. They will continue to provide medical, social, and demographic information and participate in clinical examinations to study risk factors for the onset and progression of clinical coronary heart disease, stroke, and related preclinical conditions. Respondents: Individuals or households, Businesses or other for-profit. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Cohort Members	4,818	2	1.77
Physicians	83	1.00	0.10
Next-of-Kin	105	1.00	0.25

Estimated Total Annual Burden: 17,055 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: February 6, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–3368 Filed 2–9–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–23]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William Molster, room 7254, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 1994 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 56 FR 23789, § _____.3(b) landholding agencies are required to notify HUD by December 31, 1994, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 56 FR 23789, § _____.8(d)(e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, Room

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4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 272–1750; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, Air Force Real Estate Agency (Area/MI), Bolling AFB, 172 Luke Avenue, Suite 104, Washington, DC 20332–5113; (202) 767–6235; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Veterans Affairs: Michael Reynolds, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW., Washington, DC 20420; (202) 233–5026; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: February 3, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V Properties Reported in Year 94 Which Are Suitable and Available

Air Force

California

Land

60 ARG/DE
Property Number: 189010189
Fed Reg Date: 12/10/94
Project Name: Travis Air Force Base
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB, CA, Co: Solano, Zip: 94535–5496
Location: State Highway 113
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Buildings

Bldg. 604
Property Number: 189010237
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Property Number: 189010238
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Property Number: 189010239
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Property Number: 189010240
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Property Number: 189010241
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Property Number: 189010242
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Property Number: 189010243
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Property Number: 189010244
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Property Number: 189010245
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Property Number: 189010246
Fed Reg Date: 12/10/94
Project Name: Point Arena Air Force Station
Point Arena Air Force Station
(See County), CA, Co: Mendocino, Zip: 95468–5000
Status: Unutilized
Comment: 1,232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Guam

Land

Annex 1
Property Number: 189010427
Fed Reg Date: 12/10/94
Project Name: Andersen Communication
Andersen Communication
Dededo, GU, Co: Guam, Zip: 96912–
Location: In the municipality of Dededo.
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Property Number: 189010428
Fed Reg Date: 12/10/94
Project Name: Andersen Petroleum Storage
Andersen Petroleum Storage
Dededo, GU, Co: Guam, Zip: 96912–
Location: In the municipality of Dededo.
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Buildings

Anderson VOR
Property Number: 189010267
Fed Reg Date: 12/10/94
Project Name: Anderson VOR
In the municipality Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
Property Number: 189010268
Fed Reg Date: 12/10/94
Project Name: Andersen Radio Beacon Annex
In the municipality Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Property Number: 189010545
Fed Reg Date: 12/10/94
Project Name: Anderson Family Housing
Anderson Family Housing
Municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Access is through Route 1, Marine Drive.
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion) (AJKZ)
Property Number: 189120234

Fed Reg Date: 12/10/94
Municipality of Dededo
Dededo, GU, Co: Guam, Zip: 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Iowa

Buildings

Bldg. 00627
Property Number: 189310001
Fed Reg Date: 12/10/94
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip: 51110–
Status: Unutilized
Comment: 1,932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested

Bldg. 00669
Property Number: 189310002
Fed Reg Date: 12/10/94
Sioux Gateway Airport
Sioux City, IA, Co: Woodbury, Zip: 51110–
Status: Unutilized
Comment: 1,113 sq. ft., 1-story concrete block bldg., contamination clean-up in process.

Bldg. 00106, Fort Dodge
Property Number: 189310051
Fed Reg Date: 12/10/94
Ft. Dodge, IA, Co: Webster, Zip: 50501–
Status: Unutilized
Comment: 200 sq. ft.; 1-story wood frame, needs rehab, most recent use—storage.

Idaho

Buildings

Bldg. 121
Property Number: 189030007
Fed Reg Date: 12/10/94
Project Name: Mountain Home Air Force Base
Mountain Home Air Force Base
Main Avenue
(See County), ID, Co: Elmore, Zip: 83648–
Status: Excess
Comment: 3,375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Buildings

Barksdale Radio Beacon Annex
Property Number: 189010269
Fed Reg Date: 12/10/94
Project Name: Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis, LA, Co: Bossier, Zip: 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Land

Calumet Air Force Station
Property Number: 189010862
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Property Number: 189010863
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 3.78 acres; potential utilities.

Buildings

Bldg. 30
Property Number: 189010779
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 46
Property Number: 189010786
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 51
Property Number: 189010791
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 52
Property Number: 189010792
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 53
Property Number: 189010793
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 54
Property Number: 189010794
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 55
Property Number: 189010795
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 56
Property Number: 189010796
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 57
Property Number: 189010797
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 58
Property Number: 189010798
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 59
Property Number: 189010799
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 60
Property Number: 189010800
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 61
Property Number: 189010801
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 62
Property Number: 189010802
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos;

Bldg. 63
Property Number: 189010803

Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft., 1 story wood frame residence with garage; possible asbestos;
Bldg. 64
Property Number: 189010804
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft., 1 story wood frame residence with garage; possible asbestos;
Bldg. 65
Property Number: 189010805
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft., 1 story wood frame residence with garage; possible asbestos.
Bldg. 66
Property Number: 189010806
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos;
Bldg. 67
Property Number: 189010807
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos;
Bldg. 68
Property Number: 189010808
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70
Property Number: 189010809
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center
Bldg. 72
Property Number: 189010811
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 73
Property Number: 189010812
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 74
Property Number: 189010813
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 75
Property Number: 189010814
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 76
Property Number: 189010815
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 77
Property Number: 189010816
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 78
Property Number: 189010817
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 79
Property Number: 189010818
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos;
Bldg. 80
Property Number: 189010819
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; possible utilities; possible asbestos.
Bldg. 81
Property Number: 189010820
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 82
Property Number: 189010821
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 83
Property Number: 189010822
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 84
Property Number: 189010823
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 85
Property Number: 189010824
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 86
Property Number: 189010825
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 87
Property Number: 189010826
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 88
Property Number: 189010827
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 89
Property Number: 189010828
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possibile asbestos.
Bldg. 97
Property Number: 189010829
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 98
Property Number: 189010830
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 10
Property Number: 189010836
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.
Bldg. 216
Property Number: 189010847
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 217
Property Number: 189010848
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 218
Property Number: 189010849
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 219
Property Number: 189010850
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 220
Property Number: 189010851
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 221
Property Number: 189010852
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 222
Property Number: 189010853
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 223
Property Number: 189010854
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 224
Property Number: 189010855
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 215
Property Number: 189010856
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 212
Property Number: 189010859
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 214
Property Number: 189010861
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 23
Property Number: 189010865
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Property Number: 189010866
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet: MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 36
Property Number: 189010872
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 37
Property Number: 189010873
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 201
Property Number: 189010879
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Montana

Buildings

Bldg. Conrad Training Site
Property Number: 189420025
Fed Reg Date: 12/10/94
15 miles east of the City of Conrad
MT, Co: Pondera, Zip: 59425–
Status: Unutilized
Comment: 7000 sq. ft., 1-story brick, most recent use—technical training site.

South Dakota

Buildings

West Communications Annex
Property Number: 189340051
Fed Reg Date: 12/10/94
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Meade, Zip: 57706–
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.

Texas

Buildings

Bldg. 121
Property Number: 189420026
Fed Reg Date: 12/10/94
Laughlin Air Force Base
TX, Co: Val Verde, Zip: 78843–5000
Status: Unutilized
Comment: 11202 sq. ft., 1-story, needs rehab, presence of asbestos, secured area with alternate access.

Bldg. 348
Property Number: 189420027
Fed Reg Date: 12/10/94
Laughlin Air Force Base
TX, Co: Val Verde, Zip: 78843–5000
Status: Unutilized
Comment: 1799 sq. ft., 1-story, needs rehab, presence of asbestos, secured area with alternate access.

Bldg. 475
Property Number: 189420028
Fed Reg Date: 12/10/94
Laughlin Air Force Base
TX, Co: Val Verde, Zip: 78843–5000
Status: Unutilized
Comment: 1083 sq. ft., 1-story, needs rehab, secured area with alternate access.

Army

Alaska

Buildings

Bldg. 400
Property Number: 219440400
Fed Reg Date: 12/23/94
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 402
Property Number: 219440401
Fed Reg Date: 12/23/94
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only.

Bldg. 407
Property Number: 219440402
Fed Reg Date: 12/23/94
Fort Richardson
Ft. Richardson, AK, Zip: 99505–
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only

Alabama

Buildings

Bldg. 8913
Property Number: 219140025
Fed Reg Date: 12/10/94
Fort Rucker
7th Avenue
Ft. Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only

Bldg. 8914
Property Number: 219140026
Fed Reg Date: 12/10/94
Fort Rucker
7th Avenue
Ft. Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain headquarters, off-site use only.

Bldg. TO3202, Fort Rucker
Property Number: 219210001
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only

Bldg. TO3203, Fort Rucker
Property Number: 219210002
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only

Bldg. TO3206, Fort Rucker
Property Number: 219210003
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3207, Fort Rucker
Property Number: 219210004
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3208, Fort Rucker
Property Number: 219210005
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3211, Fort Rucker
Property Number: 219210006
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3213, Fort Rucker
Property Number: 219210007
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3216, Fort Rucker
Property Number: 219210008
Fed Reg Date: 12/10/94
Cowboy & Crusader St.
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3214, Fort Rucker
Property Number: 219230001
Fed Reg Date: 12/10/94
Cowboy & Crusader Streets
Fort Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldg. T03215, Fort Rucker
Property Number: 219230002
Fed Reg Date: 12/10/94
Cowboy & Crusader Streets
Ft. Rucker, AL, Co: Dale, Zip: 36362–
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only

Bldg. 3502, Fort Rucker
Property Number: 219340181
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—instruction bldg., off-site use only

Bldg. 3507, Fort Rucker
Property Number: 219340182
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 2677 sq. ft., 1-story wood, needs rehab, most recent use—instruction bldg, off-site use only.

Bldg. 3702, Fort Rucker
Property Number: 219340183
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3703, Fort Rucker
Property Number: 219340184
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only

Bldg. 3704, Fort Rucker
Property Number: 219340185
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only

Bldg. 3705, Fort Rucker
Property Number: 219340186
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—general purpose, off-site use only

Bldg. 3706, Fort Rucker
Property Number: 219340187
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—general purpose, off-site use only.

Bldg. 3707, Fort Rucker
Property Number: 219340188
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 3708, Fort Rucker
Property Number: 219340189
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 3714, Fort Rucker
Property Number: 219340190
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—general purpose, off-site use only

Bldg. 3717, Fort Rucker
Property Number: 219340191
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—general purpose, off-site use only

Bldg. 3803, Fort Rucker
Property Number: 219340192
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only.

Bldg. 3822, Fort Rucker
Property Number: 219340193
Fed Reg Date: 12/10/94
Ft. Rucker, AL, Co: Dale, Zip: 36362–5138
Status: Unutilized
Comment: 2677 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—admin/supply, off-site use only.

Bldg. T274, Fort McClellan
Property Number: 219440389
Fed Reg Date: 12/23/94
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 3967 sq. ft., 1-story, most recent use—clinic, needs rehab, off-site use only

Bldg. T407, Fort McClellan
Property Number: 219440390
Fed Reg Date: 12/23/94
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 2524 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only.

Bldg. T408, Fort McClellan
Property Number: 219440391
Fed Reg Date: 12/23/94
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 1150 sq. ft., 1-story, most recent use—admin., needs rehab, off-site use only

Bldg. T417, Fort McClellan
Property Number: 219440392
Fed Reg Date: 12/23/94
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 432 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. T421, Fort McClellan
Property Number: 219440393
Fed Reg Date: 12/23/94
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 1602 sq. ft., 1-story, most recent use—support activity, needs rehab, off-site use only.

Bldgs.T614, T692
Property Number: 219440394
Fed Reg Date: 12/23/94
Ft. McClellan
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 2314 sq. ft. & 2685 sq. ft., 1-story bldgs., most recent use—admin., off-site use only.

7 Bldgs.
Property Number: 219440395
Fed Reg Date: 12/23/94
Fort McClellan
No. 829–831, 833, 835–836, 844
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 4425 sq. ft. each, 2-story, most recent use—barracks, off-site use only

Bldg. T00893
Property Number: 219440396
Fed Reg Date: 12/23/94
Fort McClellan
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 3269 sq. ft., 1-story, most recent use—chapel, off-site use only.

Bldgs. T903, T909
Property Number: 219440397
Fed Reg Date: 12/23/94
Fort McClellan
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 1677 sq. ft. and 1166 sq. ft. bldgs., most recent use—classroom, off-site use only.

Bldgs. T916–T917, T925
Property Number: 219440398
Fed Reg Date: 12/23/94
Fort McClellan
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 3075–4500 sq. ft., 1-story, most recent use—barracks, off-site use only

Bldg. T1398
Property Number: 219440399
Fed Reg Date: 12/23/94
Fort McClellan
Ft. McClellan, AL, Co: Calhoun, Zip: 36205–5000
Status: Unutilized
Comment: 3108 sq. ft., 1-story, most recent use—classroom, needs rehab, off-site use only.

Arizona

Buildings

Bldg. 70117, Fort Huachuca
Property Number: 219120306
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3434 sq. ft., 1-story wood structure, presence of asbestos, most recent use—general instructional, off-site use only.

Bldg. 70118, Fort Huachuca
Property Number: 219120307
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3434 sq. ft., 1-story wood structure, presence of asbestos, most recent use—general instructional, off-site use only.

Bldg. 70119, Fort Huachuca
Property Number: 219120308
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3434 sq. ft., 1-story wood structure, presence of asbestos, most recent use—general instructional, off-site use only.

Bldg. 70120, Fort Huachuca
Property Number: 219120309
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3434 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 70225, Fort Huachuca
Property Number: 219120310
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3813 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 83006, Fort Huachuca
Property Number: 219120311
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2062 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 83007, Fort Huachuca
Property Number: 219120312
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2000 sq. ft., 2-story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 83008, Fort Huachuca

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Property Number: 219120313
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2192 sq. ft., 2-story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 83015, Fort Huachuca
Property Number: 219120314
Fed Reg Date: 12/10/94
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only.

Bldg. 81001
Property Number: 219240720
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 81020
Property Number: 219240722
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 67204
Property Number: 219240723
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 66151
Property Number: 219240728
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72219
Property Number: 219240729
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72220
Property Number: 219240730
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72221
Property Number: 219240731
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67108
Property Number: 219240733
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70226
Property Number: 219240734
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71116
Property Number: 219240735
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71215
Property Number: 219240736
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70110
Property Number: 219240739
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70111
Property Number: 219240740
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70113
Property Number: 219240741
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70114
Property Number: 219240742
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70115
Property Number: 219240743
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70123
Property Number: 219240744
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70124
Property Number: 219240745
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70126
Property Number: 219240746
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70210
Property Number: 219240747
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70211
Property Number: 219240748
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized

Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70221
Property Number: 219240749
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70222
Property Number: 219240750
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71214
Property Number: 219240751
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 82013
Property Number: 219240752
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 90327
Property Number: 219240753
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71213
Property Number: 219240754
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82007
Property Number: 219240755
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, CO: Cochise, ZIP: 85635–
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82009
Property Number: 219240756
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 70216
Property Number: 219310287
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70215
Property Number: 219310288
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70214
Property Number: 219310289
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70212
Property Number: 219310290
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70220
Property Number: 219310291
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70218
Property Number: 219310292
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 70217
Property Number: 219310293
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 80010
Property Number: 219310294
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 84103
Property Number: 219310296
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101
Property Number: 219310297
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.

Bldg. 30012
Property Number: 219310298
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 90328
Property Number: 219310299
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.

Bldg. S–120
Property Number: 219320202
Fed Reg Date: 12/10/94
Yuma Proving Ground
Yuma, AZ, Co: Yuma/LaPaz, Zip: 85365
9104
Status: Underutilized
Comment: 6845 sq. ft., 1 story, wood frame presence of asbestos, most recent use—bowling center, scheduled to be vacated 11/15/93

Bldg. 67221
Property Number: 219330235
Fed Reg Date: 12/10/94
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1068 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 83102
Property Number: 219330236
Fed Reg Date: 12/10/94
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office off-site use only.

Bldg. 84010
Property Number: 219330237

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Fed Reg Date: 12/10/94
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. S–1005
Property Number: 219340198
Fed Reg Date: 12/10/94
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz, Zip: 85365–9104
Status: Unutilized
Comment: 176 sq. ft., 1-story, cold storage bldg., needs repair, off-site use only.

Bldg. 67116
Property Number: 219410243
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1784 sq. ft., 1 story; wood; most recent use—admin.; off-site use only.

Bldg. 67205
Property Number: 219410244
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2166 sq. ft., 2 story; wood; most recent use—admin.; off-site use only.

Bldg. 67207
Property Number: 219410245
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2166 sq. ft., 2 story; wood; most recent use—admin.; off-site use only.

Bldg. 67213
Property Number: 219410246
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2594 sq. ft., 1 story; wood; most recent use—admin., off-site use only.

Bldg. 73913
Property Number: 219410247
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 910 sq. ft., 1 story; wood; most recent use—admin.; off-site use only.

Bldg. 80001
Property Number: 219410248
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1958 sq. ft., 2 story; wood; most recent use—admin.; off-site use only.

Bldg. 83027
Property Number: 219410249
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1993 sq. ft., 2 story; wood; most recent use—admin.; off-site use only.

Bldg. 84007
Property Number: 219410250
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2000 sq. ft., 2 story; wood; most recent use—admin.; off-site use only.

Bldg. 68320
Property Number: 219410251
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1531 sq. ft., 1 story; wood; most recent use—recreation center; off-site use only.

Bldg. 30126
Property Number: 219410252
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 9324 sq. ft., 1 story; wood; most recent use—maintenance; off-site use only.

Bldg. 84014
Property Number: 219410253
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2260 sq. ft., 1 story; wood; most recent use—maintenance; off-site use only.

Bldg. S–106
Property Number: 219420345
Fed Reg Date: 12/10/94
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz, Zip: 85365–9104
Status: Unutilized
Comment: 1101 sq. ft., 1-story, cold storage bldg., needs repair.

Bldgs. 67210, 67217
Property Number: 219420347
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1165 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. 80005
Property Number: 219430245
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1718 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only.

Bldg. 80006
Property Number: 219430246
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1628 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only.

Bldg. 83023
Property Number: 219430247
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 1648 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 81027
Property Number: 219430248
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repairs, off-site use only.

Bldg. 81028
Property Number: 219430249
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only.

Bldg. 80111
Property Number: 219430250
Fed Reg Date: 12/10/94
Fort Huachuca
Sierra Vista, AZ, Co: Cochise, Zip: 85635–
Status: Unutilized
Comment: 2032 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only.

Colorado

Buildings

Bldg. P–1388
Property Number: 219430134
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 240 sq. ft., 1-story steel structure, needs rehab, secure area with alternate access, off-site use only.

Bldg. T–1827
Property Number: 219430135
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—exchange service outlet, off-site use only.

Bldg. T–3565
Property Number: 219430136
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 2402 sq. ft., 1-story wood structure needs rehab, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. T–3566
Property Number: 219430137
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood structure, needs rehab, most recent use—classroom, off-site use only.

Bldg. T–3569

Property Number: 219430138
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–3572
Property Number: 219430139
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—bev. store annex, off-site use only.

Bldg. T–6048
Property Number: 219430140
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 7528 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–6052
Property Number: 219430141
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 4458 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—maint. shop., off-site use only.

Bldg. T–6089
Property Number: 219430142
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 3150 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—exchange service outlet, off-site use only.

Bldg. T–6120
Property Number: 219430143
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 4609 sq. ft., 1-story concrete block structure, needs rehab, presence of asbestos, most recent use—printing plant, off-site use only.

Bldg. T–6127
Property Number: 219430144
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 5280 sq. ft., 1-story wood structure, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. S–6251
Property Number: 219430145
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Comment: 23811 sq. ft., 2-story concrete block structure, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Georgia

Buildings

Bldg. 5390
Property Number: 219010137
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5362
Property Number: 219010147
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5392
Property Number: 219010151
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5391
Property Number: 219010152
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2432 sq. ft.; most recent use—dining room needs rehab.

Bldg. 4605
Property Number: 219011493
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 915 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4487
Property Number: 219011681
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Property Number: 219011683
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor

Bldg. 3400
Property Number: 219011694
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Property Number: 219011704
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation, 1 floor.

Bldg. 4092
Property Number: 219011709
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Property Number: 219011710
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 176 sq. ft., most recent use—gas station; needs substantial rehabilitation, 1 floor.

Bldg. 5276
Property Number: 219012376
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2124 sq. ft., 2 story; most recent use—barracks; poor conditions; needs major rehab.

Bldg. 1235
Property Number: 219014887
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1236
Property Number: 219014888
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Property Number: 219014889

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Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 4491
Property Number: 219014916
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Property Number: 219014919
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Property Number: 219014922
Fed Reg Date: 12/10/94
Project Name: Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 2150
Property Number: 219120258
Fed Reg Date: 12/10/94
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2409
Property Number: 219120263
Fed Reg Date: 12/10/94
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2590
Property Number: 219120265
Fed Reg Date: 12/10/94
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Property Number: 219120266
Fed Reg Date: 12/10/94
Fort Benning
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouses.

Bldg. 3086, Fort Benning
Property Number: 219220688
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 3089, Fort Benning
Property Number: 219220689
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 3092, Fort Benning
Property Number: 219220690
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Property Number: 219220694
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Property Number: 219220697
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9342 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Property Number: 219220698
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083, Fort Benning
Property Number: 219220699
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Property Number: 219220703
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4861, Fort Benning
Property Number: 219220707
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 4963, Fort Benning
Property Number: 219220710
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396, Fort Benning
Property Number: 219220712
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Property Number: 219220715
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Property Number: 219220726
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldg. 4882, Fort Benning
Property Number: 219220727
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repairs, off-site removal only.

Bldg. 4967, Fort Benning
Property Number: 219220728
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 5396, Fort Benning
Property Number: 219220734
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Property Number: 219220735
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldg. 4977, Fort Benning
Property Number: 219220736
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4978, Fort Benning
Property Number: 219220737
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Property Number: 219220747

Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Property Number: 219220752
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Property Number: 219220753
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Property Number: 219220755
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Property Number: 219220756
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Property Number: 219220758
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 4884, Fort Benning
Property Number: 219220762
Fed Reg Date: 12/10/94
Fort Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Property Number: 219220763
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., needs repairs, off-site removal only.

Bldg. 4966, Fort Benning
Property Number: 219220764
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4679, Fort Benning
Property Number: 219220767
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Property Number: 219220768
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Property Number: 219220769
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Property Number: 219220770
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Property Number: 219220771
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Property Number: 219220772
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Property Number: 219220778
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip 31905–
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Property Number: 219220779
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Property Number: 219220780
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4627, Fort Benning
Property Number: 219220786
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldg. 4114 Fort Benning
Property Number: 219310407
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4117, Fort Benning
Property Number: 219310408
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4118, Fort Benning
Property Number: 219310409
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4125, Fort Benning
Property Number: 219310410
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4126, Fort Benning
Property Number: 219310411
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4129, Fort Benning
Property Number: 219310412
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab most recent use—barracks, off-site use only.

Bldg. 4130, Fort Benning
Property Number: 219310413
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4137, Fort Benning
Property Number: 219310414
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4138, Fort Benning
Property Number: 219310415
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4140, Fort Benning
Property Number: 219310416
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4002, Fort Benning
Property Number: 219310417
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4004, Fort Benning
Property Number: 219310418
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4008, Fort Benning
Property Number: 219310419
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4009, Fort Benning
Property Number: 219310420
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4010, Fort Benning
Property Number: 219310421
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4012, Fort Benning
Property Number: 219310422
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4015, Fort Benning
Property Number: 219310423
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4020, Fort Benning
Property Number: 219310424
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4106, Fort Benning
Property Number: 219310425
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4115, Fort Benning
Property Number: 219310426
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4116, Fort Benning
Property Number: 219310427
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4127, Fort Benning
Property Number: 219310428
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4128, Fort Benning
Property Number: 219310429
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4139, Fort Benning
Property Number: 219310430
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4149, Fort Benning
Property Number: 219310431
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4150, Fort Benning
Property Number: 219310432
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Property Number: 219310435
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4112, Fort Benning
Property Number: 219310436
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4119, Fort Benning
Property Number: 219310437
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4124, Fort Benning
Property Number: 219310438
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4141, Fort Benning
Property Number: 219310439
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4136, Fort Benning
Property Number: 219310440
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4131, Fort Benning
Property Number: 219310441
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Property Number: 219310442
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 1835, Fort Benning
Property Number: 219310443
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4013, Fort Benning
Property Number: 219310444
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1884 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4007, Fort Benning
Property Number: 219310445
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1884 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Property Number: 219310446
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 3072, Fort Benning
Property Number: 219310447
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4001, Fort Benning
Property Number: 219310448
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4103, Fort Benning
Property Number: 219310449
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 3004, Fort Benning
Property Number: 219310450
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4019, Fort Benning
Property Number: 219310451
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4018, Fort Benning
Property Number: 219310452
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 3003, Fort Benning
Property Number: 219310453
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 3002, Fort Benning
Property Number: 219310454
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4109, Fort Benning
Property Number: 219310455
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Property Number: 219310456
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Property Number: 219310457
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4135, Fort Benning
Property Number: 219310458
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4123, Fort Benning
Property Number: 219310459
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4111, Fort Benning
Property Number: 219310460
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Property Number: 219310461
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Property Number: 219310462
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Property Number: 219310463
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4026, Fort Benning
Property Number: 219310464
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4067, Fort Benning
Property Number: 219310465
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4025, Fort Benning
Property Number: 219310466
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin. off-site use only.

Bldg. 4110, Fort Benning
Property Number: 219310467
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4122, Fort Benning
Property Number: 219310468
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4134, Fort Benning
Property Number: 219310469
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4021, Fort Benning
Property Number: 219310470
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehosue, off-site use only.

Bldg. 4113, Fort Benning
Property Number: 219310473
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storage, off—site use only

Bldg. 10439, Fort Benning
Property Number: 219310474
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Property Number: 219310475
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning

Property Number: 219310476
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.
Bldg. 10768, Fort Benning
Property Number: 219310477
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.
Bldg. 2683, Fort Benning
Property Number: 219310478
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.
Bldg. 2504, Fort Benning
Property Number: 219310479
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.
Bldg. 4121, Fort Benning
Property Number: 219310487
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.
Bldg. 4133, Fort Benning
Property Number: 219310488
Fed Reg Date: 12/10/94
Ft. Benning, Ga, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.
Bldg. 4143, Fort Benning
Property Number: 219310489
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.
Bldg. 4105, Fort Benning
Property Number: 219310490
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.
Bldg. 4005, Fort Benning
Property Number: 219310491
Fed Reg Date: 12/10/94
Ft. Benning, GA, Co: Muscogee, Zip: 31905–
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.
Bldg. 13503
Property Number: 219320209
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—residential
Bldg. 14502
Property Number: 219320210
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use— residential.
Bldg. 481
Property Number: 219320211
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 10602
Property Number: 219320215
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2000 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 14503
Property Number: 219320216
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.
Bldg. 25304
Property Number: 219320223
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.
Bldg. 26306
Property Number: 219320225
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.
Bldg. 33436
Property Number: 219320228
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.
Bldg. 33438
Property Number: 219320229
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame presence of asbestos, needs rehab, off-site use only, most recent use—storage
Bldg. 39502
Property Number: 219320230
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame presence of asbestos, needs rehab, off-site use only, most recent use—offices.
Bldg. 45308
Property Number: 219320231
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame presence of asbestos, needs rehab, off-site use only, most recent use—community center
Bldg. 26301
Property Number: 219320234
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame presence of asbestos, needs roof repairs off-site use only, most recent use—storage
Bldg. 27301
Property Number: 219320235
Fed Reg Date: 12/10/94
Fort Gordon
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame presence of asbestos, off-site use only, most recent use—storage
Bldg. 354, Fort Gordon
Property Number: 219330259
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only
Bldg. 355, Fort Gordon
Property Number: 219330260
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only
Bldg. 356, Fort Gordon
Property Number: 219330261
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only
Bldg. 376, Fort Gordon
Property Number: 219330262
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, most recent use—offices, off-site use only

Bldg. 377, Fort Gordon
Property Number: 219330263
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 13501, Fort Gordon
Property Number: 219330264
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 18704, Fort Gordon
Property Number: 219330265
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 18717, Fort Gordon
Property Number: 219330266
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 19601, Fort Gordon
Property Number: 219330268
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 19602, Fort Gordon
Property Number: 219330269
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 24501, Fort Gordon
Property Number: 219330270
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 25103, Fort Gordon
Property Number: 219330271
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only
Bldg. 25105, Fort Gordon
Property Number: 219330272
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 25503, Fort Gordon
Property Number: 219330273
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 33415, Fort Gordon
Property Number: 219330275
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.
Bldg. 34502, Fort Gordon
Property Number: 219330276
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 35503, Fort Gordon
Property Number: 219330277
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.
Bldg. 37505, Fort Gordon
Property Number: 219330278
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 17370 sq. ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.
Bldg. 39503, Fort Gordon
Property Number: 219330279
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1316 sq. ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.
Bldg. 18707, Fort Gordon
Property Number: 219330280
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18708, Fort Gordon
Property Number: 219330281
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 3772 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18718, Fort Gordon
Property Number: 219330282
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18720, Fort Gordon
Property Number: 219330283
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18721, Fort Gordon
Property Number: 219330284
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18722, Fort Gordon
Property Number: 219330285
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18723, Fort Gordon
Property Number: 219330286
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 18724, Fort Gordon
Property Number: 219330287
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., wood, presence of asbestos, most recent use—classrooms, off-site use only.
Bldg. 12712, Fort Gordon
Property Number: 219330288
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 15,500 sq. ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only.
Bldg. 332, Fort Gordon
Property Number: 219330289
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.
Bldg. 333, Fort Gordon
Property Number: 219330290
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.
Bldg. 334, Fort Gordon
Property Number: 219330291
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only.
Bldg. 335, Fort Gordon
Property Number: 219330292
Fed Reg Date: 12/10/94

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Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.
Bldg. 353, Fort Gordon
Property Number: 219330293
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 5157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only.
Bldg. 352, Fort Gordon
Property Number: 219330294
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equipment storage, off-site use only.
Bldg. 18703, Fort Gordon
Property Number: 219330295
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 18705, Fort Gordon
Property Number: 219330296
Fed Reg Date: 12/10/94
Ft. Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, off-site use only.
Bldg. 10501
Fort Gordon
Property Number: 219410264
Fed Reg Date: 12/10/94
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story wood, needs rehab.; most recent use—office; off-site use only.
Bldg. 10601
Fort Gordon
Property Number: 219410265
Fed Reg Date: 12/10/94
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 1334 sq. ft.; 1 story wood, most recent use—office; off-site use only.
Bldg. 20303
Fort Gordon
Property Number: 219410266
Fed Reg Date: 12/10/94
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2376 sq. ft.; 1 story wood, needs rehab.; most recent use—office; off-site use only.
Bldg. 41504
Fort Gordon
Property Number: 219410267
Fed Reg Date: 12/10/94
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2516 sq. ft.; 1 story wood, needs rehab.; most recent use—store; off-site use only.
Bldg. 963
Property Number: 219410268
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 18,471 sq. ft., 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only.
Bldg. 11813
Property Number: 219410269
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only.
Bldg. 21314
Property Number: 219410270
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only.
Bldg. 951
Property Number: 219410271
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only.
Bldg. 12809
Property Number: 219410272
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only
Bldg. 10306
Property Number: 219410273
Fed Reg Date: 12/10/94
Fort Gordon
Fort Gordon, GA, Co: Richmond, Zip: 30905–
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only.
Bldg. P–8582
Property Number: 219420355
Fed Reg Date: 12/10/94
Hunter Army Airfield
Savannah, GA, Co: Chatham, Zip: 31409–
Status: Unutilized
Comment: 5892 sq. ft.; 2-story; steel, needs major repairs, most recent use—radar tower, off-site use only.
Bldg. T–723
Property Number: 219440403
Fed Reg Date: 12/23/94
Hunter Army Airfield
Savannah, GA, Co: Chatham, Zip: 31409–
Status: Unutilized
Comment: 9190 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.
Bldg. T–121
Property Number: 219440404
Fed Reg Date: 12/23/94
Hunter Army Airfield
Savannah, GA, Co: Chatham, Zip: 31409–
Status: Unutilized
Comment: 1842 sq. ft., 1-story wood frame needs rehab, most recent use—admin. off-site use only
Bldg. T154
Property Number: 219440405
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty Zip 31314–
Status: Unutilized
Comment: 1440 sq ft, 1-story aluminum frame, needs rehab, most recent use—aces facility, off-site use only
Bldg. T155
Property Number: 219440406
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty Zip 31314–
Status: Unutilized
Comment: 1440 sq ft., 1-story aluminum frame, needs rehab, most recent use—aces facility, off-site use only
Bldg. T284
Property Number: 219440407
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 960 sq. ft., 1-story metal frame needs rehab, most recent use—gen storehouse, off-site use only
Bldg. TT0791
Property Number: 219440408
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces facility, off-site use only
Bldg. TT0792
Property Number 219440409
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces facility, off-site use only
Bldg. TT0793
Property Number: 219440410
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces facility, off-site use only
Bldg. T8041
Property Number: 219440411
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame needs rehab, most recent use—storehouse off-site use only
Bldg. T9591
Property Number: 219440412
Fed Reg Date: 12/23/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized

Comment: 11462 sq. ft., 1-story wood frame, needs rehab, most recent use—theater w/ dressing room, off-site use only.

Hawaii

Buildings

P–88
Property Number: 219030324
Fed Reg Date: 12/10/94
Project Name: Aliamanu Military Reservation
Aliamanu Military Reservation
Honolulu, HI, Co: Honolulu, Zip: 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.
Bldg. 302
Property Number: 219320236
Fed Reg Date: 12/10/94
Fort Shafter
Honolulu, HI, Co: Honolulu, Zip: 96818–
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only.
Facility T–119
Property Number: 219430252
Fed Reg Date: 12/10/94
Fort Shafter
Honolulu, HI, Zip: 96819–
Status: Unutilized
Comment: 10205 sq. ft., wood structure, some termite damage, most recent use—above ground swimming pool, off-site use only

Indiana

Buildings

Bldg. 703–1C
Property Number: 219013761
Fed Reg Date: 12/10/94
Project Name: Indiana Army Ammo. Plant
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip:
Location: Gate 22 off Highway 22
Status: Underutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.
Bldg. 1011 (Portion of)
Property Number: 219013762
Fed Reg Date: 12/10/94
Project Name: Indiana Army Ammo. Plant
Indiana Army Ammunition Plant
End of 3rd Street
Charlestown, IN, Co: Clark, Zip:
Location: East of State Highway 62 at Gate 3
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.
Bldg. 1001 (Portion of)
Property Number: 219013763
Fed Reg Date: 12/10/94
Project Name: Indiana Army Ammu. Plant
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip:
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing
Bldg. 2542
Property Number: 219240717
Fed Reg Date: 12/10/94
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.
Bldg. 2531
Property Number: 219240718
Fed Reg Date: 12/10/94
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secured area w/alternate access, most recent use—storage.
Bldgs. 7215, 7216
Property Number: 219330297
Fed Reg Date: 12/10/94
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark, Zip: 47111–
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way

Kansas

Land

Parcel 1
Property Number: 219012333
Fed Reg Date: 12/10/94
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 14.4+ acres.
Parcel 3
Property Number: 219012336
Fed Reg Date: 12/10/94
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.
Parcel 4
Property Number: 219012339
Fed Reg Date: 12/10/94
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.
Parcel 6
Property Number: 219012340
Fed Reg Date: 12/10/94
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.
Parcel F
Property Number: 219012552
Fed Reg Date: 12/10/94
Project Name: Fort Leavenworth
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth, Zip: 66027–5020
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.
Buildings
Bldg. T–2549, Fort Riley
Property Number: 219310251
Fed Reg Date: 12/10/94
Ft. Riley, KS, Co: Geary, Zip: 66442–
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.
Bldg. 166, Fort Riley
Property Number: 219410325
Fed Reg Date: 12/10/94
Ft. Riley, KS, Co: Geary, Zip: 66442–
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.
Bldg. 184, Fort Riley
Property Number: 219430146
Fed Reg Date: 12/10/94
Ft. Riley, KS, Zip: 66442–
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.
Bldg. T–1030
Property Number: 219440413
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 19377 sq. ft., 1-story wood frame, most recent use—storage off-site use only
Bldg. T–1035
Property Number: 219440414
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 496 sq. ft., 1-story wood frame, most recent use—storage, off-site use only
Bldg. 1362
Property Number: 219440415
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1457
Property Number: 219440416
Fed Reg Date: 12/23/94

Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1458
Property Number: 219440417
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 863 sq. ft., wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1462
Property Number: 219440418
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1464
Property Number: 219440419
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 863 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1358
Property Number: 219440420
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1359
Property Number: 219440421
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1454
Property Number: 219440422
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1455
Property Number: 219440423
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.
Bldg. 1461
Property Number: 219440424
Fed Reg Date: 12/23/94
Fort Leavenworth
Ft. Leavenworth, KS, Co: Leavenworth, Zip: 66027–
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Kentucky

Buildings

Bldg. 6550
Property Number: 219410300
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 25,701 sq. ft., most recent use—storage; off-site use only.
Bldg. 7162
Property Number: 219410301
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1256 sq. ft.; most recent use—storage; off-site use only.
Bldg. 5417
Property Number: 219410309
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 8208 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.
Bldg. 05451, Fort Campbell
Property Number: 219410337
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 200 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—military vehicle gas station.
Bldg. 05624, Fort Campbell
Property Number: 219410338
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05625, Fort Campbell
Property Number: 219410339
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05811, Fort Campbell
Property Number: 219410342
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.
Bldg. 05813, Fort Campbell
Property Number: 219410343
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop.
Bldg. 05815, Fort Campbell
Property Number: 219410344
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05817, Fort Campbell
Property Number: 219410345
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05819, Fort Campbell
Property Number: 219410346
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.
Bldg. 05823, Fort Campbell
Property Number: 219410347
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab., presence of asbestos, most recent use—maintenance shop.
Bldg. 05829, Fort Campbell
Property Number: 219410348
Fed Reg Date: 12/10/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab., presence of asbestos, most recent use—maintenance shop.
Bldg. 5712
Property Number: 219410354
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2732 sq. ft., 1-story, needs rehab., presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.
Bldg. 5730
Property Number: 219410364
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 9000 sq. ft., 1-story, needs rehab., presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.
50 Bldgs.

Property Number: 219420365
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Location: #2750, 2752, 2754, 2758, 2943, 2945, 2947, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 3111, 3113, 3115, 3119, 3121, 3123, 3125, 3127, 3129, 3138, 3140, 3150–3169, 3178, 3188
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks and training, off-site use only.
13 Bldgs.
Property Number: 219420367
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Location: #2776, 2946, 3130–3131, 3136–3137, 3139, 3144–3147, 3176, 3186
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldgs. 2778, 2786, 2939
Property Number: 219420368
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2941
Property Number: 219420369
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2944
Property Number: 219420370
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2957
Property Number: 219420371
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2959
Property Number: 219420372
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2965
Property Number: 219420373
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2505 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldg. 2967
Property Number: 219420374
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.
Bldgs. 2774, 2940
Property Number: 219420375
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.
Bldg. 3134, 3148
Property Number: 219420376
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.
Bldg. 2969
Property Number: 219420377
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.
Bldg. 3132
Property Number: 219420378
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2200 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.
Bldg. 3142
Property Number: 219420379
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2310 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.
Bldg. 3143
Property Number: 219420380
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.
Bldg. 3149
Property Number: 219420381
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2365 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.
Bldg. 2782
Property Number: 219420382
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2950 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—training, off-site use only.
Bldg. 2907–2908
Property Number: 219420383
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.
Bldg. 2938
Property Number: 219420384
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.
Bldg. 2942
Property Number: 219420385
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.
Bldg. 2953
Property Number: 219420386
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1900 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.
Bldg. 3182
Property Number: 219420387
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2550 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.
Bldg. 2948
Property Number: 219420388
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 2961
Property Number: 219420389
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1800 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 2955
Property Number: 219420390

Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1890 sq. ft., 1-story, presence of asbestos, most recent use—conf. room, off-site use only.
Bldg. 109
Property Number: 219430150
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 24164 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—transient family quarters.
Bldg. 234
Property Number: 219430152
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 8042 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 236
Property Number: 219430153
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 238
Property Number: 219430154
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—Educ. center, off-site use only.
Bldg. 240
Property Number: 219430155
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only.
Bldgs. 242, 244
Property Number: 219430156
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 7020 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—educ. center, off-site use only.
Bldg. 2104
Property Number: 219430158
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 2107
Property Number: 219430160
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 7528 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 2108
Property Number: 219430161
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3823 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 2739
Property Number: 219430163
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Go: Christian, Zip: 42223–
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only.
Bldg. 2737
Property Number: 219430164
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only.
Bldg. 2951
Property Number: 219430165
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—office, off-site use only.
Bldg. 2230
Property Number: 219430166
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs repair, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 2788
Property Number: 219430167
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1813 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 3184
Property Number: 219430168
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2625 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 6412
Property Number: 219430169
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 6126
Property Number: 219430170
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 2756
Property Number: 219430171
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—housing, off-site use only.
Bldg. 3170
Property Number: 219430172
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only.
Bldg. 5343
Property Number: 219430173
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only.
Bldg. 6408
Property Number: 219430174
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 5345
Property Number: 219430175
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2957 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only.
Bldg. 6127
Property Number: 219430176
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 4020 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only.
Bldg. 6351
Property Number: 219430177
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs repair, presence of asbestos, most recent use—maint. shop, off-site use only.

Bldg. 01472, Fort Campbell
Property Number: 219440278
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 8029 sq. ft., 1-story, most recent use—scout bldg., needs rehab, presence of asbestos, off-site use only.
Bldg. 02234, Fort Campbell
Property Number: 219440279
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02238, Fort Campbell
Property Number: 219440280
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02239, Fort Campbell
Property Number: 219440281
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02240, Fort Campbell
Property Number: 219440282
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02241, Fort Campbell
Property Number: 219440283
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02243, Fort Campbell
Property Number: 219440284
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02247, Fort Campbell
Property Number: 219440285
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02748, Fort Campbell
Property Number: 219440286
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip. 42223–
Status: Unutilized
Comment: 2950 sq. ft., 1-story, most recent use—storage, needs rehab, presence of asbestos, off-site use only.
Bldg. 02268, Fort Campbell
Property Number: 219440287
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2250 sq. ft., 1-story, most recent use—classroom, needs rehab, presence of asbestos, off-site use only.
Bldg. 02951, Fort Campbell
Property Number: 219440288
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, most recent use—admin., needs rehab, presence of asbestos, off-site use only.
Bldg. 05632, Fort Campbell
Property Number: 219440289
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.
Bldg. 05634, Fort Campbell
Property Number: 219440290
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.
Bldg. 05638, Fort Campbell
Property Number: 219440291
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.
Bldg. 05642, Fort Campbell
Property Number: 219440292
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.
Bldg. 05644, Fort Campbell
Property Number: 219440293
Fed Reg Date: 12/23/94
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Comment: 2232 sq. ft., 1-story, most recent use—veh. maint. shop, needs rehab, presence of asbestos, off-site use only.

Maryland

Buildings
Bldg. E5878
Property Number: 219012652
Fed Reg Date: 12/10/94
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford, Zip: 21010–5425
Status: Unutilized
Comment: 213 sq. ft.; structural deficiencies; possible asbestos; and contamination.
Bldg. E5879
Property Number: 219012653
Fed Reg Date: 12/10/94
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford, Zip: 21010–5425
Status: Unutilized
Comment: 213 sq. ft.; possible asbestos; and contamination; no utilities; most recent use—igloo storage.
Bldg. 10302
Property Number: 219012666
Fed Reg Date: 12/10/94
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford, Zip: 21010–5425
Status; Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.
Bldg. E5975
Property Number: 219012677
Fed Reg Date: 12/10/94
Project Name: Aberdeen Proving Ground
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford, Zip: 21010–5425
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies; most recent use—training exercises/chemicals and explosives; potential use—storage.
Bldg. 6687
Property Number: 219220446
Fed Reg Date: 12/10/94
Fort George G. Meade
Mapes and Zimbroski Roads
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only, sched. to be vacated 10/1/92.
Bldgs. 303–308, 323–328, 333–337
Property Number: 219320293
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 4720 sq. ft. each, 2-story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only.
Bldg. 309
Property Number: 219320294
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 2324 sq. ft., 1-story wood frame, possible asbestos, fair to good condition, off-site use only.
Bldgs. 312, 319
Property Number: 219320295
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip 20755–5115
Status: Unutilized
Comment: 2594 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only.
Bldgs. 313–314, 317–318
Property Number: 219320296

Fed Reg Date: 12/10/94
Fort George G. Meade
Ft Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only

Bldgs. 302, 329, 332, 339
Property Number: 219320297
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 2208 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only

Bldg. 2239
Property Number: 219320298
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Comment: 24528 sq. ft., 1-story concrete block, possible asbestos, most recent use—mess hall, needs rehab, off-site use only

Bldg. 3033
Property Number: 219320302
Fed Reg Date: 12/10/94
Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Unutilized
Comment: 11016 sq. ft., 1-story , needs rehab, most recent use—gym, presence of asbestos.

Bldg. E4890
Property Number: 219330434
Fed Reg Date: 12/10/94
Aberdeen Proving Ground
MD, Co: Harford, Zip: 21005–5001
Status: Unutilized
Comment: 6250 sq. ft., 1-story , needs rehab, presence of asbestos.

Bldgs. 2251, 2252
Property Number: 219430180
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip 20755–5115
Status: Unutilized
Comment: 648 & 3594 sq. ft., 1-story, concrete/metal structure, needs rehab, presence of asbestos, most recent use—heating plant & admin

Michigan

Buildings

Bldg. 301, Arsenal Acres
Property Number: 219220448
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 52 sq. ft sentry station, secured area with alternate access

Bldg. 301, Arsenal Acres
Property Number: 219220449
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area with alternate access.

Bldg. 302, Arsenal Acres
Property Number: 219220450
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2619 sq. ft., 2-story colonial style home, secured area with alternate access.

Bldg. 303, Arsenal Acres
Property Number: 219220451
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2619 sq. ft., 2-story colonial style home, secured area with alternate access.

Bldg. 304, Arsenal Acres
Property Number: 219220452
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area with alternate access.

Bldg. 305, Arsenal Acres
Property Number: 219220787
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area with alternate access

Bldg. 306, Arsenal Acres
Property Number: 219410326
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area w/alternate access

Bldg. 307, Arsenal Acres
Property Number: 219410327
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 2443 sq. ft., 2-story colonial style home, secured area w/alternate access

Bldg. 308, Arsenal Acres
Property Number: 219410328
Fed Reg Date: 12/10/94
24140 Mound Road
Warren, MI, Zip: 48091–
Status: Unutilized
Comment: 205 sq. ft., 1-story brick, secured area w/alternate access

Minnesota

Land

Land
Property Number: 219120269
Fed Reg Date: 12/10/94
Twin Cities Army Ammunition Plant
New Brighton, NM, Co: Ramsey, Zip: 55112–
Status: Underutilized
Comment: Approx 25 acres, possible contamination, secured area with alternate access

Missouri

Buildings

Bldg. T3057
Property Number: 219220580
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2650 sq. ft., wood frame, 1 story, presence of asbestos, off-site removal only, most recent use—admin. gen. purpose, not handicapped accessible.

Bldg. T2383
Property Number: 219230228
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 9267 sq. ft., 1-story, presence of asbestos, most recent use—general purpose facility, off-site use only

Bldg. T1376
Property Number: 219230237
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of asbestos, most recent use—Hqts. bldg., off-site use only

Bldg. T599
Property Number: 219230260
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1311
Property Number: 219230261
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1333
Property Number: 219230263
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T1270
Property Number: 219320307
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story, most recent use—admin., possible asbestos, off-site use only

Bldg. T427
Property Number: 219330299
Fed Reg Date: 12/10/94
Fort Leonard Wood

Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only.

Bldg. T1329
Property Number: 219330300
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story presence of asbestos, most recent use—Hqt. bldg., off-site use only.

Bldg. T2206
Property Number: 219330302
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1440 sq. ft., 1-story, presence of asbestos and contamination, most recent use—storage, off-site use only.

Bldg. T2368
Property Number: 219330306
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. T3005
Property Number: 219330307
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2220 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only.

Bldg. T2171
Property Number: 219340212
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T1258
Property Number: 219340213
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2360 sq. ft., 1-story wood frame, most recent use—warehouse, no handicap fixtures, possible asbestos, lead base paint, off-site use only.

Bldg. T2312
Property Number: 219340217
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1403 sq. ft., 1-story wood frame, most recent use—paint shop, no handicap fixtures, lead base paint, off-site use only.

Bldg. T6822
Property Number: 219340219
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.

Bldg. T1363
Property Number: 219420392
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only

Bldg. T1364
Property Number: 219420393
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1686
Property Number: 219420394
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 3012 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1687
Property Number: 219420395
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2646 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T2550
Property Number: 219420396
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 224 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T281
Property Number: 219420397
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T282
Property Number: 219420398
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T283
Property Number: 219420431
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T407
Property Number: 219420432
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T408
Property Number: 219420433
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T409
Property Number: 219420434
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T410
Property Number: 219420435
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T411
Property Number: 219420436
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T412
Property Number: 219420437
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip: 65473–5000

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Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T415
Property Number: 219420438
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T429
Property Number: 219420439
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T1100
Property Number: 219420440
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 3236 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T1497
Property Number: 219420441
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2056
Property Number: 219420442
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 3600 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2057
Property Number: 219420443
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 3200 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T2066
Property Number: 219420444
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 3307 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen purpose, off-site use only
Bldg. T2138
Property Number: 219420445
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 1676 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2139
Property Number: 219420446
Fed Reg Date: 12/10/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only
Bldg. T2143
Property Number: 219440324
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2144
Property Number: 219440325
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft , 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2158
Property Number: 219440326
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2159
Property Number: 219440327
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2161
Property Number: 219440328
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2162
Property Number: 219440329
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2173
Property Number: 219440330
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2188
Property Number: 219440331
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2189
Property Number: 219440332
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft , 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.
Bldg. T2190
Property Number: 219440333
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95 lead based paint, most recent use—barracks.
Bldg. T2191
Property Number: 219440334
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame off-site removal only, to be vacated 8/95 lead based paint, most recent use—barracks.
Bldg. T2197
Property Number: 219440335
Fed Reg Date: 12/23/94
Fort Leonard Wood
Ft. Leonard Wood, MO, Co: Pulaski, Zip 65473–5000
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame off-site removal only, to be vacated 8/95 lead based paint, most recent use—barracks.

Mississippi

Buildings

Bldg. VB201
Property Number: 219330308
Fed Reg Date: 12/10/94
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 15444 sq. ft., 1 story, metal frame, most recent use—army reserve center, off-site use only.
Bldg. VB202
Property Number: 219330309
Fed Reg Date: 12/10/94
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 800 sq. ft., 1 story, metal, most recent use—admin., off-site use only.
Bldg. VB213
Property Number: 219330310
Fed Reg Date: 12/10/94
Vicksburg Reserve Center
Vicksburg, MS, Zip: 39180–0055
Status: Unutilized
Comment: 180 sq. ft., 1-story concrete block, most recent use—storehouse, off-site use only.

Montana

Land

U.S. Army Reserve Center
Property Number: 219420009
Fed Reg Date: 12/10/94
Marcella Avenue
Lewistown, MT, Co: Fergus, Zip:
Status: Unutilized
Comment: 4.16 acres of bare land.

Buildings

USARC Bozeman Reserve Center
Property Number: 219420391
Fed Reg Date: 12/10/94
Bozeman, MT, Co: Gallatin, Zip:
Status: Unutilized
Comment: 15236 sq. ft., 3-story reserve center on 54 acres, bldg. on National Register of Historic Places, secured with alternate access.

North Carolina

Buildings

Bldg. O–9710, Fort Bragg
Property Number: 219330312
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 974 sq. ft., metal trailer, needs repair, most recent use—living quarters, off-site use only.
Bldg. 4–2402, Fort Bragg
Property Number: 219420447
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 1532 sq. ft., 1-story masonry block, needs rehab, possible asbestos, most recent use—auto rental facility off-site use only
Bldg. 8–4139, Fort Bragg
Property Number: 219420448
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 3154 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only
Bldg. 8–4343, Fort Bragg
Property Number: 219420449
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only
Bldg. 8–4546, Fort Bragg
Property Number: 219420450
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs rehab, possible asbestos, most recent use—storage, off-site use only.
Bldg. M–5351, Fort Bragg
Property Number: 219420452
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 4141 sq. ft., 1-story wood, needs repair, possible asbestos, most recent use—shopette, off-site use only.
Bldg. O–9025, Fort Bragg
Property Number: 219420454
Fed Reg Date: 12/10/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Unutilized
Comment: 1964 sq. ft., metal, needs rehab, possible asbestos, most recent use—admin., off-site use only.
Bldg. H–1838, Fort Bragg
Property Number: 219440318
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 3145 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing.
Bldg. H–1839, Fort Bragg
Property Number: 219440319
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 4094 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—parachute packing.
Bldg. 2–3208, Fort Bragg
Property Number: 219440320
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 800 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—storage.
Bldg. 2–3309, Fort Bragg
Property Number: 219440321
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 22636 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—vehicle maintenance shop
Bldg. 0–9045, Fort Bragg
Property Number: 219440322
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 7680 sq. ft., 1 story metal frame, needs rehab, off-site removal only, most recent use—open end barn.
Bldg. 6–9273, Fort Bragg
Property Number: 219440323
Fed Reg Date: 12/23/94
Ft. Bragg, NC, Co: Cumberland, Zip: 28307–
Status: Excess
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—fire station admin

Nebraska

Land

60 Acres & Bldgs.
Property Number: 219340220
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 60 acres of land and structures (Bldg. A14), potential utilities.

Buildings

Bldg. RG–1
Property Number: 219210292
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–2
Property Number: 219210293
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.
Bldg. RG–3
Property Number: 219210294
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–4
Property Number: 219210295
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–5
Property Number: 219210296
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–6
Property Number: 219210297
Fed Reg Date: 12/10/94
Cornhusker Army Ammunition Plant
Old Potash Hwy

Grand Island, NE, Co: Hall, Zip: 68803–
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

New Jersey

Buildings

Bldg. 421, Fort Monmouth
Property Number: 219330435
Fed Reg Date: 12/10/94
Ft. Monmouth, NJ, Co: Monmouth, Zip: 07703–
Status: Unutilized
Comment: 4720 sc ft 2-story most recent use—office.
Bldg. 2529, Fort Mo uth
Property Number: 219330436
Fed Reg Date: 12/10/94
Charles Wood Area
Ft. Monmouth, NJ, Co: Monmouth, Zip: 07703–
Status: Unutilized
Comment: 4413 sq. ft., 2-story, needs rehab, most recent use—admin

New Mexico

Buildings

Bldg. 108
Property Number: 219330327
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 109
Property Number: 219330328
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip 88002–
Status: Unutilized
Comment: 3561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 117
Property Number: 219330329
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 118
Property Number: 219330330
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 119
Property Number: 219330331
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 147
Property Number: 219330334
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3561 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 148
Property Number: 219330332
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3570 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 149
Property Number: 219330333
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3570 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 150
Property Number: 219330334
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3750 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 357
Property Number: 219330335
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip 88002–
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1758
Property Number: 219330336
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip 88002–
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 1768
Property Number: 219330337
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 15,333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28281
Property Number: 219330338
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 28282
Property Number: 219330339
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only
Bldg. 32980
Property Number: 219330340
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 34252
Property Number: 219330341
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only
Bldg. 418
Property Number: 219330342
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 420
Property Number: 219330343
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 890
Property Number: 219330344
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1346
Property Number: 219330345
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1738
Property Number: 219330346
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–

Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 1765
Property Number: 219330347
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 21542
Property Number: 219330348
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 22118
Property Number: 219330349
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 22253
Property Number: 219330350
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 28267
Property Number: 219330351
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 29195
Property Number: 219330352
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only
Bldg. 34219
Property Number: 219330353
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 34221
Property Number: 219330354
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 145
Property Number: 219330355
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only.
Bldg. 1754
Property Number: 219330356
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 19242
Property Number: 219330357
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 34227
Property Number: 219330358
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 34244
Property Number: 219330359
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.
Bldg. 21105
Property Number: 219330360
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only
Bldg. 21106
Property Number: 219330361
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbestos, most recent use—veterinarian facility, off-site use only.
Bldg. 21310
Property Number: 219330362
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only.
Bldg. 29890
Property Number: 219330363
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only
Bldg. 1868
Property Number: 219330364
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off site use only
Bldg. 528
Property Number: 219330365
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only
Bldg. 1834
Property Number: 219330366
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only.
Bldg. 1300
Property Number: 219330367
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only
Bldg. 23100
Property Number: 219330368
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only
Bldg. 29196

Property Number: 219330369
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, CO: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only
Bldg. 30774
Property Number: 219330370
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only
Bldg. 33136
Property Number: 219330371
Fed Reg Date: 12/10/94
White Sands Missile Range
White Sands, NM, Co: Dona Ana, Zip: 88002–
Status: Unutilized
Comment: 18 sq. ft., off-site use only

Nevada

Land

Parcel A
Property Number: 219012049
Fed Reg Date: 12/10/94
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W edge of Walker Lane
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.
Parcel B
Property Number: 219012056
Fed Reg Date: 12/10/94
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Status: Unutilized
Comment: 1920 acres, road and utility easements, no utility hookup; possible flooding problem.
Parcel C
Property Number: 219012057
Fed Reg Date: 12/10/94
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area of Western edge of State Route 359
Status: Unutilized
Comment: 85 acres; road and utility easements, no utility hookup.
Parcel D
Property Number: 219012058
Fed Reg Date: 12/10/94
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral, Zip: 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Status: Unutilized
Comment: 955 acres; road and utility easements, no utility hookup

Buildings

Bldgs. 00425–00449
Property Number: 219011946
Fed Reg Date: 12/10/94
Project Name: Hawthorne Army Ammo. Plant
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral, Zip: 89415–
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.

New York

Buildings

Bldg. 323
Property Number: 219012567
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
Story Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks & mess facility, needs major rehab.
Bldg. 304
Property Number: 219012570
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
Shore Road
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 9610 sq ft., 3 floors, most recent use-hospital, needs major rehab/utilities disconnected.
Bldg. 211
Property Number: 219012573
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
211 Totten Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 6329 sq ft., 3 floors, most recent use-family housing, needs major rehab, utilities disconnected
Bldg. 332
Property Number: 219012578
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
Theater Road
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 6288 sq ft., 1 floor, most recent use-theater w/stage, needs major rehab, utilities disconnected
Bldg. 322
Property Number: 219012583
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
322 Story Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks, mess & administration, utilities disconnected, needs rehab
Bldg. 326
Property Number: 219012586
Fed Reg Date: 12/10/94
Project Name: Fort Totten
Fort Totten
326 Pratt Avenue
Bayside, NY, Co: Queens, Zip: 11359–
Status: Underutilized
Comment: 6000 sq ft., 2 floors, most recent use-storage, offices & residential, utilities disconnected/needs rehab.
23 Residential Apartment Bldgs
Property Number: 219330315
Fed Reg Date: 12/10/94
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location. Y and Garden Loop Streets
Status: Unutilized
Comment: 2-story family housing, concrete block/wood, needs rehab, scheduled to be vacated 1996
5 Detached Garages
Property Number: 219330316
Fed Reg Date: 12/10/94
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location: Y and Garden Loop Streets
Status. Unutilized
Comment: 1-story garages, concrete block/wood, needs rehab, scheduled to be vacated 1996
30 Storage Sheds
Property Number: 219330317
Fed Reg Date. 12/10/94
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor, NY, Co: Orange, Zip: 12553–
Location: Y and Garden Loop Streets
Status: Unutilized
Comment: 1-story aluminum/wood storage sheds, good condition, scheduled to be vacated 1996.
Bldg. 100, Fort Hamilton
Property Number: 219340254
Fed Reg Date: 12/10/94
Bellmore, NY, Co. Nassau, Zip: 11710–
Status: Unutilized
Comment: 155 sq. ft., 1-story, most recent use—storage
Bldg. 200, Fort Hamilton
Property Number: 219340255
Fed Reg Date: 12/10/94
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Unutilized
Comment: 12000 sq. ft., 1-story, most recent use—office.
Bldg. 300, Fort Hamilton
Property Number: 219340256
Fed Reg Date: 12/10/94
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Underutilized
Comment: 11000 sq. ft., 1-story, most recent use—reserve center.
Bldgs. S–2341, S–2342
Property Number: 219430183
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 266–484 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. S–2800

Property Number: 219430184
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 671 sq. ft., 1-story, needs rehab, most recent use—sotrage, off-site use only.
Bldg. S–2801
Property Number: 219430185
Fed Reg Date. 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 3182 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldgs. T–196, T–197
Property Number: 219430186
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 3576–3809 sq. ft., 1-story, needs rehab, most recent use—maint. shop, off-site use only.
Bldgs. T–901
Property Number: 219430187
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2305 sq. ft., 1-story, needs rehab, most recent use—admin./gen. purpose, off-site use only.
Bldg. T–902
Property Number: 219430188
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 3350 sq. ft., 1-story, needs rehab, most recent use—training, off-site use only
Bldg. T–916
Property Number: 219430190
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 840 sq. ft., 1-story, needs rehab, most recent use—training facility, off-site use only.
Bldg. T–2320
Property Number: 219430191
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—barracks/annual training, off-site use only.
Bldg. T–2321
Property Number: 219430192
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—barracks/annual training, off-site use only
Bldg. T–2322
Property Number: 219430193
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—admin. & supply, off-site use only.
Bldg. T–2406
Property Number: 219430194
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4712 sq. ft., 1-story, needs rehab, most recent use—medical admin./training, off-site use only.
Bldg. T–2410
Property Number: 219430195
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs repair, 30% in runway clear zone, most recent use—housing/training, off-site use only
Bldg. T–2427
Property Number: 219430196
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4345 sq. ft., 1-story, needs rehab, most recent use—storage/training, off-site use only
Bldg. T–2425
Property Number: 219430197
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldgs. T–4854, T–4859
Property Number: 219430198
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2592 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. T–224
Property Number: 219430199
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2750 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–234
Property Number: 219430200
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1296 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. T–239
Property Number: 219430201
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2588 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. T–2338
Property Number: 219430202
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 159 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–2405
Property Number: 219430203
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–231
Property Number: 219430204
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–232
Property Number: 219430205
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–237
Property Number: 219430206
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–238
Property Number: 219430207
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. T–220
Property Number: 219430208
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–225
Property Number: 219430209
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–229
Property Number: 219430210
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–240
Property Number: 219430211
Fed Reg Date: 12/10/94

Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–249
Property Number: 219430212
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2360 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–2323
Property Number: 219430213
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2500 sq. ft., 1-story, needs rehab, most recent use—mess hall/training, off-site use only.
Bldg. T–4834
Property Number: 219430214
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 2250 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
13 Bldgs.
Property Number: 219430215
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Location: Bldgs, T221–T223, T226–T228, T241–T244, T246–T248
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks/training, off-site use only.
Bldg. T–1011
Property Number: 219430216
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–1012
Property Number: 219430217
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2270
Property Number: 219430218
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 7670 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2271
Property Number: 219430219
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2276
Property Number: 219430220
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2277
Property Number: 219430221
Fed Reg Date: 12/10/94
Fort Drum
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 8044 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2402, Fort Drum
Property Number: 219430222
Fed Reg Date: 12/10/94
Ft. Drum, NY Co: Jefferson Zip: 13602–
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. T–2404, Fort Drum
Property Number: 219430223
Fed Reg Date: 12/10/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 5034 sq. ft., 2-story, needs rehab, most recent use—officers quarters/training, off-site use only.
Bldg. 900, Fort Hamilton
Property Number: 219430259
Fed Reg Date: 12/10/94
Bellmore, NY, Co: Nassau, Zip: 11710–
Status: Underutilized
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage.
Bldg. T–12, Fort Drum
Property Number: 219440425
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office, needs rehab, off-site use only.
Bldg. T–467, Fort Drum
Property Number: 219440426
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized.
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only.
Bldg. T–468, Fort Drum
Property Number: 219440427
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only.
Bldg. T–683, Fort Drum
Property Number: 219440428
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson Zip: 13602–
Status: Unutilized
Comment: 4160 sq. ft., 1-story, most recent use—storage, needs rehab, off-site use only.
Bldg. P–2012, Fort Drum
Property Number: 219440429
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 450 sq. ft., most recent use—water distribution bldg., off-site use only.
Bldg. T–2408, Fort Drum
Property Number: 219440430
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 3202 sq. ft., 1-story, most recent use—dental clinic, needs rehab, off-site use only.
Bldg. T–2420, Fort Drum
Property Number: 219440431
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.
Bldg. T–2421, Fort Drum
Property Number: 219440432
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.
Bldg. T–2422, Fort Drum
Property Number: 219440433
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.
Bldg. T–2423, Fort Drum
Property Number: 219440434
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.
Bldg. T–2426, Fort Drum
Property Number: 219440435
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.
Bldg. T–2430, Fort Drum
Property Number: 219440436
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4837 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only.
Bldg. T–2441, Fort Drum
Property Number: 219440437
Fed Reg Date: 12/23/94
Ft. Drum, NY, Co: Jefferson, Zip: 13602–
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—clinic w/o beds, needs rehab, off-site use only.
Bldg. T–4886, Fort Drum
Property Number: 219440438
Fed Reg Date: 12/23/94

Ft. Drum, NY, Jefferson, Zip: 13602–
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only.

Ohio

Land

5 acres
Property Number: 219320313
Fed Reg Date: 12/10/94
Doan U.S. Army Reserve Center
Portmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Property Number: 219320316
Fed Reg Date: 12/10/94
Hayes U.S. Army Reserve Center
Fremont, OH, Co: Sandusky, Zip: 43420–
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Buildings

Bldg. P–3
Property Number: 219320311
Fed Reg Date: 12/10/94
Doan U.S. Army Reserve Center
Portmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 10752 sq. ft., 1-story brick, most recent use—office, possible asbestos.
Bldg. P–4
Property Number: 219320312
Fed Reg Date: 12/10/94
Doan U.S. Army Reserve Center
Portmonth, OH, Co: Scioto, Zip: 45662–
Status: Unutilized
Comment: 2508 sq. ft., 1-story brick, most recent use—vehicle maint. shop.
Bldg. P–2
Property Number: 219320314
Fed Reg Date: 12/10/94
Hayes U.S. Army Reserve Center
Fremont, OH, Co: Sandusky, Zip: 43420–
Status: Unutilized
Comment: 3956 sq. ft., 1-story brick, most recent use—office, possible asbestos.
Bldg. P–3
Property Number: 219320315
Fed Reg Date: 12/10/94
Hayes U.S. Army Reserve Center
Fremont, OH, Co: Sandusky, Zip: 43420–
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use—vehicle maint. shop, possible asbestos.

Oklahoma

Buildings

Bldg. T–2545, Fort Sill
Property Number: 219011255
Fed Reg Date: 12/10/94
Project Name: Fort Sill
2545 Sheridan Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors; no operating sanitary facilities; most recent use—enl. barracks basic.
Bldg. T–2606, Fort Sill
Property Number: 219011273
Fed Reg Date: 12/10/94
Project Name: Fort Sill
2606 Currie Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.
Bldg. T–3507, Fort Sill
Property Number: 219011315
Fed Reg Date: 12/10/94
Project Name: Fort Sill
3507 Sheridan Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.
Bldg. T–4919, Fort Sill
Property Number: 219014842
Fed Reg Date: 12/10/94
Project Name: Fort Sill
4919 Post Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.
Bldg. T–4523, Fort Sill
Property Number: 219014933
Fed Reg Date: 12/10/94
Project Name: Fort Sill
4523 Wilson Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1639 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—storage.
Bldg. T–838, Fort Sill
Property Number: 219220609
Fed Reg Date: 12/10/94
838 Macomb Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).
Bldg. T–2702, Fort Sill
Property Number: 219240655
Fed Reg Date: 12/10/94
2702 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T–3311, Fort Sill
Property Number: 219240656
Fed Reg Date: 12/10/94
3311 Naylor Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.
Bldg. T954, Fort Sill
Property Number: 219240659
Fed Reg Date: 12/10/94
954 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3751 sq. ft., 1 story wood fame, needs rehab, off-site use only, most recent use—motor repair shop.
Bldg. T–1050, Fort Sill
Property Number: 219240660
Fed Reg Date: 12/10/94
1050 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
Bldg. T–1051, Fort Sill
Property Number: 219240661
Fed Reg Date: 12/10/94
1051 Quinette Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.
Bldg. T–2703, Fort Sill
Property Number: 219240667
Fed Reg Date: 12/10/94
2703 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2704, Fort Sill
Property Number: 219240668
Fed Reg Date: 12/10/94
2704 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2740, Fort Sill
Property Number: 219240669
Fed Reg Date: 12/10/94
2740 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2745, Fort Sill
Property Number: 219240670
Fed Reg Date: 12/10/94
2745 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.
Bldg. T–2633, Fort Sill
Property Number: 219240672
Fed Reg Date: 12/10/94
2633 Miner Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.
Bldg. T–2701, Fort Sill
Property Number: 219240673
Fed Reg Date: 12/10/94
2701 Thomas Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2907, Fort Sill
Property Number: 219240674
Fed Reg Date: 12/10/94
2907 Marcy Road

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Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–2928, Fort Sill
Property Number: 219240675
Fed Reg Date: 12/10/94
2928 Custer Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. T–4050, Fort Sill
Property Number: 219240676
Fed Reg Date: 12/10/94
4050 Pitman Street
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.
Bldg. P–3032, Fort Sill
Property Number: 219240678
Fed Reg Date: 12/10/94
3032 Haskins Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.
Bldg. T3325, Fort Sill
Property Number: 219240681
Fed Reg Date: 12/10/94
3325 Naylor Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.
Bldg. T–260, Fort Sill
Property Number: 219240776
Fed Reg Date: 12/10/94
260 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—admin.
Bldg. T–3641, Fort Sill
Property Number: 219320324
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, most recent use—day room, needs rehab, off-site use only.
Bldg. T–3644, Fort Sill
Property Number: 219320327
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.
Bldg. T–5122, Fort Sill
Property Number: 219320334
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.
Bldg. P–6220, Fort Sill
Property Number: 219320335
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use—construction bldg., off-site use only.
Bldg. S–6228, Fort Sill
Property Number: 219320336
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only.
Bldg. P–2610, Fort Sill
Property Number: 219330372
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 512 sq. ft., 1-story, possible asbestos, most recent use—classroom, off-site use only.
Bldg. 4722, Fort Sill
Property Number: 219330373
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3375 sq. ft., 2-story, possible asbestos, most recent use—admin., off-site use only.
Bldg. T232, Fort Sill
Property Number: 219330377
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2868 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T312, Fort Sill
Property Number: 219330379
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1970 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T1652, Fort Sill
Property Number: 219330380
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use-storage, off-site use only.
Bldg. T1665, Fort Sill
Property Number: 219330381
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2034, Fort Sill
Property Number: 219330383
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2705, Fort Sill
Property Number: 219330384
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2706, Fort Sill
Property Number: 219330385
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2156 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2708, Fort Sill
Property Number: 219330387
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2709, Fort Sill
Property Number: 219330388
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2756, Fort Sill
Property Number: 219330390
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2757, Fort Sill
Property Number: 219330391
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3026, Fort Sill
Property Number: 219330392
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3651, Fort Sill
Property Number: 219330393
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2770 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3706, Fort Sill
Property Number: 219330394
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1947 sq. ft., 2-story possible asbestos, most recent use—storage, off-site use only.
Bldg. T3710, Fort Sill
Property Number: 219330396
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized

Comment: 1176 sq. ft., 1-story, possible asbestos, most recent use—Storage, off-site use only.
Bldg. T3712, Fort Sill
Property Number: 219330397
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1021 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only.
Bldg. T3713, Fort Sill
Property Number: 219330398
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1013 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T4035, Fort Sill
Property Number: 219330401
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 867 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only.
Bldg. T4474, Fort Sill
Property Number: 219330402
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1159 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only.
Bldg. T5011, Fort Sill
Property Number: 219330403
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1556 sq. ft., 1-story possible asbestos, most recent use—storage, off-site use only.
Bldg. T5120, Fort Sill
Property Number: 219330405
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1471 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5123, Fort Sill
Property Number: 219330406
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5124, Fort Sill
Property Number: 219330407
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1287 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5245, Fort Sill
Property Number: 219330410
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5246, Fort Sill
Property Number: 219330411
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5247, Fort Sill
Property Number: 219330412
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5248, Fort Sill
Property Number: 219330413
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5249, Fort Sill
Property Number: 219330414
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2920 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5250, Fort Sill
Property Number: 219330415
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3257 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5251, Fort Sill
Property Number: 219330416
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3257 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5252, Fort Sill
Property Number: 219330417
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 3081 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5628, Fort Sill
Property Number: 219330418
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 2016 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5637, Fort Sill
Property Number: 219330419
Fed Reg Date: 12/10/94
Lawton, OK, Co: Comanche, Zip: 73503–5100
Status: Unutilized
Comment: 1606 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T–282,
Property Number: 219410236
Fed Reg Date: 12/10/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 2420 sq. ft., 2-story, wood frame; most recent use—admin.; off-site use only.
Bldg. T–2937,
Property Number: 219410237
Fed Reg Date: 12/10/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 3740 sq. ft., 1-story, wood frame; most recent use—admin.; off-site use only.
Bldg. T–2908,
Property Number: 219410238
Fed Reg Date: 12/10/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73501–5100
Status: Unutilized
Comment: 3745 sq. ft., 1-story, wood frame; most recent use—classroom; off-site use only.
Bldg. T–268, Fort Sill
Property Number: 219440338
Fed Reg Date: 12/23/94
268 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–269, Fort Sill
Property Number: 219440339
Fed Reg Date: 12/23/94
268 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 7840 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–281, Fort Sill
Property Number: 219440340
Fed Reg Date: 12/23/94
281 Corral Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4836 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3731, Fort Sill
Property Number: 219440341
Fed Reg Date: 12/23/94
3731 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3632, Fort Sill
Property Number: 219440342
Fed Reg Date: 12/23/94
3632 Scott Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3656, Fort Sill
Property Number: 219440343
Fed Reg Date: 12/23/94
3656 Swartz Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess

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Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3657, Fort Sill
Property Number: 219440344
Fed Reg Date: 12/23/94
3657 Swartz Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3719, Fort Sill
Property Number: 219440345
Fed Reg Date: 12/23/94
3719 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3720, Fort Sill
Property Number: 219440346
Fed Reg Date: 12/23/94
3720 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3723, Fort Sill
Property Number: 219440347
Fed Reg Date: 12/23/94
3723 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3724, Fort Sill
Property Number: 219440348
Fed Reg Date: 12/23/94
3724 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3725, Fort Sill
Property Number: 219440349
Fed Reg Date: 12/23/94
3725 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3726, Fort Sill
Property Number: 219440350
Fed Reg Date: 12/23/94
3726 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3728, Fort Sill
Property Number: 219440351
Fed Reg Date: 12/23/94
3728 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 3162 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—storage.
Bldg. T–3732, Fort Sill
Property Number: 219440352
Fed Reg Date: 12/23/94
3732 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3733, Fort Sill
Property Number: 219440353
Fed Reg Date: 12/23/94
3733 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3734, Fort Sill
Property Number: 219440354
Fed Reg Date: 12/23/94
3734 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3735, Fort Sill
Property Number: 219440355
Fed Reg Date: 12/23/94
3735 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3736, Fort Sill
Property Number: 219440356
Fed Reg Date: 12/23/94
3736 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3739, Fort Sill
Property Number: 219440357
Fed Reg Date: 12/23/94
3739 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3750, Fort Sill
Property Number: 219440358
Fed Reg Date: 12/23/94
3750 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3752, Fort Sill
Property Number: 219440359
Fed Reg Date: 12/23/94
3752 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3753, Fort Sill
Property Number: 219440360
Fed Reg Date: 12/23/94
3753 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3754, Fort Sill
Property Number: 219440361
Fed Reg Date: 12/23/94
3754 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T–3755, Fort Sill
Property Number: 219440362
Fed Reg Date: 12/23/94
3755 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3756, Fort Sill
Property Number: 219440363
Fed Reg Date: 12/23/94
3756 Wilson Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5216, Fort Sill
Property Number: 219440364
Fed Reg Date: 12/23/94
5216 Conklin Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5217, Fort Sill
Property Number: 219440365
Fed Reg Date: 12/23/94
5217 Conklin Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–5218, Fort Sill
Property Number: 219440366
Fed Reg Date: 12/23/94
5218 Conklin Road
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4900 sq. ft., 2 story wood frame possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–3738, Fort Sill
Property Number: 219440367
Fed Reg Date: 12/23/94
3738 Webster Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks
Bldg. T–2441, Fort Sill
Property Number: 219440368
Fed Reg Date: 12/23/94
2441 Miner Road

Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 1686 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3645, Fort Sill
Property Number: 219440369
Fed Reg Date: 12/23/94
3645 Tacy Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3715, Fort Sill
Property Number: 219440370
Fed Reg Date: 12/23/94
3715 Tacy Street
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Excess
Comment: 1311 sq. ft., 1 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—admin.
Bldg. T–3740
Property Number: 219440371
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–3744
Property Number: 219440372
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–3745
Property Number: 219440373
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–3746
Property Number: 219440374
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–3757
Property Number: 219440375
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–5215
Property Number: 219440376
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–3721
Property Number: 219440377
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 3042 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.
Bldg. T–3737
Property Number: 219440378
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 2964 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.
Bldg. T–3758
Property Number: 219440379
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73350–
Status: Unutilized
Comment: 3132 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—mess hall, off-site use only.
Bldg. T–3751
Property Number: 219440380
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 3141 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.
Bldg. T–5219
Property Number: 219440381
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 2662 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.
Bldg. T–3631
Property Number: 219440382
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 4530 sq ft., 2-story wood frame, possible asbestos and lead paint, most recent use—dayroom, off-site use only.
Bldg. P–2938
Property Number: 219440383
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 23 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—Storage, off-site use only.
Bldg. T–4226
Property Number: 219440384
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 114 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
Bldg. T–5009
Property Number: 219440385
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 114 sq ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
Bldg. T–3749
Property Number: 219440386
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 4525 sq ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
Bldg. P–1615
Property Number: 219440368
Fed Reg Date: 12/23/94
Fort Sill
Lawton, OK, Co: Comanche, Zip: 73503–
Status: Unutilized
Comment: 14392 sq ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.

Pennsylvania

Buildings

Bldg. T–1–10
Property Number: 219420010
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4502 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–1–15
Property Number: 219420011
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4503 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–1–18
Property Number: 219420012
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4503 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–14–402
Property Number: 219420013
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.
Bldg. T–14–406

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Property Number: 219420014
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–408
Property Number: 219420015
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–410
Property Number: 219420016
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 2-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–412
Property Number: 219420017
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. T–14–414
Property Number: 219420018
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldg. 4–71
Property Number: 219420019
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1220 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. 4–72
Property Number: 219420020
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1220 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–4–94
Property Number: 219420021
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Birch Street
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1220 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–100
Property Number: 219420022
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3070 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–102
Property Number: 219420023
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1075 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–110
Property Number: 219420024
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3700 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–112
Property Number: 219420025
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq ft., 1-story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–114
Property Number: 219420026
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–117
Property Number: 219420027
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3320 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–202
Property Number: 219420028
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–204
Property Number: 219420029
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–206
Property Number: 219420030
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–208
Property Number: 219420031
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–210
Property Number: 219420032
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–212
Property Number: 219420033
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–214
Property Number: 219420034
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess

Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–215
Property Number: 219420035
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–216
Property Number: 219420036
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–300
Property Number: 219420037
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 6445 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–302
Property Number: 219420038
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1512 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–303
Property Number: 219420039
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3340 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–305
Property Number: 219420040
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–307
Property Number: 219420041
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–308
Property Number: 219420042
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–310
Property Number: 219420043
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–415
Property Number: 219420044
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3650 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–416
Property Number: 219420045
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4172 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–1–11
Property Number: 219420046
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–1–19
Property Number: 219420047
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–1–21
Property Number: 219420048
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–1–8
Property Number: 219420050
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–1–12
Property Number: 219420051
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–4–124
Property Number: 219420052
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 214 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–122
Property Number: 219420053
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2277 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (vehicle).

Bldg. T–14–200
Property Number: 219420054
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3898 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–201
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–14–400
Property Number: 219420049
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

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Property Number: 219420055
Fed Reg Date: 12/10/94
Fort Indianto wn Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–203
Property Number: 219420056
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–205
Property Number: 219420057
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–207
Property Number: 219420058
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–209
Property Number: 219420059
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–211
Property Number: 219420060
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–213
Property Number: 219420061
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–217
Property Number: 219420062
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–301
Property Number: 219420063
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 9662 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–309
Property Number: 219420064
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–311
Property Number: 219420065
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–314
Property Number: 219420066
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–315
Property Number: 219420067
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3624 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–401
Property Number: 219420068
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 782 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–403
Property Number: 219420069
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2685 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–404
Property Number: 219420070
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–405
Property Number: 219420071
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 480 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–411
Property Number: 219420072
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–413
Property Number: 219420073
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3000 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–417
Property Number: 219420074
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–419
Property Number: 219420075
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess

Comment: 3576 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–424
Property Number: 219420076
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 63 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–500
Property Number: 219420077
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–503
Property Number: 219420078
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–505
Property Number: 219420079
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–507
Property Number: 219420080
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–508
Property Number: 219420081
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose storehouse).

Bldg. T–14–509
Property Number: 219420082
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–511
Property Number: 219420083
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–113
Property Number: 219420084
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–115
Property Number: 219420085
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–312
Property Number: 219420086
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–313
Property Number: 219420087
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–316
Property Number: 219420088
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–317
Property Number: 219420089
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3623 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–407
Property Number: 219420090
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital

Bldg. T–14–409
Property Number: 219420091
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–502
Property Number: 219420092
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–504
Property Number: 219420093
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–506
Property Number: 219420094
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–304
Property Number: 219420095
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 4212 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only most recent use—ADP bldg.

Bldg. T–14–306

Property Number: 219420096
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg.

Bldg. T–1–16
Property Number: 219420097
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—arms bldg.

Bldg. T–1–20
Property Number: 219420098
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1,075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. 4–73
Property Number: 219420099
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1,075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. T–9–1
Property Number: 219420100
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 2,170 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—credit union.

Bldg. T–13–64
Property Number: 219420101
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 5,747 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–421
Property Number: 219420102
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 287 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–423
Property Number: 219420103
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 1,681 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–16–149
Property Number: 219420104
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 18,045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.

Bldg. T–14–561
Property Number: 219420105
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–562
Property Number: 219420106
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–563
Property Number: 219420107
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–564
Property Number: 219420108
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–565
Property Number: 219420109
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–566
Property Number: 219420110
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–567
Property Number: 219420111
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–568
Property Number: 219420112
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–569
Property Number: 219420113
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–570
Property Number: 219420114
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–571
Property Number: 219420115
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–572
Property Number: 219420116
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldg.

Bldg. T–14–819
Property Number: 219420117
Fed Reg Date: 12/10/94
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Co: Lebanon, Zip: 17003–5011
Status: Excess
Comment: 6122 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—covered walkway.

South Carolina

Buildings

Bldg. 9608
Property Number: 219410200
Fed Reg Date: 12/10/94
Fort Jackson
Fort Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 4,720 sq. ft.; wood frame; 2 story; needs rehab.; off-site use only; utilities upgrade; most recent use—enlisted quarters.

Bldg. 5492
Property Number: 219410207
Fed Reg Date: 12/10/94
Fort Jackson
Fort Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 2,379 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—information management office.

Bldg. 10–436
Property Number: 219410217
Fed Reg Date: 12/10/94
Fort Jackson
Fort Jackson, SC, Co: Richland, Zip: 29207–
Status: Unutilized
Comment: 100 sq. ft.; wood frame; 1 story; off-site use only; limited utilities; needs rehab.; most recent use—shed.

Tennessee

Land

Milan Army Ammunition Plant
Property Number: 219010547
Fed Reg Date: 12/10/94
Project Name: Milan Army Ammunition Plant
Milan, TN, Co: Carroll, Zip: 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Status: Excess
Comment: 17.2 acres; right of entry legal constraint.

Holston Army Ammunition Plant
Property Number: 219012338
Fed Reg Date: 12/10/94
Project Name: Holston Army Ammunition Plant
Kingsport, TN, Co: Hawkins, Zip: 61299–6000
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Land
Property Number: 219240780
Fed Reg Date: 12/10/94
Milan Army Ammunition Plant
NE corner of plant & housing area
Milan, TN, Co: Carroll, Zip: 38358–
Status: Unutilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use—buffer zone.

Texas

Land

Vacant Land, Fort Sam Houston
Property Number: 219220438
Fed Reg Date: 12/10/94
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 244.47 acres, 85% located in floodplain, possibility of unexploded ordnance.

Old Camp Bullis Road
Property Number: 219420461
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Camp Bullis, Tract 9
Property Number: 219420462
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1.07 acres of undeveloped land.

Buildings

Harlingen USARC
Property Number: 219120304
Fed Reg Date: 12/10/94
1920 East Washington
Harlingen, TX, Co: Cameron, Zip: 78550–
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Bldg. P–3824, Fort Sam Houston
Property Number: 219220398
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only

Bldg. 4168, Fort Hood
Property Number: 219320350
Fed Reg Date: 12/10/94
Fort Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use—vehicle wash platform, needs rehab, off-site use only

Bldg. 440, Fort Bliss
Property Number: 219320355
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only.

Bldg. 1164, Fort Bliss
Property Number: 219330420
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 2054 net sq. ft., 1-story wood, most recent use—admin. bldg., needs rehab, off-site use only.

Bldg. 512, Fort Hood
Property Number: 219330421
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 6733 sq. ft., 1-story wood, most recent use—commissary, off-site use only

Bldg. P–293, Fort Sam Houston
Property Number: 219330441
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 442 sq. ft., 1-story brick needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–298, Fort Sam Houston
Property Number: 219330442
Fed Reg Date: 12/10/94
Status: Unutilized
Comment: 3200 sq. ft., 1-story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–371, Fort Sam Houston
Property Number: 219330443
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18387 sq. ft., 2-story structural tile, most recent use—vehicle maintenance shop, off-site use only.

Bldg. P–377, Fort Sam Houston
Property Number: 219330444
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. S–1164, Fort Sam Houston
Property Number: 219330445
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 8629 sq. ft., 1-story metal, needs rehab, most recent use—classroom, off-site use only.

Bldg. T–374
Property Number: 219330480
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 8640 sq. ft., 1-story wood frame, needs rehab, located in National Historic District, off-site use only.

Bldg. T–1170
Property Number: 219330481
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. T–1468
Property Number: 219330482
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized

Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–1492
Property Number: 219330483
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–2066
Property Number: 219330484
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–2509
Property Number: 219330485
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3147 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. T–5901
Property Number: 219330486
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.
Bldg. T–1464
Property Number: 219330487
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3778 sq. ft., 1-story wood frame, needs rehab, most recent use—t-shirts and frame shop, off-site use only.
Bldg. T–1874
Property Number: 219330488
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3108 sq. ft., 1-story wood frame, needs rehab, off-site use only.
Bldg. T–2011
Property Number: 219330489
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 150 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only.
Bldg. T–2193
Property Number: 2193304
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 1800 sq. ft., 1-story wood frame, needs rehab, most recent use—storage shed, off-site use only.
Bldg. T–2507
Property Number: 219330491
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.
Bldg. T–2510
Property Number: 219330492
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3210 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.
Bldg. T–4044
Property Number: 219330493
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 263 sq. ft., 1-story brick, needs rehab, most recent use—storage, off-site use only.
Bldg. T–2511
Property Number: 219330494
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only.
Bldg. T–2512
Property Number: 219330495
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only.
Bldg. T–2513
Property Number: 219330496
Fed Reg Date: 12/10/94
Fort Sam Houston, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 13,603 sq. ft., 1-story wood frame, needs rehab, most recent use—repair shop, off-site use only.
Bldg. S–2516
Property Number: 219330497
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3008 sq. ft., 1-story steel, most recent use—paint stripping plant, lead contaminants present, off-site use only.
Bldg. T–2520
Property Number: 219330498
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 31,296 sq. ft., 1-story wood frame, needs rehab, most recent use—physical fitness, off-site use only.
Bldg. T–2183
Property Number: 219330499
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 3000 sq. ft., 1-story wood frame needs rehab, most recent use—stable, off-site use only.
Bldg. T–6231
Property Number: 219330500
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 600 Sq. Ft., 1-story wood frame, most recent use—firing range, off-site use only.
Bldg. T–6232
Property Number: 219330501
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only.
Bldg. T–6236
Property Number: 219330502
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, needs rehab, most recent use—firing range off-site use only.
Bldg. T–2508
Property Number: 219330503
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame needs rehab, most recent use—storage, off site use only.
Bldg. T–211
Property Number: 219340194
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame most recent use—instruction bldg., off-site use only.
Bldg. T–1031
Property Number: 219340195
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame most recent use—photo lab, off-site use only.
Bldg. T–1126
Property Number: 219340196
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame most recent use—blood donor center needs rehab, off-site use only
Bldg. P–5902
Property Number: 219340197
Fed Reg Date: 12/10/94
Fort Sam Houston
San Antonio, TX Co: Bexar, Zip: 78234–5000

Status: Unutilized
Comment: 1157 sq. ft., 1-story wood, most recent use—warehouse, off-site use only.
Bldg. 240, Fort Hood
Property Number: 219410314
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 315, Fort Hood
Property Number: 219410315
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip 76544–
Status: Unutilized
Comment: 2400 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 316, Fort Hood
Property Number: 219410316
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 1500 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 317, Fort Hood
Property Number: 219410317
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 3436, Fort Hood
Property Number: 219410320
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip 76544–
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 3437, Fort Hood
Property Number: 219410321
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 4480, Fort Hood
Property Number: 219410322
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off site use only.
Bldg. 871, Fort Bliss
Property Number: 219420455
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 3540 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.
Bldg. 1165, Fort Bliss
Property Number: 219420456
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only.
Bldg. 1675, Fort Bliss
Property Number: 219420457
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 3674 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only.
Bldg. 4717, Fort Bliss
Property Number: 219420458
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 1081 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only.
Bldg. 4718, Fort Bliss
Property Number: 219420459
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 899 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.
Bldg. 4719, Fort Bliss
Property Number: 219420460
Fed Reg Date: 12/10/94
El Paso, TX, Co: El Paso, Zip: 79916–
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.
Bldg. 4105, Ft Hood
Property Number: 219420463
Fed Reg Date: 12/10/94
Ft. Hood, TX, Co: Coryell, Zip: 76544–
Status: Unutilized
Comment: 2535 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldgs. 7050, 7058
Property Number: 219430181
Fed Reg Date: 12/10/94
Fort Bliss
Ft. Bliss, TX, Zip 79916–
Status: Unutilized
Comment: 1809–8584 sq. ft., 1-story wood frame, needs rehab, most recent use—office/club, off-site use only.
Bldgs. 828–830
Property Number: 219430182
Fed Reg Date: 12/10/94
Fort Hood
Ft. Hood, TX, Co: Bell, Zip: 76544–
Status: Unutilized
Comment: 4740 sq. ft. each, 2-story, needs rehab, presence of asbestos, most recent use—classroom, off-site use only.
Bldg. 1, Fort Hood
Property Number: 219440336
Fed Reg Date: 12/23/94
Lubbock, TX, Co: Lubbock, Zip: 79408–
Status: Unutilized
Comment: 11440 sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center.
Bldg. 2, Fort Hood
Property Number: 219440337
Fed Reg Date: 12/23/94
Lubbock, TX, Co: Lubbock, Zip: 79408–
Status: Unutilized
Comment: 2818 Sq. ft., 1 story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop.

Virginia

Buildings

Bldg. T–6015
Property Number: 219012376
Fed Reg Date: 12/10/94
Project Name: U.S. Army Logistics Center
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Comment: 2124 sq. ft.; 2 story, most recent use—barracks; poor condition: needs major rehab.

Washington

Buildings

Reserve Center, Longview
Property Number: 219320368
Fed Reg Date: 12/10/94
14 Port Way
Longview, WA, Co: Cowlitz, Zip: 98632–
Status: Unutilized
Comment: 17,304 sq. ft., 1-story training facility, scheduled to be vacated 9/93.

Wisconsin

Buildings

Bldg. 7174, Fort McCoy
Property Number: 219320372
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.
Bldg. 7176, Fort McCoy
Property Number: 219320373
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.
Bldg. 7261, Fort McCoy
Property Number: 219320374
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.
Bldg. 556, Fort McCoy
Property Number: 219320386
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 3748 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel
Bldg. 455, Fort McCoy
Property Number: 219320390
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply
Bldg. 2321, Fort McCoy
Property Number: 219430225
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 682 sq. ft., 1-story, needs rehab, most recent use—heat plant.
Bldg. 2673, Fort McCoy

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Property Number: 219430226
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 13515 sq. ft., 1-story, needs rehab, most recent use—theater.

Bldg. 2842, Fort McCoy
Property Number: 219430227
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 5310 sq. ft., 1-story, needs rehab, most recent use—range support bldg.

Bldg. 10105, Fort McCoy
Property Number: 219430228
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse.

Bldg. 10106, Fort McCoy
Property Number: 219430229
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 4105 sq. ft., 1-story, needs rehab, most recent use—warehouse.

Bldg. 10107, Fort McCoy
Property Number: 219430230
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse.

Bldg. 10108, Fort McCoy
Property Number: 219430231
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 3944 sq. ft., 1-story, needs rehab, most recent use—warehouse.

Bldg. 2110, Fort McCoy
Property Number: 219430232
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–,
Status: Unutilized
Comment: 18270 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2320, Fort McCoy
Property Number: 219430233
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 33345 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2327, Fort McCoy
Property Number: 219430234
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co. Monroe, Zip: 54656–
Status: Unutilized
Comment: 3464 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2328, Fort McCoy
Property Number: 219430235
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 4000 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2763, Fort McCoy
Property Number: 219430236
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 3250 sq. ft., 1-story, needs rehab, most recent use—admin.

Bldg. 2173A, Fort McCoy
Property Number: 219430237
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 705 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 2747, Fort McCoy
Property Number: 219430238
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 2755, Fort McCoy
Property Number: 219430239
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 168 sq. ft., 1-story, need rehab, most recent use—dispatch bldg.

Bldg. 2853, Fort McCoy
Property Number: 219430240
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 651, Fort McCoy
Property Number: 219430242
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility.

Bldg. 850, Fort McCoy
Property Number: 219430243
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility.

Bldg. 13, Storage Facilities, Fort McCoy
Property Number: 219430244
Fed Reg Date: 12/10/94
Ft. McCoy, WI, Co: Monroe, Zip: 54656–
Location: Bldgs. 1157, 1156, 1353, 1357, 1873, 1874, 2182, 2185, 2189, 2192, 2324, 2325, 2326
Status: Unutilized
Comment: 224–5520 sq. ft., 1-story, needs rehab, most recent use—storage.

COE

Alabama

Buildings

Bldg. TU–22
Property Number: 319011551
Fed Reg Date: 12/10/94
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1:
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–21
Property Number: 319011552
Fed Reg Date: 12/10/94
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1:
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–23
Property Number: 319011553
Fed Reg Date: 12/10/94
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1.
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–24
Property Number: 319011554
Fed Reg Date: 12/10/94
Project Name: Selden Lock and Dam
Selden Lock and Dam
Route 1.
Sawyerville, AL, Co: Hale, Zip: 36776–
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Arkansas

Land

Parcel 01
Property Number: 319010071
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 77 6 acres.

Parcel 02
Property Number: 319010072
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
Property Number: 319010073
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 18
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
Property Number: 319010074
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
Property Number: 319010075
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 16

Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
Property Number: 319010076
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
Property Number: 319010077
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 34
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
Property Number: 319010078
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 13
Arkadelphia, AR, Co: Clark, Zip: 71923–9361
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
Property Number: 319010079
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
Property Number: 319010080
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 12
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
Property Number: 319010081
Fed Reg Date: 12/10/94
Project Name: DeGray Lake
DeGray Lake
Section 19 .
Arkadelphia, AR, Co: Hot Spring, Zip: 71923–9361
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Property Number: 319010083
Fed Reg Date: 12/10/94
Project Name: Lake Greeson
Section 7, 8 and 18
Murfreesboro, AR, Co: Pike, Zip: 71958–9720
Status: Unutilized
Comment: 46 acres.

California

Land

Lake Mendocino
Property Number: 319011015
Fed Reg Date: 12/10/94
Project Name: Lake Mendocino
1160 Lake Mendocino Drive
Ukiah, CA, Co: Mendocino, Zip: 95482–9404
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

Florida

Buildings

Bldg. SF–97
Property Number: 319340001
Fed Reg Date: 12/10/94
Port Mayaca Lock & Spillway
9 miles north of Canal Point
Port Mayaca, FL, Co: Martin, Zip: 33438–
Status: Unutilized
Comment: 1700 sq. ft., 1-story concrete block/stucco, most recent use—laboratory, off-site use only.

Iowa

Buildings

Bldg.—Bridgeview
Property Number: 319340003
Fed Reg Date: 12/10/94
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Bldg.—Island View
Property Number: 319340004
Fed Reg Date: 12/10/94
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Bldg.—Rolling Cove
Property Number: 319340005
Fed Reg Date: 12/10/94
Rathbun Lake Project, R.R. #3
Centerville, IA, Co: Appanoose, Zip: 52544–
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Illinois

Land

Lake Shelbyville
Property Number: 319240004
Fed Reg Date: 12/10/94
Shelbyville, IL, Co: Shelby & Moultrie, Zip: 62565–9804
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved 2/4 small equipment storage bldgs. and a small access road, easement restrictions.

Buildings

Bldg. 7
Property Number: 319010001
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Property Number: 319010002
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 5
Property Number: 319010003
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame, most recent use—residence.

Bldg. 4
Property Number: 319010004
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Property Number: 319010005
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Property Number: 319010006
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Property Number: 319010007
Fed Reg Date: 12/10/94
Project Name: Ohio River Locks & Dam No. 53
Ohio River Locks & Dam No. 53
Grand Chain, IL, Co: Pulaski, Zip: 62941–9801

Location: Ohio River Locks and Dam No. 53 at Grand Chain
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Buildings

Bldg. 01, Monroe Lake
Property Number: 319140002
Fed Reg Date: 12/10/94
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington, IN, Co: Monroe, Zip: 47401–8772
Status: Unutilized
Comment: 1312 sq. ft.; 1 story brick residence, off-site use only.

Bldg. 02, Monroe Lake
Property Number: 319140003
Fed Reg Date: 12/10/94
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington, IN, Co: Monroe, Zip: 47401–8772
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only

Kansas

Land

Parcel 1
Property Number: 319010064
Fed Reg Date: 12/10/94
Project Name: El Dorado Lake
El Dorado Lake
Section 13, 24, and 18
(See County), KS, Co: Butler, Zip:
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Buildings

Trailer—Clinton Lake
Property Number: 319410003
Fed Reg Date: 12/10/94
Rt. 5, Box 109B
Lawrence, KS, Co: Douglas, Zip: 66046–
Status: Excess
Comment: double-wide trailer (24×50), most recent use—residence, needs repair, off-site use only.

Kentucky

Land

Tract 2625
Property Number: 319010025
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: Adjoining the village of Rockcastle.
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Property Number: 319010026
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Property Number: 319010027
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Property Number: 319010028
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Property Number: 319010029
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 6½ miles west of Cadiz.
Status: Excess
Comment: 5.76 acres; steep and wooded; not utilities.

Tract 2702
Property Number: 319010031
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Cadiz, KY, Co: Trigg, Zip: 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Property Number: 319010032
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: Trigg Co. adjoining the city of Canton, KY, on the waters of Hopson Creek.
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Property Number: 319010033
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Property Number: 319010034
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 5 miles south of Canton, KY.
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Property Number: 319010035
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Property Number: 319010036
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 6½ miles south from Canton, KY.
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Property Number: 319010042
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: On the north side of the Illinois Central Railroad.
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Property Number: 319010044
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Property Number: 319010045
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Property Number: 319010046
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Property Number: 319010047
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Property Number: 319010048
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–

Location: Approximately 5½ miles east of Eddyville, KY.
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Property Number: 319010049
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Property Number: 319010050
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Property Number: 319010051
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 24.26 acres; steep and wooded; no utilities.

Tract 214
Property Number: 319010052
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Property Number: 319010053
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa.
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Property Number: 319010054
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Property Number: 319010055
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Property Number: 319010056
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Property Number: 319010057
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Kuttawa, KY, Co: Lyon, Zip: 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Property Number: 319010058
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: Village of Linton, KY state highway 1254.
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Property Number: 319010059
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Linton, KY, Co: Trigg, Zip: 42212–
Location: 1 mile northwest of Linton, KY.
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Property Number: 319011621
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tracts 4619–B
Property Number: 319011622
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Canton, KY, Co: Trigg, Zip: 42212–
Location: 4½ miles south from Canton, KY.
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Property Number: 319011623
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Eddyville, KY, Co: Lyon, Zip: 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.

Tract 241–B
Property Number: 319011624
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Property Number: 319011625
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Property Number: 319011626
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Property Number: 319011627
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon, Zip: 42045–
Location: 5 miles southwest of Kuttawa
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract B—Markland Locks & Dam
Property Number: 319130002
Fed Reg Date: 12/10/94
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Property Number: 319130003
Fed Reg Date: 12/10/94
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding

Tract C—Markland Locks & Dam
Property Number: 319130005
Fed Reg Date: 12/10/94
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, KY, Co: Gallatin, Zip: 41095–
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Property Number: 319140009
Fed Reg Date 12/10/94

Illwill Creek, Hwy 90
Hobart, KY, Co: Clinton, Zip: 42601–
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Property Number: 319320003
Fed Reg Date: 12/10/94
Kentucky River
Carrolton, KY, Co: Carroll, Zip: 41008–0305
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Property Number: 319320004
Fed Reg Date: 12/10/94
Kentucky River
Lockport, KY, Co: Henry, Zip: 40036–9999
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Buildings

Green River Lock & Dam #3
Property Number: 319010022
Fed Reg Date: 12/10/94
Project Name: Green River Lock & Dam #3
Rochester, KY, Co: Butler, Zip: 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Kentucky River Lock and Dam
Property Number: 319010060
Fed Reg Date: 12/10/94
Project Name: Kentucky River Lock and Dam 3
Pleasureville, KY, Co: Henry, Zip: 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Bldg. 1
Property Number: 319011628
Fed Reg Date: 12/10/94
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Property Number: 319011629
Fed Reg Date: 12/10/94
Project Name: Kentucky River Lock and Dam
Kentucky River Lock and Dam
Carrolton, KY, Co: Carroll, Zip: 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Utility Bldg, Nolin River Lake
Property Number: 319320002
Fed Reg Date: 12/10/94
Project Name: Moutardier Recreation Site
KY, Co: Edmonson, Zip:
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.

Louisiana

Land

Wallace Lake Dam and Reservoir
Property Number: 319011009
Fed Reg Date: 12/10/94
Project Name: Wallace Lake Dam and Reservoir
Shreveport, LA, Co: Caddo, Zip: 71103–
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Property Number: 319011010
Fed Reg Date: 12/10/94
Project Name: Bayou Bodcau Dam and Reservoir
Haughton, LA, Co: Caddo, Zip: 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Land

Parcel D
Property Number: 319011038
Fed Reg Date: 12/10/94
Project Name: Pine River
Cross Lake, MN, Co: Crow Wing, Zip: 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Property Number: 319011040
Fed Reg Date: 12/10/94
Project Name: Sandy Lake
Sandy Lake
McGregor, MN, Co: Aitkins, Zip: 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Property Number: 319011041
Fed Reg Date: 12/10/94
Leech Lake
Benedict, MN, Co: Hubbard, Zip: 56641–
Location: 1 mile from city of Federal Dam, MN.
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Land

Harry S Truman Dam & Reservoir
Property Number: 319030014
Fed Reg Date: 12/10/94
Project Name: Harry S Truman Dam & Reservoir
Warsaw, MO, Co: Benton, Zip: 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Buildings

House No. 2, Clearwater Lake
Property Number: 319430009
Fed Reg Date: 12/10/94
Rt. HH at the dam
Piedmont, MO, Co: Wayne, Zip: 63957–
Status: Excess
Comment: 1600 sq. ft., 1-story brick veneer residence, off-site use only.

Mississippi

Land

Parcel 7
Property Number: 319011019
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Sections 22, 23, T24N
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Property Number: 319011020
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Sections 20, T24N
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Property Number: 319011021
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Sections 20, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Property Number: 319011022
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Sections 16, 17, 18 T24N, R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Property Number: 319011023
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 20 and T23N, R5E
Grenada, MS, Co: Grenada, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Property Number: 319011024
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 4, T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903

Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Property Number: 319011025
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Sections 2 and 3, T23N, R5E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Property Number: 319011026
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 7, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Property Number: 319011027
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 9, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Property Number: 319011028
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 20, T24N, R8E
Grenada, MS, Co: Calhoun, Zip: 38901–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Property Number: 319011029
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 25, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38390–0903
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Property Number: 319011030
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 34, T24N, R7E
Grenada, MS, Co: Yalobusha, Zip: 38903–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Property Number: 319011031
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 3, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Property Number: 319011032
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 4, T24N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Property Number: 319011033
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 9, T23N, R6E
Grenada, MS, Co: Yalobusha, Zip: 38901–0903
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Property Number: 319011034
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 17, T23N, R7E
Grenada, MS, Co: Grenada, Zip: 38901–0903
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Property Number: 319011035
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 22, T23N, R7E
Grenada, MS, Co: Grenada, Zip: 38902–0903
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Property Number: 319011036
Fed Reg Date: 12/10/94
Project Name: Grenada Lake
Grenada Lake
Section 9, T22N, R7E
Grenada, MS, Co: Grenada, Zip: 38901–0903
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Ohio

Land

Hannibal Locks and Dam
Property Number: 319010015
Fed Reg Date: 12/10/94
Project Name: Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal, OH, Co: Monroe, Zip: 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Status: Underutilized
Comment: 22 acres; river bank.

Buildings

Barker Historic House
Property Number: 319120018
Fed Reg Date: 12/10/94
Willow Island Locks and Dam
Newport, OH, Co: Washington, Zip: 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Status: Unutilized
Comment: 1600 sq. ft. bldg. with 1/2 acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Oklahoma

Land

Pine Creek Lake
Property Number: 319010923
Fed Reg Date: 12/10/94
Project Name: Pine Creek Lake
Section 27
(See County, OK, Co: McCurtain, Zip:
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Land

Mahoning Creek Lake
Property Number: 319010018
Fed Reg Date: 12/10/94
Project Name: Mahoning Creek Lake
New Bethlehem, PA, Co: Armstrong, Zip: 16242–9603
Location: Route 28 north to Belknap, Road #4
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Property Number: 319011001
Fed Reg Date: 12/10/94
Project Name: Shenango River Lake
Shenango River Lake
Sharpsville, PA, Co: Mercer, Zip: 16150–
Location: I–79 North, I–80 West, Exit Sharon R18 North 4 miles, left on R518, right on Mercer Avenue.
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Property Number: 319011011
Fed Reg Date: 12/10/94
Project Name: Crooked Creek Lake
Crooked Creek Lake
PA, Co: Armstrong, Zip: 03051–
Location: Left bank—55 miles downstream of dam.
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Property Number: 319430012
Fed Reg Date: 12/10/94
Crooked Creek Lake, LR 03051
Ford City, PA, Co: Armstrong, Zip: 16226–
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Buildings

Mahoning Creek Reservoir
Property Number: 319210008
Fed Reg Date: 12/10/94
New Bethlehem, PA, Co: Armstrong, Zip: 16242–

Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.
One Unit/Residence
Property Number: 319430011
Fed Reg Date: 12/10/94
Conemaugh River Lake, RD #1, Box 702
Saltburg, PA, Co: Indiana, Zip: 15681–
Status: Unutilized
Comment: 2642 sq. ft. 1-story, 1-unit of duplex, fair condition, access restrictions.
Tract 302A
Property Number: 319430016
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Old Glassworks, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 960 sq. ft., 2-story log structure, most recent use—residential, needs rehab, if used for habitation must be flood proofed or removed off-site.
Tract 302B
Property Number: 319430017
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Old Glassworks, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 502 sq. ft., 2-story, needs repair, most recent use—beauty shop/residence, if used for habitation must be flood proofed or removed off-site.
Tract 314
Property Number: 319430018
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Old Glassworks, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 1864 sq. ft., 2-story brick structure needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.
Tract 353
Property Number: 319430019
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.
Tract 402
Property Number: 319430020
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 728 sq. ft., 2-story, needs repairs, most recent use—residential/parsonage, if used for habitation must be flood proofed or removed off-site.
Tract 403A
Property Number: 319430021
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.
Tract 403B
Property Number: 31943002?
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.
Tract 403C
Property Number: 319430023
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.
Tract 434
Property Number: 319430024
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site.
Tract 440
Property Number: 319430025
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 1000 sq. ft., 2-story, asbestos shingle siding, most recent use—residential, if used for habitation must be flood proofed or removed off-site.
Tract No. 224
Property Number: 319440001
Fed Reg Date: 12/09/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off-site.
Tract No. 301
Property Number: 319440002
Fed Reg Date: 12/09/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Greene, Zip: 15338–
Status: Excess
Comment: 1330 sq. ft., 2 story brick bldg., needs repair, historic struct., flowage easement, if habitation is desired the property will be required to be flood proofed or removed.

South Carolina

Buildings

Bldg. 5
Property Number: 319011548
Fed Reg Date: 12/10/94
Project Name: J.S. Thurmond Dam & Reservoir
J.S. Thurmond Dam and Reservoir
Clarks Hill, SC, Co: McCormick, Zip:
Location: 1/2 mile east of Resource Managers Office.
Status: Excess
Comment: 1900 sq. ft., 1 story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

Tennessee

Land

Tract 6827
Property Number: 319010927
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles west of Dover, TN.
Status: Excess
Comment: .57 acres; subject to existing easements.
Tracts 6002–2 and 6010
Property Number: 319010928
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 3½ miles south of village of Tabaccoport.
Status: Excess
Comment: 100.86 acres; subject to existing easements.
Tract 11516
Property Number: 319010929
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Dickson, Zip: 37015–
Location: 1/2 mile downstream from Cheatham Dam
Status: Excess
Comment: 26.25 acres; subject to existing easements.
Tract 2319
Property Number: 319010930
Fed Reg Date: 12/10/94
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: West of Buckeye Bottom Road
Status: Excess
Comment: 14.48 acres; subject to existing easements.
Tract 2227
Property Number: 319010931
Fed Reg Date: 12/10/94
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: Old Jefferson Pike
Status: Excess
Comment: 2.27 acres; subject to existing easements.
Tract 2107
Property Number: 319010932
Fed Reg Date: 12/10/94
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: Across Fall Creek near Fall Creek camping area.
Status: Excess
Comment: 14.85 acres; subject to existing easements.
Tracts 2601, 2602, 2603, 2604
Property Number: 319010933
Fed Reg Date: 12/10/94
Project Name: Cordell Hull Lake & Dam Pro.
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro, TN, Co: Jackson, Zip: 38562–
Location: TN Highway 56
Status: Unutilized
Comment: 11 acres; subject to existing easements.
Tract 1911
Property Number: 319010934
Fed Reg Date: 12/10/94
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: East of Lamar Road
Status: Excess
Comment: 15.31 acres; subject to existing easements.
Tract 2321
Property Number: 319010935
Fed Reg Date: 12/10/94
Project Name: J. Percy Priest Dam
J. Percy Priest Dam and Reservoir
Murfreesboro, TN, Co: Rutherford, Zip: 37130–
Location: South of Old Jefferson Pike
Status: Excess
Comment: 12 acres; subject to existing easements.
Tract 7206
Property Number: 319010936
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 2½ miles SE of Dover, TN.
Status: Excess
Comment: 10.15 acres; subject to existing easements.
Tracts 8813, 8814
Property Number: 319010937
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Cumberland, TN, Co: Stewart, Zip: 37050–
Location: 1½ miles East of Cumberland City.
Status: Excess
Comment: 96 acres; subject to existing easements.
Tract 8911
Property Number: 319010938
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Cumberland City, TN, Co: Montgomery, Zip: 37050–
Location: 4 miles east of Cumberland City.
Status: Excess
Comment: 7.7 acres; subject to existing easements.
Tract 11503
Property Number: 319010939
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2 miles downstream from Cheatham Dam.
Status: Excess
Comment: 1.1 acres; subject to existing easements.
Tracts 11523, 11524
Property Number: 319010940
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Ashland City, TN, Co: Cheatham, Zip: 37015–
Location: 2½ miles downstream from Cheatham Dam.
Status: Excess
Comment: 19.5 acres; subject to existing easements.
Tract 6410
Property Number: 319010941
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Bumpus Mills, TN, Co: Stewart, Zip: 37028–
Location: 4½ miles SW. of Bumpus Mills.
Status: Excess
Comment: 17 acres; subject to existing easements.
Tract 9707
Property Number: 319010943
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Palmyer, TN, Co: Montgomery, Zip: 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Status: Excess
Comment: 6.6 acres; subject to existing easements.
Tract 6949
Property Number: 319010944
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 1½ miles SE of Dover, TN.
Status: Excess
Comment: 29.67 acres; subject to existing easements.
Tracts 6005 and 6017
Property Number: 319011173
Fed Reg Date: 12/10/94
Project Name: Barkley Lake
Barkley Lake
Dover, TN, Co: Stewart, Zip: 37058–
Location: 3 miles south of Village of Tobaccoport.
Status: Excess
Comment: 5 acres; subject to existing easements.
Tracts K–1191, K–1135
Property Number: 319130007
Fed Reg Date: 12/10/94
Old Hickory Lock and Dam
Hartsville, TN, Co: Trousdale, Zip: 37074–
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.
Tract A–102
Property Number: 319140006
Fed Reg Date: 12/10/94
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina, TN, Co: Clay Zip: 38551–
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.
Tract A–120
Property Number: 319140007
Fed Reg Date: 12/10/94
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.
Tracts A–20, A–21
Property Number: 319140008
Fed Reg Date: 12/10/94
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina, TN, Co: Clay, Zip: 38551–
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.
Tract D–185
Property Number: 319140010
Fed Reg Date: 12/10/94
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston, TN, Co: Clay, Zip: 38570–
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Texas

Land

Parcel #222
Property Number: 319010421
Fed Reg Date: 12/10/94
Project Name: Lake Texoma
Lake Texoma
TX, Co: Grayson, Zip:
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Virginia

Buildings

Peters Ridge Site
Property Number: 319430013
Fed Reg Date: 12/10/94
Gathright Dam
Covington, VA, Zip:
Status: Excess
Comment: 64 sq. ft., metal bldg.
Coles Mountain Site
Property Number: 319430015
Fed Reg Date: 12/10/94
Gathright Dam, Rt. 607
VA, Co: Bath, Zip:
Status: Excess
Comment: 64 sq. ft., 1-story metal bldg.

Washington

Buildings

Park Hdqts. House
Property Number: 319430014
Fed Reg Date: 12/10/94
McNary Lock & Dam Project
5107 West Columbia Dr.
Kennewick, WA, Co: Benton, Zip: 99336–
Status: Unutilized
Comment: 1696 sq. ft., 1-story brick residence, off-site use only.

Wisconsin

Buildings

Former Lockmaster's Dwelling
Property Number: 319011524
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property Number: 319011525
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property Number: 319011527
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna, WI, Co: Outagamie, Zip: 54131–
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property Number: 319011531
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton, WI, Co: Outagamie, Zip: 54911–
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Property Number: 319011533
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown, WI, Co: Outagamie, Zip: 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Status: Unutilized
Comment: 1952 sq. ft.; 2-story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Property Number: 319011535
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence, WI, Co: Brown, Zip: 54130–
Location: 2-miles southeasterly from intersection of Lost Dauphin Road (Country Trunk Highway "D") and River Street.
Status: Unutilized
Comment: 1224 sq. ft.; 2-story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Property Number: 319011536
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute, WI, Co: Outagamie, Zip: 54140–
Status: Unutilized
Comment: 1224 sq. ft.; 2-story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

DOT

North Carolina

Buildings

Dwelling 1
Property Number: 879120083
Fed Reg Date: 12/10/94
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 2
Property Number: 879120084
Fed Reg Date: 12/10/94
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 3
Property Number: 879120085
Fed Reg Date: 12/10/94
USCG Coinjock Housing
Coinjock, NC, Co: Currituck, Zip: 27923–
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

New Jersey

Buildings

Sandy Hook Light
Property Number: 879340001
Fed Reg Date: 12/10/94
Middletown, NJ, Co: Monmouth, Zip: 07732–
Location: Adjacent to Gateway National Recreation Area
Status: Unutilized
Comment: Brick 29' base diameter lighthouse, historic structure, needs major rehab.

Virginia

Buildings

Housing
Property Number: 879120082
Fed Reg Date: 12/10/94
Rt. 637—Gwynnville Road
Gwynn Island, VA, Co: Mathews, Zip: 23066–
Status: Unutilized
Comment: 929 sq. ft., one story residence.

GSA

California

Land

(P) Camp Elliott
Property Number: 549310008
Fed Reg Date: 12/10/94
Rosedale Tract
San Diego, CA, Co: San Diego, Zip:
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider.
GSA No.: 9–GR(6)–CA–694A.

Colorado

Buildings

Former AF Finance Center
Property Number: 549310011
Fed Reg Date: 12/10/94
3800 York Street
Denver, CO, Co: Denver, Zip: 80205–
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab.
GSA No.: 7–GR–CO–468–D.

Kansas

Land

Parcels #2 and #3
Property Number: 319010066
Fed Reg Date: 12/10/94
Project Name: Fall River Lake
Fall River Lake
Section 25 and 26
KS, Co: Greenwood, Zip:
Status: Excess
Comment: 64.24 acres, most recent use—recreation.
GSA No.: 7–D–KS–0513.

Minnesota

Buildings

Coast Guard Family Housing
Property Number: 549230007
Fed Reg Date: 12/10/94
404 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Surplus
Comment: 1333 sq. ft., 1-story frame residence.
GSA No.: 2–W–MN–503–E.

Coast Guard Family Housing
Property Number: 549230008
Fed Reg Date: 12/10/94
406 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA No.: 2–W–MN–503–E.

Coast Guard Family Housing
Property Number: 549230009
Fed Reg Date: 12/10/94
408 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA No.: 2–U–MN–503–E.

Coast Guard Family Housing
Property Number: 549230010
Fed Reg Date: 12/10/94
418 East Hamilton Avenue
Baudette, MN, Co: Lake of the Woods, Zip: 56623–
Status: Surplus
Comment: 1633 sq. ft., 1-story wood frame residence.
GSA No.: 2–W–MN–503–E.

Nebraska

Buildings

Bldg. 20, Portion of VA Center
Property Number: 549430003
Fed Reg Date: 12/10/94
600 South 70th Street
Lincoln, NE, Co: Lancaster, Zip: 68510–
Status: Excess
Comment: 3428 sq. ft., 2-story, needs major rehab, presence of asbestos, ornamental concrete block structure.

GSA No.: 7–GR–NE–427C.

Oklahoma

Land

Parcel No. 44/GSA No. 4
Property Number: 319010475
Fed Reg Date: 12/10/94
Project Name: Lake Texoma
Lake Texoma
Section 15, T5S, R7E
OK, Co: Johnston, Zip:
Location: About ½ miles southeast of Bee
Status: Excess
Comment: 14.98 acres; no utilities, most recent use—recreation.
GSA No.: 7–D–OK–507–H.

Parcel No. 46/GSA No. 5
Property Number: 319010477
Fed Reg Date: 12/10/94
Project Name: Lake Texoma
Lake Texoma
Section 15 and Section 16, T5S, R7E
OK, Co: Johnston, Zip:
Location: About 1 mile southwest of Bee
Status: Excess
Comment: 23.91 acres, no utilities, most recent use—recreation.
GSA No.: 7–D–OK–507–H.

Parcel No. 7
Property Number: 319010842
Fed Reg Date: 12/10/94
Project Name: Kaw Lake
Kaw Lake
Section 27
OK, Co: Kay, Zip:
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel No. 66/GSA No. 9
Property Number: 549210009
Fed Reg Date: 12/10/94
Lake Texoma
OK, Co: Marshall, Zip: 73439–
Location: Sections 12 and 13, 2½ miles southwest of Cumberland, OK
Status: Excess
Comment: 14.05 acres, potential utilities, most recent use—low density recreation/ natural gas well and pipelines.
GSA No.: 7–D–OK–0507–H.

Parcel No. 164/GSA No. 16
Property Number: 549210014
Fed Reg Date: 12/10/94
Lake Texoma
OK, Co: Love, Zip: 73441–
Location: Section 3
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA No.: 7–D–OK–0507–H.

Parcel No. 165/GSA No. 17
Property Number: 549210015
Fed Reg Date: 12/10/94
Lake Texoma
OK, Co: Love, Zip: 73441–
Location: Section 3
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA No.: 7–D–OK–0507–H.

Parcel No. 166/GSA No. 18
Property Number: 549210016
Fed Reg Date: 12/10/94
Lake Texoma
OK, Co: Love, Zip: 73441–
Location: Section 10
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA No.: 7–D–OK–0507–H.

Parcel No. 68/GSA No. 10
Property Number: 549240010
Fed Reg Date: 12/10/94
Lake Texoma, Sect. 11 T6S, R6E
Cumberland, OK, Co: Marshall, Zip:
Status: Excess
Comment: 29.76 acres, most recent use—recreation.
GSA No.: 7–D–OK–507–H.

Puerto Rico

Land

La Hueca—Naval Station
Property Number: 549420006
Fed Reg Date: 12/10/94
Roosevelt Roads
Vieques, PR, Zip: 00765–
Status: Excess
Comment: 323 acres, cultural site.

Texas

Land

Parcel No. 185/GSA No. 19
Property Number: 319010405
Fed Reg Date: 12/10/94
Project Name: Lake Texoma
Lake Texoma
TX, Co: Cooke, Zip:
Location: Robert Firinash survey A–368
Status: Excess
Comment: 31.64 acres, most recent use—recreation.
GSA No.: 7–D–OK–507–H.

Parcel No. 201
Property Number: 549320007
Fed Reg Date: 12/10/94
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
Comment: 8.07 acres, most recent use—low density recreation, upland timber wildlife habitat.
GSA No.: 7–D–OK–0507–H.

Parcel No. 205
Property Number: 549320009
Fed Reg Date: 12/10/94
Lake Texoma
TX, Co: Grayson, Zip:
Status: Excess
Comment: 11.18 acres, most recent use—low density recreation and grazing.
GSA No.: 7–D–OK–0507–H.

8.83 Acre Tract
Property Number: 549440004
Fed Reg Date: 12/09/94
Portion, former Fort Wolters
Mineral Wells, TX, Co: Parker/Palo Pinto, Zip: 76067–
Status: Excess
Comment: Land w/former recreation bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA No.: 7–GR–TX–548AA&BB.

10.75 Acre Tract
Property Number: 549440005
Fed Reg Date: 12/09/94
Portion, former Fort Wolters
Mineral Wells, TX, Co: Parker/Palo Pinto, Zip: 76067–
Status: Excess
Comment: Land w/former officer's club bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA No.: 7–GR–TX–548AA&BB.

120.26 Acre Tract
Property Number: 549440006
Fed Reg Date: 12/09/94
Portion, Former Fort Wolters
Mineral Wells, TX, Co: Parker/Palo Pinto, Zip: 76067–
Status: Excess
Comment: Unimproved land containing friable asbestos.
GSA No.: 7–GR–TX–548AA&BB.

Buildings

19 Buildings and Land
Property Number: 549440007
Fed Reg Date: 12/09/94
Subtropical Agricultural Research Worksite
Brownsville, TX, Co: Cameron, Zip: 78520–
Status: Excess
Comment: 25,000 sq. ft. structures, 1 story, pres. of asbestos, most recent use—housing, 18.76 acres which includes 16 acres of vacant land.
GSA No.: 7–A–TX–0451G.

Washington

Land

Asotin Quarry-Lower Lock & Dam
Property Number: 549340001
Fed Reg Date: 12/10/94
West of Upriver Road
Asotin, WA, Co: Asotin, Zip: 99402–
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry.
GSA No.: 9–D–WA–824K.

Wyoming

Land

Wind Site A
Property Number: 419030010
Fed Reg Date: 12/10/94
Project Name: Wind Site A
Medicine Bow, WY, Co: Carbon, Zip: 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions.

Interior

Arizona

Land

Tract No. APO–SRP–RB–5
Property Number: 619410005
Fed Reg Date: 12/10/94
Mesa, AZ, Co: Maricopa, Zip: 85213–
Location: 2000' south of Thomas Road at Val Vista Drive
Status: Unutilized
Comment: 0.57 acre; 20 foot strip of land which is 1,026 ft. long.

California

Land

L–4 Reservoir
Property Number: 619410004
Fed Reg Date: 12/10/94
La Quinta, CA, Co: Riverside, Zip: 92253–
Location: Borders Adams St., ¼ mile north of Calle Tampico
Status: Excess

Comment: 1.69 acres; concrete reservoir; most recent use—water retention.

Nevada

Land

Freight Yard
Property Number: 619440005
Fed Reg Date: 12/16/94
Fallon Rail Facility
Fallon, NV, Co: Churchill, Zip: 89406–
Status: Unutilized
Comment: 6.3 acres, subject to a 10-year lease to the City.

Virginia

Buildings

NPS Tract 422–25
Property Number: 619440002
Fed Reg Date: 12/21/94
Former White property
County Rd. 602 on Moore Run near 4–H Camp
Front Royal, VA, Co: Warren, Zip: 22630–
Status: Excess
Comment: 864 sq. ft., 2-story frame residence, w/Natl. Appalachian Trails System Act, off-site use only.

Wasington

Buildings

Construction Office Bldg.
Property Number: 619410002
Fed Reg Date: 12/10/94
Roosevelt Way
Coulee Dam, WA, Co: Okanogan, Zip: 99116–
Status: Excess
Comment: 7778 sq. ft. 1 story frame structure, off-site removal only, most recent use–offices.

Navy

California

Buildings

Bldg. 50, Annex Area
Property Number: 779320022
Fed Reg Date: 12/10/94
Naval Postgraduate School
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use—storage.
Bldg. 25, Annex Area
Property Number: 779320023
Fed Reg Date: 12/10/94
Naval Postgraduate School
Monterey, CA, Co: Monterey, Zip: 93943–
Status: Unutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use—child care center, secured area w/alternate access.

Georgia

Land

Naval Submarine Base
Property Number: 779010229
Fed Reg Date: 12/10/94
Project Name: Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay, GA, Co: Camden Zip: 31547–
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Hawaii

Buildings

Bldg. S87, Radio Trans. Fac.
Property Number: 779240011
Fed Reg Date: 12/10/94
Lualualei, Naval Station, Eastern Pacific
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.
Bldg. 466 Radio Trans. Fac.
Property Number: 779240012
Fed Reg Date: 12/10/94
Lualualei, Naval Station, Eastern Pacific
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use—gas station, off-site use only.
Bldg. T33 Radio Trans Facility
Property Number: 779310003
Fed Reg Date: 12/10/94
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.
Bldg. 64, Radio Trans Facility
Property Number: 779310004
Fed Reg Date: 12/10/94
Naval Computer & Telecommunications Area
Wahiawa, HI, Co: Honolulu, Zip: 96786–3050
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Maine

Buildings

Naval Air Station
Property Number: 779010110
Fed Reg Date: 12/10/94
Project Name: Transmitter Site
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland, Zip: 04053–
Status: Underutilized
Comment: 7,270 sq. ft., 1 story bldg., most recent use—storge, structural deficiencies
Parcel No. 3
Property Number: 779120001
Fed Reg Date: 12/10/94
Naval Air Station Topsham Annex
Topsham, ME, Co: Sagadahoc, Zip: 04086–
Status: Demolished
Comment: 1900 sq. ft. abandoned storage facility, poor condition on 4.31 acres.
Bldg. 373, Topsham Annex
Property Number: 779320024
Fed Reg Date: 12/10/94
Naval Air Station
Topsham, ME, Co: Sagadahoc, Zip:
Status: Excess
Comment: 1300 sq. ft., 1 story, most recent use—public works maintenance shop, on 2.55 acres.

Texas

Land

Peary Point #2
Property Number: 779030001
Fed Reg Date: 12/10/94
Project Name: Naval Air Station
Naval Air Station
Corpus Christi, TX, Co: Nueces, Zip: 78419–5000
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA No.: 7–N–TX–402–V

VA

Alabama

Land

VA Medical Center
Property Number: 979010053
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VAMC
Tuskegee, AL, Co: Macon, Zip: 36083–
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Buildings

Bldg. 19, VA Medical Center
Property Number: 979220006
Fed Reg Date: 12/10/94
Tuskegee, AL, Co: Macon, Zip: 36083–
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure.

California

Land

Property Number: 979240001
Fed Reg Date: 12/10/94
4150 Clement Street
San Franciso, CA, Co: San Francisco, Zip: 94121–
Status: Underutilized
Comment: 4 acres; landslide area.

Buildings

Bldg. 263
Property Number: 979110010
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
Wilshire and Sawtelle Blvds
Lost Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.
Bldg. 20—VA Medical Center
Property Number: 979210003
Fed Reg Date: 12/10/94
Wilshire & Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines.
Bldg. 13, VA Medical Center
Property Number: 979220001
Fed Reg Date: 12/10/94
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip 90073–
Status: Underutilized
Comment: portion of 66,165 sq. ft. bldg. needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.
Bldg. 156, VAMC
Property Number: 979230015
Fed Reg Date: 12/10/94
Willshire & Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Comment: portion of 39,454 sq. ft., bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Indiana

Buildings

Bldg. 140, VAMC
Property Number: 979230007
Fed Reg Date: 12/10/94
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house, access restrictions.

Louisiana

Land

Land—8.27 acres
Property Number: 979010009
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
2501 Shreveport Highway
Alexandria, LA, Co: Rapides, Zip: 71301–
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

Land

VA Medical Center
Property Number: 979010020
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
9500 North Point Road
Fort Howard, MD, Co: Baltimore, Zip: 21052–
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Pennsylvania

Buildings

Bldg. 24—VA Medical Center
Property Number: 979210001
Fed Reg Date: 12/10/94
Delafield Road
Pittsburgh, PA, Co: Allegheny, Zip: 15215–
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab.

Tennessee

Buildings

Bldg. 16, VAMC Mountain Home
Property Number: 979220007
Fed Reg Date: 12/10/94
Johnson, TN, Co: Washington, Zip: 37604–
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements.

Texas

Land

Land
Property Number: 979010079
Fed Reg Date: 12/10/94
Project Name: Olin E. Teague Veterans Center
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX, Co: Bell, Zip: 76504–
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.
VA Medical Center
Property Number: 979010081
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
4800 Memorial Drive
Waco, TX, Co: McLennan, Zip: 76711–
Status: Underutilized
Comment: 2.3 Acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use—parking lot.

Wisconsin

Land

VA Medical Center
Property Number: 979010054
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Buildings

Bldg 8
Property Number: 979010056
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
County Highway E
Tomah, WI, Co: Monroe, Zip: 54660–
Status: Underutilized
Comment: 2200 Sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Title V Properties for Year 94 Which Are Suitable and Unavailable

Air Force

California

Land

Camp Kohler Annex
Property Number: 189010045
Fed Reg Date: 12/10/94
Project Name: McClellan AFB
McClellan AFB
Sacramento, CA, Co: Sacramento, Zip: 95652–5000
Status: Unutilized
Reason: Change in AF mission.
Norton Com. Facility Annex
Property Number: 189010194
Fed Reg Date: 12/10/94
Project Name: Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland, CA, Co: San Bernardino, Zip: 92409–5045
Status: Excess
Reason: Leased by "Baseline Little League"

Buildings

Hawes Site (KHGM)
Property Number: 189010084
Fed Reg Date: 12/10/94
Project Name: Hawes Site
March AFB
Hinckley, CA, Co: San Bernardino, Zip: 92402–
Status: Unutilized
Reason: Contamination being cleaned up.

Michigan

Buildings

Bldg. 20
Property Number: 189010775
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 21
Property Number: 189010776
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 22
Property Number: 189010777
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 28
Property Number: 189010778
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 40
Property Number: 189010780
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 41
Property Number: 189010781
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 42
Property Number: 189010782
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 43
Property Number: 189010783
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station

Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 44
Property Number: 189010784
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 45
Property Number: 189010785
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 47
Property Number: 189010787
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 48
Property Number: 189010788
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 49
Property Number: 189010789
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 50
Property Number: 189010790
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 14
Property Number: 189010833
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 16
Property Number: 189010834
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 9
Property Number: 189010835
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 11
Property Number: 189010837
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 12
Property Number: 189010838
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 13
Property Number: 189010839
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 5
Property Number: 189010840
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 6
Property Number: 189010841
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 7
Property Number: 189010842
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913
Status: Excess
Reason: Renewal of lease.
Bldg. 8
Property Number: 189010843
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 4
Property Number: 189010844
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 3
Property Number: 189010845
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 1
Property Number: 189010846
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 158
Property Number: 189010857
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 15
Property Number: 189010864
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 31
Property Number: 189010867
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 32
Property Number: 189010868
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 33
Property Number: 189010869
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 34
Property Number: 189010870
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 35
Property Number: 189010871
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 39
Property Number: 189010874
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease
Bldg. 202
Property Number: 189010880
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 203
Property Number: 189010881
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 204
Property Number: 189010882
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 205
Property Number: 189010883
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 206
Property Number: 189010884
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 207
Property Number: 189010885
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 153
Property Number: 189010886
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 154
Property Number: 189010887
Fed Reg Date: 12/10/94
Project Name: Calumet Air Force Station
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.
Bldg. 157
Property Number: 189010888
Fed Reg Date: 12/10/94
Calumet Air Force Station
Calumet, MI, Co: Keweenaw, Zip: 49913–
Status: Excess
Reason: Renewal of lease.

Missouri

Buildings

Jefferson Barracks ANG Base
Property Number: 189010081
Fed Reg Date: 12/10/94
Missouri National Guard
1 Grant Road
St. Louis, MO, Co: St. Louis, Zip: 63125–4118
Status: Underutilized
Reason: Vehicle fuel stations/fuel storage, Flooded area.

Montana

Buildings

Bldg. 00007
Property Number: 189330066
Fed Reg Date: 12/10/94
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00008
Property Number: 189330067
Fed Reg Date: 12/10/94
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00016
Property Number: 189330068
Fed Reg Date: 12/10/94
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00023
Property Number: 189330069
Fed Reg Date: 12/10/94
Havre Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00024
Property Number: 189330070
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00027
Property Number: 189330071
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00029
Property Number: 189330072
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00031
Property Number: 189330073
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00032
Property Number: 189330074
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00035
Property Number: 189330075
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00039
Property Number: 189330076
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00040
Property Number: 189330077
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00041
Property Number: 189330078
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00042
Property Number: 189330079
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldg. 00044
Property Number: 189330080
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 51, 52, 56, 58
Property Number: 189330081
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71
Property Number: 189330082
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 60, 62, 64, 66, 68
Property Number: 189330083
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 70, 72, 74, 78
Property Number: 189330084
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 76, 80
Property Number: 189330085
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized

Reason: Environmental cleanup required.
Bldgs. 82
Property Number: 189330086
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184
Property Number: 189330087
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 106–109, 112–113
Property Number: 189330088
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 202, 204, 206, 212, 214, 216, 218
Property Number: 189330089
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.
Bldgs. 208, 210
Property Number: 189330090
Fed Reg Date: 12/10/94
Havre: Air Force Station
MT, Co: Hill, Zip: 59501–
Status: Unutilized
Reason: Environmental cleanup required.

Nebraska

Buildings

Bldg. 4
Property Number: 189320059
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 500
Property Number: 189320060
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 502
Property Number: 189320061
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 504
Property Number: 189320062
Fed Reg Date: 12/10/94
Hastngs Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 506
Property Number: 189320063
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 507
Property Number: 189320064
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 509
Property Number: 189320065
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 511
Property Number: 189320066
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 512
Property Number: 189320067
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 515
Property Number: 189320068
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 517
Property Number: 189320069
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 519
Property Number: 189320070
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status. Excess
Reason: Subject to special legislation.
Bldg. 521
Property Number: 189320071
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 523
Property Number: 189320072
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 525
Property Number: 189320073
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 526
Property Number: 189320074
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation
Bldg. 529
Property Number: 189320075
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 531
Property Number: 189320076
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 533
Property Number: 189320077
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 534
Property Number: 189320078
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 536
Property Number: 189320079
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 538
Property Number: 189320080
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 541
Property Number: 189320081
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.

Bldg. 542
Property Number: 189320082
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 544
Property Number: 189320083
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 546
Property Number: 189320084
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 549
Property Number: 189320085
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 550
Property Number: 189320086
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 552
Property Number: 189320087
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 553
Property Number: 189320088
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 555
Property Number: 189320089
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 557
Property Number: 189320090
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 558
Property Number: 189320091
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 560
Property Number: 189320092
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
27 Detached Garages
Property Number: 189320093
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 17
Property Number: 189320094
Fed Reg Date: 12/10/94
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 16
Property Number: 189320095
Fed Reg Date: 12/10/94
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 18
Property Number: 189320096
Fed Reg Date: 12/10/94
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 6
Property Number: 189320097
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 547
Property Number: 189320098
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.
Bldg. 604
Property Number: 189320099
Fed Reg Date: 12/10/94
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings, NE, Co: Adams, Zip: 68901–
Status: Excess
Reason: Subject to special legislation.

New Hampshire

Buildings

Bldg. 114
Property Number: 189320055
Fed Reg Date: 12/10/94
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.
Bldg. 115
Property Number: 189320056
Fed Reg Date: 12/10/94
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.
Bldg. 127
Property Number: 189320057
Fed Reg Date: 12/10/94
New Boston Air Force Station
Amherst, NH, Co: Hillsborough, Zip: 03031–1514
Status: Excess
Reason: Ongoing installation mission consideration.

Texas

Buildings

Bldg. 605
Property Number: 189110090
Fed Reg Date: 12/10/94
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 72835–
Status: Unutilized
Reason: Change in agency mission.
Bldg. 696
Property Number: 189110091
Fed Reg Date: 12/10/94
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.
Bldg. 697
Property Number: 189110092
Fed Reg Date: 12/10/94
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.
Bldg. 698
Property Number: 189110093
Fed Reg Date: 12/10/94
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.
Bldg. 699
Property Number: 189110094
Fed Reg Date: 12/10/94
Project Name: Brooks Air Force Base
Brooks Air Force Base
San Antonio, TX, Co: Bexar, Zip: 78235–
Status: Unutilized
Reason: Change in agency mission.

Army

Arizona

Buildings

Bldg. S–306

UMI

VOL 60

ISS 28

FE 10

1995

UMI

Property Number: 219420346
Fed Reg Date: 12/10/94
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz, Zip: 85365–9104
Status: Unutilized
Reason: Currently being utilized.

Colorado

Buildings

Bldg. T–3449
Property Number: 2190320205
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Bldg. T–740
Property Number: 219410254
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Bldg. T–741
Property Number: 219410255
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Bldg. T–1817
Property Number: 219410256
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Bldg. T–2740
Property Number: 219410257
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Bldg. T–106
Property Number: 219410259
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Currently being utilized.

Bldg. S–6275
Property Number: 219410262
Fed Reg Date: 12/10/94
Fort Carson
Colorado Springs, CO, Co: El Paso, Zip: 80913–
Status: Unutilized
Reason: Being utilized.

Georgia

Buildings

Bldg. T201
Property Number: 219420357
Fed Reg Date: 12/10/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Reason: Being utilized.

Bldg. T–902
Property Number: 219420360
Fed Reg Date: 12/10/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Reason: Being utilized.

Bldg. 704
Property Number: 219420364
Fed Reg Date: 12/10/94
Fort Stewart
Hinesville, GA, Co: Liberty, Zip: 31314–
Status: Unutilized
Reason: Being utilized.

Kentucky

Buildings

Bldg. 05711
Property Number: 219410340
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 05713
Property Number: 219410341
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 5715
Property Number: 219410355
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 5717
Property Number: 219410357
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 5723
Property Number: 219410359
Fed Reg Date: 12/10/94
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 5725
Property Number: 219410361
Fed Reg Date: 12/10/04
Fort Campbell
Fort Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Being utilized.

Bldg. 232
Property Number: 219430147
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 230
Property Number: 219430148
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 111
Property Number: 219430149
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 30
Property Number: 219430151
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 250, 252
Property Number: 219430157
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 2105
Property Number: 219430159
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Bldg. 2905
Property Number: 219430162
Fed Reg Date: 12/10/94
Fort Campbell
Ft. Campbell, KY, Co: Christian, Zip: 42223–
Status: Unutilized
Reason: Fully utilized.

Maryland

Buildings

Bldgs. TMA4, TMA5, TMA8, TMA9
Property Number: 219320292
Fed Reg Date: 12/10/94
Fort George G. Meade
Ft. Meade, MD, Co: Anne Arundel, Zip: 20755–5115
Status: Unutilized
Reason: To be demolished.

New Jersey

Land

Land—Camp Kilmer
Property Number: 219230358
Fed Reg Date: 12/10/94
Plainfield Avenue
Edison, NJ, Co: Middlesex, Zip: 08817–2487
Status: Underutilized
Reason: Leasing to MIPH.

Nevada

Buildings

U.S. Army Reserve Center
Property Number: 219340180
Fed Reg Date: 12/10/94
685 East Plumb Lane
Reno, NV, Co: Washoe, Zip: 89502–
Status: Unutilized
Reason: Currently utilized.

Texas

Buildings

Bldg. P–2000, Fort Sam Houston
Property Number: 219220389
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2001, Fort Sam Houston
Property Number: 219220390
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. P–2007, Fort Sam Houston
Property Number: 219220391
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Bldg. T–189, Fort Sam Houston
Property Number: 219220402
Fed Reg Date: 12/10/94
San Antonio, TX, Co: Bexar, Zip: 78234–5000
Status: Underutilized
Reason: Area programmed for future use.

Virginia

Buildings

Bldg. T3004, Fort Pickett
Property Number: 219310317
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Unutilized
Reason: Needed for training activities.

Bldg. T3022, Fort Pickett
Property Number: 219310318
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3023, Fort Pickett
Property Number: 219310321
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3024, Fort Pickett
Property Number: 219310320
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3026, Fort Pickett
Property Number: 219310321
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3025, Fort Pickett
Property Number: 219310322
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3040, Fort Pickett
Property Number: 219310323
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities

Bldg. T3041, Fort Pickett
Property Number: 219310324
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3049, Fort Pickett
Property Number: 219310325
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3050, Fort Pickett
Property Number: 219310326
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Unutilized
Reason: Needed for training activities.

Bldg. T3029, Fort Pickett
Property Number: 219310327
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3030, Fort Pickett
Property Number: 219310328
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3037, Fort Pickett
Property Number: 219310329
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3038, Fort Pickett
Property Number: 219310330
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3039, Fort Pickett
Property Number: 219310331
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3042, Fort Pickett
Property Number: 219310332
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3043, Fort Pickett
Property Number: 219310333
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3044, Fort Pickett
Property Number: 219310334
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3045, Fort Pickett
Property Number: 219310335
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3046, Fort Pickett
Property Number: 219310336
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3047, Fort Pickett
Property Number: 219310337
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3048, Fort Pickett
Property Number: 219310338
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3051, Fort Pickett
Property Number: 219310339
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3052, Fort Pickett
Property Number: 219310340
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3053, Fort Pickett
Property Number: 219310341
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3054, Fort Pickett
Property Number: 219310342
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3027, Fort Pickett
Property Number: 219310343
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3028, Fort Pickett
Property Number: 219310344
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3031, Fort Pickett
Property Number: 219310345
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3032, Fort Pickett
Property Number: 219310346
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3033, Fort Pickett
Property Number: 219310347
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3034, Fort Pickett
Property Number: 219310348
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.

Bldg. T3035, Fort Pickett
Property Number: 219310349
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T3036, Fort Pickett
Property Number: 219310350
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T3057, Fort Pickett
Property Number: 219310351
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. T3055, Fort Pickett
Property Number: 219310352
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. TT3001, Fort Pickett
Property Number: 219310353
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. TA3002, Fort Pickett
Property Number: 219310354
Fed Reg Date: 12/10/94
Blackstone, VA, Co: Nottoway, Zip: 23824–
Status: Underutilized
Reason: Needed for training activities.
Bldg. 178, Fort Monroe
Property Number: 219320357
Fed Reg Date: 12/10/94
Ft. Monroe, VA, Zip: 23651–
Status: Underutilized
Reason: Currently utilized.
Quarters 19201 & 19209
Property Number: 219410365
Fed Reg Date: 12/10/94
Fort Lee
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Reason: In footprint of construction.
Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Property Number: 219410366
Fed Reg Date: 12/10/94
Fort Lee
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Reason: In footprint of construction.
Quarters 19203, 19205, 19207
Property Number: 219410367
Fed Reg Date: 12/10/94
Fort Lee
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Reason: In footprint of construction
Quarters 19210, 19214
Property Number: 219410368
Fed Reg Date: 12/10/94
Fort Lee
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Reason: In footprint of construction.
Quarters 19212
Property Number: 219410369
Fed Reg Date: 12/10/94
Fort Lee
Fort Lee, VA, Co: Prince George, Zip: 23801–
Status: Unutilized
Reason: In footprint of construction.

COE

California

Buildings

Santa Fe Flood Control Basin
Property Number: 319011298
Fed Reg Date: 12/10/94
Project Name: Santa Fe Flood Control Basin
Irwindale, CA, Co: Los Angeles, Zip: 91706–
Status: Unutilized
Reason: Needed for contract personnel.

Florida

Buildings

Bldg. CN7
Property Number: 319010012
Fed Reg Date: 12/10/94
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.
Bldg. CN8
Property Number: 319010013
Fed Reg Date: 12/10/94
Project Name: Ortona Lock Reservation
Ortona Lock Reservation, Okeechobee Waterway
Ortona, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Disposal actions have been initiated.
Bldg. SF–83
Property Number: 319310006
Fed Reg Date: 12/10/94
Moore Haven Lock & Dam
Okeechobee Waterway
Moore Haven, FL, Co: Glades, Zip: 33471–
Status: Unutilized
Reason: Will be removed from site.

Indiana

Land

Portion of Tract 1219
Property Number: 319310002
Fed Reg Date: 12/10/94
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized
Reason: Disposal action initiated.
Portion of Tract No. 1220
Property Number: 319310003
Fed Reg Date: 12/10/94
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized
Reason: Disposal action initiated.
Portion of Tract No. 1207
Property Number: 319310004
Fed Reg Date: 12/10/94
Salamonie Lake, SR 9
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Unutilized
Reason: Disposal action initiated.
Portion of Tract No. 116
Property Number: 319320001
Fed Reg Date: 12/10/94
Huntington Lake
Huntington, IN, Co: Huntington, Zip: 46750–
Status: Excess
Reason: Disposal actions initiated

Kentucky

Land

Carr Fork Lake
Property Number: 319240003
Fed Reg Date: 12/10/94
5 miles SE of Hindman, KY, Hwy 60
Hindman, KY, Co: Knott, Zip:
Status: Unutilized
Reason: Used as drainage field.

Oklahoma

Land

45 acre parcel, Sardis Lake
Property Number: 319140004
Fed Reg Date: 12/10/94
SE¼ NE¼ Section 4, T 2 N, R 18 E
OK, Co: Pushmataha, Zip: 74521–
Status: Excess
Reason: Fully utilized.

Buildings

Govt. Quarters #2
Property Number: 319330002
Fed Reg Date: 12/10/94
Fort Supply Lake
Section 16, T 24 N, R 22 E
Ft. Supply, OK, Co: Woodward, Zip: 73841–0248
Status: Excess
Reason: Disposal action initiated

Pennsylvania

Land

East Branch Clarion River Lake
Property Number: 319011012
Fed Reg Date: 12/10/94
Project Name: East Branch Clarion River Lake
Wilcox, PA, Co: Elk, Zip:
Status: Underutilized
Reason: Location near damsite

Buildings

Residence
Property Number: 319430010
Fed Reg Date: 12/10/94
Crooked Creek Lake, RD #3
Ford City, PA, Co: Armstrong, Zip: 16226–
Status: Unutilized
Reason: Under consideration for mission purposes.
Tract No. 408E
Property Number: 319440003
Fed Reg Date: 12/10/94
Grays Landing Lock & Dam Project
Greensboro, PA, Co: Green, Zip: 15338–
Status: Excess
Reason: Being utilized.

Tennessee

Buidlings

Transiet Quarters
Property Number: 319140005
Fed Reg Date: 12/10/94
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1 Box 64
Celina, TN, Co: Clay, Zip: 38551–
Status: Unutilized
Reason: Fully utilized.

Texas

Land

Part of Tract 340
Property Number: 319010400

Fed Reg Date: 12/10/94
Project Name: Joe Pool Lake
Joe Pool Lake TX, Co: Dallas, Zip:
Status: Unutilized
Reason: Incorporated into a park lease.

Washington

Land

Portion of Tract 905
Property Number: 319320005
Fed Reg Date: 12/10/94
Lower Monumental Lock & Dam
½ mi SE of Lyons Ferry Marina
WA, Co: Whitman, Zip:
Status: Excess
Reason: Disposal action initiated.

Wisconsin

Buildings

Former Lockmaster's Dwelling
Property Number: 319011526
Fed Reg Date: 12/10/94
Project Name: Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere, WI, Co: Brown, Zip: 54115–
Status: Unutilized
Reason: In negotiation for transfer to the State.

DOT

Massachusetts

Buildings

Keepers Dwelling
Property Number: 879240024
Fed Reg Date: 12/10/94
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport, MA, Co: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement.
Assistant Keepers Dwelling
Property Number: 879240025
Fed Reg Date: 12/10/94
Cape Ann Light, Thachers Island
U.S. Coast Guard
Rockport, MA, Co: Essex, Zip: 01966–
Status: Unutilized
Reason: Under a license agreement.

Maine

Buildings

Mount Desert Rock Light
Property Number: 879240023
Fed Reg Date: 12/10/94
U.S. Coast Guard
Southwest Harbor, ME, Co: Hancock, Zip: 04679–
Status: Unutilized
Reason: No electrical service.
Little River Light
Property Number: 879240026
Fed Reg Date: 12/10/94
U.S. Coast Guard
Cutler, ME, Co: Washington, Zip:
Status: Unutilized
Reason: Well contamination.
Burnt Island Light
Property Number: 879240027
Fed Reg Date: 12/10/94
U.S. Coast Guard
Southport, ME, Co: Lincoln, Zip: 04576–
Status: Unutilized
Reason: Under a historic lease.

Texas

Buildings

Brownsville Urban System
Property Number: 879010003
Fed Reg Date: 12/10/94
Project Name: Brownsville Urban system (Grantee)
700 South Iowa Avenue
Brownsville, TX, Co: Cameron, Zip: 78520–
Status: Unutilized
Reason: City of Brownsville needs the property.

GSA

Alaska

Buildings

Ketchikan Ranger House
Property Number: 549430009
Fed Reg Date: 12/10/94
Ketchikan, AK, Zip: 99901–
Status: Surplus
GAS No.: 9–A–AK–0746
Reason: Interest expressed.

Arkansas

Land

Old Lock & Dam site No. 6
Property Number: 549420007
Fed Reg Date: 12/10/94
Ouachita-Black Rivers Navigation Proj.
AR, Co: Ashley/Union, Zip:
Status: Excess
GSA No.: 7–D–AR–549
Reason: Interest expressed.

California

Land

Receiver Site
Property Number: 549010042
Fed Reg Date: 12/10/94
Project Name: Dixon Relay Station
Dixon Relay Station
7514 Radio Station Road
Dixon, CA, Zip: 95620–9653
Status: Surplus
GSA No.: 9–2–CA–1162–A
Reason: Interest expressed.
Receiver Site
Property Number: 549010044
Fed Reg Date: 12/10/94
Project name: Delano Relay Station
Delano Relay Station
Route 1, Box 1350
Delano, CA, Co: Tulare, Zip: 93215–
Status: Surplus
GSA No.: 9–2–CA–1308
Reason: Advertising.
Dixon Relay Station
Property Number: 549320002
Fed Reg Date: 12/10/94
7514 Radio Road
Dixon, CA, Co: Solano, Zip: 95620–9653
Status: Surplus
GSA No.: 9–Z–CA–1162B
Reason: Interest expressed.

Buildings

Suppiger Residence
Property Number: 549410003
Fed Reg Date: 12/10/94
Point Reyes National Seashore
Point Reyes, CA, Co: Marin, Zip: 94956–
Status: Excess
GSA No.: 9–I–CA–958B
Reason: Advertising.

Colorado

Buildings

3 Bldgs.
Property Number: 549330002
Fed Reg Date: 12/10/94
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah, CO, Co: Pueblo, Zip: 81023–
Status: Excess
GSA No.: 7–GR–CO–525
Reason: Advertising.

Georgia

Land

Portion of Tract I–801
Property Number: 549340009
Fed Reg Date: 12/10/94
Lake Allatoona, Yacht Club Road
Acworth, GA, Co: Cherokee, Zip: 30102–
Status: Excess
GSA No.: 4–D–GA–826
Reason: Advertised for public sale.

Idaho

Land

Portion
Property Number: 549230004
Fed Reg Date: 12/10/94
Former Farragut Naval Training Center
Athol, ID, Co: Kootenai, Zip: 83801–
Status: Excess
GSA No.: 9–GR(2)–ID–421C
Reason: Interest expressed.

Kansas

Buildings

U.S. Post Office & Courthouse
Property Number: 549420003
Fed Reg Date: 12/10/94
812 North 7th Street
Kansas City, KS, Co: Wyandotte, Zip: 66101–
Status: Excess
GSA No.: 7–G–KS–0514
Reason: Interest expressed.

Kentucky

Buildings

Federal Building
Property Number: 549430015
Fed Reg Date: 12/10/94
4th & Main Streets
Danville, KY, Co: Boyle, Zip: 40422–
Status: Excess
GSA No.: 4–G–KY–604
Reason: Interest expressed.

Massachusetts

Buildings

Lowell Federal Building
Property Number: 549320003
Fed Reg Date: 12/10/94
50 Kearny Square
Lowell, MA, Co: Middlesex, Zip: 01854–
Status: Excess
GSA No.: 2–G–MA–778
Reason: Interest expressed.

Maine

Buildings

9 Capehart Family Houses
Property Number: 189310052
Fed Reg Date: 12/10/94
Charleston Family Housing Annex, Union St

Bangor, ME, Co: Penobscot, Zip:
Status: Surplus
GSA No.: 2–D–ME–526G
Reason: Homeless interest expressed.

Minnesota

Buildings

Army Reserve Center
Property Number: 549330003
Fed Reg Date: 12/10/94
301 Lexington Ave. South
New Prague, MN, Co: LeSueur, Zip: 56071–
Status: Surplus
GSA No.: 2–D–MN–558
Reason: Negotiating sale.

Montana

Land

Mekoshika Radio Site
Property Number: 549420004
Fed Reg Date: 12/10/94
Glendive, MT, Co: Dawson, Zip: 59330–
Status: Excess
GSA No.: 5–B–MT–599
Reason: Interest expressed.

North Carolina

Buildings

Portion VA Reservation
Property Number: 549320006
Fed Reg Date: 12/10/94
Nurses Quarters
Oteen, NC, Co: Buncombe, Zip:
Status: Excess
GSA No.: 4–GR–NC–481B
Reason: Compelling Federal need

New Mexico

Land

Western Perimeter Tract
Property Number: 549310010
Fed Reg Date: 12/10/94
Los Alamos, NM, Co: Los Alamos, Zip:
Status: Surplus
GSA No.: 7–B–NM–504–G, 7–GR(1)–NM–504–L
Reason: Interest expressed

Nevada

Buildings

17 Single Family Residences
Property Number: 549430004
Fed Reg Date: 12/10/94
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–C
Reason: Advertising.

1 Single Family Residence
Property Number: 549430005
Fed Reg Date: 12/10/94
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–C
Reason: Advertising.

Bldg. 111
Property Number: 549430006
Fed Reg Date: 12/10/94
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–D
Reason: Advertising.

Bldg. 112
Property Number: 549430007
Fed Reg Date: 12/10/94
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–D
Reason: Public body interest expressed.

Bldg. 120
Property Number: 549430008
Fed Reg Date: 12/10/94
Tonopah Housing Complex
Tonopah, NV, Co: Nye, Zip: 89049–
Status: Excess
GSA No.: 9–U–NV–467–D
Reason: Interest expressed.

Ohio

Land

Portion, Camp Sherman Range
Property Number: 549310004
Fed Reg Date: 12/10/94
Approximately 1 mile north of Chillicothe
Springfield, OH, Co: Ross, Zip:
Status: Excess
GSA No.: 2–GR–OH–433B
Reason: City expressed interest in negotiated sale.

Oklahoma

Land

Parcel No. 18
Property Number: 219013808
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 12
Wagoner Co., OK, Co: Wagoner, Zip
Status: Surplus
GSA No.: 7–D–OK–0442E–0004
Reason: Advertised for public sale

Parcel 14
Property Number: 319010870
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 20
OK, Co: Cherokee, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0002
Reason: Public sale.

Parcel 28
Property Number: 319010877
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 35
OK, Co: Mayes, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0005
Reason: Public sale.

Parcel 75
Property Number: 319010887
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 16
OK, Co: Mayes, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0009
Reason: Public sale.

Parcel No. 43
Property Number: 319011371
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 11
OK, Co: Mayes, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0006
Reason: Public sale.

Parcel No. 49
Property Number: 319011377
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 15
OK, Co: Mayes, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0007
Reason: Public sale.

Parcel No. 61
Property Number: 319011389
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 13
OK, Co: Mayes, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0008
Reason: Public sale

Parcel No. 99
Property Number: 319011400
Fed Reg Date: 12/10/94
Project Name: Fort Gibson Lake
Fort Gibson Lake
Section 21
OK, Co: Wagoner, Zip: 74434
Status: Surplus
GSA No.: 7–D–OK–0442E–0013
Reason: Public sale.

Pennsylvania

Buildings

Storage & Maint. Facility
Property Number: 549330004
Fed Reg Date: 12/10/94
1200 Airport Road
Hopewell, PA, Co: Beaver, Zip: 15001
Status: Excess
GSA No.: 4–L–PA–766
Reason: Interest expressed

Puerto Rico

Land

Parcel C
Property Number: 549340004
Fed Reg Date: 12/10/94
Naval Station, Roosevelt Roads
Vieques, PR, Zip: 00765–
Status: Excess
GSA No.: 2–N–PR–486
Reason: Interest expressed

Texas

Buildings

Bldg. 2
Property Number: 219014815
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Unutilized
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Bldg. 4
Property Number: 219014816
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 17
Property Number: 219014817
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 29
Property Number: 219014818
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 30
Property Number: 219014819
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 18
Property Number: 219014820
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 6
Property Number: 219014821
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 7
Property Number: 219014822
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 8
Property Number: 219014824
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 16
Property Number: 219014825
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 19
Property Number: 219014826
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 31
Property Number: 219014827
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 9
Property Number: 219014828
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 25
Property Number: 219014829
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 10
Property Number: 219014830
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 26
Property Number: 219014831
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 21
Property Number: 219014832
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 22
Property Number: 219014833
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 27
Property Number: 219014834
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed.

Bldg. 32
Property Number: 219014835
Fed Reg Date: 12/10/94
Project Name: Saginaw Army Aircraft Plant
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant, Zip: 76070–
Status: Excess
GSA No.: 7–D–TX–879A
Reason: Interest expressed

Del Rio Federal Building
Property Number: 549310001
Fed Reg Date: 12/10/94
Del Rio, TX, Co: Val Verde, Zip: 78840–
Status: Excess
GSA No.: 7–G–TX–1034
Reason: Interest expressed.

Virginia

Land

Rutherford Coleman Estate
Property Number: 549410002
Fed Reg Date: 12/10/94
Goodwin Farm
Norwood, VA, Co: Nelson, Zip: 24581–
Status: Excess
GSA No.: 4–G–VA–691
Reason: Advertised for public sale.

Washington

Land

Former Stadium Homes site
Property Number: 549410005
Fed Reg Date: 12/10/94
1701 28th Avenue, South
Seattle, WA, Co: King, Zip: 98144–
Status: Excess
GSA No.: 9–GR(1)–WA–543
Reason: Negotiated sale.

Sandpoint Control Tower
Property Number: 54940003
Fed Reg Date: 12/09/94
Near 7600 Sandpoint Way, NE
Seattle, WA, Co: King, Zip: 98115–
Status: Excess
GSA No.: 9–C–WA–1069
Reason: Federal requirement.

Buildings

Olympia Federal Building
Property Number: 549420002
Fed Reg Date: 12/10/94
801 Capitol Way
Olympia, WA, Co: Thurston, Zip:
Status: Excess
GSA No.: G–WA–1040
Reason: Interest expressed.

West Virginia

Buildings

Point Pleasant Depot
Property Number: 549430013
Fed Reg Date: 12/10/94
State Route 35
Point Pleasant, WV, Co: Mason, Zip:
Status: Excess
GSA No.: WV0015PP

UMI

VOL 60

ISS 28

FE 10

1995

UMI

Reason: Interest expressed

Interior

Arizona

Land

Land—640 acres
Property Number: 619340001
Fed Reg Date: 12/10/94
Ave. B—County 23 St.
Yuma, AZ, Co: Yuma, Zip: 85364–
Status: Unutilized
Reason: Reported to GSA for sale.

Tract No. APO–SRP–JL–4
Property Number: 619340002
Fed Reg Date: 12/10/94
West of 91st Ave. & South of Indian School Rd
AZ, Co: Maricopa, Zip:
Status: Unutilized
Reason: Reported to GSA for sale.

Quartermaster Depot
Property Number: 619420001
Fed Reg Date: 12/10/94
4th Avenue and Colorado River
Yuma, AZ, Co: Yuma, Zip: 85364–
Status: Unutilized
Reason: Under long term lease.

California

Land

Folsom South Canal
Property Number: 619310002
Fed Reg Date: 12/10/94
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova, CA, Co: Sacramento, Zip: 95670–
Status: Excess
Reason: Will be reported to GSA for sale.

New Mexico

Buildings

Mobile Home, GQ
Property Number: 619430003
Fed Reg Date: 12/10/94
Gran Quivira Ruins
Mountainair, NM, Co: Socorro, Zip: 87036–
Status: Excess
Reason: Homeless interest expressed.

Navy

Florida

Land

Naval Public Works Center
Property Number: 779010157
Fed Reg Date: 12/10/94
Naval Air Station
Pensacola, FL, Co: Escambia, Zip: 32508–
Status: Unutilized
Reason: Prop. reverts to grantor when no longer needed by military.

Georgia

Land

Naval Submarine Base
Property Number: 779010255
Fed Reg Date: 12/10/94
Project Name: Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay, GA, Co: Camden, Zip: 31547–
Status: Underutilized
Reason: Buffer area for an explosive safety arc

Maryland

Buildings

Bldg. 230
Property Number: 779330010
Fed Reg Date: 12/10/94
Naval Communication Detachment
9190 Commo Road
Cheltenham, MD, Co: Prince George, Zip: 20397–5520
Status: Unutilized
Reason: Federal need expressed.

Maine

Buildings

Bldg. 376, Naval Air Station
Property Number: 779320011
Fed Reg Date: 12/10/94
Topsham Annex
Topsham, ME, Co: Sagadahoc, Zip:
Status: Unutilized
Reason: Federal need.

Ohio

Buildings

Naval & Marine Corps Res. Cntr
Property Number: 779320012
Fed Reg Date: 12/10/94
315 East LaClede Avenue
Youngstown, OH, Zip:
Status: Unutilized
Reason: Returning property to the City

Texas

Buildings

Bldg. 2435
Property Number: 779010161
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2436
Property Number: 779010162
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces Zip: 78419–
Status: Underutilized
Reason: Area Programmed for future use.

Bldg. 2460
Property Number: 779010163
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2462
Property Number: 779010164
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2464
Property Number: 779010165
Fed Reg Date: 12/10/94
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2466
Property Number: 779010166
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2467
Property Number: 779010167
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2468
Property Number: 779010168
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2472
Property Number: 779010169
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2476
Property Number: 779010170
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2482
Property Number: 779010171
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2495
Property Number: 779010172
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2514
Property Number: 779010173
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2518
Property Number: 779010174
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2520
Property Number: 779010175
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2522
Property Number: 779010176
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2526
Property Number: 779010177
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2423
Property Number: 779010178
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2427
Property Number: 779010179
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2431
Property Number: 779010180
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2424
Property Number: 779010181
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2433
Property Number: 779010182
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2428
Property Number: 779010183
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2429
Property Number: 779010184
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2454
Property Number: 779010185
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2477
Property Number: 779010186
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2485
Property Number: 779010187
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2499
Property Number: 779010188
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2503
Property Number: 779010189
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2507
Property Number: 779010190
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2513
Property Number: 779010191
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2521
Property Number: 779010192
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2451
Property Number: 779010193
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2458
Property Number: 779010194
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2461
Property Number: 779010195
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2473
Property Number: 779010196
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2478
Property Number: 779010197
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Bldg. 2480
Property Number: 779010198
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area

Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2484
Property Number: 779010199
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2486
Property Number: 779010200
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2487
Property Number: 779010201
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2488
Property Number: 779010202
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2494
Property Number: 779010203
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2500
Property Number: 779010204
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2502
Property Number: 779010205
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2506
Property Number: 779010206
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2508
Property Number: 779010207
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2525
Property Number: 779010208
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2452
Property Number: 779010209
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2475
Property Number: 779010210
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2479
Property Number: 779010211
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2497
Property Number: 779010212
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2501
Property Number: 779010213
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2505
Property Number: 779010214
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2515
Property Number: 779010215
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2517
Property Number: 779010216
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2519
Property Number: 779010217
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2523
Property Number: 779010218
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2465
Property Number: 779010219
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2493
Property Number: 779010220
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2510
Property Number: 779010221
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2474
Property Number: 779010222
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2481

Property Number: 779010223
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2509
Property Number: 779010224
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2511
Property Number: 779010225
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2512
Property Number: 779010226
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.
Bldg. 2527
Property Number: 779010227
Fed Reg Date: 12/10/94
Project Name: Laguna Housing Area
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces, Zip: 78419–
Status: Underutilized
Reason: Area programmed for future use.

Virginia

Land

Naval Base
Property Number: 779010156
Fed Reg Date: 12/10/94
Project Name: Naval Base
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Identified for use in developing admin. office space.

Buildings

Naval Medical Clinic
Property Number: 779010109
Fed Reg Date: 12/10/94
Project Name: Naval Medical Clinic
6500 Hampton Blvd.
Norfolk, VA, Co: Norfolk, Zip: 23508–
Status: Unutilized
Reason: Planned for expansion space

West Virginia

Buildings

Naval & Marine Corps Res. Ctr
Property Number: 779010077
Fed Reg Date: 12/10/94
Project Name: Naval & Marine Corps Res. Ctr
N. 13th St & Ohio River
Wheeling, WV, Co: Ohio, Zip: 26003–
Status: Excess
Reason: Government leased

VA

California

Land

Land
Property Number: 979010077
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Reason: Restoration project underway

Buildings

Bldg. 116
Property Number: 979110009
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, CA, Co: Los Angeles, Zip: 90073–
Status: Underutilized
Reason: Use negotiations underway with New Directions, Inc.

Florida

Land

Compound, VAMC
Property Number: 979230017
Fed Reg Date: 12/10/94
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504–
Status: Underutilized
Reason: Construction staging site

Buildings

Bldg. 36, VAMC
Property Number: 979230009
Fed Reg Date: 12/10/94
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504
Status: Underutilized
Reason: Dedicated to patient care purposes
Bldg. 37, VAMC
Property Number: 979230010
Fed Reg Date: 12/10/94
10,000 Bay Pines Blvd.
Bay Pines, FL, Co: Pinellas, Zip: 33504
Status: Underutilized
Reason: Dedicated to patient care purposes

Illinois

Land

VA Medical Center
Property Number: 979010082
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
3001 Green Bay Road
North Chicago, IL, Co: Lake, Zip: 60064–
Status: Underutilized
Reason: Fully used as a staging area for major construction project.

Indiana

Buildings

Bldg. 24, VAMC
Property Number: 979230005
Fed Reg Date: 12/10/94
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Currently utilized.
Bldg. 105, VAMC
Property Number: 979230006
Fed Reg Date: 12/10/94
East 38th Street
Marion, IN, Co: Grant, Zip: 46952–
Status: Underutilized
Reason: Integral part of the security system.

Michigan

Land

VA Medical Center
Property Number: 979010015
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
5500 Armstrong Road
Battle Creek, MI, Co: Calhoun, Zip: 49016–
Status: Underutilized
Reason: Being used for patient and program activities

Minnesota

Land

Bldg. 43 Land Site
Property Number: 979010005
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Underutilized
Reason: Used as parking areas for employees of the medical center
Bldg. 227–229 Land
Property Number: 979010006
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA Medical Center
Fort Snelling
St Paul, MN, Co: Hennepin, Zip: 55111
Status: Underutilized
Reason: Used for recreation and parking for occupants of bldg.
VA Medical Center
Property Number: 979010024
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Underutilized
Reason: Used as parking for employees working in buildings on-site.
Land—12 acres
Property Number: 979010031
Fed Reg Date: 12/10/94
Project Name: VAMC
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, MN, Co: Hennepin, Zip: 55417–
Status: Unutilized
Reason: Licensed to Minnesota Dept. of Natural Resources.

Buildings

Bldg. 227
Property Number: 979010033
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
Va Medical Center
Fort Snelling
St. Paul, MN, Co: Hennepin, Zip: 55111–
Status: Unutilized
Reason: Plans to use for housing medical center staff.

New York

Land

VA Medical Center
Property Number: 979010017
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
Fort Hill Avenue
Canandaigua, NY, Co: Ontario, Zip: 14424–
Status: Underutilized
Reason: 13 acres/Canandaigua School Dist., 14.5 acres landlocked.

Buildings

Bldg. 144, VAECC
Property Number: 979210004
Fed Reg Date: 12/10/94
Linden Blvd. and 179th St.
St. Albans, NY, Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process.

Bldg. 143, VAECC
Property Number: 979210005
Fed Reg Date: 12/10/94
Linden Blvd. and 179th St.
St. Albans, NY, Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process.

Bldgs. 142/146, VAECC
Property Number: 979210006
Fed Reg Date: 12/10/94
Linden Blvd. and 179th St.
St. Albans, NY, Co: Queens, Zip: 11425–
Status: Unutilized
Reason: Construction in process.

Pennsylvania

Land

VA Medical Center
Property Number: 979010016
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
New Castle Road
Butler, PA, Co: Butler, Zip: 16001–
Status: Underutilized
Reason: Used as natural drainage for facility property.

Land No. 645
Property Number: 979010080
Fed Reg Date: 12/10/94
Project Name: VA Medical Center
VA. Medical Center
Highland Drive
Pittsburgh, PA, Co: Alleghany, Zip: 15206–
Status: Unutilized
Reason: Property is essential to security and safety of patients.

Land—34.16 acres
Property Number: 979340001
Fed Reg Date: 12/10/94
VA Medical Center
1400 Black Horse Hill Road
Coatesville, PA, Co: Chester, Zip: 19320–
Status: Underutilized
Reason: needed for mission related functions.

Buildings

Bldg. 2, VAMC
Property Number: 979230011
Fed Reg Date: 12/10/94
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Underutilized
Reason: Construction projects in progress.

Bldg. 3, VAMC
Property Number: 979230012
Fed Reg Date: 12/10/94
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Underutilized
Reason: Construction in progress.

Bldg. 103, VAMC
Property Number: 979230014
Fed Reg Date: 12/10/94
1700 South Lincoln Avenue
Lebanon, PA, Co: Lebanon, Zip: 17042–
Status: Underutilized
Reason: Construction in progress.

Wyoming

Buildings

Bldg. 13
Property Number: 979110001
Fed Reg Date: 12/10/94
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutilized
Reason: Planned for future use—currently used for storage.

Bldg. 79
Property Number: 979110003
Fed Reg Date: 12/10/94
Project Name: Medical Center
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan, Zip: 82801–
Status: Unutilized
Reason: VA uses as a filtration plant.

[FR Doc. 95–3203 Filed 2–9–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–05–1610–00]

Availability of the Draft Sweet Grass Hills Resource Management Plan Amendment and Environmental Impact Statement; Liberty and Toole Counties, MT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Availability of the Draft Sweet Grass Hills Resource Management Plan Amendment and Environmental Impact Statement.

SUMMARY: The draft Amendment and Environmental Impact Statement (EIS) addresses future management options for land tenure adjustment, off-road vehicle use, oil and gas leasing, and locatable mineral development for lands and minerals administered by the Bureau of Land Management (BLM) in the Sweet Grass Hills in Toole and Liberty Counties, Montana, and amends the West HiLine Resource Management Plan (1988 and 1992). This includes approximately 7,717 surface acres, 19,765 acres of all mineral estate, and 1,644 acres of only oil and gas estate. These lands are administered by the BLM through the Great Falls Resource Area. The draft preferred alternative and three other alternatives have been developed to provide management options for the Sweet Grass Hills.

PUBLIC PARTICIPATION: Copies of the draft Amendment/EIS will be available from the Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457–1160, (406) 538–7461. Public reading copies will be available for review at the following BLM locations: Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240; External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107; Lewistown District Office, Airport Road, P.O. Box 1160, Lewistown, MT 59457–1160; and Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401.

Written comments on the draft Amendment/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Filing of the Draft in the **Federal Register**. Comments can also be presented at four public meetings to be held at: Shelby, MT, Shelby High School Auditorium, February 27, 1995, 7 p.m.; Browning, MT, Browning High School Annex, February 28, 1995, 7 p.m.; Chester, MT, Chester High School Auditorium, March 1, 1995, 7 p.m.; and, Rocky Boy, MT, Community Hall, March 2, 1995, 10 a.m.

ADDRESSES: Written comments on the document should be addressed to Richard Hopkins, Area Manager, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401.

FOR FURTHER INFORMATION CONTACT: Tad Day, Team Lead, Great Falls Resource Area, 812 14th St. N., Great Falls, MT 59401, (406) 727–0503.

SUPPLEMENTARY INFORMATION: In August 1993, the BLM segregated the Federal mineral estate in the Sweet Grass Hills for a two-year period which closed the area to the location of new mining claims until August 1995. The BLM also began amending the West HiLine Resource Management Plan to reevaluate current management decisions for the Sweet Grass Hills. The amendment to the West HiLine Resource Management Plan will provide specific direction concerning locatable mineral development and will recommend whether some or all of the area should be closed to mining claim location. If the final amendment and record of decision recommends closure, the BLM would begin processing a 20-year term withdrawal.

Dated: February 7, 1995.

Gary Slagel,

Acting District Manager

[FR Doc. 95–3505 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit From Mr. Robert Farr, in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Robert Farr (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy lands owned by the Applicant in Baldwin County, Alabama. The Application proposed to construct and use a single family residence on less than 0.5 acres of privately owned land, which is in the Cabana Beach subdivision.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on *Peromyscus polionotus ammobates* in order to assist in the requirement of the intra-Service consultation. This notice also advices the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before March 13, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–798697 in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, FAX 404/679–7280).

Field Supervisor, U.S.Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Will McDearman at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (AMB), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The know current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys have not been conducted on the Applicant's property. Suitable habitat in the form of secondary and scrub dunes exist on the Applicant's property. These habitats are likely to be occupied by ABM. The Applicant's property resides in designated critical habitat for the ABM. Construction of the single family residence on about 0.1–0.2 acres of the Applicant's property may result in the death of, or injury to, ABM. Habitat alterations due to house placement and its subsequent use may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of three alternatives. The proposed action alternative is the issuance of the incidental take permit. This provided for restrictions that include house placement landward of the frontal crest of the scrub dune line, establishment of a walkover structure across that scrub dune, a prohibition against housing or keeping pet cats, scavenger-proof garbage containers, no landscaping, and the minimization and control of outdoor lighting. The HCP provides a funding source for these mitigation measures.

Dated: February 3, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–3353 Filed 2–9–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Cypress Creek (Phase I), a Single Family Residence Subdivision, in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: RNR Properties, Ltd., (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The permit would authorize the take of two families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 10 years. The proposed taking is incidental to construction of 148 single family homes, including the necessary infrastructure, on approximately 225 acres (Project). Within the Project, 28.7 acres are occupied by Florida scrub jays and will be permanently altered. The Project is called Cypress Creek (Phase I), and it is located on the mainland of Brevard County, in the Town of Grant.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major

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Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before March 13, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–798698 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is the proposed Project that is designed to reduce the impacts to *Aphelocoma coerulescens coerulescens* by restricting the Project's total buildable area. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of off-site habitat for the Florida scrub jay, the establishment of an endowment fund for the off-site acquired habitat, and donation of additional off-site habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: February 3, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–3354 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permit Application

AGENCY: Forest Service, Interior.

ACTION: Notice of availability.

Availability of a Draft Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for Desert Tortoises in Clark County, Nevada.

SUMMARY: This notice advises that Clark County; the cities of Mesquite, Las Vegas, North Las Vegas, Henderson, and Boulder City; and Nevada Department of Transportation (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authority the incidental take of the threatened desert tortoise (*Gopherus agassizii*). The permit application is accompanied by a Habitat Conservation Plan (HCP) entitled the *Clark County Desert Conservation Plan* (CCDCP) and an implementing agreement.

The Service also announces the availability of a draft Environmental Impact Statement (EIS) for the incidental take permit application. This EIS, the CCDCP, and the implementing agreement are available for public review. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended, and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). Comments and suggestions are requested.

The permitted take would be in association with various proposed public and private development projects. Two alternatives are being considered. The proposed action would allow for development to occur on up to 113,900 acres of desert tortoise habitat. Take would be minimized through a pick-up and collection service for desert tortoises encountered in harm's way, implementation of a public information and education program, and specific measures for Nevada Department of Transportation to implement during roadway maintenance and construction The Applicants propose to mitigate impacts to desert tortoise by providing at least $1 million per year for State and Federal resource managers to implement desert tortoise recovery measures recommended in the *Desert Tortoise (Mojave Population) Recovery Plan*), providing funding to address the needs of other sensitive plants and animals in Clark County, and purchasing a conservation easement for more than 85,000 acres of non-Federal land in Clark County.

DATES: Written comments are requested by April 11, 1995.

ADDRESSES: Comments should be addressed to: Sheryl L. Barrett, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Sheryl L. Barrett at the above Reno, Nevada address, telephone (702) 784–5227. Individuals wishing copies of the permit application, HCPURPA, implementing agreement, and draft EIS for review should immediately contact the above individual or Dr. Dolores Savignano at U.S. Fish and Wildlife Service, 1500 North Decatur Boulevard, #01, Las Vegas, Nevada 89108, telephone (702) 646–3499. Copies of the above documents have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: On April 2, 1990, the Service issued a final rule that determined the desert tortoise to be a threatened species (55 FR 12178). This regulation became effective on the date of its publication in the Federal Register. Because of its listing as a threatened species, the desert tortoise is protected by the Act's prohibition against "taking." The act defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3)

The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered and threatened wildlife under certain circumstances Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For threatened species, such permits are available for scientific purposes, enhancing the propagation or survival of the species, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the purposes of the Act.

Clark County; the cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City; and Nevada Department of Transportation (NDOT) (Applicants) submitted an application to the Service for a permit to incidentally take desert tortoises (*Gopherus agassizii*), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), in association with various proposed public and private projects in Clark County, Nevada. The proposed permit would allow incidental take of desert tortoises for a period of 30 years, resulting from development on up to 113,900 acres of private lands with Clark County, Nevada. The permit application was received September 28, 1994, and was accompanied by the *Clark County Desert Conservation Plan* (CCDCP), which serves as the Applicant's habitat conservation plan and details their proposed measures to minimize, monitor, and mitigate the impacts of the proposed take on the desert tortoise.

To minimize the impacts of take, the Applicants propose to provide a free pick-up and collection service for desert tortoises encountered in harm's way within Clark County. These desert tortoises will be made available for beneficial uses such as translocation studies and programs, research, education, zoos, museums, or other programs approved by the Service and Nevada Division of Wildlife. Sick or injured desert tortoises will be humanely euthanized. NDOT will incorporate specific measures into its operations to avoid or minimize impacts to desert tortoises. Clark County will also implement a public information and education program to benefit the desert tortoise and the desert ecosystem.

To mitigate the impacts of take, the Applicants propose to provide funding of between $1 million and $1.325 million per year for State and Federal resource managers to implement desert tortoise recovery measures recommended in the *Desert Tortoise (Mojave Population) Recovery Plan* and for the planning and management of lands both within and outside of desert wildlife management areas to address the needs of other plant and wildlife resources to avoid the need to list these species as threatened or endangered under the Act in the future. The Applicants also propose to purchase a conservation easement that preserves, protects, and assures the management and study of the conservation values, and in particular the habitat of the desert tortoise, of more than 85,000 acres of non-Federal land in Clark County.

Clerk County or the cities would approve the issuance of land development permits for otherwise lawful public and private project proponents during the 30-year period in which the proposed Federal permit would be in effect. Clark County or the cities would impose, and NDOT would pay, a fee of $550 per acre of habitat disturbance to fund the measures to minimize and mitigate the impacts of the proposed action on desert tortoises.

The underlying purpose or goal of the proposed action is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

Two alternatives are under consideration. Issuance of the permit with the mitigation, minimization, and monitoring measures outlined in the CCDCP is the Service's preferred action and is discussed above. The EIS also outlines alternative measures that may be considered by the Service in issuing the permit. The other alternative selected for detailed evaluation is a No Action alternative. The No Action alternative was not identified as the preferred alternative because it would diffuse existing regional conservation planning efforts for the desert tortoise and possible concentrate activity on individual project needs and not meet the purpose and need of the applicants. Additionally, the No Action alternative could result in adverse impacts to the social environment within Clark County due to constraints on land-use activities that would impact the desert tortoise.

In the development of this draft EIS, the Service initiated action to ensure compliance with the purpose and intent of the National Environmental Policy Act of 1969, as amended. Scoping activities were undertaken preparatory to developing the EIS with a variety of Federal, State, and local entities. A Notice of Intent to prepare the EIS was published February 4, 1994 (59 FR 5439), and a public scoping meeting was held February 14, 1994.

Key issues addressed in this draft EIS are identified as the effects that implementation of the alternatives would have upon: (1) The desert tortoise, (2) plant communities of concern, (3) other species of concern, (4) land uses, (5) socioeconomics, and (6) cultural resources.

Eight alternatives were considered before limiting the alternatives to be advanced for further study. Alternatives considered but not advanced for detailed analysis included: (1) A multiple-species plan, (2) a statewide plan, (3) a range-wide plan, (4) mitigation on non-Federal land, and (5) continuation of the short-term HCP. Alternatives advanced for detailed analysis include: (1) Issuing the permit with the mitigation, minimization, and monitoring measures outlined in the CCDCP or with one or more of the alternative measures provided and (2) a No Action Alternative. Alternative 1 is the Service's preferred alternative.

The No Action alternative would benefit individual desert tortoises on private lands in the short-term, however, it has been determined that viable populations of desert tortoises will not persist in the urban areas over the long-term. The No Action alternative would, therefore, not provide the benefits of the long-term recovery efforts for the desert tortoise identified in the CCDCP. In addition, the No action alternative would diffuse existing regional conservation planning efforts for the desert tortoise and possibly concentrate activity on individual project needs and not meet the purpose and need of the applicants. The No Action alternative could also result in adverse impacts to the social environment within Clark County due to constraints on land-use activities that would impact the desert tortoise.

Dated: February 1, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–3078 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–55–P

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National Park Service

Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, March 16, 1995.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, March 16, 1995, Driving Directions: From south, take Rte. 27 to Water Row in Sudbury, turn right at end on to Lincoln Rd., left on Weir Hill Rd., follow signs to GMNWR Headquarters. From north, take Concord Rd. to Lincoln Rd., turn left, follow Lincoln Rd. to Weir Hill Rd., turn left, follow signs to headquarters building. Or, take Rte 126 north or south to Sherman's Bridge Rd. in Wayland, cross Sudbury River, turn right on Weir Hill Rd.

Agenda

I. Welcome and introductions, approval of minutes from 2/23/95 meeting—Bill Sullivan, Chairman
II. Brief questions and comments from public
III. Management Plan: Vote to accept Final Draft
IV. Report on Town Meeting Warrant Articles and Agenda: Julia Blatt, Outreach Coordinator and town reps.
V. Issues of local concern
VI. Other Business—Next meeting date and location

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: February 3, 1995.

Chrysandra L. Walter,

Acting Deputy Regional Director.

[FR Doc. 95–3391 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Harvest States Cooperatives.
(2) P.O. Box 64594, St. Paul, MN 55164.
(3) 1667 N. Snelling Ave., St. Paul, MN 55108.
(4) Allen J. Anderson, Senior Vice President, Admin. and Public Affairs, P.O. Box 64594, St. Paul, MN 55164.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3413 Filed 2–9–95; 8:45 am]

BILLING CODE 7035–01–P

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: GMK, Inc. 45 North Brandon Drive, Glendale Heights, Illinois 60139.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: GMK Trucking, Ltd., an Illinois corporation.

B. 1. The parent corporation is Steelcase, Inc. and the address of the principal office is: 1120 36th Street S.E., Grand Rapids, Michigan 49508.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

Anderson Desk, Inc., California corporation
Atelier International, Ltd., New York corporation
A.1. Collection, Ltd., New York corporation
Attwood Corporation, Michigan corporation
Brayton International, Inc. North Carolina corporation
Brayton Leasing Corporation, North Carolina corporation
Continuum, Inc., North Carolina corporation
Columbus Circle Realty Corp., New York corporation
Design Tex Fabrics, Inc. New York corporation
Western States Design Tex, Inc. California corporation
Hedberg Data Systems, Inc., Connecticut corporation
Legacy Dealer Capital Fund, Inc., Delaware corporation
Metropolitan Corporation, Delaware corporation
Metropolitan Fabricating Corporation, California corporation
Metropolitan Furniture Corporation, California corporation
Revest, Inc. Texas corporation
SC Transport, Inc., Michigan corporation
Steelcase Canada Ltd., Toronto corporation
Steelcase Hong Kong Ltd., Inc., Michigan corporation
Steelcase Financial Services Inc., Michigan corporation
Steelcase Financial Services Ltd., Canadian corporation
Steelcase International Inc., Michigan corporation
Stow Davis Furniture Incorporated, Indiana corporation
Turnstone Inc., Michigan corporation
Vecta Division (a/k/a/ Vecta Contract), Steelcase, Inc., Texas corporation
WDI Realty Co., Michigan corporation

C 1. The parent corporation is Wolverine World Wide, Inc. and the address of the principal office is: 9341 Courtland Drive, Rockford, Michigan 49351.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

Hush Puppies Retail, Inc. Michigan
Aguadilla Shoe Corporation, Michigan
BSI Shoes, Inc., Michigan
Frolic de Mexico, S.A. de C.V., Monterrey, Mexico
WWW Europe, Ltd., Central Milton Keynes, Eng.

Wolverine Procurement, Inc., Michigan
Spartan Shoe Company, Ltd., Cayman Islands
Wolverine Design Center, Inc., Tuscany, Italy
Wolverine Sourcing, Inc., Michigan
Dominican Wolverine Shoe Company Limited, Cayman Islands.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3412 Filed 2–9–95; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,507; A. P. Green Refractories, Inc., Warren, OH
TA–W–30,575; C. McDowell Oil, Inc., Albion, IL
TA–W–30,492; Wiener Laces (Wiener), Clifton, NJ
TA–W–30,512; Webb-Norfolk Conveyor Div., Cohasset, MA
TA–W–30,505; Cushman Industries, Inc., Hartford, CT

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,468; Pontiac Weaving Corp., Cumberland, RI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,538; Lone Star Industries, Inc., Nazareth Cement Corp., Nazareth, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,485; Lockheed Fort Worth Co., Wire Harness Production, Fort Worth, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,496; Sunbrite Dye Co., Passaic, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,535; Dow Brands, Inc., Greenville, TX

Production at the subject plant is being transferred to another affiliated domestic facility in order to improve customer service.

TA–W–30,510; Enron Operations Corp., (EOC) Houston Pipe Line (HPL), Corpus Christi, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,519; Herman Miller, Inc., Dayton, NJ

The investigation revealed that the planned shut down of the Herman Miller's Dayton, NJ facility is attributable to a consolidation of domestic operations.

TA–W–30,523; Xerox Corporation, Canadian, Latin American Manufacturing Organization, Pittsford, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,482; Dana Corp., Chelsea Plant, Chelsea, MI

The investigation revealed that production at the subject plant was transferred domestically during the relevant period.

TA–W–30,479; Mobil Chemical Co., Consumer Products Div., Washington, NJ

Predominate reason for layoffs of workers at the subject firm was due to over capacity at Mobil Chemical Co., Consumer Products Div. The division does not import nor did it experience a decline in sales in the relevant period prior to the closing of the firm in 1994.

TA–W–30,625; Alscom, Inc., Anchorage, AK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,499; Martin Marietta Corp., Regional Electronics Center, Conklin, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,513; Telescope Casual Furniture, Grainville, NY

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,497; Sybron Dental Specialties, Romulus, MI

A certification was issued covering all workers separated on or after November 3, 1993.

TA–W–30,498; RB & W Corp., Kent, OH

A certification was issued covering all workers separated on or after October 28, 1993.

TA–W–30,503; Clopay E & I Door, Shawano, WI

A certification was issued covering all workers separated on or after November 9, 1993.

TA–W–30,526; Henson Kickernick, AKA Bali Co., Atlanta, TX

A certification was issued covering all workers separated on or after November 18, 1993.

TA–W–30,530; S & A Casuals, New York, NY

A certification was issued covering all workers separated on or after November 23, 1993.

TA–W–30,217; Portland Provision Meat Co., Portland, OR

A certification was issued covering all workers separated on or after July 25, 1993.

TA–W–30,525; Independent Leather Manufacturing Corp., Gloversville, NY

A certification was issued covering all workers separated on or after November 10, 1993.

TA–W–30,506; AST Research, Inc., Instrument Plant, Ft. Worth, TX

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A certification was issued covering all workers separated on or after September 29, 1993.

TA-W-30,467; SGS-Thomson Micoelectronics, Inc., Montgomeryville, PA

A certification was issued covering all workers separated on or after November 7, 1993.

TA-W-30,481; Component Technology Corp., Erie, PA

A certification was issued covering all workers separated on or after October 31, 1993.

TA-W-30,534; California Manufacturing Co., Plant #3, St. James, MO

A certification was issued covering all workers separated on or after November 25, 1993.

TA-W-30,494 & TA-W-30,495; Yolanda Industries, New York, NY, Dandy Trimming Co., Inc., New York, NY

A certification was issued covering all workers separated on or after October 28, 1993.

TA-W-30,489 & TA-W-30,489A; Tape Measure Enterprises, Inc., Jersey City, NJ and New York, NY

A certification was issued covering all workers separated on or after November 2, 1993.

TA-W-30,474 & TA-W-30,475, TA-W-30,476, A & B; Wicker Park L.P., Herrin, IL, Chicago, IL, New York, NY, Prattville, AL, and Montgomery, AL

A certification was issued covering all workers separated on or after October 26, 1993.

TA-W-30,487; Philips Components, A.C.T. Div., Saguerties, NY

A certification was issued covering all workers separated on or after November 1, 1993.

TA-W-30,540; National Ceramics, Inc., Cunningham, KY

A certification was issued covering all workers separated on or after November 17, 1993.

TA-W-30,466; Weslock National, Inc., Sikeston, MO

A certification was issued covering all workers separated on or after October 21, 1993.

TA-W-30,520; Cameron Custom Carpets, Auburn, ME

A certification was issued covering all workers separated on or after November 15, 1993.

TA-W-30,486; Peridot Chemicals (New Jersey), Inc., Newark, NJ

A certification was issued covering all workers separated on or after November 3, 1993.

TA-W-30,501; General Porcelain Manufacturing Co., Inc., Trenton, NJ

A certification was issued covering all workers separated on or after September 13, 1993.

TA-W-30,490 & A; Trigg Drilling Co., Inc., Oklahoma City, OK & Operating at Various Locations in the State of Oklahoma

A certification was issued covering all workers separated on or after October 21, 1993.

TA-W-30,484; Freedom Fisheries, Endeavor Fisheries, New Bedford, MA

A certification was issued covering all workers separated on or after October 24, 1993.

TA-W-30,524; Miss Elaine, Inc., Bristow, OK

A certification was issued covering all workers separated on or after November 11, 1993.

TA-W-30,501; Dawson Home Fashions, Inc., Vienna, OH

A certification was issued covering all workers separated on or after November 10, 1993.

TA-W-30,580; Grange Springwall Chiropractic, Inc., LaConner, WA

A certification was issued covering all workers separated on or after November 30, 1993.

TA-W-30,455; Marathon Oil Co., Robinson, IL & Operating at Various Locations in the Following States: A; AL, B; AK, C; AZ, D; CA, E; CO, F; FL, G; GA, H; IL, I; IN, J; KS, K; KY, L; LA, M; MI, N; NM, O; OH, P; OK, Q; SC, R; TN S; TX, T; WI, U; WY.

A certification was issued covering all workers separated on or after October 18, 1993.

TA-W-30,455V; Marathon Oil Co., Houston, TX & Operating in The Following Other Locations: W; Cody, WY, X; Findlay, OH, Y; Midland, OH, Z; Oklahoma City, OK, AA; Ruston, LA, AB; Bridgeport, IL, AC; Lafayette, LA AD; Lindsey, OK, AE; Medicine Lodge, KS, AF; Shreveport, LA, AG; Anchorage, AK.

A certification was issued covering all workers separated on or after October 21, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor Presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of January, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision: or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00312; Frigidaire Co., Microwave Div., Dalton, GA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the Microwave Division of the Frigidaire Co to Mexico or Canada during the period under investigation, nor did the Frigidaire Co import any microwave ovens from Mexico or Canada.

NAFTA-TAA-00294; Uarco, Inc., Adrian, MI

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Canada or Mexico during the relevant period. A survey of customers of Uarco revealed that respondents did not import continuous stock computer paper.

NAFTA-TAA-00298; Carter-Wallace, Inc., Wampole Div., East Windsor, NJ

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from Carter-Wallace, Inc. to Mexico or Canada during the period under investigation, nor did the Carter-Wallace, Inc. Import from Mexico or Canadn any articles that are like or directly competitive with over the counter and professional diagnostic test kits.

NAFTA-TAA-00308; A.B. Chance Co., Parkersburg Plant, Parkersburg, WV

The investigation revealed that criteria (3) and criteria (4) were not met. A survey results revealed that customers did not import electrical porcelain insulators from Mexico or Canada. There was not shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import electrical procelain insulators from Mexico or Canada.

NAFTA-TAA-00307; H. Grabell & Sons, Inc., Paterson, NJ

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shirt in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company increase imports of lamp shades from Mexico or Canada. Survey results revealed that customers did not import lamp shades from Canada or Mexico.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00309; Eutectic Corp., Flushing, NY

A certification was issued covering all workers engaged in the production of welding consumables, such as electrodes and fluxes at Eutectic Corp., Flushing, NY separated on or after December 8, 1993.

NAFTA-TAA-00297; D&R Lumber Corp D/B/A Blaney Lumber & Manufacturing, Bethesda, OH

A certification was issued covering all workers of D&R Lumber d/b/a Blaney Lumber & Manufacturing, Bethesda, OH on or after December 8, 1993.

NAFTA-TAA-00303; Iowa Assemblies, Inc., Lucas, IA

A certification was issued covering all workers related to the production of wiring harnesses & assembly of Iowa Assemblies, Inc., at the Lucas, Mt. Ayr and Osceola facilities separated on or after December 8, 1993.

NAFTA-TAA-00299; Best Shingle Co., Hoguiam/Aberdeen, WA

A certification was issued covering all workers of Best Shingle Co., Hoquiam/Aberdeen, WA separated on or after December 8, 1993.

NAFTA-TAA-00314; Gannett Outdoor Co., Outdoor Advertising Div., Denver, CO

A certification was issued covering all workers of Gannett Outdoor Co., Outdoor Advertising Div., Denver, CO separated on or after December 8, 1993.

NAFTA-TAA-00313; Yocom Knitting Co., Stowe, PA NAFTA-TAA-00313A; Linden Knitting Wear, Mohrsville, PA

A certification was issued covering all workers engaged in the production of activewear apparel, at the Yocom Knitting Co plant in Stowa, PA and Linden Knitting Wear plant in Morhrsville, PA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of January, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 27, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade, Adjustment Assistance.

[FR Doc. 95-3401 Filed 2-9-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,681]

Caron International Rochelle, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 23, 1995 in response to a worker petition which was filed on behalf of workers at Caron International, Rochelle, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 27th day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-3395 Filed 2-9-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,931]

Dresser Industries, Inc., Guiberson-Ava Division, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Dresser Industries, Inc. Operating at Various Locations in the Following States: TA-W-29,931A Alaska, TA-W-29,931B California, TA-W-29,931C Colorado, TA-W-29,931D Illinois, TA-W-29,931E Kansas, TA-W-29,931F Louisiana, TA-W-29,931G New Mexico, TA-W-29,931H North Dakota, TA-W-29,931I Ohio, TA-W-29,931J Oklahoma, TA-W-29,931K Texas except Dallas, TA-W-29,931L Wyoming.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 1994, applicable to all workers of the subject firm. The certification was published in the **Federal Register** on December 16, 1994 (59 FR 65075).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at various locations in other States.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of the Guiberson-Ava Division of Dresser Industries, Inc., who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA-W-29,931 is hereby issued as follows:

All workers of the Guiberson-Ava Division of Dresser Industries, Inc., Dallas, Texas and operating at various locations in the following States: Alaska, California, Colorado, Illinois, Kansas, Louisiana, New Mexico, North Dakota, Ohio, Oklahoma, Texas (except Dallas) and Wyoming who became totally or partially separated from employment on or after May 20, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-3397 Filed 2-9-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,539]

Marathon Oil Company; Cody, WY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 5, 1994 in response to a worker petition which was filed on behalf of workers and former workers at Marathon Oil Company, located in Cody, Wyoming (TA-W-30,539).

The investigation revealed that workers at Marathon Oil Company

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located in various locations in the following States are currently covered under an existing certification: (1) Wyoming (TA–W–30,455U); (2) Ohio (TA–W–30,455O); and California (TA–W–30,455D).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3398 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below not later than February 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 23rd day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Swift Adhesives, Inc(wkrs)	St. Joseph, MO	01/23/95	01/03/95	30,658	Industrial Adhesives.
Johnson Controls(UAW)	Owosso, MI	01/23/95	12/22/94	30,659	Automobile Batteries.
Utica Corp(IAMAW)	Whitesboro, NY	01/23/95	01/09/95	30,660	Turbine Blades & Vanes.
Utica Corp(IAMAW)	Whitesboro, NY	01/23/95	01/09/95	30,661	Turbine Blades & Vanes.
McDonald Douglas Corp(UAW)	Long Beach, CA	01/23/95	01/10/95	30,662	Passenger Aircraft.
E-Systems Corp(UAW)	Greenville, TX	01/23/95	01/11/95	30,663	Contracted Aircraft Services.
Automobile Specialty Co(wkrs)	North Jackson, OH	01/23/95	01/11/95	30,664	Factory Assembly Conversion.
Cleaver Brooks(wkrs)	Lebanon, PA	01/23/95	01/11/95	30,665	Steam & Hot Water Boilers.
Dick Lynott, Inc(Co)	Duluth, GA	01/23/95	01/12/95	30,666	Men's Jackets and Coats.
OshKosh B'Gosh(UGWA)	Dover, TN	01/23/95	01/09/95	30,667	Denim Childrens Jeans & Youthwear.
Venus Fashions, Inc(ILGWU)	Hoboken, NJ	01/23/95	01/10/95	30,668	Coats and Suits.
Anadrill-Schumberger(wkrs)	Scott, LA	01/23/95	01/13/95	30,669	Provides Service for Oil Industries.
KBM Well Service, Inc(wkrs)	Williston, ND	01/23/95	01/02/95	30,670	Oil Well Services.
KBM Well Service, Inc(wkrs)	Tioga, ND	01/23/95	01/02/95	30,671	Oil Well Services.
KBM Well Service, Inc(wkrs)	Keene, ND	01/23/95	01/02/95	30,672	Oil Well Services.
KBM Well Service, Inc(wkrs)	Mohall, ND	01/23/95	01/02/95	30,673	Oil Well Services.
KBM Well Service, Inc(wkrs)	Lignite, ND	01/23/95	01/02/95	30,674	Oil Well Services.
Mallinckrodt Medical, Inc(wkrs)	Argyle, NY	01/23/95	01/16/95	30,675	Tracheal Tubes.
Hasbro, Inc(Co)	Pawtucket, RI	01/23/95	10/24/94	30,676	Toys and Games.
Leland Electrosystems, Inc(UE/wks)	Erie, PA	01/23/95	01/11/95	30,677	Military & Commercial Starters, Motors.
Star Fireworks(wkrs)	Danville, IL	01/23/95	01/05/95	30,678	Fireworks.
Mr. Carmen, Inc(Co)	Selinsgrove, PA	01/23/95	01/12/95	30,678	Ladies' Loungewear & Sleepwear.
J.M. Huber Corp(wkrs)	Macon, GA	01/23/95	01/12/95	30,680	Kaolin Clay.
Caron International(Co)	Rochelle, IL	01/23/95	01/11/95	30,681	Consumer Yarn.
BASF Corp(wkrs)	Lowland, TN	01/23/95	01/10/95	30,682	Polyester Filament Yarn.
Amphenol Corp(IAMAW)	Sidney, NY	01/23/95	01/13/95	30,683	Electrical & Environmental Connectors.
Sportswear Inc(wkrs)	Sikeston, MO	01/23/95	01/12/94	30,684	Tee Shirts & Golf Shirts.
Alfred Angelo(ILGWU)	Horsham, PA	01/23/95	01/20/95	30,685	Bridal, Bridesmaids, Prom Gowns.
Alfred Angelo(ILGWU)	Willow Grove, PA	01/23/95	01/20/95	30,686	Bridal, Bridesmaids, Prom Gowns.
Alfred Angelo(ILGWU)	Hatboro, PA	01/23/95	01/20/95	30,687	Bridal, Bridesmaids, Prom Gowns.

[FR Doc. 95–3399 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 21, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 21, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Union Camp Corp (UPIU)	Savannah, GA	01/30/95	01/16/95	30,688	Paper Bags for Retail Customers.
Baker Hughes Inteq (Co)	Houston, TX	01/30/95	01/06/95	30,689	Oil and Gas.
Pennzoil Products Co (OCAW)	Roosevelt, UT	01/30/95	01/12/95	30,690	Petroleum Products.
Champion Technologies, Inc (wkrs)	Houston, TX	01/30/95	01/18/95	30,691	Oilfield Chemicals.
Eveready Battery Co (wkrs)	Red Oak, IA	01/30/95	01/17/95	30,692	Batteries.
Hudson Valley Polymers (wkrs)	Poughkeepsie, NY	01/30/95	01/06/95	30,693	Rubber Parts for Milking Equip.
Leica, Inc (Co)	Buffalo, NY	01/30/95	01/17/95	30,694	Ophthalmic Instruments.
Malcolm Clothing Corp. (ILGWU)	Passaic, NJ	01/30/95	01/17/95	30,695	Women's Coats.
Statler Tissue Co (UPIU)	Augusta, ME	01/30/95	01/13/95	30,696	Tissue.
Empire Manufacturing Co (wkrs)	Winder, GA	01/30/95	01/05/95	30,697	Casual Slacks & Shorts.
Classic Fashions (ILGWU)	Paterson, NJ	01/30/95	01/17/95	30,698	Ladies' Coats.
Novelle Industries, Inc (wkrs)	Miami, FL	01/30/95	01/18/95	30,699	Ladies' Sportswear.
E.G. & G Vactec, Inc (UAW)	St. Louis, MO	01/30/95	01/18/95	30,700	Photocells.

[FR Doc. 95–3400 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,927; NAFTA–00120]

Walker Manufacturing Company Hebron, Ohio; Negative Determination on Reconsideration

On December 14, 1994 the United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *UAW Local 1927 and Employees and Former Employees of Walker Manufacturing* v. *Secretary of Labor* (94–10–00584).

The workers filing under petition TA–W–29,927 were initially denied eligibility to apply for trade adjustment assistance (TAA) on September 2, 1994 (59 FR 45711) and denied on application for reconsideration on October 5, 1994 (59 52194). The Department's denial was based on the fact that increased import criterion and the "contributed importantly" test of the Worker Group Eligibility Requirements of the Trade Act were not met. U.S. imports of mufflers and exhaust pipes declined in 1993 compared to 1992 and in the latest twelve month period ending in May 1994 compared to the same twelve month period ending in May 1993.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Hebron's sole customer shows that the sole customer's import purchases were not important relative to Hebron's sales during the relevant period.

The workers were also denied under the NAFTA petition (NAFTA–00120) on June 30, 1994 (59 FR 3997) and on reconsideration on October 7, 1994 (59 FR 53213). The Department's denial was based on the fact that neither the increased import criterion from Mexico or Canada nor the shift in production to Mexico or Canada criterion of the Worker Group Eligibility Requirements of the NAFTA provisions of the Trade Act were met.

The record states that the Ohio Bureau of Employment Security (OBES) made a preliminary finding that the employment and production decline and the aggregate import criteria had been met. Under the NAFTA–TAA provisions, the State does not make a finding on the "contributed importantly" test.

On remand the Department contacted the plaintiff's counsel, and other witnesses to provide the Department with any information or documentation that would contradict the Department's negative determinations. The plaintiffs indicated that about 50 resonator workers were laid off in February, 1994 and that 40 percent of the plant's production was shipped to Mexico prior to the phasedown.

The remand findings show that the Walker plant in Mexico does not produce any products for the workers' firm's only customer.

The findings also show that no production was transferred to Mexico as a result of the closure of the Hebron plant. Only the production of resonator bodies was transferred to Canada; however, this accounted for only a very small portion of Hebron's total production and the workers were not separately identifiable by product. All other production was transferred to company owned domestic plants.

The Department's survey showed that Hebron's customers did not decease their purchases of exhaust systems from Hebron and increase their imports from Mexico or Canada in the relevant period.

The findings on remand show that as a result of the Hebron closure, the company is making its excess machinery available to other corporate North American plants including the one in Mexico. According to several company officials, the Hebron closing is the result of capacity issues within Walker Manufacturing in North America.

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The transfer of machinery from a domestic plant to a Mexican or Canadian plant would not form a basis for a worker group certification under the NAFTA provisions of the Trade Act. The NAFTA provisions to the Trade Act specifically state that there must be a transfer of production from a domestic firm to a Mexican or Canadian plant to be eligible to apply for transitional adjustment assistance, not machinery associated with that or any other type of production.

Further, the Department has never considered in any of its investigations under the NAFTA provisions of the Trade Act that the transfer of machinery is tantamount to the transfer of production. Certification under the NAFTA provisions of the Trade Act is premised on increased imports of articles from Mexico or Canada that are like or directly competitive with those produced at the workers' firm or a shift in production to Mexico or Canada of articles that are like or directly competitive with those produced at the workers' firm. Accordingly a shift of machinery or other capital assets would not meet the shift in production criterion of the NAFTA Worker Group Eligibility Requirements.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 27th day of January 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3404 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1995 Regular Program and Calendar Year 1995 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The ETA of the Department of Labor (DOL) is publishing the proposed Native American allocations, distribution formulas and rationale, and individual grantee planning estimates for Program Year (PY) 1995 (July 1, 1995–June 30, 1996) for regular programs funded under Title IV–A of the Job Training Partnership Act (JTPA), and for Calendar Year (CY) 1995 for Summer Youth Employment and Training Programs (SYETP) funded under Title II–B of the JTPA.

DATES: Written comments on this proposal are invited and must be received on or before March 13, 1995.

ADDRESSES: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Phone: 202–219–8502 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to Section 162 of the JTPA, ETA of the DOL publishes below for review and comment the proposed allocations and distribution formulas for areas to be served by Native American grantees to be funded under JTPA Section 401, and JTPA Title II, Part B. The amounts to be distributed are $64,080,040 for the JTPA Section 401 programs for PY 1995 (July 1, 1995–June 30, 1996); and $15,768,370 for the JTPA Title II, Part B, SYETP for the Summer of CY 1995. The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, and legislative changes.

The formula for allocating JTPA Section 401 funds provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on youths, unemployed persons, and poverty-level persons among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1990.

Signed at Washington, D.C., this 6th day of February 1995.

Douglas Ross,

Assistant Secretary of Labor

U.S. Department of Labor—Employment and Training Administration, PY 1995 Title IV–A and CY 1995 Title II–B (Summer 1995) Planning Estimates for Native American Grantees, (Date)

BILLING CODE 4510–30–M

U. S. Department of Labor
Employment and Training Administration
Native Americans PY 1995 JTPA Title IV-A Allotments
(With 80% Hold-Harmless)

State		Grantee	Grant Number	Administrative	Program	Total
		NATIONAL TOTAL		12,816,013	51,264,027	64,080,040
1	AL	Inter-Tribal Council of Alabama	99-1-3624-55-255-02	54,055	216,219	270,274
1	AL	Poarch Band of Creek Indians	99-1-0648-55-173-02	21,397	85,590	106,987
2	AK	Aleutian/Pribilof Islands Association	99-1-0117-55-139-02	7,172	28,687	35,859
2	AK	Association of Village Council President	99-1-2713-55-210-02	100,558	402,233	502,791
2	AK	Bristol Bay Native Association	99-1-0116-55-138-02	24,543	98,170	122,713
2	AK	Central Council of Tlingit and Haida	99-1-0114-55-136-02	44,440	177,759	222,199
2	AK	Chugachmiut	99-1-0118-55-140-02	9,147	36,586	45,733
2	AK	Cook Inlet Tribal Council	99-1-3402-55-243-02	90,619	362,478	453,097
2	AK	Kawerak Incorporated	99-1-0123-55-141-02	37,935	151,738	189,673
2	AK	Kenaitze Indian Tribe	99-1-0089-55-135-02	4,818	19,272	24,090
2	AK	Kodiak Area Native Association	99-1-0115-55-137-02	9,628	38,512	48,140
2	AK	Manilaq Manpower	99-1-0124-55-142-02	26,603	106,411	133,014
2	AK	Metlakatla Indian Community	99-1-0064-55-121-02	4,599	18,395	22,994
2	AK	Orutsararmuit Native Council	8-4259-3-00-81-55	10,712	42,847	53,559
2	AK	Tanana Chiefs Conference, Inc.	99-1-3109-55-227-02	90,197	360,788	450,985
4	AZ	Affiliation of Arizona Ind. Cntrs. Inc.	99-1-0268-55-158-02	58,766	235,064	293,830
4	AZ	American Indian Association of Tucson	99-1-0492-55-164-02	61,772	247,090	308,862
4	AZ	Colorado River Indian Tribes	99-1-0498-55-165-02	15,541	62,164	77,705
4	AZ	Gila River Indian Community	99-1-0054-55-116-02	138,522	554,088	692,610
4	AZ	Hopi Tribal Council	99-1-0057-55-117-02	65,820	263,280	329,100
4	AZ	Indian Development District of Arizona,	99-1-0053-55-115-02	31,819	127,277	159,096
4	AZ	Native Americans for Community Action	99-1-1777-55-193-02	41,794	167,175	208,969
4	AZ	Navajo Nation	99-1-0059-55-119-02	1,515,455	6,061,822	7,577,277
4	AZ	Pasqua Yaqui Tribe	99-1-3289-55-237-02	25,922	103,687	129,609
4	AZ	Phoenix Indian Center, Inc.	99-1-0195-55-153-02	189,413	757,652	947,065
4	AZ	Salt River Pima-Maricopa Indian Council	99-1-0476-55-162-02	32,231	128,925	161,156
4	AZ	San Carlos Apache Tribe	99-1-0173-55-149-02	79,449	317,795	397,244
4	AZ	Tohono O'Odham Nation	99-1-0181-55-152-02	108,074	432,298	540,372
4	AZ	White Mountain Apache Tribe	99-1-0174-55-150-02	104,776	419,104	523,880
5	AR	American Indian Center of Arkansas, Inc.	99-1-1778-55-194-02	69,673	278,690	348,363
6	CA	American Indian Center of Santa Clara Va	99-1-0499-55-166-02	35,395	141,578	176,973
6	CA	California Indian Manpower Consortium, I	99-1-2058-55-203-02	526,711	2,106,844	2,633,555
6	CA	Candelaria American Indian Council	99-1-0086-55-133-02	68,955	275,820	344,775
6	CA	Indian Human Resources Center, Inc.	99-1-2441-55-209-02	72,716	290,866	363,582
6	CA	Northern CA Indian Development Council,	99-1-0686-55-175-02	51,823	207,292	259,115
6	CA	Southern CA Indian Center, Inc.	99-1-0170-55-147-02	298,100	1,192,401	1,490,501
6	CA	Tule River Tribal Council	99-1-3219-55-230-02	21,859	87,436	109,295
6	CA	United Indian Nations, Inc.	99-1-2310-55-208-02	96,124	384,494	480,618
6	CA	Ya-Ka-Ama Indian Education & Development	99-1-0082-55-132-02	19,799	79,196	98,995
8	CO	Denver Indian Center	99-1-0076-55-129-02	135,459	541,836	677,295
8	CO	Southern Ute Indian Tribe	99-1-2714-55-211-02	10,785	43,138	53,923
8	CO	Ute Mountain Ute Indian Tribe	99-1-1143-55-188-02	21,402	85,609	107,011
10	DE	Nanticoke Indian Association, Inc.	99-1-3518-55-251-02	6,113	24,452	30,565
12	FL	Florida Governor's Council on Indian Aff	99-1-0692-55-178-02	204,125	816,499	1,020,624

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U. S. Department of Labor
Employment and Training Administration
Native Americans PY 1995 JTPA Title IV-A Allotments
(With 80% Hold-Harmless)

State		Grantee	Grant Number	Administrative	Program	Total
12	FL	Miccosukee Corporation	99-1-0052-55-114-02	18,294	73,175	91,469
12	FL	Seminole Tribe of Florida	99-1-0004-55-076-02	18,409	73,636	92,045
15	HI	Alu Like, Inc.	99-1-1179-55-190-02	379,462	1,517,846	1,897,308
15	HI	State of HI Dept. of Labor and Industria	8-4262-3-00-81-55	16,875	67,502	84,377
16	ID	Kootenai Tribe of Idaho	99-1-3334-55-238-02	3,870	15,480	19,350
16	ID	Nez Perce Tribe	99-1-0065-55-122-02	17,042	68,168	85,210
16	ID	Shoshone-Bannock Tribes	99-1-1780-55-195-02	52,563	210,251	262,814
17	IL	Native Americans Educ Srvcs College	8-4260-3-00-81-55	111,467	445,870	557,337
18	IN	Indiana American Ind Manpower Council	8-4261-3-00-81-55	57,546	230,182	287,728
20	KS	Mid American All Indian Center, Inc.	99-1-0168-55-145-02	35,465	141,859	177,324
20	KS	United Tribes of Kansas and S.E. Nebrask	99-1-0178-55-151-02	88,808	355,234	444,042
22	LA	Inter-Tribal Council of Louisiana, Inc.	99-1-0026-55-092-02	141,494	565,975	707,469
23	ME	Central Maine Indian Association, Inc.	99-1-2719-55-212-02	17,597	70,386	87,983
23	ME	Tribal Governors, Inc.	99-1-0001-55-074-02	16,103	64,413	80,516
24	MD	Baltimore American Indian Center	99-1-3405-55-245-02	54,682	218,728	273,410
25	MA	Nashpee-Wampanoag Indian Tribal Council,	99-1-0408-55-161-02	14,524	58,097	72,621
25	MA	North American Indian Center of Boston,	8-4258-3-00-81-55	48,996	195,984	244,980
26	MI	Grand Traverse Band of Ottawa & Chippewa	99-1-2721-55-213-02	11,214	44,854	56,068
26	MI	Inter-Tribal Council of Michigan, Inc.	99-1-0172-55-148-02	14,202	56,807	71,009
26	MI	MI Indian Employment and Training Servi	99-1-1144-55-189-02	155,697	622,787	778,484
26	MI	North American Indian Association of Det	99-1-0695-55-180-02	58,011	232,045	290,056
26	MI	Potawatomi Indian Nation	99-1-3339-55-240-02	23,278	93,112	116,390
26	MI	Sault Ste. Marie Tribe of Chippewa India	99-1-0507-55-168-02	49,231	196,923	246,154
26	MI	Southeastern Michigan Indians, Inc.	99-1-3220-55-231-02	28,768	115,072	143,840
27	MN	American Indian Opportunities Center	99-1-3221-55-232-02	126,523	506,092	632,615
27	MN	Bois Forte R.B.C.	99-1-0010-55-081-02	5,938	23,752	29,690
27	MN	Fond Du Lac R.B.C.	99-1-0009-55-080-02	49,674	198,697	248,371
27	MN	Leech Lake R.B.C.	99-1-0012-55-083-02	45,186	180,744	225,930
27	MN	Mille Lacs Band of Chippewa Indians	99-1-0008-55-079-02	10,071	40,282	50,353
27	MN	Minneapolis American Indian Center	99-1-0204-55-154-02	93,504	374,014	467,518
27	MN	Red Lake Tribal Council	99-1-0017-55-086-02	48,051	192,204	240,255
27	MN	White Earth R.B.C.	99-1-0011-55-082-02	33,730	134,918	168,648
28	MS	Mississippi Band of Choctaw Indians	99-1-0005-55-077-02	60,552	242,206	302,758
29	MO	Region VII American Indian Council, Inc.	99-1-0967-55-182-02	99,823	399,291	499,114
30	MT	Assiniboine & Sioux Tribes	99-1-0033-55-098-02	56,550	226,201	282,751
30	MT	Blackfeet Tribal Business Council	99-1-0006-55-078-02	74,535	298,141	372,676
30	MT	Chippewa Cree Tribe	99-1-0035-55-100-02	29,481	117,923	147,404
30	MT	Confederated Salish & Kootenai Tribes	99-1-0031-55-096-02	58,846	235,385	294,231
30	MT	Crow Indian Tribe	99-1-0030-55-095-02	52,121	208,482	260,603
30	MT	Fort Belknap Indian Community	99-1-0032-55-097-02	21,430	85,720	107,150
30	MT	Montana United Indian Association	99-1-0074-55-127-02	92,623	370,491	463,114
30	MT	Northern Cheyenne Tribe	99-1-0034-55-099-02	46,785	187,140	233,925
31	NE	Indian Center, Inc.	99-1-2722-55-214-02	50,200	200,802	251,002
31	NE	Nebraska Indian Inter-Tribal Dev. Corp.	99-1-0087-55-134-02	81,736	326,942	408,678
32	NV	Inter-Tribal Council of Nevada	99-1-0058-55-118-02	75,654	302,616	378,270
32	NV	Las Vegas Indian Center, Inc.	99-1-0687-55-176-02	28,879	115,517	144,396
32	NV	Shoshone-Paiute Tribes	99-1-2723-55-215-02	26,239	104,957	131,196
34	NJ	Powhatan Renape Nation	99-1-3222-55-233-02	62,315	249,258	311,573

U. S. Department of Labor
Employment and Training Administration
Native Americans PY 1995 JTPA Title IV-A Allotments
(With 80% Hold-Harmless)

State		Grantee	Grant Number	Administrative	Program	Total
35	NM	Alamo Navajo School Board	99-1-2724-55-216-02	13,511	54,044	67,555
35	NM	All Indian Pueblo Council, Inc.	99-1-3341-55-241-02	28,526	114,104	142,630
35	NM	Eight Northern Indian Pueblo Council	99-1-3223-55-234-02	13,907	55,630	69,537
35	NM	Five Sandoval Indian Pueblos, Inc.	99-1-3336-55-239-02	23,058	92,230	115,288
35	NM	Jicarilla Apache Tribe	99-1-2725-55-217-02	14,752	59,009	73,761
35	NM	Mescalero Apache Tribe	99-1-3100-55-226-02	26,337	105,348	131,685
35	NM	National Indian Youth Council	99-1-0077-55-130-02	274,419	1,097,674	1,372,093
35	NM	Pueblo of Acoma	99-1-2199-55-204-02	34,558	138,230	172,788
35	NM	Pueblo of Laguna	99-1-1583-55-191-02	23,462	93,848	117,310
35	NM	Pueblo of Taos	99-1-2200-55-205-02	11,278	45,112	56,390
35	NM	Pueblo of Zuni	99-1-0021-55-089-02	65,737	262,948	328,685
35	NM	Ramah Navajo School Board, Inc.	99-1-0146-55-143-02	26,476	105,905	132,381
35	NM	Santa Clara Indian Pueblo	99-1-3224-55-235-02	7,259	29,035	36,294
35	NM	Santo Domingo Tribe	99-1-1781-55-196-02	19,480	77,922	97,402
36	NY	American Indian Community House, Inc.	99-1-0348-55-159-02	133,131	532,524	665,655
36	NY	Native American Cultural Center, Inc.	99-1-3407-55-246-02	51,126	204,503	255,629
36	NY	Native Am. Comm. Services of Erie & Nieg	99-1-0689-55-177-02	38,587	154,347	192,934
36	NY	St. Regis Mohawk Tribe	99-1-0522-55-171-02	31,879	127,516	159,395
36	NY	Seneca Nation of Indians	99-1-0169-55-146-02	47,023	188,092	235,115
37	NC	Cumberland County Association for Indian	99-1-1782-55-197-02	20,575	82,300	102,875
37	NC	Eastern Band of Cherokee Indians	99-1-0003-55-075-02	50,255	201,021	251,276
37	NC	Guilford Native American Association	99-1-2727-55-219-02	14,682	58,729	73,411
37	NC	Haliwa-Saponi Tribe, Inc.	99-1-3514-55-247-02	16,563	66,253	82,816
37	NC	Lumbee Regional Development Association	99-1-0067-55-123-02	217,680	870,722	1,088,402
37	NC	Metrolina Native American Association	99-1-2726-55-218-02	15,006	60,024	75,030
37	NC	North Carolina Commission of Indian Affa	99-1-0070-55-124-02	51,163	204,650	255,813
38	ND	Devils Lake Sioux Tribe	99-1-0037-55-101-02	31,881	127,523	159,404
38	ND	Standing Rock Sioux Tribe	99-1-0046-55-109-02	54,235	216,938	271,173
38	ND	Three Affiliated Tribes - Ft. Berthold R	99-1-0062-55-120-02	41,848	167,390	209,238
38	ND	Turtle Mountain Band of Chippewa Indians	99-1-0075-55-128-02	86,229	344,918	431,147
38	ND	United Tribes Technical College	99-1-0206-55-155-02	41,932	167,727	209,659
39	OH	North America Indian Cultural Centers	99-1-3349-55-242-02	113,363	453,454	566,817
40	OK	Caddo Tribe of Oklahoma	99-1-1783-55-198-02	6,915	27,658	34,573
40	OK	Central Tribes of Shawnee Area, Inc.	99-1-0038-55-102-02	22,727	90,908	113,635
40	OK	Cherokee Nation of Oklahoma	99-1-0027-55-093-02	329,122	1,316,487	1,645,609
40	OK	Cheyenne-Arapaho Tribes	99-1-0048-55-111-02	52,205	208,822	261,027
40	OK	Chickasaw Nation of Oklahoma	99-1-0042-55-105-02	117,506	470,026	587,532
40	OK	Choctaw Nation of Oklahoma	99-1-0041-55-104-02	170,403	681,610	852,013
40	OK	Citizen Band Potawatomi Indians of Oklah	99-1-2202-55-206-02	71,473	285,893	357,366
40	OK	Comanche Tribe of Oklahoma	99-1-3150-55-228-02	37,126	148,502	185,628
40	OK	Creek Nation of Oklahoma	99-1-0025-55-091-02	153,934	615,734	769,668
40	OK	Four Tribes Consortium of Oklahoma	99-1-2728-55-220-02	23,867	95,470	119,337
40	OK	Inter-Tribal Council of N.E. Oklahoma	99-1-1135-55-183-02	19,416	77,663	97,079
40	OK	Kiowa Tribe of Oklahoma	99-1-0047-55-110-02	48,491	193,963	242,454
40	OK	Oklahoma Tribal Assistance Program, Inc.	99-1-0072-55-125-02	79,573	318,293	397,866
40	OK	Osage Tribal Council	99-1-0022-55-090-02	28,626	114,503	143,129
40	OK	Otoe-Missouria Tribe of Oklahoma	99-1-2730-55-221-02	9,749	38,995	48,744
40	OK	Pawnee Tribe of Oklahoma	99-1-1785-55-200-02	10,305	41,222	51,527

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U. S. Department of Labor
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(With 80% Hold-Harmless)

State		Grantee	Grant Number	Administrative	Program	Total
40	OK	Ponca Tribe of Oklahoma	99-1-0029-55-094-02	23,771	95,083	118,854
40	OK	Seminole Nation of Oklahoma	99-1-0051-55-113-02	30,113	120,454	150,567
40	OK	Tonkawa Tribe of Oklahoma	99-1-1136-55-184-02	17,280	69,122	86,402
40	OK	United Urban Indian Council, Inc.	99-1-2731-55-222-02	127,566	510,263	637,829
41	OR	Confed. Tribes of Siletz Indians of Oreg	99-1-3153-55-229-02	121,791	487,162	608,953
41	OR	Confed. Tribes of the Umatilla Indian Re	99-1-3065-55-225-02	8,776	35,105	43,881
41	OR	Confederated Tribes of Warm Springs	99-1-0256-55-157-02	23,580	94,321	117,901
41	OR	Organization of Forgotten Americans	99-1-2732-55-223-02	84,263	337,051	421,314
42	PA	Council of Three Rivers	99-1-0642-55-172-02	124,445	497,781	622,226
42	PA	United American Indians of the Delaware	99-1-0477-55-163-02	30,288	121,151	151,439
44	RI	Rhode Island Indian Council	99-1-0510-55-169-02	50,875	203,498	254,373
45	SC	Catawba Indian Nation	99-1-3516-55-249-02	40,457	161,828	202,285
46	SD	Cheyenne River Sioux Tribe	99-1-0039-55-103-02	56,052	224,209	280,261
46	SD	Lower Brule Sioux Tribe	99-1-0073-55-126-02	10,477	41,906	52,383
46	SD	Oglala Sioux Tribe	99-1-0043-55-106-02	146,031	584,122	730,153
46	SD	Rosebud Sioux Tribe	99-1-0044-55-107-02	94,246	376,983	471,229
46	SD	Sisseton-Wahpeton Sioux Tribe	99-1-0045-55-108-02	36,527	146,106	182,633
46	SD	United Sioux Tribe Development Corp.	99-1-0165-55-144-02	146,340	585,362	731,702
47	TN	Native American Indian Association	99-1-3515-55-248-02	64,682	258,729	323,411
48	TX	Alabama-Coushatta Indian Tribal Council	99-1-1784-55-199-02	139,456	557,826	697,282
48	TX	Dallas Inter-Tribal Center	99-1-0078-55-131-02	71,833	287,334	359,167
48	TX	Ysleta del Sur Pueblo	99-1-2099-55-202-02	84,942	339,767	424,709
49	UT	Indian Center Employment Services, Inc.	99-1-3517-55-250-02	104,003	416,010	520,013
49	UT	Ute Indian Tribe	99-1-0049-55-112-02	25,907	103,627	129,534
50	VT	Abenaki Self-Help Association/ NH Ind. C	99-1-3064-55-224-02	25,612	102,448	128,060
51	VA	Mattaponi Pamunkey Monacan Consortium	99-1-3227-55-236-02	49,307	197,227	246,534
53	WA	American Indian Community Center	99-1-1138-55-186-02	147,745	590,982	738,727
53	WA	Colville Confederated Tribes	99-1-1726-55-192-02	38,169	152,678	190,847
53	WA	Lummi Indian Business Council	99-1-2204-55-256-02	22,457	89,828	112,285
53	WA	Northwest Inter-Tribal Council	99-1-0069-55-174-02	18,674	74,695	93,369
53	WA	Puyallup Tribe of Indians	99-1-1137-55-185-02	32,401	129,606	162,007
53	WA	Seattle Indian Center	99-1-0511-55-170-02	79,867	319,466	399,333
53	WA	Western WA Indian Empl. and Trng Pgm.	99-1-1933-55-201-02	161,583	646,330	807,913
55	WI	Lac Courte Oreilles Tribal Governing Boa	99-1-0018-55-087-02	31,972	127,889	159,861
55	WI	Lac Du Flambeau Band of Lake Superior Ch	99-1-1139-55-187-02	17,300	69,201	86,501
55	WI	Menominee Indian Tribe of Wisconsin	99-1-0013-55-084-02	33,124	132,494	165,618
55	WI	Milwaukee Area Am. Ind. Manpower Council	99-1-0227-55-156-02	48,910	195,642	244,552
55	WI	Oneida Tribe of Indians of WI, Inc.	99-1-0015-55-085-02	43,008	172,033	215,041
55	WI	Stockbridge-Munsee Community	99-1-0500-55-167-02	15,640	62,560	78,200
55	WI	Wisconsin Indian Consortium	99-1-2207-55-207-02	30,382	121,529	151,911
55	WI	Wisconsin Winnebago Business Committee	99-1-0019-55-088-02	43,031	172,124	215,155
56	WY	Shoshone/Arapahoe Tribes	99-1-0050-55-252-02	82,914	331,658	414,572

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State		Grantee	Grant Number	Administrative	Program	Total
		NATIONAL TOTAL		2,365,257	13,403,113	15,768,370
1	AL	Inter-Tribal Council of Alabama	99-1-3624-55-255-02	0	0	0
1	AL	Poarch Band of Creek Indians	99-1-0648-55-173-02	760	4,307	5,067
2	AK	Aleutian/Pribilof Islands Association	99-1-0117-55-139-02	4,434	25,126	29,560
2	AK	Association of Village Council President	99-1-2713-55-210-02	35,166	199,162	234,308
2	AK	Bristol Bay Native Association	99-1-0116-55-138-02	9,828	55,690	65,518
2	AK	Central Council of Tlingit and Haida	99-1-0114-55-136-02	27,075	153,422	180,497
2	AK	Chugachmiut	99-1-0118-55-140-02	4,000	22,664	26,664
2	AK	Cook Inlet Tribal Council	99-1-3402-55-243-02	45,697	258,952	304,649
2	AK	Kawerak Incorporated	99-1-0123-55-141-02	14,442	81,839	96,281
2	AK	Kenaitze Indian Tribe	99-1-0089-55-135-02	3,963	22,460	26,423
2	AK	Kodiak Area Native Association	99-1-0115-55-137-02	5,267	29,843	35,110
2	AK	Maniilaq Manpower	99-1-0124-55-142-02	12,325	69,840	82,165
2	AK	Metlakatla Indian Community	99-1-0064-55-121-02	2,534	14,357	16,891
2	AK	Orutsararmuit Native Council	8-4259-3-00-81-55	6,642	37,638	44,280
2	AK	Tanana Chiefs Conference, Inc.	99-1-3109-55-227-02	35,472	201,008	236,480
4	AZ	Affiliation of Arizona Ind. Cntrs. Inc.	99-1-0268-55-158-02	0	0	0
4	AZ	American Indian Association of Tucson	99-1-0492-55-164-02	0	0	0
4	AZ	Colorado River Indian Tribes	99-1-0498-55-165-02	5,828	33,022	38,850
4	AZ	Gila River Indian Community	99-1-0054-55-116-02	25,681	145,526	171,207
4	AZ	Hopi Tribal Council	99-1-0057-55-117-02	17,989	101,940	119,929
4	AZ	Indian Development District of Arizona,	99-1-0053-55-115-02	7,800	44,201	52,001
4	AZ	Native Americans for Community Action	99-1-1777-55-193-02	0	0	0
4	AZ	Navajo Nation	99-1-0059-55-119-02	390,680	2,213,854	2,604,534
4	AZ	Pasqua Yaqui Tribe	99-1-3289-55-237-02	6,570	37,227	43,797
4	AZ	Phoenix Indian Center, Inc.	99-1-0195-55-153-02	0	0	0
4	AZ	Salt River Pima-Maricopa Indian Council	99-1-0476-55-162-02	9,248	52,406	61,654
4	AZ	San Carlos Apache Tribe	99-1-0173-55-149-02	17,591	99,684	117,275
4	AZ	Tohono O'Odham Nation	99-1-0181-55-152-02	23,491	133,117	156,608
4	AZ	White Mountain Apache Tribe	99-1-0174-55-150-02	23,527	133,322	156,849
5	AR	American Indian Center of Arkansas, Inc.	99-1-1778-55-194-02	0	0	0
6	CA	American Indian Center of Santa Clara Va	99-1-0499-55-166-02	0	0	0
6	CA	California Indian Manpower Consortium, I	99-1-2058-55-203-02	28,721	162,755	191,476
6	CA	Candelaria American Indian Council	99-1-0086-55-133-02	0	0	0
6	CA	Indian Human Resources Center, Inc.	99-1-2441-55-209-02	0	0	0
6	CA	Northern CA Indian Development Council,	99-1-0686-55-175-02	1,914	10,848	12,762
6	CA	Southern CA Indian Center, Inc.	99-1-0170-55-147-02	0	0	0
6	CA	Tule River Tribal Council	99-1-3219-55-230-02	2,154	12,204	14,358
6	CA	United Indian Nations, Inc.	99-1-2310-55-208-02	0	0	0
6	CA	Ya-Ka-Ama Indian Education & Development	99-1-0082-55-132-02	0	0	0
8	CO	Denver Indian Center	99-1-0076-55-129-02	0	0	0
8	CO	Southern Ute Indian Tribe	99-1-2714-55-211-02	3,004	17,024	20,028
8	CO	Ute Mountain Ute Indian Tribe	99-1-1143-55-188-02	3,656	20,716	24,372
10	DE	Nanticoke Indian Association, Inc.	99-1-3518-55-251-02	0	0	0
12	FL	Florida Governor's Council on Indian Aff	99-1-0692-55-178-02	0	0	0

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State		Grantee	Grant Number	Administrative	Program	Total
12	FL	Miccosukee Corporation	99-1-0052-55-114-02	4,949	28,044	32,993
12	FL	Seminole Tribe of Florida	99-1-0004-55-076-02	3,891	22,049	25,940
15	HI	Alu Like, Inc.	99-1-1179-55-190-02	340,024	1,926,803	2,266,827
15	HI	State of HI Dept. of Labor and Industria	8-4262-3-00-81-55	0	0	0
16	ID	Kootenai Tribe of Idaho	99-1-3334-55-238-02	164	926	1,090
16	ID	Nez Perce Tribe	99-1-0065-55-122-02	5,303	30,048	35,351
16	ID	Shoshone-Bannock Tribes	99-1-1780-55-195-02	7,004	39,689	46,693
17	IL	Native Americans Educ Srvcs College	8-4260-3-00-81-55	0	0	0
18	IN	Indiana American Ind Manpower Council	8-4261-3-00-81-55	0	0	0
20	KS	Mid American All Indian Center, Inc.	99-1-0168-55-145-02	0	0	0
20	KS	United Tribes of Kansas and S.E. Nebrask	99-1-0178-55-151-02	2,298	13,025	15,323
22	LA	Inter-Tribal Council of Louisiana, Inc.	99-1-0026-55-092-02	677	3,835	4,512
23	ME	Central Maine Indian Association, Inc.	99-1-2719-55-212-02	0	0	0
23	ME	Tribal Governors, Inc.	99-1-0001-55-074-02	3,692	20,921	24,613
24	MD	Baltimore American Indian Center	99-1-3405-55-245-02	0	0	0
25	MA	Mashpee-Wampanoag Indian Tribal Council,	99-1-0408-55-161-02	0	0	0
25	MA	North American Indian Center of Boston,	8-4258-3-00-81-55	0	0	0
26	MI	Grand Traverse Band of Ottawa & Chippewa	99-1-2721-55-213-02	633	3,590	4,223
26	MI	Inter-Tribal Council of Michigan, Inc.	99-1-0172-55-148-02	7,131	40,406	47,537
26	MI	MI Indian Employment and Training Servi	99-1-1164-55-189-02	0	0	0
26	MI	North American Indian Association of Det	99-1-0695-55-180-02	0	0	0
26	MI	Potawatomi Indian Nation	99-1-3339-55-240-02	0	0	0
26	MI	Sault Ste. Marie Tribe of Chippewa India	99-1-0507-55-168-02	9,646	54,662	64,308
26	MI	Southeastern Michigan Indians, Inc.	99-1-3220-55-231-02	0	0	0
27	MN	American Indian Opportunities Center	99-1-3221-55-232-02	0	0	0
27	MN	Bois Forte R.B.C.	99-1-0010-55-081-02	1,109	6,283	7,392
27	MN	Fond Du Lac R.B.C.	99-1-0009-55-080-02	2,859	16,204	19,063
27	MN	Leech Lake R.B.C.	99-1-0012-55-083-02	7,873	44,611	52,484
27	MN	Mille Lacs Band of Chippewa Indians	99-1-0008-55-079-02	1,097	6,218	7,315
27	MN	Minneapolis American Indian Center	99-1-0204-55-154-02	1,529	8,665	10,194
27	MN	Red Lake Tribal Council	99-1-0017-55-086-02	9,519	53,944	63,463
27	MN	White Earth R.B.C.	99-1-0011-55-082-02	6,233	35,319	41,552
28	MS	Mississippi Band of Choctaw Indians	99-1-0005-55-077-02	10,334	58,559	68,893
29	MO	Region VII American Indian Council, Inc.	99-1-0967-55-182-02	0	0	0
30	MT	Assiniboine & Sioux Tribes	99-1-0033-55-098-02	13,628	77,224	90,852
30	MT	Blackfeet Tribal Business Council	99-1-0006-55-078-02	15,492	87,787	103,279
30	MT	Chippewa Cree Tribe	99-1-0035-55-100-02	5,176	29,331	34,507
30	MT	Confederated Salish & Kootenai Tribes	99-1-0031-55-096-02	14,569	82,557	97,126
30	MT	Crow Indian Tribe	99-1-0030-55-095-02	12,650	71,686	84,336
30	MT	Fort Belknap Indian Community	99-1-0032-55-097-02	5,393	30,562	35,955
30	MT	Montana United Indian Association	99-1-0074-55-127-02	0	0	0
30	MT	Northern Cheyenne Tribe	99-1-0034-55-099-02	10,678	60,507	71,185
31	NE	Indian Center, Inc.	99-1-2722-55-214-02	0	0	0
31	NE	Nebraska Indian Inter-Tribal Dev. Corp.	99-1-0087-55-134-02	8,705	49,329	58,034
32	NV	Inter-Tribal Council of Nevada	99-1-0058-55-118-02	13,121	74,352	87,473
32	NV	Las Vegas Indian Center, Inc.	99-1-0687-55-176-02	0	0	0
32	NV	Shoshone-Paiute Tribes	99-1-2723-55-215-02	2,381	13,494	15,875
34	NJ	Powhatan Renape Nation	99-1-3222-55-233-02	0	0	0

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State		Grantee	Grant Number	Administrative	Program	Total
35	NM	Alamo Navajo School Board	99-1-2724-55-216-02	4,235	23,998	28,233
35	NM	All Indian Pueblo Council, Inc.	99-1-3341-55-241-02	11,619	65,840	77,459
35	NM	Eight Northern Indian Pueblo Council	99-1-3223-55-234-02	5,248	29,741	34,989
35	NM	Five Sandoval Indian Pueblos, Inc.	99-1-3336-55-239-02	10,008	56,713	66,721
35	NM	Jicarilla Apache Tribe	99-1-2725-55-217-02	6,787	38,458	45,245
35	NM	Mescalero Apache Tribe	99-1-3100-55-226-02	6,189	35,074	41,263
35	NM	National Indian Youth Council	99-1-0077-55-130-02	0	0	0
35	NM	Pueblo of Acoma	99-1-2199-55-204-02	6,660	37,740	44,400
35	NM	Pueblo of Laguna	99-1-1583-55-191-02	7,981	45,227	53,208
35	NM	Pueblo of Taos	99-1-2200-55-205-02	2,606	14,768	17,374
35	NM	Pueblo of Zuni	99-1-0021-55-089-02	19,401	109,939	129,340
35	NM	Ramah Navajo School Board, Inc.	99-1-0146-55-143-02	5,267	29,843	35,110
35	NM	Santa Clara Indian Pueblo	99-1-3224-55-235-02	3,004	17,024	20,028
35	NM	Santo Domingo Tribe	99-1-1781-55-196-02	8,216	46,560	54,776
36	NY	American Indian Community House, Inc.	99-1-0348-55-159-02	0	0	0
36	NY	Native American Cultural Center, Inc.	99-1-3407-55-246-02	2,860	16,205	19,065
36	NY	Native Am. Comm. Services of Erie & Niag	99-1-0689-55-177-02	0	0	0
36	NY	St. Regis Mohawk Tribe	99-1-0522-55-171-02	4,452	25,229	29,681
36	NY	Seneca Nation of Indians	99-1-0169-55-146-02	8,072	45,739	53,811
37	NC	Cumberland County Association for Indian	99-1-1782-55-197-02	0	0	0
37	NC	Eastern Band of Cherokee Indians	99-1-0003-55-075-02	14,569	82,557	97,126
37	NC	Guilford Native American Association	99-1-2727-55-219-02	0	0	0
37	NC	Haliwa-Saponi Tribe, Inc.	99-1-3514-55-247-02	0	0	0
37	NC	Lumbee Regional Development Association	99-1-0067-55-123-02	0	0	0
37	NC	Metrolina Native American Association	99-1-2726-55-218-02	0	0	0
37	NC	North Carolina Commission of Indian Affa	99-1-0070-55-124-02	0	0	0
38	ND	Devils Lake Sioux Tribe	99-1-0037-55-101-02	7,348	41,637	48,985
38	ND	Standing Rock Sioux Tribe	99-1-0046-55-109-02	14,732	83,479	98,211
38	ND	Three Affiliated Tribes - Ft. Berthold R	99-1-0062-55-120-02	7,927	44,919	52,846
38	ND	Turtle Mountain Band of Chippewa Indians	99-1-0075-55-128-02	17,790	100,812	118,602
38	ND	United Tribes Technical College	99-1-0206-55-155-02	0	0	0
39	OH	North America Indian Cultural Centers	99-1-3349-55-242-02	0	0	0
40	OK	Caddo Tribe of Oklahoma	99-1-1783-55-198-02	1,973	11,178	13,151
40	OK	Central Tribes of Shawnee Area, Inc.	99-1-0038-55-102-02	8,198	46,458	54,656
40	OK	Cherokee Nation of Oklahoma	99-1-0027-55-093-02	171,912	974,170	1,146,082
40	OK	Cheyenne-Arapaho Tribes	99-1-0048-55-111-02	17,682	100,196	117,878
40	OK	Chickasaw Nation of Oklahoma	99-1-0042-55-105-02	59,434	336,790	396,224
40	OK	Choctaw Nation of Oklahoma	99-1-0041-55-104-02	79,052	447,960	527,012
40	OK	Citizen Band Potawatomi Indians of Oklah	99-1-2202-55-206-02	50,131	284,078	334,209
40	OK	Comanche Tribe of Oklahoma	99-1-3150-55-228-02	16,252	92,094	108,346
40	OK	Creek Nation of Oklahoma	99-1-0025-55-091-02	77,097	436,884	513,981
40	OK	Four Tribes Consortium of Oklahoma	99-1-2728-55-220-02	5,773	32,715	38,488
40	OK	Inter-Tribal Council of N.E. Oklahoma	99-1-1135-55-183-02	9,302	52,714	62,016
40	OK	Kiowa Tribe of Oklahoma	99-1-0047-55-110-02	15,275	86,556	101,831
40	OK	Oklahoma Tribal Assistance Program, Inc.	99-1-0072-55-125-02	41,951	237,722	279,673
40	OK	Osage Tribal Council	99-1-0022-55-090-02	12,234	69,327	81,561
40	OK	Otoe-Missouria Tribe of Oklahoma	99-1-2730-55-221-02	3,764	21,332	25,096
40	OK	Pawnee Tribe of Oklahoma	99-1-1785-55-200-02	4,669	26,459	31,128

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(With 80% Hold-Harmless)

State		Grantee	Grant Number	Administrative	Program	Total
40	OK	Ponca Tribe of Oklahoma	99-1-0029-55-094-02	8,597	48,713	57,310
40	OK	Seminole Nation of Oklahoma	99-1-0051-55-113-02	11,347	64,302	75,649
40	OK	Tonkawa Tribe of Oklahoma	99-1-1136-55-184-02	6,642	37,638	44,280
40	OK	United Urban Indian Council, Inc.	99-1-2731-55-222-02	62,384	353,507	415,891
41	OR	Confed. Tribes of Siletz Indians of Oreg	99-1-3153-55-229-02	3,457	19,588	23,045
41	OR	Confed. Tribes of the Umatilla Indian Re	99-1-3065-55-225-02	2,642	14,973	17,615
41	OR	Confederated Tribes of Warm Springs	99-1-0256-55-157-02	7,963	45,124	53,087
41	OR	Organization of Forgotten Americans	99-1-2732-55-223-02	514	2,910	3,424
42	PA	Council of Three Rivers	99-1-0642-55-172-02	0	0	0
42	PA	United American Indians of the Delaware	99-1-0477-55-163-02	0	0	0
44	RI	Rhode Island Indian Council	99-1-0510-55-169-02	109	615	724
45	SC	Catawba Indian Nation	99-1-3516-55-249-02	0	0	0
46	SD	Cheyenne River Sioux Tribe	99-1-0039-55-103-02	13,610	77,121	90,731
46	SD	Lower Brule Sioux Tribe	99-1-0073-55-126-02	2,769	15,691	18,460
46	SD	Oglala Sioux Tribe	99-1-0043-55-106-02	29,626	167,883	197,509
46	SD	Rosebud Sioux Tribe	99-1-0044-55-107-02	25,500	144,500	170,000
46	SD	Sisseton-Wahpeton Sioux Tribe	99-1-0045-55-108-02	7,511	42,560	50,071
46	SD	United Sioux Tribe Development Corp.	99-1-0165-55-144-02	12,415	70,353	82,768
47	TN	Native American Indian Association	99-1-3515-55-248-02	0	0	0
48	TX	Alabama-Coushatta Indian Tribal Council	99-1-1784-55-199-02	1,502	8,512	10,014
48	TX	Dallas Inter-Tribal Center	99-1-0078-55-131-02	0	0	0
48	TX	Ysleta del Sur Pueblo	99-1-2099-55-202-02	1,459	8,268	9,727
49	UT	Indian Center Employment Services, Inc.	99-1-3517-55-250-02	688	3,897	4,585
49	UT	Ute Indian Tribe	99-1-0049-55-112-02	6,371	36,099	42,470
50	VT	Abenaki Self-Help Association/ NH Ind. C	99-1-3064-55-224-02	0	0	0
51	VA	Mattaponi Pamunkey Monacan Consortium	99-1-3227-55-236-02	0	0	0
53	WA	American Indian Community Center	99-1-1138-55-186-02	22,912	129,835	152,747
53	WA	Colville Confederated Tribes	99-1-1726-55-192-02	9,465	53,636	63,101
53	WA	Lummi Indian Business Council	99-1-2204-55-256-02	4,488	25,434	29,922
53	WA	Northwest Inter-Tribal Council	99-1-0069-55-174-02	6,461	36,612	43,073
53	WA	Puyallup Tribe of Indians	99-1-1137-55-185-02	2,486	14,088	16,574
53	WA	Seattle Indian Center	99-1-0511-55-170-02	0	0	0
53	WA	Western WA Indian Empl. and Trng Pgm.	99-1-1933-55-201-02	16,306	92,398	108,704
55	WI	Lac Courte Oreilles Tribal Governing Boa	99-1-0018-55-087-02	5,936	33,638	39,574
55	WI	Lac Du Flambeau Band of Lake Superior Ch	99-1-1139-55-187-02	3,710	21,024	24,734
55	WI	Menominee Indian Tribe of Wisconsin	99-1-0013-55-084-02	7,746	43,893	51,639
55	WI	Milwaukee Area Am. Ind. Manpower Council	99-1-0227-55-156-02	0	0	0
55	WI	Oneida Tribe of Indians of WI, Inc.	99-1-0015-55-085-02	5,791	32,818	38,609
55	WI	Stockbridge-Munsee Community	99-1-0500-55-167-02	1,179	6,680	7,859
55	WI	Wisconsin Indian Consortium	99-1-2207-55-207-02	4,706	26,664	31,370
55	WI	Wisconsin Winnebago Business Committee	99-1-0019-55-088-02	1,891	10,714	12,605
56	WY	Shoshone/Arapahoe Tribes	99-1-0050-55-252-02	14,207	80,506	94,713

[FR Doc. 95-3405 Filed 2-9-95; 8:45 am]
BILLING CODE 4510-30-C

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than February 21, 1995.

Also, interested person are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than February 21, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner union/workers/firm—	Location	Date received at Governor's office	Petition No.	Articles produced
Dover Parkersburg; Louis Berkman Companies (ACTWU).	Fall River, MA	12/27/94	NAFTA–00318	Sheet metal fabricating.
Woodward Governor Company; Aircraft Group (wkrs).	Stevens Point, WI	12/27/94	NAFTA–00319	Parts for aircraft engines
Fenestra Corporation (USW)	Erie, PA	12/27/94	NAPTA–00320	Steel door and frames.
General Imaging Technology Inc. (USA): Denver Plant (Co.).	Arvada, CO	12/27/94	NAFTA–00321	Slitting of thermal transfer ribbon.
Kirkwood Industries; Kepco Manufacturing, Inc. (wkrs).	Cleveland, OH	01/03/95	NAFTA–00322	Electrical motor components; slip rings, carbon brushes, mica insulation.
LeVelle Powder Co., Inc. (wkrs)	Butte, MT	01/05/95	NAFTA–00323	Trucking and hauling of talc.
Eveready Battery Company; aka Energizer Power Systems (wkrs).	El Paso, TX	01/09/95	NAFTA–00324	Consumer and industrial rechargeable batteries.
Regency Vegetable House; of Regency Reality Farm Division (wkrs).	Naples, FL	01/09/95	NAFTA–00325	Packing of green peppers.
Helca Mining Co., Inc., Republic Unit (wkrs).	Republic, WA	01/09/95	NAFTA–00326	Processed gold and silver.
Digital Equipment Corporation (wkrs)	Maynard, MA	01/13/95	NAFTA–00327	Field services for computer systems
Hubbell-Bell; RACO (IBEW)	Fogelsville, PA	01/12/95	NAFTA–00328	Electrical fittings.
Swift Adhesives; Riechold Chemical (wkrs).	St. Joseph, MO	01/13/95	NAFTA–00329	Protein glue.
Melnor Inc. (Co.)	Moonachie, NJ	01/12/95	NAFTA–00330	Lawn and garden equipment.
English Squire; Dick Lynott Inc. (Co.)	Duluth, GA	01/17/95	NAFTA–00331	Men's jackets and outerwear.
Fairchild Aircraft (wkrs)	San Antonio, TX	01/18/95	NAFTA–00332	Small aircraft.
A-Tek (Co.)	Brainerd, MN	01/18/95	NAFTA–00333	Video cassette sub-assemblies
West Helena; Helena Sportswear, Inc (wkrs).	West Helena, AR	01/18/95	NAFTA–00334	Ladies lined jackets and suits.
Mallinckrodt Medical, Inc.; Mallinckrodt Anesthesiology (wkrs).	Argyle, NY	01/18/95	NAFTA–00335	Airway management products.
Reiniger Brothers Inc. (wkrs)	Hatsboro, PA	01/18/95	NAFTA–00336	Fresh cut flowers (ie. roses).
AlliedSignal, Inc.; Filters & Spark Plugs Group (FEIU).	Greenville, OH	01/17/95	NAFTA–00337	Air filters, oil filters, and spark plugs for automobiles.
Burns Philip; Fleischmann's Yeast Inc. (Teamsters).	Sumner, WA	01/19/95	NAFTA–00338	Yeast.
J. K. Operating Corporation (wkrs)	Kulpmont, PA	01/19/95	NAFTA–00339	Women's sleepwear.
Leland Electrosystems, Inc.; Erie (UEW)	Erie, PA	01/19/95	NAFTA–00340	Parts for aerospace electrical motors, starters, generators, and commercial aircraft.
Statler Tissue Company (UIPU)	Augusta, ME	01/19/95	NAFTA–00341	Tissue products; toilet tissue, napkins, facial tissue, and absorbent towels.
Johnson & Johnson; Personal Products Division (Co.).	N. Little Rock, AR	01/23/95	NAFTA–00342	Sanitary undergarments for adults (ie Serenity).
Woodward Governor Company; Industrial Controls Div. (wkrs).	Stevens Point, WI	01/23/95	NAFTA–00343	Hydro mechanical controls.
Alfa-Laval; Hudson Valley Polymers (IAM).	Poughkeepsie, NY	01/23/95	NAFTA–00344	Rubber parts used in alfa-laval milking.

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APPENDIX—Continued

Petitioner union/workers/firm—	Location	Date received at Governor's office	Petition No.	Articles produced
Johnson Controls, Battery Group Inc. (UAW)	Owosso, MI	01/23/95	NAFTA–00345	O–E and aftermarket batterys
D & G Shake Co., Inc. (Co.)	Amanda Park, WA	01/24/95	NAFTA–00346	Red cedar shakes, shingles, hip and ridge.
London Fog Pacific Trail, Spokane Division (Teamsters)	Spokane, WA	01/24/95	NAFTA–00347	All season recreational clothing; all genders.
Martin Marietta; Ocean Radar & Sensor Systems (IAM)	Utica, NY	01/24/95	NAFTA–00348	Long range radar systems
Unysis; Government Systems Group (IUE)	Great Neck, NY	01/26/95	NAFTA–00349	Circuit cards
Memotec (wkrs)	North Andover, MA	01/27/95	NAFTA–00350	Data communications equipment ie modems, network equipment.
Eagle Coach Corporation (wkrs)	Brownsville, TX	01/27/95	NAFTA–00351	Coach buses.
Washington Public Power Supply; Satsop Subdivision (IBEW)	Richland, WA	01/27/95	NAFTA–00352	Electrical energy.
Anderson Middleton; Grays Harbor Veneer (Co.)	Hoquiam, WA	01/27/95	NAFTA–00353	Soft wood lumber veneer

[FR Doc. 95–3402 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00271]

Nalley's Fine Foods, Tacoma, Washington; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 9, 1994, applicable to all workers of Curtice Burns Foods, Incorporated, a Division of Nalley's Fine Foods in Tacoma, Washington. The certification was published in the **Federal Register** January 3, 1995 (60 FR 149)

The Department, on its own motion, reviewed the certification for workers of the subject firm. The investigation findings show that the scope of the investigation is limited to Nalley's Fine Foods in Tacoma, Washington. Accordingly, the Department is amending the certification to properly reflect this matter

The amended notice applicable to NAFTA–00271 is hereby issued as follows

All workers of Nalley's Fine Foods, Tacoma, Washington who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974

Signed in Washington, DC, this 31st day of January 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3403 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued

Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

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California

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Colorado

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Guam

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Hawaii

HI94–1 (Feb. 11, 1994) (HI95–1)

Idaho

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Montana

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Utah

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Washington

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Wyoming

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WY94–24 (Feb. 11, 1994) (WY95–24)

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

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New York
NY950072 (Feb. 10, 1995)
NY950073 (Feb. 10, 1995)

Volume III

Alabama
AL950037 (Feb. 10, 1995)
Mississippi
MS950055 (Feb. 10, 1995)
MS950056 (Feb. 10, 1995)

Volume IV

Indiana
IN950040 (Feb. 10, 1995)
IN950043 (Feb. 10, 1995)

Volume VI

Utah
UT950034 (Feb. 10, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950005 (Feb. 10, 1995)
Rhode Island
RI950001 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950001 (Feb. 10, 1995)
Virginia
VA950016 (Feb. 10, 1995)

Volume III

North Carolina
NC950010 (Feb. 10, 1995)
NC950011 (Feb. 10, 1995)
NC950016 (Feb. 10, 1995)
NC950025 (Feb. 10, 1995)
NC950026 (Feb. 10, 1995)
NC950031 (Feb. 10, 1995)

Volume IV

None

WY94–16 (Feb. 11, 1994) (WY95–16)
WY94–17 (Feb. 11, 1994) (WY95–17)
WY94–18 (Feb. 11, 1994) (WY95–18)
WY94–19 (Feb. 11, 1994) (WY95–19)
WY94–20 (Feb. 11, 1994) (WY95–20)
WY94–21 (Feb. 11, 1994) (WY95–21)
WY94–22 (Feb. 11, 1994) (WY95–22)
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WY94–24 (Feb. 11, 1994) (WY95–24)

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume I

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NY950073 (Feb. 10, 1995)

Volume III

Alabama
AL950037 (Feb. 10, 1995)
Mississippi
MS950055 (Feb. 10, 1995)
MS950056 (Feb. 10, 1995)

Volume IV

Indiana
IN950040 (Feb. 10, 1995)
IN950043 (Feb. 10, 1995)

Volume VI

Utah
UT950034 (Feb. 10, 1995)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY950005 (Feb. 10, 1995)
Rhode Island
RI950001 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950001 (Feb. 10, 1995)
Virginia
VA950016 (Feb. 10, 1995)

Volume III

North Carolina
NC950010 (Feb. 10, 1995)
NC950011 (Feb. 10, 1995)
NC950016 (Feb. 10, 1995)
NC950025 (Feb. 10, 1995)
NC950026 (Feb. 10, 1995)
NC950031 (Feb. 10, 1995)

Volume IV

None

Volume V

Iowa
IA950007 (Feb. 10, 1995)
IA950029 (Feb. 10, 1995)
IA950037 (Feb. 10, 1995)
Kansas
KS950014 (Feb. 10, 1995)

Volume VI

North Dakota
ND950002 (Feb. 10, 1995)
ND950004 (Feb. 10, 1995)
ND950047 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 6th day of February 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–3328 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–09855, et al.]

Proposed Exemptions; PACCAR Inc. Savings Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR

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32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

PACCAR Inc Savings Investment Plan (the Plan) Located in Bellevue, Washington

[Application No. D–09855]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed guarantee (the Guarantee) by PACCAR Inc (the Employer), the sponsor of the Plan, of the Plan's investment in a guaranteed investment contract (the GIC) issued by Confederation Life Insurance Company (Confederation Life), including the potential extensions of credit to the Plan by the Employer (the Advances) pursuant to the Guarantee; and (2) the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(B) The Repayments are made only from GIC Proceeds, defined as the amounts actually received by the Plan (1) from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or (2) from the sale or transfer of the GIC to unrelated third parties;

(C) The Repayments will be made only after the Plan has recovered, through the Advances plus GIC Proceeds, the amount guaranteed by the Employer with respect to the GIC; and

(D) To the extent the Advances exceed GIC Proceeds, Repayment of the difference will be waived.

Summary of Facts and Representations

Introduction

Confederation Life was recently placed in a receivership. As a result, the Confederation Life GIC owned by the Plan is frozen, and the future of Confederation Life is uncertain. The Employer, PACCAR Inc, proposes to protect the Plan from loss on its investment in the GIC, by guaranteeing the value of the GIC as of the commencement of the receivership, as described below.

1. The Employer is a publicly-owned Delaware corporation engaged in the production of class 8 trucks, winches, oil drilling equipment and retail auto parts. Its principal place of business is Bellevue, Washington. The Employer sponsors the Plan, which is a defined contribution 401(k) plan, providing for individually-directed participant accounts (the Accounts). As of September 21, 1994, the Plan had 4,816 participants and, as of July 31, 1994, total assets of approximately $211,979,510. The trustee of the Plan is Fidelity Management Trust Company of Boston, Massachusetts (the Trustee). Plan participants may invest their accounts in and among six investment funds, including an income fund (the I Fund) which consists of guaranteed investment contracts issued by insurance companies, a cash short-term investment fund, and units in a group trust maintained by the Trustee and designated as the Fidelity Managed Income Portfolio II of the Fidelity Group Trust for Employee Benefit Plans (the MI Portfolio).

2. Among the assets of the I Fund is the GIC, which is identified as Confederation Life Guaranteed Investment Contract No. 62185, issued to the Plan by Confederation Life on July 10, 1990 for a principal deposit of $6 million. The GIC is a single-deposit, non-benefit-responsive contract, with interest on principal at the annual rate of 9.67 percent, requiring payment to the Plan of $9.49 million on the maturity date of June 30, 1995 (the Maturity Date). On August 12, 1994 (the Receivership Date), Confederation life was placed in receivership (the Receivership) pursuant to rehabilitation proceedings by the State of Michigan.[1] Consequently, Confederation Life's assets and operations were frozen, and payments on all its guaranteed investment contracts, including the GIC held by the Plan, were suspended effective as of the Receivership Date. As of the Receivership Date, the total GIC principal and accumulated interest was $8.752 million (the Receivership Value), representing 17.92 percent of the assets of the I Fund.

3. In order to avoid liquidity problems in the I Fund, after the Receivership was announced, the Employer and the Trustee froze the I Fund assets invested in the GIC. The Employer represents that it appears unlikely that Confederation Life will make timely payment to the Plan upon the Maturity Date of the GIC. The Employer has notified Plan participants that it will undertake measures to protect the Accounts from adverse effects of any nonpayment of the GIC or from the effects of a lengthy rehabilitation of Confederation Life. Accordingly, the Employer proposes to guarantee the Plan's investment in the GIC plus interest, by means of potential extensions of credit to the Plan, and is requesting an exemption for these transactions under the terms and conditions described herein.

4. The terms of the Employer's guarantee (the Guarantee) of the Plan's investment in the GIC and the Employer's potential cash advances (the Advances) pursuant to the Guarantee will be evidenced in a written agreement between the Plan and the Employer.[2]

The Guarantee

In making the Guarantee, the Employer is undertaking to ensure that in the eventual resolution of the Receivership the Plan receives a total amount with respect to the GIC which is no less than its investment in the GIC as of the Receivership Date plus interest thereafter at a market rate. In accordance with this undertaking, the amount which the Employer proposes to guarantee (the Guarantee Amount) is the Receivership Value of the GIC, which is $8.752 million, less GIC Proceeds (defined as the amounts actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties) and advances made by the Employer (Advances, as described below), plus interest on the net of the foregoing amount after the Receivership Date at the rate earned by the MI Portfolio (the Guarantee Rate), accrued on a daily basis. The Trustee's MI Portfolio is a diversified portfolio of short-term and long-term conventional and synthetic guaranteed investment contracts issued by insurance companies and other institutions. The average yield on the MI Portfolio Assets for the month of November, 1994, was 5.81 percent.

The Advances

Although the GIC is non-benefit-responsive, the Employer is concerned that the Receivership may result in an increase in transfers of Accounts out of the I Fund to other investment funds maintained by the Plan, posing potential liquidity problems for the I Fund. Accordingly, if as a result of Account transfers or withdrawals from the I Fund the Guarantee Amount commences to represent more than 30 percent of the I Fund, the Employer will make Advances to the I Fund in an amount sufficient to reduce the ratio to 30 percent.

Final Resolution

If the Receivership and any rehabilitation of Confederation Life are resolved and completed prior to the end of the year 2000, within 60 days of the Plan's receipt of final payment from or on behalf of Confederation Life with respect to the GIC, the Employer will honor the Guarantee by making a final Advance to the I Fund in an amount sufficient to cause the Guarantee Amount to equal zero. If the Receivership and any rehabilitation extend beyond the year 2000, the Employer will make a final Advance to the I Fund on the first business day in the year 2001 in the amount of the Guarantee Amount.

Repayments

Repayment of the final Advance and all previous Advances will be restricted to the GIC Proceeds. The Repayments will only be made after such time as the Plan has recovered, through the Advances plus the GIC Proceeds, the amount guaranteed by the Employer with respect to the GIC, as described above. To the extent the total Advances exceed GIC Proceeds, repayment will be waived.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Guarantee will enable the Employer to complete its commitment to Plan participants to protect the Plan from any loss of its investment in the GIC as of the Receivership Date; (2) The Advances will protect the I Fund from threats to its liquidity resulting from possible transfers and withdrawals of Accounts; (3) The Repayments will be made only from GIC Proceeds, and only after the Plan has recovered the amount guaranteed by the Employer; (4) After resolution of the Receivership, the Plan will be made whole with respect to the Guarantee by means of a final cash Advance; and (5) To the extent the Advances exceed the GIC Proceeds, Repayment of the difference will be waived.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202)219–8881. (This is not a toll-free number.)

Shippers Paper Products Company 401(k) Plan (the Plan) Located in Glenview, IL

[Application No. D–09866]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of Group Annuity Contract, No. GA–4725 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit) to Illinois Tool Works Inc., a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GAC at the time of the sale; (3) the Plan's trustee, acting as independent fiduciary for the Plan, has determined that the proposed sale price is not less than the current fair market value of the GAC; and (4) the Plan's trustee has determined that the proposed transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is sponsored by the Shippers Paper Products Company, which is an wholly-owned subsidiary of Illinois Tool Works Inc. (the Applicant). The Plan is a defined contribution plan with a salary reduction feature. There were 91 participants as of October 20, 1994. As of September 30, 1994, the Plan's total assets were $635,695.00. The Plan is administered by the Employee Benefits Committee of the Board of Directors of the Applicant (the Committee). The Plan's trustee, Northern Trust Company (the Trustee), manages the investment of Plan funds at the direction of the Committee. The GAC, which is the sole asset of the Plan, was effective as of July 1, 1985.[3] The Applicant represents that the GAC was scheduled to terminate only after disbursement of the final annuity payment thereunder and, therefore, had no stated maturity date. The terms of the GAC provided for a minimum annual interest rate of 4.0%.

2. On July 16, 1991, Mutual Benefit was placed into rehabilitation proceedings by the New Jersey Commissioner of Insurance. As a result of these proceedings, the Plan's assets have been frozen.[4] The Applicant represents that it wishes to enter into the proposed transaction in order to protect the accounts of Plan participants and beneficiaries from the risk of investment loss associated with the GAC. The Applicant further represents that the Plan needs to sell its interest in

[1] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[2] The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to claims under section 404 of the Act in connection with any aspect of the GIC transactions.

[3] The Department notes that the decisions to acquire and hold the GAC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GAC issued by Mutual Benefit.

[4] Following the cessation of payments by Mutual Benefit with respect to the GAC, Shippers Paper Products Company made the decision to make periodic advances to the Plan to enable the payment of distributions to terminating and retiring participants and the payment of certain in-service withdrawals to current participants. The Applicant represents that, as of November 30, 1994, the periodic advances to the Plan totaled approximately $178,595. The Applicant also represents that the terms of those periodic advances satisfy the conditions of PTE 80–26 (45 FR 28545, April 29, 1980). This conditional class exemption permits a party in interest to make an interest-free loan to an employee benefit plan, and the repayment of such loan. Specifically, the exemption states, in relevant part, that effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money from a party in interest to an employee benefit plan, nor to the repayment of such loan in accordance with its terms, if no interest or other fee is charged to the plan, the loan is unsecured, and the loan proceeds are used only for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan. In this proposed exemption the Department expresses no opinion as to whether the periodic advances satisfy the provisions of PTE 80–26.

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the GAC in order to give the Plan more investment flexibility to direct the investment of participant account balances to safer and more prudent investments. The Applicant also represents that the Plan will not incur any expenses with respect to the sale of the GAC.

3. The Applicant proposes to protect the interests of the affected participants by purchasing the GAC from the Plan. The purchase price for the GAC will be the contract balance of the GAC as of September 30, 1994, as determined by Mutual Benefit using the following interest rates: (1) Interest is credited at the rate of 10.35% for the period from July 1, 1986 through June 30, 1990; (2) interest is credited at the rate of 8.7% for the period from July 1, 1990 through June 30, 1991; (3) interest is credited at the rate of 8.35% for the period from July 1, 1991 through December 31, 1991. These are the rates of interest actually earned under the GAC until December 31, 1991. After December 31, 1991, pursuant to the terms of the proposed plan of rehabilitation set forth by the Superior Court of New Jersey, interest is credited at a rate equal to 5.75% for 1992, 5.25% for 1993, and at a rate equal to 5.10% for 1994. The purchase price will be adjusted to reflect any contract distributions and additional interest earned from September 30, 1994 to the date the actual purchase takes place.[5] From January 1, 1995 through December 31, 1999, the GAC will earn interest based on Mutual Benefit's actual investment performance, with a minimum annual rate of 3.5%.

4. The Trustee has reviewed the proposed transaction on behalf of the Plan. The Trustee represents that it has determined that the proposed purchase price for the GAC is at least equal to the fair market value of the GAC. In addition, the Trustee represents that it has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

5. In summary, the Applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan will receive cash for the GAC in the amount of the contract balance of the GAC, as determined by Mutual Benefit as of the date of the sale; (2) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GAC, and to exercise all of their rights under the Plan to request distributions and withdrawals from the Plan; and (3) the Plan's trustee, acting as the Plan's independent fiduciary, has determined that the sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan, and that the proposed price is not less than the fair market value of the GAC.

[5] The Applicant represents that, following the sale of the GAC to the Applicant, the Plan will repay any amounts due Shippers Paper Products Company in connection with the periodic advances discussed above.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Manke Lumber Company, Inc. Profit Sharing Plan (the Plan) Located in Tacoma, Washington

[Exemption Application No. D–09897]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain real property (the Property) to Manke Family Resources, Limited Partnership (MFR).

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the Sale is a one-time cash transaction; and (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the greater of: (a) The fair market value of the Property on the date of the Sale; or (b) the Plan's aggregate costs of acquiring and holding the Property.

Summary of Facts and Representations

1. Manke Lumber Company, Inc. (Manke) sponsors the Plan, a profit sharing plan which was established on May 1, 1971. The Plan was amended, effective May 1, 1988, to include 401(k) features which allow participants to direct the investments of their accounts. As of April 30, 1993, approximately eighty-eight percent of Plan assets were held as general assets while the remaining twelve percent were subject to participant direction. As of the same date, the Plan had assets totalling $9,360,468 and approximately 520 participants.

West One Trust Company (the Trustee) serves as the trustee of the Plan and has the sole investment discretion with respect to the Property and certain other non-liquid assets. Piper Capital Management, a registered investment adviser, has investment management discretion over the marketable securities and other liquid assets of the Plan. Under the terms of the Plan, Manke appoints an Advisory Committee (the Advisory Committee) which is responsible for setting the funding policy for the Plan. The Advisory Committee does not have any investment discretion. As of January 9, 1995, the Advisory Committee consisted of two Manke employees—J. Randal Jordan and Milton Farvour.

2. Manke is a Washington corporation engaged in the manufacturing and sale of lumber and other wood products. In addition, Manke also owns and manages timberland. The principal shareholders of Manke include Charles Manke, Virgil Manke and James Manke, who also comprise the Board of Directors (the Directors) and are the officers of Manke.

MFR is a Washington limited partnership engaged in the business of owning, utilizing and developing timberland and personal property related to the timber business. Tacoma Timber Co. (Tacoma Timber), a Washington corporation, serves as the general partner of MFR. Both MFR and Tacoma Timber are wholly owned by sons and daughters of the Directors, who are parties in interest with respect to the Plan. In addition, the owners of MFR and Tacoma Timber also own small amounts of Manke stock.

3. Among the general assets of the Plan is the Property, which consists of approximately 275 acres of land and timber located in Clallam County, Washington. The Property lies contiguous to a forty acre parcel of property owned by Manke. The Plan acquired the Property on September 25, 1975 for $200,709 from Raymond B. Fife, an unrelated party. Since its acquisition, the Plan has held the Property as timberland, and it has not been utilized by, or leased to, any related or unrelated party. As of December 9, 1994, the Plan had expended a total of $14,384 in connection with the Property for taxes and other expenses such as surveying and insurance.

4. Steven D. Lodge of Shorett & Riely, a real estate appraising and consulting firm located in Seattle, Washington, appraised the Property. Mr. Lodge is a Washington State-certified General Real Estate Appraiser and has fifteen years of experience in appraising real estate. Mr. Lodge represents that both he and Shorett & Riely are independent of, and unrelated to, Manke, MFR, Tacoma Timber and the Directors.

Because the timber located on the Property has a substantial value apart from the underlying land, Mr. Lodge valued the two components of the Property, the timber and the land, separately and then as one. Based upon a report prepared by Washington Timberland Management, Inc., which estimates harvestable area, timber volume and timber value, Mr. Lodge placed the fair market value of the timber at $1,519,283 as of April 30, 1994. In addition, based upon comparable sales of properties located in the Tacoma area, Mr. Lodge placed the fair market value of the land within a range of $220,456 and $385,798 as of April 30, 1994. Finally, as of result of these two valuations, Mr. Lodge placed the fair market value of the Property at $1,700,000 as of April 30, 1994.

5. The Trustee attempted to sell the Property on October 7, 1994 in a written/oral bid auction sale. Beginning on September 2, 1994, the Trustee circulated a written bid proposal, to approximately 100 prospective bidders. The written bid proposal set the minimum bid at $2,000,000 in cash. None of the prospective bidders submitted an oral or written bid in response to the written bid proposal, and, as a result, the Property was not sold. Despite this, the Trustee believes that a new proposal will result in a sale of the Property and, therefore, proposes to attempt to sell the Property again through a written/oral bid auction sale.

Because of its need for timberland, MFR desires to purchase the Property from the Plan provided that it is the highest bidder. MFR represents that the Sale price will be at least the greater of: (a) The fair market value of the Property on the date of the Sale; or (b) the Plan's aggregate costs of acquiring and holding the Property. Accordingly, the Advisory Committee of the Plan requests an administrative exemption from the Department to permit the Sale of the Property under the terms and conditions described herein. The Sale will be a one-time cash transaction, and the Plan will not be required to pay any fees, commissions or expenses in connection with the Sale.

6. The Trustee has indicated that the bid auction sale for the Property will be conducted sometime in 1995. In preparation of such auction, the Advisory Committee represents that the Trustee will circulate a written bid proposal to approximately 100 prospective bidders which will allow them to bid either in writing prior to the auction or orally at the action. The minimum bid set forth in the bid proposal will be at least the Property's fair market value as of the date of such proposal. The Property will be sold to the highest bidder, which may or may not be MFR, only if the highest bid exceeds the minimum bid set by the Trustee. Acceptance of the highest bidder's offer is subject to final acceptance and approval by the Trustee's Trust Committee. For purposes of condition #4 of this proposed exemption, the fair market value of the Property on the date of the Sale will be determined in the following manner. If the Trustee receives two or more bids from unrelated individuals or entities, the highest bid will be deemed to be the Property's fair market value on the date of the Sale. If the Trustee receives less than two bids from unrelated individuals or entities, the fair market value on the date of the Sale will be determined by an independent, qualified appraiser. In this event, MFR's bid cannot be less than the fair market value of the Property as determined by the independent, qualified appraiser on the date of the Sale.

7. In summary, it is represented that the transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) All terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction; (b) the Sale will be a one-time cash transaction; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the Sale; and (d) the Plan will receive a sales price equal to the greater of: (1) The fair market value of the Property on the date of the Sale; or (2) the Plan's aggregate costs of acquiring and holding the Property.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Virginia Fibre Corporation Employees Retirement Savings Plan (the Plan) Located in Amherst, Virginia

[Application No. D–09901]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 1, 1995, to (1) The proposed purchase from the Plan (the Purchase) by the Virginia Fibre Corporation (the Employer), the sponsor of the Plan, of a guaranteed investment contract (the GIC) issued by the Confederation Life Insurance Company (Confederation Life); or, in the alternative, (2) the proposed interest-free loan to the Plan by the Employer (the Loan) with respect to the GIC, including repayment of the Loan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) In the event of the Purchase, the Plan receives a cash purchase price which is no less than the greater of (1) The fair market value of the GIC as of the sale date, or (2) the GIC's Maturity Payment, as described below;

(C) In the event of the Loan: (1) The Loan is in the amount of the GIC's Maturity Payment, as described below; (2) the Loan is repaid only from GIC Proceeds, defined as the amounts paid by or on behalf of Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the GIC; (3) the Plan incurs no expenses or interest with respect to the Loan; and (4) repayment of the Loan is waived to the extent the Loan exceeds the GIC Proceeds.

EFFECTIVE DATE: This exemption, if granted, will be effective as of Febraury 1, 1995.

Summary of Facts and Representations

1. The Employer is a Virginia corporation engaged in the manufacture of corrugating medium and liner board, with its principal place of business in Amherst, Virginia, and is wholly owned by the Grief Bros. Corporation, located in Delaware, Ohio. The Plan is a defined contribution 401(k) plan with 240 participants and total assets of approximately $5,510,972 as of September 30, 1994. The Plan's assets are held, managed and invested by its trustee, Society National Bank in Cleveland, Ohio.

2. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The Plan participants may direct the investment of their Accounts among various investment options offered by the Trustee, including the Virginia Fibre MAGIC Fund (the M Fund), which invests in, among other things, guaranteed investment contracts issued by insurance companies. Of the Plan's 280 participants, 168 Accounts are invested in the M Fund. Among the

assets in the M Fund is the GIC, a single-deposit, non-benefit-responsive guaranteed investment contract issued to the Plan on February 2, 1990 by Confederation Life, a Canadian life insurance company doing business in the United States through subsidiaries in Michigan and Georgia. The GIC was purchased by the Plan for an initial principal deposit of $250,000 (the GIC Principal), which earns interest at the rate of 9.18 percent per annum (the Contract Rate). The GIC terms provide for annual interest payments (the Annual Payments) on February 1 each year, commencing 1991 through 1995. All Annual Payments through 1994 have been made by Confederation Life and received by the Plan. The GIC provides for no pre-maturity withdrawals of principal, and has a maturity date of February 1, 1995 (the Maturity Date). Upon the Maturity Date, the Plan is due a final Annual Payment plus the total GIC Principal, for a total of $272,950 (the Maturity Payment).

3. On August 12, 1994, Confederation life was placed in receivership (the Receivership) pursuant to rehabilitation proceedings by the State of Michigan.[6] Consequently, Confederation Life's assets and operations were frozen, and payments on all its guaranteed investment contracts were suspended effective as of the Receivership commencement. The Employer represents that under the prevailing circumstances, it is unlikely that the Maturity Payment will be made to the Plan when due on February 1, 1995. The Employer is also concerned that the Plan may never recover the full Maturity Payment in its entirety. The Employer desires to protect Plan participants and beneficiaries from any loss resulting from the Receivership, by purchasing the GIC from the Plan, if allowable, or by lending the Plan the amount of the Maturity Payment, if the purchase is not allowable. The Employer is requesting an exemption for such transactions under the terms and conditions described herein.

4. The Employer prefers to purchase the GIC from the Plan on February 1, 1995 for the amount of the Maturity Payment due the Plan on that date. However, the terms of the GIC include a prohibition against assignment of the GIC. The Employer and the Trustee represent that they have initiated the process of obtaining a release from this contractual prohibition. If a release is obtained to enable the GIC's transfer to the Employer, the Employer will purchase the GIC on February 1, 1995 for cash in the amount of the Maturity Payment due on that date. The Plan will incur no expenses with respect to this proposed sale transaction.

In the event the parties are unable to obtain a release from the prohibition on assignability of the GIC, on February 1, 1995 the Employer will make a cash loan to the Plan (the Loan) in the amount of the Maturity Payment due on that date. The Loan will be interest-free, and the Plan will incur no expenses related to the Loan. Repayment of the Loan will be restricted to the amounts which the Plan receives from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the GIC (the GIC Proceeds). To the extent the Loan exceeds the GIC Proceeds, repayment of the Loan will be waived.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions will protect the Plan from any loss on the GIC's full Maturity Payment which might result from the Receivership; (2) The Employer's proposed purchase of the GIC will be a one-time transaction for cash in which the Plan receives no less than the greater of the fair market value of the GIC or the Maturity Payment; (3) If a release is not obtained to enable the purchase of the GIC, the Plan will still receive the Maturity Payment when due, in the form of the Loan; (4) If the Loan is made, its repayment will be restricted to GIC Proceeds; (5) To the extent the Loan exceeds GIC Proceeds, the repayment of the Loan will be waived; and (6) The Plan will pay no interest or incur any expenses with respect to the proposed transactions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Annis, Mitchell, Cockey, Edwards & Roehn, P.A. (the Plan) Located in Tampa, Florida

[Application No. D–09906]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Annis, Mitchell, Cockey, Edwards & Roehn, P.A. (the Employer), of the Plan's interest (the Interest) in a limited partnership, for $40,000 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses are paid by the Plan in connection with the sale; and (c) the Plan receives not less than the fair market value of the Interest as of the date of the sale as determined by a qualified, independent expert.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan which currently has approximately 105 participants. As of September 30, 1994, the aggregate fair market value of the Plan's assets was $3,378,407. The Employer is a professional association engaged in the practice of law in Tampa, Florida.

2. On June 30, 1988 the Plan acquired the Interest, which is a one-half unit of limited partnership interest in Hunter's Ridge Associates, Ltd. (the Partnership). The business of the Partnership is to acquire, own, operate, improve and otherwise deal with an apartment complex located in Winter Park, Florida. The Partnership units were not registered with the Securities and Exchange Commission or the Florida Division of Securities, but rather were privately placed. The total number of units offered and sold was 35. No shareholder or employee of the Employer individually purchased an interest in the Partnership.

3. The Plan has now been modified to permit individual investment selections by the Plan participants. The Plan's investment in the Interest is illiquid, difficult to accurately value and hard to allocate among participants. In order to improve the Plan's liquidity and to reduce accounting costs for the Plan attributable to this investment, the Plan would like to sell the Interest to the Employer.

4. If the exemption proposed herein is granted, the Plan will assign the Interest to the Employer as a substitute investor in the Partnership, in exchange for a lump sum cash payment equivalent to the current fair market value of the Interest from the Employer. Participants' accounts will receive an allocation in cash exactly equal to the most recent valuation of the Interest. No broker fees or administrative fees will be incurred by the Plan since the Employer will absorb the cost of the transfer.

5. Mr. Richard D. Schofield, a registered real estate broker who has been in the real estate business for 17 years, is the general partner of the Partnership. Mr. Schofield represents that as of January 5, 1995, the Interest would be appraised as having a fair market value at its original cost, or $40,000. This is the purchase price that the Employer proposes to pay to the Plan for the Interest.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) the Plan will pay no commissions or fees in connection with the transaction; (c) the Plan will receive not less than the current fair market value of the Interest at the time of the sale; and (d) the fair market value for the Interest has been determined by Mr. Schofield, a qualified, independent expert who is the general partner of the Partnership.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of February, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–3407 Filed 2–9–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–09; Exemption Application No. D–09462, et al.]

Grant of Individual Exemptions; Peoples Security Life Insurance Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Peoples Security Life Insurance Company (Peoples) Located in Durham, North Carolina

[Exemption Application No.: D–09462]

Commonwealth Life Insurance Company (Commonwealth) Located in Louisville, Kentucky

[Prohibited Transaction Exemption 95–09; Exemption Application No.: D–09463]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective March 1, 1992, to: (1) The extension of credit by Peoples or Commonwealth (the Applicants), the sponsors of an investment product (the Group Annuity Contract or GAC) in connection with a plan's investment in the GAC; and (2) the reimbursement of Peoples or Commonwealth for benefit payments made to investing plans from the cashflow generated by the investments in the plans' Custodian Accounts which are set up by a plan pursuant to the GAC, or (3) the reimbursement of Peoples or Commonwealth for benefit payments made to investing plans from the proceeds generated by liquidation of investments in the Custodial Accounts upon termination of the Group Annuity Contract provided:

1. The decision to enter into the Group Annuity Contract will be made

[6] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

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by a plan fiduciary who is independent of Peoples and Commonwealth and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in the Group Annuity Contract, the Independent Fiduciary for such plan receives full and detailed written disclosures of all features of the Group Annuity Contract including all applicable premium charges.

3. Neither Peoples nor Commonwealth or any of their affiliates has discretionary authority or control with respect to the decision to invest plan assets in the investment product described herein or renders investment advice (within the meaning of 29 CFR 2510.3–21(a)) with respect to those assets.

4. Neither Peoples nor Commonwealth or any of their affiliates exercises any discretion or renders investment advice on behalf of a plan with respect to the ongoing acquisition, management or disposition of Custodian Account assets.

5. For all transactions that occur after the date of publication of the proposed and final exemptions, Peoples and Commonwealth provide copies of the proposed and final exemptions as published in the **Federal Register** to each plan which invests in a Group Annuity Contract.

6. The premiums charged by Peoples and Commonwealth for the GAC (including early termination charges assessed in the event of early contract termination) will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and will constitute the only fees charged by Peoples or Commonwealth in connection with such contract other than accrued interest on unreimbursed benefit payments.

7. Peoples and Commonwealth maintain or cause to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Peoples or Commonwealth or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Peoples or Commonwealth shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (8) below.

8(a). Except as provided in section (b) of the paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to an investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary of an investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)–(4) of this paragraph 8 shall be authorized to examine the trade secrets of Peoples or Commonwealth or its affiliates or commercial or financial information which is privileged or confidential.

For purposes of this exemption, affiliate means:

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within 45 days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by December 29, 1994. The Department received one written comment submitted by the Applicants. The issue addressed in the comment and the Department's response are summarized as follows:

The application for exemption submitted by the Applicants requested a March 1, 1992 effective date for the requested exemption. The effective date was not specified in the notice of proposed exemption published in the **Federal Register** on November 14, 1994 (59 FR 5655). Accordingly, the Applicants request that the Department clarify that the final exemption is effective as of March 1, 1992.

The Department concurs with the Applicants' comment and notes that, in order for the exemption to apply to a covered transaction, all of the conditions in the exemption except condition 5 (relating to the provision of copies of the proposed and final exemption to plan investors) must have been met.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

CNA Employees' Retirement Trust (the Trust) Located in Chicago, Illinois

[Prohibited Transaction Exemption 95–10; Exemption Application Nos. D–09539 through D–09544]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 17, 1992, to fifteen past sales and purchases by the Trust of twelve issues of short-term commercial paper (the CNA Transactions), as identified in the Notice of Proposed Exemption, involving the Continental Casualty Company, the Continental Assurance Company, the Continental Assurance Company Guaranteed Investment Fund, the Valley Forge Life Insurance Company, Valley Forge Insurance Company, and the American Casualty Company of Reading, Pennsylvania (collectively, the CNA Companies), each of which is a party in interest with respect to the CNA Employees' Retirement Plan, whose assets are held by the Trust; provided that the following conditions are satisfied:

(A) In each of the CNA Transactions, the Trust paid no more, or received no less, than the fair market value of the commercial paper involved in the transaction;

(B) The CNA Transactions constituted, in the aggregate, less than four percent of all commercial paper transactions of the Trust during 1992; and

(C) The CNA Companies have undertaken efforts to prevent any recurrence of direct or indirect transactions involving the Trust and the CNA Companies, including the appointment of an independent investment manager of all the Trust's commercial paper investments.

EFFECTIVE DATE: This exemption is effective as of January 17, 1992.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 28, 1994 at 59 FR 60843.

Written Comments

The Department received one written comment, which included a request for a hearing. The comment did not address substantively the transactions which were the subject of the proposed exemption. Subsection (b) of 29 CFR 2570.46, in the prohibited transaction exemption procedure, states that the Department will grant a request for a hearing where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. The Department has determined that no issues have been identified which would require the convening of a hearing, and, accordingly, has determined not to hold a public hearing.

After careful consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hospital Supplies, Inc. Pension Plan (the Plan) Located in Radnor, Pennsylvania

[Prohibited Transaction Exemption 95–11; Application No. D–09727]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of two adjacent parcels of real property (the Properties) by the Plan to Armond J. Civera, Jr. (Mr. Civera),[1] a disqualified person with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale will be a one-time cash transaction;

(b) The Plan will receive for each Property the current fair market value established at the time of the sale by an independent qualified appraiser;

(c) The Plan will pay no expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995 at 60 FR 486/487.

[1] Because Mr. Civera is the only participant in the Plan and the Employer is wholly owned by Mr. Civera there is no jurisdiction with respect to the Plan under Title I of the Act pursuant to CFR 2510.3–3(b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Clarence E. Coker, Jr. and the Clarendon Family Practice, PA Employee Retirement Plan (the Plan) Located in Manning, South Carolina

[Prohibited Transaction Application 95–12; Exemption Application No. D–09736]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of approximately eight acres of unimproved land (the Land) by the Plan to Dr. Clarence E. Coker, Jr., (Dr. Coker), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The sale will be a one-time cash transaction;

(b) The Plan will receive the higher of: (1) the original acquisition cost;[2] or (2) the current fair market value plus a certain premium related to the adjacency of the Land to other real property owned by Dr. Coker, established at the time of the sale by an independent qualified appraiser; and

(c) The Plan will pay no expenses associated with the sale. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65396/65397.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Alucobond Technologies, Incorporated Employees' Savings Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 95–13; Application No. D–09834]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the interest-free loan to the Plan (the Loan) by Alucobond Technologies, Incorporated (the Employer), a party in interest with respect to the Plan, and (2) the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under Guaranteed Investment Contract No. CG01285A3A (the GIC) issued by Executive Life Insurance Company (Executive Life); provided the following conditions are satisfied:

(A) No interest or expenses are paid by the Plan in connection with the transaction;

(B) The Loan will be repaid only out of amounts paid to the Plan by Executive Life, its successors, or any other responsible third party; and

(C) Repayment of the Loan is waived with respect to the amount by which the Loan exceeds GIC proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65393.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

[2] The original acquisition cost is determined as follows: (original purchase price+aggregate real estate taxes) – aggregate rental income=original acquisition cost.

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material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 7th day of February, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95-3406 Filed 2-9-95; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before March 27, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivision requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-95-3). Routine records of closing bases.

2. Department of the Army (N1-AU-94-23). Working papers and background material related to the Army Foreign Materiel Program.

3. Department of Housing and Urban Development (N1-207-94-1). Administrative Adjudication Case Files.

4. Department of Justice, Federal Bureau of Investigation (N1-65-94-2). Records relating to the Violent Crime Apprehension Program.

5. Department of State, Bureau of Economic and Business Affairs (N1-59-94-30 through -33). Routine, facilitative, and duplicative records relating to transportation, aviation, and maritime and land transport.

6. National Oceanic and Atmospheric Administration (N1-370-90-2). Portions of an agency-wide records schedule covering Scientific and Technical records, International Affairs records, Sea Grant Program records, and Records Common to All Offices.

7. Peace Corps (N1-490-95-1, -2, -3, -4 and -5). Automated records systems.

Dated: January 31, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-3335 Filed 2-9-95; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological and Geographic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Anthropological and Geographic Sciences (#1757).

Date and Time: March 3-4, 1995; 9:00 a.m.-5:00 p.m.

Place: Port Orchard Room, Seattle Westin, 1900 5th Avenue, Seattle, Washington 98101

Type of Meeting: Closed

Contact Person: J.W. Harrington, Program Director for Geography and Regional Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 995 Arlington, VA 22230. Telephone: (703) 306-1754.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF Geography and Regional Sciences Program for financial support.

Agenda: To review and evaluate Geography and Regional Sciences Dissertation Research Improvement proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: February 7, 1995

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 94-3434 Filed 2-9-94; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget Review of Information Collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: "License Event Report."

3. The form number if applicable: NRC Forms: 366, 366A, and 366B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Holders of Operating Licenses for Commercial Nuclear Power Plants.

6. An estimate of the number of responses: 1,500 per year.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 50 hours per response. The total industry burden is 75,000 hours.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not Applicable.

9. Abstract: NRC collects reports of operational events at commercial nuclear power plants in order to incorporate lessons of that experience in the licensing process and to feed back the lessons of that experience to the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20037. Comments and questions can be directed by mail to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs (3150-0104), NEOB-10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415-7230.

Dated at Rockville, Maryland this 6th day of February 1995.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95-3373 Filed 2-9-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313/368, 72-1007]

In the Matter of Entergy Operations, Inc. (Arkansas Nuclear One); Sierra Nuclear Corporation; Director's Decision Under 10 CFR 2.206 (DD-95-03)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of July 5, 1994, by Dennis Dums, on behalf of the Wisconsin Citizen's Utility Board, requesting that the Chairman exercise his authority to: (1) Determine the applicability of 10 C.F.R. 72.48 to 10 C.F.R. part 72 subparts K and L; (2) determine whether Entergy Operations, Inc. (Entergy) is in violation of any U.S. Nuclear Regulatory Commission regulations regarding use of 10 C.F.R. 72.48 to make modifications to the VSC-24 cask for use at Arkansas Nuclear One (ANO); (3) order ANO to cease using 10 C.F.R. 72.48 until NRC determines whether or not it is applicable; (4) order Sierra Nuclear Corporation to cease construction of VSC-24 casks for use at ANO that are being constructed based on ANO's 10 C.F.R. 72.48 evaluation. Notice of Receipt of Petition for Director's Decision under 10 C.F.R. 2.206, dated August 16, 1994, was published in the **Federal Register** on August 24, 1994 (59 FR 43594).

The Director of the Office of Nuclear Material Safety and Safeguards has determined to grant in part and deny in part the actions requested by the Petition. The reasons for this decision are explained in the "Director's Decision under 10 C.F.R. 2.206" (DD-95-03), which is published below.

A copy of the decision will be filed with the Office of the Secretary for the Commission in accordance with 10 C.F.R. 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Copies of the Petition, dated July 5, 1994, and the Notice of Receipt of Petition for Director's Decision under 10 C.F.R. 2.206 that was published in the **Federal Register** on August 24, 1994 (59 FR 43594), and other documents related to this Petition are available in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555 and Local Public Document Room at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 31st day of January 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Introduction

By Petition dated July 5, 1994 (Petition), Dennis Dums, on behalf of the Wisconsin Citizen's Utility Board (Petitioner), filed a request pursuant to 10 C.F.R. 2.206 that the U.S. Nuclear Regulatory Commission (NRC): (1) Determine the applicability of 10 C.F.R. 72.48 to 10 C.F.R. Part 72 Subparts K and L; (2) determine whether Entergy Operations, Inc. (Entergy) is in violation of any NRC regulations regarding use of 10 C.F.R. 72.48 to make modifications to the VSC-24 cask for use at Arkansas Nuclear One (ANO); (3) order ANO to cease using 10 C.F.R. 72.48 until NRC determines whether or not it is applicable; (4) order Sierra Nuclear Corporation (SNC) to cease construction of VSC-24 casks for use at ANO that are being constructed based on ANO's 10 C.F.R. 72.48 evaluation.

By letter to Mr. Dennis Dums, dated August 16, 1994, I acknowledged receipt of the Petition. Notice of receipt was published in the **Federal Register** on August 24, 1994 (59 FR 43594). For the reasons given below, I have now concluded that the Petitioner's request should be granted in part and denied in part.

Background

The Petitioner submitted its July 5, 1994, request to NRC in connection with an earlier letter to NRC dated June 2, 1994, from Entergy, an NRC licensee under 10 CFR part 50, which operates ANO Units 1 and 2 near Russellville, Arkansas. In its June 2 letter, Entergy had briefly described its plans for spent nuclear fuel storage at ANO, involving use of the VSC-24 dry cask, in accordance with the general license of 10 CFR Part 72, Subpart K. Entergy had also stated in the June 2 letter that its use of the VSC-24 would involve minor changes to the cask design. According to Entergy's July 2 letter, the specific changes involved lengthening the approximately eighteen foot VSC-24 by about 11 inches in order to accommodate the slightly longer ANO Unit 2 fuel.

The June 2 letter went on to advise NRC of Entergy's conclusions that section 72.48 of the Commission's regulations applied to the changes Entergy proposed to make to the cask for use at ANO. It was this statement by Entergy regarding the applicability of 72.48 that apparently prompted the Petition that is the subject of this decision.

Section 72.48 of the Commission's regulations covers "Changes, tests, and experiments" that may be made by the "holder of a license issued under this part" without prior Commission

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approval.[1] Specifically with regard to its determination to use section 72.48, Entergy's June 2 letter contended that the minor changes proposed for the VSC–24 cask were covered by a "plain reading" of the regulations. It argued the general license issued under 10 CFR part 72 was a license "issued under this part," and that the minor changes to the VSC–24 by Entergy, as the license "holder," could therefore be made to address site-specific considerations "as determined necessary" by Entergy. It also contended its approach was consistent with the regulatory background of the general license, particularly the Commission's objective to provide for "a regulatory framework allowing on-site spent fuel storage 'without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.' (55 FR 29181)." Entergy Letter at 2.

It is the foregoing determination by Entergy with which the Petition takes issue.

The Petition asserts as bases for its requests that: Entergy is currently pursuing spent fuel storage at ANO through use of 10 CFR Subparts K and L; ANO currently intends to utilize the VSC–24 constructed by vendor SNC under an SAR submitted in October 1991, and safety evaluation report (SER), issued by the NRC in April 1993; and NRC response, dated January 31, 1994, to an October 13, 1993, public request for information, stated that Subparts K and L of 10 CFR Part 72 are silent on cask SAR and certificate changes after the final rule; an ANO request for a rule exemption to 10 CFR 72.234(c) was granted by the NRC to allow for the fabrication of four VSC–24 casks to the longer length prior to NRC approval of SNC's June 14, 1993, submittal of Revision 1 to the 1991 VSC–24 Cask SAR; a February 14, 1994, memorandum to NRC Assistant General Counsel Treby requested a legal interpretation of the applicability of 10 CFR 72.48 to general licenses issued under 10 CFR 72.210; a May 19, 1994, meeting was held regarding SNC's revisions to the VSC–24 SAR and the applicability of 10 CFR 72.48 to general license users, as well as a June 3, 1994, memorandum regarding this meeting which stated that "the licensee can make its own interpretation of the regulations;" and a letter dated June 2, 1994, from Entergy to the NRC which stated that Entergy has directed SNC to fabricate all fourteen planned casks with the increased length and that Entergy plans to continue to conduct evaluations in accordance with 10 CFR 72.48.

Entergy has not filed any comments with the NRC following publication of the Petition.

Discussion

As the discussion that follows will set forth in detail, we have determined that ANO, as a general licensee under 10 C.F.R. 72.210, can make use of 10 CFR 72.48. This determination is based first on the words of 10 C.F.R. 72.48 itself which are fully consistent with use of the authority in that section by a general licensee. Second, the determination is based on regulatory policy considerations. These include the extensive NRC safety review at the time of cask approval, the limited nature of the subsequent changes permitted under 10 C.F.R. 72.48, and the fact that NRC regulations in other contexts and over many years have permitted utilities such as ANO to make similar types of changes to nuclear facilities that involve safety issues previously reviewed by NRC.

This approach is well suited to the 10 C.F.R. Part 72 general license framework, especially given the Congressional purpose underlying the Nuclear Waste Policy Act of 1982 that directed the NRC to establish a licensing framework for spent fuel storage technologies that can be approved by the Commission for use at reactor sites "without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission" (55 FR 29181). Because 10 C.F.R. 72.48 permits certain changes by a licensee without Commission approval, making it available to general licensee's will further this Congressional purpose.

A. The Language of Section 72.48.

An analysis of the pertinent NRC regulations regarding use of 10 C.F.R. 72.48 by a general licensee shows that ANO's use of that authority is covered by the regulations. The relevant regulations and our analysis of them are given below.

10 CFR 72.48(a)(1) provides as follows:

*The holder of a license issued under this part may: (i) Make changes in the ISFSI * * * described in the Safety Analysis Report,* * * (iii) * * * without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed environmental impact. (Emphasis added.)

Further 10 CFR 72.210 provides as follows:

A general license is hereby issued for the storage of spent fuel *in an independent spent fuel storage installation* at power reactor sites to persons authorized to possess or operate nuclear power reactors under Part 50 of this chapter. (Emphasis added.)

In order to determine whether 10 C.F.R. 72.48 can be interpreted to cover the general license in section 72.210, the first question is whether the general licensee is "the holder of a license issued under this part," as required for the application of 10 CFR 72.48. We think the language of § 72.210 answers this question. The phrase "[a] general license is hereby issued," leaves no doubt the general license is "a license issued under this part." Because a general licensee is "the holder of a license issued under this part," § 72.48(a)(1) therefore applies.

The second question, in order to determine if 10 CFR 72.48 can be interpreted to apply to a general license, is whether changes to a certified cask by a general licensee can appropriately be termed "changes in the ISFSI * * * described in the Safety Analysis Report," as required for the application of 10 CFR 72.48. We think the language of § 72.210 also resolves this issue. * Specifically, the regulatory language of the general license authorizes "storage * * * *in an independent spent fuel storage installation* * * * *in casks approved under the provisions of this part.*"[2] (Emphasis added.) The ISFSI under the general license incorporates the NRC approved casks. Further the NRC's approved casks under the general license are ISFSI components described in a safety analysis report and, specifically, in the cask vendor safety analysis report (SAR).[3] Therefore, changes to an NRC-approved cask, used in an ISFSI, by the general licensee literally are "changes in the ISFSI * * * described in the Safety Analysis Report," and therefore are reasonably covered by the words of section 72.48(a)(1).[4]

B. Regulatory Policy Considerations

The foregoing analysis of the applicable regulations is fully supported by the policy underlying NRC's program for generic cask approvals. In particular, NRC generic approval of a cask certifies the cask for use under a range of environmental conditions sufficiently broad to encompass most sites within the United States, by using conservative requirements that make safety of an approved cask independent of the effects of site-specific phenomena. During the review of the SAR, NRC considers all credible accidents that could harm the cask. We analyze: drops, tipovers, lighting, floods, high and low temperatures, tornadoes, explosions, and other conditions. Using the safety analyses relied on by the NRC for the generic approval, a general licensee must thereafter establish that the cask is suitable for the environmental conditions of the licensee's site. However, use of the generically approved cask does not require additional NRC site-specific approvals, provided the conditions in the general license and the cask certificate are met.

The NRC's generic approval of a dry cask, without any site-specific approval, fulfills the express intent of the Congress. In the Nuclear Waste Policy Act of 1982, Congress directed the government (NRC and the Department of Energy) to establish a program allowing the NRC to approve spent fuel storage technologies "by rule * * * without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." 42 U.S.C. 10198(a). If NRC were to require site-specific Commission approval of every change to an approved cask by a general licensee—even changes that did not involve any site-specific unreviewed environmental condition or safety issue—then its action could be viewed as seriously undermining the statutory policy supporting general cask approvals without, to the maximum extent practicable, requiring additional NRC site-specific approvals.

10 CFR 72.48 is limited to changes that do not involve "a change in the license conditions incorporated in the license, an unreviewed safety question,[5] a significant increase in occupational exposure or a significant unreviewed environmental impact." If the proposed change involves a generic change to the certificate of compliance or any of the certificate's conditions then an application must be filed with the Commission for approval for this generic change.

The general licensee must also satisfy other requirements under section 72.48. For example, 10 CFR 72.48 requires that a licensee must permanently "maintain records of changes in the ISFSI" which "include a written safety evaluation that provides the bases for the determination that the change * * * does not involve an unreviewed safety question." The NRC may examine these records during an inspection and take appropriate action if the changes made by the licensee do not comply with the regulations. Additionally, 10 CFR 72.48 requires that the licensee must annually furnish the NRC a report containing a brief description of the changes.

The decision whether a proposed change involves an unreviewed safety question is made initially by the licensee but can be reviewed by the NRC. If the NRC disagrees with the licensee's decision, the agency may, upon review, take appropriate enforcement action. To facilitate review of a licensee's decision during subsequent inspections, the NRC promulgated the record keeping and reporting requirements described above, thus requiring the licensee to maintain records related to the licensee's decision under 10 CFR 72.48.

There is a similar rule under 10 CFR Part 50 for production and utilization facilities. 10 CFR 50.59 allows utilities to make changes to their power plants under circumstances comparable to those circumstances covered by 72.48. In particular, 10 CFR 50.59 specifically allows a reactor licensee to modify its facility without prior NRC approval unless the modification involves a change in the technical specifications incorporated in the facility license or involves an unreviewed safety question. The definition and criteria in 10 CFR 50.59 for identifying whether a proposed change involves an unreviewed safety question are identical to those in 10 CFR 72.48. If the proposed change does involve either an unreviewed safety question or a change in the technical specifications, then the licensee must apply for an amendment to its license. For decades the NRC has allowed its licensees in the first instance to review proposed changes in their facilities to determine whether changes in technical specifications are involved or unreviewed safety questions are presented. The NRC would not be sensibly allocating its limited resources if the agency itself were to expressly review and approve every single facility change, whether or not it raises an unreviewed safety question. Rather, NRC retains an oversight function for enforcement purposes, supported by requirements for licensees to retain and preserve all records of 50.59 changes, just as they must retain all records of 72.48 changes. See Kelley v. Selin, No. 93–3613, Slip opinion at 11 (6th Cir., Jan. 11, 1995) ("* * * NRC's historical method of regulation * * * has long allowed licensees to make initial determinations about changes to their facilities and has enabled the agency to retain its enforcement power. 10 CFR 50.59.")

Thus, for all of the foregoing reasons, we have determined that ANO, and any other general licensee under Subpart K, can make use of the authority in 10 CFR 72.48 to make changes that comply with the requirements of that section. We accordingly have no basis and therefore are declining to take enforcement action against ANO at this time. However, in our continuing regulatory oversight of ANO and other general licensees, we reserve the right to review any change made under 10 CFR 72.48 and take appropriate followup action.

Conclusion

Based on a review of the regulations and taking into account the relevant policy considerations, NRC staff has determined that 10 CFR 72.48 can be used by all Part 72 licensees. Therefore, the Petitioner's request to (1) determine the applicability of 10 CFR 72.48 to 10 CFR Part 72, Subparts K and L; and (2) determine whether Entergy is in violation of any NRC regulations regarding use of 10 CFR 72.48 has been granted. Further, in light of the foregoing determination that Entergy can make use of 10 CFR 72.48, the Petitioner's request to (3) order ANO to cease using 10 CFR 72.48 until NRC determines whether or not it is applicable, and (4) order Sierra Nuclear Corporation to cease construction of VSC–24 casks for use at ANO has therefore been denied.

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[1] In particular, section 72.48(a)(1) provides in pertinent part as follows:

The holder of a license issued under this part may:

(i) Make changes in the ISFSI [i.e., independent spent fuel storage installation] * * * described in the Safety Analysis Report * * *

* * * without prior Commission approval, unless the proposed change * * * involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure or a significant unreviewed environmental impact.

[2] See 10 CFR 72.212(a)(2) ("This general license is limited to storage of spent fuel in casks approved under the provisions of this part.")

[3] See 10 CFR 72.230(a)("A safety analysis report describing the proposed cask design and how the cask should be used to store spent fuel safely must be included with the application.")

[4] Commission policy already permits changes to a cask design approved by NRC in a site-specific licensing proceeding; this determination results in similar treatment for designs approved in rulemaking.

[5] Under 10 CFR 72.48, a proposed change involves an unreviewed safety question if:

(i) the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report (SAR) may be increased;

(ii) the possibility for an accident or malfunction of a different type than any evaluated previously in the SAR may be created; or

(iii) the margin of safety as defined in the basis for any technical specification is reduced

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Dated at Rockville, Maryland, this 31st day of January 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95-3374 Filed 2-9-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Houston Lighting and Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

This document corrects a general notice appearing in the **Federal Register** on January 30, 1995 (60 FR 5739), in which the NRC is considering issuance of amendments to Facility Operating License Nos. NPF-76 and NPF-80, issued to Houston Lighting and Power Company, et al., for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas. This notice is necessary to correct an erroneous date.

On page 5740, in the first sentence of the second full paragraph in the first column, the date "February 14, 1995"

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV-1, Division of Reactor Projects III/IV; Office of Nuclear Reactor Regulation.

[FR Doc. 95-3375 Filed 2-9-95; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Draft Security Tenets for the National Information Infrastructure

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: OMB is publishing these draft Security Tenants for the National Information Infrastructure (NII) on behalf of the Security Issues Forum of the Information Infrastructure Task Force. The Tenets were developed by the Forum to help support the secure use of the NII. The Forum is chaired by OMB. OMB has not adopted these Security Tenets as policy, but is publishing them in the belief that they are worthy of public discussion.

DATES: Comments should be submitted no later than April 11, 1995.

ADDRESSES: Comments should be sent to the Security Issues Forum c/o the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, Washington, DC 20503. The Tenets can be downloaded from the IITF gopher/bulletin board system: 202-501-1920. The IITF gopher/bulletin board can be accessed through the Internet by pointing your gopher client to IITF.DOC.GOV or by telnet to IITF.DOC.GOV and logging in as GOPHER. Electronic comments may be sent to HUTH_V@A1.EOP.GOV. (Note: e-mail address is A1, not AL.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Huth, NII Security Issues Forum, Office of Management and Budget, Washington, DC 20503. Voice telephone: 202-395-3785. Facsimile: 202-395-5167. E-mail: HUTH_V@A1.EIP.GOV. (Note: e-mail address is A1, not AL.)

SUPPLEMENTARY INFORMATION: Government has an important public mission to support the secure use of the NII. In order for the support to be effective, the Government must cooperate with the private sector and with the public-at-large in setting legal and policy ground rules for security in the NII. The Security Issues Forum provides leadership for Federal NII security activities. The Security Tenets are an early step in the development of an "NII Security Plan" to define the security requirements for the NII and to determine needed policy, technology, and managerial controls, and what the Federal role will be to assure that those needs are fulfilled. The NII Security Plan will also incorporate the security principles developed by the Organization for Economic Cooperation and Development.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs

Security Tenets for the National Information Infrastructure

Security is a critical component of the National Information Infrastructure (NII). NII participants must have confidence that the NII is a trustworthy, reliable system, or they will not use it.

NII security includes the integrity, confidentiality, and availability of the NII and of the information in the NII. In general, people who use the NII want to know that their information goes where and when they want it to, and nowhere else. From this general proposition flow five security tenets that the NII should provide the people who use it.

(1) The ability to control who sees (or cannot see) their information and under what terms;

(2) The ability to know who they are communicating with and that information received comes from who it says it is from;

(3) The ability to know that information stored or transmitted is unaltered;

(4) The ability to know when information and communication services will (or will not be) available; and

(5) The ability to block unwanted information or intrusions

Two conditions attach to these security tenets:

(1) None of these tenets is absolute. For each tenet there may be valid societal reasons—such as an emergency or a need to protect another's rights—that cause the tenet to be conditional in some manner.

(2) Each tenet requires NII participants to take responsibility for establishing the terms and conditions under which they will exchange information. The distributed and empowered nature of this technology demands a greater level of responsibility. Education of NII participants is thus a critical task.

[FR Doc. 95-3408 Filed 2-9-95; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee on Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the February 9, 1995 meeting of the Advisory Committee on Trade Policy and Negotiation will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee on Trade Policy and Negotiation will hold a meeting on December 6, 1994 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for February 9, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the Sheraton-Carlton Hotel, located at 16th and K streets, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395-6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95-3336 Filed 2-9-95; 8:45 am]

BILLING CODE 3190-01-M

[Docket No. 301-98]

Initiation of Section 302 Investigation Concerning Certain Discriminatory Canadian Communications Practices; Proposed Determination; and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(a) of the Trade Act of 1974, as amended (19 U.S.C. 2412(a)); notice of proposed determination; request for written comment.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(a) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Canada that have resulted in the denial of market access for U.S.-owned programming services to be distributed in Canada via cable carriage and in the termination of the authorization of a U.S.-owned programming service, Country Music Television (CMT), to be distributed in Canada via cable carriage. The USTR invites written comments from the public on the matters being investigated, particularly with respect to the amount of burden or restriction on U.S. commerce caused by the Canadian government's acts, policies and practices. In addition, the USTR is seeking public comment concerning a proposed determination that certain acts, policies and practices of Canada with respect to the granting or termination of authorizations for U.S.-owned programming services to be distributed in Canada via cable carriage are unreasonable or discriminatory and constitute a burden or restriction on U.S. commerce.

DATES: This investigation was initiated on February 6, 1995. Written comments from the public are due on or before noon on March 6, 1995.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Canadian Affairs, (202) 395-3412, or Vanessa Sciarra, Assistant General Counsel, (202) 395-7305.

SUPPLEMENTARY INFORMATION: On December 23, 1994, CMT filed a petition pursuant to Section 302(a) of the Trade Act alleging that acts, policies and practices of the Canadian government regarding the authorization for distribution via cable carriage of U.S.-owned programming services are discriminatory and are actionable under Section 301.

Section 302(a) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "section 301"), in response to the filing of a petition pursuant to Section 302(a)(1). Matters actionable under section 301 include, *inter alia*, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy or practice is unreasonable if the act, policy or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair or inequitable. Unreasonable acts, policies or practices include, *inter alia*, denial of fair and equitable market opportunities.

On February 6, 1995, the USTR determined that an investigation should be initiated to determine whether certain acts, policies or practices of the Government of Canada that have resulted in the denial of market access for U.S.-owned programming services to be distributed in Canada via cable carriage and in the termination of the authorization of a U.S.-owned programming service to be distributed in Canada via cable carriage are unreasonable or discriminatory and burden or restrict U.S. commerce. The acts, policies or practices at issue include the policy of the Canadian Radio-television and Telecommunications Commission (CRTC), set forth in Public Notice CRTC 1984-81, to terminate authorizations of non-Canadian-owned programming services which, in the CRTC's opinion, could be considered either totally or partially competitive with existing or newly-available Canadian-owned programming services. This policy limits the ability of U.S.-owned programming services to compete in the Canadian market and acts as a disincentive to such service providers to attempt to enter the Canadian market.

Consultations and Proposed Determination

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Canada concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

If the issues which are the basis of this investigation are not resolved expeditiously, the USTR proposes to determine pursuant to Section 304(a)(1) of the Trade Act that acts, policies and practices of the Canadian Government with respect to the granting or termination of authorizations for U.S.-owned programming services to be distributed in Canada via cable carriage are unreasonable or discriminatory and constitute a burden or restriction on U.S. commerce.

If this determination is affirmative, the USTR must also determine what action would be appropriate under the statute. Actions that would be permitted in the case of an affirmative determination include action to suspend, withdraw or prevent the application of benefits of trade agreement concessions to Canada; imposition of duties or other import restrictions on goods of Canada or fees or restrictions on services of Canada; and restriction or denial of service sector access authorizations with respect to services of Canada.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the petition and any other submissions to USTR in this investigation. In particular, comments are invited regarding (i) The acts,

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policies and practices of the Government of Canada that are the subject of this investigation; (ii) the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices; (iii) the determinations required under section 304 of the Trade Act; and (iv) appropriate action under Section 301 which could be taken in response.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than noon on March 6, 1995. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301–98) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection.

Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket (Docket No. 301–98) may be made by contacting Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 95–3396 Filed 2–9–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35335; File No. SR–CHX–94–23]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Odd-Lot Transactions

February 6, 1995.

On November 10, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit differentials to be charged for certain odd-lot trades..

The proposed rule change was published for comment in Securities Exchange Act Release No. 35048 (December 2, 1994), 59 FR 63844 (December 9, 1994). No comment letters were received.

Currently, Article XXXI, Rule 9 dealing with execution of odd-lot orders provides that odd-lots must be executed at the best bid or offer, similar to round lot executions. The rule does not permit odd-lot specialists to charge differentials. The rule change allows the Committee on Floor Procedure to determine that a differential may be charged for: (1) an odd-lot "seller's option" trade,[3] (2) an odd-lot order for cash or "next day" delivery, (3) an odd-lot order for additional settlement periods, and (4) an odd-lot order in an issue in which a differential is charged in the primary market. If the Committee on Floor Procedures determines to allow a differential to be charged under number 1, 2, or 3 above, all CHX odd-lot specialists may charge differentials under the specified condition. The Committee on Floor Procedures may also determine that the primary market is charging a differential in a particular security and allow the CHX specialist in the security also to charge a differential.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to allow differentials to be charged on specified odd-lot securities will make the rules of the Exchange consistent with those of the other securities exchanges.[6] In addition, the rule change will allow the CHX to authorize the charging of a differential in a security when the primary market is charging a differential in that security. This provision will ensure that the CHX market makers will be allowed to effect executions at competitive prices, which will contribute to the maintenance of a fair and orderly market in those securities trading on the primary market with a differential.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–94–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3370 Filed 2–9–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] A "seller's option" trade is defined in Article XX, Rule 9(c) of the CHX Rules as one for delivery within the time specified in the option.

[4] 15 U.S.C. § 78f(b) (1988).

[5] See, e.g., NYSE Rule 124(B).

[6] 15 U.S.C. § 78s(b)(2)(1988).

[7] 17 CFR 200.30–3(a)(12) (1993).

[8] 15 U.S.C. 78s(b)(1) (1988).

[Release No. 34–35332; File No. SR–DTC–95–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Establishing a Link Between the Institutional Delivery System and Other Compatible Electronic Trade Confirmation Systems

February 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes relationships between The Depository Trust Company ("DTC") and trade confirmation systems operated by other organizations that would provide for, among other things, the automated settlement in DTC of transactions introduced to DTC by such other systems (e.g., confirmed and affirmed in such other systems). Under this proposal, DTC would link its Institutional Delivery ("ID") system with another compatible electronic trade confirmation system (the "Other System").[2] DTC is prepared at this time to link the ID system with any Other System in the manner described below and estimates that a link in that manner could be implemented within three months from the time when the vendor of the Other System indicates a desire to establish the link. DTC will consider and may implement additional methods of linking the ID system which are different from the link described below.

Where a broker and its institutional customer in a trade use the Other System, and the agent (i.e., the institution's custodian) and/or any interested parties use the ID system, notice of order execution (sometimes called advice of execution), institution instructions (sometimes called trade allocation), confirmation and affirmation for the trade will occur in the Other System, in which case the Other System will transmit a confirmation, in DTC format, to the ID system. DTC will then process the trade in the ID system, which includes transmitting an ID system message to the Other System containing the ID system control number for the trade and transmitting confirmations to any agent and interested parties who use the ID system. DTC will not transmit confirmations to the broker and the institution. The Other System will transmit to the ID system the affirmation from the Other System, in DTC format, containing the ID system control number. If the trade involves a DTC-eligible issue, the trade will be settled by book-entry at DTC in the normal way for an affirmed trade in the ID system.

DTC will be responsible for all quality control reporting with respect to all trades processed through the link, and the vendor of the Other System will furnish DTC with whatever data from the Other System is needed for that purpose.

Except as stated in this paragraph, DTC will charge its usual ID system fees for a transaction processed through the link. In the above example, DTC will not charge confirmation fees to the broker or institution because it will not send confirmations to either of them. Fees for any services provided by the ID system directly to the broker or institution will continue to be billed to and paid by the appropriate party. In order to encourage the development of links between the ID system and Other Systems where both the broker and the institution use the Other System, the ID system fees charged in that case to the vendor of the Other System with respect to confirmation activity will be limited to $0.10 per trade during the period ending on December 31, 1995. DTC continually examines its fees, and the fees associated with the link between the ID system and Other Systems may be changed after December 31, 1995.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, a large number of DTC users interact operationally with DTC through intermediaries selected by them, including "service bureaus." Pursuant to standing instructions from these users, DTC currently links with these intermediaries in providing a wide range of DTC services to users, including the automated delivery and receipt of ID system confirmations and affirmations and related reports. In addition, DTC currently links the ID system with systems operated by the other two registered securities depositories in the United States on a "private label" basis. In those links, confirmation and affirmation for a trade occur in the ID system, but any parties involved in the trade who use the other depository's system submit all data and communications regarding the trade to the other depository and receive all such data and communications from the other depository. On behalf of those parties, the other depository submits to and receives from DTC on an omnibus basis all data and communications regarding the trade in the course of ID system processing. DTC is likely to enter into similar arrangements with other organizations in the United States and abroad.

The purpose of the proposed rule change is to establish a new method of linking the ID system in addition to the current arrangements.

DTC believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder applicable to DTC since the proposed rule change will facilitate the processing of transactions in securities where different trade confirmation systems are involved. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change relates to DTC's existing ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC Participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[2] The establishment of the link between the ID system and the Other System would be subject to the Other Systems obtaining any necessary or appropriate approvals by regulatory agencies, such as approval in regard to compliance with Rule 10b–10 under the Securities Exchange Act of 1934 if the Other System will confirm transactions.

[3] Any such fee changes would be filed with the Commission in accordance with the requirements of the Securities Exchange Act of 1934.

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(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–95–04 and should be submitted within March 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3326 Filed 2–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35326; File No. SR–Phlx–95–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Listing and Trading of Options on the Phlx USTOP Index

February 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 30, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to list and trade options on the Phlx USTOP 100 Index, a broad-based index developed by the Phlx and comprised of 100 highly capitalized U.S. stocks representing a variety of industries ("USTOP 100 Index" or "Index"). Exchange Rules 1001A, 1006A and 1101A respecting position limits, exercise restrictions, trading hours and far term strike prices respectively will be amended to add references to the USTOP 100 Index. The test of the proposed rule changes is available at the Office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to list for trading European-style options[2] on the Index, a broad-based, capitalization-weighted index composed of 100 highly capitalized U.S. common stocks in a variety of industries, including but not limited to technology, manufacturing and the service industries. USTOP 100 Index options will be traded pursuant to current Phlx rules governing the trading of index options.[3]

The Phlx represents that the Index includes some of the largest and most widely-held U.S. common stocks. As of January 23, 1995, the Phlx represents that the market capitalization of the individual stocks in the Index ranged from a high of $86 billion to a low of $7.6 billion. The market capitalization of all of the stocks in the Index was approximately $2 trillion. As of that same date, no one stock accounted for more than 4.17% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 17.28% of the Index's value. The percentage weighting of the lowest weighted stock was 0.37% of the Index's value.

The formula for calculating the value of the Index is as follows:[4]

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Where:

MV_n=Price × Shares outstanding for each component of the Index

Divisor=Number calculated to achieve a base value of 370 for the Index as of the close of trading on December 14, 1994.

In order to maintain continuity in the value of the Index, the index divisor will be adjusted for changes in capitalization of any of the component issues resulting from, among other things, mergers, acquisitions, delistings, and substitutions. As the close of trading on January 27, 1995, the Index Value was 383.81.

The Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete that stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index. In making replacement determinations, the Exchange will also take into account

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[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] European-style options can be exercised only during a specific time period prior to expiration of the options.

[3] *See* Phlx Rules 1000A through 1103A, and 1000 through 1070.

[4] The formula for calculating the value of the Index is the same as that previously approved by the Commission for calculating the value of the Phlx Big Cap Index. See Securities and Exchange Act Release No. 33973 (April 28, 1994), 59 FR 24245 (May 5, 1994). Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 2, 1995.

the capitalization, liquidity, and volatility of a particular stock.

The Exchange represents that all of the stocks comprising the Index currently are options eligible[5] and have standardized options listed on them. If at any time, less than 90% of the components in the Index, by weight, are options eligible, the Exchange will submit a Rule 19b-4 filing for Commission approval before opening any new series of options on the Index for trading. Further, the Exchange will submit a Rule 19b-4 filing for Commission approval prior to opening any new series of options on the Index if the number of stocks in the Index ever increases to more than 120 or decreases to less than 80.

The settlement value for Index options will be based on the opening values of the component securities on the date prior to expiration. Index options will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ position and exercise limits applicable to the Exchange's other broad-based indexes pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively. Specifically, the position limit will be $25,000 contracts total, of which no more than 15,000 contracts can be in the nearest expiration month.

Exercise price intervals will be set at five point intervals in terms of the current value of the Index except exercise prices in the far-term series shall be $25.00 unless demonstrated customer interest exists at $5.00 intervals. The Exchange represents that demonstrated customer interest will include institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit but not interest expressed by a registered options trader ("ROT") with respect to trading for the ROT's own account. Exchange Rule 1101A, Commentary .02, which already permits $25.00 intervals for the Exchange's other broad-based indexes, will be amended to include this treatment for the USTOP 100 Index. Additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

As with the Exchange's other indexes, the multiplier for options on the USTOP 100 Index will be 100. Index options will trade during the Exchange's regular trading hours (9:30 a.m. through 4:15 p.m., Eastern time).

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, and December cycle plus two additional near-term months so that the three nearest term months will always be available.

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include having complete access to trading activity in the securities underlying the Index, all of which are traded on either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("Amex"), or are Nasdaq National Market securities. In addition, the Intermarket Surveillance Group Agreement will be applicable to the trading of options on the Index.[6]

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

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[5] The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* Phlx Rule 1009, Commentary .01.

[6] The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the NYSE; the Pacific Stock Exchange, Inc., and the Phlx. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[7] 15 U.S.C. 78f(b)(5) (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-95–07 and should be submitted by March 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

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[8] 17 CFR 200.30–3(a)(12) (1994).

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Margaret H. McFarland,
Deputy Secretary
[FR Doc. 95–3327 Filed 2–9–95; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Release No. 20882; 812–9356]

Nicholas-Applegate Mutual Funds, et al.; Notice of Application

February 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nicholas-Applegate Mutual Funds (the "Trust"), Nicholas-Applegate Capital Management (the "Adviser"), and Nicholas-Applegate Securities (the "Distributor").

RELEVANT ACT SECTIONS: Order requested to amend a prior order under section 6(c) that granted an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek to amend an order permitting them to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of certain series of the Trust. The amended order would permit applicants to impose a CDSC on redemptions of shares of certain other series of the Trust not covered by the previous order.

FILING DATES: The application was filed on December 9, 1994, and amended on February 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 6, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 600 West Broadway, 30th Floor, San Diego, California 92101.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust and Nicholas-Applegate Investment Trust (the "Master Trust") are open-end management investment companies organized as Delaware business trusts. Under a "master-feeder" structure, each of the Trust's portfolios invests all of its assets in a corresponding series of the Master Trust. The Adviser is a registered investment adviser that serves as investment adviser to the Master Trust. The Distributor serves as principal underwriter of the shares of the portfolios of the Trust.

2. On March 30, 1993, the SEC issued an order (the "Existing Order")[1] permitting certain existing portfolios of the Trust (the "Portfolios") to impose a CDSC on certain redemptions and waive the CDSC under certain circumstances. The application for the Existing Order sought, and accordingly the Existing Order granted, relief on behalf of the Trust only with respect to the Trust's Portfolio A Series, Portfolio B Series, and Money Market Portfolio. The Existing Order also applied to all other open-end management investment companies or series thereof that invest substantially all of their assets in a registered investment company for which the Adviser serves in the future as investment adviser and that are in the same "group of investment companies" as the Portfolios, as defined in rule 11a–3 under the Act, the shares of which will be distributed on substantially the same basis as those of the Portfolios.

3. Applicants seek to amend the Existing Order to permit other portfolios of the Trust (the "Portfolio C Series") to impose a CDSC. Shares of the Portfolio C Series would be offered at net asset value without a front-end sales load. The shares would be offered under a distribution plan and shareholder service plan, each adopted pursuant to rule 12b–1 under the Act. Under the distribution plan, each Portfolio C Series may pay the Distributor an amount equal to .75% of the average daily net assets of the series to compensate the Distributor for selling the shares of the series. Under the shareholder service plan, each series pays the Distributor an annual fee of up to .25% of the series' average daily net assets as reimbursement for certain expenses incurred in connection with shareholder services provided by the Distributor.

4. If the shares of a Portfolio C CDSC are redeemed within specified periods after their purchase date, the redemption proceeds will be reduced by a percentage of the lesser of the value of the shares redeemed or the total cost of such shares. The percentage will vary depending on the period the shares were held, as set forth in the applicable prospectus. The Distributor will retain the CDSC as compensation for dealer commissions paid with respect to sales of shares of the series and to recover a portion of the sales and marketing expenses incurred in marketing such shares. Applicants may in the future reduce the CDSC percentage, shorten the applicable holding period, or temporarily or permanently discontinue the CDSC.

5. No CDSC will be imposed on exchanges of shares of a Portfolio C Series for shares of other Portfolio C Series or for shares of the Trust's Money Market Portfolio Series. No CDSC will be imposed on the amount which represents a capital appreciation of shares, reinvestment of dividends, or capital gains distributions. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares not subject to the CDSC, including shares derived from reinvestment of dividends or capital gains distributions, and then of other shares in the order of purchase.

6. Applicants request relief to permit each investment company or series thereof that would assess a CDSC under the requested order to waive or reduce the CDSC in certain circumstances. Any waiver or reduction will comply with the conditions in paragraphs (a) through (d) of rule 22d–1. In addition, applicants will comply with rule 11a–3 with respect to any exchanges of shares.

7. The Distributor will refund out of its own assets any CDSC paid in connection with a redemption of shares of a Portfolio C Series upon reinvestment in a Portfolio C Series within 90 days of such redemption.

Applicants' Legal Analysis

Section 6(c) provides that the SEC may exempt any transactions from any transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons set forth in the application for the Existing Order, applicants believe that the requested exemption satisfies the standards set forth in section 6(c).

Applicants' Condition

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–3371 Filed 2–9–95; 8:45 am]
BILLING CODE 8010–01–M

[1] Investment Company Act Release Nos. 19315 (March 5, 1993) (Notice) and 19367 (March 30, 1993) (order).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2762]

North Carolina; Declaration of Disaster Loan Area

Buncombe County and the contiguous Counties of Haywood, Henderson, Madison, McDowell, Rutherford, Transylvania, and Yancey in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on January 14 and 15, 1995. Applications for loans for physical damage may be filed until the close of business on April 3, 1995 and for economic injury until the close of business on November 2, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276206 and for economic injury the number is 844200

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 2, 1995

Philip Lader,
Administrator.
[FR Doc. 95–3346 Filed 2–9–95; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2160]

United States International Telecommunications Advisory Committee (ITAC)—Ad Hoc on APEC; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Ad Hoc on APEC Activities will meet March 2, 1995, in Room 1107, 1:30 to 4 p.m., at the Department of State, 2201 C Street NW., Washington, DC.

The meeting will review results of the APEC–OCED–PECC Symposium on Information Infrastructure and the meeting of the APEC Working Group on Telecommunications, which will be held February 20–24, in Vancouver. Specific topics to be discussed include: Asia-Pacific Information Infrastructure (APII); guidelines on equipment harmonization and trade in international value-added network services; mutual recognition of telecoms equipment test data; APEC telecommunications training programs; and handling of international property rights (IPR) in the APEC arena. The Ad Hoc will also commence preparations for the APEC Telecommunications Ministerial meeting. Questions regarding the agenda or Ad Hoc Activities in general may be directed to Gary DeVight, Department of State (202–647–3234).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. All persons planning to attend should advise the Department by leaving a message on 202–647–0201, no later than two days before the meeting. Enter through the main lobby on C Street. A picture ID will be required for admittance.

Dated: January 31, 1995.

Richard E. Shrum,
ITAC Executive Secretary.
[FR Doc. 95–3409 Filed 2–9–95; 8:45 am]
BILLING CODE 4710–45–M

[Public Notice 2161]

United States International Telecommunications Advisory Committee (ITAC); Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) will meet March 2, 1995, in Room 1107, 10 a.m. to 1 p.m., at the Department of State, 2201 "C" Street, NW., Washington, DC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. To assist in preparations for related international meetings, the Department has established two ITAC Ad Hoc groups to deal respectively with activities of the Working Group on Telecommunications (TEL) of the Asia-Pacific Economic Cooperation (APEC), and the Committee for Information, Computer and Communications Policy (ICCP) of the Organization for Economic Development and Cooperation (OECD). The Ad Hoc on APEC will meet after the ITAC meeting (see separate notice for details).

The agenda of the ITAC meeting will include: (1) Report of ITAC's Ad Hoc on Refinement of ITU Sectors, and related developments; (2) review of the ITU Radio and Telecommunications Standards Advisory Groups (RAG/TSAG) results, January 1995; (3) status of and U.S. participation in other ITU Advisory Groups; (4) recommendations on agenda topics for the first ITU Policy Forum, scheduled for Fall of 1996 (Note: State Department will submit preliminary U.S. views on the Policy Forum agenda to the ITU Secretary General by March 15); (5) further development of an ITAC Work Program and Priorities for the 1995–96 time period; and (6) discussion of the new ITAC Ad Hocs dealing with APEC and OCED preparatory activities for upcoming meetings (to be taken up as the last item of the ITAC meeting). Questions regarding the agenda or ITAC activities in general may be directed to Richard Shrum, Department of State (phone 202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. All persons planning to attend should advise the Department by leaving a message on 202–647–0201, no later than two days before the meeting. Enter through the main lobby on C

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Street. A picture ID will be required for admittance.

Dated: January 31, 1995.

Richard E. Shrum,

ITAC Executive Secretary.

[FR Doc. 95–3410 Filed 2–9–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2162]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:00 p.m., on Thursday, March 16, 1995, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to prepare for the 72nd Session of the International Maritime Organization (IMO) Legal Committee, to be held April 3–7, 1995, and to report on the results of the Seventh Session of the Joint Intergovernmental Group of Experts (JIGE VII), held December 5–9, 1994, in Geneva.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second major subject, which will be considered at approximately 2:30 p.m., will be possible revisions to the 1976 Convention on Limitation of Liability for Maritime Claims ('76 LLMC). The last major subject, which will be considered at approximately 3:00 p.m., will be the JIGE negotiations regarding possible revisions to the International Convention of the Unification of Certain Rules Related to the Arrest of Ships, 1952 (1952 Arrest Convention).

The Current draft of the HNS Convention imposes strict liability upon the shipowner with an additional international fund (second-tier fund) modeled after the International Oil Pollution Compensation Fund. The draft HNS Convention provides compensation for environmental damage as well as personal injury and property damage from a broad range of substances. At the 71st Session, the Legal Committee finalized decisions on several issues regarding the draft HNS Convention and agreed in principal on several others. However, other important questions remain to be resolved. Additionally, it is expected that the 72nd Session of Legal Committee will complete a final review of the draft articles of the HNS Convention, making it the last session for substantive work on the Convention before a scheduled 1996 Diplomatic Conference. The views of the public are requested.

The Legal Committee resumed deliberations on the '76 LLMC at the 71st Session. Several decisions were made, and discussions centered on a draft protocol which provides for raising the limits of liability, changes made necessary by a decision to link the HNS Convention to other limitation of liability regimes, and a streamlined tacit amendment procedure. Work will continue at the 72nd session. Although the United States has not ratified the '76 LLMC, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to the Convention. The views of the public are requested.

Several important decisions were made at JIGE VII regarding possible revisions to the 1952 Arrest Convention. The principle focus of JIGE VII was as follows: (1) Expanding of the list of maritime claims, consistent with the changes in the 1993 Maritime Liens and Mortgages Convention, for which a vessel may be arrested; (2) whether personal liability of the owner is a prerequisite to arrest, particularly when the claim is secured by a maritime lien; (3) whether the arrest should give the respective arresting court jurisdiction to decide the merits of the case; and (4) the extent to which the Convention should be applied to vessels of non-contracting states. The United States has not ratified the 1952 Arrest Convention. However, the interests of United States owners of foreign flag vessels, cargo owners, and maritime claimants and lienholders may be affected by changes to the Convention. The views of the public are requested.

Member of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Commander Steven D. Poulin, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: February 1, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–3411 Filed 2–9–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 3, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50106
Date filed: January 30, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0684 dated January 27, 1995 r–1 to r–3 TC23 Reso/P 0685 dated January 27, 1995 r–4 to r–12 Expedited Europe-South East Asia Resos
Proposed Effective Date: February 28/ March 1, 1995

Docket Number: 50113
Date filed: February 3, 1995
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 728 Reso 010cc—Cargo Currency Adjustment
Proposed Effective Date: April 1, 1995

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–3345 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Research, Engineering and Development Advisory Committee; Aviation Weather Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Friday, February 24, 1995, 2 p.m. to 5 p.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include: a review and discussion of the task statement; discussion of work assignments for committee members; and consideration of issues to be discussed at the next meeting.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Mr. Carl McCullough, ASE–10, 800 Independence Avenue, SW., Washington, DC, at (202) 287–8595, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on February 7, 1995.

Andres Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–3417 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 95–6]

Federal Highway Cost Allocation Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice requests public comment on issues related to a new Federal highway cost allocation study (HCAS) that the FHWA is initiating. Comments on recommendations emanating from an October 1994 cost allocation workshop are requested, in addition to comments on other issues that should be considered in planning and conducting the new study. Preliminary copies of the workshop proceedings are available from Mr. James March, who may be contacted at the phone number shown below.

DATES: This docket will remain open until the study is completed. However, in order for comments responding to issues raised by this notice to be considered during critical early stages of the study, they should be received no later than April 11, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–6, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James March, Office of Policy Development, at (202) 366–9237 or Mr. Steven Rochlis, Office of Chief Counsel, at (202) 366–0780, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The last comprehensive Federal HCAS was conducted from 1978 to 1982, pursuant to Section 506 of the Surface Transportation Assistance Act (STAA) of 1978 (Pub. L. 95–599). That section stipulated that the study was to investigate the distribution of Federal highway program costs among the various classes of highway vehicles that occasion such costs. It also called for an assessment of current Federal user charges and recommendations for more equitable user charge alternatives. In addition, Section 506 directed the Congressional Budget Office (CBO) to develop guidelines for the cost allocation study, including procedures to be employed in determining the equitable allocation of highway costs and the information needed to apply those procedures.

Section 506 and the subsequent CBO guidelines established the general scope of the 1982 Federal highway cost allocation study. Specifically, the study was to focus on evaluating Federal highway program costs, not highway costs incurred by State and local transportation agencies. Also, the Federal user fee structure was to be evaluated on the basis of equity rather than economic efficiency, with equity measured in terms of the ratio of Federal user fees payments to Federal program costs occasioned by different vehicle classes.

The CBO guidelines listed several factors underlying the need for the 1982 Federal cost allocation study, including the effect of energy policies on fuel consumption and tax revenues, the shift in the Federal highway program's emphasis away from new construction and toward repair and rehabilitation, the long time that had elapsed since the last comprehensive Federal cost allocation study, and the fact that methods used in previous studies could be improved upon in a number of technical aspects and in the way they reflected the new mix of Federal highway programs.

Similar factors are relevant today and suggest that a new Federal cost allocation study would be timely. The last comprehensive highway cost allocation study was completed over 12 years ago and much of the data upon which that study was based are outdated. Energy and environmental initiatives continue to affect fuel tax receipts, and considerations leading up to reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102–240, 105 Stat. 1914, may require changes in current highway user fees. The ISTEA made fundamental changes in the structure of the Federal-aid highway program that have significant implications for cost allocation. Proposals currently being discussed to consolidate Department of Transportation programs could have even greater ramifications for highway cost allocation.

The General Accounting Office recommended in its 1994 report, Highway User Fees: Updated Data Needed to Determine Whether All Users Pay Their Fair Share, (report number GAO/RCED–94–181) that a new Federal cost allocation study be conducted as the basis for assessing the equity of Federal highway user fees. Without explicit Congressional guidance on the scope of a new cost allocation study, and recognizing the many changes in the highway program since the last study was completed, the FHWA conducted a two-day workshop in October 1994 to discuss a range of policy and technical issues that might be considered in the study. Over 75 persons representing Federal and State transportation agencies, transportation industries, academic institutions, consulting firms, and other organizations participated in the workshop. Preliminary proceedings of that workshop, which include many specific recommendations made by workshop participants, will be available for inspection in the docket; copies may be requested by calling Mr. James March at the phone number listed above under "For Further Information Contact:". During the course of the cost allocation study, working papers and other interim work products will be placed in the docket.

Among other things, workshop participants recommended that the cost allocation study consider:

(1) External costs of highway use and operation, such as congestion, accident costs, and air and noise pollution costs, as well as traditional highway agency costs;

(2) Alternative cost allocation methods, especially a marginal cost approach, along with traditional cost allocation methods;

(3) Highway-related revenues and expenditures for all levels of government, not just Federal revenues and expenditures;

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(4) Implications for highway cost allocation of multi-modal investment programs; and

(5) Life-cycle cost analysis principles for estimating future highway investment requirements.

Participants also recommended that, while many new issues deserve consideration in the cost allocation study, a primary focus of the study should be on allocating Federal costs using methods consistent with the 1982 study.

Comments are requested on these recommendations and on other technical issues and recommendations included in the workshop proceedings.

A preliminary plan for the new cost allocation study has been developed. The study will be divided into four phases: (1) Issues analysis and workplan development; (2) update and refinement of highway cost allocation data and methods; (3) analysis of highway cost responsibility and the equity of the user fee structure; and (4) evaluation of alternative cost allocation procedures. Work envisioned under each phase is summarized below. Comments are requested on this plan.

Phase I—Issues Analysis and Workplan Development

Many issues were raised at the October workshop concerning the scope of the next cost allocation study and the advantages and disadvantages of pursuing alternative highway cost allocation methods. Several issues could have major implications for the direction of the next study, including: (1) The extent to which marginal costs can and should be reflected in the study; (2) the extent to which revenues and expenditures by all levels of government can be estimated and incorporated in the study; and (3) the extent to which cost allocation can be applied to multi-modal transportation investment programs that will replace mode-specific investment programs in the future. White papers will be prepared to evaluate issues related to the analysis of these and other concerns in the next cost allocation study. An important factor that will affect the extent to which these issues can be considered is the availability of needed data and analytical methods. An assessment of data needs to evaluate the emerging cost allocation issues will be conducted during this initial phase of the study.

The FHWA has maintained a continuing research program to update highway cost allocation data and methods. Research has focused primarily on refining data and methods used in the 1982 study. A review of current cost allocation data and methods is already underway. Working papers will be prepared which discuss current methods for analyzing cost responsibility for: Pavement, bridge, and other highway costs; sources of data on vehicle miles of travel, operating weight distributions, and registered weight/operating weight distributions; estimates of highway user revenue contributions by each vehicle class; and other aspects of highway cost allocation. Additional research and data needs will be discussed in those working papers.

At the end of the first phase, the study work plan will be reviewed based on analysis and data needs identified in the white papers and technical working papers. Input from internal and external review committees will be sought.

Phase II—Update and Refine Highway Cost Allocation Data and Methods

Based upon the revised study plan developed in Phase I, data and analytical tools will be updated and refined. Among the areas where significant work already can be foreseen are improving pavement cost models, improving the consideration of life cycle costs, improving estimates of highway travel by different vehicle classes, improving operating weight distributions for different vehicle classes, improving estimates of operating weight/registered weight distributions, and improving other data needed to estimate revenues generated by different highway user fees. Data and information needed to apply alternative cost allocation approaches identified at the workshop will be collected, consistent with the relative importance of each approach and the resources available.

Phase III—Analyze Highway Cost Responsibility and the Equity of Alternative User Fee Structures

In this phase information from Phase II will be used to analyze the highway cost responsibility and user fee contributions of different vehicle classes and to evaluate the equity of the current user fee structure. Alternative user fee structures will be analyzed to evaluate improvements in equity and efficiency that potentially could be realized through changes in highway user fees. Sensitivity analyses will be performed throughout the course of this phase to evaluate the most critical factors that affect cost allocation results.

Phase IV—Evaluate Alternative Cost Allocation Procedures

In this phase alternative approaches to highway cost allocation will be evaluated, including application of a marginal cost approach, analysis of the responsibility of different vehicle classes for external highway costs and benefits, estimates of the overall responsibility of different vehicle classes for highway costs at all levels of government, evaluation of the overall equity of highway user fees imposed by all levels of government, and consideration of applying cost allocation principles to costs and revenues for all surface transportation modes. The level of analysis for these issues will depend on several factors, including the availability of data, the relevance of each issue to broader policy objectives, and the time and resources available to analyze the issues. Docket comments will be considered in evaluating the type and level of analysis required for these and other emerging cost allocation issues.

In addition to comments on this broad study plan, comments also are requested on the following questions that arose from the cost allocation workshop:

1. ISTEA provides greater flexibility in the use of Federal-aid highway funds for transit and other expenditures not directly related to the construction, operation, and maintenance of the highway system. Many of these newly eligible costs are intended to promote broad societal goals that extend beyond transportation goals. Should expenditures of Federal-aid highway funds for such non-transportation costs be allocated to highway users, and if so how? Is there a rationale for allocating certain transit expenditures to highway users and not others? Should all highway users share equally in such costs? Should fuel taxes for deficit reduction be considered in cost allocation, and if so, how?

2. Previous cost allocation studies have been criticized for using different approaches to allocate different types of costs. Should cost allocation methods be varied according to the types of costs and differences in the incidence of those costs among highway users or should the same approach be used for all types of costs?

3. The workshop did not explicitly consider alternative user fees, but user fee issues will be important considerations in the cost allocation study. Several alternative highway user fees were analyzed in the 1982 cost allocation study and in subsequent FHWA studies. Comments are requested on the advantages and disadvantages of potential modifications to the existing user fee structure including new types of fees that might be imposed, on the desirability of maintaining current tax exemptions such as for various alternative fuels, and on other user fee issues.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: February 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–3425 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Coordinating Council on March 15, 1995. The session is expected to focus on: (1) Federal Intelligent Transportation Systems (ITS) Reports; (2) ITS America Executive Director's Report; (3) Discussion of a White Paper on ITS America's Role in Standards Development; (4) Discussion of a White Paper on an ITS Data Communications Strategy; (5) Report from the Policy and Deployment Task Force; (6) Report from the Commercial Vehicle Operations Committee; (7) ITS America Restructuring Report; (8) Report from the Benefits, Evaluation, and Costs Committee; and (9) Communications and Public Affairs Report. ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS America establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS America will meet on March 15, 1995, from 8 a.m. to 11:30 a.m., e.t.

ADDRESSES: The Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or wishing to speak at this meeting should contact Mr. Chris Body at ITS America by telephone at (202) 484–4131, or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HVH–1, 400 Seventh St., SW., Washington, D.C. 20590, (202) 366–2201. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–3422 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS America) will hold a meeting of its Board of Directors on March 17, 1995. The session is expected to focus on: (1) Review and Acceptance of Election Results; Installation of New Board Members; (2) Election of New Officers of the Board of Directors; (3) Report on ITS America Bylaws Revision; (4) Appointment of ITS America Coordinating Council Members; (5) Report of the Board Executive Committee; (6) ITS America Executive Director's Report; (7) Report on Federal Intelligent Transportation Systems (ITS) Initiatives; (8) Report of the ITS America Coordinating Council; (9) Report on the ITS America Fifth Annual Meeting; (10) Report of the International Liaison Committee, ITS World Congress Planning; (11) Report and Discussion Regarding ITS America Membership Development; (12) Discussion of Responsibility of Boards of Directors; (13) New Board of Directors Committee Appointments; and (14) Report of the ITS America Deployment Task Force. ITS America provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS America establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS America will meet on March 17, 1995, from 1:30 p.m. to 4 p.m., e.t.

ADDRESSES: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008, (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS America, 400 Virginia Avenue SW., Suite 800, Washington, D.C. 20024. Persons desiring further information or wishing to speak at this meeting should contact Mr. Chris Body at ITS America by telephone at (202) 484–4131 or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HVH–1, 400 Seventh St., SW., Washington, D.C. 20590, (202) 366–2201. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–3423 Filed 2–9–95; 8:45 am]

BILLING CODE 4910–22–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 28
Friday February 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, February 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Reports of the Office of Inspector General.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: Various Failed Depository Institutions Nationwide (Case No. 550-01953-94-BOD)

Matters relating to the Corporation's supervisory and corporate activities.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

Dated: February 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95-3490 Filed 2-8-95; 11:29 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 7625.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 9, 1995—2:00 p.m.

CHANGE IN THE MEETING: The time of the meeting has been rescheduled from 2:00 p.m. to 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 95-3527 Filed 2-8-95; 3:19 am]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:30 p.m., Thursday, February 16, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 8, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-3509 Filed 2-8-95; 3:19 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 15, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-3465 Filed 2-8-95; 8:45 am]

BILLING CODE 6210-01-P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of February 13, 1995.

An open meeting will be held on Tuesday, February 14, 1995, at 3:00 p.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, February 14, 1995 at 3:00 p.m., will be:

Consideration will be given to whether to propose for public comment a new rule and form under the Investment Advisers Act of 1940 that would require certain investment advisers to provide clients with an annual report regarding their use of client brokerage

including their receipt of research and other services in exchange for that brokerage. For further information, please contact Kenneth J. Berman at (202) 942-0721.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

Dated: February 8, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95-3565 Filed 2-8-95; 3:47 pm]

BILLING CODE 8010-01-M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 9:30 a.m., Thursday, February 16, 1995.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The telephone conference meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial and financial issues of the Corporation.
- Review of personnel rules and practices.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301-564-3354.

Dated: February 7, 1995.

William H. Timbers, Jr.,

President and Chief Executive Officer

[FR Doc. 95-3482 Filed 2-8-95; 10:45 am]

BILLING CODE 8720-01-M

Corrections

Federal Register
Vol. 60, No. 28
Friday, February 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941242-4342; I.D. 111494A]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

Correction

In the correction of proposed rule document 94-30727 appearing on page 5763 in the issue of Monday, January 30, 1995, Table 2 should have appeared in its entirety as set forth below:

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS.[1,2]

Subarea	TAC	ITAC[3]	Roe season[4]		Non-roe season[5]	
			45%	40%	55%	60%
Bering Sea:						
Inshore		395,675	178,054	158,270	217,621	237,405
Offshore		734,825	330,671	293,930	404,154	440,895
Total	1,330,000	1,130,500	508,725	452,200	621,775	678,300
Aleutian Islands:						
Inshore		16,838	16,838		remainder	
Offshore		31,272	31,272		remainder	
Total	56,600	48,110	48,110		remainder	
Bogoslof:						
Inshore		298	298		remainder	
Offshore		552	552		remainder	
Total	1,000	850	850		remainder	

[1] TAC = total allowable catch.
[2] Based on an offshore component allocation of 0.65 (TAC) and an inshore component allocation of 0.35 (TAC)
[3] ITAC = initial TAC = 0.85 of TAC
[4] January 1 through April 15—based on a 45/55 or 40/60 split (roe = 45 percent or 40 percent)
[5] August 15 through December 31—based on a 45/55 or 40/60 split (non-roe = 55 percent or 60 percent)

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-7131]

Safe Harbor for Forward-Looking Statements

Correction

In notice document 95-2968 beginning on page 7235, in the issue of Tuesday, February 7, 1995, make the following correction:

On page 7236, in the third column, after the sentence "3:30 pm: BankAmerica, Michael J. Halloran, Executive Vice President and General Counsel", a paragraph, the date, the signature line, the FR document line, and the Billing Code were omitted and should have appeared as follows:

III. Statutory Authority

This public rulemaking proceeding has been ordered by the Commission pursuant to Section 21 of the Securities Act, Section 22 of the Exchange Act and Rule 6 of the Commission's Rules of Practice.

Dated: February 1, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-2968 Filed 2-6-95; 8:45 am]

BILLING CODE 8010-01-M

BILLING CODE 1505-01-D

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federal register

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February 10, 1995

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 110

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 110

[SD–94–001]

RIN 0581–AB22

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service, United States Department of Agriculture, is amending its regulations governing recordkeeping of federally restricted use pesticides by certified applicators. The final regulations revise the definitions of the terms "medical emergency" and "licensed health care professional," provide new requirements for recording the location of "spot applications" of federally restricted use pesticides, reduce the time period for a certified applicator to make a record of the application of a federally restricted use pesticide, clarify the circumstances under which licensed health care professionals may obtain, utilize, and release restricted use pesticide records or record information, and clarify the penalty provisions in the regulations. The changes to the rule ensure that the regulations are consistent with the objectives of section 1491 of the Food, Agriculture, Conservation, and Trade Act of 1990. The changes should further ensure accuracy of records of the application of federally restricted use pesticides, and improve the ability of licensed health care professionals to provide medical treatment to an individual who may have been exposed to a federally restricted use pesticide.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, Science Division, AMS, 8700 Centreville Road, Suite 200, Manassas, VA 22110, 703–330–7826.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by OMB.

This rule also has been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will (1) revise certain definitions within the regulations; (2) require the location of spot applications of federally restricted use pesticides be designated as "spot application" followed by a concise description of location and treatment; (3) reduce the time period within which the information required by the regulations must be recorded; (4) clarify the availability of pesticide record information to facilitate medical treatment or first aid; (5) clarify the utilization and release of pesticide records or record information by licensed health care professionals; and (6) clarify the penalty provisions.

The Administrator of AMS has determined that approximately 1.3 million certified pesticide applicators (980,000 private and 300,000 commercial applicators) will be affected by this final rule. However, we do not anticipate that any of the revisions to the regulations or additional requirements will result in any significant additional economic impact on certified applicators of federally restricted use pesticides. The amendments to the rule will not increase the amount of time necessary for a certified applicator to record the information required by the regulations. Although the regulations will require certified applicators to record a concise description of the location of a "spot application," this requirement does not significantly increase the time to make a record.

Under these circumstances, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging this rule.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping provisions included in this rule have been approved by the Office of Management and Budget (OMB), number 0581–0164.

Background

As part of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 136i-1), hereinafter referred to as the FACT Act, Congress mandated the establishment by the Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency, of requirements for recordkeeping by all certified applicators of federally restricted use pesticides.

The regulations at 7 CFR part 110, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides," (hereinafter referred to as the regulations) require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records or record information by federal or state officials, or by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions. The regulations became effective on May 10, 1993.

After publication of the regulations, AMS proceeded with the implementation of a national program for recordkeeping of federally restricted use pesticides. Early in the implementation phase of the AMS recordkeeping program, state regulatory agencies and others raised issues involving specific interpretations of the regulations. A lawsuit was filed against the Secretary of Agriculture and the Administrator of the Environmental Protection Agency by the National Coalition Against the Misuse of Pesticides and others. The lawsuit challenged the substance of limited portions of the final regulations promulgated by AMS.

Proposed Rule

After a thorough review of the regulations and consideration of the issues raised by the lawsuit, we published a document on April 6, 1994, in the **Federal Register** (59 FR 16400–16403), proposing to amend the recordkeeping regulations for federally restricted use pesticides.

Comments on the Proposed Rule

AMS solicited comments concerning our proposal for a 60 day comment period ending June 6, 1994. We received 47 comments from certified pesticide applicators, medical professionals, agricultural and farmworker organizations, State Departments of Agriculture, State Cooperative Extension Services and other individuals and groups. The comments received and our responses to those comments are as follows.

Section 110.2—Definitions

Licensed Health Care Professional

The current regulations define "licensed health care professional" as "a physician, nurse, emergency medical technician or other qualified individual, licensed by a State to provide medical treatment."

AMS proposed to amend the definition of a "licensed health care professional" to mean "a physician, nurse, emergency medical technician or other qualified individual, licensed or certified by a state to provide medical treatment." AMS proposed this amendment to clarify our intention to include qualified individuals who have been certified by a state to provide medical treatment in the definition of "licensed health care professional."

Many comments supported the proposed change in the definition citing the need to include all individuals who are either state certified or licensed, and are qualified to provide medical treatment in cases of pesticide related illness in the definition of "licensed health care professional." For example, one commentor stated, "the proposed definition recognizes the realities of modern health care, in that many tasks are performed by paraprofessionals and other persons working under the direction of licensed professionals." Another commentor stated, "* * * often the first responder for medical emergencies or medical care is not a licensed health care professional. The definition needs to be broadened to include other professionals to ensure greater access to immediate and appropriate medical treatment."

AMS agrees that under some circumstances certified individuals are qualified to provide medical treatment for pesticide related exposures. Some states use the term "certified" and "licensed" interchangeably. For example, a "licensed nurse practioner" in one state may be classified as a "certified nurse practioner" in another state. Therefore, this final rule amends the definition of "licensed health care professional" to include any qualified individuals certified by a state to provide medical treatment. However, individuals who have been certified only to provide first aid or cardiopulmonary resuscitation (CPR) through organizations such as the American Red Cross are not included in the definition of "licensed health care professional" in this final rule.

AMS also received comments which expressed concerns that allowing access by "certified" individuals would greatly expand access to private record information to individuals who are not qualified to provide proper treatment for pesticide related illnesses. One commentor stated, "* * * there are 23 different health care professionals certified by the state including such professions as: Athletic Training, Chiropractic, Mental Health Practice, Physical Therapy and Psychology. Under the proposed changes, these professionals would be able to request records and release the information. This change would not increase health protection, but rather provide an avenue for non-related health care professionals to have access to private records."

We agree with comments received expressing concerns that certified individuals such as physical or athletic therapists should not be able to request pesticide record information. We are addressing these concerns in section 110.5(a) by allowing only the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, access to record information. This amendment to section 110.5(a) should eliminate the request for pesticide record information by individuals who are not qualified to provide medical treatment for pesticide related injuries or illness.

For these reasons, we are adopting the proposed language. "Licensed health care professional" shall be defined as "a physician, nurse, emergency medical technician, or other qualified individual, licensed or certified by a State to provide medical treatment."

Medical Emergency

The current regulations define "medical emergency" as "injuries or illnesses which require immediate medical attention to prevent life-threatening or disabling conditions."

AMS proposed to change the definition of "medical emergency" after concerns were raised that the definition was too restrictive and could hinder medical treatment by licensed health care professionals of individuals who may have been exposed to a federally restricted use pesticide. It was not the intent of AMS to limit medical treatment of persons who may have been exposed to a restricted use pesticide. Therefore, AMS proposed that the term "medical emergency" be defined as "a situation that requires immediate medical treatment or first aid."

AMS received 27 comments concerning the proposed change to the definition of "medical emergency." The commentors who supported the proposed definition stated that the current definition was too restrictive. For example, one commentor stated that the proposed definition "* * * ensures that all instances of pesticide related illnesses can be appropriately dealt with; that they do not get omitted inadvertently due to an overly narrow definition." Another commentor stated, "Expanding this definition ensures the appropriate care and medical response for all pesticide related illnesses."

Commentors who opposed the proposed change stated that the current and proposed definitions of "medical emergency" are too broad because they encompass illnesses or injuries that have nothing to do with possible pesticide poisonings. One of these commentors stated that "The definition should refer to and be limited to the related pesticide situation to avoid confusion and misunderstanding." However, the comments opposing the change to the definition did support providing the record information when appropriate for pesticide related illness.

AMS agrees that the current definition of "medical emergency" is too restrictive and could hinder appropriate medical treatment to individuals who may have been exposed to a federally restricted use pesticide. After considering the comments, we have adopted a definition that is less restrictive than the current definition and provides for more appropriate access to record information for a medical emergency. The definition of "medical emergency" in the final rule encompasses situations that require immediate medical treatment or first aid as set forth in the proposal. Further, in response to the comments which stated that the definition was too broad, we added a phrase which limits the definition of medical emergency to situations that require treatment or first aid "to treat possible symptoms of pesticide poisoning or exposure."

Therefore, this final rule amends the definition of "medical emergency" to read as follows: "A situation that requires immediate medical treatment or first aid to treat possible symptoms of pesticide poisoning or exposure."

Section 110.3(a)(6)—Spot Applications

The current pesticide recordkeeping regulations provide reduced requirements for recording information for "spot applications." Section 110.3(a)(6) provides that applications of restricted use pesticides made on the same day in a total area of less than one-tenth (1/10) of an acre require the following elements be recorded: (1) Brand or product name and EPA registration number; (2) total amount applied; (3) location must be designated as "spot application"; and (4) the date of application. Section 110.3(a)(6) does

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not apply to records maintained for greenhouse and nursery applications.

The reduced requirements for recordkeeping information for "spot applications" were intended to provide certified applicators with an incentive to record small spot applications on noxious weeds or similar type applications, without recording each location, due to the usually small amount of pesticide associated with a spot application.

After concerns were raised that the required spot application record information was not adequate for medical treatment because a specific location was not required to be recorded for each spot application, AMS proposed to delete section 110.3(a)(6), the spot application record element. By deleting section 110.3(a)(6), spot applications would be recorded in the same manner as all other federally restricted use pesticide applications.

AMS received 35 comments addressing the deletion of the spot application provision. Comments which supported the deletion of the spot application provision generally stated that specific locations can provide important information for medical treatments. For example one commentor stated, "in cases where an individual may have been poisoned by a spot application, it may be critically important to know the specific location of the application."

Comments opposing the proposed change stated that it would be extremely difficult to record the specific location of a spot application. For example one commentor stated that "It would be very difficult, if not impossible, to provide the exact legal description of the area treated." Other commentors were concerned that the proposed change would be extremely burdensome to certified applicators, increase their workload and operating costs, and therefore have an economic impact. Other commentors stated that if the recordkeeping requirements become too burdensome, the net result would be non-compliance.

AMS recognizes the importance of location information where an entire field or area has been treated. AMS also recognizes that, in some instances, knowing that a spot application was performed could be valuable information when needed to determine if a possible pesticide exposure could have occurred in a field or area.

Moreover, because the purpose of a spot application is to apply pesticide to a small area targeting a specific pest, such as noxious weeds or an ant mound, it would be impractical to require certified applicators to supply a precise description of each application within a field or production area, in order to make an exact determination if a possible pesticide exposure occurred.

In order to provide information on the location of spot pesticide applications, and avoid a cumbersome recording requirement for such spot applications, this final rule maintains the spot application provision in the regulations, but requires a more detailed description of the location of spot applications to be recorded than is currently required by section 110.3(a)(6). This final rule requires the certified applicator to provide location, designated as "spot application," followed by a concise description of the location and treatment for spot applications of a federally restricted use pesticide. For example, a certified applicator who applied pesticides for noxious weeds could record the location and treatment as "spot application," followed by a concise description such as "treated thistle over entire farm acreage;" a certified applicator who treated for fire ants could record the location of the application by stating "spot application, sprayed fire ant mounds on pastures of lower creek farm." The description of the location of spot applications should assist licensed health care professionals to determine whether an individual has been exposed to a federally restricted use pesticide.

Additionally we are making other changes for clarification and consistency between the recordkeeping requirements for spot applications and those for other applications set forth at section 110.3(a)(1–5) which is redesignated in this final rule as section 110.3(a). We are amending section 110.3(a)(6)(iv) from "the date of application" to "the month, day, and year on which the restricted use pesticide application occurred." This language is consistent with that used in section 110.3(a)(4).

Accordingly, this final rule amends the spot application provision in section 110.3(a)(6), which is redesignated in this final rule as section 110.3(b), to require certified applicators to maintain records of applications of restricted use pesticides made on the same day in a total area of less than one-tenth (1/10) of an acre. These records must include, for the application, the brand or product name and EPA registration number; total amount applied; location, designated as "spot application," followed by a concise description of location and treatment; and the month, day, and year on which the restricted use pesticide application occurred. This final rule does not change requirements as previously established for greenhouse and nursery applications of restricted use pesticides. The provisions for spot applications do not apply to applications of restricted use pesticides in greenhouses and nurseries. Instead, certified applicators who make applications in greenhouses and nurseries are required to keep all the data elements required by section 110.3(a).

Section 110.3(b)—Time for Making an Official Record

The current regulations provide that the information required for a record shall be recorded within 30 days following the pesticide application.

Concerns were raised regarding the accuracy of the records for both collecting information for a pesticide use data base and for medical treatment if application information was only required to be recorded within 30 days following the pesticide application. AMS responded by proposing that a record of the application of a restricted use pesticide be made within 7 days following the pesticide application.

AMS received 41 comments on this issue. Comments ranged from suggestions that a record be completed upon application, within 24 hours, shortened to 2 days, 3 days, 5 days, 14 days and maintained at the 30 day time period.

Some commentors supported requiring certified applicators to record the required pesticide information within 7 days or less after application of the pesticide in order to have information available for medical treatment of possible pesticide exposure. AMS supports the need to have accurate information available in cases of medical treatment and has addressed these concerns by requiring in section 110.5(a), as amended by this final rule, that certified applicators provide the record information promptly to the atttending licensed health care professional when necessary to provide medical treatment or first aid, and immediately when the attending licensed health care professional determines that there is a medical emergency.

AMS disagrees with those commentors who stated that pesticide application information must be recorded shortly after the pesticide has been applied so that it can be available for medical treatment. The current regulations require certified applicators to provide accurate record information for purposes of providing medical treatment or first aid, in accordance with section 110.5(a), whether or not the time to make a written record has elapsed. This final rule amends the regulations by adding language which clarifies the certified applicator's responsibility to provide federally restricted use pesticide record information for medical treatment.

AMS also received comments supporting allowing 30 days to record pesticide application information because it was consistent with section 1491(a)(2) of the FACT Act which requires certified commercial applicators to provide a copy of a restricted use application record within 30 days of the application. Although the FACT Act requires certified commercial applicators to provide a copy of the record information to their clients within 30 days of application, it does not provide a time period within which a certified applicator, private or commercial, shall make a record.

In addition, numerous commentors supported the 30 day period to make a record because they believed the 7 days did not provide certified applicators adequate time to make a record in peak production periods. AMS has reevaluated the proposed 7 day time period and agrees that during peak production periods certified applicators could need more time to make accurate records due to the long hours many applicators spend in the field during those periods.

Therefore, to provide a balanced approach to assure accurate information for data collection on federally restricted use pesticides and provide adequate time for certified applicators to make a record, we are amending section 110.3(b), which is redesignated in this final rule as section 110.3(c), to require that certified applicators must complete the record within 14 days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with section 110.5(a).

AMS also received comments from certified commercial applicators objecting to the change in the time frame to provide copies of restricted use application records to clients from 30 days to the proposed 7 days. We did not propose to change, nor does this final rule change the time within which certified commercial applicators must provide clients with copies of records of restricted use applications. Certified commercial applicators are still given 30 days to provide a copy of the federally restricted use application record to their clients.

AMS also received comments requesting clarification of the use of the term "official record" in the supplementary information in the proposed rule. The use of the term "official record" was incorrect. Its use was our attempt to describe the recording of a pesticide application as required under 7 CFR part 110.

Section 110.5(a)—Availability of Records To Facilitate Medical Treatment

Currently, section 110.5(a) of the rule states: "When a licensed health care professional determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained, the certified applicator required to maintain the record shall provide the record information and any available label information promptly to the licensed health care professional. If it is determined by a licensed health care professional to be a medical emergency, the record information of the restricted use pesticide relating to the medical emergency shall be provided immediately."

AMS proposed to amend section 110.5(a) to address concerns that if a strict interpretation was applied to this section, it would require the licensed health care professional to personally make the record information request and possibly hinder access to record information and medical treatment. AMS never intended to prevent an individual acting under the direction of the attending licensed health care professional from requesting record information. We are aware that, in some instances, the attending licensed health care professional may rely on a person acting under his/her direction to make the contacts necessary to obtain the pesticide record information.

In order to clarify the regulations concerning the availability of pesticide record information to facilitate medical treatment, AMS proposed to amend section 110.5(a) to provide that either the licensed health care professional or an individual acting under the direction of the attending licensed health care professional could request record information when necessary to provide medical treatment or first aid. The proposed amendment reads as follows: "When a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately."

AMS received 28 comments regarding proposed section 110.5(a). Most of the commentors supported the proposed change. Additionally, several commentors supported the concept of the proposed amendment, but suggested changes in the proposed language to decrease the possibility of unqualified licensed health care professionals obtaining the record information.

After consideration of the comments, AMS agrees that the proposed language could be more specifically worded to address comments received regarding access to records by licensed health care professionals who may not be qualified to provide treatment for pesticide related illness. Therefore, we are adding the word "attending" to licensed health care professional to be consistent throughout the rule and help eliminate request for records or record information from individuals who may be licensed or certified by a state to provide medical treatment or first aid, but are not qualified to provide medical treatment for possible pesticide injury or illness. This final rule amends section 110.5(a) to read as follows:

When the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of a restricted use pesticide required to be maintained under § 110.3 is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

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Section 110.5(b)—Release of Record Information by Licensed Health Care Professionals

Under the current regulations, licensed health care professionals may release record information obtained through section 110.5(a) only when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained. Section 110.5(b) provides: "No licensed health care professional shall release any record or information from the record obtained under paragraph (a) of this section except as necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained."

Due to concerns that section 110.5(b) was too restrictive, AMS proposed to expand the circumstances under which the pesticide record information could be utilized and released, and to clarify who had the authority to release this information. Accordingly, AMS proposed to amend section 110.5(b) to provide: A licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual or individuals who may have been exposed to the restricted use pesticide for which the record is or will be maintained. Further utilization and release of such record or record information is limited to licensed health care professionals who may use it: (1) To submit pesticide poisoning incident reports to appropriate State or Federal agencies, or (2) where consideration of medical ethics may necessitate such utilization and release.

In general, the comments received supported the proposed amendments to section 110.5(b). However, many comments expressed concern with the use of the term "medical ethics" as a criterion for the release of pesticide record information. One commentor stated, "* * * matters of ethics are, in some respects, shared by a group, but are also inherently personal and subjective." Numerous commentors also thought that the use of "medical ethics" was vague and were opposed to the proposal unless the phrase was clarified as to what constitutes "consideration of medical ethics." However, the comments generally supported the use of record information by the licensed health care professional if it would prevent further pesticide health hazards.

AMS agrees with the comments stating that the attending licensed health care professional in some instances should be able to utilize pesticide record information to prevent additional poisoning or injuries. AMS also agrees with the commentors that stated that the use of the term "medical ethics" is vague and open for broad interpretation. Therefore, the amended language deletes the use of the phrase "medical ethics." Accordingly, this final rule provides the attending licensed health care professional with the ability to release pesticide record information to appropriate agencies when necessary to prevent further injury or illness.

In addition, comments expressed the need to allow licensed health care professionals the flexibility to meet requirements of pesticide poisoning incident reporting. Again, comments generally supported the concept. However, some commentors were concerned about the certified applicator's right to confidentiality in the process of reporting.

AMS agrees that the proposed language can be improved in order to address many of the comments and still provide the needed flexibility to assure that licensed health care professionals can utilize and release the pesticide record information for appropriate reasons.

Therefore, we are amending section 110.5(b) to read as follows:

(1) The attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained. (2) The attending licensed health care professional may release the record or record information to appropriate federal or state agencies that deal with pesticide use or any health issue related to the use of pesticides when necessary to prevent further injury or illness. (3) A licensed health care professional may release the record or record information to submit pesticide poisoning incident reports to appropriate state or federal agencies.

Section 110.7—Penalties

Section 110.7 provides that "any certified applicator who violates 7 U.S.C. 136i–1 (a), (b), or (c) shall be liable for a civil penalty of not more than $500 in the case of the first offense, and of not less than $1,000 in the case of each subsequent offense, except that the penalty shall be less than $1,000 for a second offense if the Administrator determines that the certified applicator made a good faith effort to comply with this part."

Several state pesticide regulatory agencies had questions regarding the application of the penalty provisions in section 110.7. After reexamining the issue, AMS proposed to amend section 110.7 to eliminate any ambiguity and make it clear that the Administrator of AMS, or the Administrator's designee, has flexibility in assessing civil penalties. The proposed changes paralleled the language in subsection (d) of the FACT Act. AMS proposed to amend section 110.7 to provide that "any certified applicator who violates the requirements of 7 U.S.C. 136i–1 (a), (b), or (c) shall be subject to a civil penalty of not more than $500 in the case of the first offense, and in the case of subsequent offenses, be subject to a fine of not less than $1,000 for each violation, except that the penalty shall be less than $1,000 if the Administrator, or his designee, determines that the certified applicator made a good faith effort to comply with this Part."

Numerous comments supported the proposed amendment. For example, one commentor stated, "* * * the flexibility to tailor penalties to specific situations and consider the effort made to comply with the regulations are essential elements of good program implementation and enforcement."

Comments opposing the proposed change asserted that the Secretary of Agriculture should not have the discretion to waive the fine. AMS disagrees. The FACT Act provides the Secretary discretion to determine whether or not a penalty shall be assessed for violations of the FACT Act, and to assess a penalty of less than $1,000 if the Secretary determines that the certified applicator made a good faith effort to comply.

Therefore, we are adopting the proposed language, with some minor changes for clarity. This final rule amends section 110.7 to read as follows: "Any certified applicator who violates the requirements of 7 U.S.C. 136i–1 (a), (b), or (c) or this part shall be subject to a civil penalty of not more than $500 in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than $1,000 for each violation, except that the civil penalty shall be less than $1,000 if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1 (a), (b), and (c) and this part."

Other Comments

We also received a number of comments which are beyond the scope of this rulemaking proceeding, and therefore we are not addressing those comments in this final rulemaking document.

Conclusion

Based upon the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule, except as previously discussed in this document and except for minor editorial changes for clarity.

List of Subjects in 7 CFR Part 110

Pesticide and pests, reporting and recordkeeping requirements.

Therefore, 7 CFR part 110, is amended as follows:

PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS

1. The authority citation for part 110 is revised to read as follows:

Authority: 7 U.S.C. 136a(d)(1)(c), 136i–1, and 450; 7 CFR 2.17, 2.50.

2. In § 110.2, the definition of the term "licensed health care professional" is amended by adding the phrase "or certified" immediately following the word "licensed".

3. In § 110.2, the definition of the term "medical emergency" is revised to read as follows:

§ 110.2 Definitions.

* * * * *

Medical emergency. A situation that requires immediate medical treatment or first aid to treat possible symptoms of pesticide poisoning or exposure.

* * * * *

4. In § 110.2, the definition of the word "recordkeeping" is amended by removing the reference to "§ 110.3(a)(1) through (6) of this part" and adding "§ 110.3(a) and (b)" in its place.

5. Section 110.3 is amended as follows:

a. Paragraph (a) is revised as set forth below.

b. Paragraphs (b) through (g) are redesignated as paragraphs (c) through (h) respectively.

c. New paragraph (b) is added to read as set forth below.

d. Redesignated paragraph (c) is revised as set forth below.

§ 110.3 Records, retention, and access to records.

(a) Certified applicators of restricted use pesticides shall maintain records of the application of restricted use pesticides. Except as provided in paragraph (b) of this section, these records shall include the following information for each application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a restricted use pesticide was applied. The location of the application may be recorded using any of the following designations:

(i) County, range, township, and section;

(ii) An identification system utilizing maps and/or written descriptions which accurately identify location;

(iii) An identification system established by a United States Department of Agriculture agency which utilizes maps and numbering system to identify field locations; or

(iv) The legal property description.

(4) The month, day, and year on which the restricted use pesticide application occurred; and

(5) The name and certification number (if applicable) of the certified applicator who applied or who supervised the application of the restricted use pesticide.

(b) Certified applicators shall maintain records of the application of restricted use pesticides made on the same day in a total area of less than one-tenth (1/10) of an acre. Except for applications of restricted use pesticides in greenhouses and nurseries, to which the requirements of paragraph (a) of this section apply, these records shall include the following information for the application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, designated as "spot application," followed by a concise description of location and treatment; and

(4) The month, day, and year on which the restricted use pesticide application occurred.

(c) The information required in this section shall be recorded within 14 days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with § 110.5(a).

* * * * *

6. Section 110.5 is revised to read as follows:

§ 110.5 Availability of records to facilitate medical treatment.

(a) When the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of any restricted use pesticide required to be maintained under § 110.3 is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by the attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

(b)(1) The attending licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release the record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained.

(2) The attending licensed health care professional may release the record or record information to appropriate federal or state agencies that deal with pesticide use or any health issue related to the use of pesticides when necessary to prevent further injury or illness.

(3) A licensed health care professional may release the record or record information to submit pesticide poisoning incident reports to appropriate state or federal agencies.

7. Section 110.7 is revised to read as follows:

§ 110.7 Penalties.

Any certified applicator who violates 7 U.S.C. 136i–1 (a), (b), or (c) or this part shall be subject to a civil penalty of not more than $500 in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than $1,000 for each violation, except that the civil penalty shall be less

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than $1,000 if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1 (a) (b), and (c) and this part.

Dated: February 2, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–3287 Filed 2–9–95; 8:45 am]

BILLING CODE 3410–02–P

federal register

Friday
Februarv 10, 1995

Part III

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Reinventing Applications and of a Pre-Application Meeting for a New Award Under the Knowledge Dissemination and Utilization Program (D&U) for Fiscal Year (FY) 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Reinviting Applications and of a Pre-Application Meeting for a New Award Under the Knowledge Dissemination and Utilization Program (D&U) for Fiscal Year (FY) 1995

Purpose: On June 8, 1994 a notice was published in the **Federal Register** at 59 FR 29664 inviting applications for new awards under the D&U program for fiscal year 1995 to train persons with rights and duties under the Americans with Disabilities Act (ADA). Satisfactory applications were not received for the priority areas of (1) ADA Training for Independent Living Centers and (2) State and Local ADA Coordinators and Policymakers. On October 18, 1994 at 59 FR 52524 a notice was published in the **Federal Register** reinviting applications for the priority areas of (1) ADA Training for Independent Living Centers and (2) State and Local ADA Coordinators and Policymakers. Satisfactory applications were not received for the priority area of ADA Training for Independent Living Centers. There is a continuing need for the training project.

The purposes of this notice are to reinvite applications for an ADA training project for Independent Living Centers for fiscal year 1995 and to invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority. The notice of final funding priority establishing the required activities for this project was published on June 8, 1994 in the **Federal Register** at 59 FR 29664.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Applications Available: April 11, 1995.

Pre-Application Meeting: March 2, 1995. Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for an ADA training project for Independent Living Centers or to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting to discuss the funding priority will be held at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 9 a.m. and 11 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person.

Application Deadline: April 17, 1995.

Available Funds: $250,000 per year.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 36 months.

Priority: The D&U ADA Training Project general requirements and final priority on Independent Living Centers published in the **Federal Register** on June 8, 1994 at 59 FR 29664 applies to this competition.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 355: and (c) the notice of final priorities published in the **Federal Register** on June 8, 1994 at 59 FR 29664.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on March 2, 1995, contact David Esquith, U.S. Department of Education, Room 3424 Switzer Building, 600 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133.

In order to obtain an application package, contact Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 600 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: February 6, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–3315 Filed 2–9–95; 8:45 am]

BILLING CODE 4000–01–P

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Part IV

Department of the Interior

Bureau of Indian Affairs

Costanoan Ohlone Rumsen-Mutsun Tribe; Receipt for Federal Acknowledgement of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Costanoan Ohlone Rumsen-Mutsun Tribe; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a)(formerly 25 CFR 54.8(a)) notice is hereby given that the

Costanoan Ohlone Rumsen-Mutsun Tribe, c/o Patrick Orozco, 110 Dick Phelps Road, Watsonville, California 95076

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on December 7, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: January 24, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3306 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
February 10, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Wyandot Nation of Kansas; Receipt for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wyandot Nation of Kansas; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Wyandot Nation of Kansas, c/o George Zane, 5412 Tomahawk Road, Prairie Village, Kansas 66208

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on May 12, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240. Phone: (202) 208–3592

Dated: January 24, 1995

Ada E. Deer,

Assistant Secretary—Indian Affairs

[FR Doc. 95–3307 Filed 2–9–95, 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
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Part VI

Department of the Interior

Bureau of Indian Affairs

Costanoan-Rumsen Carmel Tribe; Receipt for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Costanoan-Rumsen Carmel Tribe; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary - Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a)(formerly 25 CFR 54.8(a)) notice is hereby given that the

Costanoan-Rumsen Carmel Tribe,
c/o Tony Cerda,
3929 Riverside Drive,
Chino, California 91710

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on August 24, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d)(formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362-MIB, 1849 C Street, NW., Washington, DC 20240 Phone: (202) 208-3592.

Dated: January 24, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95-3308 Filed 2-9-95; 8:45 am]

BILLING CODE 4310-02-P

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Part VII

Department of the Interior

Bureau of Indian Affairs

Pokanoket Tribe of the Wampanoag Nation; Receipt for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pokanoket Tribe of the Wampanoag Nation; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Pokanoket Tribe of the Wampanoag Nation, 400 Metacom Avenue, Bristol, Rhode Island 02809, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 5, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: January 24, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3309 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–02–P

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Part VIII

Department of the Interior

Bureau of Indian Affairs

Grand River Band Ottawa Council; Receipt for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grand River Band Ottawa Council; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a)(formerly 25 CFR 54.8(a)) notice is hereby given that the Grand River Band Ottawa Council, 1391 Terrace Street, Muskegon, Michigan 49442, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 16, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d)(formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: January 24, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3310 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

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Part IX

Department of the Interior

Bureau of Indian Affairs

The Chicora-Wàccamaw Indian People; Receipt for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

The Chicora-Waccamaw Indian People; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Chicora-Waccamaw Indian People, 1903 Oak Street Extension, Conway, South Carolina 29526, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 5, 1994, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: January 24, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3311 Filed 2–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
February 10, 1995

Part X

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416
Benefit Reforms for Individuals Disabled Based on Drug Addiction or Alcoholism; Interim Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD96

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Benefit Reforms for Individuals Disabled Based on Drug Addiction or Alcoholism

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules with request for comments.

SUMMARY: The Social Security Independence and Program Improvements Act of 1994 contains provisions affecting the payment of benefits under titles II and XVI of the Social Security Act (the Act) to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability. These interim final rules implement certain provisions related to limitations on benefit payments and the nonpayment and termination of benefits to these individuals.

DATES: These interim final rules are effective on March 1, 1995. To be sure that your comments are considered, we must receive them no later than April 11, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, or delivered to the Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1758; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

History

In 1972, Public Law (Pub. L.) 92–603 established the supplemental security income (SSI) program under title XVI of the Act. Aside from disability for children under age 18 and blindness, the Act provided the same definition of disability for individuals under title XVI as it does under title II. However, the SSI program included special provisions for disabled persons medically determined to be drug addicts or alcoholics. As implemented, those provisions applied to individuals whose drug addiction or alcoholism (DAA) was a contributing factor material to the determination that they were disabled (disabled based on DAA). The SSI provisions stated that an individual determined to be disabled based on DAA could receive SSI benefits only if he or she underwent appropriate treatment for the substance addiction when it was available and received payments through a representative payee.

The 1972 legislation also required the Secretary of Health and Human Services (the Secretary) to provide for the monitoring and testing of these individuals to assure compliance with treatment and to determine how the imposition of the treatment requirement contributes to the achievement of program purposes. The Secretary also was required to submit an annual report to Congress on the treatment and compliance of affected SSI recipients.

Prior to the passage of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103–296, enacted on August 15, 1994, there were no special program rules for Social Security beneficiaries whose medically determined drug addiction or alcoholism was a contributing factor material to the determination of disability.

New Legislation

The amendments made to the Act by section 201 of Pub. L. 103–296 introduced several new requirements and limitations for SSI recipients disabled based on DAA and applied similar requirements and limitations to Social Security beneficiaries disabled based on DAA, as well. These requirements and limitations are, in part, intended to discourage individuals from using Social Security or SSI benefits to support an addiction, as well as encourage the treatment and rehabilitation of individuals disabled based on DAA.

Section 201(a) of Pub. L. 103–296 contains the title II provisions related to DAA and section 201(b) contains the corresponding SSI provisions. The new requirements and changes under both programs for individuals disabled based on DAA include:

- Paying benefits to a representative payee;
- A preference for selecting certain types of organizational payees, inclusion of certain State and local government agencies as qualified organizations, making permanent the provision authorizing certain qualified organizations to collect a fee from beneficiaries for whom they serve as representative payees, and increasing the upper limit of the fee that organizational payees can charge persons disabled based on DAA;
- Requiring both Social Security and SSI recipients who are disabled based on DAA to undergo appropriate substance abuse treatment, if available
- Suspending benefits for months in which there is a failure to comply with appropriate, available treatment and requiring that individuals must demonstrate compliance with that treatment for a specified period of time before payments can resume;
- Terminating benefits after 12 consecutive months of suspension for noncompliance (the individual may reapply and receive disability benefits based on DAA for the remainder of the 36-month limit described below);
- Monitoring and testing of individuals to assure compliance;
- Establishing at least one referral and monitoring agency (RMA) in every State to identify appropriate treatment placements, to refer individuals disabled based on DAA to treatment and to monitor compliance with such treatment;
- Paying past-due benefits in installments, with a limited exception for individuals with outstanding debts related to housing who are at a high risk of homelessness;
- A 36-month limit on the payment of benefits beginning with the March 1995 payment month, with some differences between the title II and SSI programs as to how the months are counted (months of suspension will not be counted in the 36 months for either program);
- A "sunset date" of September 2004 for the 36-month limit on the payment of benefits;
- Continued Social Security benefit payments to auxiliaries after a disabled wage earner's benefits are suspended for failure to comply with treatment requirements or when entitlement is terminated after the 36 months, as long as the wage earner continues to be disabled;

- Continuation of beneficiary status for purposes of Medicare and Medicaid coverage during periods of suspense for noncompliance and after eligibility or entitlement is terminated after 36 months of benefits are paid, as long as the individual remains disabled.

Many of these provisions are effective for benefits payable for months beginning March 1, 1995. Implementing regulations for certain statutory provisions must be issued by February 11, 1995, 180 days after enactment, and are included in these interim final rules. For those statutory provisions not requiring final regulations by February 1995, principally those concerning representative payment, we will publish a separate notice of proposed rulemaking (NPRM) in the **Federal Register**.

These interim final regulations affect all disabled individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability, including those who were found eligible for title II or SSI benefits before March 1, 1995. By March 1, 1995, the Social Security Administration (SSA) will have sent notices to these individuals of the changes in the Act which affect them, as required by section 201 of Pub. L. 103–296. At the same time, SSA also will have sent notices to the representative payees of these individuals who have them.

Congressional Direction to Consult With Experts

Section 201 of Pub. L. 103–296 directed the Secretary to consult with drug and alcohol treatment professionals in formulating regulations defining appropriate treatment for individuals subject to the new provisions and establishing guidelines for the review and evaluation of compliance and progress. On August 24–25, 1994, SSA convened a meeting in Hunt Valley, Maryland of substance abuse treatment professionals from across the nation to gain their individual views on devising the new and revised regulations. During this meeting, a wide range of substance abuse-related topics was discussed, but the focus was on the legislative requirements to treat and monitor this disabled population. In addition, SSA has written directly to numerous professional organizations, individual treatment professionals, public advocacy organizations, RMAs, and others with knowledge of substance abuse-related issues seeking their views on treatment and compliance questions and issues to gain balanced input on general contemporary treatment philosophies.

On October 17, 1994, SSA published in the **Federal Register** a Notice of Intent with Request for Comments (59 FR 52380) to solicit public comments about the legislative requirements imposed by Pub. L. 103–296 and the regulations SSA is required to promulgate. The comment period closed on November 16, 1994.

The comments we have received from all of these varied sources have proved to be invaluable in revising the rules relating to individuals under a disability when drug addiction or alcoholism is a contributing factor material to the determination of disability.

What the Experts and Other Public Commenters Told Us

We solicited the views of experts in the field of substance abuse treatment, as required by Pub. L. 103–296. We received valuable input from treatment professionals and administrators at the August 24–25 meeting and subsequently received written comments from many of the attendees. While we were interested in receiving the views of the experts and other members of the public on all issues related to the DAA provisions, we sought specific input from the discussions and the Notice of Intent published October 17, 1994, on the following issues:

- The definition of "appropriate" treatment for DAA;
- The definition of when treatment is "available";
- How to define and evaluate "progress" in treatment;
- How to evaluate "compliance" with treatment;
- The frequency with which RMAs should monitor an individual's compliance with his/her treatment plan;
- The definition of "good cause" for an individual's failure to comply with the treatment requirements; and
- The costs and benefits to be realized from the provisions.

In response to the Notice of Intent, we received comments from 56 individuals and groups. Commenters from State and local governments ranged from State RMAs to Social Service Agencies, Medicaid Agencies, and county government offices. Two national associations of directors of State governmental entities also provided comments. In addition, several treatment facilities, legal services organizations, and individual attorneys commented on the Notice of Intent.

We have carefully considered all of the comments in developing these interim final regulations.

Appropriate Treatment

Most commenters defined appropriate substance abuse treatment as a continuum of services to individuals with alcohol and other drug problems. Many commenters believed that appropriate treatment is that which serves the individual's needs in the least restrictive setting consistent with an individualized treatment plan. A significant number of commenters expressed the view that appropriate treatment can be defined only on an individualized basis by treatment professionals since there is no one modality that will work for every client disabled based on DAA. Accordingly various commenters advised SSA to refrain from promulgating specific regulatory guidelines. Rather, they suggested that the determination of "appropriate" treatment should be within the purview of treatment professionals, circumscribed by very general guidelines provided by SSA. Many commenters stated that client participation in 12-step programs such as Alcoholics Anonymous is not, in and of itself, appropriate treatment. While such programs may be part of an overall treatment plan, because of their nature, they are not treatment.

Available Treatment

Many commenters believed that the definition of "availability" of substance abuse treatment should be a broadly inclusive definition to assure that the client can in fact avail himself or herself of appropriate treatment. Many commenters offered a list of factors that should be used in determining availability of treatment: location of the facility, availability and affordability of transportation, child care, the client's general health, particular condition and circumstances, language and cultural appropriateness.

There was a division among commenters as to whether one component of "available" should be whether the treatment was without cost to the client. Some commenters were of the view that treatment must be without cost in order to be "available." Others thought that the client should be required to make some investment in the treatment program by paying for some or all of the cost of treatment, depending upon the type of treatment and the client's circumstances.

Evaluating Progress in Treatment

Generally, commenters posited that it would be difficult to construct one definition or method by which to measure individuals' progress in treatment. A large organization of State

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program administrators and others commented that no universally accepted tool existed to measure individuals' progress in substance abuse treatment. Due to the lack of a universally acceptable tool to measure progress, other commenters were of the view that treatment professionals should evaluate whether progress is made according to very general rules set out by SSA. A few commenters provided suggestions for some of the elements in the measurement of progress, including abstinence from alcohol and drug use, a reduction in the use of emergency medical services, an increase in educational or vocational rehabilitation activities, and avoidance of criminal activity.

Evaluating Compliance With Treatment

The commenters favored general rather than specific rules governing compliance with the treatment requirements. Several commenters were of the view that compliance means that an individual follows his or her individual treatment plan. Accordingly, the treatment professional is in the best position to evaluate compliance. One legal services organization was concerned that SSA retain the ultimate responsibility for determining compliance. One aspect of compliance is the issue of requiring alcohol and drug testing. A few commenters recommended that SSA mandate drug tests for beneficiaries in treatment. Several commenters, including one of the large national organizations of State administrators, advised against mandatory drug testing. In their view, the need for and frequency of drug testing should be determined by the treatment professional in accordance with an individualized treatment plan. Concern was expressed about the cost of mandatory drug testing and inaccuracies inherent in drug testing results.

Good Cause for Failure to Comply With Treatment

Many commenters supported an expansive list of factors that would be considered "good cause" for noncompliance with the treatment requirements, such as medical problems, lack of transportation, or personal or family tragedies. Some commenters thought that the treatment provider was in the best position to evaluate if the client had "good cause" for noncompliance. A minority of commenters supported a very restrictive definition because of their concern that "good cause" factors could be manipulated by individuals in treatment.

Costs and Benefits

Few commenters provided information on the potential costs and benefits of the provisions. Commenters provided a range of estimated costs for drug testing expenses.

Other Comments

Many commenters expressed concerns regarding a number of operational issues which are not the subject of these regulations. Although these concerns are not regulatory issues, they have been considered carefully in the development of our operating procedures.

Explanation of Revisions

These interim final regulations amend §§ 404.315, 404.316, 404.321, 404.332, 404.335, 404.337, 404.350, 404.352, 404.402, 404.902, 416.202, 416.213, 416.262, 416.265, 416.535, 416.542, 416.558, 416.601, 416.610, 416.935, 416.936, 416.937, 416.938, 416.939, 416.1123, 416.1326, 416.1331, 416.1335, 416.1402 and 416.1725 and create new §§ 404.470, 404.480, 404.1535, 404.1536, 404.1537, 404.1538, 404.1539, 404.1540, 404.1541, 416.544, 416.940 and 416.941 to reflect the statutory changes.

Section 404.315 is revised to add a new paragraph explaining the prohibition against reentitlement to disability benefits based on DAA after receiving 36 months of disability benefits on the basis of that impairment.

Sections 404.316 and 404.321 have been amended to include an explanation of the 36-month benefit limit and the termination of benefits for 12 consecutive months of noncompliance in cases in which drug addiction or alcoholism is a contributing factor material to the determination of disability.

Section 404.332 is revised to state that, if the insured person is disabled based on DAA and benefits terminate because of noncompliance with treatment or because of the 36-month benefit limit, benefits to the spouse will continue, provided the insured person remains disabled.

Section 404.335 provides that, if benefits to a widow(er) who is disabled based on DAA are terminated after 36 months of benefits, that person cannot become entitled again to widow(er)'s benefits if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.337 explains that, if the widow(er)'s entitlement to benefits is based on DAA, benefits will terminate after 12 consecutive months of suspension for noncompliance with treatment or, unless otherwise disabled without regard to drug addiction or alcoholism, after having received 36 months of payment.

Section 404.350 is revised to state that, if the entitlement of a disabled child age 18 or over whose disability was based on DAA terminates because of the 36-month benefit limit, the child may not be entitled again to benefits based on a disability if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.352 states that, if the disability of a disabled child age 18 or over is based on DAA and his or her benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, those benefits will terminate with the month following the 12-month period of suspension. Likewise, if, after receiving 36 months of benefits based on DAA, the child would not otherwise be disabled without regard to drug addiction or alcoholism, benefits based on disability will be terminated with the month following the 36th month of payment. If the disabled child is receiving benefits on the record of a wage earner whose disability was based on DAA and benefits to the wage earner end because of noncompliance with treatment or 36 months of benefits have been paid, benefits to the child will continue, provided the insured person would have remained entitled to benefits but for the operation of this provision.

Section 404.402 is revised to include nonpayments because of drug addiction or alcoholism in the list of deductions, reductions, and adjustment events which are considered before computing any applicable reduction for the family maximum.

Sections 404.470 and 416.1725 explain the nonpayment ramifications for beneficiaries disabled based on DAA who fail to comply with the rules regarding available treatment for drug addiction or alcoholism. Benefits will be suspended beginning with the first month after we notify the individual of a determination of noncompliance with the treatment requirements. Benefits will be terminated after 12 consecutive months of suspension for noncompliance.

Sections 404.480 and 416.544 explain that past-due benefits must be paid in installments. Accrued unpaid benefits must be paid in installments so that the total monthly payment including the installment generally does not exceed two times the monthly benefit amount. These sections also explain the exception to the limitation if the beneficiary has unpaid housing debts which put him or her at high risk of homelessness. We consider an individual to be at high risk of homelessness if continued nonpayment of housing expenses is likely to result in the individual losing a place to live. We also consider an individual who is already homeless to be among those at high risk of homelessness.

Section 404.902 is revised to expand the list of administrative actions that are initial determinations to include determinations about drug addiction or alcoholism.

Sections 404.1535 and 416.935 explain the process by which a determination is made that drug addiction or alcoholism is a contributing factor material to the determination of disability.

Sections 404.1536 and 416.936 explain the treatment requirements and the consequences of noncompliance with these requirements for individuals disabled based on DAA. For consistency between programs, especially for individuals who receive concurrent title II and SSI benefits, we extend to title II beneficiaries the current SSI policy that individuals referred for treatment generally are not expected to pay for the treatment.

Sections 404.1537 and 416.937 explain what we mean by appropriate treatment for these individuals and give examples of appropriate treatment modalities.

Sections 404.1538 and 416.938 explain what we mean by approved institutions or facilities for providing the appropriate treatment.

Sections 404.1539 and 416.939 describe the factors we will consider in determining the availability of treatment.

Sections 404.1540 and 416.940 explain how we intend to assess compliance with prescribed treatment, including measuring progress with the treatment.

Based upon our contact with treatment professionals and administrators, we deemed it best that our regulations not attempt to provide exhaustive guidelines for determining what constitutes appropriate treatment and definitive methods of measuring progress. These particular concepts are inherent parts of the treatment program, which must be developed by the treatment professional for each individual. Thus, in these regulatory sections, we have provided broad rather than narrow guidelines in these areas.

Sections 404.1541 and 416.941 delineate the functions and responsibilities of the RMAs. The RMAs' duties include making treatment referrals and monitoring compliance with prescribed treatment. The contractual agreements with the RMAs will set forth their functions and responsibilities in much more detail.

In carrying out their functions and responsibilities, the RMAs will work closely with State alcohol and other drug abuse agencies, which often are the focal point for the delivery of publicly funded services to SSI beneficiaries.

Section 416.202 has been revised to reflect the new provision that an individual disabled based on DAA is not eligible for SSI benefits if he or she has previously received 36 months of Social Security benefits when treatment was available or 36 months of SSI benefits based on DAA.

Section 416.213 is revised to state that an individual disabled based on DAA who refuses or does not follow available and appropriate treatment for drug addiction or alcoholism will not receive SSI benefits until he or she has demonstrated compliance with treatment requirements for the period specified in the revised rules in § 416.1326. The section also explains in detail the eligibility requirement that an individual cannot receive SSI benefits on the basis of disability based on DAA if he or she has already received 36 months of SSI or Social Security benefits on the same basis. The section contains references to other SSI and Social Security regulatory sections which explain how the 36 months are calculated for each of those programs.

Sections 416.262 and 416.265 have been revised to explain that individuals who are disabled based on DAA may be eligible for SSI payments, including special SSI cash benefits, and special SSI eligibility status for a total of 36 months.

Section 416.535 is revised to include cross-references to the SSI regulatory sections which state the rules on the installment payment of past-due benefits for individuals who are disabled based on DAA.

Section 416.542 is revised to explain that, if an underpaid recipient disabled based on DAA is alive, the amount of any underpayments due the recipient will be paid to his or her representative payee. No underpayments may be paid to the recipient.

Section 416.558 is revised by adding to paragraph (a) a reference to the new § 416.544, and by adding a new paragraph (c) to explain that, whenever a decision is made about the amount of any benefits due for a past period that should be paid in installments, the written notice which is sent to the individual and the individual's representative payee will also explain the amount of the installment payment and when an increased initial installment payment may be made.

The last sentence of paragraph (b)(1) of § 416.601 and paragraph (a)(3) of § 416.610 are revised to update the language referring to an individual "medically determined to be a drug addict or an alcoholic." We now refer to individuals for whom "drug addiction or alcoholism is a contributing factor material to the determination of disability." This does not change the meaning in any way; it merely makes the terminology consistent with that used throughout these regulations.

Paragraph (d) of § 416.1123, which discusses how we count retroactive monthly Social Security benefits as unearned income, is revised to address the counting of such benefits when they are paid in installments. New installment requirements for past-due benefits for individuals disabled based on DAA are explained in § 416.544. Because of those requirements, SSA generally will be precluded from paying at one time all past-due benefits remaining after reimbursing a State for interim assistance (when appropriate) Paragraph (d)(2) explains that the total of retroactive Social Security benefits paid in installments to individuals disabled based on DAA which is countable income after the rules in paragraph (d)(1) are applied will be counted as unearned income only in the first month they are paid.

In enacting section 201 of Pub. L. 103–296, Congress evidenced no intent to change the manner in which past-due Social Security benefits are counted for SSI purposes, but instead intended to reduce the likelihood that the past-due benefits would be used by the beneficiary in a way that would support continuing substance abuse. By counting retroactive benefits paid in installments as if received in a lump sum in the first month of payment, the SSI recipient will be at risk of losing SSI (and possibly Medicaid) eligibility for at most 1 month because of the receipt of those benefits, as is now the case. The alternative method of counting these past-due benefits—month by month as the installments are received—would result, in many cases, in the loss of eligibility for both SSI and Medicaid for the entire period during which the installments are paid. A loss of eligibility for Medicaid could severely limit the accessibility of treatment for drug addiction or alcoholism and thus undermine the intent of the legislation Accordingly, these regulations make no change in the way past-due benefits are counted for SSI purposes; past-due benefits will continue to be counted as

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if received in a lump sum even when received in installments.

Section 416.1326 has been revised to explain that SSI benefits for individuals disabled based on DAA will be suspended for noncompliance with treatment requirements effective the first month after notification of noncompliance. Suspension of SSI benefits will continue until the recipient demonstrates compliance with treatment for specified periods; a minimum of 2 months, 3 months, and 6 months, respectively, for the first, second, and third and additional determinations of noncompliance. Suspension of benefits for 12 consecutive months, for any reason, will result in termination of benefits.

Section 416.1331, which addresses termination of disability benefits, has been revised. New paragraph (c) discusses termination after 12 months of suspension for noncompliance. New paragraph (d) describes the limit of 36 months on benefits and that this limit is no longer effective for benefits for months beginning after September 2004. New paragraph (e) explains what months are counted in determining the 36 months of benefits.

Section 416.1335, which discusses termination due to continuous suspension for ineligibility, has been amended by changing the language to explain that SSI benefits will be terminated after 12 months of suspension, even when some or all of the suspension months are due to suspense for noncompliance, as defined in § 416.1326.

Paragraph (d) of § 416.1402 is revised to update the language referring to an individual "determined to be a drug addict or an alcoholic." We now refer to an individual for whom "drug addiction or alcoholism is a contributing factor material to the determination of disability." This does not change the meaning in any way; it merely makes the terminology consistent with that in the new legislation and used throughout these regulations.

Regulatory Procedures

The Department of Health and Human Services, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures.

Pub. L. 103–296 was signed into law on August 15, 1994. Sections 201(a)(3)(E)(i) and 201(b)(3)(E)(i) of Pub. L. 103–296 require the Secretary to issue regulations necessary to carry out those amendments made by section 201 which are the subject of these interim final rules by February 11, 1995. In addition, the legislation requires that the Secretary consult with drug and alcohol treatment professionals in developing certain aspects of these regulations with regard to defining appropriate substance abuse treatment and establishing guidelines to review and evaluate compliance with treatment and measures of progress. Accordingly, to undertake the required consultation process and also issue these rules as an NPRM would have delayed issuance of final rules until well past the statutory deadline of February 11, 1995. In light of these constraints, we solicited public comments on the regulations needed to implement certain aspects of this new legislation by publishing a Notice of Intent with Request for Comments on October 17, 1994 (59 FR 52380), and allowed adequate time to give the comments received in response to that notice our full consideration.

In addition, publishing interim final regulations will permit the timely and effective implementation of the new provisions for recipients whose drug addiction or alcoholism is a contributing factor material to the determination of disability. Such implementation may allow some recipients to get into available treatment for their addictions sooner. This will benefit both the recipients and the public at large.

In light of the Congressional mandate that we issue regulations needed to carry out these statutory provisions no later than February 11, 1995, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable and contrary to the public interest. While we are issuing these rules as interim final regulations, we are interested in receiving public comments regarding the substance of these interim rules.

Executive Order 12866

These interim final rules reflect and implement most of the provisions of sections 201(a) and 201(b) of Pub. L. 103–296. The Office of Management and Budget (OMB) has reviewed these interim final rules and determined that they meet the criteria for a significant regulatory action under E.O. 12866. Therefore, we prepared and submitted to OMB, separately from the interim final rules, an assessment of the potential costs and benefits of this regulatory action. This document also contains an analysis of alternative policies we considered and chose not to adopt. This assessment is available for review by members of the public.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect individuals' eligibility for program benefits under the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These interim final rules contain information collection requirements in §§ 404.480, 404.1540, 404.1541, 416.544, 416.940, and 416.941. As required by the Paperwork Reduction Act of 1980, we will submit a copy of these information collection requirements to OMB for its review. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for HHS. The public reporting burden for the collections of information in §§ 404.480 and 416.544 is estimated to average 4 minutes per response. The burden for §§ 404.1540, 404.1541, 416.940, and 416.941 is estimated to average 5 minutes per response for one form for each beneficiary annually, and 10 minutes per response for another form for each beneficiary monthly. These include the time it will take to read the instructions, gather the necessary facts, and provide the information. For §§ 404.480 and 416.544 we expect approximately 2,400 beneficiaries or recipients to provide responses and estimate the total annual burden to be 160 hours. For §§ 404.1540, 404.1541, 416.940, and 416.941 we expect responses from treatment providers through approximately 52 RMAs on behalf of approximately 184,000 beneficiaries or recipients and estimate the total annual burden to be 395,600 hours. If you have any comments or suggestions on these estimates, write to the Social Security Administration, Attention: Reports Clearance Officer, 1–A–21 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: December 22, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Approved: February 2, 1995.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subparts D, E, J, and P of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a) through (e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a) through (e), and 1302.

2. Section 404.315 is amended by redesignating the introductory test as paragraph (a) and adding a heading to it, redesignating former paragraphs (a) through (d) as paragraphs (a)(1) through (a)(4), and adding a new paragraph (b) to read as follows:

§ 404.315 Who is entitled to disability benefits.

(a) *General.* * * *

* * * * *

(b) *Prohibition against reentitlement to disability benefits if drug addiction or alcoholism is a contributing factor material to the determination of disability.* You cannot be entitled to a period of disability payments if drug addiction or alcoholism is a contributing factor material to the determination of disability and your earlier entitlement to disability benefits on the same basis terminated after you received benefits for 36 months during which treatment was available.

3. Section 404.316 is amended by adding paragraphs (e) and (f) to read as follows:

§ 404.316 When entitlement to disability benefits begins and ends.

* * * * *

(e) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, you may receive disability benefits on that basis for no more than 36 months regardless of the number of entitlement periods you may have. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefit payments were suspended for any reason. Benefits to your dependents may continue after the 36 months of benefits if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability. The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(f) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535 and your disability benefits are suspended for 12 consecutive months because of your failure to comply with treatment requirements, your disability benefits will be terminated effective the first month after such 12-month period. Benefits to your dependents may continue after the 12-month period if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability.

4. Section 404.321 is amended by adding paragraph (d) to read as follows:

§ 404.321 When a period of disability begins and ends.

* * * * *

(d) *When drug addiction or alcoholism is a contributing factor material to the determination of disability.* (1) Your entitlement to receive disability benefit payments ends the month following the month in which, regardless of the number of entitlement periods you may have had based on disability where drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535)—

(i) You have received a total of 36 months of disability benefits. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefits were suspended for any reason; or

(ii) Your benefits have been suspended for 12 consecutive months because of your failure to comply with treatment requirements.

(2) For purposes other than payment of your disability benefits, your period of disability continues until the termination month as explained in § 404.325.

5. Section 404.332 is amended by adding a sentence to the end of paragraph (b)(5) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

* * * * *

(b) * * *

(5) * * * Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of benefits (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and but for the operation of these provisions, the insured person would remain entitled to benefits based on disability.

* * * * *

6. Section 404.335 is amended by removing the word "and" at the end of paragraph (c)(2), adding the word "and" after the semicolon at the end of paragraph (c)(3), and adding a new paragraph (c)(4) to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(c) * * *

* * * * *

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow(er)'s benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

7. Section 404.337 is amended by adding a new sentence at the end of paragraph (b)(2) to read as follows:

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§ 404.337 When widow's and widower's benefits begin and end.

* * * * *

(2) * * * If your widow's or widower's benefit is based on a finding that drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, your entitlement to benefits will terminate the month after the 12th consecutive month of suspension for noncompliance with treatment or after 36 months of benefits on that basis when treatment is available regardless of the number of entitlement periods you may have had, unless you are otherwise disabled without regard to drug addiction or alcoholism.

* * * * *

8. Section 404.350 is amended by redesignating the introductory text as paragraph (a) and adding a heading to it, redesignating former paragraphs (a) through (e) as paragraphs (a)(1) through (a)(5), and adding a new paragraph (b) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) *General.* * * *

* * * * *

(b) *Entitlement preclusion for certain disabled children.* If you are a disabled child as referred to in paragraph (a)(5) of this section, and your disability was based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535) and your benefits ended after your receipt of 36 months of benefits, you will not be entitled to benefits based on disability for any month following such 36 months regardless of the number of entitlement periods you have had if, in such following months, drug addiction or alcoholism is a contributing factor material to the later determination of disability (as described in § 404.1535).

9. Section 404.352 is amended by adding a new sentence to the end of paragraph (b)(3), redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * *

(b) * * *

(3) * * * Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of payment (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and the insured person remains disabled.

(c) If you are entitled to benefits as a disabled child age 18 or over and your disability is based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), your benefits also will terminate under the following conditions:

(1) If your benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, your benefits will terminate with the month following the 12 months unless you are otherwise disabled without regard to drug addiction or alcoholism (see § 404.470(c)).

(2) If you have received 36 months of benefits on that basis when treatment is available, regardless of the number of entitlement periods you may have had, your benefits will terminate with the month following such 36-month payment period unless you are otherwise disabled without regard to drug addiction or alcoholism.

* * * * *

10. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 425, 427, and 1302.

11. Section 404.402 is amended by revising paragraph (a), introductory text, to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

(a) *Deductions, Reductions, Adjustment.* Deductions because of earnings or work (see §§ 404.415 and 404.417); failure to have a child "in her care" (see § 404.421); refusal to accept rehabilitation services (see § 404.422); as a penalty for failure to timely report noncovered work outside the United States, failure by a woman to report that she no longer has a child "in her care," or failure to timely report earnings (see §§ 404.451 and 404.453); because of unpaid maritime taxes (see § 404.457); or nonpayments because of drug addiction and alcoholism to individuals other than an insured individual who are entitled to benefits on the insured individual's earnings record are made:

* * * * *

12. A new § 404.470 is added to read as follows:

§ 404.470 Nonpayment of disability benefits due to noncompliance with rules regarding treatment for drug addiction or alcoholism.

(a) *Suspension of monthly benefits.* (1) For an individual entitled to benefits based on a disability (§ 404.1505) and for whom drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535), monthly benefits will be suspended beginning with the first month after we notify the individual in writing that he or she has been determined not to be in compliance with the treatment requirements for such individuals (§ 404.1536).

(2) This rule applies to all individuals entitled to disability benefits (§ 404.315), widow(er)'s benefits (§ 404.335), and child's benefits based on a disability (§ 404.350) effective with benefits paid in months beginning on or after March 1, 1995.

(3) Benefit payments to any other person who is entitled on the basis of a disabled wage earner's entitlement to disability benefits are payable as though the disabled wage earner were receiving benefits.

(b) *Resumption of monthly benefits.* The payment of benefits may be resumed only after an individual demonstrates and maintains compliance with appropriate treatment requirements for:

(1) 2 consecutive months for the first determination of noncompliance;

(2) 3 consecutive months for the second determination of noncompliance; and

(3) 6 consecutive months for the third and all subsequent determinations of noncompliance.

(c) *Termination of benefits.* (1) A suspension of benefit payments due to noncompliance with the treatment requirements for 12 consecutive months will result in termination of benefits effective with the first month following the 12th month of suspension of benefits.

(2) Benefit payments to any other person who is entitled on the basis of a disabled wage earner's entitlement to disability benefits are payable as though the disabled wage earner were receiving benefits.

13. A new § 404.480 is added to read as follows:

§ 404.480 Paying benefits in installments: Drug addiction or alcoholism.

(a) *General.* For disabled beneficiaries who receive benefit payments through a representative payee because drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535), certain amounts due the beneficiary for a past period will be paid in installments. The amounts subject to payment in installments include:

(1) benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) benefits due but unpaid which accrued during a period of suspension for which the beneficiary was subsequently determined to have been eligible; and

(3) any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment formula.* Except as provided in paragraph (c) of this section, the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any benefit due for the preceding month under such entitlement which is payable in such month, does not exceed two times the amount of the beneficiary's benefit payment for the preceding month. In counting the amount of the beneficiary's benefit payment for the previous month, no reductions or deductions under this title are taken into account.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a beneficiary accrues benefit amounts subject to payment in installments if the beneficiary has unpaid housing expenses which result in a high risk of homelessness for the beneficiary. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses include charges for all items required to maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the beneficiary does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid beneficiary no longer entitled.* In the case of a beneficiary who is no longer currently entitled to monthly payments, but to whom amounts defined in paragraph (a) are still owing, we will treat such beneficiary's monthly benefit for the last month of entitlement as the beneficiary's benefit for the preceding month and continue to make installment payments of such benefits through a representative payee.

(f) *Beneficiary currently not receiving Social Security benefits because of suspension for noncompliance with treatment.* If a beneficiary is currently not receiving benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in § 404.1536), the payment of amounts under paragraph (a) will stop until the beneficiary has demonstrated compliance with treatment as described in § 404.470 and will again commence with the first month the beneficiary begins to receive benefit payments.

(g) *Underpaid beneficiary deceased.* Upon the death of a beneficiary, any remaining unpaid amounts as defined in paragraph (a) will be treated as underpayments in accordance with § 404.503(b).

14. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d) through (h), 221(d), 225, and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), and (d) through (h), 421(d), 425, and 1302; sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

15. Section 404.902 is amended by revising paragraph (o), redesignating paragraphs (p) through (v) as paragraphs (q) through (w), and adding a new paragraph (p) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee, unless you are under age 18, legally incompetent, or you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535);

(p) Your drug addiction or alcoholism;

* * * * *

16. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

17. A new § 404.1535 is added to read as follows:

§ 404.1535 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.*

(1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

18. A new § 404.1536 is added to read as follows:

§ 404.1536 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor

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material to the determination of disability (as described in § 404.1535), you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in § 404.470.

19. A new § 404.1537 is added to read as follows:

§ 404.1537 What we mean by appropriate treatment.

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from outpatient counseling services through a variety of residential treatment settings including acute detoxification, short-term intensive residential treatment, long-term therapeutic residential treatment, and long-term recovery houses. Appropriate treatment is determined with the involvement of a State licensed or certified addiction professional on the basis of a detailed assessment of the individual's presenting symptomatology, psychosocial profile, and other relevant factors. This assessment may lead to a determination that more than one treatment modality is appropriate for the individual. The treatment will be provided or overseen by an approved institution or facility. This treatment may include (but is not limited to)—

(a) Medical examination and medical management;

(b) Detoxification;

(c) Medication management to include substitution therapy (e.g., methadone);

(d) Psychiatric, psychological, psychosocial, vocational, or other substance abuse counseling in a residential or outpatient treatment setting; or

(e) Relapse prevention.

20. A new § 404.1538 is added to read as follows:

§ 404.1538 What we mean by approved institutions or facilities.

Institutions or facilities that we may approve include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal or State laws and regulations;

(b) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism;

(c) State licensed or certified care providers;

(d) Programs accredited by the Commission on Accreditation for Rehabilitation Facilities (CARF) and/or the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) for the treatment of drug addiction or alcoholism;

(e) Medicare or Medicaid certified care providers; or

(f) Nationally recognized self-help drug addiction or alcoholism recovery programs (e.g., Alcoholics Anonymous or Narcotics Anonymous) when participation in these programs is specifically prescribed by a treatment professional at an institution or facility described in paragraphs (a) through (e) of this section as part of an individual's treatment plan.

21. A new § 404.1539 is added to read as follows

§ 404.1539 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The capacity of an approved institution or facility to admit you for appropriate treatment;

(b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is prescribed for your drug addiction or alcoholism.

22. A new § 404.1540 is added to read as follows:

§ 404.1540 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will:

(1) Monitor your attendance at and participation in treatment sessions;

(2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with alcoholism) when such tests are likely to yield important information;

(3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or

(4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been prescribed for your drug addiction or alcoholism may include (but are not limited to)—

(1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);

(2) Consistent attendance at and participation in treatment sessions;

(3) Improved social functioning and levels of gainful activity;

(4) Participation in vocational rehabilitation activities; or

(5) Avoidance of criminal activity.

23. A new § 404.1541 is added to read as follows:

§ 404.1541 Establishment and use of referral and monitoring agencies.

We will contract with one or more agencies in each of the States, Puerto Rico and the District of Columbia to provide services to individuals whose disabilities are based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535) and to submit information to us which we will use to make decisions about these individuals' benefits. These agencies will be known as referral and monitoring agencies.

Their duties and responsibilities include (but are not limited to)—

(a) Identifying appropriate treatment placements for individuals we refer to them;

(b) Referring these individuals for treatment;

(c) Monitoring the compliance and progress with the appropriate treatment of these individuals; and

(d) Promptly reporting to us any individual's failure to comply with treatment requirements as well as failure to achieve progress through the treatment.

For the reasons set forth in the preamble, part 416, subparts B, E, F, I, K, M, N, and Q of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

24. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

25. Section 416.202 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 416.202 Who may get SSI benefits.

* * * * *

(e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.

* * * * *

26. Section 416.213 is revised to read as follows:

§ 416.213 You are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *If you do not comply with treatment requirements.* If you receive benefits because you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), you must avail yourself of any appropriate treatment for your drug addiction or alcoholism at an approved institution or facility when this treatment is available and make progress in your treatment. You are not eligible for SSI benefits beginning with the month after the month you are notified in writing that we determined that you have failed to comply with the treatment requirements. If your benefits are suspended because you failed to comply with treatment requirements, you will not be eligible to receive benefits until you have demonstrated compliance with treatment for a period of time, as specified in § 416.1326. The rules regarding treatment for drug addiction and alcoholism are in subpart I of this part.

(b) *If you previously received 36 months of SSI or Social Security benefits.* You are not eligible for SSI benefits by reason of disability on the basis of drug addiction or alcoholism as described in § 416.935 if—

(1) You previously received a total of 36 months of SSI benefits on the basis of disability and drug addiction or alcoholism was a contributing factor material to the determination of disability for months beginning March 1995, as described in § 416.935. Not included in these 36 months are months before March 1995 and months for which your benefits were suspended for any reason. The 36-month limit is no longer effective for months beginning after September 2004; or

(2) You previously received a total of 36 months of Social Security benefits counted in accordance with the provisions of § 404.316, 404.337, and 404.352 by reason of disability on the basis of drug addiction or alcoholism as described in § 404.1535.

27. Section 416.262 is amended by removing the word "and" at the end of paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 416.262 Eligibility requirements for special SSI cash benefits.

* * * * *

(d) If your disability is based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, you have not yet received SSI cash benefits, special SSI cash benefits, or special SSI eligibility status for a total of 36 months, or Social Security benefit payments when treatment was available for a total of 36 months; and

* * * * *

28. Section 416.265 is amended by revising paragraph (a) to read as follows:

§ 416.265 Requirements for the special SSI eligibility status.

* * * * *

(a) You are blind or you continue to have a disabling impairment which, if drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, has not resulted in your receiving SSI cash benefits, special SSI cash benefits, or special SSI eligibility status for a total of 36 months, or Social Security benefit payments when treatment was available for a total of 36 months;

* * * * *

29. The authority citation for subpart E of part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and (e), and 1631(a) through (d) and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382 (c) and (e), and 1383 (a) through (d) and (g).

30. Section 416.535 is amended by redesignating paragraphs (b) and (c) as paragraphs (d) and (e) and adding a new paragraph (b) to read as follows:

§ 416.535 Underpayments and overpayments.

* * * * *

(b) *Additional rules for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.* When an individual whose drug addiction or alcoholism is a contributing factor material to the determination of disability, as described in § 416.935, receives less than the correct amount of SSI benefits, adjustment is effected as described in §§ 416.542 and 416.543 and the additional rule described in § 416.544 applies.

* * * * *

31. Section 416.542 is amended by revising paragraph (a) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

(a) *Underpaid recipient alive—underpayment payable.* (1) If an underpaid recipient is alive, the amount of any underpayment due him or her will be paid to him or her in a separate payment or by increasing the amount of his or her monthly payment.

(2) If an underpaid recipient whose drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 416.935) is alive, the amount of any underpayment due the recipient will be paid through his or her representative payee in installment payments. No underpayment may be paid directly to the recipient. If the recipient dies before we have paid all benefits due through his or her representative payee, we will follow the rules which apply to underpayments for the payment of any remaining amounts due to any eligible survivor of a deceased recipient as described in paragraph (b) of this section.

* * * * *

32. A new § 416.544 is added to read as follows:

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§ 416.544 Paying benefits in installments: Drug addiction or alcoholism.

(a) *General.* For disabled recipients who receive benefit payments through a representative payee because drug addiction or alcoholism is a contributing factor material to the determination of disability, certain amounts due the recipient for a past period will be paid in installments. The amounts subject to payment in installments include:

(1) benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) benefits due but unpaid which accrued during a period of suspension for which the recipient was subsequently determined to have been eligible; and

(3) any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment formula.* Except as provided in paragraph (c) of this section, the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any current benefit due cannot exceed twice the Federal Benefit Rate plus any federally-administered State supplementation payable to an eligible individual for the preceding month.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a recipient accrues benefit amounts subject to payment in installments if the recipient has unpaid housing expenses which result in a high risk of homelessness for the recipient. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses include charges for all items required to maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the recipient does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid recipient no longer eligible.* In the case of a recipient who is no longer currently eligible for monthly payments, but to whom amounts defined in paragraph (a) of this section are still owing, we will continue to make installment payments of such benefits through a representative payee.

(f) *Recipient currently not receiving SSI benefits because of suspension for noncompliance with treatment.* If a recipient is currently not receiving SSI benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in § 416.936), the payment of amounts under paragraph (a) of this section will stop until the recipient has demonstrated compliance with treatment as described in § 416.1326 and will again commence with the first month the recipient begins to receive benefits.

(g) *Underpaid recipient deceased.* Upon the death of a recipient, any remaining unpaid amounts as defined in paragraph (a) of this section will be treated as underpayments in accordance with § 416.542(b).

33. Section 416.558 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 416.558 Notice relating to overpayments and underpayments.

(a) *Notice of overpayment and underpayment determination.* Whenever a determination concerning the amount paid and payable for any period is made and it is found that, with respect to any month in the period, more or less than the correct amount was paid, written notice of the correct and incorrect amounts for each such month in the period will be sent to the individual against whom adjustment or recovery of the overpayment as defined in § 416.537(a) may be effected or to whom the underpayment as defined in §§ 416.536 and any amounts subject to installment payments as defined in § 416.544 would be payable, notwithstanding the fact that part or all of the underpayment must be withheld in accordance with § 416.543. When notifying an individual of a determination of overpayment, the Social Security Administration will, in the notice, also advise the individual that adjustment or recovery is required, as set forth in § 416.571, except under certain specified conditions, and of his or her right to request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

* * * * *

(c) *Notice relating to installment payments to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.* Whenever a determination is made concerning the amount of any benefits due for a period that must be paid in installments, the written notice will also explain the amount of the installment payment and when an increased initial installment payment may be made (as described in § 416.544). This written notice will be sent to the individual and his or her representative payee.

34. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383(a)(2) and (d)(1).

35. Section 416.601 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 416.601 Introduction.

* * * * *

(b) *Policy used to determine whether to make representative payment.* * * * However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of disability if drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

36. Section 416.610 is amended by revising paragraph (a)(3) to read as follows:

§ 416.610 When payment will be made to a representative payee.

(a) * * *

(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

37. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1614(a), 1619, 1631 (a), (c), and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382, 1382c(a), 1382h, 1383 (a), (c), and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

38. Section 416.935 is revised to read as follows:

§ 416.935 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability, unless we find that you are eligible for benefits because of your age or blindness.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.*

(1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

39. Section 416.936 is revised to read as follows:

§ 416.936 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability, you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in § 416.1326.

40. Section 416.937 is revised to read as follows:

§ 416.937 What we mean by appropriate treatment.

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from outpatient counseling services through a variety of residential treatment settings including acute detoxification, short-term intensive residential treatment, long-term therapeutic residential treatment, and long-term recovery houses. Appropriate treatment is determined with the involvement of a State licensed or certified addiction professional on the basis of a detailed assessment of the individual's presenting symptomatology, psychosocial profile, and other relevant factors. This assessment may lead to a determination that more than one treatment modality is appropriate for the individual. The treatment will be provided or overseen by an approved institution or facility. This treatment may include (but is not limited to)—

(a) Medical examination and medical management;

(b) Detoxification;

(c) Medication management to include substitution therapy (e.g., methadone);

(d) Psychiatric, psychological, psychosocial, vocational, or other substance abuse counseling in a residential or outpatient treatment setting; or

(e) Relapse prevention.

41. Section 416.938 is revised to read as follows:

§ 416.938 What we mean by approved institutions or facilities.

Institutions or facilities that we may approve include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal or State laws and regulations;

(b) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism;

(c) State licensed or certified care providers;

(d) Programs accredited by the Commission on Accreditation for Rehabilitation Facilities (CARF) and/or the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) for the treatment of drug addiction or alcoholism;

(e) Medicare or Medicaid certified care providers; or

(f) Nationally recognized self-help drug addiction or alcoholism recovery programs (e.g., Alcoholics Anonymous or Narcotics Anonymous) when participation in these programs is specifically prescribed by a treatment professional at an institution or facility described in paragraphs (a) through (e) of this section as part of an individual's treatment plan.

42. Section 416.939 is revised to read as follows:

§ 416.939 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The capacity of an approved institution or facility to admit you for appropriate treatment;

(b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is prescribed for your drug addiction or alcoholism.

43. A new § 416.940 is added to read as follows:

§ 416.940 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will—

(1) Monitor your attendance at and participation in treatment sessions;

(2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with

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alcoholism) when such tests are likely to yield important information;

(3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or

(4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been prescribed for your drug addiction or alcoholism may include (but are not limited to)—

(1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);

(2) Consistent attendance at and participation in treatment sessions;

(3) Improved social functioning and levels of gainful activity;

(4) Participation in vocational rehabilitation activities; or

(5) Avoidance of criminal activity.

44. A new § 416.941 is added to read as follows:

§ 416.941 Establishment and use of referral and monitoring agencies.

We will contract with one or more agencies in each of the States and the District of Columbia to provide services to individuals whose disabilities are based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 416.935) and to submit information to us which we will use to make decisions about these individuals' benefits. These agencies will be known as referral and monitoring agencies. Their duties and responsibilities include (but are not limited to)—

(a) Identifying appropriate treatment placements for individuals we refer to them;

(b) Referring these individuals for treatment;

(c) Monitoring the compliance and progress with the appropriate treatment of these individuals; and

(d) Promptly reporting to us any individual's failure to comply with treatment requirements as well as failure to achieve progress through the treatment.

45. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

46. Section 416.1123 is amended by revising paragraph (d) to read as follows:

§ 416.1123 How we count unearned income.

* * * * *

(d) *Retroactive monthly social security benefits.* We count retroactive monthly social security benefits according to the rule in paragraph (d)(1) of this section, unless the exception in paragraph (d)(2) of this section applies:

(1) *Periods for which SSI payments have been made.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally-administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in months prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally-administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see § 404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent month in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

(2) *Social security disability benefits where drug addiction or alcoholism is a contributing factor material to the determination of disability.* If your retroactive social security benefits must be paid in installments because of the limitations on paying lump sum retroactive benefits to disabled recipients whose drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.480, we will count the total of such retroactive social security benefits as unearned income in the first month such installments are paid, except to the extent the rule in paragraph (d)(1) of this section would provide that such benefits not be counted.

* * * * *

47. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 1102, 1611 through 1615, 1619, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 through 1382d, 1382h, and 1383.

48. Section 416.1326 is revised to read as follows:

416.1326 Suspension for failure to comply with treatment for drug addiction or alcoholism.

(a) *Basis for Suspension.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, we will refer you to appropriate treatment as defined in § 416.937. You will not be an eligible individual and we will suspend your benefits if you do not comply with the terms, conditions and requirements of treatment prescribed by the institution or facility. (See § 416.940 which explains how we evaluate compliance with treatment.)

(b) *Date of Suspension.* We will suspend your benefits for a period starting with the first month after we notify you in writing that you failed to comply with prescribed treatment.

(c) *Resumption of Benefits.* If you are complying with prescribed treatment and are otherwise eligible for benefits, we will resume benefits effective with the first day of the month after you demonstrate and maintain compliance with appropriate treatment for these periods—

(1) 2 consecutive months for the first determination of noncompliance;

(2) 3 consecutive months for the second determination of noncompliance; and

(3) 6 consecutive months for the third and all subsequent determinations of noncompliance.

49. Section 416.1331 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

* * * * *

(c) *When benefits terminate due to 12 consecutive suspension months for failure to comply with treatment for drug addiction or alcoholism.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, your benefits will terminate after 12 consecutive months of suspension for noncompliance with treatment requirements as described in § 416.1326.

(d) *When benefits terminate due to payment of 36 months of benefits based on disability when drug addiction or alcoholism is a contributing factor material to the determination of disability.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, your benefits will terminate after you receive a total of 36 months of SSI benefits. The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(e) *Months we count in determining the 36 months of benefits when drug addiction or alcoholism is a contributing factor material to the determination of disability.* Beginning March 1995, we will count all months for which you were paid an SSI benefit, a federally-administered State supplement, a special SSI cash benefit, or you were in special SSI eligibility status, toward the 36 months described in paragraph (d) of this section. Months for which you were not eligible for benefits will not count toward the 36 months.

50. Section 416.1335 is revised to read as follows:

§ 416.1335 Termination due to continuous suspension.

We will terminate your eligibility for benefits following 12 consecutive months of benefit suspension for any reason beginning with the first month you were no longer eligible for regular SSI cash benefits, federally-administered State supplementation, special SSI cash benefits described in § 416.262, or special SSI eligibility status described in § 416.265. We will count the 12-month suspension period either from the start of the first month you are no longer receiving your cash benefits (see § 416.1321(a)) or the start of the month after the month your special SSI eligibility status described in § 416.265 ended. This termination is effective with the start of the 13th month after the suspension began.

51. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

52. Section 416.1402 is amended by revising paragraph (d) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(d) Whether payments will be made, on your behalf, to a representative payee, unless you are under age 18, legally incompetent, or you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability;

* * * * *

53. The authority citation for subpart Q of part 416 is revised to read as follows:

Authority: Secs. 1102, 1611(e)(3), 1615, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(e)(3), 1382d, and 1383.

54. Section 416.1725 is revised to read as follows:

§ 416.1725 Effect of your failure to comply with treatment requirements for your drug addiction or alcoholism.

(a) *Suspension of benefits.* Your eligibility for benefits will be suspended beginning with the first month after we notify you in writing that we have determined that you have failed to comply with the treatment requirements for your drug addiction or alcoholism as defined in § 416.940. Your benefits will be suspended and reinstated in accordance with the provisions in § 416.1326.

(b) *Termination of benefits.* If your benefits are suspended for 12 consecutive months for failure to comply with treatment in accordance with § 416.1326, your eligibility for disability benefits will be terminated in accordance with § 416.1331.

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February 10, 1995

Part XI

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program (TIIAP); Notice

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DEPARTMENT OF COMMERCE

[Docket Number: 950124024–5024–01]

RIN 0660–AA04

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

CFDA: 11.552.

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces the availability of funds to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing targeted, matching demonstration and planning grants, this program will help to develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas.

DATES: In order to facilitate planning for and scheduling of the review process, all applicants are required to send NTIA a non-binding letter of intent to submit an application. All letters of intent should be received by 5 p.m. est on March 23, 1995. Any exceptions to this policy will be determined on a case-by-case basis for good cause shown.

The 1995 TIIAP grant cycle will include three primary application categories. Program deadlines vary, depending on the category in which a proposal is being submitted.

For Category One applications requesting less than $1 million, and for all other categories, complete applications must be mailed or hand carried to the address indicated below and received by NTIA by 5 p.m. edt on April 20, 1995. NTIA anticipates that it will take between 4 and 6 months to process each application and make final funding determinations.

For Category One applications requesting $1 million or more from the TIIAP, applicants are required to submit abbreviated preliminary proposals. Preliminary proposals must be received by NTIA by 5 p.m. edt on April 6, 1995. The purpose of requiring preliminary proposals is to reduce the burden on the applicant by providing the applicant with feedback on the proposed project without requiring the applicant to submit a complete application.

Each preliminary proposal will be reviewed based on the criteria in this Notice by an expert panel, which will advise the TIIAP staff about whether or not to recommend that the applicant submit a full proposal. Note that the TIIAP's recommendation on submission of a full proposal is not binding; applicants whose preliminary proposals are not recommended may choose to submit full applications at their discretion. Furthermore, the review of a preliminary proposal will not prejudice the review of the subsequent full proposal. Full proposals for Category One applicants requesting $1 million or more from the TIIAP must be received at NTIA by 5 p.m. edt on June 22, 1995. No full proposals for Category One projects requesting $1 million or more will be accepted by the TIIAP unless a corresponding preliminary proposal was submitted by the April 6 deadline.

February–March—Regional workshops for prospective applicants (contact TIIAP for additional information about dates and locations)

March 23—Deadline for receipt of letters of intent (by 5 p.m. est)

April 6—Deadline for receipt of preliminary proposals in Category One (applies only to proposals requesting $1 million or more) (by 5 p.m. edt)

April 20—Deadline for receipt of proposals in Category One (proposals requesting less than $1 million), Category Two, and Category Three (by 5 p.m. edt)

June 22—Deadline for receipt of final proposals in Category One (proposals requesting $1 million or more) (by 5 p.m. edt)

ADDRESSES: Telecommunications and Information Infrastructure Assistance Program, National Telecommunications and Information Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Room 6043 HCHB, Washington, D.C. 20230. Fax: 202/501–5136. Internet: tiiap@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Breeden, Director of the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048; fax: 202/501–5136; e-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Program Description

NTIA announces the second annual round of a competitive matching grant program, the TIIAP, created to promote the development and widespread availability of advanced telecommunications and information technologies to serve the public interest. The TIIAP will provide matching grants to state and local governments, non-profit health care and public health providers, school districts, libraries, universities, public safety providers, community-based organizations, and other non-profit entities. Grants will be awarded after a competitive merit review process and will be used to fund projects that improve the quality of, and the public's access to, education and lifelong learning; reduce the cost, improve the quality, and/or increase the accessibility of health care and other social services; promote the accessibility and responsiveness of state and local governments to their citizens and encourage citizen participation in government; improve the efficiency and efficacy of government services; enhance public safety; and promote economic development in rural and urban areas.

NTIA expects that the level of competition will be extremely strong, as it was in fiscal year 1994, when NTIA received 1,088 applications, collectively requesting more than $550 million in grant funds. On October 12, 1994, the Department of Commerce announced 92 TIIAP awards amounting to a total of $24.4 million in Federal funds.

Eligibility Criteria

Eligible Organizations

The fiscal year 1995 TIIAP grant cycle is divided into three categories. State and local governments and non-profit entities are eligible to apply in all categories. Individuals and for-profit organizations are not eligible.

Interactive Services

All services and networks proposed under the TIIAP must be interactive; the program does not support the construction or augmentation of one-way networks.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. A project will not be considered eligible for funding unless the applicant can document the capacity to supply matching funds. Matching funds may be in the form of cash or in-kind contributions (see OMB Circular A–110). Grant funds under this program will be released in direct proportion to local matching funds raised and/or documented. Except as noted below in the case of demonstration projects for which the request is $1 million or more in NTIA funding, NTIA will supply up to 50% of the total project cost, unless extraordinary circumstances warrant a grant to up to 75%. Federal funds generally may not be used as matching monies. However, when authorized by Federal statute, other Federal funds may be used for cost sharing or matching. Please contact the TIIAP for more information, if you have questions about matching funds requirements.

For demonstration projects for which the request is $1 million or more, the following conditions apply. NTIA will supply up to 25% of the "total NTIA-supported project cost" (the total NTIA-supported project cost refers to the NTIA grant funds plus matching funds). However, if a proposed NTIA-supported project is a component of a more comprehensive initiative, for which the applicant has obtained or is seeking funding from another Federal agency or agencies, then NTIA will consider supplying up to one-third of the total NTIA-supported project cost. The proposal must clearly describe the scope of work supported by NTIA and be supported by a budget and a budget narrative indicating the expenditure of both NTIA and matching funds. The success of a proposal and the level of funding from NTIA may depend on the applicant's ability to have components funded through other Federal sources.

Past Performance

Unsatisfactory performance under prior Federal financial assistance awards may result in an application not being considered for funding.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to the Department of Commerce are made.

No Funding for Sectarian Purposes

The Department of Commerce has a long standing policy of not funding projects for purposes the essential thrust of which is sectarian. Consistent with this policy, TIIAP will not fund projects the essential thrust of which is sectarian. Sectarian organizations, however, are eligible applicants and may request funds for non-sectarian purposes. [Cf. NTIA Public Telecommunications Facilities Program (PTFP) regulations at 15 C.F.R. §§ 2301.1 and 2301.22(d); *Fordham University* v. *Brown*, No. 93–2120 (CRR) (D.D.C. June 29, 1994), appeal docketed, No. 94–5229 (D.C. Cir. Aug. 22, 1994)]

Program Categories

Introduction

The 1995 TIIAP grant cycle is divided into three separate categories. Category One is comprised of Demonstration projects. Category Two is comprised of Access projects. Category Three is comprised of Planning projects. Categories One and Three are further divided into two sub-categories each.

NTIA will award approximately 60% of the funds in this program to support demonstration projects (Category One), with approximately 25% of the funds to support access projects (Category Two) and approximately 15% to support planning projects (Category Three), unless the quality and/or submissions in any category does not, in NTIA's judgment, merit the proposed allocation of funds.

All TIIAP proposals will be evaluated using the same criteria, as explained below, but the relative weights of the criteria vary from category to category. Please keep this in mind as you read the following section.

Note that while there is no upper limit on the amount of funds that any organization may request in Category One or in Category Three, the overall level of funding will place obvious limits on the amount of funding available for individual grants. The largest award made in fiscal year 1994 was $733,424.

Category One (Demonstration Projects)

Category One is for exemplary projects that involve the deployment, use, and attendant evaluation of the national information infrastructure to solve a particular problem or set of problems, and that have high potential to serve as models for other communities to follow. Category One is divided into two subcategories based on the amount of NTIA funds requested by the applicant. Proposals requesting $1 million or more from NTIA are subject to a different application process and to different matching funds requirements than proposals requesting less than $1 million. Applicants who choose to apply in Category One should read carefully the sections on Dates, Matching Funds Requirements, Application Forms, and Selection Process.

NTIA's priority in Category One is to leverage the Federal Government's investments by supporting demonstration projects that can serve as national models. Demonstration projects must involve the delivery of useful, practical services in real-world environments within the grant award period. Therefore, while some software development may be required to integrate existing systems or components, it may not be a major emphasis of any demonstration project. Similarly, the TIIAP will not support projects whose primary focus is the development of information content rather than the practical application of information infrastructure.

Projects proposed under this category must address important problems and must demonstrate high-impact, useful applications of information infrastructure. These projects should hold significant potential for replication in other communities. Applicants in this category must explain how their project will add to what is already known about the problems that the project addresses. Applicants must keep in mind that it is the application of the technology to specific needs or problems that is to be demonstrated, not the technology itself. Furthermore, the emphasis in this category is not on showing that an approach is technically feasible, but that the approach is cost effective and appropriate.

Demonstration projects should be innovative to the extent that they represent promising approaches whose benefits and costs may not be fully understood.

By supporting demonstration projects, NTIA intends to stimulate the effective and efficient use of the NII. However, without a rigorous evaluation and active dissemination of results, the potential of any project to play such a catalyzing role is severely limited. Therefore, the TIIAP will use high standards in reviewing the evaluation and dissemination plans presented by proposals in this category.

Category Two (Access Projects)

In this category the TIIAP will support projects whose principal aim is to provide greater access to a national information infrastructure for underserved communities, populations, and/or geographic areas. The emphasis is on basic connectivity, rather than uniqueness or innovation. An access project may build on or emulate a successful model project, either one previously supported by the TIIAP or a model that has gained widespread acceptance in the field.

The primary goals of Category Two projects will be: (1) To reduce disparities in access to and use of the national information infrastructure; (2) to promote high levels of support from diverse members of the community; and (3) to support projects that are guided by the needs of end users. Applicants are strongly urged to provide the TIIAP with a thorough breakdown of the

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various end user groups to be brought on-line; the services to be provided; the information resources to be made available; the public and private organizations and agencies that will participate in the project; and the mechanisms to be employed for informing end users about the existence of the system, ensuring that prospective end users possess adequate skills to use the system, and providing ongoing training for end users.

As in the case of demonstration projects, the emphasis is on the application of technology, rather than the technology itself. Proposals must include compelling evidence that the technology to be employed is both appropriate to the proposed task and cost-effective. Examples of applications in this category would include the establishment of community information networks; creation of wide-area networks within school systems or districts; and provision of Internet access to an isolated group or population. Projects that include extensive software or hardware development will not be considered.

Note: No award in Category Two will exceed $250,000.

Category Three (Planning Projects)

In this category the TIIAP will support planning processes in which organizations, or groups of organizations, develop strategies and plans for the enhanced application of information infrastructure. Planning projects are encouraged for rural or underserved populations where telecommunications could provide enhanced economic opportunity or where business development is insufficient to sustain growth.

Proposals in this category must include clear descriptions both of the planning process (or methodology) to be employed and of the expected outcomes of the process. Each planning project should address how end users will have access to information and will be connected to one another. Applicants should identify the anticipated end users of the information infrastructure and describe the number and diversity of end users, as well as the social and economic benefits expected from implementation.

In addition, NTIA encourages applications that demonstrate partnerships among groups, communities, and entities for the purpose of sharing or leveraging resources. These partnerships or coalitions should demonstrate that, if appropriate, they will continue to operate effectively once TIIAP support is concluded and/or the project plans are implemented. Applicants should also clearly document the administrative or institutional support that has been generated for any planning grant.

Planning grants are divided into two sub-categories:

1. Statewide or Local

This sub-category includes planning proposals that illustrate that the economic and social benefits from an advanced information infrastructure are many and can encompass many sectors, including business, education and training, public and social services, and environmental goals. Planning grants in this sub-category should be multidisciplinary in scope and should focus on the needs of several sectors (*e.g.*, education, health, public information, etc.). For example, the TIIAP awarded grants in fiscal year 1994 to state governments and universities to develop comprehensive statewide information infrastructure plans.

2. Regional or National

Planning activities in this subcategory may focus on a single sector or topic, as long as the project is regional (*i.e.*, involving multiple states) or national in scope. For example, the TIIAP awarded a grant in fiscal year 1994 to the Western Interstate Commission for Higher Education to develop a plan to build an ongoing capacity to "broker" the educational resources of western colleges and universities by using existing telecommunications networks to make higher education more widely available in rural areas of 15 states in the West.

Evaluation Criteria

Proposals will be reviewed according to the following evaluation criteria. The weight of each criterion will vary according to the category of the proposal, as explained below.

(1) Problem Definition

Applicants must clearly explain *why* the proposed project is needed, and *how* the project will meet the needs identified. This may seem obvious; however, a proposal will often fail to survive the competition because the applicant has spent too much effort on unnecessary rhetoric, and too little effort on clearly defining the *actual problem to be solved or the need to be addressed* by the project. It is essential that the problem definition present a convincing case as to why and how a particular problem, task, or social need can best be addressed through the application of information infrastructure.

(2) Applicant Qualifications

Every applicant must present evidence that it has both the experience and the expertise to bring the project to a successful conclusion. Applicants should take care to describe the qualifications of the participating organizations, the key personnel associated with the project, their relationship to the applicant organization, and the applicant's experience in addressing information-related issues. Experience may be demonstrated in a variety of ways, including projects successfully completed and participation in comprehensive planning activities. In addition, each applicant should present evidence that it is not only a capable organization but also an appropriate and credible organization to undertake the project it proposes.

(3) Support for End Users

Since the success of the NII will depend on both its accessibility and the value it offers to end users, projects supported by the TIIAP must demonstrate a high degree of attention to the needs, skills, and working conditions of the targeted end users. The program will look carefully at the degree of end user involvement in the design of proposed projects and at the plans for training users and/or upgrading their skills. Applicants should explain clearly how targeted end users will benefit from the services offered, or how the project will provide the public with easily accessible, useful and useable information. NTIA expects applicants to consider carefully safeguards to protect the privacy of the end users of the information infrastructure funded through this grant program. In addition, applicants proposing projects dealing with individually identifiable information (student grades, medical records, etc.) will be required to prescribe mechanisms for protecting the confidentiality of such information and the privacy of any individuals involved.

(4) Partnerships and Community Support

Broad community support is essential to the viability of TIIAP projects. Partnerships will diverse sectors of the community will be considered an integral part of the proposal. The most successful partnerships are those that create "win-win" situations for all parties involved; every partner both contributes to and benefits from the partnership. Partners must also demonstrate the ability to work together Evidence of strong community support also includes a solid commitment of a high-quality, non-Federal match. Beyond the mandatory commitment of a non-Federal match, TIIAP is concerned with the long term sustainability of a project. Applicants should discuss how they plan to sustain the project after the period of Federal funding is over. Finally, a representative sample of thoughtful letters of support from diverse elements of the community may provide evidence of solid support that will help assure the project's success.

(5) Reducing Disparities in Access to and Use of the Natural Information Infrastructure

One of the Administration's primary NII goals is reducing gaps between information "haves" and "have-nots." Therefore, TIIAP will support projects that increase an underserved population's access to social services and information made available via information infrastructure. Of primary importance is the applicant's plan to redress disparities of access. For example, difficulties in access to information infrastructure may arise from living in a remote rural area or from economic hardship in the inner city. Redressing these disparities in access may involve unique sharing arrangements, innovative outreach strategies, or sensitivity to local conditions of populations that are traditionally underserved. Whatever a particular situation, the applicant must demonstrate that the project will reduce disparities of access and use.

(6) Technical Quality

Technical quality in the TIIAP focuses not on innovation for its own sake, but on consistency with the vision of a nationwide, seamless, interactive network of networks. Therefore, projects proposed to the TIIAP must demonstrate an awareness of, and a realistic approach to, questions of interoperability and scalability. The TIIAP will not support standalone small- or large-scale systems that cannot communicate effectively with other systems. Similarly, the program will not consider proposals for systems that are likely to limit rather than permit growth in the number of sites served, the number of end users accommodated, the number of institutions connected, or the range of information and communication services provided. Where feasible, applicants should seek to build upon existing information infrastructure. Applicants must demonstrate knowledge of existing information infrastructure in the area to be served by the project. Applicants must also address how they intend to deal with the issue of rapid obsolescence by describing their plans to accommodate advances in information and telecommunications technologies. In addition to demonstrating technological soundness, applicants must show that the approach proposed is both cost-effective and appropriate to the need or problem that is to be addressed. Proposals in Category Three (Planning Projects) will also be rated on the soundness of the planning methodology that is presented in the application.

(7) Evaluation and Dissemination

An evaluation of each project is critical in order to answer the essential question of whether or not the project has achieved its goals. Evaluation summaries will be particularly important as projects progress and comparisons can be made and conclusions drawn. For these reasons, every project proposed to the TIIAP must present a clearly defined evaluation strategy that offers rational criteria for measuring the effectiveness of the project in reaching its goals during the grant award period and identifies specific evaluation instruments to be employed. The applicant should also demonstrate adequate experience in arranging and conducting a project evaluation, with the attendant budget for a thorough and useful evaluation. In conjunction with the evaluation strategy, the TIIAP will review the applicant's plan to disseminate the knowledge gained as a result of implementing the project.

(8) Ability to Serve as a Model

In Category One, the TIIAP is interested in supporting projects whose ultimate impact will extend far beyond the scope of the activities funded. Therefore, the program will examine closely the degree to which a proposed project has the potential to serve as a model for others to follow. A focus of this criterion will be the extent to which a project is innovative, not necessarily in terms of the technology to be used, but rather in the application of the technology in a particular setting, in the service of a particular population, or in the solution of a particular problem. Projects will also be judged on whether they can be replicated in other communities and can serve as a catalyst or blueprint for other sectors of society or other providers of services. In addition, the program will examine whether a subsequent evaluation of the project can contribute significantly to our understanding of how the national information infrastructure can be used to improve the delivery of a wide range of social services and promote economic development. Implicit in this concept of a model project is financial viability. Therefore, applicants who intend for their projects to be considered as models must address the issue of the sustainability of the project beyond the grant period.

The above evaluation criteria are weighted as follows:

Criteria	Category one (percent)	Category two (percent)	Category three (percent)
(1) Problem Definition	10	10	10
(2) Applicant Qualifications	10	10	10
(3) Support for End Users	10	15	15
(4) Partnerships and Community Support	10	15	20
(5) Reducing Disparities	10	25	15
(6) Technical Quality	15	10	10
(7) Evaluation and Dissemination	15	10	10
(8) Ability to Serve as a Model	20	5	10

Selection Process

TIIAP grants are awarded on the basis of a competitive review process. Each application will be thoroughly reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the criteria listed in this Notice and make non-binding recommendations to the program staff. Under the guidance of the TIIAP Director, staff will prepare proposed slates of the highest rated projects to be funded for consideration by the NTIA Administrator, who is the selecting official.

The TIIAP Director will propose the slates to the NTIA Administrator in two stages: a slate of Category Two applications, and a slate of applications in Categories One and Three. Acting on these recommendations, the Administrator will select the applications to be negotiated for possible grant award.

In making their decisions, the Program Director and the Administrator will consider the following:

1. The evaluations of the outside reviewers;

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2. The degree to which each slate of applications, taken as a whole, satisfies the program's stated purposes for the applicable program categories;

3. The geographic distribution of the proposed grant awards;

4. The diversity of the technologies employed by the proposed grant awards;

5. The diversity of projects represented by the proposed grant awards;

6. The promotion of equitable access to and use of the information infrastructure for traditionally disadvantaged or under-served groups;

7. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and

8. The availability of funds.

After applications have been selected in this manner, negotiations will take place between TIIAP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TIIAP proposes to fund. Not all applicants who are contacted for negotiation will necessarily receive a TIIAP award.

When the negotiations are completed for Category Two, the TIIAP Director will recommend final award actions to the NTIA Administrator. Applying the same factors listed above, the Administrator will then make the final selection of grant recipients from the pool of negotiated applications in Category Two. This process is repeated for the set of projects approved for negotiation in Categories One and Three.

Eligible Costs

Eligible Costs

Allowable costs incurred under approved projects shall be determined in accordance with applicable Federal costs principles, *i.e.*, OMB Circular A–21, A–87, or A–122. If included in the approved project budget, the TIIAP will allow costs for personnel, fringe benefits, computer hardware and software, other end-user equipment, telecommunication services and related equipment, consultants and other contractual services, travel, rental of office equipment, furniture and space, supplies, etc. that are reasonable and directly related to the project. Construction costs are not eligible.

Note that costs that are ineligible for TIIAP support may not be included as part of the applicant's matching fund contribution.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under TIIAP must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Award Period

Successful applicants in Category One will have between 12 and 24 months to complete their projects. Successful applicants in Categories Two and Three will have between 12 and 18 months to complete their projects. The actual time will vary depending on the complexity of the project.

Other Information

Electronic Information

Information about NTIA and the TIIAP, including this document and the *Guidelines for Preparing Applications*, can be retrieved electronically via the Internet through ftp, gopher and the World Wide Web.

To reach the ftp server, ftp to ftp.ntia.doc.gov. Use the login name of 'anonymous' and use your email address as the password. Change to the /grantinfo directory to find TIIAP files.

To reach the gopher server, point your gopher client at gopher.ntia.doc.gov and login as 'gopher'.

To reach the www server, use http://www.ntia.doc.gov to reach the NTIA Home Page. Follow the link entitled 'What's New' to reach TIIAP information.

TIIAP can also be reached via electronic mail at tiiap@ntia.doc.gov.

Technical Assistance

TIIAP program staff are available to provide technical assistance to applicants on a first-come, first-served basis until the time that a proposal has been submitted to NTIA. All applicants are asked to read carefully both this Notice and the *Guidelines for Preparing Applications* before contacting staff for technical assistance. In addition to outreach through professional conferences and meetings, NTIA will be conducting a series of regional workshops to provide potential applicants with information on the program and application procedures. Information on these workshops is provided in the Dates section.

Application Forms

Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev. 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines for Preparing Applications, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the **ADDRESS** section above. The TIIAP requires one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application.

Because of the high level of public interest in projects supported by the TIIAP, the program anticipates receiving requests for copies of applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. Applicants may identify sensitive information and label it "confidential" to assist NTIA in making disclosure determinations.

Abbreviated proposals under Category One do not need to include the above standard forms. Instructions for preparing an abbreviated proposal are included in the Guidelines for Preparing Applications.

As noted above, all applicants are required to submit a non-binding letter of intent in advance of submitting a full proposal. The letter of intent shall contain information on how to contact the applicant, the category in which the applicant intends to apply, the subject area of the intended proposal, and a brief description of the project that is to be proposed. Detailed instructions for preparing a letter of intent are included in the Guidelines for Preparing Applications.

Type of Funding Instrument

The funding instrument for awards under this program shall be a grant.

Authority and Funding Availability

The National Telecommunications and Information Administration (NTIA) Department of Commerce, serves as the President's principal adviser on telecommunications and information policy. NTIA's functions were codified as part of the Telecommunications Authorization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533, 47 U.S.C. §§ 901–04 (1993).

As specified in the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1994, Pub. L. No. 103–317, 108 Stat. 1724, 1747 (1994), Congress has provided the Department of Commerce $64 million for the TIIAP for fiscal year 1995. The grant funds may be used for the planning and construction of telecommunications networks for the provision of

educational, cultural, health care, public information, public safety, or other social services (notwithstanding the requirements of 47 U.S.C. 392 (a) and (c)).

Federal Policies and Procedures

Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b).

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce or NTIA to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce. Receipt of a TIIAP grant, however, will not eliminate the recipient from consideration for future funding.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification from prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered Federal action, such as the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. § 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." This Notice was reviewed by the Office of Management and Budget under Executive Order 12866.

Definitions

Connectivity

The capacity of one system or device to link to a second system or device to complete a connection and provide continuing service. Connectivity is established among systems when it is possible for an end-user on one system to gain access to another system.

Content Development

The creation of information resources for the purpose of dissemination through one or more on-line services. Typically, content development involves the collection and organization of data, the design of an appropriate user interface, and the creation of software to allow information retrieval.

Demonstration Project

The deployment, use, and attendant evaluation of information infrastructure in the solution of a particular problem or set of problems.

End User

A person who customarily employs or seeks access to, rather than provides, information infrastructure. An end-user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

Information Infrastructure

The telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

Interactivity

The capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail).

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or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

Interoperability

The condition achieved among information and communication systems when information (i.e., data, voice, image, audio, or video) can be easily and cost-effectively shared across acquisition, transmission, and presentation technologies, equipment, and services.

Grant

Financial assistance award authorized by law to support autonomous projects or activities of state or local governments, or non-profit groups. This term does not include direct United States government cash assistance to an individual, a subsidy, a loan, a loan guarantee, or insurance.

Model

A project that employs a novel, innovative, and replicable approach. The ultimate impact of a model project should extend far beyond the community or communities to be served by the project itself.

National Information Infrastructure (NII) Initiative

A Federal policy initiative to facilitate and accelerate the development and utilization of the nation's information infrastructure. The Administration's vision for the NII is of a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. For more detailed information on various aspects of the NII initiative, see e.g., The National Information Infrastructure: Agenda for Action, 58 FR 49,025 (September 21, 1993).

Planning Project

A deliberative process in which an organization, or group of organizations, develops plans and strategies for the enhanced application of information infrastructure. The outcome of a planning project should be a plan for improved delivery of social services, economic development, or increased citizen access to information resources.

Scalability

The ability of a system to accommodate a significant growth in the size of the system (i.e., services provided, end users served) without the need for substantial redesign. A scalable approach that is demonstrated on a small scale can also be applied on a larger scale.

Social Services

Activities performed by public or private entities to meet basic community needs. Examples include education, health care and public health, public information, public safety, and economic development.

Underserved

End users who are subject to barriers that limit or prevent their access to either social services or information infrastructure. In terms of information infrastructure, these barriers may be linguistic, geographic, economic, or cultural. A rural community may be physically isolated from circuits adequate to allow for data access; inner city neighborhoods may contain large numbers of potential end users for whom ownership of computer hardware is unlikely; residents of isolated ethnic communities may lack the requisite language skills to permit ease of access to on-line information resources.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–3426 Filed 2–9–95; 8:45 am]

BILLING CODE 3510–60–M

federal register

Friday
February 10, 1995

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91
Class B, C, and E Airspace Areas and Special Visual Flight Rules, Colorado; VOR Federal Airways and Jet Routes; Final Rules

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–37]

Establishment of Class D Airspace; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action establishes Class D airspace at Denver International Airport, Colorado, so cargo aircraft can operate safely within controlled airspace until the new Denver International Airport is commissioned. Accordingly, action is taken herein to establish Class D airspace preceding the effective date of Class B airspace, which is scheduled to be effective February 28, 1995.

DATES: Effective 0701 UTC, February 26, 1995.

Comment Date: Comments must be received prior to February 21, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–37, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, Suite 570, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone: (206) 227–2007.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–37, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On January 17, 1995, the City and County of Denver proposed to allow cargo airport operations at the new Denver International Airport prior to official commissioning. Denver anticipates commissioning the airport on February 28, 1995, but wishes to allow cargo aircraft to operate at the new airport before the new airport is officially commissioned. This action is necessary to provide controlled airspace until the Class B airspace becomes effective at the new airport. Class B airspace is scheduled to become effective at the new airport on February 28, 1995, when operations at Stapleton Airport are discontinued.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at the new Denver International Airport, Colorado to provide controlled airspace for operations.

Accordingly, action is taken herein to establish Class D airspace in order to provide for safe operations on February 26, 1995, until the new airport opens. The establishment of Class D airspace is required in the interest of flight safety. Under the circumstances presented, the FAA concludes that there is an immediate need to establish this Class D airspace area in order to promote the safe and efficient handling of air traffic in this area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

ANM CO D Denver, CO [New]

Denver International Airport CO
(Lat. 39°51'30" N, long. 104°40'01" W)
Denver Stapleton International Airport, CO
(Lat. 39°46'28" N, long. 104°52'47" W)
Heckendorf Airport, CO
(Lat. 39°57'48" N, long. 104°52'47" W)

That airspace extending upward from the surface to and including 8,000 feet MSL within a 6.3-mile radius of the Denver International Airport excluding that airspace within the Denver Stapleton International Airport, CO, Class B airspace; and excluding that airspace south of lat. 39°48'44" N and east of long. 104°35'00" W; and excluding that airspace within a 1-mile radius of Heckendorf Airport, CO. This Class D airspace shall be effective until superseded by the new Denver International Airport Class B airspace.

* * * * *

Issued in Seattle, Washington, on January 23, 1995.

Bill H. Ellis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–3479 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Nos. 91–ANM–14, 91–ANM–16, 91–ANM–17, 93–ANM–1, 93–ANM–2, 93–ANM–3, and 93–ANM–5]

Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Announcement of effective data.

SUMMARY: On February 28, 1995, the new Denver International Airport is scheduled to open, replacing Stapleton International Airport. This action supports the new Denver International Airport airspace structure by altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These changes were delayed previously pending the opening of the new Denver International Airport. This airspace reconfiguration coincides with the scheduled opening date of the new airport.

EFFECTIVE DATE: The final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, 58 FR 47635, as postponed at 58 FR 60552, corrected at 59 FR 1472, 59 FR 5080, 59 FR 6217, and as postponed at 59 FR 10743 and 59 FR 24914, are effective 0701 UTC, February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federal airways, and jet routes to support the new Denver International Airport airspace reconfiguration. On January 11, 1994, a correction was published on Airspace Docket No. 91–ANM–14 to incorporate an amendment to V–220 between Grand Junction, CO, and Meeker, CO. Additionally, on February 3 and February 10, 1994, corrections were published concerning J–54 in Airspace Docket No. 91–ANM–16 to reinstate a segment from Cherokee, WY, to Laramie, WY. Most recently, the FAA delayed these rules indefinitely pending the official opening of the Denver International Airport. The new Denver International Airport is scheduled to open on February 28, 1995. This airspace reconfiguration coincides with the opening date of the new airport.

Because the public needs to be made aware of the opening date immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, Airspace Docket No. 93–ANM–1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93–ANM–2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93–ANM–3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93–ANM–5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO (58 FR 47373; September 9, 1993); Airspace Docket No. 91–ANM–14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993) as corrected at (59 FR 1472; January 11, 1994); Airspace Docket No. 91–ANM–16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993) as corrected at 59 FR 5080 (February 3, 1994) and 59 FR 6217 (February 10, 1994); Airspace Docket No. 91–ANM–17 altering VOR Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993), as postponed at 58 FR 60552 (November 17, 1993), as postponed at 59 FR 10743 (March 8, 1994), and as postponed at 59 FR 24914 (May 13, 1994), are effective February 28, 1995.

Issued in Washington, DC, on February 8, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–3476 Filed 2–8–95; 11:41 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–20]

Alteration of Jet Route J–171; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; announcement of effective date.

SUMMARY: On February 28, 1995, the new Denver International Airport is scheduled to open, replacing Stapleton International Airport. This action supports the new Denver International Airport airspace structure by altering Jet Route J–171 from Tobe, CO, to Hugo, CO. This airspace change was delayed previously pending the opening of the new Denver International Airport. This airspace reconfiguration coincides with the scheduled opening date of the new airport.

EFFECTIVE DATE: The final rule at 59 FR 1619, as postponed at 59 FR 10744 and 59 FR 24915, is effective 0701 UTC, February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–171 from Tobe, CO, to Hugo, CO, to support the new Denver International Airport airspace reconfiguration.

Most recently, the FAA delayed this rule indefinitely pending the official opening of the new Denver International Airport. The new airport is scheduled to open on February 28, 1995. This airspace reconfiguration coincides with the opening date of the new airport.

Because the public needs to be made aware of the opening date immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, Airspace Docket No. 93–ANM–20 altering Jet Route J–171 (59 FR 1619; January 12, 1994) as postponed at 59 FR 10744 (March 8, 1994) and 59 FR 24915 (May 13, 1994) is effective February 28, 1995

Issued in Washington, DC, on February 8, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–3477 Filed 2–8–95; 11:42 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Nos. 91–AWA–3]

RIN 2120–AE46

Alteration of the Denver Class B Airspace Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; announcement of effective date.

SUMMARY: On February 28, 1995, the new Denver International Airport is scheduled to open, replacing Stapleton International Airport. This action supports the new Denver International Airport airspace structure by altering the Denver, CO, Class B airspace area.

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This change was delayed previously pending the opening of the new Denver International Airport. This Class B airspace reconfiguration coincides with the scheduled opening date of the new airport.

EFFECTIVE DATE: The final rule at 58 FR 48722, as postponed at 58 FR 60552, as corrected at 59 FR 2953, and as postponed at 59 FR 10744 and 59 FR 24914, is effective 0701 UTC, February 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. On January 20, 1994, a correction to the final rule was published correcting an error in the coordinates for the airport reference point and the supporting Navigational Aid for the new Denver International Airport, and to reflect the upgrading of the Denver Very High Frequency Omnidirectional Range facility to a very high frequency omnidirectional range/tactical air navigational facility. Most recently, the FAA delayed these rules indefinitely pending the official opening of the Denver International Airport. The new Denver International Airport is scheduled to open on February 28, 1995. This airspace reconfiguration coincides with the opening date of the new airport.

Because the public needs to be made aware of the opening date immediately, notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, Airspace Docket No. 91–AWA–3 altering the Class B airspace area in Denver, CO, 58 FR 48722 (September 17, 1993); as postponed at 58 FR 60552 (November 17, 1993), as corrected at 59 FR 2953 (January 20, 1994), and as postponed at 59 FR 10744 (March 8, 1994) and 59 FR 24914 (May 13, 1994) is effective February 28, 1995.

Issued in Washington, DC, on February 8, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–3478 Filed 2–8–95; 11:42 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 27583; Amendment No. 91–243]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule announcement of effective date.

SUMMARY: On January 19, 1994, the Federal Aviation Administration (FAA) published a final rule to amend appendix D, part 91 of the Federal Aviation Regulations to accurately reflect the name of the new Denver, Colorado airport. This action was previously delayed pending the opening of the Denver International Airport. This amendment coincides with the scheduled opening date of the new airport.

EFFECTIVE DATE: The final rule at 59 FR 2918, as corrected at 59 FR 6547, as postponed at 59 FR 10958 and 59 FR 24915 is effective 0701 UTC, February 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Ellen E. Crum, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On January 19, 1994, the Federal Aviation Administration (FAA) published a technical amendment to sections 1 and 3 of appendix D, 14 CFR part 91, replacing the reference to Stapleton International Airport with the Denver International Airport (Amendment No. 91–236; 59 FR 2918). In the amendment, however, the FAA inadvertently indicated that the word "Stapleton" should be replaced with the word "International". The FAA issued a correcting amendment on February 11, 1994 (59 FR 6547). Most recently, the FAA delayed the rule indefinitely pending the official opening of the Denver International Airport. The new airport is scheduled to open on February 28, 1995. This action coincides with the opening of the new airport. Because the public needs to be made aware of the opening date immediately notice and public procedure are impracticable and good cause exists for making this action effective in less than 30 days.

In consideration of the foregoing, the final rule (Docket No. 27583) amending the name of the Denver International Airport in appendix D of 14 CFR part 91 (59 FR 2918; January 19, 1994) and the final rule correction (59 CFR 6547, February 11, 1994) postponed at 59 FR 10958, March 9, 1994, and 59 FR 24915 May 13, 1994 is effective February 28 1995.

Issued in Washington, DC, on February 8, 1995.

Harold W. Baker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–3481 Filed 2–8–94; 11:42 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–7]

Alteration Jet Route J–20

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule; clarification.

SUMMARY: This action reflects the name change of the Shreveport, LA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility to the Belcher VORTAC in the airspace designation for Jet Route J–20 The description for J–20 was previously modified to support the airspace structure for the new Denver International Airport. That action was delayed pending the opening of the airport and reflected the old name for the Belcher, LA, VORTAC. This action clarifies that the Shreveport, LA, VORTAC is now named the Belcher VORTAC in the new description of J–20 which becomes effective on February 28, 1995.

EFFECTIVE DATE: 0701 UTC, February 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) reflects a change to the name of the Shreveport, LA, VORTAC to the Belcher VORTAC. The description for J–20 was previously modified in Docket 91–ANM–16 to support the opening of the new Denver International Airport; that action was delayed pending the opening of the airport. The description for J–20 in Docket 91–ANM–16 contained the old name for the Belcher VORTAC. The airspace configuration to support the opening of the new Denver International Airport will now become effective on February 28, 1995. This action is necessary to clarify the name change of the VORTAC from Shreveport, LA, to Belcher, LA, in the new description of J–20. This action is editorial in nature. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public is not particularly interested. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–20 [Revised]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 154° and Fort Lauderdale, FL, 339° radials to Fort Lauderdale.

* * * * *

Issued in Washington, DC, on February 28, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–3480 Filed 2–8–95; 11:43 am]

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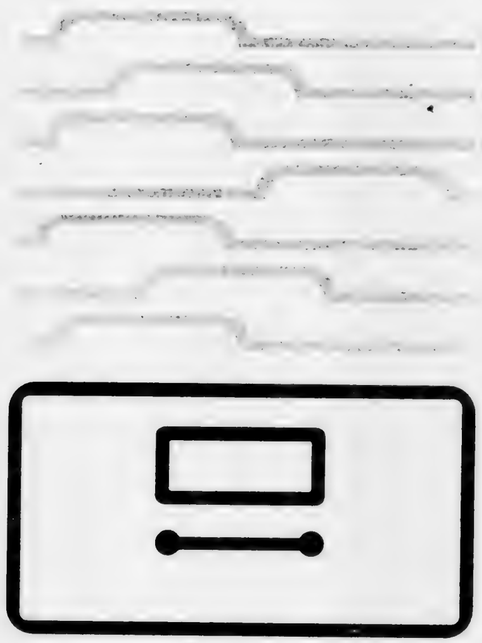

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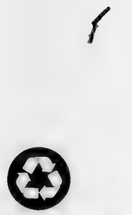

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Executive Order 12949 of February 9, 1995

Foreign Intelligence Physical Searches

By the authority vested in me as President by the Constitution and the laws of the United States, including sections 302 and 303 of the Foreign Intelligence Surveillance Act of 1978 ("Act") (50 U.S.C. 1801, *et seq.*), as amended by Public Law 103–359, and in order to provide for the authorization of physical searches for foreign intelligence purposes as set forth in the Act, it is hereby ordered as follows:

Section 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical searches, without a court order, to acquire foreign intelligence information for periods of up to one year, if the Attorney General makes the certifications required by that section.

Sec. 2. Pursuant to section 302(b) of the Act, the Attorney General is authorized to approve applications to the Foreign Intelligence Surveillance Court under section 303 of the Act to obtain orders for physical searches for the purpose of collecting foreign intelligence information.

Sec. 3. Pursuant to section 303(a)(7) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(7) of the Act in support of applications to conduct physical searches:

(a) Secretary of State;

(b) Secretary of Defense;

(c) Director of Central Intelligence;

(d) Director of the Federal Bureau of Investigation;

(e) Deputy Secretary of State;

(f) Deputy Secretary of Defense; and

(g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate.

William J. Clinton

THE WHITE HOUSE,
February 9, 1995.

[FR Doc. 95–3671
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Rules and Regulations

Federal Register
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Monday, February 13, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1751

RIN 0572–AB07

Telecommunications System Planning and Design Criteria, and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its rule on State Telecommunications Modernization Plans to incorporate changes in RUS Telecommunications Program policy. These amendments also incorporate suggestions received from the public in response to the proposed rule. All Telephone Borrowers will be affected by this final rule.

EFFECTIVE DATE: March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron III, Director, Telecommunications Standards Division, U.S. Department of Agriculture, Rural Utilities Service, 14th & Independence Avenue, SW., Room 2835–S, Washington, DC 20250–1500, telephone number (202) 720–8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not: (1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS Telecommunications Program provides loans to RUS Borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS Borrowers, as a result of obtaining federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with RUS regulations and requirements. Moreover, this action is in response to the Rural Electrification Loan Restructuring Act of 1993.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule have been submitted to OMB for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Send comments regarding this collection of information to: Department of Agriculture, Clearance Office, Office of Information Resources Management, Room 404–W, Washington, DC 20250, and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), (Reorganization Act), signed by President Clinton on October 13, 1994, provides for a streamlining and reorganizing of the Department of Agriculture (Department). The Reorganization Act requires the Secretary of Agriculture (Secretary) to establish the Rural Utilities Service (RUS) within the Department. On October 20, 1994, the Secretary of Agriculture, in Secretary's Memorandum 1010–1, abolished the Rural Electrification Administration (REA) and established RUS, as required by the Reorganization Act.

On December 20, 1993, RUS (formerly REA) published an interim rule (58 FR 66250) to incorporate changes to telephone loan policies required by the Rural Electrification Loan Restructuring Act of 1993 (RELRA) (107 Stat. 1356).

On April 13, 1994, RUS adopted its interim rule as a final rule (59 FR 17460) with one exception, 7 CFR Part 1751, Telecommunications System Planning and Design Criteria, and Procedures. Because of the overwhelming response and concerns regarding the requirements of the State Telecommunications Modernization Plan (Modernization Plan), RUS published proposed amendments to 7 CFR Part 1751, Subpart B on October 27, 1994 (59 FR 53939).

During the comment period RUS received 39 comments regarding the proposed rule and these comments were taken into consideration in preparing the final rule. Comments were received from the following:

(1) Colorado Public Utilities Commission Staff.
(2) Florida Public Service Commission.
(3) Idaho Public Utilities Commission.
(4) Illinois Commerce Commission.

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(5) Louisiana Public Service Commission.
(6) Michigan Public Service Commission Staff.
(7) Missouri Public Service Commission.
(8) Nebraska Public Service Commission.
(9) New England Conference of Public Utilities Commissioners, Inc.
(10) New York State Department of Public Service.
(11) Ohio Public Utilities Commission.
(12) Pennsylvania Public Utility Commission.
(13) Texas Public Utility Commission.
(14) Virginia State Corporation Commission.
(15) Wisconsin Public Service Commission.
(16) Wyoming Public Service Commission.
(17) National Association of Regulatory Utility Commissioners.
(18) GTE Service Corporation.
(19) Joint comments from 15 RUS Telephone Borrowers and 2 consulting engineering companies located in South Carolina.
(20) TDS Telecom.
(21) Unicom.
(22) United and Central Telephone Companies.
(23) National Emergency Number Association.
(24) Joint comments from the National Rural Telecom Association and the Western Rural Telephone Association.
(25) Nebraska Telephone Association.
(26) North Dakota Association of Telephone Cooperatives.
(27) National Telephone Cooperative Association.
(28) New York State Telephone Association, Inc.
(29) Joint comments from the Oklahoma Rural Telephone Coalition, Rural Arkansas Telephone Systems, and Texas Statewide Telephone Cooperative, Inc.
(30) Organization for the Protection and Advancement of Small Telephone Companies.
(31) Oregon Independent Telephone Association.
(32) United States Telephone Association.
(33) Bell Atlantic Telephone Companies.
(34) Southwestern Bell Telephone Company.
(35) U.S. West Communications, Inc.
(36) MCI Telecommunications Corporation.
(37) Kadrmas, Lee & Jackson, P.C.
(38) GVNW Inc/Management.
(39) Reed Veach Wurdeman and Associates.

1. Comment Summary. Many commenters argued that the Modernization Plan requirements in the proposed rule go beyond a reasonable reading of RELRA. More specifically, they said that RELRA requires "objectives", but the proposed rule translates those into requirements, and sets deadlines for accomplishment of those requirements that are insensitive to market forces, technological development, and State regulatory authority.

Response. RUS believes that a Modernization Plan without service improvement requirements, and timeframes for achievement, would be ineffective in accomplishing the modernization of rural telecommunications infrastructure that RELRA clearly intends. RELRA makes the Modernization Plan a condition to eligibility for certain financing programs administered by RUS. An ineffective Modernization Plan would undermine this direction of financing resources under RELRA.

In response to the substance of these comments, RUS has recast its requirements and timeframes. The long-term requirements have been changed to goals, and some requirements have been reduced. From the comments received, RUS believes that these changes will mitigate the concerns about marketability of required technologies. RUS again invites States to exercise their authority by taking advantage of the one year period of eligibility to prepare a Modernization Plan.

2. Comment Summary. One commenter noted that if no Modernization Plan is developed for a State, thereby excluding the State from some RUS program benefits, service rates would probably increase in the State. Others expressed concern that investments made to comply with Modernization Plan requirements would affect other Telecommunications Providers through the universal service fund and other toll settlement plans.

Response. The Telecommunications Providers covered by Modernization Plans are interconnected with other telecommunications carriers in many ways, and they are certainly interconnected economically. Borrowers and PUC's can make various decisions that can jeopardize RUS funding of projects, and these may affect service rates for subscribers and toll pool distributions. RELRA requires that no loans except guaranteed loans be made in a State without a Modernization Plan.

3. Comment Summary. Many commenters suggested that the language in § 1751.106(a)(5) is not consistent with the language in § 1751.106(f) of the proposed rule. Some commenters preferred the language in the response to comments to the language presented in the proposed rule.

Response. The language in § 1751.106(a)(5) was a restatement of the provision in RELRA. Paragraph (g), (paragraph (f) in the proposed rule) of the subsection is RUS's effort to clarify the term "uniform deployment schedules" and is intended to allow Plan Developers some latitude in the timing of deployment of advanced services. § 1751.106(a) has been rewritten to clarify that it is a restatement of RELRA so as to eliminate any appearance of a conflict with paragraph (g).

4. Comment Summary. Many commenters wonder what guidelines RUS will use to determine whether something is "technically or economically feasible", under § 1751.103(b) of the proposed rule.

Response. Technical feasibility means the equipment is available to do the job. Economic feasibility means the job can be done at a reasonable cost. Every telecommunications loan processed by RUS is studied for technical and economic feasibility. Technical feasibility of the loan is determined by telecommunications engineers with knowledge of current technology and facility costs. Economic feasibility is determined by the loan feasibility study which is a comprehensive consideration of projected revenues and expenses for the particular Borrower. The results of RUS's studies are submitted to the Borrower for concurrence before a loan is approved.

5. Comment Summary. One commenter pointed out that the extension process discussed in § 1751.106(b) may require Borrowers to request extensions from groups of other Borrowers who might have competitive interests. This could happen if the Plan Developer is a Borrower group.

Response. This has been rewritten to give this authority to RUS in those cases where the Plan Developer is the majority of RUS Borrowers.

6. Comment Summary. Many commenters opposed the requirement in § 1751.106(g)(2)(ii) for eliminating inductive loading of copper loops. Some commenters argued that § 1751.106(g)(2)(ii) is contradictory to § 1751.103(b) in the proposed rule.

Response. The requirement in § 1751.106(g)(2)(ii) has been deleted.

7. Comment Summary. Some commenters expressed concern about the exception process mentioned in § 1751.106(g)(2)(i) in the proposed rule for those who do not want the elimination of party line service

Response. The language providing for the elimination of party line service has been revised to focus this requirement on the capability of providing one-party service.

8. Comment Summary. Many commenters argued that the powering requirement in § 1751.106(h)(2)(ii) and § 1751.106(i)(2)(iv) in the proposed rule is not supported by industry consensus at this time. Some suggested that this item be approached from a reliability standpoint. Some commenters believed this requirement covered powering of fax machines and PBXs.

Response. RUS does not want to see the reliability of basic telecommunications service decline as a result of modernization. Such a decline will most certainly occur if local powering is relied upon even for basic voice telephone service, because the average annual outage time for a residential line connected to the public switched network is estimated at 105 minutes, whereas the average annual outage time for residential power users is over 300 minutes. The final rule has been revised to require that the Plan Developer make "provision for" service continuation during local power failure. Regarding the confusion over what has to be resilient to local power failure, this provision was carefully written in the proposed rule to cover only basic voice communications in the event of a local power failure. RUS has rewritten this provision to make this point without mentioning specific equipment and technologies that need not be provided with alternative power.

9. Comment Summary. Many commenters expressed opposition to the medium-term requirement for switched 1.544 Mb/sec service. Some commenters suggested that this would be very expensive to provide. Others suggested that only a few central office switches could provide the service. One commenter suggested the capability would be useless unless interexchange carriers could carry such signals. One commenter noted that in Alaska, where satellites play an important role in connecting exchanges to the network, this requirement would be very difficult.

Response. The substance of the comments received has caused RUS to reconsider this requirement. The requirement for switched 1.544 Mb/sec service in the proposed rule has been changed to a requirement for the transmission and reception of at least 1 Mb/sec and the reception of video. The Plan Developer may specify how this is to be accomplished.

10. Comment Summary. Two commenters observed that the Modernization Plan would apply to all Borrowers, and as defined that would include past as well as present and future Borrowers. This would mean that RUS would apply RELRA requirements retroactively.

Response. This was not RUS's intent. The language has been changed to clarify that the Modernization Plan for a State will only act to set requirements on Borrowers for certain kinds of loans, and further, only if the loan is approved after the date that the Modernization Plan is approved by RUS.

11. Comment Summary. Some commenters thought that § 1751.106(i)(2)(iii) in the proposed rule was intended to eliminate plain old telephone service ("POTS") as a new service offering, and that this long-term requirement would force subscribers to purchase digital telephones.

Response. This requirement has been deleted from the regulation as part of the recasting of the Modernization Plan discussed above.

12. Comment Summary. One commenter suggested that § 1751.105 be revised to state that no amended Modernization Plan could increase the requirements of a previously-approved Modernization Plan.

Response. RUS disagrees. This could unreasonably limit a State or group of Borrowers in their efforts to continue to modernize telecommunications systems in the State.

13. Comment Summary. One commenter is concerned whether RUS will follow 5 U.S.C. § 553 regarding notice and comment procedures if the rule is changed in the future. Another commenter felt that RUS has no statutory authority to revise the rule after the final rule is issued.

Response. The underlying purpose of the Modernization Plan is to stimulate the continuing modernization of telephone service. RUS believes that it has the obligation to provide guidance to Plan Developers for updating their Modernization Plans. As is stated in § 1751.105(e), RUS, if it revises the rule, must follow the Administrative Procedures Act.

14. Comment Summary. One commenter expressed concern that under § 1751.103 as written in the proposed rule, RUS could deny loans to all Borrowers in a State if any Borrower does not participate in the Modernization Plan.

Response. This was not RUS's intent. Language in this subsection has been revised to clarify that only the Borrower who does not participate in the Modernization Plan is denied certain types of loans.

15. Comment Summary. Many commenters expressed displeasure with the one year period for State eligibility with no extensions, and the rejection of Borrower-prepared plans before the end of that year. Also, one commenter recommended that States be required to notify other interested parties 180 days before the expiration of the one year period of their intent to file or not to file a proposed Modernization Plan.

Response. Beginning with the publication of this Final Rule, States have a one year period of eligibility for preparing a Modernization Plan. There is no provision in RELRA for any party other than a State to prepare a Modernization Plan until the expiration of that one year. Regarding the suggestion for advance notice of the State's intent to file, RUS agrees and has added language to § 1751.102 (b) to request a State to inform RUS if it does not intend to submit a proposed Modernization Plan. RUS will inform its Borrowers as well as telephone industry associations when it has been notified that a State does not intend to develop a Modernization Plan.

16. Comment Summary. Several commenters expressed opposition to § 1751.106(e) in the proposed rule, which provides for Modernization Plan guidelines for the development of affordable tariffs for medical links and distance learning services. Two commenters argued that this provision would usurp a PUC's rate regulatory authority by mandating a subsidy.

Response. One of the requirements of RELRA is that the "Modernization Plan must provide for the availability of telecommunications services for improved business, educational, and medical services." If such services are to be "available" in any reasonable sense, they must be affordable.

17. Comment Summary. Several commenters suggested that RUS should provide a model Modernization Plan.

Response. RUS believes, and most commenters have strongly asserted, that Modernization Plans can best be developed by local State groups and Telecommunications Providers. In view of the preponderance of comments received on the proposed rule, RUS declines to issue suggested language that might be seen as an ad hoc standard for Modernization Plans.

18. Comment Summary. One commenter suggested that requirements for improvements under Modernization Plans should be made conditional upon adequate available federal capital and cost recovery mechanisms.

Response. Unless the PUC decides otherwise, the Modernization Plan requirements only apply to RUS

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Borrowers. Moreover, the only enforcement of a Modernization Plan pursuant to RELRA is denial of a loan to a Borrower that is not participating in the Modernization Plan. Therefore, to a considerable extent, Modernization Plan requirements are conditional upon the availability of federal capital and cost recovery mechanisms.

19. Comment Summary. Several commenters argued that RELRA did not give RUS the authority to require a modernization of the national communications infrastructure. These commenters noted that this is contrary to the Communications Act of 1934 objective of consolidating federal authority over telecommunications into one agency.

Response. Through various financing programs and technical initiatives, the REA, now RUS, has been instrumental in the modernization of the national rural telecommunications infrastructure. The provisions of RELRA as set forth in this final rule will continue that modernization.

20. Comment Summary. One commenter pointed out that since a Borrower-developed Modernization Plan can only apply to Borrowers, the rule should make that clear.

Response. Language has been added to § 1751.102(c) to clarify that a Borrower-developed plan will only apply to Borrowers.

21. Comment Summary. One commenter said that Borrower-developed plans can affect others, and proposed that RUS require that Borrowers allow outside participation in development of a plan.

Response. RUS encourages all Plan Developers to include outside participation, but does not believe it is necessary for Borrower groups to be required to include outside participation.

22. Comment Summary. One commenter expressed concern that Modernization Plan requirements would threaten universal service because it would require Borrowers and non-Borrowers to build infrastructure whether or not it met customer needs.

Response. The regulation has been revised to alleviate this concern. RUS performs feasibility studies to ensure that the proposed construction does not threaten the viability of a Borrower.

23. Comment Summary. One commenter suggested that in the balance between cost and improved service, cost is clearly secondary to RUS.

Response. RUS is concerned with improved service to rural subscribers at reasonable prices. RUS strongly feels that communications infrastructure is essential to rural economic development. The real cost of failing to provide this infrastructure is a failing rural economy, decline in rural subscribers and less revenue to the rural telecommunications provider.

24. Comment Summary. Many commenters found the approximate restatement of a part of RELRA in § 1751.106(a) to be confusing and vague. It uses terms that do not seem to apply to any communications industry segment such as "video images" and "proper routing of information to subscribers".

Response. This language has been clarified to show that § 1751.106(a) is a restatement of RELRA while the balance of the section implements the law.

25. Comment Summary. One commenter proposed that RUS should automatically grant lien accommodations for Borrowers that do not meet the minimum requirements of their State Modernization Plan.

Response. RUS disagrees. To do so would negate RELRA's purpose of improving and modernizing telecommunications and might jeopardize the security of RUS loans.

26. Comment Summary. One commenter proposed that RUS review Modernization Plans within 30 days without exception, and asserts that as written the rule allows RUS to postpone denial until it is too late for a developer to resubmit a plan for approval.

Response. Both Plan Developers and RUS face difficult schedules as a result of this regulation. RUS has developed an internal processing procedure intended to deal with the estimated 45 Modernization Plans that could be received simultaneously. It is the intent of RUS to process all Modernization Plans within 30 days of receipt of the proposed Modernization Plan. If the submission of the proposed Plan is timely, this will not be a problem.

27. Comment Summary. One commenter noted that RELRA places no time limit on RUS as to promulgation of a final rule. This commenter suggested that RUS should wait for further congressional direction.

Response. RUS was required under RELRA to issue the interim regulation, and RUS wishes to respond to the public by issuing a final rule that implements the requirements of RELRA in a reasonable and effective manner. Without this final rule, the interim rule remains in effect.

28. Comment Summary. One commenter asked why the rule does not apply to RUS electric borrowers and grant recipients who may compete with RUS telephone Borrowers either directly or through a subsidiary.

Response. As written, the Modernization Plan will serve as requirements for all telephone Borrowers seeking new financing. Modernization Plans developed by the States may expand coverage to others in the telecommunications industry.

List of Subjects in 7 CFR Part 1751

Loan programs—communications, Telecommunications, Telephone.

For reasons set forth in the preamble, chapter XVII of Title 7 of the Code of Federal Regulations is amended by revising part 1751 to read as follows:

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURES

Subpart A—[Reserved]

Sec.

1751.1–1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

1751.100 Definitions.
1751.101 General.
1751.102 Modernization Plan Developer; eligibility.
1751.103 Loan and loan advance requirements.
1751.104 Obtaining RUS approval of a proposed Modernization Plan.
1751.105 Amending a Modernization Plan.
1751.106 Modernization Plan; requirements.

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart A—[Reserved]

§§ 1751.1–1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

§ 1751.100 Definitions.

As used in this subpart:

Bit rate. The rate of transmission of telecommunications signals or intelligence in binary (two state) form in bits per unit time, e.g., Mb/s (megabits per second), kb/s (kilobits per second), etc.

Borrower. Any organization that has received an RUS loan designation number and which has an outstanding telephone loan made by RUS or the Rural Telephone Bank, or guaranteed by RUS, or which has a completed loan application with RUS.

Emerging technologies. New or not fully developed methods of telecommunications.

Modernization Plan (State Telecommunications Modernization Plan). A State plan, which has been approved by RUS, for improving the telecommunications network of those Telecommunications Providers covered by the plan. A Modernization Plan must conform to the provisions of this subpart.

New facilities. Facilities which are wholly or partially constructed or reconstructed after a short- or medium-term requirements start date, as appropriate. This does not include connections or capacity extensions within the wired capacity of existing plant such as adding line cards to existing equipment.

Plan Developer. The entity creating the Modernization Plan for the State, which may be the State PUC, the State legislature, or a numeric majority of the RUS Borrowers within the State. When this part refers to the PUC as the Plan Developer, this includes the State legislature.

PUC (Public Utilities Commission). The public utilities commission, public service commission or other State body with such jurisdiction over rates, service areas or other aspects of the services and operation of providers of telecommunications services as vested in the commission or other body authority, to the extent provided by the State, to guide development of telecommunications services in the State. When this part refers to the PUC as the Plan Developer, this includes the State legislature.

RE Act. The Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA. The Rural Electrification Administration, formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

RELRA. The Rural Electrification Loan Restructuring Act of 1993 (107 Stat. 1356).

RUS. The Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*)), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

RUS cost-of-money loan. A loan made under section 305(d)(2) of the RE Act bearing interest as determined under 7 CFR 1735.31(c). RUS cost-of-money loans are made concurrently with RTB loans.

RUS hardship loan. A loan made by RUS under section 305(d)(1) of the RE Act bearing interest at a rate of 5 percent per year.

RTB loan. A loan made by the Rural Telephone Bank (RTB) under section 408 of the RE Act bearing interest as determined under 7 CFR 1610.10. RTB loans are made concurrently with RUS cost-of-money loans.

State. Each of the 50 states of the United States, the District of Columbia, and the territories and insular possessions of the United States. This does not include countries in the Compact of Free Association.

Telecommunications. The transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

Telecommunications providers. RUS Borrowers and if the Plan Developer is a PUC, such other entities providing telecommunications services as the developer of the Modernization Plan (See § 1751.101) may determine.

Wireline Service. Telecommunications service provided over telephone lines. It is characterized by a wire or wirelike connection carrying electricity or light between the subscriber and the rest of the telecommunications network. Wireline Service implies a physical connection. Although radio may form part of the circuit, it is not the major method of transmission as in radiotelephone.

§ 1751.101 General.

(a) It is the policy of RUS that every State have a Modernization Plan which provides for the improvement of the State's telecommunications network.

(b) A proposed Modernization Plan must be submitted to RUS for approval. RUS will approve the proposed Modernization Plan if it conforms to the provisions of this subpart. Once obtained, RUS's approval of a Modernization Plan cannot be rescinded.

(c) The Modernization Plan shall not interfere with RUS's authority to issue such other telecommunications standards, specifications, requirements, and procurement rules as may be promulgated from time to time by RUS including, without limitation, those set forth in 7 CFR part 1755.

(d) The Modernization Plan must, at a minimum, apply to RUS Borrowers' wireline service areas. If a Modernization Plan is developed by the PUC, RUS encourages, but does not require, that the Modernization Plan's requirements apply to the rural service areas of all providers of telecommunications services in the State. A PUC's decision not to include non-RUS Borrowers will not prejudice RUS approval of that PUC's Modernization Plan. The PUC may also, at its option, extend coverage of the Modernization Plan to all service areas of all providers of telecommunications services in the State. In addition, while the requirements and goals contained in § 1751.106 apply only to wireline services, the PUC, at its discretion, may extend coverage of Modernization Plans to wireless or other communications services in the State as it deems appropriate. Borrower-developed Modernization Plans apply only to Borrowers.

§ 1751.102 Modernization Plan Developer; eligibility.

(a) Each PUC is eligible until February 13, 1996 to develop a proposed Modernization Plan and deliver it to RUS. RUS will review and consider for approval all PUC-developed Modernization Plans received by RUS within this one year period. The review and approval, if any, may occur after the one year period ends even though the PUC is no longer eligible to submit a proposed Modernization Plan.

(b) The PUC must notify all Telecommunications Providers in the State and other interested parties of its intent to develop a proposed Modernization Plan. The PUC is encouraged to consider all Telecommunications Providers' and interested parties' views and incorporate these views into the Modernization Plan. In the event that the PUC does not intend to develop a proposed Modernization Plan, RUS requests that the PUC inform RUS of this decision as soon as possible.

(c)(1) If the PUC is no longer eligible to develop a Modernization Plan or has informed RUS that it will not develop a Modernization Plan, as described in paragraphs (a) and (b) of this section, a majority of the Borrowers within the State may develop the Modernization Plan. If a majority of Borrowers develops the Modernization Plan, the following apply:

(i) All Borrowers shall be given reasonable notice of and shall be encouraged to attend and contribute to all meetings and other proceedings relating to the development of the Modernization Plan; and

(ii) Borrowers developing a Modernization Plan are encouraged to solicit the views of other providers of telecommunications services and interested parties in the State.

(2) There is no time limit placed on Borrowers to develop a Modernization Plan. Borrowers should be aware that certain types of loans may be restricted until a Modernization Plan is approved. See § 1751.103.

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§ 1751.103 Loan and loan advance requirements.

(a) For information about loan eligibility requirements in relation to the Modernization Plan, see 7 CFR part 1735. In particular, beginning February 13, 1996, RUS will make RUS hardship loans, RUS cost-of-money loans, and RTB loans for facilities and other RE Act purposes in a State only if:

(1) The State has an RUS approved Modernization Plan; and

(2) The Borrower to whom the loan is to be made is participating in the Modernization Plan for the State. A Borrower is considered to be participating if, in RUS's opinion, the purposes of the loan requested by the Borrower are consistent with the Borrower achieving the requirements stated in the Modernization Plan within the timeframe stated in the Modernization Plan unless RUS has determined that achieving the requirements is not technically or economically feasible.

(b) With regard to the three types of loans discussed in paragraph (a), only loans approved after the date the State has an RUS approved Modernization Plan are subject to complying with the Modernization Plan.

(c) For loans subject to complying with the Modernization Plan, advances will not be made if, in RUS's opinion, the advances are not consistent with achieving the requirements of the Modernization Plan.

§ 1751.104 Obtaining RUS approval of a proposed Modernization Plan.

(a) To obtain RUS approval of a proposed Modernization Plan, the Plan Developer must submit the following to RUS:

(1) A certified copy of the statute or PUC order, if the PUC is the Plan Developer, or a written request for RUS approval of the proposed Modernization Plan signed by an authorized representative of the Plan Developer, if a majority of Borrowers is the Plan Developer; and

(2) Three copies of the proposed Modernization Plan.

(b) Generally, RUS will review the proposed Modernization Plan within (30) days and either:

(1) Approve the Modernization Plan if it conforms to the provisions of this subpart in which case RUS will return a copy of the Modernization Plan with notice of approval to the Plan Developer; or

(2) Not approve the proposed Modernization Plan if it does not conform to the provisions of this subpart. In this event, RUS will return the proposed Modernization Plan to the Plan Developer with specific written comments and suggestions for modifying the proposed Modernization Plan so that it will conform to the provisions of this subpart. If the Plan Developer remains eligible, RUS will invite the Plan Developer to submit a modified proposed Modernization Plan for RUS consideration. This process can continue until the Plan Developer gains approval of a proposed Modernization Plan unless the Plan Developer is a PUC whose eligibility has expired. If a PUC's eligibility has expired, RUS will return the proposed Modernization Plan unapproved. Because RUS does not have authority to extend the term of a PUC's eligibility, RUS recommends that the PUC submit a proposed Modernization Plan at least 90 days in advance of February 13, 1996 to allow time for this process.

§ 1751.105 Amending a Modernization Plan.

(a) RUS understands that changes in standards, technology, regulation, and the economy could indicate that an RUS-approved Modernization Plan should be amended.

(b) The Plan Developer of the Modernization Plan may amend the Modernization Plan if RUS finds the proposed changes continue to conform to the provisions of this subpart.

(c) The procedure for requesting approval of an amended Modernization Plan is identical to the procedure for a proposed Modernization Plan except that there are no time limits on the eligibility of the Plan Developer.

(d) The existing Modernization Plan remains in force until RUS has approved the proposed amended Modernization Plan.

(e) RUS may from time to time revise these regulations to incorporate newer technological and economic standards that RUS believes represent more desirable goals for the future course of telecommunications services. Such revisions will be made in accordance with the Administrative Procedure Act. These revisions shall not invalidate Modernization Plans approved by RUS but shall be used by RUS to determine whether to approve amendments to Modernization Plans presented for RUS approval after March 15, 1995.

§ 1751.106 Modernization Plan; requirements.

(a) The requirements for a Modernization Plan as stated in RELRA are:

(1) The plan must provide for the elimination of party line service.

(2) The plan must provide for the availability of telecommunications services for improved business, educational, and medical services.

(3) The plan must encourage and improve computer networks and information highways for subscribers in rural areas.

(4) The plan must provide for—

(i) Subscribers in rural areas to be able to receive through telephone lines—

(A) Conference calling;

(B) Video images; and

(C) Data at a rate of at least 1,000,000 bits of information per second; and

(ii) The proper routing of information to subscribers.

(5) The plan must provide for uniform deployment schedules to ensure that advanced services are deployed at the same time in rural and nonrural areas.

(6) The plan must provide for such additional requirements for service standards as may be required by the Administrator.

(b) To implement the requirements of the law described in paragraph (a) of this section, RUS has set minimum requirements as described in paragraphs (i) and (j) of this section. They are grouped into short-term and medium-term requirements. RUS has also included long-term goals which are not requirements. The Modernization Plan must meet all of the statutory requirements of RELRA and shall provide that short- and medium-term requirements be implemented as set forth in this section of the regulation except that the PUC, if it is the Plan Developer, or RUS, if a majority of Borrowers is the Plan Developer, may approve extensions of time if the required investment is not economically feasible or if the best available telecommunications technology lacks the capability to enable the Telecommunications Provider receiving the extension to comply with the Modernization Plan. Extensions shall be granted only on a case-by-case basis and generally shall not exceed a total of five years from the first such extension granted to the Telecommunications Provider.

(c) Each State's Modernization Plan shall be a strategic development proposal for modernizing the telecommunications network of the Telecommunications Providers covered by the Modernization Plan. In addition to implementing the requirements described in paragraphs (a), (i), and (j) of this section, the Modernization Plan shall include a short engineering description of the characteristics of a future telecommunications structure that would enable all Telecommunications Providers to achieve the requirements and goals of the Modernization Plan.

(d) Within the scope of § 1751.101(d), if the Plan Developer is the PUC, the Modernization Plan shall name the Telecommunications Providers in the State, in addition to Borrowers, that are covered by the Modernization Plan.

(e) The Modernization Plan must require that the design of the network provided by Telecommunications Providers allow for the expeditious deployment and integration of such emerging technologies as may from time to time become commercially feasible.

(f) The Modernization Plan must provide guidelines to Telecommunications Providers for the development of affordable tariffs for medical links and distance learning services.

(g) With regard to the uniform deployment requirement of the law restated in paragraph (a)(5) of this section, if services cannot be deployed at the same time, only the minimum feasible interval of time shall separate availability of the services in rural and nonrural areas.

(h) The Modernization Plan must make provision for reliable powering of ordinary voice telephone service operating over those portions of the telecommunications network which are not network powered. In the event of electric utility power outages, an alternative source of power must be available to ensure reliable voice service.

(i) *Short-term requirements.* (1) The "short-term requirements start date" is the date one year after the date RUS approves the Modernization Plan for the State.

(2) All New Facilities providing Wireline Service after the short-term requirements start date, even if the construction began before such date, shall be constructed so that:

(i) Every subscriber can be provided 1-party service.

(ii) The New Facilities are suitable, as built or with additional equipment, to provide transmission and reception of data at a rate no lower than 1 Mb/sec.

(3) All switching equipment installed by a Telecommunications Provider after the short-term requirements start date shall be capable of:

(i) Providing custom calling features. At a minimum, custom calling features must include call waiting, call forwarding, abbreviated dialing, and three-way calling; and

(ii) Providing E911 service for areas served by the Telecommunication Provider when requested by the government responsible for this service.

(j) *Medium-term requirements.* (1) The "medium-term requirements start date" is the date six years after the date RUS approves the Modernization Plan for the State, or such earlier date as the Modernization Plan shall provide.

(2) All New Facilities providing Wireline Service after the medium-term requirements start date, even if the construction began before such date, shall be capable, as built or with additional equipment, of transmitting video to a subscriber. The video must be capable of depicting a reasonable representation of motion. The frame rate, resolution, and other measures of audio and video quality shall be determined by the Plan Developer.

(3) No later than the medium-term requirements start date, all switching equipment of Telecommunications Providers covered by the Modernization Plan must be capable of providing E911 service when requested by the government responsible for this service.

(4) No later than five years after the medium-term requirements start date, one-party service must be provided upon demand to any subscriber of a Telecommunications Provider covered by the Modernization Plan.

(k) *Long-term goals.* RUS suggests, but does not require, that the provisions of each Modernization Plan be consistent with the accomplishment of the following:

(1) The elimination of party line service.

(2) For subscribers that desire the service, universal availability of:

(i) digital voice and data service (56–164 kb/sec).

(ii) service that provides transmission and reception of high bit rate (no less than 1 Mb/sec) data.

(iii) service that provides reception of video as described in paragraph (j)(2) of this section.

Dated: January 23, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–3414 Filed 2–10–95; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0835]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its risk-based capital guidelines for state member banks and bank holding companies (banking organizations) to implement section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act). Section 350 states that the amount of risk-based capital required to be maintained by any insured depository institution, with respect to assets transferred with recourse, may not exceed the maximum amount of recourse for which the institution is contractually liable under the recourse agreement. This rule will have the effect of correcting the anomaly that currently exists in the risk-based capital treatment of recourse transactions under which an institution could be required to hold capital in excess of the maximum amount of loss possible under the contractual terms of the recourse obligation.

EFFECTIVE DATE: March 22, 1995.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728–5883), Thomas R. Boemio, Supervisory Financial Analyst (202/452–2982), or David Elkes (202/452–5218), Senior Financial Analyst, Policy Development, Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board's current regulatory capital guidelines are intended to ensure that banking organizations that transfer assets and retain the credit risk inherent in the assets maintain adequate capital to support that risk. For banks, this is generally accomplished by requiring that assets transferred with recourse continue to be reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based and leverage capital ratios. For bank holding companies, transfers of assets with recourse are reported in accordance with generally accepted accounting principles (GAAP), which treats most such transactions as sales, allowing the assets to be removed from the balance sheet.[1] For purposes of calculating bank

[1] The GAAP treatment focuses on the transfer of benefits rather than the retention of risk and, thus, allows a transfer of receivables with recourse to be accounted for as a sale if the transferor: (1) surrenders control of the future economic benefits of the assets; (2) is able to reasonably estimate its obligations under the recourse provision; and (3) is not obligated to repurchase the assets except pursuant to the recourse provision. In addition, the

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holding companies' risk-based capital ratios, however, assets sold with recourse that have been removed from the balance sheet in accordance with GAAP are included in risk-weighted assets. Consequently, both banks and bank holding companies generally are required to maintain capital against the full risk-weighted amount of assets transferred with recourse.

In cases where an institution retains a low level of recourse, the amount of capital required under the Board's risk-based capital guidelines could exceed the institution's maximum contractual liability under the recourse agreement. This can occur in transactions in which a banking organization contractually limits its recourse exposure to less than the full effective risk-based capital requirement for the assets transferred—generally, 4 percent for mortgage assets and 8 percent for most other assets.

The Federal Reserve and the other federal banking agencies have long recognized this anomaly in the risk-based capital guidelines. On May 25, 1994, the banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), issued a Notice of Proposed Rulemaking (NPR) (59 FR 27116) that was aimed principally at amending the risk-based capital guidelines to limit the capital charge in low level recourse transactions to an institution's maximum contractual recourse liability. The proposal for these types of transactions would effectively result in a dollar capital charge for each dollar of low level recourse exposure, up to the full effective risk-based capital requirement on the underlying assets.

The proposal requested specific comment on whether an institution should be able to use the balance of the GAAP recourse liability account to reduce the dollar-for-dollar capital charge for the recourse exposure on assets transferred with low level recourse in a transaction recognized as a sale both under GAAP and for regulatory reporting purposes. In addition, the proposal indicated that the capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities would be the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

The NPR also addressed other issues related to recourse transactions, including equivalent capital treatment of recourse arrangements and direct credit substitutes that provide first dollar loss protection and definitions for "recourse" and associated terms such as "standard representations and warranties." The NPR was issued in conjunction with an Advance Notice of Proposed Rulemaking (ANPR) that outlined a possible alternative approach to deal comprehensively with the capital treatment of recourse transactions and securitizations. The comment period for the NPR and ANPR ended on July 25, 1994.

During the agencies' review of the comments received, the Riegle Act was signed into law on September 23, 1994. Section 350 of the Act requires the federal banking agencies to issue regulations limiting, as of March 22, 1995, the amount of risk-based capital an insured depository institution is required to hold for assets transferred with recourse to the maximum amount of recourse for which the institution is contractually liable. In order to meet the statutory requirements of section 350, the Federal Reserve is now issuing a rule that puts into final form only those portions of the NPR dealing with low level recourse transactions.

Comments Received

In response to the NPR and ANPR, the Federal Reserve Board received letters from 36 public commenters. Of these respondents, 27 addressed issues related to the NPR's proposed low level recourse capital treatment. These commenters included 13 banking organizations, including 11 multinational and regional banking organizations, one community banking organization, and one foreign banking organization; eight trade associations; two law firms; one government-sponsored agency; and three other commenters. Of these 27 respondents, 23 specifically provided a favorable overall assessment of the low level recourse proposal. In general, these respondents viewed the low level proposal as a way of rationally correcting an anomaly in the existing risk-based capital rules so that institutions would not be required to hold capital in excess of their contractual liability.

Ten of the commenters stated that, while the proposed low level recourse capital treatment was a positive step, it still would result in too high of a capital requirement for assets sold with limited recourse. These respondents, which included eight of the thirteen banking organizations and two of the eight trade associations, expressed the view that the banking agencies should adopt the GAAP treatment of assets sold with recourse for purposes of calculating the regulatory capital ratios. These commenters maintained that the GAAP recourse liability account provides adequate protection against the risk of loss on assets sold with recourse, obviating the need for additional capital.

The NPR specifically sought comment on five issues related to the proposed capital treatment of low level recourse transactions. Thirteen of the 27 respondents commented on the first issue, which concerned the treatment of the GAAP recourse liability account established for assets sold with recourse reported as sales for regulatory reporting purposes. These 13 commenters favored reducing the capital requirement for low level recourse transactions by the balance of its GAAP recourse liability account—which would continue to be excluded from an institution's regulatory capital. In their view, not taking this account into consideration would result in double coverage of the portion of the risk provided for in that account.

Fourteen commenters, including five banking organizations and five trade associations, responded to the second issue, which sought comment on whether a dollar-for-dollar capital requirement would be too high for low level recourse transactions. Eleven commenters indicated that such a capital charge would be too high since it was unlikely that an institution would incur losses up to its maximum contractual liability. Two others responded that whether the capital treatment was too high depended upon the credit quality of the underlying asset pool and the structure of the securitization. One commenter stated that the dollar-for-dollar capital charge would not be too onerous.

The third issue dealt with ways of demonstrating that the dollar-for-dollar capital requirement might be too high and possible methods for reducing this requirement without jeopardizing safety and soundness. The eight commenters on this issue indicated that historical analysis, examiner review, and "depression scenario" stress testing would show whether the capital requirement would be too high relative to historical losses.

The fourth issue concerned ways the banking agencies could handle the increased probability of loss to the insurance fund if less than dollar-for-dollar capital is maintained against low level recourse transactions. The eight commenters on this issue stated that as long as the amount of required capital held against the low level recourse transactions was prudently assessed based upon expected losses, actual losses would seldom, if ever, exceed the capital requirement. Thus, the insurance funds would not likely experience losses.

The fifth issue sought comment on whether the proposed low level recourse capital treatment would reduce transaction costs or otherwise help to facilitate the sale or securitization of banking organizations' assets. The eight commenters that responded to this issue were all of the opinion that the low level capital treatment generally would help lower transaction costs and help facilitate securitization.

Final Rule

After consideration of the comments received and further deliberation on the issues involved, particularly the requirements of section 350 of the Riegle Act, the Board is adopting a final rule amending the risk-based capital guidelines with respect to the treatment of low level recourse transactions. Specifically, the final amendments implement section 350 by reducing the capital requirements for all recourse transactions in which a state member bank contractually limits its recourse exposure to less than the full, effective risk-based capital requirement for the assets transferred. Although section 350 explicitly extends only to depository institutions, the Board, consistent with its proposal, is also issuing a parallel final amendment to its risk-based capital guidelines for bank holding companies.[2]

The final rule applies to low level recourse transactions involving all types of assets, including small business loans, commercial loans, and residential mortgages. In this regard, the Board notes that previously under the risk-based capital guidelines residential mortgage loans transferred with recourse were excluded from risk-weighted assets if the institution did not retain significant risk of loss. As proposed, this treatment would no longer apply and the low level recourse capital treatment the Board is now issuing would extend to these types of mortgage loan transfers.

Under the low level recourse rule, a banking organization that contractually limits its maximum recourse obligation to less than the full effective risk-based capital requirement for the transferred assets would be required to hold risk-based capital equal to the contractual maximum amount of its recourse obligation. This requirement limits to one dollar the capital charge for each dollar of low-level recourse exposure. Under this dollar-for-dollar capital requirement, the capital charge for a 100 percent risk-weighted asset transferred with 3 percent recourse would be 3 percent of the value of the transferred assets, rather than the 8 percent previously required. Thus, a banking organization's capital requirement on a low level recourse transaction would not exceed the contractual maximum amount it could lose under the recourse obligation.

Under the final rule, an institution may reduce the dollar-for-dollar capital charge held against the recourse exposure on assets transferred with low level recourse for a transaction recognized as a sale under GAAP and for regulatory reporting purposes by the balance of any associated non-capital GAAP recourse liability account. In adopting this aspect of the final rule, the Board concurs with commenters that indicated that nonrecognition of the liability account would result in double coverage of the portion of the credit risk provided for in that account.

In applying the final rule, the Board will, as proposed, limit the capital requirement for an exposure to low level recourse retained in a transaction associated with a swap of mortgage loans for mortgage-related securities to the lower of the capital charge for the swapped mortgages or the combined capital charge for the low level recourse exposure and the mortgage-related securities, adjusted for any double counting.

In setting forth this final rule, the Board has considered the arguments that several commenters made for adopting for regulatory capital purposes the GAAP treatment for all assets sold with recourse, including those sold with low levels of recourse. Under such a treatment, assets sold with recourse in accordance with GAAP would have no capital requirement, but the GAAP recourse liability account would provide some level of protection against losses.

The Board continues to believe it would not be appropriate to adopt for regulatory capital purposes the GAAP treatment of recourse transactions, even if the transferring bank retains only a low level of recourse. In the Board's view, the GAAP recourse liability account would be an inadequate substitute for maintaining capital at a level commensurate with the risks. One of the principal purposes of regulatory capital is to provide a cushion against unexpected losses. In contrast, the GAAP recourse liability account is, in effect, a specific reserve that is intended to cover only an institution's probable expected losses under the recourse provision. In this regard, the Board notes that the capital guidelines explicitly state that specific reserves may not be included in regulatory capital.

In addition, the amount of credit risk that is typically retained in a recourse transaction greatly exceeds the normal expected losses associated with the transferred assets. Thus, even though a transferring institution may reduce its exposure to potential catastrophic losses by limiting the amount of recourse it provides, it may still retain, in many cases, the bulk of the risk inherent in the assets. For example, an institution transferring high quality assets with a reasonably estimated expected loss rate of one percent that retains ten percent recourse in the normal course of business will sustain the same amount of losses it would have had the assets not been transferred. This occurs because the amount of exposure under the recourse provision is very high relative to the amount of expected losses. The Board believes that in such transactions the transferor has not significantly reduced its risk for purposes of assessing regulatory capital and should continue to be assessed regulatory capital as though the assets had not been transferred.

The GAAP reliance on reasonable estimates of all probable credit losses over the life of the receivables transferred poses additional concerns to the Board. While it may be possible to make such estimates for pools of consumer loans or residential mortgages, the Board is of the view that it is currently difficult to do so for other types of loans. Even if it is possible to make a reasonable estimate of probable credit losses at the time an asset or asset pool is transferred, the ability of an institution to make a reasonable estimate may change over the life of the transferred assets.

Finally, the Board is concerned that an institution transferring assets with recourse might estimate that it would not have *any* losses under the recourse provision, in which case it would not establish any GAAP recourse liability account for the exposure. If the transferor recorded either no liability or only a nominal liability in the GAAP

transferor must establish a separate liability account equal to the estimated probable losses under the recourse provision (GAAP recourse liability account).

[2] In addition to amending the risk-based capital guidelines to reduce the capital requirement for low level recourse transactions (see paragraph g of section III.D.1. of the guidelines), the Board is also making some technical, nonsubstantive changes to that section of the guidelines by identifying each paragraph in the section with a letter designation.

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recourse liability account for a succession of asset transfers, it could accumulate large amounts of credit risk that would not be reflected, or would be only partially reflected, on the balance sheet.

The Board is issuing this final rule now in order to implement section 350 of the Riegle Act in accordance with the statutory deadline. Consequently, the rule deals with only those portions of the NPR concerned with low level recourse transactions. The Board will continue to consider, on an interagency basis, the other aspects of the NPR, as well as all aspects of the ANPR that was issued in conjunction with the NPR.

Regulatory Flexibility Act

The purpose of this final rule is to reduce the risk-based capital requirement on transfers of assets with low levels of recourse. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this rule will have a beneficial economic impact on small business entities (in this case, small banking organizations) that sell assets with low levels of recourse. The risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million; thus, this rule will not affect such companies.

Paperwork Reduction Act and Regulatory Burden

The Board has determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 requires that new regulations take effect on the first day of the calendar quarter following publication of the rule, unless, *inter alia*, the regulation, pursuant to any other Act of Congress, is required to take effect on a date other than the date determined under section 302. Section 350 of the Riegle Act requires that before the end of the 180-day period beginning on the date of enactment of the Act, or in this case no later than March 22, 1995, the amount of risk-based capital required to be maintained, under regulations prescribed by the appropriate Federal banking agency, by any insured depository institution transferring assets with recourse be limited to the maximum amount of recourse for which such institution is contractually liable under the recourse agreement. Accordingly, the Board has determined that an effective date of March 22, 1995 is appropriate.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318.

2. In Part 208, Appendix A, section III.D.1. is revised to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

D. * * *

1. *Items with a 100 percent conversion factor.*

a. A 100 percent conversion factor applies to direct credit substitutes, which include guarantees, or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or that back off-balance sheet items that require capital under the risk-based capital framework. Direct credit substitutes include, for example, financial standby letters of credit, or other equivalent irrevocable undertakings or surety arrangements, that guarantee repayment of financial obligations such as; commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, or standby or commercial letters of credit. Direct credit substitutes also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring bank that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution.[41] (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

b. The full amount of a direct credit substitute is converted at 100 percent and the resulting credit equivalent amount is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. In the case of a direct credit substitute in which a risk participation[42] has been conveyed, the full amount is still converted at 100 percent. However, the credit equivalent amount that has been conveyed is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after giving effect to any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation. Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the portion of a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the risk category appropriate to claims guaranteed by those institutions, that is, the 20 percent risk category.[43] This approach recognizes that such conveyances replace the originating bank's exposure to the obligor with an exposure to the institutions acquiring the risk participations.[44]

c. In the case of direct credit substitutes that take the form of a syndication as defined in the instructions to the commercial bank Call Report, that is, where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank, each bank will only include its *pro rata* share of the direct credit substitute in its risk-based capital calculation.

d. Financial standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) fails to repay an outstanding loan or debt instrument (direct credit substitute). Performance standby letters of credit (performance bonds) are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) fails to perform some other contractual non-financial obligation.

e. The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the fact that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer fails to repay an outstanding debt obligation or fails to perform a contractual obligation is treated, for risk-based capital purposes, as respectively, a financial guarantee standby letter of credit or a performance standby.

f. A loan commitment, on the other hand, involves an obligation (with or without a material adverse change or similar clause) of the bank to fund its customer in the normal course of business should the customer seek to draw down the commitment.

g. Sale and repurchase agreements and asset sales with recourse (to the extent not included on the balance sheet) and forward agreements also are converted at 100 percent. The risk-based capital definition of the sale of assets with recourse, including the sale of 1- to 4-family residential mortgages, is the same as the definition contained in the instructions to the commercial bank Call Report. Accordingly, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of 1- to 4-family residential mortgages, are to be converted at 100 percent and assigned to the risk weight appropriate to the obligor, or if relevant, the nature of any collateral or guarantees. The terms of a transfer of assets with recourse may contractually limit the amount of the institution's liability to an amount less than the effective risk-based capital requirement for the assets being transferred with recourse. If such a transaction (including one that is reported as a financing, i.e., the assets are not removed from the balance sheet) meets the criteria for sales treatment under GAAP, the amount of total capital required is equal to the maximum amount of loss possible under the recourse provision. If the transaction is also treated as a sale for regulatory reporting purposes, then the required amount of capital may be reduced by the balance of any associated non-capital liability account established pursuant to GAAP to cover estimated probable losses under the recourse provision. So-called "loan strips" (that is, short-term advances sold under long-term commitments without direct recourse) are defined in the instructions to the commercial bank Call Report and for risk-based capital purposes as assets sold with recourse.

h. Forward agreements are legally binding contractual obligations to purchase assets with certain drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[45] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

i. Securities lent by a bank are treated in one of two ways, depending upon whether the lender is at risk of loss. If a bank, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a bank lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, to any collateral delivered to the lending bank, or, if applicable, to the independent custodian acting on the lender's behalf. Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Part 225, Appendix A, section III.D.1. is revised to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risked-Based Measure

* * * * *

III. * * *

D. * * *

1. *Items with a 100 percent conversion factor.*

a. A 100 percent conversion factor applies to direct credit substitutes, which include guarantees, or equivalent instruments, backing financial claims, such as outstanding securities, loans, and other financial liabilities, or that back off-balance sheet items that require capital under the risk-based capital framework. Direct credit substitutes include, for example, financial standby letters of credit, or other equivalent irrevocable undertakings or surety arrangements, that guarantee repayment of financial obligations such as: commercial paper, tax-exempt securities, commercial or individual loans or debt obligations, or standby or commercial letters of credit. Direct credit substitutes also include the acquisition of risk participations in bankers acceptances and standby letters of credit, since both of these transactions, in effect, constitute a guarantee by the acquiring banking organization that the underlying account party (obligor) will repay its obligation to the originating, or issuing, institution.[46] (Standby letters of credit that are performance-related are discussed below and have a credit conversion factor of 50 percent.)

b. The full amount of a direct credit substitute is converted at 100 percent and the resulting credit equivalent amount is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor or the nature of the collateral. In the case of a direct credit substitute in which a risk participation[45] has been conveyed, the full amount is still converted at 100 percent. However, the credit equivalent amount that has been conveyed is assigned to whichever risk category is lower: the risk category appropriate to the obligor, after giving effect to any relevant guarantees or collateral, or the risk category appropriate to the institution acquiring the participation. Any remainder is assigned to the risk category appropriate to the obligor, guarantor, or collateral. For example, the portion of a direct credit substitute conveyed as a risk participation to a U.S. domestic depository institution or foreign bank is assigned to the risk category appropriate to claims guaranteed by those institutions, that is, the 20 percent risk category.[46] This approach recognizes that such conveyances replace the originating banking organization's exposure to the obligor with an exposure to the institutions acquiring the risk participations.[47]

c. In the case of direct credit substitutes that take the form of a syndication, that is, where each banking organization if obligated only for its *pro rata* share of the risk and there is no recourse to the originating banking organization, each banking organization will only include its *pro rata* share of the direct credit substitute in its risk-based capital calculation.

d. Financial standby letters of credit are distinguished from loan commitments (discussed below) in that standbys are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument (direct credit substitute). Performance standby letters of credit (performance bonds) are irrevocable obligations of the banking organization to pay a third-party beneficiary when a customer (account party) *fails to perform* some other contractual non-financial obligation.

e. The distinguishing characteristic of a standby letter of credit for risk-based capital purposes is the combination of irrevocability with the fact that funding is triggered by some failure to repay or perform an obligation. Thus, any commitment (by whatever name) that involves an *irrevocable*

[41] Credit equivalent amounts of acquisitions of risk participations are assigned to the risk category appropriate to the account party obligor, or, if relevant, the nature of the collateral or guarantees.

[42] That is, a participation in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[43] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[44] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

[45] Forward forward deposits accepted are treated as interest rate contracts.

[46] Credit equivalent amounts of acquisitions of risk participations are assigned to the risk category appropriate to the account party obligor, or, if relevant, the nature of the collateral or guarantees.

[47] That is, a participation in which the originating banking organization remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn.

[48] Risk participations with a remaining maturity of over one year that are conveyed to non-OECD banks are to be assigned to the 100 percent risk category, unless a lower risk category is appropriate to the obligor, guarantor, or collateral.

[49] A risk participation in bankers acceptances conveyed to other institutions is also assigned to the risk category appropriate to the institution acquiring the participation or, if relevant, the guarantor or nature of the collateral.

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obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation or *fails to perform* a contractual obligation is treated, for risk-based capital purposes, as respectively, a financial guarantee standby letter of credit or a performance standby.

f. A loan commitment, on the other hand, involves an obligation (with or without a material adverse change or similar clause) of the banking organization to fund its customer *in the normal course* of business should the customer seek to draw down the commitment.

g. Sale and repurchase agreements and asset sales with recourse (to the extent not included on the balance sheet) and forward agreements also are converted at 100 percent.[48] So-called "loan strips" (that is, short-term advances sold under long-term commitments without direct recourse) are treated for risk-based capital purposes as assets sold with recourse and, accordingly, are also converted at 100 percent.

h. Forward agreements are legally binding contractual obligations to purchase assets with *certain* drawdown at a specified future date. Such obligations include forward purchases, forward forward deposits placed,[49] and partly-paid shares and securities; they do not include commitments to make residential mortgage loans or forward foreign exchange contracts.

i. Securities lent by a banking organization are treated in one of two ways, depending upon whether the lender is at risk of loss. If a banking organization, as agent for a customer, lends the customer's securities and does not indemnify the customer against loss, then the transaction is excluded from the risk-based capital calculation. If, alternatively, a banking organization lends its own securities or, acting as agent for a customer, lends the customer's securities and indemnifies the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor, to any collateral delivered to the lending banking organization, or, if applicable, to the independent custodian acting on the lender's behalf. Where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in a subsidiary lending institution for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

* * * * *

By order of the Board of Governors of the Federal By Reserve System, February 7, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-3469 Filed 2-10-95; 8:45 am]

BILLING CODE 6210-01-P

[48] In regulatory reports and under GAAP, bank holding companies are permitted to treat some asset sales with recourse as "true" sales. For risk-based capital purposes, however, such assets sold with recourse and reported as "true" sales by bank holding companies are converted at 100 percent and assigned to the risk category appropriate to the underlying obligor or, if relevant, the guarantor or nature of the collateral, provided that the transactions meet the definition of assets sold with recourse (including assets sold subject to pro rata and other loss sharing arrangements), that is contained in the instructions to the commercial bank Consolidated Reports of Condition and Income (Call Report). This treatment applies to any assets, including the sale of 1- to 4-family and multifamily residential mortgages, sold with recourse. Accordingly, the entire amount of any assets transferred with recourse that are not already included on the balance sheet, including pools of 1- to 4-family residential mortgages, are to be converted at 100 percent and assigned to the risk category appropriate to the obligor, or if relevant, the nature of any collateral or guarantees. The terms of a transfer of assets with recourse may contractually limit the amount of the institution's liability to an amount less than the effective risk-based capital requirement for the assets being transferred with recourse. If such a transaction is recognized as a sale under GAAP, the amount of total capital required is equal to the maximum amount of loss possible under the recourse provision, less any amount held in an associated non-capital liability account established pursuant to GAAP to cover estimated probable losses under the recourse provision.

[49] Forward forward deposits accepted are treated as interest rate contracts.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB20

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its capital standards for insured state nonmember banks to establish a limitation on the amount of certain deferred tax assets that may be included in (that is, not deducted from) Tier 1 capital for risk-based and leverage capital purposes. Under the final rule, deferred tax assets that can be realized through carrybacks to taxes paid on income earned in prior periods generally will not be subject to limitation for regulatory capital purposes. On the other hand, deferred tax assets that can only be realized if an institution earns sufficient taxable income in the future will be limited for regulatory capital purposes to the amount that the institution is expected to realize within one year of the most recent calendar quarter-end date, based on the institution's projection of taxable income for that year, or ten percent of Tier 1 capital, whichever is less. Deferred tax assets in excess of these limitations will be deducted from Tier 1 capital and from assets for purposes of calculating both the risk-based and leverage capital ratios.

This regulatory capital limit was developed on a consistent basis by the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (hereafter, the federal banking agencies or the agencies) in response to the issuance by the Financial Accounting Standards Board (FASB) of Statement No. 109, "Accounting for Income Taxes" (FASB 109), in February 1992.

The capital limitation is intended to balance the FDIC's continued concerns about deferred tax assets that are dependent upon future taxable income against the fact that such assets will, in many cases, be realized. The limitation also ensures that state nonmember banks do not place excessive reliance on deferred tax assets to satisfy the minimum capital standards.

EFFECTIVE DATE: April 1, 1995

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898-8906, or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898-7349, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Characteristics of Deferred Tax Assets

Deferred tax assets are assets that reflect, for financial reporting purposes, amounts that will be realized as reductions of future taxes or as future receivables from a taxing authority. Deferred tax assets may arise because of specific limitations under tax laws of different tax jurisdictions that require that certain net operating losses (*i.e.*, when, for tax purposes, expenses exceed revenues) or tax credits be carried forward if they cannot be used to recover taxes previously paid. These "tax carryforwards" are realized only if the institution generates sufficient future taxable income during the carryforward period.

Deferred tax assets may also arise from the tax effects of certain events that have been recognized in one period for financial statement purposes but will result in deductible amounts in a future period for tax purposes, *i.e.*, the tax effects of "deductible temporary differences." For example, many depository institutions may report higher income to taxing authorities than they reflect in their regulatory reports[1] because their loan loss provisions are expensed for reporting purposes but are not deducted for tax purposes until the loans are charged off.

Deferred tax assets arising from an organization's deductible temporary differences may or may not exceed the amount of taxes previously paid that the organization could recover if the temporary differences fully reversed at the report date. Some of these deferred tax assets may theoretically be "carried back" and recovered from taxes previously paid. On the other hand, when deferred tax assets arising from deductible temporary differences exceed such previously paid tax amounts, they will be realized only if there is sufficient future taxable income during the carryforward period. Such deferred tax assets, and deferred tax assets arising from tax carryforwards, are hereafter referred to as "deferred tax assets that are dependent upon future taxable income."

FASB 109

In February 1992, the FASB issued Statement No. 109, which superseded Accounting Principles Board Opinion No. 11 (APB 11) and FASB Statement No. 96 (FASB 96), the previous standards governing accounting for income taxes. FASB 109 provides guidance on many aspects of accounting for income taxes, including the accounting for deferred tax assets. FASB 109 generally allows institutions to report certain deferred tax assets on their balance sheets that they could not recognize as assets under previous generally accepted accounting principles (GAAP) and the federal banking agencies' prior reporting policies.[2] Unlike the general practice under previous standards, FASB 109 permits the reporting of deferred tax assets that are dependent upon future taxable income. However, FASB 109 requires the establishment of a valuation allowance to reduce deferred tax assets to an amount that is more likely than not (*i.e.*, a greater than 50 percent likelihood) to be realized.

FASB 109 became effective for fiscal years beginning on or after December 15, 1992. The adoption of this standard has resulted in the reporting of additional deferred tax assets in Call Reports and TFRs that have directly increased institutions' undivided profits and Tier 1 capital.

Concerns Regarding Deferred Tax Assets That Are Dependent Upon Future Taxable Income

The FDIC has certain concerns about including in capital deferred tax assets that are dependent upon future taxable income. Realization of such assets depends on whether a bank has sufficient future taxable income during the carryforward period. Since a bank that is in a net operating loss carryforward position is often experiencing financial difficulties, its prospects for generating sufficient taxable income in the future are uncertain. In addition, the condition of and future prospects for an organization often can and do change very rapidly in the banking environment. This raises concerns about the realizability of deferred tax assets that are dependent upon future taxable income, even when a bank ostensibly appears to be sound and well-managed. Thus, for many banks, such deferred tax assets may not be realized and, for other banks, there is a high degree of subjectivity in determining the realizability of this asset. In this regard, many banks may be able to make reasonable projections of future taxable income for relatively short periods of time and actually realize the projected income, but beyond these short time periods, the reliability of the projections tends to decrease significantly. Furthermore, unlike many other assets, banks generally cannot realize the value of deferred tax assets by selling them.

In addition, as a bank's condition deteriorates, it is less likely that deferred tax assets that are dependent upon future taxable income will be realized. Therefore, the bank is required under FASB 109 to reduce its deferred tax assets through increases to the asset's valuation allowance. Additions to this allowance would reduce the bank's regulatory capital at precisely the time it needs capital support the most. Thus, the inclusion in a bank's reported capital of deferred tax assets that are dependent upon future taxable income raises supervisory concerns.

Because of these concerns, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), considered how the deferred tax assets of depository institutions should be treated for regulatory reporting and capital purposes. In August 1992, the FFIEC requested public comment on this matter (57 FR 34135, Aug. 3, 1992). After considering the comments received, the FFIEC decided in December 1992, that banks and savings associations should adopt FASB 109 for reporting purposes in Call Reports and Thrift Financial Reports (TFRs) beginning in the first quarter of 1993 (or the beginning of their first fiscal year thereafter, if later). Insured banks were notified by the FFIEC that they should report deferred tax assets in their Call Reports in accordance with FASB 109 in Financial Institutions Letter FIL-97-92 dated December 31, 1992. For insured state nonmember banks, this GAAP reporting standard has superseded the regulatory reporting limitation on deferred tax assets established by the FDIC in Bank Letter BL-36-85 dated October 4, 1985. As a consequence, this 1985 Bank Letter has been withdrawn.

II. Proposed Regulatory Capital Treatment of Deferred Tax Assets

The FFIEC, in reaching its decision on regulatory reporting, also recommended that each of the federal banking agencies should amend its regulatory capital standards to limit the amount of deferred tax assets that can be included in regulatory capital. In response to the FFIEC's recommendation, on May 5, 1993, the FDIC issued for public comment a proposal to adopt the recommendation of the FFIEC in full, as summarized below (58 FR 26701). The FFIEC recommended that the agencies limit the amount of deferred tax asset that are dependent upon future taxable income that an institution can include in regulatory capital to the lesser of:

(1) the amount of such deferred tax assets that the institution expects to realize within one year of the quarter-end report date, based on its projection of future taxable income (exclusive of tax carryforwards and reversals of existing temporary differences) for that year, or

(2) ten percent of Tier 1 capital before deducting any disallowed purchased mortgage servicing rights, any disallowed purchased credit card

[1] Insured commercial banks and FDIC-supervised savings banks are required to file quarterly Consolidated Reports of Condition and Income (Call Reports) with their primary federal regulatory agency (the FDIC, the FRB, or the OCC, as appropriate). Insured savings associations file quarterly Thrift Financial Reports (TFRs) with the OTS.

[2] Prior reporting policies of the OCC and FDIC, as set forth in Banking Circular 202 dated July 2, 1985, and Bank Letter BL-36-85 dated October 4, 1985, respectively, limited the reporting of deferred tax assets in the regulatory reports filed by national banks and insured state nonmember banks to the amount of taxes previously paid which are potentially available through carryback of net operating losses. As such, the OCC and FDIC did not permit the reporting of deferred tax assets that are dependent upon future taxable income in the Call Reports filed by national and insured state nonmember banks. The FRB and OTS did not issue policies explicitly addressing the recognition of deferred tax assets. Consequently, state member banks and savings associations were able to report deferred tax assets in accordance with GAAP. Prior to FASB 109, GAAP, as set forth in APB 11 and FASB 96, also for the most part did not permit the reporting of deferred tax assets that are dependent upon future taxable income.

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relationships, and any disallowed deferred tax assets.

When the recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, exceeds this limitation, the excess amount would be deducted from Tier 1 capital and from assets in regulatory capital calculations. Deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences generally would not be limited under the proposal.

III. Public Comments on the Proposal

The comment period for the FDIC's proposal closed on June 4, 1993. The FDIC received comment letters from 23 entities, 18 of which were banks or bank holding companies, four of which were bank trade associations, and one of which was an accounting firm (which submitted two comment letters). Only two commenters expressed support for or nonobjection to the proposed regulatory capital limitation, although each raised an implementation question about the limit. Two others favored the concept of a regulatory capital limitation on deferred taxes, but recommended that the limit be set in a different manner than was proposed. Three commenters seemed to suggest that deferred tax assets should not be included in regulatory capital at all. The remaining 16 commenters, including all of the larger banking organizations that commented, expressed a preference for placing no limit on the amount of deferred tax assets that can be included in regulatory capital. These commenters generally indicated that a regulatory capital limitation on deferred tax assets is unnecessary because FASB 109 contains sufficient safeguards to ensure that the amount of deferred tax assets carried on an institution's balance sheet is realizable. Instead, they supported the full adoption of FASB 109 for both regulatory reporting and regulatory capital purposes, indicating that such an approach would limit regulatory burden. Nevertheless, while preferring no capital limit on deferred tax assets, two commenters considered the agencies' decision to include some deferred tax assets that are dependent upon future taxable income in regulatory capital as a positive step compared to prior regulatory policies and proposals permitting little or no inclusion of such deferred tax assets in regulatory reports and regulatory capital.

Responses to the FDIC's Questions

The proposed rule requested specific comment on a number of questions.

Question (1): The FDIC's first question asked about the appropriateness of the proposed capital limit, particularly the ten percent of Tier 1 capital limitation. Eight commenters specifically responded to this question, while the views expressed by most of the remaining commenters could also be regarded as responsive to this question. In other words, because more than two-thirds of the commenters favored relying on the proper application of GAAP to the reporting of deferred tax assets over establishing a separate regulatory capital limit on such assets, these commenters generally considered the proposed limits to be inappropriate and unnecessary. Some of those who commented on this issue noted that any percentage of capital limit would be inappropriate because realizability is a function of an institution's ability to generate future taxable income. Thus, several letters described the proposed ten percent limit as arbitrary and too conservative.

One commenter noted that healthy banks typically earn in excess of ten percent of Tier 1 capital each year, thereby ensuring that this percentage limit will be the operative limit for such banks. This commenter suggested setting the percentage limitation for institutions that are deemed to be "well-capitalized" for prompt corrective action purposes at 20 percent of Tier 1 capital.

Another commenter likened deferred tax assets to the two identifiable intangible assets, purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs), that are included in Tier 1 capital. This commenter's recommendation was to apply the existing percentage limits for these two intangibles to deferred tax assets, *i.e.*, a 50 percent of Tier 1 capital limit for the total of PMSRs, PCCRs, and deferred tax assets along with 25 percent of Tier 1 capital sublimits for both PCCRs and deferred tax assets.

Question (2): The second question dealt with whether certain identifiable assets acquired in a nontaxable business combination accounted for as a purchase should be adjusted for the tax effect of the difference between the market or appraised value of the asset and its tax basis. Under FASB 109, this tax effect is recorded separately in a deferred tax liability account, whereas under previous GAAP, this tax effect reduced the amount of the intangible asset. This change in treatment could cause a large increase, *i.e.*, a "gross-up," in the reported amount of certain identifiable intangible assets, such as core deposit intangibles, which are deducted for purposes of computing regulatory capital.

Six commenters indicated that institutions should be permitted to deduct the net after-tax amount of the intangible asset from capital, not the gross amount of the intangible asset. These commenters argued that FASB 109 will create artificially high carrying values for intangible assets and a related deferred tax liability when an institution acquires assets with a carryover basis for tax purposes but revalues the assets for financial reporting purposes. The commenters generally indicated that, under FASB 109, the balance sheet will not accurately reflect the value paid for the intangibles. Furthermore, commenters indicated that the increased carrying value of the intangible asset posed no risk to an institution, because a reduction in the value of the asset would effectively extinguish the related deferred tax liability.

On the other hand, one commenter indicated that deferred tax assets resulting from the gross-up effect in certain business combinations should not be treated differently from other deferred tax assets.

Question (3): The FDIC's third question inquired about (a) the potential burden associated with the proposal and whether a limitation based on projections of future taxable income would be difficult to implement and (b) the appropriateness of the separate entity method for determining the proposed limit on deferred tax assets and for tax sharing agreements in general.

Question (3)(a): The FDIC received seven comment letters specifically addressing the issue of potential burden and a limitation based on income projections.

Two commenters supported the use of income projections. The first one stated that capital limitations on deferred tax assets based on projected future taxable income should not be difficult to implement and should not impose an additional burden. This commenter noted that many institutions already forecast future taxable income in order to support the recognition of deferred tax assets on their balance sheets. The second commenter similarly observed that these taxable income projections must be evaluated by institutions' independent auditors and that the subjectivity and complexity involved in such projections are no greater than for the process of determining loan loss reserves. Another commenter added that these calculations should not pose any problems, provided they are done on a consolidated basis. One other commenter, who did not appear to oppose the concept of income projections, nevertheless reported that requiring banks to project their taxable income for the next year at the end of each interim quarter presents a potentially difficult burden to smaller banks.

In addition, one commenter who did not directly address the burden of income projections recommended that the FDIC clarify the term "expected to be realized within one year." This commenter suggested that the term should mean the amount of deferred tax assets that could be absorbed by the expected amount of income taxes that would result from an institution's projected future taxable income for the next 12 months, and not the amount of deferred tax assets that actually will be used.

In contrast, three commenters specifically opposed an income approach, preferring that a limit be determined by other means. These commenters opposed the income approach because they believe that projecting future earnings involves either too much subjectivity or complexity. Instead, the three commenters expressed a preference for setting the regulatory capital limit for deferred tax assets solely as a percentage of capital. Two of these commenters suggested that the deferred tax asset limit should be a function of an institution's capital level for prompt corrective action purposes, with the highest limit for "well capitalized" banks. The other commenter recommended that the FDIC adopt percentage of capital limits consistent with those applicable to purchased mortgage servicing rights and purchased credit card receivables. On the other hand, one commenter specifically opposed the establishment of a capital limitation based upon the perceived "health" of an institution, stating that this method could lead to arbitrary and inconsistent measures of capital adequacy.

Question (3)(b): Seven commenters expressed opinions concerning the separate entity method. The FDIC's proposal stated that the capital limit for deferred tax assets would be determined on a separate entity basis for each insured state nonmember bank. Under this method, a bank (together with its consolidated subsidiaries) that is a subsidiary of a holding company is treated as a separate taxpayer rather than as part of a consolidated group.

All of these commenters opposed the separate entity approach, although one commenter appeared to support this approach for banks that do not have a "strong" holding company. Commenters argued that the separate entity approach is artificial and that tax-sharing agreements between financially capable bank holding companies and bank subsidiaries should be considered when evaluating the recognition of deferred tax assets for regulatory capital purposes. Commenters also stated that the separate entity method is unnecessarily restrictive and is contrary to bank tax management practices. It was suggested that any systematic and rational method that is in accordance with GAAP should be permitted for the calculation of the limitation for each bank.

One commenter's opposition to the separate entity approach was based on the view that the limitation is not consistent with the Federal Reserve Board's 1987 "Policy Statement on the Responsibility of Bank Holding Companies to Act as Sources of Strength to Their Subsidiary Banks" and the FDIC's 1990 "Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions," which, in some respects, treat a controlled group as one entity. Another commenter contended that the effect of a separate entity calculation would be to reduce bank capital which is needed for future lending, an outcome that would be inconsistent with the objectives of the March 10, 1993, "Interagency Policy Statement on Credit Availability." This same commenter as well as one other further noted that the required use of the separate entity method creates significant regulatory burden and adds to the cost and complexity of calculating deferred tax assets for both bankers and regulators.

Question (4): The FDIC's fourth question requested comment on the appropriateness of the provisions of the proposal that would (a) consider tax planning strategies as part of an institution's projections of taxable income for the next year and (b) assume that all temporary differences fully reverse at the report date.

Question (4)(a): The FDIC's proposal stated that the effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during the next year should be included in taxable income projections. Five commenters addressed this issue. All of these commenters expressed support for including tax planning strategies in an institution's projection of taxable income. However, one commenter went on to state that the proposal should be modified to permit institutions to consider strategies that would ensure realization of deferred tax assets within the one-year time frame.

Question (4)(b): Six commenters specifically addressed the full reversal of temporary differences assumption and all but one agreed that this assumption is appropriate. One commenter observed that this assumption would eliminate the burden of scheduling the "turnaround" of temporary differences. In contrast, one commenter felt that this assumption was not realistic.

Question (5): The FDIC's final question asked whether the definition for the term "deferred tax assets that are dependent upon future taxable income" should appear in the rule, as proposed, or in the Call Report instructions. The only commenter who responded to this question indicated that the Call Report instructions should reference definitions in the tax rules and FASB 109.

IV. Final Rule

Limitation on Deferred Tax Assets

After considering the comments received on the proposed rule and consulting with the other federal banking agencies, the FDIC is limiting the amount of deferred tax assets that are dependent on future taxable income that can be included in Tier 1 capital for risk-based and leverage capital purposes. The limitation is consistent with both the FDIC's proposal and the recommendation of the FFIEC's Task Force on Supervision to the agencies as announced by the FFIEC on November 18, 1994. Under the final rule, for regulatory capital purposes, deferred tax assets that are dependent upon future taxable income are limited to the lesser of:

(1) the amount of such deferred tax assets that the institution expects to realize within one year of the quarter-end report date, based on its projection of future taxable income (exclusive of tax carryforwards and reversals of existing temporary differences), or

(2) ten percent of Tier 1 capital before deducting any disallowed purchased mortgage servicing rights, any disallowed purchased credit card relationships, and any disallowed deferred tax assets.

Deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally are not limited under the final rule. The reported amount of deferred tax assets, net of its valuation

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allowance, in excess of the limitation will be deducted from Tier 1 capital for purposes of calculating both the risk-based and leverage capital ratios. Banks should not include the amount of disallowed deferred tax assets in risk-weighted assets in the risk-based capital ratio and should deduct the amount of disallowed deferred tax assets from average total assets in the leverage capital ratio. Deferred tax assets included in capital continue to be assigned a risk weight of 100 percent.

To determine the limit, a bank should assume that all temporary differences fully reverse as of the report date. The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year means the amount of such deferred tax assets that could be absorbed by the amount of income taxes that are expected to be payable based upon the bank's projected future taxable income for the next 12 months. Estimates of taxable income for the next year should include the effect of tax planning strategies that the bank is planning to implement to realize tax carryforwards that will otherwise expire during the year. Consistent with FASB 109, the FDIC believes tax planning strategies are carried out to prevent the expiration of such carryforwards. These provisions of the final rule are consistent with the proposed rule.

The capital limitation is intended to balance the FDIC's continued concerns about deferred tax assets that are dependent upon future taxable income against the fact that such assets will, in many cases, be realized. The limitation also ensures that state nonmember banks do not place excessive reliance on deferred tax assets to satisfy the minimum capital standards.

The final rule generally permits full inclusion of deferred tax assets potentially recoverable from carrybacks, since these amounts normally will be realized. The final rule also includes in Tier 1 capital those deferred tax assets that are dependent upon future taxable income, if they can be recovered from projected taxable income during the next year, provided this amount does not exceed ten percent of Tier 1 capital. The FDIC is limiting projections of future taxable income to one year because the FDIC believes that banks generally are capable of making taxable income projections for the following twelve month period that have a reasonably good probability of being achieved. However, the reliability of projections tends to decrease significantly beyond that time period. Deferred tax assets that are dependent upon future taxable income are also limited to ten percent of Tier 1 capital, since the FDIC believes such assets should not comprise a large portion of a bank's capital base given the uncertainty of realization associated with these assets and the difficulty in selling these assets apart from the bank. Furthermore, a ten percent of capital limit also reduces the risk that an overly optimistic estimate of future taxable income will cause a bank to significantly overstate the allowable amount of deferred tax assets.

Banks are required to follow FASB 109 for regulatory reporting purposes and, accordingly, are already making projections of taxable income. The ten percent of Tier 1 capital calculation also is straightforward. In addition, banks have been reporting the amount of deferred tax assets that would be disallowed under the proposal in their Call Reports since the March 31, 1993, report date. Therefore, the FDIC believes that banks will not have significant difficulty in implementing this final rule. In this regard, as of the September 30, 1994, report date, more than one third of the 7,000 state nonmember banks carried no net deferred tax assets on their balance sheets. Fewer than 300 state nonmember banks with net deferred tax assets reported that any portion of this asset would have been disallowed under the proposal.

Guidance on Specific Implementation Issues

In response to the comments received and after discussions with the other federal banking agencies, the FDIC is providing the following additional guidance concerning the implementation of the limit.

Projecting Future Taxable Income: Banks may choose to use the future taxable income projections for their current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) when applying the capital limit at an interim report date rather than preparing a new one-year projection each quarter. One commenter expressed concern about the potential burden and difficulty of preparing revised projections each quarter, particularly for smaller banks.

In addition, the final rule does not specify how originating temporary differences should be treated for purposes of projecting future taxable income for the next year. Each institution should decide whether to adjust its income projections for originating temporary differences and should follow a reasonable and consistent approach.

Tax Jurisdictions: Unlike the proposed rule, the final rule does not require an institution to determine its limitation on deferred tax assets on a jurisdiction-by-jurisdiction basis. While an approach that looks at each jurisdiction separately theoretically may be more accurate, the FDIC does not believe the greater precision that would be achieved in mandating such an approach outweighs the complexities involved and its inherent cost to institutions. Therefore, to limit regulatory burden, a bank may calculate one overall limit on deferred tax assets that covers all tax jurisdictions in which the bank operates.

Available-for-sale Securities: Under FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FASB 115), "available-for-sale" securities are reported in regulatory reports at fair value, with unrealized holding gains and losses on such securities, net of tax effects, included in a separate component of stockholders equity. These tax effects may increase or decrease the reported amount of a bank's net deferred tax assets.

The FDIC has recently decided to exclude from regulatory capital the amount of net unrealized holding gains and losses on available-for-sale securities (except net unrealized holding losses of available-for-sale equity securities with readily determinable fair values) (59 FR 66662, Dec. 28, 1994). Therefore, it would be consistent to exclude the deferred tax effects relating to unrealized holding gains and losses on these available-for-sale securities from the calculation of the allowable amount of deferred tax assets for regulatory capital purposes. On the other hand, requiring the exclusion of such deferred tax effects would add significant complexity to the regulatory capital standards and in most cases would not have a significant impact on regulatory capital ratios.

Therefore, when determining the capital limit for deferred tax assets, the FDIC has decided to permit, but not require, institutions to adjust the reported amount of deferred tax assets for any deferred tax assets and liabilities arising from marking-to-market available-for-sale debt securities for regulatory reporting purposes. This choice will reduce implementation burden for institutions not wanting to contend with the complexity arising from such adjustments, while permitting those institutions that want to achieve greater precision to make such adjustments. Institutions must follow a consistent approach with respect to such adjustments.

Separate Entity Method: Under the proposed rule, the capital limit would be determined on a separate entity basis by each bank that was a subsidiary of a holding company. The use of a separate entity approach for income tax sharing agreements (including intercompany tax payments and current and deferred taxes) is generally required by the FDIC's 1978 Statement of Policy on Income Tax Remittance by Banks to Holding Company Affiliates, and similar policies are followed by the other federal banking agencies. Thus, any change to the separate entity approach for deferred tax assets would also need to consider changes to this policy statement, which is outside the scope of this rulemaking. The FDIC also notes that income tax data in bank regulatory reports generally are required to be prepared using a separate entity approach and consistency between these reports would be reduced if institutions were permitted to use other methods for calculating deferred tax assets in addition to a separate entity approach. Thus, while a number of the commenters suggested that the FDIC consider permitting other approaches, the FDIC has decided that the final rule should retain the separate entity approach.

The final rule departs from the separate entity approach in one situation. This situation arises when a bank's parent holding company, if any, does not have the financial capability to reimburse the bank for tax benefits derived from the bank's carryback of net operating losses or tax credits. If this occurs, the amount of carryback potential the bank may consider in calculating the amount of deferred tax assets that may be included in Tier 1 capital may not exceed the amount which the bank could reasonably expect to have refunded by its parent. This provision of the final rule is consistent with the proposed rule.

Gross-up of Intangibles: As noted above, the manner in which FASB 109 must be applied when accounting for purchase business combinations can lead to a large increase (*i.e.*, "gross-up") in the reported amount of certain intangible assets, such as core deposit intangibles, which are deducted for purposes of computing regulatory capital. Commenters stated that the increased carrying value of such an intangible posed no risk to an institution, because a reduction in the value of the asset would effectively extinguish the related deferred tax liability. The FDIC agrees with these commenters and, consequently, will permit, for capital adequacy purposes, the netting of deferred tax liabilities arising from this gross-up effect against related intangible assets. This will result in the same treatment for intangibles acquired in purchase business combinations as under the accounting standards in effect prior to FASB 109. However, a deferred tax liability netted in this manner may not also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income. Netting will not be permitted against purchased mortgage servicing rights and purchased credit card relationships, since these intangible assets are deducted for capital adequacy purposes only if they exceed specified capital limits.

Leveraged Leases: While not expected to significantly affect many banks, one commenter stated that future net tax liabilities related to leveraged leases acquired in a purchase business combination are included in the value assigned to the leveraged leases and are not shown on the balance sheet as part of an institution's deferred taxes. This artificially increases the amount of deferred tax assets for those institutions that acquire leveraged leases. Thus, this commenter continued, the future taxes payable included in the valuation of a leveraged lease portfolio in a purchase business combination should be treated as a taxable temporary difference whose reversal would support the recognition of deferred tax assets, if applicable. The FDIC agrees with this commenter and, therefore, banks may use the deferred tax liabilities that are embedded in the carrying value of a leveraged lease to reduce the amount of deferred tax assets subject to the capital limit.

V. Regulatory Flexibility Act Analysis

The FDIC does not believe that the adoption of this final rule will have a significant economic impact on a substantial number of small business entities (in this case, small banks), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, the vast majority of small banks currently have very limited amounts of net deferred tax assets, which are the subject of this proposal, as a component of their capital structures. Furthermore, adoption of this final rule, in combination with the adoption of FASB 109 for regulatory reporting purposes, will allow many banks to increase the amount of deferred tax assets they include in regulatory capital.

VI. Paperwork Reduction Act

The FDIC has previously received approval from the Office of Management and Budget (OMB) to collect in the Reports of Condition and Income (Call Reports) information on the amount of deferred tax assets disallowed for regulatory capital purposes. (OMB Control Number 3064–0052.) Therefore, this final rule will not increase banks' existing regulatory paperwork burden.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

§ 325.2 [Amended]

2. Section 325.2 is amended in paragraphs (t) and (v) by adding "minus deferred tax assets in excess of the limit set forth in § 325.5(g)," after "12 CFR part 567),".

3. Section 325.5 is amended:

a. In paragraphs (f)(3)(i) and (f)(4)(i), by removing the word "and", by adding a comma after "rights", and by adding ", and any disallowed deferred tax assets" after "relationships"; and

b. By adding a new paragraph (g) to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(g) *Treatment of deferred tax assets.* For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes), deferred tax assets are subject to the conditions, limitations, and restrictions described in this section.

(1) *Deferred tax assets that are dependent upon future taxable income.* These assets are:

(i) Deferred tax assets arising from deductible temporary differences that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related deferred tax effects are reported on the balance sheet) fully reverse at the calendar quarter-end date; and

(ii) Deferred tax assets arising from operating loss and tax credit carryforwards.

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(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) Ten percent of the amount of Tier 1 capital that exists before the deduction of any disallowed purchased mortgage servicing rights, any disallowed purchased credit card relationships, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital. However, notwithstanding the above, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a member of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the member could reasonably expect to have refunded by its parent.

(3) *Projected future taxable income.* Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather then preparing a new projection each quarter.

(4) *Unrealized holding gains and losses on available-for-sale debt securities.* The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

(5) *Intangible assets acquired in nontaxable purchase business combinations.* A deferred tax liability that is specifically related to an intangible asset (other than purchased mortgage servicing rights and purchased credit card relationships) acquired in a nontaxable purchase business combination may be netted against this intangible asset. Only the net amount of the intangible asset must be deducted from Tier 1 capital. When a deferred tax liability is netted in this manner, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of such assets.

4. Section I.A.1. of appendix A to part 325 is amended by revising the first paragraph following the definitions of Core capital elements to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

I. * * *

A. * * *

1. * * *

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. *Core (Tier 1) capital* is defined as the sum of core capital elements[3] minus all intangible assets other than mortgage servicing rights and purchased credit card relationships[4] and minus any disallowed deferred tax assets.

* * * * *

5. Section I.B. of Appendix A to part 325 is amended by adding a new paragraph (5) immediately after paragraph (4) and preceding the final undesignated paragraph of Section I.B. to read as follows:

* * * * *

I. * * *

B. * * *

(5) *Deferred tax assets* in excess of the limit set forth in § 325.5(g). These disallowed deferred tax assets are deducted from the core capital (Tier 1) elements.

* * * * *

Appendix A to Part 325 [Amended]

6. Table I in Appendix A to part 325 is amended by redesignating footnote 3 as footnote 4, by adding a new entry at the end under "Core Capital (Tier 1)" and by adding a new footnote 3 to read as follows:

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

[Note: See footnotes at end of table]

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1) * * *	
* * * * *	
Less: Certain deferred tax assers.[3]	
* * * * *	

[3] Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95-3179 Filed 2-10-95; 8:45 am]

BILLING CODE 6714-01-P

[1] In addition to the core capital elements, Tier 1 may also include certain supplementary capital elements during the transition period subject to certain limitations set forth in section III of this statement of policy

[4] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Statement of Policy or Interpretation; Enforcement Policy for Art Materials

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; statement of enforcement policy.

SUMMARY: In 1988, Congress enacted the Labeling of Hazardous Art Materials Act which mandated a labeling standard and certain other requirements for art materials. Based on its experience enforcing these requirements, the Commission is issuing a statement of enforcement policy to more clearly apprise the public of its intended enforcement focus.

DATES: Effective Date; February 13, 1995.

Applicability Dates: For items for which this policy relieves a restriction, this policy is applicable for products introduced into interstate commerce on or after February 13, 1995. For items against which the Commission previously stated it would not enforce under LHAMA, the policy becomes applicable for products introduced into interstate commerce on or after August 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Toro, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400.

SUPPLEMENTARY INFORMATION:

A. Background

In 1988, Congress enacted the Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277. Through LHAMA, Congress expressed its desire that art materials should be labeled to warn consumers of potential chronic hazards. LHAMA mandated a voluntary standard, ASTM D 4236, with certain modifications, as a mandatory Commission rule under section 3(b) of the Federal Hazardous Substances Act ("FHSA").

On October 9, 1992, the Commission issued a notice in the **Federal Register** that codified the standard as mandated by Congress. 57 FR 46626. (At that time, the Commission also issued guidelines for determining when a product presents a chronic hazard, and a supplemental regulatory definition of the term "toxic" that explicitly includes chronic toxicity.) The standard is codified at 16 CFR 1500.14(b)(8).

LHAMA and the standard it mandated provide certain requirements for art materials. Under these requirements, the producer or repackager of an art material must submit the product's formulation to a toxicologist to determine whether the art material has potential to produce chronic adverse health effects through customary or reasonably foreseeable use. If the toxicologist determines that the art material has this potential, the producer or repackager must use suitable labeling on the product. The producer or manufacturer of the art material must submit to the Commission (1) the criteria the toxicologist uses to determine whether the producer/repackager's product presents a chronic hazard and (2) a list of art materials that require chronic hazard labeling. The standard also requires that the product bear or be displayed with a conformance statement indicating that it has been reviewed in accordance with the standard. The standard, which is set forth at 16 CFR 1500.14(b)(8), and section 2(p) of the FHSA, 15 U.S.C. 1261(p), provide additional information on the required content of labels and the conformance statement.

B. The Scope of "Art Materials"

1. The Statute and Previous Commission Interpretation

The requirements described above apply to "art materials" as broadly defined in LHAMA. The term art material is defined in the statute as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The definition applies to art materials intended for users of any age, but excludes pesticides, drugs, devices, and cosmetics subject to other federal statutes, *Id.* 1277(b) (1) and (2).

When the Commission issued the final rule implementing the LHAMA provisions on October 9, 1992, it recognized that the statutory definition of art material could be interpreted to reach far beyond the common perception of the meaning of that term. Accordingly, the Commission identified three categories of products that it would not enforce the LHAMA requirements against, although they arguably fall within the statutory definition of art materials. Specifically, the Commission stated that it would not enforce the LHAMA requirements against tools, implements, and furniture that were used in the process of creating a work of art but do not become part of the work of art (called "category 3 products" in the October 9, 1992 notice). Examples provided of items that might fall into this category were drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

The Commission also delineated two general categories of products which could fall within the statutory definition and against which the Commission would enforce the LHAMA requirements. The October 9, 1992 notice identified these items as products which actually become a component of the work of art (e.g., paint, canvas, inks) (previously "category 1 products") and products closely and intimately associated with the creation of an art work (e.g., brush cleaners, solvents, photo developing chemicals) (previously "category 2 products").

2. The Statement of Enforcement Policy

The distinctions made in the October 9, 1992 notice have proved unsatisfactory in the practical enforcement of the LHAMA requirements. The staff has found that these categories, and enforcement policies based on the categories, may lead to inconsistent determinations. Thus, the Commission began to reconsider its enforcement of the LHAMA requirements against certain products. On March 8, 1994, the Commission published a proposed Enforcement Policy for Art Materials. 59 FR 10761. Today, the Commission is finalizing its enforcement policy essentially as it was proposed. This notice restates the enforcement policy, clarifies several issues, and responds to public comments received on the proposal. This interpretation will supersede the enforcement policy stated in the October 9, 1992 notice and other related interpretations.

The Commission will focus its enforcement efforts on items that have traditionally been considered art materials, such as paints, inks, solvents, pastes, ceramic glazes, and crayons, and on other items that may present a risk of chronic injury. This enforcement policy will not compromise public safety because there is virtually no risk of chronic health effects with the types of products and materials—such as paper or hard plastic—that the Commission will not enforce against. Also, even if such products presented such a risk, the Federal Hazardous Substances Act, 15 U.S.C. 1261(p), requires cautionary labeling for any article intended or packaged for household use if it contains a hazardous substance. This includes, but is not limited to, art materials that, under reasonably foreseeable conditions of purchase, storage, or use, may be used in or around the household. Unless expressly exempted, children's articles are banned under the FHSA if they are or contain a hazardous substance. The Commission believes that the public interest will be better served by this exercise of enforcement discretion because the staff can use its limited resources more efficiently to pursue enforcement actions against those art materials that present the greatest risk of chronic health effects.

The Commission will not enforce against the following types of products under LHAMA.

(1) General use products. The Commission will not take enforcement action under LHAMA against general use products which might incidentally be used to create art, unless a particular

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product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Examples of such general use products are common wood pencils, pens, markers, and chalk. For enforcement purposes, the Commission presumes that these types of items are not art materials. The presumption can be overcome, however, by evidence that such an item is intended for specific use in creating art. Factors the Commission will consider to determine the status of such items include how the items are packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art material uses are likely to be art materials), how they are marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where they are sold (e.g., products sold in an art supply store are likely to be art materials).

(2) Tools, implements, and furniture. The Commission will not take enforcement action under LHAMA against tools, implements, and furniture used in the creation of a work of art, such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, and air pumps for air brushes. In this policy statement the Commission expands the scope of what were referred to as "category 3" art materials in the October 9, 1992 notice. Based on the Commission's enforcement experience, the Commission will consider some items that it previously categorized as closely and intimately associated with creation of a work of art (previously "category 2" products) to be tools, implements and furniture. The Commission believes that these items (brushes, kilns, and molds) are better characterized as tools and implements against which the Commission will not enforce the LHAMA requirements. The Commission believes this revised interpretation is more consistent with the purposes of LHAMA. They are not like the more traditional art materials mentioned in LHAMA floor debates, and they are unlikely to pose a chronic hazard to the user.

(3) Surface materials. The Commission will not take enforcement action under LHAMA against the surface materials to which an art material is applied. Examples are coloring books and canvas. In many instances, an art material is applied to a surface such as paper, plastic, wood, or cloth. These surfaces continue to be components of the work of art and thus art materials, but are now characterized as products against which the Commission will not enforce the LHAMA requirements.

(4) Specific Materials. The Commission will also not take enforcement action under LHAMA against the following specifically enumerated materials: paper, cloth, plastic, film, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal. Several of these materials are often used as a surface for art work while others are used to create the work of art itself. Regardless of whether such items are used as a surface or not, the Commission will not enforce the LHAMA requirements against them.

The guidance given in (3) and (4) above does not apply if the processing or handling of a material exposes users to chemicals in or on the material in a manner which makes those chemicals susceptible to being ingested, absorbed through the skin, or inhaled. The Commission believes that in most cases, the surfaces and specific materials listed do not present a chronic risk. These types of materials are unlikely to allow exposure. However, if it is likely that reasonably foreseeable handling or use of the material would expose the consumer to chemicals, the Commission will enforce all LHAMA requirements with respect to that product. This is a question of potential exposure, not the manufacturer's assessment of hazard. Thus, even if the chemical to which the consumer might be exposed is potentially non-hazardous, the Commission would enforce the LHAMA requirements, including review by a toxicologist. This is consistent with Congress's intention that a toxicologist, not the manufacturer, should assess the potential chronic hazard.

For example, paper stickers marketed or promoted as art materials often have an adhesive backing that users lick. The act of licking the backing can result in the ingestion of chemicals, and the LHAMA requirements will therefore be enforced. For self-adhesive stickers, on the other hand, which present little risk of exposure, the staff will generally refrain from enforcement unless there is reason to believe that the nature of a particular sticker and its intended use presents a genuine risk of exposure to a potential chemical hazard either by ingestion or absorption.

Another example involves plastic. If the artistic use for which the plastic is intended requires heating or melting it in a manner that results in the emission of chemical vapors, the LHAMA requirements will be enforced.

C. Craft and Hobby Kits and Supplies

1. Kits

a. Previous Interpretation

In enforcing LHAMA, the Commission has encountered the question of the applicability of LHAMA requirements to certain craft or hobby kits. The basic issue centers on the meaning of the term "work of art." In previous letters to industry, the staff has advised that the determination depends on whether the end product produced from the kit would be primarily functional or aesthetic. If the former were true, the staff has said that the end product would not be a work of art and none of the components would be art materials. If the latter were true, the end product would be a work of art and all of the components of the kit would be art materials. This distinction proved difficult for practical enforcement, and has raised the possibility of inconsistent enforcement results. For example, if the same paints that were included in a kit to make a working model airplane were also included in a paint-by-number set, under the staff's previous interpretation, the Commission would enforce the LHAMA requirements against the paints in the second kit, but not in the first.

b. Statement of Enforcement Policy

After considering the above, as well as the purpose of LHAMA to alert consumers to the potential dangers associated with products used in the creation of art, the Commission published its proposed policy to clarify its enforcement of LHAMA concerning craft and hobby kits. The Commission is finalizing that aspect of the policy as proposed. As explained below, the Commission believes that its LHAMA enforcement should include both (1) kits to make items for display and (2) kits which involve decorating an item, regardless of the end use of the item created. Models and similar kits to make hobby or art/craft items can have dual purposes, both functional and for display. In addition, when a consumer creatively decorates a functional object, it arguably becomes a work of art just as decorated canvas or paper would. Therefore, the Commission believes that materials for decorating and assembling models and art/craft items come within the reach of LHAMA. The Commission believes that the following interpretation is more workable than the previous one and is consistent with the intent of Congress.

For kits that include materials to decorate products whether the products are functional, for display, or both, the Commission will enforce the LHAMA requirements against materials in the kit that are intended to decorate or assemble an item in the kit—i.e., traditional art materials, such as, paints, crayons, colored pencils, adhesives, and putties—even if the finished product is a toy or other item whose primary use may be functional. Thus, for a kit that contains a plastic toy or a paint-by number board, along with paints or adhesives to decorate or assemble the item, the Commission will expect the paints and adhesives in each case to meet all the LHAMA requirements. However, as explained in section B.2.(3) & (4) above pertaining to surfaces and specific materials, the Commission would not enforce the requirements against the plastic toy or the board.

For kits that package an item that would be subject to enforcement under this policy together with an item that would not, any necessary chronic hazard statements or labeling, including any required conformance statement, must appear on the outer container or wrapping of the kit, or must be visible through it, and must specify the item to which the statement or labeling refers. Any conformance statement must be visible at the point of sale. In addition to being visible at the point of sale, any required chronic hazard warning label must be on the immediate package of the item that is subject to LHAMA as well as on accompanying literature where there are instructions for use. See 16 CFR 1500.125.

2. Enforcement Policy for Separate Supplies

As stated in the March 8, 1994 proposal, the Commission will enforce LHAMA requirements against materials intended to decorate art and craft, model and hobby items, such as paints, even if they are sold separately and not part of a kit. Similarly, paints or markers intended for decorating clothes will be considered art materials for enforcement purposes since they are intended for decorating clothing, even though the resulting item, the garment, has a functional purpose. Note that as explained in section B above, the Commission would not enforce the requirements against the surface upon which the art material is applied, regardless of the primary use of the finished product.

The status of glues, adhesives, and putties will depend on their intended use. Some illustrative examples follow. Glues which are marketed for general repair use only would not be art materials, and the Commission will not enforce the LHAMA requirements against them. Glue sticks for glue guns which are for art or craft use would be considered art materials. Spray adhesives and rubber cements will normally be considered art materials unless they are marketed for some specialty non-art use. School pastes and glues will also be considered art materials.

D. Conformance Statement

Section 1500.14(b)(8)(i)(C)(7) of the LHAMA rule requires that a conformance statement appear with an art material. In the preamble to the original LHAMA rule, the Commission stated that every art material must display either a conformance statement or a hazard warning, but not both. *See* 57 FR 46629, October 9, 1992.

The Commission has reviewed this matter in light of one comment it received opposing the Commission's policy on this issue and its experience enforcing the LHAMA requirements. The Commission agrees with the commenter and is now modifying its policy concerning the conformance statement.

The language of the standard that was mandated by LHAMA is not entirely clear on this question. 16 CFR 1500.14(b)(8)(i)(C). However, based on its experience enforcing LHAMA, the Commission agrees with the commenter that there is the potential for confusion if some products that have been reviewed according to the standard display a conformance statement but others do not. Thus, the Commission's policy is that a conformance statement must appear with all toxicologist-reviewed art materials subject to LHAMA regardless of whether they also have a hazard warning statement. A subsection has been added to the enforcement policy, § 1500.14(b)(8)(iv)(C), stating this policy. Since the conformance statement constitutes "other cautionary labeling" as defined in 16 CFR 1500.121(a)(2)(viii), it must comply with the conspicuousness requirements of 16 CFR 1500.121 (c) and (d), including the type-size requirement laid out in Table 1 of 1500.121(c)(2).

E. Response to Comments

1. General

The Commission heard from six commenters on its proposed enforcement policy. For the most part, commenters supported the Commission's effort to clarify its enforcement intentions in this area. For example, one commenter stated that the proposed enforcement policy alleviates practical problems, follows common sense, is consistent with Congressional intent, and appropriately focuses on intended use. However, commenters did raise several specific criticisms of certain aspects of the proposed policy. These comments and the Commission's responses are discussed below.

2. Scope of "Art Materials"

One commenter suggested changing 16 CFR 1500.14(b)(8)(iv)(A)(1) to state that markers sold in art supply stores *are* art materials, rather than *likely* to be art materials.

The Commission declines to make this change. For general use products, the Commission will look at a variety of factors, including packaging, marketing, and where the item is sold. Often a single factor will not be determinative. For example, along with other markers, an art supply store might sell highlighters which are clearly promoted for use by students in marking textbooks. These are probably general use products, and the enforcement policy should be flexible enough to allow this determination.

The Writing Instrument Manufacturer's Association ("WIMA"), a trade association for the writing instrument industry, commented that it generally supported the proposed enforcement policy but suggested that cased pencils (referred to as common wood pencils in the proposed policy) should generally be considered art materials. WIMA asserted that these pencils are generally considered in the industry to be art materials and are used for drawing and sketching. Another commenter argued that if the enforcement policy considers these general use pencils not to be art materials, products from China and other countries without consumer protection laws will flood the market.

The Commission declines to make this change in the enforcement policy. The Commission believes that common pencils, much like pens or markers, are generally used as writing materials. Under the policy, specific pencils that are intended primarily for drawing or sketching (such as colored pencils) will be considered art materials for enforcement purposes. Of course, pencil makers who wish to submit their formulations to a toxicologist for evaluation and label them accordingly may do so. However, the Commission will not enforce the LHAMA requirements against common pencils unless they are specifically intended or marketed as art materials. Whether products are produced domestically or imported, they are all subject to the consumer protection laws and regulations of this country if they are sold here. With respect to the comment concerning imports from countries

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without consumer protection laws, CPSC reminds the commenter that imports are subject to the same requirements as products made in this country.

One commenter stated support for the proposed enforcement policy's treatment of brushes, kilns, and molds, finding it to be consistent with other CPSC policy interpretations. CPSC agrees.

3. Actual Toxicity Hazards

One commenter argued that the proposed enforcement policy would allow products which present chronic toxicity hazards to consumers to evade the review required by LHAMA. The commenter stated that items "such as pencils, paper, fabric, paint brushes, and sand have all been found to present chronic toxicity hazards in the past * * *."

The Commission's scientific staff examined this comment, and does not agree. Neither the Commission nor the staff have concluded that any of the listed items typically present chronic toxicity hazards. The staff has in the past examined some uses of some of these materials outside of the context of art materials. For example, children's playsand was evaluated to see if the sand posed a hazard through tremolite asbestos or non-asbestos tremolite. No such hazard was established. Paper has been found to contain extremely small amounts of dioxin, but the amount is so small that the risk is negligible. Through its enforcement policy, the Commission is attempting to focus enforcement efforts on items that may actually harm consumers. The Commission believes this policy furthers that goal. It is worth noting that in the unlikely event that any of these items were found to be dangerous, the labeling and banning provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261 (f), (p), and (q)(1), and 15 U.S.C. 1263) still apply.

Another commenter agreed with the Commission's focus on potential for genuine risk of exposure but suggested that the language of the proposed policy be changed in 16 CFR 1500.14(b)(8)(iv)(A) (3) and (4) to state that the user's exposure must be to a *hazardous* chemical before the Commission will enforce LHAMA against the materials listed in those subsections. In the sections referred to, the enforcement policy provides that the Commission will not enforce the LHAMA requirements against surface materials and certain specifically enumerated materials unless it is likely that handling or processing the material may expose the user to chemicals in or on the material.

The Commission declines to make the commenter's suggested change. As explained in section B.2 above, although the Commission believes that generally there will not be a chronic hazard with use of these materials, the Commission is concerned that a situation could arise in which a unique manner of handling or using these materials could pose a risk of exposure. An example is paper stickers with adhesive that is licked. The commenter's suggestion would put the manufacturer in the position of deciding whether a particular chemical is hazardous. However, Congress intended that this determination be made by the toxicologist reviewing a product's formulation. The enforcement policy concerns the initial question of whether exposure is likely, not whether a chemical is hazardous. Thus, under the Commission's enforcement policy, if there is the potential for exposure to a chemical from a surface or specifically enumerated material, the LHAMA requirements will be enforced.

4. Enforcing LHAMA Against Non-Hazardous Products

Comments suggested that all art materials should have to comply with LHAMA regardless of actual risk, and that the items listed in the proposed enforcement policy should not be excluded from enforcement efforts. They noted that the conformance statement on a non-hazardous product tells the consumer that the product has been cleared by a toxicologist. An unlabeled product, on the other hand, could either have been evaluated as non-toxic, or not evaluated at all. Thus the commenters argue that the Commission should enforce against all art materials, whether hazardous or not.

In response, the Commission notes that focusing its enforcement efforts is important to ensure that the enforcement program is as effective as possible through the effective use of the Commission's limited resources. The Commission believes that the categories of products against which it will no longer enforce present virtually no risk of exposing consumers to chronic toxicity hazards. No evidence of consumer confusion was presented with the comments, and we think any such confusion should be minimal.

5. Conformance Statement and Warnings

As explained above, one commenter argued that the conformance statement should accompany all art materials, including those that also require a hazard warning. The preamble to the original LHAMA rule stated that every art material must display either a conformance statement or a hazard warning, but not both. *See* 57 FR 46629, October 9, 1992.

The Commission has reviewed this issue in light of this comment and its experience. For reasons explained in greater detail above, the Commission agrees with the commenter and has added a subsection to the enforcement policy making this change.

6. Other Labeling Issues

One commenter noted that some labels bear adequate safe handling instructions, but do not list the chronic hazards that necessitate these precautions. LHAMA and the ASTM standard clearly require that both the chronic hazard and the safety instructions be on the label.

Another commenter noted that facially adequate labels should be examined for accuracy. The Commission considers this a very important issue. If labels are inaccurate, the labels and the standard itself become meaningless to the consumer. It is clearly unacceptable for labels to indicate that they have been reviewed by a toxicologist (by display of the conformance statement) if they in fact have not.

7. Kits and Supplies

One commenter stated specific support for the proposed enforcement policy concerning kits and separate supplies.

8. Status of Enforcement Policy

One commenter argued that the Commission is actually exempting certain products from the FHSA, and it is therefore improper to issue an enforcement policy rather than a regulation under section 3(c) of the FHSA (15 U.S.C. 1262(c)). The commenter argued that the enforcement policy would create confusion.

The Commission disagrees with this comment. This policy does not exempt any items from the FHSA. First, the policy does not grant exemptions from the LHAMA provisions, but rather clarifies the Commission's interpretation of the statutory term "art material" and informs the public that the Commission's enforcement efforts under LHAMA will be directed against those products that present the greatest risk. Through this policy, the Commission is explaining what that means in practice. The policy explains how the Commission will interpret the statutory definition of "art material" for purposes of enforcement and that it does not intend to enforce LHAMA requirements against certain items or materials which are unlikely to present a chronic hazard. The Commission believes that the policy, with its general guidance and specific examples, will help to clarify existing confusion. The enforcement policy will be published in the CFR with the LHAMA regulations so that all will be aware of Commission policy. In addition, the policy has no impact on the enforcement of other provisions of the FHSA, such as recall or notice actions under section 15 of the FHSA, as to art materials.

Focusing enforcement efforts to make them maximally effective is an appropriate use of an enforcement policy. The commenter stated that enforcement policies should clarify where an agency will take action, rather than where it will not. No authority was cited for this proposition, and the Commission is not aware of any such authority.

However, the Commission is modifying the language of section 1500.14(b)(8)(iv)(A)(1) slightly to clarify its interpretation with respect to that one category of products. The Commission does not consider the products described in that subsection (products intended for general use) to be art materials under the statutory definition. This is now stated explicitly in that subsection.

9. Effective Date

One commenter requested that manufacturers have one year to comply with this enforcement policy, rather than six months. No data were submitted as to why compliance in six months would be unduly burdensome. The Commission believes that six months is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. The Commission will, however, apply the policy to those products initially introduced into interstate commerce after six months, rather than those manufactured or imported after that date.

10. Prohibition of Lead in Children's Products

One commenter suggested that the Commission should prohibit the use of lead in products intended or marketed for the use of children. This comment is beyond the scope of this enforcement policy. However, we remind the commenter that the hazard of lead in consumer products intended for children is dealt with by regulations under the CPSA, 16 CFR 1303.4, and provisions of the FHSA, 15 U.S.C. 1261 (f)(1)(A) & (q)(1)(A).

F. Environmental Considerations

The Commission has considered whether issuance of this enforcement statement will produce any environmental effects and has determined that it will not. The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules and safety standards ordinarily have little or no potential to affect the human environment, and therefore, do not require an environmental impact statement or environmental assessment. The Commission believes that, as with such standards, this enforcement policy would have no adverse impact on the environment.

G. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires agencies to prepare proposed and final regulatory analyses describing the impact of a rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that this enforcement statement will have little effect on businesses in general or on small businesses in particular. Accordingly, the Commission concludes that its enforcement statement concerning the labeling of hazardous art materials would not have any significant economic effect on a substantial number of small entities.

H. Authority

Section 10 of the FHSA gives the Commission authority to issue regulations for the efficient enforcement of the FHSA 15 U.S.C. 1269(a). This provision authorizes the Commission to issue statements of enforcement policy in which the Commission explains how it intends to enforce a Commission requirement.

I. Applicability Date

Since this notice issues an interpretative rule/statement of policy, no particular applicability date is required by the Administrative Procedure Act. 5 U.S.C. 553(d)(2). The Commission recognizes, however, that as to items against which the Commission previously stated that it would not enforce LHAMA, manufacturers will need time to bring their products into compliance. Thus, this policy regarding such items applies to products introduced into interstate commerce on or after 6 months from the date this policy is published in the **Federal Register**. The Commission believes that this is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. As to those items where this policy relieves a restriction, the policy becomes applicable for such products introduced into interstate commerce on or after the date of publication of this notice.

List of Subjects in 16 CFR Part 1500

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons given above, the Commission amends 16 CFR 1500.14 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1277

2. Section 1500.14 is amended by adding a new paragraph (b)(8)(iv) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the Act.

* * * * *

(b) * * *

(8) * * *

(iv) *Policies and interpretations.*

(A) For purposes of enforcement policy, the Commission will not consider as sufficient grounds for bringing an enforcement action under the Labeling of Hazardous Art Materials Act ("LHAMA") the failure of the following types of products to meet the requirements of § 1500.14(b)(8) (i) through (iii).

(*1*) Products whose intended general use is not to create art (e.g., common wood pencils, and single colored pens, markers, and chalk), unless the particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Factors the Commission would consider in making this determination are how an item is packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art materials uses are likely to be art materials), how it is marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where it is sold (e.g., products sold in an art supply store are likely to be art materials). The products described in this paragraph do not meet the statutory definition of "art material."

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(2) Tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, air pumps for air brushes, kilns, and molds.

(3) Surface materials upon which an art material is applied, such as coloring books and canvas, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled.

(4) The following materials whether used as a surface or applied to one, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled: paper, cloth, plastics, films, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal.

(B) For purposes of LHAMA enforcement policy, the Commission will enforce against materials including, but not limited to, paints, crayons, colored pencils, glues, adhesives, and putties, if such materials are sold as part of an art, craft, model, or hobby kit. The Commission will enforce the LHAMA requirements against paints or other materials sold separately which are intended to decorate art, craft, model, and hobby items. Adhesives, glues, and putties intended for general repair or construction uses are not subject to LHAMA. However, the Commission will enforce the LHAMA requirements against adhesives, glues, and putties sold separately (not part of a kit) if they are intended for art and craft and model construction uses. This paragraph (b)(8)(iv)(B) applies to products introduced into interstate commerce on or after August 14, 1995.

(C) Commission regulations at § 1500.14(b)(8)(i)(C)(7) require that a statement of conformance appear with art materials that have been reviewed in accordance with the Commission standard. The Commission interprets this provision to require a conformance statement regardless of the presence of any chronic hazard warnings.

(D) Nothing in this enforcement statement should be deemed to alter any of the requirements of the Federal Hazardous Substances Act ("FHSA"), such as, but not limited to, the requirement that any hazardous substance intended or packaged in a form suitable for household use must be labeled in accordance with section 2(p) of the FHSA.

Dated: February 6, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95-3450 Filed 2-10-95; 8:45 am]

BILLING CODE 6355-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegation of Authority to the Director of the Division of Trading and Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is delegating to the Director of the Division of Trading and Markets, and to such members of the Commission staff acting under the Director's direction as the Director may designate from time to time, the authority to perform all functions reserved to the Commission under the recently adopted risk assessment requirements for holding company systems in §§ 1.14 and 1.15 of the Commission's regulations. The delegation should result in more expeditious treatment of exemption requests, which will benefit futures commission merchants ("FCMs") and the Commission.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Delegation

On December 21, 1994, the Commission adopted Rules 1.14 and 1.15 to implement the risk assessment authority set forth in Section 4f(c) of the Commodity Exchange Act.[1] These rules generally require FCMs that are subject to the rules to maintain and file with the Commission certain information concerning their financial activities and the activities of their material affiliates.

In promulgating the risk assessment rules, and at the suggestion of commenters on the proposed rules, the Commission reserved, in Rules 1.14(d)(3) and 1.15(c)(3), the authority to exempt any FCM from any of the provisions of either Rule 1.14 or Rule 1.15 if the Commission finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. Additionally, the rules permit the Commission to exempt an FCM affiliated with a "Reporting Futures Commission Merchant" from the recordkeeping and reporting requirements of the rules, and permit the Commission to request information to supplement an FCM's filings with the Commission if the Commission determines that additional information is necessary for a complete understanding of a particular affiliate's financial impact on the FCM's organizational structure.[2]

The Commission has determined to codify in Part 140 the delegation of its authority under the risk assessment rules to the Director of the Division of Trading and Markets.[3] Accordingly, the Commission is hereby amending its delegation of authority to the Director of the Division of Trading and Markets set forth in Rule 140.91, which currently governs authority to perform functions on behalf of the Commission with respect to the minimum financial and related reporting requirements for FCMs and introducing brokers under Rules 1.10, 1.12, 1.16 and 1 17, by adding to it the authority to act on behalf of the Commission with respect to all functions reserved to the Commission under Rules 1.14 and 1.15. The Commission further notes that paragraph (b) of Rule 140.91 will continue to provide that the Director may submit any matter delegated under the rule to the Commission for its consideration.

II. Related Matters

A. Administrative Procedure Act

The Commission has determined that this delegation of authority relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rule making and which provide other opportunities for public participation, are not applicable. The Commission further finds that, because the rule has no adverse effect upon a member of the public, there is good cause to make it effective immediately upon publication in the **Federal Register**.

[1] 59 FR 66674 (December 28, 1994).

[2] Rules 1.14(d)(2), 1.15(c)(2) and 1.15(a)(2)(iii). For a complete discussion of the recently adopted risk assessment rules, see 59 FR 66674.

[3] See 59 FR 66674, at 66682, n.35 (Director of Division of Trading and Markets is generally delegated the authority to act on behalf of the Commission with respect to the risk assessment rules).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein are only an administrative delegation and will have no impact on registered entities. Even if these rules were deemed to affect FCMs, the Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA and FCMs have been determined not to be small entities under the RFA.[4] Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these rule amendments will not have a significant impact on a substantial number of smaller entities.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and, in particular, sections 2a and 8a, 7 U.S.C. 4a and 12a, the Commission is amending part 140 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

1. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

2. Section 140.91 is amended by redesignating paragraphs (a)(3) and (a)(4) as (a)(5) and (a)(6) and by adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(3) All functions reserved to the Commission in § 1.14 of this chapter;

(4) All functions reserved to the Commission in § 1.15 of this chapter;

* * * * *

Issued in Washington, D.C. on February 7, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95-3455 Filed 2-10-95; 8:45 am]

BILLING CODE 6351-01-M

[4] 47 FR 18618-18621 (April 30, 1982).

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1310

Administrative Cost Recovery

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule amends TVA's administrative cost recovery regulations by adding a provision requiring payment to TVA of nonrefundable application processing fees to recover the costs of reviewing plans for the construction, operation, or maintenance of dams, appurtenant works, or other obstructions affecting navigation, flood control, or public lands or reservations in the Tennessee River system under Section 26a of the TVA Act; eliminating cost recovery exemptions for agricultural licenses, firewood cutting permits, permits for the nonexclusive short-term use of TVA land, conveyance or abandonment of TVA land or landrights to States, municipalities, and political subdivisions and agencies thereof, and use of TVA land for utility line crossings; authorizing the responsible land manager to establish a standard charge for each category of action rather than determining the actual administrative costs for each individual action; and increasing the range of fees for certain actions. These amendments will allow TVA to recover more of its administrative costs incurred in processing certain actions from those persons who directly benefit from the actions.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: David L. Pack, Manager of Reservoir Land Management, Tennessee Valley Authority, 17 Ridgeway Road, Norris, Tennessee 37828, (615) 632-1602.

SUPPLEMENTARY INFORMATION: TVA published the proposed rulemaking in the **Federal Register** on October 27 (59 FR 53948-49) and invited comments for 30 days ending November 28, 1994. No comments were received. Accordingly, TVA is promulgating this final rule as proposed.

In order to help ensure that TVA land management and permitting activities are self-sustaining to the fullest extent possible, the agency has determined that its administrative cost recovery regulations should be expanded to include a broader range of use, disposal, and permitting activities. This determination is consistent with national objectives to increase government efficiency and to recover the costs of government services from those who most directly benefit from the services.

Persons who wish to construct dams, appurtenant works, or other obstructions in or along the Tennessee River system are required by Section 26a of the TVA Act of 1933, as amended, to obtain TVA's approval of plans for the proposed activity prior to construction. TVA's administrative cost recovery regulations previously provided for recovery of costs of actions taken by TVA to approve obstructions constructed without prior approval of plans. In order to help ensure that the agency's entire Section 26a permitting program is self-sustaining to the fullest extent possible, the amended regulations now provide for recovery of costs of processing permits for proposed obstructions as well as after-the-fact permit processing. The responsible TVA land manager has established standard permit processing fees that will be payable upon submission of a permit application and will be nonrefundable regardless of whether or not the plans are approved by TVA.

Initially, the standard application processing fee for private noncommercial Section 26a permit proposals will be $100, and the standard fee for commercial, industrial, and public Section 26a permit application processing will be $500. These fees are based in part upon a review of costs incurred by TVA in processing these permits. In addition, TVA examined prevailing permit application fees by conducting a comparative analysis survey of several other agencies and utilities. In adjusting application processing fees and in establishing standard fees for other applicable activities, the responsible land manager will examine average costs incurred in conducting the various activities.

The amended regulations also provide for increasing TVA's administrative fee for quota deer hunts and quota turkey hunts at Land Between The Lakes. The purpose of this fee is to recover the cost of processing applications, conducting a computerized drawing, and mailing notification of selection status. The hunting fee will increase from $2 to a range of $5 to $25. This range will allow TVA to recover increasing costs of conducting the drawings and hunts, and allow a range of pricing for special hunts and drawings.

Applications received prior to March 17, 1995, will be processed under the regulations in effect at the time of receipt of the application.

List of Subjects in 18 CFR Part 1310

Government property, Hunting.

For the reasons set out in the preamble, 18 CFR Part 1310 is revised to read as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

Sec.
1310.1 Purpose.
1310.2 Application.
1310.3 Assessment of administrative charge.

Authority: 16 U.S.C. 831–831dd; 31 U.S.C. 9701.

§ 1310.1 Purpose.

The purpose of the regulations in this part is to establish a schedule of fees to be charged in connection with the disposition and uses of, and activities affecting, real property in TVA's custody or control; approval of plans under Section 26a of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831y–1); and certain other activities in order to help ensure that such activities are self-sustaining to the full extent possible.

§ 1310.2 Application.

(a) *General.* TVA will undertake the following actions only upon the condition that the applicant pay to TVA such administrative charge as the Vice-President of Land Management or the Manager of Power Properties (hereinafter "responsible land manager"), as appropriate, shall assess in accordance with § 1310.3; provided, however, that the responsible land manager may waive payment where he/she determines that there is a corresponding benefit to TVA or that such waiver is otherwise in the public interest:

(1) Conveyances and abandonment of TVA land or landrights.

(2) Licenses and other uses of TVA land not involving the disposition of TVA real property or interests in real property.

(3) Actions taken to suffer the presence of unauthorized fills and structures over, on, or across TVA land or landrights, and including actions not involving the abandonment or disposal of TVA land or landrights.

(4) Actions taken to approve fills, structures, or other obstructions under Section 26a of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831y–1), and TVA's regulations issued thereunder at part 1304 of this chapter.

(b) *Exemption.* An administrative charge shall not be made for the following actions:

(1) Conveyances pursuant to section 4(k)(d) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831c(k)(d)).

(2) Releases of unneeded mineral right options.

(3) TVA phosphate land and mineral transactions.

(4) Permits and licenses for use of TVA land by distributors of TVA power.

(c) *Quota deer hunt and turkey hunt applications.* Quota deer hunt and turkey hunt permit applications will be processed by TVA if accompanied by the fee prescribed in § 1310.3(d).

§ 1310.3 Assessment of administrative charge.

(a) *Range of charges.* Except as otherwise provided herein, the responsible land manager shall assess a charge which he/she determines in his/her sole judgment to be approximately equal to the administrative costs incurred by TVA for each action including both the direct cost to TVA and applicable overheads. In determining the amount of such charge, the responsible land manager may establish a standard charge for each category of action rather than determining the actual administrative costs for each individual action. The standard charge shall be an amount approximately equal to TVA's actual average administrative costs for the category of action. Charges shall be not less than the minimum or greater than the maximum amount specified herein, except as otherwise provided in paragraph (c) of this section.

(1) Land transfers—$500–$10,000.

(2) Use permits or licenses–$50–$5,000.

(3) Actions taken to approve plans for fills, structures, or other obstructions under Section 26a of the TVA Act—$100–$5,000.

(4) Abandonment of transmission line easements and rights-of-way—$100–$1,500.

(5) Quota deer hunt or turkey hunt applications—$5–$25.

(b) *Basis of charge.* The administrative charge assessed by the responsible land manager shall, to the extent applicable, include the following costs:

(1) Appraisal of the land or landrights affected;

(2) Assessing applicable rental fees;

(3) Compliance inspections and other field investigations;

(4) Title and record searches;

(5) Preparation for and conducting public auction and negotiated sales;

(6) Mapping and surveying;

(7) Preparation of conveyance instrument, permit, or other authorization or approval instrument;

(8) Coordination of the proposed action within TVA and with other Federal, State, and local agencies;

(9) Legal review; and

(10) Administrative overheads associated with the transaction.

(c) *Assessment of charge when actual administrative costs significantly exceed established range.* When the responsible land manager determines that the actual administrative costs are expected to significantly exceed the range of costs established in paragraph (a) of this section, such manager shall not proceed with the TVA action until agreement is reached on payment of a charge calculated to cover TVA's actual administrative costs.

(d) *Quota deer hunt and turkey hunt application fees.* A fee for each person in the amount prescribed by the responsible land manager must accompany the complete application form for a quota deer hunt and turkey hunt permit. Applications will not be processed unless accompanied by the correct fee amount. No refunds will be made to unsuccessful applicants, except that fees received after the application due date will be refunded.

(e) *Additional charges.* In addition to the charges assessed under these regulations, TVA may impose a charge in connection with environmental reviews or other environmental investigations it conducts under its policies or procedures implementing the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 95–3451 Filed 2–10–95; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 254, 255, 256, 257, 258, and 259

[Docket No. RM 93–12 and RM 94–1A]

Copyright Arbitration Royalty Panels; Correction

AGENCY: Copyright Office, Library of Congress.

ACTION: Correction to regulations.

SUMMARY: This document contains corrections to the former Copyright Royalty Tribunal (CRT) regulations that were reissued by the Library of Congress and the Copyright Office on December 22, 1993, and to the interim copyright arbitration rules that were published on May 9, 1994.

EFFECTIVE DATE: These corrections are effective February 13, 1995.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024 (202–707–8380).

SUPPLEMENTARY INFORMATION: On December 17, 1993, the Copyright Royalty Tribunal was abolished, and its functions were transferred to copyright arbitration royalty panels (CARPs) to be convened and supported by the Library of Congress and the Copyright Office. Copyright Royalty Tribunal Reform Act of 1993 (CRT Reform Act), Pub.L. No. 103–198, 107 Stat. 2304 (1993). The CRT Reform Act directed the Library and the Office to adopt the rules and regulations of the former CRT until later rules were adopted. Accordingly, the CRT's rules were republished on December 22, 1993. 58 FR 67690 (December 22, 1993).

The Library and the Office adopted interim rules on May 9, 1994, and final rules on December 7, 1994 adapting the former CRT rules to the new copyright arbitration system. 59 FR 23964 (May 9, 1994); 59 FR 63025 (December 7, 1994).

In reviewing the former CRT rules and our new CARP rules, we have discovered a number of substantive and nonsubstantive technical errors.

The first was an error in the interim rules published on May 9, 1994, in which the reference in § 251.32(a) to "§ 251.30" should read "§ 251.31"

The second error occurred in § 251.52(c), Proposed findings and conclusions. To distinguish between proposed findings of fact and proposed conclusions, the sentence in paragraph (c) which reads, "Proposed findings shall be stated separately.", should be removed from paragraph (c) and placed in a new paragraph (d).

The third was an error in the 1992 public broadcasting rate adjustment proceeding at the CRT. In § 253.6(c)(4), the rate listed there is applicable to the years 1993–1997, not 1988–1992, as published.

The fourth error is found in § 254.2 which defines coin-operated phonorecord player. The section references the definition in former section 116 of the Copyright Act, which was repealed by the CRT Reform Act. Section 254.2 is therefore revised by inserting the definitional langauge formerly contained in section 116.

The fifth correction is to the mechanical royalty rates listed in § 255.3. When the CRT adjusted the royalty rate in 1993 to take effect in 1994, it dropped an earlier paragraph that described the rates that were in effect for the period 1992–1993. It left the impression that the rates effective starting in 1990 were in effect for four years, instead of two. We are restoring that paragraph, so that all the rates, beginning in 1981, are listed in the rules.

The sixth correction is removal of the reference, "(Supp. IV 1992)", wherever it appears in part 259. The reference, "(Supp. IV 1992)", refers to the Audio Home Recording Act of 1992, Pub.L. No. 102–563, 106 Stat. 4237, which amended Title 17, of the U.S. Code, by adding a new Chapter 10. Since the Audio Home Recording Act has been incorporated into title 17 at Chapter 10, there is no need to continue citation to the Supplement.

The seventh correction is to § 259.2, the section on filing a claim for digital audio recording royalties. When we published our interim rules on May 9, 1994, the Office substituted the phrase "Library of Congress" or "Copyright Office", as appropriate, for "Copyright Royalty Tribunal" wherever the phrase was found. However, in reviewing § 259.2, it appears that it would have been more accurate to substitute the phrase "Copyright Office and/or Copyright Arbitration Panels" for "Copyright Royalty Tribunal" as a recognition of the split nature of the proceedings.

And finally, three terms will be added to the List of Subjects. Under the heading, 37 CFR Part 258, the term "Cable television" should be replaced with the term "Satellite" to more accurately reflect the content of this section. Additionally, the term "rate" shall be added to the headings, 37 CFR Part 255 and 37 CFR Part 258. The addition of this term will harmonize the subject lists for these sections with the headings for 37 CFR 253, 37 CFR Part 254 and 37 CFR Part 256. We are making that change here and correcting any nonsubstantive technical errors.

List of Subjects

37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Part 252

Cable television, Claims, Copyright.

37 CFR Part 253

Copyright, Music, Radio, Rates, Television.

37 CFR Part 254

Copyright, Jukeboxes, Rates.

37 CFR Part 255

Copyright, Music, Recordings.

37 CFR Part 256

Cable television, Rates.

37 CFR Part 257

Claims, Copyright, Satellites.

37 CFR Part 258

Copyright, Satellites.

37 CFR Part 259

Claims, Copyright, Digital audio recording devices and media.

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Accordingly, 37 CFR chapter II is corrected by making the following corrections and amendments:

1. and 2. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

§ 251.13 [Corrected]

3. Section 251.13(f) is corrected by adding an "a" before the word "clearly".

§ 251.32 [Corrected]

4. In § 251.32(a), the reference to "§ 251.30" is revised to read "§ 251.31"

§ 251.33 [Corrected]

5. The first sentence in § 251.33(c) is corrected by replacing the word "a" with "an" in the phrase "to serve as a arbitrator".

§ 251.38 [Corrected]

6. In § 251.38(b), the word "for" is added before the word "travel".

§ 251.44 [Corrected]

7. In § 251.44(e)(1), the first "it" in the last sentence is revised to read "the document".

8. Section 251.44(g) is corrected by revising "telefacsimile" to read "facsimile".

9. Section 251.48(f)(1)(ii) is revised to read as follows:

§ 251.48 Rules of evidence.

* * * * *

(b) * * *

(1) * * *

(ii) An explanation of the method of selecting the sample and of the characteristics which were measured and counted.

* * * * *

§ 251.50 [Corrected]

10. In § 251.50, "That" is revised to read "that".

§ 251.52 [Amended]

11. In § 251.52 the sentence which reads, "Proposed conclusions shall be stated separately." is removed from paragraph (c) and a new paragraph (d) is added to read as follows:

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§ 251.52 Proposed findings and conclusions.

* * * * *

(d) Proposed conclusions shall be stated separately.

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

12. and 13. The authority citation for part 252 continues to read as follows:

Authority: 17 U.S.C. 111(d)(4), 801, 803

§ 252.1 [Corrected]

14. Section 252.1 is corrected by removing the word "to" before the U.S. Code citation.

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

15. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.6 [Corrected]

16. In § 253.6(c)(4), the phrase "1988 through 1992," is revised to read "1993 through 1997,".

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

17. The authority citation for part 254 continues to read as follows:

Authority: 17 U.S.C. 116, 801(b)(1).

§ 254.2 [Corrected]

18. Section 254.2 is revised to read as follows:

§ 254.2 Definition of coin-operated phonorecord player.

As used in this part, the term *coin-operated phonorecord player* is a machine or device that:

(a) Is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

(b) Is located in an establishment making no direct or indirect charge for admission;

(c) Is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(d) Affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

19. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.3 [Corrected]

20. In § 255.3, paragraph (a), the phrase "paragraphs (b), (c), (d), (e), (f) and (g) of this section." is revised to read "paragraphs (b), (c), (d), (e), (f), (g) and (h) of this section."

21. In § 255.3, paragraph (b), the phrase "paragraphs (c), (d), (e), (f) and (g) of this section." is revised to read "paragraphs (c), (d), (e), (f), (g) and (h) of this section."

22. In § 255.3, paragraph (c), the phrase "paragraphs (d), (e), (f) and (g) of this section." is revised to read "paragraphs (d), (e), (f), (g) and (h) of this section."

23. In § 255.3, paragraph (d), the phrase "paragraphs (e), (f) and (g) of this section." is revised to read "paragraphs (e), (f), (g) and (h) of this section."

24. In § 255.3, paragraph (e), the phrase "paragraphs (f) and (g) of this section." is revised to read "paragraphs (f), (g) and (h) of this section."

25. In § 255.3, paragraphs (f) and (g) are redesignated (g) and (h), respectively, the reference in redesignated paragraph (g) to "paragraph (g)" is revised to read "paragraph (h)", and a new paragraph (f) is added as follows:

§ 255.3 Adjustment of royalty rate.

* * * * *

(f) For every phonorecord made and distributed on or after January 1, 1992, the royalty payable with respect to each work embodied in the phonorecord shall be 6.25 cents, or 1.2 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (g) and (h) of this section.

* * * * *

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

26. The authority citation for part 256 continues to read as follows:

Authority: 17 U.S.C. 702, 802.

§ 256.1 [Corrected]

27. The first sentence of § 256.1 is corrected by revising "or" to read "for".

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

28. The authority citation for part 259 continues to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.1 [Amended]

29. Section 259.1 is amended by removing all references to "(Supp. IV 1992)".

§ 259.2 [Corrected]

30. In paragraphs (a) and (b) of § 259.2, "and/or Copyright Arbitration Royalty Panels" is added after the phrase "Copyright Office" and before the phrase "in royalty filing".

§ 259.3 [Amended]

31. Paragraph (a) of § 259.3 is amended by removing all references to "(Supp. IV 1992)".

§ 259.4 [Amended]

32. Paragraphs (a) and (b) of § 259.4 are amended by removing all references to "(Supp. IV 1992)".

Dated: February 7, 1995.

Marybeth Peters,

Register of Copyrights

[FR Doc. 95-3497 Filed 2-10-95; 8:45 am]

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37 CFR Parts 251 and 259

[Docket No. RM 94-1A]

Copyright Arbitration Royalty Panels; Correction

AGENCY: Copyright Office, Library of Congress.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations that were published Wednesday, December 7, 1994, concerning copyright arbitration royalty panels. The first correction concerns the removal of § 251.72, and the second is a grammatical correction of § 259.3(d)

EFFECTIVE DATE: These regulations are effective February 13, 1995.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024, (202-707-8380).

SUPPLEMENTARY INFORMATION: On December 7, 1994, the final rules governing the copyright arbitration royalty panels (CARP) were published in the **Federal Register**. As published, the final regulations contained two errors. 59 FR 63025 (December 7, 1994).

First, the final regulations removed § 251.72; however, the section was incorrectly cited as § 3251.7.

Second, § 259.3(d) was amended to state that if a joint claim to digital audio recording royalties (DART) is filed, it shall include a concise statement of the authorization for the filing of the joint claim and the name of each claimant to the joint claim. However, as published, § 259.3(d) was grammatically incorrect.

Accordingly, the publication on December 7, 1994, of the final regulations is corrected as follows:

§ 251.72 [Corrected]

On page 63042, in the second column, "§ 3251.7 [Removed]" is corrected to read, "§ 251.72 [Removed]"

§ 259.3 [Corrected]

On page 63043, in the second column, in § 259.3, paragraph (d), after the phrase "If the claim is a joint claim," and before the phrase "a concise statement", the words "it shall include" are added.

Dated: February 7, 1995.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 95-3498 Filed 2-10-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 14]

RIN 2127-AE07

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on January 12, 1993, that added minimum photometric values for headlamps at test points above the horizontal. The notice corrects minor errors that appeared in the final rule, and others which have been brought to NHTSA's attention. The notice also deletes photometric requirements that no longer apply to headlighting systems on vehicles manufactured on and after September 1, 1994.

DATES: The final rule is effective March 15, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Rulemaking, NHTSA (202-366-6987).

SUPPLEMENTARY INFORMATION: On January 12, 1993, NHTSA published a final rule adopting 49 CFR part 564, *Replaceable Light Source Information*, as a repository for information on new types of replaceable light sources for headlamps, and amending 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to ensure that the light sources in part 564 are designed to meet certain performance requirements of the standard, and to amend the headlighting requirements by adding minimum photometric values at two zones and two test points above the horizontal (58 FR 3856). Petitions for reconsideration of part 564 have been received, and will be responded to separately and at a later date. This notice responds to the portion of the rule that amended Standard No. 108.

No petitions were received asking for reconsideration of the amendments to Standard No. 108. However, Ford Motor Company has called the agency's attention to several errors in the amendments to the standard. The agency has noted additional errors.

Ford commented that SAE J579 DEC84 should not yet be deleted from Figure 26 as compliance with those specifications for certain light sources is permitted through August 31, 1994. The agency concurs, but the passage of time has rendered this comment moot. Because September 1, 1994 has now passed, by this notice NHTSA is removing from Standard No. 108 those provisions that no longer apply to headlighting systems on vehicles manufactured after August 31, 1994. Principally, these amendments remove references to Tables 1 and 2 of SAE J579 DEC84, and Figures 15 and 17, as well as removing the Figures themselves. Figure 26 is revised to reflect these changes. These amendments affect S7 1, and portions of S7.3, and S7.4 of Standard No. 108.

In Ford's view, the amended text of paragraphs S7.5(d) (2) and (3) does not appear to reflect NHTSA's intent stated in the preamble for photometric requirements of headlamp systems using dual filament light sources, i.e., that such headlamps be permitted to meet Table 1 of SAE J579 DEC84 or Figure 27, or alternatively Figures 15/15A or 17/17A. NHTSA concurs that the text should be revised to make clear that the agency is allowing optional compliance with Figure 27 or Figure 15A as well as with Figure 17A (SAE J579, and Figures 15 and 17 now being deleted). To avoid confusion with the deleted Figures, NHTSA is not presently redesignating Figures 15A and 17A as Figures 15 and Figure 17, although it may do so in the future.

The following additional corrections are also made. The operand "+/−" is added in S7.7(a) in the last sentence, preceding "1 degree 00 minutes." In paragraph S7.7(j), the reference to subparagraph "(e)" is properly to "(g)". In Figure 17A, the correct sixth upper beam test point is "H-9L and 9R."

Further, in the version of Standard No. 108 appearing in Title 49, Code of Federal Regulations, Parts 400-999 revised as of October 1, 1993, the titles of paragraphs S7.5 and S7.7 are not underlined, and a value is given in paragraph S11 as "12.8V +/20mV". This notice provides an underline for the titles and a correction of S11 to "12.8V +/−20mV "

Ford noticed that when the final rule removed paragraph S7.4(d) and redesignated the succeeding lettered paragraphs, cross-references in S7.5(i) and S7.6.2.1 to paragraph S7.4(i) were not changed to S7.4(h). NHTSA has noticed that its amendments of S8.7 Humidity of March 11, 1991 (56 FR 10185) removing the necessity for a photometric test following completion of the humidity test were not accompanied by a corresponding amendment removing S8.7 from the list of tests required under S8.1 Photometry This notice corrects the errors, and several other minor ones that appear in the CFR text of Standard No. 108, such as an erroneous identification in S5.1.1.6 of SAE J222 "September 1970" which is correctly December 1970.

Effective Date

Because these amendments are corrective in nature and impose no additional burden upon any person, notice and comment upon are not required under the Administrative Procedure Act, and it is found, for good cause shown, that an effective date earlier than 180 days after issuance is in the public interest. The amendments will become effective 30 days after publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that it will not review this rulemaking under Executive Order 12866. It has been determined that the rulemaking is not significant under Department of Transportation regulatory policies and procedures. Since the rule does not have any significant cost or

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other impacts, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon the environment.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Based on the discussion above, I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, headlamps, and light sources, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected by these minor amendments.

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103 (formerly section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Forty-nine U.S.C. 30161 (formerly Section 105 of the Act (15 U.S.C. 1394)) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 30111, 30162, 30115; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. In paragraph S5.1.1.6 of Section 571.108, the phrase "September 1970" is revised to read "December 1970."

3. Section 571.108 is amended by revising paragraphs S7.1, S7.3.2(a)(3), S7.3.3(a), S7.3.4, S7.3.5(a), and S7.3.6(a) to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S7.1 Each passenger car, multipurpose passenger vehicle, truck, and bus manufactured on or after September 1, 1994, shall be equipped with a headlighting system designed to conform to the requirements of S7.3, S7.4, S7.5, or S7.6.

* * * * *

S7.3.2 *Type A headlighting system.*

* * *

(a) * * *

(3) In paragraphs 4.5.2 and 5.1.6, the words "Figure 28 of Motor Vehicle Safety Standard No. 108" are substituted for "Table 3"

* * * * * *

S7.3.3. *Type B headlighting system*

* * *

(a) The requirements of paragraphs S7.3.2(a) through (c), except that Figure 27 is substituted for Table 3 in paragraph S7.3.2(a)(3).

* * * * *

S7.3.4 *Type C headlighting system.* A Type C headlighting system consists of two Type 1C1 and two Type 2C1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2(a) through (d), except that Figure 28 is substituted for Table 3 in paragraph S7.3.2(a)(3).

S7.3.5 *Type D headlighting system.* (a) A Type D headlighting system consists of two Type 2D1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2(a) through (c), except that Figure 27 is substituted for Table 3 in paragraph S7.3.2(a)(3).

* * * * *

S7.3.6 *Type E headlighting system.* (a) A Type E headlighting system consists of two Type 2E1 headlamps and associated hardware, which are designed to conform to the requirements of paragraph S7.3.2(a) through (c), except that Figure 27 is substituted for Table 3 in paragraph S7.3 2(a)(3)

* * * * *

4. In paragraph S7.3.7(b) of Section 571.108 remove the words "Figure 15 or".

5. In the heading of paragraph S7.3.7(c) of Section 571.108 the reference to "Peformance" is revised to read "Performance".

6. In paragraphs S7.3.7(d) and S7.3.7(h)(1) of section 571.108 the reference to "Figure 15" is revised to read "Figure 15A".

7. Paragraph S7.3.8(b) of Section 571.108 is amended by revising the last sentence to read: "In paragraph 4.5.2, the words 'Figure 28' are substituted for the words 'Table 3.' ".

8. Paragraph S7.3.9(a) of Section 571.108 is revised to read: S7.3.9 *Type H Headlighting System.*

* * * * *

(a) Paragraphs S7.3.8(a) through (d) except that in paragraph S7.3.8(b), Figure 27 is substituted for Table 3.

* * * * *

9. Paragraph S7.4 of Section 571.108 is amended by revising paragraphs S7.4(a)(1)(i), (ii), and (iii), (a)(2)(i) and (ii) and the first sentence of (a)(3) to read as follows:

S7.4 *Integral Beam Headlighting System.* * * *

(a) * * *

(1) * * *

(i) Figure 15A; or

(ii) Figure 15A except that the upper beam test value at 2½ D–V and 2½ D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1½D–9R and 9L shall be 1000, or

(iii) Figure 28.

(2) * * *

(i) Figure 17A; or

(ii) Figure 27.

(3) In a system in which there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15A based upon the following mathematical expression: conforming test point value=2 (Figure 15A test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate. * * *

* * * * *

10. and 11. Section 571.108 is amended by removing the word "standardized" from the following paragraphs:

(a) S7.5(a);

(b) S7.5(b);

(c) S7.5(f);

(d) S8.6;

12. Section 571.108 is amended by revising paragraphs S7.5(d)(2)(i)(A)(*1*) and (*2*), (d)(2)(ii)(A)(*1*) and (*2*), (d)(3)(i)(A) and (B), (d)(3)(ii)(A) and (B), (e)(2)(i)(A) and (B), (e)(2)(ii)(A) and (B), (e)(3)(i) and (ii), and (i) to read as follows:

S7.5 *Replaceable Bulb Headlamp Systems.*

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) The lower beam requirements of Figure 27 or Figure 17A if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2; or

(*2*) The lower beam requirements of Figure 17A if the light sources are Type HB2, or any combination of replaceable light sources that include Type HB2; or

* * * * *

(ii) * * *

(A) * * *

(*1*) the upper beam requirements of Figure 27 or Figure 17A if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2; or

(*2*) the upper beam requirements of Figure 17A if the light sources are Type HB2, or any combination of replaceable light sources that include Type HB2; or

* * * * *

(3) * * *

(i) * * *

(A) The lower beam requirements of Figure 27 or Figure 15A if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The lower beam requirements of Figure 15A if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "L"

(ii) * * *

(A) The upper beam requirements of Figure 27 or Figure 15A if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The upper beam requirements of Figure 15A, if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "U"

(e) * * *

(2) * * *

(i) * * *

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17A; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17A.

(ii) * * *

(A) By the inboard light source (or the lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 17A; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17A.

(3) * * *

(i) The lower beam shall be produced by the outboard lamp (or the upper one if arranged vertically), designed to confrom to the lower beam requirements of Figure 15A. The lens of each such headlamp shall be permanently marked with the letter "L"

(ii) The upper beam shall be produced by the inboard lamp (or the lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15A. The lens of each such headlamp shall be marked with the letter "U"

* * * * *

(i) Each headlamp shall meet the requirements of paragraphs S7.4(g) and (h), except that the sentence in paragraph (g) to verify sealing according to section S8.9 *Sealing* does not apply.

13. In paragraph S7.6.2 of Section 571.108 the words "Figure 17" are revised to read "Figure 17A".

14. In paragraph S7.6.2.1 of Section 571.108, the phrase "through (i)" is revised to read "through (h)."

15. In paragraph S7.6.3 of Section 571.108 the words "Figure 15" are revised to read "Figure 15A" wherever they appear.

16. Paragraph S7.7(a) of Section 571.108 is amended by revising the final sentence to read: "A general tolerance shall apply to Figure 3 as follows: +/− 0.004 in. (0.10 mm) to all linear dimensions and +/− 1 degree 00 minutes to all angular dimensions except for referenced dimensions and unless otherwise specified."

17. Paragraph S7.7(j) of Section 571.108 is amended by revising the second sentence to read: "The diameter of the aperture in Figure 25 on a replaceable light source designed to conform to subparagraph (g) of this paragraph shall be that figure furnished for such light source in compliance with section IV.B of appendix A of part 564 of this chapter."

18. In paragraph S7.8.5.2(a) of Section 571.108, the word "verticle" is revised to read "*vertical.*"

19. Section 571 108 is amended by revising S8.1 to read as follows:

S8.1 *Photometry.* Each headlamp to which paragraph S8 applies shall be tested according to paragraphs 4.1 and 4.1.4 of SAE Standard J1383 APR85 for meeting the applicable photometric requirements after each test specified in paragraphs S8.2, S8.3, S8.5, S8.6.1, and S8.6.2. A 1/4 degree reaim is permitted in any direction at any test point.

20. In paragraph S11 of Section 571.108, the words in the first sentence "12.8V +/20mV" are revised to read "12.8V +/− 20mV"

21 Figure 15 and Figure 17 of Section 571.108 are removed.

22. Figure 17A of Section 571 108 is revised to read as follows:

FIGURE 17A.—PHOTOMETRIC TEST POINT VALUES, 2-LAMP SYSTEM

Upper beam			Lower beam		
Test points (degrees)	cd max.	cd min.	Test points (degrees)	cd max.	cd min.
2U–V		1,500	10U–90U	125	
1U–3L and 3R		5,000	4U–8L and 8R		64
H–V	75,000	40,000	2U–4L		135
H–3L and 3R		15,000	1–1/2U–1R to 3R		200
H–6L and 6R		5,000	1–1/2U–1R to R	1,400	
H–9L and 9R		3,000	1U–1–1/2L to L	700	
H–12L and 12R		1,500	1/2U–1–1/2L to L	1,000	
1–1/2D–V		5,000	1/2U–1R to 3R	2,700	500
1–1/2D–9L and 9R		2,000	H–4L		135
2–1/2D–V		2,500	H–8L		64
2–1/2D–12L and 12R		1,000	1/2D–1–1/2L to L	3,000	
4D–V	12,000		1/2D–1–1/2R	20,000	10,000

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FIGURE 17A.—PHOTOMETRIC TEST POINT VALUES, 2-LAMP SYSTEM—Continued

Upper beam			Lower beam		
Test points (degrees)	cd max.	cd min.	Test points (degrees)	cd max.	cd min.
			1D–6L		1,000
			1–1/2D–2R		15,000
			1–1/2D–9L and 9R		1,000
			2D–15L and 15R		850
			4D–4R	12,500	

23. Figure 26 of Section 571.108 is revised to read as follows:

FIGURE 26.—TABLE OF PHOTOMETRIC REQUIREMENTS

[1. Four-Headlamp Systems (4)]
[2. Two-Headlamp Systems (2)]

Light source type	HB1	HB2	HB3	HB4	HB5
HB1	Fig. 27 (4,2) or Fig. 15A (4) or Fig. 17A (2)	Fig. 15A(4) Fig. 17A(2)	Fig. 15A(4) Fig. 17A(2)	Fig. 15A(4) Fig. 17A(2)	Fig. 27 (4,2) or Fig. 15A (4) or Fig. 17A (2)
HB2		Fig. 15A(4) Fig. 17A(2)	Fig. 15A(4) Fig. 17A(2) Fig. 15A(4) Fig. 17A(2)	Fig. 15A(4) Fig. 17A(2) Fig. 15A(4) Fig. 17A(2) Fig. 15A(4) Fig. 17A(2)	Fig. 15A(4) Fig. 17A(2) Fig. 15A(4) Fig. 17A(2) Fig. 15A(4) Fig. 17A(2)
HB3					
HB4					
HB5					Fig. 27 (4,2) or Fig. 15A (4) or Fig. 17A (2)

24. In Table IV of Section 571.108, the word "symetrically" appearing under the heading "Motorcycles" in the horizontal column captioned "Headlamps" is revised to read "symmetrically."

Issued on: February 6, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–3303 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 94–53, Notice 02]

RIN No. 2127–AF19

Federal Motor Vehicle Safety Standards (FMVSS); New Pneumatic Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA amends the labeling requirements of the safety standard for new passenger car pneumatic tires by permitting tires whose maximum inflation pressure is 60 pounds per square inch (psi) to be labeled in metric measurements: "Inflate to 420 kPa (60 psi)." This final rule would further international harmonization of standards. NHTSA takes this action in response to a petition for rulemaking from the Japan Automobile Tire Manufacturers' Association.

DATES: This final rule is effective March 15, 1995. Petitions for reconsideration of this final rule must be received not later than March 15, 1995.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Droneburg, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 5307, Washington, DC 20590. Ms. Droneburg's telephone number is: (202) 366–6171.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 109, New Pneumatic Tires (Std. No. 109), requires passenger car tires to be labeled with important safety information, including tire size, construction, and inflation pressure. S4.3.5 of the standard provides that if the maximum inflation pressure of a tire is 60 pounds per square inch (psi), the words "Inflate to 60 psi" shall be molded on both sidewalls of the tire.

The Japan Automobile Tire Manufacturers' Association (JATMA) petitioned NHTSA, suggesting that S4.3.5 should be amended to require adding the words "or 'inflate to 420 kPa (60 psi)'" after "Inflate to 60 psi." JATMA stated that the maximum inflation pressure of a "T"-type spare tire is listed as 420 kilopascals (kPa) in the Tire and Rim Association, Inc., Year Book, the JATMA Year Book, and in Japanese Industrial Standard (JIS) D4230. JATMA indicated that, if the suggested amendment were adopted by NHTSA, tire manufacturers would be able to mark tires for both the Japanese and U.S. markets. NHTSA granted the petition by letter dated January 7, 1994.

Notice of Proposed Rulemaking

On July 5, 1994, NHTSA published in the **Federal Register** (59 *FR* 34405) a notice of proposed rulemaking (NPRM) proposing to make JATMA's requested changes to Std. No. 109. NHTSA noted that the changes, if made final, would be consistent with the requirement of section 5164 of the Omnibus Trade and Competitiveness Act (Pub. L. 100–418), which designated the metric system as the preferred system of weights and measures for U.S. trade and commerce. NHTSA stated its belief that allowing metric units on tires would further the international harmonization of standards. Common sizing for international markets would facilitate the manufacture of products, and could ultimately result in products sold at lower prices. NHTSA tentatively determined that the petitioner's requested metric unit on tires would not confuse consumers or obscure the meaning of the inflation pressure information labeled on tires. Thus, NHTSA tentatively concluded there was no safety reason to preclude permitting JATMA's requested metric labeling.

In the NPRM, NHTSA also proposed to correct a typographical error in S4.3 of Std. No. 109. The first sentence of S4.3 provides that each tire shall have the information "shown in paragraphs (a) and (g)" of S4.3. The word "and" in that phrase should read "through," and NHTSA proposed to make the correction in the regulatory text.

Final Rule

In response to the NPRM, NHTSA received one comment. That comment came from the Rubber Manufacturers Association (RMA), on behalf of domestic tire manufacturers. The RMA stated that it favored adoption of the proposed changes to Std. No. 109. Since NHTSA received only one comment on the NPRM, and that comment favored adoption of the proposal, NHTSA adopts as final the regulatory text proposed in the NPRM.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action and has concluded that it is not significant under the DOT's regulatory policies and procedures. This action would not change any of the substantive requirements of Std. No. 109. The effect on labeling costs might be to decrease such costs slightly for tire manufacturers that now convert metric units on their tires to English units, or that now convert English units on tires to metric units for sale overseas. However, NHTSA believes the costs savings, if any, would be minimal. NHTSA has concluded, therefore, that since the costs of complying with the changes in this final rule are minimal, preparation of a full regulatory evaluation is not warranted.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis. The rationale for this certification is that the agency believes that few, if any, of the tire manufacturers which would be affected by this final rule qualify as small businesses. Small businesses, small organizations and small governmental units could be affected by the final rule to the extent that they may purchase new tires subject to the new requirements. However, NHTSA does not believe the costs of tires would be affected by this rule. Thus, these entities would not be significantly affected.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act and has determined that implementation of this final rule would have no significant impact on the quality of the human environment.

D. E.O. 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Paperwork Reduction Act

Certain provisions in this final rule that permit manufacturers to mark metric measurements on tires, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB), in 5 CFR part 1320. The information collection requirements have been submitted to and approved by OMB. This collection of information has been assigned OMB Control Number 2127–0503 (Consolidated labeling requirements for tires and rims) and has been approved for use through November 30, 1995.

F. Civil Justice Reform

This final rule would not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance that is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance applicable only to vehicles procured for the state's own use. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.109 is amended by revising the introductory paragraph of S4.3 and the entire paragraph of S4.3.5 to read as follows:

§ 571.109 Standard No. 109, New Pneumatic Tires.

* * * * *

S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2, each tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (g). On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires where the maximum section width falls in that area, locate all required labeling between the bead and a point one-half the distance from the bead to the shoulder of the tire. However, in no case shall the information be positioned on the tire so that it is obstructed by the flange or any rim designated for use with that tire in Standards Nos. 109 and 110 (§ 571.109 and § 571 110 of this part).

* * * * *

S4.3.5 If the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 1/2 inch high, the words "Inflate to 60 psi" or "Inflate to 420 kPa (60 psi)." On both sidewalls, the words shall be positioned in an area between the tire shoulder and the bead of the tire. However, in no case shall the words be positioned on the tire so that they are obstructed by the flange of any rim designated for use with that tire in

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this standard or in Standard No. 110 (§ 571.110 of this part).

* * * * *

Issued on: February 3, 1995.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 95–3487 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register

Vol. 60, No. 29

Monday, February 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–19–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 series helicopters. This proposal would require initial and repetitive inspections of the main rotor (M/R) blade upper and lower surface for bulging. This proposal is prompted by two reported incidents in which a balance weight became detached from inside the M/R blade structure and migrated toward the tip of the M/R blade. The actions specified by the proposed AD are intended to detect movement of a balance weight to prevent severe vibrations and a subsequent precautionary landing.

DATES: Comments must be received by April 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Luftfahrt-Bundesamt, which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 series helicopters. The Luftfahrt-Bundesamt advises that the M/R blade upper and lower surfaces in the area of the balance weights may bulge or have creep deformations.

Eurocopter Deutschland GmbH (ECD) has issued Alert Service Bulletin ASB–MBB–BK 117–10–108, Revision 1, dated October 14, 1994, which specifies initial and repetitive inspections of the upper and lower surfaces of the main rotor blades for bulging in the area of the outboard lead balance weight. The Luftfahrt-Bundesamt classified this service bulletin as mandatory and issued AD 94–280 in order to assure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftfahrt-Bundesamt has kept the FAA informed of the situation described above. The FAA has examined the findings of the Luftfahrt-Bundesamt, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 series helicopters of the same type design registered in the United States, the proposed AD would require initial and repetitive inspections of the M/R blade upper and lower surface for bulging. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 125 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-half work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,750.

The regulations proposed herein would not have substantial direct effects

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on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter Deutschland GmbH (ECD):
Docket No. 94–SW–19–AD

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category

Compliance: Required as indicated, unless accomplished previously

To detect movement of a balance weight, severe vibrations, and a subsequent precautionary landing, accomplish the following:

(a) Within the next 5 hours time-in-service (TIS) after the effective date of this AD, and thereafter, at intervals not to exceed 50 hours TIS, visually inspect the upper and lower surface of the main rotor blades (blades) in the area of the outboard lead balance weight in the marked inspection area for signs of bulging, in accordance with Paragraph 2.A. of the Accomplishment Instructions of Eurocopter Deutschland GmbH (ECD) Alert Service Bulletin ASB–MBB–BK 117–10–108, Revision 1, dated October 14, 1994.

(b) If a marked inspection area is not visible, mark the area in accordance with Paragraph 2.A. of the Accomplishment Instructions of Eurocopter Deutschland GmbH (ECD) Alert Service Bulletin ASB-MBB-BK 117–10–108, Revision 1, dated October 14, 1994, and then inspect in accordance with paragraph (a) of this AD.

(c) If bulging exceeds 1mm in height, remove the blade and replace it with an airworthy blade in accordance with the applicable maintenance manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on February 6, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–3514 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–219–AD]

Airworthiness Directives; Lockheed Model L–1011–385–1 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385–1 series airplanes. This proposal would require implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair, if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This proposal is prompted by a structural re-evaluation by the manufacturer that identified certain structural details where fatigue damage is likely to occur. The actions specified by the proposed AD are intended to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: Comments must be received by April 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–219–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a transport category airplane managed to land after tiny cracks in rivet holes in the upper fuselage linked together, causing structural failure and explosive decompression. An 18-foot section ripped from the fuselage. This accident focused greater attention on the problem of aging aircraft.

In June 1988, the FAA sponsored a conference on aging airplane issues, which was attended by representatives of the aviation industry from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was originally established in August 1988. The objective of the AAWG was to sponsor "Task Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,

2. Develop corrosion directed inspections and prevention programs,

3. Review the adequacy of each operator's structural maintenance program,

4. Review and update the Supplemental Inspection Documents (SID), and

5. Assess repair quality.

The Task Group assigned to review Lockheed Model L–1011–385 series airplanes completed its work on Item 1 (mandatory structural modifications), above, in June 1990. The Task Group's recommendations are contained in Revision 1 of Lockheed Service Bulletin 093–51–035, "Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin," dated December 16, 1991. The FAA issued AD 94–05–01, amendment 39–8839 (59 FR 10275, March 4, 1994), which mandates the installation of the modifications specified in that document.

The Task Group completed its work on Item 2 (corrosion-directed inspections) and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Lockheed Model L–1011 fleet. This program is contained in Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," dated March 15, 1991. The FAA issued AD 93–20–03, amendment 39–8710 (58 FR 60775, November 18, 1993), which requires the implementation of a corrosion prevention and control program.

The Task Group completed its work on Item 4 (Supplemental Inspection Document) in May 1993 and developed a program for the implementation of a SID program identified in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994, which recommends structural inspections of older airplanes. The Task Group has identified certain service difficulties that warrant mandatory inspections following mandatory modification of these airplanes. The Task Group considers that these service difficulties can be controlled safely by repetitively inspecting following modification of these airplanes, and that, because of the safety implications, the inspections should be mandatory to assure that all operators perform them. Typically, the addressed unsafe conditions (i.e., fatigue cracking) have occurred infrequently on older airplanes, and the Task Group has a very high degree of confidence in the ability of an inspection program to detect the damage before it impairs safety.

Explanation of Service Information

Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994 (hereafter referred to as "the Lockheed Document"), is the result of a structural re-evaluation conducted by Lockheed. The criteria that were used for this re-evaluation are contained in FAA Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," and Federal Aviation Regulation 25.571 (14 CFR 25.571), amendment 25–45. During this structural re-evaluation, Lockheed examined Structurally Significant Details (SSD), which are structural parts and components that carry significant ground, flight, cabin pressure, or control loads whose failure could affect the safety of the aiplane. From these SSD's, Lockheed identified candidate locations for supplemental inspections that have been incorporated into the Lockheed Document.

The Model L–1011–385–3 series airplanes were excluded from this re-evaluation. These newer, long-range airplanes fly less frequently and are neither imminently approaching nor have they exceeded the manufacturer's original fatigue design life goal. (However, as these airplanes accumulate more hours time-in-service, and as the critical area selection is developed and identified, the FAA anticipates that these airplanes will be addressed in future rulemaking actions.)

Specifically, the Lockheed Document describes procedures for supplemental inspections of SSD's for Model L–1011–385–1 series airplanes. This Lockheed Document identifies SSD's in 13 fuselage, one stabilizer, and 14 wing critical areas. The Document also specifies that operators submit the results of these inspections to Lockheed.

The Task Group has reviewed the Lockheed Document, and has recommended it to the FAA for mandatory inspection following mandatory modification to ensure the successful long-term operation of Lockheed Model L–1011–385 series airplanes. The FAA has concurred with the Task Group's recommendations and has determined that AD action is warranted to mandate the inspections and modifications to ensure the continued airworthiness of the Model L–1011–385 fleet. Fatigue cracking in the SSD's specified in the Lockheed Document, if not detected and corrected in a timely manner, could compromise the structural integrity of the airplane

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Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a revision to the FAA-approved maintenance inspection program to include a SID program of structural inspections. The intent of these inspections is to detect fatigue cracking in order to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal.

Specifically, this proposal would require that the initial inspection for each individual SSD be performed within one "repeat interval" after the effective date of the AD or prior to the threshold specified in the Lockheed Document, whichever occurs later. This proposal would provide operators with time for planning and scheduling by granting a deviation of 10 percent for the interval specified in the Lockheed Document for subsequent repetitive inspections. This action also would require that the results of the inspections be reported to Lockheed. These actions would be required to be accomplished in accordance with the Lockheed Document described previously.

This proposal also would require that any cracking detected be repaired either in accordance with the appropriate information referenced in the Lockheed Document, in accordance with the Structural Repair Manual, or in accordance with a method approved by the FAA.

Economic Impact Information

There are approximately 186 Lockheed Model L–1011–385–1 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD. Incorporation of the SID into an operator's maintenance program would take approximately 550 work hours, and the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD to incorporate the SID into an operator's maintenance program is estimated to be $33,000 per operator.

Initially, the FAA estimates that it would take 293 work hours to accomplish the 28 inspections specified in the SSID, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD for the first year is estimated to be $1,758,000, or $17,580 per airplane.

However, the FAA has been advised that the terminating modification for SSD 53–2–1, which is described in the Lockheed Document, has been accomplished by the entire L–1011–385–1 fleet. Therefore, the inspections for SSD 53–2–1, which would have required 48 work hours per airplane to accomplish, will not need to be performed. In light of this, the cost impact for the initial inspections contained in this proposal is now only $1,470,000, or $14,700 per airplane.

The recurring inspection cost impact on the affected operators is estimated to be 52 work hours per airplane at an average labor cost of $60 per work hour. Based on these figures, the annual recurring cost of this AD is estimated to not exceed $312,000 for the affected U.S. fleet, or $3,120 per airplane.

Based on the above figures, the total cost impact of this AD for the first year is estimated to not exceed $47,700 per airplane, and $2,820 per airplane for each year thereafter.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the proposed actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 93–NM–219–AD.

Applicability: Model L–1011–385–1, –385–1–14, and –385–1–15 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking that could compromise the structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection(s) of the structurally significant details (SSD) defined in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994.

(1) The initial inspection for each SSD must be performed within one repeat interval after the effective date of this AD, or prior to the threshold specified in the Lockheed Document for that SSD, whichever occurs later.

(2) A 10 percent deviation from the repetitive interval specified in the Lockheed Document for that SSD is acceptable to allow for planning and scheduling time.

(3) If the Lockheed Document specifies that inspection of any SSD be performed at every "C" check, those inspections must be performed at intervals not to exceed 5,000 hours time-in-service or 2,500 flight cycles, whichever occurs earlier.

(4) If the Lockheed Document specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection shall be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(5) The non-destructive inspection techniques referenced in Appendix VI of the Lockheed Document (Revision A of Lockheed Drawing 1647194) provide acceptable methods for accomplishing the inspections required by this AD.

(b) If any cracking is found in any SSD, prior to further flight, repair in accordance with either paragraph (b)(1), (b)(2), or (b)(3) of this AD:

(1) In accordance with the applicable service bulletin referenced in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994; or

(2) In accordance with the Structural Repair Manual; or

(3) In accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(c) Within 30 days after returning the airplane to service, subsequent to accomplishment of the inspection(s) specified in Lockheed Document Number LG92ER0060, "L–1011–385 Series Supplemental Inspection Document," revised January 1994, submit a report of the results (positive or negative) of the inspection(s) to Lockheed in accordance with Section V., Data Reporting System (DRS), of the Lockheed Document. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21 197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21 199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 7, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3515 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35

RIN 1219–AA87

Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding its proposed rule for testing and evaluation by nationally recognized testing laboratories and the use of equivalent testing and evaluation requirements.

DATES: Written comments must be received on or before February 21, 1995.

ADDRESSES: All comments should be sent to Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: On November 30, 1994, MSHA published a proposed rule (59 FR 61376) to establish new procedures and requirements for testing and evaluation of certain products MSHA approves for use in underground mines. The comment period was scheduled to end on February 13, 1995.

In response to requests from the public, MSHA is extending the time for commenting on this proposed rule to February 21, 1995. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: February 8, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–3596 Filed 2–10–95; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–093]

RIN 2115–AE47

Drawbridge Operation Regulations; Mullica River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Burlington County, New Jersey, the Coast Guard is considering a change to the regulations governing operation of the Lower Bank bridge over the Mullica River at mile 15.0 between Atlantic and Burlington Counties, New Jersey. This change will extend the existing winter seasonal restrictions into April and require four hours advance notice of all bridge openings during this period. This change is being proposed because there have been few requests for bridge openings during the winter months. The proposed change, if adopted, will relieve the bridge owner of the responsibility of having a bridgetender constantly on duty during a time of year when there is no demonstrated need for one, and will still provide for the reasonable needs of navigation throughout the year.

DATES: Comments must be received on or before May 15, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, c/o Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York 10004–5073. The comments will become part of this docket and will be available for inspection and copying by appointment at Bldg. 135A, Governors Island, New York 10004–5073. Normal office hours are between 7 a.m. and 3:30 p.m., Mondays through Fridays, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Bridge Administrator—NY, Fifth Coast Guard District, (212) 668–7170.

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SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–093) and the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. J. Arca, Fifth Coast Guard District, Bridge Branch-NY, Project Officer, and LCDR C.A. Abel, Fifth Coast Guard District Legal Office, Project Attorney.

Background and Purpose

The Lower Bank highway bascule bridge over the Mullica River in Lower Bank, New Jersey was replaced in 1993. It has a vertical clearance of 13 feet above mean high water (MHW) in the closed position, which is 4 feet higher than the previous bridge in the closed position. During the period from December 1993 through April 1994, a period of 151 days, requests for bridge openings occurred on only 34 days. The current operating regulations, which were implemented in January 1988, require the Lower Bank bridge to open on signal, except that it is required to open with four hours advance notice from April 1 through November 30 from 11 p.m. to 7 a.m., and from December 1 through March 31, from 4:30 p.m. to 8 a.m. This proposed change to the regulations would extend the winter seasonal restrictions into April and increase the four hours advance notice requirement to apply to all requests for bridge openings during the winter months. This change, if adopted, will provide the bridge owner relief from the burden of constantly having a person available to open the bridge, when there is no sufficient justification to do so.

Burlington County has requested a change to the present operating regulations in 33 CFR 117.731a which would allow the Lower Bank Bridge to operate as follows: The draw of the Lower Bank Bridge would need not open unless at least four hours advance notice is given during the following periods, May 1 through November 30, from 11 p.m. to 7 a.m. and from December 1 to April 30 at all times. At all other times, the bridge would open on signal. This change to the regulations is being proposed due to infrequent requests for openings. The proposed change to the regulation will relieve the bridge owner of the burden of having personnel at the bridge at night and during the winter months. The bridgetenders will be on call to open the draw when the four hour advance notice is given to the bridge owner by calling the number that will be posted at the bridge; therefore, the reasonable needs of navigation will be met.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require as assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the bridge. Rather, it will only require mariners to plan their transits and provide advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.E.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read ad follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In section 117.731a paragraph (a) is revised to read as follows:

§ 117.731a Mullica River.

* * * * *

(a) The draw of the Lower Bank bridge, mile 15.0, need not open unless at least four fours notice is given during the following periods:

(1) From May 1 though November 30, from 11 p.m. to 7 a.m.

(2) From December 1 through April 30, at all times.

* * * * *

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District, Acting.

[FR Doc. 95–3545 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95–3]

Appeals of Postal Service Determinations to Close or Consolidate Post Offices

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice governing the filing of postal patrons' appeals of determinations by the United States Postal Service to close or consolidate the post office which serves them. The Commission's current rule requires that petitions to initiate such appeals be received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available. The proposed rule would allow affected postal patrons to initiate a timely appeal by filing a petition which either is received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available, or bears a postmark or other indicia that it was mailed no later than 30 days after that date.

DATES: Comments responding to this notice of proposed rulemaking must be submitted no later than March 30, 1995.

ADDRESSES: Comments and correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act Amendments of 1976, Pub. L. No. 94–421, 90 Stat. 1303, provide postal patrons an opportunity to appeal determinations by the United States Postal Service to close or consolidate the post office which serves them. In pertinent part, the statute provides: "A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Rate Commission within 30 days after such determination is made available to such person * * *." 39 U.S.C. 404(b)(5).

In adopting rules to implement the provisions of Pub. L. 94–421, the Postal Rate Commission incorporated the 30-day provision in section 404(b)(5) as follows:

Petition for review. Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b)(3) through (4).

39 CFR 3001.111(a). Thus, under the Commission's current rule, the timeliness of affected postal patrons' appeals depends upon the Commission's actual receipt of their petition within the 30-day statutory period.

The Commission is concerned that the current rule may operate to the detriment of postal patrons served by post offices that are geographically remote from the Commission's offices in Washington, D.C. Because of uncertainties associated with postal processing, transportation, and delivery, a petition's transit time from mailing by the appellants to receipt at the Commission's offices cannot be known in advance, but may constitute a significant portion of the 30-day interval established in the current rule. An internal review of the Commission's records of section 404(b) appeals filed in Fiscal Years 1993 and 1994 discloses that the interval between the mailing of a petition and its receipt by the Commission has frequently approached, and has sometimes exceeded, one week.

In order to assure that members of the public affected by Postal Service determinations to close or consolidate post offices are afforded the full 30 days to pursue an appeal provided by 39 U.S.C. 404(b)(5), the Commission proposes to amend its current rule to incorporate two alternative measures of the timeliness of petitions. Under the proposed revision of 39 CFR 3001.111(a), a petition would be deemed timely if: (1) The Commission actually received it no later than 30 days following publication of the Postal Service's determination, or (2) the petition bears a postmark or other indicia demonstrating that it was mailed no later than 30 days after publication by the Postal Service.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

Accordingly, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—RULES OF PRACTICF AND PROCEDURE

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Section 3001.111(a) would be revised to read as follows:

§ 3001.111 Initiation of review proceedings.

(a) *Petition for review.* (1) Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must either:

(i) Be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b) (3) through (4), or

(ii) Bear a postmark or other indicia demonstrating that the petition was mailed no later than the 30th day following the date on which the Postal Service made its written determination available.

(2) The petition shall specify the parties seeking review, all of whom must be persons served by the post office proposed to be closed or consolidated and shall identify the Postal Service as respondent. The Commission encourages parties seeking review to attach a copy of the Postal Service written determination, as the appeal process is thereby expedited. If two or more persons are entitled to petition for review of the same determination and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

* * * * *

Issued by the Commission on February 7 1995.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–3457 Filed 2–10–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5154–6]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 18

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") proposes to add new sites to the NPL. This 18th proposed revision to the NPL includes 7 sites in the General Superfund Section and 2 in the Federal Facilities Section. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL is not intended to define the boundaries of a site or to determine the extent of contamination (see Section II, subsection, "Facility Boundaries"). This action does not affect the 1,241 sites currently listed on the NPL (1,087 in the General Superfund Section and 154 in the Federal Facilities Section). However, it does increase the number of proposed sites to 55 (47 in the General Superfund Section and 8 in the Federal Facilities Section). Final and proposed sites now total 1,296.

DATES: Comments must be submitted on or before April 14, 1995.

ADDRESSES: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–8917. Please note this is the mailing address only. If you wish to visit the HQ Docket to view documents, and for additional Docket addresses and further details on their contents, see Section I of the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, 100 stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action. . . and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 USC 9601(23). "Remedial" actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *" 42 USC 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities List ("NPL").

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for determining priorities for possible remedial actions are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which is Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be

listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on December 16, 1994 (59 FR 65206).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 68 sites from the General Superfund Section of the NPL, most recently Suffolk City Landfill, Suffolk, Virginia (60 FR 4568, January 24, 1995).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 67 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 215 sites are also in the NPL CCL, all but two from the General Superfund Section. Thus, as of January 25, 1995, the CCL consists of 282 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of December 1994, EPA had conducted 649 removal actions at NPL sites, and 2,357 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 9 sites to the NPL. The General Superfund Section currently includes 1,087 sites, and the Federal Facilities Section includes 154 sites, for a total of 1,241 sites on the NPL. An additional 55 sites are proposed, 47 in the General Superfund Section and 8 in the Federal Facilities Section. Final and proposed sites now total 1,296.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, (Mail Code 5201G), Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–8917. (Please note this is visiting address only. Mail comments to address listed in **ADDRESSES** section above.)

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES–CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729

Walter Schoepf, Region 2, U.S. EPA, 26 Federal Plaza, New York, NY 10278 212/264–0221

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904

Kathy Piselli, Region 4 U.S. EPA, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–4216

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis. Comments that include complex or voluminous reports, or

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materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decisions after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992)). Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site serves as notice to potentially responsible parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment ("PA"), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection ("SI"). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. As of December 1994, EPA had completed 36,831 PAs and 17,790 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those that present significant risk or are sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of hazardous substances, pollutants or contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after

further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases." Thus, the purpose of the NPL is merely to identify releases that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, described at 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted above and at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected, 40 CFR 300.430(f)) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process * * * [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984).

See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." Eagle-Picher [Industries v EPA] II, 759 F 2d [921] at 932 [(D.C. Cir. 1985)].

It is the Agency's policy that, in the exercise of its enforcement discretion, EPA will not take enforcement actions against an owner of residential property to require such owner to undertake response actions or pay response costs, unless the residential homeowner's activities lead to a release or threat of release of hazardous substances, resulting in the taking of a response action at the site (OSWER Directive #9834.6, July 3, 1991). This policy includes residential property owners whose property is located above a ground water plume that is proposed to or on the NPL, where the residential property owner did not contribute to the contamination of the site. EPA may, however, require access to that property during the course of implementing a clean up.

III. Contents of This Proposed Rule

Table 1 identifies the 7 sites in the General Superfund Section and Table 2 identifies the 2 sites in the Federal Facilities Section being proposed to the NPL in this rule. Both tables follow this preamble. All sites are proposed based on HRS scores of 28.50 or above. The sites in Table 1 and Table 2 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of

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releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover Federal facility sites. This policy and requirements are explained below and have been explained in greater detail previously (56 FR 5598, February 11, 1991).

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add three sites to the Federal Facilities Section of the NPL.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's proposal to the NPL. EPA believes that the kinds of economic effects associated with this proposal generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing and adding sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that typically follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities is controlled by Section 104(c) of CERCLA and the NCP. For privately-operated sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site[1]
RI/FS	1,350,000
Remedial Design	1,260,000
Remedial Action	[3]22,500,000
Present Discounted Value O&M[2]	5,630,000

[1] 1994 U.S. Dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 5.8% discount rate.
[3] Includes State cost-share.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the States associated with today's proposed rule are incurred when the sites are finalized and arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites; and (3) States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $26 million. State O&M costs cannot be accurately determined because EPA, as noted above, will pay O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $35 million.

Placing a site on the proposed or final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of an amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

NATIONAL PRIORITIES LIST PROPOSED RULE #18 GENERAL SUPERFUND SECTION

State	Site name	City/county	NPL Gr[1]
FL	Normandy Park Apartments	Temple Terrace	6
KS	Ace Services	Colby	5/6
LA	Gulf State Utilities-North Ryan Street	Lake Charles	5
LA	Old Citgo Refinery	Bossier City	5/6
LA	Southern Shipbuilding	Slidell	5/6
ME	West Site/Hows Corners	Plymouth	5/6
MI	Bay City Middlegrounds	Bay City	5/6

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Note: Number of Sites Proposed to General Superfund Section: 7.

NATIONAL PRIORITIES LIST PROPOSED RULE #18 FEDERAL FACILITIES SECTION

State	Site name	City/county	NPL Gr[1]
KS	Sunflower Army Ammunition Plant	DeSoto	5/6
MD	Indian Head Naval Surface Warfare Center	Indian Head	5/6

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
Note: Number of Sites Proposed to Federal Facilities Section: 2.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: February 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–3601 Filed 2–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–158; FCC 94–352]

Operator Services Providers

AGENCY: Federal Communications Commission.

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ACTION: Proposed rule and notice of inquiry.

SUMMARY: The Commission adopted this Notice of Proposed Rule Making and Notice of Inquiry to solicit comment on proposed changes to its rules and policies governing operator service providers (OSPs) and call aggregators. The proposed rule changes are intended to clarify existing OSP requirements, and the notice of inquiry examines the need for additional protection measures.

DATES: Comments must be submitted on or before March 9, 1995 and reply comments must be submitted on or before March 24, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Carolyn Tatum Roddy, Enforcement Division, Common Carrier Bureau, (202) 418–0960.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making and Notice of Inquiry* in CC Docket No. 94–158 [FCC 94–352], adopted December 28, 1994 and released February 8, 1995. The full text of the Notice of Proposed Rule Making and Notice of Inquiry is available for inspection and copying during normal business hours in the Dockets Reference Room, Room 239, 1919 M Street, NW, Washington, D.C. The full text of this Notice of Proposed Rule Making and Notice of Inquiry may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

Summary of Notice of Proposed Rule Making and Notice of Inquiry

1. On December 28, 1994, the Commission adopted a Notice of Proposed Rule Making and Notice of Inquiry in CC Docket No. 94–158, FCC 94–352, proposing changes to rules governing the operator service providers (OSPs) and call aggregators and soliciting comments concerning the need to reexamine certain issues relating to OSPs in correctional institutions and the need to establish a time limit for updating consumer information posted on or near aggregator telephones. The proposed rule changes are intended to clarify existing OSP requirements, and the notice of inquiry examines the need for additional consumer protection measures.

2. The Commission adopted comprehensive regulations governing the practices and services of OSPs and the call aggregators with whom they contract to provide operator services pursuant to the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA). TOCSIA established rules concerning consumer information, call blocking, restrictions on certain charges, and equipment capabilities. Further, the Commission established minimum standards for OSPs to use in routing and handling emergency telephone calls. Subsequently, with the Telecommunications Authorization Act of 1992 (TAA), Congress amended Section 226 (d)(4)(A) to require the Commission to establish minimum standards for aggregators, as well as OSPs, to use in routing and handling emergency calls.

3. Section 226(b)(1)(A) of the Communications Act of 1934, as amended (Act), and Section 64.703(a)(1) of the Commission's rules (rules) require an OSP to identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. This identification is known as "call branding." Section 226(a)(4) of the Act and Section 64.708(d) of the Commission's rules define a "consumer" as "a person initiating any interstate telephone call using operator services." The Commission notes that collect calls involve two parties making choices and tentatively concludes that both the calling party, who places the call, and the called party, who must accept the charges in order for the message portion of the call to begin, cooperatively initiate the call as "consumers" and should each receive a "brand" before they commence their portions of the collect call transaction. Thus, the Commission proposes to amend Section 64.708(d) of the Commission's rules to redefine "consumer" to that effect and invites interested parties to comment on this proposed rule change. The Commission specifically solicits data concerning both the cost of compliance with this proposed rule change and the ratio of collect calls to all operator-assisted calls.

4. Section 226(d)(4)(A) of the Act directed the Commission to prescribe regulations establishing minimum standards for OSPs to use in routing and handling emergency telephone calls. In the *Report and Order*, CC Docket No. 90–313, 56 F R 18519 (April 23, 1991), the Commission adopted Section 64.706 of the rules to implement this requirement. This rule currently requires that "[u]pon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call." The TAA amended Section 226(d)(4)(A) of the Act and directed the Commission to establish minimum standards for aggregators, as well as OSPs, to use in routing and handling emergency telephone calls. In light of this amendment, the Commission proposes to modify its rules to require that aggregators be subject to the same requirements for routing and handling emergency calls that apply to OSPs. The Commission solicits comment on this proposed rule change and whether the TAA or sound public policy support the adoption of additional requirements in order to ensure the prompt and proper handling of emergency calls from aggregator locations.

5. In the *Report and Order* in CC Docket No. 90–313, the Commission examined the question of whether correctional institutions providing inmate-only telephones should be excluded from the definition of "aggregator" and, therefore, exempt from the requirements of TOSCIA and the Commission's implementing regulations. The Commission concluded that providing such telephones to inmates presents an "exceptional set of circumstances" that warrant their exclusion from the definition of "aggregators" and ruled that inmate-only telephones would not be subject to the requirements specified by TOCSIA or the implementing rules. In light of numerous informal complaints, the Commission hereby initiates a Notice of Inquiry concerning what changes, if any, should be made to the rules applicable to inmate-only telephones in correctional institutions. The Commission specifically seeks comment on the needs of the inmate users, the resources and needs of correctional institutions in providing inmate telephone service, and whether the goals of Section 226 of the Act and the public interest have been met through the current treatment of inmate-only telephones in correctional institutions.

6. The Commission also seeks comment on whether to require a time limit for updating consumer information that is posted on aggregator telephones. Section 226(c)(1)(A) of the Communications Act and Section 64.703(b) of the Commission's rules require that each aggregator post on or near the telephone instrument in plain view of consumers: (1) the name, address, and toll-free telephone number of the provider of operator services; (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and (3) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services. Neither the statute nor the Commission's rules specifies when this notice must be changed to reflect a change in the presubscribed carrier at the telephone location. In response to reports that some aggregators are not promptly updating this consumer information to reflect a change in the presubscribed OSP, the Commission seeks comment on the extent of this problem, and whether a specific time limit for updating the consumer information is necessary or desirable.

7. The Commission asserts that this is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

8. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The Commission has also directed the Secretary to send a copy of the Notice of Proposed Rule Making and Notice of Inquiry, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Ordering Clauses

9. Accordingly, pursuant to Sections 1, 4(i), 4(j). 201–205, 218, 226, and 303(r) of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201–205, 218, 226, 303(r), a *Notice of Proposed Rule Making and Notice of Inquiry* is issued, proposing amendment of 47 CFR §§ 64.706 and 64.708(d) as set forth below.

10. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, all interested parties may file comments on the matters discussed in this Notice and on the proposed rules contained below by March 9, 1995. Reply comments are due by March 24, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 64

Communications Common Carrier, Telephone.

Federal Communications Commission.

William F. Caton,

Secretary.

Proposed Rules

Part 64 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201–4, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 201, 218, 225, 226, 227, unless otherwise noted.

2. The heading of Subpart G is revised to read as follows:

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Telephone Operator Services; Pay-Per-Call Services

3. Section 64.706 is revised to read as follows:

§ 64.706 Minimum standards for the routing and handling of emergency telephone calls.

Upon receipt of any emergency telephone call, providers of operator services and aggregators shall ensure immediate connection of the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

4. Section 64.708 is amended by revising paragraph (d) to read as follows:

§ 64.708 Definitions.

* * * * *

(d) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements, both the party on the originating end of the call and the party on the terminating end of the call are consumers under this definition;

* * * * *

[FR Doc. 95–3493 Filed 2–10–95; 8:45 am]

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Notices

Federal Register
Vol. 60, No. 29
Monday, February 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Mantrose-Haeuser Company, Inc., of Attleboro, Massachusetts, an exclusive license to U.S. Patent No. 5,019,403, issued May 28, 1991, (Serial No. 07/450,192), "Coating for Substrates Including High Moisture Edible Substrates." Notice of Availability was published in the **Federal Register** on December 13, 1989.

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: *Send comments to:* USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Mantrose-Haeuser Company, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator
[FR Doc. 95–3470 Filed 2–10–95; 8:45 am]
BILLING CODE 3410–03–M

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Oryx Resources of Binghamton, New York, an exclusive license to U.S. Patent No. 5,169,666 issued December 8, 1992 (Serial No. 07/791,691), "Preparation of Simulated Human Milk Protein by Low Temperature Microfiltration." Notice of Availability was published in the **Federal Register** on November 14, 1991

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Oryx Resources has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator
[FR Doc. 95–3471 Filed 2–10–95; 8:45 am]
BILLING CODE 3410–03–M

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agricultural Research Service, intends to grant to Quincy, Illinois, an exclusive license to U.S. Patent No. 5,122,188 issued June 16, 1992, (Serial No. 07/519,197), "Vegetable Oil Based Printing Ink." Notice of Availability was published in the **Federal Register** on May 3, 1990.

DATES: Comments must be received on or before April 14, 1995

ADDRESSES: *Send comments to.* USDA, ARS, Office of Technology Transfer Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Quincy Soybean Company has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,
Assistant Administrator
[FR Doc. 95–3472 Filed 2–10–95; 8:45 am]
BILLING CODE 3410–03–M

DEPARTMENT OF COMMERCE

Bureua of Export Administration

[Docket Nos. 3101–01, 3101–02]

Reza Panjtan Amiri, Also Known as Ray Amiri, Individually and Doing Business as Ray Amiri Computer Consultants (RACC), Now Also Known as CCC Inc., Respondents; Modification of Order of September 25, 1993

Whereas, on September 25, 1993, the then-Acting Under Secretary for Export Administration, Barry Carter, entered an Order[1] denying Reza Panjtan Amiri, also known as Ray Amiri, individually and doing business as Ray Amiri Computer Consultants (RACC), now also know as CCC Inc. (hereinafter collectively referred to as Amiri), all U.S. export privileges for a period of 20 years, based on a finding that Amiri had violated the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5,1994)) (the Act),[2] and the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1994)) (the Regulations);

Whereas, the September 25, 1993 Order entered against Amiri identified as one of his addresses as "1411 Fifth Street, Suite 303, Santa Monica, California 90401";

Whereas, Ulysses International[3] has submitted information that Amiri has ceased doing business at 1411 Fifth Street, Suite 303, Santa Monica, California 90401; and

Whereas, based on the information submitted by Ulysses International, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), has requested that the September 25, 1993 Order be modified by deleting 1411 Fifth Street, Suite 303, Santa Monica, California 90401 as one of the addresses for Amiri.

Accordingly, it is hereby ordered that the September 25, 1993 Order denying all U.S. export privileges to Reza Panjtan Amiri, also known as Ray Amiri, individually and doing business as Ray Amiri Computer Consultants (RACC), now also know as CCC Inc., is modified by deleting "1411 Fifth Street, Suite 303, Santa Monica, California 90401" as one of the addresses for Amiri. In all other aspects, the September 25, 1993 Order remains in full force and effect.

This Order, which is effective immediately, shall be published in the **Federal Register**.

Entered this 6th day of February, 1995.
[FR Doc. 95–3475 Filed 2–10–95; 8:45 am]
BILLING CODE 3510–DT–M

[1] 58 FR 51610 (October 4, 1993).

[2] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

[3] Ulysses International is a California corporation whose offices are located at 1411 Fifth Street, Suite 303, Santa Monica, California 90401.

International Trade Administration

[C–201–001]

Leather Wearing Apparel From Mexico; Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review.

SUMMARY: In response to a request by the Government of Mexico (GOM), the Department of Commerce (the Department) has conducted a changed circumstances countervailing duty administrative review. The review covers the period January 1, 1994 through September 30, 1994 and two companies, Maquiladora Pieles Pitic, S.A. de C.V. (MPP) and Finapiel de Mexico, S.A. de C.V. (Finapiel). The purpose of the review is to reexamine the cash deposit rate for these two exporters that was set in the final results of the last administrative review of the countervailing duty order on leather wearing apparel from Mexico (59 FR 43815; August 25, 1994).

We preliminarily determine the cash deposit rate to be zero for both companies. If the final results remain unchanged from these preliminary results, we will instruct U.S. Customs to require zero cash deposits of estimated countervailing duties on shipments of leather wearing apparel from MPP and Finapiel.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1994, the Department published the final results of the last administrative review of the countervailing duty order on leather wearing apparel from Mexico, covering the January 1, 1992 through December 31, 1992 review period (46 FR 21357; April 10, 1981). In that review, 65 companies which the GOM certified did not receive benefits from the programs under review received a cash deposit rate of zero. All other companies, which did not respond to our questionnaire, including MPP and Finapiel, received a cash deposit rate of 13.35 percent based on best information available.

On December 1, 1994, the GOM requested a changed circumstances review to examine the cash deposit rate applicable to MPP and Finapiel. In its request, the GOM stated that MPP and Finapiel were excluded from the list of GOM-certified zero-benefit recipients submitted to the Department in the recently completed administrative review due to an oversight by the GOM. With its request, the GOM provided company and government certifications that MPP and Finapiel did not apply for or receive any net subsidy during the first three quarters of 1994 from the programs that were previously found countervailable or not-used, and will not apply for or receive any such net subsidy in the future, in accordance with 19 CFR 355.22(a)(2)(1994). The GOM also stated that it has taken steps to ensure that the type of oversight which occurred in this case will not be repeated in future administrative reviews.

On December 21, 1994 (59 FR 65755), the Department initiated a changed circumstances review to examine the cash deposit rate for MPP and Finapiel. We conducted verification of the certification statements at both GOM and company offices from January 9 through January 12, 1995. At verification, we confirmed that, during the first three quarters of 1994, MPP and Finapiel did not apply for or receive any benefits from the programs examined by the Department in the last administrative review. These programs were:

(A) BANCOMEXT Loans and Export Financing
(B) Certificates of Fiscal Promotion (CEPROFI)
(C) FOGAIN
(D) FONEI
(E) State Tax Incentives
(F) PITEX
(G) Import Duty Reductions and Exemptions

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(H) Article 15 Loans

The Department has conducted this review in accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls, and infants, and other leather apparel products including leather vests, pants, and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 4203.10.4030, 4203.10.4060, 4203.10.4085 and 4203.10.4095. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1994 through September 30, 1994 and eight programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, during the first three quarters of 1994, MPP and Finapiel did not receive any benefits from the programs examined in the last administrative review of this order. Therefore, if the final results remain the same as these preliminary results, the Department will instruct the Customs Service to collect zero cash deposits of estimated countervailing duties, as provided by the Act, on shipments of Mexican leather wearing apparel from MPP and Finapiel exported on or after the date of publication of the final results of this review .

Interested parties may request a hearing not later than 10 days after the date of publication of this notice (See 19 CFR 355.38(b)). Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with section 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due (*See* 19 CFR 355.34(b)(1)(iii)).

The Department will publish the final results of this changed circumstances administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This changed circumstances administrative review and notice are in accordance with section 751(b)(1) of the Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.22(h).

Dated: February 7, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3662 Filed 2–10–95; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Request Submitted to the Office of Management and Budget for Review

AGENCY: The Corporation for National and Community Service (CNS).

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information proposal by CNS, currently under review by OMB.

DATES: OMB and CNS will consider comments on the proposed collection of information and record keeping requirements received within 10 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comment to both:

Chuck Helfer Study Director, CNS, 1201 New York Ave., NW., Washington DC 20525

Daniel Chenock, Desk Officer, OMB, 3002 NEOB, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Chuck Helfer, (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service Issuing Proposal: Office of Evaluation

Title of Form: Learn and Serve America—Higher Education Annual Accomplishments Survey and Community Impact Survey

Need and Use: The National and Community Service Trust Act of 1993 (Pub. L. 103–82) requires the Corporation for National Service to evaluate its programs on a regular basis. This information is required for program management, planning, and required record keeping

Type of Request: Submission of a new collection

Respondents Obligation to Reply: Voluntary

Frequency of Collection: Once each year for three years

Estimated Number of Responses: 1,250

Average Burden Hours per Response: .51 hours

Estimated Annual Reporting or Disclosure Burden: 637.5 hours

Regulatory Authority: Public Law 103–82

Dated: February 7, 1995.

Lance Potter,

Director, Office of Evaluation

[FR Doc. 95–3548 Filed 2–10–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on March 2–3, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The Task Force should place special emphasis on the application of technology to enhance the effectiveness of the evolving force structure within tight fiscal constraints and should also place a special focus on issues dealing with operations other than war.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 7, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3452 Filed 2–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Theater Missile Defense (TMD)

ACTION: Change in Date/Location of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Theater Missile Defense (TMD) scheduled for February 1–2, 1995 at the Pentagon, Arlington, Virginia, as published in the **Federal Register** (Vol. 60, No. 19, Page 5656, Monday, January 30, 1995, FR Doc. 95–2195) will be held on February 13–14, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia.

Dated: February 7, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3453 Filed 2–10–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Quality of Life

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Quality of Life will meet in open session on February 27–28, 1995 at the Hyatt Arlington at Key Bridge, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call LtCol Dave Witkowski at (703) 697–7192.

Dated: February 7, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3454 Filed 2–10–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Yakima Training Center Cultural and Natural Resources Committee—Technical Committee

AGENCY: HQ, I CORPS & Fort Lewis, DOD.

ACTION: Notice of meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of Meeting: March 9, 1995.

Place: Yakima Training Center, Building 266, Yakima, Washington.

Time: 1:00 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan development.

All proceedings are open. For future information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3552 Filed 2–10–95; 8:45 am]

BILLING CODE 3710–08–M

Yakima Training Center Cultural and Natural Resources Committee—Technical Committee

AGENCY: HQ, I CORPS & Fort Lewis, DOD.

ACTION: Notice of meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of Meeting: March 16, 1995.

Place: Yakima Training Center, Building 266, Yakima, Washington.

Time: 1:00 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan development.

All proceedings are open. For further information contact Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3551 Filed 2–10–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Dredged Material Placement at Duluth-Superior Harbor, Minnesota and Wisconsin

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Detroit District, is evaluating the environmental impacts of dredged material placement alternatives for maintenance dredging at Duluth-Superior Harbor, Minnesota and Wisconsin. The Federal navigation project includes 17 miles of navigation channels, anchorage areas, and maneuvering basins, with channel depths ranging from 20 to 27 feet. Existing dredged material placement sites have insufficient capacity for future maintenance dredging needs. Alternatives under consideration for future dredged material placement include expansion of the existing Erie Pier Confined Disposal Facility (CDF) by increasing the dike heights, other diked in-water facilities, upland placement, habitat creation, and open water disposal. The no Federal action alternative will also be considered.

ADDRESSES: U.S. Army Corps of Engineers, Army Engineer District, Detroit, Environmental Analysis Branch, P.O. Box 1027; Detroit, Michigan 48231–1027.

FOR FURTHER INFORMATION CONTACT:

Duluth-Superior Harbor is located at the western end of Lake Superior between Duluth, Minnesota, and Superior, Wisconsin. The harbor is formed by the waters of the St. Louis River, the second largest tributary of Lake Superior. Approximately 113 docks or terminals at Duluth-Superior Harbor handle a variety of commodities including iron ore, coal, limestone, petroleum, steel and scrap iron, cement, general cargo, and grain.

Maintenance dredging for the Federal project averages about 150,000 yards per year. Much of the dredged material is placed in the Erie Pier CDF, which is located on approximately 82 acres along the northwest shore of Duluth-Superior Harbor. The CDF was constructed in 1979 to hold up to one million cubic yards of material dredged from the Federal navigation project over a 10 year period. Clean sand dredged from the outer parts of the harbor is generally used for beach nourishment to mitigate the affects of beach erosion along the lake.

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Since 1988, a washing operation has been conducted at the Erie Pier CDF to separate out the cleaner, coarse grained fraction of the dredged materials for beneficial use. Through this operation, over a half-million cubic yards of coarse grained material have been removed for various beneficial uses, primarily construction projects. This has helped extend the life of the Erie Pier CDF by several years. Nonetheless, remaining capacity at the Erie Pier CDF is insufficient for future dredged material placement needs.

The U.S. Army Corps of Engineers, Detroit District, is therefore evaluating the environmental impacts of several dredged material placement alternatives for Duluth-Superior Harbor in coordination with the development of a dredged material placement plan for the harbor. Alternatives under consideration include expansion of the existing Erie Pier CDF by increasing the dike heights, diked in-water facilities, upland placement, habitat creation, and open water disposal. To date, no viable sites for upland placement have been identified in the harbor vicinity. The no Federal action alternative will also be considered and will serve as a baseline from which to measure the impacts of the action alternatives.

Possible sites for diked in-water facilities include: (1) A 25 acre site in the embayment on the east side of Erie Pier, (2) an 18-acre embayment and deep ship mooring area on the south side of the Duluth, Missabe and Iron Range Railroad (DMIR) taconite storage facility (about 1 mile northeast from Erie Pier), and (3) 65 acres of the embayment on the east side of the DMIR facility.

The Habitat Creation alternative focuses on the filling of existing deep holes (which were created in the harbor by past mining activities) with dredged material to an appropriate elevation for development of shallow water fishery habitat. Sites under consideration include: (1) The deep hole adjacent to Hearding Island in the outer harbor, and (2) the Cross Channel deep hole, located in the inner harbor between Interstate Island and the Cross Channel. Barrier islands would be constructed to shelter the created fishery habitat from wave action and to provide upland habitat for birds.

Significant issues to be analyzed include potential impacts on wetlands, water quality, fish and wildlife habitat, and cultural resources. Social impacts, including impacts upon recreation, aesthetics, and the local economy, will also be considered.

The proposed actions will be reviewed for compliance with the Fish and Wildlife Act of 1956; the Fish and Wildlife Coordination Act of 1958; the National Historic Preservation Act of 1966; the National Environmental Policy Act (NEPA) of 1969; the Clean Air Act of 1970; the Coastal Zone Management Act of 1972; the Endangered Species Act of 1973; the Water Resources Development Act of 1976; the Clean Water Act of 1977 Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 1971, Executive Order 11988, Flood Plain Management, May 1977; Executive Order 11990, Wetland Protection, May 1977; and Corps of Engineers, Dept. of the Army, 33 CFR Part 230, Environmental Quality: Policy and Procedure for Implementing NEPA.

The proposed dredged material placement is being coordinated with the U.S. Fish and Wildlife Service and the Minnesota Department of Natural Resources. Coordination will also be initiated with the U.S. Environmental Protection Agency, the Minnesota Pollution Control Agency, the Minnesota State Historic Preservation Office, the Bureau of Indian Affairs, local and regional Indian tribes, and other interested agencies and individuals.

A public information meeting was held on November 19, 1994, sponsored by the Duluth Seaway Port Authority, in conjunction with the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, and the Harbor Technical Advisory Committee of the Duluth-Superior Metropolitan Interstate Committee. The purpose of the meeting was to inform the local residents and other interested individuals and environmental groups of the deep hold/habitat creation concept being investigated as a viable dredged material placement alternative.

All Federal, state, and local agencies, Indian tribes, and other private organization and parties are invited to participate in the proposed project review. Questions, concerns, and comments may be directed to the address given in this notice. During the DEIS public comment period, a public meeting will be scheduled, if necessary. It is anticipated that the DEIS would be available for public review in 1996.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95-3553 Filed 2-10-95; 8:45 am]

BILLING CODE 3710-GA-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Solicitation for Financial Assistance; Research, Development and Demonstration of New and Advanced Technology for the Glass Industry; Correction

AGENCY: U.S. Department of Energy, Idaho Operations Office.

ACTION: Correction.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, published a complete solicitation in the **Federal Register** on January 24, 1995 (60 F.R. 4608, Notice), requesting cost shared applications for Research, Development and Demonstration of New and Advanced Technology for the Glass Industry (No. DE-PS07-95ID13346). The purpose of this notice is to make the following corrections and add additional text:

1. Page 4609 (1st Column), "**DATES:** The deadline for receipt of applications is 4:00 p.m. MDT, March 22, 1995." is changed to "**DATES**: The deadline for receipt of applications is 4:00 p.m. MDT, March 29, 1995."

2. Page 4609 (2nd Column), Add the following paragraph to the end of section B. Project Description, "The Gas Research Institute (GRI), 8600 West Bryn Mawr Ave., Chicago, IL 60631, has expressed interest in co-funding gas related projects which will benefit the glass industry. GRI has typically supported the research, development and demonstration phases of projects. Applicants wishing to be considered for GRI support should contact Mr. Leslie Donaldson (telephone number 312-399-8295) at GRI before submitting proposals. It is suggested that bidders contact GRI as early in the proposal preparation process as is practical. While the cost share requirements of the solicitation must be met, natural gas industry funding is NOT required to obtain DOE support. Likewise, natural gas industry funding will NOT provide assurance of DOE support."

3. Page 4610 (2nd Column), under F. Proposal Evaluation, a. Application Deadline: The sentence, "The deadline for receipt of applications is 4:00 p.m. MST, March 22, 1995." is changed to "The deadline for receipt of applications is 4:00 p.m. MST, March 29, 1995."

4. Page 4611 (1st Column), under e. Merit Reviews (which began on p. 4610). The sentence, "Selections for negotiations are expected to be made May 10, 1995, and financial assistance awards are expected to be made beginning July 21, 1995," is changed to "Selections for negotiations are expected to be made May 17, 1995, and financial assistance awards are expected to be made beginning July 28, 1995."

5. Page 4612 (1st Column), h. Assurances and Certifications: The sentence, "It is advised that prospective applicants submit their requests in writing no later than February 21, 1995." is changed to "It is advised that prospective applicants submit their requests in writing no later than February 28, 1995."

6. Page 4612 (1st Column), i. Questions & Answers: The sentence, "Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than February 15, 1995."is changed to "Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than February 22, 1995."

Dated: February 2, 1995.

J.O. Lee,

Director of Procurement Services Division.

[FR Doc. 95-3531 Filed 2-10-95; 8:45 am]

BILLING CODE 6450-01-M

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Tuesday, February 21, 1995, 10:00 a.m. to 12:00 noon.

ADDRESSES: The board meeting will be held at: Barnwell County Museum, Marlboro Avenue, Barnwell, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, (803) 725-8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

10:00 a.m.—Budget Issues
12:00 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details.

A final agenda will be available at the meeting Tuesday, February 21, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803) 725-8074.

Issued at Washington, DC on February 8, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95-3532 Filed 2-10-95; 8:45 am]

BILLING CODE 6450-01-P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES: Wednesday, February 22, 1995 10:00 am-2:00 pm.

ADDRESSES: February 22, 1995 meeting: Carson County Square House Museum, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477-3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

10:00 am—Welcome—Agenda Review—Introductions
Co-Chairs' Comments
- report from participants in Feb 14-15 SSAB Workshop

10:30 am—Updates
- occurrence report from DOE
- other DOE updates: pit storage and heat buildup in igloos

11:30 am—Working Lunch
- Work plan for next year (and task forces to address issues)
- Consider T&P Subcommittee recommendation; adopt plans

1:00 pm—Subcommittee Reports
- Training and Program Subcommittee
- Community Outreach Subcommittee
- Budget and Finance Subcommittee
- Nominations and Membership
- Policy and Personnel

1:45 pm—Next Meetings (1995)
- Tuesday, March 28, 1:30-5:50 pm
- Tuesday, April 25, 1:30-5:50 pm
- Tuesday, May 23, 1:30-5:50 pm
- Tuesday, June 27, 1:30-5:50 pm

2:00 pm—Adjourn

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statement pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is

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being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on February 8, 1995.

Rachel Murphy Samuel,

Acting Deputy, Advisory Committee Management Officer.

[FR Doc. 95–3529 Filed 2–10–95; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development.

Date and Time: Tuesday, February 28, 1995, 8:45 am–1:00 pm.

Place: Washington, D.C.—Final Location To Be Determined—Please call the SEAB Office on (202) 586–7092 after 2/15/95 for details.

FOR FURTHER INFORMATION CONTACT:

Peter F. Didisheim, Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7700.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development assists the Board in its top-level review of the Department's civilian energy research programs. The Board's Task Force will examine the Department's current research and development portfolio against its strategic goals, policy priorities and national needs will examine the Departments' research and development planning and management process and the first research, development, demonstration, and commercialization management plan, required biennially by the Energy Policy Act of 1992.

Tentative Agenda

8:45 am—Opening Remarks
9:00 am—Panel #1: Transportation and Related R&D Needs
10:45—Break
11:00 am—Panel #2: Building & Industry and Related R&D Needs
12:45 pm—General Discussion and Public Comment
1:00 pm—Adjourn Public Meeting

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Peter F. Didisheim, Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585. In order to insure that Task Force members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, February 24, 1995.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on February 8, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 94–3528 Filed 2–10–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG95–29–000, et al.]

Austin Cogeneration Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 6, 1995.

Take notice that the following filings have been made with the Commission:

1. Austin Cogeneration Corporation

[Docket No. EG95–29–000]

On February 1, 1995, Austin Cogeneration Corporation ("Applicant"), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant is a Delaware corporation formed to acquire an indirect ownership interest in a 255 MW natural gas-fired cogeneration facility to be located in the City of Austin, Texas, and/or operate such facility and engage in project development activities with respect thereto.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CINergy Services, Inc.

[Docket No. ER95–501–000]

Take notice that on January 30, 1995, CINergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., made an abbreviated filing to amend each of its coordination schedules to add guidelines for the recovery of emission allowance costs. The rate schedules affected by this filing are the following:

Rate schedule	Other signatory(ies)
CG&E Rate Schedule FERC No. 13	Indiana Michigan Power Co. and Ohio Power Company.
CG&E Rate Schedule FERC No. 38	Columbus Southern Power Co.
CG&E Rate Schedule FERC No. 39	Dayton Power & Light Co.
CG&E Rate Schedule FERC No. 43	East Kentucky Power Cooperative, Inc.

Rate schedule	Other signatory(ies)
CG&E Rate Schedule FERC No. 33	Louisville Gas & Electric Co.
CG&E Rate Schedule FERC No. 45	Ohio Valley Electric Corp.
CG&E Rate Schedule FERC No. 47	Cleveland Public Power.
CG&E Rate Schedule FERC No. 48	City of Piqua, Ohio.
PSI Rate Schedule FERC No. 257	Big Rivers Electric Co.
PSI Rate Schedule FERC No. 260	Blue Ridge Power Agency.
PSI Rate Schedule FERC No. 263	Electric Clearinghouse, Inc.
PSI Rate Schedule FERC No. 262	Enron Power Marketing, Inc.
PSI Rate Schedule FERC No. 222	Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Gas and Electric Co.
PSI Rate Schedule FERC No. 231	Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Gas and Electric Co.
PSI Rate Schedule FERC No. 250	Illinois Municipal Electric Agency.
PSI Rate Schedule FERC No. 49	Indiana Michigan Power Co.
PSI Rate Schedule FERC No. 234	Indiana Municipal Power Agency.
PSI Rate Schedule FERC No. 247	Indianapolis Power & Light Co.
PSI Rate Schedule FERC No. 254	Kentucky Utilities Co.
PSI Rate Schedule FERC No. 266	LG&E Power Marketing, Inc.
PSI Rate Schedule FERC No. 256	City of Logansport, Indiana.
PSI Rate Schedule FERC No. 261	Louis Dreyfus Electric Power, Inc.
PSI Rate Schedule FERC No. 208	Louisville Gas & Electric Co.
PSI Rate Schedule FERC No. 227	Northern Indiana Public Service Co.
PSI Rate Schedule FERC No. 255	City of Piqua.
Ohio PSI Rate Schedule FERC No. 265	Rainbow Energy Marketing Corp.
PSI Rate Schedule FERC No. 264	Tennessee Valley Authority.
PSI Rate Schedule FERC No. 241	Wabash Valley Power Authority, Inc.
PSI Rate Schedule FERC No. 233	Wabash Valley Power Association, Inc.
PSI Rate Schedule FERC No. 242	American Municipal Power-Ohio, Inc.
PSI Rate Schedule FERC No. 205	Central Illinois Public Service Co.
PSI Rate Schedule FERC No. 207	Southern Indiana Gas and Electric Co.
PSI Rate Schedule FERC No. 245	Baltimore Gas & Electric Co.
PSI Rate Schedule FERC No. 258	AES Power, Inc.

Each of the customers under the aforementioned rate schedules were served with a copy of the filing.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER95–502–000]

Take notice that on January 30, 1995, Central Illinois Public Service Company (CIPS), submitted an abbreviated filing for the limited purpose of including the cost of SO_2 Emission allowances as an incremental out-of-pocket cost in CIPS' rates for coordination sales. The Commission's December 15, 1994 Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates (Interim Rule) contemplated that utilities such as CIPS, affected by the 1990 Clean Air Act Amendments as of January 1, 1995, would make such a filing.

As permitted by the Interim Rule, CIPS seeks an effective date of January 1, 1995 for the proposed change in rates and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on all customers under CIPS's Coordination Sales Tariff and on all parties to various bilateral or trilateral agreements with CIPS affected by the proposed change. Copies of the filing are available for public inspection in CIPS' offices in Springfield, Illinois.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER95–503–000]

Take notice that on January 30, 1995, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin), (hereinafter NSP Companies) are Parties to various Diversity Exchange and Interconnection and Interchange Agreements. This filing contains amendments to coordination agreements to recover the replacement cost of emission allowances in coordination rates. The purpose of this filing is to comply with the Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emission Allowances in Coordination Rates, Docket No. PL95–1–000, issued on December 15, 1994.

In this Policy Statement and Interim Rule the Commission stated that in exchange for granting waiver of notice, a utility may implement this emission allowance replacement cost treatment, as of January 1, 1995, if it agrees to refund any allowance-related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing without investigation or hearing. NSP Companies request that the Commission grant waiver of its Part 35 notice provisions and accept this filing effective January 1, 1995, subject to refund.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER95–504–000]

Take notice that on January 31, 1995, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 6 to its partial requirements service agreement with Manitowoc Public Utilities (MPU), Manitowoc County, Wisconsin. Supplement No. 6 provides MPU's contract demand nominations for January 1995–December 1999, under WPSC's W–2 partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

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Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER95–505–000]

Take notice that on January 31, 1995, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 8 to its service agreement with Consolidated Water Power Company (CWPCO). Supplement No. 8 provides CWPCO's contract demand nominations for January 1994–December 1999, under WPSC's W–3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER95–506–000]

Take notice that on January 30, 1995, Illinois Power Company (Illinois Power), tendered for filing an Addendum to its coordination agreements. Illinois Power states that the purpose of the Addendum is to explain how the cost of emission allowances are to be calculated.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER95–507–000]

Take notice that on January 30, 1995, Ohio Edison Company and Pennsylvania Power Company, tendered for filing amendments to the agreements. The purpose of this filing is to amend energy rates contained in the foregoing agreements to reflect the energy-related costs incurred by Ohio Edison Company and Pennsylvania Power Company to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Compahy (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–508–000]

Take notice that on January 30, 1995, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin), (hereinafter NSP Companies) are Parties to various coordination agreements. This filing contains amendments to these coordination agreements to recover the replacement cost of emission allowances in coordination rates. The contents of this filing comply with the Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emission Allowances in Coordination Rates, Docket No. PL95–1–000, issued on December 15, 1994.

In accordance with the waiver of notice provisions contained in the Policy Statement and Interim Rule, NSP Companies request that the Commission grant waiver of its Part 35 notice provisions and accept this filing effective January 1, 1995, subject to refund.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–509–000]

Take notice that on January 30, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing proposed supplements to its Rate Schedules FERC No. 92 and FERC No. 96.

The proposed Supplement No. 7 to Rate Schedule FERC No. 96 increases the rates and charges for electric delivery service furnished to public customers of the New York Power Authority (NYPA) by $22,367,000 annually based on the 12-month period ending March 31, 1996.

The proposed Supplement No. 6 to Rate Schedule FERC No. 96, applicable to electric delivery service to NYPA's non-public, economic development customers, and the proposed supplement No. 4 to Rate Schedule FERC No. 92, applicable to electric delivery service to commercial and industrial economic development customers of the county of Westchester Public Agency (COWPUSA) or the New York City Public Utility Service (NYCPUS), increase the rates and charges for the service by $217,000 annually based on the 12-month period ending March 31, 1996.

The proposed increases are a part of a Company-wide general electric rate increase application by the Edison which is pending before the New York Public Service Commission (NYPSC).

Although the proposed supplements bear a nominal effective date of April 1, 1995, Con Edison will not seek permission to make these effective until the effective date, estimated to be April 1, 1995 of the rate changes authorized by the NYPSC.

A copy of this filing has been served on NYPA, COWPUSA, NYCPUS, and the New York Public Service Commission.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Iowa-Illinois Gas and Electric Company

[Docket No. ES95–20–000]

Take notice that on January 31, 1995, Iowa-Illinois Gas and Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue up to $150 million of unsecured short-term debt during the period commencing June 30, 1995 and ending June 30, 1997, with a final maturity date not later than June 30, 1998.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3494 Filed 2–10–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–37–000]

Columbia Gas Transmission Corp.; Intent to Prepare an Environmental Assessment for the Proposed Panda-Brandywine Project and Request for Comments on Environmental Issues

February 7, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation associated with the jurisdictional facilities proposed in the Panda-Brandywine

Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

Columbia Gas Transmission Corporation (Columbia) wants Commission authorization to construct and operate 6.3 miles of pipeline to transport up to 24,240 dekatherms of natural gas per day to Panda-Brandywine L.P. (Panda) for its Brandywine, Maryland cogeneration plant. Columbia's facilities would consist of:

—4.1 miles of 36-inch-diameter pipeline loop on Line WB in Hardy County, West Virginia;
—1.6 miles of 36-inch-diameter pipeline (designated as Line WB–5) that would replace approximately 1.5 miles of 26-inch-diameter pipeline in three sections (designated as Line WB) in Braxton County, West Virginia; and
—0.6 mile of 36-inch-diameter pipeline loop on Line SB–5 in Clay County, West Virginia.

In addition, a nonjurisdictional tap, measurement and regulation facilities, and about 0.5 mile of 20-inch-diameter nonjurdisdictional pipeline would be constructed by Washington Gas Light Company (WGL) in Prince George's County, Maryland, to supply gas to Panda's cogeneration plant.

The locations of the project facilities are shown in appendix 1.[2]

Land Requirements for Construction

The proposed replacement pipeline and loops would be built within or adjacent to existing pipeline rights-of-way (ROW). The construction ROW would typically be 75 feet wide consisting of a 50-foot-wide permanent ROW and a 25-foot-wide temporary ROW. The construction ROW would overlap existing ROW by about 25 feet. Generally, the old replaced pipeline would be removed except in specific areas such as some road/railroad crossings identified by Columbia. Following construction, the disturbed area would be restored and the 25 feet of temporary ROW and additional workspaces would be allowed to revert to their former land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Land use
- Cultural resources
- Vegetation and wildlife
- Endangered and threatened species
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. Issues are:

- The proposed project would cross two perennial streams, three intermittent streams, and eight nonforested wetlands.
- Access roads would cross the two perennial streams at five locations and intermittent streams at seven locations.
- There are three private wells within 50 feet of the proposed construction ROW.
- There are six residences within 50 feet of the proposed ROW.

Also, we have made a preliminary decision to not address the impacts of the nonjurdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–37–000;
- Send a *copy* of your letter to: Mr. John Wisniewski, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before March 10, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wisniewski at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of

[1] Columbia Gas Transmission Corporation's application was filed with the Commission under section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public References and Files Maintenance Branch, Room 3104, at 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. John Wisniewski, EA Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3466 Filed 2–10–95; 845 am]

BILLING CODE 6717–01–M

[Docket No. CP95–118–000]

East Tennessee Natural Gas Co.; Intent To Prepare an Environmental Assessment for the Proposed Roanoke Expansion Project and Request for Comments on Environmental Issues

February 7, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Roanoke Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is required and whether or not to approve the project.

Summary of the Proposed Project

East Tennessee Natural Gas Company (East Tennessee) wants Commission authorization to construct and operate 5.2 miles of pipeline loop to provide Roanoke Gas Company, in Roanoke, Virginia, with up to 9,789 decatherms per day of continued firm transportation service. East Tennessee's proposed facilities would consist of:

- 5.2 miles of 12-inch-diameter loops in Washington county, Virginia (3.06 miles of loop between milepost (MP) 3311–1+0.04 and MP 3311–1+3.10 and 2.14 miles of loop between MP 3310–1+8.82 and MP 3310–1+10.96); and
- A 980-horsepower uprate of existing compressor units at East Tennessee's Compressor Station 3110 in Wartburg, Morgan County, Tennessee.

The locations of these facilities are shown in appendix 1.[2]

Land Requirements for Construction

The proposed loops would be built adjacent to existing pipeline rights-of-way (ROW). The construction ROW would typically be 75 feet wide consisting of a 50-foot-wide permanent ROW and a 25-foot-wide temporary ROW. Following construction, the disturbed area would be restored and the 25 feet of temporary ROW would be allowed to revert to its former land use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste
- Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by East Tennessee. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis. Issues are:

- One wetland (palustrine forested/scrub-shrub/emergent) and six small perennial streams would be affected.
- There is one residence and one cemetery located within 50 feet of the construction ROW.
- There may be additional noise impact on nearby noise-sensitive areas from the uprate in compression at Compressor Station 3110.

Public Participation

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–118–000;
- Send a *copy* of your letter to: Mr. John Wisniewski, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E. Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before March 10, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Wisniewski at the above address

[1] East Tennessee Natural Gas Company's application was filed with the Commission under section 7 of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.W., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. John Wisniewski, EA Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3467 Filed 2–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–130–000]

Northern Natural Gas Co.; Intent To Prepare an Environmental Assessment for the Proposed East Leg Expansion Project and Request for Comments on Environmental Issues

February 7, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the East Leg Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Northern Natural Gas Company (Northern) wants to expand the capacity of its facilities in Iowa, Illinois and Wisconsin to transport an additional 107,600 million British thermal units per day of natural gas to four local distribution companies and one electric cogeneration plant. Northern requests Commission authorization, in Docket No. CP95–130–000, to construct and operate the following facilities needed to transport those volumes:

Phase I Facilities (1995)

- 6,000 horsepower (hp) of electric motor-driven compression at the new Hubbard Compressor Station in Hardin County, Iowa;
- Modification and repiping of the existing Waterloo Compressor Station in Black Hawk County, Iowa;
- 14,000 hp of gas turbine-driven compression at the new Earlville Compressor Station in Delaware County, Iowa;
- A new Quad Cities town border station (TBS) in Dubuque County, Iowa for deliveries to the Iowa-Illinois Gas and Electric Company;
- Modification of the existing Galena Compressor Station in Jo Daviess County, Illinois;
- Modification of the existing Beloit TBS near Beloit, Rock County, Wisconsin for deliveries to the Wisconsin Power and Light Company; and
- A new LS Power TBS in Walworth County, Wisconsin for Deliveries to the LS Power-Whitewater Limited Partnership (LS Power).

Phase II Facilities (1996)

- 3,200 hp of compression (two 1,600-hp gas turbine-driven compressors) at the new Belleville Compressor Station in Green County, Wisconsin.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 26.9 acres of land. Following construction about 8.6 acres would be maintained as new above-ground facility sites. The remaining 18.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands [3]
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issue will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. Keep in mind that this is a

[1] Northern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] According to the applicant, the project will not affect any waters of the United States. We will repot any potential impacts, or their absence, under this heading.

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preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Eight federally listed endangered or threatened species may occur in the proposed project area.
- A total of 8.6 acres of agricultural land, including a total of 3.2 acres of prime farmland soils, would convert to industrial use.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–130–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before March 13, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Gerber at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Gerber, EA Project Manager, at (202) 208–1121.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3468 Filed 2–10–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–361–000 CP93–361–001]

SunShine Interstate Transmission Co.; Suspension of Environmental Review Process for the Sitco/Sunshine Project

February 7, 1995.

The Preliminary Determination issued May 25, 1994, states that the Federal Energy Regulatory Commission (Commission) intends to prepare one Environmental Impact Statement (EIS) which examines the environmental impacts of both SunShine Interstate Transmission Company's (SITCO) and SunShine Pipeline Company's (SunShine) facilities. The Commission staff now notifies all parties that we are suspending environmental review. In a December 9, 1994 filing SITCO:

- States that it is studying a proposed amendment to its application which would reduce the length of the SITCO portion of the project. SITCO states that any amendment would be filed by May 1, 1995;
- Proposes a preferred schedule which contemplates start up of the EIS in November 1995; and
- Indicates that because of the needs of its customers, SITCO and SunShine now propose a pipeline in-service date of January 1998, rather than in 1996.

The Commission staff will issue a Notice of Intent to Prepare an EIS at an appropriate time in the future.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3463 Filed 2–10–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015(a)(1), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period beginning in January 1995. The Panel will continue to provide advice to the Director of Energy Research, on long-range planning and priorities in the national high energy physics program.

The Secretary of Energy has determined that renewal of the Panel is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Marsha Marsden at (301) 903–4140.

Issued in Washington, D.C. on February 8, 1995.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–3530 Filed 2–10–95; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL–5153–5]

Gulf of Mexico Program Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Ramada Inn, 798 E. I–10 Service Road, Slidell, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held March 7, 1995, at the Ramada Inn, 798 E. I–10 Service Road, Slidell, LA. The committee will meet from 8:30 to 4:30 p.m. Agenda items will include: Federal Participation Agreement Follow-up Planning; 1995 Symposium Preparation; FY 96 Funding Process; Measures of Environmental Success; and International Partnerships.

The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 95–3518 Filed 2–10–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5153–6]

Science Advisory Board

Environmental Health Committee; Preliminary Announcement—Dioxin Reassessment Review

Under Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) and the Indoor Air Quality/Human Exposure Committee (IAQC) of the Science Advisory Board (SAB) will meet jointly during the time period of late March to mid-April 1955 (specific date to be announced later) to review EPA's reassessment of 2,3,7,8-TCDD, dioxin. Information on the relevant documents may be found in FRL5070–7 (**Federal Register**, Vol. 59, 176, page 46980, September 13, 1994) which announced the documents and provided ordering information.

The purpose of this announcement is to identify members of the public wishing to make oral comments at the meeting and allow the SAB to plan sufficient time to accommodate these comments. This will be the only opportunity to register to make such comments at the meeting. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Anyone wishing to make a presentation at the meeting should forward a written statement (50 copies) to Mr. Samuel Rondberg, Designated Federal Official, at the Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 by March 10, 1995. Persons desiring to submit written materials for consideration by the Committees, but who do not wish to make an oral presentation may do so (provide 50 copies) at any time prior to the meeting.

Mr. Rondberg may be reached via telephone at (202) 260–2559, via Internet to rondberg.samuel@epamail.epa.gov, by facsimile to (202) 260–7118. Those persons submitting statements for oral presentation will be notified of the specific meeting date by the SAB as soon as possible.

Dated: January 31, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–3517 Filed 2–10–95; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 22]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

PURPOSE: The proposed Survey of Eximbank Competitiveness (1995) to Exporters and Banks as authorized by 12 U.S.C. 635(b), Export-Import Bank of the United States Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of evaluating the private sector's view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to assess and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

SUMMARY: The following summarizes the information collection proposal submitted to OMB.

(1) Type of request: revised
(2) Number of forms submitted: one
(3) Form Number: EIB 85–3 (Rev. 12/92)
(4) Title of information collection: Survey of Eximbank Competitiveness (1994) to Exporters and Banks
(5) Frequency of use: annual
(6) Respondents: Commercial banks and exporters in the United States
(7) Estimated total number of annual responses: 25
(8) Estimated total number of hours needed to fill out the form: 25

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed application may be obtained from Tamzen C. Reitan, Agency Clearance Officer, (202) 565–3333. Comments and questions should be directed to Mr. Jeff Hill, Office of Management and Budget, Information and Regulatory Affairs, Room 10102, Washington, DC 20503, (202) 395–3176. All comments should be submitted within two weeks of this notice; if you intend to submit comments but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: February 6, 1995.

Tamzen C. Reitan,

Agency Clearance Officer.

[FR Doc. 95–3448 Filed 2–10–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

[Docket No 94–20]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements

By Order published in the **Federal Register** (59 F.R. 52165) on October 14, 1994, ("October Order"), the Commission directed 243 carriers, conferences and marine terminal operators to show cause why the Commission should not cancel their tariffs or essential terms publications on file in paper format. The parties named as respondents to his proceeding had failed to cancel their essential terms publication and/or failed to convert their tariffs to ATFI format. This action was taken pursuant to section 8 of the Shipping Act of 1984, 46 U.S.C. app § 1707, the Commission's regulations implementing ATFI at 46 C.F.R. Part 514, and Supplemental Reports Nos. 2, 3 and 4[1] issued in Docket No. 90–23, *Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce (Automated Tariff Filing and Information System)*.

Written responses were received from or on behalf of 45 parties. The responses of 24 carriers, conferences or marine terminal operators requested that the tariffs or essential terms publications subject to the October Order be cancelled or stated that cancellations had been issued.[2] The responses of 13

[1] *Supplemental Report No. 2*, served August 4, 1992; *Supplemental Report No. 3* (57 *Fed. Reg.* 59,999) and *Supplemental Report No. 4* (58 *Fed. Reg.* 31,522) advised carriers that failure to convert tariffs to ATFI format by the scheduled filing dates would subject them to show cause proceedings.

Moreover, section 502(b)(1) of Public Law 102–582 ("P.L. 102–582") requires all tariffs and essential terms of service contracts filed with the Commission to be in electronic format.

[2] These are: ADM/Growmark River System, Inc.; American Africa Europe Line GmBH; Australia-Eastern U.S.A. Shipping Conference; Baltimore Forest Products Terminals, Concorde Line Central American Service; Continental North Atlantic Westbound Freight Conference; Cool Carriers (Svenska) AB; D.B. Turkish Cargo Lines; Dole fresh Fruit Company which has been renamed Dole

Continued

carriers and marine terminal operators stated that ATFI tariffs had been filed prior to the issuance of the October Order.[3] Commission records conform that ATFI tariffs are now on file for these parties. Nine other carriers and marine terminal operators filed ATFI tariffs subsequent to the issuance of the October Order.[4] Five respondents cancelled their tariffs without otherwise submitting written responses in this proceeding.[5] One carrier's tariff was cancelled for failure to maintain active evidence of non-vessel-operating common carrier financial responsibility.[6] These carriers, conferences and marine terminal operators will be dismissed from this proceeding.

Other responses to the October Order merely provided further information but did not cancel their paper-format tariffs or essential terms. Distribution Publications, Inc. responded on behalf of Parr Terminal Railroad and stated that this firm is not a marine terminal operator subject to the Commission's tariff filing requirements and that the tariff had been filed for informational purposes only.

South Europe American Conference Responded on behalf of the Greece Westbound Conference stating that it believed the October Order referred to the Greece/USA Rate Agreement which had been disbanded. This does not appear to be correct. The Commission has on file an essential terms publication published on behalf of Agreement No. 202–009238, the assigned agreement number for the Greece Westbound Conference.

Transportaton Services, Inc. named four carriers that it previously represented and stated that it believed that these firms are out of business.[7] The name carriers did not otherwise respond to the October order.

One response was received from a person maintaining the post office box of one of the respondents, Osborne Truck Line, Inc. and stated that the respondent is no longer at that address and could not be located. Another response was received from a firm stating that it had unsuccessfully attempted to forward the October Order to Container Express Lines Inc., but was unable to locate its current address.

None of the carriers, conferences and marine terminal operators referred to above have shown good cause why their paper-format tariffs or essential terms publications should not be cancelled. Accordingly the tariffs published by these carriers will be cancelled.

The 191 carriers, conferences and marine terminals listed in Appendix A that did not respond to the October Order and that did not comply with ATFI tariff filing requirements also will have their paper tariffs or essential terms publications cancelled.

The 52 carriers, conferences and maine terminal operators listed in Appendix B that have complied with the filing requirements or that have cancelled their tariffs will be dismissed from this proceeding.

Therefore, it is ordered that the paper tariffs or essential terms publications for the carriers, conferences or marine terminal operators identified in Appendix A to this Order are cancelled effective five days from publication of this Order in the **Federal Register**.

It is further ordered, that the parties listed in Appendix B to this Order are dismissed from this proceeding.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix A

A/S Dampskibsselskabet Torm
Able Warehousing
Aegis Logistic System, Inc.
Agrex Incorporated
Airport Brokers Corporation
Alliance Navigation Line Inc.
Allied Pickfords U.S.A., Inc.
Amazon Lines Limited
America Russia Turkey Ocean Navigation Shipping Lines
American Automar, Inc.
American Container Transport, Inc.
American Contract Freight Line, Ltd.
American Transport Line, Ltd.
American Transport Lines, Inc.
Anchor Container Services Company
Aremar C.I.F.S.A.
Arpin International Group
Arrowpac, Inc.
Associated Container Transportation (Australia) Limited
Atlantic Land and Improvement Company, The Atlantik Express Linie Thien & Heyenga Schiffaharts GmbH & Co.
Australia-Pacific Coast Rate Agreement
B.C.R. Line
Bangladesh Shipping Corporation
CBSL-U.S. Med Line Limited
Bernuth Lines Ltd.
Bim Enterprises, Ltd.
Binkley Company, the
Blue Caribe Line, Ltd.
Blue Star Line Ltd.
Bluefields Marine Ltd.
Boston Docks Services Association
Bulkstar Shipping Corporation
Capital Maritime Terminal
Central America Shippers, Inc.
Central American Container Line
Char Ching Marine Company, Ltd.
Charles, Willmore A.
Chicksaw Terminal Corporation
Chipman Corporation
City Marine Terminal, Inc.
Coastal Stevedoring Company
Columbus River Transportation Center
Companhia De Navegacao Lloyd Brasileiro
Compania Trasatlantica Espanola, S.A.
Connecticut Terminal Company, Inc.
Consorcio Naviero Del Occidente, C.A.
Container Express Lines Inc.
Container Services of Washington, Inc.
Container Services, Inc.
Contract Marine Carriers, Inc.
Convoy Intercontinental Container Transport GmbH & Co., KG
Costa Container Lines
Cottman Company, the
Crescent Western Warehouse Company
CSX/Sea-Land Logistics, Inc.
Distribution-Warehousing, Inc.
Empresa Maritima, S.A.—Chile
Empresa Naviera Santa, S.A.
Energy Resources—Imports & Exports, Inc.
Euro-Gulf International, Inc.
Family Islands Shipping Company Ltd.
FEDNAV (USA) Inc.
FEDNAV Lakes Services, Inc.
Flagship Container Line, Inc.
Forward Marine Inc.
Fourchon Int'l Shipping Inc.
Gateway Service Center, Inc.
Gearbulk Container Services
Gearbulk Ltd.
Georgia-Pacific Corporation
Godchaux-Henderson Terminal
Great Lakes Transcaribbean Line Limited
Great Western Unifreight System
Greece Westbound Conference
Guarani Line Limited
Gulf & Mexico Shipping Lines, Inc.
Gulf European Freight Association
Gulf Florida Terminal Company
Gulf Motorships, Inc.
H & A Trading Company, Inc.
Hale Shipping Corporation
Heide Warehouse Company
Horizons Shipping and Trading Ltd. Inc.
Hugo Stinnes Schiffahrt GmbH
IML Freight, Inc.
Inague Lines Inc.
Incotrans BV
The Inter-American Freight Conference—Pacific Coast Area
Iowa Trader L.P.
Jebsen New Zealand Line
Jet Pac Corporation
Johnson Scanstar
Johnson Shipping Agency, Inc.
Kimberly Navigation Company Ltd.
KKL (Kangaroo Line) Pty., Ltd.
Knik Construction Co., Inc.
Land Link, Ltd.
Lineas Navieras Bolivianas S.A.M. (LINABOL)
Little Rock Terminal Company
Malaysia Pacific Rate Agreement
Manufacturers Export Service, Inc.
Marcella Shipping Company
Maritima Aregua, S.A.
MB Canadian Tropic Line
Mediterranean Shipping Company S.A.
MFP St. Elmo and Myrtle Grove Terminal Elevators
Miami International Container Freight Station
Miami Marine Terminal Corporation
Naviera Del Pacifico C.A.
Naviera Lavinel C.A.
Naviera Mercante C.A.
Naviera Neptuno, S.A.
Naviera Universal, S.A. (Uniline)
Naviera Venline C.A.
Nedlloyd Lijnen B.V.
Nexos Line, Inc.
Nichiro Corporation
Northern Shipping Company
Ocean Express Lines, Inc.
Ocean Steamship (Nigeria) Ltd.
Ocean Trading & Marine Terminals S.A
Osborne Truck Line, Inc.
P.T. Mogas Shipping Co. Ltd.
Pacific Commerce Lines Inc.
Pacific Europe Express
Pacific Great Lakes Transport
Pan Caribbean Freight Consolidators, Inc
Parker Warehouse, Inc.
Parr Terminal Railroad
Pegasus (N.Y.) Inc.
Pier Haulage, Inc.
Pioneer Shipping, Inc.
Port Covington Grain Elevator
Port of Galena Park Corporation
Prairie Maritime Corporation
Principal Lines, Ltd.
Prudential Lines, Inc.
Rainier Overseas Movers, Inc.
Ranvar Corporation
Reserve Elevator Corporation
Rokuchu Marine Corporation
Ryder/PE Nationwide Inc.
S.T.S. Inc.
Salem Marine Terminal Corporation
Salt Lake Container Freight Station
Sea Terminal Inc.
Sea-Alaska Terminal, Inc.
Seaboard Caribe Ltd.
Seaport of Chicago
Sentry Household Shipping, Inc.
Shawneetown, Illinois, Port of
Societe Ivoirienne De Transport Maritime (SITRAM)
Societe Nevale Et Commerciale Delmas-Vieljeux and America-Africa Europe Line GmbH, Joint Service
South River Terminal Company
Southwest Forest Industries
Southwestern Freight Bureau, Agent
St. Joe Stevedoring Company
St. Lucie Terminal Company, Inc.
Staten Island Operating, Inc.
Stockton Elevators
Stolt Terminals (Chicago) Inc.
Strachan Shipping Company
Sunshine Express Line, Inc.
Superior Assembly & Distribution Center, Inc.
Surinam Navigation Co.
SWF Gulf Coast, Inc.
Sylvan Shipping Company, Inc.
Tampa Bay Shipping Ltd.
Tangi Trans-port, Inc.
Tecomar, S.A.
Thames Shipping, Ltd.
Thriftcargo Florida, Inc.
Trailer Marine Transport Corporation
Trans Caribbean Terminal, Co.
Trans Pacific Freight Conference of Hong Kong
Transocean Marine, Inc.
Tri-Seas Marine Terminal, Inc.
U.S. Atlantic/Italy, France & Spain Freight Conference
United States/Colombia Conference
Unico Shipping Company
United Grain Corporation
Universal Shipping Terminal, Inc.
V.I. Ferries Incorporated
Vencaribe C.A.
Venezuela Transport Line, Incorporated
Victoria Shipping Line, Inc.
Volkswagen of America, Inc.
Westlake Harbor Terminals, Inc.
Zim Isreal Navigation Co., Ltd.

Appendix B

ADM/Growmark River System, Inc.
Air & Sea Inc.
Alaska Cargo Transport, Inc.
America Africa Europe Line GmbH
Australia-Eastern U.S.A. Shipping Conference
Baltimore Forest Products Terminals
Ben Federico Freight Consolidator, Inc.
Gentroline, Inc.
Compagnie Maritime Marfret
Concorde Line Central American Service
Container Management, Inc.
Continental North Atlantic Westbound Freight Conference
Cool Carriers (Svenska) AB
D.B. Turkish Cargo Lines
Dole Fresh Fruit Company
Dorick Navigation, S.A.
Frata Container Liner PTE. LTD.
Gateways International, Inc.
Hapag-Lloyd, A.G.
Imex Shipping Group, Inc.
Inter-Shipping Chartering Co.
Island Shipping and Trading, Inc.
Jackson Shipping, Inc.
Jacksonville Caribbean Broker Services, Inc.
Lauritzen Reefers A/S
Mares Transport
Midwest Machinery Movers, Inc.
Mobile River Terminal Company
Navieros Interamericanos, S.A.
Nissui Shipping Corporation
North Atlantic Westbound Freight Association
Omega Shipping (CA), Inc.
Pacific Ocean Express, Inc.
Portuguese American Export Line, Inc.
Savannah Sound Maritime Company Limited
Scandinavia Baltic U.S. North Atlantic Freight Conference
Sea-Barge, Inc.
Sesko Marine Trailers, Inc.
Seth Shipping Corp.
South and East Africa/USA Conference
Southern Freight Tariff Bureau
Southern Oceans Container Line Limited
Sunshine Express, Inc.
Tientsin Marine Shipping Company
Top Freight Systems, Inc.
Traffic Executive Assoc.—Eastern Railroads
Trans-Atlantic American Flag Liner Operators
United ARAB Shipping Company (S.A.G.)
Universal ALCO LTD.
Westvaco Corporation
Wolfgang Jobmann GmbH
Y II Shipping Company Limited

Ocean Liner Express; Gateways International, Inc.; Hapag-Lloyd, A.G.; Lauritzen Reefers A./S; Mares Transport; Navieros Interamericanos, S.A.; Mobile River Terminal Company; Nissui Shipping Corporation; North Atlantic Westbound Freight Association; Pacific Ocean Express, Inc; Scandinavia Baltic U.S. North Atlantic Freight Conference; South and East Africa/USA Conference; Southern Freight Tariff Bureau; Traffic Executive Assoc.—Eastern Railroad; United Arab Shipping Company (S.A.G.); and Wolfgang Jobmann GmBH.

[3] These are: Air & Sea Inc.; Ben Federico Freight Consolidator, Inc.; Container Management, Inc.; Dorick Navigation, S.A.; Inter-Shipping Chartering Co.; Island Shipping and Trading Ltd.; Jackson Shipping, Inc.; Portuguese American Export Line, Inc.; Sea-Barge Inc.; Sunshine Express Line Inc.; Top Freight Systems, Inc.,; Universal Alco Ltd.; and Y II Shipping Company Limited.

[4] These are: Alaska Cargo Transport, Inc.; Centroline, Inc.; Imex Shipping Group, Inc.; Jacksonville Caribbean Broker Services, Inc.; Omega Shipping (CA), Inc.; Savannah Sound Maritime Company Limited; Sesko Marine Trailers, Inc.; Tientsin Marine Shipping Company and Westvaco Corporation.

[5] These are: Midwest Machinery Movers, Inc.; Trans-Atlantic American Flag Liner Operators; Seth Shipping Corp.; Southern Oceans Container Line Limited; and Compagnie Maritime Marfret.

[6] This is: Frata Container Lines Pte. Ltd.

[7] These are: Empresa Naviera Santa, S.A.; Guarani Line Limited; Principal Lines, Ltd. and Vencaribe, C.A.

[FR Doc. 95–3444 Filed 2–10–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Firstar Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 9, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstar Corporation, Milwaukee, Wisconsin; and Firstar Corporation of Wisconsin, Milwaukee, Wisconsin, to acquire 100 percent of the voting shares

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of Firstar Credit Card Bank, N.A., Gurnee, Illinois, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3491 Filed 2–10–95; 8:45 am]

BILLING CODE 6210–01–F

Jamestown Union Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Jamestown Union Bancshares, Inc., Jamestown, Tennessee; to engage *de novo* through its finance company subsidiary, Jamestown Loan & Thrift Co., Jamestown, Tennessee, in credit-related insurance agency activities, pursuant to Sections 225.25(b)(8)(i) and (ii) of the Board's Regulation Y. The proposed activity woll be conducted throughout the State of Tennessee.

Board of Governors of the Federal Reserve System, February 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3492 Filed 2–10–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–2858]

California and Hawaiian Sugar Company, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens a 1977 consent order that settled allegations that the respondents deceptively advertised that sugar derived from Hawaiian sugar cane is different from or superior to other sugars, particularly those derived from beets. This order modifies the consent order so that the respondents may make claims about objective differences in granulated white sugars with respect to health, safety, nutritional quality, or purity, as long as it has competent and reliable evidence to substantiate such claims. The Commission found that the public interest warranted reopening and modifying the 1977 order.

DATES: Consent order issued January 6, 1977. Modifying order issued January 17, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Justin Dingfelder or Robert Frisby, FTC/S–4631, Washington, DC 20580. (202) 326–3017 or 326–2098.

SUPPLEMENTARY INFORMATION: In the Matter of California and Hawaiian Sugar Company, et al. The prohibited trade practices and/or corrective actions as set forth at 42 FR 6800, are changed, in part, as indicated in the summary.

[1] Copies of the Modifying Order and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–3539 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9081]

Levi Strauss & Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens a 1978 consent order that settled allegations that the respondent had engaged in a number of anticompetitive practices, including fixing the resale prices at which retailers sold its products, and modifies the consent order by adding a provision to clarify that the order does not prohibit conduct by the respondent that is necessary to form and operate wholly-owned retail stores, or retail stores partially owned by the respondent in lawful joint ventures. The Commission found that the respondent had satisfactorily met its burden of showing that changed conditions of fact required the modification.

DATES: Consent order issued July 12, 1978. Modifying order issued December 20, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Levi Strauss & Co. The prohibited trade practices and/or corrective actions as set forth at 43 FR 35262, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–3540 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3551]

Notations, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Pennsylvania company and its president from misbranding any textile product by mentioning or implying that the product contains a fiber without using the generic fiber name required by the Textile Fiber Products Identification Act and the Federal Trade Commission rules, or by mentioning or implying that it contains a fiber when it, in fact, does not. The respondents also are required to file with the Commission a continuing guaranty applicable to all textile products they handle in the future.

DATES: Complaint and Order issued January 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Katharine Alphin, Atlanta Regional Office, 1718 Peachtree Street NW., Room 1000, Atlanta, GA. 30367. (404) 347–4837.

SUPPLEMENTARY INFORMATION: On Monday, October 31, 1994, there was published in the **Federal Register**, 59 FR 54462, a proposed consent agreement with analysis In the Matter of Notations, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 95–3541 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942 3029]

Orchid Technology; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based company from falsely representing that any of its computer peripheral products had been rated, reviewed or endorsed by any person or publication, and from misrepresenting the results of any test, study or evaluation in connection with marketing its computer peripheral equipment. The consent agreement also would require the respondent to possess competent and reliable evidence to substantiate performance claims.

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comment or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Orchid Technology, a corporation, ("proposed respondent"), and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Orchid Technology, a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Orchid Technology is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 45365 Northport Loop West, Fremont, California 94538.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th street & Pennsylvania Avenue NW., Washington, D.C. 20580.

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waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the term "computer peripheral equipment" shall mean graphics cards, sound cards, adaptor cards, memory expansion cards, or other hardware products that enhance the capability and performance of personal computers.

I

It is ordered that respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been rated, endorsed, recommended, reviewed or evaluated by any person or publication, unless such is the case.

II

It is further ordered that respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test or study.

III

It is further ordered that respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the performance or attributes of any such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order.

VI

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, licensees, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this Order.

VII

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Orchid Technology, a California corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of the "Celsius/VLB Windows Accelerator," a circuit board that both increases the speed at which a personal computer displays complex graphical images, and improves the quality of the graphical images. The Commission's complaint charges that respondent's advertising represented that excerpts from computer periodical reviews referred to the Celsius, when, in fact, they referred to products manufactured by Orchid's competitors

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from falsely representing that any computer peripheral equipment, as defined in the order, has been rated, endorsed, recommended, reviewed or evaluated by any person or publication.

As fencing-in relief, Part II of the proposed order prohibits respondent, when advertising computer peripheral equipment, from misrepresenting the existence, contents, validity, results, conclusions, interpretations or purpose of any test or study. Part III provides that, if respondent makes any representation about the performance or attributes of any computer peripheral equipment, the representation must be true and respondent must possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, to substantiate the representation.

The proposed order also requires respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to its employees involved in the preparation and placement of respondent's advertisements, or in communication with respondent's customers or prospective customers; to notify the Commission of any change in the corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–3542 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0009]

The Penn Traffic Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, the Penn Traffic Company to acquire a number of Acme supermarkets from American Stores Company, but would require it to divest, to a Commission approved acquirer or acquirers within twelve months, one supermarket in each of the three Pennsylvania areas designated (Towanda, Mount Carmel, and Pittston). If the divestitures were not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transactions. In addition, the consent agreement would require the respondent, for ten years, to obtain Commission approval before acquiring any interest in any entity that owns or operates a supermarket in any of the three areas designated.

DATES: Comments must be received on or before April 14, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe or Marimichael Skubel, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610 or 326–2611.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 45 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of The Penn Traffic Company's ("Penn Traffic") proposed acquisition of certain assets of American Stores Company (American), and it now appearing that Penn Traffic hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts, and providing for other relief,

It is hereby agreed by and among proposed respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Penn Traffic Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1200 State Fair Boulevard, Syracuse, New York 13221–4737.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The

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order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file verified written reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Penn Traffic" means The Penn Traffic Company, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by The Penn Traffic Company, their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. "Assets to be divested" means the assets described in Paragraph II. A. of this order.

C. "Commission" means the Federal Trade Commission.

D. "Supermarket" means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months from the date this order becomes final:

1. The "Acme" supermarket located at River and Park Streets, Borough of Towanda, Pennsylvania;

2. The "Acme" supermarket located on Kennedy Boulevard in Pittston, Pennsylvania; and

3. An "Acme" or a Penn Traffic supermarket located in the Township of Mount Carmel, Pennsylvania.

The assets to be divested shall include the grocery business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the distribution or sale of groceries at the locations that are divested.

B. Respondent shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing, viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. Pending divestiture of such assets to be divested, respondent shall take such actions as are necessary to maintain the viability and marketability of such assets to be divested and to prevent the destruction, removal, wasting, deterioration, or impairment of such assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondent shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as respondent has divested all of the assets to be divested.

III

It is further ordered that:

A. If respondent has not divested, absolutely and in good faith and with the Commission's prior approval, such assets to be divested within twelve months from the date this order becomes final, the Commission may appoint a trustee to divest any of the remaining assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the remaining assets to be divested.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all right and powers necessary to permit the trustee to effect the divestitures required by this order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to any of the remaining assets to be divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers in any of the areas specified in this order for a supermarket to be divested from more than one acquiring entity, and if the Commission determines to approve more than one acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is furthered ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any supermarket or leasehold interest in any supermarket, including any facility that has operated as a supermarket within six (6) months of the date of the proposed acquisition, located in (a) the Towanda, Pennsylvania area, which includes the Borough of Towanda and the townships of Wysox, North Towanda, and Monroeton; (b) the Mount Carmel, Pennsylvania area, which includes the Borough of Mount Carmel and the Township of Mount Carmel; and (c) the Pittston, Pennsylvania area, which includes the city of Pittston, the townships of Pittston and Jenkins, and the boroughs of Dupont, Avoca, Hughestown, Duryea, Yatesville, and Laflin, Pennsylvania.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of the date of the proposed acquisition in (a) the Towanda, Pennsylvania area, which includes the Borough of Towanda and the townships of Wysox, North Towanda, and Monroeton; (b) the Mount Carmel, Pennsylvania area, which includes the Borough of Mount Carmel, and the Township of Mount Carmel; and (c) the Pittston, Pennsylvania area, which includes the city of Pittston, the townships of Pittston and Jenkins, and the boroughs of Dupont, Avoca, Hughestown, Duryea, Yatesville, and Laflin, Pennsylvania.

Provided, however, that these prohibitions shall not apply to the construction of new facilities or the leasing of facilitates that have not operated as supermarkets within six months of the date of the offer to lease.

V

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II. or III. of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II. and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in respondent that may affect compliance obligations arising out of the order.

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VII

It is further ordered that, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representative of the Commission:

A. Upon reasonable notice to respondent, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon reasonable notice to respondent and without restraint or interference from it, to interview respondent or officers, directors, or employees of respondent in the presence of counsel.

VIII

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between The Penn Traffic Company ("Penn Traffic"), a corporation organized under the laws of the State of Delaware, with its principal offices located at 1200 State Fair Boulevard, Syracuse, New York 13221–4737, and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively "the Parties").

Premises

Whereas, Penn Traffic, pursuant to an agreement dated September 30, 1994, agreed to purchase certain assets of American Stores Company (hereinafter "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II. A. of the attached Agreement Containing Consent Order ("Assets") during the period prior to their divestiture, when those Assets will be in the hands of Penn Traffic, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Penn Traffic entering into this Agreement shall in no way be construed as an admission by Penn Traffic that the Acquisition is illegal; and

Whereas, Penn Traffic understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, Therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Penn Traffic agrees to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed acquisition, Penn Traffic will be free to close the Acquisition after 11:59 p.m., January 17, 1995.

3. Penn Traffic agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a–3.b it will comply with the provisions of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. On the day the divestiture set out in the Consent Order has been completed.

4. From the time Penn Traffic acquires the Assets until the divestiture set out in the Consent Order has been completed, Penn Traffic shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Penn Traffic to divest itself of the Assets or to seek any other injunctive or equitable relief, Penn Traffic shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Penn Traffic also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Penn Traffic to its principal offices, Penn Traffic shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Penn Traffic, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Penn Traffic relating to compliance with this Agreement; and

Upon five (5) days' notice to Penn Traffic and without restraint or interference from them, to interview officers or employees of Penn Traffic, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("the Commission") has accepted for public comment from The Penn Traffic Company ("Penn Traffic") an agreement containing consent order to divest certain assets. The agreement is designed to remedy any anticompetitive effect stemming from Penn Traffic's acquisition of a number of Acme supermarkets from American Stores Company.

The agreement has been placed on the public record for sixty days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

The Commission's draft complaint charges that on or about September 30, 1994, Penn Traffic agreed to acquire certain assets of Acme Markets, Inc., wholly-owned subsidiary of American Stores Company, for $94 million. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the draft complaint, Penn Traffic and Acme are direct competitors for the retail sale of food and grocery items in the market areas of (1) the Towanda, Pennsylvania area, which includes the Borough of Towanda and the townships of Wysox, North Towanda, and Monroeton; (2) the Mount Carmel, Pennsylvania area, which includes the Borough of Mount Carmel and the Township of Mount Carmel; and (3) the Pittston, Pennsylvania area, which includes the city of Pittston, the townships of Pittston and Jenkins, and the boroughs of Dupont, Avoca, Hughestown, Duryea, Yatesville, and Laflin, Pennsylvania. According to the draft complaint, these markets are highly concentrated and entry is difficult or unlikely. Penn Traffic's acquisition of Acme may reduce competition in these markets by eliminating the direct competition between Penn Traffic and Acme, by increasing the likelihood that Penn Traffic will become a dominant firm, and by increasing the likelihood of collusive behavior among the few remaining competitors.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order, Penn Traffic must divest three supermarkets within twelve-months, to a purchaser approved by the Commission. The three stores to be divested include the "Acme" supermarket located in Towanda, Pennsylvania, the "Acme" supermarket located in Pittston, Pennsylvania, and either the "Acme" or the Penn Traffic store located in Mount Carmel, Pennsylvania.

For a period of ten years from the date the order becomes final, the order also prohibits Penn Traffic from acquiring, without prior Commission approval, stock, or any other interest in any supermarket, or entity that owns or operates a supermarket, located in the areas of Towanda, Pittston, or Mount Carmel, Pennsylvania. This prohibition will not apply to the construction of new facilities or the leasing of facilities not operated as supermarkets within six months of the offer to lease.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of this matter. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 95–3543 Filed 2–10–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0016]

Johnson Matthey Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Johnson Matthey Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silver chloride coated titanium dioxide.

DATES: Written comments on the petitioner's environmental assessment by March 15, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4442) has been filed by Johnson Matthey Chemicals, c/o 1000 Potomac St. NW., Washington, DC 20007. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of silver chloride coated titanium dioxide.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 15, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–3557 Filed 2–10–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95F–0017]

Robinson Brothers Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Robinson Brothers Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by March 15, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4437) has been filed by Robinson Brothers Ltd., Phoenix St., West Bromwich, West Midland, B70 OAH, England. The petition proposes to amend the food additive regulations in

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§ 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of diisopropyl xanthogen polysulfide as a component of rubber articles intended for repeated use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 15, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–3556 Filed 2–10–95; 8:45 am]

BILLING CODE 4160–01–F

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Health Improvement Projects

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1995 funds are available for grants and cooperative agreements for the following activities: Maternal and Child Health (MCH) Special Projects of Regional and National Significance (SPRANS), including special MCH improvement projects (MCHIP) which contribute to the health of mothers, children, and children with special health care needs (CSHCN); and genetic disease testing, counseling and information services. All awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program. No new hemophilia SPRANS grants will be funded in FY 1995. Grants for MCH research and training are being announced in a separate notice.

Of the approximately $44 million available for SPRANS activities in FY 1995 in categories covered by this announcement, about $9.7 million will be available to support approximately 65 new and competing renewal projects at an average of $150,000 per award for one year. The remaining funds will be used to support continuation of existing SPRANS activities. The actual amounts available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which may run from 1 to 5 years in duration. Funds for the MCH Federal Set-Aside Program are appropriated by Public Law 103–333. Revised regulations implementing the Federal Set-Aside Program (42 CFR part 51a) were published in the July 19, 1994, issue of the **Federal Register** at 59 FR 36703.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202 783–3238).

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people. In addition, Public law 103–227, The Pro-Children Act Of 1994, prohibits smoking in certain facilities in which education, library, day care, regular and routine health care and early childhood development services are provided to children. Smoking must also be prohibited in indoor facilities that are constructed, operated or maintained with Federal funds.

ADDRESSES: Grant applications for the MCH SPRANS Federal Set-Aside Program must be obtained from and submitted to: Acting Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for all projects covered by this announcement will use application Form PHS 5161–1 with revised face page DHHS Form 424, approved by OMB under control number 0937–0189. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided.

DATES: Deadlines for receipt of applications differ for the several categories of grants and cooperative agreements. These deadlines are as follows:

MCH FEDERAL SET-ASIDE COMPETITIVE GRANT AND COOPERATIVE AGREEMENTS ANTICIPATED DEADLINES, AWARDS, FUNDING, AND PROJECT PERIODS, BY CATEGORY

(FY 1995)

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
(1) Grants in the following areas:				
1.1 Genetic services	4/25/95	Up to 20	$3.5 million	Up to 3 years.
1.2 Special MCH Improvement Projects (MCHIP) of regional and national significance in the following areas:.				
1.2.1 Maternal, infant, child, and adolescent health	4/25/95	10–12	1 million	Up to 5 years.
1.2.2 School health program	5/10/95	8	1.5 million	3–5 years.
1.2.3 Data utilization	6/15/95	5	500,000	3 years.
1.2.4 Healthy tomorrows partnership for children	4/14/95	Up to 10	500,000	5 years.
(2) Cooperative agreements (MCHIPs) in the following areas:				
2.1 CSHCN cultural competency systems implementation	4/28/95	1	250,000	5 years.
2.2 Partnership for information and communication (PIC)	5/10/95	4	1.2 million	Up to 5 years.
2.3 Childhood injury prevention	3/31/95	4	600,000	3–5 years.
2.4 Out-of-home child care health and safety	4/27/95	1	350,000	Up to 5 years.

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to: Audrey H. Nora, M.D., M.P.H., Director, Maternal and Child Health Bureau, HRSA, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Requests for category-specific technical information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Acting Grants Management Officer (GMO), Maternal and Child Health Bureau, at the address specified in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: To facilitate the use of this announcement, information in this section has been organized, as outlined in the Table of Contents below, into a discussion of: Program Background, Special Concerns, Overall Review Criteria, SPRANS Program, and Eligible Applicants. In addition, for each specific SPRANS funding category and subcategory covered by this notice, information is presented under the following headings:

- Application Deadline
- Purpose
- Priorities
- Grants/Amounts
- Contact

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1. Program Background and Objectives

Under Section 502 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act (OBRA) of 1989, 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million are set aside by the Secretary of Health and Human Services (HHS) for special Community Integrated Service Systems projects under Section 501(a)(3) of the Act. Of the remainder of the total appropriation, 15 percent of the funds are to be retained by the Secretary to support (through grants, contracts, or otherwise) special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); for genetic disease testing, counseling, and information development and dissemination programs; for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services. The MCH SPRANS set-aside was established in 1981. Support for projects covered by this announcement will come from the SPRANS set-aside. To reduce confusion to potential applicants from announcement of grants in very large numbers of SPRANS categories and subcategories, announcement of availability of FY 1995 funds for MCH research and training categories is being published separately this year.

2. Special Concerns

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from racial and ethnic minority populations who have had limited access to accessible care. This means that SPRANS projects are expected to serve and appropriately involve in project activities individuals from the populations to be served, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project interventions are responsive to the

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cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB.

In keeping with our special concern for broadening participation in MCHB programs of institutions that reflect the Nation's cultural and linguistic diversity, a funding priority will be placed on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Projects supported under SPRANS are expected to be part of community-wide, comprehensive initiatives, to reflect appropriate coordination of primary care and public health activities, and to target HRSA resources effectively to fill gaps in the Nation's health system for at-risk mothers and children. This applies especially to projects in the 22 communities in the Nation which have received grants from HRSA under the Healthy Start initiative. Grantees in these communities providing services related to activities of a Healthy Start program are expected to coordinate their projects with the Healthy Start program efforts. Healthy Start communities include: Aberdeen Area Indian Nations, NE/ND/SD; Baltimore, MD; Birmingham, AL; Boston, MA; Chicago, IL; Cleveland, OH; Dallas, TX; Detroit, MI; Essex County, NJ; Florida Panhandle, FL; Lake County, IN; Milwaukee, WI; Mississippi Delta, MS; New Orleans, LA; New York, NY; Oakland, CA; Philadelphia, PA; Pittsburgh, PA; PeeDee Region, SC; Richmond, VA; Savannah, GA; Washington, DC.

3. Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds under the specific project categories in section 4 below as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act, with special emphasis on improving service delivery to women and children from culturally distinct populations; best address achievement of *Healthy Children 2000* objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

3.1 Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for awards under all SPRANS grants and cooperative agreement project categories announced in this notice. Further guidance in this regard is supplied in application guidance materials, which elaborate upon how these criteria apply to specific grant categories and subcategories.

—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;
—The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The strength of the project's plans for evaluation.
—The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The extent to which the application is responsive to the special concerns and program priorities specified in this notice.

3.2 Funding of Approved Applications

Final funding decisions for SPRANS grants are the responsibility of the Director, MCHB. The following mechanisms, as defined below, may be applied in determining scores for ranking the funding of approved applications:

—Funding Preferences—Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuation projects ahead of new projects.
—Funding Priorities—Merit reviewers will assign scores based on the extent to which applicants address program priorities specified in this notice for the category in which the application is made.
—Special Considerations—Merit reviewers will assign scores based on the extent to which applicants address areas that are identified in this notice as meriting special consideration.

4. Special Projects of Regional and National Significance

Project categories for SPRANS awards are grouped in this notice under two sections: Grants and Cooperative Agreements.

4.1. Grants

Two major categories of SPRANS grants are discussed below: Genetic Services; and Maternal and Child Health Improvement Projects (in 4 subcategories):

4.1.1. Genetic Services

Application Deadline: April 25, 1995.

Purpose: To support projects that demonstrate increased access to effective genetic information, education, testing and counseling services.

Priorities: Applicants to the genetic services program are invited to submit proposals in the areas of:

—Genetics in primary care. To aid in incorporating genetics into maternal and child health and federally-qualified health centers' (FQHC) primary care programs.
—Ethnocultural barriers. To improve services for populations for whom language and/or culture are barriers.
—Regional genetic services networks. To maintain genetic services networks in the Pacific Northwest, Pacific Southwest, Mountain States, and areas encompassing New York, Puerto Rico, and the Virgin Islands.
—Cooley's Anemia/Thalassemia. To demonstrate comprehensive care for those affected by Cooley's Anemia/Thalassemia.
—Comprehensive care for infants with Sickle Cell Disease identified through State newborn screening programs.
—Transition from pediatric to adult care. To demonstrate models of care for individuals with genetic disorders moving from pediatric care to adult, family practice, and specialty care.

Grants/Amounts: About $3.5 million will be available to support up to 20 projects. Approximately 7 of these are expected to be competing renewals of existing projects, and approximately 13 will be new. An average of about $175,000 per award per year is anticipated. Project periods are up to 3 years.

Contact: For programmatic or technical information, contact: Jane S. Lin-Fu, M.D., telephone: 301 443–1080.

4.1.2. Maternal and Child Health Improvement Projects

Maternal and Child Health Improvement Projects (MCHIP) are divided into 4 subcategories: Maternal, Infant, Child, and Adolescent Health; School Health Program; Data Utilization and Enhancement; and Healthy Tomorrows Partnerships for Children:

4.1.2.1. Maternal, Infant, Child, and Adolescent Health.

Application Deadline: April 25, 1995.

Purpose: To improve the health of all mothers, infants, children, and adolescents.

Priorities: Applicants in this MCHIP category are invited to submit proposals in the following program areas:

—Content And Organization Of Care For Women Of Child Bearing Age, Infants, Children, Adolescents And Their Families. Grants will be provided for projects which assist in developing mechanisms to define appropriate personal health care services, creating or enhancing collaborative systems to deliver such services, and identifying measures to determine the quality of the content and mechanism of services delivered.
—Adolescent Health Resource Development. Grants will be awarded for the purpose of continuing the capacity-building of State health agencies/maternal and child health programs to meet the diverse health needs of adolescents in a period of health care reform and the myriad of changes in States and communities. Adolescent Health Resource Center grants are intended to advance the knowledge and skills of State MCH staff and local providers of adolescent health services through training and technical assistance, information development and dissemination, and promotion of integrated systems development that impact on adolescent access to prevention and health services.

Grants/Amounts: A total of 10–12 grants, totalling $1 million will be awarded in this category in FY 1995. For grants dealing with the content and organization of care, funding for 2 grants is anticipated in the range of $150,000 per year for periods of up to 5 years. For adolescent health resource development, approximately 4–6 grants of $150,000-$200,000 each per year will be supported for up to 5 years.

Contact: For programmatic or technical information, contact David Heppel, M.D., telephone: 301 443–2250.

4.1.2.2. School Health Program

Application Deadline: May 10, 1995.

Purpose: To strengthen the capacity of school-based and school-linked health programs to address psychosocial issues and mental health problems by enhancing primary mental health resources and services for school-age children and youth, including those with special health care needs. Primary mental health resources and services include primary prevention, such as prevention of violent and health damaging behaviors; early problem identification and intervention, including indicated referral and followup; and collaboration with ongoing care for chronic conditions.

Priorities: Grants will be awarded in the following two areas:

—Development of infrastructure and resources to build capacity for primary mental health services in school-based and school-linked health programs. Applicants are expected to represent State-level partnerships among health, mental health and education agencies that are designed to assure accessibility to primary mental health services for school-age children and youth. Project emphasis is on coordinating school-based and school-linked programs with multiple community resources in the public health, mental health, substance abuse prevention and treatment, social service and other relevant systems to facilitate comprehensive approaches.
—Development of "state of the art" instructional materials and resources to strengthen the mental health service capacity of primary care providers for school-age children and youth. The emphasis is on enhancing primary mental health resources and services in school-based and school-linked health programs; in addition, such staff development materials and resources will be available to community-based centers that furnish primary health care to those in the school-age population who cannot be accessed through the schools.

Grants/Amounts: A total of $1.5 million dollars will be available for projects in this subcategory; about $750,000 for up to 5 State primary mental health partnership grants for 3 to 5 years, and about $750,000 for up to 3 mental health resource grants for up to 5 years.

Contact: For programmatic information, contact Linda Johnston, telephone 301 443–4026.

4.1.2.3. Data Utilization and Enhancement

Application Deadline: June 15, 1995.

Purpose: To enable Federal, State, and local MCH/CSHCN agencies, in collaboration with State primary care planning, to develop data and data systems required under Title V and analyze data to facilitate needs assessment, planning, monitoring or evaluation of maternal and child agencies and comprehensive health services.

Priorities: Proposals in this MCHIP subcategory are invited in the following program areas:

—Enhancement of data collection and analysis capabilities of national, state and local health agencies.
—Compilation and analysis of new data, and development and application of analytic techniques regarding the health status of and delivery of comprehensive health care to mothers and children.
—Networking, coordination, and integration of existing and proposed resources and data and analysis systems developed in other states, national organizations or organizations.
—Increasing national, state and local entities' capacity to respond to and implement changes in the organization of health care resources.

Grants/Amounts: An estimated $500,000 will be available for 5 grants in this subcategory at $100,000 per award per year. Project periods are up to 3 years.

Contact: For programmatic or technical information, contact Russ Scarato, telephone: 301 443–2340.

4.1.2.4. Healthy Tomorrows Partnerships for Children.

Application Deadline: April 14, 1995.

Purpose: To support projects for children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

Priorities: Proposals in this MCHIP category are invited in the following program areas:

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—Local initiatives that are community-based, family-centered, comprehensive and culturally relevant and improve access to health services for infants, children, adolescents, or CSHCN.
—Initiatives which show evidence of a capability to meet cost participation goals by securing funds for the second and sequential years of the project.

In the interest of equitable geographic distribution, special consideration for funding will be given to projects from States without a currently funded project in this category. These States are cited in the application guidance.

• Grants/Amounts: About $500,000 will be available to support up to 10 new Healthy Tomorrows projects, at an average of $50,000 per award per year. The project period is 5 years.

• Contact: For programmatic or technical information, contact Latricia Robertson, M.S.N., M.P.H., telephone: 301 443–3163.

4.2. Cooperative Agreements

Cooperative agreements will be awarded in 4 categories: Children with Special Health Care Needs (CSHCN) Cultural Competency Systems Implementation; Partnership for Information and Communication; Childhood Injury Prevention; and Out-Of-Home Child Care Health And Safety.

It is anticipated that substantial Federal programmatic involvement will be required in these cooperative agreements. This means that after award, awarding office staff provide technical assistance and guidance to, or coordinate and participate in, certain programmatic activities of award recipients beyond their normal stewardship responsibilities in the administration of grants. Federal involvement may include, but is not limited to, planning, guidance, coordination and participation in programmatic activities. Periodic meetings, conferences, and/or communications with the award recipient are held to review mutually agreed upon goals and objectives and to assess progress. Additional details on the scope of Federal programmatic involvement in cooperative agreements, consistent with HRSA grants administration policy, will be included in the application guidance for these cooperative agreements.

4.2.1. Children with Special Health Care Needs (CSHCN) Cultural Competency Systems Implementation

• Application Deadline: April 28, 1995.

• Purpose: To promote the design, implementation, and testing of culturally competent service systems to assist State and local Title V and other related programs to furnish services for culturally diverse CSHCN and their families. Specifically, to:
—Promote networking and information exchange among CSHCN/MCH programs at all levels that advances their ability to assure that services to culturally diverse families having children with special health needs are integrated into such programs in a culturally competent manner.
—Foster linkages between such programs and: (a) culturally diverse consumers and families of children with special health care needs; and (b) other public/private agencies or groups at the Federal, State and local levels, including those providing primary health care and services, that will enhance the development of culturally competent systems of care which are family-centered and at the community level.
—Provide training, technical assistance, and consultation to the above mentioned programs to advance the "state of the art" in the areas of: (a) staff/agency assessment and training; (b) development and implementation of culturally competent policies, procedures and practices; and (c) identification of resources for training and program implementation.
—Support evaluation of existing training materials and evaluation tools, develop and test new materials for adoption by CSHCN programs, and identify model approaches.
—Disseminate training materials, principles, and model approaches for CSHCN and related programs.

Preference for funding will be given to public or private non-profit organizations having prior experience with CSHCN/MCH systems of care at the Federal, State and local levels, and in the areas described above, especially those which can demonstrate:
—Measurable, positive outcomes in operationalizing cultural competence in programs.
—Expertise in providing appropriate training and technical assistance packages in a timely manner.
—Establishment of linkages with related programs having cultural competency initiatives and expertise.

• Cooperative Agreement/Amounts: Up to $250,000 will be available to support one new cultural competency systems implementation cooperative agreement focusing on the provision of comprehensive care to CSHCN and their families. The project period is 5 years.

• Contact: For programmatic and technical information contact Ms. Diana Denboba, telephone 301–443–2370.

4.2.2. Partnership for Information and Communication

• Application Deadline: May 10 1995.

Purpose: To facilitate dissemination of new maternal and child health-related information to policy and decision makers in a format most useful to them and provide those individuals with a means of communicating issues directly to each other and to MCHB.

This is a continuous Bureau activity with a single priority—to enhance communication between the MCHB and governmental, professional and private organizations representing leaders and policy makers concerned with issues related to maternal and child health. Organizations currently receiving support as part of this cooperative agreement represent State governors and their staffs; county health policymakers, municipal health policymakers, as well as national membership organizations representing groups or constituencies listed below.

To ensure continuity, membership for the organizations participating in PIC is rotated so that not all project periods coincide. For this year, only national membership organizations representing the following groups will be considered for funding:
—State Title V programs.
—State legislators.
—Private business, particularly self-insured businesses.
—Philanthropic organizations.
—Parent organizations.

• Cooperative Agreement/Amounts: Up to 5 cooperative agreements totalling $1.2 million in FY 1995 will be awarded in this category. Award amounts will vary with the level of proposed grantee participation, as described in the application guidance. Awards will be made for a project period of up to 5 years.

• Contact: For programmatic or technical information, contact David Heppel, M.D., telephone: 301 443–2250.

4.2.3. Childhood Injury Prevention

• Application Deadline: March 31, 1995.

• Purpose: The Children's Safety Network was established in FY 1990 to provide technical assistance to States and communities in injury prevention and to consult with States and localities, develop and distribute publications, organize conferences, and conduct training. MCHB is interested in continuing this capacity.

• Priorities: During FY 1995, awards will be made for a resource center focused on each of the following four special injury prevention topics:

—Rural Child and Adolescent Injury.
—Adolescent Violence and Suicide.
—Injury Data.
—Economics and Insurance Issues.

All funded centers, together with the Children's Safety Network site at the Education Development Center, will constitute the Children's Safety Network.

• Cooperative Agreement/Amounts: Up to 4 agreements, totaling $600,000, will be awarded in this category in FY 1995.

• Contact: For programmatic or technical information, contact Jean Athey, Ph.D., telephone: 301 443–4026.

4.2.4. Out-Of-Home Child Care Health And Safety

• Application deadline: April 27, 1995.

• Purpose: To continue support for a national resource center which will:
—Maintain a reference collection relating to health and safety in out-of-home child care settings.
—Maintain computerized databases, including states' current health and safety standards; health consultants registry; and directory of conferences and organizations.
—Provide training and technical assistance on health and safety in child care programs.
—Develop and distribute resource materials and maintain communications links with the child care community.

• Cooperative Agreement/Amounts: Approximately $350,000 will be available annually for up to 5 years to support a resource center to assist in maintaining links with child care providers and consumers regarding health and safety in out-of-home child care settings.

• Contact: For programmatic or technical information, contact Denise Sofka, telephone: (301) 443–6600.

The categories, priorities, special considerations and preferences described above are not being proposed for public comment this year. In July 1993, following publication of the Department's Notice of Proposed Rulemaking to revise the MCH special project grant regulations at 42 CFR 51a, the public was invited for a 60-day period to submit comments regarding all aspects of the SPRANS application and review process. Public comments regarding SPRANS priorities received during the comment period were considered in developing this announcement. In responding to those comments, the Department noted the practical limits on Secretarial discretion in establishing SPRANS categories and priorities owing to the extensive prescription in both the statute and annual Congressional directives.

Comments on this SPRANS notice which members of the public wish to make are welcome at any time and may be submitted to: Director, Maternal and Child Health Bureau, at the address listed in the **ADDRESSES** section. Suggestions will be considered when priorities are developed for the next solicitation.

5. Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements for project categories covered in this announcement.

6. Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

7. Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 8, 1995.

Ciro V. Sumaya,

Administrator

[FR Doc. 95–3555 Filed 2–10–95; 8:45 am]

BILLING CODE 4160–15–U

National Institutes of Health

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: February 17, 1995.
Time: 11:00 a.m.
Place: Georgetown Inn, Washington, DC.
Contact Person: Dr. Carole Jelsema, Scientific Review Administrator, 5333 Westbard Ave., Room 319B, Bethesda, MD 20892; (301) 594–7311.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3461 Filed 2–10–95; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–95–1082; FR–3677–D–01]

Delegation of Concurrent Authority to the President, Government National Mortgage Association

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of concurrent authority to the President, Government National Mortgage Association.

SUMMARY: The Secretary of Housing and Urban Development is delegating to the President, Government National Mortgage Association, Dwight P. Robinson, all power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development, to be exercised concurrently with the Secretary, with the exception of the power to sue and be sued.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Sam E. Hutchinson, Associate General Counsel for Human Resources Law, Office of General Counsel, Department of Housing and Urban Development, Room 10242, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2947. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In the delegation of authority issued today, the Secretary is delegating to the President, Government National Mortgage Association, Dwight P. Robinson, all power and authority vested in or delegated or assigned to the Secretary, to be exercised concurrently with the Secretary, with the exception of the power to sue and be sued. The Government National Mortgage Association is part of the Department of Housing and Urban Development (42 U.S.C. 3534(b)).

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The President, Government National Mortgage Association, Dwight P. Robinson, is hereby authorized to exercise all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development to be exercised concurrently with the Secretary.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the authority to sue and be sued.

Section C. Delegation of Concurrent Authority Superseded

The Delegation of Authority to the Acting Deputy Secretary published in the **Federal Register** on September 21, 1994, at 59 FR 48444, is hereby superseded.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 7, 1995.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 95–3500 Filed 2–10–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Alaska

[AK–964–1410–00–P; F–14934–A2 and F–14934–B2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Shishmaref Native Corporation for approximately 9,136 acres. The lands involved are in the vicinity of Shishmaref, Alaska, within Tps. 8 N., Rs. 32, 33, and 35 W., and T. 9 N., R. 32 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 15, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–3506 Filed 2–10–95; 8:45 am]

BILLING CODE 4310–JA–P

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on March 10 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: March 10, 1995, 9:00 a.m.

ADDRESSES: The meeting will be held at the Grand Island Interstate Holiday Inn, Conference Room U, Grand Island, Nebraska 68802. The North American Wetlands Conservation Council Coordinator is located at U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989), the North American Wetlands Conservation Council is a Federal-State-Private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: January 27, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–3510 Filed 2–10–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32425]

Chicago SouthShore & South Bend Railroad—Operation Exemption—Illinois International Port District

Chicago SouthShore & South Bend Railroad (CSS) filed a notice of exemption to provide nonexclusive switching service over 8.7 miles of yard and switching track entirely within the Illinois International Port District. The track generally is located north of 130th Street and east of Doty Avenue on the west bank of Lake Calumet in Chicago, IL. The exemption was to become effective on or about October 20, 1994.

Any comments must be filed with the Commission and served on: Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, D.C. 20005–4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 1, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3516 Filed 2–10–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Simultaneously with the filing of the notice of exemption, CSS filed a petition to dismiss; and, on October 20, 1994, it submitted exhibits inadvertently omitted from its petition. The Railway Labor Executives' Association and United Transportation Union, respectively, filed comments on October 24 and November 3, 1994. Chicago Rail Link (CRL), on November 3, 1994, petitioned to revoke the exemption and replied to CSS's petition to dismiss. Patrick W. Simmons, Illinois Legislative Board Director, United Transportation Union (Simmons), on November 9, 1994, petitioned to reject or revoke the exemption and replied to the petition to dismiss. CSS, on November 22, 1994, withdrew its petition to dismiss the exemption and submitted a copy of a CRL letter withdrawing the latter's petition to revoke. Thereafter, on November 29, 1994, CSS replied to Simmons' petition to reject or revoke and reply to CSS's petition to dismiss. Simmons' petition was considered as an appeal in a separate decision, and that decision is being served simultaneously with this notice of exemption.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA No. 129P]

Proposed 1995 Aggregate Production Quota for a Schedule II Controlled Substance

AGENCY: Drug Enforcement Administration.

ACTION: Notice of a proposed 1995 aggregate production quota.

SUMMARY: This notice proposes a 1995 aggregate production quota for hydrocodone (for conversion), a controlled substance in Schedule II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before March 15, 1995.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations.

The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

A company submitted an application for a manufacturing quota for hydrocodone (for conversion) a Schedule II controlled substance. Based on the review of this application and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby proposes that the 1995 aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1995 aggregate production quota (grams)
Hydrocodone (for conversion) ..	2,200,000

All interested persons are invited to submit comments or objections, in writing, regarding this proposal. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: February 6, 1995.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 95–3456 Filed 2–10–95; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93–13C]

Copyright Restoration of Certain Motion Pictures in Accordance With the North American Free Trade Agreement; List of Titles for Which Statements of Intent To Restore Copyright Were Received

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of list of restored NAFTA works.

SUMMARY: The Copyright Office is publishing a list of 345 titles for which Statements of Intent to Restore Copyright in the United States have been filed under terms of the North American Free Trade Agreement (NAFTA) and its implementing statute. Potential copyright owners of certain motion pictures and their contents who filed a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, restored copyright protection in those works effective January 1, 1995. Publication of this list creates a record for the public regarding works for which complete Statements of Intent have been filed with the Copyright Office.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement (NAFTA) and the North American Free Trade Agreement Implementation Act (NAFTA Act) (Pub. L. No. 103–182, 107 Stat. 2057, 2115 (1993)), provide for the restoration of copyright for certain works that were in the public domain in the United States. Under the new section 104A of title 17 of the United States Code as provided by the NAFTA Act, copyright protection could have been restored for certain motion pictures that were first fixed or published in Mexico or Canada, and any work included in such motion pictures that was first fixed or published with these motion pictures, if the work "entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by sections 401, 402, or 403 of [title 17], the absence of which has not been excused by the operation of section 405 of [title 17], as such sections were in effect during that period." 17 U.S.C. 104A(a) (1993). A motion picture or underlying work (such as original music or dramatic text embodied in the motion picture) meeting these requirements "shall have copyright protection under [title 17] for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice." *Id.*

The Copyright Office notified the public that copyright owners of qualifying works had to file with the Office Statements of Intent to Restore Copyright protection between January 1, 1994 (the date on which NAFTA entered into force), and December 31, 1994, to comply with the terms of the NAFTA Act. 59 FR 1408 (January 10, 1994). We stated that we would then publish in the **Federal Register** the list of works for which Statements were filed and which were determined to meet the criteria for restoration. *Id.* The restoration of copyright protection for these works was effective on January 1, 1995, in accordance with section 104A of title 17 of the United States Code as amended by the NAFTA Implementation Act. Section 104A(c) of this Act provides that U.S. nationals or domiciliaries who made or acquired copies of a motion picture or their contents may publicly perform, sell or distribute copies of these restored works or may continue such activities for up to one year following publication of this list of 345 titles of motion pictures today. This provision of the NAFTA Act applies only to copies produced or acquired before the date of enactment of the implementing legislation (December 8, 1993). As to copies produced or acquired after December 8, 1993, an owner of a restored work listed below may immediately enforce his or her restored copyright against individuals who infringe his or her rights.

This list of Restored Works is also available in the Public Information Office of the U.S. Copyright Office, Library of Congress, Room 401, James Madison Building, 101 Independence Avenue, S.E., Washington, D.C. Additionally, the complete Statements of Intent have been recorded on microfilm, and are available for inspection or copying. These statements have been indexed by title and the name of the copyright owner; these records are available both online in the Copyright Office and on Internet at Marvel.loc.gov.

List of Restored Works by Title

A

A FUEGO LENTO
A PASO DE COJO
ACOMPANAME
ADRIANA DEL RIO ACTRIZ
AGENCIA S.O.S. S.A.
AL CABO QUE NI QUERIA
AL FINAL DEL ARCO IRIS
ALBURES MEXICANOS
ALLA EN LA PLAZA GARIBALDI
AMBICION
AMIGO
AMOR A LA MEXICANA
AMOR LIBRE
EL AMOR LLEGO MAS TARDE
EL AMOR NUNCA MUERE
AMOR PROHIBIDO
EL ANO DE LA PESTE
ANORANZA
ANTONIETA
APRENDIENDO A AMAR
EL ARABE
ARDIENTE SECRETO
EL ARRACADAS
ASTUCIA

B

BAIO LA METRALLA
BARTOLO
BELLA Y BESTIA
BIANCA VIDAL
BLANCA NIEVES Y SUS SIETE AMANTES
LO BLANCO, LO ROJO & LO NEGRO
BURLESQUE

C

EL CABALLITO VOLADOR
LA CABRA
CACERIA IMPLACABLE
CACHUN CACHUN RA RA
CADENA PERPETUA
CAMINOS DE MICHOACAN
CAMPANAS ROJAS
CANANEA
EL CARA PARCHADA
LA CARABINA DE AMBROSIO
CARAS Y GESTOS
LA CARAVANA DE LA MUERTE
LAS CARINOSAS
CARNADA
CARNE DE HORCA
CARTAS PARA UNA VICTIMA
CARTUCHO CORTADO
CASA DE HUESPEDES
LA CASA PROHIBIDA
CASCABEL
LA CASTA DIVINA
CAZADOR DE TIBURONES
CEPILLIN
EL CHACHARAS
EL CHAPULIN COLORADO
EL CHARRO DEL MISTERIO
EL CHAVO
CHEPINA DE TODOS LOS MOLES
CHESPIRITO
CHICOASEN
CHIQUILLADAS
CHISPITA
LOS CHOLOLOCOS
EL CIELO ES PARA TODOS
CINCO POLLAS EN PELIGRO
EL COLOR DE NUESTRA PIEL
COLORINA
EL COMBATE
LOS COMPADRES
CON LA MUERTE EN ANCAS
CONFIDENCIAS
CONTACTO CHICANO

EL CONTRABANDO DEL PASO
EL CORAZON DE LA NOCHE
COSA FACIL
EL COYOTE Y LA BRONCA
CRONICA DE UNA FAMILIA
CRONICA INTIMA
CUARTELAZO
EL CUATRERO
CUENTOS DE PRINCIPES & PRINCESAS
CUMBRES BORRASCOSAS II

D

DEJAME VIVIR
DEL OTRO LADO DEL PUENTE
EL DERECHO DE NACER II
EL DESCONCIDO
DEVERAS ME ATRAPASTE
EL DIABOLICO
DIAS DIFICILES
DIMAS DE LEON
DIMENSIONES OCULTAS
DIOS EL NINO Y EL MAR
DISCOTECA ES AMOR
DISTRITO FEDERAL
DOMENICA MONTERO
DON HERCULANO ENAMORADO
DONA HERLINDA Y SU HIJO
DONDE TERMINA EL CAMINO
DOS MACHOS QUE LADRAN NO MUERDEN

E

EL ELIGIDO
ELISA
EN BUSCA DEL PARAISO II
EN EL CAMINO ANDAMOS
EN EL PAIS DE LOS PIES LIGEROS
EN LA TORMENTA
EN LA TRAMPA
EN LAS GARRAS DE LA CIUDAD
EL ENEMIGO
ENRIQUE POLIVOZ
EROTICA
ES MI VIDA
ESPEJISMO
ESTA NOCHE ES LUCIA
ESTA NOCHE EUROPA
ESTAS RUINAS QUE VES
ESTELARES DEL SABADO
EL ESTUDIO DE LOLA
EXTRANOS CAMINOS DEL AMOR
EL EXTRATERRESTRE

F

EL FANTASMA DEL LAGO
FANTASTICO ANIMAL
FIERAS CONTRA FIERAS
EL FISCAL DE HIERRO
FRIDA NATURALEZA VIVA
FUEGO EN EL MAR
LA FURIA DE UN DIOS
FUT-BOL DE ALCOBA
EL FUTBOLISTA FENOMENO

G

GABRIEL Y GABRIELA
LOS GEMELOS ALBOROTADOS
LAS GLORIAS DEL GRAN PUAS
LA GOLFA DEL BARRIO
GOTITA DE GENTE
EL GRAN PERRO MUERTO
LOS GUARURAS
LA GUERRA DE LOS PASTELES
LA GUERRA DE LOS SEXOS
LA GUERRA ES UN BUEN NEGOCIO
LA GUERRA SANTA

H

LOS HERMANOS MACHORRO
LA HIJA DE NADIE
LA HIJA SIN PADRE
EL HIJO DEL PALENQUE
EL HIJO DEL VIENTO
HISTORIAS VIOLENTAS
HOGAR DULCE HOGAR
EL HOGAR QUE YO ROBE
EL HOMBRE DE LOS HONGOS
EL HOMBRE SIN MIEDO
LOS HOMBRES NO DEBEN LLORAR
HONRARAS A LOS TUYOS
HORA DE SILENCIO
LA HORA DEL JAGUAR
HUEVOS RANCHEROS
HUMILLADOS Y OFENDIDOS

I

EL IMPERIO DE LA FORTUNA
LA INDIA BLANCA
LOS INDOLENTES
EL INFIERNO DE TODOS TAN TEMIDO

J

J.J. JUEZ
JUAN CHARRASQUEADO - GABINO BARRERA (SU VERDADERA HISTORIA)
EL JUDICIAL (CARNE DE CANON)
EL JUDICIAL 2 (CAZADORES DE NARCOS)
JUVENTUD
LA JUVENTUD DE SOR JUANA

L

LADRONZUELA
LAGRIMAS DE AMOR
LAGRIMAS NEGRAS
UNA LEYENDA DE AMOR
UNA LIMOSNA DE AMOR
LA LLAMA DE TU AMOR
LLAMENME MIKE
LLOVIZNA
LO QUE EL CIELO NO PERDONA
LO QUE IMPORTA ES VIVIR
LONGITUD DE GUERRA
LOS DE ABAJO
EL LUGAR SIN LIMITES
LUNA DE SANGRE

M

LA MAFIA DE LA FRONTERA
LA MAFIA TIEMBLA
LOS MAISTROS (pelados pero sabrosos)
MALDITA MISERIA
LOS MALVIVIENTES
MAMA CAMPANITA
MAMA SOLITA
MARCHA NUPCIAL
MARIA JOSE
MARIACHI
MARIANA MARIANA
MAS ALLA DEL DESEO
MATAR POR MATAR
MATEN AL LEON
MATINEE
LA MAXIMA FELICIDAD
ME LLEVA LA TRISTEZA
MEXICANO HASTA LAS CACHAS
MEXICO DE MIS AMORES
MEXICO DOS MIL
MI AMOR FRENTE AL PASADO
MI AVENTURA EN PUERTO RICO
MI COLONIA LA ESPERANZA
MI NOMBRE ES SERGIO Y SOY ALCOHOLICO
MI SECRETARIA
MIL CAMINOS TIENE LA MUERTE
MIL MILLAS AL SUR
MIS HUESPEDES
MISTERIO
LAS MODELOS
EL MOFLES Y LOS MECANICOS
MOJADO DE NACIMIENTO
MOJADO POWER
EL MONASTERIO DE LOS BUITRES
EL MORO DE CUMPAS
LAS MOVIDAS DEL MOFLES
MUCHACHA DE BARRIO
MUCHACHAS DE ACAPULCO
MUENCA ROTA
MUERTE A SANGRA FRIA
LA MUERTE DE UN PISTOLERO
LA MUERTE DEL SOPLON
LA MUGROSITA
UNA MUJER MARCADA
EL MUNDO DE LUIS DE ALBA
MUNDO MAGICO
MUNECAS DE MEDIA NOCHE
LAS MUSIQUERAS

N

NADIE ES INOCENTE
NAUFRAGIO
LA NINA DE LA MOCHILA AZUL
EL NINO DEL TAMBOR
EL NINO Y LA ESTRELLA
NO EMPUJEN
NO ME LAS DES LLORANDO
NO TEMAS AL AMOR
NO TODO LO QUE BRILLA ES ORO
NOCHE A NOCHE
NOCHE DE CARNAVAL
LA NOCHE DEL KU KLUX KLAN
NOCHES DE CABARET
NOVIOS Y AMANTES

O

ODISEA BURBUJAS
OJO POR OJO
EL OTRO
OYE SALOME!

P

PACTO DE AMOR
PANDILLEROS DE LA MUERTE
PARA GENTE GRANDE
PASIONES ENCENDIDAS
PECADO DE AMOR
PEDRO PARAMO
PELEA DE PERROS
LOS PENITENTES DEL PUP
EL PERDON DE LA HIJA DE NADIE
PEREGRINA
PERICO EL DE LOS PALOTES
PERRO CALLEJERO I
LOS PERROS DE DIOS
PICARDIA MEXICANA
PICARDIA MEXICANA II
PICARDIA MEXICANA III
LAS POBRES ILEGALES
EL PREMIO NOBEL DEL AMOR
EL PRESO NO. 9
PRESOS SIN CULPA
LA PUERTA FALSA
PUERTO MALDITO
LA PULQUERIA
LA PULQUERIA DOS
PUM!

Q

QUE TE VAYA BONITO
QUE VIVA TEPITO
QUIEREME SIEMPRE

R

RAICES DE SANGRE
RASTRO DE MUERTE
RATAS DEL ASFALTO
RAZA DE VIVORAS
RETRATO DE UNA MUJER CASADA
EL REY DE LA SELVA
EL REY DE LOS TAHURES
LOS RICOS TAMBIEN LLORAN
ROBACHICOS
ROSALIA
ROSARIO DE AMOR
LA RULETERA

S

SABADO LOCO LOCO
SAN MIGUEL EL ALTO
SANDRA Y PAULINA
LA SANGRE DE ME RAZA
SANTA
SANTO EN EL MISTERIO DE LA PERLA NEGRA
EL SANTO Y LA TIGRESA
EL SECUESTRO DE LOS CIEN MILLONES
SECUESTRO EN ACAPULCO
LA SEDUCCION
EL SEMENTAL
LA SENORITA ROBLES Y SU HIJO
EL SEXOLOGO
EL SHOW DE EDUARDO II
EL SHOW DEL LOCO VALDEZ
SIEMPRE EN DOMINGO
LA SILLA VACIA
SIN FORTUNA
SOLEDAD
SON TUS PERJUMENES MUJER
LA SUCESION
SUPER ESTELAR
LOS SUPERSABIOS

T

EL TAHUR
LAS TENTADORAS
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Dated: February 6, 1995.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95-3499 Filed 2-10-95; 8:45 am]

BILLING CODE 1410-30-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

International Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that meeting of the International Advisory Panel (International Projects Initiative Section) to the National Council on the Arts will be held on March 13-15, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on March 13 and 14 and from 9:00 a.m. to 5:00 p.m. on March 15. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on March 13 for introductions and instructions to the panel and from 4:00 p.m. to 5:00 p.m. on March 15 for an overview discussion.

The remaining portions of this meeting from 10:00 a.m. to 6:00 p.m. on March 14; and from 9:00 a.m. to 4:00 p.m. on March 15 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5433.

Dated: February 7, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Art.

[FR Doc. 95-3501 Filed 2-10-95; 8:45 am]

BILLING CODE 7537-01-M

International Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that meeting of the International Advisory Panel (Overview/US Host Organizations Section) to the National Council on the Arts will be held on March 16-17, 1995 from 9:00 a.m. to 6:00 p.m. This meeting will be held in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on March 16 for introductions and instructions to panelists and from 9:00 a.m. to 6:00 p.m. on March 17 for guidelines review and overview discussion.

The remaining portion of this meeting from 10:00 a.m. to 6:00 p.m. on March 16 is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: February 7, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-3502 Filed 2-10-95; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio/Audio Production/Services Section) to the National Council on the Arts will be held on February 21-23, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on February 21; from 9:00 a.m. to 5:30 p.m. on February 22 and 23. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on February 21 for introductory remarks and from 4:30 p.m. to 5:30 p.m. on February 23, for a policy discussion.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on February 21; from 9:00 a.m. to 5:30 p.m. on February 22; and from 9:00 a.m. to 4:30 p.m. on February 23 are fro the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: February 7, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-3502 Filed 2-10-95; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Composer in Residence Section) to the National Council on the Arts will be held on February 22-23, 1995 from 10 a.m. to 5:30 p.m. on February 22 and from 9 a.m. to 5:30 p.m. on February 23, 1995. This meeting will be held in Room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 10 a.m. to 5:30 p.m. on February 22 for orientation and opening remarks; an overview of Music Program categories and categories supporting composer activities; a statement from the Director of the Music Program; a question and answer period; a session to identify the needs of the composer; a discussion of the Millenium Projects, and guidelines development. On February 23, open sessions will be held from 9 a.m. to 12 p.m. for guidelines development and from 4:30 p.m. to 5:30 p.m. for policy discussion and guideline review.

The remaining portion of this meeting from 1 p.m. to 4:30 p.m. on February 23 is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5439.

Dated: February 6, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-3502 Filed 2-10-95; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Composer in Residence Section) to the National Council on the Arts will be held on February 22-23, 1995 from 10 a.m. to 5:30 p.m. on February 22 and from 9 a.m. to 5:30 p.m. on February 23, 1995. This meeting will be held in Room M-14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 10 a.m. to 5:30 p.m. on February 22 for orientation and opening remarks; an overview of Music Program categories and categories supporting composer activities; a statement from the Director of the Music Program; a question and answer period; a session to identify the needs of the composer; a discussion of the Millenium Projects, and guidelines development. On February 23, open sessions will be held from 9 a.m. to 12 p.m. for guidelines development and from 4:30 p.m. to 5:30 p.m. for policy discussion and guideline review.

The remaining portion of this meeting from 1 p.m. to 4:30 p.m. on February 23 is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95-3504 Filed 2-10-95; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-352 and 50-353]

Philadelphia Electric Co.; Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-85, issued to Philadelphia Electric Company, (the licensee), for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of December 9, 1993, as supplemented July 5, September 9, October 19, November 19, 1994, January 6, and January 23, 1995. to amend the Limerick Generating

Station (LGS), Units 1 and 2 operating licenses. The proposed amendment would increase the licensed thermal power level from 3293 Mwt to 3458 Mwt. This request is in accordance with the generic boiling water reactor (BWR) power uprate program established by the General Electric Company (GE) and approved by U.S. Nuclear Regulatory Commission (NRC) staff in a letter of September 30, 1991.

The proposed action involves NRC issuance of a license amendment to increase the authorized power level by changing the operating license, including Appendix A of the license (Technical Specifications). No change is needed to Appendix B of the license (Environmental Protection Plan—Non-radiological).

The Need for the Proposed Action

The proposed action is needed to permit an increase in the licensed core thermal power from 3293 Mwt to 3458 Mwt and provide the licensee with the flexibility to increase the potential electrical output of LGS, Units 1 and 2, providing additional electrical power to service domestic and commercial areas.

Environmental Impacts of the Proposed Action

The "Final Environmental Statement (FES) Related to Operation of Limerick Generating Station, Units 1 and 2" was issued April 1984 (NUREG–0974). The licensee submitted GE Topical Report, NEDC–32225P, "Power Rerate Safety Analysis Report for Limerick Generating Station, Units 1 and 2," Class III, dated September 1993, as Attachment 3 to the December 9, 1993 submittal. NEDC–32225P contains the safety analysis prepared by GE to support this license change request and the implementation of power uprate at LGS, Units 1 and 2. The analyses and evaluations supporting these proposed changes were completed using the guidelines in GE Topical Report NEDC–31897P–A, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," Class 3, dated May 1992, and NEDC–31948P, "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate," Class III, dated July 1991. The NRC reviewed and approved GE Topical Reports NEDC–31897P–A and NEPC–31948P in a September 30, 1991, letter and in a letter from W. Russell, NRC, to P. Marriotte, GE, dated July 31, 1992.

The licensee provided information regarding the nonradiological and radiological environmental effects of the proposed action in the December 9, 1993 application and supplemental information in the January 6, and January 23, 1995 submittal. The staff has reviewed the potential radiological and non-radiological effects of the proposed action on the environment as described below.

Non-Radiological Environmental Assessment

Power uprate will not change the method of generating electricity nor the method of handling any influents from nor effluents to the environment. Therefore, no new or different types of environmental impacts are expected.

The staff reviewed the nonradiological impact of operation at uprated power levels on influents from the Perkiomen Creek, Schuylkill and Delaware Rivers and effluents to the Schuylkill River. LGS, Units 1 and 2 each have a closed-loop circulating water system and cooling tower for dissipating heat from the main turbine condensers. The cooling towers are operated in accordance with the requirements of National Pollution Discharge Elimination System (NPDES) Permit No. PA0051926. The current permit was renewed on December 12, 1994 and is effective through December 31, 1999. The only increase in LGS water intake due to operation at power uprate conditions is due to increased evaporation in the hyperbolic natural draft cooling towers. In the January 6, 1995 letter, the licensee indicated that the existing consumptive flow will conservatively increase from 38,059,065 to 40,723,200 gallons per day (total for both units), depending on atmospheric conditions. The velocity of the intake water will increase less than 7 percent. Makeup is drawn from the Schuylkill River, Perkiomen Creek, or the Delaware River, depending on flow and temperature. When makeup is drawn from the Delaware River through the Point Pleasant Pumping Station via the Bradshaw Station, 3 percent additional evaporative losses must be considered. The increase makeup flow (including evaporative losses), is within the existing water diversion consumptive use limit of 42,000,000 gallons per day specified in the original permitting evaluations.

Makeup water requirements for systems and components other than the cooling towers are not expected to change due to operation at uprated power levels. The licensee indicated that the only potential change is due to increased reactor operating pressure which could slightly increase leakage through valve packing. System leakage, however, is processed through the liquid radwaste system and returned to the condensate storage tank for reuse. Based on the above considerations, the staff concluded that the effect of makeup requirements at uprated power levels on the environment is not significant.

The licensee does not expect any increase in the cooling tower blowdown due to the physical limitation in the blowdown system. Likewise, the licensee does not expect any increase in the blowdown discharge velocity. However, the licensee indicated that the blowdown discharge temperature will increase less than 0.1°F. This temperature rise will have an insignificant effect on the thermal plume. This increase is within the NPDES permit limit.

An increase in cooling tower drift is not anticipated for operation at uprated conditions. Drift is a function of physical geometry, water flow, and wind conditions, none of which are changed by power uprate. Therefore, the licensee has indicated that the original evaluation of impacts to the terrestrial environment is not altered.

The only changes to the cooling tower water chemistry are due to increased evaporation from the towers. Concentrations of dissolved and suspended solids in the blowdown will increase approximately less than 7 percent, which is within NPDES permit limits. The licensee stated that the use of biocides and corrosion inhibitors in the circulating water system may change as a result of operation at uprated power levels. However, the licensee stated that change in chemical usage would not impact existing NPDES permit limitations.

Nonradiological effluent discharges from other systems were also considered. Nonradiological effluent limits for such systems as yard drains, sewage treatment plant, and laundry drains are established in the NPDES permit. Discharges from these systems are not expected to change significantly, if at all, because operation at uprated power levels is governed by the limits in the NPDES permit. Thus, the impact on the environment from these systems as a result of operation at uprated power levels is not significant.

Operation at uprated power levels will not result in increased noise generation from the majority of plant equipment. Some of this equipment, such as the main turbine and generator will operate at the same speed and thus will not contribute to increased offsite noise. Other major plant equipment is located within plant structures and will not lead to increased offsite noise levels. The main station transformers will operate at an increased kilovolt-ampere level which will cause an insignificant increase in the overall noise level. The makeup pumps, which are indoors, will operate at the same level, however, in some cases cycling on slightly more frequently. The pumps at the Bradshaw Station are variable speed and, when used, will operate at a slightly higher speed. The pumps are indoors; therefore, the outside noise level increase will be insignificant.

The licensee has stated that there are no changes required to the LGS Environmental Protection Plan as a result of operation at uprated power levels. Specifically the licensee stated:

> Other non-radiological environmental impacts of the proposed power rerate were reviewed based on the information submitted in the Environmental Report, Operating License Stage, the NRC Final Environmental Statement (FES), Operating License Appendix B (i.e., Environmental Protection Plan), the requirements of the applicable NPDES permits, which include the outfall limits, and the Delaware River Basin Commission Water Use permit. We have concluded the proposed power rerate will have insignificant impacts on the non-radiological elements of concern and the plant will be operated in an environmentally acceptable manner as established by the FES. Existing Federal, State and Local regulatory permits presently in effect will accommodate power rerate without modification.

The FES described the impact of plant operation on fogging in the vicinity of the facility. The FES discussed that the increase in fogging due to plant operation was expected to blend in with the natural fog and be indistinguishable. The staff expects that operation of the plant at uprated power levels will result in only a minimal increase in fogging over that discussed in the FES. Thus, the impact of plant operation on local fogging, including operation at uprated power, remains insignificant.

Radiological Environmental Assessment

The licensee evaluated the impact of the proposed amendment to show that the applicable regulatory acceptance criteria continue to be satisfied for the uprated power conditions. In conducting this evaluation, the licensee considered the effect of the higher power level on source terms, onsite and offsite doses, and control room habitability during both normal operation and accident conditions. The licensee provided information regarding the radiological environmental effects of the proposed action in NEDC–32225P and supplemental information in the January 6, 1995 submittal. In Sections 8.1 and 8.2 of NEDC–32225P, the licensee discussed the potential effect of power rerate on liquid and gaseous radioactive waste systems. Sections 8.3 and 8.4 discussed the potential effect of power uprate on radiation sources in the reactor coolant resulted from coolant activation products, activated corrosion products and fission products. Section 8.5 of the Topical Report discussed the radiation levels during normal operation, normal post-operation, post-accident, and offsite doses during normal operation. Finally, Section 9.2 of NEDC–32225P presented the results of calculated whole body and thyroid doses at the uprated power and current authorized power conditions at the exclusion area boundary and the low population zone that might result from the postulated design basis radiological accidents [i.e., loss-of-coolant-accident (LOCA), main steam line break accident (MSLBA) outside containment, fuel handling accident (FHA) and control rod drop accident (CRDA)].

In Section 8.1 of NEDC–32225P, the licensee stated that there will be only a slight increase in the liquid radwaste collection as a result of operation at higher power levels. The liquid waste system collects, monitors, processes, stores, and returns processed radioactive waste to the plant for reuse or for discharge. The largest contributor to the liquid waste results from the backwash of the condensate demineralizers and deepbeds. The rate of loading on the demineralizers increases, resulting in the average time between backwash precoat being reduced slightly; this reduction does not affect plant safety. Similarly, the reactor water cleanup (RWCU) filter/demineralizers will require slightly more frequent backwashes due to slightly higher levels of activation and fission products. The power uprate will increase the flow rate through the condensate demineralizers, with a subsequent reduction in the average time between backwashing. Additionally, neither the floor drain collector subsystem nor the waste collector subsystem is expected to experience a significant increase in the total volume of liquid waste due to operation at the uprated level.

The licensee stated that while the activated corrosion products in liquid wastes are expected to increase proportionally to the square of the power increase, the total volume of processed waste is not expected to increase appreciably. Based on its analyses of the liquid radwaste system, the licensee has concluded the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I, will be met. Based on the above considerations, the staff concluded that the power uprate will have no significant adverse effects on liquid effluents.

The gaseous waste management systems collect, control, process, store and dispose of gaseous radioactive waste generated during normal operation and abnormal operational occurrences. These systems include the standby gas treatment system (SGTS), off-gas recombiner system, the ambient temperature charcoal treatment system, and various building ventilation systems. Various devices and processes, such as radiation monitors, filters, isolation dampers, and fans, are used to control airborne radioactive gases. The licensee states that the activity of airborne effluents released through building vents is not expected to increase significantly with power uprate and the systems are designed to meet the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I.

In its power uprate submittal, the licensee has stated that the greatest contributor of radioactive gases is the noncondensible radioactive gases from the main condenser, including activation gases (principally N–16, O–19, and N–13) and radioactive noble gas parents. The increase in production of these gases is expected to be approximately proportional to the core power increase. These noncondensible radioactive gases, along with nonradioactive air due to inleakage to the condenser, are continuously removed from the main condensers by the stream jet air ejectors (SJAE). The SJAEs discharge into the offgas system. The flow of these gases into the offgas system is included with the flow of H_2 and O_2 to the recombiner, which will also increase linearly with core power. Radioactive gases and H_2 and O_2 pass from the recombiner through a holdup pipe, cooler condenser, adsorber bed, and high-efficiency particulate air (HEPA) filters and exit the facility through the north stack. Gaseous activity effluent release rates are monitored down stream of the adsorber bed and alarms are provided in the control room. The licensee has stated that the operational increases in hydrogen, oxygen, and noble gases due to uprate are not significant when compared to the current total system flow which also includes air from condenser inleakage and steam flows from the air ejector.

The design basis for the offgas system is for activity release rates of 100,000 microcuries per second based on a mixture of activation and fission product gases and fuel leakage and a 30-minute holdup time. The system is designed to meet the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I. Performance of the system at uprated power levels is expected to remain within the system design basis and, thus, to continue to meet the

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requirements of 10 CFR part 20 and 10 CFR part 50, appendix I.

The contribution of gases to the gaseous waste management system from building ventilation system is not expected to increase significantly with power uprate because (1) the amount of fission products released into the reactor coolant depends on the number of nature of the fuel rod defects and is not dependent on reactor power, and (2) the concentration of coolant activation products is expected to remain unchanged since the linear increase in the production of these products will be offset by the linear increase in steaming rate.

Based on its review of the gaseous waste management system, the staff concluded that there will not be a significant adverse effect on airborne effluents as a result of the power rerate.

The licensee has evaluated the effects of the power uprate on in-plant radiation levels in the LGS facility during normal and abnormal operation as well as from postulated accident conditions. The licensee has concluded that radiation levels from both normal and accident conditions may increase slightly. However, because many areas of the plant were designed for higher than expected radiation sources, the small increase in radiation levels expected due to power uprate will not affect radiation zoning or shielding in the plant.

During periods of normal and post-operation conditions, individual worker exposures will be maintained within acceptable limits by the existing, as low as is reasonably achievable (ALARA) program, which controls access to radiation areas. Procedure controls compensate for slightly increased radiation levels.

The offsite doses associated with normal operation are not significantly affected by operation at the uprated power level, and are expected to remain below the limits of 10 CFR part 20 and 10 CFR part 50, appendix I.

The main control room (MCR) habitability was evaluated. Post-accident MCR and technical support center doses were confirmed by the licensee to be within the limits of General Design Criterion (GDC) 19 or 10 CFR part 50, appendix A.

The increase in LOCA radiological consequences due to power uprate was analyzed by the licensees. The resultant offsite doses were found to be within guidelines of 10 CFR part 100. The events evaluated for uprate were the LOCA, the MSLBA, the FHA, and the CRDA. The whole body and thyroid doses were calculated for the exclusion area boundary (EAB), low population zone (LPZ), and the control room. The plant-specific results for power uprate remain well below established regulatory limits. The doses resulting from the accidents analyzed are compared below with the applicable dose limits.

Location	LOCA radiological consequences		Limit
	UFSAR dose (rem) @3458 MWt	Dose (rem) @ 3527 MWt[1]	
Exclusion area:			
Whole body dose	0.67	0.68	25
Thyroid dose	0.15	0.15	300
Low population zone:			
Whole body dose	1.7	1.7	25
Thyroid dose	0.04	0.04	300
Main control room:			
Whole body dose	4.6	4.7	5
Thyroid dose	14.0	14.3	30
Beta	7.6	7.8	30
FHA Radiological Consequences			
Exclusion area:			
Whole body dose	0.7	0.7	6
Thyroid dose	0.95	0.98	75
Low population zone:			
Whole body dose	0.099	0.102	6
Thyroid dose	0.13	0.135	75
CRDA Radiological Consequences			
Exclusion area:			
Whole body dose	0.04	0.042	6
Thyroid dose	0.32	0.3	75
Low population zone:			
Whole body dose	0.014	0.0148	6
Thyroid dose	0.62	0.63	75

[1] This number represents 102% of the power uprate level. Doses based on 102% are consistent with Regulatory Guide 1.49, Revision 1 guidance and are provided to allow for possible instrument errors in determining the power level.

Based on a review of the licensee's major assumptions and methodology used in their reconstituted dose calculations and the staff's original safety evaluation, the staff concluded that the offsite radiological consequences and control room operator doses at uprated power levels still remain below 10 CFR part 100 dose reference values and GDC 19 dose limits. Therefore, the staff concludes that no significant adverse effect on radiation levels will result onsite or offsite from the planned power uprate

It is expected that the increased energy requirements associated with operation at uprated power will require an increase in the reload fuel enrichment and will result in increased burnup. The NRC previously evaluated the environmental impacts associated with burnup values of up to 60,000 MWd/MT with fuel enrichments up to 5 percent ^{235}U (published in the **Federal Register**, 53 FR 6040 dated February 29, 1988). The staff concluded that the environmental impacts associated with Table S–3 of 10 CFR 51.51, Uranium Fuel Cycle Environmental Data, and Table S–4 of 10 CFR 51.52, Environmental Impact of Transportation of Fuel and Waste, are conservative and bound the corresponding impacts for burnup levels of up to 60,000 MWd/MtU and ^{235}U enrichments up to 5 percent by weight. In the January 23, 1995 submittal, the licensee indicated that while fuel burnup and enrichment levels may increase as a result of operation at uprated power, the burnup and enrichment will remain within the 5 percent enrichment and 60,000 MWd/MT value previously evaluated by the staff. Based on the above cited environmental assessment and the licensee's statements regarding expected burnup and enrichment values, the staff concludes that the environmental effects of increased fuel cycle and transportation activity as a result of operation at uprated power levels are not significant.

The Commission has completed its evaluation of the proposed action and concludes that the NRC's FES is valid for operation at the proposed uprated power conditions for LGS, Units 1 and 2. The staff also concluded that the plant operating parameters impacted by the proposed uprate would remain within the bounding conditions on which the conclusions of the FES are based.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The NRC staff finds the radiological and nonradiological environmental impacts associated with the proposed small increase in power are very small and do not change the conclusion in the FES that the operation of LGS, Units 1 and 2, would cause no significant adverse impact upon the quality of the human environment.

Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative to the action would be to deny the request. Such action would not significantly reduce the environmental impact of plant operation but would restrict operation of LGS, Units 1 and 2 to the currently licensed power level and prevent the facility from generating approximately 60 MWe (165 MWt) additional that is obtainable from the existing plant design.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Limerick Generating Station, Units 1 and 2," dated April 1984.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Bureau of Radiation Protection, Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 9, 1993, as supplemented by letters dated July 5, September 9, October 19, and November 19, 1994, and January 6, and January 23, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Dated at Rockville, Maryland, this 7th day of February 1995.

For the Nuclear Regulatory Commission.

Chester Poslusny,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3520 Filed 2–10–95; 8:45 am]

BILLING CODE 7590–01–M

Draft NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued a draft report entitled, "Management of Radioactive Material Safety Programs at Medical Facilities" (NUREG–1516). This draft report, prepared by NRC staff and two representatives of Agreement States, is available for review and comment.

The draft report describes a systematic approach for effectively managing radiation safety programs at medical facilities. This is accomplished by defining and emphasizing the roles of an institution's executive management, radiation safety officer (RSO), and radiation safety committee, if required. Various aspects of program management are discussed and guidance is offered on selecting the RSO, determining adequate program resources, using contractual services such as consultants and service companies, conducting program audits, and clarifying the roles of physician authorized users and supervised individuals. NRC's reporting and notification requirements are outlined and a general description is given of how NRC's licensing, inspection, and enforcement programs work. There are 19 appendices that present detailed information on specific aspects of program management and include an annotated bibliography prepared by the Radiological Sciences Division of Brookhaven National Laboratory.

This report presents regulatory guidance. It does not describe new or proposed regulations, and licensees are not required to adhere to its principles. Any discussion or specific information that implies a new or proposed regulatory requirement does so unintentionally. Rather, this should be viewed as a practical guide to present a management approach and describe management tools which regulatory agencies have observed to be effective when managing a radiation safety program at a medical facility. Even though the radiation safety principles and practices in NUREG–1516 are directed towards the safe use of byproduct material, they have universal applicability and may be used by the RSO and other responsible individuals to manage the safe use of other sources of radiation for medical use not specifically addressed in this report.

Comments and suggestions on the Draft NUREG–1516 should be sent to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Copies of the comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC. Submit comments on this draft report by December 31, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for those comments received by this date.

Copies of draft NUREG–1516 may be obtained by written request or telefax (301–504–2260) from Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further information contact Janet Schlueter, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Mail Stop, T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7894.

Dated at Rockville, Maryland, this 25th day of January 1995.

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For the Nuclear Regulatory Commission.

Larry W. Camper,

Acting Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–3521 Filed 2–10–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Entergy Operations, Inc. (Arkansas Nuclear One, Unit 1); Exemption

I

Entergy Operations, Inc. (the licensee) is the holder of Operating License No. DPR–51, which authorizes operation of Arkansas Nuclear One, Unit 1 (ANO–1). The operating license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility consist of pressurized water reactor at the licensee's site in Pope County, Arkansas.

II

Section III.D.1(a) of appendix J to 10 CFR part 50 requires, "* * * a set of three Type A tests [Overall Integrated Containment Leakage Rate Tests, or ILRTs] shall be preformed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspection." By letter dated November 8, 1994, the licensee requested an exemption from this requirement of the Commission's regulations..

The NRC may grant exemptions from the requirements of the regulations, pursuant to 10 CFR 50.12, that (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2) of 10 CFR part 50 describes special circumstances as including cases that would not serve the underlying purpose of the rule or are not necessary to achieve the underlying purpose of the rule.

In its November 8, 1994, letter, the licensee also applied for an amendment to Facility Operating License No. DPR–51 to change related provisions of the ANO–1 Technical Specifications (TSs). The TS amendment request will be addressed as a separate action.

III

The Type A test is defined in 10 CFR part 50, appendix J, section II.F, as a "test intended to measure the primary reactor containment overall integrated leakage rate (1) after the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter." A total of six Type A tests (ILRT) has been performed on the ANO–1 containment including the preoperational ILRT that was performed in 1973. Except for leakage detected by Type B and C tests, containment leakage rates have always been below the ANO–1 acceptance criteria. The requested exemption does not affect the performance of Type B and C leakage tests which are expected to detect the most probable sources of containment leakage.

In order to schedule the next ILRT (the third ILRT of this service period) such that it coincides with the 10-year inservice inspections, the licensee has requested a one-time exemption from the appendix J requirements. The exemption would permit the licensee to perform the ILRT together with the 10-year inservice inspections that are schedule during the thirteenth refueling outage. If performed during the thirteenth refueling outage, the third ILRT will not be completed until after the end of the current 10-year service period. To comply with regulations as written, an ILRT would be required during the twelfth refueling outage to satisfy the requirement for three ILRTs during the 10-year service period and another ILRT would be required during the thirteenth refueling outage to satisfy the requirement for the third ILRT to be performed when the plant is shutdown for the 10-year inservice inspections.

The thirteenth refueling outage is currently scheduled for the summer of 1996 and an ILRT performed during this refueling outage would result in a test interval between the second and third ILRTs of approximately 53 months. If the ILRT were performed during the twelfth refueling outrage, currently scheduled for early 1995, the interval between the second and third ILRTs would be approximately 34 months. In the absence of the exemption and related technical specification changes, the licensee would be required to perform ILRTs during both the twelfth and thirteenth refueling outages. A requirement to perform ILRTs during two consecutive refueling is clearly beyond the intent of the regulations and given the satisfactory results of previous tests at ANO–1, there is little, if anything, to gain from two closely spaced tests.

For the reasons set forth above, the NRC staff concludes that this one-time relief from the requirement to perform the third ILRT within a 10-year service period is not significant in terms of complying with the intent of appendix J, section III.D.1(a). Accordingly, the staff finds that the performance of ILRTs during both the twelfth and thirteenth refueling outages would not result in a commensuate increase in the confidence of containment integrity. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(ii), in that in these particular circumstances, the fourth test is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12. Further the staff also finds that extending the schedule for the third ILRT to beyond the 10-year service period will not present a undue risk to the public health and safety.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50,12(a), that this exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants Entery Operations, Inc. an exemption from the requirements of 10 CFR part 50, appendix J, section III.D.1(a).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact of the quality of the human environment (60 FR 6568).

Dated at Rockville, Maryland this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3522 Filed 2–10–95; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Review Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2645, Extension of Special Withdrawal Liability Rules

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB review.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested review by the Office of Management and Budget for a collection of information (1212–0023) contained in its regulation on Extension of Special Withdrawal Liability Rules (29 CFR part 2645).

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0023), Washington, DC 20503. The request for review will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours at 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Extension of Special Withdrawal Liability Rules, 29 CFR part 2645.

Sections 4203(f) and 4208(e)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") provide for the PBGC's issuance of regulations under which the PBGC may approve a multiemployer pension plan's adoption of special rules for determining whether a complete or partial withdrawal from the plan has occurred. Section 4203(f) also sets standards for the approval of such special rules. The PBGC's regulation on Extension of Special Withdrawal Liability Rules requires the plan sponsor of a plan that adopts special rules to submit information about the rules, the plan, and the industry in which the plan operates with its request for PBGC approval of the rules. The PBGC uses that information in determining whether the plan's special withdrawal liability rules meet the requirements of ERISA.

The PBGC estimates that it receives three requests per year under the regulation and that each request takes sixteen hours to prepare. Thus, the total estimated burden is 48 hours per year.

Issued at Washington, DC, this 7th day of February 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–3447 Filed 2–10–95; 8:45 am]

BILLING CODE 7708–01–M

Request for Review Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2672, Mergers And Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB review.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested review by the Office of Management and Budget for a collection of information (1212–0022) contained in its regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 2672).

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0022), Washington, DC 20503. The request for review will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Mergers and Transfers Between Multiemployer Plans, 29 CFR Part 2672.

Section 4231 of the Employee Retirement Income Security Act of 1974 (ERISA) imposes requirements on multiemployer plan mergers and transfers and provides that a merger or transfer will be deemed not to be in violation of ERISA section 406 (a) or (b)(2) (dealing with prohibited transactions) if the PBGC determines that those requirements are satisfied. Pursuant to section 4231, the PBGC has promulgated its regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 2672), which sets forth (in §§ 2672.2, 2672.7, and 2672.8) the procedures a plan sponsor must follow to give the PBGC notice of a merger or transfer under section 4231 or to request a PBGC determination that a merger or transfer complies with the requirements of section 4231. The PBGC uses information submitted by multiemployer plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The PBGC estimates that it takes a respondent an average of 5 hours to prepare a submission under the regulation and, based on its experience, that about 20 submissions are made each year.

Accordingly, the estimated burden of the collection of information is 100 hours.

Issued at Washington, DC, this 7th day of February 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–3446 Filed 2–10–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington DC 20549

Proposed Amendment Form BD File No. 270–19

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for the Office of Management and Budget approval on the proposed amendments to Form BD [17 CFR 249.501] under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Form BD is used to apply for registration as a broker-dealer and for firms other than banks and registered broker-dealers to apply for registration as a municipal securities dealer or a government securities broker-dealer. Form BD also is used to amend such applications when any information previously filed on Form BD becomes inaccurate. It is estimated that 1,200 broker-dealers annually will incur an average burden of 2.75 hours to file initial or successor applications for registration on Form BD for an annual burden of 3,300 hours. It also is estimated that broker-dealers will file 12,000 amendments annually, and will incur an average burden of 20 minutes to file amendments on Form BD for an annual burden of 3,960 hours. The total annual burden for Form BD and Form BD amendments is 7,260 hours.

Direct general comments to the Clearance Officer for the Securities and

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Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and the Clearance Officer for the Securities and Exchange Commission, Project Number 3235–0012, Office of Management and Budget, New Executive Office Building, Room 3208, Washington DC 20503.

Dated: February 3, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3495 Filed 2–10–95; 8:45 am]

BILLING CODE 8010–01–M

Release No. 34–35334; File No. SR–NASD–94–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Numbering and Terminology of Rules and Correction of Cross References

February 6, 1995.

On December 13, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change [1] that recognizes the NASD Manual with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The Commission published notice of the proposed rule change in the **Federal Register** on January 5, 1995.[4] No comments were received in response to the notice. For the reasons discussed below, the Commission is approving the proposed rule change.

The rule change amends Articles I, III, IV, V, VII, VIII, IX, XII and XVII of the By-Laws; and Articles, I, II, III, IV and V of the Rules of Fair Practice. The new language was included in the notice of the proposed rule change. The amendments are part of a multi-phase program in which the NASD is reorganizing the NASD Manual to make it easier to use by members and other users. The amendments are a non-substantive reordering of the existing rules, interpretations, and other provisions of the Manual intended to establish a more logical progression of rules within the Manual. All rules in the NASD Manual, including not only the current Rules of Fair Practice, but also, for example, such specialized rules as the Government Securities Rules, Nasdaq Rules, and the Code of Arbitration Procedure will be numbered consecutively throughout the Manual and considered together as "Rules. The amendments will require certain changes in numbering and terminology in the By-Laws and Rules of the NASD. In addition, a common numbering and naming scheme for subdivisions within a Rule will be used. Discussion of the specific changes were included in the **Federal Register** notice.

The Commission finds the proposed rule change consistent with the provisions of Section 15A(b)(6) of the Act,[5] in that the proposal simplifies the terminology used for rules and corrects inadvertent errors and omissions. The Commission believes that making the NASD Manual easier to use may enhance the protection of investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–64 be, and hereby is, approved, effective February 9, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 95–3496 Filed 2–10–95; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD originally submitted the proposed rule change on November 28, 1994. On December 13, 1994, the NASD filed Amendment No. 1 to its filing requesting that certain language be deleted and substituted with the word "unchanged". This order reflects the amendment.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 35150 (December 23, 1994), 60 FR 1808.

[5] 15 U.S.C. Sec. 78o–3.

[6] 17 CFR 200.30–3(a)(12).

[Investment Company Act Release No. 20883; 812–9304]

Frank Russell Investment Company, et al.; Notice of Application

February 6, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Frank Russell Investment Company, including all current and future series thereof, (the "Investment Company"); Frank Russell Investment Management Company ("FRIMCo"), Russell Fund Distributors, Inc. ("RFD"), and all future registered open-end management investment companies distributed by RFD or for which FRIMCo serves in the future as investment adviser, or for which any person controlling, controlled by, or under common control with FRIMCo (within the meaning of section 2(a)(9) of the Act) may in the future serve as investment adviser.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for conditional exemptions from sections 18(f), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to issue an unlimited number of classes of shares representing interests in the same portfolio of securities.

FILING DATE: The application was filed on October 25, 1994, and was amended on January 9, 1995, and on February 1, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 3, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, 909 A Street, Tacoma, Washington 98402.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, (202) 942–0654, or Barry D. Miller, Senior Special Counsel, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Investment Company is a Massachusetts business trust registered under the Act as an open-end management investment company. The Investment Company is a series company and consists of twenty-two separate series, each of which has separate investment objectives and policies (the existing and future series of the Investment Company are collectively referred to as the "Funds"). FRIMCo is the investment adviser (the "Adviser") and RFD is the distributor of the Investment Company. The Funds consist of both money market funds and funds with fluctuating net asset values, the shares of which are sold and redeemed daily at net asset value without a sales or redemption change.

2. Applicants proposed to create a multi-class distribution system.[1] The Investment Company would be permitted to offer an unlimited number of additional classes of shares ("New Shares") in connection with (a) a plan adopted pursuant to rule 12b–1 under the Act (the "Services Plan"); and/or (b) a non-rule 12b–1 administrative plan (the "Shareholder Administrative Plan"); or (c) neither the Services Plan nor the Shareholder Administrative Plan (collectively, the "Plans"). The services provided pursuant to the Plans will augment or replace (and not be duplicative of) the services to be provided to the Funds by FRIMCo and RFD. Applicants propose to "unbundle" the services to be provided to the Funds to permit organizations, such as broker-dealers or banks, to select those services they wish to provide to their customers under Services Plan agreements and/or Shareholder Administrative Plan agreements (collectively, "Plan Agreement").[2]

3. A Fund would pay the distributor and/or an organization for its services and assistance in accordance with the terms of its particular Plan Agreement(s) (the "Plan Payments"). Plan Payments will not exceed the limits imposed under Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD").

4. The New Shares of a Fund would be identical in all respects, except that: (a) Each class of New Shares would have a different class designation; (b) each class of New Shares offered in connection with a Plan would bear the expense of the Plan Payments applicable to such class; (c) each class of New Shares could, as more fully described below, also bear certain other expenses ("Class Expenses") that are directly attributable only to the class; (d) only the holders of the New Shares of the class or classes involved would be entitled to vote on matters pertaining to a Plan and any related agreements relating to such class or classes; and (e) classes of New Shares may have different exchange privileges.

5. Expenses of the Investment Company that cannot be attributed directly to any one Fund will be allocated to each Fund based on the relative net assets of such Fund ("Investment Company Expenses"). Expenses that may be attributable to a Fund but not to a particular class will be allocated to a class ("Fund Expenses").

6. FRIMCo may choose to reimburse or waive Class Expenses of certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by FIRMCo may vary from class to class. Class Expenses are, by their nature, specific to a given class and therefore are expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Fund.

7. In addition, FRIMCo may waive or reimburse Investment Company Expenses and/or Fund Expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Investment Company Expenses and/or Fund Expenses is waived or reimbursed for each class. Thus, any Investment Company Expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes. Similarly, any Fund Expenses that are waived or reimbursed would be credited to each class of that Fund according to the relative net assets of the classes. Investment Company Expenses and Fund Expenses apply equally to all classes of a given Fund. Accordingly, it may not be appropriate to waive or reimburse Investment Company Expenses or Fund Expenses at different levels for different classes of the same Fund.

8. The Investment Company may also offer classes of shares ("Institutional Shares") that are available solely to: (a) Unaffiliated benefit plans, such as qualified retirement plans, other than individual retirement accounts and self-employed retirement plans, with total assets in excess of such minimum amounts as the Funds may establish and with such other characteristics as the Funds may establish; [3] (b) tax-exempt retirement plans of FRIMCo and its affiliates, including the retirement plans of FRIMCo's affiliated brokers; (c) banks and insurance companies that are not affiliated with FRIMCo purchasing for their own investment; (d) investment companies not affiliated with FRIMCo; and (e) endowment funds of non-profit organizations that are not affiliated with FRIMCo (each, an "Institutional Investor").

9. Each class of Institutional Shares will have attributes designed to meet specific investment needs of a particular category of Institutional Investor. Institutional Shares will be subject to either lower or no servicing fees under any Plan, and may bear lower transfer agency fees and other operating expenses than some other classes of shares. Only Institutional Investors will be eligible to invest in Institutional Shares. Applicants may choose not to make a particular class of Institutional Shares available to one or more categories of Institutional Investors.

No Institutional Investor that is eligible to invest in any class of Institutional Shares will be permitted to invest in any class other than a class of Institutional Shares. Accordingly, there will be no overlap between the investors eligible to invest in Institutional Shares and investors eligible to invest in other shares of a Fund.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 18(f)(1) and 18(g) of the Act to the extent that the proposed issuance and sale of an unlimited number of classes of new Shares may result in a "senior security" prohibited by section 18(f), and in a violation of section 18(i), to the extent that the different voting rights associated with such classes may be deemed to result in one or more classes of shares having unequal voting rights with other classes of shares.

2. The proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. The proposed arrangement does not involve borrowing and does not affect a Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of a Fund's shares,

[1] Existing shares of the Funds are expected to comprise one or more different classes.

[2] Twelve of the Funds (the "Internal Fee Funds") follow the conventional practice of paying FRIMCo a management fee from Fund assets. Ten of the Funds (the "External Fee Funds") require investors to pay a management fee directly to FRIMCo pursuant to contracts between each investor and FRIMCo. Each shareholder of an External Fee Fund pays the same *pro rata* amount for advisory services as each other shareholder of the Fund. In the future, FRIMCo may elect to "internalize" the portion of the management fee attributable to advisory services, administrative services, or both, so that fees for those services are deducted from Fund assets in the same manner as done for the Internal Fee Funds. In no event, if the requested relief is granted, would a Fund issue both a class of shares with an internal fee arrangement and one with an external fee arrangement.

[3] These plans will have a separate trustee who is vested with investment discretion as to plan assets will have limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and will not include self-directed plans

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since all such shares will participate *pro rata* in all of the Fund's income and all of the Fund's expenses (with the exception of the proposed Plan Payments and Class Expenses).

Applicants' Conditions

Applications agree that the order granting the requested relief will be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except for differences related to: (a) Class designation; (b) expenses assessed to a class pursuant to a Services Plan or Shareholder Administrative Plan; (c) certain Class Expenses, which would be limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class; (iii) blue sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of the Investment Company's administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating to one class of shares; (vii) Trustees' fees incurred as a result of issues relating to one class of shares; (viii) independent accountants' fees related solely to a specific class of shares; (ix) expenses incurred in connection with shareholder meetings as a result of issues relating to one class of shares; and (x) account expenses relating to a particular class of shares; (d) voting rights as to matters exclusively affecting one class of shares; and (e) exchange privileges. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission pursuant to an amended order.

2. The Trustees of the Investment Company, including a majority of the independent Trustees, will approve the offering of different classes of New Shares (the "Multi-Class System") with respect to a particular Fund, prior to the implementation of the Multi-Class System by the Fund. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approval necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of the Fund and its shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Investment Company, including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expanded and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. FRIMCo and RFD will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, FRIMCo and RFD at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. RFD, as the Investment Company's distributor, will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards. Such compliance standards will require that all investors eligible to purchase Institutional Shares be sold only Institutional Shares, rather than any other class of shares offered by the Fund.

6. The Shareholder Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

7. The Trustees will receive quarterly and annual statements concerning the amounts expended under the Shareholder Administrative Plan and Services Plan and the related Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to a class of shares will be calculated in the same manner, at the same time, on the same day, and will be in the same per share amount as dividends paid by that Fund with respect to each other class of shares of the Fund, except that the amount of dividends declared and paid by a particular class may be different from another class because Plan Payments made by a class under its Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants concluding that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. The Expert's report is attached as Exhibit F to the originally filed application, and is incorporated by reference. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Investment Company that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Investment Company (which the Investment Company agrees to provide), will be available for inspection by the Commission staff upon written request by a senior member of the Division of Investment Management or a regional office of the Commission. Authorized staff members would be limited to the director, an associate director, the chief accountant, the chief financial analyst, an assistant director, and any regional administrators or associate and assistant administrators. The initial report of the Expert is a "Special Purpose" report on "policies and procedures placed in operation" in accordance with Statements on Auditing Standards ("SAS") No. 70. "Reports on the Processing of Transactions by Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports will be reports on "policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9, above, and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis, at least annually, in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectuses of each class of a Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Fund.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the Trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, exchange privileges, services, Shareholder Administrator Fees, and Services Fees applicable to each class of shares, other than Institutional Shares, in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Institutional Shares will be offered solely pursuant to separate prospectuses. The prospectus for a class of Institutional Shares will disclose the existence of the Fund's other classes, and a prospectus for a non-Institutional share class will disclose the existence of Institutional Shares and will identify the persons eligible to purchase Institutional Shares. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Institutional Shares. Advertising materials reflecting the expenses or performance data for a class of Institutional Shares will be available only to those persons eligible to purchase that class of Institutional Shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares, except Institutional Shares, separately.

14. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization of, or acquiescence in, any particular level of payments that a Fund may make to organizations pursuant to any Plan in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3459 Filed 2–10–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No.: 09/79–0402]

AVI Capital L.P.; Notice of Issuance of a Small Business Investment Company License

On September 15, 1994, a notice was published in the **Federal Register** (59 FR 47366) stating that an application had been filed by AVI Capital, L.P., One First Street, Suite 12, Los Altos, CA 94022, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

An additional limited partner of AVI III, Nynex Corporation, is expected to indirectly own 10 percent or more of the capital of Applicant. Also, AVI Partners Growth Fund II, L.P. (AVI PGF II) will not be providing capital to the Applicant. Accordingly, the Applicant will begin operations with private capital of $21.9 million solely from Associated Ventures III, L.P. (AVI III) and AVI Silicon Valley Partners, L.P. (AVI SVP).

Interested parties were given until close of business September 30, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No.: 09/79–0402 on February 6, 1995, to AVI Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–3523 Filed 2–10–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/05–0222]

Norwest Equity Partners V; Notice of Issuance of a Small Business Investment Company License

On December 5, 1994, a notice was published in the **Federal Register** (59 FR 62439) stating that an application had been filed by Norwest Equity Partners V, L.P., 2800 Piper Jaffrey Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a non-leveraged small business investment company.

Interested parties were given until close of business December 19, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0222 on February 6, 1995, to Norwest Equity Partners V to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

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Dated: February 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–3524 Filed 2–10–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice No. 2165]

Application for Presidential Permit Authorizing Petroleum Products Pipeline

AGENCY: Department of State.

ACTION: Notice of availability for public comment of application of Chevron Pipeline Company to the Department of State for a Presidential permit authorizing a petroleum products pipeline and related documents including a draft environmental assessment.

SUMMARY: Notice is hereby given that the Department of State has received an application for a Presidential permit authorizing construction by Chevron Pipeline Company of an approximately 20 mile petroleum products pipeline from El Paso, Texas in the United States, passing beneath the Rio Grande River, to Cuidad Juarez, Chihuahua in Mexico.

The Department of State's jurisdiction with respect to this petroleum products pipeline application derives from Executive Order 11423, dated August 18, 1968. As required by the Executive Order, the Department of State has circulated this application to the following agencies, as cooperating agencies: Department of the Treasury, Department of Defense, Department of the Interior, Department of Transportation, Department of Justice, Department of Commerce, Federal Emergency Action Agency, and Interstate Commerce Commission. As permitted by the Executive Order, the Department of State has also circulated this application to the Environmental Protection Agency, the Council on Environmental Quality.

Interested persons may submit their views regarding the application and related documents including a draft Environmental Assessment of the project prepared for the Department of State, in writing, not later than March 22, 1995, either to Mr. Donald Grabenstetter, Office of International Energy Policy, Rm. 3535, U.S. Department of State, 2201 C Street NW., Washington, DC 20520 or Ms. Nelly Rocha at the U.S. Environmental Protection Agency, 4050 Rio Bravo, Suite 100, El Paso, Texas (533–7273).

SUPPLEMENTARY INFORMATION: The application and related documents, including the draft Environmental Assessment referred to above, are a part of the record to be considered by the Department of State in connection with this application and are available for inspection and copying in Washington, D.C. at the Department of State, Office of International Energy Policy at the address set forth above. They are also available for inspection and copying at the EPA office in El Paso (4050 Rio Bravo, Suite 100, El Paso 79902) and at the main branch of the El Paso, Texas Public Library, (501 N. Oregon Street, El Paso).

PUBLIC MEETING; DATES: Notice is hereby given that a meeting, chaired by the Department of State, open to members of the public,including representatives from interested non-governmental organizations, and government representatives, for purposes of hearing and considering oral statements from the public on the application and related documents including the draft environmental assessment referred to above will be held on Monday, March 6 in El Paso, Texas at the University of Texas at El Paso, Student Union, East Thomas Rivera Conference Center, 500 West University Avenue, El Paso, Texas 79968. Information and materials concerning various aspects of the proposed project also may be obtained by the public at the meeting room on Monday, March 6 between 12:00 noon and 10:00 pm. The public meeting will be held from 4:00 pm until 10:00 pm.

Seating for interested members of the public will be available on a first-come, first-served basis. Oral comments, not to exceed five minutes in length, may be made at the meeting by members of the public upon recognition by the Chair, with due regard having been given to the number of speakers requesting an opportunity to be heard and the time constraints involved. To facilitate recognition, persons who wish to speak are encouraged to sign-in at the meeting. Speakers who sign in will be recognized on a first-come, first-served basis. Any written statements and supplemental materials may be presented to the Chairman at the meeting. The Department of State will provide a Spanish-English translator to assist as needed.

FOR FURTHER INFORMATION CONTACT: The Office of International Energy Policy at the above address or by telephone (202) 647–4557.

Dated: February 6, 1995.

Glen Rase,

Director, Office of International Energy Policy, Bureau of Economic and Business Affairs.

[FR Doc. 95–3549 Filed 2–10–95; 8:45 am]

BILLING CODE 4710–07–M

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2158; Correction]

U.S. MAB National Committee for Man and the Biosphere; U.S. MAB Request for Proposals for Environmental Projects; Correction

Department of State Public Notice 2158, U.S. MAB National Committee for Man and the Biosphere: U.S. MAB Request for Proposals for Environmental Projects, which was published in 60 FR 5953, 1–31–95, is to be corrected as follows:

The United States Man and the Biosphere (U.S.) Program hereby announces its request for proposals to continue its assistance to the U.S. Peace Corps in the development of a worldwide environmental education projects initiative as described below.

U.S. MAB will accept proposals of a maximum length of six (6) pages that outline how the objectives described below could be accomplished.

A curriculum vitae (C.V.) of a maximum length of four (4) pages for each principal(s), that clearly demonstrates a history of competency in the implementation of such tasks, must accompany the proposal.

Proposals may not request more than the sum of fifty-four thousand one hundred eighty ($54,180) dollars to implement this initiative.

All proposals must specify that all tasks will be completed at U.S. Peace Corps headquarters and field offices for the period of March 13, 1995 through March 12, 1996.

Payments will be made on a quarterly basis in equal installments.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on February 28, 1995. Proposals and c.v.'s will be evaluated on the criteria noted in the following section.

Selection will be made no later than March 3, 1995. Selected candidate principals must be prepared to implement their proposals beginning on March 13, 1995.

Objectives

To provide technical assistance to the U.S. Peace Corps, including but not limited to:

—Further develop the ongoing collaboration with the Environmental Sector in the design of Environmental Education projects and project components. As part of this effort, develop and coordinate in-service training workshops in Education and the Environment for Volunteers and their counterparts teaching math, science and English as a Foreign Language (EFL) in countries which are requesting this assistance;
—Take primary responsibility for providing technical support to Peace Corps Education projects, including, but not limited to, the following activities;
—Undertake approximately four consultancies to respond to requests from Peace Corps posts for technical assistance in project development, training development, or project evaluation;
—Develop and manage other initiatives in education, including, but not limited to, collaboration with other governmental and private agencies offering assistance to Peace Corps in project development and training;
—Review/select materials to be distributed through Peace Corps' Information Collection Exchange (ICE);
—Initiate and manage the development of training manuals and materials;
—Support the Agency in the implementation of PATS (Programming and Training System), including project design, monitoring, and evaluation assistance.
—Collaborate with incumbent Sector Specialists in the following tasks.—Participate in project plan reviews for environmental education projects;
—Undertake annual reviews of country programs and technical assistance requests
—Coordinate consultancies to respond to programming and training requests from the field, including developing and managing budgets and hiring and managing consultants.
—Work with other Education Sector Specialists in regular sector activities, including, but not limited to:
—Initiating and maintaining collaborative relationships with private organizations and other government agencies;
—Preparing documentation of sector activities;
—Sharing administrative tasks of the sector including managing budgets and coordinating activities;
—Collaborating with other sectors in OTAPS (Office of Training Program Support); for example, incorporating attention to WID (Women in Development) and Youth Issues into Education Sector projects/activities, and with other offices in Peace Corps.

Selection Criteria

—Performance record of the proposed principal;
—Demonstrated ability of the proposer to design and deliver training for environmental education.
—Demonstrated ability of the proposer to manage budgets and personnel;
—Demonstrated ability of the proposer to conduct needs assessments and develop project design;
—Fluency in Spanish or French preferred.

For further information concerning technical or grant performance-related inquiries, please contact: George Mahaffey, Director, Office of Training and Program Support, U.S. Peace Corps, Room 8624, 1990 K Street N.W., Washington, DC 20526, Tel. (202) 606–3101, FAX (202) 606–3204.

For submission of proposals: Roger E. Soles, Executive Director U.S. MAB, OES/EGC/MAB, U.S. Department of State, Washington, DC 20522, Tel. (703) 235–2946.

Dated: January 24, 1995.

Roger E. Soles,

Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.

[FR Doc. 95–3519 Filed 2–10–95; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2164]

Defense Trade Advisory Group; Partially Closed Meeting

The Defense Trade Advisory Group (DTAG) will meet from 10:00–4:45 p.m. on Monday, March 13, 1995 in the Loy Henderson Conference Room, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. This advisory committee consists of private sector defense trade specialists who advise the Department on policies, regulations, and technical issues affecting defense trade.

The open session, which will be made up of all sessions preceding the lunch break, will include speakers from the Bureau of Political-Military Affairs and reports on DTAG Working Group progress, accomplishments, and future projects. Members of the public may attend the open session as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions.

As access to the Department of State is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by Friday, March 3, 1995. Each person should provide his or her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat at telephone number (202) 647–4231 or fax number (202) 647–4232 (Attention: Unita Williams). Attendees must carry a valid photo ID with them. They should enter the building through the C-Street diplomatic entrance (21st and C Streets, NW), where Department personnel will direct them to the Loy Henderson auditorium.

Following the open portion of the meeting, briefings which the Department of State will arrange for DTAG members will involve discussions of classified information pursuant to Executive Order 12356. The disclosure of classified and/or proprietary information essential to formulating U.S. defense trade policies would substantially undermine U.S. defense trade relations with foreign competitors. Therefore, these segments of the meeting will be closed to the public, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

For further information, contact Linda Lum of the DTAG Secretariat, U.S. Department of State, Office of Export Control Policy (PM/EXP), Room 2422 Main State, Washington, DC 20520–2422. She may be reached at telephone number (202) 647–0137 or fax number (202) 647–4232.

Dated: January 31, 1995.

Martha C. Harris,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 95–3550 Filed 2–10–95; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD02–95–002]

Second Coast Guard District Industry Day; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Commander, Second Coast Guard District is sponsoring an Industry Day event in St. Louis, Missouri. This notice will advertise the event which is open to the public.

DATES: Industry Day will be held on March 16, 1995 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: Industry Day activities will be held at the Frontenac Hilton Hotel, 1335 South Lindbergh Blvd., St. Louis, Missouri. To request registration forms

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or additional information on Industry Day activities and on events scheduled by other groups to coincide with Industry Day, or to submit written recommendations for agenda discussion topics, contact Lieutenant Amy B. Kritz or Lieutenant Commander Patrick G. Gerrity, Commander (mpb), Second Coast Guard District, 1222 Spruce Street, Room 2.102G, St. Louis, Missouri 63103–2832. Please forward your registration forms to: Frontenac Hilton Hotel, Attn: Reservations, c/o Tanya Reichman, 1335 S. Lindbergh, St. Louis, Missouri 63131.

FOR FURTHER INFORMATION CONTACT: Lieutenant Amy B. Kritz or Lieutenant Commander Patrick G. Gerrity, Commander (mpb), Second Coast Guard District, 1222 Spruce Street, Room 2.102G, St. Louis, Missouri 63103–2832. The telephone number is: (314) 539–2655.

SUPPLEMENTARY INFORMATION: Industry Day is designed to provide an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. Industry Day activities will be held at the Frontenac Hilton Hotel, 1335 South Lindbergh Blvd., St. Louis, Missouri. The schedule of events follows:

Wednesday, 15 March

5:00–7:00 p.m.—Registration for early arrivals.

Thursday, 16 March

7:30 a.m.—Registration continues.
8:30 a.m.—General Session: Opening comments and Selected Presentations.
10:00 a.m.—Panel Discussions: Two separate small group panels will focus on waterways management and environmental issues.
12:00 p.m.—Luncheon.
1:30 p.m.—Two separate small group panels will focus on towing vessel issues and passenger vessel issues.
4:30 p.m.—Industry Day concludes.

Advance registration and payment of a $27.00 conference fee is required. The fee includes luncheon and refreshments.

Persons interested in attending Industry Day may request registration forms or additional information on the Industry Day activities and on events scheduled by other groups to coincide with Industry Day from the address provided in the Addresses section of this notice. Persons interested in submitting written recommendations for agenda discussion topics should mail their recommendations directly to Commander (mpb), also at the address provided in the Addresses section of this notice.

Completed registration forms and fees should be mailed directly to the Frontenac Hilton Hotel, Attn: Reservations, c/o Tanya Reichman, 1335 S. Lindbergh, St. Louis, Missouri 63131. Registration forms and fees must be received by February 21, 1995.

Paul M. Blayney,

Rear Admiral, United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 95–3547 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

Northeast Corridor Safety Committee; Public Meeting

Pursuant to Section 11 of the Rail Safety Improvement Act of 1988 (Pub. L. 100–342), notice is hereby given that a public meeting of the Northeast Corridor Safety Committee will be held on March 1, 1995, at 10 a.m. in room 6200 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The meeting is called for the purpose of providing counsel and advice to the Department of Transportation on safety improvements on the main line of the Northeast Corridor (NEC). The major topics on the agenda are vandalism and trespass prevention. Others may be added and are specifically requested.

Issued in Washington, D.C. on February 6, 1995.

Bruce M. Fine,

Acting Associate Administrator for Safety.

[FR Doc. 95–3486 Filed 2–10–95; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Safety Administration (NHTSA), DOT.

ACTION: Annual list of nonconforming vehicles decided to be eligible for importation.

SUMMARY: This notice lists all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that have been decided, as of January 27, 1995, to be eligible for importation into the United States.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1) (formerly section 108(c)(3)(C)(i) of the Act), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under (49 U.S.C. 30141(c))." The Secretary's authority to make these decisions has been delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator redelegated to the Associate Administrator for Enforcement the authority to grant or deny petitions for import eligibility decisions submitted by motor vehicle manufacturers and registered importers (49 CFR 501.8(g)(3)). Thus far, a number of import eligibility decisions have been made on the Administrator's own initiative, and the Associate Administrator has granted many petitions for such decisions submitted by registered importers.

Under 49 U.S.C. 30141(b)(2) (formerly section 108(c)(3)(C)(iv) of the Act), a list of all import eligibility decisions must be published annually in the **Federal Register**. That list is set forth in Annex A and is current as of January 27, 1995.

Each vehicle on the list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must write that number on the Form HS–7 accompanying entry to indicate that the vehicle is eligible for importation. "VSA" eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator. "VSP" eligibility numbers are assigned to vehicles that are decided to be eligible under 49 U.S.C. 30141(a)(1)(A), based on a petition from a manufacturer or registered importer which establishes that a substantially similar U.S.-certified vehicle exists. "VCP" eligibility numbers are assigned to vehicles that are decided to be eligible under 49 U.S.C. 30141(a)(1)(B), based on a petition from a manufacturer or registered importer which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards. Vehicles for which eligibility decisions have been made are listed in Annex A alphabetically by make. Eligible models within each make are listed numerically by "VSA," "VSP," or "VCP" number.

Under 49 U.S.C. 30112(b)(9) (formerly section 108(i) of the Act), "any motor vehicle that is at least 25 years old" is not subject to importation restrictions. Such vehicles may therefore be imported into the United States without regard to their compliance with applicable Federal motor vehicle safety standards. Since the importation of a vehicle more than 25 years old is not conditioned on the existence of an eligibility decision, NHTSA has amended its eligibility decisions so that they no longer apply to such vehicles.

Authority: 49 U.S.C. 30141(b)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 7, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

Annex A

Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards

VSA #

1

(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989;
(b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;
(c) All multipurpose passenger vehicles, trucks, and buses less than 25 years old that were manufactured before September 1, 1991;
(d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and
(e) All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

VSP #	Model type	Model year
	Acura	
51	Legend	1988
	Alfa Romeo	
44	Spider	1972
70	Spider	1987
76	164	1991

VSA #	Model type	Model year
	BMW	
2	1600	1970 through 1971
3	2002	1970 through 1976
4	2000 and 2000A	1970
5	2500 and 2500A	1970 through 1970
6	2800 and 2800A	1970 through 1971
7	2002A	1970 through 1976
8	2800CS and 2800CSA	1970 through 1971
9	2.8 and 2.8A Bavaria	1971
10	2002Ti	1972 through 1974
11	3.0 and 3.0A Bavaria	1972
12	3.0CSi and 3.0CSiA	1972 through 1974
13	3.0S and 3.0SA	1974
14	3.0Si and 3.0SiA	1975
15	530i and 530iA	1975 through 1978
16	320, 320i, and 320iA	1976 through 1985
17	630CSi and 630CSiA	1977
18	633CSi and 633CSiA	1977 through 1984
19	733i and 733iA	1977 through 1984
20	528i and 528iA	1979 through 1984
21	528e and 528eA	1982 through 1988
22	533i and 533iA	1983 through 1984
23	318i and 318iA	1981 through 1989
24	325e and 325eA	1984 through 1987
25	535i and 535iA	1985 through 1989
26	524tdA	1985 through 1986
27	635, 635CSi, and 635CSiA	1979 through 1989
28	737, 735i, and 735iA	1980 through 1989
29	L7	1986 through 1987

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VSA #	Model type	Model year
30	325, 325i, 325iA, and 325E	1985 through 1989
31	325is and 325isA	1987 through 1989
32	M6	1987 through 1988
33	325iX and 325iXA	1988 through 1989
34	M5	1988
35	M3	1988 through 1989
66	316	1978 through 1982
67	323i	1978 through 1985
68	520 and 520i	1978 through 1983
69	525 and 525i	1979 through 1982
70	728 and 728i	1977 through 1985
71	730, 730i, and 730iA	1978 through 1980
72	732i	1980 through 1984
73	745i	1980 through 1986
78	All other models except those in the M1 and Z1 series	1970 through 1989

VSP #	Model type	Model year
	BMW	
4	518i	1986
5	525i	1989
6	730iA	1988
9	520iA	1989
10	850i	1991
14	728i	1986
15	625CSi	1981
24	730i	1991
25	316	1986
32	628CSi	1980
41	750iL	1993
46	518i	1991
55	859i	1993
57	730i	1993
79	525i	1991–1992
81	750iL	1991
	BMW Motorcycle	
30	R75/6	1974
58	R100S	1977

VCP #	Model type	Model year
	Bristol Bus	
2	VRT Bus—Double Decker	1978–1981
4	VRT Bus—Double Decker	1977
	Citroen	
1	XM	1990 through 1992

VSA #	Model type	Model year
	Ferrari	
36	308 (all models)	1974 through 1985
37	328 GTS	1985 through 1989
37	328 (all other models)	1985 and 1988 through 1989
38	GTO	1985
39	Testarossa	1987 through 1989
74	Mondial (all models)	1980 through 1989
76	208, 208 Turbo (all models)	1974 through 1988

VSP #	Model type	Model year
	Ferrari	
61	365 GTB 4 Daytona	1971
62	365 GT 2+2	1970
86	348TB	1992
100	365 GTB 4 Daytona	1972–1973

VSP #	Model type	Model year
	Honda	
77	Legend	1989
	Honda Motorcycle	
34	VFR750	1990
	Iso Grifo	
88	Lusso	1971

VSA #	Model type	Model year
	Jaguar	
40	XJS	1980 through 1987
41	XJ6	1970 through 1986

VSP #	Model type	Model year
	Jaguar	
47	XJ6	1987
78	Sovereign	1993
	Jaguar Daimler	
12	Limousine	1985
	Lancia	
82	Fulvia	1971
	Laverda Motorcycle	
37	1000	1975

VSA #	Model type	Model year
	Mazda	
42	RX7	1978 through 1981

VSA #	Model type	Model ID	Model year
	Mercedes Benz		
43	600	100.012	1970 through 1981
43	600 Long 4dr	100.014	1970 through 1981
43	600 Landaulet	100.015	1970 through 1981
43	600 Long 6dr	100.016	1970 through 1981
44	280 SLC	107.022	1975 through 1981
44	350 SLC	107.023	1972 through 1979
44	450 SLC	107.024	1973 through 1989
44	380 SLC	107.025	1981 through 1989
44	500 SLC	107.026	1978 through 1981
44	300 SL	107.041	1986 through 1988
44	280 SL	107.042	1970 through 1985
44	350 SL	107.043	1971 through 1978
44	450 SL	107.044	1972 through 1989
44	380 SL	107.045	1980 through 1989
44	500 SL	107.046	1980 through 1989
44	420 SL	107.047	1986
44	560 SL	107.048	1986 through 1989
45	280 S	108.016	1970 through 1972
45	280 SE	108.018	1970 through 1972
45	280 SEL	108.019	1970 through 1972
45	280 SE (3.5)	108.057	1970 through 1973
45	280 SEL (3.5)	108.058	1972 through 1973
45	280 SE (4.5)	108.067	1970 through 1972
45	280 SEL (4.5)	108.068	1972
46	300 SEL	109.016	1970 through 1972

VSA #	Model type	Model ID	Model year
46	300 SEL (6.3)	109.018	1970 through 1972
46	300 SEL (4.5)	109.057	1972
47	280S E Coupe	111.024	1970 through 1971
47	280 SE Conv	111.025	1970 through 1971
47	280 SE 3.5 Cp	111.026	1971
47	280 SE 3.5 Cv	111.026	1971
48	230 SL	113.042	1970 through 1971
48	250 SL	113.043	1970 through 1971
48	280 SL	113.044	1970 through 1971
49	230.6	114.015	1970 through 1976
49	250	114.010	1970 through 1976
49	250	114.011	1971 through 1976
49	250 CE	114.022	1970 through 1976
49	250 C	114.023	1970 through 1976
49	280	114.060	1972 through 1976
49	280 E	114.062	1972 through 1976
49	280 CE	114.072	1972 through 1976
49	280 C	114.073	1972 through 1976
50	200	115.015	1976
50	230.4	115.017	1974 through 1976
50	220 D	115.110	1970 through 1976
50	240 D (3.0)	115.114	1974 through 1976
50	240 D	115.117	1974 through 1976
51	280 S	116.020	1973 through 1980
51	280 SE	116.024	1972 through 1988
51	280 SEL	116.025	1972 through 1980
51	350 SE	116.028	1973 through 1980
51	350 SEL	116.029	1972 through 1980
51	450 SE	116.032	1972 through 1980
51	450 SEL	116.033	1972 through 1988
51	450 SEL (6.9)	116.036	1972 through 1988
52	200	123.020	1976 through 1980
52	230	123.023	1976 through 1985
52	250	123.026	1976 through 1985
52	280	123.030	1976 through 1985
52	280 E	123.033	1976 through 1985
52	230 C	123.043	1978 through 1980
52	280 C	123.050	1977 through 1980
52	280 CE	123.053	1977 through 1985
52	230 T	123.083	1977 through 1985
52	280 TE	123.093	1977 through 1985
52	200 D	123.120	1980 through 1982
52	240 D	123.123	1977 through 1985
52	300 D	123.130	1976 through 1985
52	300 D	123.133	1977 through 1985
52	300 CD	123.150	1978 through 1985
52	240 TD	123.183	1977 through 1985
52	300 TD	123.193	1977 through 1985
52	200	123.220	1979 through 1985
52	230 E	123.223	1977 through 1985
52	230 CE	123.243	1980 through 1984
52	230 TE	123.283	1977 through 1985
53	280 S	126.021	1980 through 1983
53	280 SE	126.022	1980 through 1985
53	280 SEL	126.023	1980 through 1985
53	300 SE	126.024	1985 through 1989
53	300 SEL	126.025	1986 through 1989
53	380 SE	126.032	1979 through 1989
53	380 SEL	126.033	1980 through 1989
53	420 SE	126.034	1985 through 1989
53	420 SEL	126.035	1986 through 1989
53	500 SE	126.036	1980 through 1986
53	500 SEL	126.037	1980 through 1989
53	560 SEL	126.039	1986 through 1989
53	380 SE	126.043	1982 through 1989
53	500 SEC	126.044	1981 through 1989
53	560 SEC	126.045	1986 through 1989
53	300 SD	126.120	1981 through 1989
54	190	201.022	1984
54	190 E (2.3)	201.024	1983 through 1989
54	190 E	201.028	1986 through 1989
54	190 E (2.6)	201.029	1988 through 1989
54	190 E 2.3 16	201.034	1984 through 1989
54	190 D (2.2)	201.122	1984 through 1989

VSA #	Model type	Model ID	Model year
54	190 D	201.126	1984 through 1989
55	200	124.020	1985
55	230 E	124.023	1985 through 1987
55	260 E	124.026	1985 through 1989
55	300 E	124.030	1985 through 1989
55	300 CE	124.050	1988 through 1989
55	230 TE	124.083	1985
55	300 TE	124.090	1986 through 1989
55	300 D	124.130	1985 and 1986
55	300 D Turbo	124.133	1985 through 1989
55	300 TD Turbo	124.193	1986 through 1989
77	All other models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance".		1970 through 1989

VSP #	Model type	Model ID	Model year
	Mercedes Benz		
1	230 E	124.023	1988
2	230 TE	124.083	1989
3	200 TE	124.081	1989
7	300SL	107.041	1989
11	200E	124.021	1989
17	200D	124.120	1986
18	260SE	126.020	1986
19	230E	124.023	1990
20	230E	124.023	1989
21	300SEL	126.025	1990
22	190E	201.024	1990
23	500SEL	129.066	1989
26	500SE	140.050	1991
27	600SEL	140.057	1992
28	260SE	126.020	1989
31	250C	114.021	1970
33	500SL	129.066	1991
35	500SE	126.036	1988
36	300SEL	109.056	1970
38	250C	114.021	1970
40	300TE	124.090	1990
45	190E	201.024	1991
48	420SEL	126.035	1990
50	500SE	140.050	1992
54	300SL	129.006	1992
56	500E	124.036	1991
60	500SL	129.006	1992
63	500SEL	126.037	1991
64	300CE	124.051	1990
66	500SEC	126.044	1990
67	300SE	140.032	1993
68	300SE	126.024	1990
69	300SE	140.032	1992
71	190E	201.028	1992
74	230E	124.023	1991
75	200E	124.019	1993
83	300CE	124.051	1991
84	230CE	124.043	1991
85	S280	140.028	1994
89	560SEL	126.039	1990
105	260E	124.026	1992

VCP #	Model type	Model ID	Model year
	Mercedes Benz		
3	300GE	463.228	1993
5	300GE	463.228	1990–1992, 1994
6	G320		1995

VSP #	Model type	Model year
	MG	
90	MGB GT	1971

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VSP #	Model type	Model year
	Mitsubishi	
8	Galant VX	1988
13	Galant SUP	1989

VSA #	Model type	Model year
	Nissan	
75	Z and 280Z	1973 through 1981
75	Fairlady and Fairlady Z	1975 through 1979
	Peugeot	
65	405	1989
	Porsche	
56	911 Coupe	1970 through 1989
56	911 Targa	1970 through 1989
56	911 Turbo	1976 through 1989
56	911 Cabriolet	1984 through 1989
56	911 Carrera	1972 through 1989
58	914	1970 through 1976
59	924 Coupe	1976 through 1989
59	924 Turbo Coupe	1979 through 1989
59	924 S	1987 through 1989
60	928 Coupe	1976 through 1989
60	928 S Coupe	1983 through 1989
60	928 S4	1979 through 1989
60	928 GT	1979 through 1989
61	944 Coupe	1982 through 1989
61	944 Turbo Coupe	1985 through 1989
61	944 S Coupe	1987 through 1989
79	All other models except Model 959	1970 through 1989

VSP #	Model type	Model year
	Porsche	
29	911 CA	1990
52	911 Carrera	1992

VSA #	Model type	Model year
	Rolls Royce	
62	Silver Shadow	1970 through 1979

VSP #	Model type	Model year
	Rolls Royce	
16	Bentley	1989
53	Bentley Turbo	1986
72	Corniche	1971
	Saab	
59	9000	1988

VSA #	Model type	Model year
	Toyota	
63	Camry	1987 through 1988
64	Celica	1987 through 1988
65	Corolla	1987 through 1988

VSP #	Model type	Model year
	Toyota	
39	Camry	1989

VSA #	Model type	Model year
	Volkswagen	
42	Scirocco	1986

VSP #	Model type	Model year
	Volkswagen	
73	Golf Rally	1988
80	Golf	1988
	Volvo	
43	262C	1981
87	740 Sedan	1988

[FR Doc. 95–3488 Filed 2–10–95; 8:45 am]
BILLING CODE 4910–59–M

[Docket No. 95–8; Notice 1]

Spartan Motors, Inc.; Receipt of Application for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

Spartan Motors, Inc., of Charlotte, Michigan, has applied to be exempted from three Federal motor vehicle safety standards for light trucks that it converts to electric power. The basis of the application is that an exemption would facilitate the development or field evaluation of a low-emission motor vehicle, and would not unreasonably lower the safety level of the vehicle.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

Spartan is a Michigan corporation "providing development electric vehicle technology through the application of state of the art traction system and battery technology in commercial applications." It intends to convert new Chevrolet S10 and GMC Sonoma pickup trucks to electric power. It seeks exemption for two years from three Federal motor vehicle safety standards. The standards for which exemptions are requested are set forth below, together with the applicant's arguments why an exemption would not unreasonably lower the safety level of the vehicle.

1. Standard No. 103, *Windshield Defrosting and Defogging Systems.* Spartan asks for exemption from paragraphs S4.2 and S4.3 because testing to these requirements "is not possible due to the engine related requirements of the test procedure." It states that the engine coolant heater core is intact, with an electrical resistance heating element contained in an external expansion tank plumbed similar to an internal combustion engine configuration, and that other portions of the system are untouched. This "minimizes the impact of the conversion not meeting the standard."

2. Standard No. 105, *Hydraulic Brake Systems.* Spartan wishes to be exempted from S5.1.1.3 (the third effectiveness test), S5.1.2.1 (partial failure), and S7.7.1, S7.9.1 and S7.9.2 (certain tests at lightly loaded vehicle weight). The curb weight of the vehicle is increased to approximately 4,500 pounds. The weight proportioning between axles is different than that used in the certification testing of the original vehicle. These changes affect the applicability of the testing requirements for lightly loaded vehicle weight. However, the GVWR remains the same as the original rating of 4,900 pounds, and the original vehicle's braking system is not modified. This, in the applicant's view, minimizes "the impact of the electric vehicle not meeting the standard."

3. Standard No. 301, *Fuel System Integrity.* Although the converted vehicle no longer uses a fossil fuel as a propellant, "a small tank" is added "for the on board storage of fuel for interior heating." Care is taken "in mounting of the electric vehicle conversion components to reduce their effect on crash protection. Specifically, the fuel storage and delivery system is of automotive quality supplying the heating device."

According to the petitioner, granting the exemption would be in the public interest and consistent with 49 U.S.C. Chapter 301 Motor Vehicle Safety because it will advance "the state of the art in electric vehicle traction systems and electric vehicle infrastructure, through the application of electric vehicles in actual commercial uses." Because the developmental changes are frequent, "testing for conformance to the standards" is impractical. Demonstration of the commercial feasibility of electric vehicles "will enhance the demand for their use, consistent with established national policy."

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: March 15, 1995.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on February 7, 1995.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95–3489 Filed 2–10–95; 8:45 am]
BILLING CODE 4910–59–P

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 15 in Room 600, 301 4th Street, S.W., Washington, D.C. from 8:15 a.m.–10:30 a.m.

At 8:15 a.m. the Commission will meet with Mr. Jack Loiello, Associate Director; and Mr. Dell Pendergrast, Deputy Associate Director; Bureau of Educational and Cultural Affairs, USIA, to discuss exchange coordination and consolidation. At 9:30 a.m. the Commission will meet with Mr. Stanley Silverman, Comptroller, USIA; and Mr. Douglas Wilson, Director, Office of Congressional and Intergovernmental Affairs, USIA, to discuss budget reauthorization and Congressional issues.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 7, 1995.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 95–3460 Filed 2–10–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 29

Monday, February 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1473]

TIME AND DATE: 10 a.m. (EST), February 15, 1995.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on January 18, 1995.

ACTION ITEMS:

New Business

C—Energy

C1. Delegation of authority to the Vice President of Purchasing, or his designee, to execute a contract with the United States Enrichment Corporation for uranium enrichment services for all of TVA's nuclear plants for the period 1995–2001

E—Real Property

E1. Abandonment of certain easement rights affecting approximately 23.18 acres of land in Sugarlimb Industrial Park on Watts Bar Lake (Tract Nos. WBR–1558F and 1559F), Loudon County, Tennessee.

E2. Sale of three noncommercial, nonexclusive, permanent recreation easements affecting 0.22 acre of Tellico Lake shoreline (Tracts XTELR–138RE, –153RE, and –157RE), Loudon and Monroe Counties, Tennessee.

E3. Grant of a 30-year recreation easement to Sevier County, Tennessee, for the continued operation, development, and maintenance of a county park affecting approximately 255 acres on Douglas Lake (Tract No. XTDR–30RE), Sevier County, Tennessee.

E4. Land Exchange by the United States Department of Agriculture, Forest Service, affecting approximately 7 acres on Chatuge Lake (Tract No. XTCHR–3, Parcel 2), Towns County, Georgia.

E5. Sale of a permanent easement to the State of Tennessee affecting 0.09 acre of TVA's Clarksburg 161–kV substation property (Tract No. XCLKSS–1H), Carroll County, Tennessee.

F—Unclassified

F1. Filing of condemnation cases.

F2. Delegation of authority to the Vice President, TVA Services, to execute a supplement to the contract with Manpower Temporary Services.

INFORMATION ITEMS:

1. Filing of condemnation cases.

2. Appointment of William M. Oden to the Board of Directors of the TVA Retirement System.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: February 8, 1995.

Edward S. Christenbury,

General Counsel and Secretary

[FR Doc. 95–3621 Filed 2–9–95; 3:09 pm]

BILLING CODE 8120–08–M

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Service Coordinator Funds for Fiscal Year 1995; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3865; FR–3852–N–01]

Service Coordinator Funds for Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the issuance of Housing Notice H–94–99, entitled "Processing of Requests for Section 8 Funds for Service Coordinators in Section 8 (including Section 515/8 under the Rural Housing and Community Development Service (RHCDS) [1]), and Sections 202, 208/8, 221(d)(3) and 236 Projects and Monitoring of Approved Requests—FY 1995" Housing Notice H–94–99 describes the procedures for applying for service coordinator funds in FY 1995 and the State or area office's processing of applications and awards for those funds.

This FY 1995 Notice supersedes Housing Notices H–93–71 and H–94–20. Also, it continues funding for service coordinators to Section 202 and 202/8 projects, Section 8 projects (including RHCDS Section 515/8 projects), and 221(d)(3) and 236 projects and substitutes an "as applied for" funding basis instead of the more limited lottery process of earlier years. All eligible applications will be approved. The awarding of funds is subject to availability.

DATES: Effective Date: February 13, 1995.

Requests for service coordinators may be submitted to the HUD State or area office in whose jurisdiction the project lies at any time, beginning February 28, 1995.

SUPPLEMENTARY INFORMATION: Service Coordinators are authorized by sections 671, 674, 676 and 677 of the Housing and Community Development Act of 1992 (the Act) (42 U.S.C. 13632). A service coordinator is a social service staff person hired by the project owner/management company. The coordinator is responsible for assuring that elderly residents of the project, especially those who are frail and disabled, are linked to the supportive services they need to continue living independently in that project.

This **Federal Register** Notice makes available $22,000,000 for Section 202 projects, $14,352,499 for Section 8 projects, and $9,568,333 for Sections 221(d)(3) and 236 projects. Additional funds may be available as a result of apportioned carryovers, and therefore the actual amount available under this **Federal Register** Notice may be greater. All requests must be for eligible projects which are housing for the elderly and disabled. Eligible projects include any building within a mixed-use project that was designated for occupancy by elderly persons or persons with disabilities at its inception, or although not so designated, for which the eligible owner gives preferences in tenant selection (with HUD approval) for all units in the eligible project to eligible elderly persons or persons with disabilities. Additionally, projects must:

—Have at least 40 rental units (Two or more projects having at least 40 rental units in combination thereof may also apply.);
—Have frail, disabled or "at risk" residents which total at least 25 percent of the tenants;
—Be finally closed;
—Be current in mortgage payments or have a current workout agreement;
—For owner/borrowers using the AAF rent increase process (e.g.), Section 202s, State Housing Finance Agencies and RHCDS 515/8), first establish that revenues from the project are not adequate to pay for a coordinator; and
—For section 202 projects, must have a residual receipts account separate from the Repair and Replacement account, or agree to establish this account. (This requirement does not apply to section 8, 515/8, 221(d)(3) and 236 projects.)

There is no deadline for submission of requests. State and area offices must process and approve requests within 45 days of receipt. Requests will be submitted by the State and area offices to HUD Headquarters for funding. All projects will be funded as they are submitted and approved, subject to the availability of funds. When dollars designated in each section 8 service coordinator category of funds are exhausted, HUD State and area offices will be notified to begin processing projects under Housing Notice H–94–98, "Funding a Service Coordinator in Eligible Housing Projects for Elderly, Disabled, or Families by Using Residual Receipts, Budget-Based Rent Increases or Special Adjustments", which allows approval of a coordinator using residual receipts, the budget-based rent increase process, or contract rents adjusted by the AAF.

FOR FURTHER INFORMATION CONTACT: The local HUD State or area office which services the project (see list, attached). RHCDS projects must also contact the HUD State or area office which normally handles the location in which the project is located. A copy of the new program Notice will be available to all requestors from the HUD State and area offices or RHCDS State offices.

Dated: January 31, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner

MF Division Directors

New England

Boston

Jeanne McHallam, Multifamily Housing Director, HUD-Boston Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, Massachusetts 02222–1092, (617) 565–5154

Hartford

Robert S. Donovan, Multifamily Housing Director, HUD-Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523

Manchester

Loren Cole, Acting Multifamily Housing Director, HUD-Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03103–2487, (603) 666–7755

Providence

Louisa Osborne, Multifamily Housing Director, HUD-Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office, Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5354

New York/New Jersey

New York

Juan Bautista, Acting Multifamily Housing Director, HUD-New York Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–4771

Buffalo

Kenneth Lobene, Multifamily Housing Director, HUD-Buffalo Office, Lafayette Court, 465 Main Street, 5th Floor, Buffalo, New York 14203–1780, (716) 846–5722

Newark

Encarnacion Loukatos, Multifamily Housing Director, HUD-Newark Office, One Newark Center, 13th Floor, Newark, New Jersey 07102–5260, (201) 622–7900 x3400

Mid-Atlantic

Philadelphia

Thomas Langston, Multifamily Housing Director, HUD-Philadelphia Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2646

Baltimore

Ina Singer, Multifamily Housing Director, HUD-Baltimore Office, City Crescent Building, 5th Floor, 10 South Howard Street, Baltimore, Maryland 21201–2505, (410) 962–2520

Charleston

Frederick Roncaglione, Multifamily Housing Director, HUD-Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7037

Pittsburgh

Edward Polombizio, Multifamily Housing Director, HUD-Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219, (412) 644–6394

Richmond

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S. 273/P.L. 104–2

To amend section 61h–6 of title 2, United States Code. (Feb. 9, 1995; 109 Stat. 45; 2 pages)

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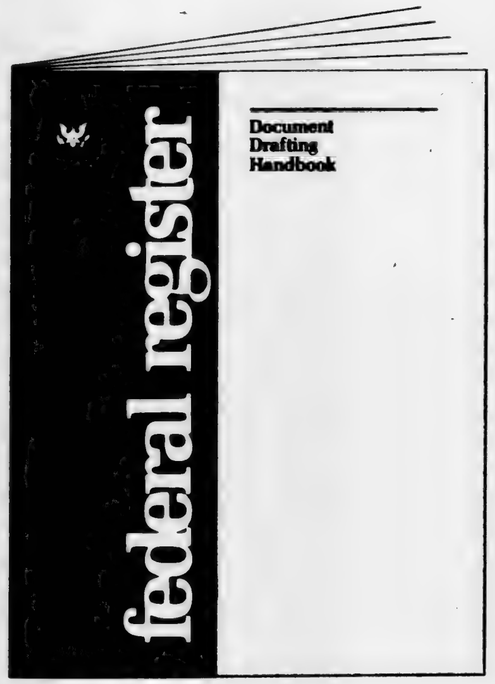

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–15–AD; Amendment 39–9148; AD 95–03–12]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, that currently requires an initial and repetitive visual inspection of the clutch control spring assembly for component wear and replacement of affected unairworthy parts. This amendment requires the same initial and repetitive visual inspection and replacements required by the existing Priority Letter AD, but references a revised service bulletin and provides replacement procedures for the aluminum spring retainer thermofit tube (plastic sleeve). This amendment is prompted by a recent accident involving a Model 269C helicopter that reportedly lost engine drive power at 100 feet above ground level (AGL) with a resulting unsuccessful autorotative landing, and the manufacturer's issuance of revised service information that provides more detailed instructions for replacement of two components of the belt drive clutch control assembly. The actions specified by this AD are intended to prevent failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing.

DATES: Effective March 1, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of September 1, 1994 (59 FR 38354, July 28, 1994).

Comments for inclusion in the Rules Docket must be received on or before April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, New York Aircraft Certification Office, FAA, New England Region, 10 Fifth Street, Valley Stream, New York 11581, telephone (516) 256–7532; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 4, 1993, the FAA issued Priority Letter AD 93–03–01, to require an initial and repetitive visual inspection of the clutch control spring assembly (assembly) for component wear and security, and replacement of affected unairworthy parts. That action was prompted by an accident involving a Schweizer Aircraft Corporation Model 269C helicopter. Reportedly, the helicopter lost engine drive power and was unsuccessful in performing a forced landing from 100 feet above ground level (AGL). A subsequent investigation revealed that the assembly had failed, and that the aluminum spring retainer, part number (P/N) 269A5483–7, of the failed assembly had excessive wear. That condition, if not corrected, could result in failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing.

Since the issuance of that AD, the manufacturer has issued a revised service bulletin, Schweizer Service Bulletin (SB) B–256.2, dated June 11, 1993, that describes procedures for an initial and repetitive inspection for component wear of the assembly in greater detail than the previously-issued service bulletin, and describes procedures for further inspections if disassembly is necessary. It also describes procedures for replacement of the aluminum spring retainer, P/N 269A5452, P/N 269A5452–3, P/N 269A5452–5, or P/N 269A5483–7, and the plastic sleeve, P/N 269A5590–101, which was not described in SB B–256.1, dated January 20, 1993, the SB cited in AD 93–03–01.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters of the same type design, this AD supersedes AD 93–03–01 to require an initial and repetitive visual inspection of the assembly for component wear; and, if any worn or unairworthy parts are found, disassembly, further inspections, and replacement of any unairworthy parts. The actions are required to be accomplished in accordance with SB B–256.2, dated June 11, 1993, described previously. The assembly puts tension on the belt drive between the transmission and the main rotor. If the assembly fails and there is no tension on the belt, the transmission will not turn the main rotor. Due to the criticalness of the clutch control assembly, and a short compliance time, this rule must be issued immediately to correct an unsafe condition in aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

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arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–15–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9148, to read as follows:

95–03–12 Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Amendment 39–9148. Docket No. 94–SW–15–AD. Supersedes Priority Letter AD 93–03–01, issued on March 4, 1993.

Applicability: Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters, with aluminum spring retainer, part number (P/N) 269A5452, P/N 269A5452–3, P/N 269A5452–5, or P/N 269A5483–7, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the aluminum spring retainer, loss of power to the rotor drive system, and a subsequent forced landing, accomplish the following:

(a) Within the next 5 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service from the last inspection, visually inspect the clutch control spring assembly for component wear in accordance with the provisions of Part I, paragraph a(2) of Schweizer Service Bulletin (SB) B–256.2, dated June 11, 1993.

(b) If worn parts are found during the inspections accomplished in accordance with paragraph (a) of this AD, before the next flight, disassemble and inspect the clutch control spring assembly and replace parts found to be unairworthy with airworthy parts in accordance with Part I, paragraph b. of SB B–256.2, dated June 11, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the inspection requirements of this AD can be accomplished.

(e) The inspections and replacement, if necessary, shall be done in accordance with SB B–256.2, dated June 11, 1993. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of September 1, 1994 (59 FR 38354, July 28, 1994). Copies may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 1, 1995.

Issued in Fort Worth, Texas, on February 6, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–3513 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–SW–21–AD; Amendment 39–9147; AD 95–03–11]

Airworthiness Directives; McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A series helicopters. This action requires initial and repetitive inspections of the tail rotor blade abrasion strip (abrasion strip), installation of stainless steel abrasion tape over the inboard end of the abrasion strip, and as a terminating action, installation of a tail rotor blade with a new-design abrasion strip. This amendment is prompted by several incidents of riveted abrasion strips debonding and separating during flight, resulting in severe out-of-balance conditions and subsequent separation of the tail rotor gearbox from the helicopter. The actions specified in this AD are intended to prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter.

DATES: Effective March 1, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5237, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On August 30, 1994, the FAA issued AD 94–18–08, Amendment 39–9021 (59 FR 46163, September 7, 1994) to require installation of abrasion strip rivets (rivets) within 25 hours time-in-service or 7 calendar days, whichever occurs first, on certain tail rotor blades. Also required are owner/operator checks of the abrasion strips for evidence of debonding along the abrasion strip bond line before the first flight of each day; a dye-penetrant and tap-test inspection to ensure the abrasion strip is secure if the owner/operator checks reveal evidence of debonding; and, if debonding is confirmed, replacement of the tail rotor blade with an airworthy blade that has been modified with the installation of rivets. Since the issuance of that AD, there have been several incidents of riveted tail rotor blade abrasion strips debonding and separating during flight, resulting in severe out-of-balance conditions, and subsequent separation of the tail rotor gearbox from the helicopter. Based on these incidents, the FAA has determined that riveting the abrasion strips alone does not create a fail-safe design. An analysis has shown that the debonding starts at the inboard end of the abrasion strip. This condition, if not corrected, could result in loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter. Therefore, installation of stainless steel abrasion tape over the inboard end of the abrasion strips within 25 hours time-in-service (TIS) or 90 calendar days, whichever occurs first, and thereafter, at intervals not to exceed 100 hours TIS, is necessary to prevent debonding of the abrasion strip from the tail rotor and to ensure the integrity of the helicopter. However, owners and operators must install abrasion strip rivets as required by AD 94–18–08 prior to installing the stainless steel abrasion tape. Additionally, within 1,000 hours TIS, installation of a tail rotor blade with a new-design abrasion strip is required.

The FAA has reviewed McDonnell Douglas Helicopter Systems Service Information Notice HN–238, DN–187, EN–80, FN–66, dated October 26, 1994, which describes procedures for inspection of the abrasion strips for separation or voids and replacement if separation or voids are evident; installation of 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strips; and replacement of existing tail rotor blades with tail rotor blades equipped with new-design abrasion strips.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369, OH–6A, and YOH–6A series helicopters of the same type design, this AD is being issued to prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter. This AD requires initial and repetitive inspections of the abrasion strip, installation of stainless steel abrasion tape over the inboard end of the abrasion strip, and as a terminating action, installation of a tail rotor blade with a new-design abrasion strip. Due to the criticality of the abrasion strip and maintaining a balanced tail rotor system, and the short compliance time for installation of the stainless steel abrasion tape, this rule must be issued immediately to correct an unsafe condition. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–SW–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

95-03-11 McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc.: Amendment 39-9147. Docket No. 94-SW-21-AD.

Applicability: Model 369, OH-6A, and YOH-6A series helicopters, with tail rotor blade assemblies, part number (P/N) 369A1613-7, 369A1613-503, 369A1613-505, 369A1613-509, 369D21606, 369D21606-509, 369D21613-11, 369D21613-31, 369D21613-41, 369D21613-51, 369D21613-71, 369D21615, 369D21615-21, 369D21615-41, or 421-088, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip, separation of a tail rotor blade, separation of the tail rotor gearbox, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) or 90 calendar days, whichever occurs first, and thereafter, at intervals not to exceed 100 hours TIS, inspect the tail rotor blade abrasion strip for debonding from the tail rotor blade. Prior to conducting the repetitive inspections, remove any abrasion tape from the tail rotor blade.

(1) If the inspection reveals debonding, replace the tail rotor blade with an airworthy blade that has been modified by an installation of rivets, and install 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strip in accordance with steps B through H of Part I of the Accomplishment Instructions of McDonnell Douglas Helicopter Systems Service Information Notice (SIN) HN-238, DN-187, EN-80, FN-66, dated October 26, 1994.

(2) If the inspection reveals no debonding, install 304 stainless steel abrasion tape (.0027-inch thick) over the inboard end of the abrasion strip in accordance with steps B through H of Part I of the Accomplishment Instructions of McDonnell Douglas Helicopter Systems SIN HN-238, DN-187, EN-80, FN-66, dated October 26, 1994.

(b) Within 1,000 hours TIS after the effective date of this AD, replace the affected tail rotor blades in shipsets with tail rotor blades that contain the new-design abrasion strips in accordance with Part II of the Accomplishment Instructions of SIN HN-238, DN-187, EN-80, FN-66, dated October 26, 1994. Once the new-design abrasion strips are installed on the tail rotor blades, the tail rotor assembly P/N changes as follows:

Old tail rotor assembly No.	New tail rotor assembly No.
369A1613-7	369A1613-11.
369A1613-503	369A1613-507.
369A1613-505	369A1613-507.
369A1613-509	369A1613-507.
369D21606	369D21606-511.
369D21606-509	369D21606-511.
369D21613-11	369D21613-11N.
369D21613-31	369D21613-31N.
369D21613-41	369D21613-61.
369D21613-51	369D21613-61.
369D21613-71	369D21613-61.
369D21615	369D21615-N.
369D21615-21	369D21615-31.
369D21615-41	369D21615-31.
421-088	421-088-11.

(c) Installation of tail rotor blades with new-design abrasion strips installed in accordance with Part II of the Accomplishment Instructions of SIN HN-238, DN-187, EN-80, FN-66, dated October 26, 1994, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided there is no evidence of debonding of the abrasion strip at any point along the entire abrasion strip bond line of the tail rotor blades.

(f) The modification and replacement shall be done in accordance with McDonnell Douglas Helicopter Systems Service Information Notice HN-238, DN-187, EN-80, FN-66, dated October 26, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 1, 1995.

Issued in Fort Worth, Texas, on February 6, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95-3512 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 94-CE-08-AD; Amendment 39-9139; AD 95-03-02]

Airworthiness Directives; Brackett Aircraft Company, Inc. Air Filter Assemblies Installed on Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to airplanes with certain Brackett Aircraft Company, Inc. (Brackett) air filter assemblies that have a neoprene gasket design installed between the carburetor heat box and the air filter frame. This action requires repetitively inspecting (visually) the air filter frame for a loose or deteriorating gasket, and replacing any gasket found loose or deteriorated. An accident report concerning a Cessna Model 172 airplane that experienced engine loss because a six-inch piece of neoprene gasket material was lodged in the carburetor prompted this action. The actions specified by this AD are intended to prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from the Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5265; facsimile (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to airplanes that have a Brackett air filter neoprene gasket installed in accordance with Supplemental Type Certificate (STC) SA71GL was published in the **Federal Register** on August 25, 1994 (59 FR 43784). The action proposed to require repetitively inspecting (visually) the air filter frame for a loose or deteriorated gasket, and replacing any gasket found loose or deteriorated.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received from two separate commenters.

The first commenter, the Brackett Aircraft Co., Inc. (Brackett), states that no full model designation was given of the Cessna 172 airplane referenced in the incident specified by the NPRM. Some Cessna 172's use the Model BA-5110A filter (which uses airlocks in the air filter frame assembly) and others use the Model BA-5110 filter (which uses screws and nuts in the air filter frame assembly). This commenter feels that some reference to this difference should be made in the proposal.

The FAA concurs. Paragraphs (a)(1) and (a)(3) of the proposal have been changed to specify removing or installing airlocks or screws, nuts, and washers, as applicable.

Brackett also states that the proposal is an economic burden to the public and the proposal does not take into account the cost of the repetitive inspections.

The FAA does not concur that this proposal would be an economic burden upon the public. Under the criteria of the Regulatory Flexibility Act of 1980 (RFA), this AD action would not unnecessarily or disproportionally burden any small entities. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at nine aircraft owned and the annualized cost threshold at $69,000 for scheduled operators and $5,000 for unscheduled operators. In order for these cost thresholds to be met (based on the inspection taking 1 workhour at $60 per hour), an owner in scheduled service would have to own 1,150 airplanes and an owner in unscheduled service would have to own 83 airplanes. With this information in mind and based on the above-referenced criteria from FAA Order 2100.14A, no small entities would meet the annualized cost threshold. The FAA has determined that the safety aspect of the proposal outweighs the economic cost upon the public. The FAA does concur that the cost figure does not reflect the cost of repetitive inspections. As specified in the proposal, the FAA has no available means of determining the number of repetitive inspections each owner/operator would incur. The proposal is unchanged as a result of this comment.

In addition, Brackett and the other commenter suggest that the proposal is unnecessary because part 43, appendix D, of the Federal Aviation Regulations (14 CFR part 43, appendix D) already addresses the proposed inspection. Brackett states that 14 CFR part 43, appendix D, specifies inspecting the engine accessories and systems for improper installation, poor general condition, defects, and insecure attachments during each 100-hour or annual inspection. The other commenter states that this proposal specifies a maintenance action as required by 14 CFR part 43, appendix D.

The FAA acknowledges that 14 CFR part 43, appendix D, does address the area of the proposed inspection, but does not specify procedures required to properly inspect Brackett air filter neoprene gaskets installed in accordance with STC SA71GL. Prior to March 16, 1994, procedures for repetitively inspecting the air filter frame were not available to owners/operators of airplanes with the affected air filter assemblies installed. On that date, Brackett Aircraft Company, Inc., issued Brackett Air Filter Document I-194, which specifies inspection procedures for these air filter assemblies. Since there is no way of knowing what type of inspection procedures were utilized prior to the issuance of this document and based on the accident information that prompted the proposal, the FAA has determined that AD action should be taken to ensure proper inspections of Brackett air filter assemblies installed on aircraft. The proposal is unchanged as a result of these comments.

After careful review of all available information, including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 50,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,000,000 or $60 per owner/operator. This figure represents the cost of the initial inspection, and does not reflect costs for repetitive inspections or possible replacements. The FAA has no way of determining how many gaskets may need replacement or how many repetitive inspections each owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95-03-02 Brackett Aircraft Company, Inc.: Amendment 39-9139; Docket No. 94-CE-08-AD.

Applicability: The following air filter assemblies that utilize a neoprene gasket incorporated in accordance with Supplemental Type Certificate (STC) SA71GL and installed on, but not limited to, the following corresponding airplanes, certificated in any category:

Air filter assembly	Airplanes installed on
BA-2010	Beech Model 77 Airplanes.
BA-4106	Cessna Models 120, 140, 140A, 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150M, 152, and A152; Champion Models 7ACA, 7ECA, and 7FC; Christian Industries Model Husky A-1; Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T-8F; and Piper Models PA-22, PA-22-135, PA-22-150, PA-22-160, PA-22-180, PA-20-115, PA-20-135, PA-38, J-3, J3C-65, J3C-65's, PA-11, PA-11's, J4A, J4AS, J4E, J5A, J5A-80, PA-12, PA-12's, PA-16, PA-17, PA-18, PA-18A, PA-18's, PA-18-"125", PA-18AS-"125", PA-18's-"125", PA-18-"135", PA-18A-"135", PA-18AS-"135", and 8S-135 Airplanes.
BA-4210	Grumman American Aviation Corporation Models AA-1, AA-1A, AA-1B, AA-1C, and AA-5 Airplanes.
BA-5110	Cessna 170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, and 172M; and Mooney Mite Aircraft Corporation Model M-18C Airplanes.
BA-5110A	Cessna Models 172N and 172P Airplanes.
BA-6110	Mooney Models M20, M20A, M20B, M20C, M20D, and M20G; and Maule Models M4, M4C, M4S, M4T, M-4-220, M-4-220C, M-4-220S, M-4-220T, M-4-180C, M-4-180S, M-4-180T, M-5-220C, M-5-235C, M-5-180C, M-5-210TC, M-6-180, M-6-235, and M-7-235 Airplanes.
BA-8910	Aero Commander Models 100 and 100A Airplanes.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS.

To prevent gasket particles from entering the carburetor because of air filter gasket failure, which could result in partial or complete loss of engine power, accomplish the following:

(a) Visually inspect the inside and outside of the air filter frame for gasket looseness, movement, or deterioration in accordance with Brackett Air Filter Document I-194, dated March 16, 1994. If any gasket looseness, movement, or deterioration is found, prior to further flight, accomplish the following:

(1) Remove the air filter frame by removing the screws, nuts, and washers on the air filter frame (3 to 4 each) or the airlocks, as applicable. Note that the screws securing the grill to the frame need not be removed.

(2) Remove and replace the neoprene gasket in accordance with Brackett Air Filter Document I-194. Inspect the carburetor in accordance with the applicable maintenance manual for gasket material ingestion. Remove any material ingested.

(3) Reinstall the filter frame to the carburetor heat box with the screws, nuts, and washers (3 to 4 each) or the airlocks, as applicable, that were earlier removed. Torque each nut to where the neoprene gasket is compressed to one-half its original thickness.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) The inspections required by this AD shall be done in accordance with Brackett Air Filter Document I-194, dated March 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Brackett Aircraft Company, Inc., 7045 Flightline Drive, Kingman, Arizona 86401. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-9139) becomes effective on March 17, 1995.

Issued in Kansas City, Missouri, on January 31, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-2786 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-SW-05-AD; Amendment 39-9149; AD 95-03-13]

Airworthiness Directives; McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369 and OH-6A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD).

applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 and OH-6A series helicopters with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies installed, that currently requires repetitive inspections and checks for cracks. This amendment requires the same inspections as the superseded AD, but would eliminate pilot checks, expand the areas of inspection, and require the application of slippage marks on each M/R blade root fitting lug and related bushings. This amendment is prompted by additional reports of cracks in the M/R blade root fittings, lugs, and adjacent blade skin, and movement of the root fitting bushings. The actions specified by this AD are intended to prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter.

DATES: Effective March 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627-5237, fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91-17-04, Amendment 39-8003 (56 FR 42230, August 27, 1991), which is applicable to McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc. Model 369 and OH-6A series helicopters with certain main rotor (M/R) blade assemblies or certain M/R hub lead-lag assemblies installed, was published in the **Federal Register** on July 21, 1994 (59 FR 37185). That action proposed to require application of a slippage mark on each M/R blade root fitting lug and related bushings to detect movement within 25 hours time-in-service (TIS). In addition, that action proposed to require, within 25 hours TIS after the effective date of the AD and thereafter at intervals not to exceed 100 hours TIS from the last inspection, that the M/R blade assembly be removed and that the M/R blade root fittings (root fittings), root fitting lugs, lead-lag lugs, the M/R blade skin, and the doublers adjacent to the root fittings be inspected for cracks. That action also proposed that the lug bushings be inspected for looseness and slippage, and that slippage marks be applied if not already present. Visual inspections of the root fittings and M/R lead-lag links for cracks and inspection of the bushing slippage marks for movement, without removing the M/R blade, were also proposed at intervals not to exceed 25 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for editorial changes and a change in the manufacturer's name from McDonnell Douglas Helicopter Company to McDonnell Douglas Helicopter Systems. Additionally, the FAA has revised the average labor rate from $55 per work hour to $60 per work hour, which raises the estimated total cost impact of the AD to $1,320,000. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,000 helicopters of U.S. registry will be affected by this AD, that it will take approximately 22 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,320,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-8003 (56 FR 42230, August 27, 1991), and by adding a new airworthiness directive (AD), Amendment 39-9149, to read as follows:

95-03-13 McDonnell Douglas Helicopter Systems and Hughes Helicopters, Inc.: Amendment 39-9149. Docket No. 94-SW-05-AD. Supersedes AD 91-17-04, Amendment 39-8003.

Applicability: Model 369 and OH-6A series helicopters, with any of the following parts installed: (1) Main rotor (M/R) blade assembly (blade assembly), part number (P/N) 369A1100-BSC, -501, -503, -505, -601 or -603; 369D21100-BSC, -503, -505, -507 -509, -511, -513, or -515; 369D21102-BSC or -501; or (2) M/R hub lead-lag link assembly (lead-lag link assembly), P/N 369A1203-BSC, -3, or -11, 369H1203-BSC -11, -21, or -31, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a M/R blade assembly or a M/R hub lead-lag link assembly, loss of a M/R blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS from the last inspection, remove each blade assembly from the helicopter and accomplish the following:

(1) Inspect the attachment lugs of the M/R blade root fittings (root fittings) and the M

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R lead-lag links (links) for cracks and the lug bushings (bushings) for looseness. Conduct the inspections in accordance with paragraph (b) of Part I of McDonnell Douglas Helicopter Company Service Information Notice HN-211.4, DN-51.6, EN-42.4, FN-31.4 (SIN), dated January 27, 1993.

(2) Visually inspect the following for cracks—

(i) The root fittings around the blade attachment lugs; and,

(ii) The M/R blade doubler and blade skin adjacent to the root fittings.

(3) Mark the root fittings and bushings with slippage marks in accordance with paragraph (e) of Part I of the SIN, dated January 27, 1993, if the slippage marks are degraded or missing.

(4) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(b) Within 25 hours TIS after compliance with the requirements of paragraph (a) of this AD, and thereafter at intervals not to exceed 25 hours TIS from the last inspection, accomplish the following without removing the M/R blade:

(1) Visually inspect the root fittings and links for cracks or loose bushings in accordance with Part II of the SIN, dated January 27, 1993.

(2) Replace any M/R blades or links found to be cracked or to have loose bushings with airworthy parts before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacements, if necessary, shall be done in accordance with McDonnell Douglas Helicopter Company Service Information Notice No. HN-211.4, DN-51.6, EN-42.4, FN-31.4, dated January 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 21, 1995.

Issued in Fort Worth, Texas, on February 7, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service

[FR Doc. 95-3511 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-CE-22-AD; Amendment 39-9124; AD 95-02-06]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Aircraft Limited) Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91-08-01, which currently requires the following on Jetstream Aircraft Limited (JAL) Jetstream Model 3101 airplanes: revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS; and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. This action requires incorporating a flap system modification as terminating action for the requirements of AD 91-08-01. The actions specified by this AD are intended to prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane.

DATES: Effective March 10, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44-292) 79888; facsimile (44-292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029; telephone (703) 406-1161; facsimile (703) 406-1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal (supplemental notice of proposed rulemaking) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Model 3101 airplanes was published in the **Federal Register** on October 13, 1994 (59 FR 51875). The action proposed to supersede AD 91-08-01, Amendment 39-7007, with a new AD that would (1) Retain the flap system operating revision and limitation currently required until the 35-degree flap system modification was incorporated; and (2) eventually require incorporating the 35 degree flap system modification in accordance with the instructions in Jetstream Aircraft Limited Service Bulletin No. 27-JA 910541, which consists of the following pages:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991
31	Revision 2	February 4, 1992
1, 3, 4, and 32 ..	Revision 3	November 16, 1992

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposal and no comments were received concerning the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 141 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 23 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. The manufacturer will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $178,365. This figure is based on the assumption that no affected owner/operator has incorporated the required modification.

Jetstream Aircraft Limited has informed the FAA that 122 modification kits have been delivered to affected airplane owners/operators. Since each of these airplane operators have incorporated revised flight manual supplements, the FAA assumes that each of these kits is installed on one of the affected airplanes. With this in mind, the proposed cost impact upon U.S. operators would be reduced $154,330 from $178,365 to $24,035. In addition, Jetstream Aircraft Limited informed the FAA that the other 19 affected airplanes are in the storage inventory of its sister company JSX. The policy of JSX is to incorporate this modification before distributing one of the affected airplanes to an operator. Taking these factors into consideration, this AD would provide no economic cost impact upon U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-08-01, Amendment 39-7007 (56 FR 24333, May 30, 1991), and adding a new AD to read as follows:

95-02-06 Jetstream Aircraft Limited: Amendment 39-9124; Docket No. 92-CE-22-AD. Supersedes AD 91-08-01, Amendment 39-7007

Applicability: Jetstream Model 3101 airplanes (all serial numbers), certificated in any category, that do not have the flap system modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 27-JA 910541, which consists of the following pages and revision levels:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991
31	Revision 2	February 4, 1992.
1, 3, 4, and 32 ..	Revision 3	November 16, 1992.

Note 1: Compliance with a previous revision level of the above-referenced service bulletin fulfills the applicable requirements of this AD.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, which could lead to loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after June 10, 1991 (the effective date of superseded AD 91-08-01), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with British Aerospace (BAe) Alert SB No. 27-A-JA 910340, dated March 25, 1991. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the Limitations Section of the airplane flight manual.

(b) Within the next 25 hours TIS after June 10, 1991 (the effective date of superseded AD 91-08-01), accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on the airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe Alert SB 27-A-JA 910340, dated March 25, 1991, Section 2.B.—Instruction for Aircraft Operations, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 100 hours TIS after the effective date of this AD, incorporate the 35 degree flap modification (Amendment JA 910541) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Aircraft Limited SB 27 JA 910541.

(d) The actions required by paragraphs (a) and (b) of this AD may be terminated when the flap system is modified in accordance with Jetstream Aircraft Limited SB 27-JA 910541, as required by paragraph (c) of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate airplanes to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(g) The modifications required by this AD shall be done in accordance with Jetstream Aircraft Limited Service Bulletin 27-JA 910541, which consists of the following pages and revision levels:

Page Nos.	Revision level	Date
2, 5 through 30 and 33 through 45.	Revision 1	November 11, 1991
31	Revision 2	February 4, 1992.
1, 3, 4, and 32 ..	Revision 3	November 16, 1992

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44-292) 79888. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office

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of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9124) supersedes AD 91–08–01, Amendment 39–7007.

(i) This amendment (39–9124) becomes effective on March 10, 1995.

Issued in Kansas City, Missouri on January 18, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1698 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–52–AD; Amendment 39–9126; AD 95–02–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6–45 or CF6–50 Engines or Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires installation of a seal on the wing front spar at each engine strut. This amendment is prompted by a report of a fire that occurred due to fuel leakage from the fuel line coupling in the engine strut area along the wing front spar while the airplane was on the ground after engine shutdown. The actions specified by this AD are intended to ensure that fuel is contained within the strut drainage area and channeled away from ignition sources.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on June 9, 1994 (59 FR 29744). That action proposed to require installation of a seal on the wing front spar at each engine strut.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Several commenters state that the one reported incident was an "isolated incident" and is not characteristic of industry findings. One commenter also states that the incident was not a safety-of-flight issue since the reported fire occurred while the airplane was on the ground. Because of this, these commenters request that the FAA withdraw the proposed rule. The FAA does not concur. As explained in detail in the preamble to the proposed rule, airflow when the airplane is in flight or airflow from the engine running when the airplane is on the ground does prevent fuel from leaking onto hot engine surface. However, a potential unsafe condition still exists because fire can occur after engine shutdown as a result of the fuel dripping onto the hot engine surface. The reported fire demonstrates that the design of the flammable fluid drainage system does not adequately separate the fuel leak from the hot surface of the engine following engine shutdown. The FAA has determined that the actions required by this AD are warranted in order to address that unsafe condition.

Several commenters contend that the proposed installation of a seal on the wing front spar at each engine will not prevent a fuel leak from occurring. One commenter states that individual modifications, such as the proposed modification, should only be required as part of a more comprehensive program of modifications that will address all known fuel system leakage problems. (The commenter did not, however, provide any specific details of a program.) Another commenter states that periodic replacement of the O-rings in the fitting would prevent the leakage of fuel; therefore, the proposed installation is not necessary. Because of these items, these commenters request that the rule not be issued. The FAA does not concur. Each incident report and each modification presented to correct causes of fuel leakage incidents is evaluated by the FAA. Both the effectiveness of the modification and the economic impact to accomplish corrective action required by an AD are considered. The FAA has determined that the installation required by this AD will improve the drainage system and prevent future fires that could be caused by fuel leakage from the fuel line (Wiggins) coupling in the engine strut area. Scheduled replacement of the O-rings may reduce the potential for fuel leaks caused by worn or aged O-rings, but it will not eliminate all causes of fuel leakage in the area of the modification.

One commenter states that the seal described in the proposed rule will be replaced during an anticipated "Boeing Model 747 strut modification program," and that installing the seal before modifying the strut area would provide a short-lived increase in safety. This commenter, therefore, considers the proposed installation to be unwarranted. The FAA does not concur. The planned strut modification program does not include a requirement for incorporation of the installation required by this AD, nor has a compliance time for the strut modifications been established; it is likely that the compliance time may be a period of three to five years. Although the planned strut modifications may require the removal and reinstallation of the seal installation required by this AD, the risk of a fire occurring before the planned strut modification program is implemented outweighs the convenience of waiting to install the seal until the strut modification is accomplished. The installation required by this AD can be incorporated during normal scheduled maintenance periods, thereby reducing the costs associated with this installation since access to this area will be necessitated in order to accomplish other scheduled maintenance actions.

Several commenters request that the FAA extend the proposed compliance time for the installation. Some of the commenters request the compliance time be extended from the proposed 12 months to as much as 48 months. This would permit ample time to accomplish the installation during scheduled maintenance periods. One of these commenters requests that the compliance time be extended to coincide with the planned strut modification program to reduce the additional cost to the operators. The FAA concurs that the compliance time may be extended somewhat. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required installation into affected operators' scheduled maintenance visits, when the airplanes would be located at a base where facilities and trained personnel would be readily available, if necessary. The FAA has reviewed data submitted by the manufacturer as to recommended installation time, and concurs with the commenters' requests for an extension. The FAA has determined that extending the compliance time from 12 months to 18 months will not compromise safety. Paragraph (a) of the final rule has been revised accordingly.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 610 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $57 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $164,151, or $897 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–02–07 Boeing: Amendment 39–9126. Docket 94–NM–52–AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6–45 or CF6–50 engines, or Pratt & Whitney JT9D series engines; as listed in Boeing Service Bulletin 747–28–2160, Revision 1, dated December 16, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fuel is contained within the strut drainage area and channeled away from ignition sources, accomplish the following:

(a) Within 18 months after the effective date of this AD, install a seal on the wing front spar at each engine strut in accordance with Boeing Service Bulletin 747–28–2160, dated July 23, 1992, or Revision 1, dated December 16, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Boeing Service Bulletin 747–28–2160, dated July 23, 1992, or Boeing Service Bulletin 747–28–2160, Revision 1 dated December 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial

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Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1846 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–16–AD; Amendment 39–9123; AD 95–02–05]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This action requires repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. The actions specified by this AD are intended to prevent the inability to open the passenger/crew door because of a cracked internal handle mounting platform structure, which, if not detected and corrected, could result in passenger injury if emergency evacuation was needed.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513–3830; facsimile (322) 230–6899; or Mr John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on October 13, 1994 (59 FR 51879). The action proposed to require repetitively inspecting the passenger/crew cabin door handle mounting platform structure for cracks, and, if found cracked, replacing with a structure of improved design as terminating action for the repetitive inspections. The proposed actions would be accomplished in accordance with Jetstream Service Bulletin 52–A–JA 930901, Revision 1, dated February 11, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 165 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,075. This figure does not take into account any possible passenger/crew door internal handle mounting platform structure replacements nor repetitive inspections. The FAA has no way of determining how many of these structures may have cracks or the number of repetitive inspections each owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–02–05 Jetstream Aircraft Limited: Amendment 39–9123; Docket No. 94–CE–16–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category. Compliance: Required upon the accumulation of 1,800 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent the inability to open the passenger/crew door because of a cracked internal handle mounting platform structure, which, if not detected and corrected, could result in passenger injury if emergency evacuation was needed, accomplish the following:

(a) Inspect the passenger/crew door internal handle mounting platform structure for cracks in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 52–A–JA 930901, Revision 1, dated February 11, 1994.

(1) If any cracked structure is found, prior to further flight, replace the mounting platform structure with a new structure, part number 137450C23, in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 52–A–JA 930901, Revision 1, dated February 11, 1994.

(2) If no cracks are found, reinspect the mounting platform structure at intervals not to exceed 1,800 hours TIS until a part number 137450C23 mounting platform structure is installed.

(b) The repetitive inspections required by this AD may be terminated upon installing a part number 137450C23 passenger/crew door internal handle mounting platform structure. This installation may be accomplished regardless of whether the existing structure is cracked.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) The inspection and modification (if necessary) required by this AD shall be done in accordance with Jetstream Service Bulletin 52–A–JA 930901, Revision 1, dated February 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9123) becomes effective on March 17, 1995.

Issued in Kansas City, Missouri, on January 18, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–1699 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–80–AD; Amendment 39–9127; AD 95–02–08]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires modification of certain fuselage support structure for the number 2 galley. This amendment is prompted by results of engineering tests and analyses which revealed that certain fuselage support structure for the number 2 galley is unable to support certain loads that may occur during emergency landing conditions. If the fuselage support structure breaks, the galley may shift and cause blockage of the forward service door (galley door). The actions specified by this AD are intended to prevent inability of passengers and crew to exit the airplane through this door after an emergency landing.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on September 1, 1994 (59 FR 45249). That action proposed to require modification of certain fuselage support structure for the number 2 galley.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests that the issuance of the proposed AD be delayed until a revision to the referenced service bulletin is issued by the manufacturer. The commenter states that by the time the revision is issued, which is expected to be in the second quarter of 1995, the manufacturer will be able to supply required modification parts "that fit." The FAA does not concur. The FAA does not consider that delaying this action until after the release of the manufacturer's planned service bulletin is warranted, since sufficient technology currently exists to perform the modification within the compliance time. Neither the manufacturer nor any operator has notified the FAA of any problems involving improper fit of parts for the required modification. However, paragraph (b) of the final rule does provide affected operators the opportunity to request an adjustment of the compliance time if a situation were to arise where ample required parts were not available.

One commenter requests that the proposed compliance time of 18 months be extended for an additional 18 months to allow operators to schedule a heavy maintenance visit in which to accomplish the required modification. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the safety implications, but the availability of required parts, as well as normal maintenance schedules for timely accomplishment of the modification. The FAA determined that an 18-month compliance time provides sufficient time within which the majority of affected operators can schedule a heavy maintenance visit, and an acceptable level of safety can be maintained. However, paragraph (b) of the final rule does provide affected

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operators the opportunity to apply for an adjustment of the compliance time if sufficient data are presented to justify such an adjustment.

One commenter requests that certain editorial changes be made to the rule. The commenter notes that the proposed rule refers to "the forward service door," but the commenter suggests that the term, "galley door," is a more commonly recognized term when referring to the right-hand forward door. The FAA concurs that clarification is necessary, and has revised the final rule to express the term, "galley door," parenthetically after each mention of the forward service door.

This commenter also requests that the rule be clarified to show that the results of engineering tests and analyses revealed that the "fuselage support structure" is unable to support certain loads, rather than the "galley support structure" or "overhead tie rods," as indicated in the preamble to the proposed rule. The FAA concurs, and the description of the unsafe condition has been revised in this final rule to reflect this clarification.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 613 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 64 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour Required parts will cost approximately $1,205 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $701,255, or $5,045 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1 The authority citation for part 39 continues to read as follows.

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2 Section 39.13 is amended by adding the following new airworthiness directive:

95-02-08 Boeing: Amendment 39-9127. Docket 94-NM-80-AD.

Applicability: Model 737 series airplanes, as listed in Boeing Service Bulletin 737-53-1154, dated November 11, 1993, equipped with rectangular intercostal support structures from Body Station (BS) 344 to BS 360 (inclusive) and a number 2 galley weight exceeding 1,170 pounds (including any attached equipment that imposes loads on the galley), or equipped with triangular intercostal support structures from BS 344 to BS 360 (inclusive) and a number 2 galley weight exceeding 1,050 pounds (including any attached equipment that imposes loads on the galley); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inability of passengers and crew to exit the forward service door (galley door) during an emergency landing condition, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the airplane support structure from BS 344 to BS 360 (inclusive) in accordance with Boeing Service Bulletin 737-53-1154, dated November 11, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Service Bulletin 737-53-1154, dated November 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-1847 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-217-AD; Amendment 39-9128; AD 95-02-09]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that requires inspections to detect damage, overheating, and proper operation of the DC connections and cooling fans in certain transformer rectifier units (TRU), and repair or replacement, if necessary. This amendment is prompted by a report of the loss of all DC electrical power, except for the battery emergency bus, due to failure of the TRU's, which occurred during flight. The actions specified by this AD are intended to prevent such failures that could lead to loss of essential electrical power required to continue safe flight of the airplane.

DATES: Effective March 16, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes was published in the **Federal Register** on February 18, 1994 (59 FR 8145). That action proposed to require inspections of the DC connections and cooling fans in certain transformer rectifier units (TRU) to detect damage or overheating and to ensure correct operation, and repair or replacement, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

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Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-02-09 British Aerospace (Commercial Aircraft), Limited: Amendment 39-9128 Docket 93-NM-217-AD

Applicability: Model ATP airplanes equipped with Ferranti Transformer Rectifier Unit TR202A (Pt. No. 84/59100) or TR202B (Pt. No. 84/60040), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of essential electrical power required to continue safe flight of the airplane, accomplish the following:

(a) Within 225 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 625 hours time-in-service, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Perform a visual inspection of the DC connections to detect any damage or overheating, in accordance with Ferranti Service Bulletin 24-20-171, dated September 1993. If any damage or overheating is found, prior to further flight, repair in accordance with a method approved by Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) Perform a torque loading inspection of each DC connection to ensure that torque loads are within the limits specified in Ferranti Service Bulletin 24-20-171, dated September 1993; and, during this inspection, ensure that each terminal stud is secure in its mounting by visually observing that the stud does not rotate; in accordance with Ferranti Service Bulletin 24-20-171, dated September 1993.

(3) Perform a visual inspection of the cooling fan blades to detect any damage due to overheating, in accordance with Ferranti Service Bulletin 24-20-172, dated September 1993. If any damage is found, prior to further flight, replace the fan blade with a serviceable part in accordance with the airplane maintenance manual.

(4) Perform a functional test of the operation of the cooling fan by energizing the relay and confirming that cooling air exits from the grill on top of the unit, in accordance with Ferranti Service Bulletin 24-20-172, dated September 1993. Prior to further flight, repair or replace any malfunctioning or damaged cooling fan or cooling fan relay, in accordance with the airplane maintenance manual.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and test shall be done in accordance with Ferranti Service Bulletin 24-20-171, dated September 1993; and Ferranti Service Bulletin 24-20-172, dated September 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 16, 1995.

Issued in Renton, Washington, on January 19, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-1849 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 8589]

RIN 1545-AS84

User Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to user fees for certain services provided to specific persons and implements the Independent Offices Appropriations Act (IOAA).

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Concerning costing methodology, Robert Miller, (202) 535-9701(x3222); concerning installment agreements, Kevin Connelly, (202) 622-3640 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The IOAA, codified at 31 U.S.C. 9701 authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA expressly provides that regulations implementing user fees "are subject to policies prescribed by the President * * * ."

The FY 1995 Appropriations Bill for the Treasury Department (the 1995 Appropriations Bill) includes a provision relating to the establishment of new fees for services provided by the IRS if the fees are authorized by another law, such as the IOAA.

Since 1959, the Office of Management and Budget (OMB) has issued policy guidance on user fees through Circular A-25 (the OMB Circular). See *FPC v. New England Power Co.*, 415 U.S. 345 349-51 (1974) (citing the OMB Circular). On July 15, 1993, OMB issued a revised version of the OMB Circular in the **Federal Register** (58 FR 38142), which provides updated policy guidance on user fees. Under the OMB Circular, user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public are encouraged. The amount of the user fee imposed should recover the cost for providing the special benefit or the value of the special benefit.

For these fees, the IRS followed the guidance provided by the OMB Circular and the relevant court cases in calculating the costs of the services provided. Under the OMB Circular, each agency is to include in its calculation of the cost of providing a benefit:

(1) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement.

(2) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment.

(3) Management and supervisory costs.

(4) The costs of enforcement, collection, research, establishment of standards, and regulation, including any environmental impact statements.

On December 28, 1994, a notice of proposed rulemaking (PS-39-94) relating to user fees under 31 U.S.C. 9701 was published in the **Federal Register** (59 FR 66828). Written comments responding to the notice were received and a public hearing was held on January 20, 1995. Commenters expressed concern that some taxpayers cannot afford to pay a fee in addition to their installment payments. The IRS is concerned about the effect of the fee on such taxpayers. Accordingly, the IRS intends to use existing administrative procedures to take into account the taxpayer's ability to pay in structuring the payment schedule, including the payment of the fee. After consideration of the comments, the proposed regulations are adopted by this Treasury decision.

Entering into Installment Agreements

Section 6159 of the Internal Revenue Code authorizes the IRS to enter into a written agreement with any taxpayer for the payment of that taxpayer's outstanding tax obligation in installments. Each taxpayer that enters into an installment agreement receives the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately.

Before entering into an installment agreement, the IRS must first determine whether such an agreement is appropriate, then set up the agreement, process payments, and monitor for conformance with the agreement.

The amount of the installment agreement fee has been determined by using activity-based costing. In a 1993 study, the IRS analyzed the work activities related to establishing new installment agreements at both the Service Center (pre-assessment) and District Office levels (post assessment). The costs incurred in establishing new installment agreements at Service Centers and District Offices were averaged in computing a uniform fee. Projected costs for program start-up and training and software maintenance were developed. Lockbox and remittance processing costs (based on an historic average of 8.5 payments per agreement) were calculated. These figures were added to the initial activity-based costing totals. The activity-based methodology did not include some indirect cost elements (primarily executive support) which were then calculated at a 2.3% indirect cost rate. Based on this costing methodology, the installment agreement fee is $43.

Restructuring or Reinstating Installment Agreements

When a taxpayer fails to meet any of the conditions of an installment agreement, that agreement is deemed to be in default. The IRS has the right to terminate an installment agreement in default. Each taxpayer that has an installment agreement restructured or reinstated receives not only the special benefit of being allowed to pay an outstanding tax obligation over time rather than immediately but also the special benefit of avoiding a potential enforcement action, including but not limited to the filing of liens and the making of levies.

Before restructuring or reinstating an installment agreement, the IRS must monitor for nonconformance, analyze the cause(s) of default, correspond with the taxpayer, analyze the taxpayer's responses, and, if appropriate, restructure or reinstate the agreement.

The amount of the restructuring or reinstatement fee was calculated by determining direct labor costs and overhead labor costs derived from the IRS' Work Planning and Control tracking system, standard correspondence and postage costs incurred in preparing and mailing certified notices, and an indirect cost factor representing support cost. Examining program history through fiscal year 1993, the IRS estimated the total number of installment agreements likely to be restructured or reinstated in fiscal year 1995 as approximately 150,000. Based on this costing methodology, the restructuring or reinstatement fee is $24.

Special Analyses

Although it has been determined that this Treasury decision is a significant regulatory action as defined in EO 12866, the Office of Management and Budget has waived the preparation of a regulatory assessment. Because no substantive changes were made to these regulations subsequent to their submission to the Office of Management and Budget, the provisions of section 6(a)(3)(E) of EO 12866 do not apply. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. However, due to the small dollar amount of each of these fees, the economic impact on any entity subject to one of the fees would not be significant. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Tom Baker, Office of Assistant Chief Counsel (General Legal Services). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is added to read as follows:

PART 300—USER FEES

Sec.

300.0 User fees; in general.
300.1 Installment agreement fee.
300.2 Restructuring or reinstatement of installment agreement fee.

Authority: 31 U.S.C. 9701.

§ 300.0 User fees; in general.

(a) *In general.* The regulations in this part 300 are designated the User Fee Regulations and provide rules relating to user fees under 31 U.S.C. 9701.

(b) *Applicability.* User fees are imposed on the following services:

(1) Entering into an installment agreement.

(2) Restructuring or reinstating an installment agreement.

(c) *Effective date.* This part 300 is effective March 16, 1995.

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§ 300.1 Installment agreement fee.

(a) *Applicability.* This section applies to installment agreements under section 6159 of the Internal Revenue Code.

(b) *Fee.* The fee for entering into an installment agreement is $43.

(c) *Person liable for fee.* The person liable for the installment agreement fee is the taxpayer entering into an installment agreement.

§ 300.2 Restructuring or reinstatement of installment agreement fee.

(a) *Applicability.* This section applies to installment agreements under section 6159 of the Internal Revenue Code that are in default. An installment agreement is deemed to be in default when a taxpayer fails to meet any of the conditions of the installment agreement.

(b) *Fee.* The fee for restructuring or reinstating an installment agreement is $[illegible].

(c) *Person liable for fee.* The person liable for the restructuring or reinstatement fee is the taxpayer that has an installment agreement restructured or reinstated.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 1, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95-3755 Filed 2-10-95; 12:57 pm]

BILLING CODE 4830-01-P

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments to the list of specially designated nationals.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add 144 entities to appendix A, Organizations Determined to Be Within the Term "Government of Libya" (Specially Designated Nationals of Libya), and to add 19 individuals to appendix B, Individuals Determined to Be Specially Designated Nationals of the Government of Libya.

EFFECTIVE DATE: February 14, 1995.

ADDRESSES: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on The Federal Bulletin Board (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622-2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A, Organizations Determined to Be within the Term "Government of Libya" (Specially Designated Nationals of Libya), is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya," as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by or act or purport to act directly or indirectly on behalf of the Government of Libya. Appendix B, Individuals Determined to Be Specially Designated Nationals of the Government of Libya, lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the definition of the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation as Specially Designated Nationals of Libya of an additional 144 companies owned by the Government of Libya or by a company owned by the Government of Libya.

Appendix B to part 550 is amended to provide public notice of 19 individuals determined to be Specially Designated Nationals of the Government of Libya.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under the authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that such person is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC.

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 for each violation of the Regulations. Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals, and criminal fines of up to $500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services.

Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701-1706; 50 U.S.C 1601-1651; 22 U.S.C. 287c; 49 U.S.C. App 1514; 22 U.S.C. 2349aa-8 and 2349aa-9; 3 U.S.C. 301; E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

Appendix A to Part 550—Organizations Determined To Be Within The Term "Government of Libya" (Specially Designated Nationals of Libya)

* * * * *

AGRICULTURAL ENGINEERING COMPANY
Libya.

* * * * *

AHLYA BUILDING MATERIALS CO
P.O. Box 8545, Jumhouriya Street, Tripoli, Libya.
Branch:
P.O. Box 1351, Benghazi, Libya

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AHMAD QASSEM AND SONS CO
Libya.

* * * * *

AL ABIAR FODDER PLANT
Libya.

* * * * *

AL AHLIYA CO. FOR TRADING AND MANUFACTURE OF CLOTHING
P.O. Box 4152, Benghazi, Libya
Branch:
P.O. Box 15182, Tripoli, Libya.

* * * * *

AL AMAL CO. FOR TRADING AND MANUFACTURING OF CLOTHING
Libya.

* * * * *

AL GAZEERA BENGHAZI
P.O. Box 2456, Benghazi, Libya.

* * * * *

AL JAMAL TRADING EST. (BENGHAZI)
Benghazi, Libya.

* * * * *

AMAN CO. FOR TYRES AND BATTERIES
Tajura Km. 19, P.O. Box 30737, Tripoli, Libya.
Branches:
Benghazi Branch, P.O. Box 2394, Bengazi, Libya.
Tripoli Branch, Tripoli, Libya.
Misurata Branch, P.O. Box 17757, Misurata, Libya.
Sabha Branch, Sabha, Libya.

* * * * *

ARAB CO. FOR IMPORTATION AND MANUFACTURE OF CLOTHING AND TEXTILES
Libya.

* * * * *

ARAB UNION CONTRACTING CO
P.O. Box 3475, Tripoli, Libya.

* * * * *

AUTO BATTERY PLANT
Libya.

* * * * *

AZIZIA BOTTLE PLANT
Libya

* * * * *

BENGHAZI CEMENT PLANT
Libya.

* * * * *

BENGHAZI EST. FOR BUILDING AND CONSTRUCTION
P.O. Box 2118, Benghazi, Libya.

* * * * *

BENGHAZI LIME PLANT
Libya.

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BENGHAZI PAPER BAGS PLANT
Libya.

* * * * *

BENGHAZI TANNERY
Libya

* * * * *

CIVIL AVIATION AUTHORITY
Sharia El Saidi, Tripoli, Libya

* * * * *

COMPRESSED LEATHER BOARD FIBRE PLANT
Tajoura, Libya.

* * * * *

DRY BATTERY PLANT
Libya

* * * * *

EL BAIDA ROADS AND UTILITIES CO
P.O. Box 232/561, El Baida, Libya

* * * * *

EL FATAH AGENCY
P.O. Box 233, Tripoli, Libya.

* * * * *

EL MAMOURA FOOD COMPANY
P.O. Box 15053, Tripoli, Libya.
Branches:
Tripoli, Libya.
Benghazi, Libya.

* * * * *

ELECTRIC WIRES AND CABLES PLANT
Libya.

* * * * *

ELECTRICAL CONSTRUCTION CO
P.O. Box 5309, Tripoli, Libya.
Branches:
Tripoli, Libya (head office)
Benghazi, Libya.
Misurata, Libya.
Sebha and Delhi, India

* * * * *

ELKHALEGE GENERAL CONSTRUCTION CO
P.O. Box 445, Agedabia, Libya.
Branches:
Sirti Office, P.O. Box 105, Sirti, Libya
Benghazi Office, Benghazi, Libya.

* * * * *

EMNUHOOD EST. FOR CONTRACTS
P.O. Box 1380, Benghazi, Libya.

* * * * *

FOOTWEAR PLANT
Misurata, Libya.

* * * * *

GAMOENNS CONTRACTS AND UTILITIES EST
P.O. Box 3038, Benghazi, Libya

* * * * *

GARABULLI FODDER PLANT
Libya.

* * * * *

GENERAL CATERING CORPORATION
P.O. Box 491, Tripoli, Libya

* * * * *

GENERAL CLEANING COMPANY
P.O. Box 920, Tripoli, Libya.

* * * * *

GENERAL CO. FOR AGRICULTURAL MACHINERY AND NECESSITIES
P.O. Box 324, Tripoli, Libya
Branches:
Alziraia, Libya.
Benghazi Office, P.O. Box 2004, Benghazi Libya.
Sebha, Libya.
Zawia, Libya.

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GENERAL CO. FOR AGRICULTURAL PROJECTS
P.O. Box 2284, Tripoli, Libya
Branch
P.O. Box 265, Gharian, Libya

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GENERAL CO. FOR CERAMIC AND GLASS PRODUCTS
Aziza, Amiri Bldg., Suani Ben Adam, P.O. Box 12581, Dhara-Tripoli, Libya.

* * * * *

GENERAL COMPANY FOR CHEMICAL INDUSTRIES
P.O. Box 100/411, 100/071, Zuara, Libya

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GENERAL CO. FOR CIVIL WORKS
P.O. Box 3306, Tripoli, Libya.
Branch
P.O. Box 1299, Benghazi, Libya

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GENERAL CO. FOR CONSTRUCTION AND EDUCATIONAL BUILDINGS
P.O. Box 1186, Tripoli, Libya
Branch
P.O. Box 4087, Benghazi, Libya

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GENERAL CO. FOR ELECTRIC WIRES AND PRODUCTS
P.O. Box 1177, Benghazi, Libya
Branch
P.O. Box 12629, Tripoli, Libya

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GENERAL CO. FOR LAND RECLAMATION
P.O. Box 307, Souani Road, Tripoli, Libya

* * * * *

GENERAL CO. FOR LEATHER PRODUCTS AND MANUFACTURE
P.O. Box 2319, Tripoli, Libya.
Branch.

P.O. Box 152, Benghazi, Libya.

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GENERAL CO. FOR MARKETING AND AGRICULTURAL PRODUCTION
P.O. Box 2897, Hadba Al Khadra, Tripoli, Libya.
Branch:
P.O. Box 4251, Benghazi, Libya

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GENERAL CO. FOR TEXTILES
P.O. Box 1816, Benghazi, Libya
Branch:
P.O. Box 3257, Tripoli, Libya.

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GENERAL CO. FOR TOYS AND SPORT EQUIPMENT
P.O. Box 3270, Tripoli, Libya.

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GENERAL CONSTRUCTION COMPANY
P.O. Box 8636, Tripoli, Libya.
Branch:
Gharian Office, P.O. Box 178, Gharian, Libya.

* * * * * *

GENERAL CORPORATION FOR PUBLIC TRANSPORT
2175 Sharia Magaryef, Tatanaka Bldg., P.O. Box 4875, Tripoli, Libya.
Branch:
P.O. Box 9528, Benghazi, Libya.

* * * * * *

GENERAL DAIRIES AND PRODUCTS CO.
P.O. Box 5318, Tripoli, Libya.
Branches:
Benghazi Branch, P.O. Box 9118, Benghazi, Libya.
Tripoli Factory, Tripoli, Libya.
Benghazi Factory, Benghazi, Libya.
Khoms Factory, Khoms, Libya.
Jebel Akhdar Factory, Jebel Akhdar, Libya.

* * * * * *

GENERAL ELECTRICITY CORPORATION
P.O. Box 3047, Benghazi, Libya.
Branch:
P.O. Box 668, Tripoli, Libya.

* * * * * *

GENERAL ELECTRONICS CO.
P.O. Box 12580, Tripoli, Libya.
Branch:
P.O. Box 2068, Benghazi.

* * * * * *

GENERAL FURNITURE CO.
Suani Road, Km. 15, P.O. Box 12655, Tripoli, Libya.

* * * * * *

GENERAL LIBYAN CO. FOR ROAD CONSTRUCTION AND MAINTENANCE
P.O. Box 2676, Swani Road, Tripoli, Libya.

* * * * * *

GENERAL NATIONAL CO. FOR FLOUR MILLS AND FODDER
Bab Bin Ghashir, P.O. Box 984, Tripoli, Libya.
Branch:
Benghazi Office, Gamel Abdumaser Street, P.O. Box 209, Benghazi, Libya.

* * * * * *

GENERAL NATIONAL CO. FOR INDUSTRIAL CONSTRUCTION
P.O. Box 953, Beida, Libya.
Branches:
Tripoli Branch, P.O. Box 295, Tripoli, Libya.
Benghazi Branch, Gamal Abd El Naser Street, P.O. Box 9502

* * * * * *

GENERAL NATIONAL MARITIME TRANSPORT CO.
(a.k.a. THE NATIONAL LINE OF LIBYA)
P.O. Box 80173, 2 Ahmed Sharif Street, Tripoli, Libya (and at all Libyan ports).
Branch
P.O. Box 2450, Benghazi, Libya.

* * * * * *

GENERAL NATIONAL ORGANISATION FOR INDUSTRIALIZATION
Shaira Sana'a, P.O. Box 4388, Tripoli, Libya.
Branch
Benghazi Branch, P.O. Box 2779.

* * * * * *

GENERAL ORGANISATION FOR TOURISM AND FAIRS
P.O. Box 891, Sharia Haiti, Tripoli, Libya.

* * * * * *

GENERAL PAPER AND PRINTING CO
P.O. Box 8096, Tripoli, Libya.
Branch
Benghazi, Sebha.

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GENERAL POST AND TELECOMMUNICATIONS CORP
Maidan al Jazair, Tripoli, Libya.

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GENERAL RAHILA AUTOMOBILE CO.
Libya.

* * * * * *

GENERAL TOBACCO COMPANY
Gorji Road Km. 6, P.O. Box 696, Tripoli.
Branches:
Benghazi, Libya.
Sebha, Libya.
Zavia, Libya.
Garian, Libya.
Khoms, Libya.

* * * * * *

GENERAL WATER WELL DRILLING CO.
P.O. Box 2532, Sharia Omar Muktar, Mormesh Bldg., Tripoli, Libya.
Branch:
P.O. Box 2532, Benghazi, Libya.

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JANUARY SHUHADA (MARTYRS) PLANT
Libya.

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KHOMS CEMENT PLANT
Khoms, Libya.

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KUFRA AGRICULTURAL CO.
P.O. Box 4239, Benghazi, Libya.
Branch:
Tripoli Office, P.O. Box 2306, Damascus Street, Tripoli, Libya.

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KUFRA PRODUCTION PROJECT
P.O. Box 6324, Benghazi, Libya.
Branch:
P.O. Box 2306, Tripoli, Libya.

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LIBYA INSURANCE CO. (CYPRUS OFFICE) LTD.
Cyprus.

* * * * * *

LIBYAN ARAB CO. FOR DOMESTIC ELECTRICAL MATERIALS
P.O. Box 12718, Tripoli, Libya.
Branch:
P.O. Box 453, Benghazi, Libya.

* * * * * *

LIBYAN BRICK MANUFACTURING CO.
P.O. Box 10700, Tripoli, Libya.
Branch:
P.O. Box 25, Km. 17, Suani Road, Suani, Libya.

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LIBYAN CEMENT CO.
P.O. Box 2108, Benghazi, Libya.

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LIBYAN CINEMA CORPORATION
P.O. Box 878, Tripoli, Libya.
Branch:
P.O. Box 2076, Benghazi, Libya.

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LIBYAN ETERNIT COMPANY
P.O. Box 6103, Zanzour Km. 17, Tripoli, Libya.

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LIBYAN FISHING COMPANY
P.O. Box 3749, Tripoli, Libya.

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LIBYAN HOTELS AND TOURISM CO.
P.O. Box 2977, Tripoli, Libya.

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LIBYAN INSURANCE COMPANY
Ousama Bldg., 1st September Street, P.O. Box 2438, Tripoli, Libya.
Branches:
Benghazi, Libya.
Derna, Libya.
Sebha, Libya.
Gharian, Libya.
Misurata, Libya.
Zawiya, Libya.
Homs, Libya.

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LIBYAN MILLS COMPANY
Sharia 1st September, P.O. Box 310, Tripoli, Libya.

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LIBYAN TRACTOR ESTABLISHMENT
P.O. Box 12507, Dahra, Libya

* * * * * *

MAGCOBAR (LIBYA) LTD.
P.O. Box 867, Tripoli, Libya.
Branch:
Benghazi, Libya.

* * * * * *

MEDICAL EQUIPMENT COMPANY
P.O. Box 12419, Tripoli, Libya.
Branches:
P.O. Box 750, Benghazi, Libya.
P.O. Box 464, Sebha, Libya.

* * * * * *

MISURATA GENERAL ROADS CO.
P.O. Box 200, Misurata, Libya.
Branch:
P.O. Box 958, Tripoli, Libya.

* * * * * *

THE MODERN FASHION CO. FOR TRADING AND MANUFACTURING OF CLOTHING

Libya.

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MAHARI GENERAL AUTOMOBILE CO.
Libya.

* * * * * *

MUHARIKAAT GENERAL AUTOMOBILE CO.
P.O. Box 259, Tripoli, Libya.
Branch:
P.O. Box 203, Benghazi, Libya.

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NATIONAL CEMENT AND BUILDING MATERIALS EST
P.O. Box 628, Sharia Hayati 21, Tripoli, Libya.

* * * * * *

NATIONAL CO. FOR CHEMICAL PREPARATION AND COSMETIC PRODUCTS
P.O. Box 2442, Tripoli, Libya.
Branch:
Benghazi Office, Benghazi, Libya.

* * * * * *

NATIONAL CO. FOR CONSTRUCTION AND MAINTENANCE OF MUNICIPAL WORKS
P.O. Box 12908, Zavia Street, Tripoli, Libya.
Branch:
P.O. Box 441, Benghazi, Libya.

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NATIONAL CO. FOR LIGHT EQUIPMENT
P.O. Box 8707, Tripoli, Libya.
Branch:
P.O. Box 540, Benghazi, Libya.

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NATIONAL CO. FOR METAL WORKS
P.O. Box 2913, Tripoli, Libya.
Branches:
P.O. Box 4093, Benghazi, Libya.
Lift Department, P.O. Box 1000, Tripoli, Libya.

* * * * * *

NATIONAL CO. FOR ROAD EQUIPMENT
P.O. Box 12392, Tripoli, Libya.
Branch:
P.O. Box 700, Benghazi, Libya.

* * * * * *

NATIONAL CO. FOR ROADS AND AIRPORTS
P.O. Box 4050, Benghazi, Libya.
Branch:
P.O. Box 8634, Sharia Al Jaraba, Tripoli, Libya.

* * * * * *

NATIONAL CO. FOR TRADING AND MANUFACTURING OF CLOTHING
Libya

* * * * * *

NATIONAL CO. OF SOAP AND CLEANING MATERIALS
P.O. Box 12025, Tripoli, Libya.
Branch:
P.O. Box 246, Benghazi, Libya.

* * * * * *

NATIONAL CONSTRUCTION AND ENGINEERING CO.
P.O. Box 1060, Sharia Sidi Issa, Tripoli, Libya.
Branch:
P.O. Box 259, Benghazi, Libya.

* * * * * *

NATIONAL CONSULTING BUREAU
P.O. Box 12795, Tripoli, Libya.
Branch:
Sirte City Branch Office, Sirte City, Libya

* * * * * *

NATIONAL CORPORATION FOR HOUSING
P.O. Box 4829, Sharia el Jumhuriya, Tripoli, Libya.

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NATIONAL DEPARTMENT STORES CO
P.O. Box 5327, Sharia el Jumhuriya, Tripoli, Libya.

* * * * * *

NATIONAL FOODSTUFFS IMPORTS, EXPORTS AND MANUFACTURING CO. SAL
P.O. Box 11114, Tripoli, Libya.
Branch.
P.O. Box 2439, Benghazi, Libya.

* * * * * *

NATIONAL GENERAL INDUSTRIAL CONTRACTING CO.
Sharia el Jumhouria, P.O. Box 295, Tripoli, Libya.

* * * * * *

NATIONAL LIVESTOCK AND MEAT CO.
P.O. Box 389, Sharia Zawiet Dahmani, Tripoli, Libya.
Branch:
P.O. Box 4153, Sharia Jamal Abdulnasser, Benghazi.

* * * * * *

NATIONAL PHARMACEUTICAL CO. SAL
20 Jalal Bayer Street, P.O. Box 2296, Tripoli, Libya.
Branches:
Jamahiriya Street, P.O. Box 10225, Tripoli, Libya.
P.O. Box 2620, Benghazi, Libya

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NATIONAL SOFT DRINKS EST
P.O. Box 559, Benghazi, Libya.
Branch:
Litraco Impex Ltd., P.O. Box 5686, Benghazi, Libya.

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NATIONAL STORES AND COLD STORES CO.
P.O. Box 8454, Tripoli, Libya.
Branch:
Benghazi branch, P.O. Box 9250, Benghazi, Libya.

* * * * * *

NATIONAL SUPPLIES CORPORATION
(a.k.a. NASCO)
P.O. Box 3402, Sharia Omar Mukhtar, Tripoli, Libya.
Branch:
P.O. Box 2071, Benghazi, Libya.

* * * * * *

NATIONAL TELECOMMUNICATIONS CO.
P.O. Box 886, Shara Zawia, Tripoli, Libya.
Branch:
P.O. Box 4139, Benghazi, Libya.

* * * * * *

NORTH AFRICA INDUSTRIAL TRADING AND CONTRACTING CO.
P.O. Box 245, Tripoli, Libya.

* * * * * *

OEA DRINKS CO.
P.O. Box 101, Ibn El Jarrah Street, Tripoli, Libya.

* * * * * *

OKBA FOOTWEAR PLANT
Tajoura, Libya.

* * * * * *

PUBLIC COMPANY FOR GARMENTS
P.O. Box 4152, Benghazi, Libya

* * * * * *

PUBLIC ELECTRICAL WORKS CO.
P.O. Box 8539, Sharia Halab, Tripoli, Libya.
Branch:
P.O. Box 32811, Benghazi, Libya

* * * * * *

PUBLIC SAFETY COMMODITY IMPORTING CO.
(a.k.a. SILAMNIA)
P.O. Box 12942, Tripoli, Libya

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QAFALA GENERAL AUTOMOBILE CO
Libya.

* * * * * *

RAS HILAL MARITIME CO.
P.O. Box 1496, Benghazi, Libya

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READY-MADE SUITS PLANT
Derna, Libya.

* * * * * *

SAHABI OIL FIELD PROJECT
P.O. Box 982, Tripoli, Libya.

* * * * * *

SEBHA FODDER PLANT
Libya.

* * * * * *

SEBHA GRAIN MILL
Libya.

* * * * * *

SEBHA ROADS AND CONSTRUCTION CO.
P.O. Box 92, Sebha, Libya.
Branch:
P.O. Box 8264, Tripoli, Libya.

* * * * * *

7TH APRIL CARD BOARD FACTORY
Tajoura, Libya.

* * * * * *

SHELL PETROLEUM DEVELOPMENT CO OF LIBYA
P.O. Box 1420, Benghazi, Libya.

* * * * * *

SOCIALIST EST FOR SPINNING AND WEAVING
Zanzour Km. 15, P.O. Box 30186, Tripoli, Libya.
Branch:
P.O. Box 852, Benghazi, Libya.

* * * * * *

SORMAN FODDER PLANT
Libya.

* * * * * *

SOUK EL KHAMIS CEMENT CO.
Libya.

* * * * * *

SOUK EL KHAMIS GENERAL CEMENT AND BUILDING MATERIALS CORP.
Tarhuna, Sharia Bou Harida, P.O. Box 1084, Tripoli, Libya.

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SOUK EL KHAMIS LIME FACTORY

UMI

VOL
60

ISS
30

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14

1995

UMI

Libya.
* * * * *
SOUSA SHIPPING AND STEVEDORING EST
P.O. Box 2973, Benghazi, Libya.
* * * * *
SUANI GYPSUM PLANT
Libya.
* * * * *
TAJOURA MODERN TANNERY
Libya.
* * * * *
TAHARAR FOOTWEAR PLANT
Tripoli, Libya.
* * * * *
TECHNICAL CO. FOR AGRICULTURAL PEST CONTROL
New Gourgy Road, P.O. Box 6445, Tripoli, Libya.
Branch:
Nacer Street, Benghazi, Libya.
* * * * *
TIBESTI AUTOMOBILE GENERAL CO.
P.O. Box 8456, Tripoli, Libya.
Branches:
P.O. Box 5397, Benghazi, Libya.
Derna, Libya.
Misurata, Libya.
Khums, Libya.
Sebha, Libya.
Gharian, Libya.
Zawia, Libya.
Tripoli, Libya.
* * * * *
TOLMETHA SHIPPING ESTABLISHMENT
P.O. Box 208, Derna, Libya.
* * * * *
TRIPOLI CEMENT SILOS
Libya.
* * * * *
TRIPOLI GRAIN MILL
Libya.
* * * * *
TYRE PLANT
Libya.
* * * * *
TYRES RETREADING CENTRES
Libya.
* * * * *
UNIVERSAL SHIPPING AGENCY
Benghazi, Libya.
UNIVERSAL SHIPPING AGENCY
Mersa El Brega, Libya.
UNIVERSAL SHIPPING AGENCY
Misurata, Libya.
UNIVERSAL SHIPPING AGENCY
Tripoli, Libya.
UNIVERSAL SHIPPING AGENCY
Zuetina, Libya.
* * * * *
WEAVING, DYEING AND FINISHING PLANT
Libya.
* * * * *
WOOL WASHING AND SPINNING PLANT
Marj, Libya.
* * * * *
ZLITEN FODDER PLANT
Libya.
* * * * *
ZLITEN GRAIN MILL
Libya.
* * * * *

3. Appendix B to part 550 is amended by adding a note following the appendix title to read as follows:

Appendix B to Part 550—Individuals Determined To Be Specially Designated Nationals of the Government of Libya

Note: In the entries below, "DOB" means "date of birth" and "POB" means "place of birth."

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4. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

Appendix b to part 550—Individuals Determined to be Specially Designated Nationals of the Government of Libya

* * * * *
AL-HIJAZI, Mahmud
Secretary of Justice and Public Security of the Government of Libya
Libya
DOB 1944
POB Batta, Libya.
* * * * *
AL-HINSHIRI, Izz Al-Din Al-Muhammad
Secretary of Communications and Transport of the Government of Libya
Libya
DOB 6 October 1951
* * * * *
AL-JIHIMI, Tahir
Secretary of Economy and Trade of the Government of Libya
Libya.
* * * * *
AL-KAFI, Isa Abd
Secretary of Agrarian Reform, Land Reclamation and Animal Resources of the Government of Libya
Libya.
* * * * *
AL-MAHMUDI, Baghdadi
Secretary of Health and Social Security of the Government of Libya
Libya.
* * * * *
AL-MAL, Muhammad Bayt
Secretary of Planning and Finance of the Government of Libya
Libya.
* * * * *
AL-MUNTASIR, Umar Mustafa
Secretary of People's External Liaison and International Cooperation Bureau of the Government of Libya
Libya
DOB 1939
POB Misurata, Libya.
* * * * *
AL-QADHAFI, Muammar Abu Minyar
Head of the Libyan Government and de facto chief of state
Libya
DOB 1942
POB Sirte, Libya.
* * * * *
AL-QA'UD, Abd Al Majid
Secretary of Libya's General People's Committee
Libya
DOB 1943
POB Ghariar, Libya.
* * * * *
AL-SHAMIKH, Mubarak
Secretary of Housing and Utilities of the Government of Libya
Libya
DOB 1950.
* * * * *
AL-ZANATI, Muhammad
Secretary of the General People's Congress of Libya
Libya.
* * * * *
BADI, Mahmud
Secretary of People's Control and Follow-up of the Government of Libya
Libya.
* * * * *
DURDA, Abu Zayd Umar
Assistant Secretary of Libya's General People's Congress
Libya.
* * * * *
FAZANI, Juma
Secretary of Arab Unity of the Government of Libya
Libya.
* * * * *
IBN SHATWAN, Fathi
Secretary of Industry of the Government of Libya
Libya
DOB 1950
* * * * *
IBRAHIM, Muhammad Ahmad
Secretary of Information, Culture and Mass Mobilization of the Government of Libya
Libya
* * * * *
KUWAYBAH, Muftah Muhammad
Secretary of Marine Resources of the Government of Libya
Libya.
* * * * *
MATUQ, Matuq Muhammad
Secretary of Education, Youth, Scientific Research, and Vocational Education of the Government of Libya
Libya
DOB 1956.
* * * * *
OMRANI, Abuzeid Ramadan
Administrative Manager of Libyan Arab Foreign Investment Company
Libya.
* * * * *

Dated: January 25, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 27, 1995.

John Berry,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 95-3507 Filed 02-8-95; 2:48 pm]

BILLING CODE 4810-25-P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552, Subpart M

Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville, Washington

AGENCY: Department of the Army, I Corps and Fort Lewis, DOD.

ACTION: Final rule.

SUMMARY: This action was published in the Federal Register (59 FR 34761), 7 July 1994, as an interim rule. This action establishes 32 CFR 552, Subpart M, Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville as a final rule. Uninterrupted military use of training areas is vital to the maintenance of US and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warning provided during training scheduling or use permit processing.

DATES: This final rule is effective February 14, 1995.

ADDRESSES: Headquarters, I Corps and Fort Lewis, ATTN: Range Officer, AZFH-PTM-R, Fort Lewis, Washington, 98433-5000.

FOR FURTHER INFORMATION CONTACT:
Ms. Virginia Lanoue or A. J. Weller, (206) 967-6165/6371.

Executive Order 12291

This final rule has been classified as nonmajor.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980. This final rule does not have a significant impact on small entities.

Paperwork Reduction Act

This final rule does not contain new reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552, Subpart M

Military personnel, Government employees, Land use.

Accordingly, subpart M to 32 CFR part 552 which was added as an interim rule at 59 FR 34761 (July 7, 1994) is adopted as final without change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95-3268 Filed 2-13-95; 8:45 am]

BILLING CODE 3710-08-M

32 CFR Part 553

Army National Cemeteries

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This action adopts as final an interim rule which was published in the **Federal Register** (59 FR 60559) 25 November 1994. In accordance with Section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, the Department of the Army amended the regulations governing eligibility for interment in Arlington National Cemetery to include former prisoners of war (POWs).

DATES: This final rule is effective February 14, 1995.

ADDRESSES: Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003.

FOR FURTHER INFORMATION CONTACT:
John C. Metzler, Jr., Superintendent, Arlington National Cemetery, (703) 695-3175.

SUPPLEMENTARY INFORMATION: 32 CFR Part 553 changed in accordance with Section 1176 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160. That section extended eligibility for interment in Arlington National Cemetery to any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service and who dies on or after the date of enactment of the 1994 Authorization Act (November 30, 1993).

This final rule governs eligibility for interment in Arlington National Cemetery, an Army national cemetery which is under the jurisdiction of the Department of the Army. Because this final rule pertains to a military function of the Department of the Army, the provisions of Executive Order 12866 do not apply. It is hereby certified that this final rule will not have a significant impact on small business or governments in the area.

List of Subjects in 32 CFR Part 553

Cemeteries, National cemeteries.

For the reasons set out in the preamble, the amendments to 32 CFR Part 553 published as an interim rule on November 25, 1994, (59 FR 60559) are adopted as final with the following corrections:

PART 553—ARMY NATIONAL CEMETERIES

1. In § 553.15a, the section heading is corrected to read as follows:

§ 553.15a Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery.

* * * * *

§ 553.15a [Amended]

2. In paragraph (e)(2) of § 553.15a, the words "active, military, naval, or air service" are corrected to read "active military, naval, or airservice"

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95-3269 Filed 2-13-95; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 233

Notice of Seizure for Forfeiture

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service forfeiture regulations by changing the requirements of the notice of seizure that the Postal Inspection Service must send to each known party that may have a possessory or ownership interest in the seized property. The amended notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. Modifying the language of the Postal Service's notice requirements will eliminate the redundancy and make Postal Service forfeiture regulations more consistent with Justice and Treasury forfeiture regulations.

EFFECTIVE DATE: February 14, 1995.

FOR FURTHER INFORMATION CONTACT:
Frederick I. Rosenberg, Associate Counsel, Postal Inspection Service, (202) 268-5477.

SUPPLEMENTARY INFORMATION: The forfeiture authority and regulations of the Postal Service are published in 39 CFR 233.7. Section 233.7(h)(1) contains the requirements for the notice of seizure that the Postal Inspection Service must send to each known party that may have a possessory or ownership interest in seized property having a value of $500,000 or less, or for monetary instruments or conveyances that were used to transport or store any controlled substance.

Included within the current requirements are provisions requiring

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the notice to state the statutory basis of the seizure and a brief narration of the facts leading to the conclusion that the property seized is subject to forfeiture. These two requirements are somewhat redundant, and their language varies from the notice requirements of the seizing agencies of the Departments of Justice and Treasury. Modifying the language of the Postal Service's notice requirements will eliminate the redundancy and make Postal Service forfeiture regulations more consistent with Justice and Treasury forfeiture regulations.

List of Subjects in 39 CFR Part 233

Crime, Law enforcement, Postal service, Seizures and forfeitures.

Accordingly, 39 CFR part 233 is amended as set forth below.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. Section 233.7(h)(1) is amended by revising the second sentence to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(h) * * *

(1) * * * The notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. * * *

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–3559 Filed 2–13–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–53–1–6740; FRL–5114–8]

Approval and Promulgation of Implementation Plans Florida: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 1994. This implementation plan was submitted by FDEP on February 24, 1993, to satisfy the federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act, as amended (CAA).

EFFECTIVE DATE: This approval is effective March 16, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4215. Reference file FL053–01–5923.

SUPPLEMENTARY INFORMATION: Implementation of the CAA requires small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. On February 24, 1993, the Florida Department of Environmental Protection submitted to EPA for approval, the requisite revisions to the SIP establishing the PROGRAM. These revisions were adopted by the Florida Legislature by amending chapter 403 of the Florida Statute, approved on April 8, 1992. The EPA reviewed this request for revision of the federally approved SIP and found it to be in conformance with the requirements of the 1990 CAA. EPA therefore published a notice to approve the revisions without prior proposal (59 FR 8542, February 23, 1994).

In the final rulemaking, EPA advised the public the effective date of the action was deferred for 60 days (until April 25, 1994) to provide an opportunity to submit comments. EPA announced if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would begin by proposing a 30 day comment period. EPA had earlier published a general notice explaining this special procedure (56 FR 44477, September 4, 1991). Adverse comments were received on the 59 FR 8542 notice (February 23, 1994). Accordingly, EPA withdrew the direct final rule (59 FR 21664, April 26, 1994) and simultaneously proposed approval (59 FR 21738, April 26, 1994) of the aforementioned Florida revisions to the SIP. The proposed rule formally solicited comments and one adverse comment was subsequently received.

Comments. The commenter, representing a trade association, indicated the proposed structure of the Florida Small Business Assistance Program (SBAP) was "fraught with risk" and "created a potential conflict of interest." The Florida Program combines the roles of the ombudsman, technical assistance and staffing for the Compliance Advisory Panel in a single office. The commenter was thus concerned that the inherent checks and balances intended by section 507 of the CAA would be compromised.

Response. The Agency recognizes the legitimacy of the commenter's concerns. Prior to the publication of the February 23, 1994, **Federal Register** notice, the Agency considered this particular issue in depth. The governing document is the Guidelines for Implementation of Section 507 of the 1990 Clean Air Act Amendments; and, in particular, two specific portions therein:

> The State must comply with all statutory requirements of the Act, however, to the extent that the EPA is interpreting the Act requirements, these interpretations are not binding on the States * * * (Preface of Guidelines); and

> The EPA does not prescribe the placement of the Ombudsman Office or the office to be charged with the implementation of an SBAP * * * The critical test for EPA approval, with respect to this element of the PROGRAM [the ombudsman], will be whether (1) the designated office is encumbered with activities that prevent it from performing effectively; (2) sufficient expertise exists to represent small businesses; and (3) no conflicts of interest exist within the office that would prevent the Ombudsman from serving effectively * * * (Section 2.0 of the Guidelines, pp. 14 and 15).

In the spirit of the guidelines, the Agency examined Florida's submission from several perspectives. The State of Florida held public hearings regarding the proposed statutory changes and SIP currently at issue. No one, including trade associations, made an adverse comment either at the hearings or in writing at a later time. The Agency concluded, therefore, every effort had been made to provide the regulated community and other potentially affected parties with an opportunity to craft the PROGRAM in an acceptable form.

The selection of the Ombudsman and the Small Business Section Program Administrator, who has the responsibility of directing the SBAP, is the responsibility of the Chief of the Bureau of Air Regulation. The decision was made to have the current ombudsman also serve as the Program Administrator. Florida has taken the position that the combined functions permit the ombudsman to effect immediate improvements and correct deficiencies in the SBAP through the advocacy responsibilities inherent in the office. The Agency accepts this as the prerogative of the State provided it works as the CAA intended. The CAA does not require that these offices be separate. Should personnel, resources and/or the needs of either the Ombudsman's or the Administrator's office warrant a different approach, the Agency acknowledges that the Bureau Chief can divide the responsibilities accordingly. From its inception, the high quality of Florida's PROGRAM has been recognized by the Agency. Indeed, even the commenter stated: "Our comments are not meant to convey an impression that we feel the Florida program is not working. In fact it seems to be working better than in many other states." The acknowledged fact that Florida's PROGRAM is working well goes to the heart of the issue. The Agency believes the structure of a PROGRAM is secondary to its effectiveness. The Agency has determined the Florida Ombudsman's office has sufficient expertise to represent small businesses and the Florida SBAP is performing efficiently. Florida's proposed SIP revision, therefore, clearly meets the first two of the required tests identified in the Guidance.

After a thorough review of the PROGRAM in light of the comment, EPA believes the PROGRAM meets the requirements of the CAA. The PROGRAM as conceived by the CAA has an inherent system of checks and balances to guard against this potential likelihood. The Florida PROGRAM does not circumvent or obviate any of them. The Florida Ombudsman has direct access to the Governor of the State should the necessary support of the Department to implement the PROGRAM be deemed wanting. The CAP is responsible for assuring adherence to the SIP and providing a source for small businesses to voice concerns regarding either the ombudsman or the SBAP. The utilization of the SBAP staff to serve and assist the CAP is, in fact, mandated by the CAA. In addition, both Region 4 and the EPA Ombudsman are responsible for monitoring and overseeing the implementation of the SIP in Florida. Should any conflict of interest or any other concern be realized, corrective or remedial action can be taken immediately. The Agency concludes, therefore, the Florida PROGRAM as proposed meets the requisite criteria for approval.

Final Action

EPA is approving the PROGRAM SIP revision submitted by the State of Florida through the FDEP for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The Agency has reviewed this request for revision of the federally approved SIP for conformance with the CAA, including sections 507 and 110(a)(2).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a PROGRAM created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Dated: November 8, 1994.

Patrick M. Tobin,

Acting Regional Administrator

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(80) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(80) The Florida Department of Environmental Regulation has submitted revisions to chapter 403.0852 of the Florida Statutes on February 24, 1993. These revisions address the requirements of section 507 of title V of the CAA and establish the Small Business Stationary Source Technical and Environmental Assistance Program (PROGRAM).

(i) Incorporation by reference. Florida Statutes 403.031(20), 403.0852 (1), (2), (3), (4), 403.0872(10)(b), 403.0873, 403.8051, effective on April 28, 1992.

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(ii) Other material. None.

* * * * *

[FR Doc. 95-3577 Filed 2-13-95; 8:45 am]

BILLING CODE 6560-60-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 94-041]

RIN 2115-AE92

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels

AGENCY: Coast Guard, DOT

ACTION: Interim rule; reopening of comment period.

SUMMARY: On October 26, 1994 (59 FR 53754), the Coast Guard published an interim rule establishing radar-training requirements for licensed masters, mates, and operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length. Under the interim rule, on February 15, 1995, these licensed persons would be required to hold either an endorsement as a radar observer or, if holding a valid license issued before February 15, 1995, a certificate from a Radar-Operation course. In response to comments from members of the regulated public, the Coast Guard is amending the interim rule to change the date on which the radar-observer endorsement or the Radar-Operation course certificate will be required from February 15, 1995, to June 1, 1995. The Coast Guard is also reopening the comment period to solicit additional public involvement in this rulemaking.

DATES: This interim rule is effective on February 14, 1995. Comments must be received before June 1, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA, 3406) (CGD 94-041), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MVP-3), (202) 267-0224, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94-041) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

Drafting Information

The principal persons involved in the drafting of this document are Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection, Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel, and Commander Thomas Cahill, Office of the Chief Counsel.

Regulatory Information

This rule amends an interim rule issued by the Coast Guard on October 26, 1994 (59 FR 53754). Comments received from members of the regulated public have indicated that difficulties were encountered in obtaining the required training in the time allowed. This rule amends the date by which a license endorsement or a certificate of training must be obtained, and relieves a potential burden on members of the regulated public by providing additional time to achieve compliance. It should not adversely affect navigation safety. Therefore, under 5 U.S.C. 553(d)(3), the Coast Guard certifies that good cause exists for this rule to be effective upon publication.

Background

Following the derailment of the Amtrak Sunset Limited, with extensive injury and loss of life, on September 22, 1993, the Coast Guard conducted a study of uninspected towing vessel safety. The study made a number of recommendations for improving safety in the towing industry. One of the recommendations was to require radar observer training and endorsements for operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length. That recommendation was approved, and on October 26, 1994 (59 FR 53754), the Coast Guard published an interim rule establishing requirements for radar training. The interim rule also added topics to the list of required subjects taught in approved radar-training courses that must be completed in order to receive a radar-observer endorsement.

The interim rule went into effect on November 25, 1994. However, to provide a reasonable opportunity for affected persons to complete the training and obtain the required endorsements, 46 CFR 15.815(c) provided that the endorsement was required only for those licenses to be issued after February 15, 1995. Persons holding valid licenses issued prior to February 15, 1995, would be required to undergo basic radar training and receive a certificate of completion for that training prior to February 15, 1995. Without the endorsement or certificate of completion, after February 15, 1995, no person may serve as a master, mate, or operator of a radar-equipped towing vessel, 8 meters (approximately 26 feet) or more in length, required to have a licensed operator. For a person holding a license issued before February 15, 1995, the additional training needed to qualify for a radar-observer endorsement would then be required before the individual renewed or upgraded his or her license.

The comment period for the interim rule closed on January 24, 1995. Prior to the close of the comment period, the Coast Guard received over 300 comments. A number of the comments expressed concern that the required training would not be available before February 15, 1995. Therefore, to relieve this potential burden, the Coast Guard is amending the interim rule. The Coast Guard will also continue to evaluate the comments received on this rulemaking.

Discussion of Amendment

This rule changes the date in 46 CFR 15.815(c) by which a radar-observer endorsement or certificate of training must be received from February 15, 1995 to June 1, 1995. This extension permits affected mariners who are not able to complete radar training by February 15 to continue to operate legally. Further, the related reopening of the comment period provides a greater opportunity for comment on the interim rule.

Mariners opting for the Radar-Operation courses in lieu of radar-observer courses approved by the Coast Guard may renew or upgrade their licenses (to be issued before June 1, 1995) before completing Radar-Operation courses. Upon completion of such courses they must hold the courses' certificates with their licenses.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule relieves a potential regulatory burden by providing additional time for persons subject to the rule to obtain required training. It does not significantly change the regulatory evaluation contained in the interim rule published October 26, 1994 (59 FR 53754).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule relieves a potential regulatory burden by providing additional time for persons subject to the rule to obtain required training, and should have no economic impact on small entities. As discussed in the interim rule, the Coast Guard expects that the burdens of complying with the interim rule will fall on individuals, rather than on small entities. This change may provide any affected small entities with additional flexibility in scheduling required training and result in some economic benefit. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This rule is an administrative matter involving personnel training and licensing and clearly has no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying here indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set forth in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The citation of authority for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8502; 49 CFR 1.45, 1.46.

§ 15.815 [Amended]

2. In § 15.815, paragraph (c) is revised to read as follows:

* * * * *

(c) On or after June 1, 1995, each person having to be licensed under 46 U.S.C. 8904(a) for employment or service as master, mate, or operator on board an uninspected towing vessel of 8 meters (approximately 26 feet) or more in length shall, if the vessel is equipped with radar, hold—

(1) A valid endorsement as radar observer; or,

(2) If the person holds a valid license dated before June 1, 1995, a valid certificate from a Radar-Operation course.

Dated: February 2, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95-3663 Filed 2-13-95; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 90-357; FCC 95-17]

New Digital Audio Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action the Commission amends its rules regarding frequency allocation to allocate spectrum in the 2310-2360 MHz band for new satellite digital audio radio services (DARS). This action will bring about a new service, which will provide enhanced quality of reception and increased program diversity to all markets nationwide.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn E. Remly, Office of Engineering and Technology, at (202) 776-1623.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in GEN Docket No. 90-357, adopted January 12, 1995 and released January 18, 1995. By this action, the Commission amends its Rules with regard to the establishment and regulation of new satellite digital audio radio services. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The full text of this decision may also be purchased from the Commission's copy contractor International Transcription Service, Inc., (202) 857-3800, 2100 M Street N.W., Washington, D.C. 20037.

Summary of Order

1. In 1990, three parties requested the Commission to allocate spectrum or otherwise authorize the provision of digital audio radio services. On May 18, 1990, Satellite CD Radio, Inc. (SCDR) filed a Petition for Rule Making in which it requested spectrum to offer a compact disk quality digital audio radio

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service to be delivered by satellites and complementary radio transmitters. On May 22, 1990, Radio Satellite Corporation filed a Request for Authorization to build and operate an earth station that would provide DARS and other mobile satellite services over a system planned to be built by the American Mobile Satellite Corporation in the 1.6/2.4 GHz bands. Finally, on July 27, 1990, Strother Communications, Inc. filed a Petition for Rule Making requesting that the Commission allocate spectrum and adopt rules for terrestrial digital audio broadcasting services.

2. In August 1990, the Commission issued a *Notice of Inquiry (NOI)*, 55 FR 34940 (August 27, 1990), soliciting information necessary to identify spectrum and develop technical rules and regulatory policies for DARS in the United States. In the *NOI*, we noted international interest in the development of digital sound broadcasting and expressed concern that the United States would be disadvantaged if it did not participate in this new technology. In a parallel effort, by a series of inquiries between 1989 and 1991, the Commission solicited comment on appropriate U.S. positions to be taken at the 1992 World Administrative Radio Conference (WARC–92). We sought comment on possible spectrum to be used for the provision of high-quality audio programming by the broadcasting satellite service (BSS Sound). Based on the inquiries, and in coordination with the National Telecommunications Information Administration (NTIA), the Commission supported a U.S. position seeking an allocation for satellite and complementary terrestrial DARS at 2310–2360 MHz.

3. At WARC–92, three different BSS (Sound) allocations were adopted. International Radio Regulation RR750B allocated the 2310–2360 MHz band in the United States for digital audio satellite broadcasting (BSS Sound). This allocation, like those adopted for other areas of the world, was limited to audio broadcasting by digital modulation. In November 1992 the Commission released the *Notice of Proposed Rule Making and Further Notice of Inquiry (NPRM)*, 57 FR 57049 (December 2, 1992), in which we proposed to adopt the WARC–92 allocation of 2310–2360 MHz for satellite DARS; proposed to accommodate aeronautical telemetry services now operating in the 2310–2390 MHz band at 2360–2390 MHz; and solicited comment on regulatory and technical aspects of satellite DARS. Also in 1992, we accepted for comment SCDR's license application and invited competing applications. Digital Satellite Broadcasting Company, Primosphere Limited Partnership, and American Mobile Radio Corporation each submitted applications. As a result, there are currently four pending satellite DARS license applications.

4. Further, two industry committees are presently considering DARS technical standards issues. The Electronics Industry Association (EIA) has formed a subcommittee to consider the development of standards for terrestrial and satellite DARS. Also, the National Radio Systems Committee (NRSC) has agreed to examine terrestrial DARS systems which would operate in the AM or FM broadcast bands, and EIA and NRSC are cooperating in testing such DARS technologies.

5. Comments to the *NPRM* comprised a wide variety of parties. Proponents of the allocation, including potential DARS providers, equipment manufacturers, and potential users, state that there will be major benefits from satellite DARS. These parties argued generally that a satellite-delivered system will meet the needs of unserved and undeserved markets as well as provide enhanced quality of reception and increased audio program diversity. Further, they pointed out that a satellite DARS system that would provide enhanced quality of reception for all listeners is currently feasible. In addition, they asserted that the allocation would create economic opportunities in the United States for various segments of industry, especially manufactures of DARS-related equipment. Finally, proponents argued that a satellite DARS allocation will improve U.S. competitiveness in the world marketplace. Opponents, primarily existing broadcast entities, either rejected a satellite DARS allocation or recommended that an allocation not be until terrestrial DARS allocation options have been fully explored. Many of these commenters argued that satellite systems will adversely impact present AM/FM radio services by driving local stations out of business. This, they contended, will cause a loss of local service, which a satellite service by its nature cannot replace. This effect, these opponents argued, contravenes the intent of the Communications Act of 1934 that local needs be met by broadcast media. In addition, opponents argued that programming will become less, not more, diverse as a result of satellite DARS. Some commenters did not oppose a satellite DARS allocations, but recommended that the Commission allocate frequencies in the 1.4–1.5 GHz band in lieu of the proposed allocation.

6. In the *Report and Order* the Commission allocates spectrum in the 2310–2360 MHz band for new satellite DARS. This domestic allocation is in accordance with the international allocation made at WARC–92. We are making this allocation, rather than an alternative allocation in the 1.4–1.5 GHz band, because it was strongly favored by commenters and because this band was allocated for BSS (Sound) at WARC–92. Satellite DARS will provide continuous radio service of compact disk quality on a nationwide or regional basis, including areas which are presently unserved or underserved. In addition, this new service will provide opportunities for domestic economic development and will improve U.S. competitiveness in the world marketplace by promoting rapid technological development in various areas, such as satellite communications and audio compression. Furthermore, we continue to support efforts to implement terrestrial DARS technology. We believe that existing radio broadcasters can and should have the opportunity to profit from new digital radio technologies, and we anticipate that technical advances will soon permit both AM and FM broadcasters to offer improved digital sounds. These innovations will also help promote the future viability of our terrestrial broadcasting system, which provides local news and public affairs programming. Finally, we note that we are deferring licensing and service rules for satellite DARS until a further proceeding.

Ordering Clauses

Accordingly, it is ordered, that Part 2 of the Commission's Rules is amended as specified below, effective March 16, 1995. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

a. The entry for 2300–2450 MHz is removed and new entries for 2300–2450 MHz are added in numerical order.

b. International footnotes No. 743A is removed and Nos. 750B, 751A, and 751B are added in numerical order.

c. United States (US) footnotes Nos. US327 and US328 are added in numerical order.

The additions read as follows:

§ 2.106 Table of Frequency Allocations

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation Mhz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
.	.	.	.	.	.	.
2300–2450, FIXED, MOBILE, Amateur, Radiolocation.	2300–2450, FIXED, MOBILE, RADIOLOCATION, Amateur	....	2300–2310, RADIOLOCATION, Fixed, Mobile, US253 G2.	2300–2310, Amateur, US253.	Amateur (97)	
			2310–2360, Mobile, Radiolocation, Fixed, US276 US327 US328 G2 751B G120.	2310–2360, BROADCASTING-, SATELLITE, Mobile, US276 US327 US328 751B.	....	Digital Audio Radio Services
			2360–2390, MOBILE, RADIOLOCATION, Fixed US276 G2 G120.	2360–2390 MOBILE US276.		
			2390–2450 RADIOLOCATION.	2390–2450 Amateur.	Amateur (97).	
664 751A 752 ...	664 750B 751 751B 752.	....	664 752 G2	664 752.		
.	.	.	.	.	.	.

International Footnotes

* * * * *

750B *Additional allocation:* In the United States of America and India, the band 2310–2360 MHz is also allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528.

* * * * *

751A In France, the use of the band 2310–2360 MHz by the aeronautical mobile service for telemetry has priority over other uses by the mobile service.

751B Space stations of the broadcasting-satellite service in the band 2310–2360 MHz operating in accordance with No. 750B that may affect services to which this band is allocated in other countries shall be coordinated and notified in accordance with Resolution 33. Complementary terrestrial broadcasting stations shall be subject to bilateral coordination with neighboring countries prior to their bringing into use.

* * * * *

United States (US) Footnotes

* * * * *

US327 The band 2310–2360 MHz is allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis. Such use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528.

US328 In the band 2310–2360 MHz, the mobile and radiolocation services are allocated on a primary basis until 1 January 1997 or until a broadcasting-satellite (sound) service has been brought into use in such a manner as to affect or be affected by the mobile and radiolocation services in those service areas, whichever is later. The broadcasting-satellite (sound) service during implementation should also take cognizance of the expendable and reusable launch vehicle frequencies 2312.5, 2332.5, and 2352.5 MHz, to minimize the impact on this mobile service use to the extent possible.

* * * * *

[FR Doc. 95–2949 Filed 2–13–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 30
Tuesday, February 14, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 20, 1991, the Federal Trade Commission ("the Commission") issued final regulations (56 FR 11653) amending 16 CFR part 307, the Commission's existing regulations pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("the Smokeless Tobacco Act"). The amendments deleted the exemption of utilitarian objects from the regulations, and provided a method for displaying and rotating the health warnings on utilitarian objects. The amendments also changed the requirements for the rotation of the health warnings on point-of-sale and non-point-of-sale promotional materials ("promotional materials"). On January 15, 1993, the Commission deleted the promotional materials portion of the 1991 amendment, indicating that it had failed to receive sufficient comment on this portion of the Regulation. At the same time, the Commission re-proposed its 1991 rule for promotional materials warning label rotations and sought comment. Some of the comments received suggested that the Commission should not only amend the rotational schedule for promotional materials, but also amend the regulations governing the rotation of utilitarian objects. Thus, the Commission is seeking public comment on whether the regulations governing the rotation schedule for utilitarian objects should be amended.

All persons are hereby notified of the opportunity to submit written data, views, and arguments concerning the requirements for the rotation of health warnings on utilitarian objects.

DATES: Written comments will be accepted on or before April 17, 1995.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, (202) 326–2484, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

On January 15, 1993, the Commission proposed amending 16 CFR part 307 (58 FR 4874) to modify the rotational schedule for health warnings on promotional materials. Some of the comments received suggested that the Commission should not only amend the rotational provisions for promotional materials, but also amend the regulations governing the rotation of utilitarian objects.

The proposed rule would provide that a satisfactory plan for utilitarian objects could provide for rotation according to either the date the object is disseminated or the date the object is ordered. It would also delete the exception permitting random rotation under certain circumstances. This exception was intended to alleviate the hardship caused when date of dissemination was specified as the only acceptable basis for a rotation schedule. The Commission currently permits rotation methods based on dissemination date or order date for promotional materials. *See* 58 FR 4874 (Jan. 15, 1993). The proposed rule for utilitarian items follows the rotation method currently in effect for promotional materials. However, the proposed rule would permit rotation based on dissemination date or order date only if the production of materials is carried out in a manner consistent with customary business practices. Thus, under the proposed rule, there would no longer be any need for random rotation. For these reasons, the Commission is proposing the deletion of the random rotation exception from the regulations.

Section B—Questions

In particular, the Commission is soliciting information on the following questions:

Question 1. What is the likely effect of the proposed requirements for the rotation of health warnings or utilitarian objects on the costs, profitability, competitiveness, and employment of small business entities?

Question 2. The Smokeless Tobacco Act requires smokeless tobacco companies to submit plans to the Commission that specify the method the companies will use to rotate, display, and distribute the required health warning statements on their packaging and advertising. The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3044–0082.

By changing the requirements for the rotation of the health warnings on utilitarian objects, the proposed amendments will require some of the smokeless tobacco companies to revise their rotational plans for utilitarian objects. What are the possible paperwork burdens that the proposed utilitarian objects amendment to 16 CFR Part 307 may impose?

Question 3. What are the possible regulatory alternatives that would reduce the economic impact of the proposed rotational requirements for warning labels on utilitarian objects, yet fully implement the regulatory mandate of the Smokeless Tobacco Act?

Section C—Regulatory Flexibility Act

When the Smokeless Tobacco Regulations were first proposed, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 24378 (1986). The Commission has re-examined that issue with respect to the proposed amendment for utilitarian objects and has preliminarily determined that the proposed amendment will not change that determination because the amendment merely enables manufacturers of smokeless tobacco to modify slightly an already existing schedule by which they rotate the three required warnings on utilitarian objects. In order to ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability, competitiveness, and employment of small entities.

Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b) (1982). This notice serves as certification to that effect for the purposes of the Small Business Administration.

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, it is proposed that part 307 of 16 CFR be amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.12 is amended by revising paragraph (b) to read as follows:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

[b] Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every 4 months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each 4-month period or require each brand to display a different warning during a given 4-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each 4-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials each as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–3536 Filed 2–13–95; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Trade Commission ("FTC" or "Commission") proposes to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act" or "the Act"). Section 3 of the Act directs the FTC to prescribe rules, within 365 days of enactment of the Act, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

DATES: Written comments must be submitted on or before March 31, 1995. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions of this comment period or any additional periods for written comment or rebuttal comment.

Following the period for written comments, Commission staff plan to conduct a Public Workshop Conference to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period. Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before March 6, 1995. A list of affected interests appears in Section D of the Supplementary Information section.

The Public Workshop-Conference will be held in Chicago, Illinois on April 18 through 20, 1995, from 9 a.m. until 5 p.m. each day.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments need not submit multiple copies or comments in electronic form. Submissions should be captioned: "Proposed Telemarketing Sales Rule," FTC File No. R411001

Notification of interest in the Public Workshop-Conference should be submitted in writing to Carole Danielson, Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

The Public Workshop-Conference will be held in Chicago, Illinois, at the Chicago Hilton Hotel, 720 South Michigan Avenue, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326–3140, or Judith M. Nixon, (202) 326–3173, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, the President signed into law the Telemarketing Act, Public Law No. 103–297. In enacting the Telemarketing Act, Congress made the following findings, set forth in section 2 of the Act:[1]

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

[1] 15 U.S.C. 6101

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(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

Based on the above findings, Congress directed the Commission to issue a rule, within 365 days from the date of enactment of the Act, prohibiting deceptive and abusive telemarketing acts and practices.[2] The Act specifies that the rule shall contain a definition of deceptive telemarketing acts or practices.[3] According to the statute, this definition may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.[4] The Act further specifies that, in order to prohibit other abusive acts or practices, the rule shall include:

(1) A requirement prohibiting a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy;

(2) Restrictions on the hours when unsolicited telephone calls can be made to consumers; and

(3) A requirement that telemarketers promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services, and make any other disclosures the Commission deems appropriate, including the nature and price of the goods or services being sold.[5] The Act also directs the Commission to consider recordkeeping requirements.[6]

Enforcement actions for violations of the final rule will be brought by the Commission in the same manner as for other rules with respect to unfair or deceptive acts or practices under section 5 of the FTC Act.[7] In addition, Section 4 of the Telemarketing Act[8] authorizes the attorneys general of the States to enforce compliance with the final rule by instituting Federal court enforcement actions, after serving prior written notice upon the Commission when feasible. Moreover, Section 5 of the Telemarketing Act[9] authorizes actions, in Federal district court, by private persons adversely affected by any pattern or practice of telemarketing which violates the final rule, where the amount in controversy exceeds $50,000 in actual damages for each such person. As with State actions, such private persons must give prior written notice to the Commission, when feasible.

Section B of this notice discusses the proposed rule that the Commission has drafted pursuant to the Telemarketing Act.

Section B. Discussion of the Proposed Rule

Section 310.1 Scope of the Regulations

Section 310.1 states that this part implements the Telemarketing Act, and shall be referred to as the "Telemarketing Sales Rule."

Section 310.2 Definitions

Section 310.2 of the proposed rule defines the following terms: Acquirer; attorney general; business venture; cardholder; Commission; credit card; credit card sales draft; credit card system; customer; goods or services; investment opportunity; material; merchant; merchant agreement; person; premium; prize; prize promotion; seller; State; telemarketer; telemarketing; telephone solicitation; and verifiable retail sales price.

The definition of "telemarketing" sets the parameters of the proposed rule's coverage. It tracks the definition of "telemarketing" included in the Telemarketing Act, with certain additions noted below.[10] As set forth in the Act, telemarketing is defined as any plan, program, or campaign which is conducted to induce payment for goods or services by use of one or more telephones and which involves more than one interstate telephone call.[11] One addition to the definition in the proposed rule clarifies that telemarketing includes the use of a facsimile machine, computer modem, or any other telephonic medium.[12] Another addition to the definition explicitly states that telemarketing includes not just calls initiated by telemarketers, but also calls initiated by persons in response to any form of promotional messages used by or on behalf of the seller, including postcards, brochures and advertisements.

The Telemarketing Act and the proposed rule exempt from the definition of telemarketing all solicitations of sales through the mailing of a catalog,[13] when the person making the solicitation does not call customers but only receives calls from customers in response to the catalog and only takes orders during those calls, without further solicitation. The proposed rule states that during such calls from customers, the person taking the order may provide further information to the customer about, or may try to sell, any other item included in the same catalog which prompted the customer's calls without losing the exemption from the definition of "telemarketing."

A number of terms are used in the proposed rule's prohibitions on credit card laundering. The term "acquirer" is defined, in § 310.2(a) of the proposed rule, to include any business organization, financial institution, or agent of such organization or institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for anything of value. The term "credit card" is defined expansively, in § 310.2(f), to include any instrument or device, however named, used by a cardholder to obtain money, goods, services, or anything else of value. § 310.2(g) defines a "credit card sales draft" as any record or evidence, including a writing or an electronic or magnetic transmission or record, of a credit card transaction. The term "credit card system" is defined, in § 310.2(h), as any method or procedure used to generate, transmit, or process for payment a credit card sales draft. For purposes of this rule, the term "merchant" is narrowly defined, in § 310.2(m), to include only those persons authorized under a written contract with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services. Finally, § 310.2(n) defines the term "merchant agreement" as the written contract between a merchant and an acquirer.

The proposed rule includes certain requirements for the telemarketing sale of business ventures and investment opportunities. The term "business venture" is defined, in § 310.2(c) of the proposed rule, to include any written or oral business arrangement, however named, including but not limited to franchises,[14] which consists of the payment of consideration for (1) the right or means to offer, sell, or distribute goods or services, and (2) the promise of more than nominal assistance in establishing, maintaining or operating a new business, or an existing business that is entering into a new line or type of business. The term "investment opportunity" is defined, in § 310.2(k), to include anything, tangible or intangible, except a business venture, that is offered, offered for sale, sold, or traded either for purposes of profit or income or based on express or implied representations about income, profit, or appreciation.[15] In addition, these two definitions state that any business arrangement in which persons acquire, or purportedly acquire, government-issued licenses, or interests in one or more businesses derived from the possession of such licenses, are considered to be an "investment opportunity," and not a "business venture."

The term "goods or services" is defined expansively, in § 310.2(j), to cover virtually any item for which payment can be induced over the telephone. A list of specific items is included in the definition for illustrative purposes only.[16]

The proposed definition for "material," in § 310.2(l), is taken from the Commission's deception statement.[17] It states that material means likely to affect a consumer's choice of, or conduct regarding, goods or services.

The proposed rule defines "prize" and "premium" in a relatively parallel fashion. Section 310.2(q) states that a "prize" means anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance. A "premium," on the other hand, is defined in § 310.2(p) as anything offered or given, independent of chance, to customers as an incentive to purchase goods or services offered through telemarketing.

The proposed definition of "prize promotion," set forth in § 310.2(r), includes the traditional sweepstakes or other game of chance as well as any oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize. Thus, the definition of "prize promotion" covers not only legitimate contests or sweepstakes, but also fraudulent representations that a consumer has won a prize, when no such prize is to be distributed.

A "seller" is defined, in § 310.2(s) of the proposed rule, as any person who, in conjunction with telemarketing, provides or offers to provide goods or services in exchange for consideration or a donation. A "telemarketer," on the other hand, is defined in § 310.2(u) as any person who, in connection with telemarketing, initiates or receives a telephonic communication from a customer. Since many of the provisions in the proposed rule apply to both the seller and the telemarketer, these two definitions make clear that the proposed rule's obligations run not only to the person making or answering a telephone call or telephonic communication from a consumer, but also to the business providing the goods or services to be sold during that call.[18]

The definition of "telephone solicitation," in § 310.2(w) of the proposed rule, is intended to include only out-bound sales calls, i.e., telephone calls that are initiated by a telemarketer to a customer to induce payment for goods or services.

Finally, the definition of "verifiable retail sales price," in § 310.2(x), is based on the Commission's Guides Against Deceptive Pricing.[19] The term means the actual, bona fide price at which one or more retailers, in the area of the seller's principal place of business, has made a substantial number of sales. The seller must be able to document such a retail sales price.

Section 310.3 Deceptive Telemarketing Acts or Practices

Section 310.3 of the proposed rule includes lists of specific, deceptive telemarketing acts or practices prohibited under the rule. It also sets forth prohibited acts or practices that assist and facilitate deceptive telemarketing. This Section ends with prohibitions on the practice of credit card laundering.

1. Prohibited Deceptive Telemarketing Acts or Practices

Section 310.3(a) of the proposed rule states that certain acts or practices, when conducted by any seller or telemarketer, are considered deceptive telemarketing acts or practices and violations of the rule. The first subsection prohibits the failure to disclose certain information before payment is requested for goods or services. The second subsection lists a series of prohibited misrepresentations covering all telemarketing transactions, while the third subsection lists prohibited misrepresentations in connection with the offer, offer for sale, or sale of any business venture. The final two subsections prohibit obtaining funds without proper authorization.

Section 310.3(a)(1) of the proposed rule states that it is a prohibited deceptive telemarketing practice for any seller or telemarketer to fail to disclose certain material information before payment is requested for goods or services offered.[20] These disclosures must be made in the same manner and form as the payment request. The information required to be disclosed is as follows: First, the total costs, terms and material restrictions, limitations, or conditions of receiving any goods or services; second, the quantity of any goods or services sold; and third, all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies, including a

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[2] 15 U.S.C. 6102(b).

[3] 15 U.S.C. 6102(a)(2).

[4] *Id.*

[5] 15 U.S.C. 6102(a)(3).

[6] *Id.*

[7] 15 U.S.C. 45. The Telemarketing Act provides that the FTC rule shall be treated as a rule issued under section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a(a)(1)(B).

[8] 15 U.S.C. 6103.

[9] 15 U.S.C. 6104.

[10] See 15 U.S.C. 6106(4).

[11] The Act's definition of the term "telemarketing" states that the plan, program, or campaign must be conducted to induce the purchase of goods or services. The proposed rule states that the plan; program, or campaign must be conducted to induce payment for goods or services. This change is intended to make clear that the definition of telemarketing includes plans, programs, or campaigns conducted to induce rentals or leases, as well as certain donations.

[12] Since telemarketing includes the use of computer modems and other telephonic media, the proposed definition states that telemarketing involves not just telephone calls, but also telephone connections.

[13] The Telemarketing Act and the proposed rule require catalogs to include multiple pages of written descriptions or illustrations of the goods or services being offered for sale, to include a business address of the seller, and to be issued not less frequently than once a year.

[14] The term "franchise" is defined in the FTC Franchise Rule, formally entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," at 16 CFR 436.2(a).

[15] The application of the proposed rule to investment opportunities is limited, to some extent, by sections 3(d) and (e) of the Telemarketing Act, 15 U.S.C. 6102(d) and (e), which exclude from rule coverage any of the following persons: A broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer (as those terms are defined in section 3(a) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)), an investment adviser (as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-2(a)(11)), an investment company (as that term is defined in section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a)), any individual associated with those persons, or any persons described in section 6(f)(1) of the Commodity Exchange Act, 7 U.S.C. 8, 9, 15, 13b, 9a.

[16] The term "goods or services" specifically includes any charitable service that is promoted in conjunction with any offer of a prize, chance to win a prize, or opportunity to purchase any other goods or services. Thus, plans, programs, or campaigns conducted to induce payment for such charitable services are the only charitable solicitations covered by the proposed rule. In addition, only charitable solicitations conducted by an entity "organized to carry on business for its own profit or that of its members" are within the jurisdiction of the Commission. *See* 15 U.S.C. 44.

[17] The Commission's Deception Statement, first set out in a letter dated October 14, 1983, to the Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, is attached as an appendix to Cliffdale Associates, 103 F.T.C. 110 (1984). See also Thompson Medical Co., 104 F.T.C. 648, 816 (1984).

[18] It is possible for a person to be both a seller and a telemarketer in the same transaction, if that person both provides the goods or services in exchange for consideration or a donation and engages in the telephone calls with consumers.

[19] 16 CFR Part 233.

[20] The proposed rule permits sellers or telemarketers to discuss the price of goods or services with potential customers before disclosing the required information, but they may not ask that payment be made until after the disclosures are made.

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statement that no such policies exist, if that is the case.

Section 310.3(a)(2) sets forth 24 different misrepresentations prohibited in connection with telemarketing. The first five subsections go to the heart of any telemarketing sales transaction, prohibiting misrepresentations of the total costs, terms or material restrictions, limitations, or conditions[21] of receiving any goods or services. These subsections also prohibit misrepresentations of the quantity of any goods or services, or any material aspect of the performance, efficacy, or central characteristics of any goods or services. In addition, sellers and telemarketers are prohibited from misrepresenting the duration of any offer made, as well as the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.

Sections 310.3(a)(2) (vi) through (viii) of the proposed rule prohibit misrepresentations about prizes. It is a violation of the proposed rule to misrepresent that any person has been selected to receive a prize, i.e. an item offered, or purportedly offered, at no cost and with no other obligation to make a purchase and given, or purportedly given, by chance. Therefore, a telemarketer could not claim that a consumer has won a prize, when in fact the consumer must pay shipping and handling charges to receive the prize. In addition, a seller or telemarketer is prohibited from misrepresenting that a premium is a prize. Thus, for example, a telemarketer could not claim that a consumer has "won" an item, when in fact many consumers will be given that item as an incentive to purchase goods or services, without any element of chance involved in selecting the "winners." Finally, a seller or telemarketer is prohibited from misrepresenting the odds of winning any prize.

The next three prohibited practices, in §§ 310.3(a)(2) (ix) through (xi) of the proposed rule, deal with misrepresentations about compliance with various laws or about an affiliation with law enforcement authorities. Any seller or telemarketer is prohibited from misrepresenting its compliance with any Federal, State, or local law, statute, regulation, or ordinance, or from falsely claiming that such compliance constitutes an endorsement or approval, by the government agency, of the seller's or telemarketer's business or conduct. Thus, a telemarketer cannot falsely claim that it is registered with a State, or, even if registered, that such registration indicates that the State had approved the telemarketer's method of operation. In addition, it is also a violation of the proposed rule to misrepresent any affiliation, association, connection, or relationship with law enforcement, a public safety organization, or other Federal, State, or local government agency.

Under § 310.3(a)(2)(xii) of the proposed rule, any seller or telemarketer is prohibited from misrepresenting the purpose for which the seller or telemarketer will use information relating to a person's checking, savings, share, or similar account number, credit card account number, or social security number. This prohibits, for example, a telemarketer from asking for a consumer's credit card number "to verify" the consumer's identity, when in fact the telemarketer plans to charge a fee to that account.

Sections 310.3(a)(2)(xiii) and (xiv) of the proposed rule prohibit misrepresentations particularly common to certain charitable solicitations.[22] Any seller or telemarketer is prohibited from misrepresenting the seller's or telemarketer's non-profit, tax-exempt, or charitable status, purpose, affiliation, or identity. Also prohibited are misrepresentations that a person is eligible or likely to receive a tax deduction, loan, or other benefit if the person pays money to the seller or telemarketer.

It is a prohibited deceptive telemarketing act or practice, under § 310.3(a)(2)(xv) of the proposed rule, for any seller or telemarketer to misrepresent the nature, terms, or existence of any prior affiliation, association, connection, or relationship with any person. Under § 310.3(a)(2)(xvi), neither a seller nor a telemarketer may misrepresent the nature, terms, or existence of any prior purchase or agreement to purchase by any person. These sections prohibit, for example, claims that a telemarketer is calling to confirm a prior order, when no such order exists, or claims that a telemarketer is calling all of its customers to ask if they would like to purchase additional products, when in fact the person called was not a prior customer of that telemarketer.

Sections 310.3(a)(2)(xvii) through (xx) of the proposed rule prohibit misrepresentations concerning investment opportunities. Any seller or telemarketer is prohibited from misrepresenting key attributes of any investment opportunity, such as the level of risk, liquidity, markup over acquisition costs, past performance, earnings potential, or market value. Any seller or telemarketer is also prohibited from misrepresenting the likelihood that the market value for an investment opportunity will either increase or decrease. In addition, a seller or telemarketer cannot misrepresent the seller's success in assisting persons to liquidate goods or services they purchased from the seller, or the profit derived from such liquidation. Thus, for example, false claims about an ability to resell an investment opportunity for a profit are prohibited.

Sections 310.3(a)(2)(xxi) and (xxii) of the proposed rule address the problem of deceptive credit repair or credit opportunity telemarketing claims. Section 310.3(a)(2)(xxi) prohibits misrepresentations that certain goods or services can or are likely to improve a person's credit history, credit record, or credit rating, or that certain goods or services can result in a person obtaining credit. Section 310.3(a)(2)(xxii) prohibits misrepresentations about the eligibility or likelihood that a person, regardless of that person's credit history, will obtain a loan or other credit-related service.

Section 310.3(a)(2)(xxiii) of the proposed rule prohibits misrepresentations that a seller or telemarketer can recover or otherwise effect or assist in the return of money or any other item of value to a person. This would prohibit, for example, telemarketers from falsely claiming that for a fee, paid in advance, they can obtain a refund for a consumer who has been victimized in the past by a telemarketing scam.

Finally, § 310.3(a)(2)(xxiv) of the proposed rule prohibits the misrepresentation of any other information required to be disclosed under this rule. For example, a telemarketer cannot misrepresent the verifiable retail sales price of a prize or premium, or misrepresent that the sales price of a prize or premium is less than $20.00, when that information is required to be disclosed under §§ 310.4(d)(3) and (4) of the proposed rule.

The next section of the proposed rule, § 310.3(a)(3), prohibits any seller or telemarketer from misrepresenting important information in connection with the offer, offer for sale, or sale of any business venture. This information includes the level of earnings for the business venture, the extent or nature of the market for the goods or services to be sold, and the nature or availability of any territory. Thus, a seller of business ventures could not falsely inflate the sales levels of previous owners, or incorrectly claim that a purchaser would obtain exclusive rights to market goods or services in a certain territory. The proposed rule also prohibits misrepresentations about (1) the existence, availability, or provision of retail outlets or accounts; (2) the locations or sites for vending machines, rack displays, or any other sales display; or (3) the nature or availability of any services offered to secure any such outlets, accounts, locations, sites or displays. Also prohibited are misrepresentations that any person owns or operates a business venture purchased from the seller, or that a person can give an accurate, independent description of his or her experience as an owner or operator of such a business venture. These provisions prohibit, for example, false claims that a shill—a phony reference that is paid to tout a business opportunity he does not own or operate—has actually purchased a business venture, or false claims about any person's experience as a business venture owner.

Under § 310.3(a)(4) of the proposed rule, it is a prohibited deceptive telemarketing act or practice for a seller or telemarketer to obtain or submit for payment from a person's checking, savings, share, or similar account, a check, draft, or other form of negotiable paper without that person's express written authorization. For example, a telemarketer cannot submit an unsigned draft on a consumer's bank account without that consumer's prior written authorization. Similarly, § 310.3(a)(5) of the proposed rule prohibits the collection of any amount of money from a person through any means, unless such amount is expressly authorized by the person. This section is intended to cover other forms of payment, in addition to unsigned drafts, and to prohibit misrepresentations of the amount collected. For example, if a consumer pays for goods or services by credit card, no amount may be charged to the consumer's account unless the consumer authorizes that charge. This authorization does not have to be in writing, however.

2. Assisting and Facilitating

Section 310.3(b)(1) of the proposed rule sets forth a general prohibition against assisting or facilitating deceptive telemarketing acts or practices. This section states that it is a deceptive telemarketing act or practice, and a violation of the rule, for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates the rule.

Section 310.3(b)(2) of the proposed rule lists five specific types of conduct that provide substantial assistance or support to telemarketing. This list is not meant to limit, in any way, the general scope of § 310.3(b)(1) concerning assisting or facilitating deceptive telemarketing acts or practices.[23] Assistors who engage in these activities will violate the rule if they know, or should know, that the person they are assisting is engaged in an act or practice that violates the rule.

The five types of assisting and facilitating activities listed in the proposed rule are as follows: First, providing lists of customer contacts to a seller or telemarketer (e.g., serving as a list broker); second, receiving consideration in exchange for providing a testimonial, endorsement, certification, appraisal, or financing, or for serving as a reference, with respect to any business venture or investment opportunity (e.g., acting as a paid shill or an art appraiser, or providing financing for a business opportunity); third, securing retail outlets or accounts for the sale of goods or services, or locations or sites for vending machines, rack displays, or any other sales displays, used in connection with any business venture (e.g., operating as a locating company); fourth, furnishing any certificate or coupon which may later be exchanged for goods or services (e.g., producing generic vacation certificates used in prize promotion scams); and fifth, providing any script, advertising, brochure, promotional material, or direct marketing piece to be used in telemarketing.

3. Credit Card Laundering

Section 310.3(c) of the proposed rule prohibits credit card laundering, or the practice of depositing into the credit card system a sales draft that is not the result of a credit card transaction between the cardholder and a merchant.[24] For example, credit card laundering involves a merchant with access to the credit card system deceiving an acquirer by submitting for payment credit card transactions that are not the merchant's own. This deception is crucial for telemarketers engaged in fraud, since such telemarketers find it difficult, if not impossible, to obtain merchant accounts to process their credit card transactions. Credit card laundering facilitates deceptive telemarketing acts or practices by providing fraudulent telemarketers with ready access to cash through the credit card system.

This Section of the proposed rule is divided into three parts. Section 310.3(c)(1) of the proposed rule deals with merchants who engage in credit card laundering. Under this section, it is a deceptive telemarketing act or practice, and a violation of the rule, for a merchant to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant. It is also a deceptive act or practice for a merchant to cause another person to present to or deposit into the credit card system for payment such a credit card sales draft.

Section 310.3(c)(2) of the proposed rule deals with telemarketers, brokers, or others who employ merchants to engage in credit card laundering. This section states that it is a deceptive telemarketing act or practice, and a violation of the proposed rule, for any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of a merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant.

Finally, § 310.3(c)(3) prohibits joint ventures or other business relationships between a merchant and a telemarketer for the purpose of engaging in credit card laundering. Specifically, this section prohibits any person from obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement.

Section 310.4 Abusive Telemarketing Acts or Practices

Section 310.4 of the proposed rule begins with a list of specific abusive conduct that is prohibited. This section also prohibits repeated telemarketing calls and calls to persons who have stated that they do not wish to receive such calls. In addition, this section sets

[21] Given the definition of the term "material," in Section 310.2(l) of the proposed rule, any seller or telemarketer would be prohibited from misrepresenting any restriction, limitation, or condition that would be likely to affect a consumer's choice of, or conduct regarding, goods or services.

[22] Based on the definition of "goods or services," in § 310.2(j) of the proposed rule, only charitable services promoted in conjunction with an offer of a prize, chance to win a prize, or opportunity to purchase any goods or services would be covered by these provisions.

[23] Thus, practices not included on this list could still be found to provide substantial assistance or support to telemarketing.

[24] As defined in § 310.2(m), a merchant is the person who is under a contractual agreement with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

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restrictions on the times when telemarketers may make calls, and includes oral and written disclosures that must be made. This Section of the proposed rule ends with a prohibition on the sale or distribution of lists of customer contacts by persons found to have violated certain provisions of this rule.

1. Abusive Conduct Generally

Section 310.4(a) of the proposed rule sets forth eight different abusive telemarketing acts or practices that are violations of the rule. The first such practice is the use of threats or intimidation in connection with telemarketing. The second prohibited practice is providing for or directing a courier to pick up a payment from a customer. This prohibition is intended to address a prevalent practice used by fraudulent telemarketers of sending an overnight courier to a consumer's home to pick up cash or a check shortly after a successful sales pitch. In this manner, the telemarketer obtains payment from the consumer before the consumer has adequate time to think about the transaction or obtain information about the telemarketer. The proposed rule would prohibit this practice.

Section 310.4(a)(3) of the proposed rule restricts the telemarketing of credit repair services. This section prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until the contract for the services has expired and the promised results have been achieved. Specifically, two events must occur before payment can be requested or received for these services: first, either the term of the contract or the time frame in which the seller has represented the goods or services will be provided has expired; and second, the seller has provided the purchaser with documentation showing that the promised results have been achieved. This documentation may be either (1) from the original furnisher or provider of the information to the consumer reporting agency, confirming that the promised results have been achieved, or (2) in the form of a consumer report from the consumer reporting agency demonstrating that the promised results have been achieved. Such a report must have been issued more than six months after the results were achieved.[25]

[25] The proposed rule makes clear that nothing in the rule alters the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose.

Recovery room scams are the focus of § 310.4(a)(4). In these operations, a telemarketer typically calls a consumer who has lost money in a previous scam, promising that, for a fee paid up front, the telemarketer can recover the money the consumer previously lost. After the consumer pays the requested fee, the promised services are not delivered. In fact, the consumer may never hear from the telemarketer again. This Section of the proposed rule prohibits any seller or telemarketer from requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise effect or assist in the return of money or any other item of value to a person until three days after such money or other item is delivered to that person. The proposed rule states that this provision does not apply to goods or services provided to a person by a licensed attorney or licensed private investigator pursuant to a written agreement with that person.

Section 310.4(a)(5) of the proposed rule is intended to limit advance fee loan scams and similar practices, in which telemarketers guarantee that they will obtain a loan or other credit-related service for a consumer, if the consumer pays them a fee in advance. As with recovery room scams, after the consumer pays the fee, the promised services typically are not provided. Under this section of the proposed rule, any seller or telemarketer is prohibited from requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.

Prize promotions conducted through telemarketing are the subject of § 310.4(a)(6). Any seller or telemarketer conducting such promotions must distribute all prizes or purported prizes offered within 18 months of the initial offer to any person.

Section 310.4(a)(7) of the proposed rule addresses the problem of reloading, the practice of offering to sell additional goods or services to a person who previously has made a purchase from that seller. In deceptive telemarketing scams, consumers may be victimized numerous times by reloading that occurs prior to delivery of the first items sold, before realizing they have been deceived. This serial deception often occurs because consumers have not seen the goods or services already purchased, and therefore do not know that they were deceived in the previous transaction. The proposed rule prohibits any seller or telemarketer from offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial sales transaction have been fulfilled.[26] The proposed rule makes clear that all prizes or premiums offered in conjunction with the initial transaction must also be distributed before a second offer or sale can be made.

The final abusive telemarketing act or practice prohibited by the proposed rule concerns the use of shills. Section 310.4(a)(8) of the proposed rule prohibits any seller or telemarketer from identifying a person as a reference for a business venture unless the following three criteria are satisfied: (1) Such person has actually purchased the business venture; (2) such person has operated the business venture for at least six months or the seller or telemarketer has disclosed the length of time the reference has operated the business venture; and (3) such person does not receive consideration for any statements made to prospective purchasers.

2. Pattern of Calls

Section 310.4(b) of the proposed rule deals with repeated telemarketing calls, and calls to persons who have indicated an unwillingness to receive such calls. This section prohibits a telemarketer from engaging in such calls, or a seller from causing a telemarketer to engage in such calls.[27] Specifically, this Section states that it is an abusive act or practice and a violation of the rule to call a person's residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three-month period. This prohibition does not apply if the person gives prior consent to more frequent calls,[28] or if the person is not reached during an earlier attempted call. It also does not apply to verification calls—those calls made solely to verify a previous telephone sale.

The proposed rule also prohibits calls to a person's residence when that person previously has stated that he or she does not wish to receive telephone solicitations made by or on behalf of the

[26] By limiting this prohibition to offering or selling goods or services through telephone solicitations, this Section does not prevent consumers from calling telemarketers to make an additional purchase before the first transaction is complete.

[27] A seller may cause a telemarketer to engage in such calls by providing the telemarketer with a customer contact list that includes customers that should not be called.

[28] The person may give prior consent either orally or in writing.

seller whose goods or services are being offered.

Sellers and telemarketers are given a limited safe harbor against liability for violating these provisions. Section 310.4(b)(2) of the proposed rule states that a seller or telemarketer will not be liable for such violations once in any calendar year per person called if the following four requirements are met: (1) It has established and implemented written procedures to comply with §§ 310.4(b)(1)(i) and (ii); (2) it has trained its personnel in those procedures; (3) the seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with §§ 310.4(b)(1)(i) and (ii); and (4) any subsequent call is the result of administrative error.

3. Calling Time Restrictions

Under § 310.4(c) of the proposed rule, any telemarketer is prohibited from engaging in telephone solicitations[29] to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location. This prohibition does not apply if the person called gives his or her prior consent to receive a call at a different time.[30]

4. Required Oral Disclosures

Section 310.4(d) of the proposed rule sets forth certain oral disclosures that must be made in telemarketing.[31] The preamble to this section states that it is an abusive telemarketing act or practice, and a violation of the rule, for a telemarketer to fail to make any of these required oral disclosures.

All telephone solicitations must begin by disclosing key information to the person called. This information includes the caller's true first and last name, the seller's name, and that the purpose of the call is to sell goods or services. The proposed rule does not require that the telemarketer's name be disclosed, if it is different from the seller's. In addition, the proposed rule does not set forth the exact language that must be used to convey the message that the purpose of the call is to sell goods or services. The choice of language is left to the telemarketer.

[29] Based on the definition of "telephone solicitation" in § 310.2(w) of the proposed rule, these calling time restrictions apply only to outbound telemarketing calls.

[30] As with the pattern of calls requirement in § 310.4(b)(1), the person may give prior consent either orally or in writing.

[31] The disclosures required by this section are in addition to the disclosures required under § 310.3(a)(1) of the proposed rule, which must be made before any payment is requested for goods or services.

If the telephone solicitation includes a charitable solicitation, slightly different and additional information must be disclosed at the beginning of the call. Not only must the caller's true first and last name and the name of the seller or charity be disclosed, but the telemarketer's name also must be disclosed in these calls. In addition, the telemarketer's status as a paid professional fundraiser must be disclosed, as well as the fact that the purpose of the call is to solicit charitable donations. If other goods or services are offered for sale during the call, the caller must disclose that the purpose of the call is also to sell goods or services.

Section 310.4(d)(2) of the proposed rule states that if a caller verifies a telemarketing sale, either during the call containing the original sales presentation or in a separate call, the caller verifying the sale must repeat all of the disclosures required under § 310.3(a)(1).[32] In this fashion, consumers will hear all of the important terms and conditions of the sale at the time they are verifying that purchase.

Section 310.4(d)(3) of the proposed rule requires three additional oral disclosures for any telemarketing which includes a prize promotion. The first disclosure is that no purchase or payment is necessary to win.[33] Second, the caller must disclose the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than $20.00.[34] The third required disclosure is the odds of winning each prize offered. A true statement that the odds of winning cannot be determined in advance, or that the odds of winning are determined by the number of entrants, would satisfy this requirement.

Under § 310.4(d)(4) of the proposed rule, any telemarketing which includes an offer of a premium must make the additional disclosure of the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than $20.00.

[32] These disclosures include the total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services, the quantity of any goods or services, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies.

[33] If a purchase or payment were required in a prize promotion that by definition involves a game of chance, that promotion would be an illegal lottery. See 18 U.S.C. 1301.

[34] Misrepresenting the retail sales price would be a violation of § 310.3(a)(2)(xxiv) of the proposed rule because such information is required to be disclosed under the rule.

5. Written Disclosures/ Acknowledgements

Section 310.4(e) of the proposed rule states that it is an abusive telemarketing act or practice for a seller or telemarketer that conducts a prize promotion or offers for sale any investment opportunity to request or accept any payment from a person without first providing the person with a written disclosure, in duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information required to be disclosed must be printed in not less than 10-point type (unless otherwise noted), in a color or shade that readily contrasts with the background of the notice. The information in the investment opportunity disclosure must be segregated from all other information that may be included in the document, while the information in the prize promotion disclosure must be on one page.

Both disclosures must be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. The envelope for the prize promotion disclosure may not contain any writing representing that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.

For prize promotions, the following information is required: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under each name; (3) the verifiable retail sales price of each prize offered, or a statement that the retail sales price of the prize offered is less than $20.00; (4) the odds of winning each prize offered and the number of persons who will receive each prize; (5) the total amount and description of any shipping or handling fees or any other charges that must be paid to receive or use a prize; (6) a complete description of any restrictions, conditions, or limitations on eligibility to receive or use a prize, including all steps a person must take to receive the most valuable prize offered; (7) the statement: "No purchase or payment is necessary to win," with a description of the no-purchase entry method; (8) a statement that a list of winners is available and the address to which a person may write to obtain such a list; (9) a statement that it is a violation of this rule for the seller to accept payment in any form unless the

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seller has received from the person a written disclosure acknowledgement; and (10) the statement: "I have read and understand this disclosure." This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

For investment opportunities, the following information must be included in the written disclosure: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under that name; (3) the complete cost to make the investment and a detailed list of all present charges and any anticipated future charges; (4) a description of all known risks associated with the investment opportunity, including the possibility that additional payments might be required for a person purchasing the investment opportunity to retain that person's interest in the investment opportunity, to realize the projected or stated returns of the investment opportunity, to prevent total loss of the investment opportunity, or for any other reason; (5) the length of time the seller has been in business and has offered the particular investment opportunity; (6) a statement disclosing whether or not the seller is licensed and, if so, with whom, the type of license, and the length of time the seller has held such license; (7) a statement that it is a violation of this rule for the seller to effect an investment transaction unless the seller has received from the person a written disclosure acknowledgement; and (8) the statement: "I have read and understand this disclosure." This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

Additional written disclosures, provided in duplicate, are required for certain types of investment opportunities. If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, § 310.4(e)(2)(ii) of the proposed rule requires the following additional information to be included in the written investment disclosure: (1) The percentage markup that the seller places on the item above its own cost in acquiring the item; and (2) an estimate of the value that persons would be likely to receive if they were to liquidate the asset through a market sale immediately following the purchase. The proposed rule makes clear that all such estimates must be substantiated by competent and reliable evidence.

If sellers or telemarketers offer for sale any investment opportunity involving tangible assets sold on credit or leverage, they must include in the written disclosure all of the information set forth in §§ 310.4(e)(2)(i) and (ii) of the proposed rule, as well as the following: (1) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first six months after the investment is made; (2) the percentage of a person's down payment that would be devoted to fees and costs by the end of the first year after the investment is made; and (3) a statement that all such investment opportunities are extremely risky.

Finally, if a seller or telemarketer offers for sale any investment opportunity involving the acquisition of government-issued licenses or interests in businesses derived from the possession of such licenses, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i) of the proposed rule: (1) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including whether and to whom the license or licenses have been issued; (2) the percentage of the person's payment that will be used to acquire any applicable license(s) from the licensee(s) or from any person or entity not affiliated in any way with the seller; and (3) the percentage of the person's payment that will be used to capitalize any business derived from such license(s).

6. Distribution of Lists

The final abusive practice set forth in § 310.4 of the proposed rule involves the distribution of lists of customer contacts. Section 310.4(f) states that it is an abusive telemarketing act or practice, and a violation of the rule, for any person, subject to any federal court order resolving a case in which the complaint alleged a violation of § 310.3, 310.4(a), or 310.4(e) of this rule,[35] and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person. In other words, any such person will be prohibited from circulating its customer contact lists in any fashion.

[35] The enumerated sections cover all of the prohibited deceptive telemarketing acts or practices, the eight general abusive telemarketing acts or practices, and the written disclosures and acknowledgements required for prize promotions and investment opportunities.

Section 310.5 Recordkeeping Requirements

Section 310.5 of the proposed rule requires any seller or telemarketer to keep, for 24 months from the date the record is produced, certain records relating to its telemarketing activities. Failure to keep those records shall be considered a violation of the rule. The seller and its telemarketer are not required to keep duplicative records, if they have entered into a written agreement allocating responsibility for the recordkeeping requirements of the proposed rule. The terms of any such agreement shall govern, unless those terms are unclear as to whom must maintain any required records. In that case, the responsibility for recordkeeping shall fall on the seller.

Section 310.5(c) of the proposed rule sets forth the parties responsible for maintaining records at the end of, or after a change in ownership of, the seller's or telemarketer's business. In the event of dissolution or termination of such business, the principal of the seller or telemarketer is required to maintain these records. On the other hand, in the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business is required to maintain the records.

Section 310.6 Exemptions

Certain acts or practices are exempt from the proposed rule. The first exemption, set forth in § 301.6(a), is for incidental telemarketing sales—that is, sales by any person who engages in fewer than ten sales each year through the use of the telephone. Second, telephonic contacts between businesses also are exempt, except for such contacts that involve the sale of office or cleaning supplies, or the inducement of payment for any charitable service promoted in conjunction with (1) an offer of a prize, (2) a chance to win a prize, or (3) the opportunity to purchase any goods or services. Finally, on § 310.6(c) of the proposed rule exempts any telephonic contact made solely by a person, when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer. However, this exemption does not apply to calls regarding employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

Given the definition of "telemarketing" in § 310.2(v) and the exemptions set forth in this section, the proposed rule covers all outbound telephone calls intended to induce payment for goods or services, except for calls made by a person who engages in fewer than ten telephone sales each year, or for telephonic contacts made from one business to another that do not involve the sale of office or cleaning supplies or certain charitable solicitations. The only inbound telemarketing calls covered are those received from a person who is responding to an initial communication, other than a catalog, from the seller or telemarketer that was directed to that particular person. In addition, all inbound telemarketing calls related to business ventures, investment opportunities, prize promotions, or credit-related programs are covered.

Section 310.7 Actions by States and Private Persons

The Telemarketing Act permits certain State officials and private persons to bring civil actions in an appropriate Federal district court for violations of this rule.[36] Section 310.7 of the proposed rule sets forth the notice such parties must provide to the Commission concerning those actions. Such parties must serve written notice of its action on the Commission, if feasible, prior to initiating an action under this rule. The notice must include a copy of the complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State official or private person must serve the Commission with the required notice immediately upon instituting its action.

Section 310.8 Federal Preemption

Section 310.8 of the proposed rule states that nothing in the rule shall be construed to preempt any State law that is not in direct conflict with any provision of the rule. Thus, State statutes concerning telemarketing that contain prohibitions or requirements that are not imposed by this rule would remain in effect, as long as those statutes do not conflict with this rule.

Section 310.9 Severability

Section 310.9 of the proposed rule sets forth the Commission's intent that the provisions of this rule be separate and severable from one another. Thus, if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

Section C. Invitation to Comment

Before adopting this proposed rule as final, consideration will be given to any written comments submitted to the Secretary of the Commission on or before March 31, 1995. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[36] See 15 U.S.C. 6103 and 6104.

Section D. Public Workshop-Conference

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to the Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the proposed regulations. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: Sellers; telemarketers; list providers; representatives of the credit card system; consumers; Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 45-day comment period.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest within 20 days of publication of the Notice of Proposed Rulemaking.
3. The party's participation would promote a balance of interests being represented at the conference.
4. The party's participation would promote the consideration and discussion of a variety of issues raised in the rulemaking proceeding.
5. The party has expertise in activities affected by the proposed regulations
6. The party adequately reflects the views of the affected interest(s) which it purports to represent, not simply a single entity or firm within that interest
7. The number of parties selected will not be so large as to inhibit effective discussion among them

A neutral third-party facilitator will be retained for the conference. It will be held over the course of three consecutive days, on April 18–20, 1995. Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff by March 6, 1995. Prior to the conference, parties selected to represent an affected interest will be provided with computer disks containing copies of the comments received in response to this notice.

Section E. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral

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communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

Section F. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document because it is believed that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Telemarketing Act requires the Commission to issue regulations, not later than 365 days after the date of enactment, prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices. The Act limits the scope of the regulations to entities that engage in telemarketing through one or more interstate telephone calls; telemarketing sales by local companies to local customers would most likely be intrastate calls and thus outside the parameters of the proposed rule. The Act also exempts certain catalog sales operations from the scope of the regulations. In addition, the proposed rule exempts incidental telemarketing sales, i.e., calls made by any person who engages in fewer than ten sales each year through the use of the telephone. The proposed rule also exempts certain contacts between businesses, and certain calls initiated by a person when there is no initial sales contact directed to that particular person from a seller or telemarketer

As a result of these statutory and regulatory limitations, we believe that many small entities will fall outside the scope of the regulations. In addition, any economic costs imposed on small entities remaining within the parameters of the rule are, in many instances, specifically imposed by statute. Where they are not, efforts have been made to make the proposed rule's requirements flexible, in part to minimize any unforeseen burden on small entities, as described elsewhere in this notice.

To ensure that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on the costs to, profitability and competitiveness of, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed regulations will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

Section G. Questions on the Proposed Rule

The Commission seeks comments on various aspects of the proposed rule. Without limiting the scope of issues it seeks comment on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions in this Notice. In responding to these comments, include detailed, factual supporting information whenever possible.

Section 310.2 Definitions

1 The proposed rule defines the following terms for use in the prohibition on credit card laundering: "acquirer," "cardholder," "credit card," "credit card sales draft," "credit card system," "merchant," and "merchant agreement."

a. Are these definitions clear, meaningful, and appropriate?

b. Are there other approaches to defining these terms that would be more useful?

2. The proposed rule defines the term "business venture."

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of business ventures which have been, are, or may be sold through telemarketing?

c. Are there other approaches to defining the term "business venture" that would be more useful?

3. The proposed rule defines the term "goods or services."

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of products, services, or other offers which have been, are, or may be sold through telemarketing?

c. Are there other approaches for defining the term "goods or services" that would be more useful?

4. The proposed rule defines the term "investment opportunity."

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner?

b. Is the definition as drafted sufficiently comprehensive to encompass the types of investment opportunities which have been, are, or may be sold or traded through telemarketing?

c. Are there other approaches to defining the term "investment opportunity" that would be more useful?

5. The proposed rule defines the terms "premium," "prize," and "prize promotion."

a. Are these definitions clear, meaningful, and appropriate? Are the distinctions between a "premium" and a "prize" clear, meaningful, and appropriate? What are the advantages and disadvantages of defining these terms in this manner?

b. Are the definitions as drafted sufficiently comprehensive to encompass the types of premiums, prizes, and prize promotions which have been, are, or may be offered through telemarketing?

c. Are there other approaches to defining these terms that would be more useful?

6. The proposed rule defines the terms "seller" and "telemarketer."

a. Are these definitions clear, meaningful, and appropriate? Are the distinctions between a "seller" and a "telemarketer" clear, meaningful, and appropriate? What are the advantages and disadvantages of defining these terms in this manner?

b. Are there other approaches to defining these terms that would be more useful?

c. Since most of the provisions of the proposed rule apply to sellers and/or telemarketers, do these definitions reflect the appropriate scope of the rule?

7 The proposed rule states that the term "telemarketing" includes the use of a facsimile machine, computer modem, or any other telephonic medium, as well as calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic, or electronic communications by or on behalf of the seller.

a. Is this definition clear, meaningful, and appropriate?

b. Is the definition of "telemarketing" sufficiently broad to encompass current as well as future technology?

c. Are there other approaches to defining the term "telemarketing" that would be more useful?

8. The proposed definition of "telemarketing" includes within the rule's coverage on-line information services which a person accesses by computer modem.

a. Is such coverage appropriate?

b. Is the proposed rule as drafted sufficiently comprehensive to regulate the types of plans, programs, or campaigns for the sale of goods or services that have been, are, or may be conducted through such computer information services?

9. The proposed definition of "telemarketing" tracks the Telemarketing Act in exempting catalog sales from coverage under the rule. One of the requirements of this exemption is that "the person making the solicitation * * * only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation." The proposed rule states that the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call.

a. Does the proposed rule sufficiently clarify the types of solicitation activities that are permitted in connection with catalog sales?

b. How much will the additional flexibility provided by this definition benefit catalog sellers? How will it affect law enforcement efforts to stop fraudulent or deceptive telemarketers?

10. The proposed rule defines the term "verifiable retail sales price."

a. Is this definition clear, meaningful, and appropriate?

b. Are there other approaches to defining this term that would be more useful?

Section 310.3 Deceptive Telemarketing Acts or Practices

11. Section 310.3(a) of the proposed rule sets forth certain conduct that will be considered a deceptive telemarketing act or practice and a violation of the rule, including the failure to make certain disclosures and the misrepresentation of certain information. Questions 13 through 18 seek comments on the particular types of acts and practices included in this Section of the proposed rule. Looking at § 310.3(a) as a whole:

a. Would it be appropriate to include in the final rule a general prohibition against material misrepresentations or the failure to disclose material information? What would be the advantages and disadvantages to this approach?

b. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would be more useful to consumers? That would be more useful to law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses forced to comply with it?

c. Are there other approaches to prohibiting deceptive telemarketing acts or practices that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

12. Section 310.3(a) of the proposed rule makes both the seller and the telemarketer equally liable for any deceptive telemarketing acts or practices.

a. Are there parts of this Section that should apply only to the seller or to the telemarketer? If so, what specific Sections should apply only to sellers? To telemarketers? Why are such limitations appropriate?

b. What are the benefits of making both sellers and telemarketers jointly liable for violations?

c. What additional costs or other burdens will the rule impose on sellers and/or telemarketers if the rule makes both liable for any violations of this Section? If the rule makes telemarketers jointly liable with sellers, will this reduce the ability of telemarketers to respond to the needs of their clients in a timely fashion?

d. If telemarketers are not jointly liable for deceptive practices of the sellers for whom they work, would some telemarketers simply seek to avoid knowledge of any questionable practices of the sellers from whom they work? Are there alternative ways to keep telemarketers from taking such an approach, without imposing full liability for all of the actions taken by their clients?

13. Section 310.3(a)(1) of the proposed rule requires that certain disclosures be made before payment is requested for any goods or services offered, and that the disclosures be made in the same manner and form as the payment request.

a. Are there other disclosures that should be required? Are any of the required disclosures unnecessary?

b. Is the description of the information to be disclosed clear, meaningful, and appropriate?

c. What are the current practices of sellers and telemarketers regarding such disclosures?

d. What costs will this disclosure requirement impose on legitimate businesses?

e. What are the advantages or disadvantages of requiring these disclosures before payment is requested? Is it more appropriate to require these disclosures at some other time?

14. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(2) of the proposed rule prohibits specific misrepresentations in connection with telemarketing

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

15. As part of the prohibition against deceptive telemarketing acts or practices, § 310.3(a)(3) of the proposed rule prohibits specific misrepresentations in connection with the offer, offer for sale, or sale of any business venture.

a. Are there other misrepresentations that should be included in the prohibited list? Are any of the prohibited misrepresentations unnecessary?

b. Is the description of the prohibited misrepresentations clear, meaningful, and appropriate?

c. How will this section benefit consumers or law enforcement efforts? What, if any, costs will this Section impose on legitimate businesses?

16. Section 310.3(a)(4) of the proposed rule prohibits obtaining or submitting a check, draft, or other form of negotiable paper for payment from a person's checking, savings, share, or similar account without that person's express written authorization.

a. Is this prohibition clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this prohibition?

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c. Is the proposed prohibition sufficiently broad to encompass all forms by which a person's account could be debited in this manner for payment of goods or services?

d. What will be the economic impact on sellers and telemarketers of requiring express written authorization prior to debiting a person's account in this manner?

e. What are the current practices of entities regarding authorizations for debiting a person's checking, savings, share, or similar account?

17. Section 310.3(a)(5) of the proposed rule prohibits obtaining any amount of money from a person through any means unless the amount is expressly authorized by the person.

a. Is this prohibition clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this prohibition?

c. Is the proposed prohibition sufficiently broad to encompass all forms by which a seller or telemarketer could obtain unauthorized amounts of money?

18. Under § 310.3(b)(1) of the proposed rule, it would be a deceptive telemarketing act or practice for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates the rule.

a. What are the advantages or disadvantages to providing such a general prohibition against "assisting and facilitating?"

b. Is this general prohibition against "assisting and facilitating" clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting "assisting and facilitating" that would be more useful to consumers? That would be more useful to law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses forced to comply with it?

d. Are there other approaches to prohibiting "assisting and facilitating" that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

19. Section 310.3(b)(2) of the proposed rule lists specific acts or practices that provide substantial assistance or support to telemarketing.

a. Is it appropriate to single out the acts and practices listed in this section?

b. Are there other acts or practices which should be included in this section?

c. Is the description of the listed acts or practices clear, meaningful, and appropriate?

20. Under § 310.3(c) of the proposed rule, certain acts or practices that constitute "credit card laundering" will be considered deceptive and a violation of the rule.

a. Is the description of prohibited acts or practices clear, meaningful, and appropriate?

b. What are the advantages or disadvantages of this provision?

c. Is the proposed prohibition sufficiently comprehensive to encompass all forms of credit card laundering which have been, are, or may be used in connection with telemarketing?

d. Are there other approaches to prohibiting credit card laundering that would be more useful to consumers? To law enforcement authorities? If so, how would these alternatives affect the burden the rule places on businesses required to comply with it?

e. Are there other approaches to prohibiting credit card laundering that would reduce the burden imposed on legitimate businesses attempting to comply with the rule's requirements? If so, how would these alternatives affect the usefulness of the rule to consumers? To law enforcement authorities?

f. Will the regulations against credit card laundering interfere with current practices of legitimate businesses?

Section 310.4 Abusive Acts or Practices

21. Section 310.4(a) of the proposed rule lists specific activities that will be considered to be abusive telemarketing acts or practices and a violation of the Telemarketing Sales Rule. Is there other conduct that should be included in § 310.4(a)?

22. Section 310.4(a) of the proposed rule makes both the seller and the telemarketer equally liable for engaging in the listed abusive telemarketing acts or practices.

a. Are there parts of this Section that should apply only to the seller or to the telemarketer? If so, what specific sections should apply only to sellers? To telemarketers? Why are such limitations appropriate?

b. What are the benefits of making both sellers and telemarketers jointly liable for violations?

c. What additional costs or other burdens will the rule impose on sellers and/or telemarketers if the rule makes both liable for any violations of this Section? If the rule makes sellers and telemarketers jointly liable, will this reduce the ability of telemarketers to respond to the needs of their clients in a timely fashion?

d. If telemarketers are not jointly liable for abusive practices of the sellers for whom they work, would some telemarketers simply seek to avoid knowledge of any questionable practices of the sellers from whom they work? Are there alternative ways to keep telemarketers from taking such an approach, without imposing full liability for all of the actions taken by their clients?

23. Section 310.4(a)(1) of the proposed rule prohibits any seller or telemarketer from engaging in threats or intimidation.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. Do the terms "threats" and "intimidation" need additional definition in order to specify the type of behavior that would violate the rule, or are the terms self-explanatory?

24. Section 310.4(a)(2) prohibits a seller or telemarketer from providing for or directing a courier to pick up payment from a customer.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact and the costs and benefits, of this provision?

e. Do legitimate telemarketers use couriers to pick up payments? If so, in what circumstances? How would these businesses be affected if they could not use couriers to pick up payments?

f. Will a prohibition on courier pick-ups be effective in reducing the consumer injury that results from telemarketing fraud? How will a fraudulent telemarketer adjust his or her practices in response to this prohibition?

25. Section 310.4(a)(3) of the proposed rule prohibits requesting or receiving payment of any fee or consideration for "credit repair" goods or services until the time frame in which the seller has represented the goods or services will be provided has expired and the seller has provided documentation that the promised results have been achieved.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive credit repair services while still permitting these legitimate activities?

26. Section 310.4(a)(4) of the proposed rule prohibits requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise assist in the return of money or any other item of value to a person until three days after such money or other item is delivered to that person. This provision does not apply to a licensed attorney or licensed private investigator who has a written agreement with that person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive recovery services while still permitting these legitimate activities?

f. Is it necessary, useful, and appropriate to exempt licensed attorneys and licensed private investigators from this provision?

g. Does this prohibition impact on legitimate businesses other than licensed attorneys or licensed private investigators?

27. Section 310.4(a)(5) of the proposed rule prohibits requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. Are there any legitimate services that could not be provided, or would be more costly to provide, if this prohibition were promulgated? If such services exist, how could the rule be crafted to prohibit deceptive advance-fee loan schemes while still permitting these legitimate activities?

28. Section 310.4(a)(6) of the proposed rule prohibits failing to distribute all prizes or purported prizes offered in a telemarketing prize promotion within 18 months of the initial offer to any person.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of sellers or telemarketers regarding the time frame within which prizes are distributed in telemarketing prize promotions?

f. Is 18 months an appropriate period of time in which to require that all prizes or purported prizes be distributed?

29. Section 310.4(a)(7) of the proposed rule prohibits offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including the distribution of all prizes and premiums offered in conjunction with the initial transaction.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Is the description of the prohibited activity clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of sellers and telemarketers regarding making additional telephone solicitations before fulfilling the terms and conditions of the initial sales transaction?

f. Are there telemarketing activities for which this prohibition would not be feasible?

30. Section 310.4(a)(8) of the proposed rule prohibits identifying a person as a reference for a business venture unless certain requirements are met.

a. Is it appropriate to include this practice as an abusive act or practice?

b. Are the descriptions of the prohibited activity and of the stated requirements clear, meaningful, and appropriate?

c. Are there other approaches to prohibiting this type of activity?

d. What will be the economic impact, and the costs and benefits, of this provision?

e. What are the current practices of telemarketers regarding the use of references in the telemarketing of business ventures?

31. Section 310.4(b)(1) of the proposed rule prohibits more than one telephone solicitation in any three-month period to a person's residence to offer, offer for sale, or sell the same or similar goods or services on behalf of the same seller, without the person's prior consent. The requirement does not apply to calls made solely to verify previous sales or attempted calls which do not reach a person. This Section also would prohibit calling a person's residence when that person has stated that he or she does not wish to receive further telephone solicitations made by or on behalf of the seller.

a. Are the descriptions of the prohibited activities clear, meaningful, and appropriate?

b. Are there other approaches to prohibiting this type of activity?

c. Should these prohibitions be extended to business-to-business calls?

d. What will be the economic impact, and the costs and benefits, of prohibiting more than one telephone solicitation within any three-month period? Is a three-month period of time appropriate?

e. What will be the economic impact, and the costs and benefits, of prohibiting further calls after a person has asked not to receive telephone solicitations by or on behalf of the seller?

f. What are the current practices of sellers and telemarketers regarding the number of calls to a person's residence within a specified period of time for the same or similar goods or services on behalf of the same seller?

g. What are the current practices of sellers and telemarketers regarding identifying those persons who do not wish to receive further telephone solicitations by or on behalf of the seller?

32. Section 310.4(b)(2) of the proposed rule sets forth certain actions that a seller or telemarketer can take that would provide a defense against liability for violating §§ 310.4(b)(1).

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a. Is it appropriate to provide a defense against potential liability with regard to these activities?

b. Is it appropriate to limit this defense to one erroneous call per person called in any calendar year?

c. Are there other requirements which should be included in the list of practices which provide a defense against potential liability? Are any of the activities required by the proposed rule inappropriate?

d. Is the description of the requirements to avoid liability clear, meaningful, and appropriate?

e. Are there other approaches to providing a defense for potential liability that would be more useful?

f. What will be the economic impact, and the costs and benefits, of taking the actions set forth in § 310.4(b)(2)?

g. What are the current practices of sellers or telemarketers with respect to the activities set forth in § 310.4(b)(2)?

33. Section 310.4(c) of the proposed rule prohibits telephone solicitations to a person's residence at any time other than between the hours of 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person being called.

a. Is the description of the prohibited activity clear, meaningful, and appropriate?

b. What will be the economic impact, and the costs and benefits, of this provision?

c. What are the current practices of telemarketers regarding the times during which telephone solicitations are made to residences?

d. Should the period when telephone solicitations are permitted be narrowed or expanded? Why or why not?

e. Should this prohibition be extended to contacts between businesses?

34. Section 310.4(d)(1) of the proposed rule requires that certain oral disclosures be made at the beginning of all telephone solicitations.

a. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

b. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

c. What will be the economic impact of requiring these disclosures at the beginning of the telephone solicitation? If these disclosures are not required at the beginning of the telephone solicitation, when should they be required? What are the advantages or disadvantages of this alternative?

d. Are the disclosure requirements for those engaged in charitable solicitations necessary? Will these disclosure requirements provide useful information to consumers? If so, how will this information be useful to consumers? What impact will these disclosure requirements have on professional fundraisers? What impact will these disclosure requirements have on charities that use these professional fundraisers?

e. Do telemarketers currently make the disclosures required by § 310.4(d)(1)? Why or why not?

f. The proposed rule would prohibit the use of aliases by persons making telephone solicitations. Is this appropriate? What are the costs and benefits of prohibiting the use of aliases? Is there an alternative approach that would permit the use of aliases while still ensuring that consumers and law enforcement authorities could identify a particular caller? What are the costs and benefits of such an alternative?

35. Section 310.4(d)(2) of the proposed rule requires that certain oral disclosures be made whenever a caller verifies a telemarketing sale.

a. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

b. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

c. What will be the economic impact of requiring these disclosures in any verification call?

d. Do telemarketers currently make the disclosures required by § 310.4(d)(2)? Why or why not?

36. Sections 310.4(d)(3) and (4) of the proposed rule require additional disclosures where telemarketing includes a prize promotion or an offer of a premium.

a. Is it appropriate to classify the failure to make these additional disclosures as an abusive act or practice?

b. Are the descriptions of the required disclosures clear, meaningful, and appropriate?

c. Are there other oral disclosures that should be required? Are any of the required disclosures unnecessary?

d. What will be the economic impact of requiring these additional oral disclosures? Will these additional oral disclosures help consumers protect themselves from fraudulent or deceptive telemarketers?

e. Is it appropriate to require that these disclosures be made both orally and in writing, as is required by § 310.4(e)(1), or would it be sufficient to permit either an oral or a written disclosure alone? How would the economic costs of this Section be affected if the latter approach were adopted?

f. What are the current practices of telemarketers regarding the disclosure of the information required by §§ 310.4(d)(3) and (4)?

37. In addition to the oral disclosures required during telephone solicitations, § 310.4(e) of the proposed rule requires that written disclosures be provided in duplicate in connection with telemarketing involving a prize promotion or the offer for sale of any investment opportunity.

a. What are the advantages and disadvantages of these required disclosures? Are written disclosures appropriate or necessary?

b. Is it appropriate to include a failure to make these disclosures as an abusive act or practice?

c. Are the descriptions of the required disclosures, their timing, size, and other requirements clear, meaningful, and appropriate?

d. Are there other written disclosures that should be required? Are any of the required written disclosures unnecessary?

e. Are there any forms of prize promotions or investment opportunities for which the disclosures would not be feasible?

f. Section 310.4(e) specifies the size of the disclosures, what else can be included in the envelope with the disclosure, and, for prize promotions, what may appear on the face of the envelope. Are these specifications necessary to ensure the clarity of the disclosures and to ensure that consumers pay attention to them, or would a more general standard (e.g., clear and conspicuous) be equally or more effective? How would the costs of complying with the requirements of this Section be affected if the more general standard were employed?

g. Section 310.4(e)(2)(iii) of the proposed rule requires, for the sale of any investment opportunity involving tangible assets sold on credit or leverage, the written disclosure of the percentage of the purchaser's down payment that would be devoted to fees and costs by the end of both the first six months and the first year after the investment is made. Are these time frames useful and appropriate? Would it be better not to have a time frame in this disclosure requirement?

h. What will be the economic impact, and the costs and benefits, of requiring these disclosures? Of requiring a written acknowledgement prior to payment?

i. What are the current practices of telemarketers regarding the disclosures required in § 310.4(e)? Regarding written acknowledgement prior to payment?

j. What will be the economic impact, and the costs and benefits, of requiring that the written disclosures be provided in duplicate? Will this requirement ensure that consumers retain a copy of the required disclosure, or are there other approaches to achieve this goal? What are the costs and benefits of these alternative approaches?

k. How many telemarketing campaigns per year will be required to comply with the written disclosure requirements? How many prize promotions per year are conducted as part of telemarketing campaigns? How many people participate in the average prize promotion conducted via telemarketing?

l. How many telemarketing campaigns per year involve sales of investment goods? What particular investment goods are sold via telemarketing by legitimate sellers? On average, how many people buy investments as a result of a telemarketing campaign?

38. Section 310.4(f) of the proposed rule prohibits any person who is subject to any federal court order resolving a case in which the complaint alleged a violation of certain sections of the rule, and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person.

a. Is this prohibition appropriate? Is the description of the prohibited activities clear, meaningful, and appropriate?

b. What will be the economic impact, and the costs and benefits, of prohibiting the sale of lists by such persons?

c. What are the current practices of telemarketers regarding the sale of lists? Specifically, under what circumstances do sellers or telemarketers sell or otherwise distribute lists to others?

d. What would be the effect if this prohibition only applied for a certain period of time after the court order was entered? How would this limitation hinder law enforcement efforts? What would be an appropriate period of time following the entry of an order to prohibit list sales?

e. Should this prohibition extend to a broader class of rule violations than that currently proposed? A narrower class?

39. In addition to or in lieu of some of the provisions in § 310.4 of the proposed rule, would it be more appropriate that telemarketing sales be subject to a cooling-off rule, or a period of time in which the purchaser can cancel a transaction? How would such a rule be structured? Should all telemarketing sales be subject to such a rule? What is an appropriate "cooling-off" time period? Should payment be permitted at the time of sale, or should payment be prohibited until the end of the cooling-off period? Would it be more appropriate to impose a mandatory right to a refund in all telemarketing sales? How long of a period would be appropriate for consumers to examine a product before returning it?

Section 310.5 Recordkeeping Requirements

40. Section 310.5(a) of the proposed rule requires sellers or telemarketers to keep certain records relating to their telemarketing activities for a period of 24 months from the date the record is produced.

a. Are the specified records appropriate to verify compliance with the rule? Are any of the required records unnecessary to verify compliance with the rule? Should any additional records be required? Specifically, should sellers and telemarketers keep copies of any consumer complaints they receive? How burdensome would it be to maintain such complaints? How many consumer complaints will the average legitimate firm have involving its telemarketing sales?

b. Is the 24-month record retention period appropriate? Why or why not? If not, what period is appropriate?

c. Are there other approaches to recordkeeping requirements that would be more useful?

d. What are the current record retention policies and practices of sellers and telemarketers with respect to the records listed in § 310.5? Specifically, what records, required to be maintained by § 310.5(a), currently are maintained by sellers or telemarketers? How long are they maintained?

e. What will be the economic impact, and the costs and benefits, of these recordkeeping requirements?

f. If the records listed are not required to be retained, how would rule compliance be verified?

g. What has been the experience of State and local law enforcement agencies with respect to record retention requirements? Have such requirements been useful? If yes, how? If no, why not? What types of enforcement issues could arise if recordkeeping were not required?

h. What volume of records will have to be maintained to comply with the requirements of § 310.5(a)? In particular, how many telemarketing campaigns will the average firm conduct on an annual basis? How many different scripts are used during an average campaign? How many consumers are called during an average telemarketing campaign, and what percentage of the persons called agree to buy goods or services? How many employee records will have to be maintained by the average firm engaged in telemarketing?

41. Under Section 310.5(b) of the proposed rule, a seller and a telemarketer calling on behalf of that seller need not keep duplicative records, but can enter into a written agreement allocating recordkeeping responsibilities between themselves. Section 310.5(c) of the proposed rule sets forth the recordkeeping requirements in the event of the dissolution, termination, or change in ownership of a seller or telemarketer.

a. Are these provisions clear, meaningful, and appropriate?

b. What are the advantages or disadvantages to these provisions?

c. What are the current practices of sellers and telemarketers regarding the distribution of responsibility for maintaining records? Regarding the maintenance of records in the event of the dissolution, termination, or change in ownership of a seller or telemarketer?

Section 310.6 Exemptions

42. The proposed rule exempts the solicitation of sales by any person who engages in fewer than ten telephone sales per year.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Is the scope of the proposed rule sufficiently limited to exempt those persons who do not regularly engage in telemarketing?

c. Are there other approaches to limiting the scope of the rule that would be more useful?

d. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing acts or practices?

43. The proposed rule also exempts telephonic contacts between businesses, except such contacts involving the sale of office or cleaning supplies or certain charitable solicitations.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Are there other types of goods or services sold in business-to-business contacts which should not be exempted from the rule?

c. Are there other approaches to limiting the scope of the rule that would be more useful?

d. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing acts or practices?

44. Finally, the proposed rule exempts a telephonic contact made solely by a person when there has been no initial sales contact directed to that particular person by the seller or

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telemarketer, except for such contacts related to certain employment services, business ventures, investment opportunities, prize promotions, or credit-related programs.

a. Is this proposed exemption clear, meaningful, and appropriate?

b. Is the scope of the proposed rule sufficiently limited to exempt businesses, such as restaurants, car rental companies, travel agents, and providers of services, such as plumbers, that rely on the telephone for the taking of orders or the scheduling of appointments?

c. Is it appropriate to exclude from this exemption contacts related to employment services, business ventures, investment opportunities, prize promotions, or credit-related programs? Are there other types of goods or services sold through these types of contacts that should not be exempted from the rule?

d. Is this exemption appropriate for on-line computer information services? How would this exemption affect advertising on computer bulletin boards? Is it more appropriate to include all contacts made over computer information services in the rule?

e. Are there other approaches to limiting the scope of the rule that would be more useful?

f. Does this exemption pose problems for law enforcement efforts to stop deceptive or abusive telemarketing?

45. Are there other telemarketing activities, such as the sale of particular products or other particular kinds of telemarketing, currently covered by the proposed rule but which should be exempted? How would the exemption of these firms or activities affect the ability of law enforcement to stop deceptive or abusive telemarketing acts or practices? How would such exemptions affect consumers? How would they benefit the firms exempted from the rule's coverage? How many firms would be exempted from the coverage of the rule if any proposed change were adopted?

46. How many firms in the United States sell their products, either in whole or in part, through telemarketing, as that term is defined in the proposed rule? How many of these firms engage in telemarketing on their own behalf? How many employ others to engage in telemarketing for them? How would the number of firms subject to the rule be changed if one or more of the exemptions in § 310.6 were eliminated?

Section 310.8 Federal Preemption

47. Under § 310.8 of the proposed rule, State laws are preempted only when they are in direct conflict with any provision of the rule. Is this preemption standard clear, meaningful, and appropriate?

Other

48. Is it appropriate for the proposed rule to take effect 30 days after its date of publication in the **Federal Register**?

a. Would 30 days be sufficient time to come into compliance with the rule? Why or why not?

b. For which specific provisions of the rule would compliance be possible within 30 days, and for which specific provisions would compliance take longer? Would a staggered effective date be more appropriate?

c. If 30 days is an insufficient period of time, what time period would be sufficient?

49. One of the findings which led Congress to pass the Telemarketing Act was that telemarketing differs from other sales activities because it can be carried out across State lines without direct, face-to-face contact with the consumer. Are there new types of technology by which sales can be made without direct contact between the buyer and seller? Is the proposed rule broad enough to encompass such forms of technology? Will the proposed rule requirements be appropriate and/or feasible for such other technology?

50. What kinds of technological changes may be anticipated in the area of telemarketing? Will the proposed rule requirements be appropriate and/or feasible after these technological changes are implemented?

51. As already noted in Section F, comment is invited on the effect of the proposed rule with regard to costs, profitability, competitiveness, and employment of small business entities.

52. To the extent not otherwise addressed by the questions above, are there any regulatory alternatives that would reduce any adverse economic impact of the proposed rule, yet fully implement the Telemarketing Act?

53. What are the aggregate costs and benefits of the proposed rule? Are there any provisions in the proposed rule that are not necessary to implement the statute or that impose costs not outweighed by benefits? Who will benefit and who will bear the cost? Can we expect either the costs or benefits of the rule to dissipate over time?

54. Does the proposed rule overlap or conflict with other Federal, State, or local government laws or regulations?

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 310 to read as follows:

PART 310—TELEMARKETING SALES RULE

Sec.
310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Federal preemption.
310.9 Severability.

Authority: 15 U.S.C. 6101–6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101–6108).

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a State.

(c) *Business venture* means any written or oral business arrangement, however denominated, including but not limited to a "franchise," as that term is defined in the "Franchise Rule," 16 CFR 436.2(a), which consists of the payment of any consideration for:

(1) The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

(2) The promise of more than nominal assistance to any person or entity in connection with or incidental to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

The term "business venture" does not include any business arrangement in which persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(d) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(e) *Commission* means the Federal Trade Commission.

(f) *Credit card* means any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, charge card, or debit card, or by any other name, issued with or without a fee for the use of the cardholder in obtaining money, goods, services, or anything else of value.

(g) *Credit card sales draft* means any record or evidence of a credit card transaction, including but not limited to any paper, sales record, instrument, or other writing, or any electronic or magnetic transmission or record.

(h) *Credit card system* means any method or procedure used to generate, transmit, or process for payment a credit card sales draft.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Goods or services* means any goods or services, including but not limited to: Any investment opportunity; any business venture; any certificate or coupon which may be later exchanged for a product or service; any membership; any license right; any timeshare or campground interest; any offer to list a timeshare or campground interest for sale; any real property interest; any offer to improve a person's credit record, history, rating, or to obtain an extension of credit; any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any other goods or services; any service promoted by an employment agency; any multi-level marketing service; and any offer of advice or assistance to a person.

(k) *Investment opportunity* means anything, tangible or intangible, excluding a business venture, that is offered, offered for sale, sold, or traded (1) to be held, wholly or in part, for purposes of profit or income; or (2) based wholly or in part on representations, either express or implied, about past, present or future income, profit, or appreciation. The term "investment opportunity" includes, but is not limited to, any business arrangement where persons acquire, or purportedly acquire, government-issued licenses or interests in one or more businesses derived from the possession of such licenses.

(l) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(m) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

(n) *Merchant agreement* means a written contract between a merchant and an acquirer authorizing the merchant to honor or accept, transmit, or process credit cards in payment for goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Premium* means anything offered or given, independent of chance, to customers as an incentive to purchase goods or services offered through telemarketing.

(q) *Prize* means anything offered, or purportedly offered, to a person at no cost and with no obligation to purchase goods or services and given, or purportedly given, by chance.

(r) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(s) *Seller* means any person who, in connection with telemarketing, provides or offers to provide goods or services in exchange for consideration or a donation.

(t) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(u) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives a telephonic communication from a customer.

(v) *Telemarketing* means a plan, program, or campaign which is conducted to induce payment for goods or services by use of one or more telephones (including the use of a facsimile machine, computer modem, or any other telephonic medium) and which involves more than one interstate telephone call or connection. The term includes, but is not limited to, calls initiated by persons in response to postcards, brochures, advertisements, or any other printed, audio, video, cinematic or electronic communications by or on behalf of the seller. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call.

(w) *Telephone solicitation* means the initiation of a telephone call by a telemarketer to induce payment for goods or services.

(x) *Verifiable retail sales price* means the actual, bona fide price at which one or more retailers, in the area of the seller's principal place of business, has made a substantial number of sales, which the seller has documented.

§ 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices.

It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before payment is requested for goods or services offered, failing to disclose any of the following information in the same manner and form as the payment request:

(i) The total costs, terms, and material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services; and

(iii) All material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies, including, if applicable, a statement that no such policies exist;

(2) Misrepresenting, directly or by implication, any of the following:

(i) The total costs, terms, or material restrictions, limitations, or conditions of receiving any goods or services;

(ii) The quantity of any goods or services;

(iii) Any material aspect of the performance, efficacy, or central characteristics of any goods or services;

(iv) The duration of any offer made;

(v) The nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(vi) That any person has been selected to receive a prize;

(vii) That a premium is a prize;

(viii) The odds of winning any prize;

(ix) That a seller or telemarketer is in compliance with any Federal, State, or local law, statute, regulation, or ordinance;

(x) That compliance with any Federal, State, or local law, statute, regulation, or ordinance constitutes an endorsement or approval of the seller's or telemarketer's business or conduct;

(xi) Any affiliation, association, connection, or relationship with law

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enforcement, a public safety organization, or any Federal, State, or local government agency;

(xii) The purpose for which the seller or telemarketer will use a person's checking, savings, share, or similar account number, credit card account number, social security number, or related information;

(xiii) The nonprofit, tax-exempt, or charitable status, purpose, affiliation, or identity of the seller or telemarketer;

(xiv) A person's eligibility or likelihood to receive a tax deduction, loan, or other benefit if the person pays money to the seller or telemarketer;

(xv) The nature, terms, or existence of any prior affiliation, association, connection, or relationship with any person;

(xvi) The nature, terms, or existence of any prior purchase or agreement to purchase by any person;

(xvii) The level of risk, liquidity, markup over acquisition costs, past performance, or earnings potential of any investment opportunity;

(xviii) The market value of any investment opportunity;

(xix) The likelihood that the market value for an investment opportunity will either increase or decrease;

(xx) The seller's success in assisting persons to liquidate goods or services they purchased from the seller, or the profit derived from such liquidation;

(xxi) That goods or services can or are likely to improve a person's credit history, credit record, or credit rating, or result in a person obtaining credit;

(xxii) The eligibility of, or likelihood that, a person, regardless of that person's credit history, will obtain a loan or other credit-related service;

(xxiii) That a seller or telemarketer can recover or otherwise effect or assist in the return of money or any other item of value to a person; or

(xxiv) Any other information required to be provided under this Rule;

(3) Misrepresenting, directly or by implication, in connection with the offer, offer for sale, or sale of any business venture, any of the following:

(i) The level of earnings;

(ii) The extent or nature of the market for the goods or services to be sold;

(iii) The nature or availability of any territory;

(iv) The existence, availability, or provision of retail outlets or accounts for the sale of goods or services;

(v) The existence, availability, or provision of locations or sites for vending machines, rack displays, or any other sales display;

(vi) The nature or availability of any services offered to secure any retail outlets, accounts, sites, locations, or displays;

(vii) That any person owns or operates a business venture purchased from the seller; or

(viii) That a person can give an accurate, independent, description of his or her experience as an owner or operator of a business venture purchased from the seller;

(4) Obtaining or submitting for payment from a person's checking, savings, share, or similar account, a check, draft, or other form of negotiable paper without the person's express written authorization; or

(5) Obtaining any amount of money from a person through any means, unless such an amount is expressly authorized by the person.

(b) Assisting and facilitating. (1) It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates this Rule.

(2) Substantial assistance or support to telemarketing for purposes of § 310.3(b)(1) includes, but is not limited to, the following:

(i) Providing lists of customer contacts to a seller or telemarketer;

(ii) Receiving consideration in exchange for providing a testimonial, endorsement, certification, appraisal, or financing, or for serving as a reference, with respect to any business venture or investment opportunity offered by a seller;

(iii) Securing retail outlets or accounts for the sale of goods or services, or locations or sites for vending machines, rack displays, or any other sales displays, used in connection with any business venture;

(iv) Providing any certificate or coupon which may later be exchanged for goods or services; or

(v) Providing any script, advertising, brochure, promotional material, or direct marketing piece to be used in telemarketing.

(c) Credit card laundering. It is a deceptive telemarketing act or practice, and a violation of this Rule, for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement.

§ 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats or intimidation;

(2) Providing for or directing a courier to pick up payment from a customer;

(3) Requesting or receiving payment of any fee or consideration for goods or services represented to improve a person's credit history, credit record, or credit rating until:

(i) The term of the contract, or time frame in which the seller has represented all of the goods or services will be provided to that person, has expired; and

(ii) The seller has provided the person with documentation:

(A) From the original furnisher or provider of the information to the consumer reporting agency, confirming that the promised results have been achieved; or

(B) In the form of a consumer report from the consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule alters the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose.

(4) Requesting or receiving payment of any fee or consideration for goods or services represented to recover or otherwise assist in the return of money or any other item of value to a person until three (3) days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney or licensed private investigator pursuant to a written agreement with that person;

(5) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or any credit service when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or credit service for a person;

(6) Failing to distribute all prizes or purported prizes offered in a prize promotion, within 18 months of the initial offer to any person;

(7) Offering or selling goods or services through a telephone solicitation to a person who previously has paid the same seller for goods or services, until all terms and conditions of the initial transaction have been fulfilled, including but not limited to the distribution of all prizes or premiums offered in conjunction with the initial transaction; or

(8) Identifying a person as a reference for a business venture unless:

(i) Such person has actually purchased the business venture;

(ii) Such person has operated that business venture for a period of at least six (6) months, or the seller or telemarketer discloses the length of time the person has operated such business venture; and

(iii) Such person does not receive consideration for any statements made to prospective business venture purchasers.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Without a person's prior consent, calling that person's residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three (3) month period. This requirement does not apply to attempted calls which do not reach a person or to calls made solely to verify a previous telephone sale; or

(ii) Calling a person's residence when that person previously has stated that he or she does not wish to receive telephone solicitations made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1) once in any calendar year per person called if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1) (i) and (ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1) (i) and (ii); and

(iv) Any subsequent call is the result of administrative error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in telephone solicitations to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to fail to make any oral disclosures set forth in this section.

(1) All telephone solicitations shall begin by disclosing:

(i) The caller's true first and last name, the seller's name, and that the purpose of the call is to sell goods or services; or

(ii) If a telephone solicitation includes a charitable solicitation, the caller's true first and last name, the telemarketer's name, the telemarketer's status as a paid professional fundraiser, the seller's name, that the purpose of the call is to solicit charitable donations, and if other goods or services are offered, that the purpose of the call is also to sell goods or services.

(2) If a caller verifies a telemarketing sale, the caller verifying the sale must repeat the disclosures required under § 310.3(a)(1).

(3) Any telemarketing which includes a prize promotion must disclose, in addition to all other disclosures required under this Section, the following information:

(i) That no purchase or payment is necessary to win;

(ii) The verifiable retail sales price of each prize offered or a statement that the retail sales price of the prize offered is less than $20.00; and

(iii) The odds of winning each prize offered.

(4) Any telemarketing which includes an offer of a premium must disclose, in addition to all other disclosures required under this Section, the verifiable retail sales price of such premium or comparable item, or a statement that the retail sales price of the premium is less than $20.00.

(e) Written disclosures/acknowledgements. It is an abusive telemarketing act or practice and a violation of this Rule for a seller or telemarketer to fail to make any written disclosures set forth in this section.

(1) Prize promotions. If a seller or telemarketer conducts a prize promotion, the seller or telemarketer may not request that a person pay for goods or services, or accept a payment in any form from a person, without first providing the person with a written disclosure, in duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information shall be disclosed on one page, in not less than 10-point type (unless otherwise noted), and of a color or shade that readily contrasts with the background of the notice. This disclosure shall be sent in an envelope that contains no writing representing that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize and shall contain no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. This disclosure must contain the following information:

(i) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business;

(ii) If the seller has been in operation under any other name(s), each such name and the length of time the seller has operated under each name;

(iii) The verifiable retail sales price of each prize offered or a statement that the retail sales price of the prize offered is less than $20.00;

(iv) The odds of winning each prize offered and the number of persons who will receive each prize;

(v) The total amount and description of any shipping or handling fees or any other charges that must be paid to receive or use a prize;

(vi) A complete description of any restrictions, conditions, or limitations on eligibility to receive or use a prize, including all steps a person must take to receive the most valuable prize offered;

(vii) The statement: "No purchase or payment is necessary to win," with a description of the no-purchase entry method;

(viii) A statement that a list of winners is available and the address to which a person may write to obtain such a list;

(ix) A statement that it is a violation of this Rule for the seller to accept payment in any form unless the seller has received from the person the written disclosure acknowledgment required pursuant to § 310.4(e)(1); and

(x) The statement: "I have read and understand this disclosure," in at least 12-point bold face type immediately preceding a signature block.

(2) Investment opportunities. (i) If a seller or telemarketer offers for sale any investment opportunity, the seller or telemarketer may not request that a person pay, or accept a payment in any form from a person, for that investment opportunity without first providing the person with a written disclosure, in

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duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information shall be disclosed in not less than 10-point type (unless otherwise noted), of a color or shade that readily contrasts with the background of the notice, and segregated from all other information. This disclosure shall be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. This disclosure must contain the following information:

(A) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business;

(B) If the seller has been in operation under any other name(s), each such name and the length of time the seller has operated under each name;

(C) The complete cost to make the investment and a detailed list of all present charges and any anticipated future charges;

(D) A description of all known risks associated with the investment opportunity, including the possibility that additional payments might be required for a person purchasing the investment opportunity to retain that person's interest in the investment opportunity, to realize the projected or stated returns of the investment opportunity, to prevent total loss of the investment opportunity, or for any other reason;

(E) The length of time the seller has been in business and has offered the particular investment opportunity;

(F) A statement disclosing whether or not the seller is licensed and, if so, with whom, the type of license, and the length of time the seller has held such license;

(G) A statement that it is a violation of this Rule for the seller to effect an investment transaction unless the seller has received from the person the written disclosure acknowledgement required pursuant to § 310.4(e)(2); and

(H) The statement: "I have read and understand this disclosure," in at least 12-point bold face type immediately preceding a signature block.

(ii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) The percentage markup that the seller places on the item above its own cost in acquiring the item; and

(B) An estimate of the value that persons are likely to receive if they were to liquidate the asset through a market sale immediately following the purchase. All such estimates must be substantiated by competent and reliable evidence.

(iii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets sold on credit or leverage, the following additional information, as well as the information set forth in § 310.4(e)(2)(ii), must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first six months after the investment is made;

(B) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first year after the investment is made; and

(C) A statement that all such investment opportunities are extremely risky.

(iv) If a seller or telemarketer offers for sale any investment opportunity involving the acquisition of government-issued licenses or interests in businesses derived from the possession of such licenses, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i):

(A) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including but not limited to whether and to whom the license or licenses have been issued;

(B) The percentage of the person's payment that will be used to acquire any applicable license(s) from the licensee(s) or from any person or entity not affiliated in any way with the seller; and

(C) The percentage of the person's payment that will be used to capitalize any business derived from such license(s).

(f) Distribution of lists. It is an abusive telemarketing act or practice and a violation of this Rule for any person who is subject to any federal court order resolving a case in which the complaint alleged a violation of §§ 310.3, 310.4(a) or 310.4(e) of this Rule, and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and address of each prize recipient and the prize awarded;

(3) The name and address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, home address and telephone number, and job title(s) for all current and former employees directly involved in telephone sales; and

(5) Any written notices, disclosures, and acknowledgements required to be provided or received under this Rule.

(b) Failure to keep all records required by § 310.5(a) shall be a violation of this Rule. The seller and telemarketer calling on behalf of the seller are not required to keep duplicative records if the seller and telemarketer have entered into a written agreement allocating responsibility for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern. If the agreement is unclear as to whom must maintain any required record(s), the seller shall be responsible for keeping such record(s).

(c) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The solicitation of sales by any person who engages in fewer than ten (10) sales each year through the use of the telephone;

(b) Telephonic contacts between businesses, except such contacts involving the sale of office or cleaning supplies or the inducement of payment for any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any goods or services; and

(c) A telephonic contact made solely by a person when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer; provided, however, that this exemption does not apply to such

contacts related to employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

§ 310.7 Actions by States and private persons.

Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

§ 310.8 Federal preemption.

Nothing in this Rule shall be construed to preempt any State law that is not in direct conflict with any provision of this Rule.

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 95–3537 Filed 2–13–95; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5155–2]

Hazardous Air Pollutants: Provisions Governing Constructed, Reconstructed or Modified Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretive notice.

SUMMARY: This notice announces the EPA's revised interpretation of the Clean Air Act's (Act) requirements regarding the effective date of section 112(g) of the Act. The interpretation adopted here postpones the effective date of section 112(g) until after the EPA has promulgated a rule addressing that provision.

EFFECTIVE DATE: February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Kaufman at (919) 541–0102, Information Transfer and Program Integration Division (MD–12), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Policy

The Administrator of the EPA is today announcing the EPA's interpretation of the Act requirements regarding the effective date of section 112(g) during the period prior to promulgation of a Federal rule addressing implementation of that section. This notice effects changes from the view embodied in the preamble to the proposed rulemaking under section 112(g), **Federal Register** notices of proposed and final approvals of operating permits programs under title V of the Act, and in guidance issued by the EPA's Office of Air Quality Planning and Standards (OAQPS).

For the reasons set forth in this notice, the EPA now interprets section 112(g) not to take effect before the EPA issues notice and comment guidance addressing implementation of that section. In the interim period before this guidance is promulgated, States may, as a matter of State law, implement a program for the review of section 112(g) modifications, constructions, or reconstructions. However, the section 112(g) requirement that major source modifications, constructions, or reconstructions meet the maximum achievable control technology (MACT)—as determined on a case-by-case basis where no Federal standard for a source category has been set—will not take effect as a matter of Federal law until the section 112(g) rule is promulgated.

II. Discussion

A. Requirements of Section 112(g). Previous Policy Position

After the effective date of a title V permit program in a State, section 112(g) prohibits any person from constructing or reconstructing a major source of hazardous air pollutants (HAP), or modifying a major HAP's source, without a determination from "the Administrator (or the State)" that MACT will be met. The determination must be on a case-by-case basis by "the Administrator (or the State)" if no MACT standard has been issued. Section 112(g)(1)(B) also provides that the Administrator "shall, after notice and opportunity for comment and not later than [May 15, 1992] publish guidance with respect to implementation of this subsection." The guidance must address the relative hazard of HAP in a manner "sufficient to facilitate the offset showing" allowed in the definition of "modification."

The EPA proposed a rule implementing section 112(g) on April 1, 1994 (59 FR 15504). The EPA currently anticipates promulgation of this rule during the summer of 1995. In anticipation of the fact that many title V permit programs would be approved before the section 112(g) rule was promulgated, the OAQPS issued a guidance memorandum on June 28, 1994[1] to assist States in their implementation of section 112(g) during this transition period. The guidance states that section 112(g) takes effect upon approval of a title V program in a State regardless of whether the EPA's rule has been promulgated. The guidance also offers suggestions for how States may implement section 112(g) during the transition period.

To date, the EPA has approved several title V programs, the first of which was for the State of Washington on November 9, 1994 (59 FR 55813). EPA also has proposed approval of numerous other programs. In each of these notices, the Agency has restated its position that the requirements of section 112(g) would take effect in these States upon approval of the title V program, and has described its understanding of how section 112(g) would be implemented in that State during the transition period.

B. Reconsideration Based on Concerns Raised

States and the regulated community have voiced considerable concern with the impracticality of implementation of section 112(g) during the transition period.[2] These concerns have focused on the provisions for determining the applicability of section 112(g), and in particular on provisions addressing *de minimis* levels and offsets for modifications, as well as the definition of "major source" for constructions and

[1] Guidance for the Initial Implementation of Section 112(g), Memorandum from John S. Seitz to EPA Regional Air Division Directors, June 28, 1994.

[2] For State and regulated community comments submitted on the proposed section 112(g) rule, see Docket Number A–91–64 inserts IV-D–199, IV-D–213, IV-D–217, IV-D–219, IV-D–222, IV-D–229, IV-D–255, IV-D–295, IV-D–323, IV-D–333, IV-D–337, IV-D-PH217, IV-D–199, IV-D–213, IV-D–295, IV-D-PH221, and IV-D-PH222.

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reconstructions. States and the regulated community have noted that the applicability of the section 112(g) modification provisions have the potential to vary significantly depending on how these issues are addressed in the final section 112(g) rule, that these provisions are among the most complex and controversial in the section 112(g) proposal, and that implementation of these provisions in the absence of a promulgated rule will present considerable uncertainty and legal and financial risk for States and emissions sources.

After careful consideration, the EPA concludes that these concerns are valid and, as a policy matter, justify re-examining and modifying the Agency's interpretation concerning the effective date of section 112(g). Moreover, the EPA believes it should announce its revised view now, before there is a significant expenditure of State, source, and Agency resources and before questions of source liability are raised. In light of this conclusion, the EPA has revisited its prior legal interpretation that section 112(g) must take effect upon approval of the title V program regardless of whether a rule has been promulgated. These practical difficulties confirm for the Agency the soundness of a reading that implementation of section 112(g) is to be delayed until a rule is promulgated.

C. Analysis of Statutory Requirements for Modifications

On its face, the section 112(g) requirement for case-by-case MACT determination for new major sources, reconstructed sources, and modifications to existing major sources appears to be triggered upon the title V program effective date. However, the Act also calls for guidance "with respect to the implementation of" section 112(g) to be issued "after notice and opportunity for comment and not later than" May 15, 1992. Section 112(g)(1)(B). Section 112(g)(1)(A) provides further that a greater-than-*de minimis* increase "shall not be considered a modification" if it is offset by an equal or greater decrease in a more hazardous pollutant, "pursuant to guidance issued by the Administrator under subparagraph (B)." The guidance must specifically "facilitate the offset showing" and "include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions" of HAP.

Section 112(g) is analogous in certain important respects to statutory provisions at issue in the recent D.C. Circuit decision concerning inspection and maintenance (I/M) programs under the Act. *Natural Resources Defense Council* versus *EPA*, 22 F.3d 1125 (D.C. Cir. 1994). Section 182(c)(3) of the Act requires States to establish programs for "enhanced" vehicle inspection and maintenance programs. The statute further requires that these programs must be in compliance with regulatory "guidance" published by the Administrator, and must be effective by Nov. 15, 1992. In *NRDC* versus *EPA*, the Court held that, because the EPA was late in issuing the guidance called for in the statute, without which it was impossible as a practical matter for States to create their own programs, the statutory requirement for States to have an effective program should be delayed.

The section 112(g) modification provisions bear two important similarities to the statutory provisions at issue in *NRDC* versus *EPA*. First, the EPA was obligated to issue guidance on section 112(g) for the States well before they were expected to begin implementing section 112(g) on the effective date of title V programs. Second, that guidance is intended to be binding. This is because the guidance forms an essential link between the statutory directives triggered on the effective date of permit program approval and the ability to actually implement these directives.

Regarding offsets, section 112(g)(1)(A) provides that offsets are to be determined "pursuant to guidance issued by the Administrator * * *" It follows that the absence of guidance precludes the issuance of valid offset determinations by a reviewing agency. Moreover, the absence of guidance makes it impossible for the owner or operator of the source to submit a "showing" provided for by the last sentence "that such increase has been offset under the preceding sentence," that is, pursuant to the Administrator's guidance (emphasis added). While a State permitting authority could decide to impose offsetting provisions that are more stringent than those in the EPA guidance, the EPA believes that Congress intended the EPA guidance as integral to the implementation of this provision.

The concept of *de minimis* values is likewise integral to the definition of "modification" in section 112(a)(5). This is because a "modification" is defined in section 112(a)(5) as a "physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant * * * by more than a de minimis amount * * *." Until *de minimis* values are established in the section 112(g) rule, the definition of "modification" remains incomplete, lacking the lower boundary that the statute contemplates will be established through a notice and comment process. The statute, recognizing that establishment of *de minimis* values would require the application of scientific expertise and judgment, called for the EPA to set these values based on a notice and comment process. It would be contrary to the intent of the Act to require the section 112(g) program for review of modifications to go forward when the issue of what constitutes a "modification" cannot be resolved with the degree of certainty envisioned by the statute.

It thus appears that certain crucial elements in the section 112(g) program for dealing with modifications are missing until the EPA promulgates guidance. Under these circumstances, it is consistent with the statute, and with applicable precedent, to conclude that the obligation of States to establish the required program for review of modifications hinges on promulgation of the requisite "guidance"—which is in fact, as the statute makes clear, a binding rule—governing both offsets and *de minimis* values.

D. Analysis of Statutory Requirements for Major Source Construction and Reconstruction

The guidance required to be published under section 112(g)(1)(B) addressing implementation of "subsection" 112(g) must extend not only to modifications under section 112(g)(2)(A), but also to major source constructions and reconstructions addressed in section 112(g)(2)((B). This general directive aside, the statutory linkage between the section 112(g) guidance and implementation is not as detailed for constructions and reconstructions as it is for modification requirements. Notwithstanding this, the EPA believes that even with regard to constructions and reconstructions, guidance is necessary to resolve issues critical to the scope of applicability of these provisions, and that delaying the effectiveness of these provisions therefore represents a permissible reading of the Act.

In the April 1, 1994 proposal, the EPA solicited comment on two alternative interpretations of the phrase "construct a major source." *See* 59 FR 15517. One interpretation would treat new major-emitting equipment at existing major source plant sites as "modifications," while the other interpretation would treat such additions as "constructions." Under the "modification" alternative, such equipment could be offset by a decrease elsewhere at the plant site. Under the "construction" alternative, such equipment would be required to install new source technology and offsets would not be available

Similarly, the April 1, 1994 proposal contained two alternative definitions of major source "reconstruction." The alternative definitions are similar in that, for each, the replacement of components, where the cost of the replacement components is greater than 50 percent of the capital cost of "constructing a major source," would trigger reconstruction requirements. The alternatives differ in that one alternative treats the entire plant site as the basis for comparison, while the other alternative treats a major-emitting "emission unit" as the basis for comparison.

The ambiguities surrounding the term "construction" have potentially significant impacts on the nature and scope of the Federal program, particularly in a transition period during which the modification provisions of section 112(g) are delayed. While there are likely to be few constructions of "greenfield" facilities emitting major amounts of HAPs prior to promulgation of the section 112(g) rule, there will be a far greater number of additions of major-emitting units at existing major source plant sites. Until the issue of whether these additions constitute a "construction" is clarified through rulemaking, there will be uncertainty as to how these additions must be treated as a matter of Federal law. For similar reasons, the scope of the section 112(g) requirements for "reconstructions" will continue to be in doubt until the section 112(g) rule is promulgated.

These implementation difficulties demonstrate that, as is the case for the section 112(g) modification provisions, rulemaking is needed to provide the degree of certainty EPA believes was intended by Congress regarding the applicability of the provisions for major source construction and reconstruction. For this reason, EPA believes it would be unreasonable to require the implementation of the section 112(g) provisions relating to construction and reconstruction prior to completion of the rulemaking.

F. Additional Clarifications

The EPA's interpretation, announced today, regarding the timing for implementation of section 112(g), applies to every title V program that has been or will be approved prior to promulgation of a Federal rule implementing section 112(g). The interpretation concerns the effective date of a Federal requirement set forth in the Act. In this sense, this interpretation need not be addressed in individual title V approvals. The EPA has indicated in a number of title V approval actions that the State would use its existing SIP-approved preconstruction review program to implement section 112(g) during the transition period. However, there have been no approvals of State programs designed specifically to implement section 112(g). Therefore, there is no need to revisit any EPA rulemaking action in order to implement today's notice.

This interpretation should not require significant changes to any title V program submittal. Each State program reviewed by EPA to date has included a general commitment to implement section 112(g), in accordance with the EPA regulations and/or guidance, upon approval of their title V program. However, those commitments were fashioned broadly enough to accommodate today's announced interpretation, and so no program revisions should be necessary for those States.

The EPA is aware of concerns that States may need additional time following the promulgation of the section 112(g) rule before they can begin implementing section 112(g). The EPA believes the statute may be read to allow for an additional period of delay so that States may adopt conforming rules if it would otherwise be impossible for States to implement the program. However, the EPA has not determined whether additional time will in fact be needed. If it is decided that additional time should be provided before the provisions of section 112(g) become effective, the EPA will so provide in the final section 112(g) rulemaking.

Finally, certain States have already promulgated regulations designed to implement section 112(g). The EPA wishes to emphasize that nothing in this notice is intended to preclude or discourage States from implementing a program similar to section 112(g) as a matter of State law prior to promulgation by the EPA of the section 112(g) guidance.

Dated: February 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95-3661 Filed 2-13-95; 8:45 am]

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40 CFR Part 70

[MT-001; FRL-5155-3]

Clean Air Act Proposed Interim Approval, or in the Alternative Proposed Disapproval, of Operating Permits Program; State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of Montana for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In the alternative, EPA proposes disapproval of the Montana Operating Permits Program if the corrective actions necessary for final interim PROGRAM approval are not completed and submitted to EPA prior to the statutory deadline.

DATES: Comments on this proposed action must be received in writing by March 16, 1995.

ADDRESSES: Comments should be addressed to Laura Farris at the Region 8 address. Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, 8ART-AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202, (303) 294-7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all

major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim PROGRAM approval, and could not be renewed. During the interim approval period, the State of Montana would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Montana. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim PROGRAM approval, if the State of Montana failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Montana then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State of Montana had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In any case, if, six months after application of the first sanction, the State of Montana still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim PROGRAM approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Montana had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State of Montana, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State of Montana had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State of Montana had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Montana submitted an administratively complete title V Operating Permit Program (PROGRAM) for the State of Montana on March 29, 1994. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated May 12, 1994. The PROGRAM submittal includes a legal opinion from the Attorney General of Montana stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a permit fee demonstration.

2. Regulations and Program Implementation

The Montana PROGRAM, including the operating permit regulation (Sub-Chapter 20, §§ 16.8.2001 through 16.8.2025, inclusive, of the Administrative Rules of Montana), substantially meets the requirements of 40 CFR parts 70.2 and 70.3 with respect to applicability; parts 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; part 70.5 with respect to complete application forms and criteria which define insignificant activities; part 70.7 with respect to public participation and minor permit modifications; and part 70.11 with respect to requirements for enforcement authority.

Section 16.8.2006(3) of Sub-Chapter 20 provides, in part, that "Insignificant emission units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emission units and emissions from insignificant emission units must be included in emission inventories and are subject to assessment of permit fees." The term "insignificant emissions unit" is defined in § 16.8.2002(22)(a) of Sub-Chapter 20 as "any activity or emissions unit located within a source that (i) has a potential to emit less than 15 tons per year of any pollutant, other than a hazardous air pollutant listed pursuant to sec. 7412(b) of the FCAA or lead; (ii) has a potential to emit of less than 500 pounds per year of lead; (iii) does not have a potential to emit hazardous air pollutants listed pursuant to sec. 7412(b) in any amount; and (iv) is not regulated by an applicable requirement." The 15 ton per year threshold is considered by EPA to be a PROGRAM deficiency that must be addressed prior to full PROGRAM approval and is discussed in more detail below.

Section 70.6(a)(3)(iii)(B) of EPA's operating permit regulations provides that each permit shall require "prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken." Under § 16.8.2010(3)(c) of Sub-Chapter 20 of Montana's regulations, reporting is considered "prompt" if made at least every six months as part of the routine reporting requirements and, if applicable, in accordance with the malfunction reporting requirements under § 16.8.705 of Subchapter 7, unless otherwise specified in an applicable requirement. However, EPA's position is that reporting only once every six months is not sufficiently "prompt" to allow for protection of public health and safety and to provide a forewarning of potential problems. Usually, reporting within two to ten days should be sufficient for these purposes, although with more serious permit deviations, earlier reporting may be necessary. Only for sources with a low level of excess emissions, would it be appropriate to allow more than ten days to elapse before reporting. EPA may veto state permits that do not require appropriately prompt reporting.

Montana has the authority to issue a variance from emission limitations. The Clean Air Act of Montana, Section 75–2–212, Montana Code Annotated (MCA), provides that the State may grant a variance if "(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and (b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public." EPA regards Montana's variance provision as wholly external to the PROGRAM submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. If the State uses its variance provision strictly to establish a compliance schedule for a non-complying source that will be incorporated into a title V permit, then EPA would consider this an acceptable use of a variance provision. However, the routine process for establishing a compliance schedule is through appropriate enforcement action. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

Comments noting deficiencies in the Montana PROGRAM were sent to the State in a letter dated October 3, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to full PROGRAM approval. In a letter dated October 20, 1994 the State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval by January 20, 1995.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to final interim PROGRAM approval are as follows: (1) Section 16.8.2004(3) of Sub-Chapter 20 allows the State to exempt sources from the requirement to obtain an air quality operating permit by establishing Federally enforceable limitations which limit the source's potential to emit. However, the State's rules do not describe the process which will be used to create these limits. Prior to interim PROGRAM approval, the State must clarify how Federally enforceable limits will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create Federally enforceable limits through title V operating permits, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority. (2) Section 16.8.2008(2)(j) of Sub-Chapter 20 states that the State's decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision, and that the decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. EPA interprets this language to mean that the 30-day period for making appeals to the board would occur after EPA's 45-day review/approval period for the proposed permit. If this is the case, any permits appealed to the board that are changed must be submitted to EPA for additional review. Prior to interim PROGRAM approval, the State must clarify whether the appeal process on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then language must be added to the State's permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review. (3) Section 16.8.2008(2)(a) allows the State to terminate, or revoke and reissue, permits for continuing and substantial violations, but does not provide the full authority under section 502(b)(5)(D) of the Act which requires that state permit programs have authority to "terminate, modify, revoke and reissue permits for cause." Prior to interim PROGRAM approval, the State must clarify that it has the authority to "terminate, modify, revoke and reissue permits for cause" pursuant to section 502(b)(5)(D) of the Act. (4) Section 16.8.2021(1)(c) of Sub-Chapter 20 states that a significant modification includes "every *significant* relaxation of permit reporting or recordkeeping terms or conditions." Section 70.7(e)(4)(i) of the Federal permitting regulation requires that *any* relaxation of reporting or recordkeeping permit terms be processed as a significant modification. Prior to interim PROGRAM approval, the State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as "every relaxation of reporting or recordkeeping permit terms", and prior to full PROGRAM approval, the word "significant" must be removed from this regulatory language.

Areas in which the Montana PROGRAM is deficient and require corrective action prior to full PROGRAM approval are as follows: (1) Section 16.8.2002(1)(d) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows for the "department's discretion" in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements. Changes in monitoring or reporting requirements must be processed through either the minor permit modification procedures or the significant permit modification procedures, unless the change requires more frequent monitoring or reporting, in which case it can be processed through the administrative permit amendment procedures. This portion of Montana's definition does not meet the criteria of an administrative permit amendment listed in § 70.7(d)(1)(iii) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must delete § 16.8.2002(1)(d) of Sub-Chapter 20, which allows for the "department's discretion" in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements.

(2) Section 16.8.2002(1)(f) of Sub-Chapter 20 is part of the definition of administrative permit amendment and allows the State to determine if other types of permit changes not listed in the definition of administrative permit amendment can be incorporated into a permit through the administrative permit amendment process. Section 70.7(d)(1)(vi) of the Federal permitting

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regulation requires that such determinations be made by the Administrator of EPA and be similar to those changes listed in § 70.7(d)(1)(i)-(iv) of the Federal permitting regulation. This provision must be changed prior to full PROGRAM approval to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of administrative permit amendment can be processed through the administrative permit amendment process.

(3) The definition of "insignificant emissions unit" in § 16.8.2002(22)(a) of Sub-Chapter 20 includes an emission threshold of 15 tons per year of any pollutant other than a hazardous air pollutant. EPA does not consider this to be a reasonable level from which to exempt emissions units from title V operating permit requirements. For other State title V programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year of regulated air pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below applicability thresholds for most applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a part 70 application and are consistent with current permitting thresholds for the State under consideration here. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in this State. This request for comment is not intended to restrict the ability of the State to propose and EPA to approve other emission levels if the State demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements. Prior to full PROGRAM approval, the State must lower the emissions cap for defining "insignificant emissions units" to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant.

(4) Section 16.8.2002(24)(ii) of Sub-chapter 20 defines "non-Federally enforceable requirement" to include any term contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 that is not Federally enforceable. However, everything contained in a preconstruction permit issued under these Sub-Chapters (which currently are, or soon will be, included in the State's SIP) is considered to be Federally enforceable. Prior to full PROGRAM approval this language must be revised or deleted.

(5) Section 16.8.2008 of Sub-Chapter 20 which lists the permit content requirements does not require a severability clause consistent with § 70.6(a)(5) of the Federal permitting regulation. Prior to full PROGRAM approval, the State must include a severability clause in Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation.

(6) Section IX.C.2 of the checklist that was part of the PROGRAM submittal regarding the implementation of the enhanced monitoring requirements of section 114(a)(3) of the Act states that there are no impediments to using any monitoring data to determine compliance and for direct enforcement. However, the State has incorporated by reference the Federal new source performance standards (NSPS) and national emissions standards for HAPs (NESHAPs) in 40 CFR parts 60 and 61 into its SIP-approved regulations, which provide that compliance can be determined only by performance tests (see 40 CFR 60.11(a) and 40 CFR 61.12(a)).

Prior to full PROGRAM approval, the State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised prior to full PROGRAM approval to provide authority to use any monitoring data to determine compliance and for direct enforcement.

(7) The Attorney General's Opinion regarding the State's authority to terminate permits is unclear. MCA 75-2-211(1) and 217(1) refer to "issuance, modification, suspension, revocation, and renewal" of permits, but not "termination." Prior to full PROGRAM approval, the State must provide an Attorney General's interpretation that Montana's statutory authority extends to "terminating" permits.

(8) The PROGRAM submittal contained a letter to Douglas M. Skie dated February 28, 1994 certifying the State's authority to implement section 112 of the Act. The letter discusses the State's authority to require permit applications from sources subject to section 112(j) of the Act, but does not address the State's ability to make case-by-case MACT determinations. Prior to full PROGRAM approval, the State must certify its ability to make case-by-case MACT determinations pursuant to section 112(j) of the Act.

(9) The State's February 28, 1994 letter to EPA also discusses the State's authority to implement section 112(r) of the Act, but does not address the State's ability to require annual certifications from part 70 sources as to whether their risk management plans (RMPs) are being properly implemented, or provide a compliance schedule for sources that fail to submit the required RMP. Prior to full PROGRAM approval, the State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their RMPs and to provide a compliance schedule for sources that fail to submit the required RMP.

Refer to the Technical Support Document accompanying this rulemaking for a detailed explanation of each comment and the corrective actions required of the State.

3. Permit Fee Demonstration

The Montana PROGRAM includes a fee structure that collects in the aggregate fees that are below the presumptive minimum set in part 70. Therefore, it was necessary for the State to include a permit fee demonstration in its PROGRAM submittal to demonstrate that the title V fee structure would collect sufficient fees to cover the reasonable direct and indirect costs of developing and administering the PROGRAM. The permit fee demonstration included a workload analysis which estimated the annual cost of running the PROGRAM to be $585,130 for fiscal year 1994, increasing to $849,705 for fiscal year 1995. The fee structure for fiscal year 1994, based on the previous year's emission inventory, included a fee of $8.55 per ton for particulates, sulfur dioxide and lead; $2.14 per ton for nitrogen oxides and volatile organic compounds; with a minimum fee of $250 per source. These fees are projected to increase to $11.75 and $2.94 per ton, respectively, for fiscal year 1995, and the State anticipates adding a fee for HAPs in the future. After careful review, the State has determined that these fees would support the Montana PROGRAM costs as required by section 70.9(a) of the Federal operating permitting regulation. Upon review of the State's permit fee demonstration, the EPA noted the following concerns:

(1) Although the State has the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM, the State Legislature must appropriate the money to operate the PROGRAM every biennium. If an adequate appropriation is not made, and the State is not able to fund all the costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a Federal permitting program.

(2) EPA was unable to determine if sufficient fees will be available to fund the PROGRAM due to deficiencies in the State's Permit Fee Demonstration. The State agreed to address these deficiencies in a letter to EPA dated October 20, 1994 and submit a revised Permit Fee Demonstration to EPA prior to final interim PROGRAM approval.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Montana has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements, with the exception of the deficiencies noted above, through the title V permit. This legal authority is contained in Montana's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Montana to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities, contingent upon the State completing the above noted corrective actions related to section 112.

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

As a condition of approval of the part 70 PROGRAM, Montana is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing Federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Montana's preconstruction permitting program found in Sub-Chapter 11, §§ 16.8.1101 through 16.8.1120, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Montana has a mechanism in place to establish Federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g). Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Montana does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Montana's PROGRAM, approve the alternative instead. To the extent Montana does not have the authority to regulate HAPs through existing State law, the State may disallow new construction or modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Montana, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Montana's procedures for adoption of Federal regulations.

c. Program for Straight Delegation of Section 112 Standards

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to sources covered by the part 70 Program, as well as non-part 70 sources. Section 112(l)(5) requires that the State's PROGRAM contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Montana has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference or case-by-case rulemaking. This program applies to both existing and future standards.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to Federal radionuclide standards. Additionally, sources which are not currently part 70 sources may be defined as major sources under forthcoming Federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

d. Program for Implementing Title IV of the Act

Montana's PROGRAM contains adequate authority to issue permits which reflect the requirements of title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Montana on March 29, 1994. If promulgated, the State must complete the following corrective actions, as discussed above, to receive final interim PROGRAM approval: (1) The State must clarify how the Federally enforceable limits allowed under § 16.8.2004(3) of Sub-Chapter 20 will be created to limit a source's potential to emit, and verify its authority to create such limits. If the State plans to create these Federally enforceable limits through the title V PROGRAM, such permits must go through all of the title V public participation requirements, including affected State review, 45-day EPA review period and EPA veto authority; (2) The State must clarify whether the appeal process in § 16.8.2008(2)(j) of Sub-Chapter 20 on the State's decisions regarding permit issuance, renewal, revision, denial, revocation, reissuance, or termination occurs before or after EPA's 45-day review/approval period. If the appeal process follows EPA's review/approval period, then additional language must be added to the State's

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permitting regulation to ensure that permits that are changed after appeal to the board are submitted to EPA for additional review; (3) The State must clarify that it has the authority to "terminate, modify, revoke and reissue permits for cause" pursuant to section 502(b)(5)(D) of the Act; (4) The State must provide an Attorney General's opinion that the language in § 16.8.2021(1)(c) of Sub-Chapter 20 regarding significant modifications will be interpreted as "every relaxation of reporting or recordkeeping permit terms."

The State must complete the following corrective actions, as discussed above, to receive full PROGRAM approval: (1) The word "significant" must be removed from the language in § 16.8.2021(1)(c) of Sub-Chapter 20; (2) The State must delete § 16.8.2002(1)(d) of Sub-Chapter 20 that allows for the "department's discretion" in determining whether or not a change in monitoring or reporting requirements would be as stringent as current monitoring or reporting requirements; (3) Section 16.8.2002(1)(f) of Sub-Chapter 20 must be changed to allow the Administrator of EPA (or EPA and the State) to determine if changes not included in the definition of "administrative permit amendment" can be processed through the administrative permit amendment process; (4) The State must lower the emissions cap for defining "insignificant emissions units" in § 16.8.2002(22)(a) of Sub-Chapter 20 to assure they will not encompass activities that trigger applicable requirements. If the State defines insignificant activity levels greater than those suggested, a demonstration must be made to show why such levels are, in fact, insignificant; (5) The language in § 16.8.2002(24)(ii) of Sub-Chapter 20 which defines "non-Federally enforceable requirement" must be revised or deleted to avoid the implication that terms contained in a preconstruction permit issued under Sub-Chapters 9, 11, 17, or 18 are not Federally enforceable; (6) The State must include a severability clause in § 16.8.2008 of Sub-Chapter 20 consistent with § 70.6(a)(5) of the Federal permitting regulation; (7) The State must provide an Attorney General's opinion verifying the State's authority to use any monitoring data to determine compliance and for direct enforcement. If the State does not have such authority, then the State's SIP-approved regulations must be revised to provide authority to use any monitoring data to determine compliance and for direct enforcement; (8) The State must provide an Attorney General's interpretation that Montana's statutory authority under MCA 75–2–211(1) and 217(1) extends to "terminating" permits; (9) The State must certify its ability to make case-by-case MACT determinations for sources subject to section 112(j) of the Act; (10) The State must certify its ability to require annual certifications from part 70 sources regarding proper implementation of their section 112(r) RMPs and to provide a compliance schedule for sources that fail to submit the required RMP.

Evidence of these corrective actions for full PROGRAM approval must be submitted to EPA within 18 months of EPA's interim approval of the Montana PROGRAM.

The scope of Montana's part 70 PROGRAM that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the PROGRAM) within the State, except the following: any sources of air pollution located in "Indian Country," as defined in 18 U.S.C. 1151, including the Northern Cheyenne, Rocky Boys, Blackfeet, Crow, Flathead, Fort Belknap, and Fort Peck Indian Reservations, or any other sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the specfal programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43955, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

In proposing not to extend the scope of Montana's part 70 PROGRAM to sources located in "Indian Country," EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over such sources. Should the State of Montana choose to seek program approval within "Indian Country," it may do so without prejudice. Before EPA would approve the State's part 70 PROGRAM for any portion of "Indian Country," EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval, that such approval would constitute sound administrative practice, and that those sources are not subject to the jurisdiction of any Indian Tribe.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The EPA is proposing to disapprove in the alternative the Montana PROGRAM if the specified corrective actions for final interim PROGRAM approval are not completed and submitted to EPA prior to EPA's statutory deadline for acting on Montana's title V submittal. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Montana would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Montana to revise and resubmit the PROGRAM.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) of the Act and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the part 70 program as well as non part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 16, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 3, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–3659 Filed 2–13–95; 8:45 am]

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40 CFR Part 80

[AMS–FRL–5154–7]

RIN 2060–AD71

Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: Section 211(l) of the Clean Air Act requires the Environmental Protection Agency to establish specifications for deposit control detergent additives. On November 22, 1993, the Environmental Protection Agency issued a notice of proposed rulemaking for standards for deposit control detergent additives. On October 15, 1994, EPA promulgated a final regulation (published in the **Federal Register** on November 1, 1994 (59 FR 54678)), with an interim program for detergent additives, which will be replaced by a full certification detergent program in a subsequent action.

On December 28, 1994 (59 FR 66860), EPA issued a supplemental notice reopening the comment period for the final detergent additive certification program and requesting comment on issues related to the final detergent additive certification program. This document extends the public comment period for the supplemental notice.

DATES: The comment period for the supplemental notice will be extended from the original closing date of January 27, 1995 to February 21, 1995.

ADDRESSES: Comments on this document should be submitted in duplicate to: EPA Air Docket Section (LE–131); Attention: Public Docket No. A–91–77; Room M–1500, 401 M Street S.W., Washington, DC 20460. (Phone 202–260–7548; FAX 202–260–4000). This docket is open for public inspection from 8:00 a.m. until 4:00 p.m. except on government holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket materials.

Electronic copies of this and other documents related to this rulemaking are available through the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS).

FOR FURTHER INFORMATION CONTACT: For general information and information related to technical issues contact: Mr. Jeffery A. Herzog, U.S. EPA (RDSD–12), Regulation Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, FAX: (313) 741–7816. For information on enforcement related issues contact: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway, Suite 300, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 966–6490.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 7, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–3603 Filed 2–13–95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144 and PP Docket No. 93–253; DA 95–67]

Facilitation of Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On November 4, 1994, the Commission released a Further Notice of Proposed Rule Making, FCC 94–271, concerning establishment of a flexible regulatory scheme and competitive bidding procedures for Specialized Mobile Radio (SMR) systems in the 800 MHz band.

Based on the number of initial comments received and the variety of views expressed in this proceeding, this Order extends the deadline for reply comments from January 20 to March 1, 1995. The intended effect of this action is to provide members of the SMR industry with an opportunity to further evaluate, discuss, and attempt to reach consensus regarding the proposals presented and issues addressed both in the Further Notice of Proposed Rule Making and the initial comments submitted in this proceeding.

DATES: Reply comments must be filed on or before March 1, 1995.

ADDRESSES: Federal Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D'wana R. Speight, Legal Branch, Commercial Radio Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

Adopted: January 18, 1995
Released: January 18, 1995

By the Acting Chief, Commercial Radio Division:

1. We have received requests from the American Mobile Telecommunications Association, Inc. ("AMTA"), Personal Communications Industry Association ("PCIA"), and SMR WON for an extension of time for filing Reply Comments in response to the *Further Notice of Proposed Rule Making* on this

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proceeding.[1] AMTA's and SMR WON's motions, both filed on January 11, 1995, request that the Commission extend the deadline for filing reply comments (currently January 20, 1995) by 60 days. PCIA's motion, also filed on January 11, 1995, requests that the deadline be extended by 30 days. To date, no opposition to these requests has been filed.

2. AMTA seeks an extension in order to "facilitate continued industry efforts to resolve certain of the matters on which no consensus has yet been achieved." In its motion, SMR WON notes that additional time is necessary to "work out a consensus acceptable to all major interested parties, even though SMR WON and other trade associations held weekly meetings and conference calls throughout November and December." In addition, PCIA observes that "the number of Comments, the controversial issues discussed, and the complexity of the proceeding dictate that careful consideration be given to the Comments filed by all parties." As a result, AMTA, SMR WON and PCIA agree that an extension of time would allow interested and affected parties to submit well-reasoned options and comments on the complex issues addressed in this proceeding.

3. Based on the number of comments received and the variety of views expressed in this proceeding, it appears that an extension of the reply comment period is warranted. We agree with both AMTA and SMR WON that the public interest would be served by granting an extension so that members of the SMR industry can further evaluate, discuss, and attempt to reach consensus regarding the proposals presented and issues addressed both in the *Further Notice* and the initial comments submitted in this proceeding. Both parties indicate that discussions among industry members have been ongoing and that the members are continuing their efforts towards developing consensus positions. We believe that additional time is needed to allow this process to continue. We also agree with PCIA that additional time is needed to enable industry members to review the extensive comment record filed in this proceeding (over 80 comments have been filed) and to submit thorough and well-reasoned reply comments. We nevertheless remain concerned about avoiding a substantial delay in the resolution of issues presented in this proceeding. Thus, we believe that a 40-day extension of the reply comment period is appropriate. We emphasize that in granting this extension, we expect SMR industry representatives to use the additional time productively by continuing their efforts to find solutions to the issues presented in this proceeding that will be broadly supported by industry members.

4. Accordingly, it is hereby ordered that the Motions of Extension of Time filed by the American Mobile Telecommunications Association, the Personal Communications Industry Association, and SMR WON are hereby GRANTED to the extent stated herein.

5. It is further ordered, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, that the deadline for filing reply comments in this proceeding is extended from January 20, 1995 to March 1, 1995.

Federal Communications Commission.

Rosalind K. Allen,

Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau.

[FR Doc. 95–3575 Filed 2–13–95; 8:45 am]

BILLING CODE 6712–01–M

[1] *Further Notice of Proposed Rule Making*, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR, PR Docket No. 93–144 and PP Docket No. 93–253, FCC 94–271, adopted October 20, 1994, released November 4, 1994, 59 FR 60111, published November 22, 1994 (*Further Notice*).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC99

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Endangered Status for Four Plants and Threatened Status for Six Plants From the Foothills of the Sierra Nevada Mountains of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed determination of endangered status for four plants and threatened status for six plants from the foothills of the Sierra Nevada Mountains of California is extended. The species proposed for endangered status are *Brodiaea pallida, Calyptridium pulchellum, Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii*, while the species proposed for threatened status are *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba*, and *Verbena californica*.

DATES: The comment period, which originally closed on December 5, 1994, and was reopened and extended to February 13, 1995, now closes on June 4, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Comments and materials should be submitted to the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller (see **ADDRESSES** section) or at 916/979–2120.

SUPPLEMENTARY INFORMATION:

Background

Allium tuolumnense (Rawhide Hill onion), *Brodiaea pallida* (Chinese Camp brodiaea), *Calyptridium pulchellum* (Mariposa pussypaws), *Carpenteria californica* (carpenteria), *Clarkia springvillensis* (Springville clarkia), *Fritillaria striata* (Greenhorn adobe lily), *Lupinus citrinus* var. *deflexus* (Mariposa lupine), *Mimulus shevockii* (Kelso Creek monkeyflower), *Navarretia setiloba* (Piute Mountains navarretia), and *Verbena californica* (Red Hills vervain) are plant species found in the foothills of the Sierra Nevada Mountains of California. These ten plants are restricted to various substrate-specific habitats in Fresno, Kern, Madera, Mariposa, Tulare, and Tuolumne Counties. These plants face ongoing threats from one or more of the following: urbanization, inadequate regulatory mechanisms, random stochastic events, off-highway vehicle use, logging, overgrazing, illegal dumping, alteration of natural fire regimes, maintenance of roads and rights-of-ways, insect predation, agricultural land conversion, mining, proposed highway projects, and competition from brush species and nonnative grass species.

On October 4, 1994, the Service published a proposed rule to list *Brodiaea pallida, Calyptridium pulchellum, Lupinus citrinus* var. *deflexus*, and *Mimulus shevockii* as endangered, and list *Allium tuolumnense, Carpenteria californica, Clarkia springvillensis, Fritillaria striata, Navarretia setiloba*, and *Verbena californica* as threatened (59 FR 50540). The comment period on this proposal originally closed on December 5, 1994.

On December 29, 1994, the Service reopened and extended the public comment period until February 13, 1995, to accommodate a public hearing held on January 31, 1995, in Bakersfield, California (59 FR 67268). In response to a letter dated January 25, 1995, from Congressmen Richard Pombo and William M. Thomas of California requesting an extension in the public comment period until June and several other similar requests made in writing or given in testimony at the public hearing, the Service extends the comment period to allow for the collection of additional data during 1995 field season on the status and distribution of the proposed plants. Written comments may now be submitted until June 4, 1995, to the Service in the **ADDRESSES** section.

Author

The primary author of this notice is Jim A. Bartel, U.S. Fish and Wildlife Service, Ecological Services, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: February 8, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–3620 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register

Vol. 60, No. 30

Tuesday, February 14, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

February 9, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and a Memorandum of Understanding (MOU) dated December 31, 1994 between the Governments of the United States and India, establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU dated December 31, 1994, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 9, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguary Round Act, and the Uruguay Round Agreement on Textiles and Clothing (URATC); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and the Memorandum of Understanding (MOU) dated December 31, 1994 between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 16, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels in Group I	
218	11,111,304 square meters.
219	53,281,729 square meters.
313	29,729,737 square meters.
314	6,343,063 square meters.
315	10,653,804 square meters.
317	34,531,200 square meters.
326	7,848,000 square meters.
334/634	113,378 dozen.
335/635	504,757 dozen.
336/636	695,255 dozen.
338/339	3,400,800 dozen.
340/640	1,662,185 dozen.
341	3,650,191 dozen of which not more than 2,190,114 dozen shall be in Category 341–Y [2].
342/642	1,022,133 dozen.
345	148,544 dozen.
347/348	477,913 dozen.
351/651	216,059 dozen.
363	34,723,417 numbers.
369–D [3]	1,057,586 kilograms.
369–S [4]	576,865 kilograms.
641	1,190,025 dozen.
647/648	691,037 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [5], 666, 669, 670, and 831–859, as a group.	90,820,800 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the URATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–3625 Filed 2–13–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	Cost comparison study
Maxwell AFB, Alabama	Fuels Management.
Maxwell AFB, Alabama	Grounds Maintenance.
Maxwell AFB, Alabama	Refuse Collection.
Little Rock AFB, Arkansas.	Transient Aircraft Maintenance.
Davis Monthan AFB, Arizona.	Military Family Housing Maintenance.
Tyndall AFB, Florida	Grounds Maintenance.
Tyndall AFB, Florida	Multi-Function Study: Base Operating Support & Backshop Aircraft Maintenance.
Moody AFB, Georgia ...	Military Family Housing Maintenance.
Andersen AFB, Guam ..	Grounds Maintenance.
Andersen AFB, Guam ..	Military Family Housing Maintenance.
Andersen AFB, Guam ..	Mess Attendants.
Andersen AFB, Guam ..	Refuse Collection.
Columbus AFB, Mississippi.	Base Operating Support.
Keesler AFB, Mississippi.	Grounds Maintenance.
Nellis AFB, Nevada	Military Family Housing Maintenance.
Wright Patterson AFB, Ohio.	Audiovisual.
Altus AFB, Oklahoma ...	Aircraft Maintenance.
Tinker AFB, Oklahoma .	Grounds Maintenance.
Lackland AFB, Texas ...	Trainer Fabrication.
Laughlin AFB, Texas	Base Operating Support.
Reese AFB, Texas	Base Operating Support.
Hill AFB, Utah	Child Care Center.
Bolling AFB, Washington, DC.	Military Family Housing Maintenance.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–3654 Filed 2–13–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of the Record of Decision (ROD) for the Environmental Impact Statement (EIS) for Closure and Disposal of Sacramento Army Depot, California

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, the 1991 Defense Base Closure and Realignment Commission recommended the closure of Sacramento Army Depot and transfer of depot missions to other installations/agencies. Maintenance missions would be competed to determine location of transfer. In accordance with the Act, the Secretary of Defense must implement all recommendations for closure or realignment. The EIS focuses on the environmental and socioeconomic impacts and mitigations associated with the disposal and reuse of Sacramento Army Depot.

No long-term adverse ecological or environmental health effects are expected due to this action. The increase in population anticipated by the reuse and disposal activities is expected to have a net positive impact on the local economy. The preferred alternative, prepared with the cooperation of the local community, is not expected to significantly impact environmental resources.

DATES: Written public comments and suggestions can be submitted on or before March 16, 1995 to the address shown below.

ADDRESSES: Copies of the ROD can be obtained by writing to the United States Army Corps of Engineers, Sacramento District, ATTN: CESPK–ED–M (ISS), 1325 J Street, Sacramento, California 95814–2922.

FOR FURTHER INFORMATION CONTACT: Mr. Wandell Carlton (916) 557–7424.

Dated: February 3, 1995.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 95–3592 Filed 2–13–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearings for the Draft Environmental Impact Statement for Disposal and Reuse of Naval Hospital Long Beach, Long Beach, CA.

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for disposal and reuse of Naval Hospital Long Beach.

In accordance with legislative requirements in the 1990 Base Closure and Realignment Act (Public Law 101–510) and the results of the 1991 Defense Base Closure and Realignment process, Naval Hospital Long Beach, California was directed to be closed and made available for reuse. Navy has analyzed the environmental effects of reasonably forseeable reuse alternatives of existing buildings and for redevelopment of the site. Five alternatives for potential reuse have been identified by the City of Long Beach and through an extensive scoping process: (1) The Los Angeles County Office of Education (LACOE); (2) a Senior Health Care facility; (3) an industrial park; (4) retail use; and (5) residential use. Alternatives (1) and (2) would rehabilitate existing structures and facilities; alternatives (3) (4) and (5) would require demolition of existing structures and subsequent site redevelopment.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups. Copies of the DEIS have also been placed in local libraries. A limited number of copies are available at the address listed at the end of this notice.

No implementation of the proposed action will occur until the National Environmental Policy Act process has been completed and the Navy releases a Record of Decision.

The Department of the Navy will hold two public hearings to inform the public of the DEIS findings and to solicit comments. The first meeting will be held on Wednesday, March 1, 1995

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beginning at 7:00 PM in the Long Beach City College (Liberal Arts Campus) Auditorium. Long Beach City College is located at 4901 East Carson Street in Long Beach, California. The auditorium is located on Harvey Way between Clark and Faculty Avenues. The second meeting will be held on Thursday, March 2, 1995 beginning at 7:00 p.m. in the Lakewood Civic Center, Weingart Ballroom. The Civic Center is located at 5000 Clark Ave, Lakewood, California. Both meetings will be bilingual with a Spanish interpreter present.

The public hearings will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record and equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by 20 March 1995, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Ms. Jo Ellen Anderson (Code 232.JA), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 93132–5190, telephone (619) 532–3912.

Dated: February 9, 1995.

M.D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–3664 Filed 2–13–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 15, 1995.

ADDRESSES: Writeen comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland, Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description attachment to this notice.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: State Plan Instructions for Title I, Part A, Improving Basic Programs Operated by Local Educational Agencies
Frequency: Annually
Affected Public: State, Local or Tribal Government
Reporting Burden:
Responses: 53
Burden Hours: 25,440
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: To receive Title I, Part A funds, the SEA must develop and submit a State plan to the Department for peer review. The Department will use the information for program management and to update their plans to reflect changes in the State's programs and strategies.
Additional Information: Clearance for this information collection is requested for February 15, 1995. In order to give the States sufficient time to prepare plans/applications, the applications need to be mailed to the SEAs by mid-February. OMB approval is needed as soon as possible to allow time for revisions or reproductions.

Office of Elementary and Secondary Education

Type of Review: Expedited
Title: State Plan Instructions for Title I, Part D Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk of Dropping Out
Frequency: Annually
Affected Public: State, Local or Tribal Governments
Reporting Burden:
Responses: 52
Burden Hours: 2,080
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: To receive Title I, Part D funds, the statute requires that State agencies develop and submit State plans to the Department of Education for approval.
Additional Information: Clearance for this information collection is requested for February 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–3598 Filed 2–13–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 20, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW, room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Washington, DC 202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited
Title: Guaranty Agency Financial Projections
Frequency: Annually
Affected Public: Not-for-profit institutions; and State, Local or Tribal Government
Reporting Burden:
Responses: 45
Burden Hours: 1,350
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by guaranty agencies under the Federal Family Education Loan Program. The Department will use the information to evaluate the current and projected financial status of guaranty agencies, to make comparisons of guaranty agencies for determining a national model for guarantors and projecting the impact of changes in revenue, and to manage guaranty agency reserves.
Additional Information: Clearance for this information collection is requested for February 20, 1995. An expedited review is requested in order to obtain accurate and in-depth information regarding the financial condition of guaranty agencies while the Direct Loan Program is being implemented. To receive a copy of the instrument, please call (202) 401–2280.

[FR Doc. 94–3599 Filed 2–13–94; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 16, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW, room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 8, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for the Higher Education Collaboration Between the United States and the European Community (A Special Focus Competition of the Fund for the Improvement of Postsecondary Education)
Frequency: Annually
Affected Public: Not-for-profit institutions; State, Local or Tribal Government
Reporting Burden:
Responses: 300
Burden Hours: 6,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Higher Education Collaboration Between the United States and the European Community is an experimental program that will support new types of cooperation and

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exchange between institutions of higher education in the U.S. and counterparts in the member states of the European Community. Eligible institutions will apply for grants under this Special Focus Competition. The Department will use the information to make awards.

[FR Doc. 95–3600 Filed 2–13–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Mr. Kevin Bolin

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15623 to Mr. Kevin Bolin of EnerTech Environmental, Inc. The proposed grant will provide funding in the estimated amount of $99,995 by the Department of Energy for the purpose of saving energy through development of "Clean Energy from Municipal Solid Waste", process technology for environment-friendly utilization of Municipal Solid Waste (MSW) energy resources.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Kevin Bolin, CPA and president of EnerTech Environmental, Inc. The application is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The applicant, Mr. Kevin Bolin, has assembled a staff consisting of Michael Klosky, a chemical engineer, and Norm Dickenson, the inventor. EnerTech Environmental, Inc., will supply its resources to process MSW fuel materials, conduct data gathering combustion runs, and perform engineering computer analyses and simulations to estimate scale-up costs to demonstrate the superior efficiency and economics of this process technology. In addition they will have the assistance of the University of North Dakota's Energy and Environmental Research Center to construct and test the pilot scale system. It is expected that if the invention results in using 20 percent of the MSW projected for landfills for fuel, the electricity generated would be the equivalent of about 22 million barrels of crude oil per year. Furthermore, the process removes contaminants and is nearly pollution free. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 24 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3650 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. Jesse J. Brown

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE-FG01–95EE15598 to Dr. Jesse J. Brown of MATVA, Inc. The proposed grant will provide funding in the estimated amount of $99,606 by the Department of Energy for the purpose of saving energy through further development of the Dr. Jesse J. Brown's "Syntheses and Sintering of Fine and Ultrafine Grain NZP Ceramics" process technology for the production of thermal shock resistant ceramics similar to sodium-zirconium-phosphate materials.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Jesse J. Brown is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3652 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Dr. John V. Milewski

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15632 to Dr. John V. Milewski of Superkinetic, Inc. The proposed grant will provide funding in the estimated amount of $98,000 by the Department of Energy for the purpose of saving energy through development of Dr. Milewski's "Hafnium Carbide Single Crystal Fiber for Ceramic Cutting Tool Reinforcement" composite material technology for the production of superior metal cutting and machining tools through the use of reinforcing whiskers in the cutting component. This method is superior over currently used silicon carbide and tungsten carbide reinforcement technology in that it is applicable for machining ferrous materials and it uses plentiful raw materials with superior high temperature properties.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. John V. Milewski is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Estimates indicate a ten- to twenty-fold improvement in machining productivity can be expected from the use of this technology. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3651 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Virginia Polytechnic Institute and State University

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a financial assistance award under Grant Number DE–FG01–95EE15584 to the Virginia Polytechnic Institute, Office of Sponsored Products. The proposed grant will provide funding in the estimated amount of $99,743 by the Department of Energy for the purpose of saving energy through the invention, "Tribopolymerization as an Anti-Wear Mechanism", a method for reducing both wear and friction between ceramic-ceramic and ceramic-metal surfaces in contact under pressure.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(e)(1) that the unsolicited application for financial assistance submitted by Dr. Michael J. Furey of the Mechanical Engineering Department of the Virginia Polytechnic Institute and State University is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The method is regarded as having the potential to play the role of an enabling technology in the development of adiabatec high-temperature ceramic engines that could improve efficiency by 50%. Laboratory tests show that this novel method is more effective at diminishing wear and lubrication needs of ceramic surfaces at higher temperatures than conventional methods. Current technology methods cannot effectively lubricate ceramic materials or operate at temperatures higher than 150 °C. Specifics used in this new process have already shown effectiveness at 250 °C. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Avenue SW., Washington, D.C. 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, D.C. on January 30, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–3648 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–06–NG]

ANR Pipeline Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ANR Pipeline Company blanket authorization to import up to 350 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after January 31, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3655 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–07–NG]

1 Source Energy Services Company; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1024 on January 31, 1995, granting 1 Source Energy Services Company (1SESC) blanket authorization to import a combined total of up to 200 Bcf of natural gas, including LNG, from Canada and Mexico. In addition, 1SESC is authorized to export a combined total of up to 200 Bcf of natural gas, including LNG, to Canada and Mexico. This authorization to import and export natural gas, including LNG, from and to Canada and Mexico is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585,

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(202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on February 6, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3656 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–04–NG]

Selkirk Cogen Partners, L.P. ; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Selkirk Cogen Partners, L.P. authorization to import from and to export to Canada up to a total of 57 Bcf of natural gas. The term of the authorization is for a period of two years, beginning on the date of first import or export after January 20, 1995.

Selkirk's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., January 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3658 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 95–09–NG]

Transco Energy Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Transco Energy Marketing Company authorization to import up to 730 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after February 6, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 7, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–3657 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–524–000, et al.]

Delmarva Power & Light Co., et al.; Electric Rate and Corporate Regulation Filings

February 8, 1995.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Co.

[Docket No. ER95–524–000]

Take notice that on January 31, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed under the provision of § 205 of the Federal Power Act an eight year power supply contract (the Service Agreement) under which Delmarva will provide requirements service to four Delaware Municipal customers, Lewes, Milford, Newark, and New Castle, respectively. Delmarva states that the Service Agreement supersedes Delmarva's Rate Schedule Nos. 61, 66, 67 and 69 under which each customer previously received requirements served from Delmarva. In addition, Delmarva filed a dispatchable generation agreement between Delmarva and Lewes.

Delmarva, with the concurrence of the four Municipal customers, requests an effective date of February 1, 1995.

The Service Agreement provides for the continuation of the requirements service previously furnished the customer, but changes certain terms and conditions. The chief differences between the Service Agreement and the service currently furnished under each customers' currently effective rate schedule, are that the Service Agreement establishes a new rate for the customer which is below the level of the rate currently charged the customer and establish a base rate level for production service that is to apply when the service agreement becomes effective and provides for annual escalations in the base rate. The Service Agreement has an eight-year term. The Dispatchable Service Agreement between Delmarva and Lewes provides the terms and conditions under which Lewes will supply a portion of its own energy needs and implements Article V of the Service Agreement between Delmarva and Lewes.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER95–523–000]

Take notice that on January 30, 1995, Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO), tendered for filing an executed service agreement with the Oklahoma Municipal Power Authority for transmission service under the SPP Interpool Transmission Service Tariff. Companies request that the filing be accepted to become effective as of January 1, 1995.

A copy of the filing has been served on the Oklahoma Corporation Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Utilities Co.

[Docket No. ER95–525–000]

Take notice that on January 31, 1995, West Texas Utilities Company (WTU), submitted an executed Remote Control Area Load Agreement (the RCAL Agreement), dated January 30, 1995, between WTU and Texas Utilities Electric Company (TU Electric). WTU also submitted a service agreement, dated November 30, 1994, with Cap Rock Electric Cooperative, Inc. under its Coordination Sales Tariff.

WTU seeks an effective date for both agreements of February 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. WTU served copies of the filing on TU Electric, Cap Rock, the Public Utility Commission of Texas and all parties to this docket. A copy of the filing is also available for inspection at WTU's offices in Abilene, Texas.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER95–527–000]

Take notice that on February 1, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, a copy of the fully executed December 8, 1994, Storage and Integration Services Agreement (Services Agreement) between PacifiCorp and Public Utility District No. 1 of Clark County, Washington (Clark), a copy of the fully executed December 8, 1994, Transmission Facilities Agreement (Facilities Agreement) between PacifiCorp and Clark and a copy of the fully executed Service Agreement between PacifiCorp and Clark dated January 30, 1995, under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 3.

PacifiCorp requests that the Commission grant a waiver of prior notice pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of December 8, 1994 be assigned to the Services Agreement and the Facilities Agreement. PacifiCorp requests that the Service Agreement under the Tariff be accepted and that an effective date of February 1, 1995 be assigned.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Ocean State Power II

[Docket No. ER95–530–000]

Take notice that on February 1, 1995, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedule with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 16 to Rate Schedule FERC No. 5
Supplements No. 16 to Rate Schedule FERC No. 6
Supplements No. 15 to Rate Schedule FERC No. 7
Supplements No. 16 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on February 1, 1995, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1996. Ocean State II is filing the Supplements pursuant to Section 7.5 of each of Ocean State II's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, the Commission's Order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992) (*Ocean State II Order*), the Commission's Order in *Ocean State Power*, 63 FERC ¶ 61,072 (1993) (April 1993 Order), and the Commission's Order in *Ocean State Power*, 69 FERC ¶ 61,146 (1994) (November 1994 Order). The Supplements constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Co.

[Docket No. ER95–531–000]

Take notice that on February 21, 1995, Duquesne Light Company tendered under the Commission's Rules of Practice and Procedure (18 CFR 35.23) six (6) copies of Appendix 90CAAA to Rate Schedule FPC Nos. 8, 9 and 15. Appendix 90CAAA was tendered to ensure compliance with the Commission's Policy Statement and Interim Rate issued December 15, 1994 at Docket No. PL95–1–000, regarding ratemaking treatment of the cost of emission allowances in coordination sales.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Union Electric Co.

[Docket No. ER95–532–000]

Take notice that on February 1, 1995, Union Electric Company (Union), tendered for filing an Addendum to its coordination agreements. Union asserts that the purpose of the Addendum is to explain how the cost of emission allowances are to be calculated, under the requirements of Docket No. PL95–1–000.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Ocean State Power

[Docket No. ER95–533–000]

Take notice that on February 1, 1995, Ocean State Power (Ocean State), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 17 to Rate Schedule FERC No. 1
Supplements No. 14 to Rate Schedule FERC No. 2
Supplements No. 13 to Rate Schedule FERC No. 3
Supplements No. 15 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning on February 1, 1995, the requested effective date of the Supplements, and ending on the effective date of Ocean State's updated rate of return on equity to be filed in February of 1996. Ocean State is filing the Supplements pursuant to Section 7.5 of each of Ocean State's unit power agreements with Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively, the Commission's Order in *Ocean State Power II*, 59 FERC ¶ 61,360 (1992) (*Ocean State II Order*), the Commission's Order in *Ocean State Power*, 63 FERC ¶ 61,072 (1993) (April 1993 Order), and the Commission's Order in *Ocean State Power*, 69 FERC ¶ 61,146 (1994) (November 1994 Order). The Supplements constitute a rate increase.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. American Electric Power Service Corp.

[Docket No. ER95–534–000]

Take notice that on February 1, 1995, the American Electric Power Service Corporation (AEPSC), tendered, an initial Rate Schedule, Agreement dated January 1, 1995, between AEPSC, an agent for the AEP System Operating Companies and Citizens Lehman Power Sales (Marketer).

The Agreement provides the Marketer access to the AEP System for short-term transmission service. The parties request an effective date of January 31, 1995.

A copy of the filing was served upon the affected state regulatory commissions of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, Tennessee, and the Marketer.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

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10. Portland General Electric Co.

[Docket No. ER95–535–000]

Take notice that on February 1, 1995, Portland General Electric Company (PGE), tendered for filing a Letter Agreement Between Portland General Electric Company and the Bonneville Power Administration (BPA) changing transmission loss factors used in the Intertie Agreement, BPA Contract No. DE-MS79–87BP92340, PGE Rate Schedule FERC No. 66. PGE requests waiver of the notice requirement to allow the changes in the loss factors to become effective February 1, 1995. Copies of this filing have been served on the parties listed in the Certificate of Service attached to the filing letter.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3632 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–D

[Docket No. EC95–8–000, et al.]

Southwestern Public Service & Texas New Mexico Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Southwestern Public Service and Texas-New Mexico Power Co.

[Docket No. EC95–8–000]

Take notice that on February 1, 1995, Southwestern Public Service Company (Southwestern), and Texas-New Mexico Power Company (TNP), filed, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, a request for an order authorizing the sale to Southwestern of facilities located in TNP's Panhandle service area. The facilities include TNP's transmission and distribution systems located within Hansford, Ochiltree, and Lipscomb counties in the Texas Panhandle area.

As a result of the acquisition of facilities, Southwestern will own and operate the transmission, distribution, and other facilities currently owned and operated by TNP in the Panhandle area. The 7,967 customers that are presently served by TNP in the Panhandle area will be served by Southwestern. Southwestern and TNP state that customers in the Panhandle area will receive an immediate rate reduction.

Resolution of the municipalities of Follett, Darrouzett, Booker, Spearman, Perryton, and Higgins supporting the acquisition of facilities accompany Southwestern and TNP's filing.

Southwestern and TNP have requested that the Commission expedite consideration of their request and, if possible, approve the acquisition of facilities in 45 days.

Comment date: February 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–019]

Take notice that on January 30, 1995, the Western System Power Pool (WSSP), filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, and Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

3. Delmarva Power & Light Co.

[Docket No. ER93–96–007]

Take notice that on February 3, 1995, Delmarva Power & Light Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Heartland Energy Services, Inc.

[Docket No. ER94–108–002]

Take notice that on January 27, 1995, Heartland Energy Services, Inc. (HES), tendered for filing with the Federal Energy Regulatory Commission information relating to the above docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. CRSS Power Marketing, Inc.

[Docket No. ER94–142–004]

Take notice that on January 19, 1995, CRSS Power Marketing, Inc. (CRSS), filed certain information as required by the Commission's December 30, 1993, letter order in Docket No. ER94–142–000. Copies of CRSS's informational filing are on file with the Commission and are available for public inspection.

6. Direct Electric Inc.

[Docket No. ER94–1161–003]

Take notice that on January 19, 1995, Direct Electric Inc. (DEI) filed certain information as required by the Commission's July 18, 1994, letter order in Docket No. ER94–1161–000. Copies of DEI's informational filing are on file with the Commission and are available for public inspection.

7. Ashton Energy Corp.

[Docket No. ER94–1246–002]

Take notice that on January 23, 1995, Ashton Energy Corporation (Ashton Energy), filed certain information as required by the Commission's August 10, 1994, letter order in Docket No. ER94–1246–000. Copies of Ashton Energy's informational filing are on file with the Commission and are available for public inspection.

8. Energy Resources Marketing, Inc.

[Docket No. ER94–1580–001]

Take notice that on February 1, 1995, Energy Resource Marketing, Inc. (ERM), filed certain information as required by the Commission's September 30, 1994, letter order in Docket No. ER94–1580–000. Copies of ERM's informational filing are on file with the Commission and are available for public inspection.

9. Entergy Services, Inc. and Entergy Power, Inc.

[Docket Nos. ER95–112–001 and EL95–17–001]

Take notice that on January 25, 1995, Entergy Services, Inc. and Entergy Power, Inc. tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Co.

[Docket No. ER95–171–001]

Take notice that on January 23, 1995, Duke Power Company (Duke), tendered for filing additional information in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. KCS Energy Management Services, Inc.

[Docket No. ER95–208–000]

Take notice that on February 1, 1995, KCS Energy Management Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Power Co.

[Docket No. ER95–472–000]

Take notice that on January 25, 1995, Consumers Power Company (Consumers), tendered for filing a Service Agreement with the Michigan Power Agency (MPPA) and Wolverine Power Supply Cooperative, Inc. (Wolverine), pursuant to Consumer's Open Access Transmission Service Tariff. The filed Service Agreement extends the availability of transmission service to MPPA and Wolverine in order to facilitate operation of the Municipal Cooperative Coordinated Pool. A copy of the filing was served upon the MPPA, Wolverine, and the Michigan Public Service Commission.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Alabama Power Co.

[Docket No. ER95–526–000]

Take notice that on February 1, 1995, Alabama Power Company filed a letter agreement dated January 6, 1995, revising the Confract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Alabama Power Company. The letter agreement extends the term of the existing Contract until the effective date of new arrangements or the filing of a notice of termination, whichever occurs first.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–536–000]

Take notice that on February 1, 1995, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing an agreement with Maine Public Service Company ("MPS"), to provide for the sale of energy and capacity. For energy sold the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by overnight delivery upon MPS.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER95–537–000]

Take notice that on February 1, 1995, Entergy Services, Inc. (Entergy Services), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and NorAm Energy Services, Inc. (NES). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies' will provide NES non-firm transmission service under Entergy Services Non-Firm Transmission Service Tariff.

Comment date: February 21, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3633 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–191–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

February 7, 1995.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Co. of America

[Docket No. CP95–191–000]

Take notice that on February 1, 1995, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95–191–000 an application under Sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon facilities and construct new facilities.

Applicant requests authority for the following actions:

(1) Abandon 99.93 miles of its 24-inch Amarillo No. 1 line located in Beaver County Oklahoma, and Ochiltree, Hansford and Hutchinson Counties, Texas and abandon 2.74 miles of its 30-inch Amarillo No. 1 line located in Hutchinson County, Texas;

(2) Transfer of this abandoned pipe to applicant's affiliate MidCon Gas Products (MidCon) for use as a gathering facility;

(3) Construct and operate 17.98 miles of 30-inch pipeline loop in Hutchinson County, Texas, at an estimated cost of $10,800,000 to

Applicant also asks the Commission to specify that the abandoned pipe line will be a non-jurisdictional facility when operated as a gathering line by MidCon.

Comment date: February 28, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp.

[Docket No. CP95–195–000]

Take notice that on February 2, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP95–195–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate an upgrade of the existing facilities at the South Vancouver Meter Station located in Clark County, Washington, as requested by an existing firm transportation shipper and marketer of natural gas, IGI Resources, Inc. (IGI); all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northwest proposes to upgrade the South Vancouver Meter

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Station by replacing the existing orifice plate in the 6-inch orifice meter run with a larger capacity orifice plate. Northwest states that this change will increase the maximum design delivery capacity of the South Vancouver Meter Station from 14,167 Dths per day to approximately 16,667 Dths per day at a pressure of 400 psig. Northwest states that the South Vancouver Meter Station originally was constructed under certificate authorization in Docket No. G–1429.

Northwest states the IGI, a marketer of natural gas, has requested that Northwest expand the South Vancouver Meter Station to accommodate an additional 2,500 MMBtu per day (at 400 psig) of firm delivery capacity under an existing firm transportation service agreement dated June 29, 1990, or under any other duly authorized transportation agreement.

Northwest states that the total cost of the proposed facility upgrade at the South Vancouver Meter Station is estimated to be approximately $1,000 which will be reimbursed by IGI.

Comment date: March 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP95–196–000]

Take notice that on February 2, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed request with the Commission in Docket No. CP95–196–000 pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate additional points of delivery, authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate new facilities that would establish ten additional points of delivery to existing customers that have asked Columbia to provide firm transportation. Columbia states that the estimated cost would be approximately $150 per tap which would be treated as a O&M Expense.

Comment date: March 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3634 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93-198–004]

Alabama-Tennessee Natural Gas Co.; Proposed Change In FERC Gas Tariff

February 8, 1995.

Take notice that on February 3, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed to revise the filing previously submitted by Alabama-Tennessee on November 29 1994 in Docket No. RP93–198–003 (November 29 Filing). In particular, Alabama-Tennessee states that the instant filing is designed to reflect a dollar-for-dollar refund of $37,631.73 that Alabama-Tennessee recently received from Tennessee Gas Pipeline Company (Tennessee) relating to a Tennessee billing error.

According to Alabama-Tennessee its November 29 Filing provided for the recovery by Alabama-Tennessee of the net debit balance due and payable by shippers on Alabama-Tennessee's system under Section 33.4(f) of the General Terms and Conditions of Alabama-Tennessee's FERC Gas Tariff, Second Revised Volume No. 1, resulting from a true-up performed by Alabama-Tennessee following the elimination of its Transportation Cost Rate Adjustment. As a further result of the flow-through of the subject refund, however, those shippers which owed Alabama-Tennessee the true-up amounts shown in the November 29 Filing will now receive a credit.

Alabama-Tennessee proposes that the November 29 Filing be deemed revised by the instant filing and that it be permitted to credit the amount due each customer under this revised filing on bills Alabama-Tennessee will be rendering in March 1995, for services provided during February, 1995.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3572 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–7–003]

Mississippi River Transmission Corp.; Compliance Filing

February 8, 1995.

Take notice that on February 3, 1995, Mississippi River Transmission Corporation (MRT), submitted for filing the following tariff sheets listed below to its FERC Gas Tariff, Third Revised Volume No. 1:

	Proposed effective date
Second Substitute First Revised Sheet No. 127.	November 1, 1994.
Second Substitute First Revised Sheet No. 213.	November 1, 1994.

MRT states that the purpose of the filing is to comply with the Commission's January 19, 1995, order by revising the tariff language on Sheet Nos. 127 and 224 to conform with the tariff language originally proposed by MRT in its October 7, 1994, filing in this proceeding.

MRT states that a copy of the filing has been mailed to each of its customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3571 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–198–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

February 8, 1995.

Take notice that on February 3, 1995, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP95–198–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Northern States Power (Minnesota) (NSP–M), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to upgrade an existing town border station (Kandiyohi #1 Town Border Station) located in Kandiyohi County, Minnesota, to accommodate increased natural gas deliveries to NSP-M for commercial, industrial and residential end-use under Northern's currently effective service agreement with NSP-M. Northern estimates increased peak day and annual volumes through the upgraded town border station of 720 Mcf and 91,980 Mcf, respectively. Northern estimates a cost of upgrading the delivery point of $3,500 and indicates that the costs would be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, Northern indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without deteriment or disadvantage of Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3574 Filed 2–13–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–4–000]

Northwest Pipeline Corp.; Filing

February 8, 1995.

Take notice that on February 2, 1995, Northwest Pipeline Corporation ("Northwest"), filed a "Petition of Northwest Pipeline Corporation For Waiver of Regulations." Northwest seeks waiver of the Federal Energy Regulatory Commission's marketing affiliate regulations described under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Northwest has entered into an agreement with Williams Energy Systems company ("WES") to act as administrator of WES' "Streamline" service which facilities the engagement of buyers and sellers of natural gas at the interface between gas production areas and pipeline interconnections at the Rocky Mountain Market Center located in Opal, Wyoming. Northwest may, in the future, provide similar services for WES at other locations. The requested waiver is limited to Northwest's role, now and in the future, as administrator of this electronic gas trading service.

Northwest states that a copy of this Petition has been served to Northwest's

[1] Order 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standard of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

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jurisdictional customers and relevant State commissions by postage paid, U.S. Mail.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214 (1994)). All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95-3573 Filed 2-13-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM95-6-000]

Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Request for Comments on Alternative Pricing Methods

February 8, 1995.

The Federal Energy Regulatory Commission (Commission) requests comments on criteria to evaluate rates established through methods other than the traditional cost-of-service ratemaking method. The Commission's traditional approach to rate regulation sets an annual revenue requirement based on operating and capital costs occurring during a historical test period, adjusted for known and measurable changes expected to occur by the time suspended rates take effect. Rates are generally designed to recover the annual revenue requirement based on contract capacity entitlements and projected annual or seasonal volumes.

Recently, the Commission has received a number of requests from natural gas pipeline companies to approve rates based on various other pricing methods, some of which are cost-based, and some of which are not. For example, the Commission has approved a number of proposals for market-based rates for storage services.[1] In *Stingray Pipeline Company*,[2] the Commission approved a one-year experimental interruptible transportation rate based on costs allocated to Stingray's interruptible service, subject to a price cap. In *KN Interstate Gas Transmission Company (KN)*,[3] the Commission addressed KN's proposal to offer market-based rates and negotiated terms and conditions of service on its Buffalo Wallow System. Most recently, Florida Gas Transmission Company's section 4 filing in Docket No. RP95-103-000 included a "Market Matching Program," under which shippers would have the option of negotiating rates and terms of service different from the tariff rates and terms of service. Florida Gas also proposed an experimental inflation indexing mechanism for rate changes, using cost-of-service rates as the starting point.

The Commission is interested in developing a framework for analyzing proposals involving alternative pricing methods for natural gas pipelines. There are a number of different ratemaking methods that could be used instead of the traditional individual company embedded cost-of-service method. In addition to market-based pricing, there are a number of cost-based methods that vary from the individual company cost-of-service method traditionally used by the Commission. The Commission recognizes that it may be necessary to develop different criteria for evaluating alternative pricing proposals, depending upon the method proposed. To this end, the Commission's staff has prepared a paper, which is attached, proposing criteria for the evaluation of proposals for market-based rates. The staff paper draws from basic antitrust market power analysis, that has been used in the past by the Commission and in other contexts, to develop a proposed analytical framework to use in evaluating gas pipeline market-based rate proposals. The Commission is interested in receiving comments on all aspects of the staff paper, including the following:

1. a. Under what circumstances are market-based rates appropriate for natural gas pipelines and services regulated by the Commission?

b. Please identify and discuss any legal issues, beyond those discussed in the staff paper, that should be considered.

2. a. Are the Department of Justice/Federal Trade Commission Horizontal Merger Guidelines, from which the staff proposal is drawn, the best framework to evaluate market power in the interstate natural gas pipeline context?

b. Are there other approaches to evaluating market power that would be less burdensome?

3. a. Are the criteria proposed in the staff paper reasonable, too strenuous, or not strenuous enough?

b. Should the Commission use a different standard for different types of service, such as mainline transmission, storage, or market hub services?

4. a. Should the Commission consider treating companies with a small market share differently from larger or dominant sellers, and if so, under what circumstances?

b. How should the Commission view cases in which large sellers face large buyers (that is, where a single buyer represents a large share of a transporter's market?

c. Can a buyer's monopsony power mitigate a seller's market power, and if so, how should the Commission analyze such cases?

5. Do commenters agree or disagree with staff's analysis that capacity release does not constitute a good alternative to firm transportation?

6. What procedures should the Commission employ to evaluate market-based rate proposals; should the Commission change its current policy of using declaratory orders or ruling on *pro forma* tariff sheets?

7. Are there particular requirements the Commission could impose that would increase the availability of shippers' service alternatives and mitigate the market power of a natural gas company that would not otherwise qualify for market-based pricing?

8. Are there regulatory policies or ratemaking methods that would better serve the Commission's regulatory goals of flexible, efficient pricing in today's environment? For example, should the Commission focus on "backstop" proposals, where pipelines would be free to negotiate rates and terms of service, so long as customers could always choose service under traditional cost-of-service rates and terms of service?

In addition, the Commission also invites comments on the criteria for evaluating incentive rate proposals. While the Commission currently has a policy for evaluating cost-based incentive rate proposals, to date no natural gas company has submitted a proposal in response to the Commission's invitation to submit incentive rate proposals for an experimental period. The Commission's October 30, 1992 policy statement on incentive regulation defined the essential elements of an incentive ratemaking policy and set guidelines for incentive rate proposals.[4] The policy statement adopted two general principles: That incentive regulation should encourage efficiency, and that starting rates under incentive regulation must conform to the Commission's traditional cost-of-service ratemaking standards. The policy statement also established five regulatory standards for the evaluation of specific proposals—that incentive proposals must: (1) Be prospective, (2) be voluntary, (3) be understandable, (4) result in quantified benefits to consumers, and (5) demonstrate how they maintain or enhance incentives to improve the quality of service. The standard pertaining to the quantification of benefits requires the inclusion of an absolute upper limit on the risk to consumers, with the overall cap on incentive rate increases based on projected traditional cost-of-service rates. In view of the lack of response to the October 30, 1992 policy statement and the changes in the natural gas market that have occurred since the issuance of the policy statement (principally the implementation of Order No. 636), the Commission believes it is appropriate at this time to revisit the issue of incentive rates for pipeline services and requests comments in response to the following questions:

9. Why have there not been any incentive proposals under the policy established in Docket No. PL92-1-000?

10. a. Should the Commission change its existing standards for incentive rate proposals?

b. If so, what specific criteria should the Commission employ when evaluating incentive rates?

11. Are there models for incentive regulation that the Commission should consider, such as the California performance-based program?

12. a. What are the benefits and drawbacks of incentive rates, and the policy objectives the Commission should pursue with an incentive rate method?

b. Is incentive ratemaking appropriate for the natural gas companies regulated by the Commission?

c. Please identify and discuss any legal issues that the Commission has not yet considered with this type of rate method.

There are other pricing methods which are neither market-based nor incentive-based, such as reference pricing (in which the rate is determined by reference, e.g., to the rates of another company or the price of another product). The Commission also requests comments on criteria for evaluating such proposals:

13. What other rate methods should the Commission consider beyond the market-based and incentive-based methods covered above?

14. a. What would be the benefits and drawbacks of any such methods?

b. Please identify and discuss any particular legal or procedural issues raised by a specific method.

15. What criteria would the Commission use to evaluate such proposals?

The Commission is requesting written comments on these questions and the attached staff paper on market-based rates. The Commission requests parties to identify the numbered questions in their comments to the maximum extent possible. An original and 15 copies of written comments should be filed with the Secretary of the Commission within 60 days of the issuance of this notice, and should refer to Docket No. RM95-6-000.

By direction of the Commission.

Lois D. Cashell,

Secretary.

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Market-Based Rates for Natural Gas Companies

A Staff Paper

The Commission has been requested by various companies to approve market-based pricing for both firm and interruptible transportation, for capacity released in the secondary market, for storage and for market hub services such as the "switching" and "parking" of natural gas. Approval of any of these proposals is contingent on the Commission finding that the company in question lacks significant market power. The purpose of this paper is to propose criteria that could be used to evaluate these proposals.

In developing these criteria staff has reviewed the Commission's prior experience with market-based ratemaking for natural gas companies, oil pipelines, and public utilities. In those cases the Commission consistently used the same general framework to evaluate requests for market-based rates. In addition, the experiences in three other industries (railroads, telecommunications, and airlines) also have been reviewed to determine whether there are lessons that can be drawn. For illustrative purposes the paper applies the proposed criteria to a hypothetical case. Finally, the paper discusses the other services that may qualify for market-based rates as well as factors the Commission may want to consider in monitoring market-based rates.

I. The Applicable Legal Standards

Operating under the "just and reasonable" standard of the Natural Gas Act (NGA), the Federal Power Act (FPA), and the Interstate Commerce Act (ICA), the Commission generally authorizes rates based on the cost of service. However, as the Supreme Court has ruled on numerous occasions,[1] the just and reasonable standard does not limit the Commission to any particular ratemaking methodology; rather, the Commission has flexibility in selecting ratemaking methods.

Courts have held that non-cost factors can legitimate a departure from cost-based rates. Departures from cost-based rates have been found to be justified when: (1) The changing characteristics of the industry make advisable or necessary a new approach;[2] (2) the deviations from costs are not unreasonable or inconsistent with statutory responsibilities;[3] and (3) the regulatory scheme acts as a monitor to determine whether competition will keep prices within a zone of reasonableness or to check rates if it does not.[4] However, in ruling that rates need not be linked to costs in order to be just and reasonable, the court in *Farmers Union II* held that the Commission cannot merely assume that competition will ensure just and reasonable prices: "[m]oving from heavy to lighthanded regulation within the boundaries set by an unchanged statute," can only "be justified by a showing that under the current circumstances the goals and purposes of the statute will be accomplished through substantially less regulatory oversight."[5]

The Commission's authority to approve market-based rates under the

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[1] Avoca Natural Gas Storage, 68 FERC ¶ 61,045 (1994); Koch Gateway Pipeline Co., 66 FERC ¶ 61,385 (1994); Bay Gas Storage Company, LTD. 66 FERC ¶ 61,354 (1994); Petal Gas Storage Co., 64 FERC ¶ 61,190 (1993); Transok, Inc., 64 FERC ¶ 61,095 (1993); Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

[2] 66 FERC ¶ 61,202 (1994).

[3] 68 FERC ¶ 61,401 (1994).

[4] Policy Statement on Incentive Regulation, 61 FERC ¶ 61,168 (1992).

[1] *See* Mobil Exploration & Producing Southeast Inc. v. United Distribution Companies, 498 U.S. 211 (1991) (affirming the Commission's Authority to consolidate existing "vintage" price categories and set a single ceiling price for "old" gas); Duquesne Light Co. v. Barash, 488 U.S. 299, 310 (1989); Permian Basin Area Rate Cases, 390 U.S. 508, 517 (1979); FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944).

[2] Farmers Union Central Exchange, Inc. V. FERC, 734 F.2D 1486, 1503 (D.C. Cir. 1984) (*Farmers Union II*), *cert. denied sub nom.*, Williams Pipe Line Co. v. Farmers Union Central Exchange, Inc., 469 U.S. 1034 (1984) (citing Permian Basin Area Rate Cases, 390 U.S. 747 (1968)).

[3] *Farmers Union II* at 1502 (citing Mobil Oil Corp. v. FPC, 417 U.S. 283 (1974)).

[4] *Id.* at 1509 (*citing* Texaco, Inc. v. FPC, 474 F.2d 416, 422 (D.C. Cir. 1972), *vacated*, 417 U.S. 380 (1974) (the court of appeal's decision was vacated on other grounds)).

[5] *Id.*

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appropriate circumstances was recently and clearly affirmed in *Elizabethtown Gas Co. v. FERC.*[6] There, the court upheld the Commission's approval of a natural gas pipeline's proposal, as part of a pre-Order No. 636 restructuring settlement entered into with its customers, to sell gas for resale at market-based prices. Noting that the Supreme Court has held on numerous occasions that the just and reasonable standard does not dictate any single pricing methodology,[7] the court held that where there is a competitive market, the Commission "may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result."[8] In sustaining the Commission's approval of market pricing in this case, the court alluded to the Commission's specific finding that the pipeline's markets were "sufficiently competitive to preclude [the pipeline] from exercising significant market power in its merchant function* * *."[9] Specifically, the Commission had determined—and no record evidence to the contrary was cited on appeal—that adequate divertible supplies of gas existed to give customers options to buy from sellers other than the pipeline, thus assuring that the pipeline would have to sell its own gas at competitive prices. This finding, the court reasoned, justified the Commission's conclusion that the pipeline would be able to charge only a price that was just and reasonable within the meaning of section 4 of the NGA.

In reaching this result, the court of appeals in *Elizabethtown* distinguished the Supreme Court's decision in *FPC* v. *Texaco, Inc.* (*Texaco*),[10] in which the Supreme Court had remanded an FPC order exempting small gas producers from direct regulation of their prices. The Commission order under challenge in *Texaco* provided that small producers' prices would be subject to scrutiny only as a part of the rates of pipelines and large producers to whom they sold their gas, and then only through review of the pipeline and large producer rates. This indirect review procedure was found by the Court to be permissible under the NGA.[11] However, the order was remanded because the Commission had not clearly shown how, or even whether, the just and reasonable standard would be applied to the small producers' prices in this process.[12] The Court admonished that on remand the Commission must adhere to the principle that "the prevailing price in the market cannot be the final measure of 'just and reasonable' rates mandated by the Act."[13]

The court in *Elizabethtown* reasoned that the point of *Texaco* was only that if Congress has subjected an industry to regulation because of anticompetitive conditions in the industry, the market cannot be the "final" arbiter of the reasonableness of a price.[14] Further, the court in *Elizabethtown* stated, in the *Texaco* proceeding the Commission had not even mentioned the "just and reasonable" standard, but rather appeared to apply only the marketplace standard in determining the reasonableness of small producers' rates. In contrast, in the order challenged in *Elizabethtown*, the Commission had made it clear that it would exercise its section 5 authority if necessary to assure that a market rate is just and reasonable.

A hybrid cost/market-based pricing scheme under the FPA was approved by the court in *Environmental Action v. FERC.*[15] There the Commission had approved the application of certain regulated and non-regulated electric utilities to operate a power pool in which transactions would be priced according to the market, subject to a uniform ceiling price based upon a hypothetical average utility's costs. The court, in rejecting challenges to the pricing mechanism, emphasized the speed and administrative efficiency benefits of market-based pricing. In addition, the court also cited the Commission's expressed intention to monitor transactions and invoke its investigatory powers under section 206 (either sua sponte or upon complaint) to redress abuses. Thus, the court concluded that "[i]n sum, FERC sought to preserve the Pool's efficiencies even as it guarded against price gouging. On the facts in evidence, we find no basis for concluding it acted unreasonably."[16]

The court's treatment of market-based pricing policies implemented by other agencies offers little guidance to the Commission since much of the focus on increasing competition and reducing federal regulations has been through statutory reform, rather than through agency interpretation of existing statutory authorities. The bounds of agency authority to interpret existing statutory procedural requirements in a manner to facilitate a move to market-based pricing was addressed by the Supreme Court in *MCI Telecommunications Corporation v. American Telephone and Telegraph Company (MCI II),*[17] and by the court of appeals in *Southwestern Bell Corporation v. FCC (Southwestern Bell).*[18] However, *MCI II* and *Southwestern Bell* do not speak to the substantive validity of market-based regulation under a just and reasonable statutory standard. Judicial precedents, as explained above, uphold the use of market-based ratemaking, or some variation thereon, if the agency finds that clearly delineated non-cost factors (including the Commission's oversight and remedial authorities) are sufficient to protect the interests of consumers.

II. The Commission's Prior Experience With Market-Based Rates

A. The Gas Inventory Charge Cases

1. The Analysis Used

In 1988, the Commission began its movement towards light-handed regulation of some aspects of natural gas markets. The light-handed regulation first appeared with the implementation of market-based gas inventory charges (GIC) for pipeline sales service. In determining whether a pipeline could implement a GIC mechanism, the Commission looked at three key factors: Market definition, the availability of divertible gas supplies and measures of market power. Additionally, the Commission considered whether the transportation of alternative supplies would be on a comparable basis to the terms and conditions of transportation service provided for gas purchased under the GIC. If the supply markets were found to be competitive and transportation terms and conditions

[6] 10 F.3d 866, 870 (D.C. Cir. 1993) (Elizabethtown).

[7] The court cited Mobil Oil Exploration v. U.S., 111 S. Ct. 615, 624 (1991): "* * * the just and reasonable standard does not compel the Commission to use any single pricing formula * * *." 10 F.3d at 870.

[8] *Id.* (quoting Tejas Power Corp. v. FERC, 908 F.2d 998, 1104 (D.C. Cir. 1990).

[9] 10 F.3d at 870–71 (*quoting* Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 at 62,234.

[10] FPC v. Texaco, Inc., 417 U.S. 380, 397 (1974).

[11] 417 U.S. at 387–91

[12] The Commission stated that the just and reasonable standard would be applied, and enumerated various factors, in addition to prevailing market prices, that would be taken into account. The Court observed that these representations were relevant to the validity of the order, but ruled that because they were not made in the order itself—only on appeal—they were unavailing. 417 U.S. at 397.

[13] 417 U.S. at 397.

[14] *Elizabethtown*, 10 F.3d at 870.

[15] 996 F.2d 401 (D.C. Cir. 1993).

[16] *Id.* at 410. *See also* National Rural Telecom Assoc. V. FCC, 988 F.2d 174 (D.C. Cir. 1993) (approving flexible pricing for local exchange companies, subject to a ceiling rate).

[17] 114 S. Ct. 2223 (1994).

[18] Nos. 93–1562, 93–1568, 93–1590, and 93–1624 (D.C. Cir. Jan. 20, 1995).

comparable, pipelines were permitted to implement a GIC.[19]

In applying these standards in *El Paso*, for example, the Commission found that the relevant product market was delivered firm gas. El Paso maintained that the product market was not simply natural gas, but energy generally (*i.e.* fuel oil, coal, propane, hydroelectric power, and purchased power). However, El Paso did not provide sufficient evidence to make such a case. Thus, the Commission excluded alternative fuels from the product market.

The Commission established that "firm" gas was a dimension of the product market since El Paso was proposing to sell firm gas under its GIC. The Commission also found that "delivered" gas was a second dimension of the relevant product market because firm gas supplies that could not be transported to the city-gate were not substitutes for supplies under the GIC.

In defining El Paso's geographic market, the Commission acknowledged that it could consist of the entire United States or North America. The Commission stated, however, that the relevant geographic market was the geographic area containing those suppliers that can affect any attempt by El Paso to exercise market power. The Commission decided to take a cautious approach and considered three areas of gas supplies in order of the most narrowly defined: (1) The counties in the three basins where El Paso purchases gas that are already connected to El Paso's system, (2) all counties in the three basins, and (3) all counties from which El Paso purchased gas in 1987, including counties outside the three basins. The Commission reasoned that if El Paso lacked market power in the most narrowly defined market, then it would also lack market power in a more broadly defined market. Alternatively, even if El Paso could exercise market power in a narrowly defined market, it might be demonstrated that El Paso nonetheless lacked market power when the definition was expanded.

The Commission found that 1.07 Bcf/d was the minimum measure of the amount of divertible, or alternative, gas supplies needed to prevent El Paso from exercising market power. The 1.07 Bcf/day represented the gas dedicated to El Paso under long-term contracts, together with its affiliates' volumes. The Commission determined that sufficient divertible supplies existed in each of the defined geographic markets, at competitive prices, such that El Paso would be precluded from exercising market power. The Commission defined divertible supplies as those that were uncommitted, or committed under contract to a buyer for no longer than some short period such as one year.

The Commission then measured each seller's share of the market. To compute El Paso's market share the Commission used its sales to each customer at the time of peak usage. These market shares were then used to compute the level of concentration in the market using the Hirschman-Herfindahl Index (HHI).[20] The Commission used an initial screen of .18 to determine if the market concentration was low enough to indicate that the competitors in the market could not exercise market power.[21] The Commission found that the market concentration was low, i.e., below .18.

The Commission also found that the transportation service to be provided by El Paso for the transportation of third party supplies was comparable, with certain modifications, to the transportation provided under the GIC.

Therefore, based on this analysis, the Commission found that El Paso lacked market power and permitted the implementation of a market-based GIC.

2. The Subsequent History of the GIC Cases

On May 11, 1988, the Commission found that Transwestern lacked market power with respect to the gas commodity. Southern California Gas Company (SoCal), the only company directly affected, had sufficient alternative gas supply sources that Transwestern's prices would be constrained. Therefore, the Commission approved, with some modifications, Transwestern's proposed market-based Gas Inventory Charge (GIC).[22]

When Transwestern attempted to put its GIC charges into effect, SoCal nominated zero volumes of Transwestern's gas.[23] This is an extreme example of a lack of market power; an attempt to get a premium above the available spot price led to virtually a 100 percent reduction in Transwestern's sales.

In July, 1990, in *Tejas Power Corp.* v. *FERC,*[24] the court of appeals emphasized the importance of a market power determination in the approval of a GIC mechanism, even in the context of a settlement. In *Tejas*, the court found the Commission's reliance on the agreement of the LDCs, in approving a GIC settlement proposed by Texas Eastern Transmission Corp., was misplaced because there was no finding, supported by substantial evidence, that the pipeline lacked significant market power. All of the Commission's subsequent market-based GIC cases examined the market power of the pipeline applicant.

The series of pipeline-by-pipeline GIC cases allowing market-based pricing for the gas commodity was broadened to a generic finding in Order No. 636. The Commission allowed pipelines to have market-based pricing for unbundled gas sales upon full compliance with the final rule.[25]

In conclusion, the Commission's experience with deregulation of the gas commodity has shown that competition can restrain prices. In fact, the statutory wellhead deregulation and the Commission's open access policies have led to a current price for the gas commodity that is well below the regulated prices that prevailed several years ago.

B. The Storage Cases

1. The Analysis Used

Starting with the the Commission's order in *Richfield Gas Storage System* (Richfield)[26] in June 1992, the Commission has permitted companies to institute market-based storage rates subject to light-handed regulation when the applicants have shown that they lack significant market power. In making these market determinations, the Commission primarily looked at the defined markets, the availability of good alternatives, and measures of market power. However, the Commission also considered other factors, such as the fact that the applicants were generally new entrants, the applications were generally unopposed, and the possibility of other

[19] *See* Transwestern Pipeline Company, 43 FERC ¶ 61,240 (1988); El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989 and 54 FERC ¶ 61,316 (1991); and Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446 (1991) *aff'd Elizabethtown, supra.*

[20] An HHI is calculated by summing the squares of each seller's market share. For example, if there are two sellers of a product having shares of total sales of 75 percent and 25 percent, respectively, then the HHI will equal $(.75)^2+(.25)^2=.5625+.0625=.625$. Rounding to two significant digits, the HHI is .63.

[21] An HHI of .18 is equivalent to having 5–6 equal sized competitors in the market. In *El Paso*, the Commission indicated that it would use a case-by-case approach to determine the lack of market power. The HHI was used as an initial screening tool only. *El Paso*, 49 FERC at 61,920. *See also* Petal Gas Storage Co., 64 FERC ¶ 61,190 at 62,573 (1993) (market power determined on a case-by-case basis).

[22] Transwestern Pipeline Co., 43 FERC ¶ 61,240 (1988).

[23] Foster Natural Gas Report, No. 1741, for the week ended September 21, 1989, pp. 2–3.

[24] 908 F.2d 998 (D.C. Cir. 1990) (*Tejas*).

[25] FERC Regulations Preambles, ¶ 30,939 at 30,439.

[26] Richfield Gas Storage System, 59 FERC ¶ 61,316 (1992).

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new entrants. In applying these standards in *Koch*, for example, the Commission agreed with Koch's definition of product and geographic markets. Koch applied a narrow and broad definition to both markets. Koch argued that if it did not have market power in narrowly defined markets, it would not have market power when the definitions were broadened.

Koch defined the narrow product market as natural gas storage. The narrow geographic market was defined to contain those storage facilities in the states of Texas, Louisiana, and Mississippi that are connected to Koch.

The record showed that Koch owned only 11.9 percent of the contract storage capacity and 6.1 percent of the contract storage deliverability in the narrow market. The market concentration was computed using the Hirschman-Herfindahl Index (HHI) to be .13 for capacity and .12 for deliverability indicating a relatively low concentration in the narrow market.

The Commission also reviewed the fact that five new suppliers may enter the market by 1996 that would potentially have direct connects to Koch.

The broader product market was defined to include non-storage alternatives and storage alternatives not connected to Koch, such as, capacity release of storage in new or existing storage facilities, purchase of natural gas from producers or other marketers, selling gas to customers that have several suppliers, access to no-notice storage, to name a few. The broader geographic market was defined as alternatives outside of Texas, Louisiana and Mississippi.

The Commission gave much consideration to whether or not the alternatives identified by Koch were "good" alternatives. The Commission defined a good alternative as one that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for Koch's service. In addition, the alternative must be available in sufficient quantity to make Koch's price increase unprofitable.

The Commission found that good alternatives were available in sufficient quantities and at competitive prices. The Commission determined that unutilized storage capacity was available in large quantities in Texas, Louisiana and Mississippi during peak periods based on statistics found in EIA's Natural Gas Monthly. The Commission reasoned that if this unutilized capacity was not under contract it was available for purchase. Unutilized capacity that was committed under contract, the Commission reasoned, would be available through capacity release. Therefore, given the small size of Koch in relation to other storage providers, the abundant storage alternatives available to Koch's customers, and that the alternatives are "good" alternatives, the Commission concluded that Koch could not exercise market power in providing storage service.

2. The Experience After Approving Market-Based Rates

The market-based storage cases approved by the Commission (Richfield, Petal, Transok, Bay State, Avoca, and Koch) are quite recent. The companies in question were not subjected to any special reporting requirements. Thus, there is little information currently to evaluate these decisions. In addition, the pipelines in several of these cases executed long term contracts at the same time they were seeking market based rates. The contracts set the prices for the term of the contract. No complaints have been filed so far regarding the market based storage rates. However, one would not expect to see the complaints so early in the process. Complaints would be more likely to occur when the parties seek to negotiate new pricing provisions at the end of the contract term, if new capacity becomes available, or if the circumstances which served as the basis of the Commission's decision changed.

Earlier, however, the Commission approved an experiment wherein Koch storage was allowed to charge any price it could negotiate up to a cap which exceeded the cost-based rate. The Commission did not make a finding that Koch lacked significant market power. The results of the "Market Responsive Storage and Delivery Service" (MRSDS) experiment suggest that competition constrained Koch to prices actually below the cost-based rates. All market-based MRSDS rates charged by Koch were below the cap. During the two full heating seasons of the experiment, customers fully subscribed all the capacity allocated to MRSDS.[27]

C. The Oil Pipeline Cases

In the oil pipeline area, two companies have the authority to charge market-based rates—Buckeye Pipe Line Company, L.P. (Buckeye) and Williams Pipe Line Company (Williams). In both cases the Commission determined that the pipeline lacked market power in markets for which each was allowed to charge market-based rates.[28]

1. The Analysis Used

In conducting its analysis of whether the applicant had market power, the Commission first defined the product and geographic markets. It then evaluated whether the applicant had significant market power in those markets by first doing an initial screen for market concentration in each market (using the Herfindahl-Hirschman Index) and then considering, weighing and balancing a number of other factors, such as, the potential entry of competitors into the market, available transportation alternatives, market share, availability of excess capacity, and the presence of large buyers able to exert downward monopsonistic pressure on transportation rates.

In *Buckeye*, for example, the relevant product market was defined as the transportation of refined petroleum products. The Commission agreed with the ALJ and rejected the position advanced by ATA that the product market should be markets in which Buckeye transports only jet fuel. The Commission concluded that the ease of product substitution among pipelines is an important reason why the relevant product market should be the transportation of refined petroleum products rather than the transportation of a specific petroleum product, such as gasoline, fuel oil or jet fuel.

The relevant geographic markets were defined as the areas that include all supplies of transportation from all origins to United States Department of Commerce, Bureau of Economic Analysis Economic Areas (BEAs).[29] The Commission concluded that the evidence of record supported the findings of the ALJ that BEAs are shown to be appropriate geographic markets since they are convenient, easily identified and have been used in past studies of the oil pipeline industry.

The Commission also concluded that an analysis of market concentration using HHIs should be the first step in evaluating the likelihood of market power being exercised in a given market. Knowing the degree of concentration in a market provides useful information about where on the competitive spectrum that market lies and what other factors will have to be weighed to enable a finding as to the existence or absence of significant market power. For measuring market concentration, the Commission concluded that a proper screening device is an HHI.[30] The Commission also concluded that the use of delivery data, e.g., deliveries into each BEA, is the best method for calculating HHIs in *Buckeye*.

In *Buckeye* (Opinion No. 380), market power was defined as the ability to profitably raise the price above the competitive level for a significant time period. Significant market power was defined as the ability to control market price by sustaining at least a 15% real price increase, without losing sales, for a period of two years. The Commission further concluded that the relevant price for the purposes of making a determination of whether Buckeye can profitably increase its transportation prices above the competitive level is the delivered product price. Because shippers or customers in the destination market often have the option of switching away from purchasing transportation into the market, and, instead, purchasing the delivered product itself, suppliers of transportation must compete with suppliers of the delivered product.

There were 22 markets examined in Opinion No. 380. The Commission found that in 15 Buckeye lacked significant market power; in two Buckeye had no tariffs on file thus no finding was warranted; in one the record was insufficient and so continued regulation was necessary; and, in four, Buckeye was found to have market power.

2. The Buckeye Experiment

In Opinions No. 380 and 380–A, the Commission also authorized a three year experimental program proposed by Buckeye.[31] During this experiment, rates in each competitive market were subject to two limitations: (1) Individual rate increases could not exceed a "cap" of 15% real increase over any two-year period, and (2) individual rate increases would be allowed to become effective without suspension or investigation only if they did not exceed a "trigger" of the change in the Gross Domestic Product (GDP) deflator plus 2%. Rate decreases were presumably valid but could not result in rates below marginal costs.

In the markets the Commission did not find to be competitive, no rate could be increased by more than the volume-weighted average rate increase in the competitive markets. Conversely, every rate in the "non-competitive markets" had to reflect the volume-weighted average of rate decreases in the competitive markets.[32]

No protests of rate changes or complaints against existing rates were filed during the three year experiment. In addition, no protests were filed in opposition to Buckeye's filing to extend the experiment indefinitely.[33] Buckeye noted that this lack of opposition to its market-based program was "in sharp contrast to the years of complex and expensive rate litigation that preceded adoption of * * *" this program.[34]

No rates were changed by more than the GDP+2% trigger during the three year period. In the competitive markets, rate increases were generally well below the trigger, and in the non-competitive markets, rate increases were below the allowed volume-weighted average increase in the competitive markets. The allowable and average actual rate changes are shown in the table below.

BUCKEYE RATE CHANGES

Year (April 1 to March 31)	Cap (GDP+15%) (percent)	Trigger (GDP+2%) (percent)	Competitive markets average rate change (percent)	Non-competitive markets average rate change (percent)
90–91	19.16	6.16	3.86	3.58
91–92	22.32	5.16	3.14	2.74
92–93	20.69	4.53	1.45	0.97

Since all changes in rates are based on an index *not* reflecting the pipeline's costs, there is no danger of the raising of rates in non-competitive markets through shifting costs attributable to competitive markets.[35] This attribute is not exclusive to the Buckeye program; approaches which base rate changes on something other than the pipeline's costs would eliminate this concern about cost shifting.

Finally, under the market-based program Buckeye was able to engage in some successful marketing in very competitive situations. For example, in Indianapolis, where Buckeye held less than three percent of the market in 1990, Buckeye raised its share to 17 percent in 1993. "These increased volumes resulted from Buckeye's deep price discounts (as deep as 40%) in 1991 and later a volume incentive tariff to attract new refinery business from a recently restarted independent refinery * * *"[36] As a result of Buckeye's actions, the total size of the Indianapolis market increased and its concentration decreased.

D. The Electric Cases

Since 1986, the Commission has approved many applications from public utilities to sell electricity in wholesale transactions at negotiated market-based rates. In a recent order addressing a request for market-based rates from an electricity marketer affiliated with a traditional public

[27] Koch Gateway Pipeline Co., 66 FERC ¶61,385 at 62,301–302 (1994).

[28] Buckeye Pipe Line Company, L.P., 53 FERC ¶61,473 (1990). Williams Pipe Line Company, 69 FERC ¶61,136 (1994). Both cases were litigated and the Commission made its findings that certain markets were competitive based on the records presented at the hearings.

[29] BEAs are geographic regions surrounding major cities that are intended to represent areas of actual economic activity.

[30] The Commission used an HHI of .18 as an initial screen in Transcontinental Gas Pipe Line Corp. (*Transco*), 55 FERC ¶61,446 at 62,393 (1991).

[31] 53 FERC 61,473 and 54 FERC 61,117.

[32] On March 24, 1994, the Commission accepted a tariff that extended this experiment for an indefinite period (66 FERC ¶61,348). However, the Order stated that Buckeye was subject to the requirements of Order No. 561, the simplified and generally applicable ratemaking methodology for oil pipelines, when they take effect on January 1, 1995. On December 6, 1994, the Commission permitted Buckeye to continue its experimental program as an exception to the Commission's oil pricing policies, subject to future reevaluation. Buckeye Pipe Line Co., L.P., 69 FERC ¶61,302 (1994).

[33] 66 FERC 61,348.

[34] October 26, 1994 Buckeye Pipeline filing in Docket No. OR94–6–000, *et al.*

[35] While there was concern that Buckeye might be able top "manipulate" the program by raising prices in the competitive markets solely to raise prices in the non-competitive markets, the Commission found this to be a very unlikely event under the approved program. It nevertheless committed to monitoring for this occurrence during the experiment (53 FERC 61,473). Since the growth rate of revenues was higher in the competitive markets than in the non-competitive markets (constant annual growth rates of 6.54% versus 2.78% (66 FERC 61,348)), this demonstrates that this potential problem did not occur during the experiment.

[36] February 22, 1994 "Statement of James A. Spicer on behalf of Buckeye Pipe Line Company, L.P."

In contrast to oil pipelines, natural gas pipelines are permitted to selectively discount. Thus, gas pipelines would be able to structure such a deal under the Commission's traditional cost-based rate regulation.

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utility, the Commission summarized its position. The Commission:

> * * * allows market-based rates if the seller (and each of its affiliates) does not have, or has adequately mitigated, market power in generation and transmission and cannot erect barriers to entry. In addition, the Commission considers whether there is evidence of affiliate abuse or reciprocal dealing.[37]

Applicants for whom the Commission approved market-based rates are required to file periodic reports or studies to demonstrate their continuing lack of market power and the absence of abusive affiliate practices.

The first step in evaluating market power in generation is to identify the relevant product and geographic markets.[38] In those markets, suppliers' market shares are calculated. Low market shares demonstrate that the seller is unlikely to be able to assert market power in that market.[39] An applicant with a high market share would be subject to further scrutiny.

For example, in *Enron Power Enterprises Corporation*,[40] the Commission looked at the market for generating services bid to New England Power Company (NEPCO). In that market, Enron's market share was 4 percent. Furthermore, there were 18 projects out of 22 finalists that were not selected. Thus, NEPCO had numerous additional alternatives to choose from other than Enron. In addition, NEPCO negotiated several favorable provisions in its agreement with Enron suggesting that Enron was not a dominant supplier at the time of the solicitation.

There have been two additional factors of concern to the Commission in electricity cases: Affiliate abuse and the ability to erect barriers to entry. With respect to affiliate abuse, in recent cases, the Commission has required the affiliated parties to file separately for any sales or purchases of electric power between the marketer and its affiliated utility. In addition, the Commission requires the affiliated marketer to purchase any transmission services it may receive from its affiliated utility under a generally applicable, open-access, comparable tariff.

With respect to an applicant's ability to erect barriers to entry, only a few electric cases have raised this issue. Some affiliates of natural gas pipelines have sought market rate approval for sales of electricity.[41] However, the Commission has looked to Order No. 636 procedures mandating open access transportation on jurisdictional pipelines to preclude pipelines from erecting barriers to entry.

As a result of *Enron* and other cases, the Commission has developed considerable experience in analyzing generation markets. Recently, in *Kansas City Power and Light*,[42] the Commission concluded that new generating facilities were being built by many different parties and that there was no evidence that any party could assert market power in markets being served by new facilities. Consequently, as did the Commission in its series of GIC decisions, market power analysis is no longer required when the applicant is proposing sales from new facilities.

The Commission's treatment of transmission market power does not parallel its treatment of market power in generation. The Commission has basically equated applicant ownership or control of transmission facilities with the applicant having market power in transmission in that region.[43] The Commission therefore requires transmission owners to file generally applicable open-access, comparable transmission tariffs before the Commission will permit them to charge market rates.[44]

III. Proposed Criteria for Evaluating Market-Based Transportation Rate Proposals

A. General Framework and Criteria

To date, in all cases where the Commission has considered market-based rates, the applicant has been required to show that it lacks significant market power in the relevant markets. Market power is defined as the ability of a pipeline to profitably maintain prices above competitive levels for a significant period of time.

While the Commission has not adopted a mechanistic approach to assessing market power, it has consistently used the same general framework to evaluate requests for market-based rates.

Using this general framework, Commission staff proposes criteria to evaluate the competitiveness of transportation services. To show a lack of market power over firm transportation, for example, staff anticipates that a pipeline would need, initially, to show that its customers have four to five good alternatives to the applicant's firm transportation service. This is the equivalent of an HHI of .18, which the Commission has used as an initial screen in previous cases.[45] Staff suggests that only capacity that the applicant shows will be available on other pipelines when the applicant institutes market-based rates could be considered as an alternative.

One necessary element of showing that customers have alternatives would be the pipeline's agreement to give existing firm transportation customers the right to renominate their contract demand levels if a pipeline is allowed to charge market-based rates under existing contracts. Otherwise, the applicant clearly has market power over its customers if existing contracts prevent its customers from freely choosing alternative service or renegotiating their contracts at the time market forces are permitted to control the rates for services. This situation did not exist in the storage cases where the Commission permitted market-based pricing. In those cases, the applicants were either new entrants or existing entities offering new services. There were no existing contracts in effect that the Commission needed to address. This condition is consistent with the Commission's practice in the GIC proceedings where it allowed customers to renominate their sales contract demand levels if a pipeline instituted a GIC.

The framework proposed would be the same for all types of services. It consists of three major steps:

1. *Define Relevant Markets*
   a. Product market: identify good alternatives to the applicant's product; and
   b. Geographic market: identify sellers of good alternatives.
2. *Measure Firm Size and Market Concentration*
   a. Measure the size of the market, calculate each seller's market share, and evaluate applicant's market share;
   b. Estimate market concentration using the Herfindahl-Hirschman Index (HHI); and
   c. Evaluate market concentration by using an initial HHI screen of 0.18; a finding in that range is equivalent to finding that customers have at least four or five equal-sized alternatives to the applicant's service.
3. *Evaluate Other Factors*
   a. If the applicant's market share is large or the market concentration is high (*i.e.*, HHI exceeds 0.18), examine other factors that might prevent or limit the exercise of market power;
   b. These other factors might include ease of entry, excess capacity held by competing sellers, and buyer power.

Each of these steps is discussed further below. In section B of this part is an example showing the application of this analysis to a hypothetical interstate pipeline in a market supplied by a number of pipelines.

There are some services that are more likely to pass these criteria than others. These are discussed more fully in section IV.C. below.[46] For example, IT and hub services have different characteristics than firm transportation and might more easily satisfy these criteria. If the capacity release program is functioning well, IT service may compete with capacity release offered by all of the pipeline's customers in the relevant zones. Capacity release may be a good alternative for IT service. There are, by definition, several pipelines at each market hub.[47] Each of the pipelines at the hub may be able to offer the same hub services as good alternatives to each other.

As a practical matter, it may well be difficult for long-term firm transportation to qualify under this framework. The nature of the transportation grid ensures that pipelines typically face few direct competitors in delivering gas from one point to another. In addition, given the long-term contracting for firm transportation service that exists, staff believes it may be difficult for pipelines to show that customers have the ability to freely move to alternative long-term transportation. For example, if a pipeline that proposes market-based rates for firm transportation has existing long-term contracts for that service, the pipeline would need to allow its customers to terminate their contracts to freely move to alternative services.

1. Market Definition

Market definition identifies the specific products or services and the suppliers of those products or services that provide good alternatives to the applicant's product or service. In this market staff would test the applicant's ability to exercise market power. Naturally, the more narrowly the market is defined, the harder it is to show a lack of market power.

The Commission's order approving market-based storage rates for Koch Gateway, defined good alternatives as follows:

> A good alternative is an alternative that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for Koch Gateway's service.[48]

a. The Product Market

The applicant's service together with other services that are good alternatives constitute the relevant product market. The applicant must fully, and specifically, define the product market. For example, the applicant must be specific in defining whether the product market consists of firm transportation only, or if the product market consists of off-peak interruptible transportation service only, etc. The applicant must also be responsible for developing and justifying any substitutes for the relevant product that can be considered competitive alternatives, *e.g.*, storage delivery services, gathering services, etc. For example, pipelines might suggest numerous alternatives to FT in their applications: IT, storage services, residual fuel oil, etc.

It is likely that applicants will argue that the market should be defined broadly. Given the natural monopoly features of many transportation services, staff suggests that the Commission take a more conservative approach and define the product market narrowly as only firm transportation. For purposes of defining relevant gas transportation markets, staff focuses here on the pipeline customers' peak.[49]

i. Timeliness

Generally, antitrust authorities have used one year as the time period in which to test whether a product can become a substitute. This is probably not appropriate for long-term firm transportation because capacity on competitors would typically need to be available simultaneously to offer a viable alternative to customers. If the pipeline applicant relies on the existence of capacity that will not be available immediately, it would also need to show that its customers would not be committed to long term contracts on its system under the operation of the right of first refusal rules, so that the alternative would not be available.

ii. Price

Along with showing that alternative capacity will be available in a reasonable time frame, the applicant must demonstrate that the price for the available capacity is low enough to effectively restrain the applicant from increasing prices. In prior cases, the Commission has defined such a threshold price level as being at or below the applicant's *approved* maximum cost-based rate plus 15%.[50]

The regulated price has been used as the prevailing price—a proxy for the competitive price. This is necessary because almost all prices for transportation are regulated and a competitive price level would be at best a guess. However, the use of prevailing prices presents analytic problems. For example, three pipelines that follow parallel courses may have radically different rates because of different historical costs, despite the fact that in a competitive market they would offer almost identical services at almost identical prices. Which of the alternative pipelines' prices should be used as the "prevailing" price? This question would have to be addressed in deciding whether the prices of alternatives are appropriate references.

iii. Quality

A good alternative must provide service in which the quality is at least as high as that of the service provided by the applicant. In order to make this showing the applicant must first be required to describe its own services. Then, the applicant must demonstrate that any available third party capacity must be comparable in service to the transportation service provided by the applicant.

Staff believes that with Order Nos. 436 and 636, all interstate pipelines currently provide operationally comparable firm transportation (FT) service.

However, even if a customer can find available capacity on an alternative pipeline, the overall package of services available may not be comparable to that it currently receives from the applicant. For instance, no-notice service may not be available from other pipelines (though a similar service might be available from third parties). Under Order No. 636 interstate pipelines

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[37] Heartland Energy Services, 69 FERC ¶ 61,223 (1994).

[38] *See, e.g.*, Kansas City Power & Light, 67 FERC ¶ 61,183 (1994).

[39] In PSI, 51 FERC ¶ 61,367 (1990), *order on reh'g* 52 FERC ¶61,963 (1990), the Commission determined that a seller with a market share of less than 20 percent did not dominate the market.

[40] 52 FERC ¶ 61,193 at 61,708–61,709 (1990).

[41] *See, e.g.*, Hartwell, 60 FERC ¶ 61,143 (1992).

[42] 67 FERC ¶ 61,183 (1994).

[43] *See* Enron Power Marketing, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244.

[44] The current policy was announced in Hermiston Generating, 69 FERC ¶ 61,035 (1994).

[45] *E.g.*, *Transco*, 55 FERC at 62,393.

[46] This paper does not attempt to analyze the capacity release market or IT service in any detail but the same general framework would apply to these.

[47] *See* "Importance of Market Centers," Office of Economic Policy, FERC (Washington, D.C.), August 21, 1992. Some pipelines have defined market hubs differently.

[48] *Koch Gateway*, 66 FERC at 62,299.

[49] During the winter peak period we would expect that excess capacity would be at a minimum and that customers' alternatives would be fewer than in off-peak periods.

[50] In Buckeye Pipe Line Company, L.P., Opinion No. 360, the Commission held that a 15 percent increase was an appropriate level to measure market power. 53 FERC 61,473 at 62,681 (1990), *order on reh'g*, Opinion No. 360–A, 55 FERC ¶ 61,084 (1991). However, in Williams Pipe Line Co., Opinion No. 391, the Commission declined to adopt a specific rate increase as a litmus test for market power. 68 FERC ¶ 61,136 at 61,657. In Koch Gateway Pipeline Company, the Commission suggested that potential alternatives would include services that though presently not used, would be economic if prevailing prices were to rise by a modest amount, e.g., five to 15 percent. 66 FERC ¶ 61,385.

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which offered no-notice sales service prior to restructuring were required to offer no-notice transportation service to their existing sales customers at the time of unbundling. Pipelines had the option of making no-notice service available to non-sales customers. Thus, while many interstate pipelines currently provide no-notice transportation service, they do not and are not required to offer such service to new customers. Thus, comparable no-notice service probably is not available on other pipelines.

Also, applicants may wish to demonstrate that intrastate pipelines offer comparable firm transportation service. Transportation services offered by intrastate pipelines under section 311 of the NGPA are also subject to the same open-access and non-discriminatory access standards as interstate pipelines are under Order No. 436. Therefore, to the extent that intrastate pipelines offer firm transportation service, Staff believes that such service would be offered under terms and conditions that are substantially comparable to the firm transportation services offered by open-access interstate pipelines. However, intrastate pipelines are not required to offer firm transportation services and currently only a few intrastate pipelines offer firm transportation. Thus, firm transportation services may not be available on intrastate pipelines.

Applicants wishing to make a showing that interruptible transportation services make good alternatives to the applicant's firm services would have to demonstrate that an adequate amount of capacity is unsubscribed during peak periods so that the quality of the IT service would be comparable to that of the applicant's FT service.

b. The Geographic Market

In addition, in defining the market, one must identify all the sellers of the product or service. The collection of alternative sellers and the applicant constitutes the relevant geographic market. Specifying the relevant product and geographic market tells us what alternatives the customer has if it attempts to avoid a price increase imposed by a seller.

Geographic market definition is particularly important in transportation markets. Gas pipelines can transport gas out of a producing or origin region. They also deliver gas into a consuming or destination region.

The applicant must specify both the origin and destination markets for its FT service. Only in that way can the applicant identify good alternatives to the pipeline's service.

Staff proposes a two-step process of defining the geographic market. First, the applicant would identify those alternative sellers who offer service between the same origin and destination markets. Second, the applicant would identify those competitors that provide service either out of the origin market or into the destination market. This two-step process generally follows the analytic approach developed in the *Report of Commissioner Branko Terzic on Competition in Natural Gas Transportation* (May 24, 1993).

i. Transportation Between Markets

The first stage of the analysis identifies sellers offering transportation service over the same route. Examining different sellers serving the same transportation link simplifies the analysis. For instance, there is no need to consider whether different producing areas offer "good" alternatives to each other.

To show that another pipeline provides a good direct alternative, the applicant must show that customers could purchase the relevant service from the alternative supplier. Such a demonstration will probably include showing that capacity would be available on the alternative, that the customer can obtain any services needed to use the competitor's facilities in both origin and destination markets over the term of the service receiving market-based rates.

If a customer has a continuing obligation to take gas at a particular receipt point, or to deliver gas to a specific delivery point, beyond the term of its FT contract, competition from parallel pipelines is particularly important in evaluating market power on a pipeline seeking market-based FT rates. Then the applicant may have market power over the shipper even if both the origin and destination markets are otherwise competitive. While the shipper will have good alternatives to the applicant for getting gas to the city-gate, it may not have good alternatives for getting gas from that particular point to its city-gate. It could, of course, sell its contract gas from that particular point on the spot market in the production area and buy an equal amount of spot gas in an area where it had good transportation alternatives. But the spot price at which it sells might be lower than the spot at which it buys, causing extra expense and providing some opportunity for the applicant pipeline to raise its price. Additionally, the shipper may value the reliability of the contract gas and be concerned that it might not be able to buy spot gas when it needs it.

In practice, parallel route competition is most likely to occur in two situations. One is the secondary market (including pipeline IT) where parties offer service on the same facility. The other is for transportation between well-functioning market centers, as illustrated in the example in part B.

ii. Transportation at Origin and Destination Markets

Parallel route competition is not the only source of market discipline on gas transporters. A shipper in the production area will typically have alternative destination markets to which it could send gas. Similarly, a downstream shipper will typically have a choice of several producing areas from which to buy gas. Pipelines that provide such alternative service may offer an additional check on the market power of a shipper.

Natural gas transportation typically originates in the production area. In the production area (or the mainline receipt point), the applicant must identify the transportation alternatives available to customers. Customers could include producers with gas supplies attached at a receipt point, LDCs, and endusers with firm long-term supply contracts. To define a particular region as an origin market, the pipeline must identify all pipelines which compete with it to move gas out of that area. To demonstrate that these other pipelines are good alternatives (that is, are in the market), the applicant must show that its producer/shippers are physically connected to these other pipeline transportation alternatives.[51] The applicant must also show that these transportation alternatives provide a netback[52] to producer/shippers roughly the same as they would receive if they used the applicant's transportation.[53] An alternative is not a good alternative to a producer seeking to move gas out of the origin market if the alternative is associated with a much higher cost than the applicant's cost-based rates, i.e., it must give roughly the same netback.

In contrast, the ultimate destination market for gas is typically a city-gate. There, the applicant must identify the transportation alternatives available to endusers and LDCs who want to receive gas in this area. To define a destination market, the applicant must demonstrate that its customers are physically connected to alternative gas transportation facilities that move gas into the area.[54] The applicant must also demonstrate that those alternatives will deliver gas at a price no higher than would be paid with the use of the applicant's transportation service to deliver gas into the area.[55]

Applicants for market-based rates might allege that LPG and LNG can be good alternatives to the use of applicant's transportation service. If so, the applicant must show that there are sufficient quantities of these available, and the transport of LPG and LNG into the destination market (*e.g.*, by truck) provides gas at an overall delivered price no higher than the overall delivered price from pipeline transport with a fifteen percent transportation rate increase on the pipeline's transportation rate.

c. Summary and Conclusion

Thus, in order to specify a gas transportation market, the applicant must first identify all products and services available as good alternatives to the applicant's customers. Next, the applicant must identify the origin and destination of that transportation. The relevant geographic market will be defined in two steps: First, those alternative sellers that offer service between the same origin and destination markets and second, all economically substitutable transportation sold by pipelines (or other good alternative products and services) serving either the origin market or the destination market.

2. Firm Size and Market Concentration

Pipelines might be able to exercise market power if customers have few good alternatives to the pipeline's service either, in the first instance, over a given route or, in a second analysis, separately in origin and destination markets. The applicant might have market power in the origin market if producer/shippers have few good alternatives to transport their product out of the origin area. In the destination market, pipelines might be able to exercise market power if downstream customers have few good transportation alternatives that reach their city-gates. If customers have long term supply contracts, it will be particularly important for the pipeline to demonstrate that it has no market power over customers on a given route.

There are two ways in which a seller can exercise market power. It can attempt to raise its price *acting alone* or it can attempt to raise its price by *acting together with other sellers.*

i. Acting Alone

One of the indicators which has been examined to determine whether a seller could exercise market power acting alone is the seller's market share. A large market share is generally a necessary condition for the exercise of market power. If the seller has a small market share it is unlikely that it can exercise market power. But, a company with a large market share may not be able to exert market power if entry into the market is easy[56] or there are other competitive forces at work.

The applicant must submit calculations (and supporting data) of its market share in all relevant origin and destination areas.

ii. Acting Together with Other Sellers

A second way in which a seller can exercise market power is to act together with other sellers to raise prices. To evaluate whether a seller can act together with others to exercise market power, the Commission has typically examined the market's concentration.

To measure market concentration, one generally considers the summary measure of market concentration known as the Herfindahl-Hirschman Index (HHI). If the HHI is small, less than .18, then one can generally conclude that sellers cannot exercise market power in this market. A small HHI indicates that customers have sufficiently diverse sources of supply in this market that no one firm or group of firms acting together could profitably raise market price. If the HHI is greater than .18 then additional analysis is needed to determine if the seller can exercise market power.

The applicant should be required to submit calculations of the HHI for the relevant markets. The HHI must be computed for each origin market as well as each destination market. The Commission should require applicants to submit information for each mainline receipt point (origin market) and each delivery point (destination market). If the applicant wishes to argue for a broader market definition it should also include calculations for its market definitions. Only sales or capacity figures associated with good alternatives should be used in calculating the HHI. In calculating the HHIs, the applicant should be required to aggregate the capacity of affiliated companies into one estimate for those affiliates as a single seller.[57]

In the GIC cases, the Commission established a threshold level for the HHI at .18.[58] In an oil pipeline case, the Commission used .25 as an initial screen.[59] The Commission may wish to establish a standard under which it will presume no potential for the exercise of joint market power exists. Since the Commission has a positive obligation under the Natural Gas Act to "protect consumers against exploitation at the hands of natural gas companies,"[60] staff believes it would be appropriate to use the relatively strict initial screen of .18. This would indicate that there are four to five good alternatives to the applicant's service in each market.

3. Entry and Other Competitive Factors

Even if the applicant's market share were large in a concentrated (and properly identified) market, one might not conclude that the applicant would be able to exercise market power. For

[51] Alternatively, the applicant could include a seller in the market if the seller can connect to the customer sufficiently cheaply that the customer receives a netback as least as large as it would receive if it used the applicant's transportation service.

[52] The netback is the delivered price of gas less the transportation costs paid by the producer. That is, the netback is the net price received by the producer.

[53] The geographic market is a region in which a hypothetical monopolist that is the only present or future provider of the relevant product at locations in that region would profitably impose at least a "small but significant and nontransitory" increase in price. In the case of an origin market, the hypothetical monopsonist will impose a small but significant and nontransitory *decrease* in netbacks. Thus, a service is a good alternative if the netback using the alternative is at least as big as the netback using the applicant's facilities after the netback decrease.

[54] The applicant could include a seller in the destination market if the seller can connect to the customer sufficiently cheaply that the customer pays a delivered gas price no higher than that paid when using the applicant's FT service.

[55] The geographic market is a region in which a hypothetical monopolist that is the only present or future provider of the relevant product at locations in that region would profitably impose a least a "small but significant and nontransitory" increase in price. In the case of an destination market, a service is a good alternative if the delivered gas price using the alternative is less than or equal to the delivered gas price using the applicant's facilities after the price increase.

[56] Given the nature of the interstate pipeline industry, ease of entry would be difficult to show except in cases involving minor facilities. For major facilities, the cost of construction and the time needed for environmental analysis would suggest that entry may not be easy.

[57] The capacity on pipeline systems owned or controlled by the applicant's affiliates should not be considered among the customer's alternatives. Rather, the capacity of its affiliates offering the same product should be included in the market share calculated for the applicant. Similarly, alternative pipelines must be aggregated with their respective affiliates in order to identify meaningful alternatives to customers. It is not reasonable to expect a profit-maximizing firm to allow its affiliates to compete with one another.

[58] El Paso Natural Gas Company, 49 FERC ¶ 61,262 (1989). *See also Buckeye*, 53 FERC at 62,667.

[59] *See* Williams Pipe Line Co., Opinion No. 391, 68 FERC ¶ 61,136 (1994).

[60] FPC v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944). *See also Elizabethtown, supra* n. 6 (sustaining the Commission's approval of market pricing based on the Commission's conclusion that the pipeline's markets were sufficiently competitive to preclude it from exercising significant market power); *Farmers Union II, supra* n.2 (holding that the Commission cannot merely assume that competition will ensure just and reasonable prices).

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example, if the applicant were to increase its price, entry into the market might be so easy that sellers attracted by the profit opportunity created by the higher price would quickly take customers away from the applicant by offering a lower price. This would make the applicant's price increase unprofitable. Thus, the applicant would not be able to exercise market power, despite its large market share and despite the high market concentration.[61]

Ease of entry is one of several competitive factors that might lead to the conclusion that an applicant lacks market power. It is most likely to apply to circumstances that do not require the large sunk costs of major construction—for instance, perhaps in offering short-haul market center services. Another competitive factor that might be alleged by an applicant would be the presence of buyer power. An applicant might argue that if a single buyer is a large customer of the pipeline, is knowledgeable and sophisticated in its buying, and has been in business for a lengthy period of time, the buyer may have the knowledge and large-scale purchasing power to negotiate reasonable rates even in a concentrated market. However, just because buyers develop sophisticated purchasing systems and market knowledge as the result of dealing with various suppliers in numerous markets, there still is reason to have some skepticism that a buyer in a single destination area served by one or a few pipelines will have such capabilities.

The applicant must demonstrate that sufficient quantities of good alternatives are available to its customers to make a price increase unprofitable. In other words, the applicant must show that customers would replace a significant proportion of its throughput with other transportation alternatives if the applicant raised its price.

B. An Example of the Analysis Applied to Firm Transportation

1. Introduction

To illustrate the application of the market power analysis discussed above to a request for market-based transportation rates, staff shows an analysis of a hypothetical filing by an interstate pipeline. In that hypothetical filing, the ABC Pipeline Company seeks Commission approval to offer firm transportation (FT) at market-based rates. ABC's primary proposal is for market-based FT rates for its entire system (see map). As an alternative, ABC requests market-based rates for firm transportation between two market centers, the Free Parking Hub, located in the production area, and the Just Visiting Hub, located in its market area. In its alternative proposal ABC Pipeline offers cost-based rates for service upstream of the Free Parking Hub and downstream of the Just Visiting Hub. Finally, as part of its alternate proposal ABC Pipeline is proposing to add facilities so that it will interconnect with all the pipelines at the Free Parking Hub. The interconnections will allow ABC to provide switching service at the hub. ABC proposes market-based rates for the switching service.

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[61] As stated before, entry would probably only be relevant for gas pipelines in the case of minor facilities such as facilities that could be constructed under a blanket certificate.

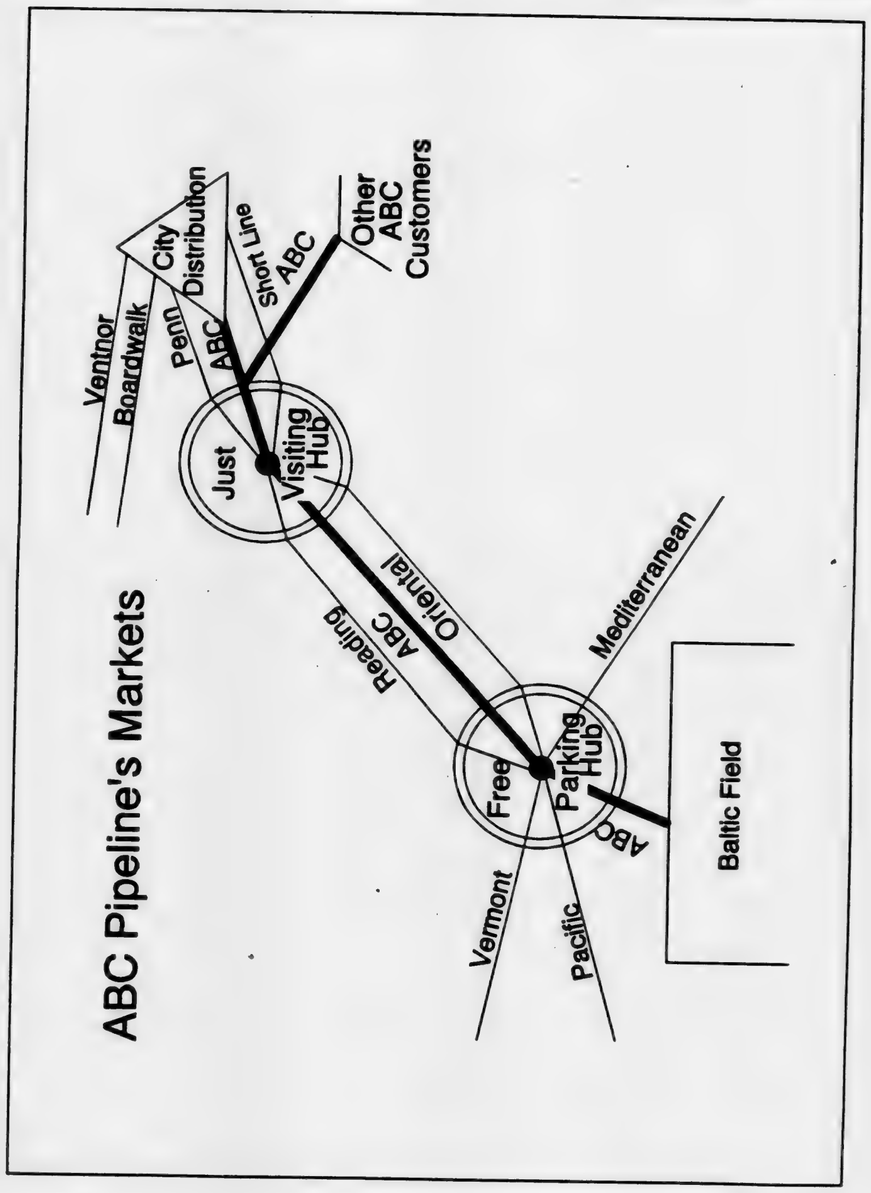

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The facts in this hypothetical are patterned after the facts of a large pipeline company and one of its major customers. Facts have been added or changed to better illustrate points in the analysis.

In order to analyze ABC's proposal, staff identifies the relevant product and geographic markets, measures the size of the market, and calculates market shares and the market's concentration using the Herfindahl-Hirschman Index (HHI). Where market shares and the HHI are high, staff examines other competitive factors that might constrain the exercise of market power.

A two step analysis is used to examine both of ABC's proposals. First, one examines whether there is sufficient competition along parallel routes for the proposed market-based services. Second, if there is not, one examines if there is sufficient competition in the origin and destination markets to constrain the exercise of market power. The Commission would deny ABC Pipeline's request if it finds that ABC has market power over customers on the relevant routes and in either origin areas or destination areas of the geographic market. To identify relevant geographic markets, one first identifies pairs of origin and destination markets. The pipeline might identify one such pair as the hypothetical Baltic field and City Distribution Company (City).[62]

2. The Applicant's Primary Proposal

a. The Relevant Facts

City Distribution is a large natural gas public utility that serves millions of customers. Its service area covers a large metropolitan area. City's service area is located 100 miles downstream of the Just Visiting Hub.

City has its own storage facilities with a maximum daily storage withdrawal capability of 1.0 Bcf/day and a total working gas capacity of approximately 30 Bcf. Its peak day system demand is approximately 3.0 Bcf/day. Thus, at full utilization of its storage, City needs at least 2.0 Bcf/day (3.0 Bcf/day—1.0 Bcf/day) of transportation capacity on its peak day to meet customer demand.

City has over 30 interconnections with five interstate pipelines: ABC Pipeline Company, the Short Line Pipeline Company, the Boardwalk Pipeline Company, the Ventnor Pipeline Company, and the Pennsylvania Pipeline Company. Table 1 shows City's contract rights to, and use of, transportation capacity on all pipeline connections to its city gate for 1994.

[62] Of course, the pipeline would need to provide the same information for all other origin and destination markets.

Table 1 shows the total capacity of the pipelines in City's metropolitan area. The totals include capacity used to serve another LDC within that metropolitan area.

TABLE 1

Pipeline	MDQ Rights (Bcf)	USE (Bcf)	Capacity (Bcf)
ABC Pipeline (FT)	1.3	1.5	1.5
The Short Line Pipeline	0.3	0.2	0.3
Boardwalk Pipeline (FT)	0.2	0.2	0.7
All Sources of IT	.....	0.3	.....
The Ventnor Pipeline	0.2	0.2	0.7
The Pennsylvania Pipeline	0.1	0.1	0.1
Total	2.1	2.5	3.3

City currently purchases a portion of its peak day from gas produced in the Baltic field. ABC Pipeline is currently the only pipeline that connects to the gathering system in the Baltic field. Table 2 displays the nearest pipelines and the estimated cost to connect these pipelines to the Baltic field gathering system :

TABLE 2

Pipeline*	Connection costs
The Atlantic Pipeline	$1,000,000
The Ventnor Pipeline	2,400,000
The Boardwalk Pipeline	17,000,000
The St. James Pipeline	15,000,000
The Park Place Pipeline	12,000,000

*The Atlantic and Ventnor Pipelines are affiliated, as are the Boardwalk and Park Place Pipelines.

b. Product Market

In its filing to the Commission, ABC might allege that there are numerous good alternatives to its FT service for City. It might start by alleging that two other pipelines directly connect areas that are very close to the Baltic field and City's city gate, and offer good alternatives to customers on both ends of the pipeline. It might further argue that customers on each end can use FT and interruptible transportation (IT) service on other pipelines leading to different market areas (in the case of Baltic field shippers) or other supply areas (in City's case).

FT on other pipelines may be a good alternative to ABC Pipeline's FT. However, ABC must demonstrate that its customers can actually get firm capacity on these other pipelines and that the quality of such FT is comparable to its own. Also, ABC must demonstrate that other pipelines can provide FT that is price competitive with ABC's.

IT service on other pipelines might be a good alternative for FT. Indeed, Table 1 shows that City used 0.3 Bcf of IT to meet its transportation needs on its 1994 peak day. ABC might argue that similar levels of IT have been available at peak for many years and can be expected to be available in the future. If so, this suggests that, at a minimum, IT was of a sufficiently high quality (i.e., had a sufficiently low probability of interruption) that it could substitute for FT in the past and could probably do so in the future. However, ABC Pipeline would need to present evidence that IT was provided at a price that rendered the price of delivered gas using IT at or below the price of delivered gas using FT. That might not be the case if City's receipt of IT required payment of IT rates on several upstream pipelines, thereby making IT not price competitive. City might have been forced to purchase IT even if its price were much higher than that of FT. Also, the IT shown in Table 1 was received by City over several pipelines, including ABC Pipeline. Thus, because ABC would be able to affect the delivered price of gas using IT service, it cannot be counted as a good product alternative to ABC Pipeline's own FT.

Therefore, for both the primary and alternate proposals, staff is defining the product market to include ABC Pipeline's FT and FT on other pipelines. However, interruptible transportation is included in the product market for switching service at the Free Parking Hub.

c. Geographic Market: Parallel Route

In its application, ABC might argue that three pipelines provide service from the same production area as the Baltic field to the same metropolitan area as City and thus are parallel routes: ABC Pipeline (with 1.5 Bcf of capacity), the Boardwalk Pipeline (with .7 Bcf of capacity) and the Ventnor Pipeline (with .7 Bcf of capacity). ABC computes an HHI of .39 for these three routes—equivalent to about three equally large firms. ABC might argue that this provides some degree of competition, which combined with other factors, would justify a market-based rate. One of the factors ABC mentions is that City has buyer power because of its size. However, ABC Pipeline does not provide sufficient factual basis to evaluate the level of City's buyer power, so staff is unable to consider this factor.

A closer examination of the example would show that there are no parallel route pipelines. Neither of the other pipelines directly connect with the producers in the Baltic field. Each would need to build significant facilities to reach the same origin market. Finally, the applicant has not shown that capacity would be available on either of the two other pipelines in the same time frame for which it seeks market-based pricing.

d. Geographic Market: Destination Area

The relevant geographic destination market includes all alternative sellers that can provide FT to City's city-gate priced at or below transportation services over ABC's system, assuming a 15 percent FT price increase by ABC. If ABC Pipeline wished to include all the pipelines listed in Table 1, it would have to demonstrate that their transportation services met this criteria. It would also have to demonstrate that the transportation services over those pipelines at least matched the quality of transportation service over ABC Pipeline.

Consider a simple measure of market size and concentration first. Table 3 displays market shares and market concentration for the FT suppliers to City in 1994. Market shares are calculated based on capacity at City's city-gate. There is additional pipeline capacity within the metropolitan area. ABC Pipeline, however, has not provided evidence to show that the capacity could be easily connected to City's city-gate. Absent such a showing staff has used the lower capacity rights figures in our calculations.

TABLE 3

Seller	MDQ rights (Bcf)	Market share	Contribution to HHI
ABC Pipeline (FT)	1.3	.62	.38
Short Line Pipeline	0.3	.14	.02
Boardwalk Pipeline	0.2	.10	.01
Ventnor Pipeline	0.2	.10	.01
Pennsylvania Pipeline	0.1	.05	—
Total	2.1	1.01	.42

In this instance, ABC has a very large market share, 62 percent. Also, the HHI is quite high (.42) indicating that the market is concentrated. The market's HHI is well above the threshold levels of .18–.25 commonly used by antitrust authorities to identify competitive markets. Were ABC to seek Commission approval for market-based transportation rates, it would have to document that there are other factors, such as ease of entry, excess capacity, etc., that would eliminate the ability to exercise market power that is not ruled out by these high market shares and high HHI.

ABC Pipeline might also allege that released capacity on its own system and on other pipelines would provide good alternatives for City. However, in one very important respect released capacity, especially on ABC Pipeline itself, will have little, if any, impact on the assessment of ABC Pipeline's underlying market power in the primary long-run FT market. An analogy might help. Suppose there were only one manufacturer of automobiles, but robust used-car and leasing markets. Would the manufacturer have monopoly power? Yes. Even with a perfectly competitive secondary market for automobiles, the manufacturer could "contrive" a scarcity by making fewer new automobiles and charging a higher price than necessary to cover costs.[63]

Similarly, if a pipeline has market power, it would exploit it by "contriving a scarcity." Although a pipeline with a well-functioning capacity release program might not withhold *existing* capacity, it could choose not to expand. Customers can only release capacity they don't need; they can't build. As demand grows, a pipeline with market power could simply enjoy higher prices and refuse to build even if its customers were willing to pay the incremental cost of expansion. It would build only when the market clearing price for FT went above the monopoly price.

Thus, this analysis suggests that the secondary market on ABC Pipeline may discipline market power the pipeline may have in selling IT and unsubscribed or "short-term" FT, but not in new primary FT. Released capacity on other pipelines might discipline any market power ABC Pipeline may have in the long-term FT market, but the secondary market on ABC Pipeline can do little to discipline its market power in supplying primary FT.

e. Other Competitive Factors

ABC Pipeline might argue that entry is sufficiently easy that ABC would be constrained from exercising market power by new firms quickly entering the market at relatively low cost. It seems unlikely that building major new transportation facilities to serve City would be inexpensive or timely. Rather, in a densely-populated urban area, building a new pipeline would likely be a contentious political and environmental issue. ABC Pipeline might, however, argue that the Boardwalk Pipeline or other pipelines could expand their existing interconnections with City. To support this argument it would need to show that the connections could be made without great expense or delay.

It may be that the four other pipelines have significant amounts of excess capacity at or close to City's city-gate. In the event that ABC Pipeline were to attempt to exercise market power, arguably such excess capacity could be used by City to defeat such an attempt. However, evidence currently at hand suggests that only the Short Line Pipeline has excess capacity.

Finally, staff did not address ABC Pipeline's argument regarding buyer power since the destination market was so highly concentrated and the analysis was not fully developed.

f. The Destination Area: Caveats and Conclusion

The market share and HHI calculations in this example are based on simplifying assumptions which minimize market shares and market concentration. First, by assuming that any of City's customers could be supplied by any of the five pipelines connecting to City, staff has intentionally expanded the market and thereby lowered market shares and HHI.

Second, staff did not include no-notice service. For this higher quality service City may have very few alternatives indeed, since no-notice service would only be available to pre-restructuring customers on the alternative pipelines.

Rather than ABC Pipeline, the Ventnor Pipeline or the Short Line Pipeline might file for market-based transportation rates to serve City on the basis that the market shares shown in Table 1 document their lack of market power, despite the destination market's high HHI. If, however, City fully utilized all of its FT at peak, then the Ventnor Pipeline or the Short Line Pipeline would be able to exercise market power despite their small shares of the market. Therefore, the Ventnor Pipeline or the Short Line Pipeline would have to demonstrate that City had alternatives at peak, as well as demonstrating that they lacked market power in the origin markets.

[63] *See* U.S. v. Aluminum Co. of America, 148 F.2d 416, 424 (2d Cir. 1945). The main issue in this case was whether secondary scrap aluminum was in the same market as primary aluminum. Judge Learned Hand held that since Alcoa had produced the metal reappearing as reprocessed scrap, it would have taken into account in its output decisions the effect of scrap reclamation on future prices, and therefore secondary scrap should not be in the same market as primary aluminum.

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g. Geographic Market: The Origin Area

ABC's pipeline is connected with the gathering system in the Baltic field in Louisiana. ABC Pipeline is the only inter or intrastate pipeline that is connected to this gathering system.

As for good alternative suppliers in the origin area, ABC Pipeline would have to demonstrate that the quality of FT on other pipelines is comparable to its own. Also, ABC would have to demonstrate that other pipelines can provide FT that is priced competitively with ABC's.

To show that other pipelines could become good FT alternatives, ABC Pipeline would have to show that other pipelines could easily connect with the gathering system in the Baltic field. Or, ABC Pipeline might argue that the producers could build gathering lines to connect to these other pipelines at a nominal cost. In either case, ABC would have to show that building these facilities would not reduce the netback to these producers.

In this example, all of the pipelines would have significant connection costs. At most, it appears that only on Atlantic would the cost of connecting the Baltic field result in a price increase of less than 15%. Thus, in the Baltic origin area, producers seem to have at most one good pipeline alternative to ABC Pipeline. The conclusion, therefore, is that staff cannot rule out the possibility, indeed likelihood, that ABC Pipeline has market power over shippers transporting gas out of the Baltic field origin area.

h. Primary Proposal: Conclusion

Our conclusion from analysis of this hypothetical is simple and straightforward. It is conceptually possible to demonstrate that pipelines lack significant market power over shippers buying transportation from supply fields to their city-gate customers. However, the City example suggests that such a showing would be difficult.

3. The Applicant's Alternate Proposal

a. The Relevant Facts

ABC Pipeline has also included a more limited market based proposal in its filing. ABC argues, at a minimum, it should be able to charge market-based rates for service between two market centers on its system, the Free Parking Hub and the Just Visiting Hub, and for its proposed new switching service at the Free Parking Hub. Table 5 shows the six pipelines at the Free Parking Hub and their capacity:

TABLE 5

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.21	.04
Oriental	*1.8	.29	.08
Vermont	*1.0	.....	.....
Reading	2.3	.24	.06
Pacific	.8	.08	.01
Mediterranean	1.7	.18	.03
Total	9.6	1.00	.22

*Since Vermont and Oriental are affiliated their capacity has been combined in computing market shares and HHIs.

Table 6 shows the five pipelines at the Just Visiting Hub:

TABLE 6

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.20	.04
Short Line Pipeline	.5	.05	.....
The Pennsylvania	*2.7	.54	.29
Reading	*2.5	.....	.....
Oriental	2.1	.21	.04
Total	9.8	1.00	.37

*Since the Pennsylvania and Reading are affiliated their capacity has been combined in computing market shares and HHIs.

Three pipelines provide firm transportation service between the two hubs. Their capacity on the route is shown in Table 7. In computing market shares and HHIs staff has used the lower of the pipeline's capacity at the Just Visiting and Free Parking Hubs as our estimate of the maximum amount of capacity that shippers can reserve between the two hubs.

TABLE 7

	MDQ rights (Bcf)	Market share	HHI
ABC Pipeline	2.0	.33	.11
Reading	2.3	.38	.14
Oriental	1.8	.30	.09
Total	6.1	*1.01	.34

*Total does not equal 1 due to rounding.

ABC Pipeline generally defines the product market as firm transportation. However, ABC argues that interruptible switching service at the Just Visiting Hub and the Free Parking Hub is the functional equivalent of firm service.

b. Geographic Market: Parallel Route

In the example, three pipelines provide firm transportation service between the Free Parking Hub (origin market) and the Just Visiting Hub (destination market): ABC Pipeline (with a .33 market share), Reading Pipeline (with a .38 market share), and Oriental (with a .30 market share). This results in an HHI of .34 for this route—equivalent to three equal sized firms. ABC Pipeline might argue that the three parallel route pipelines provide some degree of competition. ABC might argue that when this is combined with additional competition at the origin and destination markets there is sufficient competition to justify market-based rates.

In its alternate proposal ABC has not proposed market-based rates for transportation upstream of the Free Parking Hub or downstream of the Just Visiting Hub. Instead, it proposes a regulated rate for such services that would recover only the (relatively small) costs of the facilities between the Baltic field and the Free Parking Hub or between the Just Visiting Hub and City's city-gate. This would ensure ABC could not use market-based rates to exercise market power over shippers at the extremities of its system. However, such a proposal would raise serious cost allocation issues between ABC's market-based and cost-based services.

In the alternate proposal there is the possibility of parallel route competition because there are three pipelines that serve both the origin and destination markets. However, this is only the beginning of the analysis. ABC Pipeline must also show that: its customers can switch gas between ABC and the alternative pipelines at a low cost; its customers can actually get firm capacity on the Reading and the Oriental Pipelines; and the quality and price of firm service on these alternative pipelines is comparable to that provided on ABC Pipeline.

ABC argues that the Free Parking Hub is a header that offers firm switching service at minimal cost and that the Just Visiting Hub offers interruptible switching service among all the pipelines. The first may offer the customers good alternatives. The second probably does not. Potential market power problems here might be mitigated if firm switching service was offered at the Just Visiting Hub.

ABC argues that capacity release programs can make capacity available on the alternative pipelines. However, it has not shown that customers can obtain the same *long-term* FT service through the release program. Potential market power problems might be mitigated if ABC could show that its customers could buy the same long-term service through the release market (perhaps if the customers had many years remaining on their contracts) or at some future time when the capacity on all the pipelines would be available simultaneously. It would also need to show that such alternatives would be competitively priced. It could do this either by analyzing regulated prices or by showing that all other pipelines would be able to match any likely market-based price on ABC. This would be a difficult showing for any pipeline if it was the only pipeline in the market seeking market-based rates.

In the alternate proposal there is possible parallel route competition between the origin and destination markets. However, even if all additional market power problems were mitigated, the HHI of the route is still well above the .18 screen staff is using. So, staff moves to the second step in the analysis to examine the origin and destination markets separately.

c. Geographic Markets: Destination Markets

ABC Pipeline might argue four other pipelines serve the Just Visiting Hub and each of these pipelines would serve as a good alternative to its service. ABC might also argue two other pipelines, the Ventnor and the Boardwalk have facilities near the Just Visiting Hub.As with the parallel route analysis, these pipelines cannot be considered good alternatives unless ABC Pipeline can demonstrate its customers can get firm transportation capacity at a price and quality comparable to its own service.

The data indicate that the Just Visiting Hub is highly concentrated. In computing the HHI for the destination market the two affiliates, the Reading and the Pennsylvania, are treated as one firm. Because these two pipelines control half the capacity at the hub, the HHI of .37 is actually higher than that for the parallel route.[64]

If ABC Pipeline could show that the Ventnor and the Boardwalk Pipelines could easily connect to the Just Visiting Hub this would significantly reduce the HHI and make it easier to support market-based rates for ABC Pipeline. Alternatively, ABC Pipeline might argue that market power at the Just Visiting Hub is minimal if it could show that there are other market centers close to the Just Visiting Hub that could be accessed by pipelines serving the Free Parking Hub. If ABC Pipeline could not show additional competitive factors that reduce market power, the data would not support market-based rates.

[64] This example demonstrates the effect that pipeline affiliation can have on market concentration. If Reading and Pennsylvania were not affiliated, the HHI for the Just Visiting Hub would be .22, significantly lower than the .37 HHI calculated with affiliate market share combined. An HHI of .22 is much closer to a level which might be deemed indicative of an unconcentrated market.

d. Hub Services

To justify market-based rates for service between two markets, ABC must show that both the origin and destination markets are competitive. ABC has not shown that the destination market, the Just Visiting Hub, is competitive. Therefore, it has not supported its proposal for market-based rates between the two hubs. However, ABC has also requested market-based rates for hub services at the Free Parking Hub.

To support its proposal for market-based rates for hub services, ABC Pipeline might argue that currently the Mediterranean Pipeline interconnects with the five other pipelines at the Free Parking Hub. When ABC builds its additional interconnections there will be two pipelines that connect with all the pipelines at the Free Parking Hub. In addition, these pipelines have several other alternative points of interconnection within a 100 mile radius of the hub and within the same rate zone. ABC argues that its customers can get the equivalent of ABC's switching service at these points of interconnection. ABC has provided a chart which shows that in addition to its proposed new facilities a shipper on any one of the five other pipelines has at least three alternative interconnections for each pipeline within the same rate zone. Some of these are direct interconnections and some require switching service at other nearby production area hubs. Further, interruptible capacity is consistently available within the production area and is of a very high quality, i.e., curtailments are rare. Thus, each shipper has at least three good alternatives to ABC's proposed switching service at the Free Parking Hub. This means that the highest HHI for ABC's switching service with any pipeline is .25.

The HHI of .25 for switching service is above staff's initial screen. However, there are other competitive factors that would reduce ABC's ability to exercise market power. One of these factors is the open access requirement that all open access pipelines must receive or deliver gas to other pipelines if capacity is available. By scheduling receipts and deliveries at the alternative points of interconnection a shipper can get the equivalent of switching service. And, when this is part of the basic point-to-point transportation service, there is no additional charge. Another competitive factor is ease of entry. In this area some of the pipelines could build additional interconnections at minimal cost. It would be economic to build these interconnections if ABC attempted to exercise market power by charging excessive rates.

ABC has shown that its customers would have good alternatives to its switching service. Therefore, market-based rates are appropriate for its switching service at the Free Parking Hub.

e. Conclusion

Given the high level of concentration in the route and in the destination market, it is unlikely that ABC Pipeline could justify market-based rates for service between the two hubs. However, using the same criteria, market-based rates can be supported for hub services at the Free Parking Hub.

In the example, staff has assumed that a pipeline might have both cost and market-based FT rates on its system. Any such proposal would require a method for allocating costs between cost-based and market-based services.[65]

4. Results of Analysis of Hypothetical

Staff must conclude that ABC would find it difficult to justify market-based rates for point-to-point FT on its system. Based on current data ABC may be able to justify market-based rates for some hub services. In the future, ABC may be able justify market-based rates for more services. As the transportation market evolves, pipelines may find it economic to build connections to more hubs. This will increase the number of alternatives at each hub and thus will make it easier to satisfy the criteria for market-based rates for hub services or for transportation between hubs.

C. Application of Criteria to Other Services

Under the standards proposed above, as the example involving ABC Pipeline shows, it is unlikely that FT rates for any city-gate customer would be market-based. The same is true for any rates paid by producers directly attached at the other end of the pipe. What role, then, beyond the gas commodity and storage services, would market-based prices play?

The answer is that market prices may play an important role in capacity-release, IT, and market-center services.

As illustrated in the ABC Pipeline example, the many new sources of FT

[65] For example, it would be necessary to identify the cost of the facilities used for the market-based services as well as any related operation and maintenance costs. Also, there would need to be an allocation of common and joint costs, such as administrative costs, between the cost and market-based services.

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potentially available through the capacity release market will have little or no effect on a pipeline's long-run market power. They may, however, have a strong effect on either the primary capacity holder's (i.e. LDC's) or the pipeline's ability to exercise market power in the capacity release market, the short-term firm market, or the IT market. For these services, there are very few existing long term contracts. Moreover, a major interstate pipeline may have 10 to 20 different holders of FT capacity within a zone. Flexible (secondary) firm receipt and delivery point rights, in concept, give any of these primary holders or their replacements the ability to move gas to any upstream city-gate on the system. Thus, the secondary market in FT may well be unconcentrated. If released FT can be shown to be a good substitute for IT or short-term FT from the pipeline, then the released FT, IT and short-term FT market will be unconcentrated.

Any such arguments would depend on the effectiveness of the capacity release program in making released capacity at least the equal of IT. While it is doubtful that any such showing could be made now, with further improvements in the capacity release program this could occur.

In addition, part of the showing must contain evidence that LDCs could not frustrate "secondary firm" firm deliveries made at their city-gates by controlling the flows behind their own city-gate delivery points. Flexible receipt and delivery points are the key to a competitive finding; if an LDC is, aside from the pipeline, the only source of FT to its city-gate then it has market power. If secondary firm is an effective alternative, however, then there is a good likelihood that these markets would pass the stringent tests laid out above.

Some market-center services, such as short-term switching and parking, may also pass the test. Market-centers, by their nature, are where many pipelines intersect and, often, where there are multiple suppliers of storage service. In such cases, it is likely that the providers could show that customers will have many good alternatives at the market-center itself or in nearby market-centers.

In conclusion, application of the standards laid out in part IV.A is likely to mean continued cost-based regulation of primary FT, but may permit market pricing for released FT, IT and short-term FT and for market-center services such as switching and parking.

All-in-all, the potential for further reliance on market pricing is rather modest. On the other hand, market pricing in the capacity release and market-center services markets could be a key to their success. Hubs could play an important role in further perfecting the spot market for gas, but to do so is likely to require creative approaches to new services and new ways of adding value to the gas commodity. Creative, economical, new services are far more likely to develop under market pricing than under a cost-of-service approach.

D. Review of Market Power Findings

As discussed in part I, an important factor to the court of appeals in Elizabethtown, in which the Commission permitted gas sales at market prices, was the Commission's assurance that it would exercise its section 5 authority if necessary to assure that the market price was just and reasonable. This means that the Commission must consider how it will monitor market-based rates so that it can exercise its oversight responsibilities.

In past cases the Commission established, on a case-by-case basis some reporting requirements for companies authorized to charge market based rates.[66] The Commission may want to consider developing standard periodic reporting requirements on prices and quantities in market-based transactions. Periodic reports would make it possible for the Commission to monitor market-based rates to ensure that the rates are within a zone of reasonableness. The Commission may also want to establish a more formal procedure for reporting changes in circumstances that could affect the market power finding, i.e., circumstances that reduce the number of good alternatives in a market.[67] If circumstances change the Commission could either reconsider its prior market power findings or wait until a complaint is filed to take action.

Appendix: Analysis of Other Industries

As discussed in the paper, the FERC has consistently used the same general framework to evaluate when the market, rather than cost-of-service rate regulation, could be relied upon to produce just and reasonable rates. This framework has been evolving for over one hundred years in antitrust litigation and analysis and has now been codified in the DOJ/FTC merger guidelines. FERC is neither the first agency to choose light-handed regulation where a lack of significant market power can be shown, nor the only one to use antitrust standards as a framework for the showing. The general framework, however, is far from a set of mechanical rules; the application of the framework to a particular industry calls for many specific decisions and to an individual case requires many judgement calls.[1]

The Interstate Commerce Commission (ICC), the first national regulatory agency and pioneer in cost-of-service ratemaking, was also among the first to move toward deregulation or light-handed regulation for railroads and trucks. About twenty years ago the ICC began to lessen or eliminate regulation of railroads and trucks, the FCC allowed new entrants to compete for long distance telephone service and the CAB relaxed its price and entry controls over the airlines. The experience of these three agencies may provide some useful guidance for the Commission in deciding whether certain natural gas pipeline transportation services should be permitted market-based pricing and, if so, how those services should be identified.

Railroads, airlines, long distance telephones and natural gas pipelines all have much in common besides being regulated. They are all transportation/transmission networks characterized by a high ratio of fixed to variable costs, making "load factor" the key to unit operating costs, and, with the possible exception of airlines, all have significant economies of scale (an element of "natural monopoly"). However, there are also significant differences among all of these industries so analogies and policy conclusions based on their similar characteristics should be made cautiously.

A. Interstate Commerce Commission Regulation of Railroads

Railroads and natural gas pipelines have some important characteristics in common. Both transport using assets that are immobile once they are constructed, though railroads invest in "rolling stock" as well track and roadbed. Further, both exhibit the same "natural monopoly characteristic" that the construction costs necessary for one company to transport a given amount between two points are usually significantly

[66] For example, Transwestern was required to file monthly reports of market based sales under Rate Schedule ISS. 43 FERC ¶61,240 (1988). Buckeye was required to file annual reports showing rates, volumes, and revenues for each destination market. See 66 FERC ¶61,348, for a review of these reports. For electric utilities, the Commission has required power marketers selling at market based rates to file quarterly reports showing prices and quantities for individual transactions [e.g., *Heartland*, 68 FERC ¶61,223 (1994)]. Among other things, the reports are intended "to provide for ongoing monitoring of the marketer's ability to exercise market power."

[67] For example, assume in the original market power analysis the Commission found there were four good alternatives in an origin market. A subsequent corporate merger of two of the pipelines and the abandonment of facilities by another would reduce the number of good alternatives to two. There have been no new entrants into the origin market. These changes probably would significantly affect the continuing validity of the original market power finding.

[1] Judge (now Justice) Stephen Breyer gives an example of how a merger "pessimist" might assess a proposed airline merger quite differently from a merger "optimist," though both use the same antitrust framework and agree on all the facts. See discussion of the interplay between antitrust and deregulation of the airline and telephone industries in his contribution to the "Symposium: Anticpating Antitrust's Centennial: Antitrust, Deregulation and the Newly Liberated Market Place," 75 California Law Review 1005–1047 (May 1987).

lower than the construction costs necessary for two companies to jointly transport the same amount between those points. Finally, both industries make extensive use of eminent domain granted from Federal and state governments to acquire land to build networks.

One significant difference between the two, however, is that pipelines carry a fungible product while railroads generally do not. That is, a pipeline customer who tenders gas in Louisiana and withdraws gas in Chicago, does not care if the gas withdrawn came from Appalachia while the tendered Louisiana gas went somewhere else. In contrast, a railroad customer in Chicago expecting a shipment of Louisiana shrimp will be very unhappy if Appalachian coal is delivered instead. Another important difference is that railroads face major intermodal transportation competition (air competition and trucks everywhere and barges in some areas), while there is no viable intermodal competition to pipelines in transporting natural gas.

Important characteristics are similar enough between railroads and pipelines that the Interstate Commerce Commission's (ICC's) handling of market-based pricing may inform FERC's handling of the issue. Of particular note are: (1) The ICC's initial rejection followed by the acceptance of the traditional economic paradigm used to evaluate competitiveness, (2) the guidelines now used by the ICC in evaluating competitiveness, and (3) evaluations of the effects of increased reliance on market forces.

1. Recent Changes in Railroad Regulation[2]

Before 1976, all rail rates were subject to regulation by the Interstate Commerce Commission (ICC) under the statutory "just and reasonable" standard.[3] The Railroad Revitalization and Regulatory Reform Act of 1976 was enacted to restore financial stability to the industry.[4] This restoration was to be accomplished partially through reducing regulatory restraints on railroad pricing decisions by limiting ICC jurisdiction over maximum rates to situations where railroads have "market dominance."[5]

Market dominance determinations thus became of the utmost importance when rates were challenged. The ICC initially adopted three "presumptions" of market dominance: the railroad handled 70% of traffic (the "market share" presumption), revenues exceeded 160% of the variable costs (the "cost" presumption), and the shipper had a substantial investment in rail-related plant or equipment (the "rail investment" presumption). Any one of these presumptions being established and unrebutted would establish market dominance and ICC jurisdiction.

The ICC determined that the relevant market in the "market share" presumption would be confined to direct carrier competition for the specific product movement. The ICC explicitly rejected the traditional antitrust framework used to evaluate competition; the ICC determined that product competition (competition by other products), or geographic competition (availability of the same product from alternative sources or destinations) was not relevant.

Several years of experience combined with the need to implement the Staggers Rail Act of 1980,[6] caused the ICC to abandon the initial presumptions and adopt new guidelines which incorporate the traditional economic paradigm for evaluating competition. The ICC ". . . concluded that the presumptions did not necessarily reflect the degree of railroad market power, and therefore, yielded inaccurate market dominance determinations.* * * The quantitative measures (i.e., the market share, cost, and rail investment presumptions) were found to be poor indicators of market dominance in the widely varying fact situations to which they were designed to apply."[7]

2. Current ICC Guidelines for Evaluating Market Dominance

Some of the ICC market dominance guidelines have no apparent relevance to FERC because they deal with intermodal transportation competition. However, other aspects of the ICC guidelines deal with issues nearly identical to those important to FERC in analyzing competition. These potentially informative portions of the guidelines are briefly summarized here.[8]

The ICC "market dominance" guidelines lay out what type of evidence is considered important.

Regarding competition from other railroads, the number of alternatives and the feasibility of alternatives are important. Feasibility is evidenced by (1) the physical characteristics of the alternative, (2) the direct access of both the shipper and receiver, (3) the cost of using the alternative, and (4) the evidence of relevant investment or long-term contracts.

Regarding geographic competition, considered important are: (1) The number of alternative destinations for shippers or alternative sources for receivers, (2) the number of alternative destinations or sources served by alternative carriers, (3) the suitability of the product available at each relevant source or required at each relevant destination, (4) the operational and economic feasibility of transportation from alternative sources or to alternative destinations, (5) the accessibility of alternative transportation, (6) the capacity of alternative sources to supply the product or alternative destinations to absorb the product, and (7) the evidence of relevant investment or long-term contracts.

Regarding product competition, considered important are: (1) the substitutability and availability of the substitute products, and (2) all costs of using the substitute product relative to using the product in question.

3. The Effect of Reducing Railroad Regulation

The 1976 Railroad Revitalization and Regulatory Reform Act and the 1980 Staggers Act were intended to improve the financial health of the railroad industry. By most measures, the railroads' financial condition has improved since 1980. Return on investment averaged about 4.9% from 1980 to 1988; this is up from the 2.5% average in the 1970s. Debt has declined from about 36% of total capital in 1980 to about 24% in 1988.[9]

While the regulatory reforms were successful in improving the financial condition of railroads, these reforms have not achieved total financial health for the industry. "[T]he railroad industry as a whole has not achieved revenue adequacy—that is, its return on investment has not equaled or exceeded the current cost of capital."[10]

Regarding the effects on rates rather than on the railroad's financial condition, a recent journal article concludes "* * * the effect of deregulation on prices has generally been to lower them. With price decreases and cost savings from deregulation, welfare gains from deregulation are likely to be positive."[11]

B. Market-Based Rates in Long Distance Telecommunications

To the extent there are similarities between long distance telecommunications and natural gas pipeline services, lessons can be learned from the FCC's experience with market based pricing. The FCC used a market power framework in its *Competitive Carrier* Proceedings, when determining the appropriate regulation for long distance service.

1. Comparison of the Industries

The long distance telecommunications market has some similarities to the natural gas pipeline market. First, with the original copper and, most recently, fiber optic cable methods of providing service, it has natural monopoly characteristics. Second, it has long been considered a public utility and until recently, was subject to standard cost-of-service regulation. Third, it provides long-

[2] The information provided here on the Interstate Commerce Commission is drawn from the Interstate Commerce Commission Decision, "Product and Geographic Competition" Ex Parte No. 320 (Sub-No. 3), October 24, 1985.

[3] Former Section 1(5) of the Interstate Commerce Act.

[4] Pub. L. No. 94–210, 90 Stat 31, February 5, 1976.

[5] Market dominance was defined in the statues as "an absence of effective competition from other carriers or modes of transportation for the traffic or movement to which a rate applies."

[6] Pub. L. No. 96–448, 94 Stat. 1895 (1980). One part of the Act directed the ICC to make a finding of no dominance if the carrier shows that a challenged rate would yield a revenue-to-variable cost percentage less than a given percentage. More generally, the Act made it federal policy to rely on competition, rather than regulation, to establish reasonable rail rates. Additionally the Act allowed railroads to enter into confidential agreements with shippers, cancel existing joint rates with other railroads that were not sufficiently profitable, and set time limits on the abandonment process.

[7] "Product and Geographic Competition," *supra*. The adopted guidelines were listed in Appendix C.

[8] It is interesting to also note, that while developing these guidelines, the ICC refused to adopt specific HHI levels for reasons that are similar to those stated by FERC when refusing to adopt specific HHI levels in Gas Inventory Charge and Oil Pipeline cases.

[9] General Accounting Office, "Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980," May 1990.

[10] *Id.* at p. 5.

[11] Wesley W. Wilson, "Market-Specific Effects of Rail Deregulation," *Journal of Industrial Economics*, 62 (March, 1994), pp. 1–22. See this article's "References" for other articles evaluating the effect of deregulation on prices.

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line service, and (since divestiture in 1984) inter-connects with independent local networks to deliver the service.

There are several differences as well. First, there is no production area nor market area for calls, although call concentration is higher in metropolitan areas. Second, the customer cannot determine the route that his calls take on a carrier, and may not switch carriers within the path. Third, calls are not fungible or interchangeable, as are gas molecules. For example, a customer wants to talk to his or her family, friends, or business associates, not someone else's.

2. History of Long Distance Service

The history of telecommunications regulation has been one of playing catch-up to technological change. Local and long-distance services were assumed to be natural monopolies, to be provided by AT&T. The fixed plant was expensive, and subject to a declining average cost of service, and all customers needed to be interconnected.

The natural monopoly disappeared with microwave technology because after a critical mass, more traffic requires a roughly proportionate increase in towers and more transmitters.[12] In 1977, the FCC allowed MCI into the market. It also allowed general OCC (Other Common Carrier) entry in 1977. In 1979, the FCC began the *Competitive Carrier* proceedings which ultimately effectively allowed market-based pricing for carriers other than AT&T. The two largest OCCs, MCI and Sprint, currently control 25% of the long-distance market.[13] Local services remained a natural monopoly.[14]

3. Light-Handed Regulation of Non-Dominant Firms

In the *Competitive Carrier* proceedings,[15] the FCC minimized the regulation of OCCs. It based its actions on two principles: First, in order to retain business with prices above total costs a firm must possess market power and some firms did not. Second, regulation imposes costs. There are the administrative costs of compiling, maintaining, and distributing information necessary to comply with reporting and licensing requirements. More significant costs on society come from the loss of dynamism which can result. The FCC cited to the Averch-Johnson effect in which rate of return regulation can distort the input choices of a regulated firm away from production at minimum cost. It also discussed effective competition being limited by firms being required to give advance notice of innovative marketing plans and having those initiatives subject to public comment and review. The FCC said that the posting of prices and legal obligation to refrain from "unjust and unreasonable discrimination" may well result in artificially stabilizing prices to the consumer's eventual disadvantage.

Competitive Carrier characterized carriers as dominant (eventually only AT&T) or non-dominant. Initially, it defined dominant firms as firms with market power.[16] The FCC said that it focused on certain market features to determine if a firm can exercise market power: The number and size distribution of competing carriers, the nature of barriers to entry and the availability of reasonably substitutable services.[17]

As the FCC refined its determination of which carriers could be subject to lighter-handed regulation, it concluded that once a determination of market power was made, it would look at the degree of power before determining whether regulations conferred greater benefits on customers than costs.[18]

The agency reasoned that non-dominant carriers lacked (substantial) market power, and that the costs outweighed the benefits of regulating such firms. It held that non-dominant firms:

- Can't charge excessive rates;
- Can't discriminate without losing their customers; and
- Can't pass on the costs of inefficient investments to customers.

Applying its definitions, the FCC determined that AT&T was a dominant carrier because of its historical market power, immense financial and technological base, control over monopoly interconnection facilities, and substantial cross-subsidization potential. In addition, it is an effective price leader.[19] Over time, the FCC found that all other carriers were non-dominant.

The FCC decreased the regulations for non-dominant carriers in two phases: streamlining and forbearance. Under both, non-dominant carriers were required to charge just and reasonable and non-discriminatory rates. With streamlining, the FCC presumed that tariff filings were legal, and required no cost justification of the tariffs.[20] Forbearance went further than streamlining, by not requiring tariff filings from non-dominant firms. The Supreme Court later overruled this, as discussed in part I above.

C. The Cab and Airlines

Airline transportation and its regulation has many similarities to gas pipeline transportation. On any given trip, the variable cost of flying the aircraft is essentially the cost of the fuel used, just as the variable cost of transporting gas is the fuel used by the compressors. Unit costs, therefore, are highly sensitive to utilization or load factors. Economies of scale attainable through the use of larger airplanes, however, have been thought to be less important than for gas pipelines.[21] Airline companies, like pipeline companies, needed a public convenience & necessity certificate to serve or abandon any interstate route; rates and terms and conditions were strictly regulated. Discounts were allowed, if at all, after a hearing at which competitors could either challenge the proposed rates or match them.

Differences were and are important. Airlines generally have little substantial investment in immobile assets like roadbed, track or in laying pipe. Airports, landing slots and air-traffic control are generally government supplied. Economies of aircraft scale, while present, are less pronounced than for pipelines. Air traffic, in contrast to natural gas, is not fungible. When you go to pick up your grandparents at the airport, you expect unique rather than generic grandparents to deplane. Regulation was thought necessary, not because airlines were a natural monopoly, but because they were thought to be subject to "excessive competition." Under this theory, regulation was necessary to prevent airlines from bankrupting each other through overbuilding and excessive price competition.[22] Another purpose was to provide direct subsidies to encourage the growth of general aviation. The history of airline deregulation also differs greatly from that for natural gas pipelines. While the CAB itself, under Alfred Kahn, initiated some important changes in 1977 under the Civil Aviation Act (1938), Congress decided, in 1978, to phase out all CAB regulation and the agency itself by 1985. The change from a highly regulated environment designed to minimize competition to a free entry environment emphasizing price competition occurred in a remarkably short time.

1. Problems That Led to Deregulation

The Senate held hearings on airline regulation in February 1975. The study released later that year was highly critical of the CAB.[23] Stephen Breyer,[24] summarized the study as revealing several "serious defects" relating to rates, routes, efficiency and agency procedures, two of which were:

Rates. Regulation led to high prices and overcapacity. Because the airline industry was highly competitive and because the CAB prevented price competition, the airlines channeled their competitive energies into providing more and costlier service—more flights, more planes, more frills * * * Yet the planes themselves flew more than half empty. (Breyer, 1982, 200)

[12] Huber, Peter W., *The Geodesic Network II: 1993 Report on Competition in the Telephone Industry*, p. 3.4.

[13] Wall Street Journal, July 22, 1994, p. A2.

[14] Meanwhile, technology has begun to remove the local natural monopoly for telephone service. There are a large number of potential and credible providers of local service including cable television providers and radio-based and cellular carriers.

[15] First Report and Order, 85 F.C.C. 2d 5 (1980).

[16] Notice of Inquiry and Proposed Rulemaking, 77 F.C.C. 2d at 350 (1979); and First Report and Order, at p. 21.

[17] First Report and Order at p. 21.

[18] Further Notice of Proposed Rulemaking, 84 F.C.C. 2d at 499–500 (1981); and Second Report and Order. 91 F.C.C. 2d (1982).

[19] Notice of Inquiry and Proposed Rulemaking, 77 F.C.C. 2d at 352–353; and First Report and Order, *supra*.

[20] Streamlining also gave (1) blanket approval for expansions, (2) reeduced the filing period (substantially) to 14 days, and (3) required no financial information.

[21] Bailey et al., provide some of the evidence indicating that economies of scale are modest at pp. 50–54. Fred Kahn, however, suggests that, from hindsight, economies of scale were underestimated. The "thoroughgoing" movement to a hub and spoke system was not foreseen. *See* "Surprises of Airline Deregulation," *American Economic Review*, May, 1985, 316–322.

[22] *See* Stephen Breyer, *Regulation and Its Reform*, Harvard, 1982, 197–221; and Elizabeth Bailey, David Graham and Daniel Kaplan, *Deregulating the Airlines*, MIT, 1985, 11–26.

[23] Senate Comm. on the Judiciary, Subcomm. on Admin. Practice and Procedure, 94th Cong., 1st Sess., *Civil Aeronautics Board Practices and Procedures*. (1975).

[24] Breyer was the Committee's chief investigator.

Routes. Regulation effectively closed the industry to newcomers and guaranteed relatively stable market shares to firms already in the industry. (Id., 205)

The Airline Deregulation Act was signed into law in 1978. The Act phased out the CAB's authority and the Board itself ceased operations entirely by 1985.

2. The Role of Market Power Analysis in Airline Deregulation and Merger Policy

Market power analysis was an important factor in the rapid deregulation of airlines and an even more important factor in the merger policy that controlled consolidation within and exit from the industry. An important element of the case against regulation was that but for regulation, the industry would be much less concentrated at the national level than it was under CAB regulation. The relevant market for the traveler was usually defined to be the "city-pair," the two cities between which the traveler wishes to fly.[25] Advocates of deregulation did not argue that each airline would find itself battling hosts of actual competitors. They claimed only that the threat of entry into a particular market by airlines not currently serving that market would hold prices down. An airline that serves city A and city B, but does not fly between them, can enter the A–B market at very low cost, and there are several such airlines serving most major routes.

The Board based its assessment of the likely effects of a merger on two related findings: that concentration measures based on city-pair markets alone are not an accurate gauge of competitive performance and that potential entry would have an important disciplining effect on performance. (Bailey et al. 1985, 173–202). Market definitions were often contested. The DOJ in the Northwest/Republic merger, for example, argued that the relevant product market was "non-stop" flights between city- pairs. In other cases witnesses have argued over whether the appropriate definition should be airport pairs, city pairs, or the complex of services representative of a hub and spoke network. But in all cases the same general relevant market definition framework has been used.

Breyer (1987) suggested that antitrust rules designed to deal with industry in general may not properly reflect the unique features of the airline industry. For example, he cautioned against applying the "optimistic" merger view that is more lenient on higher concentration thresholds and places great store on "potential competitors," fearing that such an antitrust view would not be stringent enough. On the other hand, he would be more lenient than the merger guidelines with respect to the "failing company" or efficiency defenses for merger, to reflect that fact that the airline industry is emerging from forty years of regulation.

3.The Effects of Airline Deregulation

Virtually all observers agree that airline fares have been much lower and traffic immensely larger than they would have been absent deregulation.[26] However, as Alfred Kahn put it, there were some "unpleasant surprises" as well.[27] Although in the early years there was much new entry, most failed and national concentration in the industry failed to decline as most proponents of deregulation had predicted. Quality of service declined. Another unpleasant surprise to Kahn was "the persistence-indeed, intensification-of price discrimination * * *" despite which the airline industry has experienced severe losses and only a few carriers have been profitable.

[FR Doc. 95–3631 Filed 02–13–95; 8:45 am]

BILLING CODE 6717–01–P

Issuance of Decisions and Orders for the Week of December 5 Through December 9, 1994

During the week of December 5 through December 9, 1994 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Eric Engberg, 12/5/94, VFA–0010

CBS News Correspondent Eric Engberg (Engberg) filed an Appeal from a determination issued by the Albuquerque Operations Office (Albuquerque). The determination denied, in part, a Request for Information which Engberg submitted under the Freedom of Information Act (FOIA). Engberg requested various travel documents submitted by security personnel, known as couriers, who had travelled with Secretary of Energy Hazel R. O'Leary. Albuquerque released responsive documents, from which names, home addresses, Social Security numbers, home telephone numbers, credit card numbers, and expiration dates had been redacted pursuant to FOIA Exemption 6. Engberg appealed only the deletion of the names. In considering the Appeal, the DOE found that Albuquerque had failed to adequately justify the withholding of the couriers' names under Exemption 6. In the course of the Appeal, Albuquerque requested an opportunity to re-evaluate the applicability of Exemption 6 and other FOIA exemptions to the withheld names. Consequently, the DOE granted in part the Appeal and remanded the matter to Albuquerque for a new determination.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Costain Coal, Inc	RF304–15459	12/06/94
Empire Coal Company	RF304–15460	"
Atlantic Richfield Company/Vaccaro & Son Arco et al	RF304–14638	12/06/94
Crystal Water Co. et al	RF272–85480	12/06/94
Cubby Oil Co., Inc	RF272–97229	12/06/94
Dalton Asphalt Corp et al	RF272–94139	12/06/94
Dart Container Corporation	RF272–66874	12/05/94
Dart Container Corporation	RD272–66874	"
E & B Paving, Inc	RF272–67026	12/07/94
E & B Paving, Inc	RD272–67026	"
Epes Transport System, Inc	RF272–93329	12/08/94
Farmers Cooperative Elevator et al	RF272–94704	12/06/94
Good Hope Refineries/Howard Oil Company	RF339–17	12/08/94
Gulf Oil Corporation/City of Rocky River et al	RF300–21325	12/07/94
Gulf Oil Corporation/Fallwood Service Center	RF300–18460	12/06/94
Gulf Oil Corporation/Kirk Brown's Gulf Service et al	RF300–18153	12/08/94

[25] The analog for pipeline transportation would be "origin-destination" pairs, but both the Commission and DOJ have generally analyzed pipeline origin and destination markets separately. Why the difference? Oil and gas are fungible, airline passengers and freight are not.

[26] Elizabeth Bailey, David Graham, and Daniel Kaplan, *Deregulating the Airlines* (MIT, 1985), and Steven Morrison and Clifford Winston, *The Economic Effects of Airline Deregulation* (Brookings, 1986).

[27] Alfred Kahn, "Supreses of Airline Deregulation," *American Economic Review* (May, 1988).

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K.A. Baker Construction Co	RF272–68186	12/06/94
S.J. Groves & Sons, Inc	RF272–77504	12/07/94
Seashore Transportation Co	RF272–97223	12/07/94
Texaco Inc./Ortiz Texaco	RF321–21049	12/08/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Alameda Texaco Station	RF321–20865
Antelope County Farmers Cooperative	RF272–92006
Bowers Asphalt Paving, Inc	RF272–94780
Burnup & Sims of Texas, Inc	RF272–89938
Cabo Roto Service Station	RF321–20849
Caranil Service Station	RF321–20720
Castro Texaco Service	RF321–20858
Citizen Action	VFA–0008
Conea Service Station Texaco	RF321–20854
Cortland Water Board	RF321–20167
David M. Diaz Monje	RF321–20824
Don Davo Service Station	RF321–20850
Garage Texaco	RF321–20954
Garage Texaco Altosano	RF321–20999
Garaje Ayala	RF321–20845
Gardner Industries, Inc	RF321–20163
Jorge David Castrodad Quiles	RF321–20956
Jorge Luis Agusto Agosto	RF321–20728
Las Mareas Service Station	RF321–20846
Luis R. Abraham Melendez	RF321–20863
Pablo R. Colon	RF321–20726
Ramon Anibal Russe Torres	RF321–20732
Raul Ignacio Colon	RF321–20725
Rexco Park Texaco	RF321–20836
Sabana Seca Service Station	RF321–20841
Salinas Service Station	RF321–20955
Savannah River Operations	VSO–0003
Sierra Bayamon Service Station	RF321–20842
Sucn. Salustiano Ortiz Acevedo	RF321–20959
Tom Davis Texaco	RF321–19794
Trenton Service Station	RF321–20812
Velez Service Station	RF321–20827

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–3653 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5154–2]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the South Coast Air Quality Management District

AGENCY: U.S. Environmental Protection Agency (USEPA)

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The USEPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California is a result of a non-selective reduction in expenditures. This determination, when final, will permit the SCAQMD to keep the financial assistance awarded to it for FY–94 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by March 16, 1995.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1246.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY–94, EPA awarded the SCAQMD $6,670,831, which represented approximately 6% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–94 section 105 application, which EPA reviewed in early 1994, the SCAQMD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $92,365,069. This MOE would have been sufficient to meet the MOE requirements of the CAA. In January of 1995, however, the SCAQMD submitted to EPA documentation which shows that its actual FY–94 MOE was $80,505,495. This amount represents a shortfall of $11,228,569 from the MOE of $91,734,064 for the preceding fiscal year (FY–93). In order for the SCAQMD to be eligible to keep its FY–94 grant, EPA must make a determination under section 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of Government" for section 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last three years emission reductions brought on by a combination of economic recession and more restrictive emission rules have reduced fee revenues from stationary sources from a high of $74,433,331 in 1990–1991 to $64,923,181 in 1993–1994. As a result of this revenue loss, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

The SCAQMD's MOE reductions resulted from a loss of fee revenues due to circumstances beyond its control. The SCAQMD did not, on its own authority, reduce its operating budget. EPA proposes to determine that the SCAQMD's lower FY–94 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SCAQMD to keep the funds received from EPA for FY–94.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by March 16, 1995 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by March 16, 1995. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: February 6, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–3610 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–0–P

[FRL–5153–8]

Public Water System Supervision Program Revision for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Indiana is revising its approved Public Water System Supervision (PWSS) primacy program. The Indiana Department of Environmental Management (IDEM) adopted drinking water regulations for Lead and Copper, 44 synthetic organic chemicals (SOCs), 12 inorganic chemicals (IOCs), and 8 volatile organic chemicals (VOCs) that correspond to the NPDWR for Lead and Copper, SOCs, IOCs, and VOCs, promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 7, 1991 (56 FR 26460–26564), on January 30, 1991 (56 FR 3526–3597), as amended on July 1, 1991 (56 FR 30266–30281), and on July 17, 1992 (57 FR 31776–31849). The U.S. EPA has completed its review of Indiana's PWSS primacy program revision and has determined that these sets of state program revisions are not less stringent than the corresponding Federal regulations.

The U.S. EPA has determined that the Indiana rule revisions meet the requirements of the Federal rule. Therefore, the U.S. EPA is proposing to approve the IDEM's rule revisions. All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before March 16, 1995. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for public hearing should be addressed to: Miguel A. Del Toral, (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administratbr in the **Federal Register** and in newspapers of general circulation in the State of Indiana. A notice will be sent to the person(s) requesting the hearing as well as to the State of Indiana. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own

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motion, these determinations shall become effective on March 16, 1995. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Indiana Department of Environmental Management, Drinking Water Branch,100 North Senate Avenue, Indianapolis, Indiana 46206

State Docket Officer: Mr. T.P. Chang, (317) 232–8435

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590

FOR FURTHER INFORMATION CONTACT: Miguel A. Del Toral, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–5253.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 31st day of January, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 95–3609 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–3]

Notice of Intent to Grant Chemical Waste Management, Inc. a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) Regarding Injection of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant Chemical Waste Management, Inc. (CWM), of Oak Brook, Illinois, a modification of an exemption for the injection of certain hazardous wastes.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today proposing to grant a modification to the exemption from the ban on disposal of certain hazardous wastes through injection wells to CWM for its site at Vickery, Ohio. If granted, this modification would allow CWM to inject additional Resource Conservation and Recovery Act (RCRA) regulated wastes, identified by codes: F037, F038, K086, K107, K108, K109, K110, K117, K118, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through four waste disposal wells (WDWs) numbered: 2, 4, 5, and 6. Wastes codes F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, and K126 were inadvertently omitted from the list for which CWM originally requested exemptions. Waste codes K141, K142, K143, K144, K145, K147, K148, K149, K150 and K151 became newly listed waste codes on September 19, 1994, and were banned from waste injection effective December 19, 1994. If granted, this modification would allow CWM to inject RCRA wastes with these codes after that ban date. The Agency has established June 30, 1995, as ban date for waste codes K131, and K132, after which, disposal by injection would be prohibited. If granted, this modification would allow CWM to continue to inject RCRA wastes with these codes beyond that ban date. On August 8, 1990, the Agency issued CWM an exemption for injection of certain hazardous wastes after determining that there is a reasonable degree of certainty that CWM's injected wastes will not migrate out of the injection zone within the next 10,000 years.

DATES: The EPA is requesting public comments on its proposed decision to exempt the wastes listed above. Comments will be accepted until March 31, 1995. Comments postmarked after the close of the comment period will be stamped "Late". A public information meeting and a public hearing to allow comment on this action may be scheduled if significant comments are received, and notice of these meetings will be given in a local paper and to all people on a mailing list developed by the Agency. If you wish to request that a public hearing be held, or to be notified of the date and location of any public hearing held, please contact the lead petition reviewers listed below.

ADDRESSES: Submit written comments, by mail, to: United Sates Environmental Protection Agency, Region 5, Underground Injection Control Section (WD–17J), 77 West Jackson Street, Chicago, Illinois 60604, Attention: Richard J. Zdanowicz, Chief.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, UIC Section, Water Division; Office Telephone Numbers: (312) 886–2939 and (312) 353–9569, respectively; 17th Floor Metcalfe Building, 77 West Jackson Street, Chicago, Illinois.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA Sections 3004(d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA Section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Part 268 pursuant to Section 3004(m) of RCRA, (the EPA has adopted the same treatment standards for injected wastes in 40 CFR Part 148, Subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate to a reasonable degree of certainty that hazardous waste will not leave the injection zone until:

(a) The waste undergoes a chemical transformation within the injection zone through attenuation, transformation, or immobilization of hazardous constituents so as to no longer pose a threat to human health and the environment; or

(b) That fluid flow is such that injected fluids will not migrate vertically upward out of the injection zone to a point of discharge for a period of 10,000 years.

The EPA promulgated final regulations on July 26, 1988, (53 FR 28118) which govern the submission of petitions for exemption from the disposal prohibition (40 CFR Part 148). Most companies seeking exemption have opted to demonstrate waste confinement (option (a) above, rather than waste transformation (option (b) above). A time frame of 10,000 years was specified for the confinement demonstration not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer time period, and also to allow time for geochemical transformations which would render the waste immobile. The Agency's confinement standard thus does not imply that leakage will occur at some time after 10,000 years, rather, it is a showing that leakage will not occur within that time frame and probably much longer.

The EPA regulations at 40 CFR 148.20(f) provide that any person who has been granted an exemption to the land disposal restrictions may request that the Agency modify the exemption to include additional wastes. If the EPA determines, to a reasonable degree of certainty, that the new wastes will behave hydraulically and chemically in a manner similar to previously exempted wastes and that injection thereof will not interfere with the containment capability of the injection zone, the modification may be granted.

Neither the existing exemption nor this modification exempts CWM from the duty to comply with the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA).

B. Facility Operation

The CWM facility accepts wastes from manufacturers and disposes of them as a commercial service. The wastes are tested to ensure that reaction products which might plug the injection interval are not formed, and mixed to ensure uniformity. The waste is filtered and injected into the four wells for permanent disposal. The facility has disposed of a total of 970,858,000 gallons of mostly hazardous wastes since the first well was placed in operation on June 7, 1976.

C. Exemption

The existing exemption allows CWM to dispose of wastes denoted by the following RCRA waste codes:

D001
D002
D003
D004
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D006
D007
D008
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D016
D017
F001
F002
F003
F004
F005
F006
F007
F008
F009
F010
F011
F012
F019
F024
F039
K001
K002
K003
K004
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P087	U045	U125
P088	U046	U126
P089	U047	U127
P092	U048	U128
P093	U049	U129
P094	U050	U130
P095	U051	U131
P096	U052	U132
P097	U053	U133
P098	U055	U134
P099	U056	U135
P101	U057	U136
P102	U058	U137
P103	U059	U138
P104	U060	U139
P105	U061	U140
P106	U062	U141
P107	U063	U142
P108	U064	U143
P109	U066	U144
P111	U067	U145
P112	UO68	U146
P113	U069	U147
P114	U070	U148
P115	U071	U149
P116	U072	UI50
P118	U073	U151
P119	U074	U152
P120	U075	U153
P121	U076	U154
P122	U077	U155
P123	U078	U156
U001	U079	U157
U002	U080	U158
U003	U081	U159
U003	U082	U160
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U018	U097	U175
U019	U098	UI76
U020	U099	U177
U021	U101	UI78
U022	U102	U179
U023	U103	U180
U024	U105	U181
U025	U106	U182
U026	U107	U183
U027	U108	U184
U028	U109	U185
U029	U110	U186
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This modification will add to the above list of approved codes in the existing exemption, so that CWM may also dispose of wastes denoted by the following RCRA waste codes: F037, F038, F086, K107, K108, K109, K110, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through its deep wells upon the effective date of this petition modification. When K131 and K132 are banned from land disposal on June 30, 1995, this modification will allow continued disposal of those wastes through the deep-well system.

D. Submission

On September 12, 1994, and October 28, 1994, CWM submitted requests to modify its existing petition for exemption from the land disposal restrictions on hazardous waste disposal under the HSWA of RCRA (40 CFR Part 148). The submissions were reviewed by staff at the EPA.

II. Basis for Determination

A. Waste Description and Analysis

CWM reports that the wastes codes for which this modification has been requested have not been disposed of by the Vickery facility. The actual chemical constituents found in the proposed codes are already found in previously exempted waste codes, which CWM does accept. CWM anticipates the possibility that manufacturers may proffer wastes containing the waste codes for which this exemption is requested.

B. Model Demonstration of No Migration

The grant of an exemption from the land disposal restrictions imposed by the HSWA of RCRA is based on a demonstration that disposed wastes will not migrate out of the defined waste management unit for a period of 10,000 years. This demonstration is based on the results of computer simulations which use geological information collected at the site or found to be appropriate for the site and mathematical models which have been proven to be capable of simulating natural responses to injection. The simulator is calibrated by matching simulator results against observations at the site. In this case, CWM simulated movement of a conservatively defined ion released at the top of the injection interval. Using values for geological parameters which have been shown to be exceptionally conservative (their use results in greater vertical movement of waste constituents than can reasonably be expected), CWM demonstrated that injected wastes will not migrate out of the defined injection zone for a period of 10,000 years. The Agency accepted the demonstration and granted the existing exemption in 1990.

A modification of an existing exemption to allow injection of additional hazardous waste constituents must show that the waste constituents denoted by the codes for which the modification is requested must behave similarly to those constituents for which the original demonstration of no migration was made. In this case, the underlying waste constituents have been shown to behave similarly because each is also a constituent of wastes denoted by codes which have already been exempted. This approach eliminated the need to reconsider each waste constituent individually. Comments on this approach are solicited.

III. Conditions of Petition Approval

The existing petition was issued with conditions. Conditions numbered: (5), (6), (7), and (8) required CWM to perform actions which might provide additional confirmation that the conditions at the site were conservatively considered in the demonstration of no migration from the injection zone. The work required under these conditions has been completed by CWM, and no additional work by CWM under these conditions is anticipated, except that the Knox-Kerbel ground water monitoring well (condition 5) must remain active at least as long as the facility is active. The remaining conditions, those numbered: (1), (2), (3), (4), and (9) place well operation conditions on CWM and continue in force. No new conditions are attached to this modification.

Dated: February 6, 1995.

Edward P. Watters,

Acting Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 95–3611 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–9]

California State Nonroad Engine and Equipment Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an Opportunity for Public Hearing and Public Comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for exhaust emission standards and test procedures for 1996 and later model heavy-duty off-road diesel cycle engines 175 horsepower or greater. CARB has requested that EPA authorize CARB to enforce regulations pursuant to section 209(e) of the Clean Air Act (Act), as amended, 42 U.S.C. 7543. This notice announces that EPA has tentatively scheduled a public hearing to consider CARB's request and to hear comments from interested parties regarding CARB's request for EPA's authorization and CARB's determination that its regulations, as noted above, comply with the criteria set forth in section 209(e). In addition, EPA is requesting that interested parties submit written comments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by February 21, 1995. If no party notifies EPA that it wishes to

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testify on the nonroad emission amendments, then no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for March 1, 1995 beginning at 9:00 a.m., if any party notifies EPA by February 21, 1995 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's requests by March 31, 1995. After February 21, 1995, any person who plans to attend the hearing may call Janice Raburn of EPA's Manufacturers Operations Division at (202) 233–9294 to determine if a hearing will be held.

ADDRESSES: If a request is received, EPA will hold the public hearing announced in this notice at the Channel Inn (Captain's Room), 650 Water Street SW., Washington, DC 20024. Parties wishing to present oral testimony at the public hearing should notify in writing, and if possible, submit ten (10) copies of the planned testimony to: Charles N. Freed, Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, any written comments regarding the waiver request should be sent, in duplicate, to Charles N. Freed at the same address to the attention of Docket A–94–44. Copies of material relevant to the waiver request (Docket A–94–44) will be available for public inspection during normal working hours of 8 a.m. to 5:30 p.m. Monday through Friday, including all non-government holidays, at the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–7548. FAX Number: (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney/Advisor, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 233–9294.

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(e)(1) of the Act as amended, 42 U.S.C. 7543(e)(1), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act: (A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (B) new locomotives or new engines used in locomotives."

For those new pieces of equipment or new vehicles other than those a State is not permanently preempted from regulating under section 209(e)(1), the State of California may promulgate standards regulating such new equipment or new vehicles provided California complies with Section 209(e)(2). Section 209(e)(2) provides in part that the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines "[i]f California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that: (i) The determination of California is arbitrary and capricious, (ii) California does not need such California standards to meet compelling and extraordinary conditions, or (iii) California standards and accompanying enforcement procedures are not consistent with this section."

EPA interpreted the preceding criterion regarding consistency in the final regulation it issued to implement section 209(e) entitled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" (section 209(e) rule). This rule sets forth several definitions and the authorization criteria EPA must consider before granting California an authorization to enforce any of its nonroad engine standards.[1] As described in the section 209(e) rule, in order to be deemed "consistent with this section", California standards and enforcement procedures must be consistent with section 209. In order to be consistent with section 209, California standards and enforcement procedures must reflect the requirements of sections 209(a), 209(e)(1), and 209(b). Section 209(a) prohibits states from adopting or enforcing emission standards for new motor vehicles or new motor vehicle engines. Section 209(e)(1) identifies the categories preempted from state regulation. As stated above, the preempted categories are (a) new engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower, and (b) new locomotives or new engines used in locomotives. The section 209(e) rule includes definitions for farm equipment or vehicles and construction equipment or vehicles. California's proposed regulations would be considered inconsistent with section 209 if they applied to these permanently preempted categories. Additionally, the section 209(e) rule requires EPA to review nonroad authorization requests under the same "consistency" criterion that it reviews motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. California's nonroad standards would not be consistent with section 202(a) if there were inadequate lead time to permit the development of technology necessary to meet those standards, giving appropriate consideration to the cost of compliance within that time frame. Additionally, California's nonroad accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent, that is, manufacturers would be unable to meet both the State and Federal test requirements with one test vehicle or engine.

Once California has been granted an authorization, under section 209(e)(2), for its standards and accompanying enforcement procedures for a category or categories of equipment, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject category or categories of equipment without the necessity of receiving further EPA authorization.

By letter dated August 24, 1993, CARB submitted to EPA a request that EPA authorize California to adopt regulations for 1996 and later model heavy-duty off-road diesel cycle engines. By letter dated July 26, 1994, EPA informed CARB that in light of two final rules issued by EPA, it would be necessary for CARB to revise its waiver request before EPA could begin the waiver process. First, EPA had not been able to process the nonroad waiver request until it issued a final section 209(e) rule (discussed above). In addition, EPA issued a rulemaking setting federal nonroad standards under section 213 of the Act.[2] One of the waiver requirements under section 209 is that CARB make a determination that its standards and test procedures are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. At the time CARB made the analysis for its August 23, 1993, waiver request, EPA had proposed but not finalized federal standards for nonroad engines at or above 37kW. Thus, CARB made a determination based upon a comparison between its standards and the standards EPA was proposing at that time. EPA made a few changes to its final rule, thus making it necessary for CARB to revise its finding and determination so as to have compared its standards with the final federal standards. By letter dated August 17, 1994, CARB submitted to EPA a supplement to its request of August 24, 1993, with the updated comparison that EPA requested.

California's regulations apply to all new heavy-duty off-road diesel cycle engines, 175 horsepower or greater, including alternate-fueled engines, produced on or after January 1, 1996. These regulations:

a. Establish tier 1 smoke-and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 1996.

b. Establish smoke and exhaust emission standards for engines greater than 750 horsepower produced on or after January 1, 2000. (These engines are low sales volume, so longer development time is allowed.)

c. Establish tier 2 smoke and exhaust emission standards for engines 175 to 750 horsepower produced on or after January 1, 2001.

d. Require that crankcase emissions be controlled for 1996 and later alternate-fueled engines derived from diesel cycle engines and naturally aspirated diesel-fueled engines used in heavy-duty off-road applications.

e. Require that commencing in the year 2000, replacement engines for pre-1996 equipment comply with the 1996 emission regulations. Replacement engines for 1996 and later equipment are required to comply with the emissions standards applicable to the original engine.

f. Establish an 8-mode steady state emissions test for certification testing.

g. Require certification compliance testing, quality audit assembly line testing, and new engine compliance testing.

h. Establish a labeling requirement.

i. Require manufacturers to provide a five year or 3000 hour emissions warranty.

EPA issued a final rule (referenced above) for nonroad engines of similar horsepower on June 17, 1994.[3] EPA set standards for engines at or greater than 130 to 560 kW (175 horsepower to 750 horsepower) identical to the CARB standards and effective January 1, 1996, the same date as the CARB standards. Also, EPA set standards for engines greater than 560 kW (750 horsepower) identical to CARB standards and effective January 1, 2000, the same date as the CARB standards. EPA did not promulgate tier 2 standards for the 175—750 horsepower category, so beginning in 2001 CARB standards would be more stringent than EPA standards.

California states in its August 17, 1994 letter that it has determined that its standards and test procedures for 1996 and later model heavy-duty off-road diesel cycle engines would not cause California emission standards, in the aggregate, to be less protective of public health and welfare as the applicable Federal standards. Further, California references its August 24, 1993 letter, which explained why compelling and extraordinary conditions warrant the need in California for separate standards for heavy-duty off-road diesel cycle engines. Finally, California states that its standards and test procedures are consistent with section 209 of the Act. California's request will be considered according to the criteria for an authorization request as set forth in the section 209(e) regulation.[4] Any party wishing to present testimony at the hearing or by written comment should address, as explained in the section 209(e) rule, the following issues:

(1) Whether California's determination that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and,

(3) Whether California's standards and accompanying enforcement procedures are consistent with (i) section 209(a), which prohibits states from adopting or enforcing emission standards for new motor vehicles or engines, (ii) section 209(e)(1), which identifies the categories preempted from state regulation, and (iii) section 202(a) of the Act.

II. Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information regarding the issues as noted above and further explained in the section 209(e) rule. Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than February 21, 1995. In addition, the party should submit 50 copies, if possible, of the proposed statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 31, 1995.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base its final decision in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

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[1] *See* 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606). This final rule titled "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" was proposed at 56 FR 45866, Sept. 6, 1991.

[2] 59 FR 31306 (June 17, 1994).

[3] 59 FR 31306 (June 17, 1994).

[4] "Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards" at 59 FR 36969, July 20, 1994 (to be codified at 40 CFR Part 85, Subpart Q, §§ 85.1601–85.1606).

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Dated: February 7, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–3608 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5154–8]

Common Sense Initiative Council, Electronics Sector Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Electronics Sector Subcommittee, Notice of Meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC)—Electronics Sector (CSI–ES) Subcommittee on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the electronics and computer industry. The charter was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA).

OPEN MEETING NOTICE: Notice is hereby given that the CSI–ES Subcommittee will hold an open meeting on Wednesday, March 8, from 8:30 a.m. to 5:00 p.m., and Thursday, March 9, from 8:30 a.m. to 3:00 p.m., at the Sheraton National Hotel, Commonwealth Ballroom, Columbia Pike and Washington Boulevard, Arlington, VA 22204. Seating will be available on a first-come, first-served basis.

The meeting will include a description of the charge to the subcommittee, orientation to the FACA process, review and approval of operating principles, review and discussion of proposed work plan items, and discussion of formation of work groups for accepted work plan items. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CSI–ES meeting minutes will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION: Concerning this meeting of the CSI–ES, please contact Gina Bushong, US EPA (202) 260–3797, FAX (202) 260–1096, or by mail at U.S. EPA (7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, Region 1, US EPA, (617) 565–1155; or Dave Jones, Region 9, U.S. EPA, (415) 744–2266.

Dated: February 7, 1995.

Gina Bushong,

Designated Federal Official.

[FR Doc. 95–3607 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5155–1]

New Hampshire; Final Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Full Program Adequacy for the State of New Hampshire's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 USC 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste, will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C), 42 USC § 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STiR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of New Hampshire applied for a determination of adequacy under Section 4005(c)(1)(C) of RCRA, 42 USC § 6945(c)(1)(C). EPA Region I reviewed New Hampshire's MSWLF permit program adequacy application and made a determination that all portions of New Hampshire's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of New Hampshire shall be effective on February 14, 1995.

FOR FURTHER INFORMATION CONTACT: EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER-CAN 6, telephone (617) 573–9670.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in Section 4005(c)(1)(C), 42 USC § 6945(c)(1)(C), that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable

standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA, 42 USC § 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of New Hampshire

On July 7, 1993, EPA Region I received New Hampshire's final MSWLF permit program application for adequacy determination. EPA published in the **Federal Register** a tentative determination of adequacy for all portions of New Hampshire's program. Further background on the tentative determination of adequacy appears at 59 FR 52299 (October 17, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. In addition, a public hearing was tentatively scheduled. However, there were no requests for such, and as a result the hearing was not held.

C. Public Comment

EPA Region I received the following written comments on the tentative determination of adequacy for New Hampshire's MSWLF permitting program, all of which have been made a part of the administrative record and are available to the public for review.

Several commenters were generally supportive of EPA's tentative determination to provide full program approval to New Hampshire's MSWLF permitting program. These commenters encouraged EPA Region I to work quickly towards the final determination of adequacy of the State's program.

A response was required by only one comment, in which the commenter questioned the effectiveness of the State's Guidance Document for ensuring compliance with both state and federal requirements for MSWLFs. Specifically, the commenter felt there were instances in which the Guidance may prove confusing to the regulated community (due in part to typographical errors and cross-references to part 258). EPA Region I forwarded a summary of the comments to the New Hampshire Department of Environmental Services (NH DES), which agreed that clarifying changes to its Guidance might be beneficial. Without creating any substantive changes, the Guidance was revised after review and approval by EPA Region I. The clarifying revisions ensure consistency with 40 CFR part 258, while maintaining the integrity of the State's original Guidance. To further prevent any chance of confusion, the State of New Hampshire will append the part 258 regulations to its Guidance document for direct reference.

D. Decision

After evaluating the New Hampshire program, EPA Region I concludes that the State of New Hampshire's MSWLF Permitting Program meets all of the statutory and regulatory requirements established by RCRA. The New Hampshire MSWLF Permitting Program is technically comparable to, no less stringent than, and equally as effective as the revised Federal Criteria. Accordingly, the State of New Hampshire is granted a determination of adequacy for all portions of its municipal solid waste permit program.

To ensure full compliance with the Federal Criteria, New Hampshire has revised its current MSWLF permitting requirements by development of the *Guidance Document for the State Permitting of Municipal Solid Waste Landfills Regulated Under Federal Rules (40 CFR Part 258) in New Hampshire.* This guidance document has incorporated those requirements from the Federal Criteria not found in the State's existing MSWLF program which are applicable to all existing MSWLFs and to all MSWLF permit applications. New Hampshire will implement its MSWLF permit program through enforceable permit conditions. These new requirements occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria. 40 CFR 258.2: Active life, active portion, director, household waste, industrial solid waste, owner, saturated zone, sludge, solid waste, state, state director, and waste management unit boundary.

2. Compliance with the location restrictions of 40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16, which pertain to airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas and closure of existing MSWLF units.

3. Compliance with the operating criteria of 40 CFR 288.20, 258.21, 258.23, 258.24, 258.28, 258.29, which pertain to excluding the receipt of hazardous waste, cover material requirements, explosive gases control, air criteria, liquid restrictions, and record keeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the ground-water monitoring and corrective action requirements of 40 CFR 258.53, 258.54, 258.55, 258.56, 258.57, and 258.58, which pertain to groundwater sampling and analysis requirements, detection monitoring, assessment monitoring, assessment of corrective measures, selection of remedy, and implementation of the corrective action program.

6. Compliance with the closure and post-closure criteria of §§ 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.70, 258.71, 258.72, 258.73, and 258.74, which pertain to applicability and effective date, financial assurance for closure, financial assurance for post-closure care, financial assurance for corrective action, and allowable mechanisms.

New Hampshire's Department of Environmental Services requires all existing MSWLFs to have either an existing permit or a temporary permit, both of which require compliance with the Federal Criteria in 40 CFR part 258 pursuant to state laws and regulations, found at New Hampshire Revised Statutes Annotated Chapter 149–M:11 and New Hampshire Code of Administrative Rules Env-Wm 308.03. The State of New Hampshire is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR Part 258.

Region I notes that New Hampshire's receipt of Federal financial assistance subjects the State to the statutory obligations of Title VI of the Civil Rights Act of 1964. EPA Region I is committed to working with the State to support and ensure compliance with all Title VI requirements. Furthermore, the narrative portion of the State's application expresses New Hampshire's voluntary support of environmental justice principles in the management of the Subtitle D program. Although this is not a criterion for program approval,

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Region I acknowledges New Hampshire's support of environmental justice principles.

Section 4005(a) of RCRA, 42 USC § 6945(a) provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 USC 6972, to enforce the Federal MSWLF Criteria set forth in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. *See*, 56 *FR* 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under Section 553(d) of the Administrative Procedure Act, 5 USC § 553(d), to put this action into effect less than 30 days after the publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of state law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended, 42 USC §§ 6912, 6945 and 6949a(c).

Dated: February 4, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–3660 Filed 2–13–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 7, 1995.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0136.

Title: Temporary Permit to Operate a General Mobile Radio Service System.

Form Number: FCC Form 574–T.

Action: Extension of a currently approved collection.

Respondents: Individuals or households.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,500 recordkeepers; .10 hours average burden per recordkeeper, 150 hours total annual burden.

Needs and Uses: Commission rules state that eligible applicants for new or modified radio stations in the General Mobile Radio Service complete FCC Form 574–T for immediate authorization to operate the radio station. The applicant is required to retain this form during processing of the application for license grant.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3576 Filed 2–13–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–29 et al.]

Trans-Atlantic Agreement

In the matter of; docket No. 94–29, practices of the Trans-Atlantic Agreement and its members with respect to independent action; docket No. 94–30, container pool practices of the Trans-Atlantic Agreement and its members; fact finding investigation No. 21, activities of the Trans-Atlantic Agreement and its members, order inviting amicus curiae filings.

On February 2, 1995, the Trans-Atlantic Conference Agreement ("TACA" or "Conference") and its member lines, the Commission's Bureau of Hearing Counsel ("Hearing Counsel") and the Investigative Officers in Fact Finding Investigation No. 21 submitted a proposed settlement of these proceedings. The settlement is now before the Commission for review.

By this Order, the Commission is inviting any interested member of the public to comment on the settlement. This is being done pursuant to the Commission's *amicus curiae* procedure, 46 CFR 502.76, whereby the Commission at its own initiative may solicit expressions of views on matters of law or policy.

Under the terms of the settlement, the TACA lines would agree to certain undertakings, including broad rate reductions; amendments to the TACA agreement provisions on service contracts, independent action ("IA") and other matters; cancellation of other agreements; and increased reporting to the Commission. These undertakings are described in more detail below. In exchange, the Commission would terminate or withdraw Dockets Nos. 94–29, 94–30, Fact Finding Investigation No. 21 and its outstanding subpoenas, and certain other orders issued under section 15 of the Shipping Act of 1984 ("1984 Act"). TACA and its members would not admit to any violations of law. In addition, the settlement agreement would bar the Commission from commencing any new actions or proceedings against the Conference or its members for possible violations or actions in contravention of sections 5, 6, and 10 of the 1984 Act, Commission regulations, or Commission orders, if such possible violations arose from activities or practices disclosed to the Commission through one of the following sources: Fact Finding Investigation No. 21; documents or depositions furnished by TACA in Dockets Nos. 94–29 or 94–30; documents furnished pursuant to the settlement agreement; minutes or conference documents provided by TACA to the Commission; additional information requested by the Commission pursuant to section 6(d) of the 1984 Act; and documents furnished by TACA in response to the Commission's section 15 compulsory orders of March 28 and July 17, 1994.

The settlement includes the following commitments from TACA and its member lines:

• Rate Reductions: TACA would suspend all rate increases implemented under its 1995 Business Plan. Specifically, within fifteen (15) days after approval of the settlement by the Commission, TACA would reduce its current tariff rates to those in effect on December 31, 1994. In addition, the Conference would offer to amend current service contracts to undo 1995 rate increases and replace them with the rates offered in 1994. The suspension of the 1995 increases would remain in effect through December 31, 1995, for both tariff rates and service contract rates. In a joint memorandum in support of the settlement proposal, Hearing Counsel estimate that the value to the shipping public of the rate reductions would be $60–70 million, depending on such factors as cargo volumes and trade growth.

• Service Contracts: (1) TACA agreement provisions would be revised to provide that shippers may negotiate with the carrier of the shippers' choice; however, the Conference Secretariat could elect to participate in such negotiations. (2) NVOCC service contracts would be amended to remove volume caps and geographic limits. (3) TACA would offer to remove or revise certain restrictions in existing service contracts, including 7-day booking notice requirements and requirements that cargo must be owned by the shipper. (4) TACA may not adopt a general policy of treating shippers who did not sign service contracts in a prior period less favorably than those who did sign contracts.

• IA: TACA agreement provisions would be revised as follows: (1) When a TACA member communicates an IA rate to the Conference Secretariat, the Secretariat would be required to publish the IA rate immediately, rather than first notifying other members. (2) The lines could not agree that they must discuss IA with other members. (3) Each line would be free to designate who within its company is authorized to take IA. (4) Quarterly IA reporting would be made to the Commission.

• Withdrawal from Discussion Agreements: the TACA lines would withdraw from membership in, or cancel, a number of rate discussion and rate-setting agreements, including the Eurocorde Discussion Agreement, FMC No. 202–010829, and the Gulfway Agreement, FMC No. 203–011141, which authorize discussions about rates between TACA lines and independent lines.

Furthermore, under the settlement, the TACA lines would also eliminate much of their current broad space charter authority; instead, long-term charter arrangements between Conference lines would be covered by separate and discrete filed agreements. Also, all connecting carrier agreements with NVOCCs would be cancelled, and applicable tariffs and service contracts would set forth the terms by which containers and equipment will be made available to shippers. Beginning in September 1995, representatives of TACA and the Commission would meet semi-annually to discuss TACA activities and plans.

As with the proposed rate reductions, the settlement agreement ties the proposed changes to TACA to the date of any settlement approval by the Commission.

As a matter of clarification, it should be noted that the amendments to TACA called for by the settlement are in addition to those which the Commission obtained from the Conference in October 1994, *i.e.:*

• removal of the Conference's "capacity regulation" program, whereby the TACA lines had withheld part of their vessel capacity from the shippers;

• authorization allowing Conference carriers not participating in a TACA service contract to unilaterally negotiate different rates with the shippers during a 15-day window following filing of the TACA contract;

• reduction of the IA notice on rates from five to three days;

• reduction of the number of Conference carriers required to approve a service contract from a "majority-minus-two" formula to five favorable votes;

• outright elimination of the 100 TEU or $100,000 minimum volume or value requirement for service contracts; and

• the deletion of provisions authorizing TACA carriers to collectively negotiate with inland carriers concerning European inland segments of through transportation, and to enter into agreements with other parties.

The Commission believes that this solicitation of public comment pursuant to the agency's *amicus curiae* procedure is warranted by the general importance of the TACA investigations, which require us to consider any settlement under broad public interest considerations as well as by the usual settlement criteria such as cost savings and effective law enforcement. For that reason and because the rate reduction and other provisions of the settlement could have a direct and immediate effect on the economic interests of shippers currently doing business with TACA, the Commission wishes to allow an opportunity for any interested person to express its opinion on the settlement before we act upon it. The Commission has already received comments opposing the settlement from the National Industrial Transportation League, Container Freight International I/S and Danish Consolidation Services, and favorable comments from the North American Shippers Association, Inc., and the New York/New Jersey Foreign Freight Forwarders and Brokers Association, Inc. These comments will be considered as filed in response to this Order, and need not be refiled.

As a matter of fairness to all parties, the Commission wishes to resolve the status of this proposed settlement as quickly as possible. For that reason, comments from shippers and other interested persons must be received by the Commission no later than February 21, 1995. The Commission intends to meet on the settlement on February 24, 1995.

Therefore, it is ordered, That pursuant to Rule 76 of the Commission's Rules of Practice and Procedure, 46 CFR 502.76, the Commission hereby grants permission to any interested person to file comments as *amicus curiae* on the proposed settlement of these proceedings;

It is further ordered, That an original and fifteen copies of such comments must be physically lodged with the Secretary of the Commission on or before February 21, 1995.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–3754 Filed 2–13–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

City Holding Company; Notice of Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

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application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* in providing to non-affiliated financial institutions data processing services for processing the user bank's deposit and loan applications pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will take place in West Virginia, Ohio, Kentucky, Virginia, Maryland, and Pennsylvania.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3614 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

Carl L. Frickey, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Carl L. Frickey, trustee of the Carl L. Frickey Revocable Trust, Oberlin, Kansas; to acquire an additional 8.33 percent, for a total of 26.36 percent, of the voting shares of Farmers Bancshares of Oberlin, Inc., Oberlin, Kansas, and thereby indirectly acquire Farmers National Bank of Oberlin, Oberlin, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Western Bank Las Cruces Employee Stock Ownership Plan, Las Cruces, New Mexico; to acquire an additional 13.8 percent, for a total of 16.86 percent, of the voting shares of Western Bancshares of Las Cruces, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3615 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

Valrico Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Valrico Bancorp, Inc., Valrico, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Valrico State Bank, Valrico, Florida.

Board of Governors of the Federal Reserve System, February 8, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–3616 Filed 2–13–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Application to Office of Management and Budget for Clearance of Information Collection Requirements Contained in Proposed Telemarketing Sales Rule

AGENCY: Federal Trade Commission ("FTC").

ACTION: Notice of application to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collection requirements contained in a proposed trade regulation rule pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed regulations implementing the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 ("Telemarketing Act" or "the Act").

The Telemarketing Act requires the Commission to issue a rule prohibiting deceptive and abusive telemarketing acts and practices. Section 3(a)(1). In accordance with the statutory directive, the Commission is proposing a rule that prohibits various misrepresentations and other deceptive and abusive acts and practices and that imposes various disclosure and recordkeeping requirements on affected entities.

Specifically, the proposed rule requires that affected entities retain certain records for a two-year period. These records include advertising, promotional materials, and telemarketing scripts; information regarding prize recipients and prizes; sales information; information regarding employees directly involved in telephone sales; and written notices, disclosures and acknowledgements required under the proposed rule. These records would be available for inspection by Commission staff, by other government law enforcement personnel, and by private litigants to determine compliance with the rule.

Absent the recordkeeping requirements, Commission staff believes that this is the type of information that would be retained by these entities in any event during the normal course of business because this information would be useful in resolving private, non-governmental inquiries and disputes. The definition of "burden" for OMB purposes excludes any effort that would be expended regardless of a regulatory requirement. 5 C.F.R. § 1320.7(b)(1). Thus, the only burden would be for retaining the records for an additional period of time.

Currently, staff is estimating that 40,000 entities will be affected and that it will take each affected entity one hour per year to retain these documents for an additional period of time. Thus, the total burden for the proposed rule is estimated at 40,000 hours (1 hour per year times 40,000 industry members). However, staff is seeking comments, particularly quantitative estimates, about the amount of time it would take to comply with these requirements, and the comments may result in a change in the estimated burden hours. The basis for this estimate is described in more detail in the Supporting Statement submitted with the Request for OMB Review.

DATES: Comments on this application must be submitted on or before March 31, 1995.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATN: Desk Officer for the Federal Trade Commission, and to the Office of the Secretary, Room 159, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David M. Torok, Attorney, Bureau of Consumer Protection, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580, (202) 326–3140.

Donald S. Clark,

Secretary.

[FR Doc. 95–3538 Filed 2–13–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–793–NC]

RIN 0938–AG54

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. These limits replace the per-visit limits that were set forth in our July 8, 1993 notice with comment period (58 FR 36748). This notice also provides, in accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), that there will be no changes in the home health agency (HHA) cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. In addition, this notice responds to public comments on the July 8, 1993 notice with comment period, which originally set forth the HHA cost limits for cost reporting periods beginning on or after July 1, 1993, and on the January 6, 1994 notice with comment period (59 FR 760), which announced the elimination of the hospital based add-on effective for cost reporting periods beginning on or after October 1, 1993.

DATES: *Effective date:* The revised schedule of limits on HHA costs set forth in this notice is effective for cost reporting periods beginning on or after July 1, 1993.

The OBRA '93 provision providing that there be no changes in the HHA cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, as set forth in this notice, is effective for cost reporting periods beginning on or after July 1, 1994.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on April 17, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–793–NC, P.O. Box 7571, Baltimore Maryland 21207–0517.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–793–NC. Comments received timely will be available for public inspection as they are received, beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 966–4602.

SUPPLEMENTARY INFORMATION:

I. Background

A. History

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under the Medicare program. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Under this

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authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct and indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations appear at 42 CFR 413.30. Additional statutory provisions governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. For cost reporting periods beginning before October 1, 1993, section 1861(v)(1)(L)(ii) of the Act requires that the Secretary make an adjustment to the cost limits for the administrative and general (A&G) costs of hospital-based HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year.

Accordingly, we published a notice with comment period that appeared in the July 8, 1993, issue of the **Federal Register** (58 FR 36748), which set forth a schedule of limits on HHA costs for cost reporting periods beginning on or after July 1, 1993. The limits were computed using the actual cost per-visit data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, and were adjusted by the latest estimates in the "market basket" index to reflect changes in the price of goods and services furnished by HHAs.

B. Omnibus Budget Reconciliation Act of 1993

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66) was enacted. Section 13564(a) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the HHA per-visit cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. In addition, section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to require that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer include a payment adjustment for A&G costs of hospital-based HHAs in computing the HHA limits. The A&G per-visit add-on for hospital-based HHAs had been applied since 1980. Under this provision, hospital-based HHAs and freestanding HHAs will be treated identically for payment purposes.

On January 6, 1994, we published a notice with comment period in the **Federal Register** to announce the elimination of the A&G add-on for hospital-based HHAs (59 FR 760). In that notice, we stated that in computing a hospital-based HHA's cost limits for cost reporting periods beginning on or after October 1, 1993, the A&G add-on amounts that were to apply, as set forth in Table II of the July 8, 1993 notice (58 FR 36753), will not be used. We also stated that we would publish a separate **Federal Register** notice to explain the effects of the requirement under section 13564(a) of OBRA '93 that there be no changes in the per-visit cost limits for home health services for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.

II. Discussion of Public Comments

A. Response to Public Comments Received On the July 8, 1993 Notice With Comment Period

We received 28 items of timely correspondence on our HHA cost limits notice issued in the **Federal Register** on July 8, 1993 (58 FR 36748). A discussion of the comments we received on that notice and our responses to those comments is set forth below.

1. Cost Limits

Comment: Many commenters stated that the per-discipline cost limits for skilled nursing and home health aides are inadequate. They believe that the cost limits are arbitrary and not at the level required by law. In addition, two commenters suggested that the limits effective July 1, 1993 should be phased in.

Response: Section 1861(v)(1)(L) of the Act governs the methodology for computing the HHA limits. As noted in section I.A of this notice, section 1861(v)(1)(L)(i) of the Act specifies that the HHA per-visit cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that we establish cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year (except for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996) and that we use the current hospital wage index to calculate the limits.

Thus, in calculating the limits, we use actual cost-per-visit data from the latest available settled Medicare cost reports. From those data, we compute an average per-visit cost for each Medicare covered home health service. The labor portion of the average per-visit cost is adjusted, using the current hospital wage index, to account for variations in area wage levels. We then apply a statistically valid methodology for eliminating outlier costs to the average per-visit costs for each service. The resulting average per-visit costs are increased by 112 percent, the maximum the statute allows. We believe the methodology used to calculate the cost limits correctly implements the statute and results in a statistically valid national average of the costs estimated to be necessary in the efficient delivery of needed home health services under the Medicare program.

In summary, the implementation of the schedule of limits set forth in our July 8, 1993 notice and the methodology for developing the limits are in full compliance with statutory directives. In developing these limits, we have made no changes, beyond those directly required by OBRA '93, in the methodology used in setting the limits effective July 1, 1991 and July 1, 1992. Finally, the statute does not provide for a phase-in of the limits.

2. Database

Comment: Several commenters questioned the database used to develop the cost limits. Some commenters raised concerns about the possible omission of providers from California. Others suggested that the provider database used to develop the limits was not representative because HCFA relies only on settled cost reports to compute the HHA cost limits.

Response: The data used in the calculations of the cost limits effective July 1, 1993, were actual cost per-visit data extracted from settled Medicare cost reports, for cost reporting periods ending on or after June 30, 1989, and before May 31, 1991. This resulted in a database of 2602 freestanding agencies located throughout the country. Due to concerns with under-representation of HHAs, we reviewed the Provider of Services (POS) file to determine the number of HHAs that were Medicare-certified as of November, 1992 (the cut-off date of the HHA database used to develop the HHA cost limits effective for cost reporting periods beginning on or after July 1, 1993). Our review showed that the POS file contained all HHA providers of service, including terminated providers, existing providers, and new providers. However, the POS file does not indicate whether a HHA needs to file a cost report, or if a cost report is due from an HHA

Accordingly, we extended our review. We instructed the nine regional home health intermediaries (RHHIs) servicing the freestanding HHAs to review their files for the time period of our data collection (before November 1992) to determine if any providers had been omitted erroneously when the intermediaries filed their cost report data for the HHA database. The RHHIs identified 309 freestanding "missing" providers. Our review of the original database showed that it did not include data from Blue Cross and Blue Shield of California. All "missing" providers' cost data were entered into the database and were subject to an extensive edit process to validate the data. In addition, we reexamined the entire database to identify duplicates and as-submitted cost reports. This examination resulted in elimination of 120 duplicate reports from freestanding HHAs and the elimination of 100 hospital-based as-submitted cost reports. The revised database consists of 2911 freestanding providers.

The following table shows the effects of the revised database on the per-discipline cost limits for Metropolitan Statistical Area (MSA) and non-MSA HHAs published in our July 8, 1993 notice. See section IV of this notice for a revised table of limits effective for cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994.

EFFECT ON PER-VISIT COST LIMITS FOR MSA AND NON-MSA HHAS

Type of visit	Effect on limits for MSA HHAs	Effect on limits for non-MSA HHAs
Skilled nursing care	$+0.72	$+0.75
Physical therapy	−1.59	−0.02
Speech pathology	−1.50	+0.02
Occupational therapy	−1.20	+0.54
Medical social services	+0.06	−1.00
Home health aide	+0.54	+0.26

The following table shows the effects of the revised database on the per-visit hospital-based add-on for MSA and non-MSA HHAs published in our July 8, 1993 notice. See section IV of this notice for a revised table of add-on amounts for hospital-based HHAs with cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

EFFECT ON PER-VISIT ADD-ON FOR MSA AND NON-MSA HHAS

Type of visit	Effect on hospital-based add-on for MSA HHAs	Effect on hospital-based add-on for non-MSA HHAs
Skilled nursing care	$+0.03	$+0.57
Physical therapy	−0.22	+0.22
Speech pathology	−0.07	+0.51
Occupational therapy	−0.20	+1.03
Medical social services	−1.14	+0.16
Home health aide	+0.03	+0.25

We recognize that the conversion to a limited number of fiscal intermediaries and the lack of a internal HCFA system to track settled cost reports for HHAs resulted in missing providers. In the future, HCFA will request that each of the nine regional intermediaries submit a list of all HHAs that it is servicing at the time of data collection. Upon collecting the data, HCFA will cross-check the HHAs included in the database with the lists submitted by the intermediaries.

Concerning the comment on the use of settled cost reports, all of the RHHIs met the Contractor Performance Evaluation (CPEP) standard for settling cost reports timely for FY 1991/1992. For example, in FY 1992, 90 percent of freestanding HHA cost reports were settled timely by the RHHIs and would be available to be included in HCFA's database. Thus, the use of settled cost reports does not affect the representative nature of the database.

Comment: Some commenters believe that the conversion to a limited number of intermediaries that specialize in handling home health claims and the exclusive use of settled cost reports in the database invalidate the rationale for excluding certain outliers from the database as a first step, before proceeding with the calculation of the cost limits. One commenter raised a series of specific questions about the outlier exclusion process, including what constitutes an outlier, how many agencies are classified as outliers, and whether all of an HHA's costs are excluded if the agency has a single outlier discipline?

Response: The use of settled cost report data does not eliminate the need to exclude outliers from the database. Outliers are aberrant costs; these costs are not representative of industry norms. As in previous schedules of HHA cost limits, the elimination of cost per-visit outliers continues to be necessary in developing the limits because the per-discipline cost data in our database are extracted from actual cost reports. Although these cost reports have been settled, the settlement process is designed to ensure that cost report data reflect actual costs associated with covered visits; it does not assess whether the actual costs are reasonable.

The elimination of outliers is on a per-discipline basis. That is, we eliminate costs associated with a specific discipline that are statistical outliers. Based on our longstanding policy, we consider outliers to be those costs that are two standard deviations or more from the mean. Therefore, the high outliers, as well as the low outliers, are eliminated. All other per-discipline costs would be included in the computation of the per-discipline limits. In the table below we have listed the range of high and low per-visit costs for each discipline for both the labor and the nonlabor portions for both MSA limits and non-MSA limits. Only per-visit costs outside these ranges are considered outliers. We believe that using costs beyond these ranges, that is, outliers, to develop the per-visit limits subverts the statistical validity of the national average of estimated costs.

HOME HEALTH AGENCY COST LIMITS OUTLIERS LABOR AND NONLABOR PORTIONS HIGHS AND LOWS

Urban	Labor low	Labor high	Nonlabor low	Nonlabor high
Skilled nursing care	$33.85	$131.24	$6.08	$36.06
Physical therapy	33.02	132.78	5.37	31.69
Speech pathology	31.59	141.76	6.05	32.45
Occupational therapy	29.85	139.01	6.19	35.88
Medical social services	31.43	252.36	6.09	58.58
Home health aide	16.16	75.30	2.87	19.21
Rural				
Skilled nursing care	39.98	141.46	4.74	29.15

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HOME HEALTH AGENCY COST LIMITS OUTLIERS LABOR AND NONLABOR PORTIONS HIGHS AND LOWS—Continued

Urban	Labor low	Labor high	Nonlabor low	Nonlabor high
Physical therapy	41.77	147.54	6.69	28.34
Speech pathology	40.28	160.19	7.36	37.65
Occupational therapy	35.69	161.74	6.22	30.35
Medical social services	36.42	350.59	6.85	62.15
Home health aide	16.18	72.55	2.52	17.07

Comment: Two commenters recommended that we use data from hospital-based agencies in the calculation of the limits. The commenters believe that the calculation of the limits using only freestanding facilities does not reflect the higher costs associated with hospital-based HHAs.

Response: Section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the cost experience of freestanding agencies. We have no discretion to include hospital-based providers in the calculation of the HHA limits.

Comment: A commenter suggested that the use of settled cost reports ignores the higher claims presented before the Provider Reimbursement Review Board (PRRB) and that these claims should be included in the database for calculation of the HHA cost limits.

Response: The use of settled cost reports in developing the HHA cost limits was established for cost reporting periods beginning on or after July 1, 1992 (see 57 FR 29411). Before July 1, 1992, HHA databases included data from both settled and as-submitted cost reports. We were able to begin using settled cost report data as a result of revised CPEP standards that required Medicare fiscal intermediaries to settle the HHA cost reports sooner than was required under former standards. Consequently, as explained in our July 1, 1992 notice with comment period, settled data are available much sooner than in previous cost reporting periods, and we believe the data accurately reflect current conditions in the health care industry. The use of settled cost reports allows us to eliminate misstated data including nonallowable costs and noncovered visits that inevitably result from using as-submitted cost reports. (See 57 FR 29410.)

Providers that file an appeal before the PRRB must have received a Notice of Program Reimbursement for the fiscal year in question, before filing the appeal. During the cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, on an annual basis, fewer than 2 percent of certified HHAs submitted appeals to the PRRB. If an appeal was decided before we develop the annual HHA per-visit cost limits, the final data would be entered into the database. In those cases in which the PRRB appeal and administrative review processes are not completed until after we have developed the annual HHA per-visit cost limits, the settled data from the cost reports in question would be entered. Including the adjusted data that may result from PRRB appeals into the database would have no significant effect on the calculation of the cost limits. Moreover, since the cost limits are set prospectively, it would be neither necessary nor administratively feasible to include adjusted data resulting from the completed appeals process into the HHA database used to develop the annual limits. We note that the HHA per-visit limits constitute an estimated national average of costs, and individual providers are free to pursue exceptions to these averages where justified.

Comment: Several commenters stated that the limits do not reflect the costs associated with the implementation of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100–203) quality assurance provisions, specifically, the requirements for home health aide training and competency evaluation programs. They asserted that no additional amount has been added to the HHA limits to account for these costs.

Response: Section 1891(a)(3) of the Act requires HHAs to comply with the requirements relating to home health aide training and competency programs, established by OBRA '87. The cost-per-visit data used in the calculations of the cost limits effective on July 1, 1993 were extracted from settled Medicare cost reports for periods ending on or after June 30, 1989, and before May 31, 1991. We published regulations on August 14, 1989 at 42 CFR § 484.36 to require that HHAs establish a competency evaluation program for home health aides by February 14, 1990 (see 54 FR 33357–33360 and 33372). Therefore, the costs associated with home health aide training and competency evaluation programs are included in this database. However, if a provider believes that it has incurred additional costs not included in the limits relating to home health aide training and competency evaluation programs, the provider may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" exception under § 413.30(f)(2).

Comment: A commenter indicated that the database from which the HHA cost limits were developed was not available for public use when the regulation was issued on July 8, 1993.

Response: It is our standard practice to make available to the public the database used to construct the cost limits. HCFA's Bureau of Data Management and Strategy annually publishes a "Public Use Files Catalog" that identifies available Medicare/Medicaid data files and gives instructions on how to obtain them. The database used to construct the cost limits outlined in the July 8, 1993 notice (that is, *Medicare HHA Cycle 11 Data Set*, containing data for cost reporting periods ending on June 30, 1989, and before May 31, 1991) was available from the Bureau of Data Management and Strategy, HCFA, to the public, on the date the regulation was published. The HHA database is available on tape or diskette for $680. For further information on obtaining data used in calculating the HHA cost limits, see section VI.C of this notice.

3. Market Basket

Comment: Several commenters believe that the market basket factors that have been used to update the 1990 cost data seemed to understate home care market basket cost increases of between 5 to 7 percent for the 1992–1993 period and need to be updated for current weights and revised wage-price proxies. Specifically, the commenters believe that the market basket factors fail to account properly for increases in the Federal minimum wage, base rates for workers' compensation premiums, reimbursement for mileage, Federal gasoline tax, computers to submit claims via electronic media communications, additional A&G costs, and FICA taxes. They indicated that there is evidence that the market basket factors now used to update the cost limits are too low and that appropriate alternatives exist and are being used to make budget projections for the Administration and Congress.

Response: For the last several years, the HHA input price index (market basket) has increased at the fastest rate of all the market basket indices for the Medicare program. The increase in the market basket reflects the weights and wage-price proxies in the market basket to capture the special market conditions for HHA services (such as the shortage of several categories of licensed health professionals providing HHA services). The compensation and nonlabor proxies used in the market basket include the effects of taxes on the rates of increase. Wages and salaries include employer contributions (payroll taxes) for social insurance (old age, survivors, disability and hospital insurance). The wage and salary category also includes State unemployment insurance, supplemental unemployment insurance and workmen's compensation. The price proxies for transportation and utilities include the relevant sales taxes. Further, the price proxy for rental and leasing costs includes the impact of all costs including property taxes.

The market basket factors used to update the cost limits are consistent with, but not identical to, the cost-per-visit budget projections for the Administration and Congress. The HHA market basket is designed to measure price inflation for inputs used to produce HHA services. It, therefore, does not take into account changes in the quantity, mix or intensity of services per visit. In contrast, the Administration's budget projections take into account the change in mix of types of visits and the effects of productivity changes on per-visit costs. Productivity changes are a major determinant of cost-per-visit increases and are specifically excluded from the HHA market basket.

We believe that it would be appropriate to do a special study of the weighting and wage-price proxies for the HHA market basket. We intend to begin such a study in the near future, and we welcome public comments on data sources for weights and wage-price proxies.

4. Wage Index

Comment: One commenter stated that the wage index factors used in the calculation of the cost limits effective July 1, 1993 are lower than the July 1, 1992 cost limits in almost all cases. In addition, the commenter stated that the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) mandates use of the most recent hospital wage index for calculation of the labor portion of the cost limits, but it also requires that aggregate payments to HHAs be budget neutral. The commenter asserted that the use of a lower budget neutrality factor than in the previous schedule of limits accounted in itself for a reduction of approximately 2.5 percent in the cost limits. In addition, the commenter noted that the budget neutrality factor of 2.7 percent used in calculating the limits effective July 1, 1993 is a considerable reduction from the 5.9 percent used in calculating the limits effective July 1, 1992 and fails to provide Congressionally mandated budget neutrality between the 1982 and the 1988 hospital wage indexes.

Response: Section 4207(d)(1) of OBRA '90 amended section 1861(v)(1)(L)(iii) of the Act to require that in establishing the HHA schedule of limits annually on July 1 of each year we are to use the current hospital wage index. To lessen the effect on individual HHAs that would have been caused by implementing this requirement immediately, section 4207(d)(3) of OBRA '90 provided for a 2-year transition period during which we would use a blend of 1982 and 1988 hospital wage data. As required by section 1861(v)(1)(L)(iii) of the Act, the limits effective for cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, use the FY 1993 hospital wage index, that is the hospital wage index effective for hospital discharges on or after October 1, 1992, which is based entirely on 1988 wage survey data (see 58 FR 36750). Thus, although the wage indices used in calculating the limits effective for cost reporting periods beginning on or after July 1, 1993 are in many cases lower than in the past, they reflect the latest available actual wages.

Section 4207(d)(2) of OBRA '90 requires that, in updating the wage index used for establishing the HHA limits, aggregate payments will remain the same as they would have been if the wage index had not been updated. To meet this requirement, as explained in detail in our July 8, 1993 notice with comment period, we determined that it was necessary to apply a budget neutrality adjustment factor of 1.027 (that is, an increase of 2.7 percent) to the labor-related portion of the cost limits (58 FR 36748–36749). However, for this notice, we have recalculated the budget neutrality adjustment factor and have determined that a factor of 1.067 should be applied (that is, a 6.7 percent increase). The change in the budget neutrality adjustment is attributable to the revised limits that have resulted from our validation of the HHA database.

Comment: A commenter stated that a persistent problem in the application of the cost limits that is made more difficult by the new limits are that HHAs, like hospitals, are sometimes assigned to the "wrong" geographic area. The commenter suggested that we consider basing hospital wage indices on the wage levels paid by neighboring providers and that wage levels should be standardized according to some predefined occupational mix.

Response: Under section 1886(d)(3)(E) of the Act, the Secretary annually establishes a wage index for the purposes of adjusting payment rates for hospital inpatient services to reflect wages in a geographic area relative to the national average. Section 1861(v)(1)(L)(iii) of the Act requires that, in establishing the HHA schedule of limits, the Secretary is to use the current hospital wage index.

Almost from the beginning of the hospital prospective payment system, we have received comments from the hospital industry objecting to the use of labor market areas based on Metropolitan Statistical Areas (MSAs) established by the Office of Management and Budget to construct the wage index. The Prospective Payment Assessment Commission (ProPAC) has also recommended changes in how the labor market areas used to construct the hospital wage index should be defined. We recognize that, as currently structured, there are certain inefficiencies inherent in the MSA-based system. In light of these concerns, we have continued to examine a variety of options for revising wage index labor market areas.

On May 27, 1994, we published a proposed rule in the **Federal Register** (59 FR 27708) that detailed changes to the hospital prospective payment system for FY 1995. In the proposed rule, we discussed in detail issues raised by commenters concerning a "nearest neighbor" approach to the wage index, as recommended by ProPAC, and our research and analysis on alternative methodologies for defining labor market areas (59 FR 27724 through 27732). These alternatives are still under review, and no final decision has been made at this time to use a different methodology in determining future payment rates.

5. Additional Costs/Exceptions

Comment: A commenter suggested that new HHAs be exempt from the limits for the first two full year cost

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reports, citing the exemptions presently granted for inpatient facilities (non-PPS hospitals and skilled nursing facilities). The commenter believes that this resulted in discrimination against the establishment of home health care services when the emphasis of health care is away from inpatient services and toward home care.

Response: Prior to 1987, § 413.40(f)(7) (formerly § 405.460(f)(7)) granted an exception to the cost limits to minimize financial barriers to HHAs wanting to enter Medicare markets for the first time, especially in underserved areas. On June 4, 1987, we published a final rule with comment period (52 FR 21216) indicating that the exception for newly-established HHAs was eliminated. As discussed in detail in that final rule with comment period, evidence acquired from FY 1980 through FY 1985 indicated a changing composition of HHAs that suggested that financing was no longer a significant obstacle to entering the market place, and therefore the exception was rescinded. In fact, while hospital-based and proprietary agencies had access to financial resources and patient populations, nonprofit and free-standing agencies did not. We continue to believe that an exception for newly-established HHAs is not necessary to encourage the spread of HHAs services. Moreover, we note that the number of HHAs servicing Medicare beneficiaries has increased approximately 28 percent since 1987, from 5,857 to 7,473 as of March, 1994.

Comment: Several commenters indicated that the recruitment and retention of occupational therapists and physical therapists, especially in rural areas, results in increased costs not incorporated in the HHA cost limits.

In addition, one commenter indicated that the additional amount of $.18 allowed for the OSHA adjustment to account for new standards for universal precautions is not adequate to account for the actual, necessary and reasonable cost being incurred by HHAs after May 31, 1991.

The commenters believe that the failure to reflect these costs fully in the per-visit limits will reduce access and quality of care to beneficiaries.

Response: If a provider can quantify the costs it incurs as a result of recruiting and retaining occupational therapists or physical therapists, or an OSHA add-on amount that exceeds the allowed $.18, the provider may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. These situations could be recognized as an "extraordinary circumstances" as defined in § 413.30(f)(2). The HHA cost limits effective for cost reporting periods beginning on or after July 1, 1992 and on or after July 1, 1993 allow a provider an adjustment for costs incurred for OSHA, upon presentation of documentation to the intermediary to substantiate the adjustment. If a provider exceeds the adjustment, an exception to the cost limits is made only to the extent that costs are reasonable, attributable to the circumstances specified, separately identified by the provider, and verified by the intermediary.

Comment: Some of the commenters believe that filing for a waiver to seek an exception from the limits is time consuming, expensive and impractical.

Response: The purpose of establishing the per-visit limits is to cover the costs necessary in the efficient delivery of needed health services. However, because the limits are not intended to take into account every cost, we have established an exceptions process for situations in which providers incur additional costs in excess of the cost limits. Providers may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. We believe that the exceptions process is a fair and equitable method for HHAs to substantiate costs exceeding the limit.

6. Administrative Procedure Act

Comment: A commenter stated that the schedule of cost limits published on July 8, 1993 (58 FR 36748) is void because it is a product of retroactive rulemaking, which is not authorized by the Social Security Act and is prohibited by the Administrative Procedure Act (APA). Specifically, the rule had an effective date of July 1, 1993, but was not published in the **Federal Register** until July 8, 1993. Further, the commenter stated that the rule is void because it was issued in violation of the notice and comment requirements of the Medicare statute and APA. The commenter believes that we did not have "good cause" to waive publication of a proposed notice and to waive the 30-day delayed effective date requirements of the APA. The commenter stated that HCFA failed to offer any explanation as to why the rule could not have been published earlier.

Response: Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary update the HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year. On July 1, 1993, the schedule of limits on HHA costs per visit, effective for cost reporting periods beginning on or after July 1, 1993, was filed with the Office of the Federal Register and was made available for public inspection (see 58 FR 36762 for file date). Under 44 U.S.C. section 1507, the filing of the document is sufficient to give constructive notice of the contents of the document to a person subject to or affected by it.

As explained in our July 8, 1993 notice with comment period, we used the same methodology to develop the schedule of limits that was used in setting the limits published on July 1, 1992. The cost limits were updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and December 31, 1993.

Because the methodology used to develop the July 1, 1993 schedule of limits was previously published for public comment and because we are required by section 1861(v)(1)(L)(iii) of the Act to use the current hospital wage index, which was based on 1988 wage survey data, we determined that it would be impractical and unnecessary to request public comment before we implemented the cost limits effective for cost reporting periods beginning on or after July 1, 1993. Thus, we stated that it would be contrary to public interest, and we found good cause to waive publication of a proposed notice.

In response to the comment on the waiver of the 30-day delayed effective date, as we explained in our July 8, 1993 notice with comment period, in order for HHAs to receive timely the benefits of the cost limits that are based on the updated wage index, it was necessary that the limits be effective for cost reporting periods beginning on or after July 1, 1993 as required by section 1861(v)(1)(L)(iii) of the Act (see 58 FR 36762).

B. Response to Public Comments Received on the January 6, 1994 Notice With Comment Period

We received 10 items of timely correspondence on our notice eliminating payment adjustments for the A&G costs of hospital-based HHAs. The comments we received on that notice and our responses to those comments are set forth below.

Many of the comments we received on that notice addressed issues that we have already addressed in section II.A of this notice, particularly, the exclusion of hospital-based agencies from the database. Since we have already addressed these comments, we are not repeating our responses to the comments here.

1. Elimination of the A&G Add-on

Comment: One commenter agreed that the A&G add-on should be eliminated. However, most commenters objected to the elimination of the A&G add-on, emphasizing that the costs incurred by hospital-based and freestanding agencies are different. One commenter stated that although section 13564 of OBRA '93 eliminates the A&G add-on, it does not preclude the Secretary from making the adjustments that are necessary to ensure fair payment to providers. In addition, another commenter believes that the elimination of the add-on should be phased-in.

Response: Section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to require that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer include a payment adjustment for the A&G costs of hospital-based HHAs in computing the HHA limits. Under this provision, for cost reporting periods beginning on or after October 1, 1993, hospital-based HHAs and free-standing HHAs will be treated identically for payment purposes. The statute does not provide for a phase-in period.

Section 1861(v)(1)(L)(i)(III) of the Act defines fair payment to HHAs at some level determined by the Secretary, but not in excess of 112 percent of the cost experience of freestanding providers. Section 1861(v)(1)(L)(ii) of the Act provides the Secretary with the authority to provide for exceptions to the cost limits. Accordingly, if a provider quantifies and provides an explanation of costs that exceed the limits, it may apply for an exception to the cost limits under the exceptions process outlined in § 413.30.

2. Reimbursement Methodology

Comment: Two commenters indicated that the reimbursement methodology for HHAs should be assessed, including a review of the Medicare step-down cost methodology and the use of severity of illness to determine the cost of care and length of stay for post-acute versus community-based referrals. One commenter stated that the change in methodology, that is, the elimination of the hospital-based add-on, imposes a systematic error in accurately measuring costs of caring for home health patients. Another commenter stated that HCFA should wait for the results of the Federally funded demonstration projects that are currently evaluating home care reimbursement before any changes are made to the present home care reimbursement structure. The commenter stated that the information we obtain from these studies should be used to develop an appropriate industry-wide home care reimbursement system.

Response: We agree that further study of the HHA reimbursement system is desirable. HCFA's Office of Research and Demonstrations is presently conducting a demonstration relating to prospective payment for HHAs. During the second phase of this demonstration, we intend to develop a prototype case-mix or severity adjustment to be tested under the demonstration for possible use in future payment methodologies. In addition, HCFA has begun the Medicare Home Health Initiative, which will review a variety of issues related to the home health benefit including those presented above.

III. Provisions of This Notice With Comment Period

A. Revised Schedule of Limits

As discussed in section II.A.2 of this notice, we have identified problems with the validity of the database used to calculate the cost limits for cost reporting periods beginning on or after July 1, 1993, as set forth in our July 8, 1993 notice. Therefore, we are setting forth in this notice a revised schedule of limits on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. We also are setting forth revised add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

Before adopting this approach, which entails the retroactive application of the schedule of limits set forth in this notice, we considered three possible alternatives for dealing with the problems with the database used in the calculation of the cost limits effective July 1, 1993. One option was to take no action to revise the limits, in accordance with the provisions of section 13564(a) of OBRA '93, which explicitly prohibit any changes in the cost limits for HHAs for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. However, we believe that in enacting these provisions, Congress could not have envisioned that there would be errors in the database that would necessitate revisions to the limits. Thus, we do not believe that the revision of the limits under these circumstances is inconsistent with the statute. In addition, we do not believe that it is appropriate to base payments to HHAs on limits that are known to be based on a limited database and are estimated to result in lower Medicare payments to HHAs. (See section V of this notice for a discussion of its economic impact.)

We also considered applying the changes to the cost limits prospectively, that is, effective upon publication of this notice. Although this option would avoid the administrative difficulties associated with implementing revised limits retroactively for cost reporting periods beginning on or after July 1, 1993, it still would not conform strictly to the OBRA '93 provisions prohibiting any changes in the cost limits until July 1, 1996. In addition, this option again would disadvantage HHAs by not assigning accurate limits effective for cost reporting periods beginning on or after July 1, 1993.

Our remaining option was to apply the changes to the cost limits retroactively. That is, we would publish revised limits that would be effective for cost reporting periods beginning on or after July 1, 1993, in place of the limits set forth in our July 8, 1993 notice. The statute allows us to set the cost limits at a maximum of 112 percent of the mean of per-visit costs for freestanding agencies. As in the past, for the cost limits applicable to cost reporting periods beginning on or after July 1, 1993, we set the limits at that maximum. Because we have identified errors in the database of costs for freestanding agencies, we believe that it is in keeping with the intent of the statute that these errors be rectified. Therefore, we believe it is appropriate, and consistent with the statute, to revise the limits for cost reporting periods beginning on or after July 1, 1993, so that they are based on 112 percent of the mean of the more accurate database of freestanding agencies' per-visit costs. Also, despite the administrative difficulties that may arise, we believe this option is in the best interests of HHAs. Therefore, we have determined that revising the limits, effective for cost reporting periods beginning on or after July 1, 1993 is the most appropriate course of action.

Thus, the revised schedule of limits set forth in Table I of section IV of this notice replaces the per-visit limits set forth in our July 8, 1993 notice. As required by section 13564(a) of OBRA '93, these limits will remain in effect for cost reporting periods beginning before July 1, 1996. In addition, we are setting forth in Table II of section IV of this notice revised A&G add-on amounts for hospital-based HHAs to replace the add-on amounts set forth in our July 8, 1993 notice. In accordance with section 1861(v)(1)(L)(ii) of the Act, as amended by section 13564 of OBRA '93, the intermediaries will make an adjustment for the A&G add-on in computing the adjusted limits for hospital-based HHAs with cost reporting periods beginning on or after July 1, 1993, and before October 1, 1993.

For the convenience of the reader, we are republishing Tables IIIa, IIIb, and IV

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that were published in our July 8, 1993 notice. These tables contain the wage indices for urban and rural areas and cost reporting year adjustment factor and also are presented in section IV of this notice.

The intermediaries will compute the adjusted limits using the wage index in Tables IIIa and IIIb set forth in section IV of this notice, and will notify each HHA that they service of its applicable cost per-visit limits for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable costs.

Example: HHA X, a free-standing agency located in Richmond VA, furnishes 5,000 covered skilled nursing visits, 2,000 covered physical therapy visits, and 4,000 covered home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning on July 1, 1993.

The Aggregate Cost Limit is Determined As Follows:

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit	Aggregate limit
Skilled Nursing Care	5,000	$16.44	$74.72	$92.32	$461,600
Physical Therapy	2,000	16.52	75.28	92.96	185,920
Home Health Aide	4,000	8.33	37.65	46.57	186,280
Total Visits	11,000	.....	.....	.....	.....
Aggregate Cost Limit	.....	.....	.....	.....	$833,800

As noted in section III.A of our July 8, 1993 notice, in order to account for OSHA's universal precaution requirements, we also will allow an additional adjustment to the aggregate cost limit of $.18 per visit for those HHAs that incur costs in complying with these requirements (see 58 FR 36749). An HHA must apply to its intermediary for the add-on amount. The agency must demonstrate that it will exceed its cost limit in order to be in compliance with the OSHA mandated requirements. The HHA must provide the intermediary with adequate documentation to support the add-on amount.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare reasonable cost principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all Medicare payment principles (for example, the cost guidelines for physical therapy furnished under arrangement (see § 413.106) and the limitation on costs that are substantially out of line with those of comparable HHAs (see § 413.9)).

B. No Changes in the Cost Limits

As discussed in section I.B of this notice, section 13564(a) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the HHA per-visit cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. The effect of this provision is that a HHA's latest per-discipline cost limit for a period beginning on or after July 1, 1993, and before July 1, 1994, as calculated under this notice, without regard to subsequent adjustments under section 1861(v)(1)(L)(ii) of the Act for exceptions, will remain in effect until its cost reporting period beginning on or after July 1, 1996. As explained in our January 6, 1994 notice with comment period, section 13564(b) of OBRA '93 eliminated the A&G add-on for hospital-based HHAs. Accordingly, there will be no changes, besides those due to the elimination of the A&G add-on, to a HHA's cost limit for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, to account for inflation, changes to the wage index or to MSA designations. Thus, in computing a provider's cost limit for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, the cost reporting period adjustment factors that were to apply for cost reporting periods beginning on or after July 1, 1994, will not be used. (In our July 8, 1993 notice with comment period, we specified that if we did not publish new limits to be effective on July 1, 1994, the limits effective July 1, 1993 would continue in effect, but the last cost reporting year adjustment factor in Table IV would be multiplied by an inflation factor once for each month between June 1, 1994, and the month in which the cost reporting period begins, until a new schedule of limits or other provision is issued (58 FR 36760). In accordance with section 13564(a) of OBRA '93, the inflation factor will not be used for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996.) The revised schedule of per-visit limits set forth in Table I of section IV of this notice, which replaces the schedule of limits set forth in our July 8, 1993 notice, will be used to compute the limits. Revised Table II will be used to calculate the A&G add-on, when applicable. The wage indices in Tables IIIa and IIIb that were originally published in our July 8, 1993 notice and are republished in section IV of this notice will continue to be used to compute the limits.

In the example below, a freestanding HHA in Dallas, Texas has a cost reporting period beginning date of January 1, 1994. As calculated under this notice, its cost limit for the 12-month period beginning January 1, 1994, for occupational therapy is $96.13. Under the provisions of this notice, the cost limit of $96.13 will remain in effect for its 12-month cost reporting periods beginning January 1, 1995, and January 1, 1996. As explained above, the cost reporting period adjustment factors that would have been used under the July 8, 1993 notice with comment period for calculating the limits for the HHA's new cost reporting periods beginning January 1, 1995, and January 1, 1996, are not used.

Accordingly, the provider in this example will not have any change in its cost limit until its cost reporting period beginning January 1, 1997.

Example: Calculation of Adjusted Limit for Occupational Therapy for a Freestanding HHA Located in Dallas, Texas: Computation of Revised Limit for Occupational Therapy:

Labor Related Component	$74.97	(Table I)
Wage Index	×0.9599	(Table IIIa)
Labor Portion	71.96	
Special Labor Adjustment for Budget Neutrality	×1.067	
Adjusted Labor Component	76.79	
Nonlabor-Related Component	+16.78	(Table I)
OSHA Per Diem Add-On	+.18	
Adjusted Occupational Therapy Limit	93.75	
Cost Reporting Period Adjustment Factor (January 1, 1994)	×1.0254	(Table IV)
Inflation Adjusted Limit (Limit in Effect for January 1, 1994, January 1, 1995, and January 1, 1996)	96.13	

As noted above, for cost reporting periods beginning on or after July 1, 1994, but before July 1, 1996, a freestanding HHA's cost limit will be its latest per-discipline cost limit for the period beginning on or after July 1, 1993, and before July 1, 1994, as calculated under this notice and without regard to any subsequent adjustments, such as an exception to the limit. Thus, if the HHA in the above example received an exception to its cost limit for its cost reporting period beginning January 1, 1993, its cost limit for the cost reporting period beginning January 1, 1994, would not include the exception amount for the previous period. To receive an exception or other adjustment to its cost limit, the HHA would need to submit a request to its fiscal intermediary in accordance with the procedures set forth in § 413.30 of our regulations.

As explained in detail in our January 6, 1994 notice with comment period, a hospital-based HHA's cost limit is computed in an identical manner (59 FR 761) to the example above, since the A&G add-on for hospital-based HHAs is no longer applicable for cost reporting periods beginning on or after October 1, 1993.

C. Periods Other Than 12 Months

The above methodology applies to providers with cost reporting periods of 12 months in duration. If a HHA's cost reporting period is not 12 months in duration, a special adjustment factor is calculated. This is necessary because inflation projections are computed to the midpoint of a cost reporting period, and the adjustment factors in Table IV (58 FR 36760) are based on 12-month reporting periods. For cost reporting periods of other than 12 months, the calculation must be made based on the midpoint of the specific cost reporting period. The HHA's intermediary obtains this adjustment factor from HCFA central office. This methodology results in a different cost limit than if a 12-month adjustment factor were used. However, since the provisions of OBRA '93 require no changes in the cost limit on or after July 1, 1994, the limit calculated with the special adjustment factor will remain in place for subsequent cost reporting periods beginning before July 1, 1996.

D. Providers Entering the Medicare Program

For providers entering the Medicare program on or after July 1, 1994, and before July 1, 1996, the applicable cost limit will be the cost limit for the identical period beginning on or after July 1, 1993, through June 30, 1994. (The only exception to this policy is that, as a result of the elimination of the A&G add-on for hospital-based HHAs effective for cost reporting periods beginning on or after October 1, 1993, the A&G add-on amount is not included in the cost limit calculation for hospital-based HHAs that enter the program.) For example, if a provider enters the Medicare program on October 1, 1994, with a 12-month cost reporting period, its cost limit will be determined in the same manner as a cost limit for a period beginning October 1, 1993, and ending September 30, 1994. If the provider's cost reporting period is a short period, for example, a period beginning October 1, 1994, and ending December 31, 1994, the provider's cost limit will be determined in the same manner as a cost limit for a period beginning October 1, 1993, and ending December 31, 1993. In addition, whether the first period is a full 12-month period or a period other than 12 months, the cost limit determined for the first period will remain in effect until the provider's first cost reporting period beginning on or after July 1, 1996.

E. Next Update of Limits

Before the enactment of OBRA '93, section 1861(v)(1)(L)(iii) of the Act required that the HHA per-discipline cost limits be updated on July 1, 1994, and every year thereafter. Section 13564(a)(2) of OBRA '93 amended that section of the Act to delay the next update until July 1, 1996, and every year thereafter. Accordingly, there will be no changes to the HHA per-discipline cost limits effective under this notice for cost reporting periods beginning on or after July 1, 1993 for inflation, changes in the wage index, or geographic designation until July 1, 1996.

F. Adjustments to the Per-Visit Cost Limits

Section 1861(v)(1)(L)(ii) of the Act provides for appropriate adjustments to the HHA per-discipline cost limits. These adjustments are set forth at § 413.30(f) and include: exceptions to the limits for atypical services and extraordinary circumstances; and other provisions. Section 13564(a)(1) of OBRA '93 mandates that the effect of allowing no changes in the HHA per-visit cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, not be considered in making adjustments to the per-visit cost limits under the exceptions process. Therefore, effective for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, a provider may request an exception only for costs incurred above the amount that the limit would have been had the OBRA '93 provisions set forth in this notice regarding no changes in the cost limits not been enacted. Accordingly, for the purpose of determining the amount of an exception to the HHA per-discipline cost limits under the regulations at

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§ 413.30(f), the difference between the amount of a provider's cost limit as determined by the provisions set forth in this notice, and the amount that a provider's cost limit would have been under this notice had the OBRA '93 provisions requiring no changes in the cost limits not been enacted, is not subject to an exception to the per-discipline cost limits. We note that this provision does not apply to the A&G add-on for hospital-based HHAs. That is, for cost reporting periods beginning on or after October 1, 1993, the A&G add-on for hospital-based HHAs will not be used in computing the amount that the hospital-based cost limit would have been had the OBRA '93 provisions requiring no changes in the limits not been enacted.

The example below demonstrates the computation to determine the amount not subject to an exception under the provisions set forth in this notice. The provider's cost limit for occupational therapy is computed for the cost reporting period beginning January 1, 1994, in accordance with the provisions set forth in this notice, and this limit remains in effect until the cost reporting period beginning January 1, 1996. In the example, the provider has requested an exception to its limit for the period beginning January 1, 1995. Again, we calculate what the limit would have been had the OBRA '93 provisions requiring no changes in the limits not been enacted. The difference between the actual limit and the amount the limit would have been ($5.14) is the amount not subject to an exception.

Example: Calculation of Amount Not Subject to an Exception to the Limits for Occupational Therapy for a Freestanding HHA Located in Dallas, Texas

Labor Related Component	$74.97	(Table I)
Wage Index	×0.9599	(Table IIIa)
Labor Portion	$71.96	
Special Labor Adjustment for Budget Neutrality	×1.067	
Adjusted Labor Component	$76.79	
Nonlabor-Related Component	+16.78	(Table I)
OSHA Per Diem Add-On	+.18	
Limit Prior to Inflation Adjustment	$93.75	
Cost Reporting Period Adjustment Factor	×1.0254	(Table IV)
(January 1, 1994)		
Inflation Adjusted Limit (Limit in Effect for January 1, 1994, January 1, 1995, and January 1, 1996)	$96.13	
Cost Reporting Period Adjustment Factor (January 1, 1995 for Exception Purposes Only)	×1.0803	(Table IV)
(Using the calculation procedures in Table IV for cost reporting periods beginning on January 1, 1995, 1.0475 is multiplied by 1.00442 seven times and the resulting factor equals 1.0803.) (1.0475×(1.00442)^7=1.0803).		
Inflation Adjusted Limit (January 1, 1994 for Exception Purposes Only)	$101.27	
Amount Not Subject to Exception ($101.27 − $96.13=$5.14)		

IV. Tables

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Non-labor portion[1]
MSA (NECMA) Location:			
Skilled Nursing Care	$91.16	$74.72	$16.44
Physical Therapy	91.80	75.28	16.52
Speech Pathology	93.18	76.30	16.88
Occupational Therapy	91.75	74.97	16.78
Medical Social Services	129.62	105.99	23.63
Home Health Aide	45.98	37.65	8.33
Non-MSA Location:			
Skilled Nursing Care	$99.83	$84.88	$14.95
Physical Therapy	105.55	89.71	15.84
Speech Pathology	110.45	93.74	16.71
Occupational Therapy	107.02	90.55	16.47
Medical Social Services	164.60	139.56	25.04
Home Health Aide	46.30	39.36	6.94

[1] Non-labor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor	Location	Adjustment factor	Location	Adjustment factor
Alaska	1.250	Kauai	1.175	Puerto Rico	1.100
Hawaii:		Maui, Lanai, and Molokai	1.200	Virgin Islands	1.125
Oahu	1.225	Hawaii (Island)	1.150		

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A&G Add-on	Labor portion	Non-labor portion
MSA (NECMA) Location:			
Skilled Nursing Care	$12.20	$9.99	$2.21
Physical Therapy	11.30	9.25	2.05
Speech Pathology	11.48	9.39	2.09
Occupational Therapy	11.48	9.35	2.12
Medical Social Services	17.73	14.42	3.32
Home Health Aide	5.50	4.50	1.00
Non-MSA Location:			
Skilled Nursing Care	$14.99	$12.74	$2.25
Physical Therapy	16.14	13.73	2.41
Speech Pathology	16.09	13.67	2.42
Occupational Therapy	17.00	14.36	2.64
Medical Social Services	24.20	20.41	3.80
Home Health Aide	6.01	5.11	0.90

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS

Urban areas (constituent counties or county equivalents)	Wage index
Abilene TX	0.9183
Taylor, TX	
Aguadilla, PR	0.4549
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9455
Portage, OH	
Summit, OH	
Albany, GA	0.8017
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8887
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0083
Bernalillo, NM	
Alexandria, LA	0.8242
Rapides, LA	
Allentown-Bethlehem, PA-NJ	0.9957
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9201
Blair, PA	
Amarillo, TX	0.8703
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2217
Orange, CA	
Anchorage, AK	1.4119
Anchorage, AK	
Anderson, IN	0.9544
Madison, IN	
Anderson, SC	0.7229
Anderson, SC	
Ann Arbor, MI	1.1815
Washtenaw, MI	
Anniston, AL	0.7899
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9142
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3938
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8760
Buncombe, NC	
Athens, GA	0.8518
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9557
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0464
Atlantic , NJ	
Cape May, NJ	
Augusta, GA-SC	0.9363
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9626
Kane, IL	
Kendall, IL	
Austin, TX	0.9560
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0824
Kern, CA	
Baltimore, MD	1.0115
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9027
Penobscot, ME	
Baton Rouge, LA	0.9052
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9480
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9599
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0124
Beaver, PA	
Bellingham, WA	1.0454
Whatcom, WA	
Benton Harbor, MI	0.8421
Berrien, MI	
Bergen-Passaic, NJ	1.0733
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9287
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8030
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9223
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8734
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8845
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8604
Monroe, IN	

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TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Bloomington-Normal, IL	0.8723
McLean, IL	
Boise City, ID	0.9718
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1762
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0155
Boulder, CO	
Bradenton, FL	0.9225
Manatee, FL	
Brazoria, TX	0.9276
Brazoria, TX	
Bremerton, WA	0.9495
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury	1.1984
Fairfield, CT	
Brownsville-Harlingen, TX	0.8592
Cameron, TX	
Bryan-College Station, TX	0.9451
Brazos, TX	
Buffalo, NY	0.8873
Erie, NY	
Burlington, NC	0.7954
Alamance, NC	
Burlington, VT	0.9320
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4461
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8776
Carroll, OH	
Stark, OH	
Casper, WY	0.8855
Natrona, WY	
Cedar Rapids, IA	0.8938
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8710
Champaign, IL	
Charleston, SC	0.8298
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9653
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.9432
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9576
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9161
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7876
Laramie, WY	
Chicago, IL	1.0475
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0937
Butte, CA	
Cincinnati, OH-KY-IN	0.9972
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7352
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0695
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9777
El Paso, CO	
Columbia, MO	0.9468
Boone, MO	
Columbia, SC	0.8904
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7452
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9634
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8559
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8155
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9599
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7476
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8640
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9686
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8907
Volusia, FL	
Decatur, AL	0.7457
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8253
Macon, IL	
Denver, CO	1.0714
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9225
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0924
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7524
Dale, AL	
Houston, AL	
Dubuque, IA	0.8341
Dubuque, IA	
Duluth, MN-WI	0.9479
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8444
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8679
El Paso, TX	
Elkhart-Goshen, IN	0.8913
Elkhart, IN	
Elmira, NY	0.8775
Chemung, NY	
Enid, OK	0.8877
Garfield, OK	
Erie, PA	0.9118
Erie, PA	
Eugene-Springfield, OR	1.0123
Lane, OR	
Evansville, IN-KY	0.9422
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	0.9668
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8262
Cumberland, NC	
Fayetteville-Springdale, AR	0.7958
Washington, AR	
Flint, MI	1.1506
Genesee, MI	
Florence, AL	0.7648
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8395

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Florence, SC	
Fort Collins-Loveland, CO	1.0197
Larimor, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0314
Broward, FL	
Fort Myers-Cape Coral, FL	0.9759
Lee, FL	
Fort Pierce, FL	1.0996
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.7900
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8881
Okaloosa, FL	
Fort Wayne, IN	0.8967
Allen, IN	
De Kalb, IN	
Whitley, IN	
Forth Worth-Arlington, TX	0.9708
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0694
Fresno, CA	
Gadsden, AL	0.8166
Etowah, AL	
Gainesville, FL	0.8763
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0129
Galveston, TX	
Gary-Hammond, IN	0.9853
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9193
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9539
Grand Forks, ND	
Grand Rapids, MI	0.9813
Kent, MI	
Ottawa, MI	
Great Falls, MT	0.9951
Cascade, MT	
Greeley, CO	0.9320
Weld, CO	
Green Bay, WI	0.9547
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9128
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8887
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9121
Washington, MD	
Hamilton-Middletown, OH	0.9347
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9879
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1868
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Litchfield, CT	
Hickory, NC	0.8735
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1534
Honolulu, HI	
Houma-Thibodaux, LA	0.7315
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0022
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9400
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8799
Madison, AL	
Indianapolis, IN	0.9665
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9489
Johnson, IA	
Jackson, MI	0.9625
Jackson, MI	
Jackson, MS	0.7702
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7878
Madison, TN	
Jacksonville, FL	0.9122
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7125
Onslow, NC	
Jamestown-Dunkirk, NY	0.7746
Chautauqua, NY	
Janesville-Beloit, WI	0.8432
Rock, WI	
Jersey City, NJ	1.0728
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8633
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8827
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0237
Grundy, IL	
Will, IL	
Joplin, MO	0.7925
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1765
Kalamazoo, MI	
Kankakee, IL	0.8454
Kankakee, IL	
Kansas City, KS-MO	0.9550
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8934
Kenosha, WI	
Killeen-Temple, TX	1.1250
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8658
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9452
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8920
LaCrosse, WI	
Lafayette, LA	0.8194
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8588
Tippecanoe, IN	
Lake Charles, LA	0.8341
Calcasieu, LA	
Lake County, IL	0.9953
Lake, IL	
Lakeland-Winter Haven, FL	0.8409
Polk, FL	
Lancaster, PA	0.9221
Lancaster, PA	
Lansing-East Lansing, MI	1.0242
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7248
Webb, TX	
Las Cruces, NM	0.7877
Dona Ana, NM	
Las Vegas, NV	1.0588
Clark, NV	

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TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Lawrence, KS	0.8901
Douglas, KS	
Lawton, OK	0.8354
Comanche, OK	
Lewiston-Auburn, ME	0.9021
Androscoggin, ME	
Lexington-Fayette, KY	0.8565
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8030
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.8920
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8373
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8656
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8933
Lorain, OH	
Los Angeles-Long Beach, CA	1.2308
Los Angeles, CA	
Louisville, KY–IN	0.9291
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8766
Lubbock, TX	
Lynchburg, VA	0.8509
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8768
Bibb, GA	
Huston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0270
Dane, WI	
Manchester-Nashua, NH	1.0219
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8358
Richland, OH	
Mayaguez, PR	0.4752
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7684
Hidalgo, TX	
Medford, OR	1.0005
Jackson, OR	
Melbourne-Titusville, FL	0.9162
Brevard, FL	
Memphis, TN–AR–MS	0.9023
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0270
Merced, CA	
Miami-Hialeah, FL	1.0147
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0903
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0335
Midland, TX	
Milwaukee, WI	0.9680
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN–WI	1.0774
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8454
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1530
Stanislaus, CA	
Monmouth-Ocean, NJ	1.0058
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7832
Ouachita, LA	
Montgomery, AL	0.7823
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8397
Delaware, IN	
Muskegon, MI	0.9680
Muskegon, MI	
Naples, FL	1.0282
Collier, FL	
Nashville, TN	0.9360
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3167
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9962
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2046
New Haven, CT	
New London, London-Norwich	1.1525
New London, CT	
New Orleans, LA	0.8967
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3431
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1350
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8350
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8481
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4225
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8580
Marion, FL	
Odessa, TX	1.0835
Ector, TX	
Oklahoma City, OK	0.9195
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0957
Thurston, WA	
Omaha, NE-IA	0.8953
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9815
Orange, NY	
Orlando, FL	0.9582
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8082
Daviess, KY	
Oxnard-Ventura, CA	1.2259
Ventura, CA	
Panama City, FL	0.8598
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8505

TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8720
Jackson, MS	
Pensacola, FL	0.8589
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8704
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.0908
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0387
Maricopa, AZ	
Pine Bluff, AR	0.7840
Jefferson, AR	
Pittsburgh, PA	1.0087
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0739
Berkshire, MA	
Ponce, PR	0.4583
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9254
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1529
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0039
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0639
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0590
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0189
Utah, UT	
Pueblo, CO	0.8687
Pueblo, CO	
Racine, WI	0.8814
Racine, WI	
Raleigh-Durham, NC	0.9448
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8366
Pennington, SD	
Reading, PA	0.8778
Berks, PA	
Redding, CA	1.0507
Shasta, CA	
Reno, NV	1.1571
Washoe, NV	
Richland-Kennewick, WA	0.9364
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9379
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1391
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8251
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0985
Olmsted, MN	
Rochester, NY	0.9671
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9245
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2280
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0452
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9382
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9376
Buchanan, MO	
St. Louis, MO-IL	0.9351
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0403
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2968
Monterey, CA	
Salt Lake City-Ogden, UT	0.9892
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8107
Tom Green, TX	
San Antonio, TX	0.8418
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2095
San Diego, CA	
San Francisco, CA	1.4480
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4840
Santa Clara, CA	
San Juan, PR	0.4967
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1721
Santa Barbara, CA	
Santa Cruz, CA	1.2733
Santa Cruz, CA	
Santa Fe, NM	0.9102
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2926
Sonoma, CA	
Sarasota, FL	0.9741
Sarasota, FL	
Savannah, GA	0.8264
Chatham, GA	
Effingham, GA	
Scranton, Wilkes,Barre, PA	0.8916
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0827
King, WA	
Snohomish, WA	
Sharon, PA	0.9024

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TABLE IIIa.—WAGE INDEX FOR URBAN AREAS—Continued

Urban areas (constituent counties or county equivalents)	Wage index
Mercer, PA	
Sheboygan, WI	0.8836
Sheboygan, WI	
Sherman-Denison, TX	0.9052
Grayson, TX	
Shreveport, LA	0.9262
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.8470
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8797
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0142
St. Joseph, IN	
Spokane, WA	1.0648
Spokane, WA	
Springfield, IL	0.9258
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8050
Christian, MO	
Greene, MO	
Springfield, MA	1.0290
Hampden, MA	
Hampshire, MA	
State College, PA	0.9861
Centre, PA	
Steubenville-Weirton, OH-WV	0.8756
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1566
San Joaquin, CA	
Syracuse, NY	0.9905
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0276
Pierce, WA	
Tallahassee, FL	0.9183
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9225
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8791
Clay, IN	
Vigo, IN	
Texarkana-TX-AR	0.7860
Miller, AR	
Bowie, TX	
Toledo, OH	1.0160
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9265
Shawnee, KS	
Trenton, NJ	1.0094
Mercer, NJ	
Tucson, AZ	0.9552
Pima, AZ	
Tulsa, OK	0.8542
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8487
Tuscaloosa, AL	
Tyler, TX	0.9798
Smith, TX	
Utica-Rome, NY	0.8652
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3150
Napa, CA	
Solano, CA	
Vancouver, WA	1.0755
Clark, WA	
Victoria, TX	0.8958
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9720
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0351
Tulare, CA	
Waco, TX	0.7783
McLennan, TX	
Washington, DC-MD-VA	1.0928
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8884
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9709
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0095
Palm Beach, FL	
Wheeling, WV-OH	0.8035
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9770
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8139
Wichita, TX	
Williamsport, PA	0.8829
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0825
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8677
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0782
Worcester, MA	
Yakima, WA	1.0070
Yakima, WA	
York, PA	0.9008
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9826
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0220
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8850
Yuma, AZ	

TABLE IIIb.—WAGE INDEX FOR RURAL AREAS

Non-urban areas	Wage index
ALABAMA	0.7121
ALASKA	1.3372
ARIZONA	0.8724
ARKANSAS	0.6979
CALIFORNIA	1.0122
COLORADO	0.8382
CONNECTICUT	1.1857
DELAWARE	0.8537
FLORIDA	0.8704
GEORGIA	0.7769
HAWAII	0.9579
IDAHO	0.8917
ILLINOIS	0.7696
INDIANA	0.7830
IOWA	0.7517
KANSAS	0.7426
KENTUCKY	0.7781
LOUISIANA	0.7355
MAINE	0.8294
MARYLAND	0.8029
MASSACHUSETTS	1.1607
MICHIGAN	0.8893
MINNESOTA	0.8288
MISSISSIPPI	0.6935
MISSOURI	0.7240
MONTANA	0.8226
NEBRASKA	0.6967
NEVADA	0.9663
NEW HAMPSHIRE	0.9508
NEW JERSEY	[1]
NEW MEXICO	0.8289
NEW YORK	0.8371
NORTH CAROLINA	0.7992
NORTH DAKOTA	0.7688
OHIO	0.8438
OKLAHOMA	0.7384
OREGON	0.9643
PENNSYLVANIA	0.8620
PUERTO RICO	[2] 0.4316
RHODE ISLAND	[1]
SOUTH CAROLINA	0.7678
SOUTH DAKOTA	0.7179
TENNESSEE	0.7316
TEXAS	0.7578
UTAH	0.8977
VERMONT	0.8997
VIRGINIA	0.7784
VIRGIN ISLANDS	[2] 1.0000
WASHINGTON	0.9597
WEST VIRGINIA	0.8482
WISCONSIN	0.8459
WYOMING	0.8423

[1] All counties within State are classified urban.

[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1993	1.0042
September 1, 1993	1.0085
October 1, 1993	1.0126
November 1, 1993	1.0169
December 1, 1993	1.0211
January 1, 1994	1.0254
February 1, 1994	1.0299
March 1, 1994	1.0340
April 1, 1994	1.0385
May 1, 1994	1.0430
June 1, 1994	1.0475

[1] Based on compounded projected market basket inflation rates of 5.10 percent for 1994 and 5.30 percent for 1995.

V. Impact Statement

For notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

This notice with comment period sets forth a revised schedule of HHA per-visit cost limits and A&G add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993. (We note that, in accordance with section 13564(b) of OBRA '93, the A&G add-on for hospital-based HHAs is eliminated effective for cost reporting periods beginning on or after October 1, 1993.) In addition, this notice announces the provisions of section 13564(a) of OBRA '93, which provides for a delay in the updates of the HHA per-visit cost limits until cost reporting periods beginning on or after July 1, 1996.

As discussed below, the aggregate impact of revising the schedule of limits effective for cost reporting periods beginning on or after July 1, 1993 is not significant. In contrast, the requirement under section 13564(a) of OBRA '93 that these limits remain in place for cost reporting periods beginning before July 1, 1996 will result in significant Federal cost savings. The impact of this OBRA '93 provision also is discussed further below. This notice explains the revised methodology for calculating the HHA per-visit cost limits that result from the provisions of OBRA '93. We do not believe that merely explaining the results of these provisions in this notice will have a significant effect on a substantial number of small entities. Therefore, we have determined and the Secretary certifies that a regulatory flexibility analysis under the RFA is not required.

However, to the extent that a legislative provision being announced by a notice such as this may have a significant effect on beneficiaries or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of the statutory requirement that there be no update in the HHA per-visit cost limits until cost reporting periods beginning on or after July 1, 1996.

A. Effects of Revised Cost Limits for Cost Reporting Periods Beginning On or After July 1, 1993 and Before July 1, 1994

In response to comments on the schedule of limits set forth in our July 8, 1993 notice with comment period, we decided to validate the database used in calculating the limits. As discussed in section II.A.2 of this notice, we determined that data were missing from a large number of HHAs and that duplicate cost reports were used in the calculation of the hospital-based add-on. Consequently, it was necessary to recalculate the limits and add-on amounts effective for cost reporting periods beginning on or after July 1, 1993. This notice sets forth revised per-visit cost limits and add-on amounts for hospital-based HHAs for cost reporting periods beginning on or after July 1, 1993. Section II.A.2 of this notice contains tables that illustrate the effects of using the revised database to calculate the limits and the A&G add-on amounts. As the tables illustrate, the per-visit cost limits and A&G add-on amounts change for each discipline. Most notable is the increase in the limits and add-on amounts for skilled nursing care and home health aide visits, since these visits constitute the great majority of covered HHA visits. We estimate that the aggregate impact of these changes on Medicare spending for HHA care will be as follows:

TABLE 1.—IMPACT OF REVISED LIMITS [1]

Fiscal year	Costs
1994	10
1995	10
1996	10
1997	10

[1] All figures are rounded to the nearest 10 million.

We are unable to estimate the effects of these changes on individual HHAs. In general, we believe that most HHAs will experience small revenue increases under the revised limits; the degree of that increase will vary depending on the proportion of the HHA's revenues that come from the Medicare program, the distribution of services provided by the HHA, and the HHA's ability to operate with the cost limits.

B. Effect of Cost Limits On Cost Reporting Periods Beginning On or After July 1, 1994 and Before July 1, 1996

In accordance with section 13564(a) of OBRA '93, this notice with comment period specifies that there will be no changes in the per-visit cost limits for home health services for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs. We estimate that this statutory provision will result in the following savings to the Medicare program:

TABLE 2.—IMPACT OF DELAY IN THE UPDATE OF HHA LIMITS [1]

Fiscal year	Savings
1994	$ 0
1995	330
1996	330
1997	100

[1] All figures are rounded to the nearest $10 million.

As illustrated in Table 3 below, the delay in updating the cost limits until July 1, 1996, will result in an increase in the number of HHAs exceeding the HHA cost limits in all categories. Table 3 below shows the impact of these changes.

TABLE 3.—AGENCIES EXCEEDING THE COST LIMITS [1]

	HHAs in Model	Exceeding the limits as of 7/1/93	Exceeding the limits as of 7/1/95
Free-standing			
HHAs	2992	763	1329
Urban	2001	510	911
Rural	991	253	418
Hospital-based			
HHAs	1053	408	856
Urban	447	173	383

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TABLE 3.—AGENCIES EXCEEDING THE COST LIMITS [1]—Continued

	HHAs in Model	Exceeding the limits as of 7/1/93	Exceeding the limits as of 7/1/95
Rural	606	235	473

[1] All figures are based on revised cost limits as published in this notice for cost reporting periods beginning on or before July 1, 1993 and before July 1, 1994.

Again, we are unable to identify the effects of these provisions on individual HHAs. However, we anticipate that overall HHA payments for FY 1995 through FY 1997 will be approximately 0.9 percent, 2.0 percent, and 0.5 percent less, respectively, than they would have been in those years if the OBRA '93 provisions were not in effect. The effects of this reduction on the total revenues of individual HHAs will depend on the HHA's ability to operate within the cost limits and on the proportion of the HHA's revenues that come from the Medicare program. We estimate that the delay in updating the limits will not result in a significant number of facilities' total revenues being increased or reduced by 3 percent or more from the revised limits effective for cost reporting periods beginning on July 1, 1993, as set forth in this notice, adjusted for inflation.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VI. Other Required Information

A. Waiver of Proposed Notice and 30-Day Delay in the Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to the public interest.

This notice revises the per-visit limits effective for cost reporting periods beginning on or after July 1, 1993. We believe the revised limits will be beneficial to HHAs. Moreover, we have revised the limits based on public comments on our July 8, 1993 notice with comment period.

In addition, as discussed above, before the enactment of OBRA '93, section 1861(v)(1)(L)(iii) of the Act required that the HHA per-discipline cost limits be updated annually no later than July 1 of each year. However, section 13564(a)(1) of OBRA '93 specifies that there be no changes in the HHA cost limits (except as may be necessary to take into account the elimination of the A&G add-on for hospital-based HHAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Section 13564(a)(2) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to delay the next required update of the HHA limits until July 1, 1996.

Thus, in conformance with the clear direction of section 13564(a) of OBRA '93, this notice announces the new HHA provisions and explains the effects of these provisions on the methodology used in calculating the HHA cost limits. We have made no changes in this methodology beyond those directly required by OBRA '93. Moreover, section 13564(a) of OBRA '93 mandates that these provisions are effective beginning with cost reporting periods beginning on or after July 1, 1994. Because many of the provisions in this notice announce, and explain the impact of, changes made by statute that are already effective, we believe it is unnecessary to publish a proposed notice or delay the effective date.

In summary, the only discretionary aspect of this notice is the revision of the schedule of HHA cost limits effective for cost reporting periods beginning on or after July 1, 1993. As noted above, this change is being made in response to public comment and is clearly beneficial to HHAs. Publishing a proposed rule or delaying the effective date would postpone the correction of errors in the database used to compute the HHA cost limits. Thus, we have concluded that in this instance, it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This notice with comment period does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

C. Requests for Data From the Public

In order to respond promptly to public requests for data used in calculating the HHA cost limits, we have set up a process under which commenters can gain access to the raw data on an expedited basis. The HHA database is available on computer tape format or diskette for $680. Anyone wishing to purchase data tapes or diskettes should submit a written request along with a company check or money order (payable to HCFA-PUF) to cover the cost, to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 597–5151.

D. Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

Authority: (Sections 1102, 1814(b), 1861(v)(1)(A) and (v)(1)(L), 1866(a), and 1871 of the Social Security Act (42 U.S.C. 1302 1395f(b), 1395x(v)(1)(A) and (v)(1)(L), 1395cc(a), and 1395hh); section 13564(a) of Public Law 103–66 (42 U.S.C. 1395x(note)) and 42 CFR 413.30.)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 4, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 95–3526 Filed 2–13–95; 8:45 am]

BILLING CODE 4120-01-P

Indian Health Service

Health Professions Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Competitive Grant Applications for the Health Professions Recruitment Program for Indians.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the Health Professions Recruitment Program for Indians established by sec. 102 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during fiscal year (FY) 1995. This program is described at § 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 et seq. Costs will be determined in accordance with OMB Circulars A–21, A–87, and A–122 (cost principles for different types of applicant organizations); and 45 CFR part 74 or 45 CFR part 92 (as applicable). Executive Order 12372 requiring intergovernmental review is not applicable to this program. This program is not subject to the Public Health System Reporting requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicant may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Smoke Free Workplace: The PHS strongly encourage our grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: A. Application Receipt Date—An original and two copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business May 15, 1995.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

B. Additional Dates

1. Application Review: June 29, 1995.

2. Applicants Notified of Results: On or about August 1, 1995 (approved, recommended for approval but not funded, or disapproved.

3. Anticipated Start Date: September 30, 1995.

FOR FURTHER INFORMATION CONTACT: For program information, contact Ronald L. Hernandez, Division of Health Professions Recruitment and Training, Indian Health Service, Twinbrook Building, Suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852, (301) 443–6197. For grants application and business management information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland (301) 443–5204. (The telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and preference, program objectives, required affiliation, fund availability and period of support, type of program activities considered for support, and application procedures for FY 1995.

A. General Program Purpose

The purpose of the Health Professions Recruitment program is to increase the number of American Indians and Alaska Natives entering the health professions and to ensure an adequate supply of health professionals to the IHS, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.

B. Eligibility and Preference

The following organizations are eligible with preference given in the order of priority to:

1. Indian tribes,
2. Indian tribal organizations,
3. urban Indian organizations and other Indian health organizations, and
4. public and other nonprofit private health or educational entities.

C. Program Objectives

Each proposal must address the following *four* objectives to be considered for funding:

1. To identify Indians with a potential for education or training in Public Health (Masters level) and other health professions (excluding nursing), and to encourage and assist them to enroll in such programs. The Nursing profession is excluded because the IHS Nursing Recruitment Grant Program provides funding to increase the number of nurses who deliver health care services to Indians.

2. To deliver the necessary student support systems to help to ensure that students who are recruited successfully complete their academic training. Support services may include providing career counseling and academic advice; assisting students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid, monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services, and other related activities which will help to retain students in school.

3. To publicize existing sources of financial aid available to Indian students interested in enrolling in or enrolled in an accredited Masters of Public Health program or accredited health professions program (excluding nursing).

4. To work in close cooperation with the IHS, tribes, tribal organizations and urban Indian organizations, in locating and identifying non-academic period placement opportunities and practicum experiences, i.e., the IHS Extern Program authorized under section 105 of Pub. L. 94–437, as amended, assisting students with individual development plans in conjunction with identified placement opportunities, monitoring students to identify and evaluate possible problems; and monitoring and evaluating all placement and practicum experiences within the IHS to further develop and modify the program.

D. Required Affiliation

If the applicant is an Indian tribe, tribal organization, urban organization

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or other Indian health organization, or a public or nonprofit private health organization, the applicant must submit a letter of support from at least one accredited school of public health or health professions program (excluding nursing), depending on the type of program for which it proposes to recruit. This letter must document linkage with that educational organization.

When the target population of a proposed project includes a particular Indian tribe or tribes, an official document, i.e., a letter of support or tribal resolution, must be submitted indicating that the tribe or tribes will cooperate with the applicant.

E. Fund Availability and Period of Support

It is anticipated that approximately $250,000 will be available for approximately 3 new grants. The average funding level for projects in FY 1994 was $98,000. The anticipated start date for selected projects will be September 30, 1995. Projects will be awarded for a budget term of 12 months. Grant funding levels include both direct and indirect costs.

F. Type of Program Activities Considered for Support

Funds are available to develop grant programs to locate and recruit students with potential for (1) Masters of Public Health or (2) other health professions degree programs (excluding nursing), and to provide support services to Indian students who are recruited.

G. Application Process

An *IHS Recruitment Grant Application Kit*, including the required PHS 5161–1 (Rev. 7/92) (OMB Approval No. 0937–0189) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 15 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs (Pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1 (pages 17–18)
—Checklist, PHS 5161–1 (pages 23–24)
—Project Abstract (one page)
—Table of Contents
—Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget
—Appendix to include
—Tribal Resolution(s) or Letters of Support
—Resumes (Curriculum Vitae) of key staff
—Position descriptions for key staff
—Organizational chart
—Workplan Format
—Completed IHS Application Checklist
—Application Receipt Care, PHS 3038–1 Rev. 5–90.

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 102.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to ensure that the scope of work can be completed within the budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions (excluding nursing), include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 pts.)

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to address the relationship of objectives to manpower deficiencies.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Soundness of Fiscal Plan (10 pts.)

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

Appendix—to include:

a. Resumes and job descriptions for key staff.

b. Current approved organizational chart.

c. Workplan.

d. Application receipt card, PHS 3038–1 Rev. 5–90.

J. Reporting

1. *Progress Report*—Program progress reports may be required quarterly or semiannually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. *Financial Status Report*—Quarterly or semi-annually financial status reports will be submitted 30 days after the end of the quarter or half year. A final financial status report is due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants.

2. PHS Grants Policy Statement, and

3. Appropriate Cost Principles: OMB Circular A–21, Educational Institutions, OMB Circular A–87, State and Local Governments, and OMB Circular A–122, Non-profit Organizations.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other Federal or non-Federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Director, Division of Health Professions Recruitment and Training (DHPRT), for final review and approval. The Director, DHPRT, will also consider the recommendations from the Grants Management Branch. Applicants are notified in writing on or about August 1, 1995. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: February 7, 1995.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 95–3667 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Geriatric Dental Program Project.
Dates: February 14, 1995.
Time: 1:00 p.m.
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Oral Health Survey.
Dates: February 14–15, 1995.
Time: 9:00 a.m.
Place: Ramada Inn, Bethesda, MD 20814.
Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Temporomandibular Joint Implants.
Dates: April 5, 1995.
Time: 1:00 p.m.
Place: Natcher Building, NIH, Conf. Rm. 4AS–10.
Contact Person: Dr. H. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN–38J, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: February 7, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3588 Filed 2–13–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, certain authorities vested in the Secretary of Health and Human Services

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under Section 1892 of the Social Security Act, as amended hereafter, pertaining to Offset of Medicare Payments to Individuals to Collect Past-Due Obligations Arising from Breach of Scholarship or Loan Contract.

The authorities hereby delegated are (1) the authority to negotiate, approve, and sign Medicare Offset Agreements, and (2) the authority to inform the Attorney General and the Inspector General of the Department of Health and Human Services when a scholarship or loan obligor has refused to enter into, or has breached, a Medicare Offset Agreement. All other authorities under Section 1892 have been delegated to, and remain with, the Administrator, Health Care Financing Administration.

I hereby ratify all actions, with respect to Medicare offsets, taken by the Assistant Secretary for Health or by any Public Health Service Official prior to the effective date of this delegation that, in effect, involved the exercise of either authority delegated herein.

This delegation became effective upon the date of signature.

Dated: January 31, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–3560 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–15–M

Office of the Assistant Secretary for Health

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA, Office of the Assistant Secretary for Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 59 FR 52553–4, October 18, 1994) is further amended to abolish the *National AIDS Program Office (HAA)*, Office of the Assistant Secretary for Health, and to establish a new *Office of HIV/AIDS Policy (HAH)* within the Office of Assistant Secretary for Health. These changes are being made to reflect the major responsibilities in AIDS policy and planning and a heightened role in collaborative coordination across the DHHS and with other Federal, Tribal, State, local and private organizations.

Office of the Assistant Secretary for Health

Under Section HA–10, Office of the Assistant Secretary for Health—Organization, delete item *1 National AIDS Program Office (HAA)*, and following item *4. Office of Research Integrity (HAG)*, add a new item *4. Office of HIV/AIDS Policy (HAH)*, and renumber items 2 through 4 as 1 through 3.

Under Section H–20, Office of the Assistant Secretary for Health (HA)—Functions, delete the title and statement for the *National AIDS Programs Office (HAA)*.

Following the statement for the *Office of Research Integrity (HAG)*, add the following title and statement:

Office of HIV/AIDS Policy (HAH). Under the direction of the Assistant Secretary for Health, the Director of the Office of HIV/AIDS Policy: (1) Serves as the principal HIV/AIDS staff to the Assistant Secretary for Health; (2) facilitates and/or coordinates HIV/AIDS policy planning processes across the DHHS and the PHS and monitors progress toward achieving established goals; (3) provides PHS liaison with the Office of the National AIDS Policy Coordinator, Executive Office of the President; (4) identifies critical HIV/AIDS national, DHHS, and PHS policy issues, including inter-and intra-agency coordination needs, and advises on how to resolve the issues; (5) provides liaison with other Federal organizations, State and local entities, and non-governmental organizations involved in HIV/AIDS policy; (6) assists in the preparation of responses to inquiries related to HIV/AIDS activities as appropriate; (7) provides analytic and administrative support to DHHS and PHS HIV/AIDS advisory bodies, cross-Departmental; coordinating groups, and other subsidiary or independent task forces, work groups, or subgroups; (8) provides guidance on the cooperative dissemination and exchange of accurate scientific, prevention, and educational information and clinical guidelines with and between public health interest groups and professional and private sector organizations; (9) guides and promotes methods of dissemination and exchange of information to and among the public and, (10) reviews and makes recommendations on PHS agency budget requests and on departmental research, prevention, services, training, information, and infrastructure priorities as incorporated in planning documents or budget proposals.

Dated: February 6, 1995.

Donna M. Shalala,

Secretary

[FR Doc. 95–3561 Filed 2–13–95; 8:45 am]

BILLING CODE 4160–17–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 60997–8, November 29, 1994) is amended to reflect the reorganization of the John E. Fogarty International Center for Advanced Study in the Health Sciences (FIC) (HNF) as follows: (1) Establish the Office of International Science Policy and Analysis (HNF12); Office of Administrative Management and International Services (HNF13); Division of International relations (HNF2); Division of International Training and Research (HNF3); and the Division of International Advanced Studies (HNF4).

Section HN–B, Organization and Functions is amended as follows: (1) Under the heading John E. Fogarty International Center for Advanced Study in the Health Sciences (HNF), insert the following:

Office of International Science Policy and Analysis (HNF12)

(1) Advises the Director on the development, analysis, and evaluation of the Center's programs; (2) advises the Director on the development of strategic and operational plans and provides staff support to and liaison with program staff in coordinating, integrating, and articulating these plans; (3) advises the Director on international science policy issues; (4) develops the Center's plan for evaluating the focus and impact of ongoing programs and providing analytical reports of program trends and future forecasts; (5) maintain legislative liaison with the Office of Science Policy and Technology Transfer, NIH; (6) disseminates information on scientific and policy developments related to international research; and (7) plans and implements the Center's public affairs and publications activities.

Office of Administrative Management and International Services (HNF13)

(1) Advises the Director, Deputy Director, and Division/Office Directors on administrative matters affecting the planning and execution of Center programs; (2) plans, directs and conducts administrative management functions of the Center including financial management, human resources management, procurement, international travel, office services, and information resources management; (3) interprets, analyzes, and implements administrative policies and directives affecting the Center and the NIH; (4) provides visa/passport services to the NIH and PHS; (5) plans and directs the provision of visa, technical, and logistic services in support of NIH programs for visiting foreign scientists; (6) provides policy and technical guidance on immigration regulations and legislation; and (7) maintains liaison with other government agencies involved in international activities.

Division of International Relations (HNF2)

(1) Fosters and facilitates international cooperation in biomedical research by: (a) Providing advice on the development of policies and procedures pertaining to international activities; (b) initiating and maintaining liaison with other U.S. agencies and embassies, foreign health ministries and embassies, and multilateral organizations; and (c) developing, coordinating, and administering international agreements in which NIH participates; (2) collects, analyzes, and disseminates information on the structure and conduct of biomedical research and related scientific programs and policies in foreign countries; (3) plans, directs, and administers the programs of the FIC–WHO Collaborating Center for Research and Training in Biomedicine, Special Foreign Currency and Joint Fund Programs, and health scientist exchange programs on behalf of the NIH; and (4) serves as the NIH focal point for the Department of State, and international components of Federal agencies, international organizations and foreign governments.

Division of International Training and Research (HNF3)

(1) Plans, directs, and administers a program of research grants, cooperative agreements, fellowships, and research contracts designed to support research and research training that: (a) Respond to known or anticipated global health threats; (b) advance science through international cooperation; and (c) develop human resources to meet global research challenges; (2) maintains an overview of the scientific and financial status of the Center's extramural programs; (3) provides advice on extramural research program administration and science in general to the Center Director, staff, and advisory groups; (4) collaborates and serves as liaison with other NIH extramural research and training programs, Federal and public agencies, universities, other centers of medical research, professional and lay organizations, and international organizations in identifying research and research training needs and developing programs to meet those needs; (5) maintains an awareness of related national and international research and research training efforts in program areas; and (6) supervises grants management, processing, and award activities.

Division of International Advanced Studies (HNF4)

(1) Plans and conducts advanced studies of national and international importance that are relevant to the programmatic and policy directions of the Center and that complement the research activities of the categorical institutes of the NIH; (2) plans, directs, and administers the Center's Scholars-in-Residence Program designed to foster collaborative research between scholars and intramural NIH scientists; (3) provides planning, management and program support for international conferences and workshops sponsored by the Center; and (4) provides information and advice on Division-supported activities to the Center's Director.

Dated: January 24, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–3587 Filed 2–13–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–95–3797; FR–3742–N–02]

Announcement of Funding Awards for Fair Housing Initiatives Program, Private Enforcement Initiative Special Project—Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of FY 1994 funding awards made under the Fair Housing Initiatives Program (FHIP), Private Enforcement Initiative Special Project. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–3216. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The FHIP has four funding categories the Administrative Enforcement Initiative, the Education and Outreach Initiative, the Private Enforcement Initiative, and the Fair Housing Organizations Initiative.

A Notice of Funding Availability (NOFA) announcing the availability of up to $2 million of FY 1994 and $500,000 of FY 1995 Fair Housing Initiatives Program funding for the Private Enforcement Initiative Special Project was published on August 9, 1994 (59 FR 40756).

The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of

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funding awards. This information is provided in Appendix A to this document.

Dated: February 6, 1995

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity

APPENDIX A.—SUCCESSFUL APPLICANTS FY 94 FHIP PRIVATE ENFORCEMENT INITIATIVE—SPECIAL PROJECT

Applicant name and address	Contact name & phone no.	Project focus (insurance or lending)	Region	Amount awarded
Open Housing Center, Inc., 594 Broadway, Suite 608 New York, New York 10012	Sylvia Kramer, Executive Director, (212) 941–6101	Insurance	2	$208,798.
National Fair Housing Alliance, 927 15th Street, NW, Suite 600, Washington, DC 20005.	Shanna L. Smith, Executive Director, (202) 898–1661	Insurance	3	299,981
Housing Opportunities Made Equal of Richmond, Inc., 1218 West Cary Street, Richmond, Virginia 23220.	Constance Chamberlin, Executive Director, (804) 354–0641	Insurance	3	200,234.
National Fair Housing Alliance, 927 15th Street, NW, Suite 600, Washington, DC 2005.	Shanna L. Smith, Executive Director, (202) 898–1661	Lending	3	127,133.
The Housing Advocates, Inc., 3214 Prospect Avenue, East, Cleveland, Ohio 55114.	Edward G. Kramer, Executive Director, (216) 391–5444.	Insurance	5	62,027 (approved for 297,052 if additional funds are available)
Housing Opportunities Made Equal, Committee of Cincinnati, Ohio, 2400 Reading Road, Room 109, Cincinnati, Ohio 45202.	Karla Irvine, Executive Director, (513) 721–4663.	Insurance	5	240,117
Lawyers' Committee for Better Housing, Inc., 1263 W. Loyola, Chicago, Illinois 60626.	Julie J. Ansel, Executive Director, (312) 274–1111	Insurance	5	155,830.
Toledo Fair Housing Center, 2116 Madison Avenue, Toledo, Ohio 43624–1131.	Lisa Rice-Coleman, Executive Director, (419) 243–6163.	Insurance	5	299,997
Fair Housing Center of Metropolitan Detroit, 1249 Washington Blvd., Room 1312, Detroit, Michigan 48226.	Clifford C. Schrupp, FHC Executive Director, (313) 963–1274.	Insurance	5	151,400.
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 200, Milwaukee, Wisconsin 53202.	William R. Tisdale, Executive Director, (414) 278–1240.	Insurance	5	283,044
Leadership Council for Metropolitan Open Communities, 401 South State Street, Suite 860, Chicago, Illinois 60605.	Aurie A. Pennick, President, (312) 341–5678.	Insurance	5	192,733
South Suburban Housing Center, 2057 Ridge Road, Homewood, Illinois 60430.	Cynthia A. McMurtrey, Director/Auditing & Compliance (708) 957–4674.	Lending	5	35,000.
Housing For All-Metro Denver Fair Housing Center, 2855 Tremont Place, Suite 205, Denver, Colorado 80205.	Kathryn Cheever, President, (303) 296–6949.	Insurance	8	94,000
The Fair Housing Council of San Diego, 1744 Euclid Avenue, San Diego, California 92105.	Joyce James, President, (619) 363–3555.	Insurance	9	149,706

[FR Doc. 95–3563 Filed 2–13–95; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington, DC 20503, telephone 202–395–7340.

Title: Higher Education Grant Annual Report Form.

OMB approval number: 1076–0106.

Abstract: Information is collected to obtain facts on measurable program performance results with categorical data and ratios of program performance results with categorical data and ratios of supplementary funding programs consistent to stated goals and objectives.

Bureau form number: None.

Frequency: Annual.

Description of respondents: Tribal, tribal organization or Bureau program administrators responsible for collection of data used in measuring program effectiveness.

Estimated completion time: 3.0 hours

Annual Responses: 300.

Annual burden hours: 900.

Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: October 19, 1994

Reginald Rodriquez,

Chief, Branch of Post Secondary Education Programs

[FR Doc. 95–3623 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0101), Washington, DC 20503, telephone 202–395–7340.

Title: Higher Education Grant Program Application Form

OMB approval number: 1076–0101

Abstract: Respondents supply identifying information and data for use in determining applicant eligibility, evidence of college admission and evidence of financial need as prepared by the college financial aid officer. Funds are provided to assist eligible Indian students pursuing their undergraduate baccalaureate degree at accrediated institutions of higher education.

Bureau form number: BIA 6237

Frequency: Annual

Description of respondents: Eligible Indian students pursuing an undergraduate baccalaureate degree.

Estimated completion time: 0:45 minutes

Annual responses: 33,250

Annual burden hours: 14,962

Bureau clearance officer: Gail Sheridan 202–208–2685.

Dated: October 18, 1994

Reginald Rodriquez,

Chief, Branch of Post Secondary Education Programs.

[FR Doc. 95–3624 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–962–1410–00–P]

Alaska; Notice for Publication AA–10988; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Chugach Alaska Corporation for 0.18 acre. The land involved are in the vicinity of Esther Bay, Alaska.

U.S. Survey No. 6918, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 16, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–3628 Filed 2–13–95; 8:45 am]

BILLING CODE 4310–JA–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32658]

Caldwell County Economic Development Commission—Acquisition Exemption—Norfolk Southern Railway Company

Caldwell County Economic Development Commission (CCEDC), a noncarrier, has filed a verified notice of exemption to acquire approximately 22.1 miles of railroad known as "the HG Line" owned by Norfolk Southern Railway Company (NS) [1] and currently operated by the Caldwell County Railroad Company (CCRC). The line extends from milepost HG–90.6 [2] at Hickory, NC, to milepost HG–112.7 at Valmead (Lenoir), NC. CCRC will continue to serve as exclusive freight operator on the subject line, pursuant to a lease and operating agreement executed with CCEDC and pursuant to the exemption in *Caldwell County Railroad Company—Lease, Operation, and Acquisition Exemption—Norfolk Southern Railway Company*, Finance Docket No. 32584 (ICC served Oct. 19, 1994).

CCEDC simultaneously filed in Finance Docket No. 32659, a petition for exemption pursuant to 49 U.S.C. 10505 to exempt it from the provisions of Subtitle IV of Title 49 of the United States Code (the Interstate Commerce Act).

CCEDC expected to consummate acquisition of this rail line on January 26, 1995, at which time CCEDC's previously executed lease and operating agreement with CCRC would also become effective.

Any comments must be filed with the Commission and served on: Robert A Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N St., N.W., Washington, DC 20036

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: February 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3630 Filed 2–13–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 19, 1994, and published in the **Federal Register** on July 28, 1994 (59 FR 38492), Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530) made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to Section

[1] The acquisition will be pursuant to a donation and sale agreement, whereby NS will donate and sell the subject line to CCEDC.

[2] CCEDC's initially filed notice erroneously reported the Hickory, NC milepost as 90.0. By letter dated January 19, 1995, CCEDC's counsel corrected the milepost to read 90.6, for a total of 22.1 miles to be acquired from NS.

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303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations. Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 6, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–3626 Filed 2–13–95; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 2, 1994, Nycomed Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as an importer of Meperidine (9230), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 16, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 6, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–3627 Filed 2–13–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January and February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations For Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,581; Arthur Frisch Co., Inc., Bronx, NY

TA–W–30,561; Nalleys' Fine Foods, A Div. of Curtice Burns Foods, Inc., Tacoma, WA

TA–W–30,511; Lockheed Fort Worth Co , Kingsley Field—Air Defense Site, Klamath, OR

TA–W–30,514; Somerville Paperboard Industries, Rochester, NY

TA–W–30,527; Esselte Pendaflex Corp., Oxford Furniture Div., Moonachie, NJ

TA–W–30,588; A.B. Chance Co., Parkersburg, WV

TA–W–30,531; Rexon Technology, Wayne, NJ

TA–W–30,562; Lockheed Corp., Abilene, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,644; Energizer Power Systems, El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,516; Phillips Petroleum Co., CT, IT, Formerly CIT Bartlesville, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,536; Digital Equipment Corp., Metairie, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,572; American Airlines, Inc., Maintenance & Engineering Center, Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,521; Xerox Corp., Manufacturing & Resource Team of Office Document Products, Office Document System Div., Cross Keys Office Park, Fairport, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,566; Woods Geophysical, Inc., Mt. Pleasant, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,528; Container Tooling Corp., Neptune, NJ

Container Tooling Corp. is transferring production of can tooling from the subject plant in Neptune, NJ to an affiliated domestic facility.

TA–W–30,556; Dana Corp., Victor Division, Chicago, IL

The investigation revealed that production at the subject plant is being transferred domestically.

TA–W–30,529; BRC, A division of Bryce Corp (Formerly TBC Packing Corp.), Buffalo, NY

U.S. imports of polyethylene sacks and bags declined in the twelve month period of October 1993–September 1994 compared to the same period one year earlier.

TA–W–30,502; General Motors Corp., Delco Chassis Div., Bristol, CT

Sales and production of the subject plant increased in 1994 compared with 1993. Production of automobile bearings was transferred to other General Motors plants or outsourcing from other domestic plants.

TA–W–30,354; Xerox Corp., American Customer Operations, Rochester, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–30,645; Mitchell Energy Corp. (Columbus District), Columbus, OH

A certification was issued covering all workers separated on or after January 3, 1994.

TA–W–30,518; Hope Mfg., Inc., Sparta, TN

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,537; GEO E. Keith Co., Bridgewater, MA

A certification was issued covering all workers separated on or after November 23, 1993.

TA–W–30,463; AT&T Network Systems, Columbus Works, Columbus, OH

A certification was issued covering all workers separated on or after November 1, 1993.

TA–W–30,623; Marilena Fashions, Jersey City, NJ

A certification was issued covering all workers separated on or after December 16, 1993.

TA–W–30,571; Brand S Corp., DBA Brand S Corp., Livingston, MT

A certification was issued covering all workers separated on or after December 2, 1993.

TA–W–30,599; Acme United Corp., Bridgeport, CT

A certification was issued covering all workers separated on or after December 9, 1993.

TA–W–30544; Wirekraft Industries, Inc., Mishawaka, IN

A certification was issued covering all workers separated on or after November 21, 1993.

TA–W–30,636; Goebel Miniatures, Camarillo, CA

A certification was issued covering all workers separated on or after December 31, 1993.

TA–W–30,545; Nacona Boot Co., Nacona, TX

A certification was issued covering all workers separated on or after November 29, 1993.

TA–W–30,596; Ansell Pacific, Inc., Salem, OR

A certification was issued covering all workers separated on or after December 14, 1993.

TA–W–30,549; Franca Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after November 28, 1993.

TA–W–30,682; BASF Corp., Polyester Filament Dept., Lowland, TN

A certification was issued covering all workers separated on or after January 10, 1994.

TA–W–30,533; Texaco, Inc., Tulsa Office Building, Tulsa, OK

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,579; McCord Winn Textron, Winchester, MA

A certification was issued covering all workers separated on or after January 8, 1993.

TA–W–30,546; Arcadia Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after November 22, 1993.

TA–W–30,558; Chronos Richardson, Inc., Wayne, NJ

A certification was issued covering all workers separated on or after November 21, 1993.

TA–W–30,576; David Stevens II. Penns Grove, NJ

A certification was issued covering all workers separated on or after December 9, 1993.

TA–W–30,543; Tultex Corp., Screenprint Operations, Martinsville, VA

A certification was issued covering all workers separated on or after November 16, 1993.

TA–W–30,515; Quadrum Telecommunications, Inc., Arab, AL

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,557; Red Kap Industries, Piedmont, AL

A certification was issued covering all workers separated on or after November 29, 1993.

TA–W–30,573 Dynatech Communications, Inc., Woodbridge, VA

A certification was issued covering all workers separated on or after December 7, 1993.

TA–W–30,676; Hasbro, Inc., Pawtucket, RI

TA–W–30,676A & B; Hasbro Toy Group, Pawtucket RI & Cincinnati, OH

TA–W–30,676C & D; Parker Brothers, Beverly & Salem, MA

TA–W–30,676E & F; Playskool Baby, Northvale, NJ & Easley, SC

TA–W–30,676G, H, I; Rhode Island Mfg, Pawtucket, RI, Central Falls, RI & West Warwick, RI

TA–W–30,676J, K; Milton Bradley, East Longmeadow, MA

TA–W–30,676L; Milton Bradley Wood Products, Fairfax, VT

A certification was issued covering all workers separated on or after October 24, 1993.

TA–W–30,550; Grace Energy Corp., Dallas, TX

A certification was issued covering all workers separated on or after December 18, 1994.

TA–W–30,550A & G; Grace Petroleum Corp., Oklahoma City, OK, Jackson, MS and Operating in the Following Other Locations: B; TX, C; AL, D; CO, E; MI, F; MT, H; NM, I; WY

A certification was issued covering all workers separated on or after August 21, 1994.

TA–W–30,554A, B & C; Private Line Group, Inc., Lyndhurst, NJ, Dadeville, AL, Franklin, GA and Bowman, GA

A certification was issued covering all workers separated on or after December 1, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents

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summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of January and February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof), have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00320; Fenestra Corp., Erie, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import steel door and frames from Mexico or Canada.

NAFTA–TAA–00317; Nelson Yacht Corp., Snohomish, WA

The investigation revealed that criteria (1) was not met in conjection with the requirements of Section 506(b)(2) of the Act. The firm closed in March 1993 and all worker separations from the subject firm occurred prior to December 8, 1993, the earliest possible reachback date.

NAFTA–TAA–00310; Tennessee Valley Steel Corp., Harriman/Rockwood, TN

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import steel from Mexico or Canada. Customers did not increase imports of steel products from Canada or Mexico during the periods under investigation.

NAFTA–TAA–00311; Indiana Sportswear, Clinton, IN

NAFTA–TAA–00311A; Columbus Sportswear, Columbus, IN

The investigation revealed that criteria (3) and criteria (4) were not met. Survey results revealed that customers did not import ladies jackets from Mexico or Canada during the periods under investigation. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import ladies jackets from Mexico or Canada.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00318; Dover/ Parkersburg, Falls River, MA

A certification was issued covering all workers at Dover/Parkersburg located in Falls River, MA separated on or after December 8, 1993.

NAFTA–TAA–00319; Woodward Governor Co., Aircraft Controls Group, Stevens Point, WI

A certification was issued covering all workers of Woodward Governor Co., Aircraft Group, Aircraft Parts Mfg, Stevens Point, WI separated on or after December 8, 1993.

NAFTA–TAA–00321; General Imaging Technology (USA), Inc., Denver Plant, Arvada, CO

A certification was issued covering all workers of the Slitting Division of General Imaging Technology (USA), Inc., Denver, CO separated on or after December 8, 1993.

NAFTA–TAA–00315; Mobil Chemical Co., Films Div., Macedon, NY

A certification was issued covering all workers of Mobil Chemical Co's Films Division plant, located in Macedon, NY separated on or after December 8, 1993.

NAFTA–TAA–00316; Ansell Pacific, Inc., Pacific Dunlop, Inc., Salem, OR

A certification was issued covering all workers of Ansell Pacific, Inc., Salem, OR separated on or after December 20, 1993.

I hereby certify that the aforementioned determinations were issued during the months of January and February, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 7, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3645 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,216]

AEG Transportation Systems; Pittsburgh, Pennsylvania; Revised Determination on Reconsideration

On January 24, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

New findings on reconsideration show that the subject firm lost a major bid for the construction of a rapid transit project to a Japanese firm. The loss of this contract contributed importantly to the layoff of personnel in 1993 and 1994 and to decreased sales and production in 1994.

Other findings show decreased production in 1993 compared to 1992 and decreased sales in the first six months of 1994 compared to the same period in 1993. Average employment declined in 1993 compared to 1992 and in the first six months of 1994 compared to the same period in 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers and former workers of AEG Transportation Systems, Inc., Pittsburgh, Pennsylvania were adversely affected by increased imports of articles that are like or directly competitive with transit vehicle systems and related equipment.

In accordance with the provisions of the Act, I make the following revised determination for workers of AEG Transportation Systems, Inc., in Pittsburgh, Pennsylvania.

All workers of AEG Transportation Systems, Inc., in Pittsburgh, Pennsylvania who became totally or partially separated from employment on or after August 4, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 2nd day of February 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3642 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,682]

BASF Corporation; Polyester Filament Department, Lowland, Tennessee; Revocation of Certification

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification for workers of the Polyester Filament Department of the subject firm on January 26, 1995. The Notice has not as yet been published in the **Federal Register**.

The Department amended an earlier certification for BASF Corporation (TA–W–30,360) to include the workers of the polyester filament department because they met all the worker group requirements for certification under the Trade Act.

Accordingly, the Department is revoking its certification under petition TA–W–30,682 effective this date because the polyester filament workers are covered under TA–W–30,360.

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3638 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,652]

The Coach Factory, Carlstadt, New Jersey; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 17, 1995, in response to a worker petition which was filed on January 17, 1995, on behalf of workers at The Coach Factory, Carlstadt, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 3rd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3640 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 354; TA–W–30, 354A; Texas et al.; TA–W–30, 354B]

Delhi Gas Pipeline Company; Headquartered in Dallas, Texas and Operating in the Following States, Texas et al.; Negative Determination Regarding Application of Reconsideration

After being granted a filing extension, one of the workers with congressional support, requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 14, 1994 and published in the **Federal Register** on December 9, 1994 (59 FR 63822).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers are engaged in natural gas transportation services via pipeline.

The findings show that the Delhi Gas Pipeline Company was established as a common carrier (pipeline) engaged in the transportation of natural gas for its affiliates; and as a common carrier, the subject firm does not own the natural gas shipped through its pipeline.

Access to Delhi's pipelines are open to all shippers on a nondiscriminatory basis. No single shipper can be granted unduly preferential treatment, and as such, Delhi has an "arm's length" relationship with its customers. Numerous other unaffiliated companies and individuals are shippers on this common carrier pipeline. Accordingly, Delhi provides a service. Other findings also show that sales increased in 1993 compared to 1992.

The findings show that some natural gas liquids are produced by Delhi; however, the amount of natural gas liquid revenue generated to total pipeline revenue is small.

Prices and profits are not worker group eligibility requirements for certification under the Trade Act. The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who produce an article and experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which "contributed importantly" to declines in sales or production and employment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance

[FR Doc. 95–3639 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,332]

INTERA Information Technologies, Inc., Denver, Colorado; Revised Determination on Reconsideration

On January 13, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on January 27, 1995 (60 FR 5438).

New findings on reconsideration show that the subject firm is engaged in operations related to the exploration and drilling for crude oil. Workers are engaged in exploration activities in the field for unaffiliated firms in the oil industry.

The findings show decreased revenues in 1994 compared to 1993 and substantial worker separations in 1994.

U.S. imports of crude oil and natural gas increased absolutely and relative to domestic shipments in the first eight months of 1994 compared to the same period in 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers and former workers of Intera Information Technologies, Inc., in Denver, Colorado were adversely affected by increased imports of articles like or directly competitive with crude oil.

Accordingly, in accordance with the provisions of the Act, I make the following certification:

All workers of Intera Information Technologies, Inc., in Denver, Colorado who became totally or partially separated from employment on or after September 2, 1993

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are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 2nd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3641 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

BASF Corporation Lowland, TN; TA–W–30,360 Nylon Hosiery Department TA–W–30,360A Polyester Filament Department; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 7, 1994, applicable to all workers of the nylon hosiery department. The certification notice was published in the **Federal Register** on January 3, 1995 (60 FR 148).

The Department on its own motion, reviewed the certification for workers of the subject firm. The Department is amending the certification to include the workers of the polyester filament department of BASF Corporation in Lowland, Tennessee. The polyester filament workers met all the criteria for worker group certification under the Trade Act and were issued a certification (TA–W–30,682) on January 26, 1995 which has not as yet been published in the **Federal Register**.

Accordingly, the Department is revoking its certification (TA–W–30,682) for the polyester filament workers of BASF Corporation in Lowland, Tennessee.

The amended notice applicable to TA–W–30,360 is hereby issued as follows:

"All workers of BASF Corporation, Polyester Filament Department and the Nylon Hosiery Department, Lowland, Tennessee who became totally or partially separated from employment on or after September 19, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 3rd day of February 1995.

Victor J. Trunzo,

Program Director, Policy, and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–3647 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1995 (July 1, 1995-June 30, 1966) for JTPA Titles II–A, II–C, and III, and for the JTPA Title II–B Summer Youth Employment and Training Program in Calendar Year (CY) 1995; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1995.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact, Mr. Donald Kulick, Deputy Administrator, Office of Job Training Programs, Room N4459, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–6236. For Employment Service planning levels contact Mr. John Robinson, Director, U.S. Employment Service, Room N–4666, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–219–5257. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1995 (July 1, 1995-June 30, 1996) for JTPA Titles II–A, II–C, and III, and for the Summer Youth Employment and Training Program in Calendar Year (CY) 1995 for JTPA Title II–B; and, in accord with Section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1995. The allotments and estimates are based on the appropriations for DOL for Fiscal Year (FY) 1995.

Attached are lists of the allotments for PY 1995 for programs under JTPA Titles II–A, II–C, and III; a list of the allotments for the CY 1995 Summer Youth Employment and Training Program under Title II–B of JTPA; and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1995 allotments for Titles II–A, II–C, and III and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1995, Public Law 103–333, for FY 1995.

The base allotments for Title II–B total $867,070,000. Included in these allotments are additional 1995 summer funds in the amount of $144,788,000 provided by Congress in the FY 1995 appropriation act. These fund were made available for obligation on July 1, 1995. The FY 1994 and FY 1995 funds available for the CY 1995 Summer Program will be issued separately through a Notice of Obligation (NOO).

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1994 data and published in the **Federal Register** at a later date.

Title II–A Allotments

Attachment I shows the PY 1995 JTPA Title II–A Adult Training Program allotments by State. For all States, Puerto Rico and the District of Columbia, the following data were used in computing the allotments:

—Data for areas of substantial unemployment (ASU) are averages for the 12-month period, July 1993 through June 1994.

—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12-month period.

—The economically disadvantaged adult data (age 22 to 72, excluding college students and military) are from the 1990 Census.

The allotments for the Insular Areas, including the Freely Associated States, are based on unemployment data from 1990 Census or, if not available, the most recent data available. A 90 percent relative share "hold-harmless" of the PY 1994 Title II–A allotments for these areas and a minimum allotment of $75,000 were also applied in determining the allotments.

Title II–A funds are to be distributed among designated service delivery areas (SDAs) according to the statutory formula contained in Section 202(b) of JTPA, as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992. (This Title VII provides an interim allocation methodology which applies to the PY 1995 allotments.) This is the same formula that has been used in previous program years; however, prior to PY 1993 a different definition of "economically disadvantaged" was used.

In determining any necessary hold-harmless levels for SDAs, the States of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for Rural Concentrated Employment Programs (RCEPs).

JTPA Title II–B Allotments

Attachment II shows the CY 1995 JTPA Title II–B Summer Youth Employment and Training Program allotments by State based on total available appropriations for CY 1995 of $867,070,000. The data used for these allotments are the same unemployment data as were used for Title II–A except that the data for the number for economically disadvantaged youth (age 16 to 21, excluding college students and military) from the 1990 Census was used.

For the Insular Areas and Native Americans, the allotments are based on the percentage of Title II–B funds each received during the previous summer.

Title II–B funds for the 1995 Summer Program are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 252(b) of JTPA, as amended by Title VII, Miscellaneous Provisions, of the Job Training Reform Amendments of 1992. This Title VII provides an interim allocation methodology which applies to the PY 1995 allotments. The Title II–B formula is the same as for Title II–C. This is the same formula which was used in the previous program year.

In determining any necessary hold-harmless levels for SDAs, the State of Kentucky, Minnesota, Montana, and Wisconsin shall not include any additional funds provided for RCEPs.

JTPA Title II–C Allotments

Attachment III shows the PY 1995 JTPA Title II–C Youth Training Program allotments by State for a total appropriation of $598,682,000. The amount is composed entirely of PY 1995 formula funds. For all States, the Insular Areas, Puerto Rico, and the District of Columbia, the data used in computing the allotments are the same data as were used for Title II–B allotments.

The allotments for the Insular Areas are based on unemployment data from the 1990 census or, if not available, the most recent data available. A 90 percent relative share "hold-harmless" of the PY 1994 Title II–C allotments for those areas and a minimum allotment of $50,000 were also applied in determining the allotments.

JTPA Title III Allotments

Attachment IV shows the PY 1995 JTPA Title III Dislocated Worker Program allotments by State, for a total of $1,296,000,000. The total includes 80 percent allotted by formula to the States ($1,036,800,000), and 20 percent ($259,200,000) for the National Reserve, including funds allotted to the Insular Areas.

Title III formulas funds are to be distributed to State and substate grantees in accordance with the provisions in Section 302 (c) and (d) of JTPA, as amended.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the October 1993 through September 1994 period. Long-term unemployed data used were for CY 1993.

Allotments for the Insular Areas are based on the PY 1995 Title II–A allotments for these areas.

A reallotment of these published Title III formula amounts, as provided for by Section 303 of JTPA, as amended, will be based on completed program year expenditure reports submitted by the States and received by October 1, 1995. The Title III allotment for each State will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture of funds.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates

Attachment V shows planning estimates which have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. These preliminary estimates are based on averages for the most current 12 months ending September 1994 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued based on CY 1994 data, as required by the Wagner-Peyser Act.

The total planning estimate includes $22,019,700, or 2.603 percent of the total amount available, which is being withheld from distribution to States to finance postage costs associated with the conduct of Employment Service business of 1995.

The Secretary of Labor has set aside 3 percent of the total available funds to assure that each State will have sufficient resources to maintain statewide employment services, as required under Section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, $24,716,769 is set aside for administrative formula allocation. These setaside funds are included in the total planning estimate. Setaside funds are distributed in two steps to States which have lost in their relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro rata basis in step two to all other States losing in relative share from the prior year, but which do not meet the size and density criteria for step one.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices, services for groups with special needs, and for the extra costs of exemplary models for delivering job services.

Signed at Washington, D.C., this 7th day of February, 1995

Doug Ross,

Assistant Secretary of Labor for Employment and Training

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ATTACHMENT I

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE II–A ALLOTMENTS

State	Dollars
Alabama	18,422,732
Alaska	2,837,523
Arizona	13,935,061
Arkansas	9,664,236
California	176,173,325
Colorado	9,930,813
Connecticut	10,156,627
Delaware	2,630,042
District of Columbia	3,654,842
Florida	53,192,656
Georgia	22,142,035
Hawaii	2,977,386
Idaho	3,194,169
Illinois	42,901,850
Indiana	15,399,204
Iowa	5,396,367
Kansas	6,345,185
Kentucky	14,745,934
Louisiana	24,378,762
Maine	5,345,984
Maryland	15,292,528
Massachusetts	23,469,898
Michigan	39,070,058
Minnesota	11,057,240
Mississippi	12,961,173
Missouri	17,412,714
Montana	3,158,989
Nebraska	2,630,042
Nevada	5,012,949
New Hampshire	3,850,939
New Jersey	29,934,546
New Mexico	7,024,514
New York	81,867,897
North Carolina	17,084,620
North Dakota	2,630,042
Ohio	38,727,805
Oklahoma	12,070,920
Oregon	12,167,986
Pennsylvania	43,523,589
Puerto Rico	43,537,073
Rhode Island	4,177,738
South Carolina	15,607,751
South Dakota	2,630,042
Tennessee	16,340,812
Texas	78,781,890
Utah	3,004,148
Vermont	2,630,042
Virginia	16,259,008
Washington	20,170,821
West Virginia	11,682,542
Wisconsin	12,191,704
Wyoming	2,630,042
American Samoa	203,076
Guam	515,941
Marshall Islands	431,326
Micronesia	643,072
Northern Marianas	172,306
Palau	131,468
Virgin Islands	699,016
TOTAL	1,054,813,000

ATTACHMENT II

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
1995 SUMMER YOUTH PROGRAM FUND SOURCES

State	FY 1994	FY 1995	1995 SUMMER TOTAL
Alabama	11,671,729	3,242,960	14,914,689
Alaska	1,804,549	501,389	2,305,938
Arizona	9,088,809	2,525,302	11,614,111
Arkansas	5,999,821	1,667,035	7,666,856
California	114,766,133	31,887,476	146,653,609
Colorado	6,244,666	1,735,065	7,979,731
Connecticut	6,345,341	1,763,037	8,108,378
Delaware	1,662,675	461,970	2,124,645
District of Columbia	2,488,730	691,487	3,180,217
Florida	32,630,814	9,066,388	41,697,202
Georgia	14,237,469	3,955,844	18,193,313
Hawaii	1,733,907	481,761	2,215,668
Idaho	2,072,490	575,836	2,648,326
Illinois	27,354,483	7,600,373	34,954,856
Indiana	9,807,737	2,725,054	12,532,791
Iowa	3,268,434	908,126	4,176,560
Kansas	3,943,190	1,095,605	5,038,795
Kentucky	9,051,805	2,515,021	11,566,826
Louisiana	15,076,197	4,188,883	19,265,080
Maine	3,321,296	922,814	4,244,110
Maryland	9,482,037	2,634,559	12,116,596
Massachusetts	14,850,823	4,126,263	18,977,086
Michigan	24,728,268	6,870,686	31,598,954
Minnesota	7,014,842	1,949,056	8,963,898
Mississippi	8,044,189	2,235,057	10,279,246
Missouri	10,872,159	3,020,802	13,892,961
Montana	1,902,352	528,563	2,430,915
Nebraska	1,662,675	461,970	2,124,645
Nevada	3,160,571	878,184	4,038,855
New Hampshire	2,389,011	663,781	3,052,792
New Jersey	18,584,145	5,163,557	23,747,702
New Mexico	4,524,680	1,257,171	5,781,851
New York	49,501,454	13,753,852	63,255,306
North Carolina	10,656,925	2,960,999	13,617,924
North Dakota	1,662,675	461,970	2,124,645
Ohio	24,424,993	6,786,421	31,211,414
Oklahoma	7,502,792	2,084,632	9,587,424
Oregon	7,608,324	2,113,953	9,722,277
Pennsylvania	26,666,126	7,409,115	34,075,241
Puerto Rico	27,356,352	7,600,892	34,957,244
Rhode Island	2,560,557	711,444	3,272,001
South Carolina	9,893,885	2,748,990	12,642,875
South Dakota	1,662,675	461,970	2,124,645
Tennessee	10,125,155	2,813,248	12,938,403
Texas	52,108,839	14,478,307	66,587,146
Utah	2,012,812	559,255	2,572,067
Vermont	1,662,675	461,970	2,124,645
Virginia	10,319,683	2,867,297	13,186,980
Washington	12,890,602	3,581,621	16,472,223
West Virginia	7,310,420	2,031,181	9,341,601
Wisconsin	7,694,289	2,137,838	9,832,127
Wyoming	1,662,675	461,970	2,124,645
American Samoa	65,823	0	65,823
Guam	802,786	0	802,786
Marshall Islands	23,658	0	23,658
Micronesia	56,063	0	56,063
Northern Marianas	30,791	0	30,791
Palau	9,284	0	9,284
Virgin Islands	455,190	0	455,190
Native Americans	15,768,370	0	15,768,370
NATIONAL TOTAL	682,282,000	184,788,000	867,070,000

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ATTACHMENT III

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE II–C ALLOTMENTS

State	Dollars
Alabama	10,468,227
Alaska	1,619,747
Arizona	8,147,782
Arkansas	5,485,147
California	103,021,012
Colorado	5,599,580
Connecticut	5,728,605
Delaware	1,492,737
District of Columbia	2,049,797
Florida	29,277,384
Georgia	12,765,370
Hawaii	1,554,532
Idaho	1,859,197
Illinois	24,538,157
Indiana	8,807,095
Iowa	3,062,825
Kansas	3,535,570
Kentucky	8,097,118
Louisiana	13,836,695
Maine	2,981,560
Maryland	8,508,010
Massachusetts	13,320,850
Michigan	22,175,059
Minnesota	6,285,591
Mississippi	7,356,394
Missouri	9,750,098
Montana	1,694,114
Nebraska	1,492,737
Nevada	2,835,626
New Hampshire	2,157,799
New Jersey	16,682,628
New Mexico	4,055,632
New York	44,419,827
North Carolina	9,555,897
North Dakota	1,492,737
Ohio	21,907,320
Oklahoma	6,727,421
Oregon	6,825,615
Pennsylvania	23,922,944
Puerto Rico	24,530,823
Rhode Island	2,299,196
South Carolina	8,876,017
South Dakota	1,492,737
Tennessee	9,076,497
Texas	46,729,927
Utah	1,794,147
Vermont	1,492,737
Virginia	9,189,895
Washington	11,566,274
West Virginia	6,561,210
Wisconsin	6,898,320
Wyoming	1,492,737
American Samoa	115,260
Guam	292,833
Marshall Islands	244,809
Micronesia	364,990
Northern Marianas	97,796
Palau	74,617
Virgin Islands	396,742
TOTAL	598,682,000

ATTACHMENT IV

U.S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1995 JTPA TITLE III (EDWAA)
ALLOTMENT TO STATES

State	Dollars
Alabama	15,772,976
Alaska	3,302,151
Arizona	11,763,895
Arkansas	6,455,146
California	209,035,357
Colorado	8,595,294
Connecticut	12,064,733
Delaware	1,914,294
District of Columbia	3,993,677
Florida	55,165,165
Georgia	22,588,965
Hawaii	2,393,933
Idaho	2,743,202
Illinois	44,861,025
Indiana	13,108,199
Iowa	4,113,077
Kansas	6,565,365
Kentucky	9,462,170
Louisiana	19,530,166
Maine	6,526,340
Maryland	17,811,023
Massachusetts	25,736,954
Michigan	36,000,525
Minnesota	8,728,512
Mississippi	9,277,057
Missouri	14,653,229
Montana	2,091,916
Nebraska	1,418,367
Nevada	5,380,652
New Hampshire	3,680,092
New Jersey	39,375,796
New Mexico	5,200,368
New York	90,822,425
North Carolina	10,996,499
North Dakota	883,621
Ohio	39,386,139
Oklahoma	10,829,815
Oregon	11,295,052
Pennsylvania	47,436,948
Puerto Rico	28,646,133
Rhode Island	5,605,994
South Carolina	15,673,409
South Dakota	670,057
Tennessee	10,684,291
Texas	73,464,543
Utah	2,161,379
Vermont	1,441,075
Virginia	13,396,865
Washington	21,659,661
West Virginia	12,480,721
Wisconsin	8,533,975
Wyoming	1,421,777
American Samoa	200,139
Guam	508,478
Marshall Islands	425,087
Micronesia	633,771
Northern Marianas	169,814
Palau	129,566
Virgin Islands	688,905
National Reserve	256,444,240
TOTAL	1,296,000,000

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Attachment V

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1995 WAGNER-PEYSER ALLOTMENTS TO STATES

State	Basic formula	3% Distribution			Total allotment
		Step 1*	Step 2**	Total	
Alabama	11,665,318	0	186,693	186,693	11,852,011
Alaska	7,818,086	1,138,016	0	1,138,016	8,956,102
Arizona	10,962,428	0	0	0	10,962,428
Arkansas	6,585,108	0	224,468	224,468	6,809,576
California	100,509,042	0	0	0	100,509,042
Colorado	10,544,711	0	0	0	10,544,711
Connecticut	9,715,024	0	541,197	541,197	10,256,221
Delaware	2,232,068	0	69,207	69,207	2,301,275
District of Columbia	4,063,968	0	424,662	424,662	4,488,630
Florida	39,304,326	0	132,803	132,803	39,437,129
Georgia	19,950,543	0	0	0	19,950,543
Hawaii	3,190,448	0	0	0	3,190,448
Idaho	6,513,857	948,170	0	948,170	7,462,027
Illinois	33,911,766	0	1,835,084	1,835,084	35,746,850
Indiana	16,065,017	0	74,437	74,437	16,139,454
Iowa	7,698,247	0	386,124	386,124	8,084,371
Kansas	7,263,953	0	0	0	7,263,953
Kentucky	9,736,987	0	517,573	517,573	10,254,560
Louisiana	11,889,765	0	174,435	174,435	12,064,200
Maine	3,873,730	563,868	0	563,868	4,437,598
Maryland	14,835,112	0	141,556	141,556	14,976,668
Massachusetts	18,009,455	0	1,122,149	1,122,149	19,131,604
Michigan	27,543,280	0	1,135,703	1,135,703	28,678,983
Minnesota	12,897,151	0	266,746	266,746	13,163,897
Mississippi	7,142,550	0	203,927	203,927	7,346,477
Missouri	14,482,951	0	622,357	622,357	15,105,308
Montana	5,323,158	774,849	0	774,849	6,098,007
Nebraska	6,397,389	931,217	0	931,217	7,328,606
Nevada	5,174,670	753,235	0	753,235	5,927,905
New Hampshire	3,350,553	0	274,927	274,927	3,625,480
New Jersey	23,789,340	0	370,650	370,650	24,159,990
New Mexico	5,973,519	869,517	0	869,517	6,843,036
New York	52,000,890	0	815,469	815,469	52,816,359
North Carolina	18,488,752	0	489,652	489,652	18,978,404
North Dakota	5,420,567	789,028	0	789,028	6,209,595
Ohio	31,170,198	0	601,116	601,116	31,771,314
Oklahoma	9,574,365	0	1,000,468	1,000,468	10,574,833
Oregon	9,290,917	0	60,694	60,694	9,351,611
Pennsylvania	33,842,741	0	994,023	994,023	34,836,764
Puerto Rico	10,083,046	0	282,584	282,584	10,365,630
Rhode Island	3,090,997	0	114,522	114,522	3,205,519
South Carolina	10,630,355	0	241,416	241,416	10,871,771
South Dakota	5,009,850	729,244	0	729,244	5,739,094
Tennessee	13,907,340	0	51,315	51,315	13,958,655
Texas	54,787,361	0	0	0	54,787,361
Utah	10,957,150	1,594,944	0	1,594,944	12,552,094
Vermont	2,346,901	341,619	0	341,619	2,688,520
Virginia	18,190,693	0	216,196	216,196	18,406,889
Washington	15,743,889	0	310,434	310,434	16,054,323
West Virginia	5,734,268	834,692	0	834,692	6,568,960
Wisconsin	14,596,482	0	0	0	14,596,482
Wyoming	3,886,885	565,783	0	565,783	4,452,668
Formula Total	797,167,167	10,834,182	13,882,587	24,716,769	821,883,936
Guam	385,518	0	0	0	385,518
Virgin Islands	1,622,846	0	0	0	1,622,846
Indicia Postage	22,019,700	0	0	0	22,019,700
National Total	821,195,231	10,834,182	13,882,587	24,716,769	845,912,000

*Funds are allocated to the 13 States whose relative share decreased from PY 1994 to the PY 1995 basic formula amount and which have a Civilian Labor Force (CLF) below one million and are below the median CLF density. These States are held harmless at 100% of their PY 1994 relative share.

**The balance of the 3% funds are distributed to the remaining 31 States losing in relative share from PY 1994 to their PY 1995 total allotment amount.

[FR Doc. 95-3544 Filed 2-13-95; 8:45 am]
BILLING CODE 4510-30-M

Footwear Management Company; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In the matter of NAFTA—00252 Tony Lama Division, El Paso, TX; NAFTA—00252A Justin Boot Company, Fort Worth, TX; NAFTA—00252B Justin Boot Company, Cassville, MO; NAFTA—00252C Nacona Boot Company, Nacona, TX; NAFTA—00252D Justin Boot Company, Sarcoxie, MO; NAFTA—00252E Justin Boot Company, Carthage, MO

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 14, 1994, applicable to all workers of the subject firm in El Paso, Texas.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New investigation findings show that the production at Justin Boot Company in Sarcoxie, Missouri and Carthage, Missouri is integrated with the production at Justin Boot Company's plants in Fort Worth, Texas and Cassville, Missouri whose workers are certified by an amendment dated December 21, 1994 to the subject certification. The amendment was published in the **Federal Register** on January 4, 1995 (60 FR 482).

New findings show that sales, production and employment declined sharply at the Justin Boot Company's plants in Sarcoxie, Missouri and Carthage, Missouri in 1993 and 1994.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA—00252 is hereby issued as follows:

All workers of the Tony Lama Division of Footwear Management Company, located in El Paso, Texas and all workers of the Justin Boot Company of Footwear Management Company in Fort Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri and Carthage, Missouri and the Nacona Boot Company in Nacona, Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 6th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-3646 Filed 2-13-95; 8:45 am]
BILLING CODE 4510-30-M

[NAFTA-00325]

Regency Vegetable House Naples, Florida; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC (2273), an investigation was initiated on January 9, 1995 in response to a petition filed on behalf of workers at Regency Vegetable House in Naples, Florida. The investigation revealed that workers of Regency Vegetable House were separated in June 1994 when production ceased and that the firm packaged and sold vegetables to substantially the same customers as Regency Packing Company (NAFTA-TAA-00227). On January 31, 1995 an amendment was made to NAFTA-TAA-00227 to include all workers of Regency Vegetable House in Naples, Florida. Because the subject workers have been included in the amendment certification of NAFTA-TAA-00227, further information in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-3643 Filed 2-13-95; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of establishment of Maritime Advisory Committee for Occupational Safety and Health (MACOSH).

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an advisory committee to advise the Assistant Secretary for the Occupational Safety and Health Administration (OSHA) on issues relating to the delivery of occupational safety and health programs, policies, and standards in the maritime industries of the United States The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved.

DATE: Comments must be received on or before March 1, 1995.

ADDRESSES: Any written comments in response to this notice should be sent, in quadruplicate, to the following address: OSHA, Office of Maritime Standards, Room N-3621, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202) 219-7234, fax (202) 219-7477.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Director, OSHA Office of Maritime Standards, Room N-3621, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202) 219-7234, FAX (202) 219-7477.

SUPPLEMENTARY INFORMATION: MACOSH is intended to address the concerns of the entire maritime community, focusing on the shipyard and marine cargo (longshoring) handling industries. This committee will continue the efforts of the previously chartered Shipyard Employment Standards Advisory Committee (SESAC) as well as provide a more focused forum of ongoing discussions with the marine cargo handling community. The specific objectives of this committee will be to make recommendations on issues related to: (1) reducing injuries and illnesses in the maritime industries, (2) improving OSHA outreach and training programs through the use of innovative partnerships, and (3) expediting the development and promulgation of OSHA standards.

Background

Establishment of this advisory committee will enable OSHA to be responsive to the uniquenesss of industries that have suffered economically as a result of any changes in the global market. This action is consistent with the President's initiative to make the U.S. shipyard and cargo handling industries competitive in the worldwide community. Furthermore, this committee will be able to focus on the resolution of those controversial issues, particularly those with international implications, that have impact in the shipyard and cargo handling communities. This committee will address the maritime community's

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concerns that will result in: streamlined standards promulgation, better focused enforcement efforts, and extended and improved outreach and training initiatives.

In accordance with the provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and the Federal Advisory Committee Act (FACA), and after consultation with the General Services Administration, the Secretary of Labor has determined that the establishment of a short-term advisory committee to address the complexities of the maritime—shipyard and longshoring—community is essential to the conduct of Agency business and in the public interest.

The committee will be composed of approximately 15 members who will be selected to represent the divergent interests of the maritime community. The makeup of the membership shall comply with Section 7(b) of the OSH Act which requires the following: at least one member who is a designee of the Secretary of Health and Human Services; at least one designee of a State safety and health agency; and equal numbers of representatives of employees and employers, respectively. Other members will be selected based on their knowledge and experience to include representatives from professional and other governmental organizations with specific maritime responsibilities. In accordance with Section 2(c) of FACA, the committee will be "balanced in membership and in terms of point of view and functions * * *" The Agency intends that this committee provide a comprehensive representation of the maritime community and have the opportunity to offer recommendations on safety and health initiatives that would be considered as part of a integrated U.S. maritime policy.

MACOSH will function solely as an advisory body and in compliance with the provisions of the FACA. In accordance with FACA, its charter will be filed with the appropriate committees of Congress.

Meetings of the committee will be announced in the **Federal Register** and are open to the public.

Interested persons are invited to submit comments regarding the establishment of the committee to Larry Liberatore, Director, Office of Maritime Standards, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW, Washington, D.C. 20210; Telephone (202) 219–7234, fax (202) 219–7477.

With this notice I am establishing the Maritime Advisory Committee for Occupational Safety and Health under Section 7(b) of the OSH Act and the FACA to address occupational safety and health issues unique to maritime employment.

Signed at Washington, D.C. this 8th day of February 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–3644 Filed 2–13–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Public Partnership Advisory Panel (Local Arts Agencies Section) to the National Council on the Arts will be held on March 16–17, 1995. The panel will meet from 8:30 a.m. to 6:00 p.m. on March 16 and from 9:00 a.m. to 12:00 p.m. on March 17 in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The entire meeting will be open to the public on a space available basis for application review.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: February 8, 1995.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 95–3564 Filed 2–13–95; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35341; File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange Inc., and Philadelphia Stock Exchange, Inc., Relating to a Continuing Education Requirement for Registered Persons

February 8, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on November 30 and December 1, 5, 7, 12, 13, and 14, 1994, the Chicago Stock Exchange, Incorporated ("CHX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), the National Association of Securities Dealers, Inc. ("NASD"), the Municipal Securities Rulemaking Board ("MSRB") and the Pacific Stock Exchange Incorporated ("PSE"), the American Stock Exchange, Inc. ("AMEX"), and the Philadelphia Stock Exchange, Inc. ("PHLX"), respectively ("Self-Regulatory Organizations" or "SROs"), submitted to the Securities and Exchange Commission ("Commission" or "SEC") proposed rule changes to establish a formal, two-part continuing education program for securities industry professionals. This program includes a Regulatory Element requiring uniform, periodic training in regulatory matters, and a Firm Element requiring members[3] to maintain ongoing programs to keep their registered persons[4] up-to-date on job and product related subjects.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] As used herein, the term "members" refers to: members and member organizations when used with reference to the AMEX, CBOE, CHX, NYSE, and PSE; members, member organizations, participants, and participant organizations when used with reference to the PHLX; brokers, dealers, and municipal securities dealers when used with reference to the MSRB; and members when used with reference to the NASD.

[4] For purposes of the proposed rules, the term "registered person" means any person required to be registered under the rules of the applicable SRO, including members and registered representatives, but does not include any person whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers. When used with reference to the MSRB, however, the term "registered person" means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal, or financial and operations principal pursuant to MSRB rule G–3.

[5] Securities Exchange Act Release No. 35102 (December 15, 1994), 59 FR 65563 (December 20, 1994).

[6] See letters from Craig L. Landauer, Associate General Counsel, NASD, to Mark P. Barracocca, Branch Chief, Division of Market Regulation ("Division"), SEC, dated January 19, 1995, and Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 ("NASD Amendment No. 1"); letter from David T. Rusoff, Foley & Lardner, to Francois Mazur, Attorney, Division, SEC, dated January 30, 1995 ("CHX Amendment No. 1"); letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Holly Smith, Associate Director, Division, SEC, dated January 31, 1995 ("CBOE Amendment No. 1"); letter from Ronald W. Smith, Legal Associate, MSRB, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("MSRB Amendment No. 1"); letter from Michael D. Pierson, Senior Attorney, PSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("PSE Amendment No. 1"); letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, AMEX, to Glen Barrentine, Team Leader, Division, SEC, dated February 1, 1995 ("AMEX Amendment No. 1"); letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Francois Mazur, Attorney, Division, SEC, dated February 1, 1995 ("NYSE Amendment No. 1"); and letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Glen Barrentine, Team Leader, Division, SEC, dated February 2, 1995 ("PHLX Amendment No. 1").

[7] Among other things, the SROs' Amendments No. 1 made conforming changes to clarify the wording of the re-entry provisions of the rule proposals.

The SROs' proposals were published for comment in the **Federal Register** on December 20, 1994.[5] Two comments were received, and are discussed below. On January 30, and 31 and February 1, and 2, 1995, the NASD, CHX, CBOE, MSRB, PSE, AMEX, NYSE, and PHLX each filed Amendment No. 1 to their respective proposals.[6] These amendments made a variety of non-substantive, clarifying changes to the proposals and are incorporated into the discussion below.[7] This order approves the SROs' proposals, including all amendments made thereto.

II. Description of Proposals

The proposed rule changes adopt uniform enabling rules for the implementation of a continuing education program for the securities industry.

A. Background

In May 1993, a self-regulatory organization task force ("Task Force") was formed by the AMEX, CBOE, MSRB, NASD, NYSE, and PHLX, which also included 12 representatives from a wide range of broker-dealer firms, to study the continuing education needs of the securities industry. In September 1993, the Task Force issued a report recommending a formal two-part continuing education program that would require uniform, industry-wide, periodic training for registered persons in regulatory matters and ongoing training programs conducted by firms to keep their employees updated on job and product-related subjects. The Task Force also recommended that a permanent Council on Continuing Education, composed of broker-dealer and SRO representatives, be formed to develop the content and provide ongoing maintenance of the continuing education program. Pursuant to this recommendation, the Securities Industry/Regulatory Council on Continuing Education ("Council") was formed in September 1993, with representatives from six SROs and thirteen broker-dealers.

After studying the recommendations of the Council, the SROs participating in the Council submitted proposed rule changes with the Commission to adopt continuing education requirements. The proposed rule changes could codify the Task Force's recommendations, allow uniform implementation of the continuing education program, and provide a means for the SROs to monitor and enforce the program's requirements.

B. The Regulatory Element

The Regulatory Element requires uniform, periodic training in a variety of regulatory subjects. It provides that registered persons, unless exempt, must complete a prescribed training program after their second, fifth, and tenth registration anniversary dates.[8] The Regulatory Element will not apply to registered persons whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers.[9] The Regulatory Element also will not apply to persons registered for more than ten years as of the effective date of the rule, unless such persons become subject to the re-entry provisions described below. Persons registered for ten years or less as of the effective date of the rule will be required to satisfy the Regulatory Element and complete the computer-based training program after the occurrence of the next relevant registration anniversary date and on any applicable registration anniversary date(s) thereafter.[10]

The Regulatory Element will be administered using computer-based interactive training techniques and will consist of standardized subject matters covering compliance, ethics, and sales practice issues, among other subjects. Failure to complete the program within prescribed time-frames (*i.e.*, within 120 days after the occurrence of the applicable registration anniversary date, or as otherwise determined by the SROs) will result in a person's registration being deemed inactive and that person being prohibited from performing the functions of a registered person until such time as the person has completed the program. The applicable SRO will terminate administratively the registration of anyone who is inactive for two years, provided that upon application and a showing of good cause, the SRO may allow a registered person additional time to satisfy the program requirements.[11]

Unless otherwise determined by a self-regulatory organization, a registered person, including anyone who has completed all or part of the Regulatory Element of the program or who meets the exemption for persons registered more than ten years, will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

[8] Any registered person who has terminated his or her association with a member and who, within two years of the date of termination, becomes reassociated in a registered capacity with a member, would be required to complete the training program at such intervals (two, five, and ten years) as would apply based upon the individuals' initial registration anniversary date rather than the date of reassociation in a registered capacity. In the event a non-associated person's second, fifth, or tenth anniversary date passes without such individual completing the appropriate phase of the training program on a timely basis, that person would be required to complete such phase prior to becoming reassociated in a registered capacity.

[9] Amendments No. 1 as filed by the NYSE, AMEX, CBOE, CHX, PSE, and PHLX revised the language of the proposal to clarify that the foregoing exemption covers non-member registered persons as well as registered persons who are members. See *supra* note 6.

[10] As a result, a person whose tenth year anniversary date falls on the implementation date of the continuing education requirement would have to participate in the Regulatory Element within 120 days of that date. Alternatively, a person registered more than ten years on the implementation date, and not subject to a disciplinary action within the last ten years, would not have to participate in the Regulatory Element.

[11] Anyone administratively terminated must requalify by taking the appropriate exam (e.g., the General Securities Registered Representative Examination or "Series 7") before such person's registration could be reactivated. The Commission recently approved the use of a revised Series 7 examination. See Securities Exchange Act Release Nos. 35021 (November 29, 1994), 59 FR 62768 (December 6, 1994) (approving PHLX proposal), and 34853 (October 18, 1994), 59 FR 53694 (October 25, 1994) (approving NYSE proposal).

1. because subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; [12]

2. becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation; or any agreement with, or rule or standard of conduct of, any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

3. is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or securities self-regulatory organization.[13]

Re-entry begins with initial participation within 120 days of the registered person become subject to the statutory disqualification, or the disciplinary action becoming final, and on three additional occasions thereafter, at intervals of two, five, and ten years after re-entry.[14] Although the re-entry provision applies notwithstanding that a registered person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program, it does not apply any registered person whose activities are limited solely to the transaction of business on the floor with the registered persons.[15]

C. The Firm Element

To satisfy the Firm Element of the program, SRO members are required to develop and administer training programs to enhance the knowledge, skills, and professionalism of their registered sales, trading, and investment banking personnel who have direct contact with customers, and for the immediate supervisors of such persons. Members must prepare training plans that take into consideration the organization's size, organizational structure, scope of business activities, and regulatory developments. In addition, training plans should take advantage of the feedback that will be generated from the Regulatory Element regarding the performance of covered persons. At a minimum, programs used to implement a member's training plan must be appropriate for the business and associated risk factors, suitability and sales practice considerations, and applicable regulatory requirements, of the securities products offered by the member.

Members will be required to review and, if necessary, update their training plans annually. The SROs may require their members, either individually or as part of a group, to provide specific training in any areas the SROs deem necessary. Persons subject to the training plan will have an affirmative obligation to participate in the programs identified by the member. Accordingly, members will be required to maintain records documenting the content of their training programs and the completion of the program by registered persons covered under the plan.

The SROs will not pre-approve training materials and programs developed by members or providers. The SROs will, however, communicate regularly with members regarding their expectations for the content of training programs. As the program evolves, it is expected that educational standards will be defined by the SROs for products and services where heightened regulatory concerns exist.

D. Effective Date

The effective date for the Regulatory Element portion of the program is July 1, 1995. Any person registered ten years or less as of the effective date shall participate initially within 120 days after the occurrence of such person's second, fifth, or tenth registration anniversary date, whichever anniversary date first applies. The SROs intend that the requirements of the Firm Element be implemented in two steps under which members will be required to have completed their Firm Element plans by July 1995, with actual implementation of the plans no later than January, 1996.

III. Comments Received by the Commission

The Commission received two comment letters regarding the SROs' proposals, one from the Boston Stock Exchange ("BSE"),[16] and the other from the Certified Financial Planner Board of Standards, Inc. ("CFPBS").[17] The BSE supports the SROs' proposals and believes that implementation of the continuing education program will elevate the quality of the securities markets and increase the level of service and protection afforded investors.

The CFPBS is concerned that certain requirements of the Firm Element could impose continuing education requirements beyond those currently imposed by the CFPBS upon its licensees. The CFPBS would like the continuing education requirements proposed by the SROs to be completely reciprocal with those of the CFPBS.

While the Commission is sympathetic to the concerns of the CFPBS, it believes that the specialized knowledge expected of individuals who are licensed to sell securities warrant the imposition by the SROs of educational requirements that exceed those required by the CFPBS of its licensees.

IV. Comments Solicited By the SROs

On August 15, 1994, the NASD published Special Notice to Members ("NTM") 94–59 to request comment regarding the NASD's draft rules to create a mandated continuing education program for the securities industry. thirty-three comment letters were received in response, of which five opposed the proposal, and the remaining commenters either expressed support for, or were not opposed to, the proposal. In addition, on August 15, 1994, the MSRB published its proposed Continuing Education Requirement, Rule G–3, and subsequently received five comment letters.[18] The NYSE received one comment letter.

A. Comments Regarding the Regulatory Element

Several commenters expressed concern about certain provisions of the draft rules. These concerns include a perceived ambiguity regarding when registered persons must participate in the Regulatory Element; the effects of inactive status and how to reactivate registration; and the apparent ability of the SEC and the SROs arbitrarily to mandate re-entry into the Regulatory Element. The SROs subsequently addressed these concerns in the proposals they filed with the Commission.[19]

Other concerns were raised with respect to the Regulatory Element, including its cost and focus (some found its scope too broad, others too narrow). Concern also was expressed that the re-entry provision's disciplinary fine threshold was ambiguous as written and could be unfair in application. Other commenters focused on the statistics to be generated by the Regulatory Element. Specifically, they were concerned about the types of statistics that would be available, and the intended and acceptable uses of such statistics.

Several commenters were concerned that the Regulatory Element would only be administered at NASD operated testing centers. Suggested alternatives included administering the Regulatory Element at firms, subject to appropriate controls, and reliance on third party interactive programs similar to those provided to the futures industry.

One commenter suggested that the securities industry model the Regulatory Element after state insurance continuing education programs, in which the licensing authority imposes the regulatory requirement directly on the individual, rather than on the firm. Another suggestion was that the Central Registration Depository ("CRD")[20] help firms comply with the Regulatory Element. Specifically, CRD could be used by firms to determine the length of service of their registered persons and to identify those that would be subject to the Regulatory Element in each of the next few years.

B. Comments Regarding the Firm Element

A concern expressed by several commenters regarding the Firm Element was the cost it will impose on smaller firms. To mitigate this effect, it was suggested that the SROs prepare and administer training programs; provide subsidies to smaller firms to help them comply with the Firm Element; or that a video satellite program be created that would enable firms to secure qualified speakers, and include material that would comply with the Firm Element.

Several commenters stated that the standards for the Firm Element are too vague to allow firms to ensure proper compliance. Some commenters suggested that the Firm Element focus on suitability, and that some form of pre-approval be provided regarding the contents of a firm's program. Another commenter questioned the usefulness of feedback from the Regulatory Element in developing an appropriate Firm Element. Concern also was expressed regarding the apparent authority of an SRO arbitrarily to prescribe specific training for a member firm. Finally, there was uncertainty regarding those who would be deemed "covered persons."

C. Response to Comments

In their filings with the Commission, the SROs addressed certain of the commenters' concerns by making three technical changes to the Regulatory Element portion of the rules as originally drafted. First, the SROs revised the rules to state clearly that registered persons must participate in the Regulatory Element on three occasions: after the occurrence of their second, fifth, and tenth registration anniversary dates. Second, the SROs expanded the provision concerning failure to complete the Regulatory Element to state that a registration that is inactive for a period of two calendar years would be terminated administratively, and that a person whose registration is so terminated must requalify by taking the appropriate examination, before such person's registration could be reactivated. Third, the SROs revised the re-entry provision of the Regulatory Element to clarify that a securities governmental agency or securities SRO could only require re-entry into the program in connection with a sanction in a disciplinary action This change is meant to address the concerns of those commenting on the due process issues that could arise if regulatory authorities were able to mandate re-entry arbitrarily.

In response to comments received, the Council has stated that the CRD system will be used to track and communicate anniversary dates and evidence of completion of the Regulatory Element. The Regulatory Element's computer based systems will also capture, store, and analyze data that will indicate who took the training, when, and where, as well as other information.

V. Discussion

The Commission believes that the SROs' proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB and, in particular, the respective requirements of Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act.[21] Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) require, among other things, that the rules of an exchange, an association, or the MSRB, respectively, be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission further believes that the proposed rule changes also are consistent with the respective provisions of Sections 6(c)(3)(B), 15A(g)(3)(A), and 15B(b)(2)(A) of the Act,[22] each of which makes it the responsibility of an exchange, an association, or the MSRB to prescribe standards of training, experience and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act,[23] which generally prohibits a registered broker-dealer from effecting any transaction in, or inducing the purchase or sale of, any security unless such broker-dealer meets the standards of training experience, competence, and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.[24] The Commission believes that the SROs' proposals to impose affirmative obligations on registered persons on a continuing basis are an appropriate means of maintaining and reinforcing the qualification standards applicable when a person first is registered. Moreover, it is Commission policy to rely principally on the SROs for the formulation and administration of qualification standards, subject to Commission review and oversight.[25]

The SROs' proposals convey broadly applicable information relating to compliance, regulatory, ethical, and general sales practice standards, as well as job related material for specific professional areas and products. The SROs have divided the continuing

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[12] 15 U.S.C. § 78c(a)(39) (1988 & Supp. 1993).

[13] Amendment No. 1 as filed by the SROs revised the language of the proposal to provide that an order to re-enter the continuing education program may be made by any securities governmental agency or securities self-regulatory organization. Previously, the proposal provided that such an order was to be made only by the "Commission, any securities self-regulatory organization or any state securities agency." See *supra* note 6.

[14] Amendment No. 1 as filed by the SROs revised the language of the proposal to clarify that the 120 day period would start to run upon a registered person becoming subject to a statutory disqualification as well as within 120 days of a disciplinary action being final. *Id.*

[15] *Id.*

[16] See letter from John I. Fitzgerald, Executive Vice President, Legal Affairs and Trading Services, BSE, to Jonathan G. Katz, Secretary, SEC, dated January 25, 1995.

[17] See letter from Robert P. Goss, CFP, Executive Director, CFPBS, to Secretary, SEC, dated January 4, 1995. The CFPBS establishes qualifications for initial professional certification that include education, examination, experience, and ethics requirements. In addition, it develops and administers continuing post-certification requirements and disciplinary procedures for its licensees. The CFPBS licenses nearly 30,000 persons in the United States, of whom approximately 18,000 are licensed to sell securities.

[18] MSRB Reports, Vol. 14, No. 4 (August 15, 1994).

[19] See *infra*, Part IV, Section C.

[20] CRD is a computerized filing and data processing system operated by the NASD that maintains registration information regarding registered broker-dealers and their registered personnel for access by state regulators, SROs, and the Commission.

[21] 15 U.S.C. §§ 78f(b)(5), 78o–3(b)(6), and 78o–4(b)(2)(C) (1988).

[22] 15 U.S.C. §§ 78f(c)(3)(B), 78o–3(g)(3)(A), and 78o–4(b)(2)(A) (1988).

[23] 15 U.S.C. § 78o(b)(7) (1988).

[24] *Id.*

[25] See Rule 15b7–1 under the Act, 17 CFR 240.15b7–1 (1994), and Securities Exchange Act Release No. 32261 (May 4, 1993), 58 FR 27656 (May 11, 1993) (in adopting Rule 15b7–1 to require broker-dealers to comply with SRO qualification standards, the Commission stated that it has been longstanding Commission policy to rely principally on the SROs in the formulation and administration of qualification standards, subject to Commission review and oversight).

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education program into two parts: The Regulatory Element, which emphasizes subjects regarding legal and ethical standards, and the Firm Element, which contemplates the timely transmission of product related information to maintain and expand individuals' professional knowledge. Taken together, the Elements form the basis for an educational program that should ensure that registered persons have the training and knowledge necessary to conduct themselves in an appropriate professional manner, over the course of their careers. The Commission also notes that the re-entry provision of the Regulatory Element, which is triggered by disciplinary action, will ensure that those individuals who have not complied with all applicable regulatory requirements, receive further training as a condition to their re-entry into business.

The Commission believes that a continuing education requirement for persons in the securities industry, administered pursuant to industry developed standards, will benefit public investors as a result of the increased knowledge and enhanced understanding of regulatory and ethical standards by industry members. SRO qualification of registered persons of broker-dealers is of critical importance in promoting compliance with the requirements of the federal securities laws. Increasing the sensitivity of registered persons to regulatory and ethical matters also should enhance investor confidence in the securities industry. Moreover, the recent attention that has been devoted to derivatives underscores the need for securities industry personnel to receive thorough training in the products in which they deal.

The SROs have noted that the Regulatory Element of the program initially will be administered only in the NASD's testing centers, stating that this is necessary to allow the NASD to manage the introduction of the program in a reasonable manner. Nevertheless, interest has been expressed in permitting member firms either to administer the Regulatory Element in-house, or to solicit the services of outside vendors. While recognizing the concerns of the Council and the SROs regarding the technological and administrative issues that arise in connection with the in-house administration of the Regulatory Element, the Commission encourages the Council and the SROs to continue to study whether practical and reasonable alternatives to the NASD's testing centers can be developed.[26]

The Commission notes with approval that the Firm Element Committee of the Council is developing guidelines for dealers' use in devising and carrying out training programs to meet the requirements of the Firm Element, including providing guidance as to how different firms might approach the requirements (e.g., firms that deal with one product, small firms, and firms with large numbers of very small offices or solo representatives).

These guidelines will offer suggestions intended to help firms devise appropriate and reasonable programs consistent with their own unique characteristics and businesses. The Commission believes that such guidance will particularly benefit smaller firms and should lessen their costs of compliance with the Firm Element. The Commission encourages the SROs, as they gain experience with the continuing education program, to continue such efforts.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule changes (File Nos. SR-AMEX-94-59, SR-CBOE-94-49, SR-CHX-94-27, SR-MSRB-94-17, SR-NASD-94-72, SR-NYSE-94-43, SR-PSE-94-35, and SR-PHLX-94-52) are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95-3569 Filed 2-13-95; 8:45 am]

BILLING CODE 8010-01-M

[26] Specifically, delivery of the Regulatory Element other than through the NASD's testing centers would require that appropriate safeguards be developed to ensure the integrity of the program and the ability to capture the necessary information for feedback.

[27] 15 U.S.C. § 78s(b)(2) (1988).

[Release No. 34-35344; File No. SR-Amex-95-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes that the Commission extend for twelve months the Exchange's existing pilot program under Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to February 8, 1995, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[2] These procedures initially were approved by the commission on a pilot basis,[3] and subsequently were extended ten times.[4]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or through the Exchange's Post Execution Reporting ("PER") system. Enhancements to the PER system have been implemented to provided for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for twelve months. The exchange notes that, in approving previous extensions to the Rule 205 pilot procedures, the Commission has expressed interest in the feasibility of the Exchange utilizing the Intermarket Trading System ("ITS") best bid or offer, rather than the Amex bid or offer, for purposes of the Exchange's odd-lot pricing system. The Exchange has determined to proceed with system modifications, anticipated to be completed within a twelve month period, to provide for execution of odd-lot market orders at the ITS best bid or offer. The Exchange will file appropriate amendments to Rule 205, prior to expiration of the extended pilot program, to accommodate the revised odd-lot pricing procedures.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-95-03 and should be submitted by March 7, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the same rational discussed in its previous orders regarding the Amex's odd-lot execution pilot program,[5] the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)[6] and 11A(a)(1)[7] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, under which odd-lot market orders are executed at the prevailing Amex quote rather than at the price of a subsequent round-lot transaction, should provide investors with more timely execution of their orders. The Exchange has implemented enhancements to its PER system to provide for the automatic execution of odd-lot market orders. Based on the data in the Amex's monitoring reports, the Rule 205 amendments have resulted in a superior execution for a significant percentage of such orders.

The Commission, however, is not satisfied that all customers received the best execution, in terms of time *and* price, under the pilot procedures. Specifically, the Commission remains concerned that some odd-lot orders may not receive the best available price, because the Exchange's pricing formula does not include quotations from other markets.[8] In its previous orders,[9] the Commission has requested that the Exchange analyze the difference in odd-lot executions between using the Intermarket Trading System ("ITS") consolidated best bid or offer and using the Amex quote. The Commission also has encouraged the Amex to evaluate the feasibility of implementing an odd-lot pricing system based on the ITS best bid or offer.[10]

At this time, the Amex has determined to proceed with the necessary system modifications to provide for the execution of odd-lot orders at the ITS best bid or offer. The Exchange anticipates that the system modifications will be completed within a twelve month period. As noted above, the Commission has encouraged the Amex to implement a pricing formula that includes quotations from other markets and believes that such action would substantially alleviate the Commission's best execution concerns. In the interim, due to the relatively low

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on February 8, 1995, to continue without interruption. The Commission notes that, under current Rule 205, no differential may be charged on odd-lot order transactions, except for non-regular way trades. See *infra*, note 5.

[2] See Securities Exchange Act Release No. 34949 (November 8, 1994), 59 FR 58863 (November 15, 1994) (approving File No. SR-AMEX-94-47).

[3] See Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (January 19, 1989) (approving File No. SR-Amex-88-23).

[4] See Securities Exchange Act Release Nos. 34949 (November 8, 1994), 59 FR 58863 (November 15, 1994) (approving File No. SR-Amex-94-47); 34496 (August 8, 1994), 59 FR 41807 (August 15, 1994) (approving File No. SR-Amex-94-28); 33584 (February 7, 1994), 59 FR 6983 (February 14, 1994) (approving File No. SR-Amex-93-45); 32726 (August 9, 1993), 58 FR 43394 (August 16, 1993) (approving File No. SR-Amex-93-24); 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR-Amex-93-06); 30305 (January 30, 1992), 57 FR 4653 (February 6, 1992) (approving File No. SR-Amex-92-04); 29922 (November 8, 1991), 56 FR 58409 (November 19, 1991) (approving File No. SR-Amex-91-30); 29186 (May 19, 1991), 56 FR 22488 (May 15, 1991) (approving File No. SR-Amex-91-09); 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR-Amex-90-39); and 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR-Amex-89-31).

[5] See e.g., Securities Exchange Act Release No. 26445, *supra* note 3, for a description of the Commission's rationale for approving the Amex's odd-lot procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order. Since initial approval of the pilot program, however, the Exchange has amended Rule 205 to provide that no differential may be charged on odd-lot order transactions, except for non-regular way trades. See Securities Exchange Act Release No. 34591 (August 24, 1994), 59 FR 44783 (August 30, 1994) (approving File No. SR-Amex-94-15).

[6] 15 U.S.C. 78f (1988).

[7] 15 U.S.C. 78k-1(a)(1) (1988).

[8] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quotation into the NYSE odd-lot pricing procedures through the use of the Best Pricing Quote ("BPQ"). See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR-SYSE-90-06).

[9] See *supra*, note 4.

[10] See *supra*, note 8.

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number of odd-lot market orders on the Amex [11] and the benefits to customers under the pilot procedures as compared to the former pricing procedures, which priced odd-lot orders based on subsequent round-lot transactions and which raised concerns regarding timeliness of execution, the Commission finds that it is appropriate to extend the pilot program for an additional twelve months. This will enable the pilot program to continue without interruption during the system modifications.

The Commission finds good cause for granting approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are substantially identical to the procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[12]

It is therefore ordered, pursuant to Section 19(b)(2) [13] of the Act, that the proposed rule change (SR–Amex–95–03) is approved for a twelve month period ending on February 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–3617 Filed 2–13–95; 8:45 am]

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[Release No. 34–35338; File No. SR–Amex–95–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Minimum Fractional Changes

February 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 31, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 127 to increase from $5 to $10 the price level below which equity securities are traded in sixteenths.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 1992, the Commission approved amendments to Amex Rule 127 to provide that securities selling under $5 and above $.25 may be traded in fractions of 1/16 of $1.00 per share.[1] Prior to the amendment, Rule 127 provided for trading in sixteenths for securities selling under $1 and above $.25, whereas trading in securities selling above $1 were subject to a minimum trading fraction of one-eighth of $1. In expanding the number of securities eligible for trading in sixteenths, the Exchange intended to promote greater liquidity in lower priced stocks by allowing quotations between the then-current one-eighth minimum trading fraction, thereby providing possible improved pricing of orders to the benefit of both public customers and market professionals.

The Exchange proposes to increase significantly the number of Amex-listed securities traded in sixteenths by amending Rule 127 to provide for sixteenths trading in securities selling under $10.[2] The Exchange believes that trading in sixteenths will improve the market for securities trading under $10 by promoting greater liquidity and providing for superior executions of retail and professional orders. In addition, the proposal is responsible to the recommendations of the Division of Market Regulation, in its Market 2000 Study,[3] that the exchanges and Nasdaq convert to a minimum variation of one-sixteenth as soon as possible.

The proposed amendments to Rule 127 do not pertain to bond issues, which will continue to be dealt in at one-eighth of $1. In addition, the Exchange will retain its authority to fix different minimum fractional changes where appropriate.

Prior to implementing expanded sixteenths trading in 1992, the Amex discussed the need for systems enhancements to the Intermarket Trading System ("ITS")[4] with all ITS participants[5] in order to permit the transmittal of commitments to trade Amex securities priced under $5 via ITS in fractions of one-sixteenth, which enhancements were implemented by the Securities Industry Automation Corporation ("SIAC").[6] Prior to the proposed expansion of trading in sixteenths, the Amex will consult with all ITS participants to permit them to make any required modifications to their individual systems to accommodate trading through ITS in Amex securities priced under $10.

2. Statutory Basis

Thr proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is intended to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will remove or lessen existing burdens on competition in that it will enhance the liquidity of and provide for greater price competition in Amex securities trading under $10.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–02 and should be submitted by March [illegible] 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–3568 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35345; File No. SR–CBOE–94–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Relating to Firm Quote Responsibilities

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on January 4, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand the applicability of the firm quote rule to include two-part orders in equity options, in which the component series are on opposite sides of the market and in a one-to-one ratio. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand the applicability of Rule 8.51 to certain two part equity orders and thus, to attempt to ensure the ability of public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes.

CBOE Rule 8.51 places the responsibility on the trading crowd to ensure that non-broker-dealer customer orders are sold or bought, up to ten contracts, at the quoted offer or bid, respectively. This "firm quote" or "ten-up" requirement is meant to provide confidence that the displayed quotes may be relied upon by the investing public and to ensure that public customer orders will be executed at those quotes.

From its inception the rule was intended to apply to, and has been interpreted to apply only to, single part orders, i.e., either a buy order or a sell order for a particular option series. The Exchange has determined, however, that public customers would be served better if the interpretation were expanded to included a requirement to provide a ten-up market in two-part equity option orders in which the components of the order are on opposite sides of the market and in a one-to-one ration to each other. The expansion in the interpretation of this rule would make it possible for public customers to execute both sides of a defined risk strategy, such as a spread or a straddle, at the disseminated prices. This rule change, then, should help the Exchange compete more effectively for public customer order flow and trading activity.

The Exchange does not believe this rule change would be burdensome to market-makers because, under the current interpretation, the market-makers would be required to satisfy the ten-up requirement as to each leg of a spread or straddle if each was placed as a separate order. This rule change would merely ensure that these two components may be done at the same time, as one order, and at the same prevailing market quotes. The Exchange believes, however, that it is inappropriate, under any circumstances, to extend the firm-quote treatment to multi-part orders with all parts on the same side of the market as this would effectively impose the burden on options market-makers of making markets in the underlying security. For example, a position in a long call and a short put is economically equivalent to being long the underlying stock; and thus, requiring a trading crowd to provide firm quote treatment to an order for this position would essentially be requiring the option market-makers to act as market-makers in the underlying security

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[11] See footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[12] No comments were received in connection with the proposed rule changes that implemented these procedures. See *supra*, notes 3–4

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] See Securities Exchange Act Release No. 31118 (August 28, 1992), 57 FR 40484 (September 3, 1992).

[2] The Amex estimates that the rule change will increase the number of securities traded in sixteenths from 362 securities (approximately 37% of Amex-listed securities) to 589 securities (approximately 60% of Amex-listed securities). These estimates were made by the Exchange as of February 3, 1995.

[3] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (January 1994), at 18 ("Market 2000 Study").

[4] ITS is a subsystem of the National Market System approved by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1 (1988). ITS facilitates intermarket trading in exchange-listed equity securities based on the current quotation information emanating from the linked markets. For a discussion of ITS, see Market 2000 Study, *supra* note 3, at Appendix II.

[5] Participants to the ITS Plan include the Amex, the Boston Stock Exchange, the Chicago Board Options Exchange, the Chicago Stock Exchange, the Cincinnati Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, and the National Association of Securities Dealers.

[6] SIAC is a jointly owned subsidiary of the New York Stock Exchange and the Amex, which does, among other things, the automated processing for ITS

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Under Rule 8.51, the firm quote size minimum will not apply whenever a "fast market" is declared under rule 6.6, and may be suspended for any class or series on a case by case basis as determined by the Market Performance Committee.

CBOE believes the proposed rule change will contribute to a market that will instill an increasing customer confidence and ability to transact business in an increasingly efficient manner. CBOE believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Exchange Act") in general and furthers the objectives of Section 6(b)(5) in particular by providing rules that perfect the mechanisms of a free and open market and that protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3618 Filed 2-13-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35342; File No. SR-DTC-94-19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding Implementation of New Guidelines Regarding Principal and Income Payments in a Same-Day Funds Environment

February 8, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 5, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. On January 24, 1995, DTC amended the proposed rule change to include a statement that the proposed rule change did not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the existing operational arrangements necessary for a securities issue to become eligible for DTC's services. Specifically, the rule change calls for changes to the processing of principal and income distributions in a same-day funds environment.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

DTC's operational arrangements are designed to maximize the number of issues that can be made depository eligible while ensuring orderly processing and timely payments to participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements those requirements can be met almost without exception.[4] The purpose of the proposed rule change is to incorporate in DTC's operational arrangements memorandum principles for the processing of principal and income payments in same-day funds.[5] Towards this end, the operational arrangements memorandum will incorporate the relevant provisions of the "Standards for Principal and Income Payments Guidelines" established by the U.S. Working Committee of the Group of Thirty. These principles will become a part of DTC's income and reorganization/redemption payments standards.

First, DTC proposes that all new issues be required to meet depository-eligibility requirements and must be structured so that all payments to depositories of principal and income are made in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Second, for all depository-eligible issues already outstanding, paying agents must remit to DTC all principal and income payments in same-day funds on payment date by 2:30 p.m. Eastern Standard time according to existing arrangements between the paying agent and DTC. Recognizing that paying agents for certain issues may need to modify their current business arrangements to account for this change, DTC will continue to pay through July 31, 1996, the same rebates as paid now to paying agents that result from paying agents municipal interest and municipal and corporate redemptions to DTC in same-day funds on payment date.

However, once DTC converts to same-day funds settlement for all security transactions, DTC will not have investment funds available to rebate to paying agents because DTC intends to make all payments to its participants on payment date in same-day funds. Recognizing that participants will benefit by receiving all their expected payments in same-day funds on payment date, from the date of the conversion to same-day funds settlement for all security transactions until July 31, 1996, DTC will charge participants in proportion to their holdings in each issue for which a rebate applies the funds needed to pay the rebate. With respect to payments made on or after August 1, 1996, these charges to participants will no longer be required. The rebate will not be applied to payments of corporate interest, dividends, and reorganizations in which the paying agent already pays DTC in same-day funds on payment date. These payments currently are not subject to interest earnings rebates. However, DTC will require that 100% of corporate interest, dividend, and reorganization payments be paid to DTC in same-day funds on payment date by 2:30 p.m. Eastern Standard time.

Third, DTC will require paying agents to provide DTC with the CUSIP numbers for each issue for which payment is being sent as well as the dollar amount of the payment for each issue no later than noon Eastern Standard time on the payment date. Notification of payment details should be made using automated communications.

Finally, if an issuer or agent continually fails to make payment as called for in the guidelines, DTC may decide to systematically prevent the allocation of such payments to participants on the payable date. Eventually, DTC may also elect to deny depository eligibility to issues brought to market by non-complying issuers or agents.

The proposal also seeks to amend the operational arrangements memorandum to introduce the use of a "Blanket Letter of Representations." This document will be submitted by an issuer to DTC only once for all issues thus eliminating the need for individual letters of representations for book-entry-only issues under certain circumstances.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions by promoting the immobilization of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC indicated that it did not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC's operational arrangements were developed in close consultation with many bond trustees, issuers' agents, participants, and industry groups throughout the country in order to assure that these processing standards can be met. DTC has disseminated these memoranda widely to corporate and public finance professionals, underwriters, bond counsel, and issuers so that they may consider whether documentation relating to issues sought to be made depository-eligible adequately accommodates these requirements.

In addition, both industry organizations and self-regulatory organizations have endorsed the four principles discussed above. These organizations include the American Bankers Association, the Bank Depository User Group, the Government Finance Officers Association, the Municipal Securities Rulemaking Board ("MSRB"),[6] the Public Securities Association, and the Reorganization Division, Dividend Division, Securities Operations Division, and the Operations Committee of the Securities Industry Association.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-94-19 and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-3566 Filed 2-13-95; 8:45 am]

BILLING CODE 8010-01-M

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[1] 17 CFR 200.30-3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Piku Thakkar, Assistant Counsel, DTC, to Peter R. Geraghty, Division of Market Regulation, Commission (January 24, 1995).

[3] Same-day funds, which are also known as "Fed funds", are immediately available for redelivery on the day of receipt.

[4] During 1993, a total of 392,000 new issues were made eligible for DTC's services. This was 99.94% of all new issues submitted to DTC's Underwriting Department for eligibility determinations. These figures include equity, corporate debt, municipal debt, and U.S. Government and Agency securities. In the unusual circumstance where the processing characteristics of a new issue that is being structured would not meet DTC's operational arrangements, if contacted early enough in the planning process DTC staff often is able to assist in suggesting restructuring alternatives that would permit the issue to be made depository eligible.

[5] DTC's operational arrangements memorandum was published in June 1987 and was updated in both June 1988 and February 1992. For a complete description of the operational arrangements memorandum, refer to Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 [File No. SR-DTC-87-10] (order approving the implementation of DTC's operational arrangements for the eligibility of security issues), and Securities Exchange Act Release No. 30625 (April 30, 1992), 57 FR 18534 [File No SR-DTC-92-06] (order approving modifications to DTC's operational arrangements).

[6] The MSRB has, however, raised questions about how these guidelines would be enforced.

[7] 17 CFR 200.30-3(a)(12) (1994).

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[Release No. 34–35340; File No. SR–NASD–94–77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Granting the Director of Arbitration the Authority to Delegate Duties Under the Code of Arbitration Procedure

February 8, 1995.

On December 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC " or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 3 of the Code of Arbitration Procedure ("Code")[3] to expressly provide that the Director of Arbitration ("Director") may delegate decisionmaking authority as appropriate.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35168, December 29, 1994) and by publication in the **Federal Register** (60 FR 1822, January 5, 1995). No comment letters were received. This order approves the proposed rule change.

The current provisions of Section 3 of the Code provide for the NASD Board of Governors to appoint a Director to perform all administrative duties and functions in connection with matters submitted for arbitration pursuant to the Code. The Director has found it necessary to delegate certain duties and functions of the Director to other senior management employees of the NASD's Arbitration Department ("Department"), especially as a result of the significant growth in the Department's staff and workload. The NASD believes that the authority of the Director to manage the functions of the NASD's Arbitration Department inherently includes the power to delegate duties and functions as appropriate. Nevertheless, the rule change amends Section 3 of the Code to expressly permit the Director to delegate duties and functions of the Director as appropriate.

The rule change provides that the Director may delegate duties and functions of the Director as appropriate. Further, in the event that the Director is incapacitated, resigns, is removed or is permanently or indefinitely disabled from the performance of the duties and functions of the Director, the rule change permits the NASD President or an NASD Executive Vice President to appoint an interim Director to perform the functions and responsibilities of the Director.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] because the rule change will protect investors and the public interest by avoiding uncertainty and possible litigation about the authority of a Department staff member to act under the Code by permitting the Director to delegate duties and functions vested by the Code with the Director. The Commission further believes that by permitting certain other NASD officers to appoint an interim Director if circumstances render the Director unable to discharge the duties vested with the Director, the proposal will help protect investors and is in the public interest.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that file No. SR–NASD–94–77 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3570 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35339; File No. SR–NASD 94–71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Application of "Do Not Reduce" and "Do Not Increase" Instructions With Respect to the Repricing of Open Orders

February 7, 1995.

On December 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change amends Article III, Section 46 of the Rules of Fair Practice,[3] which governs adjustment of open orders, relating to the applicability of this section to orders marked "do not reduce" ("DNR") and "do not increase ("DNI"). The provisions of Section 46 deal with the adjustment of open orders in the event of a payment or distribution. As amended, the rule will neither apply to orders marked DNR where the dividend is payable in cash, nor to orders marked DNI where the dividend is payable in stock, provided that the price of such DNI orders shall be adjusted as required by the rule.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] No comments were received in response to the notice. This order approves the proposed rule change.

Article III, Section 46 of the Rules of Fair Practice, which became effective September 15, 1994, requires a member to adjust the price and size of an open order in proportion to the dividend or other distribution on the day the security is quoted "ex",[6] before the member may permit the order to be executed. The amendment has been proposed in response to an inconsistency in the definition of the terms DNR and DNI between the NASD's Section 46 and New York Stock Exchange ("NYSE") Rule 118,[7] on which Section 46 was patterned. Because Section 46 was intended to operate in the same manner as NYSE Rule 118, the NASD filed the proposed rule change to amend the definitions of DNR and DNI to conform to the definitions in Rule 118.

Under NYSE Rule 118, a DNR instruction applies only with respect to cash dividends. An order with a DNR instruction will not be reduced in price in the event of a cash dividend. Such an order will, however, be reduced in price and increased in size in the event of a stock dividend or split. In addition, under NYSE Rule 118, a DNI instruction applies only with respect to order size adjustments in the event of stock dividends. While an order with a DNI instruction will not increased in size, it will be reduced in price in the event of a stock dividend or split. An order with a DNI instruction is inapplicable in the event of a cash distribution because the number of shares is not affected by a cash distribution and, therefore, no order size adjustment is necessary.

Currently, under Section 46, a DNR instruction applies to both cash and stock distributions. For example, the price of an order marked DNR would not be adjusted under the current definition in Section 46 even in the event of a 2 for 1 or similar stock dividend. Such a dividend would halve the quotes for the security, but the order would remain at the original price, far out of line with the adjusted market for that security. Similarly, all orders marked DNI would not be subject to the current adjustment provisions of Section 46. While an order marked DNI would not be increased in size in the event of stock dividend, it also would not be reduced in price pursuant to the provisions of Section 46.

For customers who understand the operation of Section 46 to be the same as NYSE Rule 118, leaving the current definitions in place could result in unexpected executions of certain open orders. To address this concern, the NASD has proposed to amend the applicability of Section 46 to orders marked DNR and DNI. Pursuant to the amendment, the provisions of the rule will not apply to orders marked DNI where the distribution is payable in cash, nor to orders marked DNI where the distribution is payable in stock, provide, however, that the price of such DNI orders will be adjusted as required by the rule.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change acts to remedy an unintentional inconsistency between Section 46 and NYSE Rule 118. The rule change also protects against the unexpected and unintended execution of open orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–71 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3567 Filed 1–13–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35343; File No. SR–NYSE–94–46]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Specialist Combination Review Policy to Require Proponents of Certain Specialist Unit Combinations to Address Issues Related to the Capitalization, Risk Management, and Operational Efficiency of Large Sized Specialized Units

February 8, 1995.

I. Introduction

On December 9, 1994 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt amendments to the NYSE's Specialist Combination Review Policy ("Policy"). Specifically, the proposal would require proponents of certain specialist unit combinations to address issues related to the capitalization, risk management, and operational efficiency of large sized specialist units.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35171 (December 28, 1994), 60 FR 1818 (January 5, 1995). No comments were received on the proposal.

II. Background

The Exchange's Policy was first approved by the Commission on a six-month pilot basis in 1987.[3] The Commission subsequently granted permanent approval following an interim extension.[4]

The Policy is a three-tier system of review, primarily conducted by the Quality of Markets Committee ("QOMC"), to review proposed specialist combinations that raise concentration-related issues. The Policy calls for review of a potential combination where the combination will result in a specialist unit accounting for more than 5% of any one of four specified concentration measures: Allocation for all listed common stocks; allocation for the 250 most active listed common stocks; total share volume of stock trading on the Exchange; and total dollar value of stock trading on the Exchange. Once a review is triggered under the Policy, the primary factors taken into consideration by the QOMC depend upon whether the proposed combination warrants a Tier I review (exceeding a concentration measure by more than 5%), Tier II review (exceeding a concentration measure by more than 10%, up to and including 15%), or a Tier III review (exceeding a concentration measure by 15%). The level of the burden of proof placed upon the proposed combining units also may vary depending on the Tier of review.

III. Description

The proposal will add several requirements that address issues related to the capitalization, risk management, and operational efficiency of large-sized specialist units.[5] The proposal requires proponents of a combination that would exceed 10% of a concentration measure to:

- Submit an acceptable risk management plan with respect to any line of business in which they engage;
- Submit an operational certification prepared by an independent, nationally recognized management consulting organization with respect to all aspects of the firm's management and operations;
- Agree to maintain a minimum of 1.5 times (2 times, in the case of a 15% combination) the total capital requirement specified in Rule 104.20[6] with respect to the combined entity's stocks;

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[1] 15 U.S.C. Section 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, Code of Arbitration Procedure, Part I, Sec. 3 (CCH) ¶ 3703.

[4] 15 U.S.C. Section 78o–3.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, of Fair Practice, Article III, Section 46, (CCH) ¶ 2200F.

[4] Securities Exchange Act Release No. 35169 (December 28, 1994).

[5] 60 FR 2169 (January 6, 1995).

[6] The "ex-date" represents the day on which the underlying security is traded without a specific dividend or distribution, NASD Manual, Uniform Practice Code, Section 3(e), (CCH) ¶ 3503.

[7] NYSE Guide, Handling of Orders and Reports, Rule 118, (CCH) ¶ 2118.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[4] See Securities Exchange Act Release Nos. 25481 (March 17, 1988), 53 FR 9554 (March 23, 1988) (interim extension); 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (permanent approval).

[5] Once the proponents agree that they will abide by the requirements listed below, the Exchange will verify the ability of the units to make such commitments by reviewing their individual capitalization information. If such a review shows that the units do not have the requisite capacity, then the combination will not be approved. Once the combination has been approved, the Exchange will monitor the combined unit to ensure that it continues to meet the additional requirements. In the event the combined unit fails to meet the additional requirements, the Exchange will address the issue as it would any other capital requirements violation. In such circumstances, the Exchange, through its Rule 476, has several courses of action available to it including stock reallocation. Conversations between Don Seimer, NYSE, and Amy Bilbija, Attorney, SEC, on January 27, 1995 and February 6, 1995.

[6] Pursuant to NYSE Rule 104.20, a specialist unit at an active post is required to be able to assume a position of 150 trading units in each common

Continued

• Agree to maintain 2 times (2.5 times, in the case of a 15% combination) the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are component stocks of the Standard and Poor's 500 Stock Price Index; and

• Agree that all capital required to be dedicated to specialist operations be accounted for separate and apart from any other capital of the combined entity, and that such specialist capital may not be used for any other aspect of the combined entity's operations.

The proposal also requires that proponents of a proposed combination that would result in a specialist unit accounting for more than 5%, but less than or equal to 10%, of a concentration measure, maintain 1.5 times the capital requirement specified in Rule 104.20 with respect to each of the combined entity's stocks that are components stocks of the Standard and Poor's 500 Stock Price Index.

IV. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designated to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it addresses concerns about capitalization, operational efficiency, and risk management where proposed combinations would result in large sized specialist units.

The Commission agrees with the NYSE that these new requirements are appropriate in that they should minimize the risk of financial and/or operational failure of larger-sized units, and ensure that such units have sufficient, separately dedicated capital with which to meet their market making responsibilities. The Commission believes that it is appropriate to modify the Policy to place additional capitalization requirements when specialist units are combining. The combined entity will be larger than either of the two (or more) original entities, responsible for more securities, and financially exposed to a larger degree. The potential impact of the financial failure of a large-sized specialist unit upon the NYSE would be proportionately greater in comparison to either original unit. Thus, imposing more stringent capitalization requirements upon the new unit should decrease the probability of any such failure, and minimize any subsequent detrimental impact upon the market place.

The Commission also believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act in that it establishes review procedures to prevent potential under-capitalization of specialist units that could hinder market quality. The Commission recognizes that the revised Policy can prevent certain combinations from occurring by placing additional requirements for such combinations to take place. Nonetheless, the Commission believes that the additional requirements will help to ensure that combinations potentially detrimental to the market place will not be permitted. Accordingly, any potential burden on competition resulting from the proposal is, in the Commission's view, justified as necessary and appropriate under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–94–46) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–3619 Filed 2–13–95; 8:45 am]

BILLING CODE 8010–01–M

stock in which he is registered and must be able to establish that he can meet, with his own net liquid assets, the greater of, a minimum capital requirement of $1,000,000 or 25% of the foregoing position requirement.

[7] 15 U.S.C. 78f(b) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area, North Carolina

Duplin, Lenoir, and Sampson Counties and the contiguous Counties of Bladen, Crave, Cumberland, Greene, Harnett, Johnston, Jones, Onslow, Pender, Pitt, and Wayne in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on January 6 and 7, 1995. Applications for loans for physical damage may be filed until the close of business on April 10, 1995 and for economic injury until the close of business on November 8, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations

The interest rates are.

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 276412 and for economic injury the number is 844400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 8, 1995

Philip Lader,

Administrator

[FR Doc. 95–3593 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

Commonwealth of the Northern Mariana Islands; Declaration of Disaster Loan Area

The Islands of Antahan, Saipan, and Tinian in the Commonwealth of the Northern Mariana Islands are hereby declared a disaster area as a result of damages caused by Typhoon Zelda which occurred on November 3, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 7, 1995 and for economic injury until the close of business on November 6, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276306 and for economic injury the number is 844300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 6, 1995.

Philip Lader,

Administrator

[FR Doc. 95–3594 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

Jiffy Lube Capital Corporation (License No. 06/03–0182); Notice of Surrender of Licensee

Notice is hereby given that Ji fy Lube Capital Corporation, 700 Milam Street, Houston, Texas 77252 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Jiffy Lube Capital was licensed by the Small Business Administration on December 9, 1987

Under the authority vested by the Act and Pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 21, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated February 8, 1995

Robert D. Stillman,

Associated Administrator for Investment.

[FR Doc. 95–3595 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5379]

New Oasis Capital Corporation; Notice of License Surrender

Notice is hereby given that New Oasis Capital Corporation ("NOCC"), 135–38 39th Avenue, Flushing, NY 11354, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). NOCC was licensed by the Small Business Administration on February 6, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 26, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 7, 1995.

Robert D. Stillman,

Associate Administrator for Investment

[FR Doc. 95–3595 Filed 2–13–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration, Transportation.

ACTION: Notice of NHTSA industry meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's safety performance standards, safety assurance and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to the agency's safety performance standards, safety assurance and other programs will be held on March 29, 1995, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the agency's safety performance standards, safety assurance and other programs must be submitted in writing by March 20, 1995, to the address shown below. If sufficient time is available, questions received after the March 20 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by March 20, 1995, and the issues to be discussed will be mailed to interested persons by March 23, 1995, and will be available at the meeting.

Also, the agency will hold a second public meeting on March 28, devoted exclusively to a presentation of research and development programs.

The meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the March 29 NHTSA Technical Industry Meeting, relating to the agency's safety performance standards and safety assurance programs should be submitted to Barry Felrice, Associate Administrator for Safety Performance Standards, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street SW., Washington, DC 20590. Questions for the Research and Development Program Meeting to be held on March 28, should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street SW., Washington, DC 20590. Both meetings will be held at the Ramada Inn, near the Detroit Metro Airport, 8270 Wickham Road, Romulus, MI 48174.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's safety performance standards safety assurance and other programs. Since the agency is holding a separate meeting on its research and development programs, any questions on those issues will only be answered at the afternoon meeting to be held on March 28, 1995, and should be submitted to the Research and Development Office. However, questions on aspects of the agency's research and development activities that relate to ongoing safety performance standards should be submitted, as in the past, to the agency's Safety Performance Standards Office. The March 28th and the March 29th meetings will be held at the Ramada Inn near the Detroit Metro Airport, 8270 Wickham road, Romulus, MI 48174. The purpose of these meetings is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting and the NHTSA Industry Research and Development Meeting. Any person desiring assistance of "auxiliary aids"

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(e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB March 20, 1995 for the 9:45 a.m. to 12:30 p.m. portion of meeting or Barbara Coleman (202) 366–1537 by COB March 20, 1995 for the 1:30 p.m. to 5:00 p.m. portion

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–3558 Filed 2–13–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Carteret Federal Savings Bank of New Jersey; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Carteret Federal Savings Bank of New Jersey, Newark, New Jersey, on January 20, 1995.

Dated: February 8, 1995

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 95–3578 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–03; OTS Nos. H–1792 and 02611]

Community Bank Shares, M.H.C., New Albany, Indiana; Approval of Conversion Application

Notice is hereby given that on January 25, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Bank Shares, M.H.C., New Albany, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 8, 1995

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3579 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–02; OTS No. 03052]

Community Federal Savings and Loan Association of Little Falls, Little Falls, Minnesota; Approval of Conversion Application

Notice is hereby given that on January 19, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Federal Savings and Loan Association of Little Falls, Little Falls, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 95–3582 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–05; OTS No. 00566]

First Federal Banking & Savings, FSB Bemidji, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Banking & Savings, FSB, Bemidji, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3581 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–07; OTS No. 03294]

First Federal Savings & Loan Association of Florence, Florence, Alabama; Approval of Conversion Application

Notice if hereby given that on February 6, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Florence, Florence, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: February 8, 1995

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 95–3582 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–08; OTS No. 03512]

Home Loan Bank fsb, Fort Wayne, Indiana; Approval of Conversion Application

Notice is hereby given that on February 8, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Loan Bank fsb, Fort Wayne, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360

Dated: February 8, 1995

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3583 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–04; OTS No. 06998]

Pendleton Federal Savings and Loan Association, Falmouth, Kentucky; Approval of Conversion Application

Notice is hereby given that on January 26, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Pendleton Federal Savings and Loan Association, Falmouth, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3584 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–01; OTS No. 07098]

Security Federal Bank, a Federal Saving Bank, Tuscaloosa, Alabama; Approval of Conversion Application

Notice is hereby give that on January 16, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Federal Bank, a Federal Savings Bank, Tuscaloosa, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3585 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–06; OTS No. 02984]

Wells Federal Bank, fsb, Wells, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Wells Federal Bank, fsb, Wells, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Midwest Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 8, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–3586 Filed 2–13–95; 8:45 am]

BILLING CODE 6720–01–M

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Sunshine Act Meetings

Federal Register

Vol. 60 No. 30

Tuesday, February 14, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following Board meeting and staff briefing:

TIME AND DATE: 2:00 p.m., February 21, 1995.

PLACE: Board Conference Room, Suite 700, 625 Indiana Ave., NW, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Board will reconvene and continue the open meeting conducted on January 19, 1995, to deliberate upon the Secretary of Energy's response to Board Recommendation 94-1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208-6387

SUPPLEMENTARY INFORMATION: The Staff will continue to brief the Board on the Secretary's response to Board Recommendation 94-1 and related topics, including, but not limited to, DOE's studies on vulnerabilities associated with the DOE's storage of spent nuclear fuel, and the current status of DOE remediation of conditions identified in Board Recommendation 94-1.

The Board specifically reserves its right to further schedule and otherwise regulate the course of this public meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 9, 1995

Kenneth M. Pusateri,

General Manager

[FR Doc. 95-3690 Filed 2-10-95; 9:32 am]

BILLING CODE 3670-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 6, 1995, 60 FR 7096.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 8, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for February 8, 1995:

Item No., Docket No. and Company

CAH-2—P-10615-008, Wolverine Power Supply Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 95-3827 Filed 2-10-95; 3:57 pm]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, February 21, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 10, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-3812 Filed 2-10-95; 3:55 pm]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., February 21, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 17, 1995, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports.

"Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Wells Fargo Institutional Trust Company and Wells Fargo Nikko Investment Advisors."

"Pension and Welfare Benefits Administration Review of Project Management Practices for the Thrift Savings Plan System."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Participant Support Process at the United States Department of Agriculture, Office of Finance and Management, National Finance System."

4. Labor Department briefing.
5. Quarterly review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: February 8, 1995

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95-3689 Filed 2-10-95; 9:31 am]

BILLING CODE 6760-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Wednesday, February 22, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6527—Aviation Accident Report: Controlled Collision with Terrain, Transportes Aereos Ejectivos, S.A. (TAESA), Learjet 25D, XA-BBA, Dulles International Airport, Chantilly, Virginia, June 18, 1994.

6522— Hazardous Materials Accident Report Tank Car Failure and Release of Arsenic Acid, Chattanooga, Tennessee, June 6, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525

Dated: February 10, 1995

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 95-3733 Filed 2-10-95; 10:33 am]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 13, 20, 27, and March 6, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of February 13

There are no meetings scheduled for the Week of February 13.

Week of February 20—Tentative

There are no meetings scheduled for the Week of February 20.

Week of February 27—Tentative

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301-415-5972)
2:00 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Wednesday, March 1

10:00 a.m.
Briefing by Electricity Committee of NARUC (Public Meeting)
(Contact: Spiros Droggitis, 301-504-2367)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed—)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301-415-7266)
3:30 p.m
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 10

10:00 a.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301-415-7360)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no items has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301-415-1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 10, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95-3813 Filed 2-10-95; 3:56 pm]

BILLING CODE 7590-01-M

STATE JUSTICE INSTITUTE

TIME AND DATE:

Tuesday, February 28, 1995, 9 a.m.–5 p.m.

Wednesday, March 1, 1995, 9 a.m.–5 p.m.

PLACE: Hyatt Regency Albuquerque, 330 Tijeras, N.W., Albuquerque, NM 87102.

MATTERS TO BE CONSIDERED: FY 1995 grant proposals and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: FY 1995 grant proposals and non-personnel-related internal business matters.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters; Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684-6100.

David I. Tevelin,

Executive Director.

[FR Doc. 95-3732 Filed 2-10-95; 10:33 am]

BILLING CODE 6820-SC-M

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federal register

Tuesday
February 14, 1995

Part II

Department of Agriculture

Agricultural Marketing Service
Grain Inspection, Packers and Stockyards Administration
Office of the Secretary

7 CFR Parts 0 and 1
7 CFR Part 47, et al.
9 CFR Chapter II et al.
Rules of Practice; Final Rule

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DEPARTMENT OF AGRICULTURE

Office of the Secretary of Agriculture

7 CFR Parts 0 and 1

Agricultural Marketing Service

7 CFR Parts 47, 50, 51, 52, 53, 54, and 97

Grain Inspection, Packers and Stockyards Administration

9 CFR Chapter II and Part 202

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, the Rules of Practice Under the Perishable Agricultural Commodities Act, and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act. This final rule provides that conferences shall be conducted by telephone or correspondence, hearings shall be conducted by audio-visual telecommunication, and depositions shall be conducted either in the manner agreed to by the parties or by telephone, unless the person conducting the proceeding determines that the conference, hearing, or deposition may be conducted by some other means. The final rule also provides for the use of recordings of hearings and depositions and the exchange of written narrative statements of the direct testimony prior to hearings to be conducted by telephone. These amendments will save the government and those who participate in the proceedings time and money.

In addition, this rule amends 9 CFR chapter II to reflect the abolishment of the Packers and Stockyards Administration and the establishment of the Grain Inspection, Packers and Stockyards Administration in the recent Department of Agriculture reorganization.

EFFECTIVE DATE: This final rule is effective March 16, 1995, except for the amendments to the chapter heading of 9 CFR chapter II and the references to the agency name in the chapter which are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, (202) 720–2453.

SUPPLEMENTARY INFORMATION:

Background

The Department conducts a number of adjudicatory proceedings in which conferences, depositions, and hearings are held. Many of these conferences, depositions, and hearings are conducted by personal attendance which necessitates travel by those who participate in the conferences, depositions, and hearings.

Generally, conferences at which personal attendance is required are attended by the person conducting the proceeding (an administrative law judge, hearing officer, examiner, or presiding officer), the parties to the proceeding, and counsel for the parties to the proceeding. Depositions are attended by an officer authorized to administer oaths, a court reporter, the parties, counsel for the parties, and the deponent. Hearings are attended by the person conducting the proceeding, the parties to the proceeding, counsel for the parties to the proceeding, a court reporter, and witnesses called by the parties.

The costs associated with travel to conferences, depositions, and hearings (meals, lodging, and actual travel expense) are often substantial. These travel costs burden all taxpayers and particularly burden the individuals who attend these proceedings. In addition to expenditure of money, individuals personally attending the proceedings often must spend valuable time traveling to and from these conferences, depositions, and hearings.

Proposed Rule

Therefore, on February 25, 1994, we published a document in the **Federal Register** (59 FR 9114–9136) proposing to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 through 1.151) (referred to as the "Uniform Rules" below), the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act (7 CFR 1.160 through 1.175) (referred to as the "Capper-Volstead Rules" below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Reparation Proceedings (7 CFR 47.1 through 47.25 and 47.46) (referred to as the "PACA Reparation Rules" below), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Determinations as to Whether a Person is Responsibly Connected With A Licensee Under the Perishable Agricultural Commodities Act (7 CFR 47.1, 47.2(a) through 47.2(h), and 47.47 through 47.68) (referred to as the "PACA Responsibly Connected Rules" below), and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act (9 CFR 202.101 through 202.123) (referred to as the "P&S Reparation Rules" below). Specifically, we proposed to provide that: (1) Conferences may be conducted by telephone, correspondence, audio-visual telecommunication, or by personal attendance of the participants; (2) depositions and hearings may be conducted by telephone, audio-visual telecommunication, or personal attendance of the participants; (3) hearings and depositions may be recorded rather than transcribed; and (4) prior to a hearing, parties exchange written narrative statements of the direct testimony they intend to introduce at the hearing.

Comments on the Proposed Rule

We solicited comments concerning the proposal for a 60-day comment period ending April 26, 1994. We received 12 comments by that date. One of the commenters requested that we reopen and extend the comment period. In response to that request, on June 22, 1994, we published a document in the **Federal Register** (59 FR 32138) reopening and extending the comment period until July 22, 1994. We received two additional comments by the close of the reopening and extension of the comment period. The fourteen comments were from the following organizations and individual: (1) The Administrative Law Section of the American Bar Association; (2) the Agriculture Law Committee, Administrative Law Section of the American Bar Association; (3) the American Meat Institute; (4) the Eastern Meat Packers Association; (5) the Federal Administrative Law Judges Conference; (6) the Forum of United States Administrative Law Judges; (7) Janet L. Heins; (8) Holland & Knight; (9) the Livestock Marketing Association; (10) the National Association of Perishable Agricultural Receivers; (11) Olsson, Frank and Weeda, P.C.; (12) the Society for Animal Protective Legislation; (13) the United Fresh Fruit & Vegetable Association; and (14) the Western States Meat Association.

All of the commenters generally opposed the proposed rule. However, many of these commenters supported some aspects of the proposal. Seven of the commenters stated that the Department should experiment with adjudicatory proceedings conducted by telecommunication, two commenters praised the Department's effort to save money expended on adjudicatory proceedings, and two of the commenters supported the elimination of gender specific references.

The comments and our responses to those comments are as follows.

1 Constitutional Due Process

Ten commenters stated that a hearing conducted by telecommunication would violate the constitutional right to due process.

We disagree with these comments. Prior to drafting the proposed rule, we carefully examined whether hearings conducted by telecommunication provide a full and fair evidentiary hearing that comports with due process. We concluded that the due process clause does not preclude the use of telecommunication in adjudicatory proceedings.

The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule. As we stated in that memorandum, due process is flexible and calls for such procedural protections as the particular situation demands. *Morrissey* v. *Brewer*, 408 U.S. 471 (1972). The courts have applied a balancing test that examines: (1) The private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews* v. *Eldridge*, 424 U.S. 319 (1976).

The question of what process is due requires flexibility rather than an either/or analysis which assumes that either face-to-face oral hearings are always required or that face-to-face oral hearings are never required. The proposed rule provides such flexibility. Hearings would be conducted by telephone, audio-visual telecommunication, or by the personal attendance of any individual who is expected to participate in the hearing. Under the proposal, the person conducting the proceeding would determine which method of conducting the hearing is to be used in a particular instance based, in part, on the need to conduct the hearing in a manner that would not prejudice any of the parties to the proceeding. (See proposed 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47 15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4).)

Despite our view that the proposal provides the person conducting the proceeding with sufficient flexibility to tailor the manner in which a hearing is conducted so that due process is provided, we have made changes that address the due process concerns raised by the commenters.

Specifically, the final rule provides that the hearings held under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication.

The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing. (See 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47.15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4) in this final rule.)

2. Compliance with the Administrative Procedure Act

Four commenters stated that a hearing conducted by telecommunication would violate the Administrative Procedure Act. All four commenters stated that a hearing conducted by telecommunication would deprive the parties of their right to cross-examine witnesses in violation of 5 U.S.C. 556(d). Two commenters stated that a hearing conducted by telecommunication would deprive the judge of the ability to control the proceeding to ensure that only reliable evidence is received. One commenter stated that a hearing conducted by telecommunication would deprive the parties of the right to participate in the hearing in violation of 5 U.S.C. 554(c) and the right to present oral or documentary evidence in violation of 5 U.S.C. 556(d).

We disagree with these comments. Prior to drafting the proposed rule, we carefully examined whether hearings conducted by telecommunication would violate the Administrative Procedure Act. We concluded that the Administrative Procedure Act does not preclude the use of telecommunication in adjudicatory proceedings. The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule.

There is no provision in the Administrative Procedure Act that explicitly requires face-to-face adjudicatory hearings and we found nothing to indicate that Congress intended to exclude the use of telecommunication in adjudicatory proceedings conducted pursuant to the Administrative Procedure Act. As previously discussed in this rulemaking document, this final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that the hearings shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication. A hearing conducted by audio-visual telecommunication allows full cross-examination with an ability to observe the demeanor of the witness; provides an opportunity to transmit and receive documents by the use of facsimile; provides for a prior exchange of exhibits; and allows the person conducting the proceeding full control of the course of the hearing. If a hearing conducted by telecommunication would not constitute a full and fair hearing, the person conducting the hearing may require a face-to-face hearing.

Further, the final rule provides that the person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would

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provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

Toward this end, we proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to authorize the person conducting a proceeding to: (1) Require each party to provide all other parties and the person conducting the proceeding with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication; and (2) require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. These proposed provisions (see proposed 7 CFR 1.144(c) (9) and (11), 1.173(d) (7) and (8), 47.11(c) (9) and (11), and 47.56 (g) and (h) and 9 CFR 202.118(a) (8) and (10)) regarding the exchange of exhibits prior to a hearing conducted by telecommunication and the ability to transmit documents during a hearing conducted by telecommunication are designed to ensure that all parties have a full opportunity to participate in the hearing, present oral or documentary evidence, and cross-examine witnesses.

We have retained these provisions in the final rule with one minor modification to correct an oversight in the proposed rule. As stated above, proposed 7 CFR 1.144(c)(11), 1.173(d)(8), 47.11(c)(11), and 47.56(h) and 9 CFR 202.118(a)(10) would authorize a person conducting a proceeding to require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. We have amended 7 CFR 1.144(c)(11), 1.173(d)(8), 47.11(c)(11), and 47.56(h) and 9 CFR 202.118(a)(10) to authorize a person conducting a proceeding to require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit and receive documents during the hearing.

3. Statutory Requirements

One commenter stated that the plain meaning of statutes that require hearings to be held "before the Secretary" is that face-to-face hearings are required. Therefore, any hearings under those statutes which are conducted by telecommunication would be inconsistent with those statutes.

Numerous hearings conducted under the rules of practice which this final rule amends are conducted pursuant to statutes that require hearings "before the Secretary." We fully examined whether hearings conducted by telecommunication in which some or all of the evidence is introduced at locations other than the location at which the person conducting the proceeding is situated would violate statutes that require hearings to be conducted "before the Secretary." We concluded that such hearings would not violate these statutes. The memorandum containing our analysis and findings was placed in the rulemaking record upon publication of the proposed rule.

A few courts have found that telephone hearings were insufficient due to language of the statute under which the hearings were conducted. For example, in *Purba* v. *Immigration & Naturalization Service*, 884 F. 2d 516 (9th Cir. 1989), the court held that a deportation hearing must be conducted in the physical presence of the immigration judge, absent the consent of the parties, because the statute under which the hearing was held required the hearing to be "before" the judge. The court found the plain meaning of the word "before" is "in the presence of," "in sight of," or "face-to-face with" a person and that conducting the hearing by telephone was not a hearing "before" the judge. However, the Supreme Court has recently held that where Congress has not decided, any alternative dictionary definition of a word that has a rational effect under a statute is a possibility for agency choice, and the courts are to defer to the agency's choice of the interpretation of the word, if it is reasonable. *National Railroad Passenger Corp.* v. *Boston and Maine Corp.*, ___ U.S. ___, 112 S. Ct. 1394 (1992).

The eleventh circuit, applying the rationale in *National Railroad Passenger Corp.*, found that a hearing conducted by telephone did not violate the Immigration and Nationality Act that provides that a "[d]etermination of deportability * * * shall be made only on the record in a proceeding *before* a special inquiry officer." *Bigby* v. *United States Immigration and Naturalization Service*, 21 F. 3d 1059 (11th Cir. 1994). (Emphasis added.) The eleventh circuit explicitly rejected the argument that "before" was susceptible of only one meaning. The court found that the word "before" did not of necessity mean "in front of" or "in the presence of," thereby mandating that the special inquiry officer be physically present at a hearing required to be held "before" the special inquiry officer. The court found that "before" could be used in a jurisdictional sense and mean "to be judged or acted on by" or "under the official or formal consideration of." The court, citing *Chevron, U.S.A., Inc.* v *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), held that "[i]n the absence of unambiguous congressional intent, we defer to an agency's reasonable interpretation of a statute it is charged with administering.

None of the statutes that require proceedings to be conducted "before the Secretary" under which hearings are conducted pursuant to the rules of practice amended by this final rule define the word "before" nor do these statutes provide any clear indication of congressional intent with respect to the meaning of the word "before" as used in these statutes. Therefore, it is reasonable for the Department to find that the word "before," as used in these statutes, is jurisdictional and means "to be judged or acted on by," "under the official or formal consideration of," or "under the cognizance or jurisdiction of."

4. Credibility Determinations

Seven commenters stated that hearings conducted by telecommunication negatively impact credibility determinations. Five commenters focused exclusively on the need for the judge to observe demeanor to determine credibility. One commenter stated that it is important for all participants to assess credibility of other participants. Four commenters raised the specter of witnesses reading prepared statements without the knowledge of all participants.

Hearings conducted by audio-visual telecommunication do not impact credibility determinations because the fact finder is able to see and hear witnesses in a hearing conducted by audio-visual telecommunication in much the same manner and to the same extent as the fact finder would see and hear witnesses in a face-to-face hearing. Hearings conducted by telephone may, but do not necessarily, negatively impact credibility determinations.

While we believe that the proposal provides the person conducting the proceeding with sufficient flexibility to tailor the manner in which a hearing is conducted so that credibility determinations are not negatively impacted, in the final rule we made substantial changes to these proposed provisions which address the concerns regarding credibility raised by the commenters. The final rule provides that hearings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication.

The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) Would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing. (See 7 CFR 1.141(b) (3) and (4), 1.168(b) (3) and (4), 47.15(c) (3) and (4), and 47.49(f) (2) and (3) and 9 CFR 202.112(a) (3) and (4) in this final rule.)

We do expect that, after the effective date of this final rule, a number of hearings will be conducted by telephone based upon a finding by the person conducting the proceeding that a hearing conducted by telephone will provide a full and fair evidentiary hearing; will not prejudice any party; and will cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

Numerous courts have found that hearings conducted by telephone do not increase the risk of error because witness demeanor cannot be viewed. In *Casey* v. *O'Bannon*, 536 F. Supp. 350 (E.D. Pa. 1982), the court determined that plaintiffs failed to prove that the constitution compels face-to-face hearings and that there is a risk of an erroneous deprivation by virtue of the telephone procedures as they currently exist. The court was influenced by testimony at trial showing that "hearing examiners can effectively judge credibility over the phone by noting voice responses, pauses, levels of irritation and other factors" and a survey showing that 82% of examiners who have presided over telephone hearings believe they can judge credibility in hearings conducted by telephone. *Id.*, at 353–54, *citing Attitudes Towards the Use of the Telephone in Administrative Fair Hearings, The California Experience*, 31 Admin. L. Rev. 247 (1979).

Further, in *Utica Mutual Ins. Co.* v. *Vincent*, 375 F.2d 129, 131 (2nd Cir. 1967), the Second Circuit stated, "Utica finds in the due process clause of the Fifth Amendment a requirement that when there are issues of credibility, as was assumed to be true here, no determination of fact may be made unless the decider has either seen the witnesses himself or has been furnished with a report as to the credibility by another who has * * *. We discern no such absolute in the history laden words of the Fifth Amendment; Utica would freeze what is usually a sensible rule of judicial administration into a constitutional imperative." The court further noted that when the Constitution was adopted the settled practice in the English chancery courts was to take evidence almost wholly by deposition. *Id.*, at 131 n. 3. *Utica* was cited as support in at least two other federal cases involving the fact finder's inability to observe demeanor. *See Moore* v. *Ross*, 687 F.2d 604, 609–10 (2nd Cir. 1982), *cert. denied*, 459 U.S. 1115 (1983); *Blake* v. *Ambach*, 691 F.Supp. 651, 655–56 (S.D.N.Y. 1988).

Numerous state courts have also upheld the use of telephone hearings under circumstances in which the issue of demeanor and credibility was raised. In *Babcock* v. *Employment Division*, 696 P.2d 19, 21 (Or. App 1985), the court considered credibility the most difficult issue for unemployment compensation telephone hearings, yet stated that while "[p]hysical appearance can be a clue to credibility, * * * of equal or greater importance is what a witness says and how she says it." The Oregon appellate court was satisfied "that the audible indicia of a witness' demeanor are sufficient for a referee to make an adequate judgment as to believability." *Id.*

In *State, ex. rel. Human Services Department* v. *Gomez*, 657 P.2d 117, 124 (N.M. 1983), the court rejected Gomez's contention that the telephonic hearing was not meaningful because his efforts to remain on welfare depended upon his credibility and the hearing officer could not judge credibility without seeing him. The court did state that credibility may be a minimal factor in disability determination, but "a requirement that the hearing officer also see Gomez testify * * * would impose the rigidities of judicial procedure on what is supposed to be an informal proceeding." *Id.*, at 124–25.

5. Exchange of Direct Testimony of Each Witness a Party Will Call

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that unless the hearing is scheduled to begin less than 20 days after the person conducting the proceeding issues a notice stating the time of the hearing, each party must exchange, in writing, with all other parties, a verified narrative statement of the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. (See proposed 7 CFR 1.141(g), 1.168(f), 47.15(f), and 47.58(a) and 9 CFR 202.112(e).)

One commenter objected to the exchange of direct testimony of each witness. Two commenters stated that they had no objection to the exchange of direct testimony as long as each witness is required "to appear in court for cross-examination."

The requirement that parties exchange the written narrative statements of the direct testimony of witnesses the parties intend to call at a hearing may, in some instances, necessitate a significant expenditure of time and resources. Based on our past experience, many administrative proceedings conducted under the rules of practice which we are amending are settled just prior to the scheduled date of hearing. In these circumstances, the preparation and exchange of a written verified narrative statement of the oral direct testimony of each witness the parties intend to call would constitute an unnecessary expenditure of time and resources. One of the purposes of this final rule is to make adjudicatory proceedings conducted by the Department as efficient as possible. Therefore, this final rule limits the provisions regarding the exchange of written verified narrative statements of the oral direct testimony of witnesses the parties intend to call to hearings to be conducted by telephone. Except as discussed below, we have retained the provision regarding the exchange of written verified narrative statements of oral direct testimony prior to hearings conducted by telephone to expedite these hearings, prevent surprise, ensure that all parties have a full opportunity to participate in the hearing and cross-examine witnesses, and assist the

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person conducting the hearing with credibility determinations.

Proposed 7 CFR 1.141(g), 1.168(f), 47 15(f), and 47.58(a) and 9 CFR 202.112(e) would have required each party to obtain written verified narrative statements of oral direct testimony of all witnesses the party intends to call to provide oral direct testimony. Under the proposal, testimony would be limited to the written direct testimony. Occasionally parties call hostile witnesses or witnesses over whom they have no control to provide oral direct testimony at hearings in proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules. Requiring a party to obtain and exchange written verified narrative statements from hostile witnesses and witnesses over whom a party has no control could result in a party's inability to introduce relevant and material evidence at a hearing. Therefore, this final rule provides that each party need only obtain and exchange written verified narrative statements of the oral direct testimony of the following witnesses that the party intends to call at hearings to be conducted by telephone: (1) The party; (2) the employees and agents of the party; and (3) the party's expert witnesses. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the person conducting the hearing finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

6. Verbatim Recordings in Lieu of Transcripts

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide for the use of recordings of hearings, and, where applicable, depositions. Four commenters opposed the use of recordings. One commenter objected to the use of recordings of hearings and depositions rather than transcripts, but did not state the basis for the objection. Three commenters stated that the review of a recording is more time-consuming than the review of a transcript of the same proceeding and the citation of relevant portions of a recording more difficult than the citation of relevant portions of a transcript. Two commenters stated that transcripts of prehearing conferences are necessary at a hearing in order to refer to evidentiary rulings made in prehearing conferences and transcripts of depositions are necessary for the proper cross-examination of witnesses. One commenter noted that the Department would have to purchase equipment to enable its counsel to review recordings.

We made changes based on these comments. The final rule requires that hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the person conducting the hearing finds that recording the hearing verbatim would expedite the proceeding and the person conducting the hearing orders the hearing to be recorded verbatim. The person conducting the hearing shall certify that to the best of his or her knowledge and belief the recording with exhibits that were accepted into evidence is the record of the hearing. The final rule provides that if a party requests the transcript of a hearing or part of a hearing and the person conducting the hearing determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the person conducting the hearing shall order the verbatim transcription of the recording as requested by the party. (See 7 CFR 1.141(i), 1.168(h), 47.15(i), and 47.60 and 9 CFR 202.112(i) in this final rule.) The final rule provides that transcripts and recordings of hearings conducted under the Uniform Rules and the Capper-Volstead Rules shall be made available to any person at actual cost of duplication. (See 7 CFR 1.141(i) and 1.168(h) in this final rule.) We have retained the provisions regarding the cost and availability of transcripts that are currently in the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules (see current 7 CFR 47.15(g) and 47.60 and 9 CFR 202.112(h)) and have applied these cost and availability provisions to recordings. (See 7 CFR 47.15(i) and 47.60 and 9 CFR 202.112 (i) in this final rule.)

The discretion provided to the person conducting the hearing to order that a transcript be provided to a party rather than a recording will ensure that transcripts are available when a party does not have access to equipment that enables that party to use recordings. Further, we believe that parties will be able to review recordings as quickly as they review transcripts by using the fast forward and reverse modes that are available on most recording devices. In addition, relevant portions of recordings can be referenced by time, revolution, or some other method, as determined by the person conducting the proceeding.

Prior to this rulemaking proceeding, none of the rules of practice which are the subject of this rulemaking proceeding required that prehearing conferences be recorded and we did not propose to require the transcription of prehearing conferences. Therefore, the comment regarding the transcription of prehearing conferences in order to refer to evidentiary rulings made in prehearing conferences is beyond the scope of this rulemaking proceeding.

7. "Practical" Problems

Four commenters stated that hearings conducted by telecommunication would result in what the commenters characterized as "practical problems."

(a) One commenter stated that hearings conducted by telecommunication would impair the ability of the parties to observe documents and call witnesses.

We proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to authorize the person conducting a proceeding to: (1) Require each party to provide all other parties and the person conducting the proceeding with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication; and (2) require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the person conducting the proceeding are able to transmit documents during the hearing. These proposed provisions (see proposed 7 CFR 1.144(c) (9) and (11), 1.173(d) (7) and (8), 47.11(c) (9) and (11), and 47.56 (g) and (h) and 9 CFR 202.118(a) (8) and (10)) regarding the exchange of exhibits prior to a hearing conducted by telecommunication and the ability to transmit documents during a hearing conducted by telecommunication are designed to ensure that all parties have a full opportunity to participate in the hearing, present oral or documentary evidence, and cross-examine witnesses.

As we stated above, we have retained these provisions in the final rule with one minor modification to correct an oversight in the proposed rule.

Further, we proposed to amend the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that unless the hearing is scheduled to begin less than 20 days after the person conducting the proceeding issues a notice stating the time of the hearing, each party must exchange, in writing, with all other parties, the direct testimony of each witness that the party will call to provide oral direct testimony at the hearing. (See proposed 7 CFR 1 141(g), 1.168(f), 47 15(f), and 47.58(a) and 9 CFR 202.112(e).) The written direct testimony must be in narrative form and must be verified. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at the hearing will be limited to the presentation of the written direct testimony, unless the person conducting the proceeding finds that oral direct testimony which is supplemental to the written direct testimony would expedite the proceeding and would not constitute surprise. These provisions regarding exchange of direct testimony are designed to ensure that all parties have a full opportunity to participate in the hearing, and cross-examine witnesses. As discussed above, we have limited the provisions regarding the exchange of written verified narrative statements of oral direct testimony to hearings to be conducted by telephone and to certain specified witnesses.

These provisions will ensure that parties to adjudicatory proceedings conducted under the rules of practice which we are amending will have ample opportunity to observe documents.

We do not agree with the comment that parties will have any more difficulty calling witnesses in a hearing conducted by telecommunication than parties will have when calling witnesses in a face-to-face hearing. The commenter did not provide any basis for this concern.

(b) One commenter stated that no provision can be made in hearings conducted by telecommunication for—the introduction of real evidence, the examination of a witness regarding documents that the witness has in his or her possession on entering the courtroom, the examination of a witness regarding his or her ability to read at a distance, the request that a witness draw a picture; or any "other unexpected events."

We have not made any change based on this comment. Very few of the hearings conducted under the rules of practice which this final rule amends necessitate the introduction of real evidence, the examination of a witness regarding documents that the witness has in his or her possession on entering the courtroom, the examination of a witness regarding his or her ability to read at a distance, or the request that a witness draw a picture.

As discussed previously in this rulemaking document, the final rule provides that the person conducting the proceeding may require hearings conducted by telecommunication to be held at locations at which the parties and the person conducting the proceeding are able to transmit and receive documents during the hearing. This requirement will enable parties to examine witnesses regarding documents that the witness has in his or her possession on entering the courtroom and the ability to read at a distance, and to request witnesses to draw pictures or diagrams in hearings conducted by telecommunication.

If real evidence is to be introduced in a hearing, the hearing or that part of the hearing in which the real evidence is to be introduced can be conducted by the personal attendance of those who are to participate in the hearing. As stated above, the person conducting the proceeding can require the hearing to be conducted by personal attendance of any individual who is expected to participate in the hearing if personal attendance is necessary to prevent prejudice to a party. The inability of a party to introduce admissible evidence because a hearing is conducted by telecommunication may prejudice a party, and, in such circumstances, a face-to-face hearing will be conducted.

(c) Two commenters stated that hearings conducted by telecommunication would reduce the appearance of justice.

We disagree with the comment and have not made any change based on this comment. The quality of justice will not be affected by this final rule. If any party will be prejudiced by a hearing conducted by telecommunication, the person conducting the proceeding will require the hearing to be conducted by personal attendance of any individual who is expected to participate in the hearing. The use of audio-visual technology preserves due process, promotes ease of participation by those for whom travel is difficult, and allows each party and the person conducting the proceeding to participate fully and with the effect of face-to-face confrontation. Therefore, we believe that this final rule will in fact heighten the appearance and fact of justice done.

(d) Two commenters stated that hearings conducted by telecommunication would make sequestration difficult.

A person conducting a hearing by telecommunication could order sequestration in the same manner in which it is ordered in a face-to-face hearing. We agree that, in most situations, the person conducting a hearing by telecommunication will not be in a position to determine whether a sequestration order has been followed. We expect that all parties in adjudicatory proceedings conducted by the Department and counsel to those parties will make every effort to comply with lawful orders issued by the person conducting the proceeding.

(e) Two commenters stated that hearings conducted by telecommunication would make recesses impractical.

We disagree and have made no change based on these comments. Recesses can be called as easily in a hearing conducted by telecommunication as in a hearing conducted by personal attendance of those involved with the hearing.

(f) Four commenters stated that prompting witnesses at hearings conducted by telecommunication would be difficult to control.

Prompting of witnesses can occur in face-to-face hearings, but we do agree that, in some situations, it may be more difficult for a person conducting a hearing to detect witness prompting at a hearing conducted by telecommunication than to detect witness prompting at a hearing conducted by personal attendance of participants. However, prompting of witnesses in hearings conducted by audio-visual telecommunication will be far more difficult to conceal from other parties and the person conducting a hearing than in hearings conducted by telephone. In fact, current audio-visual technology can provide the person conducting the proceeding and the parties with virtually unlimited vision in the room in which a hearing is being conducted. We believe that the potential prompting problem is minimized by making audio-visual hearings the prevalent method of hearing.

(g) Two commenters stated that hearings conducted by telecommunication could be negated by a signal or power failure or electronic interference.

We disagree. If a signal or power failure were to occur, the hearing would be adjourned until such time as the hearing could be resumed. That portion of the hearing which is completed prior to the signal or power failure would not be negated. A signal or power failure which causes the adjournment of a

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hearing conducted by telecommunication is not different than an event, such as a power failure or fire in the building in which a hearing is being conducted, that may cause the person conducting a face-to-face hearing to temporarily adjourn a hearing.

(h) One commenter stated that the rules of practice would be subject to challenge which would add to uncertainty and cost money to defend.

While proceedings conducted by telecommunication could be challenged, we believe that these challenges can be easily defended. Above, we cited a number of cases in which adjudicatory proceedings conducted by telecommunication have been challenged, and the state and federal agencies conducting proceedings by telecommunication have prevailed.

(i) Two commenters stated that hearings conducted by telecommunication would often necessitate the employment of multiple counsel by each party to observe witness demeanor at each location at which a hearing is being held.

The final rule does not require counsel to be present at the location at which a witness is testifying in a proceeding conducted by telecommunication. While we do not believe that the presence of counsel at each location at which witnesses testify is necessary, a party may chose to have counsel present at some or all of the locations at which witnesses testify in hearings conducted by telecommunication. Such an expenditure would be at the option of each party to the proceeding.

8. The Rulemaking Record

Six commenters stated that the rulemaking record is deficient.

(a) Four commenters stated that the cost-benefit analysis is inadequate or nonexistent.

We have not made any change based upon these comments. In accordance with Executive Order 12866, we prepared an assessment in connection with the preparation of the notice of proposed rulemaking which preceded this final rule. The assessment, which was included in the rulemaking record, contains a discussion of the costs and benefits associated with the proposed rule. Again, in accordance with Executive Order 12866, we prepared an assessment in connection with the preparation of this final rule. The assessment, which was included in the rulemaking record, contains a discussion of the costs and benefits associated with the final rule.

(b) Two commenters stated that there was no "justification of the technical feasibility of conducting cross-examination *via* audio-visual devices."

We have not made any change based upon these comments. Prior to preparing the proposed rule, we thoroughly examined the range of equipment available to conduct adjudicatory proceedings by telecommunication. We found that both the telephone and audio-visual telecommunication equipment are generally adequate to conduct cross-examinations. Again, the final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules, to provide that hearings will be conducted by the personal attendance of any individual who is expected to participate in the hearing if the person conducting the proceeding finds that personal attendance: (1) Is necessary to prevent prejudice to a party; (2) is necessary because of a disability of any individual expected to participate in the hearing; or (3) would cost less than conducting the hearing by audio-visual telecommunication. The person conducting the proceeding may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone only if the person conducting the proceeding finds that a hearing conducted by telephone: (1) would provide a full and fair evidentiary hearing; (2) would not prejudice any party; and (3) would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(c) One commenter stated that it did not have adequate notice of the proposed rule, and, therefore, the comment period should be extended.

On June 22, 1994, in response to this comment, we published a document in the **Federal Register** (59 FR 32138) reopening and extending the comment period until July 22, 1994.

9. Suggestions

(a) Five commenters stated that the Department should experiment with proceedings conducted by telecommunication on a limited basis.

We have not made any change based on these comments. The use of telecommunication in adjudicatory proceedings is not new. Numerous state and federal agencies have conducted adjudicatory proceedings by telecommunication in the past. We believe that experience of other state and federal agencies is sufficient to enable the Department to forego the implementation of telecommunication on an experimental basis.

(b) Five commenters stated that hearings should only be conducted by telecommunication when the parties agree.

We have not made any change based on this comment. The final rule provides the parties with ample opportunity to make the person conducting the proceeding aware of the parties' preferences regarding the manner in which the hearing should be conducted and to persuade the person conducting the proceeding to conduct the hearing in a manner other than that ordered by the person conducting the proceeding. Specifically, the final rule amends the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to provide that any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Further, within 10 days after the person conducting the proceeding issues a notice stating the manner in which the hearing is to be conducted, any party may move that the person conducting the proceeding reconsider the manner in which the hearing is to be conducted. (See 7 CFR 1.141(b)(2), 1.168(b)(2), 47.15(c)(2), and 47.53 (b) and (c) and 9 CFR 202.112(b) (2) and (3) in this final rule.)

(c) Two commenters stated that the parties should elect the manner in which depositions are to be held and judges should only be involved if the parties cannot agree.

We agree with the commenters with respect to the PACA Reparation Rules and the P&S Reparation Rules. We proposed to amend the Uniform Rules, the PACA Reparation Rules, and the P&S Reparation Rules to provide that a deposition shall be conducted by telephone unless the person conducting the proceeding determines that conducting the deposition by audio-visual telecommunication: (1) Would cost less than conducting the deposition by telephone; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition. If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the person conducting the proceeding determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition: (1) Would cost less than conducting the deposition by telephone or audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition.

However, the government is never a party in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings. Therefore, the final rule provides that in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules the parties may agree upon the manner in which the depositions are to be conducted and the person conducting the proceeding will only determine the manner in which a deposition is to be conducted when the parties cannot agree. (See 7 CFR 47.16(b) (3) and (4) and 9 CFR 202.109(d) (4) and (5) in this final rule.)

(d) One commenter opposed the proposal, but urged the Department to modernize its rules and to form an ad hoc committee to review the rules.

We welcome any comments or petitions for rulemaking which any interested member of the public may wish to make regarding any of the Department's rules of practice, but we do not believe that it is necessary to form a committee to review the Department's rules or practice. The Department regulation regarding petitions for issuance, amendment, or repeal of a rule is set forth in 7 CFR 1.28.

(e) Two commenters supported conducting conferences by telephone when the judge decides that the use of the telephone is appropriate.

We did not make any change based on these comments. The proposed rule provided that conferences are to be held either by telephone or by correspondence unless certain findings are made by the person conducting the proceeding. The final rule retains those provisions.

Conclusion

Based on the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule except as previously discussed in this rulemaking document and except for minor editorial changes for clarity. In addition, since the preparation of the notice of proposed rulemaking 7 CFR 180.300 has been redesignated as 7 CFR 97.300. Therefore, we have removed the amendment of 7 CFR 180.300 in this final rule and, instead, amended 7 CFR 97.300.

Further, based upon the general need to allow the person conducting the proceeding to tailor the manner in which the proceeding is conducted to prevent prejudice to any party and to ensure that any hearing is a full and fair evidentiary hearing, we have eliminated all of the provisions which appeared in the proposal concerning interlocutory appeal. Specifically, we proposed to amend 7 CFR 1.143(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further, we proposed to amend 7 CFR 47.13(b) to allow any party to appeal to the Secretary an examiner's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further still, we proposed to amend 7 CFR 1.172(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; or (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing. Finally, we proposed to amend 9 CFR 202.118(b) to allow any party to appeal to the Judicial Officer a presiding officer's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a prehearing conference; (2) to conduct an oral hearing by audio-visual telecommunication or personally attend an oral hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. None of these proposed amendments concerning interlocutory appeal have been adopted in this final rule.

Further, the proposed rule amended the Uniform Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to require hearings to be recorded verbatim by an electronic recording device. Only if a party to the proceeding requests a transcript of the hearing or a part of the hearing and the person conducting the proceeding determines that the disposition of the proceeding would be expedited by a transcript of the hearing could the person conducting the proceeding order the verbatim transcription of the recording as requested by the party. We proposed to require that any presiding person's order to transcribe a hearing and the basis for the order be reduced to a written order and filed with the Hearing Clerk. We have eliminated the requirement that the order of the person conducting the proceeding and the basis of that order be reduced to a written order and filed with the Hearing Clerk. (See 7 CFR 1.141(i) and 47.60 and 9 CFR 202.112(i) in this final rule.) We do not believe that an order regarding transcription of a hearing must be handled in a manner different than any other order issued by the person conducting the proceeding.

Finally, the Department will bear the entire cost of audio-visual transmission and only some of the travel costs related to face-to-face hearings, conferences, and depositions. Therefore, there could be rare circumstances in which the overall cost of conducting a conference, hearing, or deposition by audio-visual telecommunication may be cheaper than conducting the same conference, hearing, or deposition in some other manner and at the same time the Department's cost of conducting the conference, hearing, or deposition by audio-visual telecommunication could be higher than conducting that conference, hearing, or deposition in some other manner. In order to avoid a measurable increase in costs to the Department, this final rule provides that if the person conducting the proceeding finds that a hearing or deposition conducted by audio-visual telecommunication would measurably increase costs to the Department, the hearing or deposition shall be conducted by personal attendance or by telephone. If the person conducting the proceeding finds that a conference conducted by audio-visual telecommunication would measurably increase costs to the Department, the conference shall be conducted by personal attendance, by telephone, or by correspondence. (See 7 CFR 1.140(c), 1.141(b), 1.148(b), 1.167(b), 1.168(b), 47.14(c), and 47.15(c), and 9 CFR 202.110(b) and 202.112(a) in this final rule.) We did not make this change with respect to depositions conducted under the PACA Reparation Rules or the P&S Reparation Rules because the government is never a party in proceedings conducted under those rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings.

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Establishment of the Grain Inspection, Packers and Stockyards Administration

Pursuant to Public Law 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture published a notice of the Department's reorganization establishing the Grain Inspection, Packers and Stockyards Administration (59 FR 66517). This rule includes amendments to 9 CFR chapter II which are necessary to bring agency regulations in alignment with the departmental reorganization.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12866. This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

This final rule provides for conducting certain conferences, depositions, and hearings in connection with proceedings under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules by telecommunication. Further, the final rule provides for the use of recordings in connection with depositions and hearings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules. Finally, this final rule requires each party to exchange, in writing, with all other parties in the proceeding a verified narrative statement of the oral direct testimony of certain specified witnesses the party intends to call in hearings to be conducted by telephone. These amendments are designed to save money associated with the purchase of transcripts and time and money associated with travel to conferences, depositions, and hearings.

Most of the costs of the proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are borne by the United States, which is not a small entity. The vast majority of conferences, hearings, and depositions held under the rules we are amending are conducted at locations convenient to the private individuals participating in the proceeding. Therefore, the United States will incur most of the costs associated with travel in connection with the proceedings. Further, most conferences held under the rules that we are amending are currently held by telephone, unless the conference is held during the hearing. Therefore, this final rule will not result in a change with respect to the manner in which most conferences are conducted.

Nonetheless, we believe that private individuals who participate in conferences, depositions, and hearings conducted by telecommunication, which will be paid for by the United States, will reduce costs which are associated with travel, even to convenient locations, and private parties who participate in these proceedings will save the difference between the cost of transcripts and recordings in depositions and hearings in which recordings are used.

Most of the private individuals who participate in proceedings conducted under the Uniform Rules, the Capper-Volstead Rules, the PACA Reparation Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules are small entities. This final rule will result in a small economic impact on private individuals who participate in the proceedings in question.

Under these circumstances, the Secretary has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this rule because the rule does not seek answers to identical questions or impose reporting or record keeping requirements on 10 or more persons, and the information collected is not used for general statistical purposes.

List of Subjects

7 CFR Part 0

Conflict of interest.

7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Blind, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of information, Lawyers, Privacy.

7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Agricultural Marketing Service, Brokers.

7 CFR Part 50

Administrative practice and procedure, Agricultural commodities, Agricultural Marketing Service.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 97

Administrative practice and procedure, Labeling, Plants.

9 CFR Part 202

Agriculture, Animals, Administrative practice and procedure, Reparation proceedings.

Accordingly, 7 CFR part 0, part 1, subpart H and subpart I, part 47, part 50 part 51, part 52, part 53, part 54, and part 97 and 9 CFR part 202 are amended as follows:

TITLE 7—[AMENDED]

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 0 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Comp., page 306; 5 CFR 735.104; 18 U.S.C. 207(j), unless otherwise noted.

§ 0.735–11 [Amended]

2. Section 0.735–11 is amended as follows:

a. In paragraph (b)(6), by adding the words "or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer" immediately before the semicolon.

b. In paragraph (b)(7), by adding the words "or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer" immediately before the semicolon.

PART 1—ADMINISTRATIVE REGULATIONS

3. The authority citation for part 1, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41

§ 1.131 [Amended]

4. In § 1.131, paragraph (a), the second sentence is revised to read "Section 1.26 shall be inapplicable to proceedings covered by this subpart."

§ 1.132 [Amended]

5. Section 1.132 is amended as follows:

a. In paragraph (d), the reference to "459g" is removed and "450g" added in its place.

b. In paragraph (d), the reference to "1970 ed. appendix, p. 550" is removed and "App. (1988)" added in its place.

c. In paragraph (d), the reference to "7 CFR 2.35(a)" is removed and "§ 2.35(a) of this chapter" added in its place.

d. Section 1.132 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.133 [Amended]

6. In § 1.133, paragraph (a)(1), the first sentence is amended by removing the words "of this subpart".

§ 1.140 [Amended]

7. In § 1.140, the section heading is revised to read as set forth below; paragraph (a)(1) introductory text is amended by removing the word "prehearing" and revising the second sentence to read "Reasonable notice of the time, place, and manner of the conference shall be given."; paragraph (b) is amended by removing the word "prehearing", and paragraph (c) is revised to read as follows:

§ 1.140 Conferences and procedure.

* * * * *

(c) *Manner of Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

* * * * *

§ 1.141 [Amended]

8. Section 1.141 is amended as follows:

a. Paragraph (b) is revised to read as set forth below.

b. Paragraph (e) is amended by removing the words "of these rules" both times they appear.

c. Paragraph (g)(7) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

d. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i) respectively.

e. New paragraph (g) is added to read as set forth below.

f. Redesignated paragraph (i) is revised to read as set forth below.

§ 1.141 Procedure for hearing.

* * * * *

(b) *Time, place, and manner.* (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed, with due regard for the public interest and the convenience and necessity of the parties. The Judge shall file with the Hearing Clerk a notice stating the time and place of the hearing.[3] This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Judge's determination regarding the manner of the hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the time, place, or manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2) (i) If any material issue of fact is joined by the pleadings and the matter is at issue and is ready for hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

[3] The place of hearing in a proceeding under the Packers and Stockyards Act shall be set in accordance with the Packers and Stockyards Act (7 U.S.C. 228 (e) and (f)). In essence, if there is only one respondent, the hearing is to be held as near as possible to the respondent's place of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent and they have their places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the hearing is to be held as near as possible to their places of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent, and they have their places of business or residence distant from each other, 7 U.S.C. 228 (e) and (f) have no applicability.

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(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:
(i) Is necessary to prevent prejudice to a party;
(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or
(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.
(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:
(i) Would provide a full and fair evidentiary hearing;
(ii) Would not prejudice any party; and
(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(g) *Written statements of direct testimony.* (1) Except as provided in paragraph (g)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.
(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.
(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.
(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

§ 1.142 [Amended]

9. Section 1.142 is amended as follows:
a. In paragraph (a), the heading is amended by adding the words "or recording" immediately after the word "transcript".
b. Paragraph (a)(1) is amended by adding the words "or recording" immediately after the word "transcript"
c. Paragraph (a)(2) is amended by adding the words "or recording" immediately after the word "transcript" both times the word "transcript" appears.
d. Paragraph (a)(3) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.
e. Paragraph (c)(2) is amended by removing the words "of the record" and adding the words "or recording" in their place.

§ 1.144 [Amended]

10. Section 1.144 is amended as follows:
a. Paragraph (c)(2) is revised to read as set forth below
b. Paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(13) and (c)(14) respectively
c. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) are added to read as set forth below.

§ 1.144 Judges.

* * * * *

(c) * * *
(2) Set the time, place, and manner of a conference and the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;
(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;
(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;
(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

* * * * *

§ 1.145 [Amended]

11. Section 1.145 is amended as follows:
a. In paragraph (a), the reference to "§ 1.141(g)(2)" is removed and "§ 1.141(h)(2)" added in its place.
b. In paragraph (c), the second sentence is amended by adding the words "or recording" immediately after the word "transcript"

§ 1.147 [Amended]

12. In section 1 147, paragraph (c)(2) is amended by removing the words "of this part"; and paragraph (d) is amended by removing the words "of this part"

§ 1.148 [Amended]

13. Section 1 148 is amended as follows:
a. Paragraph (b) is revised to read as set forth below:
b. In paragraph (f), the words "or recording" are added immediately after the word "transcript" in the paragraph heading; in paragraph (f)(1), once; in paragraph (f)(2), twice; and in paragraph (f)(3), twice.

§ 1.148 Depositions.

* * * * *

(b) *Judge's order for taking deposition.* (1) If the Judge finds that the testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be filed with the Hearing Clerk and shall state:
(i) The time of the deposition;
(ii) The place of the deposition;
(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);
(iv) The name of the officer before whom the deposition is to be made; and
(v) The name of the deponent. The officer and the time, place, and manner need not be the same as those suggested in the motion for the deposition.
(2) The deposition shall be conducted by telephone unless the Judge determines that conducting the deposition by audio-visual telecommunication:
(i) Is necessary to prevent prejudice to a party;
(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or
(iii) Would cost less than conducting the deposition by telephone. If the Judge determines that a deposition conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the deposition, the deposition shall be conducted by personal attendance of any individual who is expected to participate in the deposition or by telephone.
(3) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:
(i) Is necessary to prevent prejudice to a party;
(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or
(iii) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

§ 1.149 [Amended]

14. In § 1.149, paragraph (b), the last sentence is amended by removing the words "of this part"
15. The authority citation for part 1, subpart I, is revised to read as follows:

Authority: 7 U.S.C. 291, 292; 7 CFR 2.35, 2.41.

§ 1.161 [Amended]

16. Section 1.161 is amended as follows:
a. In paragraph (c), the words "or her" are added immediately after the word "his".
b. In paragraph (g), the reference to "1976 ed., appendix, p. 764" is removed and "App. (1988)" added in its place.
c. In paragraph (g), the reference to "7 CFR 2.35" is removed and "§ 2.35(a) of this chapter" added in its place.
d. In paragraph (g), the words "or she" are added immediately after the word "he".
e. Section 1.161 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.162 [Amended]

17. Section 1.162 is amended as follows:
a. In paragraph (b), in the first sentence, the word "part" is removed and the word "paragraph" added in its place.
b. In paragraph (b), in the first sentence, the word "he" is removed and the words "the Secretary" added in its place.
c. In paragraph (b), in the second sentence, the word "he" is removed and ", the Secretary" added in its place.

§ 1.164 [Amended]

18. In § 1.164, paragraph (a), the first sentence is amended by removing the word "his" and adding the words "the respondent's" in its place.

§ 1.167 [Amended]

19. Section 1.167 is revised to read as follows:

§ 1.167 Conference

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure and/or possible stipulations. The conference may include discussions regarding:
(1) Simplification of the issues;
(2) Limitation of expert or other witnesses;
(3) The orderly presentation of evidence; and
(4) Any other matters that may expedite and aid in the disposition of the proceeding.
(b) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:
(i) Is necessary to prevent prejudice to a party;
(ii) Is necessary because of a disability of any individual expected to participate in the conference; or
(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.
(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:
(i) Is necessary to prevent prejudice to a party;
(ii) Is necessary because of a disability of any individual expected to participate in the conference; or
(iii) Would cost less than conducting the conference by audio-visual telecommunication.

§ 1.168 [Amended]

20. Section 1.168 is amended as follows:
a. In paragraph (e)(1), the first sentence is amended by removing the word "reported" and adding the words "transcribed or recorded" in its place
b. In paragraph (e)(2), the first sentence is amended by removing the word "he" and by adding the words "the party" in its place.
c. In paragraph (e)(2), the second sentence is amended by adding the words "or recording" immediately after the word "transcript".
d. Paragraph (e)(6) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.
e. Paragraphs (b), (c), (d), and (e) are redesignated as (c), (d), (e), and (g) respectively
f. New paragraphs (b), (f), and (h) are added to read as follows:

§ 1.168 Procedure for hearing.

* * * * *

(b) *Manner of hearing.* (1) The Judge shall file with the Hearing Clerk a notice stating whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing and the Judge's determination regarding the manner of

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hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of the change, which notice shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) Any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judge's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(f) *Written statements of direct testimony* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

* * * * *

(h) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

* * * * *

§ 1.169 [Amended]

21. Section 1.169 is amended as follows:

a. In paragraph (a), the heading is revised to read "*Corrections to transcript or recording.*"

b. In paragraph (a)(1), the words "or recording" are added immediately after the word "transcript"

c. In paragraph (a)(2), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

d. In paragraph (a)(3), the words "or recording" are added immediately after the word "transcript" each of the three times the word "transcript" appears.

e. In paragraph (c), in the last sentence, the word "herein" is removed.

§ 1.170 [Amended]

22. Section 1.170 is amended as follows:

a. In paragraph (a), in the second sentence, the reference to "§ 1.167(e)(2)" is removed and "§ 1.168(g)(2)" added in its place.

b. In paragraph (c), the words "or recording" are added immediately after the word "transcript".

c. In paragraph (i), in the last sentence, the word "herein" is removed.

§ 1.171 [Amended]

23. Section 1.171 is amended by removing the word "herein"

§ 1.172 [Amended]

24. In § 1.172, paragraph (a) is amended by adding the words "or recording" immediately after the word "transcript".

§ 1.173 [Amended]

25. Section 1.173 is amended as follows:

a. In paragraph (b)(1), the words "or herself" are added immediately after the word "himself".

b. In paragraph (b)(2), the word "he" is removed and the words "the Judge" added in its place.

c. In paragraph (b)(2), the words "or herself" are added immediately after the word "himself"

d. In paragraph (d), in the introductory language, the words "or her," are added immediately after the word "him".

e. Paragraph (d)(2) is revised to read as set forth below.

f. Paragraph (d)(7) is redesignated as paragraph (d)(9).

g. New paragraphs (d)(7) and (d)(8) are added to read as set forth below.

h. In paragraph (e), the word "his" is removed and the words "the Judge's" added in its place.

i. In paragraph (e), the word "him" is removed and the words "the Judge" are added in its place both times the word "him" appears.

§ 1.173 Judges.

* * * * *

(d) * * *

(2) Set the time, place, and manner of any conference, set the manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(7) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(8) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

* * * * *

§ 1.174 [Amended]

26. In § 1.174, paragraph (c) is amended by adding the words "or recording" immediately after the word "transcript".

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

CHAPTER I—AGRICULTURAL MARKETING SERVICE

PART 47—RULES OF PRACTICE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

27. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.17(a)(6)(xiii), 2.50(a)(8)(xiii).

§ 47.2 [Amended]

28. Section 47.2 is amended as follows:

a. In paragraph (c), the words "or her" are added immediately after the word "his".

b. In paragraph (e), the words "or her" are added immediately after the word "his".

c. In paragraph (f), the words "or her" are added immediately after the word "his".

d. In paragraph (h), the words "or her" are added immediately after the word "his".

§ 47.3 [Amended]

29. Section 47.3 is amended as follows:

a. In paragraph (b)(1), in the first sentence, the word "his" is removed and the words "the Director's" added in its place.

b. Paragraph (c) is revised to read as follows:

§ 47.3 Institution of proceedings.

* * * * *

(c) *Status of person filing informal complaint.* The person filing an informal reparation complaint shall not be a party to any disciplinary proceeding which may be instituted as a result of the informal reparation complaint. The person filing an informal reparation complaint shall have no legal status in the reparation proceeding, except as he or she may be subpoenaed as a witness or deposed without expense to him or her.

§ 47.4 [Amended]

30. In section 47.4, paragraph (b)(2) is amended by removing the words "of this part".

§ 47.5 [Amended]

31. Section 47.5 is amended by removing the words "of these regulations in this part" and "of the regulations in this part" and revising the last sentence to read as follows:

§ 47.5 Scope and applicability of rules of practice.

* * * In addition, except to the extent that they are inconsistent with §§ 1.130 through 1.151 of this chapter, §§ 47.1 through 47.5 and 47.46 are also applicable to procedures governing the filing and disposition of formal complaints and other moving papers relating to administrative proceedings to enforce the Act pursuant to §§ 1.130 through 1.151 of this chapter.

§ 47.11 [Amended]

32. Section 47.11 is amended as follows:

a. In paragraph (b), in the second sentence, the word "he" is removed and the words "the Secretary" are added in its place.

b. In paragraph (c), in the introductory language, the words "elsewhere in the regulations" are removed.

c. In paragraph (c), in the introductory language, the words "or her" are added immediately after the word "him".

d. Paragraph (c)(2) is revised to read as set forth below.

e. Paragraph (c)(9) is redesignated as (c)(13).

f. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) are added to read as set forth below.

g. In paragraph (d), the word "him" is removed and the words "the examiner" added in its place.

§ 47.11 Examiners.

* * * * *

(c) * * *

(2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(9) Require each party to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

* * * * *

§ 47.12 [Amended]

33. Section 47.12 is amended by removing the word "he" and adding the words "the petitioner" each of the three times the word "he" appears.

§ 47.13 [Amended]

34. Section 47.13 is amended as follows:

a. In paragraph (a)(1), the words "or recording" are added immediately after the word "transcript".

b. Paragraph (b) is revised to read as follows:

§ 47.13 Motions and requests.

* * * * *

(b) *Certification to the Secretary.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to transmittal of the record to the Secretary as provided in this part shall be made by and in the discretion of the examiner. The examiner may either rule upon or certify the motion, request, objection, or other question to the Secretary, but not both.

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§ 47.14 [Amended]

35. Section 47.14 is revised to read as follows:

(a) In any proceeding in which it appears that a conference will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before the examiner to consider:

(1) The simplification of the issues;

(2) The necessity or the desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses; or

(5) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) No transcript or recording of the conference shall be made. If the conference is conducted by correspondence, the examiner shall forward copies of letters and documents to the parties as circumstances require. The correspondence in connection with a conference shall not be part of the record. The examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(c) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the examiner determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the examiner determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

§ 47.15 [Amended]

36. Section 47.15 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. In paragraph (d)(2), the word "he" is removed and the words "the party" are added in its place.

c. In paragraph (d)(2), the words "or her" are added immediately after the word "his".

d. In paragraph (d)(3)(i), the words "or her" are added immediately after the word "him".

e. In paragraph (f)(2)(i), the word "he" is removed and the words "the party" are added in its place.

f. In paragraphs (f)(2)(i), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

g. In paragraph (f)(6)(ii), "recording," is added immediately after "document," both times "document," appears.

h. In paragraph (f)(8), the words "or recording" are added immediately after the word "transcript" the three times the word "transcript" appears.

i. In paragraph (g), in the first sentence, the words "hereinafter provided" are removed and the words "provided in this part" are added in their place.

j. In paragraph (g), in the second sentence, the word "he" is removed and the words "the examiner" are added in its place.

k. Paragraphs (f), (g), and (h) are redesignated as (g), (h), and (i) respectively.

l. A new paragraph (f) is added to read as set forth below.

m. Redesignated paragraph (i) is revised to read as set forth below.

§ 47.15 Oral hearing before examiner.

* * * * *

(c) *Time, place, and manner.* (1) If and when the proceeding has reached the stage of oral hearing, the examiner, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of the hearing shall be the place in which the respondent is engaged in business. This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing and the examiner's determination regarding the manner of the hearing shall be made in accordance with paragraphs (c)(3) and (c)(4) of this section. If any change in the time, place, or manner of the hearing is made, the examiner shall file with the hearing clerk a notice of the change. The notice of any change in the time, place, or manner of the hearing shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) If and when the proceeding has reached the stage of oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the examiner issues a notice stating the manner in which the hearing is to be conducted, any party may move that the examiner reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the examiner's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the hearing by personal attendance of any individual expected to attend the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the examiner determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The examiner may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the examiner finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

* * * * *

(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the examiner finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the examiner's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the examiner finds that recording the hearing verbatim would expedite the proceeding and the examiner orders the hearing to be recorded verbatim.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the examiner determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the examiner shall order the verbatim transcription of the recording as requested by the party.

(3) If a reporter transcribes or records the testimony at a hearing, the reporter shall deliver the original transcript or recording, with exhibits thereto attached, to the examiner, who will retain such copy for the official file and for use in preparing his or her report. The reporter will also deliver to the examiner such other copy or copies as may be ordered by the Department, which copy or copies the examiner will forward to the hearing clerk.

(4) Parties to the proceeding, or others, who desire a copy of the transcript or recording of the hearing may place orders at the hearing with the reporter, who will furnish and deliver such copies direct to the purchaser upon payment of the applicable rate.

* * * * *

§ 47.16 [Amended]

37. Section 47.16 is amended as follows:

a. Paragraphs (a)(3) and (a)(4) are revised and (a)(5) and (a)(6) are added to read as set forth below.

b. Paragraph (b) is revised to read as set forth below.

c. Paragraph (d)(1) is revised to read as set forth below.

d. In paragraph (e), in the first sentence, the word "him" is removed and the words "the officer" added in its place.

e. In paragraph (e), in the second sentence, the word "He" is removed and the words "The officer" added in its place.

§ 47.16 Depositions.

(a) * * *

(3) the proposed time of the deposition which, unless otherwise agreed, shall be at least 30 days after the date of the mailing of the application; (4) the proposed place of the deposition; (5) the proposed manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition); and (6) the reasons for taking the deposition.

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, the examiner shall order the taking of the deposition. The order shall be filed with the hearing clerk and shall be served by the hearing clerk upon the parties in accordance with § 47.4.

(2) The order shall state:

(i) The time of the deposition (which unless otherwise agreed shall not be less than 20 days after the filing of the order);

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent.

(3) The deposition shall be conducted in the manner (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition) agreed to by the parties.

(4) If the parties cannot agree on the manner in which the deposition is to be conducted:

(i) The deposition shall be conducted by telephone unless the examiner determines that conducting the deposition by audio-visual telecommunication:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone.

(ii) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

* * * * *

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or some person under the officer's direction. In lieu of oral examination, parties may transmit written questions to the officer prior to examination and the officer shall propound the written questions to the deponent.

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§ 47.17 [Amended]

38. In § 47.17, paragraph (c), the last sentence is amended by removing the words "of this part".

§ 47.19 [Amended]

39. Section 47.19 is amended as follows:

a. In paragraph (a), the heading is revised to read *"Certification of transcript or recording."*.

b. In paragraph (a), the words "or recording" are added immediately after the word "transcript" each of the five times the word "transcript" appears.

c. In paragraph (a), the words "or her" are added immediately after the word "his" both times time the word "his" appears.

d. In paragraph (a) the word "he" is removed and the words "the examiner" added in its place both times the word "he" appears.

e. In paragraph (b), in the second sentence, the words "or she" are added immediately after the word "he".

f. In paragraph (d)(3), the word "his" is removed and the words "the party's" are added in its place.

g. In paragraph (d)(6), in the first sentence, the words "or her" are added immediately after the word "his".

h. In paragraph (e), the words "or her" are added immediately after the word "his".

§ 47.20 [Amended]

40. Section 47.20 is amended as follows:

a. In paragraph (b)(2), the words "or she" are added immediately after the word "he" both times the word "he" appears.

b. In paragraph (h), "(or she)" is added immediately after the word "he" both times the word "he" appears.

c. In paragraph (k), the words "or her" are added immediately after the word "his".

d. In paragraph (l), the words "or her" are added immediately after the word "his".

§ 47.21 [Amended]

41. Section 47.21 is amended by adding the words "or recording" immediately after the word "transcript" and by removing the word "prehearing".

§ 47.22 [Amended]

42. In § 47.22, paragraph (a) is amended by removing the reference to "§ 47.15(g)" and adding "§ 47.15(h)" in its place.

§ 47.23 [Amended]

43. Section 47.23 is amended by removing the word "he" and adding the words "the Secretary" in its place each of the three times the word "he" appears; and by adding the words "or her" immediately after the word "his" each of the three times the word "his" appears.

§ 47.24 [Amended]

44. In § 47.24, paragraph (a) is amended by removing the word "he" and adding the words "the Secretary" in its place both times the word "he" appears.

§ 47.25 [Amended]

45. In § 47.25, paragraph (e) is amended by removing the words "the regulations in", and by adding the words "or her" immediately after the word "him".

§ 47.46 [Amended]

46. Section 47.46 is amended by removing the word "he" and adding the words "the Secretary" both times the word "he" appears; and adding the words "or her" immediately after the word "his".

§ 47.47 [Amended]

47. Section 47.47 is amended as follows:

a. In the introductory language, the reference to "7 CFR 47.2 (a) through (h)" is removed and "§§ 47.2 (a) through (h)" added in its place.

b. In the introductory language, the reference to "7 CFR 47.47 through 47.68" is removed and "§§ 47.47 through 47.68" added in its place.

c. Section 47.47 is amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 47.49 [Amended]

48. In section 47.49, paragraph (f) is revised to read as follows:

§ 47.49 Determinations.

* * * * *

(f)(1) The presiding officer will order that an oral hearing be held if one is requested by the petitioner, or if the presiding officer determines that an oral hearing is necessary. A verbatim record shall be made of the hearing. In the event that an oral hearing is neither requested by the petitioner, nor ordered by the presiding officer, the presiding officer shall provide the petitioner a copy of the official file, and give the parties an opportunity to submit documents and other evidence to support their positions, as well as written arguments pertaining to their positions.

(2) If an oral hearing is held, it shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the hearing by the personal attendance of any individual expected to attend the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the presiding officer determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(3) The presiding officer may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the presiding officer finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

§ 47.53 [Amended]

49. Section 47.53 is revised to read as follows:

§ 47.53 *Notice of time, place, and manner of hearing and provision of the official file.*

(a) Upon assignment of the matter for oral hearing, the presiding officer shall notify the parties by serving them with copies of the notice of hearing, stating the time and place of the hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing, and the presiding officer's determination regarding the manner of the hearing shall be made in accordance with § 47.49(f)(2) and § 47.49(f)(3). The parties will be notified as soon as possible of any change in the time, place, or manner of the hearing.

(b) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(c) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

(d) Upon assignment of the matter for oral hearing, the presiding officer shall make the official file a part of the records of the proceeding and shall provide the petitioner with a copy of the official file.

§ 47.56 [Amended]

50. Section 47.56 is amended as follows:

a. Paragraph (b) is revised to read as set forth below.

b. Paragraphs (g) and (h) are redesignated as paragraphs (i) and (j) respectively.

c. New paragraphs (g) and (h) are added to read as set forth below.

§ 47.56 Powers of presiding officer.

* * * * *

(b) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

* * * * *

(g) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(h) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

* * * * *

§ 47.58 [Amended]

51. Section 47.58 is amended as follows:

a. In paragraph (b), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

b. In paragraph (f), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

c. Paragraphs (a), (b), (c), (d), (e), and (f) are redesignated as (b), (c), (d), (e), (f), and (g) respectively.

d. A new paragraph (a) is added to read as follows:

§ 47.58 Evidence.

(a) *Written statements of direct testimony.* (1) Except as provided in paragraph (a)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing.

* * * * *

§ 47.59 [Amended]

52. Section 47.59 is amended as follows:

a. The section heading is revised to read *"Filing transcripts or recordings and exhibits."*

b. In section 47.59, the words "or recording" are added immediately after the word "transcript" each of the five times the word "transcript" appears.

§ 47.60 [Amended]

53. Section 47.60 is revised to read as follows:

§ 47.60 Transcript or recording.

(a) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the presiding officer finds that recording the hearing verbatim would expedite the proceeding and the presiding officer orders the hearing to be recorded verbatim. The presiding officer shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(b) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party.

(c) Parties to the proceeding who desire a copy of the transcript or recording of the hearing may place orders at the hearing with the reporter who will furnish and deliver such copies direct to the purchaser upon payment therefore at the rate provided by the contract between the reporter and the Department for such reporting services.

§ 47.62 [Amended]

54. In § 47.62, the last sentence is amended by removing the words "of this part".

PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

55. The authority citation for part 50 is revised to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*; 7 CFR 2.35, 2.41.

56. Part 50 is revised to read as follows:

PART 50—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

Subpart A—General

Sec.

50.1 Scope and applicability of rules of practice.

Subpart B—Supplemental Rules of Practice

50.10 Definitions.
50.11 Conditional withdrawal of service.
50.12 Summary suspension of service.

Subpart A—General

§ 50.1 Scope and applicability of rules of practice.

(a) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130

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through 1.151 of this title are rules of practice applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service. In addition, the supplemental rules of practice in subpart B of this part shall be applicable to adjudicatory proceedings under the regulations promulgated under 7 U.S.C. 1621 *et seq.* for denial or withdrawal of inspection, certification, or grading service.

(b) Neither the rules of practice in §§ 1.130 through 1.151 of this title nor the supplemental rules of practice in subpart B of this part modify existing procedures for refusing to inspect, grade, or certify a specific lot of a product because of adulteration, improper preparation of the lot for grading, improper presentation of the lot for grading, or because of failure to comply with any similar requirements set forth in applicable regulations.

Subpart B—Supplemental Rules of Practice

§ 50.10 Definitions.

Director. The Director of the Division or any employee of the Division to whom authority to act in his or her stead is delegated.

Division. The Division of the Agricultural Marketing Service, United States Department of Agriculture, initiating the withdrawal of inspection, certification, or grading service.

Mailing. Depositing an item in the United States mail with postage affixed and addressed as necessary to cause the item to be delivered to the address shown by ordinary mail, certified mail, or registered mail.

§ 50.11 Conditional withdrawal of service.

(a) The Director may withdraw grading or inspection service from a person for correctable cause. The grading or inspection service withdrawn, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader or inspector can be made available.

(b) Written notice of withdrawal of grading or inspection service under this section shall be given to the person from whom grading or inspection services will be withdrawn in advance of withdrawal, whenever it is feasible to provide such an advance written notice. If advance written notice is not given, the withdrawal action and the reasons for the withdrawal shall be confirmed as promptly as circumstances permit, unless the deficiency which is the basis for the withdrawal has already been corrected.

§ 50.12 Summary suspension of service.

(a) *General.* In any situation in which the integrity of grading or inspection service would be jeopardized if the grading or inspection service were continued pending a decision in a proceeding to withdraw grading or inspection service, such service to the respondent may be suspended effective on the third day after mailing of a written notice of the suspension of service to the respondent's last known address or designated address or upon actual receipt of the written notice, whichever is earlier.

(b) Actual or threatened physical violence. In any case of actual or threatened physical violence to an inspector or grader, grading and inspection services to the respondent may be suspended prior to the transmittal of the written notice of suspension to the respondent. A written notice shall be given as promptly as circumstances permit.

PART 51 [AMENDED]

57. The authority citation for part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50; unless otherwise noted.

§ 51.46 [Amended]

58. Section 51.46 is amended by revising the last sentence to read "The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall govern proceedings conducted pursuant to this section."

PART 52 [AMENDED]

59. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 52.54 [Amended]

60. In § 52.54, paragraph (a) is amended by revising the last sentence to read "The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall be applicable to such debarment action."

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

61. The authority citation for part 53 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.50.

§ 53.13 [Amended]

62. In § 53.13, paragraph (a)(2) is revised to read as follows:

§ 53.13 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

63. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 2.50.

§ 54.11 [Amended]

64. In § 54.11, paragraph (a)(2) is revised to read as follows:

§ 54.11 Denial or withdrawal of service.

(a) * * *

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

* * * * *

PART 97—PLANT VARIETY PROTECTION

65. The authority citation for part 97 is revised to read as follows:

Authority: 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 7 CFR 2.17, 2.50.

§ 97.300 [Amended]

66. In § 97.300, paragraph (d), the last sentence is revised to read "If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title."

TITLE 9—[AMENDED]

Chapter II—Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture

67. The heading of 9 CFR chapter II is revised to read as set forth above.

68. In 9 CFR chapter II, consisting of parts 200 to 205, all references to "Packers and Stockyards Administration" are revised to read "Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs)" and all references to "P&SA" are revised to read "GIPSA".

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

69. The authority citation for part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a); 7 CFR 2.17(e), 2.56.

§ 202.102 [Amended]

70. Section 202.102 is amended by removing all paragraph designations and placing the definitions in alphabetical order.

§ 202.103 [Amended]

71. In § 202.103, paragraph (a), the second sentence is amended by removing the words "the provisions of"

§ 202.105 [Amended]

72. In § 202.105, paragraph (f)(2) is amended by removing the words "of this part".

§ 202.109 [Amended]

73. Section 202.109 is amended as follows:

a. Paragraph (a)(5) is revised to read as set forth below.

b. In paragraph (c)(2), in the second sentence, the word "pace" is removed and the word "place" is added in its place.

c. Paragraph (d) is revised to read as set forth below.

d. In paragraph (g), the words "or recording" are added immediately after the word "transcript" each of the four times the word "transcript" appears.

e. In paragraph (h), the words "or recording" are added immediately after the word "transcript" each of the four times the word "transcript" appears.

f. In paragraph (i), the words "or recording" are added immediately after the word "transcript" each of the six times the word "transcript" appears and, in the first sentence, the words "the provisions of" are removed.

g. In paragraph (j), the word "therein" is removed and the words "in the deposition" added in its place.

h. In paragraph (l), the words "or recording" are to be added immediately after the word "transcript" both times the word "transcript" appears.

§ 202.109 Rule 9: Depositions.

(a) * * *

(5) if oral, a suggested time and place where the proposed deposition is to be made and a suggested manner in which the proposed deposition is to be conducted (telephone, audio-visual telecommunication, or by personal attendance of the individuals who are expected to participate in the deposition). The application for an order for the taking of testimony by deposition shall be made in writing, unless it is made orally on the record at an oral hearing.

* * * * *

(d) *Order.* (1) The presiding officer, if satisfied that good cause for taking the deposition is present, may order the taking of the deposition.

(2) The order shall be served on the parties and shall include:

(i) The name and address of the officer before whom the deposition is to be made;

(ii) The name of the deponent;

(iii) Whether the deposition will be oral or on written questions;

(iv) If the deposition is oral, the manner in which the deposition is to be conducted (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition); and

(v) The time, which shall not be less than 20 days after the issuance of the order, and place.

(3) The officer, time, place, and manner of the deposition as stated in the presiding officer's order need not be the same as the officer, time, place, and manner suggested in the application.

(4) The deposition shall be conducted in the manner (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition) agreed to by the parties.

(5) If the parties cannot agree on the manner in which the deposition is to be conducted:

(i) The deposition shall be conducted by telephone unless the presiding officer determines that conducting the deposition by audio-visual telecommunication:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by telephone.

(ii) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(A) Is necessary to prevent prejudice to a party;

(B) Is necessary because of a disability of any individual expected to participate in the deposition; or

(C) Would cost less than conducting the deposition by audio-visual telecommunication.

* * * * *

§ 202.110 [Amended]

74. Section 202.110 is amended as follows:

a. In paragraph (a), the last sentence, the words "or recording" are added immediately after the word "transcript"

b. Paragraph (b) is revised to read as set forth below.

§ 202.110 Rule 10: Prehearing Conference.

* * * * *

(b) *Manner of the prehearing conference.* (1) The prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by telephone or correspondence. If the presiding officer determines that a prehearing conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the prehearing conference, the prehearing conference shall be conducted by personal attendance of any individual who is expected to participate in the prehearing conference, by telephone, or by correspondence.

(2) If the prehearing conference is not conducted by telephone or correspondence, the prehearing conference shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the prehearing conference by personal attendance of any individual who is expected to participate in the prehearing conference:

(i) Is necessary to prevent prejudice to a party;

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(ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by audio-visual telecommunication.

§ 202.112 [Amended]

75. Section 202.112 is be amended as follows:

a. Paragraph (a) is revised to read as set forth below.

b. Paragraph (b) is revised to read as set forth below.

c. In paragraph (e)(2), in the second sentence, the words "or recording" are added immediately after the word "transcript", and the word "thereon" is removed and the words "on objections" added in its place.

d. In paragraph (e)(3), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

e. In paragraph (e)(5), the word "thereof" is removed and the words "of the Department" added in its place, and the word "therein" is removed and the words "in the record of the Department" added in its place.

f. Paragraphs (e), (f), (g), (h), (i), and (j) are redesignated as (f), (g), (h), (i), (j), and (k) respectively.

g. New paragraph (e) is added to read as set forth below.

h. Redesignated paragraph (i) is revised to read as set forth below.

i. In redesignated (j), the heading is revised to read *"Filing, and presiding officer's certificate, of the transcript or recording."*; the words "or recording" are added immediately after the word "transcript" each of the 10 times the word "transcript" appears; and the words "or recorded" are added immediately after the word "transcribed".

j. In redesignated paragraph (k), the heading is revised to read *"Keeping of copies of the transcript or recording."*; and the words "or recording" are added immediately after the word "transcript" each of the three times the word "transcript" appears.

§ 202.112 Rule 12: Oral hearing.

(a) *Time, place, and manner.* (1) If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time, place, and manner for oral hearing. The time shall be set based upon careful consideration to the convenience of the parties. The place shall be set in accordance with paragraph (a)(2) of this section and careful consideration to the convenience of the parties. The manner in which the hearing is to be conducted shall be determined in accordance with paragraphs (a)(3) and (a)(4) of this section.

(2) The place shall be set in accordance with paragraphs (e) and (f) of section 407 of the Act, if applicable. In essence, under paragraphs (e) and (f) of section 407 of the Act, if the complainant and the respondent, or all of the parties, if there are more than two, have their principal places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the oral hearing is to be held as near as possible to such places of business or residence, depending on the availability of an appropriate location for conducting the hearing. If the parties have such places of business or residence distant from each other, then paragraphs (e) and (f) of section 407 of the Act are not applicable.

(3) The oral hearing shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the oral hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the presiding officer determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The presiding officer may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the presiding officer finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(b) *Notice.* (1) A notice stating the time, place, and manner of oral hearing shall be served on each party prior to the time of the oral hearing. The notice shall state whether the oral hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. If any change is made in the time, place, or manner of the oral hearing, a notice of the change shall be served on each party prior to the time of the oral hearing as changed, unless the change is made during the course of an oral hearing and shown in the transcript or on the recording. Any party may waive such notice, in writing, or orally on the record at an oral hearing and shown in the transcript or on the recording.

(2) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(3) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

* * * * *

(e) *Written statements of direct testimony.* (1) Except as provided in paragraph (e)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the presiding officer finds that recording the hearing verbatim would expedite the proceeding and the presiding officer orders the hearing to be recorded verbatim. The presiding officer shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party.

(3) Parties to the proceeding who desire copies of the transcript or recording of the oral hearing may make arrangements with the reporter, who will furnish and deliver such copies direct to such parties, upon receipt from such parties of payment for the transcript or recording, at the rate provided by the contract between the reporter and the Department for such reporting service.

* * * * *

§ 202.115 [Amended]

76. Section 202.115 is amended as follows:

a. Paragraph (b), the second sentence is amended by adding the words "or recording" immediately after the word "transcript".

b. Paragraph (d) is revised to read as set forth below.

§ 202.115 Rule 15: Submission for final consideration.

* * * * *

(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

§ 202.118 [Amended]

77. Section 202.118 is amended as follows:

a. Paragraph (a)(1) is revised to read as set forth below

b. In paragraph (a)(7), the word "and" is removed.

b. Paragraph (a)(8) is redesignated as paragraph (a)(12).

c. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added to read as set forth below.

202.118 Rule 18: Presiding officer.

(a) * * *

(1) Set the time, place, and manner of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time, place, and manner of oral hearing;

* * * * *

(8) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any oral hearing to be conducted by telephone or audio-visual telecommunication;

(9) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(10) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

(11) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition; and

* * * * *

Done in Washington, D.C., this 31st day of January, 1995.

Richard E. Rominger,

Acting Secretary of Agriculture.

[FR Doc. 95-3464 Filed 2-13-95; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 611, et al.

Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish; Final Rules

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 676

[Docket No. 950206041–5041–01; I.D. 012894A]

Groundfish of the Gulf of Alaska; Foreign Fishing; Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1995 harvest specifications of groundfish and associated management measures; closures; request for comments.

SUMMARY: NMFS announces final 1995 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1995 fishing year. NMFS is also closing specified fisheries consistent with the final 1995 groundfish specifications. These measures are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: The final 1995 harvest specifications are effective on February 8, 1995 through 2400 Alaska local time (A.l.t.), December 31, 1995, or until changed by subsequent notification in the **Federal Register**. The closures to directed fishing are effective February 8, 1995 through 2400 A.l.t., December 31, 1995, or until changed by subsequent notification in the **Federal Register**. Comments are invited on the apportionments of reserves on or before February 23, 1995.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Copies of the Environmental Assessment (EA) for 1995 Total Allowable Catch Specifications for the Gulf of Alaska, dated February 1995, may be obtained from the above address or by calling (907) 586–7229. The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1994, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 or by calling (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS announces for the 1995 fishing year: (1) Total allowable catch (TAC) amounts for each groundfish species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) apportionments of pollock TAC among regulatory areas, seasons, and between inshore and offshore components; (5) apportionment of Pacific cod TAC between inshore and offshore components; (6) "other species" TAC; (7) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (8) closures to directed fishing; (9) Pacific halibut PSC mortality limits; and, (10) seasonal apportionments of the halibut PSC limits. A discussion of each of these measures follows.

The process of determining TACs for groundfish species in the GOA is established in regulations implementing the FMP, which was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Pursuant to § 672.20(a)(2)(ii), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species in § 672.20(a)(1). Under §§ 611.92(c)(1) and 672.20(a)(2)(i), TACs are apportioned initially among DAP, JVP, TALFF, and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen.

Regulations at § 672.20(a)(2)(ii) establish initial reserves equal to 20 percent of the TACs for pollock, Pacific cod, flatfish species categories, and "other species." Reserve amounts are set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF according to § 672.20(d)(2).

The Council met from September 28 to October 5, 1994, and developed recommendations for proposed 1995 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended other management measures pertaining to the 1995 fishing year. Under § 672.20(c)(1)(ii), proposed GOA groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 22, 1994 (59 FR 65990). Interim amounts of one-fourth the proposed TAC levels were published in the **Federal Register** on December 22, 1994 (59 FR 65975). The final 1995 groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim specifications.

The Council met on December 7–11, 1994, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1995 groundfish fisheries. Scientific information is contained in the November 1994 SAFE report for the GOA. The November 1994 SAFE report was prepared and presented by the GOA Plan Team to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) and includes the most recent information concerning the status of groundfish stocks based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions.

For establishment of the acceptable biological catches (ABCs) and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except Pacific ocean perch (POP), Pacific cod, and Atka mackerel.

The Plan Team separated black rockfish from the pelagic shelf rockfish and established an ABC for this species. The SSC did not believe adequate biological information is available to separate this species and did not recommend a separate category. The Council accepted the advice of the SSC and this action continues to include black rockfish as a part of the pelagic shelf rockfish group.

The Plan Team and the SSC recommended removing redbanded rockfish (*Sebastes babcocki*) from the demersal shelf rockfish (DSR) group and placing it in the "other rockfish" category because the harvest of this species as bycatch in other fisheries can result in closure of the DSR fishery before other species components may be harvested. Furthermore, redbanded rockfish are caught as bycatch in the "other rockfish" category. The DSR and "other rockfish" TAC amounts are adjusted in this action to reflect this reclassification of redbanded rockfish.

The Council adopted the SSC's ABC recommendations for each species category, except for POP. The Council's recommended ABCs reflect harvest amounts that are less than the specified overfishing amounts. These amounts are listed in Table 1. The sum of 1995 ABCs for all groundfish is 492,780 mt, which is lower than the 1994 ABC total of 553,050 mt.

As in 1994, the SSC calculated the ABC for POP by applying a fishing mortality rate of F=0.078 adjusted by the ratio of the current biomass to target spawning biomass to provide for rebuilding, which results in an ABC of 8,230 mt. Because this ABC is equal to the overfishing level (OFL), the Plan Team had further reduced this number by $F_{35\%}/F_{40\%}$ to provide a buffer between the ABC and OFL, which results in an ABC of 6,530 mt. As at the September meeting, the SSC did not agree with the latter adjustment and, as it did in 1994, recommended that ABC equal OFL. However, the Council adopted the recommendation of the Plan Team. The ABC for POP is set at 6,530 mt.

1. Specifications of TAC and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

The Council recommended TACs equal to ABCs for pollock, Pacific cod, sablefish, shortraker/rougheye rockfish, pelagic shelf rockfish, DSR, thornyhead rockfish, Atka mackerel, and northern rockfish. The Council recommended TACs less than the ABC for shallow-water and deep-water flatfish, other slope rockfish, rex sole, flathead sole, and arrowtooth flounder. The final 1995 ABCs, TACs, and OFLs are shown in Table 1. The sum of the TACs for all GOA groundfish is 279,463 mt, which is within the OY range specified by the FMP. The sum of the TACs is lower than the 1994 TAC sum of 304,595 mt.

The 1995 POP ABC was approximately double the 1994 ABC level. This caused some concern for the Council in establishing a 1995 TAC that was significantly higher than the 1994 TAC. Therefore, the Council requested staff to prepare an FMP amendment to the POP rebuilding plan that would establish an upperbound TAC limit but allow the Council to establish TAC below that limit. The current POP rebuilding plan does not allow a TAC to be set that differs from that specified in the rebuilding plan. However, until the FMP has been amended, NMFS must establish a POP TAC consistent with the current POP rebuilding plan, or 5,630 mt. NMFS recognizes the Council's intent, but is required to specify a TAC consistent with the FMP until the FMP is amended to allow a more conservative TAC and a more rapid rebuilding schedule.

The Plan Team's ABC recommendation for Pacific cod (108,000 mt) was approximately double the 1994 ABC (50,400 mt). This was due, in part, to a change from the length-based stock assessment model to a stock synthesis model that used a different recruitment assumption, and that had fitted survey selectivity of catch along with natural mortality rate. However, the SSC was concerned with the Plan Team recommendation because the stock has been declining since 1987 and, with an average recruitment rate, the stock is projected to decline under any catch rate. The SSC advised using a more conservative $F_{40\%}$ exploitation rate. The resulting ABC is 69,200 mt. The AP recommended a TAC equal to the SSC's ABC. This level was accepted by the Council. The 1995 TAC for Pacific cod is set at 69,200 mt.

The Council recommended setting the TAC for the various flatfish groups equal to the 1994 TAC amounts except for the Central Gulf (CG) TAC for arrowtooth flounder. The Council recommended increasing the CG TAC for arrowtooth flounder from 20,000 mt to 25,000 mt, to accommodate anticipated increased groundfish harvest in this area of the GOA. The 1995 TAC for various flatfish groups reflect these recommendations.

The Council approved the AP recommendation of adopting the 1994 TAC amounts for flathead sole as the 1995 TAC amounts. In the GOA Eastern Regulatory Area, the 1994 TAC amount (3,000 mt) is higher than the Council's recommended 1995 ABC (2,740 mt). To maintain consistency with the accepted policy of setting TACs lower than or equal to ABC amounts, NMFS is establishing a 1995 TAC of 2,740 mt for the Eastern Regulatory Area. This number is equal to the 1995 ABC recommended by the Plan Team and the SSC and approved by the Council. Adjustment of the flathead sole TAC in the Eastern Regulatory Area changes the total 1995 flathead sole TAC to 9,740 mt. This revision is also reflected in the 1995 TAC for "other species." NMFS establishes a TAC of 13,308 mt for "other species" which represents 5 percent of the sum of the TACs for the other groundfish species categories.

The Council, after specifying the TACs, recommended 1995 apportionments of the TACs for each species category among DAP, JVP, TALFF, and reserves. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1995 TAC specification for GOA groundfish; therefore, the Council recommended that the DAP allowance equal the TAC for each species category. NMFS concurs and no TALFF or JVP apportionments for the 1995 fishing year are specified.

NMFS reviewed the Council's recommendations concerning TAC specifications and apportionments. Except as noted, NMFS hereby approves the Council's recommendations and specifications under § 672.20(c)(1)(ii)(B).

The 1995 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1995 ABCs, TACs, AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP

Species	Area[1]	ABC	TAC=DAP	Overfishing
Pollock[2]				
Shumagin	(61)	30,380	30,380	
Chirikof	(62)	15,310	15,310	266,000

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TABLE 1.—1995 ABCs, TACs, AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP—Continued

Species	Area[1]	ABC	TAC=DAP	Overfishing
Kodiak	(63)	16,310	16,310)	
Subtotal	W/C	62,000	62,000	
	E	3,360	3,360	14,400
Total		65,360	65,360	280,400
Pacific cod[3]				
Inshore	W		18,090	
Offshore	W		2,010	
Inshore	C		41,085	
Offshore	C		4,565	
Inshore	E		3,105	
Offshore	E		345	
Subtotals				
	W	20,100	20,100	
	C	45,650	45,650	
	E	3,450	3,450	
Total		69,200	69,200	126,000
Flatfish[4] (deep-water)	W	670	460	
	C	8,150	7,500	
	E	5,770	3,120	
Total		14,590	11,080	17,040
Rex sole[4]	W	1,350	800	
	C	7,050	7,050	
	E	2,810	1,840	
Total		11,210	9,690	13,091
Flathead sole	W	8,880	2,000	
	C	17,170	5,000	
	E	2,740	2,740	
Total		28,790	9,740	31,557
Flatfish[5] (shallow-water)	W	26,280	4,500	
	C	23,140	12,950	
	E	2,850	1,180	
Total		52,270	18,630	60,262
Arrowtooth flounder	W	28,400	5,000	
	C	141,290	25,000	
	E	28,440	5,000	
Total		198,130	35,000	231,416
Sablefish[6]	W	2,600	2,600	
	C	8,600	8,600	
	WYK	4,100	4,100	
	SEO	6,200	6,200	
Total		21,500	21,500	25,730
Pacific ocean perch[7]	W	1,180	1,014	1,480
	C	3,130	2,702	3,951
	E	2,220	1,914	2,799
Total		6,530	5,630	8,232
Short raker rougheye[8]	W	170	170	
	C	1,210	1,210	
	E	530	530	
Total		1,910	1,910	2,925
Other rockfish[9,10,11]	W	180	55	

TABLE 1.—1995 ABCs, TACs, AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP—Continued

Species	Area[1]	ABC	TAC=DAP	Overfishing
	C	1,170	370	
	E	5,760	1,810	
Total		7,110	2,235	8,395
Northern Rockfish[12]	W	640	640	
	C	4,610	4,610	
	E	20	20	
Total		5,270	5,270	9,926
Pelagic shelf rockfish[13]	W	910	910	
	C	3,200	3,200	
	E	1,080	1,080	
Total		5,190	5,190	8,704
Demersal shelf rockfish[11]	SEO	580	580	1,044
Thornyhead rockfish	GW	1,900	1,900	2,660
Atka mackerel	W		2,310	
	C		925	
	E		5	
Total		3,240	3,240	11,700
Other species[14]	GW	[15] N/A	13,308	
Total[16]		492,780	279,463	839,082

[1] Regulatory areas and districts are defined at § 672.2.
[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances.
[3] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. Component allowances are shown in Table 4.
[4] "Deep-water flatfish" means Dover sole and Greenland turbot.
[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means *Sebastes alutus*.
[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.
[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).
[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[12] "Northern rockfish" means *Sebastes polyspinis*.
[13] "Pelagic shelf rockfish" means *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] "Other species" means sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.
[15] "N/A" means not applicable.
[16] The total ABC is the sum of the ABCs for target species.

2. Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). For the preceding 7 years, including 1994, NMFS has apportioned all of the reserves to DAP. For 1995, NMFS apportions reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts. Specifications of DAP shown in Table 1 reflect apportioned reserves. Under § 672.20(d)(5)(iv), the public may submit comments on the apportionments of reserves. Comments should focus on whether, and the extent to which, operators of vessels of the United States will harvest reserve or DAP amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

3. Assignment of the Sablefish TACs to Authorized Fishing Gear Users

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is assigned to hook-and-line gear and 20 percent to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be

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used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl gear must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the 1995 sablefish TACs between hook-and-line and trawl gear

TABLE 2.—1995 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR. VALUES ARE IN METRIC TONS

Area/district	TAC	Hook-and-line share	Trawl share
Western	2,600	2,080	520
Central	8,600	6,880	1,720
West Yakutat	4,100	3,895	205
Southeast Outside	6,200	5,890	310
Total	21,500	18,745	2,755

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and inshore/offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined Western and Central Areas of the GOA be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distributions of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure Each statistical area apportionment is further divided equally among the four quarterly reporting periods of the fishing year (Table 3). Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowance of following quarters, resulting in a sum for each quarter that does not exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year As defined at § 672.23(f), directed fishing for the four quarterly allowances starts on January 1, June 1, July 1, and October 1 The Eastern Regulatory Area pollock TAC of 3,360 mt is not allocated among smaller areas, or quarters.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components One hundred percent of the pollock DAP in each regulatory area is apportioned to the inshore component after subtraction of amounts that are determined by the Regional Director to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, incidental amounts of pollock to be caught by the offshore component are unknown, and will be determined during the fishing year

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS 62,000 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT

Statistical area	Biomass percent	1995 TAC	Quarterly allowance
Shumagin (61)	49	30,380	7,595
Chirikof (62)	24.7	15,310	3,826
Kodiak (63)	26.3	16,310	4,078
Total	100.0	62,000	15,499

5. Apportionment of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area. The remaining 10 percent of the TAC assigned to the offshore component. Inshore and offshore allocations of the 69,200 mt Pacific cod TAC for 1995 are shown in Table 4.

TABLE 4.—1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	20,100	18,090	2,010
Central	45,650	41,085	4,565

TABLE 4.—1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS—Continued

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Eastern	3,450	3,105	345
Total	69,200	62,280	6,920

6. "Other Species" TAC

The FMP specifies that the TAC amount for the "other species" category is calculated as 5 percent of the 1995 combined TACs for target species This results in a TAC amount of 13,308 mt for 1995.

7. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if NMFS determines, after consultation with the Council, that the TAC for any species or species group will be fully utilized in the DAP fishery, a groundfish PSC limit applicable to the JVP fisheries may be specified for that species or species group.

The Council recommended that DAP equal TAC for each species category. NMFS concurs with the Council's recommendation, and has not established any JVP amounts; therefore, no groundfish PSC limits under § 672.20(b)(1) are necessary.

8. Closures to Directed Fishing

The interim 1995 initial specifications of groundfish, associated management measures, and closures for the GOA (59 FR 659575, December 22, 1994) contained several closures to directed fishing for groundfish during 1995. The closures for the final specifications are listed in Table 5.

Under § 672.20(c)(2)(ii), the Director, Alaska Region, NMFS (Regional Director), determined that the entire TACs or allocations of TAC of some groundfish species and species groups will be needed as incidental catch to support other anticipated groundfish fisheries during 1995. The Regional Director is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the year for the fisheries listed in Table 5. Directed fishing standards for the aforementioned closures may be found at § 672.20(g).

TABLE 5.—CLOSURES TO DIRECTED FISHING FOR TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS ACTION.[1] OFFSHORE=THE OFFSHORE COMPONENT; TRW=TRAWL; ALL=ALL GEARS; WG=WESTERN REGULATORY AREA; CG=CENTRAL REGULATORY AREA; EG=EASTERN REGULATORY AREA; GOA=ENTIRE GULF OF ALASKA

Fishery	Component	Gear	Closed areas
Atka mackerel	Offshore	ALL	GOA
Northern rockfish		ALL	WG, EG
Deep-water flatfish		ALL	WG
Other rockfish[2]		ALL	WG, CG
Pacific cod		ALL	EG
Pacific ocean perch		ALL	WG, CG
Rex sole		ALL	WG
Sablefish		TRW	WG, CG
Shortraker/rougheye rockfish		ALL	GOA
Thornyhead rockfish		ALL	GOA

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 672.
[2] "Other rockfish" includes slope and demersal shelf rockfish in the WG and CG.

In addition to the above closures, NMFS closed statistical areas 62 and 63 to directed fishing for pollock effective noon, A.l.t., January 24, 1995 (60 FR 5337, January 27, 1995; 60 FR 5338, January 27, 1995), under authority of the interim 1995 specifications. In accordance with § 672.20(c)(2)(ii), the closure for Statistical Area 63 will remain in effect until noon, A.l.t., April 1, 1995, or until changed by subsequent notification in the **Federal Register**. The Director, Alaska Region, NMFS, determined that the remaining quarterly allowance of pollock TAC in Statistical Area 62 is sufficient to allow a 48-hour directed fishery. In a separate notification in the **Federal Register**, NMFS is reopening directed fishing for pollock in Statistical Area 62 from 12 noon, A.l.t., February 8, 1995 until 12 noon, A.l.t., February 10, 1995. Effective 12 noon, A.l.t., February 10, 1995, the closure to directed fishing for pollock in Statistical Area 62 is reinstated. In accordance with § 672.20(c)(2)(ii), the closure for Statistical Area 62 will remain in effect until 12 noon, A.l.t., April 1, 1995, or until changed by subsequent notification in the **Federal Register**. Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g). Pursuant to § 672.23(f), directed fishing for pollock is prohibited after the first quarter ends on noon, April 1, 1995, until the second quarter directed fishery opens at 12 noon, A.l.t., June 1, 1995.

9. Halibut PSC (PSC) Mortality Limits

Under § 672.20(f)(2), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and are established for pot gear. The Council recommended that NMFS initiate rulemaking to exempt the hook-and-line sablefish fishery from the halibut PSC limit. The sablefish and halibut Individual Fishing Quota (IFQ) program will be implemented in 1995, and will allow legal-sized halibut to be retained in the sablefish fishery. A proposed rule to implement the Council's recommendation was published in the **Federal Register** on December 29, 1994 (59 FR 67268). If made final, this would also specify a reduced halibut PSC limit for the 1995

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GOA hook-and-line gear fisheries other than sablefish.

At its December 1994 meeting, the Council recommended a hook-and-line PSC limit of 300 mt, based on the proposed exemption of the hook-and-line sablefish fishery. Until the regulatory amendment to authorize the exemption of hook-and-line sablefish is approved, NMFS is specifying the PSC limits of 750 mt for hook-and-line and 2,000 mt for trawl gear. The hook-and-line halibut PSC limit is further apportioned between the DSR fishery (10 mt halibut mortality) and all other hook-and-line fisheries (740 mt). The final rule to exempt hook-and-line sablefish, if approved, would establish the hook-and-line PSC limit at 300 mt, as recommended by the Council.

Regulations at § 672.20(f)(1)(i) authorize separate apportionments of the trawl halibut bycatch mortality limit between trawl fisheries for deep-water and shallow-water species. These apportionments are divided seasonally to avoid seasonally high halibut bycatch rates.

As in the proposed specifications, the Council recommended that pot gear be exempt from Pacific halibut PSC limits for the 1995 fishing year. The Council proposed this exemption after considering that the 1994 groundfish catch and associated halibut bycatch mortality (4 mt), which continues to be low relative to other groundfish operations. NMFS concurs with the Council's recommendation.

In making its determinations with respect to halibut PSC mortality limits, NMFS considered information presented in the 1994 SAFE report; in addition, information from Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) and public testimony also were considered. The proposed 1995 specifications discuss: (1) Estimated halibut bycatch in prior years; (2) current estimates of halibut biomass and stock condition; (3) potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries; and (4) methods available for, and costs of, reducing halibut bycatches in groundfish fisheries. That discussion is not repeated here. The following information was also considered:

A. Expected Changes in Groundfish Stocks

At its December 1994 meeting, the Council adopted lower ABCs for pollock, deep-water flatfish, rex sole, flathead sole, sablefish, pelagic shelf rockfish, DSR, Atka mackerel, arrowtooth flounder, shortraker/rougheye, "other" rockfish, and northern rockfish, than those established for 1994. The Council adopted higher ABCs for Pacific cod, shallow-water flatfish, POP, and thornyhead rockfish than those established for 1994. More information on these changes is included in the Final SAFE Report dated November 1994 and in the Council and SSC minutes.

B. Expected Changes in Groundfish Catch

The total of the 1995 TACs for the GOA is 279,463 mt, a slight decrease from the 1994 TAC total of 304,595 mt. At its December 1994 meeting, the Council changed the 1995 TACs for some fisheries from the 1994 TACs. Those fisheries for which the 1995 TACs are lower than in 1994 are pollock (decreased to 65,360 mt from 109,300 mt), rex sole (decreased to 9,690 mt from 10,140), flathead sole (decreased to 9,740 mt from 10,000 mt), sablefish (decreased to 21,500 mt from 25,500 mt), shortraker/rougheye (decreased to 1,910 mt from 1,960 mt), northern rockfish (decreased to 5,270 from 5,760 mt), pelagic shelf rockfish (decreased to 5,190 mt from 6,890 mt), DSR (decreased to 580 mt from 960 mt), and Atka mackerel (decreased to 3,240 mt from 3,505 mt). Those species for which the 1995 TAC is higher than in 1994 are Pacific cod (increased to 69,200 mt from 50,400 mt), arrowtooth flounder (increased to 35,000 mt from 30,000 mt), POP (increased to 5,630 mt from 2,550 mt), and thornyhead rockfish (increased to 1,900 mt from 1,180 mt).

10. Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(1)(iii), NMFS seasonally allocates the halibut PSC limits based on recommendations from the Council. The FMP requires that certain information be considered by the Council in recommending seasonal allocations of halibut. The publication of the final 1994 groundfish and PSC specifications (59 FR 7647, February 16, 1994) summarizes Council findings with respect to each of the FMP considerations. At this time, the Council's findings are unchanged from those set forth for 1994. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 6. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1995 season.

As noted above, the Council requested a change in the hook-and-line PSC limit for 1995, which would be established in a separate rulemaking exempting the hook-and-line sablefish from the PSC limit. Until that final rule becomes effective, NMFS is establishing the same allowances for 1995 as were used in 1994.

TABLE 6.—FINAL 1995 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. VALUES ARE IN METRIC TONS

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600(30%)	Jan 1–May 17	200(27%)	Jan 1–Dec 31	10(100%)
Apr 1–June 30	400(20%)	May 18–Aug 31	500(68%)		
Jul 1–Sep 30	600(30%)	Sep 1–Dec 31	40(5%)		
Oct 1–Dec 31	400(20%)				
Total	2,000(100%)		740(100%)		10(100%)

Regulations at § 672.20(f)(1)(i) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex and a shallow-water species complex. The deep-water species complex consists of sablefish, rockfish, deep-water flatfish, and arrowtooth flounder. The shallow-water species complex consists of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species." The apportionment for these two complexes is presented in Table 7.

TABLE 7.—FINAL 1995 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX. VALUES ARE IN METRIC TONS

Season	Shallow-water	Deep-water	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jun. 30	100	300	400
Jul. 1–Sep. 30	200	400	600
Oct. 1–Dec. 31	No apportionment between shallow and deep for the 4th quarter.		

Except as noted below, the Council proposed that revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1995 groundfish fisheries. These assumed halibut mortality rates are based on an average of mortality rates determined from NMFS-observer data collected during 1992 and 1993, except for the GOA hook-and-line rockfish, for which 1992/93 rates were not available and the rates from 1990 and 1991 were used. For most fisheries, the 1992–93 averages, on which the 1995 mortality rates are based, are somewhat higher than the assumed rate used in 1994. This occurs because the rates used in 1994 were a rollover of the 1993 rates, which had been derived from data for 1990 and 1991.

The Council recommended establishing two separate mortality rates for the GOA bottom trawl pollock fishery: 63 percent for shoreside processors and 74 percent for at-sea processors. The different rates for at-sea and shoreside processors result from analyses by the IPHC that showed that at-sea processing vessels had a significantly higher discard mortality rate than the shorebased operators. The rates for the bottom trawl pollock fishery are revised from the proposed specifications. The rates recommended by the Council are adopted and will be used in calculating halibut mortality. However, NMFS notes that directed fishing for GOA pollock by the offshore component is prohibited under § 672.20(a)(2)(v) and that at-sea processing of pollock would be unlikely.

The Council proposed adjusting the IPHC's recommendation for GOA Pacific cod hook-and-line and trawl mortality rates. The IPHC recommended assumed mortality rates of 20 percent and 58 percent, respectively. The Council recommended setting the Pacific cod hook-and-line halibut mortality rate at 12.5 percent and the trawl rate at 55 percent. NMFS has evaluated the Council's recommendation but adopts mortality rates suggested by the IPHC for 1995, which is the best information available on assumed mortality rates.

The IPHC determined that the careful release measures implemented for vessels using hook-and-line gear did not show appreciable improvements in mortality rates and has recommended one rate for both observed and unobserved vessels in the hook-and-line fisheries. This action was approved by the Council and is adopted by NMFS. The halibut mortality rates are listed in Table 8.

TABLE 8.—1995 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

Gear and Target	
Hook-and-Line:	
Sablefish	25
Pacific cod	20
Rockfish	18
Trawl:	
Midwater pollock	66
Rockfish	66
Shallow-water flatfish	64
Pacific cod	58
Deep-water flatfish	59
Bottom pollock:	
Shoreside	63
At-sea	74
Pot:	
Pacific cod	18

Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under new regulations implementing the IFQ program (50 CFR part 676) in 1995, the opening of the sablefish fishery is March 1.

Comments

Written comments on the proposed 1994 specifications and other management measures were requested until January 20, 1995 (59 FR 65990; December 22, 1994). No written comments were received.

Classification

This action is authorized under 50 CFR 611.92 and 672.20; and is exempt from review under E.O. 12866

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This action apportions reserves to DAP fisheries on a date other than those specified in § 672.20(d)(1)(ii). Under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), for the reasons set forth below, finds good cause to waive prior notice and opportunity for public comment provided by the regulations. This waiver is necessary to allow the harvest of TAC and prevent unnecessary closure of the fishery. Closure of the fishery would be contrary to the public interest. In accordance with § 672.20(d)(5)(iv), comments are invited on the reserve apportionments as noted in "DATES" above.

This action adopts final 1995 harvest specifications for the GOA, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts will be overharvested and retention of these species will become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in effective date.

NMFS has determined that the GOA groundfish fisheries are not likely to affect Steller sea lions in a way or to an extent not already considered in previous Section 7 consultations on this fishery. NMFS has determined that reinitiation of formal consultation under this ESA is not required.

NMFS prepared an environmental assessment (EA) on the 1995 TAC specifications. The Assistant Administrator concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see addresses).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 7, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–3483 Filed 2–8–95; 4:37 pm]

BILLING CODE 3510–22–P

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50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 020695D]

Groundfish of the Gulf of Alaska; Daily Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change in recordkeeping and reporting requirements.

SUMMARY: NMFS has determined that Daily Production Reports (DPRs) must be submitted by offshore component processor vessels that catch and/or receive Pacific cod in Statistical Areas 61, 62, and 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding that portion of the total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in those areas. This action will enable NMFS to effectively monitor the Pacific cod catch and take inseason action to close the fishery prior to its exceeding the TAC.

EFFECTIVE DATE: From noon, Alaska local time (A.l.t.), February 8, 1995, through the duration of the 1995 directed offshore Pacific cod fishery in these areas or until the Director, Alaska Region, NMFS (Regional Director) determines the supplementary reporting requirements are no longer necessary. This determination will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

Pursuant to § 672.5(c)(3)(i) the Regional Director is requiring offshore component processor vessels, as defined at § 672.2, that catch and/or receive Pacific cod in Statistical Areas 61, 62, and 63 in the GOA to submit DPRs in addition to weekly processor reports. DPRs must include the information required by § 675.2(c)(3)(ii).

These requirements are necessary to manage the offshore component Pacific cod fisheries in those areas. The Regional Director is doing so in consideration of the potential for exceeding that portion of the total allowable catch (TAC) of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in those areas.

The allocation of the TACs for Pacific cod to vessels catching Pacific cod for processing by the offshore component under § 672.20(a)(2)(v)(B) will become available for directed fishing by offshore component vessels with the filing of the final specifications of groundfish for the GOA and are expected to be rapidly harvested.

DPRs must include all information required by § 672.5(c)(3)(ii) for groundfish harvested from the applicable reporting areas. Processors must submit the required information on the "Alaska Groundfish Processor Daily Production Report" form that was distributed to participants in the groundfish fishery with their 1995 Federal fisheries permit. The form also may be obtained from the Regional Director by calling Mary Furuness at 907–586–7228. Processors must transmit their completed DPRs to the Regional Director by facsimile transmission to number 907–586–7131, telex (U.S. code) plus 62296000, or by telephone via number 907–586–7228, no later than 12 hours after the end of the day the groundfish was processed.

If and when the Regional Director determines that these reports are no longer necessary, he may rescind the requirement. Criteria used to assess the need for the reports include the stability of effort and harvest rates in the fishery, and remaining amounts.

The Assistant Administrator for Fisheries, NOAA, finds that reasons justifying implementation of this action also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date. Intense fishing effort without DPRs could result in industry's exceeding these allocations.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 7, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3484 Filed 2–8–95; 4:37 pm]

BILLING CODE 3510–22–F

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50 CFR Parts 611, 675, and 676

[Docket No. 950206040–5040–01; I.D. 111494A]

Groundfish Fishery of the Bering Sea and Aleutian Islands; Foreign Fishing; Limited Access Management of Federal Fisheries In and Off of Alaska; Final 1995 Harvest Specifications of Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1995 specifications of groundfish and associated management measures; final rule; technical amendment; closures.

SUMMARY: NMFS announces final 1995 harvest specifications of total allowable catches (TACs), initial apportionments of TACs for each category of groundfish, and associated management measures in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1995 fishing year. In addition, this action implements a technical amendment to update a directed fishery standard and the definition of a fishery category to reflect a change in a BSAI TAC category that resulted from the annual specification process. The technical amendment is necessary to incorporate a change in a groundfish TAC category to accommodate other regulations that limit bycatch amounts of prohibited species or groundfish species closed to directed fishing. NMFS also is closing specified fisheries consistent with the final 1995 groundfish specifications and fishery bycatch allowances of prohibited species. These measures are intended to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: The final 1995 harvest specifications are effective on February 8, 1995, through 2400 Alaska local time (A.l.t.) on December 31, 1995, or until changed by subsequent notification in the **Federal Register**. The closures to directed fishing are effective on February 8, 1995, through 2400 A.l.t., December 31, 1995. The amendments to §§ 675.20 and 675.21 are effective on February 8, 1995.

ADDRESSES: Comments on directed fishing closures should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (Attn: Lori Gravel). The final Environmental Assessment prepared for the 1995 Total Allowable Catch Specifications may be obtained from the same address, or by calling 907–586–7229. The final Stock Assessment and Fishery Evaluation (SAFE) report is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 675 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island area (FMP). Other applicable regulations are found at 50 CFR 611.93 (foreign fishing) and 50 CFR part 676 (Limited Access Management of Federal Fisheries In and Off of Alaska). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the apportionments of prohibited species catch (PSC) limits among fisheries and seasons (§ 675.21(b)), the TAC, initial TAC (ITAC), initial domestic annual harvest (DAH), and initial total allowable level of foreign fishing (TALFF) for each target species and the "other species" category (§ 675.20(a)(2)). The sum of the TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Specifications set forth in Tables 1–9 of this action satisfy these requirements. For 1995, the sum of TACs is 2,000,000 mt.

The proposed BSAI groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 14, 1994 (59 FR 64383). Comments were invited through January 9, 1995. No written comments were received within the comment period. Public consultation with the Council occurred during the Council meeting in Anchorage, AK, held on December 5–10, 1994. Council recommendations and biological and economic data that were available at the Council's December meeting were considered in implementing the final 1995 specifications.

Interim Specifications

Regulations under § 675.20(a)(7)(i) authorize one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each PSC allowance, and the first proposed seasonal allowance of pollock to be in effect on January 1 on an interim basis and to remain in effect until superseded by final initial specifications. NMFS published the interim 1995 specifications in the **Federal Register** on December 14, 1994 (59 FR 64346) and corrected January 30, 1995 (60 FR 5762). The final 1995 initial groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim 1995 specifications.

TAC Specifications and Acceptable Biological Catch (ABC)

The specified TAC for each species is based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their September and December 1994 meetings. This information was compiled by the Council's BSAI Groundfish Plan Team and is presented in the final 1995 Stock Assessment and Fishery Evaluation (SAFE) report for the BSAI groundfish fisheries, dated November 1994. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of the preliminary ABCs for each species for 1995 and other biological data from the September 1994 draft SAFE report were provided in the discussion supporting the proposed 1995 specifications. The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their

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September 1994 meetings. Based on the SSC's comments concerning technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report, dated November 1994. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1994 meetings. While the SSC endorsed most of the Plan Team's recommendations for 1995 ABCs set forth in the final SAFE report, the SSC recommended revisions to ABC amounts calculated for Bogoslof pollock, Greenland turbot, and Atka mackerel. The Council adopted the SSC's recommendations for the 1995 ABCs. The final ABCs are listed in Table 1.

The Council developed its TAC recommendations based on the final ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4–2.0 million mt. None of the Council's recommended TACs for 1995 exceeds the final 1995 ABC for each species category.

Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The final TACs and overfishing levels for groundfish in the BSAI area for 1995 are given in Table 1 of this action.

Apportionment of TAC

As required by § 675.20 (a)(3) and (a)(7)(i), each species' TAC initially is reduced by 15 percent (special provisions apply to the hook-and-line and pot gear allocation for sablefish); this is the ITAC for the species. The sum of these reductions is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The ITAC for each target species and the "other species" category at the beginning of the year is apportioned between the DAH and TALFF, if any. Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The DAP category includes U.S. vessels that process their catch on board or deliver it to U.S. fish processors. The joint venture processors (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final 1991–94 initial specifications, the Council recommended that 1995 DAP specifications be set equal to ITAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipated that 1995 DAP operations will harvest the full TAC specified for each BSAI groundfish species category. The ABCs, TACs, ITACs, OFLs, and initial apportionments of groundfish in the BSAI for 1995 are set out in Table 1.

TABLE 1. FINAL 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREAS [1 2]

Species	ABC	TAC	ITAC DAP [3 4]	Over fishing level
Pollock:				
Bering Sea (BS)	1,250,000	1,250,000	1,062,500	1,500,000
Aleutian Islands (AI)	56,600	56,600	48,110	60,400
Bogoslof District	22,100	1,000	850	22,100
Pacific cod	328,000	250,000	212,500	390,000
Sablefish BS	1,600	1,600	1,360	
AI	2,200	2,200	1,870	4,900
Atka mackerel total	125,000	80,000	68,000	335,000
Western AI	55,600	16,500	14,025	
Central AI	55,900	50,000	42,500	
Eastern AI/BS	13,500	13,500	11,475	
Yellowfin sole	277,000	190,000	161,500	319,000
Rock sole	347,000	60,000	51,000	388,000
Greenland turbot total	7,000	7,000	5,950	27,200
BS	4,669	4,669	3,969	
AI	2,331	2,331	1,981	
Arrowtooth flounder	113,000	10,227	8,693	138,000
Flathead sole	138,000	30,000	25,500	167,000
Other flatfish [5]	117,000	19,540	16,609	137,000
Pacific ocean perch.				
BS	1,850	1,850	1,573	2,910
AI	10,500	10,500	8,925	15,900
Other red rockfish [6].				
BS	1,400	1,260	1,070	1,400
Sharpchin/Northern.				
AI	5,670	5,103	4,338	5,670
Shortraker/Rougheye.				
AI	1,220	1,098	933	1,220
Other rockfish [7]				
BS	365	329	280	365
AI	770	693	589	770
Squid	3,110	1,000	850	3,110
Other Species [8]	27,600	20,000	17,000	136,000

TABLE 1. FINAL 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREAS [1 2]—Continued

Species	ABC	TAC	ITAC DAP [3 4]	Over fishing level
Totals	2,836,985	2,000,000	1,700,000	3,655,945

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock and for the purpose of these specifications, the BS includes the Bogoslof district.
[2] Zero amounts of groundfish are specified for Joint Venture Processing (JVP) and Total Allowable Level of Foreign Fishing (TALFF).
[3] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, .20 of the allocated TAC is reserved for use by Community Development Quota participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.
[4] DAP = domestic annual processing = ITAC
[5] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species) and all other flatfish species that have a separate specified TAC amount.
[6] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.
[7] "Other rockfish" includes all *Sebastes and Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker and rougheye.
[8] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

The SSC's revisions to the ABCs recommended by the Plan Team for Bogoslof pollock, Greenland turbot, and Atka mackerel are discussed below.

Bogoslof pollock. The Plan Team indicated in the final 1995 SAFE report that the current estimate of biomass of Aleutian Basin pollock (442,000 mt) is the best estimate, assuming that no recruitment to the stock has occurred and that the natural mortality rate (M) is 0.2. Reassessment of the Bogoslof area hydroacoustic survey with new threshold levels of abundance has not changed previous conclusions that this stock has continued to decrease since 1988. The Plan Team lacks conclusive data that Bogoslof pollock are an independent stock that is self sustaining. Recruitment to the Aleutian Basin is most likely coming from another area from the surrounding continental shelf. To the extent that this recruitment may not be the progeny of Bogoslof spawners, the Plan Team assumed no recruitment will occur in 1995, and projected a biomass for 1995 of 442,000 mt using M=0.2. The Plan Team then calculated the $F_{0.35}$ exploitation rate of 0.26 to derive an ABC of 115,000. However, the SSC continued the policy of adjusting the exploitation rate downward by M/4, or 05, in proportion to the ratio of current biomass to optimal biomass. This leads to an ABC of 22,100. Due to lack of recruitment predicted for 1995, the Council recommended a TAC of 1,000 mt to provide for bycatch in other groundfish operations. That recommendation is adopted in these final specifications (Table 1).

Greenland turbot. The Plan Team used the stock synthesis model to estimate the ABC, which was updated with 1994 catch and survey data. Similar to last year, the Plan Team used a more conservative exploitation rate of $F_{0.40}$ and an increased slope survey catchability coefficient of 0.75, due to the lack of recruitment. These parameters resulted in a conservative ABC of 18,500 mt. Continued poor recruitment and stock abundance levels lead the SSC to recommend a continuation of the present 7,000 mt ABC for this species. The SSC further recommended that the ABC be split into two apportionments: Two-thirds to the eastern Bering Sea, and one-third to the Aleutian Islands. This resulted in ABCs of 4,669 mt and 2,331 mt, respectively. This recommendation is intended to spread fishing effort over a larger area to avoid localized depletion. The Council concurred with the SSC's recommendation for ABC and set the TAC equal to ABC. That recommendation is adopted in these final specifications.

Atka mackerel. The Plan Team was not able to assess the current Atka mackerel stock level and the magnitude of the incoming year classes because data from the 1994 trawl survey and age composition of the 1993 fishery were not available. As a result, the Plan Team's recommended ABC (245,000 mt) was unchanged from 1994. Since 1992, the SSC has been apprehensive about possible environmental problems that may result from an increased catch of the magnitude implied by the Plan Team's estimate of ABC. Atka mackerel is a prey species of northern fur seals (a depleted species under the Marine Mammal Protection Act) and Steller sea lions (a threatened species under the Endangered Species Act). During their migrations, northern fur seals feed heavily on Atka mackerel as they move through the Aleutian passes. Therefore, since 1992, the SSC has recommended phasing in the Plan Team's estimate of ABC over a 6-year period by adopting the Plan Team's biomass estimate (832,000 mt for 1995), and raising the exploitation rate in steps. These incremental steps are as follows. (M)(1/6) in 1992, (M)(2/6) in 1993, (M)(3/6) in 1994, (M)(4/6) in 1995, (M)(5/6) in 1996 and M in 1997. However, due to current uncertainty about the stock status, the SSC recommends that the stairstep be frozen at the level used to reduce the calculated ABC for 1994. According to this revised schedule, the recommended ABC for 1995 is (0.30/2)(832,000)=125,000 mt. The main purpose of this approach is to postpone a large ABC increase until data are available to evaluate the phase-in policy.

The Council recommended an 80,000 mt TAC for Atka mackerel in the BSAI in 1995. Based on the authority provided by Amendment 28 to the FMP, the Council recommended the following apportionment of the TAC for Atka mackerel among the Aleutian Islands (AI) management districts and the Bering Sea relative to survey biomass distribution estimates: 16,500 mt in the western AI district; 50,000 mt in the central AI district; and 13,500 mt in the eastern AI district and Bering Sea combined. These recommendations are adopted in these final specifications (Table 1).

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the 1995 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 675.2. The 1995 ITAC specifications are consistent with these requirements (Table 2).

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of

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the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season).

The Council recommended that the 1995 seasonal allowances of pollock be set at the same relative levels as in 1993 and 1994 with 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season. Although the Council is authorized under § 675.20(a)(7)(ii) to recommend seasonal allowances of the 1995 CDQ pollock reserve, it did not take such action at its December 1994 meeting. Therefore, NMFS is limiting the 1995 fishery to 45 percent of the CDQ reserve during the roe season, consistent with the seasonal split recommended by the Council for the inshore/offshore pollock fisheries (Table 2).

When specifying seasonal allowances of the pollock TAC, the Council and NMFS consider the factors as specified in Section 14.4.10 of the FMP and discussed in the proposed specifications (59 FR 64383), December 14, 1994).

A discussion of these factors relative to the roe and non-roe seasonal allowances (45 and 55 percent of the TAC, respectively) was presented in the final 1993 specifications for BSAI groundfish (58 FR 8703, February 17, 1993). Considerations under these factors remain unchanged from 1993 and 1994, given that the relative seasonal allowances for 1993, 1994, and 1995 are the same.

Apportionment of Pollock TAC to the Nonpelagic Trawl Gear Fishery

Regulations under § 675.24(c)(2) authorize NMFS, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in nonpelagic trawl operations.

The Council did not recommend limiting the amount of pollock TAC that may be taken in the 1995 directed fishery for pollock by vessels using nonpelagic trawl gear, given that regulations at § 675.7 appear to limit effectively the bycatch of halibut and crab when directed fishing for pollock with nonpelagic trawl gear is closed. NMFS concurs with the Council's recommendation, and no limit on the amount of pollock TAC that may be taken in the directed fishery for pollock using nonpelagic trawl gear is specified.

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS[1,2]

Subarea	TAC	ITAC[3]	Roe season[4]	Non-roe season[5]
Bering Sea:				
Inshore		371,875	167,344	204,531
Offshore		690,625	310,781	379,844
	1,250,000	1,062,500	478,125	584,375
Aleutian Islands:				
Inshore		16,838	16,838	([6])
Offshore		31,272	31,272	([6])
	56,600	48,110	48,110	([6])
Bogoslof:				
Inshore		298	298	([6])
Offshore		552	552 ([6])	
	1,000	850	850	([6])

[1] TAC = total allowable catch.
[2] Based on an offshore component allocation of 0.65(TAC) and an inshore component allocation of 0.35(TAC).
[3] ITAC = initial TAC = 0.85 of TAC.
[4] January 1 through April 15—based on a 45/55 split (roe = 45 percent).
[5] August 15 through December 31—based on a 45/55 split (non-roe = 55 percent).
[6] Remainder.

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Regulations at § 675.20(a)(3)(ii) require one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a Community Development Quota (CDQ) reserve for each subarea or district. The 1995 CDQ reserve amounts for each subarea are as follows:

BSAI subarea	Pollock CDQ
Bering Sea	93,750 mt
Aleutian Islands	4,245 mt
Bogoslof	75 mt
Total	98,070 mt

Under regulations governing the CDQ program at § 675.27, NMFS may allocate the 1995 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). NMFS has approved six CDP's and associated percentages of the CDQ reserve for each CDP recipient for 1994–95 (58 FR 61031, November 19, 1993). Table 3 lists the approved CDP recipients, and each recipient's allocation of the 1995 pollock CDQ reserve for each subarea.

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1995 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS

CDP recipient	Percent	Area	Allocation	Roe-season allowance[1]
Aleutian Pribilof	18	BS	16,875	7,594

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1995 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS—Continued

CDP recipient	Percent	Area	Allocation	Roe-season allowance[1]
Island Community Development Assn		AI	764	
		BD	14	
Total			17,653	
Bristol Bay Economic Development Corp	20	BS	18,750	8,437
		AI	849	
		BD	15	
Total			19,614	
Central Bering Sea Fishermen's Assn	8	BS	7,500	3,375
		AI	340	
		BD	6	
Total			7,846	
Coastal Villages Fishing Coop	27	BS	25,312	11,390
		AI	1,146	
		BD	20	
Total			26,478	
Norton Sound Fisheries Development Assn	20	BS	18,750	8,438
		AI	849	
		BD	15	
Total			19,614	
Yukon Delta Fisheries Development Assn	7	BS	6,563	2,953
		AI	297	
		BD	5	
Total			6,865	
Total	100		98,070	42,182

[1] No more than 45 percent of a CDP recipient's 1995 pollock allocation may be harvested during the pollock roe season, January 1 through April 15.

Allocation of the Pacific Cod TAC

Under § 675.20(a)(2)(iv), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 44 percent to vessels using hook-and-line or pot gear, and 54 percent to vessels using trawl gear. At its December 1994 meeting, the Council recommended a seasonal apportionment of the portion of the Pacific cod TAC allocated to the hook-and-line gear fisheries. The seasonal apportionments are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) expected variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the year, and (3) economic effects of any seasonal apportionment of Pacific cod on the hook-and-line and pot gear fisheries. The seasonal allocation of the Pacific cod ITAC is specified in Table 4.

TABLE 4.—1995 GEAR SHARES OF THE BSAI PACIFIC COD INITIAL TAC

Gear	Percent TAC	Share ITAC (mt)	Seasonal apportionment		
			Date	Percent	Amount (mt)
Jig	2	4,250	Jan 1	100	4,250
Hook-and-line/pot gear	44	93,500	Jan 1–Apr 30	73	[1] 68,000
			May 1–Aug 31	19	18,000
			Sep 1–Dec 31	8	7,500
Trawl gear	54	114,750	Jan 1	100	114,750
Total	100	212,500			

[1] Any portion of the first seasonal apportionment that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

Sablefish Gear Allocation and CDQ Allocations for Sablefish

Regulations at § 675.24(c)(1) require that sablefish TACs for BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear allocations of TACs are specified in the following proportions: Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent, and Aleutian Islands subarea: trawl gear—25 percent; hook-and-line/pot gear—75 percent. In addition, regulations under § 676.24(b) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as sablefish CDQ reserve. To accommodate the CDQ reserve and allow for the issuance of 1995 sablefish individual fishing quotas (IFQs), NMFS is releasing reserves to make the full amount of the 1995 sablefish TACs available early in the fishing year. Gear allocations and CDQ shares of sablefish TACs are specified in Table 5.

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TABLE 5.—1995 GEAR AND CDQ SHARES OF BSAI SABLEFISH TAC

Area (mt)	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]	Share of CDQ [2]
BS	Trawl	50	800	800	N/A
	Hook-and-line/Pot [2]	50	800	640	160
AI	Trawl	25	550	550	N/A
	Hook-and-line/Pot	75	1,650	1,320	330
Total			3,800	3,310	490

[1] Reserve added to ITAC.
[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line gear or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

Sablefish CDP Allocations

On November 25, 1994, NMFS approved the 1995–97 Community Development Plans (CDPs) for the 1995–97 sablefish CDQ program. The percentages of CDQ fixed gear sablefish allocation for each approved CDP were published in the **Federal Register** on December 2, 1994 (59 FR 61877). The resulting 1995 allocations of sablefish to the approved CDPs are listed in Table 6

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1995 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

CDP recipient	Sablefish		Amount (mt)
	Area	Percent	
Atka Fishermen's Association	BS	0	0
	AI	0	0
Bristol Bay Economic Development Corp	BS	0	0
	AI	25	82.5
Coastal Villages Fishing Cooperative	BS	0	0
	AI	25	82.5
Norton Sound Economic Development Corporation	BS	25	40
	AI	30	99
Pribilof Island Fishermen	BS	0	0
	AI	0	0
Yukon Delta Fisheries Development Association	BS	75	120
	AI	10	33
Aleutian Pribilof Islands Community Development Association	BS	0	0
	AI	10	33
Total	BS	100	160
	AI	100	330

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the Bering Sea subarea, and for Pacific halibut throughout the BSAI specified under § 675.21(a). The PSC limits are:

—Zone 1 trawl fisheries, 200,000 red king crabs;
—Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
—Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
—BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;
—BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut; and
—BSAI trawl fisheries, 1,861 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 1995 herring biomass is 186,100 mt. This amount was derived using 1994 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 1995 is 1,861 mt.

Regulations at § 675.21(b)(2) authorize the apportionment of the non-trawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other non-trawl fisheries). The PSC allowances are listed in Table 7. In general, the fishery bycatch allowances listed in Table 7 reflect the recommendations made to the Council by its AP. These recommendations were based on 1994 bycatch amounts, anticipated 1995 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1992–93 observer data.

The Council recommended continuing to exempt groundfish pot gear fisheries from halibut bycatch restrictions during 1995. In 1994, total groundfish catch for the pot gear fishery in the BSAI was approximately 8,500 mt with an associated halibut bycatch of 58 mt, or less than 5 mt bycatch mortality using the mortality rate recommended for 1995 (8 percent). The Council recommended that pot gear be exempt from halibut-bycatch restrictions because (1) potential exists for halibut-bycatch mortality in the Greenland turbot or sablefish hook-and-line fisheries to require closure of the pot gear fishery if the halibut-bycatch allowance is reached, and (2) the groundfish pot gear fishery uses a selective gear type that experiences very low halibut bycatch mortality

The Council also recommended exempting the BSAI jig gear fishery and the sablefish hook-and-line gear fishery from halibut-bycatch restrictions. A proposed rule was published by NMFS on December 29, 1994 (59 FR 67268) which, if approved, would provide the authority to determine annually whether to apportion the halibut-bycatch limit to the groundfish jig gear fishery or the sablefish hook-and-line fishery or to exempt these fisheries from halibut-bycatch restrictions. At its December 1994, meeting, the Council recommended that the 1995 BSAI groundfish jig gear fishery and the sablefish hook-and-line gear fishery be exempt from halibut-bycatch restrictions. The final rule, if approved, would specify the Council's recommended exemptions.

TABLE 7.—FINAL 1995 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES.

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Red king crab, number of animals:			
Yellowfin sole	50,000		
Rcksol/flatsol/othflat [1]	110,000		
Turb/arrow/sab [2]	0		
Rockfish	0		
Pacific cod	10,000		
Pick/Atka/othr [3]	30,000		
Total	200,000		
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	225,000	1,525,000	
Rcksol/flatsol/othflat	475,000	510,000	
Turb/arrow/sab	0	5,000	
Rockfish	0	10,000	
Pacific cod	225,000	260,000	
Pick/Atka/othr	75,000	690,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
Yellowfin sole			750
Rcksol/flatsol/othflat			690
Turb/arrow/sab			120
Rockfish			110
Pacific cod			1,550
Pick/Atka/othr			555
Total			3,775
Pacific herring, mt:			
Midwater pollock			1,345
Yellowfin sole			315
Rcksol/flatsol/othflat			0
Turb/arrow/sab			0
Rockfish			8
Pacific cod			24
Pick/Atka/othr [4]			169
Total			1,861
Non-trawl fisheries			
Pacific halibut, mortality (mt)			
Pacific cod			725
Other non-trawl			175
Groundfish pot gear			(5)
Total			900

[1] Rock sole, flathead sole, and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and "other species" fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category
[5] Exempt.

Seasonal Apportionments of PSC Limits

Regulations at § 675.21(b)(3) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances among the fisheries to which bycatch has been apportioned. Under § 675.21(b)(3), such an apportionment must be based on certain types of information. See the discussion in the proposed specifications (59 FR 64383, December 14, 1994).

At its December 1994 meeting, the Council recommended that the halibut bycatch allowances listed in Table 7 be seasonally apportioned as shown in Table 8, for yellowfin sole, rock sole/flathead sole/other flatfish, rockfish, and pollock/Atka mackerel/"other species" fishery categories. The recommended seasonal apportionments reflect recommendations made to the Council by its AP.

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The Council recommended seasonal apportionments of the halibut bycatch allowances specified for the yellowfin sole, and rocksole, flathead sole, and other flatfish categories to provide additional fishing opportunities in the BSAI early in the year and to reduce the incentive for trawl vessel operators to move from the BSAI to the Gulf of Alaska after the rock sole roe fishery is closed, typically at the end of February.

The AP's recommended seasonal apportionment of the halibut bycatch allowance for the pollock/Atka mackerel/"other species" fishery category is based on the seasonal allowances of the Bering Sea pollock ITAC recommended for the roe and non-roe seasons, and the assumption that most of the pollock taken during the roe season will be taken with pelagic trawl gear with reduced halibut bycatch rates.

The AP recommended seasonal apportionment of the halibut bycatch allowance for the Pacific cod fishery based on: (1) Anticipation that the proposed rule published in the **Federal Register** on December 29, 1994 (59 FR 67268) would exempt the BSAI jig gear fishery and the sablefish hook-and-line gear fishery from halibut-catch restrictions, and (2) the Council's desire to limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high. Seasonal apportionments of the halibut bycatch allowances for 1995 are specified in Table 8.

TABLE 8.—FINAL SEASONAL APPORTIONMENTS OF THE 1995 PACIFIC HALIBUT BYCATCH MORTALITY ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES.

Fishery	Seasonal bycatch mortality allowance (mt halibut)
Trawl gear:	
Yellowfin sole:	
Jan. 20–Jul. 31	280
Aug. 01–Dec. 31	470
Total	750
Rock sole/flathead sole/"other flatfish":	
Jan. 20–Mar. 31	428
Apr. 01–Jun. 30	180
Jul. 01–Dec. 31	82
Total	690
Turbot/arrowtooth flounder/sablefish Total	120
Rockfish:	
Jan. 20–Mar. 31	30
Apr. 01–Jun. 30	60
Jul. 01–Dec. 31	20
Total	110
Pacific cod:	
Jan. 20–Oct. 24	1,450
Oct. 25–Dec. 31	100
Total	1,550
Pollock/Atka mackerel/"other species":	
Jan. 20–Apr. 15.	455
Apr. 15–Dec. 31	100
Total	555
Total Trawl Halibut Mortality	3,775
Non-trawl gear	
Pacific cod:	
Jan. 01–Apr. 30	475
May 01–Aug. 31	40
Sep. 01–Dec. 31	210
Total	725
Other non-trawl	175
Groundfish pot	(1)
Total Non-trawl Halibut Mortality	900

[1] Exempt.

For purposes of monitoring the fishery halibut bycatch mortality allowances and apportionments, the Regional Director will use observed halibut bycatch rates reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance or apportionment is reached. The Regional Director monitors the fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the final annual SAFE report.

The Council recommended that the assumed halibut mortality rates for the BSAI groundfish fisheries remain unchanged from those used in 1994. This recommendation is contrary to the recommendation of International Pacific Halibut Commission (IPHC) staff, who advocated assumed mortality rates that are generally higher, based on 1992–93 observer data. The Council further recommended that NMFS, if possible, conduct a mid-year evaluation of the halibut mortality rates, based on final 1994 and 1995 observer data, and adjust the rates for the remainder of 1995.

NMFS will use the assumed halibut mortality rates recommended by the IPHC staff for the BSAI groundfish fisheries in 1995 except for the BSAI Pacific cod hook-and-line gear fishery. Except for that fishery, NMFS believes data presented by the IPHC staff represent the best available information on halibut discard mortality rates and should be used to estimate halibut bycatch mortality levels.

NMFS will use an assumed halibut mortality rate of 12.5 percent for the BSAI hook-and-line cod fishery during the first half of 1995, instead of the IPHC's recommended rate of 18 percent, for the following reason: Mandatory careful release requirements are expected to result in reduced halibut discard mortality rates relative to the rates experienced in 1992–93; the BSAI hook-and-line fishery for Pacific cod has initiated a program to disseminate timely in-season data on halibut bycatch rates and individual vessel mortality rates that is anticipated to further reduce discard mortality rates within the fleet; vessels using hook-and-line or pot gear are allocated a specified portion of the BSAI Pacific cod TAC; the Council recommended that the halibut bycatch allowance apportioned to the BSAI Pacific cod hook-and-line fishery be apportioned into three seasons, with 28 percent of the annual apportionment allocated to the third season that starts September 1; the NMFS Observer Program Office has indicated that 1995 in-season observer data and final 1994 observer data for the BSAI Pacific cod hook-and-line fishery will be available by mid-1995 to allow for an analysis of observed halibut discard mortality rates and an adjustment from the 12.5 assumed rate in time for the beginning of the third season (September 1). This reconsideration could result in an increase or decrease of the assumed rate; and if the mid-1995 assessment of observer data indicates that the halibut mortality rate in the hook-and-line cod fishery has not declined to the extent anticipated, retroactive adjustments in the estimated 1995 halibut bycatch mortality would be accommodated within the third seasonal apportionment of the annual bycatch allowance specified for this fishery. Although an upward adjustment in estimated bycatch mortality may preclude a fishery for Pacific cod in the third season, NMFS believes that the amount of halibut bycatch mortality apportioned to the third season should prevent the halibut bycatch limit from being exceeded.

Assumed Pacific halibut mortality rates for BSAI fisheries during 1995 are specified in Table 9.

TABLE 9.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1995

	Percent
Hook-and-line gear fisheries:	
Rockfish	24.0
Pacific cod[1]	12.5
Greenland turbot	19.0
Sablefish	17.0
Trawl gear fisheries:	
Midwater pollock	89.0
Non-pelagic pollock	77.0
Yellowfin sole	76.0
Rock sole, flathead sole, other flatfish	75.0
Rockfish	69.0
Pacific cod	65.0
Atka mackerel	59.0
Arrowtooth	49.0
Greenland turbot	48.0
Pot gear fisheries:	
Pacific cod	8.0

[1] The assumed halibut bycatch mortality rate for the hook-and-line Pacific cod fishery will be re-evaluated mid-1995 using final 1994 observer data and inseason 1995 observer data.

Groundfish PSC Limits

No PSC limits for groundfish species are specified in this action. Section 675.20(a)(6) authorizes NMFS to specify PSC limits for groundfish species or species groups for which the TAC will be completely harvested by domestic fisheries. These PSC limits apply only to JVP or TALFF fisheries. At this time, no groundfish are allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Closures to Directed Fishing

If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8).

Fishing for groundfish in the BSAI is authorized from January 1 through December 31, with the following exceptions (§ 675.23): (1) Directed fishing for arrowtooth flounder and Greenland turbot is authorized from May 1, 1995, to December 31, 1995, subject to the other provisions in the BSAI regulations; (2) fishing for groundfish with trawl gear in the BSAI is prohibited until January 20, 1995; (3) with certain exceptions, directed fishing for pollock by the inshore component, defined at § 675.2, is authorized January 1, 1995, through April 15, 1995, and August 15, 1995, through the end of the fishing year; (4) with certain exceptions, directed fishing for pollock by the offshore component, defined at § 675.2, is authorized from January 26, 1995, to April 15, 1995, and from August 15, 1995, through the end of the fishing year; (5) directed fishing for pollock under the Western Alaska CDQ Program is authorized from January 1, 1994, through the end of the fishing year (§ 675.23(e)); and (6) directed fishing with trawl gear in Zone 1 for rockfish, Greenland turbot, arrowtooth flounder, and sablefish is closed, as there is no crab PSC to support this fishery (See Table 7).

In addition to these regulatory closures, NMFS may take action to implement closures to directed fishing for species needed as bycatch amounts in other directed fisheries. A principal consideration for the Council in developing its 1995 TAC recommendations was ensuring that the sum of the species TACs did not exceed the maximum OY of 2 million mt. After consideration of the amount of each species category TAC which is required for bycatch in other directed fisheries, the Council recommended that TAC amounts specified for certain species be established as directed fishing allowances.

NMFS concurs with the Council's recommendations, and accordingly, is prohibiting directed fishing for the following species and species groups: (1) Pacific ocean perch in the Bering Sea, (2) other red rockfish in the Bering Sea, (3) shortraker/rougheye in the Aleutian Islands, (4) other rockfish in the BSAI, (5) arrowtooth flounder in the BSAI, and (6) pollock in the Bogoslof district. Species or species groups identified in Table 10 are necessary as incidental catch to support other anticipated groundfish fisheries and TAC amounts for these species will be used for bycatch purposes only. If NMFS determines the full TAC amount will not be used as bycatch, NMFS may open a directed fishery for that species.

TABLE 10.—CLOSURES TO DIRECTED FISHING UNDER 1995 TACS[1]

Fishery (all gear)	Closed area[2]
Pollock in Bogoslof District.	Statistical Area 518.
Pacific ocean perch	Bering Sea.
Shortraker/rougheye rockfish.	AI.[3]
Other rockfish[4]	BSAI.
Other red rockfish[5]	Bering Sea.
Rockfish, Greenland turbot/arrowtooth/sablefish.	Zone 1.
Arrowtooth	BSAI.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.
[2] Refer to § 675.2 for definitions of areas.
[3] "AI" means Aleutian Islands area.
[4] In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.
[5] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

In addition to the above closures, NMFS closed the directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea effective noon, A.l.t., February 2, 1995, under authority of the interim 1995 specifications. In accordance with § 675.20(a)(7)(ii), these closures will remain in effect until 12 midnight, A.l.t., December 31, 1995. Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Technical Amendment To Revise Specified Fishery Categories for Directed Fishing Standards and PSC Apportionments

Two technical amendments are necessary to update a directed fishery standard and a definition of a fishery category to reflect the establishment of a flathead sole TAC separate from the "other flatfish" category.

First, regulations under § 675.20(h)(2) establish directed fishing standards for yellowfin sole, rock sole, arrowtooth flounder, and "other flatfish." To the extent that flathead sole now has a separate ABC, TAC, OFL, and ITAC, the standards for directed fishing are revised by technical amendment to add flathead sole to this directed fishing category.

Second, regulations under § 675.21(b) authorize the apportionment of each PSC limit into bycatch allowances for specified trawl fishery categories. The definition of these fishery categories at § 675.21(b)(1)(iii) must be amended to include the new flathead sole fishery at § 675.21(b)(1)(iii)(B)(*2*). The fishery category "rock sole/other flatfish" is revised, therefore, to "rock sole/flathead sole/other flatfish" to provide PSC amounts for this category.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and 676; and is exempt from review under E.O. 12866.

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The final rule makes minor technical amendments to 50 CFR 675.20 and 675.21. These amendments are a logical outgrowth of the proposed 1995 TAC specifications, which separated flathead sole from the "other flatfish" category, and are necessary to implement the specifications. Prior notice and opportunity for public comment would serve no useful purpose and is, therefore, unnecessary. Accordingly, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) finds good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B).

This action adopts final 1995 harvest specifications for the BSAI, revises associated management measures, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. Without these closures, specified TAC amounts will be overharvested and retention of these species will become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources. Accordingly, the Assistant Administrator finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the technical amendment discussed above. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in effective date.

NMFS has determined that the BSAI groundfish fisheries are not likely to affect Steller sea lions in a way or to an extent not already considered in previous Section 7 consultations on this fishery. NMFS has determined that reinitiation of formal consultation under this ESA is not required.

NMFS prepared an EA on the 1995 TAC specifications. The Assistant Administrator concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see addresses).

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: February 7, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.20, paragraph (h)(2) is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(h) * * *

(2) *Yellowfin sole, rock sole, arrowtooth flounder, flathead sole, or "other flatfish."* The operator of a vessel is engaged in directed fishing for yellowfin sole, rock sole, arrowtooth flounder, flathead sole or "other flatfish" if he or she retains, at any time during a trip, an amount of one of these species equal to or greater than 35 percent of the amount of the other respective species retained at the same time on the vessel during the same trip, plus 20 percent of any groundfish species other than yellowfin sole, rock sole, flathead sole or "other flatfish" retained at the same time on the vessel during the same trip.

* * * * *

3. In § 675.21, paragraph (b)(1)(iii)(B)(*2*) is revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) * * *

(*2*) *Rock sole/flathead sole/"other flatfish" fishery.* Fishing with trawl gear during any weekly reporting period that is defined as a flatfish fishery under paragraph (b)(1)(iii)(B) of this section and is not a yellowfin sole fishery as defined under paragraph (b)(1)(iii)(B)(*1*) of this section.

* * * * *

[FR Doc. 95–3485 Filed 2–8–95; 4:37 pm]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Advanced Simulation Plan Revisions; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28072; Notice No. 95–2]

RIN 2120–AF29

Advanced Simulation Plan Revisions

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to: Revise and clarify certain requirements of the Advanced Simulation Plan for part 121 operators to authorize more training and checking in simulators; clarify the operating experience requirements for certain second-in-command pilots trained and checked in simulators; and eliminate the requirement that the minimum of 1 year of employment as an instructor or check airman be with the operator of the simulator. This action is needed to respond to concerns identified by certain affected certificate holders in petitions for exemption. It is intended to alleviate unnecessary training costs while maintaining an equivalent level of safety.

DATES: Comments must be received by March 16, 1995.

ADDRESSES: Comments on this proposal may be mailed in triplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28072, 800 Independence Avenue Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3747

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28072." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure

Background

Terminology

Appendix H to 14 CFR part 121, "Advanced Simulation Plan," provides guidelines and a means for achieving flightcrew training and checking in advanced airplane simulators. The three-phase plan provides standards for a progressive upgrade of airplane simulators so that the total scope of flightcrew training can be enhanced.

Appendix H specifically describes the simulator and visual system requirements that must be met to obtain approval to conduct certain training and checking in the particular type of simulator (Phase I, II, or III). The term "phase" was used because it was expected that operators would be upgrading their simulator inventories in phases while exercising simulator privileges commensurate with the phase of the simulator. The upgrading of simulators in phases is now essentially complete and the designation of "phase" for identification of simulator complexity is no longer descriptive. Operators no longer begin at a lower level of qualification and upgrade in phases. The tendency is to acquire a given level simulator that best meets their needs. The agency and the industry now commonly refer to the simulators in terms of "levels." The levels currently used to describe a particular simulator compared with the older phase designations are:

New terminology	Old terminology
Level A	Visual.
Level B	Phase I.
Level C	Phase II.
Level D	Phase III.

It is proposed to revise Appendix H to replace the old terminology with the new throughout the appendix. The new terminology will be used throughout this preamble in discussing other amendments proposed herein.

Advanced Simulation

Appendix H was developed and adopted when there were no "advanced simulators." Currently, however, advanced simulators exist which have permitted virtual duplication of many aircraft performance characteristics and systems. As a result, the vast majority of U.S. airline pilot training is now conducted in these advanced simulators. According to industry members, however, certain limitations originally incorporated into Appendix H still require a small, yet relatively expensive, amount of training to be completed in the actual airplane.

In light of their highly satisfactory experience with these simulators, some industry members believe that a Level C simulator should be approved for those flightcrew training and checking maneuvers that currently are permitted only in the aircraft or in Level D simulators. In a petition for exemption dated October 12, 1992, the Air Transport Association, on behalf of its affected member airlines and other similarly situated airlines, petitioned for an exemption to provide for initial training in a Level C simulator. Trans World Airlines and Tower Airlines petitioned individually to use a Level C simulator to conduct limited initial and upgrade training and checking functions that would normally be conducted in a Level D simulator. Agreeing in part with the petitioners' supportive information and, based on its own experience, the FAA granted some limited relief for training and checking.

More recently, United Airlines (UAL) has requested similar but slightly more extensive relief than previously granted. UAL believes that its experience with advanced simulation, as well as the FAA's own experience, more than adequately justifies expanding the scope of flightcrew training and checking in a Level C simulator. In support of its request, UAL points out that: (1) The same training curricula and pilot proficiency standards would apply to a Level C or Level D simulator; (2) these curricula can be implemented and proficiency demonstrated effectively in a Level C simulator; and (3) daily local FAA oversight of training and checking programs will assure that these curricula and standards remain sufficient.

UAL further believes that its request would be in the public interest since it is universally acknowledged that simulator training is superior to training in an actual aircraft and the public is served best when high quality training is conducted in the safest and most cost-effective manner.

The FAA agrees with much of UAL's rationale in its petition; however, after consideration of the supportive information, the FAA believes that UAL is not alone or unique in its request. Therefore, the FAA has determined that the appropriate response to the UAL petition for exemption is to propose a change to the existing regulations.

Discussion of the Proposal

Authorizing Additional Training and Checking in a Level C Simulator

All simulators duplicate or simulate the functions of an airplane to varying levels of accuracy. The FAA requires that, for each higher level of simulator, the simulator duplicate the performance of the airplane over larger and more critical portions of the airplane's operating envelope. This performance must be shown by documented evidence. Level D simulators must provide the highest level of flight realism. They must perform as the airplane performs over the largest portion of the airplane's operating envelope, while providing the most complete and technically accurate environment possible. Evidence of this performance must include certain sophisticated aerodynamic modeling that allows more complete replication of the performance of the airplane.

Level C simulators are designed to operate over the same portion of the airplane's operating envelope as Level D simulators, and do so under a relatively sophisticated performance verification process. Level C simulators, however, are not required to have sophisticated aerodynamic modeling factors. Nor do they undergo the degree of performance verification that Level D simulators do. However, based on 13 years of experience using Level C simulators and on the rigorous qualification process and performance standards required for Level C simulators, the FAA has determined that they may now be used for initial qualification and upgrade training and checking for SIC. Because of performance differences between Level C and Level D simulators, however, the pilots qualified using Level C simulators should meet certain prerequisite levels of experience. They should also be required to have supervised post qualification operational experience.

Prior Aeronautical Experience

In Appendix H to part 121, the FAA proposes to add a new paragraph to the section entitled "Level C Training and Checking Permitted." It would permit SIC applicants to obtain initial and upgrade training and certification checks in Level C simulators if certain preconditions are met. The rule would require that the applicant meet the prior aeronautical experience requirements for an ATP certificate and airplane rating under § 61.155, before beginning training in a Level C simulator and before being checked under § 61.157 in a Level C simulator for an ATP certificate or rating.

In addition, these SIC initial and upgrade applicants must fulfill special operational experience requirements under proposed new provisions in § 121.434(c)(2). Under proposed § 121.434(c)(2)(ii), the SIC would have to obtain line operations experience at the SIC duty position, supervised by a check pilot. These pilots will not have the option, available to other pilots under § 121.434(c)(2)(i), to fulfill operating experience requirements by simply observing another pilot perform SIC duties. In addition, as part of this initial operating experience, these pilots would have to perform a minimum of four takeoffs and four landings also under the supervision of a check pilot.

The proposed amendment to § 121.434(f) would not allow pilots trained in a Level C simulator to substitute takeoffs or landings for required operating experience. The proposed rule would continue to allow other SIC pilots to reduce by 50 percent the hours of required operating experience by the substitution of one additional takeoff and landing for each hour of flight.

Revising Appendix H to authorize expanded use of Level C simulators for additional training and checking would provide an equivalent or higher level of safety. Additionally, by not doing this training and checking in flight in the actual aircraft, these authorized programs would provide benefits in safety, energy conservation, and efficiency.

Modifying Employment Requirement

The FAA is proposing to remove the requirement in Appendix H (in paragraph 3 of the section entitled "Advanced Simulation Training Program") that each instructor and check airman have been employed for at least 1 year by the certificate holder applying for approval of the program. The FAA's intention, in originally requiring a minimum period of 1-year of employment with the operator, was to ensure suitable experience levels for individuals selected to be instructors and check airmen. The most sophisticated simulator can be of little value without an experienced, well-trained instructor or check airman to operate it. However, the agency has concluded that this goal can be achieved by 1 year of experience serving as an instructor or check airman with any part 121 operator. The FAA believes that this amount of instructor experience, in addition to the training prerequisites for these individuals in Appendix H, is an adequate level of preparation for an instructor or check airman in a Level C simulator. Modifying the employment requirement in this way will not decrease safety. However, it should be noted that, instructors and check airmen may participate in more than one operator's approved training program, each operator must provide training for each instructor and check airman in its training program. Thus, an instructor or check airman who instructs for more than one operator must receive training in each operator's program.

Similarly, the FAA is proposing to revise the section entitled "Phase II. Training and Checking Permitted" in Appendix H to provide that pilots seeking to upgrade to pilot in command (PIC) do not have to have obtained the prerequisite SIC experience "with the operator," nor have served or be serving as SIC "with that operator." Again, the FAA believes that the level of experience required by an approved training program in addition to the training prerequisites for these individuals in Appendix H and elsewhere under the Federal Aviation Regulations, establishes an adequate level of preparation regardless of employment with any specific operator

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Clarifying Training and Certification Check Requirements for Initial and Upgrading Training for SIC's Upgrading to PIC

The FAA is also proposing to revise paragraph 2 of the section entitled "Level C, Training and Checking Permitted," to clearly distinguish between the prerequisites for initial versus upgrade training and checking. To do this, paragraph 2(a) would be redesignated as paragraph 2 and paragraph 2(b) as paragraph 3. New paragraph 3 would be stated so as to eliminate the need for the flush paragraph currently at the end of the section.

Current paragraph 2(a) sets forth the prerequisites for training and checking in a Level C simulator for SIC's upgrading to PIC in the same equipment. For example, a pilot serving as SIC in a Boeing 727 upgrading to PIC in the same airplane would have to meet the requirements of this paragraph. Under new paragraph 2, these requirements would not change. The pilot would still have to have previously qualified as SIC in the equipment, have at least 500 hours of actual flight time as SIC in an airplane in the same group, and be currently serving as SIC in an airplane in the same group. These requirements are consistent with the definition of upgrade training under Subpart N—Training program. Section 121.400(c)(3) defines "Upgrade training" as the training required for crewmembers who have qualified and served as SIC or flight engineer on a particular airplane type, before they serve as PIC or SIC, respectively, on that airplane.

The requirements of current paragraph 2(b) must be read in conjunction with the final paragraph in the section to determine that it applies to initial training and checking for SIC's upgrading to PIC in an airplane type in which the pilot has never served as SIC. This SIC has experience in the same group of airplanes, but not in the same airplane to which the pilot wants to upgrade. For example, a pilot serving as an SIC in a Boeing 737 initially upgrading to PIC in a Boeing 727 must meet the requirements of this paragraph.

New paragraph 3 would not change this requirement, but would make it easier for the reader to see that it applies to initial training and checking. The pilot would still have to be employed by an operator, be currently serving as SIC in an airplane in the same group, have a minimum of 2500 flight hours as SIC in airplanes in the same group, and have served as SIC on at least two airplanes of the same group. Because proposed new paragraph 3 would refer to "initial" training, the language in the current last paragraph is no longer needed to explain that pilots meeting these requirements may upgrade to another airplane in that group in which that pilot has not previously qualified. The requirements in new paragraph 3 continue to be consistent with § 121.400(c)(1), which defines "initial training" as the training required for crewmembers and dispatchers who have not qualified and served in the same capacity on another airplane of the same group.

Modifying Minimum Flight Hour Requirements

The FAA also is considering whether to propose revising certain flight hour experience requirements for initial and upgrade training and checking in a Level C simulator. Currently, pilots upgrading from SIC to PIC in equipment in which they have previously qualified as SIC are required to have at least 500 hours of actual flight time while serving as SIC in an airplane in the same group. Similarly, pilots who are initially upgrading from SIC to PIC in other equipment in which the pilot has not been previously qualified, must have a minimum of 2500 hours as SIC in airplanes of the same group as the equipment to which they are upgrading.

The flight hour experience requirements ensure that a pilot has adequate experience in order to upgrade to PIC. These values were established, based on the collective opinions of the FAA and industry members, when Appendix H was originally adopted. Since then, industry members have argued that the required hours are excessive. Based on the success of some industry members who have operated under exemptions that provided certain relief of these flight-hour requirements and other specific requirements for upgrade training under Subpart N, the FAA may propose, for example, to eliminate the 500 flight-hour requirement and reduce from 2500 to 500 the number of flight hours required for initial upgrade training and checking.

The FAA seeks comments and additional information that may justify proposing to modify these current flight hour requirements in a future notice of proposed rulemaking.

Standardizing Language and Eliminating Obsolete References

As discussed above, the term "phase" is no longer used to describe the various simulators referred to in Appendix H. Accordingly, it is proposed to replace "phase" with "level" wherever it appears and to use the current alphabetical designations for the various levels.

In addition, it is proposed to remove the section entitled "Phase IIA Interim Simulator Upgrade Plan for Part 121 Operators" as obsolete. For the same reason, it is proposed to remove paragraph 7 of the section entitled "Advanced Simulation Training Program" which references Phase IIA. Under Phase IIA, any part 121 operator could conduct Phase II training for 3 and ½ years from the date it was approved for Phase I in a simulator approved for the landing maneuver under Phase I. The carrier's upgrade plan had to be submitted to the FAA before July 30, 1981. Thus, these provisions are no longer effective.

Regulatory Analysis

Executive Order 12866 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of this rulemaking action. The FAA has determined that this proposed rule is not a "significant rulemaking action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A more detailed discussion of costs and benefits is contained in the full regulatory evaluation placed in the docket for this proposed rule).

Costs

The proposed rule would not improve any additional costs on either part 121 air carrier operators or the flying public. The proposed rule would allow certain training practices that the FAA has determined to be safe and efficient methods for training pilots, and it would clarify other portions of Appendix H. Thus, the proposal would not impose any additional costs because it would permit operators to use the least costly methods of training while maintaining an equivalent level of safety for the flying public. Since current training practices would be maintained to current standards under the proposed rule, there would be no reduction in aviation safety imposed on the flying public.

Potential Cost-Relief Benefits

The proposed rule would generate potential cost savings benefits estimated at $20 million, in 1992 dollars, over the next 10 years (or $12.4 million, discounted, using a 7.0 percent rate of interest). These potential cost savings benefits would take the form of increased operational efficiency (qualitative) and cost savings (quantitative) to those part 121 operators engaged in initial simulator training, in accordance with Appendix H.

The potential cost savings benefits of the proposed rule represent the difference between the costs incurred currently by part 121 air carriers for initial training and checking of SIC pilots and the costs that would be incurred if the proposal were to become a rule. Currently, certain requirements for initial training and checking of SIC pilots that are not performed in a Level D simulator must be performed in the aircraft. Under the proposed rule, those requirements that are performed in the aircraft in lieu of a Level D simulator would be performed in a Level C simulator. The costs of operating the aircraft for those requirements above the costs of operating the less expensive simulator for those same requirements is the estimated benefit of this proposed rule.

In an effort to derive a cost-relief estimate associated with this proposed rule, several part 121 air carriers were contacted. These air carriers provided the agency with estimated aircraft operating costs per hour, the time needed to train and check pilots for those requirements that, under the present rule, cannot be performed in a Level C simulator, and the number of pilots that it expects to train in the next 10 years.

Potential Operational Efficiency Benefits

The potential benefits of the proposed rule would be generated in the form of increased operational efficiency. In the full regulatory evaluation placed in the docket, these potential efficiency benefits are presented qualitatively. These benefits are difficult to estimate quantitatively due, at present, to the lack of available cost information.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules will have "a significant economic impact on a substantial number of small entities" and, in cases where they will, conduct a Regulatory Flexibility Analysis.

Accordingly to FAA Order 2100.14A (Regulatory Flexibility and Guidance), a substantial number of small entities is defined as a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule. A significant economic impact on a small entity is an annualized net compliance cost which, when adjusted for inflation, equals or exceeds the significant cost threshold for the entity type under review.

The entities that potentially would be affected by the proposed rule are small part 121 operators that own, but do not necessarily operate, nine or fewer aircraft. As discussed in the cost section of this evaluation summary, the proposed rule would not impose any costs on these operators because it is cost-relieving in nature. Therefore, the proposed rule would not impose a significant economic impact on a substantial number of small aircraft operators.

International Trade Impact Assessment

The proposed rule would have little, if any, impact on the competitive posture of either U.S. carriers doing business in foreign countries or foreign carriers doing business in the United States. This assessment is based on the fact that the proposed rule would not impose any cost on part 121 operators because it is cost-relieving in nature. These operators do not compete directly with air carriers engaged in foreign operations (part 129).

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposal would not have federalism implications requiring the preparation of a Federalism Assessment.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, it is certified that this proposal, if adopted, will not have a significant economic impact, positive or negative, on an substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Transportation

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 continues to reads as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983)

2. Section 121.434 is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 121.434 Operating experience.

* * * * *

(c) * * *

(2) A second-in-command pilot must perform the duties of a second in command as follows:

(i) For a second-in-command pilot who received training for second-in-command duties for the relevant type airplane pursuant to any appropriate provision of this part other than paragraph 4 of "Level C Training and Checking Permitted" in Appendix H of this part, he or she must perform those duties under the supervision of a check

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pilot or observe the performance of those duties on the flight deck.

(ii) For a second-in-command pilot who received training in a Level C simulator in accordance with Appendix H of this part, he or she must perform—

(A) Those duties under the supervision of a check pilot; and

(B) At least four takeoffs and four landings as sole manipulator of the controls under the supervision of a check pilot.

* * * * *

(f) Except for second-in-command pilots who were trained for the airplane type in a Level C simulator in accordance with Appendix H of this part, the hours of operating experience for flight crewmembers may be reduced to 50 percent of the hours required by this section by the substitution of one additional takeoff and landing for each hour of flight.

* * * * *

3. Appendix H is amended by replacing the words "Phase I", "Phase II", and "Phase III" with the words "Level B", "Level C", and "Level D" respectively, wherever they appear; by replacing the words "Phase I, II, and III" with the words "Level B, C, and D", wherever they appear; by replacing the words "Phase II or III" with the words "Level C or D", wherever they appear; by replacing the words "Phase I, II, or III" with the words "Level B, C, or D", wherever they appear; by replacing the words "Phase II, IIA, or III" with the words "Level C or D", wherever they appear; by replacing the word "phase" with the word "level", wherever it appears; and by replacing the word "phases" with the word "levels" wherever it appears.

4. The section entitled "Advanced Simulation Training Program" in Appendix H is amended by removing paragraph 7 and revising paragraph 3 to read as follows:

Appendix H to Part 121—Advanced Simulation Plan

* * * * *

Advanced Simulation Training Program

* * * * *

3. Documentation that each instructor and check airman has served for at least 1 year in that capacity in a certificate holder's approved program or has served for at least 1 year as a pilot in command or second in command in an airplane of the group in which that pilot is instructing or checking.

* * * * *

5. Appendix H, "Phase II, Training and Checking Permitted" is amended by revising paragraph 2. and adding paragraphs 3. and 4. to read as follows:

* * * * *

Level C—Training and Checking Permitted

1. * * *

2. Upgrade to pilot-in-command training and the certification check when the pilot—

a. Has previously qualified as second in command in the equipment to which the pilot is upgrading;

b. Has at least 500 hours of actual flight time while serving as second in command in an airplane of the same group; and

c. Is currently serving as second in command in an airplane in this same group.

3. Initial pilot-in-command training and the certification check when the pilot—

a. Is currently serving as second in command in an airplane of the same group;

b. Has a minimum of 2,500 flight hours as second in command in an airplane of the same group; and

c. Has served as second in command on at least two airplanes of the same group.

4. For all second-in-command pilot applicants who meet the aeronautical experience requirements of § 61.155 of this chapter in the airplane, the initial and upgrade training and checking required by this part, and the certification check requirements of § 61.157 of this chapter

* * * * *

6. Appendix H, "Phase IIA, Interim Simulator Upgrade Plan for Part 121 Operators" is removed in its entirety

Issued in Washington, DC, on January 31, 1995.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 95-3132 Filed 2-13-95; 8:45 am]

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federal register

Tuesday
February 14, 1995

Part V

Department of Energy

Bonneville Power Administration

Pacific Northwest Electric Power Planning and Conservation Act; Proposed Transmission and Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment; Notices

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DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Wholesale Power Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment.

SUMMARY: *BPA File No:* WP–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation WP–95.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing wholesale power rate schedules to be effective October 1, 1995, so that the wholesale power rates in total produce revenues that best enable BPA to meet its costs.

The proposal BPA is making at this time is preliminary. While BPA was in the late stages of putting together its proposal, it determined that the proposal as prepared could send an erroneous signal of BPA's commitment to rate stability. Competitive forces are causing fundamental and significant changes in the Pacific Northwest wholesale electric power market on a weekly, and sometimes a daily, basis. The competition is relentless, and BPA can not issue a final rate proposal that does not allow it to meet and beat the competition. Nothing other than that will allow BPA to sustain its statutory responsibilities. As a consequence, BPA has determined that its initial proposal should include a stable, 5-year rate for most, if not all, of its requirements service. BPA anticipates that the work necessary to assemble such a proposal will take until late March or early April of 1995. Since such a rate would cover the bulk of BPA's firm sales, its impact on BPA's overall proposal is fundamental. Thus, the information BPA is releasing now should be considered preliminary. Information in BPA's preliminary proposal concerning rate design, product definition and pricing, revenue requirement, and other matters should provide parties valuable information that will enable them to better assess BPA's initial proposal when it is released in late March or early April. BPA will propose a rate hearing schedule at the prehearing conference that will take into account changes in the markets and allow review of BPA's initial proposal that it intends to make in late March or early April of 1995. The rate hearing schedule will be published in the **Federal Register** immediately following the prehearing conference.

Opportunities will be available for interested persons to review BPA's rate proposal, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Petitions to intervene must be received by 9 a.m. February 13, 1995, and should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk-LQ, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

In addition, a copy of the petition must be served concurrently on BPA's Office of Legal Services:, Janet L. Prewitt, Office of Legal Services-LQ, 905 NE. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9:00 a.m. on February 13, 1995, in the BPA Rates Hearing Room, 3rd Level, 2032 Lloyd Center; Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile preliminary proposal studies at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs, and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule information is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

On or about February 9, 1995—Rate Schedules and General Rate Schedule Provisions, mailed to customers and 1993 rate case parties and available from BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995—Deadline for interventions to be filed with Hearing Clerk at above address.

On or about February 13, 1995—Preliminary proposal studies available at BPA's Rates Hearing Room; 2032 Lloyd Center; Portland, Oregon and BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon

February 13, 1995—Prehearing conference to set schedule and act on petitions to intervene.

On or about April 5, 1995—BPA Initial Proposal filed.

October 29, 1995—Final Record of Decision published.

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times and locations of the field hearings will be made later through mailings and public advertising.

When BPA holds public field hearings, written transcripts are made and included in the official record. A notice of the dates and times of the field hearings also will be published in the **Federal Register**.

ADDRESSES: The date for written comments by participants must be received by May 15, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager, Corporate Communications-CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519.

Information may also be obtained from

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621, Portland, OR 97232 (503–230–5356)

Mr George Eskridge; Manager, SE Sales and Customer Service District; 1101 W River, Suite 250; Boise, ID 83702 (208–334–9137)

Mr Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201 (509–353–2518)

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660 (360–418–8600)

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; 201 Queen Anne Ave. N., Suite 400; Seattle, WA 98109–1030 (206–216–4272).

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION:

Table of Contents

I Introduction
II Purpose and Scope of Hearing
III Procedures Governing Rate Adjustments and Public Participation
IV Major Studies
V Tiered Rates Methodology
VI. Wholesale Power Rate Schedules
VII Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

I. Introduction

After the 1993 rate case, BPA conducted a series of workshops on subjects relevant to its ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of the 1995 rate case, and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to address the impacts of BPA's "reinvention," transmission issues, risk mitigation, forecasted revenue requirements, and rate design issues. The workshops provided opportunity for informal public comment on issues prior to the formal hearing process.

On December 28, 1994, BPA published in the **Federal Register** a Notice of "Intent to Revise Wholesale Power Rates to Become Effective October 1, 1995," 59 F.R. 66947, in order to satisfy contractual provisions between BPA and its customers. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates must be adjusted for the FY 1996 and FY 1997 rate period. BPA also is considering setting some rates for periods longer than 2 years.

In order to assess its current rates, BPA first determined the amount of revenues required to meet its financial obligations in FY 1996 and FY 1997. BPA has determined that the revenues it would expect to collect from projected sales under its current rates will not adequately recover these revenue requirements. Therefore, BPA proposes to revise its wholesale power rates. At the conclusion of the rate proceeding, BPA will file its rates with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

Consistent with the risk mitigation policy adopted in BPA's last rate case, BPA's preliminary proposal contains an Interim Rate Adjustment (IRA) that allows, but does not require, BPA to increase its rates for the second year of the rate period to reverse any serious, unplanned decline in financial reserves that occurs in the first year of the rate period. BPA also is including power rate schedules in this preliminary proposal that are both new and significantly different from BPA's 1993 power rate schedules, as well as including the negotiated rates for the Pacific Northwest Coordination Agreement.

BPA is planning significant changes in the design of its power rates. BPA is proposing to divide its priority firm (PF) and industrial firm power (IP) rates into two tiers, (Tier 1 and Tier 2) and to establish separate rates for each tier. The other services and products that customers may select to complement either firm requirements service provided by BPA, or power acquired from other sources, will be priced separately.

The proposed wholesale power rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 (1982). The proposed rate schedules reflect many requirements contained principally in the Northwest Power Act's rate directives (section 7) and the conditions related to classes of customers and services contained in the Northwest Power Act's power sales directives (section 5).

BPA proposes that its wholesale power rate schedules, including the adjustments, charges, and special rate provisions, and the General Rate Schedule Provisions associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. (BPA's proposal combines the General Rate Schedule Provisions for Wholesale Power Rates and Transmission Rates into one document—the GRSPs). BPA currently anticipates that it will request FERC approval of its revised rates effective October 1, 1995.

The 1995 wholesale power rate schedules, and the GRSPs associated with those rate schedules, supersede BPA's 1993 rate schedules (which became effective October 1, 1993) to the extent stated in the Availability section of each 1995 rate schedule. These schedules and GRSPs shall be applicable to BPA power sales contracts, as appropriate, including contracts executed both prior to and subsequent to enactment of the Northwest Power Act. In addition, as stated in the availability section of each schedule, certain of the rates and tiered rate methodology will be effective for extended periods of time.

In developing the proposed wholesale power rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, ease of comprehension, and BPA's statutory obligations. The studies that have been prepared to support the proposed preliminary rates will be mailed to all parties to BPA's 1993 rate case and will be available for examination on February 13, 1995, at BPA's public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th; Portland, and will be available at the prehearing conference, to the extent they are available. The preliminary studies and documents are:

1. Loads and Resources Study and Documentation
2. Revenue Requirement Study and Documentation
3. Segmentation Study
4. Marginal Cost Analysis Study and Documentation
5. Wholesale Power Rate Development Study and Documentation
6. Wholesale Power and Transmission Rate Schedules.

BPA's proposed Wholesale Power and Transmission Rate Schedules and General Rate Schedule Provisions will be published in a separate **Federal Register** Notice on or about February 13 1995. In addition, the documents described above will be mailed to BPA's customers, 1993 rate case parties, and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

To request any of the above documents by telephone, call BPA's document request line: (503) 230–3478 or call toll-free 1–800–622–4520. Please

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request the document by its above-listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise, the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Documentation.")

Because of the complexity of the issues in this rate case, in part occasioned by continuing contract negotiations between BPA and its customers, as well as BPA's "reinvention" and Competitiveness Project, BPA anticipates that it will need to meet with customers and other interested third parties during the rate case on a very frequent, and possibly extended, basis. To comport with the rate case procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to participate fully in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

II. Purpose and Scope of Hearing

BPA's proposal to revise its wholesale power rates is needed in order for BPA to continue to recover all costs and expenses allocated to the Federal power system, including amortization of the Federal investment in the FCRPS over a reasonable period of time, and to recover the costs in a way that achieves the goals of BPA's Competitiveness Project. BPA has found that substantial changes must be made in the ways in which it sets its rates if it is to remain competitive. If BPA is not competitive, it will not recover its costs, and it then will be unable to satisfy its statutory responsibilities.

BPA began its Competitiveness Project in early 1993 in response to market forces and deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a review of all of BPA's activities leading to structural reorganization, strategic action plans for each of BPA's major activities, an internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

BPA's Draft Strategic Business Plan and the Draft Business Plan EIS were released to the public in June 1994. The Draft Strategic Business Plan sets the overall strategic direction for both serving BPA's customers and meeting BPA's legislated responsibilities, including new statements of BPA's mission, values, and strategic business objectives to guide its activities. The Draft Strategic Business Plan also describes the conceptual framework for the products BPA is offering. As stated in the Draft Strategic Business Plan, BPA's pricing policies are designed to meet many objectives, including (1) providing maximum customer choice and encouraging optimal use of the FCRPS; (2) contributing to BPA's continued viability in an increasingly competitive energy market environment; and (3) allowing BPA to take full advantage of its responsibility and authority to manage the FCRPS, consistent with all statutory requirements.

The Draft Strategic Business Plan envisions BPA as having three separate and distinct business lines—power, transmission, and energy services (conservation)—which will be self-supporting and serve customers according to their unique needs. The Draft Strategic Business Plan also outlines a number of initiatives to improve BPA's competitiveness, including strategies to close the projected gap between BPA's costs and revenues, a financial strategy, and proposals to change BPA's power rate structures to give customers more choice, to more accurately reflect BPA's costs associated with providing the discrete components of electric service selected by customers, and thereby to encourage investment in cost-effective conservation. BPA proposes to close the revenue gap by exerting strict cost management and becoming market-driven.

To provide customers with a price signal that encourages efficient resource investment decisions, including conservation resources, and appropriately shares the benefits of the relatively low-cost Federal power and transmission systems, BPA is proposing to tier its power rates for requirements service and for the residential exchange. The rate for requirements service would be divided into two parts: a Tier 1 rate, and one or several alternative Tier 2 rates. BPA expects that the Tier 1 rate will be available to serve most of the existing customers' firm loads. The Tier 1 rate is expected to be a lower rate than Tier 2 because it will be based primarily on the costs associated with the existing Federal system. The Tier 2 rates will be available to serve regional firm requirements in excess of Tier 1, including future load growth, and will be based on the costs associated with supplying power to meet these loads.

To address the increasingly competitive market for power, transmission, and energy services, BPA is proposing to offer a menu of unbundled products in the 1995 rate case. BPA expects that the products offered will be available both under the current power sales contracts and under new power sales contracts. BPA expects to offer additional unbundled products in future rate cases and to price these products to meet market conditions and its cost recovery obligations. In some cases, BPA expects the market will require flexible pricing. BPA is planning to "unbundle" what it offers so customers can choose among products and services based on what they need to meet their loads and support their own resources, if any.

BPA is assessing the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of the Business Plan Environmental Impact Statement (EIS). Beginning in June 1994, BPA solicited input to the Draft Strategic Business Plan and the Business Plan EIS from customers throughout the region. From August 3–August 9, BPA held numerous public comment meetings throughout the region. Additionally BPA held a Draft Business Plan EIS workshop where participants were invited to design their own alternatives and consider the environmental and fiscal result. BPA field staff also were available to brief groups on the Draft Business Plan upon request. A supplemental Draft EIS, revised in response to comments received, will be available for public comment in February. The Draft EIS evaluates BPA's Business Plan proposal and a range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also documents the impact of the current rate proposal for purposes of the National Environmental Policy Act. Comments on the Business Plan EIS will be received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 1995 rates. The Final Business Plan and the Business Plan EIS that elaborates BPA's strategic action plans will be released in late 1995.

BPA's spending levels are developed as a part of its Strategic Business Plan, with the benefit of a public comment process. They also are determined as a part of the Federal budget process. Consistent with the Draft Strategic Business Plan, the Administrator formally announced spending levels for FYs 1996–2001 to the public on January 12, 1995. BPA will continue to refine its strategic business objectives, goals, and spending levels, and inform the public accordingly, as part of its Strategic Business Plan development process. That process is expected to culminate in a final Strategic Business Plan published in June 1995. Therefore, except for the limited exceptions hereafter noted, spending level decisions will not be addressed in this rate case. Accordingly, pursuant to section 1010.3(f) of the "Procedures, Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986) (hereinafter Procedures), the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to in any way visit the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's cost evaluation period of FY 1995 through FY 2000 and its test period revenue requirement for FYs 1996 through 2000. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate case. BPA's Revenue Requirement Study will incorporate spending levels and reflect BPA's risk mitigation, capital funding, and other financial goals in the rates. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are: (1) Forecasts of residential exchange benefits; (2) forecasts of short-term purchase power costs; (3) provision in BPA's revenue requirement for cash working capital or cash lag needs; (4) repayment matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; and (5) updates to forecasts by BPA which may occur in the spring of 1995 and for which no other review forum has been provided.

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. The proceedings for BPA's proposal to adjust wholesale power rates will be combined with the proceedings for BPA's proposal to adjust transmission rates. This proceeding will be governed by BPA's rules for general rate proceedings, § 1010.9 of BPA's Procedures, due to the importance and complexity of the issues involved. These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

BPA's Procedures distinguish between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the Procedures as any person who may express views, but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by May 15, 1995. This date is anticipated to follow the submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications, at the address listed in the Summary section of this Notice, above. In addition, BPA will hold several field hearings in the Pacific Northwest region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes the rate decision.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of BPA's Procedures. Parties may participate in any aspect of the hearing process.

Persons wishing to become a formal "party" to BPA's rate proceeding must notify the Hearing Officer and BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Intervention petitions will be available for inspection in BPA's Public Information Center; 1st Floor; 905 NE. 11th; Portland, Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Interventions are subject to § 1010.4 of BPA's Procedures.

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by BPA staff, BPA's environmental impact statement and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates first will be expressed in the Administrator's Draft Record of Decision (ROD). Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. The Administrator will serve copies of the Final ROD on all parties and will file the final proposed rates together with the record with FERC for confirmation and approval.

IV. Major Studies

1. Loads and Resources Study

BPA's forecasts of regional loads by customer group are the basis from which public utility and direct service industry (DSI) customer purchases from BPA (Federal system firm loads) are projected. BPA also projects Federal transmission losses, obligations to regional investor-owned utilities (IOUs) under their power sales contracts, and other inter- and intraregional contractual obligations.

BPA develops forecasts of regional non- and small-generating public utility

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(NSGPU) and generating public utility (GPU) loads using standard econometric techniques. Regional NSGPU and GPU loads are forecasted as a function of average retail electricity prices, weather-related variables, and nonagricultural employment. The regional load forecasts then are adjusted to account for factors such as effects from proposed wholesale tiered rate implementation and conservation programs to derive a projection of NSGPU and GPU purchases from BPA. The IOU load forecast was produced by updating the economic assumptions from the 1991 joint BPA/Northwest Power Planning Council (NPPC) forecast.

Forecasts of aluminum DSI purchases from BPA are prepared by analyzing smelter production costs relative to aluminum prices, and by considering other factors affecting smelter loads, including BPA's proposed tiered rate implementation. Forecasted non-aluminum DSI purchases from BPA are prepared by analyzing historical and technical plant information and forecasted market conditions. Adjustments also are made to incorporate the effects of BPA's tiered rate implementation.

BPA's resource acquisition plans are based on work by BPA and the NPPC staff and reflect extensive input and review by the general public and the region's utilities. The specific resource acquisitions and associated costs included in this proposal are based on BPA's 1994 Draft Strategic Business Plan. Besides emphasizing a diverse resource portfolio, including both conservation and generating resources, BPA is committed to moving toward a blend of acquisition methods, including BPA-designed, utility-designed, and developer-initiated programs. This combination of resource diversity and acquisition approaches allows BPA to better deal with varying circumstances and uncertainties.

The load/resource balance determines BPA's obligation to serve firm loads during the test years under 1930 water conditions. It also contributes to the determination of the supply of surplus firm power in the region and on the Federal system. A related hydro regulation study incorporates the operation of thermal plants, exports and imports of power, projected resource acquisitions, and system constraints such as the Columbia River flow augmentation project, "spill," and the water budget for fish migration. For this preliminary proposal, a 50-year hydro study was completed, which includes assumptions regarding the Columbia River flow augmentation. The hydro study starts in August 1995. The 50-year study determines nonfirm energy availability for the region.

2. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Transmission System Act, and the Northwest Power Act require BPA to set rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study includes a demonstration as to whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment requirements to the U.S. Treasury. Revenue requirements are the major factor in determining the overall level of BPA's proposed power and transmission rates.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. Separate generation and transmission revenue requirements are developed in the Revenue Requirement Study. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment is tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1995 preliminary rate proposal is based on cost and revenue estimates for FY 1996 and FY 1997. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1994. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

3. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, DSI, and IOU customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services it provides. This provides the basis for segmenting the projected transmission revenue requirements used in BPA's rate proposals. The results of the Study include the historical investment and the average of the last three years' operations and maintenance expenses. In addition, the facilities of the integrated network similarly are divided among distinct services. This division of the FCRTS into segments provides the basis for the equitable allocation of transmission costs between Federal and non-Federal customers based on their usage of the segments.

4. Marginal Cost Analysis

The Marginal Cost Analysis (MCA) estimates the marginal cost that BPA incurs to supply energy on a seasonal, daily, and hourly basis to meet customers' loads.

The conditions and terms under which BPA supplies energy necessitate that BPA take actions that impose a cost. The MCA measures the costs that BPA incurs in taking actions to provide energy under different terms. BPA proposes to measure the marginal costs of actions it takes to (1) guarantee availability of energy, (2) provide energy at guaranteed prices, and (3) actually deliver energy. The results of the MCA are used to develop wholesale power rates that promote efficient development and operation of generation and conservation resources.

BPA proposes to measure marginal costs based on the supply and demand conditions BPA faces in the interconnected West Coast wholesale power market. Estimated marginal costs are based on the results from a model that was developed to simulate future wholesale market transactions to aid in BPA's long-term power marketing and resource strategy decisions—the Power Marketing Decision Analysis Model (PMDAM). PMDAM projects the opportunity costs that BPA will face when taking actions to serve its Pacific Northwest customers, at the least cost, under conditions of uncertainty. PMDAM uses information on the costs associated with acquiring and operating

resources to meet load in conjunction with the costs associated with purchasing and/or selling power in the West Coast bulk power market.

The MCA provides estimates of BPA—s marginal costs of supplying energy at different times. These estimates provide the basis for classifying BPA's costs. All of BPA's generation costs were classified to hourly energy; no generation costs were classified to demand. The estimates also provide the basis for the seasonal and hourly time-differentiation of rates, including the identification of time-periods in which different rates may apply and appropriate levels for rates in each time period relative to the others. These time periods consist of hours of the week when the marginal cost of power is high and those when it is relatively low, as well as seasons of the year when different marginal costs prevail. The results of the analysis suggested more seasonality in BPA rates, three annual periods instead of the two previous seasons. The results also suggested that BPA energy rates be diurnally differentiated, which was not a feature of previous rate designs. This analysis does not include any quantitative estimate of marginal costs incurred on the transmission system.

5. Wholesale Power Rate Development Study (WPRDS)

BPA is proposing substantial changes in the method used to develop its wholesale power rates. BPA's wholesale power rate develop is a two step process. First, BPA performs a Cost of Service Analysis (COSA) and then adjusts these results to reflect various rate design objectives and statutory requirements.

A. Cost of Service Analysis

The Cost of Service Analysis (COSA) apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. BPA's revenue requirement is functionalized to transmission and generation in the Revenue Requirement Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the COSA to determine the costs of providing generation and transmission services to BPA's customers.

The COSA further identifies costs of specific types of service by performing the following steps:

1. *Classification.* BPA classified transmission costs entirely to capacity, and the transmission costs allocated to the power uses of the transmission system form the basis for the power rates demand charge. As described above in the Section concerning the Marginal Cost Analysis, in this rate proposal BPA proposes to classify generation costs to two components of electric power, delivered energy and rights to energy.

2. *Allocation.* The final major step in the COSA is to allocate the functionalized, segmented, and classified costs to customer classes. BPA's proposed tiered rate design necessitates a change in cost allocation approach. BPA is proposing to allocate costs to reflect the difference in costs associated with existing loads and future loads. Costs are allocated to classes of service on the basis of the relative use of services, and on the basis of priorities of service by resource pools provided in the Northwest Power Act. The COSA also determines and allocates the net costs incurred under the Residential Exchange Program prescribed in Section 5(c) of the Northwest Power Act. Costs that cannot be attributed to a particular resource pool or customer are allocated on a uniform basis to all customers.

a. Resource pools: For cost allocation purposes, BPA is proposing to separate resources into two categories: FBS resources and new resources. FBS resources are defined as (1) the Federal Columbia River Power System hydroelectric projects; (2) resources acquired by the Administrator under long-term contracts in force on the effective date of the Pacific Northwest Power Act; and (3) the resources acquired by the Administrator in an amount necessary to replace reductions in capabilities of resources in (1) and (2). Since enactment of the Northwest power Act in 1980, a number of events have occurred that have reduced FBS resources capability. BPA has initiated a consultation process with its customers in which BPA is considering replacing a portion of this lost capability with approximately 450 average megawatts from ten generating resources that BPA has acquired or contracted for since 1980. For the preliminary proposal, these FBS replacement resources are included in the FBS resource pool. Remaining resources are included in the new resource pool.

For the test period, BPA is proposing to allocate the payments BPA makes under the residential exchange program. Under the residential exchange program, BPA purchases power offered by an exchanging utility at its "average system cost." BPA then sells an equivalent amount of power back to the exchanging utility at the applicable PF rate. The residential exchange transaction, however, is only a "paper transaction" and does not result in actual power deliveries. The program provides for BPA to pay exchanging utilities the difference between the cost of power "purchased" by BPA and the cost of power "sold" by BPA. These cash payments by BPA are referred to as the net cost of the exchange. For the test period, BPA is proposing to allocate the net cost of the exchange to all firm loads except preference customer general requirement loads.

b. Tier 1 and Tier 2 Loads: Within each customer class, BPA is proposing to allocate resource costs separately to Tier 1 and Tier 2 loads, instead of allocating costs to the total customer class load. To accomplish this, the resources within the FBS resource pool are separated further into Tier 1 resources and Tier 2 resources. BPA is proposing to identify a set of FBS resources whose costs then will be allocated to Tier 1 loads. All other resource costs, including future FBS replacements or new resources, will be allocated to Tier 2 loads. For the test period, BPA is proposing to include all FBS resources, both existing and replacements, in the specified set of FBS resource costs allocated to Tier 1 loads.

BPA is proposing to allocate the majority of its short-term purchase power costs associated with meeting operational deficits to Tier 2 loads. In the months in which short-term operational purchases are required, these costs are allocated first to Tier 2 loads, new resources loads, and long term surplus firm power contract loads. Any remaining short-term purchase power costs then are allocated to Tier 1 loads.

B. Adjustments to Allocated Costs

The remaining steps in the rate design process use the allocated costs developed in the COSA and modify them to: (1) reflect BPA's rate design objectives; (2) conform with contractual requirements; (3) reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act; and (4) conform with requirements of applicable legislation. BPA's rate design objectives include recovery of BPA's revenue requirement, rate and revenue stability, practicality, fairness, and efficiency.

Major rate design adjustments to the allocated COSA costs include the following:

1. *Excess Revenue Adjustment.* In the initial cost allocation, BPA allocates its entire test period revenue requirement to firm power loads on the basis of

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resources available under critical water conditions. However, rates are set assuming BPA recovers nonfirm sales revenues equal to the expected value of revenues under 50 years of streamflows in the historical record. Since no generation costs are allocated to NF service, forecasted NF revenues are credited against costs allocated to firm loads. Similarly, revenues from nonfirm wheeling under the Energy Transmission (ET) rate schedule are credited to firm transmission loads.

2. *Nonfirm Energy Use Adjustment.* The Nonfirm Energy Use adjustment is a new adjustment that accounts for the costs and benefits derived from the use of nonfirm power to displace planned power purchases. The adjustment, in effect, results in loads served by balancing purchases (i.e., purchases necessary to balance loads and resources) "buying" the nonfirm energy used to displace some of those purchases, and loads served by the Federal Base System resources receiving a credit for this use of the nonfirm energy produced by those resources. The cost of purchase power is increased to reflect the average revenues received from other sales of nonfirm energy in the same months when power purchases are displaced. Loads served by Federal Base System resources then are credited by the same amount for this use of nonfirm energy.

3. *Surplus Firm Power Excess Revenue Adjustment.* BPA has sold and expects to continue to sell surplus power under long term contracts. Expected revenues from the sale of such power are compared to allocated costs. BPA expects revenues to exceed costs of this power, resulting in a credit to other customers.

4. *7(c)(2) Adjustment.* The rates applicable to the DSIs are set at a level that is equitable in relation to BPA preference customers' industrial rates. The costs allocated to the DSIs are higher than revenues from the "equitable" rate. The difference is a revenue deficiency called the "7(c)(2) delta," which is allocated to other customers.

The foregoing list of adjustments identifies some of the major cost adjustments and is not intended to be all-inclusive. All of the above adjustments are functionalized and segmented where appropriate. As a final step in rate design, BPA will develop seasonal and diurnally differentiated delivered energy charges based on the results of the MCA. At this final stage in the rate development process, annual energy costs have been allocated in COSA, and a series of rate design adjustments have reallocated and adjusted the costs by class of service. An average annual energy rate for each class of service then is developed by dividing the adjusted allocated costs by the billing determinants for the class of service. A set of seasonal and diurnally differentiated energy rates which recover an equivalent amount of adjusted costs then is developed.

5. Unbundled Products

For service under the 1981 and 1995 power sales contracts, BPA is unbundling the PF, NR, IP, and VI rates into Tier 1, Tier 2, load shaping and load regulation. Load shaping allows BPA to meet customer load variations from forecast. Load regulation, sometimes called load following, follows variations in the customers' loads on an instantaneous basis. BPA also will be adding unbundled charges for changes from preschedules and for reactive power deliveries. Outside of the PF, NR, and IP rates, BPA has developed the Firm Power Products and Services (FPS) rate schedule, which is the primary vehicle for BPA's marketing of unbundled products described in the Draft Marketing Plan and Draft Strategic Business Plan. The FPS rate schedule will allow BPA to sell firm energy, capacity, or power using a variety of sources of supply, and will specify charges or specifically authorize negotiated charges for control area services and other resource support services. The Control Area Services part of the FPS rate schedule also will specify a charge for the generation control services provided pursuant to section 13(d) of the 1981 utility power sales contracts. Firm power products and services to be marketed by BPA under the FPS rate schedule are intended to be flexible so that BPA can respond to market conditions. Power products and services also are available for ancillary services for transmission of non-Federal resources.

6. Other Rate Design Changes

BPA is proposing other rate design changes. These include, among others, changes to demand charges, the development of a Long-Term Firm Requirements Service option for some customers, elimination of the Irrigation Discount, and development of a charge for reactive power. BPA also is proposing to modify the contract rate in the NF rate schedule.

a. Demand Charges. Only transmission costs are allocated to demand. Demand charges are proposed to be billed based on each customer's coincident peak, rather than on peaks at individual Points of Delivery. Demand charges are seasonally differentiated into two seasons, with charges higher in the months of December through February. The proposed demand billing factors have been designed to be take-or-pay, relieved to a certain extent by the purchase of the Load Shaping product. The Demand Ratchet included in previous rates has been eliminated.

b. Long-Term Firm Requirements Service. Long-Term Firm Requirements Service is a package of services available to purchasers who sign new ("1995") power sales contracts and make a 6-year commitment to purchase from BPA. It includes an adjustment to the customer's power bill to reflect the value to BPA of a long-term commitment and for customers whose loads are 25 aMW or less, a composite rate.

c. Low Density Discount. The calculation of the proposed Low Density Discount is revised from previous rate proposals. The calculation uses a sliding scale of percentage discounts based on the utility's number of customers per pole mile and the utility's ratio of total electric energy requirements to investment. The two discounts from the two ratios are added to result in the utility's total discount, which is capped at 7 percent.

d. Irrigation Discount. The irrigation discount has been eliminated in the 1995 rate proposal.

e. Reactive Power. Instead of charging a power factor penalty for customers who take excessive quantities of reactive power, BPA proposes to bill the customer directly for measured quantities of reactive demand and reactive energy.

f. Unauthorized Increase. The proposed unauthorized increase charge reflects a penalty rate without seasonal differentiation, and includes a demand component to reflect transmission system usage. In addition, there is an unauthorized deviation charge for partial requirements purchases purchasing under the new ("1995") power sales contract.

7. Section 7(b)(2) Rate Test Study

Section 7(b)(2) of the Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing four years, are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the

Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed using BPA's Supply Pricing Model (SPM). The SPM simulates BPA's rate development process, using load, resource, and cost data consistent with that used in this rate proposal. The assumptions and rate development processes such as load/resource balancing, cost allocation, and rate design also are consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) a set of rates for the test period and the ensuing four years, assuming that section 7(b)(2) is not in effect (program case rates); and (2) a set for the same period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain costs specified in section 7(g) of the Northwest Power Act (7(g) costs) are subtracted from the program case rates.

The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates, less the 7(g) costs, is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test period (7(b)(2) amount) is calculated by multiplying the difference between the discounted program case and 7(b)(2) case rates by the general requirements loads of the preference customers. The 7(b)(2) amount is used as an adjustment to the allocated costs in the rate case test period. For the preliminary proposal, the 7(b)(2) rate test will not be performed.

V. Tiered Rates Methodology

In this rate period, BPA is proposing to tier its rates for sales to public bodies, cooperatives, and Federal agencies under the Priority Firm Power (PF–95) rate schedule and for sales to its Direct Service Industrial (DSI) customers under the Industrial Firm Power (IP–95) rate schedule. For utilities participating in the residential exchange, BPA is also proposing to tier the PF rate applicable to such exchanges.

Under the proposed tiered rate design, firm power purchases will be divided into two blocks of power. Separate rates will be developed for each block of power for each customer class. The size of the first block of power (Tier 1 power) is set so that most forecasted purchases will be at the Tier 1 rate. BPA is proposing a somewhat higher rate that would apply to Tier 2 power. The forecasted sales of Tier 2 power will be based on the forecasted load above the Tier 1 amount. The proposed Tier 1 and Tier 2 rates will be determined as part of BPA's Wholesale Power Rates Development Study.

BPA is proposing to establish the amounts of Tier 1 power each customer will be able to purchase, based in large part on information submitted by the customers during the course of these rate proceedings. BPA is proposing a nomination process where customers indicate the amount of power they will purchase at the Tier 1 rate for each month during the rate period within boundaries set in this rate proceeding. Customer input will establish the billing factors for the Tier 1 rate, by month, for that purchaser. The boundaries on the customers' nominations also will be established based on information submitted by the customers. The deadlines for customer submittals will be established in BPA's initial proposal and after consultation with parties and customers. BPA encourages all customers to devote the necessary resources to provide the information needed to establish the amounts of power they will be able to purchase at a Tier 1 rate. If a customer is unable to provide the necessary information, BPA is proposing to establish that customer's Tier 1 power amounts using the same approach proposed in this preliminary proposal.

1. Utility Customers' Tier 1 Power: BPA proposes the following process to determine each utility customers share of Tier 1 power. BPA will establish an aggregate annual amount of Tier 1 power for all preference customers based on a percentage share of the Pacific Northwest Loads and Resources Study FY 1996–97 loads forecast. BPA will base each preference customer's annual share of the total FY 1996–97 load forecast on historical sales during the period FY 1986 through FY 1993. Each customer may choose a 12-month historical period for purposes of distributing the forecasted FY 1996–97 load between it and the other customers. This chosen subperiod also will be used to shape the given customer's annual load into monthly amounts. Since customers will submit their choice of historical period during the course of this proceeding, for the preliminary proposal, BPA has selected a historical period for each customer for the historical 12-month period for which BPA sales to that customer were the highest. BPA will shape the load based on sales during the selected historical period. BPA proposes that each utility's Tier 1 amount will be 90% of their shaped monthly Tier 1 energy amounts in August through March, and 100% of their shaped monthly Tier 1 energy amounts in April through July.

Because BPA proposes to establish separate rates for Heavy Load Hours (HLH) and Light Load Hours (LLH), BPA also will establish a separate Tier 1 amount of power for HLH and LLH. Customers will be able to choose how to shape their monthly Tier 1 amount of power into the HLH and LLH. However, for the preliminary proposal, BPA split each customer's monthly amount of Tier 1 power into HLH and LLH based on relative percentage of HLH sales and LLH sales during the selected historical period.

2. DSI's Tier 1 Power: BPA proposes to establish an amount of Tier 1 power for each individual DSI. For the DSI's, however, the aggregate amount of Tier 1 power for the DSI class will be set at 2,450 aMW, in each month. Like utilities, each DSI will select a contiguous 12-month period of sales over the FY1986–93 historical period. An individual DSI's monthly share of the 2,450 aMW will be based on its percentage of historical load compared to the total DSI's historical load. For the preliminary proposal, BPA selected a historical period for each DSI based on the same criteria used to select each utility's historical period. Similarly, BPA will split each DSI's monthly amount of Tier 1 power between HLH and LLH. Although BPA is proposing that a DSI may elect to shape its monthly amounts of Tier 1 power so that its the same in each hour of the month, for the preliminary proposal BPA calculated the monthly amount of Tier 1 power in HLH and LLH based on relative percentage of HLH sales and LLH sales during the selected historical period.

3. Residential Exchange Customers' Tier 1 power: BPA is proposing to establish an amount of Tier 1 power for residential exchange utilities using an approach similar to the approach for establishing utility customers' Tier 1 power. For exchanging utilities, however, BPA will set an exchanging utility's amount of Tier 1 power proportional to the amount of DSI and utility customers' Tier 1 power. The percentage of DSI and preference customer Tier 1 load relative to their total load will be applied to the forecasted exchange load for all utilities in the residential exchange, both active and inactive, to determine the exchange load amount of Tier 1 power.

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As part of this rate proceeding, BPA will propose a Long-term Tiered Rate Methodology that will guide the implementation of a tiered rate structure in subsequent rate cases. BPA expects that this Methodology will resolve some of the basic questions associated with developing a tiered rate. The Long-term Tiered Rate Methodology will be published in a separate **Federal Register** Notice.

VI. Wholesale Power Rate Schedules

The wholesale power rates developed in the cost of service analysis and rate design adjustment process are incorporated in the Wholesale Power and Transmission Rate Schedules. The rate schedule document includes three sections. The first section contains the wholesale power and transmission rate schedules. Each schedule is comprised of sections stating to whom the rate schedule is available, rates for the products offered under the schedule, billing factors, and the cost basis of the rates in the schedule (resource contribution). Each rate schedule also lists the adjustments, charges, and special provisions that apply to that rate schedule.

The second section contains detailed descriptions of the adjustments, charges, and special provisions that apply to the various rate schedules. The third section contains the General Rate Schedule Provisions (GRSPs) for power and transmission rates. The GRSPs include a lengthy list of definitions, both of products and services and of rate schedule terms.

The Wholesale Power and Transmission Rate Schedules and the GRSPs will be published in a separate **Federal Register** Notice as described in Section I of this Notice. Following is a description of each wholesale power rate schedule.

Priority Firm Power Rate, PF–95

The proposed PF–95 rate schedule would replace the PF–93 rate schedule. Power is available under the PF–95 rate schedule to public bodies, cooperatives, Federal agencies, and utilities participating in the residential exchange under section 5(c) of the Northwest Power Act. Priority Firm power must be used to meet firm loads within the Pacific Northwest.

The PF rate schedule is available for power purchased both under the 1981 power sales contracts and under the new contracts BPA expects to offer in 1995 (1995 contracts). Rates have been developed for sales under each contract and for the various products available: Tier 1 demand and energy; Standard Tier 2 demand and energy; Enhanced Tier 2 demand and energy; and Load Shaping and Load Regulation. The PF–95 rate schedule also contains a "composite" rate, for these products for small full requirement customers (25 aMW) purchasing power under the 1995 contracts. Also available is capacity without energy for computed requirements purchasers under "1981" contracts. The PF–95 rate schedule includes demand charges that are seasonally and diurnally differentiated. There is no demand charge for Light Load Hours in any month of the year. The energy charges also are seasonally and diurnally differentiated.

The energy billing factors under the proposed PF–95 rate schedule for Computed Requirements customers purchasing under existing ("1981") contracts have been changed from those in previous rate proposals (the Availability Charge). The proposed billing factors are now based entirely on contractual entitlements.

New Resource Firm Power Rate, NR–95

The proposed NR–95 rate schedule would replace the NR–93 rate schedule. The NR–95 rate schedule is available to investor-owned utilities under net requirements contracts for resale to consumers, and to publicly owned utilities for New Large Single Loads. Products available under the NR–95 rate schedule include New Resource Firm Power, Load Shaping, and Load Regulation. Demand and energy charges are seasonally and diurnally differentiated.

Industrial Firm Power Rate, IP–95

The proposed IP–95 rate would replace the IP–93 rate. The IP–95 rate schedule is available to BPA's direct-service industrial customers for firm power to be used in their industrial operations. Products available under the IP–95 rate include Tier 1 demand and energy, Standard Tier 2 demand and energy, Enhanced Tier 2 demand and energy, Load Shaping, and Load Regulation. The IP–95 rate schedule includes a composite rate for DSI purchasers under 1995 or later power sales contracts who are qualified and choose to purchase under the composite rate. Demand and energy charges are seasonally and diurnally differentiated.

Variable Industrial Power Rate

The VI–91 rate schedule is available to DSIs purchasing from BPA under both the power sales contracts signed prior to 1995 and the 1986 Variable Rate Contract. The VI–91 rate schedule terminates on June 30, 1996, at the termination of the Variable Rate Contracts, at which time sales to purchasers under the VI rate will be made at the IP–95 rate. The VI–91 rate schedule is unchanged from prior years other than to update the rates and rate parameters based on the rate adjustment criteria established in 1991. Service under the VI rate is not tiered (i.e., there is not Tier 1 and Tier 2 service under this rate). For the preliminary rate proposal, BPA assumed no sales under the VI rate schedule during the rate period.

Firm Power and Services Rate, FPS–95

The proposed FPS–95 rate schedule is available for purchase of firm power products inside and outside the United States, and control area services, until its termination date, September 30, 2000. The FPS–95 rate schedule would supersede both the SP–93 (Surplus Firm Power Rate) and the CE–93 (Emergency Capacity) rate schedules, and also includes products formerly available under other rate schedules, such as construction, test and startup, and station service. Sales under FPS–95 may be made at fixed rates, as specified in the rate schedule, or at flexible rates as established by BPA or mutually agreed to by BPA and the purchaser. Fixed demand charges are diurnally but not seasonally differentiated, and fixed energy charges do not change diurnally or seasonally.

Nonfirm Energy Rate, NF–95

The proposed NF–95 rate schedule replaces the NF–93 rate. The NF–95 rate schedule is available for purchases of nonfirm energy inside and outside the Pacific Northwest for resale to consumers, direct consumption, and resale under Western Systems Power Pool agreements. The form of the NF–95 rate has not changed from previous years, with the schedule including a Standard rate, a Market Expansion rate, an Incremental rate, a Western Systems Power Pool rate, an End-User rate, and a Contract rate. However, the cost basis for the Contract rate has changed to reflect the average cost of nonfirm energy.

The NF Rate Cap, described in the Adjustments, Charges, and Special Rate Provisions section of the rate schedule document, continues to apply to all sales under NF–95 rate schedule. The NF Rate Cap defines the maximum nonfirm energy price for general application. The level of the NF Rate Cap is based on a formula tied to BPA's system cost and California fuel costs.

Reserve Power Rate, RP–95

The RP–95 rate schedule replaces the RP–93 rate schedule. The RP rate is available in cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied; when BPA determines no other rate schedule is applicable; or to serve a purchaser's firm power load when BPA does not have a power sales contract in force with such a purchaser, and BPA determines that this rate should be applied. The demand and energy charges are seasonally and diurnally differentiated, with no demand charge during light load hours during any month of the year.

Power Shortage Rate, PS–95

The PS–95 rate schedule is available for sales under the Share-the-Shortage agreement or a similar substitute agreement. BPA is not obligated to make Shortage Power available or broker power under the PF–95 rate schedule unless specified by contract.

VII. Charges Under the Amended and Integrated Pacific Northwest Coordination Agreement

The Pacific Northwest Coordination Agreement (PNCA) is an agreement for planned operations among the utilities and other entities that operate the major electric generating facilities and systems in the Pacific Northwest. The parties jointly and cooperatively plan and coordinate their combined generation facilities so as to produce the optimum firm load carrying capability (FLCC) of the coordinated system. FLCC is the firm load that could be carried under coordinated operation with critical streamflow conditions and with the use of all reservoir storage.

In order to coordinate operations, and so that each party can meet its individual FLCC, the PNCA provides for exchanges of energy and capacity among the parties. The agreement sets up charges for each form of exchange. The parties are negotiating a successor agreement to the PNCA, and have agreed on charges to apply under the new agreement.

The PNCA Rate Schedules will be published in a separate **Federal Register** Notice as described in Section I of this notice.

Issued in Portland, Oregon, on February 7, 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3534 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Proposed Transmission Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Opportunities for Review and Comment.

SUMMARY: *BPA File No:* TR–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TR–95.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA. BPA is proposing to revise its transmission rate schedules to be effective October 1, 1995, through September 30, 1997, to produce sufficient revenues for BPA to meet its costs for Fiscal Year (FY) 1996 and FY 1997

Opportunities will be available for interested persons to review BPA's rate proposal, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Petitions to intervene must be received by 9 a.m. February 13, 1995, and should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, NE. 11th Ave., Box 12999, Portland, Oregon 97212.

In addition, a copy of the petition must be served concurrently on BPA's Office of Legal Services: Janet L. Prewitt, Office of Legal Services—LQ, Bonneville Power Administration, Box 3621, Portland, Oregon 97208.

Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on February 13, 1995, in the BPA Rates Hearing Room, 3rd Level, 2032 Lloyd Center, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. BPA will prefile preliminary proposal studies at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs, and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference. The rate hearing schedule will be published in the **Federal Register** immediately following the prehearing conference.

The following schedule information is provided for informational purposes.

On or about February 9, 1995

Rate Schedules, General Rate Schedule Provisions, and Transmission Tariffs mailed to customers and 1993 rate case Parties, and available from BPA's Public Information Center; 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995

Deadline for interventions to be filed with Hearing Clerk at above address.

On or about February 13, 1995

Preliminary proposal studies available at BPA's Rates Hearing Room, 2032 Lloyd Center, Portland, Oregon and BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.

February 13, 1995

Prehearing conference to set schedule and act on petitions to intervene.

On or about April 5, 1995

BPA Initial Proposal filed.

October 29, 1995

Final Record of Decision published

BPA also will be conducting public field hearings. A field hearing schedule will be announced at the prehearing conference. A notice of the dates, times and locations of the field hearings will be made later through mailings and public advertising.

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When BPA holds public field hearings, written transcripts are made and included in the official record. A notice of the dates and times of the field hearings also will be published in the **Federal Register**.

ADDRESSES: Written comments by participants must be received by May 15, 1995, to be considered in the Draft Record of Decision (ROD). Written comments should be submitted to the Manager; Corporate Communications—CK; Bonneville Power Administration; 905 NE. 11th; P.O. Box 12999; Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519.

Information also may be obtained from:

Mr. Steve Hickok; Group Vice President, Sales and Customer Service; P.O. Box 3621; Portland, OR 97208, (503) 230–5356.

Mr. George Eskridge; Manager, SE Sales and Customer Service District; 1101 W. River, Suite 250; Boise, ID 83702, (208) 334–9137.

Mr. Ken Hustad; Manager, NE Sales and Customer Service District; Crescent Court, Suite 500; 707 Main; Spokane, WA 99201, (509) 353–2518.

Ms. Ruth Bennett; Manager, SW Sales and Customer Service District; 703 Broadway; Vancouver, WA 98660, (360) 418–8600.

Ms. Marg Nelson; Manager, NW Sales and Customer Service District; Suite 400, 201 Queen Anne Ave. N.; Seattle, WA 98109–1030, (206) 216–4272.

Responsible Official: Mr. Geoff Moorman, Manager for Pricing, Marginal Cost and Ratemaking, is the official responsible for the development of BPA's rates.

SUPPLEMENTARY INFORMATION:

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I. Introduction

After the 1993 Rate Case, BPA conducted a series of workshops on subjects relevant to BPA's ratemaking. The purpose of the workshops was to identify, simplify, and reduce the number of issues that might become part of the 1995 rate case and to reduce the amount of discovery normally required during the formal rate proceedings. Opportunity was provided to address the impacts of reinvention, transmission issues, risk mitigation, forecasted revenue requirements, and rate design issues. The workshops provided opportunity for informal public comment on issues prior to the formal hearing process.

On December 28, 1994, BPA published in the **Federal Register** a Notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1995," 57 FR 66946, in order to satisfy contractual provisions between BPA and its customers. Since then, BPA has continued to study the adequacy of its current rates and has concluded that current rates must be adjusted for the FY 1996 and FY 1997 rate period.

In order to assess its current rates, BPA first determined the amount of revenues required to meet its financial obligations in FY 1996 and FY 1997. BPA has determined that the revenues it would expect to collect from projected sales under its current rates will not recover these revenue requirements. Therefore, BPA proposes to revise its current transmission rates. At the conclusion of this rate proceeding, BPA will file its rates with FERC for confirmation and approval.

The proposed transmission rates were prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C. 832 (1982); the Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act (Transmission System Act), 16 U.S.C. 838 (1982); the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839 (1982); and the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992).

In the Energy Policy Act of 1992, Congress approved amendments to the Federal Power Act that allow FERC to order access to transmitting utilities' systems. As a result, FERC has developed standards for providing comparable access including guidelines for pricing such access. This rate proposal includes two new rate schedules (the Network Integration and Point-to-Point Firm rates) to be used for FERC-ordered transmission access and which are designed to allow comparable access to BPA's transmission system. BPA's Energy Transmission rate schedule will be used to price comparable service for nonfirm uses of the transmission system. In a process concurrent with the 1995 rate case, BPA is proposing terms and conditions for these new services for FERC approval. For further information about the terms and conditions process, please contact Mr. Dennis Metcalf, Transmission Team Lead, (503) 230–3410 or Mr. Michael Hansen, Public Involvement and Information Specialist, (503) 230–4328

BPA proposes that its transmission rate schedules, including the adjustments, charges and special rate provisions, and the General Rate Schedule Provisions (GRSPs) associated with these rate schedules, become effective upon interim approval or upon final confirmation and approval by FERC. (BPA's proposal combines the general rate schedule provisions for wholesale power rates and transmission rates into one document—the GRSPs.) BPA currently anticipates that it will request FERC approval effective October 1, 1995, or at the same time as its revised power rates. The 1995 transmission rate schedules and the GRSPs shall supersede BPA's 1993 rate schedules and General Transmission Rate Schedule Provisions (which became effective October 1, 1993) to the extent stated in the Availability section of each 1995 rate schedule.

BPA is proposing extension of the Townsend-Garrison Transmission rate and the Use of Facilities rate with no changes. The Market Transmission rate is being revised only to the extent that the Reactive Power Charge is being included in the rate schedule. Three new rates are proposed: the Network Integration Transmission rate; the Point-to-Point Firm Transmission rate; and the Advance Funding rate. The proposed Southern Intertie Annual Costs rate is substantially changed to reflect the outcome of contract negotiations. In addition, a Reservation Charge for Transmission Capacity and a Reactive Power Charge are included in many of the transmission rate schedules. BPA also has provided for charging opportunity costs in the firm transmission rates for new requests for transmission capacity.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, ease of administration, revenue stability, rate continuity, comparability, ease of comprehension, contract provisions, and BPA's statutory obligations. The studies that have been prepared to support the proposed preliminary transmission rates will be mailed to all parties in BPA's 1993 rate case and will be available for examination on February 13, 1995, at BPA's Public Information Center; BPA Headquarters Building; 1st Floor; 905 NE. 11th; Portland, and will be available at the prehearing conference, to the extent they are available. The preliminary studies and documents that relate to transmission rates are:

1. Loads and Resources Study and Documentation
2. Revenue Requirement Study and Documentation
3. Segmentation Study
4. Wholesale Power Rate Development Study and Documentation
5. Transmission Rate Design Study
6. Wholesale Power Rate and Transmission Rate Schedules

BPA's proposed Wholesale Power and Transmission Rate Schedules, General Rate Schedule Provisions, and Transmission Tariffs will be published in a separate **Federal Register** Notice on or about February 13, 1995. The documents described above will be mailed to BPA's customers, 1993 rate case parties, and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

To request any of the above documents by telephone, call BPA's document request line: (503) 230–3478 or call toll-free 1–800–622–4520. Please request the document by its above-listed title. Also state whether you require the accompanying documentation (these can be quite lengthy); otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Documentation.")

Because of the complexity of the issues in this rate case, in part occasioned by continuing contract negotiations between BPA and its customers as well as BPA's "reinvention" and Competitiveness Project, BPA anticipates that there will be a need to meet with customers and other interested third parties during the rate case on a very frequent, and possibly extended, basis. To comport with the rate case procedural rule prohibiting *ex parte* communications, BPA will provide necessary notice of meetings involving rate case issues for participation by all rate case parties. Parties should be aware, however, that such meetings may be held on very short notice and they should be prepared to devote the necessary resources to fully participate in every aspect of the rate proceeding. Consequently, parties should be prepared to attend meetings every day during the course of the rate case.

II. Purpose and Scope of Hearing

BPA's proposal to revise its rates is needed in order to continue to recover all costs and expenses allocated to the power system, including amortization of the Federal investment in the FCRPS over a reasonable period of time, and to recover costs in a way that achieves the goals of BPA's Competitiveness Project.

BPA began its Competitiveness Project in early 1993 in response to market forces and deregulation of the electric utility industry. The project, a re-invention of the agency to make it more competitive in the new marketplace, included the development of a new business concept, a marketing plan, a review of all of BPA's activities leading to structural reorganization, strategic action plans for each of BPA's major activities, an internal effort to promote leadership and employee empowerment, and proposals to eliminate unnecessary administrative and regulatory requirements.

BPA's Draft Strategic Business Plan and the Draft Business Plan EIS were released to the public in June 1994. The Draft Strategic Business Plan sets the overall strategic direction for both serving BPA's customers and meeting BPA's legislated responsibilities, including new statements of BPA's mission, values, and strategic business objectives to guide BPA's activities. The Draft Strategic Business Plan also describes the conceptual framework for the products BPA is offering. As stated in the Draft Strategic Business Plan, BPA's pricing policies are designed to meet many objectives, including: (1) providing maximum customer choice and encouraging optimal use of the FCRPS; (2) contributing to BPA's continued viability in an increasingly competitive energy market environment; and (3) allowing BPA to take full advantage of its responsibility and authority to manage the FCRPS, consistent with all statutory requirements.

The Draft Strategic Business Plan envisions BPA as having three separate and distinct business lines—power, transmission, and energy services (conservation)—which will be self-supporting and serve customers according to their unique needs. The Draft Strategic Business Plan also outlines a number of initiatives to improve BPA's competitiveness, including strategies to close the projected gap between BPA's costs and revenues, a financial strategy, and proposals to change BPA's power rate structures to give customers more choice, to more accurately reflect BPA's costs associated with providing the discrete components of electric service selected by customers, and thereby to encourage investment in cost-effective conservation. BPA proposes to close the revenue gap by exerting strict cost management and becoming market driven.

To provide customers with a price signal that encourages efficient resource investment decisions, including conservation resources, and appropriately shares the benefits of the relatively low-cost Federal power and transmission systems, BPA is proposing to tier its power rates for requirements service and for the residential exchange. The rate for requirements service would be divided into two parts: a Tier 1 rate, and one or several alternative Tier 2 rates. BPA expects that the Tier 1 rate will be available to serve most of the existing customers' firm loads. The Tier 1 rate is expected to be a lower rate than Tier 2 because it will be based primarily on the costs associated with the existing Federal system. The Tier 2 rates will be available to serve regional firm requirements in excess of Tier 1, including future load growth, and will be based on the costs associated with supplying power to meet these loads.

To address the increasingly competitive market for power, transmission, and energy services, BPA is proposing to offer a limited menu of unbundled products in the 1995 rate case. BPA expects that the products offered will be available both under the current power sales contracts and under new power sales contracts. BPA expects to offer additional unbundled products in future rate cases and to price these products to meet market conditions and its cost recovery obligations. In some cases, BPA expects the market will require flexible pricing. BPA is planning to "unbundle" what it offers so customers can choose among products and services based on what they need to meet their loads and support their own resources, if any.

BPA owns most of the high-voltage transmission system in the PNW and recognizes the need to ensure that BPA's transmission system is not an impediment to a fully functioning and competitive bulk power market. To assure that the transmission system does not provide BPA with anticompetitive market power, BPA is proposing network transmission services and prices for such services on a basis comparable to its own use of its system. In setting rates, terms, and conditions of service, BPA will be consistent with FERC comparability standards applicable to other transmitting utilities under sections 210 and 211 of the Federal Power Act except where prohibited by statute or regulation.

BPA is assessing the potential environmental effects of its rate proposal as required by the National Environmental Policy Act (NEPA) as part of the Business Plan Environmental Impact Statement (EIS). Beginning in June 1994, BPA solicited input to the Draft Strategic Business Plan and the Draft Business Plan EIS from customer

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throughout the region. From August 3 - August 9, BPA held numerous public comment meetings throughout the region. Additionally, BPA held a Draft Business Plan EIS workshop where participants were invited to design their own alternatives and consider the environmental and fiscal results. The draft EIS evaluates BPA's Business Plan proposal and a range of alternatives, including the impacts of the range of potential rate designs for BPA's power and transmission services. It also documents the impact of the current rate proposal for purposes of the National Environmental Policy Act. A supplemental Draft Business Plan EIS, revised in response to comments received, will be available for public comment in February. Comments will be received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's 1995 rates. The Final Strategic Business Plan and the Business Plan EIS that elaborates BPA's strategic action plans will be released in June 1995.

Spending levels are developed as a part of the BPA Strategic Business Plan, with the benefit of a public comment process. They also are determined as a part of the Federal budget process. Consistent with the Business Plan, the Administrator formally announced spending levels for FYs 1996–2001 to the public on January 12, 1995. BPA will continue to refine its strategic business objectives, goals, and spending levels, and inform the public accordingly, as part of its Strategic Business Plan development process. That process is expected to culminate in a Final Strategic Business Plan published in June 1995. Therefore, except for the limited exceptions hereafter noted, spending level decisions will not be addressed in this rate case. Accordingly, pursuant to § 1010.3(f) of the "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986) (hereinafter Procedures), the Administrator directs the Hearing Officer to exclude from the record any material attempted to be submitted or arguments attempted to be made in the hearing which seek to visit in any way the appropriateness or reasonableness of BPA's decisions on spending levels, as included in BPA's cost evaluation period of FY 1995 through FY 1997 and its test period revenue requirements for FYs 1996 and 1997. If, and to the extent, any re-examination of spending levels is necessary, that re-examination will occur outside of the rate case. The Revenue Requirement Study will incorporate BPA's spending levels and reflect BPA's risk mitigation, capital funding, and other financial goals in the rates. Excepted from this direction on account of their variable nature, dependency on BPA's rate case models, or timing, are: (1) Forecasts of residential exchange benefits; (2) forecasts of short-term purchase power costs; (3) provision in BPA's revenue requirement for cash working capital or cash lag needs; (4) repayment matters such as interest rate forecasts, scheduled amortization, depreciation, replacements, and interest expense; and (5) updates to forecasts by BPA which may occur in the Spring of 1995 and for which no other review forum has been provided.

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i), requires that BPA's rates be established according to certain procedures. These procedures include, among other things, issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates. This proceeding will be governed by BPA's rule for general rate proceedings, § 1010.9 of BPA's Procedures. These Procedures implement the statutory section 7(i) requirements. Section 1010.7 of the Procedures prohibits *ex parte* communications.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express views, but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are received by May 15, 1995. This date follows the anticipated submission of BPA's and all other parties' direct cases. Written views, supporting information, questions, and arguments should be submitted to BPA's Manager of Corporate Communications at the address listed in Section I of this Notice. In addition, BPA will hold several field hearings in the Pacific Northwest Region. Participants may appear at the field hearings and present oral testimony. The transcripts of these hearings will be a part of the record upon which the Administrator makes the rate decision.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of BPA's Procedures. Parties may participate in any aspect of the hearing process.

Persons wishing to become a party to BPA's rate proceeding must notify the Hearing Officer and BPA in writing of their request. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention based on a petition filed in conformance with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 NE. 11th, Portland, Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Interventions are subject to § 1010.4 of the Procedures.

The record will include, among other things, the transcripts of any hearings, any written material submitted by the parties and participants, documents developed by BPA staff, BPA's environmental analysis and comments accepted on it, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates first will be expressed in the Administrator's Draft ROD. Parties will have an opportunity to comment on the Draft ROD as provided in BPA's hearing procedures. The Administrator will serve copies of the Final ROD on all parties and will file the final proposed wholesale power and transmission rates together with the record with FERC for confirmation and approval.

IV. Major Studies

A. Major Studies

1. Loads and Resources Study

BPA's forecast of regional loads by customer group are the basis from which public utility and direct service industry (DSI) customer purchases from BPA (Federal system firm loads) are projected. BPA also projects Federal transmission losses, obligations to regional investor-owned utilities (IOUs) under their power sales contracts, and other inter- and intraregional contractual obligations.

BPA's resource acquisition plans are based on work by BPA and the Northwest Power Planning Council staff and reflect extensive input and review by the general public and the region's utilities. The specific resource acquisitions and associated costs included in this proposal are based on BPA's 1994 Draft Strategic Business Plan.

The load/resource balance determines BPA's obligation to serve firm loads during the test years under 1930 water conditions. It also contributes to the determination of the supply of surplus firm power in the region and on the Federal system. A related hydro regulation study incorporates the operation of thermal plants, exports and imports of power, projected resource acquisitions, and system constraints such as the Columbia River flow augmentation project, "spill", and the water budget for fish migration. For this proposal, a 50-year hydro study was completed which includes assumptions regarding the Columbia River flow augmentation. The hydro study starts in August 1995. The 50-year study determines nonfirm energy availability for the region.

2. Revenue Requirement Study

The Bonneville Project Act, the Flood Control Act of 1944, the Transmission System Act, and the Northwest Power Act require BPA to set rates that are projected to collect revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. The Revenue Requirement Study determines whether current rates will produce enough revenues to recover all BPA costs and expenses, including BPA's repayment obligations to the U.S. Treasury. Revenue requirements are the major factor in determining the overall level of BPA's proposed power and transmission rates.

The Transmission System Act and the Northwest Power Act require that transmission rates be based on an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In compliance with a FERC order dated January 27, 1984, 26 FERC ¶ 61,096, the Revenue Requirement Study incorporates the results of separate repayment studies for the generation and transmission components of the FCRPS. The repayment studies for generation and transmission demonstrate the adequacy of the projected revenues to recover all of the Federal investment in the FCRPS over the allowable repayment period. Separate generation and transmission revenue requirements are developed in the Revenue Requirement Study. The adequacy of projected revenues to recover test period revenue requirements and to meet repayment period recovery of the Federal investment is tested and demonstrated separately for the generation and transmission functions.

The Revenue Requirement Study for the 1995 preliminary rate proposal is based on revenues and cost estimates for FY 1996 and FY 1997. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1994. In addition, it reflects all FCRPS obligations incurred pursuant to the Northwest Power Act, including residential exchange costs.

3. Segmentation Study

BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) to provide transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Pacific Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration, fringe area; and delivery segments for public agency, DSI, and IOU customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide. This provides the basis for segmenting the projected transmission revenue requirements used in BPA's rate proposals. The results of the Study include the historical investment and the average of the last 3 years' operations and maintenance expenses. In addition, the facilities of the integrated network similarly are divided among distinct services. This division of the FCRTS into segments provides for equitable allocation of transmission costs between Federal and non-Federal customers based on their usage of the segments.

4. Wholesale Power Rate Development Study (WPRDS)

BPA is proposing substantial changes in the method used to develop its wholesale power rates. The cost of service analysis (COSA) and rate design adjustments are the two central parts of the rate development process. The COSA apportions BPA's test year generation and transmission revenue requirements to customer classes based on the use of specific types of service by each customer class and in accord with the rate directives of the Northwest Power Act. Costs are allocated to classes of service on the basis of the relative use of services. The coincidental peak (CP) allocation of network transmission costs to customer classes uses an average of a 12–CP and 3–CP (December, January, and February) method to reflect transmission cost causation. The transmission costs allocated to the Federal power uses of the transmission system form the basis for the power rates' demand charge; the transmission costs allocated to non-Federal uses form the basis for the transmission, or wheeling, rates that are calculated in the Transmission Rate Design Study (discussed below).

The rate design adjustment portion of the WPRDS modifies the allocated costs developed in the COSA to: (1) Reflect BPA's rate design objectives; (2) conform with contractual requirements; (3) reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Northwest Power Act, and (4) conform with requirements of applicable legislation. BPA's rate design

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objectives include recovery of BPA's revenue requirement, rate and revenue stability, practicality, fairness, comparability, and efficiency. All of the rate design adjustments are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final power rates are calculated.

5. Transmission Rate Design Study (TRDS)

In the TRDS, rates for various transmission services are calculated using the portion of the transmission revenue requirement allocated to non-Federal uses of the transmission system. Wheeling load forecasts are developed in the TRDS in order to calculate rates. The design of individual rate schedules also is accomplished in the TRDS.

B. Transmission Rates

In a process concurrent with the 1995 rate case, BPA is proposing terms and conditions for new and existing services (network integration, point-to-point firm, and nonfirm) that allow comparable access to the Federal transmission system. Two new rate schedules (the Network Integration Transmission rate and the Point-to-Point Firm Transmission rate) are proposed to price the new services. BPA's Energy Transmission rate is proposed to price comparable nonfirm transmission services. These new services ensure that all parties have access to the Federal transmission system under comparable terms, conditions, and rates as BPA. Such comparability allows for a competitive marketplace for power products.

BPA also is proposing the Advance Funding rate to allow BPA to collect the cost of specified BPA-owned transmission facilities through advance payment. In addition to the three new rate schedules, all of BPA's traditional transmission rate schedules are proposed to be confirmed. A charge is included in the firm transmission rates to allow BPA to charge opportunity cost when that is higher than the embedded cost charge for new requests for transmission capacity. BPA also provides notice in the firm rate schedules that requests for new or increased firm transmission service may be subject to incremental cost rates that would be developed pursuant to section 7(i) of the Northwest Power Act. In applying incremental or opportunity cost rates, BPA would be consistent with FERC's "or" pricing—the higher of embedded cost or incremental cost (or, the higher of embedded cost or opportunity cost), but not the sum of the two. Finally, a Reservation Charge for Transmission Capacity and a Reactive Power Charge are included in the many of the transmission rate schedules.

1. Formula Power Transmission (FPT)

The FPT–95 rate schedule is available for the firm wheeling of power on the network segment of the FCRTS. This rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula that is prescribed by contract provisions.

In calculating the FPT–95 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a simulation of the power flow of the projected peak load during the test period. Unit costs for the FPT rate components are derived by dividing facility cost by facility use as determined in a power flow study.

2. Integration of Resources (IR)

The IR service is a flexible transmission service that may be used to integrate multiple resources and transmit non-Federal power to multiple points of delivery on the FCRTS Integrated Network facilities. The IR–95 rate is structured as a postage-stamp (independent of distance) rate with a demand and energy charge. The proposed IR–95 rate schedule continues to include the Short-Distance Discount, an exception to the postage stamp rate design for contractually specified points of integration.

The IR–95 rate is calculated by dividing the revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs; total energy usage for energy) yields the rates.

3. Energy Transmission (ET); Southern Intertie (IS), Northern Intertie (IN), and Eastern Intertie (IE) Transmission; and Market Transmission (MT)

The ET–95 rate is designed to approximate the average cost of firm wheeling on the network. It is calculated by dividing the costs allocated to the FPT/IR class of service by all wheeling under firm wheeling contracts. The ET rate applies to use of intra-regional FCRTS facilities excluding the Interties and will provide comparable nonfirm transmission service.

The proposed IS–95 rate consists of two parts: a nonfirm energy-only rate, and a firm rate with separate demand and energy components.

BPA also is proposing two rates for the IN–95 rate schedule: an energy-only rate for nonfirm wheeling, and a rate with demand and energy components for firm wheeling. The cost of the Northern Intertie is allocated to Federal and non-Federal power; the cost allocated to non-Federal power is the basis for the calculation of the rate.

The IE–95 rate is available for nonfirm transmission on the Eastern Intertie. It is calculated as the ratio of the Eastern Intertie segment cost to the projected wheeling of energy from the Colstrip plant.

BPA is continuing its MT–95 rate unchanged, except for the addition of the Reactive Power Charge. This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and allows for flexible hourly, daily, weekly, and monthly charges.

4. Use of Facilities Transmission (UFT) and Townsend-Garrison Transmission (TGT)

The UFT–95 and TGT–95 rate schedules are formula rates that are being proposed unchanged from the current 1993 rates. The UFT rate recovers the annual cost of identified facilities over which specific wheeling transactions occur. The TGT rate is a contract rate that recovers the cost of the Montana (Eastern) Intertie.

5. Southern Intertie Annual Costs (AC)

BPA is proposing the AC–95 rate to be applied to owners of AC Intertie capacity. This rate recovers the Capacity Owner's prorata share of actual AC Intertie costs: Operations, maintenance, general plant, and other identified expenses, as well as capital costs of replacements and reinforcements. The proposed AC–95 rate takes the place of the AC–93 rate which was a "bridge" rate until Capacity Ownership contracts were complete.

6. Network Integration Transmission (NT) and Point-to-Point Firm Transmission (PT)

The proposed NT–95 and PT–95 rates, along with the associated terms and conditions of service, are designed to provide customers with transmission service that is comparable to what BPA provides itself in serving its power customers. Network Integration transmission service allows customers to serve their load located in the PNW region. The proposed NT–95 rate is based on a load-ratio share concept. The load-ratio share measures the Network Integration customer's contribution to the FCRTS peak.

The proposed PT rate, along with terms and conditions of service, provides transmission service for customer's native load and/or transactions with third parties over the FCRTS Integrated Network. The PT rate is based on transmission costs allocated to the FPT/IR class of service and is structured as a monthly demand charge.

7 Advance Funding (AF)

The proposed AF rate allows BPA to collect the capital and related costs of specified BPA-owned transmission facilities through advance payment. Such facilities could include interconnection and resource integration facilities, and upgrades or reinforcements to the FCRTS. Following commercial operation of the specified facilities, a true-up of estimated costs with actual costs would occur.

8. Reservation Charge for Transmission Capacity, and Reactive Power Charge

The proposed Reservation Charge is included in the firm transmission rate schedules for application to customers who enter into a contract with BPA for new or increased firm transmission service on the FCRTS and want to reserve transmission capacity to accommodate such service. Payment of the Reservation Charge for Transmission Capacity would allow a customer to reserve capacity for up to 3 years, with the possibility of two annual extensions granted by BPA on a case-by-case basis.

The proposed Reactive Power Charge is included in BPA's transmission rate schedules as well as BPA's power rate schedules, and charges customers for their reactive power requirements by point of delivery.

V. Transmission Rate Schedules

The proposed transmission rates are incorporated in the Wholesale Power and Transmission Rate Schedules. The rate schedule document includes three sections. The first section contains the wholesale power and transmission rate schedules. Each schedule is comprised of sections stating to whom the rate schedule is available, rates for the products offered under the schedule, and billing factors. Each rate schedule also lists the adjustments, charges, and special provisions that apply to that rate schedule.

The second section contains detailed descriptions of the adjustments, charges, and special provisions that apply to the various rate schedules. The third section contains the GRSPs for power and transmission rates. The GRSPs include a lengthy list of definitions, both of products and services and of rate schedule terms.

The Wholesale Power and Transmission Rate Schedules and the GRSPs will be published in a separate **Federal Register** Notice as described in Section I of this Notice.

Issued in Portland, Oregon, on February 7, 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3535 Filed 2–13–95; 8:45 am]

BILLING CODE 6450–01–P

Hearing and Opportunity for Public Comment; Regarding Proposed Comparable Transmission Terms and Conditions

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Hearing and Opportunity to Comment.

SUMMARY: *BPA File No.* TC–95. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation TC–95. BPA will be proposing terms and conditions applicable to three transmission services over the network transmission system of the Federal Columbia River Transmission System (FCRTS) which BPA considers to be comparable to the uses BPA itself makes of such system for its own power transactions. The Federal Power Act, as amended by the Energy Policy Act of 1992, provides that BPA may institute a regional hearing process on proposed transmission terms and conditions of general applicability. By this notice, BPA is announcing such a proceeding and the dates on which the proposed transmission terms and conditions will be available.

DATES: Persons wishing to comment on the proposed transmission terms and conditions but not wishing to become "parties" to the proceeding must submit written comments on the proposals by May 15, 1995. Persons wishing to become formal "parties" to the proceeding must notify BPA in writing of their intention to do so in accordance with requirements stated in this Notice. Intervention petitions must be received by 9 a.m. February 13, 1995.

A prehearing conference will be held before the Hearing Officer at 9:00 a.m. on February 13, 1995, in the BPA Rates Hearing Room located at 2032 Lloyd Center, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. The prehearing conference for BPA's 1995 power and transmission rate case will occur at the same time and place as the prehearing conference for this proceeding. BPA's present intent is for the Hearing Officer for this transmission terms and conditions proceeding to be other than the Hearing Officer presiding over BPA's 1995 power and transmission rate proceeding. However, it also is BPA's intent to merge as much as possible the schedules and records for these two proceedings in order to address common transmission issues efficiently. At the prehearing conference, BPA may move to consolidate common transmission issues.

The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additions or changes to the Procedures, establish a service list, establish a procedural schedule in conjunction with the rates hearing officer, and consolidate parties with similar interests for purposes of filing jointly-sponsored testimony and briefs and for expediting any necessary cross-examination. A notice of the dates and times of any hearings will be mailed to all parties of record. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule information is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

February 9, 1995 (on or about)
Proposed Transmission Terms and Conditions mailed to customers and 1993 rate case parties and available from BPA's Public Information Center, 1st Floor, 905 N.E. 11th Ave., Portland, Oregon.
February 13, 1995 (on or about)
Proposed Transmission Terms and Conditions published in **Federal Register.**
February 13, 1995
Prehearing conference to set schedule and act on petitions to intervene.
April 5, 1995 (on or about)
Supplemental testimony filed.
October 29, 1995
Administrator's Final Decision

BPA also will be conducting public field hearings on it proposed power and transmission rates. Comments on the proposed transmission terms and conditions also will be accepted at these hearings. The dates and locations of the field hearings will be announced later through mailings and public advertising.

ADDRESSES: Written comments by "participants" should be submitted by May 15, 1995, to: Manager, Corporate

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Communications–CK, Bonnesville Power Administration, 905 N.E. 11th Ave, P.O. Box 12999, Portland, Oregon 97212

Petitions to intervene should be filed by 9 a.m. February 13, 1995. Persons intervening in the power and transmission rate case who also desire to intervene in this proceeding may file a single petition to intervene which specifically identifies both proceedings. Petitions to intervene should be addressed as follows: Hearing Officer, c/o Francis (Jamie) Troy, Hearing Clerk—LQ, Bonneville Power Administration, 905 N.E. 11th Ave., P.O. Box 12999, Portland, Oregon 97212.

In addition, persons intervening in the rate case must serve a copy of the petition on: Janet L. Prewitt, Office of Legal Services—LQ, Bonneville Power Administration, 905 N.E. 11th Ave., P.O. Box 3621, Portland, OR 97208.

Interventions in this proceeding must be served concurrently on: Stephen Larson, Office of Legal Services—LP, 905 N.E. 11th Ave., P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230–4328 or call toll-free 1–800–622–4519.

Information also may be obtained from:

Mr. Steve Hickok, Group Vice President, Sales and Customer Service, P.O. Box 3621, Portland, OR, 97232 (503) 230–5356.

Mr. George Eskridge, Manager, SE Sales and Customer Service District, 1101 W. River, Suite 250, Boise, ID 83702, (208) 334–9137

Mr. Ken Hustad, Manager, NE Sales and Customer Service District, Crescent Court, Suite 500, 707 Main, Spokane, WA 99201, (509) 353–2518.

Ms. Ruth Bennett, Manager, SW Sales and Customer Service District, 703 Broadway, Vancouver, WA 98660, (360) 418–8600.

Ms. Marg Nelson, Manager, NW Sales and Customer Service District, Suite 400, 201 Queen Anne Ave. N., Seattle, WA 98109–1030, (206) 216–4272.

Responsible Official: Mr. Dennis Metcalf, BPA Transmission Team Lead, is the responsible official for the development of BPA's transmission terms and conditions.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to this notice, BPA is initiating a regional hearing process on proposed transmission services terms and conditions. BPA is proposing to establish terms and conditions of general applicability for certain transmission services comparable to the uses Bonneville provides itself over the integrated network transmission system of the FCRTS. These proposed terms and conditions for comparable services are intended to: (1) respond to customer requests in the context of the renegotiation of BPA's power sales contracts that Bonneville eliminate its transmission-based market power, (2) with respect to network transmission services, comply with the Commission's requirement that members of regional transmission associations develop and publish tariffs meeting the Commission's comparability standards; and (3) facilitate an opportunity for FERC to review the rates for these services, which BPA will file as meeting the just, reasonable, and not unduly discriminatory or preferential standard in the context of the associated contractual terms and conditions. Though BPA and its customers have not yet concluded their discussions regarding what constitutes comparable access to the Federal transmission system, nevertheless BPA is now initiating this proceeding in order to place it on the same initial schedule as the related transmission rate case, also being noticed today. It is likely that discussions will continue before and during this proceeding, consistent with ex parte rules, in an attempt to settle outstanding issues.

The Federal Power Act amendments passed by Congress in the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992), provide that BPA may institute a formal regional hearing on transmission terms and conditions which it proposes to establish for general applicability. 16 U.S.C. § 824k(i)(2). This hearing is in some important respects different in function from BPA's rate case proceedings under section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i). If BPA elects to institute a transmission terms and conditions hearing, the agency must (1) give notice in the Federal Register and state in such notice the reasons why the terms and conditions are being offered, and (2) adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Northwest Power Act, 16 U.S.C. § 839e(i)(1)–(3), except that the Hearing Officer shall make findings and conclusions on material issues of fact, law or discretion presented on the record and make a recommended decision to the BPA Administrator. The Administrator then must make a separate determination, based on the hearing record, the Hearing Officer's recommendation, and applicable law, setting forth the reasons for reaching any findings and conclusions different from those of the hearing officer. Pursuant to BPA's statutory requirements, the rates associated with these terms and conditions will be the subject of a formal hearing, also noticed today, established by BPA under section 7(i) of the Northwest Power Act. The extent to which the schedules for these two related hearings will be merged will be determined at the prehearing conference on February 13, 1995.

BPA will be proposing comparable network transmission tariffs based on similar tariff documents recently developed by the litigation staff of the Federal Energy Regulatory Commission (hereafter "Commission"). Proposed commitments and requirements will be described for: (1) integrated network service pursuant to which an entity may use the integrated network transmission system of the FCRTS flexibly to meet its network loads on a basis equal to BPA's native load obligations; (2) a flexible, multiple point-to-point firm transmission service over the integrated network transmission system of the FCRTS and available to serve network loads as well as off-system sales; and (3) nonfirm point-to-point transmission service over the integrated network transmission system of the FCRTS. The proposed tariffs will be published in a separate **Federal Register** Notice on or about February 13, 1995. The tariffs also will be mailed to BPA's customers, 1993 rate case parties and other interested persons, and will be available from BPA's Public Information Center on or about February 9, 1995.

Because of the complexity of the issues in this proceeding and the related rate case, in part occasioned by continuing contract negotiations between BPA and its customers together with BPA's reinvention and its Competitiveness Project, BPA anticipates that it will need to meet with customers and other interested third parties on a very frequent, and possibly extended, basis. To comport with the procedural rule prohibiting ex parte communications, BPA will provide necessary notice of meetings involving issues related to transmission terms and conditions of general applicability for participation by all parties to the proceeding. Parties should be aware, however, that such meetings may be held on very short notice. In the interim prior to the prehearing conference, persons who would like notice of such meetings should provide their name, address, phone and fax numbers to: Ms. Janet L. Prewitt, Office of General Counsel—LQ, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, Tel: (503) 230–4201, Fax: (503) 230–7405

II. Governing Procedures

BPA is adopting the "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986) (hereafter "Procedures") to govern this proceeding, except that the Hearing Officer will make a recommended decision to the Administrator as described in section 212(i)(2)(A)(II) of the Federal Power Act, 16 U.S.C. § 824k(i)(2)(A)(II), and the Administrator will either accept or reject the recommendation. BPA and parties to the proceeding may move to adopt special rules of practice at the February 13 prehearing conference to better address the requirements of this proceeding.

The Procedures distinguish between "participants" and "parties" to the hearing. Apart from the formal hearing process, BPA will receive comments, views, opinions and information from "participants," who are defined in the Procedures as any person who may express views but who does not petition successfully to intervene as a party. Participants' written comments will be made part of the official record of the case and considered by the Hearing Officer and the Administrator. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties. Written comments by participants on BPA's proposed transmission terms and conditions will be accepted May 15, 1995, and should be submitted to BPA's Manager of Corporate Communications at the address listed above in the Summary Section of this notice.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of the Procedures. Parties may participate in any aspect of the hearing process. Persons wishing to timely become a party to BPA's terms and conditions proceeding must notify the Hearing Officer and BPA in writing of their request by 9:00 am, February 13 1995. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the proceeding in sufficient detail to permit the Hearing Officer to determine whether the person has a relevant interest in the proceeding. Petitioners may designate no more than two representatives upon whom service of documents will be made. Intervention petitions will be available for inspection in BPA's Public Information Center, 1st Floor, 905 N.E. 11th Ave., Portland Oregon. Any opposition to a petition to intervene must be raised at the February 13, 1995, prehearing conference. All timely applications will be ruled on by the Hearing Officer. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of petition. Interventions are subject to § 1010.4 of the Procedures.

Issued in Portland, Oregon, on February 1995.

J.H. Curtis,

Acting Administrator.

[FR Doc. 95–3533 Filed 2–13–95; 8:45 am]

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federal register

Tuesday
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Part VI

The President

Proclamation 6768—American Heart Month

Proclamation 6769—National Older Workers Employment Week

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Presidential Documents

Title 3—

The President

Proclamation 6768 of February 10, 1995

American Heart Month, 1995

By the President of the United States of America

A Proclamation

Throughout history, the heart has been a symbol of health and well-being. Yet nothing now overshadows Americans' health as much as heart disease—the leading cause of death among men and women. Diseases of the heart and blood vessels kill nearly a million Americans each year, most from the effects of atherosclerosis, the narrowing and stiffening of blood vessels from the buildup of plaque that usually begins early in life.

Today, Americans are enjoying the rewards of the progress humanity has made in understanding and treating cardiovascular disease. Advances in diagnosis make it possible to see the heart beat without the use of invasive procedures. Thousands of heart attack victims are being saved by the rapid administration of drugs to dissolve blood clots. Soon, gene therapy may be able to prevent the smooth muscle cell multiplication that contributes to the narrowing of blood vessels. Perhaps most important, we have greater understanding of how to prevent the development of heart disease. By controlling blood pressure and blood cholesterol, being physically active, and not smoking cigarettes, more Americans can have the chance to lead long, healthy lives.

The Federal Government has contributed to these successes by supporting research and education through the National Heart, Lung, and Blood Institute. Through its commitment to research, its programs to heighten public awareness, and its vital network of dedicated volunteers, the American Heart Association also has played a crucial role in bringing about these remarkable accomplishments.

Yet the heart has not revealed all of its mysteries. No one knows why heart disease begins. And, while it is known that heart disease develops differently in men and women, the reasons for those variations are still being studied. About 50 million Americans continue to suffer from hypertension, a major cause of stroke, and 1.25 million Americans have heart attacks every year.

Conquering these diseases requires unwavering national and personal commitment. On the national level, the Federal Government will continue to support research into the prevention, diagnosis, and treatment of heart disease. On the personal level, Americans can take steps to prevent heart disease from striking their families, including teaching their children heart-healthy habits. Working together, we can make the tragedy of heart disease a nightmare of the past.

In recognition of the need for all Americans to become involved in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 1995 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and

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the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-688
Filed 2-13-95; 11:16 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6769 of February 10, 1995

National Older Workers Employment Week, 1995

By the President of the United States of America

A Proclamation

Today, our Nation relies more than ever on the active involvement of citizens 55 years old or older. It is estimated that more than 70 percent of these Americans work every day to keep our Nation running, contributing to all aspects of our economy and our society. And as our population continues to age, the contributions of older workers will play an increasingly important role in maintaining America's leadership in a highly competitive international marketplace.

Yet despite often impressive job qualifications, these citizens find that the search for employment becomes more difficult as they grow older. Those seeking to change careers or those struggling to find new jobs are too often confronted by employer reluctance or stereotyping. Rather than being judged on their abilities, older people sometimes face the injustice of being judged solely on their age.

But we Americans understand the meaning of fairness and the value of honest labor. Every reasonable measure of job performance tells us that older workers are at least as effective as younger employees. In many cases, their unique combinations of knowledge, skills, insight, and experience make older Americans even more effective.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of March 12 through March 18, 1995, as "National Older Workers Employment Week." I urge all employers to consider carefully the qualifications of men and women 55 and older and to make use of their talents and expertise. I also encourage public officials responsible for job placement, training, and related services to intensify efforts to help older workers find suitable jobs and training.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-3887
Filed 2-13-95; 11:17 am]
Billing code 3195-01-P

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Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 104th Congress, 1st Session, 1995.

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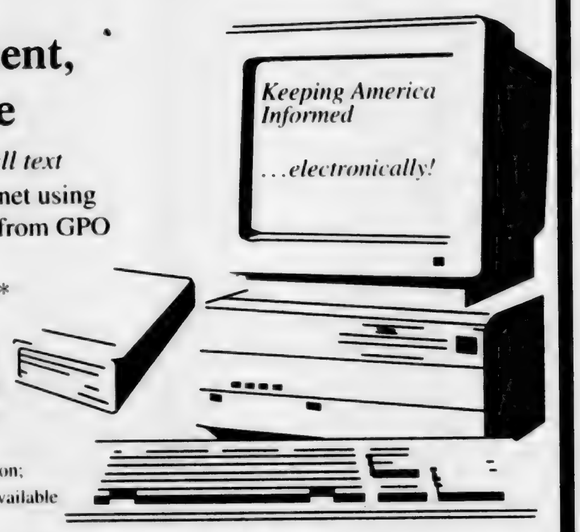

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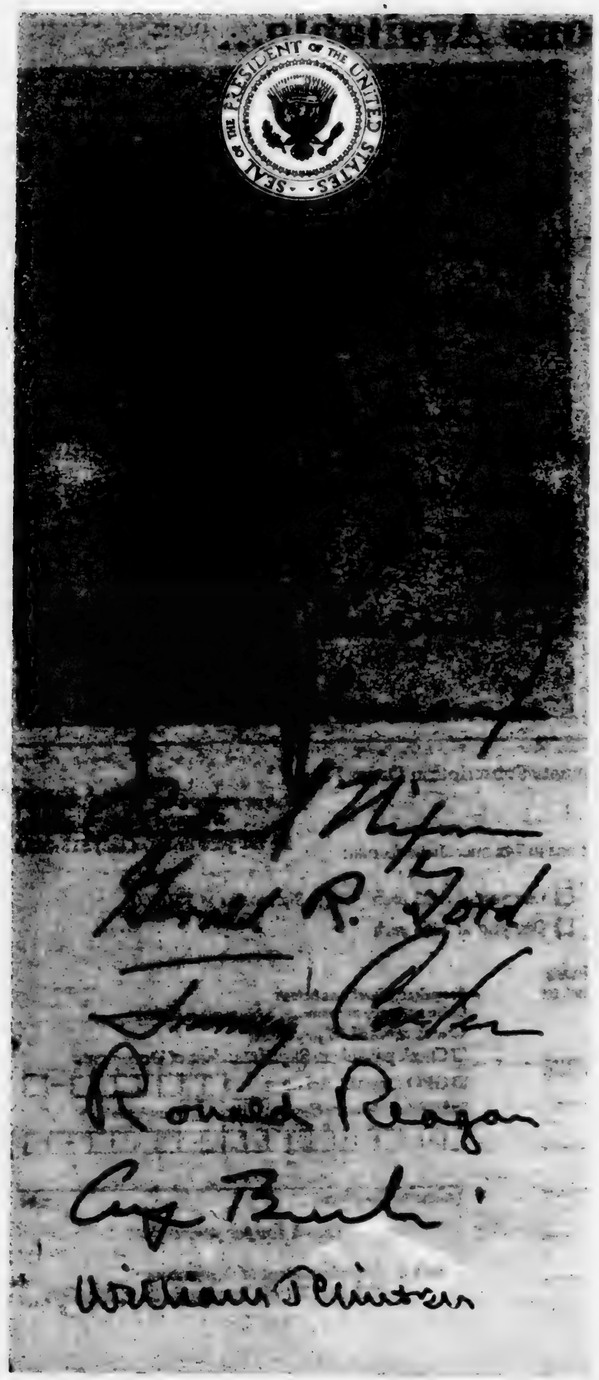

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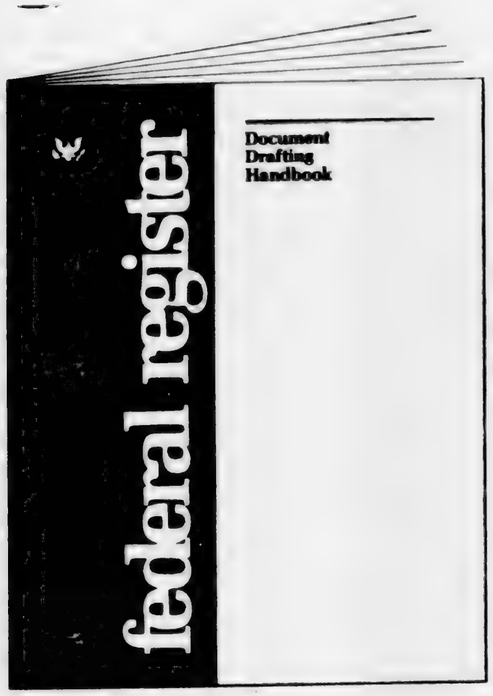

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Title 3—

The President

Presidential Determination No. 95–14 of February 6, 1995

Use of Peacekeeping Operations Account Funds for Enforcing the Serbia and Montenegro Sanctions Program

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the "Act"), I hereby determine that it is important to the security interests of the United States to furnish up to $17 million in funds made available under chapter 6 of part II of the Act for fiscal year 1995 to furnish assistance for enforcing the Serbia and Montenegro sanctions program without regard to any provision of law within the scope of section 614(a)(1), including section 660 of the Act. I hereby authorize the furnishing of such assistance.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 6, 1995.

[FR Doc. 95–3955
Filed 2–13–95; 2:31 pm]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
Vol. 60, No. 31
Wednesday, February 15, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[FV95-911-1IFR]

Expenses and Assessment Rates for Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees) under Marketing Orders 911 and 915 for the 1995–96 fiscal year. The Committees are responsible for local administration of the marketing orders which regulate the handling of Florida limes and avocados. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1995, through March 31, 1996. Comments received by March 17, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone (202) 720–5331; or Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 911 [7 CFR Part 911], as amended, regulating the handling of limes grown in Florida; and Marketing Agreement and Order No. 915 [7 CFR Part 915] regulating the handling of avocados grown in Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Florida limes and avocados handled during the 1995–96 fiscal year, beginning April 1, 1995, through March 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of limes grown in Florida, and approximately 40 producers in the regulated area. Also, there are approximately 65 handlers of avocados grown in Florida, and approximately 95 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of lime and avocado producers and handlers may be classified as small entities.

The lime and avocado marketing orders, administered by the Department require that the assessment rates for a particular fiscal year apply to all assessable limes and avocados handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing orders, and submitted to the Department for approval. Each Committee consists of producers, handlers and a non-industry public member. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected

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persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of limes and avocados (in bushels). Because those rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Florida Lime Administrative Committee met on December 14, 1994, and unanimously recommended 1995–96 expenses of $92,270. In comparison, the 1994–95 fiscal year expense amount was $92,197, which is $73 less in expenses than the amount recommended for this fiscal year.

The Committee also unimously recommended an assessment rate of $0.16 per 55-pound bushel of limes. The 1995–96 assessment rate remains unchanged from the previous fiscal year. Assessment income for 1995–96 is estimated to total $64,000 based on anticipated fresh domestic shipments of 400,000 bushels of limes. This, along with $2,500 in interest income, and a withdrawl of $25,770 from the Committee's reserve fund will be adequate to cover estimated expenses. Funds in the reserve at the end of the 1995–96 fiscal year are expected to be within the maximum permitted by the order of three fiscal years' expenses.

Major budget categories for 1995–96 are $34,000 for administrative staff salaries, $10,000 for research, $8,300 for compliance, and $7,300 for employee benefits.

The Avocado Administrative Committee also met on December 14, 1994, and unanimously recommended 1995–96 expenses of $107,570. In comparison, 1994–95 fiscal year expenses were $116,420, which is $8,850 more than the $107,570 recommended for this fiscal year.

An assessment rate of $0.16 per 55-pound bushel of avocados was also unanimously recommended by the Committee. The 1995–96 rate of assessment remains the same as the previous fiscal year. Assessment income for 1995–96 is estimated to total $112,000 based on anticipated fresh domestic shipments of 700,000 bushels of avocados. Assessment income, plus an additional $1,500 in interest income will provide sufficient funds to cover budgeted expenses. The Committee anticipates a reserve fund increase of $5,930 because assessment income is more than budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year are within the maximum permitted by the order of three fiscal years' expenses.

Major budget categories for the 1995–96 are $34,000 for administrative staff salaries, $15,600 for compliance, $12,810 for insurance and bonds, and $10,000 for research.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on April 1, 1995, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable limes and avocados handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committees at public meetings; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 911 and 915 are amended as follows:

1 The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the Code of Federal Regulations

PART 911—LIMES GROWN IN FLORIDA

2. A new § 911.233 is added to read as follows:

§ 911.233 Expenses and Assessment rate.

Expenses of $92,270 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per 55-pound bushel of assessable limes is established for the 1995–96 fiscal year ending on March 31, 1996. Unexpended funds may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new § 915.233 is added to read as follows:

§ 915.233 Expenses and Assessment rate.

Expenses of $107,570 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per 55-pound bushel of assessable avocados is established for the 1995–96 fiscal year ending on March 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: February 8, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–3766 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[FV94–985–5FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1995–96 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 [7 CFR Part 985], regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1995–96 marketing year, which begins on June 1, 1995. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) oil allotment base, and approximately 145 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000. A minority of producers and handlers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the marketing order, the Committee recommended the salable quantities and allotment percentages for the 1995–96 marketing year at its October 5, 1994, meeting. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil by a unanimous vote, and a seven to one vote, respectively. The member voting in opposition favored the establishment of a higher salable quantity that would have resulted in a higher allotment percentage. The Committee also recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil by a unanimous vote.

This final rule establishes a salable quantity of 908,531 pounds and an allotment percentage of 51 percent for Scotch spearmint oil, and a salable quantity of 906,449 pounds and an allotment percentage of 46 percent for Native spearmint oil. This rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1995–96 marketing year, which begins on June 1, 1995. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The salable quantity and allotment percentage for each class of spearmint oil for the 1995–96 marketing year is based upon the Committee's recommendations and the following data and estimates:

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1995—57,325 pounds. This number is derived by subtracting the estimated 1994–95 marketing year trade demand of 900,000 pounds from the revised 1994–95 marketing year total available supply of 957,325 pounds.

(B) Estimated trade demand (domestic and export) for the 1995–96 marketing year—950,000 pounds. This number is an estimate that takes into account the average of total annual sales made between 1980 and 1993, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1995–96 regulated production—892,675 pounds. This number is the difference between the estimated 1995–96 marketing year trade demand and the estimated carry-in on June 1, 1995.

(D) Total allotment base for the 1995–96 marketing year—1,781,433 pounds.

(E) Computed allotment percentage—50.1 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—51 percent.

(G) The Committee's recommended salable quantity—908,531 pounds.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1995—156,733 pounds. This number is

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derived by subtracting the estimated 1994–95 marketing year trade demand of 1,150,000 pounds from the revised 1994–95 marketing year total available supply of 1,306,733 pounds.

(B) Estimated trade demand (domestic and export) for the 1995–96 marketing year—1,050,000 pounds. This number is an estimate based on the average of total annual sales made between 1980 and 1993, handler estimates, and information provided by producers and buyers.

(C) Salable quantity required from 1995–96 regulated production—893,267 pounds. This number is the difference between the estimated 1995–96 marketing year trade demand and the estimated carry-in on June 1, 1995.

(D) Total allotment base for the 1995–96 marketing year—1,970,542 pounds.

(E) Computed allotment percentage—45.3 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—46 percent.

(G) The Committee's recommended salable quantity—906,449 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended salable quantities of 908,531 pounds and 906,449 pounds, and allotment percentages of 51 percent and 46 percent for Scotch and Native spearmint oils, respectively, are based on anticipated 1995–96 marketing year supply and trade demand.

The recommended salable quantity and allotment percentage for Native spearmint oil reflects the Committee's expectation that demand during the 1995–96 marketing year will approximate the demand initially anticipated for the 1994–95 marketing year. On the other hand, the relatively higher recommended salable quantity and allotment percentage for Scotch spearmint oil for the 1995–96 marketing year demonstrates that the Committee is concerned with the increasing Scotch spearmint oil production both inside and outside the marketing order production area, and the industry's desire to maintain a significant share of the North American market.

These salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantity. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1994–95 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation, as adopted, will be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this final action are expected to be offset by the benefits derived from improved returns.

The establishment of these salable quantities and allotment percentages allows for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this final rule also provides spearmint oil producers with information on the amount of oil which should be produced for next season.

The proposed rule concerning this action was published in the December 15, 1994, **Federal Register** [59 FR 64624], with a 30-day comment period ending January 17, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new section 985.214 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.214 Salable quantities and allotment percentages—1995–96 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1995, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 908,531 pounds and an allotment percentage of 51 percent.

(b) Class 3 (Native) oil—a salable quantity of 906,449 pounds and an allotment percentage of 46 percent.

Dated: February 8, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–3785 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 95–03]

RIN 1557–AA72

Lending Limits

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is comprehensively revising its rules governing national bank lending limits as part of its Regulation Review Program. The final rule amends, clarifies, and reorganizes the OCC's lending limit rules.

The final rule eliminates inefficient and unduly burdensome regulatory requirements and refocuses the lending limit rules on the areas of greatest safety and soundness concern. The new rule enhances the ability of national banks to lend while protecting against situations where excessive loans to a borrower or related borrowers present safety and soundness concerns.

EFFECTIVE DATE: March 17, 1995.

FOR FURTHER INFORMATION CONTACT: William C. Kerr, National Bank Examiner, or Frank R. Carbone, National Bank Examiner, Credit and Management Policy, (202) 874–5170; P. Moni SenGupta, Attorney Legislative and Regulatory Activities Division, (202) 874–5090; Aline J. Henderson, Senior Attorney, or Laura G. Goldman, Attorney, Bank Activities and Structure Division, (202) 874–5300; Office of the Comptroller of the Currency, 250 E St. SW., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Background

Although the limitations on a national bank lending to one borrower can be traced to the Currency Act of 1863,[1] the Garn-St Germain Depository Institutions Act (Act), Pub. L. 97–320 (1982), represents the most recent major revision of the statutory lending limits. Section 401(a) of that Act amended 12 U.S.C. 84 to raise the amount that a national bank may lend to a single borrower from 10 to 15 percent of the bank's unimpaired capital and unimpaired surplus. It also added new exceptions, defined key terms, and provided express authority for the OCC to issue regulations to implement the statute, including regulations to define or further define terms and to establish limits or requirements other than those contained in the statute for particular classes or categories of loans.

The OCC implemented the amended 12 U.S.C. 84 with a final rule published on April 12, 1983 (48 FR 15844). The final rule created a new part 32 in title 12 of the Code of Federal Regulations which replaced and restructured existing interpretive rulings previously found at 12 CFR part 7. The OCC proposed another major regulatory revision of the lending limits for national banks on October 24, 1989 (54 FR 43398). A final rule in response to this proposal was never adopted, however.

The Proposal

On February 11, 1994 the OCC published its proposal to revise the lending limit regulation found at 12 CFR part 32 (proposal), 59 FR 6593, as part of the OCC's Regulation Review Program. The proposal sought to modernize the regulation and incorporate into the rule significant interpretive positions of the OCC. The proposal sought to comprehensively revise, reorganize, update, and simplify the regulation, and to reduce unnecessary regulatory burdens, without compromising the important safety and soundness objectives of the lending limits rule.

Comments Received and Changes Made

The final rule implements most of the initiatives contained in the proposal. However, several additional changes are made in response to the comments received. Most of these changes clarify the original intent of the proposal. Other changes alter the proposed regulation in a manner that provides additional flexibility to banks. The final rule also includes a number of technical changes to the proposal.

The OCC received 28 comment letters on the proposal. The comments received generally were very favorable. Comment letters included 16 from banks and bank holding companies, three from law firms, and eight from trade associations and the representatives of banks, thrifts, home builders, and clearing houses. The commenters welcomed the OCC's effort to reorganize part 32 and several stated that the changes made in the proposal represented a significant improvement over the old rule. Commenters generally praised the new format and the additional clarity provided by the revisions. Some predicted that the simplified regulation would reduce regulatory burden and compliance costs.

Overview of the Final Rule

The OCC reviewed the lending limit rule with the goals of reducing unnecessary regulatory burdens and providing banks with increased flexibility in their lending operations, consistent with safe and sound banking practices.

As part of this new approach, the final rule alters the definition of "capital and surplus" upon which lending limits are based. The new lending limit calculation draws upon risk-based capital components that a bank must already calculate for Call Report purposes. By relying on quarterly Call Report information, most national banks generally will be required to calculate their lending limit only once every quarter, rather than every time they propose to make a loan.

The final rule also adds a few new definitions and removes or consolidates old ones to enhance the regulation's clarity. Several modifications provide banks with greater flexibility in certain lending situations, subject to safety and soundness parameters. For example, the rule includes a new exception to the lending limits to allow a bank to advance funds to renew and complete the funding of a qualifying loan commitment under circumstances where the additional advance will protect the position of the bank. The final rule also allows a bank to advance funds to pay for taxes, insurance and other necessary expenses to protect its interest in the collateral securing a loan, and clarifies when a loan is considered "nonconforming," rather than a violation, when it exceeds a bank's lending limit, but was within the bank's lending limit when made.

Section-by-Section Discussion

The commenters focused on provisions of the proposal needing modification or further amendment. The OCC carefully considered each of the comment letters and has made a number of changes in response. Those comments and any changes are identified and explained in the section-by-section discussion that follows. A table summarizing the sections of the former part 32 that are amended by the final rule is included at the end of this preamble.

Authority, Purpose and Scope (§ 32.1)

The proposal amended the "Purpose" paragraph to expressly incorporate the objectives of safety and soundness, loan diversification, and equitable access to banking services. The final rule adds to the "Scope" paragraph new language cautioning bank management that the lending limit rule is not a "safe harbor" for lending.

The "Scope" paragraph emphasizes that the lending limit rules are only one component of a prudent lending program. National banks must always underwrite loans in accordance with prudent banking practices, in addition to adhering to specific quantitative limitations such as the lending limits. Several commenters remarked that the OCC should amend the lending limits provisions to recognize the existence of limited liability companies as bank subsidiaries, comparable to operating subsidiaries. Treatment of limited liability companies as operating subsidiaries is an issue raised in the OCC's proposed changes to Part 5 of its regulations, and the OCC believes the question is better resolved in that context. (59 FR 61034, November 29, 1994.) In the interim, however, when a bank seeks permission to invest in a limited liability company as a subsidiary, and the bank's voting interest satisfies the operating subsidiary percentage control requirements, the bank may also seek confirmation that loans by the bank to the limited liability company subsidiary will be treated in the same way as loans to an "operating subsidiary" for purposes of lending limits.

Definitions (§ 32.2)

The proposal consolidated all the definitions located throughout the existing rule into a single section. Commenters raised questions about some of the revisions and additions made to the definitions. Of particular note are the following revisions.

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[1] Act of Feb. 25, 1863, 12 Stat. 665 et seq.; R.S. § 5200.

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Capital and Surplus (§ 32.2(b))

Under the former rule, the statutory lending limit of 15% of capital was applied to a definition of capital found in 12 CFR § 3.100. The § 3.100 definition serves as the capital base for certain other regulatory limitations, such as limits on purchasing investment securities, holding property and OREO, and investing in community development corporations. The § 3.100 capital definition is separate and different from the leverage and risk-based capital formulae used to determine banks' capital adequacy.

In order to reduce regulatory burden associated with calculating lending limits and to begin the process of reducing the multiple definitions of capital currently in use, the proposal changed the definition of capital and surplus used for lending limits purposes by employing a capital calculation that all banks already make. Under the proposal, a bank's basic lending limit would be an amount equal to 15% of the sum of its allowed Tier 1 and Tier 2 capital, plus the balance of its allowance for loan and lease losses (ALLL) not included in Tier 2 capital for the bank's risk-based capital calculation. For simplicity, the proposal used the terminology "capital and surplus" rather than the statutory terms "unimpaired capital and unimpaired surplus."

The commenters generally favored this approach to the capital definition, however, some expressed concern that the approach needed to be clarified. The new capital base for calculation of the limit in the proposal appeared to some commenters to be the sum of all Tier 1 elements and all Tier 2 elements, whether or not they exceeded the amounts that could be included in a bank's risk-based capital. The final rule adopts the proposed capital and surplus definition but with an amendment to clarify that only the amount of Tier 1 and Tier 2 capital that is actually included in a bank's risk-based capital (plus the excess ALLL) is allowed in the bank's lending limit capital base.

Loans and Extensions of Credit (§ 32.2(j))

The commenters generally favored the proposed amendments to the definition of loans and extensions of credit, now found at § 32.2(j), which incorporates significant OCC interpretive positions clarifying the term. Section 32.2(j)(1)(iii) adds the requirement that in order to exclude a bank's purchase of Type I securities subject to a repurchase agreement, a bank must have assured control over or established rights to the securities.

Some commenters requested additional clarification of the meaning of "assured control." Assured control means that the bank has recognized and exercisable authority over the asset. For example, a bank can assure control of property subject to a repurchase agreement by taking physical possession of the security or by requiring a proper recordation of ownership of book-entry securities.

Section 32.2(j)(1)(v) excludes all intra-day or daylight overdrafts from the definition of an extension of credit. Several commenters questioned whether the terms "intra-day" or "daylight" were sufficiently adaptable for an increasingly complex and international payments system. As the commenters point out, more and more banks operate across several time zones. The financial payments systems are now global systems spanning many time zones. With this in mind, several commenters suggested that the final rule adapt the meaning of a "daylight" overdraft to contemporary conventions. The OCC believes these concerns have merit and the final rule drops the reference to "daylight" and simplifies the definition. Intra-day overdrafts excluded from the final rule are those overdrafts for which payment is received before the bank closes its books for the calendar day. This change recognizes the reality of a rapidly expanding payments system that may eventually run 24 hours a day and looks to each bank's practice for closing its books for the calendar day.

Loans Legally Unenforceable

Section 32.2(j)(1)(vii) of the proposal was intended to incorporate OCC interpretive letters that elaborated on former § 32.106, that certain loans that become legally unenforceable would not be counted in calculating a bank's lending limit. One commenter observed that in attempting to incorporate the OCC interpretive letters, the proposal effectively narrowed the effect of the interpretive ruling by excluding from lending limit calculations only loans that are discharged in bankruptcy, or by judicial decision or statute, and not excluding loans that are legally unenforceable "for any other reason."

The final rule returns to the scope of the original OCC interpretive ruling. Under the final rule, a loan (or a portion thereof) that becomes legally unenforceable for any reason and has been charged off on a bank's books, is not considered a loan or extension of credit. As a matter of prudent banking practice, the OCC expects that banks will keep sufficient documentation to show why loans are legally unenforceable. These records may include letters, memoranda, or written agreements that evidence the bank's legally enforceable forgiveness of a loan. The financial records of the bank also should reflect that the loan has been charged off.

Advances for the Benefit of the Borrower

As proposed, § 32.2(j)(2)(i) exempts from the definition of "loans and extensions of credit" additional funds advanced to a borrower by a bank for taxes or insurance if the advance is made for the protection of the bank. The purpose of this exemption was to allow banks to preserve the value of the collateral securing a loan. The proposal requested that commenters address whether advances made for other purposes should be similarly exempted from the definition of loans and extensions of credit. Commenters responded that the purpose of the exemption is served by allowing an advance for any purpose that protects the collateral.

The OCC carefully considered the comments received on this issue. The OCC recognizes that there may be situations when an advance on behalf of a troubled borrower could help the lending bank avoid greater expenses after foreclosure. For example, an advance for the purpose of repairing a leaking roof is more cost effective than waiting until after foreclosure which leads to spending more money to restore the value of water-damaged OREO. However, using the exemption to advance funds for building new property would not be consistent with the purpose of the exemption. The OCC also has concerns that banks reasonably anticipate a borrower's need to fund various expenses in determining the appropriate size of the loan that a bank is able to extend and that the exemption not create incentives for borrowers to divert or reclassify spending in order to qualify larger portions of their credit needs for the exemption.

Nevertheless, the OCC believes that a moderate extension of the exemption to allow advances to pay for more than taxes and insurance is appropriate, provided that the expenses have not been structured to avoid a bank's lending limits. The final rule therefore exempts from the lending limit reasonable advances made on behalf of the borrower to pay for necessary maintenance and certain other expenditures when an advance is consistent with safe and sound banking practices and designed to protect the lending bank's interest in the collateral.

As before, these advances will be treated as an extension of credit and taken into account in calculating the bank's lending limit if the bank seeks to make an additional loan to the same borrower.

Accrued and Discounted Interest

Section 32.2(j)(2)(ii) of the proposal clarified the type of accrued and discounted interest that would qualify for an exclusion from the definition of "loans and extensions of credit." The proposal also provided, however, that accrued and discounted interest would be treated as an extension of credit if a bank sought to make another loan to the borrower.

Several commenters, particularly large banks with loans to foreign governments, objected to this provision of the paragraph. One commenter stated that this provision would be a major problem for banks seeking to restructure loans to foreign governments with substantial accrued interest. The proposed provision could severely impair a bank's ability to participate in any new extensions of credit in connection with that type of sovereign debt restructuring. Other commenters pointed to the 1982 Garn-St Germain amendments, Pub. L. 97–320 (1982), which changed the language of 12 U.S.C. 84 from "total obligations" of a borrower to "loans and extensions of credit." These commenters argued that the 1982 amendment reflects a shift in the focus of the statute. They argued that the 1982 amendment confirms that § 84 is not directed to interest that is contractually due but is intended to limit only the funds that actually leave the bank in the form of principal. In short, these commenters believe that the lending limits apply to money loaned, not money owed.

The OCC believes these comments have merit. In order to provide greater flexibility to banks seeking to improve their recoveries through loan work-outs and restructured loans with troubled debtors, the final rule modifies the OCC's previous approach. Under the final rule, a bank need not attribute past-due or accrued interest to a borrower for purposes of the lending limit. However, as already noted, all loans made by a national bank must be underwritten in accordance with prudent banking practices, in addition to adhering to specific quantitative limitations such as the lending limits. National banks therefore should consider the possibility of unscheduled interest accruals in determining the amount of the bank's original extension of credit, and also must bear the prudent banking practices standard in mind when extending additional credit to a borrower with past-due or accrued interest.

Renewals

The proposal incorporated an OCC interpretive position that excludes from the definition of "loans and extensions of credit" certain loan renewals or restructurings if the bank first exercised "best efforts" to bring the loan into conformity with its lending limit. Several commenters questioned whether the use of the term "best efforts" sets a standard that is too high to provide any practical application. The OCC agrees and the final rule uses the term "reasonable" efforts, which better reflects the OCC expectation and the original intent of the proposed amendment.

Items in the Process of Collection

The OCC has generally taken the interpretive position that giving credit for uncollected items is a loan or an extension of credit. However, under the proposal, the OCC also created an exception for instances where payment is required by Regulation CC of the Federal Reserve Board, 12 CFR part 229. Regulation CC specifies certain time frames within which funds must be made available. Several commenters correctly pointed out that although the intent of the proposal was to provide additional flexibility, the effect of the change did not achieve that result. In fact, the proposal may have prevented a bank from giving credit for an uncollected item prior to the day stated in the mandatory availability schedule in Regulation CC, by requiring the bank to treat that advance as an extension of credit.

The final rule amends this paragraph by providing that amounts paid on items in the normal process of collection do not constitute a loan or extension of credit. However, once an item is returned or dishonored by the paying bank, it no longer is in the normal process of collection. Payment by a bank against a dishonored item would be an extension of credit.

Participation Loans

Section 32.2(j)(2)(vi) of the final rule revises the proposal's treatment of participation loans. The proposal incorporated interpretive positions previously found at § 32.107 and included a new provision requiring a bank that originates a loan to receive funding from the participants on the same day. If the bank did not receive participant funding on the same day, the proposal required the bank to treat unfunded portions as a loan from the originating bank to the borrower. Many commenters suggested that the OCC eliminate the same-day funding requirement because it is impractical. The OCC disagrees with that contention and believes the participant funding provision is an important protection to the originating bank that will help ensure prompt funding by participants.

The commenters, however, correctly point out that delays in the timing and delivery in funding a participation are not infrequent. The OCC does not intend for inadvertent funding delays to cause lending limit violations. The final rule therefore extends the funding period to provide a more realistic timeframe to address temporary or inadvertent funding errors. The final rule provides that a participation loan is not attributed to the originating bank if it receives funding from the participants before the close of business on the day after it makes funds available to the borrower. The final rule also sets forth standards for an originating bank that, if followed, shield the bank from a lending limit violation in the event that a participant fails to fund.

Special Lending Limits (§ 32.3(b))

Section 32.3(b)(3)(ii) of the proposal required an inspection and valuation of livestock that is "current, taking into account the nature and frequency of turnover of the livestock" in order to qualify for the special lending limit for loans secured by documents covering livestock. Former part 32 required that an "inspection and appraisal report" be performed at least every 12 months or more frequently as deemed prudent. The proposal recognized the differences in turnover between different kinds of livestock that secure a loan. It removed the presumption that an inspection and appraisal report performed every 12 months is adequate.

Several commenters questioned this change. The commenters read the former rule to require an inspection report only once every 12 months. Although some commenters characterized the proposal as more burdensome than the old requirement, the OCC believes it is not. In fact, the former rule required an inspection and appraisal report more frequently than once a year, if it was prudent to do so. The proposal actually reduced burden by allowing the use of valuations, rather than appraisals, when appropriate. Recognizing the need for clarity, however, the final rule includes the requirement that an inspection or valuation be made no less frequently than every 12 months.

Section 32.3(b)(5) of the proposal also provided a new exception to the lending limits to enable a bank to renew a

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qualifying commitment to lend in order to complete the financing of a project in process. Under the proposal, the advance had to be to protect the position of the bank, and the amount of additional advances could not exceed the lesser of the unfunded portion of the original commitment or 5 percent of the bank's capital and surplus. Commenters generally supported this position. Several suggested, however, that for the exception to accomplish its intended purpose, the OCC should allow the bank to fund the full amount of the commitment even if it was in excess of the five percent cap.

The OCC believes that this suggestion has merit, but is also concerned that full funding of the original commitment must not compromise a bank's safety and soundness. Accordingly, the final rule modifies the approach contained in the proposal to allow funding up to the amount of the original commitment, provided the renewal and additional funding thereunder is consistent with safe and sound banking practices, is made to protect the bank's position, and will enable the borrower to complete the project for which the original commitment was made.

Section 32.3(b)(6) of the proposal was not included in the final rule. This paragraph set forth a special lending limit that expired on January 1, 1995. Since the section serves no purpose after that date it is not incorporated into the final rule.

Loans Exempt From the Lending Limit (§ 32.3(c))

Section 32.3(c)(3) is revised in the final rule. This paragraph provides that loans collateralized by U.S. government obligations are exempt from the lending limits to the extent of the current market value of the collateral. This exemption includes loans that are secured by bonds, notes, Treasury bills, or similar obligations fully guaranteed as to principal and interest by the full faith and credit of the United States Government. This exemption was the subject of several commenter suggestions that it be expanded to include loans that are secured by instruments with comparable government backing. The OCC agrees with these comments that certain other forms of collateral that carry the full faith and credit of the U.S. government pose no greater risk of loss. Accordingly, the final rule relies on the OCC's authority under 12 U.S.C. 84(d)(1) to establish limits or requirements other than those specified in the statute, for particular classes or categories of loans, to include an additional class of loans in the exempt category—loans guaranteed as to repayment of principal by the full faith and credit of the U.S. Government. This exemption includes qualifying Small Business Administration, Federal Housing Administration, and Veterans Administration guaranteed loans, but only to the extent of the government guarantee.

Some commenters suggested that the final rule also extend this exemption to loans that are secured by other types of instruments. The OCC has carefully considered these suggestions, but does not agree that, as a general matter, the principal and liquidity risks presented by the suggested types of instruments are sufficiently comparable to the risks of directly holding the U.S. Government securities, or government-backed loans. Accordingly, the OCC declines to add an additional category of collateral that could qualify a loan for an exemption from lending limits.

The final rule also modifies § 32.3(c)(10) of the proposal. As proposed, this paragraph was intended to incorporate OCC interpretive positions on loans to leasing companies. This paragraph allows banks to attribute loans made to leasing companies to the lessees when certain conditions are met. The final rule includes minor changes to ensure that the conditions for this treatment are no more burdensome than if the bank were to act as a lessor itself subject to 12 CFR part 23. These changes better convey the current OCC interpretive position.

Frequency of the Lending Limit Calculation (§ 32.4)

The former rule required a bank to determine its lending limit for each loan on the date that it made a loan. The proposal simplified this requirement by allowing a bank to rely on its quarterly calculation of capital found in its Call Report. Rather than calculate daily, under the proposal the bank generally could calculate the lending limit once for the entire quarter. However, the OCC was concerned that a significant decline in capital between quarterly calculations could result in a bank lending at a level above its actual limit for the duration of the quarter

To prevent a bank from lending in excess of a shrinking capital base, the proposal required a bank to recalculate its lending limit between quarters if there were a change in its capital category for purposes of prompt corrective action, or if a "material event" occurred that caused its capital to increase or decrease by 10 percent or more. However, it was recognized that what constitutes a "material event" for this trigger may not be readily defined. Anticipating criticism of the material event component, the proposal suggested an alternative: a simple increase or decrease of 10 percent in a bank's capital between quarters would trigger the recalculation obligation.

Comment was mixed on both approaches to the recalculation trigger Generally, commenters characterized the "material event" element as too vague to be useful. Many suggested that a simple percentage test would be more reliable and useful. Others questioned whether a percentage test was needed given the OCC's general ability to require more frequent calculations in individual cases. The OCC finds these arguments persuasive. The OCC has concluded that the material event element is too vague to give a reliable indication of the need to recalculate. As a result, the OCC has not included this requirement in the final rule.

Imposing the requirement that a bank recalculate whenever its capital declined by 10 percent between quarters is also problematic. Several commenters observed that the obligation to monitor the changes in capital between quarters would give a bank little comfort that its quarterly lending limit is valid for the entire quarter. In effect the obligation to monitor 10 percent swings in capital could force a bank to make a daily calculation of capital, not quarterly as proposed. This result would be contrary to the purpose of the proposed quarterly calculation.

On the other hand, the OCC also considered whether a quarterly calculation would be inappropriate for any identifiable subset of national banks, such as banks that are undercapitalized. The OCC determined not to include a different lending limit calculation frequency requirement for undercapitalized banks as a class, however, because the OCC anticipates that such banks will be subject to enhanced supervisory oversight and directives that will address the frequency of the bank's lending limit calculations in those cases where lending limit excesses are a potential problem. (For example, a bank could be undercapitalized for reasons unrelated to its lending activities, or could have poor underwriting practices and losses on loans and raise no lending limits issues). The OCC closely monitors undercapitalized banks, however, and will make appropriate adjustments to the frequency of required lending limit calculations for such banks if experience indicates that a general standard for undercapitalized banks is needed.

The final rule, therefore, deletes the 10 percent recalculation requirement

but retains the explicit authority for the OCC to require a national bank to calculate its lending limits more frequently than every quarter when the OCC believes it is necessary. The OCC therefore may address unsafe or unsound lending practices or other supervisory concerns by directing any bank to calculate its lending limit more frequently than quarterly. This authority is set forth in § 32.4(b).

Direct Benefit Test (§ 32.5(b))

Section 32.5(b) requires a loan to be attributed to a third party if the third party gains the direct benefit of the loan proceeds. The proposal narrowed the direct benefits tests to clarify that loans are not attributable to a third party when the loan proceeds are transferred to the third party to acquire property, goods, or services in a bona-fide arms-length transaction.

The proposal requested comment on the question of whether the direct benefits test was necessary. Several commenters argued that it was not. Some commenters suggested that the common enterprise test addresses most, and possibly all, circumstances that involve the less than a bona fide arms-length transactions that is the focus of the direct benefits test. The OCC has carefully considered these comments but has concluded that the direct benefits test uniquely addresses an area of concern in the lending limits area. The final rule therefore retains the test but with one change, designed to improve certainty regarding the application of the test. The "facts and circumstances" provision of the direct benefits test is removed. The OCC believes this part of the test was redundant and potentially confusing.

Common Enterprise Test (§ 32.5(c))

The final rule adopts the common enterprise test largely as stated in the proposal. The common enterprise test requires the aggregation of loans made to persons who are related through common control and financial interdependence or share a common source of income for repayment of the loan, or whenever the OCC determines the "facts and circumstances" requires aggregation. Most commenters characterized the proposed language as a much improved restatement of the test that was easier to understand Some commenters requested further amendments, alterations, and extension of the rule.

The OCC has not adopted most of the suggestions. Many of the commenters' suggestions for change would have undermined the effectiveness of this combination rule. Most of the suggested changes would not have provided much additional clarity. Others risked diminishing the effectiveness of the rule. Although the common enterprise test may be somewhat complex to apply to certain corporate structures, the OCC has concluded that, on balance, it is an effective description of the varied circumstances when loans to separate borrowers should be combined because they present a common source of credit exposure for a bank.

The final rule makes changes to § 32.5(c)(3), to clarify that the rule requires combination of only those loans that the borrowers use for the acquisition of a controlling interest in a business. The final rule also specifically clarifies that limited liability companies will be treated in the same manner as corporations, rather than as partnerships, in applying the common enterprise test.

Nonconforming Loans (§ 32.6)

The proposal incorporated OCC policy that a bank will not be deemed to violate the lending limits when a loan that was legal when made becomes nonconforming as a result of several specifically defined events, provided the bank exercises "best efforts" to bring the loan into conformity with the lending limit. A number of commenters objected that the "best efforts" standard was too high. Some commenters pointed out that using best efforts to reduce a nonconforming loan could pose certain safety and soundness risks to a bank. For example, if a bank holds a loan that was legal when made and subsequently the bank's capital declines, the best efforts standard might require that the bank sell the loan off at any price. This forced sale only causes the bank to lose an asset during a period that its capital is in decline. The OCC did not intend this result of the proposed nonconforming loan provisions.

In response to commenter concerns, the final rule replaces the term "best efforts" with the term "reasonable efforts" The OCC believes this standard more accurately reflects the level of effort appropriate to bring a loan into conformance with a bank's current lending limits. The final rule also makes clear that the section does not require a bank to make efforts to bring the loan into conformity if to do so would be inconsistent with safe and sound banking practices. In addition, the final rule adds that loans that exceed a bank's lending limit as a result of changes in the capital rules or because borrowers subsequently become a common enterprise will be treated as nonconforming.

Finally, in response to commenters, the final rule changes the treatment of loans that qualify for a lending limit exemption because they are secured by certain collateral, such as U.S. government obligations. Under the former rule, as well as the proposal, a national bank was required to bring a loan into conformity through restoration of the market value of the collateral or by reducing the amount of the bank's loan by the amount that exceeds the lending limit within five business days Several commenters characterized the five day correction period as arbitrary and unrealistic.

The OCC recognizes that there are circumstances beyond the bank's control which might cause a loan of this type to violate the lending limit, because of a decline in collateral value Instead of the five day period, the final rule requires that a bank bring these loans into conformity within 30 calendar days. During that 30 day period, the loan will be treated as non-conforming. The OCC believes this change will provide a more realistic period to enable a bank to address restoration of proper collateral for a loan without forcing a precipitous divestiture of all or part of the loan that would not be in the best interests of the bank.

Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, requires that a regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier.

The OCC believes that this regulation relieves burden by eliminating inefficient and unduly costly regulatory requirements and better focusing the lending limit rules on areas of greatest safety and soundness concern. These revisions to part 32 should not be further delayed. Accordingly, the final rule is effective 30 days after publication.

Derivation Table

Only substantive modifications, additions and changes are indicated

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Revised provision	Existing provision	Comments
§ 32.1	§ 32.1, § 32.111	Modified.
§ 32.2(a)	§ 32.101	Added and modified.
(b)	§ 32.2(c)	Significant change.
(c)		Added.
(d)	§ 32.6(h)(3)	
(e)	§ 32.6(h)(4)	
(f)	§ 32.2(d)	
(g)	§ 32.5(a)(2)(v)	Modified.
(h)	§ 32.4(b)	
(i)	§ 32.4(c) and (e)	
(j)(1)(i)	§ 32.2(a)	
(j)(1)(ii)	§ 32.2(a)	
(j)(1)(iii)	§ 32.103	Modified.
(j)(1)(iv)	§ 32.104	Modified.
(j)(1)(v)	§ 32.105	
(j)(1)(vi)	§ 32.102(b)	
(j)(1)(vii)	§ 32.106	Modified.
(j)(2)(i)		Added.
(j)(2)(ii)	§ 32.108	Modified.
(j)(2)(iii)		Added.
(j)(2)(iv)		Added.
(j)(2)(v)		Added.
(j)(2)(vi)	§ 32.107	Significant change.
(k)	§ 32.2(b)	Modified.
(l)	§ 32.2(f)	
(m)	§ 32.4(c)	
(n)	§ 32.6(c)(3)	
(o)	§ 32.102(a)	
(p)	§ 32.2(e)	
§ 32.3(a)	§ 32.3, § 32.4	Modified.
(b)(1)	§ 32.6(c)	
(b)(2)	§ 32.6(h)	Modified.
(b)(3)	§ 32.6(i)(1)	Modified.
(b)(4)	§ 32.6(i)(2)	
(b)(5)		Significant addition.
(c)(1)	§ 32.6(a)	
(c)(2)	§ 32.6(b)	
(c)(3)	§ 32.6(d)	Significant change.
(c)(4)	§ 32.6(e)	
(c)(5)	§ 32.109	
(c)(6)	§ 32.6(f)	Modified.
(c)(7)	§ 32.6(g)	
(c)(8)	§ 32.6(j)	
(c)(9)	§ 32.110	
(c)(10)		Added.
§ 32.4		Significant addition.
§ 32.5(a)	§ 32.5(a)(1)	
(b)		Significant change.
(c)	§ 32.5(a)(2)	Modified.
(d)	§ 32.5(b)	Modified.
(e)	§ 32.5(c)	
(f)	§ 32.5(d)	
§ 32.6	§ 32.7	Modified.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action as defined in Executive Order 12866.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 32—LENDING LIMITS

Sec.
32.1 Authority, purpose and scope.
32.2 Definitions.
32.3 Lending limits.
32.4 Calculation of lending limits.
32.5 Combination rules.
32.6 Nonconforming loans.

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a

§ 32.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84, and 12 U.S.C. 93a.

(b) *Purpose.* The purpose of this part is to protect the safety and soundness of

national banks by preventing excessive loans to one person, or to related persons that are financially dependent, and to promote diversification of loans and equitable access to banking services.

(c) *Scope.* (1) This part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. This part does not apply to loans made by a national bank and its domestic operating subsidiaries to the bank's "affiliates," as that term is defined in 12 U.S.C. 371c(b)(1), to the bank's operating subsidiaries, or to Edge Act or Agreement Corporation subsidiaries.

(2) The lending limits in this part are separate and independent from the investment limits prescribed by 12 U.S.C. 24 (Seventh), and a national bank may make loans or extensions of credit to one borrower up to the full amount permitted by this part and also hold eligible securities of the same obligor up to the full amount permitted under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(3) Extensions of credit to executive officers, directors and principal shareholders of national banks, and their related interests are subject to limits prescribed by 12 U.S.C. 375a and 375b in addition to the lending limits established by 12 U.S.C. 84 and this part.

(4) In addition to the foregoing, loans and extensions of credit made by national banks and their domestic operating subsidiaries must be consistent with safe and sound banking practices.

§ 32.2 Definitions.

(a) *Borrower* means a person who is named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in § 32.5.

(b) *Capital and surplus* means—

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the OCC's Minimum Capital Ratios in Appendix A of part 3 of this chapter; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under part 3 of this chapter.

(c) *Close of business* means the time at which a bank closes its accounting records for the business day.

(d) *Consumer* means the user of any products, commodities, goods, or services whether leased or purchased, but does not include any person who purchases products or commodities for resale or fabrication into goods for sale.

(e) *Consumer paper* means paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Consumer paper also includes paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(f) *Contractual commitment to advance funds.* (1) The term includes a bank's obligation to—

(i) Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) Guarantee or act as surety for the benefit of a person;

(iii) Advance funds under a qualifying commitment to lend, as defined in paragraph (l) of this section; and

(iv) Advance funds under a standby letter of credit as defined in paragraph (p) of this section, a put, or other similar arrangement.

(2) The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

(g) *Control* is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons—

(1) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person,

(2) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person, or

(3) Has the power to exercise a controlling influence over the management or policies of another person.

(h) *Current market value* means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(i) *Financial instrument* means stocks, notes, bonds, and debentures traded on a national securities exchange, OTC margin stocks as defined in Regulation U, 12 CFR part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term "financial instrument" does not include mortgages.

(j) *Loans and extensions of credit* means a bank's direct or indirect advance of funds to or on behalf of a borrower based on an obligation of the borrower to repay the funds or repayable from specific property pledged by or on behalf of the borrower.

(1) Loans or extensions of credit for purposes of 12 U.S.C. 84 and this part include—

(i) A contractual commitment to advance funds, as defined in paragraph (f) of this section;

(ii) A maker or endorser's obligation arising from a bank's discount of commercial paper;

(iii) A bank's purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period, but not including a bank's purchase of Type I securities, as defined in part 1 of this chapter, subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the Type I securities as collateral;

(iv) A bank's purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(v) An overdraft, whether or not prearranged, but not an intra-day overdraft for which payment is received before the close of business of the bank that makes the funds available;

(vi) The sale of Federal funds with a maturity of more than one business day, but not Federal funds with a maturity of one day or less or Federal funds sold under a continuing contract; and

(vii) Loans or extensions of credit that have been charged off on the books of the bank in whole or in part, unless the loan or extension of credit—

(A) Is unenforceable by reason of discharge in bankruptcy;

(B) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(C) Is no longer legally enforceable for other reasons, provided that the bank

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maintains sufficient records to demonstrate that the loan is unenforceable.

(2) The following items do not constitute loans or extensions of credit for purposes of 12 U.S.C. 84 and this part—

(i) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(ii) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(iii) Financed sales of a bank's own assets, including Other Real Estate Owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(iv) A renewal or restructuring of a loan as a new "loan or extension of credit," following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the OCC determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(v) Amounts paid against uncollected funds in the normal process of collection; and

(vi)(A) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(B) When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to § 32.6, rather than a violation, if:

(*1*) The originating bank had a valid and unconditional participation agreement with a participating bank or banks that was sufficient to reduce the loan to within the originating bank's lending limit,

(*2*) The participating bank reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

(*3*) The participation was to be funded by close of business of the originating bank's next business day.

(k) *Person* means an individual; sole proprietorship; partnership; joint venture; association, trust, estate; business trust; corporation; limited liability company; not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(l) *Qualifying commitment to lend* means a legally binding written commitment to lend that, when combined with all other outstanding loans and qualifying commitments to a borrower, was within the bank's lending limit when entered into, and has not been disqualified.

(1) In determining whether a commitment is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of "loan or extension of credit" under paragraph (j)(2)(vi) of this section.

(2) If the bank subsequently chooses to make an additional loan and that subsequent loan, together with all outstanding loans and qualifying commitments to a borrower, exceeds the bank's applicable lending limit at that time, the bank's qualifying commitments to the borrower that exceed the bank's lending limit at that time are deemed to be permanently disqualified, beginning with the most recent qualifying commitment and proceeding in reverse chronological order. When a commitment is disqualified, the entire commitment is disqualified and the disqualified commitment is no longer considered a "loan or extension of credit." Advances of funds under a disqualified or non-qualifying commitment may only be made to the extent that the advance, together with all other outstanding loans to the borrower, do not exceed the bank's lending limit at the time of the advance, calculated pursuant to § 32.4.

(m) *Readily marketable collateral* means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations based upon actual transactions on an auction or similarly available daily bid and ask price market.

(n) *Readily marketable staple* means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations.

(1) An article comes within this definition if—

(i) The exact price is easy to determine; and

(ii) The staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral.

(2) Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(o) *Sale of Federal funds* means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

(p) *Standby letter of credit* means any letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer.

(1) To repay money borrowed by or advanced to or for the account of the account party;

(2) To make payment on account of any indebtedness undertaken by the account party; or

(3) To make payment on account of any default by the account party in the performance of an obligation.

§ 32.3 Lending limits.

(a) *Combined general limit.* A national bank's total outstanding loans and extensions of credit to one borrower

may not exceed 15 percent of the bank's capital and surplus, plus an additional 10 percent of the bank's capital and surplus, if the amount that exceeds the bank's 15 percent general limit is fully secured by readily marketable collateral, as defined in § 32.2(m). To qualify for the additional 10 percent limit, the bank must perfect a security interest in the collateral under applicable law and the collateral must have a current market value at all times of at least 100 percent of the amount of the loan or extension of credit that exceeds the bank's 15 percent general limit.

(b) *Loans subject to special lending limits.* The following loans or extensions of credit are subject to the lending limits set forth below. When loans and extensions of credit qualify for more than one special lending limit, the special limits are cumulative.

(1) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples.* (i) A national bank's loans or extensions of credit to one borrower secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples, as defined in § 32.2(n), may not exceed 35 percent of the bank's capital and surplus in addition to the amount allowed under the bank's combined general limit. The market value of the staples securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's combined general limit.

(ii) Staples that qualify for this special limit must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance if such insurance is customary. Whether a staple is non-perishable must be determined on a case-by-case basis because of differences in handling and storing commodities.

(iii) This special limit applies to a loan or extension of credit arising from a single transaction or secured by the same staples, provided that the duration of the loan or extension of credit is:

(A) Not more than ten months if secured by nonperishable staples; or

(B) Not more than six months if secured by refrigerated or frozen staples.

(iv) The holder of the warehouse receipts, order bills of lading, documents qualifying as documents of title under the Uniform Commercial Code, or other similar documents, must have control and be able to obtain immediate possession of the staple so that the bank is able to sell the underlying staples and promptly transfer title and possession to a purchaser if default should occur on a loan secured by such documents. The existence of a brief notice period, or similar procedural requirements under applicable law, for the disposal of the collateral will not affect the eligibility of the instruments for this special limit.

(A) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the staples even though the grain elevator or warehouse is maintained on the premises of the owner of the staples.

(B) Warehouse receipts issued by the borrower-owner that is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or Federal authorities, may be considered eligible collateral under this provision only when the receipts are registered with an independent registrar whose consent is required before the staples may be withdrawn from the warehouse.

(2) *Discount of installment consumer paper.* (i) A national bank's loans and extensions of credit to one borrower that arise from the discount of negotiable or nonnegotiable installment consumer paper, as defined at § 32.2(e), that carries a full recourse endorsement or unconditional guarantee by the person selling the paper, may not exceed 10 percent of the bank's capital and surplus in addition to the amount allowed under the bank's combined general limit. An unconditional guarantee may be in the form of a repurchase agreement or separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not make conditional an otherwise unconditional guarantee.

(ii) Where the seller of the paper offers only partial recourse to the bank, the lending limits of this section apply to the obligation of the seller to the bank, which is measured by the total amount of paper the seller may be obligated to repurchase or has guaranteed.

(iii) Where the bank is relying primarily upon the maker of the paper for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the seller of the paper, the lending limits of this section apply only to the maker. The bank must substantiate its reliance on the maker with—

(A) Records supporting the bank's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or by a third party that is contractually obligated to make those records available for examination purposes; and

(B) A written certification by an officer of the bank authorized by the bank's board of directors or any designee of that officer, that the bank is relying primarily upon the maker to repay the loan or extension of credit.

(iv) Where paper is purchased in substantial quantities, the records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) *Loans secured by documents covering livestock.* (i) A national bank's loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or give a first lien on livestock may not exceed 10 percent of the bank's capital and surplus in addition to the amount allowed under the bank's combined general limit. The market value of the livestock securing the loan must at all times equal at least 115 percent of the amount of the outstanding loan that exceeds the bank's combined general limit. For purposes of this subsection, the term "livestock" includes dairy and beef cattle, hogs, sheep, goats, horses, mules, poultry and fish, whether or not held for resale.

(ii) The bank must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in any case not more than 12 months old.

(iii) Under the laws of certain states, persons furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If a lien that is based on pasturage furnished by the lienor prior to the bank's loan or extension of credit is assigned to the bank by a recordable instrument and protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise, it will qualify under this exception provided the amount of the perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the portion of the loan or extension of credit that exceeds the bank's combined general limit. When the amount due under the grazing contract is dependent upon future performance, the resulting lien does not meet the requirements of the exception.

(4) *Loans secured by dairy cattle.* A national bank's loans and extensions of credit to one borrower that arise from the discount by dealers in dairy cattle of

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paper given in payment for the cattle may not exceed 10 percent of the bank's capital and surplus in addition to the amount allowed under the bank's combined general limit. To qualify, the paper—

(i) Must carry the full recourse endorsement or unconditional guarantee of the seller; and

(ii) Must be secured by the cattle being sold, pursuant to liens that allow the bank to maintain a perfected security interest in the cattle under applicable law.

(5) *Additional advances to complete project financing pursuant to renewal of a qualifying commitment to lend.* A national bank may renew a qualifying commitment to lend, as defined by § 32.2(l), and complete funding under that commitment if all of the following criteria are met—

(i) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(ii) The completion of funding will enable the borrower to complete the project for which the qualifying commitment to lend was made; and

(iii) The amount of the additional funding does not exceed the unfunded portion of the bank's qualifying commitment to lend.

(c) *Loans not subject to the lending limits.* The following loans or extensions of credit are not subject to the lending limits of 12 U.S.C. 84 or this part.

(1) *Loans arising from the discount of commercial or business paper.* (i) Loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper. The paper—

(A) Must be given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or any other business purpose that may reasonably be expected to provide funds for payment of the paper; and

(B) Must bear the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions, that is transferred without recourse, or with limited recourse, must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the Export-Import Bank.

(ii) A failure to pay principal or interest on commercial or business paper when due does not result in a loan or extension of credit to the maker or endorser of the paper; however, the amount of such paper thereafter must be counted in determining whether additional loans or extensions of credit to the same borrower may be made within the limits of 12 U.S.C. 84 and this part.

(2) *Bankers' acceptances.* A bank's acceptance of drafts eligible for rediscount under 12 U.S.C. 372 and 373, or a bank's purchase of acceptances created by other banks that are eligible for rediscount under those sections; but not including—

(i) A bank's acceptance of drafts ineligible for rediscount (which constitutes a loan by the bank to the customer for whom the acceptance was made, in the amount of the draft);

(ii) A bank's purchase of ineligible acceptances created by other banks (which constitutes a loan from the purchasing bank to the accepting bank, in the amount of the purchase price); and

(iii) A bank's purchase of its own acceptances (which constitutes a loan to the bank's customer for whom the acceptance was made, in the amount of the purchase price).

(3)(i) *Loans secured by U.S. obligations.* Loans or extensions of credit, or portions thereof, to the extent fully secured by the current market value of:

(A) Bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully guaranteed as to principal and interest by the United States;

(B) Loans to the extent guaranteed as to repayment of principal by the full faith and credit of the U.S. government, as set forth in paragraph (c)(4)(ii) of this section.

(ii) To qualify under this paragraph, the bank must perfect a security interest in the collateral under applicable law.

(4) *Loans to or guaranteed by a Federal agency.* (i) Loans or extensions of credit to any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

(ii) Loans or extensions of credit, including portions thereof, to the extent secured by unconditional takeout commitments or guarantees of any of the foregoing governmental entities. The commitment or guarantee—

(A) Must be payable in cash or its equivalent within 60 days after demand for payment is made;

(B) Is considered unconditional if the protection afforded the bank is not substantially diminished or impaired if loss should result from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(5) *Loans to or guaranteed by general obligations of a State or political subdivision.* Loans or extensions of credit to a State or political subdivision that constitutes a general obligation of the State or political subdivision, as defined in Part 1 of this chapter, and for which the lending bank has obtained the opinion of counsel that the loan or extension of credit is a valid and enforceable general obligation of the borrower, and loans or extensions of credit, including portions thereof, to the extent guaranteed or secured by a general obligation of a State or political subdivision and for which the lending bank has obtained the opinion of counsel that the guarantee or collateral is a valid and enforceable general obligation of that public body.

(6) *Loans secured by segregated deposit accounts.* Loans or extensions of credit, including portions thereof, to the extent secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law.

(i) Where the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank's prior consent.

(ii) A deposit that is denominated and payable in a currency other than that of the loan or extension of credit that it secures may be eligible for this exception if the currency is freely convertible to U.S. dollars.

(A) This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit.

(B) The lending bank must establish procedures to revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(7) *Loans to financial institutions with the approval of the Comptroller.* Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of a financial institution when an emergency situation exists and a national bank is asked to provide assistance to another financial institution, and the loan is approved by the Comptroller. For purposes of this paragraph, financial institution means a commercial bank, savings bank, trust company, savings association, or credit union.

(8) *Loans to the Student Loan Marketing Association.* Loans or extensions of credit to the Student Loan Marketing Association.

(9) *Loans to industrial development authorities.* A loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant will be deemed a loan to the lessee, provided that—

(i) The bank evaluates the creditworthiness of the industrial occupant before the loan is extended to the authority;

(ii) The authority's liability on the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank as security for the loan or the industrial occupant issues a promissory note to the bank that provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank.

(10) *Loans to leasing companies.* A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease will be deemed a loan to the lessee, provided that—

(i) The bank evaluates the creditworthiness of the lessee before the loan is extended to the leasing corporation;

(ii) The loan is without recourse to the leasing corporation;

(iii) The bank is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(iv) The leasing corporation assigns all of its rights under the lease to the bank;

(v) The lessee's lease payments are assigned and paid to the bank; and

(vi) The lease terms are subject to the same limitations that would apply to a national bank acting as a lessor.

§ 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84 and this part, a bank's lending limit shall be calculated as of the most recent of the following dates—

(1) When the bank's Consolidated Report of Condition and Income is required to be filed; or

(2) When there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and part 6 of this chapter.

(b) *Authority of OCC to require more frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

§ 32.5 Combination rules.

(a) *General rule.* Loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower—

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) *Direct benefit.* The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) *Common enterprise.* A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made—

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the OCC determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) *Special rule for loans to a corporate group.* (1) Loans or extensions of credit by a bank to a corporate group may not exceed 50 percent of the bank's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) *Special rules for loans to partnerships, joint ventures, and associations.*—(1) *Partnership loans.* Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) *Loans to partners.* (i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association

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when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(f) *Loans to foreign governments, their agencies, and instrumentalities.*—(1) *Aggregation.* Loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

(i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it will be presumed that the means test has not been satisfied.

(ii) The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(2) *Documentation.* In order to show that the means and purpose tests have been satisfied, a bank must, at a minimum, retain in its files the following items:

(i) A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

(ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three;

(iii) Financial statements for each year the loan or extension of credit is outstanding;

(iv) The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(3) *Restructured loans.*—(i) *Non-combination rule.* Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate lending limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) *Qualifying restructuring.* Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign debt restructuring approved by the OCC, upon request by a bank for application of the non combination rule. The factors that the OCC will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

(iii) *50 percent aggregate limit.* With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities, (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's capital and surplus.

§ 32.6 Nonconforming loans.

(a) A loan, within a bank's legal lending limit when made, will not be deemed a violation but will be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because—

(1) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, the lending limit or capital rules have changed; or

(2) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value

(b) A bank must use reasonable efforts to bring a loan that is nonconforming as a result of paragraph (a)(1) of this section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank must bring a loan that is nonconforming as a result of circumstances described in paragraph (a)(2) of this section into conformity with the bank's lending limit within 30 calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

Dated: February 6, 1995

Eugene A. Ludwig,

Comptroller of the Currency

[FR Doc. 95–3363 Filed 2–14–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–119–AD; Amendment 39–9132; AD 95–02–13]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6–80C2 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires modification of the fire extinguishing system in the number two engine strut. This amendment is prompted by reports of chafing of the fire extinguishing tubes in a certain inboard strut to wing area. The actions specified by this AD are intended to prevent chafing of the fire extinguishing tube; such chafing could cause cracking of the tube and consequently produce a hole in the fire extinguishing tube, which could prevent the proper distribution of the fire extinguisher agent within the nacelle in the event of a fire.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamra Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2669; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on October 7, 1994 (59 FR 51151). That action proposed to require modification of the fire extinguishing system in the number two engine strut.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Since issuance of the notice, Boeing has issued Alert Service Bulletin 747–26A2226, Revision 1, dated November 23, 1994. This alert service bulletin is essentially identical to the original issue, but contains certain editorial changes. The FAA has revised the final rule to include reference to this revision of the alert service bulletin as an additional appropriate source of service information.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 145 Boeing Model 747 series airplanes equipped with General Electric CF6–80C2 engines of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at not cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360, or $180 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–02–13 Boeing: Amendment 39–9132 Docket 94–NM–119–AD.

Applicability: Model 747 series airplanes equipped with General Electric CF6–80C2 engines; as listed in Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994, or Revision 1, dated November 23, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration

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eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper distribution of the fire extinguisher agent within the nacelle in the event of a fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the fire extinguishing system in the number two engine strut, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994, or Revision 1, dated November 23, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Alert Service Bulletin 747–26A2226, dated June 30, 1994, and Boeing Alert Service Bulletin 747–26A2226, Revision 1, dated November 23, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2147 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 94–NM–113–AD; Amendment 39–9131; AD 95–02–12]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the fixed engine cowling at the forward and aft crane beam attachment; and an inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. This amendment is prompted by several reports of rear cabin noise (engine rumble) during flight and while taxiing, which may have been caused by the interference between the forward and aft crane beams and the fasteners in the fixed engine cowling. The actions specified by this AD are intended to prevent chafing due to normal engine vibration, which could result in structural damage to the engine mount and possible separation of the engine from the airplane.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker F28 Mark 0100 series airplanes was published in the **Federal Register** on September 30, 1994 (59 FR 49865). That action proposed to require modification of the fixed cowl at the forward and aft crane-beam attachment; and performing a visual inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the proposed 3-month "grace period" for compliance be extended to at least two years after the effective date of this AD for airplanes that are nearing or have exceeded the threshold of 15,000 flight hours. This commenter states that it would have to special schedule its fleet of airplanes that are approaching or have exceeded 15,000 flight hours in order to accomplish the proposed inspection/modification within the proposed compliance time. This would entail considerable additional expenses and schedule disruptions. Additionally, this commenter states that the engines on these airplanes are changed on an average of every two years and that a two-year compliance time would allow the proposed inspection/modification to be accomplished during a regularly scheduled engine change. The two-year compliance time would eliminate some of the extra down time associated with the modification. The commenter also states that no in-service incident exists to warrant such a limited compliance time.

The FAA concurs with the commenter's request. The 3-month "grace period" proposed in the notice was intended to provide additional time for compliance for those airplanes that are approaching or have exceeded 15,000 flight hours, without necessarily requiring immediate compliance (and, thus, grounding of those airplanes). The FAA selected the 3-month interval specifically as an attempt to provide as conservative an interval as possible for compliance by the higher time airplanes; however, it was selected without benefit of any empirical data or other information from the manufacturer or Dutch airworthiness authority. Based on the information provided by the commenter, and the fact that there has been no in-service incident of the subject chafing, the FAA has determined that a longer "grace period" for modification is reasonable. The FAA has revised paragraph (a) of the final rule to reflect a "grace period" of two years after the effective date of this AD. This would allow the modification to be accomplished during regularly scheduled maintenance at a main base, where special equipment and trained personnel will be available, if necessary. The FAA does not consider that this extension will adversely affect safety.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 90 work hours per airplane to accomplish the required inspection and modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $454,425, or $5,475 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–02–12 Fokker: Amendment 39–9131. Docket 94–NM–113–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11438 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent structural damage to the engine mount and possible separation of the engine from the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight hours, or within 2 years after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Fokker Service Bulletin SBF100–71–016, dated February 18, 1994.

(1) Modify the fixed engine cowling at the forward and aft crane-beam attachment in accordance with the service bulletin.

(2) Perform a visual inspection of the forward and aft crane beam to detect surface damage, in accordance with the service bulletin.

(i) If no surface damage is found, no further action is required by paragraph (a)(2) of this AD.

(ii) If any surface damage is found, prior to further flight, repair the crane beam in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification, inspection, and repair shall be done in accordance with Fokker Service Bulletin SBF100–71–016, dated February 18, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1995.

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Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-2175 Filed 2-14-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-144-AD; Amendment 39-9133; AD 95-02-14]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes, and Model C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 series airplanes, and Model C-9 (military) airplanes, that requires replacement of the engine nose cowl attaching bolts and the installation of bearing plates on the nose cowl attach ring. This amendment is prompted by incidents in which the nose cowl separated from the airplane due to the elongation and/or breakout of the nose cowl's attachment ring holes, and failure of the attaching bolts. The actions specified by this AD are intended to prevent separation of the engine nose cowl from the airplane, which could result in damage to the airplane structure or could present a hazard to persons or property on the ground.

DATES: Effective March 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 17, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (310) 627-5245; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 series airplanes, and Model C-9 (military) airplanes, was published in the **Federal Register** on October 18, 1994 (59 FR 52483). That action proposed to require replacement of the engine nose cowl attaching bolts and the installation of bearing plates on the nose cowl attach ring.

Discussion of Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Two commenters request that the proposed compliance time of 12 months for replacement be extended so that the required action can be accomplished during regularly scheduled maintenance activities. One commenter suggests a compliance time of 18 months; the other commenter suggest a compliance time of 3,000 hours time-in-service. The FAA concurs that the compliance time can be extended somewhat. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement on the affected fleet in a timely manner. The FAA's intent was that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. Based on the information supplied by the commenters, the FAA now recognizes that 18 months corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules. Paragraph (a) of the final rule has been revised to reflect a compliance time of 18 months. The FAA does not consider that this extension will adversely affect safety.

One commenter questions the FAA's estimate of the cost of required replacement parts. The commenter states that the $1,200 per airplane figure, presented in the cost impact information in the preamble to the notice, is too low. This commenter suggests that parts costs will be approximately $15,700 per airplane. Upon further review, the FAA concurs that the cost of required parts may be more than what was previously estimated. The manufacturer has provided updated cost figures for replacement bearing plates and bolts. If these items are purchased directly from the manufacturer, the cost of replacement bearing plates may be as much as $13,284 (36 plates at $369 each), and the cost of replacement bolts may be as much as $1,900 (38 bolts at $50 each). However, the FAA points out that bearing plates can be fabricated locally at a nominal cost, and bolts can be procured from the operator's current stock, thereby reducing parts costs considerably. The FAA has revised the cost impact information, below, to include this updated information on the cost of required parts.

Discussion of Additional Changes to the Rule

Since issuance of the notice, the FAA has reviewed and approved Revision 1 to McDonnell Douglas DC-9 Service Bulletin A71-63, dated December 15, 1994. This revision is essentially identical to the originally issued service bulletin, which was referenced in the notice as the appropriate source of service information; however, it contains certain editorial revisions and additional nose cowl part numbers. The FAA has revised the final rule to include this revision of the service bulletin as an additional source of service information.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 892 Model DC-9-10, -20, -30, -40, and -50 series airplanes, and Model C-9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 557 airplanes of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish the required replacement actions, at an average labor rate of $60 per work hour. Required parts will vary in price, depending upon whether they are purchased from the manufacturer, manufactured locally, or procured from the operator's existing stocks. If all required parts (36 bearing plates and 38 bolts) are purchased from the manufacturer, the cost could be as much as $15,184 per airplane. However, if the bearing plates are manufactured locally and bolts are retrieved from the operator's current stock, the estimated costs will be considerably lower, approximately $1,900 per airplane.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be between $1,258,820 (or $2,260 per airplane) and $8,658,008 (or $15,544 per airplane). This total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-02-14 McDonnell Douglas: Amendment 39-9133. Docket 94-NM-144-AD.

Applicability: Model DC-9-10, -20, -30, -40, and -50 series airplanes, and Model C-9 (military) airplanes; as listed in McDonnell Douglas DC-9 Alert Service Bulletin A71-63, dated July 21, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the engine nose cowl from the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the left and right engine nose cowl attaching bolts and install bearing plates, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A71-63, dated July 21, 1994; or Revision 1, dated December 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A71-63, dated July 21, 1994; or McDonnell Douglas DC-9 Alert Service Bulletin A71-63, Revision 1, dated December 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 17, 1995.

Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-2176 Filed 2-14-95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–216–AD; Amendment 39–9130; AD 95–02–11]

Airworthiness Directives; McDonnell Douglas Model DC–9–87 (MD–87) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–87 (MD–87) series airplanes. This action requires an inspection to detect chafing or arcing damage to the wiring of the aft right coatroom, the intercostal, and the recirculation duct assembly near longeron 5; and modification of the wiring installation for the aft right coatroom. This amendment is prompted by a report of an electrical fire that started due to a short in the coatroom wiring, which was caused by arcing and chafing damage to the wiring. The actions specified in this AD are intended to prevent severe damage to the airframe in the event of a fire caused by arcing and chafing damage to the coatroom wiring.

DATES: Effective March 2, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–216–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California;or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5344; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA received a report of an electrical fire that started behind the aft right coatroom on a McDonnell Douglas Model DC–9–87 (MD–87) series airplane. Investigation revealed that the fire occurred due to a short in the coatroom wiring, which was caused by arcing and chafing damage to the wiring between an intercostal and a recirculation air duct assembly. This condition, if not corrected, could result in severe damage to the airframe.

McDonnell Douglas has issued MD–80 Service Bulletin 24–151, dated September 29, 1994, which describes procedures for a visual inspection to detect chafing or arcing damage to the wiring of the aft right coatroom, the intercostal, and the recirculation duct assembly near longeron 5 (between stations Y=1078.000 and Y=1098.000), and modification of the wiring installation for the aft right coatroom. The modification entails removing any damaged wiring, cutting a hole in the intercostal and installing a clip assembly, and rerouting the wiring for the aft right coatroom through the modified intercostal. Modification of the wiring installation for the aft right coatroom will minimize the possibility of chafing damage.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent severe damage to the airframe in the event of a fire. This AD requires a visual inspection to detect chafing or arcing damage to the wiring of the aft right coatroom, the intercostal, and the recirculation duct assembly near longeron 5 (between stations Y=1078.000 and Y=1098.000), and modification of the wiring installation for the aft right coatroom. The actions are required to be accomplished in accordance with the service bulletin described previously, with the exception of modifying the wiring installation for airplanes on which any arcing damage to the intercostal or recirculation air duct assembly is found; that modification is required to be accomplished in accordance with a method approved by the FAA.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this requirement.

None of the Model DC–9–87 (MD–87) series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts will cost approximately $410 per airplane. Based on these figures, the total cost impact of this AD would be $830 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–216–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–02–11 McDonnell Douglas: Amendment 39–9130. Docket 94–NM–216–AD.

Applicability: Model DC–9–87 (MD–87) series airplanes having factory serial numbers (FSN) 49605 through 49612 inclusive, 49614, 53009 through 53011 inclusive, 53336, 53337, 53340, and 53348; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe damage to the airframe in the event of a fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a visual inspection to detect chafing or arcing damage to the wiring of the aft right coatroom, the intercostal, and the recirculation duct assembly near longeron 5 (between stations Y=1078.000 and Y=1098.000), in accordance with McDonnell Douglas MD–80 Service Bulletin 24–151, dated September 29, 1994.

(1) If no damage is found, prior to further flight, modify the wiring installation for the aft right coatroom (reference paragraph 1.C., Condition I, of the service bulletin) in accordance with the procedures described in the service bulletin.

(2) If any damage is found, prior to further flight, modify the wiring installation for the aft right coatroom (reference paragraph 1.C., Condition II, of the service bulletin) in accordance with the procedures described in the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with McDonnell Douglas MD–80 Serivce Bulletin 24–151, dated September 29, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 1995.

Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–2177 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0271]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of β, 3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant for general use in polymeric food-contact articles. This action is in response to a petition filed by Atochem North America, Inc.

DATES: Effective February 15, 1995; written objections and requests for a hearing by March 17, 1995.

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ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 8, 1991 (56 FR 37712), FDA announced that a food additive petition (FAP 1B4274) had been filed by Atochem North America, Inc., c/o 1150 17th St. NW., Washington, DC 20036 (presently, 1001 G St. NW, suite 500 West, Washington, DC 20001). The petition proposed that the food additive regulations be amended in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of β, 3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant in polymeric articles intended for food-contact uses. The agency reviewed the nomenclature of the additive and has determined that to ensure unambiguous identification of the compound, a synonym compatible with the Chemical Abstract Service nomenclature, namely, 1-[(*beta*-(octadecylthio)ethyl]-3(or 4)-(octadecylthio)cyclohexane, should be included in this final rule.

Upon further review of the petition, the agency noted that the petitioner had requested use of the additive for general use in polymers rather than as an additive for paper and paperboard. In a notice published in the **Federal Register** of September 11, 1991 (56 FR 46323), FDA amended the filing notice of August 8, 1991, to state that the petitioner had requested that the food additive regulations be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the use of β, 3(or 4)-bis(octadecylthio)cyclohexylethane as an antioxidant for general use in polymeric food-contact articles.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 17, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
. . .	. . .
β, 3(or 4)-Bis(octadecylthio)cyclohexylethane (CAS Reg. No. 37625–75–5); CAS synonym: 1-[(*beta*-(octadecylthio)ethyl]-3(or 4)-(octadecylthio)cyclohexane.	For use only: 1. At levels not to exceed 0.3 percent by weight of all polymers for use in contact with foods of Types I, II, IV-B, VI, VII-B, and VIII under conditions of use B through H as described in Tables 1 and 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of polyolefins complying with § 177.1520 of this chapter, for use in contact with food of types III, IV-A, V, VII-A, and IX under conditions of use C through G as described in Tables 1 and 2 of § 176.170(c) of this chapter.
. . .	. . .

Dated: February 3, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–3804 Filed 2–14–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of four new animal drug applications (NADA's) held by Premiere Agri Technologies, Inc. The NADA's provide for use of Type A medicated articles and Type B medicated feeds containing tylosin and Type B medicated feeds containing virginiamycin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
45–690	Tylosin Type B medicated feeds and Type A medicated article.	Premiere Agri Technologies, Inc., P.O. Box 2508, Fort Wayne, IN 46801–2508 (former sponsor Henwood Feed Additives)
97–289	Tylosin Type B medicated feeds and Type A medicated article.	Do. (Former sponsor Feed Specialties Co., Inc.)
133–361	Virginiamycin Type B medicated feed.	Do. (Former sponsor Feed Specialties Co., Inc.)
133–839	Virginiamycin Type B medicated feed.	Do. (Former sponsor MacPage, Inc.)

The sponsor requested withdrawal of approval of the NADA's. This final rule removes 21 CFR 558.625(b)(11) and (b)(15) and amends 21 CFR 558.635(b)(2) to reflect the withdrawal of approval of these NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

2. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(11) and (b)(15).

3. Section 558.635 *Virginiamycin* is amended by revising paragraph (b)(2) to read as follows:

§ 558.635 Virginiamycin

* * * * *

(b) * * *

(2) 2.2 percent activity (10 grams per pound) to 011490, 016968, and 017790 in § 510.600(c) of this chapter for use as in paragraphs (f)(1)(iv) and (f)(1)(v) of this section.

* * * * *

Dated: January 6, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–3802 Filed 2–14–95; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 110]

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: The Agency hereby adopts as final with modifications the interim rule governing its oversight and administration of au pair programs. Au pair programs permit foreign nationals to enter the United States for a period of one year for the purpose of residing with an American host family while participating directly in the home life of the family and providing limited child care services. The foreign national also attends a United States accredited post-secondary educational institution. These rules are promulgated pursuant to Public Law 103–415 which authorizes the continued operation, until September 30, 1995, of au pair programs currently designated by the Agency.

DATES: Effective date: These rules are effective February 15, 1995.

Applicability dates: With the exceptions of § 514.31(j) (1) and (4), and § 514.31(k), these rules apply to all au pair placements and operations as of February 15, 1995. The provisions set forth at § 514.31(j) (1) and (4) and § 514.31(k) shall apply only to au pair participants placed after date of publication.

Compliance date: Sponsor implementation of the provisions set forth at § 514.31(g) (1) and (2) will not be expected before March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; Telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: First begun pursuant to the provisions of the United States Information and Educational Exchange Act of 1948 ("Smith-Mundt"), and subsequently incorporated into and broadened under the Fulbright-Hays Act, educational and cultural exchange activities have, over the past forty years, exposed millions of foreign nationals to the United States, its peoples, cultures, skills, business techniques, educational institutions, and way of life. The Fulbright-Hays Act mandates reciprocal exchange and Americans traveling abroad have, in similar fashion, developed an enhanced awareness of foreign people, their cultures and societies. Thus, Fulbright-Hays programs further one of the Agency's primary missions: increasing mutual understanding between Americans and others through people-to-people contact. Originally conducted by the Department of State, oversight of exchange activities, occurring under the umbrella of the Exchange Visitor Program, has been the responsibility of the Agency since 1978.

The Fulbright-Hays Act sets forth certain parameters which all exchange activities must meet. With an eye towards ensuring that these parameters were being met and acting in response to a Congressional request, the General Accounting Office ("GAO") investigated Agency oversight and administration of the Exchange Visitor Program and its attendant utilization of the J visa. In its report to Congress, dated February 5, 1990 and entitled "Inappropriate Uses

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of Educational and Cultural Exchange Visas," the GAO determined that certain Exchange Visitor Program activities appeared to be inconsistent with the statutory grant of authority and its underlying legislative intent. GAO summarized its findings, stating:

"Most J visa activities appear to conform to the intent of the 1961 act. However, GAO believes that certain activities and programs in the trainee and international visitor categories, including the summer student/travel work, international camp counselor, and au pair (Child care) programs, are inconsistent with the legislative intent. GAO identified instances of participants working as waiters, cooks, child care providers, amusement and leisure park workers, and summer camp counselors. Authorizing J visas for participants and activities that are not clearly for educational and cultural purposes as specified in the act dilute the integrity of the J visa and obscures the distinction between the J visa and other visas granted for work purposes."

The concerns raised in the GAO report had troubled USIA for several years, especially the au pair program. Objections to the operation of au pair programs under the Exchange Visitor Program and the use of the J visa were also raised by the Department of Labor, the Immigration and Naturalization Service, and, most importantly, USIA's congressional committees of jurisdiction.

In June of 1993, USIA was approached by the au pair sponsors conducting these programs to examine whether the Agency's past objections to the continuation of these programs under the Exchange Visitor Program could be resolved. The au pair sponsors were advised that the Agency saw merit in the programs but had concluded that it lacked statutory authority to conduct the programs as then configured. The Agency's principal objection to the program was its lack of a bona fide educational component sufficient to meet the statutory requirements of the Fulbright-Hays Act. A secondary, but equally compelling, objection was the program's failure to comply with the Fair Labor Standards Act and its requirements governing the payment of minimum wage.

The Agency and the au pair sponsors began earnest discussions involving how best to regularize the au pair program in order for it to find a permanent home at USIA. During the course of these discussions, several tragic incidents involving au pair placements occurred and were widely reported in the press. Specifically, the deaths of two infants while in the care of au pairs and allegations of child molestation and child pornography allegedly involving au pairs brought about Congressional and public scrutiny of these programs. This scrutiny, in turn, resulted in Congressional action which authorized and directed the Agency to promulgate regulations governing au pair placements.

Pursuant to this clear directive, the Agency published, on December 14, 1994, interim final regulations governing the au pair program that were both consistent with the provisions of the Fulbright-Hays Act and which also provided safeguards for au pair participants and the American host families with whom they are placed. Given the wide popularity of these programs—and the criticisms of them—the Agency met with, solicited, and incorporated the views of the au pair organizations, interested members of the public and the views of those congressional offices possessing jurisdiction over educational and cultural exchange programs.

The Agency's **Federal Register** publication of this interim rule with request for public comment generated over 3,000 responses from American families during the thirty day public comment period. A considerable number of the comments received had a remarkably familiar style and theme, and focused primarily or exclusively on two issues: the rise in weekly wage or stipend paid to au pairs and the requirement that au pairs taking care of children under the age of two be at least 21 years of age. Additionally, however, the Agency received a significant number of personalized and thoughtful comments and responses, many which were highly persuasive. A majority of the commentators, including a large number who objected to certain aspects of the interim final rules, praised the Agency for efforts to improve screening, training, and/or other aspects of the au pair program. The letters also highlighted that, despite the problems which have been associated with this program, many families develop excellent relations with their au pairs and make considerable efforts to advance the cultural and educational exchange aspects of the program.

Many letters lamented that other forms of child care were unaffordable. Some complained about the quality alternative child care. While the USIA is pleased that the au pair program apparently provides considerable direct benefit to many American families on the important matter of affordable child care, the Agency cannot lose sight of the fact that it has legal authority to operate the au pair program only if it is primarily a cultural and educational exchange program which incidentally provides child care. If the program becomes primarily a child care program, no matter how valuable, it can be legally maintained as a federal program only if it is transferred to another agency.

Although a distinct small minority, some letters criticized the Agency for virtually any effort to regulate the program as undue interference into family activities. While the Agency has made every effort to ensure that the regulations are as unburdensome as possible, it is important to note that certain regulations are necessary before the Agency is legally permitted to operate this program. Additionally, none of the regulations will affect individuals involuntarily. The regulations apply only to families who voluntarily and deliberately choose to participate in the au pair program.

In light of the comments it has received, the Agency has determined that the interim regulations published December 14, 1994 should be amended as follows.

Educational Component

As discussed above, the Agency's statutory authority to facilitate au pair activities has been the subject of debate for the past eight years. To achieve compliance with applicable federal law, taking into account the 1990 GAO opinion, the interim regulations required that au pair participants pursue six semester hours (or its equivalent) of academic course work at an accredited post-secondary institution. The Agency concluded that this requirement is the minimum programmatic component necessary to comply with the provisions of the Fulbright-Hays Act. Without this requirement the Agency had determined that it would not have statutory authority to conduct this activity.

Some responses criticized the Agency for focusing excessively on traditional forms of educational activities to meet the educational exchange requirement. These critics claimed the Agency failed to appreciate the degree and caliber of cultural exchange that results from daily contact between host families and au pairs. Contrary to these assertions, the Agency believes it fully appreciates the value of the experiences identified by these commentators. The Agency recognizes that the family context provides a unique opportunity for the host family and au pair to learn about each other's cultures and values. Additionally, one of the clear benefits of the au pair program is that it provides many young foreign nationals who otherwise would not have the opportunity to participate in an exchange program a chance to do so.

This recognition does not alleviate the Agency's responsibility to conduct the program in accordance with federal law, however. The Agency does agree it should not impose unnecessary rigidity into the requirement and adhered to this principle in drafting the interim regulations. Accordingly, the Agency does not amend the regulatory provisions set forth at 22 CFR 514.31(k). Moreover, for clarification purposes, it is not necessary that the course work be taken for credit so that audit of such courses is permissible.

Selection, Training and Screening

The au pair program has been governed for over eight years by voluntary guidelines issued in 1986. Because of Congressional enactments in 1988 and 1990, the Agency had been essentially barred from modifying or enforcing the guidelines or otherwise regulating and monitoring the au pair organizations. Unfortunately, these guidelines, promulgated for two au pair organizations under a pilot program overseeing 300 au pairs annually, was deficient for a program that had grown to eight au pair organizations and 10,000 au pairs annually. By the summer of 1994, a number of high profile incidents, buttressed by a series of investigative reports, strongly suggested that the lack of oversight may in some instances be jeopardizing the safety of host family children. Evidence also was presented that some au pairs had been mistreated by host family members. The Agency was equally disturbed by reports suggesting the program had been portrayed to host families as a child care program but to young potential au pairs as a chance to see America. Such a disparity in expectations laid a poor foundation for either a good exchange experience or for quality child care. Faced with this history, and under Congressional mandate, the Agency developed regulations which attempted to provide reasonable confidence that au pairs assigned to host families had the skills, experiences and character to meet host families' reasonable expectations.

One of the two components of the interim regulations drawing the most comments involved the age requirement for au pairs caring for infant children. The Agency had specified at 22 CFR 514.31(e)(3) that an au pair providing such care for a child under the age of two must be at least twenty-one years of age. The reason for this requirement was to attempt to ensure that au pairs entrusted with infant children had some degree of maturity and experience. In imposing this requirement the Agency recognized that any age limitation was subjective and inexact; nevertheless, the Agency had considered the requirement reasonable given all surrounding circumstances.

Many who commented provided persuasive accounts, examples, and illustrations supporting their beliefs that a 21 year old rule was unnecessary, especially in light of the Agency's six months of prior child care experience requirement. These stories helped convince the Agency that the correlation between age and maturity was marginal at best and, as a result, the Agency is dropping the twenty-one age requirement.

Another modification is set forth at 22 CFR 514.31(e) (1)–(3). Many comments were received which questioned the utility of requiring a parent to remain in the home for the first week following the au pair's arrival. Many suggested modifications but agreed that some form of transition was desirable; others suggested the transition period should be left entirely to the discretion of the host family.

The Agency's reason for imposing such a requirement was the need to ensure that the au pair received the benefit of an adequate transition period and was comfortable with his or her new duties, new home, new community, and new country. The Agency recognized that a vast majority of host families would never leave their infants and other children with an au pair without an adequate adjustment period, but concluded that requiring a reasonable transition period was essential to the welfare of both the au pair and the children, especially infants.

In response to the comments received, the Agency is amending 22 CFR 514.31(e)(1) to allow either a parent or other responsible adult to assist in this transition period and also is reducing the length of such transition from one week to three days duration. The Agency has been informed that in many instances this three day period will encompass the weekend. This increased flexibility addresses the concerns raised by most of these comments but still provides adequate assurances of a smooth transition for the au pair. The Agency rejects those comments suggesting the transition period should be left entirely to the discretion of the host family based upon the Agency's experience in these matters which indicates that a prescribed transition period is necessary, even if it is a short one.

The Agency also is amending the requirement set forth at 22 CFR 514.31(e)(3) to provide for greater flexibility. Originally, the Agency had required that au pairs placed with families having children under the age of two must have at least six months documented infant child care experience. In response to comments suggesting that "documented" was too rigid, confusing or otherwise counterproductive, the Agency is amending this provision by substituting the word "prior" for "documented."

In response to documented failures over past eight years to adequately screen potential au pair participants, the Agency set forth at 22 CFR 514.31(d) specific criteria governing au pair selection. Based upon comments received, the Agency is amending 22 CFR 514.31(d)(6) by requiring a personality profile rather than a psychological profile for potential au pair participants. This amendment is adopted based upon representations made to the Agency that psychological testing would be unduly burdensome, costly and would be ineffective. Au pair sponsors suggested the substitution of a "personality" profile which they assert would in fact provide a screening mechanisms sufficient to ensure the au pair applicant's suitability for child care services. Also set forth in this paragraph is the requirement that au pair applicants undergo a criminal record check. Au pair sponsors and the Agency's posts overseas confirm that a criminal record check as such term is commonly understood in the United States is not necessarily available in all countries. For those countries where such records are not readily available, the Agency will accept the recognized equivalent of a criminal record check for that country.

Directly related to the screening of au pair participants is experience and training. A need for some level of uniform training for au pair participants was recognized and supported by the public comments received by the Agency. However, the length of this training was subject to debate. At 22 CFR 514.31(g)(1) the Agency set forth a requirement that au pair participants receive not less than 16 hours of child safety instruction. Based upon comments received from au pair sponsors and the American Red Cross, the Agency is amending this requirement by reducing the number of hours of such instruction from 16 to 8. The regulation is also amended to permit such training to be given prior to placement with the host family. This amendment will permit au pair sponsors to provide child safety training in the au pair's home country if they choose to do so.

Finally, for the purpose of clarity, the Agency has determined that amendments to 22 CFR 514.31(h) are needed. This regulation sets forth requirements governing host family

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selection for participation in the au pair program. Given the educational and cultural exchange overlay of this program, criteria for program participation is necessary. As published, the interim rule required that all family members resident in the home be fluent in spoken English, be personally interviewed, and have successfully passed a background investigation. The Agency is amending this regulation by substituting "host parents" for "all family members" based upon comments received which convinced the Agency that the change is needed to avoid confusion and unintended senseless results.

Placement and Orientation

The Agency has reviewed certain requirements governing the terms and conditions of an au pair placement and has determined that greater flexibility is both possible and desirable. At 22 CFR 514.31(e)(4) the Agency amends the interim rule language in order to permit the host family and au pair the latitude of establishing flexible work hours. As amended, this regulation will require only that the au pair and host family have signed a written agreement that outlines the au pair's obligation to provide not more than 45 hours of child care services per week.

A small, but vocal, minority expressed strong disagreement with the interim regulations' nine hour ceiling on an au pair's work day. Many of these commentators apparently failed to realize that the nine hours per day limit had been in effect since 1986 and was not new. Nevertheless, upon reconsidering this provision, the Agency has concluded that the 45 hour week limit, if aggressively enforced, in conjunction with other oversight changes, makes the nine hours per day cap unnecessary. Thus, the Agency amends 22 CFR 514.31(j)(2) by deleting the requirement that au pairs provide not more than nine hours of child care services per day. The Agency adopts instead language that will permit the au pair to provide a "reasonable" number of hours per day. The Agency does not define what is reasonable, leaving this determination to the host family and au pair in the first instance, working with the sponsoring au pair organization as necessary. Given the monthly contact by organizational representatives, the Agency is of the belief that the documented abuses that prompted the limitation of hours will be prevented. As a result of striking the nine hour per day limit, the Agency believes the program will be opened to potential host families previously unable to participate.

Many comments objected to the requirement that host families and au pairs attend quarterly conferences or seminars devoted to cross cultural or child development issues. Some comments criticized the number as excessive, others disagreed with the nature of the events, and still others considered any such events as an intrusive nuisance. The gatherings suggested by the Agency have been a traditional hallmark of educational and cultural exchange programs, and the Agency does not agree with the characterization that they are an intrusive nuisance or otherwise inappropriate for a cultural and educational exchange program. However, based on the comments, the Agency agrees to amend 22 CFR 514.31(i)(3) to require attendance at one family day event sponsored by the au pair organization. Thus, not only are the number of events reduced, but the Agency is making clear it did not intend to prescribe a narrow agenda to the activity.

Au Pair Employment Status

Much of the criticism of the au pair program is directly related to the work component that is an integral part of the program. Because of this, domestic nanny services, and others, have long and loudly objected to these programs. Critics contend that since 45 hours of work per week exceeds the traditional 40 hour American work week, it leaves the au pair insufficient time to either meet the educational exchange requirement or truly pursue a cultural experience. They assert that the program displaces American workers and amounts to no more than the import of cheap foreign labor in the guise of an educational and cultural exchange program. While the Agency does not agree with this characterization, it may not ignore these claims. Accordingly, the Agency has been obligated to examine the question of whether au pairs are employees subject to the provisions of the Fair Labor Standards Act. The Agency has also sought the views and guidance of the Department of Labor on this matter. The Department of Labor has specifically advised the Agency that an employment relationship is established. Because the Department of Labor is the Federal agency entrusted with regulating labor laws, including the definition of employer and employee and determining when an employment relationship is established, it is appropriate for the Agency to defer to Department of Labor in this area. *Chevron, U.S.A.* versus *NRDC*, 467 U.S. 837 (1984). To assist the public in their understanding of this matter a short analysis is set forth.

To fall within the purview of the Fair Labor Standards Act, 29 U.S.C.S. 202 *et seq*, an individual must meet the threshold requirement of "employee" status. The Act, at 29 U.S.C.S. 203(e)(1) and (g), defines "employee" as an individual employed by an employer and "employ" as to suffer or permit to work. Three United States Supreme Court decisions provide the controlling authority for the determination of employee status.

In seeking to answer directly the question of who is an employee, the Court in *Bartels* versus *Birmingham*, 332 U.S. 126 (1947) at page 130 pronounced that "in the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render service." This concept of "economic reality" was first developed in *Rutherford Food Corp.* versus *McComb*, 331 U.S. 722 (1947) which has, along with *Bartels*, been controlling authority for almost fifty years.

The decision in *Goldberg* versus *Whitaker House Corp., Inc.*, 366 U.S. 28 (1961) dictates that determination of an employee relationship requires review of the circumstances of the whole activity. Pursuant to this decision, pervasive control exercised by the employer over the work performed is indicative of employee status. Application of these judicially established criteria to the au pair and to his or her host "family" clearly reveals an employment relationship.

The most obvious indication of employment is the inherent financial basis upon which the relationship is built. The au pair provides child care services and currently receives one hundred dollars per week room and board. The au pair is dependent upon her host "family" for her subsistence. This economic dependence is the measure of "economic reality" set forth in the *Rutherford* and *Bartels* decisions, *supra*. The Agency believes it to be unlikely that an au pair is going to uproot his or herself from his or her home country, travel to the United States, and provide forty-five hours of child care per week for someone's children without compensation. The au pair provides a service and expects and receives payment therefore. Designation of the wage paid as "pocket money" is immaterial given that the consideration for the receipt of the "pocket money" is the child care services of the au pair. Pursuant to *Rutherford* and *Bartels*, an au pair is an employee.

A second criterion routinely applied to determine employee status is that of

employer control over the work performed. As explained in the *Goldberg* decision, *supra*, pervasive control exercised by the employer over the work performed is indicative of an employment relationship. This concept of control stems from the English common law theories of master and servant.

As applied today, the concept of control involves the employer setting the terms and conditions of the employment, i.e., hours of work, methods of performing the work, break times, uniforms, and the designation of actual duties. The question of control generally arises in those situations in which an employer seeks to designate an employee as an independent contractor and thereby escapes the obligations of various labor statutes such as the Fair Labor Standards Act. Designation of the au pair as a "family" member would be analogous to this scenario, when made to avoid the employer/employee relationship.

An au pair's relationship to his or her "family" meets the pervasive control theory of *Goldberg*. The "family" determines what hours of the day the au pair will work. The "family" determines what additional duties may be necessary for the au pair to perform on a daily basis. The "family" dictates what the child, under the care of the au pair, will eat, when he will play, and when he will nap. Pursuant to *Goldberg*, an au pair is an employee.

Au Pair Wages

The weekly compensation paid to au pairs generated voluminous comment. All of the comments received objected to an increase in the weekly wage or stipend from the current $100 to $155 per week. Many agreed that a substantial increase was appropriate, given that au pairs have been receiving $100 per week since the inception of the program in 1986. $120–$130 per week was the range mentioned most frequently.

Some of the commentators who criticized the increase to $155 per week reprimanded the Agency for promoting a 55 percent increase, asserting that the decision reflected an insensitivity to the needs of American families. The Agency believes these critics misunderstood the interim regulations and the purpose for the formula proposed in those regulations.

As explained in the interim final rulemaking published December 14, 1994, the $155 amount was established by examining Department of Labor regulations governing the payment of minimum wage to live-in domestic employees. The $155 amount reflected minimum wage less a fixed credit of $36 permitted under current Department of Labor regulations for room and board. This regulation, set forth at 29 CFR 552.100 also provides for an alternative calculation of the credit for room and board based upon actual cost.

The Agency noted in the interim rule that the $36 credit was based upon a regulation published in 1979 and that the Agency was of the opinion that the credit should be substantially higher. The Department of Labor is of the same opinion as evidenced by its proposed rule published in the **Federal Register** on December 30, 1993 at page 69312. In this proposed rule the Department of Labor sought to amend 29 CFR 552.100 to reflect the increase in the cost of room and board by determining the permissible credit as a percentage of the hourly minimum wage. This proposed rule has not been finalized.

In an attempt to document costs, certain au pair organizations conducted a nationwide survey of their host families to determine the average cost of room and board provided to au pairs. While not endorsing the methodology used in this survey, the Agency is comfortable with the results presented. This survey suggests that the average cost for room and board is approximately $65 per week. This survey provides some measure of objective evidence that the allowance for room and board is substantially higher than the 1979 allowance of $36 per week.

As stated, 29 CFR 552.100 provides two methods for recognizing the cost of room and board provided live-in domestic employees. The first method, which allows a fixed $36 credit is outdated but still legally applicable. The second method, which allows for a deduction against the minimum wage based on the actual cost of room and board.

The public comments received have convinced the Agency that a credit for room and board based upon actual costs is preferred by the majority of host families. However, the programmatic need for a uniform wage remains. Thus, in order to balance the preference of host families against the programmatic need for a uniform wage, the Agency will rely on the Department of Labor's methodology as set forth in its proposed rule of December 30, 1993. To this end, and until this Department of Labor regulation is adopted as final, the Agency will permit a credit for room and board based upon actual cost but not to exceed $76 per week. Upon finalization of this Department of Labor regulation, the Agency will adopt the fixed credit method and thereby alleviate the family's obligation to maintain records.

The Agency concludes this approach will allow the weekly wage or stipend to automatically adjust, using a formula based on the minimum wage and room and board costs routinely calculated by the Department of Labor. The Agency believes this method is fair to host families and au pairs, and will ensure adherence to federal law. Moreover, once the Department of Labor regulations are finalized, this approach will eliminate the need for host families to keep individualized records. Additionally, it will not compel the federal government to expend scarce resources to regulate or otherwise oversee this portion of the program.

Based on the comments received and the above discussions, the Agency is of the opinion that a weekly stipend or wage of not less than $115 is consistent with Fair Labor Standards Act requirements governing payment of minimum wage and is appropriate for the present time.

Other Statutory Considerations

Finally, a question has arisen regarding the Agency's statutory authority to impose a performance bond. The program guidelines governing au pair placements for the past eight years have required that the au pair participants place with the au pair sponsor a bond in the amount of five hundred dollars. This bond was forfeited if the au pair participant failed to successfully complete the agreed upon one year program or failed to return to their home country.

In discussions with the Department of Labor regarding payment of minimum wage, the Agency was advised by the Department that this bond requirement was a minimum wage violation. For the reasons discussed above, under the *Chevron* doctrine, deference to Department of Labor's interpretation is appropriate. Additionally the Agency's subsequent review of this matter has led it to conclude that it is without statutory authority to impose a bond. Pursuant to provisions of the Immigration and Naturalization Act set forth at 8 U.S.C. 1184(a) the Attorney General is vested with authority governing the admission of aliens into the United States and the giving of a bond to insure the aliens maintenance of status and departure from the United States. The Director of USIA is without such authority and the regulatory provision set forth at 22 CFR 514.31(1) requiring a performance bond is therefore deleted.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

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Dated: February 8, 1995.

Les Jin,

General Counsel.

Accordingly, the interim rule amending 22 CFR part 514 which was published at 59 FR 64296 on December 14, 1994, is adopted as a final rule with the following change:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No. 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p. 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Part 514 is amended by revising § 514.31 to read as follows:

§ 514.31 Au pairs.

(a) *Introduction.* These regulations govern Agency-designated exchange visitor programs under which foreign nationals are afforded the opportunity to live with an American host family and participate directly in the home life of the host family while providing limited child care services and attending a U.S. post-secondary educational institution.

(b) *Program designation.* The Agency may, in its sole discretion, designate bona fide programs satisfying the objectives set forth in paragraph (a) of this section. Such designation shall be for a period of two years and may be revoked by the Agency for good cause.

(c) *Program eligibility.* Sponsors designated by the Agency to conduct au pair exchange program shall:

(1) Limit the participation of foreign nationals in such programs to not more than one year;

(2) Limit the number of hours an au pair participant is obligated to provide child care services to not more than 45 hours per week;

(3) Require that the au pair participant enrolls in a U.S. institution of higher education for not less than six semester hours of academic credit or its equivalent;

(4) Require that all officers, employees, agents, and volunteers acting on their behalf are adequately trained and supervised;

(5) Require that the au pair participant is placed with a host family within one hour's driving time of the home of the local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from the au pair's participation in their exchange program;

(6) Require that each local organizational representative maintain a schedule of personal monthly contact (or more frequently as required) with each au pair and host family for which he or she is responsible;

(7) Require that local organizational representatives not devoting their full time and attention to their program obligations are responsible for no more than fifteen au pairs and host families; and

(8) Require that each local organizational representative is provided adequate support services by a regional organizational representative.

(d) *Au pair selection.* In addition to satisfying the requirements of § 514.10(a), sponsors shall ensure that all participants in a designated au pair exchange program:

(1) Are between the ages of 18 and 26;

(2) Are a secondary school graduate, or equivalent;

(3) Are proficient in spoken English;

(4) Are capable of fully participating in the program as evidenced by the satisfactory completion of a physical;

(5) Have been personally interviewed, in English, by an organizational representative; and

(6) Have successfully passed a background investigation that includes verification of school, three, non-family related personal and employment references, a personality profile and a criminal record check or its recognized equivalent.

(e) *Au pair placement.* Sponsors shall secure, prior to the au pair's departure from the home country, a host family placement for each participant. Sponsors shall not:

(1) Place an au pair with a family unless the family has specifically agreed that a parent or other responsible adult will remain in the home for the first three days following the au pair's arrival;

(2) Place an au pair with a family having a child aged less than three months unless a parent or other responsible adult is present in the home;

(3) Place an au pair with a host family having children under the age of two, unless the au pair has at least six months of prior infant child care experience;

(4) Place the au pair with a family unless a written agreement between the au pair and host family outlining the au pair's obligation to provide not more than 45 hours of child care services per week has been signed by both; and

(5) Place the au pair with a family who cannot provide the au pair with a suitable private bedroom.

(f) *Au pair orientation.* In addition to the orientation requirements set forth herein at § 514.10, all sponsors shall provide au pairs, prior to their departure from the home country, with the following information:

(1) A copy of all operating procedures, rules, and regulations, including a grievance process, which govern the au pair's participation in the exchange program;

(2) A detailed profile of the family and community in which the au pair will be placed;

(3) A detailed profile of the educational institutions in the community where the au pair will be placed, including the financial cost of attendance at these institutions; and

(4) A detailed summary of travel arrangements.

(g) *Au pair training.* Sponsors shall provide the au pair participant with child development and child safety instruction, as follows:

(1) Prior to placement with the host family, the au pair participant shall receive not less than eight hours of child safety instruction; and

(2) Prior to placement with the American host family, the au pair participant shall receive not less than twenty-four hours of child development instruction.

(h) *Host family selection.* Sponsors shall adequately screen all potential host families and at a minimum shall:

(1) Require that the host parents are U.S. citizens or legal permanent residents;

(2) Require that host parents are fluent in spoken English;

(3) Require that all adult family members resident in the home have been personally interviewed by an organizational representative;

(4) Require that host parents have successfully passed a background investigation including employment and personal references;

(5) Require that the host family has adequate financial resources to undertake hosting obligations; and

(6) Provide a written detailed summary of the exchange program and the parameters of their and the au pair's duties, participation, and obligations.

(i) *Host family orientation.* In addition to the requirements set forth at § 514.10, sponsors shall:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange program;

(2) Provide all selected host families with a copy of Agency-promulgated Exchange Visitor Program regulations;

(3) Advise all selected host families of their obligation to attend at least one family day conference to be sponsored by their au pair organization during the course of the placement year. Host family attendance at such gathering is a condition of program participation and failure to attend will be grounds for possible termination of their continued or future program participation; and

(4) Require that the organization's local counselor responsible for the au pair placement contacts the host family and au pair within forty-eight hours of the au pair's arrival and meets, in person, with the host family and au pair within two weeks of the au pair's arrival at the host family' home.

(j) *Stipend and hours.* Sponsors shall require that au pair participants:

(1) Are compensated at a rate of not less than $115.00 per week;

(2) Do not provide more than a reasonable number of hours of child care on any given day;

(3) Receive a minimum of one and a half days off per week in addition to one complete weekend off each month; and

(4) Receive two weeks of paid vacation.

(k) *Educational component.* Sponsors shall require that during the period of program participation, all au pair participants are enrolled in an accredited post-secondary institution for not less than six hours of academic credit or its equivalent. As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of the au pair and to pay the cost of such academic course work in an amount not to exceed $500.

(l) *Monitoring.* Sponsors shall fully monitor all au pair exchanges, and at a minimum shall:

(1) Require monthly personal contact by the local counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(2) Require quarterly contact by the regional counselor with each au pair and host family for which the counselor is responsible. Counselors shall maintain a record of this contact;

(3) Require that all local and regional counselors are appraised of their obligation to report unusual or serious situations or incidents involving either the au pair or host family; and

(4) Promptly report to the Agency any incidents involving or alleging a crime of moral turpitude or violence.

(m) *Reporting requirements.* Along with the annual report required by regulations set forth at § 514.17, sponsors shall file with the Agency the following information:

(1) A summation of the results of an annual survey of all host family and au pair participants regarding satisfaction with the program, its strengths and weaknesses;

(2) A summation of all complaints regarding host family or au pair participation in the program, specifying the nature of the complaint, its resolution, and whether any unresolved complaints are outstanding;

(3) A summation of all situations which resulted in the placement of an au pair participant with more than one host family;

(4) A report by a certified public accountant attesting to the sponsor's compliance with the procedures and reporting requirements set forth in this subpart;

(5) A report detailing the name of the au pair, his or her host family placement, location, and the names of the local and regional organizational representatives; and

(6) A complete set of all promotional materials, brochures, or pamphlets distributed to either host family or au pair participants.

(n) *Sanctions.* In addition to the sanctions provisions set forth at § 514.50, the Agency may undertake immediate program revocation procedures upon documented evidence that a sponsor has failed to:

(1) Comply with the au pair placement requirements set forth in paragraph (e) of this section;

(2) Satisfy the selection requirements for each individual au pair as set forth in paragraph (d) of this section; and

(3) Enforce and monitor host family's compliance with the stipend and hours requirements set forth in paragraph (j) of this section.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Chapter VI

RIN 1076–AD19

Tribal Self-Governance Program Selection Criteria

AGENCY: Office of Self-Governance, Office of the Secretary, Interior

ACTION: Interim rule.

SUMMARY: In this interim rule, the Office of Self-Governance (OSG) announces the criteria for tribes to be included in an applicant pool and the establishment of the selection process for tribes to negotiate agreements pursuant to the Tribal Self-Governance Act of 1994.

DATES: Effective date of this interim rule is February 15, 1995. Written comments concerning this rule must be received on or before April 17, 1995. The closing date for submission of complete application packages for consideration for negotiations in 1996 is May 16, 1995. No application package will be dated as received before March 17, 1995.

Applications requesting to be included in the applicant pool may be submitted at any time. All tribes wishing to be considered for participation in FY 1996 must respond to this announcement, except for those which are (1) currently involved with negotiations with the Department or (2) one of the 29 tribes with signed agreements in the Demonstration Project.

ADDRESSES: Written comments concerning this rulemaking should be sent to Director, Office of Self-Governance, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 2548, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Verner V. Duus, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW., Mail Stop 2548, Washington, DC 20240, 202–219–0240.

SUPPLEMENTARY INFORMATION:

Justification for Interim Rule

Implementation of this rule is not rulemaking subject to the provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) (APA). Section 553(a)(2) excepts from the scope of rulemaking rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

Even if this rule were considered rulemaking subject to the provisions of section 553 of the APA, good cause exists to publish this interim rule without prior opportunity for public comment for the following reasons.

Section 553 outlines the following rulemaking steps: (1) Publication of a notice of proposed rulemaking, (2) solicitation of public comment on the proposed rule, (3) review of comments received prior to developing the final rule, and (4) publication of the final rule 30 days prior to the effective date. Using this process at this time would not serve the goal of the Tribal Self-Governance Act of 1994, which is to expand tribal participation in the Self-Governance Program, because the process would delay selection of new participating tribes for FY 1996. Under the Tribal Self-Governance Act of 1994, the Secretary may select up to 20 additional participating tribes for the Tribal Self-Governance Program, and negotiate and enter into an annual written funding agreement with each participating tribe. The Act mandates that the Secretary

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submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the BIA agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe located in an area and/or agency which has not previously been involved with self-governance negotiations, will take approximately 3 months from start to finish. Since agreements for tribes on an October 1 to September 30 fiscal year need to be signed and submitted by July 1, new participating tribes would need to be selected by April 1 to allow sufficient time for negotiations. Publication of this interim rule without prior opportunity for public comment is necessary to complete the above procedures in a timely fashion. Therefore, pursuant to 5 U.S.C. 553(b)(3)(B), good cause is found that notice and public comment procedures are impracticable, and pursuant to 5 U.S.C. 553(d), good cause exists to make the rule effective immediately.

Background

The Tribal Self-Governance Program is designed to promote self determination by allowing tribes to assume more control of programs operated by the Department of the Interior through negotiated agreements. The new law allows for negotiations to be conducted for programs operated by the Bureau of Indian Affairs (BIA) and for programs operated by other bureaus and offices within the Department that are available to Indians or where there is an historical, cultural, or geographic connection to an Indian tribe.

At the time of this announcement, 29 compacts have been signed under the provisions of the Demonstration Project. In addition to these 29 tribal entities, the newly enacted Tribal Self-Governance Act of 1994, Public Law 103-413, authorizes the Secretary to negotiate with up to 20 new tribes per year. Congress has also provided guidance concerning the handling of signatory tribes in Alaskan consortiums. If they are eligible to negotiate on their own and choose to do so, they should not be counted as part of the 20 new tribes.

Purpose of Rule

This interim rule identifies the procedures and criteria that the Office of Self-Governance will use in establishing the priority listing of the additional participating tribes under the Tribal Self-Governance Act of 1994. While this interim rule may be changed at a later date by the rulemaking established pursuant to the Act, the Act stipulates that the lack of promulgated regulations will not limit its effect. This rule will take immediate effect to allow the application and selection process for the upcoming year to begin.

The Secretary's decision on the actual number of tribes that will enter negotiations will be made at a later date. Being on the list will not guarantee that a tribe will actually be provided the opportunity to negotiate in any given year; however, it does mean that a tribe will not be passed over for a tribe farther down on the list or an unlisted tribe with the exception of tribes that are already in the negotiations process. For example, if the Department determines that 20 tribes will be afforded the opportunity to negotiate self-governance agreements in 1996, the first 20 tribes on the list would be notified and negotiations would be scheduled. The tribe numbered 21 on the list would become number one on the list for 1997 or might enter negotiations in 1996 if one of the first 20 dropped out.

The Department is adopting this rule before beginning the negotiated rulemaking process as required by Congress to establish definitive rules for the total self-governance program. This interim rule governing the selection process and criteria will be subject to negotiation and amendment by the negotiated rulemaking committee. The committee will use any comments received following the publication of this interim rule in negotiating the final rule. Furthermore, the portion of the rule governing selection will be subject to additional comment once the proposed regulations recommended by the negotiated rulemaking committee are published in the **Federal Register**. The final published rule will supersede this interim rule.

A. E.O. 12612

The Department has determined that this interim rule does not have significant federalism effects.

B. E.O. 12630

In accordance with Executive Order 12630, the Department had determined that this rule does not have significant takings implications.

C. E.O. 12778

The Department has certified to the Office of Management and Budget that this interim rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

D. E.O. 12866

This interim rule is not a significant regulatory action under Executive Order 12866, and therefore will not be reviewed by the Office of Management and Budget.

E. Regulatory Flexibility Act Statement

This interim rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. NEPA Statement

The Department has determined that this interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

G. Information Collection Statement

The information collection requirements contained in this interim rule are included in current collections 1076–0090, 0091, 0096, 1030 and OMB circulars A–102, A–110, and SF–424.

H. Authorship Statement

The primary author of this document is Verner V. Duus, Office of Self-Governance.

List of Subjects in Part 1001

Indians, Native Americans.

For the reasons set forth in the preamble, a new chapter VI consisting at this time of part 1001 is added to Title 25 of the Code of Federal Regulations as follows:

CHAPTER VI—OFFICE OF THE ASSISTANT SECRETARY—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 1001—SELF-GOVERNANCE PROGRAM

Sec.

1001.1 Purpose.
1001.2 Applicant eligibility.
1001.3 Priority ranking for negotiations.
1001.4 Application review and approval.
1001.5 Application review and selection process for negotiations for funding agreements.
1001.6 Submitting applications.

Authority: 25 U.S.C. 450 note, 458aa–458gg.

§ 1001.1 Purpose.

The purpose of this rule is to establish the process for tribes to apply for entry into the Self-Governance program and to establish the selection criteria by which the Department will identify eligible tribes and select tribes to begin the negotiations process.

§ 1001.2 Applicant eligibility.

Any tribe or consortium of tribes seeking inclusion in the applicant pool must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93–638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96–502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

(1) legal and budgetary research; and

(2) internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

§ 1001.3 Priority ranking for negotiations.

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-governance option. This narrative should identify any activities that the tribe has pursued, carefully identifying and documenting the dates involved, including, but not limited to, the following:

(a) Prior planning activities related to self-governance, noting the source of funding for the planning activity and whether or not it was sanctioned by the Office of Self-Governance (OSG), including documentation as applicable.

(b) Prior efforts to secure planning and/or negotiation grants.

(c) Meetings with the OSG or other Departmental offices in which the tribe expressed an interest in participating in the Self-Governance Project.

(d) Correspondence between the tribe and the Department in which the tribe has expressed an interest in participating in the Self-Governance Project.

(e) All actions of the tribal governing body related to participating in the self-governance option.

§ 1001.4 Application review and approval.

Upon receipt of an application, the OSG will review the package and determine whether or not it is complete. Upon determination that it is complete, the name of the tribe or consortium will be included in the official applicant pool. Incomplete submissions will be returned with the deficiencies identified. Revised applications may be resubmitted for consideration at any time.

§ 1001.5 Application review and selection process for negotiations for funding agreements.

Upon acceptance into the applicant pool, the OSG will assign to each tribe or consortium a ranking relative to other applicants based upon the date the OSG receives the complete application package. This ranking will constitute a master list that will be maintained and updated on a continuous basis from year to year. When receipt dates are the same for two or more applications, several other factors will be considered in determining the placement of the tribe or consortium on the list. These factors are identified in priority order as follows:

(a) Designation by the Congress through report language that a tribe should be considered for participation. These designations will be considered based upon the actual language of the report.

(b) Documentation of OSG sanctioning of the tribe's self-governance planning and subsequent evidence of actual planning by the tribe.

(c) Submission of a completed planning or negotiation grant application in the previous year.

(d) A signed agreement pursuant to the Indian Health Service (IHS) self-governance project.

(e) Receipt of a planning grant awarded by the IHS.

§ 1001.6 Submitting Applications.

(a) Applications for inclusion in the applicant pool will be accepted on an on-going basis.

(b) Applications may be mailed or hand-delivered.

(c) Applications for negotiations in 1996 that are mailed must be postmarked no later than May 16, 1995.

(d) Applications must be sent to: Director, Office of Self Governance, Department of the Interior, 1849 C Street, NW MIB RM/MS–2548, Washington, DC 20240.

Dated: February 6, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–3445 Filed 2–14–95; 8:45 am]

BILLING CODE 4310-02-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in March 1995, and to multiemployer plans with valuation dates in March 1995. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the March 1995 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

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Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during March 1995 and multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1995.

For annuity benefits, the interest rates will be 7.30% for the first 20 years following the valuation date and 5.75% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.00% for the period during which benefits are in pay status, 5.25% during the seven-year period directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. The above annuity and lump sum interest assumptions are unchanged from those in effect for February 1995.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the Federal Register by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during March 1995, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during March 1995, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 17 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_1 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATIONS

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
17	3–1–95	4–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t=$	i_t	for $t=$	i_t	for $t=$
March 1995	.0730	1–20	.0575	>20	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 17 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{y:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferred period is y years (y is an integer and $y>n_1+n_2$), interest rate i_1 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I.—LUMP SUM VALUATIONS

Rate set	For plans with a valuation date		Immediate annuities rate (percent)	Deferred annuities rate (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
17	3–1–95	4–1–95	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

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TABLE II.—ANNUITY VALUATIONS

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for $t=$	i_t	for $t=$	i_t	for $t=$
March 1995	.0730	1–20	.0575	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of February 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–3775 Filed 2–14–95; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky has proposed revisions to the Kentucky Administrative Rules (KAR) at 405 KAR 7:080 concerning the types of assistance provided by Kentucky's Small Operator Assistance Program (SOAP) and the eligibility criteria for that assistance. The amendment is intended to revise the Kentucky program to be consistent with changes in section 507 of SMCRA enacted by Congrss as part of the Energy Policy Act of 1992, Public Law 102–486.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Rd, Lexington, Kentucky 40503. Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 26, 1994 (Administrative Record No. KY–1278), Kentucky submitted a proposed amendment to its program on its own initiative. This amendment proposed to revise ten sections of Kentucky's regulations at 405 KAR 7:080 concerning Kentucky's Small Operator Assistance Program (SOAP). The proposed amendment included revisions to the sections pertaining to program services, eligibility for services, information requirements, and applicant liability. It also contained editorial revisions and clarifications of other sections.

OSM announced receipt of the proposed amendment in the May 20, 1994, **Federal Register** (59 FR 26471), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1994.

In the September 1, 1994, **Federal Register** (59 FR 45201), the Director of OSM announced his decision to approve the amendment, with certain exceptions. As part of his decision, the Director required Kentucky to submit a second proposed amendment to further revise 405 KAR 7:080 sections 5(2) and 11(1) to:

(1) Delete the phrase "the twelve (12) months immediately following the date the permit is issued";

(2) Provide that an applicant establish that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons; and

(3) Either delete the word "laboratory" in the phrase "The applicant shall reimburse the cabinet for the costs of the laboratory services performed * * *" or otherwise specify that the costs of all services rendered pursuant to 405 KAR 7:080 shall be reimbursed by SOAP recipients.

By letter dated October 3, 1994 (Administrative Record No. KY–1320), Kentucky submitted further rule revisions in an amendment intended to address the requirements in the Director's September 1, 1994, decision and to make other editorial corrections to Kentucky's regulations. OSM announced receipt of the proposed amendment in the November 14, 1994, **Federal Register** (59 FR 56449), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 14, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Kentucky's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulations (405 KAR 7:080)	Subject	Federal regulations (30 CFR part 795)
Section 5(2)	Annual Coal Production	795.6(a)(2).
Section 5(2)(a)	Ownership of the Applicant	795.6(a)(2)(i).
Section 5(2)(b)	Ownership of the Applicant	795.6(a)(2)(ii).
Section 11(1)	Services Performed	795.12(a).
Section 11(1)(e)	Transfer of Permit	795.12(a)(3).

Because the above, proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that these proposed rules are no less effective than the Federal rules.

B. Revisions to Kentucky's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 405 KAR 7:080 Section 8. Information requirements

Kentucky proposes to revise 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11) to authorize the use of SOAP assistance to collect and analyze information required by the Kentucky regulations at 405 KAR 8:030 and 040, Section 30; MRP. These regulations concern information necessary for the protection of historically or archaeologically significant sites of public parks and historic places.

The Federal regulations at 30 CFR part 795.9(b)(4) authorize use of SOAP funding to collect historic or archaeological information but do not mention the protection of public parks. The Director finds that 405 KAR 7:080 sections 8(2)(a)(11) and (b)(11), as revised, are no less effective than the corresponding Federal regulations at 30 CFR 795.9(b)(4) with the understanding that Kentucky may authorize the use of SOAP funds to collect and analyze historical or archaeological information required by Kentucky for historic sites but not to collect and analyze any additional information required by Kentucky for public parks.

2. 405 KAR 7:080 Section 11. Applicant liability

Kentucky proposes to revise 405 KAR 7:080 section 11(1)(e) to require that the SOAP applicant reimburse Kentucky for the costs of SOAP-funded services if the permit rights are sold, transferred, or assigned to another person and if that person's coal production exceeds the 300,000 ton annual limit during the twelve months immediately following the date the original permit is reissued in the name of the successor.

The revised Kentucky rules differ slightly from the corresponding Federal regulations at 30 CFR 795.12(a)(3) which refer to the twelve-month period after the date the permit was originally issued. The Director finds that 405 KAR 7:080 section 11(1)(e), as revised, is no less effective than the corresponding Federal regulations at 30 CFR 795.12(a)(3) for two reasons:

(1) The Kentucky regulations require reimbursement in every instance in which the Federal regulations require reimbursement; and

(2) The additional reimbursement requirements imposed by Kentucky in the event of permit sale, transfer, or assignment would not adversely impact the availability of SOAP assistance to eligible small operators.

C. Revisions to Kentucky's Regulations With no Corresponding Federal Provisions

1. 405 KAR 7:080 Section 6. Filing for assistance

Kentucky proposes to revise 405 KAR 7:080 section 6 by changing the reference date of Kentucky's SOAP application form in the rule from October 1991 to September 1994, with the latter date reflecting Kentucky's most recent revision to that form. Kentucky's SOAP application form date has no equivalent in the corresponding Federal regulations at 30 CFR part 795.7.

The Director finds that the proposed revision is necessary for the accuracy of the Kentucky regulations and is not inconsistent with any requirement of SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No one requested an opportunity to speak at a public hearing, so no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Kentucky program. The U.S. Environmental Protection Agency noted that the reference in 405 KAR 7:080 section 10(2)(a)(6) to the document "Standard Methods for the Examination of Water and Wastewater," 14th edition, 1975, should be updated to refer to the 18th edition, 1992. The Director concurs with this comment even though the referenced Kentucky regulations was not affected by the program amendment which is the subject of this final rule. OSM has notified Kentucky of this U.S. EPA comment and has requested that the State make this correction in its next revision of 405 KAR 7:080. The U.S. Fish and Wildlife Service, the Mine Safety and Health Administration, the U.S. Forest Service, and the U.S. Bureau of Mines responded that they had no comment on the proposed amendment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Kentucky on October 3, 1994.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly,

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30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding paragraph (xx) read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(xx) Revisions to the following rules, as submitted to OSM on October 3, 1994, are approved effective February 15, 1995.

405 KAR 7:080	Small operator assistance
Section 5(2)	Annual Coal Production.
Section 5(2) (a) and (b).	Ownership of the Applicant.
Section 6	SOAP Application Form.
Section 8(2)(a)(11)	Information Requirements.
Section 8(2)(b)(11)	Information Requirements.
405 KAR 7:080	Small operator assistance
Section 11(1)	Services Performed.
Section 11(1)(e)	Sale, Transfer, or Assignment of Permit Rights.

3. Section 917.16 paragraph (1) is removed.

[FR Doc. 95–3743 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). New Mexico proposed the addition of rules pertaining to the exemption for extraction of coal incidental to the extraction of other minerals. The amendment revises the New Mexico program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated October 26, 1994, New Mexico submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. NM–716). New Mexico submitted the proposed amendment in response to a February 7, 1990, letter (administrative record No. NM–563) that OSM sent to New Mexico in accordance with 30 CFR 732.17(c). New Mexico submitted the amendment with the intent of making the New Mexico Coal Surface Mining Commission (CSMC) rules consistent with the corresponding Federal regulations. New Mexico proposed new rules to implement sections 69–25A–1 through 35 of the New Mexico Surface Coal Mining Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 ⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The provisions of the New Mexico Coal Surface Mining Commission (CSMC) Rules 80–1 that New Mexico proposed to add are at new Chapter O, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, and include sections 34–1, scope; 34–2, definitions; 34–3, application requirements and procedures; 34–4, contents of application for exemption; 34–5, public availability of information; 34–6, requirements for exemption; 34–7, conditions of exemption and right of inspection and entry; 34–8, stockpiling of minerals; 34–9, revocation and enforcement; and 34–10, reporting requirements.

OSM announced receipt of the proposed amendment in the November 15, 1994, **Federal Register** (59 FR 58801), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–718). Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 15, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of CSMC Rules 80–1–34–2, definition of "cumulative measurement period," and 80–1–34–9, administrative review of revocation decisions. OSM notified New Mexico of the concerns by letter dated December 20, 1994 (administrative record No. NM–724). New Mexico responded in a letter dated December 20, 1994, by submitting revisions for the two rules (administrative record No. NM–723).

Based upon the revisions to the proposed program amendment submitted by New Mexico, OSM reopened the public comment period in the December 28, 1994, **Federal Register** (59 FR 66837, administrative record No. NM–729). The public comment period ended on January 12, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by New Mexico on October 26, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

Addition of Substantive Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

New Mexico proposed the addition of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

CSMC Rule 80–1–34–1 (30 CFR 702.1), scope,
CSMC Rule 80–1–34–2 (30 CFR 702.5), definitions,
CSMC Rule 80–1–34–3 (30 CFR 702.11), application requirements and procedures,
CSMC Rule 80–1–34–4 (30 CFR 702.12), contents of application for exemption,
CSMC Rule 80–1–34–5 (30 CFR 702.13), public availability of information,
CSMC Rule 80–1–34–6 (30 CFR 702.14), requirements for exemption,
CSMC Rule 80–1–34–7 (30 CFR 702.15), conditions of exemption and right of inspection and entry,
CSMC Rule 80–1–34–8 (30 CFR 702.16), stockpiling of minerals,
CSMC Rule 80–1–34–9 (30 CFR 702.17), revocation and enforcement, and
CSMC Rule 80–1–34–10 (30 CFR 702.18), reporting requirements.

Because these proposed New Mexico rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

IV. Summary and Disposition of Comments

Following are summaries of all oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Mines responded in a telephone conversation on November 15, 1994, that it had no comments on the proposed amendment (administrative record No. NM–719).

The U.S. Army Corp of Engineers stated in letters dated November 16, 1994, and January 6, 1995, that it found the changes to be satisfactory (administrative record Nos. NM–721 and NM–730).

The U.S. Fish and Wildlife Service (the Service) provided comments in a letter dated December 1, 1994 (administrative record No. NM–722). Due to concerns of the Service about risks to fish and wildlife from selenium, mercury, and polycyclic aromatic hydrocarbons (PAH's) contamination, it recommended that the proposed amendment be revised to require permit conditions for testing and monitoring mercury, selenium, and PAH's for such mining operations that extract coal incidental to the extraction of other minerals.

The Federal regulations at 30 CFR Part 702 exclude from SMCRA regulation those mining operations that extract coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Because New Mexico's proposed incidental coal extraction rules are substantively identical to these corresponding Federal regulations, New Mexico's coal mining rules also do not regulate such mining operations. To the extent that the Service's comments address the mitigation of impacts of selenium, mercury, and PAH's contamination of such mining operations, they are outside the scope of New Mexico's coal mining rules. Therefore, OSM is not requiring New Mexico to revise its coal mining rules in response to the comment.

By letter dated January 25, 1995, the Mine Safety and Health Administration (MSHA) stated that the amendment had been reviewed and that it appeared there were no conflicts with the requirements of 30 CFR (administrative record No. NM–731).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to

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those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM–717). It responded on November 29, 1994, that it had no objections to OSM's approval of the proposed regulations (administrative record No. NM–720).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (administrative record No. NM–717). Neither the SHPO nor the ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves New Mexico's proposed amendment as submitted on October 26, 1994, and as revised on December 20, 1994.

The Director approves, as discussed above, CSMC Rule 80–1–34–1, concerning scope; CSMC Rule 80–1–34–2, concerning definitions; CSMC Rule 80–1–34–3, concerning application requirements and procedures; CSMC Rule 80–1–34–4, concerning contents of application for exemption; CSMC Rule 80–1–34–5, concerning public availability of information; CSMC Rule 80–1–34–6, concerning requirements for exemption; CSMC Rule 80–1–34–7, concerning conditions of exemption and right of inspection and entry; CSMC Rule 80–1–34–8, concerning stockpiling of minerals; CSMC Rule 80–1–34–9, concerning revocation and enforcement; and CSMC Rule 80–1–34–10, concerning reporting requirements.

The Director approves the rules as proposed by New Mexico with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 931, codifying decisions concerning the New Mexico program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding paragraph(s) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(s) The following New Mexico Coal Surface Mining Commission (CSMC) rules, as submitted to OSM on October 26, 1994, and as revised on December 20, 1994, are approved effective February 15, 1995.

CSMC Rule 80–1–34–1, scope.

CSMC Rule 80–1–34–2, definitions.

CSMC Rule 80–1–34–3, application requirements and procedures.

CSMC Rule 80–1–34–4, contents of application for exemption.

CSMC Rule 80–1–34–5, public availability of information.

CSMC Rule 80–1–34–6, requirements for exemption.

CSMC Rule 80–1–34–7, conditions of exemption and right of inspection and entry.

CSMC Rule 80–1–34–8, stockpiling of minerals.

CSMC Rule 80–1–34–9, revocation and enforcement.

CSMC Rule 80–1–34–10, reporting requirements.

[FR Doc. 95–3744 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On January 17, 1995 (60 FR 3464), the Secretary of Education published in the **Federal Register** final regulations implementing the Family Educational Rights and Privacy Act. This document corrects an error that was made in the effective date.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, Family Policy Compliance Office, Office of Management, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–4605. Telephone (202) 260–3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The final regulations published on January 17 stated that the effective date was 45 days from the date of publication in the **Federal Register** subject to certain conditions. This document corrects the effective date to read "These regulations take effect on February 16, 1995."

Dated: February 8, 1995.

Rodney McCowan,

Assistant Secretary, Office of Management.

[FR Doc. 95–3699 Filed 2–14–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR11–2–6854; FRL–5145–3]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking final action to approve a revision to the state implementation plan (SIP) submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for La Grande, Oregon.

EFFECTIVE DATE: This action will be effective on March 17, 1995.

ADDRESSES: Copies of the State's request and information supporting today's action are available for public inspection during normal business hours at the following locations: EPA, 1200 Sixth Avenue, Seattle, WA 98101, and the State of Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air and Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

The Union County, La Grande, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990 [1] (see 56 FR 56694 (November 6, 1991) and 40 CFR § 81.338). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

The State of Oregon was required to submit for the La Grande PM–10 nonattainment area, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. (see sections 172(c), 188, and 189 of the Act).

Additional provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also were required to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

To address the CAAA of 1990, Oregon submitted a PM–10 nonattainment area SIP for La Grande, Oregon, on November 15, 1991. EPA reviewed the November 15, 1991, SIP revision according to its interpretation of subpart 1 and 4 of Part D of Title I of the Act. EPA concluded from its review that the SIP met the applicable requirements of the Act and EPA, therefore, indicated that it was approving the plan to be effective on August 30, 1994, unless adverse or critical comments were received by August 1, 1994, (see 59 FR 33914, July 1, 1994).

On July 1, 1994, EPA also published an accompanying proposed rule (see 59 FR 33941) explaining that if adverse comments were received on the prospective final rule approval of the La Grande PM–10 SIP, then the final rule would be withdrawn and all comments would be responded to in relation to the proposal. The notice also indicated that anyone wishing to comment should do so by August 1, 1994.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, et seq.

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

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EPA received an adverse comment on August 1, 1994, on its approval of the SIP. The effective date of the rule was withdrawn on September 13, 1994, to allow time for EPA to review and respond to the comment. See 59 FR 46929. EPA has thoroughly considered the comment in determining the appropriate action on the La Grande PM–10 SIP. The response to the comment is presented in the "Response to Comments" section below.

EPA is approving the La Grande PM–10 SIP as described in the July 1, 1994, **Federal Register** Notice at 59 FR 33914 and its accompanying technical support document and proposed in the July 1, 1994, **Federal Register** Notice at 59 FR 33941.

II. Response To Comments

A. Source Apportionment

The commenter questioned the validity of using Chemical Mass Balance (CMB) for source apportionment of the various smoke sources in the area. Commenter was concerned that CMB may not accurately distinguish between residential wood combustion, industrial emissions, field burning, and other open burning and therefore could lead to a control strategy that is not going to work properly. The Commenter did not provide specific evidence that the attainment demonstration is actually flawed, but rather raised as a concern the possibility that the source apportionment was inaccurate.

EPA has broad discretion in determining what modeling is appropriate for moderate PM–10 nonattainment areas. The CAA only requires that an attainment demonstration include "Air Quality Modeling" and does not describe a particular analysis. CAA § 181(B)(i). In contrast, CAA § 182(c)(2)(A) specifies that attainment demonstrations for serious ozone nonattainment areas must be based on photochemical grid modeling or an alternate analytical model that EPA determines to be at least as effective. See also, *Central Arizona Water Conservation Dist. v. EPA*, 990 F.2d 1531, (9th cir.), cert. denied 1114 Sup. Ct. 94, (1993).

As indicated in the General Preamble, 57 FR at 13539, EPA has developed a supplemental attainment demonstration policy for initial PM–10 nonattainment areas such as La Grande, Oregon. An earlier April 2, 1991, memorandum titled, "PM–10 Moderate Area SIP Guidance: Final Staff Work Product" contained "Attachment 5" describing the same policy. The policy sets out specific criteria for attainment demonstrations based on proportional rollback analysis and explains that such analysis may be appropriate in cases where "time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration" by November 15, 1991. The policy further explains that its application is reserved for those initial PM–10 nonattainment areas that have "completed the technical analysis * * * and made a good-faith effort to submit a final SIP by their November 15, 1991, due date." The CAA gave states containing initial moderate PM–10 areas only a limited time—1 year from designation—to develop comprehensive control strategies and attainment demonstrations. CAA 189(A)(2)(a).

As discussed in the July 1, 1994, **Federal Register** and the technical support document for that notice, the Oregon Department of Environmental Quality (ODEQ) conducted an attainment demonstration based upon receptor modeling (Chemical Mass Balance version 7.0) and proportional emission inventory roll-back analysis. The results of the emission inventory and CMB analysis were consistent between themselves in identifying woodsmoke and soil dust as the major sources of PM–10 on exceedance days (e.g. local woodsmoke = 61 percent and 60 percent and soil dust = 38 percent and 32 percent for CMB and rollback methods, respectively). Control strategies for the area were developed based on this analysis. The CMB modeling was conducted according to EPA guidance. It was used in lieu of dispersion modeling because at the time the attainment plan was being developed, valid historical meteorological data was not available. It would not have been possible for the state to use dispersion modeling and still submit the SIP by November 15, 1991.

Therefore, because ODEQ followed EPA guidance, used the approved EPA CMB model, and because the CMB results were verified by the emission inventory, EPA is satisfied that the source apportionment provided by ODEQ in the La Grande PM–10 SIP is adequate. EPA has also considered the fact that, since implementation of the control strategies in 1991, the area has not exceeded the PM–10 NAAQS. The last measured 24-hour PM–10 exceedance occurred on January 28, 1991, indicating that the selected measures, are likely to be sufficient to attain the NAAQS and protect public health.

B. Potential Impact From Point Source Located Outside Nonattainment

The commenter questioned why the emissions from a large industrial source located "within close proximity to the PM–10 nonattainment area" was not accounted for in the SIP. The comment did not contain any specific data showing the sources' impact on the nonattainment area and did not provide any technical support for the general concern.

The source in question is Boise Cascade's Island City facility. This major source is located approximately five kilometers northeast of the La Grande PM–10 monitor and three kilometers from the nonattainment area border. The Island City facility is about fifty-five feet lower in elevation and is down valley from the PM–10 monitor.

It is the State's contention that the results from both the CMB modeling and wintertime PM–10 saturation surveys,[3] indicate that this point source is not a significant contributor to the nonattainment problem. The CMB modeling, based on the analysis of 43 PM–10 samples (seven of which exceeded the 24-hour NAAQS), showed La Grande industrial source category emissions to be insignificant. The emission inventory showed industrial emissions to be less than five percent on a worst case day basis. Wintertime PM–10 saturation surveys conducted in 1985, 1989, and 1990, do not indicate a significant impact from the source. For these reasons, EPA thinks the State's contention is reasonable and it is EPA's position that the implemented control measures will bring the area into attainment of the NAAQS by the December 31, 1994, attainment date. See 59 FR 33918 and its accompanying support documents for a description of the control measures. Also, as previously stated, the area has not exceeded the NAAQS since 1991, indicating that the implemented control measures are sufficient to attain the NAAQS.

To further address the adequacy of the attainment demonstration and the point source issue, EPA reviewed the effectiveness of the control measures. Because the control strategies are achieving greater emission reductions than anticipated and accounted for in the SIP, EPA's analysis indicates that even if the Island City facility had a significant impact on the nonattainment area or influenced the background concentration, the area will still attain the 24-hour NAAQS. Information supporting this analysis is contained in the docket supporting this notice.

[3] Short term intensive ambient monitoring studies in which portable PM–10 samplers are distributed throughout a small geographical study area to better characterize PM–10 concentrations.

C. Open Burning, Field and Forestry Slash Burning

Finally, the commenter expressed concern "about when open burning is allowed and that field and forestry slash burning be allowed to increase without good monitoring." Again the comment was only a general concern and did not provide any specific information to support it.

As discussed in the July 1, 1994, **Federal Register**, 59 FR 33914 and further explained in its technical support document, open, field and forestry slash burning activities either do not occur, are adequately controlled or are not allowed during the time period when exceedances of the 24-hour NAAQS typically occur.

IV. Significance of Today's Action

EPA is approving this plan revision submitted to EPA for the La Grande nonattainment area. Among other things, ODEQ has demonstrated that the La Grande moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. Note that this action includes approval of the contingency measures for the La Grande nonattainment area which take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make reasonable further progress (RFP) or attain the PM–10 NAAQS by the applicable statutory deadline.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: January 17, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (107) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(107) On November 15, 1991, the ODEQ submitted a PM–10 nonattainment area SIP for La Grande, Oregon.

(i) Incorporation by reference.

(A) November 15, 1991 letter from ODEQ to EPA Region 10 submitting the PM–10 nonattainment area SIP for La Grande, Oregon.

(B) PM–10 Control Strategy for Particulate Matter, October 1991, La Grande, Oregon Nonattainment Area, as adopted by the Environmental Quality Commission on November 8, 1991.

[FR Doc. 95–3679 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 14–15–6851; FRL–5145–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 20, 1994 and October 21, 1994. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from solvent metal cleaning operations, gasoline transfer operations, storage of organic liquids, and steam drive wells. Thus, EPA is finalizing the approval of

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these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on March 17, 1995.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

Monterey Bay Unified Air Pollution Control District, 24580 Silvercloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1994 in 59 FR 52947, EPA proposed to approve the following rules into the California SIP: KCAPCD Rule 410.3, Organic Solvent Degreasing Operations, and Rule 412, Gasoline Transfer into Stationary Storage Containers, Delivery Vessels, and Bulk Plants. Both Rule 410.3 and Rule 412 were adopted by the KCAPCD on May 6, 1991 and were submitted by the California Air Resources Board (CARB) to EPA on May 30, 1991. The following rules from the MBUAPCD were proposed for approval on October 21, 1994 in 59 FR 53128: Rule 417, Storage of Organic Liquids, Rule 418, Transfer of Gasoline into Stationary Storage Containers, and Rule 427, Steam Drive Crude Oil Production Wells. These rules were adopted by the MBUAPCD on August 25, 1993, and were submitted by the CARB to EPA on November 18, 1993. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notices of Proposed Rulemaking (NPRMs) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRMs cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 59 FR 52947 and 59 FR 53128, and in technical support documents (TSDs) available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 52947 and 59 FR 53128. EPA did not receive any comments in response to these NPRMs.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 11, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (185)(i)(A)(*7*) and (194)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(185) * * *

(i) * * *

(A) * * *

(*7*) Rule 410.3 and Rule 412, adopted on May 6, 1991.

* * * * *

(194) * * *

(i) * * *

(F) Monterey Bay Unified Air Pollution Control District

(*1*) Rule 417, Rule 418, and Rule 427, adopted on August 25, 1993.

* * * * *

[FR Doc. 95–3682 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[PA37–1–6370a; FRL–5144–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; SO_2: Conewango Township, Warren County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. The implementation plan was submitted by Pennsylvania to satisfy the requirements of the Clean Air Act (CAA) pertaining to nonattainment areas. This action is being taken under section 110 of the Clean Air Act.

DATES: This action will become effective April 17, 1995 unless notice is received

on or before March 17, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and, Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air & Radiation Programs Branch (3AT11), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597–9781.

SUPPLEMENTARY INFORMATION: On December 9, 1993, the Commonwealth of Pennsylvania submitted a revision to its State implementation plan (SIP) for sulfur oxides, measured as sulfur dioxide (SO_2). The revision pertains to the SO_2 nonattainment area in Conewango Township, Warren County, Pennsylvania.

Background

The Clean Air Act, as amended in 1977, required EPA to establish the attainment status of areas with respect to the national ambient air quality standards (NAAQS). On March 3, 1978 (43 FR 8962), as amended on September 12, 1978 (43 FR 40502), EPA published the initial designations for each State in Region III.

As part of EPA Region III's initial designations, Conewango Township, Warren County, Pennsylvania was designated as nonattainment for the primary NAAQS for sulfur oxides, measured as sulfur dioxide (SO_2). EPA acted on the recommendation of the Commonwealth of Pennsylvania to designate this area as nonattainment for SO_2. The basis of the recommendation was air quality dispersion modeling that predicted violations of the primary NAAQS for SO_2 in Conewango Township.

The Clean Air Act, as amended in 1990, provided that any area designated with respect to the NAAQS, as in effect immediately before November 15, 1990, shall retain that designation "by operation of law" (section 107(d)(1)(C)). Furthermore, States with existing nonattainment areas for the primary NAAQS for SO_2 that lack fully approved SIP's, including part D nonattainment area plans, must submit implementation plans for those areas (section 191(b)). These plans must meet the requirements of subpart 1 of part D and must be submitted to EPA within 18 months of enactment of the 1990 amendments (i.e., by May 15, 1992.) Thus, a SIP and part D plan were due for the Conewango Township, Warren County, Pennsylvania by May 15, 1992.

On June 15, 1992, Mr. Stanley L. Laskowski, Acting Regional Administrator, EPA Region III notified Mr. Robert P. Casey, Governor, Commonwealth of Pennsylvania that Pennsylvania had failed to submit the required SIP revision for Conewango Township, Warren County. The letter constituted an official finding of failure to submit pursuant to section 179(a)(1) of the 1990 Amendments. According to section 179, Pennsylvania had 18 months in which to correct the identified deficiency or face one of the sanctions detailed under section 179(b). Therefore, the Commonwealth had until December 15, 1993 to submit a SIP revision or face the imposition of sanctions.

On December 9, 1993, the Commonwealth of Pennsylvania submitted a revision to its SIP for the Conewango Township SO_2 nonattainment area. The revision provides for the attainment of the NAAQS for SO_2 by November 15, 1995, as required by section 192(a). This submittal was determined to be a "complete" submittal as discussed below. The submittal of a complete SIP revision satisfied the deficiency identified under section 179(a)(1), thus halting the sanctions process.

Summary of SIP Revision

On December 9, 1993, Mr. Arthur A. Davis, Secretary, Pennsylvania Department of Environmental Resources submitted to Mr. Stanley L. Laskowski, Acting Regional Administrator, EPA Region III a SIP revision for the Conewango Township nonattainment area. The SIP revision consists primarily of a Consent Order and Agreement (hereinafter, the Agreement) entered into by and between the Commonwealth of Pennsylvania, Department of Environmental Resources and Pennsylvania Electric Company (hereinafter, Penelec) on April 1, 1993. The Agreement affects Penelec's Warren Generating Station, the principle source of SO_2 emissions in the nonattainment area. The Agreement establishes interim and final emission limits for the Warren Generating Station. The final allowable emission limit will protect the NAAQS for SO_2 in Conewango Township. The emission limit is supported by a modeling analyses and attainment demonstration, the contents of which are evaluated below.

Evaluation of State Submittal

The Clean Air Act requires States to submit implementation plans that indicate how each State intends to attain and maintain the NAAQS. The 1977 Amendments established specific requirements for implementation plans in nonattainment areas in part D, sections 171–178. With respect to SO_2, the 1990 Amendments did not change these requirements in any significant way and guidance in existence prior to their enactment generally remains valid. On April 16, 1992 (57 FR 13498), EPA issued "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" describing EPA's preliminary views on how it intends to interpret various provisions of title I, primarily those concerning revisions required for nonattainment areas.

In order to approve the SIP revision, all of the part D requirements must be evaluated and they must ensure that: (1) The revised allowable emission limitation demonstrates attainment and maintenance of the NAAQS for SO_2 in the nonattainment area; (2) the emission limitation is clearly enforceable; and (3) that all applicable procedural and substantive requirements of 40 CFR part 51 are met. The following is an evaluation of the part D requirements as described in the "General Preamble"; a more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this document:

1. Reasonably Available Control Technology (RACT)

Pennsylvania's SIP revision provides for reasonably available control technology (RACT). The SIP revision indicates that SO_2 emissions are controlled at the Warren Generating Station through fuel specification. The final allowable SO_2 emission limitation for the Warren Generating Station as established in the Agreement is 1.0 pounds SO_2 per million Btu (1.0 lb/mmBtu) heat input or a total hourly emission of 1280 pounds of SO_2.

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whichever is less. This limit is to be met beginning November 15, 1995. The SIP limit is to be met beginning November 15, 1995. The SIP revision provides a demonstration that this limit will attain the NAAQS in the nonattainment area. Therefore, Pennsylvania has ensured that reasonably available control technology, fuel specification, is required and that the control technology provides for achievement of the NAAQS by the statutory attainment date, which is November 15, 1995.

2. Reasonable Further Progress (RFP)

Pennsylvania's SIP revision provides for reasonable further progress (RFP). The SIP revision provides for RFP through interim emission limitations established in the Agreement. The Agreement specifies that the Warren Generating Station shall achieve a daily average emission rate not to exceed 3.0 pounds of SO_2 per million Btu (3.0 lb/mmBtu) heat input beginning January 1, 1993. An allowable emission rate of 2.5 lb/mmBtu is imposed on the Station beginning November 15, 1994. These emission limits clearly adhere to an ambitious compliance plan which will provide for attainment by the applicable date.

3. Contingency Measures

Pennsylvania's SIP revision provides for adequate contingency measures. The SIP revision requires the collection of continuous emission monitoring (CEM) data at the Warren Generating Station in accordance with the previously federally-approved procedures established in 25 Pa. Code § 123.25 "Monitoring Requirements for Sulfur Compound Emissions from Combustion Units" and subchapter C "Requirements for Continuous In-Stack Monitoring for Stationary Sources" (48 FR 2320). The collection of CEM data and the ambient air quality monitoring network currently operating in and around the nonattainment area provides a comprehensive program to identify violations of the NAAQS. The existing Agreement may be modified, as agreed to by both parties, to require further reductions as deemed necessary to achieve attainment of the NAAQS.

4. Stack Height Issues and Remand

Pennsylvania has chose to address stack height issues upon the resolution of the remand. The Warren Generating Station merges the exhaust from its four (4) boilers into one stack as part of its original design and operation in 1948. This constitutes dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)). These sources had originally been exempted under the stack height rules but that provision was remanded to EPA for reconsideration. Pennsylvania does not address this issue in the SIP revision. Therefore, it will have to revise its rules, including any affected emission limitations, to conform with resolution of the remand.

5. Existing Modeling Protocols

Pennsylvania's SIP revision is supported by a modeling demonstration using regulatory air dispersion models as defined by EPA's "Guideline on Air Quality Models (Revised)," July 1986. However, the Agreement allows for the completion of a model evaluation and equivalency study by Penelec. Penelec will perform a study comparing and evaluating the predictive results of the MPTER/RTDM (Multiple Point Gaussian Dispersion Algorithm with Terrain Adjustment (MPTER) and Rough Terrain Diffusion Model (RTDM), respectively) and LAPPES (Large Area Power Plant Effluent Study) models. The protocol for this study has been approved by Pennsylvania and EPA. The study is currently underway. Upon satisfactory completion of the study, Pennsylvania has indicated that it will revise its SIP, as appropriate, in accordance with the results of the study. Until such time as any future revised SIP is approved by EPA, the limits established by the Agreement and this SIP revision will remain in effect.

6. Test Methods and Averaging Times

Pennsylvania's SIP provides for the use of continuous emissions monitoring (CEM) as the means of compliance. The revision stipulates an hourly emission limit and requires the use of a Pennsylvania-approved method for calculating hourly emissions. Pennsylvania's federally approved CEM regulations (25 Pa. Code § 123.25 and subchapter C) define the general requirements for CEM operation and references the CEM guidelines in "Standards of Performance for New Stationary Sources," 40 CFR part 60 and "Minimum Source Monitoring Requirements," 40 CFR part 51 appendix P. An hourly emission limit for the source is shorter than the time period for the NAAQS for which the area is nonattainment (i.e., the 24-hour primary standard). The required limit is also adequate to determine compliance with the 3-hour secondary standard.

7. Emission Inventory

Pennsylvania's SIP revision provides an adequate actual emissions inventory from all relevant sources of SO_2 in the nonattainment area. Pennsylvania has provided a current, actual emissions data and stack parameter information for the Warren Generating Station and various emission sources at the nearby United Refining facility.

8. Attainment Demonstration

Pennsylvania's SIP revision provides an adequate attainment demonstration, including appropriate air quality dispersion modeling. 40 CFR 51.112 requires nonattainment plans to include a demonstration of the adequacy of the plan's control strategy. The Commonwealth's demonstration employs the applicable air quality models, data bases, and other requirements specified in appendix W of 40 CFR part 51 ("Guideline on Air Quality Models (Revised)" (1986), supplement A (1987), and supplement B (1993) (hereinafter, the Guideline)). This demonstration includes the following information: model selection and descriptions; model application and assumptions made during application of selected models; receptor grids; meteorological data; ambient air monitoring data and background concentration; model source input; and modeling results.

Model Descriptions—The air quality dispersion modeling analysis performed for this demonstration employed the MPTER and RTDM Guideline models. The Guideline provides a description of the models along with guidance on their application. MPTER is limited to predicting concentrations at elevations below stack height. In this analysis, the MPTER code was altered to accommodate the algorithm used in Industrial Source Complex Model (ISC2). The ISC2 algorithm was added to address the requirements of the interim terrain concept; the assessment of receptors between stack height and plume height. RTDM is employed to calculate concentrations at receptors whose elevations are greater than or equal to plume height.

Model Application—MPTER and RTDM were both applied to the modeling domain in accordance with the recommendations of the Guideline. The default mode of RTDM was employed. Likewise, the regulatory mode of MPTER was used with the applicable restrictions for complex terrain.

Receptor Grids—Three sets of receptor grids, with a total of 725 receptors were used for this demonstration. One grid was located in Conewango Township, the nonattainment area. The other two grids were located to the south and east of the Township. These grids were developed to adequately assess the impacts of the

Warren Generating Station as well as the nearby United Refinery facility, the other major source of SO_2 in the region.

Meteorological Data—The modeling analysis used one year of on-site and local meteorological data. Two towers, an 150-meter tower and a 10-meter tower, collected wind directions and wind speeds, stability information, and temperature. The 150-meter tower is located on-site at the Penelec facility. The 10-meter tower is located in nearby, elevated terrain and was used primarily for determination of the stability class and as a substitute data site. Data was recovered at a greater than 90 percent rate and appropriate data substitution procedures were employed.

Background Concentration—The study uses monitored air quality data for determining that portion of the background concentrations attributable to sources other than those nearby that are to be explicitly modeled. Seven SO_2 monitoring sites in and around the nonattainment area were available for evaluation. The Guideline procedures for determining background concentrations for multiple-source areas were used to select the most representative monitor.

Source Inputs—The Warren Generating Station was modeled using an emission rate of 1.0 pounds per million BTU, the revised allowable limit established in the Consent Order and Agreement. Each of the other input parameters such as stack height, stack temperature, etc. were included in the demonstration. United Refining Company's facility was modeled using its current allowable operating conditions. Similar input parameters were provided for the United Refining facility.

Modeling Results—The results of the modeling analysis indicate that no exceedances of the NAAQS for SO_2 are expected in the Conewango Township nonattainment area when the Warren Generating Station is operating at an emission rate of 1.0 lb/mmBTU. The predicted high-second-high concentrations for the 3-hour (1,300 $\mu g/m^3$), 24-hour [365 $\mu g/m^3$), and annual arithmetic mean (80 $\mu g/m^3$) ambient air quality standards are 1,038 $\mu g/m^3$, 184 $\mu g/m^3$, and 23.2 $\mu g/m^3$ respectively. This demonstrates that the proposed SIP revision will be protective of the NAAQS in the Conewango Township nonattainment area for SO_2 for each NAAQS averaging period.

EPA's review of this material indicates that Pennsylvania's SIP revision provides for the attainment of the NAAQS for SO_2 in Conewango Township, Warren County and satisfies the requirements of part D of the Clean Air Act. The revision is supported by a modeling analysis which clearly demonstrates the adequacy of emission limits in providing for the attainment and maintenance of NAAQS for SO_2 in and around the nonattainment area. The Consent Order and Agreement between Penelec and Pennsylvania at the center of the SIP revision establishes enforceable SO_2 emission limits on the Warren Generating Station. The submittal clearly fulfills the procedural and substantive requirements of 40 CFR part 51. Therefore, EPA is approving the Pennsylvania SIP revision for the Conewango Township, Warren County SO_2 nonattainment area, which was submitted on December 9, 1993.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 17, 1995 unless, by March 17, 1995, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 17, 1995.

Final Action

EPA is approving the Pennsylvania SIP revision for the Conewango Township, Warren County SO_2 nonattainment area.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve a revision to Pennsylvania's SIP for SO_2 in Conewango Township, Warren County may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: November 18, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

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PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(93) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(93) Revisions to the Pennsylvania implementation plan for sulfur dioxide (SO_2) in Conewango Township, Warren County submitted on December 9, 1993 by Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of December 9, 1993 from Mr. Arthur A. Davis, Secretary, Pennsylvania Department of Environmental Resources transmitting a SIP revision for the Conewango Township, Warren County SO_2 nonattainment area.

(B) A Consent Order and Agreement entered into by and between the Commonwealth of Pennsylvania, Department of Environmental Resources and Pennsylvania Electric Company on April 1, 1993 and an attainment demonstration. The Agreement was effective on April 1, 1993.

(ii) Additional material.

(A) Remainder of Pennsylvania's December 9, 1993 submittal.

[FR Doc. 95–3680 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5153–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Olmsted County Sanitary Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Olmsted County Sanitary Landfill site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ramon Torres at (312) 886–3010 (HSRM–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Rochester Public Library, 11 First St. SE. Rochester, MN.

Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Olmsted County Sanitary Landfill, Minnesota.

A Notice of Intent to Delete for this site was published October 13, 1994 (59 FR 51933). The closing date for comments on the Notice of Intent to Delete was November 12, 1994. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 19, 1995.

Michelle D. Jordan,

Acting Regional Administrator, USEPA, Region V.

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Olmsted County Sanitary Landfill, Minnesota".

[FR Doc. 95–3605 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5154–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Boise Cascade/Onan Corp./Medtronics, Inc. Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Boise Cascade/Onan Corp./ Medtronics, Inc. site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Minnesota Pollution Agency Public Library, 520 Lafayette RD. St Paul, MN 55155–4194. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Boise Cascade/Onan Corp./Medtronics, Inc., Minnesota

A Notice of Intent to Delete for this site was published October 26, 1994 (59 FR 53773). The closing date for comments on the Notice of Intent to Delete was November 25, 1994. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 19, 1995.

Michelle D. Jordan,

Acting Regional Administrator, U.S. EPA, Region V

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site "Boise Cascade/Onan Corp./Medtronics, Inc., Minnesota".

[FR Doc. 95–3606 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7114

[NM–930–1430–01; NMNM 46826]

Public Land Order No. 3952, Correction; Revocation of National Forest Administrative Sites and Experimental Range Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct the errors in the acreage and land description in Public Land Order No. 3952.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description and acreage in Public Land Order No. 3952, 31 FR 4793, March 22, 1966, are hereby corrected as follows:

In paragraph 1, under the heading Luna Ranger Station, which reads "T. 5 S., R. 20 W., sec. 32, NE¼." is hereby corrected to read "T. 5 S., R. 20 W., sec. 32, N½NE¼."

The third column, the last sentence of paragraph 1, which reads "the areas described aggregate approximately 2,758 acres." is hereby corrected to read "the areas described aggregate 2,678 acres."

Dated: January 31, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–3718 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–FB–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93–253]

Implementation of Section 309(j) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the Federal Register document containing the synopsis of the *Fifth Memorandum Opinion and Order* in PP Docket 93–253, which was published December 7, 1994 (59 FR 63210). The Federal Register document contained regulations related to the broadband PCS auction rules.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Background

The **Federal Register** summary that is the subject of these corrections sets forth rules designed to ensure that small businesses, rural telephone companies and businesses owned by minorities and women have the opportunity to compete for and obtain licenses for broadband personal communications services (broadband PCS) and to attract the investment capital needed to have meaningful involvement in building and managing this nation's broadband PCS infrastructure.

Need for Correction

As published, the **Federal Register** document inadvertently omitted portions of rules which need to be inserted to avoid confusion. The omitted rule portions were contained in the original document as released by the Federal Communications Commission on November 23, 1994.

Correction of Publication

Accordingly, the publication on December 7, 1994 of the Federal Register final rule, FR Doc. 94–30075, is corrected as follows:

1. Section 24.720(l)(3) introductory text and examples on page 63237, columns is corrected to read as follows:

§ 24.720 Definitions.

* * * * *

(l) *Affiliate.*

* * * * *

(3) *Identity of interest between and among persons.* Affiliation can arise

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between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a PCS application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the PCS application, Corporation Y would still be deemed an affiliate of the applicant.

* * * * *

3. Section 24.720(o) on page 63238, column 3, corrected to read as follows:

§ 24.720 Definitions.

* * * * *

(o) *Preexisting entity; Existing investor.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994. An *existing investor* is a person or entity that was an owner of record of a *preexisting entity's* equity as of November 10, 1994, and any person or entity acquiring *de minimus* equity holdings in a *preexisting entity* after that date.

Note: In applying the term *existing investor* to *de minimus* interests in preexisting entities obtained or increased after November 10, 1994, the Commission will scrutinize any significant restructuring of the preexisting entity that occurs after that date and will presume that any change of equity that is five percent or less of the preexisting entity's total equity is *de minimis*. The burden is on the applicant (or licensee) to demonstrate that changes that exceed five percent are not significant.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3674 Filed 2–14–95; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register

Vol. 60, No. 31

Wednesday, February 15, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–95–326]

United States Standards for Grades of Frozen Green and Frozen Wax Beans

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: In response to a petition from the National Food Processors Association, the Agricultural Marketing Service (AMS) has reviewed and proposes to revise the United States Standards for Grades of Frozen Green and Frozen Wax Beans (hereinafter referred to as "frozen green beans"). The proposed rule would change the U.S. grade standards for frozen green beans by: Providing for the "individual attributes" lot acceptance procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); establishing AQL's and acceptance numbers based on a specified sample size of 13 sample units; and making minor editorial changes.

DATES: Comments must be received on or before April 17, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–4693. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96–354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

USDA received a petition from the National Food Processors Association (NFPA), requesting that the U.S. grade standards for frozen green beans be revised. NFPA is a trade association representing over 450 food industry companies.

NFPA's grade standards review subcommittee is responsible for reviewing the existing U.S. grade standards for canned and frozen fruits and vegetables to ascertain whether the standards remain current and reflect processing and marketing practices. Based on the subcommittee's recommendation, NFPA requested that the U.S. grade standards for frozen green beans, which are currently based on "full attributes," where defects are grouped into four categories (minor, major, severe, and critical) with acceptable quality levels (AQL's) for each grouping, be revised.

Their recommendation was to convert the U.S. grade standards to statistically-based individual attributes grade standards, similar to the recently revised U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993) where each defect has its own AQL. Canned green beans and frozen green beans standards would be similar in design and format.

This proposal is based on the discussion drafts provided to the industry in December 1993, March 1994, and April 1994 through their major trade associations, the American Frozen Food Institute (AFFI) and NFPA. The drafts incorporated a grading system where individual tolerances would be assigned to each individual defect. This proposal would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current standards (except some tolerances were changed to be similar to the tolerances in canned green beans). The proposal also includes minor editorial changes and provides a uniform format consistent with recent revisions of other U.S. grade standards. The format is designed to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables have been incorporated to assure a better understanding and uniform application of the standards. USDA believes that this proposed rule would facilitate trade between processors and buyers and improve the marketing of frozen green beans.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to revise Subpart—United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans of 7 CFR Part 52 as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for Part 52 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 52, Subpart—United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans is revised to read as follows:

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Subpart—United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans

Sec.

52.2321 Product description.
52.2322 Styles.
52.2323 Types.
52.2324 Kinds of pack.
52.2325 Definitions of terms.
52.2326 Grades.
52.2327 Factors of quality.
52.2328 Allowances for defects.
52.2329 Sample size.
52.2330 Quality requirements criteria.

§ 52.2321 Product description.

"Frozen green beans" and "frozen wax beans," hereinafter called "frozen beans," means the frozen product prepared from the clean, sound, succulent pods of the bean plant. The pods are stemmed, washed, blanched, sorted, and properly drained. The product is frozen in accordance with good commercial practice and maintained at temperatures necessary for the preservation of the product.

§ 52.2322 Styles.

(a) *Whole* means frozen beans consisting of whole pods, which after removal of either or both ends, are not less than 44 mm (1.75 in) in length.

(b) *Cut or cuts* means frozen beans consisting of pods that are cut transversely into pieces less than 70 mm (2.75 in) but not less than 19 mm (0.75 in) in length.

(c) *Short cut or short cuts* means frozen beans consisting of pieces of pods of which 75 percent or more are less than 19 mm (0.75 in) in length and not more than 1 percent are more than 32 mm (1.25 in) in length.

(d) *Mixed* means a mixture of two or more of the following styles of frozen beans: whole, cut, or short cut.

(e) *Sliced lengthwise, or French style* means frozen green beans consisting of pods that are sliced lengthwise.

§ 52.2323 Types.

The type of frozen beans is not incorporated in the grades of finished product, since it is not a factor of quality. The types of frozen beans are described as "round type" and "Romano or Italian type."

(a) *Round type* means frozen beans having a width not greater than 1½ times the thickness of the beans.

(b) *Romano or Italian type* means frozen beans having a width greater than 1½ times the thickness of the beans.

§ 52.2324 Kinds of pack.

The kind of pack of frozen beans is not incorporated in the grades of finished product, since it is not a factor of quality. The kinds of pack of frozen beans are described as "regular process," "extended blanch process," and "special pack."

(a) *Regular process* means the frozen beans are processed in such a manner that the brightness is not affected by the process.

(b) *Extended blanch process* means the frozen beans are intentionally processed in such a manner that the brightness is affected by the process.

(c) *Special pack* means the frozen bean pack intentionally contains beans of two or more varietal characteristics (such as a mixture of green and wax beans).

§ 52.2325 Definitions of terms.

(a) *Acceptable Quality Level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemish.*

(1) *Minor blemish* means any unit which is affected by scars, pathological injury, insect injury or other means in which the aggregate area affected exceeds the area of a circle 3 mm (0.125 in) in diameter or the appearance or eating quality of the unit is slightly affected.

(2) *Major blemish* means any unit which is affected or damaged by discoloration or any other means to the extent that the appearance or eating quality of the unit is more than slightly affected.

(3) *Total blemish* means the total of the major and minor blemishes.

(c) *Brightness* means the extent that the overall appearance of the sample unit as a mass is affected by dullness. (Applies to "regular process" only).

(1) Grade A: Not affected.
(2) Grade B: Slightly affected.
(3) Grade C: Materially affected.
(4) Substandard: Seriously affected.

(d) *Character.*

(1) *Round type—Green Beans.*

(i) *Good character* means the pods are full fleshed; after cooking, the pods are tender and the seeds are not mealy.

(ii) *Reasonably good character* means the pods are reasonably fleshy; after cooking, the pods are tender and the seeds are not mealy.

(iii) *Fairly good character* means the pods have not entirely lost their fleshy structure; after cooking, the pods are fairly tender and the seeds may be slightly mealy.

(iv) *Poor character* means the beans fail the requirements for "fairly good character."

(2) *Round type—Wax Beans.*

(i) *Good character* means the pods are full fleshed and may show slight breakdown of the flesh between seed cavities; after cooking, the pods are tender and the seeds are not mealy.

(ii) *Reasonably good character* means the pods are reasonably fleshy and may show substantial breakdown of the flesh between the seed cavities; after cooking, the pods are tender and the seeds are not mealy.

(iii) *Fairly good character* means the pods may show total breakdown of the flesh between the seed cavities with no definite seed pocket, but still retain flesh on the inside pod wall; after cooking, the pods are fairly tender and the seeds may be slightly mealy.

(iv) *Poor character* means the beans fail the requirements for "fairly good character."

(3) *Romano or Italian type.*

(i) *Good character* means the pods have a full inner membrane, typical of the variety and are tender after cooking.

(ii) *Reasonably good character* means the pods have a reasonably well developed inner membrane and are reasonably tender after cooking.

(iii) *Fairly good character* means the pods may lack an inner membrane; and are fairly tender after cooking.

(iv) *Poor character* means the beans fail the requirements for "fairly good character."

(e) *Color defective* means a unit that varies markedly from the color that is normally expected for the variety and grade.

(f) *Defect* means any nonconformance of a unit of product from a specified requirement of a single quality characteristic.

(g) *Extraneous vegetable material (EVM)* means harmless vegetable material (other than the bean pods) including, but not limited to, stalk, vine material, [vine material with stem(s) attached], leaves of the bean plant, and leaves or portions of other harmless plants.

(h) *Flavor and odor.*

(1) *Good flavor and odor* means the product, after cooking, has a characteristic green bean or wax bean flavor and odor typical of the varietal type and is free from objectionable flavors and odors.

(2) *Fairly good flavor and odor* means the product, after cooking, may be lacking in characteristic flavor and odor for the varietal type but is free from objectionable flavors and odors.

(i) *Fiber.*

(1) *Edible fiber* means fiber developed in the wall of the bean pod that, after cooking, is noticeable upon chewing, but can be consumed with the rest of the bean material without objection.

(2) *Inedible fiber* means fiber developed in the wall of the bean pod that, after cooking, is objectionable upon chewing and tends to separate from the rest of the bean material.

(j) *Mechanical damage* means a unit, in all styles except French, that is broken or split into two parts (equals 1 defect), is crushed, or is damaged by mechanical means to such an extent that the appearance is seriously affected; and for whole and cut styles has very ragged edges that are greater than 8 mm (5/16 in).

(k) *Short piece* means a unit in cut style, that is less than 13 mm (0.50 in) in length, and a unit in whole style that is less than 44 mm (1.75 in) in length, measured along the longest dimension parallel to the bean suture line.

(l) *Single sample unit* means the amount of product specified (500 grams for French style and 400 units for all other styles) to be used for unofficial inspection. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers.

(m) *Sloughing* means the separation of the outer surface layer of tissue from the pod.

(n) *Small pieces and odd cuts,* in French style only, mean pieces of pod less than 19 mm (0.75 in) in length or pieces of pod not conforming to the normal appearance of a sliced lengthwise bean unit.

(o) *Stem* means any part or portion (loose or attached) of the hard or tough fibrous material that attaches the bean pod to the vine.

(p) *Tolerance* means the percentage of defective units allowed for each quality factor for a specified sample size.

(q) *Unit* means a bean pod or any individual portion thereof.

§ 52.2326 Grades.

(a) *U.S. Grade A* is the quality of frozen beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except special packs);

(ii) Have a good flavor and odor;

(iii) Have a good overall brightness that is not affected by dullness (regular process only);

(iv) Are not materially affected by sloughing;

(v) Are practically free from small pieces.

(2) Is within the limits for defects as specified in § 52.2328, as applicable for the style.

(b) *U.S. Grade B* is the quality of frozen beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except special packs);

(ii) Have a good flavor and odor;

(iii) Have a reasonably good overall brightness (regular process only);

(iv) Are not materially affected by sloughing;

(v) Are reasonably free from small pieces.

(2) Is within the limits for defects as specified in § 52.2328, as applicable for the style.

(c) *U.S. Grade C* is the quality of frozen beans that:

(1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics (except special packs);

(ii) Have a fairly good flavor and odor;

(iii) Have a fairly good overall brightness (regular process only);

(iv) Are not seriously affect by sloughing;

(v) Are fairly free from small pieces.

(2) Is within the limits for defects as specified in § 52.2328, as applicable for the style.

(d) *Substandard* is the quality of frozen beans that fail the requirements of U.S. Grade C.

§ 52.2327 Factors of quality.

The grade of frozen beans is based on requirements for the following quality factors:

(a) *Prerequisite quality factors.*
(1) Varietal characteristics (except special packs);
(2) Flavor and odor;
(3) Brightness (regular process only);
(4) Sloughing; and
(5) Small pieces.

(b) *Classified quality factors.*
(1) Extraneous vegetable material (EVM);
(2) Stems;
(3) Major blemishes;
(4) Total blemished;
(5) Mechanical damage;
(6) Short pieces;
(7) Color defectives;
(8) Character;
(9) Inedible fiber; and
(10) Edible fiber.

§ 52.2328 Allowances for defects.

TABLE I.—PREREQUISITE FACTORS FOR FROZEN GREEN BEANS AND WAX BEANS [1]

Factors	Grade A	Grade B	Grade C
Varietal Characteristics	Similar	Similar	Similar.
Flavor and Odor	Good	Good	Fairly Good.
Brightness	Good	Reasonably Good	Fairly Good.
Sloughing	Not Materially Affected	Not Materially Affected	Not Seriously Affected.
Small Pieces	Practically Free	Reasonably Free	Fairly Free.

[1] Determined container-by-container.

TABLE II.—ACCEPTANCE NUMBERS FOR WHOLE, AND CUT STYLE FROZEN GREEN BEANS AND WAX BEANS GRADE A

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			[1] 400	[2] 600	1200	2400	5200	8400	11600
TOL	AQL [3]	Quality Factors	Acceptance Numbers						
0.25	0.162	Extraneous Vegetable Material.	2	2	4	7	13	19	26
0.75	0.58	Stems	5	6	11	20	39	60	81
1.25	1.02	Major Blemishes	7	10	18	33	65	101	136
3.75	3.30	Total Blemishes (Major+Minor).	19	27	50	94	193	304	415
3.00	2.60	Mechanical Damage	16	22	40	75	154	242	330

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TABLE II.—ACCEPTANCE NUMBERS FOR WHOLE, AND CUT STYLE FROZEN GREEN BEANS AND WAX BEANS GRADE A—Continued

20.00	19.10	Short Pieces, Whole Style.	89	130	251	490	1040	1664	2285
8.50	7.90	Short Pieces, Cut Style.	41	59	111	212	444	706	966
1.75	1.48	Edible Fiber	10	14	25	45	91	142	193
0.10	0.05	Inedible Fiber	1	1	2	3	5	7	10
5.50	5.00	Color Defectives	27	39	73	138	286	454	620
10.75	10.10	Character—"B"	50	72	138	266	561	894	1225
1.25	1.02	Character—"C"	7	10	18	33	65	101	136
0.10	0.05	Character—"SStd"	1	1	2	3	5	7	10

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 5200.

TABLE IIa.—ACCEPTANCE NUMBERS FOR WHOLE, AND CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE B

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			[1]400	[2]600	1200	2400	5200	8400	11600
TOL	**AQL[3]**	**Quality Factors**	**Acceptance Numbers**						
.50	0.366	Extraneous Vegetable Material.	3	4	8	13	26	40	53
1.50	1.25	Stems	8	12	21	39	78	122	165
2.50	2.17	Major Blemishes	13	19	34	64	130	204	278
6.75	6.20	Total Blemishes (Major + Minor).	33	47	88	169	352	559	763
6.00	5.50	Mechanical Damage	30	42	79	151	314	498	680
N/A	N/A	Short Pieces, Whole Style.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12.50	11.80	Short Pieces, Cut Style.	58	84	160	309	552	1040	1426
4.50	4.00	Edible Fiber	22	32	59	112	232	366	500
1.50	1.25	Inedible Fiber	8	12	21	39	78	122	165
10.75	10.10	Color Defectives	50	72	138	266	561	894	1225
N/A	N/A	Character—"B"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10.75	10.10	Character—"C"	50	72	138	266	561	894	1225
1.25	1.02	Character—"SStd"	7	10	18	33	65	101	136

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 5200.

TABLE IIb.—ACCEPTANCE NUMBERS FOR WHOLE, AND CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE C

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			[1]400	[2]600	1200	2400	5200	8400	11600
TOL	**AQL[3]**	**Quality Factors**	**Acceptance Numbers**						
1.00	0.80	Extraneous Vegetable Material.	6	8	15	26	52	80	108
3.00	2.60	Stems	16	22	40	75	154	242	330
3.75	3.30	Major Blemishes	19	27	50	94	193	304	415
12.75	12.00	Total Blemishes (Major + Minor).	58	85	162	314	663	1057	1449
10.75	10.10	Mechanical Damage	50	72	138	266	561	894	1225
N/A	N/A	Short Pieces, Whole Style.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
18.25	17.40	Short Pieces, Cut Style.	82	119	230	448	950	1519	2085
8.50	7.90	Edible Fiber	41	59	111	212	444	706	966
3.75	3.30	Inedible Fiber	19	27	50	94	193	304	415
17.75	16.90	Color Defectives	80	116	224	435	923	1476	2027
N/A	N/A	Character—"B"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	Character—"C"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10.75	10.10	Character—"SStd"	50	72	138	266	561	894	1225

[1] For unofficial samples.
[2] For use with small container sizes only.

[3] AQL calculated from tolerance (TOL) at 5200.

TABLE III.—ACCEPTANCE NUMBERS FOR SHORT CUT, AND MIXED CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE A

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			[1]400	[2]600	1200	2400	5200	8400	11600
TOL	**AQL[3]**	**Quality Factors**	**Acceptance Numbers**						
0.25	0.162	Extraneous Vegetable Material.	2	2	4	7	13	19	26
0.75	0.58	Stems	5	6	11	20	39	60	81
1.25	1.02	Major Blemishes	7	10	18	33	65	101	136
3.75	3.30	Total Blemishes (Major + Minor).	19	27	50	94	193	304	415
3.00	2.60	Mechanical Damage	16	22	40	75	154	242	330
1.75	1.48	Edible Fiber	10	14	25	45	91	142	193
0.10	0.05	Inedible Fiber	1	1	2	3	5	7	10
5.50	5.00	Color Defectives	27	39	73	138	286	454	620
10.75	10.10	Character—"B"	50	72	138	266	561	894	1225
1.25	1.02	Character—"C"	7	10	18	33	65	101	136
0.10	0.05	Character—"SStd"	1	1	2	3	5	7	10

[1] For unofficial samples. [2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 5200.

TABLE IIIa.—ACCEPTANCE NUMBERS FOR SHORT CUT, AND MIXED CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE B

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			[1]400	[2]600	1200	2400	5200	8400	11600
TOL	**AQL[3]**	**Quality Factors**	**Acceptance Numbers**						
0.50	0.366	Extraneous Vegetable Material.	3	4	8	13	26	40	53
1.50	1.25	Stems	8	12	21	39	78	122	165
2.50	2.17	Major Blemishes	13	19	34	64	130	204	278
6.75	6.20	Total Blemishes (Major + Minor).	33	47	88	169	352	559	763
6.00	5.50	Mechanical Damage	30	42	79	151	314	498	680
4.50	4.00	Edible Fiber	22	32	59	112	232	366	500
1.50	1.25	Inedible Fiber	8	12	21	39	78	122	165
10.75	10.10	Color Defectives	50	72	138	266	561	894	1225
N/A	N/A	Character—"B"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10.75	10.10	Character—"C"	50	72	138	266	561	894	1225
1.25	1.02	Character—"SStd"	7	10	18	33	65	101	136

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 5200.

TABLE IIIb.—ACCEPTANCE NUMBERS FOR SHORT CUT, AND MIXED CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE C

Sample Units × Sample Unit Size.			1×400	1.5×400	3×400	6×400	13×400	21×400	29×400
Units of Product			400[1]	600[2]	1200	2400	5200	8400	11600
TOL	**AQL[3]**	**Quality Factors**	**Acceptance Numbers**						
1.00	0.80	Extraneous Vegetable Material.	6	8	15	26	52	80	108
3.00	2.60	Stems	16	22	40	75	154	242	330
3.75	3.30	Major Blemishes	19	27	50	94	193	304	415
8.50	7.90	Total Blemishes (Major + Minor).	41	59	111	212	444	706	966
10.75	10.10	Mechanical Damage	50	72	138	266	561	894	1225
8.50	7.90	Edible Fiber	41	59	111	212	444	706	966
3.75	3.30	Inedible Fiber	19	27	50	94	193	304	415
17.75	16.90	Color Defectives	80	116	224	435	923	1476	2027
N/A	N/A	Character—"B"	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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TABLE IIIb.—ACCEPTANCE NUMBERS FOR SHORT CUT, AND MIXED CUT STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE C—Continued

N/A	N/A	Character—"C"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10.75	10.10	Character—"SStd"	50	72	138	266	561	894	1225

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 5200.

TABLE IV.—ACCEPTANCE NUMBERS FOR FRENCH STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE A

Sample Units × Sample unit Size. Grams of Product			1×200 ×2.5 [1]500	1.5×200 ×2.5 [2]750	3×200 ×2.5 1500	6×200 ×2.5 3000	13×200 ×2.5 6500	21×200 ×2.5 10500	29×200 ×2.5 14500
TOL	AQL[3]	Quality Factors	Acceptance Numbers						
0.25	0.153	Extraneous Vegetable Material (No. of Pieces).	1	1	2	4	7	10	14
0.75	0.541	Stems (No. of stems).	3	4	6	11	20	30	41
1.25	0.961	Major Blemishes (Grams).	10	15	25	43	83	128	170
2.50	2.05	Total Blemishes [(Grams) Major +Minor].	18	25	45	83	163	253	343
5.50	4.80	Color Defectives (Grams).	38	50	95	175	358	563	765
N/A	N/A	Character—"B" (Grams).	N/A	N/A	N/A	N/A	N/A	N/A	N/A
6.75	6.00	Character—"C" (Grams).	45	63	115	215	440	695	945
1.75	1.40	Character—"SStd" (Grams).	13	18	33	58	115	178	240

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 2600.

TABLE IVa.—ACCEPTANCE NUMBERS FOR FRENCH STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE B

Sample Units × Sample Unit Size. Grams of Product			1×200 ×2.5 500[1]	1.5×200 ×2.5 750[2]	3×200 ×2.5 1500	6×200 ×2.5 3000	13×200 ×2.5 6500	21×200 ×2.5 10500	29×200 ×2.5 14500
TOL	AQL[3]	Quality Factors	Acceptance Numbers						
0.50	0.325	Extraneous Vegetable Material (No. of Pieces).	2	2	4	7	13	20	26
1.50	1.16	Stems (No. of stems).	5	6	11	20	39	60	81
2.50	2.05	Major Blemishes (Grams).	18	25	45	83	163	253	343
3.75	3.20	Total Blemishes [(Grams) Major + Minor].	25	38	65	120	245	383	520
10.75	9.80	Color Defectives (Grams).	68	95	178	338	703	1113	1520
N/A	N/A	Character—"B"	N/A	N/A	N/A	N/A	N/A	N/A	N/A
20.00	18.80	Character—"C" (Grams).	118	168	320	620	1305	2078	2848
5.50	4.80	Character—"SStd" (Grams).	38	50	95	175	358	563	765

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 2600.

TABLE IVb.—ACCEPTANCE NUMBERS FOR FRENCH STYLE FROZEN GREEN BEANS AND WAX BEANS—GRADE C

Sample Units × Sample unit Size. Grams of Product			1×200 ×2.5 [1]500	1.5×200 ×2.5 [2]750	3×200 ×2.5 1500	6×200 ×2.5 3000	13×200 ×2.5 6500	21×200 ×2.5 10500	29×200 ×2.5 14500
TOL	AQL[3]	Quality Factors	Acceptance Numbers						
1.00	0.733	Extraneous Vegetable Material (No. of Pieces).	3	4	8	13	26	40	53
3.00	2.50	Stems (No. of stems).	8	12	21	39	78	122	165
3.75	3.20	Major Blemishes (Grams).	25	38	65	120	245	383	520
10.75	9.80	Total Blemishes [(Grams)Major + Minor].	68	95	178	338	703	1113	1520
17.75	16.60	Color Defectives (Grams).	105	150	285	550	1158	1843	2523
N/A	N/A	Character—"B" (Grams).	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	Character—"C" (Grams).	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12.50	11.50	Character—"SStd" (Grams).	75	108	205	390	813	1293	1768

[1] For unofficial samples.
[2] For use with small container sizes only.
[3] AQL calculated from tolerance (TOL) at 2600.

§ 52.2329 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§ 52.2330 Quality requirement criteria.

(a) *Lot inspection.* A lot of frozen beans is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.2326 and § 52.2328, Table I, are met; and

(2) None of the allowances for the individual quality factors specified in Tables II, IIa, IIb, III, IIIa, IIIb, IV, IVa, and IVb of § 52.2328, as applicable for the style, are exceeded.

(b) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisites requirements specified in § 52.2326 and § 52.2328, Table I, are met; and

(2) The Acceptable Quality Levels in Tables II, IIa, IIb, III, IIIa, IIIb, IV, IVa, and IVb of § 52.2328, as applicable for the style, are not exceeded.

Dated: February 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–3784 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

RIN 0581–AB36

[No. LS–94–010]

Pork Promotion, Research, and Consumer Information Act of 1985—Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this proposed rule would increase the rate of assessment of 0.35 percent of market value of porcine animals to 0.45 percent; and adjust the amount of assessment per pound due on imported pork and pork products to reflect the proposed 0.10 percent increase in the assessment rate and the decrease in the 1994 average price for domestic barrows and gilts. The proposed assessment increase and the proposed adjustment in assessments on imported pork and pork products would increase annual funding of the promotion, research, and consumer information program by an estimated $10 million to $12 million over a 12-month period.

DATES: Written comments must be received by March 17, 1995.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA; P.O. Box 96456, Room 2624–S; Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Room 2624 South Agricultural Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of

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obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Information available to the Department indicates that nearly all of the estimated 278,000 pork producers and many of the estimated 200 importers can be classified as small entities. This proposed rule would increase the rate of the assessment from 0.35 percent of the market value of porcine animals to 0.45 percent, and would increase the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.35 to 0.45 percent and increasing the assessment on imported pork and pork products would result in an estimated increase in assessments of $10 million to $12 million over a 12-month period. However, the gross market value of all swine marketed in the United States during 1993 exceeded $10.6 billion. The economic impact of the proposed assessments will not be a significant part of the total market value of swine.

This proposed rule also would adjust importer assessments to reflect the increase in the assessment rate from 0.35 to 0.45 percent and to reflect a decrease in the 1994 average market price for domestic barrows and gilts. The combined effect of the assessment rate increase and the decrease in the average market price would increase the assessments on imported pork and pork products subject to assessments by two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products would result in an estimated increase in assessments of $175,000 over a 12-month period.

Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in part 1230, subparts A and B, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0851–0151.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.35 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31896; as corrected, at 51 FR 26283, and amended at 53 FR 1909, and 53 FR 30243). Assessments began on December 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.35 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced.

The procedures for collection and remittance of assessments are specified in § 1230.71 of the Order.

Pursuant to section 1620 of the Act, the assessment rate of 0.25 percent of the market value of porcine animals, pork, or pork products sold or imported was established in the initial Order and was changed to 0.35 percent on December 1, 1991. Based on the assessment rate of 0.35 percent, the total annual assessments collected during 1994 were approximately $42 million. Assessments on imported pork and pork products accounted for about $1.5 million of the total.

The Act and § 1230.71 of the Order contain provisions for increasing the initial rate of assessment. Section 1620(b)(2) of the Act provides that the rate of the assessment in the initial Order may be increased by not more than 0.1 percent per year upon recommendation of the National Pork Producers Delegate Body whose producer and importer members are appointed annually by the Secretary. The Act further provides that the rate of assessment may be increased by no more than 0.1 percent annually not to exceed 0.5 percent of the market value unless the Delegate Body recommends a greater increase and the increase is approved in a referendum.

The 1994 Delegate Body, at its annual meeting on March 3–5, 1994, in Denver, Colorado, voted overwhelmingly to recommend to the Secretary that the rate of assessment of 0.35 percent be increased to 0.45 percent. There were 170 Delegate Body members appointed by the Secretary in 1994. At the Delegate Body meeting 154 delegates were present during voting and voted 37,226 valid share votes. States and importers are allotted one share per $1,000 of the aggregated amount of assessment collected. There were 31,089 share votes cast in favor of the 0.1 percent increase.

The following example will illustrate the effect of the 0.1 percent increase on a per head basis. Based on the 1994 annual average five market price of $39.57 per hundredweight for barrows and gilts with an average weight of 248 pounds as reported in the USDA's publication "Livestock, Meat, and Wool Weekly Summary and Statistics" published in January 1995, the total assessment per head at the assessment rate of 0.45 percent would be 44 cents. At the assessment rate of 0.35 percent, the total per-head assessment would be 34 cents. Based on the Delegate Body's recommendation in accordance with § 1230.71(d) of the Order, it is proposed that regulations be issued increasing the rate of assessments from 0.35 to 0.45 percent.

This proposed rule also would increase the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule September 8, 1994, and effective on October 11, 1994 (59 FR 46323). This adjustment would reflect the increase in the assessment rate to 0.45 percent and would be consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1994 as reported by USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This adjustment in assessments would make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting comparability between the importer and domestic assessments.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. The annual average price, which was based on price data from six major markets, is now based on only five markets as one of the six markets—St. Louis—closed in 1994. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.45 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect increases in the rate of assessments or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

Substituting the proposed assessment rate of 0.45 in the formula and using the 1994 average annual five market price for domestic barrows and gilts of $39.57 per hundredweight would result in an increase in assessments for all the Harmonized Tariff Systems (HTS) numbers in the table in § 1230.110, 59 FR 46323; September 8, 1994, of an amount equal to two- to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four- to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1994, through September 30, 1994, the proposed increases in the assessment amounts would result in an estimated $175,000 increase in importer assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart—[Amended]

2. Subpart B—Rules and Regulations is amended by revising § 1220.110 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	0.45 percent Customs Entered Value.
0103.91.0000	0.45 percent Customs Entered Value.
0103.92.0000	0.45 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified. Assessment

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000	.25	.551150
0203.12.1010	.25	.551150
0203.12.1020	.25	.551150
0203.12.9010	.25	.551150
0203.12.9020	.25	.551150
0203.19.2010	.30	.661380
0203.19.2090	.30	.661380
0203.19.4010	.25	.551150
0203.19.4090	.25	.551150
0203.21.0000	.25	.551150
0203.22.1000	.25	.551150
0203.22.9000	.25	.551150
0203.29.2000	.30	.661380
0203.29.4000	.25	.551150
0206.30.0000	.25	.551150
0206.41.0000	.25	.551150
0206.49.0000	.25	.551150
0210.11.0010	.25	.551150
0210.11.0020	.25	.551150
0210.12.0020	.25	.551150
0210.12.0040	.25	.551150
0210.19.0010	.30	.661380
0210.19.0090	.30	.661380
1601.00.2010	.35	.771610
1601.00.2090	.35	.771610
1602.41.2020	.38	.837748
1602.41.2040	.38	.837748
1602.41.9000	.25	.551150
1602.42.2020	.38	.837748
1602.42.2040	.38	.837748
1602.42.4000	.25	.551150
1602.49.2000	.35	.771610
1602.49.4000	.30	.661380

3. Subpart B—Rules and Regulations is amended by revising § 1230.1120 to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.45 percent of market value.

Dated: February 9, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–3783 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–02–P

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB54

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Rule.

SUMMARY: The FDIC is proposing to amend its risk-based capital guidelines to modify the definition of the OECD-based group of countries. Claims on the governments and banks of this group generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD-based countries. The FDIC is proposing this amendment on the basis of an announcement, made on July 15, 1994, by the Basle Committee on Banking Supervision (Basle Committee) that, subject to national consultation, the Basle Committee plans to introduce a change to the Basle Accord in 1995. The effect of the proposed modification would be to exclude from the OECD-based group of countries which are eligible for the lower risk weights any country that has rescheduled its external sovereign debt within the previous five years.

DATES: Comments on the proposal must be received by March 17, 1995.

ADDRESSES: All comments should be submitted to Robert E. Feldman, Acting Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17 Street NW., Washington, D.C. 20429. Comments may be hand delivered to Room F–402, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5:00 p.m. [Fax number: (202)898–3838.] Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For supervisory purposes, Stephen G. Pfeifer, Examination Specialist, Accounting Section, Division of Supervision (202/898–8904); for legal purposes, Dirck A. Hargraves, Attorney, Legal Division (202/898–7049).

SUPPLEMENTARY INFORMATION:

I. Background

In 1988 the central bank governors of the G–10 countries endorsed international capital standards (the Basle Accord) [1] establishing a risk-based framework for measuring the capital adequacy of internationally-active banks. Under the framework, risk-weighted assets are calculated by assigning assets and off-balance-sheet items to broad categories based primarily on their credit risk; that is, the risk that a banking organization will incur a loss due to an obligor or counterparty default on a transaction. Risk weights range from zero percent, for assets with minimal credit risk (such as U.S. Treasury securities), to 100 percent, which is the risk weight that applies to most private sector claims, including commercial loans.

While the Basle Accord primarily focuses on credit risk, it also incorporates country transfer risk considerations.[2] In addressing transfer risk, the Basle Committee members examined several methods for assigning obligations of foreign countries to the various risk categories. Ultimately, the Basle Committee decided to use a defined group of countries considered to be of high credit standing as the basis for differentiating claims on foreign governments and banks. For this purpose, the Basle Committee determined this group as the full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.[3] These countries are referred to as the OECD-based group of countries and encompass most of the major industrial countries, including all members of the G–10 and the European Union.

Under both the Basle Accord and the FDIC's risk-based capital guidelines, claims on the governments and banks of the OECD-based group of countries generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD countries. Specifically, the FDIC's risk-based capital policy statement provides for the following treatment:

- Direct claims on, and the portions of claims that are directly and unconditionally guaranteed by, OECD-based central governments (including central banks) are assigned to the zero percent risk weight category. Claims on central governments outside the OECD-based group are assigned to the zero percent risk weight category only if such claims are denominated in the national currency (i.e., local currency claims) and funded by liabilities in the same currency.
- Claims conditionally guaranteed by OECD-based central governments and claims collateralized by securities issued or guaranteed by OECD-based central governments generally are assigned to the 20 percent risk weight category. The same types of claims on non-OECD countries are assigned to the 100 percent risk category.
- Long-term claims on OECD banks are assigned to the 20 percent risk-weight category. Long-term claims on non-OECD banks are assigned to the 100 percent risk category. (Short-term claims on all banks, whether they are members of the OECD-based group of countries or not, are assigned a 20 percent risk weight.)
- General obligation bonds that are obligations of states or other political subdivisions of the OECD-based group of countries are assigned to the 20 percent risk category. Revenue bonds of such political subdivisions are assigned to the 50 percent risk category. Both general obligation and revenue bonds of political subdivisions of non-OECD countries are assigned to the 100 percent risk category.

Recently, the OECD has taken steps to expand its membership. In light of these steps, the Basle Committee was urged to clarify an ambiguity in the Basle Accord as to whether the OECD members eligible for the lower risk weights include only those members that were in the OECD when the Basle Accord was endorsed in 1988 or all members, regardless of entry date into the OECD. The Basle Committee also reviewed the overall appropriateness of the criteria the Basle Accord uses to determine whether claims on a foreign government or bank qualify for placement in a lower risk category. As part of this review, the Basle Committee reassessed whether membership in the OECD (or the conclusion of special lending arrangements with the IMF) would, by itself, be sufficient to ensure that only countries with relatively low transfer risk would continue to be eligible for lower risk weight treatment.

On July 15, 1994, the Basle Committee made an announcement to clarify that the reference in the Basle Accord to OECD members applies to all current members of the organization. The announcement also stated that it is the Basle Committee's intention, subject to national consultation, to record a change to the Basle Accord in 1995 that would modify the definition of the OECD-based group of countries for risk-based capital purposes. The change, if adopted, would exclude from lower risk weight treatment any country within the OECD-based group of countries that has rescheduled its external sovereign debt within the previous five years. The Basle Committee announcement was endorsed by the G–10 Governors.

II. Proposed Rule

In view of the Basle Committee's announcement, the FDIC is proposing to amend its risk-based capital guidelines to modify the definition of the OECD-based group of countries. Under the proposal, the OECD-based group of countries would continue to include countries that are currently full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow, but would exclude any country within this group that has rescheduled its external sovereign debt within the previous five years. The effect of the proposed modification would be to clarify that membership in the OECD-based group of countries must coincide with relatively low transfer risk in order for a country to be eligible for differentiated capital treatment.

For purposes of this proposal, an event of rescheduling of external sovereign debt generally would include renegotiations of terms arising from the country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

The FDIC invites comment on all aspects of this proposal.

III. Regulatory Flexibility Act

The Board of Directors of the FDIC hereby certifies that adoption of this proposed amendment to part 325 will not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations) within the meaning of the Regulatory Flexibility Act requirements (5 U.S.C. 601 et seq.). This amendment will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers to comply with this regulation. In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

IV. Paperwork Reduction Act

The FDIC has determined that the proposed amendment, if adopted, would not increase the regulatory paperwork burden of state nonmember banks pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings Associations, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended by revising footnote 12 in section II.B.2. to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

B. * * *

2. * * * [12] * * *

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By order of the Board of Directors.

Dated at Washington, D.C. this 31st day of January, 1995.

Federal Deposit Insurance Cprporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3692 Filed 2–14–95; 8:45 am]

BILLING CODE 6714–01–P

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12 CFR Part 363

RIN 3064—AA83

Annual Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 314 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) amends sections 36(i) and 36(g)(2) of the Federal Deposit Insurance Act (FDI Act). Section 36 of the FDI Act is generally intended to facilitate early identification of problems in financial management through annual independent audits, assessments of the effectiveness of internal controls and of compliance with designated laws and regulations, and more stringent reporting requirements. Section 314(a) provides relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over $9 billion in total assets which are subsidiaries of multibank holding companies. Section 314(b) requires the Corporation to notify a large insured depository institution in writing if it decides a review by an independent public accountant of such institution's quarterly financial reports is required.

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[1] The Basle Accord was issued in 1988 by the Basle Committee, which is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg. In 1989 the FDIC adopted a Statement of Policy on Risk-Based Capital (Appendix A to Part 325) to implement the Basle Accord. This risk-based capital policy statement applies to the state nonmember banks for which the FDIC is the appropriate federal banking agency.

[2] Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor.

[3] The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices; liberal trade policies; and the absence of exchange controls. Full members of the OECD at the time the Basle Accord was endorsed included Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In May 1994, Mexico was accepted as a full member of the OECD. In addition, Saudi Arabia has concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow.

[12] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

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The Corporation's regulations governing annual independent audits implement section 36 of the FDI Act and this proposed amendment seeks to conform the regulations to the amended statute.

In addition, the FDIC proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as an appendix concerning compliance with certain provisions of section 36. The FDIC also proposes to amend the schedule entitled, "Agreed Upon Procedures for Determining Compliance with Designated Laws", to implement recent amendments to the federal regulations concerning loans to insiders improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. These proposed amendments reflect the experience of the Corporation, institutions, and accountants with the existing procedures during the past year.

DATES: Comments must be received by April 17, 1995.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429 on business days between 8:30 a.m. and 5:00 p.m. (FAX number: (202) 898–3838.) Comments will be available for inspection in room 7118, 550 17th Street, N.W., Washington, D.C., between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, "Independent Annual Audits of Insured Depository Institutions", to the FDI Act (12 U.S.C. 1831m). Section 36 requires the FDIC, in consultation with the appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution over a certain asset size (covered institution) to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards and section 37 of the FDI Act (12 U.S.C. 1831n), and to provide a management report and independent public accountant's attestation concerning both the effectiveness of the institution's internal controls for financial reporting and its compliance with designated safety and soundness laws. Section 36 also requires each covered institution to have an independent audit committee. The audit committee of each large covered institution (total assets exceeding $3 billion) must meet additional requirements.

Section 36 also requires the FDIC, in consultation with the other federal banking agencies, to designate laws and regulations concerning safety and soundness. This section requires the institution's independent public accountant to perform procedures agreed upon by the Corporation to determine an institution's compliance with these designated laws and regulations. The "Designated Laws" selected by the Corporation are the federal laws and regulations concerning loans to insiders and the federal and state laws and regulations concerning dividend restrictions.

In June 1993, the FDIC published 12 CFR part 363 (58 FR 31332, June 2, 1993) to implement the provisions of section 36 of the FDI Act. Under part 363, the requirements of section 36 apply to each insured depository institution with $500 million or more in total assets at the beginning of any fiscal year that begins after December 31, 1992.

Section 314 of RCDRIA amends sections 36(i) and 36(g)(2) of the FDI Act (12 U.S.C. 1831m (i) and (g)(2)). The purpose of section 314(a) is to provide relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over $9 billion in total assets which are subsidiaries of multibank holding companies. Section 314(b) requires the Corporation to notify a large insured depository institution in writing if it decides to require a review by an independent public accountant of such institution's quarterly financial reports. In addition, the federal regulations concerning loans to insiders (Federal Reserve Regulation O, 12 CFR part 215), which are included in one of the Designated Laws, were amended during 1994.

The FDIC proposes certain amendments to 12 CFR Part 363, which conform Part 363 to the amended statute. The FDIC also proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as Appendix A to part 363, concerning compliance with certain provisions of section 36.

In addition, a year's experience with Part 363 indicates that a clarification of certain of the specific procedures in Schedule A to Appendix A of the Guidelines would make them more efficient and less burdensome. The FDIC therefore proposes to amend Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance with Designated Laws, to reflect the recent amendments to the federal regulations concerning loans to insiders (12 CFR Part 215), improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. The proposed amendments reflect the experience of the Corporation, institutions, and accountants dealing with the existing procedures during the past year.

Section 36(g)(2) of the FDI Act authorizes the FDIC to require independent public accountants for "large institutions" to review such institutions' quarterly financial reports. This provision is amended by Section 314(b) of RCDRIA to add section 36(g)(3) which requires the Corporation to notify a large insured depository institution in writing if it decides to require a review of its quarterly financial reports by an independent public accountant. When the FDIC adopted Part 363, it elected not to exercise its authority in this area for reasons of cost and limited expected benefits, preferring instead to request such reviews on a case-by-case basis. The FDIC has not changed its opinion. Should the FDIC decide to request an independent public accountant's review of the quarterly financial statements of a large insured depository institution, it will make the request in writing.

II. The Proposal

The FDIC proposes to make conforming amendments to Part 363 so that it is consistent with section 36 as amended by section 314 of RCDRIA, and to make minor, technical, and clarifying changes to the Guidelines in Appendix A. In addition, the FDIC proposes to amend and reformat the specific procedures in Schedule A to Appendix A to make them more efficient and less burdensome.

A. Amendments to the Rule

Section 363.1—Scope. In § 363.1(b), the phrase "but less than $9 billion" would be deleted from the provisions of the regulation describing the institutions eligible to report using the holding company exception set forth in section 36(i). This revision would make the regulation consistent with the amendment to section 36(i) made by section 314 of RCDRIA. In addition, the subsection would be reformatted and another paragraph added to incorporate the provisions of section 314(a)(3) of RCDRIA which identifies the

circumstances under which the appropriate federal banking agency may require a large institution subsidiary of a holding company to have its own audit committee and report separately.

Section 363.4—Filing and notice requirements. The citation in § 363.4(b) would be corrected so that it is clear that only the annual report in § 363.4(a)(1) is available for public inspection. This correction would make the Rule consistent with section 36 of the FDI Act.

Section 363.5—Audit committees. A new sentence would be added at the end of § 363.5(b) to make the rule consistent with the amendment to section 36(i) made by section 314 of RCDRIA. The new sentence prohibits any large customers of a large insured depository institution from being members of the audit committee of the institution's holding company if the institution relies on the audit committee of the holding company to comply with this rule.

B. Amendments to Appendix A to Part 363—Guidelines and Interpretations

Guideline 4. Comparable Services and Functions—An amendment to Guideline 4(c) under "Scope of Rule" would replace the word "all" with the word "those" to clarify that only information pertaining to covered institutions must be included in reports filed under Part 363.

Guideline 9. Safeguarding of Assets. The third and fourth sentences of Guideline 9 and the addition of a phrase to the footnote would be revised. When Part 363 was adopted, the FDIC determined that "safeguarding of assets", as the term relates to internal control policies and procedures for financial reporting, should be addressed in the management report and the independent public accountant's attestation discussed in guideline 18. In May, 1994, the Committee of Sponsoring Organizations (COSO) of the Treadway Commission issued an Addendum to the "Reporting to External Parties" volume of COSO's September 1992 Internal Control—Integrated Framework (COSO Report). The Addendum expanded the discussion of the scope of a management report on internal controls to address additional controls pertaining to safeguarding of assets. It states that "Such internal control can be judged effective if the board of directors and management have reasonable assurance that unauthorized acquisition, use or disposition of the entity's assets that could have a material effect on the financial statements is being prevented or detected on a timely basis". The FDIC, therefore, believes that the concern that existed at the time of the adoption of Part 363 over the lack of criteria against which the accountant may judge safeguarding of assets for financial reporting no longer exists. Thus, the last two sentences and the footnote to this Guideline would be revised.

Guideline 10. Standards for Internal Controls. The footnote to Guideline 10 includes a list of sources of information on safeguarding of assets and standards for internal controls for financial reporting that may be considered for use by institutions. The Addendum to the COSO Report now contains information regarding safeguarding of assets. Therefore, a reference to this standard would be added to the list in the footnote, and Guideline 10 revised appropriately.

In addition, the American Institute of Certified Public Accountants (AICPA) issued Statement on Auditing Standards No. 55 (SAS 55), "Consideration of the Internal Control Structure in a Financial Statement Audit". SAS 55 has superseded AICPA Statement on Auditing Standards No. 30 (SAS 30), "Reporting on Internal Accounting Control", which is currently listed as a standard in the footnote to Guideline 10. Therefore, SAS 30 would be deleted from the footnote and replaced with SAS 55.

Guideline 15. Peer Reviews—The footnote to Guideline 15 includes the names of the three peer and quality review programs of the AICPA. Since the AICPA is combining two of these programs into a single peer review program, the footnote to Guideline 15 would be amended to identify the two acceptable peer review programs to which an independent public accountant performing audit and attestation work may belong.

Guideline 24. Relief from Filing Deadlines—The phrase referring to section 36 of the FDI Act in the second sentence of Guideline 24 would be deleted since section 36 does not provide authority to the FDIC to provide relief to, or exempt institutions from, provisions in the statute. This Guideline has also been revised to make it more readable.

Guideline 31. Holding Company Audit Committees—The first sentence of Guideline 31 would be amended to clarify that a holding company audit committee, on which subsidiary institutions rely in order to comply with this rule, must meet the requirements for the audit committee of the largest subsidiary institution.

The proposal would revise Guideline 31 because it has been widely misunderstood. The first two sentences of this Guideline apply to the situation where an insured depository institution subsidiary has $5 billion or more in total assets, and a 3, 4, or 5 composite CAMEL rating. Such a subsidiary must have its own audit committee separate from the audit committee of the holding company. It was not clear that the third sentence of Guideline 31 addressed the situation where an insured depository institution subsidiary has either less than $5 billion in total assets, or $5 billion or more in total assets and a 1 or 2 composite CAMEL rating, and its holding company performs services and functions comparable to those required by the statute. In the latter situation, an institution may choose to rely on the holding company's audit committee. The members of the audit committee of the holding company are expected to meet the membership requirements of the largest subsidiary depository institution and may perform the duties of the audit committee for a subsidiary institution without becoming directors of the institution. This Guideline would be amended to clarify its meaning.

Guideline 32. Duties—The second sentence of Guideline 32 would be amended to complete the citation to certain sections of Part 363. The sentence states that the duties of a covered institution's audit committee should be appropriate to the size of the institution and the complexity of its operations, and should include reviewing with management and the independent public accountant the basis for the reports issued under §§ 363.2 (a) and (b) and 363.3 (a) and (b) of the rule. At present, the citation refers only to § 363.2(b) of the rule.

C. Amendments to Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance with Designated Laws

The agreed upon procedures in Schedule A would be amended to clarify the numbering system, make the procedures consistent with amendments to insider loan regulations, and adopt suggestions of institutions and accountants to make the performance of the agreed upon procedures more efficient and less burdensome.

Proposed formatting changes include renumbering the paragraphs and adding more subject titles. The procedures applicable to insider extensions of credit granted, insider extensions of credit outstanding, aggregate insider extensions of credit outstanding, overdrafts, limitations on extensions of credit to executive officers, and reports on indebtedness to correspondent banks would all be placed in separate

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subsections of the procedures for more efficient performance of the procedures and ease of reference. The amendments to the Federal Reserve Board's Regulation O (12 CFR Part 215), the federal rules governing insider loans, necessitated citation changes.

The proposed revisions to the procedures should make them less burdensome for institutions and accountants since they will permit the use of the most recently completed Reports of Condition and Income (Call Report) or Thrift Financial Report (TFR) available when the procedures are being performed rather than requiring the use of only the year-end Call Report or TFR. The scope of the required reading of board and committee minutes and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a) would also be more clearly defined. Inadvertent overdrafts in an aggregate amount of $1,000 or less, which are exempt from Regulation O proscriptions (See 12 CFR 215.4(e)), would no longer need to be separately tracked by institutions, listed when certain representations are made by management, or tested by the accountant. Where accountants were expected to compare insider transactions to transactions with nonaffiliated persons, the comparison period within which nonaffiliated transactions can take place would be expanded from four to eight weeks. In addition, where no maximum number transactions to which comparisons must be made were previously included, comparisons would now be limited to a maximum of three. If no comparable transactions exist, an alternative procedure would be available to the institution.

To ensure that some tests were performed on each category of extension of credit, including overdrafts and loans from correspondent banks, accountants would be requested to obtain three separate samples. In accordance with suggestions received for the procedures covering extensions granted and outstanding during the year, the proposal would have accountants focus the testing on a sample of insiders rather than a sample of transactions.

Under the guidelines, an institution may choose to have some of the testing required in the agreed-upon procedures performed by its internal auditor with less testing performed by its independent public accountant. When the holding company exception set forth in section 36(i) is used at a holding company with more than one covered subsidiary institution, the proposal would extend to internal auditors the same testing requirements that are now applicable to independent public accountants. This would eliminate the existing requirement that internal auditors perform the procedures on each covered subsidiary every year. Thus, the testing of samples from all covered subsidiaries every two or three years that has been required of independent public accountants would now apply to internal auditors, and a requirement that the lead institution or a few very large covered subsidiary institutions be included every year has been added for both accountants and internal auditors. However, in response to the proposed reduction in testing requirements applicable to internal auditors, the FDIC would increase the size of the sample required to be tested by the independent public accountant from 20 to 30 percent of the transactions in the sample used by the internal auditor. This change would generally not result in any increase in the number of transactions tested by the independent public accountant for reports on holding companies with two or more covered subsidiary institutions. Previously, the internal auditor had to perform procedures on a sample of transactions from each covered subsidiary and the independent public accountant had to test a sample from the consolidated holding company that was at least 20 percent of the size of the aggregate samples used by the internal auditor. Under the proposal, the internal auditor may also select a sample on a consolidated holding company basis (so long as some transactions come from each covered subsidiary institution at least every two or three years), but the accountant would have to test a sample of transactions that was at least 30 percent of the size of the sample used by the internal auditor. In most cases, testing 30 percent of the number of transactions in the one sample from the consolidated entity used by the internal auditor will consist of fewer transactions to test than 20 percent of the transactions included in the samples aggregated from each covered institution.

The changes and reformatting in the procedures from the current rule to the proposal are outlined in the table below:

Subject	Old section I	New section I
Insider Loans:		
Designated Laws and Regulations	A.1	A.1
General Information	A.2.a.	A.2.a
Calculations	A.2.b	A.4
Policies and Procedures	A.2.c	A.3
Insider Transactions	A.2.d	A.5
Loans to Correspondent Banks	A.2.d.(1)	A.10
Aggregate Indebtedness	A.2.d.(2)(a)	A.2.b.(3) A.2.d.(7) A.8
Executive Officers	A.2.d.(2)(b) & (c) A.2.e.(ii)	Deleted A.7
Insider Extensions of Credit	A.2.d.(2)(d) & (e) A.2.d.(5) & (6)	A.5, A.6
Overdrafts	A.2.d.(3)	A.9
Reports on Indebtedness to.		
Correspondent Banks	A.2.e.	A.10
Dividend Restrictions:		
Designated Laws and Regulations	B.1	B.1
General Information	B.2	B.2
Policies and Procedures	B.2.b	B.3
Board Minutes	B.2.c	B.4
Calculation of Undercapitalization	B.2.d	B.5
Dividends Declared by Banks	B.2.e	B.6
Dividends Declared by Savings Associations	B.2.f	B.7

Subject	Old section I	New section I
Subject	Old section II	New section II
Procedures for the Independent Public Accountant:		
Designated Laws and Regulations	A. & B.1	A. & B.1
Internal Auditor's Workpapers	B.2	B.2
Testing	C.	B.3
Reports Concerning Holding Companies	D.	B.4

D. Timing and Effective Date

Since the vast majority of covered institutions have fiscal years that coincide with the calendar year, they will be or are in the process of preparing the annual reports and having the agreed-upon procedures performed. In order to make this process less burdensome for institutions and their accountants, the FDIC will raise no objection if an institution chooses to follow immediately the provisions of this proposal for any fiscal year that ends prior to such time as any final amendment is adopted. However, if an institution chooses to follow these provisions and procedures, it must do so for both of the Designated Laws.

III. Regulatory Flexibility Act

The rule expressly exempts insured depository institutions having assets of less than $500 million, and, for that reason, is inapplicable to small entities. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the FDIC Board of Directors certifies that the rule would not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The proposed rule would reduce the burden in a collection of information that has been reviewed and approved by the Office of Management and Budget under control number 3064–0113, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The currently approved burden for this collection is 76,330 hours per year. Of the reports filed during the first year of implementation of Part 363, nearly half (500) were submitted using the holding company exception. However, institutions generally reported that the time expended was greater than had been previously estimated. For this reason, the hours per response estimated is nearly double the previous estimate.

The amended provisions of RCDRIA permit additional use of the holding company exception. Additional burden reduction is expected from the reformatted and streamlined specific procedures in Schedule A to Appendix A to Part 363. It is expected that the proposal would reduce the currently approved burden by 18,360 hours, to an industry-wide total of 57,970 hours per year.

The total estimated reporting burden for the collection under Part 363 as it is proposed to be amended would be:

Number of Respondents: 450.

Number of Responses Per Respondent: 3.19.

Total Annual Responses: 1,435.5.

Hours per Response: 40.38.

Total Annual Burden Hours: 57,970.

The proposed changes to this collection of information have been submitted to OMB for review and approval pursuant to the Paperwork Reduction Act. Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be directed to the Office of Management and Budget, Paperwork Reduction Project 3064–0113, Washington, D.C. 20503, with copies of such comments to Steven F. Hanft, Office of the Executive Secretary, Room F–400, 550 17th St. N.W., Washington, D.C. 20429.

List of Subjects in 12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC proposes to amend part 363 of title 12, chapter III, of the Code of Federal Regulations as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

1. The authority citation for part 363 continues to read as follows:

Authority: 12 U.S.C. 1831m.

2. Section 363.1 is amended by revising paragraph (b) to read as follows:

§ 363.1 Scope.

* * * * *

(b) *Compliance by subsidiaries of holding companies.* (1) The audited financial statements requirement of § 363.2(a) may be satisfied for an insured depository institution that is a subsidiary of a holding company by audited financial statements of the consolidated holding company.

(2) The other requirements of this part for an insured depository institution that is a subsidiary of a holding company may be satisfied by the holding company if:

(i) The services and functions comparable to those required of the insured depository institution by this part are provided at the holding company level; and

(ii) Either the insured depository institution has total assets as of the beginning of such fiscal year of:

(A) Less than $5 billion; or

(B) $5 billion or more and a composite CAMEL rating of 1 or 2.

(3) The appropriate federal banking agency may suspend the exception in paragraph (b)(2) of this section regarding any institution with total assets in excess of $9 billion for any period of time during which the appropriate federal banking agency determines that the institution's exemption would create a significant risk to the affected deposit insurance fund.

3. Section 363.4 is amended by revising paragraph (b) to read as follows:

§ 363.4 Filing and notice requirements.

* * * * *

(b) *Public availability.* The annual report in paragraph (a)(1) of this section shall be available for public inspection.

* * * * *

4. Section 363.5 is amended by revising paragraph (b) to read as follows:

§ 363.5 Audit committees.

* * * * *

(b) *Committees of large institutions.* The audit committee of any insured depository institution that has total assets of more than § 3 billion, measured as of the beginning of each fiscal year, shall include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. If a large institution is a subsidiary of a holding company and relies on the audit committee of the holding company to comply with this part, the holding company audit committee shall not include any members who are large customers of the subsidiary institution.

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5. Appendix A to Part 363 is amended by revising guidelines 4(c), 9, footnote 2 in guideline 10, footnote 3 in guideline 15(b), 24, 31, and the introductory paragraph of guideline 32 and footnotes 2 and 3 to read as follows:

Appendix A to Part 363—Guidelines and Interpretations

* * * * *

4. *Comparable Services and Functions.*

* * * (c) Prepares and submits the management assessments of the effectiveness of the internal control structure and procedures for financial reporting (internal controls), and compliance with the Designated Laws defined in guideline 12 that are based on information concerning the activities and operations of those subsidiary institutions within the scope of the rule.

* * * * *

9. *Safeguarding of Assets.* "Safeguarding of assets", as the term relates to internal control policies and procedures regarding financial reporting, and which has precedent in accounting literature, should be addressed in the management report and the independent public accountant's attestation discussed in guideline 18. Testing the existence of and compliance with internal controls on the management of assets, including loan underwriting and documentation, represents a reasonable implementation of section 36. Management therefore should include such internal controls as part of its assertion in the management report. The accountant's attestation to management's assertion concerning the effectiveness of internal controls for financial reporting should also include safeguarding of assets against unauthorized acquisition, use or disposition.[1]

10. * * *[2]

* * * * *

15. * * *

(b) * * *[3] * * *

* * * * *

24. *Relief from Filing Deadlines.* Although the reasonable deadlines for filings and other notices established by this part are specified, some institutions may occasionally be confronted with extraordinary circumstances beyond their reasonable control that may justify extensions of a deadline. In that event, upon written application from an insured depository institution, setting forth the reasons for a requested extension, the FDIC or appropriate federal banking agency may, for good cause shown, extend a deadline in this part for a period not to exceed 30 days.

* * * * *

31. *Holding Company Audit Committees.* When an insured depository institution subsidiary fails to meet the requirements for the holding company exception in § 363.1(b)(2) or maintains its own separate audit committee to satisfy the requirements of this part, members of the independent audit committee of the holding company may serve as the audit committee of the subsidiary institution if they are otherwise independent of management of the subsidiary, and, if applicable, meet any other requirements for a large subsidiary institution covered by this part. However, this would not permit officers or employees of the holding company to serve on the audit committee of its subsidiary institutions. When the subsidiary institution satisfies the requirements for the holding company exception in § 363.1(b)(2), members of the audit committee of the holding company should meet all the membership requirements applicable to the largest subsidiary depository institution and may perform all the duties of the audit committee of a subsidiary institution, even though such holding company directors are not directors of the institution.

32. *Duties.* The audit committee should perform all duties determined by the institution's board of directors. The duties should be appropriate to the size of the institution and the complexity of its operations, and include reviewing with management and the independent public accountant the basis for the reports issued under §§ 363.2 (a) and (b) and 363.3(a) and (b) of the rule. Appropriate additional duties could include:

* * * * *

6. Schedule A to Appendix A to Part 363 is revised to read as follows:

Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance With Designated Laws

i. Schedule A is attached to the Guidelines and Interpretations issued by the FDIC as an appendix to this part 363 adopted to implement section 36 of the FDI Act.

ii. The Agreed Upon Procedures set forth in this schedule are referred to in guideline 19. They should be followed by the institution's independent public accountant (or, with respect to the procedures set forth in section I of this schedule, by the institution's internal auditor if the accountant is to perform the procedures set forth in section II of this schedule) in order to permit the accountant to report on the extent of compliance with the Designated Laws (defined in guideline 12) as required by section 36(e) (1) and (2).

iii. Additional guidance concerning the role of the institution, its internal auditor, and its independent public accountant in assessing the institution's compliance with the Designated Laws is set forth in the Guidelines. All terms not defined in this schedule have the meanings given them in this part 363, the Guidelines, and professional accounting and auditing literature.

Section I—Procedures for Individual Institutions

The following procedures should be performed by the institution's independent public accountant in accordance with generally accepted standards for attestation engagements, or by the institution's internal auditor if the procedures set forth in section II of this schedule are to be performed by the independent public accountant. To the extent permitted by § 363.1(b), these procedures may be performed on a holding company basis rather than at each covered subsidiary insured depository institution. (See section II.B.3. for information concerning testing by the independent public accountant when the institution's internal auditor is performing the procedures in Section I.)

A. *Loans to Insiders.*

1. *Designated Laws.* The following federal laws and regulations (Designated Insider Laws), to the extent that they are applicable to the institution, should be read:

a. Laws: 12 U.S.C. 375, 375a, 375b, 376, 1468(b), 1828(j)(2), 1828(j)(3)(B), and 1972; and

b. Regulations: 12 CFR 23.5, 31, 215, 337.3, 349.3, and 563.43.

2. *General.*

a. *Information.* Obtain from management of the institution, the following information for the institution's fiscal year:

(1) Management's assessment of compliance with the Designated Insider Laws;

(2) All minutes (including minutes drafted, but not approved) of the meetings of the board and committees of the board which have been delegated authority pertaining to insider lending;

(3) Reports of examination, supervisory agreements, and enforcement actions issued by the institution's primary federal and state regulators, if applicable;

(4) The annual survey which identifies all insiders of the institution (*i.e.*, directors, executive officers, and principal shareholders, and includes their related interests) and/or other records maintained for insiders of the institution's affiliates (pursuant to 12 CFR 215.8(c));

(5) All Forms 10–K, 10–Q, and 8–K and proxy statements filed with the SEC and comparable documents filed with the FDIC, Federal Reserve Board, OCC, or OTS under the Securities Exchange Act of 1934 containing information pertaining to insider lending;

(6) A list of loans, including all overdrafts of executive officers and directors,[1] and other extensions of credit to insiders (including their related interests) outstanding at any time during the fiscal year (and which identifies those extensions granted during the year) as well as the amounts outstanding of such extensions of credit as of the date of the most recently completed Call Report or TFR (Insider Extensions List); and

(7) Management's written representation concerning the completeness of:

(a) Its records concerning insider loans and extensions of credit; and

(b) The Insider Extensions List.

b. *Procedures:*

(1) Read the foregoing information.

(2) If the institution has excluded any officers or directors from being considered executive officers for purposes of paragraph 2.a.(4) of this section, ascertain that any such exclusions have been approved by resolution of the board or the bylaws of the bank or company.

(3) Trace and agree each insider loan and other extension of credit disclosed in the documents listed in paragraphs 2.a. (2) through (5) of this section to see that it is included on the Insider Extensions List.

3. *Policies and Procedures.*

a. *Information.* Obtain the institution's written policies and procedures concerning its compliance with the Designated Insider Laws, including any written "Code of Ethics" or "Conflict of Interest" policy statements. If the institution has no written policies and procedures, obtain a narrative from management that describes the methods for complying with such laws and regulations, and includes provisions similar to those listed in paragraph A.3.b of this section.

b. *Procedures.* Ascertain that the policies and procedures include, or incorporate by reference, provisions consistent with the Designated Insider Laws for:

(1) Defining terms;

(2) Restricting loans to insiders;

(3) Maintaining records of insider loans;

(4) Requiring reports and/or disclosures by the institution and by executive officers, directors, and principal shareholders (and their related interests);

(5) Disseminating policy information;

(6) Revising policies to reflect subsequent changes in the law and regulations;

(7) Educating employees about the legal requirements and management's related policies and procedures;

(8) Prior approval of the board of directors; and

(9) Reporting insider loans to regulatory agencies on the institution's Call Report or TFR.

4. *Calculations of Lending Limits.*

a. *Information.* Obtain management's calculation of the following items as of the date of the institution's most recently completed Call Report or TFR and as of a Call Report or TFR date six or nine months earlier:

(1) The institution's unimpaired capital and surplus (the legal lending limit for all insiders);

(2) The greater of 5 percent of the institution's unimpaired capital and surplus or $25,000; and

(3) The institution's individual lending limit (12 CFR 215.4(c)).

b. *Procedures.* Recalculate the amounts in paragraph 4.a. of this section for mathematical accuracy, and trace the amounts used in management's calculations to the most recently completed Call Report or TFR.

5. *Insider Extensions of Credit Granted.*

a. *Information.* Obtain management's written representations regarding whether the terms and creditworthiness of insider extensions of credit granted during the fiscal year are comparable to those that would have been available to unaffiliated third parties.

b. *Procedures.* Select a sample of insiders who were granted or had outstanding extensions of credit during the fiscal year from the Insider Extensions List. For each extension of credit granted during the fiscal year to each insider in the sample selected:

(1) If a credit granted during the year (aggregated with all other extensions of credit to that person and all related interests of that person) exceeds the lesser of the amounts calculated in paragraph 4.a.(2) of this section on either of the dates used in paragraph 4.a. of this section or $500,000, read the minutes of the meetings of the board of directors and determine whether the minutes indicate that:

(a) The credit was approved in advance by the board; and

(b) The insider abstained from participating directly or indirectly in voting on the transactions;

(2) Obtain management's calculation of the institution's individual lending limit for insiders pursuant to 12 CFR 215.4(c) as of the date when the extension of credit was granted and ascertain whether the amount of the extension of credit being granted to the insider, when combined with all other extensions of credit to that insider, exceeds such limit;

(3) Based on the types of extensions of credit granted during the fiscal year in the sample selected, select a sample of three (or such smaller number that exists) for each similar type of extension of credit to persons who are not insiders or employees of the institution or its affiliates that were granted within four weeks before or after the granting of the insider extension of credit:

(a) Compare the terms of the transactions with the persons not affiliated with the institution to those with the insiders, and note in the findings any material differences in the terms favorable to the insiders compared to the terms of the transactions with persons not affiliated with the institution or its affiliates;

(b) Alternatively, if no comparable transactions with persons who are not insiders exist within the time period specified in paragraph 5.b.(3) of this section, compare the terms of the insider transaction to approved policies delineating the interest rate and other terms and conditions in effect for similar extensions of credit to unaffiliated persons. Note in the findings any material differences in the terms favorable to the insiders compared to the terms of the approved policies for an extension of credit to persons not affiliated with the institution or its affiliates;

(4) For each extension of credit granted to each executive officer in the sample selected in paragraph 5.b. of this section, ascertain that each credit was:

(a) Preceded by submission of financial statements;

(b) Approved by, or promptly reported to, the board of directors, as appropriate; and

(c) Made subject to the written condition, as specified in the note or other evidence of indebtedness, that the extension of credit will become, at the option of the institution, due and payable at any time that the executive officer is indebted to other insured institutions in an aggregate amount greater than the executive officer would be able to borrow from the institution.

6. *Insider Extensions of Credit Outstanding.*

a. *Information.* Use the sample of insiders selected in paragraph 5.b. of this section.

b. *Procedure.* Trace and agree amounts outstanding from insiders in the sample to the supporting documents, as applicable, for the line item aggregating indebtedness of all insiders on the institution's most recently completed Call Report or TFR.

7. *Limitation on Extensions of Credit to Executive Officers.*

a. *Information.* From the sample selected in paragraph 5.b. of this section, select the executive officers who were granted extensions of credit during the year.

b. *Procedures.*

(1) For each executive officer selected, obtain management's calculation as of the two dates used in paragraph 4.a. of this section of:

(a) The aggregate amount of extensions of credit to the executive officer; and

(b) 2.5 percent of the institution's unimpaired capital and surplus.

(2) Ascertain whether, and report as an exception if, the aggregate amount of the extensions of credit to the executive officer exceeds the greater of $25,000 or 2.5 percent of the institution's unimpaired capital and surplus, but in no event more than $100,000. The aggregate amount should exclude the types of extensions of credit set forth in 12 CFR 215.5(c)(1) through (3).

(3) Recalculate management's computations for mathematical accuracy and trace amounts used in management's computations to the institution's most recently completed Call Report or TFR.

(4) If the credit extended is a real estate loan, obtain documentation for the credit and note whether such documentation contains representations that:

(a) The purpose of the credit is for the purchase, construction, maintenance, or improvement of the executive officer's residence;

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[1] It is management's responsibility to establish policies concerning underwriting and asset management and to make credit decisions. The auditor's role is to test compliance with management's policies relating to financial reporting.

[2] In considering what information is needed on safeguarding of assets and standards for internal controls, management may review guidelines provided by its primary federal regulator; the Federal Financial Institutions Examination Council's "Supervisory Policy Statement on Securities Activities"; the FDIC's "Statement of Policy Providing Guidance on External Auditing Procedures for State Nonmember Banks" (Jan. 16, 1990); "Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks" (Nov. 16, 1988), and Division of Supervision Manual of Examination Policies; the Federal Reserve Board's Commercial Bank Examination Manual and other relevant regulations; the Office of Thrift Supervision's Thrift Activities Handbook; the Comptroller of the Currency's Handbook for National Bank Examiners; standards published by professional accounting organizations, such as the American Institute of Certified Public Accountant's (AICPA) Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit"; the Committee of Sponsoring Organizations (COSO) of the Treadway Commission's Internal Control—Integrated Framework, including its addendum on safeguarding of assets; and other internal control standards published by the AICPA, other accounting or auditing professional associations, and financial institution trade associations.

[3] These would include standards for Performing and Reporting on Peer Reviews, codified in the SEC Practice Section Reference Manual, and Standards for Performing and Reporting on Peer Reviews, contained in Volume 2 of the AICPA's Professional Standards.

[1] Overdrafts of an executive officer or director in an aggregate amount of $1,000 or less need not be included on this list if management provides a written representation that policies and procedures are in effect to report as extensions of credit all overdrafts that do not meet the criteria listed in paragraph 9.a.(2) of this section concerning overdrafts in an aggregate amount of $1,000 or less.

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(b) The credit is secured by a first lien on the residence; and

(c) The executive officer owns or expects to own the residence after the extension of credit.

8. *Aggregate Insider Extensions of Credit Outstanding.*

a. *Information.* Obtain management's calculation of the aggregate extensions of credit to executive officers, directors, and principal shareholders of the institution and to their related interests as of the two dates selected in paragraph 4.a. of this section.

b. *Procedures.* Recalculate the amounts obtained in paragraph 8.a. of this section for mathematical accuracy.

(1) Compare this total with 100 percent of the institution's unimpaired capital and surplus calculated in paragraph 4.a.(1) of this section.

(2) Report any amount by which the aggregate extensions of credit exceed 100 percent of the institution's capital and surplus as an exception in the findings.

9. *Overdrafts.*

a. *Information.* Select a sample of insiders from the Insider Extensions List who had overdrafts outstanding during the fiscal year.

(1) Obtain a written history of the insider's overdrafts for the year and management's written representation concerning the completeness of that history.

(2) For overdrafts of an executive officer or director in an aggregate amount of $1,000 or less included in the sample, obtain management's written representation that:

(a) It believes the overdrafts were inadvertent;

(b) The account was overdrawn in each case for no more than 5 business days; and

(c) The institution charged the executive officer or director the same fee that it would charge any other customer in similar circumstances.

b. *Procedures.* For each overdraft by an insider in the sample selected in paragraph 9.a. of this section:

(1) Inquire whether cash items for the insider were being held by the institution during the time that the overdraft was outstanding to prevent additional overdrafts;

(2) Trace and agree subsequent payment by the insider of the insider's overdrafts to records of the account at the institution; and

(3) For overdrafts of executive officers and directors included in the sample that were paid by the institution for the executive officer and director from an account at the institution:

(a) Trace and agree to a written, pre-authorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(b) Trace and agree to a written, pre-authorized transfer of funds from another account of the insider at the institution.

10. *Reports on Indebtedness to Correspondent Banks.*

a. *Information.* Obtain from management:

(1) A list of executive officers and principal shareholders and related interests thereof that filed reports of indebtedness to a correspondent bank. This list should be prepared as of the calendar year for which the management assessment and independent public accountant's attestation are being filed. If the institution is not on a calendar year fiscal year, the list should be prepared as of the end of the calendar year during its fiscal year.

(2) Its written representation concerning the completeness of the list for paragraph 10.a.(1) of this section and its written representation that all executive officers and principal shareholders have been notified of the reporting requirements for the calendar year in paragraph 10.a.(1) of this section relative to borrowings from correspondent banks by executive officers and principal shareholders and their related interests.

(3) Its representation concerning the amount each executive officer would have been able to borrow from the reporting institution.

b. *Procedures.* Select a sample of executive officers, principal shareholders, and related interests thereof from the list obtained in paragraph 10.a.(1) of this section.

(1) Ascertain that each executive officer and principal shareholder (or related interest thereof) included in the sample reported to the board of directors (on or before the January 31 following the calendar year in paragraph 10.a.(1)), indebtedness to correspondent banks and that such report states:

(a) The maximum amount of indebtedness during that calendar year;

(b) The amount of indebtedness outstanding 10 days prior to report filing; and

(c) A description of the loan terms and conditions, including the rate or range of interest rates, original amount and date, maturity date, payment terms, security, and any unusual terms or conditions.

(2) If any executive officer's extensions of credit from all correspondent banks from the list obtained in paragraph 10.a.(1) of this section exceed the total amount that management represents that the executive officer would have been able to borrow from the reporting institution during the fiscal year, note whether a report pursuant to 12 CFR 215.9 was made to the board of directors of the officer's institution within 10 days of the date the indebtedness reached such a level.

B. *Dividend Restrictions.* If the institution has declared any dividends during the fiscal year, the following procedures should be performed for each dividend declared. (These procedures are not applicable to mutual institutions and insured branches of foreign banks.)

1. *Designated Laws.* The following federal laws and regulations (Designated Dividend Laws), to the extent that they are applicable to the institution (see paragraph 2 below), should be read:

a. Laws: 12 U.S.C. 56, 60, 1467(a)(f), 1831o; and

b. Regulations: 12 CFR 5.61, 5.62, 6, 7.6120, 19, 208.19, 208.30, 263, 325.105, 563.134, and 565.

2. *General.* Although the information requirements and procedures in paragraphs 2. through 5. of this section are applicable to all institutions, paragraphs 6. and 7. of this section were designed to be applicable to national banks and federally-chartered savings associations. However, if the institution is state chartered, and the state has dividend restrictions substantially identical to those for national banks and federally-chartered savings associations, the requirements in paragraphs 6. and 7. of this section for information and procedures to be performed should be applied to the state bank or savings association.

a. *Information.* Obtain from management of the institution the following information for the institution's most recent fiscal year:

(1) Its assessment of the institution's compliance with the Designated Dividend Laws and any applicable state laws and regulations cited in its assessment.

(2) A copy of any supervisory agreements with, orders by, or resolutions of any regulatory agency (including a description of the nature of any such agreements, orders, or resolutions) containing restrictions on dividend payments by the institution.

(3) Its written representation whether dividends declared comply with any restrictions on dividend payments under any supervisory agreements with, orders by, or resolutions of any regulatory agency (including a description of the nature of any such agreements, orders, or resolutions).

b. *Procedures.*

(1) Read the foregoing information.

(2) If any restrictions on dividend payments exist in any documents obtained in paragraph 2.a.(2) of this section, test and agree dividends declared with any such quantitative restrictions.

3. *Policies and Procedures.*

a. *Information.* Obtain the institution's written policies and procedures concerning its compliance with the Designated Dividend Laws. If the institution has no written policies and procedures, obtain from the institution a narrative that describes the institution's methods for complying with the Designated Dividend Laws, and includes provisions similar to those below.

b. *Procedures:* Ascertain whether the policies and procedures include, or incorporate by reference, provisions which are consistent with the Designated Dividend Laws. These would include capital limitation tests, including section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), earnings limitation tests, transfers from surplus to undivided profits, and restrictions imposed under any supervisory agreements, resolutions, or orders of any federal or state bank regulatory agency. In addition, for savings associations, this would include prior notification to the OTS.

4. *Board Minutes.*

a. *Information.* Obtain the minutes of the meetings of the board of directors for the most recent fiscal year to ascertain whether dividends (either paid or unpaid) have been declared.

b. *Procedures.* Trace and agree total dividend amounts to the general ledger records and the institution's most recently completed Call Report or TFR.

5. *Calculation of Undercapitalization.*

a. *Information.* Obtain management's computation of the amount at which declaration of a dividend would cause the institution to be undercapitalized as of each date on which a dividend was declared during the fiscal year.

b. *Procedures:* Recalculate management's computation (for mathematical accuracy) and compare management's calculations to the amount of any dividend declared to determine whether it exceeded the amount.

6. *Dividends Declared by Banks.*

a. *Information.* Obtain the computations by the management of each national and state member bank concerning the bank's compliance with 12 U.S.C. 56, "Capital Limitation Test"; 12 U.S.C. 60, "The Earnings Limitation Test", and transfers from surplus to undivided profits after declaration of the dividends referenced in paragraph 4.a. of this section. In a state with substantially similar laws, obtain the corresponding computations by the management of each state nonmember bank.

b. *Procedures.* Recalculate management's computations (for mathematical accuracy) and compare management's calculations to the standards defined in the tests set forth in paragraph 6.a. of this section to ascertain whether the dividends declared fall within the permissible levels under these standards. If dividends are not permissible in the amounts declared under such standards, ascertain whether the dividends were declared with the approval of the appropriate federal banking agency or under any other exception to the standards. If not, report the findings.

7. *Dividends Declared by Savings Associations.*

a. *Information.* Obtain management's documentation of the OTS determination whether the institution is a Tier 1, Tier 2, or Tier 3 savings association and management's computations of its capital ratio after declarations of dividends under the Tier determined by the OTS. For dividends declared, obtain copies of the savings association's notifications to the OTS to ascertain whether notifications were made at least 30 days before payment of any dividends.

b. *Procedures:* Recalculate management's computations (for mathematical accuracy) and trace amounts used by management in its calculations to the institution's TFRs.

Section II—Procedures for the Independent Public Accountant

If the internal auditor has performed the procedures set forth in section I for either or both Designated Laws, the following procedures may be performed by the independent public accountant for the appropriate designated law(s) if neither the FDIC nor the appropriate federal banking agency has objected in writing. The report of procedures performed and list of exceptions found by the internal auditor, identifying the institution with respect to which any exception was found, should be submitted to the audit committee of the board of directors. Management should file a summary of the internal auditor's significant findings and management's response to those findings with the FDIC at the same time as the independent public accountant's attestation report is filed.[2]

[2] Since this summary supplements the independent public accountant's attestation on the Designated Laws, the FDIC has determined that the summary is exempt from public disclosure consistent with the guidance in Guideline 18 in Appendix A to this part 363.

A. *Review of Designated Laws.* Read either or both of the Designated Insider Laws and Designated Dividend Laws applicable to the institution, as appropriate to the engagement.

B. *Information and Procedures.* Perform the procedures indicated as follows:

1. *Designated Laws.* Read Section I of this schedule. Obtain management's assessment contained in its management report on the institution's or holding company's compliance with the Designated Laws for the fiscal year.

2. *Internal Auditor's Workpapers.*

a. *Information.* If an internal auditor performed the procedures in Section I, obtain the internal auditor's workpapers documenting the performance of those procedures on the institution and the chief internal auditor's written representation that:

(1) The internal auditor or audit staff, if applicable, performed the procedures listed in section I on the institution;

(2) The internal auditor tested a sufficient number of transactions governed by the Designated Laws so that the testing was representative of the institution's volume of transactions;

(3) The workpapers accurately reflect the work performed by the internal auditor and, if applicable, the internal audit staff;

(4) The workpapers obtained are complete; and

(5) The internal auditor's report, which describes the procedures performed for the fiscal year as well as the internal auditor's findings and exceptions noted, has been presented to the institution's audit committee.

b. *Procedures.*

(1) Compare the workpapers to the procedures that are required to be performed under section I. Report as an exception any procedures not documented and any procedures for which the sample size is not sufficient.

(2) Compare the exceptions and errors listed by the internal auditor in its report to the audit committee to those found in the workpapers, and report as an exception any exception or error found in the internal auditor's workpapers and not listed in the internal auditor's list of exceptions.

3. *Testing.* a. The independent public accountant should perform the procedures listed in Section I on representative samples of the insiders and/or transactions of the institution to which the Designated Law applies. If the institution's internal auditor is performing the procedures in Section I, the samples tested by the independent public accountant should be at least 30 percent of the size of the samples tested by the internal auditor although samples selected by the accountant should be from the population at large. However, if there are so few transactions in any area that the internal auditor cannot use sampling, but must test all transactions, the independent public accountant should also test all transactions.

b. If the testing is being performed on a holding company with more than one subsidiary institution that is subject to this part 363 (covered subsidiary), the samples tested should include a combination of insiders and transactions from each covered subsidiary with total assets (after deductions of intercompany amounts that would be eliminated in consolidation) in excess of 25 percent of the holding company's total assets every fiscal year. Samples should be tested for each smaller covered subsidiary at least every other fiscal year unless the holding company has more than eight covered subsidiaries, in which case the samples to be tested for each Designated Law should be drawn from each smaller covered subsidiary at least every third fiscal year.

4. *Reports Concerning Holding Companies.* Only one report of any exceptions noted from application of the procedures in section II performed by the independent public accountant should be filed as required by guideline 3 in Appendix A to this part 363, but the report should identify, for each exception or error noted, the identity of the covered subsidiary to which it relates.

By order of the Board of Directors.

Dated at Washington, D.C. this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3176 Filed 2–14–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–251–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires a revision to the input wiring for the flap control unit. This action would require a new systems test for the wiring of the trailing edge flap. The proposal would also expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by a report indicating that a wiring error was not detected by the system test required by the existing AD. The actions specified by the proposed AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Comments must be received by April 10, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103,

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Attention: Rules Docket No. 94–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 1, 1994, the FAA issued AD 94–14–21, amendment 39–8970 (59 FR 35240, July 11, 1994), applicable to certain Boeing Model 747–400 series airplanes, to require a revision to the input wiring for the flap control unit (FCU). That action was prompted by reports of disconnection of the Landing Gear Module electrical connectors, which can result in the loss of the primary, secondary, and alternate control of the flaps. The requirements of that AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

Since issuance of that AD, an operator has reported a wiring error of the Landing Gear Module that was not detected by the system test (Work Package I) required by AD 94–14–21, and described in Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994. This wiring error could allow the connectors to become disconnected, and all FCU modes of flap operation (primary, secondary, and alternate control of flaps) could be lost. This condition, if not corrected, could result in all-flaps-up landing due to the loss of control of all flap operations.

The FAA has reviewed and approved Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995, which provides procedures for a systems test (Work Package II) of the trailing edge flap to detect incorrect wiring. It also expands the effectivity listing to include additional affected airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 94–14–21 to continue to require revision of the input wiring for the flap control unit, but would include the addition of a new systems test for the wiring of the trailing edge flap. The proposed AD also would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 310 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $30 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8970 (59 FR 35240, July 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–251–AD. Supersedes AD 94–14–21, Amendment 39–8970.

Applicability: Model 747–400 series airplanes having line numbers 696 through 1036 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 94–14–21, amendment 39–8970. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 94–14–21 have already been accomplished, this AD does not require that those actions be repeated.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) For airplanes having serial numbers 696 through 1019 inclusive, and 1021 through 1026 inclusive: Within 30 days after August 10, 1994 (the effective date of AD 94–14–21, amendment 39–8970), revise the input wiring for the flap control unit (FCU) in accordance with Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, or Revision 2, dated January 12, 1995.

(b) For airplanes having serial numbers 1020, and 1027 through 1036 inclusive: Within 30 days after the effective date of this AD, revise the input wiring for the FCU in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(c) For airplanes having serial numbers 696 through 1036 inclusive: Within 120 days after the effective date of this AD, perform the additional systems test for the wiring of the trailing edge flap in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Aircraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3752 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–218–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Jetstream Model 4101 airplanes, that currently requires modification of the mounting structure of the elevator controls on the rear pressure bulkhead. That proposal was prompted by results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. This action would limit the applicability of the rule. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

DATES: Comments must be received by March 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–218–AD." The postcard will be date stamped and returned to the commenter.

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Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 23, 1994, the FAA issued AD 94–14–07, amendment 39–8959 (59 FR 35247, July 11, 1994), applicable to all Jetstream Model 4101 airplanes, to require modification of the mounting structure of the elevator controls on the rear pressure bulkhead. That action was prompted by the results of a structural analysis which indicate that certain structure in the elevator control system may be subject to deformation when maximum load is exerted by the pilot(s) in the event of a jam in the elevator control cables. The requirements of that AD are intended to prevent reduced controllability of the airplane due to structural deformation in the elevator control system.

Since the issuance of that AD, Jetstream has issued Revision 1 (dated October 3, 1994) to Service Bulletin J41–53–012–41262A, which was referenced in AD 94–17–04 as the appropriate source of service information. This revision of the service bulletin is essentially the same as the originally issued version, insofar as the modification procedures described. However, Revision 1 has been revised to specify that, if previously installed, a certain modification does not need to be reinstalled. Additionally, the effectivity listing in Revision 1 has been limited to specify only those Model 4101 airplanes on which the modification has not been accomplished. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified Revision 1 as mandatory.

Since AD 94–14–07 currently is applicable to "all" Jetstream Model 4101 airplanes, the FAA finds that the applicability of that AD must be revised to limit it to only airplanes on which the subject modification has not been accomplished. Airplanes that have been modified previously are considered to be in compliance with the existing AD, and are not subject to the unsafe condition addressed by it. In accordance with part 39 of the Federal Aviation Regulations (14 CFR part 39) and Executive Order 12866, the purpose of AD's is to mandate actions to correct unsafe conditions while imposing the least necessary burden on the public. The unsafe condition addressed by this AD action has been found not to exist with regard to airplanes previously modified; therefore, to make the AD applicable to airplanes on which it has been determined that the unsafe condition does not exist would be contrary to this purpose.

Additionally, the FAA considers that revising the applicability of the existing AD is necessary in order to eliminate any ambiguity regarding whether or not airplanes previously modified would be required to be modified again.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 94–14–07 to limit the applicability to airplanes that have not been previously modified in accordance with the requirements of the AD. This proposed revision would continue to require modification of the mounting structure of the elevator controls on the rear pressure bulkhead on airplanes not previously modified.

The FAA estimates that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,160, or $1,020 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8959 (59 FR 35247, July 11, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited: Docket 94–NM–218–AD. Revises AD 94–14–07, Amendment 39–8959.

Applicability: Model 4101 airplanes, as listed in Jetstream Service Bulletin J41–53–012–41262A, Revision 1, dated October 3, 1994, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration

eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to structural deformation in the elevator control system, accomplish the following:

(a) Within 6 months after August 10, 1994 (the effective date of AD 94–14–07, amendment 39–8959), modify the mounting structure of the elevator controls on the rear pressure bulkhead, in accordance with Jetstream Service Bulletin J41–53–012, dated November 30, 1993, or Revision 1, dated October 3, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3753 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 91–NM–195–AD]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. That action would have required the modification of certain distance measuring equipment (DME), which would terminate a previously required limitation of the FAA-approved Airplane Flight Manual (AFM) that prohibits terminal area and enroute area navigation operations under certain conditions. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking that requires installation of the modification proposed in the NPRM. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Pete Skaves, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2795; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to supersede AD 91–12–08, amendment 39–7019 (56 FR 25362, June 4, 1991), applicable to certain Boeing Model 747–400 series airplanes, was published in the **Federal Register** on November 1, 1991 (56 FR 56177). The proposed rule would have required modification of certain distance measuring equipment (DME). Accomplishment of that modification would have constituted terminating action for a previously required limitation of the FAA-approved Airplane Flight Manual (AFM) that prohibits terminal area and enroute area navigation operations under certain conditions. That action was prompted by the development of a design change that would prevent erroneous distance information from being displayed to the flight crew and sent to the flight management computer (FMC). The proposed actions were intended to prevent decreased enroute area navigation (RNAV) accuracy or decreased terminal area navigation capabilities, which may then necessitate missed approaches, the use of alternative means of navigation for approach, or diversion to an alternative airport.

Since the issuance of that NPRM, the FAA issued AD 94–02–02 (59 FR 2519, January 18, 1994), applicable to Rockwell International/Collins Air Transport Division DME–700 Distance Measuring Equipment. (A correction of the rule was published in the **Federal Register** on February 23, 1994 (59 FR 8519)). That AD requires, in part, modification of certain DME units, including those units installed on the Boeing Model 747–400 series airplanes that would have been applicable to the rule proposed by the NPRM.

Since modification of the DME units is now required by AD 94–02–02, the FAA finds that the proposed requirements of the NPRM are unnecessary, since they would merely duplicate those currently required by AD 94–02–02. Accordingly, the proposed rule is hereby withdrawn.

Additionally, since the modification required by AD 94–02–02 eliminates the need for the AFM limitation required by AD 91–12–08, the FAA is considering rescinding that AD by a separate rulemaking action.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 91–NM–195–AD, published in the **Federal Register** on November 1, 1991 (56 FR 56177), is withdrawn.

Issued in Renton, Washington, on February 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3751 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 94N–0380]

Gastroenterology-Urology Devices; Effective Date of the Requirement for Premarket Approval of the Implanted Mechanical/Hydraulic Urinary Continence Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice

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of completion of a product development protocol (PDP) for the implanted mechanical/hydraulic urinary continence device, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request that the agency change the classification of the device based on new information.

DATES: Written comments by June 15, 1995; requests for a change in classification by March 2, 1995. FDA intends that, if a final rule based on this proposed rule is issued, PMA's will be required to be submitted within 90 days of the effective date of the final rule.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, or John F. Guest, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or declared completed PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedures under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device.

Section 515(b)(2)(A) of the act provides that a proceeding to promulgate a final rule to require premarket approval shall be initiated by publication, in the **Federal Register**, of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device under section 513 of the act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). FDA has in the past requested that manufacturers take action to prevent the further use of devices for which no PMA or notice of completion of a PDP has been filed and may determine that such a request is appropriate for implanted mechanical/hydraulic urinary continence devices.

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976).)

A. Classification of the Implanted Mechanical Hydraulic Urinary Continence Device

In the **Federal Register** of November 23, 1983 (48 FR 53012 at 53026), FDA issued a final rule classifying the implanted mechanical/hydraulic urinary continence device into class III § 876.5280 (21 CFR 876.5280). The preamble to the proposal to classify the device (46 FR 7610, January 23, 1981) included the recommendation of the Gastroenterology-Urology Devices Advisory Panel (the Panel), an FDA advisory committee, which met on September 26 and 27, 1976, regarding the classification of the device. The Panel recommended that the device be in class III, and identified certain risks to health presented by the device. FDA agreed with the Panel's recommendation and proposed that the implanted mechanical/hydraulic urinary continence device be classified into class III. The proposal stated that the agency believed that general controls and performance standards are insufficient to provide reasonable assurances of the safety and effectiveness of the device and that there is insufficient information to establish a standard to provide reasonable assurances of the safety and effectiveness of the device. The proposal stated that premarket approval is necessary for this device because it presents a potential unreasonable risk of injury due to: (1) Adverse tissue reaction and erosion; (2) leakage of urine secondary to device defects; (3) infection resulting from defects in the design, construction, packaging, or processing of the device; (4) urinary tract infection, secondary to urine stasis, occurring as a result of the inflation cuff locking in the closed position; and (5) additional surgery that might be required as a result of a malfunction of the device. In support of its proposal to strengthen regulatory surveillance of the device, FDA cited references supporting the proposed classification.

The preamble to the November 23, 1983, final rule (48 FR 53012) classifying the device into class III advised that the earliest date by which PMA's for the device could be required was June 30, 1986, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurs later. In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's. Although the implanted mechanical/hydraulic urinary continence device was not listed among these 31 devices, the agency has received more than 2,700 medical device reports (MDR's) since 1984 for this device. Additionally, the types of problems identified in these reports are similar to those identified during the classification proceedings of the device. Therefore, FDA has determined that the implanted mechanical/hydraulic urinary continence device identified in § 876.5280 has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the implanted mechanical/hydraulic urinary continence device has an approved PMA or a declared completed PDP.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the implanted mechanical/hydraulic urinary continence device within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the implanted mechanical/hydraulic urinary continence device during FDA's review of the PMA or notice of completion of the PDP. FDA intends to complete the review of any PMA for the device within 180 days and a notice of completion of a PDP within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any implanted mechanical/hydraulic urinary continence device which is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for the implanted mechanical/hydraulic urinary continence device is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the final rule to avoid interrupting investigations.

C. Description of the Device

An implanted mechanical/hydraulic urinary continence device is a device used to treat urinary incontinence by the application of continuous or intermittent pressure to occlude the urethra. The totally implanted device may consist of either a static pressure pad, or a system with a container of saline or radiopaque fluid in the abdomen and a manual pump and valve under the skin surface that is connected by tubing to an adjustable pressure pad or to a cuff around the urethra. The fluid is pumped as needed from the container to inflate the pad or cuff to compress the urethra. These devices are most commonly constructed from silicone elastomers. Additionally, static pressure pad designs have been known to contain silicone gel and/or polyurethane foam covering.

The proposed rule to require premarket approval of implanted mechanical/hydraulic urinary continence devices applies to legally marketed implanted mechanical/hydraulic urinary continence devices identified above that were commercially distributed before May 28, 1976, and to devices introduced into commercial distribution since that date that have been found to be substantially equivalent to such implanted mechanical/hydraulic urinary continence devices.

D. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the implanted mechanical/hydraulic urinary continence device to have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the device.

E. Degree of Risk

After considering the information discussed by the Panel during the classification proceedings, as well as the published literature and MDR's, FDA has evaluated the risks associated with the implanted mechanical/hydraulic urinary continence device. FDA now believes that the following are

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significant risks associated with the use of the implanted mechanical/hydraulic urinary continence device:

1. Erosion of the Implanted Mechanical/Hydraulic Urinary Continence Device

Erosion is the destruction or breakdown of tissue and is the most common cause of failure in the implanted mechanical/hydraulic urinary continence device (Refs. 1 through 5). Cuff erosion into the urethra or bladder neck is a serious complication that has been frequently reported (Refs. 3 and 6 through 15). This type of erosion makes reimplantation difficult and is associated with higher complication rates for reimplantation (Refs. 1 and 16 through 18) of the device. Erosion of the pump through the labia, vagina, scrotum (Refs. 14 and 19 through 21), and the perineum (Refs. 2, 9, and 22) have also been reported.

Erosion often occurs as a result of low grade, nonclinical infection of the prosthesis (Refs. 9, 14, and 23 through 28). Other factors which can contribute to erosion include previous surgery (Ref. 11), poor vascularization (Refs. 27 and 29 through 31), prior pelvic irradiation (Refs. 17, 28, and 32 through 35), improper cuff size (Ref. 30), improper reservoir volume (Ref. 17), surgical injury (Refs. 18 and 24), excessive urethral compression (Ref. 16), and premature activation (Refs. 19 and 27).

2. Infection

Infection, a risk of any surgical implant procedure, is associated with the use of implanted mechanical/hydraulic urinary continence devices (Refs. 7, 10, 12, 33, and 36 through 39). Infection is one of the most serious potential complications of device implantation and usually necessitates removal of the prosthesis (Refs. 7, 40, and 41). As in any implantation procedure, compromised device sterility and/or surgical techniques may be major contributing factors to this risk (Refs. 40 and 42). Additionally, a life-long risk for hematogenously seeded infection possibly exists in these patients and antibacterial prophylaxis for subsequent dental and surgical procedures may be needed (Ref. 40).

3. Mechanical Malfunctions

Fluid leakage is one of the most commonly reported mechanical malfunctions (Refs. 2, 26, 28, 37, 43, and 44) of implanted mechanical/hydraulic urinary continence devices. Fluid can leak from the cuff or pad (Refs. 7, 13, 21, 31, and 45), reservoir (Refs. 7, 13, and 31), or connectors (Ref. 10). Leakage from the cuff has been associated with cuff folding and attendant material wear (Refs. 31, 36, and 46). This malfunction results in inadequate cuff pressure and incontinence (Ref. 7). Tube kinking is another reported device malfunction (Refs. 7, 12, 26, 28, 34, 37, 43, 44, and 47). Also, disconnection of the tubing from components of the device can occur (Ref. 19). Pump assembly failure is another noted complication (Refs. 2, 19, 36, 37, and 44) of this implant. This can include malfunction of the valves within the hydraulic system (Ref. 45). Finally, balloon herniation has been noted (Ref. 17). Device malfunction usually requires replacement or revision surgery (Refs. 7 and 43).

4. Iatrogenic Disorders

Iatrogenic complications can occur as a result of any medical procedure, including implantation of the implanted mechanical/hydraulic urinary continence device. Improper device handling (including cutting or nicking of the device) can lead to device malfunctions. Inadequate pressure within the system (due to selection of incorrect cuff or reservoir size) results in either incontinence (due to inadequate urethral closing pressure) or outflow obstruction (due to excessive urethral closing pressure), both of which lead to the need for reoperation (Refs. 7, 12, 30, and 34). This may be due to a lack of guidance for determining the appropriate device size for an individual patient (Refs. 2, 9, 25, 31, and 48). Erosion secondary to infection, can be caused by intraoperative field contamination or urethral or vaginal injury (Refs. 26 and 42). Finally, intraoperative and postoperative kinks in the tubing can occur due to incorrect tubing length (Ref. 7) and result in a low urethral closure pressure (Refs. 9, 34, and 48).

5. Hydronephrosis

Hydronephrosis refers to the dilation of the upper urinary tract as a result of chronic obstruction to urine outflow, which can lead to kidney damage. Some authors have reported an elevated incidence of hydronephrosis following implantation of the implanted mechanical/hydraulic urinary continence device (Refs. 49 through 52). This complication has mostly occurred when the device is implanted in patients with myelopathy. It has been theorized that the development of hydronephrosis is due to a combination of slight detrusor hyperreflexia and low bladder capacity (Ref. 49). Other researchers have noted the development of detrusor hypertonicity after implantation, leading to hydronephrosis (Ref. 52). The pathogenesis and incidence of this risk is unknown and requires further study.

6. Human Carcinogenicity

Carcinogenesis has been widely discussed as a reputed risk secondary to implantation of any material. Evidence from the literature indicates that in animal studies, different forms of silicone have been associated with various types of cancer (Refs. 53 through 57). Cases of several types of cancer in humans have been reported in association with various forms of implanted silicone (Refs. 58 through 61).

7. Human Reproductive and Teratogenic Effects

The effect of certain silicone compounds on the reproductive potential of the male is largely unknown. Le Vier and Jankowiak report that at least one form of organosiloxane, which is known to be present in some silicone gels, mimics estrogens in the male rat, leading to rapid testicular atrophy (Ref. 62).

Teratogenesis includes the origin or mode of production of a malformed fetus and the disturbed growth processes involved in the production of a malformed fetus. Studies using silicone fluid in animals have been minimal, and yield contradictory and inconclusive results (Refs. 63 through 65). Prolonged contact with either silicone elastomer, or silicone gel-filled membrane in devices containing silicone gel, presents a potential risk of teratogenicity in humans. Further study of these risks is necessary.

8. Immune Related Connective Tissue Disorders—Immunological Sensitization

Immunological sensitization may be a serious risk associated with an implanted mechanical/hydraulic urinary continence device. Recent clinical data have shown that silicone elastomers are capable of producing immune responses (Ref. 66). Immune related connective tissue disorders have also been reported in women who have silicone gel-filled devices or who have had silicone injections in augmentation mammoplasty. There are clinical reports of several patients who have undergone augmentation mammoplasty with silicone gel-filled breast prostheses and later presented with connective tissue disease-like syndromes (Ref. 67). Recently, Naim et. al. conducted studies in rats which demonstrated that silicone gel is a potent immunological adjuvant (Ref. 68). Because implanted mechanical/hydraulic urinary continence devices may consist of similar silicone elastomers and gels, further study of the potential risk of immune related connective tissue disorders in humans with these implants is warranted.

9. Biological Effects of Silica

Amorphous (fumed) silica is bound to the silicone in the elastomer of the implanted mechanical/hydraulic urinary continence device, and may be fibrogenic and immunogenic. Fumed silica and the silicone elastomer each elicit cellular responses in rats (Ref. 69). Researchers have reported that there is an association between industrial exposure to silica and development of systemic lupus erythematosus (Ref. 41). The biological effects of silica, particularly the immunologic component of these reactions, present a potential risk for device recipients and need to be examined.

10. Silicone Particle Shedding, Silicone Gel Leakage, and Associated Migration

Silicone particle shedding and subsequent migration have been reported with genitourinary prosthetic devices, including implanted mechanical/hydraulic urinary continence devices (Refs. 70 and 71). Silicone gel leakage and migration from the silicone elastomer envelope, either from rupture of the envelope or by leaking of the gel through the envelope (gel "bleed"), are also potential significant risks of implanted mechanical/hydraulic urinary continence devices containing silicone gel. Rupture of the envelope with gel leakage and subsequent migration may be secondary to surgical technique, or may result from mechanical stresses such as device usage, trauma, and wear on the envelope, and necessitates removal of the implant. In addition, silicone gel-filled breast implants are reported to "bleed" micro amounts of silicone through the intact silicone elastomer shell into the surrounding tissues (Refs. 72 through 81). Furthermore, fluorosilicone gels have been used to lubricate the inner surfaces of cuff shells (Ref. 36) and, therefore, are an additional source for gel bleed. Although diffusion of silicone gel through the elastomer envelope and silicone particle shedding have not specifically been measured (e.g., quantified) in the implanted mechanical/hydraulic urinary continence device, they have been reported (Ref. 70) and, therefore, particle shedding and gel bleed continue to be potential risks with this device and need to be evaluated. Migration of the particles and gel into the human body presents the potential for development of adverse effects such as granulomas, lymphadenopathy, or cellular immune response (Refs. 41, 58, 59, 70, and 71). The ultimate fate of migrating silicone particles or silicone gel within the body is currently not well understood. It should be noted that the use of silicone gel in these devices may have been discontinued.

11. Degradation of Polyurethane Elastomer

Polyurethane elastomer materials, which may be present in some implanted mechanical/hydraulic urinary continence devices, may degrade over time and release degradation products such as methylene diamine or toluene diamine, which are potential carcinogens in animals (Refs. 82 and 83). FDA is not aware of any mechanical/hydraulic urinary incontinence devices which currently use this material. This potential risk is associated only with those implanted mechanical/hydraulic urinary continence devices that contain polyurethane elastomers.

12. Degradation of Polyurethane Foam

This potential risk is associated only with those implanted mechanical/hydraulic urinary continence devices that are covered with polyurethane foam. The polyurethane foam material that has been used to cover some devices is known to degrade over time with a potential breakdown product of 2,4 diaminotoluene (TDA), a known carcinogen in animals (Refs. 84 through 89). The fate of the degraded product in vivo is unknown to date, and the use of this material in implanted mechanical/hydraulic urinary continence devices may have been discontinued. Case reports of polyurethane foam covered silicone gel-filled breast implants indicate that there is greater difficulty with the removal of this type of prosthesis due to fragmented polyurethane shell and/or capsular tissue ingrowth (Refs. 90 through 96). Also, foreign body response has been reported concurrent with the use of the polyurethane foam covered testicular prosthesis in humans (Ref. 97).

13. Other Reported Complications

The following are among the additional risks which have also been reported with the implanted mechanical/hydraulic urinary continence device: perineal discomfort/pain (Refs. 10, 17, and 27); development of bladder hyperreflexia (Refs. 98 through 100); worsening/persistence of incontinence (Refs. 51, 99, and 100); urinary retention (Refs. 51 and 101); hematoma (Ref. 28); seroma (Ref. 44); inguinal hernia formation (Ref. 102); fibrous capsule formation, failure of cuff to deflate, broken tubing (Ref. 51); fistula formation from urethral erosion (Ref. 8); urethral scarring (Ref. 99); bleeding (Ref. 103); urethral stricture requiring urethrotomy (Ref. 101); wound dehiscence, pelvic abscess (Ref. 104); and fistula to the skin (Ref. 10).

F. Benefits of the Device

The implanted mechanical/hydraulic urinary continence device is intended to provide intermittent or continuous pressure to occlude the urethra, thereby restoring urinary continence. The device is indicated in males or females whose urinary sphincter is dysfunctional.

Implants have been used to treat incontinence resulting from prostatectomy, myelopathy (e.g., spina bifida, myelomeningocele), spinal column injury, sacral agenesis/dysgenesis, exstrophy/epispadias syndrome, pelvic trauma, and other conditions.

Although there are adverse physiologic effects associated with urinary incontinence (e.g., infection and skin irritation due to exposure to urine) (Ref. 105), the incontinent patient's mental health and quality of life can also suffer significantly. Incontinence can be socially, psychologically, and physically debilitating (Refs. 43 and 106). A reduction of social activities and interactions can be associated with the loss of urinary continence (Ref. 105). The loss of self-esteem (Ref. 107) and emotional problems (Ref. 25) have also been associated with this condition. Finally, some research has shown a relationship between depression indices and incontinence (Ref. 105).

An implanted mechanical/hydraulic urinary continence device can restore continence and may improve quality of life. Published studies indicate a moderately high success rate for either restoring or improving continence. Some of these studies have also noted that the restoration of continence can improve quality of life (Refs. 20 and 38) and self-esteem (Ref. 26).

G. Need for Information for Risk/Benefits Assessment of the Device

As the above sections indicate, there is reasonable identification of the risks and benefits associated with the implanted mechanical/hydraulic urinary continence device. There is, however, insufficient valid scientific evidence to permit FDA to perform a risk/benefit analysis. Therefore, FDA is now seeking further information on the following safety and effectiveness issues associated with the implanted mechanical/hydraulic urinary continence device:

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(1) Long-term safety and effectiveness data for the device are needed. The incidence of implant failure and attendant causes, as well as the incidence of reoperations required, have not been clearly determined. Such device failures include, but are not limited to: Tissue erosion, infection, pain/discomfort, injury to the upper urinary tract due to either urinary retention or hydronephrosis, continued or worsened incontinence secondary to implantation of the implanted mechanical/hydraulic continence device, leakage, wear, tubing kinking/breaking or disconnection, pump failure, and cuff or pad failure. Also, the incidence rates of hematoma, seroma, inguinal hernia formation, fibrous capsule formation, fistula formation from urethral erosion, urethral scarring, bleeding, urethral stricture, development of bladder hyperreflexia, wound dehiscence, pelvic abscess, and fistula to the skin are poorly understood and need to be studied. Particularly, it is not well known whether the increased urethral resistance afforded by implanted mechanical/hydraulic urinary continence devices eventually leads to chronic upper urinary tract damage (e.g., hydronephrosis and/or worsening of renal function). This risk is especially a concern for young patients, who are most likely to have the device in place for many years.

(2) It is unknown for which subgroups of the population with urinary incontinence the benefits of the implanted mechanical/hydraulic continence device outweigh the attendant risks, especially since other voiding abnormalities, such as bladder dysfunction (detrusor instability and poor compliance) and reflux often coexist with sphincteric insufficiency. Factors which may increase the rate of complications include the etiology and duration of incontinence, age, gender, concomitant medical conditions, various anatomical abnormalities, patient motivation and manual dexterity, and prior treatments for the disorder, including prior surgery. An appropriate risk/benefit analysis is needed for each subgroup for whom the device will be indicated.

(3) The required presurgical workup of patients prior to device implantation, including the diagnostic tests to demonstrate significant sphincteric insufficiency which could be treated with the prosthesis, must be clarified. In particular, the proper patient selection and screening processes need to be developed and studied. Since some adverse events, such as persistent urinary incontinence, may be associated with other coexisting urodynamic abnormalities (e.g., bladder dysfunction), these abnormalities must be effectively diagnosed prior to device implantation (Refs. 7, 22, and 108). The increased risk of hydronephrosis among device recipients whose bladders are unable to store urine at low pressures underscores the importance of thorough preoperative patient evaluation with special attention to bladder function and urodynamics (Ref. 103). Additionally, because the adverse events that may occur following implantation of the device may not be reversible, investigation is needed to determine which prior conservative therapies a patient should have failed before being considered an appropriate candidate for an implanted mechanical/hydraulic continence device.

(4) The long-term effects of devices implanted in pediatric patients need to be investigated. Currently, the relationship between patient growth and the need for implanted mechanical/hydraulic continence device revision or replacement is poorly understood and warrants further study. While some researchers report no effects related to the growth of the child, others report the potential for an effect upon both the growth/morphology of the organs in the urinary tract, as well as sexual development and function in children (Refs. 24 and 109).

(5) The effects of the implanted mechanical/hydraulic continence device upon male sexual function are poorly understood. In particular, the effect of the device upon erectile function needs to be examined.

(6) Since women of childbearing age are among the recipients of implanted mechanical/hydraulic continence devices, the effects of the device upon sexual function, pregnancy, and delivery must be analyzed.

(7) The effect of device implantation upon future medical diagnoses and treatments needs to be examined. Currently, it is not well understood whether the device's presence interferes with the ability to diagnose and treat disorders affecting the organs or structures in proximity to the implant components.

(8) The potential risks associated with silicone particle shedding and silicone gel leakage, and the subsequent migration of the particles and gel, need further clarification. This would include consideration of gel cohesiveness, envelope thickness/strength, gel bleed, and the role that the physical, mechanical, and chemical characteristics of silicone elastomers and gels play in the immediate or long-term wear of implanted mechanical/hydraulic urinary continence devices. (The agency's concerns regarding silicone gel relate specifically to devices with gel-filled components, such as certain models of the implanted static pressure pad.)

(9) The potential long-term adverse effects of implanted mechanical/hydraulic urinary continence devices, such as cancer, immune related connective tissue disorders, and reproductive and teratogenic effects, are unknown. Likewise, in polyurethane elastomer and/or polyurethane foam covered implanted mechanical/hydraulic urinary continence devices (known to be applicable to certain models of the implanted static pressure pad), the long-term effects of the polyurethane material (such as mechanical integrity and carcinogenicity) are not understood. The agency notes that neither the silicone particles, which may shed from the device (Refs. 70, 110, and 111), nor the chemical forms of silicone monomers and oligomers, or additives (including catalysts, antioxidants, fillers, reinforcers, and other processing agents), which may leach from the device, have been characterized, and their metabolic fates are not known (Ref. 64). Furthermore, no satisfactory independent study has thoroughly evaluated the chronic long-term toxicity of silicone elastomers and their derivatives. Because children are among the potential recipients of these implants, information regarding the chronic toxic effects, including possible reproductive and teratogenic effects, of silicone could be of substantial importance in determining the risk to these patients and their offspring.

(10) The malfunction rate and longevity reported for implanted mechanical/hydraulic urinary continence devices have generally not reflected the predictions of preclinical testing. Further investigation is warranted to determine how the laboratory and animal studies can be designed to more accurately predict device reliability under actual conditions of use.

FDA believes, therefore, that the implanted mechanical/hydraulic urinary continence device should undergo premarket approval to obtain valid scientific evidence in order for FDA to determine whether the risks of using the device are adequately balanced by its benefits.

II. PMA Requirements

Any PMA for the device must include the information required by section 515(c)(1) of the act and the implementing provisions under 21 CFR 814.20. Such a PMA shall include a detailed discussion, accompanied by the results of applicable preclinical and clinical studies, of the above identified risks and the effectiveness of the device. In particular, the PMA shall include all known or otherwise available data and other information regarding: (1) Any risks known or should be reasonably known to the applicant that have not been identified in this document; and (2) the effectiveness of the specific implanted mechanical/hydraulic urinary continence device that is the subject of the application.

Valid scientific evidence, as defined in § 860.7 (21 CFR 860.7), addressing the safety and effectiveness of the device should be presented, evaluated and summarized in a section or sections of the PMA separate from known or otherwise available safety and effectiveness information that does not constitute valid scientific evidence (e.g., isolated case reports, random experiences, etc.).

A. Manufacturing Information

All manufacturing information for the device should be completely described. The information should include but, is not necessarily limited to, the chemical formulation and manufacturing procedures and processes, presented in a step-by-step manner from the starting materials to the finished product, including, but not limited to, all nonreactants (such as antioxidants, light stabilizers, plasticizers, i.e., anything added to polymer resins that is necessary for processing of the finished product) and reactants (including catalysts, curing agents, and intermediate precursors) for the pad (including polyurethane foam covering, if applicable), cuff, pump, reservoir, tubing, and all internal components, adhesives, colorants, lubricants, and filling agents (e.g., gel, saline, contrast medium, etc.). A complete master list of the common chemical names and alternate names (manufacturer's trade name or code) for all nonreactants, reactants (including intermediate precursors), additives, catalysts, adjuvants, and products should be provided.

Chemical characterization of the elastomer intermediates (i.e., network precursors) of the pad (including polyurethane foam covering, if applicable), cuff, pump, reservoir, tubing, and internal gel (if applicable) sufficient to demonstrate control of the chemical processing of the device materials should be provided. This should be based on lot-to-lot comparisons (10 consecutive lot minimum) of the following information: (1) The molecular weight distribution, expressed as weight average molecular weight, number average molecular weight, peak molecular weight, polydispersity, and viscosity average molecular weight of these precursors; (2) analyses for volatile and nonvolatile (if applicable) compounds, such as cyclic oligomers; (3) when viscosity is used as the variable that is measured for production control, a comparison of viscosity, number average molecular weight, and volatile content; and (4) isocyanate content, acidity, isomer ratios, hydroxyl number, water content, acid number, and peroxide content (where applicable). Documentation establishing the extent of cross-linking (where applicable) in the materials of the pad, cuff, pump, reservoir, tubing, and all internal components and filling agents, or the silicone-hydride and vinyl content of cross-linked materials of the pad, cuff, pump, reservoir, tubing, and all internal components and filling agents, as well as the particle size and surface area of the silica if present in the pad, cuff, pump, reservoir, tubing, and the composition of all internal components, filling agents, or gel should be provided. A complete description of the medium used to inflate the device (saline, contrast medium, etc.) and whether and how the implant will be prefilled must also be provided.

The standard operating procedures for sterility and materials qualifications must be provided. Sterilization information should include the method of sterilization; the detailed sterilization validation protocol and results; the sterility assurance level; the type of packaging; the packaging validation protocol and results; residual levels of ethylene oxide, ethylene glycol, and ethylene chlorohydrin remaining on the device after the sterilization quarantine period, if applicable; and the radiation dose, if applicable.

A complete description of the functional testing of subassemblies and finished products performed during the manufacturing process and during quality assurance/quality control (QA/QC) testing must be provided. Functional testing performed during manufacturing and QA/QC procedures should detect any device flaws that could lead to short-term failure and should demonstrate functional integrity of the device. A QA/QC plan that demonstrates how raw materials, components, subassemblies, and any filling agents will be received, stored, and handled in a manner designed to prevent damage, mixup, contamination, and other adverse effects must be provided. This plan shall specifically include, but not necessarily be limited to, a record of raw material, component, subassembly, and filling agent acceptance and rejection, visual examination for damage, and inspection, sampling and testing for conformance to specifications.

Written procedures for finished device inspection to assure that device specifications are met must be provided. These procedures shall include, but are not limited to, the requirement that each production run, lot or batch be evaluated and, where necessary, tested for conformance with device specifications prior to release for distribution. A representative number of samples shall be selected from a production run, lot or batch and tested under simulated use conditions and to any extremes to which the device may be exposed.

Furthermore, the QA/QC procedures must include appropriate visual testing of the packaging, packaging seal, and product. Sampling plans for checking, testing, and release of the device shall be based on an acceptable statistical rationale (21 CFR 820.80 and 820.160).

B. Preclinical Data

Complete identification and quantification of all chemicals, including residual amine containing components, volatile and nonvolatile silicone cyclics and oligomers below a molecular weight of 1,500 exhaustively extracted from each of the individual structural components (pad, cuff, pump, reservoir, tubing, and any other materials, lubricants, or filling agents) as they are found in the final sterilized device should be reported. The solvents used for extraction should have varying polarities and should include, but not be limited to, ethanol/saline (1:9) and dichloromethane. Other, more contemporary extraction techniques, such as supercritical fluid extraction, may also be useful, at least for exhaustive extraction of the silicone materials. Experimental evidence must be provided establishing that exhaustive extraction is achieved with one of the selected solvents, and the percent recovery, especially for the more volatile components, must be reported. Extracts that may contain oligomeric or polymeric species must have the molecular weight distribution provided along with the number and weight average molecular weight, and polydispersity. All experimental methodologies must be described, and raw data (including instrument reports) must be provided along with all chromatographs, spectrograms, etc. The limit of detection (two times noise level) must be provided when the analyte of interest is not detected. Laboratory test methods and animal experiments used

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in the characterization of the physical, chemical (other than exhaustive extraction) and mechanical properties of the device should be applicable to the intended use of the device in humans. Infrared measurements of the surface of device components as they occur in the final, sterilized product should be provided.

Biocompatibility testing data must be provided for all materials (pad, cuff, pump, reservoir, tubing, filling agents, gels, lubricants, and any other materials) in the implanted mechanical/hydraulic urinary continence device, including all color additives (ink, dyes, markings, etc.) used to fabricate the implanted mechanical/hydraulic urinary continence device. FDA guidance on biocompatibility testing is available in the document titled "Tripartite Biocompatibility Guidance for Medical Devices." A copy may be obtained upon request from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Biocompatibility evaluation should follow the methodology of tests for tissue contacting, long-term internal devices.

Toxicological effects (e.g., cytotoxicity, mutagenicity, affects on the immune system, and reproductive and developmental toxicity) should be identified. Complete mutagenicity testing of extracts from the finished, sterilized components of the device should be provided. These tests should include the following: Bacterial mutagenicity, mammalian mutagenicity, deoxyribonucleic acid (DNA) damage, and cell transformation assay.

Acute, subchronic, and chronic toxicity studies using the chemicals recovered by the above exhaustive extraction processes should be provided in the evaluation of the long-term biocompatibility of the device, including dose response and time to response as well as gross and histopathological findings in tissues both surrounding implants and distal to implant sites (lymph nodes, prostate, urethra, bladder, ovaries/testes, liver, kidneys, lungs, uterus, etc.). Animal studies of carcinogenicity, reproductive toxicity, teratogenicity, and later effects on offspring must be performed using scientifically justified test methods. These studies must include animal testing of the extracts from the final sterilized device. Teratology/reproductive testing of the final sterilized device and extractables should be performed in an appropriate species using validated methods. Furthermore, for those devices that contain silicone gel, a subset of these studies must test the compounds extracted from the materials of the sterilized device for estrogen-like antigonadotropic activity in an appropriate animal model using scientifically valid methods.

Pharmacokinetic/biodegradation studies of all materials contained in the finished device should state all materials of toxicological concern, such as amine, silicone, and fluorosilicone compounds. Of special concern are questions regarding the ultimate fate, quantities, sites/organs of deposition, routes of excretion, and potential clinical significance of silicone shedding, retention, and migration. Data on the distribution and metabolic fate of amine containing components, silicone, and any other materials used in the manufacturing of the device should be supplied.

Animal testing should also be conducted to study the effect of implantation upon device function and material integrity. Complete device chemical characterization and mechanical testing should be performed after devices have been implanted in an appropriate animal model for an appropriate length of time. Of special concern is the material integrity of the pad, cuff, reservoir, pump, tubing, joints, etc., which should be functionally tested and investigated using electron microscopy. The results of this testing should be compared to the failure rates noted during in vitro testing and clinical studies in order to demonstrate that the animal model and study duration chosen are appropriate.

For the implanted mechanical/hydraulic urinary continence device designs that contain silicone gel, or employ a silicone gel as a lubricant, the gel bleed performance of the device, as determined from the results of measurements using a standard diffusion cell maintained at a temperature simulating physiologic conditions using stirred, physiologic saline as a receptacle medium for the bleed, must be reported. Each variation in thickness or device design must be measured to accurately determine diffusion coefficients (with appropriate time dependencies). The chemical identification of the bleed product, including, but not limited to, amine containing components, volatile and nonvolatile silicone cyclics and oligomers below a molecular weight of 1,500 and molecular weight distribution, must be reported.

For the polyurethane covered designs (foam or elastomer), FDA believes that in vivo implant studies must be performed to identify and determine the bioabsorption, distribution, and elimination of the polyurethane covering (as well as their degradation products) in experimental animals. It is also important to identify and determine the mechanism and rate of degradation, as well as the quantity of TDA or other products generated by the breakdown of polyurethane covered implanted mechanical/hydraulic urinary continence devices after prolonged exposure under physical conditions in animals. Additionally, the agency recommends that retrospective epidemiological and prospective clinical studies be designed to assess the potential of cancer and other long-term complications related to implanted mechanical/hydraulic urinary continence devices containing polyurethane. The agency suggests that these preclinical and epidemiological studies be conducted as a separate subset of implanted mechanical/hydraulic urinary continence device safety studies.

In vitro testing should be conducted at the component, subassembly, and final device levels and must examine all aspects of device design, construction, and operation. This testing should also demonstrate how the device design and manufacturing processes address the failure mode and effects analysis. The failure mode effects analysis should be provided. Copies of the original data sheets from all tests must be included in the PMA. All device failures must be completely described, and the corrective actions taken to eliminate or minimize further recurrence should also be identified.

An adequate number of samples of each model, based on relevant power calculations, will be required. If marketing approval is sought for multiple device versions, each version requires its own set of preclinical tests and results. If sample devices of each available size are not tested, it must be clearly indicated which device sizes were used for each test. The absence of testing on each size must be justified by analysis demonstrating that the results from the tested devices will accurately predict results for the untested device sizes.

The test conditions and acceptance criteria for all tests should be completely explained and justified. All tests should be performed on final, sterilized devices in an environment simulating the possible range of anticipated in vivo conditions (temperatures, pressures, forces, stresses, etc.), where possible. All methods used to determine the condition of the device after testing, e.g., visual examination, electrical continuity, electron microscope examination, functional testing, etc., must be discussed and justified.

All data collected from in vitro and animal testing, regarding the useful lifetime or long-term reliability of the device, must be compared to data from clinical studies (prospective and/or retrospective) where the useful lifetime of the device has been determined. This comparison must validate the ability of the in vitro and animal tests to accurately predict the useful lifetime of the implanted device.

If accelerated aging is used to demonstrate device durability and reliability, all processes used should be completely described, and the calculations validating the expected aging should be provided.

All physical, chemical, and functional properties of the device should be completely characterized, and the design specifications must be adequately justified. Chemical characterization should include, where applicable, molecular weight and molecular weight distribution, cross-link density, infrared analysis (free isocyanate content, side reaction products), and differential scanning calorimetry. The physical tests should include, but are not necessarily limited to the tests discussed below.

Testing should include the following specific methods or their equivalents: (1) American Society for Testing Materials (ASTM) Test Method D412 to measure tensile strength, force to breakage, ultimate elongation, and total energy to rupture of the pad, cuff, pump, reservoir, tubing, and bulk of all elastomeric components (with and without incorporated fold flaws) of the finished, sterilized device; dynamic mechanical analysis and fatigue characterization of all elastomeric components particularly those comprising the cuff of the finished, sterilized device; (2) ASTM Test Method D624 to determine tear and abrasion resistance of all components; an applied force at the rate of 1 Hertz versus number of cycles to failure (AF/N) curve (including the minimum force required to rupture the component under a single stroke of applied load), constructed on the basis of cyclical compression testing of intact sterilized devices; and (3) ASTM Test Method F703 (section 7.2) to determine the force to break of adhered or fused joints. A complete report of the cohesivity and penetration testing of the gel must also be reported for the devices containing silicone gel. The results of each of these tests must be compared to the energy, forces, etc., that the device will encounter in vivo.

Life testing should demonstrate the device is sufficiently durable to withstand the demands of use while maintaining operational characteristics sufficient for urethral compression throughout the expected operational lifetime of the implanted mechanical/hydraulic urinary continence device, as stated in the physician and patient labeling. Life testing should include measurements of all component and material wear and bond strengths after the device is cycled between inflated and deflated conditions. A discussion comparing the rate of cycling performed in each test to the approximate maximum rate of cycling of the device in vivo and to the expected longevity of the implant should be included.

Appropriate "downtimes" at predetermined cyclical intervals should be included in the life tests to evaluate relevant performance characteristics and conformance to design specifications. Material characteristics indicative of material degradation that could induce device malfunction should be completely evaluated. Cyclical testing beyond the expected longevity of the implant and recording of failure mode must also be included as part of the life tests.

Filling agent permeability from the reservoir and body of the device must be evaluated to demonstrate that fluid loss due to osmosis will be acceptable over the expected life of the implanted mechanical/hydraulic urinary continence device.

Component-specific tests are also necessary. Reliability over the expected life of the device, proper operation, and conformance to predetermined operational specifications must be demonstrated for each component. Resistance of each component to abrasion, tear, crazing, fracture, material fatigue (including wear between each component), change of position (e.g., valve seats), and permanent deformation also must be demonstrated.

Pad characterization and testing should include, but not be limited to: Measurement of stiffness and rigidity, including resistance to buckling; uniformity of dimensions (if the device is inflated); and wear characteristics.

Cuff characterization and testing should include, but not be limited to: Maximum pressure and expansion capability; measurement of stiffness, including resistance to buckling; resistance to aneurysms; ability of cuff closure to remain inflated under maximum loads expected in vivo; uniformity of inflated dimensions; inflation and deflation characteristics; and wear characteristics at folds in the cuff.

Pump characterization and testing should include, but not be limited to: The range of volumes displaced per stroke; minimum force required to affect fluid displacement; squeeze force versus fluid displacement; inflation effort, defined as pump force times the number of strokes required for full device activation; and ability of the implanted mechanical/hydraulic urinary continence device to maintain its set pressure after repeated punctures to its pressure adjustment port with both new devices and devices evaluated in the reliability tests.

Valve characterization and testing should include, but not be limited to: Pump output pressure required to affect valve opening for device activation; tactile pressure/force required to affect valve opening, against fully inflated cuffs, for deflation; back pressure required for valve failure; maximum pressure differential across closed valve at full inflation and deflation, and the leakage rates at these pressures; prevention of spontaneous deflation under movements and loads simulating those expected to be sustained by the implanted device in an inflated state; and potential for valve failure which could result in an inability to inflate or deflate the cuff.

Reservoir characteristics should be evaluated and should include, but not be limited to: Volume capacity; pressures generated over the inflation/deflation cycle; rate of maximum fluid outflow and inflow; wear characteristics if a fold in the reservoir envelope occurs; and durability tests demonstrating adequate resistance to fatigue caused by cyclic external compression applied radially to inflated reservoir.

Tubing testing should include, but not be limited to: Tensile characteristics (with and without tubing connectors, if any); tear or rupture resistance; kink resistance; wear characteristics if a fold in the tubing develops; and ability of the tubing to remain intact under loads simulating and exceeding those expected in vivo.

Testing to demonstrate the inflation/deflation characteristics of the device should include, but not be limited to: Amount of pressure generated during inflation of the cuff; amount of pressure drop (deflation) and rise (inflation) per unit time; ability to maintain the inflated cuff dimensions; and time to fully inflate and deflate the cuff from specified starting pressures.

All bonds within the device and between components should undergo appropriate testing including, but not be limited to measurement of bond shear and tensile strength. Bond strength

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should exceed the loads expected during device handling and after implantation.

Other components of the implanted mechanical/hydraulic urinary continence device or accessories, such as tubing connectors, extension adapters, and specialized tools used during the insertion procedure, should be evaluated appropriately. Testing of these components or accessories should reflect the anticipated conditions of use; for example, tubing connectors should be demonstrated to be able to maintain connection to the device for the expected life of the device.

C. Clinical Data

Valid scientific evidence, as defined in § 860.7(c)(2), which includes information from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts and reports of significant human experience with a marketed device from which it can fairly and responsibly be concluded by qualified experts that there are reasonable assurances of the safety and effectiveness of the implanted mechanical/hydraulic urinary continence device. Detailed protocols for the clinical trials, with explicit patient inclusion/exclusion criteria and well-defined followup schedules, should be specified. FDA believes that 5-year followup data are necessary in order to characterize the safety and effectiveness of the device over its expected lifetime; however, appropriately justified alternate followup schedules will be considered. Any deviations from the protocol should be stated and justified. Time-course presentations of restoration of continence (dryness) or significant improvement in continence, as well as other information on the anatomical and physiological effects of the implanted mechanical/hydraulic urinary continence device (including all adverse events) should be provided. Full patient accounting should be reported, including: (1) Theoretical followup (the number of patients that would have been examined if all patients were examined according to their followup schedules); (2) patients lost to followup, excluding deaths, should include measures taken to minimize such events (with all available information obtained on patients lost to followup) and should not exceed 20 percent over the course of the study; (3) time course of revisions, including all explant and repair data; and (4) time-course of deaths (stating the cause of death, including the reports from any postmortem examinations). As part of this patient accounting, each clinical report should clearly state the date that the data base was closed to the addition of new information. Detailed patient demographic analyses and characterizations should be presented to show that the patients enrolled in the study are representative of the population for whom the device is intended.

A statistical demonstration, based on the number of patients who complete the required study period, should show that the sample size of the clinical study is adequate to provide accurate measures of the safety and effectiveness of this device. The statistical demonstration should identify the effect criteria, clinically reasonable levels for Type I (alpha) and Type II (beta) errors, and anticipated variances of the response variables. The statistical demonstration should also provide any assumptions made and all statistical formulas used (with copies of any references). A complete description of all patient randomization techniques used, and how these techniques were employed to exclude potential sources of bias, should be provided. Statistical justifications for pooling across several demographic or surgical variables, such as the etiology and duration of incontinence, age, gender, concomitant medical conditions, various anatomical abnormalities, the type or model of the device implanted, the number and type of treatments (if any) attempted to restore continence prior to device implantation, device usage (initial implantation versus revision), investigational site, degree of patient motivation and manual dexterity, surgeon experience and technique, and pad or cuff placement site, should be provided. The data collected and reported should include all necessary variables in order to permit stratification and analysis of the study data required to evaluate the risk/benefit ratio for each clinically relevant subpopulation of patients.

Appropriate concurrent control/comparison groups should be included and justified and, if not, their absence must be justified. All hypotheses to be tested must be clearly stated. Appropriate statistical techniques must be employed to test these hypotheses as support for claims of safety and effectiveness. For each relevant subgroup, a sufficient number of patients need to be followed for a sufficient length of time to support all claims (explicit and implied) in any PMA submission.

To evaluate the risks to the patient from the implanted mechanical/hydraulic urinary continence device, clinical studies should include time-course presentations of clinical data demonstrating the presence or absence of tissue erosion, infection, pain/discomfort, injury to the upper urinary tract due to either urinary retention or hydronephrosis, continued or worsened incontinence, leakage, wear, tubing kinking/breaking or disconnection, pump failure, cuff or pad failure, hematoma, seroma, inguinal hernia formation, fibrous capsule formation, fistula formation from urethral erosion, urethral scarring, bleeding, urethral stricture, development of bladder hyperreflexia, reoperation, wound dehiscence, pelvic abscess, and fistula to the skin, including any effects on the immune system (both local to the device and systemic) and the reproductive system, without regard to the device relatedness of the event. The diagnostic criteria for each type of immunological and allergic phenomenon should be defined at the beginning of the study, and all cases should be well-documented utilizing these criteria. Patients must be regularly monitored for the occurrence of such adverse events for a minimum of 5 years post-implantation, or until physical maturity of the subject (whichever occurs later).

The effectiveness of the device may be assessed by an objective and standardized recording/measurement of: (1) The ability of the device in vivo to either restore or significantly improve urinary continence; and (2) the enhancement of a patient's quality of life following implantation of the device; both of which should be balanced against any risk of illness or injury from use of the device. FDA understands that evaluation of the degree of benefit involves, in part, an assessment of patient quality of life, which relates to the postoperative function of the device. Such evaluation includes subjective factors and relates to patient expectations. Assessments of the in vivo performance of the device's function, on the other hand, should provide some objective measure of device effectiveness.

Documentation of the anatomical and physiologic outcomes of implantation of an implanted mechanical/hydraulic urinary continence device shall include:

(1) Regular postsurgical evaluations of the functional (i.e., inflation and deflation) characteristics of the device for at least 5 years postimplantation, or until physical maturity of the subject (whichever occurs later);

(2) Periodic postsurgical urodynamic testing (such as measurements of leak point pressure and the volume of urine leaked into a pad after a standard set of maneuvers) during this followup period, with comparisons to baseline measurements;

(3) Regular postsurgical assessments of incontinence grade (possibly obtained from patient voiding diaries or the number of pads required per day to keep dry), as compared to baseline values; and

(4) Patient assessments of the mechanical function of the implant (such as ease of activation) during this followup period (which may be influenced by the manual dexterity or motivation of the patient).

Documentation of the effect of the device upon the patient's quality of life shall include:

(1) Prospective research designs, including pre- and postsurgical repeated measures for at least 5 years postimplantation, or until physical maturity of the subject (whichever occurs later);

(2) Standardized test questions rather than informal, yet-validated questionnaires; and

(3) Comparisons of the postsurgical scores to those measured prior to device implantation.

Any PMA for the implanted mechanical/hydraulic urinary continence device should separately analyze the degree of device safety and effectiveness by the following variables: (1) Etiology; (2) duration and degree of urinary incontinence; (3) the device type or model implanted; (4) gender; and (5) age. Furthermore, for each explantation procedure performed on the study subjects, the following information must be provided: (1) The mode of failure of the removed device; (2) whether or not the explanted device was replaced with a new device; and (3) either the manufacturer, type and model of the new device implanted (if another implanted mechanical/hydraulic urinary continence device was implanted), or the type of treatment (if any) that the patient received for his/her incontinence (if revision surgery was not performed). Additionally, the effect of the presence of these implants upon future medical diagnoses/treatments involving the lower pelvic region in recipients of implanted mechanical/hydraulic urinary continence devices must be analyzed. Furthermore, any accessories sold with the implanted mechanical/hydraulic urinary continence device must be shown to have been effectively used in implant procedures without adverse effects. Finally, each clinical investigation should validate the physician and patient instructions for use (labeling) that were used, particularly the instructions regarding the selection of the appropriate device size (if applicable).

For polyurethane foam covered implants, the following additional information needs to be presented:

(1) The kinetics of end products generated from the degradation of the polyurethane material (in vivo);

(2) The frequency and incidence of infection and complication of retrieval of the implant by surgeons; and

(3) The neoplasticity of these materials and products, as well as their general toxicity, including neurological, physiological, biochemical, and hematological effects, as well as pathology following prolonged and repeated exposure to polyurethane foam covered implanted mechanical/hydraulic urinary continence devices.

Any epidemiological studies submitted should contain sufficient subjects to permit detection of a small, but clinically significant, increase in one or more connective tissue diseases (especially scleroderma) that may be associated with the use of the device.

The agency believes that insufficient time has elapsed to permit a direct evaluation of the risks of cancer and immune related connective tissue disorders posed by the presence of silicone in the human body, and that insufficient epidemiological and experimental animal data are available to make a reasonable and fair judgment of these risks. Furthermore, the potential long-term risk of hydronephrosis and/or decreases in renal function in patients implanted with the implanted mechanical/hydraulic urinary continence device, due to the chronic elevation of urethral resistance experienced postimplantation, has yet to be quantified and is a concern of the agency. Therefore, the agency will require long-term postapproval followup for any implanted mechanical/hydraulic urinary continence device permitted in commercial distribution. Well-designed clinical prospective studies with long-term followup together with experimental animal studies will be considered essential to the determination of the safety and effectiveness of the device. Further, these clinical studies must collect long-term data on the reproductive/teratogenic effects of the device as well as on the later effects on the offspring.

The risk/benefit assessment (as with the entire PMA) must rely on valid scientific evidence as defined in § 860.7(c)(2) from well-controlled studies as described in § 860.7(f) in order to provide reasonable assurance of the safety and effectiveness of the implanted mechanical/hydraulic urinary continence device in the treatment of urinary incontinence.

D. Labeling

Copies of all proposed labeling for the device including any information, literature, or advertising that constitutes labeling under section 201(m) of the act (21 U.S.C. 321(m)), should be provided. The general labeling requirements for medical devices are contained in 21 CFR part 801. These regulations specify the minimum requirements for all devices. Additional guidance regarding device labeling can be obtained from FDA's publication "Labeling: Regulatory Requirements for Medical Devices," and from the Office of Device Evaluation's "Device Labeling Guidance"; both documents are available upon request from the Division of Small Manufacturers Assistance (address above). Highlighted below is additional guidance for some of the specific labeling requirements for implanted mechanical/hydraulic urinary continence devices.

The intended use statement should include the specific indications for use and identification of the target populations. Specific indications and target populations must be completely supported by the clinical data described above. For example, it may be necessary to restrict the intended use to patients who have failed prior less invasive therapies and/or to patients with specific etiologies of incontinence in whom safety and effectiveness have been demonstrated.

The directions for use should contain comprehensive instructions regarding the preoperative, perioperative, and postoperative procedures to be followed. This information includes, but is not necessarily limited to: (1) A description of any preimplant training necessary for the surgical team; (2) a description of how to prepare the patient (e.g., prophylactic antibiotics), operating room (e.g., what supplies must be on hand), and implanted mechanical/hydraulic urinary continence device (e.g., handling instructions, resterilization instructions) for device implantation; (3) instructions for implantation, including possible surgical approaches, sizing, fluid adjustment (including what filling solutions may be used and how they must be prepared), device handling, and intraoperative test procedures to ensure implant functionality and proper placement; and (4) instructions for followup, including whether antibiotic prophylaxis is recommended during the postimplant period and/or during any subsequent dental or other surgical procedures, how to determine when

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patients are ready to activate the device, and how to evaluate, and how often to evaluate, proper functionality and placement. The directions should instruct caregivers to specifically question patients prior to surgery for any history of allergic reaction to any of the device materials or filling agents. Troubleshooting procedures should be completely described. The directions for use should incorporate the clinical experience with the implant, and should be consistent with those provided in other company-provided labeling.

The labeling should include both implant and explant forms to allow the sponsor to adequately monitor device experience. The explant form should allow collection of all relevant data, including the reason for the explant, any complications experienced and their resolution, and any action planned (e.g., replacement with another implant).

Patient labeling must be provided which includes the information needed to give prospective patients realistic expectations of the benefits and risks of device implantation. Such information should be written and formatted so as to be easily read and understood by most patients and should be provided to patients prior to scheduling implantation, so that each patient has sufficient time to review the information and discuss it with his or her physician(s). Technical terms should be kept to a minimum and should be defined if they must be used. Patient information labeling should not exceed the seventh grade reading comprehension level.

The patient labeling should provide the patient with the following information: (1) The indications for use and relevant contraindications, warnings, precautions and adverse effects/ complications should be described using terminology well known and understood by the average layman; (2) the anticipated benefits and risks associated with the device must be provided to give patients realistic expectations of device performance and potential complications. The known, suspected and potential risks of device implantation should be identified and the consequences, including possible methods of resolution, should be described; (3) alternatives available to the use of the device, including less invasive treatments, should be identified, along with a description of the associated benefits and risks of each. The patient should be advised to contact his physician for more information on which of these alternatives might be appropriate given his specific condition; (4) instructions for how to use the device must be provided to the patient. This information should include the expected length of recovery from surgery and when to attempt activation following implantation, whether and how often the device should be periodically cycled (if applicable), warnings against certain actions that could damage the device, how to identify conditions that require physician intervention, who to contact if questions arise, and other relevant information; (5) the fact that the implant should not be considered a "lifetime" implant must be emphasized. Where possible, the patient labeling should provide information on the approximate number of revisions necessary for the average patient, and indicate the average longevity of each implant so patients are fully aware that additional surgery for device modification, replacement, or removal may be necessary. This information must be supported by the clinical experience (i.e., not merely bench studies) with the implant or by published reports of experience with similar devices.

The physician's labeling should instruct the urologist or implanting surgeon to provide the implant candidate with the patient labeling prior to surgery to allow each patient sufficient time to review and discuss this information with his physician(s).

The adequacy and appropriateness of the instructions for use provided to physicians and patients should be verified as part of the clinical investigations.

Applicants should submit any PMA in accordance with FDA's "Premarket Approval (PMA) Manual." The manual is available upon request from the Division of Small Manufacturers Assistance (address above).

III. Comments

Interested persons may, on or before June 15, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Those wishing to make comments are encouraged to discuss all aspects of the proposed findings regarding the following topics:

(1) Degree of risk, illness, or injury associated with the use of the implanted mechanical/hydraulic urinary continence device;

(2) Laboratory, animal, and human studies required in a PMA for the device in order to assess its safety and effectiveness;

(3) Feasibility of these studies within the time permitted by the act, etc.; and

(4) Benefits to the public from the use of the device.

The comments must discuss in detail, for example, the reasons why important new information on the safety and effectiveness of the device could not feasibly be submitted within the time permitted, or why animal studies may not be available to assess long-term effects such as connective tissue disorders, or that carefully designed epidemiological studies may not be available to evaluate the long-term silicone related illnesses, etc.

The Center for Devices and Radiological Health staff are available to provide guidance to manufacturers on any proposed laboratory, animal, or epidemiological studies needed in a PMA.

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the act.

A request for a change in the classification of the implanted mechanical/hydraulic urinary continence device is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by March 2, 1995.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the implanted mechanical/hydraulic urinary continence device is submitted, the agency will, by April 17, 1995, after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because PMA's for this device could have been required by FDA as early as June 30, 1986, and because firms that distributed this device prior to May 28, 1976, or whose device has been found by FDA to be substantially equivalent will be permitted to continue marketing the implanted mechanical/hydraulic urinary continence device during FDA's review of the PMA or notice of completion of the PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 876 be amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 876.5280 is amended by revising paragraph (c) to read as follows:

§ 876.5280 Implanted mechanical/hydraulic urinary continence device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the FDA on or before (insert date 90 days after the effective date of a final rule based on this proposed rule), for any implanted mechanical/hydraulic urinary continence device that was in commercial distribution before May 28, 1976, or that has on or before (insert date 90 days after the effective date of a final rule based on this proposed rule), been found to be substantially equivalent to the implanted mechanical/hydraulic urinary continence device that was in commercial distribution before May 28, 1976. Any other implanted mechanical/hydraulic urinary continence device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: January 10, 1995.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 95–3805 Filed 2–14–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No. 941120–4320]

RIN 0651–AA76

Changes to Implement 20-Year Patent Term and Provisional Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule; change in public hearing location.

SUMMARY: The public hearing scheduled for February 16, 1995, concerning the notice of proposed rulemaking published on December 12, 1994 at 59 FR 63951, with a supplemental request for comments published on January 17, 1995, at 60 FR 3398, will be held in the Roanoke Room, Stouffer Hotel at Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia, instead of in the Commissioner's Conference Room, Crystal Park 2, Room 912, 2121 Crystal Drive, Arlington, Virginia, as previously indicated. The change in location is being made to accommodate more people.

DATES: Written comments must be submitted on or before February 17, 1995. A public hearing will be held Thursday, February 16, 1995, at 9:30 a.m., in the Roanoke Room, Stouffer Hotel at Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia. Oral testimony on the effects of patent expiration dates and patent term extension will begin at 1:00 p.m. Requests to present oral testimony should be received on or before February 14, 1995.

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ADDRESSES: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231. Attention: Stephen G. Kunin, Deputy Assistant Commissioner for Patent Policy and Projects, Crystal Park 2, Suite 910, or by fax to (703) 305–8825.

FOR FURTHER INFORMATION CONTACT: Magdalen Y. Greenlief or John F. Gonzales, Special Program Examiners, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, at (703) 305–9285, or by mail marked to their attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Dated: February 9, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–3742 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–16–M

POSTAL SERVICE

39 CFR Part 265

Demands for Testimony or Records in Certain Legal Proceedings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes establishing a procedure for Postal Service response to subpoenas or other demands for Postal Service employees to testify about, or produce records concerning, Postal Service matters in private litigation or other proceedings in which the United States is not a party. This proposed rule should minimize the disruption of official duties caused by compliance with those demands, maintain Postal Service control over the release of official information, and otherwise protect the interests of the United States. This proposed rule would prohibit Postal Service employees from complying with those demands without the General Counsel's permission.

DATES: Comments must be received on or before March 17, 1995.

ADDRESSES: Written comments should be mailed or delivered to: Library, Attention Federal Register Comments, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 11800, Washington, DC 20260–1540. Copies of all written comments will be available for public inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, in Room 11800 at the above address.

FOR FURTHER INFORMATION CONTACT: Julie A. Holvik, Attorney, (312) 765–5230.

SUPPLEMENTARY INFORMATION: The proposed rule provides that, in response to subpoenas or other demands for testimony or records concerning Postal Service matters in private litigation or other proceedings in which the United States is not a party, Postal Service employees may testify or produce records only if the General Counsel or the General Counsel's delegate authorizes compliance with the demand. In making this determination, the General Counsel or his or her delegate will consider whether compliance is in accordance with applicable laws, privileges, rules, authority, and regulations and would not be contrary to the interests of the United States.

Several federal agencies have enacted this type of regulation, including the Department of Justice, the Department of Transportation, and the Department of Veterans Affairs. The courts have recognized the authority of federal agencies to limit compliance with demands in this manner. *See, United States ex. rel. Touhy v. Ragen,* 340 U.S. 462 (1951). Moreover, subpoenas by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation regarding compliance with those subpoenas reinforces this principle. *See, McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819); *United States v. McLeod, 385 F.2d 734 (5th Cir. 1967).*

This proposed rule would not apply to situations in which the United States is a party in a lawsuit. It also would not apply to instances in which an employee is requested to appear in legal proceedings unrelated to federal activities or the employee's duties at the Postal Service. Finally, the proposed rule would not apply to subpoenas or requests for information submitted by either House of Congress or by a congressional committee or subcommittee with jurisdiction over the matter for which the testimony or information is requested.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

For the reasons set out in this notice, 39 CFR part 265 is proposed to be amended as follows.

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 is revised to read as follows:

Authority: 39 U.S.C. 401, 403, 410, 1001, 2601; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended, 5 U.S.C. App. 3).

2. Section 265.12 is added to read as follows:

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service; or

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules published at § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act, 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding* means:

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact the Records Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 266 and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means.

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260–1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen,* 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to

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promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

An appropriate amendment to 39 CFR 265.1 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95-3702 Filed 2-14-95; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA37-1-6370b; FRL-5144-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; SO_2: Conewango Township, Warren County Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision provides for, and demonstrates, the attainment of the national ambient air quality standards (NAAQS) for sulfur oxides in the Conewango Township, Warren County nonattainment area. In the final rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 17, 1995

ADDRESSES: Written comments on this action should be addressed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and, Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air & Radiation Programs Branch (3AT11), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, phone: 215 597-9781.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7671q.

Dated: November 18, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 95-3681 Filed 2-14-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 180

[PP 0E3882 and PP 4E4286/P598; FRL-4932-3]

RIN 2070-AC18

Pesticide Tolerances for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for the combined residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodities celery and dry bulb onion. The proposed regulation to establish maximum permissible levels for residues of the herbicide was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number, [PP 0E3882 and PP 4E4286/P598], must be received on or before March 17, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 0E3882 and PP 4E4286 to EPA on behalf of the named Agricultural Experiment Stations. These petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.368 by establishing tolerances for combined residues (free and bound) of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2methoxy-1-methylethyl)acetamide], and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol, and 4 (2-ethyl-6-methylphenyl)-2-hydroxy-5 methyl-3-morpholinone, each expressed as the parent compound in or on certain raw agricultural commodities as follows:

1. *PP 0E3882.* Petition submitted on behalf of the Experimental Stations of California, Florida, and Texas proposing a tolerance for celery at 0.1 part per million (ppm).

2. *PP 4E4286.* Petition submitted on behalf of the Experimental Stations of Arkansas, Michigan, New Jersey, New York, Oklahoma, and Texas proposing a tolerance for dry bulb onion at 1.0 ppm. The petitioner proposed that use of metolachlor on dry bulb onion be limited to onion production areas east of the Rocky Mountains based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study with dogs fed diets containing 0, 100, 300, or 1,000 ppm with a systemic no-observed-effect-level (NOEL) of 300 ppm (9.7 mg/kg/day) based on decreased body weight in females.

2. A 2-year feeding/carcinogenicity study with rats fed diets containing 0, 30, 300, 1,000 or 3,000 ppm (equivalent to 0, 1.5, 15, 50, or 150 mg/kg/day) with a compound-related increase in liver adenomas and combined adenomas/carcinomas in female rats at the high-dose level. This study was classified as supplemental data due to inadequate clinical chemistry determinations and dietary preparation records.

3. A 2-year feeding/carcinogenicity study with rats fed diets containing 0, 30, 300, or 3,000 ppm (equivalent to 0, 1.5, 15, or 150 mg/kg/day) with a systemic NOEL of 300 ppm based on decreased body weight at the 3,000-ppm dose level. A statistically significant increase in liver neoplasia was found in female rats at the 3,000-ppm dose level, as well as evidence for a neoplastic response in the nasal turbinates of both sexes.

4. A 2-year carcinogenicity study in mice fed diets containing 0, 300, 1,000 and 3,000 ppm (highest dose level equivalent to 428 mg/kg/day) with no treatment-related carcinogenic effects observed under the conditions of the study.

5. A second 2-year carcinogenicity study in mice fed diets containing 0, 300, 1,000, or 3,000 ppm with no treatment-related carcinogenic effects observed under the conditions of the study.

6. A two-generation reproduction study in rats fed diets containing 0, 30, 300, or 1,000 ppm with a reproductive NOEL of 300 ppm (equivalent to 23.5-26 mg/kg/day) based on reduced pup weights in the F1a and F2a litters at the 1,000-ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity is equal to or greater than the 1,000-ppm dose level.

7. A developmental toxicity study in rabbits given gavage doses at 0, 36, 120, or 360 mg/kg/day on gestation days 6 to 18. The NOEL for maternal toxicity was established at 120 mg/kg/day based on lacrimation, miosis, reduced food consumption, and body weight gain. There was no developmental toxicity observed under the conditions of the study.

8. A developmental toxicity study in rats given gavage doses of 0, 60, 180, or 360 mg/kg/day on gestation days 6 to 15. There were no signs of maternal or developmental toxicity observed under the conditions of the study.

9. A second developmental toxicity study in rats given gavage doses of 0, 30, 100, 300, or 1,000 mg/kg/day on gestation days 6 to 15. The NOEL's for maternal and developmental toxicity were established at 300 mg/kg/day. The NOEL for maternal toxicity was based on deaths, salivation, lacrimation, convulsions, reduced body weight, and food consumption at the 1,000-mg/kg/day dose level. The NOEL for developmental toxicity was based on reduced mean fetal body weight, reduced number of implantations/dam with resulting decreased litter size, and a slight increase in resorptions/dam with resulting increase in post-implantation loss.

10. Metolachlor was not found to be mutagenic in any tests. Mutagenicity data include gene mutation assays in Salmonella and mouse lymphoma cells, structural chromosome aberration tests including an in vivo micronucleus assay in Chinese hamsters and a dominant lethal assay in mice; and other genotoxic activity tests including DNA damage/repair assays in rat hepatocytes and in human fibroblasts, and an in vivo/in vitro unscheduled DNA synthesis assay.

11. Several metabolism studies have been performed with metolachlor, and the available data indicate the compound is readily absorbed after oral dosing and excreted in approximately equal amounts in urine and feces.

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Metolachlor was evaluated by the Office of Pesticide Programs' Peer Review Committee in 1991 and classified as a Group C (possible carcinogen) with a recommendation for the quantification of estimated potential human risk using a linearized low-dose extrapolation (Q*). This recommendation was based on the finding of liver tumors in female rats at the 3,000-ppm dose level in both rat studies and the apparent induction of a small number of nasal turbinate tumors in both sexes of rats at the 3,000-ppm dose level. Nasal turbinate tumors have also been associated with dietary administration of acetochlor and alachlor, structurally related herbicides that are classified as Group B2 carcinogens (probable human carcinogens).

The Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Panel on September 18, 1991. The Panel concluded that liver tumors were benign and hyperplasia was evident in rats of both sexes. The Panel also concluded that the occurrence of nasal turbinate tumors in rats was low and not statistically significant, but of concern since metolachlor is structurally related to acetochlor and alachlor. The Panel considered the carcinogenicity evidence to be minimal but sufficient for the classification of metolachlor as a Group C carcinogen.

The Office of Pesticide Programs' Health Effect Division Carcinogenicity Peer Review Committee met on July 27, 1994, to revaluate the weight-of-the-evidence on metolachlor, with particular reference to its carcinogenicity, based on newly submitted metabolism and mutagenicity studies. The registrant submitted data to show that the metabolism of metolachlor is substantially different from the metabolism of acetochlor and alachlor. Metolachlor does not metabolize to form a reactive quinone imine, which is presumed to be the carcinogenic metabolite of acetochlor and alachlor. There was also no evidence for mutagenic potential of metolachlor. Based on these data and in consideration of the full weight-of-the-evidence, the Carcinogenicity Peer Review Committee concluded that the classification of metolachlor should remain as a Group C carcinogen, but recommended that the RfD approach should be used for quantification of human risk.

A NOEL of 15 mg/kg/day from the 2-year rat feeding study was determined to be appropriate for use in the Margin of Exposure carcinogenic risk assessment. The chronic reference dose (RfD) is currently based on a systemic NOEL of 9.7 mg/kg/day from the 1-year feeding study in dogs, and any cancer concerns from chronic exposure are already addressed by the lower NOEL, which is the basis for the current RfD.

The Reference Dose (RfD) is established at 0.1 mg/kg of body weight (bwt)/day, based on a NOEL of 9.7 mg/kg/day and an uncertainty factor of 100. Available information on anticipated residues and/or percent of crop treated were used to estimate the Anticipated Residue Contribution (ARC) from residues of metolachlor in the human diet. The ARC from established tolerances and the proposed tolerances for celery and onions is estimated at 0.0006 mg/kg bwt/day and utilizes 0.6 percent of the RfD for the U.S. population. The ARC for non-nursing infants (the subgroup most highly exposed) utilizes 2 percent of the RfD. EPA believes these uses of metolachlor pose a negligible cancer risk to humans.

An adequate analytical method, gas chromatography, is available for enforcement purposes. The analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual, Vol. II (PAM II). The nature of the residue in plants is adequately understood. There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3882 and PP 4E4286/P597]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 1995

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.368, paragraph (a) is amended by adding and alphabetically inserting the entry for celery, and paragraph (c) is amended by adding and alphabetically inserting the entry for onion (dry bulb), to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Celery	0.1
* * * * *	

* * * * *

(c) * * *

Commodity	Parts per million
Onion (dry bulb)	1.0
* * * * *	

[FR Doc. 95-3386 Filed 2-14-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 6E3460/P597; FRL-4932-2]

RIN 2070-AB78

Pesticide Tolerance for Prometryn

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for residues of the herbicide prometryn in or on the raw agricultural commodity parsley. The proposed regulation to establish a maximum permissible level for residues of the herbicide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 6E3460/P597], must be received on or before March 17, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 6E3460 to EPA on behalf of the Agricultural Experiment Station of California. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.222 by establishing a tolerance for residues of the herbicide prometryn (2,4-bis(isopropylamino)-6-methylthio-s-triazine) in or on the raw agricultural commodity parsley at 0.1 part per million (ppm). The petitioner proposed that use of prometryn on parsley be limited to California only based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study with dogs fed diets containing 0, 15, 150, or 1,500 ppm (equivalent to 0, 0.375, 3.75, or 37.5 milligrams (mg)/kilogram (kg)/day) with a no-observed-effect level (NOEL) of 150 ppm (3.75 mg/kg/day) based on degenerative hepatic changes, renal tubule degeneration, and bone marrow atrophy at the 1,500-ppm dose level.

2. A 104-week chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 100, 750, or 1,500 ppm (equivalent to 0, 0.38, 3.90, 29.45, or 60.88 mg/kg/day for males and 0, 0.49, 4.91, 37.25, or 80.62 mg/kg/day for females) with a systemic NOEL of 750 ppm (29.45 mg/kg/day in males and 37.25 mg/kg/day in females) based on decreased body weight gain in both sexes, and renal lesions (mineralized concretions) in males at the 1,500-ppm dose level. There were no carcinogenic effects observed under the conditions of the study.

3. A carcinogenicity study with mice fed diets containing 0, 10, 1,000, or 3,000 ppm (equivalent to 0, 1, 100, or 300 mg/kg/day) for 102 weeks with a systemic NOEL of 1,000 ppm (100 mg/kg/day) based on decreased body weight gain in female mice at the 3,000-ppm dose level. There were no carcinogenic effects observed under the conditions of the study.

4. A two-generation reproduction study in rats fed diets containing 0, 10, 750, or 1,500 ppm (equivalent to 0, 0.6, 47.8, 96.7 mg/kg/day in males and 0, 0.7, 53.6, or 105.6 mg/kg day in females) with a NOEL for reproductive effects of 10 ppm (0.6 mg/kg/day in males and 0.7 mg/kg/day in females) based on decreased pup weight at the 750-ppm dose level. The NOEL for parental systemic toxicity was also established at 10 ppm based on decreased food consumption, body weight, and body weight gain at the 750-ppm dose level.

5. A developmental toxicity study in rabbits given gavage doses of 0, 2, 12, or 72 mg/kg/day with a NOEL of 12 mg/kg/day for maternal toxicity based on decreased food consumption at the highest dose tested (72 mg/kg/day). The NOEL for developmental effects was established at 12 mg/kg/day based on increased fetal resorption at the highest dose tested.

6. A developmental toxicity study in rats given gavage doses of 0, 10, 50, or 250 mg/kg/day during gestational days 6 to 15 with a NOEL of 50 mg/kg/day for maternal toxicity based on salivation and decreases in body weight and food consumption at the highest dose tested (250 mg/kg/day). A NOEL for developmental toxicity was established at 50 mg/kg/day based on decreased fetal body weight and increased incomplete ossification of sternebrae and metacarpals at the 250-mg/kg/day dose level.

7. Mutagenicity studies as follows: a gene mutation test (Ames assay), negative up to cytotoxic solubility limits; structural chromosome aberration tests, negative for anomalies in micronuclei in bone marrow cells of

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Chinese hamsters dosed orally at 5,000 mg/kg; and tests for other genotoxic effects, negative for unscheduled DNA synthesis in rat hepatocytes up to cytotoxic levels.

8. In a general metabolism study using rats fed diets containing radio-labelled prometryn, prometryn was extensively metabolized with less than 2 percent of the recovered 14C radioactivity representing the parent compound. Prometryn is excreted predominately in the urine and feces.

The Reference Dose (RfD) for prometryn is established at 0.04 mg/kg of body weight (bwt)/day, based on a NOEL of 3.75 mg/kg/day from the 2-year feeding study in dogs and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances and the current action is estimated at 0.000181 mg/kg of body weight/day and utilizes less than 1 percent of the RfD for the U.S. population. The most highly exposed subgroup (children of ages 1 through 6 years) will be exposed to less than 1 percent of the RfD from existing uses and the proposed use on parsley.

An acute dietary exposure analysis was conducted for prometryn based on a NOEL of 12 mg/kg/day from the rabbit developmental toxicity study. In the analysis, tolerance level residues were used to calculate the high-end exposure for females older than 13 years, which approximates women of child-bearing age. High-end dietary exposure was compared to the NOEL of 12 mg/kg/day to obtain a high-end Margin of Exposure (MOE) of 10,000. The Agency concludes there is no acute dietary concern for prometryn at this time.

The nature of residue in plants is adequately understood for the purposes of the proposed tolerance. An adequate analytical method, gas chromatography, is available for enforcement purposes. The analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual, Vol. II (PAM II).

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry, since there are no livestock feed items associated with this action.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3460/P597]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 1995

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.222, paragraph (b) is amended in the table therein by adding and alphabetically inserting a new entry, to read as follows:

§ 180.222 Prometryn; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
. . . . .	
Parsley	0.1

[FR Doc. 95-3385 Filed 2-14-95; 8:45 am]

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40 CFR Part 300

[FRL-5154-4]

National Oil and Hazardous Substances Contingency Plan; The National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Cemetery Dump site, Rose Township, Michigan from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region V announces its intent to delete the Cemetery Dump site, Rose Township, Michigan from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State of Michigan, has determined that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until March 17, 1995.

ADDRESSES: Comments may be mailed to Matt Mankowski (HSRW-6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. The comprehensive information on the site is available at the local information repository located at: the Holly Township Library, 1116 N. Saginaw, Holly, Michigan. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

FOR FURTHER INFORMATION CONTACT: Matt Mankowski (HSRW-6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-1842; or Heidi Valetkevitch (P-19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-1303.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Cemetery Dump site from the National Priorities List (NPL), Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the deletion. The EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-Financed remedial actions. Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate;

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before EPA can delete a site from the NPL, the state in which the site was located must concur on the proposed deletion. EPA shall provide the state 30 working days for review of the deletion notice prior to its publication in the **Federal Register**.

As noted above, deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, EPA may formally begin deletion procedures. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on EPA's intention to delete the site from the NPL. All critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will, if necessary prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the site from the NPL.

The Cemetery site is located in the NE 1/4 of Section 27 (T4N, R7E), Rose Township, Oakland County, Michigan. The 4-acre site is located on Rose Center (or Milford) Road and is a former sand and gravel pit in which a large number of drums were buried within an approximate 2-acre area on the site.

The site was placed on the National Priorities List (NPL) in 1982. The Michigan Department of Natural Resources (MDNR) entered into a Cooperative Agreement (CA) with the United States Environmental Protection Agency (USEPA) in May, 1984 to conduct a Remedial Investigation/Feasibility Study (RI/FS). The Record of Decision (ROD) was signed on September 11, 1985. The September 1985 ROD recommended a Remedial Action (RA) that included the excavation of approximately 250 drums and disposal at an approved off-site landfill. The RA for the Cemetery site was completed on November 10, 1988. On September 19, 1989, a second ROD was signed indicating that the selected remedy for the rest of the site was "No Further Action". An Interim Close Out Report, signed on September 11, 1991, was written in response to the completion of the RA. The Final Close Out Report was signed by the Regional Administrator July 11, 1994. The State's concurrence was received on August 30, 1994. A Five-Year Review was completed July 8, 1994.

EPA, with concurrence of the State of Michigan, has determined that all appropriate Fund-financed responses under CERCLA at the Cemetery Dump site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment. Therefore, it is proposed that the site be deleted from the NPL.

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Dated: January 4, 1995.

Valdas V. Adamkus,

Regional Administrator, U S. EPA, Region V

[FR Doc. 95–3604 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 17, 21, 22, 23, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97

[WT Docket No. 95–5, FCC 95–16]

Streamlining the Antenna Structure Clearance Procedure and Revision of the Rules Concerning Construction, Marking, and Lighting of Antenna Structures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making which seeks to streamline the Commission's antenna structure clearance process by instituting a uniform registration process for structure owners, revise the current antenna structure painting and lighting requirements in keeping with updated recommendations by the Federal Aviation Administration (FAA), and make antenna structure owners primarily responsible for antenna structures that require painting and/or lighting. This action stems from the Commission's effort to streamline regulatory processes and eliminate unnecessary public burdens as well as the need to update the Commission's Rules to reflect recent changes in two FAA Advisory Circulars and the Communications Act of 1934, as amended. Thus, the proposed rules should reduce the number of Commission filings, expedite the processing authorizations involving FAA coordination, and clarify rules concerning the painting and lighting of antenna structures.

DATES: Comments must be filed on or before March 21, 1995, and reply comments must be filed on or before April 20, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger Noel of the Wireless Telecommunications Bureau at (202) 418–0680, or Robert Greenberg of the Mass Media Bureau at (202) 418–2720.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, WT Docket No. 95–5, FCC 95–16, adopted January 12, 1995, and released, January 20, 1995. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor International Transcription Services, 2100 M Street NW., Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Commission has initiated the instant proceeding to thoroughly review its antenna structure clearances process, eliminate unnecessary public burdens, and reduce processing time for Commission authorizations that require FAA coordination. Presently, the clearance process requires identifying the coordinates and height of each antenna structure requiring FAA notification (*i.e.*, each structure exceeding 60.96 meters (200 feet) in height above ground level or within close proximity to an airport). If the FAA determines that such a structure is a potential hazard to air navigation because of its height or location, the FAA may recommend that the antenna structure height be decreased, recommend painting or lighting specifications, or both. Thus, the current clearance process requires certain prospective licensees and permittees to file antenna structure data with the Commission and the FAA, and upon authorization, holds licensees and permittees responsible for the painting and lighting of antenna structures, where required.

2. The Commission proposes three distinct changes to the rules. First, the Commission proposes to replace the current clearance process with a streamlined procedure for registering each antenna structure which requires FAA notification. The registration process would require the antenna structure owner, not the licensees or permittees using the structure, to (1) register the antenna structure with the Commission, (2) maintain the structure's painting and lighting in accordance with the Commission's Rules, (3) notify the Commission of changes in height, coordinates, ownership, painting, or lighting of the structure, and (4) notify the Commission upon dismantling the structure. This proposed action would not impose a greater net filing burden on the public, but would instead decrease the number of entities affected by these requirements.

3. Second, the Commission proposes to incorporate by reference the recommendations found in the following two FAA Advisory Circulars: Obstruction Marking and Lighting (AC 70/7460–1H) released August, 1991, and Specification for Obstruction Lighting Equipment (AC 150/5435–43D) released July, 1988. This proposed change updates the Commission's Rules in light of the FAA's recent air safety recommendations and would grandfather the present painting and lighting requirements of existing structures for 10 years. This action would serve to streamline the Commission's Rules and increase air safety.

4. Third, the Commission proposes to implement statutory language holding antenna structure owners primarily responsible for compliance with the Commission's painting and lighting requirements. This means that the Commission would first look toward structure owners to ensure that antenna structures are painted and lighted in accordance with the Commission's Rules. In cases where reliance on the owner proves ineffective, the Commission would turn toward the tenant licensees and permittees to ensure that the structure is properly painted and lighted.

5. The Commission seeks specific comments concerning the proposed rule amendments, options for implementing the registration process, and whether the proposal may necessitate changes to the Commission's environmental rules in 47 CFR 1.1301–1.1319.

6. Initial Regulatory Flexibility Analysis. *Reason for Action.* The Commission proposes to: (1) institute a procedure to register certain antenna structures, used by Commission licensees and permittees, which require notice to the FAA of proposed construction, (2) revise the Commission's painting and lighting requirements to incorporate by reference FAA Advisory Circulars AC 70/7460–1H (August 1991) and AC 150/5345–43D (July 1988), and (3) hold antenna structure owners primarily responsible for compliance with the Commission's painting and lighting requirements.

Objectives

The Commission seeks to: (1) reduce the number of filings to the Commission regarding changes to antenna structures, (2) expedite application and notification processing, (3) unify and streamline federal painting and lighting regulations to ease the public and governmental burdens associated with processing certain application, (4) increase safety in air navigation.

Legal Basis

The proposed actions are authorized under sections 4(i), 4(j) and 303(r) of the Communications Act 47 U.S.C. 154(i), 154(j), and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

The proposed revision of 47 CFR Part 17 would require certain antenna structure owners to register their structures and to comply with the Commission's painting and lighting requirements. Additionally, each owner would have to provide a copy of the Antenna Structure Registration to all tenant licensees and post the structure's Registration Number at the site. Further, the proposed rules eliminate the requirement for certain licensees and permittees to individually file with the Commission to amend structure height or painting and lighting specifications. Most licensees and permittees, however, would have to provide the Registration Number of the structure from which they intend to transmit when filing for a new modified, or renewed authorization.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description Potential Impact, and Small Entities Involved

Any rule change requiring a small business antenna structure owner to file an application for Registration could affect a small business. However, the overall impact, if any, will be minimal because the proposed registration process will eliminate the need for many small business licensees and permittees on an antenna structure to file certain applications and notifications. The Commission will further examine the impact of any rule changes on small entities after evaluating the comments in this proceeding

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 17

Antennas, Aviation safety, Communications equipment, Radio Reporting and recordkeeping requirements.

47 CFR Part 21

Communications equipment, Radio, Reporting and recordkeeping requirements

47 CFR Part 22

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 23

Radio, Reporting and recordkeeping requirements.

47 CFR Part 25

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 73

Radio broadcasting, Television, broadcasting.

47 CFR Part 74

Radio broadcasting, Television broadcasting.

47 CFR Part 78

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements

47 CFR Part 87

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 94

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 97

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3675 Filed 2–14–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. RSOR 13, Notice No. 3]

RIN 2130–AA86

Roadway Worker Protection

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Notice; Schedule of Advisory Committee Meetings.

SUMMARY: The Federal Railroad Administration is announcing as required by the Federal Advisory Committee Act (Pub. L. 92–463) its meeting schedule for the Advisory Committee on Regulatory negotiation (concerning the protection of railroad employees who work on or adjacent to track and face the risk of injury from moving trains and equipment). This Advisory Committee (Committee) will meet in 1995 on the dates listed below

DATES: Meetings of the Committee are scheduled on the following dates:

1. Thursday and Friday, February 16–17
2. Tuesday and Wednesday, March 7–8
3. Thursday and Friday, March 23–24
4. Monday and Tuesday, April 3–4
5. Wednesday, Thursday and Friday, April 19–21

ADDRESSES: The February 16–17 meeting will be held in rooms 5A,B,C, of the Federal Aviation Administration building located at 800 Independence Avenue SW., Washington, DC. The March 23–24 meeting will be held at the Ramada Hotel O'Hare located at 6600 North Mannheim Road, Rosemont, IL 60018. All other meetings will be held in Room 3200 of the Department of Transportation's headquarters building. 400 7th Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cynthia B. Walters, Trial Attorney, Office of Chief Counsel, FRA 400 7th Street SW., Room 8201, Washington, DC 20590 (Telephone: 202–366–0621) or Doug Taylor, Chief Accident Investigation Branch, Office of Safety, FRA 400 7th Street SW., Room 8301, Washington, DC 20590. (Telephone: 202–366–2760).

SUPPLEMENTARY INFORMATION: On August 17, 1994 FRA published a notice of intent to establish an Advisory Committee. (59 FR 42200). FRA also published a notice establishing this Committee on January 5, 1995 (60 FR 1761). Consistent with these notices, the continued objective of this Committee is to produce a report, including a draft notice of proposed rulemaking (NPRM) recommending a course of action for

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FRA to follow that will prevent roadway worker injuries and fatalities.

FRA continues to believe that public participation is critical to the success of this process. Negotiation sessions will be open to the public, so interested parties may observe the negotiations and communicate their views. Pursuant to Committee ground rules, observers who wish to speak to the Committee may do so through a member of the Committee, by advising the Committee members of the matter to be presented, through a Facilitator at 3 the discretion of the Committee; or at the invitation of a Committee member, subject to the discretion of the Committee FRA has given advance notice to all committee members of the meeting schedule and anticipates attendance or representation by all Committee members, as well as the public during this important process.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 95–3757 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Koala Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; notice of reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the status review of the Australian koala, as initiated in response to a petition to add the species to the List of Endangered and Threatened Wildlife, will be reopened until April 1, 1995.

DATES: All comments and information received through April 1, 1995, will be considered in making a final decision on whether the requested action is warranted, and will be included in the administrative record.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Room 725, 4401 North Fairfax Drive; U.S. Fish and Wildlife Service; Arlington, Virginia 22203 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203 The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Arlington, Virginia address

FOR FURTHER INFORMATION CONTACT: Dr. Charles W Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1994 (59 FR 50557–50558), the U.S Fish and Wildlife Service (Service) announced the 90-day finding that a petition to add the Australian koala (*Phasocarctos cinereus*) to the List of Endangered and Threatened Wildlife had presented substantial information indicting that the requested action may be warranted A status review was initiated, with the original comment period ending February 1, 1995. During that period, requests to extend the comment period were received from the Fund for Animals and Australians for Animals (the original petitioners), the Zoological Society of San Diego, and the American Zoo and Aquarium Association's Marsupial and Monotreme Advisory Group. All indicated that more time was needed to collect pertinent information In response, the Service has decided to reopen the comment period until April 1, 1995.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 7, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–3749 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 950203035–503501; I.D. 120594C]

Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment for Hogfish, Cubera Snapper, Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS proposes to establish a daily recreational bag limit of five hogfish per person; limit the harvest and possession of cubera snapper 30 inches (76.2 cm), total length, or larger to two per day; and establish a minimum size limit for gray triggerfish of 12 inches (30.5 cm), total length. These measures would apply only in the exclusive economic zone (EEZ) off the Atlantic coast of Florida. The intended effects of this rule are to rebuild the snapper-grouper resources and enhance enforcement.

DATES: Written comments must be received on or before March 2, 1995.

ADDRESSES: Comments on the proposed rule must be sent to Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the South Atlantic Fishery Management Council's (Council) regulatory document, which includes a regulatory impact review and an environmental assessment, should be sent to the Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J Eldridge, 813–570–5305

SUPPLEMENTARY INFORMATION: Snapper-grouper species in the Atlantic Ocean off the southern Atlantic states (North Carolina to Florida) are managed under the FMP The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

The Council is concerned about the biological status of hogfish, cubera snapper, and gray triggerfish, especially off the Atlantic coast of Florida where recreational fishing pressure is intense. The majority of hogfish and cubera snapper catches occur off Florida, and a large portion of the gray triggerfish catch occurs off Florida. Gray triggerfish is overfished with an estimated spawning stock ratio (SSR) of 27 percent Under the FMP, species with SSRs below 30 percent are considered overfished The SSRs for cubera snapper and hogfish are unknown, but these species are thought to be overfished.

Florida implemented in its waters a harvest/possession limit for large cubera snapper on March 1, 1994, and a bag limit for hogfish on July 1, 1994. A size limit for gray triggerfish will be implemented on January 1, 1995 The Council proposes similar regulations in the EEZ off Florida to protect these species and to enhance compliance by using compatible state and Federal regulations.

Limits on Hogfish and Larger Cubera Snapper

The bag limits for hogfish and harvest and possession limits for cubera snapper larger than 30 inches (76.2 cm), total length, would decrease fishing mortality and enhance the spawning potential of these species. If further measures are required, the Council may propose them through the framework procedure.

Size Limit for Gray Triggerfish

The minimum size limit for gray triggerfish will enhance the spawning potential of gray triggerfish off Florida and increase the yield-per-recruit. Again, additional measures may be proposed under the framework procedure.

The Council's recommended changes are within the scope of the management measures that may be adjusted by the framework procedure referred to at 50 CFR 646.27 and specified in the FMP. The Director, Southeast Region, NMFS, initially concurs that the Council's recommended changes are consistent with the objectives of the FMP, the national standards, and other applicable law Accordingly, the Council's recommended changes are published for comment

Additional Change Proposed by NMFS

NMFS proposes to retitle and reorganize § 646.25 for clarity, without substantive change.

The changes in this proposed rule are based on the text of 50 CFR part 646 as amended in the final rule to implement Amendment 7 to the FMP, published on December 23, 1994 (59 FR 66270).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because no participants in the fishery, all of whom are small entities, (1) are expected to incur losses in gross revenues exceeding 5 percent, (2) would incur significant capital costs of compliance—such costs would be much less than 5 percent of total costs of production, and (3) would be expected to be forced to cease business. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 8, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OFF THE SOUTHERN ATLANTIC STATES

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.2, a new definition of "Off Florida" is added, in alphabetical order, to read as follows:

§ 646.2 Definitions.

* * * * *

Off Florida means the waters off the east coast from a line extending directly east from the seaward terminus of the Georgia/Florida boundary (30°42′45.6″ N. lat.) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

* * * * *

3. In § 646.7, paragraphs (pp)(2) and (pp)(3) are redesignated as paragraphs (pp)(3) and (pp)(4), respectively; in newly designated paragraph (pp)(4), the reference to "§ 646.25(e)" is revised to read "§ 646.25(d)"; text for paragraph (bb), previously reserved, is added; and new paragraph (pp)(2) is added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(bb) Harvest or possess cubera snapper 30 inches (76.2 cm), total length, or larger in or from the EEZ off Florida in excess of the limits specified in § 646 21(k)(1).

* * * * *

(pp) * * *

(2) Cubera snapper, as specified in § 646.21(k)(3);

* * * * *

4. In § 646.21, new paragraphs (a)(1)(ix) and (k) are added to read as follows:

§ 646.21 Harvest limitations.

(a) * * *

(1) * * *

(ix) Gray triggerfish off Florida—12 inches (30.5 cm), total length.

* * * * *

(k) *Cubera snapper harvest and possession limit.*

(1) No person may harvest in the EEZ off Florida more than two cubera snapper 30 inches (76 2 cm), total length, or larger per day and no more than two such cubera snapper in or from the EEZ off Florida may be possessed aboard a vessel at any time.

(2) A person who fishes in the EEZ off Florida may not combine the harvest and possession limit specified in paragraph (k)(1) of this section with the bag and possession limit applicable to Florida's waters.

(3) A cubera snapper 30 inches (76.2 cm), total length, or larger taken in the EEZ off Florida may not be transferred at sea, regardless of where such transfer takes place; a cubera snapper 30 inches (76.2 cm), total length, or larger may not be transferred at sea in the EEZ off Florida, regardless of where such cubera snapper was taken.

5. In § 646.23, paragraph (b)(2) is revised and new paragraph (b)(6) is added to read as follows:

§ 646.23 Bag and possession limits.

* * * * *

(b) * * *

(2) Snappers, excluding cubera snapper 30 inches (76.2 cm), total length, or larger in or from the EEZ off Florida and excluding vermilion—10, of which no more than 2 may be red snapper. (See § 646.21(k) for limitations on cubera snapper 30 inches (76.2 cm), total length, or larger in or from the EEZ off Florida.)

* * * * *

(6) Hogfish in or from the EEZ off Florida—5.

* * * * *

6. Section 646.25 is revised to read as follows:

§ 646.25 Commercial limitations.

(a) *Trip limits.* Persons who are not subject to the bag limits and who fish in the EEZ on a trip are subject to the following vessel trip limits. (See § 646.23(a)(1) for applicability of the bag limits.)

(1) Snowy grouper (whole weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 646.24(b) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 646 24(b) is reached, 300 lb (136 kg).

(2) Golden tilefish (whole weight or gutted weight, that is, eviscerated but otherwise whole):

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(i) Until the fishing year quota specified in § 646.24(c) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 646.24(c) is reached, 300 lb (136 kg).

(b) *Reduction of trip limits.* When a commercial quota specified in § 646.24(b) or (c) is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the appropriate trip limit applies.

(c) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit under this section with any trip or possession limit applicable to state waters.

(d) *Transfer at sea.* A snowy grouper or golden tilefish taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; a snowy grouper or golden tilefish may not be transferred at sea in the EEZ, regardless of where such snowy grouper or golden tilefish was taken.

(e) *Sale/purchase of excess fish.* Snowy grouper or golden tilefish in excess of an applicable trip limit specified in paragraph (a) of this section may not be sold, purchased, traded, or bartered, or attempted to be sold, purchased, traded, or bartered.

[FR Doc. 95–3695 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 650

[Docket No. 950118017–5017–01; I.D. 122994A]

RIN 0648–AH82

Atlantic Sea Scallop Fishery; Temporary Reduction in Crew-Size Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures contained in Framework Adjustment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The intent of this proposed framework is to reduce the maximum crew-size limit on Atlantic sea scallop vessels from nine to seven through February 29, 1996, to preserve small scallops.

DATES: Comments on the proposed rule must be received on or before February 27, 1995.

ADDRESSES: Comments on the proposed rule, Framework Adjustment 4, or supporting documents should be sent to Jon Rittgers, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Sea Scallop Framework 4."

Copies of Amendment 4, its regulatory impact review and the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 4 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The final rule for Amendment 4 to the FMP was published on January 19, 1994 (59 FR 2757), with implementation for most measures on March 1, 1994. The amendment retained the FMP's objectives to: (1) Restore adult stock abundance and age distribution; (2) increase yield per recruit for each stock, (3) evaluate plan research, development and enforcement costs; and (4) minimize adverse environmental impacts on sea scallops.

Amendment 4 changed the primary management strategy from a meat count (size) control to effort control. The amendment controls total fishing effort through limited access permits and a schedule of reductions in allowable days-at-sea (DAS). Supplemental measures include limits on increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed, gear restrictions, and limits on the number of crew members. Additionally, the amendment includes a framework procedure for adjusting the management measures in the FMP. Initially, the maximum crew size was set at nine.

In response to very high levels of recruitment documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994) the New England Fishery Management Council (Council) recommended lowering the maximum crew-size limit from nine to seven until December 31, 1994. NMFS concurred and through Framework Adjustment 1, which was published on July 19, 1994 (59 FR 36720), with an effective date of August 17, 1994, lowered the maximum crew size from nine to seven until December 31, 1994.

Because the conditions that justified lowering the maximum crew-size limit to seven still exist, the Council recommended extending the maximum crew-size limit of seven through the end of the 1995–96 scallop fishing year.

This framework action proposes to lower the maximum crew size from nine to seven through February 29, 1996, the end of the 1995–96 scallop fishing year.

The expected impact of the proposed seven-member crew limit was analyzed in Amendment 4. There are two possible ways for vessel operators to respond to reduced crew limits. They can try to fish for larger scallops, and if catches are sufficient, land as much weight of scallop meat as with a crew of nine; or they can continue catching and processing fewer small scallops, or a combination of both. Either response effectively reduces the number of scallops harvested by a vessel per DAS. For example, in the analysis done for this framework adjustment, it is estimated that a crew of seven can shuck and process 900 lb (408.2 kg) (meat weight) of scallops per DAS, at an average of 45 meats per lb (0.453 kg). A crew of nine, however, would be capable of shucking 1,500 lb (680.4 kg). Under ideal conditions, this impact would translate into a 40 percent reduction in fishing mortality of small scallops.

The small scallops are less valuable than large one, and the seven-man crew limit will encourage boats to target the larger scallops. The result will mean no reduction in revenue.

By delaying harvest of these small scallops and because of their rapid growth rate, they will be available for harvest in a larger, more valuable size within a short time.

The adjustments being made through the framework process (§ 650.40) are within the scope of analyses contained in Amendment 4 and the final supplemental environmental impact statement. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 1 and 4 (see **ADDRESSES**).

NMFS is proposing to adjust the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 650, subpart C. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings, on October 26 and December 8, 1994. However, because the December 8, 1994, meeting was not announced as the second and final of the two required meetings, the Council recommended to the Director, Northeast Region, NMFS (Regional Director) publication of the measures contained in Framework Adjustment 4 as a proposed rule to ensure that the public has been afforded sufficient opportunity for notice and comment.

In accordance with the regulations, public comments on the framework adjustment were taken by the Council during its October 26, 1994 and December 8, 1994 meetings. One member of the industry from Virginia Beach, VA and an attorney representing 22 full-time scallop vessels from New Bedford, MA, commented at the December meeting. The comments were in support of the recommended adjustment. Written responses were received on this framework adjustment from two individuals. Those comments questioned the safety aspects of a reduction in the minimum crew size. The analysis included in the Council's framework package suggests that, based on available Coast Guard data for the scallop fishery, there is no relationship between the size of the crew and accidents aboard scallop vessels. Fishers have publicly stated that most New Bedford scallop boats carried less than seven crew members in the winter of 1993–94 simply because scallop stocks were low. Fishers also stated, and NMFS concurs, that there is nothing inherently dangerous about using a seven-person crew and that safety ultimately depends upon onboard safety practices rather than crew size.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This action, if adopted, is a 1-year reimposition of a restriction in crew limit size established by Framework #1 to the FMP, effective from August 17, 1994, through December 31, 1994. The proposed action would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) It is unlikely to force vessels to cease or substantially modify operations; (2) many vessels already carried crew sizes of seven or less because of low stock abundance of sea scallops; and (3) short-term benefits of harvesting immature sea scallops in 1995 that have never produced young for future years would be greatly outweighed by longer-term benefits to small entities for the next several years. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: February 8, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 650.21 is proposed to be amended by revising paragraph (c) to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(c) *Crew restrictions.* Limited-access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people onboard when not docked or moored in port through February 29, 1996, and nine people onboard when not docked or moored in port thereafter, including the operator, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

* * * * * *

[FR Doc. 95–3688 Filed 2–10–95; 8:54 am]

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Notices

Federal Register
Vol. 60, No. 31
Wednesday, February 15, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS-95-002]

Beef Promotion and Research: Certification and Nomination Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer and general farm organizations as well as beef importers who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business March 17, 1995.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch, Livestock and Seed Division; AMS, USDA, Room 2624–S; P O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp at 202/720–1115 (FTS 720–1115).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), approved December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 101 cattle producers and 6 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557). Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of three (3) years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in 1995:

State or unit	Number of vacancies
Alabama	1
Arkansas	1
California	2
Colorado	1
Florida	1
Georgia	1
Idaho	1
Illinois	1
Indiana	1
Iowa	2
Kansas	2
Kentucky	1
Minnesota	1
Missouri	2
Montana	1
Nebraska	2
New York	1
North Dakota	1
Ohio	1
Oklahoma	2
Oregon	1
Pennsylvania	1
South Dakota	1
Tennessee	1
Texas	5
Virginia	1
Wisconsin	1
Northwest Unit	1
Importers	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northeast unit and mid-Atlantic units, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by March 17, 1995. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 as published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information.

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 et seq.

Dated: February 9, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–3782 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

California Spotted Owl EIS

AGENCY: Forest Services, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces an open house in which the public is invited to participate in information exchange regarding alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement, as they affect the Eldorado National Forest area.

DATES AND TIME: March 10, from 12 noon to 9:00 p.m. March 11, from 8 a.m. to 12 noon.

ADDRESS: Placerville Town Hall, 549 Main Street, Placerville, CA.

CONTACT PERSON FOR FURTHER INFORMATION: Frank Mosbacher, Eldorado National Forest Supervisor's Office, 100 Forni Road, Placerville, CA, 95667, (916) 622–5061

SUPPLEMENTARY INFORMATION: The Forest Service will release a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding the Draft Environmental Impact Statement and the preferred alternative.

The meeting will be informally structured. Members of the team that prepared the DEIS will be available to answer questions and discuss the DEIS. Visual media depicting the alternatives and selected environmental consequences will be displayed.

Dated: February 7, 1995

John Phipps,

Forest Supervisor, Eldorado National Forest

[FR Doc. 95–3807 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–11–M

Secesh River Subdivision Access Roads

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Payette National Forest proposes to issue a special use permit to allow the Secesh River Property Owners Association to construct/reconstruct, maintain, and use four roads in the Secesh Meadows area to access private land. The total length of the roads is approximately 2,100 feet and would enable development on nine lots in the Secesh River Subdivision #1 and one lot in Secesh River Subdivision #2. The private land lies approximately 25 miles northeast of McCall, Idaho, in T22N, R5E, Sections 9 and 10, and covers 74 acres; it is part of the former Spokane Group #7 patented mining claim, Minerals Survey 3387.

FOR FURTHER INFORMATION CONTACT: Linda Fitch, McCall District Ranger (208) 634–0400.

SUPPLEMENTARY INFORMATION: In 1994, the Payette National Forest prepared an Environmental Assessment (EA) which analyzed six alternatives for accomplishing the project. The EA was released for 30-days predecisional review and comment on November 21, 1994. In reviewing the Council on Environmental Quality Regulations for significance (40 CFR 1508.27), it was determined this project would be a major Federal action with significant effects, because the Forest Service's biological assessment for endangered chinook salmon made a finding of "Likely to Adversely Affect."

PURPOSE AND NEED: The need connected with this project is to respond to the special use application for road construction, use, and maintenance.

PROPOSED ACTION: The Proposed Action is a modification of Alternative D from the EA. Alternative D presented in the EA would have allowed Secesh Meadows Property Owners Association to construct/reconstruct, use, and maintain roads #1 (1,200 feet), #2 (300 feet), and #5 (300 feet) to a standard including construction to a grade above ground level (or road side ditch) for good drainage, gravel surfacing, and installation of structures to accommodate overland flow (culverts). Road #3 (300 feet) would be built to a standard of construction of approximately 12 feet in width, native surfacing, and no drainage structures or maintenance. Existing road #4 would be closed, and the owner of lot 10 would have to work out alternative access. In addition, the Proposed Action includes a modification to Alternative D which will require that road #3 also be constructed to a grade similar to other approved roads.

FOREST PLAN AMENDMENT: The Proposed Action may require site-specific Forest Plan amendments in standards and guidelines for: anadromous fish habitat, big game calving areas, meadows

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fragmentation, and open road densities; and for wild and scenic study river interim management.

PRELIMINARY ISSUES: The Forest Service has identified five issues which were addressed in the EA:

1. Effect of each alternative on land ownership status.
2. Effect of the project on soil and water resources.
3. Effect of the project on the habitat of the Snake River spring/summer chinook salmon and other, sensitive fish species.
4. Effect of the roads on the eligibility and suitability of the Secesh River for designation as a wild and scenic river
5. Effect of the project on wildlife species that depend on meadow ecosystems, and how the project affects the habitat of the endangered gray wolf and other sensitive wildlife species.

POSSIBLE ALTERNATIVES: The Forest Service has identified five possible alternatives to the Proposed Action: No Action alternative, Denial of Permit and Closure of Unauthorized Roads, Proponent Request, Roads #1 and #2 only, and Minimum Access Alternative.

DECISIONS TO BE MADE: The Payette National Forest Supervisor will decide:

Whether a permit should be issued to allow construction and/or reconstruction, use, and maintenance of roads to access Secesh River Subdivisions #1 and #2.

If a permit is issued, then how many and which proposed roads will be constructed and/or reconstructed.

If a permit is issued, then what standard of roads will be constructed and/or reconstructed.

If a permit is issued, then what mitigation measures, management requirement, and monitoring will be implemented. And, What Forest Plan amendment(s) are required.

AGENCY/PUBLIC CONTACTS: As part of the EA process, the Forest Service conducted two scoping processes in 1993 and 1994, contacting 31 groups, agencies, and individuals; 13 scoping responses were received. The EA was sent out for predecisional review November 21, 1994 to 69 individuals and agencies; six responses were received. To initiate the EIS, the Forest Service is mailing a letter to those who have expressed interest in this project in the past.

SCHEDULE: Draft Environmental Impact Statement, March 1995. Final EIS May 1995. Implementation, June 1995. Project decision and implementation are contingent on completion of consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

COMMENTS: Comments on the Proposed Action and the analysis should be received in writing on or before March 2, 1995. Send comments to: Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 W. Park Street, McCall, ID 83638; telephone (208) 634–0700; FAX (208) 634–0281.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1002 (9th Cir., 1986); and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the Proposed Action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

RESPONSIBLE OFFICIAL: David F. Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, 106 West Park, McCall, ID 83638.

Dated: February 8, 1995.

David F. Alexander,

Forest Supervisor.

[FR Doc. 95–3806 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation of Champaign for the Jinks (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA is designating Champaign-Danville Grain Inspection Departments, Inc. (Champaign), to provide Class X and Class Y weighing services under the United States Grain Standards Act, as amended (Act), in the former Jinks Grain Weighing Service (Jinks) geographic area.

EFFECTIVE DATES: March 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1, therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 31, 1994, **Federal Register** (59 FR 54427), GIPSA asked persons interested in providing official services in the geographic area assigned to Jinks to submit an application for designation. Applications were due by September 30, 1994. Jinks, the only applicant, applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the January 3, 1995, **Federal Register** (60 FR 96). Comments were due by January 31, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and determined that Jinks is not able to provide official weighing services in the geographic area for which they applied.

Section 7A(c)(2) of the Act authorizes GIPSA's administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. Champaign is already designated to provide official inspection services in the former Jinks area and is willing to provide official weighing services in that area. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and determined that Champaign is able to provide official weighing services in the geographic area for which they are designated.

Effective March 1, 1995, and terminating upon the end of Champaign's designation to provide official inspection services (May 31, 1995), Champaign's designation is amended to include Class X or Class Y weighing in their assigned geographic area, as specified in the December 2, 1994, **Federal Register** (59 FR 61868).

Interested persons may obtain official services by contacting Champaign-Danville at 217–398–0723.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 8, 1995

Neil E. Porter,

Director, Compliance Division

[FR Doc. 95–3666 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–EN–F

Natural Resources Conservation Service

Pasture Creek Watershed, Montana; Notice of Intent to Deauthorize Federal Funding

AGENCY: Natural Resources Conservation Service.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR Part 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Pasture Creek Watershed project McCone County, Montana.

For further information contact Shirley J. Elliott, Acting State Conservationist, Natural Resources Conservation Service, 10 East Babcock Street, Room 443, Bozeman, Montana 59715, telephone: 406–587–6814.

Pasture Creek Watershed, Montana: Notice of Intent to Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination has been made by Shirley J. Elliott that the proposed works of improvement for the Pasture Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Shirley J. Elliott, Acting State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention, Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: February 6, 1995

Shirley J. Elliott,

Acting State Conservationist

[FR Doc. 95–3808 Filed 2–14–95; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will be held on Wednesday, March 15, 1995, from 2:00 p.m. to 5:00 p.m. at the Mile High Center, Tower 1, 1700 Broadway, Suite 490, Denver, Colorado 80290. The purpose of the meeting will be to provide orientation for new members on Commission and regional activities, discuss current civil rights issues in the State, and approve plans for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Joseph Arcese, 303–556–3139, ext. 4780, or Ki-Taek Chun, Acting Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 95–3713 Filed 2–14–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Kansas Advisory Committee to the Commission will meet on Thursday, March 2, 1995, from 6:00 p.m. until 9:30 p.m. at the Student Union, Oak Room, Coffeyville Community College, 400 West 11th Street, Coffeyville, Kansas 67337. The purpose of the meeting is to collect information on civil rights issues in order to plan for future projects in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 95–3712 Filed 2–14–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Mississippi Advisory Committee to the Commission will meet on Monday, March 13, 1995, from 7:00 p.m. until 9:00 p.m. at the Edison Walthall Hotel, Magnolia Room, 225 East Capitol Street, Jackson, Mississippi 39201. The purpose of the meeting is to plan for the police-community relations factfinding meeting.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253

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(TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1995

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–3714 Filed 2–14–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Pennsylvania Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will be held on Tuesday, February 28, 1995, from 2:00 p.m. to 4:00 p.m. at the Department of Justice, Community Relations Service, Conference Room 208, 2nd and Chestnut Streets, Philadelphia, Pennsylvania 19106. The purpose of the meeting is to conduct project planning for the current term, elect officers, and orient newly appointed members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1995

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–3715 Filed 2–14–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Alabama Advisory Committee to the Commission will meet on Wednesday, March 15, 1995, from 6:00 p.m. to 8:00 p.m. at the Tutwiler Hotel, Park Place and 21st Street North, Birmingham, Alabama 35203. The purpose of the meeting is program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 7, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit

[FR Doc. 95–3809 Filed 2–14–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held March 8, 1995, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation on Automated Export System (AES).
3. Presentation on Office of Strategic Industries and Economic Security.
4. Presentation of papers or comments by the public.
5. Old business.
6. New business—Working Group and Task assignments.

Executive Session

7 Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA—Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S Department of Commerce, Washington DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 9, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit

[FR Doc. 94–3736 Filed 2–14–94; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held March 9, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to computer systems and technology.

Agenda

Executive Session 9:00 a.m –10:00 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

General Session 10:00 a.m –12:00 p.m

2. Opening remarks by the Chairmen.
3 Presentation of papers or comments by the public.
4. Report from Composite Theoretical Performance Subcommittee
5. Discussion on licensing issues, including European Union controls, pre-release software, Export Administration Regulations rewrite.
6. Discussion on General License GLX: lessons learned and new proposals.

Executive Session 1:00 p.m.–5:00 p.m

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 10, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit

[FR Doc. 95–3781 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping duty orders and findings with January anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) (1994), for administrative reviews of various antidumping duty orders and findings with January anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c), we are initiating administrative reviews of the following antidumping duty orders and findings. We intend to issue the final results of these reviews not later than January 31, 1996.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Brass Sheet and Strip:	
A–122–601	
Wolverine Tube (Canada) Inc.	01/01/94–12/31/94
France:	
Anhydrous Sodium Metasilicate:	
A–427–098	
Rhone-Poulenc, S.A.	01/01/94–12/31/94
Certain Stainless Steel Wire Rods:	
A–427–811	
Imphy, S.A. Ugine-Savoie	01/01/94–12/31/94
Korea:	
Stainless Steel Cooking Ware:	
A–580–601	
Daelim Trading Company, Ltd.	01/01/94–12/31/94
The People's Republic of China:	
Potassium Permanganate:	
A–570–001	
China National Chemicals I/E Corporation ("Sinochem")	01/01/94–12/31/94

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Antidumping duty proceedings	Period to be reviewed
China National Chemicals I/E Corp./Qingdao Branch	
China National Chemicals I/E Corp./Shenzhen Branch	
Beijing Dayu Chemical Plant	
Changsha Organic Chemical Plant	
Chongqing Jialing Chemical Plant	
Jinan Huaiyin Chemical General	
Jinan Tailu Chemical Industry	
Shenzhen Metals Materials Co.	
Tianjin Haiyang Chemical Plant	
Tongji Chemical Plant	
Zunyi Chemical Plant	
Beijing Chemicals	
Calberson Int'l	
Chemical Spa	
China Conic	
China National Chemicals/Guiyang, China	
China National Chemicals/Huangpu, China	
China National Chemicals/Shanghai, China	
China National Foreign Trade	
Daher Oriental Lines	
Elandco Trading	
Gatehouse	
Guangzhou Chemicals	
Guangdong Foreign Trading Development	
Guangdong Foreign Economics Development	
Guangdong Foreign Economic Relations & Trade Consultancy Corp.	
Guangxi Guilin Prefecture	
Guangxi Zhuang Autonomous Region	
Guangzi I/E Trading Corp.	
China Native Produce & Animal By-Products I/E Corporation	
Guilin Native Produce & Animal By-Products I/E Corporation	
Guilin Prefecture Foreign Economic	
Guilin District I/E Corporation	
Hei Long Jiang Machinery Imports Exports	
Helm Products	
Hunan Golden Globe Imports Exports	
Hunan Chemicals & Medicines	
Jinan Spring Chemical Products	
Mitrans	
Region Win	
Shenzhan Metals Materials Co	
Sinchart	
Strong Guide	
Thompson Express	
Yue Xiu Chemicals	
All other exporters of potassium permanganate from the People's Republic of China are conditionally covered by this review	
Suspension Agreements	
Hungary:	
Truck Trailer Axle-and-Brake Assemblies:	
A–437–001	01/01/94–12/31/94

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1).

Dated: February 9, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–3780 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–DS–M

Request for Monitoring of Helical Spring Lock Washers From Russia and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice and request for comments; request for monitoring of helical spring lock washers from Russia and Mexico.

SUPPLEMENTARY INFORMATION: On August 19, 1994, Shakeproof Industrial Products Division of Illinois Tool Works Inc. (SIP), a domestic producer of helical spring lock washers (HSLW), submitted a request that the Secretary of Commerce monitor imports of HSLWs from Russia and Mexico under section 732(a)(2) of the Tariff Act of 1930, as amended (the Act), and section 353.11(c) of the Department's regulations. In response to the Department's requests for clarification, SIP subsequently supplemented its request on October 24, 1994, November 30, 1994, and January 16, 1995. The monitoring request applies to circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. HSLWs are included under item number 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive. SIP requests that the Secretary monitor imports of these products from Russia and Mexico, alleging that circumstances which allow the Department to monitor imports currently exist. Under section 732(a)(2) of the Act, the requirements for the Secretary to monitor imports are: (a) more than one antidumping duty order for the same class or kind of merchandise must be in effect; (b) the Department must have a reason to believe or suspect that there exists an extraordinary pattern of persistent injurious dumping with respect to shipments from one or more additional supplier countries; and (c) this extraordinary pattern of persistent injurious dumping is causing a serious commercial problem for the domestic industry.

COMMENTS: Interested parties wishing to comment upon this request must send written comments not later than March 17, 1995. Comments should be sent to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than seven days after March 17, 1995. Any interested parties submitting business proprietary information must do so in accordance with section 353.32(b) of the Department's regulations and submit a public version or summary of that information.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Holly Vineyard, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230, telephone (202) 482–3793 or telefax (202) 482–1388.

Dated: February 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3777 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–098]

Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 20, 1994, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. This review covers Rhone Poulenc Chime de Base (Rhone Poulenc), a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1993, through December 31, 1993. The firm failed to submit a timely response to our questionnaire. As a result, we have used best information available (BIA) for cash deposit and appraisement purposes. We did not receive any comments on our preliminary results of review. Therefore, the final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: February 15, 1995.

The review covers Rhone Poulenc and the period January 1, 1993 through December 31, 1993.

Use of Best Information Available

We mailed the antidumping questionnaire to Rhone Poulenc, a manufacturer/exporter of this merchandise to the United States. Rhone Poulenc failed to submit a timely response to our questionnaire. The Department has therefore decided to use BIA in determining the rate for this firm.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) The highest rate assigned to any company in the less-than-fair-value (LTFV) investigation or in prior administrative reviews, or (b) the highest rate found in the current review for any firm. See 19 CFR 353.37(b) and Final Results of Administrative Review, Antifriction Bearings (other than Tapered Roller Bearings) from France (58 FR 39729, 39739, July 26, 1993). In this case, as BIA, we used 60 percent, the highest rate from a prior review. See Final Results of Antidumping Duty Administrative Review, Anhydrous Sodium Metasilicate from France (52 FR 33856, September 8, 1987).

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Therefore, the final results are unchanged from those presented in the preliminary results of review. We determine that a margin of 60.00 percent exists for Rhone Poulenc during the period January 1, 1993, through December 31, 1993.

Furthermore, the following deposit requirements will be effective upon publication of these final results of this administrative review, for all shipments of ASM from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be 60 percent, (2) for exporters not covered in this review, but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and exporters will be 60 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

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Dated: January 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-3778 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-475-816, A-201-817, A-469-806]

Postponement of Final Antidumping Duty Determinations: Oil Country Tubular Goods From Italy, Mexico and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: William Crow (Italy and Spain) or Jennifer Stagner (Mexico), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0116 or (202) 482-1673, respectively.

Postponement

On January 26, 1995, the Department of Commerce (the Department) issued its preliminary determinations in the antidumping duty investigations of oil country tubular goods (OCTG) from Italy, Mexico, and Spain (60 FR 6515, 6510, and 6516, respectively, February 2, 1995).

The following parties requested that the Department postpone the final determinations until 135 days after publication of the preliminary determinations in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(a)(2)), and 19 CFR 353.20(b): Dalmine S.p.A., the respondent in the Italian investigation, on February 3, 1995; North Star Steel Ohio, the petitioner in the Mexican investigation, on January 30, 1995; and Koppel Steel Corporation, USS/Kobe Steel Company, and U.S. Steel Group (a unit of USX Corporation), the petitioners in the Spanish investigation, on January 30, 1995.

Under section 735(a)(2) of the Act and 19 CFR 353.20(b), if, subsequent to the preliminary determination, the Department receives a request for postponement of the final determination from the petitioner if the preliminary determination was negative, or the respondent if the preliminary determination was affirmative, then the Department will, absent compelling reasons for denial, grant the request. We find no compelling reasons to deny the requests, which were properly filed, and are, accordingly, postponing the date of the final determinations until no later than June 19, 1995.

The U.S. International Trade Commission is being advised of these postponements in accordance with section 733(b) of the Act.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies may be submitted by any interested party to the Assistant Secretary for Import Administration no later than May 2, 1995, and rebuttal briefs no later than May 9, 1995. We request that parties in these cases provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearings will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, on:

Italy: May 17, 1995, at 10:00 a.m. in Room 1851;

Mexico: May 19, 1995, at 10:00 a.m. in Room 1851;

Spain: May 17, 1995, at 2:00 p.m. in Room 1851.

Parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This notice is published pursuant to section 735(a)(2) of the Act and 19 CFR 353.20(b).

Dated: February 8, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations

[FR Doc. 95-3779 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 020195B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 873 (P772#63).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038-0271, has requested a modification to permit no. 873.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980-4016).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, Office of Protected Resources, F/PR1, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 873, issued on July 28, 1993 (58 FR 34038), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit no. 873 authorizes the permit holder to biopsy several species of cetaceans off the coasts of Washington, Oregon, California, Mexico, and in the Southern Ocean; to import biopsy tissues collected outside of U.S. waters; and to conduct photo-identification and photogrammetry studies on these species. The permit holder requests authorization to add several additional species to the permit authority; to import biopsy tissues from these additional species; to expand the study area to include the Indian Ocean; to biopsy gray whales (including animals accompanying calves), fin, sei, minke, and right whales; and to employ photo-identification and photogrammetry techniques to study both gray whales and the additional species mentioned above.

Dated: February 9, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95-3696 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-22-F

National Telecommunications and Information Administration

National Endowment for Children's Educational Television Advisory Council on Children's Educational Television; Notice of Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice is hereby given of a meeting of the Advisory Council on Children's Educational Television, created pursuant to the National Endowment for Children's Television Act of 1990.

SUMMARY: Congress established the National Endowment for Children's Educational Television under the direction of the Secretary of Commerce. Authority to administer this program is further delegated to the National Telecommunications and Information Administration. Congress mandated creation of the Advisory Council to advise on the making of grants and contracts for the purpose of creating and producing television programming specifically directed toward the development of fundamental intellectual skills of our nation's children.

Authority: Public Law 101-437, 104 Stat. 997, approved October 18, 1990, codified at 47 U.S.C. 394.

DATES: The meeting will be held on Monday, March 6, 1995, from 1:00 p.m. to 2:30 p.m.

ADDRESSES: The meeting will take place via telephone conference call in Room 4898 of the Herbert C. Hoover Commerce Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Heather Birnie; Acting Director, National Endowment for Children's Educational Television (NECET); National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4096; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: 202/482-5802.

SUPPLEMENTARY INFORMATION: The Council was chartered on September 13, 1993 pursuant to 47 U.S.C. § 394 to advise the Secretary of Commerce on matters related to the making of grants and contracts that would enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

Agenda

1. Opening Introductions and Remarks by Larry Irving, Assistant Secretary of Communications and Information.
2. Discussion and Recommendations on Issues:
   a. Whether there is a specific age group that is currently considered to be most under-served by children's educational television that should serve as the focus of the NECET grant round for Fiscal Year 1995;
   b. Whether there are specific subject matter areas that should be designated as priorities for the Fiscal Year 1995 grant round.
3. Other Items for Discussion.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Speaker telephones will be available to the public.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95-3750 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-04-M

Minority Business Development Agency

Business Development Center Applications: Boston, Massachusetts

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice (Cancellation).

SUMMARY: The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate a Boston, Massachusetts MBDC (closing date, December 16, 1994). Refer to the **Federal Register** dated, October 25, 1994.

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency

[FR Doc. 95-3792 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-21-P

Business Development Center Applications: Portland, Oregon

AGENCY: Minority Business Development Agency, Commerce

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Portland Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Portland, Oregon Metropolitan Area. The award number of the MBDC will be 09-10-95013-01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 17, 1995. A pre-application conference will be held on March 3, 1995, at 10:00 a.m., at 911 Federal Building, Conference Room "B", First Floor, 911

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N.E. 11th Street, Portland, Oregon 97208.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost -sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–3797 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Boston, Massachusetts

AGENCY: Minority Business Development Agency, Commerce

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Boston Minority Business Development Center (MBDC). The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Boston Metropolitan Area. The award number of the MBDC will be 01–10–95001–01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 17, 1995.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Levi Pace at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $222,196. The total Federal amount of $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share 15% ($33,329) in non-federal (cost sharing) contributions for a total project cost of $222,196. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information and requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

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Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–3793 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Alaska Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the State of Alaska. The award number of the MBDC will be 09–10–95005–01.

DATES: The closing date for applications is March 28, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 28, 1995. A pre-application conference will be held on March 9, 1995, at 10:00 a.m., at the Federal Building and U.S. Court House, U.S. Fish and Wildlife Conference Room, 3rd Floor, 101 12th Avenue, Fairbanks, Alaska 99701.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

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Dated: February 9, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency

[FR Doc. 95-3794 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-21-P

Business Development Center Applications: Fresno, California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Fresno Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Fresno, California Metropolitan Area. The award number of the MBDC will be 09-10-95011-01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 17, 1995. A pre-application conference will be held on February 27, 1995, at 10:00 a.m., at the U.S. Attorneys Office, Room 3654 (Conference Room), 3rd Floor, 1130 "O" Street, Fresno, California 93721.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482-3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744-3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $222,196. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share of 15%, $33,329 in non-federal (cost-sharing) contributions for a total project cost of $222,196. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, 'Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103-121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995.

Donald L. Powers

Federal Register Liaison Officer, Minority Business Development Agency

[FR Doc. 95-3795 Filed 2-14-95; 8:45 am]

BILLING CODE 3510-21-P

Business Development Center Applications: Miami, Florida

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Miami Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Miami, Florida Metropolitan Area. The award number of the MBDC will be 04-10-95010-01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat or before March 17, 1995. A pre-application conference will be held on March 1, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308-3516.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482-3763.

FOR FURTHER INFORMATION, CONTACT: Robert Henderson at (404) 730-3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $666,853. The total Federal amount is $566,825 and is composed of $553,000 plus the Audit Fee amount of $13,825. The application must include a minimum cost share of 15%, $100,028 in non-federal (cost-sharing) contributions for a total project cost of $666,853. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic

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reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–3796 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 020695A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P319D).

SUMMARY: Notice is hereby given that Dr Randall S. Wells, Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written comments must be received on or before March 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702 (813/570–5312).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to capture and subsequently release up to 150 individual dolphins near the Sarasota, Florida, area over a 5-year period. Some animals may be recaptured up to 3 times per year. The animals would be weighed, measured, blood sampled, and have other samples taken and/or have procedures conducted for the assessment of various health parameters. Acoustic recordings and playback experiments would also be conducted prior to the animals' release. Additionally, the applicant requests authorization to mark the animals with freezebrands, cattle ear tags, or roto-tags, and also to radio tag up to 20 of these dolphins per year.

Dated: February 9, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–3697 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–22–F

Minority Business Development Agency

Business Development Center Applications: Seattle, Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Seattle Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Seattle, Washington Metropolitan Area. The award number of the MBDC will be 09–10–95014–01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 17, 1995. A pre-application conference will be held on March 2, 1995, at 10:00 a.m., at the Seattle Federal Building, 915 Second Avenue, Room 3080, Seattle, Washington 98174.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $222,196. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share of 15%, $33,329 in non-federal (cost-sharing) contributions for a total project cost of $222,196. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information

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requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.600 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency

[FR Doc. 95–3798 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Stockton, California

AGENCY: Minority Business Development Agency, Commerce

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Stockton Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Stockton, California Metropolitan Area. The award number of the MBDC will be 09–10–95012–01.

DATES: The closing date for applications is March 17, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 17, 1995. A pre-application conference will be held on March 1, 1995, at 10:00 a.m., at the San Joaquin Economic Development Center, Conference Room, 814 North Hunter Street, Stockton, California 95202.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073 Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from July 1, 1995 to July 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: The knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is

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intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: February 9, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency

[FR Doc. 95–3799 Filed 2–14–95; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0125]

Clearance Request for Written Refusal of a Utility Supplier to Execute a Utility Contract

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0125).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Written Refusal of a Utility Supplier to Execute a Utility Contract.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Regulation requires that contracts comply with the applicable Federal laws and the relevant parts of the FAR. The written and definite refusal by a utility supplier to execute a tendered contract (41.202(c)) is intended to identify those suppliers who refuse to do so and the rationale of the supplier for refusing.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 50; responses per respondent, 1; total annual responses, 50; preparation hours per response, .30; and total response burden hours, 25.

Obtaining Copies for Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0125, Written Refusal of a Utility Supplier to Execute a Utility Contract, in all correspondence.

Dated: February 9, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–3767 Filed 2–14–95; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0126]

Clearance Request for Electric Service Territory Compliance Representation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0126).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Electric Service Territory Compliance Representation.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The representation at 52.241–1, Electric Service Territory Compliance Representation, is required when proposed alternatives of electric utility suppliers are being solicited. The representation is to ensure compliance with Public Law 100–202.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

The annual reporting burden is estimated as follows: Respondents, 200; responses per respondent, 2.5; total annual responses, 500; preparation hours per response, 1; and total response burden hours, 500.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0126, Electric Service Territory Compliance Representation, in all correspondence.

Dated: February 9, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–3768 Filed 2–14–95; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0123]

Clearance Request for Change in Rates or Terms and Conditions of Service for Regulated Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0123).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Change in Rates or Terms and Conditions of Service for Regulated Services.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241–7 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,000; responses per respondent, 5; total annual responses, 5,000; preparation hours per response, 15 minutes; and total response burden hours, 1,250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1,000; hours per recordkeeper, 1; and total recordkeeping burden hours, 1,000.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0123, Change in Rates or Terms and Conditions of Service for Regulated Services, in all correspondence.

Dated: February 9, 1995.

Beverly Fayson,

FAR Secretariat

[FR Doc. 95–3765 Filed 2–14–95; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0124]

Clearance Request for Capital Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0124).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Capital Credits.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 52.241–13, Capital Credits, is designed to obtain an accounting of Capital Credits due the Government when the Government is a member of a cooperative

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

The annual reporting burden is estimated as follows: Respondents, 450; responses per respondent, 1; total annual responses, 450; preparation hours per response, 2; and total response burden hours, 900.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 450; hours per recordkeeper, 1; and total recordkeeping burden hours, 450.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, Telephone (202) 501–4755. Please cite OMB Control No. 9000–0124, Capital Credits, in all correspondence.

Dated: February 9, 1995.

Beverly Fayson,

FAR Secretariat

[FR Doc. 95–3766 Filed 2–14–95; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0122]

Clearance Request for Scope and Duration of Contract

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0122).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Scope and Duration of Contract.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.241–3 requires the utility to furnish the Government with a complete set of rates, terms and conditions, and any subsequently approved or proposed revisions when proposed.

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B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents 1,000; responses per respondent, 5; total annual responses, 5,000; preparation hours per response, .25; and total response burden hours, 1,250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1,000; hours per recordkeeper, 1, and total recordkeeping burden hours, 1,000

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No 9000–0122, Scope and Duration of Contract, in all correspondence

Dated: February 9, 1995.

Beverly Fayson,

FAR Secretariat

[FR Doc. 95–3790 Filed 2–14–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet 28 February and 1 March 1995, from 9:00 a.m. to 4:00 p.m., on each day. The meeting will be held at 4401 Ford Avenue, Alexandria, Virginia on 28 February and at the Headquarters, National Security Agency, Fort Meade, Maryland on 1 March. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include current intelligence, information warfare, and special access programs. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205

Dated: February 6, 1995

L. R. McNees,

Lt CDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 95–3716 Filed 2–14–95; 8:45 am]

BILLING CODE 3810–FF–F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 22, 1995. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 10:30 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey

An informal conference among the Commissioners and staff will be open for public observation at 10:00 a.m. at the same location and will include a discussion of the proposed Commission Geographic Information System

The subjects of the hearing will be as follows:

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *ConAgra Poultry Company (formerly Country Pride Foods) D–84–15 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 33 million gallons (mg)/30 days of water to the applicant's poultry processing facility from existing Well Nos. 1 and 2. Commission approval on June 27, 1984 was limited to 10 years. The applicant requests that the total withdrawal from all wells be increased from 27 mg/30 days to 33 mg/30 days. The project is located in the City of Milford, Kent County, Delaware.

2. *Harry T. Hudson D–84–31 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 19.55 mg/30 days of water to the applicant's agricultural irrigation system from Well No. 1. Commission approval on September 25, 1984 was limited to 10 years. The applicant requests that the total withdrawal from all wells remain limited to 19.55 mg/30 days. The project is located in Sussex County, Delaware.

3. *Utility Group Services Corporation D–89–40 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 23.1 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 18. Commission approval on October 25, 1989 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 23.1 mg/30 days. The project is located in West Bradford Township, Chester County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Concord Mobile Home Park D–92–68.* A sewage treatment plant (STP) project that entails construction of a 63,500 gallons per day (gpd) capacity secondary level extended aeration plant to serve a proposed 254 lot mobile home park in Concord Township, Delaware County, Pennsylvania. The STP will discharge to Green Creek, a tributary of West Branch Chester Creek, at a point just north of Concord Road.

5. *Utility Group Services Corporation D–94–4.* A project to upgrade and expand the applicant's Little Washington Drainage Company STP located in East Brandywine Township, Chester County, Pennsylvania. The STP serves two residential developments in East Brandywine Township, Culbertson Run and The Timbers. The STP will expand from 53,100 gpd to 93,000 gpd and the advanced secondary treatment facilities will be modified from extended aeration to the sequencing batch reactor process with tertiary filtration. The existing allowable discharge to Culbertson Run will remain at 53,100 gpd with the expanded allowable discharge of 40,000 gpd to be pumped to two proposed infiltration beds for subsurface disposal.

6. *City of Dover D–94–27 CP.* An application for approval of a ground water withdrawal project to supply up to 138 mg/30 days of water to the applicant's distribution system from new Well Nos. 1A, 2, 4B, 5, 6A, 7A and 8A screened in the Columbia Formation, and to retain the existing withdrawal limit from all wells of 300 mg/30 days. The proposed project wells are located in a north-south line east of the City of Dover, Kent County, Delaware.

7. *Richard M. Morgan, Jr. D–94–55.* An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the applicant's agricultural irrigation system from new Well No. 3, to increase the existing withdrawal limit of 25 mg/30 days from all wells to 56.16 mg/30 days, and to supply up to 63.27 mg/30 days from surface water intakes Nos. 1 and 2. The project is located in Sussex County, Delaware.

8. *Superior Water Company D–94–58 CP* An application for approval of a ground water withdrawal project to supply up to 2.16 mg/30 days of water to the applicant's distribution system from new Well No. 5, to limit the withdrawal from all wells to 15.00 mg/30 days, and to consolidate all wells into one comprehensive docket. The project is located in Douglass and New Hanover Townships, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Holly Hills Golf Club D–94–60.* An application for approval of a surface water withdrawal of 7 mg/30 days for irrigation of the applicant's golf course. The applicant will continue to utilize three existing man-made ponds located in the drainage area of Carlisle Run and Deep Run, both tributaries of Alloway Creek in Alloway Township, Salem County, New Jersey.

* * * * *

Proposed Water Charging Contract for North Penn Water Authority/North Wales Water Authority

Pursuant to the provisions of the Delaware River Basin Compact, DRBC Resolution No. 71–4 and Section 5.3.2 of Resolution No. 74–6, a contract is proposed between the Delaware River Basin Commission and North Penn/North Wales Water Authorities to provide payment of water charges in connection with the Point Pleasant Pumping Station and related transmission facilities purchased from Bucks County, Pennsylvania.

Documents related to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions and Dr. Richard Tortoriello concerning the proposed North Penn/North Wales Water Authorities contract. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 7, 1995.

Susan M. Weisman,

Secretary.

[FR Doc. 95–3717 Filed 2–14–95; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Strategic Petroleum Reserve Weeks Island Facility Alternative Uses

Notice of Public Meeting

AGENCY: Strategic Petroleum Reserve (SPR), Department of Energy (DOE).

SUMMARY: The Department of Energy (DOE) is soliciting suggestions for potential alternative uses for the Strategic Petroleum Reserve (SPR) Weeks Island Facility in Iberia Parish, Louisiana. DOE has concluded that the Weeks Island Facility, which presently stores 73 million barrels of crude oil underground in a salt dome, is no longer suitable for long term storage of crude oil. DOE will transfer the oil to other SPR storage sites in Louisiana and Texas and decommission the facility. DOE will hold a public meeting to discuss possible future uses of the facility and property.

DATES: A public meeting will be held on Thursday, March 2, 1995, from 7:00 p.m. to 9:00 p.m. Speakers may pre-register in writing, by telephone or by facsimile by close of business February 23, 1995.

ADDRESSES: The meeting will be held at New Iberia Senior High School Gym, 1301 East Admiral Doyle Drive, New Iberia, Louisiana. Written requests to speak and inquiries should be labeled "Future Uses For Weeks Island Facility" and submitted to Ms. Durinda L. Robinson, Office of Public Affairs (FE–445.2), Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123. Requests to speak will also be accepted by telephone at (504) 734–4312 between the hours of 8:00 a.m. and 4:00 p.m. CST, Monday through Friday, except Federal holidays, or by facsimile, (504) 734–4427.

A transcript of the meeting will be prepared and will be made available for inspection at the following locations:

- New Iberia Public Library, 445 E. Main Street, New Iberia, Louisiana 70560 (ATTN: Ms. Vicki Chrisman).
- Dupre Library, 302 East St. Mary Blvd., U. of Southwestern Louisiana, Lafayette, Louisiana 70504 (ATTN: Ms. Sandy Himel).
- New Orleans Public Library, Louisiana Division, 219 Loyola Avenue, New Orleans, Louisiana 70140.
- DynMcDermott Petroleum Operations Co., Technical Library, 800 Commerce Rd. W., Suite 102, New Orleans, Louisiana 70123 (ATTN: Ms. Cindi Nelson).
- Freedom of Information Reading Room, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Durinda L. Robinson, Office of Public Affairs (FE–445.2), Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123, telephone (504) 734–4312, facsimile (504) 734–4427.

SUPPLEMENTARY INFORMATION: The meeting will be informal. Its purpose is to gather information and ideas. Basic procedures for conducting the meeting will be announced by the presiding officer at the start of the meeting.

Persons wishing to speak are advised to pre-register by mail, telephone, or by facsimile at the address or telephone number listed above. A separate request is required for each speaker. Registrants should confirm the time they are scheduled to speak at the registration desk. Persons may register to speak at the door and will be accommodated on a first-come, first-served basis to the extent time allows. To ensure that as many persons as possible have the opportunity to speak, five minutes will be allotted to each individual.

Issued in Washington, DC on February 9, 1995.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 95–3789 Filed 2–14–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act. The listing does not include collections of information contained in new or revised regulations which are to be submitted

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under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: EIA has requested expedited OMB approval by March 24, 1995. Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for addition information or copies of the forms and instructions should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 254–5346

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–846(A), (B), (C)
3. 1905–0169
4. Manufacturing Energy Consumption Survey (MECS)
5. Reinstatement
6. Biennial
7. Mandatory
8. Business or other for-profit
9. 21,703 respondents
10. .5 responses annually
11. 9.25 hours per response
12. 100,325 hours respondent burden
13. EIA–846(A), (B), (C) will be used to collect data on energy consumption and related subjects for the manufacturing sector of the U.S. economy. In addition to being used for the National Energy Modeling System, the MECS will be used to augment a data base on the manufacturing sector. Respondents are manufacturing establishments.

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1).

Issued in Washington, D.C., February 9, 1995.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 95–3788 Filed 2–14–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–155–000]

Viking Gas Transmission Co; Notice of Filing

February 9, 1995

Take notice that on February 6, 1995, Viking Gas Transmission Company (Viking), filed a report of interruptible throughput and revenues for the period November 1, 1993 through October 31, 1994. Viking also stated that Viking did not have sufficient net interruptible revenues during that period to trigger an obligation, under Article 5, Section 5 of Viking's Rate Schedule IT, to credit net interruptible revenues to Viking's firm shippers.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before February 16, 1995. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3710 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–154–000]

Viking Gas Transmission Co.; Notice of Filing

February 9, 1995

Take notice that on February 6, 1995 Viking Gas Transmission Company (Viking), filed a report of penalty revenues and credits for the period November 1, 1993 through October 31, 1994.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3709 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–112–002]

Tennessee Gas Pipeline Co.; Notice of Filing

February 9, 1995.

Take notice that on February 6, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered a response in compliance with the Commission's order issued on January 25, 1995, in which the Commission suspended Tennessee's general section 4 rate case filed on December 30, 1994.

Tennessee states that copies of the filing have been mailed to affected parties.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed before February 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3708 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–224–000, RP89–203–000, RP90–139–000, RP91–69–000, RP92–134–000, RP93–15–000, RP94–67–000, et al., and CP71–273–000]

Southern Natural Gas Co.; Notice of Informal Settlement Conference

February 9, 1995.

Take notice that an informal settlement conference will be convened in these proceedings on February 16, 1995, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Betsy R. Carr at (202) 208–1240 or Neil L. Levy at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3707 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–194–000]

Northern Border Pipeline Co.; Notice of Application

February 9, 1995.

Take notice that on February 2, 1995, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–194–000, an application, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and compression facilities for the expansion and extension of Northern Border's system to transport gas on a firm basis on behalf of eleven shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern Border requests authority to construct and operate facilities consisting of: (1) Approximately 218 miles of 30-inch pipeline extending from the terminus of Northern Border's existing pipeline at Harper, Iowa to Manhattan, Illinois; (2) 45 miles of 24-inch pipeline from the end of the proposed 30-inch pipeline to a point of interconnection with Crossroads Pipeline Company near Griffith, Indiana; (3) four new 20,000 horsepower (HP) compressor stations on the existing 42-inch pipeline in North Dakota, South Dakota, and Minnesota; (4) one new 6,000 HP compressor station on the existing 30-inch pipeline in Iowa; (5) one new compressor on the proposed 30-inch pipeline extension in Iowa, consisting of two 2,650 HP units; (6) seven meter stations at seven new delivery points; and (7) other appurtenant facilities. In addition, Northern Border proposes to install interconnection facilities (tees and side valves) along the proposed extension in close proximity to other pipeline systems. Northern Border states that the estimated cost of the proposed facilities is $370.3 million and will be project financed. The proposed in-service date of the facilities is November 1, 1997.

Northern Border proposes to maintain its cost of service ratemaking methodology and roll-in to Rate Schedule T–1, (Northern Border's Part 284 firm transportation rate schedule) the cost of the new facilities with its existing system costs. Northern Border maintains that the aggregation of the proposed costs with existing facility costs will result in a unit cost under Rate Schedule T–1 rate that is less than the present unit cost. Northern Border also requests a one-time waiver of Subsection 4.83 of Rate Schedule T–1 in Northern Border's FERC Gas Tariff, First Revised Volume No. 1, which details the calculation of an average monthly rate base. Instead of calculating the average monthly rate base using the beginning and end of month balances as is currently in the tariff, Northern Border seeks to use a daily weighted average balance for the in-service month of the proposed facilities.

Northern Border states that it held an open season between October 24, 1994 and November 18, 1994 for the proposed capacity expansion and system extension. Northern Border asserts that the open season resulted in eleven qualified shippers. Based on the accepted bids, 212,500 Mcf per day will be received into Northern Border's system at Port of Morgan, Montana. Of this total, 10,000 Mcf per day will be delivered upstream of Ventura, Iowa and 40,000 Mcf per day will be delivered at Ventura, Iowa. At Ventura, Iowa, Northern Border will receive 100,000 Mcf per day and transport a total of 262,500 Mcf per day for delivery at various points downstream.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 2, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulation under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3706 Filed 2–14–95; 8:45 am]

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[Docket No. CP95–193–000]

K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

February 9, 1995

Take notice that on February 2, 1994, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–193–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate three new natural gas delivery points for K N Energy, Inc. (K N) under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate proposes to construct and operate three new delivery taps located in Clay, Dawes and Hamilton Counties, Nebraska for use under an existing transportation agreement between K N Interstate and K N. K N Interstate states that it would deliver approximately 4 Mcf on a peak day and 5,040 annually through the Clay tap, and 5,880 Mcf on a peak day and 1,800,000 Mcf annually through the Hamilton tap. K N Interstate estimates that the Dawes tap would cost $400, the Clay tap would cost $1,150 and the Hamilton tap would cost $145,000. K N Interstate asserts that the addition of the proposed delivery points would not have any adverse impact on its existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 95–3705 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–87–002]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

February 9, 1995.

Take notice that on February 6, 1995, Cove Point LNG Limited Partnership, tendered for filing as part of its FERC Gas Tariff Volume No. 1, Second Substitute Original Sheet No. 1 Superseding Substitute Original Sheet No. 1 and Original Sheet Nos. 2 through 11.

Cove Point states that the tariff sheets have been filed pursuant to the Commission's January 5, 1995, Letter Order in the above-named proceeding and in compliance with Parts 154 and 284 SubPart B of the Commission's regulations. Cove Point states further that Second Substitute Original Sheet No. 1 removes the Annual Charge Adjustment and adds a provision for retainage which was contained in Original Sheet No. 1. Original Sheet Nos. 2 through 12 set forth the terms and conditions of Cove Point's Rate Schedule IT and provide information required by the Commission's Order.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules of Regulations. All such protests should be filed on or before February 16, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3704 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Notice of Informal Settlement Conference

February 9, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on February 16, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary

[FR Doc. 95–3703 Filed 2–14–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00165; FRL–4934–3]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: The four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice.

DATES: The four Projects will meet March 6, 1995, from 8 a.m. to 5 p.m., with a plenary session from 1 p.m. until 2:15 p.m., and on March 7, 1995, from 8 a.m. to noon.

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Erica Phipps, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202) 260–9094.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The Projects are: (1) The Toxics Release Inventory Project; (2) The State and Tribal Enhancement Project; (3) The Chemical Management Project; and (4) The Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: February 6, 1995.

James B. Willis,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–3613 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5151–6]

Open Meeting of the FACA Subcommittee for the Metal Finishing Industry Under the Common Sense Initiative

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the Environmental Protection Agency (EPA) is convening the second open meeting of the Metal Finishing Subcommittee of EPA's Common Sense Initiative (CSI) Council, on February 24, 1995. The meeting has several purposes: (1) To discuss outstanding procedural matters; (2) to hear reports from and discuss issues relating to the CSI metal finishing workgroups; and (3) to discuss other substantive issues of importance to this sector. The meeting is open to the public without need for advance registration.

DATES: The Subcommittee will meet on February 24, 1995. The meeting will begin at approximately 9 a.m. EST and run until about 5 p.m. Open workgroup discussions will occur on February 23rd, at the same location as the FACA meeting.

ADDRESSES: The Subcommittee will meet at the Sheraton Crystal City Hotel, located at 1800 Jefferson Davis Highway, Arlington, VA 22202. The hotel telephone number is (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: Bob Benson of EPA's Office of Policy, Planning and Evaluation, at (202) 260–8668.

February 2, 1995.

Robert S. Benson,

CSI Metal Finishing Sector Staff Lead. Designated Federal Official.

[FR Doc. 95–3762 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5155–6]

Commission on Risk Assessment and Risk Management; Notice of Open Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established by Congress under Section 303 of the Clean Air Act Amendments of 1990, will meet on the following dates during 1995:

March 2, 1995—Washington, DC, Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007; Phone: 202–338–4600.

Purpose: Discuss legislative issues related to risk; discuss report section drafts on risk management issues.

April 7, 1995—New Jersey, Call 703–308–8087 for location.

Purpose: Receive update on status of legislation; hear from regional representatives/stakeholders.

May 25, 1995—Washington, DC, Call 703–308–8087 for location.

Purpose: Continue exploration of other statutes.

July 5–6, 1995—Seattle, Washington. Call 703–308–8087 for location.

Purpose: Continue exploration of other statutes; hear from regional representatives/stakeholders.

August 17–18, 1995—Palo Alto, California, Call 703–308–8087 for location.

Purpose: Hear from regional representatives/stakeholders; discuss report section drafts on risk management issues.

Sept. 14–15, 1995—Washington, DC, Call 703–308–8087 for location.

Purpose: Working meeting to discuss report drafts and rewrite.

October 18, 1995—New York, New York, Call 703–308–8087 for location.

Purpose: Hear from regional representatives/stakeholders; start to revisit risk assessment issues; start drafting report sections on risk assessment issues.

November 17, 1995—Washington, DC, Call 703–308–8087 for location.

Purpose: Explore remaining risk assessment/risk management issues; work on draft report; revise work plan as appropriate.

December 14–15, 1995—Florida, Call 703–308–8087 for location.

Purpose: Explore remaining risk assessment/risk management issues; hear from regional representatives/stakeholders.

The meetings are open to the public. Seating at the meeting is limited; therefore, seating will be on a first come basis.

Background

The Risk Assessment and Management Commission held its first meeting on May 16, 1994 **Federal Register** 59/FR 22615/Vol. 59, No. 83, May 2, 1994.) The Commission was established by Congress to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws.

It is expected that the Commission members will continue their inquires and discussions on the five topical areas mandated by Congress: review of the National Research Council's report Science and Judgment in Risk Assessment (1994); uses and limitations of risk assessment in decision-making; appropriate exposure scenarios; uncertainty and risk communication; risk management policy issues; and cross-agency consistency.

For additional information about the Commission and copies of the agenda, please call Joanna Foellmer at 703–308–8087.

Dated: February 9, 1995.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 95–3764 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66208; FRL–4931–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 16, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that

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a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 47 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000059–00196	Atroban Insecticide Ear Tag X 20	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000070–00258	Rigo Diazinon 4% Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000239–02564	Orthomite Insecticidal Soap	Potassium salts of fatty acids
000264–00222	Weedone 170 Woody Plant Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00223	Envert 171 Woody Plant Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00231	Weedone 2,4-DP Woody Plant Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264–00307	Weedone Super BK 32 Woody Plant Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00308	Weedone DP Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00309	Weedone 20 Weed & Feed	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00310	Weedone HG Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00346	Weedone 2,4-D, 2,4-DP Manufacturing Concentrate	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00393	Weedone CB Ready-To-Use Woody Plant Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00396	Weedone DPC Ester Broadleaf Herbicide	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2,4-dichlorophenoxyacetate
000264–00404	MCPP IOE Technical Grade	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
000264 AL–79–0009	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 AR–79–0011	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 AR–81–0023	Weedone 2, 4-DP	1Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 FL–85–0018	Weedone CB Woody Plant Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 GA–79–0014	Weedone 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 LA–79–0008	Weedone 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 MS–79–0009	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 MS–81–0034	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate

TABLE 1 —REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000264 NC–81–0029	Amchem Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 OK–83–0015	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 OR–79–0080	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 OR–80–0015	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 OR–82–0005	Weedone 170 Woody Plant Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 SC–80–0013	Amchem Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 TN–88–0007	Weedone 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 TN–88–0008	Weedone 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 TX–79–0025	Amchem Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 VA–80–0029	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 WA–79–0094	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 WA–80–0006	Weedone 2, 4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000264 WA–82–0001	Weedone 170 Woody Plant Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000572–00230	Rockland Kleen Kow Fly Spray	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
001021–01452	Multicide Intermediate 2237	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl d-trans-2,2-dimethyl- (3-Phenoxyphenyl)methyl d-cis and trans* 2,2-dimethyl-3-(2-methyl-propenyl)cyclopro 2,2-Dichlorovinyl dimethyl phosphate
001812–00356	Linex 50DF	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
002935–00343	Red-Top Diazinon 2 Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
004816–00516	Pyranha 1-10RC Concentrate	Dipropyl isocinchomeronate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
010182–00177	Ro-Neet 10 G	S-Ethyl cyclohexylethylthiocarbamate
019713–00247	Broot 15G Trim Ethacarb Granular Insecticide	3,4,5-Trimethylphenyl methylcarbamate 2,3,5-Trimethylphenyl methylcarbamate
019713–00248	Landrin 50% W. P. Insecticide	3,4,5-Trimethylphenyl methylcarbamate 2,3,5-Trimethylphenyl methylcarbamate
019713–00249	Technical Trimethacarb Insecticide	3,4,5-Trimethylphenyl methylcarbamate and 2,3,5-trimethylphenyl methylcarbamate
053871–00001	Stirrup PBW	(Z,E) 7,11-Hexadecadien-1-yl acetate

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TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
059639–00054	Valent Dairy and Horse Fly Spray R	(Z,Z)-7,11-Hexadecadien-1-yl acetate Dipropyl isocinchomeronate
065384–00003	Deet Insect Repellent Towelettes	(Butylcarbityl)(6-propylpiperonyl) ether 80% and relatedcompounds 20% Pyrethrins Dipropyl isocinchomeronate *N*-Octyl bicycloheptene dicarboximide *N,N*-Diethyl-meta-toluamide and other isomers

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000059	Coopers Animal Health Inc., Director of Regulatory Affairs, 421 E. Hawley St, Mundelein, IL 60060
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755
000239	Solaris Group of Monsanto Co, The, Box 5006, San Ramon, CA 94583
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007
001021	McLaughlin Gormley King Co, 8810 Tenth Ave North, Minneapolis, MN 55427
001812	Griffin Corp., Box 1847, Valdosta, GA 31603
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645
010182	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897
019713	Drexel Chemical Co, Box 9306, Memphis, TN 38109
053871	Troy Biosciences Inc., 2620 N. 37th Dr, Phoenix, AZ 85009
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596
065384	Solarcare Technologies Corp., 1745 Eaton Ave, Bethlehem, PA 18018

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, three pesticide active ingredients will not longer appear in any registered products. Those who are concerned about the potential loss of these active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3, with the EPA Company Number.

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No
12407–86–2	Trimethylphenyl methylcarbamate 4-dichlorophenoxyacetate	019713
2686–99–9	Trimethylphenyl methylcarbamate	019713
2655–15–4	Trimethylphenyl methylcarbamate	019713

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before May 16, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs

[FR Doc. 95–3298 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66207; FRL–4931–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 16, 1995, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 19 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000239–02564	Orthomite Insecticidal Soap	Potassium salts of fatty acids
000322–00006	Fort Dodge Mole Bait	Strychnine
000769–00696	Smcp 5% Diazinon Agricultural Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000769–00712	Smcp Diazinon 5D Insecticide Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
002230–00043	Pan-A-Sol	Ethanol Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
002491–003	Ace Lawn Food with Weed Control 22–6–8	2,4-Dichlorophenoxyacetic acid 2-(2-Methyl-4-chlorophenoxy)propionic acid
003125 NC–86–0007	Sencor 4 Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 NC–91–0008	Dylox 80% Soluble Powder Crop Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
005736–00090	WCO-237	Sodium bromide
005736–00094	WCO-232	Sodium bromide
007401–00178	Ferti-Lome Special Tomato Set	4-Chlorophenoxyacetic acid
007401–00268	Fertilome Tomato Set	4-Chlorophenoxyacetic acid
008660–00132	Vertagreen for Proffesional Use Kerb Granules	Propyzamide
008660–00134	Vertagreen Fertilizer for Proffesional Turf with Kerb	Propyzamide
010349–00031	Roban 3999	2-Methyl-5-nitroimidazole-1-ethanol
010352–00029	Ucarcide 602 Sterilizing and Disinfecting Solution	Glutaraldehyde
048211–00058	Muni-Fog	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
048211–00076	Kitten & Bear Retard	1,2-Dihydro-3,6-pyridazinedione, potassium salt
053871–00001	Stirrup PBW	(*Z,E*)-7,11-Hexadecadien-1-yl acetate (*Z,Z*)-7,11-Hexadecadien-1-yl acetate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1 in sequence by EPA Company Number.

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TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000239	Solaris Group, The, A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583.
000322	Fort Dodge Chemical Co., Box 2021, Lompoc, CA 93438.
000769	Sureco Inc., 10008 N. Dale Mabry Ste 121, Tampa, FL 33618.
002230	Warsaw Chemical Co. Inc., Argonne Rd, Box 858, Warsaw, IN 46580.
002491	Koos Inc., 4500 13th Ct, Kenosha, WI 53140.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd, Box 4913, Kansas City, MO 64120.
005736	Diversey Corp., 12025 Tech Center Dr, Livonia, MI 48150
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
008660	The Andersons, Lawn Fertilizer Div, Box 119, Maumee, OH 43537.
010349	Nalco Chemical Co, One Nalco Center, Box 87, Naperville, IL 60563.
010352	Union Carbide Corp., Box 670, Bound Brook, NJ 08805
048211	Intercon Chemical, 1100 Central Industrial Dr, St. Louis, MO 63110.
053871	Troy Biosciences Inc., 2620 N. 37th Dr, Phoenix, AZ 85009.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A Hollins, at the address given above, postmarked before May 16, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements

IV Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for one year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pest, Product registrations.

Dated: January 30, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs

[FR Doc. 95-3299 Filed 2-14-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34070; FRL 4931-7]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 15, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 15, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000769-00633	SMCP Ethion EM-4	Ethion	Peaches, peanuts, strawberries, turf, beans, cucumbers, summer squash, eggplant, melons, ornamentals, lawns, peppers, pimentos, tomatoes, bermuda grass
000769-00658	X-Cel Citrus & Ornamental Spray	Ethion	Peaches, ornamentals
008536-00002	Chloropicrin 100		Aquatic crops, forestry uses
033657-00001	Chloropicrin		Wood poles, pilings, garbage dumps, rodent burrows
034704-00119	Clean Crop 8EC Insecticide	Malathion	Asparagus, carrots, soil application for strawberries
058266-00002	Tri-Clor Fumigant	Chloropicrin	Aquatic crops, forestry uses

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1 in sequence by EPA company number

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000769	SureCo, Inc., P.O. Box 938, Fort Valley, GA 31030.
008536	Soil Chemicals Corp., P.O. Box 782, Hollister CA 95024
033657	Mitsui Toatsu Chemicals, Inc., 140 East 45th Street, New York, NY 10017
034704	Platte Chemical Co., P.O. Box 667, Greeley, Co 80632
058266	Shadow Mountain Products Corp., P.O. Box 1327, Hollister, CA 95024.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 2, 1995

Daniel M. Barolo,

Director, Office of Pesticide Programs

[FR Doc. 95-3612 Filed 2-14-95; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30108; FRL-4937-5]

Notice of Limited Plant Propagation Registration for a Plant-Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is proposing to issue a limited plant propagation registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Monsanto Company for the *Bacillus thuringiensis* var. kurstaki (B.t.k.) delta endotoxin produced in cotton for the purpose of increasing reproductive plant materials (plant propagation/seed production). This limited plant propagation registration will be restricted as to the duration of the registration, time and acreage of cotton planted, containment of field plots, and the subsequent harvesting and processing of the resulting crop

DATES: Comments identified by the docket control number [OPP-30108] must be received on or before March 17 1995

ADDRESSES: By mail: Submit written comments identified by the document control number [OPP-30108] to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Attention: Phil Hutton. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 305-5805.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of the information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential at the time of submission may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays

FOR FURTHER INFORMATION CONTACT: Phil Hutton, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 308-8260.

SUPPLEMENTARY INFORMATION: EPA has received several requests for experimental use permits for plant-pesticides which include acreage dedicated solely to seed increase. Because plant-pesticides are produced in living plants, their commercial development involves the propagation and breeding of new varieties of the crops producing the plant-pesticides This plant breeding process also involves increases of plant reproductive materials prior to commercialization. The production of propagative plant products (such as seeds, tubers, corms, cuttings, etc.) is an integral step in the development of new commercial plant varieties. Because of the biology of plants and general planting and harvesting restrictions associated with plant propagation, this step usually takes an entire year in the product development cycle. In the case of tree crops, it may take much longer.

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EPA has considered procedural options under FIFRA which would allow plant-pesticides to be propagated for the production of reproductive plant materials under limited acreage and conditions in instances where the Agency has determined that such plant propagation will not result in unreasonable adverse effects to humans or the environment. EPA has determined that a limited registration under section 3(c)(5) is an appropriate regulatory vehicle for pesticides produced in plants grown for the purposes of plant propagation/seed increase. A limited registration will stipulate the conditions under which the plantings could occur and may include such restrictions as the acreage to be planted, the design of the field sites to ensure adequate containment, the locations of the field sites, and any other restrictions deemed necessary including restrictions on the sale and distribution of the crop. The Agency, in making its finding of no unreasonable adverse effects, will rely in part upon the restrictions set in the limited registration. The limited registration will also stipulate that the company acquiring the registration is liable for the actions of its cooperators in terms of meeting the conditions of the registration. Companies that wish to make applications for a limited registration under FIFRA section 3(c)(5) for the purposes of plant propagation/seed production should be cognizant of tolerance requirements under the Federal Food, Drug, and Cosmetic Act (FFDCA). Where food or feed crops are involved, crop destruction or other actions to prevent the introduction of the resulting crop into commerce will be a necessary condition of a limited registration in the absence of a tolerance or exemption from the requirement of a tolerance. Moreover, seeds or other plant parts may be restricted in their sale or distribution.

Monsanto has requested a limited registration for plant propagation and has proposed certain conditions for the registration. The Agency has evaluated the information and data that have been submitted by Monsanto concerning the potential risks from planting cotton producing *Bacillus thuringiensis* var. kurstaki (B.t.k.) delta endotoxin for the purpose of increasing propagative materials. The information and data evaluated by the Agency to date has led EPA to preliminarily conclude that, under the restrictions of the limited registration, there are no foreseeable unreasonable adverse effects to humans or the environment.

Copies of information submitted to the Agency in support of this registration will be available from the public docket. The release of data is subject to section 10(g) of FIFRA; disclosure requires submission of a signed Affirmation of Non-multinational Status form. To receive a copy of the form contact the OPP docket staff at the address or telephone number listed under the ADDRESSES unit. Due to the volume of data, callers will receive the data on microfiche. A papercopy of the data is available for viewing in the docket.

Therefore, EPA is proposing to issue the following limited registration:

524–UTI. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. The approved limited registration for plant propagation would allow the use of the *Bacillus thuringiensis* var. kurstaki delta endotoxin as produced by the Cry 1 A(c) gene and its controlling sequences in cotton plants over a total of 36,850 acres. Planting of the product would be limited to the states of Arizona, Arkansas, California, Mississippi, South Carolina, and Texas and the territory of Puerto Rico. The registration would be limited to plantings from March 15, 1995 through December 15, 1995, and would include associated agronomic activities such as the harvesting and processing of plant propagative material. Sale or distribution of the crop or plant propagative materials would be prohibited. This registration would be limited in that containment of the field sites to prevent outcrossing to other cotton would consist of the use of isolation distances and/or buffer rows of non-transgenic cotton. This registration would be also be limited in that all crops would either be destroyed or stored for future plantings or research. The field sites would be monitored for 12 months for germinating seed which would be destroyed.

Interested parties should note that in the **Federal Register** of January 25, 1995 (60 FR 4910), and February 8, 1995 (60 FR 7538), EPA announced a March 1, 1995 meeting of the Scientific Advisory Panel for consideration of scientific issues related to this registration.

List of Subjects

Environmental protection, Biotechnology, Plant-pesticide, Pesticides, Plants, Registration.

Dated: February 8, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–3761 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 4G4409 and 5G4448/T668; FRL 4935–8]

Northrup King Co. and Ciba-Geigy Corp.; Initial Filings of Exemptions from the Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for the delta endotoxin protein produced in field corn by a CryIA(b) gene from *Bacillus thuringiensis* subsp. *kurstaki* HD-1 and inserted in the plant expression vector pZ01502 and for the plant pesticide *Bacillus-thuringiensis* subsp. *kurstaki* CryIA (b) insect control protein as produced in corn plants and the genetic material necessary for its production.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. Crystal Station, 5th Fl 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8712; e-mail: Mendelsohn.Mike@epamail.epa.gov

SUPPLEMENTARY INFORMATION: EPA gives notice that it has established exemptions from the requirement of tolerances relating to the initial filing of tolerances in or on certain raw agricultural commodities as follows.

Initial Filings

1. *PP 4G4409.* Northrup King Co. 7500 Olson Memorial Highway, Golden Valley, MN 55427, has requested in pesticide petition (PP) 4G4409, the establishment of an exemption from the requirement of a tolerance for the delta endotoxin protein produced in field corn by a CryIA(b) gene from *Bacillus thuringiensis* subsp. *kurstaki* HD-1 and inserted in the plant expression vector pZ01502.

2. *PP 5G4448.* Ciba-Geigy Corp., P.O Box 12257, Research Triangle Park, NC 27709-2257, has requested in pesticide petition (PP) 5G4448, the establishment of an exemption from the requirement of a tolerance for the plant pesticide *Baccillus thuringiensis* subsp. *kurstaki* CryIA(b)) insect control protein as produced in corn plants and the genetic material necessary for its production

These temporary exemptions from the requirements of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 67979–EUP–1 (Northrup) and 66736-EUP-1 (Ciba), which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Northrup King Co. and Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. Each company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

Residues remaining in or on all raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on these pesticides indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–3387 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5155–4]

Report on the Status of Visibility Research

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the public availability of an EPA report titled "Interim Findings on the Status of Visibility Research." The Clean Air Act calls for EPA to produce this report.

DATES: This report will be available at the addresses indicated below on February 15, 1995.

ADDRESSES: Copies of the report may be obtained by writing or phoning February 15, 1995 to March 15, 1995 Ms. Gloria J. Koch, Technical Information Officer, Atmospheric Research and Exposure Assessment Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle park, NC 27711, Telephone: 919–541–4109

After March 15, 1995: U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161

FOR FURTHER INFORMATION CONTACT: Mr. Johnnie L. Pearson, Acting Associate Director, Atmospheric Research and Exposure Assessment Laboratory (MD–75), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: 919–541–0572.

SUPPLEMENTARY INFORMATION: EPA is announcing the public availability of a report titled "Interim Findings on the Status of Visibility Research." The report was called for under section 169B(a) of the Clean Air Act, 42 U.S.C 7492(a). Issuance of the report does not represent final agency action.

The report summarizes visibility research findings previously reported. The report also summarizes visibility research currently being performed, based on information provided by the organizations conducting the research.

The report does not evaluate or otherwise address the merits of the visibility research information presented. Moreover, the report does not make EPA policy determinations about visibility protection and does not affect any legal rights or impose any obligations.

Dated: February 9, 1995

Henry L. Longest II,

Acting Assistant Administrator, Research and Development.

[FR Doc. 95–3760 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5151–7]

Hillsdale Drum Superfund Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response at the Hillsdale Drum Superfund Site in St Helena Parish, Louisiana, with the following parties:

Our Lady of the Lake Hospital
St. Louis County Highway Department
University of Texas System
W.R. Grace & Co.
York International Corporation (formerly Borg Warner Air Conditioning, Inc.)
Castrol North American Specialty Products Division (formerly Bray Oil)
Chemed Corporation
Chrysler Corporation
Jamaica Corperation
National Gasoil Company
University of Iowa
University of Utah
Exxon, Inc. (n/k/a UI Acquicon, Inc.)
IMC—Agrico Company
Pan Am World Services, Inc. (n/k/a Johnson Controls World Services, Inc.)
Chemical Compounding Corp. (n/k/a Triatech, Inc.)
Glidden Company
Anderson Chemical Company, Inc.
Coastal Fluid Technologies, Inc.
E.I. du Pont de Nemours and Company
Georgia Institute of Technology
Inspectorate American Corporation
Pennwalt Corp. (n/k/a Elf Atochem, Inc.)
Martin Marietta
Betz Entec, Inc.
Betz Laboratories, Inc.
Lane County School District 4-J (n/k/a Eugene Public Schools)
Kaiser Aluminum and Chemical Corporation
University of Alabama
University of Southern Alabama
Southern University
University of Arkansas
Missouri Southern State College
University of California, Riverside
Trident Chemical Company, Inc.
Texas Tech University
U.S. Department of Veterans Affairs

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EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. Carl Bolden, Superfund Enforcement Branch, Cost Recovery Section (6H–EC), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6713.

Written comments may be submitted to the person above by 30 days from the date of publication.

Dated: February 2, 1995.

Allyn M. Davis,

Acting Regional Administrator

[FR Doc. 95–3763 Filed 2–14–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Deutshe Bank AG, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutshe Bank AG, Frankfurt, Germany; to engage *de novo* through its subsidiary Deutsche Bank Trust Company, New York, New York, in providing trust company functions, foreign exchange advisory and transactional services, and consumer financial counseling, pursuant to §§ 225.25(b)(3), (17) and (20) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Mutual Bancorp, Inc., Decatur, Illinois; a proposed bank holding company, to engage *de novo* in making a loan to the Employee Stock Ownership Plan, to purchase stock in the proposed stock conversion of First Mutual Bank, S.B., Decatur, Illinois. Pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Jacob Schmidt Company, St. Paul, Minnesota; and American Bancorporation, Inc., St. Paul, Minnesota, to engage *de novo* through its subsidiary American Credit Corporation, St. Paul, Minnesota, in making, acquiring and servicing loans or other extensions of credit such as would be made by a commercial finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-3745 Filed 2-14-95; 8:45 am]

BILLING CODE 6210-01-F

Matenve, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 10, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Matenve, Ltd., Miami, Florida; to become a bank holding company by acquiring 25.97 percent of the voting shares of Ocean Bankshares, Inc., Miami, Florida, and thereby indirectly acquire Ocean Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, February 9, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95-3746 Filed 2-14-95; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1995, unless otherwise indicated.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* in consumer and real estate lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y and credit insurance activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y by acquiring through two newly incorporated subsidiaries, 54 subsidiaries of ITT Financial Corporation, doing business in Puerto Rico under the name Island Finance Corporation and by acquiring the assets of five branch offices of ITT FInancial Corporation doing business in the U.S. Virgin Islands.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bolder Bancorporation, Boulder, Colorado; to engage in the activity of making, acquiring or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Comments regarding this application must be received not later than February 27, 1995.

Board of Governors of the Federal Reserve System, February 9, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-3747 Filed 2-14-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1995, through September 30, 1996; Correction

ACTION: Notice of correction.

SUMMARY: This notice will correct an error listed on the Table of Federal Medical Assistance percentages calculated for the State of Minnesota for determining the amount of Federal matching in State welfare and medical expenditures for Fiscal Year 1996.

EFFECTIVE DATES: The corrected percentage will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1995 and ending September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 690–7861.

SUPPLEMENTARY INFORMATION: On November 17, 1994, in notice document 94–28397 beginning on page 59407, the Office of the Secretary announced the Federal Percentages and Federal Medical Assistance Percentages (FMAP) for use in determining the amount of Federal matching in State welfare and medical expenditures for October 1, 1995 through September 30, 1996. The percentages are applicable to programs under the Social Security Act including Aid to Families With Dependent Children, Foster Care and Adoption Assistance, Job Opportunities and Basic Skills Training, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons. The Notice provided a Table on page 59408 that listed Federal Percentages and Federal Medical Assistance percentages for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Federal Percentage published for the State of Minnesota is correct at 50.00%. The Federal Medical Assistance Percentage for Minnesota is incorrect. The Federal Medical Assistance Percentage was published as 53.84%. The correct percentage is 53.93%. The Department of Health and Human Services regrets the error.

Dated: February 1, 1995.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 95–3525 Filed 2–14–95; 8:45 am]

BILLING CODE 4150–04–M

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375 and Pub. L. 103–171, that the 1995 White House Conference on Aging Advisory Committee will hold a meeting on Friday, March 3, 1995, from 9 AM to 11 AM. The meeting will be held at the Marriott Metro Center Hotel, 775 12th Street NW., Washington, DC.

The meeting of the Committee shall be open to the public. The proposed agenda includes a discussion of the responsibilities of the Advisory Committee for the Conference.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: White House Conference on Aging, 501 School Street SW., 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Dated: February 9, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–3756 Filed 2–14–95; 8:45 am]

BILLING CODE 4130–02–M

Food and Drug Administration

[Docket No. 94N–0450]

Premiere Agri Technologies, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing

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approval of five new animal drug applications (NADA's), one held by Pfizer, Inc., and four NADA's held by Premiere Agri Technologies, Inc. Pfizer, Inc., notified FDA that its oxytetracycline soluble powder is no longer marketed. Premiere Agri Technologies, Inc., notified FDA that its approved NADA's are no longer required to manufacture Type B medicated feeds containing tylosin or virginiamycin. For these reasons, both sponsors requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: FDA has been informed by : (1) Pfizer, Inc., that it is no longer manufacturing or marketing its oxytetracycline soluble powder, and (2) Premiere Agri Technologies, Inc., that approval of its NADA's listed in the table is no longer required to manufacture Type B medicated feeds containing tylosin or virginiamycin (Type A medicated articles containing tylosin are covered by another NADA). Accordingly, both firms requested in writing that FDA withdraw approval of the applications.

NADA No.	Drug name	Sponsor name and address
10–661	Oxytetracycline soluble powder (Terramycin Egg Formula).	Pfizer, Inc., 235 East 42d St., New York, NY 10017
45–690	Tylosin Type B medicated feeds and Type A medicated article.	Premiere Agri Technologies, Inc., P.O. Box 2508, Fort Wayne, IN 46801–2508 (former sponsor Henwood Feed Additives)
97–289	Tylosin Type B medicated feeds and Type A medicated article.	Do. (Former sponsor Feed Specialties Co., Inc.)
133–361	Virginiamycin Type B medicated feed.	Do. (Former sponsor Feed Specialties Co., Inc.)
133–839	Virginiamycin Type B medicated feed.	Do. (Former sponsor MAC-PAGE, Inc.)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 10–661, 45–690, 97–289, 133–361, and 133–839 and all supplements and amendments thereto is hereby withdrawn, effective February 27, 1995.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is: (1) Amending 21 CFR 558.625 by removing and reserving paragraphs (b)(11) and (b)(15) to reflect the withdrawal of approval of NADA's 45–690 and 97–289 and (2) amending 21 CFR 558.635(b)(2) to reflect the withdrawal of approval of NADA's 133–361 and 133–839. It is unnecessary to amend the regulations to reflect withdrawal of approval of NADA 10–661 because it is not codified.

Dated: January 6, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–3801 Filed 2–14–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0024]

Somatic Cell and Gene Therapy Manufacturing Issues; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), is announcing a public meeting to discuss somatic cell and gene therapy production issues. The meeting is designed to discuss several issues related to the limited access to ancillary components on the development of somatic cell and gene therapies and to solicit public testimony regarding these issues.

DATES: The public meeting will be held on Monday, March 6, 1995, from 6 p.m. to 7:30 p.m., immediately following the National Institutes of Health, Recombinant DNA Advisory Committee meeting. Submit written requests for participation and written copies or summaries of oral presentations, or any written comments for possible discussion at the meeting by February 27, 1995. Written comments may also be submitted after the meeting to the Dockets Management Branch (address below).

ADDRESSES: The public meeting will be held at the National Institutes of Health, Bldg. 31C, 9000 Rockville Pike, conference room 6, Bethesda, MD. No registration is required to attend the meeting. Submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written requests for participation and written copies or summaries of oral presentations, or any written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For information regarding the meeting: John G. Bishop, Center for Biologics Evaluation and Research (HFM–515), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–402–1336, FAX 301–496–7027.

For information regarding this notice: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: The field of gene and somatic cell therapy is rapidly evolving. FDA is interested in exploring approaches to overcome barriers to the development of novel and useful therapeutics for a variety of human diseases without diminishing patient safety. To facilitate this process, FDA is holding a public meeting to discuss practical concerns relating to gene therapy vector production and somatic cell production.

In recent months, FDA has been asked by several sponsors of clinical investigations conducted under investigational new drug applications to allow modifications to gene therapy protocols, due to limited access to critical reagents and products, e.g., growth factors used in the expansion of cells for somatic cell and gene therapies. Limited access to ancillary components could potentially lead to the adoption of suboptimal somatic cell and gene therapy procedures which might affect the investigation of the safety and efficacy of somatic cell and gene therapy products. This limited access may, in the long term, unduly restrict progress in the field of somatic cell and gene therapy in the United States.

To obtain more information, FDA would like to discuss several issues related to the limited access to ancillary components on the development of somatic cell and gene therapies, including: (1) What are the ancillary components that are most critical to somatic cell and gene therapy trials? (2) What are the main reasons for the lack of availability of ancillary components? (3) Are there alternate suppliers of ancillary components? and (4) What is the impact of the limited supply of ancillary components on somatic cell and gene therapy development?

FDA is soliciting public testimony from biomedical researchers, university faculty and administrators, biotechnology associations, other Federal and government agencies, and other individuals and organizations with relevant information concerning limited access to critical ancillary componets for gene therapy and somatic cell therapy manufacturing. FDA also solicits testimony, in particular, from affected individuals and consumer organizations. All interested parties are invited to participate in the meeting.

Every effort will be made to accommodate each person who wants to participate in the public meeting. However, because presentations will be limited to the first 30 minutes of the meeting, the time allotted for each presentation will be restricted to 5 minutes. Due to the time limitations of the meeting, all requests may not be granted. Therefore, each person who wants to participate in the meeting is encouraged, by close of business on February 27, 1995, to do the following: (1) File a written request of participation containing the name, address, phone number, facsimile number, affiliation, if any, of the participant, and topic of the presentation, and (2) submit a copy or summary of their presentation. The requested information, including the written notice of participation, may be submitted to the Dockets Management Branch (address above). After the presentations, the remainder of the meeting will be used to allow for discussion.

Before the meeting, CBER will determine the schedule for the presenters. A schedule of the presenters will be filed with the Dockets Management Branch (address above) and mailed or FAX'ed to each participant before the meeting. Interested persons attending the meeting who did not request an opportunity to make a presentation or those who did request an opportunity to make a presentation but due to the time limitations were not granted the request will be given the opportunity to make an oral presentation at the conclusion the meeting, as time permits.

FDA will consider information presented and discussed at the meeting in the developing of future points to consider and regulatory and guidance documents, and in identifying topics for future discussion.

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript of the public meeting and copies of information and comments submitted to the meeting record will be available for examination at the Dockets Management Branch (address above) approximately 15 working days after the meeting, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 10, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–3800 Filed 2–10–95; 3:00 pm]

BILLING CODE 4160–01–F

Indian Health Service

Health Professions Preparatory, Pregraduate and Indian Health Scholarship (Professions) Programs

AGENCY: Indian Health Service, HHS.

ACTION: Standing Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Scholarship (Professions) Programs for Fiscal Years (FYs) 1995 and 1996.

SUMMARY: The Indian Health Service (IHS) announces the availability of approximately $3,578,200 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 1995 awards. Pending the availability of funds, a similar amount is anticipated in FY 1996. These programs are authorized by section 103 of the Indian health Care Improvement Act (IHCIA), Pub. L. 94–437, as amended by Pub. L. 100–713 and by Pub. L. 102–573.

The Indian Health Scholarship (Professions) Program, authorized by section 104 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713 and by Pub. L. 102–573, has approximately $8,160,751 available for FY 1995 awards. Pending the availability of funds, a similar amount is anticipated in FY 1996.

Scholarships under the three programs will be awarded utilizing the Notice of Grant Award, form PHS–5152–1 (Rev. 7/92). For academic years 1995–1996 and 1996–1997, full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Health Professions Preparatory Scholarship Program is listed as No. 93–123 in the Office of Management and Budget Catalog of Federal Domestic Assistance (CFDA). The Health Professions Pregraduate Scholarship Program is listed as No. 93.971, and the Indian Health Scholarship (Professions) Program is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based programs. Potential applicants may obtain a copy of *Healthy People 2000*, (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

DATES: The application deadline is April 1, 1995 and 1996. If April 1 falls on the week-end, the application will be due on the following Monday. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDRESSES: Application packets may be obtained by calling or writing to the addresses listed below. The IHS Scholarship Program application forms include: IHS–856, 856–2 through 856–8, 815, 816, 818 and, F–01 through L–04 (approved under OMB No. 0917–0006, expires 12/31/97).

IHS area office and States/locality served	Scholarship coordinator/address
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Alice LaFontaine, Scholarship Coordinator, IHS Aberdeen Area, Federal Building, 115 4th Avenue, SE, Aberdeen, SD 57401, Tele: 605–226–7553.
Alaska Area Native Health Service: Alaska	Ms. Rose Jerue, Scholarship Coordinator, IHS Alaska Area, 250 Gambell Street, Anchorage, Alaska 99501, Tele: 907–257–1307.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Alvina Waseta, Scholarship Coordinator, IHS Albuquerque Area, 505 Marquette, NW., Suite 1502, Albuquerque, NM 87102, Tele: 505–766–2143.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin	Mr. Dennis O'Keefe, Scholarship Coordinator, IHS Bemidji Area, 203 Federal Building, Bemidji, MN 56601, Tele: 218–759–3377.
Billings Area IHS: Montana, Wyoming	Mr. Sandy Macdonald, Scholarship Coordinator, IHS Billings Area, P.O. Box 2143, Billings, MT 59103–6601, Tele: 406–657–6909.
California Area IHS: California, Hawaii	Ms. Michelle Hadsell/Luana Hill, Scholarship Coordinator, IHS California Area, 1825 Bell Street—Suite 200, Sacramento, CA 95825–4202, Tele: 916–566–7001.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, District of Columbia, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.	Mr. Steven Holder, Scholarship Coordinator, IHS Nashville Area, 3310 Perimeter Hill Drive, Nashville, TN 37211, Tele: 615–736–2431.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Rosalinda Allison, Scholarship Coordinator, IHS Navajo Area, P.O. Box 9020, Window Rock, AZ 86515–9020, Tele: 602–871–1367.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma	Mr. Jim Ingram/Ms. Barbara Roy, Scholarship Coordinator, IHS Oklahoma City Area, 3625 N.W. 56th Street, Five Corporate Plaza, Oklahoma City, OK 73211, Tele: 405–945–6939.
Phoenix Area IHS: Arizona, Nevada, Utah	Mr. Eric LaRose, Scholarship Coordinator, IHS Phoenix Area, 3738 N. 16th Street—Suite A, Phoenix, AZ 85016–5981. Tele: 602–261–2066.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Darlene Marcellay, Scholarship Coordinator, IHS Portland Area, 1220 SW 3rd Street, Rm 315, Portland, OR 97204–2892, Tele: 503–326–2019.
Tucson Area IHS: Arizona, Texas	Ms. Adeline Horst, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road, Tucson, AZ 85746, Tele: 602–295–2484.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Ms. Rosh Foley, Acting Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza Building, Suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–6197. (This is not a toll free number.) For grants information, contact Ms. Patricia Lee-McCoy, Grants Scholarship Coordinator, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–0243. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs are authorized by section 103 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 96–537, Indian Health Care Amendments of 1980; Pub. L. 100–713, Indian Health Care Amendments of 1988; and Pub. L. 102–573, Indian Health Care Amendments of 1992.

The Indian Health Scholarship (Professions) Program, formerly authorized by section 3381 of the Public Health Service Act (42 U.S.C. 254r), is now authorized by section 104 of the IHCIA, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713 and Pub. L. 102–573, Indian Health Care Amendments of 1992.

A. General Program Purpose

These scholarship programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professions to serve Indians.

B. Eligibility Requirements

1. The Health Professions Preparatory Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and the part-time equivalent of 2 years not to exceed 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

3. The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized tribe as provided by section 104, 4(c), and 4(d) of the IHCIA. Membership in a tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursing a course of study in a health profession as defined by section 4(n) of the IHCIA. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

Awards of Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338C of the Public Health Service Act

(43 U.S.C. 244m) which shall be met by service:

(1) In Indian Health Service;

(2) In a program conducted under a contract entered into under the Indian Self-Determination Act;

(3) In a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Pursuant to the Indian Health Amendment of 1992 (Pub. L. 102–573) a recipient of an Indian Health Scholarship (Professions) may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338c of the Public Health Service Act (42 U.S.C. 254m) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the tribe in which the recipient is enrolled; or

(ii) Serves the tribe in which the recipient is enrolled.

In summary, all recipients of Indian Health Scholarship (Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713 and Pub. L. 102–573.

C. Fund Availability

Both part-time and full-time scholarship awards will be made in accordance with regulations and 42 CFR 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 238 awards, 92 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians in each fiscal year covered by this standing announcement. The awards are for 10 months in duration and the average award to a full-time student is approximately $15,000. In FY 1995, approximately $1,380,000 is available for continuation awards and approximately $2,190,000 is available for new awards. Pending the availability of funds, a similar amount is anticipated to be available in FY 1996.

Approximately 453 awards, 350 of which are continuing, will be made under the Indian Health Scholarship (Professions) program in each fiscal year covered by this announcement. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration and the average award to a full-time student is for approximately $18,000. In FY 1995, approximately $6,300,000 is available for continuation awards, and $1,860,751 is available for new awards. Pending availability of funds, a similar amount is anticipated for FY 1996.

No more than 20% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status.

D. Criteria for Evaluation

Applicants will be evaluated against the following criteria:

1. *Needs of the IHS.* Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. *Academic performance.* Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. *Faculty/employer recommendations.* Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related professions.

4. *Stated reasons for asking for the scholarship and stated career goals.* Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on content and how well it is written.

5. *Applicants who are closest to graduation or completion are awarded first.* For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores

E. Priority Categories

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate Scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. The lists of priority health professions that follow, by scholarship program, and based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

1. *Health Professions Preparatory Scholarships.* (Below is the list of disciplines to be supported and priority is based on academic level)
   - A. Pre-Medical Technology
   - B. Pre-Dietetics.
   - C. Pre-Nursing.
   - D. Pre-Pharmacy.
   - E. Pre-Physical Therapy.
   - F. Pre-Social Work (JR and SR undergraduate years).
2. *Health Professions Pregraduate Scholarships.* (Below is the list of disciplines to be supported and priority is based on academic level Senior, Junior, Sophomore, Freshman)
   - A. Pre-Dentistry.
   - B. Pre-Medicine.
3. *Indian Health Scholarships (Professions).* (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior Sophomore, Freshman)
   - A. Associate Degree Nurse.
   - B. Chemical Dependency Counseling
   - C. Clinical Psychology: PH.D. only
   - D. Computer Science: B.S
   - E. Dentistry
   - F. Dietician: B.S.
   - G. Engineering: B.S. Civil
   - H. Health Education: Masters level only.
   - I. Health Records: A.R.T. and R.R.T
   - J. Medical Technology: B.S.
   - K. Medical Social Work: Masters level only.
   - L. Medicine: Allopathic and Osteopathic.
   - M. Nurse Practitioner: R.N.A. and F.N.P.
   - N. Nurse Midwife: C.N.M.
   - O. B.S. Nurse.*
   - P. M.S. Nurse.*

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*(Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under title V of the Indian Health Care Improvement Act.)

Q. Optometry.
R. Para-Optometric.
S. Pharmacy: B.S.
T Physician Assistant: B.S.
U Physical Therapy.
V Podiatry: D.P.M.
W Public Health: M.P.H. only. (Applicants must be enrolled or accepted in a school of public health in specialty areas such as Dietetics and Community Development in health).
X. Public Health Nutrition: Masters level only.
Y Radiologic Technology: Associate and B.S.
Z. Respiratory Therapy: Associate.
AA. Sonography.

Interested individuals are reminded that the list of eligible health and allied health professions is effective for the applicants for the 2 academic years covered by this standing announcement. These priorities will remain in effect until superseded.

Dated: February 7, 1995

Michael H. Trujillo,

Assistant Surgeon General, Director

[FR Doc. 95-3740 Filed 2-14-95; 8:45 am]

BILLING CODE 4160-16-M

Health Resources and Services Administration

Federal Financial Assistance for Rural Regional Trauma and Emergency Medical Services System Demonstration Project in South Central Florida

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), Public Health Service, Department of Health and Human Services, announces the availability of funds in Fiscal Year (FY) 1995 for a grant to support the development of a rural regional Trauma and Emergency Medical Services (EMS) System in South Central Florida for a one year project period. The successful applicant will develop a plan to integrate existing rural emergency services (EMS), local community hospitals, a metropolitan tertiary care center/level I trauma center and its medical helicopter to develop a regionalized system of care. This project is intended to serve as a model for other rural, underserved areas of the United States.

Authority

The award will be made from funds appropriated under Pub. L. 103-333 (HHS Appropriation Act for FY 1995). The Senate Committee on Appropriations Report 103-318, included a set-aside to support the Rural Regional Trauma and EMS System Demonstration Project under the FY 1995 appropriations to support Outreach grants. Grants for these projects are authorized under Section 301 of the Public Health Service Act.

Eligible Applicants

Justification for Other Than Full and Open Competition

In the Senate Committee on Appropriations Report 103-318, the Senate directed this demonstration project grant award to be made only to an entity located in South Central Florida. Specifically, the eligible applicant must be located either in an urban-based, level I trauma hospital in Florida, or in one of the Florida counties comprising the demonstration grant service area (Okeechobee, Highlands, Hendry, DeSoto, Glades, or Hardee County). The applicant can be a public or private, not-for profit entity. The Department agrees that this set-aside will further program objectives.

Funds Available

An estimated total award of up to $600,000 will be available to support a single grant project for a one-year grant period.

Cost Participation

Cost participation serves as an indicator of community and institutional support for the project and the likelihood that the project will continue after Federal grant support has ended. The successful applicant must share in the project costs by providing equipment, personnel, building space, indirect costs, other in-kind contributions, or cash.

DATES: Applications for the program must be received by the close of business on April 25, 1995. Completed applications must be sent to the Bureau of Primary Health Care at the address shown below. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESSES: Requests for grant application kits should be directed to Lt Colleen Hennessy, Program Management, Office of Rural Health Policy, 5600 Fishers Lane, Room 9-05, Rockville, Maryland, 20857, telephone: 301/443-0835. Completed applications and requests for additional information regarding business or fiscal issues should be directed to Ms. Opal McCarthy, Grants Management, at the Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Bethesda, Maryland 20857, telephone: (301) 594-4260. The standard application form and general instructions for completing applications (Form PHS 5161-1, OMB 0937-0189) have been approved by the Office of Management and Budget (OMB).

FOR FURTHER INFORMATION CONTACT: Requests of a programmatic nature should be directed to Lt. Colleen Hennessy, at the Office of Rural Health Policy, 5600 Fishers Lane, Room 9-05, Rockville, Maryland, 20857, telephone: 301/443-0835.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the Rural Regional Trauma and EMS System Demonstration Project is to support the development of a regional trauma and EMS system to serve rural communities. The successful applicant will integrate existing rural prehospital providers (EMS), local community hospitals, and rural community providers, with a metropolitan tertiary care center/level I trauma center and its aeromedical transport services, into a services network that is capable of improving emergency services to rural populations Specifically, these rural populations are located in the Florida counties of Okeechobee, Highlands, Hendry, DeSoto, Glades, and Hardee; and are comprised of medically underserved populations, such as migrant laborers and Native Americans. Currently these populations do not receive timely, comprehensive trauma care.

Consistent with the requirements of the Rural Health Outreach Program, under which this demonstration project is funded, all qualified applicants must develop consortia of three or more participatory entities, each of which must play an active contributory role in the project. All of these entities, with the exception of the level I trauma center, must be located in rural areas within the proposed grant service area. The rural-urban partnership MUST have a reciprocal relationship, a thorough understanding of the needs of rural populations, and a sustained dedication to serving these needs. Consortia should also include representation from the special populations, such as tribal organizations or migrant laborers, which will also be expected to contribute an active role in implementing the demonstration project. The successful application must also include a plan to enhance the capability and resources of rural communities to provide emergency medical services. Suggested approaches might include the provision of on-site, emergency medical services training and certification, first responder and community education to rural community members, rural providers and emergency services volunteers. The project must have the support of the Florida State Office of EMS and have been coordinated with the state's comprehensive trauma plan.

The goals of this program are as follows: (1) Increase access to aeromedical transport services by the rural EMS providers; (2) improve response times to the scenes of injuries in remote areas of these counties; (3) increase access to critical trauma services to the medically underserved, regardless of ability to pay; and (4) improve transport times of critically ill or injured citizens to tertiary care.

Review Consideration

All eligible applications will be evaluated on the basis of the following criteria:

(1) The extent to which the project facilitates the development of a comprehensive, integrated, regional trauma and EMS system to all rural populations within the specified grant service area. The plan should conform to guidelines presented in the *Model Trauma Care Systems Plan* ordered by Congress under Title XII of the Public Health Service Act (Pub. L. 101-590), a copy of which will be provided to all potential applicants in the application package.

(2) The strength of the relationships among members of the consortium, demonstrated by the degree of reciprocity and commitment reflected in contractual arrangements and letters of support, and in the breadth and selection of a consortium that fairly represents the rural populations and existing services located in the specified grant service area.

(3) The level of local commitment and involvement with the project, as demonstrated by the extent to which cost participation by the applicant and/or other organizations is employed.

(4) A demonstrated capability, experience, dedication, and knowledge of the applicant, as well as others, who will be responsible for the project.

(5) The extent to which the applicant has developed measurable goals and objectives for meeting the need(s).

(6) The reasonableness of the budget proposed for the project, and the feasibility for plans to sustain project services after Federal grant support has ended.

(7) The extent to which the proposed project will be capable of replication in rural areas with similar needs and characteristics, particularly with regard to its affordability by other communities.

Other Information

The successful applicant will be permitted to spend no more than 15 percent of the total amount awarded for administrative costs. More than 50 percent of the funds awarded must be spent in rural areas. Services provided by the grant may not be restricted to only those patients with the ability to pay. Grant funds may not be used to purchase or construct real property. Equipment and renovation costs of up to 40 percent of the Federal share of the project are allowable, if the costs are supported with written justification and are in accordance with the program objectives of the demonstration grant. The allowability of other costs will be governed by applicable regulations.

Applicants are advised that the narrative description of their program and the budget justification may not exceed 30 pages in length. All applications must be typewritten and clearly legible.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—# 0937-0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424).

b. A summary of the project not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

The Rural Health Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more then one State, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Rockville, Maryland 20857, (301) 594-4260. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

This is intended to be a one-time program. Therefore, a Catalogue of Federal Domestic Assistance number has not been requested.

Dated: February 9, 1995

Ciro V. Sumaya,

Administrator.

[FR Doc. 95-3739 Filed 2-14-95; 8:45 am]

BILLING CODE 4160-15-P

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Social Security Administration

Privacy Act 1974; Computer Matching Programs (Model for SSA/State and Local Governments Match of Prisoner Data, Match #1002)

AGENCY: Social Security Administration, HHS

ACTION: Notice of Computer Matching Programs

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces computer matching programs that SSA plans to conduct

DATES: SSA will file a report of the subject matching programs with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching programs will be effective as indicated below

ADDRESSES: Interested parties may comment on this notice by either facsimile to (410) 966–5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal Agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that these computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: February 3, 1995

Shirley S. Chater,

Commissioner of Social Security

Notice of Computer Matching Program, State and Local Government Prisoner Data Systems With the Social Security Administration (SSA)

A. Participating Agencies

SSA and State and Local Governments.

B. Purpose of the Matching Program

Section 202(x)(1) of the Social Security Act (the Act) prevents SSA from paying Old-Age, Survivors, and Disability Insurance benefits to certain prisoners. Section 1611(e)(1)(A) of the Act provides, with some exceptions, that inmates in public institutions are not eligible for payments under the Supplemental Security Income program.

The purpose of these matching programs is to assist SSA in enforcing these provisions.

C. Authority for Conducting the Matching Program

Section 202(x)(1), 1611(e)(1)(A), 202(x)(3), and 1631(e)(1)(a) of the Act.

D. Categories of Records and Individuals Covered by the Matching Programs

State and Local Government Prison Systems will submit names and other identifying information of prisoners from Prisoner Data Systems. The SSA Master Files of Social Security Number Holders and Social Security Number Applications contains the SSNs and identifying information for all SSN holders. The SSA Master Beneficiary Record and Supplemental Security Income Record contain beneficiary and payment information.

E. Inclusive Dates of the Match

These matching programs shall become effective 40 days after a copy of the model agreement, as approved by the responsible Data Integrity Board, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, or after both parties to each individual agreement have signed the agreement, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met

[FR Doc. 95–3673 Filed 2–14–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. R–95–1762; FR–3709–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 2, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Moderate Rehabilitation; Rent Adjustments; Annual and Special Adjustments; Comparability Studies; and Rent Reductions (FR–3709).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 801(c) of the HUD Reform Act of 1989 recognized HUD's authority to perform comparability studies "in order to establish rents that are not materially different from rents charged for comparable unassisted units." Section 142 of the Housing Community Development Act of 1992 allows HUD to give special rent adjustments for increased costs due to expiration of real property tax exemption. Section 8(c)(2)(B) of the United States Housing Act allows HUD to make special rent adjustments for "similar costs," other than those enumerated, to the extent HUD determines such adjustments are necessary to reflect increase expenses of owning and maintaining the units.

Form Number: None.

Respondents: Businesses or Other For-Profit, Not-For-Profit Institutions, Federal Government, and State, Local, or Tribal Government.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	797		1		9.74		7,761

Total Estimated Burden Hours: 7,761

Status: New.

Contact: Madeline Hasting, HUD. (202) 708–2841; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 2, 1995.

[FR Doc. 95–3727 Filed 2–14–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–95–3884]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject propsal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: February 2, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division

Notice of Submission of Proposed Information Collection to OMB

Proposal: American Housing Survey—1995 National Sample

Office: Policy Development and Research

Description of the Need for the Information and Its Proposed Use: The 1995 AHS-National is a longitudinal study that collects current information on the quality, availability, and cost of the housing inventory. It also provides information on the characteristic of occupants. Federal and local government agencies use AHS data to evaluate housing issues.

Form Number: AHS–21, 22, 23, 26(L), 28(L) and 398

Respondents: Individuals or Households

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Survey	59,000		1		.54		31,911

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Total Estimated Burden Hours: 31,911
Status: Reinstatement with changes
Contact: Duane T. McGough, HUD, (202) 708–1060; Joseph F. Lackey, Jr., OMB. (202) 395–7316.

Dated: February 2, 1995.

[FR Doc. 95–3728 Filed 2–14–95; 8:45 am]
BILLING CODE 4210-01-M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N–95–3883]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

DATES: Comments must be received on or before February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone no. (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB for expedited processing an information collection package with respect to "Impact of Disaster on Low-Income Rental Housing: Lessons from the Northridge Earthquake". HUD is requesting a 10 day OMB review of this information collection.

HUD is interested in learning as much as possible from the recent earthquake experience in Los Angeles so that the multifamily rebuilding process occurs efficiently and loss of low-income rental housing can be minimized when the next large-scale disaster strikes. This study will provide HUD systematic information about the impact of the earthquake on low-income rental housing.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency from number, if applicable;

(5) What members of the public will affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 1, 1995.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Information Collection Associated with the "Impact of Disaster on Low-Income Rental Housing: Lessons from the Northridge Earthquake".

Office: Office of Police Development and Research

Description of the need for proposed information and its proposed use: On January 17, 1994, a severe earthquake struck the Los Angeles metropolitan area, causing considerable damage to area housing. Reconstruction presented a major challenge for local, state and federal housing officials, especially reconstruction of low-income rental housing, a segment of the market particularly vulnerable to loss. The study will provide systematic information about the impact of the Northridge earthquake on low-income rental housing. Four data collection instruments will be used: (1) the Property-Owner Survey will be used to address a number issue, including the extent of earthquake damage, the physical and financial characteristics of damaged properties, owner reconstruction plans and financing, and recommended improvements to public assistance programs; (2) the Sample Monitoring Survey will explore major changes in reconstruction plans stated during the initial data collection effort; (3) the Follow-up Surveys will determine progress of reconstruction efforts, and identify major changes in stated reconstruction plans; and (4) the case study interview guide will detail the resources being used for reconstruction and problems being encountered by owners as well as detailed characteristics of the projects before and after the quake.

Form Number: None

Respondents: Property Owners of properties affected by the Northridge Earthquake

Frequency of Submission: On time.

Reporting Burden:

Form	Respondents	No. of respondents	Time to complete	Frequency	Burden hours
Property-owner	Property-owners	250	30 min	1	125
Sample monitoring	Property-owners	60	5 min	1	3
Follow-up	Property-owners	200	10 min	1	33.3
Case study	Property-owners	20	120 min	1	40

BILLING CODE: 4210–33–M

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SECTION A: JUSTIFICATION

A.1 Circumstances That Make Information Collection Necessary

On January 17, 1994, a severe earthquake struck the Los Angeles metropolitan area, causing considerable damage to area housing. Reconstruction presented a major challenge for local, state and federal housing officials, especially reconstruction of low-income rental housing, a segment of the market particularly vulnerable to loss. This study will provide the U.S. Department of Housing and Urban Development (HUD) systematic information about the impact of the Northridge earthquake on low-income rental housing.

Several factors exacerbate the problems related to reconstruction in the low-income segment of the rental market. In some instances it may not be economically viable to rebuild low-income rental properties because the return on investment is too small; in others it may be profitable to rebuild low-income housing, but for a higher income clientele. Although assistance programs can mitigate some of these exacerbating factors, experience in the aftermath of the Loma Prieta earthquake suggests it may be more difficult to use public assistance to reconstruct multifamily as opposed to single-family buildings, and therefore more difficult to rebuild low-income rental housing.[1] This study's ultimate goal is to insure that HUD policy-makers learn as much as possible from the recent earthquake experience in Los Angeles so that the multifamily rebuilding process occurs efficiently and so that loss of low-income rental housing can be minimized when the next large-scale disaster strikes.

Specifically, the study's objectives are as follows:

- To estimate the extent of damage to Los Angeles area low-income rental housing.
- To document the financial, physical and other characteristics of damaged low-income properties, before and after the earthquake.
- To estimate the extent to which damaged low-income rental properties are being rebuilt and retained for low-income occupancy.
- To document the financial resources low-income rental property-owners employ for reconstruction, including federal, state and local disaster assistance.
- And, finally, to assess housing and emergency relief programs and recommend potential improvements so that the supply of low-income housing is preserved and restored as efficiently as possible after future disasters.

To meet these objectives, the study will employ a multifaceted information-gathering approach. To the extent possible, the study will rely on analysis of existing automated datasets

[1] See Comerio, Mary, John Landis, and Yodan Rofle. 1994. *Post-Disaster Residential Building.* Draft Report. Institute of Urban and Regional Development, University of California at Berkeley.

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and documentation of federal, state and local earthquake assistance programs, however information from these sources is of limited utility. Secondary information can help sketch a profile of damaged low-income rental housing, for example, but can not indicate what share of damaged properties will be rebuilt. To supplement secondary information, therefore, the study will survey owners of earthquake-damaged low-income rental properties to solicit first-hand information about reconstruction plans, obstacles to reconstruction, and the effectiveness of current public assistance programs.

A.2 Use and Users of Information–Overview of Data Requirements

The purpose of the information collected under this project is to help document the Northridge earthquake's impact on Los Angeles area low income rental housing and to aid in the assessment public disaster assistance programs. The data will be used by the Urban Institute (UI) and its subcontractor, Hamilton, Rabinovitz and Alschuler, Inc. (HR&A), to prepare initial and final reports for HUD's Office of Policy Development and Research. The purpose for each of the study's four data collection instruments is outlined below:

- *Property-Owner Survey.* A property-owner survey instrument (see Annex A) will be administered by telephone to a stratified, random sample of 250 property-owners during the study's initial data collection cycle. It will ask about a range of issues, including the extent of earthquake damage, the physical and financial characteristics of damaged properties, owner reconstruction plans and financing, and recommended improvements to public assistance programs.

- *Sample Monitoring Survey.* A sample monitoring instrument (see Annex B) will be administered by telephone to a subset of the sampled property-owners approximately four months after administration of the initial instrument. This instrument will explore major changes in reconstruction plans stated during the initial data collection effort.

- *Follow-Up Surveys.* Follow-up surveys will be conducted by telephone for two subsets of the property-owner sample according to their response about reconstruction plans at the time of the initial survey (or the sample monitoring process if they were contacted then) Specifically, follow-up surveys will be administered to 1) property-owners who initially planned to rebuild (see Annex C), and 2) property-owners who initially were undecided about reconstruction (see Annex D). These two instruments will determine the progress of reconstruction efforts, and identify major changes in stated reconstruction plans.

- *Case Studies.* Case studies of 20 damaged low-income properties will be conducted to provide a detailed illustration of the resources being used for reconstruction and problems being encountered by owners. Case studies will also detail the physical characteristics and financial status of properties prior to the quake, the level of damage sustained, and the process involved with applying for and using public disaster assistance. Case studies will follow an interview guide (see Annex E), and will be conducted in-person during the study's initial data collection phase.

Along with initial and final reports, the research team will transfer the results of the study's telephone surveys to HUD in an automated form.

A.3 Consideration of the Use of Improved Information Technology.

The Urban Institute and HR&A will use all available information technology in an effort to efficiently gather information from a population in which data collection is traditionally difficult and to reduce the burden to respondents.

To minimize the number of calls required to locate owners of properties sampled for the initial telephone survey, the property sample will be address-matched against existing automated data files to identify telephone numbers. The first resource, FEMA's automated disaster assistance file, provides information about applicants for FEMA assistance after the Northridge earthquake including those identified as multi-family apartment building owners. To the extent a merge with the FEMA file leaves gaps in our contact information, the research team will use the Assessor's parcel numbers for sampled properties (provided on an automated California Office of Emergency Services dataset) to address-match sampled properties with a proprietary database maintained by TRW-REDI. The TRW-REDI data include information on the owner's name and their telephone numbers. As a final resource, CD-ROMs with personal and business telephone numbers will be used to locate missing contact information.

Once contact has been made with an eligible respondent, a Computer Assisted Telephone Interview (CATI) system will guide the interviewer through the questionnaire. A CATI system reduces respondent burden because it selects the correct question sequence based on the respondent's previous answers allowing the interviewer to concentrate on reading the question and entering the response, not searching for the correct next question. This technology also requires the entry of consistent data which falls into appropriate ranges thus eliminating editing time while the respondent is on the telephone. A CATI system will be used for all three of the study's telephone surveys.

A.4 Efforts to Identify Duplication

This study will build on, not duplicate existing information about the reconstruction of housing in the aftermath of a disaster. This is the first such effort to collect systematic, first-hand information about the impact of disaster on low income rental housing and the effectiveness of public support for reconstruction of housing in this segment of the housing market.

A.5 Why Similar, Already Available Data Cannot Be Used

As noted above, this is the first such effort to collect systematic, first-hand information about the impact of disaster on low income rental housing. Nevertheless, every attempt will be made to use existing automated data sources to meet the study's objectives. These sources are described below, and include 1) information about earthquake damage to residential structures, and 2) information about apartment owner applications for government assistance to repair earthquake damage.

- *Earthquake Damage to Residential Structures.* The California Office of Emergency Services (OES) dataset provides comprehensive information on residential building damage caused by the Northridge earthquake. The OES was responsible for initially

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assembling the damage database in the months following the earthquake and continues to be responsible for the day-to-day maintenance of the data at this time. This database is primarily based on the results of earthquake damage inspections made by local building and safety departments in the study area. In addition to information about the extent of damage sustained by buildings as a result of the earthquake, the database includes information on the general characteristics of the inspected buildings (e.g., date and type of construction). OES staff have also merged other building level data from files prepared by the County Assessor.

- *Applications For Assistance To Repair Earthquake Damage.* The study will also use datasets maintained by federal, state and local agencies that record owner applications for financial assistance to repair earthquake damage. These data sources include FEMA's comprehensive dataset with information about relief applicants, the SBA's dataset regarding applications for aid, and data describing applications to HUD's HELP Program. Datasets describing state and local programs will be collected and utilized to the extent such these sources can be identified and obtained. Together these datasets can provide a comprehensive profile of participation in government assistance programs by owners of damaged apartment buildings.

A.6 Minimizing the Burden to Small Businesses and Other Small Entities.

This study's major research objectives necessitate collection of first-hand information about the experiences, intentions, and motivation of owners of properties damaged by the earthquake. Having said that, as discussed in item A.3, the use of a CATI system minimizes the burden associated with the means of administering the study's three telephone surveys. To minimize the burden for individual case study respondents, every attempt will be made to minimize overlap between case study and telephone survey samples.

A.7 Consequences of Less Frequent Data Collection.

As noted above, the project includes an initial data collection phase during which a telephone survey and case studies will be conducted, and two follow-on telephone surveys--the monitoring survey approximately 4 months after the initial data collection phase, and a follow-up survey about 4 months after that.

The study's follow-on surveys are important because of uncertainty about the earthquake's *long-term* impact on the low-income segment of the Los Angeles rental housing market. In the absence of any previous studies of this issue, it is unclear whether property owners will adhere to their initial decisions about reconstruction, or for that matter whether reconstruction plans will actually be carried out. For instance, initial support for reconstruction may be undermined by problems associated with financing improvements. Therefore, the *potential* consequence of not conducting the project's two follow-on surveys would be to provide an inaccurate description of the earthquake's impact.

A.8 Special Circumstances Requiring Inconsistency with 5 CFR 1320.6.

All data collection procedures and data collection instruments have been designed in a manner which is in compliance with all sections of 5 CFR 1320.6. No exceptions are requested.

A.9 Consultations with Persons Outside the Agency.

The survey design and data collection instruments have been developed by the Urban Institute and the its subcontractor, HR&A, under contract with HUD. To date, development of the draft instruments has involved three steps. First, specification of concepts to be explored through the telephone surveys and case studies by project staff at HUD, UI and HR&A, with subsequent review by other members of the HR&A team and an outside expert on disaster rebuilding who previously worked on policies arising from the Loma Prieta earthquake. Second, translation of these concepts into specific questions to be asked of owners and, for the telephone surveys, response options. And, third, incorporation of feedback on the draft instruments from project staff at UI and HUD.

A.10 Confidentiality

A letter of introduction from the Apartment Owners Association of Greater Los Angeles will be mailed to all owners in the sample, urging cooperation in providing information for the study and stressing the confidentiality of responses (see Annex F). All respondents will be assured that information that they provide will remain confidential, and that they can refuse to answer any individual question during the interview. For the most part, analyses will present data at an aggregate level. Where necessary for illustrative purposes, information about the experience of a particular property-owner or at a particular building will be presented without identifying the respondent's name or address. No names, addresses, or telephone numbers will be included in the data files delivered to HUD.

A.11 Justification for Questions of a Sensitive Nature

Some respondents may be reluctant to answer some questions because of their sensitive nature, especially questions about the financial characteristics of damaged properties. In designing the telephone questionnaires, every attempt has been made to minimize the amount of financial information requested, however this information is essential to gauge the economic context for reconstruction decisions and experience. When the data collection instruments are pre-tested, a special effort will be made to identify questions of a sensitive nature that respondents are unwilling to answer. To the extent possible, these questions will be replaced.

The case studies will require more detailed financial information, however, respondents will be forewarned about the sensitive nature of some of the questions to be asked, and given the opportunity not to participate. Case study participants should only include respondents willing to reveal financial details about the low-income rental property in question.

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A.12 Estimates of Cost

The full cost of this study including survey design, sampling, data collection, analysis and report preparation is $145,014.

A.13 Estimates of Respondent Burden

The total estimated burden for survey respondents is 12,200 minutes or 203 hours. This total is broken down as follows:

Survey Instrument	*Estimated No. of Respondents*	*Estimated Mins. Per Respondent*	*Total*
Property-owner	250	30	7,500
Sample monitoring	60	5	300
Follow-up	200	10	2,000
Case study	20	120	2,400
			12,200

A.14 Reasons for Change In Respondent Burden

This is a one time data collection effort. Question does not apply.

A.15 Plans for Publication and Statistical Tabulation.

The research team will produce two reports detailing the results of the study's surveys. The initial report will present findings from secondary data analysis, the initial telephone survey and case studies. A large part of this analysis will document the specific outcomes of the Northridge Earthquake, however, special attention will be given to considering how lessons learnt from this disaster can be applied to other situations involving the catastrophic loss of housing. The study's final report will summarize findings from the initial project report and provide an update based on findings from the sample monitoring and final survey efforts. This update will include information about the extent to which low-income rental properties are being rebuilt, reasons for these decisions, and overall implications of this final result for the Los Angeles area. It will also update the lessons from the Northridge Earthquake that can be applied to other disaster situations.

SECTION B: STATISTICAL METHODS OF DATA COLLECTION

B.1 Sampling Method and Respondent Universe.

B.1.1 Estimating the Universe of Damaged Low-income Rental Properties

An estimation of the universe of damaged low-income rental housing will form the study's sampling frame, and will involve three steps: 1) operational definition and identification of the universe of damaged rental properties, 2) operational definition and estimation of the universe of low-income housing, and 3) combination of datasets to create a database with damaged low-income rental properties. These steps are described in detail below.

Damaged Rental Property Universe. Since there is no generally accepted definition of what constitutes damaged housing, a definition is required to conduct empirical analysis. For the purposes of this study, the universe of "damaged" buildings is defined as properties in Los Angeles County, inspected for earthquake damage, that were determined by local building and safety inspectors to be either "unsafe" for occupancy ("red tagged"), or suitable only for "limited entry" occupancy ("yellow tagged").

Initial analysis of the OES dataset shows that almost all (95%) of the residential buildings inspected for damage and almost all (about 96%) buildings actually damaged in the Northridge earthquake are located in Los Angeles County. We therefore do not plan to include the 3,000 red and yellow tagged properties in Ventura County, the County with the next highest damage level after Los Angeles, in the universe for sampling because of the modest scale of damage relative to Los Angeles County, and because it is likely that the reconstruction problems in Los Angeles County are similar to those experienced in Ventura.

According to the proposed definition, properties with one or more units that are not suitable for continuous occupancy are considered "damaged." This definition excludes inspected properties that were found to be "safe for regular use" ("green tagged") although many green tagged buildings have sustained considerable cosmetic and non-life threatening structural damage. Given this operational definition of damaged properties, approximately 15% of all inspected residential properties in Los Angeles County were damaged by the Northridge earthquake, including 14,100 buildings and 70,000 dwelling units.

In this study, the universe of damaged rental properties is restricted to multi-family structures and excludes all detached single-family units occupied by renters. Single family properties are excluded from the study for two reasons. First, low-income households are much less likely to reside in single family rental units than in multi-family structures. Tabulation of 1990 Census data for the County of Los Angeles indicates that approximately 9% of all low-income

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households resided in single family units, while 91% resided in multifamily units.[2] Second, there is no readily available data or analytic procedure to distinguish owner-occupied from renter-occupied single family units.[3]

There are two useful definitions of multi-family properties: the HUD definition that includes properties with four or more rental units, and the Census definition that includes any building with two or more units. For sampling purposes we will use the Census definition, however secondary data analysis will be performed at both the two or more and four or more rental unit levels.

Low-Income Housing Universe. An empirical estimation of the universe of low-income rental housing must account for two low-income rental housing sub-groups:

- Properties with project-based subsidies and/or HUD mortgage insurance--these clearly constitute low-income rental housing;
- Properties without project-based subsidies or HUD insurance that are occupied by low-income households.[4]

This approach offers a number of benefits. To start, it provides a meaningful distinction between two types of low-income housing that may be affected differently by disasters Properties with project-based subsidies essentially reserve affordable units for low-income households regardless of market forces, so it is particularly important to understand how the owners are responding to the financial and management challenges created by earthquake damage. HUD-insured properties are similarly of special interest.

Also, as described below, this approach provides a straightforward method for estimating the universe of low-income housing and for linking that universe to the California Office of Emergency Services database with information about damaged properties. In other words, it provides a clear definition of the sample frame needed to draw damaged property samples and to estimate sample weights for calculation of population parameters from survey results. Our methods for defining the two sub-groups are detailed below.

- *Properties with Project-Based Subsidies or HUD Mortgage Insurance.* This sub-group consists of the properties identified in a series of project-based subsidy and HUD insurance datasets including MIDLIS from HUD, the California Housing Finance Agency's Project Management database, and datasets on subsidized projects maintained by local housing agencies such as the City of Los Angeles Housing Department. Properties may

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[2] While 42% of LA county's single family rental stock is located in the San Fernando Valley, which includes the epicenter of the Northridge Earthquake, only 35% of the single family rental stock in the Valley is occupied by very low and low-income households, compared, for example, to 69% of the single family rental stock in South Central LA.

[3] We will also screen out condominium buildings and focus only on buildings whose primary purpose is to serve as rental housing.

[4] Our method does not *explicitly* classify properties occupied by households with tenant-based subsidies (e.g. Section 8 Certificates and Vouchers) as low-income. In the Los Angeles area, comparable buildings could provide replacement housing for households receiving tenant-based subsidies.

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appear in more than one of these datasets, so standard address matching techniques will be employed to assemble a single database with one record for each assisted or HUD-insured property.

- *Other Properties Occupied by Low-income Households.* There is no direct means of identifying low-income housing without project-based subsidies or HUD insurance, so we will rely on location as a proxy indicator for properties that can be so-classified. For this purpose we will use the CDBG block-level eligibility file.

This file includes special Census tabulations of the 1990 block group level population meeting HUD's low and very-low-income criteria--i.e. the population in households with incomes less than 80 percent of the HUD-adjusted median family income for the Los Angeles area. These data are used in the CDBG program to identify Census block groups that qualify for area-benefit expenditures, and for the purposes of the current study will be used to classify Census block group income level. Census block groups in the study area will be classified as either "low-income" or "higher income" depending the share of their population that meets HUD's low-income standard and properties located in "low-income" block groups (i.e. those with a low-income population share above a specified threshold) will be classified as low-income properties.

We will assess the impact of using alternative threshold definitions for our classification of low-income block groups on the estimated size of the low-income housing stock. We are most interested in focusing on very-low-income households and suspect that the proportion of buildings occupied by low- AND very-low-income households is large. The threshold will be established at a level that roughly equates the number the number of housing units defined as low-income for the purposes of this study with the number of very-low-income households reported in the 1990 PUMS data. The result of this analysis will a database that identifies low-income Census block groups.

Damaged Low-income Rental Property Database. Development of a sampling frame with damaged low-income rental properties will involve combination of the set of damaged rental properties identified from the California Office of Emergency Services database with 1) the set of subsidized and HUD-insured low-income properties, and 2) the set of Census block groups classified as low-income.

Combination of the OES database with the project-based dataset (subsidized & HUD-insured projects) will be performed using project street addresses. Standard address matching techniques will be employed, though to maximize the likelihood that we achieve a complete merge we will also use any additional information that may be available to uniquely or partially identify assisted or HUD-insured rental projects.

The damage database will be merged with the set of Census block groups classified as low-income for this study using the latitude and longitude indicators found on the OES dataset to place damaged properties in block groups. In the event that buildings which we would like to match are missing latitude and longitude indicators, we will geocode these buildings using property address information.

The resultant database, henceforth the low-income damage database, will identify all

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damaged low-income multi-family properties in the study area including their status as either a project-based or block-group classified low-income property. Properties identified as low-income in both the project-based and block-group matches will be assigned to the project-based category.

B.1.2 Selecting a Stratified Random Sample of Damaged Properties

In order to conduct a telephone survey of owners of damaged low-income properties, a stratified random sample will be drawn from the low-income damage database. The key tasks and issues related to the sampling procedure are described below.

A stratified random sample of damaged properties will be drawn from the damaged low-income rental housing database. Our target sample is 250 properties, but to account for non-responses due to difficulties in locating property-owners and refusals to participate in the telephone survey we will draw an initial sample of 400 properties. We will stratify the sample to ensure that an acceptable level of precision is obtained for important sub-sets of the population of damaged properties. We propose to stratify the initial sample of 400 damaged low-income rental properties in two dimensions and then draw the target 250 property sample from the two strata. The strata include:

- *Extent of Earthquake Damage--Red or Yellow Tagged Properties.* Damage data obtained from the City of Los Angeles suggest that red tagged properties comprise approximately 20% of all yellow and red tagged buildings. Increasing the precision of the population parameters for red tagged properties is especially important since they sustained the heaviest damage and are probably the best candidates for permanent removal from the low-income housing stock. Since a simple random sample of 250 properties would yield, on average, about 50 red tagged properties, stratification is necessary to increase the sample of red tagged properties. Our target sample for red-tagged properties is between 100-125.

- *Low-Income Housing Category--Project- or Location-Identified Properties.* It is likely that the sample of 250 buildings will have to be stratified to ensure an adequate number of properties with project-based subsidies or HUD insurance--i.e. those identified using a project-based method. According to the 1990 Census, only about 17 percent of Los Angeles County very-low-income households reside in subsidized housing--a simple-random sample might therefore under-represent this portion of the market. The distribution of the target sample between project- and location-identified properties is necessarily conditional on the extent and distribution of damage to properties in each category. If only a small proportion of the damaged low-income stock consists of properties with project-based subsidies or HUD insurance, sample stratification would be adjusted accordingly.

B.1.3 Selecting a Case Study Sample

The case study sample will be selected from the low-income damage database using an opportunistic, non-random method to illuminate an number of specific issues. Based on previous expenence with apartment owner case studies in Los Angeles, we expect that a large pool of

potential respondents will be required to obtain our target sample of 20 properties. The specific property categories that are of interest appear below. These property categories are too numerous to permit strict stratification (given target sample size and budget), but every effort will be made to ensure the target sample incorporates properties to *illustrate* each category. Not all of the property categories are mutually exclusive, so some case study respondents may satisfy more than one criteria.

The first task in identifying a case study sample will be identifying a pool of potential respondents for each property category. As noted above, in general we prefer *not* to select respondents from the study's stratified random sample of properties (to avoid additional respondent burden), however for practical reasons it may be preferable to identify some case study participants this way. In some instances we can identify a pool of potential respondents independent of the initial telephone survey; in other instances we need responses from the initial telephone survey to help us identify potential respondents.

The following discussion addresses how we will identify a pool of potential respondents for each property category:

- *Properties Being Rebuilt With Public Assistance.* Case studies of properties being rebuilt with public assistance will include at least one participant for each major federal, state and local assistance program. For example, properties receiving funding from the Housing Earthquake Loan Program (HELP) are of special interest, as are those who assisted by the HUD (FHA) Risk Sharing Program which is providing reinsurance. The pool of potential respondents for this category of properties will consist of successful applicants for these various programs. These properties will be identified on the automated datasets described above.

- *Properties Being Rebuilt With Private Finance.* It is more difficult to identify a pool of potential respondents planning to rebuild with private funds. In the absence of a better source, potential respondents will be identified through responses to the study's initial telephone survey.

- *Properties Not Being Rebuilt.* Properties in this category are of interest because they are likely to provide some of the best insights into the problems associated with reconstruction (such as problems securing bank forbearance on existing debt). Potential respondents will be identified from respondents to this study's initial telephone survey.

- *Properties For Which Reconstruction Is Undecided.* Again, in the absence of a better source, potential respondents will be identified from respondents to this study's initial telephone survey.

- *Ghost Town Properties.* Also of interest are properties located in an area identified as a "ghost town" following the earthquake--that is, an area with a spatial concentration of damaged properties where not much reconstruction has occurred yet. A pool of potential respondents will be identified by cross-matching the areas we understand to be "ghost towns" with the damaged low-income rental property database using Census block groups. HR&A will request the City of Los Angeles Housing Department to provide estimates of the spatial extent of "ghost towns."

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- *Properties Owned by Non-Profits.* Non-profit ownership likely poses a unique set of problems related to reconstruction, so it is important to include at least one case-study of this kind of property. A pool of non-profit owned properties will be identifiable (by property-owner name or specific flag) from secondary data sources.

- *Properties Owned by Limited Partnerships.* Initial reports following the earthquake suggested that limited partnership owners experienced unique problems in securing reconstruction assistance. A pool of potential case study respondents in this category will be identified, to the extent possible, using property-owner names from the secondary datasets. If necessary a respondent pool can be assembled from responses to the initial telephone survey.

Regardless how the pool of potential respondents is identified, selection of the final case study sample will involve a separate telephone request for participation. These calls will be performed by HR&A staff simultaneous with and subsequent to the initial telephone survey.

B.2 Procedures to Deal with Non-Response

A number of techniques will be used to maximize response to the telephone survey, including:

- A letter of introduction from the Apartment Owners Association of Greater Los Angeles. This correspondence will be mailed to owners of all sampled properties prior to the initial survey, urging cooperation in providing information for the study.

- Repeat calls to locate respondents. Owners will be contacted six times, with contacts being attempted in the evening as necessary. If the property-owner indicates that the property manager is a more appropriate respondent for some questions, a follow-up interview with the manager will be conducted. Out-of-town owners will be contacted in the same way as in Los Angeles owners.

- Replacement from sample reserve. Non-responses or other conditions leading to the conclusion that the sampled property is inappropriate for inclusion (e.g. the property is not a rental property), will be replaced from the reserve sample of 150 properties as necessary to obtain a completed target sample of 250 building owners. Because replacement of refusals may create biases, known characteristics of all non-respondents will be compared with the charactenstics of respondents and aggregate characteristics of the damage database to assess the likelihood and nature of any non-response biases.

B.3 Pretesting of Procedures

The initial telephone survey instrument will be pretested on five property-owners not included in the study's sample. This procedure will identify areas where questions are unclear to owners or fail to produce the type of information originally intended, check the estimated time burden involved for respondents, and identify questions of a sensitive nature that respondents are unlikely to answer. Findings from the pretest and recommended changes to the instruments will

be reported in a memo for Urban Institute and HUD review. On approval of the GTM, appropriate modifications will be made to the draft instrument.

B.4 Persons Responsible for Statistical Aspects of the Design

The sampling plan for this project was developed by HR&A, with guidance from the Urban Institute The study is being directed by Patrick Boxall of the Urban Institute (202-857-8730). The sampling methodology was developed under the direction of Francine Rabinovitz of HR&A (818-509-7333) HR&A will be responsible for selecting the telephone survey and case study samples.

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ANNEX A
PROPERTY-OWNER QUESTIONNAIRE

Interview Date: _____ Recall: _____

PROPERTY OWNER'S QUESTIONNAIRE

A. PROPERTY OWNER SCREENER

A1. Hello, my name is (INTERVIEWER'S NAME) and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/complex you own at ENTER ADDRESS_____from the January 17, 1994 earthquake in Los Angeles. May I please speak to (OWNER'S NAME)?

SPEAKING	1	☐	GO TO A4
AVAILABLE NOW	2	☐	GO TO A4
AVAILABLE LATER	2	☐	SET APPOINTMENT AND RECALL
DOES NOT KNOW OWNER	4	☐	GO TO A2
OWNER HAS NEW NUMBER	5	☐	GET NEW NUMBER AND ADDRESS
MANAGER NOT OWNER	6	☐	GO TO A3
OTHER RESULT	7	☐	RECORD ON CALL RECORD

A2. Have I reached ({ })({ })-({ })?

YES	1	☐	GO TO A3
NO	2	☐	THANK RESPONDENT AND TERMINATE

A3. That is the number I dialed, do you have a new number or address for (OWNER'S NAME)?

YES	1	☐	RECORD NEW NUMBER AND ADDRESS AND RECALL
DOES NOT KNOW OWNER	2	☐	THANK RESPONDENT AND RECORD RESULT

PROPERTY OWNER'S QUESTIONNAIRE

A4 We are conducting this study to learn how the Federal government can improve programs to assist multifamily housing owners when a disaster like an earthquake occurs. Your participation in this study is voluntary but it is very important. You have probably received or will receive a letter from the Apartment Owners Association of Greater Los Angeles urging you to participate if you are called. All of your answers are confidential. Your answers will not affect any application you have on file now for federal, state, local or private assistance to repair or rebuild your property/complex.

Do you own, either yourself or with a group, the property/complex listed above?

YES	1	☐	GO TO A7
NO	2	☐	GO TO A5

A5. Do you represent the owner(s) of this property and, if so, can you answer detailed questions about the damage sustained by this property in the earthquake and plans for repair/reconstruction?

YES	1	☐	GO TO A7
NO	2	☐	GO TO A6

A6. Do you know the owner's address and telephone number?

YES	1	☐	RECORD BELOW, THANK RESPONDENT AND TERMINATE
NO	2	☐	THANK RESPONDENT AND TERMINATE

OWNER ADDRESS AND NUMBER _____

A7. Is this a rental property?

YES	1	☐	
NO	2	☐	THANK RESPONDENT AND TERMINATE

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PROPERTY OWNER'S QUESTIONNAIRE

A8. Is this a multi-family property (with two or more units)?

YES ..... 1 ☐

NO ..... 2 ☐ THANK RESPONDENT AND TERMINATE

A9. What color tag did the property/complex initially receive as a result of the earthquake?

RED ..... 1 ☐

YELLOW ..... 2 ☐

GREEN ..... 3 ☐ THANK RESPONDENT AND TERMINATE

This series of questions is about the general characteristics of your property/complex.

B1. What type of property/complex is it?

GARDEN APARTMENTS (APARTMENTS HAVE OWN ENTRANCES) ..... 1 ☐

HIGH RISE BUILDING (MORE THAN 6 STORIES) ..... 2 ☐

LOW RISE BUILDING (UNDER 6 STORIES, 1 ENTRANCE) 3 ☐

TOWNHOUSE ..... 4 ☐

OTHER (SPECIFY) ..... 5 ☐

_____

B2. How many rental apartment units were in the property/complex before the earthquake?

Number of Units _____

B3. Of the __[insert from B2]__ units, how many were:

STUDIOS ..... 1 _____

1 BEDROOMS ..... 2 _____

2 BEDROOMS ..... 3 _____

3 OR MORE BEDROOMS ..... 4 _____

PROPERTY OWNER'S QUESTIONNAIRE

B4. What kind of parking did the property/complex have?

SURFACE ..... 1 _____

UNDERGROUND ..... 2 _____

TUCK UNDER (Half level down) ..... 3 _____

COMBINED SURFACE/TUCK UNDER ..... 4 _____

NONE ..... 5 _____

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PROPERTY OWNER'S QUESTIONNAIRE

C. FINANCIAL INFORMATION

C1. What was the average monthly gross rent receipt before the earthquake for all the units? (Gross rent means all rent, including government subsidies plus utilities)

_____

C2. How much if any of this amount paid for utilities?

_____

C3. What portion of the units were vacant before the earthquake?

5% or less ..... 1 ☐
6 - 10% ..... 2 ☐
11 - 15% ..... 3 ☐
15 - 20% ..... 4 ☐
More than 20% ..... 5 ☐

C4. What were the average monthly expenses for all units prior to the earthquake?

_____

C5. What is the form of ownership of this building?

INDIVIDUAL ..... 1 ☐
PARTNERSHIP ..... 2 ☐
CORPORATION ..... 3 ☐
NON-PROFIT ..... 4 ☐
OTHER ..... 5 ☐

C6. When did you or your company purchase the property/complex? _____

C7. What was the initial purchase price? _____

C8. How much outstanding debt do you and/or other partners have on the property/complex?

_____ IF NONE, GO TO C12

PROPERTY OWNER'S QUESTIONNAIRE

C9. What is the outstanding debt, rate and remaining term and mortgagee of the first mortgage?

OUTSTANDING DEBT ..... _____
RATE ..... _____
REMAINING TERM ..... _____
MORTGAGEE ..... _____

C10. What is the outstanding debt, rate and remaining term and mortgagee of the second mortgage?

NONE (IS NO SECOND) ..... _____
OUTSTANDING DEBT ..... _____
RATE ..... _____
REMAINING TERM ..... _____
MORTGAGEE ..... _____

C11. What is the outstanding debt, rate and remaining term and mortgagee of the third mortgage?

NONE (IS NO THIRD) ..... _____
OUTSTANDING DEBT ..... _____
RATE ..... _____
REMAINING TERM ..... _____
MORTGAGEE ..... _____

C12. HUD provides Section 8 rent subsidies directly to property owners to cover the gap between the maximum a tenant can afford to pay in rent and the fair market rent for the project set by HUD. Did you receive any Section 8 Project-Based Subsidies for the property/complex?

YES ..... 1 ☐ GO TO C13
NO ..... 2 ☐ GO TO C14

C13. Approximately how much money did you receive in total Section 8 project-based subsidies per month before the earthquake?

_____

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PROPERTY OWNER'S QUESTIONNAIRE

C14. HUD also provides Section 8 certificates to tenants directly. Did any of your tenants receive Section 8 Certificates prior to the earthquake?

YES ..... 1 ☐ GO TO C15
NO ..... 2 ☐ GO TO C17

C15. How many tenants received Section 8 Certificates prior to the earthquake?_____

C16. Approximately how much money did you receive in tenant Section 8 Certificates per month before the earthquake?

_____

C17. Did you receive any HUD subsidies or FHA insurance assistance other than Section 8 prior to the earthquake?

YES ..... 1 ☐ GO TO C18
NO ..... 2 ☐ GO TO D1

C18. Describe any other subsidies and insurance that you received:

_____

PROPERTY OWNER'S QUESTIONNAIRE

D. DAMAGE SUSTAINED BY PROPERTY/COMPLEX

The next few questions are about the damage to your property/complex caused by the earthquake.

D1. What was the tag on the property/complex after the reinspection following the earthquake?

RED ..... 1 ☐
YELLOW ..... 2 ☐
GREEN ..... 3 ☐

D2. How many units in the property/complex sustained damage as a result of the earthquake?

_____

D3. Of these damaged units, how many required major rehabilitation (over $5,000 per unit) as a result of the earthquake?

_____

D4. Of the units in your property/complex, how many could not be occupied after the earthquake?

_____

D5. Of the units in your property/complex, how many still cannot be occupied?_____

D6. What was the original estimated total cost of repairing the damage?

$1 TO $10,000 ..... 1 ☐
$10,001 TO $50,000 ..... 2 ☐
$50,001 TO $100,000 ..... 3 ☐
$100,001 TO $250,000 ..... 4 ☐
$250,001 TO $500,000 ..... 5 ☐
$500,001 TO $1,000,000 ..... 6 ☐
OVER $1,000,000 ..... 7 ☐

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PROPERTY OWNER'S QUESTIONNAIRE

D7. Are you planning to repair/or have you rebuilt your property/complex?

WILL REPAIR / REBUILD	1	☐	GO TO D8
NO	2	☐	GO TO E37
REPAIRS ARE COMPLETED (EXPLAIN)	3	☐	GO TO D8
NOT SURE AT THIS POINT (EXPLAIN)	3	☐	GO TO E73

D8. If you have already rebuilt or are in the process of repairing your property, what was the final cost estimate for the repairs?

_____ IF NO ESTIMATE, GO TO D10

D9. If this amount is different from the original estimated repair cost (D6), why?

_____

D10 Do you expect the rents you charge after reconstruction will differ from the rents charged before the earthquake?

YES	1	☐	
NO	2	☐	GO TO D13

D11. Will you charge higher or lower rents?

HIGHER	1	☐
LOWER	2	☐

D12. What is the total monthly gross rent you expect to receive after reconstruction? (Gross rent means all rent, including government subsidies and utilities)

_____

PROPERTY OWNER'S QUESTIONNAIRE

D13. Do you plan to change the total number of units in the property or reconfigure existing units when you reconstruct/repair?

YES	1	☐	
NO	2	☐	GO TO D16

D14. How many units will the property contain?

_____

D15. Of these, how many will be:

STUDIOS	1	_____
1 BEDROOMS	2	_____
2 BEDROOMS	3	_____
3 OR MORE BEDROOMS	4	_____

D16. Do you plan to reconfigure the building's parking when you reconstruct?

YES	1	☐	
NO	2	☐	GO TO D18

D17. How will you reconfigure the parking?

_____

D18 Do you plan to install new fire and earthquake safety features when you reconstruct?

YES	1	☐	
NO	2	☐	GO TO D20

D19. What features to you plan to install?

_____

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PROPERTY OWNER'S QUESTIONNAIRE

D20. Do you plan to make any other major changes to the property when you reconstruct?

YES . . . . . 1 ☐
NO . . . . . 2 ☐ GO TO D22

D21. What changes do you plan to make?

_____

D22. About how many tenants were displaced as a result of the earthquake?

_____

D23. What share of displaced tenants do you anticipate will return?

ALL . . . . . 1 ☐
NONE . . . . . 2 ☐
HALF OR MORE . . . . . 3 ☐
LESS THAN HALF . . . . . 4 ☐
DON'T KNOW . . . . . 5 ☐

Do you anticipate that the tenants you rent to after reconstruction will be similar to those you rented to before the earthquake in terms of:

D24. Income?

SAME . . . . . 1 ☐
HIGHER . . . . . 2 ☐
LOWER . . . . . 3 ☐

PROPERTY OWNER'S QUESTIONNAIRE

D25. Family Size?

SAME . . . . . 1 ☐
LARGER . . . . . 2 ☐
SMALLER . . . . . 3 ☐

D26. Race / Ethnicity?

SAME . . . . . 1 ☐
DIFFERENT (PLEASE DESCRIBE) . . . . . 2 ☐

_____

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PROPERTY OWNER'S QUESTIONNAIRE

E. PROPERTY/COMPLEX REPAIR/CONSTRUCTION ACTIVITIES

Now I want to ask you about the financial resources you plan to use for reconstruction and your experience applying for assistance from banks and the state, local or federal governments.

E1 Do you plan to (or did you) use personal financial resources to fund a portion (or all) of the repairs to this property?

ALL REPAIRS ..... 1 ☐
SOME REPAIRS ..... 2 ☐
NO PERSONAL RESOURCES USED ..... 3 ☐

I am going to ask you whether you have applied for assistance from different sources, and a number of follow-up questions for each possible source of funds. For those resources you **have** applied for, I'd like to find out the status of your application (whether it was approved, rejected or is still pending), and, if an application was rejected, why For those resouces you have **not** applied for, please explain briefly why not.

E2. Have you applied for bank forbearance on existing debt?

YES ..... 1 ☐ GO TO E4
NO ..... 2 ☐

E3. Why not? _____ GO TO E6

E4. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E6
REJECTED ..... 2 ☐ GO TO E5
PENDING ..... 3 ☐ GO TO E6
OTHER ..... 4 ☐ GO TO E6

E5. Why was your application rejected?

_____

PROPERTY OWNER'S QUESTIONNAIRE

E6. Have you applied for new bank financing?

YES ..... 1 ☐ GO TO E8
NO ..... 2 ☐

E7. Why not? _____ GO TO E10

E8. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E10
REJECTED ..... 2 ☐ GO TO E9
PENDING ..... 3 ☐ GO TO E10
OTHER ..... 4 ☐ GO TO E10

E9. Why was your application rejected?

_____

E10. Have you applied for assistance from the S.B.A.?

YES ..... 1 ☐ GO TO E12
NO ..... 2 ☐

E11. Why not? _____ GO TO E14

E12. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E14
REJECTED ..... 2 ☐ GO TO E13
PENDING ..... 3 ☐ GO TO E14
OTHER ..... 4 ☐ GO TO E14

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PROPERTY OWNER'S QUESTIONNAIRE

E13. Why was your application rejected?

_____

E14. Have you applied to the HELP program for assistance?

YES ..... 1 ☐ GO TO E16
NO ..... 2 ☐

E15. Why not? _____ GO TO E18

E16. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E18
REJECTED ..... 2 ☐ GO TO E17
PENDING ..... 3 ☐ GO TO E18
OTHER ..... 4 ☐ GO TO E18

E17. Why was your application rejected?

SUFFICIENT FUNDS IN RESIDUAL RECEIPTS TO COVER REPAIRS ..... 1 ☐
HUD INSPECTORS DETERMINED THERE WAS NO EARTHQUAKE DAMAGE TO PROPERTY ..... 2 ☐
OTHER (SPECIFY) ..... 3 ☐

_____

E18. Have you applied for FNMA assistance?

YES ..... 1 ☐ GO TO E20
NO ..... 2 ☐

E19. Why not? _____ GO TO E22

PROPERTY OWNER'S QUESTIONNAIRE

E20. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E22
REJECTED ..... 2 ☐ GO TO E21
PENDING ..... 3 ☐ GO TO E22
OTHER ..... 4 ☐ GO TO E22

E21. Why was your application rejected?

_____

E22. Have you applied to the State of California (CALDEP) for assistance?

YES ..... 1 ☐ GO TO E24
NO ..... 2 ☐

E23. Why not? _____ GO TO E26

E24. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E26
REJECTED ..... 2 ☐ GO TO E25
PENDING ..... 3 ☐ GO TO E26
OTHER ..... 4 ☐ GO TO E26

E25. Why was your application rejected?

_____

E26. Have you applied to the City of {CITY NAME} for assistance?

YES ..... 1 ☐ GO TO E28
NO ..... 2 ☐

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PROPERTY OWNER'S QUESTIONNAIRE

E27. Why not? _____ GO TO E30

E28. What is the status of your application?

APPROVED	1	☐	GO TO E30
REJECTED	2	☐	GO TO E29
PENDING	3	☐	GO TO E30
OTHER	4	☐	GO TO E30

E29. Why was your application rejected?

_____

E30. Have you applied to the County for assistance?

YES	1	☐	GO TO E32
NO	2	☐	

E31. Why not? _____ GO TO E34

E32. What is the status of your application?

APPROVED	1	☐	GO TO E34
REJECTED	2	☐	GO TO E33
PENDING	3	☐	GO TO E34
OTHER	4	☐	GO TO E34

E33. Why was your application rejected?

_____

PROPERTY OWNER'S QUESTIONNAIRE

E34. Approximately what share of total repair costs do you expect (or did) come from different financial resources. Include, as applicable, personal financial resources (see E1) and other resources for which applications have been approved or are still pending. *Note: these shares should add at least to 100%, but may exceed this figure.*

Source		n/a	percent of costs
PERSONAL FUNDS	1	☐	_____%
BANK FORBEARANCE ON EXISTING MORTGAGE	2	☐	_____%
NEW BANK FINANCING	3	☐	_____%
SBA	4	☐	_____%
HELP	5	☐	_____%
FNMA	6	☐	_____%
STATE (CALOEP)	7	☐	_____%
COUNTY	8	☐	_____%
CITY	9	☐	_____%
OTHER (SPECIFY)	10	☐	_____%

_____

E35. In your opinion, what are the top three obstacles owners of multi-family rental properties have faced in trying to rebuild after the earthquake?

a. _____

b _____

c. _____

E36. How could federal, state, or local government assistance programs be modified to help owners like to overcome these obstacles the next time a major disaster strikes?

_____

END OF INTERVIEW FOR OWNERS PLANNING TO REBUILD

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PROPERTY OWNER'S QUESTIONNAIRE

START FOR OWNERS NOT PLANNING TO REBUILD

E37. Although you've decided not to rebuild, did you apply for any financial assistance from banks, or the federal, state or local governments to repair the property?

YES ..... 1 ☐ GO TO E39
NO ..... 2 ☐

E38. Why not?

_____ GO TO E71

E39. Have you applied for bank forbearance on existing debt?

YES ..... 1 ☐ GO TO E41
NO ..... 2 ☐

E40. Why not? _____ GO TO E43

E41 What is the status of your application?

APPROVED ..... 1 ☐ GO TO E43
REJECTED ..... 2 ☐ GO TO E42
PENDING ..... 3 ☐ GO TO E43
OTHER ..... 4 ☐ GO TO E43

E42. Why was your application rejected?

_____

E43. Have you applied for new bank financing?

YES ..... 1 ☐ GO TO E45
NO ..... 2 ☐

PROPERTY OWNER'S QUESTIONNAIRE

E44. Why not? _____ GO TO E47

E45 What is the status of your application?

APPROVED ..... 1 ☐ GO TO E47
REJECTED ..... 2 ☐ GO TO E46
PENDING ..... 3 ☐ GO TO E47
OTHER ..... 4 ☐ GO TO E47

E46. Why was your application rejected?

_____

E47 Have you applied for assistance from the S.B.A.?

YES ..... 1 ☐ GO TO E49
NO ..... 2 ☐

E48. Why not? _____ GO TO E51

E49. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E51
REJECTED ..... 2 ☐ GO TO E50
PENDING ..... 3 ☐ GO TO E51
OTHER ..... 4 ☐ GO TO E51

E50 Why was your application rejected?

_____

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PROPERTY OWNER'S QUESTIONNAIRE

E51 Have you applied to the HELP program for assistance?

YES ..... 1 ☐ GO TO E53
NO ..... 2 ☐

E52. Why not? _____ GO TO E55

E53 What is the status of your application?

APPROVED ..... 1 ☐ GO TO E55
REJECTED ..... 2 ☐ GO TO E54
PENDING ..... 3 ☐ GO TO E55
OTHER ..... 4 ☐ GO TO E55

E54 Why was your application rejected?

SUFFICIENT FUNDS IN RESIDUAL RECEIPTS TO COVER REPAIRS ..... 1 ☐
HUD INSPECTORS DETERMINED THERE WAS NO EARTHQUAKE DAMAGE TO PROPERTY ..... 2 ☐
OTHER (SPECIFY) ..... 3 ☐

_____

E55. Have you applied for FNMA assistance?

YES ..... 1 ☐ GO TO E57
NO ..... 2 ☐

E56. Why not? _____ GO TO E59

PROPERTY OWNER'S QUESTIONNAIRE

E57. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E59
REJECTED ..... 2 ☐ GO TO E58
PENDING ..... 3 ☐ GO TO E59
OTHER ..... 4 ☐ GO TO E59

E58. Why was your application rejected?

_____

E59. Have you applied to the State of California (CALDEP) for assistance?

YES ..... 1 ☐ GO TO E61
NO ..... 2 ☐

E60. Why not? _____ GO TO E63

E61. What is the status of your application?

APPROVED ..... 1 ☐ GO TO E63
REJECTED ..... 2 ☐ GO TO E62
PENDING ..... 3 ☐ GO TO E63
OTHER ..... 4 ☐ GO TO E63

E62. Why was your application rejected?

_____

E63. Have you applied to the City of {CITY NAME} for assistance?

YES ..... 1 ☐ GO TO E65
NO ..... 2 ☐

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PROPERTY OWNER'S QUESTIONNAIRE

E64. Why not? _____ GO TO E67

E65. What is the status of your application?

APPROVED	1	☐	GO TO E67
REJECTED	2	☐	GO TO E66
PENDING	3	☐	GO TO E67
OTHER	4	☐	GO TO E67

E66. Why was your application rejected?

_____

E67. Have you applied to the County for assistance?

YES	1	☐	GO TO E69
NO	2	☐	

E68. Why not? _____ GO TO E71

E69. What is the status of your application?

APPROVED	1	☐	GO TO E71
REJECTED	2	☐	GO TO E70
PENDING	3	☐	GO TO E71
OTHER	4	☐	GO TO E71

E70. Why was your application rejected?

_____

PROPERTY OWNER'S QUESTIONNAIRE

E71 Would you rank the major reasons you are not planning to rebuild? I will read you a list of possible reasons and I would like you to tell me which is the most important to your decision, second most important, or unimportant to your decision.

	Most important	Second Most Important	Unimportant
COULD NOT OBTAIN THE FINANCIAL RESOURCES	☐	☐	☐
PROPERTY/COMPLEX COULD NOT SUPPORT ADDITIONAL DEBT	☐	☐	☐
WHOLE NEIGHBORHOOD WAS DESTROYED AND DOES NOT WANT TO BE THE FIRST TO REBUILD	☐	☐	☐
DIDN'T LIKE PUBLIC ASSISTANCE PROGRAMS	☐	☐	☐
APPLICATION PROCESS TOO SLOW	☐	☐	☐
OTHER (EXPLAIN)	☐	☐	☐

_____

E72. How could federal, state or local government assistance programs be modified to persuade owners like you to rebuild the next time a major disaster strikes?

_____

_____

END OF INTERVIEW FOR OWNERS NOT PLANNING TO REBUILD

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PROPERTY OWNER'S QUESTIONNAIRE

START FOR OWNERS UNSURE OF PLANS

E73. What is the most important reason you are not sure whether you will rebuild at this time?

_____

_____

E74. When do you expect to be able to make a decision?

WITHIN THE NEXT MONTH	1	☐
WITHIN ONE TO SIX MONTHS	2	☐
WITHIN SIX MONTHS TO A YEAR	3	☐
I DO NOT EXPECT TO MAKE THIS DECISION WITHIN THE NEXT YEAR	4	☐
OTHER (EXPLAIN)	5	☐

E75. What incentives should the government provide that would persuade you to rebuild now?

_____

_____

E76. We would like your permission to recontact you after (time frame) above to find out what you have decided. Where can we contact you?

AT THE SAME TELEPHONE NUMBER AT WHICH WE REACHED YOU TODAY	1	☐
ANOTHER NUMBER (SPECIFY)	2	☐

_____ _____

END OF INTERVIEW FOR OWNERS UNSURE OF PLANS TO REBUILD

ANNEX B
MONITORING INSTRUMENT

Interview Date: _____

MONITORING INSTRUMENT

A1. Hello, my name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/ complex you own from the January 17, 1994 earthquake in Los Angeles. May I please speak to {OWNER'S NAME}?

SPEAKING	1	☐	GO TO A4
AVAILABLE NOW	2	☐	GO TO A5
AVAILABLE LATER	2	☐	SET APPOINTMENT
DOES NOT KNOW OWNER	4	☐	GO TO A2
OWNER HAS NEW NUMBER	5	☐	GET NEW NUMBER AND ADDRESS
OTHER RESULT	6	☐	RECORD ON CALL RECORD

A2. Have I reached ({ }){ }-{ }?

YES	1	☐	GO TO A3
NO	2	☐	THANK RESPONDENT AND HANG UP

A3. That is the number I dialed, do you have a new number or address for {OWNER'S NAME}?

YES	1	☐	RECORD NEW NUMBER AND ADDRESS
DOES NOT KNOW OWNER	2	☐	THANK RESPONDENT AND RECORD RESULT

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MONITORING INSTRUMENT

A4. { } months ago we interviewed you over the phone about your plans for rehabilitating your earthquake damaged property/complex. This is a brief follow-up call to determine whether you've changed your mind since then about your plans. The last time we spoke with you, you stated that you: {SELECT ONE OPTION}

a. Definitely planned to repair and/or rebuild your property/complex. Have you changed your mind since then?

YES, I AM NO LONGER PLANNING TO REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX ..... 1 ☐ GO TO A6

YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 2 ☐ GO TO A7

NO, I HAVE NOT CHANGED MY MIND ..... 3 ☐ THANK RESPONDENT AND RECORD RESULT

b. Definitely planned NOT to repair and/or rebuild your apartment property/complex. Have you changed your mind since then?

YES, I NOW PLAN TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 3 ☐ GO TO A8

YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 2 ☐ GO TO A7

NO, I HAVE NOT CHANGED MY MIND ..... 1 ☐ THANK RESPONDENT AND RECORD RESULT

MONITORING INSTRUMENT

c. Were not sure as to whether you would repair and/or rebuild your apartment property/complex. Have you decided what to do since then?

YES, I DECIDED NOT TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 1 ☐ GO TO A6

NO, I AM STILL NOT SURE OF WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 2 ☐ THANK RESPONDENT AND RECORD RESULT

YES, I NOW PLAN TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 3 ☐ GO TO A8

A5 Hello, my name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/complex you own from the January 17, 1994 earthquake in Los Angeles.

{ } months ago we interviewed you over the phone about your plans for rehabilitating your earthquake damaged property/complex. This is a brief follow-up call to determine whether you've changed your mind since then about your plans. The last time we spoke with you, you stated that you: {SELECT ONE OPTION}

a. Definitely planned to repair and/or rebuild your apartment property/complex. Have you changed you mind since then?

YES, I AM NO LONGER PLANNING TO REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX ..... 1 ☐ GO TO A6

YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX ..... 2 ☐ GO TO A7

NO, I HAVE NOT CHANGED MY MIND ..... 3 ☐ THANK RESPONDENT AND RECORD RESULT

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MONITORING INSTRUMENT

b. Definitely planned **NOT** to repair and/or rebuild your apartment property/complex. Have you changed your mind since then?

YES, I NOW PLAN TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	3	☐	GO TO A8
YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	2	☐	GO TO A7
NO, I HAVE NOT CHANGED MY MIND	1	☐	THANK RESPONDENT AND RECORD RESULT

c Were not sure as to whether you would repair and/or rebuild your apartment property/complex. Have you decided what to do since then?

YES, I DECIDED NOT TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	1	☐	GO TO A6
NO, I AM STILL NOT SURE OF WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	2	☐	THANK RESPONDENT AND RECORD RESULT
YES, I NOW PLAN TO REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	3	☐	GO TO A8

MONITORING INSTRUMENT

A6. What are the major reasons you **decided** not to repair and/or rebuild your property/complex?

_____

_____

END OF INTERVIEW FOR OWNERS DECIDING NOT TO REBUILD

A7. What is the most important reason you are no longer sure at this time whether you will rebuild or not?

_____

_____

END OF INTERVIEW FOR OWNERS NO LONGER SURE

A8. What are the major reasons you changed your mind and decided to rebuild?

OBTAINED PRIVATE FINANCING	1	☐
RECEIVED ASSISTANCE	2	☐
OTHER (EXPLAIN)	3	☐

_____

_____

END OF INTERVIEW FOR OWNERS NOW PLANNING TO REBUILD

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ANNEX C
FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

Interview Date: _____

FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A1 Hello, my name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/ complex you own from the January 17, 1994 earthquake in Los Angeles. May I please speak to {OWNER'S OR MANAGER'S NAME}?

SPEAKING	1	☐	GO TO A4
AVAILABLE NOW	2	☐	GO TO A5
AVAILABLE LATER	2	☐	SET APPOINTMENT
DOES NOT KNOW OWNER	4	☐	GO TO A2
OWNER HAS NEW NUMBER	5	☐	GET NEW NUMBER AND ADDRESS
OTHER RESULT	6	☐	RECORD ON CALL RECORD

A2 Have I reached ({ })({ }-{ })?

YES	1	☐	GO TO A3
NO	2	☐	THANK RESPONDENT AND HANG UP

A3 That is the number I dialed, do you have a new number or address for {OWNER'S NAME}?

YES	1	☐	RECORD NEW NUMBER AND ADDRESS
DOES NOT KNOW OWNER	2	☐	THANK RESPONDENT RECORD RESULT

FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A4. { } months ago we interviewed you over the phone about your plans for rehabilitating your earthquake damaged property/complex. This is a brief follow-up call to find out whether you've progressed in your plans to rebuild your property/complex. The last time we spoke with you, you stated that you definitely planned to repair and/or rebuild your property/complex. Have you changed your mind since then?

YES, I AM NO LONGER PLANNING TO REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX	1	☐	GO TO A6
YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	2	☐	GO TO A9
NO, I HAVE NOT CHANGED MY MIND	3	☐	GO TO A11

A5. Hello, my name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/complex you own from the January 17, 1994 earthquake in Los Angeles.

{ } months ago we interviewed you over the phone about your plans for rehabilitating your earthquake damaged property/complex. This is a brief follow-up call to find out whether you've progressed in your plans to rebuild your property/complex. The last time we spoke with you, you stated that you definitely planned to repair and/or rebuild your property/complex. Have you changed your mind since then?

YES, I AM NO LONGER PLANNING TO REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX	1	☐	GO TO A6
YES, I AM NO LONGER SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/ COMPLEX	2	☐	GO TO A9
NO, I HAVE NOT CHANGED MY MIND	3	☐	GO TO A11

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FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A6. What is the most important reason you decided not to repair and/or rebuild your property/complex?

_____

_____

A7 What is the second most important reason?

_____

_____

A8. How can existing government programs be improved to better serve your needs?

_____

_____

END OF INTERVIEW FOR OWNERS DECIDING NOT TO REBUILD

A9 What is the most important reason you are no longer sure whether you will rebuild or not?

_____

_____

A10 What incentives should the government provide to persuade you to rebuild?

_____

_____

FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A11. What progress have you made since our last survey?

NO PROGRESS ..... 1 ☐
OBTAINED PRIVATE FINANCING ..... 2 ☐
OBTAINED ASSISTANCE FROM SBA ..... 3 ☐
OBTAINED ASSISTANCE FROM CALDEP ..... 4 ☐
OBTAINED ASSISTANCE FROM HUD ..... 5 ☐
OTHER (EXPLAIN) ..... 6 ☐

_____

_____

A12. Which forms of assistance have you applied for, but not yet received?

I HAVE RECEIVED ALL NEEDED FINANCING ..... 1 ☐
PRIVATE FINANCING ..... 2 ☐
ASSISTANCE FROM SBA ..... 3 ☐
ASSISTANCE FROM CALDEP ..... 4 ☐
ASSISTANCE FROM HELP ..... 5 ☐
OTHER (EXPLAIN) ..... 6 ☐

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FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A13. The next few questions are about your experience applying for assistance from public programs, such as SBA or HELP. Overall, how satisfied are you with the help you received from Federal programs?

DID NOT APPLY FOR ANY FEDERAL ASSISTANCE ..... 1 ☐
DID NOT RECEIVE ANY HELP ..... 2 ☐
VERY SATISFIED ..... 3 ☐
SOMEWHAT SATISFIED ..... 4 ☐
SOMEWHAT UNSATISFIED ..... 5 ☐
VERY UNSATISFIED ..... 6 ☐

A14. Overall how satisfied are you with the help you received from State based programs?

DID NOT APPLY FOR ANY STATE ASSISTANCE ..... 1 ☐
DID NOT RECEIVE ANY HELP ..... 2 ☐
VERY SATISFIED ..... 3 ☐
SOMEWHAT SATISFIED ..... 4 ☐
SOMEWHAT UNSATISFIED ..... 5 ☐
VERY UNSATISFIED ..... 6 ☐

A15. How can the existing State government programs be improved to better serve your needs?

_____

_____

A16. Overall how satisfied are you with the help you received from local programs?

DID NOT APPLY FOR ANY LOCAL PROGRAMS ..... 1 ☐
DID NOT RECEIVE ANY HELP ..... 2 ☐
VERY SATISFIED ..... 3 ☐
SOMEWHAT SATISFIED ..... 4 ☐
SOMEWHAT UNSATISFIED ..... 5 ☐
VERY UNSATISFIED ..... 6 ☐

FOLLOW-UP SURVEY FOR OWNERS PLANNING TO REBUILD

A17. How can the existing local government programs be improved to better serve your needs?

_____

_____

A18. When will the rehabilitation of your property/complex be completed?

WITHIN THE NEXT TWO MONTHS ..... 1 ☐
IN TWO TO SIX MONTHS ..... 2 ☐
IN SIX TO TWELVE MONTHS ..... 3 ☐
IN MORE THAN A YEAR ..... 4 ☐

END OF INTERVIEW

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ANNEX D
FOLLOW-UP SURVEY FOR UNDECIDED OWNERS

Interview Date: _____

FOLLOW-UP SURVEY FOR UNDECIDED OWNERS

A1. Hello, my name is {INTERVIEWER'S NAME} and I am calling on behalf of the U.S. Department of Housing and Urban Development about the damage to the property/ complex you own from the January 17, 1994 earthquake in Los Angeles. May I please speak to {OWNER'S NAME}?

SPEAKING	1	☐	GO TO A4
AVAILABLE NOW	2	☐	GO TO A4
AVAILABLE LATER	2	☐	SET APPOINTMENT
DOES NOT KNOW OWNER	4	☐	GO TO A2
OWNER HAS NEW NUMBER	5	☐	GET NEW NUMBER AND ADDRESS
OTHER RESULT	6	☐	RECORD ON CALL RECORD

A2. Have I reached ({ }){ }-{ }?

YES	1	☐	GO TO A3
NO	2	☐	THANK RESPONDENT AND HANG UP

A3. That is the number I dialed, do you have a new number or address for {OWNER'S NAME}?

YES	1	☐	RECORD NEW NUMBER AND ADDRESS
DOES NOT KNOW OWNER	2	☐	THANK RESPONDENT AND RECORD RESULT

FOLLOW-UP SURVEY FOR UNDECIDED OWNERS

A4. { } months ago we interviewed you over the phone about your plans for rehabilitating your earthquake damaged property. This is a brief follow-up call to find out whether you've made further changes in your plans to rebuild. The last time we spoke with you, you stated that you didn't know whether you were going to repair and/or rebuild. Have you decided since then?

YES, I AM NO LONGER PLANNING TO REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX	1	☐	GO TO A6
NO, I AM STILL NOT SURE WHETHER OR NOT I WILL REPAIR AND/OR REBUILD MY PROPERTY/COMPLEX	2	☐	THANK RESPONDENT AND RECORD RESULT
YES, I HAVE DECIDED TO REPAIR AND/OR REBUILD MY PROPERTY COMPLEX	3	☐	GO TO A8

A6. What is the most important reason you decided not to repair and/or rebuild your property/complex?

_____

_____

A7. What incentives should the government provide that would persuade you to rebuild?

_____

_____

END OF INTERVIEW FOR OWNERS NOT GOING TO REBUILD

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FOLLOW-UP SURVEY FOR UNDECIDED OWNERS

A8. What is the most important reason you decided to rebuild?

_____

_____

A9. What progress have you made since deciding to rebuild?

NO PROGRESS	1	☐
OBTAINED PRIVATE FINANCING	2	☐
OBTAINED ASSISTANCE FROM SBA	3	☐
OBTAINED ASSISTANCE FROM CALDEP	4	☐
OTHER (EXPLAIN)	5	☐

_____

_____

_____

A10. Which forms of assistance have you applied for, but not yet received?

I HAVE RECEIVED ALL NEEDED FINANCING	1	☐
PRIVATE FINANCING	2	☐
ASSISTANCE FROM SBA	3	☐
ASSISTANCE FROM CALDEP	4	☐
OTHER (EXPLAIN)	5	☐

A11. When will the rehabilitation of your property/complex be completed?

WITHIN THE NEXT TWO MONTHS	1	☐
IN TWO TO SIX MONTHS	2	☐
IN SIX TO TWELVE MONTHS	3	☐
IN MORE THAN A YEAR	4	☐
IS ALREADY COMPLETED	5	☐

END OF INTERVIEW

ANNEX E
INTERVIEW GUIDE FOR OWNER CASE STUDY INTERVIEWS

Interview Guide For Owner Case Study Interviews

Introduction

Hello, my name is (INTERVIEWER'S NAME), I am conducting this interview on behalf of the U.S. Department of Housing and Urban Development to learn about your experiences after the January 1994 earthquake in navigating through the available earthquake relief programs. We are also conducting similar interviews with 19 other multifamily property-owners. The purpose of this study is to learn how the Federal government can improve programs to assist multifamily housing owners when a disaster like an earthquake occurs.
Keep in mind that all of your comments are confidential and your comments today will not affect any application you have on file now for federal, state, local or private assistance to repair or rebuild your property.

General Property Information

- Approximately when was your building constructed?
- How long have you owned it?
- Have you ever made any major renovations to the property since you owned it? Describe the renovations, when they were made and approximately how much they cost?
- Describe the neighborhood prior to the earthquake. What kind of trends could you observe.
- Describe the neighborhood today. How many buildings have sustain serious damage. What other trends can you observe?

Financial Information

- How much did you pay for the property?
- Describe the financial structure of the building? What is the outstanding debt? How many mortgages are there? At what rate and term? Who are the mortgagees?
- Prior to the earthquake, what was the vacancy rate in your building? What is it today?
- Prior to the earthquake, what was the approximate annual NOI for your building? What is it today?
- Describe any rent or other government subsidies you received for the property prior to the earthquake?
- Can you provide me with an audited financial statement for the building over the last two years?
- Can you provide me with a rent roll for the building prior to and after the earthquake?

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- What was the level of damage to the building during the earthquake? What was the nature of the damage?
- How far along are you in the rebuilding process? What steps have you taken to date? What steps do you intend to take in the future?

Earthquake Relief

- Now we want you to describe the chronology of the assistance programs that you applied for and explain what happened. After the earthquake, how did you learn about the availability of assistance programs?
- Which agencies did you approach and in what order?
- Did you approach the SBA? Did you file an application? Did they make a loan to you? [Probe sequence of events and why or why not a loan was made. Does this program have any characteristics that make it particularly useful as a source of assistance for your rebuilding efforts? Does it have any characteristics that make it difficult for you to use? For instance, if no loan was made be sure to probe whether it was because of partnership ownership structure, credit test for loans over $1.5 million, debt coverage ratios in excess of 1.05, or recourse action.]
- Did you approach Fannie Mae? Did you file an application? Did they make a loan to you? [Again, probe for sequence and outcome. Probe whether reinsurance was offered and if so was it sufficient for lenders to then take the risk.]
- Did you approach the local HUD office to obtain assistance from the HELP program? Did you file an application? Did they make a loan to you? [Again, probe for sequence and outcome.]
- Did you approach the City of Los Angeles Department of Housing to obtain assistance? What programs did they have to offer? Did you file an application? Did they make a loan or grant to you? [Probe for sequence and outcome.]
- Did you approach another city's housing department? What programs did they have to offer? Did you file an application? Did they make a loan or grant to you or offer some other form of assistance? [Again, probe for sequence and outcome.]
- Did you approach the State of California Housing Department? What programs did they have to offer? Did you file an application? Did they make a loan or grant to you or offer some other form of assistance? [Again, probe for sequence and outcome.]
- What specific reasons, if any, did you have for *not* approaching any of the programs discussed above?
- Now I would like you to rate the helpfulness of the agencies and programs we just discussed. Taking each program you inquired about or actually applied for in turn, let's explore how helpful the personnel were and how efficient the system was in determining whether or not you were eligible, and then, if eligible, in providing assistance.

- We would very much like to obtain your suggestions about what could be done better by governments at all levels if another disaster occurs here or in another big city. What would your main suggestions be about program features? About federal assistance? About state assistance? About local assistance?

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ANNEX F
LETTER OF INTRODUCTION

PROPOSED DRAFT LETTER
[Will need to be passed through the Association]

Apartment Association of Greater Los Angeles
621 South Westmoreland Avenue
Los Angeles, California 90005-3995

Owner's Name
Owner's Address
City, State Zip

January 25, 1995

Dear Apartment Owner:

In response to last year's Northridge Earthquake, the U.S Department of Housing and Urban Development has redoubled its efforts to assure that government programs effectively and efficiently serve the needs of owners and tenants in disaster situations. As part of this effort, the Los Angeles consulting firm of Hamilton, Rabinovitz & Alschuler, Inc. has been engaged to conduct a study to assess the effect the Northridge Earthquake has had on property owners' plans for their rental buildings, and how local, state and federal programs are working so that they may be improved in the event of a future disaster.

HR&A will soon be contacting a sample of rental property owners whose buildings suffered damage to ask them to participate in a telephone survey. The survey's questions are designed to determine how rental properties such as yours have or will be repaired since the earthquake, what programs and program features property owners have used and found to be most or least helpful, and how they might be improved.

We strongly support this effort and urge you to cooperate with HR&A by providing your best information and most honest opinions about your experiences with the recovery. We hope that the results of the study will improve the speed, efficiency and effectiveness of the government's response if another such disaster should occur.

Sincerely,

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-95-3839; FR-3822-N-03]

NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP); Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1995; Amendment.

SUMMARY: On January 5, 1995 (59 FR 1846), HUD published a NOFA that announced FY 1995 funding of $250,391,741 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. This notice amends that NOFA to permit housing authorities which were identified in the NOFA as having public housing police departments to receive funding for the purchase of clothing, equipment or vehicles that supports their mission.

DATES: The original application deadline date is not changed. Applications must be received at the local HUD Field Office on or before Friday, April 14, 1995, at 3:00 PM, local time. This application deadline is firm as to the date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A Facsimile (FAX) is not acceptable.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM, PUBLIC HOUSING, CONTACT: The local HUD Field Office, Director, Public Housing Division (Appendix "A" of this NOFA), or Malcolm E. Main, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197 A telecommunications device for hearing impaired or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers).

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: The local HUD Field Office Administrator, Office of Native American Programs (Appendix "A" of this NOFA), or Tracy Outlaw, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, Room B133, 451 Seventh Street, S.W Washington, D.C. 20410, telephone (202) 708–0088. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION REGARDING ASSISTED (NON-PUBLIC AND INDIAN) HOUSING DRUG ELIMINATION PROGRAM CONTACT: Lessley Wiles, Office of Multifamily Housing Management, Department of Housing and Urban Development, Room 6176, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708–2654. TDD number (202) 708–4594 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's Fiscal Year (FY) 1995 funding of $250,391,741 under the Public and Indian Housing Drug Elimination Program (PHDEP) was published on January 5, 1995 (59 FR 1846). A notice making several corrections to the NOFA was published in the **Federal Register** on February 2, 1995 (60 FR 6548). This notice amends the FY 1995 PHDEP NOFA to permit certain public housing authorities to receive funding for the purchase of police clothing, equipment, and vehicles.

Paragraphs I.(c)(1)(ii)(j)(5) and I.(c)(10)(v) of the NOFA do not permit funding to purchase or lease any military or law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment. Paragraph I.(c)(10)(iv) of the NOFA does not permit funding for the purchase or lease of law enforcement and/or any other vehicles, including cars, vans, buses, and motorcycles.

This notice amends paragraphs I.(c)(1)(j)(5), I.(c)(10)(iv), and I.(c)(10)(v) to permit public housing authorities which have been identified in paragraph I.(c)(1)(ii) of the NOFA as having public housing police departments to receive funding for the purchase of clothing, equipment, and vehicles that support their mission.

Accordingly, FR Doc. 95–260, the FY 1995 NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP), published in the **Federal Register** on January 5, 1995 (60 FR 1846) is amended as follows:

1. On page 1850, in columns 2 and 3, paragraph I.(c)(1)(ii)(j)(5), on page 1854, in column 1 I.(c)(10)(iv) and I. (c)(10)(v) of the NOFA are revised to read as follows:

I. Purpose and Substantive Description

* * * * * *

(c) * * *

(1) * * *

(ii) * * *

(J) * * *

* * * * * *

(5) *Funding is permitted* Housing authorities that have been identified by HUD in paragraph I. (c)(1)(ii) of this NOFA as having public housing police departments are permitted to purchase or lease law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc. that supports their mission. HAs may not purchase such clothing or equipment for local police departments.

* * * * * *

(10) * * *

(iv) *Funding is not permitted* for the purchase of law enforcement and/or any other vehicles, including cars, vans, buses, and motorcycles, with the following exception, public housing authority police are permitted to purchase law enforcement and/or any other vehicles, including cars, vans buses, and motorcycles for public housing authority police departments, that are listed in paragraph I.(c)(1)(ii) of the NOFA, that supports their mission. HAs may not purchase such vehicles for local police departments.

(v) *Funding is not permitted* to purchase or lease any military or law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles, protective vests, and any other supportive equipment, etc., with the following exception, public housing police departments, identified in paragraph I.(c)(1)(ii) of the NOFA, are permitted to purchase or lease law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles, protective vests, and any other supportive equipment, etc. that supports their mission. HAs may not purchase such clothing or equipment for local police departments

* * * * * *

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Dated: February 8, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95-3730 Filed 2-14-95; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-920-05-1320-01]

UTAH: Notice of Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application UTU-69635

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Bureau of Land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The Federal coal lands in coal lease application UTU-69635 have been delineated into a coal lease tract referred to as the Alkali Creek Tract. The tract under consideration is located about 13 miles northeast of Wellington, Utah, in Carbon County. The tract is in the Book Cliffs Coal Field and is described as follows:

T 13 S., R. 11 E., SLM
Section 1, Lots 1-7, Lot 8 for all coal except the Rock Canyon bed;
Section 10, E½E½;
Section 11, All;
Section 12, W½W½;
Section 13, W½NW¼, SE¼NW¼, SW¼;
Section 14, N½, N½S½, SE¼SE¼,
Section 15, NE¼NE¼;
Section 24, N½N½NW¼,
Section 25, N½NE¼NE¼
Containing 2,177.52 acres.

Two economically minable coal beds, the Gilson and Rock Canyon, are found in this tract. The Gilson seam averages 6.3 feet in thickness and the Rocky Canyon 8.4 feet. This tract contains an estimated 18 million tons of recoverable, high-volatile C bituminous coal. Coal quality in the seam, on an as received basis, is as follows:

Seam	Moist %	Ash %	V.M. %	F.C. %	Sulfur %	Btu
Gilson	3.4	10.7	36.8	49.4	0.6	12,434
Rock Canyon	4.1	10.0	37.4	48.6	0.6	12,333

The public is invited to make public comment and also to submit written comments on the fair market value and the maximum economic recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on the discussion of the potential effects of mining the proposed lease. Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the mentioned address during regular business hours (8 a.m. to 4 p.m.) Monday through Friday.

Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated, a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs include mining and reclamation of producing the coal and tons of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax account factors.
12. The value of any surface estate where held privately.
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held March 8, 1995, and comments on fair market value and maximum economic recovery must be received by April 10, 1995.

ADDRESSES: For more complete data on this tract, please contact Max Nielson at 801-5393-4038, Bureau of Land Management, Utah State Office, P.O. Box 45155, 324 South State Street, Salt Lake City, Utah, 845-0155.

The public hearing will be held at the College of Eastern Utah, Main Building, Room No. 114, located at 451 East 400 North in Price, Utah, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Max Nielson, 801-539-4038.

Dated: February 6, 1995.

Mat Millenbach,

State Director, BLM, Utah State Office.

[FR Doc. 95-3810 Filed 2-14-95; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-015-95-1430-01; AZA-27081]

Application for Conveyance of Land, Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands located south of the town of Colorado City, Mohave County, Arizona, have been examined and found suitable for classification for conveyance pursuant to Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes (R&PP) Amendment Act of 1988.

Gila and Salt River Meridian, Arizona

T 40 N., R. 6 W.,
Sec. 9, S½NE¼, S½.
Containing 400 acres.

The town of Colorado City has made application for the above described public lands for solid waste disposal purposes. The lands are not needed for Federal purposes. Conveyance would be in the public interest and is consistent with the Arizona Strip District Resource Management Plan, dated January 1992. Conveyance would be in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances.

Publication of this notice in the **Federal Register**, will segregate and make the lands unavailable to all forms of appropriation under the public land laws, including the general mining and mineral leasing laws, except for conveyance under the R&PP Act, as amended. Segregation shall terminate upon publication in the **Federal Register** of an opening order or upon issuance of a patent or deed, which ever occurs first.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for solid waste disposal. Comments on the classification are restricted to whether the land is physically suited for solid waste disposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for solid waste disposal.

DATES: For a period of 45 days from the date of this publication, interested parties may submit comments to the District Manager, Bureau of Land Management, Arizona Strip District, 390 N. 3050 E., St. George, UT 84770. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Vermillion Resource Area Realty Specialist, at (801) 628-4491, ext. 271.

Roger G. Taylor,

Arizona Strip District Manager

[FR Doc. 95-3811 Filed 2-14-95; 8:45 am]

BILLING CODE 4310-32-P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-795517

Applicant: Robert Dunn, Sylmar, CA

The applicant has applied for a permit to export and re-import a pair of captive-born orangutans (*Pongo pygmaeus*) to Canada. This permit was originally published on January 5, 1995. The activity for which the permit is requested has been modified to include the filming of a movie. The purpose of the activity continues to be conservation education. This notice will only be published for a period of 15 days.

Written data or comments should be submitted to the Director, U.S. Fish, and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 15 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 15 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: February 9, 1995.

Caroline Anderson,

Acting Chief Branch of Permits Office of Management Authority.

[FR Doc. 95-3698 Filed 2-14-95; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No.]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Comment Period on Draft Guidance for Candidate Species, Draft Petition Management Guidance, Draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments, Preliminary Draft Handbook for Habitat Conservation Planning and Incidental Take Permit Processing, and Draft Section 7 Endangered Species Consultation Handbook

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, Commerce.

ACTION: Notice of reopening of comment periods.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (Services) provide notice that the comment periods on their draft guidance and policies published in the **FEDERAL REGISTER** on December 21, 1994 (59 FR 65780-82 and 65884) are extended. All interested parties are invited to submit comments.

DATES: The comment periods, which originally were to close on February 21, 1995, now close on April 7, 1995.

ADDRESSES: Persons wishing to review the draft guidance documents or policy statements may obtain copies by contacting the nearest Regional Director of the Fish and Wildlife Service. The Regional Offices are listed below.

Region 1.—California, Hawaii, Idaho, Nevada, Oregon, Washington, Commonwealth of the Northern Mariana Islands, and Pacific Territories of the United States.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (503-231-6241).

Region 2.—Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505-766-3972).

Region 3.—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612-725-3276).

Region 4.—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana,

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Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30303 (404–679–7103).

Region 5.—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413–253–8615).

Region 6.—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303–236–7398).

Region 7.—Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Street, Anchorage, Alaska 99501 (907–786–3605).

Written comments should be sent to the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358–2105). Each comment should address only a single guidance document or policy.

FOR FURTHER INFORMATION CONTACT: Robert G. Ruesink, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, at the above address (703/358–2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1994, the Services published in the **Federal Register** (59 FR 65780–82 and 65884) a series of draft guidance documents and policy statements under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et. seq.*). A brief description is given below of each of these documents and policy statements.

1. Draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments: The authority to list a "species" as endangered or threatened is not restricted to species recognized in formal taxonomic terms, but extends to subspecies, and for vertebrate taxa, to distinct population segments. This document proposes to adopt a policy to clarify the Services' interpretation of the term "distinct population segments" for the purposes of listing, delisting, and reclassifying vertebrates.

2. Draft Guidance for Candidate Species: This draft document is intended to provide internal guidance for the assessment, monitoring, and conservation of species that are candidates for listing under the Act.

3. Draft Petition Management Guidance: The purpose of this document is to provide policy and guidance for managing petitions submitted to the Services under the Act so as to promote efficiency and nationwide consistency.

4. Draft Section 7 Endangered Species Consultation Handbook: This draft handbook provides consistent procedures to the Services' for compliance with the affirmative conservation responsibilities of section 7(a)(1) of the Act, and for the conduct of section 7(a)(2)–(4) consultations and conferences.

5. Draft Handbook for Habitat Conservation Planning and Incidental Take Permit Processing: This draft document provides internal guidance for conducting the incidental take permit program under section 10(a)(1)(B) of the Act so as to promote efficiency and nationwide consistency within and between the Services.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: January 31, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

Dated: February 7, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 95–3748 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Alp. I), this notice announces a regularly scheduled meeting of the Sport Fishing and Boating Partnership Council. Interested persons may make oral statements to the Council or may file written statements for consideration Summary minutes of the workshop will be maintained by the Council Coordinator at 4040 North Fairfax Drive Arlington, VA 22203, and will be available for public inspection during regular business hours (7:30–4:00) Monday through Friday within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATE: The meeting will be held on March 7, 1995, beginning at 8:30 a.m.

PLACE: The meeting will be held at the San Destin Hilton Hotel, Destin, Florida.

AGENDA: The Council will receive reports from the Initiatives, Boating, Outreach, Education, and Ad-Hoc Membership Committees.

CONTACT PERSON FOR MORE INFORMATION: For further information individuals may contact Chris Dlugokenski, Council Coordinator, at 703 358–1777.

Dated: February 9, 1995.

Richard N. Smith,

Acting Director.

[FR Doc. 95–3737 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 4, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 2, 1995.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Jefferson County

Calvery Episcopal Church, 1300 Arapahoe St., Golden, 95000186

ILLINOIS

Lake County

Bennett, Edward H., House and Studio, 89 E. Deerpath, Lake Forest, 95000196

Montgomery County

Litchfield Elke Lodge No. 654, 424 N. Monroe St., Litchfield, 95000195

INDIANA

Clinton County

Kirklin Public Library, 115 N. Main St., Kirklin, 95000206

Elkhart County

Puterbaugh, Joseph and Sarah, Farm, 59123 Co. Rd. 9, Elkhart vicinity, 95000198

Fountain County

Bethel Church and Graveyard, Bethel Rd., 0.5 mi. W of jct. with Riverside Rd., Attica vicinity, 95000203

Franklin County

Franklin United Brethren Church, Old, Jct. of Franklin Church Rd. and IN 101, .5 mi. N of Fox Run Rd., Brookeville vicinity, 95000201

Snow Hill Covered Bridge, Snow Hill Rd. over Johnson Fork, Rockdale, 95000208

Hamilton County

Union High Academy Historic District, 434 S. Union St., Westfield, 95000209

Hendricks County

Kellum, Noah and Hannah Hadley, House, 7290 S. Co. Rd. 1050 E, Camby vicinity 95000204

McCormack—Bowman House, Co. Rd. 200 W, 0.5 mi. S of jct. with US 40, Clayton, 95000200

Knox County

Rose Hill Farmstead, Co. Rd. ce10s, 0.25 mi. N of jct. with Old Wheatland Rd., Vincennes Vicinity, 95000202

Marion County

Indiana State Library and Historical Building, 140 N. Senate Ave., Indianapolis, 95000207

Miami County

Converse Depot, 203 E. Railroad St. Converse, 95000205

St. Joseph County

Stephenson Underwear Mill, 322 E. Colfax Ave., South Bend, 95000197

Wabash County

McNamee—Ford House, 536 N. Wabash St. Wabash, 95000199

MISSISSIPPI

Hinds County

North Manor Apartments, 909 North St. Jackson, 95000177

Marion County

Marion County Courthouse and Jail, Courthouse Sq., Columbia, 95000178

Wilkinson County

Tansy Island Hunting Club Camp Site and Clubhouse, Tansy Island Rd., off of Dolosoro Loop, Woodville vicinity 95000179

NEW JERSEY

Atlantic County

Pleasant Mills, Elwood—Pleasant Mills Rd. E side, Mullica Township, Pleasant Mills, 95000182

Cumberland County

Vineland High School, 61 W. Landis Ave., Vineland, 95000181

Hudson County

Fairmont Apartments, 2595 Kennedy Blvd Jersey City, 95000183

Hunterdon County

Amsterdam Historic District, Roughly, area surrounding Amsterdam, Church, and Crab Apply Hill Rds., Holland Township, Amsterdam, 95000184

NORTH CAROLINA

Iredell County

Allison Woods, Roughly, area E and S of US 21 surrounding the S. Yadkin R., N to NC 2156, Statesville vicinity, 95000173

Martin County

Williamston Commercial Historic District, Roughly area surrounding the 100 blocks of E. Main, W. Main and S. Smithwick Sts. and the 200 block of Washington St. Williamston, 95000174

Stanly County

Opera House—Starnes Jewelers Building, 127—133 W. Main St., Albemarle, 95000180

Snugs, Isaiah Wilson, House, and Marks House, 112 N. Third St., Albemarle, 95000190

Watauga County

Bollinger—Hartley House, 423 N. Main St. Blowing Rock, 95000172

OHIO

Ashtabula County

Mother of Sorrows Church, 1500 W. 6th St. Ashtabula, 95000170

Carroll County

Kilgore Union Presbyterian Church, 7219 Germano Rd. SE, Carrollton vicinity, 95000166

Pottorf, Henry and Mary, House and Farmstead, 4071 Meter Rd., Mechanicstown vicinity, 95000171

Columbiana County

Salem Methodist Episcopal Church, 244 S. Broadway, Salem, 95000167

Madison County

Farmers National Bank, Jct. of Main and Chillicothe Sts., SW corner Plain City 95000168

Marion County

Soldiers' and Sailors' Memorial Chapel, OH 423, E side, within Marion Cemetery Marion, 95000169

VERMONT

Washington County

Leonard, Chauncey B. House, N side Shed Rd., about 0.2 mi W of Scott Hill Rd. Berlin, 95000176

Windham County

Crawford, Theophilus, House, SW side Hickory Ridge Rd., about 2 mi. N of Putney, Putney vicinity, 95000175

Windsor County

Beaver Meadow Union Chapel, N side VT 132, Norwich, 95000185

WASHINGTON

King County

Kirk, Lilly, House (Bothell MPS), 19619 100th Av. NE, Bothel, 95000188

Sorenson House (Bothell MPS), 10011 W Riverside Dr., Bothell, 95000187

Kitsap County

Bainbridge Island Filipino Community Hall, 7566 NE High School Rd., Bainbridge Island, 95000193

Bremerton Elks Temple Lodge No. 1181 Building, 285 Fifth St., Bremerton, 95000192

Pierce County

Smith, Peter, Farm—Donation Land Claim, 12504 Spanaway Loop Rd., Parkland vicinity, 95000194

Snohomish County

Bates—Tanner Farm (Bothell MPS), 3420 240th St. SE, Bothell, 95000189

Grimm House, 2002 Hartford Dr., Lake Stevens, 95000191

[FR Doc. 95–3677 Filed 2–14–95; 8:45 am]

BILLING CODE 4310–10–M

Notice of Inventory Completion for Native American Human Remains in the Possession of the Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains in the possession of the Field Museum of Natural History, Chicago, IL.

A detailed inventory and assessment of these human remains has been made by the Field Museum and representatives of the Pawnee Tribe of Oklahoma.

The cranium and mandible of a single individual was acquired by The Field Museum in 1894 from Ward's Natural Science Establishment, Rochester, NY. Information from Ward's identifies that remains as a Pawnee woman killed in Nebraska in September, 1875. There are no associated funerary objects. Inventory of the human remains and review of the accompanying documentation failed to establish the individual's identity.

Based on the abovementioned information, officials of The Field Museum has determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and the Pawnee Tribe of Oklahoma.

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This notice has been sent to officials of the Pawnee Tribe of Oklahoma. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains should contact Jonathan Haas, MacArthur Curator of North American Anthropology, The Field Museum of Natural History, Roosevelt Road at Lake Shore Drive, Chicago, IL 60605, telephone: (312) 922–9410, extension 641, before March 17, 1995. Repatriation of these human remains may begin after that date if no additional claimants come forward.

Dated: February 9, 1995

Francis P. McManamon

Departmental Consulting Archeologist, Chief, Archeological Assistance Division

[FR Doc. 95–3684 Filed 2-14–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of The Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of The Field Museum of Natural History, Chicago, IL, that meet the definition of "object of cultural patrimony" under section 2 of the act.

The Little Elk Standing Village Bundle (FM# 71860–7187) consists of a hide bundle wrapper with pipe stem and arrows; paint bag; two scalp locks; three bundles of braided sweetgrass; sinew; two goose necks; swan neck; loon neck; shell; black pipe and stem; ear of corn; pierced elkhorn scraper; and penis bone. The bundle was purchased for the Field Museum by Assistant Curator James Murie in 1902 and identified as Pawnee.

The Big Black Meteoritic Bundle (FM# 71898) consists of a hide bundle wrapper; war club; two pipe stems; pipe and stem; two curved bones; pipe tamper; wooden pole for storing a star chart, including a metal disc, bag and skin container; start chart; three arrow shafts; three birds wrapped in skin; two scalp locks; small mammal skin; legging fragments; bird leg with talon; two feathers; stuffed hawk; two mammal skins; leather pouch; two bundles of braided sweetgrass; piece of leather bound with leather thong; two pouches; bag; piece of string; ear of corn; two birds in pouches; thong for tying bundle; owl skin; rope, and weasel skin. The bundle was purchased for The Field Museum by Assistant Curator James Murie in 1906 and identified as Pawnee.

Authorized representatives of the Pawnee Tribe of Oklahoma have been provided with copies of the museum records and have viewed the bundles in person. Representatives of the Pawnee Tribe of Oklahoma identify the bundles as two of the twelve major sacred bundles of the Pawnee, all of which have ongoing importance central to the Pawnee tribe as a whole and which could not have been alienated, appropriated, or conveyed by any individual. The Pawnee Tribe of Oklahoma Business Council requested repatriation of the bundles in a letter dated April 18, 1994.

Based on the above mentioned information, officials of The Field Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the two bundles and the Pawnee Tribe of Oklahoma. Officials of The Field Museum have also determined that the two bundles meet the definition of object of cultural patrimony pursuant to 25 U.S.C. 3001 (3)(C).

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

This notice has been sent to officials of the Pawnee Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Jonathan Haas, MacArthur Curator of North American Anthropology, The Field Museum of Natural History, Roosevelt Road at Lake Shore Drive, Chicago, IL 60605, telephone: (312) 922–9410, extension 641, before March 17, 1995. Repatriation of the two bundles to the Pawnee Tribe of Oklahoma can begin after that date if no additional claimants come forward.

Dated: February 9, 1995

Francis P. MacManamon

Departmental Consulting Archeologist Chief, Archeological Assistance Division

[FR Doc. 95–3685 Filed 2-14–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the Robert Hull Flemming Museum of the University of Vermont, Burlington, Vermont

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of the Robert Hull Flemming Museum of the University of Vermont, Burlington, VT, that meets the definitions of "sacred object" and "object of cultural patrimony" under section 2 of the act.

The item consists of a rattle made of a turtle shell and the hollow neck and head of the turtle, reinforced with willow, serving as a handle. The tortoise shell rattle was donated to the Museum in 1931 by Mr. Henry Schnakenberg, an art collector who is thought to have acquired the object in New York City about 1925–30. The rattle is designated accession number 1931.10.2 and E593.

The object's cultural affiliation was determined from the donor's information in consultation with the Oneida Indian Nation of New York. Representatives of the Oneida Indian Nation of New York have identified this item as a tortoise shell rattle. This tortoise shell rattle is needed by present day adherents for continued observance of the Great Feather Dance, a sacred ritual observance enacted during ceremonies of the traditional calendrical round including the Midwinter festival. Representatives of the Oneida Indian Nation of New York also affirm that this tortoise shell rattle is owned collectively by the members of the Oneida Indian Nation of New York and no individual had the right to sell or otherwise alienate the item.

Based on the above mentioned information, officials of the Robert Hull Fleming Museum, University of Vermont have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between this tortoise shell rattle and the Oneida Indian Nation of New York. Officials of the Robert Hull Fleming Museum, University of Vermont have also determined that this tortoise shell rattle meets the definitions of sacred object and object of cultural patrimony pursuant to 25 U.s.C. 3001 (3)(C). Copies of this notice have been sent to the the Oneida Indian Nation of New York and the Oneida Tribe of Indians of Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Ann Porter, Director, Robert Hull Fleming Museum, Colchester Avenue Burlington, VT 05405, telephone: (802) 656–0750 before March 17, 1995. Repatriation of this tortoise shell rattle to the Oneida Indian Nation of New York can begin after that date if no additional claimants come forward.

Dated: February 9, 1995

Francis P. MacManamon

Departmental Consulting Archeologist Chief, Archeological Assistance Division

[FR Doc. 95–3686 Filed 2-14–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Titicut Site in Bridgewater, MA in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects, presently in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, from the Titicut Site in Bridgewater, MA.

A detailed inventory and assessment of these human remains has been made by the Robert S. Peabody Museum of Archaeology. Human remains of one individual, a ten to twelve year old female, were recovered in 1947 from the Titicut site. This site is believed to have been occupied for several thousand years prior to European Contact. The human remains were recovered with glass and shell beads, a felsite biface, an iron axe, awl, and knife handle, a large ceramic vessel, several antler spoons and hafts, and several whelk shells. The burial can be dated between 1600 and 1620, based on the European trade items recovered with the individual. This site is located within the aboriginal territory of the Wampanoag Tribe at the time of European contact.

Based on the available archaeological and ethnohistorical evidence, as well as the geographical and oral tradition of the Wampanoag people, officials of the Robert S. Peabody Museum have determined that pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects from the Titicut Site and the Wampanoag people. The nearest group of identifiable Wampanoag people are located in Mashpee, MA. The Federally recognized Gay Head Wampanoag concur that Mashpee is the closest community of Wampanoag people to be identified with the Titicut Site. However, the Mashpee Wampanoag are not recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Since the Mashpee Wampanoag are not Federally-recognized, the Robert S. Peabody Museum included these remains and associated funerary objects on an inventory of "culturally unidentifiable" human remains and requested the Native American Graves Protection and Repatriation Act Review Committee's recommendation as to their disposition.

On December 21, 1994, officials of the Robert S. Peabody Museum were formally notified of the recommendation from the Review Committee stating that, "(A)fter careful consideration of the evidence provided in your letter and in testimony at their most recent meeting, the Review Committee recommends that the Robert S. Peabody Museum of Archaeology proceed to repatriate the above mentioned human remains and associated funerary objects to the Mashpee Wampanoag."

This notice has been sent to officials of the Mashpee Wampanoag Tribe. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James W. Bradley, Director of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810; telephone: (508) 749–4490, before March 17, 1995. Repatriation of these human remains and associated funerary objects to the Mashpee Wampanoag Tribe may begin after that date if no additional claimants come forward.

Dated: February 9, 1995

Francis P. McManamon

Departmental Consulting Archeologist, Chief, Archeological Assistance Division

[FR Doc. 95-3687 Filed 2-14-95; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–700 and 701 (Final)]

Disposable Lighters From the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION: On October 24, 1994, the Commission instituted investigation No. 731–TA–701 (Final), Disposable Lighters from Thailand, and established a schedule for its conduct (59 FR 55853, November 9, 1994). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 3, 1995, to March 8, 1995 (59 FR 59210, November 16, 1994). The Commission, therefore, revised its schedule in the investigation to conform with Commerce's new schedule (59 FR 66973, December 28, 1994). On December 13, 1994, the Commission instituted investigation No. 731–TA–700 (Final), Disposable Lighters from the People's Republic of China and established a schedule for its conduct (60 FR 6289, February 1, 1995).

On February 1 and February 2, 1995, the Commission received requests from counsel for Chinese respondents to postpone the date of its scheduled hearing in the subject investigations. No objections to these requests were received from the petitioner or other parties to these investigations. The 2 Commission, therefore, is granting the postponement requests and is revising its schedule in the investigations.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 10, 1995; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 15, 1995; the prehearing staff report will be placed in the nonpublic record on March 8, 1995; the deadline for filing prehearing briefs is March 15, 1995; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 21, 1995; and the deadline for filing posthearing briefs is March 29, 1995.

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For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: February 9, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3758 Filed 2–14–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–368]

Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same; Notice of Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Respondents Toshiba Battery Co., Toshiba America Information Systems, Inc., and Toshiba America Consumer Products, Inc., on the Basis of a License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued on January 12, 1995, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainants Energy Conversion Devices, Inc. and Ovonic Battery Co., Inc. and respondents Toshiba Battery Co., Toshiba America Information Systems, Inc., and Toshiba America Consumer Products, Inc. (collectively "the Toshiba companies") to terminate the investigation as to the Toshiba companies on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of certain rechargeable nickel metal hydride anode materials and batteries and products containing same, on September 8, 1994. Complainants allege infringement of claims 1–17, 22, 23, 25, 27, and 32 of U.S. Letters Patent 4,623,597 ("the '597 patent").

On December 22, 1994, complainants and the Toshiba companies filed a joint motion to terminate the investigation with respect to the Toshiba companies on the basis of a licensing agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to the Toshiba companies. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: February 6, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3759 Filed 2–14–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interoperable System Project Foundation

Notice is hereby given that, on July 5, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the InterOperable System Project Foundation ("ISPF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: ABB Corporate Research, Dept. KL, Vasteras, Sweden; Apparatebau Hundsbach GmbH, Baden-Baden, Germany; Beamex Oy Ab, Pietarsaari, Finland; Bray International, Inc., Houston, TX; Chevron Research and Technology Co., Richmond, CA; ifak, Barleben, Germany; Knick Elektronische MeBgerate GmbH & Co., Berlin, Germany; Politecnico di Torino-Dai, Torino, Italy; Ramsey Technology, Inc., Minneapolis MN; Rosemount Analytical Inc., Eden Prairie, MN; Simrad Albatross AS, Kongsberg, Norway; and Toshiba Corporation, Tokyo, Japan. The following parties are no longer members of ISP: KDG Mobrey Ltd.; Fachhochschule Landshut; Asea Brown Boveri; and Rosemount Measurement Division.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ISPF intends to file additional written notifications disclosing all changes in membership.

On May 7, 1993, ISPF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 23, 1993 (58 FR 49529).

The last notification was filed with the Department on April 5, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 18, 1994 (59 FR 25960).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3723 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Edison Industrial Systems Center

Notice is hereby given that, on December 21, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Edison Industrial Systems Center has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Edison Industrial Systems Center, Toledo, OH; Doehler-Jarvis, Toledo, OH; and AI WARE, Cleveland, OH. The project's general area of planned activity is to develop and demonstrate the application of sensors and neural network technology to the monitoring and control of the aluminum die casting process. The activities of this Joint Venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3722 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Catalytica, Inc.

Notice is hereby given that, on December 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* ("the Act"), Catalytica, Inc., for itself and on behalf of its members, has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Catalytica, Inc., Mountain View, CA; and Microfluidics, Newton, MA. The project's general area of planned activity is to develop and commercialize technology for the production of nanomaterials using Microfluidizer technology for catalyst application. The activities of this joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–3721 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Healthcare Information Infrastructure Proposal (HIIT)

Notice is hereby given that, on September 27, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the South Carolina Research Authority ("SCRA") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties, led by SCRA, Columbia, SC, under the Healthcare Open Systems & Trials (HOST) Consortium, Austin, TX, are General Electric Corporate Research and Development, Schenectady, NY; Microelectronics & Computer Technology Corporation, Austin, TX; Medical University of South Carolina, Charleston, SC; BellSouth Business Systems, Columbia, SC; TransQuick, Inc., Atlanta, GA; Coleman Research Corporation, Springfield, VA; Marco International, Calverton, MD; Connecticut Hospital Research and Education Foundation, Wallingford, CT; University of Georgia, Athens, GA; and New Jersey Institute of Technology, Newark, NJ. The Healthcare Information Infrastructure Technology ("HIIT") is an innovative, industry-led program involving healthcare and technology experts. The general area of planned activity is to develop infrastructure tools that will accelerate the adoption of open systems, enabling the emergence of the virtual healthcare enterprise. SCRA is responsible for managing the overall effort.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3725 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant To The National Cooperative Research And Production Act Of 1993—Phosphoric Acid Steering Committee And Joint Venture

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* ("the Act"), Phosphoric Acid Steering Committee and Joint Venture has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new members to the Phosphoric Acid Joint Venture are: Chemax, Portland, OR and Venus Laboratories, Inc., Wood Dale, IL. In addition, the corporate name of Diversey Corp., Livonia, MI was previously incorrect.

No other changes have been made in either the membership, corporate names, or planned activities of the joint venture.

On April 26, 1991, the Phosphoric Acid Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 20, 1991 (56 FR 23089). An additional notification was filed by Diversey Corp., on June 1, 1992 and published in the **Federal Register** on July 9, 1992 (57 FR 30510).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3724 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Beazer East, Inc.*, Civ. Act. No. 5:95–CV–62–BO(2), was lodged on January 26, 1995, with the United States District Court for the Eastern District of North Carolina, Western Division.

This case concerns the Koppers Co., Inc. (Morrisville Plant) Superfund site, In Morrisville, Wake County, North Carolina (the "Site"). Pursuant to Section 107 of CERCLA, 42 U.S.C. Section 9607, the Complaint in this action seeks recovery of all response costs incurred in response to the release or threatened release of hazardous substances at the Site.

Defendant Beazer East, Inc., (the "Settling Defendant") has agreed in the proposed Consent Decree to pay the United States $1,023,475.15 to reimburse response costs incurred by the United States with respect to the Site prior to March 5, 1994.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney

General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Beazer East, Inc.*, DOJ Ref. #90–11–3–1108.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of North Carolina, Western Division, 310 New Bern Avenue, Suite 800, Federal Building, Raleigh, North Carolina, 27601–1461; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–3720 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Cooperative Agreement Announcement

AGENCY: National Institute of Corrections, Justice.

ACTION: Notice.

SUMMARY: The NIC announces the solicitation of applications for the study of the District of Columbia Department of Corrections.

DATES: Applications for this cooperative agreement will be available beginning February 15, 1995. Applications are due no later than 4 p.m. Eastern time, March 20, 1995.

ADDRESSES: Request copies of the solicitation (application) from NIC, 320 First St., N.W. (HOLC), Washington, D.C. 20534, by FAX to 202–307–3361.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Moore or Ms. Anna Z. Thompson, (202) 307–1300, ext. 147 or 145.

Cooperative Agreement Announcement

District of Columbia Department of Corrections Study

I. Overview

Congress has appropriated $200,000 to the National Institute of Corrections (NIC) for Federal Fiscal Year 1995 to fund an in-depth study of the District of Columbia Department of Corrections (DC DOC). Therefore, the National Institute of Corrections is soliciting applications from organizations or individuals knowledgeable about correctional management, programs and operations. The project to be funded involves an analysis and evaluation of specific areas of the District of Columbia Department of Corrections. Some areas will also require attention in the development of a program design as well as implementation strategies. The project should include, but not be limited to, a compilation and review of existing data and relevant information; analysis of the data, to include previous and/or on-going court ordered evaluations and findings; evaluation of areas listed below; and recommendations for programmatic and operational improvement in the DC DOC based on current and "best" practices.

II. Scope

The successful applicant will document findings and recommendations in a report to be made available to NIC. The report will be based on a comprehensive study of each of the areas listed below:

* Analysis of the rated capacity of the system, to include an analysis of the appropriate number of inmates to be housed in each facility;
* Design and implementation of an objective classification system and a community risk assessment system;
* Staffing analysis;
* A review of the policies, procedures, standards, regulations and laws currently governing human resource issues within the D.C. Department of Corrections including hiring, training, assignment, and promotion of personnel with a special emphasis on hiring and training standards;
* Assessment of the physical plant, to include, but not be limited to, state of repair and safety and health considerations;
* Security analysis of those facilities which are not under court order, to include, but not be limited to, internal security, perimeter/external security, and assessment of emergency preparedness; (through and comprehensive security audits as well as assessments of emergency preparedness have been conducted at Central, Maximum and the Jail by Court consultants. This effort will be extended to all other facilities by the cooperative agreement recipient);
* Facility safety and health assessments, primarily of an environmental nature, to include, but not be limited to, food service sanitation, vector control, air quality, water supply and sewage disposal, lighting, and noise control, and communicable disease and infection control. (Comprehensive assessments are currently being conducted at Central, Maximum, Modular and the Jail by the Department of Consumer and Regulatory Affairs (DCRA) with thorough, detailed reports issued every four months by highly qualified environmental health and safety experts. The concerns at the facilities under court scrutiny are probably similar to those at all DC facilities and these issues can be addressed by auditing the facilities not under court scrutiny and extrapolating the relevant findings of the DCRA reports to them);
* Assessment of the adequacy of existing financial resources;
* Review and recommendations as to new and/or additional policies and procedures relative to the above mentioned areas.

Funding for this project has been set at $200,000 which will support one cooperative agreement. Activities funded through this agreement are to be completed within six months after the project award. Those eligible for application consideration include state agencies; public for profit or non-profit organizations; associations; educational institutions; other organizations and individuals. This project is on an expedited time frame and the award recipient should be prepared to begin work within 45 days of the closing date of the announcement. Applications for this project must be received by the Prisons Division no later than 4 p.m. Eastern time, March 20, 1995.

Note: It is acceptable for two or more organizations to join together to submit a joint application for this award or for an applicant to propose some type of a subcontract. There are specific provisions which apply to these types of arrangements. Any applicants planning on proposing such an arrangement should contact NIC and specifically request the briefing materials related to this issue, see Section VI.

III. Application Procedures

The applicant must complete OMB Standard Form 424, Application for Federal Assistance; the certification of a drug-free workplace; and the certification regarding debarment (Copies of these forms are included in the Institutes' Annual Program Plan.) Detailed procedures for preparing financial assistance applications are given in the NIC Guidelines Manual: Instructions for Applying for Federal Assistance. Each of the above referenced documents will be made available upon request, see Section VI.

Applications should be submitted in six copies. At least one of the six copies must bear the original signature, in ink, of the administrator or chief executive officer of the applicant organization. A cover letter must identify the responsible audit agency for the applicant's financial accounts. Applications must be written concisely and typed double spaced.

Applications must detail the project, the objectives, and the plan for implementing the proposal. Projected costs and description of the qualifications of the applicant(s) must be included. The projected cost of conducting the project is a critical element in the decision making process, and the Institute urges applicants to keep indirect costs, in particular, to a minimum. In addition, applicants must assure that they have the personnel resources to complete this project within the specified timeframes.

Applications being sent by mail should be addressed to the National Institute of Corrections, Grant Office, 320 First Street, N.W., Washington, D.C. 20534. Applications transmitted by fax will not be accepted or acknowledged. Applications for grants should not be sent to NIC Longmont, Colorado, offices. Applications being sent by personal delivery or Federal Express should be directed to the National Institute of Corrections, 500 First Street, N.W., Grants Office, Seventh Floor, Washington, D.C. 20534.

IV. Application Review Procedures

Applications for grants and cooperative agreements are reviewed by a team of Institute staff members. The applications are subsequently approved or disapproved by the Director of the National Institute of Corrections. Four categories of criteria are used in reviewing applications: programmatic, organizational, project management, and financial/administrative. Among the specific criteria used to evaluate the applications are:

* Indication of a clear understanding of the specific areas of corrections to be addressed by this project and the key issues;
* Well-defined project objectives, tasks, and resources necessary to meet the objectives;
* Technical soundness of the design and methodology for achieving the project goals;
* Description of all elements and tasks of the project, and realistic timeframes necessary to complete the tasks;
* Background, experience, and expertise of the proposed project staff, including any subcontractors;
* Sufficient and realistic time commitments from key project staff;
* Reputation or recognized skill of the applicant organization and any proposed subcontractors;
* Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
* Adequate detail and narrative about the cost elements in the proposed budget.

V. Project Outcome

The final product will be a camera-ready document that is fully and professionally edited and prepared in accordance with NIC and federal publications guidelines. A copy of the "General Conditions" for projects entailing the preparation of a report for publication and public dissemination is available upon request, see section VI.

Monthly briefings, quarterly progress reports and a three month interim product will be required. The Cooperative Agreement recipient will be expected to work closely with the NIC Project Monitor as well as the designated Project Coordinator from the DC Department of Corrections.

VI. Additional Information

To obtain additional information including OMB Standard Form 424, Application for Federal Assistance; the certification of a drug-free workplace; certification regarding debarment (Copies of these forms are included in the Institutes' Annual Program Plan), as well as, NIC Guidelines Manual: Instructions for Applying for Federal Assistance and "General Conditions" for the preparation of printed material you may contact John E. Moore or Anna Z. Thompson, Correctional Program Specialists, Prisons Division, National Institute of Corrections, 320 First St., N.W. (HOLC), Washington, D.C. 20534, Phone: 202–307–1300, ext. 147 or 145 or fax 202–307–3361.

Morris L. Thigpen,

Director.

[FR Doc. 95–3701 Filed 2–14–95; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on February 28-March 1, 1995 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–5521/5523, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on February 28 and 8:30 a.m. on March 1.

On February 28, in the morning, OSHA will brief the ACCSH on the focused inspection policy; the status of the Excellence in Construction Program, fall protection for construction workers erecting non-building steel structures; the deliberations of the Steel Erection Negotiated Rulemaking Committee; and the standards planning process. Workgroups will meet in the afternoon. On March 1, work groups will report back to the full Committee and plans will be made for the next meeting. The meeting will end at approximately 12:00 noon.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Holly Nelson, Office of the Assistant Secretary, Room S–2316, Telephone 202–219–6027; or Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone 202–219–8615, at the

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Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, D.C. this 9th day of February, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–3773 Filed 2–14–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorizes agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) proposes the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a)

DATES: Request for copies must be received in writing on or before April 3, 1995. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester

Schedules Pending

1. Department of Education, National Education Commission on Time and Learning (N1–441–94–4). Documentation used to prepare the final report.

2. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (N1–511–94–2). Final reports of research and investigation grants, 1969–1993.

3. Department of Housing and Urban Development (N1–207–94–6). Flexible Subsidy Files.

4. Department of State, Bureau of Economic and Business Affairs (N1–59–95–2). Routine, facilitative, and duplicative records relating to transportation matters.

5. Department of the Treasury, Office of Thrift Supervision (N1–483–93–26). Electronic Examination Data System.

6. Defense Contract Audit Agency (N1–372–95–1). Routine and facilitative records relating to forms management and recurring reports.

7. Office of the Secretary of Defense (N1–330–95–2). Records relating to the curriculum vitae of instructors at the Uniformed Services University of the Health Sciences. (Records are already scheduled as temporary; proposed reduction in retention period.)

8. Small Business Administration (N1–309–94–1). Textual copy of SBA notices and checklists (microfiche copy will be preserved).

Dated: February 8, 1995

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–3726 Filed 2–14–95; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 27–28, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications for Special Projects for the Special Competition deadline, submitted to the Division of Public Programs, for projects beginning after July 1, 1995.

2. *Date:* March 1, 1995.
Time: 9 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after July 1, 1994.

3. *Date:* March 2–3, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications submitted to Special Projects for the Special Competition deadline of January 27, 1995, submitted to the Division of Public Programs, for projects beginning after July 1, 1995.

4. *Date:* March 2–3, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals submitted to the January 15, 1995 deadline in the Higher Education Program, for projects beginning after June 1, 1995.

5. *Date:* March 3, 1995.
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1995.

6. *Date:* March 9–10, 1995.
Time: 9 a.m. to 5 p.m.
Room: 430
Program: The meeting will review proposals submitted to the January 15, 1995 deadline in the Higher Education Program, submitted to the Division of Education Programs, for projects beginning after June 1, 1995.

7. *Date:* March 16–17, 1995.
Time: 8 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications for Dissertation Grants, submitted to the Division of Research Programs, for projects beginning after June 1, 1995.

8. *Date:* March 21, 1995
Time: 9 a.m. to 5:30 p.m.
Room: 315 & 415
Program: This meeting will review proposals submitted to the February 1, 1994 deadline in the Higher Education Program, for projects beginning after October 1, 1995.

9. *Date:* March 28, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals submitted to the February 1, 1995 deadline in the Higher Education Program, for projects beginning after October 1, 1995.

10. *Date:* March 30, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 315 & 415
Program: This meeting will review proposals submitted to the February 1, 1995 deadline in the Higher Education Program, for projects beginning after October 1, 1995.

11. *Date:* March 31, 1995.
Time: 9 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals submitted to the February 1, 1995 deadline in the Higher Education Program, for projects beginning after October 1, 1995.

David C. Fisher,

Advisory Committee Management Officer

[FR Doc. 95–3738 Filed 2–14–95; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (#1756)

Dates and Times: March 3, 1995 from 8 a.m. to 8 p.m.

Place. Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Odile de la Beaujardiere, Program Director for Magnetospheric Physics Program, Division of Atmospheric Science, Room 775, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, Tel: (703) 306–1519.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate the Geospace Environment Modeling (GEM) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 10, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–3741 Filed 2–14–95; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Indianapolis, Indiana: Aviation Accident

In connection with its investigation of the Simmons Airlines, dba (American Eagle), Flight 4181, Aerospatiale, ATR–72–210, N401AM, accident at Roselawn, Indiana, October 31, 1994, the National Transportation Safety Board will convene a public hearing at 12 p.m., (est) on February 27, 1995, in the Hall of Champions Ballroom of the Adam's Mark Hotel, Located at 2544 Executive Drive, Indianapolis, Indiana 46241. For more information, contact Pat Cariseo, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 382–0660.

Dated: February 10, 1994.

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 95–3734 Filed 2–14–95; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS), located in Claiborne County, Mississippi.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will replace the existing Technical Specifications (TSs) in their entirety with the Improved Technical Specifications (ITSs).

The proposed action is in accordance with the licensee's amendment request dated October 15, 1993, as supplemented by letters dated April 15, and November 10, 1994.

The Need for the Proposed Action

It has been recognized that nuclear safety in all plants would benefit from improvement and standardization of the TSs. The "NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," (**Federal Register** 52 FR 3788, February 6, 1987) and later the Final Policy Statement, formalized this need.

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To facilitate the development of individual ITSs, each reactor vendor owners group (OG) and the NRC staff developed Standard TSs. For General Electric (GE) plants, the Standard TSs (STS) are NUREG–1433 for BWR/4 reactor facilities and NUREG–1434 for BWR/6 facilities. NUREG–1434 formed the basis of the GGNS ITSs.

Description of the Proposed Change

The proposed revision to the TSs is based on NUREG–1434 and on guidance provided in the Policy Statement. Its objective is to completely rewrite, reformat, and streamline the existing TSs. Emphasis is placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1434, portions of the existing TSs were also used as the basis for the ITSs. Plant-specific issues (unique design features, requirements, and operating practices) were discussed at length with the licensee, and generic matters with the GE and other OGs.

The proposed changes from the existing TSs can be grouped into four general categories, as follows:

1. Non-technical (administrative) changes, which were intended to make the ITSs easier to use for plant operations personnel. They are purely editorial in nature or involve the movement or reformat of requirements without affecting technical content. Every section of the GGNS TSs has undergone these types of changes. In order to ensure consistency, the NRC staff and the licensee have used NUREG–1434 as guidance to reformat and make other administrative changes.

2. Relocation of requirements, which includes items that were in the existing GGNS TSs but did not meet the criteria set forth in the Policy Statement for inclusion in the TSs. In general, the proposed relocation of items in the GGNS TSs to the Updated Final Safety Analysis Report (UFSAR), appropriate plant-specific programs procedures and ITS Bases follows the guidance of the BWR/6 STS, NUREG–1434. Once these items have been relocated by removing them from the TSs to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC staff-approved control mechanisms which provide appropriate procedural means to control changes.

3. More restrictive requirements, which consist of proposed GGNS ITS items that are either more conservative than corresponding requirements in the existing GGNS TSs, or are additional restrictions which are not in the existing GGNS TSs but are contained in NUREG–1434. Examples of more restrictive requirements include: placing a Limiting Condition of Operation (LCO) on plant equipment, which is not required by the present TSs to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

4. Less restrictive requirements, which are relaxations of corresponding requirements in the existing GGNS TSs which provided little or no safety benefit and placed unnecessary burden on the licensee. These relaxations were the result of generic NRC action or other analyses. They have been justified on a case-by-case basis for GGNS as described in the safety evaluation to be issued with the license amendment, which will be noticed in the **Federal Register**.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. Changes which are administrative in nature have been found to have no effect on technical content of the TSs, and are acceptable. The increased clarity and understanding these changes bring to the TSs are expected to improve the operator's control of the plant in normal and accident conditions.

Relocation of requirements to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may be made by the licensee under 10 CFR 50.59 or other NRC-approved control mechanisms, which assures continued maintenance of adequate requirements. All such relocations have been found to be in conformance with the guidelines of NUREG–1434 and the Policy Statement, and, therefore, to be acceptable.

Changes involving more restrictive requirements have been found to be acceptable.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit or to place unnecessary burden on the licensee, their removal from the TSs was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic NRC action, or of agreements reached during discussions with the OG and found to be acceptable for GGNS. Generic relaxations contained in NUREG–1434 have also been reviewed by the NRC staff and have been found to be acceptable.

In summary, the proposed revision to the TSs was found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is not significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed amendment, the staff considered denial of the amendment. Denial of the amendment would result in no change in current environmental impacts. The environmental impacts of the proposed amendment and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Grand Gulf Nuclear Station, Unit 1

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Mississippi State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a signficant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated October 15, 1993, as supplemented by letters dated April 15, and November 10, 1994, which are available for public inspection at the Commissin's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Dated at Rockville, Maryland this 9th day of February 1995.

For the Nuclear Regulatory Commission

James R. Hall,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3772 Filed 2–14–95; 8:45 am]

BILLING CODE 7590–01–M

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 20, 1995, through February 3, 1995. The last biweekly notice was published on February 1, 1995 (60 FR 6296).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 17, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission s Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

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bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 19, 1995.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement 4.0.3 and its associated bases to provide for a delay period of up to 24 hours in which to perform a surveillance which has been discovered not to have been performed within its specified frequency. This change would adopt the requirements of NUREG–1431, "Standard Technical Specifications, Westinghouse Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will reduce the requirement to unnecessarily manipulate and challenge plant systems and equipment. The most probable result of performing a surveillance during the delay period will be to verify its conformance with Technical Specification requirements. Since this change does not affect plant design, operation, or the manner in which testing is performed, the consequences of accident scenarios postulated in the Final Safety Analysis Report will not increase. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any new equipment, nor does it require existing systems to perform a different type of function than they are currently designed to perform. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety is neither described or prescribed for this specification. The proposed change simply provides additional time to perform a surveillance and verify that the operability of equipment is in conformance with the Technical Specification requirements. Therefore, the proposed change does not involve a significant reduction in [the] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: December 23, 1994.

Description of amendment request: The proposed amendments would increase the allowable enrichment of new fuel stored in the new fuel storage vault (NFSV), revise the enrichment description of fuel in the reactor core, and include references to documents previously approved by the staff in the Technical Specifications that provide analytical methods used to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A.1. The proposed change does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

The Updated Final Safety Analysis Report (UFSAR) does not consider any accidents involving the NFSV. The Fuel Handling Accidents that are analyzed (Section 15.7.4) include dropping of a spent fuel assembly onto the spent fuel pool floor and breaking of all fuel rods, and dropping of a fuel assembly inside containment onto the top of the core.

The proposed change to increase the NFSV fuel enrichment limit from 4.0 to 4.65 weight percent U–235 does not affect any of the initiators or precursors of any accident previously evaluated. The proposed change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, failure mechanisms are not affected. As a result, the probability of occurrence of accidents previously evaluated is not significantly increased.

A new criticality analysis for the proposed change to increase the NFSV fuel enrichment limit from 4.0 to 4.65 weight percent U–235 was performed for the NFSV. It was determined that even in worst case conditions the acceptance criteria was met since the maximum K_{eff} was determined to be well below the 0.95 limit with a 95/95 probability/confidence level. The consequences of any accident, including a fuel handling accident involving the NFSV, are not significantly increased.

A.2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to the Technical Specifications does not involve the addition of any new or different types of safety related equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the safety analysis. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures governing normal plant operation and recovery from an accident are not changed by the proposed Technical Specification changes. Since no new failure modes or mechanisms are added by the proposed changes, the possibility of a new or different kind of accident is not created.

A.3. The proposed change does not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. There will be no changes to either the physical design of the plant or to any of these settings and limits as a result of increasing the NFSV fuel enrichment limit. The change does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated or create the possibility of a new or different kind of accident from any previously analyzed. Additionally, the revised criticality analysis demonstrates that the maximum K_{eff} under all postulated conditions remains below the acceptance value of 0.95. Therefore, the change will not result in a significant reduction in a margin of safety.

B.1. The proposed change does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

The proposed change to increase the reactor core fuel enrichment range discussed in the Design Features section of Technical Specifications from "between 2.2 to 4.0" to "up to 4.65" weight percent U–235 is administrative in nature and does not affect any of the initiators or precursors of any accident previously evaluated. The proposed change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, failure mechanisms are not affected. As a result, the probability of occurrence of accidents previously evaluated is not significantly increased.

The fuel enrichment limit of each core is determined by the core specific design and is determined to be acceptable with respect to the accident analysis by the reload analysis and is not impacted by the value specified in the description in the Design Features section of Technical Specifications. This value is only provided as the highest expected core fuel enrichment in the Design Features section discussion of the reactor core. This change is administrative in nature and does not affect the consequences of any accident previously evaluated.

B.2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change in the reactor core fuel enrichment description contained in the Design Features section of Technical Specifications does not involve the addition of any new or different types of safety related equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the safety analysis. No safety related equipment or function will be altered as a result of the proposed change. Also, the procedures governing normal plant operation and recovery from an accident are not changed by the proposed Technical Specification change. Since no new failure modes or mechanisms are added by the proposed change, the possibility of a new or different kind of accident is not created.

B.3. The proposed change does not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. There will be no changes to either the physical design of the plant or to any of these settings and limits as a result of increasing reactor core fuel enrichment value given in the Design Features section of Technical Specifications. The change does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated or create the possibility of a new or different kind of accident from any previously analyzed.

Based on the above discussion, the ability to safely shutdown the operating unit and mitigate the consequences of all accidents previously evaluated will be maintained. Therefore, the margin of safety is not significantly affected.

C.1. The proposed change does not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

The proposed change to add three documents to the list of documents that provide the analytical methods to determine core operating limits is administrative in nature and does not affect any of the initiators or precursors of any accident previously evaluated. The proposed change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction

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and/or catastrophic system failure. Since the proposed change does not involve the introduction of new or redesigned plant equipment, failure mechanisms are not affected.

The documents have been previously reviewed and approved by the NRC and it was determined that they provide an acceptable means to determine core operating limits. As a result, the probability of occurrence of accidents previously evaluated is not significantly increased. Since the documents provide NRC approved methodologies for determining core operating limits, the addition of the documents to Technical Specifications or use of the documents to determine core operating limits will not significantly increase the consequences of any accident previously evaluated.

C.2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to add three documents to the list of documents that provide the analytical methods to determine core operating limits is administrative in nature and does not involve the addition of any new or different types of safety related equipment, nor does it involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the safety analysis. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures governing normal plant operation and recovery from an accident are not changed by the proposed Technical Specification changes. Since no new failure modes or mechanisms are added by the proposed changes, the possibility of a new or different kind of accident is not created.

C.3. The proposed change does not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. There will be no changes to either the physical design of the plant or to any of these settings and limits as a result of adding references to the new documents. The ability to mitigate the consequences of all accidents previously evaluated will be maintained. Therefore, the margin of safety is not significantly affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York Date of amendment request: September 19, 1994

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 4.4.A.3 to reference the testing frequency requirements of 10 CFR Part 50, Appendix J, and to state that NRC approved exemptions to the applicable regulatory requirements are permitted. This proposed administrative revision simply deletes the paraphrased language and directly references Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change will provide a one-time exemption from the 10 CFR [Part] 50, Appendix J Section III.D.1.(a) leak rate test schedule requirement. This change will allow for a one-time test interval for Type A Integrated Leak Rate Tests (ILRTs) of approximately 70 months.

Leak rate testing is not an initiating event in any accident, therefore this proposed change does not involve a significant increase in the probability of a previously evaluated accident.

Type A tests are capable of detecting both local leak paths and gross containment failure paths. The history at IP–2 [Indian Point 2] demonstrates that Type B and C Local Leak Rate Tests (LLRTs) have consistently detected any excessive local leakages.

Administrative controls govern the maintenance and testing of containment penetrations such that the probability of excessive penetration leakage due to improper maintenance or valve misalignment is very low. Following maintenance on any containment penetration, an LLRT is performed to ensure acceptable leakage levels, following any LLRT on a containment isolation valve, an independent valve alignment check is performed. Therefore, Type A testing is not necessary to ensure acceptable leakage rates through containment penetrations.

While Type A testing is not necessary to ensure acceptable leakage rates through containment penetrations, Type A testing is necessary to demonstrate that there are no gross containment failures. Structural failure of the containment is considered to be a very unlikely event, and in fact, since IP–2 has been in operation it has never failed a Type A ILRT. Therefore, a one-time exemption increasing the interval for performing an ILRT should not result in a significant decrease in the confidence in the leak tightness of the containment structure.

The proposed change also revises Technical Specification 4.4.A.3 to reference the testing frequency requirements of 10 CFR [Part] 50, Appendix J, and to state that NRC approved exemptions to the applicable regulatory requirements are permitted. The current language of TS 4.4.A.3 paraphrases the requirements of Section III.D.1.(a) of Appendix J. The proposed administrative revision simply deletes the paraphrased language and directly references Appendix J. No new requirements are added, nor are any existing requirements deleted. Any specific changes to the requirements of Section III.D.1.(a) will require a submittal from Consolidated Edison under 10 CFR 50.12 and subsequent review and approval by the NRC prior to implementation. The proposed change is stated generically to avoid the need for further TS changes if different exemptions are approved in the future.

The proposed change, in itself, does not affect reactor operations or accident analysis and has no radiological consequences. The change provides clarification so that future Technical Specifications changes will not be necessary to correspond to applicable NRC approved exemptions from the requirements of Appendix J.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed exemption request does not affect normal plant operations or configuration, nor does it affect leak rate test methods. The proposed change allows a one-time test interval of approximately 70 months for the ILRT. Given the test history of IP–2 of no Type A test failures during plant lifetime, the relaxation in schedule should not significantly decrease the confidence in the leak tightness of the containment.

The proposed Technical Specification amendment provides clarification to a specification that paraphrases a codified requirement.

Since the proposed change would not change the design, configuration or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The purpose of the existing schedule for ILRTs is to ensure that the release of radioactive materials will be restricted to those leak paths and leak rates assumed in accident analyses. The relaxed schedule for ILRTs does not allow for relaxation of Type B and C LLRTs. Therefore, methods for detecting local containment leak paths and leak rates are unaffected by this proposed change. Given that the test history for ILRTs shows no failure during plant life, a one-time increase of the test interval does not lead to a significant probability of creating a new leakage path or increased leakage rates, and the margin of safety inherent in existing accident analyses is maintained.

The proposed Technical Specification change is administrative and clarifies the relationship between the requirements of TS 4.4.A.3, Appendix J and any approved exemptions to Appendix J. It does not, in itself, change a safety limit, an LCO [limiting condition for operation], or a surveillance requirement on equipment required to operate the plant. The NRC will directly approve any proposed change or exemption to [Section] III.D.1.(a) of Appendix J prior to implementation.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based on the Safety Analysis, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92 and (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed change. Moreover, because this action does not involve a significant hazards consideration, it will also not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Although the licensee has included an evaluation of a proposed exemption to 10 CFR part 50, Appendix J requirements in the above determination of no significant hazards consideration, only the part related to the amendment is pertinent to this notice of proposed amendment. The exemption request will be considered as a separate matter on its own merits. The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Ledyard B. Marsh

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 31, 1994

Description of amendment request: The requested amendments would remove the stroke times for the steam generator power operated relief valves (PORVs) from Technical Specification (TS) Tables 3.6–2a and 3.6–2b. The PORVs are part of the main steam vent to atmosphere system. The PORV actuators have difficulty developing enough closing thrust to adequately overcome all of the friction loads within the valves; therefore, difficulty exists in consistently meeting the present 5-second closing stroke time requirement. The licensee requests the proposed change on the basis that the PORVs do not receive an actual containment isolation signal; therefore, it is justified to remove the stroke times from TS Tables 3.6–2a and 3.6–2b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In 48 FR 14870, the Commission has set forth examples of amendments that are considered not likely to involve significant hazards considerations. Example (vi) describes a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. In this case, the proposed amendment is similar to example (vi) in that it removes the required isolation time of the steam generator PORVs from TS Tables 3.6–2a and 3.6–2b; however, no adverse impact upon accident analyses is created as a result.

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The effects of the delays in isolation times on the various transients affected have been analyzed and found to be acceptable. Since these valves do not receive a containment isolation signal, and no credit is taken for operation of these valves in the dose analysis for a containment isolation function, a maximum stroke time does not apply for containment isolation.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. SV PORV closure (provided the valves are not already closed at the start of the transient) is a response to a transient already in progress. The possibility of a spurious SV PORV opening will not be affected by the requested amendments. No equipment or component reconfiguration will occur as a result of this change. Finally, no changes to plant procedures are being made which would affect any accident causal mechanisms.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. The isolation times which are applicable to these valves are specified in TS Table 3.3–5, Engineered Safety Features Response Times. The effects of the isolation of these valves were evaluated based on their ESF function, not a containment isolation function, and determined to be acceptable.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

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amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 13, 1994, as supplemented August 15, 1994.

Description of amendment request: The proposed changes would increase the initial fuel enrichment limit from a current maximum of 4.0 weight % to 4.75 weight % and establish new loading patterns for new and irradiated fuel in the spent fuel pool to accommodate this increase. These changes would also increase the efficiency of fuel storage cell use in the spent fuel pools and provide additional flexibility to the reload design efforts at Duke Power Company, while at the same time maintaining sufficient criticality safety margin and decay heat removal capabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no increase in the probability or consequences of an accident in the new fuel vault since the only credible accidents for this area are criticality accidents and it has been shown that calculated, worst case K_{eff} for this area is ≤0.95 under all conditions.

There is no increase in the probability of a fuel drop accident in the Spent Fuel Storage Pool since the mass of an assembly will not be affected by the increase in fuel enrichment. The likelihood of other accidents, previously evaluated and described in Section 9.1.2 of the FSAR [Final Safety Analysis Report], is also not affected by the proposed changes. In fact, it could be postulated that since the increase in fuel enrichment will allow for extended fuel cycles, there will be a decrease in fuel movement and the probability of an accident may likewise be decreased. There is also no increase in the consequences of a fuel drop accident in the Spent Fuel Pool since the fission product inventory of individual fuel assemblies will not change significantly as a result of increased initial enrichment. In addition, no change to safety related systems is being made. Therefore, the consequences of a fuel rupture accident remain unchanged. Also, it has been shown that k_{eff} is ≤0.95, under all conditions therefore, the consequences of a criticality accident remain unchanged as well.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident since fuel handling accidents (fuel drop and misplacement) are not new or different kinds of accidents. Fuel handling accidents are already discussed in the FSAR for fuel with enrichments up to 4.1 weight %. As described in Section VI.9 of Attachment IV, additional analyses have been performed for fuel with enrichment up to 4.75 weight %. Worst case misloading accidents associated with the new loading patterns were evaluated. For all possible misloading accidents the negative reactivity provided by soluble boron maintains k_{eff} ≤0.95. of safety.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in the margin of safety since, in all cases, a k_{eff} ≤0.95 is being maintained. Criticality analyses have been performed which show that the new fuel storage vault will remain subcritical under a variety of moderation conditions, from fully flooded to optimum moderation. As discussed above, the Spent Fuel Pool will remain sufficiently subcritical during any fuel misplacement accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 11, 1994, as supplemented January 30, 1995.

Description of amendment request: The amendments would revise the Technical Specifications Design Features section to establish restricted loading patterns and associated burnup criteria for placing fuel in the Oconee Spent Fuel Pools. These changes are necessary to address two new fuel designs which have increased initial fuel enrichment and therefore cannot be stored in the spent fuel pools under existing Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to changes in Cycle 15 parameters to determine the effect of the Cycle 16 reload and to ensure that the acceptance criteria of the FSAR safety analyses remain satisfied. The transient evaluation of Cycle 16 is considered to be bounded by previously accepted analyses. Section 7 of the Reload Report addresses "Accident and Transient Analysis" for this core reload.

There is no increase in the probability or consequences of an accident due to the spent fuel storage restrictions proposed in this amendment request. It has been shown that the calculated, worst case k_{eff} for this area is [less than or equal to] 0.95 under all conditions. There is no increase in the probability of a fuel drop accident in the SFP [spent fuel pool] since the mass of the new assemblies is not significantly different from the mass of the old assemblies. The likelihood of other accidents, previously evaluated and described in the FSAR, is also not affected by the proposed changes. In fact, it could be postulated that since the increase in fuel enrichment will allow for extended fuel cycle lengths, there will be a decrease in fuel movement and the probability of an accident may actually be reduced. There is also no increase in the consequences of a fuel rod drop accident in the SFP since the fission product inventory of individual fuel assemblies will not change significantly as a result of increasing the initial enrichment. In addition, no change to safety related systems is being made. Therefore, the consequences of a fuel rupture accident remain unchanged. In addition, it has been shown that k_{eff} is [less than or equal to] 0.95 under all conditions. Therefore, the consequences of a criticality accident in the SFP remain unchanged as well. The above analysis ensures that the proposed reload amendment request will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The analyses performed in support of this reload are in accordance with the NRC approved methods delineated in Specification 6.9.2. The predicted operating characteristics of Oconee 3 Cycle 16 are similar to previously licensed designs. The Mark B10T and Mark B11 fuel assembly designs remain mechanically compatible with all fuel handling equipment. Therefore, no new or different kind of fuel handling accident is created by the proposed amendment request.

Section 15.11 of the Oconee FSAR states that the refueling boron concentration is maintained such that a criticality accident during refueling is not considered credible. The proposed amendment request continues to assure that a criticality accident in the SFP or during refueling is not credible. The double contingency principle discussed in ANSI N–16.1–1975 and the April 1978 NRC letter allows credit for soluble boron under other abnormal or accident conditions, since only a single accident need be considered at one time. Thus, by requiring a minimum boron concentration in the SFP, a criticality accident caused by violating the SFP storage restrictions is not considered credible. Therefore, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The Oconee 3 Cycle 16 design was performed using the NRC approved methods given in Specification 6.9.2. The safety limits for Oconee 3 Cycle 16 are unchanged from previous cycles. The limits and margins summarized in the Oconee 3 Cycle 16 Reload Report are well within the allowable limits and requirements, and reflect no reductions to any margins of safety.

The proposed change does not involve a significant reduction in the margin of safety related to SFP criticality. In all cases, a k_{eff} [less than or equal to] 0.95 is maintained. Criticality analyses have been performed which show that the SFP will remain sufficiently subcritical during any fuel misplacement accident. In summary the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Herbert N. Berkow.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: January 6, 1995

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 3/4.8.1.1, "AC Sources-Operating," and 3/4.8.1.2, "AC Sources-Shutdown," to (1) revise the minimum quantity of fuel oil required in the day tanks and the storage tanks, (2) add specific actions to be taken if the storage tank levels fall below minimum requirements, (3) revise and relocate to the associated Bases the fuel oil sampling and testing criteria, and (4) add specific actions to be taken if the fuel oil properties do not meet specified limits. The proposed amendment would also revise TS 6.8.4, "Programs," to add a requirement for a diesel fuel oil testing program. The licensee stated that the proposed changes are consistent with the NRC's Improved Standard Technical Specifications (NUREG–1434).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The diesel generators are not initiators or precursors to an accident previously evaluated. The diesel generators are required to provide onsite power to safe shutdown loads as assumed in the accident analysis. Therefore, the proposed changes to the diesel generator fuel oil specifications cannot significantly affect the probability of a previously evaluated accident.

The proposed change to the minimum required diesel generator fuel oil levels is based on updated calculations of fuel consumption rates. Because the updated calculations assume a lower consumption rate, the new minimum fuel oil levels are lower but still assure that a seven-day fuel oil capacity is available. Accordingly, the proposed change has no effect on the operation of the diesel generator. The proposed change to allow 48-hours to restore diesel generator fuel oil to the minimum required level does not affect short-term diesel generator operability and is acceptable based on the remaining fuel oil capacity (>6 days), initiating the process for procuring additional fuel and the low probability of an event requiring a diesel generator during this interval. Also, the proposed allowance of a limited time to restore diesel fuel oil properties to required limits will not affect the short-term operability of the diesel generator. Even with minor degradation of the fuel oil properties, the diesels will start and perform their intended function. Relocation of the testing requirements to the bases and adding a description of the Diesel Fuel Oil Testing Program to the Administrative Control section are administrative changes. The diesel fuel oil will continue to be sampled and tested in a manner to assure its quality. In summary, the changes will not adversely affect the performance or the ability of the diesel generators to perform their intended function. Therefore, the proposed changes will not significantly increase the consequences of an accident previou y evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will revise the minimum required diesel generator fuel oil levels and requirements associated with diesel generator fuel oil properties.

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The changes do not introduce any new accident precursors and do not involve any alterations to plant configurations which could initiate a new or different kind of accident. The proposed changes do not affect the short-term operability of the diesel generator. In addition, the operability of the diesel generators is assured by periodic testing and preventive maintenance. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Safety margins are established through safety analyses. These analyses assume that at least one diesel generator will start and load whenever offsite power is lost. The proposed change to the minimum required diesel generator fuel oil levels is based on updated calculations of fuel consumption rates. The updated calculations use the guidance delineated in Regulatory Guide 1.137 which is based on time-dependent loads of the diesel-generators during design basis events. Calculations based on time dependent loads result in new minimum fuel oil levels which are lower. This change has no effect on the operation of the diesel generator or on a margin of safety. The allowance of a limited time to restore the fuel oil levels, or to analyze and restore fuel oil properties to required limits, is justified since the short term operability of the diesel generators is not affected. Relocation of the fuel oil testing requirements to the Bases does not affect the quality of the fuel oil. The 10CFR50.59 process will assure that future changes to the Bases will maintain the current margins of safety, and that the diesel fuel oil will continue to be sampled and tested in such a manner as to assure its quality. Adding a description of the Diesel Fuel Oil Testing Program to the Administrative Control section of Technical Specifications are administrative. Therefore, the diesel generator will continue to operate as analyzed and there will not be a significant reduction in a margin of safety.

The proposed changes are further justified in that they are consistent with the requirements of the Improved Standard Technical Specifications (NUREG–1434).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: January 6, 1995.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 3/4.3.7.5, "Accident Monitoring Instrumentation," and TS 3/4.4.2, "Safety/Relief Valves." TS 3/4.3.7.5 would be revised to delete certain instruments not classified as Category 1 (Type A or non-Type A) as defined in Regulatory Guide 1.97 and to delete the requirement that accident monitoring instrumentation be operable in Operational Condition 3. The ACTIONS of TS Table 3.3.7.5–1 would be revised to allow 30 days to restore one inoperable channel and 7 days to restore two inoperable channels. TS 3.3.7.5 would be revised to add an exception to the requirements of TS 3.0.4. In addition, editorial changes would be made to TS Tables 3.3.7.5–1 and 4.3.7.5–1 for consistency and clarity.

The proposed amendment would also revise TS 3/4.4.2 to remove requirements related to safety/relief valve acoustic monitors to be consistent with the proposed changes to TS Tables 3.3.7.5–1 and 4.3.7.5–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of NMP2 [Nine Mile Point Nuclear Station Unit 2] in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

PAM [Post-Accident Monitoring] instruments are used to help guide operator response to postulated accidents. Thus, the status or operability of PAM instrumentation does not affect the probability of previously analyzed accidents. The non-Category 1 PAM instruments being removed from the Technical Specifications do not meet any of the Commission's screening criteria and are not of controlling importance to safety or necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to public health and safety. The operability of critical parameters necessary to assure proper response to previously analyzed accidents (i.e., Category 1 instruments) is still controlled by the Technical Specifications. Thus, deleting non-Category 1 instruments will not increase the consequences of any accident previously evaluated.

PAM instruments are related to the diagnosis and preplanned actions required to mitigate DBAs [Design Basis Accidents] assumed to occur in Operational Conditions 1 and 2. A DBA during Operational Condition 3 is extremely unlikely. The requirement to maintain the Reactor Water Level, Suppression Pool Water Level and Drywell High Range Radiation Monitor instrumentation operable in Operational Condition 3 will be deleted. Because Suppression Pool Water Level indication will no longer be required in Operational Condition 3, its ACTION requirement was revised to delete the requirement to place the plant in COLD SHUTDOWN, Operational Condition 4. This is consistent with ITS [Improved Standard Technical Specifications] which requires that the plant be brought to an operational condition in which the LCO [Limiting Condition for Operation] does not apply if a required action cannot be met. Therefore, deleting the requirement that PAM instruments be operable during Operational Condition 3 and changing the ACTION requirement for Suppression Pool Water Level Monitoring does not affect the probability or consequences of an accident.

The passive nature of the Category 1 PAM instruments (i.e., those instruments that initiate no critical automatic action) and the alternate means available to obtain the required information assure an acceptable level of safety is maintained during operation with instrument channels out of service. Since an acceptable level of safety is maintained with inoperable channels, plant startup or operation with inoperable channels will not alter plant response to analyzed accidents. Thus, the proposed changes to the required ACTIONS and the proposed exemption to Specification 3.0.4 will not increase the consequences of analyzed events.

The proposed changes to the requirements for PCIV [Primary Containment Isolation Valve] indication are consistent with the proposed required ACTIONS. Position indication will still be required for each operable PCIV and penetrations without adequate PCIV indication status will be isolated, thus assuring containment integrity in the event of an accident. Deletion of the "Minimum Required Actions" column in Table 3.3.7.5–1 is consistent with the proposed ACTIONS for LCO 3.3.7.5, since compensatory actions are based on compliance with the "Required Number of Channels." Deleting the "Applicable Operating Conditions" column is consistent with the proposed changes and other NMP2 Technical Specifications sections. Finally, referencing Specification 4.0.5 is an administrative change which does not alter any existing surveillance requirements for the safety relief valves.

In aggregate, the proposed changes do not affect the plant in a way that could directly contribute to causing or mitigating the effects of an accident. Therefore, the operation of NMP2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of NMP2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not represent a physical change to the plant as described in the NMP2 USAR [Updated Safety Analysis Report]. The proposed changes do not modify any plant equipment and the initial conditions used for the design basis accident analysis are still valid. Thus, no potential initiating events are created which would cause any new or different kinds of accidents. PAM instrumentation is used to guide operator response during postulated accidents. Those PAM instruments considered of controlling importance to safety are retained in the Technical Specifications. Thus, plant response to previously analyzed events is not altered so as to create any new or different kinds of accidents. Therefore, operation of Nine Mile Point Unit 2 in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously assessed.

The operation of NMP2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The non-Category 1 PAM instruments being removed from the Technical Specifications do not meet any of the Commission's screening criteria. That is, the instruments being proposed for removal are not of controlling importance to safety or necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to public health and safety. Thus, they are not critical to any margin of safety.

PAM instruments are related to the diagnosis and preplanned actions required to mitigate DBAs assumed to occur in Operational Conditions 1 and 2. A DBA during Operational Condition 3 is extremely unlikely. The requirement to maintain the Reactor Water Level, Suppression Pool Water Level and Drywell High Range Radiation Monitor instrumentation operable in Operational Condition 3 will be deleted. Because Suppression Pool Water Level indication will no longer be required in Operational Condition 3, its ACTION requirement was revised to delete the requirement to place the plant in COLD SHUTDOWN, Operational Condition 4. This is consistent with the ITS, which requires that the plant be brought to an operational condition in which the LCO does not apply if a required action cannot be met. Therefore, deleting the requirement that PAM instruments be operable during Operational Condition 3 and changing the ACTION requirement for Suppression Pool Water Level Monitoring does not significantly reduce a margin of safety.

Since the Category 1 PAM instruments are passive in nature (i.e., no critical automatic action is assumed to occur from these instruments) and alternate means exist to obtain the required information, an acceptable level of safety is assured when instrument channels are out of service. Also, the probability of an event requiring PAM instrumentation is low. Continued operation with one channel out of service, and limited plant operation with two channels out of service, does not compromise plant safety margins. An acceptable level of safety is maintained during plant startups and operation with instrument channels out of service. Thus, the proposed changes to the required ACTIONS and the proposed exemption to Specification 3.0.4 will not significantly reduce a margin of safety.

The proposed changes to PCIV indication will assure correct implementation of the ACTIONS discussed above. Isolating the flow path associated with one or two inoperable PCIV indication channels is conservative since the subject valve will be positioned as required to assure primary containment integrity. The remaining editorial changes are administrative in nature and by definition do not affect safety margins. Deleting the "Minimum Operable Channels" and "Applicable Operating Conditions" columns is consistent with the proposed changes. Finally, referencing the requirements of Specification 4.0.5 is an administrative change and by definition does not reduce the margin of safety.

Therefore, the operation of NMP2 in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 9, 1994.

Description of amendment request: The proposed changes incorporate NRC recommendations contained in Generic Letter 93–05 related to the diesel generator (DG) surveillance requirements and other DG surveillance requirements related to the cold starts. The proposed changes to the DG operability testing surveillance requirements are consistent with the intent of GL 93–05 however vary in some particulars, because of circumstances specific to Millstone 3. The proposed changes will modify the requirement for the DG operability testing when the other DG is inoperable delete the requirement for DG operability testing when one or both offsite AC sources are inoperable, eliminate fast loading of DGs except for the 18-month test, and modify the hot restart test from the 24-hour loaded test run for the DGs.

Basis for proposed no significant hazards consideration determination

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As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

• • • The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes revise the action requirements regarding operability testing of a non-affected DG when the other DG is inoperable, delete the requirement for operability testing of the DGs when one or both offsite AC sources are inoperable and eliminate the fast loading of DGs except for the 18-month test. These changes will improve DGs performance by reducing the number of unnecessary quick starts and by requiring more appropriate testing of the DGs when there is a potential for common mode failure. The proposed change, to revise the method of verifying DG hot restart capability after a 24-hour run without loading the DG with LOP/SI [loss of offsite power/safety injection] load, meets an intent of Regulatory Guide 1.108, Position C.2.a.5, which states the purpose of the test as to "demonstrate functional capability at full load temperature conditions." Functional capability of the DG can be adequately demonstrated by manually or automatically restarting the DG within five minutes after a 24-hour test run without loading it with LOP/SI loads, provided that a full load temperature condition is maintained prior to restart. The proposed DG restart method does not reduce the effectiveness of the test. The proposed revisions of the DG surveillance requirements will not increase the probability of an accident and it will not change the response of the DG to a LOP as described in the Millstone Unit No. 3 FSAR. Since the plant response to an accident will not change, there is no change in the potential for an increase in the consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of an accident previously evaluated.

The proposed changes of the DG surveillance requirements and operability testing requirements do not affect the operation or response of any plant equipment or introduce any new failure mechanisms. The proposed changes do not affect the test results and the DGs will be verified to be operable and their response to a loss of voltage will be unchanged. The plant equipment will respond per the design and analyses and there will not be a malfunction of a new or any type introduced by the revision to the DG surveillance requirements. As such, the changes do not create the possibility of a new or different kind of accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The bases of Technical Specification 3/4.8, "Electrical Power Systems," state that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety-related equipment required for safe shut down and mitigation and control of accident conditions. The bases also state that the surveillance requirements for determining the operability of the DGs are in accordance with the recommendations of Regulatory Guide 1.108, Revision 1. The revisions of the surveillance requirements establishes tests that will continue to verify that the DGs are operable and the testing will still meet the intent of Regulatory Guide 1.108, Revision 1. Operable DGs ensure that the assumptions in the bases of the Technical Specifications are not affected and ensure that the margin of safety is not reduced. Therefore, the assumptions in the bases of the technical specifications are not affected and these changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 14, 1994.

Description of amendment request: The proposed amendment would revise the Millstone Unit No. 3 Technical Specifications by:

1. Increasing the upper bound of the overall containment integrated leakage rate required by Technical Specification 3.6.1.2.a from 0.3 wt. % per day to 0.65 wt. % per day of the containment air per 24 hours at design basis pressure.

2. Revising Technical Specification 4.6.6.1.d.3 by providing more margin with respect to the drawdown time for secondary containment vacuum.

3. Revising Bases Section 3/4.7.9 to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

• • • The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

• • • There is a reasonable assurance that the modified criteria for the negative pressure in the secondary containment boundary proposed via the proposed change (i.e., a negative pressure of 0.1 inches in one minute and a negative pressure of 0.4 inches within the next two minutes), can be accomplished in the prescribed time.

Extension of the time allowed to achieve the final drawdown of secondary containment from 120 seconds to 180 seconds (these times include the diesel generator start and load time of approximately 11 seconds) will have a negligible impact on heating and cooling. Plant experience has shown that heatup and cooldown of thick-walled concrete structures, such as the Millstone Unit No. 3 auxiliary building, is a relatively slow process. Also, natural convection within the auxiliary building tends to stabilize temperatures. Following an accident signal, ventilation equipment is restarted promptly. Therefore, heatup or cooldown, during short periods while ventilation fans and/or heaters are inactive, is insignificant and can be neglected.

The proposed change to reinstate the containment integrated leakage rate at the design basis pressure from 0.3 wt % per day to 0.65 wt % per day has been evaluated to determine the impact to the Appendix J requirements for Type A, B and C Testing. In addition, the radiological consequence evaluation also addressed the increase in L_a (i.e., from 0.3 wt % per day to 0.65 wt % per day).

On October 12, 1993, Millstone Unit No. 3 successfully conducted the second Type A test in the first 10-year service period. Test results indicated that the "As-Found" and "As-Left" ILRTs [integrated leakage rate tests] passed the technical specification acceptance criteria. The "As-Found" value was 0.1327 weight percent per day and the "As-Left" value was 0.1313 weight percent per day. These values represent 27.2% and 26.9% of the technical specification criterion of 0.4875 wt % per day (0.75 L_a), based on L_a equal to 0.65 wt % per day, respectively. In addition, as of October 9, 1993, the total Type B and C "As-Found" and "As-Left" leakage results were 0.099 wt % per day, and 0.084 wt % per day, respectively. These values represent approximately 25.3% and 21.5% of the technical specification limit of 0.39% wt % per day (0.6 L_a), based on L_a equal of 0.65 wt % per day, respectively. Correspondingly, the 1993 Type A, B, and C test results indicate that the "As-Found" and "As-Left" result in each test case was below the existing Technical Specification limit of 0.3 wt % per day. This further demonstrates the overall leakage integrity of the containment and its boundaries.

Based on the relatively low "As-Left" ILRT leakage rate (i.e., 0.1313 wt % per day is well below the existing technical specification limit of 0.225 wt % per day (0.75 L_a), based on L_a equal to 0.3 wt % per day), which represents the overall containment integrated leakage rate for the containment prior to start-up, there is reasonable assurance that containment integrity will be maintained below the allowable leakage rate limit of 0.65 wt % per day. In addition, the total Type B and C "As-Left" leakage result of 0.084 wt % per day (this is well below the existing technical specification limit of 0.18 wt % per day (0.6 L_a), based on L_a equal to 0.3 wt % per day), provides further assurance that leakage, based on individual penetration, will be maintained within sufficient margin of the leakage limits.

Because the last Type A, B, and C tests were performed under the technical specification limit of 0.65 wt % per day, the proposed change to restore L_a to 0.65 wt % per day has no impact to these systems from a leakage allowance perspective. As indicated above, the previous test results met the technical specification leakage limits (based on 0.65 wt % per day) within sufficient margin and, therefore, would not present any challenge to these leakage limits.

NNECO has evaluated the proposed changes to Surveillance Requirement 4.6.6.1.d.3 that increase the time to draw a final required negative pressure as measured at the 24'-6" elevation of the auxiliary building in conjunction with the proposed change to reinstate the containment integrated leakage rate of 0.65 wt % per day to determine the impact on the offsite doses following a LOCA. The calculated radiological doses are, in most cases, less than the previously calculated doses (i.e., EAB [exclusion area boundary] and LPZ [low-population zone] doses) and are within the 10CFR100 limits. Previously, the EAB thyroid and whole body doses as documented in the November 4, 1993, submittal were calculated to be 141 REM and 9.4 REM respectively, while the previously docketed (i.e., the November 4, 1993, submittal) LPZ doses to the thyroid and whole body were calculated to be 29.8 REM and 1.7 REM respectively. Utilizing the revised application of containment recirculation spray DF, the EAB thyroid and whole body doses were calculated to be 61 REM and 16.7 REM, respectively, and the LPZ thyroid and whole body doses were calculated to be 10.9 REM and 2.8 REM respectively. The assumptions used in the above radiological dose calculations are provided in Attachment 1. It is noted that a LOCA at Millstone Unit No. 3 is also one of the bounding accidents for the Millstone Unit No. 3 control room, Millstone Unit No. 2 control room, and the Millstone Technical Support Center habitability analysis. Therefore, the doses for these areas were recalculated and are presented in the Safety Assessment section above. The Millstone Unit No. 1 control room and the Emergency Operating Facility doses are bounded by the Millstone Unit No. 1 LOCA calculations.

The Millstone Unit Nos. 2 and 3 control rooms and Millstone Technical Support Center doses were not recalculated in 1993 (i.e., November 4, 1993, submittal) since EAB/LPZ doses proved that the releases were less than the 1990 submittal. In summary, all control room and Technical Support Center doses are within the guidelines of GDC 19. Therefore, the proposed changes do not result in an increase in consequences of an accident (i.e., a LOCA) previously analyzed.

The proposed changes to Bases Section 3/4.6.6 do not have any safety impact since they only reflect the changes proposed to Surveillance Requirement 4.6.6.1.d.3.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not compromise the ability of the SLCRS [supplementary leak collection and release system] and ABFS [auxiliary building filter system] to mitigate the consequences of an accident. The proposed changes do not make any physical or operational changes to existing plant structures, systems or components. The proposed changes do not introduce any new or unique operational modes or accident precursors. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

NNECO has evaluated the proposed changes to Surveillance Requirement 4.6.6.1.d.3 that increase the time to draw a final required negative pressure as measured at the 24'–6" elevation of the auxiliary building in conjunction with the proposed change to reinstate the containment integrated leakage rate of 0.65 wt % per day to determine the impact on the offsite doses following a LOCA. The calculated radiological doses are, in most cases, less than the previously calculated doses and these doses are within the 10CFR100 limits. All control rooms and technical support center doses are within the guidelines of GDC 19. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 23, 1994.

Description of amendment request: The proposed amendment would change the acceptance criteria for the peak transient generator voltage from 4784 volts to 5000 volts during full load rejection tests of the diesel generator (DG), and delete the 10-year surveillance requirement to perform a

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110% pressure test of the DG fuel oil system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

• • • The proposed changes do not involve a SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

DG Full-Load Rejection Test

NNECO is proposing to modify Surveillance Requirement 4.8.1.1.2.g.3 of the Millstone Unit No. 3 Technical Specifications by changing the acceptable transient voltage to 5000 volts from 4784 volts. This change will permit the DG full load rejection tests to be performed at realistic plant conditions using a power factor that will envelope the calculated power factor during the worst kW loading conditions. The transient voltage of 5000 volts is within the normal design limits of the DGs.

The proposed change does not alter the intent of the surveillance, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to Surveillance Requirement 4.8.1.1.2.g.3 will not degrade the capability of the DGs to perform their intended safety function, and will not reduce the availability of the DGs. Actually, the proposed change will increase the effectiveness of the full load rejection tests, because the DGs will be tested in a configuration that is closer to the design basis conditions.

Pressure Test of the DG Fuel Oil System

The DG fuel oil system is classified as an ASME Code Class 3 system in accordance with the guidance of Regulatory Guide 1.26, "Quality Group Classification and Standards for Water-, Steam-, and Radioactive-waste Components of Nuclear Power Plants." Surveillance Requirement 4.0.5 requires the testing of ASME Class 1, 2, and 3 components in accordance with Section XI of the ASME Code. Surveillance Requirement 4.8.1.1.2.i.2 is redundant to the ASME Section XI pressure test requirements of Surveillance Requirement 4.0.5. Additionally, the DG fuel oil tank cannot be tested in the configuration required by Surveillance Requirement 4.8.1.1.2.i.2, because the tanks are vented to the atmosphere and the vent cannot be isolated. Therefore, NNECO is proposing to delete Surveillance Requirement 4.8.1.1.2.i.2.

The proposed change does not modify the manner in which the DGs respond to an accident. Also, the proposed change does not reduce the reliability of the DGs.

Conclusion

Based on the above, the proposed changes to Surveillance Requirements 4.8.1.1.2.g.3 and 4.8.1.1.2.i.2 of the Millstone Unit No. 3 Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

DG Full-Load Rejection Test

The DGs are required to operate in response to a loss of offsite power. Their failure cannot initiate an accident. Additionally, the proposed change to Surveillance Requirement 4.8.1.1.2.g.3 does not affect the operation or response of any plant structure, system, or component, and it does not introduce any new failure mechanisms.

Pressure Test of the DG Fuel Oil System

The proposed change to Surveillance Requirement 4.8.1.1.2.i.2 does not affect the design or function of the DG fuel oil system. Failure of the DG fuel oil system would not initiate an accident.

Conclusion

Based on the above, the proposed changes to Surveillance Requirements 4.8.1.1.2.g.3 and 4.8.1.1.2.i.2 of the Millstone Unit No. 3 Technical Specifications will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

DG Full-Load Rejection Test

NNECO is proposing to modify Surveillance Requirement 4.8.1.1.2.g.3 of the Millstone Unit No. 3 Technical Specifications by changing the acceptable transient voltage to 5000 volts from 4784 volts. The intent of the proposal is to permit the DG full load rejection tests to be conducted at conditions which simulate design basis conditions.

The proposed change does not alter the intent of the surveillance, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. As such, the proposed change to Surveillance Requirement 4.8.1.1.2.g.3 will not degrade the ability of the DGs to perform their intended safety function, and will not reduce the availability of the DGs.

The bases of Technical Specification 3/4.8, "Electrical Power Systems," state that the operability of the AC and DC power systems and associated distribution systems ensure that sufficient power will be available to supply the safety related equipment required for safe shutdown and for the mitigation of transients. The proposed change to the surveillance requirement will increase the effectiveness of the full load rejection tests.

This will ensure the operability of the DGs. Operable DGs ensure that the assumptions for the bases of the Millstone Unit No. 3 Technical Specifications are not affected.

Pressure Test of the DG Fuel Oil System

NNECO is proposing to delete Surveillance Requirement 4.8.1.1.2.i.2 from the Millstone Unit No. 3 Technical Specifications. This surveillance requirement is redundant to the requirements of Surveillance Requirement 4.0.5 which invokes ASME Section XI. Additionally, the fuel oil system cannot be tested to the requirements of Surveillance Requirement 4.8.1.1.2.i.2 because the DG fuel oil tanks are vented to the atmosphere and this vent path cannot be isolated.

Millstone Unit No. 3 will include the DG fuel oil system pressure test as an augmented inspection within the Inservice Inspection program. Inspections will be performed in compliance with the requirement of the 1983 Edition of ASME Section XI, Table IWD–2500–1, "Test and Examination Categories." Testing (i.e., a system hydrostatic test) in accordance with ASME Section XI will provide equivalent assurance of tank and piping integrity.

Conclusion

Based on the above, the proposed changes to Surveillance Requirements 4.8.1.1.2.g.3 and 4.8.1.1.2.i.2 of the Millstone Unit No. 3 Technical Specifications do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 18, 1995.

Description of amendment request: The proposed changes to the technical specifications will increase the minimum required boron concentration in the boric acid tank (BAT) from 6300 ppm to 6600 ppm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

• • • The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The change affects the minimum required boron concentration in the BAT. Changes in the tank's boron concentration will not affect the probability of any plant accident.

An increase in the minimum BAT concentration of 6600 ppm was recommended by Westinghouse based on their Cycle 6 BORDER evaluation. The BORDER evaluation conservatively determines the ability to maintain shutdown margin when the plant is taken from an initial operating condition of Mode 1 or 2 to a final condition of Mode 5 or 6 using an assumed minimum BAT concentration. Therefore, the ability to maintain shutdown margin is assured and the change will not adversely affect the consequences of any plant accident.

2. Create the possibility of a new or different kind of accident from any Previously Analyzed.

The change conservatively increases the minimum required boron concentration in the BAT from 6300 ppm to 6600 ppm. There is no impact on the operability of plant systems or equipment. Therefore, the change does not create a malfunction that is different from those previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed increase in the minimum boron concentration in the BAT provides conservatism in the calculated shutdown margin for Millstone Unit No. 3. The change does not adversely affect any equipment credited in the safety analysis. Also, the change does not adversely affect the probability or consequences of any plant accident, including the calculated PCT (peak clad temperature) or offsite doses. Therefore, there is no impact on the margin of safety as specified in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: January 10, 1995.

Description of amendment requests: The proposed amendments would revise the Prairie Island Event Monitoring Instrumentation Technical Specifications and associated Bases to conform to Standard Technical Specifications for post-accident monitoring.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary purpose of post accident monitoring instrumentation is to display plant variables that provide information to the control room operators during accident situations. Plant instrumentation was evaluated for importance for this function when Regulatory Guide 1.97 ["Instrumentation for Light Water Cooled Nuclear Power Plants to Assess Plant Conditions During and Following an Accident"] classifications were determined. The Prairie Island Regulatory Guide 1.97 classification of instruments was previously approved by the NRC on October 18, 1985. This amendment request proposes to base Prairie Island Technical Specifications on the results of the Regulatory Guide 1.97 evaluation in accordance with the guidance of the industry standard.

Revising the allowed outage time for these instruments will not significantly increase the probability or consequences of an accident since these instruments do not initiate automatic actions, there are available backup indications and the probability of an event requiring these instruments to be operable is very low.

Therefore, the probability or consequences of an accident previously evaluated are not affected by any of the proposed amendments.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The license amendment request proposes to add instruments to the Technical Specifications which have been previously determined to be important for post accident monitoring, and to remove instruments from Technical Specifications which have been previously determined to be less important for post accident monitoring This amendment ensures the control room operators are provided with the instrumentation required to properly manage an accident situation

Therefore, based on the above considerations, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The post accident monitoring functions do not initiate any automatic actions. The instrumentation to be added to the Event Monitoring Instrumentation Table was previously recognized through the Regulatory Guide 1.97 evaluation process as important for post accident monitoring and would be relied upon if there were an event without this license amendment. Instrumentation to be removed from Technical Specifications was previously recognized to be less

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important and would not be relied upon very much in an event. Overall, with the trade-off of adding and deleting instrumentation, the margin of safety will not be significantly affected.

The proposed license amendment will increase the allowed outage time for most of the instruments. Again, these instruments do not provide automatic action, they provide indications for monitoring post accident conditions. All of the instruments have backup or corroborating indications which could be relied upon if the Technical Specifications instruments were inoperable. Also, an event requiring use of these instruments has a very low probability. For these reasons the proposed changes in allowed outage time will not result in a significant reduction in the margin of safety.

For these same reasons, the proposed changes in radiation instrument surveillance requirements will not significantly reduce the margin of safety.

Overall, a significant reduction in the margin of safety would not result from this license amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: John N. Hannon.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 25, 1995.

Description of amendment request: The proposed Technical Specification change would replace a specific requirement for the frequency of Type A tests with a general requirement to perform Type A tests. The proposed amendment would change Surveillance Requirement 4.6.1.2.a. Specifically, the change would require the performance of Type A tests (overall containment integrated leak rate tests (ILRTs)) at intervals as specified in 10 CFR 50, Appendix J, instead of on a specific schedule for performance of ILRTs of "40 plus or minus 10 months."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change merely replaces a prescriptive schedule for performing ILRTs with a requirement to conduct the ILRTs on a schedule consistent with the Commission's regulations. The change does not alter the methodology, frequency, or acceptance criteria for ILRTs, does not affect the design basis of the containment, and does not change the post-accident response of the containment.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the change does not affect the manner by which the facility is operated and does not make any changes to existing plant structures, systems, or components. The proposed change merely replaces a prescriptive schedule for performing ILRTs with a requirement to conduct the ILRTs on a schedule consistent with the Commission's regulations.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, MA 02110–2624.

NRC Project Director: Phillip F. McKee.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 7, 1994.

Description of amendments request: The amendments would provide a permanent voltage-based steam generator tube repair criteria for both units. This criteria is based on the guidance contained in the NRC Proposed Generic Communication (Generic Letter 94–XX), "Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," that was issued for public comment in the **Federal Register** (59 FR 41520) on August 12, 1994. The licensee's submittal also includes responses to and identifies exceptions taken to the draft Generic Letter. The significant exceptions are: (1) The requirement to reinspect all tubes if bobbin probe wear exceeds 15%; (2) the 1×10^{-2} limit on the calculated conditional burst probability; and (3) the need to pull additional steam generator tubes to evaluate the current condition of the steam generator tubes. In addition, the operational leakage requirement for Unit 2 will be modified to reduce the total allowable primary-to-secondary leakage for any steam generator from 500 gallons per day (gpd to 150 gallons per day.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Farley units in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free standing tubes at room temperature conditions shows burst pressures as high as approximately 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 26.5 volts. Burst testing performed on pulled tubes with up to 7.5 volt indications show burst pressures in excess of 5900 psi at room temperature. As stated earlier, tube burst criteria are inherently satisfied during normal operating conditions by the presence of the tube support plate. Furthermore, correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the R.G. [Regulatory Guide] 1.121 criterion requiring the maintenance of a margin of 1.43 times the steam line break pressure differential on tube burst if through-wall cracks are present without regard to the presence of the tube support plate. Considering the existing data base, this criterion is satisfied with bobbin coil indications with signal amplitudes over twice the 2.0 volt voltage-based repair criteria, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data. The 2.0 volt criterion provides an extremely conservative margin of safety to the structural limit considering expected growth rates of outside diameter stress corrosion cracking at Farley. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 7.7 volts for 3/4 inch tube which correlates to 10 volts for 7/8 inch tubing (as compared to the 2.0 volt proposed voltage-based tube repair limit). Thus, the proposed amendment does not involve a significant increase in the probability or consequences of an accident.

Relative to the expected leakage during accidents (sic) condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley in considering the potential for off-site doses. The offsite doses analyses for the other events which model primary-to-secondary leakage and steam releases from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following a steam line break event. In addition, the steam line break event results in a bypass of containment for steam generator leakage. Upon implementation of the voltage-based repair criteria, it must be verified that the expected distributions of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis. Data indicate that a threshold voltage of 2.8 volts could result in through-wall cracks long enough to leak at steam line break conditions. Applications of the proposed repair criteria requires that the current distribution of a number of indications versus voltage be obtained during the refueling outages. The current voltage is then combined with the rate of change in voltage measurement and a voltage measurement uncertainty to establish an end of cycle voltage distribution and, thus, leak rate during steam line break pressure differential. The leak rate during a steam line break is further increased by a factor related to the probability of detection of the flaws. If it is found that the potential steam line break leakage for degraded intersections planned to be left in service coupled with the reduced specific activity levels allowed result in radiological consequences outside the current licensing basis, then additional tubes will be plugged or repaired to reduce steam line break leakage potential to within the acceptance limit. Thus, the consequences of the most limiting design basis accident are constrained to present licensing basis limits.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed voltage-based tube support plate elevation steam generator tube repair criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in steam generator in which the repair criteria have been applied during all plant conditions. The bobbin probe signal amplitude repair criteria are established such that operational leakage or excessive leakage during a postulate steam line break condition is not anticipated. Southern Nuclear has previously implemented a maximum leakage limit of 140/150 gpd (Unit 1/ Unit 2) per steam generator. The R.G. 1.121 criterion for establishing operational leakage limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 140/150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor safety of 1.43 against bursting at steam line break pressure differential. A voltage amplitude of approximately 9 volts for typical outside diameter stress corrosion cracking corresponds to meeting this tube burst requirement at the 95% prediction interval on the burst correlation. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus throughwall crack length correlations is used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that results in tube burst at 1.43 times steam line break pressure differential and steam line break conditions are about 0.53 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from about 0.4 gallons per minute to 4.5 gallons per minute, respectively, while lower 95% confidence level leak rates would range from about 0.06 gallons per minute to 0.6 gallons per minute, respectively.

An operating leak rate of 140/150 gpd per steam generator has been implemented. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 140/150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for steam line break conditions at leak rates less than 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Considering the above, the implementation of voltage-based plugging criteria will not create possibility of a new or different kind of accident from any previously evaluated

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based tube support plate elevation repair criteria is demonstrated to maintain steam

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generator tube integrity commensurate with the requirements of R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting GDCs [General Design Criteria] 2, 14, 15, 31, and 32 by reducing the probability of the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of outside diameter stress corrosion cracking at the tube support plant elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be a possible increase in leakage during a steam line break event. Excessive leakage during a steam line break event, however, is precluded by verifying that, once the criteria are applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable primary to secondary leakage during the event and, hence, help to demonstrate radiological conditions are less than an appropriate fraction of the 10 CFR 100 guideline.

The margin to burst for the tubes using the voltage-based repair criteria is comparable to that currently provided by existing technical specifications.

In addressing the combined effects of LOCA [loss-of-coolant accident] + SSE [safe shutdown earthquake] on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS [reactor coolant system] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential the partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse or that short through-wall indications would leak at significantly higher leak rates than included in the leak rate assessments.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley reactor coolant system primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley, any flow area reduction is expected to be minimal (much less than 1%) and PCT margin is available to account for this potential effect. Based on analyses' results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary to primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that previously allowed, i.e., 500 gpd per steam generator. Furthermore, secondary-to-primary in-leakage would be less than primary-to-secondary leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.G. 1.83 considerations, implementation of the tube repair criteria is supplemented by 100% inspection requirements at the tube support plate elevations having outside diameter stress corrosion cracking indications, reduced operating leakage limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principle degradation mechanism as outside diameter stress corrosion cracking.

As noted previously, implementation of the tube support plate elevation repair criteria will decrease the number of tubes that must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs or tube sleeves would reduce the RCS flow margin, thus implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced through increased tube plugging or sleeving.

Considering the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: William H Bateman.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: January 9, 1995.

Description of amendments request: The requested changes to the Technical Specifications (TS) would implement the recommended changes from Generic Letter 93–05, "Line Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." Specifically, the amendments would implement TS changes corresponding to the following GL 93–05 line-item improvement issues: Control Rod Movement Test for Pressurized Water Reactors, Radiation Monitors, Surveillance of Boron Concentration in the Accumulator/Safety Injection/Core Flood Tank, Containment Spray System, Hydrogen Recombiner, and Special Test Exemptions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. The changes to the surveillance requirements will result in an overall improvement in plant safety by reducing the likelihood of plant trips and subsequent challenges to safety systems, decreasing equipment degradation due to excessive testing, reducing radiation exposure to plant personnel, increasing the availability of safety related equipment, and eliminating an unnecessary burden on plant personnel. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. The relaxation of surveillance tests curtails the excessive amount of testing that increases wear on the equipment and reduces the likelihood of plant trips and subsequent challenges to safety systems. The relaxation also increases the availability of safety related equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes eliminate an unnecessary burden without compromising protection for public health and safety. The proposed changes were generically analyzed by the NRC as part of a comprehensive study and presented in NUREG–1366 "Improvement to Technical specifications (sic) Surveillance Requirements." The NRC concluded that while some testing at power is essential to verify equipment and system operability, safety can be improved, equipment degradation decreased, and unnecessary personnel burden relaxed by reducing the amount of testing at power. SNC has analyzed plant operations and made a comparison with the criteria stated in NUREG–1366 for the line-item improvements contained in this request and has found the NUREG–1366 basis to be consistent with the Farley design and operation experience. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Project Director: William H. Bateman.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 6, 1994.

Description of amendment request: The proposed change to Technical Specification 3/4.1.3.2 will delete Surveillance Requirement (SR) 4.1.3.2.2, that presently requires, every 31 days, the movement of at least 2% of its height for each Axial Power Shaping Rod not fully withdrawn. The proposed amendment would also change the surveillance intervals for the following Technical Specifications (TS) in accordance with the guidance of Generic Letter 93–05, "Line Item Technical Specifications Improvements to Reduce Surveillance Requirements For Testing During Power Operation," and NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements:"

1. TS 4.1.3.2 for the Movable Control Assemblies "Group Height—Safety and Regulating Rod Groups," will relax testing requirements from at least once every 31 days to every 92 days.

2. TS 4.4.6.2, for "Operational Leakage," relaxes the requirement to leakage test RCS pressure isolation valves prior to MODE 2 whenever the plant has been in COLD SHUTDOWN for 72 hours to whenever the plant has been in COLD SHUTDOWN for 7 days.

3. SR 4.5.2.c.2 for TS 4.5.2, "ECCS Subsystems—Tavg equal to or greater than 280° F," relaxes the inspection requirements for ensuring no debris in containment from "at the completion of each containment entry" to "at least once daily."

4. TS 4.6.2.1.d, for the "Containment Spray System," relaxes the SR to perform an air or smoke flow test through the spray header and nozzles from once per 5 years to once per 10 years.

5. TS 4.10.4.2 for "Special Test Exceptions Shutdown Margin" relaxes the SR interval for testing rod insertion capability prior to reducing shutdown margin from 24 hours to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not involve a significant increase in the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated because no change is being made to any accident initiator and no accident conditions or assumptions used in evaluating the radiological consequences of an accident are changed. Relaxation of surveillance requirements is in accordance with GL 93–05, NUREG–1366, and is compatible with plant operating experience. Deletion of SR 4.1.3.2 is consistent with NUREG–1430, "Improved Standard Technical Specifications for B&W Plants." No credit is taken in any accident analysis or mitigation requirements for the Axial Power Shaping Rod Group.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of any new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by these proposed changes. Relaxation of SRs as discussed in GL 93–05 was evaluated as reducing equipment degradation with no increase in safety consequences consistent with the maintenance of plant specific reliability of the equipment and systems affected. Deletion of the SR to move the Axial Power Shaping Rod Group does not affect the requirement to verify rod position, and there is no credit taken for movement of these rods to mitigate an accident.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

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The changes do not involve a significant reduction in the margin of safety, because the proposed changes affect only surveillance requirements, do not affect the function of the components and systems involved, and do not decrease the estimated equipment or system reliability.

Based on the NRC staff analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 6, 1994.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.0.5, "Applicability" and its associated Bases; TS 3/4.1.2.3, "Reactivity Control Systems—Makeup Pump—Shutdown; TS 3/4.1.2.4, "Reactivity Control Systems—Makeup Pump—Operating; TS 3/4.1.2.6, Reactivity Control Systems—Boric Acid Pump—Shutdown; and TS 3/4.1.2.7, "Reactivity Control System—Boric Acid Pumps—Operating." The proposed change would replace the specific monthly surveillance requirements associated with the makeup pumps and boric acid pumps with a surveillance requirement referencing TS 4.0.5, which references Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code for quarterly pump testing requirements. The proposed change to TS 4.0.5 and its associated Bases would revise the requirement regarding the NRC's approval of relief requests to be in accordance with the NRC Staff's recommendation contained in NUREG–1482, "Guidelines for Inservice Testing at Nuclear Power Plants." Additionally, TS 4.0.5.a.2 which describes historical requirements for inservice inspection and testing would be deleted and TS 4.0.5.a.1 would be renumbered as TS 4.0.5.a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the NRC Staff has performed an analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes, would not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are affected by the proposed changes to replace the specific monthly surveillance requirements for the makeup and boric acid pumps with surveillance requirements referencing TS 4.0.5 (ASME Boiler and Pressure Vessel Code Section XI requirements) and to delete wording regarding NRC approval of relief requests. The changes do not involve a significant increase in the consequences of an accident previously evaluated, because no accident conditions or assumptions are affected that would increase the radiological consequences of a previously evaluated accident.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in any new accident initiators nor do they alter any accident scenarios. The changes do not create the possibility of a different kind of accident from any accident previously evaluated, because the surveillance requirements for the makeup and boric acid pumps only affect the testing of existing components, systems, and functions, and do not introduce any new requirements.

(3) The proposed changes do not result in a significant reduction in the margin of safety.

The proposed changes do not reduce or adversely affect the capabilities or reliability of any plant structures, systems or components. Relaxation of the surveillance testing interval for the boric acid and makeup pumps and modifying the testing requirements is consistent with previous NRC guidance.

Based on this NRC staff evaluation, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: January 13, 1995.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) by relocating Tables 3.3–2, "Reactor Trip System Instrumentation Response Times," and 3.3–5, "Engineered Safety Features Response Times," to FSAR Chapter 16, Section 16.3. The Bases discussion specific to Table 3.3–5 would also be relocated to FSAR Section 16.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analyses documented in FSAR Chapter 15, WCAP–10961–P, and WCAP–11883 since no changes to the response times or measurement interval are proposed.

The RTS and ESFAS will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

These Technical Specification revisions do not involve any hardware changes nor do they affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, there will be no increase in the probability or consequences of any accident occurring due to these changes.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is unaffected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different type of accident is not created.

(3) Involve a significant reduction in a margin of safety.

No response time changes are proposed in this amendment application; only the document where these limits are listed will be changed. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density, or any other margin of safety.

Based upon the preceding information, it has been determined that the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10CFR50.92(C) [sic] and do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 8, 1994.

Description of amendment request: The proposed amendment would change Standby Gas Treatment Power Supply Requirements during refueling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

SGTS [Standby Gas Treatment System] DURING REFUELING OPERATIONS (Specification 3.7.B.1, 3.7.B.3)

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Standby Gas Treatment System (SGTS) is not the initiator of any accident. SGTS may be required to operate for a design basis loss of coolant accident or for a refueling accident in order to mitigate the consequences of said accident by providing a filtered exhaust path to minimize the potential release of radioactive material to the environs. The proposed amendment does not reduce or change the operational requirements for the SGTS for an accident. The proposed amendment now clearly defines the operability requirements during refueling conditions. The proposed amendment further requires the availability of a second auxiliary power supply in the event that an Emergency Diesel Generator (EDG) is out of service during refueling operations, not currently required. We conclude, therefore, that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The SGTS is not an accident initiator, therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed amendment requires the availability of a second auxiliary power supply in the event that an EDG is out of service during refueling operations, not currently required. Maintaining availability of a specific reliable auxiliary electrical power source as an alternative to an EDG in this mode provides assurance that SGTS can, if required, be operated without placing undue constraints on EDG availability and represents an enhancement that increases a margin of safety. We conclude, therefore, that the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above discussion, we have determined that this change does not constitute a significant hazards consideration as defined in 10CFR50.92(c).

LABORATORY CARBON SAMPLE ANALYSIS (Specification 3.7.B.2.b)

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Standby Gas Treatment System (SGTS) is not the initiator of any accident. SGTS may be required to operate for a design basis loss of coolant accident or for a refueling accident in order to mitigate the consequences of said accident by providing a filtered exhaust path to minimize the potential release of radioactive material to the environs. The proposed amendment does not reduce or change the operational requirements for the SGTS for an accident. The proposed amendment now clearly defines the operability requirements during the interval between sample removal and completion of laboratory analysis.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The SGTS is not an accident initiator, therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change does not reduce the requirements or acceptance criteria for sampling, testing or analysis. The proposed change only incorporates into the specification an existing clarification which addresses the determination of operability during the time between sample removal and completion of laboratory analysis. The change provides an explicit time limit consistent with current regulatory criteria for completion of analyses.

Based on the above discussion, we have determined that this change does not constitute a significant hazards

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consideration as defined in 10CFR50.92(c).

TORUS VENT MODE (Specification 4.7 B.2.c)

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The Standby Gas Treatment System (SGTS) is not the initiator of any accident. SGTS may be required to operate for a design basis loss of coolant accident or for a refueling accident in order to mitigate the consequences of said accident by providing a filtered exhaust path to minimize the potential release of radioactive material to the environs. The proposed amendment does not reduce or change the operational requirements for the SGTS for an accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The SGTS is not an accident initiator, therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety. The proposed change will incorporate into the specification an existing clarification. Use of the SGTS filters during Torus venting results in an insignificant flow through the filters. Further, maintaining humidity control prevents any adsorber degradation. Past sample testing on a six month calendar interval when 720 hours operating time has not accumulated has shown no detectable impact.

Based on the above discussion, we have determined that this change does not constitute a significant hazards consideration as defined in 10CFR50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Walter R. Butler

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: November 19, 1994.

Brief description of amendment: The proposed amendment would revise Section 3.10.8 and the associated Bases of the Indian Point Nuclear Generating Unit No. 3 Technical Specifications. Specifically, the proposed revision would reduce the maximum allowable control rod drop time from 2.4 to 1.8 seconds. The change would remove, for testing purposes, the allowance for a seismic event (0.6 seconds), which had been integral to the 2.4 second safety analysis basis. Since a seismic event cannot be simulated during the rod drop time test, the more conservative testing acceptance criteria value of 1.8 seconds is needed to ensure that the plant is within its design basis. This proposed revision will support control rod testing which is required during startup from the current outage.

Date of publication of individual notice in **Federal Register**: January 20, 1995 (60 FR 4203).

Expiration date of individual notice: February 21, 1995.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments. November 30, 1994.

Brief description of amendments: These amendments relocate Table 3.3–2, "Reactor Protective Instrumentation Response Times," and Table 3.3–5, "Engineered Safety Features Response Times," of TS 3/4.3.1 and 3/4.3.2, respectively, to the Palo Verde Updated Final Safety Analysis Report (UFSAR) in accordance with the guidance provided in Generic Letter 93–08. In addition, the amendments make administrative changes to two previous TS amendment requests to maintain consistency with the deletion of Tables 3.3–2 and 3.3–5. The amendments also delete an obsolete footnote on page 3/4 3–17 of the Palo Verde Unit 2's TS.

Date of issuance: February 3, 1995.
Effective date: February 3, 1995.
Amendment Nos.: 88, 75 and 59.
Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: January 4, 1995 (60 FR 496) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 16, 1994.
Brief description of amendments: The proposed amendments change the Technical Specifications to revise the wording for the containment integrated leakage rate testing in Section 3/4.6.1.2 to make it consistent with the requirements of the BWR–4 Improved Standard Technical Specifications (NUREG–1433).
Date of issuance: January 26, 1995.
Effective date: January 26, 1995.
Amendment Nos.: 173 and 204.
Facility Operating License Nos. DPR–71 and DPR–62.
Date of initial notice in **Federal Register**: December 21, 1994 (59 FR 65810).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 26, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments. June 13, 1994, as supplemented on October 7, 1994.
Brief description of amendments: The amendments revise the administrative controls in Section 6 of the technical specifications (TS). The changes include: (1) a change to the submittal frequency of the Radiological Effluent Release Report from semiannually to annually; (2) changes to the Shift Technical Advisor (STA) description; (3) a clarification of the Shift Engineer responsibilities; and (4) several editorial changes.
Date of issuance: February 2, 1995.
Effective date: February 2, 1995.
Amendment Nos.: 69, 69, 59 and 59.
Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 26, 1994 (59 FR 53839).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 17, 1993 as supplemented October 12, 1994.
Brief description of amendment: The amendment replaces License Condition 2.C.4, relating to the implementation and maintenance of the approved Fire Protection Program, in its entirety with a new License Condition. In conjunction, with this change, and in accordance with GL 86–10, Technical Specification provisions related to the Fire Protection Program are being deleted and placed in the Updated Final Safety Analysis Report.
Date of Issuance: February 1, 1995.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 179.
Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 7, 1993 (58 FR 36432).
The October 12, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 1, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina Date of application for amendments: August 25, 1994, as supplemented November 16, 1994.

Brief description of amendments: The amendments revise Technical Specification Table 3.3–4, by revising the "Trip Setpoint" and "Allowable Value" for the 4 kV bus undervoltage grid degraded voltage relays and the "Allowable Value" for the 4 kV undervoltage loss of voltage/loss of offsite power relays. This revision was submitted in response to a concern identified by the licensee in their Self-Initiated Technical Audit and during the electrical distribution system functional inspection team findings.
Date of issuance: January 20, 1995.
Effective date: To be implemented within 30 days from the date of issuance.
Amendment Nos.: 127 and 121.
Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 12, 1994 (59 FR 51619).
The November 16, 1994, letter provided clarifying information that did not change the scope of the August 25, 1994, application and the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 20, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: July 28, 1994.
Brief description of amendment: This amendment revises Technical Specifications 3/4.4.13 to incorporate Low Temperature Overpressure Protection requirements similar to those recommended by the NRC staff via Generic Letter 90–06.

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Date of Issuance: January 27, 1995.
Effective Date: January 27, 1995.
Amendment No.: 132.
Facility Operating License No. DPR–67. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: August 17, 1994 (59 FR 42341).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: February 3, 1994.
Brief description of amendments: The amendments relocate the requirements of Technical Specification 3/4.7.10, Area Temperature Monitoring, to section 16.3 of the VEGP Final Safety Analysis Report (FSAR). With this relocation to the FSAR, GPC plans to clarify the basis for areas to be monitored and modify these surveillance requirements. This change is in accordance with NUREG–1431, "Standard Technical Specifications, Westinghouse Plants."
Date of issuance: January 23, 1995.
Effective date: To be implemented within 30 days from the date of issuance.
Amendment Nos.: 83 and 61.
Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: September 2, 1994 (59 FR 45735).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 13, 1992.
Brief description of amendment: The amendment changes the allowable primary-to-secondary leakage rate, as specified in License Condition 2.c.(8)2, from 0.1 gallons per minute (gpm) to 0.2 gpm.
Date of Issuance: January 31, 1995.
Effective date: January 31, 1995.
Amendment No.: 193.
Facility Operating License No. DPR–50. Amendment revises a License Condition.
Date of initial notice in **Federal Register**: October 14, 1992 (57 FR 47137).
The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 31, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 26, 1994.
Brief description of amendment: The amendment revised Technical Specification 3.5.C.1 and 3.5.C.4 to increase the minimum pressure at which the high pressure coolant injection system is required to be operable from 113 psig to 150 psig.
Date of issuance: January 25, 1995.
Effective date: January 25, 1995.
Amendment No.: 166.
Facility Operating License No. DPR–46. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 26, 1994 (59 FR 53841). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 22, 1994.
Brief description of amendment: The amendment revised Technical Specification 1.0.J, definition of limiting conditions for operation, consistent with the guidance provided in NRC Generic Letter 87–09, "Sections 3.0 and 4.0 of the Standard Technical Specifications on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."
Date of issuance: February 3, 1995.
Effective date: February 3, 1995.
Amendment No.: 168.
Facility Operating License No. DPR–46. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: January 3, 1995 (60 FR 153).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York.

Date of application for amendment: July 21, 1994.
Brief description of amendment: The amendment revises Technical Specifications 2.2.2, 3.2.8, 4.2.8, and the associated Bases to reduce the number of reactor head safety valves required operable from 16 valves to 9 valves. The setpoints of the valve groups are unchanged by this amendment. The amendment requires testing of the safety valves in accordance with the approved NMP–1 Inservice Test Program.
Date of issuance: January 25, 1995.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 152.
Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register**: August 31, 1994 (59 FR 45027).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York.

Date of application for amendment: October 28, 1994.
Brief description of amendment: The amendment revises Technical

Specification (TS) 1.7, "CORE ALTERATION," to state that movement or replacement of incore instrumentation is not considered to be a CORE ALTERATION and that movement of control rods is not considered a CORE ALTERATION provided there are no fuel assemblies in the associated core cell. This amendment includes changes to TS 3/4.9.3, "Control Rod Position," and associated Bases to be consistent with the revision to TS 1.7. TS 3/4.9.3 is being revised to require that all control rods be inserted only during loading of fuel assemblies into the core rather than during CORE ALTERATIONS. These changes are consistent with the NRC's, "Improved Standard Technical Specifications," (NUREG–1434).
This amendment also revises Item 1.i.3) of TS Tables 3.3.2–1 and 4.3.2.1–1 to delete the requirement for Reactor Water Cleanup isolation due to actuation of the Standby Liquid Control System (SLCS) in OPERATIONAL CONDITION 5. License Amendment No 48 issued on September 30, 1993, deleted the requirement for the SLCS to be OPERABLE in OPERATIONAL CONDITION 5; however, due to an oversight, Item 1.i.3) and associated notations were not deleted from TS Tables 3.3.2–1 and 4.3.2.1–1 as part of License Amendment No. 48. This amendment corrects that oversight.
Date of issuance: January 20, 1995
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 61.
Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register**: November 23, 1994 (59 FR 60382).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 14, 1994.
Brief description of amendment: The amendment revises Technical Specification 4.5.1.e.2.e) to reduce the leak rate test pressure for the Automatic Depressurization System (ADS) nitrogen receiving tanks from 385 psig to 365 psig.
Date of issuance: January 31, 1995.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 62.
Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register**: December 21, 1994 (59 FR 65817).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 14, 1994, as modified by letter dated October 17, 1994.
Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) to specify the composition of the Station Operation Review Committee (SORC) based on experience and expertise vice organizational position, to implement a Station Qualified Reviewer Program (SQRP), and to revise the time within which the Nuclear Safety Audit Review Committee (NSARC) must issue reports and minutes.
The amendment also incorporated a number of editorial changes to delete certain items that are no longer applicable; remove inconsistencies involving the names of systems, equipment and NSARC function, composition, and use of alternates; and correct the value for the reactor coolant system volume. Other editorial changes have been incorporated for document format consistency. The amendment affects the following: TS Sections 1.31, 3.3.3.6, 3.4.1.2, 4.6.3.2, 3.7.1.2, 3/4 10.6, 5.4.2, 6.3.1, 6.4, 6.7, and 6.8.1.4, and Table 4.3–1.
Date of issuance: January 26, 1995
Effective date: January 26, 1995.
Amendment No.: 34.
Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27057) The licensee's letter dated October 17, 1994, provided clarification and minor revision to the application but does not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 22, 1994.
Brief description of amendment: The amendment revises the Technical Specifications to incorporate a different setpoint and transient methodology for determining the maximum allowable power range neutron flux setpoint. These changes allow Millstone Unit 3 to operate with a reduced number of main steam-line safety valves at a reduced power level, as determined by the high flux setpoint.
Date of issuance: January 31, 1995.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 102.
Facility Operating License No. NPF–49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: September 14, 1994 (59 FR 47171).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments October 25, 1994.
Brief description of amendments These amendments add to the Susquehanna, Units 1 and 2, Technical Specifications, isolation signals to Table 3.6.3–1 for the containment isolation valves on the sample lines for the containment radiation monitoring and

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wetwell sample lines. This change is based on the licensee's design change for installation of a new CRM and wetwell sample system.

Date of issuance: January 31, 1995.
Effective date: January 31, 1995.
Amendment Nos.: 141 and 111.
Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63126). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of application for amendment: June 10, 1994, as supplemented by letter dated December 19, 1994.
Brief description of amendment: This amendment involves a one-time change affecting the Allowed Outage Time (AOT) for the Emergency Sevice Water (ESW) system, Residual Heat Removal Service Water (RHRSW) System, the Suppression Pool Cooling, the Suppression Pool Spray, and Low Pressure Coolant Injection modes of the Residual Heat Removal System, and Core Spray System to be extended from 3 and 7 days to 14 days during the Unit 2 refueling outage scheduled to begin in lanuary 1995. This proposed extended AOT allows adequate time to install isolation valves and cross-ties on the ESW and RHRSW Systems to facilitate future inspections or maintenance.
Date of issuance: January 27, 1995.
Effective date: January 27, 1995.
Amendment No. 86.
Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37077). The December 19, 1994 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: June 30, 1994.
Brief description of amendment: This amendment removes the controls for a remote shutdown system control valve and the primary containment isolation valves from TS Tables 3.3.7.4-1 and 3.6.3-1 respectively, as a result of eliminating the steam condensing mode of the Residual Heat Removal system.
Date of issuance: January 27, 1995.
Effective date: January 27, 1995.
Amendment No. 47.
Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: August 17, 1994 (59 FR 42343).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: August 27, 1993, supplemented by letter dated November 17, 1993.
Brief description of amendment: The amendment allows an expanded operating domain for the Limerick Generating Station (LGS), Unit 2, resulting from the implementation of the Average Power Range Monitor—Rod Block Monitor Technical Specifications/ Maximum Extended Load Line Limit Analysis. These improvements are a prerequisite for Power Rerate Program implementation at Limerick Generating Station, Unit 2.
Date of issuance: January 27, 1995.
Effective date: January 27, 1995.
Amendment No. 48.
Facility Operating License No. NPF-85. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 13, 1993 (58 FR 52992). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 22, 1994.
Brief description of amendments: These amendments revise TS 3.1.5, "Standby Liquid Control System," to remove the requirement for the standby liquid control system to be operable in OPERATIONAL CONDITION 5, Refueling, when any control rod is withdrawn and the TS definition of CORE ALTERATION to exclude control rod movement in a control cell that contains no fuel assemblies.
Date of issuance: January 27, 1995.
Effective date: January 27, 1995.
Amendment Nos. 87/49.
Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: November 9, 1994 (59 FR 55881).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 28, 1993.
Brief description of amendment: The amendment revised Technical Specification (TS) Section 4.11.D to change the surveillance requirements for the Emergency Service Water System pumps. The change added pump flow rate requirements and tests the pumps in accordance with the licensee's Inservice Testing Program. The respective TS Bases were also revised.
Date of issuance: January 30, 1995.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 223.
Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: November 24, 1993 (58 FR 62156).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 3, 1995 (TS 95-01).
Brief description of amendments: The amendments add a permissive statement to Surveillance Requirement 4.9.7.1 that will allow the auxiliary building bridge crane interlocks and physical stops to be defeated during implementation of the spent fuel pool storage capacity increase modification.
Date of issuance: January 24, 1995.
Effective date: January 24, 1995.
Amendment Nos.: 194 and 185.
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.
Date of initial notice in **Federal Register**: January 9, 1995 (60 FR 2404) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1995.
No significant hazards consideration comments received: None.
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration amd Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.
Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.
For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.
In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.
Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.
The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.
Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.
For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.
The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 17, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.
As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

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with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 26, 1994, as supplemented by letters dated December 27, 1994, and January 27, 1995.

Brief description of amendment: The amendment changed the Technical Specification Section 3/4.12.A to allow for increased flow capacity of the control room emergency filter system. By increasing the maximum allowed makeup capacity of this system, additional margin is provided for the positive pressurization of the control room envelope.

Date of issuance: January 27, 1995.

Effective date: January 27, 1995.

Amendment No.: 167.

Facility Operating License No. DPR–46. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499.

NRC Project Director: William D. Beckner.

Dated at Rockville, Maryland, this 8th day of February 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3629 Filed 2–14–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–20893; 811–3095]

Pacific American Fund; Notice of Application

February 9, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pacific American Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on January 11, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 6, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 West Sixth Street, Suite 1000, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or Barry D. Miller, Senior Special Counsel at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On September 24, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement on Form N–1 under section 8(b) of the Act and the Securities Act of 1933. Applicant commenced its initial public offering on April 15, 1981.

2. On July 20, 1994, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Pacifica Funds Trust (the "Trust"), a registered open-end management company. The Plan provided for the reorganization of applicant's Money Market Portfolio and U.S. Treasury Pertfolio (the "Portfolios") as corresponding new portfolios of the Trust. Under the Plan, all of the assets and liabilities of the Portfolios would be transferred to the corresponding Money Market Portfolio and U.S. Treasury Portfolio of the Trust (the "New Portfolios") in exchange for the number of shares of the New Portfolios equal to the number of shares outstanding in the Portfolios.

3. According to applicant's proxy statement dated September 1, 1994, the trustees considered various factors in approving the reorganization, including, (a) the elimination of duplicate costs incurred for services that are performed for both applicant and the Trust separately, (b) the potential improvement of trading and operational efficiencies through the combination of the mutual fund groups, (c) economies of scale to be realized primarily with respect to fixed expenses, (d) the availability of additional investment portfolios of the Trust to applicant's shareholders after the reorganization, and (e) the enhancement of the distribution of the New Portfolio shares to potential investors. Applicant's trustees also determined that the sale of applicant's assets to the New Portfolios of the Trust was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

4. Proxy materials soliciting shareholder approval of the reorganization were distributed to applicant's shareholders during the first week of September, 1994. Definitive copies of the proxy materials were filed with the SEC on September 6, 1994. Applicant's shareholders approved the reorganization at a special meeting held on September 27, 1994.

5. As of September 30, 1994, applicant's Money Market Portfolio had 565,408,253.15 shares outstanding, having an aggregate net asset value of $565,305,165 and a per share net asset value of $1.00 (based on the amortized cost valuation method), and applicant's U.S. Treasury Portfolio had 690,630,344.65 shares outstanding, having an aggregate net asset value of $690,630,344.65 and a per share net asset value of $1.00. On October 1, 1994, pursuant to the Plan, the assets and liabilities of the Portfolios were transferred to the corresponding New Portfolios. The aggregate net asset value of the New Portfolios' shares received are equal to the net asset value of applicant's shares held. Applicant then distributed the New Portfolios' shares it received *pro rata* to its shareholders, in complete liquidation of applicant.

6. No brokerage commissions were paid in connection with the reorganization. The expenses applicable to the Plan, consisting of legal, state registration, and filing fees and printing expenses, were approximately $70,000 and were allocated to applicant and the New Portfolios.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file a certificate of termination with the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3700 Filed 2–14–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94–64; Notice 2]

Accuride Corporation; Grant of Application for Decision of Inconsequential Noncompliance

Accuride Corporation (Accuride) of Henderson, Kentucky, determined that some of its wheels fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Accuride also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on July 28, 1994, and an opportunity afforded for comment (59 FR 38503).

Paragraph S5.2(b) of FMVSS No. 120 requires that each wheel be marked with the rim size designation. On January 11, 1994, Accuride produced an estimated 103 Accu-Forge 22.5 x 9.00 inch, 15 degree drop center, one-piece tubeless dual wheels with incorrect size designations for the rim width. The wheels were incorrectly stamped "22.5 x 8.25." The wheels should have been stamped "22.5 x 9.00." All other stampings and markings required by FMVSS No. 120 are correctly identified on each of the subject wheels.

Accuride supported its application for determination of inconsequential noncompliance with the following arguments:

Accuride has fully analyzed the issues surrounding the incorrect width designation on these wheels and has sought the input of the others with particular expertise on this subject. Based upon all of this analysis and the information obtained, it appears clear that there is no safety-related issue potentially arising from the incorrect width designations indicated on the wheels

According to the 1994 Tire and Rim Association Yearbook, the permissible tires on a 22.5x9.00 inch rim are the 295/75*22.5 and the 12*22.5. The permissible tires for use on a 22.5x8.25 inch rim are the 265/75*22.5, 295/75*22.5, 11*22.5, and the 12*22.5 size Because the 12*22.5 and the 295/75*22.5 tires are acceptable on both the 8.25 inch and 9.00 inch rims, these tire combinations are not of concern. The remaining 11*22.5 and 265/75*22.5 tires that are specified only for the 8.25 inch rim have been given particular attention. Accuride has carefully evaluated all of the issues surrounding the possible effect of use of such tires on a wider 9.00

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inch rim. We have also solicited the input of two major tire manufacturers and specifically inquired as to potential negative effects of such usage. Our analysis, as well as that of the tire manufacturers, is that there is no safety-related issue. Load carrying capacities, air retention, handling characteristics, and other aspects of performance will not be affected to any degree significant to motor vehicle safety. The only potential effect of such usage results from the fact that the tires in question are slightly more spread on the wider 9.00 inch rim resulting in some chance of reduction in tread wear to a minor degree.

It should also be pointed out that the 22.5x9.00 inch size is generally a special application tire and wheel combination typically used in North America only on fleets requiring a particular larger tire for the needs of their operation. The wheel in question is heavier and more expensive than a standard 8.25 inch wheel, and these fleets use the product because of specific higher load requirements and would also use the larger tire to meet those same requirements. It is, therefore, Accuride's conclusion that the possibility that narrower tires would be used on these wheels is extremely remote.

A comment on the petition was received from Robert J. Crail of Knoxville, TN, who concurred with Accuride's argument that the possibility of a tire being misapplied on the noncompliant rims is remote. He recommended granting the petition.

Because Accuride had not specified the names of the tire manufacturers that it had consulted, NHTSA contacted the applicant and learned that the manufacturers were Michelin Tire Corporation and Bridgestone/Firestone, Inc. NHTSA spoke with representatives of the two companies, each of whom stated that the only possible effect of misapplication would be a possible minor increase in tire wear. At NHTSA's request, Accuride is sending an explanatory letter to the entities to whom Accuride sold the noncompliant rims. NHTSA agrees with the argument and comment that the possibility of misapplication is remote due to specialized use by truck fleets.

In consideration of the foregoing, Accuride has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety, and it is hereby exempted from providing the notification required by 49 U.S.C. 30118, and the remedy required by 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 9, 1995

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95-3693 Filed 2-14-95 8:45 am]

BILLING CODE 4910-59-P

[Docket No. 94-103; Notice 2]

American Transportation Corporation; Grant of Application for Decision of Inconsequential Noncompliance

American Transportation Corporation (AmTran) of Conway, Arkansas determined that some of its vehicles failed to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." AmTran also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on November 22, 1994, and an opportunity afforded for comment (59 FR 60190).

Paragraph S5.3 of FMVSS No. 120 requires that each vehicle to which it applies must have a label affixed which includes the size designation of the tires and the size designation of the rims. AmTran produced approximately 38,000 buses and school buses from 1987 through 1994 which do not meet the labeling requirements stated in the standard in that they lack the rim diameter designation on the label. However, the label does bear the complete tire size, which includes the tire diameter.

AmTran supported its application for inconsequential noncompliance with the following:

> The rim width is listed on the certification label; however, the rim diameter is not listed. The complete tire size, including the diameter (which is identical to the rim diameter), is listed on each label. Therefore, [AmTran] believes that sufficient information is available for the user to match tire and rim sizes appropriately.

No comments were received in response to the notice.

Lack of rim size designation could result in installation of replacement tires of an improper size, or installation of a replacement rim that is not congruent with the other (unmarked) rims. Presumably, a tire too small for the rim would not fit and a tire too large for the rim would be noticeable. Further, in determining an appropriate replacement rim, the individual servicing the vehicle would most likely look at the size of the tire on the rim being replaced. NHTSA deems it unlikely that such an individual would simply guess at the correct rim diameter without confirmation from a reliable source. The vehicles whose labels lack the rim size designation are buses and school buses, are typically serviced by experienced individuals, and, as a practical matter, the noncompliance is unlikely to have adverse safety consequences.

In consideration of the foregoing, the applicant has met its burden of persuasion, and the Administrator has decided that the noncompliance herein described is inconsequential to safety Accordingly, American Transportation Corporation is hereby exempted from providing notification according to 49 U.S.C. 30118, and remedy according to 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 501.8)

Issued on: February 9, 1995

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 95-3694 Filed 2-14-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Application and Renewal Fees; Increase in Fees Imposed

The Department of the Treasury, Financial Management Service, will be increasing the fees imposed and collected as referred to in 31 CFR 223.22. This increase is to cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1994, and are determined in accordance with the Office of Management and Budget Circular A-25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$3,725.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,200.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,325.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$930.

Questions concerning this notice should be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874-6850.

Dated: January 31, 1995.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service

[FR Doc. 95-3791 Filed 2-14-95; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 31
Wednesday, February 15, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, February 15, 1995.

LOCATION: Room 420, East West Towers 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

Matter to be Considered:

Toy Labeling/Reporting Requirements

The Commission will consider final labeling and reporting requirements that would implement the Child Safety Protection Act of 1994.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504-0800.

Dated: February 9, 1995

Sadye E. Dunn,

Secretary.

[FR Doc. 95-3949 Filed 2-13-95; 12:42 pm]

BILLING CODE 6355-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: February 24, 1995 10:00 am-4:00 pm.

PLACE: The Corporation For National Service, 8th Floor Conference Room, 1201 New York Ave., N.W., Washington, D.C. 20525

STATUS: The meeting will be open to the public up to the seating capacity of the room.

MATTERS TO BE CONSIDERED: The Board of Directors of the Corporation for National and Community Service will meet on February 24, 1995, to review reports from Committees of the Board of Directors on Corporation activities, review the report from the Chief Executive Officer, and to review the status of various Corporation initiatives. There will be a period devoted to public comment at the end of the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, The Corporation For National Service, 8th Floor, Room 8619, 1201 New York Avenue, N.W., Washington, D.C. 20525. Phone (202) 606-5000 ext. 282. Fax (202) 565-2794.

Dated: February 13, 1995

Terry Russell,

General Counsel

[FR Doc. 95-3971, Filed 2-13-95; 3:07 pm]

BILLING CODE 6050-28-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following Board meeting and staff briefing:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Previously announced in the February 14, 1995, **Federal Register.**

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., February 21, 1995.

CHANGES IN THE MEETING: The Board is broadening the scope of matters to be considered by adding the following information: The Board will also convene a panel of nationally-recognized experts to discuss the DOE Plutonium Vulnerability Study and to address questions that may arise from the results of this study.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, S.W., Suite 700, Washington, D.C. 20004, (202) 208-6387.

Dated: February 13, 1995

Kenneth M. Pusateri,

General Manager

[FR Doc. 95-3964 Filed 2-13-95; 2:59 pm]

BILLING CODE 3670-01-M

NATIONAL COUNCIL ON DISABILITY

TYPE: 50-State ADA Town Meeting Tour.

SUMMARY: This notice sets forth the announcement of additional dates, locations, and contacts for NCD's 50-state town meeting tour on the implementation of the Americans with Disabilities Act (ADA). Notice of these meetings is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94-409).

BACKGROUND: As an independent Federal agency making recommendations to the President and the Congress on issues affecting 49 million Americans with disabilities and their families, NCD has congressional authority and responsibility to monitor ADA implementation. In fact, it was the NCD that first proposed the ADA in 1986. In 1991, NCD established ADA Watch.

These town meetings are being conducted as part of NCD's ADA Watch initiative. NCD is interested in hearing personal stories from consumers as to the law's impact. NCD is particularly interested in hearing about varying types of successes and the methods used to achieve those successes. The stories could be about personal experiences, or something related to changes in the community.

1995 Dates, Locations, and Contact Numbers:

February 1—Miami, Florida, (305) 547-5444
February 2—Jackson, Mississippi, (601) 969-0601
February 4—Atlanta, Georgia, (404) 451-2340
February 7—Frankfort, Kentucky, (502) 564-2918
February 9—Columbia, South Carolina, (803) 782-0639
February 14—Brimingham, Alabama, (205) 251-2223
February 15—Topeka, Kansas, (913) 296-6527
February 16—New Orleans, Louisiana, (504) 286-6939
February 17—Albuquerque, New Mexico, (505) 827-6465
February 21—Little Rock, Arkansas, (501) 661-2953
February 21—Oklahoma City, Oklahoma, (405) 949-1962
February 22—Arlington, Texas, (512) 463-5741
February 28—Honolulu, Hawaii, (808) 537-1941
March 1—Los Angeles, California, (310) 390-3611
March 7—Norfolk, Virginia, (804) 461-8007
March 8—Washington, D.C., (202) 727-0904
March 9—Sutton, West Virginia, (304) 525-3324
March 10—Harrisburg, Pennsylvania, (610) 378-4372
March 16—Portland, Maine, (207) 624-5307
March 17—Concord, New Hampshire (603) 228-9680
March 22—Boston, Massachusetts, (617) 338-6665
April 6—Nashville, Tennessee, (615) 428-6266
April 11—Des Moines, Iowa, (515) 281-5969
April 12—Jeferson City, Missouri, (314) 751-2600

April 13—Missoula, Montana, (406) 243-2636

Additional dates, locations, and contacts will be published when available.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004-1107, Telephone: (202) 272-2004, (202) 272-2074 (TT).

AGENCY MISSION: NCD is an independent Federal agency comprised of 15 members who are appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of the Council is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD prior to each town meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend these meetings. In order to reduce such exposure, we ask that you not wear perfumes or scents at the town meetings. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting rooms and surrounding area

OPEN MEETING: These town meetings of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Opening Statements
Success Stories from Consumers
Discussion
Announcements
Adjournment

Records shall be kept of all NCD proceedings and shall be available after the meetings for public inspection at NCD.

Signed in Washington, D.C., on February 13, 1995.

Speed Davis,

Acting Executive Director

[FR Doc. 95-3919 Filed 2-13-95; 2:58 pm]

BILLING CODE 6820-BS

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Corrections

Federal Register
Vol. 60, No. 31
Wednesday, February 15, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NM002; FRL-5136-1]

Clean Air Act Interim Approval of Operating Permits Program; City of Albuquerque Environmental Health Department, Air Pollution Control Division

Correction

In rule document 95–547 beginning on page 2527 in the issue of Tuesday, January 10, 1995 make the following correction:

On page 2528, in the first column, under **DATES**, in the second line "March 13, 1955" should read "March 13, 1995"

BILLING CODE 1505–01–D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Correction

In notice document 95–2878 appearing on page 7201, in the issue of Tuesday, February 7, 1995, the *Agreement No.* should read "202–007680–088".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 94N-0308]

Public Information Communications With State and Foreign Government Officials

Correction

In proposed rule document 95–2111 beginning on page 5530 in the issue of Friday, January 27, 1995, make following correction:

On page 5530, in the first column, in the **Dates** section, in the fourth and fifth lines "on or before February 27, 1995" should read "30 days after the date of publication of the final rule in the **Federal Register**".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26228]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 3, 1995

Correction

In notice document 95–3282 beginning on page 7808 in the issue of Thursday, February 9, 1995, make the following correction:

On page 7808, in the third column, in the third paragraph, the heading was "*The Columbia Gas System, Inc., et al.*" should read "*The Columbia Gas System, Inc., et al. (70-8317)*".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-20864; 812-9168]

Heritage Cash Trust, et al.; Notice of Application

January 26, 1995

Correction

In notice document 95–2429 beginning on page 6338 in the issue of Wednesday, February 1, 1995, make the following correction:

On page 6339, in the first column, in the **For Further Information Contact** section, in the first line, "Khawley" should read "Khawly".

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35307; File No. SR-CBOE-95-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Restrictions on the Exercise on Index Options

January 31, 1995.

Correction

In notice document 95–3034 beginning on page 7606 in the issue of Wednesday, February 8, 1995, make the following correction:

On page 7607, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35299; File No. SR-PTC-94-07]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis a Proposed Rule Change Establishing a Daily Penalty Fee Applicable to Late Funding of Shortfalls in Participants' Mandatory Deposits to the Participants Fund

January 31, 1995.

Correction

In notice document 95–2904 beginning on page 7250 in the issue of Tuesday, February 7, 1995, the file number is corrected as set forth above

BILLING CODE 1505–01–D

federal register

Wednesday
February 15, 1995

Part II

Department of Transportation

Research and Special Programs Administration

California and Los Angeles County Requirements Applicable to the On-site Handling and Transportation of Hazardous Materials; Notice

VOL 60 ISS 31 FE 15 1995 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Preemption Determination Nos. PD–8(R), PD–9(R), PD–10(R) and PD–11(R); Docket Nos. PDA–9(R), PDA–7(R), PDA–10(R), and PDA–11(R), respectively]

California and Los Angeles County Requirements Applicable to the On-site Handling and Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Administrative determinations of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Applicants

Docket PDA–7(R)—HASA, Inc.
Dockets PDA–9(R), PDA–10(R), PDA–11(R)—Swimming Pool Chemical Manufacturers' Association (SPCMA)

State and Local Laws Affected

PD–8(R) (Docket PDA–9(R))—
Chapter 6.95, California Health and Safety Code:
§ 25501.3
§ 25503.7
PD–9(R) (Docket PDA–7(R))—
Title 2 Los Angeles County Code
§ 2.20.140
§ 2.20.150
§ 2.20.160
§ 2.20.170
Title 32 Los Angeles County Code:
§ 4.108.c.7
Table 4.108–A
§ 79.809 (b), (c) and (f)
§ 80.101(a) exception 1
§ 80.101(b)
§ 80.103(a)
§ 80.103(b)(1)
§ 80.103(b)(2)
§ 80.103 (c), (d) and (e)
§ 80.201
§ 80.202 (a) and (b)
§ 80.203
Appendix VI–A
§ 80.301(a)(2)
§ 80.301(b)(1)
§ 80.402(b)(3)(G)(i)
§ 80.402(c)(8)(A)
PD–10(R) (Docket PDA–10(R))—
Title 32 Los Angeles County Code:
§ 4.108(c)(8)
§ 9.105
§ 75.101
§ 75.103(a)
Table 75.103–A
§ 75.104
§ 75.105 (a) and (b)
§ 75.108
§ 75.205
§ 75.602 (a), (b) and (c)
PD–11(R) (Docket PDA–11(R))—
Title 32 Los Angeles County Code:
§ 4.108.c.7

Applicable Federal Requirements: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

Mode Affected: Rail.

SUMMARY: Due to a lack of information in the record, RSPA is unable to make a preemption determination regarding:

(1) California Health and Safety Code (CHSC) § 25503.7, which states that hazardous materials contained in any rail car, rail tank car or rail freight container at the same railroad facility or business facility for more than 30 days is deemed stored and subject to the requirements of the CHSC;

(2) Title 32 LACoC §§ 80.103(e), which requires that hazardous materials business plans, risk management prevention programs and hazardous materials inventory statements be posted in an approved location and available to emergency responders; and

(3) 80.301(b)(1), which requires that containers and tanks be designed constructed in accordance with nationally recognized standards.

(4) Title 32 LACoC §§ 80.402(b)(3)(G)(i) and 80.402(c)(8)(A), which require that cylinders or portable containers of compressed gas be unloaded within a ventilated gas cabinet, laboratory fume hood, exhausted enclosure or separate gas storage room.

The following non-Federal requirements are preempted by Federal hazmat law:

(1) Title 2 Los Angeles County Code (LACoC) §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170, to the extent that those provisions levy a fee on tank car unloading activities. The fees collected under those provisions are not used for purposes related to hazardous material transportation;

(2) Title 32 LACoC § 79.809(f) as applied and enforced by Los Angeles County. Los Angeles County fails to recognize a Department of Transportation (DOT or Department) exemption that authorizes HASA, Inc. to employ alternative methods of compliance with certain Federal tank car unloading requirements;

(3) Title 32 LACoC § 79.809(c), which prohibits a tank car from remaining on a siding at point of delivery for more than 24 hours while connected for transfer operations, unless otherwise approved by the fire chief. The unloading restriction is not "substantively the same" as Federal tank car unloading requirements.

Federal hazmat law does not preempt any other CHSC or LACoC provision for which HASA and SPCMA request preemption determinations.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

Document Outline

I. General Preamble
A. Procedural Summary
B. Background
C. California Statutory and Regulatory Requirements
D. Preemption Under Federal Hazmat Law
E. General Authority Under Federal Hazmat Law
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I. General Preamble

A. Procedural Summary

Each of the four Preemption Determination Applications (PDAs) at issue in this matter relates to a California State statute or Los Angeles County regulation applicable to the "on-site" transportation and handling of hazardous materials. For this reason, RSPA has reviewed these PDAs collectively, and is issuing its Preemption Determinations (PDs) with respect to each of the PDAs simultaneously.

The information, discussion and citations provided in this General Preamble constitute a part of each of the four PDs identified above. Where information or statements in this General Preamble address a specific PD, that information is relevant only to that PD. This General Preamble includes a discussion of the factual background applicable to each of the applications, a brief discussion of the California statutory and Los Angeles County regulatory requirements at issue in the four PDAs addressed in this document, and discussions regarding general authority and preemption under Federal hazmat law. It is followed by four PDs, each representing a separate administrative proceeding. These PDs do not address the issue of preemption under the Federal Railroad Safety Act of 1970, as amended, 45 U.S.C. 421 *et seq.*

Appendix A to this document contains the text of each CHSC and LACoC provision that is at issue.

B. Background

On December 22, 1992, HASA, Inc. applied for a determination that Federal hazmat law preempts certain provisions of LACoC Titles 2 and 32 applicable to the transportation and handling of hazardous materials in railroad tank cars on private property (Docket PDA–7(R)). HASA, a California corporation, manufactures, packages, warehouses, and transports chemical compounds for use in, among other things, potable and waste water treatment, and swimming pool and spa disinfection. HASA receives railroad tank cars containing liquefied chlorine, a liquefied compressed gas, from manufacturers engaged in interstate commerce. HASA unloads liquefied chlorine from railroad tank cars on a private siding adjacent to its facility in Santa Clarita, California. It has manufacturing and distribution facilities located in Santa Clarita, California, and Arizona. It distributes products throughout the western United States, Alaska and Hawaii.

Santa Clarita is an incorporated city in Los Angeles County. HASA explains that Santa Clarita does not maintain a city fire department. Instead, Santa Clarita is one of many cities that contracts with the Consolidated Fire Protection District of Los Angeles County (CFPD/LACo) for fire protection. Fire protection services for the CFPD/LACo are provided by the Los Angeles County Fire Department. HASA states that the CFPD/LACo adopted LACoC Title 32 as the fire code for the CFPD/LACo. Consequently, the fire codes for the County of Los Angeles and the CFPD/LACo are identical.

Between December 30, 1992, and January 20, 1993, SPCMA, a non-profit organization with members involved in the transportation of hazardous materials, submitted three separate applications (Dockets PDA–9(R), PDA–10(R) and PDA–11(R)) seeking determinations that Federal hazmat law preempts certain provisions of:

(a) CHSC Chapter 6.95 as they apply to the on-site handling and storage of hazardous materials in railroad tank cars (Docket PDA–9(R));

(b) LACoC Title 32 as they apply to the on-site transportation and handling of cryogenic liquids in railroad tank cars, including unloading, storage, and the construction of containers used for transporting cryogenic liquids (Docket PDA–10(R)); and

(c) LACoC Title 32 as they apply to the on-site transportation and handling of compressed gases in railroad tank cars (Docket PDA–11(R)).

SPCMA is a non-profit organization composed of individual member companies with manufacturing and distribution facilities located across the United States, including California. SPCMA members manufacture, package, warehouse, and transport chemical compounds for use in potable and waste water treatment, and swimming pool and spa disinfection. SPCMA states that many of these chemicals are classified as hazardous material by the HMR. For example, SPCMA's members transport, load, and off-load chlorine in railroad tank cars, cargo tanks, cylinders, and multi-unit tank car tanks, at facilities owned or leased by a member, or at facilities under a member's direct control.

SPCMA says that while some SPCMA members are subject to LACoC Title 32 because of the location of their facilities, others are subject to Title 32 because they ship into or transport hazardous materials through the CFPD/LACo or unincorporated areas of Los Angeles County.

On January 26, 1993, RSPA published a Public Notice and Invitation to Comment on HASA's application (58 FR 6176). That Notice set forth the text of HASA's application and asked that comments be filed with RSPA on or before March 31, 1993, and that rebuttal comments be filed on or before June 4, 1993.

On February 12, 1993, RSPA published a Public Notice and Invitation to Comment on each of SPCMA's applications (58 FR 8480, 8488, 8494) Those Notices set forth the text of SPCMA's applications and asked that comments be filed with RSPA on or before April 9, 1993, and that rebuttal comments be filed on or before June 4, 1993.

In a September 10, 1993 letter to Secretary of Transportation Federico Peña, Congressman George Miller (D-CA), Chairman of the House Committee on Natural Resources, stated his opposition to SPCMA's request for a preemption determination in Docket PDA–9(R). This letter was received outside the rebuttal comment period in PDA–9(R).

In a September 13, 1993 letter to Secretary Peña, California State Assemblyman Robert J. Campbell and 23 other State legislators requested that the Department deny SPCMA's request for a preemption determination in

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Docket PDA–9(R). This letter also was received outside the rebuttal comment period in Docket PDA–9(R).

On October 14, 1993, RSPA published a Public Notice in the **Federal Register** (58 FR 53239) reopening the comment period in each of the four matters to allow all interested parties an opportunity to respond to Congressman Miller's and the California State legislators' letters. RSPA reopened the comment period in all four PDAs because they relate to the same California statutory and local regulatory requirements. RSPA also requested further information regarding how the California and Los Angeles County requirements at issue actually are applied and enforced. Furthermore, RSPA asked HASA and SPCMA to amend their applications to the extent necessary to make them consistent with the 1993 amendments to LACoC Title 32, which were adopted by Los Angeles County shortly after HASA's and SPCMA's applications were filed with RSPA.

C. California's Statutory and Regulatory Requirements

CHSC Chapter 6.95 (§§ 25500 *et seq.*) was enacted by the California Legislature in 1985. Section 25500, entitled "Legislative Findings and Declaration," sets forth the legislative purpose of Chapter 6.95. Specifically, it states

> In order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. The establishment of minimum statewide standards for these plans is a statewide concern. Basic information on the location, type, quantity, and the health risks of hazardous materials handled, used, stored, or disposed of in the state, which could be accidentally released into the environment, is not now available to firefighters, health officials, planners, public safety officers, health care providers, regulatory agencies, and other interested persons. The information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and environment.

Chapter 6.95, Article 1 requires, among other things, that any business that handles hazardous materials (above specified threshold amounts) establish and implement a business plan for emergency response to a release or threatened release of a hazardous material (§ 25503.5). The required elements of a business plan include: (1) an annual inventory of the chemicals handled; (2) an emergency response plan and procedures; (3) an evacuation plan and procedures; and (4) training for all new employees and annual training (§ 25504).

Chapter 6.95, Article 2 states that handlers of "acutely hazardous materials" (AHM) (defined as any chemical designated as such in 40 CFR Part 355, Appendix A of the Environmental Protection Agency's (EPA's) regulations—which includes chlorine) must register with local authorities and, if required by local authorities, prepare and submit a risk management and prevention program (RMPP). An RMPP must include: (1) a history of each accident involving AHM for the preceding three-year period; (2) a report specifying the nature, age and condition of the equipment used to handle AHM at the facility; (3) design, operating and maintenance controls that minimize the risk of an accident involving AHM; (4) detection, monitoring or automatic control systems to minimize accident risk; and (5) a list of additional steps that the business will take to reduce the risk of an accident, based on an assessment of the processes, operations, and procedures of the business (§ 25534).

The requirements in Chapter 6.95, Articles 1 and 2, closely follow Federal environmental protection regulations under Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), 42 U.S.C. 11001, *et seq.* (also known as the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)), and § 112(r) of the Clean Air Act Amendments of 1990 (CAA Amendments), 42 U.S.C. 7412(r). *See, e.g.*, 42 U.S.C. 7412(r)(1) (duty for facilities to undertake appropriate hazard assessment, design, and release response activities); 42 U.S.C. 7412(r)(7)(B) (requiring accident prevention and response planning, including reporting of accidental release history); 42 U.S.C. 11022 (SARA Title III chemical inventory and location information); 42 U.S.C. 11041(b) (authorizing local SARA Title III supplementary inventory forms).

The requirements in Chapter 6.95, Articles 1 and 2, are applied and enforced at the local level. Chapter 6.95 § 25502 states that "every county shall implement [Chapter 6.95] as to the handling of hazardous materials in the county." Nevertheless, the legislature clearly indicated in § 25500 that Chapter 6.95 does not "occupy the whole area of regulating the inventorying of hazardous materials and the preparation of hazardous materials response plans * * * and the legislature does not intend to preempt any local actions, ordinances, or regulations which impose additional or more stringent requirements on businesses which handle hazardous materials."

In response to the mandate in § 25502, Los Angeles County implemented the requirements of Chapter 6.95 by promulgating the regulations contained in LACoC Titles 2 and 32. On May 20, 1993, the Los Angeles County Board of Supervisors passed Los Angeles County Ordinance No. 93–0044, which amended Title 32 bv incorporating the 1991 edition of the Uniform Fire Code (UFC) (with amendments, additions and deletions).

D. Preemption Under Federal Hazmat Law

The Hazardous Materials Transportation Act (HMTA), former 49 App. U.S.C. 1801 *et seq.* (1993), was enacted in 1975 to give DOT greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." Id. at § 1801. The HMTA "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co. v. Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1980).

On July 5, 1994, President Clinton signed Public Law (P.L.) 103–272, which codified the provisions of the HMTA without substantive change. P.L. 103–272, 108 Stat. 745 (1994). The purpose of P.L. 103–272 was to "clean-up" related Federal transportation laws, "restating" them in a format and language intended to be easier to understand without changing substantive content. Consequently, P.L. 103–272 revised, enacted, and codified provisions of the former HMTA, which now are found at 49 U.S.C. 5101–5127.

When it last substantively amended Federal hazmat law in 1990, Congress stated that uniform regulations promote safety in the transportation of hazardous materials. It specifically found that:

> (3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

P.L. 101–615, § 2, 104 Stat. 3244 (1990).

In order to promote consistency in laws and regulations governing the transportation of hazardous material, to achieve greater uniformity among those laws, and to promote the public health, welfare, and safety at all levels, Congress gave DOT the authority to preempt a requirement of a State, political subdivision of a State or Indian tribe where:

> (1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of [Federal hazmat law] or a regulation prescribed under [Federal hazmat law] is not possible; or
>
> (2) The requirement of the State, political subdivision, or tribe, as applied and enforced, is an obstacle to accomplishing and carrying out [Federal hazmat law] or a regulation prescribed under [Federal hazmat law].

49 U.S.C. 5125.

The two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings (IRs) prior to the 1990 amendments to the HMTA. While advisory in nature, these IRs were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application * * * [for] a waiver of preemption pursuant to section 112(b) of the HMTA." Inconsistency Ruling (IR)–2, 44 FR 75566, 75657 (Dec. 20, 1979). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *E.g., Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

Federal hazmat law also explicitly preempts:

> A law, regulation, order or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects that is not substantively the same as a provision of [Federal hazmat law] or a regulation prescribed under [Federal hazmat law]:
>
> (A) The designation, description, and classification of hazardous material.
>
> (B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125(b).

RSPA has defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. 57 FR 20424, 20428. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA explicitly exempted from preemption those non-Federal requirements that were authorized by other Federal law. *See* 49 App. U.S.C. 1804(a)(4)(A) and 1811(a) (a non-Federal requirement will not be preempted if it is "otherwise authorized by Federal law"). A non-Federal requirement is not authorized by Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 (10th Cir. 1991). The phrase "unless otherwise authorized by Federal law" was omitted inadvertently as "surplus" when Sections 1804(a)(4)(A) and 1811(A) of the HMTA were codified at 49 U.S.C. 5101 by P.L. 103–272. *See* H.R. Rep. No. 180, 103d Cong., 1st Sess., at 32 (1993). It was later reinstated by P.L. 103–429, October 31, 1994.

The Secretary of Transportation has delegated to RSPA the authority to make preemption determinations, except for those concerning highway routing, which are delegated to the Federal Highway Administration. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a). Federal hazmat law provides that the Department may waive a finding of preemption upon application by a State, political subdivision or Indian tribe, pursuant to 49 CFR 107.215 through 107.227, if the Department finds that the non-Federal requirement provides the public at least as much protection as Federal hazmat law and the HMR, and the requirement does not unreasonably burden commerce. 49 U.S.C. 5125(e). Alternatively, the jurisdiction may petition under 49 CFR 106.31 for adoption of a uniform Federal rule.

Preemption determinations under Federal hazmat law are consistent with the principles and policy set forth in Executive Order No. 12,612 ("Federalism"), 52 FR 41685 (Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Federal hazmat law contains an express preemption provision, which RSPA has implemented through its regulations. Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under Federal law, other than Federal hazmat law, unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law."

E. General Authority Under Federal Hazmat Law

The four PDAs filed with RSPA raise the issues of whether California's and Los Angeles County's regulation of a consignee's transportation of hazardous materials within the gates of its facility, and the consignee's unloading and storage of that hazardous material at its facility, conflict with Federal hazmat law and the HMR.

The HMR have been promulgated in accordance with the direction in 49 U.S.C. 5103(b) that the Secretary of Transportation "prescribe regulations for the safe transportation of hazardous material in intrastate, interstate and foreign commerce." "Transportation" is defined as "the movement of property, and any loading, unloading, or storage incidental to the movement." 49 U.S.C. 5102(12). Ground transportation is "in commerce" when it takes place on, across, or along a public road. Consequently, the HMR, issued under the authority of 49 U.S.C. 5103(b), apply to the ground transportation of hazardous material on, across, or along a public road, including loading, unloading and storage incidental to that transportation.

Federal hazmat law and the HMR do not apply to the movement of hazardous material exclusively at a consignee's facility. On the other hand, Federal hazmat law and the HMR regulate certain specific carrier and consignee handling of hazardous materials, including unloading of railroad tank cars, incidental to transportation in commerce, even when that unloading takes place exclusively at a consignee's facility. *See* 49 CFR 174.67.

Unloading that is incidental to transportation includes consignee unloading of tank cars containing hazardous materials. *See* 49 CFR 174.67 (requirements for tank car unloading)

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Storage that is incidental to transportation includes storage by a carrier that may occur between the time a hazardous material is offered for transportation to a carrier and the time it reaches its intended destination and is accepted by the consignee. *See* 49 CFR 174.204(a)(2) (requirements for tank car delivery, including storage, of gases). Consequently, while consignor and consignee storage of hazardous material is not incidental to transportation in commerce, IR–28, *City of San Jose, California; Restrictions on Storage of Hazardous Materials*; 55 FR 8884 (Mar. 8, 1990), rail carrier storage of hazardous materials is incidental to transportation in commerce and is regulated under Federal hazmat law and the HMR. *See* 49 CFR 174.204. On the other hand, when a shipment is consigned by the offerer to a storage facility rather than to an end user, the shipment is out of transportation once received and then unloaded, or stored loaded, at the storage facility.

Other Federal agencies also regulate hazardous materials. For example, EPA regulates hazardous materials to ensure that they are not unintentionally or unlawfully released into the environment (*see, e.g.*, SARA Title III, 42 U.S.C. 1101, *et seq.*) and the Department of Labor's Occupational Safety and Health Administration (OSHA) regulates hazardous materials in the workplace to ensure worker safety (*see, e.g.*, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*).

II. Preemption Determinations

A. PD–8(R) (Docket PDA–9(R))

California Requirements for the Handling and Storage of Hazardous Materials

Applicant: Swimming Pool Chemical Manufacturers' Association (SPCMA)
State Laws Affected: California Health and Safety Code (CHSC), Chapter 6.95, §§ 25501.3 and 25503.7

Summary: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, does not preempt § 25501.3 because that section is otherwise authorized by Federal law, specifically Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), 42 U.S.C. §§ 11001, *et seq.* (also known as the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)), and § 112(r) of the Clean Air Act Amendments of 1990 (CAA Amendments), 42 U.S.C. 7412(r). There is insufficient information in the record to determine whether Federal hazmat law preempts § 25503.7, which provides that certain bulk containers (including railroad tank cars) are deemed "stored" if they are expected to remain, or actually remain, at a facility for more than 30 days.

1. Application for Preemption Determination

In its application, SPCMA argues that Federal hazmat law preempts certain on-site storage and handling provisions of Chapter 6.95 as they pertain to transportation in commerce of hazardous materials in railroad tank cars. SPCMA alleges that the original intent of Chapter 6.95 was to minimize the release of hazardous materials from a fixed facility and to establish efficient evacuation plans for those localities in the event of such a release. SPCMA contends that, as originally enacted, Chapter 6.95 did not address or apply to the transportation of hazardous materials. SPCMA alleges that the subsequent addition of § 25501.3 and § 25503.7 expanded the reach of Chapter 6.95 to transportation in commerce.

SPCMA believes that Federal hazmat law preempts these provisions "irrespective of where or when such transportation of hazardous materials including loading, unloading, and storage incidental thereto, occurs, *i.e.*, either in transit or on private property owned, leased, and/or otherwise under the control of the consignor, consignee, and/or transporter." SPCMA asserts that if the Research and Special Programs Administration (RSPA) preempts these two provisions, the remaining requirements in Chapter 6.95 no longer will apply to the transportation of hazardous materials, and loading, unloading and storage incidental thereto. In the event that RSPA does not preempt the amendments, SPCMA asks that RSPA review the remaining 63 provisions of Chapter 6.95 to determine whether they are preempted by Federal hazmat law.

In response to RSPA's February 12, 1993 Public Notice and Invitation to Comment, 58 FR 8494, which set forth the text of SPCMA's application, comments were submitted by the Chemical Waste Transportation Institute (CWTI), the City of California City Fire Department, Contra Costa County Health Services Department (Contra Costa), the American Trucking Associations (ATA), the Compressed Gas Association, the Carpinteria-Summerland Fire Protection District, the State of California Chemical Emergency Planning and Response Commission, the Kern County Fire Department, Congressman George Miller, California State Assemblyman Robert J. Campbell and 23 other State legislators, and the State of California Governor's Office of Emergency Services (California OES). SPCMA filed rebuttal comments.

In response to RSPA's October 14, 1993 Public Notice re-opening the comment period in Docket PDA–9(R), SPCMA, HASA, California OES, and the County of Los Angeles Fire Department submitted comments.

2. Discussion

a. Handling of Hazardous Materials

(1) CHSC Requirement. SPCMA challenges the following CHSC provision:

Chapter 6.95, § 25501.3 defines the term "handle" to include the use or potential for use of a quantity of hazardous material by the connection of any marine vessel, tank vehicle, tank car, or container to a system or process for any purpose other than the immediate transfer to or from an approved atmospheric tank or approved portable tank. (Section 25501(i), the general definition section of Chapter 6.95, states that "handle" means "to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion." Section 25501.3 expanded that definition to include, in certain instances, tank car unloading to a system or process.)

(2) SPCMA's Arguments and Comments Supporting Preemption. SPCMA asserts that § 25501.3 extends all of the requirements of Chapter 6.95 to facilities that handle hazardous materials, including facilities that unload compressed gases incidental to transportation in commerce. SPCMA states that the exception in § 25501.3 for immediate transfers to or from approved atmospheric tanks or approved portable tanks is not applicable to the handling of compressed gases because compressed gases "cannot be unloaded to or loaded from atmospheric tanks, *i.e.*, tanks which are open to the atmosphere, or to or from portable tanks which are not pressure vessels, *i.e.*, cylinders."

SPCMA states that until a facility is in compliance with Chapter 6.95, the facility is not permitted to "load, unload, or store hazardous materials incidental thereto." Furthermore, it states that transporters are prohibited from unloading and consignees are prohibited from accepting hazardous materials shipments until the receiving facility is in compliance with the State requirements. SPCMA contends that, as a practical matter, none of its member companies with facilities in California is in compliance with Chapter 6.95, and that it is not aware of any company operating in California that is in compliance.

SPCMA concludes that § 25501.3 should be preempted because the requirement that handlers of hazardous materials comply with Chapter 6.95 is in addition to and different from Federal hazmat law and HMR requirements, and is an obstacle to accomplishing and carrying out those Federal requirements.

In its comments, CWTI agrees with SPCMA that loading and unloading operations constitute "handling," which CWTI argues is a "covered subject area." Specifically, CWTI states that,

> Congress recognized the importance of loading and unloading operations to ensure the safety of hazardous materials in transportation when it included "packing, repacking, (and) handling * * * of hazardous materials" as one of several regulatory subject areas reserved to the federal government. Non-federal requirements, unless they are "substantively the same" as the HMRs, are preempted.

Nevertheless, CWTI acknowledges that Congress limited the preemptive reach of Federal hazmat law to those non-Federal requirements that are not "otherwise authorized by Federal law." CWTI notes that both SARA Title III, 42 U.S.C. §§ 11001, *et seq.*, and § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r),

> Impose requirements on persons and facilities that handle hazardous materials with varying provisions for separate state action. [CWTI] thinks that the impact of these statutes, whether at the federal, state, or local level, cannot be avoided for facilities and operations handling hazardous materials that are not "in transportation."

HASA supports SPCMA's request for preemption and comments that the provisions of Chapter 6.95, as implemented by Los Angeles County through LACoC Titles 2 and 32, are applied and enforced "as soon as the tank car containing liquefied chlorine is moved by the railroad from the railroad right-of-way to [HASA's] property and are applied and enforced on a continuous basis until the unloaded tank car is moved from [HASA's] property back to the railroad right of way." HASA further asserts that the provisions of Chapter 6.95 are applied and enforced against the railroad while the railroad is moving the car both onto and off of HASA's property.

ATA also believes that Federal hazmat law preempts § 25501.3. It urges RSPA to find that "transportation ends and storage begins when the rail car or freight container is emptied of its contents, regardless of the time period it awaits the unloading process on the property of the ultimate user. In this instance, the [Federal hazmat law]

prevails and should, therefore, preempt the [CHSC]." Nevertheless, ATA also states that authority under Federal hazmat law "does not extend to the storage and use (unloading) of hazardous materials once transportation has ended." ATA cites several cases interpreting the Interstate Commerce Act of 1887, 49 U.S.C. § 1 *et seq.* (repealed by Act, October 17, 1978, P.L. 95–473, § 4(b), 92 Stat. 1467, subject to certain exceptions) for the proposition that "where on-site transportation is conducted at the location where compressed gases are used or have come to 'rest,' [Federal hazmat law] no longer prevails. A material comes 'to rest' when the intent of the shipper is fulfilled. It is the intent, with persistence, that governs when a product is in transportation."

(3) Comments Opposing Preemption. Contra Costa states that Federal hazmat law addresses safety during transportation in commerce, while Chapter 6.95 continues attention to safety in the manufacturing process following that transportation. Contra Costa emphasizes throughout its comments that the intent of Chapter 6.95 is to regulate the users of hazardous materials, not the transporters. It states that Chapter 6.95 requirements apply to the "handling of hazardous materials during processing and storage (*i.e.*, manufacturing), not during transportation." Contra Costa stresses that, contrary to statements made by SPCMA in its application, there is no provision of Chapter 6.95 that prohibits a carrier from delivering hazardous materials to a consignee. Also, it states that, contrary to SPCMA's assertions, there are many businesses and industries operating in Contra Costa County that are in compliance with Chapter 6.95.

Furthermore, Contra Costa states that even if there is an overlap of Federal hazmat law and Chapter 6.95 jurisdiction in the area of consignee loading or unloading of hazardous materials, the requirements of Chapter 6.95 are not incompatible or in conflict with the Federal requirements. Contra Costa indicates that § 25501.3 is consistent with the Environmental Protection Agency's (EPA's) intention to regulate tank car unloading to a manufacturing process. Specifically, Contra Costa notes that EPA issued a Notice of Proposed Rulemaking (NPRM) wherein it proposed a list of regulated substances and threshold quantities as required under § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r). 58 FR 5102, January 19, 1993. Contra Costa states that, in the NPRM, EPA sets forth proposed requirements for chemical accident prevention steps that must be taken by the owner or operator of a stationary source. Contra Costa notes that EPA defines "stationary source" to include "transportation containers that are no longer under active shipping orders and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading."

California OES states that, through local government agencies, the State of California has required over 75,000 businesses to complete hazardous material emergency planning activities. It states that any reduction of California's ability to regulate emergency preparedness would increase the potential for chemical disasters. California OES asserts that Chapter 6.95 requirements are substantially the same as those set forth in SARA Title III and § 112(r) of the CAA Amendments. It notes that those Federal statutes, like Chapter 6.95, require businesses to develop and implement emergency response plans and accidental release prevention programs, to submit inventories of hazardous materials used and stored at their facilities, and to notify government agencies of releases of hazardous materials.

California OES also argues that Chapter 6.95 defines "handling" and "handle" specifically not to include transportation in commerce, but rather to regulate only the use or potential use of hazardous materials at business facilities. For example, by providing that the immediate transfer of hazardous materials to or from a system or process is outside the scope of "handling," as defined in § 25501.3, California OES believes Chapter 6.95 avoids regulating the loading or unloading of hazardous materials incidental to transportation in commerce. California OES further states that—

> SPCMA fails to point out that immediate transfers from "approved portable tanks" also are specifically excluded from the Code, which would include the common practice of unloading or loading a rail car, truck or marine vessel as regulated under [Federal hazmat law]. * * * SPCMA presents no evidence whatsoever demonstrating that loading or unloading from such approved tank cars cannot occur, and that the Code's exemption for such practices is therefore not applicable.

California OES indicates that §§ 25501.3 and 25503.7 (discussed below) were designed to close a loophole in the State's regulation of hazardous materials at fixed facilities. California OES states that in 1991 it came to the attention of emergency responders and the State legislature that

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businesses in increasing numbers were avoiding the public safety and emergency preparedness provisions of State and Federal law by using unique storage methods for hazardous materials. The businesses then claimed that the materials were still in transportation in commerce and, thus, subject to Federal regulation. For example, California OES says that businesses handling bulk chemicals were using bulk containers, such as tank cars, for fixed long-term storage at their facilities while they gradually off-loaded the material. According to California OES, a facility also would shuttle a bulk container to different nearby locations within the facility and claim that it still was in transportation in commerce. California OES asserts that chlorine has been one of the key chemicals involved in this "non-transportation related" storage practice. It says that to address the significant public safety risk of these chemicals, and to reduce ambiguity, Chapter 6.95 was amended to clearly identify when a business became subject to emergency response requirements.

Finally, California OES asserts that "the California Code does not explicitly prohibit a business of any type that handles hazardous materials from operating if it does not comply with the code, nor does it require permits for operation. Instead, the purpose of the California Code is to ensure that fixed facilities that handle hazardous material implement appropriate emergency planning and accident prevention programs."

Congressman Miller states that a July 1993 chemical spill in Richmond, California, located in Contra Costa County, underscores the importance of denying SPCMA's request for preemption of certain provisions of Chapter 6.95. He indicates that communities such as Contra Costa County currently are covered by the risk management and prevention program (RMPP), under Title 2 of Chapter 6.95, which requires responsible management of Acutely Hazardous Materials (AHM), such as chlorine. He expresses concern that RSPA's preemption of provisions of Chapter 6.95 will set a policy precedent that could render the RMPP useless, thereby depriving communities of accident prevention measures and emergency response planning.

Assemblyman Campbell and 23 other State legislators also cite the July 1993 chemical spill in Richmond, California, as evidence of a need to strengthen California's risk management and prevention laws. The legislators indicate that the State has worked diligently to put in place statutory and regulatory programs designed to minimize the risk of chemical accidents, citing Chapter 6.95 as an example. They say that California's regulatory requirements are intended to reduce the risk of accidents and assist in emergency response in the event that an accident occurs. They maintain that it does not conflict with Federal hazmat law and the HMR.

(4) Analysis. As discussed above in the General Preamble, unless "otherwise authorized by Federal law" or unless a waiver of preemption is granted by the Department of Transportation (DOT), Federal hazmat law explicitly preempts any requirement of a State or political subdivision thereof or Indian tribe if it applies to the "handling" of hazardous materials and is not substantively the same as the Federal requirement. *See* 49 U.S.C. 5125(b)(1)(B). "Handling" includes the unloading of hazardous materials, incidental to transportation in commerce.

In 1986, Congress enacted SARA Title III, 42 U.S.C. §§ 11001, *et seq.*, which requires States to establish State and local emergency planning groups to develop chemical emergency response plans for each community. SARA Title III also requires facilities to provide information regarding the hazardous chemicals they have on site to States, local planners, fire departments and, through them, the public. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction.

SARA Title III directly delegates to States the authority to engage in emergency response planning, through the use of information gathered from regulated facilities. SARA Title III does not apply to the transportation, including storage incident to transportation, of any substance or chemical subject to the requirements of Title III. *See* 42 U.S.C. 11047. In its regulations implementing SARA Title III, EPA states that a substance is stored "incident to transportation" if it is still under active shipping papers and has not reached the ultimate consignee. *See* 40 CFR 355.40(b)(4)(ii). Consequently, hazardous materials that are stored incident to transportation are not subject to the requirements of SARA Title III. On the other hand, regulated materials that have been delivered to the ultimate consignee's facility are not stored "incident to transportation," as that term is defined by EPA, and are subject to SARA Title III requirements.

Pursuant to the requirement in § 302 of SARA Title III, 42 U.S.C. 11002, EPA has issued a list of extremely hazardous substances (which includes chlorine) and threshold planning quantities for each substance. California regulates all 360 of the extremely hazardous substances on EPA's § 302 list. A facility is subject to the requirements of SARA Title III if a substance on the § 302 list is present at the facility in an amount in excess of the threshold planning quantity established for the substance. 42 U.S.C. 11002(b)(1).

Among other requirements, facilities subject to SARA Title III must prepare and submit an emergency and hazardous chemical inventory form to the appropriate local emergency planning committee (LEPC), State emergency response commission (SERC), and fire department with jurisdiction over the facility. 42 U.S.C. 11022(a)(1). Section 303(d)(3) of SARA Title III, 42 U.S.C. 11003(d)(3), specifically requires the owner or operator of a facility to promptly provide to an LEPC, on request, information that the LEPC believes is necessary for developing and implementing an emergency plan. Thus, certain hazardous materials (including chlorine) that are on site at SPCMA members' facilities, in above-threshold quantities, awaiting consumption in the manufacturing process, are regulated under SARA Title III. Furthermore, SARA Title III specifically authorizes California, and all other States, to collect information regarding these materials, for emergency response purposes, from facilities that are subject to SARA Title III requirements.

Although SARA Title III governs emergency response planning, it does not mandate that facilities establish accident prevention programs. The CAA Amendments of 1990, P.L. 101–549, 104 Stat. 2399, amended § 112 of the Clean Air Act, 42 U.S.C. 7412, by adding a new subsection (r), which includes requirements related to chemical accident prevention. The goal of § 112(r) is to prevent accidental releases, from facilities, of regulated substances and other extremely hazardous substances to the air, and to minimize the consequences of releases of chemicals that pose the greatest risk.

Section 112(r) has a number of provisions. It establishes a general duty for facility owners or operators to identify hazards that may result from releases, design and maintain a safe facility, and minimize the consequences of releases when they occur. Section 112(r)(3) requires EPA to promulgate a list of at least 100 substances that are known to cause, or reasonably may be anticipated to cause, death, injury, or serious adverse effects to human health or the environment when released to air. EPA also is required to set thresholds for each listed substance. The list of regulated substances and thresholds, issued pursuant to § 112(r)(3), is used to determine which facilities must comply with the accident prevention regulations.

On January 31, 1994, EPA published a final rule which included the list of regulated substances and thresholds required under § 112(r). 59 FR 4478 (Jan. 31, 1994). The final rule became effective on March 2, 1994. Various compressed gases, including chlorine, appear on the list of regulated toxic substances. In that final rule, EPA defines "stationary source" as follows:

> Stationary source means any building, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. *A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purpose of temporary storage, loading, or unloading.*

59 FR 4478, 4493 (definition of "stationary source") (to be codified at 40 CFR 68.3) (emphasis added). This definition applies to all regulations issued under § 112(r). In the preamble to the final rule, EPA states:

> [F]or purposes of regulations under section 112(r), the term stationary source does not apply to transportation conditions, which would include storage incident to such transportation, of any 112(r) regulated substance. . * * * [T]ransportation containers that are not under active shipping papers are not considered by EPA to be in storage incident to transportation; the agency considers the definition of stationary source to include such containers.

59 FR 4490.

Section 112(r)(7), 42 U.S.C. 7412(r)(7), also requires EPA to establish "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for responses to such releases. These regulations must include, as appropriate, provisions concerning facilities' use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations must require facility owners or operators to prepare and implement risk management plans that provide for compliance with regulations for managing risk and include a hazard assessment, a prevention program, and an emergency response program. The risk management plans developed under those programs must be registered with EPA, and provided to the Chemical Safety and Hazard Investigation Board established under the CAA Amendments, State governments, local planning authorities, and the public on request.

On October 20, 1993, EPA published an NPRM in the **Federal Register** proposing regulations that would require stationary source owners or operators that manufacture, process, use, store or otherwise handle regulated substances in quantities that exceed specified thresholds to develop and implement risk management programs, as required under § 112(r)(7). As part of the emergency response element of the risk management program, EPA proposes that the emergency response plan be coordinated with the LEPC plans required under SARA Title III for chemical releases. On request of the LEPC, the owner of a facility would be required to provide the LEPC with information necessary to develop and implement the LEPC plan. This requirement is a restatement of the mandate in § 303 of SARA Title III, 42 U.S.C. 11003, that the owner of a facility provide information to an LEPC, on request, and is proposed to ensure that the facility and community planning efforts are coordinated.

Many States, including California, have developed or are developing programs for control of hazardous air pollutants and for prevention and mitigation of accidental releases. Under § 112(r), these programs, developed to address specific State needs, may continue to exist and even differ from Federal rules being developed by EPA. under § 112. However, State programs must be approved by EPA. State accidental release prevention programs, at a minimum, must be at least as stringent as the Federal regulations.

Section 112(l), 42 U.S.C. 7412(l), gives EPA the authority to approve and delegate Federal authority to the States. In the preamble of the October 20, 1993 NPRM, EPA recognizes that several States, including California, have existing risk management programs that address the same basic elements that EPA proposed in its NPRM. EPA recognizes that the existing State programs will need some revisions to meet the requirements under the CAA Amendments, but expects that most of the needed changes will involve the listing of chemicals and adjusting of thresholds. EPA issued a final rule addressing the approval of State programs and the delegation of Federal authorities on November 26, 1993. 58 FR 62262 (to be codified at 40 CFR Part 63, Subpart E). Section 112(l) also requires EPA to develop guidance for States, especially for the registration of facilities.

EPA's § 112(r) regulations apply in every State until a State has sought and received EPA approval of its own program. Once a State program is approved by EPA, the State may implement and enforce its rules and programs in place of certain Federal rules promulgated under § 112(r), with the EPA-approved State rules and programs being Federally enforceable. Consequently, EPA's regulation of tank car unloading to a manufacturing process, as part of its implementation of § 112(r), is applicable to any State that does not have a risk management program that is approved by EPA.

In its definition of "stationary source," EPA clearly asserts authority over transportation containers that are no longer under active shipping papers and over transportation containers that are connected to equipment at the stationary source for the purpose of temporary storage, loading, or unloading. EPA regulates this activity as part of its statutory mandate under the CAA Amendments to issue regulations regarding hazardous materials accident prevention.

Section 310 of the Clean Air Act, as amended, states that "this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the [EPA] Administrator, or any other Federal officer, department, or agency." 42 U.S.C. 7610. Therefore, EPA's regulation of consignee unloading of hazardous materials may not supersede or conflict with RSPA's regulation of the same activity. But, it may coexist with it.

EPA's regulations and proposed regulations under § 112(r) focus on accident prevention and risk management of hazardous materials by requiring owners of facilities that handle certain hazardous materials above threshold amounts to: (1) register the name of the facility with EPA; (2) develop and implement a risk management program that addresses hazard assessment, prevention and emergency response; and (3) develop a risk management plan for submission to certain Federal, State and local entities. On the other hand, RSPA's tank car unloading regulation (49 CFR 174.67) applies to any person that unloads a tank car containing any material classed as a hazardous material under the HMR, and focuses solely on the physical aspects of unloading the tank car. EPA's regulation of tank car unloading does not conflict with RSPA's regulation of the same activity.

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Pursuant to § 112(r), EPA has authority over tank car unloading by a facility to a manufacturing process for the purpose of chemical spill prevention, and has the authority to delegate its responsibilities under § 112(r) to the States. Once EPA issues a final rule regarding the Risk Management Programs for Chemical Accidental Release Prevention, it will begin to analyze State applications for Federal approval of State regulatory programs. RSPA, therefore, finds that § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r), authorizes States' regulation of tank car unloading to a manufacturing process for purposes of establishing accident prevention programs that are within the scope of § 112(r).

There is insufficient evidence in the record to substantiate SPCMA's claim that § 25501.3 is applied and enforced against carriers. Furthermore, the evidence in the record does not support SPCMA's claim that consignees are prohibited from accepting hazardous materials shipments unless and until they are in compliance with Chapter 6.95.

Consequently, Federal hazmat law does not preempt § 25501.3 because it is otherwise authorized by Federal law—specifically, § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r), and SARA Title III, 42 U.S.C. 11001 *et seq.*

b. Storage of Hazardous Materials. (1) CHSC Requirement. SPCMA challenges the following CHSC provision:

Chapter 6.95, § 25503.7 states that a hazardous material contained in any rail car, rail tank car, rail freight container, marine vessel, or marine freight container is deemed stored and, consequently, is subject to the requirements of Chapter 6.95 if it remains within the same railroad, marine or business facility for more than 30 days, or a business knows or has reason to know that it will. Furthermore, a business must immediately notify the administering agency whenever a hazardous material is stored in a rail car, rail tank car, rail freight container, marine vessel, or marine freight container.

(2) SPCMA's Arguments and Comments Supporting Preemption. SPCMA claims that § 25503.7 "prohibits the storage of hazardous materials at places where and at times when such storage is permitted by [Federal hazmat law] and regulations thereunder." SPCMA asserts that "there are no provisions [of Federal hazmat law] or regulations thereunder (Part 174 'Carriage by Rail' and Part 177 'Carriage by Public Highway') which prohibit storage—incidental to transportation—of hazardous materials in rail cars, rail tank cars, rail freight containers, marine vessels, or marine freight containers." SPCMA cites language in § 174.204(a)(2) of the HMR—"such cars may be stored on a private track * * * or on carrier tracks designated by the carrier for such storage"—as granting specific authority for consignee storage of hazardous materials in tank cars. SPCMA argues that "the prohibition of storage in rail tank cars is an obstacle to the transportation of hazardous materials."

HASA urges preemption of § 25503.7. Nevertheless, HASA remarks that it seldom has the same tank car "on site" for more than a few days, and recognizes that "section 25503.7 exempts incidental storage of hazardous materials in railroad tank cars for periods of less than 30 days from the requirements of Chapter 6.95."

ATA believes that Federal hazmat law preempts § 25503.7. ATA states in its comments to Dockets PDA–7(R), PDA–10(R), and PDA–11(R), however, that "[s]trict storage of materials for use on the consignee's property is not governed by [Federal hazmat law] or the HMRs."

(3) Comments Opposing Preemption. California OES believes that the HMR only address storage "directly incidental to transportation, with an aim to expediting the completion of such storage. * * * The [HMR] do not permit the indefinite storage of hazardous materials." California OES also states that "contrary to SPCMA's claim, Code § 25503.7 does not prohibit or even directly regulate the storage of hazardous materials in rail cars. It simply requires facilities storing hazardous materials in such cars for more than 30 days to prepare emergency response plans and risk prevention plans." California OES indicates that § 25501.2 further clarifies that "hazardous materials which are in transit or are temporarily maintained in a fixed facility for a period of less than 30 days during the course of transportation" are excluded from the coverage of Chapter 6.95.

CWTI believes that "storage incidental to transportation refers to any storage which may occur between the time a hazardous material is offered for transportation to a carrier until it reaches its intended destination and is accepted by the consignee." CWTI also notes, citing a RSPA interpretation letter dated October 13, 1992, that "[a] carrier can be a consignee if a hazardous material is consigned to a carrier's storage facility rather than to an end user of the material." CWTI concludes that "[s]hipments of hazardous materials in storage incidental to transportation remain regulated under the HMRs. However, the storage of accepted hazardous materials, no matter how temporary, at its intended destination is not storage protected by [Federal hazmat law]."

CWTI states that Congress limited the preemptive reach of Federal hazmat law to those non-Federal requirements that are not "otherwise authorized by Federal law," and states that both SARA Title III and the CAA Amendments impose requirements on persons and facilities that handle hazardous materials, with varying provisions for separate State action.

Contra Costa submits that SPCMA is incorrect in its assertion that § 25503.7 "clearly prohibits the storage of hazardous materials in rail cars, rail tank cars, rail freight containers, marine vessels or marine freight containers." Contra Costa states that "Chapter 6.95 requires that storage of hazardous materials in these types of containers for longer than 30 days be reported to the local administering agency, along with the other requirements of the business plan. These requirements are not onerous or unreasonable and are necessary for local emergency response planning."

Congressman Miller and 24 California State legislators believe preemption of the CHSC requirements will deprive communities of accident prevention measures and emergency response planning.

(4) *Analysis.* The crux of SPCMA's contention regarding § 25503.7 is that it prohibits consignee storage of hazardous materials "at places where and at times when such storage is permitted by [Federal hazmat law] and regulations thereunder." SPCMA asserts that HMR Parts 174 and 177 authorize consignee storage incidental to transportation and, thus, concludes that § 25503.7 is an obstacle to accomplishing and carrying out Federal hazmat law. However, SPCMA presents no evidence that § 25503.7, as applied and enforced, actually prohibits storage incidental to transportation.

Section 25503.7, on its face, does not prohibit storage of hazardous materials. It simply requires a facility that stores or plans to store hazardous materials in a rail car, rail tank car, rail freight container, marine vessel, or marine freight container for a period greater than 30 days to comply with the requirements of Chapter 6.95. Also, it requires that the facility give notice to the local administering agency. Both Contra Costa and California OES state that § 25503.7 does not prohibit storage, but simply requires facilities to comply with Chapter 6.95 requirements when they engage in storage of hazardous materials, as defined by that section.

Furthermore, SPCMA's reliance on HMR Parts 174 and 177 is incorrect. Part 177 of the HMR, which applies to transportation by public highway, is inapplicable to the regulation of rail transportation. Section 174.204(a)(2), which SPCMA relies on to support the proposition that the HMR authorize a consignee to *store* hazardous materials in tank cars, is equally inapplicable to the situation at issue. Section 174.204 sets forth duties and responsibilities with respect to the *delivery and unloading* of gases that are in transportation in commerce.

3. *Ruling.* Based on the above, Federal hazmat law does not preempt § 25501.3 to the extent that it makes handlers of hazardous materials subject to emergency response planning and accident prevention requirements that are within the scope of SARA Title III and § 112(r) of the CAA Amendments. There is insufficient information in the record to determine whether Federal hazmat law preempts § 25503.7.

Although SPCMA requests that RSPA review the remaining 63 provisions of the CHSC in the event that RSPA does not preempt § 25501.3 and § 25503.7, this ruling does not address those provisions. There is no information in the record regarding how these provisions are actually applied and enforced or how SPCMA members are affected by these provisions.

B. PD–9(R) (Docket PDA–7(R))

Los Angeles County, California Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property

Applicant: HASA, Inc.
Local Laws Affected:
Los Angeles County Code (LACoC), Title 2:
§ 2.20.140
§ 2.20.150
§ 2.20.160
§ 2.20.170
Title 32 LACoC:
§ 4.108.c.7
Table 4.108–A
§ 79.809(b), (c) and (f)
§ 80.101(a) exception 1
§ 80.101(b)
§ 80.103(a)
§ 80.103(b)(1)
§ 80.103(b)(2)
§ 80.103(c), (d) and (e)
§ 80.201
§ 80.202(a) and (b)
§ 80.203
Appendix VI–A
§ 80.301(a)(2)
§ 80.301(b)(1)
§ 80.402(b)(3)(G)(i)
§ 80.402(c)(8)(A)

Summary: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, preempts the following provisions of LACoC Titles 2 and 32:

(1) Title 2 LACoC §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170, to the extent that those provisions levy a fee on tank car unloading activities. The fees collected under those provisions are not used for purposes related to hazardous materials transportation;

(2) Title 32 LACoC § 79.809(f) as applied and enforced by Los Angeles County. Los Angeles County fails to recognize a Department of Transportation (DOT) exemption that authorizes HASA, Inc. to employ alternative methods of compliance with certain Federal tank car unloading requirements; and

(3) Title 32 LACoC § 79.809(c), which prohibits a tank car from remaining on a siding at point of delivery for more than 24 hours while connected for transfer operations, unless otherwise approved by the fire chief. The unloading restriction is not substantively the same as Federal tank car unloading requirements applicable to a tank car connected for transfer operations.

Based on a lack of information in the record, the Research and Special Programs Administration (RSPA) is unable to determine whether Federal hazmat law preempts LACoC Title 32, §§ 80.103(e), 80.301(b)(1), 80.402(b)(3)(G)(i) and 80.402(c)(8)(A).

Federal hazmat law does not preempt the following provisions of LACoC Title 32: § 4.108.c.7, Table 4.108–A, § 79.809(b), § 80.101(a) exception 1, § 80.101(b), § 80.103(a), § 80.103(b)(1), § 80.103(b)(2), § 80.103(c), § 80.103(d), § 80.201, §§ 80.202(a) and (b), § 80.203, Appendix VI–A, and § 80.301(a)(2).

1. Application for Preemption Determination

HASA states that transportation of liquefied chlorine at its facility, including loading, unloading, and storage incidental thereto, is in accordance with: (1) Federal hazmat law; (2) HMR Part 174 (49 CFR Part 174); (3) the Chlorine Manual and related pamphlets published by the Chlorine Institute, Inc.; and (4) DOT Exemption E–10552, issued by RSPA. Nevertheless, HASA states that "[o]ver the past year, HASA has been inspected numerous times by the county fire department and, as a result of these inspections, subsequently ordered to comply with the regulation[s] contained in the county fire code with respect to 'on-site transportation' of hazardous materials." HASA states that it is the "clear intent" of Title 32 to regulate the on-site transportation of compressed gases.

HASA explains that its application for an administrative determination is "specific to the transportation, including loading, unloading, and storage incidental thereto, of liquefied chlorine in railroad tank cars at the Santa Clarita, California manufacturing facility of HASA, Inc." HASA requests a determination that:

(1) Regulation of the transportation of chlorine in railroad tank cars, including loading, unloading, and storage incidental thereto at [its] facility in Santa Clarita, California, is exclusive to the Federal government pursuant to the [Federal hazmat law] and regulation[s] thereunder;

(2) The term "transportation," as defined [by Federal hazmat law], includes both "on-site" and "off-site" transportation of hazardous materials in commerce, including loading, unloading, and storage incidental thereto; and

(3) [The Los Angeles County regulations at issue] are preempted by [Federal hazmat law] and regulations promulgated thereunder with respect to both "off-site" and "on-site" transportation of chlorine in railroad tank cars, including loading, unloading, and storage incidental thereto.

In response to RSPA's January 26, 1993, Public Notice and Invitation to Comment, 58 FR 6176, which set forth the text of HASA's application, comments were submitted by the Chemical Waste Transportation Institute (CWTI), the Orange County Fire Department, the California Fire Chiefs' Association, the Chlorine Institute, Inc., the Los Angeles County District Attorney's Office, the County of Los Angeles Fire Department, and the County of Santa Barbara Environmental Health Services Department. Rebuttal comments were submitted by HASA and the Chlorine Institute, Inc.

In response to RSPA's October 14, 1993, Public Notice re-opening the comment period in Docket PDA–7(R), comments were submitted by HASA and the County of Los Angeles Fire Department.

2. Discussion

a. Fees. (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 2:

§ 2.20.140 requires that every handler of hazardous materials pay an annual fee for the administration and enforcement of the provisions of California Health and Safety Code (CHSC) Chapter 6.95 (commencing with § 25500). Fees range from $110 annually for a minor handler of hazardous materials to $2,650 annually for a major handler of large volumes of hazardous materials.

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§ 2.20.150 requires every handler of acutely hazardous materials (AHM) to pay an additional annual fee to the county for the administration and enforcement of AHM registration, risk assessment, and risk mitigation. The fee is calculated according to a formula set forth in § 2.20.150.

§ 2.20.160 imposes a late submission fee on: (1) handlers of hazardous materials for failure to file the required hazardous materials business plan or inventory documents on a timely basis; and (2) handlers of AHM for failure to submit the required AHM registration documents on a timely basis.

§ 2.20.170 sets out the formula for calculating annual adjustments to the schedule of fees contained in § 2.20.140 through § 2.20.160.

(2) HASA's Arguments and Summary of Comments

HASA states that §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170 establish fees applicable to "handlers" of hazardous materials. HASA notes that § 2.20.100(E) defines "handler" to mean 'any business which handles a hazardous material or acutely hazardous material." HASA asserts that "handling" is a transportation-related activity that is regulated under Federal hazmat law and the HMR.

HASA indicates that fees paid by handlers of hazardous materials to the County of Los Angeles are used for the administration and enforcement of CHSC Chapter 6.95. HASA further states that the requirements under Chapter 6.95 (*e.g.*, the preparation of hazardous materials business plans, inventories and risk management and prevention programs (RMPPs)) are not related to the transportation of hazardous materials. HASA concludes that Federal hazmat law preempts the collection of fees by Los Angeles County because the fees are not used for purposes relating to the transportation of hazardous material.

The California Fire Chiefs' Association, the Los Angeles County District Attorney's Office and the County of Los Angeles Fire Department all acknowledge that the fees collected under LACoC Title 2 are used to cover the cost of administering CHSC Chapter 6.95. The County of Los Angeles Fire Department states that § 25513 and § 25535.2 of Chapter 6.95 give the local agencies that administer Chapter 6.95 the authority to assess and collect fees in order to recover "the cost to administer both the Risk Management and Prevention Program and the Hazardous Materials Release Response Plans and Inventory Program."

(3) Analysis

Federal hazmat law provides that:

> A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and *used for a purpose related to transporting hazardous material*, including enforcement and planning, developing, and maintaining a capability for emergency response.

49 U.S.C. 5125(g) (emphasis added). Consequently, fees levied in connection with the transportation of hazardous materials must be equitable and used for a purpose related to the transportation of hazardous materials.

LACoC §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170 establish fees applicable to "handlers" of hazardous materials. Section 2.20.100(E) defines "handler" to mean "any business which handles a hazardous material or acutely hazardous material." "Handle," as defined at § 2.20.100(D), means—

> To use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous or acutely hazardous material in any fashion and includes the use or potential use of a quantity of hazardous or acutely hazardous material by the connection of any marine vessel, tank vehicle, tank car or container to a system or process for any of the above purposes or activities.

The County definition of "handle" under 2.20.100(D) includes a number of activities that are not regulated by Federal hazmat law and the HMR because they are outside the scope of transportation in commerce, *i.e.*, the use, generation, processing, production, treatment, emission, discharge, and disposal of hazardous materials. The definition of "handle" also includes activities, *i.e.*, packaging and storage, that are regulated by Federal hazmat law and the HMR only in certain instances. Specifically, the HMR apply to hazardous materials storage that is incidental to transportation in commerce, and the packaging of hazardous materials for transportation in commerce. The HMR do not apply to storage that is not incidental to transportation in commerce, or packaging of hazardous materials for purposes other than transportation in commerce. HASA does not assert, and the record does not reflect, that the term "store," as used in § 2.20.100(D), includes storage that is incidental to transportation in commerce, or that the term "package" as used in § 2.20.100(D) includes the packaging of hazardous materials for transportation in commerce. Consequently, for purposes of this decision, RSPA assumes that the terms refer to activities that are not subject to the requirements of Federal hazmat law and the HMR.

The definition of "handle" also includes the use or potential use of hazardous materials by the connection of a railroad tank car to a system or process. Tank car unloading is regulated under the HMR as incidental to transportation in commerce. 49 CFR 174.67. Consequently, any fee levied for unloading activities must be fair and used for a purpose related to transporting hazardous material.

There is no assertion in the record that the fees are unfair. Furthermore, the participants in this proceeding agree that the fees are used to administer Chapter 6.95, which primarily concerns emergency response planning for hazardous materials no longer in transportation in commerce. Accordingly, the fees collected from facilities that engage in tank car unloading are not being used for "a purpose related to transporting hazardous material." Therefore, 49 U.S.C. 5125(g) preempts §§ 2.20.140, 2.20.150, 2.20.160 and 2.20.170 to the extent that those provisions levy a fee on facilities for tank car unloading activities. To the extent that they levy a fee for non-transportation activities, they are not preempted.

b. Permits. (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32:

§ 4.108.c.7 and Table 4.108–A require a permit from the Bureau of Fire Prevention prior to engaging in the storage, on-site transportation, dispensing, use, or handling, at normal temperatures and pressures, of a compressed gas in excess of amounts specified in Table 4.108–A.

§ 80.103(a) states that the permit requirement in § 4.108.c.7 applies to any person, firm or corporation that stores, dispenses, uses or handles hazardous material in excess of quantities specified in § 4.108.

§ 80.103(b)(1) requires that each permit application include a Hazardous Materials Business Plan (HMBP) that meets the requirements contained in LACoC Title 2, Chapter 2.20, Part 2. Title 2, § 2.20.130 requires the applicant to follow the requirements of CHSC Chapter 6.95 when preparing an HMBP.

§ 80.103(b)(2) states that, with respect to HMBPs, every business shall comply with the reporting requirements in LACoC Title 2, Chapter 2.20, Part 2.

§ 80.103(c) states that each application for a permit shall include a hazardous materials inventory statement (HMIS) in accordance with LACoC Title 2, Chapter 2.20, Part 2. Section 2.20.130 of Title 2, Chapter 2.20, Part 2 requires the applicant to follow the requirements of CHSC Chapter 6.95 when preparing an HMIS.

§ 80.103(d), entitled "Risk Management and Prevention Program," (RMPP) requires that every business comply with the requirements of LACoC Title 2, Chapter 2.20, Part 2.

§ 80.103(e) states that HMBPs, RMPPs and HMISs shall be posted in an approved location and immediately available to emergency responders. Further, the fire chief may require that the information be posted at the entrance to the occupancy or property.

(2) HASA's Arguments and Summary of Comments

HASA states that § 4.108.c.7 and § 80.103(a) require any facility that stores, dispenses, uses or handles compressed gas in excess of quantities specified in Table 4.108–A to obtain a permit from the Bureau of Fire Prevention prior to engaging in the on-site storage, transportation, dispensing, use or handling of compressed gas in railroad tank cars.

HASA indicates that § 80.103(b) and § 80.103(c) require that each permit application include an HMBP and HMIS that meet the requirements contained in LACoC Title 2, Chapter 2.20, Part 2. Section 80.103(d) requires that, with respect to RMPPs, every business comply with the requirements of LACoC Title 2, Chapter 2.20, Part 2. LACoC Title 2, Chapter 2.20, Part 2 implements the administration and enforcement of CHSC Chapter 6.95, Articles 1 and 2. Permit applicants under the LACoC, therefore, must follow the requirements of CHSC Chapter 6.95 when preparing an HMBP, HMIS and RMPP. HASA asserts that—

> Requirements contained in Chapter 6.95 of the [CHSC] provide *inter alia* for written notification, recording, and reporting of the unintentional release of hazardous materials. These requirements are preempted [as covered subjects].

HASA asserts that "there is no assurance that a permit for 'on-site transportation' will be issued or that it will not be revoked for reasons unrelated to the transportation of hazardous materials. Business plans and risk management plans are not only subject to approval by the administering agencies, but such approval is subject to unspecified delays."

HASA believes that the LACoC requirement that a facility obtain a permit prior to engaging in the on-site storage, transportation, dispensing, use or handling of compressed gas is preempted because: (1) it applies to "handling," which is a covered subject, and the requirement is not substantively the same as Federal regulations; (2) it applies to the "on-site" transportation of hazardous materials and, consequently, is an obstacle to accomplishing and carrying out Federal hazmat law and the HMR; and (3) it requires permit applicants to comply with the written notification, recording and reporting requirements pertaining to unintentional releases of hazardous materials contained in CHSC Chapter 6.95, as implemented by LACoC Titles 2 and 32, which HASA believes are preempted as covered subjects.

In support of its position, HASA states that similar permit requirements have been found to be inconsistent with Federal hazmat law and the HMR, citing IR–28, *City of San Jose, California; Restrictions on Storage of Hazardous Materials*, 55 FR 8884 (Mar. 8, 1990), and *Southern Pacific Transp. Co.* v. *Public Service Comm'n of Nevada*, 909 F.2d 352 (9th Cir. 1990).

HASA does not discuss how § 80.103(e), which requires that HMBPs, RMPPs and HMISs be posted in an approved location and immediately available to emergency responders, conflicts with the Federal hazmat law or the HMR.

The Chlorine Institute, Inc. believes that Federal hazmat law preempts the LACoC permit requirements. It states that "the permit requirement under section 4.108.c.7 of the [LACoC] is restrictive in that it requires an application, inspection and permit prior to unloading certain quantities of hazardous materials on private property regardless of whether the activity is in compliance with DOT regulation * * *. The permit process and requirements are not consistent with [Federal hazmat law] and DOT regulations."

The Los Angeles County District Attorney's Office and the County of Los Angeles Fire Department both oppose preemption of the permit requirements, stating that the requirements are not an obstacle to accomplishing and carrying out Federal hazmat law and the HMR.

(3) Analysis

Permit requirements do not fall within any of the five covered subject areas enumerated in 49 U.S.C. 5125, described above in the General Preamble. They also do not, *per se*, make it impossible to comply with Federal hazmat law or HMR requirements, or create an obstacle to accomplishing and carrying out Federal hazmat law or the HMR. Whether or not a permit requirement is preempted depends on the steps required to obtain the permit. *See* IR–28, 55 FR 8884 (Mar. 8, 1990); IR–20, 52 FR 24396 (June 30, 1987); IR–3 (Appeal), 47 FR 18457 (Apr. 29, 1982); IR–2, 44 FR 75566 (Dec. 20, 1979); *New Hampshire Motor Transport Ass'n* v. *Flynn*, 751 F.2d 43 (1st Cir. 1984); *Colorado Public Utilities Comm'n* v. *Harmon*, CV 88–Z–1524 (D. Colo. 1989), *rev'd on other grounds*, 951 F.2d 1571 (10th Cir. 1991).

First, HASA asserts that Los Angeles County's regulation of "handling," through the permit process, is preempted because handling is one of the five covered subject areas established under 49 U.S.C. 5125. The LACoC permit requirements are Los Angeles County's response to the mandate in CHSC § 25502 that "every county shall implement this chapter as to the handling of hazardous materials in the county." The LACoC requires chemical manufacturers to obtain a permit "prior to engaging in the storage, on-site transportation, dispensing, use or handling, at normal temperatures and pressures, of a compressed gas in excess of specified amounts." As part of the permit process under LACoC Title 32, facilities that handle hazardous materials must submit, to the County, an HMBP, HMIS and RMPP that meet the reporting requirements in LACoC Title 2. Title 2, § 2.20.130 requires that these documents be prepared in accordance with the requirements set forth in CHSC Chapter 6.95.

As discussed above in PD–8(R), Federal hazmat law does not preempt Chapter 6.95 requirements applicable to the handling of hazardous materials because they are otherwise authorized by Federal law. Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), 42 U.S.C. §§ 11001 *et seq.*, and § 112(r) of the Clean Air Act Amendments of 1990 (CAA Amendments), 42 U.S.C. 7412(r). As a result, the LACoC permit program, which implements the CHSC handling requirements, is not preempted because its underlying substantive requirements are "otherwise authorized" by SARA Title III and § 112(r) of the CAA Amendments.

Second, HASA asserts that Los Angeles County's permit requirements are preempted because they apply to the on-site transportation of hazardous materials at HASA's facility and, therefore, present an obstacle to accomplishing and carrying out Federal hazmat law. Transportation that takes place entirely on private property is not transportation "in commerce." Federal hazmat law and the HMR do not apply to a consignee's transportation of hazardous materials solely within the gates of a private manufacturing facility To the extent that the permit requirements under the LACoC provide that HASA must obtain a permit prior to transporting hazardous materials within its facility, the requirements do not apply to transportation in commerce

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and are not preempted by Federal hazmat law. The holdings in *Southern Pacific Transp. Co.* v. *Public Service Comm'n of Nevada* and IR–28, which HASA relies on to support its argument in favor of preemption, are inapposite to the facts in this case. The holdings are based on local regulation of common carriers engaged in the transportation of hazardous materials in commerce.

Finally, HASA asserts that permit applicants must comply with the reporting requirements of LACoC Title 2, Chapter 2.20, Part 2 and, by reference therein, CHSC Chapter 6.95, Articles 1 and 2. HASA asserts that Chapter 6.95 requirements include written notification, recording, and reporting of the unintentional release of hazardous materials. HASA argues that the written notification, recording and reporting requirements are preempted as covered subjects. HASA believes that the permit requirements are preempted to the extent they mandate compliance with Chapter 6,95 requirements regarding the reporting of unintentional releases of hazardous materials.

HASA is correct that Federal hazmat law preempts any State or local requirement dealing with the "written notification, recording, and reporting of the unintentional release *in transportation* of hazardous material," unless the requirement is substantively the same as the Federal requirement or otherwise authorized by Federal law. 49 U.S.C. 5125(b)(1)(D) (emphasis added). However, HASA fails to identify in its application the sections of Chapter 6.95 that it believes are preempted, or even to set forth the text of those sections for RSPA's review and consideration. Consequently, RSPA cannot determine whether the permit requirements under the LACoC are preempted to the extent that they require compliance with unidentified provisions of LACoC Title 2, Chapter 2.20, Part 2 and, by reference therein, CHSC Chapter 6.95.

Nowhere does the record reflect that a permit actually is required in order for a facility to engage in storage, dispensing, use or handling of hazardous materials in excess of threshold quantities. In fact, HASA admits that it is not in compliance with LACoC requirements it believes are preempted, and information in the record seems to indicate that HASA has operated without a § 4.108.c.7 permit for extended periods of time. To the extent that Los Angeles County has taken enforcement action against HASA, it appears that it has done so in an effort to persuade HASA to comply with the substantive permit application requirements (*e.g.*, the hazardous materials inventory requirement). Consequently, to the extent that the Bureau of Fire Prevention has the authority to issue permits, that authority does not appear to have been enforced and applied to prevent facilities from storing and handling hazardous materials incidental to transportation. Therefore, the permit requirement does not violate the "obstacle" standard.

For the reasons stated above, Federal hazmat law does not preempt the following sections of LACoC Title 32: § 4.108.c.7, Table 4.108–A, § 80.103(a), § 80.103(b)(1), § 80.103(b)(2), and §§ 80.103 (c) and (d). There is insufficient information in the record to determine whether Federal hazmat law preempts LACoC § 80.103(e).

c. Hazard Classification. (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32:

§ 80.101(a) exception 1 exempts the off-site transportation of hazardous materials from the classification system set forth in LACoC Article 80, if the transportation is in conformance with the HMR.

§ 80.101(b) states that the classification system referenced at §§ 80.202 and 80.203 applies to all hazardous materials, including those materials regulated elsewhere in the LACoC.

§ 80.201 requires that hazardous materials be divided into hazard categories. The categories include materials regulated under LACoC Article 80 and materials regulated elsewhere in the LACoC.

§ 80.202(a) classifies certain materials as physical hazards, including compressed gases, flammable liquids and combustible liquids. A material with a primary classification of "physical hazard" also can present a health hazard (as set forth below at § 80.202(b)). Chlorine is listed, in Appendix VI–A to Title 32, as a toxic compressed gas that constitutes a physical hazard.

§ 80.202(b) classifies certain materials as health hazards, including highly toxic or toxic materials. A material with a primary classification of "health hazard" also can present a physical hazard. Chlorine is listed, in Appendix VI–A to Title 32, as an example of a toxic compressed gas that constitutes a health hazard.

§ 80.203 states that descriptions and examples of materials included in hazard categories are contained in Appendix VI–A to Title 32.

Appendix VI–A contains information, explanations and examples to illustrate and clarify the hazard categories contained in Division II of Article 80. The hazard categories are based on Occupational Safety and Health Administration (OSHA) standards set forth in the Code of Federal Regulations, Title 29. Where numerical classifications are included, they are in accordance with nationally recognized standards.

(2) HASA's Arguments and Summary of Comments. HASA states that the classification system in the LACoC is different from and in addition to the hazardous materials classification system under Federal hazmat law and the HMR and, therefore, should be preempted as relating to a covered subject under 49 U.S.C. 5125(b)(1) HASA indicates that the classification system under the LACoC only applies to a facility's on-site transportation of hazardous materials, and not to off-site transportation of hazardous materials conducted pursuant to the HMR. HASA provides several examples of how the LACoC classification system differs from that under the HMR.

The Chlorine Institute, Inc. urges preemption of the LACoC classification system. It states that the classification requirements "define categories of hazardous materials that are not consistent with the DOT regulations shown in 49 CFR 173.2 * * *. Compliance with [both the LACoC and the HMR] would necessitate dual compliance for personnel handling and unloadjng a chlorine tank car on private property The situation creates confusion and leads to errors in judgment."

CWTI believes that the classification system used under the LACoC is not preempted because it is otherwise authorized by Federal law, specifically the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 651 *et seq* CWTI states:

> In order to protect employees from the effects of hazardous chemicals in the workplace, OSHA implemented the hazardous communication standard (HCS) which requires employers to develop and implement a written hazard communication program, including lists of hazardous chemicals present, labeling of containers of chemicals in the workplace as well as of containers of chemicals being shipped to other workplaces that does not conflict with the HMTA, preparation and distribution of [Material Safety Data Sheets], and development and implementation of employee training programs regarding the hazards of chemicals and protective measures. (*See* 29 CFR 1910.1200.) The hazardous materials classifications, 'physical hazards' and 'health hazards' referenced by HASA as required by the County are terms of classification used under the HCS. (*See* LA County Code 80.202 and 29 CFR 1910.1200(c)). Section 18 of the OSH Act provides that no state or political subdivision of a state may adopt or enforce * * * any requirements relating to the issue addressed by the HCS, except pursuant to a federally-approved state plan. California is a federally-approved state.

CWTI also notes that Congress, during passage of the 1990 amendments to the HMTA, recognized the authority of OSHA to regulate the storage of hazardous materials at consignee locations. Specifically, CWTI asserts that Congress directed OSHA, under authority of the OSH Act, to issue regulations requiring the retention of HMR markings, placards, and labels, and any other information as may be required by the HMR, on a package, container, motor vehicle, rail freight car, aircraft, or vessel until the hazardous materials have been removed. *See* P.L. 101–615, § 29, 104 Stat. 3277.

The County of Los Angeles Fire Department opposes preemption of the LACoC classification requirement, stating that the classification system required under § 80.201 is based on the OSHA classification system at Title 29 CFR.

(3) Analysis. The classification of hazardous materials for purposes of transportation in commerce is exclusive to the Federal Government. *See* 49 U.S.C. 5125(b)(1)(A). Federal hazmat law preempts State, local and Indian tribe requirements that are not substantively the same as the Federal classification requirements, or not otherwise authorized by Federal law. *Id.*

The Department of Transportation has an exclusive role in defining hazard classes for materials that are offered or transported in commerce. The HMR classification system is used to determine the type of packagings that must be used to transport hazardous materials in commerce, and the applicable placarding, labeling and marking requirements necessary for that transportation. The HMR classification of hazardous materials does not apply to materials that are not in transportation in commerce. The movement of hazardous materials by a consignee exclusively on private property, for purposes related to a manufacturing process, is not transportation in commerce under Federal hazmat law

Section 80.101(a) exception 1 states that off-site hazardous materials transportation in accordance with DOT requirements is excepted from the requirements of LACoC Article 80 (which includes the classification system under § 80.201, § 80.202, § 80.203 and Appendix VI-A). HASA does not dispute that the LACoC classification system applies only to HASA's on-site transportation of hazardous materials. Consequently, Federal hazmat law does not preempt the LACoC classification requirements, as they pertain to the on-site transportation of hazardous materials exclusively within a chemical manufacturing facility, because the LACoC requirements do not apply to hazardous materials that are in transportation in commerce.

d. Storage. (1) LACoC Requirement. HASA challenges the following provision of LACoC Title 32:

§ 80.301(a)(2) prohibits the use of tank vehicles and railroad tank cars as storage tanks.

(2) HASA's Arguments and Summary of Comments.

Section 80.301(a)(2) states that tank vehicles and railroad tank cars shall not be used as storage tanks. HASA argues that neither Federal hazmat law nor the HMR "prohibit storage—incidental to transportation or otherwise—of hazardous materials in either tank vehicles or in tank cars." HASA states that 49 CFR 174.204(a)(2) specifically permits storage of specified gases on both private and carrier track. HASA notes that § 174.204(a)(2) states, in part, "such cars may be stored on private track * * * or on carrier tracks designated by the carrier for such storage." HASA believes that the LACoC's prohibition of storage in tank vehicles and railroad tank cars is an obstacle to accomplishing and carrying out Federal hazmat law and the HMR, and should be preempted.

No commenter addressed this issue specifically.

(3) Analysis. HASA states that it receives railroad tank cars containing liquefied chlorine from manufacturers engaged in interstate commerce. HASA unloads the tank cars on a private siding adjacent to its facility. HASA asserts that § 80.301(a)(2) prohibits it from storing hazardous material, for use in its manufacturing process, in the tank cars in which the material arrives at HASA's facility. There is no indication in the record that HASA stores hazardous materials in cargo tank motor vehicles, and there is no information in the record regarding how this requirement is applied and enforced when hazardous materials are stored in cargo tank motor vehicles.

Federal hazmat law and the HMR apply to hazardous materials that are in transportation in commerce, and loading, unloading and storage that is incidental to that transportation. Federal hazmat law and the HMR do not apply to storage activities not incidental to transportation, such as storage activities at consignees' facilities. *See* IR–28, 55 FR 8884 (Mar. 8, 1990). As a result, hazardous materials that are stored at a manufacturing facility awaiting consumption in the manufacturing process are not stored incidental to transportation in commerce, and are beyond the reach of Federal hazmat law. Federal hazmat law, therefore, does not prevent Los Angeles County from prohibiting the use of tank cars for storage purposes, where that storage is not incidental to transportation in commerce.

Section § 174.204(a)(2) of the HMR, which HASA relies on to support the proposition that the HMR authorize a consignee to store hazardous materials in tank cars, is inapplicable to the situation at issue. Section 174.204 sets forth duties and responsibilities with respect to the delivery and unloading of gases that are in transportation in commerce.

Thus, Federal hazmat law does not preempt § 80.301(a)(2).

e. Unloading. (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32:

§ 80.301(a)(2) requires that containers, cylinders and tanks containing hazardous materials be unloaded in accordance with the requirements for flammable and combustible liquids at § 79.809.

§ 79.809(b) states that flammable and combustible liquids may be transferred from a tank car only into an approved atmospheric tank or approved portable tank.

§ 79.809(c) states that, unless otherwise approved by the fire chief, a tank car may not remain on a siding at point of delivery for more than 24 hours while connected for transfer operations.

§ 79.809(f) states that the operator or other competent person must be in attendance at all times while a tank car is discharging cargo.

§ 80.402(c)(8)(A) states that when tank cars regulated by DOT are used outdoors, gas cabinets or a locally exhausted enclosure must be provided. Installation and design must be in accordance with the requirements of Title 32.

§ 80.402(b)(3)(G)(i) states that when portable or stationary tanks are "utilized in use or dispensing," they must be within a ventilated separate gas storage room or placed within an exhausted enclosure.

(2) HASA's Arguments and Summary of Comments. Section 79.809 addresses unloading operations for flammable and combustible liquids. Section 80.301(a)(2) makes the unloading requirements in § 79.809 applicable to the unloading of railroad tank cars containing hazardous materials regulated under Title 32. HASA states that "many of the requirements in § 79.809 are not only inappropriate but unsafe for unloading compressed and

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liquefied gases, including chlorine." HASA offers, as examples, the requirements to transfer flammable and combustible materials only to an approved atmospheric tank or approved portable tank (§ 79.809(b)), the prohibition against remaining on a siding for more than 24 hours while connected for unloading operations (§ 70.809(c)), and the tank car unloading attendance requirement (§ 79.809(f)).

HASA states that liquefied and nonliquefied compressed gases cannot be unloaded into a tank "open to the atmosphere" because they will no longer be contained or compressed. HASA, therefore, believes that this LACoC requirement conflicts with Federal hazmat law and the HMR and should be preempted.

HASA further explains that liquefied gases, including chlorine, are unloaded "under their own vapor pressure, at a finite rate," to prevent the liquefied gas remaining in the tank car from freezing as heat is withdrawn by gas vaporization. HASA maintains that liquefied chlorine gas has a normal unloading rate of 3,600 to 7,200 pounds per hour. HASA concludes that it takes between 25 and 50 hours to unload each tank car containing 90 tons of liquefied chlorine. As a result, HASA believes that the 24-hour time limit on unloading conflicts with Federal hazmat law and the HMR and should be preempted.

HASA notes that 49 CFR 174.67 (i) and (j) pertain to tank car unloading. HASA applied for, and obtained from RSPA, an exemption (E–10552) from the requirements in 174.67 (i) and (j), including the requirement that a person physically attend a tank car while cargo is discharged. HASA states that the local attendance requirement at § 79.809(f) is similar to the Federal attendance requirement set out at 49 CFR 174.67(i). Nevertheless, HASA asserts that Los Angeles County refuses to recognize that HASA's exemption from Federal attendance requirements prevents the County from enforcing the local attendance requirement. Consequently, HASA asserts that § 79.809(f) conflicts with E–10552 and should be preempted.

HASA further requests a preemption determination regarding § 80.402(b)(3)(G)(i) and § 80.402(c)(8)(A), which it states require secondary containment for the "use" of railroad tank cars which contain highly toxic or toxic compressed gases. HASA states that "use" is defined at LACoC § 9.123 as "the placing in action or making available for service by opening or connecting anything utilized for confinement of material whether a solid, liquid or gas." HASA contends that this definition of the term "use" encompasses the unloading of tank cars. HASA, therefore, alleges that tank car unloading must take place in accordance with § 80.402(b)(3)(G)(i) and § 80.402(c)(8)(A). HASA believes these requirements conflict with unloading requirements under Federal hazmat law and the HMR, and should be preempted.

In summary, HASA asks RSPA to compare several aspects of the LACoC unloading requirements with (1) the general unloading requirements for tank cars set out at 49 CFR 174.67; (2) the specific unloading requirements for compressed gases in Title 49, Subpart F of the CFR (49 CFR 174.200–174.204, 174.208, 174.280, and 174.290); and (3) the requirements in E–10522 with respect to chlorine.

The Chlorine Institute supports preemption of LACoC §§ 79.809, 80.402(b)(3)(G)(i) and 80.402(c)(8)(A). It agrees with HASA's assertion that several requirements under these provisions are obstacles to accomplishing and carrying out HMR provisions regarding handling and unloading of chlorine tank cars on private property. Specifically, the Chlorine Institute supports preemption of: (1) the requirement that unloading be to an approved atmospheric tank only; (2) the prohibition against remaining on a siding for more than 24 hours while connected; (3) the requirement that someone physically attend the unloading process; and (4) the requirement for special unloading equipment. The Chlorine Institute believes that these LACoC requirements conflict with E–10552 and with 49 CFR 174.600, which it believes enable a tank car of chlorine to be received at a private siding with no maximum holding time.

The County of Orange Fire Department, the County of Los Angeles Fire Department, and the California Fire Chiefs' Association do not agree with HASA that §§ 79.809, 80.402(b)(3)(G)(i) and 80.402(c)(8)(A) conflict with Federal hazmat law and the HMR. Consequently, they oppose preemption of those provisions.

(3) Analysis. *(a) Unloading to Storage Tanks.* Section 80.301(a)(2) makes the unloading requirements for flammable and combustible liquids at § 79.809(b) applicable to the unloading of tank cars containing hazardous materials. Section 79.809(b), which pertains to unloading to storage tanks, requires that flammable and combustible liquids be transferred from a tank car only into an approved atmospheric tank or approved portable tank. HASA states that it cannot comply with this requirement when unloading liquefied and nonliquefied compressed gases because those materials cannot be stored in a tank "open to the atmosphere." HASA, therefore, asks that RSPA preempt this LACoC requirement. HASA does not indicate why storage in approved portable tanks is not possible. Furthermore, there is no evidence in the record that Los Angeles County has cited HASA for failure to comply with § 79.809(b) while unloading compressed gases.

Tank car unloading is not regulated under Section 79.809(b). Section 79.809(b) dictates the type of storage tanks that may be used when unloading a tank car. RSPA does not regulate consignee storage, including the types of containers used to store hazardous materials that are no longer in transportation in commerce. HASA's storage of hazardous materials at its facility, for use in its manufacturing process, is beyond the scope of Federal hazmat law and the HMR. Consequently, Federal hazmat law does not preempt LACoC § 79.809(b), which applies to consignee storage.

(b) 24–Hour Time Limit. Section 79.809(c) states that "unless otherwise approved by the chief, a tank car shall not be allowed to remain on a siding at point of delivery for more than 24 hours while connected for transfer operations." HASA states that this restriction on the amount of time a tank car may remain connected for transfer operations should be preempted because there is no similar restriction under Federal hazmat law or the HMR.

Certain consignee tank car unloading activities fall under the term "handling," a covered subject. Unless substantively the same as Federal regulation, or otherwise authorized by Federal law, non-Federal regulation of a covered subject area is preempted. Section 174.67 of the HMR applies to the mechanics of the tank car unloading process by dictating unloading procedures to be followed prior to, during and after unloading, *e.g.*, brake requirements; posting of caution signs; procedures for breaking seals and removing manhole covers; prohibition against unloading connections remaining attached after unloading is completed or discontinued; attendance requirements. Nowhere do the HMR limit the amount of time a tank car may remain on a siding at point of delivery while connected for transfer operations. The 24-hour time restriction is not substantively the same as the Federal requirements and, therefore, is preempted by § 5125(b)(1)(B) of Federal hazmat law, 49 U.S.C. 5125(b)(1)(B).

Local time restrictions, if properly crafted, may serve a legitimate purpose. Under certain circumstances, however, time restrictions may not promote safety. For example, time restrictions on tank car unloading may prompt a chemical manufacturing facility to unload tank cars at higher pressures, at greater risk, in order to expedite the unloading process. Also, facilities may be forced to discontinue unloading a tank car and to disconnect the transfer lines between the tank car and the storage receptacle, or manufacturing process, simply to meet the local time restriction. This results in the more frequent exposure of employees to product remaining in the disconnected lines.

Consequently, a request for a waiver from preemption may be granted if it can be shown that a local time restriction provides an equal or greater level of protection to the public than the HMR, and does not unreasonably burden commerce.

(c) Attendance. Section 79.809(f) requires that the operator or another competent person attend a tank car at all times while the tank car is discharging cargo. Tank car unloading is an aspect of "handling," a covered subject. Nevertheless, § 79.809(f) is substantively the same as 49 CFR 174.67(i), which requires that a tank car be attended throughout the entire unloading process and, therefore, is not preempted except as it is applied and enforced.

A consignee that unloads tank cars containing hazardous materials may obtain a DOT exemption from the Federal attendance requirement. The DOT exemption allows the consignee to use an alternative monitoring procedure. HASA holds such an exemption (E–10552). Specifically, E–10552 permits HASA to use electronic surveillance to monitor tank car unloading, under certain conditions and restrictions, in lieu of a human observer at the unloading site.

Exemptions from Federal hazmat law and HMR requirements are issued by the Associate Administrator for Hazardous Materials Safety pursuant to 49 U.S.C. 5117 and 49 CFR 107.101–107.123. Exemptions may be issued on a showing by the applicant that procedures it proposes to adopt will achieve a level of safety that is at least equal to that specified in the regulation from which the exemption is sought. *See* 49 U.S.C. 5117(a)(1)(A). If the regulations do not specify a level of safety, the applicant must show that its proposed procedures will be consistent with the public interest. See 49 U.S.C. 5117(a)(1)(B).

Exemption applications are published in the **Federal Register**, and all interested parties, including States, localities and Indian tribes, are invited to submit comments. Once issued, DOT exemptions are binding on State, local and Indian tribe authorities, and on regulated entities. See 49 CFR 171.2. To avoid conflict with Federal hazmat law and the HMR, State, local and Indian tribe authorities must implicitly or explicitly recognize a DOT exemption. *See* IR–31, 55 FR 25572 (June 21, 1990).

HASA claims that Los Angeles County fails to recognize that E–10552 exempts HASA not only from the Federal attendance requirements but also from the local attendance requirements (which are substantively the same as the Federal requirements). Los Angeles County's failure to recognize a DOT exemption undermines the exemption authority granted to the Secretary of Transportation under 49 U.S.C. 5117. Section 5117(A) explicitly authorizes DOT to issue exemptions when the applicant can demonstrate that it will transport or ship hazardous materials in a manner that achieves a safety level at least equal to that required under Federal hazmat law, or that the exemption is consistent with the public interest.

Los Angeles County's continued enforcement of § 79.809(f) against HASA, in spite of the fact that HASA holds DOT exemption E–10552, is an obstacle to accomplishing and carrying out Federal hazmat law and the regulations issued thereunder. Consequently, § 5125(a)(2) of Federal hazmat law, 49 U.S.C. 5125(a)(2), preempts LACoC § 79.809(f) as it is applied and enforced. However, California has incorporated the HMR by reference into its regulations (*see*, Title 13 California Code of Regulations, Division 2, Chapter 6). If Los Angeles County finds at any time that HASA is not in compliance with its DOT exemption, it can enforce the HMR and its own regulations.

(d) Ventilation. HASA asks that RSPA preempt § 80.402(b)(3)(G)(i) and § 80.402(c)(8)(A) because they apply to the unloading of hazardous materials in a manner that conflicts with Federal hazmat law and the HMR. Specifically, these LACoC provisions require the use of a gas cabinet or locally exhausted enclosure when a tank car is unloaded outdoors, and the use of a ventilated separate gas storage room or an exhausted enclosure when a portable or stationary tank is unloaded indoors.

There is insufficient information in the record regarding how the LACoC ventilation requirements are applied and enforced. RSPA, therefore, is unable to determine whether the requirements are preempted by Federal hazmat law.

f. Packaging Design and Construction. (1) LACoC Requirement. HASA challenges the following provision of LACoC Title 32:

§ 80.301(b)(1) states that containers and tanks must be designed and constructed in accordance with nationally recognized standards. Title 32, § 2.304(b) sets forth the national standards and publications recognized under that title. The most recent edition of Title 49 CFR Chapter 1 (which includes the HMR) is referenced.

(2) HASA's Arguments and Summary of Comments. HASA provides no explanation or arguments regarding how § 80.301(b)(1) is applied and enforced, or why HASA believes that it should be preempted.

(3) Analysis. Section 80.301(b)(1), on its face, requires that containers and tanks be designed and constructed in accordance with nationally recognized standards. "Nationally recognized standards" is defined at Title 32, § 2.304(b) to include the most recent edition of the HMR. There is no evidence in the record that design, construction, and performance standards other than those contained in the HMR are being applied and enforced under the LACoC, or that the containers and tanks at issue are being used to transport hazardous materials in commerce. Furthermore, LACoC § 80.101(a) exception 1 exempts "off-site hazardous materials transportation in accordance with DOT requirements" from the requirements of LACoC Article 80, including § 80.301(b)(1).

Thus, there is insufficient evidence in the record to determine whether Federal hazmat law preempts § 80.301(b)(1).

3. Ruling

Based on the above, Federal hazmat law preempts the following provisions of LACoC Titles 2 and 32:

(1) Title 2 LACoC §§ 2.20.140, 2.20.150, 2.20.160, and 2.20.170, to the extent that those provisions levy a fee on tank car unloading activities. The fees collected under those provisions are not used for purposes related to hazardous materials transportation;

(2) Title 32 LACoC § 79.809(f), as applied and enforced by Los Angeles County. Los Angeles County fails to recognize the validity of a DOT exemption that authorizes HASA to employ alternative methods of compliance with certain Federal tank car unloading requirements; and

(3) Title 32 LACoC § 79.809(c), which prohibits a tank car from remaining on a siding at point of delivery for more than 24 hours while connected for transfer operations, unless otherwise approved by the fire chief. The unloading restriction is not

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"substantively the same" as Federal tank car unloading requirements.

Based on a lack of information in the record, RSPA is unable to determine whether Federal hazmat law preempts LACoC Title 32, §§ 80.103(e), 80.301(b)(1), 80.402(b)(3)(G)(i) and 80.402(c)(8)(A).

Federal hazmat law does not preempt the following provisions of LACoC Title 32: § 4.108.c.7, Table 4.108–A, § 79.809(b), § 80.101(a) exception 1, § 80.101(b), § 80.103(a), § 80.103(b)(1), § 80.103(b)(2), § 80.103(c), § 80.103(d), § 80.201, §§ 80.202(a) and (b), § 80.203, Appendix VI-A, and § 80.301(a)(2).

C. PD–10(R) (Docket PDA–10(R)

Los Angeles County, California Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property

Applicant: Swimming Pool Chemical Manufacturers' Association (SPCMA)

Local Laws Affected:

Los Angeles County Code (LACoC) Title 32 :
§ 4.108(c)(8)
§ 9.105
§ 75.101
§ 75.103(a)
Table 75.103–A
§ 75.104
§ 75.105 (a) and (b)
§ 75.108
§ 75.205
§ 75.602 (a), (b), and (c)

Summary: Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101–5127, does not preempt the following provisions of LACoC Title 32: § 4.108(c)(8), § 9.105, § 75.101, § 75.103(a), Table 75.103–A, § 75.104, §§ 75.105 (a) and (b), § 75.108, § 75.205, and §§ 75.602 (a), (b), and (c).

1. Application For Preemption Determination

SPCMA filed its application with the Research and Special Programs Administration (RSPA) on January 20, 1993, asking that certain provisions of Title 32 of the 1990 LACoC be preempted. SPCMA states that preemption is warranted because the LACoC applies to the transportation of cryogenic liquids, including unloading and storage. Furthermore, SPCMA asserts that the LACoC applies to the construction of containers used for the transportation of cryogenic liquids, a covered subject area.

On February 12, 1993, RSPA published a Public Notice and Invitation to Comment on SPCMA's application. 58 FR 8480. That Notice set forth the text of SPCMA's application. Following publication of the Public Notice, comments were submitted by the American Trucking Associations (ATA), the County of Los Angeles Fire Department, and the Compressed Gas Association, Inc. Rebuttal comments were submitted by SPCMA.

In response to RSPA's October 14, 1993 Public Notice re-opening the comment period in Docket PDA–10(R), comments were submitted by SPCMA, HASA and the County of Los Angeles Fire Department. SPCMA also updated its application to reflect amendments to Title 32 that were adopted by Los Angeles County in May 1993.

2. Discussion

a. Permits. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.101 requires that storage, handling, and transportation of cryogenic fluids be in accordance with LACoC Article 75. (Article 75 sets forth all requirements pertaining specifically to cryogenic fluids.)

§ 4.108(c)(8) states that a permit must be obtained from the Bureau of Fire Prevention prior to producing, storing or handling "cryogens" in excess of amounts specified in Table No. 4.108–B, except where Federal or State regulations apply.

§ 75.104 indicates that a permit must be obtained to store, handle or transport "cryogens," and references § 4.108.

(2) SPCMA's Arguments and Summary of Comments. SPCMA asserts that the permit requirements in Title 32 apply to any person, firm or corporation that stores, handles or transports cryogenic liquids in excess of the permit amounts set forth in Table No. 4.108–B. Based on its review of § 4.108.c.8, § 75.101, and § 75.104, SPCMA concludes that, in the LACoC, the terms "handling" and "transportation" are synonymous. SPCMA points out that "handling" is defined in LACoC § 9.110 as "the deliberate transport of material by any means to a point of storage or use."

SPCMA further contends that "there is no assurance that a permit can be obtained from the Bureau of Fire Prevention and7or obtained without prior compliance with the LACoC, and in particular, Article 75. Many of the requirements contained in Article 75 are themselves preempted by [Federal hazmat law] and regulation[s] thereunder." SPCMA concludes that the requirement to obtain a permit prior to the storage, handling or transportation of cryogenic liquids is an obstacle to accomplishing and carrying out Federal hazmat law and the HMR and is, therefore, preempted.

ATA supports SPCMA's position. ATA states that the LACoC applies to the transportation of cryogenic liquids, including loading, unloading, and storage incidental thereto, in interstate and intrastate commerce. ATA believes that the requirements directly conflict with Federal hazmat law and the HMR.

The County of Los Angeles Fire Department disagrees with SPCMA's assertion that certain provisions within Title 32 apply to transportation in commerce, and asserts that Title 32 applies to fixed facilities that "handle" hazardous materials. It states that, under the LACoC, "transport" is defined as "handle." It explains that cryogenic liquids arrive at a manufacturing facility via railroad tank car, and the contents are unloaded to a stationary storage tank at the facility. As the need arises, the cryogenic liquids are "transported" via either piping or containers to the site of use. The County of Los Angeles Fire Department explains that, in the above-described situation, "'transport' can mean the transport of cryogenic liquids to processing equipment and pressure vessels from a distant stationary pressure storage tank via piping or from a portable pressure tank that is transported to the processing area." It submits that the meaning of transport in the above example is quite different from that set forth under 49 CFR 107.3, which defines "transportation" as "any movement of property by any mode, and any loading, unloading, or storage incidental thereto."

(3) Analysis. SPCMA, like HASA (in PDA–7(R), discussed above in PD–9(R)), seeks preemption of the permit requirements under the LACoC. In this instance, a permit is required to produce, store, transport on site or handle cryogenic fluids in excess of specified amounts. SPCMA, like HASA, asserts that the permit requirements are preempted because they apply to a facility's on-site transportation of hazardous materials and, therefore, are an obstacle to accomplishing and carrying out Federal hazmat law. For the reasons enumerated above in PD–8(R), Federal hazmat law does not preempt the LACoC permit requirements, which implement the handling requirements under Chapter 6.95 of the California Health and Safety Code.

b. Definition/Classification of Cryogenic Fluids. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 9.105 defines cryogenic fluids as those fluids that have a normal boiling point below 150 degrees fahrenheit.

§ 75.103(a) specifies that cryogenic fluids shall be classified according to Table No. 75.103–A.

Table No. 75.103–A classifies specified cryogenic fluids as either "flammable," "nonflammable," Corrosive/Highly Toxic" or "Oxidizer."

(2) SPCMA's Arguments and Summary of Comments. SPCMA states that the definition of cryogenic fluid at LACoC § 9.105 differs from the definition of cryogenic liquid contained at 49 CFR 173.115(g). Specifically, § 9.105 defines "cryogenic fluid" as "a fluid that has a normal boiling point below 150 degrees fahrenheit." Section 173.115(g) defines "cryogenic liquid" as "a refrigerated liquefied gas having a boiling point colder than −90 degrees celsius (−130 degrees Fahrenheit) at 101.3 kPa (14.7 psi) absolute." SPCMA alleges that "it is impossible to comply with both the definition in the LACoC and the definition in Title 49, because the LACoC definition includes additional 'hazardous materials' which are not classified for shipment as 'cryogenic liquids' in the 'Hazardous Materials Table' at 49 CFR 172.101." SPCMA, therefore, concludes that § 9.105 should be preempted because it applies to a covered subject area—the designation of materials as hazardous—and compliance with both the Federal and local requirement is impossible.

With respect to the classification of hazardous materials, SPCMA states that § 75.103 and Table 75.103–A provide a classification system for cryogenic fluids that is in addition to and different from the HMR. SPCMA gives several examples of how the LACoC classification system and the HMR classification system differ. SPCMA concludes that Federal hazmat law preempts § 75.103 and Table 75.103–A because those provisions apply to hazardous materials classification, a covered subject, and are not substantively the same as the Federal requirement.

The County of Los Angeles Fire Department opposes preemption of § 75.103 and Table 75.103–A. It states that "Title 32 [of the LACoC] regulates the handling and not the transport[ation] (per 49 CFR 107.3) of hazardous substances at a fixed facility. The chemical classification under [Federal hazmat law and the HMR] applies to transportation and does not apply to 'handling' of cryogenic liquids within a fixed facility."

(3) Analysis. The designation of materials as hazardous and the classification of hazardous materials, for purposes of transportation in commerce, are exclusive to the Federal Government. See 49 U.S.C. 5125(b)(1)(A). Federal hazmat law provides that State, local and Indian tribe requirements pertaining to hazardous materials designation and classification for purposes of transportation in commerce are preempted if they are not substantively the same as the Federal requirements or are not otherwise authorized by Federal law. Id. The Federal Government's exclusive role in hazardous materials designation and classification is limited, however, to materials that are in transportation in commerce. Federal hazmat law provides that "[t]he Secretary of Transportation shall designate material * * * or a group or class of material as hazardous when the Secretary decides that *transporting the material in commerce* in a particular amount and form may pose an unreasonable risk to health and safety or property." 49 U.S.C. 5103 (emphasis added).

There is no evidence in the record that Los Angeles County, through LACoC § 9.105, is attempting to designate additional materials as hazardous for purposes related to transportation in commerce. Furthermore, there is no evidence in the record that the LACoC's classification system for cryogenic fluids is applied to materials that are in transportation in commerce. In order for Federal hazmat law to preempt the LACoC requirements, the LACoC requirements would have to apply to the transportation of hazardous materials *in commerce*, or loading, unloading or storage incidental thereto.

The LACoC's designation of certain materials as "cryogenic fluids" and its classification of those materials, in conjunction with the amount of the cryogenic fluid at issue, appear from the record and from RSPA's review of LACoC Article 75 to be used to determine, among other things: (1) whether a permit is required under Article 4 of Title 32, Table 4.108–A; and (2) the required minimum separation between cryogenic fluids in storage on the one hand, and buildings, public spaces, and other hazardous materials, on the other. *See* Table 75.303–A. RSPA has determined that Federal hazmat law does not preempt the LACoC permit requirements because the underlying substantive requirements are otherwise authorized by Federal law. Furthermore, consignee storage of hazardous materials is not regulated under Federal hazmat law.

Thus, Federal hazmat law does not preempt § 9.105, § 75.103(a), or Table No. 75.103–A.

c. Hazard Communication. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.108 requires that warning labels and signs be posted on containers and equipment at locations prescribed by the fire chief.

§ 75.205 states that containers must be identified by the attachment of a nameplate in an accessible place marked as authorized by nationally recognized standards (as set forth at § 2.304(b)) or DOT regulations.

§ 75.602(a) indicates that vehicles transporting cryogenic fluids and subject to Title 32 must be "placarded at the front, rear and on each side identifying the product." Placards must have letters not less than two inches high using approximately a ⅝ inch stroke. Abbreviations are not permitted. Vehicles also must bear other placards required by DOT.

(2) SPCMA's Arguments and Summary of Comments. SPCMA states that § 75.108 requires fixed facilities to post warning labels and signs on containers and equipment and at locations prescribed by the fire chief. SPCMA asserts that the phrase "warning labels and signs" includes labeling, marking and placarding of cryogenic liquid containers. SPCMA further asserts that the LACoC does not specify the particular requirements for labeling, marking and placarding and that, therefore, SPCMA cannot compare the LACoC requirements with Federal hazmat law and HMR requirements in order to ascertain whether they are substantively the same. SPCMA also alleges that different fire chiefs in different jurisdictions "are likely to have different requirements." SPCMA concludes that the requirements under § 75.108 are preempted because they apply to a covered subject—labeling, marking and placarding of hazardous materials—and are an obstacle to accomplishing and carrying out Federal hazmat law and the HMR.

SPCMA states that § 75.205 requires that nameplates be attached to containers "as authorized by nationally recognized standards or DOT regulations." SPCMA asserts that "nationally recognized standards" may or may not be substantively the same as requirements under the HMR. SPCMA states that § 75.205 is preempted because it applies to containers used for the transportation of cryogenic liquids—a covered subject area.

SPCMA states that the vehicle placarding requirements under § 75.602 are in addition to, and different from, Federal requirements. Furthermore, SPCMA asserts that § 75.602(a) confuses the requirements for "marking" and "placarding." SPCMA states that "'[p]lacarding' is required in the LACoC where neither 'placarding' nor 'marking' is required by Federal regulation. In the LACoC, placarding is required for all

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shipments of cryogenic liquids, irrespective of quantity being transported. [Under the HMR,] placarding is not required for shipments of 1,000 pounds or less for 2.1 and 2.2 materials. All shipments—irrespective of quantity—of 2.3 material require placarding."

SPCMA also states that the "placarding" requirement at 75.602(a) actually appears to be a "marking" requirement addressed in Subpart D of 49 CFR Part 172. SPCMA states that § 75.602(a) requires "'placarding' on all vehicles transporting any quantity of cryogenic liquids, and that 'placarding' includes 'placards' and 'markings.'" SPCMA concludes that the requirements at § 75.602(a) are in addition to and different from Federal requirements, in that placarding is required under the LACoC "at times when and at places where there is no Federal requirement." SPCMA asserts that § 75.602(a) requirements pertain to a covered subject area and are not substantively the same as the Federal requirements. SPCMA, therefore, requests that the requirements be preempted. SPCMA also alleges that the § 75.602(a) requirements "fail" the dual compliance test.

The County of Los Angeles Fire Department opposes preemption of § 75.602(a), stating that the placarding requirements under the LACoC apply to the on-site handling of hazardous materials and not the transportation of hazardous materials in commerce.

(3) Analysis. The record does not reflect that the labeling, nameplating and placarding requirements under §§ 75.108, 75.205, and 75.602(a), respectively, are applied to hazardous materials that are in transportation in commerce and, consequently, regulated under Federal hazmat law and the HMR. These regulations appear to apply to hazardous materials stored and transported at facilities for consumption in manufacturing processes. As stated throughout this determination, Federal hazmat law and the HMR do not apply to: (1) hazardous materials that are stored at a consignee's facility; or (2) the transportation of hazardous materials exclusively on private property. Therefore, to the extent that the requirements in §§ 75.108, 75.205 and 75.602(a) pertain to hazardous materials that are stored at a consignee's facility or that are being transported exclusively within that facility, they do not conflict with Federal hazmat law and are not preempted.

d. Motor Vehicles. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.602(b) requires that vehicles transporting cryogenic fluid be equipped with not less than one approved-type fire extinguisher, with a minimum rating of 2–A:20–B:C.

§ 75.602(c) requires that vehicles transporting cryogenic fluid be equipped with adequate chock blocks.

(2) SPCMA's Arguments and Summary of Comments. SPCMA notes that 49 CFR 177.804 requires motor carriers and other persons subject to 49 CFR Part 177 to comply with Federal Motor Carrier Safety Regulations (FMCSR). SPCMA states that the FMCSR, at 49 CFR 393.95, requires a host of safety equipment on all power units, *e.g.*, fire extinguishers, spare fuses, flares, red flags. SPCMA asserts that because "there is no requirement [under the LACoC] for emergency equipment other than fire extinguishers * * * the [LACoC] fire extinguisher requirement is inconsistent with the Federal requirements contained in * * * 49 CFR 393.95(a)." SPCMA concludes that the fire extinguisher requirement "fails both the 'obstacle' and 'dual compliance' tests" and should be preempted.

SPCMA does not address the requirement in § 75.602(c) that vehicles transporting cryogenic fluid be equipped with adequate chock blocks.

No commenter specifically addressed § 75.602(b) or § 75.602(c).

(3) Analysis. SPCMA does not allege and the record does not reflect that the requirements under § 75.602(b) or § 75.602(c) are applied to motor vehicles that transport hazardous materials on other than private property. As stated earlier, Federal hazmat law and the HMR apply to transportation in commerce. Ground transportation is "in commerce" when it takes place on, across, or along a public way. Ground transportation of hazardous material that takes place entirely on private property is not transportation "in commerce," and is not regulated by Federal hazmat law and the HMR.

Thus, Federal hazmat law does not preempt LACoC § 75.602(b) or § 75.602(c) to the extent that each applies to motor vehicles that are transporting hazardous materials exclusively on private property.

e. Packaging Design and Construction. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.105(a) requires that containers, equipment and devices used for the storage, handling and transportation of "cryogenic fluids" be of a type, material and construction approved by the fire chief as suitable for that use. Approval is based on satisfactory evidence that design, construction and testing are in accordance with nationally recognized standards. Title 32, § 2.304(b) lists various national standards and publications, and indicates that the most recent edition or supplement may be used; included in that list is Title 49, Code of Federal Regulations, Chapter 1, which contains the HMR.

§ 75.105(b) states that containers, equipment or devices that are not in compliance with recognized standards for design and construction may be approved by the chief on presentation of satisfactory evidence that they are designed and constructed for safe operation.

(2) SPCMA's Arguments and Summary of Comments. SPCMA notes that the term "container" is defined at § 75.102(b) as "any cryogenic vessel used for transportation, handling or storage." SPCMA believes the term "container" includes all containers used for both storage and on-site transportation of cryogenic liquids, including portable tanks, cargo tanks and rail cars. SPCMA further notes that the fire chief has discretionary approval authority under §§ 75.105 (a) and (b).

SPCMA specifically requests that three issues be addressed in RSPA's preemption determination regarding §§ 75.105 (a) and (b):

(1) Can the chief prohibit the use of containers for the transportation of cryogenic liquids, which be has not approved, and where there are no Federal specifications?

(2) Can the chief approve containers for the transportation of cryogenic liquids [when those containers] are different from those specified in Title 49 of the CFR?

(3) Can the chief approve containers for the transportation of cryogenic liquids which are not in compliance with Federal specifications where Federal specifications exist?

SPCMA states that the fire chief is authorized to approve containers prior to the on-site transportation of cryogenic liquids, including type, material, and construction, absent any Federal requirements. Furthermore, SPCMA alleges that requirements and specifications are likely to vary from district to district, depending on requirements and specifications established by the local fire chief. SPCMA also asserts that the fire chief is authorized to approve any container for on-site transportation without regard to whether the container is constructed in accordance with DOT specifications. Consequently, the fire chief can approve specifications and construction of containers that are in addition to, different from, or not approved by DOT SPCMA concludes that the requirements under §§ 75.105 (a) and (b) should be preempted by the Federal hazmat law because they: (1) are an obstacle to accomplishing and carrying out Federal hazmat law and the HMR; and (2) apply to a covered subject area and are not substantively the same as the Federal requirements.

ATA agrees with SPCMA's position and arguments regarding the LACoC packaging design and construction requirements to the extent that the requirements "pertain to actual transportation of hazardous materials." Nevertheless, ATA believes that the LACoC requirements are not in conflict with Federal hazmat law and the HMR where transportation has concluded. ATA notes that "strict storage of materials for use on the consignee's property is not governed by [Federal hazmat law] and HMRs. Regulations pertaining to storage of materials are within the purview of [OSHA] at the Federal level and similar agencies within the states."

(3) Analysis. Federal hazmat law and the HMR apply to the design and construction of containers used to transport hazardous materials in commerce. This authority is exclusive to the Federal Government. *See* 49 U.S.C. 5125(b)(1)(E). Federal hazmat law provides that the "design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified or sold as qualified for use in transporting hazardous material" is a covered subject area. *Id.* A State, local or Indian tribe requirement that is not substantively the same as the Federal requirements, therefore, is preempted unless otherwise authorized by Federal law.

The packaging design and construction requirements under the LACoC apply to packagings used to transport hazardous materials within the gates of a facility. Federal hazmat law and the HMR do not apply to packagings that are intended for use solely on private property, *i.e.*, packagings that are not intended for the transportation of hazardous materials in commerce. The record does not reflect that the containers, equipment and devices regulated under §§ 75.105 (a) and (b) are used to store, handle or transport cryogenic fluids that are in transportation in commerce.

Consequently, Federal hazmat law does not preempt §§ 75.105 (a) and (b).

3. Ruling

Based on the above, Federal hazmat law does not preempt any of the following provisions of Title 32 LACOC: § 4.108(c)(8), § 9.105, § 75.101, § 75.103(a), Table 75.103–A, § 75.104, §§ 75.105 (a) and (b), § 75.108, § 75.205, and §§ 75.602 (a), (b) and (c).

D. PD–11(R) (Docket PDA–11(R))

Los Angeles County, California Requirements for The On-Site Transportation of Compressed Gases

Applicant: Swimming Pool Chemical Manufacturers' Association (SPCMA)

Local Laws Affected: Los Angeles County Code (LACoC), Title 32 § 4.108.c.7

Summary: Federal hazardous material transportation law, 49 U.S.C. 5101–5127, does not preempt LACoC § 4.108.7 because the substantive permit application requirements are otherwise authorized by Federal law, specifically Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), 42 U.S.C. §§ 11001 *et seq.* and § 112(r) of the Clean Air Act Amendments of 1990 (CAA Amendments), 42 U.S.C. 7412(r).

1. Application for Preemption Determination

On January 12, 1993, SPCMA applied for a determination that Federal hazmat law preempts the permit requirement under LACoC Title 32 as it applies to the on-site transportation of compressed gases. On February 12, 1993, the Research and Special Programs Administration (RSPA) published a Public Notice and Invitation to Comment on SPCMA's application in the **Federal Register**, 58 FR 8488. That Notice set forth the text of SPCMA's application. Following publication of this Public Notice, comments were submitted by the American Trucking Associations, the County of Los Angeles Fire Department, and the Compressed Gas Association. Rebuttal comments were submitted by SPCMA.

In response to RSPA's October 14, 1993, Public Notice re-opening the comment period in Docket PDA–11(R), comments were submitted by SPCMA, HASA and the County of Los Angeles Fire Department.

2. Discussion Regarding Permits

a. LACoC Requirement. SPCMA challenges the following provision under LACoC Title 32:

§ 4.108.c.7 requires a permit to be obtained from the Bureau of Fire Prevention prior to engaging in the storage, on-site transportation, dispensing, use or handling of a compressed gas, at normal temperatures and pressures, in excess of specified amounts listed in Table 4.108–A.

b. SPCMA's Arguments and Summary of Comments. SPCMA states that a permit is required "for the 'on-site' transportation of compressed gases, *i.e.*, movement on property owned, leased, or otherwise under the control of the consignor, consignee, manufacturer, transporter, etc." SPCMA further asserts that "[i]n almost all cases, both 'loading' and 'unloading' of compressed gases occur 'on-site.' Therefore, the permit requirement in the LACoC is applicable to such activities."

SPCMA asserts that "there is no assurance in the LACoC that a permit can be obtained from the bureau of fire prevention and/or obtained without prior compliance with the LACoC. Moreover, a permit can be revoked or cancelled where a change in ownership of the business occurs, change in use of the property, noncompliance with the fire code, change in operations, etc." SPCMA believes that "the permit system is an unauthorized prior restraint on shipment of compressed gases in commerce which are presumptively safe based on compliance with [Federal hazmat law and the HMR], and therefore, constitutes an obstacle to the accomplishment and execution of [Federal hazmat law]."

The County of Los Angeles Fire Department opposes preemption of § 4.108.c.7, stating that the permit requirement does not apply to the transportation of hazardous materials in commerce. It asserts that:

"transportation" as stated in 49 CFR 107.3, means any movement of property by any mode, and any loading, unloading or storage incidental thereto, as related to intrastate and interstate commerce. Under [Title 32 of the LACoC] the * * * meaning of transport is defined as 'handle.' Title 32 * * * regulates the 'storage,' 'handling' and 'use' of hazardous substances, materials and devices that may prove to be hazardous to life or property in the use or occupancy of buildings or premises. [The permit requirement for compressed gases] specifically states the exemption of the permitting requirement for those facilities [where] Federal or State regulations apply.

c. Analysis. In PDA–7(R), HASA challenged LACoC § 4.108.c.7. A discussion of the LACoC permit requirement under § 4.108.c.7, and the rationale for RSPA's finding that Federal hazmat law does not preempt § 4.108.c.7, are at PD–8(R), above.

3. Ruling

Based on the above, Federal hazmat law does not preempt § 4.108.7 because the substantive permit application requirements are otherwise authorized by Federal law, specifically SARA Title III and § 112(r) of the CAA Amendments.

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III. Appeal Rights

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by these decisions may file a petition for reconsideration within 20 days of service of this decision. Any party to these proceedings may seek review of RSPA's decisions "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

These decisions will become RSPA's final decisions 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of the decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of these decisions is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, D.C. on February 7, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A—Statutory and Regulatory Provisions at Issue in PD–8(R), PD–9(R), PD–10(R) and PD–11(R)

A. PD–8(R)—(Docket PDA–9(R)) California Health and Safety Code, Chapter 6.95

25501.3. Additional definition of "Handle"

"Handle" also means the use or potential for use of a quantity of hazardous material by the connection of any marine vessel, tank vehicle, tank car, or container to a system or process for any purpose other than the immediate transfer to or from an approved atmospheric tank or approved portable tank.

25503.7. Railroad car, marine vessel, or tank truck at same facility 30 days; stored

(a) When any hazardous material contained in any rail car, rail tank car, rail freight container, marine vessel, or marine freight container remains within the same railroad facility or business facility for more than 30 days, or a business knows or has reason to know that any rail car, rail tank car, rail freight container, marine vessel, or marine freight container containing any hazardous material will remain at the same railroad facility, marine facility, or business facility for more than 30 days, the hazardous material is deemed stored at that location and for purposes of this chapter and subject to the requirements of this chapter.

(b) Subdivision (a) does not apply to a marine vessel while under construction, repair, modernization, or retrofitting while located in a ship repair facility.

(c) Notwithstanding Section 25510, a business handling hazardous materials or hazardous substances which are stored in a manner subject to subdivision (a) shall immediately notify the administering agency whenever a hazardous material is stored in a rail car, rail tank car, rail freight container marine vessel, or marine freight container (Amended by Stats. 1991, Ch. 1128.)

B. PD–9(R)—(Docket PDA–7(R)) Los Angeles County Code, Titles 2 and 32

Title 2

Section 2.20.140 Annual fees to be paid by handlers of hazardous materials.

The annual fee required to be paid to the county by every handler of hazardous materials for the administration and enforcement of the provisions of the Act shall be as follows:

Fee group	Total quantity of hazardous materials handled at any one time during the retotal quantity of hazardous materials handled at any one time during fee group the reporting year	Annual fee
I	Minor Handler 55–500 gallons or 500–5,000 pounds or 200–2,000 cubic feet	$110.00
II	Moderate Handler 501–2,750 gallons or 5,001–25,000 pounds or 2,001–10,000 cubic feet	330.00
III	Major Handler 2,751 and over gallons or 25,001 and over pounds or 10,0001 and over cubic feet	770.00
IV	Major Handler—Large Volume (a) 50,000 gallons and over or (b) 500,000 pounds and over or (c) 200,000 cubic feet and over or (d) A total quantity of two or more hazardous materials when expressed in or converted to pounds that is 500,000 pounds or greater, AND (e) Which is either a refinery, chemical plant, distillery, bulk plant, or terminal as defined herein.	2,650.00

The following definitions govern the construction of this Section 2.20.140:

"Refinery" means a plant in which flammable or combustible liquids are produced on a commercial scale from crude petroleum, natural gasoline, or other hydrocarbon sources.

"Chemical plant" means a large integrated plant or that portion of such a plant other than refinery or distillery where liquids are produced by chemical reactions or used in chemical reactions.

"Distillery" means a plant or that portion of a plant where liquids produced by fermentation are concentrated, and where the concentrated products may also be mixed, stored, or packaged.

"Bulk plant or terminal" means that portion of a property where liquids are received by tank vessel, pipelines, tank car, or tank vehicle, and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

V	Exempt Handler Less than 55 gallons and Less than 500 pounds and Less than 200 cubic feet	No fee
Exception:	Underground fuel tanks regardless of quantity.	Annual fee $110.00

Fee group	Total quantity of hazardous materials handled at any one time during the retotal quantity of hazardous materials handled at any one time during fee group the reporting year	Annual fee

Exemption: Every governmental agency shall comply with the reporting requirements established by the county administering agency relating to hazardous materials under the Act, but every governmental agency is exempt from the annual fee required to be paid under this Section 2.20.140.

(Ord. 90–0109 § 3.1990: Ord. 89–0055 § 1.1989: Ord. 87–0001 § 1 (part), 1987.)

2.20.150 Additional fees—Acutely hazardous substances.

Every handler of an acutely hazardous material, shall in addition to the fee specified in Section 2.20.140, be required to pay an annual fee to the county for the administration and enforcement of acutely hazardous materials registration, risk assessment, and risk mitigation in accordance with compliance under the Act. This fee shall be calculated as follows:

AHM Fee = Base Administrative Fee + RMPP Risk Factor Fee

Where:

The base administrative fee shall be charged each handler of one or more acutely hazardous materials or mixtures containing an acutely hazardous material handled in quantities equal to or greater than the threshold planning quantities specified in Section 25536 of the Act, as follows:

1–3 AHMs = $50
4 or more AHMs = $100

And

RMPP Risk Factor Fee = Rate Factor x Handler Risk Units

Where:

The county rate factor shall be calculated as the county RMPP program cost (the cost base for which is defined in Section 2.20.170), minus the total of the handler base administrative fees, divided by the total county risk units.

Rate Factor = County RMPP Program Cost—Total Base Admin. Fees+Total County Risk Units

The total county risk units is determined by adding the risk units for each AHM registered in the county. The number of risk units for each AHM is equal to the total reported daily maximum quantity in pounds divided by the assigned TPQ for that AHM. For the 1990–91 fiscal year, the county RMPP program cost is $547,871, the total base administrative fees is $38,650, the total county risk units is 885.629 and the rate factor is $0.57498

And:

The handler risk units are determined by adding risk units for each AHM required to be registered by each handler.

Any "Third Party Technical Review" required by the administering agency shall be a cost paid by the handler.

Exemption:

Every governmental agency shall comply with the reporting requirements established by the county administering agency relating to AHMs under the Act, but every governmental agency is exempt from the annual fee required to be paid under this Section 2.20.150.

(Ord. 90–0190 § 4, 1990.)

2.20.160 Late submission fee.

A late submission fee shall apply to the filing requirements of both the business plan and inventory and to the AHM registration requirements as follows:

Each handler submitting the required hazardous materials business plan or inventory documents after January 1st of each year or of each second year as specified in Section 2.20.130 and each AHM handler submitting the required AHM registration documents after January 1st of each year shall be levied a late submission fee commensurate to the additional administrative costs as determined by the administering agency and approved by the auditor-controller. Said late submission fee shall be $230 for the 1990–91 fiscal year.

(Ord. 90–0190 § 5, 1990.)

2.20.170 Fee schedule—Annual adjustment procedure.

Beginning with the 1991–92 fiscal year, the schedule of fees contained in Sections 2.20.140 through 2.20.160 inclusive shall be adjusted annually by the following procedure:

The annual adjustment shall be the result of computing the change in the annualized cost to the administering agency of administering the program, where "annualized cost" is defined as the program cost which includes applicable salary, employee benefits and overhead calculated from rates contained in the administering agency's rate package, as approved by the auditor-controller.

Program Cost=Hazmat Section Personnel Salaries+Employee Benefits+Overhead

The program cost is annually re-allocated among handlers based upon:

(A) Disclosure Unit—The number of handlers in each fee group and time involved in processing the required documents in each group.

(B) RMPP Unit—Total county risk units and each handlers risk units.

Where:

Disclosure unit is the unit assigned to administer the hazardous materials disclosure program (Section 2.20.140), and RMPP unit is the unit assigned to administer the AHM registration and risk management and prevention programs (Section 2.20.150).

(Ord. 90–0190 § 6, 1990.)

TITLE 32

§ 4.108.

A permit shall be obtained from the bureau of fire prevention prior to engaging in the following activities, operations, practices or functions: * * *

c.7. Compressed gases. To store, transport on site, dispense, use or handle at normal temperatures and pressures compressed gases in excess of the amounts listed in Table No. 4.108.A.

TABLE NO. 4.108–A.—PERMIT AMOUNTS FOR COMPRESSED GASES[1]

Type of gas	Amount
Corrosive	Any amount.
Flammable (except cryogenic fluids and liquefied petroleum gases).	200 cubic feet.
Highly toxic	Any amount.
Inert	6,000 cubic feet.
Oxidizing (including oxygen).	500 cubic feet.
Pyrophoric	Any amount.
Radioactive	Any amount.
Toxic	Any amount.
Unstable (reactive)	Any amount.

[1] See Articles 74, 80 and 82 for additional requirements and exceptions.

§ 79.809.

(b) Storage Tanks. Class I, II or III liquids shall be transferred from a tank vehicle or tank car only into an approved atmospheric tank or approved portable tank.

(c) Time Limit. Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring the liquid between tank cars and permanent storage tanks. Unless otherwise approved by the chief, a tank car shall not be allowed to remain on a siding at point of delivery for more than 24 hours while connected for transfer operations.

(f) Attendant. The operator or other competent person shall be in attendance at all times while a tank vehicle or tank car is discharging cargo. When practical, the tank vehicle or tank car shall be positioned such that the operating controls and the discharging end of the hoses are both in view of the operator or other competent person.

§ 80.101.

(a) General. Prevention, control and mitigation of dangerous conditions related to storage, dispensing, use and handling of hazardous materials and information needed by emergency response personnel shall be in accordance with this article.

Exceptions: 1. Off-site hazardous materials transportation in accordance with DOT requirements. * * *

(b) Material Classification. Hazardous materials are those chemicals or substances defined as such in Article 9. See Appendix VI–A for the classification of hazard categories and hazard evaluations.

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Exception: For the purpose of this article, carcinogens, irritants and sensitizers do not include commonly used building materials and consumer products which are not otherwise regulated elsewhere in this code.

The classification system referenced in Division II shall apply to all hazardous materials regulated elsewhere in this code.

§ 80.103.

(a) General. Permits are required to store, dispense, use or handle hazardous material in excess of quantities specified in Section 4.108.

A permit is required when a material is classified as having more than one hazard category if the quantity limits are exceeded in any category.

Permits are required to install, repair, abandon, remove, place temporarily out of service, close or substantially modify a storage facility or other area regulated by this article. See also Sections 80.110 and 80.111.

(b) Hazardous Materials Business Plan. 1. Application. Each application for a permit required by this article shall include a hazardous materials business plan (HMBP) in accordance with Part 2 of Chapter 2.20 of Title 2 of this code. (2)—Reporting. Every business shall comply with the reporting requirements as set forth in Part 2 of Chapter 2.20 of Title 2 of this code.

(c) Hazardous Materials Inventory Statement. Each application for a permit required by this article shall include a hazardous materials inventory statement (HMIS) in accordance with Part 2 of Chapter 2.20 of Title 2 of this code.

(d) Risk Management and Prevention Program. Every business shall comply with the requirements as set forth in Part 2 of Chapter 2.20 of this code.

(e) Emergency Information. Hazardous materials business plans, risk management prevention programs and hazardous materials inventory statements shall be posted in an approved location and immediately available to emergency responders. The chief may require that the information be posted at the entrance to the occupancy or property. (Ord. 93-0044 § 100, 1993.)

§ 80.201.

Hazardous materials shall be divided into hazard categories. The categories include materials regulated under this article and materials regulated elsewhere in this code.

§ 80.202.

(a) Physical Hazards. The materials listed in this subsection are classified as physical hazards. A material with a primary classification as a physical hazard can also present a health hazard.

1. Explosives and blasting agents, regulated elsewhere in this code.
2. Compressed gases, regulated in this article and elsewhere in this code.
3. Flammable and combustible liquids regulated elsewhere in this code.
4. Flammable solids.
5. Organic peroxides.
6. Oxidizers.
7. Pyrophoric materials.
8. Unstable (reactive) materials.
9. Water-reactive solids and liquids.
10. Cryogenic fluids, regulated under this article and elsewhere in this code.

(b) Health Hazards. The materials listed in this subsection are classified as health hazards. A material with a primary classification as a health hazard can also present a physical hazard.

1. Highly toxic or toxic materials, including highly toxic or toxic compressed gases.
2. Radioactive materials.
3. Corrosives.
4. Carcinogens, irritants, sensitizers and other health hazards.

§ 80.203.

For descriptions and examples of materials included in hazard categories, see Appendix VI-A.

Appendix VI-A—[available in RSPA Dockets Unit]

§ 80.301.

(a)(2) Quantities exceeding exempt amounts. Storage of hazardous materials, in containers, cylinder and tanks, in excess of the exempt amounts specified in Sections 80.302 through 80.315 shall be in accordance with this division. Tank vehicles and railroad tank cars shall not be used as storage tanks. Unloading operations shall be in accordance with Section 79.808 [sic] [Should read "Section 79.809"]. (Ord. 93-0044 § 104, 1993.)

(b)(1) Containers and Tanks. Design and construction. Containers and tanks shall be designed and constructed in accordance with nationally recognized standards. See Section 2.304(b).

§ 80.402.

(b)(3)(G)(i) [Indoor dispensing and use] [Closed Systems] Special requirements for highly toxic and toxic compressed gases. Ventilation and storage arrangement. Compressed gas cylinders in use shall be within ventilated gas cabinets, laboratory fume hoods, exhausted enclosures or separate gas storage rooms. When portable or stationary tanks are utilized in use or dispensing, they shall be within a ventilated separate gas storage room or placed within an exhausted enclosure.

(c)(8)(A) [Exterior Dispensing and Use] Special requirements for highly toxic or toxic compressed gases. Ventilation and storage arrangement. When cylinders or portable containers are used out-of-doors, gas cabinets or a locally exhausted enclosure shall be provided.

C. PD-10(R)—(Docket PDA-10(R))

LOS ANGELES COUNTY CODE, TITLE 32

§ 4.108.

(c)(6). Cryogens. Except where federal or state regulations apply and except for fuel systems of the vehicle, to produce, store or handle cryogens in excess of the amounts listed in Table No. 4.108-B.

§ 9.105.

Cryogenic Fluid is a fluid that has a normal boiling point below 150°F.

§ 75.101

Storage, handling and transportation of cryogenic fluids shall be in accordance with this article.

For quantity limits for storage in buildings, see Section 80.311.

§ 75.103.

(a) Classification. Cryogenic fluids shall be classified according to Table No. 75.103-A.

TABLE NO. 75.103-A.—CLASSIFICATION OF CRYOGENIC FLUIDS

Flammable	Nonflammable	Corrosive/highly toxic	Oxidizer
Carbon Monoxide	Air	Carbon Monoxide	Fluorine.
Deuterium[1]	Argon	Fluorine	Nitric oxide
Ethylene	Helium	Nitric oxide	Oxygen.
Hydrogen	Krypton		
Methane	Neon		
	Nitrogen		
	Xenon		

[1] Heavy hydrogen is treated as hydrogen in this article.

§ 75.104.

For a permit to store, handle or transport cryogens, see Section 4.108.

Exception: Permits are not required for vehicles properly equipped for and using cryogenic fluids as the primary fuel for propelling the vehicle or for refrigerating the lading.

§ 75.105.

(a) General. Containers, equipment and devices used for the storage, handling and transportation of cryogenic fluids shall be of a type, material and construction approved by the chief as suitable for such use. Approval shall be based upon satisfactory evidence that the design, construction and test are in accordance with nationally recognized standards. See Section 2.304(b).

(b) Unidentified Containers. Containers, equipment or devices which are not in compliance with recognized standards for design and construction may be approved by the chief upon presentation of satisfactory evidence that they are designed and constructed for safe operation.

§ 75.108.

Warning labels and signs shall be posted on containers and equipment and at locations prescribed by the chief.

§ 75.205.

Containers shall be identified by the attachment of a nameplate in an accessible place marked as authorized by nationally recognized standards or DOT regulations. See Section 2.304(b).

§ 75.602.

Vehicles transporting cryogenic fluids and subject to requirements of this code shall:

(a) Be placarded at the front, rear and on each side identifying the product. Placards shall have letters not less than 2 inches high using approximately a 5/8-inch stroke. Abbreviations shall not be used. In addition to the placard identifying the product, vehicles shall also bear other placards required by DOT, such as FLAMMABLE GAS and OXIDIZER.

(b) Be equipped with not less than one approved-type fire extinguisher, with a minimum rating of 2-A:20-B:C.

(c) Be equipped with adequate chock blocks.

D. PD-11(R)—(Docket PDA-11(R))

LOS ANGELES COUNTY CODE, TITLE 32

§ 4.108.

A permit shall be obtained from the bureau of fire prevention prior to engaging in the following activities, operations, practices or functions: • • •

c.7. Compressed gases. To store, transport on site, dispense, use or handle at normal temperatures and pressures compressed gases in excess of the amounts listed in Table No. 4.108-A.

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Part III

Department of Transportation

Research and Special Programs Administration

California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids; Decision on Petition for Reconsideration; Notice

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Preemption Determination No. PD–4(R); Docket No. PDA–6(R)]

California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids; Decision on Petition for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of decision on petition for reconsideration of administrative determination of preemption.

PETITIONER: California Highway Patrol (CHP).

STATE LAWS AFFECTED: California Vehicle Code (VC), Division 14.7 (sections 34000–34102), and California Code of Regulations (CCR), Title 13, Chapter 6, Article 3 (sections 1160–1168) and Article 6 (sections 1190–1197).

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: RSPA's Associate Administrator for Hazardous Materials Safety is denying CHP's petition for reconsideration of the determination that California's requirement for an annual inspection of cargo tanks and portable tanks used for highway transportation of flammable and combustible liquids was preempted by the former Hazardous Materials Transportation Act (HMTA) (since revised, codified and enacted without substantive change at 49 U.S.C. 5101 *et seq.*).

This decision constitutes RSPA's final action on the July 27, 1992 application for a preemption determination filed by Nalco Chemical Co. (Nalco). Any party who submitted comments in Docket No. PDA–6(R) (including the applicant) may seek judicial review within 60 days of this decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

The California Highway Patrol (CHP) administers a design, registration, and inspection program applicable to cargo tanks and portable tanks on vehicles that transport flammable and combustible liquids on highways within California. See VC Div. 14.7 and § 34001. Excluded from the CHP's Cargo Tank (CT) program are, among others, a vehicle's own fuel tanks; tanks smaller than 120 gallons (or most tanks smaller than 500 gallons that meet DOT specifications); empty tanks (with less than 120 gallons of residue); and intermodal IM 101 and 102 portable tanks when the highway portion of an interstate shipment is less than 25 miles from an "ocean port or railroad loading or unloading terminal." VC 34003(a). See also the discussion in Preemption Determination (PD) No. 4(R), 58 FR 48933, 48934 (Sept. 20, 1993).

In July 1992, Nalco applied for a determination that the HMTA preempted major portions of California's CT program. Following notice of Nalco's application in the **Federal Register**, 57 FR 38081 (Aug. 21, 1992), and the receipt of written comments from all interested parties, RSPA issued its determination in PD–4(R) that the former HMTA:

(a) Preempted California's requirement for an annual inspection of cargo tanks and portable tanks used for highway transportation of flammable and combustible liquids, as that requirement is applied and enforced, because any wait for the arrival of State inspectors from another location constitutes an "unnecessary" delay;

(b) did not preempt California's requirement for an annual registration, as applied and enforced, because there is no evidence that this requirement creates any delays separate from the wait for an inspection to be conducted;

(c) did not preempt California's statute authorizing design and construction standards for cargo tanks and portable tanks used to transport flammable and combustible liquids, because there is no evidence that California enforces design and construction requirements, with respect to tanks meeting DOT specifications, that are not substantively the same as requirements in the HMR; and

(d) preempted the following State marking requirements, when applied to DOT specification cargo tanks and portable tanks, because they are not substantively the same as requirements in the HMR: (1) That a metal identification plate be affixed to any tank for which such a plate is not required by the HMR (13 CCR 1195); (2) that a "CT number" be marked on the tank or on a metal identification plate on the tank (13 CCR 1194); and (3) that a certification label be affixed to the tank and a registration certificate be carried in a waterproof holder permanently attached to portable tanks (VC 34044 and 13 CCR 1193).

RSPA did not decide whether the former HMTA preempted either: (a) California's registration fees, since no party contended that the fees are inequitable or used for purposes other than those related to the transportation of hazardous materials, or (b) the requirement that the remote secondary control for internal valves be clearly labeled (13 CCR 1197), in the absence of any evidence that Nalco or any other party submitting comments is directly affected by this requirement.

RSPA's determination did not address similar California registration, inspection and certification requirements applicable to vehicles and tanks used to transport hazardous wastes, but noted that these requirements are subject to the same Federal preemption provisions and the general principles discussed in PD–4(R). RSPA also noted that its determination did not consider or affect State motor vehicle inspection and registration requirements that apply to all commercial vehicles.

Within the 20-day time period provided in 49 CFR 107.211(a), CHP filed a petition for reconsideration of RSPA's decision in PD–4(R). CHP certified that it had mailed a copy of its petition to Nalco and all others who had submitted comments, in accordance with 49 CFR 107.211(c). Four parties responded to CHP's petition for reconsideration: Nalco, National Tank Truck Carriers, Inc. (NTTC), Chemical Waste Transportation Institute (CWTI), and the 3M Corporation (3M).

In Part II of the decision in PD–4(R), RSPA set forth the standards for making determinations of preemption under the former HMTA and the specific statutory provisions under which non-Federal requirements governing the transportation of hazardous materials are preempted. 58 FR at 48934–35. On July 5, 1994, President Clinton signed Public Law 103–272 which extensively revised, codified and enacted without substantive change numerous laws related to transportation. The former HMTA, 49 App. U.S.C. 1801 *et seq.*, has been repealed and replaced by 49 U.S.C. Chapter 51 (5101 *et seq.*), "Transportation of Hazardous Material," except as to "proceedings that were begun before July 5, 1994." Accordingly, the preemption provisions in former 49 App. U.S.C. 1804 and 1811, discussed in Part II of PD–4(R), remain applicable to RSPA's consideration of this petition for reconsideration. However, since Congress made no substantive change in passing 49 U.S.C Chapter 51, this decision will cite to the preemption criteria as presently set forth in 49 U.S.C. 5125.

II. Petition for Reconsideration

CHP's petition seeks reconsideration of the decision in PD–4(R) that 49 U.S.C. 5125(a) preempts California's requirement for an annual inspection of cargo tanks and portable tanks used to transport flammable and combustible liquids. It does not contest RSPA's determination that 49 U.S.C. 5125(b) preempts certain requirements for marking these tanks, although CHP states that it "will petition RSPA for a waiver of preemption" as to the requirement for a "metal identification plate on a non-spec cargo tank (13 CCR 1195)." With respect to the annual inspection requirement, CHP asks for "correction of [three alleged] factual errors," and it asks three questions for "written clarification of the application of the preemption [determination]."

First, CHP contends that there was no "current substantive evidence that significant delays were still being experienced." According to CHP, the comments by Union Pacific Railroad Co. (UPRR) and CWTI concerned the separate (but similar) requirements imposed on transporters of hazardous waste, under California's Hazardous Waste Vehicle and Container Inspection and Certification Program (HWIC), rather than the delays currently being experienced under the CT Program. CHP refers to the availability of temporary registration under the CT program, which supposedly eliminates the delays experienced in the HWIC Program. And it reiterates that it "has more than doubled the number of inspectors statewide since UPRR's comments were made * * * and invited Nalco to update [its] experience."

CHP charges that comments by both Nalco and 3M are "invalid," on the ground that these comments did not consider changes made to the CT Program between 1990 and 1993. CHP alleges that the Hazardous Materials Advisory Council (HMAC) and NTTC did not provide substantial or substantive evidence of a burden on commerce or an obstacle to compliance with the Federal hazardous material transportation law and the HMR. CHP also argues that comments "about the proliferation of other states' programs failed to address the addition of 34120 and 34121 VC which authorized reciprocity with CT Programs by other States and the Federal Government."

Second, CHP asserts that RSPA has improperly interpreted 49 CFR 177.853(a) to prohibit "safety related delays, including compliance with mandatory inspection programs [which] are legitimate reasons for delay." It argues that the intent of this regulation "was to balance safe transportation of hazardous materials with the need for their expeditious delivery," and that RSPA's determination "implies that delays for any reason (other than as specifically authorized)"—including bad weather, road hazards, driver rest periods, and holidays—are "unnecessary." CHP also argues that 177.853(a) should not apply to any delays after delivery of the tank's contents, since that is the "point of 'final discharge at destination.'"

Third, CHP states that RSPA also may not clearly understand—and that HMAC and NTTC failed to investigate or address—California's

> Temporary registration process that allows the carrier to simply forward the registration fees via a telegraphic money order and carry a copy as temporary cargo tank registration for up to 10 days (see 13 CCR 1190.1(b)) as proof of registration.

CHP asserts that a carrier's ability to "obtain a temporary cargo tank registration for any out-of-state based cargo tank 24 hours a day, 365 days a year" avoids delays, because the temporary registration allows the tank to enter the State, be unloaded, and then be presented for inspection. CHP continues that a 1992 amendment to the inspection requirement "allows the carriers to freely move a tank that contains only residue throughout the State without current registration," so the carrier is subject to citation only if it reloads the tank with a flammable or combustible liquid after failing to be inspected within 10 days of entering California.

Besides these alleged errors, CHP asks RSPA to answer the following questions to clarify the ruling in PD–4(R):

1. Given the fact that the HMTUSA allows the State the authority to require a cargo tank registration program (separate from the inspection program), can the State require some form of proof of registration be carried with the packaging (cargo or portable tank) either directly on the packaging or carried in the vehicle (or vehicle combination)?

2. Based on the fact that HMTA allows the State to operate a registration program, can the State require some means of positively identifying the packaging in order to verify its registration (keeping in mind that nearly all bulk packagings have some type of unique identifier)? Please note that non-specification (DOT) packagings which require no identification are the central issue.

3. Is our understanding of the ruling correct in that the mandatory inspection and certification is only preempted for tanks based out of California (i.e., the State is not preempted from requiring a mandatory inspection of tanks based in California as the operators of these tanks have adequate opportunity to have the tanks inspected prior (up to 60 days prior) to the expiration of the previous registration/certification)?

III. Comments Responding to the Petition for Reconsideration

Three parties submitted comments opposing CHP's petition for reconsideration: Nalco, NTTC, and CWTI. In addition, 3M stated that it now uses portable tanks that are no longer covered by the CHP inspection requirement (although it incurred costs "in reverting to drum shipments and back to portable tanks once the amendment became effective"), and thus was withdrawing its earlier comments.

As it had earlier, Nalco acknowledges "improvements in California's registration and inspection processing," but contends that "delays continue to be encountered, both in this program and in the immediately parallel program on wastes." It asserts that CHP's "focus is misplaced," because the "primary issue is not the minutes or hours of delay as they affect a particular tank on a particular day but, rather, whether the delay is 'unnecessary' as that term is used in the regulations." Nalco contends that RSPA has not misinterpreted 49 CFR 177.853(a) because "[e]xpeditious delivery is a safety issue, not a commercial one."

NTTC disagrees that any of the parties had "confused" the requirements of California's HWIC and CT Programs or that there was any error from an alleged failure to respond to the changes in the CT Program which CHP implemented between 1990 and 1993. NTTC quotes the language at 58 FR 48933 stating that PD–4(R) "does not address" the HWIC Program, and it asserts that RSPA properly considered "the fact patterns as presented in the original petitions."

NTTC contends that temporary registration will not prevent delays. It states that, even if a carrier's headquarters "telegraphs a money order to CHP," the truck may depart before confirmation of registration, and "geography and time zone differences assure that the driver will not have a copy of the documentation." NTTC also presents situations in which delays would exceed the 10-day period permitted for inspection, under a temporary registration:

> Truck deliveries may be made during weekends or at hours when inspectors are not available. Inspectors take holidays, they call in sick or they may be redispatched to more pressing duties. Surely the state is not asserting that a vehicle "hang around" until such contingencies are resolved?

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NTTC also states that the "reciprocity" provisions" in the CT program are illusory, because "CHP failed to give but one example of another state joined by such provisions." According to NTTC, "the extension of reciprocity is discretionary. There are no readily-available criteria upon which a carrier (or even another state) can rely to determine whether or not an existing program is 'reciprocal' with California."

CWTI similarly argues that "reciprocity has not materialized." It asserts that CHP's discussion of "factual errors" and "changes to the CT program" miss the point of the decision in PD–4(R): "To the extent [that] CHP can demonstrate to RSPA that its CT program no longer causes 'unnecessary' delay, the CHP may begin to apply and enforce its requirements." CWTI contends that CHP has not eliminated unnecessary delay, even by hiring more inspectors:

> The unavailability of inspectors, however, is only part of the unnecessary delay problem. Delay also results from the advance notification of hazardous materials shipments which must attend all inspections in order to arrange for the inspection and routing of vehicles and bulk packagings to inspection locations, as well as delays which may result from the logistics of obtaining, completing, and filing authorized documentation of vehicle/bulk packaging registration and fees.

CWTI likens delays for bad weather and holidays to "acts of God," and states the "key point" to be that "state program deficiencies evidenced by a lack of inspectors and/or inspection locations do not justify delay in the transportation of hazardous materials." Citing the legislative history and findings in the 1990 amendments to the former HMTA, CWTI argues that unnecessary delay inhibits safety, not just commerce. And it states that RSPA is the proper agency to balance what CHP asserts are competing goals of "safe transportation" and "expeditious delivery."

CWTI initially accepted statements in the petition for reconsideration that CHP "'routinely find(s) tanks that are not in compliance with the HMR,'" as short as one day after certification by a DOT-registered facility, but argued that this simply proves that "any inspection is as good as the point in time in which it is conducted," and "roadside inspections are vital to ensuring the safe transportation of hazardous materials." (In supplemental comments dated November 17, 1993, CWTI disagreed with CHP's statements of routinely finding tanks in violation of the HMR, based on data in the Federal Highway Administration's 1992 Annual Report. These supplemental comments are not necessary for reaching a decision on CHP's petition for reconsideration.) CWTI asserted that, rather than proceeding with "unilateral state action," CHP should provide more specific data to support its concern that periodic inspections under DOT's regulations are inadequate.

CWTI finds CHP's statements concerning the absence of temporary registration under the HWIC Program is an admission that "the HWIC program causes 'unnecessary delay.'" It requests that "RSPA repeat in as strong of terms as possible its directive that the CHP desist applying and enforcing the HWIC program in a manner which is inconsistent with the principles contained in PD–4(R)." CWTI also states that RSPA correctly decided that 49 U.S.C. 5125(b) preempts California's marking requirements, and that CHP should have "participate[d] in the formulation of federal requirements for the marking/certification of cargo tanks used for the transportation of hazardous materials," in RSPA's rulemaking Docket No. HM–183. CWTI notes that RSPA reached no conclusion about the registration fees under the CT Program, and comments that the requirement that fees be equitable, in former 49 App. U.S.C. 1811(b) (reworded as "fair" in 49 U.S.C. 5125(g)), is generally violated when "fees remain unapportioned for carriers operating in interstate commerce."

Nalco, NTTC and CWTI all challenge CHP's implicit positions, in the questions, that it would be appropriate to require proof of registration to "be transported with the packaging (cargo or portable tank)" and "some means of positively identifying the packaging in order to verify its registration." NTTC states that all tanks have some means of identification; "[e]ven non specification cargo tanks have VIN numbers." Nalco agrees, stating that as part of the registration process, States gather information about the registrant and its equipment and can "provide it directly to their inspectors without having to decorate the interior or exterior of the vehicle for each jurisdiction for the inspectors' convenience." CWTI opposes what it calls CHP's "efforts to reassert a linkage between specific vehicles and registration." It alleges the "burden that would result if other states insisted on unique numbers and shipping paper requirements," and refers to recommendations of a working group on uniform forms and procedures for registration and permitting, under 49 U.S.C. 5119. According to CWTI, the working group has recommended State registration of hazardous materials carriers, not specific vehicles or packagings.

Nalco and NTTC disagree with CHP's conclusion that an annual inspection may still be required for cargo tanks and portable tanks based in California. They consider that the decision in PD–4(R) applies to all tanks regulated by the HMR, and Nalco comments that, "in light of the anticipated rule in Docket No. HM–200," the small number of tanks presently not governed by the HMR "does not warrant the confusion that would be caused by a State program addressed only to these units."

IV. Discussion

As discussed in PD–4(R), Nalco's original challenge to California's inspection requirement, in 1990, was accompanied by an affidavit setting forth specific dates that "filled incoming tanks" were held waiting the arrival of a CHP inspector, "thereby delaying delivery to customers." 58 FR at 48938. Two parties submitting comments in the original proceeding (designated IRA–53) provided specific time periods for CHP's delays in inspecting tanks: Union Pacific cited waits of up to five days for inspections at its intermodal ramps (which CHP states referred only to tanks containing hazardous wastes), and CWTI stated that it had encountered "delays of two to three days for an inspection" of tanks used for hazardous wastes. 58 FR at 48939.

After the application in IRA–53 was returned to Nalco, and Nalco petitioned for an administrative determination of preemption pursuant to what is now 49 U.S.C. 5125(d), no party submitted further information as to the specific periods that cargo tanks and portable tanks used for flammable and combustible liquids were being delayed. Rather, Nalco stated that "improvements and pre-payment options have speeded the issuance of instructions to the field * * *, but unnecessary delays are still encountered * * * compounded by inspector[s'] schedules, vacations and sick leave." 48 FR at 48938. CHP acknowledged that some delays still exist, despite modifications such as reducing the number of tanks subject to inspection, increasing the number of inspectors, establishing inspection stations at four port-of-entry locations, and providing a 10-day temporary registration that allows a carrier to enter California and deliver its load before being inspected.

At no time, however, in its prior comments or in its petition for reconsideration, has CHP contended that it has eliminated situations where the transportation of a loaded tank must be interrupted and wait for the arrival of an inspector. Rather CHP acknowledged, in its opening comments in PDA–6(R), that "some instances have resulted in inspections not being performed in as timely a manner as the CHP or industry would like * * * due to lack of adequate planning on the part of both the operator and the CHP." In its rebuttal comments, CHP stated that, with the "current [inspection] staff and the four POE facilities we can inspect nearly all out-of-state domiciled cargo tanks without any diversion or delays." It contended that the remaining delays encountered in performing inspections are reasonable, justified and not "unnecessary" based on the number of violations found—as CHP again contends in its petition for reconsideration.

RSPA's decision in PD–4(R) did not ignore safety, but rather followed the prior inconsistency rulings in which RSPA consistently found that the safe transportation of hazardous materials is advanced by 49 C.F.R. 177.853(a) which prohibits "unnecessary" delays. See the discussion at 58 FR 48939–41. The argument in CHP's petition for reconsideration that safety justifies delays does not provide any answer. Safety has been alleged as the basis of every non-Federal requirement that has been challenged, and considered by RSPA, since the former HMTA first provided for the preemption of "inconsistent" State and local requirements.

The only difference cited by CHP to distinguish the CT inspection program and the HWIC program applicable to carriers of hazardous waste is the availability of a 10-day temporary registration under the CT program only. Whether or not the procedures for temporary registration can eliminate delays, there is no information that they have eliminated delays. Moreover, NTTC asserts that temporary registration will not always prevent delays.

The CT and HWIC inspection programs appear to be otherwise similar, and the inspections under both are conducted by CHP. For that reason, RSPA must assume that waits experienced by transporters of hazardous waste (such as UPRR and CWTI) are representative of waits faced by an interstate carrier of flammable or combustible liquids, when that carrier is unable to obtain a temporary registration or plan its arrival to allow for inspection at a POE location.

In addition, CHP's admissions that it has not eliminated situations where loaded tanks must wait for an inspector to arrive to conduct an inspection make the specific number of days' wait cited by UPRR and CWTI unnecessary for RSPA's decision.

The decision in PD–4(R) was a narrow one. As specifically noted there, RSPA encourages State and local governments to adopt and enforce the requirements in the HMR through inspections. 58 FR 48940–41. During fiscal 1994, DOT provided grants in excess of $64 million to all States, and $3.2 million to California, to carry out inspections under the Federal Motor Carrier Assistance Program. See generally 49 CFR Part 350 governing grants "to encourage each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers." 49 CFR 350.5.

Moreover, RSPA agreed with all parties that the time involved to conduct a tank inspection was reasonable, and not unnecessary, including any time waiting one's "turn" for an inspector already present. 58 FR at 48941. But RSPA found that forcing a tank to wait for the arrival of an inspector from another location was an "unnecessary" delay, and because California's CT program was not free from these kinds of delays it created an obstacle to the accomplishment and execution of the Federal hazardous material transportation law and the HMR. California "may not require an inspection as a condition of travelling on California's roads when the inspection cannot be conducted without delay because an inspector must come to the place of inspection from another location." *Id.* For that reason, RSPA found that the provision now codified at 49 U.S.C. 5125(a) preempted the inspection requirement in VC 34060 and 13 CCR 1192, as that requirement was being applied and enforced.

If and when California eliminates the unreasonable delays in its inspection program, that requirement will no longer be preempted. Nothing in CHP's petition for reconsideration, however, provides any basis for RSPA to change the decision in PD–4(R).

It is not possible to provide complete answers to CHP's three questions for clarification of the decision in PD–4(R), since preemption under the "obstacle" criterion depends upon the manner in which a non-Federal requirement is enforced and applied. (See also the statement in H.R. Rep. 101–444, 101st Cong., 2d Sess. 49, that Congress did not intend for DOT to be a "clearing house for obtaining advisory opinions with respect to legislative or regulatory ideas and notions prior to enactment.") However, the following responses can be made:

1. CHP has asked about requirements for "some proof of registration * * * directly on the packaging or carried in the vehicle." As specifically discussed in PD–4(R), unless otherwise authorized by Federal law, any non-Federal requirement for a "marking * * * of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material" is preempted unless it is "substantively the same as" the requirements in the Federal hazardous material transportation law and the HMR. 49 U.S.C. 5125(b)(1)(E). See 58 FR at 48936–37. A requirement to carry additional documentation on a vehicle transporting hazardous materials, beyond that required in the HMR, may create an obstacle to the accomplishment and execution of the Federal hazardous material transportation law and the HMR. See *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1581 (10th Cir. 1991)

2. CHP has asked about "some means of positively identifying the packaging" and noted that its concern is primarily with non-DOT specification packagings, since all DOT specification tanks subject to the CT program have a metal identification plate and, in some instances, a separate metal certification plate. As discussed in PD–4(R), any marking on the tank itself is a "marking * * * of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material." 49 U.S.C. 5125(b)(1)(E); 58 FR 48937. To the extent that non-specification packagings do not already contain some unique identifying characteristic and California believes that they must in order to transport hazardous materials, California may submit a petition for rulemaking in accordance with 49 CFR part 106.

3. CHP has asked about the application of the decision in PD–4(R) to "tanks based in California." However, it does not indicate whether it assumes that these tanks remain completely within California or travel throughout the United States. Tanks that never leave California would not experience delays associated with entering the State or being rerouted around California. See PD–5(R), Massachusetts Requirement for an Audible Back-up Alarm, etc., 58 FR 62707, 62710 (Nov. 29, 1993). On the other hand, "tanks based in California" which are used in other States may well experience the same types of delays as "tanks based out of California."

V. Ruling

For the reasons stated above, the CHP petition for reconsideration is denied.

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This decision incorporates and reaffirms the determination set forth at 58 FR 48933 that the provisions now codified at 49 U.S.C. 5125(a) and (b) preempt:

A. California's requirement in VC 34060 and 13 CCR 1192 for an annual inspection of cargo tanks and portable tanks used for highway transportation of flammable and combustible liquids, as that requirement is applied and enforced, because any wait for the arrival of State inspectors from another location constitutes an "unnecessary" delay.

B. VC 34042(d) and 34061(c), which provide that the failure to make a cargo tank or portable tank available for inspection is a ground for denial, suspension or revocation of registration, and 13 CCR 1193, requiring that cargo tanks and portable tanks transporting flammable and combustible liquids pass an inspection to be certified.

C. The following requirements to mark cargo tanks and portable tanks transporting flammable and combustible liquids, because they are not substantively the same as requirements in the HMR: (1) 13 CCR 1195, that a metal identification plate be affixed to any tank for which such a plate is not required by the HMR; (2) 13 CCR 1194, that a "CT number" be marked on the tank or on a metal identification plate; and (3) VC 34044, 34101 and 13 CCR 1193, that a certification label be affixed to the tank and that a registration certificate be carried in a waterproof holder permanently attached to a portable tank, together with the provisions for removal of the certification label in VC 34062–63.

VI. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on Nalco's application for a determination of preemption as to the above-specified California requirements applicable to cargo tanks transporting flammable and combustible liquids. Any party to this proceeding "may bring a civil action in an appropriate district court of the United States for judicial review of [this] decision * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

Issued in Washington, D.C. on February 7, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–3591 Filed 2–14–95; 8:45 am]

BILLING CODE 4910–60–P

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Part IV

Department of the Interior

Office of the Secretary

25 CFR Chapter VI

Joint Tribal and Federal Self-Governance Negotiated Rulemaking; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Chapter VI

Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee

AGENCY: Office of Self-Governance, Office of the Secretary

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: As required by the Negotiated Rulemaking Act of 1990, the Department of the Interior (DOI) is giving notice of the intent to establish a Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Tribal Self-Governance Act of 1994. DOI invites any interested party to comment on the proposal to create this negotiated rulemaking committee and on the proposed membership of the committee, which is subject to the requirements of the Tribal Self-Governance Act. In addition, DOI invites persons who believe that they will be significantly affected by the proposed rule to apply or nominate other persons for membership on the negotiated rulemaking committee. In particular, DOI seeks to add four members to the committee from non-Self-Governance tribes.

DATES: Written comments concerning this notice must be received on or before March 17, 1995. Nominations from non-Self-Governance tribes and other interested parties may be made by submitting applications on or before March 17, 1995. Each application must contain the information described in the "Application for Membership" section below.

ADDRESSES: Please submit comments and applications to: William A. Sinclair, Office of Self-Governance, U.S. Department of the Interior, MS 2548–MIB, 1849 C Street NW., Washington, D.C. 20240. Comments and applications received will be available for inspection at the address listed above from 9:00 a.m. to 3:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William A. Sinclair, Acting Director, Office of Self-Governance, Office of the Secretary, at the address listed above, or by telephone at (202) 219–0240.

SUPPLEMENTARY INFORMATION: The Tribal Self-Governance Act of 1994, Public Law 103–413 (Act), requires the Secretary, upon request of a majority of the Self-Governance tribes, to initiate procedures under the Negotiated Rulemaking Act, 5 U.S.C. 561, *et seq.*, in order to negotiate and promulgate the regulations necessary to carry out the Self-Governance Program. The Act calls for a negotiated rulemaking committee to be established pursuant to 5 U.S.C. 565 comprised of federal and tribal representatives, with a majority of the tribal representatives representing Self-Governance tribes. The Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and the Indian tribes. On November 1, 1994, a majority of the self-governance tribes wrote the Secretary requesting the immediate initiation of negotiated rulemaking.

Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988) (FACA).

Scope of the Proposed Rule

The proposed rule generally will include provisions governing how DOI carries out its responsibility to tribes under the Act and how tribes carry out their responsibility under the Act. The provisions will include procedural (information and deadline) and substantive (residual funds retained) requirements governing how DOI conducts negotiations with tribes. The rule will also set forth a definition of stable base budgets and timelines for the transfer of these and other funds to tribes. The provisions will govern how additional tribes are accepted into the Self-Governance Program planning and negotiation process and how DOI awards planning and negotiation grants. The rule will set forth how DOI will process regulation waiver requests from tribes, establish an ongoing process for determining and negotiating tribal shares of BIA and eligible non-BIA programs, set up mechanisms to review tribal trust functions, and establish retrocession procedures for programs or portions of programs under the Act if there is imminent jeopardy to a physical trust asset or to public health or safety. The provisions will include procedures for the Secretary to ensure that proper health and safety standards are provided for in construction projects included in annual funding agreements. The rule will establish reporting requirements of tribes and DOI under the Act and a mechanism for negotiating the inclusion of specific provisions of the Office of Federal Procurement and Policy Act and Federal acquisition regulations into annual funding agreements.

It is anticipated that the negotiated rulemaking committee will develop proposed regulations in all of the above-referenced areas and any other areas that may be suggested during the process.

Interests Significantly Affected

A limited number of identifiable interests will be significantly affected by the rule. Those parties are Indian tribes, tribal organizations as defined in section 4(l) of the Indian Self Determination and Education Assistance Act, and individual tribal members, including owners of allotted Indian lands.

Proposed Agenda and Schedule for Publication of Proposed Rule

It is the Secretary's intent to publish the proposed rule for notice and comment within 12 months of the establishment of the committee. Consequently, the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee shall terminate 12 months after the date the charter is filed or upon publication of a final rule implementing the Act, whichever occurs first. The charter for the negotiations committee specifies that a minimum of three meetings will be held. The first meeting will serve as an organizational meeting to establish procedures, deadlines and a work schedule to accelerate discussions and decisions in order that the 12 month time period will be met. Following this first meeting, the Department will publish in the **Federal Register** the procedures, deadlines, and a schedule of negotiation committee meetings.

Negotiation Procedures

The following procedures and guidelines will apply to the negotiated rulemaking committee, unless they are modified as a result of comments received on this notice or during the negotiation process.

The committee may use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to help the negotiation process run smoothly, and help participants define and reach consensus.

The members of the committee, with the assistance of the facilitator, may adopt procedures for committee meetings which they consider most appropriate.

The goal of the negotiating process is for the committee to reach consensus on the proposed rule. Consensus means unanimous concurrence among the interests represented unless the committee agrees to define such term to mean general but not unanimous concurrence, or agrees upon another specified definition.

If the committee reaches consensus on the proposed rule, the committee shall transmit a report containing the proposed rule to the Secretary at the conclusion of negotiations. If the committee does not reach consensus on the proposed rule, it may transmit a report specifying any areas in which it did reach consensus, and any other recommendation it considers appropriate, including dissenting views of committee members. DOI, to the maximum extent consistent with its legal obligations, will use the consensus of the committee as the basis for a proposed rule for notice and comment. Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members will evaluate whether the committee should continue or be reconstituted.

Meetings will be held in the Washington area, or in another location, at the convenience of the committee. DOI will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

Records of Meetings

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix, DOI will keep a record of all committee meetings.

Administrative Support

The Office of Self-Governance will provide funding for the costs of the committee, as well as administrative support and technical assistance, including logistical support services, for the activities of the committee.

Committee Membership

The Act requires that the committee be comprised only of Federal and tribal government representatives and that a majority of the tribal committee members be representatives from Self-Governance tribes. In a letter to the Secretary on November 1, 1994, the Self-Governance tribes nominated the following persons:

Rhonda Swaney—(Salish & Kootenai-Flathead)
Ron Allen—(Jamestown S'Klallam)
Loretta Bullard—(Kawerak)
Dale Risling—(Hoopa)
Bernida Churchill—(Mille Lacs)
Lindsey Manning—(Duck Valley Shoshone Paiute)
Merle Boyd—(Sac & Fox)

The Secretary has determined that the individuals listed above shall represent the Self-Governance Tribes. In order to comply with the Act the federal representatives will be comprised of two individuals and that there will be four representatives from non-Self-Governance tribes, for a total of thirteen committee members. The federal representatives shall consist of a Special Assistant to the Secretary and the Deputy Assistant Secretary for Indian Affairs. The representatives of the non-Self-Governance tribes will be selected by the Assistant Secretary-Indian Affairs from the nominations received under this notice.

Application for Membership

Non-Self-Governance tribes may nominate tribal leaders to fill the four designated positions on the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee. Each nomination shall include:

1. The name, address and telephone number of the nominee and the name of his or her tribe.

2. Evidence that the nominee is authorized to represent that tribe.

3. A written commitment from the nominee to actively participate in good faith in the development of the proposed rule.

The Assistant Secretary-Indian Affairs will give full consideration to all applications and nominations timely submitted.

Solicitation of Public Comments

Members of the public are invited to submit comments on this proposal to establish the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee, as well as on the proposed membership of the committee.

Dated: February 6, 1995

Ada E. Deer,

Assistant Secretary—Indian Affairs

[FR Doc. 95–3622 Filed 2–14–95; 8:45 am]

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Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Delinquency Prevention Program Guideline; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) No. 1043]

ZRIN 1121-ZA07

Delinquency Prevention Program Guideline

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of availability of funds for the FY 1995 Title V Delinquency Prevention Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces availability of funds and application requirements for the Title V Delinquency Prevention Program.

DATES: Applications from eligible State agencies for Title V Delinquency Prevention Program grants must be received by April 17, 1995.

ADDRESS: Office of Juvenile Justice and Delinquency Prevention, Room 742, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Paul Steiner, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, at the above address. Telephone (202) 307–5924.

SUPPLEMENTARY INFORMATION: Section 504(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601, *et seq.*) (JJDP Act), directs OJJDP to issue "such rules as are appropriate and necessary to carry out" Title V—Incentive Grants for Local Delinquency Prevention Programs.

Background

Title V of the JJDP Act was enacted in 1992. The first appropriation, in the amount of $13 million, was for Fiscal Year 1994. OJJDP published the final funding Guideline for the program in the **Federal Register** on August 1, 1994, Vol. 59, No.146, pp. 39204–39213. The provisions contained in that Guideline apply to the program for Fiscal Year 1995, except for the following changes:

State Application Requirements and Deadline

Application requirements outlined in the 1994 funding Guideline remain unchanged. State applications are due to OJJDP not later than 60 days after the effective date of this notice.

Allocation of Title V Funds to States

For Fiscal Year 1995, the Title V appropriation is $20 million. OJJDP is proposing to allocate $1 million of the Title V appropriation to support the prevention component of the Safe Futures: Partnerships to Reduce Youth Violence and Delinquency Program. A description of the Safe Futures Program may be found in the OJJDP Proposed Comprehensive Plan for Fiscal Year 1995, published in the **Federal Register** on December 30, 1994, Vol. 59, No. 250, pp. 68080–68102. Any changes to the proposed allocations of Title V will be announced in the **Federal Register**. The remaining $19 million, plus $257,000 not awarded in F.Y. 1994, is available for the Title V Delinquency Prevention Program. Awards will be made to States, to be transmitted through the State Advisory Groups, to eligible units of general local government. The minimum allocation for States is $100,000, and $33,000 for Territories and Possessions. A list of the proposed State allocations is available from OJJDP.

Duration of Grants

OJJDP will award grants to States for a project period beginning on the date of award and ending on September 30, 1997.

Shay Bilchik,

Administrator

[FR Doc. 95–3678 Filed 2–14–95; 8:45 am]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–95–1688; FR–3255–F–05]

RIN 2502–AF77

Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On October 26, 1994, HUD published a rule, to become effective on April 24, 1995, establishing escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act. Subsequent to the publication of that rule, HUD received a number of requests asking HUD to correct, clarify, or further illustrate matters contained in the final rule. Because the Department agrees that further action may help illuminate its intentions and avoid confusion on the part of persons responsible for complying with the requirements of the October 26 rule, the Department is issuing this subsequent final rule. This rule responds to inquiries concerning the applicability of the October 26 rule and, as was the October 26 rule, is based on policy decisions made while reconsidering the proposed rule published on this subject earlier and the public comments received in connection with the proposed rule.

Both this rule and the October 26 rule will be effective on the same date, which is delayed by 1 month from the effective date originally announced in the October 26 rule. Where applicable, the provisions and appendices in this rule will supersede the provisions and appendices in the October 26 rule. As part of these corrections, clarifications, and further illustrations, HUD is reissuing Appendices G, H, I, and J in their entirety, and is adding Appendices K, L, M, and N, which provide additional examples or information.

EFFECTIVE DATE: The final rule is effective May 24, 1995, and the effective date of the final rule published at 59 FR 53890, is delayed until May 24, 1995.

FOR FURTHER INFORMATION CONTACT: William Reid, Research Economist, Office of Policy Development and Research, Room 8212, telephone (202) 708–0421. For legal questions: Grant E. Mitchell, Senior Attorney for RESPA, Room 9262, telephone (202) 708–1552; or Kenneth A. Markison, Assistant General Counsel for Government-Sponsored Enterprises/RESPA, Room 9262, telephone (202) 708–3137. The address for all of these contact persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. The TDD number is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0501.

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting separate public comment, in that any changes in the existing requirements made by this final rule evolve from the proposed rule published on December 3, 1993 (58 FR 64065). Prior public procedure is unnecessary with respect to the corrections, clarifications, and information contained in this rule and its preamble because the corrections, clarifications, and information do not impose additional requirements, but are merely explanatory in nature or correct certain technical requirements of the October 26, 1994, rule to make it easier to comply with the substance of the rule. This rule is being issued in response to requests for such corrections, clarifications, and information, and, therefore, delaying its issuance would also be contrary to the public interest. Immediate issuance of this rule will ease the regulatory compliance burden of persons subject to the October 26, 1994, rule (59 FR 53890) (October 26 rule) and will eliminate the possibility of having to make intermediate changes in business practices, required by that rule, pending the completion of notice-and-comment procedures for this rule. As has been urged by some persons subject to the requirements of the October 26 rule, the Department is issuing this subsequent rule with the belief that it will make timely compliance with the October 26 rule easier. In order to facilitate compliance further, the Department also is delaying the effective date of the escrow accounting requirements by 1 month from the effective date announced in the October 26 rule.

Background

On October 26, 1994 (59 FR 53890), the Department published a final rule establishing escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA; see 12 U.S.C. 2605(g) and 2609). In response to a number of requests from mortgage servicing industry spokespersons, including those in the form and computer software businesses, asking for corrections, clarifications, or further illustration of matters contained in the final rule, in this document the Department is setting forth clarifications and technical corrections of the October 26 final rule. Following publication of the final rule, the Department also received requests for extension of the April 24, 1995, effective date of the rule. The Department has concluded that today's corrections and clarifications, coupled with the original rule, provide sufficient information to allow the industry to implement the rule by May 24, 1995, which is 1 month later than the effective date originally announced for the October 26 rule. In addition, the Department anticipates publishing soon a Mortgagee Letter containing instructions regarding the RESPA escrow rule and the FHA single family program.

Clarifications of Final Rule

Clarifications of the final rule that do not require modifications of the language in the rule are set out in the following paragraphs of this document. When appropriate for ease in referencing the final rule, the clarification references in brackets the page number of the relevant provision of the rule as published in the October 26, 1994, **Federal Register**.

(a.) May dollar amounts under this rule be rounded?

Answer: Yes, any dollar amount referenced in this rule may be rounded up or down to the nearest dollar.

(b.) What impact does the escrow accounting rule have on the Good Faith Estimate requirement under § 3500.7 of the RESPA rules?

Answer: Good Faith Estimates are set forth in dollar amounts or ranges. The Good Faith Estimate range or number for reserves (the 1000 series on the HUD–1 or HUD–1A) will generally be lower than before the effective date of the rule, because of the requirements of the escrow accounting rule to use aggregate accounting. During the phase-in period, § 3500.8(c) (as added by the October 26 final rule, 59 FR at 53901) servicers are allowed, as an alternative to the use of aggregate analysis, to use single-item analysis with a maximum 1-month cushion amount at closing. The use of single item analysis with a maximum 1-month cushion for establishing a range for Good Faith Estimate purposes is acceptable until October 27, 1997. See Appendix N, for an example of these alternatives on a HUD–1.

(c.) Is an assumption of an existing loan by a new purchaser which is covered by RESPA under § 3500.2 a new loan for purposes of this rule, even if the existing escrow account is assigned to the new purchaser?

Answer: Yes.

(d.) [Page 53902, § 3500.17(b), Definitions, "Escrow account item".] Are certain payments that may enter and leave the account within the same month, such as FHA monthly premiums, private mortgage insurance, or credit life insurance, considered to be escrow account items?

Answer: Yes. All items in the account are included so that the projected low monthly balance is zero (-0-) at the end of Step 2 in the Appendix I examples. The chosen cushion may be no more than the lesser of 2 months or the number of months allowed in the loan documents, multiplied by 1/12 the sum of the estimated disbursements for the items that may be included in the cushion.

Note: State laws or Federal program requirements may prohibit cushioning for certain of these payments.

(e.) [Page 53902, § 3500.17(b), Definitions, "Phase-in period".] Is the switch to aggregate accounting for existing accounts, and the use of the alternate method for calculating escrow account requirements at settlement, the only requirements that are allowed a 3-year phase-in period under the rule?

Answer: Yes.

(f.) [Page 53903, § 3500.17(c).] Do surpluses generated by voluntary borrower prepayments before the due date (frequently of principal, interest, and escrow account amounts) constitute a violation of the escrow account limits if they remain in the account in the next escrow account computation year?

Answer: No. The escrow account portions of any voluntary prepayment by a borrower should be treated as an accrual for the upcoming escrow account computation year, and not counted for the purpose of determining whether a surplus is to be credited or returned. In these circumstances, shortage or surplus adjustments to monthly escrow account payments for the succeeding escrow account computation year may, at the servicer's option, be spread over the period remaining in the escrow account computation year after the prepayment accrual period. This precept also applies for other unusual accumulations in the escrow account; e.g., loss drafts for property damage, or continuing accumulation because new construction is not assessed for more than a year after completion, but the tax charges are billed retroactively.

(g.) [Page 53903, § 3500.17(c)(1)(i), and page 53904, § 3500.17(c)(7).] In the case where an account is being established for a new borrower, is the servicer bound by the charges the previous owner paid regarding the subject property, particularly where taxes or other charges may have been held down because of the seller's status or tax laws relating to ownership?

Answer: No. In creating a new escrow account, the servicer should estimate disbursement amounts using its best judgment with information known or readily available.

(h.) [Page 53903, § 3500.17(c)(2) and (3).] May a servicer choose a disbursement date earlier than the date due for a disbursement, for example, to give the borrower the advantage of a current year tax deduction, even though the payment is due in the next calendar year?

Answer: Yes, the rule states that the servicer shall use as the disbursement date for the escrow item a date on *or before* the earlier of either a deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. There is no conflict with the statement in the background information (page 53893, third column, first full sentence): "Unless there is a discount to the borrower for early payments, the regulation does not allow servicers to pay installment payments on an annual or other prepayment basis." This statement dealt with a practice, previously engaged in by some servicers, of collecting and paying a full-year's taxes in advance, although they were billed on an installment basis.

(i.) [Page 53904, § 3500.17(c)(7).] How does a servicer compute the Consumer Price Index (CPI) adjustment factor to estimate disbursements?

Answer: This factor is the ratio of the monthly CPI for all urban consumers, all items, reported most recently, to the same monthly CPI reported 12 months earlier; i.e.:

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The adjustment is made by multiplying last year's disbursement by this ratio. For example, if last year's school tax bill was $827, the value of the most recent CPI (September 1994) was 149.4, and the value of the CPI in September 1993 was 145.1, then the school tax projection using this technique may not exceed $851.51:

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The two CPI numbers must have the same base period and must either both be seasonably adjusted or both be not seasonably adjusted.

(j.) [Page 53905, § 3500.17(e).] For what period of time is the transferor (old) servicer or transferee (new) servicer responsible for delivering an account history or projection in the case of a transfer of mortgage servicing?

Answer: Each servicer is generally responsible for providing data for the period for which it services the loan. The transferor (old) servicer is responsible for providing a short-year annual statement (but not a projection) for the portion of the year it controlled the servicing. (Also see "short year" statement discussion in paragraph (r), below.) If the transferee servicer provides an initial escrow account statement, the transferee servicer uses the effective date of the transfer of servicing to establish a new escrow account computation year. The transferee servicer may also retain the payment schedule and accounting method of the previous servicer and not provide an initial escrow account statement after transfer.

(k.) [Page 53905, § 3500.17(f).] May a servicer return surplus funds by wire transfer, rather than by a check?

Answer: Yes. The rule does not specify the manner in which refunds are to be paid.

(l.) [Page 53905, § 3500.17(f).] How does the servicer show the collection of a deficiency and a remaining shortage in the same account?

Answer: The servicer first computes the deficiency and then computes the remaining shortage, and informs the borrower accordingly, based on the format in Appendix I. That format

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allows for explanatory language in the event of both a deficiency and a remaining shortage.

(m.) [Page 53905, § 3500.17(f)(2).] May a servicer give the borrower an option to credit a refundable surplus directly to principal, rather than refund the surplus to the borrower?

Answer: No. However, the servicer may inform the borrower in the information accompanying the return of the surplus that the borrower may also choose to use the refund to credit principal or the escrow account.

(n.) [Page 53906, § 3500.17(g)(1)(i).] The rule indicates that the trial running balance is required to be submitted for an initial escrow account statement. Is it also required to be submitted for subsequent years as part of the annual statement projections?

Answer: The reference cited in § 3500.17(g)(1)(i) means that the information from the trial running balance is to be included in the initial escrow account statement. Similarly, the information from a trial running balance is included as the projections in the annual statement after the first escrow account computation year. There is no requirement for duplication of the same information.

(o.) [Page 53906, §§ 3500.17(h)(3) and (i)(l)]. If a particular payee collects payments on behalf of several taxing or other entities, how much information identifying these subpayees is necessary?

Answer: The minimum amount of information to be disclosed is that which describes the payee to whom the servicer delivers the funds. The servicer may, but is not required to, identify the subpayees on the account. If there are several payees for similar categories of items, such as taxes or insurance, there should be sufficient differentiation to identify the use of funds (see last sentence of § 3500.17(h)(3) for examples).

(p.) [Page 53906, § 3500.17(i)(1).] Does the servicer have to highlight a change in the monthly mortgage payments during the year caused by such factors as an adjustable rate mortgage (ARM) readjustment?

Answer: This rule does not require that such a change be specifically highlighted after an annual statement has been delivered. Language is provided in Appendix I to alert the borrower that principal or interest may change during the escrow account computation year under certain loan programs, such as ARMs. The borrower should receive notice of an ARM change prior to the change. The next annual statement history will note the change in principal and interest.

(q.) [Page 53906, § 3500.17(i)(4).] If the servicer determines that new escrow items should be added to the account, what further activities are required of the servicer?

Answer: If the servicer is going to change the payment amount, then the servicer should reanalyze the account to include the new items and issue a short-year annual statement, with a new projection for a new escrow account computation year. If there is no payment change, there is no activity required of the servicer.

(r.) [§ 3500.17(i)(4)]. Please explain in more detail when and how short-year statements are used under this rule.

Answer: Short-year statements must include all the elements normally provided in an annual statement, with the clarifications noted below. These elements consist of a history of the account since the last annual statement, a copy of the projections issued with the last annual statement, and projections for the next 12 months. The following principles are followed in developing short-year statements:

(1.) The servicer that prepared the projections issued with the last annual statement must provide to the borrower another copy, with all 12 months of those projections, at the time the servicer's components of the short-year statement are provided.

(2.) The servicer that prepared the projections issued with the last annual statement will report history, with asterisks, from the time of the last analysis to the time of the short-year statement.

(3.) Upon transfer, payoff, or maturity, the paragraphs beginning with "Last year we * * *" and "Your actual lowest * * *" on the account history are not required. Otherwise, if the account will be ongoing with the same servicer, these paragraphs are required only if the projected lowest monthly balance was in the period covered by the history.

(4.) Upon transfer, the new servicer must issue a short-year statement at the time of transfer only if the monthly escrow payment or accounting method changes. Otherwise, the servicer may wait until up to the end of the regular yearly cycle to issue an annual statement. The transferor (old) servicer shall submit a short-year statement to the borrower within 60 days of the transfer.

(5.) With a transfer, the account history issued by the new servicer must report the transferred balance along with the history for the period since the transfer. Asterisks, inclusion of a copy of the projections issued with the last annual statement, and the paragraphs beginning with "Last year we * * *" and "Your actual lowest * * *" on the account history are not required of the new servicer.

(6.) A projection for the next 12 months is not required upon maturity or payoff. Upon transfer, the old servicer is not required to produce a projection for the next 12 months. The new servicer issues a projection for the next 12 months when it does its analysis. For the new servicer this must occur at the time of transfer if the monthly payment or the accounting method changes. Otherwise, the new servicer has until the end of the regular 12-month cycle to perform the analysis, including the projection for the next 12 months.

With two exceptions, servicers must always project the account forward for a period of 12 months to determine monthly payments and the existence of surpluses, shortages, and deficiencies. The term "short-year" refers to the time since the last annual statement, not the period to be covered by the old or new projections.

The first exception is for mortgages scheduled to terminate within the next 12 months, when projections of less than 12 months are permissible. The second exception is for escrow accounts covering items, such as flood insurance, that have disbursements less frequently than every 12 months. In this case, projections longer than 12 months are required. In the latter case, servicers may opt to report only the first 12 months of a projection covering a longer period.

(s.) [Appendix K] How is the annual statement projection prepared when the loan is scheduled to mature within the upcoming escrow account computation year?

Answer: The account may be analyzed and payments collected as if the account would be in existence for a full computation year. Alternatively, the account may be analyzed and payments collected and disbursed as if the account were terminating on the date of maturity. In either event, any balances are returned to the borrower following maturity of the loan. The judgment of the servicer as to which method to use may be based on the length of time the account will be open and the size of payments to be made within that period. The short-year statement after payoff should be furnished consistent with § 3500.17(i)(4)(iii).

(t.) During the first year of operation of the rule (i.e. May 24, 1995, through May 23, 1996), certain information may not be available, such as the previous year's projection or history. Is a servicer required to reconstruct or hypothesize about such documents?

Answer: No. If no projection or history has been prepared or the records are not in a readily retrievable form, neither document is required to be submitted during the first year's operation. The Appendix I format allows for the reference to such documents to be deleted.

(u.) Is the annual charge for mortgage insurance under FHA's Title I property improvement program covered by this rule if the lender collects the charge in monthly installments?

Answer: HUD is considering either exempting such fee from coverage of this rule or otherwise clarifying coverage. Title I lenders need not treat the periodic collection of this fee as triggering a requirement to comply with this rule, pending the issuance of such clarification.

Technical Corrections With Changes in Rule Language

Technical corrections made in this document are for the purposes of:

(1) Providing language that is consistent with Appendix F. The language provides that the initial computation of an escrow account is to be based on an analysis yielding a lowest month-end balance of zero (-0-) at some time during the year, before the addition of the cushion;

(2) Conforming the language for servicer handling of shortages of less than 1-month's escrow deposit with the language for "deficiencies", allowing servicers to require payments within 30 days;

(3) Clarifying that the servicer must allow the borrower to repay in a period of 12 months or longer a shortage equal to or greater than 1 month's escrow deposit;

(4) Clarifying that the servicer may require the borrower to repay in any period of 2 months or more a deficiency equal to or greater than 1 month's escrow deposit;

(5) Conforming the shortage and deficiency requirements by substituting the word "require" rather than "allow" in a 1-month deficiency situation;

(6) Permitting the servicer to assume that payments and disbursements for the final 2 months of an escrow account computation year will be made as estimated, thereby allowing the annual account history and projections to be produced in a timely manner;

(7) Including a reference to the information in Appendix I that allows the servicer to identify, using asterisks (*), the items for which there are differences between estimated and actual amounts or payment dates in the most recent account history and the last year's projection, thereby aiding computer-generated statements that give an indication about why a low point was not reached;

(8) Specifying a time period (90 days) in which a servicer must produce an annual statement, if production of the statement otherwise required was deferred because the loan was in default, foreclosure, or bankruptcy. "Bankruptcy" is added as another circumstance in which the statement need not be produced;

(9) Correcting a month reference in Example I, Step 3, of Appendix F from "Jul" to "Jun", and correcting an error in the column headings in Example II, Step 1, of Appendix F; and

(10) Clarifying the instructions regarding aggregate accounting adjustments at settlement.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this rule do not affect a physical structure or property and relate only to statutorily required accounting and reporting procedures, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule is in the nature of minor changes and clarifications of an earlier rule (59 FR 53890, October 26, 1994), which was directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule clarifies and makes minor changes in a previous rule (59 FR 53890, October 26, 1994) setting out requirements concerning the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This underlying rulemaking for this rule was listed as item number 1811 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57658), under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the effective date of FR Doc. 94–26583, Real Estate Settlement Procedures Act (Regulation X): Escrow Accounting Procedures, published on October 26, 1994 (59 FR 53890), is delayed from April 24, 1995, to May 24, 1995, and part 3500 of title 24 of the Code of Federal Regulations is amended as follows:

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PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 is revised to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. Section 3500.8(c)(1) is revised to read as follows:

§ 3500.8 Use of HUD–1 or HUD–1A settlement statements.

* * * * *

(c) * * *

(1) After itemizing individual deposits in the 1000 series using single-item accounting, the settlement agent shall make an adjustment based on an aggregate analysis to reflect the difference between the deposit required under aggregate accounting and the sum of the deposits required under single-item accounting. The computation steps for both accounting methods are set out in § 3500.17(d). The adjustment will always be a negative number or zero (-0-). The servicer shall enter the aggregate adjustment amount on a final line in the 1000 series of the HUD–1 or HUD–1A statement.

* * * * *

3. Section § 3500.17 is amended by:

a. Revising the fourth sentence of paragraph (a);

b. Removing the word "servicing" following the phrase "the terms of any mortgage" in the definition of "Servicing" in paragraph (b);

c. Adding a sentence after the first sentence in paragraph (c)(1)(i);

d. Revising paragraphs (f)(3)(i)(B) and (C);

e. Revising paragraph (f)(3)(ii)(B);

f. Revising paragraph (f)(4)(i)(C);

g. Revising paragraph (f)(4)(ii);

h. Adding a sentence after the first sentence in paragraph (i) introductory text;

i. Adding a sentence after the first sentence in paragraph (i)(1) introductory text;

j. Removing the period at the end of paragraph (i)(1)(viii), and by adding a phrase and sentence to the end of the paragraph; and

k. Revising paragraph (i)(2), to read as follows:

§ 3500.17 Escrow accounts.

(a) * * * Appendix H to this part provides examples of biweekly accounting and Appendix J to this part provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section.

* * * * *

(c) * * *

(1) * * *

(i) *Charges at settlement or upon creation of an escrow account.* * * * The "amount sufficient to pay" is computed so that the lowest month end target balance projected for the escrow account computation year is zero (-0-) (see Step 2 in Appendix F). * * *

* * * * *

(f) * * *

(3) * * *

(i) * * *

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) * * *

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) * * *

(i) * * *

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

* * * * *

(i) * * * The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. * * *

(1) *Contents of Annual Escrow Account Statement.* * * * In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. * * *

* * * * *

(viii) * * *, as indicated by noting differences between the most recent account history and last year's projection. Appendix I of this part sets forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy.* This paragraph contains an exemption from the provisions of § 3500.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 3500.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

* * * * *

4. In Appendix A to part 3500, the heading for the Appendix is revised, and the second paragraph for lines 1000–1008 under the heading "Line Item Instructions" is revised, to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements

* * * * *

Line Item Instructions

* * * * *

Lines 1000–1008. * * *

After itemizing individual deposits in the 1000 series using single-item accounting, the settlement agent shall make an adjustment based on an aggregate analysis to reflect the difference between the deposit required under aggregate accounting and the sum of the deposits required under single-item accounting. The computation steps for both accounting methods are set out in 24 CFR 3500.17(d). The adjustment will always be either a negative number or zero (-0-). The servicer shall enter the aggregate adjustment amount on a final line in the 1000 series of the HUD–1 or HUD–1A statement.

* * * * *

5. Appendix F to part 3500 is amended by:

a. Revising in Example I, illustrating aggregate analysis, step 3, the reference to "Jul", which immediately follows "May" to read "Jun"; and

b. Revising the chart for "Step 1.—Initial Trial Balance" in Example II, illustrating single-item analysis (existing accounts), to read as follows:

STEP 1.—INITIAL TRIAL BALANCE

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	0	0	0	0
July	100	500	−400	30	0	30
August	100	0	−300	30	0	60
September	100	0	−200	30	360	−270
October	100	0	−100	30	0	−240
November	100	0	0	30	0	−210
December	100	700	−600	30	0	−180
January	100	0	−500	30	0	−150
February	100	0	−400	30	0	−120
March	100	0	−300	30	0	−90
April	100	0	−200	30	0	−60
May	100	0	−100	30	0	−30
June	100	0	0	30	0	0

6. In part 3500, the appendices are amended as follows: The text of Appendix G is removed, the heading of Appendix G is revised to read "APPENDIX G—(Appendix G consists of Appendices G–1 and G–2)" and Appendices G–1 and G–2 are added after the parenthetical to read as set forth below;

The text of Appendix H is removed, the heading of Appendix H is revised to read "APPENDIX H—(Appendix H consists of Appendices H–1 and H–2)" and Appendices H–1 and H–2 are added after the parenthetical to read as set forth below;

The text of Appendix I is removed, the heading of Appendix I is revised to read "APPENDIX I—(Appendix I consists of Appendices I–1 through I–8)" and Appendices I–1 through I–8 are added after the parenthetical to read as set forth below;

The text of Appendix J is removed, the heading of Appendix J is revised to read "APPENDIX J—(Appendix J consists of Appendices J–1 and J–2)" and Appendices J–1 and J–2 are added after the parenthetical to read as set forth below; and Appendices K through N are added, reading as follows:

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APPENDIX G–1: *INITIAL* ESCROW ACCOUNT DISCLOSURE STATEMENT — FORMAT

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$_____

[A filled-out format follows.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $_____.

[YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT.]

[YOUR FIRST MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT. THE TERMS OF YOUR LOAN MAY RESULT IN CHANGES TO THE MONTHLY PRINCIPAL AND INTEREST PAYMENTS DURING THE YEAR.]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate option above describing the principal and interest payments for the coming year. This instruction paragraph should not appear in the form.]

APPENDIX G–2: *INITIAL* ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Monthly payments, monthly accounting.]

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$1,200
September	200	0		1,400
October	200	800	taxes	800
November	200	600	insurance	400
December	200	0		600
January	200	0		800
February	200	0		1,000
March	200	0		1,200
April	200	0		1,400
May	200	0		1,600
June	200	1,000	taxes	800
July	200	0		1,000
August	200	0		1,200

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 400.

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX H–1: BIWEEKLY PAYMENTS — EXAMPLE

[Biweekly payments, biweekly accounting.]

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Period	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$ 1,000
1	120	0		1,120
2	120	0		1,240
3	120	520	taxes	840
4	120	0		960
5	120	0		1,080
6	120	0		1,200
7	120	0		1,320
8	120	600	taxes	840
9	120	0		960
10	120	0		1,080
11	120	0		1,200
12	120	0		1,320
13	120	0		1,440
14	120	0		1,560
15	120	0		1,680
16	120	0		1,800
17	120	0		1,920
18	120	0		2,040
19	120	0		2,160
20	120	1,200	insurance	1,080
21	120	0		1,200
22	120	800	taxes	520
23	120	0		640
24	120	0		760
25	120	0		880
26	120	0		1,000

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 520.

YOUR BIWEEKLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 750 OF WHICH $ 630 WILL BE FOR PRINCIPAL AND INTEREST AND $ 120 WILL GO INTO YOUR ESCROW ACCOUNT.

APPENDIX H–2: BIWEEKLY PAYMENTS — EXAMPLE

[Biweekly payments, monthly accounting.]

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$ 1,000
September	360	520	taxes	840
October	240	0		1,080
November	240	0		1,320
December	240	0		1,560
January	240	600	taxes	1,200
February	240	0		1,440
March	360	0		1,800
April	240	0		2,040
May	240	1,200	insurance	1,080
June	240	800	taxes	520
July	240	0		760
August	240	0		1,000

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 520.

YOUR BIWEEKLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 750 OF WHICH $ 630 WILL BE FOR PRINCIPAL AND INTEREST AND $ 120 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX I–1: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — FORMAT

[Account history of pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM _____ THROUGH _____. (COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*—WHICH WAS SENT TO YOU LAST YEAR ON _____-(ANOTHER COPY ENCLOSED).)

[INSTRUCTIONS TO PREPARER: Delete material in brackets (] if initial escrow account disclosure statement or annual disclosure payment history was not delivered in previous year. Also, if the servicer elects to provide a side-by-side comparison of last year's projection to the account history, delete "(COMPARE . . . ENCLOSED.)". This instruction paragraph should not be included in the form.]

Your monthly mortgage payment for the past year was $_____ of which $_____ was for principal and interest and $_____ went into your escrow account.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$_____

[A filled-out example follows.]

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount.

Last year, we anticipated that payments from your account would be made during this period equaling $_____. Under Federal law, your lowest monthly balance should not have exceeded $_____, unless your mortgage contract or State law specifies a lower amount. (Your mortgage contract and State law are silent on this issue.) (Under your mortgage contract and State law, your lowest monthly balance should not have exceeded $_____.)

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate sentence above describing the mortgage contract. This instruction paragraph should not appear in the form.]

Your actual lowest monthly balance was greater than $_____. The items with an asterisk on your Account History may explain this. If you want a further explanation, please call our toll-free number.

[INSTRUCTIONS TO PREPARER: The servicer is to use the paragraph above if the lowest month-end balance exceeds either the Federal or the contract/State law limit. Put the lower of the two in the blank. This instruction paragraph should not appear in the form.]

APPENDIX I–2: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — FORMAT

[Projections for pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$_____

[A filled-out format follows.]

Your ending balance, from the last month of the account history, is $_____. Your starting balance according to this analysis should be $_____.

[This means you have a surplus of $_____. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. (We are sending you a check for the surplus.) (We are keeping the surplus and lowering your monthly payments.)]

[This means you have a shortage of $_____. This shortage may be collected from you over a period of 12 months or more unless the shortage is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. (We have decided to collect it over _____ months.) (We have decided to collect it within 30 days.) (We have decided to do nothing.)]

[This means you have a deficiency of $_____. This deficiency may be collected from you over a period of 2 months or more unless the deficiency is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. (We have decided to collect it over _____ months.) (We have decided to collect it within 30 days.) (We have decided to do nothing.)]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate paragraph above if there is a surplus, shortage, or deficiency. The servicer should then print the response selected from the choices given. If the deficiency and shortage paragraphs are to be used on the same form, appropriate explanatory language may be used. This instruction paragraph should not be included in the form.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

[YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT.]

[YOUR FIRST MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT. THE TERMS OF YOUR LOAN MAY RESULT IN CHANGES TO THE MONTHLY PRINCIPAL AND INTEREST PAYMENTS DURING THE YEAR.]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate option above describing the principal and interest payments for the coming year. This instruction paragraph should not appear in the form.]

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APPENDIX I–3: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Account history of pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPTEMBER 1993 THROUGH AUGUST 1994. (COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON AUGUST 16 (ANOTHER COPY IS ENCLOSED).)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE PAST YEAR WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,350
September	200	0		1,550
October	200	680*	taxes	1,070
November	200	600	insurance	670
December	200	0		870
January	200	0		1,070
February	200	0		1,270
March	200	0		1,470
April	200	0		1,670
May	200	0		1,870
June	200	0		2,070
July	200	1,000*	taxes	1,270
August	200	0		1,470

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount.

Last year, we anticipated that payments from your account would be made during this period equaling $ 2,400. Under Federal law, your lowest monthly balance should not have exceeded $ 550 unless your mortgage contract or State law specifies a lower amount. Under your mortgage contract, your lowest monthly balance should not have exceeded $ 550.

Your actual lowest monthly balance was greater than $ 550. The items with an asterisk on your Account History may explain this. If you want a further explanation, please call our toll-free number.

APPENDIX I–4: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Projections for pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,230
September	190	0		1,420
October	190	680	taxes	930
November	190	600	insurance	520
December	190	0		710
January	190	0		900
February	190	0		1,090
March	190	0		1,280
April	190	0		1,470
May	190	0		1,660
June	190	0		1,850
July	190	1,000	taxes	1,040
August	190	0		1,230

Your ending balance, from the last month of the account history, is $ 1,470. Your starting balance according to this analysis should be $ 1,230.

This means you have a surplus of $ 240. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. We are sending you a check for the surplus.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,314 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 190 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX I–5: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — FORMAT

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM _____ THROUGH _____. {COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON _____ (ANOTHER COPY ENCLOSED).}

[INSTRUCTIONS TO PREPARER: Delete material in brackets {} if initial escrow account disclosure statement or annual disclosure payment history was not delivered in previous year. Also, if the servicer elects to provide a side-by-side comparison of last year's projection to the account history, delete "{COMPARE . . . ENCLOSED.}". This instruction paragraph should not be included in the form.]

Your monthly mortgage payment for the past year was $_____ of which $_____ was for principal and interest and $_____ went into your escrow account.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance

Starting balance: ..... $_____

[A filled-out example follows.]

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount.

Last year, we anticipated that payments from your account would be made during this period equaling $_____. Under Federal law, your lowest monthly balance should not have exceeded $_____, or 1/6 of anticipated payment from the account, unless your mortgage contract or State law specifies a lower amount. (Your mortgage contract and State law are silent on this issue.) (Under your mortgage contract and State law, your lowest monthly balance should not have exceeded $_____.

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate sentence above describing the mortgage contract. This instruction paragraph should not appear in the form.]

Your actual lowest monthly balance was greater than $_____. The items with an asterisk on your Account History may explain this. If you want a further explanation, please call our toll-free number.

[INSTRUCTIONS TO PREPARER: The servicer is to use the paragraph above if the lowest month-end balance exceeds either the Federal or the contract/State law limit. Put the lower of the two in the blank. This instruction paragraph should not appear in the form.]

APPENDIX I–6: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — FORMAT

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance

Starting balance: ..... $_____

[A filled-out format follows.]

Your ending balance, from the last month of the account history, is $_____. Your starting balance according to this analysis should be $_____.

[This means you have a surplus of $_____. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. (We are sending you a check for the surplus.) (We are keeping the surplus and lowering your monthly payments.)]

[This means you have a shortage of $_____. This shortage may be collected from you over a period of 12 months or more unless the shortage is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. (We have decided to collect it over ____ months.) (We have decided to collect it within 30 days.) (We have decided to do nothing.)]

[This means you have a deficiency of $_____. This deficiency may be collected from you over a period of 2 months or more unless the deficiency is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. (We have decided to collect it over _____ months.) (We have decided to collect it within 30 days.) (We have decided to do nothing.)]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate paragraph above if there is a surplus, shortage, or deficiency. The servicer should then print the response selected from the choices given. If the deficiency and shortage paragraphs are to be used on the same form, appropriate explanatory language may be used. This instruction paragraph should not be included in the form.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

[YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT.]

[YOUR FIRST MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $_____ OF WHICH $_____ WILL BE FOR PRINCIPAL AND INTEREST AND $_____ WILL GO INTO YOUR ESCROW ACCOUNT. THE TERMS OF YOUR LOAN MAY RESULT IN CHANGES TO THE MONTHLY PRINCIPAL AND INTEREST PAYMENTS DURING THE YEAR.]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate option above describing the principal and interest payments for the coming year. This instruction paragraph should not appear in the form.]

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APPENDIX I–7: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPTEMBER 1993 THROUGH AUGUST 1994. (COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON AUGUST 16 (ANOTHER COPY IS ENCLOSED).)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE PAST YEAR WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,200
September	200	0		1,400
October	200	680 *	taxes	920
November	200	600	insurance	520
December	200	0		720
January	200	0		920
February	200	0		1,120
March	200	0		1,320
April	200	0		1,520
May	200	0		1,720
June	200	0		1,920
July	200	1,000 *	taxes	1,120
August	200	0		1,320

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount.

Last year, we anticipated that payments from your account would be made during this period equaling $ 2,400. Under Federal law, your lowest monthly balance should not have exceeded $ 400 or 1/6 of anticipated payments from the account, unless your mortgage contract or State law specifies a lower amount. Under your mortgage contract and State law, your lowest monthly balance should not have exceeded $ 400.

Your actual lowest monthly balance was greater than $ 400. The items with an asterisk on your Account History may explain this. If you want a further explanation, please call our toll-free number.

APPENDIX I–8: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,090
September	190	0		1,280
October	190	680	taxes	790
November	190	600	insurance	380
December	190	0		570
January	190	0		760
February	190	0		950
March	190	0		1,140
April	190	0		1,330
May	190	0		1,520
June	190	0		1,710
July	190	1,000	taxes	900
August	190	0		1,090

Your ending balance, from the last month of the account history, is $ 1,320. Your starting balance according to this analysis should be $ 1,090.

This means you have a surplus of $ 230. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. We are sending you a check for the surplus.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,314 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 190 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX J–1: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Three year cycle, three year display.]

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEARS BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$ 900
January	130	0		1,030
February	130	600	taxes	560
March	130	0		690
April	130	240	insurance	580
May	130	0		710
June	130	0		840
July	130	0		970
August	130	600	taxes	500
September	130	0		630
October	130	0		760
November	130	0		890
December	130	0		1,020
January	130	0		1,150
February	130	600	taxes	680
March	130	360	flood insurance	450
April	130	240	insurance	340
May	130	0		470
June	130	0		600
July	130	0		730
August	130	600	taxes	260
September	130	0		390
October	130	0		520
November	130	0		650
December	130	0		780
January	130	0		910
February	130	600	taxes	440
March	130	0		570
April	130	240	insurance	460
May	130	0		590
June	130	0		720
July	130	0		850
August	130	600	taxes	380
September	130	0		510
October	130	0		640
November	130	0		770
December	130	0		900

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 260.

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 870 OF WHICH $ 740 WILL BE FOR PRINCIPAL AND INTEREST AND $ 130 WILL GO INTO YOUR ESCROW ACCOUNT.

APPENDIX J–2: ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — EXAMPLE

[Three year cycle, one year display.]

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Initial deposit:				$ 900
January	130	0		1,030
February	130	600	taxes	560
March	130	0		690
April	130	240	insurance	580
May	130	0		710
June	130	0		840
July	130	0		970
August	130	600	taxes	500
September	130	0		630
October	130	0		760
November	130	0		890
December	130	0		1,020

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 260.

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 870 OF WHICH $ 740 WILL BE FOR PRINCIPAL AND INTEREST AND $ 130 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX K
(APPENDIX K consists of Appendices K–1 through K–4)

APPENDIX K–1: SHORT YEAR STATEMENTS — EXAMPLE

[Maturity, payoff, or transferor (old) servicer when sold.]

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPTEMBER 1993 THROUGH APRIL 1994. (COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON AUGUST 16 (ANOTHER COPY IS ENCLOSED).)

YOUR MONTHLY MORTGAGE PAYMENT SINCE SEPTEMBER 1993 WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,200
September	200	0		1,400
October	200	680*	taxes	920
November	200	600	insurance	520
December	200	0		720
January	200	0		920
February	200	0		1,120
March	200	0		1,320
April	200	0		1,520

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount. If you want a further explanation, please call our toll-free number.

APPENDIX K–2: SHORT YEAR STATEMENTS — EXAMPLE

[Transferor (old) servicer when sold.]

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,200
September	200	0		1,400
October	200	800	taxes	800
November	200	600	insurance	400
December	200	0		600
January	200	0		800
February	200	0		1,000
March	200	0		1,200
April	200	0		1,400
May	200	0		1,600
June	200	1,000	taxes	800
July	200	0		1,000
August	200	0		1,200

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APPENDIX K–3: SHORT YEAR STATEMENTS — EXAMPLE

[Transferee (new) servicer, no change in monthly payment or accounting system, at the end of the yearly cycle.]

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM MAY 1994 THROUGH AUGUST 1994.

YOUR MONTHLY MORTGAGE PAYMENT SINCE MAY 1994 WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,520
May	200	0		1,720
June	200	0		1,920
July	200	1,000	taxes	1,120
August	200	0		1,320

APPENDIX K–4: SHORT YEAR STATEMENTS — EXAMPLE

[Transferee (new) servicer when sold.]

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,090
September	190	0		1,280
October	190	680	taxes	790
November	190	600	insurance	380
December	190	0		570
January	190	0		760
February	190	0		950
March	190	0		1,140
April	190	0		1,330
May	190	0		1,520
June	190	0		1,710
July	190	1,000	taxes	900
August	190	0		1,090

Your ending balance, from the last month of the account history, is $ 1,320 . Your starting balance according to this analysis should be $ 1,090 .

This means you have a surplus of $ 230 . This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. We are sending you a check for the surplus.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,314 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 190 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX L: SIDE-BY-SIDE PRESENTATION OF OLD PROJECTION AND HISTORY

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPTEMBER THROUGH AUGUST. (LAST YEAR'S PROJECTIONS ARE NEXT TO THE ACTUAL ACTIVITY.)

Your monthly mortgage payment for the past year was $ 1,324 of which $ 1,124 was for principal and interest and $ 200 went into your escrow account.

Month	Projected Payments to Escrow Account	Actual Payments to Escrow Account	Projected Payments from Escrow Account	Description	Actual Payments from Escrow Balance	Description	Projected Escrow Account Balance	Actual Escrow Account Balance
Starting balance							$1,200	$1,200
September	200	200	0				1,400	1,400
October	200	200	800	taxes	680 *	taxes	800	920
November	200	200	600	insurance	600	insurance	400	520
December	200	200	0				600	720
January	200	200	0				800	920
February	200	200	0				1,000	1,120
March	200	200	0				1,200	1,320
April	200	200	0				1,400	1,520
May	200	200	0				1,600	1,720
June	200	200	1,000	taxes			800	1,920
July	200	200	0		1,000 *	taxes	1,000	1,120
August	200	200	0				1,200	1,320

An asterisk (*) indicates a difference from a previous estimate either in the date or the amount.

Last year, we anticipated that payments from your account would be made during this period equaling $ 2,400. Under Federal law, your lowest monthly balance should not have exceeded $ 400 or 1/6 of anticipated payments from the account, unless your mortgage contract or State law specifies a lower amount. Under your mortgage contract and State law, your lowest monthly balance should not have exceeded $ 400.

Your actual lowest monthly balance was greater than $ 400. The items with an asterisk on your Account History may explain this. If you want a further explanation, please call our toll-free number.

APPENDIX M: ILLUSTRATION OF OPTION OF IDENTIFYING SIMULTANEOUS DEFICIENCY AND SHORTAGE

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$3,300
September	500	0		3,800
October	500	800	taxes	3,500
November	500	3,000	insurance	1,000
December	500	0		1,500
January	500	0		2,000
February	500	0		2,500
March	500	0		3,000
April	500	0		3,500
May	500	0		4,000
June	500	2,200	taxes	2,300
July	500	0		2,800
August	500	0		3,300

Your ending balance, from the last month of the account history, is ($ 2,400). Your starting balance according to this analysis should be $ 3,300.

This means you have a deficiency of $ 2,400. This deficiency may be collected from you over a period of 2 months or more unless the deficiency is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. We will ask you to pay it over 2 months.

After considering the deficiency, you still have a remaining shortage of $ 3,300. This shortage may be collected from you over a period of 12 months or more unless the shortage is less than 1 month's deposit, in which case we have the additional option of requesting payment within 30 days. We have decided to collect it over 12 months.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

YOUR MONTHLY MORTGAGE PAYMENT FOR THE FIRST 2 MONTHS OF THE COMING YEAR WILL BE $ 3,099 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 1,975 WILL GO INTO YOUR ESCROW ACCOUNT.

YOUR MONTHLY MORTGAGE PAYMENT FOR THE 3RD THROUGH THE 12TH MONTHS OF THE COMING YEAR WILL BE $ 1,899 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 775 WILL GO INTO YOUR ESCROW ACCOUNT.

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APPENDIX N: HUD–1 AGGREGATE ACCOUNTING ADJUSTMENT EXAMPLE

Given: City Property Taxes $1200 in December
Insurance $360 in September

First regular monthly payment in June

Option 1: Aggregate at closing

Two month cushion chosen

1000.	Reserves Deposited With Lender			
1001.	Hazard Insurance	10 months @	$30 per month	300
1002.	Mortgage Insurance	months @	per month	
1003.	City Property Taxes	7 months @	$100 per month	700
1004.	County Property Taxes	months @	per month	
1005.	Annual Assessments	months @	per month	
1006.		months @	per month	
1007.		months @	per month	
1008.	Aggregate Accounting Adjustment			-90

This adjustment works so long as single item is performed as indicated in this rule and shown in examples in the appendices. Errors may result if the instructions for single item in this rule are not followed.

Option 2: Single item at closing, one month cushion

1000.	Reserves Deposited With Lender			
1001.	Hazard Insurance	9 months @	$30 per month	270
1002.	Mortgage Insurance	months @	per month	
1003.	City Property Taxes	6 months @	$100 per month	600
1004.	County Property Taxes	months @	per month	
1005.	Annual Assessments	months @	per month	
1006.		months @	per month	
1007.		months @	per month	
1008.	Aggregate Accounting Adjustment			

Dated: February 8, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 95–3683 Filed 2–10–95; 12:46 pm]

BILLING CODE 4210–27–C

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federal register

Wednesday
February 15, 1995

Part VII

Office of Management and Budget

Budget Rescission and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 23 rescission proposals of budgetary resources, totaling $1.1 billion. These rescissions, when combined with other discretionary savings proposals contained in the FY 1996 Budget, will reduce FY 1995 budgetary resources by $2.4 billion.

The proposed rescissions affect the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Labor, and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; the Small Business Administration; the Chemical Safety and Hazardous Investigation Board; and the National Science Foundation.

William J. Clinton

The White House,
February 6, 1995.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No.	ITEM	Budgetary Resources
	Department of Agriculture:	
	Foreign Agricultural Service:	
	Public Law 480 Program Accounts:	
R95-1	Public Law 480 program account	43,865
	Public Law 480 grants, title I (OFD), II, and III	98,635
	Food and Nutrition Service:	
R95-2	Food stamp program	2,900
	Department of Commerce:	
	National Telecommunications and Information Administration:	
R95-3	Public broadcasting facilities, planning and construction	18,000
	Department of Education:	
	Office of Elementary and Secondary Education:	
R95-4	School improvement programs	138,084
	Office of Vocational and Adult Education:	
R95-5	Vocational and adult education	43,888
	Office of Postsecondary Education:	
R95-6	Higher education	26,903
R95-7	College housing and academic facilities loans program	168
	Office of Educational Research and Improvement:	
R95-8	Education research, statistics, and improvement	750
R95-9	Libraries	12,942
	Department of Health and Human Services:	
	Health Resources and Services Administration:	
R95-10	Health resources and services	29,147
	Centers for Disease Control and Prevention:	
R95-11	Disease control, research, and training	1,300
	National Institutes of Health:	
R95-12	National Center for Research Resources	1,000

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No.	ITEM	Budgetary Resources
	Department of Housing and Urban Development:	
	Housing Programs:	
R95-13	Annual contributions for assisted housing	439,200
R95-14	Congregate services	37,000
	Department of Labor:	
	Bureau of Labor Statistics:	
R95-15	Salaries and expenses	1,100
	Department of Transportation:	
	Federal Railroad Administration:	
R95-16	Local rail freight assistance	13,216
	Office of the Secretary:	
R95-17	Payments to air carriers (Airport and airway trust fund)	7,680
	Environmental Protection Agency:	
R95-18	Abatement, control, and compliance	11,642
R95-18A	Abatement, control, and compliance	(4,807)
R95-18B	Water infrastructure financing	(3,200)
R95-18C	Research and development	(3,635)
	National Aeronautics and Space Administration:	
R95-19	Mission support	1,000
R95-20	Construction of facilities	27,000
	Small Business Administration:	
R95-21	Salaries and expenses	15,000
	Other Independent Agencies:	
	Chemical Safety and Hazard Investigation Board:	
R95-22	Salaries and expenses	500
	National Science Foundation:	
R95-23	Academic research infrastructure	131,867
	Total, rescissions	1,102,787

R95-1

DEPARTMENT OF AGRICULTURE

FOREIGN AGRICULTURAL SERVICE

Public Law 480 program accounts

Of the funds made available under this heading in Public Law 103-330, $142,500,000 are rescinded of which: $6,135,000 shall be from the amounts appropriated for ocean freight differential costs; $92,500,000 shall be from the amounts appropriated for commodities supplied in connection with dispositions abroad pursuant to title III; and $43,865,000 shall be from the amounts appropriated for the cost of direct credit agreements as authorized by the Agricultural Trade Development and Assistance Act of 1954, as amended, and the Food for Progress Act of 1985, as amended.

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Rescission Proposal No. R95-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 238,623,000 (P.L. 103-330)
BUREAU: Foreign Agricultural Service	Other budgetary resources.. $ _____
Appropriations title and symbol: P. L. 480 program account 12X2277	Total budgetary resources.. $ 238,623,000
	Amount proposed for rescission..... $ 43,865,000
OMB identification code: 12-2277-0-1-151	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds subsidy budget authority and administrative costs of the Title I loan program. The program provides for the sale of U.S. agricultural commodities to more advanced developing countries through government-to-government agreements. Sales are made through direct loans with highly concessional financing terms. This proposed rescission, in conjunction with the rescission of ocean freight grant funds in the grant account, totals $50 million. The GAO has characterized this program as not fully meeting its objectives of economic growth and market development.

ESTIMATED PROGRAM EFFECT: The effect of the rescission in Title I is to force decisions as to the relative priority of country-programs for the remaining funds.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
368,349	343,346	-25,003	-16,230	-2,632	—	—	—

Rescission Proposal No. R95-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 1,007,542,000 (P.L. 103-330)
BUREAU: Foreign Agricultural Service	Other budgetary resources.. $ _____
Appropriations title and symbol: P.L. 480 grants, title I (OFD), II, and III 12X2278	Total budgetary resources... $ 1,007,542,000
	Amount proposed for rescission..... $ 98,635,000
OMB identification code: 12-2278-0-1-151	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation funds the grant portion of Title I, and Titles II and III of P.L. 480. Rescissions of $43.9 million for subsidies in the program account and $6.1 million proposed here for the ocean freight differential grant for Title I combine for a total of $50 million. The program is considered less than fully effective in meeting agricultural market development goals.

This proposal also includes a $92.5 million rescission of P.L. 480 Title III funds. This is part of a proposed phased elimination of funding for Title III by FY 1997. The program has already declined from $312 million in FY 1993 to $157 million in FY 1995.

ESTIMATED PROGRAM EFFECT: The effect of the rescission in Title I is to force decisions as to the relative priority of country-programs for the remaining funds. The effect of the rescission on Title III is to speed up the elimination of the program, and shift from food aid to direct assistance.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
1,067,572	1,036,325	-31,247	-61,470	-5,918	—	—	—

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R95-2

DEPARTMENT OF AGRICULTURE
FOOD AND NUTRITION SERVICE
Food stamp program

Of the funds made available under this heading in Public Law 103-330, $2,900,000 are rescinded: Provided, That the fifth proviso under this heading is amended by (1) deleting "$1,143,000,000" and inserting "$1,140,100,000", and (2) deleting "$12,472,000" and inserting "$9,572,000."

Rescission Proposal No. R95-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... (P.L. 103-330) $ 29,830,710,000
BUREAU: Food and Nutrition Service	Other budgetary resources.. -2,500,000,000
Appropriations title and symbol: Food stamp program 1253505	Total budgetary resources... $ 26,330,710,000
	Amount proposed for rescission..... $ 2,900,000
OMB identification code: 12-3505-0-1-605	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: Funds were appropriated to this account for transfer to the Animal and Plant Health Inspection Service. This proposal reflects savings from the elimination of funding for a cattle tick eradication program in Puerto Rico conducted by the Animal and Plant Health Inspection Service. The eradication program has been ongoing since the early 1980s. The current eradication strategy does not appear to be effective, and, therefore, it is a low-priority activity.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

Food Stamp Program

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
26,555,315	26,555,315	—	—	—	—	—	—

Animal and Plant Health Inspection Service, Salaries and expenses

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
428,465	426,023	-2,442	-458	—	—	—	—

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R95-3

DEPARTMENT OF COMMERCE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Public broadcasting facilities, planning and construction

Of the funds made available under this heading in Public Law 103-317, $18,000,000 are rescinded.

Rescission Proposal No. R95-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce	New budget authority..... $ 29,000,000 (P.L. 103-317)
BUREAU: National Telecommunications and Information Administration	Other budgetary resources.. $ 4,212,676
Appropriations title and symbol: Public broadcasting facilities, planning and construction 13X0551	Total budgetary resources... $ 33,212,676
	Amount proposed for rescission..... $ 18,000,000
OMB identification code: 13-0551-0-1-503	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the expenses of the Public broadcasting facilities, planning and construction program. A rescission of $18 million is proposed because savings can be realized by not funding replacement equipment at public broadcasting stations and equipment for distance learning applications.

ESTIMATED PROGRAM EFFECT: The proposed rescission would not affect the National Telecommunications and Information Administration's ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
28,178	26,018	-2,160	-8,280	-3,780	-3,780	—	—

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R95-4

DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

School improvement programs

Of the funds made available under this heading in Public Law 103-333, $138,084,000 are rescinded as follows: from the Elementary and Secondary Education Act, $28,000,000 for part C of title V, $5,899,000 for section 10602, $4,185,000 for part G of title X, and $100,000,000 for title XII.

Rescission Proposal No. R95-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... $ 1,564,877,000 (P. L. 103-333)
BUREAU: Office of Elementary and Secondary Education	Other budgetary resources.. $ 31,000,000
Appropriations title and symbol: School improvement programs 91 5/61000 91 4/51000 9151000	Total budgetary resources... $ 1,595,877,000
	Amount proposed for rescission..... $ 138,084,000
OMB identification code: 91-1000-0-1-501	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☒ Multi-year: September 30, 1996 September 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The amount of $138,084,000 is proposed for rescission from the Ellender Fellowships ($4,185,000), the Instruction in Civics, Government, and the Law ($5,899,000), the Dropout Prevention Demonstrations ($28,000,000), and the Education Infrastructure ($100,000,000) programs. Support of Ellender Fellowship program is not an appropriate Federal responsibility. Other well-established programs have successfully institutionalized law education throughout the country, the same purpose served by the Instruction in Civics, Government, and the Law program. The Dropout Prevention Demonstration program has accomplished its purpose in 1994, the final planned year. State and local governments have traditionally had the responsibility for providing adequate infrastructure for education.

ESTIMATED PROGRAM EFFECT: Ellender Fellowships and Instruction in Civics, Government, and the Law would be able to continue their programs with continued use of non-Federal funds. Continuation of the Dropout Prevention program would provide non-competitive assistance to incumbent grantees rather than support demonstrations, which have already been funded. Without new Federal activities, State and local governments would continue to fund school construction renovation.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
1,591,656	1,575,086	-16,570	-93,897	-24,855	-2,762	—	—

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R95-5

DEPARTMENT OF EDUCATION

OFFICE OF VOCATIONAL AND ADULT EDUCATION

Vocational and adult education

Of the funds made available under this heading in Public Law 103-333, $43,888,000 are rescinded, of which $9,479,000 are rescinded from funds made available for title III, part A, of the Carl D. Perkins Vocational and Applied Technology Education Act, and $34,409,000 are rescinded from funds made available for title III, part B, of that Act.

Rescission Proposal No. R95-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... $ 1,480,323,197 (P. L. 103-333)
BUREAU: Office of Vocational and Education	Other budgetary resources.. $ 122,736,645
Appropriations title and symbol: Office of vocational and adult education 915/60400 91X0400 914/50400 9150400	Total budgetary resources... $ 1,603,059,842
	Amount proposed for rescission..... $ 43,888,000
OMB identification code: 91-0400-0-1-501	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☒ Multi-year: September 30, 1996 / September 30, 1995 (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The amount of $43,888,000 is proposed for rescission from the Community-Based Organizations ($9,479,000) and the Consumer and Homemaking Education ($34,409,000) programs. Programs operated jointly with community-based organizations can be carried out under the Vocational Education Basic State Grants program in States and communities that have a need for the services. All States currently have active, well-established consumer and homemaking education programs that will continue without direct Federal support.

ESTIMATED PROGRAM EFFECT: There will be no program effect because the Community-Based Organizations program duplicates activities permissible under the Vocational Education Basic State Grants program, and because States already dedicate far greater resources to Consumer and Homemaking Education programs than does the Federal government.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
1,549,094	1,543,828	-5,267	-29,844	-7,900	-877	—	—

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R95-6

DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

Higher education

Of the funds made available under this heading in Public Law 103-333, $26,903,000 are rescinded as follows: from the Higher Education Act, $3,108,000 for chapter 2, subpart 2, part A of title IV; $1,875,000 for subpart 3, part C of title V; $14,920,000 for part G of title IX; $4,000,000 for part D of title X; $2,000,000 for part C of title VI of the Excellence in Mathematics, Science, and Engineering Education Act of 1990; and $1,000,000 for part E of title XV of the Higher Education Amendments of 1992.

Rescission Proposal No. R95-6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education **BUREAU:** Office of Postsecondary Education **Appropriations title and symbol:** Higher education 9150201 91X0201	New budget authority..... $ 962,842,000 (P. L. 103-333) Other budgetary resources.. $ 15,708,017 Total budgetary resources... $ 978,550,017 Amount proposed for rescission..... $ 26,903,000
OMB identification code: 91-0201-0-1-502 **Grant program:** [X] Yes [X] No	**Legal authority (in addition to sec. 1012):** [ ] Antideficiency Act [ ] Other _____
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: The amount of $26,903,000 is proposed for rescission from the Olympic Scholarships ($1,000,000), the National Academy of Science, Space, and Technology ($2,000,000), the National Early Intervention Scholarships and Partnerships ($3,108,000), Law School Clinical Experience ($14,920,000), the Eisenhower Leadership ($4,000,000), and the Teacher Corps ($1,875,000) programs. The Olympic Scholarships and the National Academy of Science, Space, and Technology programs are inappropriate uses and duplicative of other Federal programs. Budgetary constraints preclude the significant investment of funds that would be required to achieve appropriate results under the National Early Intervention Scholarships and Partnerships program, which is any case already duplicates the Federal TRIO programs, which provide support to low-income disadvantaged individuals to pursue and complete college. The Law School Clinical Experience program is more appropriately funded through non-Federal resources and has fullfilled its original purpose. The Eisenhower Leadership program is poorly focused and duplicative as is the overly-complex Teacher Corps program. The elimination of these programs is consistent with the National Performance Review.

ESTIMATED PROGRAM EFFECT: No material effect. These programs are duplicative of other programs, are more appropriately funded from other sources or are an inappropriate Federal role.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
902,542	899,314	-3,228	-18,294	-4,843	-538	—	—

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R95-7

DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
College housing and academic
facilities loans program

Of the funds made available under this heading in Public Law 103-333 for the costs of direct loans, as authorized under part C of title VII of the Higher Education Act, as amended, $168,000 are rescinded, and the authority to subsidize gross loan obligations is repealed.

Rescission Proposal No. R95-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P. L. 103-333)	$	1,190,000
BUREAU: Office of Postsecondary Education	Other budgetary resources..	$	
Appropriations title and symbol: College housing and academic facilities loans program 9150241	Total budgetary resources...	$	1,190,000
	Amount proposed for rescission.....	$	168,000
OMB identification code: 91-0241-0-1-502	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____		
Grant program: ☐ Yes ☒ No			
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____		

JUSTIFICATION: This program provides direct, low-interest-rate loans to postsecondary educational institutions for construction, reconstruction, and renovation of housing and educational facilities. This proposal reflects savings derived from not making new loans. In the FY 1995 appropriations act, $10 million in new loans was authorized, but only $168 thousand was provided for loan subsidies. Based on current subsidy calculations, the subsidy provided would support only $840 thousand in new loans. The proposal would rescind the subsidy and repeal the loan authority rather than restart a terminated program and issue so few new loans. The National Performance Review recommended the elimination of this loan program because providing funds to institutions of higher education for renovation and construction supplants State, local, and private support.

ESTIMATED PROGRAM EFFECT: No material effect. Institutions already provide the resources for this activity in far greater amounts.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
2,872	2,872	—	—	-8	-50	-42	-34

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R95-8

DEPARTMENT OF EDUCATION

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

Education research, statistics, and improvement

Of the funds made available under this heading in Public Law 103-333, $750,000 made available for part I of title X of the Elementary and Secondary Education Act, as amended, are rescinded.

Rescission Proposal No. R95-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P.L. 103-333) $ 354,892,000
BUREAU: Office of Educational Research and Improvement	Other budgetary resources.. $ _____
Appropriations title and symbol: Education research, statistics, and improvement 91X1100 9151100	Total budgetary resources... $ 354,892,000
	Amount proposed for rescission..... $ 750,000
OMB identification code: 91-1100-0-1-503	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The amount of $750,000 is proposed for rescission from the 21st Century Community Learning Center program. The entire amount appropriated for the program in FY 1995 is proposed for rescission because separate funding for this activity is not needed. Other programs provide elementary and secondary school students and their families better access to such services.

ESTIMATED PROGRAM EFFECT: No material effect. States would use other funding sources, including other Elementary and Secondary Education Act programs and grants, for activities that provide similar benefits.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
330,529	330,439	-90	-510	-135	-15	—	—

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R95-9

DEPARTMENT OF EDUCATION

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

Libraries

Of the funds made available under this heading in Public Law 103-333, $12,942,000 are rescinded, of which $8,026,000 are rescinded from funds made available for title VI of the Library Services and Construction Act, and $4,916,000 are rescinded from funds made available for section 222 of the Higher Education Act.

Rescission Proposal No. R95-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P.L. 103-333) $ 144,161,000
BUREAU: Office of Educational Research and Improvement	Other budgetary resources.. $ 12,618,160
Appropriations title and symbol: Libraries 9150104 91X0104	Total budgetary resources... $ 156,779,160
	Amount proposed for rescission..... $ 12,942,000
OMB identification code: 91-0104-0-1-503	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from the elimination of the Library Literacy and the Library Education and Training discretionary grant programs. The Library Literacy program provides small ($35 thousand or less) grants to support the involvement of State and local public libraries in adult literacy programs. These activities may also be supported under the Public Library Services program, a State formula grant program that permits States to direct funds where services are most needed. The Library Education and Training program supports awards, primarily to institutions of higher education, to provide training or retraining to prepare individuals for service in all types of libraries. No shortage of trained librarians has been demonstrated. Eliminating these programs is consistent with the recommendations of the National Performance Review.

ESTIMATED PROGRAM EFFECT: Similar activities to the Library literacy program would be supported under the Public Library Services programs and from State and local sources. Persons seeking training or retraining in library and information science would be able to seek other student financial assistance for such training.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
155,415	150,239	-5,176	-4,789	-2,977	—	—	—

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R95-10

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Health resources and services

Of the funds made available under this heading in Public Law 103-333, $29,147,000 are rescinded.

Rescission Proposal No. R95-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Health and Human Services
BUREAU:
Health Resources and Services Administration
Appropriations title and symbol:
Health resources and services
7550350

New budget authority (P.L. 103-333)	$	3,049,859,000
Other budgetary resources	$	142,276,000
Total budgetary resources	$	3,192,135,000
Amount proposed for rescission	$	29,147,000

OMB identification code:
75-0350-0-1-550
Grant program:
[ ] Yes [X] No

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other _____

Type of account or fund:
[X] Annual
[ ] Multi-year _____ (expiration date)
[ ] No-Year

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

JUSTIFICATION: This proposal reflects savings from reductions in 29 health professions curriculum assistance grants Independent evaluations indicate that these grants have not had a significant impact on the supply, distribution, and minority representation of health professionals. Reductions are also proposed in health care facilities

ESTIMATED PROGRAM EFFECT None

OUTLAY EFFECT (in thousands of dollars)

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
2,851,000	2,839,600	-11,400	-11,280	-6,467	---	---	---

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R95-11

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION
Disease control, research, and training

Of the funds made available under this heading in Public Law 103-333, $1,300,000 are rescinded.

Rescission Proposal No. R95-11

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services **BUREAU:** Centers for Disease Control and Prevention **Appropriations title and symbol:** Disease control, research, and training 7550943	New budget authority..... (P.L. 103-333) $ 2,085,868,000 Other budgetary resources.. $ 146,877,000 Total budgetary resources... $ 2,232,745,000 Amount proposed for rescission..... $ 1,300,000
OMB identification code: 75-0943-0-1-550 **Grant program:** ☐ Yes ☒ No	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The proposal reflects rescission of $1.3 million in funds not needed to accomplish programmatic goals.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
2,009,425	2,008,940	-485	-815	—	—	—	—

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R95-12

DEPARTMENT OF HEALTH AND HUMAN SERVICES
NATIONAL INSTITUTES OF HEALTH
National Center for Research Resources

Of the funds made available under this heading in Public Law 103-333, $1,000,000 are rescinded.

Rescission Proposal No. R95-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $ 294,877,000 (P.L. 103-333)
BUREAU: National Institutes of Health	Other budgetary resources.. $ 74,049,000
Appropriations title and symbol: National Center for Research Resources 7559915	Total budgetary resources... $ 368,926,000
	Amount proposed for rescission..... $ 1,000,000
OMB identification code: 75-9915-0-1-552	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from a small reduction in the FY 1995 appropriation for the National Center for Research Resources' extramural construction grant program. These funds are not needed to accomplish programmatic goals.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
343,694	343,694	—	-500	-500	—	—	—

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R95-13

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

Annual contributions for assisted housing

Of the funds made available under this heading in Public Law 103-327 and any unobligated balances from funds appropriated under this heading in prior years, $439,200,000 are rescinded, of which $100,000,000 shall be from the modernization of existing public housing projects pursuant to section 14 of the United States Housing Act of 1937; $150,000,000 shall be from the assistance for State or local units of government, tenant, and nonprofit organizations to purchase projects where owners have indicated an intention to prepay mortgages and for assistance to be used as an incentive to prevent prepayment or for vouchers to aid eligible tenants adversely affected by mortgage prepayment, as authorized in the Emergency Low-Income Housing Preservation Act of 1987, as amended; $80,000,000 shall be from the lead-based paint hazard reduction program as authorized under sections 1011 and 1053 of the Residential Lead-Based Hazard Reduction Act of 1992; $39,000,000 are rescinded from amounts recaptured during fiscal year 1995 or in prior years; $21,000,000 shall be from Section 8 contract amendments; $34,200,000 shall be from amounts reserved for lease adjustments; and $15,000,000 shall be from amounts for the Family Unification program.

Rescission Proposal No. R95-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... (P.L. 103-327) $ 11,083,000,000
BUREAU: Housing Programs	Other budgetary resources.. $ 1,305,951,283
Appropriations title and symbol: Annual contributions for assisted housing 86X0164	Total budgetary resources... $ 12,388,951,283
	Amount proposed for rescission..... $ 439,200,000
OMB identification code: 86-0164-0-1-604	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from reductions in the following activities:

Lead-based paint. This program supported lead-based paint removal efforts targeted primarily at privately owned and operated multifamily housing. Much progress has been made in the fight against lead poisoning, and abatement efforts will continue where the problem still exists, primarily in low-income housing. In the future, allocation of funds for removal efforts will rest with State and local governments under the new Affordable Housing Performance Funds program.

Multifamily Preservation. The preservation program was intended to ensure the availability of low-income rental housing by preventing project owners from prepaying mortgages and converting the units to other uses. The program compensates owners for the loss of the prepayment option through preservation incentives. While well-intended, this program is a very inflexible and costly method of preserving low-income housing. In addition to overly generous incentives, there is a lack of prepayment threat in most areas of the country. The Administration and HUD are proposing program reforms that would reduce both the number of eligible projects and the level of payments. The rescission affects funds in excess of needs under the reformed program.

Choice in Management. The Choice in Management program permits public housing residents to remove a poorly performing management team (Public Housing Authority) and replace it with a private sector manager. The program has never been implemented. Under HUD's proposed reinvention, need for this program is obviated. The monopoly of poor performing PHAs will be broken up, and they will have to compete for tenants. Tenants will be able to change managers by "voting with their feet" (i.e., moving to apartments of their choosing).

Family Unification. The Family Unification program earmarked housing certificates for families who are in danger of losing their children because of inadequate housing. Regular preferences for certificates should take care of this problem without the need for earmarks.

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Lease Adjustments. Lease adjustments is a small program that provides inflation adjustments on pre-1974 rental assistance contracts. These funds are in excess of anticipated needs.

Section 8 Amendments. These amendments provide additional funds for multi-year Section 8 contracts. These funds are in excess of anticipated needs.

Section 8 Recaptures. The recaptures under the Section 8 program are normally recycled to other recipients. This rescission would return these funds to the Treasury.

ESTIMATED PROGRAM EFFECT: This proposed rescission would not affect the Housing Programs' ability to accomplish its mission.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
16,412,734	16,359,134	-53,600	-112,700	-82,300	-56,300	-46,300	-25,700

R95-14

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

Congregate services

Of the funds made available under this heading in Public Law 103-327 and any unobligated balances from funds appropriated under this heading in prior years, $37,000,000 are rescinded.

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Rescission Proposal No. R95-14

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development **BUREAU:** Housing Programs **Appropriations title and symbol:** Congregate services 86X0178 **OMB identification code:** 89-0178-0-1-604 **Grant program:** ☐ Yes ☒ No **Type of account or fund:** ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	New budget authority..... (P.L. 103-327) $ 25,000,000 Other budgetary resources.. $ 19,747,156 Total budgetary resources... $ 44,747,156 Amount proposed for rescission..... $ 37,000,000 **Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____ **Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from the proposed elimination of the Congregate services program. The Cranston-Gonzalez National Housing Act of 1990 authorized the Secretary of Housing and Urban Development to enter into five-year contracts for congregate support services (meals, transportation, etc.) for the elderly and disabled. Other funding mechanisms exist that can be utilized to provide similar services to elderly and handicapped persons, such as the Community development block grant program and the Elderly service coordinator program. The need for these services can be prioritized at the State/local level, and the appropriate resources can be made available to fit individual circumstances.

ESTIMATED PROGRAM EFFECT: The funding for the "new" congregate services program would not be implemented until the "new" program and the "older" congregate services programs become eligible for funding under HUD's new grants to States and localities.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
6,100	6,100	—	-5,088	-9,805	-7,261	-5,619	-6,151

R95-15

DEPARTMENT OF LABOR

BUREAU OF LABOR STATISTICS

Salaries and expenses

Of the funds made available under this heading in Public Law 103-333, $1,100,000 are rescinded.

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Rescission Proposal No. R95-15

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Labor	New budget authority..... $ 293,627,000 (P.L. 103-333)
BUREAU: Bureau of Labor Statistics	Other budgetary resources.. 74,803,000
Appropriations title and symbol: Salaries and expenses 16X0200	Total budgetary resources.... $ 368,430,000
	Amount proposed for rescission..... $ 1,100,000
OMB identification code: 16-0200-0-1-505	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: The Bureau of Labor Statistics (BLS) produces employment and unemployment data for 11 large states, New York City, and the Los Angeles-Long Beach area directly from the Current Population Survey (CPS). For other areas, BLS produces monthly estimates using regression analyses that combine information from the CPS, Current Employment Survey, and unemployment records. This proposal reflects savings from continuing the practice of obtaining the monthly employment and unemployment data from the original 11 large states instead of expanding the CPS to allow employment and unemployment data for Georgia and Virginia to be obtained directly from the CPS. This rescission proposal would allow BLS to continue the Direct Use States Program at the FY 1994 level.

ESTIMATED PROGRAM EFFECT: This number of Direct Use States would not rise from 11 to 13. Monthly unemployment data would continue to be produced for Georgia and Virginia under the same method used in the 37 other non-direct use States.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
369,522	368,437	-1,085	-15	---	---	---	---

R95-16

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
Local rail freight assistance

Of the funds made available under this heading, $13,216,371 are rescinded.

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Rescission Proposal No. R95-16

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $ 18,469,741 (P.L. 103-331)
BUREAU: Federal Railroad Administration	Other budgetary resources.. $ _____
Appropriations title and symbol: Local rail freight assistance 69X0714	Total budgetary resources... $ 18,469,741
	Amount proposed for rescission..... $ 13,216,371
OMB identification code: 69-0714-0-1-401	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from the termination of the Local rail freight assistance program. The program has completed the purpose for which it was initiated.

ESTIMATED PROGRAM EFFECT: Applications for assistance from a number of States will be denied.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
25,128	19,842	-5,286	-5,286	-2,643	—	—	—

R95-17

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Payments to air carriers
(Airport and airway trust fund)

Of the unobligated balances available under this heading, $7,680,000 are rescinded: Provided, That the Secretary shall not enter into any contracts for "Small Community Air Service" which require compensation fixed and determined under subchapter II of chapter 417 of Title 49, United States Code (49 U.S.C. 41731-42) payable by the Department of Transportation: Provided further, That no funds under this head shall be available for payments to air carriers under subchapter II.

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Rescission Proposal No. R95-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (P.L. 93-344)	$	33,423,000
BUREAU: Office of the Secretary	Other budgetary resources..	$	———
Appropriations title and symbol: Payments to air carriers (Airport and airway trust fund) 69X8304	Total budgetary resources...	$	33,423,000
	Amount proposed for rescission.....	$	7,680,000
OMB identification code: 69-8304-0-1-402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____		
Grant program: ☐ Yes ☒ No			
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____		

JUSTIFICATION: This proposal reflects savings from the rescission of remaining unobligated balances of contract authority authorized for the Payments to Air Carriers program. Termination is warranted because the communities that now receive subsidized air service through this program are within reasonable driving distance of other airports or other modes of transportation and because the per passenger subsidy cost is not merited.

ESTIMATED PROGRAM EFFECT: This proposal will encourage some currently subsidized air service operators to become self-supporting.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
26,249	23,309	-2,940	-1,960	—	—	—	—

R95-18

ENVIRONMENTAL PROTECTION AGENCY

Abatement, control, and compliance

Of the funds made available under this heading in Public Law 103-327, $11,641,805 are rescinded.

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Rescission Proposal No. R95-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency **BUREAU:**	New budget authority..... $ 1,414,444,000 (P.L. 103-327) Other budgetary resources.. $ 60,000,000 Total budgetary resources... $ 1,474,444,000
Appropriations title and symbol: Abatement, control, and compliance 685/60108	Amount proposed for rescission..... $ 11,641,805
OMB identification code: 68-0108-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: Funds were originally withheld pending rescission for the Clean Lakes ($3,141,805 grant) and the Rural Water Technical Assistance ($8,500,000 non-grant) programs. However, this rescission proposal has been replaced by the following three rescission proposals, and funds for rural water technical assistance have been released for obligation.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
1,384,009	1,380,027	-3,982	-5,300	-1,737	-444	-179	—

R95-18A

ENVIRONMENTAL PROTECTION AGENCY

Abatement, control, and compliance

Of the funds made available under this heading in Public Law 103-327, $4,806,805 are rescinded.

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Rescission Proposal No. R95-18A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency	New budget authority..... (P.L. 103-327)	$ 1,414,444,000
BUREAU:	Other budgetary resources..	$ 60,000,000
Appropriations title and symbol: Abatement, control, and compliance 68X5/60108	Total budgetary resources...	$ 1,474,444,000
	Amount proposed for rescission.....	$ 4,806,805
OMB identification code: 68-0108-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☒ Yes ☒ No		
Type of account or fund: ☐ Annual ☒ Multi-year September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This proposal would: (1) terminate funding for the Clean Lakes program ($3,141,805 grant) as States are able to address lake restoration needs, along with other priorities, under their existing Water Quality Management programs; and (2) rescind $1,665,000 (non-grant) in additional procurement savings due to the enactment of recent procurement reform legislation.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
1,384,009	1,381,940	-2,069	-1,746	-643	-238	-111	—

R95-18B

ENVIRONMENTAL PROTECTION AGENCY

Water infrastructure financing

Of the funds made available under this heading in Public Law 103-327, $3,200,000 are rescinded.

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Rescission Proposal No. R95-18B

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency	New budget authority..... (P.L. 103-327)	$ 2,961,805,000
BUREAU:	Other budgetary resources..	$ 1,767,700,000
Appropriations title and symbol: Water infrastructure financing 68X0103	Total budgetary resources...	$ 4,729,505,000
	Amount proposed for rescission.....	$ 3,200,000
OMB identification code: 68-0103-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____	
Grant program: ☒ Yes ☐ No		
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____	

JUSTIFICATION: This proposal would rescind funds earmarked by Congress specifically for wastewater infrastructure improvements in Mt. Pleasant, New Jersey. This increase appears to have been inadvertant as neither of the two municipalities in New Jersey bearing the name of Mt. Pleasant has a need for funds for this particular purpose.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
2,202,261	2,202,133	-128	-640	-960	-640	-320	-192

R95-18C

ENVIRONMENTAL PROTECTION AGENCY

Research and development

Of the funds made available under this heading in Public Law 103-327, $3,635,000 are rescinded.

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Rescission Proposal No. R95-18C

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Environmental Protection Agency	New budget authority..... (P.L. 103-327)	$	349,279,000
BUREAU:	Other budgetary resources..	$	50,000,000
Appropriation title and symbol: Research and development 68/60107	Total budgetary resources...	$	399,279,000
	Amount proposed for rescission.....	$	3,635,000
OMB identification code: 68-0107-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____		
Grant program: ☐ Yes ☒ No			
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____		

JUSTIFICATION: This proposal would rescind funding for Congressionally-directed increases for the following: (1) $2.3 million in health effects research, academic training, and neurotoxicity research activities that were fully funded in the President's budget for all activities identified as priority research; and (2) $735,000 in funding for agricultural/ livestock pollution abatement that duplicates ongoing activities at U.S.D.A. and EPA's non-point source program. In addition, $600,000 in additional procurement savings is proposed for rescission due to recently enacted procurement reform legislation.

ESTIMATED PROGRAM EFFECT: The rescission of these funds will not affect the accomplishment of the Agency's mission.

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
349,483	348,211	-1,272	-1,854	-400	-73	-36	—

R95-19

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Mission support

Of the funds made available under this heading in Public Law 103-327, $1,000,000 are rescinded.

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Rescission Proposal No. R95-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Aeronautics and Space Administration	New budget authority..... $ 734,387,000 (P.L. 103-327)
BUREAU:	Other budgetary resources.. $ 85,235,000
Appropriations title and symbol: Mission support 805/80112	Total budgetary resources... $ 819,622,000
	Amount proposed for rescission..... $ 1,000,000
OMB identification code: 80-0112-0-1-999	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year: September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings from the elimination of two of the eight National Aeronautics and Space Administration administrative aircraft. An ongoing study of the use and need of the remaining aircraft will be completed prior to phasing out of additional aircraft.

ESTIMATED PROGRAM EFFECT None

OUTLAY EFFECT (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
2,077,259	2,076,582	-677	-250	-57	-13	-3	—

R95-20

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Construction of facilities

Of the funds made available under this heading in Public Law 102-389, $27,000,000 are rescinded.

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Rescission Proposal No. R95-20

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Aeronautics and Space Administration	New budget authority..... $ 200,000 (P.L. 102-389)
BUREAU:	Other budgetary resources.. $ 532,975,376
Appropriations title and symbol: Construction of facilities 80X0107	Total budgetary resources... $ 533,175,376
	Amount proposed for rescission..... $ 27,000,000
OMB identification code: 80-0107-0-1-999	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year: _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This proposal reflects savings due to the decision not to construct a headquarters building for the Consortium for International Earth Science Information Network in Saginaw, Michigan.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
540,521	536,721	-3,800	-14,664	-5,395	-1,985	-730	-269

R95-21

SMALL BUSINESS ADMINISTRATION

Salaries and expenses

Of the funds made available under this heading in Public Law 103-317, $15,000,000 are rescinded: Provided, That no funds shall be available to implement section 24 of the Small Business Act, as amended.

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Rescission Proposal No. R95-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Small Business Administration	New budget authority..... $ 244,891,976 (P.L. 103-317)
BUREAU:	Other budgetary resources.. $ 330,958,179
Appropriations title and symbol: Salaries and expenses 7350100	Total budgetary resources... $ 575,850,155
	Amount proposed for rescission..... $ 15,000,000
OMB identification code: 73-0100-0-1-376	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the administrative expenses and non-credit activities of the Small Business Administration. This reflects savings from the elimination of grants to States for contracting the planting of trees. The Small Business Administration, unlike either the Department of Agriculture or the Department of the Interior, does not have the technical expertise needed to administer this program adequately. In addition, this program duplicates the urban tree planting program of the Forest Service.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
627,191	615,266	-11,925	-3,075	—	—	—	—

R95-22

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Salaries and expenses

Of the funds made available under this heading in Public Law 103-327, $500,000 are rescinded.

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Rescission Proposal No. R95-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Chemical Safety and Hazard Investigation Board	New budget authority..... (P.L. 103-327) $ 500,000
BUREAU:	Other budgetary resources.. $ _____
Appropriations title and symbol: Salaries and expenses 9553850	Total budgetary resources... $ 500,000
	Amount proposed for rescission..... $ 500,000
OMB identification code: 95-3850-0-1-304	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi-year: _____ (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: As part of the Administration's reinventing government initiative, this proposal would rescind funding for a board that has not yet begun operation. The Board's purpose duplicates existing efforts of the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) to prevent chemical accidents. EPA and OSHA already collaborate with State and local governments, as well as private interests, in responding to accidental releases of hazardous substances. The agencies also promulgate appropriate regulations to prevent future accidents. Additional funds are being requested to augment EPA and OSHA in FY 1996 to enhance their investigative and prevention efforts.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars):

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
500	200	-300	-190	-10	—	—	—

R95-23

NATIONAL SCIENCE FOUNDATION

Academic research infrastructure

Of the funds made available under this heading in Public Law 103-327, $131,867,000 are rescinded

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Rescission Proposal No. R95-23

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Science Foundation	New budget authority (P.L. 103-327) $ 250,000,000
BUREAU:	Other budgetary resources $ 242,661
Appropriations title and symbol: Academic research infrastructure 495/60150	Total budgetary resources $ 250,242,661
	Amount proposed for rescission $ 131,867,000
OMB identification code: 49-0150-0-1-251	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year September 30, 1996 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the activities of the National Science Foundation (NSF). Academic research infrastructure appropriation. This proposal reflects the Administration's decision not to expand the NSF's program of support of existing infrastructure modernization efforts (buildings and instrumentation). NSF will continue its focus on funding people and research.

ESTIMATED PROGRAM EFFECT: None

OUTLAY EFFECT: (in thousands of dollars)

1995 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
115,736	115,736	---	-39,560	-52,747	-39,560	---	---

[FR Doc. 95–3589 Filed 2–14–95; 8:45 am]
BILLING CODE 3110–01–C

Federal Register

Wednesday
February 15, 1995

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for Public and Indian Housing Family Investment Centers; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3714; FR–3832–N–01]

NOFA for Public and Indian Housing Family Investment Centers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces a total of up to $60,000,000 in funding, including the FY 1995 appropriation of $26,342,000 for Family Investment Centers for families living in public and Indian housing. Because some of the total FY 1995 funds are to be derived from sources other than the appropriation (transfers, recaptures of prior obligations, and carryover funds), the actual amount available may be less. This program provides grants to public housing agencies and Indian housing authorities (collectively "HAs") to provide families living in public and Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence. The supportive services funded under this grant shall be provided over a 3- to 5-year period. The final rule on this program was published in the **Federal Register** on August 24, 1994 (59 FR 43622; see part 964, subpart D, and part 905, subpart O).

In the body of this document is information concerning the purpose of the NOFA, eligible activities, eligibility, available amounts, ranking factors, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available beginning February 15, 1995. The application deadline will be 3:00 p.m., local time, on June 15, 1995.

ADDRESSES: An application kit may be obtained from the local HUD State/Area Office with delegated responsibilities over an applicant public/Indian housing agency (See Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Telephone requests must include your name, mailing address, or post office address (including zip code), telephone number (including area code), and should refer to document FR–3832–N–01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Community Relations and Involvement (OCRI), Room 4106, or Charles V. Bell, Office of Native American Programs (ONAP), Room P8204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone numbers: OCRI (202) 708–4214; and ONAP (202) 755–0032 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0189.

I. Purpose and Substantive Description

A. Authority

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) provides for the establishment of Family Investment Centers (FIC). Implementing regulations for the program were published in the **Federal Register** on August 24, 1994 (59 FR 43622), as subpart D of part 964 and subpart O of part 905.

B. Allocation Amounts

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994), Congress appropriated $26,342,000 for Family Investment Centers. This amount is being combined with excess recaptured funds carried over from FY 1993 to make an additional amount of up to $33,658,000 available for funding. These funds may be adjusted pending Secretarial and congressional actions.

Of the $60 million total current funds, $44,529,629 is being made available under this NOFA. The Department intends to use $10 million for a Youth Development Initiative for the purposes of curbing crime among youth, and for youth leadership and development programs that will provide young individuals in public housing with better access to comprehensive education, employment opportunities, and supportive services to achieve self-sufficiency. (Indian Housing Authorities (IHAs) are not eligible for the Youth Development Initiative; however, additional IHAs may be funded through the regular FIC allocation under this NOFA.) In FY 1994, the Department awarded $5 million of FIC funds under this Initiative. A separate NOFA announcing these funds will be published in the **Federal Register**.

The Department also intends to use up to $3.5 million for the purpose of developing 4–H after-school programs for youth, ages 7 to 13, in public housing communities. The After-School Demonstration will involve joint investment by the public and private sectors to provide counseling, tutoring, mentoring, and other supportive services designed to reduce gang-related activities and enhance lifestyle choices. HUD expects that this funding will demonstrate the success of such public/private partnerships and commitments in public housing communities that address specific, long-term counseling needs. A separate notice announcing these funds and soliciting public comment will be published in the **Federal Register**.

To ensure that the Family Investment Centers Program is implemented on a broad, nationwide basis, each applicant may submit only one application under this NOFA. A public housing agency/Indian housing authority (collectively, "HAs") may apply to establish one or more Family Investment Centers for more than one public or Indian housing development; however the maximum grant amount per applicant under this NOFA is $1 million.

C. Overview and Policy

The stated purpose of Section 22 is "[T]o provide families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence by: (a) Developing facilities in or near public housing for training and support services; (b) mobilizing public and private resources to expand and improve the delivery of such services; (c) providing funding for such essential training and support services that cannot otherwise be funded; and (d) improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services."

Although Section 22 is phrased in terms of families living in public housing, the program is also available to Indian Housing Authorities (IHAs), because of section 527 of the National Affordable Housing Act (104 Stat. 4216; 42 U.S.C. 1437aa note) (NAHA). Section 527 extends the applicability of many NAHA provisions affecting Title I of the 1937 Act (including section 515, which

added Section 22) to housing operated by an IHA.

FIC provides funding to HAs to access educational, housing, or other social service programs to assist public and Indian housing residents toward self-sufficiency. The Department envisions that FIC will complement other self-sufficiency activities, such as the Family Self-Sufficiency (FSS) Program and the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). As an incentive to become self-sufficient, the earnings of public or Indian Housing families participating in the FIC shall not be treated as income for the purposes of any other program or provision of State or Federal law, including rent assistance (see Section I.F(5) of this NOFA). The FIC is administered by the Department's Office of Community Relations and Involvement (OCRI) in the Office of Public and Indian Housing, with assistance from a network of Community Relations Involvement Specialists (CRIs) in HUD's Field Offices.

D. Definitions

Eligible residents means participating residents of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program.

Secretary means the Secretary of Housing and Urban Development.

Service coordinator means, for purposes of this NOFA, any person who is responsible for:

(1) Determining the eligibility of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the 5-year period, at least, following the initial receipt of funding under this NOFA;

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under this program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs and other education and employment programs; or

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Supportive services means new or significantly expanded services essential to providing families in public and Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. (HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided). Supportive services may include:

(1) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(2) Employment training and counseling (*e.g.*, job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(3) Computer skills training;

(4) Entrepreneurship training;

(5) Education (*e.g.*, remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(6) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(7) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

Vacant unit means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

E. Eligibility

(1) *Eligible Applicants.* Funding for this program is limited to public and Indian housing authorities. Housing Authorities with Section 8 oversight (only) are *not* eligible to apply for funds under this NOFA. Facilities assisted shall be on or near the premises of public or Indian housing. Two or more HAs may apply jointly if they demonstrate that it is feasible to run the program together; however, only *one* applicant may serve as the lead applicant and the maximum grant per application under this NOFA is $1,000,000.

Although the program is intended to benefit public and Indian housing residents, an applicant that is otherwise eligible and is combining FIC activities with FSS activities may use FIC funds to serve both HA residents and section 8 families who are participating in the FSS Program. Some HAs will combine their FIC and FSS programs. Section 8 FSS Program participants are eligible to participate in the FIC program when it is combined with FSS, but FIC income exclusions that are provided to public and Indian housing residents participating in employment training and supportive service programs do not apply to Section 8 FSS families. If a family under FSS is currently putting their funds in an escrow account, it cannot also be eligible for the FIC income exclusion. For all other families using FIC services, costs incurred are to be borne by other resources.

To be eligible under this NOFA, a HA cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the HA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [PHAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD

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regulations (24 CFR 8.57) [PHAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(2) *Eligible Activities.* Program funds may be used for the following activities:

(a) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(c) The renovation, construction, or acquisition of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

(3) *Eligible Costs.* Activities that may be funded and carried out by an HA include, but are not limited to the following:

(a) Administrative costs. No cap. Costs that are reasonable and include maintenance, utility costs (telephone, fax, light, gas), Postage, Printing, Copier, Building leasing/rent costs, Service Coordinator/Case Manager, Accounting Staff, initial equipment purchase (i.e., desks, chairs, computer equipment, tools, etc.);

(b) *Other program costs.* Costs that include advertisement, reimbursement for participant travel costs, travel stipends, vehicle lease (to transport participants to FIC), insurance liability costs (personal property/property off HA site) and Technical Assistance (T/A) contractor fees, etc.,

(c) Supportive services. The provision of not more than 15% of the total cost of supportive services. Direct service delivery includes the costs of training programs, day care services, manpower, etc.; and

(d) Site Facility/Renovation/Conversion/Construction Costs. Costs include renovation/conversion/construction, acquisition, architectural and engineering (and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections).

(4) *Other Eligibility Related Requirements.* (a) Grants used solely for the renovation, conversion, construction, or acquisition activities listed in paragraphs (a), (b), or (c) of Section I.E(2), "Eligible Activities," of this NOFA, shall be completed within 3 years of the effective date of the grant. The provision of supportive services shall commence upon completion of such activities and shall be provided for over a 3- to 5-year period. Each applicant should submit a description of the renovation or conversion to be conducted, along with a budget and timetable for those activities. Each applicant must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities funded under this NOFA. Grants solely for supportive services activities (only) shall be funded over a maximum 3- to 5-year period.

(b) Each applicant must submit a budget, timetable, and list of milestones outlining the supportive services proposed for the 3- to 5-year period (following initial receipt of funding), at least, covered by the applicant's description of supportive services. Milestones shall include the number of families to be served, types of services, and dollar amounts to be allocated over the 3- to 5-year period.

(c) Each applicant for funds to conduct supportive services (only) must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than 3 years following receipt of funds under this NOFA.

(d) When a grant application is approved, the HA must receive approval from HUD to conduct renovation/conversion/construction/acquisition. Approval must be provided prior to drawing down funds.

(e) If renovation/conversion/construction is done off-site, the HA must provide documentation that it has control of the proposed property for not less than 3 years and, preferably, for 5 years or more. Control can be evidenced through a lease agreement, ownership documentation, or other appropriate documentation (see Sections III.B(3) and III.C(18) of this NOFA).

F. Other Program Requirements

(1) *Resident Involvement.* The Department has a longstanding policy of encouraging HAs to promote resident involvement and to facilitate cooperative partnerships to achieve specific and mutual goals. Therefore, residents must be included in the planning and implementation of this program. The HA shall develop a process that assures that Resident Council/Resident Management Corporation/Resident Organization representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application in response to this NOFA. The HA shall give full consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application, as appropriate.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) Provide to any resident organization representing the development a summary of the resident comments and its response to them, and notify residents of the development(s) that this summary and response are available for reading in the management office.

(d) After HUD approval of a grant, notify residents of the development, and any representative organizations, of approval of the grant; notify the residents of the availability of the HUD approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

(2) *Training/Employment/Contracting of HA Residents.*

(a) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods.

The requirements of Section 3 have been implemented in 24 CFR part 135 by an interim rule published on June 30, 1994 (59 FR 33866). For purposes of training and employment, the HA may offer opportunities to Section 3 residents in the following priority: (i) residents who reside within the service area as defined in 24 CFR 135.5 and who reside in developments managed by the HA that is expending the assistance; (ii) participants in Youthbuild programs; (iii) where the project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.), homeless persons residing in the service area or neighborhood; and (iv) other Section 3 residents. Therefore, at a minimum each HA and each of its contractors and subcontractors receiving funds under this program shall make best efforts to provide HA residents opportunities in connection with housing rehabilitation, housing construction, or other public construction projects.

(b) For purposes of the requirements under Section 3, a best effort means that the HA shall:

(1) Attempt to recruit HA residents from the appropriate areas through local advertising media, signs placed at the proposed FIC project site, and community organizations and public or private institutions operating within the development area. The HA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program because it includes construction/renovation/conversion/acquisition type of activities, i.e., low-income households headed by women and persons with disabilities; and

(2) Determine the qualifications of HA residents when they apply, either on their own or on referral from any source, and employ HA residents if their qualifications are satisfactory and the contractor has openings. If the HA is unable to employ residents determined to be qualified, those residents shall be listed for the first available openings.

(3) Attempt to contract for services with HA resident-owned businesses and other eligible businesses located in, or owned in substantial part by persons residing in, the area.

(c) Indian housing authorities that receive funding under this NOFA shall comply with the procedures and requirements of part 135 to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(3) *Davis-Bacon Requirements.* All laborers and mechanics employed by contractors or the HA in renovation, construction, or conversion (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5). All architects, technical engineers, draftsmen, and technicians employed with respect to such work shall be paid not less than the wages prevailing in the locality as determined by HUD. These requirements do not apply to volunteers under the conditions set out in 24 CFR part 70.

(4) *Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(5) *Treatment of Income.* (a) *1937 Act.* As provided in section 22(i) of the United States Housing Act of 1937 (1937 Act), no service provided to a HA resident under this program may be treated as income for the purpose of any other program or provision of State, Tribal, or Federal law. Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the tenant's total annual income that is used to determine the tenant rental payment during:

(i) The period that the resident participates in the program; and

(ii) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(A) The date the resident ceases to continue employment without good cause; or

(B) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program.

(6) *Reports.* Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

G. Ranking Factors

Each application for grant award will be evaluated if it is submitted as required under Section II.B of this NOFA and meets the eligibility requirements in Section I.E of this NOFA. Applications will be placed in funding categories as follows. Applications submitted for funds that include combination supportive services/renovation, conversion, new construction, or acquisition will be competitively selected based on the highest scores out of a possible 100 points. Applications submitted for funds solely to implement supportive services will be competitively selected based on the highest scores out of a possible 100 points.

Initially, HUD will distribute funds geographically in order to seek diversity through an appropriate mix of public and Indian housing authorities. Grants will be awarded to the two highest ranked eligible applicants in each funding category per HUD State Office. The actual number of awards granted per State Office will be determined based on funding available, and may be less than stated. In addition, grants will be awarded to the two highest ranked eligible IHA applications in each funding category on a nationwide basis. All of the remaining funds will be awarded based on project size and geographical diversity. HUD reserves the right to select lower rated applications, if necessary to achieve geographic diversity or to meet the need for services. (For example, the Department retains the authority to fund additional IHAs in rank order, even though they scored less than PHAs that have not been selected for funding.)

HUD will review and evaluate the application as follows, according to whether the application seeks funds for supportive services only or for combination renovation/conversion/construction/acquisition/supportive services activities.

(1) *Combination Renovation/Conversion/Construction/Acquisition/Supportive Services Activities* (Maximum 100 points).

Applications for funds for these activities will be scored on the following factors:

(a) Evidence of Need [35 Points]

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Evidence of need for supportive services by eligible residents.

(i) A *high score* (26–35 points) is achieved where the applicant:

- Provides a detailed needs assessment of eligible residents;
- Clearly identifies specific target areas of concern;
- Documents milestone results and benefits to be derived from resident participation in FIC services.

(ii) A *medium score* (13–25 points) is achieved where the applicant:

- Provides a general needs assessment of eligible residents;
- Identifies target areas, but does not provide milestone results to be derived from resident participation in FIC services.
- (iii) A *low score* (1–12 points) is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) Program Quality [20 Points]

The extent to which the HA and each service provider has evidenced that supportive services and other resources will be provided for at least 3 to 5 years following the receipt of funding for supportive services under this NOFA or for 3 years following the completion of renovation/conversion/ construction/ acquisition activities. The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/Comprehensive Improvement Assistance Program funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents. The extent to which the envisioned renovation/conversion/ construction/acquisition and combination activities are appropriate to facilitate the provision of FIC supportive services.

(i) A *high score* (14–20 points) is received where the applicant:

- Provides letters from the service provider(s) that contain its strong commitment to providing support services and other resources (i.e., direct financial staff, training/educational) over the grant period;
- Clearly documents its current use of CGP/CIAP funds and its continued plans to utilize part of its CGP/CIAP funds toward eligible FIC activities;
- Provides a detailed and precise description of the location of the FIC, the coordination of services proposed at the facility, the area to be served by the FIC, and its accessibility to residents, including distance and the transportation necessary to receive services.

(ii) A *medium score* (7–13 points) is received where the applicant:

- Provides letters or narrative language regarding the commitment of service providers, but the commitment is limited to providing services;
- Does not currently have CGP/CIAP funding, but has made clear its intention to use part of future CGP/CIAP funding toward eligible FIC activities;
- Provides a description of the facility location, however the accessibility of the facility to residents is somewhat unclear.

(iii) A *low score* (1–6 points) is received where the applicant:

- Merely mentions that services will be provided, but does not provide letters or further explanation;
- Does not make clear an intention to use part of its current or future CGP/CIAP funding toward eligible FIC activities;
- Mentions the location of the FIC facility, but does not provide specific details regarding its accessibility or distance to residents.

(c) HA Capability [20 Points]

The capability of the HA or designated service provider to provide the supportive services; and the extent to which the HA has demonstrated success in modernization activities under the Comprehensive Grant/ Comprehensive Improvement Assistance (CIAP) Programs (see 24 CFR part 968 and part 905, subpart I). The extent to which the HA has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901 and, for IHAs, 905.135), and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions).

(i) A *high score* (14–20 points) is received where:

- The applicant demonstrates success in providing similar supportive services programs and has clearly detailed how the services were coordinated and complemented with other programs;
- The applicant's PHMAP score is in the "high performer" range;
- For IHAs, the applicant is not a "high risk" IHA, as defined in § 905.135, or has developed innovative strategies to improve management of its developments.

(ii) A *medium score* (7–13 points) is received where:

- The applicant does not currently provide similar programs, but demonstrates how the services will be coordinated and complemented with other programs;
- The applicant's PHMAP score is in the "standard" range (less than 90) and the HA has clearly identified innovative strategies to improve management of its developments;
- The applicant's PHMAP score is in the "troubled" range, but it is successfully implementing local, State, or Federal partnerships in an effort to develop effective strategies to improve its management capacity;
- For IHAs, the applicant is a high risk IHA, but indicates that it has specific plans for improving management of its developments.

(iii) A *low score* (1–6 points) is received where:

- It is unclear if the applicant or designated service provider has experience in providing similar supportive services programs;
- The applicant's PHMAP score is in the "troubled" range, and it does not have local, State, or Federal partnerships underway or effective strategies to improve its management capacity;
- For IHAs, the applicant is a high risk IHA and does not indicate specific plans for improving management of its developments.

(d) Resident Involvement/Local Partnerships [25 Points]

The extent to which the HA has demonstrated that it has partnered with residents in the planning phase for the FIC, will further include the residents in the implementation phase (evidence of such a partnership may be in the form of a resident council board resolution or letter), and will contract with or employ residents to provide services and conduct renovation/conversion/ construction activities. In addition, the HA shall include a certification that it is implementing a FSS program (IHAs without FSS programs that have established counseling programs, such as those found in Mutual Help (MH), may provide similar certification) and shall provide evidence of the extent to which the HA has coordinated with tribal, State, or local social service agencies the implementation of the program, including in those target areas, such as Weed and Seed, distressed (as defined by the Housing Authority), etc. In assigning points for this factor, HUD will consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*i.e.*, counseling and

training), the use of public/Indian housing funds available through existing State and local programs, or other commitments.

(i) A *high score* (18–25 points) is received where the applicant provides:

- Evidence that it has a strong and cooperative partnership with its residents and that residents were involved in the development of the application;
- Evidence that the residents will continue their involvement throughout the implementation stages of the FIC, including evidence that the applicant will seek resident input in identifying resident needs;
- Evidence that the applicant will contract with or employ residents to provide services and conduct renovation/conversion/construction activities;
- Certification (in letter or resolution) that it is currently implementing a FSS program (or similar Mutual Help Program), and demonstrates success with previous partnerships in other similar program efforts.
- Evidence that the facility will be located in a target area, such as Weed and Seed, distressed, etc.;
- Evidence of strong and committed partnerships with existing social service agencies and evidence of social service agencies' intent to provide various resources to the FIC (identifying source committed, availability of funds, etc.).

(ii) A *medium score* (9–17 points) is received where:

- The applicant mentions its partnership with residents. Where the residents were notified of the FIC, but were not involved in the development of the application, the applicant ensures that the residents' role will be increased during the implementation stages of the FIC;
- The applicant states its intent to provide services, although the plan for hiring and contracting is not specific;
- The applicant provides certification (in letter or resolution) that it is currently implementing a similar program (volunteer) utilizing partnerships with service agencies in its locality;
- The FIC facility will not be located in a target area, such as Weed and Seed, distressed, etc.;
- The applicant provides some evidence of partnerships with existing social service agencies and some evidence of social service agencies' intent to provide various resources to the FIC (identifying source committed, availability of funds, etc.).

(iii) A *low score* (1–8 points) is received where the applicant:

- Mentions a partnership with existing social service agencies, but evidence of such support is not provided;
- Does not currently implement a FSS program or a Federal or local program similar to Mutual Help, but has indicated its intent to implement such a program;
- Mentions its efforts to coordinate the FIC facility in a target area, but does not include evidence of commitments from existing local, State, Federal sources.

(2) *Supportive Services Only* (Maximum 100 points). Applications for funds for these activities will be scored on the following factors:

(a) Evidence of Need [35 Points]

Evidence of need for supportive services by eligible residents.

(i) A *high score* (26–35 points) is achieved where the applicant provides a detailed needs assessment of eligible residents, clearly identifies specific target areas of concern, and documents milestone results and benefits to be derived from resident participation in FIC services.

(ii) A *medium score* (13–25 points) is achieved where the applicant provides a general needs assessment of eligible residents and identifies target areas, but does not provide milestone results to be derived from resident participation in FIC services.

(iii) A *low score* (1–12 points) is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) Program Quality [20 Points]

The extent to which the HA and each service provider has evidenced that supportive services and other resources will be provided for at least 3 to 5 years following the receipt of funding for supportive services under this NOFA. The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program funds for CGP/ CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents.

(i) A *high score* (14–20 points) is received where the applicant:

- Provides letters from the service provider(s) that contain the provider's strong commitment to provide support services and other resources (i.e., direct financial staff, training/educational) over the grant period;
- Clearly documents its current use of CGP/CIAP funds and its continued plans to utilize part of its CGP/CIAP funds toward eligible FIC activities;
- Provides a detailed and precise description of the location of the FIC, the coordination of services proposed at the facility, and the area to be served by the FIC;
- Clearly indicates the accessibility of the FIC to residents, including distance and the transportation necessary to reach the facility.

(ii) A *medium score* (7–13 points) is received where the applicant:

- Provides letters or narrative language regarding a limited commitment of service providers to provide support services and other resources;
- Does not currently have CGP/CIAP funding, but has made clear its intention to use part of future CGP/CIAP funding toward eligible FIC activities;
- Provides a description of the facility location, but the accessibility of the facility to residents is limited or is somewhat unclear.

(iii) A *low score* (1–6 points) is received where the applicant:

- Merely mentions that providers will provide services, but does not provide letters or language indicating a commitment by the providers;
- Does not make clear any intention to use part of its current or future CGP/CIAP funding toward eligible FIC activities;
- Mentions the location of the FIC facility, but does not provide specific details regarding the accessibility or distance to residents.

(c) HA Capability [20 Points]

The capability of the HA or designated service provider to provide the supportive services. The extent to which the HA has demonstrated success in modernization activities under the Comprehensive Grant/Comprehensive Improvement Assistance (CIAP) Programs (see 24 CFR part 968 and, for IHAs, part 905, subpart I). The extent to which the HA has a good record of maintaining and operating public housing, as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901 and, for IHAs, 905.135), and has utilized innovative and workable strategies to improve management (e.g., LEAP, which uses highly skilled retired military personnel in key management positions).

(i) A *high score* (14–20 points) is received where the applicant:

- Demonstrates success in providing similar supportive services programs and has clearly detailed how the services were coordinated and complemented with other programs;

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• The applicant's PHMAP score is in the "high performer" range;

• For IHAs, the applicant is not a "high risk" IHA, as defined in 905.135, or has developed innovative strategies to improve management of its developments.

(ii) A *medium score* (7–13 points) is received where the applicant:

• Does not currently provide similar programs, but demonstrates how the services will be coordinated and complemented with other programs;

• The applicant's PHMAP score is in the "standard" range (less than 90) and the HA has clearly identified innovative strategies to improve management of its development;

• For IHAs, the applicant is a high risk IHA, but indicates that it has specific plans for improving management of its developments.

(iii) A *low score* (1–6 points) is received where:

• It is unclear if the applicant or designated service provider has experience in providing similar supportive services programs;

• The applicant's PHMAP score is in the "troubled" range, but the applicant is currently implementing local, State, or Federal partnerships in an effort to develop effective strategies to improve its management capacity;

• For IHAs, the applicant is a high risk IHA and does not indicate specific plans for improving management of its developments.

(d) Resident Involvement/Local Partnerships [25 Points]

The extent to which the HA has demonstrated that it has partnered with residents in the planning phase for the FIC and will further include the residents in the implementation phase (evidence of such a partnership may be in the form of a resident council board resolution or letter). The extent to which the HA will contract with or employ residents to provide services and conduct renovation/conversion/construction activities. In addition, the HA shall include a certification that it is implementing a FSS program (IHAs without FSS programs that have established counseling programs, such as those found in Mutual Help (MH), may provide similar certification) and shall provide evidence of the extent to which the HA has coordinated with tribal, State, or local social service agencies the implementation of the program, including in those target areas, such as Weed and Seed, distressed (as defined by the Housing Authority), etc. In assigning points for this factor, HUD shall consider the extent of the involvement of those agencies in the development of the application and their commitment of assistance in the implementation of the FIC. The commitment of these agencies may be demonstrated through evidence of intent to provide direct financial assistance or other resources, such as social services (*i.e.*, counseling and training), the use of public/Indian housing funds available through existing State and local programs or other commitments.

(i) A *high score* (18–25 points) is received where the applicant provides:

• Evidence that it has a strong and cooperative partnership with its residents and that residents were involved in the development of the application;

• Evidence that the residents will continue their involvement throughout the implementation stages of the FIC, including evidence that the applicant will seek resident input in identifying resident needs;

• Evidence that the applicant will contract with or employ residents to provide services and conduct renovation/conversion/construction activities;

• Certification (in letter or resolution) that it is currently implementing a FSS program (or similar Mutual Help Program), and demonstrates success with previous partnerships in other similar program efforts.

• Evidence that the facility will be located in a target area, such as Weed and Seed, distressed, etc.;

• Evidence of strong and committed partnerships with existing social service agencies and evidence of social service agencies' intent to provide various resources to the FIC (identifying source committed, availability of funds, etc.).

(ii) A *medium score* (9–17 points) is received where:

• The applicant mentions its partnership with residents. Where the residents were notified of the FIC, but were not involved in the development of the application, the applicant ensures that the residents' role will be increased during the implementation stages of the FIC;

• The applicant states its intent to provide services, although the plan for hiring and contracting is not specific;

• The applicant provides certification (in letter or resolution) that it is currently implementing a similar program (volunteer) utilizing partnerships with service agencies in its locality;

• The FIC facility will not be located in a target area, such as Weed and Seed, distressed, etc.;

• The applicant provides some evidence of partnerships with existing social service agencies and some evidence of social service agencies' intent to provide various resources to the FIC (identifying source committed, availability of funds, etc.).

(iii) A *low score* (1–8 points) is received where the applicant:

• Mentions a partnership with existing social service agencies, but evidence of such support is not provided;

• Does not currently implement a FSS program or a Federal or local program similar to Mutual Help, but has indicated its intent to implement such a program;

• Mentions its efforts to coordinate the FIC facility in a target area, but does not include evidence of commitments from existing local, State, Federal sources.

H. Environmental Review

To ensure that site-specific environmental impacts will be addressed before assistance is provided to the HA, HUD will conduct an environmental review of those eligible activities in accordance with 24 CFR part 50. The environmental impact of FIC eligible activities, such as renovation, construction, conversion, or acquisition will be local in scope and will be addressed in the localized setting in which they occur. The HA is expected to adhere to all assurances and requirements of the environmental review.

II. Application Submissions Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD State/Area Offices with delegated responsibilities over an applying HA (See Appendix for listing), or by calling HUD's Resident Initiatives Clearinghouse toll-free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box (including zip code), and telephone number (including area code), and should refer to document FR–3832–N–01. Applications may be requested beginning February 15, 1995.

B. Application Submission

The original and two copies of the application must be submitted. The Appendix lists addresses of HUD State/Area Offices that will accept the completed application.

The application must be physically received by 3 p.m., local time, on June 15, 1995. This application deadline is firm to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible* for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. *Applications for Supportive Services Only* must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of the need for supportive services by eligible residents;

(4) A description of the supportive services that are to be provided over at least a 5-year period after the initial receipt of funding under this NOFA, and how the supportive services will enhance education and job opportunities for residents;

(5) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for at least 5 years following receipt of funding under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the commitment;

(6) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance expressed by State and local governments, private foundations, and other organizations (including profit and nonprofit organizations);

(7) A description of the plan for continuing operation of the FIC, and the provision of services to families for at least 5 years following receipt of funding under this NOFA;

(8) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide families better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for the entire 5-year period, at least, after the initial receipt of funding under this NOFA;

(9) A description of assistance for which the HA is applying;

(10) A narrative on the location of the FIC facility. Provide the precise location of the facility to be used for FIC, and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(11) Evidence that the HA has control of the FIC site. If the facility is off-site, the HA shall include copies of the negotiated lease and the terms, including any option to lease, indicating that the facility is available to the HA for use as a FIC for not less than 3 years, and preferably, for 5 years or more;

(12) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(13) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program, including FSS;

(14) A description of the resident involvement in the planning and implementation phases of this program;

(15) A description of the services that HA residents will be employed to provide;

(16) Letters of commitment. The letters should identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; Job Training Partnership Act (JTPA) and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation, or other resources for use by participants of the FIC;

(17) Certification that efforts were made to use or obtain other resources to fund or provide the services proposed;

(18) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant/Comprehensive Improvement Assistance (CGP/CIAP) Program funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(19) A project budget, timetable and narrative;

(20) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding;

(21) Equal Opportunity Requirements. The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d– 2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135; and

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(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(22) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(23) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(24) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment"), generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(25) A certification that:

(a) The HA will include in any contract for renovation, conversion, or construction (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

B. *Applications for Renovation/Conversion/Construction/Acquisition Activities Only* must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) A narrative on the location of the off-site facility, if applicable. Provide the precise location of the FIC facility (street address) and indicate its accessibility to residents, including distance from the development(s), and transportation necessary to receive services;

(3) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, including any option to lease, indicating that the facility will be available to the HA for use as a FIC for not less than 3 years, and preferably, for 5 years or more.

(4) A description of services that the HA expects to be provided, to the greatest extent practicable, by HA residents, as described in Section I.F(2) of this NOFA. The description shall include the position titles and numbers of residents expected to be employed for renovation/conversion/construction and other eligible activities;

(5) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program/Comprehensive Improvement Assistance (CGP/CIAP) Program funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(6) A project budget, timetable, and narrative;

(7) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding

(8) *Equal Opportunity Requirements* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(Note: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138 Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(8) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than 3 years following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the commitment;

(9) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(10) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F

(11) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment"), generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF–LLL form).

(12) A certification that:

(a) The HA will include in any contract for renovation, conversion, or construction (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a–5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

(13) A description of the need for supportive services that will be provided in the proposed facility by eligible residents;

(14) A description of the supportive services that are to be provided for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities funded under this NOFA;

(15) A description of public or private sources of assistance that can reasonably be expected to fund or provide supportive services, including evidence of any intention to provide assistance by State and local governments, private foundations, and other organizations (including non-profit organizations);

(16) Certification from an appropriate agency that the provision of supportive services is well designed to provide families better access to educational and employment opportunities and that there is reasonable likelihood that such services will be provided for the entire period specified. In the case of FSS, the appropriate agency can be the Coordinating Committee. IHAs without FSS programs may rely on agencies associated with such programs as those found in Mutual Help;

(17) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the commitment; and

(18) A description of a plan for continuing the operation of the FIC and the provision of supportive services to families for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities.

C. *Applications for Both Supportive Services and Renovation/Conversion/Construction/Acquisition Activities* must contain the following information:

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application review process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A description of assistance for which the HA is applying;

(4) A description of the need for supportive services by eligible residents;

(5) A description of the supportive services that are to be provided for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities funded under this NOFA;

(6) A certification from an appropriate service agency (in the case of FSS, the certification may be from the Coordinating Committee) that:

(a) The provision of supportive services is well designed to provide families better access to educational and employment opportunities; and

(b) There is a reasonable likelihood that such services will be funded or provided for 3 years following the completion of renovation/conversion/construction/acquisition activities funded under this NOFA.

(7) Evidence of a firm commitment of assistance from one or more sources ensuring that the supportive services will be provided for not less than 3 years following the completion of activities funded under this NOFA. Evidence shall be in the form of a letter or resolution. A cost allocation plan shall be submitted outlining the commitment;

(8) A description of the plan for continuing operation of the FIC and the provision of supportive services to families for not less than 3 years following the completion of renovation/conversion/construction/acquisition activities;

(9) A description of services that the HA expects to be provided, to the greatest extent practicable by HA residents as provided under Section I.F(2) of this NOFA;

(10) A description of the positions and numbers of residents expected to be employed for renovation, conversion, construction, and other eligible activities;

(11) A certification that the HA is implementing a FSS program, if applicable. IHAs, without FSS programs, that have established counseling programs such as those found in Mutual Help (MH) should provide similar certification, if applicable;

(12) A certification that funds used to pay for a Service Coordinator are not duplicate expenses from any other program, including FSS;

(13) A description of the resident involvement in the planning and implementation phases of this program.

(14) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program/Comprehensive Improvement Assistance (CGP/CIAP) Program funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents;

(15) A project budget, timetable, and narrative;

(16) Letters of commitment. Identify all commitments for additional resources to be made available to the program from the applicant and other State, local, or private entities. The description shall include, but is not limited to, the commitment source, source committed, availability and use of funds, and other conditions associated with the loan, grant, gift, donation, contribution, etc. Commitments from State or local agencies may include, but are not limited to, vocational, adult, and bilingual education; JTPA and Family Support Act of 1988 job training programs; child care; and social services assistance, counseling or drug addiction services. Commitments may include in-kind contributions, on-site journeymen or equivalent instructors, transportation

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or other resources for use by participants of the FIC.

(17) A narrative on the location of the off-site facility, if applicable. Provide the precise location of the FIC facility (street address) and its accessibility to residents including distance from the development(s), and transportation necessary to receive services;

(18) Evidence that the HA has control of the proposed off-site premises. This shall include copies of the negotiated lease and the terms, including any option to lease, indicating that the facility will be available to the HA for use as a FIC for not less than 3 years, and, preferably, for 5 years or more;

(19) Certification that FIC funding will not duplicate any other HUD funding, including CGP funding.

(20) *Equal Opportunity Requirements.* The HA must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 107, 109, 110, and 121; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(**Note:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, do not apply to Indian housing authorities (IHAs) established by exercise of a Tribe's powers of self-government. Title VI and the Fair Housing Act (24 CFR parts 1 and 100) shall not be applicable to the development or operation of projects by such IHAs.)

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and Title II or the Americans with Disabilities Act of 1009 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(21) Form HUD–2880, Applicant/Recipient Disclosure Update Report must be completed in accordance with 24 CFR part 12, Accountability in the Provision of HUD Assistance. A copy is provided in the application kit.

(22) Drug-Free Workplace Certification. The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

(23) Certification regarding Lobbying. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment"), generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any HA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if applicable, a Disclosure of Lobbying Activities (SF-LLL form).

(24) A certification that:

(a) The HA will include in any contract for renovation, conversion, or construction (including combining of units) on the premises of the HA development to accommodate the provision of supportive services under this program, a requirement that all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a—276a-5);

(b) The HA will include in such contracts a requirement that all architects, technical engineers, draftsmen, and technicians (other than volunteers) shall be paid not less than the wages prevailing in the locality as determined by HUD; and

(c) The HA will pay such wage rates to its own employees engaged in this work.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA.

V. Other Matters

A. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III, Checklist of Application Submission Requirements, of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR parts 35, 965, and 968.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87, A–122, and A–133 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (family, individual, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the project.

B. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds to provide families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to assist families living in public or Indian housing with better access to education and job opportunities to achieve self-sufficiency and independence, and, thus, could benefit families significantly. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by regulations published at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking, or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; however, the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is

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appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from nondisclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

I Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act of Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 1437t and 3535(d).

Dated: February 6, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses and Telephone Numbers of the Local HUD Offices and Offices of Native American Programs Accepting Applications for the Family Investment Centers Program

New England

Connecticut State Office, Attention: Director, Office of Public Housing, First Floor, 330 Main Street, Hartford, CT 06106–1860, Telephone No. (203) 240–4523.

Massachusetts State Office, Attention: Director, Office of Public Housing, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5634.

New Hampshire State Office, Attention: Director, Office of Public Housing, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, Telephone No. (603) 666–7681

Rhode Island State Office, Attention: Director, Office of Public Housing, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–3234, Telephone No. (401) 528–5351

New York/New Jersey

New Jersey State Office, Attention: Director, Office of Public Housing, One Newark Center, Thirteenth Floor, Newark, NJ 07102–5260, Telephone No. (202) 622–7900.

New York State Office, Attention: Director, Office of Public Housing, 26 Federal Plaza, New York, NY 10278–0068, Telephone No. (212) 264–6500.

Buffalo Area Office, Attention: Director, Office of Public Housing, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, Telephone No. (716) 846–5755.

Mid-Atlantic

District of Columbia Office, Attention: Director, Office of Public Housing, 820 First Street, NE, Washington, DC 20002–4205, Telephone No. (202) 275–9200.

Maryland State Office, Attention: Director, Office of Public Housing, City Crescent Building, 5th Floor, 10 South Howard Street, Baltimore, MD 21201–2505, Telephone No. (410) 962–2520.

Pennsylvania State Office, Attention: Director, Office of Public Housing, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390, Telephone No. (215) 656–0574.

Virginia State Office, Attention: Director, Office of Public Housing, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, Telephone No. (804) 278–4507

West Virginia State Office, Attention: Director, Office of Public Housing, 405 Capitol Street, Charleston, WV 25301–1795, Telephone No. (304) 347–7000.

Pittsburgh Area Office, Attention: Director, Office of Public Housing, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, Telephone No. (412) 644–6428.

Southeast/Caribbean

Alabama State Office, Attention: Director, Office of Public Housing, Beacon Ridge Tower, Suite 300, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, Telephone No. (205) 290–7617

Caribbean Office, Attention: Director, Office of Public Housing, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, Telephone No. (809) 766–6121.

Georgia State Office, Attention: Director, Office of Public Housing, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388, Telephone No. (404) 331–5136.

Kentucky State Office, Attention: Director, Office of Public Housing, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, Telephone No. (502) 582–5251

Mississippi State Office, Attention: Director, Office of Public Housing, Doctor A.H. McCoy Federal Building, Suite 910, 100 West Capitol Street, Jackson, MS 39269–1016, Telephone No. (601) 965–5308.

North Carolina State Office, Attention: Director, Office of Public Housing, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707 Telephone No. (910) 547–4001

South Carolina State Office, Attention: Director, Office of Public Housing, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, Telephone No. (803) 765–5592.

Tennessee State Office, Attention: Director, Office of Public Housing, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, Telephone No. (615) 736–5213.

Jacksonville Area Office, Attention: Director, Office of Public Housing, Southern Bell Tower, Suite 2200, 301 West Bay Street, Jacksonville, FL 32202–5121, Telephone No. (904) 232–2626.

Knoxville Area Office, Attention: Director, Office of Public Housing, John J. Duncan Federal Building, Third Floor, 710 Locust Street, Knoxville, TN 37902–2526, Telephone No. (615) 545–4384.

Midwest

Illinois State Office, Attention: Director, Office of Public Housing, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Telephone No. (312) 353–5680

Indiana State Office, Attention: Director, Office of Public Housing, 151 North Delaware Street, Indianapolis, IN 46204–2526, Telephone No. (317) 226–6303

Michigan State Office, Attention: Director, Office of Public Housing, Patrick V McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, Telephone No. (313) 226–7900

Minnesota State Office, Attention: Director, Office of Public Housing, 220 Second Street, South, Minneapolis, MN 55401–2195, Telephone No. (612) 370–3000

Ohio State Office, Attention: Director, Office of Public Housing, 200 North High Street, Columbus, OH 43215–2499, Telephone No. (614) 469–5737

Wisconsin State Office, Attention: Director, Office of Public Housing, Suite 1380, Henry S. Rouss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, Telephone No. (414) 297–3214

Cincinnati Area Office, Attention: Director, Office of Public Housing, Room 9002, Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253 Telephone No. (513) 684–2884

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Food and Drug Administration

21 CFR Part 310
Topical Drug Products for Over-the-Counter Human Use; Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket N0. 77N–334S]

RIN 0905–AA06

Topical Drug Products for Over-the-Counter Human Use; Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears; Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) topical otic drug product for the prevention of swimmer's ear or for the drying of water-clogged ears is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC topical otic drug products for these uses that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 15, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 16, 1977 (42 FR 63556), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical otic drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in topical otic drug products. Interested persons were invited to submit comments by March 16, 1978. Reply comments in response to comments filed in the initial comment period could be submitted by April 14, 1978.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In the December 16, 1977 advance notice of proposed rulemaking on OTC topical otic drug products, the Panel discussed the treatment of swimmer's ear (42 FR 63556 at 63565), but the Panel did not address the prevention of swimmer's ear or the drying of water-clogged ears.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears was published in the **Federal Register** of July 30, 1986 (51 FR 27366). Interested persons were invited to file by September 29, 1986, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by November 28, 1986. New data could have been submitted until July 30, 1987, and comments on the new data until September 30, 1987.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(15) (21 CFR 310.545(a)(15)) the active ingredient acetic acid, which had been under consideration as part of this rulemaking for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. This ingredient was determined to be nonmonograph because no additional data had been submitted following publication of the tentative final monograph to determine whether acetic acid is generally recognized as safe and effective as a topical otic drug products for the prevention of swimmer's ear or for the drying of water-clogged ears. After that final rule published, only two ingredients remained to be evaluated in this rulemaking: Isopropyl alcohol and anhydrous glycerin. Final agency action on all other OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears occurs with the publication of this final rule.

In the tentative final monograph for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears (51 FR 27366), the agency did not propose any active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredient to monograph status. In this final rule, however, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC topical otic drug products for the prevention of swimmer's ear or for the drying of water-clogged ears. Therefore, proposed §§ 344.3(c) through (f), 344.12, 344.14, 344.52, and 344.54 for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears are not being issued as a final regulation.

This final rule declares OTC drug products containing active ingredients for the prevention of swimmer's ear or for the drying of water-clogged ears to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application.

This final rule amends part 310 (21 CFR part 310) to include OTC topical otic drug products containing active ingredients for the prevention of swimmer's ear or for the drying of water-clogged ears by adding new paragraph (a)(15)(ii) to § 310.545 to include the ingredients covered by this final rule, by redesignating the text of paragraph (a)(15) as (a)(15)(i), by revising the heading of newly redesignated paragraph (a)(15)(i), and by revising the heading of paragraph (a)(15) to clarify that products for the drying of water-clogged ears are also included. The inclusion of OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears in part 310 is consistent with FDA's established policy for regulations in which there are no monograph conditions. (See, e.g. §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, 310.534, and 310.536.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC topical otic drug product for the prevention of swimmer's ear or for the drying of water-clogged ears, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the tentative final monograph for OTC topical otic drug products (51 FR 27366 at 27367), the agency advised that the conditions under which the drug products are subject to the monograph would be generally recognized as safe and effective and not misbranded would be effective 12 months after the date of publication of the final monograph in the **Federal Register**. Although data and information were submitted in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, topical otic drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). Because no OTC drug monograph is being established for this class of drug products, the agency is adopting its standard 6-month effective date for the nonmonograph conditions in this final rule. Therefore, on or after August 15, 1995, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears, two drug manufacturers submitted comments on isopropyl alcohol and anhydrous glycerin, and one physician submitted a comment on isopropyl alcohol and acetic acid. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments

1. One comment contended that products for the treatment of "water-clogged ears" are not drugs within the meaning of section 201(g) of the act (21 U.S.C. 321(g)) and, thus, are not the proper subject of an OTC drug monograph. The comment stated that section 201(g)(1) of the act defines a drug, in part, as "* * * (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals * * *." The comment argued that these products are not intended for use in connection with "any disease," do not affect the structure or any function of the body, and are not meant to have any effect on the body. The comment mentioned that FDA had previously stated that "water-clogged ears is not a recognized clinical entity or a term found in textbooks," (Refs. 1 and 2) and thus, in FDA's view, the condition "water-clogged ears" is not a disease.

The comment added that if FDA concluded that such products are intended for use in connection with a "disease" or affect the structure or a function of the body, then the products should be regulated as a device rather than as a drug. The comment stated that section 201(h) of the act (21 U.S.C 321(h)) states that a device "does not achieve its primary intended purposes through chemical action within or on the body * * * and * * * is not dependent upon being metabolized for the achievement of its primary intended purposes." The comment contended that products that function by drying excess water work by a purely physical process and that the product is not metabolized.

Despite the comment's arguments, the agency considers products "for the drying of water in the ears" or "to help relieve the discomfort of water-clogged ears by drying excess water" to be drugs and not devices. All drugs do not need to be metabolized. Some work by a purely physical process, such as a skin protectant that forms a physical barrier.

The act defines a device, in section 201(h), in part, as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is: (1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them, (2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. The agency has determined that these products do not meet the definition of a device because they are not an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article.

As discussed in the Panel's report (42 FR 63556 at 63565), external otitis, an infection of the skin lining the external auditory canal, is one of the most common diseases of the ear. One type of external otitis is called "diffuse external otitis" and is commonly known as "swimmer's ear." It occurs with greater frequency during hot, humid weather and has been reported to occur in divers and swimmers. "Swimmer's ear" is apparently due to excessive moisture in the external auditory meatus, which may be the result of various causes. The external auditory canal is a cul-de-sac, well suited for the collection of moisture, thus providing a basis for infection. Disruption of the skin lining of the external auditory canal by the action of the accumulated moisture, or by the use of instruments to clear the ear canal of water after bathing or swimming, may cause maceration, fissuring, or laceration of the skin lining and provide a favorable environment for the growth of bacteria or fungi. Although the action of products that dry water in the ear is limited to removal of the excess water, if this condition is left untreated, it could result in "swimmer's ear."

In the tentative final monograph (51 FR 27366 at 27367), the agency stated that it recognized a population that is prone to develop swimmer's ear and that the availability of OTC drug products to prevent the occurrence of this condition would benefit the consumer. Products that dry water in the ear may prevent the occurrence of "swimmer's ear" and, thus, help prevent disease. As discussed in the tentative final monograph (51 FR 27366 at 27370), the agency also believes that

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excess water in the ear could impair hearing. Therefore, the drying of water-clogged ears may affect the function of the ear by reducing a loss of hearing in some individuals. Accordingly, the agency concludes that products that dry water in the ears are drugs under section 201(g) of the act.

References

(1) Letter from W. E. Gilbertson, FDA, to H. W. Gordon, Commerce Drug Co., Inc., coded LET006, Docket No. 77N–0334, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to H. W. Gordon, Commerce Drug Co., Inc., coded LET010, Docket No. 77N–0334, Dockets Management Branch.

2. One comment requested that products for drying water-clogged ears be allowed to make the claim "helps relieve swimmer's ear." The comment stated that the agency's proposed definition of "swimmer's ear" in § 344.3(e) (51 FR 27366 at 27373) was too restrictive because it included a demonstration of effectiveness against external otitis in a susceptible target population. The comment mentioned that consumers have long used the term "swimmer's ear" to refer to the retention of excess water in the ears after swimming, showering, or bathing. The comment argued that a demonstration of efficacy against external otitis should not be a prerequisite for a claim relating to "swimmer's ear."

The agency disagrees with the comment. The Panel (42 FR 63556 at 63565) defined swimmer's ear as a "diffuse external otitis," an infection of the skin lining the external auditory canal. Likewise, other medical experts (Ref. 1) define swimmer's ear as external otitis associate with swimming. Clinical symptoms include an itchy or painful, discharging ear, and a tender edematous canal filled with debris. *Pseudomonas aeruginosa* is the predominant bacterial pathogen in cases of external otitis. Successful treatment of the infection can require a combination of topical therapies, including antibiotics, steroids, drying agents, and acetic acid. If not successfully treated, swimmer's ear may lead to malignant external otitis and mastoiditis. For these reasons, the agency considers diagnosis and treatment of this infection by a physician to be necessary.

The comment did not submit any data to demonstrate that ear water-drying aid products alone "help relieve swimmer's ear." Data showing effectiveness of an ear water-drying aid product as a single agent against external otitis would be a prerequisite for a claim relating to "swimmer's ear." The agency concludes that the existing data are inadequate to support a relief of swimmer's ear claim for any ear water-drying aid drug product.

Reference

(1) Mandell, G. L., G. Douglas, and J. E. Bennett, "Principles and Practice of Infectious Diseases," 3d ed., Churchill Livingstone, New York, pp. 1680–1681, 1990.

3. One comment requested that the proposed indications in § 344.52(b) for products for drying water-clogged ears be expanded to permit mention of the source of the water in the ears causing the problem. The comment suggested adding the following words to the indications: ("caused by" or "resulting from") "swimming, showering, or bathing."

The agency would have no problems in allowing the indications to mention the source of the water. However, this would not be required information because the proposed indications adequately describe the use of the product. The agency would allow the source of the water to appear as optional additional information that could appear at the manufacturer's choice. At this time, indications for these products will not appear in the final rule because no active ingredients are included in a monograph for this class of OTC drug products. Should a monograph be proposed in the future, the optional expanded indications will be considered.

B. Comments on Isopropyl Alcohol and Anhydrous Glycerin

4. One comment submitted a study (Ref. 1) to support the effectiveness of 5 percent anhydrous glycerin in 95 percent isopropyl alcohol for the drying of water-clogged ears. The comment stated that if FDA determines that this product is a drug, it should be classified as Category I.

The agency has reviewed the study and determined that the data are insufficient to demonstrate the effectiveness of 5 percent anhydrous glycerin in 95 percent isopropyl alcohol for the drying of water-clogged ears. This study involved 27 male or female volunteers, between 18 and 65 years of age, with a history of water-clogged ears. The subjects were in generally good health with ears free of obstructions and tympanic membranes free of any perforations. The objective of the study was to determine the effectiveness of 5 percent anhydrous glycerin in 95 percent isopropyl alcohol placed in the external auditory canal to speed up the evaporation of water. Each subject was placed in the supine position, and the ear was inspected with an operating microscope. The ear to be tested was then filled with lukewarm water. Each subject was permitted to tilt his/her head to allow the water to run freely out of the ear onto absorbent cotton. Only those subjects with water remaining in their ears were selected. The presence of water was recorded on tape by means of an operating microscope and its television camera. Five drops of product or water, as a placebo, were then randomly instilled into the ear. The samples were coded to maintain a double-blind so that both the investigator and subjects were unaware of the material instilled. After 5 minutes, the ear was inspected under the operating microscope and the presence or absence of water was determined. The quantity of water present after treatment was recorded as "more," "same," "less," or "none." The findings were recorded on tape and the subject record form.

Because participants were selected based on a history of some problem with retaining water in the ears after exposure, it is the agency's view that it is inappropriate to use a water-only placebo in a study of the indication for relief of "water-clogged ears." In such situations, the water-only group would be expected to do worse than a group left untreated after water exposure. The agency is also concerned that the method used in the study did not specify how the head was tilted nor did it specify the time allowed for the water to run freely out of the ear onto the absorbent cotton. The position of the head and the length of time allowed for the water removal from the ear should have been specified.

The agency does not consider a study population of 27 subjects adequate to demonstrate that the results are statistically significant. Based on its statistical evaluation of the results, the comment reported that the product was effective in 22 out of 25 subjects' ears (88 percent) and that the placebo was effective in 3 out of 24 subjects' ears (12 percent), a highly significant result (Chi Square ≤ 99.9 percent). However, the agency finds that a Yates correction of Chi Square should have been used for this small cell size study. A reanalysis using this correction was never provided.

While the study provides some supportive information on the product's drying effect, at least one additional well-designed confirmatory study with an adequate number of subjects is needed. Because the submitted data are inadequate to establish effectiveness for the drying of symptoms of water-clogged ears, neither anhydrous glycerin nor isopropyl alcohol is included in a monograph for this use. The agency's detailed comments and evaluation of the above data are on file in the Dockets Management Branch (Ref. 2).

The agency considers this product to be a drug. (See discussion in section I.B., comment 5.) The agency has been informed that the comment plans to conduct another study to establish the effectiveness of this product for the drying of water-clogged ears (Refs. 3 and 4). When the study is completed, the comment should submit the data in the form of a petition to establish a monograph for this type of OTC drug product.

References

(1) Brookler, K. H., "Evaluation of Auro-Dri in the Relief for Water-Clogged Ears," Comment No. C2, Docket No. 77N–334S, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to H. W. Gordon, Del Laboratories, coded LET5, Docket No. 77N–334S, Dockets Management Branch.

(3) Comment No. C5, Docket No. 77N–334S, Dockets Management Branch.

(4) Memorandum of meeting between representatives of Del Laboratories, Inc., and FDA, coded MM1, Docket No. 77N–334S.

5. One comment discussed the status of glycerin in a product containing 5 percent anhydrous glycerin in 95 percent isopropyl alcohol. The comment contended that glycerin was not an active ingredient, but that glycerin was the vehicle. The comment stated that the product did not make any claims for glycerin as an active ingredient and thus no further testing for the glycerin in this product was necessary. The comment stated that glycerin was miscible with both water and alcohol (Ref. 1) and, thus, glycerin was particularly appropriate for use as a vehicle in this product.

The comment pointed out that the agency had previously stated (Ref. 2):

> In order to meet the requirements for a combination product, each ingredient must be tested alone and also in combination to show effectiveness for the proposed claims However, if glycerin functions only as a vehicle (and the need for it as a vehicle is shown) and no claims are made for it as an active ingredient, additional testing would not be required for this ingredient.

The comment added that the Panel stated in its report on OTC topical otic drug products (42 FR 63556 at 63562) that "glycerin is used in topical otic products * * * as a vehicle because of its solvent properties. * * * Its viscosity makes it useful as an ingredient in both liquid and ointment forms of medication. * * * Glycerin is widely accepted as a vehicle of choice in otic products."

The agency does not have sufficient information demonstrating that anhydrous glycerin functions only as a vehicle in this product. The anhydrous glycerin could have an active role in the product. One text states that anhydrous glycerin alone, or mixed with vinegar, will help to remove water from the ear (Ref. 3). The comment did not provide any data to show that at the 5 percent concentration present the anhydrous glycerin does not contribute to the effect of the product. In order to show that glycerin does not have an active role in the product, it needs to be shown that the product with the glycerin is not superior to 95 percent isopropyl alcohol used alone. If the combination is superior, this would show that the anhydrous glycerin contributes to the product's effectiveness. The agency believes that a four-arm study (combination, 95 percent isopropyl alcohol, anhydrous glycerin alone, and placebo, which would be no treatment) should be conducted to clarify the role of the glycerin in the product.

In addition, if the glycerin were found to act only as a vehicle, then the product would have to be labeled accordingly. The product could not continue to be labeled as 5 percent anhydrous glycerin in 95 percent isopropyl alcohol.

References

(1) "The Pharmacological Basis of Therapeutics," 6th ed., edited by L. S. Goodman, and A. G. Gilman, The McMillan Co., New York, p. 951, 1980.

(2) Letter from W. E. Gilbertson, FDA, to H. W. Gordon, Commerce Drug Co., Inc., coded LET10, Docket No. 77N–0334, Dockets Management Branch.

(3) "Handbook of Nonprescription Drugs," 10th ed., American Pharmaceutical Association, Washington, p. 400, 1993

C. Comments on the Isopropyl Alcohol and Acetic Acid

6. One comment requested that a combination product containing 95 percent isopropyl alcohol and 3 percent acetic acid be included in the final monograph with a claim for the prevention of swimmer's ear. The comment urged the agency to consider this combination because isopropyl alcohol with anhydrous glycerin was proposed as category III for drying of water in the ears (51 FR 27366 at 27370) and 2 percent acetic acid in distilled water was category III for prevention of swimmer's ear (51 FR 27367). The comment stated that preliminary data from a study suggested that this product may be statistically significant in diminishing the frequency of otitis externa in children during the summer months. The comment concluded that a product containing 95 percent isopropyl alcohol and 3 percent acetic acid was effective in drying of excess moisture in the ears as well as re-establishing the acid mantle in the ear canals.

As the comment noted, in the tentative final monograph, the agency placed several products in category III: (1) 2 percent acetic acid in distilled water or propylene glycol and the combination of 5 percent anhydrous glycerin and 95 percent isopropyl alcohol for the prevention of swimmer's ear, and (2) the combination of 5 percent anhydrous glycerin and 95 percent isopropyl alcohol for the drying of water in the ears or for the relief of the discomfort of water-clogged ears by drying excess water.

The comment did not submit any data on this combination, nor was this combination considered by the Panel in its report or the agency in the tentative final monograph. More data were needed on all of these products. Likewise, adequate data to demonstrate the safety and effectiveness of the comment's product are needed. Because no data were submitted to establish safety and effectiveness, the combination of 95 percent isopropyl alcohol and 3 percent acetic acid for the prevention of swimmer's ear is not being included in a monograph.

II. The Agency's Final Conclusions on OTC Topical Otic Drug Products for the Prevention of Swimmer's Ear and for the Drying of Water-Clogged Ears

At this time, there is a lack of data from adequate and well-controlled studies to establish that acetic acid, isopropyl alcohol, anhydrous glycerin, or any other ingredients are safe and effective for use as a topical otic drug product for the prevention of swimmer's or for the drying of water-clogged ears.

Therefore, any ingredient that is labeled, represented, or promoted for OTC use as a topical otic drug product for the prevention of swimmer's ear or for the drying of water-clogged ears is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part

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310, establishing that certain ingredients under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(15) the ingredient acetic acid that had been previously considered under this rulemaking for use as a topical otic drug product for the prevention of swimmer's ear and for the drying of water-clogged ears. The agency is revising § 310.545(a)(15) to clarify that products for the drying of water-clogged ears are also included in the regulation and to add new paragraph (a)(15)(ii) to include the ingredients covered by this final rule.

III. Analysis of Impacts

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (51 FR 27366 at 27371). FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This particular rulemaking for OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears is not expected to pose such an impact on small businesses. As noted above, the ingredient acetic acid has already been removed from OTC topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears. The agency is only aware of several OTC topical otic drug products containing isopropyl alcohol and anhydrous glycerin labeled for these uses. Accordingly, based on the number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by revising paragraphs (a)(15) and (d)(1) and by adding new paragraph (d)(18) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(15) *Topical otic drug products for the prevention of swimmer's ear and for the drying of water-clogged ears*—(i) *Approved as of May 7, 1991*

Acetic acid

(ii) *Approved as of August 15, 1995*

Glycerin and anhydrous glycerin

Isopropyl alcohol

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3) through (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(9) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv), and (a)(14) through (a)(18)(i) of this section

* * * * *

(18) August 15, 1995, for products subject to paragraph (a)(15)(ii) of this section.

* * * * *

Dated: January 31, 1995

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 95–3803 Filed 2–14–95; 8:45 am]

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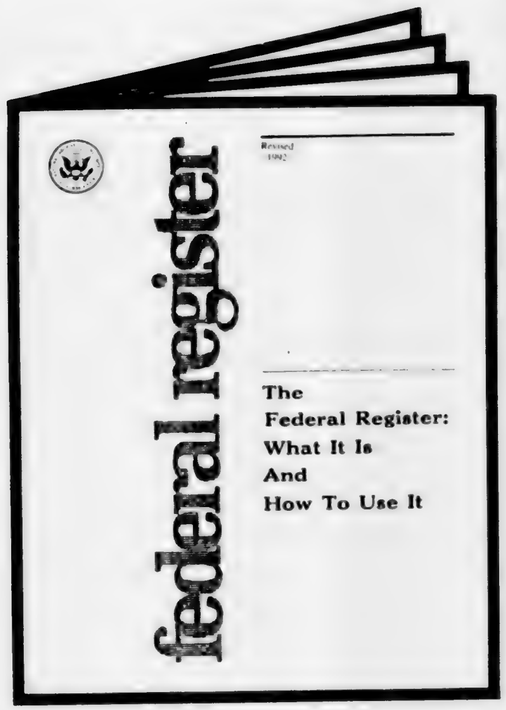

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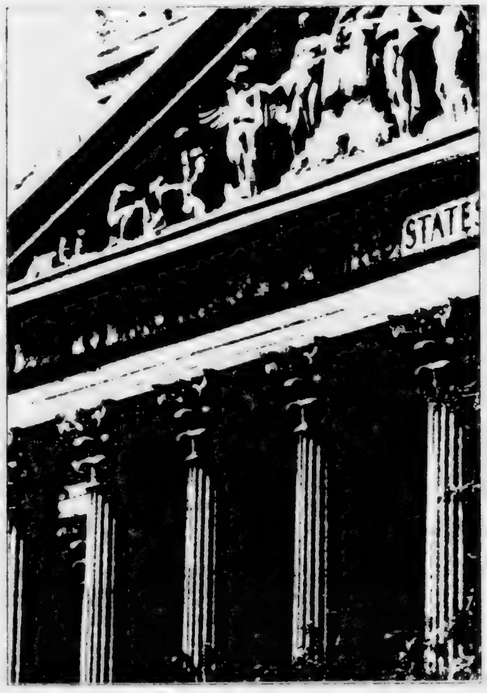

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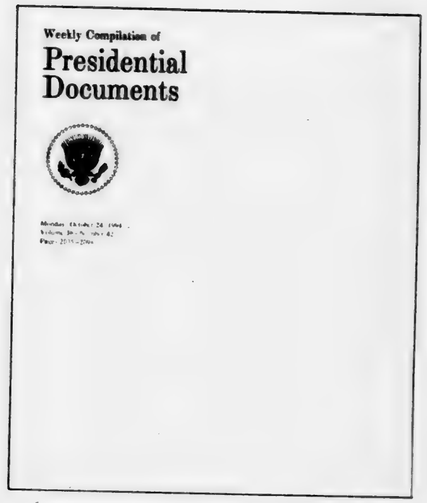

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–042–2]

True Potato Seed From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, the importation of true potato seed from Chile. The true potato seed imported from Chile under this rule will originate from certified virus-free plantlets from the United States, be produced under the supervision of Chilean plant protection authorities, and be tested for seedborne viruses prior to being offered for entry into the United States. Allowing the importation of true potato seed from Chile will give potato producers in the United States another means of producing disease-free tubers.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, Plant Protection and Quarantine, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–6799 (Hyattsville); (301) 734–6799 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

One of the articles restricted in the regulations is *Solanum* species (spp.) true seed, also known as true potato seed. "*Solanum* spp. true seed" is defined in § 319.37–1 as "seed produced by flowers of *Solanum* capable of germinating and producing new *Solanum* plants, as distinguished from *Solanum* tubers, whole or cut, that are referred to as *Solanum* seeds or seed potatoes."

On September 9, 1994, we published in the **Federal Register** (59 FR 46572–46574, Docket No. 94–042–1) a proposed rule to allow, under certain conditions, the importation of true potato seed from Chile. We proposed that the true potato seed imported from Chile would have to originate from certified virus-free plantlets from the United States, be produced in the country's Tenth (X) Region under the supervision of Chilean plant protection authorities, and be tested for seedborne viruses prior to being offered for entry into the United States.

We solicited comments concerning our proposal for a 30-day comment period ending October 11, 1994. We received 31 comments by that date, from State universities and university extension services; plant researchers and geneticists; potato breeders, growers, and marketers; State agriculture departments; seed companies; an agronomist; a member of the U.S. House of Representatives; and the Chilean government trade bureau. Twenty one of the commenters supported the proposed rule as written. 8 commenters supported the proposed rule but suggested changes, and 2 commenters were opposed to the proposed rule. The suggested changes and the comments of those opposed to the proposal are discussed below.

Comment: Although the disease is already present in the United States, the regulations should include safeguards to prevent the introduction of potato spindle tuber viroid (PSTV), which is transmitted by true potato seed.

Response: As discussed in the proposed rule, the plants that would produce the true potato seed would originate from plantlets from the United States that have been tested for viruses (including PSTV) and certified virus-free. Additionally, PSTV is not known to exist in the X Region, and, because the X Region is a quarantined area for potatoes, the entry of potato seeds, true seed, plants, and tubers is restricted in order to prevent the introduction of PSTV and other potato pests or diseases. Therefore, we believe that it is unlikely that the true potato seed would introduce PSTV into the United States and have made no changes in this final rule as a result of that comment.

Comment: The growing season inspection discussed in the proposed rule should be conducted within six weeks of harvest to maximize the ability to detect infected plant material. Surveys conducted earlier in the growing season might not detect infected plants.

Response: Diseases with visible symptoms would likely be more easily recognized later in the growing season but the viruses for which the plants, tubers, and true potato seed will be tested may be asymptomatic in potatoes. The testing protocol presented by Chile's ministry of agriculture, the Servicio Agricola y Ganadero (SAG), and accepted by the Animal and Plant Health Inspection Service (APHIS) calls for plant samples to be collected for testing between 30 days after planting up to the flowering phase. APHIS agrees with that time frame because we believe that the most accurate testing results would be obtained from samples gathered during the active phase of the plants' growth. We have, therefore, made no changes in this final rule as a result of that comment.

Comment: Our literature indicates that potato smut occurs in parts of Chile. If that disease is present in the X Region, it could be carried with the true potato seed as a contaminant.

Response: Potato smut is not reported to occur in the X Region and, as mentioned above, there are quarantine measures in place to prevent its introduction into the region. Because we believe that it is unlikely that potato smut would be carried into the United States as a contaminant on the true potato seed from Chile, we have made no changes in this final rule based on that comment.

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Comment: For the sake of clarity, APHIS should specify "*Solanum tuberosum*," rather than the more general "*Solanum* spp.," when referring to the potato species from which the true potato seed may be derived.

Response: We agree that using "*Solanum tuberosum*" instead of the more general "*Solanum* spp." would be clearer. We have, therefore, changed the regulatory text of this final rule to refer to the potato species from which the true potato seed may be derived as "*Solanum tuberosum*."

Comment: Specifically requiring that the nitro-cellulose membrane (NCM) enzyme-linked immunosorbent assay (ELISA) be used to test for the viruses of concern leaves no room for the use of other tests that are also recommended by the International Potato Center. Other ELISA tests, as well as the nucleic acid spot hybridization (NASH) non-reagent test, should be allowed.

Response: In the testing protocol presented by SAG and accepted by APHIS, the NCM ELISA test was specified as the method that would be used to test for the viruses of concern. We recognize, however, that the other tests recommended by the International Potato Center are equally accurate and could be used to test for the viruses of concern without compromising the integrity of the testing program in any way. Therefore, we have changed the regulatory text of this final rule to allow the use of other ELISA tests and the NASH non-reagent test for the purposes of testing the tubers, plants, and true potato seed for the viruses of concern.

Comment: With regard to the sample sizes specified in proposed paragraph § 319.37–5(h)(iii), the sampling rate should be 500 tubers and 500 plantlets per hectare (2.5 acres) rather than per 30 acres in order to detect 1 percent contamination with a 99 percent confidence level. The sampling level for the true potato seed should be made according to International Potato Center's guidelines for laboratory tests.

Response: The 500/500/500 sampling rate discussed in the proposed rule for the testing of plants, tubers, and true potato seed actually should, as pointed out by the commenter, be 500/500/500 per hectare, and not per 30-acre field as stated in the proposed rule. We have changed the regulatory text in this final rule to correct that error. With regard to the sampling to the true potato seed, the testing protocol presented by SAG and accepted by APHIS dictated that the true potato seed would be sampled at the same rate as the plants and tubers in order to detect 1 percent contamination with a 99 percent confidence level. It is the contamination level/confidence level equation that is of the greatest importance to APHIS; if SAG would prefer to establish a different sampling procedure for true potato seed that could detect the same level of contamination with the same level of confidence, APHIS is willing to review the new sampling procedure and, if warranted, publish a proposal in the **Federal Register** to add the procedure to the regulations.

Comment: APHIS should recognize Chile's VIII and IX regions as also being free from the four viruses of concern and allow the importation of true potato seed from those regions as well. Once such recognition has been established, APHIS should allow the use of parental material from those regions to produce the true potato seed and eliminate the requirement for the pre-export inspection and testing of true potato seed from the VIII, IX, and X regions of Chile.

Response: APHIS is open to working with SAG to expand the range of areas in Chile from which true potato seed may be imported into the United States; similarly, we are open to relaxing or eliminating inspection or testing requirements as circumstances warrant. However, we must first be able to establish that such actions would not result in an increased risk of plant pest introduction or dissemination in the United States. Once adequate protocols had been established and agreed upon, we could publish a proposal in the **Federal Register** to add any new areas or inspection requirements to the regulations. We cannot, however, make any such changes in this final rule.

Comment: The proposed requirement to test at three levels (plantlet, tuber, and true potato seed) for Andean Potato Latent Virus (APLV), Arracacha Virus B (AVB), and the Andean Potato Calico Strain of Tobacco Ringspot Virus (TRV-Ca) is unnecessarily stringent because there is no evidence to confirm that any of the three viruses can be transmitted by true potato seed under natural conditions. Additionally, the International Potato Center has analyzed true potato seed from the Peruvian Andean area—where AVB and TRV-Ca have been found to exist—and from the Center's own germplasm stock for a continued term of 8 years and has never found any of the three viruses in the true potato seed tested.

Response: The testing protocol presented by SAG and accepted by APHIS prescribed that plants, tubers, and true potato seed would all be tested for the viruses of concern. If alternative testing protocols are presented by SAG, and APHIS determines that they would not result in an increased risk of plant pest introduction or dissemination in the United States, we could publish a proposal in the **Federal Register** to relax or replace the requirement to test all three levels (plants, tubers, and true potato seed) for all viruses of concern.

Comment: The proposed criteria of sampling to detect 1 percent contamination at a 99 percent confidence level is not adequate for quarantine purposes. Zero tolerance is the desired goal of quarantine, and anything less creates an unacceptable level of risk that is not in the best interest of the potato industry. Under ideal conditions, most quarantines only delay the spread of regulated pests. The potato industry does not need to face the threat of diseases not currently in the United States.

Response: If "zero tolerance" for pest risk was the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS' goal is to reduce that risk to an insignificant level. In the case of true potato seed from Chile, we believe factors such as the low incidence of disease transmission by seeds and the absence of potato viruses in the seed production area, as well as the origin, certification, and testing requirements contained in this final rule, reduce the pest risk associated with its importation to an acceptable level.

Comment: The proposed rule contains a requirement for SAG to provide certain phytosanitary certifications. Before further consideration is given to the proposal, a formal review of the SAG's phytosanitary certification program should be conducted by U.S. officials to determine whether SAG can in fact provide reliable and credible certification.

Response: APHIS has a longstanding working relationship with SAG, and we are fully confident in their ability to provide reliable and credible phytosanitary certification for Chile's agriculture products, including true potato seed.

Comment: Potato producers in the United States do not need another means of producing disease-free tubers, especially if that means would not provide a genetically pure potato variety. True potato seed is already produced in the United States and is available to domestic potato research personnel and the seed potato industry. If there is a need for additional true potato seed, it could be produced in the United States.

Response: Whether the domestic potato industry will buy and use the true potato seed imported from Chile will be the decision of the domestic potato industry. APHIS is concerned with plant pest risk; marketing risks would be the concern of the true potato seed's producers, exporters, and importers.

Comment: The economic well-being of pre-nuclear seed potato producers and their associated industries may be jeopardized by allowing cheaper foreign material to enter the market.

Response: As discussed in the Regulatory Flexibility analysis in the proposed rule and in this final rule, we expect that it will take several years before true potato seed imported into the United States from Chile and its products will be in a position to capture any significant market share. Thus, its potential impact on price and competition in the potato seed market remains uncertain. If consumer response is favorable and true potato seed imported from Chile becomes competitive with the seed potatoes currently available in the United States, the price of seed potatoes may be driven down. However, because U.S. seed potato prices are influenced more by domestic production and market conditions than by imports, it is likely that any economic impact on domestic seed potato producers will be small.

Addition of New Virus

In addition to the comments discussed above, a representative of the Food Production and Inspection Branch of Agriculture and Agri-Food Canada informed APHIS of recent research that indicated the presence of Potato Yellowing Virus (PYV) in Chile. Because PYV can be transmitted through true potato seed, SAG informed APHIS that it will include PYV testing in its pre-export virus testing. Therefore, we have added PYV as a virus of concern in the listings for *Solanum* spp. and *Solanum* spp. true seed in § 319.37–2(a), and we have added PYV to the list in § 319.37–5(o)(3) of viruses for which the samples of *Solanum tuberosum* tubers, plants, and true seed must be tested.

Miscellaneous

In addition to those changes discussed above, we have also made two nonsubstantive changes to the paragraph designations in § 319.37–5. First, the regulatory text that we had proposed to add to the section as paragraph § 319.37–5(h) are added in this final rule as paragraph § 319.37–5(o). Second, the subordinate paragraphs in that same paragraph were incorrectly designated in the proposed rule as (i), (ii), and (iii); they are now correctly designated as (1), (2), and (3).

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed above.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will allow, under certain conditions, the importation of true potato seed from Chile. True potato seed imported from Chile under this rule will originate from certified virus-free plantlets from the United States, will be grown under the supervision of Chilean plant protection authorities, and a sample of the plants, tubers, and true potato seeds will be tested for seedborne viruses prior to the true potato seed being offered for entry into the United States. Allowing the importation of true potato seed from Chile will give potato producers in the United States another means of producing disease-free tubers.

The United States produced approximately 2,880 million pounds of seed potatoes in 1992 (U.S. Department of Agriculture [USDA], Economic Research Service). During that same period, the United States imported approximately 128 million pounds of seed potatoes, which represents about 4.4 percent of U.S. production. Because imports represent such a small portion of the domestic seed potato supply, fluctuations in import levels and prices do not appear to have a significant effect on domestic seed potato prices.

For example, U.S. imports of seed potatoes declined by more than a third between 1990 and 1992, dropping from 201 million pounds in 1990 to 128 million pounds in 1992. This decline in imports did not, however, result in an increase in U.S. grower or retail prices for seed potatoes. In fact, the price of imported seed potatoes also fell by more than a third during that time, dropping from $11 per 100 pounds in 1990 to $7 per 100 pounds in 1992 (USDA, "Agricultural Statistics 1992," Table 371, page 239). Based on the decline in both import levels and price during the same 2-year period, it appears that domestic seed potato prices are influenced more by the volume of U.S. production.

The import levels and prices discussed above do not reflect any imports of true potato seed from anywhere in the world, nor is there any record of true potato seed being imported into the United States. Our records indicate that true potato seed is a product that has not been commercially available in the United States. We expect that it will take several years before true potato seed imported into the United States from Chile and its products will be in a position to capture any significant market share. Thus, its potential impact on price and competition in the potato seed market remains uncertain.

We have identified domestic seed potato producers and seed potato importers as the entities potentially affected by this rule. According to the Small Business Administration's criteria, an agricultural producer with annual sales of less than $500,000 is considered to be a small entity; an importer is considered to be a small entity if it employs fewer than 100 people. According to the U.S. Department of Commerce's "1987 Census of Agriculture," there were about 14,732 farms that produced potatoes in the United States, and about 96 percent of those farms reported sales of less than $100,000. The exact percentage of those farms that produced only seed potatoes or a combination of seed potatoes and table potatoes is not known, but it is likely that the number is small, based on the total production of seed potatoes versus table potatoes (2,880 million pounds vs. 42,500 million pounds, respectively).

Information regarding the total number of seed potato importers and the percentage of those importers that would be considered small entities was unavailable. It is unlikely, however, that allowing the importation of true potato seed from Chile will have a significant impact on seed potato import levels. The true potato seed imported from Chile may be used by potato producers in the United States to produce potatoes of a different variety than those potatoes currently grown in the United States; the economic impact of the imported true potato seed will thus be affected by consumer response to the new variety of potatoes. If consumer response is favorable and true potato seed imported from Chile becomes competitive with the seed potatoes currently available in the United States, the price of seed potatoes may be driven down. However, because U.S. seed potato prices are influenced more by domestic production and market conditions than by imports, it is likely that any economic impact on domestic seed potato producers will be small. Any slight negative impact will likely be offset by the positive impact on

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domestic potato producers, who will benefit from lower seed potato prices, and consumers will benefit from any resulting lower prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will allow true seed of *Solanum* spp. to be imported into the United States from Chile. State and local laws and regulations regarding true seed imported under this rule will be preempted while the true seed is in foreign commerce. Seeds are generally imported for immediate distribution and sale to the public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0049.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1 The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c)

§ 319.37–2 [Amended]

2 In § 319.37–2(a), in the table, the listing for *Solanum* spp. is amended in the third column by adding the words Arracacha Virus B; Potato Yellowing Virus" at the end of the entry, immediately before the period.

3. In § 319.37–2(a), in the table, the listing for *Solanum* spp. true seed is amended in the second column by removing the words "Canada and New Zealand" and adding the words "Canada, New Zealand, and the X Region of Chile (that area of Chile between 39° and 44° South latitude—see § 319.37–5(o))" in their place, and in the third column by adding the words ", Arracacha Virus B, Potato Yellowing Virus" at the end of the entry, immediately before the period.

4. In § 319.37–3, paragraph (a)(3) is amended by removing the words "true seed of *Solanum* spp. (tuber bearing species only—Section Tuberarium) from New Zealand;", and a new paragraph (a)(17) is added to read as set forth below:

§ 319.37–3 Permits.

(a) * * *

(17) *Solanum tuberosum* true seed from New Zealand and the X Region of Chile (that area of Chile between 39° and 44° South latitude—see § 319.37–5(o)).

* * * * *

5. In § 319.37–5, a new paragraph (o) is added to read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(o) Any *Solanum tuberosum* true seed imported from Chile shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection issued in Chile by the Servicio Agricola y Ganadero (SAG), containing additional declarations that:

(1) The *Solanum* spp. true seed was produced by *Solanum* plants that were propagated from plantlets from the United States;

(2) The *Solanum* plants that produced the *Solanum tuberosum* true seed were grown in the Tenth (X) Region of Chile (that area of the country between 39° and 44° South latitude); and

(3) *Solanum tuberosum* tubers, plants, and true seed from each field in which the *Solanum* plants that produced the *Solanum tuberosum* true seed were grown have been sampled by SAG once per growing season at a rate to detect 1 percent contamination with a 99 percent confidence level (500 tubers/500 plants/500 true seeds per 1 hectare/2.5 acres), and that the samples have been analyzed by SAG using an enzyme-linked immunosorbent assay (ELISA) test or nucleic acid spot hybridization (NASH) non-reagent test, with negative results, for Andean Potato Latent Virus, Arracacha Virus B, Potato Virus T, the Andean Potato Calico Strain of Tobacco Ringspot Virus, and Potato Yellowing Virus.

(Approved by the Office of Management and Budget under control number 0579–0049)

Done in Washington, DC, this 9th day of February 1995

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–3843 Filed 2–15–95; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV94–905–4–FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which relaxed the minimum size requirement for domestic shipments of Florida red seedless grapefruit and for red seedless grapefruit imported into the United States to 3⁹⁄₁₆ inches in diameter (size 56) through November 12, 1995. This rule enables handlers in Florida and importers to continue to ship size 56 red seedless grapefruit for the entire 1994–95 season.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770; or Mark Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 905 [7 CFR Part 905], as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order". This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order

imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 110 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, about 11,970 producers of these citrus fruits in Florida, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, importers, and producers may be classified as small entities.

The order for Florida citrus provides for the establishment of minimum grade and size requirements. The minimum grade and size requirements are designated to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

The Citrus Administrative Committee (committee), which administers the order locally, makes recommendations to the Secretary of Agriculture as to the grade and size of fruit that should garner consumer acceptance. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The committee met on September 13, 1994, and unanimously recommended that the minimum size requirement for domestic shipments of fresh red seedless grapefruit be relaxed from size 48 to size 56 for the period November 7, 1994, to November 12, 1995. Size 56 (3⁹⁄₁₆ inches diameter) is the minimum size until November 6, 1994. At that time, absent this revision of the rules and regulations under the order, the minimum size will revert to size 48 (3⁹⁄₁₆ inches diameter).

Section 905.52, Issuance of regulations, authorizes the committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). Export requirements are not changed by this rule.

In making its recommendation, the committee considered estimated supply and current shipments. The committee reports that it expects that fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1994–95 season.

The committee recommended this relaxation in size to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This is consistent with current and anticipated demand in those markets for the 1994–95 season, and provides for the maximization of shipments to fresh market channels.

There are several exemption provisions under the order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale under these provisions. Fruit shipped for animal feed is also exempt under specific conditions. Fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This rule reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for red seedless grapefruit as specified This rule has a beneficial impact on

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producers, handlers and importers since it permits Florida grapefruit handlers and importers to make available those sizes of fruit needed to meet consumer needs consistent with this season's crop and market conditions.

The interim final rule concerning this action was published in the November 8, 1994, **Federal Register** (59 FR 55571), with a 30-day comment period ending December 8, 1994. No comments were received.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

This rule relaxes the minimum size requirements for imported red seedless grapefruit to 3⁵⁄₁₆ inches in diameter (size 56) through November 12, 1995, to reflect the relaxation being made under the order for grapefruit grown in Florida.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule without change, as published in the **Federal Register** (59 FR 55571) will tend to effectuate the declared policy of the Act.

List of Subjects 7 CFR Parts 905 and 944

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR Part 905 which was published at 59 55571 on November 8, 1994, is adopted as a final rule without change.

PART 944—FRUIT; IMPORT REGULATIONS

The interim final rule amending 7 CFR Part 944 which was published at 59 FR 55571 on November 8, 1994, is adopted as a final rule without change.

Dated: February 8, 1995

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 95–3838 Filed 2–15–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR PART 915

[Docket No. FV93–911–1FR; Amendment]

Increase in Expenses for Marketing Order Covering Avocados Grown in South Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: The Department of Agriculture (Department) is amending the final rule that authorized expenses and established an assessment rate for the Florida Avocado Administrative Committee (Committee) under Marketing Order No. 915 for the 1994–95 fiscal year. This final rule authorizes an increased level of expenses for the 1994–95 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer its program. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: April 1, 1994, through March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Brittbany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone (202) 720–5127; or Aleck Jonas, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 338833, telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 915 (7 CFR Part 915), as amended, regulating the handling of avocados grown in south Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule increases the authorized level of expenses for the 1994–95 fiscal year which began April 1, 1994, and ends March 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 95 producers of avocados grown in south Florida, and approximately 65 handlers who are subject to regulation under the avocado marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the avocado producers and handlers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable avocados handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers and handlers of avocados. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in its area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of avocados. Because this rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Expenses for the Committee are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on December 8, 1993, and unanimously recommended 1994–95 marketing order expenditures of $97,000 and an assessment rate of $0.16 per 55-pound bushel of avocados. In comparison, 1993–94 fiscal year budgeted expenditures were $113,846, which is $16,846 more than the $97,000 recommended for the 1994–95 fiscal year. The assessment rate of $0.16 per bushel remained the same as last year's assessment rate of $0.16. The major budget categories for 1994–95 were $28,000 for administrative staff salaries, $15,600 for compliance, and $10,100 for employee benefits.

Assessment income for 1994–95 was estimated to total $96,000 based on anticipated fresh domestic shipments of 600,000 55-pound bushels of avocados. Interest on savings was expected to add an additional $1,000 to income. Sufficient reserve funds were available to cover any unexpected shortfall in projected income. Funds in the reserve at the end of the 1994–95 fiscal year were estimated to be $100,000. These reserve funds will be within the maximum permitted by the order of three fiscal years' expenses.

The expenses and assessment rate were authorized by an interim final rule issued on January 25, 1994, and published in the **Federal Register** (59 FR 5073, February 3, 1994). A 30-day comment period was provided for interested persons. No comments were received.

The Committee met again on March 9, 1994, and unanimously recommended to increase expenses from $97,000 to $99,500, an increase of $2,500 in expenses from the previously authorized amount. The additional funds provided money for increased monitoring of water table levels in south Florida. No change was recommended for the assessment rate. Sufficient reserve funds were available to cover the increased expenses.

The increase in expenses was authorized in the finalization of the interim final rule issued on April 15, 1994, and published in the **Federal Register** (59 FR 18943, April 21, 1994).

The Committee met again on November 9, 1994, and unanimously recommended to further increase expenses by $16,920. This increases the total 1994–95 expense amount from $99,500 to $116,420. The additional increase in expenses was recommended to provide funding for the Avocado Lace Bug Research Project. The avocado lace bug has been the most persistent pest of the avocado and its population numbers have been increasing for the last two years. No change was recommended in the approved assessment rate. Adequate funds exist in the Committee's reserve to cover the increase in expenses.

This action will not impose additional costs on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year began on April 1, 1994, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (3) no increase in the assessment rate is being recommended so no additional funds will need to be collected from handlers.

List of Subjects in CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 915 is hereby amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

§ 915.232 [Amended]

2. Section 915.232 is amended by removing the number "$99,500" and adding in its place "$116,420".

Dated: February 8, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 95–3837 Filed 2–15–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–118–AD; Amendment 39–9142; AD 95–03–05]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires an inspection to detect cracks in the cleats at certain rib stations of the wing, and replacement of the cracked cleats with new cleats. This amendment is prompted by a report that, during manufacture of the wings of these airplanes, cracks were discovered in the cleats at the left- and right-hand rib station 8200 of the wing due to improper installation of certain bolts. The actions specified by this AD are intended to prevent cracking of the cleats, which could result in reduced structural integrity of the wing.

DATES: Effective March 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained

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from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on October 18, 1994 (59 FR 52481). That action proposed to require a one-time high-frequency eddy current inspection to detect cracks of the cleats at the left- and right-hand rib station 8200 of the wing, and replacement of the cracked cleats with new cleats.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 55 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,600, or $3,300 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–05 Fokker: Amendment 39–9142 Docket 94–NM–118–AD

Applicability: Model F28 Mark 0100 series airplanes; as listed in Fokker Service Bulletin SBF100–57–018, dated September 23, 1993; certificated in any category

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 16,000 total flight cycles or within 3 months after the effective date of this AD, whichever occurs later, perform a one-time high-frequency eddy current inspection to detect cracks in the cleats at the left- and right-hand rib station 8200 of the wing, in accordance with Fokker Service Bulletin SBF100–57–018, dated September 23, 1993. If any cracked cleat is detected, prior to further flight, replace it with a new cleat, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with Fokker Service Bulletin SBF100–57–018, dated September 23, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 20, 1995.

Issued in Renton, Washington, on February 3, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3247 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–109–AD; Amendment 39–9141; AD 95–03–04]

Airworthiness Directives; British Aerospace Model Viscount 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Viscount 744, 745D, and 810 series airplanes, that requires repetitive inspections to detect fatigue cracking in the pivot pins that attach both nose wheel steering actuators to the steering head assembly, and replacement of cracked pins. This amendment is prompted by a reported failure of a pivot pin due to fatigue cracking. The actions specified by this AD are intended to prevent failure of the pivot pin, which could result in the loss of nose wheel steering capability.

DATES: Effective March 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 20, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Viscount 744, 745D, and 810 series airplanes was published in the **Federal Register** on November 14, 1994 (59 FR 56435). That action proposed to require initial and repetitive magnetic particle inspections to detect cracking of the pivot pin that attaches the nose wheel steering actuators to the steering head assembly, and replacement of cracked pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane, per inspection cycle, to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,220, or $180 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-03-04 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39-9141. Docket 94-NM-109-AD.

Applicability: All Model Viscount 744, 745D, and 810 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of nose wheel steering capability due to failure of the pivot pin, accomplish the following:

(a) Prior to the accumulation of 1,100 landings after the effective date of this AD, or within 14 months after the effective date of this AD, whichever occurs first, perform a magnetic particle inspection to detect cracks of the nose wheel steering actuators connecting (pivot) pins, in accordance with either Viscount Preliminary Technical Leaflet (PTL) 334, Issue 2, dated July 8, 1992 (for Model 744 and 745D series airplanes); or Viscount PTL 205, Issue 2, dated July 8, 1992 (for Model 810 series airplanes); as applicable. Repeat this inspection thereafter at intervals not to exceed 1,100 landings or 14 months, whichever occurs first.

(b) If any crack is found in a pivot pin during any inspection required by this AD, replace the pivot pin in accordance with either Preliminary Technical Leaflet (PTL) 334, Issue 2, dated July 8, 1992 (for Model 744 and 745D series airplanes), or Viscount PTL 205, Issue 2, dated July 8, 1992 (for Model 810 series airplanes). After replacement, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 1,100 landings or within 14 months, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with Viscount PTL 334, Issue 2, dated July 8, 1992; or Viscount PTL 205, Issue 2, dated July 8, 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Ltd., Engineering Support Manager, Military Business Unit, Chadderton Works, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 20, 1995.

Issued in Renton, Washington, on February 3, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-3245 Filed 2-15-95; 8:45 am]

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14 CFR Part 39

[Docket No. 94-ANE-11; Amendment 39-9138; AD 95-03-01]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6-45/-50/-80A series turbofan engines, that currently requires a one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3-9 spool for cracks. This amendment retains the inspection requirements of the current AD, but would accelerate the inspection schedule, and introduce a repetitive inspection requirement. This amendment is prompted by a review of the inspection results to date, which indicate that the crack occurrence rate is higher than initially projected. The actions specified by this AD are intended to prevent an uncontained HPCR stage 3-9 spool failure, which could result in damage to the aircraft

DATES: Effective March 20, 1995

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 20 1995.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246 This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803-5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7138; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 91-20-01, Amendment 39-8035 (56 FR 55230), which is applicable to General Electric Company (GE) CF6-45/-50/-80A series turbofan engines, was published in the **Federal Register** on May 3, 1994 (59 FR 22769). That action proposed to retain the one-time ultrasonic and eddy current inspection of the high pressure compressor rotor (HPCR) stage 3-9 spool for cracks as required in the current AD, but would accelerate the inspection schedule, and introduce a repetitive ultrasonic and eddy current inspection requirement in accordance with GE CF6-50 Service Bulletin (SB) No. 72-1000, Revision 2, dated September 9, 1993, and GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule as proposed.

One commenter states that the repetitive inspection interval of 3,500 cycles in service (CIS) in compliance paragraph (b) of the proposed rule should be replaced with 4,000 CIS in

order to avoid premature engine removals. The FAA concurs that this change will avoid some engine removals while not decreasing the level of safety provided by the proposed rule. Accordingly, the FAA has made this change in the final rule.

Although no comments were received regarding compliance paragraphs (a)(3), (a)(4), (c)(2), and (d), the FAA has replaced 3,500 CIS with 4,000 CIS in these paragraphs to maintain consistency.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 462 GE CF6-45/-50/-80A series engines of the affected design in the worldwide fleet. The FAA estimates that 67 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 584 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $127,412 per engine. Based on these figures, and assuming that 3 of the inspected spools will require replacement, the total cost impact of the AD on U.S. operators is estimated to be $2,534,276.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Amendment 39-8035 (56 FR 55230; October 25, 1991) and by adding a new airworthiness directive to read as follows:

95-03-01 General Electric Company: Amendment 39-9138. Docket 94-ANE-11. Supersedes AD 91-20-01, Amendment 39-8035.

Applicability: General Electric Company (GE) CF6-45/-50/-80A series turbofan engines installed on, but not limited to, Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC-10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor rotor (HPCR) stage 3-9 spool failure, which could result in damage to the aircraft, accomplish the following:

(a) Eddy current and ultrasonic inspect GE CF6-45/-50 HPCR stage 3-9 spools, Part Number (P/N) 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G08, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, with serial numbers (S/N) listed in Table 2 of GE CF6-50 Service Bulletin (SB) No. 72-1000, Revision 2, dated September 9, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6-50 SB No. 72-888, Original, Revision 1 Revision 2, Revision 3, or Revision 4, or GE CF6-50 SB No. 72-1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.C of GE CF6-50 SB No. 72-1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been inspected in accordance with GE CF6-50 SB No. 72-888, Original, Revision 1, or Revision 2; inspect in accordance with paragraph 2.D of GE CF6-50 SB No. 72-1000, Revision 2, dated September 9, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(3) For spools that have been inspected in accordance with GE CF6-50 SB No. 72-888, Original, Revision 1, or Revision 2, and GE CF6-50 SB No. 72-1008, Original, inspect in accordance with paragraph 2.D of GE CF6-50 SB No. 72-1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 4,000 cycles in service (CIS) since inspected in accordance with GE CF6-50 SB No. 72-1008, Original, whichever occurs earlier.

(4) For spools that have been inspected in accordance with GE CF6-50 SB No. 72-888, Revision 3, or Revision 4, or GE CF6-50 SB No. 72-1000, Original, Revision 1, or Revision 2, inspect in accordance with paragraph 2.D of GE CF6-50 SB No. 72-1000, Revision 2, dated September 9, 1993, at the next piece-part exposure, or within 4,000 CIS since inspected in accordance with GE CF6-50 SB No. 72-888, Revision 3, or Revision 4, or GE CF6-50 SB No. 72-1000, Original, Revision 1, or Revision 2, whichever occurs earlier.

(b) Thereafter, for spools that have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with paragraph 2.D of GE CF6-50 SB No. 72-1000 Revision 2, dated September 9, 1993, at intervals not to exceed 4,000 CIS since the last inspection.

(c) Eddy current and ultrasonic inspect GE CF6-80A HPCR 3-9 spool, P/N 9136M89G10, with S/N's listed in Table 2 of GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993, as follows:

(1) For spools that have not been previously inspected in accordance with GE CF6-80A SB No. 72-500, Original, Revision 1, Revision 2, Revision 3, or Revision 4, or GE CF6-80A SB No. 72-583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.C of GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993, at the next engine shop visit, or by 30 days after the effective date of this AD, whichever occurs earlier.

(2) For spools that have been previously inspected in accordance with GE CF6-80A SB No. 72-500, Revision 3, or Revision 4, or GE CF6-80A SB No. 72-583, Original, Revision 1, Revision 2, Revision 3, or Revision 4, inspect in accordance with paragraph 2.D of GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993, at the next piece-part exposure, or within 4,000 CIS since inspected in accordance with GE CF6-80A SB No. 72-500, Revision 3, or Revision 4, or GE CF6-80A SB No. 72-583, Original, Revision 1, Revision 2, Revision 3 or Revision 4, whichever occurs earlier.

(d) Thereafter, for spools that have been inspected in accordance with paragraph (c) of this AD, reinspect in accordance with paragraph 2.D of GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993, at intervals not to exceed 4,000 CIS since the last inspection.

(e) Remove from service prior to further flight HPCR stage 3-9 spools that meet or exceed the reject criteria established in Section 2.C and 2.D, as applicable, of GE CF6-50 SB No. 72-1000, Revision 2, dated September 9, 1993, and GE CF6-80A SB No. 72-583, Revision 4, dated September 15, 1993, as appropriate.

(f) For the purpose of this AD, an engine shop visit is defined as the induction of an

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engine into a shop for maintenance involving the separation of any major flange.

(g) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPCR rotor.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(j) The actions required by this AD shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
GE CF6–50, SB No. 72–1000 ..... Total pages: 37.	1–37	2	Sept. 9, 1993
GE CF6–80A SB No. 72–583 ..... Total pages: 34.	1–34	4	Sept. 15 1993

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on March 20, 1995.

Issued in Burlington, Massachusetts, on January 31, 1995.

Donald F. Perrault,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–3248 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8580]

RIN 1545–AN06

Disposition of an Interest in a Nuclear Power Plant; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (TD 8580), which was published in the **Federal Register** for Tuesday, December 27, 1994 (59 FR 66471). The final regulation relates to certain Federal income tax consequences of a disposition of an interest in a nuclear power plant by a taxpayer that has maintained a nuclear decommissioning fund with respect to that plant.

EFFECTIVE DATE: December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Peter C. Friedman, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 468A of the Internal Revenue Code.

Need for Correction

As published, TD 8580 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8580), which were the subject of FR Doc. 94–31428, is corrected as follows:

§ 1.468A–3 [Corrected]

1. On page 66474, column 1, preceding § 1.468A–3, in instructional "Par. 4.", paragraph 2a is added immediately following the text of paragraph 2 to read as follows:

2a. In newly designated paragraph (h)(1)(vi), the reference "paragraph (h)(1)(viii)" is removed and "paragraph (h)(1)(vii)" is added in its place.

§ 1.468A–5 [Corrected]

2. On page 66474, column 2, preceding § 1.468A–5, in instructional "Par. 5.", paragraph 3a is added immediately following the text of paragraph 3 to read as follows:

3a. In newly designated paragraph (b)(2)(vii) introductory text, the reference "paragraph (b)(2)(vi)" is removed from the last sentence and "paragraph (b)(2)(vii)" is added in its place.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–3770 Filed 2–15–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1948–95]

Establishment of the Office of Community Oriented Policing Services

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This order will amend the Department of Justice organization regulations to reflect the creation of the Office of Community Oriented Policing Services. This new office will implement certain grant programs authorized by the Violent Crime Control and Law Enforcement Act of 1994. This order will provide the public with a list of the duties of the Director of the Office of Community Oriented Policing Services, and will amend the Code of Federal Regulations in order to reflect accurately the Department's internal management structure. Finally, this order makes applicable to the Office of Community Oriented Policing Services certain parts of the Code of Federal Regulations currently applicable only to the Office of Justice Programs.

DATES: Interim rule effective February 16, 1995; comments must be received on or before April 3, 1995.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Office of Community Oriented Policing Services, U.S. Department of Justice, P.O. Box 14440, Washington, DC 20044 or delivered to Suite 300, 633 Indiana Avenue, N.W., Washington, DC between 9 a.m. and 5:30 p.m. Comments received may also be inspected at Suite 300 between 9:15 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: L. Anthony Sutin, General Counsel, Office of Community Oriented Policing Services, U.S. Department of Justice, 633 Indiana Avenue, N.W., Suite 300, Washington, DC 20531, telephone (202) 514–2058.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management, 5 U.S.C. 553(b)(A). It does not have a significant impact on a substantial number of small entities, 5 U.S.C. 605(b). It is not a significant regulatory action within the meaning of or subject to Executive Order 12866, and has not been reviewed by the Office of Management and Budget. Comments are invited as to whether any modifications to the existing Department of Justice hearing and appeal procedures set forth in 28 CFR part 18 should be made in connection with the grants to be awarded under the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) by the new Office of Community Oriented Policing Services.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—AMENDED

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 515–519.

§ 0.1 [Amended]

2. Part 0, subpart A, § 0.1 is amended by adding at the end of the list under "Offices" the title "Office of Community Oriented Policing Services."

3. Subpart U–1 of part 0 is added, to read as follows:

Subpart U–1—Office of Community Oriented Policing Services

Sec.

0.119 Organization.
0.120 General functions.
0.121 Applicability of existing departmental regulations

§ 0.119 Organization.

The Office of Community Oriented Policing Services shall be headed by a Director appointed by the Attorney General. The Director shall report to the Attorney General through the Associate Attorney General.

§ 0.120 General functions.

The Director, Office of Community Oriented Policing Services shall:

(a) Exercise the powers and perform the functions vested in the Attorney General by Title I and subtitle H of Title III of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322); and

(b) Perform such other duties and functions relating to policing and law enforcement as may be specially assigned by the Attorney General or the Associate Attorney General.

§ 0.121 Applicability of existing departmental regulations.

Unless superseded by regulations promulgated by the Office of Community Oriented Policing Services, Departmental regulations set forth in part 18 of this title, applicable to grant programs administered through the Office of Justice Programs, shall apply with equal force and effect to grant programs administered by the Office of Community Oriented Policing Services, with references to the Office of Justice Programs and its components in such regulations deemed to refer to the Office of Community Oriented Policing Services, as appropriate.

Dated: February 3, 1995

Janet Reno,

Attorney General.

[FR Doc. 95–3719 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; North Korean Travel and Financial Transactions; Information and Informational Materials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Foreign Assets Control Regulations (the "Regulations") consistent with commitments undertaken in the October 21, 1994 U.S.–Democratic People's Republic of Korea ("North Korea") Framework Agreement. In addition, the Regulations are also being amended to bring them into conformity with recent amendments to the Trading with the Enemy Act.

EFFECTIVE DATE: February 14, 1995

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel. 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

On October 21, 1994, the United States and North Korea agreed, in the context of broader negotiations, to begin reducing barriers to trade and investment. Based on these mutual commitments, the Regulations are being amended by (1) adding a new § 500.580 to authorize the clearing through the U.S. banking system of U.S. dollar transactions in which North Korea or a national thereof has an interest; (2) adding a new § 500.581 to authorize transactions related to the operation of certain U.S. and North Korean diplomatic missions in the United States and North Korea; (3) amending § 500.563 to authorize all U.S. persons' transactions with respect to travel to, from, and within North Korea, including removal of restrictions on group travel and travel service providers (including travel agents, carriers, ticket agents and commercial and noncommercial organizations that promote or arrange travel) and removal of the prior $200 per diem ceiling on expenditures; (4) amending § 500.566, regarding the authorization of travel–related transactions by North Korean nationals in the United States; (5) amending § 500.579 to authorize the case–by–case unblocking of certain funds which came into the possession or control of U.S. banking institutions through wire transfer instructions or check remittances in which North Korea or a national thereof has or has had an interest, provided no funds are transferred directly to the Government of North Korea, entities controlled by the Government of North Korea, or to persons in North Korea; and (6) removing § 500.564, regarding reimbursment of travel costs by foreign subsidiaries, and § 500.569, regarding group travel to North Korea, as no longer necessary.

Section 500.582 is added to the Regulations to provide a statement of licensing policy noting that specific licenses may be issued for the

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importation into the United States of North Korean–origin magnesite or magnesia, because the absence of North Korea as a supplier subjects U.S. importers to unreasonably high prices due to otherwise limited foreign sources. Section 500.583 is added to the Regulations to provide that specific licenses may be issued to authorize transactions necessary to establish offices in North Korea of U.S. news organizations and for offices in the United States of North Korean news organizations. Finally, § 500.584 is added to the Regulations to provide that specific licenses may be issued to authorize U.S. persons to participate in certain types of energy sector projects in North Korea with respect to the replacement of existing nuclear reactors with light–water reactor power plants.

Section 525(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103–236, 108 Stat. 474 (the "FRAA"), amended section 5(b)(4) of the Trading with the Enemy Act, 50 U.S.C. App. 5(b)(4) ("TWEA"), to expand the list of items defined as categories of informational materials to include compact discs, CD ROMs, artworks, and news wire feed. In addition, section 5(b)(4) of TWEA, as amended, exempts from the authority granted to the President pursuant to TWEA the authority to regulate or prohibit, directly or indirectly, the exportation or importation, whether commercial or otherwise, of information or informational materials regardless of format or medium of transmission, except exportations that would be controlled pursuant to national security, nonproliferation, or antiterrorism provisions of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420, or espionage provisions of 18 U.S.C. chapter 37. Section 500.571 of the Regulations is being amended to reflect the exemption from regulation of all transmissions of noncontrolled information over existing telecommunications circuits, including current settlement of telecommunications fees between the United States and North Korea.

Note: The FRAA exemption applies to transmissions of information, not telecommunications facilities and equipment used to transmit information. Exportation from the United States of equipment to enhance gateway–to–gateway telecommunications service with North Korea is subject to licensing requirements of the Department of Commerce, in conjunction with the general license in § 500.533 of the Regulations. Exportation or reexportation of such equipment to North Korea from a third country by a U.S. person requires a specific license from FAC and may also be subject to Commerce Department licensing provisions set forth in the Export Administration Regulations, 15 CFR parts 768–799.

Section 500.206 is amended to reflect the FRAA exemption that applies to transactions concerning exportation and importation of information and informational materials. The definition of the term "informational materials" contained in § 500.332 is amended to conform the section to amended section 5(b)(4) of TWEA. Conforming amendments are also made to § 500.550, which authorizes transactions related to the importation and exportation of information and informational materials.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart B—Prohibitions

2. The section heading and paragraphs (a) and (b) of § 500.206 are revised to read as follows, the words "information or" are added before the words "informational materials" in each place they appear in paragraph (c) of § 500.206, and the word "synchronization" and the comma following it are removed from Example #4 of § 500.206:

§ 500.206 Exemption of information and informational materials.

(a) The importation from any country and the exportation to any country of information or informational materials as defined in § 500.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of information or informational materials, including mail, between the United States and any foreign country designated under § 500.201, are exempt from the prohibitions and regulations of this part.

* * * * *

Subpart C—General Definitions

3. Section § 500.332 is revised to read as follows:

§ 500.332 Information and informational materials.

(a) For purposes of this part, the term *informational materials* includes, without limitation:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) that would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or

(2) with respect to which acts are prohibited by 18 U.S.C. chapter 37

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

4. The section heading and paragraph (a) of § 500.550 are revised to read as follows, and the words "information or" are added before the words "informational materials" in each place they appear in the first sentence of paragraph (b) of § 500.550

§ 500.550 Transactions related to information and informational materials.

(a) All financial and other transactions directly incident to the importation or exportation of information or informational materials as defined in § 500.332 of this part are authorized.

* * * * *

5. The section heading and text of § 500.563 are revised to read as follows:

§ 500.563 Transactions incident to travel to and within North Korea.

(a) All transactions of persons subject to U.S. jurisdiction, including travel service providers, ordinarily incident to travel to, from, and within North Korea and to maintenance within North Korea are authorized. This authorization extends to transactions with North Korean carriers and those involving group tours, payment of living expenses, the acquisition of goods in North Korea for personal use, and normal banking transactions involving currency drafts, charge, debit or credit cards, traveler's checks, or other financial instruments negotiated incident to personal travel.

(b) The purchase of merchandise in North Korea by persons subject to U.S. jurisdiction, and importation as accompanied baggage, is limited to goods with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 500.206 of this part, information and informational materials are exempt from this restriction.

(c) This section does not authorize any debit to a blocked account.

§ 500.564 [Reserved]

6. Section 500.564 is removed and reserved.

7. Paragraph (b) of § 500.566 is removed, paragraph (c) is redesignated as paragraph (b), and the section heading and the introductory text of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 500.566 Certain transactions authorized on behalf of North Korean nationals incident to their travel and maintenance expenses.

(a) Except as provided in paragraph (b) of this section, the following transactions are authorized by or on behalf of a national of North Korea who enters the United States on a visa issued by the Department of State:

(1) All transactions ordinarily incident to travel to, from, and within the United States are authorized, including the importation into the United States of accompanied baggage for personal use;

* * * * *

§ 500.569 [Reserved]

8. Section 500.569 is removed and reserved.

§ 500.571 [Amended]

9. Section 500.571 is amended by removing the word "Vietnam" and adding the words "North Korea" wherever it appears.

10. Section 500.579 is amended by designating the current text as paragraph (a), and by adding the following paragraph (b) to the end of the section to read as follows:

§ 500.579 Authorization for release of certain blocked transfers by banking institutions subject to U.S. jurisdiction.

* * * * *

(b) Specific licenses may be issued authorizing the return to the remitting party of funds that were blocked by banking institutions subject to the jurisdiction of the United States pursuant to this part because of an interest of North Korea or a national thereof and that came into the banking institution's possession or control by wire transfer or check remittance, provided that no funds are released to the Government of North Korea, any entity controlled by the Government of North Korea, or any person located in, controlled from, or organized under the laws of North Korea.

11. Section 500.580 is added to read as follows:

§ 500.580 Authorization of U.S. dollar clearing transactions involving North Korea.

Banking institutions organized under the laws of or located in the United States are authorized to process the transfer of funds in which North Korea or a national thereof has an interest. Persons subject to U.S. jurisdiction who are originators or ultimate beneficiaries of funds transfers, however, including U.S. banking institutions that are themselves originators or beneficiaries, may not initiate or receive such transfers if the underlying transactions to which they relate are prohibited pursuant to this part.

12. Section 500.581 is added to read as follows:

§ 500.581 Financial transactions related to diplomatic missions authorized.

All financial transactions related to activities of North Korean diplomatic missions in the United States and U.S. diplomatic missions in North Korea are authorized, with the exception of transactions involving the North Korean mission to the United Nations in New York, which are subject to approval by specific license.

13. Section 500.582 is added to read as follows:

§ 500.582 Importation of North Korean-origin magnesite and magnesia.

Specific licenses may be issued authorizing the importation into the United States of North Korean–origin magnesite or magnesia.

14. Section 500.583 is added to read as follows:

§ 500.583 News organization offices.

(a) Specific licenses may be issued authorizing all transactions necessary for the establishment and operation of news bureaus in North Korea by U.S. organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that will be authorized include but are not limited to those incident to the following:

(1) leasing office space and securing related goods and services;

(2) hiring North Korean nationals to serve as support staff;

(3) purchasing North Korean-origin goods for use in the operation of the office; and

(4) paying fees related to the operation of the office in North Korea.

(c) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in the United States by North Korean organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to a specific license issued pursuant to this section should be referenced in all import documents, and in all funds transfers and other banking transactions through banking institutions organized or located in the United States, in connection with the licensed transactions to avoid the blocking of goods imported from North Korea and the interruption of the financial transactions with North Korea.

15. Section 500.584 is added to read as follows:

§ 500.584 Energy sector projects in North Korea.

Specific licenses may be issued to permit persons subject to U.S. jurisdiction to participate in certain energy sector projects in North Korea in connection with that country's transition to light-water reactor ("LWR") power plants. Transactions that may be licensed include those related to LWR

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power plant design, site preparation, excavation, delivery of essential nonnuclear components including turbines and generators, building construction, the disposition of spentnuclear fuel, and the provision of heavy oil to North Korea for heating and electricity generation pending completion of the first LWR unit.

Dated: February 7, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 8, 1995.

John Berry,

Deputy Assistant Secretary (Enforcement).

[FR Doc. 95–3984 Filed 2–14–95; 9:15 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1994 revision of the section listing DoD contractors receiving contract awards of $10 million or more. This part is published to comply with the provisions of section 1, Public Law 97–295, October 12, 1982; 10 U.S.C. 2397

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. R.S. Drake, Director, Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302. Telephone (703) 604–4569.

List of Subjects in 32 CFR Part 40a

Armed forces, Conflict of interests, Government employees, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 40a is revised to read as follows:

PART 40a—DEFENSE CONTRACTING: REPORTING PROCEDURES ON DEFENSE RELATED EMPLOYMENT

Authority: 10 U.S.C. 2397

§ 40a.1 Department of Defense contractors receiving awards of $10 million or more.

Fiscal Year 1994

A C S Construction Co. of Mississippi
A G Marketing Inc.
A I L Systems Inc.
A W D Technologies Inc
AAI Corp.
AAR Manufacturing Inc.
ABB Business Services (DEL)
ACC Construction Co., Inc.
AEL Industries Inc.
AM General Corp.
ARC Prfessional Services Group
AT&T Corp.
AT&T Global Information Solutions Co.
Abacus Technology Corp.
Absher Construction Co., Inc.
Addision, L & Associates Inc.
Adler & Stern (1968), Ltd.
Adminastar Inc.
Advance Electronic Co., Ltd.
Advance Ratio Design Co., Inc.
Advance, Inc.
Advanced Communications Systems
Advanced Integrated Technology, Inc.
Advanced Marine Enterprises
Advanced Resource Technologies
Aepco, Inc.
Aerojet Electro Systems
Aerojet-General Corp.
Aeroquip Corp.
Aerospace Corp.
Aetna Casualty & Surety Co., Inc.
Agip SPA
Air Cruisers Co., Inc.
Air Transport International
Air Treads, Inc.
Aksarben Foods, Inc.
Alabama Power Co.
Alder Construction Co.
Alenia Aeritalia E Selenia SPA
Alisud SPA
Alliant Techsystems, Inc.
Allied Petro, Inc.
Allied Signal Avionics Inc.
Allied Signal Technical Services
Allied Signal, Inc.
Allison Engine Co., Inc.
AllStar/SAB
Alpha Marine Services, Inc.
Amdura Corp.
Amerada Hess Corp.
American Apparel, Inc.
American Auto Carriers Inc.
American Automar Inc.
American Engineering Corp.
American International Airways
American Management Systems Inc.
American President Lines Ltd.
American Renovation Construction Co.
American Systems Corp.
Amerind, Inc.
Ames Construction, Inc.
Amoco Corp.
Amtec Corp.
Analysis & Technology, Inc.
Analytic Services, Inc.
Analytical Systems Engineering Corp.
Anderson-Tully Co.
Andrulis Research Corp.
Applied Construction Technology
Applied Data Technology, Inc.
Applied Ordnance Technology
Applied Research Associates, Inc.
Aquidneck Management Association, Ltd
Arbel Fauvent Rail
Arctic Slope Regional Corp.
Arinc, Inc.
Arinc Research Corp.
Arrow Air Inc.
Asea Brown Boveri Inc
Assurance Technology Corp.
Astra Holdings Corp.
Astra Resources Inc.
Astronautics Corporation of America
Atherton Construction, Inc.
Atkins, Claude E. Enterprises
Atkinson, Guy F., Co. NV
Atlantic Marine Inc.
Atlantic Richfield Co.
Austin Co., The
Autec Range Services
Avoc Corp.
Avondale Industries, Inc.
B A M S I Inc.
B B A Equity Inc
B D S Inc.
B O C Holdings
B P International, Ltd.
BBDO Worldwide Inc.
BDM International Inc.
BHP Petroleum International PT
BICC USA., Inc.
BKM Enterprises Inc.
BTG Inc.
BTR Dunlop Holdings Inc.
Baker Michael Corp.
Baker Support Services, Inc.
Ball Corp.
Banes General Contractors Inc
Barrett Refining Corp.
Bates & Associates Inc.
Bath Holding Corp.
Battelle Development Corp.
Battelle Memorial Institute
Bay Tankers, Inc.
Bean, C.F. Corp.
Bechtel Corp.
Beech Aircraft Corp.
Bell Atlantic Network Services, Inc.
Bell Atlantic-Virginia Inc.
Bell BCI Co.
Bell Corporation of Rochester
Bell Helicopter Textron, Inc.
Bender, Allen L., Inc.
Beneco Enterprises, Inc.
Bergen Brunswig Corp.
Berliner Elektro Holding AG
Binghamton Simulator Co.
Black & Veatch Holding Co.
Blinderman Construction Co.
Blue Cross & Blue Shield of South Carolina
Boeing Aerospace Operations
Boeing Company, The
Boeing Sikorsky LHX Program Office
Boland, David, Inc.
Bollinger Machine Shop & Shipyard
Bolt Beranek & Newman, Inc.
Bombardier Corp.
Bombardier International BV
Booz Allen & Hamilton, Inc.
Bozell Jacobs Kenyon Eckhardt Inc.
Brantley Construction Co.
Braswell Services Group Inc.
British Aerospace Inc.
Brown & Root Holdings Inc.
Brown, Dayton T., Inc.
Brunswick Corp.
Buckner & Moore, Inc.
Buffalo Airways Inc.
Bull Data Systems Inc.
Burns & McDonnell Inc.
C & P Corp.
C C I Construction Co., Inc.
C Construction Co., Inc.
C D M Federal Programs Corp.
C E R Inc.
C Q Construction Corp.

C-Cubed Corp.
CACI, Inc.
CAE (US) Inc.
CAE-Link Corp.
CAS, Inc.
CBC Enterprises, Inc.
CBPO of America, Inc
CDE Enterprises Inc.
CH2M Hill Companies Ltd.
CH2M Hill Corp.
CIA Espanola De Petroleos SA
CNA Corp.
CTA Inc.
Caddell Construction Co., Inc.
California Microwave, Inc.
Caltech Service Corp.
Caltex Petroleum Corp.
Campbell Soup Co.
Capitol Contractors Inc.
Carnegie Mellon University
Carolina Power & Light Co.
Carothers Construction Inc.
Carreon, Abel Inc.
Cartwright Electronics, Inc.
Catalano, V.J. Inc.
Caterpillar Inc.
Centex Construction Group Inc.
Central Gulf Lines, Inc.
Central Sprinkler Corp.
Centric-Jones Co.
Ceridian Corp.
Ceselsa SA
Chamberlain Manufacturing Corp.
Chautauqua County Resource Center
Chemical Waste Management Inc.
Chevron USA, Inc.
Childers Construction Co.
Chouest, Edison Offshore Inc.
Chromalloy Gas Turbine Corp.
Chrysler Technologies Corp.
Chugoku Electric Power Co., Inc.
Cincinnati Bell Information Systems
Civil Constructors Inc. (DEL)
Clark Construction Group Inc.
Coastal Aruba Refining Co., NV
Coastal Government Services
Coastal Holding Corp.
Colejon Mechanical Corp.
Coleman Research Corp.
Colsa, Corp.
Colts Manufacturing Co., Inc.
Columbia Research Corp.
Comarco, Inc.
Compex Corp.
Compliance Corp.
Comprehensive Technologies International
Comptek Research, Inc.
Computer Associates International
Computer Data Systems Inc.
Computer Reliance
Computer Sciences Corp.
Computer Systems Development
Comsat Corp.
Conagra, Inc.
Concrete Construction (GUAM) Inc.
Concurrent Computer Corp.
Conner Brothers Construction
Conoco Inc.
Consolidated Industries Inc.
Consolidated Services, Inc.
Contel Corp.
Contel Federal Systems Inc.
Contrack International, Inc.
Control Data Systems Inc.
Cook, J W & Sons Inc.
Cordant Holdings Corp.
Cosbel Petroleum Corp.
Cox Construction Co.
Craddock-Terry, Inc.
Craft Machine Works, Inc.
Gray Research, Inc.
Creative Apparel Associates
Crowley American Transport, Inc.
Crowley Maritime Corp.
Crown Andersen Inc.
Crysen Corp.
Cubic Corp.
Cubic Defense Systems Inc.
Cummins Engine Co., Inc.
D T H Contract Services Inc.
DBA Systems Inc.
DJ Manufacturing Corp.
Daimler-Benz Luft-Und Raumfahr
Daimler-Benz North American Corp.
Dames & Moore Inc.
Daniel Mann Johnson Mendenhall
Danis Industries Corp.
Datron Inc.
Daun-Ray Casuals Inc.
Davis Constructors & Engineers
Dawson Construction Co.
Day & Zimmerman, Inc.
Decision Systems Technologies
Defense Holding Corp.
Delaware Systems Engineering Management Co.
Delta Air Lines, Inc.
Delta Dental Plan of California
Denny, J.B., Co.
Detyens Shipyards Inc.
Deutsche Aerospace AG
Deutsche Bundespost
Deutsche Bundespost Telecom
Diamond Shamrock Refining Marketing Co.
Digital Equipment Corp.
Digital System Resources Inc.
Digital Systems Research, Inc.
Diverse Technologies Corp.
Dongbu Construction Co., Ltd.
Draper, Charles Stark Lab Inc.
Dreadnought Marine, Inc.
Dual, Inc.
Duininck Bros Inc.
Dutra Construction Co., Inc.
Dynamic Science, Inc.
Dynamics Research Corp.
Dyncorp
Dyncorp Aviation Services Inc.
Dynetics, Inc.
E C I/Hyer Inc.
E–OIR Measurements Inc.
E-Systems, Inc.
EA Engineering & Science Technology
EC III JV
ECC International Corp.
ECS Technologies, Inc.
EER Systems Corp.
EG&G, Inc.
EG&G Washington Analytical Services Center
ESL, Inc.
Egan McAllister Associates
Earth Technology Corp, USA
East Penn Manufacturing Co.
Eastern Computers Inc.
Eastern JBI Joint Venture
Eastman Kodak Co.
Eaton Corp.
Ebasco Services, Inc.
Eberharter Construction Inc.
Ecology & Environment, Inc.
Elbit Systems Inc.
Eldyne, Inc.
Electronic Data Systems Corp.
Emhart Corp.
Engineered Support Systems
Engineering & Professional Services
Engineering Computer Optecnomics
Engineering-Science, Inc.
English Electric Co., Ltd. The
Enron Gas Services Corp.
Ensafe/Allen & Hoshall
Ensco, Inc.
Enserch Corp.
Enserch Environmental Corp
Entwistle Co., The
Environmental Research Institute of Michigan
Environmental Chemical Corp.
Environmental Resources Management
Environmental Science & Engineering
Environmental Technologies Group
Enzian Technology Inc.
Excel Corp.
Exide Electronics Group, Inc
Exxon Corp.
F E L Corp.
FD Engineers & Constructors
FKW, Inc.
FMC Arabia, Ltd.
FMC Corp.
FMS Corp.
Fairchild Aircraft, Inc.
Fargo Pacific Inc.
Federal Computer Corp.
Federal Data Corp.
Federal Express Corp.
Ferguson-Williams Inc.
Ferrell Construction Company of Topeka
Figgie International Inc.
Firan USA, Corp.
Firearms Training Systems Inc
Firth Construction Co., Inc.
Fisher, King, Marine Service
Fletcher Construction Co., Del. Ltd
Fletcher Pacific Construction
Flight Services Corp.
Flightsafety International
Fluor Corp.
Ford, H.J. Associates, Inc
Foster-Miller Inc.
Foundation Health Corp
Frequency Sources Inc.
Frito Lay, Inc.
Frontier Engineering, Inc
Fru-Con Holding Corp.
Fugro-McClelland BV
G & C Enterprises, Inc.
G & C Equipment Corp.
G M Hughes Electronics Corp
GEC Inc.
GLS Associates, Inc.
GTE Corp.
GTE Government Systems Corp
Galaxy Builders, Inc.
Gary-Williams Co.
Gaskins, L.C. Construction Co
General Atomics
General Dynamics Corp.
General Dynamics Land Systems
General Electric Co.
General Mills, Inc.
General Motors Corp.
General Physics Corp.
General Research Corp
General Scientific Corp
Genrad Inc.
Gentex Corp.
Geo-Centers Inc.

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Geodynamics Corp.
Georgia Technology Research Corp.
Georgia Tent & Awning Inc.
Geronimo Service Co.
Geste Holdings USA, Inc.
Gibraltar, P.R. Inc.
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Giles, Alexander
Gold Line Refining, Ltd.
Golden Manufacturing Co., Inc.
Goodrich, B. F. Co., The
Goodyear Tire & Rubber Co., The
Government Systems, Inc.
Government Technology Services
Granite Construction Co.
Great Lakes Dredge & Dock Corp.
Greenland Contractors I/S
Greenwich Air Services Inc.
Gregory, R.R. Corp.
Greiner, Inc., Southern
Grimberg, John C. Co., Inc.
Groundwater Technology Inc.
Group Hospitalization Medical Svcs.
Group Technologies Corp.
Grumman Aerospace Corp.
Grumman Corp.
Gulf Coast Trailing Co.
Gulfstream Delaware Corp.
Guyco Engineering Co.
HM Anglo-American, Ltd.
Halifax Engineering, Inc.
Harbert Bill International Construction
Harbert Corp.
Harding Lawson Associates Inc.
Harkins Builders, Inc.
Harms, George Construction Co.
Harper Construction Co.
Harper-Nielsen Construction Co.
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Harsco Corp.
Hawaiian Electric Co., Inc.
Hellenic Fuel & Lubricant Industry
Henderson, H.F. Industries
Hensel Phelps Construction Co.
Hercules Construction Corp.
Hercules, Inc.
Hermes Consolidated, Inc.
Hewlett-Packard Co.
Holly Corp.
Holmes & Narver, Inc.
Holzmann Philipp USA, Inc.
Honeywell, Inc.
Hooks, Mike, Inc.
Horizons Technology, Inc.
Hsu, Ronald Construction Co.
Hughes Aircraft Co.
Hughes Missile Systems Co.
Humphrey, W.T., Inc.
Hunt Building Corp.
Hyster-Yale Materials Handling
I–Net, Inc.
IBP Inc.
IIT Research Institute
IMO Industries Inc.
IRISS Co.
IT Corp.
ITT Corp.
ITT Federal Services Corp.
Iceland Prime Contractors
Icfcorp International Inc.
Ilex Systems Inc.
Impact Technologies Corp.
Inacom Corp.
Incore, Inc.
Industrial Builders, Inc.
Industrial Mechanical Contractors
Industrial Systems Inc.
Information Spectrum, Inc.
Information Systems Networks Corp.
Information Technology Solutions
Infotec Development, Inc.
Institute for Defense Analyses
Inter-National Research Institute
Intergraph Corp.
Intermarine, USA
Intermetrics, Inc.
Intermountain Construction Co.
International Business Machines Corp.
International Charter Express
International Fuel Cells Corp.
International Technology Corp.
International Terminal Operation Co.
International Computers Telecommunication
Interocean Steamship Corp.
J&J Maintenance, Inc.
J.R. Roberts Enterprises
J.T. Construction Co., Inc.
JSA Healthcare Corp.
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James, T.L. & Co., Inc.
Jamitch Enterprises, Inc.
Jaycor
Jersey Central Power & Light Co.
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Johnson, Rex K. Co.
Jones, J.A. Construction Co.
Jones, J.A. Inc.
Jordan, W.M. Co., Inc.
Jowett, Inc.
K&F Industries, Inc.
K&M Maintenance Services
KCA Corp.
KDI Corp.
KPMG Peat Marwick LLP
KVASS Construction Company
Kaiser Aerospace & Electronics Corp.
Kaman Corp.
Kaman Diversified Technology Corp.
Kaman Sciences Corp.
Kapla S. Barbara Greenhouse
Kato Corp.
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Keco Industries, Inc.
Keflavik Contractors
Kiewit Construction Group, Inc.
Kilgallon Construction Co.
Knoxville Canvas Crafters
Koch Refining Co., Inc.
Kollmorgen Corp.
Korea Electric Power Corp.
Kovatch Mobile Equipment Corp.
Kraemer Brothers, Inc.
Kraft General Foods, Inc.
Kyung In Energy Co., Ltd.
Kyushu Electric Power Co., Inc.
LATA Curls
LC Acquiring Corp.
LKM Industries-Woburn, Inc.
LTV Aerospace & Defense, Co.
LTV Corp.
Ladd, Roy E., Inc.
Laguna Industries, Inc.
Laidlaw Environmental Services
Landmark Construction, Inc.
Lanthier, R.J. Co., Inc.
Law Environmental, Inc.
Lawson Mechanical Contractors
Legris Industries
Leland Electrosystems, Inc.
Light Helicopter Turbine Engine Co.
Lightcom International, Inc.
Little, Arthur D. Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lobar, Inc.
Lockheed Aeromod Center, Inc.
Lockheed Air Terminal, Inc.
Lockheed Corp.
Lockheed Engineering & Sciences Co.
Lockheed Missiles & Space Co.
Lockheed Sanders, Inc.
Locot, Inc.
Logicon, Inc.
Logicon R & D Associates
Logistics Management Institute
Loral Aerospace Holding Inc.
Loral Corp.
Loral Electro-Optical Systems
Loral Federal Systems Company
Loral Systems Company
Loral Vought Systems Corp.
Loral/Rolm Mil-Spec Corp.
Lotos Snc Di Lo Sciuto Giusepp
Louisiana Land Exploration, The
Louisiana & Arkansas Railway Co.
Lucas Industries, Inc.
Luhr Brothers, Inc.
Lusi, A.F. Construction, Inc.
M V P Joint Venture
MCC Construction Corp.
MCI Telecommunications Corp.
MEI Holdings, Inc.
MEI Technology Corp.
ML Group, Ltd.
MacAulay-Brown, Inc.
Maden Technology Consulting, Inc.
Maersk Inc.
Maersk Line, Ltd.
Magnetek, Inc.
Management Consulting Inc.
Management Systems Application
Manhattan Construction Co.
Manson Construction & Engineering Co.
Mansour General Dynamics, Ltd.
Mantech International Corp.
Manufacturing Technology, Inc.
Mapco Petroleum, Inc.
Marine Hydraulics International
Martin Marietta Corp.
Martin Marietta Services, Inc.
Martin Marietta Technologies
Martin-Baker Aircraft Co., Ltd.
Marvin Engineering Co., Inc.
Mason Hanger-Silas Mason Co., WV
Massachusetts Institute of Technology
Massman Construction Co.
Matra Aerospace Inc.
Maxwell Laboratories, Inc.
McDermott Incorporated
McGinnis, Roy & Co., Inc.
McKnight Construction Co., Inc.
McCall Perry Construction Inc.
McCarty Corp.
McDonnell Douglas Financial Services Corp.
McDonnell Douglas Corporation
McDonnell Douglas Helicopter Co.
McKenzie Construction Corp.
McKesson Corporation Maryland
McLaughlin Research Corp.
McMaster Construction, Inc.
Mellon-Stuart Construction
Mesc Electronic Systems Inc.
Metric Construction Co., Inc.
Metric Systems Corporation
Metro Machine Corp.

Metters Industries, Inc.
Michelin Corp.
Microelectronics Computer Technology Corp.
Mid Eastern Builders
Midgard Ds Ag
Midsco, Inc.
Milcom Systems Corp.
Miltope Group, Inc.
Mine Safety Appliances Co.
Minnesota Mining & Manufacturing Co
Mission Research Corp.
Mitre Corp.
Mobil Oil Corp.
Modern Technologies Corp.
Monarch Construction Co.
Monfort, Inc.
Montgomery Watson Americas
Moog, Inc.
Morganti Group, Inc.
Morrison Knudsen Corp., Ohio Corp
Mortenson, M.A., Co.
Motor Oils Hellas Corinth Refinery
Motorola, Inc.
Mutual of Omaha Insurance Co.
Mystech Associates Inc.
N A I Technologies Inc
NASSCO Holdings Inc.
Natco Limited Partnership
Nation, Inc.
National Academy of Sciences, USA
National Aerospace Plan
National Airmotive Corp.
National Apparel, Inc.
National Beef Packing Co., LP
National City Corp.
National Refrigerants, Inc.
National Systems & Research Co.
Nato Maintenance & Supply Agency
Natural Gas Clearinghouse
Naughton Energy Corp.
Navcom Defense Electronics
Navcom Systems, Inc.
Needham Inc.
Network Equipment Technologies, Inc
New Mexico, State of
New Street Capital Corp
New West Petroleum
Nichols Research Corp.
Nicholson & Associates, Inc.
Nomura Enterprise Inc.
Norfolk Ship Repair Inc.
Norfolk Shipbuilding & DryDock Corp.
North American Mechanical Services
North Carolina State of
North Florida Shipyards, Inc.
Northern Telecom, Ltd.
Northrop Grumman Corp.
Northrop Worldwide Aircraft Services
Norton Co.
Nova Group, Inc.
Nuclear Research Corp.
O R C Industries Inc.
OEA, Inc.
OHM Remediation Services Corp
OTC Tracor Aerospace, Inc.
OTC Tracor Applied Sciences
OTC Tracor Flight Systems
Ocean Shipholdings, Inc.
Oceaneering International, Inc
Oerlikon-Buhrle USA, Inc., DE
Ogden Allied Services GMBH
Ogden Government Services Corp.
Ogden Services Corp.
Oil Refineries, Ltd.
Okinawa City Waterworks
Okinawa Electric Power Co., Inc.
Oklahoma State University
Olin Corp.
Omega Group Inc.
Orbital Sciences Corp.
Oregon Iron Works, Inc.
Osborne Construction Co.
Oshkosh Truck Corp.
Otis Elevator Co.
Outdoor Venture Corp.
Owl International, Inc.
P W Construction, Inc.
PA Acquisition Corp.
PHH Holdings, Inc.
PHP Healthcare Corp.
PPC-Tokyu Joint Venture
PPG Industries, Inc.
PRC, Inc.
PSC International Language
Pacer Systems, Inc.
Pacific Architects & Engineers, Inc
Pacific Dunlop Holdings USA, Inc.
Pacific Environmental Services
Pacific Marine & Supply Co., Ltd.
Pacific Ship Repair & Fabrication
Pacific Sierra Research Corp
Pacifica Services, Inc.
Pacificorp Holdings, Inc.
Pandiestra Oceanic Navegacion
Parker Hannifin Corp.
Parsons, Ralph M. Co., The
Patrol Ofisi A S Genel Mud
Patterson Leasing Co.
Pearse, Jack F.
Pemco Aeroplex, Inc.
Pence, Howard W., Inc.
Pennsylvania State University Inc
Penske Transportation, Inc.
Perini Corp.
Peterson Builders, Inc
Petrofina SA
Petrolea Oil Corp.
Phibro Energy USA, Inc
Philip Morris, Inc.
Phillips National, Inc.
Phoenix Air Group, Inc.
Physics International Co.
Pickus Construction & Equipment Co
Pierce Enterprises, Inc.
Pine Bluff Sand & Gravel Co.
Pioneer U. A. V., Inc.
Piquniq Management Corp.
Pirnie, Malcolm Inc.
Pizzagalli Construction Co.
Placid Refining Co.
Planning Systems, Inc.
Poole & Kent Co., Inc.
Potomac Electric Power Co.
Potomac Systems Engineering
Power Conversion Inc.
Praoil Aromatici E Raffinazion
Praxair Inc.
Presidio Corp.
Pride Companies LP
Primark Holding Corp.
Proctor & Gamble Distributing Co., The
Pulau Electronics Corp.
Pulsar Data Systems, Inc.
Questech Service Co.
Questech, Inc.
Quintron Corp.
R & D Maintenance Services
R & J Commercial Contracting
RC Construction Co., Inc.
RG E Engineering Services
RJO Enterprises, Inc.
RJR Nabisco
RMS Technologies Inc.
Racal Corp.
Racal Radio Ltd.
Radian Corp.
Rafael
Ram Systems GMBH
Rand Corp.
Rasmussen, C.A., Inc.
Raytheon Co.
Raytheon Engineers & Constructions
Raytheon Service Co.
Red River Shipping Corp.
Refinery Associates, Inc.
Reliable Mechanical Inc.
Research Analysis & Maintenance
Research Planning Inc
Research-Cottrell Inc.
Reynolds, R.J., Co.
Richards, R.P., Inc.
Robbins-Gioia, Inc.
Rockwell International Corp
Roh Inc.
Rohr, Inc.
Rolls Royce PLC
Rosenblatt, M. & Son, Inc.
Roxco, Ltd.
Ryan Co., Inc.
SCI Technology, Inc.
SFA, Inc.
SKF USA, Inc.
SRA International Inc.
SRI International
SRS Technologies, Inc.
SSI Services, Inc
Sabreliner Corp.
Saco Defense, Inc
Sacramento Municipal Utility District
Saft America, Inc.
Sarcos Inc.
Sargent, H.E., Inc
Saudi Operations & Maintenance Co
Schlosser, W.M., Co., Inc.
Science & Applied Technology
Science & Technology, Corp.
Science Applications International Corp
Scientific Atlanta, Inc.
Scientific Research Corp
Sea Land Service, Inc
Seaward Marine Services Inc
Sechan Electronics, Inc.
Semcor, Inc.
Sencom Corp.
Sentel Corp.
Sequa Corp.
Serv-Air Inc.
Service Engineering Co., Inc
Service Engineering Industries
Severn Companies Inc.
Shah Construction Co., Inc.
Sharp, George G., Inc.
Shell Oil Co.
Shell Petroleum Inc.
Sherikon, Inc.
Shin Cheon Co., Ltd.
Siebe Industries, Inc.
Siemens AG
Siemens Corp.
Sierra Nevada Corp.
Sierra Technologies Inc
Sierracin Corp.
Silverton Construction Co
Simmons, D.S., Inc.
Slana Energy
Smith, Johnny F., Truck Dragline Svc.
Smiths Industries, Inc.
Smiths Industries PLC

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Societe Generale De Belgique
Softech, Inc.
Sollitt, George Constr Co., The
Sonalysts, Inc.
Sonicraft Inc.
Source Diversified Inc.
Souter Construction Co., Inc.
South Carolina Research Authority
Southeastern Public Service Authority
Southern Air Transport, Inc.
Southern Technologies Inc.
Southfork Systems, Inc.
Southwest Marine, Inc.
Southwest Research Institute
Space & Sensors Associates
Space Applications Corp.
Space Data Corp.
Space Industries International
Sparta, Inc.
Specialty Group Inc.
Speegle Construction, Inc.
Ssangyong Oil Refining Co., Ltd.
Standard Technology, Inc.
Standortverwaltung Wuerzburg
Stanford Telecommunications
Sterling Software, Inc.
Stevedoring Services of America
Stewart & Stevenson Services, Inc.
Storage Technology Corp.
Structural Associates Inc.
Suffolk Construction Co.
Sumitomo Heavy Industries, Ltd.
Summa Technology, Inc.
Sun Company, Inc.
Sun Microsystems, Inc.
Sundstrand Corp.
Sunkyong, Ltd.
Support Systems Associates
Supreme Beef Processors, Inc.
Suva Diagnostica
Sverdrup Civil Inc.
Sverdrup Corp.
Sverdrup Technology Inc.
Swinerton & Walberg Co.
Sylvest Management System
Symetrics Industries Inc.
Synectics Corp.
Syscon Corp.
Sysorex Information Systems
System Planning Corp.
System Resources Corp.
Systems & Electronics, Inc.
Systems Control Technology
Systems Engineering Solutions
Systems Engineering Energy Management Association
Systems Integration & Research
TI Group Inc.
TRW, Inc.
Talley Manufacturing & Technology Inc.
Tasty Bird Foods Inc.
Tec-Masters, Inc.
Techmatics, Inc.
Technical & Management Services Corp.
Technology Applications Service Co.
Technology Management & Analisys Corp.
Tecolote Research, Inc.
Tecom Inc.
Tektronix, Inc.
Telecommunication Systems
Teledyne, Inc.
Teledyne Industries Inc.
Telos Corp.
Tennessee Apparel Corp.
Tennessee Gas Pipeline Co.
Tennessee Tent Corp.
Tennier Industries Inc.
Tetra Tech, Inc.
Texaco Caribbean, Inc.
Texas Instruments Inc.
Texas Utilities Co.
Textron Inc.
Thalia Carpet & Drapery Shop
Therm, Inc.
Thermotrex Corp.
Thiokol Corp.
Tiburon Systems, Inc.
Titan Corp., The
Todd Shipyards Corp.
Tohoku Electric Power Co., Inc.
Tokyo Electric Power Co., Inc.
Tower Air, Inc.
Translant, Inc.
Traylor Bros., Inc.
Tri-Cor Industries, Inc.
Tri-State Design Construction, Inc.
Trinity Marine Group
Tumpane Services Corp.
Turner Corp.
Twigg Corp.
Tybrin Corp.
Tyco International Ltd.
U.S. Aeromotive, Inc.
U.S. Oil & Refining Co.
UNC Holdings, Inc.
URS Consultants Inc. (Del)
UXB International
Unidyne Corp.
Unified Industries, Inc.
Unilever United States Inc.
Unisys Corp.
Unisys Government Systems, Inc.
United Defense LP
United International Engineering
United Technologies Corp.
University of California
University of Dayton, Inc.
University of Pittsburgh
University of Southern California
University of Texas
University of Texas at Austin
Urban General Contractors, Inc.
User Technology Associates
Utah State University
Utilicorp United, Inc.
VSE Corp.
Valenzuela Engineering, Inc.
Van Ommeren Nederland BV
Vance, Gregory A.
Vanee Foods Co.
Vanguard Research, Inc.
Varian Associates, Inc.
Varo, Inc.
Veba Oel AG
Vector Microwave Research Corp.
Vector Research, Inc.
Vectura Group, Inc.
Veda, Inc.
Ventre, Robert Associates, Inc.
Verac, Inc.
Versar, Inc.
Victory Maritime Inc.
Vion Corp.
Virtexco Corp.
Vitro Corp.
Vitro Services Corp.
Vredenburg, R. M. & Co.
Wang Laboratories, Inc.
Warehouses Services Agency SARL
Washington Agricultural Development
Washington, University of
Waterman Steamship Corp.
Watkins Construction
Weeks Marine, Inc.
Westar Corp.
Western Atlas Inc.
Western Resources Inc.
Western Union
Westinghouse Electric Corp.
Westmont Industries
Weston, Roy F., Inc.
Whiting-Turner Contracting Co., Inc.
Whittaker Corp.
Wick Construction Co.
Wickland Oil Co.
Wiggins Lift Co., Inc.
Williams Electric Co., Inc.
Williams International Corp.
Winona Hudson Corp.
Wisconsin Physicians Service Insurance
Woodington Corp.
Woodward-Clyde Consultants
Worldcorp, Inc.
Wyle Laboratories
Xerox Corp.
York International Corp.
Young & Rubicam, Inc.
Yun's Co., Inc.
Zachry, H.B., Co.
Zeneca Holdings, Inc.

Dated: February 10, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3824 Filed 2–15–95; 8:45 am]

BILLING CODE 5000–04–M

32 CFR Part 113

Indebtedness Procedures of Military Personnel

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects administrative errors which were made in a document published in the **Federal Register** of January 5, 1995 (60 FR 1720), concerning indebtedness of military personnel.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 113

Claims, Credit, Military personnel.

Accordingly, 32 CFR Part 113 is amended as follows:

PART 113—INDEBTEDNESS PROCEDURES OF MILITARY PERSONNEL

1. The authority citation for part 113 continues to read as follows:

Authority: 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

2. The heading for part 113 is revised as set forth above.

§ 113.2 [Corrected]

3. The heading for § 113.2 is revised to read "Applicability".

Dated: February 10, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3825 Filed 2–15–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–95–004]

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation and public hearing; request for comments.

SUMMARY: The Commander, Ninth Coast Guard District, has authorized a 90-day deviation from the operation regulations for the draws of City of Chicago-owned bridges over the Chicago River, Illinois. The deviation is being authorized to solicit comments, data, and recommendations concerning impacts upon the various modes of transportation, to include vessel, vehicular, and rail to determine if a change to the existing schedule of bridge operation will result in a more equitable balance of impacts upon all modes of transportation. This deviation would provide for a twenty-four hour advance notice to the City of Chicago of planned recreational vessel movement and not restrict vessels to particular periods for passage through the bridges, other than during the established and specified periods of rush hour closure periods. The Coast Guard will hold a public hearing concerning this deviation and will review comments, data, and recommendations prior to issuing the deviation.

DATES: The public hearing will be held on Thursday, March 9, 1995 at 7 p.m.

The deviation will be effective from April 15, 1995, through July 14, 1995, unless sooner terminated by the District Commander. Comments on the impacts of the deviation must be received by July 20, 1995.

ADDRESSES: The public hearing will be held at the Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois, Room 331.

Comments on the deviation may be mailed to Mr. Robert Bloom, Chief, Bridge Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, or may be delivered to room 2083D at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993. Comments will become part of the public docket and will be available for inspection or copying at room 2083D, at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Public Hearing

The Commander, Ninth Coast Guard District, has scheduled a public hearing to be held to solicit comments relative to this deviation which will govern the operation of City of Chicago-owned drawbridges across the Chicago River System.

The hearing will provide all concerned parties with the opportunity to present oral and written statements, with supporting data, to the Coast Guard, for evaluation to determine if any revisions are to be made to the deviation prior to its becoming effective on April 15, 1995.

The public hearing will be held on Thursday, March 9, 1995 at 7 p.m. at the Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois, Room 331.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed temporary deviation to regulations, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the person listed in the section **FOR FURTHER INFORMATION CONTACT** in this notice. Such notification should include the approximate time required to make the presentation.

A transcript will be made of the hearing and may be purchased by the public through arrangements with the individual providing the transcription service. Interested persons who are unable to attend this hearing may also participate in this solicitation by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the deviation, and include the name and address of the person or organization submitting the comment. Comments should be sent to the address under **ADDRESSES**.

Request for Comments

The Coast Guard encourages interested persons to submit written data or views concerning the operation of drawbridges during this deviation period. Persons submitting comments should include their names and addresses and identify this notice (CGD09–95–004). Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

Drafting Information: The principal persons involved in drafting this document are Robert Bloom, Project Manager, Chief, Bridge Branch, Ninth Coast Guard District, and Commander James Collin, Project Counsel.

Background and Purpose

Following notice and comment rulemaking, the Coast Guard promulgated a final rule on April 18, 1994, establishing a new rule for drawbridge operations on the Chicago River. On September 26, 1994, the United States District Court for the District of Columbia issued an order in the case of *Crowley's Yacht Yard, Inc., Plaintiff,* v. *Federico Pena, Secretary, United States Department of Transportation, Defendant,* Civil Action Number 94–1152 SSH, rescinding the Final Rule published on April 18, 1994, and reinstating the previous regulations found at 33 CFR 117.391 (1993 Edition). The regulations reinstated by the District Court provided for on-demand openings of drawbridges except during rush hour periods. Further, those regulations contained no requirement for advance notice or the use of specified recreational vessel flotilla size. As a result of the Court decision and to gather data for future use, in the Fall of 1994, the District Commander issued a temporary deviation to regulations for the period October 11, 1994 through December 5 , 1994, with a comment period through January 15, 1995. The deviation provided openings of bridges, with a twenty-four hour advance notice to the City of Chicago, from 7 a.m. to 7 p.m. on Saturdays and Sundays, and on Wednesdays between the hours of 6:30 p.m. and 10:00 p.m. throughout the entire period. In addition, from October 11 through October 23 the draws were opened during the period from 10:30 a.m. to 1:30 p.m. on Tuesdays and Thursdays, and from October 23 through December 5 the draws were opened for vessel passage during the

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time between 10:30 a.m. and 1:30 p.m. on Wednesdays. Flotilla size was specified.

Discussion of Comments and Changes

At the end of the comment period for the temporary deviation to regulations, the Coast Guard received twenty-one comments. One comment letter, from the City of Chicago, expressed opposition to any permanent regulation for the Spring Breakout in 1995. In response to a request for data, the City stated the data would be provided to the Coast Guard on June 15, 1995. In addition, they proposed one weekday daylight opening and weekend openings. Thirteen of the other twenty comment letters favored not effecting any change to the regulations that are in place now and expressed opposition to establishing minimums and maximums for recreational vessel flotilla sizes that would be allowed to pass through the bridges. Other commenters indicated that if a change is necessary, there should be daylight openings during the weekdays and not restrict openings to strictly nighttime hours from Monday through Friday. These commenters also expressed opposition to establishing a minimum and maximum of boats that would be required for the bridges to be opened. Representatives from the Chicago River boat yards in their comments stated they did not favor a permanent regulation for the Spring Breakout in 1995, but favor the existing regulatory structure.

The District Commander has authorized the temporary deviation to commence on April 15, 1995, and remain in effect for a period of ninety (90) days. This deviation would require that the City open their bridges seven days a week for the passage of recreational vessels only when notice is given twenty-four hours in advance of a vessel's time of intended passage through the draws. However, the bridges subject to this deviation need not open for the passage of recreational vessels from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m., Mondays through Fridays. No requirement as to minimum or maximum flotilla size will be imposed. This deviation will facilitate data gathering and scheduling and will support safety while addressing concerns of all parties during the Spring period when most recreational vessels traditionally return to Lake Michigan from winter storage at the Chicago River boat yards. The temporary deviation from the operating requirements at 33 CFR 117.391 governing bridges owned by the City of Chicago over the Chicago River would read as follows:

The bridges affected by this deviation are listed below:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
LaSalle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Monroe Street
Madison Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
N Halsted Street

This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, and applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall operate as follows:

(a) The bridges covered by this deviation need not open for the passage of vessels Mondays through Fridays from 7:30 a.m. to 10 a.m. and 4 p.m. to 6:30 p.m.

(b) At all other times the draws shall open on signal if notice is given twenty-four hours in advance of a vessel's time of intended passage through the draws.

(c) This period of deviation is effective from April 15, 1995 through July 14, 1995.

Dated: February 10, 1995.

Paul J. Pluta,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. 95–3952 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 161

[CGD09–94–036]

RIN 2115–AF01

Temporary Speed Limits for the St. Marys River; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMMARY: This document corrects the temporary final regulations [CGD09–94–036] which were published on Monday, January 23, 1995, (60 FR 4378) concerning the Speed Limits for the St. Marys River.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Hoffman, Project Manager, Vessel Traffic Services Division (G–NVT), at (202) 267–6277.

SUPPLEMENTARY INFORMATION:

Background

In accordance with an agreement reached on June 29, 1993, with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the Michigan Department of Natural Resources, the Coast Guard may make temporary changes to the speed regulations for periods during the winter season when icebreaking is being conducted in the vicinity of Neebish Island, St. Marys River, Michigan, as a precautionary measure to minimize any possible damage to the environment.

In 59 FR 36324 of July 15, 1994; sections 161.1 through 161.60 of 33 CFR Part 161 were revised. In this document revising Part 161, speed limit regulations for the St. Marys River were placed in 33 CFR Part 162.

On January 23, 1995, a document was published at page 4378 to amend 33 CFR Part 161. This document, intended to address temporary speed limits in the St. Marys River, amended Part 161 by suspending § 161.880 and adding § 161.881. The suspension and addition were effective from December 29, 1994 through April 15, 1995.

Need for Correction

The January 23, 1995, amendments did not make the needed temporary changes to the St. Marys River speed limits. That publication, therefore, needs to be revoked. A new temporary rulemaking addressing the St. Marys River speed limits in 33 CFR 162.117 will be prepared for publication.

For this reason, under the authority of 33 U.S.C. 1231 and 49 CFR 1.46, the suspension of § 161.880 is terminated and § 161.881 is removed.

Dated: February 8, 1995.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation, Safety and Waterways Services.

[FR Doc. 95–3833 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Memphis 95–001]

RIN 2115–AA97

Safety Zone; Lower Mississippi River, Mile 579.0 to mile 581.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Lower Mississippi River mile 579.0 to mile 581.0. This regulation is needed to restrict vessel traffic in the regulated area to prevent a collision with vessel salvage equipment and to provide a safe work area for salvage personnel. The regulation restricts navigation in the regulated area and may have an effect on commercial traffic.

EFFECTIVE DATES: This regulation is effective on January 7, 1995, and will terminate on December 31, 1995.

FOR FURTHER INFORMATION CONTACT: LT Byron Black, Chief, Port Operations, Captain of the Port, Memphis, Tennessee at (901) 544–3941.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT Byron Black, Project Officer, Marine Safety Office, Memphis, Tennessee and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, river conditions are now favorable to salvage three sunken barges located mid-channel at mile 580.0 in the Lower Mississippi River. Traffic restrictions are required for salvage personnel to safely conduct salvage operations during windows of favorable conditions. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

On November 8, 1994, the Coast Guard was notified of three sunken barges in the vicinity of Lower Mississippi River mile 580. The salvage of the sunken barges located mid-channel will pose a substantial threat to safe navigation. After an investigation by Marine Safety Office Memphis, it was recommended that a safety zone be issued in order to safely salvage the barges and to limit access to unauthorized vessels as a safety precaution. The safety zone will be limited to the Lower Mississippi River mile 579.0 to mile 581.0.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

To avoid any unnecessary adverse impact on businesses which use the river for commercial purposes, Captain of the Port, Memphis, Tennessee will monitor river conditions and salvage operations and will authorize unrestricted entry into the zone as conditions permit. Changes will be announced by Marine Safety Information Radio broadcast (Broadcast Notice to Mariners) on VHF marine band radio, channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, Memphis, Tennessee at (901) 544–3941.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.051(g), 604–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02–001 is added to read as follows:

§ 165–T02–001 Safety Zone: Lower Mississippi River.

(a) *Location.* The Lower Mississippi River mile 579.0 to mile 581.0 is established as a safety zone.

(b) *Effective date.* This section becomes effective on January 7, 1995 and will terminate on December 31, 1995.

(c) *Regulations.* Under the general regulations of 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: January 6, 1995.

A.L. Thompson, Jr.,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 95–3832 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK6–1–6587a; AK5–1–6437a; AK3–1–5851a; FRL–5147–8]

Approval and Promulgation of Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

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ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) takes action on and/or approves regulations from three submittals received from the Alaska Department of Environmental Conservation (ADEC): submittal dated July 17, 1990 requesting our action to address out-of-date sections found in 40 CFR 52.73–52.96 relating to Alaska state implementation plan (SIP) deficiencies, and including the applicable Alaska statutes to support their request; submittal dated October 15, 1991 requesting approval of amendments to regulations dealing with Air Quality Control, 18 AAC 50, for inclusion into Alaska's SIP to assure compliance with Federal ambient air quality standards for airborne particulate matter, and submittal dated March 24, 1994 requesting approval of additional amendments to 18 AAC 50, Air Quality Control, for inclusion into Alaska's SIP to assure compliance with new source review permitting requirements, the 1990 Clean Air Act Amendments (the Act), for sources located in nonattainment areas for either carbon monoxide or particulate matter. The above submittals include amendments to the State Air Quality Control Plan, which is incorporated by reference in 18 AAC 50.

DATES: This final rule will be effective on April 17, 1995 unless adverse or critical comments are received by March 20, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to:

Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and ADEC, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634), EPA revised the national ambient air quality standards (NAAQS) for particulate matter. Total suspended particulate (TSP) was replaced as the indicator for particulate matter ambient standard by a new indicator, particulate matter with a nominal aerodynamic diameter of 10 micrometers or less in size (PM–10). In response, ADEC amended its rules and regulations which dealt with particulate matter to assure compliance with particulate NAAQS throughout Alaska, and in addition, adopted numerous other changes, including amendments to its regulations for new source review. The package, dated October 15, 1991, was received by EPA on October 21, 1991, together with the proof of filing certification by the Lieutenant Governor of Alaska and a certified copy of the regulations dealing with Air Quality Control, 18 AAC 50, for inclusion into the SIP.

An earlier package, submitted on July 17, 1990, requested EPA to address out-of-date sections in the CFR and included Alaska statutes which were applicable to the corrections.

On March 24, 1994 further amendments to 18 AAC 50, including amendments to the State Air Quality Control Plan (which is incorporated by reference in 18 AAC 50), were submitted to EPA as a revision to the Alaska SIP. These amendments include further changes to the regulations for PM–10 and new source review.

II. Description of Revisions

A. Amendments to Air Quality Control Plan, October 15, 1991

The October 15, 1991 submittal encompasses a broad range of topics. Specifically, the amendments to 18 AAC 50:

1. establish an ambient air quality standard for particulate matter smaller than 10 microns;
2. revise the provisions relating to wood-fired heating devices in the Juneau Mendenhall Valley;
3. establish air quality increments for oxides of nitrogen;
4. reduce the visible emission standard for marine vessels from 40 percent to 20 percent opacity;
5. change the incinerator permit size threshold from 1000 lb/hr charging rate for an individual incinerator to 1000 lb/hr on the basis of facility-wide capacity;
6. establish a permit program that will allow new and modified major carbon monoxide-emitting facilities to be constructed in Anchorage and Fairbanks without disrupting progress towards attaining compliance with the ambient air quality standards for carbon monoxide;
7. establish a new air episode category called "air quality advisory";
8. restrict wood stove operation during an air quality advisory and an air emergency;
9. require a public notice and 30-day public comment period for all new Air Quality Control Permits issued under 18 AAC 50.
10. specify minimum requirements on quality assurance and quality control for ambient monitoring programs; and
11. clarify certain permit requirements and procedures, especially issues pertaining to the definition and application of "actual" and "allowable" emissions.

EPA approves the following amendments to 18 AAC 50, Air Quality Control Regulations, from the submission by ADEC dated October 15, 1991 for inclusion into the Alaska SIP.

Article 1. Program Standards and Limitations

Sections 020(a)(1) and 020(b), Ambient Air Quality Standards, are revised to establish State ambient air quality standards and Prevention of Significant Deterioration increments which are as stringent as the Federal standards.

Section 085, Wood-fired heating devices, is revised to establish elements of the PM–10 control strategy which meet the criteria set forth by EPA to assure attainment and maintenance of the PM–10 NAAQS.

Section 100, Marine vessels, is revised to establish lower emission standards that apply to all marine vessels within three miles of the coastline of Alaska in order to reduce visibility problems encountered in Alaska that are associated with marine vessels.

Article 2. Permit Requirements

Section 300(a)(3) is amended to require permits for incinerators having a total combined rated capacity of 1,000 pounds per hour or more.

Section 300(a)(5), (6) and (8), Permit to Operate, are revised by making numerous editorial changes for clarity.

Section 300(a)(7), Permit to Operate, is revised by adding a requirement for a permit to operate for facilities that provide emission offsets.

Section 300(a)(9), Permit to Operate, is revised by adding a new provision which requires a permit to operate for facilities located within ten kilometers of a nonattainment area, which have been installed or modified after the effective date of the regulation change and have an allowable emission increase of 100 tons per year of the nonattainment air contaminant.

Section 300(d), Permit to Operate, is revised by changing the requirements for new and modified major sources in nonattainment areas to require emission offsets in lieu of using a growth allowance.

Sections 300(e) and 300(g), Permit to Operate, are revised by making a number of editorial changes for clarity.

Section 300, Permit to Operate, is revised by adding a new paragraph (h) which sets the requirements for sources required to have a permit under the new Section 300(a)(9).

Article 3. Permit Review Criteria

Section 400(a), Application Review and Issuance of Permit to Operate, is revised to require public notice of all applications of facilities requiring a new Air Quality Control Permit to Operate and for certain renewals.

Sections 400 (b), (c), and (d), Application Review and Issuance of Permit to Operate, are revised by making a number of editorial changes for clarity.

Section 400(c), Application Review and Issuance of Permit to Operate, is revised by adding provisions for emission offsets in lieu of an emissions allowance for new or modified major sources located in a nonattainment area.

Article 4. Regulation Compliance Criteria

Section 510, Ambient Analysis Methods, is revised to clarify the approved ambient monitoring procedures and quality assurance requirements.

Section 520, Air Quality Monitoring, is revised by making several editorial changes.

Article 5. Procedure and Administration

Section 610, Air Episodes and Advisories, is revised by changing the indicator for particulate matter from TSP to PM–10, lowering the concentrations for declaring an air alert, warning, or emergency, and adding a provision allowing ADEC to declare an air advisory and to request voluntary emission curtailments from operators of air contaminant sources.

Section 620, Air Quality Control Plan, is revised to reflect the date for new revisions to Volumes II and III of the Air Quality Control Plan.

Article 6. General Provisions

Section 900, Definitions, is amended by revising the current definitions of the terms "actual emissions," "baseline concentration," "baseline date," "regulated air pollutant," "wood smoke control area," and "fugitive emissions," and adding new definitions of the terms "approved," "nonattainment air contaminant," "particulate matter emissions," "PM–10," "PM–10 emissions," and "total suspended particulate matter."

The above amendments to regulations and the State Air Quality Control Plan comply with EPA's regulations for control strategies to attain and maintain the NAAQS for particulate matter and for permits to construct pursuant to Parts C and D of the Act.

B. Amendments To Delete Obsolete Code of Federal Regulations (CFR) Sections

In an earlier package submitted to EPA on July 17, 1990, ADEC submitted a request to correct findings of Alaska's SIP deficiency in 40 CFR 52, Sections 52.73–96. ADEC identified and explained why several of those sections were now obsolete (dating back to 1973) and how they had been remedied by changes to Alaska's statutes and regulations. ADEC also submitted the applicable Alaska statutes (Title 46. Water, Air, Energy, and Environmental Conservation) to support their request for corrections. The sections are all identified below. At this time, EPA is making the following changes:

Section 52.74(a)(1), Cook Inlet. Delete. The Cook Inlet Air Resources Management District has not existed for over a decade. Deficiencies related to permitting authority attributed to Cook Inlet Air Resources Management District do not exist.

Section 52.74(a)(2), Fairbanks North Star Borough (FNSB). Delete. The Memorandum of Understanding between ADEC and FNSB gives the borough responsibility only for permitting open burns of less than 40 acres; monitoring and air quality forecasting; attainment planning; and motor vehicle inspection and maintenance. It does not include responsibilities for recordkeeping, monitoring requirements, and public availability of stationary source data. Therefore, deficiency findings in those areas are moot.

Regarding emergency abatement, the CFR refers to Ordinance 45.05.100, which is found to be deficient because it only refers to generalized conditions of air pollution. FNSB Ordinance 8.05.010–050, which gives the borough adequate authority, was accepted into the SIP in the May 26, 1989 **Federal Register**. FNSB Ordinance 8.04.071 provides adequate authority for injunctions. Therefore, § 52.74(a)(2)(i) on injunctions, and (v) on episode abatement may be deleted.

Section 52.74(a)(2)(vi), Legal Authority. Delete. The Fairbanks Inspection and Maintenance Program was accepted as fulfilling the transportation control requirement.

Section 52.74(b), Legal Authority. Delete. This finding of deficiency for lack of authority to prevent operation or construction which may result in violation of ambient air quality standards is satisfied by 18 AAC 50.300 and 18 AAC 50.400. These sections define criteria for permit issuance, and prevent operation or construction without a permit.

Section 52.74(c), Legal Authority. Delete. This subsection disapproves Alaska Statute (AS) 46.03.180 for not meeting the requirement for disclosure of emissions data. However, AS 46.03.180 allows confidentiality only for some "Records and Information, other than emission data." Therefore, the legal authority to provide for public availability of emission data is adequate, and this deficiency determination may be deleted.

Section 52.73 (a) and (b), General Requirements. Delete. These are simply remedies to the deficiencies identified above in § 52.74 and, since the legal authority to provide for public availability of emission data is adequate, these remedies may be deleted.

Section 52.78, Review of new sources and modifications. EPA defers action on this section, which establishes a plan for review of new or modified indirect sources, to a later date when a subsequent **Federal Register** action will address the revisions to the Carbon Monoxide SIP submitted March 24, 1994 by ADEC.

Section 52.80, Intergovernmental cooperation. Delete. This subsection refers to lack of clear delineation of responsibilities between state and local agencies. This has been addressed in memoranda of understanding between ADEC and the municipalities of Anchorage and Fairbanks which define responsibilities. In addition, emergency avoidance plans are described in the Alaska State Air Quality Control Plan.

Section 52.81, Attainment dates for national standards, and

Section 52.82, Extensions. No action to be taken at this time. The information contained in these two sections, pertaining to historical attainment dates and status data, will be updated at a later time.

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Section 52.84, Compliance schedules. Delete. All compliance schedules listed here are outdated. Compliance schedules have been replaced by compliance orders, which are enforcement actions, and are not part of the SIP.

Section 52.95, Maintenance of national standards. Delete. These pre-1977 requirements are out of date and no longer applicable.

Section 52.96(b), Significant deterioration of air quality. Retain. The State of Alaska does not have jurisdiction over Indian reservations. Therefore, EPA must retain this provision in the Code of Federal Regulations in order to promulgate Federal procedures to prevent significant deterioration of air quality in Indian reservations as part of the Alaska SIP.

C. Additional Amendments to the Air Quality Control Plan, March 24, 1994

The March 24, 1994 ADEC submittal of revisions for inclusion into the Alaska SIP include additional amendments to 18 AAC 50, Air Quality Control Plan. In some instances the amendments further revise the amendments dated October 15, 1991, and in those cases, EPA is approving the version of the rules as it exists under the most recent revision. The amendments EPA is specifically approving at this time from the March 24, 1994 submittal concern state air quality classifications for PM–10 and new source review requirements. All other amendments to the SIP contained in the March 24, 1994 submittal will be addressed in subsequent actions. At this time, EPA is approving the following amendments to 18 AAC 50, Air Quality Control:

Article 1. Program Standards and Limitations

Section 021, State Air Quality Classifications, is revised by adding the Eagle River Community and Mendenhall Valley of Juneau as nonattainment areas for PM–10.

Article 2. Permit Requirements

Section 300 (a)(7) and (a)(8), Permit to Operate, are revised by adding provisions to require a permit for sources located in PM–10 nonattainment areas.

Section 300(d), Permit to Operate, is revised to clarify that emission offsets must be enforceable at the time of permit issuance and that they must actually occur by the time that increased emissions from the new or modified source will occur. In addition, this section requires a demonstration that the benefits of construction, operation, or modification of the facility will significantly outweigh the environmental and social costs incurred due to its location in a nonattainment area.

Sections 300 (e) and (g), Permit to Operate, are revised by making a number of editorial changes for clarity.

Article 3. Permit Review Criteria

Section 400(a)(1)(A), Application Review and Issuance of Permit to Operate, is revised by making several editorial changes for clarity.

Section 400(c)(3)(B)(ii), Application Review and Issuance of Permit to Operate, is revised by adding significance levels for PM–10.

Section 400(c)(4), Application Review and Issuance of Permit to Operate, is revised to clarify that emission offsets must be enforceable at the time of permit issuance and that they must actually occur by the time that increased emissions from the new or modified source will occur. In addition, this section requires a demonstration that the benefits of construction, operation, or modification of the facility will significantly outweigh the environmental and social costs incurred due to its location in a nonattainment area.

Section 400(d)(4), Application Review and Issuance of Permit to Operate, is revised by making several editorial changes for clarity.

Article 5. Procedure and Administration

Section 620, State Air Quality Control Plan, is revised to reflect the date for new revisions to Volumes II and III of the Air Quality Control Plan.

The above amendments include updates to air quality area classifications and reflect date changes to include the most recent (March 24, 1994) SIP revisions submitted from ADEC to EPA. Also, included are revisions of the new source review provisions to meet the new requirements of Part D of the Clean Air Act for moderate carbon monoxide and particulate matter nonattainment areas as set forth in the General Preamble for the Implementation of Title I of the Clean Air Act.

III. Summary of EPA Action

In this action, EPA approves the following amendments to Alaska Administrative Code, 18 AAC 50, Air Quality Control Regulations, for inclusion into the Alaska SIP:

A. Revisions to Article 1: In section 050.020, paragraphs (a)(1) and (b), section 085, and section 100;

Revisions to Article 2: In section 300, paragraphs (a)(3), (a)(5)(A), (a)(6)(A), (a)(6)(C), (a)(6)(C)(iv), (a)(6)(C)(xvi), (a)(7), (a)(8), (a)(9), paragraph (d), paragraph (e), paragraph (g), and paragraph (h);

Revisions to Article 3: in section 400, paragraph (a), paragraph (a)(1), paragraph (b), paragraph (c)(1), paragraph (c)(3)(B)(ii), paragraph (c)(4);

Revisions to Article 4: Section 510, and in section 520, paragraph (a);

Revisions to Article 5: Sections 610 and 620;

Revisions to Article 6: in section 900, paragraphs (1), (7), (8), (39), (48), and additions of paragraphs (50), (51), (52), (53), (54), and (55).

B. Overall, the revised table of contents for Title 18, Environmental Conservation, Chapter 50, Air Quality Control, is as follows:

Article 1. Program Standards and Limitations

18 AAC 50.010. Applicability of Local Government Regulations (5/16/72)
18 AAC 50.020. Ambient Air Quality Standards (7/21/91)
18 AAC 50.021. State Air Quality Classifications (4/23/94)
18 AAC 50.030. Open Burning (10/30/83)
18 AAC 50.040. Incinerators (10/30/83)
18 AAC 50.050. Industrial Processes and Fuel Burning Equipment (5/11/91)
18 AAC 50.060. Pulp Mills (11/1/82)
18 AAC 50.070. Motor Vehicle Emissions (5/4/80)
18 AAC 50.085. Wood-Fired Heating Devices (7/21/91)
18 AAC 50.090. Ice Fog Limitations (5/16/72)
18 AAC 50.100. Marine Vessels (7/21/91)
18 AAC 50.110. Air Pollution prohibited (5/26/72)

Article 2. Permit Requirements

18 AAC 50.300. Permit to Operate (4/23/94)
18 AAC 50.310. Revocation or Suspension (5/4/80)

Article 3. Permit Review Criteria

18 AAC 50.400 (4/23/94)

Article 4. Regulation Compliance Criteria

18 AAC 50.500. Source Testing (6/2/88)
18 AAC 50.510. Ambient Analysis Methods (7/21/91)
18 AAC 50.520. Emission and Ambient Monitoring (7/21/91)

18 AAC 50.530. Circumvention (6/7/87)

Article 5. Procedural and Administrative

18 AAC 50.600. Reclassification Procedures and Criteria (11/1/82)
18 AAC 50.610. Air Episodes and Advisories (7/21/91)
18 AAC 50.620. State Air Quality Control Plan (4/23/94)

Article 6. General Provisions

18 AAC 50.900. Definitions (7/21/91)

C. EPA has corrected several out-of-date sections found in 40 CFR 52.73–96 relating to Alaska SIP deficiencies.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 17, 1995 unless, by March 20, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 17, 1995.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: January 23, 1995.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(19) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(19) The Environmental Protection Agency (EPA) takes action on and/or approves regulations from three submittals received from the ADEC on July 17, 1990, October 15, 1991 and on March 24, 1994, which pertain to correcting SIP deficiencies in the CFR; amendments to regulations dealing with Air Quality Control, 18 AAC 50, for inclusion into Alaska's SIP; and additional amendments to 18 AAC 50, Air Quality Control, for inclusion into Alaska's SIP to assure compliance with new source review permitting requirements for sources located in nonattainment areas for either carbon monoxide or particulate matter.

(i) Incorporation by reference.

(A) July 17, 1990 letter from ADEC to EPA requesting correction for findings of SIP deficiency in 40 CFR Part 52, and including the version of Alaska Statutes, "Title 46. Water, Air, Energy, and Environmental Conservation," in effect at the time of the July 17, 1990 letter, of which Sections 46.03.020, 46.03.030, 46.03.032, and 46.03.715, amended in 1987, were the most recently amended of the enclosed statutes.

(B) October 15, 1991 letter from ADEC to EPA, and including amendments to regulations and the State Air Quality Control Plan to assure compliance with national ambient air quality standards for particulate matter; the Order Amending Regulations of the Department of Environmental Conservation, effective July 21, 1991; and the following *Alaska Administrative Code, 18 AAC 50, Air Quality Control Regulations:* (50.020; 50.085; 50.100; 50.300; 50.400; 50.510, 50.520, 50.610, and 50.900), effective July 21, 1991, Register 119.

(C) March 24, 1994 letter from Walter J. Hickel, Governor of Alaska, to Chuck Clarke, Regional Administrator of EPA, and including amendments to 18 AAC 50, State Air Quality Control Plan; the Order Adopting and Amending

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Regulations of the Department of Environmental Conservation, effective April 23, 1994, Register 130; and the amendments to 18 AAC 50 (50.021, 50.300(a)(7) and (a)(8), 50.300 (d), (e), and (g), 50.400(a)(1)(A), 50.400(c)(3)(B)(ii), 50.400(c)(4), 50.400(d)(4), and 50.620), State Air Quality Control Plan, found in Volume III: Appendices, Modifications to Section III.A, effective April 23, 1994, Register 130.

§ 52.74 [Amended]

3. In § 52.74, paragraphs (a) and (c) are removed and the paragraph designation for paragraph (b) is removed.

4. Sections 52.73, 52.80, 52.84, and 52.95 are removed and reserved.

[FR Doc. 95–3859 Filed 2–15–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA 40–1–6813 FRL–5145–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1993. The revisions concern rules from the following districts: The Bay Area Air Quality Management District (BAAQMD) and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from leaking valves and connectors at petroleum refinery complexes, chemical plants, bulk plants, and bulk terminals (BAAQMD Rule 8–18); and fugitive emissions from petroleum refineries and chemical plants (VCAPCD Rule 74.7). Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on March 20, 1995.

ADDRESSES: Copies of the submitted rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street SW., Washington, DC 20460.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Ventura County Air Pollution Control District, 669 County Square Drive, Second floor, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1993 in 58 FR 65959, EPA proposed to approve the following rules into the California SIP:

BAAQMD's Rule 8–18, Valves and Connectors at Petroleum Refinery Complexes, Chemical Plants, Bulk Plants, and Bulk Terminals; and VCAPCD's Rule 74.7, Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants. The BAAQMD adopted Rule 8–18 on March 4, 1992 and the VCAPCD adopted Rule 74.7 on January 10, 1989. The California Air Resources Board (CARB) submitted these rules on November 12, 1992 and March 26, 1990, respectively. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 65959 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated May 13, 1993—BAAQMD Rule 8–18 and June 21, 1993—VCAPCD 74.7).

Response to Public Comments

A 30-day public comment period was provided in 58 FR 65959. No comments were received.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 11, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (179)(i)(D) and (190)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(179) * * *

(i) * * *

(D) Ventura County Air Pollution Control District.

(*1*) Rule 74.7, adopted on January 10, 1989.

* * * * *

(190) * * *

(i) * * *

(B) Bay Area Air Quality Management District.

(*1*) Rule 8–18, adopted on March 4, 1992.

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[FR Doc. 95–3861 Filed 2–15–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[CA 102–6–6837a; FRL–5145–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from valves and flanges at chemical plants. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on April 17, 1995, unless adverse or critical comments are received by March 20, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board; Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being approved into the California SIP is BAAQMD's Rule 8–22, "Valves and Flanges at Chemical Plants." This rule was submitted by the California Air Resources Board (ARB) to EPA on September 28, 1994.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Francisco-Bay Area (Bay Area). 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area is classified as moderate;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 28, 1994, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for BAAQMD's Rule 8–22, "Valves and Flanges at Chemical Plants." The BAAQMD adopted Rule 8–22 on June 1, 1994. This submitted rule was found to be complete on November 22, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

Rule 8–22 prohibits volatile organic compound (VOC) emissions in excess of 10,000 parts per million (ppm) from valves and flanges at chemical plants. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (EPA–450/3–83–006)." Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The BAAQMD's submitted Rule 8–22, "Valves and Flanges at Chemical Plants," includes the following significant changes from the current SIP:

1. The exemption for valves and flanges on instrument and sample lines with diameters of 1.8 cm (0.75 in.) or less has been deleted.

2. Research and development facilities must now satisfy certain criteria in order to be exempt from the rule.

3. The rule transfers the regulation of chemical plants with 100 or more valves to the BAAQMD's Rule 8–18, "Valves and Connectors at Petroleum Refineries, Chemical Plants, Bulk Plants and Bulk Terminals," which has a leak standard of 1,000 ppm. EPA proposed an approval of Rule 8–18 on December 17, 1993 (58 FR 65959).

4. EPA Method 21 is the test method used to determine leaks.

5. Quarterly inspections are now required for accessible valves while annual inspections continue for inaccessible valves.

6. The rule requires records of the identification codes, types, and locations of each valve.

7. The rule requires records of the dates of all inspections, re-inspections, and the measured leak concentrations of valves and flanges where the emission standard of the rule has been exceeded.

8. The rule requires monthly records of all non-repairable valves until the next unit turnaround when these valves must be repaired.

9. The rule requires that all records be maintained for at least 5 years.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Rule 8–22, "Valves and Flanges at Chemical Plants," is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 17, 1995, unless, by March 20, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 17, 1995.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under sections 110 and 301(a) and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 17, 1995.

Felicia Marcus,

Regional Administrator.

Subpart 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(199)(i)(A)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(199) * * *

(i) * * *

(A) * * *

(4) Rule 8–22, adopted on June 1, 1994.

* * * * *

[FR Doc. 95–3864 Filed 2–15–95; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD–424–F]

RIN 0938–AE94

Medicare Program; Medicare Coverage of Prescription Drugs Used in Immunosuppressive Therapy

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to provide Medicare coverage for prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made. This rule reflects the enactment of section 1861(s)(2)(J) of the Social Security Act that provides Medicare coverage for prescription drugs used in immunosuppressive therapy for a period of up to 1 year from the date of discharge from an inpatient hospital stay during which the Medicare-covered organ or tissue transplant was performed.

This final rule also implements section 13565 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) and section 160 of the Social Security Act Amendments of 1994 (Public Law 103–432) that, beginning January 1, 1995, expand Medicare coverage for prescription drugs used in immunosuppressive therapy from 1 year to a phased-in period of 3 years from the date of discharge from a hospital stay during which the Medicare-covered organ or tissue transplant was performed.

DATES: These regulations are effective January 1, 1995, the effective date of the statute.

FOR FURTHER INFORMATION CONTACT: Debra McKeldin, (410) 966–9671.

SUPPLEMENTARY INFORMATION:

I. Background

Before enactment of section 9335(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509, there was no specific Medicare benefit that provided for Medicare Part B coverage of prescription drugs used in immunosuppressive therapy.

OBRA '86 added subparagraph (J) to section 1861(s)(2) of the Social Security Act (the Act) to provide Medicare coverage for immunosuppressive drugs, furnished to an individual who receives an organ transplant for which Medicare payment is made, for a period not to exceed 1 year after the transplant procedure. Coverage of these drugs under Medicare Part B began January 1, 1987.

We published a proposed rule with a 60-day public comment period (53 FR 1383) on January 19, 1988, which we discuss below. Before its publication, however, the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, was enacted and effective December 22, 1987, revised section 1861(s)(2)(J) of the Act so that the scope of coverage was expanded from coverage of "immunosuppressive drugs" to coverage of "prescription drugs used in immunosuppressive therapy." We issued the proposed rule before changes could be made to reflect this new terminology. We did propose, however, coverage that would include, in addition to immunosuppressive drugs, other drugs used in conjunction with immunosuppressive therapy. In addition, in April 1988, we issued manual instructions to Medicare contractors that reflected the new terminology.

Also, section 202 of the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, enacted on July 1, 1988, extended coverage of drugs used in immunosuppressive therapy to include drugs furnished in subsequent years after the first year following a covered transplant. It also extended coverage to include drugs used following a noncovered transplant irrespective of any prescribed time limitations. This extended coverage, which was to be effective on January 1, 1990, was part of the outpatient drug coverage set forth in section 202(a) of Public Law 100–360. On December 19, 1989, however, these provisions of the law were repealed as part of the Medicare Catastrophic Coverage Repeal Act of 1989, Public Law 101–234. As a result, the extended Medicare coverage of drugs used in immunosuppressive therapy set forth in Public Law 100–360 never became effective.

Since publication of the proposed rule, section 13565 of the Omnibus Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, amended section 1861(s)(2)(J) of the Act. In accordance with OBRA '93, the coverage period for prescription drugs used in immunosuppressive therapy will be extended to 18 months from the hospital discharge date following a covered transplant procedure for drugs furnished in 1995; 24 months for drugs furnished in 1996; 30 months for drugs furnished in 1997; and 36 months for drugs furnished after 1997. Subsequently, section 160 of the Social Security Act Amendments of 1994, Public Law 103–432, enacted on October 31, 1994, allows us to administer the OBRA '93 provision in such a way that coverage would be continued consecutively.

Since this provision is self-executing, we have issued it as part of this final rule, rather than in proposed form.

II. Provisions of the Proposed Rule

In the January 1988 proposed rule, we proposed to amend 42 CFR part 410 ("Supplementary Medical Insurance (SMI) Benefits") to incorporate the following:

- Cover immunosuppressive drugs under Medicare Part B by revising § 410.10 to include immunosuppressive drugs in the term "medical and other health services";
- Add a new § 410.31 to provide specifically for coverage of immunosuppressive drugs generally; and
- Add a new § 410.65 to provide Medicare coverage of drugs used in immunosuppressive therapy, that are furnished to an individual who receives an organ transplant for which Medicare payment is made, for a period of up to 1 year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed (the proposed rule did not, of course, include the OBRA '93 phased-in extension to the coverage period that follows a Medicare approved transplant). We proposed that coverage include: (1) Those immunosuppressive drugs specifically labeled as immunosuppressive drugs and approved for marketing by the Food and Drug Administration (FDA) and (2) other drugs that FDA-approved labeling indicates are used in conjunction with immunosuppressive drug therapy.

III. Discussion of Comments

We received 11 timely comments in response to the January 1988 proposed rule. The comments were from representatives of hospitals, medical centers, national associations representing health care professionals, and a university. The specific comments and our responses follow:

Comment: Several commenters suggested that coverage of immunosuppressive drugs be extended beyond 1 year.

Response: As stated earlier, since the publication of the proposed rule, OBRA

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'93 has authorized phased-in extensions to the Medicare coverage period for prescription drugs used in immunosuppressive therapy. In accordance with this new legislation, the period after the hospital discharge date in which a Medicare beneficiary is eligible to receive Part B coverage of prescription drugs used in immunosuppressive therapy has been extended as follows:

- For drugs furnished during 1995, a Medicare beneficiary is eligible for coverage within 18 months after the date of discharge from an inpatient stay during which the covered transplant was performed.
- For drugs furnished during 1996, a Medicare beneficiary is eligible for coverage within 24 months after the date of discharge from an inpatient stay during which the covered transplant was performed.
- For drugs furnished during 1997, a Medicare beneficiary is eligible for coverage within 30 months after the date of discharge from an inpatient stay during which the covered transplant was performed.
- For drugs furnished after 1997, a Medicare beneficiary is eligible for coverage within 36 months after the date of discharge from an inpatient stay during which the covered transplant was performed.

Thus, the extension provides a range of coverage extending from 12 to 36 months depending on the date of discharge from an inpatient stay during which the covered transplant was performed.

For example, if prescription drugs used in immunosuppressive therapy are furnished to a beneficiary who received a covered transplant and was discharged on February 1, 1994, the initial coverage period is for 12 months (February 1, 1994 to January 31, 1995). In accordance with OBRA '93, on January 1, 1995, the coverage period for prescription drugs used in immunosuppressive therapy will be extended to 18 months from the hospital discharge date following a covered transplant procedure. Therefore, the initial 12-month coverage period is extended to July 31, 1995 because section 13565 of OBRA '93 extends coverage for drugs furnished in 1995 to 18 months. Subsequently, the eligibility for coverage for drugs furnished in 1996 is extended to 24 months after the discharge date. Because January 31, 1996 is 24 months after the discharge date of the covered transplant procedure in this example, the beneficiary is eligible for an additional month of coverage beginning January 1, 1996 and ending on January 31, 1996. Thus, the beneficiary will receive a total of 19 months of coverage for prescription drugs used in immunosuppressive therapy.

The following chart illustrates how the extension periods prescribed by OBRA '93 will be phased in using a discharge date of the first day of each month.

PHASED-IN BENEFIT PERIODS FOR IMMUNOSUPPRESSIVE DRUG THERAPY

Discharge date	Coverage period ends	Coverage period resumes	Coverage period ends	Total months of coverage
08/1/93	07/31/94	01/1/95	01/31/95	13
09/1/93	08/31/94	01/1/95	02/28/95	14
10/1/93	09/30/94	01/1/95	03/31/95	15
11/1/93	10/31/94	01/1/95	04/30/95	16
12/1/93	11/30/94	01/1/95	05/31/95	17
01/1/94	06/30/95	.....	.....	18
02/1/94	07/31/95	01/1/96	01/31/96	19
03/1/94	08/31/95	01/1/96	02/29/96	20
04/1/94	09/30/95	01/1/96	03/31/96	21
05/1/94	10/31/95	01/1/96	04/30/96	22
06/1/94	11/30/95	01/1/96	05/31/96	23
07/1/94	06/30/96	.....	.....	24
08/1/94	07/31/96	01/1/97	01/31/97	25
09/1/94	08/31/96	01/1/97	02/28/97	26
10/1/94	09/30/96	01/1/97	03/31/97	27
11/1/94	10/31/96	01/1/97	04/30/97	28
12/1/94	11/30/96	01/1/97	05/31/97	29
01/1/95	06/30/97	.....	.....	30
02/1/95	07/31/97	01/1/98	01/31/98	31
03/1/95	08/31/97	01/1/98	02/28/98	32
04/1/95	09/30/97	01/1/98	03/31/98	33
05/1/95	10/31/97	01/1/98	04/30/98	34
06/1/95	11/30/97	01/1/98	05/31/98	35
07/1/95	06/30/98	.....	.....	36

As illustrated in the chart, the statutory construction of the provision in OBRA '93 that prescribed the phased-in extension of coverage for drugs used in immunosuppressive therapy resulted in gaps in the coverage period. However, as stated earlier, section 160 of the Social Security Act Amendments of 1994 allows us to administer this provision in such a way that consecutive months of coverage are furnished provided the total number of months of coverage allowed by OBRA '93 are the same. Thus, in the above example, the beneficiary who was discharged on February 1, 1994 will receive 19 consecutive months of coverage (through August 31, 1995) for prescription drugs used in immunosuppressive therapy.

The periods of consecutive coverage for prescription drugs used in immunosuppressive therapy are illustrated in the following chart. The chart demonstrates how the OBRA '93 provisions would be phased in using a discharge date of the first day of each month.

PHASED-IN CONSECUTIVE BENEFIT PERIODS FOR IMMUNOSUPPRESIVE DRUG THERAPY

Discharge date	Coverage period ends	Total months of coverage
08/1/93	08/31/94	13
09/1/93	10/31/94	14
10/1/93	12/31/94	15
11/1/93	02/28/95	16
12/1/93	04/30/95	17
01/1/94	06/30/95	18
02/1/94	08/31/95	19
03/1/94	10/31/95	20

PHASED-IN CONSECUTIVE BENEFIT PERIODS FOR IMMUNOSUPPRESIVE DRUG THERAPY—Continued

Discharge date	Coverage period ends	Total months of coverage
04/1/94	12/31/95	21
05/1/94	02/29/96	22
06/1/94	04/30/96	23
07/1/94	06/30/96	24
08/1/94	08/31/96	25
09/1/94	10/31/96	26
10/1/94	12/31/96	27
11/1/94	02/28/97	28
12/1/94	04/30/97	29
01/1/95	06/30/97	30
02/1/95	08/31/97	31
03/1/95	10/31/97	32
04/1/95	12/31/97	33
05/1/95	02/28/98	34
06/1/95	04/30/98	35
07/1/95	06/30/98	36

Comment: One commenter recommended that each patient be given a card showing eligibility dates for immunosuppressive drug therapy.

Response: We have not adopted this suggestion because it would add an unnecessary paperwork burden without a commensurate benefit to the program. This information is contained in the Medicare Handbook.

The Medicare contractors processing claims for prescription drugs used in immunosuppressive therapy are prepared to implement the extended periods of coverage. The claims processing systems are capable of determining the periods for which Part B coverage is available beginning with the date of discharge from a hospital stay during which a covered transplant was performed.

Comment: One commenter requested that we define several classes of drugs, such as treatment related drugs (for example, prednisone, antihypertensives, and cardiac medicines) that, in his opinion, would be eligible for payment. This classification would provide guidelines for coverage of each type of drug. Another commenter urged that there be flexible criteria to permit providers to use a full range of drug therapy, including drugs prescribed for unapproved indications, rather than limiting coverage to "other drugs that are used in conjunction with immunosuppressive drugs as part of a therapeutic regimen."

Response: Section 1861(s)(2)(J) of the Act provides for coverage of only prescription drugs used in immunosuppressive therapy. We interpret this to mean that coverage is limited to those drugs that are medically necessary and appropriate for the specific purpose of preventing or treating the rejection of a transplanted organ or tissue by suppressing a patient's natural immune responses. To meet this definition, a drug must be approved by the FDA, be available only through a prescription, and belong to one of the following three categories:

- It is a drug approved for marketing by the FDA and is labeled as an immunosuppressive drug.
- It is a drug, such as a corticosteroid, that is approved by the FDA and is labeled for use in conjunction with immunosuppressive drugs to treat or prevent the rejection of a patient's transplanted organ or tissue.
- It is a drug that a Part B carrier, in processing a Medicare claim, determined to be reasonable and necessary for the specific purpose of preventing or treating the rejection of a patient's transplanted organ or tissue, or for use in conjunction with those immunosuppressive drugs for the purpose of preventing or treating the rejection of a patient's transplanted organ or tissue.

Accordingly, drugs that are used for the treatment of conditions that may result from an immunosuppressive drug regimen (for example, antibiotics, antihypertensives, analgesics, vitamins, and other drugs that are not directly related to organ rejection) are not covered under this benefit.

Comment: One commenter suggested that we clarify the statement in the proposed rule (53 FR 1383) that implied that corticosteroids may be covered by Medicare only if used in association with Sandimmune (that is, cyclosporine).

Response: The statement in the proposed rule was meant as an example of a drug treatment regimen that included corticosteroids. It was not our intention to imply that corticosteroids would not be covered if prescribed in conjunction with another immunosuppressive, or alone, to prevent rejection of an organ or tissue transplant.

Comment: One commenter concluded that our statement that commonly prescribed immunosuppressive drugs are available at substantial discounts from prices listed in the Red Book (an annual publication that lists drugs and their wholesale prices) is wrong because the drugs we listed (with the exception of prednisone) are sole source drugs and there is no competition to reduce the prices.

Response: Since publication of the proposed rule in January 1988, payment for Medicare Part B drugs was modified by the November 25, 1991 final rule for the fee schedule for physicians' services (56 FR 59502). Section 405.517 states that payment for drugs (other than those paid on a cost or prospective basis) is based on the lower of the estimated acquisition cost or the national average wholesale price of the drug. The estimated acquisition cost is determined by individual carrier surveys of actual invoice prices paid for the drug. If physicians or pharmacies receive price discounts, the reductions are reflected in their invoice costs.

Comment: One commenter objected to our statement in the preamble to the proposed rule (53 FR 1385) that mail service pharmacies "offer reduced prices that minimize beneficiaries' coinsurance liability," on the grounds that it amounted to a "commercial" on behalf of mail service pharmacies.

Response: Our intent was not to endorse one source of drugs over another, but to make the public aware of the alternative of mail service pharmacies.

Comment: One commenter expressed concern that ordering drugs through the mail eliminates patient-pharmacist contact.

Response: The absence of face-to-face contact is one of the many things a beneficiary would want to consider in deciding from whom he or she will obtain prescribed drugs.

Comment: One commenter suggested that we buy drugs from manufacturers and have them shipped directly to participating transplant centers.

Response: We lack the legal authority to do this. We administer the Medicare program at the national level as authorized by the law. We are not empowered to participate in the delivery of health care services.

Comment: One commenter asked that we update prices for immunosuppressive drugs.

Response: Medicare carriers use the *Red Book* or a similar publication that is updated periodically during the year for current prices.

Comment: One organization suggested that our payment policy cover not only the costs of drugs, but also pharmaceutical care services. The organization explained that in addition to traditional drug distribution services, contemporary pharmaceutical services include clinical functions that ensure the safe and effective use of drug therapy. Examples of these functions, which were characterized by the commenter as "pharmacy" services, are providing patient education, assessing patient compliance, and monitoring for therapeutic effectiveness and adverse effects.

Response: Payment for functions furnished by pharmacists is included in the amount that Medicare pays for the drugs.

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Comment: One commenter recommended that all payments, including those to hospital outpatient departments, should be made under Part B on a reasonable charge basis. The commenter maintained that payments based on costs do not allow the hospital to be paid a reasonable rate for pharmaceutical services and overhead and that many hospitals maintain separate inventory and purchasing practices for drugs used in the outpatient setting.

Response: The statute mandates that the outpatient department of a hospital be paid based on the lower of reasonable cost or customary charges as established in the following sections of the Act:

- Sections 1832(a)(2)(B) and 1861(s)(2)(J), which establish that drugs used in immunosuppressive therapy furnished in a provider are a covered medical service.
- Section 1833(a)(2)(B), which states that payment is based on the lesser of the reasonable cost of hospital outpatient department services as determined under section 1861(v), or the customary charges with respect to these services.
- Section 1861(u), which defines a provider of services to include a hospital.
- Section 1862(a)(14), which states, in part, that no payment may be made under Part A or Part B for any expenses incurred for items or services, other than for statutorily specified exceptions, that are furnished to an individual who is a patient of a hospital by an entity other than the hospital or under arrangements with the hospital. ("Patient" means inpatients and outpatients of a hospital.)

Therefore, if a patient is an outpatient of a hospital and receives prescription drugs from the hospital pharmacy, payment would have to be made to the hospital pharmacy according to the mandate of section 1833(a)(2)(B) of the Act. That section establishes that payment to any provider of services (in this case, the outpatient pharmacy department of a hospital) must be the lesser of the reasonable cost of these services, as determined under section 1861(v) (which includes recognition of both direct and indirect costs), or the customary charges with respect to these services.

Comment: One commenter suggested that we improve our communication with fiscal intermediaries, because some intermediaries are unaware that they should be paying for prescription drugs used in immunosuppressive therapy.

Response: We have taken steps to ensure that all contractors processing claims for prescription drugs used in immunosuppressive therapy are aware of current Medicare coverage and payment policies. We have not been informed of any specific problems in this area of program administration.

IV. Provisions of This Final Rule

The provisions of this final rule restate the provisions of the January 1988 proposed rule. The final rule differs from the proposed rule in that we have changed the term "immunosuppressive drugs," wherever it appears, to "prescription drugs used in immunosuppressive therapy" to conform with section 4075 of OBRA '87. Also, we have redesignated the proposed § 410.65 as § 410.31. The final rule also differs from the proposed rule in that we have specified that drugs also will be covered if they have been determined, by a Part B carrier in processing a Medicare claim, to be reasonable and necessary (that is, safe and effective) for the purpose of treating or preventing the rejection of a patient's transplanted organ or tissue, or for use in conjunction with these immunosuppressive drugs for the purpose of preventing or treating the rejection of a patient's transplanted organ or tissue. The carriers make these determinations by considering factors such as authoritative drug compendia, current medical literature, recognized standards of medical practice, and professional medical publications. This change makes the policy governing drugs used in immunosuppressive therapy consistent with Medicare's general drug coverage policy.

An additional point of clarification is that the coverage of prescription drugs for transplants under this rule includes prescription drugs used in immunosuppressive therapy furnished to an individual who receives a bone marrow tissue transplant for which Medicare payment is made. For purposes of this rule, we consider bone marrow tissue transplants to be subsumed within the term "organ transplant" under section 1861(s)(2)(J) of the Act. Medicare currently covers heart, kidney, bone marrow, and certain liver transplants.

The final rule also differs from the proposed rule in that OBRA '93 requires phased-in extensions (up to 3 years) to the coverage period for prescription drugs used in immunosuppressive therapy.

V. Collection of Information Requirements

This notice does not impose information collection or recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*).

VI. Regulatory Impact Statement

A. Introduction

This final rule amends the regulations to provide Medicare coverage for prescription drugs used in immunosuppressive therapy following an inpatient hospital stay during which a Medicare-covered organ transplant was performed. OBRA '86 amended section 1861(s)(2) of the Act to provide Part B coverage for a period not to exceed 1 year beginning July 1, 1987. As a result of OBRA '93, the period of coverage of prescription drugs used in immunosuppressive therapy after the discharge from a hospital has been increased to 18 months for drugs furnished in 1995, 24 months for drugs furnished in 1996, 30 months for drugs furnished in 1997, and 36 months for drugs furnished after 1997. The following table shows the estimated additional expenditures as a result of the extended coverage.

ESTIMATED ADDITIONAL COST BECAUSE OF EXTENDED COVERAGE OF DRUGS FOR IMMUNOSUPPRESSIVE THERAPY—ROUNDED TO THE NEAREST $5 MILLION

FY 1995	FY 1996	FY 1997	FY 1998	FY 1999
$20	$60	$90	$110	$120

The use of immunosuppressive drug therapy is indicated for the prevention of organ rejection when an organ or tissue transplant is performed. The estimated number of transplants that will be performed in CY 1994 is 10,125, some of which will have an effect on immunosuppressive drug therapy expenditures in CYs 1995 and 1996. The estimated 10,850 transplants that will be performed in CY 1995 will have an effect on drug therapy costs in CYs 1996, 1997, and 1998. We estimate that the annual drug cost following transplantation for a full time user of immunosuppressive drugs will be as follows:

ESTIMATED ANNUAL COST OF IMMUNOSUPPRESSIVE DRUGS FOR EACH TRANSPLANT PATIENT

CY 1995	CY 1996	CY 1997
$5580	$5910	$6275

This final rule also differs from the proposed rule in that the term "immunosuppressive drugs" has been changed to "prescription drugs used in immunosuppressive therapy" to conform with section 4075 of OBRA '87. This expanded coverage will allow payment for other necessary drugs used in conjunction with immunosuppressive drugs.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, pharmacists, physicians who perform transplantation services, and manufacturers of covered pharmaceuticals are considered to be small entities. Although pharmaceutical manufacturers are frequently not considered to be small entities, the possibility exists that certain manufacturers affected by this final rule may meet the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Because of the high cost of a majority of the drugs used for immunosuppressive therapy and the extended time that beneficiaries are required to take the drugs to ensure that the transplanted organ is not rejected, all Medicare transplant patients and many small entities will benefit by this regulation. In many cases, 1 year of immunosuppressive therapy is not sufficient. Also, it is possible that we may avoid the additional cost of a second transplant if a patient is kept on immunosuppressive drug therapy beyond the original 12 month coverage period.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 410

Medical and other health services, Medicare.

For the reasons set forth in the preamble, 42 CFR chapter IV, part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.10, the introductory text is republished and a new paragraph (u) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(u) Prescription drugs used in immunosuppressive therapy.

3. A new § 410.31 is added to read as follows:

§ 410.31 Prescription drugs used in immunosuppressive therapy.

(a) *Scope.* Payment may be made for prescription drugs used in immunosuppressive therapy that have been approved for marketing by the FDA and that meet one of the following conditions:

(1) The approved labeling includes the indication for preventing or treating the rejection of a transplanted organ or tissue.

(2) The approved labeling includes the indication for use in conjunction with immunosuppressive drugs to prevent or treat rejection of a transplanted organ or tissue.

(3) Have been determined by a carrier (in accordance with part 421, subpart C of this chapter), in processing a Medicare claim, to be reasonable and necessary for the specific purpose of preventing or treating the rejection of a patient's transplanted organ or tissue, or for use in conjunction with immunosuppressive drugs for the purpose of preventing or treating the rejection of a patient's transplanted organ or tissue. (In making these determinations, the carriers may consider factors such as authoritative drug compendia, current medical literature, recognized standards of medical practice, and professional medical publications.)

(b) *Period of eligibility.* Coverage is available only for prescription drugs used in immunosuppressive therapy, furnished to an individual who receives an organ or tissue transplant for which Medicare payment is made, for the following periods:

(1) For drugs furnished before 1995, for a period of up to 1 year beginning with the date of discharge from the hospital during which the covered transplant was performed.

(2) For drugs furnished during 1995, within 18 months after the date of discharge from the hospital during which the covered transplant was performed.

(3) For drugs furnished during 1996, within 24 months after the date of discharge from the hospital during which the covered transplant was performed.

(4) For drugs furnished during 1997, within 30 months after the date of discharge from the hospital during which the covered transplant was performed.

(5) For drugs furnished after 1997, within 36 months after the date of discharge from the hospital during which the covered transplant was performed.

(c) *Coverage.* Drugs are covered under this provision irrespective of whether they can be self-administered.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: January 9, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: February 9, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–3835 Filed 2–15–95; 8:45 am]

BILLING CODE 4120-01-P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7115

[UT-942-1430-01; UTU-52338]

Partial Revocation of Executive Order of April 17, 1926, Public Water Reserve 107 Withdrawal; Utah

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order revokes Executive Order of April 17, 1926, insofar as it affects 40.84 acres of public land withdrawn as a public water reserve. The land is no longer needed for the purpose of the withdrawal, and the revocation is needed to permit disposal of the land through a land exchange under the authority of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry, and to mining for nonmetalliferous minerals. The land has been and will remain open to mineral leasing and mining for metalliferous minerals.

EFFECTIVE DATE: March 20, 1995.

FURTHER FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order of April 17, 1926, which withdrew public land containing springs and water holes as public water reserves, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 11 N., R. 19 W.,
Sec. 4, lot 1;
The area described contains 40.84 acres in Box Elder County.

The land described above is no longer needed for the purpose for which withdrawn. There is no water on the parcel, nor evidence of any in the past.

2. At 9 a.m. on March 20, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 20, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 20, 1995 the land will be opened to location and entry for nonmetalliferous minerals under the United States mining law, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 6, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95-3893 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 950201033-5033-01; I.D. 041294E]

RIN 0648-AG37

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule allows non-Federal entities to apply for, and NMFS to issue, permits for the incidental take of threatened species of sea turtles consistent with section 10(a) of the Endangered Species Act (ESA). Under existing regulations, the prohibitions of section 9 of the ESA apply to both endangered and threatened species, but section 10 incidental take permits may be authorized for endangered, but not threatened, species of sea turtles. This regulation corrects this discrepancy in the application of sections 9 and 10 to threatened species of sea turtles.

EFFECTIVE DATE: March 20, 1995.

ADDRESSES: Requests for copies of the Environmental Assessment (EA) for the proposed rule, should be addressed to Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Heather Weiner, Endangered Species Division, 301-713-1401; Doug Beach, Protected Species Program Coordinator, NMFS Northeast Regional Office, 508-281-9254; or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813-570-5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico, and the breeding population of olive ridley turtles on the Pacific Coast of Mexico, which are listed as endangered.

In a proposed rule published on July 21, 1994 (59 FR 37213), NMFS proposed to extend existing incidental-take permit regulations to all threatened species of sea turtles as authorized under section 10(a)(1)(B) of the ESA. Section 10 authorizes the Secretary of Commerce to permit under such terms and conditions as he or she may prescribe, any taking otherwise prohibited by section 9(a)(1)(B) of the ESA, if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. NMFS implemented regulations for the application and issuance of incidental-take permits, under section 10(a) of the ESA, which appear at 50 CFR parts 220 and 222, and allow the Assistant Administrator for Fisheries, NOAA, (AA) to issue permits to incidentally take endangered marine species during otherwise lawful activities.

Comments and Responses on the Proposed Rule

NMFS received responses from four commenters, including the U.S. Department of the Interior, regarding the proposed rule. Commenters were generally supportive of the proposed rule, but expressed some concerns about permit issuance and review. NMFS reviewed all comments in detail and combined their common concerns for response.

Comment: Incidental take permits imply acceptance of the killing of threatened and endangered species. Granting exceptions to the ESA undermines the intent of the Act. Protective regulations for threatened species impacted by non-Federal entities should be issued under section 4(d) of the Act instead of through section 10 permits. If section 10 permits are allowed, then they should not be used as a means to avoid the required use of turtle excluder devices in shrimp fisheries.

Response: Section 10(a)(1)(B) of the ESA explicitly provides that the Secretary may permit any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The intent of this provision of the ESA is to allow non-Federal entities to carry out an activity that may incidentally take endangered species without jeopardizing the species, thereby extending the same allowance for Federal actions to non-Federal actions. Section 4(d) of the ESA allows NMFS to apply this provision and the takings prohibition of section 9, to threatened as well as endangered species.

As a Federal action that may affect listed species, the proposed issuance of a section 10 incidental take permit must be accompanied by a section 7 consultation. Through the consultation process, NMFS must ensure that the activity conducted under the permit, including the conservation plan, is not likely to jeopardize the listed species. This is the same substantive requirement applicable to regulations.

Comment: The section 10 incidental take permit program should require adequate Federal oversight of permits and conditions. NMFS must deny general permits to states unless there are adequate assurances that state applicants have the requisite legal authority, resources, and commitment to administer a statewide general permit under the required conservation plan. A conservation plan should provide for the registration of all vessels covered by the permit, observers on a substantial portion of the vessels, onshore and aerial observations, and procedures to halt the activity if conditions are being violated. In addition, applicants must demonstrate that they have sufficient resources and interest to provide adequate monitoring and enforcement of permit conditions, including an effective turtle stranding network to monitor mortalities.

Response: Both section 10 of the ESA and NMFS regulations (50 CFR 222.22(b)(5)) require permit applicants to include a detailed conservation plan that specifies (among other things) the steps that will be taken to monitor, minimize, and mitigate the activity's impacts on listed species. The conservation plan must also detail the funding available to implement these measures. In addition, one of the criteria used to determine issuance is the availability of effective monitoring techniques. Conservation plans for incidental take permits for commercial fisheries that incidentally take sea turtles may include requirements such as observer coverage, aerial surveys, and a monitoring network to document turtle strandings as necessary, depending on the activity involved.

If the permit holder fails to comply with the conditions of the permit or with any applicable laws or regulations governing the conduct of the permitted activity, then NMFS may suspend or revoke the permit pursuant to 50 CFR 227.27. In a state that has an authorized general section 10 permit, those vessels that wish to conduct an activity covered by the permit must apply to NMFS for a certificate of inclusion. Certificates of inclusion may also be suspended or revoked if the certificate holder fails to comply with the applicable terms of the permit.

Comment: Adequate procedural safeguards should be added to ensure that interested parties receive timely notice and meaningful opportunity to comment on applications for incidental take permits.

Response: Under existing NMFS regulations (50 CFR 222.24) and guidelines, a notice of receipt of a completed permit application is published in the **Federal Register** with a 30-day comment period. The permit application is then distributed to interested parties for review and comment. All comments received are reviewed and considered prior to final agency action on the permit application. In addition, any commenter may request a hearing. Specific questions raised by reviewers are directed anonymously to the applicant for reply. If the issuance of the permit may significantly affect the human environment, then an environmental assessment is prepared, as required by the National Environmental Policy Act. Because issuance of an incidental take permit is a Federal action that may affect the listed species, consultation pursuant to section 7 is required. The permit application may be altered, denied or issued based on the public comments and environmental compliance reviews. NMFS will make every effort to ensure that comments are adequately responded to in the applicable section 7 consultations and environmental assessments.

Comment: NMFS recently issued a joint policy with the U.S. Fish and Wildlife Service (USFWS) regarding Habitat Conservation Plans (HCPs) under section 10 of the ESA. This policy should not apply to section 10 permits for sea turtles because the conservation plans do not involve private ownership, but address the taking of public resources from public trust waters.

Response: NMFS agrees. The "No Surprises" policy states that the purpose of the policy is to provide assurances to non Federal landowners participating in Habitat Conservation Planning that "no additional land restrictions or financial compensation will be required from an HCP permittee for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances."

Comment: Permits should be issued for periods not to exceed 1 year because conditions may change altering the necessity for exemptions and modifications to existing ESA rules governing turtles.

Response: NMFS agrees that circumstances may change that alter the conditions of the activity or the status of the species, thereby requiring alterations to the terms of the permit. However, NMFS regulations set neither a minimum nor maximum time limit to incidental take permits. Regulations at 50 CFR 222.22(e) state that the duration of the permit is related to the duration of the proposed activities, as well as the possible positive and negative effects associated with issuing a permit of the proposed duration. Rather than requiring annual renewals of all section 10 permits, NMFS may require either periodic renewals or reviews and, if needed, require applicable modifications. The timing of that review will depend on the nature of the permitted activity, and will be set as a condition of the permit. Additionally, permit holders will be required to submit reports on the implementation of and activities conducted under the conservation plan.

Final Regulations and Changes From the Proposed Rule

The purpose of this final rule is to amend the existing regulations to allow NMFS to authorize incidental take permits for threatened, as well as endangered, species of sea turtles. The final regulations are identical to those published in the proposed rule. NMFS has determined that no changes to the text of the regulations are necessary.

The general permit procedures in 50 CFR part 220, as well as the endangered

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species permit requirements in 50 CFR part 222, apply to the application, issuance, modification, revocation, suspension, and amendment of an incidental take permit for threatened, as well as for endangered sea turtles.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved previously by the Office of Management and Budget (OMB) (OMB Control Number 0648–0230). The reporting burden for this collection is estimated to average approximately 80 hours for permit applications, 0.5 hours for certificate of inclusion applications and 0.5 hours for reports. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service (F/PR), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attn: PRA Project 0648–0230).

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have significant economic impact on a substantial number of small entities because the final rule establishes a discretionary permitting procedure that will, by itself, have no economic impact. As a result, a regulatory flexibility analysis was not prepared.

The AA prepared an EA for the proposed rule that concludes that the rule would have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: February 10, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(1) introductory text is revised and paragraph (e)(7) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * * (1) *General.* The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with the requirements of paragraphs (e)(1), (2), (3), and (6) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (e)(7) of this section.

* * * * *

(7) *Incidental-take permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited in § 227.71(a) of this chapter in accordance with section 10(a)(1)(B) of the Act (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to, the provisions of parts 220 and 222 of this chapter. Such permits may be issued for the incidental taking of both endangered and threatened species of sea turtles. This section supersedes restrictions on the scope of parts 220 and 222, including, but not limited to, the restrictions specified in §§ 220.3, 222.1, 222.2(a) and 222.22(a).

* * * * *

[FR Doc. 95–3816 Filed 2–15–95; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 625

[Docket No. 950206038–5038–01; I.D. #103194A]

RIN 0648–XX04

Summer Flounder Fishery; Final Specifications for 1995

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1995 summer flounder fishery.

SUMMARY: NMFS issues the final specifications for the 1995 summer flounder fishery, which include commercial catch quotas and mesh size requirements. The intent of this document is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the summer flounder resource. In order to comply with an Order issued by the U.S. District Court for the Eastern District of Virginia, this document adds 3.05 million lb (1.4 million kg) to the final commercial catch quota established under the implementing regulations.

EFFECTIVE DATE: February 10, 1995.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 625.

Section 625.20 specifies the process for setting annual management measures for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate. These measures include the following, which, with the exception of measure (1) below, are unchanged from the proposed 1995 specifications that were published in the **Federal Register** on December 2, 1994 (59 FR 61864); note that all quota figures are rounded for the convenience of the reader: (1) A coastwide commercial quota of 14.7 million lb (6.7 million kg); (2) a coastwide recreational harvest limit of 7.8 million lb (3.5 million kg); (3) no change from the present minimum commercial fish size of 13 inches (33 cm); and (4) no change in the present minimum mesh restriction of 5.5-inch (14.0 cm) diamond or 6-inch (15.2 cm) square.

Commercial Quota

The final 1995 coastwide commercial quota is changed from the amount (11.6 million lb; 5.3 million kg) contained in the proposed specifications. In order to comply with a court order issued on December 19, 1994, by the U.S. District Court for the Eastern District of Virginia, NMFS announces that an additional 3.05 million lb (1.4 million kg) are added to the commercial quota. The resulting 1995 coastwide commercial quota is 14.7 million lb (6.7 million kg).

The commercial coastwide quota is allocated among the states based on historic catch shares specified in the regulations. Table 1 presents the 1995 commercial quota (14,690,407 lb; 6,663,569 kg) apportioned among the states according to the percentage shares specified in § 625.20(d)(1). These state allocations do not reflect the adjustments required under § 625.20, if 1994 landings exceed the quota for any state. A notification of allocation adjustment will be published in the **Federal Register** if such an adjustment is necessary.

TABLE 1.—1995 STATE COMMERCIAL QUOTAS

State	Share (percent)	1995 quota (lb)	1995 quota (kg)
ME	0.04756	6,987	3,169
NH	0.00046	67	30
MA	6.82046	1,001,953	454,478
RI	15.68298	2,303,894	1,045,029
CT	2.25708	331,574	150,399
NY	7.64699	1,123,374	509,554
NJ	16.72499	2,456,969	1,114,462
DE	0.01779	2,614	1,186
MD	2.03910	299,551	135,874
VA	21.31676	3,131,519	1,420,433
NC	27.44584	4,031,905	1,828,841

Recreational catch data for 1994 are not yet available. The Council and ASMFC will consider modifications to the recreational possession limit and recreational season after a review of that information.

Comments and Responses

Twenty-nine comments were received concerning the proposed 1995 specifications from individuals, owners and employees of fishing businesses, Congressional representatives, the Council and industry organizations. One comment submitted by a fishing business was presented as a statement on behalf of 100 individuals associated with the business. The Council expressed concern that the recommended total catch may be too high. Twenty-eight of the commenters opposed the proposed commercial quota level, though their suggested alternatives varied. A few commenters suggested a less restrictive minimum-mesh requirement.

Comment: The Council notes the concern expressed by NMFS in the proposed rule that the recommended quota may not reasonably assure that the target fishing mortality rate will be achieved in 1995. The Council acknowledges that the recommended quota may be too high and states that the court order may negatively impact the likelihood of attaining the mortality target. The Council is also concerned that, if the fishery exceeds the target in 1995, it will reduce the allowable catch in 1996, when the target mortality rate is lowered by the FMP. The Council urges NMFS to take appropriate action to ensure that the mortality target is met in 1995.

Response: NMFS acknowledges that the 1995 catch limit may not assure attainment of the target fishing mortality rate. However, under the terms of the court order, NMFS must judge the Council's recommended quota independent of the court-ordered addition. The Council's recommended quota has a 50 percent probability of achieving the target fishing mortality rate, but the FMP does not provide a basis for setting the catch limit to achieve any particular level of probability of meeting or exceeding the target fishing mortality rate. NMFS will take whatever appropriate actions remain to contain mortality in the summer flounder fishery (e.g., work closely with the states to monitor landings accurately and enforce closures after quotas are attained).

Comment: Twenty-eight of the commenters believe that the proposed commercial quota level is too low, for a variety of reasons. They propose alternate commercial quotas that range from the 1993 quota level of 12.35 million lb (5.6 million kg) to 20 million lb (9.1 million kg). Many believe that there will be harmful economic impacts if the commercial quota is reduced from the 1994 level. Several believe that summer flounder stock abundance is underestimated and that NMFS is being overly cautious at the expense of the industry. The commenters give various examples to demonstrate that stock abundance is underestimated, including that more large fish are being landed than in the past, state quotas are filled quickly, and the most recent North Carolina trawl survey indicates a good 1994 year class.

Response: The quota has been raised for the reason noted above. NMFS strongly believes that the stock abundance estimate produced by the most recent assessment represents the best available scientific information on the stock as a whole. However, NMFS expects that the initial signs of stock rebuilding (e.g., more larger fish, increased abundance) may first be observed by harvesters. NMFS commits substantial resources toward collecting and compiling such observations from harvesters through biological sampling, interviews with captains, vessel logbooks and other methods. Once compiled throughout the range of the resource, quantifiable data on increased fish sizes and indicators of abundance are considered in the stock assessment. The observations that industry members make in 1994 will begin to be evaluated by scientists in 1995. It is important that all observations are brought together during the stock assessment process.

NMFS, the Council and the ASMFC are committed to building upon indications of positive change, such as those observed by the commenters, to the point where a healthy stock is reestablished. For example, while the results of the North Carolina trawl survey were not available in time to be

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incorporated into the assessment itself, those results were factored into the quota recommendation made by the Council and ASMFC. However, despite some localized improvements, the stock as a whole continues to decline. Therefore, NMFS does not agree that the commercial quota should be increased in 1995 above the level specified herein. Furthermore, NMFS believes that continued stock decline will result in more serious and comprehensive adverse economic consequences than the reduction in the quota from 1994 levels to 1995 levels.

Comment: One industry group reminds NMFS that the recent court decision holds that the requirement to use the best scientific information available is best met by utilizing the stock projection based on the mean estimate of recruitment and the number of age-1 fish.

Response: NMFS interprets this comment to mean that the proposed quota level is appropriate because it is based on the stock projection that assumed mean recruitment and number of age-1 fish.

Comment: Several commenters express support for a change from the current minimum mesh size of 5.5-inch (14 cm) diamond, 6-inch (15.2 cm) square. They support a minimum mesh size of 5-inch (12.7 cm) diamond or 5.5-inch (14.0 cm) square mesh, because they believe that 50 percent of 13-inch (33-cm) fish escape from nets under the current requirement.

Response: NMFS data show that more than 50 percent of the 13-inch (33-cm) fish will escape. However, it is the intent of the Council that both the commercial and recreational fisheries should target fish greater than or equal to 14 inches (35.5 cm) in length. This is the required, minimum size in the recreational fishery. The Council established a minimum size of 13 inches (33 cm) in the commercial fishery to allow fish of that size to be kept in order to minimize the discard mortality in the fishery. The minimum-mesh size selected is intended to result in a catch primarily composed of fish of 14 inches (35.5 cm) or more in size.

Classification

This action is authorized by 50 CFR part 625.

These final specifications are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–3815 Filed 2–10–95; 4:06 pm]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 950208040–5040–01; I.D. 021095A]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Eastern Aleutian District and Bering Sea; Prohibit Retention of Atka Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting the retention for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in these areas be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) in the Eastern Aleutian District and the Bering Sea subarea in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 10, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea was established by the final groundfish specifications published February 14, 1995, as 11,475 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention effective from 12 noon, A.l.t., February 10, 1995, until 12 midnight, A.l.t., December 31, 1995.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 10, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3814 Filed 2–10–95; 4:06 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 60, No. 32

Thursday, February 16, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AG50

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations governing the solicitation of Federal civilian and uniformed services personnel for contribution to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982). Private voluntary organizations and OPM's Inspector General have indicated a need for clarifying or changing current procedures for soliciting Federal employees in the workplace. These regulations propose a number of changes to improve procedural operations and accountability for the annual charitable solicitation campaign conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the Combined Federal Campaign.

DATES: Comments must be submitted on or before April 17, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Gerri Mason Hall, Counsel for Extragovernmental Affairs, U.S. Office of Personnel Management, 1900 E Street NW., Room 6H28, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Lee, Assistant Counsel for Extragovernmental Affairs, (202) 606–2564.

SUPPLEMENTARY INFORMATION: These regulations are proposed to implement a number of procedural changes to the operations of the Combined Federal Campaign (CFC). These proposed changes to the regulations include, but are not limited to:

More clearly defining the scope and meaning of workplace solicitations in the Federal government;

Identification of the circumstances where the Director may authorize solicitations of Federal employees in the workplace outside of the CFC;

Clarification of procedural requirements for charitable organizations seeking participation in the CFC;

Expanding local eligibility by defining and enumerating criteria for organizations that provide services on a statewide basis;

Authorizing the use of a "perpetual" payroll allotment (pledge card) that, once completed, would remain in effect until changed or cancelled by the donor-employee;

Removing all general designation options not required by statute.

Expanding the solicitation methods and the pool of potential donors.

These proposed regulations are consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it will only effect those charitable organizations that participate in the CFC.

Paperwork Reduction Act

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 3206–0131.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contribution, Government employee, Military personnel, Nonprofit organizations, Reporting and recordkeeping requirements.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to revise 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

Sec.
950.101 Definitions.
950.102 Scope of the Combined Federal Campaign.
950.103 Establishing a local campaign.
950.104 Local Federal Coordinating Committee responsibilities.
950.105 Principal Combined Fund Organization (PCFO) responsibilities.
950.106 PCFO expense recovery.
950.107 Lack of a qualified PCFO.
950.108 Preventing coercive activity.
950.109 Avoidance of conflict of interest.
950.110 Prohibited discrimination.

Subpart B—Eligibility Provisions

950.201 National list eligibility.
950.202 National list eligibility requirements.
950.203 Public accountability standards.
950.204 Local list eligibility.
950.205 Appeals.

Subpart C—Federations

950.301 National federations eligibility.
950.302 Responsibilities of national federations.
950.303 Local federations eligibility.
950.304 Responsibilities of local federations.

Subpart D—Campaign Materials

950.401 Campaign and publicity materials.
950.402 Pledge card.
950.403 Penalties.

Subpart E—Distribution of Undesignated Funds

950.501 Applicability.
950.502 Distribution of undesignated funds.
950.503 Review by the Director.

Subpart F—Miscellaneous Provisions

950.601 Release of contributor names.
950.602 Solicitation method.
950.603 Sanctions.
950.604 Records retention.

Subpart G—DoD Oversess Campaign

950.701 DoD overseas campaign.

Subpart H—CFC Timetable

950.801 Campaign schedule.

Subpart I—Payroll Withholding

950.901 Payroll allotment.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

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Subpart A—General Provisions

§ 950.101 Definitions.

Administrative Expenses, PCFO Expenses, Campaign Expenses, or *CFC Expenses* means all documented expenses identified in the PCFO application relating to the conduct of a local CFC and approved by the LFCC in accordance with these regulations.

Campaign Year means the calendar year in which Federal employees are solicited for contributions to the Combined Federal Campaign.

Combined Federal Campaign or *Campaign* or *CFC* means the charitable fundraising program established and administered by the Director of the Office of Personnel Management (OPM) pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program.

Designated Funds means those contributions which the contributor has designated to a specific charitable organization(s), federation(s), or general option(s).

Director means the Director of the Office of Personnel Management.

Domestic Area means the several United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Employee means any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service, uniformed service, foreign service, and the postal service.

Federation or *Federated Group* means a group of voluntary charitable human health and welfare organizations created to supply common fundraising, administrative, and management services to its constituent members.

International General Designation Option means that the donor wishes that his or her gift be distributed to all of the international organizations listed in the International Section of the campaign brochure in the same proportion as all of the international organizations received designations in the local CFC. This option will have the code IIII.

International Organization means a charitable organization that provides services either exclusively or in a substantial preponderance in the overseas area or primarily on behalf of non-U.S. citizens in the overseas area.

Local Federal Coordinating Committee or *LFCC* means the group of Federal officials designated by the Director to conduct the CFC in a particular community.

Organization or *Charitable Organization* means a private, non-profit, philanthropic, human health and welfare organization.

Overseas Area means the Department of Defense (DoD) Overseas Campaign which includes all areas other than those included in the domestic area.

Principal Combined Fund Organization or *PCFO* means the federated group or combination of groups, or a charitable organization selected by the LFCC to administer the local campaign under the direction and control of the LFCC and the Director.

Solicitation means any action requesting money, either by cash, check or payroll deduction, on behalf of charitable organizations.

Undesignated Funds means those contributions which the contributor has not designated to a specific charitable organization(s), federation(s), or the International General Designation Option.

§ 950.102 Scope of the Combined Federal Campaign.

(a) The CFC is the only authorized charitable fundraising drive in the Federal workplace. A campaign may be conducted during a 6 week period, as determined by the LFCC, from September 1 through December 15 at every Federal agency in the campaign community in accordance with these regulations. Except as provided in this section, no other solicitation on behalf of charitable organizations may be conducted in the Federal workplace. Upon written request, the Director may grant permission for solicitations of Federal employees in support of victims of cases of emergencies and disasters. Emergencies and disasters are defined as any hurricane, tornado storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world. No such permission will be granted for such solicitations during the period September 1 through December 15.

(b) These regulations do not apply to the collection of gifts-in-kind, such as food, clothing and toys, or to the solicitation of Federal employees outside of the Federal workplace as defined by the applicable Agency Head consistent with General Services Administration regulations 41 CFR 101–20.308, government ethics regulations 5 CFR part 2635, and any other applicable laws and/or regulations.

(c) The Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. Any disputes relating to the interpretation or implementation of this part may be submitted to the Director for resolution. The decisions and rulings of the Director are final for administrative purposes.

(d) Heads of departments or agencies may establish policies and procedures applicable to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members. Such solicitations are not subject to these regulations, and therefore do not require permission of the Director.

§ 950.103 Establishing a local campaign.

(a) The Director establishes and maintains the official list of local campaigns and the geographical area each covers. There is no prerequisite regarding the federal employee population needed to establish or maintain a CFC. However, rather than establishing or maintaining small campaigns, OPM encourages mergers and expansions of campaigns to promote efficiency and economy.

(b) The Director establishes an LFCC to govern the conduct of the local CFC. The LFCC will, whenever possible, be comprised of members of local Federal inter-agency organizations, such as Federal Executive Boards, Federal Executive Associations, Federal Business Associations or, in the absence of such organizations, self-organized associations of local Federal officials. These groups will include local Federal agency heads or their representatives. It will also include, wherever possible, representatives of employee unions and other employee groups. The LFCC Chair should be rotated among its members. For continuity, each LFCC should appoint a Vice Chair who would be expected to serve as the Chair in the following year.

(c) The agency head to each Federal installation within a campaign area shall:

(1) Become familiar with all CFC regulations,

(2) Cooperate with the representatives of the LFCC and PCFO in organizing and conducting the campaign,

(3) Initiate official campaigns within their offices or installations and provide support for the campaign, and

(4) Assure the campaign is conducted in accordance with these regulations.

(d) Once a campaign has been established, agency heads may not discontinue solicitation of Federal employees within their organization without the written approval of the Director.

(e) Any change in the geographical boundaries of local campaigns may be made only upon the express written permission of the Director.

(f) Each year the LFCC must establish the 6 week time period to solicit employees. Each campaign should not be conducted for more than a 6 week period. However, in unusual circumstances the LFCC may extend the campaign as local conditions require. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders or cash. Contractor personnel, credit union employees and other persons employed on Federal premises may make single contributions to the CFC through check or money order. Retired Federal employees may also make single contributions to the CFC through check or money order.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC.

§ 950.104 Local Federal Coordinating Committee responsibilities.

(a) All members of the LFCC should develop an understanding of campaign regulations and procedures. The LFCC is the central point of information regarding the CFC among Federal employees.

(b) The responsibilities of the LFCC include, but are not limited to, the following:

(1) Maintaining minutes of LFCC meetings and responding promptly to any request for information for the Director.

(2) Naming a campaign chairperson and notifying the Director when the chairperson changes.

(3) Determining the eligibility of local organizations that apply to participate in the local campaign. This is the exclusive responsibility of the LFCC and may not be delegated to the PCFO.

(4) Ensuring that the list of charities found by the Director to be nationally eligible to participate in all local campaigns is reproduced in the local brochure in accordance with these regulations.

(5) Ensuring that the local brochure and pledge card are produced in accordance with these regulations and instructions for the Director.

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. Federal agency heads are encouraged to grant administrative leave to all loaned executives appointed to assist in the conduct of the CFC. Federal loaned executives are prohibited from working on non-CFC fundraising activities.

(7) Establishing a thorough network of employee keyworkers and volunteers; and participating in interagency briefing sessions and kick-off meetings.

(8) Ensuring that, to the extent reasonably possible, every employee is given the opportunity to participate in the CFC, and ensuring employee designations are honored.

(9) Ensuring that the PCFO includes in keyworker training instructions to encourage employees to designate the charitable organizations they wish to receive their donations and specific information on how general designation monies are distributed.

(10) Ensuring that contributions are distributed in accordance with the method described in these regulations.

(11) Ensuring that no employee is coerced in any way to participate in the campaign.

(12) Bringing allegations of coercion to the attention of the Director and the employee's agency and providing a mechanism to review employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices should be responsible for information employees of the proper channels for pursuing such complaints.

(13) Notifying the Director of any other significant problems or controversies concerning the campaign that the LFCC can not resolve by applying these regulations. The LFCC must abide by the Director's decisions on all matters concerning the campaign.

(14) Ensuring the PCFO selected or retained does not use the services of consulting firms, advertising firms or similar business organizations to perform the policy-making or decision-making functions in the CFC. A PCFO may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(15) Ensuring that the activities and functions required of the PCFO are kept separate from any non-CFC operations of the organization. The LFCC must verify that the PCFO keeps and maintains CFC financial records and interest bearing bank accounts separate from the PCFO's non-CFC financial records and bank accounts.

(16) Monitoring the work of the PCFO, and inspecting closely the annual audit required of the PCFO pursuant to § 950.105(d)(9) for compliance with these regulations.

(17) Authorizing to the PCFO the administrative fee described in § 950.106(d) and reimbursement of only those campaign expenses that are legitimate CFC costs and are adequately documented. Total documented expenses may not exceed the approved campaign budget by more than 10 percent.

(c) The LFCC must annually solicit applications for the PCFO via public notice no later than February 1 of each calendar year. Costs incurred in providing the public notice should be added to the PCFO budget for the current campaign year as an administrative cost. The LFCC shall select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the local committee as described in § 950.105. The LFCC shall consider the efficiency and effectiveness of the campaign as the primary factors in selecting a PCFO.

(d) A federated group(s) or charitable organization may be barred from serving as PCFO for 1 year if found by the Director to have violated these regulations. A federated group(s) or charitable organization serving as PCFO will be notified of the Director's intent to bar and have an opportunity to submit written comments prior to its becoming effective. The Director's decision as to debarment shall be communicated in writing to the LFCC and PCFO, and the LFCC shall not consider an application from such group(s) or organization to serve as the PCFO during terms of debarment.

§ 950.105 Principal Combined Fund Organization (PCFO) responsibilities.

(a) Only federations, charitable organizations or combinations thereof may serve as the PCFO.

(b) The primary goal of the PCFO is to conduct an effective and efficient campaign in a fair and even-handed manner aimed at collecting the greatest amount of charitable contributions possible. Therefore, PCFO's should afford federated groups and agencies with representatives in the local campaign area adequate opportunity to offer suggestions relating to the operation of the campaign, printed campaign material, and training. If requested in writing to either the LFCC or PCFO, federated groups and agencies must be given the opportunity to attend all campaign meetings, kick-off events,

and training sessions. The PCFO must provide representatives of federated groups, agencies and the general public the opportunity to review at the PCFO office all reports, budgets, audits, training materials, and other records pertaining to the CFC.

(c) Any federation, charitable organization or combinations thereof wishing to be selected for the PCFO must submit to the LFCC no later than March 1 of each year an application that includes:

(1) A written campaign plan sufficient in detail to allow the LFCC to determine if the applicant could administer an efficient and effective CFC. The campaign plan must include a CFC budget that details all estimated costs required to operate the CFC. The budget may not be based on the percentage of funds raised in the local campaign.

(2) A statement signed by the applicant's local director or equivalent pledging to:

(i) administer the CFC fairly and equitably,

(ii) conduct campaign operations, such as training, kick-off and other events, and fiscal operations, such as banking, auditing, reporting and distribution separate from the applicant's non-CFC operations, and

(iii) abide by the directions, decisions, and supervision of the LFCC and/or Director.

(3) A statement signed by the applicant's local director or equivalent acknowledging the applicant is subject to the provisions of § 950.403 and § 950.603.

(d) The specific responsibilities of the PCFO include but are not limited to:

(1) Honoring employee designations.

(2) Helping to ensure no employee is coerced in any way regarding participation in the campaign and that allegations of coercion are brought to the attention of the appropriate Federal officials.

(3) Training agency loaned executives, coordinators, and keyworkers in the methods of non-coercive solicitation. This training must be completely separate from training given for other types of charitable campaign drives. Additionally, keyworkers should be trained to check to ensure the pledge card is legible on each copy, verify arithmetical calculations, and ensure the block on the pledge card concerning the release of the employee's name and address is completed fully.

(4) Ensuring that no employee is questioned in any way as to his or her designation or its amount except by keyworkers in accord with paragraph (d)(3) of this section.

(5) Preparing pledge cards and brochures that are consistent with these regulations and instructions by the Director.

(6) Honoring the request of employees who indicate on the pledge card that their names not be released to the organization(s) that they designate.

(7) Maintaining a detailed schedule of its actual CFC administrative expenses with, to the extent possible, itemized receipts for the expenses. The expense schedule must be in a format that can be reconciled to the PCFO's budget submitted in accordance with paragraph (c)(1) of this section

(8) Keeping and maintaining CFC financial records and interest bearing bank accounts separate from the PCFO's internal organizational financial records and bank accounts. Interest earned on all CFC accounts must be distributed in the same manner as undesignated funds pursuant to § 950.502. All financial records and bank accounts must be kept in accordance with generally accepted accounting principles.

(9) Submitting to the LFCC an audit of collections and disbursements for each campaign managed no later than June 15 of the year in which the last disbursement is made. For example, for the 1994 CFC the audit of the 1994 campaign must be submitted to the LFCC no later than June 15, 1996. The audit must be performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(10) Absorbing the cost of any reprinting of campaign materials due to its noncompliance with these regulations, embezzlement, or loss of funds. A PCFO must also absorb campaign costs exceeding 10 percent of the approved budget.

(11) Designing and implementing CFC awards programs which are accessible to all employees and which reflect the Government's commitment to non-coercion. Awards to Federal agencies or employees by individual federations or organizations for CFC accomplishments is prohibited.

(12) Communicating to all local applicants the date, time, and place of the open public meeting where the LFCC will announce eligibility decisions.

(13) Producing any documents or information requested by the LFCC and/or the Director within 10 calendar days of the receipt of that request.

(14) Responding in a timely and appropriate manner to reasonable inquiries from participating organizations.

§ 950.106 PCFO expense recovery.

(a) The PCFO shall recover from the gross receipts of the campaign its expenses, approved by the LFCC, reflecting the actual costs of administering the local campaign. The amount recovered for campaign expenses shall not exceed 10 percent of the estimated budget submitted pursuant to § 950.105(c)(1) unless approved by the Director.

(b) The PCFO may only recover campaign expenses from receipts collected for that campaign year. Expenses incurred preparing for and conducting the CFC in the fall cannot be recovered from receipts collected in the previous year's campaign. The PCFO may absorb the costs associated with conducting the campaign from its own funds and be reimbursed, or obtain a commercial loan to pay for costs associated with conducting the campaign. If the commercial loan option is used, the amount of a reasonable rate of interest is an allowable campaign expense, subject to the approval of the LFCC when the PCFO budget is submitted.

(c) The campaign expenses will be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

(d) In addition to recovering campaign expenses, PCFO's shall also collect a fee of 15 percent of the undesignated funds in each local campaign for performing the functions of PCFO.

§ 950.107 Lack of a qualified PCFO.

There is no authority in statute or regulation for an LFCC or any Federal official or employee to assume the duties and responsibilities of the PCFO. In the event that there is no qualified PCFO, the LFCC Chairman will promptly inform the Director in writing. The Director will assist the LFCC in merging the campaign with an adjacent campaign that has a qualified PCFO or identifying an eligible organization to function as the campaign's PCFO. If the LFCC's of the adjacent campaigns elect not to merge and a qualified PCFO cannot be found, the local CFC will be canceled. No workplace solicitation of any Federal employee in the campaign area is authorized and payroll allotments cannot be accepted and honored during the duration of the cancellation of the CFC.

§ 950.108 Preventing coercive activity.

True voluntary giving is fundamental to Federal fundraising activities. Actions that do not allow free choices or create the appearance employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. Activities contrary to the non-coercive intent of Federal fundraising policy are not permitted in campaigns. They include, but are not limited to:

(a) Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency to perform the usual activities associated with the campaign kick-off and to demonstrate his or her support of the CFC in employee newsletters or other routine communications with the Federal employees.

(b) Supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation. Supervisors may be given nothing more than summary information about the major units that they supervise.

(c) Setting of 100 percent participation goals.

(d) Establishing personal dollar goals and quotas.

(e) Developing and using lists of non-contributors.

(f) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under § 950.601.

(g) Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

§ 950.109 Avoidance of conflict of interest.

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fundraising program coordinator, must not participate in any decisions where, because of membership on the board or other affiliation with a charitable organizations, there could be or appear to be a conflict of interest under any statutes, Executive order, or applicable agency standards of conduct. Under no circumstances may an LFCC member affiliated with an organization applying for inclusion on the local list, participate in the eligibility determinations.

§ 950.110 Prohibited discrimination.

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the management and the execution of the CFC. Nothing herein denies eligibility to any organization, which is otherwise eligible under this part to participate in the CFC, merely because such organization is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

Subpart B—Eligibility Provisions

§ 950.201 National List eligibility.

(a) The Director shall annually:

(1) Determine the timetable and other procedures regarding application for inclusion on the national list,

(2) Determine which organizations among those that apply qualify to be part of the national list and then provide the national list of qualified organizations to all local campaigns.

(b) The national list shall be reproduced in all local brochures in accordance with these regulations. The list will include each organization's national list number code. These number codes must be faithfully reproduced in the local brochures.

(c) An organization on the national list may elect to be removed from the national list and have its local affiliate or subunit listed on the local list of organizations in its stead. For the local affiliate or subunit to be listed in lieu of the organization on the national list, the following procedures must be followed:

(1) The organization must send a letter to the local affiliate or subunit in that particular CFC waiving its listing on the national list so that is eligible local affiliate or subunit on the local list of organizations will appear as that organization's sole list in the CFC Brochure.

(2) The local affiliate or subunit will include in its application to the LFCC a copy of the letter authorizing the removal of the organization from the national list as well as all the required materials for completing a local organization application.

(3) Upon finding the local organization eligible, the waiver letter from the organization on the national list authorizes the LFCC to delete that organization from the national list.

§ 950.202 National List of eligibility requirements.

All organizations seeking national list eligibility must:

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an "800" telephone number or by sending materials via the U.S. Mails or a combination thereof. In addition, this requirement cannot be met by providing a service, benefit, assistance or program activity in only one state to recipients who live in a different state. A schedule listing those states (minimum 15) or the foreign countries (minimum 1) where the program activities have been provided and a detailed description of the activities in each state or foreign country must be included with the application. Clear evidence must be submitted that the services, benefits, assistance or activities were provided in each state or foreign country.

(b) Certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170. A copy of the letter from the Internal Revenue Service granting tax-exempt status under the Internal Revenue Code, 26 U.S.C. 501(c)(3) must be included with the application.

(c) Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h).

§ 950.203 Public accountability standards.

(a) To insure organizations wishing to solicit donations from Federal employees in the workplace are portraying accurately their programs and benefits, several standards and certifications must be met annually by each organization seeking national list eligibility. Each organization wishing to participate must:

(1) Certify that the organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. The organization's application must provide documentation describing the human health and welfare benefits provided by the organization within the previous year.

(2) Certify that it accounts for its funds in accordance with generally accepted accounting principles and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. Such audit must show expenses by function. A copy of the organization's most recent annual audit must be included with the application. The audit must cover the fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying. For example, the audit included in the 1994

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application must cover the fiscal period ending on or after June 30, 1992.

(3) Provide a completed copy of the organization's IRS Form 990, including signature, with the application regardless of whether or not the IRS requires the organization to file this form. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes. The IRS Form 990 and audit must cover the same fiscal period and, if revenue and expenses on the two documents differ, these amounts must be reconciled in an accompanying signed statement by the certified public accountant who completed the audit.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administration and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to § 950.203(a)(3), by adding the amount spent on "management and general" (line 14) to "fundraising" (line 15) and then dividing the sum by "total revenue" (line 12).

(i) If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable due to special circumstances. It must provide an explanation with its application and also include a formal plan to reduce these expenses below 25 percent.

(i) The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances. Failure to reduce the expenses to the 25 percent level within one application year will render the organization ineligible for the succeeding campaign.

(5) Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and, a majority of which serve without compensation. A list of the organization's Board of Directors and a description of each Directors' participation in the conduct of the organization's affairs, such as official positions and committee memberships, must be included with the application.

(6) Certify that the organization's fundraising practices protect against unauthorized use of its CFC contributor lists as described in § 950.601(d).

(7) Certify that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims.

(8) Certify that contributions are effectively used for the announced purposes of the charitable organization.

(9) Certify under which governmental entity the charitable organization is chartered, incorporated or organized (congressionally chartered or the state in which it is registered).

(10) Certify that the organization has received no more than 80 percent of its total support and revenues from government sources as computed by dividing line 1c by line 12 from the IRS Form 990 submitted pursuant to § 950.203(a)(3).

(11) Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the orgranization's activities and supporting services and identifies its directors and chief administrative personnel. A copy of the organization's annual report must be included with the application. The annual report must cover the fiscal year ending not more than 18 months prior to January of the campaign year to which the organization is applying. A more frequently published document, such as a quarterly newsletter, may be used to meet this requirement provided that such document is available to the general public upon request and describes the organization's activities and supporting services and identifies its directors and chief administrative personnel.

(12) Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list.

(13) Provide a statement in 25 words or less describing the program activities of the charitable organization. The 25-word statement need not include the organization's name. In addition, organizations must provide a telephone number, dedicated solely for the organization's use, through which the donors may receive further information about the organization. Except as provided in § 950.401(k), this information will be included in the campaign brochure listing of agencies along with the organization's administrative and fundraising percentage computed pursuant to § 950.203(a)(3).

(b) The Director shall review these applications for accuracy, completeness, and compliance with these regulations. Failure to supply any of this information may be judged a failure to comply with the requirements of public accountability, and the charitable organization may be ruled ineligible for inclusion on the national list.

(c) The Director may request such additional information as the Director deems necessary to complete these reviews. An organization that fails to comply with such requests within 10 calendar days from receipt of the request may be judged ineligible.

(d) The required certifications and documentation must have been completed and submitted prior to the application filing deadline. Applications received that are incomplete may not be perfected during the appeal process described in § 950.205.

(e) The Director may waive any of these standards and certifications upon a showing of extenuating circumstances.

§ 950.204 Local list eligibility.

(a) The LFCC shall establish an annual application process consistent with these regulations for organizations that wish to be listed in the local brochure.

(b) The requirements for an organization to be listed in the local brochure shall include the following:

(1) An organization must demonstrate to the satisfaction of the LFCC, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence.

(i) *Substantial local presence* is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an 800 telephone number or the U.S. Mails or a combination thereof.

(ii) *Substantial statewide presence* is defined as providing or conducting real services, benefits, assistance or program activities covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an 800 telephone number or the U.S. Mails or a combination thereof.

(2) An organization seeking local eligibility also must meet all requirements for national list eligibility in § 950.202 and § 950.203, with the following two exceptions:

(i) Local charitable organizations are not required to have provided services or benefits in 15 states or a foreign country over the prior three years,

(ii) Local charitable organizations with annual revenue less than $100,000 are not required to be audited in accordance with generally accepted auditing standards and, hence, are not required to submit an audit report. Annual revenue is determined by line 12 of the IRS Form 990 covering the organization's most recent fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying.

(3) An organization seeking local eligibility based upon a substantial statewide presence, need only submit a complete application to the LFCC of the largest campaign in the state, as determined by OPM. OPM will annually publish a list of the largest campaigns in each state. The decision of the aforementioned LFCC, or OPM in the event of an appeal, is binding upon all other campaigns in the state. The applicant organization must forward a copy of the LFCC's decision to any other campaigns in which it would like to participate as a statewide organization.

(c) Family support and youth activities certified by the commander of a military installation as meeting the eligibility criteria contained in § 950.204(d) may appear on the list of local organizations and be supported from CFC funds. Family support and youth activities may not participate in the CFC as a member of a federation.

(d) A family support and youth activity must:

(1) Be a nonprofit, tax-exempt organization that provides family service programs or youth activity programs to personnel in the Command. The activity must not receive a majority of its financial support from appropriated funds.

(2) Have a high degree of integrity and responsibility in the conduct of their affairs. Contributions received must be used effectively for the announced purposes of the organization.

(3) Be directed by the base Non-Appropriated Fund Council or an active voluntary board of directors which serves without compensation and holds regular meetings.

(4) Conduct its fiscal operations in accordance with a detailed annual budget, prepared and approved at the beginning of the fiscal year. Any significant variations from the approved budget must have prior authorization from the Non-Appropriated Fund Council or the directors. The family support and youth activities must have accounting procedures acceptable to an installation auditor and the inspector general.

(5) Have a policy and practice of nondiscrimination on the basis of race, color, religion, sex or national origin applicable to persons served by the organization.

(6) Prepare an annual report which includes a full description of the organization's activities and accomplishments. These reports must be made available to the public upon request.

(e) Within 15 business days after the closing date of the application period, the LFCC shall communicate its eligibility decisions at an open public meeting. The open public meeting date, place, and time must be communicated to local applicant organizations during the application process and in the public notice section of principal local newspaper(s). The open public meeting is the only notification local organizations will receive regarding their original applications. At the meeting, LFCC's must provide written explanations to an organization for its denial of its application and the procedures and deadline for appealing the decision. LFCC's may authorize PCFO's to release eligibility determinations to applicant organizations via telephone, after the open public meeting. This has no affect on the deadline for LFCC's to receive local appeals. Applicants denied eligibility may appeal in accordance with § 950.205.

(f) No LFCC may print the campaign brochure while there are appeals of eligibility decisions from their campaign pending with the Director. LFCC's are obligated to check with OPM 21 calendar days after the mailing of the local appeal decision as to whether the Director is on notice of a pending timely appeal.

§ 950.205 Appeals.

(a) Organizations who apply and are denied eligibility for inclusion on the national list will be notified of the Director's decision by registered or certified mail of the U.S. Postal Service. Organizations may appeal the Director's decision by submitting a written request to reconsider the denial to the Director. This request must be received within 10 business days from the date of receipt of the Director's decision to deny eligibility and shall be limited to those facts justifying the reversal of the original decision. Petitions for reconsideration may not be used to supplement applications that had missing or outdated documents, and any such documents submitted with the petition will not be considered.

(b) Applicants denied listing in the local brochure must first appeal in writing to the LFCC to reconsider its original decision. Such an appeal must be received by the LFCC within the 7 business days from the date of the open public meeting announcing local eligibility decisions. The LFCC must consider all timely appeals and notify the appealing organization within a reasonable time period, not to exceed 22 business days from the date of the open public meeting. Denial of the appeal by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt (PS Form 3811). Approval of local appeals may be sent via U.S. Postal Service regular first class mail.

(c) A local applicant which is unsuccessful in its appeal to the LFCC may appeal to the Director. All appeals must:

(1) Be in writing;

(2) Be received by the Director within 10 business days of the date of receipt of the letter from the LFCC denying eligibility on appeal;

(3) Include a statement explaining the reason(s) why eligibility should be granted;

(4) Include a copy of the letter from the LFCC disapproving the original application, the organization's appeal to the LFCC, and the letter from the LFCC denying the appeal.

(d) If an organization fails to file a timely application or a timely appeal of an adverse eligibility determination in accordance with these regulations, such application or appeal to OPM will be dismissed as untimely.

(e) Appeals to the Director may not be used to supplement original applications that had missing or outdated documents. Any such supplemental documents will not be considered. Such appeals shall be limited to those facts justifying the reversal of the original decision.

(f) The Director's decision is final for administrative purposes.

Subpart C—Federations

§ 950.301 National federations eligibility.

(a) The Director may establish national federations that conform to the requirements of these regulations and are eligible to receive designations.

(b) By applying for inclusion in the CFC, federations consent to allow the Director complete access to it and its members' CFC books and records and to

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respond to requests for information by the Director.

(c) An organization may apply to the Director for inclusion as a national federation to participate in the CFC if the applicant has, as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202 and § 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status, unless requested by the Director.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of § 950.202 and § 950.203 to be included on the national list. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for national federation status must annually certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the national list. Applicants must provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and that it is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That it does not employ in its CFC operations the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform its policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(f) The Director will notify a federation if it is determined that the federation does not meet the eligibility requirements of § 950.301(e). A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

(h) Two organizations—American Red Cross and United Service Organization—are exempt from the 15-member requirement of § 950.301(c).

§ 950.302 Responsibilities of national federations.

(a) National federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) The Director may elect to review, accept or reject the certifications of the eligibility of the members of the national federations. If the Director requests information supporting a certification of national eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of national eligibility of that member.

(c) The Director may elect to decertify for up to one campaign year a federation which makes a false certification, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. This presumption may be overcome by evidence presented at the hearing.

(d) The failure of a national federation to respond in a timely fashion to a request by the Director for required information or cooperation in an investigation or a settlement of disbursements may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

§ 950.303 Local federations eligibility.

(a) LFCC's must approve local federations that conform to the requirements of these regulations.

(b) By applying for inclusion in the CFC, federations consent to allow the LFCC and Director complete access to it and its members' CFC books and records and to respond to requests for information by the LFCC, the Director.

(c) An organization may apply to the LFCC for inclusion as a local federation if the applicant has as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202, § 950.203, and § 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of §§ 950.202, 950.203 and 950.204 to be included on the Local List. The LFCC or the Director may require any member organization of a local federation to supply independent evidence of its eligibility. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for local federation status must certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the Local List and provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the annual audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That it does not employ, in its CFC operations, the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform the policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its ministerial tasks.

(f) The LFCC will notify a federation if it is determined that the federation does not meet the eligibility requirements of § 950.301(e). A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

§ 950.304 Responsibilities of local federations.

(a) Local federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) LFCC's may elect to review, accept or reject the certifications of the eligibility of the members of local federations. If the LFCC requests information supporting a certification of local eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of local eligibility.

(c) The Director, upon recommendation by the LFCC, may elect to decertify a federation which makes a false certification for up to one campaign year, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the hearing.

(d) The failure of a local federation to respond in a timely fashion to a request by the Director or the LFCC for required information or cooperation in an investigation may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

Subpart D—Campaign Materials

§ 950.401 Campaign and publicity materials.

(a) The specific campaign and publicity materials, such as the official brochure, will be developed locally, except as specified in these regulations. All materials must be reviewed by the LFCC for compliance with these regulations and will be printed and supplied by the PCFO. Any disputes over local materials will be resolved by the LFCC. All publicity materials must have the approval of the LFCC before being used. Federations must notify the PCFO in writing of their desire to participate in the development of campaign and publicity materials. The PCFO must respond in a timely manner to a federation's request to participate in the development of campaign and publicity materials. Federations must also respond in a timely fashion in the development of campaign and publicity materials.

(b) During the CFC solicitation period, participating CFC organizations may distribute bona fide educational materials describing its services or programs. The organization must be granted permission by the Federal agency installation head, or designee to distribute the material. CFC Coordinators, Keyworkers or members of the LFCC, are not authorized to grant permission for the distribution of such materials. If one organization is granted permission to distribute educational materials, then the Federal agency installation head must allow any other requesting CFC organization to distribute educational materials.

(c) Organizations and federations are encouraged to publicize their activities outside Federal facilities and to broadcast messages aimed at Federal employees in an attempt to solicit their contributions through the media and other outlets.

(d) LFCC's are further authorized to permit the distribution by organizations of promotional pamphlets to Federal personnel in public areas at or near Federal workplaces in connection with the CFC, provided that the manner of distribution accords equal treatment to all charitable organizations furnishing such pamphlet for local use, and further provided that no such distribution shall utilize Federal personnel on official duty or interfere with Federal government activities. LFCC members and other campaign personnel are to be particularly aware of the prohibition of assisting any charitable organization or federated group in distributing any type of literature, especially during the campaign period. Nothing in this section shall be construed to require an LFCC to distribute or arrange for the distribution of any material other than the Campaign Brochure and the pledge card.

(e) The Campaign Brochure and pledge card is the official CFC information package and shall be made available to all potential contributors. All CDC Brochures must inform employees of their right to make a choice to contribute or not to contribute; to designate or not to designate; and to give a confidential gift in a sealed envelope.

(f) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. The package should focus on the CFC without undue use of charitable organization symbols and logos or other distractions that compete for the donor's attention. Extraneous instructions concerning the routing of forms, tallying of contributor's receipts, and similar reports, which are primarily for keyworkers must be avoided.

(g) The following applies specifically to the campaign brochure:

(1) Contributor's Information Section will include:

(i) A description of the CFC arrangement and explain the payroll deduction privilege. It will clearly state that the Federal donor can direct his or her gift to specific charitable organizations or federations of his or her choice, or to the international general designation option, and urge them to do so. It will further explain that failure to designate a specific organization or federation will result in the undesignated donation being distributed proportionately to all recipient organizations in the local campaign, minus a 15 percent administration fee to the PCFO.

(ii) A statement that the donor may only designate charitable organizations or federations that are listed in the brochure and that write-ins are prohibited.

(iii) Instructions as to how an employee may obtain more specific information about the programs and the finances of the organizations participating in the campaign.

(iv) A description of employees' rights to pursue complaints of undue pressure or coercion in Federal fundraising activities. The Campaign Brochure will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization

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handling such complaints in their respective Federal agencies.

(2) Organization Listing Section.

(i) The listing of organizations shall be in three major divisions. The first is referred to as introductory pages, the second shall be labelled national list and will consist of a faithful reproduction of the list of national and international organizations provided by OPM as described in § 950.201(b). The third division will consist of the Local List. In odd-numbered campaign years the Local List shall appear before the national list and after the introductory pages. In even-numbered campaign years the national list shall appear before the Local List and after the introductory pages. The order of the listing of the federated and unaffiliated organizations within the National and Local Lists will be determined by a random drawing. The order of organizations within each federation will be determined by the federation. The order of organizations within the unaffiliated lists will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of their services and programs, plus a telephone number for the Federal donor to request further information about the group's services, benefits, and administrative expenses. Each listing will include a statement of the percentage of the organization's total receipts and revenues that are used for administration and fundraising. Neither the percentage of administrative and fundraising expense, nor the telephone number count toward the 25-word statement.

(ii) Each national federation and charitable organization will be assigned a code number by OPM. Local federations and local charitable organizations will be assigned code numbers by the LFCC. At the beginning of each federated group's listing will be the federation's name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the brochure where the unaffiliated agencies are listed will begin with the titles National Unaffiliated Organizations, International Unaffiliated Organizations and Local Unaffiliated Organizations respectively.

(iii) Preceding any other listing of the eligible organizations, the Organization Listing Section will begin with the heading Definition of a Federation followed by this definition of a federation: A federation is a group of voluntary charitable human health and welfare organizations established for the purpose of providing common fundraising, administrative, and management services to its members. Federations may be either national, representing national and/or international organizations, international, representing only international organizations; or local, representing local and/or regional organizations. If you wish to designate all or some portion of your contribution to a federation, record that federation's corresponding code number in one of the boxes on your pledge card. Contributions designated to a federation will be shared in accordance with the federation's policy.

(iv) In even-numbered campaign years, immediately following the definition of a federation will be the heading National Federations which will be followed by the list of all the national federations. Following the list of national federations will be the list of all the international federations. Immediately following the end of that list the heading, Local Federations will begin the list of local federations. In odd-numbered campaign years, the local federations will immediately follow the definition of a federation. After each federation will be the statement, Federation and federation member listings begin on page _____.

(v) Immediately following the list of federations will be the heading, Unaffiliated Organizations. This section will inform the donor on which pages the list of national, international and local unaffiliated organizations begins.

(vi) Immediately following the unaffiliated section will be the heading, International General Designation Option. This option will include the following explanation and the code for designating it: "IIII—All Organizations in the International Section of the national list. I request that my gift be shared among all the international organizations listed in the International Section of the Organization Listing in the same proportion that they received designations."

(vii) Immediately following the International General Designation Option will be the heading Undesignated Funds. Beneath this heading the following explanation of the distribution of undesignated funds will appear: "Even if you choose not to designate to a specific organization or federation, your contribution will still be accepted. These undesignated funds will be distributed to all organizations in the brochure in the same proportion that the organizations and federations received designations in the CFC."

(viii) The international general designation option on the introductory pages will be printed in the same format and font as the organizations listed in the brochure. No special prominence or emphasis may be placed on the federations listed.

(h) Pledge Card. The pledge card as described in § 950.402 will be distributed with the campaign Brochure.

(i) Omission of an eligible charitable organization from the Brochure may require that all Brochures be reprinted and redistributed. The Director or LFCC may direct that the cost of such reprinting and redistribution be borne by the PCFO or charged to CFC administrative expenses.

(j) Dual listing. Listing of a national organization, as well as its local affiliate organization, is permitted. However, a national organization may only waive its listing in the national section of the brochure in favor of its eligible local affiliate. The local affiliate must include in its application the written waiver from its national organization.

(k) Multiple listing. Each national or local organization must individually meet all of the eligibility criteria and submit independent documentation as required in § 950.202, § 950.203 or § 950.204. Once an organization is deemed eligible, it is entitled to only one listing in the CFC Brochure, regardless of the number of federations to which that organization belongs.

(l) The LFCC may omit the 25-word program description from the CFC Brochure if, in the immediately preceding campaign year, contributions received in the local CFC totalled less than $100,000.

§ 950.402 Pledge card.

(a) The Director will make available each campaign year at least one model pledge card which shall be faithfully reproduced at the local level. This will be the only authorized pledge card for use in that year's CFC.

(b) Campaigns may incorporate additional giving levels to the Director's authorized pledge card. Campaigns may also include their award recognition program. No further modifications to the pledge card are permitted unless approved in advance by the Director.

(c) An employee may not make a designation to an organization not listed in the Brochure. In addition, an employee may not make a CFC contribution to an organization listed in the Brochure of a campaign covering a geographic location different from the campaign where the employee works. Designations made to organizations not listed in the Brochure are not invalid, but will be treated as undesignated funds and distributed accordingly.

(d) In the event the PCFO receives a pledge card that has designations that add up to less than the total amount pledged, the PCFO must honor the total amount pledged and treat the excess amount as undesignated funds. In the event that a PCFO received a pledge card that has a total amount pledged that is less than the sum of the individual designations, the PCFO must honor the designations by assigning a proportionate share of the total gift to each organization designated. For example, if an employee indicates a total gift of $100 in the upper portion of the pledge card, but designates $25 each to five organizations in the lower part of the pledge card, the PCFO must adjust each organization's designation to $20.

§ 950.403 Penalties.

A PCFO's failure to comply with subpart D of these regulations may result in either disqualification from future service as PCFO, disqualification as a participating federation, or both penalties. These penalties may only be imposed after a hearing on the record and communication of the Director's decision in writing.

Subpart E—Distribution of Undesignated Funds

§ 950.501 Applicability.

The distribution of undesignated funds described in § 950.401(g)(2)(vii) and § 950.502 applies to all domestic area campaigns. It does not apply to the DOD Overseas Campaign.

§ 950.502 Distribution of undesignated funds.

The PCFO shall collect from undesignated funds a 15 percent administration fee for performing the services of PCFO as set forth in § 950.106(d). All remaining undesignated funds shall be distributed to all of the organizations in the CFC Brochure in the same proportion that they received designations in the campaign.

§ 950.503 Review by the Director.

The Director may alter an LFCC's distribution of undesignated funds:

(a) To reverse any allocation to ineligible organizations;

or

(b) To enforce the distribution method described in §§ 950.401(g)(2)(vii) and 950.502.

Subpart F—Miscellaneous Provisions

§ 950.601 Release of contributor names.

(a) The pledge card, designed pursuant to § 950.402, must allow an employee to indicate if the employer does not wish his or her name and home address forwarded to the charitable organization or organizations designated. A PCFO's failure to honor an employee's wish may result in the decertification of the PCFO.

(b) The pledge card will direct an employee to provide his or her complete home address on the pledge card should he or she wish his or her name and home address released to organizations receiving their donations.

(c) It is the responsibility of the PCFO to forward the names and addresses of employees who have indicated that they wish their names be forwarded, to the recipient organization directly, if the organization is unaffiliated, and to the organization's federation if the organization is a member of a federation. The PCFO may not make any other use of these employees' names and addresses.

(d) Recipient organizations that receive the names and addresses of employees must segregate this information from all other lists of contributors. This segregated list may not be sold or in any way released to anyone outside of the recipient organization. Federations may not use a member organization's list for its own purposes or share its member's lists among federation members. Failure to protect the integrity of this information may result in penalties up to and including permanent expulsion from the CFC.

(e) Organizations must cooperate fully with OPM investigations into the care and appropriate use of these lists. Should an organization ignore or fail to respond to OPM's requests for cooperation or hamper an investigation, the Director may propose that the organization be suspended or expelled from the CFC. The Director will consider any response in issuing a decision.

§ 950.602 Solicitation methods.

(a) Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Campaign kick-offs, victory events, awards, and other non-solicitation events to build support for the CFC are encouraged.

(b) Special CFC fundraising events, such as, raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are prohibited unless approved by the appropriate agency head or government official consistent with agency ethics regulations.

(c) In all approved special fundraising events the donor must have the option of designating to a specific participating organization or federation or be advised that the donation will be counted as an undesignated contribution and distributed according to these regulations.

§ 950.603 Sanctions.

(a) Sanctions not specifically provided for elsewhere in these regulations, may be imposed on an organization, federation or PCFO for violating any provisions of these regulations, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction, up to and including permanent expulsion from the CFC, based on a progressive schedule which is related to the severity of the violation. In determining the appropriate sanction, the Director will consider all elements such as previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director shall provide written notification to the organization, federation or PCFO regarding the alleged violation and of the intent to impose a sanction. Prior to implementation of sanctions under this section, the organization, federation or PCFO shall be provided an opportunity to address in writing why the sanctions should not be imposed. This submission must be received within 10 calendar days from the date of receipt of the Director's notification letter.

(b) At the Director's discretion, PCFO's and Federations may be directed to suspend distribution of current and future CFC donations from Federal employees to recipient organizations. Federations and PCFO's shall immediately place suspended contributions in an interest bearing account until directed to do otherwise.

§ 950.604 Records retention.

Federations, PCFO's and other participants in the CFC shall retain documents pertinent to the campaign for at least three (3) campaign years. Documents requested by OPM must be made available within 10 business days of the request.

Subpart G—DoD Overseas Area

§ 950.701 DoD overseas campaign.

(a) A Combined Federal Campaign is authorized for all Department of Defense (DoD) activities in the overseas areas during a 6 week period in the fall. Organizations that may participate in the Overseas Campaign will consist of

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organizations found nationally eligible by OPM.

(b) The DoD must select an organization or combination of organizations to serve as PCFO as it deems in the best interests of the overseas campaign.

(c) Federal civilian agencies with overseas personnel may elect to have these employees participate in the DoD campaign or in the National Capital Area campaign.

(d) The overseas campaign brochure shall not include the All International Organizations Designation Option-IIII.

(e) Family support and youth activities established in overseas locations may be supported from CFC funds.

(f) Undesignated funds contributed in the Overseas Campaign equal to up to 6 percent of the gross campaign contributions will be allocated to the Overseas family support and youth activities. No other funds may be used for this purpose. If the undesignated funds exceed 6 percent of the gross campaign contributions, this excess shall be distributed to all other organizations in the same proportions as designations.

(g) Overseas family support and youth activities shall not be charged any share of campaign costs. All other organizations participating in the Overseas Area CFC will be charged for campaign costs in the same proportion that they received gross campaign receipts, net of that amount of receipts set aside for family support and youth activities.

(h) The overseas campaign brochure must explain the allocation policy utilized by each of the military services to allocate funds received from the Overseas campaign to their overseas family support and youth activities.

Subpart H–CFC Timetable

§ 950.801 Campaign schedule.

(a) The Combined Federal Campaign will be conducted according to the following timetable.

(1) During one 30-calendar day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national list.

(i) Included with the annual notice of the campaign schedule and OPM guidance will be a list of the LFCCs responsible for making statewide determinations for local eligibility.

(ii) Organizations seeking statewide recognition must contact the applicable LFCC for detailed information on the local application process.

(2) Within 35 calendar days of the closing of the receipt of applications, the Director will issue notices to each national applicant organization of the results of the Director's review.

(3) Local Federal Coordinating Committees must select a PCFO no later than March 15.

(4) The Director will issue a national eligibility list to all local campaigns by June 30.

(5) Local Federal Coordinating Committees must accept applications from organizations seeking local eligibility for 30 calendar days as determined by the LFCC, and must issue notice of its eligibility decisions within 15 business days of the closing date for receipt of applications.

(b) The Director will annually issue a timetable for accepting and processing national applications.

Subpart I—Payroll Withholding

§ 950.901 Payroll allotment.

The policies and procedures in this section are authorized for payroll withholding operations in accordance with the Office of Personnel Management Pay Administration regulations in part 550 of this chapter.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local CFC organizations.

(b) *Allottees.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a CFC when an appropriate official of the employing Federal agency determines that the employee will continue employment for a period to justify an allotment. This includes military reservists, National Guard, and other part-time and intermittent employees who are regularly employed.

(2) Members of the Uniformed services are eligible, excluding those on only short-term assignment (less than 3 months).

(c) *Authorization.* (1) Allotments will be totally voluntary and will be based upon contributor's individual authorization.

(2) The CFC Pledge Card, in conformance with § 950.402, is the only form for authorization of the CFC payroll allotment and may be printed or purchased from a central source by each PCFO. The Pledge Cards and Official Brochure will be distributed to employees when charitable contributions are solicited.

(3) The original copy of each pledge card (payroll allotment authorization) should be transmitted to the contributor's servicing payroll office as promptly as possible, preferably by December 15. However, if pledge cards are received after that date they should be accepted and processed by the payroll office.

(d) *Duration.* Authorization of allotments will be perpetual or in the form of a term allotment. A perpetual authorization becomes effective the first pay period beginning in January and will remain in effect from year-to-year until cancelled by the Federal employee/donor. Perpetual authorizations may only be changed during the campaign solicitation period as defined by the LFCC. Term authorizations will be in effect for 1 full year—26, 24, or 12 pay periods depending on the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. Three months of employment is considered the minimum amount of time that is reasonable for establishing an allotment.

(e) *Amount.* (1) Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount of the allotment will be determined by the LFCC but will not be less than $1 per payday, with no restriction on the size of the increment above that minimum.

(3) No change of amount will be authorized for term allotments. Changes in amounts for perpetual allotments may only occur during the solicitation period, unless the donation is based on a percentage of the employees pay.

(4) No deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the CFC allotment. No adjustment will be made in subsequent periods to make up for missed deductions.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point (CRP) at each local CFC location for which the payroll office has received allotment authorizations. The Director will provide a list of the authorized CRP's to Federal payroll offices.

(2) The check will be accompanied by a statement identifying the agency, the dates of the pay period, and the total number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Term allotments will be discontinued automatically on expiration of the 1 year withholding period, or on the death, retirement, or separation of the allotter from the federal service, whichever is earlier.

(2) An allotter may revoke a perpetual or term authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different Department or agency, his or her allotment authorization should be transferred to the new payroll office.

(i) *Accounting.* (1) Federal payroll offices will oversee the establishment of individual allotment accounts, the deductions each pay period, and the reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The PCFO shall notify the federated groups, national agencies, and local agencies as soon as practicable after the completion of the campaign, but in no case later than February 15, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them.

(3) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit at least monthly for campaigns of $500,000 of more or quarterly if less than that amount, minus only the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106(d). It shall remit the contributions to each organization or to the federated group, if any, of which the organization is a member. For campaigns with gross receipts in excess of $500,000, the PCFO will distribute all CFC receipts beginning April 1, and monthly thereafter. For campaigns with gross receipts of $500,000 or less, the PCFO will distribute all CFC receipts beginning June 1, and quarterly thereafter. At the close of each disbursement period, the PCFO's amount shall have a balance of zero.

(4) The PCFO may make one-time disbursements to organizations receiving minimal donations from Federal employees. The LFCC must determine and authorize the amount of these one-time disbursements. The PCFO may deduct the proportionate amount of each organization's share of the campaign's administrative costs and the average of the previous 3 years pledge loss from the one-time disbursement. This is the only approved application of adjusting for pledge loss.

(5) Federated and national charitable organizations, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution amount the charitable organizations of remittances from the PCFO; and

(ii) Arrangements for an independent audit conducted by a certified public accountant agreed upon by the participating charitable organizations.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 51

[Docket Number FV–94–302]

Bermuda-Granex-Grano Type Onions and Onions (Other than Bermuda-Granex-Grano and Creole Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Bermuda-Granex-Grano Type Onions and United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type). The proposal would set a minimum sample size for consumer size packages, provide a "Colossal" size classification, eliminate Export size classifications and designate a U.S. No. 1 Peeled Grade. It would also include other technical revisions to update the standards in accord with current handling and marketing practices.

DATES: Comments must be postmarked or courier dated on or before April 17, 1995.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions and U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Bermuda-Granex-Grano Type Onions was last revised February 20, 1985, and the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) was last revised October 1, 1971. In general, the Bermuda-Granex-Grano Type (BGG) standard is applied to southern grown onions that have thin papery outer scales, are harvested in the spring and summer and are not typically kept in storage. The Other Than Bermuda-Granex-Grano and Creole Types (Other Than) standard is generally applied to northern grown onions that have thick outer papery scales, are harvested in the fall and are

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more commonly stored. The major distinction between the two standards for grades of these onions is the lot tolerances; 10 percent for BGG and 5 percent for Other Than. Although separated by type and tolerances, many similarities exist in the grading of these onions. The different types of onions are affected by most of the same defects. The procedures for sampling and performing grading activities are essentially the same regardless of which standard is being applied. The standards were established and have been revised separately over the years to reflect the needs of their respective industries.

A broad spectrum of growers and shippers of onions who utilize both standards, represented by The National Onion Association (NOA), have requested that the minimum sample size for consumer size packages be designated at 20 pounds. While considering the NOA's request the Department, through a periodic review, decided to take the opportunity to bring the standards into closer uniformity with each other and conformity to current harvesting, handling and marketing practices. Therefore, this proposal would revise both standards by the addition of a required minimum sample size. It would also include the following: An additional grade for peeled onions, an additional size designation for colossal onions and technical revisions to promote uniformity and clarity wherever possible. The following are revisions proposed herein:

—"Fairly firm" is now a basic requirement only in the Other Than standard. "Fairly firm" would be added as a basic requirement to the U.S. No. 1 grade in the BGG standard (§ 51.3195) and also included in the Definitions section (§ 51.3205). This would make both U.S. Standards uniform in their basic requirements for a U.S. No. 1 onion.

—The BGG standard currently contains paragraphs for tolerances in each of the respective grade sections. The Other Than standard now contains a specific section entitled "Tolerances" which is the format established for more recent and current standards. To make referencing much easier and to make both U.S. Standards current and uniform in the way they read, a specific section for Tolerances (§ 51.3200) would be established in the BGG standard. The actual tolerances would not be changed, only the location in the standard.

—A U.S. No. 1 Peeled grade would be established for both standards (§§ 51.2835 and 51.3196). The marketing of fresh-cut, "ready to use" products has expanded greatly in the last few years in the produce industry. Onions offered for sale whole and completely peeled as a fresh product ready to use have been part of this expanding market. This grade would provide clear and defined trading language helping to facilitate the increased movement in these type of onions. The new grade would read as follows:

"U.S. No. 1 Peeled consists of onions which meet all the requirements for the U.S. No. 1 grade" ("except for damage by peeling" in the Other Than standard). "Furthermore, onions must be free from any outer papery scales in order to meet the requirements of this grade."

A 5 percent tolerance for onions in a lot with outer papery scales in any amount would also be provided in the tolerance section.

—Both the BGG and Other Than standards contain the grade classification "Unclassified." This grade would be deleted from both standards since it is not an actual grade classification and is rarely, if ever used. Elimination of Unclassified would also maintain consistency with newer versions of standards for other commodities.

—Currently size classifications in each of the standards are similar but not completely the same. Each standard now contains size designations for small, medium and large sizes. The BGG standard also references a Repacker or Prepacker size, while the Other Than standard contains export small, export medium and export large sizes as well as regional specifications for the medium size.

Size classifications would be revised and placed in chart form for each standard (§§ 51.2837 and 51.3199) to achieve uniformity and clarity.

A new size classification for colossal onions would be added to both standards based on the increased trade in this size product and the need for common trading language.

In the Other Than standard three additional changes would also be made to the size classifications. First, the reference to export sizes would be eliminated since these sizes are rarely, if ever used. The reference to these sizes in the Application of Tolerances section would also be eliminated. There would be no need for this reference if the sizes were dropped. Next, the medium size classification would no longer give smaller size exception for "onions grown in Minnesota, Iowa, and States east of the Mississippi River * * *." This would eliminate confusion in the trade and standardize across the nation the size of onions referred to as "Medium." Finally, the Repacker/Prepacker size currently only referenced in the BGG standard would be included in the Other Than standard. This would make both standards completely uniform along size classifications providing common and standardized trading language in reference to size for onions shipped from anywhere in the country. The new size chart proposed for each standard would read as follows:

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or Jumbo	3	76.2	([2])	
Colossal	3¾	95.3	([2])	

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.
[2] No requirement.

—Sample size is not currently defined in the standards for onions. Inspections are performed using the consumer package that onions are packed in as the sample. While this may be a fair and accurate way to determine percentages of defects for 50 pound sacks, when smaller consumer size packages (i.e., 2, 3, 5, pounds) are taken as the sample a lot may be thrown out of grade by a proportionately small number of onions due to the restrictions imposed by the application of tolerances.

A specified sample size would provide more uniform sampling when certifying various sizes of smaller packages. Also, to apply tolerances more accurately to these smaller packages in conjunction with the change in sample size the application of tolerances would need to be applied to the sample as opposed to the package.

Therefore, this proposal would add new sections (§ 51.2839 in Other Than and 51.3201 in BGG), Samples For Grade And Size Determination, to each standard. The addition of sample size requirements, §§ 51.2839 in Other Than and 51.3201 in BGG, will read as follows in both standards: "Individual samples shall consist of at least 20 pounds. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample." For onions smaller than Large or Jumbo size (3 inches), a 20 pound sample would be sufficient regardless of the package size because the onions are small. Defects are determined by weight and therefore smaller onions provide ample numbers of units for inspection purposes, whereas the larger onions provide fewer specimens in the same size sample. With this proposed addition of sample sizes a more uniform determination of defect percentages will be applied to the various sizes of onions in both small and large packages.

To further enhance the uniform determination of defect tolerances this proposal would also modify the Application of Tolerances section in each standard, §§ 51.2840 & 51.3202.

Currently each standard limits the individual package from exceeding certain tolerances. Each standard now reads, in part, as follows: "* * * the contents of individual packages in the lot, based on sample inspection, are subject to the following limitations * * *."

This proposal would change those limits from the package to the sample. The modified sections as proposed would read, in part: "Individual samples are subject to the following limitations: * * *" Of course, in some instances the package still remains the sample.

This proposed change in the application of tolerances is intended to enhance clarity, simplicity and uniformity of inspection procedure. Since the sample would be the unit of inspection the tolerances should apply to that unit. A single package could be just one part of the unit of inspection (in a combined 20 pound sample) and applying the limits of tolerances to that package would confuse and complicate the inspection process.

—Currently each standard contains sections entitled "Damage" and "Serious Damage." The paragraphs within each of these sections list defects and the definitions of damage or serious damage by these defects. The following proposed revisions would affect some of these defect definitions in the interest of providing clear language, uniformity of application and consistency with current marketing and handling practices.

Currently Dry sunscald is a defect listed under damage in both standards and also under serious damage in the BGG standard. Over the years there has been some confusion surrounding the identification of this defect because dirt clod bruising of the onions may cause an area similar looking to dry sunscald. To eliminate confusion and to standardize inspection procedures the term Dry sunken areas is proposed as a replacement for the term Dry sunscald. This definition is more objective and precise. (Sections 51.2850(f) and 51.3209(c).)

The proposed definition for serious damage by dry sunken areas would remain the same in the BGG standard as it currently reads (51.3211(b)). The same definition would be added to the Other Than Standard (51.2853(f)). This would maintain uniformity and clarity in each of the standards.

Some of the defects currently listed in the damage and serious damage sections are defined in terms of when materially or seriously detracting from the appearance of the lot. Hence, these defects are scored as damage or serious damage when the lot is affected to a certain degree as opposed to when the individual onions are affected. The method of judging when the appearance of the lot is to be scored should be more precise and objective.

In the Other Than standard damage and serious damage by dirt or staining, and damage by dry roots, tops and sunburn are defined this way. In the BGG standard damage and serious damage by staining, dirt or other foreign material is also defined this way.

This proposed rule would set percentage allowances for when the lot is damaged or seriously damaged by individual defective specimens. For example the current definition for damage by dry roots in the Other Than standard reads: "when detracting from the appearance of the lot more than the presence of 20 percent of the onions having all roots 2 inches in length." The proposed revision would read: "when more than 20 percent of the onions in a lot have practically all roots 2 inches or more in length." The new definition should be more objective and precise. "Practically all" was added to be more realistic in determining the number of roots. This term means 95 percent or more as defined in the General Inspection Instructions of the Fresh Products Branch. Each of the defects listed above would be clarified in this way while keeping the intent of the scoring guidelines intact. See §§ 51.2850 (c), (e), (g), (l) and 51.2853(b) in Other Than and §§ 51.3209 (f), (h) and 51.3211(d) in BGG.

The Other Than standard currently contains definitions for damage by new roots, dry roots, tops, and watery scale. The BGG standard does not currently contain definitions for any of these defects. In an effort to promote uniformity and clarity these definitions would be added to the BGG standard.

The current definition for damage by watery scale in the Other Than standard reads: "when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition." To distinguish this defect from another condition called translucent scale an additional clarification is proposed. The following words would be added to the watery scale definition: "* * * The off-color must be of some shade of brown or yellow." The serious damage definition would also be modified. The BGG standard as mentioned above would also have these definitions included for uniformity. (Sections 51.2850(k) & 51.2853(a) and 51.3209(l) and 51.3211(f).)

Neither standard currently has a definition for damage by translucent scales. To provide clear language that is consistent with current marketing practices a definition would be provided as follows: "when more than the equivalent of two entire outer fleshy scales have a watersoaked condition." To provide uniformity each standard would be affected. (Sections 51.2850(n) and 51.3209(k).)

The BGG standard currently contains definitions for damage and serious damage by mechanical means. The Other Than standard does not contain these definitions. To be consistent with current handling practices for both types of onions and to provide uniformity between the standards, the current BGG definitions for mechanical damage and serious damage would be

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added to the Other Than standard. (Sections 51.2850(m) and 51.2853(e).)

—Finally, the BGG standard currently does not contain a metric conversion table. The Other Than standard does. To keep both standards uniform and to bring the BGG standard up to date with current standard format a metric conversion table would be added. (Section 51.3213.)

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. Part 51, Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) is revised to read as follows:

Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)

Grades

Sec.

51.2830 U.S. No. 1.
51.2831 U.S. Export No. 1.
51.2832 U.S. Commercial.
51.2833 U.S. No. 1 Boilers.
51.2834 U.S. No. 1 Picklers.
51.2835 U.S. No. 1 Peeled.
51.2836 U.S. No. 2.

Size Classifications

51.2837 Size classifications.

Tolerances

51.2838 Tolerances.

Samples for Grade and Size Determination

51.2839 Samples for grade and size determination.

Application of Tolerances

51.2840 Application of tolerances.

Export Packing Requirements

51.2841 Export packing requirements.

Definitions

51.2842 Mature.
51.2843 Dormant.
51.2844 Fairly firm.
51.2845 Fairly well shaped.
51.2846 Wet sunscald.
51.2847 Doubles.
51.2848 Bottlenecks.
51.2849 Scallions.
51.2850 Damage.
51.2851 Diameter.
51.2852 Badly misshapen.
51.2853 Serious damage.
51.2854 One type.

Metric Conversion Table

51.2855 Metric conversion table.

Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types)

Grades

§ 51.2830 U.S. No. 1.

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Fairly firm; and,
(4) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Disease;
(15) Insects; and,
(16) Other means.
(d) For tolerances see § 51.2838
(e) Size. Unless otherwise specified the diameter shall be not less than 1½ inches, and yellow, brown, or red onions shall have 40 percent or more, and white onions shall have 30 percent or more, by weight, of the onions in any lot 2 inches or larger in diameter.

(f) When a percentage of the onions is specified to be of any certain size or larger, no part of any tolerance shall be allowed to reduce the specified percentage, but individual packages in a lot may have as much as 25 percentage points less than the percentage specified, except that individual packages containing 10 pounds or less shall have no requirements as to percentage of a certain size or larger: *Provided*, that any lot, regardless of package size, shall average within the percentage specified. (See §§ 51.2837 and 51.2838.) [1]

[1] Any lot of onions quoted as being of size smaller than 1¼ inches minimum, such as "U.S. No. 1, 1¼ inches min." is not required to meet the percentages which shall be 2 inches or larger as specified in the U.S. No. 1 grade.

§ 51.2831 U.S. Export No. 1.

U.S. Export No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Dormant;
(4) Fairly firm; and,
(5) Fairly well shaped.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Splits;
(3) Tops;
(4) Roots;
(5) Dry sunken areas;
(6) Sunburn;
(7) Sprouts;
(8) Freezing;
(9) Peeling;
(10) Cracked fleshy scales;
(11) Watery scales;
(12) Dirt or staining;
(13) Foreign matter;
(14) Disease;
(15) Insects; and,
(16) Other means.
(d) Unless otherwise specified onions are packed in accordance with Export Packing Requirements set forth in § 51.2841. (See § 51.2838.)

§ 51.2832 U.S. Commercial.

U.S. Commercial consists of onions which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Mature;
(3) Not soft or spongy; and,
(4) Not badly misshapen.
(b) Free from:
(1) Decay;
(2) Wet sunscald;
(3) Doubles;
(4) Bottlenecks; and,
(5) Scallions.
(c) Free from damage caused by:
(1) Seedstems;
(2) Tops;
(3) Roots;
(4) Dry sunken areas;
(5) Sunburn;
(6) Sprouts;
(7) Freezing;
(8) Cracked fleshy scales;
(9) Watery scales;
(10) Disease;
(11) Insects; and,
(12) Other means.
(d) Free from serious damage caused by:

(1) Staining;
(2) Dirt; and,
(3) Other foreign matter.
(e) For tolerances see § 51.2838.
(f) Size. Unless otherwise specified, the diameter shall be not less than 1½ inches. (See §§ 51.2837 and 51.2838.)

§ 51.2833 U.S. No. 1 Boilers.

U.S. No. 1 Boilers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size. The diameter of onions of this grade shall be not less than 1 inch nor more than 1⅞ inches. (See § 51.2838.)

§ 51.2834 U.S. No. 1 Picklers.

U.S. No. 1 Picklers consists of onions which meet all the requirements for the U.S. No. 1 grade except for size. (See § 51.2830.) Size. The maximum diameter of onions of this grade shall be not more than 1 inch. (See § 51.2838.)

§ 51.2835 U.S. No. 1 Peeled.

U.S. No. 1 Peeled consists of onions which meet all the requirements for the U.S. No. 1 grade except for damage caused by peeling. Furthermore, onions must be free from any outer papery scales in order to meet the requirements of this grade. (See § 51.2830.)

(a) Size. Unless otherwise specified the diameter shall be not less than 1½ inches with 30 percent or more, by weight, of the onions in any lot 2 inches or larger in diameter.

(b) When a percentage of the onions is specified to be of any certain size or larger, no part of any tolerance shall be allowed to reduce the specified percentage, but individual packages in a lot may have as much as 25 percentage points less than the percentage specified, except that individual packages containing 10 pounds or less shall have no requirements as to percentage of a certain size or larger: *Provided*, that any lot, regardless of package size, shall average within the percentage specified.

(See §§ 51.2837 and 51.2838.) [2]

§ 51.2836 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:
(1) One type;
(2) Mature; and,
(3) Not soft or spongy.
(b) Free from:
(1) Decay;
(2) Wet sunscald; and,
(3) Scallions.
(c) Free from serious damage caused by:
(1) Seedstems;
(2) Dry sunken areas;
(3) Sprouts;
(4) Freezing;
(5) Watery scales;
(6) Disease;
(7) Insects; and,
(8) Other means.
(d) For tolerances see § 51.2838.
(e) Size. Unless otherwise specified, the diameter shall not be less than 1½ inches. (See §§ 51.2837 and 51.2838.)

Size Classifications

§ 51.2837 Size classifications.

The size of onions may be specified in accordance with one of the following classifications.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or jumbo	3	76.2	(2)	
Colossal	3¾	95.3	(2)	

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.
[2] No requirement.

Tolerances

§ 51.2838 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1, U.S. Export No. 1, U.S. No. 1 Boilers and U.S. No. 1 Picklers grades.*

(i) Not more than 10 percent of the onions in a lot may be damaged by peeling;

(ii) Not more than 5 percent of the onions in a lot may be below the remaining requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald (see § 51.2840); and,

(2) *U.S. No. 1 Peeled grade.*

(i) Not more than 5 percent of the onions in a lot may have outer papery scales in any amount;

(ii) Not more than 5 percent of the onions in a lot may be below the remaining requirements of the grade, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald (see § 51.2840); and,

(3) *U.S. Commercial and U.S. No. 2 grades.*

(i) Not more than 5 percent of the onions in a lot may be below the requirements of these grades, but not more than two-fifths of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald. (See § 51.2840.)

(b) For off-size:

(1) *U.S. No. 1, U.S. No. 1 Boilers, U.S. No. 1 Peeled, U.S. Commercial, and U.S. No. 2 grades.* Not more than 5 percent of the onions in a lot may be below the specified minimum size, and not more than 10 percent may be above any specified maximum size. (See § 51.2840.)

(2) *U.S. No. 1 Pickler grade.* Not more than 10 percent of the onions in a lot may be above the maximum size specified for this grade. (See § 51.2840.)

Samples for Grade and Size Determination

§ 51.2839 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are

[2] Any lot of onions quoted as being of size smaller than 1½ inches minimum, such as "U.S. No. 1, 1¼ inches min." is not required to meet the percentages which shall be 2 inches or larger as specified in the U.S. No. 1 grade.

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opened to provide at least a 20 pound sample.

Application of Tolerances

§ 51.2840 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that en-route or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: And *provided further*, that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

Export Packing Requirements

§ 51.2841 Export packing requirements.

Onions specified as meeting Export Packing Requirements shall be packed in containers having a net capacity of 25 kilograms (approximately 56 pounds).

Definitions

§ 51.2842 Mature.

Mature means well cured. Midseason onions which are not customarily held in storage shall be considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy.

§ 51.2843 Dormant.

Dormant means that at least 90 percent of the onions in any lot show no evidence of growth as indicated by distinct elongation of the growing point or distinct yellow or green color in the tip of the growing point.

§ 51.2844 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§ 51.2845 Fairly well shaped.

Fairly well shaped means having the shape characteristic of the variety, but onions may be slightly off-type or slightly misshapen.

§ 51.2846 Wet sunscald.

Wet sunscald means sunscald which is soft, mushy, sticky or wet.

§ 51.2847 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§ 51.2848 Bottlenecks.

Bottlenecks are onions which have abnormally thick necks with only fairly well developed bulbs.

§ 51.2849 Scallions.

Scallions are onions which have thick necks and relatively small and poorly developed bulbs.

§ 51.2850 Damage.

Damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than ¼ inch in diameter;

(b) Splits when onions with two or more hearts are not practically covered by one or more outer scales;

(c) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(d) New roots when most roots on an individual onion have grown to a length of 1 inch or more in length;

(e) Dry roots when more than 20 percent of the onions in a lot have practically all roots 2 inches or more in length;

(f) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(g) Sunburn when more than 33 percent of the onions in a lot have a medium green color on one-third of the surface;

(h) Sprouts when visible, or when concealed within the dry top and more than three-fourths inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(i) Peeling when more than one-half of the thin papery skin is missing, leaving the underlying fleshy scale unprotected;

(j) Cracked fleshy scales when one or more of the fleshy scales are cracked;

(k) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow;

(l) Dirt, staining or other foreign matter when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(m) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale; and,

(n) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition.

§ 51.2851 Diameter.

Diameter means the greatest dimension measured at right angles to a straight line running from the stem to the root.

§ 51.2852 Badly misshapen.

Badly misshapen means that the onion is so misshapen that its appearance is seriously affected.

§ 51.2853 Serious damage.

Serious damage means any specific defect described in this section; or any equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the onions. The following specific defects shall be considered as serious damage:

(a) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow;

(b) Dirt, staining or other foreign matter when more than 25 percent of the onions in a lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(c) Seedstems when more than one-half inch in diameter;

(d) Sprouts when the visible length is more than one half inch;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion

2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions.

§ 51.2854 One type.

One type means that the onions are within the same general color category.

Metric Conversion Table

§ 51.2855 Metric conversion table.

Inches	Millimeters (mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1
1¾	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

3. In Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions is revised to read as follows:

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

Sec.
51.3195 U.S. No. 1.
51.3196 U.S. No. 1 Peeled.
51.3197 U.S. Combination.
51.3198 U.S. No. 2.
Size Classifications
51.3199 Size classifications.

Tolerances

51.3200 Tolerances

Samples for Grade and Size Determination

51.3201 Samples for grade and size determination.

Application of Tolerances

51.3202 Application of tolerances.

Definitions

51.3203 Similar varietal characteristics.
51.3204 Mature.
51.3205 Fairly firm.
51.3206 Fairly well shaped.
51.3207 Wet sunscald.
51.3208 Doubles.
51.3209 Bottlenecks.
51.3210 Damage.
51.3211 Serious damage.
51.3212 Diameter.

Metric Conversion Table

51.3213 Metric conversion table.

Subpart—United States Standards for Grades of Bermuda-Granex-Grano Type Onions

Grades

§ 51.3195 U.S. No. 1

U.S. No. 1 consists of onions which meet the following requirements:

(a) Basic requirements:

(1) Similar varietal characteristics;

(2) Mature;

(3) Fairly firm; and,

(4) Fairly well shaped.

(b) Free from:

(1) Decay;

(2) Wet unscald;

(3) Doubles; and,

(4) Bottlenecks.

(c) Free from damage caused by:

(1) Seedstems;

(2) Splits;

(3) Moisture;

(4) Roots:

(5) Dry sunscald;

(6) Sunburn;

(7) Sprouting;

(8) Staining;

(9) Dirt or foreign material;

(10) Disease;

(11) Insects;

(12) Mechanical; and,

(13) Other means.

(d) For size and tolerances see §§ 51.3199 and 51.3200.

§ 51.3196 U.S. No. 1 Peeled.

U.S. No. 1 Peeled consists of onions which meet all the requirements for the U.S. No. 1 grade. Furthermore, onions must be free from any outer papery scales in order to meet the requirements of this grade. (See §§ 51.3199 and 51.3200.)

§ 51.3197 U.S. Combination.

U.S. Combination consists of a combination of U.S. No. 1 and U.S. No. 2 onions: *Provided*, that at least 50 percent, by weight, of the onions in each lot meet the requirements of U.S. No. 1 grade. (See §§ 51.3199 and 51.3200.)

§ 51.3198 U.S. No. 2.

U.S. No. 2 consists of onions which meet the following requirements:

(a) Basic requirements:

(1) Similar varietal characteristics; and,

(2) Not soft or spongy.

(b) Free from:

(1) Decay;

(2) Wet sunscald; and,

(3) Bottlenecks.

(c) Free from serious damage caused by:

(1) Seedstems;

(2) Dry sunken areas;

(3) Sprouting;

(4) Staining;

(5) Dirt or other foreign material;

(6) Disease;

(7) Insects;

(8) Mechanical; and,

(9) Other means.

(d) For size and tolerances see §§ 51.3199 and 51.3200.

Size Classifications

§ 51.3199 Size classifications.

Size shall be specified in connection with the grade in terms of minimum diameter, range in diameter, minimum diameter with a percentage of a certain size or larger, or in accordance with one of the size classifications listed below: Provided, that unless otherwise specified, onions shall not be less than 1½ inches in diameter, with 60 percent or more 2 inches or larger in diameter.

Size designation	Minimum diameter		Maximum diameter	
	Inches	Millimeters	Inches	Millimeters
Small	1	25.4	2¼	57.2
Repacker/Prepacker [1]	1¾	44.5	3	76.2
Medium	2	50.8	3¼	82.6
Large or jumbo	3	76.2	[2]	
Colossal	3¾	95.3 [2]		

[1] In addition to the sizes specified, a lot of onions designated as Repacker or Prepacker shall contain at least 60 percent or more 2 inches or larger in diameter.
[2] No requirement.

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Tolerances

§ 51.3200 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades the following tolerances, by weight, are provided as specified:

(a) For defects:

(1) *U.S. No. 1 and U.S. No. 2 grades.*

(i) Not more than 10 percent of the onions in a lot may fail to meet the requirements of these grades, but not more than one-fifth of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald.

(2) *U.S. No. 1 Peeled grade.*

(i) Not more than 5 percent of the onions in a lot may have outer papery scales in any amount;

(ii) Not more than 10 percent of the onions in a lot may be below the remaining requirements of the grade, but not more than one-fifth of this tolerance, or 2 percent, may be allowed for onions which are affected by decay or wet sunscald.

(3) *U.S. Combination grade.*

(i) When applying the foregoing tolerances to this grade no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of onions of the U.S. No. 1 grade, but individual containers shall have not less than 40 percent of the U.S. No. 1 grade.

(b) For size:

(1) Not more than 5 percent of the onions in a lot may be smaller than the minimum diameter specified. In addition, not more than 10 percent of the onions in a lot may be larger than the maximum diameter specified.

(2) When a percentage of the onions is specified to be a certain size and larger, individual packages containing more than 10 pounds may have not less than one-half of the percentage specified: *Provided*, that the entire lot averages within the percentage specified.

Samples for Grade and Size Determination

§ 51.3201 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds. When individual packages contain 20 pounds or more and the onions are packed for Large or Jumbo size or larger the package shall be the sample. When individual packages contain less than 20 pounds, a sufficient number of adjoining packages are opened to provide at least a 20 pound sample.

Application of Tolerances

§ 51.3202 Application of tolerances.

Individual samples are subject to the following limitations:

(a) Samples which contain more than 20 pounds shall have not more than one and one half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that enroute or at destination when onions in containers of 50 pounds or more are packed to a minimum size of 3 inches or larger not more than three onions or more than 4 percent (whichever is the larger amount) may be affected by decay or wet sunscald: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade; and,

(b) Samples which contain 20 pounds shall have not more than double the tolerance specified, except that at least one defective and one off-size onion may be permitted in any sample: *Provided*, that the averages for the entire lot are within the tolerances specified for the grade.

Definitions

§ 51.3203 Similar varietal characteristics.

Similar varietal characteristics means that the onions in any container are similar in color, shape and character of growth.

§ 51.3204 Mature.

Mature means that the onion is fairly well cured, and at least fairly firm.

§ 51.3205 Fairly firm.

Fairly firm means that the onion may yield slightly to moderate pressure but is not appreciably soft or spongy.

§ 51.3206 Fairly well shaped.

Fairly well shaped means that the onion shows the characteristic shape, not appreciably three-, four- or five-sided, thick necked or badly pinched.

§ 51.3207 Wet sunscald.

Wet sunscald means any sunscald which is soft, mushy, sticky or wet.

§ 51.3208 Doubles.

Doubles means onions which have developed more than one distinct bulb joined only at the base.

§ 51.3209 Bottlenecks.

Bottlenecks means onions which have abnormally thick necks with only fairly well developed bulbs.

§ 51.3210 Damage.

Damage unless otherwise specifically defined in this section, means any defect which materially affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Seedstems which are tough or woody, or which are more than one-fourth inch in diameter;

(b) Splits when well cured onions are not practically covered by an outer scale, or when fairly well cured onions are not completely covered by one outer scale;

(c) Dry sunken areas when the affected areas exceed the equivalent to that of a circle ½ inch in diameter on an onion 2¾ inches in diameter which does not have the outer papery scale covering the affected areas or when the affected areas exceed the equivalent to that of a circle ¾ inch in diameter on an onion 2¾ inches in diameter which has the outer papery scale covering the affected areas. Correspondingly lesser or greater areas are allowed on smaller or larger onions;

(d) Sunburn when dark green in color and affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter or correspondingly smaller or larger areas on smaller or larger onions, or when medium to light green in color and affecting more than 10 percent of the surface of the onion;

(e) Sprouting when any sprout is visible, or when concealed within the neck scales and are more than three-fourths inch in length on an onion 2 inches or larger in diameter, or proportionately shorter on smaller onions;

(f) Staining, dirt or other foreign material when more than 20 percent of the onions in a yellow, brown or red lot, or more than 15 percent of the onions in a white lot are appreciably stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(g) Mechanical when any cut extends deeper than one fleshy scale, or when any bruise breaks a fleshy scale;

(h) Tops when more than 30 percent of the onions in a lot have tops 3 inches or more in length;

(i) New roots when most roots on an individual onion have grown to a length of 1 inch or more;

(j) Dry roots when practically all roots are 2 inches or more in length;

(k) Translucent scales when more than the equivalent of two entire outer fleshy scales have a watersoaked condition; and,

(l) Watery scales when more than the equivalent of the entire outer fleshy scale is affected by an off-color, watersoaked condition. The off-color must be of some shade of brown or yellow.

§ 51.3211 Serious damage.

Serious damage unless otherwise specifically defined in this section, means any defect which seriously affects the appearance, or the edible or shipping quality of the onions. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Seedstems when more than one-half inch in diameter;

(b) Dry sunken areas when extending deeper than one fleshy scale, or when affecting an area equivalent to that of a circle 1 inch in diameter on an onion 2¾ inches in diameter, or correspondingly lesser or greater areas on smaller or larger onions;

(c) Sprouting when any visible sprout is more than one-half inch in length;

(d) Staining, dirt or foreign material when more than 25 percent of the onions in any lot are badly stained. Onions with adhering dirt or other foreign matter shall be judged on the same basis as stained onions;

(e) Mechanical when any cut extends deeper than two fleshy scales, or when cuts seriously damage the appearance of the onion; and,

(f) Watery scales when more than the equivalent of two entire outer fleshy scales are affected by an off-colored, watersoaked condition. The off-color must be of some shade of brown or yellow.

§ 51.3212 Diameter.

Diameter means the greatest dimension of the onion at right angles to a line running from the stem to the root.

Metric Conversion Table

§ 51.3213 Metric conversion table.

Inches	Millimeters (mm)
1⅜	44.5
2	50.8
2½	63.5
2¾	69.9
3	76.2
3½	88.9
4	101.6

Dated: February 9, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–3787 Filed 2–15–95; 8:45 am]

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Inches	Millimeters (mm)
⅛	3.2
¼	6.4
⅜	9.5
½	12.7
⅝	15.9
¾	19.1
⅞	22.2
1	25.4
1¼	31.8
1½	38.1

Rural Utilities Service

7 CFR Part 1717

Investments, Loans, and Guarantees by Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Rural Utilities Service (RUS) hereby proposes to revise its policies and requirements governing restrictions on investments, loans and guarantees made by electric borrowers. This proposed rule is intended to clarify RUS's policies and requirements, reduce uncertainty by borrowers, and improve compliance.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by April 17, 1995.

ADDRESSES: Written comments should be addressed to Mr. F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Utilities Service, Ag Box 1522, room 2234–S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Alex M. Cockey, Jr., Deputy Assistant Administrator—Electric, U.S. Department of Agriculture, Rural Utilities Service, Ag Box 1560, room 4037–S, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–9547.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0017, 0572–0032, and 0572–0103. Additional information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 10102, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

On December 22, 1987, section 312 was added to the Rural Electrification Act of 1936. This section allows electric borrowers to invest their own funds or make loans or guarantees, not in excess of 15 percent of their total utility plant,

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without restriction or prior approval of the Administrator of the Rural Utilities Service (RUS). On June 29, 1989, RUS issued a final rule codifying this provision (at 54 FR 27325), and the provision became effective for all electric mortgages executed after July 31, 1989. Mortgages executed prior to that date contained a provision granting the Administrator the right to approve investments, loans and guarantees by the borrower once the aggregate of such investments, loans and guarantees reached 3 percent of total utility plant.

This proposed rule is intended to clarify RUS's policies and requirements regarding restrictions on borrower investments, loans and guarantees. Over the past several years borrowers have raised a number of questions about such issues as: Which investments, loans or guarantees are subject to RUS approval and which are excluded; the criteria used by RUS in approving an investment, loan or guarantee; whether RUS approval of an investment, loan or guarantee means that it is no longer counted in determining the ratio to total utility plant; whether RUS will approve an investment, loan or guarantee if the borrower is under the 15 percent limit; whether a borrower will be in default under its mortgage because net profits earned on its investments pushed its total above the 15 percent limit. This proposed rule attempts to resolve such questions.

RUS is also in the process of updating its mortgage and loan contract used with electric borrowers. RUS published a proposed mortgage for electric distribution borrowers on September 29, 1994 at 59 FR 49594. In that rule it is proposed that RUS controls over borrower investments, loans and guarantees be moved from the mortgage to the RUS loan contract. Such a move would have no effect on RUS's controls or their enforceability under the RUS mortgage.

The following discussion of the proposed rule published today focuses on the major provisions and more significant changes proposed to the existing regulation.

Section 1717.651 Policy

No change is proposed to this section. It would remain RUS policy that borrowers are encouraged to use their own funds to foster the economic development of rural areas, provided that such actions do not in any way put government funds at risk or impair the borrower's ability to repay its indebtedness to RUS and other lenders.

Section 1717.652 Definitions

Several changes are proposed to this section, mostly to accommodate changes proposed elsewhere in the rule. For example, definitions are added for "Default," "Equity," "Operating DSC," "Operating TIER," "Regulatory Created Assets," and "Total Assets." These relate primarily to proposed § 1717.655, under which borrowers that meet certain criteria would be exempt from RUS approval of investments, loans and guarantees.

Technical changes are proposed to the definition of "Own Funds." These are not intended to make any substantive change to what investments, loans and guarantees are or are not controlled by RUS. The proposed changes are intended to more closely reflect the approach actually used by RUS in monitoring investments, loans and guarantees. The current definition may give the erroneous impression that all cash deposits and other assets held by a borrower are first divided into "Own Funds" and "other funds" and that only "Own Funds" are subject to controls. In fact, all of a borrower's investments, loans and guarantees are subject to controls except those made under the 15 percent limit and those excluded under § 1717.654. The definition of "Own Funds" serves primarily to make clear that, for the purposes of the 15 percent exclusion, a borrower cannot treat funds lent by RUS as its "Own Funds".

In addition, four new terms would be defined: "Natural Gas Distribution System," "Solid Waste Disposal System," Telecommunication and Other Electronic Communication System," and "Water and Waste Disposal System." Under proposed § 1717.654 investments by borrowers in these four types of community infrastructure located in the borrowers' service territories would be excluded from RUS control.

Finally, it is proposed that the current definition of "Invest" be supplemented by allowing borrowers to submit any proposed transaction to RUS for an interpretation of whether the action is an investment for the purposes of RUS controls.

Section 1717.653 Transactions Below the 15 Percent Level

Proposed paragraph (a) of new § 1717.653 is the same substantively as existing § 1717.653. It would continue to provide that a borrower in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS would not need prior approval from RUS to make investments, loans and guarantees up to the 15 percent level. For purposes of clarity, the proviso that the borrower must not be in default would be included at this point rather than in the definition of borrower, as in the existing rule. Similarly, a proviso would be included to make it clear that funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage would remain subject to RUS controls. This issue is currently addressed in the definition of "Own Funds" in the existing rule.

Proposed paragraph (b) is substantively the same as existing § 1717.654(b).

Proposed paragraph (c) is new, and is intended to clarify RUS policy that it will not "approve" investments, loans or guarantees made below the 15 percent level. In the past, some borrowers have sought to obtain RUS approval of transactions below the 15 percent limit and to have these transactions excluded when determining the aggregate amount of investments, loans and guarantees made by the borrower. Such approvals would not be consistent with the restriction imposed on RUS by section 312 of the RE Act. They also would not be consistent with protecting loan security since a borrower might seek approval and exclusion of low-risk transactions below the 15 percent limit in order to make room for high-risk transactions below the limit that would be immune from RUS review.

Section 1717.654 Exclusion of Certain Investments, Loans and Guarantees

Proposed paragraph (a) would remain substantively the same as existing paragraph (a). The exclusions set forth in proposed paragraph (b) are the same as those in existing paragraph (b)(2), except that it would be made clear that all investments made in the National Rural Utilities Cooperative Finance Corporation and the National Bank for Cooperatives would be excluded from RUS controls, as they are now under current RUS policy.

Certain other exclusions currently followed by RUS would continue. These include exclusions for any investment, loan or guarantee that the borrower is required to make by RUS or other USDA agency; investments included in an irrevocable trust for the purpose of funding post-retirement benefits of the borrower's employees; and reserves required by a reserve bond agreement or other legally binding agreement that are dedicated to making required payments on debt secured under the RUS mortgage, not to exceed the amount of reserves specifically required by such agreement.

All dollar amounts excluded by RUS from the calculation of aggregate investments, loans, and guarantees pursuant to the RUS mortgage, RUS loan contract, and/or RUS regulations, bulletins, memoranda (including the memorandum of March 28, 1985 cited below), or other written notice as of the date of this proposed rule will continue to be excluded in the future. However, profits, interest and other returns (regardless of whether or not they are reinvested) from such investments, loans, and guarantees after the date of this proposed rule will be excluded only if they are excluded under proposed § 1717.654. Also, any new commitment of funds to such investments, loans, and guarantees will not be exempted after the date of this proposed rule unless they are excluded under proposed § 1717.654. Moreover, the memorandum issued to all electric borrowers by the Administrator of the Rural Electrification Administration, dated March 28, 1985, regarding the approval of certain investments is hereby rescinded.

Several new exclusions are proposed under paragraph (c) of this section. There would be no restrictions on investments in or loans to the following types of community infrastructure located in the borrower's service territory: water and waste disposal systems; solid waste disposal systems; telecommunication and other electronic communication systems; and natural gas distribution systems. Guarantees of the obligations of such systems would also be excluded so long as the aggregate amount of such guarantees does not exceed 20 percent of the borrower's equity.

RUS believes that borrowers should be able to minimize the risks associated with investing in these types of community infrastructure because of the similarities in structure and operation between them and the borrowers' main electric utility business, and the opportunities for sharing overhead in such areas as billing, communications, system control, repair and maintenance, and construction supervision. Excluding these investments complements the approach in the proposed new mortgage for distribution borrowers, which would allow borrowers meeting certain criteria to issue up to 20 percent of their total secured debt for such community infrastructure, without the approval of the mortgagees.

It is also proposed that amounts "invested" in customer accounts receivable and other accounts receivable be excluded from the calculation of total investments, loans and guarantees. These "investments" represent commitments made for a period of less than a year, and should not present a significant on-going risk to the borrower or RUS.

Other proposed editorial changes to existing 1717.654, such as shifting paragraph (b)(1) to 1717.653(b) would not change the substance of the rule.

Section 1717.655 Exemption of Certain Borrowers From Controls

Proposed new § 1717.655 would exempt borrowers that meet certain criteria from RUS approval of investments, loans and guarantees. The proposed criteria are as follows:

- The borrower must be in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS.
- The average revenue per kWh for residential service received by the borrower must not exceed 130 percent of the average revenue for residential service for all residential consumers in the state or states served by the borrower. The criterion would apply only to distribution borrowers.
- In the most recent calendar year the borrower must have achieved an operating TIER and an operating DSC of at least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent years.
- The borrower's ratio of net utility plant to long-term debt must be at least 1.1.
- The borrower must have equity equal to at least 27 percent of its total assets.

Both distribution and power supply borrowers that meet these criteria would be exempt from RUS approval of investments, loans and guarantees. It is estimated that about 83 percent of distribution borrowers and 3 power supply borrowers currently would meet the proposed criteria for exemption. Borrowers not meeting the criteria would be subject to RUS approval of investments, loans and guarantees above 15 percent of total utility plant.

The first qualification criterion would require the borrower to be in good standing with respect to all covenants of its RUS mortgage, RUS loan contract or any other agreement with RUS, such as adequately maintaining the property, having adequate insurance coverage, meeting all financial obligations, and achieving margins sufficient to meet TIER and DSC requirements.

The second criterion would exclude borrowers that are more likely to face risks of substantial downward pressure on rates and the possible loss of load and revenues. While comparing a borrower with the state average, as proposed, is less reliable analytically than a detailed comparison with the borrower's neighboring competitors, setting the threshold at 130 percent should ensure that borrowers that fail the test most likely face an increased risk of rate competition. At a borrower's request, the Administrator of RUS could waive this criterion if he found that the borrower's strength on the other qualification criteria offset the borrower's weakness in rate disparity.

The third criterion would ensure that the borrower is usually able to cover all of the expenses of its utility operation from utility revenues, and normally should not be dependent on income from investments or loans to meet the expenses of its primary business.

The fourth criterion would provide substantial assurance that the borrower's long-term debt is adequately collateralized and that RUS loan security normally should not need to depend on the borrower's investments and loans, which may not be secured or effectively secured under the RUS mortgage and whose liquidation value may vary substantially over time.

The fifth criterion would provide an equity cushion in the event the borrower defaulted and foreclosure and liquidation became necessary. It also would provide an incentive for profitable investments and a disincentive for unprofitable investments, since the ratio of equity to total assets would increase in the first case and decrease in the second. A borrower could lose its exemption status if bad investments reduced equity below 27 percent.

While distribution and power supply borrowers that meet the proposed criteria would be exempt from RUS approval of their investments, loans and guarantees, these borrowers would continue to be obligated to maintain adequate records and to report annually on their transactions. Such records and reports would be needed in the event an exempt borrower lost its exemption because of failure to meet one or more of the criteria, and also to monitor borrower performance in making investments in rural development.

If an exempt borrower ceases to meet the criteria for exemption, it would become subject to the controls set forth in this proposed rule upon receiving written notice from RUS. Such borrower could regain its exemption if subsequently it met the qualification criteria and was so notified in writing by RUS.

If an exempt borrower is over the 15 percent level at the time it loses its exemption, it could ask the Administrator to exclude a portion of its investments, loans and guarantees up to

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the aggregate amount of net profit earned on all of its transactions over the past 10 years. If the net profits are insufficient, or if the Administrator does not exclude an amount sufficient to bring the borrower to or below the 15 percent level, the borrower would be required to reduce or restructure its portfolio (e.g., divest or shift some investments to excluded investments) in order to come within the 15 percent limit. If the borrower failed to do this within a timeframe set by RUS, the borrower would be in default of its RUS loan contract and/or RUS mortgage upon receiving written notice from RUS of the default.

Section 1717.656 Investments, Loans, and Guarantees in Excess of 15 Percent of Total Utility Plant

Proposed new § 1717.656 would establish policies and requirements for RUS approval of investments, loans and guarantees above 15 percent of total utility plant. The section would apply only to borrowers that do not qualify for an outright exemption from RUS approval under § 1717.655. In the case of distribution borrowers that do not qualify for an exemption, they would not be given approval to make controlled investments, loans and guarantees above the 15 percent level.

These borrowers currently represent less than 20 percent of all distribution borrowers, and all but one of them are below the 15 percent level at the present time. These borrowers would retain the latitude to make unlimited investments, loans and guarantees within those categories excluded from control under § 1717.654. Moreover, RUS believes that many of these borrowers could improve their economic and financial condition in order to qualify for the outright exemption under § 1717.655, if they want the additional latitude to make controlled investments, loans and guarantees above the 15 percent level.

In the case of power supply borrowers that do not qualify for an exemption under § 1717.655, RUS would consider requests to make controlled investments, loans and guarantees above the 15 percent level. To be eligible to submit a request, a power supply borrower would have to meet the following criteria:

- The borrower must be in compliance with all provisions of its RUS mortgage, RUS loan contract and any other agreement with RUS.
- The borrower cannot be in financial workout nor had its government debt restructured.
- The borrower must have equity of at least 5 percent of total assets.
- After approval of the request, the aggregate of the borrower's investments, loans and guarantees cannot exceed 20 percent of total utility plant. Beyond this level RUS believes that further investments, loans or guarantees outside of the "excluded categories" would present unacceptable risks in the case of borrowers that do not qualify for an exemption under § 1717.655.

If a power supply borrower meets the above criteria, its request would be considered on a case by case basis. In considering the request, the Administrator would take the following factors into consideration:

- The repayment of all loans secured by the RUS mortgage must continue to be assured and security must continue to be reasonably adequate even if the entire investment, loan or guaranteed amount were lost. This "total loss" approach would expedite review by RUS by eliminating the need to assess the probability of a loss occurring and its probable size. The effect of the loss of the entire investment, loan or guaranteed amount would be considered along with all other risks facing the borrower.
- In the case of an investment, the investment would have to be made in an entity separate from the borrower, such as a subsidiary, whereby the borrower would be protected from any liabilities incurred by the separate entity, unless the borrower is able to demonstrate that making the investment directly rather than through a separate entity would present no substantial risk beyond that of possibly losing part or all of the investment.
- The borrower must be economically and financially sound as indicated by its costs of operation, competitiveness, operating TIER and operating DSC, physical condition of the plant, ratio of equity to total assets, ratio of net utility plant to long-term debt, and other factors.
- Other factors affecting the security and repayment of government debt, as determined on a case by case basis.

This proposed new section 1717.656 would also clarify existing policy that if RUS approves an investment, loan or guarantee, such investment, loan or guarantee would continue to be included when calculating the borrower's ratio of aggregate investments, loans and guarantees to total utility plant. In other words, just because an investment has been approved by RUS doesn't mean it will not continue to be counted toward the borrower's total investments.

Proposed paragraph (d) of this section would deal with the situation where profits earned on investments increase the aggregate amount of investment and could cause a borrower to be in technical violation of its loan contract or mortgage. The paragraph would make it clear that if a borrower exceeded the 15 percent limit as a result of net profits earned on the aggregate of its investments, loans and guarantees during the past 10 years, the borrower would not be in default of its loan contract or mortgage. Net profit would be calculated by taking the sum of all profits earned on all transactions during the past 10 years (including interest earned on cash accounts, loans, and similar transactions), and subtracting all losses experienced on all transactions during the same period.

Also, under proposed paragraph (d) RUS would be willing to consider a borrower's request to exclude up to the amount of net profit earned on the borrower's investments, loans and guarantees during the past 10 years. Such exclusion by RUS may or may not reduce the borrower's aggregate investments, loans and guarantees to or below the 15 percent limit. If it does not, the borrower would be required to restructure or reduce its portfolio to come within the 15 percent level. Failure to do so within a timeframe set by RUS would result, upon written notice from RUS, in a default by the borrower.

Section 1717.657 Records, Reports and Audits

Paragraphs (a), (b) and (c) of proposed § 1717.657 are the same substantively as existing § 1717.655. Proposed paragraph (a) is the same substantively as existing paragraph (a) of § 1717.655, and proposed paragraph (c) is the same substantively as existing paragraph (b). Proposed paragraph (b) would combine existing paragraphs (c) and (d).

Proposed paragraph (d) would be a new provision. It would clarify that RUS monitoring of borrower compliance with this rule will be based primarily on the annual financial and statistical reports submitted by borrowers (i.e., the RUS Forms 7 and 12), and the annual auditor's report on borrower operations. While RUS would ordinarily rely primarily on these annual reports, all borrowers would continue to be obligated to comply with this rule throughout the entire year. For example, if a borrower was below the 15 percent level at the end of the preceding year, it could not exceed the 15 percent level during the current year without prior approval from RUS, unless of course it was exempt from approval under proposed § 1717.655.

Section 1717.658 Effect of Subpart on RUS Loan Contract and Mortgage

Section 1717.656 of the existing rule lists several specific provisions of the RUS mortgage that are not affected by the rule, as well as the fact that a supplemental lender's rights under the RUS mortgage regarding control of investments also are not affected by the rule. These specific provisions were listed for emphasis only; there being no intent to imply that other provisions of the mortgage are somehow affected by the rule on investment controls. Furthermore, section 1717.657 of the existing rule provides that the rule does not affect a supplemental lender's rights under its own loan documentation to control borrower investments.

Proposed § 1717.658 would combine and simplify the two existing sections. Rather than list, for emphasis, specific provisions of the RUS mortgage that are not affected by the rule, the proposed rule would make it clear that it does not affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval of investments, loans, and guarantees made by the borrower. Also, the proposed section would combine the provisions of the two existing sections regarding a supplemental lender's rights to control investments not being affected by the proposed rule.

Appendix A

Existing Appendix A to subpart N provides several examples of how certain types of investments, loans, and guarantees should be reported. In light of the clarification and additional guidance that would be provided in the main body of this proposed rule, as well as that provided annually in RUS Bulletins 1717B–2 and 1717B–3, it is proposed that Appendix A be dropped.

In summary, RUS believes the proposed changes to subpart N will clarify RUS's policies and requirements on investments, loans and guarantees, improve compliance, provide better service to our borrowers by reducing uncertainty as to what is expected of them, and improve the utilization of RUS staff resources.

List of Subject in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated, subpart N of 7 CFR 1717 is proposed to be revised as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

Sec.

1717.650 Purpose.
1717.651 Policy.
1717.652 Definitions.
1717.653 Transactions below the 15 percent level.
1717.654 Exclusion of certain investments, loans, and guarantees.
1717.655 Exemption of certain borrowers from controls.
1717.656 Investments, loans, and guarantees in excess of 15 percent of total utility plant.
1717.657 Records, reports and audits.
1717.658 Effect of this subpart on RUS loan contract and mortgage.

Subpart N—Investments, Loans, and Guarantees by Electric Borrowers

Authority: 7 U.S.C. 901–950b; Pub.L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); Title I, Subtitle D, Pub.L. 100–203, 101 stat. 1330.

§ 1717.650 Purpose.

This subpart contains the general regulations of the Rural Utilities Service (RUS) for implementing and interpreting the provisions of the Rural Electrification Act of 1936, as amended, including section 312 (7 U.S.C. 901 et seq.) (RE Act), permitting, in certain circumstances, that borrowers of insured or guaranteed electric loans under the RE Act may, without restriction or prior approval of the Administrator of RUS, invest their own funds and make loans or guarantees.

§ 1717.651 Policy.

RUS electric borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not in any way put government funds at risk or impair a borrower's ability to repay its indebtedness to RUS and other lenders. In considering whether to make loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve. RUS assumes that borrowers will use the latitude afforded them by section 312 of the RE Act primarily to make needed investments in rural community infrastructure projects (such as water and waste systems, garbage collection services, etc.) and in job creation activities (such as providing technical, financial, managerial assistance) and other activities to promote business development and economic diversification in rural communities. Nonetheless, RUS believes that borrowers should continue to give primary consideration to safety and liquidity in the management of their funds.

§ 1717.652 Definitions.

As used in this subpart:

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification.

Cash-construction fund-trustee account means the account described in the Uniform System of Accounts as one to which funds are deposited for financing the construction or purchase of electric facilities.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of subsidiaries. Some examples of such guarantees include guarantees of payment or collection on a note or other debt instrument (assuring returns on investments); issuing performance bonds or completion bonds; or cosigning leases or other obligations of third parties.

Equity means the Margins and Equities of the borrower as defined in the Uniform System of Accounts, less regulatory created assets.

Invest means to commit money in order to earn a financial return on assets, including, without limitation, all investments properly recorded on the borrower's books and records in investment accounts as those accounts are used in the Uniform System of Accounts for RUS Borrowers. Borrowers may submit any proposed transaction to RUS for an interpretation of whether the action is an investment for the purposes of this definition.

Make loans means to lend out money for temporary use on condition of repayment, usually with interest.

Mortgaged property means any asset of the borrower which is pledged in the RUS mortgage.

Natural gas distribution system means any system of community infrastructure that distributes natural gas and whose services are available by design to all or a substantial portion of the members of the community.

Operating DSC means Operating Debt Service Coverage (ODSC) calculated as:

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$$ODSC = \frac{A+B+C}{D}$$

where:
A = Depreciation and Amortization Expense;
B = Interest on Long-term Debt, except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property exceed 2 percent of Total Margins and Equities;
C = Patronage Capital & Operating Margins (distribution borrowers) or Operating Margins (power supply borrowers); and
D = Debt Service Billed (RUS + other) which equals all interest and principal billed during the calendar year plus ⅓ of the amount, if any, by which the rentals of Restricted Property exceed 2 percent of Total Margins and Equities. Unless otherwise indicated, all terms used in defining ODSC and OTIER are as defined in RUS Bulletin 1717B–2 Instructions for the Preparation of the Financial and Statistical Report for Electric Distribution Borrowers, and RUS Bulletin 1717B–3 Instructions for the Preparation of the Operating Report for Power Supply Borrowers and for Distribution Borrowers with Generating Facilities, or the successors to these bulletins.

Operating TIER means Operating Times Interest Earned Ratio (OTIER) calculated as:

$$OTIER = \frac{A+B}{A}$$

where:
A = Interest on Long-term Debt, except that Interest on Long-term Debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property exceed 2 percent of Total Margins and Equities; and
B = Patronage Capital & Operating Margins (distribution borrowers) or Operating Margins (power supply borrowers).

Own funds means money belonging to the borrower other than the proceeds of loans made or guaranteed by RUS. Such proceeds include, but are not limited to, all funds on deposit in the cash-construction fund-trustee account.

Regulatory created assets means the sum of the amounts properly recordable in Account 182.2 Unrecovered Plant and Regulatory Study Costs, and Account 182.3 Other Regulatory Assets of the Uniform System of Accounts.

RUS means the Rural Utilities Service, an agency of the U.S. Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178, 7 U.S.C. 6941 et seq.) and, for purposes of this subpart, includes its predecessor, the Rural Electrification Administration.

RUS mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

RUS loan contract means the loan contract between the borrower and RUS.

Solid waste disposal system means any system of community infrastructure that provides collection and/or disposal of solid waste and whose services are available by design to all or a substantial portion of the members of the community.

Subsidiary means a company which is controlled by the borrower through ownership of voting stock, and is further defined in 7 CFR 1767.10.

Supplemental lender means a lender that has provided a supplemental source of financing that is secured by the RUS mortgage.

Telecommunication and other electronic communication system means any community infrastructure that provides telecommunication or other electronic communication services and whose services are available by design to all or a substantial portion of the members of the community.

Total assets means the total assets of the borrower as calculated according to the Uniform System of Accounts, less regulatory created assets.

Total utility plant means the sum of the borrower's Electric Plant Accounts and Construction Work in Progress—Electric Accounts, as such terms are used in the Uniform System of Accounts.

Uniform System of Accounts means the system of accounts prescribed for RUS borrowers in 7 CFR part 1767.

Water and waste disposal system means any system of community infrastructure that supplies water and/or collects and treats waste water and whose services are available by design to all or a substantial portion of the members of the community.

§ 1717.653 Transactions below the 15 percent level.

(a) A borrower in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS may, without prior written approval of the Administrator, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant without regard to any provision contained in any RUS mortgage or RUS loan contract to the effect that the borrower must obtain prior approval from RUS. However, funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls on borrower investments, loans and guarantees.

(b) RUS will require that any electric loan made or guaranteed by RUS after [Date 30 days after the final rule is published in the **Federal Register**] shall be subject to a provision in the loan contract or mortgage restricting investments, loans and guarantees by the Borrower substantially as follows: The borrower may, to the extent permitted by this subpart, invest its own funds or make loans or guarantees not in excess of 15 percent of its total utility plant, as those terms are used in said subpart.

(c) RUS will not consider requests from borrowers to approve or exclude investments, loans, or guarantees made below the 15 percent level. (Categorical exclusions are set forth in 1717.654.)

§ 1717.654 Exclusion of certain investments, loans, and guarantees.

(a) In calculating the amount of investments, loans and guarantees permitted under this subpart, there is excluded from the computation any investment, loan or guarantee of the type which by the terms of the borrower's RUS mortgage or RUS loan contract the borrower may make in unlimited amounts without RUS approval.

(b) Furthermore, the borrower may make unlimited investments, without prior approval of the Administrator, in:

(1) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(2) Capital term certificates, bank stock, or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender, as well as any other investment made in, or loans made to, the National Rural Utilities Cooperative Finance Corporation or the National Bank for Cooperatives;

(3) Patronage capital allocated from a power supply cooperative of which the borrower is a member.

(c) Without prior approval of the Administrator, the borrower may also:

(1) Invest or lend funds derived directly from grants received from, or loans made or guaranteed by, an agency of the U.S. Department of Agriculture (USDA) for the purposes specifically authorized in such grants or loans;

(2) Make loans guaranteed by an agency of USDA, up to the amount of principal whose repayment, with interest, is fully guaranteed; and

(3)(i) Make unlimited investments in and unlimited loans to finance the following community infrastructure located within its service territory, and guarantee debt issued by such entities up to an aggregate amount of such guarantees not to exceed 20 percent of the borrower's equity:

(A) Water and waste disposal systems;

(B) Solid waste disposal systems;

(C) Telecommunication and other electronic communication systems; and

(D) Natural gas distribution systems.

(ii) In each of the four cases in paragraph (c)(3)(i) of this section, if the system is a component of a larger organization other than the borrower itself (e.g., if it is a component of a subsidiary of the borrower or a corporation independent of the borrower), to be eligible for the exemption the borrower must certify annually that either a majority of the assets of the larger organization were invested in said system at the end of the most recent fiscal year, or that a majority of the revenues of the larger organization came from said system during the most recent fiscal year.

(d) Also excluded from the calculation of investments, loans and guarantees made by the borrower are:

(1) Amounts properly recordable in Account 142 Customer Accounts Receivable, and Account 143 Other Accounts Receivable;

(2) Any investment, loan, or guarantee that the borrower is required to make by an agency of USDA, for example, as a condition of obtaining financial assistance for itself or any other person or organization;

(3) Investments included in an irrevocable trust for the purpose of funding post-retirement benefits of the borrower's employees; and

(4) Reserves required by a reserve bond agreement or other agreement legally binding on the borrower, that are dedicated to making required payments on debt secured under the RUS mortgage, not to exceed the amount of reserves specifically required by such agreements.

(e) Grandfathered exclusions. All amounts excluded by RUS from the calculation of the aggregate amount of investments, loans and guarantees as of February 16, 1995 shall remain excluded. Such exclusions must have been based on the RUS mortgage, RUS loan contract, regulations, bulletins, memoranda, or other written notice from RUS. Profits, interest, and other returns earned (regardless of whether or not they are reinvested) on such investments, loans and guarantees after February 16,1995 shall be excluded only if they are eligible for exclusion under paragraphs (a) through (d) of this section. Any new commitments of money to such investments, loans and guarantees shall likewise be excluded only if they are eligible under paragraphs (a) through (d) of this section.

(f) Any investment, loan or guarantee made by a borrower that is not excluded under this section or under § 1717.656(d) shall be included in the aggregate amount of investments, loans and guarantees made by the borrower, regardless of whether RUS has specifically approved the investment, loan or guarantee under § 1717.656(c), or has approved a related transaction (e.g., a related contract or lien accommodation).

§ 1717.655 Exemption of certain borrowers from controls.

(a) Any distribution or power supply borrower that meets all of the following criteria is exempted from the provisions of the RUS mortgage and loan contract that require RUS approval of investments, loans, and guarantees made by the borrower:

(1) The borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS;

(2) The average revenue per kWh for residential service received by the borrower during the two most recent calendar years does not exceed 130 percent of the average revenue per kWh for residential service during the same period for all residential consumers located in the state or states served by the borrower. This criterion applies only to distribution borrowers and does not apply to power supply borrowers. If a borrower serves customers in more than one state, the state average revenue per kWh will be based on a weighted average using the kWh sales by the borrower in each state as the weight. The calculation will be based on the two most recent calendar years for which both borrower and state-wide data are available. If a borrower fails to qualify for an exemption based solely on its failure to meet this criterion on rate disparity, at the borrower's request the Administrator may at his sole discretion exempt the borrower if he finds that the borrower's strengths with respect to the other criteria are sufficient to offset any weakness due to rate disparity;

(3) In the most recent calendar year for which data are available, the borrower achieved an operating TIER of at least 1.0 and an operating DSC of at least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent calendar years;

(4) The borrower's ratio of net utility plant to long-term debt is at least 1.1, based on year-end data for the most recent calendar year for which data are available; and

(5) The borrower's equity is equal to at least 27 percent of its total assets, based on year-end data for the most recent calendar year for which data are available.

(b) While borrowers meeting the criteria in paragraph (a) of this section are exempt from RUS approval of investments, loans and guarantees, they are nevertheless subject to the record-keeping, reporting, and other requirements of § 1717.657.

(c) Any borrower exempt under paragraph (a) of this section that ceases to meet the criteria for exemption shall, upon written notice from RUS, no longer be exempt and shall be subject to all provisions of this subpart applicable to non-exempt borrowers. A borrower may regain its exemption if it subsequently meets the criteria in paragraph (a) of this section, and is so notified in writing by RUS.

(d) If a borrower loses its exemption and the aggregate of investments, loans and guarantees of such borrower exceeds 15 percent of total utility plant, the borrower will be required to reduce or restructure its portfolio (e.g., divest or shift some investments to excluded investments) in order to come within the 15 percent level. (However, such borrower is eligible to ask RUS to exclude a portion of its investments under the conditions set forth in § 1717.656(d).) If the borrower does not come within the 15 percent level within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of its loss of exemption, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and/or RUS mortgage.

(e) By no later than May 1 of each year, RUS will provide written notice to any borrowers whose exemption status has changed as a result of more recent data being available for the qualification criteria set forth in paragraph (a) of this section, or as a result of other reasons, such as corrections in the available data. An explanation of the reasons for any changes in exemption status will also be provided to the borrowers affected.

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§ 1717.656 Investments, loans, and guarantees in excess of 15 percent of total utility plant.

(a) *General.* This section applies only to borrowers that are subject to Administrator approval of investments, loans and guarantees made above the 15 percent limit, i.e., borrowers that do not meet the exemption criteria in § 1717.655(a).

(b) *Distribution borrowers.* Distribution borrowers subject to Administrator approval of investments, loans and guarantees will not be given approval to make investments, loans and guarantees in an aggregate amount in excess of 15 percent of total utility plant. Above the 15 percent level, such borrowers will be restricted to excluded investments, loans and guarantees as defined in § 1717.654. (However, they are eligible to ask RUS to exclude a portion of their investments under the conditions set forth in paragraph (d) of this section.)

(c) *Power supply borrowers.* (1) Power supply borrowers subject to Administrator approval of investments, loans and guarantees may request approval to exceed the 15 percent level if all of the following criteria are met:

(i) The borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreement with RUS;

(ii) The borrower is not in financial workout and has not had its government debt restructured;

(iii) The borrower has equity equal to at least 5 percent of its total assets; and

(iv) After approval of the investment, loan or guarantee, the aggregate of the borrower's investments, loans and guarantees will not exceed 20 percent of the borrower's total utility plant.

(2) Borrower requests for approval to exceed the 15 percent level will be considered on a case by case basis. The requests must be made in writing.

(3) In considering borrower requests, the Administrator will take the following factors into consideration:

(i) The repayment of all loans secured under the RUS mortgage will continue to be assured, and loan security must continue to be reasonably adequate, even if the entire investment or loan is lost or the borrower is required to perform for the entire amount of the guarantee. These risks will be considered along with all other risks facing the borrower, whether or not related to the investment, loan or guarantee;

(ii) In the case of investments, the investment must be made in an entity separate from the borrower, such as a subsidiary, whereby the borrower is protected from any liabilities incurred by the separate entity, unless the borrower demonstrates to the satisfaction of the Administrator that making the investment directly rather than through a separate entity will present no substantial risk to the borrower in addition to the possibility of losing all or part of the original investment;

(iii) The borrower must be economically and financially sound as indicated by its costs of operation, competitiveness, operating TIER and operating DSC, physical condition of the plant, ratio of equity to total assets, ratio of net utility plant to long-term debt, and other factors; and

(iv) Other factors affecting the security and repayment of government debt, as determined by the Administrator on a case by case basis.

(4) If the Administrator approves an investment, loan or guarantee, such investment, loan or guarantee will continue to be included when calculating the borrower's ratio of aggregate investments, loans and guarantees to total utility plant.

(d) *Distribution and power supply borrowers.* If the aggregate of the investments, loans and guarantees of a distribution or power supply borrower exceeds 15 percent of the borrower's total utility plant as a result of the cumulative profits or margins, net of losses, earned on said transactions over the past 10 calendar years (i.e., the sum of all profits earned during the 10 years on all transactions—including interest earned on cash accounts, loans, and similar transactions—less the sum of all losses experienced on all transactions during the 10 years) then:

(1) The borrower will not be in default of the RUS loan contract or RUS mortgage with respect to required approval of investments, loans and guarantees, provided that the borrower had not made additional net investments, loans or guarantees without approval after reaching the 15 percent level; and

(2) At the request of the borrower, the Administrator in his sole discretion may decide to exclude up to the amount of net profits or margins earned on the borrower's investments, loans and guarantees during the past 10 calendar years, if the Administrator determines that such exclusion will not increase loan security risks. The borrower must provide documentation satisfactory to the Administrator as to the current status of its investments, loans and guarantees and the net profits earned during the past 10 years. Any exclusion approved by the Administrator may or may not reduce the level of investments, loans and guarantees to or below the 15 percent level. If such exclusion does not reduce the level to or below the 15 percent level, RUS will notify the borrower in writing that it must reduce or restructure its investments, loans and guarantees to a level of not more than 15 percent of total utility plant. If the borrower does not come within the 15 percent level within a reasonable period of time determined by the Administrator, which shall not exceed 12 months from the date the borrower was notified of the required action, then, upon written notice from RUS, the borrower shall be in default of its RUS loan contract and mortgage.

§ 1717.657 Records, reports and audits.

(a) Every borrower shall maintain accurate records concerning all investments, loans and guarantees made by it. Such records shall be kept in a manner that will enable RUS to readily determine:

(1) The nature and source of all income, expenses and losses generated from the borrower's loans, guarantees and investments;

(2) The location, identity and lien priority of any loan collateral resulting from activities permitted by this subpart; and

(3) The effects, if any, which such activities may have on the feasibility of loans made, guaranteed or lien accommodated by RUS.

(b) In determining the aggregate amount of investments, loans and guarantees made by a borrower, the borrower shall use the recorded value of each investment, loan or guarantee as reflected on its books and records for the next preceding end-of-month, except for the end-of-year report which shall be based on December 31 information. Every borrower shall also report annually to RUS, in the manner and on the form specified by the Administrator, the current status of each investment, outstanding loan and outstanding guarantee which it has made pursuant to this subpart.

(c) The records of borrowers shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the financial records of any subsidiaries of the borrower to determine if the borrower is in compliance with this subpart, and to ascertain if the debts, guarantees (as defined in this subpart), or other obligations of the subsidiaries could adversely affect the ability of the borrower to repay its debts to the Government.

(d) RUS will monitor borrower compliance with this subpart based primarily on the annual financial and statistical report submitted by the borrower to RUS and the annual auditor's report on the borrower's operations. However, RUS may inspect the borrower's records at any time during the year to determine borrower compliance. If a borrower's most recent annual financial and statistical report shows the aggregate of the borrower's investments, loans and guarantees to be below the 15 percent level, that in no way relieves the borrower of its obligation to comply with its RUS mortgage, RUS loan contract, and this subpart with respect to Administrator approval of any additional investment, loan or guarantee that would cause the aggregate to exceed the 15 percent level.

§ 1717.658 Effect of this subpart on RUS loan contract and mortgage.

(a) Nothing in this subpart shall affect any provision, covenant, or requirement in the RUS mortgage, RUS loan contract, or any other agreement between a borrower and RUS with respect to any matter other than the prior approval by RUS of investments, loans, and guarantees made by the borrower. Also, nothing in this subpart shall affect any rights which supplemental lenders have under the RUS mortgage, or under their loan contracts or other agreements with their borrowers, to limit investments, loans and guarantees by their borrowers to levels below 15 percent of total utility plant.

(b) RUS reserves the right to change the provisions of the RUS mortgage and loan contract relating to RUS approval of investments, loans and guarantees made by the borrower, on a case-by-case basis, in connection with providing additional financial assistance to a borrower after [Date 30 days after the final rule is published in the **Federal Register**].

Dated: February 7, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–3665 Filed 2–15–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101, 111, 170, and 310

[Docket Nos. 91P–0186 and 93P–0306]

Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Supplemental proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a supplemental proposed rule to set forth its legal authority, after the passage of the Dietary Supplement Health and Education Act (DSHEA), to require unit-dose packaging of iron-containing dietary supplements that contain 30 milligrams (mg) or more iron per dosage unit. On October 6, 1994, the agency proposed this packaging requirement as part of a broader proposal to require unit-dose packaging of all iron-containing products in solid oral dosage form containing 30 mg or more iron per dosage unit and to require label warning statements on all iron-containing products in solid oral dosage form. The agency's authority to establish the labeling requirements and the packaging requirements for iron-containing products other than dietary supplements (i.e., iron-containing drugs) is unaffected by the DSHEA. To ensure that there is adequate time to comment on this supplemental proposed rule, as well as on the issues raised by the initial proposal, FDA is reopening the comment period for this rulemaking until April 17, 1995.

DATES: Written comments to the initial proposal (published at 59 FR 51030, October 6, 1994) and this supplemental proposal by April 17, 1995. The agency is proposing that any final rule that may be issued based upon this proposal become effective 180 days after its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John N. Hathcock, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 8301 Muirkirk Rd., Laurel, MD 20708, 301–594–6006.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 6, 1994 (59 FR 51030), FDA issued a proposal on actions that it tentatively concluded were necessary to stem the recent epidemic of pediatric poisonings from accidental overdoses of iron-containing products. The available evidence shows that since the mid 1980's, there has been an upsurge in reported accidental pediatric poisonings from ingestion of iron-containing products (59 FR 51030). This upsurge in poisonings, and the many resultant injuries and deaths of children, have created a dilemma with respect to how to ensure that iron sources are available while still minimizing the risks to children.

To protect children, FDA proposed two new requirements: First, to ensure that consumers are fully informed about the consequences of consuming iron-containing products, FDA proposed to require a warning statement about the adverse effects of acute, high-dose iron ingestion by children to be included in the labeling of all iron-containing products in solid oral dosage form. FDA found that the fact that poisonings continue to occur, even though there have been at least 37 deaths from accidental iron ingestion, strongly suggests that many adults are not aware of the potential for serious harm or death in young children from accidental ingestion of iron-containing products. Support for this finding is provided by statements made by the parents of the victims in several of the poisoning incidents, described in the case reports obtained from the U.S. Consumer Product Safety Commission (CPSC). FDA proposed that this requirement apply to iron-containing drugs and dietary supplements based on its authority under sections 201(n), 403(a)(1), 502(a), and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n), 343(a)(1), 352(a), and 371(a)). Under section 403(a)(1) of the act, a food is misbranded if its labeling is false or misleading in any particular. Section 502(a) of the act establishes the same rule for drugs. Section 201(n) of the act states:

> If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

These statutory provisions, combined with section 701(a) of the act, which grants the agency authority to issue regulations for the efficient enforcement of the act, clearly authorize FDA to issue a regulation designed to ensure that persons using iron-containing drugs and dietary supplements will receive information that is material with respect to consequences that may result from the use of the product.

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The circumstances involved with the iron poisonings parallel in many significant respects those that led the agency to require a warning on protein products. The use of iron-containing products in households where children are present is in no way an unusual practice. Multi-vitamin/mineral supplements with iron are taken routinely by children, and products of this type specifically intended for use by children are widely available and commonly sold. Iron supplements and iron-containing drug products are frequently recommended by physicians for pregnant women (often with a prescription) and other women of child-bearing age to meet their dietary requirement (these groups require more iron than other adults). Yet, the evidence on poisonings and deaths shows that the presence of iron-containing products in households with young children can lead to accidental injury or death if the children gain access to the products. Thus, FDA tentatively concluded that a warning about the risk of accidental pediatric poisoning from iron-containing products in solid oral dosage form is necessary in the labeling of all iron-containing products.

Second, FDA proposed to require that all iron-containing drugs and dietary supplements in solid oral dosage form that contain 30 mg or more iron per dosage unit be packaged in unit-dose packaging. In the proposal, FDA tentatively concluded that full compliance with CPSC's child resistant packaging requirements, even if there are warning statements in labeling of iron-containing products and appropriate educational programs, is not adequate to ensure the safe use of certain iron-containing drugs and dietary supplements if bottle and closure packaging were to continue as the predominant means of packaging such products. FDA recognizes that each of these measures either has been successful in limiting the number of poisonings or can be reasonably expected to be effective in reducing the number of poisonings. However, given the potentially fatal outcome that can result from pediatric iron poisoning, FDA stated that it is not persuaded that these measures are adequate to ensure the safety of the use of certain iron-containing drugs and dietary supplements. To reduce the incidence of pediatric iron poisonings to a level that would permit the agency to conclude that the use of these products is safe, or generally recognized as safe (GRAS), FDA tentatively concluded that it was necessary to require a specific type of physical barrier to access dietary supplements that contain 30 mg or more of iron. Therefore, FDA tentatively concluded that an additional packaging requirement was necessary.

FDA proposed this packaging requirement for iron-containing dietary supplements based on its authority under the act, with the provisions available at that time, to ensure that food ingredients are safe. In particular, the act requires, in sections 402 and 409 (21 U.S.C. 342 and 348), that the safety of each food ingredient be established, either because the ingredient is GRAS, or because it is listed under the food additive or other relevant provisions, before it is added to food.

Section 409(a) of the act deems a food additive to be unsafe unless its use conforms to the conditions specified in the listing regulation. These conditions include, but are not limited to, specifications as to the particular food or classes of food to which the additive may be added, the manner in which the additive may be added to such food, and any directions or other labeling or packaging requirements for such additive deemed necessary to assure the safety of such use (section 409(c)(1)(A) of the act). Thus, under the act, the agency is authorized to specify packaging requirements for a food additive when it finds that use of such packaging is necessary to ensure the safe use of the additive.

Section 201(s) of the act provides an exemption to the "food additive" definition for substances that are GRAS under the conditions of their intended use. FDA has issued regulations delineating conditions under which the use of certain substances is GRAS. In the proposal, FDA tentatively concluded that those conditions could include packaging. Thus if a dietary supplement contained an iron salt whose use would be GRAS except for the fact that its packaging would not ensure that its use would be safe, the product would be considered to contain an unsafe food additive and thus to be adulterated.

FDA proposed the packaging requirement for iron-containing drugs based on its authority under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)). This section states that a drug shall be deemed to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated or administered in conformity with, current good manufacturing practice (CGMP) to assure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

Under section 501(a)(2)(B) of the act, manufacturers are responsible for preventing intentional misuse of a drug product. For example, in 1982, in response to a series of capsule tamperings, FDA issued a regulation (§ 211.132), under the authority of this section, that requires tamper-resistant packaging for all over-the-counter (OTC) human drug products except dermatologics, dentifrices, and insulin (47 FR 50442, November 5, 1982). The agency's action assured greater package integrity and product security beyond the point of manufacture.

The recent data available to FDA demonstrate that the current manner of holding iron-containing drug products until their use by the intended consumer fails to ensure that the drug products will be safe because large numbers of children are ingesting such products and suffering serious injuries or death. Existing technology permits additional safeguards, such as child-resistant blister packs, to be used for holding iron-containing drug products. Given the known dangers and the ability to minimize or eliminate such dangers through the use of existing technology, FDA tentatively concluded that CGMP dictates that unit-dose packaging be used.

II. The Dietary Supplement Health and Education Act

On October 25, 1994, President Clinton signed into law the DSHEA (Pub. L. 103–417). The DSHEA contains two provisions that bear on FDA's packaging proposal with respect to dietary supplements. First, section 3(b) of the DSHEA added section 201(s)(6) to the act. This provision excludes minerals, such as iron, that are used in dietary supplements from the definition of a "food additive." Second, section 9 of the DSHEA added section 402(g) to the act. Under this provision, a dietary supplement is adulterated unless it has been prepared, packed, and held under conditions that comply with the CGMP (section 402(g)(1) of the act). Under section 402(g)(2), the Secretary (and, by delegation, FDA) is authorized to prescribe CGMP's for dietary supplements by regulation.

The DSHEA does not bear on any aspect of this rulemaking other than the proposed packaging requirement for dietary supplements. Dietary supplements are deemed to be food and thus are subject to sections 201(n), 403(a), and 701(a) of the act (see section 201(ff) of the act). Thus, the proposed labeling requirement for iron-containing dietary supplements is not affected by the DSHEA. Moreover, the DSHEA does not bear on how drugs are regulated. Thus, the proposed requirements for iron-containing drugs are also unaffected by the new law. Even with the DSHEA, however, FDA continues to have authority to require that dietary supplements that contain 30 mg or more of iron per dosage unit be unit-dose packed.

III. Discussion

A. Effect of Section 201(s)(6) of the Act

In the proposal, FDA explained the basis for its tentative conclusion that it had authority to impose packaging requirements on iron-containing dietary supplements, FDA stated:

> Should FDA determine that a particular type of packaging is necessary to ensure the safe use of iron substances in dietary supplements, either as GRAS substances or as listed food additives, then any use of iron substances in dietary supplements that does not involve use of that type of packaging would constitute a use of an unapproved food additive and render the dietary supplements adulterated under the act. See 59 FR 51047.

This argument is deprived of its legal validity by new section 201(s)(6) of the act. The use of iron ingredients in dietary supplements is not subject to section 409 of the act, even if the conditions of use of the iron ingredients are not those that are GRAS. Thus, FDA cannot rely on section 409 of the act for authority to require unit-dose packaging of dietary supplements.

B. Effect of Section 402(g) of the Act

While, on the one hand, the DSHEA deprives the agency of the authority that it relied on in the proposal to require unit-dose packaging, on the other it added a new provision to the act that gives the agency authority to establish such a requirement.

Section 402(g)(2) of the act provides that CGMP's for dietary supplements shall be modeled after the CGMP's for food. The current food CGMP regulations provide that food is to be packaged in a way that ensures that it is safe and sanitary (§§ 110.5(a)(2) and 110.80(b)(13)). As explained in the preamble to the October 6, 1994, proposal, FDA has tentatively concluded that unit-dose packaging is necessary to ensure the safety of dietary supplements that contain 30 mg or more of iron per dosage unit.

As discussed in the proposal, the recent data available to FDA demonstrate that iron-containing products with 30 mg or more iron per dosage unit are associated with a significant number of pediatric illnesses and deaths. As FDA stated with respect to drugs in the proposal, to ensure that these products are safe, CGMP requires that manufacturers respond to this new information, and take advantage of advances in technology, to alter, adapt, or change their manufacturing processes to ensure that all possible measures have been taken to eliminate known dangers from their products.

Existing technology permits safeguards, specifically unit-dose packaging, to be used for iron-containing products, including dietary supplements. Unit-dose packaging limits a child's ability to gain access to enough dosage units to provide a harmful amount of iron. Given the known dangers posed by dietary supplements that contain 30 mg or more iron per dosage unit, and the ability to minimize or eliminate such dangers through the use of unit-dose packaging, FDA tentatively concludes that the CGMP dictates that unit-dose packaging be used for these products.

Thus, FDA tentatively concludes that, to ensure that dietary supplements that contain 30 mg of iron or more per dosage unit are safe, CGMP requires that they be packaged in unit-dose packaging.

The agency will consider conducting a more complete rulemaking on what CGMP requirements for dietary supplements under section 402(g) of the act are. However, considering the hazard presented to young children by iron-containing products, FDA tentatively concludes that it is appropriate to effect this aspect of its CGMP authority in advance of any broader rulemaking.

To reflect the shift in the agency's authority with respect to packaging of dietary supplements, FDA is codifying the proposed CGMP requirements for iron-containing dietary supplements in new part 111, rather than in part 170 (21 CFR part 170). Proposed § 170.55 is being removed in this supplemental proposal and replaced by § 111.1. The agency is also making conforming amendments to part 101 to reflect new part 111 rather than part 170. For the convenience of the reader, FDA is republishing the amendments to parts 101 and 310 in their entirety. Thus, the codified portion of this document will also reflect the changes proposed in the October 6, 1994, proposed rule and thereby supersedes that codified material.

In proposing the unit-dose packaging requirement under new part 111, the agency is removing the provision from the packaging regulation in the original proposal that also would have required the proposed warning labels as a condition of safe use (i.e., as food additives or GRAS ingredients) for iron and iron salts in iron-containing supplements. The authority for this requirement was also derived from section 409 of the act, which permits the agency to consider any necessary labeling requirements in establishing conditions of safe use for a food additive. New section 201(s)(6) of the act also invalidates the legal authority that FDA relied upon for this proposed provision because the use of iron ingredients in dietary supplements is no longer subject to section 409 of the act.

IV. Comments

Because of the change in the law and issuance of this supplemental proposal, FDA will allow an additional 60 days for comment on the entire proposed action. This additional time will provide an opportunity for the submission of all views on the issues in the rulemaking.

Interested persons may, on or before April 17, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

V. Environmental Impact

The agency previously considered the environmental effects of its action to require unit-dose packaging for iron-containing products, in the proposed rule that was published in the **Federal Register** of October 6, 1994 (59 FR 51030). The changes in legal authority being proposed in this document will not affect the agency's previously proposed requirement for unit-dose packaging for iron-containing products and, therefore, will not affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Analysis of Impacts

FDA previously examined the impact of the proposed rule as published in the **Federal Register** of October 6, 1994 (59 FR 51030), in accordance with Executive Order 12866 and the Regulatory Flexibility Act, and determined that it is not an economically significant rule. The discussion of the legal authority contained in this supplemental proposed rule does not alter the

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agency's conclusions. The rule will result in total costs of approximately $53 million and discounted benefits of between $315 million and $653 million over the next 20 years (discounted at 7 percent).

List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 111

Current good manufacturing practices, Dietary supplements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical Devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the codified text as proposed in the **Federal Register** of October 6, 1994 (59 FR 51030), is republished in its entirety and is thereby superseded by this document. It is further proposed that Title 21, Chapter I be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.17 is amended by adding a new paragraph (e) to read as follows:

§ 101.17 Food labeling warning and notice statements.

* * * * *

(e) *Dietary supplements containing iron or iron salts.* (1) The labeling of any dietary supplement in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

(i) If the product is packaged in unit-dose packaging as defined in § 111.1 of this chapter:

WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(ii) If the product contains less than 30 milligrams of iron per dosage unit and is packaged by the manufacturer in other than unit-dose packaging as defined in § 111.1 of this chapter, e.g., a container with a child-resistant closure, its label shall bear the following statement:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(2) The statement required by paragraph (e)(1)(i) of this section shall appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. The statement required by paragraph (e)(1)(ii) of this section shall appear prominently and conspicuously on the immediate container labeling. In all cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

3. Part 111 is added to read as follow:

PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

Authority: Secs. 201, 402, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 371).

§ 111.1 Iron and iron salts in dietary supplements.

The use of iron and iron salts as iron sources in dietary supplements offered in solid oral dosage form (e.g., tablets or capsules), and containing 30 milligrams or more of iron per dosage unit, is safe and in accordance with current good manufacturing practice only when such supplements are packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage unit" means the individual physical unit of the product (e.g., tablets or capsules).

PART 170—FOOD ADDITIVES

3. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

§ 170.55 [Removed]

4. Section 170.55 *Iron and iron salts in dietary supplements not in conventional food form* (as proposed in at 59 FR 51030, October 6, 1994) is removed.

PART 310—NEW DRUGS

5. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

6. New § 310.518 is added to subpart E to read as follows:

§ 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form (e.g., capsules or tablets) shall meet the following requirements:

(a) *Packaging.* If the product contains 30 milligrams or more of iron per dosage unit, it shall be packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage-unit" means the individual physical unit of the product, e.g., tablets or capsules.

(b) *Labeling.* (1) If the product is packaged by the manufacturer in unit-dose packaging, its label shall bear the following statement:

WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(2) If the product contains less than 30 milligrams of iron and is packaged by the manufacturer in other than unit-dose packaging, e.g., a container with a child-resistant closure, its label shall bear the following statement:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(3) The statement required by paragraph (b)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. The statement required by paragraph (b)(2) of this section shall appear prominently and conspicuously on the immediate container labeling. In all cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

Dated: February 10, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–3970 Filed 2–15–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[CGD 95–009]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Hazardous Substances Response Plan Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Hazardous Substances Response Plan Subcommittee of CTAC will meet to develop response plan criteria for hazardous substances to be considered under proposed requirements for tank vessels and marine transportation related facilities under the Oil Pollution Act of 1990 (OPA 90). The meeting will be open to the public.

DATES: The meeting will be held on March 13, 1995, from 9 a.m. to 4 p.m. Written material should be submitted no later than March 3, 1995.

ADDRESSES: The meeting will be held in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written material should be submitted to Ms. Margaret K. Doyle, Chemical Carriers' Association, 1700 North Moore Street, Suite 1805, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret K. Doyle, Chemical Carriers' Association, 1700 North Moore Street, Suite 1805, Arlington, VA 22209, telephone (703) 528–6900, or Lieutenant Rick Raksnis, Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 1 *et seq.* OPA 90 requires owners or operators of tank vessels and marine transportation related onshore facilities to prepare and submit response plans for a worst case discharge or release of oil or a hazardous substance. The Coast Guard has begun preliminary work to develop vessel and facility response plan regulations for hazardous substances. This Subcommittee was recently established to evaluate the regulatory approach to assess the appropriateness of the planned requirements for this rulemaking. Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Ms. Doyle, listed above under **ADDRESSES,** no later than three days before the meeting. Written material may be submitted at any time for presentation to the Subcommittee. However, to ensure advance distribution to each Subcommittee member, persons submitting written material are asked to provide 30 copies of Ms. Doyle no later than March 3, 1995.

Dated: February 7, 1995.

N.W. Lemley,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–3834 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK6–1–6887b, AK5–1–6437b, AK3–1–5851b; FRL–5147–9]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve regulations from three submittals received from the Alaska Department of Environmental Conservation (ADEC): submittal dated July 17, 1990 requesting our action to address out-of-date sections found in 40 CFR 52.73–5296 relating to Alaska state implementation plan (SIP) deficiencies, and including the applicable Alaska statutes to support their request; submittal dated October 15, 1991 requesting approval of amendments to regulations dealing with Air Quality Control, 18 AAC 50, for inclusion into Alaska's SIP to assure compliance with Federal ambient air quality standards for airborne particulate matter, and submittal dated March 24, 1994 requesting approval of additional amendments to 18 AAC 50, Air Quality Control, for inclusion into Alaska's SIP to assure compliance with new source review permitting requirements, the 1990 Clean Air Act Amendments (the Act), for sources located in nonattainment areas for either carbon monoxide or particulate matter. In the Final Rules Section of this **Federal Register**, the EPA is approving these SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by March 20, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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Dated: January 23, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–3860 Filed 2–15–95; 8:45 am]

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40 CFR Part 52

[CA 102–8–6837b; FRL–5145–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP), which concerns the control of volatile organic compound (VOC) emissions from valves and flanges at chemical plants.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 20, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Duane F. James, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District's (BAAQMD) Rule 8–22, "Valves and Flanges at Chemical Plants," submitted to EPA on September 28, 1994, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 17, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–3865 Filed 2–15–95; 8:45 am]

BILLING CODE 6560–50–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[IC Docket No. 94–31; FCC No. 95–36]

Preparation for International ITU World Radiocommunication Conferences

AGENCY: Federal Communications Commission.

ACTION: Second notice of inquiry.

SUMMARY: The International Telecommunication Union (ITU) will convene the 1995 World Radiocommunication Conference (WRC–95) from October 23 to November 17, 1995, in Geneva, Switzerland. The agenda for WRC–95 includes issues relating to the introduction of global mobile-satellite services (MSS); simplification of the international Radio Regulations; and agendas for future conferences. This proceeding addresses technical, regulatory, and procedural matters related to the WRC–95 agenda and solicits information to assist the Federal Communications Commission (FCC) in preparing U.S. proposals for that conference, including proposals for future conference agendas.

DATES: Comments must be filed on or before March 6, 1995, and reply comments must be filed on or before March 21, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, International Bureau, (202) 739–0510, or Audrey L. Allison, International Bureau, (202) 739–0557.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Second Notice of Inquiry*, IC Docket No. 94–31, FCC No. 95–36, adopted January 30, 1995, and released January 31, 1995. The full text of this *Second Notice of Inquiry* is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, Room 239, 1919 M St. NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St. NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Second Notice of Inquiry

1. The purpose of this proceeding is to solicit comments addressing technical, operational, regulatory and procedural matters relating to the WRC–95 agenda issues in order to assist the FCC in its preparation of draft recommended U.S. proposals for WRC–95. In the *Second Notice of Inquiry*, the FCC reviews comments and replies submitted in response to the initial *Notice of Inquiry* in this proceeding 59 FR 25873, May 18, 1994 and the interim report of the FCC's WRC–95 Industry Advisory Committee. The FCC seeks further comment on these matters and on the FCC draft recommended U.S. proposals for WRC–95 attached to the *Second Notice of Inquiry*. Presentation of the FCC's preliminary views on these topics is intended to stimulate discussions and is part of an overall effort to achieve early consensus on U.S. proposals to WRC–95.

2. WRC–95 will be the first conference under the ITU's new accelerated conference cycle to discuss substantive spectrum allocation and regulatory matters. This conference represents a significant opportunity to build a foundation for advancing near and long-term United States telecommunications goals. In particular, WRC–95 is critical to a new commercial telecommunications industry—the mobile-satellite services (MSS) industry, that includes low-Earth orbit (LEO) MSS systems. LEO systems can provide voice, data and other services at relatively low cost and will be a critical component in achieving the FCC's goals of universal service, open access and competition in the provision of services. The systems will be an important part of a new seamless, nationwide (and eventually global) communication network. The new MSS industry also promises to stimulate significant economic growth both domestically and abroad. The FCC's proposals are intended to facilitate the implementation of competitive MSS operations by easing international technical and regulatory constraints and providing additional spectrum allocations.

3. In addition to seeking comment on specific MSS proposals, the FCC seeks input on other subjects raised in the first *Notice of Inquiry* and relating to the WRC–95 agenda including: space service allocation issues; review of Appendices 30 and 30A; availability of high frequency broadcasting bands; the Final Report of the Voluntary Group of Experts on simplifying the international Radio Regulations; and agendas for future WRCs. The FCC also asks parties to consider the long-range planning aspects of the ITU's new conference cycle including the FCC's conference preparatory methods.

4. Upon review of the comments received in response to the *Second Notice of Inquiry* and a final report from the WRC–95 Industry Advisory Committee, the FCC will issue a *Final Report* in this proceeding containing recommended U.S. proposals for the conference. The FCC will consult with the Department of Commerce's National Telecommunications and Information Administration and the Department of State to develop final U.S. proposals for WRC–95.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3830 Filed 2–15–95; 8:45 am]

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47 CFR Part 1

[GC Docket No. 95–21; FCC 95–52]

Ex Parte Presentations in Commission Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its regulations concerning ex parte presentations in Commission proceedings. The proposed rules would simplify the determination in particular proceedings of whether ex parte presentations are premissible and whether they must be disclosed. The proposed rules would also modify the Commission's "sunshine period prohibition." Additionally, the proposed rules would modify in certain respects the procedures for reporting oral ex parte presentations and for handling potential violations of the rules. Certain other minor amendments of the rules are proposed. The intended effect of these proposals is to make the rules simpler and easier with which to comply, to enhance the fairness of the Commission's processes, and to facilitate the public's ability to communicate with the Commission.

DATES: Comments must be filed on or before March 16, 1995; reply comments must be filed on or before March 31, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street NW, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 418–1760.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, GC Docket No. 95–21, adopted on February 7, 1995, and released February 7, 1995. The full text of the notice of proposed rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW, Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., Suite 140, 2100 M Street NW, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Further Notice of Proposed Rule Making

1. In this notice, the Commission invites comment on proposals to revise its rules governing ex parte presentations in Commission proceedings. The Commission believes that the current rules continue to be excessively complex, making compliance difficult. Moreover, certain specific problem areas have become apparent.

2. The Commission proposes to revise its system for specifying whether proceedings are "restricted," "permit-but-disclose" or "exempt," which determine how ex parte presentations are treated in that proceeding (with certain exceptions). (An ex parte presentation is a communication to a Commission decisionmaker concerning the outcome or merits of a proceeding which–if written–is not served on all parties and–if oral–is made without notice and the opportunity for all parties to be present.) In restricted proceedings, ex parte presentations are prohibited. In non-restricted proceedings, ex parte presentations are permitted but must be disclosed on the record of the proceeding. In exempt proceedings, ex parte presentations may be made without limitation. The Commission is proposing a simplified system that would permit people to rely on broad general rules to determine the status of a proceeding.

3. Under the proposed system, all proceedings not restricted or exempt would be subject to permit-but-disclose rules. The rules would generally classify as restricted only those proceedings required to be so classified by the Administrative Procedure Act (APA). This would include proceedings designated for hearing. Consistent with the APA, proceedings would also be restricted with respect to any person with knowledge that a designation order was in preparation. Additionally, proceedings involving mutually exclusive applications not subject to auction or lottery would be restricted. The Commission or a Bureau or Office after consultation with OGC could also classify individual proceedings as restricted on a case-by-case basis.

4. A few matters would continue to be expressly classified as exempt. These would include notice of inquiry proceedings and proceedings involving complaints which are not served on the target of the complaint.

5. All other proceedings, including informal adjudications (such as an application, waiver request, other filings seeking affirmative relief) and informal rulemakings, would be subject to permit-but-disclose rules when ex parte presentations are made. For the purposes of these ex parte rules, "parties" would be defined as those making filings which initiate adjudicatory-type proceedings and those who make written submissions regarding the filing party which are served on the filer. Parties also include other persons formally given party status, such as the subject of an order to show cause proceeding.

6. In addition, the proposed rules deal specifically with complaints. They provide that generally in complaint proceedings where the complaint is served on the target of the complaint, both the complainant and the target are parties. In formal section 208 proceedings, both the complainant and the carrier would be parties. Comment is requested on the treatment of informal section 208 complaints.

7. Under this proposal, a sole applicant or other uncontested filer could freely make presentations to the Commission about its filing. As long as no other party appeared, these presentations would not be "ex parte"

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presentations, as defined in the rules, and would therefore not be subject to permit-but-disclose requirements. Once another party appeared, both the applicant or filer and the other party would have to comply with the permit-but-disclose rules, because their presentations would be "ex parte."

8. In rulemaking proceedings, the public would, in effect, be treated as parties. Thus, the rules would expressly provide that permit-but-disclose requirements would be triggered by the filing of a petition for rulemaking, or the issuance of a notice of proposed rulemaking (or a rulemaking order done without notice and comment) and would apply to all persons.

9. The Commission also solicits comments as to whether the sunshine period prohibition should be modified. Under the current rules, once a proceeding has been placed on a sunshine notice, no presentations, whether ex parte or not, are permitted until the Commission has released the full text of the order in the proceeding noticed in the sunshine notice, deleted the item from the sunshine agenda, or returned the item for further staff consideration. The prohibition is intended to give the Commission "a period of repose" in which to make decisions.

10. The Commission asks for comments on whether there should be a "sunshine period" once items are adopted on circulation. The Commission also proposes to exempt from the prohibition the discussion of recent Commission actions at public meetings or symposia.

11. Additionally, the Commission proposes certain specific provisions of the ex parte rules. First, the Commission proposes to give additional authority to the Office of General Counsel to evaluate alleged ex parte violations. Second, the Commission proposes that notices of oral ex parte presentations should be more informative by requiring that a full summary of the contents of the presentation be filed with respect to all oral presentations, whether or not the arguments or data presented are "new." Third, the Commission proposes to require that persons with reason to believe that a situation raises an ex parte question must alert the Office of General Counsel of this circumstance.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission has determined that the rules governing ex parte communications in Commission proceedings should be made simpler, clearer, and less restrictive. The Commission finds it appropriate to reexamine the public interest basis for the limitations on ex parte communications.

Objective

The Commission seeks to simplify and clarify the rules governing ex parte communications in Commission proceedings and to make the rules more consistent with the needs of administrative practice.

Legal Basis

Action is being taken pursuant to 47 U.S.C. §§ 154(i) and (j),303(r), 403.

Reporting, Record Keeping and Other Compliance Requirements

This proposal would modify the requirement to report ex parte presentations in order to increase the usefulness and value of the reports and to eliminate unnecessary restrictions on ex parte presentations.

Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules

None.

Description, Potential Impact, and Number of Small Entities Affected

Small entities participating in Commission proceedings would be subject to limitations on ex parte presentations.

Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objections

None.

List of Subjects for 47 CFR Part 1

Administrative practice and procedure, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3935 Filed 2–15–95; 8:45 am]

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47 CFR Part 63

[CC Docket No. 87–266; FCC 95–20]

Telephone Company-Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopted a Fourth Further Notice of Proposed Rulemaking in Common Carrier Docket 87–266, with the intent of soliciting information and comment on the extent to which Title II of the Communications Act, Title VI, or both, apply to a telephone company's provision of video programming directly to subscribers within its telephone service area. The Commission also requested comment on what changes, if any, need to be made to the video dialtone regulatory framework if a telephone company decides to become a video programmer on its own video dialtone platform in its telephone service area, and in particular, whether telephone company provision of video programming raises new concerns about anticompetitive behavior or cross-subsidy that the Commission's existing regulatory framework may not sufficiently address.

DATES: Comments must be submitted on or before March 6, 1995. Reply comments are due on March 27, 1995.

ADDRESSES: Comments and Reply Comments may be mailed to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. A copy of each filing should also be filed with Peggy Reitzel of the Common Carrier Bureau, and James Yancey of the Cable Services Bureau.

FOR FURTHER INFORMATION CONTACT: Jane Jackson (202) 418–1593, Common Carrier Bureau, Policy and Program Planning Division, and Larry Walke (202) 416–0847, Cable Services Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Fourth Further Notice of Proposed Rulemaking in Common Carrier Docket 87–266: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, adopted January 12, 1995, and released January 20, 1995. The complete text of this Fourth Further Notice of Proposed Rulemaking is available for inspection and copying, Monday through Friday, 9:00 a.m.–4:30 p.m., in the FCC Reference Room (Room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of the Fourth Further Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Fourth Further Notice of Proposed Rulemaking

A. Governing Statutory Provisions.

1. Local exchange carrier (LEC) provision of video programming raises questions about whether Title II of the Communications Act, Title VI of the Communications Act, or both, would govern particular LEC video offerings, and how these provisions might apply to a LEC's provision of video programming directly to subscribers within its telephone service area and over facilities used to provide both voice and video services. We now seek comment on these issues and on the analysis we offer below.

1. Application of Title II to LEC Video Programming Offerings

2. We first tentatively conclude that telephone companies should be permitted to provide video programming over Title II video dialtone platforms. We recently reaffirmed our conclusion that the construction of video dialtone systems would serve the public interest goals of facilitating competition in the provision of video programming services, encouraging efficient investment in our national information infrastructure, and fostering the availability to the American public of new and diverse sources of video programming. Two U.S. Courts of Appeals have now held unconstitutional the specific statutory basis for prohibiting a telephone company from providing, directly or indirectly, programming over its own video dialtone platform. In light of the public interest benefits of a video dialtone platform, which provides multiple video programmers with common carrier-based access to end users, we tentatively conclude, in the absence of Section 533(b), that we should not ban telephone companies from providing their own video programming over their video dialtone platforms. We note that we allow telephone companies to use their networks to provide their own enhanced services today, subject to safeguards. Thus, in the absence of a demonstration of a significant governmental interest to the contrary, we propose to allow telephone companies to provide video programming over their own video dialtone platforms, subject to appropriate safeguards. We seek comment on this proposal, and on whether any such significant governmental interest to support a ban exists and, if it does, whether a ban would be a narrowly tailored restriction on the telephone companies' First Amendment rights.

3. A second Title II issue is whether we can, and should, require telephone companies to provide video programming only over video dialtone platforms. Even before the recent court decisions invalidating the telco-cable cross-ownership ban, there were three circumstances in which LECs could provide video programming directly to subscribers. In these circumstances, however, LECs have not been authorized to use their local exchange facilities to provide cable service, but, rather, to construct or purchase interests in separate cable facilities. Indeed, as noted by the court in *NCTA* v. *FCC (1994)*, it was not until after the 1984 Cable Act that technological advances have made it practical to deliver video signals over the same common carrier networks that are used to provide telephone service. Previously, as the court noted, "[a] telephone company that wanted to provide cable service would have had to construct a coaxial cable distribution system parallel to its telephone system."

4. We seek comment on whether we have authority under Section 214 to require LECs that seek to provide video programming directly to subscribers in their telephone service areas to do so on a video dialtone common carrier platform and not on a non-common carrier cable television facility. We seek comment on what circumstance would warrant such a requirement, and specifically on whether we should require use of a video dialtone platform whenever a LEC provides video services over facilities that are also used in the provision of telephone services. We seek comment on our authority generally to require LECs seeking Section 214 authority to acquire or construct video facilities to comply with our video dialtone framework.

2. Application of Title VI to LEC Provision of Video Programming

5. We now seek comment on the circumstances, if any, in which a LEC that, by court decision, is not subject to the 1984 Cable Act telco-cable cross-ownership ban may offer a cable service subject to Title VI in lieu of a Title II video dialtone offering. We also seek comment on the extent to which Title VI should apply to video programming provided by LECs on a Title II video dialtone system. We have previously held that LEC provision of a common carrier video dialtone platform is not subject to Title VI of the Act. In particular, we found that such LECs are not offering "cable service," and are not operating a "cable system" within the meaning of Title VI. We reasoned that LECs did not actively participate in the selection and distribution of video programming because they were precluded from providing video programming directly to subscribers in their telephone service areas. We also concluded that video dialtone facilities are not cable systems because they are common carrier facilities subject to title II of the Act which, under Commission rules, could not be used for LEC provision of video programming directly to subscribers in the LEC's telephone service area. We now seek comment on whether, if a LEC, or its affiliate, does provide video programming over its video dialtone system and actively engages in the selection and distribution of such programming, that LEC, or its affiliate, is subject to Title VI. We seek comment on the Commission's legal authority to determine whether some, but not all, provisions of Title VI relating to cable operators would apply to a LEC that provides video programming over its video dialtone platform. We also seek comment on whether the application of some or all provisions of Title VI would result in a regulatory framework that is duplicative of, or inconsistent with, federal or state regulation of communications common carriage. For example, the goals of the leased access provision of Title VI could be met through obligations Title II imposes on a LEC as the provider of the video dialtone platform whether or not the LEC as a video service provider provides its own leased access channels. We seek comment on the potential impact of our determinations in this proceeding on existing grants by state and local authorities of public rights-of-way. We also invite parties to discuss both the legal and practical implications of requiring, or not requiring, telephone companies providing video programming over their own video dialtone systems to comply with each of the various provisions of Title VI. In the event that Title VI cable rate regulation rules apply, we seek comment on how such rules would apply to a LEC providing video programming directly to subscribers over its own video dialtone platform.

6. In addition, we seek comment on whether, if Title VI does not apply to telephone companies' provision of video programming on video dialtone facilities, the Commission should adopt, under Title II, provisions that are analogous to certain aspects of Title VI. For example, we seek comment on whether we should adopt rules governing program access by competing distributors, carriage agreements between video service providers and unaffiliated programmers, and vertical ownership restrictions.

7. Finally, we note that the court's opinion in *NCTA* v. *FCC (1994)* is consistent with the Commission's reasoning in the First Report and Order, 56 FR 65464–01 (December 17, 1991), that a LEC providing video dialtone service does not require a local franchise because the LEC does not provide the video programming. We seek comment on whether this view would require a LEC offering video dialtone service to secure a local

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franchise if that LEC also engages in the provision of video programming carried on its platform.

B. Regulatory Safeguards Governing a Local Exchange Carrier's Provision of Video Programming on its Video Dialtone Platform

1. Introduction and Scope

8. In this section we consider what changes, if any, need to be made to our video dialtone regulatory framework if a telephone company, pursuant to an applicable court decision, decides to become a video programmer on its own video dialtone platform in its telephone service area. In addressing the issues identified below, parties should address whether we should apply different safeguards for technical and market trials than for commercial offerings of video dialtone.

2. Ownership Affiliation Standards

9. Under our current rules, LECs are prohibited from providing video programming directly to subscribers, and from having a cognizable (*i.e.*, 5 percent or more) financial interest in, or exercising direct or indirect control over, any entity that is deemed to provide video programming in its telephone service area. We propose to retain these ownership affiliation standards to identify those video dialtone programmers that we will consider to be affiliated with LECs providing the underlying common carriage. Under this proposal, if the Commission determines that LEC ownership of video programming requires additional safeguards, those safeguards would apply if the LEC owned five percent or more of a video programmer. We seek comment on this proposal.

3. Safeguards Against Anticompetitive Conduct

a. Sufficient Capacity To Serve Multiple Service Providers

10. Under the video dialtone regulatory framework, a LEC is required to provide sufficient capacity to serve multiple service providers on a nondiscriminatory basis. In the Video Dialtone Reconsideration Order, 59 FR 63909–01 (December 12, 1994), we rejected use of an "anchor programmer," that is, allocation of all or substantially all of the analog capacity of the video dialtone platform to a single programmer. We seek comment on whether there are other across-the-board rules that we should adopt to ensure that video dialtone retains its essential Title II character when a LEC becomes a video programmer on its platform.

11. We seek comment, for instance, on whether we should limit the percentage of its own video dialtone platform capacity that a LEC, or its affiliate, may use. Such a limit could help ensure other programmers access, but may create a risk that some capacity might go unused. We seek comment on what an appropriate limit would be; whether any percentage limit should vary with the platform's capacity; and whether different rules should apply to analog and digital channels. Video dialtone capacity constraints appear likely to be most severe in the short-term, with respect to analog channels, and may be of less concern on future all-digital systems. Commenters should address whether LEC use of video dialtone capacity raises short-term or long-term concerns, and how the probable duration of the problem should affect our regulatory approach. Alternatively, we seek comment on whether LECs that deny capacity to independent programmers should be subject to procedural requirements more detailed than those imposed inthe Video Dialtone Reconsideration Order.

12. In the Third Further Notice of Proposed Rulemaking, 59 FR 63971–01 (December 12, 1994), the Commission sought comment and information regarding channel sharing mechanisms that LECs have proposed as means of making analog capacity available to more customer-programmers than might otherwise be accommodated. Parties addressing limits on LEC use of the video dialtone platforms should comment in this proceeding on the relationship between such channel sharing mechanisms and any proposal to limit LEC use of analog channels. The Third Further Notice of Proposed Rulemaking also sought comment on two other signal carriage issues: (1) Whether the Commission should mandate preferential video dialtone access or rates for commercial broadcasters, public, educational and governmental ("PEG") channnels, or other not-for-profit programmers; and (2) whether the Commission should permit LECs to offer preferential treatment to certain programmers on a voluntary ("will carry") basis. Parties should comment in this proceeding on the relationships among mandatory preferential treatment, "will carry," and any proposed limits on a LEC's use of its video dialtone capacity to provide programming directly to subscribers.

13. Another example of potentially anticompetitive conduct that has been cited in the context of cable television service under Title VI involves channel positioning. Programmers assert that cable operators can and do deliberately assign unaffiliated program services to undesirable channel locations. Under Title II, such discriminatory conduct is prohibited. We seek comment on whether LECs that are also video program providers have an increased incentive to use their control over the video dialtone platform to engage in such activities and what, if any, specific safeguards we should implement to prevent such conduct. In particular, we seek comment on whether the channel positioning rules that apply to cable operators in the context of the "must-carry" requirement of Title VI should also apply to video dialtone platform operators providing programming directly to subscribers in their local exchange service areas.

b. Non-Ownership Relationships and Activities Between Telephone Companies and Video Programmers

14. In the Video Dialtone Reconsideration Order, the Commission affirmed, with certain modifications, its decision to permit LECs to enter into non-ownership relationships with video programmers that exceed a carrier-user relationship. We propose at a minimum, to retain these restrictions as safeguards against LEC anticompetitive conduct and to promote further LEC deployment of broadband services. We believe that the restrictions on non-ownership affiliations between LECs and cable operators are important to the Commission's goal of promoting competition in the video services marketplace, and are not overbroad infrigements on LEC First Amendment rights. Parties should comment on the proposal to retain these safeguards and should describe any specific additional measures they believe necessary to safeguard against anticompetitive conduct by LECs that offer programming on their own video dialtone system.

c. Acquisition of Cable Facilities

15. In the Video Dialtone Reconsideration Order, the Commission substantially affirmed its decision to prohibit telephone companies from acquiring cable facilities in their telephone service areas for the provision of video dialtone. We continue to believe that this ban will benefit the public interest by promoting greater competition in the delivery of video services, increasing the diversity of video programming available to consumers, and advancing the deployment of the national communications infrastructure. We tentatively conclude that the ban on LEC acquisition of cable facilities for the provision of video dialtone does not impermissibly restrict LEC speech under *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.*, and seek comment on this conclusion.

16. In the *Third Further Notice of Proposed Rulemaking*, the Commission recognized that some markets may be incapable of supporting two video delivery systems. The Commission was concerned that, in such markets, the prohibition could preclude establishment of video dialtone service, thereby denying consumers the benefits of competition and diversity of programming sources that our video dialtone regulatory framework is designed to promote. As a result, the Commission requested parties to suggest criteria that would permit us to identify those markets in which two wire-based multi-channel video delivery systems would not be viable. We seek comment on how, if at all, the decisions in *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.* should affect our consideration of criteria for allowing exceptions to our two-wire policy. We also seek comment on whether we should ban telephone company acquisition of cable facilities, with or without exceptions, if (a) Title VI applies to telephone companies providing programming on their own video dialtone platforms; or (b) telephone companies are permitted to become traditional cable operators in their own service areas instead of constructing video dialtone platforms.

d. Joint Marketing and Customer Proprietary Network Information

17. In the Video Dialtone Reconsideration Order, the Commission also affirmed its decision to permit LECs to engage in joint marketing of basic and enhanced video services, and of basic video and non-video services. We found that significant public interest benefits can accrue from the efficiencies and innovations that may be obtained by permitting LECs to engage in joint marketing of basic and enhanced video services, and of basic video and non-video services. We also found that the record on reconsideration did not support a finding that joint marketing of common carrier video and telephony services would have an anticompetitive impact on the provision of video programming to end users. We now seek comment on whether LEC provision of video programming directly to end users requires that we revisit our analysis of joint marketing issues.

18. In the Bell Atlantic Market Trial Order, released on January 20, 1995, the Commission authorized Bell Atlantic to conduct a six-month video dialtone market trial that will include provision of video programming directly to subscribers by a Bell Atlantic affiliate as well as by independent video programmers.

Pending resolution of the instant rulemaking proceeding, we conditioned Bell Atlantic's authorization on its compliance with existing safeguards for the provision of nonregulated services, including enhanced services, and with several additional, interim safeguards against discrimination. We seek comment on whether any or all of these interim safeguards should be adopted as permanent requirements for LECs that provide video programming over their own video dialtone platforms.

19. Under the Commission's customer proprietary network information (CPNI) requirements, the Commission limits the Bell Operating Companies' (BOCs') and GTE Service Corporation's (GTE's) use of CPNI; requires them to make CPNI available to competitive enhanced service providers (ESPs) designated by a customer; and requires that they make available to ESPs non-proprietary aggregated CPNI on the same terms and conditions on which they make such CPNI available to their own enhanced service personnel. In the Video Dialtone Reconsideration Order, the Commission determined that there was insufficient evidence to conclude that our existing CPNI rules do not properly balance our CPNI goals relating to privacy, efficiency, and competitive equity in the context of video dialtone. The Commission also required the BOCs and GTE to provide additional information regarding the kinds of CPNI to which they will have access as a result of providing video dialtone service and indicated its intent to seek further comment on such information. We now seek additional comment and information on whether LEC provision of video programming impacts the balancing of our goals for CPNI.

20. In addition to concerns over possible anticompetitive use of CPNI, parties should discuss whether LEC provision of video programming raises new concerns regarding consumer privacy. Parties that perceive a greater threat to consumer privacy should describe with specificity their concerns, and suggest specific safeguards for protecting consumer privacy, and explain how these suggestions benefit the public interest.

21. We also seek comments on safeguards to ensure nondiscriminatory access to network technical information. In the Bell Atlantic Market Trial Order, the Commission required Bell Atlantic to provide all video programmers with nondiscriminatory access to technical information concerning the basic video dialtone platform and related equipment. The Commission also noted that, in the circumstances of the market trial, Bell Atlantic would also be subject to the more specific Computer III network disclosure rules. We seek comment on whether the Bell Atlantic condition should be adopted as a permanent safeguard. We also seek parties to address whether the Computer III network disclosure rules should be modified in any way for application in the video dialtone context.

4. Safeguards Against Cross-Subsidization of Video Programming Activities

22. In the Video Dialtone Reconsideration Order, the Commission determined that price cap regulation and accounting safeguards would be effective to prevent cross-subsidization of video dialtone-related nonregulated activities. We tentatively conclude that these safeguards against cross-subsidization apply to LEC provision of video programming just as they would to any other activity not regulated as Title II common carrier service, and that the existing rules are adequate to forestall cross-subsidy of the video programming activity. We seek comment on these tentative conclusions.

23. Assuming we do not require structural separation, LECs will have the flexibility to conduct video programming activities both within the telephone operating company and through affiliates. For those video programming activities conducted in the operating company, the LEC will be required to record costs and revenues in accordance with Part 32 of the Commission's Rules, the Uniform System of Accounts (USOA), and to separate the costs of video programming activity from the costs of regulated telephone service in accordance with the part 64 joint cost rules. We tentatively conclude that these rules are adequate to prevent cross-subsidization of video programming activities. We also tentatively conclude that we will apply to video programming activities the rule adopted in the Video Dialtone Reconsideration Order requiring LECs to amend their cost allocation manuals to reflect video dialtone-related nonregulated activities within 30 days of receiving video dialtone facilities authorization. We seek comment on these tentative conclusions.

24. H a LEC chooses for business reasons to provide video programming through an affiliate, the accounting treatment of operating company transactions with that affiliate will be governed by the affiliate transactions rules. We seek comment on whether amendments to those rules are needed

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to safeguard against abuses in transactions between LECs and affiliated video program providers. Specifically, we seek comment on whether we should amend Section 32.27 to clarify that any video program provider that is considered, because of a LEC's five percent ownership interest, to be a LEC affiliate for purposes of applying video dialtone safeguards will also be considered an "affiliate" for purposes of the affiliate transactions rule.

5. Structural Separation

25. In the Computer III proceeding, the Commission replaced its requirement that BOCs offer enhanced services through separate subsidiaries with a set of nonstructural safeguards. Those nonstructural safeguards were intended to protect against discrimination and cross-subsidization while avoiding the inefficiencies associated with structural separation. We seek comment on whether our approach to these questions should differ when BOCs provide video programming. Specifically, we seek comment as to whether there are aspects of the video programming business that warrant our treating BOC provision of video programming differently from the way we treat BOC provision of customer premises equipment (CPE) and enhanced services generally. We also seek comment on whether any structural separation requirement should apply to LECs other than the BOCs. Commenting parties should specifically identify what aspects warrant different treatment, and what form of separation would be appropriate. Parties should also offer information concerning the relative costs and benefits of structural separation.

6. Pole Attachments

26. Section 63.57 of our rules requires LECs seeking to provide channel service to show in their Section 214 applications that the cable system for which they would be providing channel service had pole attachment rights or conduit space available "at reasonable charges and without undue restrictions on the uses that may be made of the channel by the operator." In the Third Further Notice of Proposed Rulemaking, the Commission sought comment on whether a similar rule should apply to LECs providing video dialtone service. We now seek additional comment on that proposal in light of *C&P Tel. Co.* v. *U.S.* and *U S West* v. *U.S.* Parties should address whether incentives to abuse control over pole and conduit space are increased if a LEC decides to offer video programming within its telephone service area. In addition, as requested in the Third Further Notice of Proposed Rulemaking, advocates of such a rule should propose specific language, and should explain how the rule would prevent anticompetitive conduct.

7. Legal and Constitutional Issues

a. Waiver of the Cross-Ownership Ban

27. Section 533(b)(4) of the Communications Act provides that, upon a "showing of good cause," the Commission may waive the 1984 Cable Act's cross-ownership ban. Under Section 533(b)(4), a waiver "shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection." In *GTE California* v. *FCC*, the United States Court of Appeals for the Ninth Circuit raises the question whether the Commission may establish conditions under which it will waive the telco-cable cross-ownership ban in order to obviate potential constitutional difficulties. We tentatively conclude that such a reading of Section 533(b)(4) is consistent with the terms of the statute. "Good cause" is commonly interpreted to include changed circumstances, and the circumstances that led us to institute the cross-ownership rule in 1970 have changed dramatically. The cable industry is no longer a fledgling industry. Instead, as the Supreme Court recently recognized, "Congress found that over 60 percent of the households with television sets subscribe to cable * * * and for those households cable has replaced over-the-air broadcast television as the primary provider of video programming."

28. We also tentatively conclude that the safeguards we will establish will constitute "particular circumstances * * *, taking into account the policy" of Section 533(b), under which waivers are warranted. We do not intend to waive the telco-cable cross-ownership rule altogether, so that telephone companies may purchase cable companies that do not face competition and offer their own programming via a monopoly cable system. Rather, and in fulfillment of the policy underlying Section 533(b), we intend to promote competition in the multi-channel video programming market by establishing particular conditions under which telephone companies may establish video dialtone systems that will compete with existing cable operators, thus providing consumers with a choice of multi-channel video systems.

29. The United States Court of Appeals for the District of Columbia Circuit recognized, in *NCTA* v. *FCC (1990)*, that "the policy of this subsection is to promote competition." However, in that decision the D.C. Circuit also appeared to give a narrow reading to the scope of the waiver provision. Specifically, the court of appeals remanded a decision in which the Commission had granted a waiver because the court concluded that the Commission had not shown that the participation of an affiliate of a telephone company in constructing transmission facilities was "essential to the success" of an experimental video programming project. But at that time no court had declared Section 533(b) unconstitutional, and the D.C. Circuit did not consider whether a broader reading of Section 533(b)(4) was appropriate to render the provision constitutional. The Supreme Court has recently reiterated that "a statute is to be construed where fairly possible so as to avoid substantial constitutional questions." A reading of the waiver provision that authorizes telephone companies that comply with the safeguards we will establish to provide video programming should render Section 533(b) constitutional, because in those circumstances any burden on speech by telephone companies will be minimal. Hence, under *U.S.* v. *X-Citement Video*, a broad interpretation of Section 533(b)(4) seems warranted. We seek comment on these tentative conclusions.

b. Constitutionality of Proposed Safeguards

30. As the Court of Appeals for the Fourth Circuit stated in *C&P Tel. Co.* v. *U.S.*, in order for a content-neutral government regulation of speech, such as the cross-ownership ban, to be constitutional, that regulation must be "narrowly tailored to serve a significant governmental interest, and * * * leave open ample alternative channels for communication of the information." With respect to all proposals set forth above for safeguards on LEC provision of video programming, we seek comment on whether such safeguards, whether individually, or in any combination, would be consistent with the First Amendment, the Fourth Circuit's decision in *C&P Tel. Co.* v. *U.S.*, and the Ninth Circuit's decision in *U.S. West* v. *U.S.*

Ex Parte Presentations

31. This Fourth Further Notice of Proposed Rulemaking is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206.

Comment Filing Dates

32. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. 1.415, 1.419, interested parties may file comments on or before March 6, 1995, and reply comments on or before March 27, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554, with a copy to Peggy Reitzel of the Common Carrier Bureau, Room 544, and James Yancey of the Cable Services Bureau, Room 408C. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC.

Initial Regulatory Flexibility Analysis Statement

33. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Fourth Further Notice of Proposed Rulemaking, seeking comment and information regarding whether additional or modified safeguards and rule changes may be necessary or appropriate in the context of the Commission's video dialtone regulatory framework, when a telephone company provides video programming directly to subscribers in its telephone service area may directly impact entities that are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act.

34. The Secretary shall send a copy of this *Fourth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.*

Ordering Clauses

35. *It is ordered* that, pursuant to Sections 1, 4, 201–205, 215, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218, a Fourth Further Notice of Proposed Rulemaking is hereby adopted.

36. *It is further ordered* that, the Secretary shall send a copy of the Fourth Further Notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 63

Cable television, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Video dialtone.

Federal Communications Commission
William F. Caton,
Secretary.

[FR Doc. 95–3831 Filed 2–15–95; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95-16]

Radio Broadcasting Services; Leone, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, on its own motion, proposes the deletion of vacant and unapplied-for Channel 266C1 from Leone, American Samoa. The independent nation of Western Samoa has recently assigned an FM station to operate on Channel 266A which conflicts with the American Samoa allotment. Should an interest in applying for a Class C1 channel at Leone be expressed, the staff has determined that Channel 230C1 can be allotted to Leone in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates –14–20–38 South Latitude and 170–47–06 West Longitude.

DATES: Comments must be filed on or before April 3, 1995, and reply comments on or before April 18, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-16, adopted January 25, 1995, and released February 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
John A Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–3936 Filed 2–15–95; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA Docket No. RAR–4, Notice No. 10]

RIN 2130–AA58

Railroad Accident Reporting

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice of postponement of decision whether or not to issue a supplemental notice of proposed rulemaking and confirmation of March 10, 1995, deadline for comments.

SUMMARY: In accordance with a notice published on December 27, 1994 (59 FR 66501), FRA held an informal public regulatory conference on January 30–February 2, 1995, in Washington, D.C. to further discuss issues related to its notice of proposed rulemaking (NPRM)

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on railroad accident reporting (59 FR 42880). Conference participants offered various alternative approaches in response to the specific proposals set forth in the NPRM. The Association of American Railroads and The American Short Line Railroad Association requested that they be allowed to address specific topics by the existing comment deadline of March 10, 1995, and that such comments be incorporated into a second or supplemental NPRM. FRA believes that a decision as to whether or not to issue a supplemental NPRM is premature at this point in the rulemaking proceeding. FRA requests that written comments addressing all issues in the NPRM be filed no later than March 10, 1995, as specified in FRA's December 27, 1994, notice. After thorough review and analysis of the submitted comments, FRA will decide whether a supplemental NPRM is in fact warranted for this rulemaking and will issue a decision in the **Federal Register**. FRA's decision whether or not to issue a supplemental NPRM will be based primarily on the extent that written comments address constructive, creative solutions to the subjects and issues involved in the NPRM.

DATES: *Written Comments:* Written comments filed in response to the NPRM must be received no later than March 10, 1995. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

ADDRESSES: *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628); or Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2760).

Issued in Washington, D.C., on February 13, 1995.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 95–3954 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 60, No. 32

Thursday, February 16, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Federal Subsistence Management Program in Alaska Meetings

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

TIMES, DATES AND LOCATIONS: The Federal Subsistence Board announces the forthcoming Subsistence Regional Advisory Council (Regional Council) meeting: Southcentral Regional Council, 9:00 am, Feb. 14, 1995, Regal Alaskan Hotel, Anchorage, AK.

SUMMARY: The public is invited to participate in this upcoming informational Regional Council meeting. Individuals will be able to listen to presentations to the Regional Council and their comments.

MATTERS TO BE CONSIDERED: The Regional Council will hear presentations on options for the customary and traditional use eligibility determination process in general, and specifically how they relate to the process in the Kenai Peninsula area. The Regional Council may also discuss other issues concerning the Federal Subsistence Management Program.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907)–786–3447.

SUPPLEMENTARY INFORMATION: The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). They advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act. The public is invited to participate in the Regional Council meetings.

The Federal Subsistence Board was established in accordance with Section 814 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). The Secretary of the Interior and Secretary of Agriculture delegated responsibility for administering the subsistence taking and use of fish and wildlife on public lands to this body. Their meetings are open and the public is invited to participate.

Dated: February 7, 1995.

Rowan W. Gould,

Acting Chair, Federal Subsistence Board.

[FR Doc. 95–3850 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

Carlota Copper Project, Tonto National Forest, Gila and Pinal Counties, AZ

AGENCY: Forest Service, USDA.

COOPERATING AGENCIES: Department of Defense, U.S. Army Corps of Engineers, Los Angeles District, Arizona Field Office.

Arizona Department of Environmental Quality.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On June 9, 1992, the USDA, Forest Service, as lead agency, issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposal to develop a mine for copper extraction in the Pinto Creek/Powers Gulch area in the **Federal Register** (57 FR 24461). The purpose of this revised notice is to inform the publics of the following:

1. A revised release date for the draft and final EIS;

2. The availability of a Scoping Report document, and Update To Plan of Operations, a Closure and Reclamation Plan and a revised Mine Site Plan further describing changes to the proposal;

3. The additional of the U.S. Army Corps of Engineers and the Arizona Department of Environmental Quality as cooperating agencies;

4. A change in the appeal regulations.

The draft EIS is now expected to be completed and available for public review in January, 1995. The final EIS is expected to be available in June, 1995.

Following several months of scoping and public meetings, a Scoping Report was completed in July, 1993, and mailed to all publics who had requested to be placed on the project mailing list. The initial plan of operations for the Carlota Mine was filed in February, 1992. As additional planning and engineering work was completed, and in response to agency and public comments and suggestions, the proponent submitted an Update to Plan of Operations in January, 1993, a revised Mine Site Plan dated 12/15/93, and a Closure and Reclamation Plan in June, 1994. Copies of the Scoping Report, Update to Plan of Operations, Mine Site Plan and Closure and Reclamation Plan are available for public review at the following locations: Forest Service Supervisor's Office, Phoenix, Arizona; Forest Service District Ranger's Office, Globe, Arizona.

The revisions will increase ore production and extend the life of the project. Based on review of those revisions, no new issues were evident which were not identified in the initial public scoping. Upon completion of the draft EIS, copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability. It is very important that those interested in this proposed action participate at that time.

The U.S. Army Corps of Engineers and the Arizona Department of Environmental Quality are participating in the analysis process as cooperating agencies for the purposes of their permitting processes.

Effective November 4, 1993, in the **Federal Register** (58 FR 58904), a new

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appeal regulation become effective. The decision on this proposed action will be subject to Forest Service appeal regulations (36 CFR part 215).

RESPONSIBLE OFFICIAL: The responsible official who will make the decision regarding this proposal is Charles R. Bazan, Forest Supervisor, Tonto National Forest, 2324 E. McDowell, Phoenix, Arizona 85006. He will decide under what circumstances the mining operations may proceed.

SUPPLEMENTARY INFORMATION: The original plan proposed three open pits over 370 acres. The revised plan proposes four open pits over 435 acres. Disturbance area has increased from approximately 1250 acres to 1447 acres. The ore reserves have increased from 54–70 million tons to 100 million tons. Mine rock (overburden or nonmineralized rock to be removed) increased from 130 million to 211 million tons, however, the extent of mine rock dumps will not be increased due to the proposed partial backfilling of the pits. The project life has increased from 10–12 years to 18 years and the number of employees increased from 225 to 280–300. The mining rate has increased from 19 million tons per year to 24 million tons per year. The separate leach solution and overflow ponds have been incorporated within the leach pad so only the raffinate solution pond will be exposed. The estimated average annual water requirement of 750 gallons per minute has not substantially increased although dry-period demands are estimated to reach 1200 gallons per minute. Locations of access roads, powerline corridors and facilities have also been relocated.

Dated: December 15, 1994.

Charles R. Bazan,

Forest Supervisor.

[FR Doc. 94–3851 Filed 2–15–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency.

Title: Narrative Reporting Requirements.

Agency Form Number: None.

OMB Approval Number: 0640–0007.

Type of Request: Reinstatement with change, of a previously approved collection for which approval has expired.

Burden: 5,720 hours.

Number of Respondents: 110.

Avg Hours Per Response: 13 hours.

Needs and Uses: MBDA awards grants and cooperative agreements for three separate service programs — Minority Enterprise Growth Assistance Centers, Minority Business Development Centers and the Native American Program. The information collected is needed to evaluate individual project and program performance by comparing accomplishments against planned performance. The information is also used to evaluate the overall results of Agency–funded programs.

Affected Public: Individuals, businesses or other for–profit organizations, not–for–profit institutions, and state, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20503

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: February 10, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc 95–3867 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Integrated Coverage Measurement (Housing Unit Follow–up).

Form Number(s): DG–1377.

Agency Approval Number: None.

Type of Request: New collection–EXPEDITED REVIEW.

Burden: 330.

Number of Respondents: 2,241.

Avg Hours Per Response: 5 minutes.

Needs and Uses: Prompted by the need to improve estimation techniques during the decennial census, the Census Bureau has developed an Integrated Coverage Measurement (ICM) approach to be tested during the 1995 Census Test. The ICM approach will utilize a separately sampled group of blocks within the 1995 Census Test sites which will be independently listed and then interviewed in addition to being enumerated in the census test. We will reconcile differences between the independent roster obtained in the ICM interviews and the census test results. This reconciliation will allow us to measure our coverage of persons in missed housing units and coverage of persons missed within housing units enumerated in the census test. Before ICM interviews are conducted, the independent listing will be enhanced by matching to existing census records. We will use the Housing Unit Follow–up Form to resolve non–matches and duplicate addresses. ICM interviews will then be conducted at housing units on the "enhanced listing."

Affected Public: Individuals or households.

Frequency: One–time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 9, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–3735 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 4–95]

Pier 1 Imports, Inc. (Home Furnishings, Housewares and Gift Products) Application for Subzone Status; Grove City, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rickenbacker Port Authority, grantee of FTZ 138, requesting special-purpose subzone status for a distribution facility of Pier 1 Imports, Inc., located in Grove City, Ohio, within the Columbus, Ohio port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 8, 1995.

Pier 1 is a nationwide retailer of home furnishings, housewares, clothing, fashion accessories, and gifts, headquartered in Fort Worth, Texas. The company operates 586 stores in North America with total sales of $700 million. Pier 1 has seven distribution centers in the United States.

Pier One's Grove City distribution facility (527,000 sq. ft. on a 30-acre site) is located at 3500 Southwest Boulevard in Grove City, Ohio, some 5 miles west of Columbus. It is used to distribute a wide range of consumer products, most of which are of foreign origin. While the company currently uses the facility (46 employees) to supply Pier 1 stores only in the northeastern United States, it plans to expand the plant to accommodate the relocation of Canadian distribution operations to the Grove City site.

Zone procedures would exempt Pier 1 from Customs duty payments on the foreign products that are reexported. On domestic sales, the company would be able to defer Customs duty payments. Foreign materials and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that the use of zone procedures at the facility is needed for proposed Canadian export activity.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is April 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 2, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Port Director, Port Columbus International Airport, 4600 17th Avenue, Room 221, Columbus, Ohio 43219.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: February 9, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–3958 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 3–95]

Foreign-Trade Zone 39—Dallas/Fort Worth, Texas, Pier 1 Imports, Inc. (Home Furnishings, Housewares and Gift Products); Application for Subzone Status, Mansfield, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for a distribution facility of Pier 1 Imports, Inc., located in Mansfield, Texas, within the Dallas/Fort Worth port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 7, 1995.

Pier 1 is a nationwide retailer of home furnishings, housewares, clothing, fashion accessories, and gifts, headquartered in Fort Worth, Texas. The company operates 586 stores in North America with total sales of $700 million. Pier 1 has seven distribution centers in the United States.

Pier One's Mansfield distribution facility (460,000 sq. ft. on 29-acre site) is located at 2200 Heritage Parkway in Mansfield, Texas, some 15 miles east of Fort Worth. It is used to distribute a wide range of consumer products, most of which are of foreign origin. While the company currently uses the facility (52 employees) to supply Pier 1 stores in the southwestern United States and three Pier 1 stores in Mexico, it plans to expand the plant for new international distribution activity as part of an overall company effort to increase exports to Mexico and other Latin American markets.

Zone procedures would exempt Pier 1 from Customs duty payments on the foreign products that are reexported. On domestic sales, the company would be able to defer Customs duty payments. Foreign materials and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that the use of zone procedures at the facility is needed for proposed export activity.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is April 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 2, 1995.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, P.O. Box 58130, 2050 N. Stemmons Freeway, Suite 170, Dallas, Texas 75258.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: February 9, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–3959 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–580–006]

Color Television Receivers From the Republic of Korea; Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on color television receivers (CTVs) from the Republic of Korea. The reviews (sixth and seventh, respectively) cover exports of this merchandise to the United States during the periods April 1, 1988 through March 31, 1989, and April 1, 1989 through March 31, 1990. The review of Quantronics Manufacturing

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Company is being terminated in the sixth (88–89) review. Based on our review of the remainder of these exports, we preliminarily find the existence of dumping margins for all reviewed companies with the exception of Samsung Electronics Co., Ltd. (Samsung), which had a *de minimis* margin in both of our reviews. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Richard Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 31, 1989, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (54 FR 13211) of the antidumping duty order on CTVs from the Republic of Korea for the period April 1, 1988 through March 1, 1989 (sixth review). The United Electrical Workers of America, Independent, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and the Industrial Union Department, AFL-CIO (the Unions), the petitioners in this proceeding, Zenith Electronics Corporation, a domestic interested party, two respondents, Cosmos Electronics Company Ltd. (Cosmos), and Samsung, and an importer of color television receivers from Tongkook General Electronics Co., Ltd (Tongkook), and Samwon Electronics, Inc. (Samwon), requested an administrative review of the antidumping duty order for this period. For the subsequent (seventh) review period, April 1, 1989 through March 31, 1990, the opportunity notice was published on April 10, 1990 (55 FR 13302). With the exception of the importer of Tongkook and Samwon, the same interested parties requested a review of the seventh period. In addition, the respondent Goldstar Company, Ltd. (Goldstar), also requested a review of its exports for the seventh period.

On May 24, 1989, the Department published a notice of initiation of the sixth review which covered seven companies including Tongkook, Samwon, Cosmos, Goldstar, Daewoo Electronics Co., Ltd. (Daewoo), Quantronics Manufacturing Company, Ltd. (Quantronics), and Samsung. On June 1, 1990, we published a notice of initiation for the seventh review (55 FR 22366) for the same seven manufacturers.

The requests for review with respect to Goldstar for both periods were withdrawn on May 23, 1994. Because all the requesting parties for these reviews withdrew their requests for Goldstar, on June 29, 1994, the Department terminated the reviews of Goldstar (59 FR 33486) pursuant to 19 CFR § 353.22(a)(5). On August 19, 1994, the final results of review with respect to Daewoo for both periods were separately issued (59 FR 40519). The request for review with respect to Quantronics for the seventh period was timely withdrawn pursuant to section 353.22(a)(5) and was terminated on July 31, 1990 (55 FR 31089). On October 7, 1994, the request for review of Quantronics made by Zenith Electronics Corporation for the sixth period was withdrawn. Pursuant to 19 CFR § 353.22(a)(5), the Department has the discretion to extend the period during which requests for review may be withdrawn. Because withdrawal of the request does not burden the Department or unfairly prejudice another party, in this notice we are terminating the sixth administrative review with respect to Quantronics pursuant to 19 CFR § 353.22(a)(5).

The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Reviews

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. The order covers all CTVs regardless of tariff classification. During the period of review, the subject merchandise was classified under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 682. 9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the *Harmonized Tariff Schedule* (HTS). Although the HTS and TSUSA item numbers are provided for convenience and Customs purposes, our written description of the scope remains dispositive.

Best Information Available (BIA)

Two companies, Tongkook and Samwon, failed to respond to the original questionnaires sent by the Department for both review periods. One firm, Cosmos, failed to respond to our supplemental questionnaire for both review periods after going out of business. In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party fails to provide requested information. When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers that company to be uncooperative, and generally assigns to that company the higher of (a) the highest rate for any company from any previous review or the original investigation, or (b) the highest rate for a responding firm with shipments during the current period. See Final Results of Antidumping Duty Administrative Review, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, et al. (56 FR 31692; July 11, 1994). *See also Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1195, 1191–92 (Fed. Cir. 1993), and *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993). For Tongkook and Samwon, the companies which failed to provide any information to the Department, we have used the highest rate from the original less-than-fair value (LTFV) investigation of 16.57 percent as their BIA rate because this rate is higher than the highest rate in the current reviews. For Cosmos, we have instead applied "second-tier" BIA, used for cooperative companies, because Cosmos provided reasonable and timely responses until the time of its business failure. Second-tier BIA rates comprise the higher of (1) the highest rate (including the "all others" rate) ever applied to that company from any prior review or the LTFV investigation, or (2) the highest rate calculated for any other company in the current review. Id. Because the only previous rate of 2.24 percent calculated for Cosmos from the immediately preceding review is higher than the rates calculated in the current reviews, Cosmos has been assigned a "second-tier" BIA rate of 2.24 percent.

Request for Revocation

On November 12, 1993, Samsung submitted a request for revocation in the sixth administrative review which it based on having established, in conjunction with its anticipated de minimis result in the sixth review, three years of sales at not LTFV. Pursuant to § 353.25(b) of the Department's regulations, parties must submit their revocation request during the opportunity month for the administrative review which the respondent reasonably believes could establish their eligibility for revocation. *See Exportaciones Bochica/Floral* v. *United States*, 802 F. Supp. 447, *aff'd without opinion*, 996 F.2d 317 (1993). Therefore, in Samsung's case, even though the 1986–1987 (fourth) and the 1987–1988 (fifth) reviews had not been completed, Samsung should have filed its request during April of 1989, the opportunity month for the sixth review period. Such a filing would have preserved its right to revocation in the sixth review. The Department has carefully considered Samsung's reasons for failing to file their revocation request in a timely manner. One reason involves their inability to speculate in April of 1989 on unknown results in reviews four and five. However, unknown results in the previous reviews is not a valid reason for delaying a request for revocation. The regulation requires the revocation request to be filed in the anniversary month of the order if it is to be considered in the review requested that month. *Id.*

In addition, Samsung argues that although reviews four and five ultimately resulted in de minimis rates, an assumption would have had to be made that the litigation (in the first administrative review) involving the tax pass-through methodology, and affecting reviews four and five, would be resolved in a way that would result in calculation and allocation methodologies favorable to Samsung. It argues that because the issue regarding the correct tax methodology was not officially resolved until September 1993, it was not until that time that recognition could actually be given to final results in the fourth and fifth reviews. The Department, however, is not persuaded by Samsung's argument that the unknown results of ongoing litigation is an acceptable explanation for tardiness. The Department has consistently indicated that it is not its policy to await the results of pending court actions in making such decisions. See, Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part) (59 FR 15159; March 31, 1994). In any case, given that the final results of reviews four and five were known to be *de minimis* on June 27, 1990 and March 27, 1991, respectively, the uncertain effect of litigation regarding the tax pass-through methodology on these results is an unconvincing explanation for Samsung's failure to file its revocation request until approximately two-and-a-half years after the de minimis results. For these reasons, we are preliminarily denying Samsung's revocation request.

Even more recently, on November 3, 1994, Samsung submitted a request for revocation in the seventh administrative review. For the same reasons discussed above, and the fact that the Department has not conducted the verification required for revocation under § 353.25(c)(2)(ii), the Department is denying Samsung's revocation request for the seventh administrative review.

United States Price (USP)

For Samsung, we based USP on purchase price in accordance with section 772(b) of the Tariff Act when CTVs were sold to unrelated purchasers in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We based Samsung's USP on ESP as defined in section 772(c) of the Tariff Act when sales were made to unrelated parties after importation into the United States.

We calculated purchase price based on the packed, delivered, free on board (FOB) U.S. port or FOB Korea prices to unrelated customers in the United States. We made deductions, where applicable, for foreign inland freight, forwarding, EIAK export fees, ocean freight, Korean customs clearance fees, marine insurance, U.S. brokerage charges, wharfage, and U.S. duties. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used in merchandise exported to the United States.

We calculated ESP based on the packed, delivered or FOB U.S. warehouse prices to unrelated customers in the United States. We made deductions, where applicable, for foreign inland freight, forwarding, EIAK export fees, ocean freight, customs clearance fees, marine insurance, U.S. brokerage charges, wharfage, U.S. duties, U.S. inland freight to the warehouse and for delivery to customers, royalties, discounts and rebates, commissions to unrelated parties, warranty expenses, return set losses, advertising, credit, and indirect selling expenses. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used in merchandise exported to the United States.

We adjusted USP for value-added taxes in accordance with our practice as outlined in Silicon Manganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.

There were no other adjustments claimed or allowed.

Foreign Market Value (FMV)

In calculating FMV, the Department used home market price, as defined in section 773 of the Tariff Act, where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Where sufficient quantities of such or similar merchandise for particular models were not sold in the home market, we used constructed value in accordance with section 773(a)(2) of the Tariff Act.

Home market price was based on the packed, delivered prices in the home market. Where applicable, we made deductions for inland freight, forwarding, discounts, rebates, credit, technical services, royalties, advertising and promotion, as well as adjustments for differences in merchandise and packing. We adjusted FMV for value-added taxes in accordance with our practice as outlined in Silicon Manganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994. The company's warehousing expense could not be tied directly to either a particular customer or sales of the subject merchandise, and therefore we treated it as an indirect selling expense.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AD-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. We instead will adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below.

When USP is based on purchase price, we only adjust for home market movement charges through the COS provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration.

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Moreover, in order to determine whether pre-sale movement expenses are direct, the Department will examine the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse also must be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense.

When USP is based on ESP, the Department uses the COS adjustment in the same manner as in purchase price situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we will adjust for any pre-sale movement charges which are treated as indirect selling expenses. Accordingly, because the Department has preliminarily determined that pre-sale warehousing costs are an indirect expense, the Department is also treating pre-sale movement costs as an indirect expense. Therefore, no COS adjustment has been made for these costs. For ESP sales, an adjustment for indirect costs has been made under the ESP offset provision.

For ESP comparisons, we also deducted indirect selling expenses from FMV in an amount not exceeding the indirect selling expenses and commissions incurred in the U.S. market. For purchase price comparisons, we added U.S. direct selling expenses including U.S. advertising, credit, warranties and royalties to FMV. Indirect selling expenses were deducted from FMV in an amount not exceeding the amount of commissions paid on U.S. purchase price sales in accordance with 19 CFR 353.56(b)(1).

We calculated constructed value for Samsung by adding material and fabrication costs, selling, general and administrative expenses (SG&A), profit, and U.S. packing in accordance with section 773(e) of the Tariff Act. Since, in both reviews, actual SG&A expenses were greater than the statutory minimum of 10 percent of the sum of materials and fabrication costs, we used Samsung's actual SG&A expenses. We used the statutory minimum of eight percent for profit in the sixth review in accordance with section 773(e) of the Tariff Act. In the seventh review, we used Samsung's actual profit experience since it was greater than eight percent of the cost of production.

No other adjustments were claimed or allowed.

Preliminary Results of the Reviews

As a result of our review, we preliminarily determine that the weighted-average dumping margins for the periods are:

Manufacturer/exporter	Margin percentage	
	04/01/88–3/31/89	04/01/89–3/31/90
Cosmos	2.24	2.24
Quantronics	Terminated	Terminated
Samsung	0.02	0.09
Samwon	16.57	16.57
Tongkook	16.57	16.57

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for all companies will continue to be the company-specific rate published in the final determination covering the most recent period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 13.90 percent, the "all other" rate established in the original LTFV investigation by the Department (49 FR 7620, March 1, 1984), in accordance with the decisions of the Court of International Trade in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States*, 822 F. Supp. 782 (CIT 1993).

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3960 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–834]

Amendment to Preliminary Determination of Sales at Less Than Fair Value: Disposable Lighters From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0167 and 482–1276, respectively.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Case History

On December 5, 1994 (59 FR 64191, December 13, 1994), the Department of Commerce ("the Department") made its affirmative preliminary determination of sales at less than fair value in the above-referenced investigation. On December 8, 1994, we disclosed our calculations for the preliminary determination to counsel for PolyCity Industrial Ltd. ("PolyCity"), a respondent in this investigation.

On December 13, 1994, counsel for PolyCity alleged that ministerial errors had occurred in the calculations and requested that these errors be corrected and an amended preliminary determination be issued reflecting these corrections. On December 16, 1994, petitioners submitted comments regarding PolyCity's ministerial error allegations. On January 10, 1995, counsel for PolyCity again requested that the Department amend the preliminary determination to correct for ministerial errors.

PolyCity alleged that for a particular U.S. sale, the Department made its first ministerial error when it used an incorrect value for ocean freight in the calculation of U.S. price. Rather than use the figure reported in its supplemental response, PolyCity argues that the Department erred when it used the figure provided on the computer diskette accompanying the response. According to PolyCity, the narrative portion of the response rather than the spreadsheet provided on diskette contained the correct value for ocean freight. We disagree that this constitutes a ministerial error. Rather, we believe that this issue should be addressed at verification where the correct value for ocean freight can be established.

The second ministerial error alleged by counsel for PolyCity involved the calculation of transportation costs for the various components used in the production of disposable lighters. According to PolyCity, the Department used the inland freight figures reported in PolyCity's supplemental response incorrectly. Rather than using the reported inland freight as transportation costs per unit of measure (i.e., cost per kilogram), the Department erred in treating the inland freight costs as transportation costs per component. PolyCity maintains that in order to obtain the transportation cost per lighter associated with each item, the Department should have multiplied the reported freight price for that item by the quantity of the item used in producing a lighter. Based on these comments and the Department's own analysis, we found that a significant ministerial error had been made.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Proposed Regulations, are provided solely for further explanation of the Department's AD practice with respect to amended preliminary determinations. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Amendment of Preliminary Determination

It is not our normal practice to amend preliminary determinations since these determinations only establish estimated margins, which are subject to verification, and which may change in the final determination. However, the Department has stated that it will amend a preliminary determination to correct for significant ministerial errors. (See Proposed Rules and Notice of Amended Preliminary Determination of Sales at Less than Fair Value: Fresh Cut Roses from Colombia, 59 FR 51554 (October 12, 1994) and Amendment to Preliminary Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289 (May 9, 1990).) Given the facts of this investigation, as noted above, the Department hereby amends its preliminary determination to correct for the ministerial error involved. The revised estimated margin for PolyCity is 39.37%.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require a cash deposit or posting of a bond for all entries of subject merchandise from the PRC for all respondents, as set forth in the original preliminary determination, and for PolyCity, at the newly calculated rate, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the amended preliminary determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days after our final determination.

This notice is published pursuant to section 733(f) of the Act and 19 CFR 353.13(a)(4).

Dated: February 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3961 Filed 2–15–95; 8:45 am]

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[A–122–503]

Certain Iron Construction Castings From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 10, 1994, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of an administrative review of the antidumping duty order on iron construction castings from Canada. The review covered four manufacturers and/or exporters of the subject merchandise to the United States during the period March 1, 1991 through February 29, 1992. Based on our analysis of the comments received, the dumping margins for these four companies have not changed from the margins presented in the preliminary results. For the final results we continue to find that 14

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additional companies are related to one of the respondents in this review and have, therefore, continued to collapse these companies and assign a single rate to the entire entity.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, D.C. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1994, the Department published in the **Federal Register** the preliminary results of an administrative review (59 FR 40866) of the antidumping duty order on iron construction castings from Canada (51 FR 17220). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department completed its administrative review of the order on Canadian castings for the next annual period, March 1, 1992, through February 28, 1993, on May 17, 1994.

Scope of the Review

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050 and to valve, service, and meter boxes which are placed below ground to encase water, gas, and other valves, or water or gas meters, classifiable as light casting under HTS item numbers 8306.29.0000 and 8310.00.0000. The HTS item numbers are provided for convenience and for Customs purposes only. The written description remains dispositive.

This review covers sales of certain Canadian iron construction castings by Fonderie LaPerle (LaPerle), Penticton Foundry, Ltd. (Penticton), Titan Foundry, Ltd. (Titan), and Associated Foundry (Associated), during the period March 1, 1991 through February 29, 1992.

Related Parties

In addition, based on our analysis, we have found that 14 other companies, for which we did not initiate an administrative review, were related to LaPerle during the period of review. (For more information, see the analysis memorandum for the preliminary results.) We have determined, based on the best information available (BIA), that these related companies should be collapsed with LaPerle and receive a single assessment rate for this review period.

On May 17, 1994, we issued final results of review for the period 1992/1993. Since we assigned cash deposit rates to 12 of the 14 related companies in that review, these final results affect only the two remaining companies.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided for in section 353.38 of the Department's regulations. We received comments from LaPerle and rebuttal comments from the Municipal Castings Fair Trade Council, including its individually named members (petitioner).

Comment 1: LaPerle commented that the Department should not have resorted to BIA since LaPerle cooperated fully with the Department and responded to all requests for information. It argues that it responded fully to all seven requests for information from the Department.

LaPerle states that, despite the Department's decision to collapse LaPerle and all parties to which it is either directly or indirectly related, LaPerle is an autonomous operation. LaPerle argues that the other companies also operate autonomously, especially, according to LaPerle, considering that two of these companies are located at too great a distance to be involved with LaPerle's operations. LaPerle asserts that the remaining companies either did not produce or did not sell such or similar merchandise or did not export to the United States.

LaPerle further contends that this situation is like that in Gray Portland Cement and Clinker from Japan (58 FR 48826, 1993), where the Department stated: "The use of BIA was not warranted in a situation where, as here, there are sufficient home market sales of comparable merchandise to unrelated customers to calculate an FMV for every month of the review period."

In its rebuttal comments the petitioner asserts that the fundamental error in LaPerle's arguments is its assertion that the submission of questionnaire responses for itself alone constitutes cooperation. By ignoring the Department's request for a consolidated response for itself and its related entities, petitioner agrees with the Department's determination that LaPerle has been uncooperative.

Department's Position: In conducting this review, we received responses from only one company, which was LaPerle. Based on our analysis of this response we determined in the preliminary results that LaPerle was not independent, but was, in fact, one of many components in a single business entity. In doing so, we determined that LaPerle and its related entities were sufficiently related to permit the possibility of price manipulation. As we stated in Cellular Mobile Telephones and Subassemblies from Japan (54 FR 48011, 1989), our determination to collapse related parties into a single respondent entity is not "based solely on the extent of their financial relationship."

The other factors we relied upon in collapsing related companies are as follows: (1) The level of common ownership; (2) interlocking officers or directors (e.g., whether managerial employees or board members of one company sit on the board(s) of directors of the other related part(ies)); (3) the existence of production facilities for similar or identical products that would not require retooling either plant's facilities to implement a decision to restructure either company's manufacturing priorities; and (4) whether the operations of the companies are intertwined (e.g., pricing decisions, sharing of facilities or employees; transactions between the companies). *See*, e.g., Certain Granite Products from Spain, 53 FR 24335 (1988); Certain Granite Products from Italy, 53 FR 27187 (1988); Steel Wheels from Brazil, 54 FR 8780 (1989); Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 37099 (1993). The Department's use of these factors was upheld by the Court of International Trade (CIT) in *Nihon Cement Co., Ltd., et al.* v. *United States and The Ad Hoc Committee of Southern California Producers of Gray Portland Cement, et al.*, Slip Op. 93–80 (CIT 1993). Based on an analysis of all four criteria, the Department has determined that the facts warrant collapsing the related entities. For further discussion of the Department's application of these factors in this review, *see* the analysis memorandum for the preliminary results.

In conducting our analysis of the related-party issue in this review, we issued six supplemental questionnaires and granted deadline extensions. In spite of this, LaPerle did not provide the Department with enough information to support its position that the related parties should not be collapsed. In addition, it did not consolidate all information for the respondent entity, including information for its related home market firms as outlined in our questionnaire. Therefore, we have determined that LaPerle significantly impeded the proceeding and, in accordance with section 776(c) of the Tariff Act, we have based our final results regarding LaPerle and its related entities on BIA.

Comment 2: LaPerle states that if the Department continues to use BIA for the final results of review, it should use a second-tier BIA rate since LaPerle was a cooperative respondent. To support its argument LaPerle refers to Stainless Steel Wire Rods from Brazil (58 FR 68862, 1993), where the Department applied a less adverse rate because the respondent was cooperative.

The petitioner in its rebuttal comments states that the Department should reject this claim for the same reason as it did in the 1992–93 review. The petitioner asserts that, as in that review, absent a consolidated response from LaPerle and its related entities, the Department would not be able to reach a determination of the amount of dumping engaged in by LaPerle and its related concerns, and thus that LaPerle did not fully cooperate with the Department.

Department's Position: Despite LaPerle's responses, the respondent entity's response was inadequate. Therefore, we have concluded that the respondent entity "refused to cooperate * * * or otherwise significantly impeded" the review. (See *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993)). Accordingly, the application of first-tier BIA is appropriate because LaPerle impeded the proceeding by failing to provide to the Department the information necessary to conduct the review and by failing to provide support for its position that LaPerle should not be collapsed with the 14 other companies during the period of review.

Final Results of the Review

As a result of our review, we determine that the following weighted-average margins exist, and have been applied based on relationship and/or failure to respond, for the period March 1, 1991 through February 29, 1992:

Manufacturer/Producer/Exporter	Margin percent
LaPerle	9.80
Penticton	9.80
Titan	9.80
Associated	9.80

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Because the Department has already completed the review for the period March 1, 1992, through February 28, 1993, the cash deposit requirement for merchandise subject to the order will not be changed by these final results, except in the case of the two companies related to LaPerle that were not assigned cash deposit rates in the review covering the next annual period. For these two companies, the Department will instruct Customs to collect cash deposits at the rate applicable to LaPerle in this review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3962 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 89–2A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the Air-Conditioning & Refrigeration Institute ("ARI") on May 10, 1991. Notice of issuance of the Certificate was published in the **Federal Register** on May 21, 1991 (56 FR 23284).

DATES: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Ch. III Part 325 (1994).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–00010 was issued to the Air-Conditioning & Refrigeration Institute ("ARI") on May 10, 1991 (56 FR 23284, May 21, 1991), and previously amended on July 6, 1992 (57 FR 30956, July 13, 1992).

ARI's Export Trade Certificate of Review has been amended to:

1. add the following companies as "Members" within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2 (1)): American Thermaflo; Cryogel: Danfoss Automatic Controls; Doucette Industries, Inc.; Herrmidifier Company, Inc.; Hoshizaki America, Inc., MDI Major Diversities, Inc.; Manchester Tank and Equipment Company; Uniflow Manufacturing Company; and Witt;

2. delete the following company as a "Member" of the Certificate: Hupp Industries, Inc.;

3. change the listing of the company name of the following current "Members" as follows: Change Airmax,

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Inc. to AIRM Alco Controls Division, Em[illegible] Electric Company to Emerson Elec[illegible] Company, for the activities of i[illegible]co Controls Division; ATOCHEM N[illegible] America to Elf ATOCHEM N[illegible] America; Baltimore Aircoil Compa[illegible], Subsidiary of Amsted Industries, Inc.[illegible] Baltimore Aircoil Company, a subsidiary of Amsted Industries, Inc.; Barber-Coleman Company to Siebe Environmental Controls; Climate Master to Climate Master, Inc., A Subsidiary of LSB Industries; Crystal Tips, Inc. to Crystal Tips Ice Systems; E.I. du Pont de Nemours & Company, Fluorochemicals Division to E.I. du Pont de Nemours & Company, for the activities of its Fluorochemicals Division; Eaton Corporation, Automotive & Appliance Controls Operation to Eaton Corporation, for the activities of its Automotive & Appliance Control Operations; Florida Heat Pump Manufacturing, Division of Harrow Products, Inc. to FHP Manufacturing Company, A Harrow Products Company; Johnson Controls, Inc., Control Products Division to Johnson Controls, Inc., for the activities of its Systems Products Division; Mammoth, A Nortek Company to Mammoth, Inc.; Manitowoc Equipment Works, Division of Manitowoc Co., Inc. to Manitowoc Co. Inc., for the activities of its Manitowoc Equipment Works Division; NIBCO, Inc., OEM Division to NIBCO, Inc., for the activities of its OEM Division; Parker Refrigeration Components Group, Parker-Hannifin Corporation to Parker-Hannifin Corporation, for the activities of its Parker Refrigeration Components Group; Ranco to Ranco North America; Servend International, Inc. to SerVend International, Inc.; SnyderGeneral Corporation to AAF/McQuay Inc; Sterling Radiator, A Division of Mestek, Inc. to Mestek, Inc., for the activities of its Sterling Radiator Division; and Superior Valve Company, Division of Amcast Industrial Corp. to Amcast Industrial Corp., for the activities of its Superior Valve Company Division; and

4. add as new products to be covered as Export Trade under the Certificate within the meaning of § 325.2j of the Regulations (15 CFR 325.2j): (1) Non-ducted unitary air-conditioning equipment, and (2) containers used for the distribution, storage or recovery of refrigerants.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: February 9, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 95–3870 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DR–P

[A–357–809, A–351–826, A–428–820 and A–475–814]

Notice of Postponement of Final Determinations: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Argentina, Brazil, Germany and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Irene Darzenta, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3965 or (202) 482–6320, respectively.

Postponement

On January 13, 1995, the respondents in the Brazilian and German investigations requested that, in the event of an affirmative preliminary determination in either investigation, the Department of Commerce (the Department) postpone the deadline for the final determination to a date no later that 135 days after the date of publication of the preliminary determination in the **Federal Register**. On January 18, 1995, the respondent in the Argentine investigation made a similar request. In each of these investigations, the respondent requested a postponement due to the complexity of the investigation. On January 30, 1995, the petitioner requested that the Department postpone its final determination in the Italian investigation until 135 days after the preliminary determination. Petitioner requested a postponement to allow the Department time to conduct a sales below cost investigation

On January 27, 1995, the Department published affirmative preliminary determinations in the antidumping duty investigations of small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe (seamless pipe) from Argentina, (60 FR 5348), Brazil (60 FR 5351) and Germany (60 FR 5355) and a negative preliminary determination in the antidumping duty investigation of seamless pipe from Italy (60 FR 5358). On February 2, 1995, the Department initiated a sales below cost investigation in the Italian case.

The Department's regulations provide that upon the receipt of a proper request, the Department will postpone the final determination unless there are compelling reasons to deny the request (19 CFR 353.20(b)(1) (1994)). We find that the requests for postponement of these investigations meet the regulatory requirements and that there are no compelling reasons to deny these requests. Therefore, we are postponing the final determinations in the above-referenced investigations pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). The final determinations will be issued not later than June 12, 1995. Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

In accordance with 19 CFR 353.38, case and rebuttal briefs must be submitted in at least ten copies to the Assistant Secretary for Import Administration according to the schedule detailed below. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If requested, hearings are tentatively scheduled as detailed below These hearings will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington D.C., 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Country	Case briefs	Rebuttal briefs	Hearing date/time/room
Argentina	May 5	May 10	May 12 at 9:30—4830.
Germany	May 8	May 15	May 17 at 9:30—1412
Brazil	May 9	May 16	May 18 at 9:30—1414
Italy	May 10	May 17	May 19 at 9:30—1414

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: February 8, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 95–3963 Filed 2–5–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 020995B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder Monitoring Committee will hold a public meeting on February 28, 1995, in the Franklin and Liberty Room of the Philadelphia Airport Hilton, 4509 Island Avenue, Philadelphia, PA. The meeting will begin at 10:00 a.m. and adjourn at approximately 5:00 p.m.

The purpose of this meeting is to recommend the summer flounder recreational fishery management measures for 1995.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3951 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment and Establishment of Import Restraint Limits and Restraint Periods for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Myanmar

February 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and establishing import limits and restraint periods.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), the current limits for Categories 340/640, 342/642, 347/348, 351/651, 448 and 647/648/847 are being amended for the new restraint periods beginning on October 1, 1994 (Categories 340/640), February 1, 1994 (Categories 342/642 and 351/651), September 1, 1994 (Categories 347/348) and March 1, 1994 (Categories 448 and 647/648/847) and extending through December 31, 1994. Also, pursuant to URATC, limits are being established for the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 7245, published on February 15, 1994; 59 FR 11256, published on March 10, 1994; 59 FR 11578, published on March 11, 1994; 59 FR 42210, published on August 17, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the URATC, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 13, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on February 8, 1994, March 7, 1994, March 8, 1994 and August 12, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Myanmar and exported during the twelve-month periods February 1, 1994 through January 31, 1995 (Categories 342/642 and 351/651), March 1 1994 through February 28, 1995 (Categories 448 and 647/648/847), September 1, 1994 through August 31, 1995 (Categories 347/348 and October 1, 1994 through September 30 1995 (Categories 340/640).

Effective on February 22, 1995, you are directed, pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), to amend the current limits for the following categories and amend the current restraint periods to end on December 31 1994:

Category	Amended limit
340/640	23,689 dozen.
342/642	23,227 dozen.
347/348	44,007 dozen.
351/651	36,505 dozen
448	1,942 dozen.
647/648/847	20,582 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1994 (Categories 342/642 and 351/651), February 28, 1994 (Categories 448 and 647/648/847), August 31, 1994 (Categories 347/348) and September 30, 1994 (Categories 340/640).

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Act, and the Uruguay Round Agreement on Textiles and Clothing (URATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 22, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Myanmar exported dur[illegible] the period beginning on January 1, 1995 [illegible]

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extending through December 31, 1995, in excess of the following restraint limits:

Category	Twelve-month limit [1]
340/640	93,975 dozen.
342/642	25,383 dozen.
347/348	131,659 dozen.
351/651	39,893 dozen.
448	2,316 dozen.
647/648/847	24,551 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

Imports charged to these category limits for the periods February 1, 1994 through December 31, 1994 (Categories 342/642 and 351/651), March 1, 1994 through December 31, 1994 (Categories 448 and 647/648/847), September 1, 1994 through December 31, 1994 (Categories 347/348) and October 1, 1994 through December 31, 1994 (Categories 340/640), shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–3956 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

February 13, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 927–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC), the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 13, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Effective on February 21, 1995 you are directed to no longer count imports of textile products in Categories 300, 301, 326, 330, 332, 333, 345, 349, 350, 353, 354, 359–O,[1] 362, 369–O[2] and 666, produced or manufactured in Pakistan and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act, and the Uruguay Round Agreement on Textiles and Clothing (URATC); pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [3]
Specific Limits	
219	6,362,862 square meters.
226/313	95,756,604 square meters.
237	309,466 dozen.
239	1,456,968 kilograms.
314	4,627,536 square meters.
315	64,427,748 square meters.
317/617	24,867,600 square meters.
331/631	1,895,252 dozen pairs.
334/634	182,788 dozen.
335/635	282,280 dozen.
336/636	371,360 dozen.
338	4,081,310 dozen.
339	1,051,934 dozen.
340/640	495,146 dozen of which not more than 185,680 dozen shall be in dress shirts in Categories 340–D/640–D[4]
341/641	557,040 dozen.
342/642	275,706 dozen.
347/348	615,554 dozen.
351/651	247,573 dozen.
352/652	618,933 dozen.
359–C/659–C[5]	1,114,079 kilograms.
360	2,160,926 numbers.
361	2,810,018 numbers.
363	37,962,164 numbers.
369–F/369–P[6]	1,856,799 kilograms.
369–R[6]	8,665,061 kilograms.
369–S[7]	566,893 kilograms.
613/614	18,960,686 square meters.
615	20,170,939 square meters.
617	15,286,929 square meters.

[1] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C).

[2] Category 369–O: all HTS numbers except 6302.91.0045 (Category 369–F); 6302.60.0010 and 6302.91.0005 (Category 369–P); 6307.10.2020 (Category 369–R); and 6307.10.2005 (Category 369–S).

Category	Twelve-month restraint limit [3]
625/626/627/628/629	62,036,800 square meters of which not more than 31,018,400 square meters shall be in Category 625, not more than 31,018,400 square meters shall be in Category 626, not more than 31,018,400 square meters shall be in Category 627, not more than 6,417,600 square meters shall be in Category 628, and not more than 31,018,400 square meters shall be in Category 629.
638/639	360,541 dozen.
647/648	683,571 dozen.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[5] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[7] Category 369–R: only HTS number 6307.10.2020.

[8] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994; April 29, 1994 through December 31, 1994 (Categories 342/642) and June 29, 1994 through December 31, 1994 (Category 625) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the URATC and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–3957 Filed 2–15–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission Investigative Hearings

AGENCY: Defense Base Closure and Realignment Commission (a Presidentially appointed commission separate from and independent of DoD).

ACTION: Notice of investigative hearings.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces a series of investigative hearings to be held in Washington, D.C. The purpose of these hearings is for the Commission to receive testimony from the Department of Defense and other Federal agencies and from individuals and groups in the private sector as part of the Commission's independent review and analysis of installation closure and realignment recommendations from the Secretary of Defense. The specific dates, locations, and general topics follow:

March 1 (Location: Dirksen Senate Office Building, Room 106).
—Secretary of Defense formally presents closure and realignment recommendations to the Commission.
—Chairman, Joint Chiefs of Staff, discusses recommendations in the context of national defense strategy, force structure plan, and the Department of Defense selection criteria.
—Assistant Secretary of Defense (Economic Security) discusses overall Defense Department methodology for determining recommendations.

March 6 (Location: Cannon House Office Building, Caucus Room 345).
—Service Secretaries present recommendations and methodology for Service selection process.

March 7 (Location: Dirksen Senate Office Building, Room 106).
—Service Secretaries and Defense Agency Directors present recommendations and methodology for Service and Defense Agency selection process.

March 16 (Location: Hart Senate Office Building, Room 216).
—Government officials and private-sector individuals and groups present testimony on issues relating to reuse of closing military installations.

The March 1 hearing will begin at 9:30 a.m. All other hearings will begin at 9:00 a.m. The building and room number are noted in parentheses following the date of each hearing. However, hearing locations, dates, and times are subject to change based upon availability of facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Nelson, Director of Communications, at (703) 696–0504

SUPPLEMENTARY INFORMATION: Changes to the above schedule will be published in the **Federal Register** by the Commission. Please call the Commission to confirm dates, times, and locations prior to each event. Individuals needing special assistance should contact the Commission in advance of each event to facilitate their requirements.

Dated: February 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–3923 Filed 2–15–95; 8:45 am]

BILLING CODE 5000–04–M

Ballistic Missile Defense Advisory Committee; Notice

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Norfolk, VA., on March 2–3, 1995.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d), Federal Advisory Committee Act, P.L. 92–463, as amended, 5 U.S.C., Appendix II, it has been determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552(c) (1), and that accordingly this meeting will be closed to the public.

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Dated: February 10, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3826 Filed 2-15-95; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Role of Federally Funded Research & Development Centers (FFRDC's) in DoD Mission will meet in open session on February 18, 1995 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Arlington, Virginia.

This meeting is scheduled on short notice because of unforeseen circumstances that require this Task Force to research large volumes of information within a very short timeframe in order to meet a Congressional mandated suspense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on Scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Robert Nemetz at (703) 756-2096.

Dated: February 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3924 Filed 2-15-95; 8:45 am]

BILLING CODE 5000-04-M

Privacy Act of 1974; Notice to Delete and Amend Record Systems

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to delete and amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to delete one and amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion is effective February 16, 1995. The amendments will be effective on March 20, 1995, unless comments are received that would result in a contrary determination

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695-0970 or DSN 225-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: February 13, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

DELETION

DUSDP 05

SYSTEM NAME:

Defense Automated Case Review System (DACRS) *(February 22, 1993, 58 FR 10264).*

Reason: This system has been determined not to be a record system subject to the Privacy Act of 1974.

AMENDMENTS

DODDS 22

SYSTEM NAME:

DoD Dependent Children's School Program Files *(February 22, 1993, 58 FR 10245).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Between the sixth and seventh paragraphs insert "Special Education files: Records pertaining to tests and evaluations of students and documentation of individual needs for special education programs. Included is follow-on correspondence and case files relating to mediations and hearings. Records are cut-off after final decision and retired to WNRC after 5 years. When 20 years old, the records are destroyed."

* * * * *

DODDS 22

SYSTEM NAME:

DOD Dependent Children's School Program Files.

SYSTEM LOCATION:

Active Students—DOD operated overseas dependents schools, regional offices, and the Office of Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway 2, Suite 1500, Arlington, VA 22202-4301

Former High School Students—Permanent records (high school transcripts) are retained at the school for four years subsequent to graduation, transfer, or termination, and are then forwarded to the regional office for one year where they are compiled and forwarded to the Washington National Records Center (WNRC) except Panama. Records for the Panama region are retired to the East Point, GA, Federal Archives Records Center (FARC).

Former Panama Canal College Students - Permanent records (college transcripts) are retained at the college for ten years and are then retired to East Point FARC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the DOD operated overseas dependent schools

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment files: Documents relating to the admission, registration, and departure of dependent school students Included are pupil enrollment applications, course preference, admission cards, drop cards, and similar or related documents.

Daily attendance register files: Documents reflecting the daily attendance of pupils at dependent schools. Included are forms, printouts, bound registers and similar or related documents.

Elementary school academic records Documents reflecting the standardized achievement, mental ability, yearly grade average, attendance of each student and the teacher's comments. Included are forms, notes, and similar or related documents.

Elementary school report card files Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic grades and averages, absence and tardiness data.

Elementary school student files. Documents pertaining to individual elementary school students. Included in each folder are reading and health records; individual education plans; intelligence quotient; achievement, aptitude, and similar test results; notes related to pupils progress and characteristics; and similar matters used by counselors and successive teachers.

Secondary school absentee files: Documents reflecting absence of students. Included are homeroom teacher's registers, secondary school daily attendance records of absentees reported by teachers, tardy slips for admission of students to classroom, transfer slips notifying teachers of new class or homeroom assignment, notices of change by school principal to teacher upon change of classroom, student applications for permission to be absent, student pass slips, and similar or related documents.

Secondary school academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

Secondary school report card files: Documents reflecting scholastic grades, personality traits, and promotion or failure. Included are report cards and related documents.

Secondary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and tardiness, and withdrawal data. Included are class registers and similar or related documents.

Secondary school class reporting files: Documents reflecting teacher reports to principals and used as source documents for preparing secondary school academic record cards. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting secondary school scholastic credits earned. Included are certificates and similar or related documents.

Secondary school student files: Documents pertaining to individual secondary school students. Included in each folder are student health records; individual education plans; absence reports and correspondence with parents pertaining to absence; records of achievement and aptitude tests; notes concerning participation in extracurricular activities, hobbies, and other special interests or activities of the student; and miscellaneous memorandums used by student counselors.

College absence, withdrawal, and add files: Student applications for permission to be absent from final exams. Student drop and add class records and administrative withdrawal letter.

College academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

College report card files: Documents reflecting scholastic grades and promotion or failure. Included are report cards and related documents.

College teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and withdrawal data. Included are class registers and similar or related documents.

College class reporting files: Documents reflecting teacher reports to Registrar and used as source documents for preparing college transcripts. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting college scholastic credits earned. Included are certificates and similar or related documents.

College student files: Documents pertaining to individual college students. Included in each folder are absence reports, records of achievement, and aptitude tests.

Automated support files: Automated data files are composed of records containing any of the above information in addition to (varies by regional system): Student registration data-student identification number, student name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, dates of absences, and sponsor's name, status, rank, date of rotation, organization, location of unit, local address, emergency address, permanent address, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Recurring provisions of the DOD Appropriations Act and Department of Defense Directive 1342.6, Department of Defense Dependents Schools, dated October 17, 1978, with change 1.

PURPOSE(S):

Dependent children's school program files (general):

1. Records of students attending DOD operated overseas dependent schools are used by school officials, including teachers, to: a. Determine the eligibility of children to attend these schools; b. Schedule children for transportation; c. Record daily and/or class attendance of students and date(s) of withdrawal; d. Determine tuition paying students and record status of payments; e. Determine students located in areas not serviced by dependents schools so that alternative arrangements for education can be made and payment made, as required; f. Monitor special education services required by and received by the student; and, g. Used to develop and maintain reading and health records, including school related medical needs.

2. Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies and recruiting officials).

Dependent children's school program files (elementary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for elementary students by school personnel cited above.

2. Used in the following manner to record: a. Teacher or standardized test data; b. Attendance, absences, and/or tardiness of each student; c. Recommendations for promotion or retention including teacher comments: d. Daily, weekly, semester, or annual grades; and, e. Notes related to the individual pupil's progress and learning characteristics useful to professional school personnel in counseling the student and in the determination of his/her proper placement.

Dependent children's school program files (secondary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for secondary students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record attendance, absences, and/or tardiness of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for post-secondary education; g. Form the basis for preparing the secondary school transcript; h. Determine secondary school academic credits earned; and, i. Note special interest or hobbies of the student.

3. Used by DOD recruiting officials to determine eligibility for military service

Dependent children's school program files (college):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an

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educational program for college students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record attendance and absences of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for college education; g. Form the basis for preparing the college transcript; and h. Determine college academic credits earned.

3. Used by DOD recruiting officials to determine eligibility for military service.

Automated support. Automated support is used by school and regional officials (where applicable) to:

1. Provide academic data to each student upon request, provide report cards, etc., at the end of each grading period, provide transcripts upon request, and provide hard copy for manual files.

2. Provide academic data within the region and to ODS.

3. Provide data within the Department of Defense on a need-to-know basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records concerning sponsor's names, rank, and branch of service may be released to former students for the purpose of organizing reunion activities.

Academic data may be provided to other educational institutions and employers or prospective employers in accordance with current policies and procedures.

Academic achievements and data may be provided to the public, via distribution of information within the school and through various media sources, for positive reinforcement purposes. This information will not be distributed for commercial uses.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are paper records in file folders.

RETRIEVABILITY:

Elementary school academic records and secondary school and college academic records (transcripts) are filed alphabetically by school, school year, and last name of student.

Elementary, secondary, and college teacher class register files are filed by school, school year, and last name of teacher.

Remaining dependent school student files are filed by school, school year, and last name of student.

The automated files are indexed by a variety of data, depending upon the region and school involved (some have regionally assigned student identification numbers, others are by last name of student). Also, any combination of data in the file can be used to select individual records. Only authorized personnel have required information to access the system or process jobs.

SAFEGUARDS:

Paper records are maintained in files accessible only to authorized personnel.

Authorized records:

Description of the automated process. Current hard copy records of all information are kept in locked file cabinets in limited access school offices. Computer-produced student records and reports become an integral part of the manual system and are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, regional offices, and/or schools. Approved special requests for data can be supported by ad hoc inquiry. Any combination of data can be used to select individual records for special processing.

Physical safeguards. Computer facilities and remote terminals are located in schools and regional offices throughout the school system. Particular regional systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. On-line access is protected by combinations of the following various factors: (1) Users must have file and/or disk names; (2) users must have possession or approval to gain possession of appropriate disk(s); and, (3) users must have specifically designed codes and/or keys to permit read/write operations.

Storage media. Hard copy files are stored in the school offices of each participating school and regional offices. Computer files are stored on magnetic tape and disks, as outlined above.

Risk analysis. All personal information which is collected and/or maintained for this system is stored in locations adequately secure for such information. Administrative safeguards have been instituted to prevent access to information in the automated systems.

RETENTION AND DISPOSAL:

Enrollment files: Maintained at the respective school for one year after graduation, withdrawal, transfer, or death of the student, then destroyed.

Daily attendance register files: Destroyed after reviewing attendance registers for the next school year.

Elementary school academic records files: When a student transfers to another school, this file is forwarded by mail to officials of the receiving school on request in accordance with current regulations, or destroyed at the school five years after graduation, withdrawal, or death of the student.

Elementary school report card files: Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Destroyed at the school concerned after five years.

Elementary school student files: 1. When a student transfers to another school, the reading and health records are released to the parent or student (if over 18 years of age) for hand-carrying to the receiving school. 2. Remaining documents pertaining to the students are forwarded by mail to the officials of the receiving school or the parent/guardian on request in accordance with current regulations; if not requested, documents are destroyed at the school concerned one year after graduation, withdrawal, or death of the student.

Special Education files: Records pertaining to tests and evaluations of students and documentation of individual needs for special education programs. Included is follow-on correspondence and case files relating to mediations and hearings. Records are cut-off after final decision and retired to WNRC after 5 years. When 20 years old, the records are destroyed.

Secondary school absentee files: Destroyed at the school after one year.

Secondary school academic record files (high school transcript): 1. Permanent file. 2. When a student transfers to another DOD dependents school, this file (transcript) is forwarded by mail to officials of the receiving school on request. 3. When a student transfers to a non-DOD school, a copy of the transcript is forwarded to the receiving school on request in accordance with current regulations. 4. Files not forwarded to another DOD school are retained at the school concerned for four years, the regional office for one year and then retired to the WNRC (or East Point FARC if in the Panama region) for an additional sixty years.

Secondary school report card files: Released to parents of students or student (if over eighteen years of age) at the end of the school year or on transfer of student.

Secondary school teacher class register files: Retained at the school concerned for five years and then destroyed.

Secondary school class reporting files: Destroyed at the school after one year.

Credit transfer certification files: Destroyed at the school after one year.

Secondary school student files: 1. Retained at the school concerned for two years after graduation, withdrawal or death of the student. 2. When a student transfers to another school: a. A copy of the record may be released to the parents or student (if over eighteen years of age) for hand-carrying to the receiving school. b. An official copy of the record will be forwarded to the receiving school in accordance with current regulations upon request. (The original record is retained at the school.)

College absentee files: Destroyed at the school after one year.

College academic record files (college transcripts): 1. Permanent file. 2. When a student transfers to another college or university, this file (transcript) is forwarded by mail to officials of the receiving school upon receipt of an authorized request. 3. Original files (transcripts) are retained at the college for ten years then retired to East Point FARC.

College report card files: Released to student at the end of the semester or school year, or on transfer of student.

College teacher class register files: Retained at the school for five years and then destroyed.

College class reporting files: Destroyed at the school after one year.

Credit transfer certificate files: Destroyed at the school after one year.

College school student files: 1. Retained at the school for two years. 2. When a student transfers to another school: a. A copy of the record may be released to the parents or student (if eighteen years of age) for hand-carrying to the receiving school. b. An official copy of the record will be forwarded to the receiving school upon request pending receipt of authorized request. (The original record is retained at the school.)

Automated files: Automated files are normally retained for one year. However, this may vary as all information is documented in the manual files and the information in automated form may be destroyed earlier or later than one year for various internal purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of Defense Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway 2, Suite 1500, Arlington, VA 22202–4301.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Department of Defense Dependents Schools, 1225 Jefferson Davis Highway, Crystal Gateway 2, Suite 1500, Arlington, VA 22202–4301.

RECORD ACCESS PROCEDURES:

Written requests for information on the records system and for instructions concerning personal visits may be forwarded to the principal of the school within four years after graduation, transfer, withdrawal, or death of student.

The fifth year, the principal should be contacted for elementary records or the system manager for secondary records.

Subsequently, all requests for secondary records may be forwarded to the Headquarters, Department of the Army, (DAAG–AMR), Washington, DC 20310, except for information from schools in Panama. These requests should be sent to Director, DODDS-Panama, APO Miami 34002.

All requests for college records should be sent to the college for the first ten years, then to the Director, DODDS-Panama, APO Miami 34002.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned and their parents/guardians, teachers and school administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

WUSU03

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Student Record System *(February 22, 1993, 58 FR 10923).*

CHANGE:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are cut-off upon graduation, transfer, withdrawal, or death of student, and held for 20 years, after which they are transferred to the Washington National Records Center. Fifty years after cut-off, the records are destroyed.'

* * * * *

WUSU03

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Student Record System.

SYSTEM LOCATION:

The file will be maintained in the Registrar's Office, USUHS, 4301 Jones Bridge Road, Bethesda, MD 20814–4799. Supplemental files consisting of student evaluation forms, grades, and course examinations pertaining to their Department will be maintained in each department by department chairperson, as well as in the Registrar's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on all students who matriculate to the University.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grade reports and instructor evaluations of performance/achievement; transcripts summarizing

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by course title, grade, and credit hours; records of awards, honors, or distinctions earned by students; and data carried forward from the Applicant File System, which includes records containing personal data e.g., name, rank, Social Security Number, undergraduate school, academic degree(s), current addresses, course grades, and grade point average from undergraduate work and other information as furnished by non-Government agencies such as the American Medical College Admission Service which certifies all information prior to being submitted to the University.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–426, Ch 104, section 2114; and E.O. 9397.

PURPOSE(S):

Data is used for recording internships, residencies, types of assignment and other career performance data on USUHS graduates; providing academic data to each student upon request, e.g., transcripts, individual course grades, grade point average, etc.; providing academic data within the Uniformed Services University of the Health Sciences for official use only purposes; and providing data to the respective Surgeon General when a specific and authorized need requires it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Academic data may be provided to other educational institutions upon the written request of a student.

The 'Blanket Routine Uses' set forth at the beginning of the USUHS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders are stored at USUHS, supported by automated copies of subsets of each student's folder, which are maintained on magnetic tape and disk at the Office of the Registrar, USUHS.

RETRIEVABILITY:

The system will be indexed by name and Social Security Number. Also, any combination of data can be used to select individual records. Only personnel in the Office of the Registrar will be with the password that allows access to the data, and those individuals are authorized access to all data in the file.

SAFEGUARDS:

The computer facility at the USUHS is operated by the Office of the Registrar. The tapes and hard copies of material are secured in government-approved security containers constructed of four-hour heat-resistant steel material. The physical location of the computer hardware, disks, and printer are located to the extreme rear of the room with access being blocked by a large counter staffed by two office personnel. All access to the computers in the Office of the Registrar is via user identification and sign-on password. Computer software ensures that only properly identified users can access the Privacy Act files on this system. Passwords are changed semiannually, or upon departure of any person knowing the password.

RETENTION AND DISPOSAL:

Files are cut off upon graduation, transfer, withdrawal, or death of student, and held for 20 years, after which they are transferred to the Washington National Records Center. Fifty years after cut-off, the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Written requests should include name, Social Security Number and dates attended.

CONTESTING RECORD PROCEDURES:

The USUHS' rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 315; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is furnished by instructor personnel, the individual concerned; the National Board of Medical Examiners; and the Applicant File System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–3921 Filed 2–15–95; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6 & 7 March 1995.

Time of Meeting: 0800–1600, 6 March 1995; 0800–1600, 7 March 1995.

Place: Arlington, VA.

Agenda: The Logistics and Sustainability Subgroup of the Army Science Board will meet for discussions focused on current doctrine, missions, functions, force structures and modules, and technologies reference 1995 Summer Study on "Army Logistical Support to Military Operations Other than War." These meetings will be closed to the public in accordance with Section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–3918 Filed 2–15–95; 8:45 am]

BILLING CODE 3710–08–M

Change to Item 410 of the International Personal Property Rate Solicitation—Notification of MTMC's Intent To Increase Carrier Liability to $1.25 Times the New Shipment Weight

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: This is to provide notification of MTMC's intent to increase carrier liability to $1.25 times the net shipment weight. This is a change to item 410 of the International Personal Property Rate Solicitation. The change was originally proposed in the Federal Register, dated 4 March 1993. As requested by industry, the General Accounting Office (GAO) conducted a study on the proposed increase in carrier liability. Acting on the recommendation of the GAO study, MTMC intends to increase the carrier liability from $1.80 per pound per article to $1.25 times the net shipment weight (in pounds), for any lost or damaged article, effective October 1, 1995, with the International Winter (IW95) rate cycle. A shipment valuation charge of $1.28 per $100 of the released or declared value will apply for 3 years from the implementation date of October 1, 1995. The shipment valuation charge will cease to apply on October 1, 1998, effective with the IW98 rate cycle. The following is the change, by subparagraph, to item 410:

Item 410.a. All rates in this solicitation apply on shipments when released to a value not exceeding $1.25 times the net shipment weight (in pounds), including items of extraordinary value.

Item 410.b. No change.

Item 410.c. No change.

Item 410.c.(1). Net weight of shipment, 5,500 pounds; headboard lost or damaged, weight 50 pounds. Carrier's maximum liability for loss or damage to the headboard would be $1.25 times 5,500 pounds (net shipment weight) or $6,875.

Item 410.c.(2). New weight of shipment, 10,000 pounds; TV (19 inch) damaged, weight 25 pounds. Carrier's maximum liability would be $1.25 times 10,000 pounds or $12,000.

Item 410.c.(3). Net weight of shipment, 3,000 pounds; fishing reel missing, weight 1 pound. Carrier's maximum liability would be $1.25 times 3,000 pounds or $3,750.

Item 410.c.(4). No change.

Item 410.c.(5). No change.

Item 410.d. Add the following subparagraph to read: A shipment valuation charge of $1.28 for each $100 of the released or declared value will apply.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: MTOP–T–NP, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Moreno, (703) 756–2383.

DATES: The shipment valuation charge will cease to apply on October 1, 1998.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3896 Filed 2–15–95; 8:45 am]

BILLING CODE 3710–08–M

Domestic Personal Property Rate Solicitation—Implementation of Proposed Change

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: This notice provides notification of MTMC's intent to eliminate the additional shipment valuation charges shown as Items 130a/130b in the Domestic Personal Property Rate Solicitation (D–3) or reissues thereof.

Acting on the recommendation of a Government Accounting Office (GAO) study, MTMC intends to eliminate the 64 cents per $100 valuation charge, applicable to all points in CONUS, as shown as Item 130a, and the additional 64 cents per $100 valuation charge on shipments to or from Alaska, shown as Item 130b in the Domestic Personal Property Rate Solicitation (D–3), and reissues thereof. GAO believes that carriers now have the claims experience needed under increased liability to adjust their rates to compensate for any increased liability costs, thus making further compensary payments unjustified. The above noted shipment valuation charges will cease to apply on November 1, 1995, effective with the Domestic Winter rate cycle.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: MTOP–T–NP, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Peterson, (703) 756–1190.

DATES: The above shipment valuation charges will cease to apply on November 1, 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3897 Filed 2–15–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Inland Waterways Users Board

AGENCY: U.S. Army Corps of Engineers, Inland Waterways Users Board, DOD.

ACTION: Notice of open meeting.

In accordance with 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: March 31, 1995.

Place: San Luis Hotel, 5222 Seawall Boulevard, Galveston, Texas 77551. Tel: 409–744–1500).

Time: 8:30 a.m. to 4:30 p.m.

Proposed Agenda:

AM Session

8.30 a.m.—Registration
9:00 a.m.—Call to Order
9:05 a.m.—Galveston District Commander's Welcome & Remarks
9 15 a.m.—Chairman's Remarks and Introductions
9.30 a.m.—Executive Director's Remarks
9:45 a.m.—Approval of Previous Meeting Minutes
9:05 a.m.—Status of the IW Trust Fund
10:00 a.m.—Navigation Project Cost Escalation: 1986–1994
10:15 a.m.—Status of the Partnerships and Board Task Force Recommendations for Quality Operating Improvements
10:45 a.m.—Break
11:15 a.m.—Draft of the FY96 Annual Report
12:00—Lunch

PM Session

1:30 p.m.—Draft of the FY96 Annual Report
2:00 p.m.—Board Navigation Project-Priorities-Status
2:30 p.m.—Project Updates for Sargent Beach & Brazos River Floodgates
2:45 p.m.—Break
3:15 p.m.—GIWW Extension into Mexico
3:30 p.m.—Section 216 Studies Update
3:45 p.m.—Public Comment Period
4:30 p.m.—Call for Adjournment

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, D.C. 20314–1000.

Kenneth L. Denton,

Army Federal Register Liaison Officer

[FR Doc. 95–5917 Filed 2–15–95; 8:45 am]

BILLING CODE 3710–92–M

Department of the Army Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS)

For a Proposed Small Boat Harbor at Chignik, Alaska

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A harbor at Chignik would support the local fishing fleet by providing moorage for approximately :

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vessels. The harbor site in Anchorage Bay would require a rubblemound breakwater to protect an approximately 5-acre moorage basin. The harbor site is between two small streams and a freshwater marsh. Potential harbor impacts for any alternative are long-term generation of harbor related pollutants and commitment of tidelands to harbor development that would modify the habitat in the harbor area. The rock quarry would not be specified.

ADDRESSES: Alaska District Corps of Engineers, ATTN: Chief, Environmental Resources Section, P.O. Box 898, Anchorage, Alaska 99506–0898.

FOR FURTHER INFORMATION CONTACT:

Mr. Guy R. McConnell or Ms. Lizette Boyer (907) 753–2637.

SUPPLEMENTARY INFORMATION: A previous draft and final Environmental Impact Statement was written for this project in 1987 (Federal Register Notice ERP No. F–COE–L39045–AK). A Record of Decision was not signed. A notice to the **Federal Register** was published on June 12, 1989 for preparation of a DSEIS to discuss additional project changes. The final supplemental EIS was not circulated because the project lost local funding.

The project has been re-initiated. In addition to presenting all the project alternative, an alternatives plan is being proposed for study. The new alternative, at the previously selected site, would re-position the breakwater to include wave protection from the south-southwest as well as from the west. The analysis would study the best location for an entrance channel and tideland fill staging areas. Approximately 264,000 cubic yards of predominately sand would be dredged from the harbor basin.

The DSEIS would analyze the new harbor alternative, all other alternatives as necessary, and update information. Much of the information contained in the previous EIS will be incorporated by reference. The final EIS will be made available. Scoping of the EIS will include continued coordination with interested local, State, and Federal agencies, and other interested parties. Scoping meetings are not planned at this time.

Anticipated subjects to be addressed include, but are not limited to: water quality, juvenile salmon and other fish movement through the harbor, tideland fill, wetlands, rock quarry issues, and measures to minimize adverse impacts.

The expected completion date of the DSEIS is spring 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3898 Filed 2–15–95; 8:45 am]

BILLING CODE 3710–NL–M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of Transportation and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Department of Transportation (DOT) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DOT and DoD that their records are being matched by computer. The record subjects are DOT delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by DOT so as to permit DOT to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective March 20, 1995, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and DOT have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that DOT can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between DOT and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Chief, Financial Asset Management Staff, Department of Transportation, 400 7th Street, SW, Room 9130, Washington, DC 20590. Telephone (202) 366–6100.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 1, 1995, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: February 8, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Program Between the Department of Transportation and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Department of Transportation (DOT) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DOT is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the DOT will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. The DOT will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the DOT of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 49 CFR part 92, Recovering Debt to the United States by Salary Offset (DOT).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The DOT will use personal data from the Privacy Act record system identified as DOT/ALL 10, entitled, 'Debt Collection File', last published in the **Federal Register** at 59 FR 54941 on November 2, 1994.

DMDC will use personal data from the record systems identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act (Pub.L. 97–365) authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* The DOT, as the source agency, will provide DMDC with a magnetic computer tape which contains the names of delinquent debtors in programs the DOT administers. Upon receipt of the magnetic computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the DOT file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the DOT. The DOT is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the DOT source file and for resolving any discrepancies or inconsistencies on an individual basis. The DOT will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The magnetic computer tape provided by DOT will contain data elements of the debtor's name, Social Security Number, debtor status and debt balance, internal account numbers and the total amount owed on approximately 2,100 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DOT and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502 Telephone (703) 607–2943.

[FR Doc. 95–3920 Filed 2–15–95; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

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DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requeted by February 21, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed ihformation collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requireemnt for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 10, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Expedited
Title: Part A Strengthening Institutions Program—Hispanic-Serving Institutions Grants
Frequency: Annually
Affected Public: Not-for-profit institutions
Reporting Burden:
Responses: 85
Burden Hours: 2,975
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This information is required of institutions of higher education applying for Hispanic-Serving Institutions grants under the Strengthening Institutions Programs, Title III, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine which applicants should receive funds.

Additional Information: Clearance for this information collection is requested for February 21, 1995. Exedpited review is requested so that awards could be made on schedule under the new authority, to allow applicants ample time to prepare quality applications, and for printing and distribution purposes.

[FR Doc. 95–3828 Filed 2–15–95; 8:45 am]

BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 14, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 10, 1995.

Gloria Parker,

Director, Information Resources Group

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Third International Mathematics and Science Study (TIMSS)
Frequency: Annually
Affected Public: Individuals or households; not-for-profit institutions; State, Local or Tribal Government
Reporting Burden:
Responses: 56,460
Burden Hours: 111,085
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: TIMSS will assess student achievement in math and science at the 4th, 8th, and 12th grade levels in about 50 countries. In the U.S., the data will be used to measure progress toward the fourth National Education Goal—that the U.S. will be first in the world in math and science by the year 2000. The study will also help educators to understand differences in student performance by providing data on teaching practices and opportunity-to-learn factors.

Addtional Information: Clearance for this information collection is requested for February 14, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–3829 Filed 2–15–95; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 2–4, 1995.

TIME: March 2, 1995—Subject Area Committee #2, 1:30 P.M.–2:00 P.M. (open); 2:00 P.M.–3:30 P.M. (closed); Achievement Levels Committee, 1:30 P.M.–3:30 P.M. (open); Reporting and Dissemination Committee, 1:30 P.M.–3:30 P.M. (open); Subject Area Committee #1, 4:00 P.M.–6:00 P.M. (open); Design and Methodology Committee, 4:00 P.M.–6:00 P.M. (open); Executive Committee, 6:30 P.M.–8:00 P.M. (open). March 3, 1995—Full Board, 8:45 A.M.–12:30 P.M. (open), 12:30 P.M.–2:00 P.M. (closed), 2:30 P.M.–4:00 P.M. (open). March 4, 1995—Full Board, 9:00 A.M. until adjournment, approximately, 12:00 Noon (open).

LOCATION: The Madison Hotel, 15th and M Streets NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, D.C., 2002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On March 2, all subcommittees of the National Assessment Governing Board will be in session. The Subject Area Committee (SAC) #2 will meet from 1:30 P.M. to 3:30 P.M. SAC #2 will meet in open session from 1:30 P.M. to 2:00 P.M. to hear a report on state arts education assessment efforts. From 2:00 P.M. until adjournment, 3:30 P.M., the SAC #2 meeting will be closed to the public to permit the Committee to receive a briefing on the 1995 NAEP field test. This briefing will include display and discussion of secure test items and materials. This portion of the meeting must be conducted in closed session because premature disclosure of the information presented for review might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

The Achievement Levels Committee will meet in open session from 1:30 P.M. until 3:30 P.M. The Committee will discuss preliminary results of the 1994 NAEP student performance standards in the U.S. history and world geography

The Reporting and Dissemination Committee will meet in open session from 1:30 P.M. to 3:30 P.M. to discuss the release of future NAEP reports and Board policy on the collection, analysis, and reporting of background data.

Beginning at 4:00 P.M., until 6:00 P.M., the Subject Area Committee #1, and the Design and Methodology committees will meet in open session. Subject Area Committee #1 will hear about plans for the new NAEP Civic Consensus Project. The Design and Methodology Committee will discuss NAEP sampling plans for 1996, policy issues related to the use of background data in NAEP, and below state-level NAEP assessments.

A meeting of the Executive Committee will conclude the subcommittee meetings of the National Assessment Governing Board scheduled for March 2. The Executive Committee will meet in open session from 6:30 P.M. until 8:00 P.M. Agenda items for this meeting include discussion of 1996 budget; schedule of NAEP assessments; and policy considerations for NAEP district level reporting.

On March 3, the full Board will convene in open session at 8:45 A.M. The morning session of the full Board meeting includes approval of the agenda, the Executive Director's Report, a presentation by Honorable Michael N. Castle, Congressman from the State of Delaware, an update on NAEP activities, a presentation on the State of Maryland's approach to the attainment of World Class Standards, and Board discussion on strategic planning.

Beginning at 12:30 P.M., until 4:00 P.M., the full Board will meet in partially closed session. From 12:30 P.M., until 2:00 P.M., the meeting will be closed to the public. The Board will hear a report on the 1994 NAEP Reading Report which will include references to specific items from the assessment. This portion of the meeting must be closed because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. From 2:30 P.M., until 4:00 P.M., the meeting will be open to the public. The Board will hear reports on the New Standards Projects, and proposed NAEP evaluations. The Board will continue discussion of strategic planning, also.

On March 4, at 9:00 A.M., the full Board will reconvene. The agenda for this session includes a report on an equating project being conducted by the State of Kentucky with its assessment program and NAEP, and reports from the Boards standing committees-Subject Area Committees #1 and #2, Achievement Levels, Reporting and Dissemination, Design and Methodology, and Executive. This meeting of the National Assessment Governing Board will be adjourned at approximately 12:00 Noon.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street NW., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Dated: February 13, 1995.

Roy Truby,

Executive Director National Assessment Governing Board.

[FR Doc. 95–3869 Filed 2–15–95; 8:45 am]

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DEPARTMENT OF ENERGY

Golden Field Office; Notice of Federal Assistance Award to Air Products and Chemicals, Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a cooperative agreement with Air Products and Chemicals, Inc. (APC), to conduct research and development activities on a Sorption Enhanced Reaction (SER) process for use with Steam Methane Reforming (SMR). The SER technology could change the basic concept and engineering design of existing hydrogen production systems based upon SMR and, as a result, reduce the cost of hydrogen.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John Motz, Contract Specialist. The telephone number is 303–275–4737.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with § 600.14 of the Federal Assistance Regulations, the unsolicited proposal entitled "Sorption Enhanced Reaction (SER) Process for Production of Hydrogen" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with § 600.14 of the Federal Assistance Regulations.

Under this cooperative agreement, APC will develop an approach for producing hydrogen through an SER process used with SMR. The project is expected to be conducted through a three-phase effort over a period of five years. The three overall activities include Concept Feasibility (Phase I), Engineering Development (Phase II), and Process Development Unit Demonstration (Phase III).

The objective of Phase I (two years in duration) is to demonstrate the feasibility of performing SMR at a low temperature with a suitable material for the production of hydrogen and to develop the base design data for engineering development and economic evaluation. The objective of Phase II (one year in duration) is to develop engineering data and models for scale-up of SER-SMR technology and continue laboratory efforts to develop improved reaction materials. Lastly, the objective of Phase III (two years in duration) is to design, install, and operate a Process Development Unit (PDU) for the manufacture of hydrogen using the SER concept. This PDU will be used to develop performance data, process optimization, and models for scale-up. Additionally, detailed economic analysis will be performed to confirm the merits of the process. Commercialization plans will be developed in detail.

The proposal has been found to be meritorious in the DOE evaluation. The APC program represents a unique approach to develop and demonstrate a technology which could result in reduced costs for hydrogen production with the SER-SMR process. The team proposed by APC has the technical capabilities and commitment which should provide a basis for a successful project. The proposed project is not eligible for financial assistance under a recent, current, or planned solicitation. This award will not be made for at least 14 days after publication to allow for public comment.

The project cost over five years (including three phases) is estimated to be $8,940,000 total, with the DOE share being $5,540,000.

Issued in Golden, Colorado, on January 30, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–3950 Filed 2–15–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP95–170–000 and CP95–181–000]

Columbia Gas Transmission Corp.; Notice of Intent To Prepare Environmental Assessments for the Proposed Coco Transmission Project and Coco Storage Field Project and Request for Comments on Environmental Issues

February 9, 1995

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare environmental assessments (EAs) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Coco Transmission Project and Coco Storage Field Project.[1] The EAs will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the projects.

Summary of the Proposed Projects

The facilities proposed to be replaced are currently in an unsafe condition due to corrosion and old age. Replacement is necessary this year in order to provide service in the upcoming winter of 1995/1996.

Coco Transmission Project (Docket No. CP95–170–000):

Columbia Gas Transmission Corporation (Columbia) proposes to construct 6.8 miles of 30-inch-diameter replacement pipeline in Kanawha County, West Virginia. The new pipeline would replace the two deteriorating 20-inch-diameter Lines X52–M1 and X52–M1–Loop, which are in the same location. Columbia would use the facilities to transport up to 606,000,000 cubic feet per day of natural gas.

Coco Storage Field Project (Docket No. CP95–181–000):

Columbia proposes to construct 10.9 miles of various 4- to 20-inch-diameter replacement pipeline and appurtenant facilities within the existing Coco "A" Storage Field in Kanawha County, West Virginia. The new pipeline would replace 15.7 miles of deteriorating pipeline, ranging in size from 4- to 16-inch-diameter, including two looped segments of mainline, and gathering lines for wells.

Columbia would also replace and install appurtenant facilities consisting of wellhead piping and measurement facilities for 29 existing wells; install an on-line pigging system on the new 10- and 20-inch-diameter pipelines; and install fluid gathering facilities and about 12 miles of 1- and 2-inch-diameter pressurized methanol pipeline injecting system that would connect to each well.

The locations of these facilities are shown in appendix 1.[2]

Land Requirements for Construction

The proposed project would be built within and adjacent to existing rights-of-way. Columbia intends to use a construction right-of-way that would vary between 25 and 120 feet during construction. Following construction, 50 feet would be maintained as permanent right-of-way, and the rest would revert back to the landowner

[1] Columbia Gas Transmission Corporation's applications were filed with the Commission under Sections 7(b) and 7(c) of the Natural Gas Act.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EPA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the Eas. All comments received are considered during the preparation of the Eas. State and local government representatives are encouraged to notify their constituents of these proposed actions and encourage them to comment on their areas of concern.

The Eas will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

- Geology and soils.
- Water resources, fisheries.
- Land use
- Cultural resources and wetlands.[4]
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Haardous waste.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Eas. Depending on the comments received during the scoping process, the Eas may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commissions official service list for each proceeding. A comment period will be allotted for review if the Eas are published. We will consider all comments on the Eas before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. Keep in mind that this is a preliminary list.The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

Coco Transmission Project (Docket No. CP95–170–000):

- The project would cross four perennial streams and five wetlands.
- The project would cross or be near cultural resources/archaeological sites.

Coco Storage Filed Project (Docket No. CP95–181–000):

- The project would cross six perennial streams at 13 locations, and 18 wetlands.
- The project would cross or be near cultural resources/archaeological sites.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.
- Reference Docket No. CP95–170–000 and/or CP95–181–000;
- Send a *copy* of your letter to:

For the Coco Transmission Project (Docket No. CP95–170–000): Mr. Jeff Shenot, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and/or.

For the Coco Storage Field Project (Docket No. CP95–181–000): Ms. Medha Kochhar, EA Project Commission, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and

- Mail your comments so that they will be received in Washington, D.C. on or before March 20, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Shenot or Ms. Kochhar, for Docket Nos. CP95–170–000 and CP95–181–000, respectively, at the above addresses.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The dates for filing of timely motions to intervene for the Coco Transmission Project (Docket No. CP95–170–000) and Coco Storage Field Project (Docket No.CP95–181–000) are February 16, 1995 and February 23, 1995, respectively. After these dates, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Jeff Shenot, Coco Transmission Project EA Manager, at (202) 219–0295, or from Medha Kochhar, Coco Field Project EA Manager, at (202) 208–2270.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3900 Filed 2–15–95; 8:45 am]

BILLING CODE 6717–01–M

[4] According to the applicant, the project will not affect any waters of the United States. We will report any potential impacts, or their absence, under this heading.

[Docket No. CP95–75–000]

Texas Eastern Transmission Corporation; Intent to Prepare an Environmental Assessment for the Proposed MS–1 Pipeline Project and Request for Comments on Environmental Issues

February 10, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the MS–1 Pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Texas Eastern Transmission Corporation (Texas Eastern) wants to

[1] Texas Eastern Transmission Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

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expand its facilities to transport natural gas to and from nonjurisdictional storage facilities (MS–1 Storage Facilities) that would be constructed in Copiah County, Mississippi by Copiah County Storage Company (Partnership).[2] The MS–1 Storage Facilities would be leased by MS–1 Distribution & Storage Corporation (MS–1 Distribution), a nonjurisdictional company, from Partnership. Texas Eastern proposes to construct pipeline facilities that would be capable of transporting up to 600,000 thousand cubic feet of natural gas per day (Mcfd). Texas Eastern wants Commission authorization to construct and operate the following facilities in Copiah County, Mississippi:

- 1.88 miles of 24-inch-diameter pipeline extending from Texas Eastern's existing Line Nos. 14 and 18 near milepost 264 to the MS–1 Storage Facilities; and
- A tap and filter separator located at the MS–1 Storage Facilities.

The storage facilities are being constructed by Copiah County Storage Company, currently a nonjurisdictional company, and as such may not fall within the Commission's jurisdiction.

The location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Texas Eastern's pipeline would be constructed on a new right-of-way. Texas Eastern proposes to use an 85-foot-wide construction right-of-way that would extend through a pine plantation and mixed oak-hickory forest. Clearing would be required along the entire construction right-of-way. Texas Eastern would retain a 50-foot-wide permanent right-of-way after construction is complete. Following construction, the disturbed area would be restored and the 35 feet of construction right-of-way not included in the permanent right-of-way could be allowed to revert to its former land use.

Additional right-of-way width would be required at steep side slopes. Additional working space would be required adjacent to streams.

[2] Copiah County Storage Company is a partnership composed of Mistex Gas Corporation, a wholly owned subsidiary of Tejas Power Corporation, and Flex Star Corporation, a wholly owned subsidiary of Panhandle Eastern Corporation.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would require clearing of forest along a new right-of-way.
- The proposed project may affect forested wetlands.
- The proposed project would require an 85-foot-wide construction right-of-way.

Also, we have made a preliminary decision not to address the impacts of the facilities described as nonjurisdictional. We will briefly describe their location and status in the EA and do a more in depth analysis in a subsequent document if appropriate.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.
- Reference Docket No. CP95–75–000.
- Send a copy of your letter to: Ms. Jennifer Goggin, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before March 20, 1995.

If you wish to receive a copy of the EA, you should request one from Ms. Goggin at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor" Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Jennifer Goggin, EA Project Manager, at (202) 208–2226.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3845 Filed 2–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–199–000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

February 10, 1995.

Take notice that on February 7, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP95–199–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm gas transportation service to Natural Gas Pipeline Company of America (NGPL), which was authorized in Docket No. CP76–007–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL states that it seeks authorization to abandon TGPL's Rate Schedule X–75, effective as of April 29, 1995. TGPL states that NGPL no longer needs such service, and TGPL and NGPL have mutually agreed to terminate Rate Schedule X–75.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3847 Filed 2–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–342–000]

PacifiCorp; Notice of Filing

February 9, 1994.

Take notice that on January 23, 1995, Sierra Pacific Power Company, tendered for filing a Certificate of Concurrence in above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3848 Filed 2–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–51–008]

Transcontinental Gas Pipe Line Corp.; Notice of Filing

February 10, 1995.

Take notice that on January 31, 1995, Transcontinental Gas Pipe Line Company (Transco) filed a revised Code of Conduct pursuant to Order Nos. 566 and 566–A.[1] Transco states that the purpose of the filing is to reflect certain changes in accordance with Order Nos. 566 and 566–A.

Transco states that copies of this filing have been mailed to all parties to Docket No. MG88–51.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission' Rules of Practice and Procedure 918 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3849 Filed 2–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP94–196–002; and CP94–197–002]

Williams Natural Gas Company Williams Gas Processing—Mid-Continent Region Co.; Notice of Filing

February 10, 1995.

Take notice that on February 3, 1995, Williams Natural Gas Company (WNG), Post Office Box 3288, Tulsa, Oklahoma 74101, tendered for filing a default contract to comply with the Commission's December 22, 1994, Order in Docket No. CP94–196–000, all as more fully set forth in the filing which

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

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is on file with the Commission and open to public inspection.

The Commission in its December 22, 1994 Order, required WNG and Williams Gas Processing—Mid-Continent Region Company (WGP–MCR) to file a "default contract" to provide a transitional mechanism for any existing shippers who had not negotiated an agreement with WGP–MCR for gathering services. WNG asserts that WGP–MCR has negotiated and executed agreements with shippers representing approximately 80 percent of the volumes currently being gathered by WNG on the subject facilities. WNG states that the default contract will be offered to shippers representing the remaining 20 percent of the current volumes.

WNG asserts that it currently has 88 gathering agreements. WNG states that WGP–MCR has consolidated the negotiated agreements so that the same shipper only needs one agreement to provide for gas gathered in multiple gathering areas. Therefore, WNG claims that WGP–MCR's 21 negotiated agreements will replace 28 WNG agreements. WNG also states that 17 agreements have been terminated effective January 31, 1995, because they have been inactive for a year and the shippers agreed to discontinue these inactive accounts. Finally, WNG states that the remaining 43 gathering agreements, representing 20 percent of the volumes, could be replaced by the default contract. WNG states that WGP–MCR has provided the remaining customers with drafts of the default contract for their review, recognizing that the contract will require the Commission's approval before execution. WNG claims that the remaining customers will still have the opportunity to negotiate an agreement tailored to their needs or, if the desire, to select the default option.

WNG states that the proposed default contract is consistent with the form of gathering agreement filed with the Commission in WNG's restructuring proceedings, Docket No. RS92–12–000, *et al.* WNG notes that, while it was not required to file the form of gathering agreement in the tariff, in the review process many of the provisions were expressly approved by the Commission. WNG states that the entire default contract is consistent with the Commission's requirements in those orders. WNG states there was one oversight, in that the provision that limits both parties' liability was not removed from the gathering agreements that were sent to potential shippers. WNG states that the oversight was not discovered until the recent review of the agreements in preparation of this default contract filing. Therefore, WNG states that it will send to all gathering shippers offers to amend the current agreements to remove that provision as soon as possible. Finally, WNG states that WGP–MCR has removed the particular provision from the default contract.

WNG states that the default contract specifically sets out the applicable provisions of WNG's Tariff General Terms and Conditions. Additionally, WNG claims that the default contract contains language clarifications to make it more applicable to gathering and more understandable, but results in no substantive language changes to the applicable provisions. WNG states that WGP–MCR proposes to add four additional provisions to the general terms and conditions of the default contract, due to the differences between traditional interstate pipeline services and gathering services. WNG states that the four provisions are: (1) Pass-Through of Unforeseen Costs Imposed by Government, to allow for the pass through of unforeseen government-imposed charges in fees or costs; (2) Capacity Curtailment, curtailment based on a straight pro rata basis; (3) Other Pipeline Requirements, because the gathering systems will be connected to multiple transmission pipelines, shippers will be required to comply with downstream requirements including bearing the resulting penalties for failure to comply; (4) Nominations, provides that the gathering fee and fuel are based on confirmed nominations rather than on receipt point volumes and this is for the convenience of all the parties.

WNG states that the default contract's general terms and conditions contain WNG's tariff imbalance penalty provisions. However, WNG states that neither it nor WGP–MCR will double charge penalties for transactions across separate gathering and transmission facilities that currently qualify for a single penalty on WNG's system.

WNG claims that the default contract rates have been determined utilizing the currently effective WNG rate methodology for WNG's rate case, Docket No. RP93–109–000. WNG states that the rates are a result of applying the currently effective rate methodology to the WNG facilities which will be conveyed to WGP–MCR to provide gathering service. WNG also notes that since it has not received a final order in Docket No. RP93–109–000, the currently effective gathering rates are subject to refund and WGP–MCR will refund amounts to the default contract customers if the Commission makes such a requirement in its final order.

WNG states that the rate is subject to an escalator, which uses the Gross Domestic Product fixed Weighted Price Index as published by the U.S. Department of Commerce. WNG states that WGP–MCR has not included discount language in the default contract because there are no remaining shippers receiving a discounted gathering rate from WNG. WNG asserts that any customers receiving discounted gathering rates from WNG have negotiated agreements with WGP–MCR and will not be using the default contract.

Any person desiring to be heard or to make a protest with reference to said application should, on or before March 3, 1995, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3846 Filed 2–15–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Oregon Pacific Hay Company, 720 NE Flanders Street, #200, Portland, OR 97232. Officers: George Joseph Spada, President; Marietta Lucia Spada, Vice President

Natural Freight, Ltd., 53 Park Place, Suite 1002, New York, NY 10007. Officers: Willy Burkhardt, President; Alfons Strub, Exec Vice President

J.F.A. Cargo Express Corporation, 505 West 211th Street, New York, NY 10034. Officers: Froilan Nunez, President; Federico Nunez, Secretary

Singh Universal Networks, Inc., 605 Country Club Drive, Unit H, Bensenville, IL 60106. Officers: Maninder Singh Birk, President; Harbinder Kaur Birk, Corporate Secretary.

Dated: February 10, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–3868 Filed 2–15–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Progressive Growth Corp.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23 of the Board's Regulation Y (12 CFR 225.23) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Progressive Growth Corp., Gaylord, Minnesota; previously known as Gaylord Bancorporation, Ltd., to expand the geographic scope of the activities of its subsidiary corporation, Sterling Capital Advisors, Inc., Gaylord, Minnesota to a nationwide basis. Sterling Capital Advisors engages in:

1. The appraisal of real and personal property pursuant to § 225.25(b)(13) of the Board's Regulation Y;

2. Management Consulting pursuant to § 225.25(b)(11) of the Board's Regulation Y; and

3. Providing investment and financial advise pursuant to §§ 225.25(b)(4)(iii), 225.25(b)(4)(iv), and 225.25(b)(4)(v) of the Board's Regulation Y.

Progressive Growth Corp. also proposes to engage in providing consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y. This activity will be conducted only in the state of Minnesota.

Progressive Growth Corp. also proposes to establish a wholly-owned subsidiary, Progressive Financial Services, Inc., Gaylord, Minnesota, which will acquire Citizens Insurance Agency, Gaylord, Minnesota, and thereby engage in the sale of insurance in towns of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted only in the cities of Gaylord and Nicollet, Minnesota.

Board of Governors of the Federal Reserve System, February 10, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3871 Filed 2–15–95; 8:45 am]

BILLING CODE 6210–01–F

Marvin R. Selden, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 8, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marvin R. Selden, Jr., Melvin H. Nielsen, Dennis L. Gallagher, Robert McLaughlin, and Carl Selden, all of Des Moines, Iowa; to acquire 55.86 percent of the voting shares of Iowa State Bank Holding Company, Des Moines, Iowa, and thereby indirectly acquire Iowa State Bank, Des Moines, Iowa.

Board of Governors of the Federal Reserve System, February 10, 1995

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 95–3872 Filed 2–15–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Logistic Data Management Division; Revision and Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration is changing the stocking requirement of SF 1303, Request for Federal Cataloging/Supply Support Action. This form is now authorized for local reproduction. You can request camera copy of SF 1303 from General Services Administration (CARM), Attn. Barbara Williams, (202) 501–0581. Also, the general instructions on the back of the form are revised to delete how to get supplies of SF 1303 and how to submit EAM cards. FPMR 101–30.3 is being revised to eliminate the use of EAM cards.

FOR FURTHER INFORMATION CONTACT:

Mr. Chuck Long, Logistics Data Management Division, (703) 305–7511

DATES: Effective February 16, 1995

Dated: January 5, 1995.

Chuck Long,

Director, Logistics Data Management Division.

[FR Doc. 95–3899 Filed 2–15–95; 8:45 am]

BILLING CODE 6820–24–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Aaron Apte, Stanford University: The Division of Research Investigations of the Office of Research Integrity (ORI), reviewed an investigation conducted by Stanford University into possible scientific misconduct on the part of Mr. Aaron Apte, a former technician in the Department of Cardiovascular Surgery Mr. Apte and his research were supported by U.S. Public Health Service grants. ORI concluded that Mr. Apte fabricated data for research, by cutting from a former coworker's notebook a scintillation counter printout, pasting it into his own notebook, and representing it as his own results from a different experiment on the binding of angiotensin to transfected cells. Mr. Apte has been debarred from eligibility for and involvement in grants as well as other assistance awards and contracts from the Federal Government for a period of three years. The fabricated research did not appear in any publications.

FOR FURTHER INFORMATION, CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens, Ph.D.,

Director, Office of Research Integrity.

[FR Doc. 95–3901 Filed 2–15–95; 8:45 am]

BILLING CODE 4160–17–P

Administration for Children and Families

[Program Announcement No. OCS 95–10]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services, Administration for Children and Family (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funds for State domestic violence coalitions for grants for family violence intervention and prevention activities.

SUMMARY: This announcement governs the proposed award of fiscal year (FY) 1995 formula grants under the Family Violence Prevention and Services Act (FVPSA) to private non-profit State domestic violence coalitions. The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This announcement sets forth the application process and requirements for grants to be awarded for FY 1995. It also specifies a new expenditure period for grant awards and sets forth the application process and requirements for grants to be awarded for FY 1996 through FY 2000.

CLOSING DATES FOR APPLICATIONS: Applications for FY 1995 family violence grant awards meeting the criteria specified in this announcement must be received no later than April 17, 1995. Grant applications for FY 1996 through FY 2000 should be received at the address specified below by November 1 of each subsequent fiscal year.

ADDRESSES: Applications should be sent to: Departemnt of Health and Human Services Office of Community Services, Administration for Children and Families, Attn: William D Riley, Fifth Floor—West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley (202) 401–5529 or Al M. Britt (202) 401–5453.

Introduction

This notice for family violence prevention and services grants to State Domestic Violence Coalitions serves two purposes. The first is to confirm a Federal commitment to reducing family and intimate violence and to urge States, localities, cities, and the private sector to become involved in State and local planning efforts leading to the development of a more comprehensive and integrated service delivery approach (Part I). The second purpose is to provide information on application requirements for FY 1995 grants to State Domestic Violence Coalitions. These funds will support coordination efforts, prevention activities, and the efforts to the public awareness of domestic violence issues and services for battered women and their children (Part II).

Part I. Reducing Family and Intimate Violence Through Coordinated Prevention and Services Strategies

A. The Importance of Coordination of Services

A person facing family or intimate violence may need more than immediate medical care and shelter. Assured protection and effective support are essential to end ongoing abuse.

The effects of domestic violence may manifest themselves in varying forms, including: Substance abuse, hopelessness, arrest, felony charges, mental health concerns, injuries, lost time at work, child abuse, and welfare dependence. When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, service delivery and prevention system may be the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of protection and services activities.

To help bring about a more effective response to the problem of intimate violence, the Department of Health and Human Services (HHS) urges State Domestic Violence Coalitions receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for family and intimate violence and related issues.

B. Coordination of Efforts

1. Federal Coordination

In the fall of 1993, a Federal Interdepartmental Work Group (including the Departments of Health and Human Services, Justice, Education, Housing and Urban Development, Labor, and Agriculture) began working together to study cross-cutting issues related to violence, and to make recommendations for action in areas such as youth development, schools, juvenile justice, family violence, sexual assault, firearms, and the media. The recommendations formed a framework for ongoing policy development and coordination within and among the agencies involved.

The interdepartmental working group also initiated a "Cities Project" (now known as PACT, Pulling America's Communities Together) to help coordinate Federal assistance to four geographic areas (Denver; Atlanta; Washington, D.C.; and the State of Nebraska) as they develop comprehensive plans for violence prevention and control.

Based on these coordination efforts, a new interdepartmental strategy was developed for implementing the programs and activities recently enacted in the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill). A Steering Committee on Violence Against Women is coordinating activities among family violence-related programs and across agencies and departments.

2. Opportunities for Coordination at the State and Local Level

The major domestic violence prevention activities funded by the Federal government focus on law enforcement and justice system strategies; victim protection and assistance services; and prevention activities, including public awareness and education. Federal programs also serve related needs, such as housing, family preservation and child welfare services, substance abuse treatment, and job training.

We want to call to your attention two major programs, recently enacted by Congress, that provide new funds to expand services and which require the involvement of State agencies, Indian tribes, State Domestic Violence Coalitions, and others interested in prevention and services for victims of domestic violence. These programs are: Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women, administered by the Department of Justice, and the Family Preservation and Support Services program, administered by DHHS. Both programs (described in detail below) require State agencies and Indian tribes administering them to conduct an inclusive, broad-based, comprehensive planning process at the State and community level.

We urge State Domestic Violence Coalitions to participate in these service planning and decision-making processes; we believe the expertise and perspective of the family violence prevention and services field will be invaluable as decisions are made on how best to use these funds and design service delivery improvements.

(a) *Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women (DOJ).* The Violence Against Women Act (VAWA), provides an opportunity to respond to violence against women in a comprehensive manner. It emphasizes the development of Federal, State and local partnerships to assure that offenders are prosecuted to the fullest extent of the law, that crime victims receive the services they need and the dignity they deserve, and that all parts of the criminal justice system have training and funds to respond effectively to both offenders and crime victims.

The Department of Justice is implementing a new formula grant program, which makes available $26 million to States in FY 1995, to develop, strengthen, and implement effective law enforcement, prosecution, and victim assistance strategies. The program contemplates coordination within and across the criminal justice and service delivery systems, and will require the development of a coordinated, comprehensive approach to bring about changes in the way the justice system intervenes and responds to domestic violence and sexual assault. Such a coordinated approach will require a partnership and collaboration among the police, prosecutors, the courts, shelter and victims service providers, and medical and mental health professionals.

The Violence Against Women Act authorized a smaller discretionary program to be implemented by Indian tribes. The Department of Justice grant regulations and program guidelines will address the requirements of both the formula grant and the discretionary grant programs.

In order to be eligible for funds, States must develop a plan for implementation. As a part of the planning process, they must consult with nonprofit, nongovernmental victims' services programs including sexual assault and domestic violence victim services programs. DOJ expects that States will draw into the planning process the experience of existing family violence task forces and coordinating councils such as the State Domestic Violence Coalitions.

(b) *Family Preservation and Family Support Services Program (DHHS).* In August 1993, Congress created a new program entitled "Family Preservation and Support Services" (Title IV–B of the Social Security Act).

Family preservation services include intensive services assisting families at-risk or in crisis, particularly in cases where children are at risk of being placed out of the home. Victims of family violence and their dependents are considered at-risk or in crisis.

Family support services include community-based preventive activities designed to strengthen parents' ability to create safe, stable, and nurturing home environments that promote healthy child development. These services also include assistance to parents themselves through home visiting and activities such as drop-in center programs and parent support groups.

In FY 1994, 100 percent Federal funds were available to State child welfare agencies and Indian Tribes to develop a comprehensive five-year Child and Family Services Plan for FYs 1995–1999 (due by June 30, 1995).

To develop the service plans, most States currently are in the process of consulting with a wide range of public agencies and nonprofit private and community-based organizations that have expertise in administering services for children and families, including those with experience and expertise in family violence.

Part II. Family Violence Prevention and Services Grants Requirements

This section includes application requirements for family violence prevention and services grants for State Domestic Violence Coalitions and is organized as follows:

A. Legislative Authority
B. Background
C. Eligibility
D. Funds Available
E. Expenditure Period
F. Reporting Requirements
G. Application Requirements
H. Paperwork Reduction Act
I. Executive Order 12372
J. Certifications

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984 (Pub. Law 98–457 42 U.S.C. 10401 et seq.) is entitled the "Family Violence Prevention and Services Act" (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was reauthorized and amended for fiscal Years 1995 through 2000 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), and signed into law on September 13, 1994.

B. Background

Section 311 of the Act authorizes the Secretary to award grants to statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

During FY 1994, the Department made grant awards to 50 State domestic violence coalitions, the District of Columbia, and the U.S. Virgin Islands In FY 1995, grant awards will be again available to one statewide domestic violence coalition in each State, the U.S Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

C. Eligibility

To be eligible for grants under this program announcement an organization

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shall be a statewide private non-profit domestic violence coalition meeting the following conditions:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self- Determination and Education Assistance Act);

(2) The Board of Directors' membership is representative of a majority of the programs for victims of domestic violence operating within the State; and

(3) The purpose of the coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children (Sec 311(b)).

D. Funds Available

The Department will make $2,500,000 available for grants to State domestic violence coalitions. Grants of $47,170 each will be available for the State domestic violence coalitions of the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. The coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands (Palau)) are eligible for domestic violence coalition grant awards of approximately $9,434 each.

On October 1, 1994, Palau became independent and a Compact of Free Association between the United States and Palau came into effect. This change in the political status of Palau has the following affect on the status of Palau's allocation:

In FY 95, Palau will receive 100% of its allocation. Beginning in FY 96, its share will be reduced as follows:

FY 96—not to exceed 75% of the total amount appropriated for such programs in FY 95;

FY 97—not to exceed 50% of the total amount appropriated for such programs in FY 95;

FY 98—not to exceed 25% of the total amount appropriated for such programs in FY 95;

E. Expenditure Period

Funds for FY 1995 through FY 2000 may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, i.e. FY 1995 funds may be expended from October 1, 1994 through September 30, 1996.

We strongly recommend that State domestic violence coalitions keep a copy of this **Federal Register** notice for future reference. The requirements set forth in this announcement also will apply to State domestic violence coalition grants for FY 1996 through FY 2000. Information regarding any changes in available funds, administrative or reporting requirements will be provided by program announcement in the **Federal Register**.

F. Reporting Requirements

1. The State domestic violence coalition grantee must submit an annual program report describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out; and the public information and education services provided. The annual report also must provide an assessment of the effectiveness of the grant supported activities. The annual report is due 90 days after the end of the fiscal year, i.e., December 30, in which the grant is awarded. The final program report is due 90 days after the end of the expenditure period. Program Reports are to be sent to: Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 370 L'Enfant Promenade, SW., 5th Floor West, Washington, DC 20447.

2. The State domestic violence coalition grantees must submit an annual financial report, Standard Form 269 (SF–269). A financial report is due 90 days after the end of the fiscal year in which the grant is awarded. A final financial report is due 90 days after the end of the expenditure period. Financial reports are to be sent to: Director for Formula, Entitlement, and Block Grants Office of Financial Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., 7th Floor, Washington, DC 20447.

G. Application Requirements

Except for the changes made by the Crime Bill, the application requirements are the same as last year's. The Crime Bill made the following changes:

- Added a new section 311(a)(1);
- Inserted references to Judges, Court officers, and other criminal justice professionals in section 311 (a)(2);
- Revised the language on supervised visitation or denial of visitation in section 311(a)(3)(H); and
- Requires public education campaigns to include information aimed at underserved, racial, ethnic, or language-minority populations (section 311(a)(4)). The changes are reflected in the language below.

The State domestic violence coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information (Please note the new 1.):

We have cited each requirement to the specific section of the law.

1. A description of the process of working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) Training and technical assistance for local programs and professionals working with victims of domestics violence;

(B) Planning and conducting State needs assessments and planning for comprehensive services;

(C) Serving as an information clearinghouse and resource center for the State; and

(D) Collaborating with other governmental systems which affect battered women (Sec. 311(a)(1)).

2. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media: billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (section 311(a)(4)).

3. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of issues including the:

(A) Inappropriateness of mutual protection orders;

(B) Prohibition of mediation when domestic violence is involved;

(C) Use of mandatory arrests of accused offenders;

(D) Discouragement of dual arrests;

(E) Adoption of aggressive and vertical prosecution policies and procedures;

(F) Use of mandatory requirements for pre-sentence investigations;

(G) Length of time taken to prosecute cases or reach plea agreements;

(H) Use of plea agreements;

(I) Consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) Restitution to victims;

(K) Use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals;

(L) Reporting practices of, and the significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(M) Use of interstate extradition in cases of domestic violence crimes; and

(N) The use of statewide and regional planning (Sec. 311(a)(2).

4. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with family law judges, criminal court judges, Child Protective Services agencies, Child Welfare agencies, Family Preservation and Support Service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present, including the:

(A) Inappropriateness of mutual protection orders;

(B) Prohibition of mediation when domestic violence is involved;

(C) Inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) Use of training and technical assistance for family law judges, criminal court judges, and court personnel;

(E) The presumption of custody to domestic violence victims;

(F) Use of comprehensive protection orders to grant fullest protection possible to victims of domestic violence, including temporary custody support and maintenance;

(G) Development by Child Protective Services of supportive responses that enable victims to protect their children;

(H) Implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(I) The possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk (Sec. 311(a)(3)).

5. The following documentation will certify the status of the domestic violence coalition and must be included in the grant application:

(A) A description of the procedures developed between the State domestic violence agency and the Statewide coalition that allow for implementation of the following cooperative activities:

(i) The applicant coalition's participation in the planning and monitoring of the distribution of grants and grant funds provided in its State (Sec. 303(a)(3)); and

(ii) The participation of the State domestic violence coalition in compliance activities regarding the State's family violence prevention and services program grantees (Sec. 303(a)(3)).

(B) A copy of a currently valid 501 (c)(3) certification letter from the Internal Revenue Service stating private non-profit status or;

A copy of the applicant's listing in the Internal Revenue's Services (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or;

A copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

(C) A list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's membership list by organization;

(D) A copy of the applicant coalition's current Board of Directors list, with Chairperson identified; and

(E) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant.

6. Assurances (include in application as an appendix)

(A) Applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition;

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (Sec. 311(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (Sec. 311(b)(4)(B)).

(B) Provide a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that the representatives of the State Domestic Violence Coalition may testify or make other appropriate communications:

(i) When formally requested to do so by a legislative body, a committee, or a member of such organization (Sec. 311(d)(1)); and

(ii) In connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (Sec. 311(d)(2)).

(C) Provide a signed statement that the State Domestic Violence Coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion. (Sec. 307).

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule, or program announcement. This program announcement contains information collection requirements in sections (F) and (G), which require that certain information must be provided in an annual report and as part of a grantee's application. We estimate that all of the information requirements for this program will take each grantee approximately 6 hours to complete. As there are 53 projected grantees, the total number of hours annually will be 318.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 308), Washington, D.C. 20503. Attention: Desk Officer for the Administration for Children and Families.

I. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only - 45 CFR 100.12 The review and comment provisions of the Executive Order and Part 100 do not apply. Federally-recognized Native American Tribes are exempt from all provisions and requirements of E.O 12372.

J. Certifications

Applicants must comply with the required certifications found at Attachments A, B, C, and D as follows

1. The Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments must be submitted.

2. Certification regarding Drug-Free Workplace Requirements and Certification Regarding Debarment. The signature on the application by a Coalition official responsible for the

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administration of the program attests to the applicant's intent to comply with the Drug-Free Workplace Requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment Certifications do not have to be returned with the application.

3. Certification Regarding Environmental Tobacco Smoke: The signature on the application by a Coalition official certifies that the applicant will comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services)

Dated: February 9, 1995.

Donald Sykes,

Director, Office of Community Services.

Attachment A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. **Report Type:** ☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*		5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. **Federal Department/Agency:**		7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. **Federal Action Number,** *if known:*		9. **Award Amount,** *if known:* $
10. a **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*		b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned		13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11.** (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

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Attachment B

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

BILLING CODE 4184-01-P

Attachment C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulatioo (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check __ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2, Revised May 1990

BILLING CODE 4184-01-P

Attachment D

Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

[FR Doc. 95-3822 Filed 2-15-95; 8:45 am]

BILLING CODE 4184-01-P

Agency For Health Care Policy And Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of March 1995:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: March 27, 1995 10:30 a.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, 6th Floor Conference Room, Rockville, Maryland 20852.

Open session 10:30 a.m.–10:45 a.m., closed for remainder of meeting.

Purpose: This panel is charged with conducting the initial review of grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policymakers, providers, and consumers.

Agenda: The open session of the meeting on March 27 from 10:30 a.m. to 10:45 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing grant applications dealing with dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care and Policy Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1438.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 9, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95-3880 Filed 2-15-95; 8:45 am]

BILLING CODE 4160-90-P

Public Health Service

Dietary Guidelines Advisory Committee; Meeting

AGENCIES: U.S. Public Health Service, Department of Health and Human Services; Agricultural Research Service and Office of Food, Nutrition, and Consumer Services, U.S. Department of Agriculture.

ACTION: Dietary Guidelines Advisory Committee: notice of meeting.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) (a) provide notice of the third and final meeting of the Dietary Guidelines Advisory Committee.

DATES: (1) The Committee will meet March 29, 1995, for a full-day meeting beginning at 9:00 a.m. e.s.t.; March 30, 1995, for a half-day meeting beginning at 9:00 a.m. e.s.t; and March 31, 1995 for a full-day meeting beginning at 9:00 a.m. e.s.t., at the Doubletree Hotel Park Terrace, Terrace Ballroom, 1515 Rhode Island Ave, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karil Bialostosky, M.S., Executive Secretary from HHS to the Dietary Guidelines Advisory Committee, Office of the Assistant Secretary for Health, Department of Health and Human Services, Room 2132, Switzer Building, 330 C Street, SW., Washington, DC 20201, (202) 205–9007.

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee Task

The eleven-member Committee appointed by the Secretaries of the two Departments reflects the commitment by the Departments of Health and Human Services and Agriculture to the provision of sound and current dietary guidance to consumers. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445) requires the Secretaries of HHS and USDA to publish the Dietary Guidelines for Americans at least every five years. The Dietary Guidelines Advisory Committee will recommend revisions to the Secretaries for the 1995 edition of Nutrition and Your Health: Dietary Guidelines for Americans.

Announcement of Meeting

The Committee's third meeting will be March 29, 1995, beginning at 9:00 a.m. (full-day meeting), March 30, 1995, beginning at 9:00 a.m. (half-day meeting), and March 31, 1995, beginning at 9:00 a.m. (full-day meeting) e.s.t. The meeting will be held at the Doubletree Hotel Park Terrace, Terrace Ballroom, 1515 Rhode Island Ave, NW , Washington, DC 20005. The agenda will include (a) discussion of working drafts and report to the Secretaries of Health and Agriculture, (b) finalizing recommendations for the 1995 edition of Nutrition and Your Health: Dietary Guidelines for Americans, and, time permitting, (c) discussion of research and other needs for the future.

Public Participation at Meeting

The meeting is open to the public. However, space is limited for all sessions. Please call Karil Bialostosky (202/205–9007) by March 15, if you will require a sign language interpreter at the meeting.

Dated: February 10, 1995.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Disease Prevention and Health Promotion/Health Planning and Evaluation, U.S. Department of Health and Human Services.

[FR Doc. 95-3925 Filed 2-15-95; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration.

The meeting of the Advisory Committee for Women's Services will include a discussion of SAMHSA's programs and policies for women, legal and administrative requirements affecting members of the Advisory Committee for Women's Services, SAMHSA's FY 1996 Budget, SAMHSA s Strategic Plan, and a legislatively mandated evaluation of the extent to

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which women are represented among senior personnel at SAMHSA.

A summary of the meeting and/or a roster of committee members may be obtained from: Jennifer B. Fiedelholtz, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Dates: March 16, 1995.

Place: The Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open: 8:30 a.m.–5:00 p.m.

Contact: Jennifer B. Fiedelholtz, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

Dated February 10, 1995.

Jeri Lipov,

Committee Management Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–3881 Filed 2–15–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3778; FR–3682–N–02]

Announcement of Funding Awards for Lead-Based Paint (LBP) Risk Assessments—Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1994 under the Lead-Based Paint Risk Assessments. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Kevin Marchman, Deputy Assistant Secretary for Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC. 20410, telephone (202) 401–8812. A telecommunications device (TDD) for persons with hearing and speech impediments is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991; at 105 Stat. 744) (1992 Appropriations Act) set aside of budget authority available for modernization of existing public housing developments, for the risk assessment of lead-based paint. However, amounts actually available from the appropriated amount were reduced because conversions from Section 8 (U.S. Housing Act of 1937)—funded section 202 (Housing Act of 1959) direct loan projects to rental assistance—funded section 202 grant projects did not occur at the rate anticipated by Congress in the Appropriations Act.

In a Notice of Funding Availability (NOFA) published in the **Federal Register** on June 20, 1994 (59 FR 31906). the Department announced the availability of $11,940,611. The purpose of the competition was to assist Public Housing Agencies and Indian Housing Authorities in risk assessment protocol to be used in conducting LBP risk assessment and in developing recommendations regarding in-place management.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names and addresses of the housing authorities which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 9, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—Lead-Based Paint Risk Assessment Recipients

Funding recipient (Name and address)	Amount approved
New Bedford Housing Authority, 134 S. Second Street, New Bedford, MA 02741.	24,597
Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103.	10,395
New York City Housing Authority, 250 Broadway, New York, NY 10007.	1,361,745
Baltimore City Housing Authority, 417 East Fayette Street, Baltimore, MD 21202.	1,530,979
Virgin Island Public Housing Authority, P O. Box 7668, St. Thomas, VI 00801.	78,657
Spartanburg Public Housing Authority, P.O. Box 4534, Spartanburg, SC 29305.	20,000
Housing Authority of the City of Charlotte, P.O. Box 36795, Charlotte, NC 28237.	50,258
Housing Authority of the City of Durham, P.O. Box 1726, Durham, NC 27702.	49,500
Housing Authority of the City of Raleigh, P.O. Box 28007, Raleigh, NC 27611.	49,500
Northwest Florida Regional Housing Authority, P.O. Box 218, Graceville, FL 32440.	53,100
Housing Authority of Bowling Green, P.O. Box 116, Bowling Green, KY 42102.	9,124
Brownsville Housing Authority, P.O. Box 194, Brownsville, TN 38012.	4,950
Lewisburg Housing Authority, P.O. Box 1846, Lewisburg, TN 37091.	4,950
Paris Housing Authority, P.O. Box 159, Paris, TN 38242.	5,940
Portland Housing Authority, P.O. Box 37, Portland, TN 37148.	2,475
Winchester Housing Authority, P.O. Box 502, Winchester, TN 37398.	2,475
Chicago Housing Authority, 22 West Madison Street, Chicago, IL 60602.	567,765
Pontiac Housing Commission, 132 Franklin Boulevard, Pontiac, MI 48341.	53,500
Lovington Housing Authority City of Lovington, P.O. Box 785, Lovington, NM 88260.	2,166
Housing Authority of the City of Bayard, P.O. Box 768, Bayard, NM 88023.	2,166
Housing Authority of the Village of Central, P.O. Box 275, Central, NM 88026.	2,166
Total	$3,888,076

[FR Doc. 95–3948 Filed 2–15–95; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–95–3785; FR–3724–N–02]

Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the **Federal Register**. Mortgage market conditions now dictate that the Secretary increase the section 235(r) maximum rate from 8.50 percent to 9.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met. Therefore, the maximum for the premium section 235(r) interest rate will be 10.50 percent (9.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755–7470, Ext. 117; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance existing mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235 in order that the assistance payments the Department pays on behalf of mortgagors may be reduced. The regulations implementing the program are contained in subpart H of 24 CFR part 235—refinancing of mortgages under section 235(r).

The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 8.50 percent was published in the **Federal Register** on June 17, 1994 (59 FR 31267). The Department has determined that market conditions dictate a change in the section 235(r) interest rate. The change will take effect on the date of publication of this notice.

The most recent HUD survey of Mortgage Market conditions (i.e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for "lock-in" commitments of 60 days or more was 9.00 percent on October 1, 1994, with an average of .78 points, and an effective interest rate of 9.11 percent.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. There is a 50 basis point spread between FHA contract interest rates and GNMA coupon rates (this covers the GNMA guarantee fee and servicing cost). On November 14, 1994, the GNMA 8.00 percent coupon securities (8.50 percent FHA loans) were priced at more than 5 points discount. This level of discount tends to impede FHA loans to finance home purchases. On the other hand, the GNMA 8.50 percent security (9.00 percent FHA loans) was trading in the two-month forward market at around two points discount, while the 9.00 percent GNMA coupons (9.50 percent FHA mortgages) continued to trade at over par (i.e., premium). Under the FHA negotiated rate/points provisions a two point discount for 9.00 percent FHA mortgages would not be burdensome.

Adjusting the section 235(r) rate to 9.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 9.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

Dated: December 9, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–3947 Filed 2–15–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[PRT–798920]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicant: S. Lee Stone, Austin Parks & Recreation Department, Austin, Texas.

The applicant requests a permit to include take activities for the black-capped vireo (*Vireo atricapillus*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–3944 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–55–M

[PRT–798823]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C., *Et. Seq.*).

Applicant: Dr. Robert Hershler, Smithsonian Institution, Washington, DC.

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The applicant requests a permit to include take activities for the Alamosa springsnial (*Tryonia alamosae*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for new review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Susan MacMullin,

Acting Regional Director, Region 2.

[FR Doc. 95-3945 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-65-M

Bureau of Land Management

[NM-070-05-1220-00]

Notice of Intent To Prepare a Plan Amendment/Environmental Assessment to the Farmington Resource Management Plan Involving Off-Highway Vehicle Designations in the Glade Run Trail System Special Management Area; Invitation for Public Participation and Call for Information; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Plan Amendment and invitation for public involvement.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office is initiating preparation of a Plan Amendment and Environmental Assessment (EA) for off-highway vehicle use in the Glade Run Trail System Special Management Area north of and adjacent to Farmington, New Mexico. The public is invited to participate in this planning effort with the identification of additional issues and planning criteria.

The planning document will be prepared by an interdisciplinary team of specialists within the Farmington District Office. The Proposed Plan Amendment/EA will be made available for comment by all those on the mailing list.

DATES: Written comments relating to the identification of issues and planning criteria will be accepted through the close of business March 20, 1995.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Mike Pool, District Manager, Bureau of Land Management, Farmington District Office; 1235 La Plata Highway, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Christopher V. Barns at the address above, or call 505-599-6300.

SUPPLEMENTARY INFORMATION: The Glade Run Trail System Special Management Area includes the following public lands totalling approximately 27,411 acres:

T. 30 N., R. 12 W., NMPM
Sec. 3: Lots 8, 9, 16, 17
Sec. 4: Lots 5–17
Sec. 5: Lots 5–20
Sec. 6: Lots 8–23
Sec. 7: Lots 5–20
Sec. 8: Lots 1–16
Sec. 9: Lots 1–11
Sec. 10: Lots 4, 5, 8, 9
Sec. 15: Lots 1, 2
Sec. 17: Lots 1–16
Sec. 19: Lots 1–3

T. 30 N., R. 13 W., NMPM
Sec. 1: Lots 1–4, S½N½, S½
Sec. 3: Lots 1–4, S½N½, S½
Sec. 4: Lots 1–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼
Sec. 8: NE¼NE¼
Sec. 9: E½, E½W½, NW¼NW¼
Sec. 10: All
Sec. 11: N½, N½S½, S½SW¼
Sec. 12: All
Sec. 13: E½, E½W½, SW¼NW¼, W½SW¼
Sec. 14: NE¼N½W¼, W½NW¼, E½SW¼, NW¼SW¼, SE¼
Sec. 15: All
Sec. 21: E½
Sec. 22: N½, SW¼, N½SE¼, SW¼SE¼
Sec. 23: E½, S½NW¼, SW¼
Sec. 24: All
Sec. 25: N½, N½S½, S½SE¼
Sec. 26: NW¼NE¼NW¼
Sec. 27: NW¼NW¼SE¼, SE¼SE¼
Sec. 28: W½SW¼
Sec. 32: E½NE¼
Sec. 33: N½NE¼ SW¼NE¼, N½SE¼NE¼, NW¼
Sec. 34: NE¼NW¼

T. 31 N., R. 12 W., NMPM
Sec. 7: S½
Sec. 9: S½
Sec. 10: SW¼ where south or west of (and including) SR 574
Sec. 14: Lots 9 and 10 where south of (and including) SR 574 and west of (and including) right-of-way NM32047
Sec. 15: Lots 3, 4, and 5 where south or west of (and including) SR 574, Lots 6–12, NW¼ where south or west of (and including) SR 574
Sec. 17: All
Sec. 18: Lots 1–4, E½, E½W½
Sec. 19: Lots, 1, 2, 5–12, NE¼, E½NW¼
Sec. 20: Lots 1–6, N½
Sec. 21: NE¼NE¼, S½NE¼, W½NW¼, SE¼SW¼, SE¼
Sec. 22: Lots 1–16
Sec. 27: All
Sec. 28: All
Sec. 29: E½, N½NW¼, E½SW¼
Sec. 30: Lots 5–17
Sec. 31: Lots 5–8, SE¼NE¼, E½SE¼, SW¼SE¼
Sec. 33: All
Sec. 34: All west of grazing allotment fence line

T. 31 N., R. 13 W., NMPM
Sec. 12: All
Sec. 13: All
Sec. 14: SE¼
Sec. 23: E½, NE¼NW¼, S½SW¼
Sec. 24: All
Sec. 25: All
Sec. 26: Lots 1–8, NE¼, SW¼
Sec. 27: Lots 1, 2, SE¼SW¼, SE¼
Sec. 33: SE¼NE¼, SE¼SW¼, SE¼
Sec. 34: All
Sec. 35: Lots 1–4, E½, SW¼

The issues anticipated to be addressed by this Plan Amendment/EA include safety, resource protection, and recreational conflict.

The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and Federal Regulations.

2. The resource allocations of proposed actions will be made in accordance with the principles of "multiple use" as defined in the Federal Land Policy and Management Act of 1976 (FLPMA), Sec. 103(c).

3. The Proposed Plan Amendment will consider the relative scarcity of the values invovled and the availability of alternative means and sites for realization of those values.

4. This planning process will provide for public involvement including early notice and frequent opportunity for citizens and interested groups and others to participate in and comment on the preparation of plans and related guidance.

Dated: February 6, 1995.

Mike Pool,

District Manager.

[FR Doc. 95-3823 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-FB-M

[UT-069-05-5700-11; UTU-70117]

Availability of Proposed Plan Amendment and Environmental Assessment/FONSI on Lands for Disposal for the San Juan Resource Area Resource Management Plan, San Juan County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Proposed Plan Amendment and Environmental Assessment/FONSI on lands for disposal for the San Juan Resource Area Resource Management Plan, San Juan County, Utah.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the San Juan Resource Management Plan (RMP). The proposed Plan Amendment and Environmental Assessment/FONSI identifies a 390.00 acre parcel of public land which would be managed for disposal by R & PP patent under the 1988 Recreation and Public Purposes Amendment Act is available. The lands are described below as follows:

Salt Lake Meridian, Utah

T. 39 S., R. 22 E.
Section 3, W2SWSW, SESWSW, S2NESWSW, S2SWSESW;
Section 4, S2SE;
Section 9, NE;
Section 10, W2NW, W2NENW, NWSENW.

The above described land aggregates 390.00 acres more or less.

This plan amendment would allow the San Juan Resource Area to dispose of the above identified public land, to San Juan County, pursuant to the 1988 Recreation and Public Purposes Amendment Act, for the purpose of developing and constructing the White Mesa Regional Sanitary Landfill.

DATES: The environmental assessment revealed no significant impacts from the proposed action. The Bureau's preferred alternative is the Proposed Action. A Notice of Intent proposing to amend the RMP was published in the **Federal Register** on June 15, 1993. A 30-day protest period for the plan amendment will commence with publication of this notice in the **Federal Register**. Protests must be received within thirty (30) days after the publication of this Notice of Availability for the plan amendment.

FOR FURTHER INFORMATION CONTACT: Brent Northrup, Acting San Juan Resource Area Manager, Bureau of Land Management, 435 North Main Street, P.O. Box 7, Monticello, Utah 84535, telephone (801) 587-2141. Copies of the Environmental Assessment and Proposed Amendment are available for review at the San Juan Resource Area Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) and 202(e) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must contain at a minimum the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

Protests must be received by the Director of the Bureau of Land Management (WO-760), MS 406 L St., 1849 C Street NW, Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the proposed plan amendment.

Dated: January 31, 1995.

Roger Zortman,

Acting State Director.

[FR Doc. 95-3907 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-DQ-P

[CA-050-05-1420-00]

Intent To Prepare an Environmental Assessment Amending the Arcata Resource Management Plan for the Scattered Tracts Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Land Management intends to prepare an environmental assessment in order to amend the existing Arcata Resource Area Management Plan specifically addressing the Scattered Tracts Management Area. This area includes land on the north side of the Mattole River (T.2S., R.2W., HUM, Sections 17 & 18 and T.2S., R.3W., HUM, Sections 12 & 13). This notice is being furnished to inform the public of the Bureau's action and to provide information regarding potential issues anticipated.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, Area Manager, Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, CA 95521. Telephone (707) 822-7648.

SUPPLEMENTARY INFORMATION: This environmental assessment is being prepared in accordance with the requirements set forth in the Code of Federal Regulations (43 CFR 1610.5-5) to amend the Arcata of Federal Regulations (43 CFR 1610.5-5) to amend the Arcata Resource Management Plan.

The issues and concerns addressed in the environmental assessment focus on changing the designation of land on the north side of the Mattole from the Scattered Tracts Management Area to the King Range Vicinity Management Area, including those lands into the existing King Range Area of Critical Environmental Concern, and withdrawing said lands from settlement, sale, location or entry under the general land laws, including the mining laws.

The environmental assessment will be made available to the public for review. Availability of the environmental assessment for public review will be published in newspapers. There will be a 30-day comment period on the decision record to which the public may respond before the amendment becomes final.

Lynda J. Roush,

Area Manager.

[FR Doc. 95-3894 Filed 2-15-95; 8:45 am]

BILLING CODE 4310-40-M

[AZ-020-7122-5542; AZA 28350]

Arizona; Opening of Lands to Entry in Pinal County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice will open approximately .98 acres to location and entry under the mining laws.

EFFECTIVE DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Shela McFarlin at Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix Arizona 85027, telephone (602) 780-8090.

SUPPLEMENTARY INFORMATION: The following described lands were segregated on November 21, 1994, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1701 et seq., (AZA 28350):

Gila and Salt River Meridian, Arizona.

T. 3 S., R. 13 E.,
sec. 10, lot 5;
sec. 11, 3 parcels of land described as follows:

Parcel No. 1. COMMENCING for a tie at Corner 1 of the Copper Era lode claim, M.S. 4405, from which the quarter section corner of secs. 3 and 10, T. 3 S., R. 13 E., GSRM,

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bears N. 71°06'30" W., a distance of 3,622.50 feet; THENCE S. 18°09' E., a distance of 1,500.00 feet to Corner 4 of said Copper Era claim; THENCE N. 71°58' E. along line 3–4 of said claim, a distance of 140.49 feet to the intersection of line 1–2 of the Copper Zone No. 1 lode claim, M.S. 3036, THE TRUE POINT OF BEGINNING; THENCE continuing N. 71°58' E. (this survey), a distance of 95.61 feet to the intersection of line 3–4 of the Era No. 2 lode claim, M.S. 2605, identical to line 2–3 of the Eagle Brand lode, M.S. 2884; THENCE S. 18°51' E. (this survey) along said line 3–4 of the Era No. 2, a distance of 33.33 feet, to the intersection of line 1–4 of the Copper Zone No. 1, M.S. 3086; THENCE S. 69°08' W. (this survey) along said line 1–4, a distance of 92.57 feet to Corner 1 of the Copper Zone No. 1; THENCE N. 23°30' W. (this survey) along line 1–2, a distance of 38.08 feet to the true POINT OF BEGINNING. Containing an area of 0.08 acres, more or less.

Parcel No. 2. BEGINNING at the intersection point of line 1–4 of the Copper Zone No. 1, M.S. 3086, and line 2–3 of the Spartan, M.S. 2605, from which Corner 1 of the Copper Zone No. 1 bears S. 69°08' W. (this survey), a distance of 569.74 feet; THENCE N. 4°44' E. (this survey) along line 2–3 of the Spartan, a distance of 71.66 feet to Corner 3 of the Spartan; THENCE N. 74°58" E. (this survey), a distance of 635.81 feet to Corner 4 of the Spartan, identical to Corner 2 of the Blue Bell lode claim, M.S. 3516, on line 1–4 of the Copper Zone No. 1; THENCE S. 69°08' W. (this survey) along line 1–4 of the Copper Zone No. 1 a distance of 663.48 feet, to the POINT OF BEGINNING; containing an area of 0.492 acres, more or less.

Parcel No. 3. BEGINNING at Corner 4 of the Spartan, M.S. 2605, identical to Corner 2 of the Blue Bell, M.S. 3516, which intersects line 1–4 of the Copper Zone No. 1, M.S. 3086; THENCE N. 4°44' E. (this survey), a distance of 116.33 feet to Corner 2 of the unpatented Blue Bell lode claim, M.S. 2605; THENCE N. 76°42' E. (this survey) along line 2–3 of said Blue Bell, M.S. 2605, a distance of 150.10 feet to a point on line 3–4 of the Copper Zone No. 1 lode claim; THENCE S. 23°30' E. (this survey) along said line 3–4, a distance of 85.24 feet, to Corner 4 of the Copper Zone No. 1 lode claim identical to Corner 3 of the Blue Bell lode claim, M.S. 3516; THENCE S. 69°08' W. (this survey) along line 1–4, a distance of 202.93 feet to Corner 4 of the Spartan, the POINT OF BEGINNING, containing an area of 0.39 acres, more or less.

Containing approximately .98 acres.

At 9 a. m. on February 16, 1995, the lands described above will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands will remain closed to appropriation under the public land laws and applications and offers under the Mineral Leasing Act.

Dated: February 10, 1995.

Bruce Conrad,

Acting State Director, Arizona State Office.

[FR Doc. 95–3943 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–32–P

[ID–943–1430–01; IDI–29857]

Opening of Land in a Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 3,285.87 acres of National Forest System lands for the Forest Service's Howell Canyon Recreation Complex expires April 14, 1995, after which the lands will be opened to mining. The lands are located in the Sawtooth National Forest. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: April 14, 1995.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (58 FR 19686, April 15, 1993), which segregated the lands described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires April 14, 1995. The withdrawal application will continue to be processed unless it is canceled or denied. The lands are described as follows:

Boise Meridian

T. 12 S., R. 24 E.,
sec. 36, SW¼NW¼, W½SW¼ and S½SE¼.
T. 12 S., R. 25 E.,
sec. 31, lot 4, NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SW¼ and SE¼;
sec. 32, S½SE¼SW¼NW¼, SE¼NE¼ and N½SW¼.
T. 13 S., R. 24 E.,
sec. 1, N½ lot 1, lots 2 to 4 inclusive, S½NW¼ and SW¼;
sec. 2;
sec. 3, lots 1 to 4 inclusive, S½N½, N½S½ and SW¼SW¼;
sec. 4, lots 1 and 2, S½NE¼, NE¼SW¼, S½SW¼ and SE¼;
sec. 9, N½NE¼, SW¼NE¼ and E½NW¼;
sec. 11, NE¼;
sec. 12, NE¼.

The areas described aggregate 3,285.87 acres in Cassia County.

At 9 a.m. on April 14, 1995, the lands shall be opened to location and entry under the United States mining laws subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 8, 1995.

M. William Weigand,

State Office Unit Leader for Realty Unit.

[FR Doc. 95–3904 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–054–5–1430–00; AZA 19287, AZA 17898]

Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

(1) AZA 19287—Bullhead City Fire Department

Gila and Salt River Meridian, Mohave County, Arizona

T. 21 N., R. 21 W.,
Sec. 28, NE¼ (Metes and Bounds description);
Containing 5.00 acres, more or less.

(2) AZA 17898—Bullhead School District #15

Gila and Salt River Meridian, Mohave County, Arizona

T. 20 N., R. 21 W.,
Sec. 30, portion of lot 2;
Containing 21.45 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patents, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of issuance of this notice in the **Federal Register** (April 3, 1995), interested persons may submit comments regarding the proposed conveyance of the lands to the Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the lands for fire department (AZA 19287) and school (AZA 17898) sites. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for school or fire departments.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publications of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Land Law Examiner, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Detailed information concerning this action is also available for review.

SUPPLEMENTARY INFORMATION: Leases AZA 19287 and AZA 17898 were originally classified under the Recreation and Public Purpose Act for lease only. This classification will allow patent for the developed leases.

Dated: February 8, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–3905 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–32–P

[AZ–054–5–1430–00; AZA 28919]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in La Paz County, Arizona have been examined and found suitable for classification for sale to La Paz County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). La Paz County, Arizona proposes to use the lands for expansion of a landfill site.

Gila and Salt River Meridian, Arizona

T. 7 N., R. 19 W.,
Sec. 13, E½, NW¼;
Containing 480.00 acres, more or less.

The lands are not needed for Federal purposes. Sale is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will be subject to the following terms, conditions and reservations;

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of issuance of this notice in the **Federal Register** (April 3, 1995), interested persons may submit comments regarding the proposed conveyance of the lands to the Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the lands for a landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for transfer sites.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Janice Easley, Land Law Examiner, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Detailed information concerning this action is also available for review

Dated: February 8, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–3906 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–32–P

[ID–016–05–1430–00; IDI–31109]

Realty Action—Leasing of Public Lands in Elmore County, Idaho

AGENCY: Bureau of Land Management, Interior.

SUMMARY: A commercial lease for the following public land will be offered for the operation of a non-permanent cement batch plant and stockpiling as as permitted under Non-Conforming Use Permit issued by the Elmore Coun-

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Planning and Zoning Commission on December 21, 1994:

Boise Meridian, Idaho

T. 4 S., R. 5 E.,
Sec. 17: SW¼SW¼SW¼ (within);
Containing 5 acres, more or less.

The subject lands, which are the present site of Mountain Home Redi-Mix, Inc.'s cement batch plant, were previously examined and found suitable for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732; 90 Stat. 2762) and applicable 43 CFR 2920 regulations.

DATES: The above site will be offered for commercial lease by competitive bid on April 12, 1995. Sealed bids will be accepted until 10:00 AM on April 12, 1995, at which time they will be opened and recorded. Immediately thereafter, oral bids will be accepted. No bid shall be accepted for less than the appraised fair market rental for the lands affected by the offered lease, which is currently $275.00 per year. Fair market rental will be subject to adjustment by appraisal.

ADDRESSES: Sealed bids may be mailed or hand delivered to Signe Sather-Blair, Bruneau Area Manager, BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Oral bidding will take place at the same address.

SUPPLEMENTARY INFORMATION: The successful bidder will be allowed to file an application for a commercial lease and shall reimburse BLM for all costs incurred in processing the application and in monitoring construction, operation, and maintenance of the facilities authorized. If the successful bidder in not Mountain Home Redi-Mix, Inc., the successful bidder hall be required to reimburse Mountain Home Redi-Mix, Inc. for the costs incurred by Mountain Home Redi-Mix, Inc. in publishing this notice in the **Federal Register** and local newspaper.

The successful bidder will be required to furnish evidence satisfactory to the BLM authorized officer that they have or, prior to commencement of construction, will have the technical and financial capability to construct, operate, maintain, and terminate the cement batch plant.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Resource Management Specialist, at the above address or at (208) 384–3338.

Dated: February 3, 1995.

R.E. Schmitt,

Acting District Manager.

[FR Doc. 94–3895 Filed 2–15–94; 8:45 am]

BILLING CODE 4310–GG–M

[NV–030–1430–01; NVN 57169]

Realty Action: Proposed Direct Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public land has been found suitable for direct sale to Jack Estill, Jewell Estill and Roger Vehrs, pursuant to sections 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713):

Mt. Diablo Meridian, Nevada

T. 9 N., R. 36 E.,
Sec. 5, Lot 3.
Containing 40.00 acres.

SUPPLEMENTARY INFORMATION: The public land is located in the southeastern portion of Mineral County. The land is not required for any Federal purpose. The proposed sale is consistent with the Walker Resource Management Plan and would be in the public interest. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Carson City District Office, Carson City, Nevada. The land will not be offered for sale until at least 60 days after the date of this notice.

The proposed direct sale will be made at fair market value. Additionally, the purchaser will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR 2720 for conveyance of unreserved mineral interests in the land.

The patent when issued will be subject to the following terms, conditions and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Those rights for road purposes granted to the U.S. Government, its successors or assigns, by right-of-way reservation No. N 58290, pursuant to the Act of October 21, 1976, (43 U.S.C. 1761).

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register** (April 3, 1995), interested parties may submit comments.

ADDRESSES: Comments should be sent to the Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this proposed realty action:

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, Carson City, NV 89706–0638; (702) 885–6000.

Dated: February 6, 1995.

John Matthiessen,

Walker Resource Area Manager.

[FR Doc. 95–3903 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–HC–M

[CO–930–1430–01; COC–57605]

Proposed Withdrawal; Colorado; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will correct an error in the land description in the original order.

DATE: February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706, BLM Colorado, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

In the Notice published in 59 FR 60826–60827, November 28, 1994 on page 60827, first column, line 2 which reads "T. 40 N., R. 22 W.," is hereby corrected to read "T. 40 N., R. 11 W.,".

Jenny L. Saunders,

Acting Chief, Branch of Realty Actions.

[FR Doc. 95–3890 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–JB–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–349]

Commission Decision To Extend by Ten Days the Deadline for Determining Whether To Review an Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice.

In the Matter of: Certain Diltiazem Hydrochloride and Diltiazem Preparations.

SUMMARY: Notice is hereby given that the Commission has extended by ten days, *i.e.*, from March 20, 1995, to March 30, 1995, the deadline by which it must determine whether to review the presiding administrative law judge's final initial determination (ID) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On February 2, 1994, the presiding administrative law judge (ALJ) issued his final ID in this investigation. The ALJ determined that no violation of section 337 of the Tariff Act of 1930, as amended, has occurred in the importation or sale of certain diltiazem hydrochloride and diltiazem preparations by reason of infringement of claim 1 of U.S. Letters Patent 4,438,035. Under Commission interim rule 210.53(h), the ID would have become the determination of the Commission on March 20, 1995, unless review was ordered or the review deadline extended.

On February 6, 1995, complainants Tanabe Seiyaku Co., Ltd. and Marion Merrell Dow, Inc. filed a letter requesting a six-day extension of time—from February 15, 1995, until February 21, 1995—to file a petition for review of the ID. On February 7, respondents Mylan Pharmaceuticals, Inc., Mylan Laboratories, Inc., and Profarmaco Nobel LRL submitted a letter taking no position on complainants' request for an extension of time, but requesting, in the event the Commission grants complainants' request, a six-day extension of time—from February 28, 1995 to March 6, 1995—to file their response to complainants' petition for review. A similar request was made on February 8, 1995, by the Fermion respondents.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 10, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3819 Filed 2–15–95; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–366]

Notice of Commission Determination To Take No Action Concerning the Presiding Administrative Law Judge's Withdrawal of an Initial Determination Designating the Investigation "More Complicated"

AGENCY: International Trade Commission.

ACTION: Notice.

In the matter of Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to take no action concerning a decision (Order No. 28) by the presiding administrative law judge (ALJ) in the above-captioned investigation which withdraws an earlier initial determination (ID) designating the investigation "more complicated." Order No. 28 states that the investigation may be designated "more complicated" at a later date if it appears that the current March 8, 1995, deadline for issuance of the ALJ's final ID cannot be met.

ADDRESSES: Copies of Order No. 28 and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On January 10, 1995, the ALJ issued an ID (Order No. 26) which designated the investigation "more complicated." The ID stated that the investigation's current schedule did not afford adequate time for the ALJ to read post-hearing briefs and write the final ID on violation. At the time that Order No. 26 was issued, the ALJ contemplated a supplemental evidentiary hearing on January 23, 1995. That hearing was scheduled at the request of complainant Minnesota Mining and Manufacturing Co. (3M) and was to focus on whether respondent Print-Inform GmbH & Co. infringed 3M's patent in issue. The ID also based its "more complicated" designation on the complex nature of the chemical processes at issue in the investigation.

On January 17, 1995, complainant 3M moved for reconsideration and reversal of Order No. 26, stating that it no longer wished a supplemental hearing. 3M urged that the investigation not be designated "more complicated" because of the short length of time remaining in the term of its patent at issue. 3M's motion was unopposed by any party and was supported by the Commission investigative attorney. On January 20, 1995, the ALJ issued Order No. 28 which grants 3M's motion to the extent that it withdraws the "more complicated" designation. However, Order No. 28 states that the ALJ may designate the investigation "more complicated" at a later date if she encounters difficulty in completing the final ID by the current March 8, 1995, deadline.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Issued: February 10, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3817 Filed 2–15–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 16)]

Intrastate Rail Rate Authority—Mississippi

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Mississippi has filed an application for recertification. The Commission, under State Intrastate Rail Rate Authority, 5 I.C.C.2d 680, 685 (1989), provisionally recertifies the State of Mississippi to regulate intra-state rail rates, classifications, rules, and practices. After its review, the Commission will issue a recertification deciston or take other appropriate action.

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DATES: This provisional recertification will be effective on February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green (202) 927–5269 or Beryl Gordon (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

Decided: February 10, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3946 Filed 2–15–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Clean Air Act

Consistent with Departmental policy, 28 CFR § 50.07, notice is hereby given that two proposed consent decrees in *United States* v. *Consolidation Edison Co. and John's Insulation, Inc.*, Civil Action No. 94 Civ. 1538 (LAP), were lodged on January 24, 1995 with the United States District Court for the Southern District of New York. Defendant Consolidation Edison is the owner of the Waterside Generating Station in New York, New York and contracted with John's Insulation, Inc. to remove Asbestos containing material from that station. The asbestos containing material was removed, stored, and disposed of in violation of the National Emission Standard for Hazardous Air Pollutants for asbestos.

Under the terms of the proposed decree, Consolidation Edison will pay the United States the sum of $100,000 within 14 days of the entry of the decree between the United States and Consolidation Edison and John's Insulation will pay the United States the sum of $42,500 in installments as follows: $15,000 within 7 days of the entry of the decree between the United States and John's Insulation, $12,500 within 97 days of entry, and $12,500 within 187 days of entry. John's Insulation Inc. will also pay interest on the amount then due at the time of the second and third installment payments.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Consolidation Edison Co. and John's Insulation Inc.*, D.J. reference #90–5–2–1–1136A.

The proposed consent decrees may be examined at the Office of the United States Attorney for the Southern District of New York, 100 Church Street, 19th Floor, New York, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the two proposed consent decrees may be obtained in person or by mail from the Consent Decree Library 1120 G Street NW. 4th Floor, Washington, DC. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–3913 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Under the Clear Air Act

Notice is hereby given that a proposed Consent Decree in *National Wildlife Federation, et al.*, v. *Copper Range Company* (W.D. Mich.), Case No. 2:92–CV–186, entered into by plaintiffs National Wildlife Federation, Michigan United Conservation Clubs, United States of America, State of Michigan, and State of Wisconsin and defendant Copper Range Company was lodged on January 31, 1995 with the United States District Court for the Western District of Michigan. The proposed Consent Decree resolves certain claims of the plaintiffs against the defendant under the Clear Air Act, 42 U.S.C. 7401 *et seq.*, section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9603, sections 304 and 313 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11004, 11023, and certain other state statutes relating to defendant's smelting operation located on Highway 64 in White Pine, Ontonagon County, Michigan. Under the proposed Consent Decree, Copper Range has agreed that if it is to continue operating its smelter in the future, it will implement extensive injunctive relief to bring it into compliance with the Clean Air Act, including the construction of a new smelter. The proposed Consent Decree also requires Copper Range to pay a total of $4.8 million in civil penalties and third party supplemental environmental projects as follows: $1.6 million to the United States; $3.0 million to the Michigan/Wisconsin Lake Superior Basin Trust Fund established pursuant to the Consent Decree; and $200,000 to the State of Michigan.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *National Wildlife Federation, et al.*, v. *Copper Range Company*, D.J. Ref. No. 90–5–2–1–1852. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 399 Federal Building, 110 Michigan St. NW, Grand Rapids, Michigan 49503; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree with exhibits, please enclose a check in the amount of $43.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Consent Decree without exhibits, please enclosed a check in the amount of $19.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–3908 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Henkel Corp. (N. D. Ga)*, Civil Action No. 4:95CV0024RLV was lodged on January 26, 1995, with the United States District Court for the Northern District of Georgia. The consent settles an action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a), for implementation of remedial action and recovery of response costs incurred and to be incurred by the United States at the Diamond Shamrock superfund site, located near the town of Cedartown, in Polk County, Georgia. Under the consent decree, Henkel Corporation will reimburse the United States for its past and future response costs incurred in connection with the site, and implement the remedy for the site selected in EPA's Record of Decision (ROD). The remedy selected in the ROD includes deed restrictions or restrictive covenants for groundwater usage and drilling, site access restrictions, and groundwater and surface water monitoring to insure that natural attenuation will be effective to prevent migration of contaminants.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Henkel Corp. (N.D. Ga)*, DOJ Ref. #90–11–2–999.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 1800 Richard Russell Bldg, 75 Spring Street, Atlanta, Georgia 30335; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, N.E. Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of 418.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–3912 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2); notice is hereby given that a proposed consent decree in *United States* v. *Nick Lipari*, Civil Action No. 1:95cv00507, was lodged on January 30, 1995, with the United States District Court for the District of New Jersey, Camden Vicinage. The proposed decree resolves the United States' claims under CERCLA against defendant Nick Lipari with respect to the Lipari Landfill Superfund Site, in Mantua Township, New Jersey. Nick Lipari is the alleged owner and operator of the Site, to which hazardous substances were sent for disposal. Under the terms of the proposed decree, Nick Lipari will pay to the United States and the State of New Jersey $1,350,000, plus interest.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nick Lipari*, DOJ Ref. #90–11–3–86A.

The proposed consent decree may be examined at the office of the United States Attorney, 402 East State Street, Trenton, New Jersey; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–3888 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bethlehem Steel Corporation and U.S. Steel Group, a Unit of USX Corporation

Notice is hereby given that, on November 8, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation, filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bethlehem Steel Corporation, Bethlehem, PA; and U.S. Steel Group, a unit of USX Corporation, Pittsburgh, PA. The general areas of planned activity are research and development activities in the field of basic iron and steelmaking technologies and processes, such as primary iron and steel process development, finishing steel process development, and steel process instrumentation development.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3909 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaboration Agreement Between Intermagnetics General Corporation and E.I. Du Pont and De Nemours and Company Through Its Superconductivity Group

Notice is hereby given that, on September 15, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Intermagnetics General Corporation has filed written notifications of the formation of a collaboration on behalf of Intermagnetics General Corporation and E.I. du Pont and de Nemours and Company through its Superconductivity Group simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the collaboration. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Intermagnetics General Corporation, Latham, NY; and E.I. du Pont and de Nemours and Company through its Superconductivity Group, Wilmington, DE. The general area of planned activity is to extend the high performance operation of magnetic resonance (MR) system to new extremes of the field strength spectrum through the potential exploitation of high temperature

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superconducting (HTS) technology in connection with an award by the Department of Commerce, National Institute of Standards & Technology under the Advanced Technology Program pursuant to 15 U.S.C. 278n.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3910 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and production Act of 1993—National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, on November 14, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as active members of NCMS: Arrindell Associates, Orange, CA; Cost Technology, Inc., Beaverton, OR; Fast Heat, Inc., Elmhurst IL; Ingersol-Rand Company, Woodcliff Lake, NJ; Lapeer Industries, Inc., Lapeer, MI; S.E. Huffman Corporation, Clover, SC; Storage Technology Corporation, Louisville, CO; The MacNeal-Schwendler Corporation, Los Angeles, CA; and Northern Telecom, Ltd., Mississauga, Ontario, Canada. In addition, the following companies were recently accepted as affiliate members of NCMS: American Supplier Institute, Inc., Allen Park, MI; Great Lakes Composites Consortium, Inc., Kenosha, WI; and Midwest Manufacturing Technology Corporation, St. Louis, MO. The following company has recently resigned from active membership in NCMS: Spectrix Corporation, Evanston, IL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 5, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 26, 1994 (59 FR 49084).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3915 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on October 19, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Premisys Communications Inc., Fremont, CA is a Corporate Member. B. H. A. Computer Pty., Ltd., Queensland, Australia; DSET Corporation, Bridgewater, NJ; IEX Corporation, Richardson, TX; Japan Telecom Co., Ltd., Tokyo, Japan; Microsoft Europe, Paris, France; Netmansys, Meylan, France; and Retix, Santa Monica, CA are Associate Members. Cap Volmac Telecom & Services, Utrecht, The Netherlands is an Affiliate Member.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 12, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 30, 1994 (59 FR 49999).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–3911 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on November 7, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: E.I. DuPont De Nemours & Co., Inc., Wilmington, DE; J.P. Morgan & Company, Inc., New York, NY; Knowledgeware, Inc., Atlanta, GA; Nihon Unisys, Inc., Tokyo, Japan; U.S. West Communications, Englewood, CO; Unibank A/S–Unidata, Tastrup, Denmark; and University of Pennsylvania, Philadelphia, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On May 11, 1994, OSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45009).

The last notification was filed with the Department on July 20, 1994. A **Federal Register** notice pursuant to Section 6(b) of the Act has not yet been published.

Constance K. Robinson,

Director of Operations Antitrust Division

[FR Doc. 95–3916 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaboration Agreement Between Uniphase Corporation and the Perkin Elmer Corporation

Notice is hereby given that, on November 15, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Uniphase Corporation has filed written notifications of the formation of a collaboration on behalf of Uniphase Corporation and the Perkin Elmer Corporation simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Uniphase Corporation, San Jose, CA; and the Perkin Elmer Corporation, Foster City, CA. The general area of planned activity is the development of blue laser for DNA diagnostics.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–3914 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 18, 1994, and published in the **Federal Register** on March 28, 1994, (59 FR 14426), and by Notice dated May 6, 1994, and published in the **Federal Register** on May 13, 1994, (59 FR 25126), Mallinckrodt, Specialty Chemical Company, Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Diphenoxylate (9170)	II
Benzoylecogonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer did file a written request for a hearing with respect to Methylphenidate. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, code of Federal Regulations, Section 1301.54(e), Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted with the exception of Methylphenidate..

Dated: February 6, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–3818 Filed 2–15–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Advisory Panel (Grants for Organizations Section) to the National Council on the Arts will be held on March 7–10, 1995. The panel will meet from 8:30 a.m. to 6:30 p.m. on March 7; from 8:30 a.m. to 7:30 p.m. on March 8; from 8:30 a.m. to 7:00 p.m. on March 9; and from 8:30 a.m. to 4:30 p.m. on March 10 in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on March 10, from 2:30 p.m. to 4:30 p.m. for a policy discussion.

Remaining portions of this meeting from 8:30 a.m. to 6:30 p.m. on March 7; from 8:30 a.m. to 7:30 p.m. on March 8; from 8:30 a.m. to 7:00 p.m. on March 9; and from 8:30 a.m. to 2:30 p.m. on March 10 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: February 13, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts

[FR Doc. 95–3938 Filed 2–15–95; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk and Traditional Arts Advisory Panel (National Heritage Fellowship Section) to the National Council on the Arts will be held on March 8–10, 1995. The panel will meet from 9:00 a.m. to 10:00 p.m. on March 8; from 9:00 a.m. to 6:30 p.m. on March 9; and from 9:00 a.m. to 4:00 p.m. on March 10 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue N.W., Washington, D.C. 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and

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Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: February 13, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–3942 Filed 2–15–95; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Artists' Communities Section) to the National Council on the Arts will be held on March 10, 1995. The panel will meet from 9 a.m. to 5:30 p.m. in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:30 p.m. for a policy discussion.

Remaining portion of this meeting from 9 a.m. to 4:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicant. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, any may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: February 13, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–3940 Filed 2–15–95; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on March 9, 1995. The panel will meet from 9:00 a.m. to 4:30 p.m. in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:45 a.m. for opening remarks and a general program overview and from 3:30 p.m. to 4:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9:45 a.m. to 3:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: February 13, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts

[FR Doc. 95–3939 Filed 2–15–95; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies Panel A Section) to the National Council on the Arts will be held on March 13–17, 1995. The panel will meet from 9:30 a.m. to 9:00 p.m. on March 13; from 9:00 a.m. to 9:00 p.m. on March 14–16; and from 9:00 a.m to 8:00 p.m. on March 17 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public on March 13 from 9:30 a.m. to 10:30 a.m. for opening remarks and a discussion of procedural issues and review criteria for the Professional Theater Companies category and from 5:00 p.m. to 8:00 p.m. on March 17 for a discussion of guidelines, policy, and procedural issues.

The remaining portions of this meeting from 10:30 a.m. to 9:00 p.m. on March 13; from 9:00 a.m. to 9:00 p.m. on March 14–16; and from 9:00 a.m. to 5:00 p.m. on March 17 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5433.

Dated: February 13, 1995.

Yvonne M. Sabine,

Director Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–3941 Filed 2–15–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Structures; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Structures (1205).

Date and Time: March 6 and 7, 1995; 8:30 a.m. to 6:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Structures, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Date: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3928 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Structures; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Structures (1205)

Date & Time: March 7, 1995; 8:30 a.m. to 6:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia

Type of Meeting: Closed

Contact Person: Dr. Priscilla P. Nelson, Program Director, Geomechanical/Geotech & Geoenvironmental Systems, Division of Civil and Mechanical Structures, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361; x 5079

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3932 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resources Development (#1199).

Date and Time: March 8, 1995; 7 p.m. to 9:30 p.m.; March 9,1995; 8 a.m. to 5 p.m.; March 10, 1995; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 370/380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact person: Lola E. Rogers, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Model Projects for Women and Girls proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3927 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 9–10, 1995—8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: William McHenry, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Careers for Minority Scholars proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–3933 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

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Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200)

Date and Time: March 9–10, 1995, 8:30 a.m. to 5:00 p.m.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Interactive Systems Program Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1995

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3934 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation Announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date and Time: March 10, 1995, 8:30 a.m.—5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1060, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Norbert M. Bikales, Program Director, Polymers; Dr. David L. Nelson, Program Director, Solid State Chemistry, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1839.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR 1995 Faculty Early Career Development (CAREER) Program proposals.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial Data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3929 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: March 6–7, 1995; 8:30 a.m. til 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rm 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals concerning Lie Groups and their representation as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3931 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Presidential Faculty Fellows; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Presidential Faculty Fellows (#139).

Date and Time: March 7–8, 1995; 8:30 a.m. to 5 p.m. both days.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margaret A. Cavanaugh, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1842

Purpose of Meeting: To provbide advice and recommendations concerning nominations submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the Presidential Faculty Fellows Program.

Reason for Closing: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 13, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–3930 Filed 2–15–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

GPU Nuclear Corporation; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear Corporation, (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the setpoints of Technical Specification 2.3.D, "Reactor High Pressure, Relief Valve Initiation" by increasing the setpoint value by 15 psig for each of the Electromatic Relief Valve (EMRVs) in the Automatic Depressurization System

The proposed action is in accordance with the licensee's application for amendment dated June 15, 1994, as supplemented by letter dated September 23, 1994, and November 3, 1994

The Need for the Proposed Action

The proposed action is needed because the "Bourden tube" type pressure switches currently in use at Oyster Creek experience drift, which results in exceeding the existing "as found" setpoint. Increasing the specified setpoints by 15 psig will provide for expanding the "as found" tolerance bands. Increasing these tolerance bands serves to ensure that the setpoints will remain within the Technical Specification requirements over a nominal 24 month operating cycle.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the licensee has provided information supporting the use of a 1.04 multiplier. This multiplier is applied to pool dynamic loads previously calculated for the plant unique analysis report (PUAR), to account for the EMRV setpoint increase and to account for errors in calculations of the PUAR loads due to use of an incorrect EMRV flow rating. The staff has reviewed the licensee's basis for use of the multiplier and finds it acceptable. The staff also finds that the structural analysis of the affected plant components was adequately conservative to demonstrate acceptability of the EMRV setpoint change.

The proposed amendment involves a minor change in the operation of the facility. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 15, 1994, as supplemented by letters dated September 23, and November 3, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, 101 Washington Street, Tows River, NJ 08753.

Dated at Rockville, Maryland, this 8th day of February 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3876 Filed 2–15–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–325]

Carolina Power & Light Co.; Facility Operating License

Exemption

In the Matter of Carolina Power & Light Co.; (Brunswick Steam Electric Plant, Unit 1).

I

The Carolina Power & Light Company (the licensee), is the holder of Facility Operating License Nos. DPR–71 and DPR–62 which authorizes operation of the Brunswick Steam Electric Plant (BSEP or the facility), Units 1 and 2, respectively, at steady state power levels not in excess of 2436 megawatts thermal. The facility consists of two boiling water reactors located at the licensee's site in Brunswick County, North Carolina. The license provides, among other things, that BSEP is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests at approximately equal intervals during each 10-year service period of the primary containment. The third test of each set shall be conducted when the plant is shutdown for the 10-year inservice inspection of the primary containment.

III

By letter dated November 22, 1994, CP&L requested a one-time exemption from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment for the Brunswick Steam Electric Plant, Unit 1 (BSEP–1), the requested exemption would permit a one-time extension of the second 10-year service period by approximately 18 months (from the April 1995 refueling outage to the September 1996 refueling outage). The requested temporary relief would permit the third test of the second 10-year service period to correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval.

IV

Section III.D.1.(a) of appendix J to 10 CFR part 50 states that a set of three Type A leakage tests shall be performed at approximately equal intervals during each 10-year service period.

The requirement to perform a set of three Type A leakage rate tests at approximately equal intervals during each 10-year containment service period provides assurance that containment leakage will not exceed allowable values. Type A leakage rate tests were performed as required by appendix J during the first 10-year containment service period that ended in 1986.

Since the first 10-year service period for BSEP–1 was not aligned with the service period for BSEP–2, CP&L moved the end date for the BSEP–1 back to coincide with the BSEP–2 end date. Therefore, the second 10-year service period for BSEP–1 began on July 10, 1986. This caused the first BSEP–1 Type A test for the second period to be performed in May 1987, only 11 months into the interval. The second Type A test on BSEP–1 was performed within the 40-month plus or minus 10-month interval required by the Technical Specifications.

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However, BSEP, Unit 1, experienced an extended shutdown during the period between April 1992 and February 1994, and the licensee notified the NRC in a letter dated August 5, 1994, that the second 10-year period end date was being extended by one year due to this outage. Because of this shutdown, the licensee also rescheduled the remaining two BSEP–1 refueling outages (reloads 9 and 10) during the second 10-year service period. The reload 9 outage was rescheduled to begin in April 1995, and the reload 10 outage was rescheduled to begin in September 1996.

Unlike Section XI, IWA–2400(c), of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), appendix J to 10 CFR part 50 does not contain any provisions for adjusting the 10-year service period due to extended outages. The licensee has already performed two of the Type A tests at BSEP–1 required during the second 10-year service period. If a Type A test is conducted during the next refueling outage, Appendix J could be interpreted to require a fourth test to satisfy the requirement that the final test of the set be conducted when the plant is shutdown for the 10-year plant inservice inspections. Due to the extension of the inservice inspection period, the final refueling outage of the current inservice inspection period is scheduled for September 1996. This action would eliminate the need to perform an extra Type A test, which could otherwise be required (one test in 1995 and another in 1996) while recoupling the Type A test period with the inservice inspection interval.

V

The Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this Exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided for in 10 CFR 50.12(a)(2)(ii), are present and justify the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of Section III.D.1.(a) of appendix J to 10 CFR part 50 is to provide an interval short enough to prevent serious deterioration from occurring between tests and long enough to permit testing to be performed during regular plant outages.

The last two Type A tests at BSEP–1 for the second 10-year period were performed in May 1987 and in February 1991. Delaying the third Type A test until the 1996 refueling outage would result in a test interval of approximately 68 months rather than the stipulated 40 months plus or minus 10 months interval. The licensee has presented the following information which gives a high degree of confidence that the containment will not degrade to an unacceptable extent while this exemption is in effect:

1. The most recent Type A test data show that the "as left" leakage rates (0.2150 weight percent per day and 0.3408 weight percent per day, respectively) were well within the acceptance limit of 0.75 L_a (0.375 weight percent per day).

2. A review of the potential primary containment degradation mechanisms, including both activity-based and time-based causes, concluded that there has not been any alteration or challenge to the primary containment since the last Type A test.

3. No modifications are scheduled that have the potential to adversely affect the integrity of the primary containment boundary.

4. Modification and maintenance activities that will affect the containment leakage rates during the next refueling outage will include administrative controls requiring the performance of local leak rate testing, Type B or Type C tests, as appropriate.

5. The licensee has committed to perform an inspection of the containment barrier during the reload 9 outage.

6. The Type B and Type C local leak rate testing programs will effectively determine containment leakage caused by degradation of containment penetrations.

The NRC staff has reviewed the licensee's request and basis and finds that there is adequate assurance that there will not be any significant undetected degradation in primary containment leakage during the extended Type A test interval in that the primary contributors to potentially excessive leakage paths will be measured during the required Type B and Type C tests. These latter tests will be conducted at least during each 18-month refueling outage, but in no case at intervals greater than 2 years (Sections III.D.2 and III.D.3 of appendix J to 10 CFR part 50).

The NRC staff agrees that the subject exemption request does not pose any undue risk to the public health and safety in that (1) the last as-left Type A test leakage rate was below 0.75 L_a, (2) no modifications are scheduled that have the potential to adversely affect the primary containment integrity, and (3) there will not be any future maintenance activity during the proposed interval extension that would adversely affect the primary containment leakage rate without administrative control requiring the performance of local leak rate testing. The licensee will continue to demonstrate that the test results from the Type B and C local leak rate tests will be no greater than their specified values in the BSEP Technical Specifications prior to restart after a refueling outage. Any potentially excessive leakage paths will continue to be repaired and/or adjusted prior to restart and at intervals of 18 months, thereby continuing to ensure the integrity of the containment. Based on these considerations, the NRC staff concludes that the licensee's request for a one-time exemption to Section III.D.1.(a) of appendix J to 10 CFR part 50 should be granted.

VI

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption; namely that the application of this regulation is not necessary to achieve the underlying purpose of the rule. Further, the NRC staff also finds that the protection provided by the licensee against potentially excessive containment leakage will not present an undue risk to the public health and safety. The application of the regulation is not necessary to assure the integrity of the containment in the event of a postulated design basis loss-of-coolant accident.

The Commission hereby grants the one-time Exemption with respect to the requirements of 10 CFR part 50, appendix J, Section III.D.1.(a), to extend the interval between the second and third Type A test for BSEP–1 until the September 1996 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject Exemption will not have a significant effect on the quality of the human environment (60 FR 6567).

This Exemption is effective upon issuance and shall expire at the completion of the 1996 refueling outage (B111R1).

Dated at Rockville, Maryland this 9th day of February.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3873 Filed 2–15–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–237, 50–249 50–254, 50–265]

Commonwealth Edison Co., Facility Operating License

Exemption

In the Matter of Commonwealth Edison Co. (Dresden Nuclear Power Station, Units 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2).

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DRP–19 and DRP–25, which authorize operation of Dresden Nuclear Power Station, Units 2 and 3, at a steady state power level not in excess of 2527 megawatts thermal; and Facility Operating license Nos. DRP–29 and DRP–30, which authorize operation of Quad Cities Nuclear Power Stations, Units 1 and 2, at a steady state power level not in excess of 2511 megawatts thermal. Dresden Station is comprised of two boiling water reactors at the licensee's site located in Grundy County, Illinois. Quad Cities Station is comprised of two boiling water reactors at the licensee's site located in Rock Island County, Illinois. These licenses provide, among other things, that Dresden and Quad Cities are subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

By letter dated October 4, 1994, the licensee requested a revision to an exemption from certain Type B (local leak rate) testing requirements of appendix J to 10 CFR part 50, for two-ply containment penetration expansion bellows at four reactor units. The request was made because the licensee has developed a set of alternative approaches which can be applied to ensure the intent of requiring a Type A test, as part of the original exemption, is met.

On February 6, 1992, the NRC issued an Exemption from certain Type B testing requirements of Appendix J. This exemption stated upon completion of the two-ply bellows testing program, a Type A integrated leak rate test (ILRT) will be performed to verify primary containment integrity. The testing program was intended to assure that at least one ply of a two-ply bellows is intact and that overall containment leakage is within its allowable limit as shown by Type A testing. The Type A test was the only test available that could properly quantify the bellows' leakages, albeit not individually. The Exemption also stated that if a method is developed which ensures a valid Type B test on one or more bellows assemblies, those bellows will also be excluded from the Exemption and will be required to be tested in accordance with the normal Type B test program.

III

The original Exemption allowed ComEd to apply special testing techniques in lieu of performing a test which meets Type B requirements for these bellows which, at that time, were unable to be tested in strict conformance to the appendix J criteria. The special testing techniques included a sequence of air and helium based local leak rate tests (LLRT) for each affected penetration and performance of a Type A leak rate test upon completion of the bellows testing during each refuel outage.

Commonwealth Edison Company now believes that the requirement to perform a Type A test every outage is not necessary to ensure that the bellows assemblies are adequately tested and leakage from any leaking bellows assembly is adequately quantified. Through testing of two-ply bellows at Dresden Station and Quad Cities Station, the licensee has developed the following insights:

1. There is minimal probability for the occurrence of a large leak in a two-ply bellows;

2. the special testing program is effective for identifying small leaks in two-ply bellows;

3. the Type A test is ineffective for identifying small leaks in two-ply bellows; and

4. more cost effective alternative methods have been developed for quantifying leakage.

At the time of the original request for an exemption, a Type A test was required every outage in accordance with the Technical Specifications (TS) and appendix J criteria for determination of ILRT test frequency. Based on appendix J and the TS, ComEd need not do a Type A test every refuel outage if they have completed two consecutive successful Type A tests. Quad Cities has completed two consecutive successful Type A tests. However, as previously stated the original exemption requires a Type A test every outage to support the two-ply bellows leakage testing.

The licensee has discovered very small leaks using the special testing techniques in some bellows and they have subsequently been modified, removed from the list described in the original exemption and are not on a Type B testing schedule.

The licensee has identified several methods for conducting a valid Type B test on bellows since the original Exemption was issued. The first method involves the addition of a bellows test enclosure equipped with leaktight seals. The second involves installation of a rubber boot inside the drywell to form a seal between the drywell atmosphere and the bellows. The third is to weld a cover plate inside the drywell to provide a seal between the process pipe and the drywell atmosphere. The licensee also has the option to implement a complete replacement of the existing two-ply bellows assemblies with a new testable two-ply bellows.

The licensee has proposed the following revision to the approved exemption for non-Type B testable bellows. This proposal eliminates the need but keeps the option to perform a Type A test every refuel outage. The licensee proposed to include the following alternatives to the current requirement in place of the existing Section III.6 and .7 in the original Exemption:

Upon completion of the two-ply bellows special testing program, the following actions shall be taken to address any two-ply bellows which have been identified as leaking through both plies:

(A) All bellows which leak through both plies shall be tested in accordance with Type B requirements to ensure license limits are met prior to return to service, or

(B) A Type A ILRT test shall be performed to verify primary containment integrity. All two-ply bellows assemblies which demonstrate leakage through both plies shall be replaced or subjected to a valid Type B test to demonstrate license limits are met prior to return to service from the subsequent refuel outage, unless ComEd provides justification for continued operation greater than one operating cycle.

The licensee states that the estimated cost of a Type A test, as described in NUREG–1493, "Performance-Based Containment Leak-Test Program," Draft Revision 2, dated March 31, 1994, is $1.89 million. Based on the number of historical leaking bellows found at Dresden and Quad Cities during the refuel outages, the cost of the Type A test per bellows ranges from $378k to $1.89M. The licensee also states that the Type A tests performed every outage since approval of the current exemption have never found a bellows leak which was undetected by the special testing program. The techniques of the special

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test program have the ability to detect leaks smaller than would be detected by the Type A test.

For a two-ply bellows that leaks through both plies, this revised exemption allows: (1) A valid Type B test using one of various developed alternatives to ensure compliance to license limits, or (2) a Type A test as required in the original exemption and, before the return to power in a subsequent refuel outage, replacement of the bellows with a testable bellows assembly or a valid Type B test to ensure license limits are met.

The staff finds that the underlying purpose of the regulation will be met in that the proposed testing program will detect bellows assemblies with significant flaws and result in replacement of flawed assemblies within one operating cycle, or be tested with a Type B test to ensure license limits are met during which period there is reasonable assurance that the bellows assemblies will not suffer excessive degradation. If the licensee should propose to wait longer than one cycle to replace any bellows assembly, the staff must evaluate and approve the request at that time.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(i) and (a)(2)(ii), that (1) the Exemption from appendix J is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of its rule.

The Commission concludes that the testing and replacement program for the containment penetration bellows assemblies is an acceptable alternative to the existing appendix J testing requirement. Accordingly, the Commission hereby grants the Exemption from appendix J.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (59 FR 64001).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 9th day of February 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3879 Filed 2–15–95; 8:45 am]

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[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Notice of Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 180 to Facility Operating License No. DPR–61 issued to the Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment revises Technical Specifications (TS) 3.1.1.3, "Shutdown Margin," and TS 3.3.3.9, "Boron Dilution Alarm," and their associated Bases sections and add a new TS 3.1.1.4, "Shutdown Margin." TSs 3.1.2.2, 3.1.2.4, and 3.1.2.6, will be revised to reference TS 3.1.1.3 rather than specify the required shutdown margin at 200 ° F. In addition, editorial changes will be made to a reference on TS pages 3/4 1–13 and 14 to reletter surveillance specification 4.5.1.c.3 to 4.5.1.b.3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 28, 1994 (59 FR 49454). No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7799).

For further details with respect to the action see (1) the application for amendment dated September 7, 1994, (2) Amendment No. 180 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 9th day of February 1995.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3874 Filed 2–15–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–15139; License No. 37–04594–11; EA No. 94–167]

Drexel University, Philadelphia, Pennsylvania; Order Imposing a Civil Monetary Penalty

I

Drexel University (Licensee) is the holder of Byproduct Materials License No. 37–04594–11 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on October 31, 1979. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at its facility in Philadelphia, Pennsylvania.

II

An inspection of the Licensee's activities was conducted on July 22, July 27, and August 1, 1994, at the Licensee's facility located in Philadelphia, Pennsylvania. The result of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 17, 1994. The Notice states the nature of the violations, the provisions of the NRC requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters, both dated November 14, 1994, and a letter dated January 17, 1995. In its responses, the Licensee denies Violations A.2 and A.6; denies in part Violation B; admits Violations A.1 A.3, A.4, A.5, C, D, and E; disagrees with the classification of the violations collectively at Severity Level III; and requests mitigation of the penalty

III

After consideration of the Licensee's response and the statements of fact,

explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that: (1) Violation B should be modified to withdraw one of the examples; (2) the remaining violations occurred as stated in the Notice; (3) the violations were appropriately classified collectively at Severity Level III; (4) partial mitigation of the penalty should be allowed based on the Licensee's corrective actions; and (5) a penalty of $5,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The Licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations A.2 and A.6 of the Notice referenced in Section II above, and Violation B as amended in the Appendix to this Order; and

(b) Whether on the basis of such violations, and the additional violations set forth in the Notice of Violations that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 8th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On October 17, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Drexel University (Licensee) responded to the Notice in two letters, both dated November 14, 1994, and a letter dated January 17, 1995. In its responses, the Licensee denies Violations A.2 and A.6; denies in part Violation B; admits the remaining violations (A.1, A.3, A.4, A.5, C, D, and E); disagrees with the classification of the violations collectively as a Severity Level III Problem; and requests mitigation of the penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation A.2

Condition 21 of License No. 37–04594–11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

Item 10.4.1(d) of the application requires that students, laboratory technicians and physical plant workmen including housekeeping and security, all receive formal training workshops concerning laboratory hazards including radioactive material.

Contrary to the above, from January 1992 to August 1994, certain personnel working in restricted areas, including students, laboratory technicians and physical plant workmen (housekeeping and security), did not receive formal training workshops concerning laboratory hazards including radioactive material. Specifically, formal training workshops were not held for housekeeping, even though housekeeping staff entered restricted areas. In addition, training sessions held for graduate students were inadequate in that several students interviewed were not aware of appropriate procedures for using survey instruments or for cleaning up contamination. In addition, the Assistant Radiation Safety Officer (RSO) was not aware of the meaning of radioactive labels on radioactive materials packages which he is required to survey

Summary of Licensee's Response to Violation A.2

The Licensee denies violation A.2, stating that training is held for students and staff who use radioactive materials (RAM), and that training takes the form of both formal instruction; as well as one-on-one between faculty and student. The licensee also states that if the students join a laboratory at random times during the year, the students receive instructions and training on the requisite laboratory hazards, and training records are maintained. The Licensee does not challenge the inspector's finding that isolated incidents may have been uncovered revealing possible incomplete knowledge on the part of a student. However, the Licensee contends that this does not represent a failure to provide radiation safety training to the staff.

The Licensee also states that the NRC was informed, at the time of the enforcement conference on September 9, 1994, that neither housekeeping staff nor physical plant workmen are permitted to enter restricted areas unescorted. The licensee further indicates that the laboratories are locked when unoccupied and are removed from the building master key system, thereby requiring escorted entry if that should become necessary. The Licensee notes that it confirmed with the manager of the housekeeping staff that the staff are given explicit instructions that they do not have unescorted access, and when escorted, they are not to handle any trash or other containers labeled with signs or other indications of hazardous materials. The Licensee states that there is no evidence that housekeeping staff or other workmen untrained in radiation safety entered restricted areas unescorted.

The Licensee further states that at the enforcement conference on September 9, 1994, the University representative informed the NRC that a new Assistant Radiation Safety Officer (ARSO), with appropriate technical background, had been appointed. Furthermore, arrangements had already been made for the new ARSO to receive a week of full-time training and education on the fundamentals in an accredited short course on radiation safety at the end of September, and that the ARSO is receiving additional on-campus training through a graduate course given by a certified health physicist.

NRC Evaluation of Licensee's Response to Violation A.2

The Licensee's training program as described in Section 10.4.1(d) ("Instructions for personnel working in restricted areas") of its License application, requires that students, laboratory technicians and physical plant workmen, including housekeeping and security, all receive formal training workshops concerning laboratory hazards including radioactive materials. The Licensee's application does not identify any exceptions concerning whether an individual is escorted or not. The inspector questioned several students and found that the students did not know how to use a survey meter or what to do in the event of a spill or accident. In fact, the RSO stated to the inspector that no formal training had been provided to housekeeping and security staffs from January 1992 to August 1994. In addition, the inspector learned that ARSO had not been instructed on the meaning of various radioactive package labels.

These findings indicate that adequate training was not provided to some of the Licensee's staff. Some of the identified examples involved users of phosphorus-32, which, if mishandled, could result in a

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significant contamination event. Although the Licensee may have conducted some training, the Licensee: (1) did not assure adequate training of all individuals covered by Item 10.4.1(d) of the license application as referenced in License Condition 21; and (2) did not verify that those who were trained understood the training that had been provided. Therefore, the NRC maintains that the violation occurred as stated in the Notice.

Restatement of Violation A.6

Condition 21 of License No. 37–04594–11 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in the Licensee's application dated April 1, 1991.

Item 10.3.1(j) requires that the RSO conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Contrary to the above, between January 1992 and July 1994, the RSO did not conduct periodic reviews of the terms and conditions of the license, as evidenced by the fact that the RSO was unaware of the requirements specified in the licensee's application dated April 1, 1991.

Summary of Licensee's Response to Violation A.6

The Licensee denies the violation and indicates that there were differences of interpretation between the RSO and NRC, and that those differences arose as a result of the process of the Licensee proposing procedures in amendment applications and the NRC formally incorporating those procedures into the license by amendment. The Licensee also states that the RSO and RSC have thoroughly reviewed the license, including the basic document and all letters of additional commitments. The Licensee indicates that, based upon its review and discussion with the NRC Regional Office, it is the Licensee's intent to apply for modifications to the license which will meet the Licensee's actual and limited need. The Licensee also states that upon satisfactory resolution of the current issues with the NRC, it expects to request modification to a more limited license and to delete some of the current commitments which are not reasonable for the circumstances of this Licensee's use of radioactive materials.

NRC Evaluation of Licensee's Response to Violation A.6

License Condition 21 requires that licensed material be possessed and used in accordance with the statements, representations, and procedures contained in certain specified applications and letters submitted by the Licensee. The requirement is clear and leaves no room for differences of interpretation. As required by License Condition 21, application dated April 1, 1991, Item 10.3.1(j), the RSO is required to conduct periodic reviews of the terms and conditions of the license to ensure compliance with requirements.

Although the Licensee describes certain actions taken by the RSO and RSC in reviewing the license, it appears that the Licensee is referring to actions taken subsequent to the inspection. As documented in the inspection report, the RSO was not aware of the requirements for leak testing and physical inventory of sealed sources, and was unfamiliar with area survey requirements for authorized users, all of which are required by conditions of the license. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

Restatement of Violation B

Condition 14 of the license requires that sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material be tested for leakage and/or contamination at intervals not to exceed 6 months or at such other intervals as are specified by the certificate of registration referred to in 10 CFR 32.210.

Contrary to the above, sealed sources and detector cells not in storage and containing greater than 100 microcuries of gamma emitting radioactive material were not tested for leakage and/or contamination at intervals not to exceed 6 months and no other intervals were specified by the certificate of registration referred to in 10 CFR 32.210. Specifically, a cesium-137 and cobalt-60 source with activities greater than 100 microcuries of gamma emitting radioactive material per source and in use by the licensee, were not tested for leakage and/or contamination during the period August 1991 to August 1994, an interval in excess of six months.

Summary of Licensee's Response to Violation B

The Licensee states that the only sealed source not in storage and requiring leak testing at the time of the NRC inspection was a 1.06 mCi cesium-137 source used once or twice a year in the Physics and Atmospheric Sciences Department. The Licensee also states that the cobalt-60 source, having decayed to 64 μCi, does not require leak testing and, for more than three years, has not required it. In addition, the Licensee notes that subsequent to the NRC inspection, the Cs-137 source was assayed on September 14, 1994, and again in October 1994 and leak tested with no evidence of any leakage found.

NRC Evaluation of Licensee's Response to Violation B

Since the Licensee acknowledges that leak-testing did not occur with respect to the cesium-137 source, the NRC concludes that this aspect of the violation occurred as stated in the Notice. Based on the additional information which has now been provided by the Licensee, but which was unavailable at the time of the inspection, the aspect of the violation regarding the cobalt-60 source is hereby withdrawn. The withdrawal of one example of a violation does not change the fact that the violation occurred, nor does it change the amount of the civil penalty assessed for the violations in this case.

Summary of Licensee's Response Regarding Severity Level

The Licensee states that it does not concur with the NRC classification of the violations collectively as a Severity Level III Problem, contending that in a number of instances, the NRC extrapolated a single, or even several replications of the identical, adverse findings among many activities and personnel, to suggest widespread disregard for either its radiation safety program or its responsibility in its oversight and management. The Licensee contends that it takes the protection of public health and safety as a serious responsibility, and to suggest otherwise from the violations cited by the NRC is a significant inaccuracy.

The Licensee also states that it finds it disturbing that the October 17, 1994, letter transmitting the civil penalty suggests that the NRC had an expectation that the corrective actions were to be completed prior to the enforcement conference, and not having them completed was a factor in classifying the violations at Severity Level III.

The Licensee further states that since the 1991 inspection, those involved at the time in the Radiation Safety Program leadership and management are no longer with the Licensee and significant change has taken place. The Licensee also states that the Provost and Senior Vice President for Academic Affairs, Senior Vice President for Administration and Finance, Vice Provost for Research and Graduate Studies, Radiation Safety Officer, and the New Chief Executive Officer of the University are all very seriously committed to a Radiation Safety Program which is in complete accord with NRC requirements.

NRC Evaluation of the Licensee's Response Regarding Severity Level

The violations identified during the 1994 inspection indicated a lack of management attention to the radiation safety program, as described in the October 17, 1994 letter transmitting the Notice. This NRC determination of a lack of adequate management attention was based on the fact that ten violations of NRC requirements were identified and cited, and more importantly, five of those violations were repetitive. If appropriate management attention had been provided, appropriate corrective actions would have been taken after the previous NRC findings in 1991, and these violations would not have recurred, or would have been promptly identified and corrected by current management. That did not happen. Rather, the violations were identified by the NRC.

The NRC did not suggest, in its letter, that there was widespread disregard for the program. If that had been the case, the NRC would have proposed a more severe sanction. However, given the number of violations, the repetitive nature of some of them, and the fact that the violations would have been identified by the RSO or RSC if adequate management attention was provided to the program, the NRC concludes that the violations were appropriately categorized collectively at Severity Level III.

The Licensee has confused the failure to take lasting corrective action to prevent the recurrence of the violations identified during the 1991 inspection with the issue of corrective actions for the violations identified during the July 1994 inspection. The latter issue was not a basis for considering the 1994 violations collectively as a Severity Level III problem; however, it was considered in determining the amount of the civil penalty for this Severity level III problem.

Summary of Licensee's Request for Mitigation

The Licensee, in its response disagrees with the NRC statement in the October 17, 1994 letter that the Licensee's corrective actions were not sufficiently prompt and comprehensive to warrant any mitigation of the penalty. The Licensee indicates that the NRC failed to recognize very significant additional actions that had already been taken by the time of the Enforcement Conference. The licensee details the corrective actions, which include the establishment of additional management oversight and monitoring controls. In addition, the Licensee maintains that the measures taken were effective, timely, comprehensive, and pro-active, and demonstrated a serious commitment to a quality and effective radiation safety program.

NRC Evaluation of Licensee's Request for Mitigation

The NRC letter, dated October 17, 1994, transmitting the civil penalty, notes that no credit was provided for the Licensee's corrective actions. As a result, a penalty of $6,250 was proposed. Upon reconsideration and evaluation of the licensee's corrective actions, after receipt of the Licensee's November 14, 1994 and January 17, 1995 responses, the NRC agrees that the actions taken subsequent to the inspection were prompt and comprehensive and that the full mitigation allowable based on corrective action should be applied. Therefore, 50% mitigation of the base civil penalty amount is being applied in this case based on the corrective actions, which reduces the civil penalty amount by $1,250. The Licensee did not provide any basis for any further mitigation of the penalty. Accordingly, no further adjustment is warranted.

NRC Conclusion

The NRC has concluded that the violations occurred as stated in the Notice, although an example of Violation B should be withdrawn, as described herein. In addition, the NRC has concluded that the Licensee provided an adequate basis for reduction of the civil penalty based on its corrective actions. Accordingly, a civil penalty in the amount of $5,000 should be imposed.

[FR Doc. 95–3878 Filed 2–15–95; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 030–12279, License No. 45–17151–01 EA 95–003]

Order Modifying License

In the Matter of Material Testing Laboratories, Inc.

I

Material Testing Laboratories, Inc. (Licensee) is the holder of Byproduct Material License No. 45–17151–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. The License authorizes, in part, possession and use of byproduct material not to exceed 200 curies of Iridium-192 per source in the operation of radiography exposure devices. The License further authorizes the Licensee to perform radiography at temporary job sites in accordance with the conditions specified therein. The License, originally issued on March 17, 1977, was renewed on December 16, 1993, and is due to expire on December 1, 1998.

II

On November 15, 1994, an inspection of NRC-licensed activities was conducted at a temporary job site in Northern Virginia and at the Licensee's office in Norfolk, Virginia. As a result of the inspection, apparent violations of NRC requirements were identified, which are the subject of a Notice of Violation and Proposed Imposition of Civil Penalty issued this date. The violations identified during the NRC inspection include:

1. Use of NRC-licensed material by an unauthorized and unqualified individual, in violation of 10 CFR 34.31(b);

2. Failure to maintain direct surveillance of radiographic operations by an authorized and qualified individual, in violation of 10 CFR 34.41;

3. Failure to perform an adequate survey following a radiographic exposure, in violation of 34.43(b);

4. Failure to post a high radiation area, in violation of 10 CFR 34.42; and

5. Failure to post the Licensee's radiography vehicle as a radioactive material storage area at a temporary job site, in violation of Condition 20 A. of the License.

A transcribed enforcement conference was conducted in the NRC Region II office in Atlanta, Georgia, on December 20, 1994, to discuss the violations, their cause, and the Licensee's corrective actions. During the enforcement conference, the Licensee acknowledged that weaknesses in management and in Radiation Safety Officer oversight of the Lorton, Virginia, field office activities contributed to the violations. These weaknesses included a lack of appreciation by management and the Radiation Safety Officer (RSO) of the effect of excessive overtime work on employees' performance and failure to promptly monitor work practices of the radiographer involved in the November 15, 1994, violations following the indications of his poor performance by a State of Maryland inspection which identified a failure to maintain a radiography exposure device under constant surveillance and control.

III

Based on the above, the NRC has concluded that the Licensee has violated NRC requirements. The performance of NRC-licensed activities requires use of appropriate safety procedures, training of personnel regarding those procedures, meticulous attention to detail by personnel conducting radiography, and proper oversight by Licensee management to ensure these activities are conducted safely and in accordance with NRC requirements. This attention is particularly important during the performance of radiography given the high radiation levels that can result from use of the sources. The failure to properly control the use of the radiography devices could result in significant radiation exposure to individuals, both employees and members of the general public. The radiographer who had primary responsibility for use and control of NRC-licensed material at the temporary job site failed to maintain proper control and surveillance during radiographic operations. The radiographer, as noted above, one month earlier also failed to maintain constant surveillance and control of a radiography exposure device in the State of Maryland. In addition, based on the violations and weaknesses identified above and information and statements obtained during the transcribed enforcement conference, the RSO, who has the responsibility for ensuring that NRC requirements are met, had not adequately controlled or maintained oversight of the Licensee's NRC-licensed activities in the Northern Virginia area to ensure compliance with all NRC requirements including the conditions of the License.

The violations described in Section II of this Order and the concerns set forth above demonstrate a significant lack of attention to required radiation safety requirements by the radiographer and lack of management control and oversight of radiographic operations by the RSO and Licensee management. Specifically, after the incident in Maryland, the ROS did not identify the root causes of the violations, the RSO did not perform a field audit of the radiographer's performance, and the retraining of the involved radiographer was not sufficient to prevent the November 15, 1994 incident which had similar violations. Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License no. 45–17151–01 in compliance with the Commission's requirements and that the

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health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public, health, and safety and interest require that the License be modified as described below in Section IV. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, it is hereby ordered, effective immediately, that license no. 45–17151–01 is modified as follows:

A. The Licensee shall retain and maintain the services of an RSO approved by Region II to oversee the activities of its radiographers based at the Lorton, Virginia, facility. The RSO duties must take priority over any other duty. The Licensee shall within 30 days submit the name and qualifications of the Lorton RSO for approval to the Regional Administrator, Region II.

B. The Licensee shall retain the services of an independent individual or organization (consultant) to perform an initial assessment of the Licensee's radiation safety program in Lorton, Virginia, and quarterly audits thereafter for a period of one year to determine compliance with all NRC requirements. The consultant shall also provide recommendations for program improvements to ensure effective management oversight and control of radiography operations. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region II, for review and approval, the name and qualifications of the consultant it proposes to conduct the assessment and audits. The consultant shall be independent of the Licensee's staff and have experience in the management and implementation of a radiation safety program, including activities similar to those authorized by the License.

C. Within 60 days of the date of NRC approval of the consultant selection, as described above, the Licensee shall have the consultant submit its assessment report to the Licensee and to the Regional Administrator, NRC Region II. Within 30 days of the end of each quarterly audit period, the Licensee shall have the consultant submit its audit report and any recommendations for improvements to the Licensee and to the Regional Administrator, NRC Region II. The assessment and audits of the Licensee's radiography program shall include, but not be limited to:

1. A review of the adequacy of the Licensee's management control and oversight in ensuring that radiographer and equipment requirements, personnel monitoring requirements, radiation safety procedures in radiographic operations, and other NRC requirements are followed including:

(a) The Licensee's program for training, retraining, and qualifying all individuals involved in using, supervising, inspecting, and auditing activities involving NRC-licensed material;

(b) The scope, methods, and frequency of the Licensee's program of surveillance and audits to determine compliance by individual users of NRC-licensed materials with NRC requirements, the conditions of the License, and the Licensee's own procedures for the safe use of radioactive materials;

(c) The RSO's functions and oversight activities, including the methods of monitoring the radiation of safety program to ensure that problems or violations are promptly identified and corrected; and

(d) The Licensee's radiation safety program for developing and implementing operating and emergency procedures for the safe use of NRC-licensed material, and record keeping and documentation.

2. On-site reviews at the Licensee's Lorton, Virginia, office of activities and records maintained for users, and interviews and observations of selected authorized users working at various locations.

3. Direct observation during each quarterly audit of, at a minimum, one radiographer employed at the Lorton, Virginia, office performing industrial radiography activities with NRC-licensed material. The audits should ensure that all radiographers at the Lorton, Virginia, office are observed within the year.

D. Within 30 days of the date of the initial assessment report and of each quarterly audit report, the Licensee shall submit to the Regional Administrator, NRC Region II, the Licensee's response to the report either describing the implementation of each of the necessary corrective actions or recommendations from the audit report, or justification for not needing any corrective action or for not adopting one or more of the specific recommendations. Each Licensee response shall include a status report on action items completed or to be completed with appropriate priorities assigned and any schedules for, or dates of, completion of each specific item.

E. The Licensee shall ensure that the work of the radiographer involved in the November 14, 1994 violations, as a radiographer using NRC-licensed material, is audited by the independent consultant within 30 days of the radiographer's return to unsupervised work and quarterly thereafter for one year. All audits shall include direct observation of the radiographer performing industrial radiography with NRC-licensed material.

F. For a period of one year from the date of this Order, the Licensee shall notify NRC Region II, by 9:00 a.m. (Eastern Time) Monday (or Tuesday, if Monday is a federal Holiday) of each week, of the location in non-Agreement states where the radiographer involved in the November 15, 1994 violations will be conducting radiography operations. This notification shall include the date, time, and specific location where radiography is planned to allow NRC to conduct an unannounced inspection. If unplanned work arises after the Monday notification, the new work can be performed by the involved radiographer in a non-Agreement state provided that the NRC has been given prior notice. Notification shall be made by telephone to Mr. Douglas M. Collins, Chief, Nuclear Materials Safety and Safeguards Branch, or his designated representative, at (404) 331–5586 or by facsimile at (404) 331–5559.

The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, Suite 2900, Atlanta, Georgia 30323, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 9th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–3877 Filed 2–15–95; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Notice of Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 103 to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications (TS) for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified TS 3.5.2.a to allow a one-time extension of the allowable Residual Heat Removal (RHR) pump outage time for the purpose of mechanical seal replacement and its related modifications. The allowable outage time is extended from 72 hours to 120 hours, may only be used one time per pump, and is not valid after April 30, 1995. The amendment clearly defines the times in which each RHR pump and associated RHR hear exchanger must be restored to an operable state.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 14, 1994 (59 FR 52200). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7800).

For further details with respect to the action see (1) the application for amendment dated August 16, 1994, and supplemented January 10, 1995, (2) Amendment No. 103 to License No. NPF–49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 9th day of February 1995.

For the Nuclear Regulatory Commission.

Vernon L. Rooney, Sr.

Project Manager, Project Directorate I–4, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3875 Filed 2–15–95; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Strategic Action Plan for 1995

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The National Partnership Council (the NPC; the Council) is announcing the approval of its strategic action plan for 1995.

DATES: The Council approved its strategic action plan for 1995 at its January 10, 1995, meeting in Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–0001.

SUPPLEMENTARY INFORMATION: The strategic action plan outlines a number of actions the Council plans to take in 1995 to support and promote partnership efforts throughout the Federal Government, as it is mandated to do under Executive Order 12871, Labor-Management Partnerships. Additionally, the actions help the Council meet its responsibilities to change the culture of Federal labor-management relations so that managers, employees, and employees' elected union representatives work together as partners in designing and implementing comprehensive changes in support of the Government reform objectives of the National Performance Review.

Office of Personnel Management.

James B. King,

Director.

Accordingly, the 1995 strategic action plan for the Council is as follows:

Executive Summary—National Partnership Council 1995 Strategic Action Plan; National Partnership Council Charter: Executive Order 12871; NPC Strategic Goal

To institutionalize labor-management partnerships in Federal agencies for the purpose of achieving the National Performance Review goal of creating a

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government that "works better and costs less."

NPC Objectives

To support the NPC Charter as stated in Executive Order 12871, the NPC objectives for 1995 are:

Objective 1. To promote cultural change.
Objective 2. To support NPC-recommended changes in labor-management relations.
Objective 3. To assess outcomes.

NPC STRATEGIC ACTIONS

Objectives advanced	Activities
1, 2 and 3	The NPC will collect, communicate, and utilize data and information illustrating the successes of labor and management working in partnership to improve effectiveness, efficiency, and customer service. Priority: "sell" success.
1, 2 and 3	The NPC will collect, analyze, and utilize data and information concerning existing barriers and impediments to the information and success of labor-management partnerships, how parties have overcome for barriers, including training activities, incentives to create successful partnerships, and how parties manage conflict. Priority: help overcome selected common problems.
1 and 3	The NPC will engage in efforts designed to measure the information, conduct, and achievements of partnerships. Priority: stimulate assessment.

National Partnership Council Strategic Action Plan; National Partnership Council Charter

The National Partnership Council (NPC) was created on October 1, 1993, by Executive Order 12871, "Labor Management Partnerships." The NPC was created to "establish a new form of labor-management relations throughout the Executive Branch to promote the principles and recommendations adopted as a result of the National Performance Review." The Executive Order provides:

The Council shall advise the President on matters involving labor-management relations in the Executive Branch. Its activities shall include:

(1) Supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) Proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review (NPR) recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) Collecting and disseminating information about and providing guidance on partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) Utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) Working with the President's Management Council (PMC) toward reform consistent with the National Performance Review's recommendations throughout the executive branch

NPC Strategic Goal

To institutionalize labor-management partnerships in Federal agencies for the purpose of achieving the National Performance Review goal of creating a government that "works better and costs less."

NPC Objectives

To support the NPC Charter as stated in Executive Order 12871, the NPC objectives for 1995 are:

1. To promote cultural change.
2. To support NPC-recommended changes in labor-management relations.
3. To assess outcomes.

To achieve these objectives, the NPC will engage in the following activities:

Strategic Actions

I. To advance objectives 1, 2 and 3, the NPC will collect, communicate, and utilize data and information illustrating the successes of labor and management working in partnership to improve effectiveness, efficiency, and customer service. Priority: "sell" success.

A. Collect

1. Develop "protocols" for the information to be gathered, and verify all reported success stories by contacting all parties involved.
2. Conduct focus groups of parties and those who have assisted the parties in improving their relationship.
3. In follow-up interviews and/or survey, request further specific data and information focusing on success stories from those parties who respond to the NPC survey.
4. Find out about labor/management relations and activities among award winners (awards for quality, hammer awards, etc.).
5. Request information from regional employees of the neutrals and the parties on successes.
6. Review information already collected by other groups (e.g., NAPA, the Alliance).

B. Communicate

1. Design and implement a pro-active internal and external communications strategy (who to reach and how).
2. Feature successful partnerships in all NPC meetings, including meetings held outside the Washington, D.C. area.
3. Publish and regularly update partnership success stories through the NPC clearinghouse and the Office of Personnel Management's electronic bulletin board. Publicize the availability of this resource and how to access it.
4. Enhance the spectrum of speakers on the NPC speakers' bureau by adding individuals from different regions of the country with line management and frontline union perspectives. Identify and encourage targeted speaking opportunities.
5. Publish targeted articles on success stories in union newsletters and bulletins and agency publications.
6. Prepare "talking papers" on success stories and partnership issues for dissemination to trainers/speakers and for use by NPC Members during public discussions of NPC activities an partnership.
7. Present NPC Awards for successes in such areas as relationship building, joint problem solving, quantified improvement in quality, customer service, etc.
8. Prepare an NPC Report to the President on progress under Executive Order 12871.

C. Other Uses of This Information

1. Identify common elements of successful partnerships.
2. Provide written guidance and develop criteria as to what constitutes an effective and successful partnership.

II. To advance Objective 1, 2, and 3, the NPC will collect, analyze, and utilize information concerning existing barriers and other impediments (legal and other) to the formation and success of labor-management partnerships, how parties have overcome the barriers, including training activities, incentives to create successful partnerships, and how parties manage conflict. Priority: help overcome selected common problems.

A. Collect

1. Utilize the same sources, including focus groups, that are being used to obtain data and information about success stories to reveal legal and other barriers and impediments to parties achieving NPR goals.
2. Request parties in successful partnerships to indicate whether further progress is being impeded by legal or other barriers.
3. Obtain information from the parties during NPC meetings.
4. Meet with management groups, such as Federal Managers Association, the Senior Executives Association, and the Coalition for Effective Change, to identify ways to achieve NPR goals.
5. Consider a partnership facilitation simulation with NPC Members.
6. Extract and summarize legal barriers to partnership from the NPC Report to the President and existing GAO studies.

B. Analyze and Use

1. Compile a list of barriers to partnership, methods to overcome barriers, incentives to partnership and methods to manage conflict.
2. Provide guidance on how to overcome common barriers to partnership at different levels.
3. Problem-solve to help overcome common selected problems, including "people" issues (such as how to deal with resistant managers and union representatives); "how to" issues (such as meaning of "employee", how to deal with unrepresented employees, and compliance with Federal Advisory Committee Act requirements); and other problems where a more consultative role would facilitate the formation and success of partnerships.
4. Identify cost-effective ways of obtaining training.
5. Develop an instrument for parties to determine their training needs.
6. Develop an instrument to evaluate various training resource alternatives.
7. Integrate partnership training into existing training programs, such as union steward training, supervisory training, total quality program training, etc.
8. Develop resources for addressing partners' needs, such as: (1) enhancing the clearinghouse's information concerning trainers/providers/change promoters; (2) assisting resolution of resource and resource allocation issues; and (3) creating incentives by working with established awards programs to integrate labor/management partnership as an eligibility or ranking criterion.
9. Develop and implement plans which support NPC-recommended changes necessary to achieve the principles of Executive Order 12871.

III. To advance Objectives 1 and 3, the NPC will engage in efforts designed to measure the formation, conduct, and achievements in partnership. Priority: stimulate assessment.

A. Collect

Collect information on how parties are assessing whether success has been achieved; whether partnerships or partnership agreements exist; what activities are being undertaken by partnerships; the impact of partnership on productivity; the impact of partnership on quality of work and customer service; and information concerning various aspects of training activities undertaken under Executive Order 12871.

1. Utilize the same sources for the data and information collection, including focus groups, to identify criteria related to the assessment of partnership activity, and to identify training activities undertaken.
2. Request specific information concerning the measurement of partnership activities; the amount and types of training activities undertaken; who has been trained; who was the provider; how has training been evaluated; has training had desired results; what skills have been identified as necessary for successful partnerships; and whether there is a partnership training plan.

B. Analyze and Use

1. Identify and highlight good assessment techniques already in place.
2. Provide guidance on the tiers of success during the various stages of partnership.
3. Issue guidance on skills needed for partnership and high performance workplace.

Responsibility for NPC Activities

1. The foregoing NPC activities will be undertaken by NPC Members and by action teams, composed of representatives of NPC Member organizations.
2. The Executive Secretariat, Office of Personnel Management, will provide logistical and administrative support to the action teams.
3. The NPC Members will specifically charge the action teams with definitive objectives and time frames for completion of the objectives.

Coordination with PMC

The NPC recognizes the importance of the support of the President's Management Council in achieving the foregoing objectives.

[FR Doc. 95–3820 Filed 2–15–95; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35350; File No. SR–CBOE–94–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Expedited Proceedings and Offers of Settlement

February 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend CBOE Rules 17.3, "Expedited Proceeding," and 17.8, "Offers of Settlement," to (1) specify that the subject of an Exchange investigation must notify the CBOE staff in writing within 15 days of the date of notification under CBOE Rule 17.2(d), "Notice, Statement and Access," that he elects to proceed in an expedited manner pursuant to CBOE Rule 17.3; (2) reduce the time period during which settlement offers may be submitted by a subject in an Exchange disciplinary matter who seeks to resolve the matter through expedited proceedings pursuant to CBOE Rule 17.3; and (3) allow either the subject or the Exchange staff to end the negotiations for a letter of consent at any point during the negotiations.[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] CBOE Rule 17.2(c), "Report," requires the CBOE staff to submit a written report of an investigation to the Exchange's Business Conduct Committee ("BCC") in every case where an investigation results in a finding that there are reasonable grounds to believe that a violation of the Act or the CBOE's rules has been committed. CBOE Rule 17.2(d) requires the CBOE staff to notify the subject of the report of the general nature of the allegations and of the specific provisions of the Act or of the CBOE's rules that appear to have been violated, and the subject has 15 days from the date of the notification to submit a written statement to the

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The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34987 (November 18, 1994), 59 FR 60858 (November 28, 1994). No comments were received on the proposed rule change.

CBOE Rule 17.3 establishes an expedited process under which the subject of an Exchange investigation may seek to resolve a disciplinary matter through a letter of consent with the Exchange prior to the issuance of a statement of charges against the subject.[4] Under CBOE Rule 17.3, a letter of consent must contain a description of the facts, violation, and sanction, and must be agreed upon by the Exchange staff, the subject of the investigation, and the BCC. If the Exchange staff and the subject are unable to agree upon a letter of consent or if they agree upon a letter of consent and the letter is rejected by the BCC, the matter proceeds as if no letter of consent had been submitted to the BCC (i.e., the BCC may decide to authorize the issuance of a statement of charges against the subject; the subject is then entitled to submit settlement offers to the BCC pursuant to CBOE Rule 17.8 during the 120-day settlement period).

The CBOE proposes to amend CBOE Rule 17.3 to (1) require that any subject who desires to resolve a disciplinary matter through the expedited proceedings using a letter of consent to submit a written notice of this fact to the Exchange staff within 15 days from the date of service of a notification letter; and (2) permit either the Exchange staff or the subject of an investigation to declare an end to the negotiations regarding a letter of consent at any point in the negotiations by providing written notice to the other party.[5] Thereafter, the subject will have 15 days to submit a notification response pursuant to CBOE Rule 17.2(d) and the Exchange staff will then be permitted to bring the matter to the BCC. The CBOE states that these new procedures will establish a start and end date for expedited proceedings so that the number of days a subject spends in the expedited process can be calculated and deducted accordingly from the 120-day settlement period, as proposed under CBOE Rule 17.8.

The proposed amendments to CBOE Rule 17.8, Interpretation and Policy .01 would reduce the time period during which settlement offers may be submitted to the BCC by a subject who seeks to resolve a disciplinary matter through expedited proceedings, is unable to reach an agreement with Exchange staff, and consumes over 30 days in the expedited proceedings. Specifically, under the proposal, the number of days in excess of 30 days that a subject spends in the expedited proceeding will be deducted from the 120-day settlement period applicable to the subject under CBOE Rule 17.8. Regardless of the amount of time spent in unsuccessful negotiations, the respondent will have no less than 14 days to submit a settlement offer to the BCC pursuant to CBOE Rule 17.8(a).

The mechanism for limiting settlement periods will apply only to a subject who attempts to resolve a disciplinary matter through expedited proceedings and is unable to reach an agreement with CBOE staff upon a letter of consent; it will not apply to a subject who attempts to resolve a disciplinary matter through expedited proceedings and who reaches an agreement with CBOE staff upon a letter of consent but finds that the agreed-upon letter of consent is not accepted by the BCC. In addition, under the proposal, the number of days between the time that the expedited process is deemed to end and the time that a subject is served with a statement of charges will not be deducted from the 120-day settlement period applicable to the subject.

Finally, the CBOE proposes to make certain editorial changes to clarify CBOE Rules 17.3 and 17.8 without affecting their substance.

The CBOE believes that the proposal will enhance the efficiency and effectiveness of the Exchange's disciplinary process. Specifically, the Exchange believes that the proposed changes will minimize opportunities for delay and thereby help to preserve evidence and the memories of witnesses.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[6] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In addition, the Commission finds that the Exchange's proposal is consistent with the requirement of Section 6(b)(1) of the Act that an exchange have the capacity to enforce compliance by its members with the Act and the rules and regulations thereunder and the rules of the exchange. The Commission also believes that the proposal is consistent with Section 6(b)(7) of the Act because it provides a fair procedure for disciplining members.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's need to provide prompt, effective and meaningful discipline for violations of Exchange rules and the federal securities laws and the need to ensure fair procedures for the subjects of Exchange investigations to contest CBOE disciplinary proceedings. By streamlining the expedited proceedings established in CBOE Rule 17.3 and limiting the time allowed for the submission of settlement offers under CBOE Rule 17.8, the Commission believes that the proposal should minimize opportunities for delay, thereby helping to preserve evidence and the availability of witnesses. This, in turn, should enhance the quality, consistency, and fairness of the Exchange's disciplinary proceedings and enable the CBOE to better enforce compliance by its members with the Exchange's rules and the federal securities laws.

The CBOE states that the Exchange's current rules allow the subject of an Exchange investigation who unsuccessfully attempts to resolve a disciplinary matter through expedited proceedings to take advantage of the entire 120-day settlement period provided under CBOE Rule 17.8, so that a respondent may utilize the expedited process to circumvent the 120-day settlement period and delay the resolution of a case. Accordingly, the Exchange proposes to amend CBOE Rule 17.8, Interpretation and Policy .01 to deduct from the 120-day settlement period the number of days over 30 days which a subject spends in the expedited process unsuccessfully attempting to reach an agreement with the Exchange staff.

The Commission believes that the proposed amendments to CBOE Rule 17.8 should allow the Exchange's disciplinary proceedings to progress promptly without compromising members' rights to "fair procedures" in CBOE disciplinary proceedings. Specifically, by deducting from the 120-day settlement period the number of days over 30 spent in unsuccessful negotiations under the expedited process, the proposal will prevent the subject of an Exchange investigation from using the expedited process to delay the resolution of a case while continuing to ensure that the subject has adequate time to resolve the matter through a letter of consent or settlement. In this context, the proposal will deduct only the portion of days above 30 spent in unsuccessful negotiations under the expedited process from the 120-day settlement period, thereby limiting the total amount of time a subject may spend in attempts to resolve a case through either a letter of consent under CBOE Rule 17.3 or a settlement offer under CBOE Rule 17.8.

The Commission also believes that it is reasonable to allow the CBOE staff, as well as the subject, to terminate negotiations for a letter of consent at any time during the negotiations. As noted above,[7] the CBOE has stated that it will terminate the letter of consent negotiations if, among other things, it appears to the Exchange that a subject is not negotiating in good faith. The Commission believes that this provision will help to ensure that disciplinary matters are resolved quickly by preventing subjects who do not negotiate in good faith from using the letter of consent negotiations to delay the resolution of the matter.

At the same time, the Commission believes that the proposal should preserve the rights of respondents to submit settlement offers under CBOE Rule 17.8. By providing that respondents will have no less than 14 days following the date of service of the statement of charges to submit offers of settlement to the BCC, regardless of the amount of time spent in the expedited process, the proposal should provide respondents with sufficient time to submit settlement offers under CBOE Rule 17.8. Thus, the Commission believes that the proposed amendments to CBOE Rule 17.8 will help to safeguard the procedural rights of members while preserving the Exchange's ability to administer its disciplinary proceedings in a timely and efficient manner.

The Commission also believes that the proposed amendments to CBOE Rule 17.3 are consistent with the Act. Specifically, the Commission believes that the proposed amendments will streamline the Exchange's expedited proceedings by providing that a subject of an Exchange investigation who wishes to dispose of a matter through a letter of consent must notify the Exchange staff of his intent within 15 days of the receipt of notice under CBOE Rule 17.2(d). In addition, the proposal clarifies the requirements for expedited proceedings by specifying that the subject and the Exchange staff must agree upon the terms of a letter of consent and the letter must be signed by the subject. The proposal also allows either party to deliver a written notice declaring an end to the negotiations, thereby limiting the amount of time that may be spent in unsuccessful negotiations.

In summary, the Commission believes that the proposed amendments to CBOE Rules 17.3 and 17.8 should allow cases to be resolved more quickly and efficiently, while continuing to ensure adequate due process for subjects of disciplinary matters, consistent with Section 6(b)(7) of the Act. Accordingly, the changes should permit Exchange resources to be allocated more effectively in pursuing violations of the Exchange's rules and the federal securities laws and help to ensure that appropriate and fair discipline is imposed for violations. This should further the Exchange's mandate to protect investors and the public interest.

Finally, the Commission believes that it is reasonable for the Exchange to clarify its rules by making editorial changes to CBOE Rules 17.3 and 17.8 which do not affect the substance of those rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–94–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3844 Filed 2–15–95; 8:45 am]

BILLING CODE 8010–01–M

BCC concerning why no disciplinary action should be taken. Under CBOE Rule 17.3, the subject of a report written pursuant to CBOE Rule 17.2 may seek to dispose of the matter through a letter of consent prior to the issue of a statement of charges.

[4] Under CBOE Rule 17.4(b), "Initiation of Charges," when it appears to the BCC from the report of the exchange staff that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the BCC directs the Exchange staff to prepare a statement of charges against the person or organization alleged to have committed a violation (the "respondent") specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Act, as amended, and the rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of which such acts are in violation. Under CBOE Rule 17.8, at any time during the 120-day period following the date of service of a statement of charges, a respondent may submit a written offer of settlement to the BCC. The offer of settlement must contain a proposed stipulation of facts and consent to a specified sanction.

[5] The CBOE states that it will terminate the negotiations for a letter of consent if, among other things, it appears to the Exchange that the subject is not negotiating in good faith. Telephone conversation between Arthur Reinstein, Attorney, CBOE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on February 8, 1995.

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] See note 5, *supra*.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35354; International Series Release No. 783; File No. SR–ISCC–94–01]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing add Immediate Effectiveness of a Proposed Rule Change Regarding the Global Clearing Network Service

February 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 6, 1995, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–ISCC–95–01) as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to ISCC's Rule 50 to expand the categories of entities with which ISCC may establish relationships for its foreign clearance and settlement service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) ISCC Rule 50 currently provides that ISCC may establish a foreign clearing, settlement, and custody service in conjunction with banks and trust companies to be known as the Global Clearance Network ("GCN") Service. The proposed rule change expands the categories of entities with whom ISCC may enter into agreements in order to provide the GCN Service to include any type of entity. This change will permit

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[1] 15 U.S.C. 78s(b)(1) (1988).

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ISCC to enter into a relationship with entities such as INDEVAL, the Mexican securities clearing and depository company. However, ISCC will still be required to file a proposed rule change pursuant to Section 19(b) of the Act before entering into a clearing, settlement, or custody service relationship with any entity.

(b) The proposed change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereuntier.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for the Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(4) thereunder in that the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities or funds and does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–ISCC–95–01 and should be submitted by March 9, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–3882 Filed 2–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20895; File No. 812–9244]

First SunAmerica Life Insurance Company, et al.; Notice of Application

February 10, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission")

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act" or "1940 Act").

APPLICANTS: First SunAmerica Life Insurance Company ("First SunAmerica"), FS Variable Separate Account ("Separate Account"), and SunAmerica Capital Services, Inc.

RELEVANT ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to allow first SunAmerica to deduct from the Separate Account the mortality and expense risk charges and the distribution expense charge imposed under the individual flexible payment deferred annuity contracts ("Contracts") to be funded in the Separate Account.

FILING DATE: The application was filed on September 16, 1994 and amended on February 3, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 7, 1995, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, c/o Routier, Mackey and Johnson, P.C., 1700 K Street NW., Suite 1003, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. First SunAmerica is a stock life insurance company organized under the laws of the State of New York and is admitted to conduct a life insurance and annuity business in that state. SunAmerica Capital Services, Inc., the distributor for the Contracts, is a broker-dealer registered under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

2. The Separate Account was established by First SunAmerica to fund variable annuity contracts. The Contracts that are the subject of the application provide for accumulation of contract values and payment of annuity benefits on a fixed and variable basis. The Contracts will be initially funded through eighteen portfolios of the Separate Account, each portfolio will invest its assets in the shares of one of four available series of the Anchor Series Trust or one of fourteen available series of the SunAmerica Series Trust. Both the Anchor Series Trust and the SunAmerica Series Trust are registered under the 1940 Act as diversified, open-end, management investment companies and the securities they issue are registered under the Securities Act of 1933 (the "1933 Act"). Additional underlying funds may become available in the future. Prior to the issuance of any Contracts, the Separate Account will be registered under the 1940 Act as a Unit Investment Trust and the Contracts thereunder will be registered under the 1933 Act.

3. The Separate Account and each of its portfolios is administered and accounted for as part of the general business of First SunAmerica, but the income, gains or losses of each portfolio are credited to or charged against the assets held in that portfolio in accordance with the terms of the Contracts, without regard to other income, gains or losses of any other portfolio or arising out of any other business First SunAmerica may conduct.

4. The Contracts are available for both retirement plans which do and do not qualify for the special federal tax advantages available under the Internal Revenue Code. Purchase payments under the Contracts may be made to the general account of First SunAmerica under one of the Contracts' fixed account options (the "Fixed Account"), the Separate Account, or allocated between them. The minimum initial purchase payment for a Contract issued on a non-qualified basis is $5,000 and additional purchase payments may be made in amounts of at least $500. The minimum initial purchase payment for a Contract issued on a qualified basis is $2,000, additional purchase payments may be made in amounts of at least $250.

5. If the contract owner dies during the accumulation period, a death benefit will be payable to the beneficiary upon receipt by First SunAmerica of due proof of death.

The standard death benefit is equal to the greater of:

(1) The contract value at the end of the valuation period during which due proof of death (and an election of the type of payment to the beneficiary) is received by First SunAmerica; or

(2) The total dollar amount of purchase payments, minus the sum of:

(a) The total dollar amount of any partial withdrawals and partial annuitizations; and

(b) Premium taxes incurred.

In addition, where permitted by state law, First SunAmerica will provide an enhanced death benefit after the seventh contract year. The enhanced death benefit is: (A) The greater of (1) the contract value at the end of the preceding contract year, plus purchase payments during the current contract year, or (2) the death benefit on the last day of the preceding contract year, minus (B) the total amount of withdrawals and partial annuitizations during the current contract year plus premium taxes incurred.

6. During the accumulation period, amounts allocated to the Separate Account may be transferred among the portfolios and/or the Fixed Account. The first fifteen transactions effecting such transfers in any contract year are permitted without the imposition of a transfer fee. A transfer fee of $25 is assessed on the sixteenth and each subsequent transfer within the contract year. This fee will be deducted from contract values which remain in the portfolio (or the Fixed Account) from which the transfer was made. If such remaining contract value is insufficient to pay the transfer fee, then the fee will be deducted from transferred contract values. After the annuity date, contract values may be transferred from the Separate Account to the Fixed Account but not from the Fixed Account to the Separate Account. Applicants represent that the transfer fee is at cost with no anticipation of profit.

7. Although there is a "free withdrawal" amount, a contingent deferred sales charge, which is referred to as the withdrawal charge, may be imposed upon certain withdrawals. Withdrawal charges will vary in amount depending upon the contribution year of the purchase payment at the time of withdrawal in accordance with the withdrawal charge table shown below.

WITHDRAWAL CHARGE TABLE

Contribution year [1]	Applicable Withdrawal Charge percentage
Zero	7
First	6
Second	5
Third	4
Fourth	3
Fifth	2
Sixth	1
Seventh and later	0

The withdrawal charge is deducted from remaining contract values so that the actual reduction in contract value as a result of the withdrawal will be greater than the withdrawal amount requested and paid. For purposes of determining the withdrawal charge, withdrawals will be allocated first to investment income, if any (which generally may be withdrawn free of withdrawal charge), and then to purchase payments on a first-in, first-out basis so that all withdrawal are allocated to purchase payments to which the lowest (if any) withdrawal charge applies.

8. First SunAmerica deducts a distribution expense charge from each portfolio of the Separate Account during each valuation period which is equal, on an annual basis, to 0.15% of the net asset value of each portfolio. This charge is designed to compensate First SunAmerica for assuming the risk that the cost of distributing the Contracts will exceed the revenues from the withdrawal charge. In no event will this charge be increased.

The distribution expense charge is assessed during both the accumulation period and the annuity period; however, it is not applied to contract values allocated to the Fixed Account.

9. The annuity rates may not be changed under the Contract. For assuming the risks that (1) the life expectancy of an annuity will be greater than that assumed in the guaranteed annuity purchase rates, (2) for waiving the withdrawal charge in the event of the death of the contract owner, and (3) for providing both a standard and enhanced death benefit prior to the annuity date, First SunAmerica deducts a mortality risk charge from the Separate Account. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 1.02% of the net asset value of each portfolio. The portion of the total morality risk charge attributable to First SunAmerica's assuming (1) and (2) and providing a standard death benefit is 0.9%; the balance of 0.12% is assessed for providing the enhanced death benefit. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, First SunAmerica will bear the loss; however, if the charge proves more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion, including offsetting losses experienced when the mortality risk charge is insufficient. The mortality risk charge may not be increased under the Contract.

10. A maintenance fee of $30 is charged against each Contract. The maintenance fee will be assessed each contract year on the anniversary of the issue date of the Contract on or prior to the annuity date. In the event that a total surrender of contract value is made other than on such anniversary, the fee will be assessed as of the date of surrender without proration. This fee reimburses First SunAmerica for expenses incurred in establishing and maintaining records relating to the

[1] With respect to a given purchase payment, a Contribution Year is a calendar year starting from the date of the purchase payment in one calendar year and ending on the anniversary of such date in the succeeding calendar year. The Contribution Year in which a purchase payment is made is "Contribution Year Zero," and subsequent Contribution Years are successively numbered

[2] 17 CFR 200.30–3(a)(12) (1994).

Contracts. The amount of this fee is guaranteed and cannot be increased by First SunAmerica. The maintenance fee is at cost with no anticipation of profit.

11. First SunAmerica bears to risk that the maintenance fee will be insufficient to cover the cost of administering the Contracts. For assuming this expense risk, First SunAmerica deducts an expense risk charge from the Separate Account. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.35% of the net asset value of each portfolio. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, First SunAmerica will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to First SunAmerica. To the extent First SunAmerica realizes any gain, those amounts may be used at its discretion, including offsetting losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants request an order under Section 6(c) of the Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the mortality and expense risk charge and distribution expense charge from the assets of the Separate Account under Contracts.

4. Applicants assert that the mortality and expense risk charge of 1.25% (which includes all risk charges imposed under the Contracts with the exception of the 0.12% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by First SunAmerica under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. First SunAmerica undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

5. Applicants assert that the mortality risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by First SunAmerica under the Contracts for the enhanced death benefit. First SunAmerica undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by First SunAmerica under the Contracts.

6. First SunAmerica has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. First SunAmerica represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. First SunAmerica further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

7. With respect to the distribution expense charge, Applicants represent that the amount of any withdrawal charge imposed when added to any distribution expense charge previously paid, will not exceed 9% of purchase payments and that First SunAmerica will monitor each Contract owner's account for the purpose of ensuring that this limitation is not exceeded.

Conclusion

For the reasons summarized above, Applicants represent that the exemptive relief requested is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–3884 Filed 2–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20894; File No. 811–6228]

Putnam Texas Tax Exempt Income Fund; Application for Deregistration

February 10, 1995

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Putnam Texas Tax Exempt Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on December 9, 1994, and amended on February 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 8, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One Post Office Square, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company that was organized as a Massachusetts business trust. On November 26, 1990, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement became effective on March 4, 1992, and applicant's initial public offering commenced on that date.

2. At a meeting held on January 7, 1994, applicant's trustees approved an agreement and plan of reorganization (the "Plan") whereby applicant would transfer all of its assets and liabilities to Putnam Tax Exempt Income Fund (the "Income Fund"), a Massachusetts business trust registered under the Act, and subsequently liquidate. Applicant's trustees determined that the proposed reorganization would achieve economies of scale, including lower advisory and operating costs, and result in performance benefits for applicant's shareholders.

3. Applicant and Income Fund share a common investment adviser, officers, and trustees. Accordingly, applicant and Income Fund may be deemed to be affiliated persons of each other. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the reorganization. Consequently, in accordance with rule 17a–8, applicant's trustees determined on January 7, 1994, that the purchase of the assets of applicant by Income Fund was in the best interests of applicant's shareholders, and that such purchase would not result in any dilution to the interests of the existing shareholders.[1]

4. Proxy materials relating to the Plan were filed with the SEC on March 14, 1994, and mailed to applicant's shareholders on March 29, a994. Applicant's shareholders voted to approve the Plan at a special meeting held on May 5, 1994.

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

5. As of May 6, 1994, applicant had 1,862,787.75 shares outstanding, having an aggregate net asset value of $16,314,742.28 and a per share net asset value of $8.76. On May 9, 1994, pursuant to the Plan, applicant transferred all of its assets and liabilities to Income Fund in exchange for a number of full and fractional Class A shares of Income Fund having an aggregate net asset value equal to the value of applicant's assets attributable to shares of applicant transferred to Income Fund. No brokerage commissions were paid in connection with such transfer. Applicant then distributed to its shareholders *pro rata* the Income Fund Class A shares it received, in complete liquidation of application.

6. The expenses applicable to the Plan, consisting of accounting, printing, administrative, and certain legal expenses, were $76,669. Applicant paid all expenses in connection with proxy printing and solicitation. All other expenses were assumed ratably by applicant and Income Fund in proportion to their net assets as of May 6, 1994.

7. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. On August 5, 1994, applicant filed the necessary documents in Massachusetts to terminate its existence as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3883 Filed 2–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20896; 811–6433]

Smith Breeden Institutional Intermediate Duration U.S. Government Fund; Notice of Application

February 10, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Breeden Institutional Intermediate Duration U.S. Government Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on November 21, 1994 and amended on February 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 7, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 200 Europa Drive, Suite 200, Chapel Hill, North Carolina 27514.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end, diversified, management investment company under the Act and is organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 8, 1991, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act. With respect to the securities issued by applicant pursuant to the Securities Act of 1933, a registration statement on Form N–1A was filed on November 29, 1991. The registration statement became effective on February 24, 1992, and applicant's initial public offering commenced on March 12, 1992.

2. At a joint meeting held on June 2, 1994, applicant's Board of Trustee (the "Trustees") unanimously determined that applicant's continuation was no longer in the best interest of applicant or its shareholders. The Trustees determined that applicant's

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shareholders would be better served by a liquidation of applicant's assets. The Trustees reached this conclusion based upon the recommendation of Smith Breeden Associates, Inc. (the "Adviser") that applicant's master-feeder structure was no longer the most economically viable alternative over the long term. The master-feeder structure was chosen initially to allow for flexibility in distribution. The Intermediate Series initially had a load and was to be marketed by brokers to a retail market. This plan was not successful and assets only grew to $8 million after two years. The Adviser was supporting an expense cap in both the master and feeder funds creating redundancies in expenses at small asset levels. After two years, the Adviser concluded that it could no longer support the expense caps. The Trustees voted to approve a plan of liquidation whereby the assets of applicant would be distributed in case or in-kind to applicant's shareholders in complete liquidation of the applicant.

3. According to applicant's Declaration of Trust, no shareholder vote was required. Prior to the time of liquidation, applicant was required to notify shareholders of the plan of liquidation in the form of a letter signed by a majority of the Trustees. The letter was sent by overnight courier on July 28, 1994.

4. On August 1, 1994, immediately preceding the liquidation, applicant had a total of 895,357.904 shares of beneficial interest outstanding. At such time, applicant's aggregate and per share net asset value was $8,813,488.2 and $9.843, respectively.

5. All portfolio securities and any other assets of applicant were distributed to applicant's shareholders in connection with the liquidation. On August 1, 1994, applicant transferred its assets to its shareholders at fair market value in cancellation of their shares. Prior to the liquidating distribution, Smith Breeden Intermediate Duration U.S. Government Series ("Intermediate Series") held a majority of applicant's shares (870,004.56). The Intermediate Series received all of applicant's investments and remaining cash. The Intermediate Series assumed all of applicant's liabilities which consisted of: $7,483,827 for accounts payable for securities purchased; $3,697 for accrued expenses; and $2,652 for investment advisory fees. The value of assets and cash received by the Intermediate Series was $8,563,932.70.

6. On August 1, 1994, applicant transferred cash to its minority shareholders in the amount of $249,555.50. This payment was equal to the net asset value of such shareholders' shares on such date. Prior to the plan of liquidation, minority shareholders held 25,353.344 shares.

7. On July 29, 1994, the balance of unamortized organizational expenses was $24,256. Initially, these expenses were paid by the Adviser and applicant established an Account Payable for Organization Costs (The "Account") to the Adviser.

On July 29, 1994, the balance in the Account equalled the balance of unamortized organizational expenses. In liquidation, the Adviser forgave the Account and relinquished its right to be reimbursed for the organization costs it paid.

8. All expenses incurred in connection with applicant's liquidation were borne by the Intermediate Series. Such expenses, totalling $2,000, included legal and drafting fees.

9. As of the date of the application, applicant has no assets, debts, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant will terminate its existence as a business trust under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3885 Filed 2–15–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2167]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Wednesday, March 22, 1995, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 41st session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is tentatively scheduled for September 18–22, 1995, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships and related matters
—International Code of Signals
—Navigational aids and related matters
—Vessel Traffic Services (VTS) and ship reporting
—Revision of SOLAS chapter V
—Human element and bridge operations
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice
—IMO standard marine communication phrases
—Removal of wrecks and towage of offshore installations, structures, and platforms
—Review of the Code for the Safe Carriage of Irradiated Nuclear Fuel (INF Code)
—Operational aspects of Wing in Ground (WIG)—craft
—Safety of passenger submersible craft
—Automatic ship identification transponder systems.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Room 1416, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: February 3, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee

[FR Doc. 95–3891 Filed 2–15–95; 8:45 am]

BILLING CODE 4710–07–M

Shipping Coordinating Committee

[Public Notice 2166]

Subcommittee on Safety of Life at Sea Working Group on Containers and Cargoes; Meeting

The Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open session from 1:00 p.m to 4:00 p.m. on Wednesday, March 15, 1995, in room 6436 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This will be a joint meeting of the Working Group's Panel on Multimodal Transport and Containers, and the Panel on Bulk Cargoes. The purpose of the meeting is to establish U.S. positions on matters to be addressed at the 34th session of the International Maritime Organization's (IMO) Subcommittee on Containers and Cargoes (BC 34) to be held at IMO Headquarters in London, March 27–31, 1995.

Items of particular interest that will be discussed at this meeting include

1. Review of guidance and proposed amendments to the Containers and Cargoes (BC), Cargo Securing Manual Circular (MSC/Circular 385)

2. Incorporation of guidelines for the development of plans for the handling of offshore containers by offshore supply vessels pursuant to the International Safety Management (ISM) Code.

3. Interpretation of the International Convention for Safe Containers (CSC), regarding the applicability of CSC on component containers.

4. Development of a proposed Code of Safe Practice for the Safe Loading and Unloading of Bulk Cargoes, including cargo transfer check-off lists to ensure coordination between vessel crews and transfer facility personnel.

5. Review and amendment of guidelines for the fumigation of bulk grain cargoes pursuant to the International Code for Safe Carriage of Grain in Bulk.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing LCDR D. Du Pont or Mr. Bob Gauvin, U.S. Coast Guard (G–MVI–2), 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1181.

Dated: February 6, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–3892 Filed 2–15–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–008]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues, to appoint new members, and to facilitate turnover of work in progress. Agenda will include elections, working group reports, and discussion of possible changes to licensing regulations. The meetings will be open to the public.

DATES: Meetings of the TSAC working groups will be held on Thursday, March 23, 1995. These meetings are scheduled to run from 8:30 a.m. to 4:30 p.m. The TSAC meeting will be held on Friday, March 24, 1995, from 8:30 a.m. to 1 p.m. Written material should be submitted by March 6, 1995, and persons wishing to make oral presentations should notify the Assistant Executive Director not later than March 16, 1995.

ADDRESSES: The TSAC working groups and committee will meet in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Patrick J. DeShon, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The agenda for the Committee meeting will include:

(1) Licensing workgroup report;
(2) Model company workgroup report;
(3) Push Gear and face wire requirements for towing vessels;
(4) Tow wire for coastal tow vessels;
(5) Operational measures to reduce oil spills from existing tank vessels without double hulls;
(6) Structural measures to reduce oil spills from existing tank vessels without double hulls; and
(7) Possible changes to Coast Guard licensing requirements.

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements during the meeting. Persons wishing to make oral presentations should notify the TSAC Assistant Executive Director no later than March 16, 1995. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Assistant Executive Director by March 6, 1995.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–3953 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Sauk County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed improvement of USH 141 between Abrams and STH 22 in Oconto County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Madrzak, Statewide Projects Engineer, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, is withdrawing the notice of intent to prepare an Environmental Impact Statement for the construction of a four lane facility for Highway 141. The project beings at the intersection with CTH "E" near Abrams and extends northerly to LeMere Road approximately one mile north of STH 22 in the central section of Oconto County. The proposed project consists of adding two lanes to the existing facility, which will be accomplished by constructing four lanes on new location or a combination of new location and added lanes to the existing location. The project will serve to reduce heavy congestion and the accident potential along the existing route.

Initial review of the subject project indicated the possibility of having a significant impact on one or more environmental resources. In accordance with the provisions of the National Environmental Policy Act (NEPA), an intent to prepare an Environmental Impact Statement was filed. Through the course of the project scoping process and investigation of the potential impacts, no significant impacts were identified. An Environmental Assessment (EA) was prepared and a public hearing was held for the project. Based on the findings of the Environmental Assessment, including sufficient analysis to determine that an Environmental Impact Statement is not required, A Finding of No Significant Impact (FONSI) was prepared and approved. Therefore, the intent to prepare an Environmental Impact Statement is withdrawn.

Comments or questions concerning this action should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 112372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued February 6, 1995

Richard C. Madrzak,

Statewide Projects Engineer, Madison, Wisconsin.

[FR Doc. 95–3902 Filed 2–15–95; 8:45 am]

BILLING CODE 4910–22–M

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DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 6, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0045.
Form Number: IRS Form 976.
Type of Review: Extension.
Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Description: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to eliminate all or a portion of a tax deficiency. The IRS uses Form 976 to determine if shareholders have included amounts in gross income.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hr., 44 min.
Learning about the law or the form—47 min.
Preparing and sending the form to the IRS—55 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 3,730 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer
[FR Doc. 95–3854 Filed 2–15–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0033.
Form Number: ATF F 1534–A (5000.19).
Type of Review: Extension.
Title: Tax Authorization Information.
Description: ATF F 1534–A (500.19) is required by ATF to be filed when a respondent's representative, not having a paper of attorney, wishes to obtain confidential information regarding the respondent. After proper completion of the form, information can be released to the representative.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours.
OMB Number: 1512–0371.
Form Number: ATF REC 5400/1.
Type of Review: Extension.
Title: Inventories: Licensed Explosives Importers, Manufacturers, Dealers, and Permittees.
Description: These records show the explosive material inventories of those persons engaged in various activities within the explosives industry and are used by the government as initial figures from which an audit trail can be developed during the course of a compliance inspection or criminal investigation.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 13,106.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 26,212 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–3855 Filed 2–15–95; 8:45 am]
BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

February 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0069.
Form Number: CF 3461 and CF 3461 Alternate.
Type of Review: Extension.
Title: Immediate Delivery Application.
Description: Customs Forms 3461 and 3461 Alternate are used by importers to provide Customs with the necessary information in order to examine and release imported cargo.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 6,100.
Estimated Burden Hours Per Respondent:
Form 3461—15 minutes.
Form 3461 Alternate—3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 838,158 hours.
Clearance Officer: Laverne Williams (202) 927–0229 U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W. Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–3856 Filed 2–15–95; 8:45 am]
BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in early March, 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by February 22, 1995. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below. All comments must be received by close of business February 15, 1995.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Survey Project Number: IRS PC:V 95–004–G.
Type of Review: Revision.
Title: Jacksonville Customer Opinion Survey.
Description: As a result of the Reinvention of Government, the IRS has been asked to change the way they do business. To accomplish this goal, we are changing the configuration of Processing Centers and District Offices and aiming toward a Customer Service Site concept. The Jacksonville District has been selected as one such site, and is expected to be fully operational as such during Fiscal Year 1996.

Jacksonville will be the focal point for providing state-of-the-art service to the taxpaying public via the telephone. A key objective in the successful implementation of the Customer Service concept will be to maintain and improve public accessibility and increase the level of accurate responses provided to callers. An important measure of these factors will be the customers' perceptions and assessments of our services. The success of the Customer Service concept will be largely determined in these terms. Therefore, this feedback will be actively solicited via a Customer Opinion Survey.

Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 1,820.
Estimated Burden Hours Per Respondent: 4 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 121 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 95–3857 Filed 2–15–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 9, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1305.
Form Number: IRS Forms 9460 and 9477.
Type of Review: Extension.
Title: Tax Forms Inventory Report.
Description: These forms are designed to collect tax forms inventory information from banks, post offices, and libraries that distribute Federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. This data is combined with shipment data for each account and used to establish forms distribution guidelines for the following year. Source code data is collected to verify that the different entities received tax forms with the correct code.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents 10,720.
Estimated Burden Hours Per Respondent:
Form 9460—10 minutes.
Form 9477—15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden 2,600 hours.
OMB Number: 1545–1316.
Form Number: IRS Form 9452–A and Letter 2735(NO).
Type of Review: Extension.
Title: Reduce Unnecessary Filings (RUF) Worksheet "Do I Need to File—Worksheet".
Description: The RUF Program has been nationwide for two years. We have successfully decreased the filing of unnecessary returns by 1.1 million in those two years. This has reduced taxpayer burden and been cost effective for the service. This is in line with IRP initiatives and compliance.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,000,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 500,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer
[FR Doc. 95–3858 Filed 2–15–95; 8:45 am]
BILLING CODE 4830–01–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 32
Thursday, February 16, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—February 24, 1995.

PLACE: Room 100 (Hearing Room)—800 North Capital St., N.W., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Trans-Atlantic Conference Agreement Proceedings (Fact Finding Investigation No. 21, Dockets No. 94–29 and 94–30)—Further Consideration of Proposed Settlement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4055 Filed 2–14–95; 2:24 pm]

BILLING CODE 6730–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5–95

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Fri., Feb. 24, 1995 at 11:15 a.m.—Consideration of decisions on claims against Iran. Hearing (if required) on Claim No. IR–2781, Pittston Stevedoring Corporation.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on February 13, 1995.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 95–4004 Filed 2–14–95; 11:46 am]

BILLING CODE 4410–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Notice of Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–403 as amended, the National Women's Business Council announces forthcoming Council Meetings. The meeting will cover action items to be taken by the National Women's Business Council in Fiscal Year 1995 including but not limited to increasing procurement opportunities and access to capital for women business owners.

DATE: February 23, 1995 from 2:00 pm to 5:30 pm.

ADDRESS: 2361 Rayburn House Office Building, Washington, DC 20515.

DATE: February 24, 1994 from 8:30 am to 1:30 pm.

ADDRESS: White House—Old Executive Office Building, Rooms 476 and 474.

STATUS: Open to the public.

CONTACT: For further information contact Amy Millman, Executive Director or Juliette Tracey, Deputy Director, National Women's Business Council, 409 Third Street, S.W., Suite 5850, Washington, D.C. 20024, (202) 205–3850.

[FR Doc. 95–4012 Filed 2–14–95; 11:46 am]

BILLING CODE 6820–AB–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on February 6, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 6, 1995, in Washington DC. The members will consider a mail reclassification case filing before the Postal Rate Commission.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Davis F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–3996 Filed 2–14–95; 9:22 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 32
Thursday, February 16, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Standard for Splicing Copper and Fiber Optic Cables

Correction

In rule document 95–1937 beginning on page 5096 in the issue of Thursday, January 26, 1995, make the following correction:

§1755.200 [Corrected]

On page 5099, in the second column, in §1755.200(d)(4)(ii), in Table 5, in the middle column heading "Maximum straight splice maximum load splice pair" should read "Maximum straight splice pair".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-942-1430-01; U-010084 et al.; 4-00152]

Proposed Continuation of Withdrawals; Utah

Correction

In notice document 95–2127 beginning on page 5696, in the issue of Monday, January 30, 1995, make the following correction:

On page 5697, in the first column, under the heading "*Pine Valley Recreation Area*", in the land description, in T 39 S., R 15 W., "Sec. 24, SE¼SW¼NW¼, NE¼SE¼, NE¼NW¼SE¼." should read "Sec. 24, SE¼SW¼NE¼, NE¼SE¼, NE¼NW¼SE¼.".

BILLING CODE 1505–01–D

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federal register

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Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1994; Notice

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Federal Register

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February 16, 1995

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1994; Notice

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OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1994

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1994.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Resources, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1994 whether or not they were still career reserved on December 31, 1994. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

U.S. Office of Personnel Management.

James B. King,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994

Agency/organization	Career reserved positions
ADMINISTRATIVE CONFERENCE OF THE U.S.:	
ADMINISTRATIVE CONFERENCE OF THE U.S	EXECUTIVE DIRECTOR.
	RESEARCH DIRECTOR.
	GENERAL COUNSEL.
ADVISORY COUNCIL ON HISTORIC PRESERVATION:	
OFC OF THE EXEC DIRECTOR	EXECUTIVE DIRECTOR.
DEPARTMENT OF AGRICULTURE:	
OFC OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSPECTOR GENERAL FOR AUDIT.
	DEP ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	DEP ASST INSPECTOR GENERAL FOR AUDIT.
	ASST INSPECTOR GEN FOR POL DEV & RES MGMT.
	DEP ASST INSP GEN FOR INVEST IMMEDIATE OFFICE.
OFFICE OF ASST SEC'Y ADMINISTRATION	DEPUTY CHIEF FINANCIAL OFFICER.
OFFICE OF OPERATIONS	DIRECTOR OFFICE OF OPERATIONS.
	DEPUTY DIR FOR PROCUREMENT & REAL PROPERTY
OFFICE OF FINANCE AND MANAGEMENT	DIRECTOR, APPLICATIONS SYSTEMS DIVISION
	DIR, INFO RESOURCES MANAGEMENT DIVISION.
	DIRECTOR, FINANCIAL SERVICES DIVISION.
	DIR, THRIFT SAVINGS PLAN DIVISION.
FARMERS HOME ADMINISTRATION	DEPUTY ADMINISTRATOR FOR MANAGEMENT.
	ASSISTANT ADMINISTRATOR, FINANCE OFFICE.
	ASST ADMR FOR AUTOMATED INFORMATION SERVICES.
	ASST ADMR, COMMUNITY AND BUSINESS PROGRAMS.
FEDERAL CROP INSURANCE CORPORATION	ASSISTANT MANAGER FOR ADMINISTRATION.
	ASSISTANT MANAGER FOR INSURANCE SERVICES.
	ASST MANAGER FOR RESEARCH & DEVELOPMENT.
RURAL DEVELOPMENT ADMINISTRATION	ASST ADMR FIN PROG.
AGRICULTURAL MARKETING SERVICE	DEPUTY ADMINISTRATOR, MANAGEMENT.
	DIRECTOR, FRUIT & VEGETABLE DIVISION.
	DIRECTOR, COTTON DIVISION.
	DIRECTOR, DAIRY DIVISION.
	DIRECTOR, LIVESTOCK DIVISION.
	DIRECTOR, TOBACCO DIVISION.
	AGRICULTURAL MARKETING SVC, DIR POULTRY DIV.
	DIRECTOR, COMPLIANCE STAFF.
	DIRECTOR.
	DIRECTOR.
ANIMAL & PLANT HEALTH INSPECTION SERVICE	DEPUTY ADMINISTRATOR FOR MANAGEMENT & BUDGET
	ASSOC DEP ADMINISTRATOR FOR MGT. & BUDGET.
	DEP ADMR, REGULATORY ENFORCEMENT/ANIMAL CARE.
VETERINARY SERVICES	DIRECTOR, NORTHERN REGION.
	DIR, S E REGION, VETERINARY SERVICES.
	DIRECTOR WESTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	DEP ADMR, ANIMAL DAMAGE CONTROL.
	DIR, NATL CTR FOR VETERINARY EPIDEMIOLOGY.
PLANT PROTECTION & QUARANTINE SERVICE	DEP ADMR, INTERNATIONAL SERVICES.
	DIRECTOR NORTHEASTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	DIRECTOR, WESTERN REGION.
	DIRECTOR, SOUTHEASTERN REGION.
	ASST TO THE ASST DEP ADRM, NATL PROGRAMS, PPQ.
	DIRECTOR OPERATIONAL SUPPORT PPQ.
SCIENCE AND TECHNOLOGY	DIRECTOR SCIENCE AND TECHNOLOGY.
FEDERAL GRAIN INSPECTION SERVICE	DIR FIELD MANAGEMENT DIVISION.
FOOD SAFETY AND INSPECTION SERVICE	ASST DEPUTY ADMIN TECHNICAL SERVICES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEP ADMIR-ADMINISTRATIVE MGMT.
	DIR NORTHEAST REGION, PHILA., PA.
	REGL DIRECTOR, ATLANTA, GEORGIA.
	DIR, NORTH CENTRAL REGION, DES MOINES, IOWA.
	DIRECTOR, SOUTHWESTERN REGION, DALLAS, TEXAS.
	ASST DEP ADMR COMP & STAFF OPERATIONS.
	ASST DEP ADMIN (ADMIN MGT).
	ASST TO THE DEP ADMR INTERNATIONAL PROGRAMS.
	ASST DEPUTY ADMINISTRATOR.
	REGIONAL DIRECTOR.
	ASSISTANT DEPUTY ADMINISTRATOR.
	ASSOCIATE DEPUTY ADMINISTRATOR.
	ASSOCIATE ADMINISTRATOR.
	DEPUTY ADMINISTRATOR.
	MATRIX MANAGER, TRACK II.
	DEPUTY ADMINISTRATOR.
	DIRECTOR.
	DEPUTY ADMINISTRATOR.
	ASSISTANT DEPUTY ADMINISTRATOR.
	DEPUTY ADMINISTRATOR.
FOOD & NUTRITION SERVICE	U.S. COORDINATOR FOR CODEX ALIMENTARIUS.
	DEPUTY ADMIN FOR FINANCIAL MANAGEMENT.
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE	DEPUTY ADMR FOR MANAGEMENT.
	ACCOUNTING OFFICER.
FOREIGN AGRICULTURAL SERVICE	DIRECTOR, BUDGET DIVISION.
	DIR, GRAIN & FEED DIV.
AGRICULTURE RESEARCH SERVICE	ASSISTANT DEPUTY ADMINISTRATOR MANAGEMENT.
	DEP ADMR FOR ADM MGMT.
	ASSOC DEP ADMIN FOR ADMINISTRATIVE MANAGEMENT.
	ASST ADMINISTRATOR FOR TECHNOLOGY TRANSFER.
NATIONAL PROGRAM STAFF OFFICE	GLOBAL CHANGE RESEARCH STAFF ASSISTANT.
	DEPUTY ADMINISTRATOR NATIONAL PROGRAM STAFF.
	ASSOC DEP ADMR.
BELTSVILLE AREA OFFICE	ASSOCIATE DEP ADMINISTRATOR, ANIMAL SCIENCES.
	DIRECTOR BELTSVILLE AREA OFFICE.
	ASSOC DIR BELTSVILLE AREA.
	ASSOC DEP ADMR, NATURAL RESOURCES/SYSTEMS.
	ASSOCIATE DEPUTY ADMIN GENETIC RESOURCES.
	ASSOCIATE DEPUTY ADMINISTRATOR.
	SUPERVISORY RESEARCH CHEMIST.
	DIR U.S. NATIONAL ARBORETUM.
	DIR BELTSVILLE HUMAN NUTRITION RESEARCH CTR.
NORTH ATLANTIC AREA OFFICE	DIRECTOR PLANT SCIENCES INSTITUTE.
	DIRECTOR, EASTERN REGL RESEARCH CENTER.
	RESEARCH PROGRAMS DIRECTOR.
	DIRECTOR, NORTH ATLANTIC AREA.
SOUTH ATLANTIC AREA OFFICE	ASSOC DIR, NORTH ATLANTIC AREA.
	RES LEADER-PLANT PHYSIO & PHOTOSYNTHESIS RES.
	ASSOCIATE DIR SOUTH ATLANTIC AREA.
	DIRECTOR, RUSSELL RESEARCH CENTER.
	SUPERVISORY RESEARCH GENETICIST.
	SUPERVISORY RESEARCH PHYSIOLOGIST.
MIDWEST AREA OFFICE	DIRECTOR, SOUTH ATLANTIC AREA.
	DIR MIDWEST AREA.
	ASSOC DIR, MIDWEST AREA.
	SUPERVISORY VETERINARY MEDICAL OFFICER.
	SUPERVISORY RESEARCH CHEMIST.
	SUPERVISORY RESEARCH GENETICIST (PLANTS).
MIDSOUTH AREA OFFICE	DIR NATL CTR FOR AGRI UTILIZATION.
	DIR, SOUTHERN REGIONAL RES CENTER, NEW ORLEANS.
	DIRECTOR, MID-SOUTH AREA.
CENTRAL PLAINS AREA OFFICE	ASSOCIATE DIRECTOR, MID SOUTH AREA..
SOUTHERN PLAINS AREA OFFICE	DIR NATL ANIMAL DISEASE CENTER.
	DIRECTOR SOUTHERN PLAINS AREA.
	DIRECTOR CONSERVATION & PRODUCTION RES LAB.
	ASSOC DIR, SOUTHERN PLAINS AREA.
	DIR, SUBTROPICAL AGRICULTURAL RES LABORATORY.
NORTHERN PLAINS AREA OFFICE	RESEARCH LEADER F & F SAFETY RES LABORATORY.
	DIRECTOR, NORTHERN PLAINS AREA.
	ASSOCIATE DIRECTOR, NORTHERN PLAINS AREA OFC.
	DIR R.L. HRUSKA US MEAT ANIMAL RES CENTER.
	SUPERVISORY SOIL SCIENTIST.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
PACIFIC WEST AREA OFFICE	DIRECTOR, WESTERN REGIONAL RESEARCH CENTER.
	RES LEADER NATURAL PRODUCTS CHEMISTRY RES.
	DIR, WESTERN HUMAN NUTRITION RESEARCH CENTER.
	DIRECTOR, PACIFIC WEST AREA OFFICE.
	DIRECTOR, PLANT GENE EXPRESSION CENTER.
	ASSOCIATE DIRECTOR, PACIFIC WEST AREA OFFICE.
	DIR, WESTERN COTTON RESEARCH LABORATORY.
	SUPERVISORY RESEARCH PLANT PATHOLOGIST.
	SUPERVISORY RESEARCH PLANT PATHOLOGIST.
	SUPERVISORY SOIL SCIENTIST.
	SUPERVISORY SOIL SCIENTIST.
COOPERATIVE STATE RESEARCH SERVICE	ASSOC ADMINISTRATOR FOR GRANTS & PROGRAM SYS.
EXTENSION SERVICE	DEPUTY ADMIN MANAGEMENT.
SOIL CONSERVATION SERVICE	DIRECTOR ENGINEERING DIVISION.
	DIR ECOLOGICAL SCIENCES AND TECHNOLOGY DIVISI.
	DEPUTY CHIEF FOR MANAGEMENT.
	DIR, CONSV PLANNING AND APP.
	DIRECTOR, WATERSHED PROJECTS DIVISION.
	DIR, BASIN & AREA PLANNING (SOIL CONSERV).
	ASSOCIATE DEPUTY CHIEF FOR MANAGEMENT.
	DIR, SOILS (SOIL SCIENTIST).
	DIR, LAND TREATMENT PROGRAM.
	DIR INFORMATION RES MANAGEMENT DIVISION.
	DIR SOUTH NATIONAL TECHNICAL CENTER.
	ASSOCIATE DEPUTY CHIEF FOR TECHNOLOGY SCI TEC.
	DIRECTOR, STRATEGIC PLANNING DIVISION.
FOREST SERVICE	DEP CHF FOR ADMINISTRATION.
	ASSOCIATE DEPUTY CHIEF-ADMINISTRATION.
	DIR FOREST PEST MGMT STAFF.
	DIR FISCAL AND ACCOUNTING MANAGEMENT.
	ASSOCIATE DEPUTY CHIEF FOR ADMINISTRATOR.
	DIRECTOR, FIRE AND AVIATION STAFF.
RESEARCH	DIRECTOR, TIMBER MGMT RESEARCH STAFF.
	DIR INSECT AND DISEASE RESEARCH STAFF.
	DIR FOREST ENVIRONMENT RESEARCH STAFF.
	DIRECTOR, FOREST RESOURCE ECONOMICS STAFF.
	DIR, FOREST FIRE & ATMOS SCIENCES RES STAFF.
NAT'L FOREST SYSTEM	DIR, RANGE MANAGEMENT STAFF.
	DIR, RECREATION, MGMT STAFF.
	DIR TIMBER MANAGEMENT STAFF.
	DIRECTOR, ENGINEERING STAFF.
	DIRECTOR, LANDS STAFF.
	DIR LAND MANAGEMENT PLANNING STAFF.
	DIR, WILDLIFE & FISHERIES MGMT STAFF.
	DIR, MINERALS & GEOLOGY STAFF.
	DIRECTOR, WATERSHED & AIR MANAGEMENT STAFF
	DIR ECOLOGICAL MANAGEMENT.
	IPA ASSIGNMENT.
STATE & PRIVATE FORESTRY	DIR COOPERATIVE FORESTRY.
FIELD UNITS	NE AREA DIR, STATE & PRIVATE FORESTRY, U DARB.
	DIR INTERMOUNTAIN FOREST & RANGE EXP STAT, OGD.
	DIR N EASTERN FOREST EXPERIMENT STATION.
	DIR, NORTH CENTRAL FOREST EXP STATION.
	DIR, PACIFIC NW FOREST & RANGE EXP STATION.
	DIR, PACIFIC SW FOR & RANGE EXPER STA.
	DIRECTOR ROCKY MT FOREST & RANGE EXPER STAT
	DIR S EASTERN FOREST EXPERIMENT STATION.
	DIRECTOR, FOREST PRODUCTS LABORATORY.
	DEP DIR FOREST PRODUCTS LAB.
	DEPUTY REGIONAL FORESTER.
INTERNATIONAL FOREST SYSTEM	ASSOCIATE DEPUTY CHIEF.
	DIR INTERNATIONAL INSTITUTE OF TROPICAL FOREST
ECONOMIC RESEARCH SERVICE	ADMR, ECONOMIC RESEARCH SERVICE.
	ASSOCIATE ADMINISTRATOR-ECONOMIC RSCH SVC.
	DIRECTOR AGRICULTURE & TRADE ANALYSIS DIV.
	DIRECTOR COMMODITY ECONOMICS DIVISION.
	DIRECTOR RESOURCES & TECHNOLOGY DIVISION.
	DIRECTOR AGRICULTURE & RURAL ECON DIVISION.
	DEP ADMIN FOR INFO RES & MGT OPER.
ECONOMICS MANAGEMENT STAFF	DIRECTOR, ECONOMICS MANAGEMENT STAFF.
NATIONAL AGRICULTURAL STATISTICS SERVICE	ADMR, NATIONAL AGRICULTURAL STATISTICS SERV
	DEPUTY ADMINISTRATOR FOR OPERATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIR ESTIMATES DIV.
	DIR, STATE STATISTICAL DIVISION.
	DEPUTY ADMINISTRATOR FOR PROGRAMS.
	DIR, SYSTEMS & INFORMATION DIVISION.
	DIRECTOR, SURVEY MANAGEMENT DIVISION.
WORLD AGRICULTURAL OUTLOOK BOARD	CHAIRPERSON.
	DEP CHAIRPERSON.
OFFICE OF ENERGY	DIRECTOR, OFFICE OF ENERGY.
AMERICAN BATTLE MONUMENTS COMMISSION:	
OFFICE OF EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR.
BOARD FOR INTERNATIONAL BROADCASTING	
BOARD STAFF	EXEC DIRECTOR.
	DEP EXEC DIRECTOR/DIRECTOR OF PROGRAM REVIEW.
	GENERAL COUNSEL.
	DIRECTOR OF FINANCIAL & CONGRESSIONAL AFFAIRS.
	INSPECTOR GENERAL.
DEPARTMENT OF COMMERCE.	
OFFICE OF THE GENERAL COUNSEL	ASST GENERAL COUNSEL FOR FINANCE & LITIGATION
	DIRECTOR, OFFICE OF INTELLIGENCE LIAISON.
OFC OF ASST SECY FOR ADMINISTRATION	DIR FOR FEDERAL ASST & MANAGEMENT SUPPORT.
	DIR FOR FINANCIAL MANAGEMENT.
DIRECTOR FOR MANAGEMENT AND INFORMATION	DIR, FOR INFORMATION RESOURCES MANAGEMENT.
DIRECTOR FOR PROCUREMENT & ADMINISTRATIVE SERVICES.	DIRECTOR FOR PROCUREMENT & ADMIN SERVICES.
	DEP DIR FOR PROCUREMENT & ADMIN SERVICES.
	DIRECTOR, OFFICE OF SECURITY.
OFFICE OF HUMAN RESOURCES MANAGEMENT	DEPUTY DIRECTOR FOR PROCUREMENT.
	DIRECTOR FOR HUMAN RESOURCES MANAGEMENT.
DIRECTOR FOR PLANNING BUDGET AND EVALUATION	DEP DIR OF HUMAN RESOURCES MANAGEMENT.
OFC OF THE UNDER SECY FOR ECONOMIC AFFAIRS	DIRECTOR, OFFICE OF BUDGET.
	DEP ASST SECY FOR STATISTICAL AFFAIRS.
BUREAU OF ECONOMIC ANALYSIS	DIR OFFICE OF BUSINESS ANALYSIS.
	DIRECTOR.
	DEP DIR, BUR OF ECONOMIC ANALYSIS.
	ASSOC DIR FOR NATL ECONOMIC ACCOUNTS.
	ASSOC DIR FOR REGIONAL ECONOMICS.
	ASSOC DIR FOR INTERNATIONAL ECONOMICS.
	CHIEF ECONOMIST.
	CHF STATISTICIAN.
	ASST TO THE DIRECTOR FOR ECONOMETRICS.
	CHF NATL INCOME & WEALTH DIV.
	CHIEF, BUSINESS OUTLOOK DIV.
BUREAU OF THE CENSUS	CHIEF INTERNATIONAL INVESTMENT DIVISION.
	DEP DIR.
	ASST DIRECTOR FOR ADP.
	PRINCIPAL ASSOC DIR & CHIEF FINANCIAL OFFICER.
	PRINCIPAL ASSOCIATE DIRECTOR FOR PROGRAMS.
	PROG MGR, COMPUTER-ASSISTED SURVEY INFO COLL.
	CHIEF, TECHNICAL SERVICES DIVISION.
	CHIEF, PERSONNEL DIVISION.
	CHIEF ADMIN & PUBLICATIONS SERVICES DIVISION.
	SENIOR PROGRAM ANALYST.
	ASST DIR FOR ADMINISTRATION.
	ASSOC DIR FOR PLANNING & ORGAN DEVELOPMENT.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	ASSOC DIR FOR INFORMATION TECHNOLOGY.
	CHIEF DATA USER SERVICES DIVISION.
	CHIEF, COMPUTER SERVICES DIVISION.
DEMOGRAPHIC PROGRAMS	ASSOCIATE DIR FOR DEMOGRAPHIC PROGS.
	CHF, POPULATION DIV.
	CHIEF DEMOGRAPHIC SURVEYS DIVISION.
	CHF, HOUSING & HOUSEHOLD ECON STATISTICS DIV.
	CHIEF, STATISTICAL METHODS DIVISION.
DECENNIAL CENSUS	CHIEF INTL STATISTICAL PROGRAMS CENTER.
	ASSOCIATE DIRECTOR FOR THE DECENNIAL CENSUS.
	ASSISTANT DIRECTOR FOR DECENNIAL CENSUS.
	CHF, GEOGRAPHY DIV.
	CHIEF DECENNIAL MANAGEMENT DIVISION.
STATISTICAL DESIGN METHODOLOGY AND STANDARDS	CHIEF, DECENNIAL STATISTICAL STUDIES DIV.
	ASSOC DIR FOR STATISTICAL STANDARDS & METHOD.
	CHIEF, YEAR 2000 RES & DEV STAFF.
	CHIEF STATISTICAL RESEARCH DIVISION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
FIELD OPERATIONS	ASSOC DIR FOR FIELD OPERATIONS.
	CHIEF, FIELD DIVISION.
	CHIEF, DATA PREPARATION DIVISION.
ECONOMIC PROGRAMS	ASSOCIATE DIRECTOR FOR ECONOMIC PROGRAMS.
	ASSISTANT DIRECTOR FOR ECONOMIC PROGRAMS.
	CHIEF, AGRICULTURE DIV.
	CHIEF, SERVICES DIVISION.
	CHF, CONSTRUCTION STATISTICS DIV.
	CHF, ECONOMIC PLANNING & COORDINATION DIV.
	CHF, FOREIGN TRADE DIV.
	CHF, GOVERNMENT DIV.
	CHF, MANUFACTURING & CONSTRUCTION DIVISION.
	CHF, ECONOMIC STATISTICAL M & P DIVISION.
	CHIEF, ECONOMIC PROGRAMMING DIVISION.
INSTITUTE FOR TELECOMMUNICATIONS SCIENCES	ASSOC ADMR FOR TELECOMMUNICATIONS SCIENCE.
	DEPUTY DIR FOR SYSTEMS & NETWORKS.
	DEPUTY DIRECTOR FOR SPECTRUM.
ECONOMIC DEVELOPMENT ADMINISTRATION	DEP DIRECTOR FOR PROGRAM OPERATIONS.
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPEC GEN FOR COMPL & AUDIT RESOLUTION.
	DEPUTY ASSISTANT INSPECTOR GEN FOR AUDITING.
	ASST INSP GEN FOR PLNG, EVAL & INSPECTIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEP ASST INSP GEN FOR INSP & RES.
	ASST INSPECTOR GENERAL FOR SYST EVALUATION.
OFC OF THE UNDER SEC FOR EXPORT ADMINISTRATION	DIRECTOR OF ADMINISTRATION.
OFC OF ASST SECY FOR TRADE DEVELOPMENT	DIRECTOR, OFFICE OF CONSUMER GOODS.
OFC OF DEP ASST SECY FOR COMPLIANCE	DIR, OFFICE OF AGREEMENTS COMPLIANCE.
	DIR, OFFICE OF ANTIDUMPING COMPLIANCE.
OFC OF DEP ASST SECY FOR INVESTIGATIONS	DIR, OFFICE OF ANTIDUMPING INVESTIGATIONS.
	DIR, OFFICE OF COUNTERVAILING INVESTIGATIONS.
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	DIR FOR HIGH PERFORMANCE COMPUTING COMMUN.
	DIR, NOAA COASTAL OCEAN PROGRAM OFFICE.
SYSTEMS PROGRAM OFFICE	DIRECTOR, SYSTEMS ENGINEERING STAFF.
	NEXRAD PROGRAM MANAGER.
	GOES PROGRAM MANAGER.
	CHF/AWI INTERACTIVE PROCESSING SYSTEM/1990'S.
	FLEET MODERNIZATION PROGRAM MANAGER.
OFFICE OF ADMINISTRATION	DIR FOR INFORMATION SYSTEMS & FINANCE.
	DIR FOR HUMAN RESOURCES MANAGEMENT.
	DIR FOR PROCUREMENT, GRANTS & ADM SERVICES.
NATIONAL MARINE FISHERIES SERVICE	SENIOR SCIENTIST FOR FISHERIES.
	DIR, OFC OF RESEARCH & ENVIRONMENTAL INFO.
FISHERIES RESOURCE MANAGEMENT	DIRECTOR, OFFICE OF HABITAT PROTECTION.
	DIRECTOR, OFFICE OF ENFORCEMENT.
	DIR, OFFICE OF ENFORCEMENT.
FISHERIES CENTERS	SCIENCE & RESEARCH DIR, NORTHEAST REGION.
	SCIENCE & RESEARCH DIR.
	SCIENCE & RESEARCH DIR, SOUTHWEST REGION
	SCIENCE & RESEARCH DIR.
	SCIENCE AND RESEARCH DIRECTOR.
NATL ENVIRON SATELLITE, DATA & INFO SERVICES	SATELLITE SYSTEMS PROGRAM MANAGER.
DEPUTY ASST ADMR FOR SATELLITES	DIR, NATL OCEANOGRAPHIC DATA CENTER.
	DIRECTOR, NATIONAL CLIMATIC DATA CENTER.
	DIR, NATIONAL GEOPHYSICAL DATA CENTER.
	POES PROGRAM MANAGER.
	SYSTEMS PROGRAM DIRECTOR.
	DIR OFC OF SYS DEVELOPMENT.
OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH	DIRECTOR, FORECAST SYSTEMS LABORATORY.
OFFICE OF OCEANIC RESEARCH PROGRAMS	DEP DIR, OFC OF OCEANIC RESEARCH PROGRAMS.
	PROGRAM DIRECTOR FOR WEATHER RESEARCH.
	DEP ASST ADMR FOR EXTRAMURAL RESEARCH.
ENVIROMENTAL RESEARCH LABORATORIES	DEP DIR, ENVIRONMENTAL RESEARCH LABORATORIES.
	ASSOCIATE DIRECTOR FOR SCIENCE & DATA.
	DIR CLIMATE MONITORING & DIAGNOSTICS LAB.
ATLANTIC OCEANOGRAPHIC AND METROLOGICAL LABS	DIR, ATLANTIC OCEANOGRAPHIC & METEOROLOGICAL.
	DIR, SPACE ENVIRONMENT LABORATORY.
WAVE PROPAGATION LAB	DIRECTOR.
AERONOMY LAB	DIRECTOR, AERONOMY LABORATORY.
GEOPHSICAL FLUID DYNAMICS LABORATORIES	DIRECTOR.
	SUPERVISORY RSCH METEOROLOGIST.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	SUPERVISORY RSCH METEOROLOGIST.
GREAT LAKES ENVIRONMENTAL RESERCH LAB	SUPERVISORY RSCH METEOROLOGIST.
NATIONAL SEVERE STORMS LABORATORY	DIR GREAT LAKES ENVIRONMENTAL RESEARCH LAB.
AIR RESOURCES LABORATORY	DIR NAT'L SEVERE STORMS LAB.
PACIFIC MARINE ENVIRONMENTAL LAB	DIRECTOR AIR RESOURCES LABORATORY
NATIONAL OCEAN SERVICES	DIR PACIFIC MARINE ENVIRONMENTAL LAB.
	CHF, MARINE ANALYSIS & INTERPRETATION DIV
	DIR, OFFICE OF OCEAN & EARTH SCIENCES.
	SENIOR SCIENTIST FOR OCEAN SERVICES.
	CHIEF, OCEAN OBSERVATION DIVISION.
OCEAN RESOURCES CONSERVATION AND ASSESSMENT	CHIEF OCEAN & LAKE LEVELS DIVISION.
	CHF, STRATEGIC ENVIRONMENTAL ASSESSMENTS DIV
	CHF, HAZARDOUS MATERIALS R & A DIVISION.
COAST AND GEODETIC SERVICES	CHIEF COSTAL MONITORING BIOEFFECTS ASSES DIV
	CHIEF, GEOSCIENCES LABORATORY.
NATIONAL WEATHER SERVICE	CHIEF, AERONAUTICAL CHARTING DIVISION.
	ASOS PROGRAM MANAGER.
	DIRECTOR, NOAA DATA BUOY OFFICE.
	CHIEF, MANAGEMENT AND BUDGET STAFF.
	CHIEF, INTERNATIONAL AFFAIRS DIVISION.
	CHF, OFC OF THE FED COORDINATOR FOR METEOROLG.
	DEPUTY ASSISTANT ADMINISTRATOR FOR OPERATIONS.
	DIR, NEXRAD OPERATIONAL SUPPORT FACILITY.
	DIRECTOR, STORM PREDICTION CENTER.
	TRANSITION DIR, TRANSITION PROG OFC.
OFFICE OF METEOROLOGY	DIRECTOR, MARINE PREDICTION CENTER.
	DIR, OFFICE OF METEOROLOGY.
	CHIEF OPERATIONS DIVISION.
OFFICE OF HYDROLOGY	CHF, PROG REQUIREMENTS & PLNG DIVISION.
	DIRECTOR, OFFICE OF HYDROLOGY.
	CHIEF, HYDROLOGIC SERVICES DIVISION.
OFFICE OF SYSTEMS OPERATIONS	CHIEF, HYDROLOGIC RESEARCH LABORATORY.
	CHIEF, ENGINEERING DIVISION.
	CHIEF, SYSTEMS OPERATIONS CENTER.
OFFICE OF SYSTEMS DEVELOPMENT	CHIEF, SYSTEMS INTEGRATION DIVISION.
	DIR, OFFICE OF SYSTEMS OPERATIONS.
	DIRECTOR, OFFICE OF SYSTEMS DEVELOPMENT.
	CHIEF, INTEGRATED SYSTEMS LABORATORY.
	CHIEF, TECHNIQUES DEVEL LABORATORY.
	CHIEF, ADVANCED DEVEL & DEMONSTRATION LAB.
NATIONAL METEOROLOGICAL CTR	DEP DIR, OFFICE OF SYSTEMS DEVELOPMENT.
	DIRECTOR NATIONAL METEOROLOGICAL CENTER.
	DEPUTY DIRECTOR.
	DIRECTOR, CLIMATE ANALYSIS CENTER.
	CHIEF, AUTOMATION DIVISION.
	CHIEF, DEVELOPMENT DIV.
	CHF, METEOROLOGICAL OPERATIONS DIVISION.
	DIR, NATL SEVERE STORMS FORECAST CENTER.
REGIONAL OFFICES & CENTERS	DIRECTOR NATL HURRICANE CENTER.
	DIR SOUTHERN REGION, FT WORTH.
	DIR, SALT LAKE CITY REGION.
	DIR, ALASKA REGION, ANCHORAGE.
	DIR EASTERN REGION NWS.
	DIRECTOR CENTRAL REGION.
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	DIRECTOR FOR QUALITY PROGRAMS.
	DEP DIR, OFC OF QUALITY PROGRAMS.
	ASSOC DIR FOR TECH & BUSINESS ASSESSMENT.
OFFICE OF ASSOCIATE DIRECTOR	DIRECTOR, PROGRAM OFFICE.
	DIRECTOR FOR INTERNATIONAL & ACADEMIC AFFAIRS.
	DEPUTY DIRECTOR FOR INTERNATIONAL AFFAIRS.
ADVANCED TECHNOLOGY PROGRAM	DEPUTY DIRECTOR FOR ACADEMIC AFFAIRS.
	DEP DIRECTOR, ADVANCED TECHNOLOGY PROGRAM.
TECHNOLOGY SERVICES	DIRECTOR, ADVANCED TECHNOLOGY PROGRAM.
	DEPUTY DIRECTOR, TECHNOLOGY SERVICES.
	DIR, OFC OF TECHNOL EVALUATION & ASSESSMENT
OFFICE OF TECHNOLOGY COMMERCIALIZATION	ASSOCIATE DIRECTOR FOR PROGRAM QUALITY.
OFFICE OF MEASUREMENT SERVICES	DIR, OFFICE OF TECHNOLOGY COMMERCIALIZATION.
	CHF, PHY MEAS S/P OFC OF MEASUREMENT SERVICES.
OFFICE OF STANDARDS SERVICES	DIRECTOR, OFFICE OF MEASUREMENT SERVICES.
ELECTRONICS AND ELECTRICAL ENGINEERING LABORATORY.	DIR, OFFICE OF STANDARDS SERVICES.
	DIR, ELECTRONICS & ELECTRICAL ENG LABORATORY.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY DIRECTOR.
	DIR, OFFICE OF MICROELECTRONICS PROGRAMS.
ELECTRICITY DIVISION	CHIEF, ELECTRICITY DIVISION.
ELECTROMAGNETIC TECHNOLOGY DIVISION	CHF-ELECTROMAGNETIC TECHNOLOGY DIVISION.
SEMICONDUCTOR ELECTRONICS DIVISION	CHIEF SEMICONDUCTOR ELECTRONICS DIVISION.
	SENIOR RESEARCH SCIENTIST.
MANUFACTURING ENGINEERING LABORATORY	DIR, MANUFACTURING ENGINEERING LABORATORY.
	CHIEF, AUTOMATED PRODUCTION, TECHNOLOGY DIV.
	MANAGER FOR INDUSTRIAL RELATIONS.
	PROGRAM MANAGER AUTOMATED MANUFACTURING RES.
	DEP DIR, MANUFACTURING ENGINEERING LABORATORY.
	DIR, MANUFACTURING EXTENSION PARTNERSHIP PROG.
PRECISION ENGINEERING DIVISION	CHIEF, PRECISION ENGINEERING DIVISION.
ROBOT SYSTEMS DIVISION	CHIEF, INTELLIGENT SYSTEMS DIVISION.
FACTORY AUTOMATION SYSTEM DIVISION	CHIEF, FACTORY AUTOMATION SYSTEMS DIVISION.
PHYSICS LABORATORY	DIRECTOR, PHYSICS LABORATORY.
	COORDINATOR OF RADIATION MEASUREMENT SERVICES.
	COORDINATOR OF PROGRAM DEVELOPMENT.
	DEPUTY DIRECTOR, PHYSICS LABORATORY.
IONIZING RADIATION DIVISION	CHIEF IONIZING RADIATION DIVISION.
FUNDAMENTAL CONSTANTS DATA CENTER	MGR, FUNDAMENTAL CONSTANTS DATA CENTER.
MOLECULAR PHYSICS DIVISION	CHIEF MOLECULAR PHYSICS DIV.
QUANTUM METROLOGY DIVISION	CHIEF, QUANTUM METROLOGY DIVISION.
ATOMIC PHYSICS DIVISION	CHIEF, ATOMIC PHYSICS DIVISION.
TIME AND FREQUENCY DIVISION	CHIEF, TIME AND FREQUENCY DIVISION.
QUANTUM PHYSICS DIVISION	SENIOR SCIENTIST.
	SENIOR SCIENTIST & FELLOW OF JILA.
	SENIOR SCIENTIST & FELLOW OF JILA.
ELECTRON AND OPTICAL PHYSICS	GROUP LEADER FOR FAR ULTRAVIOLET PHYSICS.
CHEMICAL SCIENCE AND TECHNOLOGY LABORATORY	DIR, CHEMICAL SCI & TECHNOLOGY LABORATORY.
	DEPUTY DIRECTOR FOR PROGRAMS.
INORGANIC ANALYTICAL RESEARCH DIVISION	CHIEF, INORGANIC ANALYTICAL RESEARCH DIVISION.
ORGANIC ANALYTICAL RESEARCH DIVISION	CHIEF, ORGANIC ANALYTICAL RESEARCH DIVISION.
	CHIEF, ANALYTICAL CHEMISTRY DIVISION.
SURFACE AND MICROANALYSIS SCIENCE DIVISION	CHF, SURFACE & MICROANALYSIS SCIENCE DIVISION.
	GROUP LEADER, SURFACE SPEC. & THIN FILMS.
BIOTECHNOLOGY DIVISION	CHIEF, BIOTECHNOLOGY DIVISION.
THERMOPHYSICS DIVISION	CHIEF, THERMOPHYSICS DIVISION.
MATERIALS SCIENCE AND ENGINEERING LABORATORY	DIR, MATERIALS SCI & ENG LABORATORY.
	SENIOR SCIENTIST.
	SCIENTIFIC ASSISTANT TO THE DIRECTOR, IMSE.
	DEP DIR, MATERIALS SCI & ENG LAB.
	CHIEF, FILM & FIBER TECHNOLOGY.
MATERIALS RELIABILITY DIVISION	CHIEF, MATERIALS RELIABILITY DIV.
OFFICE OF INTELLIGENT PROCESSING OF MATERIALS	CHF, OFC OF INTELL PROCESSING OF MATERIALS.
POLYMERS DIVISION	CHIEF, POLYMERS DIVISION.
METALLURGY DIVISION	CHF, METALLURGY DIVISION.
	PHYSICIST (SOLID STATE).
REACTOR RADIATION DIVISION	CHIEF, REACTOR RADIATION DIVISION.
	GROUP LEADER, NEUTRON CONDENSED MATTER SCIENCE.
	CHIEF, REACTOR OPERATIONS.
COMPUTER SYSTEMS LABORATORY	CHIEF, SYSTEMS & NETWORK ARCHITECTURE DIVISION.
	CHF, ADVANCED SYSTEMS DIVISION.
	CHF, INFO SYST ENGINEERING DIVISION.
	ASSOCIATE DIRECTOR FOR COMPUTER SECURITY.
	ASSOCIATE DIRECTOR FOR PROGRAM IMPLEMENTATION.
	CHIEF, COMPUTER SECURITY DIVISION.
BUILDING AND FIRE RESEARCH LABORATORY	CHIEF, STRUCTURES DIVISION.
	DIR, BUILDING & FIRE RESEARCH LABORATORY.
	DEP DIR, BUILDING & FIRE RESEARCH LABORATORY.
	ASST DIR, BUILDING & FIRE RESEARCH LABORATORY.
BUILDING ENVIRONMENT DIVISION	CHIEF, BUILDING ENVIRONMENT DIVISION.
BUILDING MATERIALS DIVISION	CHF, BUILDING MATERIALS DIV.
FIRE SCIENCE AND ENGINEERING DIVISION	CHIEF, FIRE SAFETY ENGINEERING DIVISION.
FIRE MEASUREMENT AND RESEARCH DIVISION	CHIEF, FIRE SCIENCE DIVISION.
COMPUTING AND APPLIED MATHEMATICS LABORATORY	DIR, COMPUTING & APPLIED MATHEMATICS LAB.
	DEP DIR, COMPUTING & APPLIED MATHEMATICS LAB.
	CHIEF, COMPUTER SERVICES DIVISION.
	CHIEF, SCIENTIFIC COMPUTING DIVISION.
	ASSOCIATE DIRECTOR FOR COMPUTING.
STATISTICAL ENGINEERING DIVISION	CHIEF, STATISTICAL ENGINEERING DIVISION.
PATENT AND TRADEMARK ADMINISTRATION	ASST COMMISSIONER FOR FINANCE AND PLANNING.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASSISTANT COMMISSIONER FOR EXTERNAL AFFAIRS.
	ADMIN FOR LEG & INTERNL AFFAIRS.
	DEP ASST COMR FOR PUBLIC SERVICES & ADM.
	DIR DIRECTORATE FOR INTERDISCIPL PROGRAM.
	CHIEF OF STAFF.
OFFICE OF ASSISTANT COMMISSIONER FOR PATENTS	ADMINISTRATOR FOR SEARCH & INFORMATION RES.
	DEP ASST COMM FOR PATENT PROCESS SERVICES.
CHEMICAL	GROUP DIRECTOR 110.
	GROUP DIRECTOR 120.
	GROUP DIRECTOR—130.
	GROUP DIRECTOR 150.
	DEPUTY GROUP DIRECTOR—110.
	GROUP DIRECTOR—180.
	DEPUTY GROUP DIR 150.
ELECTRICAL	DEPUTY GROUP DIRECTOR 180.
	GROUP DIRECTOR FOR 260.
	GROUP DIRECTOR 210.
	GROUP DIRECTOR FOR 220.
	GROUP DIRECTOR—230.
	GROUP DIRECTOR 240.
	GROUP DIRECTOR 250.
	DEPUTY GROUP DIRECTOR—250.
	DEPUTY GROUP DIRECTOR—260.
	DEPUTY GROUP DIRECTOR—230.
	DEPUTY GROUP DIRECTOR—220.
MECHANICAL	GROUP DIRECTOR—310.
	GROUP DIRECTOR—320.
	GROUP DIRECTOR—330.
	GROUP DIRECTOR—340.
	GROUP DIRECTOR—350.
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS	CHAIRMAN, TRADEMARK TRIAL & APPEAL BOARD.
	DEPUTY ASST COMMISSIONER FOR TRADEMARKS.
	DIRECTOR, TRADEMARK EXAMINING OPERATION.
COMMODITY FUTURES TRADING COMMISSION:	
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL (OPINIONS & REVIEW).
	DEPUTY GENERAL COUNSEL (LITIGATION).
	DEPUTY GENERAL COUNSEL (REG & ADM).
OFFICE OF THE EXECUTIVE DIRECTOR	DEP EXEC DIR.
	DIR, OFC IN INFORMATION RESOURCES MGMT.
DIVISION ECONOMIC ANALYSIS	DEP CHF ECONOMIST.
	CHF, ANALYSIS SECTION.
	ASSOCIATE DIRECTOR FOR SURVEILLANCE.
	DIRECTOR OF ECONOMIC RESEARCH.
DIVISION OF ENFORCEMENT	DEPUTY DIRECTOR (WESTERN OPERATIONS).
	DEPUTY DIRECTOR (EASTERN OPERATIONS).
DIVISION OF TRADING AND MARKETS	DEPUTY DIRECTOR (CONTRACT MARKETS).
	CHIEF COUNSEL.
CONSUMER PRODUCT SAFETY COMMISSION:	
OFC OF EXECUTIVE DIR	ASST EXEC DIR FOR COMPLIANCE & ENFORCEMENT.
	ASSOC EXEC DIR FOR ADM.
	ASSOCIATE EXECUTIVE DIR FOR FIELD OPERATIONS.
OFFICE OF HAZARD IDENTIFICATION & REDUCTION	ASST EXEC DIR FOR HAZARD I & R.
	ASSOCIATE EXEC DIR FOR EPIDEMIOLOGY.
	ASSOCIATE EXECUTIVE DIRECTOR FOR ECONOMICS.
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE:	
OFFICE INSPECTOR GENERAL	INSPECTOR GENERAL.
ASSOC DIRECTOR FOR MGMT & BUDGET	ASSOCIATE DIRECTOR FOR MANAGEMENT & BUDGET.
	ASST DIR FOR FINANCIAL MANAGEMENT.
OFC SECY OF DEFENSE:	
OFFICE OF THE SECRETARY	ASST TO THE SECY OF DEFENSE (INTEL OVERSIGHT).
OFFICE OF ASSISTANT SECRETARY (SOLIC)	DEP ASST SECY OF DEFENSE (FORCES & RESOURCES).
	DIRECTOR FOR BUDGET AND EXECUTION.
	DIRECTOR FOR REQUIREMENTS & PROGRAMS.
JOINT ACTIVITIES	DIRECTOR DESA.
DIRECTOR OPERATIONAL TEST AND EVALUATION	DEP DIR FOR RESOURCES & ADMINISTRATION.
OFC OF INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GEN FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INSPECTIONS.
	ASST INSPECTOR GENL FOR ANALYSIS & FOLLOWUP.
	ASST INSP GEN FOR ADM & INFO MANAGEMENT.
	AIG FOR DEPARTMENTAL INQUIRIES.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEP ASST INSPECTOR GEN FOR ADM & INFO MGMT.
	DIR, AUDIT PLANNING & TECHNICAL SUPPORT.
	DIRECTOR, ACQUISITION MANAGEMENT.
	DIRECTOR, LOGISTICS AND SUPPORT.
	DIRECTOR, CONTRACT MANAGEMENT.
	DIR, READINESS & OPERATIONAL SUPPORT.
	DIRECTOR, FINANCIAL MANAGEMENT.
	ASST INSPECTOR GEN FOR AUDIT, POL & OVERSIGHT.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITING.
	ASST IG FOR INSPECTIONS.
	ASST INSPECTOR GENERAL FOR AUDITING.
	DIR FOR INVESTIGATIVE OPERATIONS.
	ASST INSP GEN FOR CRIMINAL INVESTIGATIVE P/O.
	DEP ASST INSPECTOR GEN FOR PROGRAM EVALUATION.
	DIRECTOR, READINESS & OPERATIONAL SUPPORT.
OFC OF ASST SECY OF DEFENSE (RESERVE AFFAIRS)	PRINCIPAL DIRECTOR (MANPOWER AND PERSONNEL).
OFC DEP ASST SECY (CIVILIAN PERSONNEL P/E OPPORTUNITY).	PRIN DIR (CIVILIAN PERS POL/EQUAL OPP).
	DIR PERSONNEL MANAGEMENT.
	DIRECTOR, STAFFING & CAREER MANAGEMENT.
OFC OF DIR OF DOD DEPENDENTS SCHOOLS	DIR PACIFIC REGION DODDS.
	DIRECTOR, GERMANY REGION.
	DEP DIR DEP OF DFENSE DEPENDENTS SCHOOL.
OFFICE ASSISTANT SEC HEALTH AFFAIRS	ASSOC DIR FOR FINANCIAL, LOGISTL, & INFO MGMT.
UNIFORMED SERV. UNIVERSITY OF THE HEALTH SCIENCES	DIR, DEFENSE MEDICAL SYSTEMS SUPPORT CENTER.
OFFICE OF ASST TO SECY OF DEF FOR PUBLIC AFFAIRS	SCIENTIFIC DIRECTOR, AFRRI.
	DIR, FREEDOM OF INFORMATION & SECURITY REVIEW.
WASHINGTON HEADQUARTERS SERVICES	DEP DIR, ARMED FORCES RADIO & TELEVISION SERV.
	DIRECTOR OF PERSONNEL AND SECURITY.
	DIRECTOR REAL ESTATE AND FACILITIES.
	DEP DIR, REAL ESTATE & FACILITIES.
OFFICE OF THE GENERAL COUNSEL	DEP DIR, PERSONNEL AND SECURITY.
	DEPUTY GENERAL COUNSEL (IG).
	DEP GEN COUNSEL (ENVIRONMENT & INSTALLATIONS).
OFC OF UNDER SECY OF DEF FOR ACQ & TECHNOLOGY	DEP DIR MISSILE & SPACE SYSTEMS.
	DEP DIR AIR WARFARE.
	DIRECTOR FOR DEFENSE PROCUREMENT.
	SR STAFF SPECIALIST FOR S & A SYSTEMS.
	DEP DIR NAVAL WARFARE.
	SR STAFF SPEC FOR MISSILE & SPACE SYST ANAL.
	DEPUTY DIR, COST PRICING & FINANCE.
	SR STAFF SPEC FOR AIR WEAPONS DEF SUPP SYS.
	SR STAFF SPEC FOR GROUND AIR DEFENSE SYSTEMS.
	SR STAFF SPEC CLOSE AIR SUP & AIR INT SYS.
	SR STAFF SPEC FOR SHIP SYSTEMS.
	DEP DIR MUNITIONS.
	SR STAFF SPEC FOR AIR MOBILITY.
	SR STAFF SPECIAL FOR AIR SUPERIORITY SYSTEMS.
	DEP DIR, CONTRACT POL & ADMINISTRATION.
	DEPUTY DIR TEST FACILITIES & RESOURCES.
	DEP DIR LAND WARFARE.
	DEP DIR DEEP STRIKE WARFARE.
	EXECUTIVE DIRECTOR, DEFENSE SCIENCE BOARD.
	DIR COMPUTER AIDED LOGISTICS SUPPORT OFFICE.
	ADUSD (ASIA/MID EAST/S. HEMISPHERE AFFAIRS).
	DEP DIR, ACQUISITION RESOURCES.
	DEP DIR, DEF SYST PROCUREMENT STRATEGIES.
	ASST DEP DIR (PROGRAM & BUDGET INTEGRATION).
	DEP DIR ELECTRONIC WARFARE.
	DOD CONTRACTOR ADV & ASSISTANCE SERV DIRECTOR.
	DIR PLANNING & ANALYSIS.
	DIR, BASE CLOSURE AND UTILIZATION.
	DIR, DEF ACQUISITION REG SYS & COUNCIL.
	DEP DIR, FOREIGN CONTRACTOR.
	DIR, ACQISITION LOG & PRODUCTION READINESS.
	SR STAFF SPEC FOR SUBMARINE & SURVEIL SYS.
	DEP DIR MAJOR POLICY INITIATIVES.
	STAFF SPEC FOR SPEC TECH PROGRAM.
	DEP DIR STRATEGY ARMS CONTROL & COMPLIANCE.
	DEP DIR, AERONAUTICAL SYSTEMS.
	SPECIAL ASST CONCEPTS & PLANS.
	DEPUTY DIRECTOR DEFENSE SYSTEMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	PRIN DASD (ATOMIC ENERGY).
	DEP DIR, LAND & MARITIME PROGRAMS.
	DEP DIR, AIR & SPACE PROGRAMS.
	ADUSD (BALLISTIC MISSLE DEFENSE).
	DD MODELING & SIMULATION SOFTWARE.
	DIR OSD STUDIES & FFRDCA.
	ASST DEP UNDER SECY DEF (CRUISE MISSILE DEF).
OFC OF DD (RESEARCH AND ADVANCED TECH)	DEPUTY DIRECTOR AIR WARFARE.
	STAFF SPECIALIST FOR VEHICLE PROPULSION.
	STAFF SPECIALIST FOR MATERIALS & STRUCTURES.
	STAFF SPECIALIST FOR WEAPONS.
	DIR ENVIRONMENTAL & LIFE SCIENCES.
	STAFF SPEC/MOBILITY, LOGISTICS & ADV CONCEPTS.
	SPEC ASST FOR MCTL & LONG-RANGE PLNNG MATTERS.
	STAFF SPEC FOR ELECTRONIC W/C, CTRL & COMMS.
	STAFF SPECIALIST FOR ELECTRONIC S/D.
	DIR, BALANCED TECHNOLOGY INITIATIVE.
OFFICE OF DD (PLANS & RESOURCES)	DEPUTY DIRECTOR (PLANS & RESOURCES).
DIRECTOR, STRATEGIC & THEATER NUCLEAR FORCES	DIR STRATEGIC & THEATER NUCLEAR FORCES C3.
DIRECTOR, THEATER & TACTICAL C3	DIR THEATER & TACTICAL COMMUN COMMAND & CONTR.
DEPUTY ASSISTANT SECRETARY OF DEFENSE (INTELLIGENCE).	DIR SPECIAL TECHNOLOGY.
	SENIOR ADVISOR FOR MEASUREMENT & SIGNATURE.
	SENIOR ADVISOR FOR IMAGING INTELLIGENCE.
	DIRECTOR, INTELLIGENCE ISSUES.
	DIRECTOR, INTELLIGENCE RESOURCES.
	DIRECTOR, INTELLIGENCE POLICY.
	PRINCIPAL DIR TO DASD I & S.
	DIRECTOR, INTELLIGENCE SYSTEMS.
	DEP DIR INTELLIGENCE SYSTEMS.
	DIR INTELLIGENCE OPERATIONS.
	DEP DIR, INTELLIGENCE OPERATIONS.
ORGANIZATION ABOLISHED	SENIOR ADVISOR FOR HUMAN INTELLIGENCE.
ORGANIZATION ABOLISHED	SENIOR ADVISOR SIGNAL INTELLIGENCE.
DEPUTY ASSISTANT SECRETARY OF DEFENSE (DEFENSE-WIDE C3).	DIRECTOR, TELECOMMUNICATIONS.
	DEP DIR SPACE & NUCLEAR C3.
DIRECTOR, C3 MOBILIZATION SYSTEMS.	DIRECTOR SPACE & NUCLEAR C3.
ORGANIZATION ABOLISHED	
ADVANCED RESEARCH PROJECTS AGENCY (ARPA)	DIRECTOR, COUNTER INTELLIGENCE.
	DIRECTOR, ASTO.
	ASSISTANT DIRECTOR, SMART WEAPONS.
	DEPUTY DIRECTOR, ASTO.
	DEPUTY DIRECTOR, MANAGEMENT.
	DEPUTY DIRECTOR.
	DIR ELECTRONIC SYSTEMS TECHNOLOGY OFFICE.
	DIR LAND SYSTEMS OFFICE.
	DIRECTOR SPECIAL PROJECTS.
	DIR MICROCELECTRONICS TECHNOLOGY.
	DEP DIR MICRO ELECTRONICS TECHNOLOGY.
	DIR MARTIME SYSTEMS TECHNOLOGY.
	CHIEF, ADVANCED TECHNOLOGY.
	EXECUTIVE DIRECTOR MANUFACTURING.
	ASST DIR, SENSORS & PROCESSING.
	SPECIAL ASST, INFORMATION TECHNOLOGY.
COMPUTING SYSTEMS TECHNOLOGY OFFICE	EXECUTIVE DIRECTOR (SOFTWARE).
	DIR COMPUTING SYSTEMS TECHNOLOGY OFFICE.
DEFENSE SCIENCES OFFICE	DIR DEFENSE SCIENCES OFFICE.
	ASSISTANT DIRECTOR FOR MATERIAL SCIENCES.
DEFENSE MANUFACTURING OFFICE	EXECUTIVE DIRECTOR, M & M WAVE TECHNOLOGY.
CONTRACTS MANAGEMENT OFFICE	DIR, CONTRACTS MANAGEMENT OFFICE.
NUCLEAR MONITORING OFFICE	DIR NUCLEAR MONITORING RESEARCH OFC.
OFFICE OF THE JOINT CHIEFS OF STAFF	DEP DIR FOR TECHNICAL OPERATIONS.
BALLISTIC MISSILE DEFENSE ORGANIZATION	ASST DIR FOR SENSORS DEMONSTRATIONS.
	ASSISTANT DIRECTOR FOR SENSOR TECHNOLOGY.
	ASST DIR FOR INTERCEPTORS & COMMUNICATIONS.
	DIRECTOR, INFORMATION SYSTEMS.
	DEPUTY FOR PROGRAM OPERATIONS.
	DIRECTOR, CONTRACTS DIRECTORATE.
	DIR BATTLE MAGT COMMAND CONTROL & COMMUN.
DEFENSE CONTRACT AUDIT AGENCY.	ASSISTANT DEP FOR ACQUISITION MANAGEMENT.
	DIRECTOR, DCAA.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY DIRECTOR, DCAA.
	ASSISTANT DIRECTOR, OPERATIONS.
	ASST DIR, POLICY & PLANS.
	DIRECTOR, FIELD DETACHMENT.
REGIONAL MANAGERS	REGIONAL DIRECTOR, EASTERN.
	REGIONAL DIRECTOR, NORTHEASTERN.
	REGIONAL DIRECTOR, CENTRAL.
	REGIONAL DIRECTOR, WESTERN.
	REGIONAL DIRECTOR, MID-ATLANTIC.
	DEP REGIONAL DIRECTOR EASTERN REGION.
	DEPUTY REGIONAL DIRECTOR NORTHEASTERN REGION.
	DEPUTY REGIONAL DIR CENTRAL REGION.
	DEPUTY REGIONAL DIRECTOR, WESTERN.
	DEP REG DIR MID ATLANTIC REGION.
DEFENSE LOGISTICS AGENCY	SPECIAL ASST FOR INTEGRITY IN CONTRACTING.
	DIR, DEFENSE MANPOWER DATA CENTER.
	CHIEF ACTUARY.
	DEPUTY EXECUTIVE DIRECTOR, DISTRIBUTION.
	DEP COMMANDER DEFENSE INDUSTRIAL SUPPLY CTR.
DIRECTORATE FOR CONTRACT MANAGEMENT	EXECUTIVE DIRECTIVE, CONTRACT MANAGEMENT
	ASST EXEC DIR, OPERATIONS/POLICY GROUP.
DIRECTORATE OF QUALITY ASSURANCE	DEPUTY COMMANDER.
OFC OF STAFF DIR-SMALL & DISADVANTAGED BUSINESS UNTIL.	STAFF DIR, SMALL & DISADV BUSIN UTILIZATION.
OFFICE OF CIVILIAN PERSONNEL	EXECUTIVE DIRECTOR, HUMAN RESOURCES.
	ASSOCIATE DIRECTOR, PERSONNEL PROGRAMS.
	ACQUISITION MANAGEMENT ADVISOR DLA CHAIR
DIRECTORATE OF SUPPLY OPERATIONS	DEP EXECUTIVE DIRECTOR, SUPPLY MANAGEMENT
	DEPUTY COMMANDER.
	DEPUTY COMMANDER.
	ASST EXEC DIR, DLA INTERNATIONAL PROGRAMS.
DIRECTORATE OF CONTRACTING	EXECUTIVE DIRECTOR PROCUREMENT.
DIRECTORATE OF TECH & LOGISTICS SERVICES	CHF, PROPERTY DISPOSAL DIV.
	DEP COMMANDER DEFENSE ELECTRONICS SUPPLY CTR.
	DEPUTY COMMANDER.
DEFENSE TRAINING & PERFORMANCE DATA CENTER	DEPUTY DIR DEFENSE MANPOWER DATA CENTER.
DEFENSE CONTRACT MANAGEMENT	EXECUTIVE DIRECTOR, CONTRACT MANAGEMENT.
OFFICE OF THE DIRECTOR	DIRECTOR, DITSO.
	DEPUTY DIRECTOR, DITSO.
	DEPUTY MANAGER NATIONAL COMMUN SYSTEMS.
OFC OF ASSOC DIR FOR ENG, TECHNOL & CORPORATE PLANNING.	ASSOC DIR FOR ENG. TECHNOLOGY & CORP PLNG.
	CHIEF INFORMATION OFFICER.
	DEP DIR FOR OPERATIONS.
	DEP DIR FOR SYSTEMS.
	DEPUTY DIRECTOR DISA.
NATIONAL COMMUNICATIONS SYSTEM	DEPUTY MANAGER, NATL COMMUNICATIONS SYSTEMS.
	ASST MGR, NCS, TECHNOLOGY & STANDARDS.
	ASST MGR, NCS, PLANS & OPERATIONS.
CENTER FOR COMMAND, CONTROL & COMMUNICATIONS (C3) SYS.	DEP DIR, THEATER SYSTEMS.
	DEP DIR FOR SWITCHED NETWORK ENGINEERING.
	S/A TO THE DIR, CPSI FOR SATELLITE COM SYS.
	SPEC ASST TO DIR, CTR FOR C3 FOR INT DIG ARCH.
	DIR MILITARY SATELLITE COMMUNICATIONS.
	DIR CENTER FOR SYSTEMS INTERO & INTEGRATION.
	DEP DIR JOINT (IEO).
	DIR CENTER FOR TECHNICAL ARCHITECTURE
	TECH DIR JOINT INTERO & ENG COMM (JIEO).
	DIR CENTER FOR STANDARDS.
	DIR CENTER FOR ENGINEERING.
	ASSOC DIR MISSION SUPPORT INFORMATION SYSTEMS
	ASSOC DIR CENTER FOR STANDARDS.
DEFENSE COMMUNICATIONS SYSTEM ORGANIZATION	DIRECTOR, CENTER FOR INFO SYSTEMS SECURITY
	DEP DIR, DEFENSE COMM SYSTEM ORGANIZATION.
	DEP DIR, DCS TELECOMMUNICATIONS NETWORKS.
	ASSOC DEPUTY DIRECTOR, DCS DATA SYSTEMS
	PRINCIPAL DEPUTY DIRECTOR.
DEFENSE COMMERCIAL COMMUNICATIONS OFFICE	DIR DEFENSE COMMERCIAL COMMUNICATIONS OFFICE
	DIR DEFENSE INFORMATION SYSTEMS.
CENTER FOR AGENCY SERVICES	DIRECTOR, CENTER FOR AGENCY SERVICES.
JOINT DATA SYSTEMS SUPPORT CENTER	DEPUTY DIRECTOR, NMCS ADP DIRECTORATE

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASSOC DIR FOR TECHNICAL & MANAGEMENT SUPPORT
	DIR, DEF INFORMATION SYSTEMS PROGRAM ORG.
JOINT TACTICAL COMMAND, CONTROL & COMMUNICATIONS AGENCY.	DEPUTY DIRECTOR FOR TESTING.
	DEPUTY COMMANDER CENTER FOR SOFTWARE.
INFORMATION MANAGEMENT CENTER	DIRECTOR, INFORMATION MANAGEMENT CENTER.
	DIRECTOR, TECHNICAL INTEGRATION OFFICE.
	DIR, NAVY INFORMATION RESOURCES MANAGEMENT
	TECHNICAL DIR, NAVAL DATA AUTOMATION COMMAND.
COMPTROLLER DIRECTORATE	COMTROLLER.
DEFENSE NUCLEAR AGENCY	CHIEF OF STAFF.
OFFICE OF THE DIRECTOR	DEPUTY DIRECTOR.
	ASSISTANT DIRECTOR FOR ARMS CONTROL.
ACQUISITION MANAGEMENT OFFICE	DIR, ACQUISITION MANAGEMENT.
OFFICE OF THE COMPTROLLER	DIR FOR INFORMATION MANAGEMENT.
OPERATIONS DIRECTORATE	DEPUTY DIRECTOR, OPERATIONS DIRECTORATE.
	CHIEF, STRUCTURAL DYNAMICS DIVISION.
	DIR FOR TECH APPLICATIONS.
RADIATION SCIENCES DIRECTORATE	CHIEF, ENVIRONMENTS & MODELING DIVISION.
	DIR FOR RADIATION SCIENCES.
	CHIEF, ATMOSPHERIC EFFECTS DIVISION.
	CHIEF, ELECTRONICS & SYSTEMS TECHNOLOGY DIV.
	CHIEF, ELECTROMAGNETIC APPLICATIONS DIVISION.
SHOCK PHYSICS DIRECTORATE	DIRECTOR FOR SHOCK PHYSICS.
TEST DIRECTORATE	CHIEF, WEAPONS EFFECTS DIVISION.
	DIRECTOR FOR TEST.
DEFENSE MAPPING AGENCY	CHF, NEVADA OPERATIONS OFC, TEST DIRECTORATE.
D M A HEADQUARTERS	CHIEF DIGITAL PRODUCTION SYSTEM DEPARTMENT.
	DEP DIR FOR HUM RES—DIR DMA OFC HUM RES MGT
	DEP DIR FOR ACQ INSTALL & LOGISTICS.
	DEPUTY DIRECTOR FOR OPERATIONS.
	DEP DIR FOR TECH & INFORMATION.
	ASST DEP DIR FOR OPERATIONS.
	DEPUTY DIRECTOR.
	ASST DEP DIR FOR ADVANCED SYS REQUIREMENTS.
	DEPUTY DIRECTOR FOR PLANS & REQUIREMENTS.
	DEP DIR FOR INTL PROG OPERATIONS.
	DEP DIR FOR INFORMATION RESOURCES MANAGEMENT
	CHIEF, ANALYSIS DIVISION.
D M A FIELD ACTIVITIES	ASST DEP DIR FOR ADVANCED WEAPON SYSTEMS.
	DEP DIR FOR PROG, PROD & OPERATIONS DMA HTC.
	DEP DIR FOR PROGS, PRODUCTION AND OPERATIONS.
	CHF, DIGITAL PRODUCTS DEPARTMENT AC.
	CHF, DIGITAL PRODUCTS DEPARTMENT HTC.
	CHIEF, SCIENTIFIC DATA DEPARTMENT.
	DIR DMA SYS CTR DEP DIR FOR RES & ENGINEERING.
	DEP DIR FOR MODERNIZATION DEVELOPMENT.
	DEP DIR FOR P/O, DMA SYST CNTR/ADD FOR RDT&E.
	CHIEF, MAPPING & CHARTING DEPARTMENT.
	CHIEF, MAPPING & CHARTING DEPARTMENT.
	CHIEF, RESTON DEPARTMENT.
	DIR DMA HYDROGRAPHIC/TOPOGRAPHIC CENTER.
	DIR DMA RESTON CENTER.
	DIR DMA AERODPACE CENTER.
	DEP DIR/DEP FOR DEVELOPMENT GROUP.
	DEP DIR FOR PRODUCTION RESTON CENTER.
	DEP DIR FOR PROGRAM EXECUTION.
	DEP DIR ENG & INTEGRATION DIRECTOR.
	DEP DIR DEP DIR FOR PRODUCTION.
DEFENSE FINANCE & ACCOUNTING SERVICE	DEPUTY DIRECTOR, CLEVELAND CENTER.
DEFENSE INVESTIGATIVE SERVICE	DIR, DEFENSE INVESTIGATIVE SERVICE.
	DEPUTY DIRECTOR (INVESTIGATIONS).
	DEP DIR (INDUSTRIAL SECURITY).
	DEPUTY DIRECTOR (RESOURCES).
	DIR, PERSONNEL INVESTIGATIONS CENTER.
DEPARTMENT OF AIR FORCE:	
OFC OF ADMINISTRATIVE ASSISTANT TO THE SECRETARY	ADMINISTRATIVE ASSISTANT TO THE SECY.
	DEP ADMINISTRATIVE ASSISTANT.
	ADMINISTRATIVE ASSISTANT.
OFC OF SMALL & DISADV BUS UTILIZATION	DIR, OFC OF SMALL & DISADV BUS UTILIZATION.
OFFICE OF THE INSPECTOR GENERAL	DEP ASST INSPECTOR GEN/SPEC INVESTIGATIONS.
OFFICE OF ASAF FOR FINANCIAL MANAGEMENT & COMPTROLLER.	PRINCIPAL DEP ASST SECRY (FINANCIAL MGMT).

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
ODAS BUDGET	DEPUTY FOR BUDGET
	DIRECTOR OF BUDGET INVESTMENT
	DIRECTOR OF BUDGET MANAGEMENT & EXECUTION.
	DEPUTY DIRECTOR OF BUDGET OPERATIONS.
ODAS COST & ECONOMICS	DEP ASST SECY (COST & ECONOMICS).
OFFICE OF ASAF FOR ACQUISITION	DIR SCIENCE & TECHNOLOGY.
	COMPETITION ADVOCATE GEN DIR, CAAS
	PRINCIPAL DAS (ACQUISITION & MGMT)
ORGANIZATION ABOLISHED	DEPUTY ASSISTANT SECRETARY.
ODAS COMMUNICATIONS, COMPUTERS & SUPPORT SYSTEMS.	ASSOC DEP ASST SECY (TRANSPORTATION).
	ASSOC DEP ASST SECY (INFO & SUPPORT SYSTEMS)
ODAS RESEARCH & ENGINEERING	DAS (RESEARCH & ENGINEERING).
ODAS MANAGEMENT POLICY & PROGRAM INTEGRATION	ASSOC DEP ASST SECY MAGNT POL & PROG INTERAGT
	DEP ASST SECY (MGMT POL & PROG INTEGRATION).
ODAS CONTRACTING	ASSOC DEP ASST SECY (CONTRACTING).
AIR FORCE PROGRAM EXECUTIVE OFFICE	AF PROGRAM EXEC OFFICER, INFO SYSTEMS.
	AIR FORCE PROG EXEC OFCR, CONVENTIONAL STRIKE
	PROGRAM DIRECTOR, AMRAAM SPO.
OFC OF ASAF FOR MANPOWER, RESERVE AFFAIRS, INSTALL & ENV.	DEP FOR AIR FORCE REVIEW BOARDS
ODAS INSTALLATIONS	DIR AIR FORCE BASE CONVERSION AGENCY
OFFICE, CHIEF OF STAFF	DEPUTY FOR INSTALLATIONS MANAGEMENT
TEST AND EVALUATION	AIR FORCE HISTORIAN.
MORALE, WELFARE, RECREATION AND SERVICES	DEPUTY DIR TEST & EVALUATION.
ASST CHIEF OF STAFF FOR C3 AND COMPUTERS	DIR OF RES MGMT & DEP DIR FOR MWR & SERVICES
	DIRECTOR OF RESOURCES
DEPUTY CHIEF OF STAFF, LOGISTICS	DIR OF ARCHITECTURES TECH & INTEROPERABILITY
	ASSOC DIR FOR LOGISTICS PLANS & PROGRAMS.
	CHIEF MODIFICATION & O&M PROGRAMS DIVISION.
	CHIEF COMBAT SUPPORT PROGRAMS DIVISION.
CIVIL ENGINEER	ASSOC DIR OF MAINTENANCE & SUPPLY
	ASSOCIATE CIVIL ENGINEER.
	DEPUTY CIVIL ENGINEER.
	DEPUTY CIVIL ENGINEER.
DEPUTY CHIEF OF STAFF, PERSONNEL	DIR CIVIL PERSONNEL POLICY & PERSONNEL PLANS
	SPEC PROJECT OFCR FOR PERSONNEL MANAGEMENT
	CHIEF RESOURCES DIVISION.
	CHIEF AIR FORCE PERSONNEL OPERATIONS AGENCY
ASSISTANT CHIEF OF STAFF, INTELLIGENCE	CHF, AIR FORCE CIVILIAN PERSONNEL MGMT CENTER.
AIR FORCE MATERIEL COMMAND	ASSOC DIR, STRATEGY & PRODUCTION.
PERSONNEL	CHAIRMAN A F LOGISTICS COMMAND PROCUR COMMITT
CONTRACTING	DIRECTOR, PERSONNEL.
	DEPUTY DIRECTOR CONTRACTING.
	DIR BUSINESS CLEARANCE.
LOGISTICS	DEP DIR FOR PROGRAM S & B CLEARANCE
ENGINEERING & TECHNICAL MANAGEMENT	DEPUTY DIRECTOR, LOGISTICS.
FINANCIAL MANAGEMENT & COMPTROLLER	DIRECTOR, ENGINEERING & TECHNICAL MGMT
CORPORATE INFORMATION	DEP DIRECTOR, FINANCIAL MGMT & COMPTROLLER.
PLANS & PROGRAMS	DIR CORPORATE INFORMATION.
SPACE AND MISSILE SYSTEMS CENTER	DEPUTY DIRECTOR, PLANS & PROGRAMS.
	EXECUTIVE DIRECTOR.
PHILLIPS LABORATORY	DIRECTOR, PLANS & ADVANCED PROGRAMS.
GEOPHYSICS DIRECTORATE	DEPUTY DIRECTOR.
	CH, ATMOSPHERIC STRUCTURE BR.
	DIR, SPACE PHYSICS DIVISION.
PROPULSION DIRECTORATE	DIRECTOR, PROPULSION DIRECTORATE
ELECTRONIC SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	ASST DEP FOR CONTRACTING & MANUFACTURING.
	PROG DIR FOR AIR BASE DECISION SYSTEMS.
	DIRECTOR, ENGINEERING & PROGRAM MANAGEMENT
	CHIEF ENGINEER.
PLANS AND PROGRAMS DIRECTORATE	DIRECTOR, PLANS & ADVANCED PROGRAMS.
COMMAND, CONTROL AND COMMUNICATIONS DIRECTORATE.	DIR PLANS & PROGRAMS.
	DIR COMMAND CONTROL COMMUNICATIONS.
STANDARD SYSTEMS CENTER	DIRECTOR, STANDARD SYSTEMS CENTER.
AERONAUTICAL SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	DIR FINANCIAL MANAGEMENT & COMPTROLLER.
DEVELOPMENT PLANNING	DIRECTOR CONTRACTING.
ORGANIZATION ABOLISHED	DIR ADVANCED SYSTEMS ANALYSIS.
	DEP DIR CONTRACTING.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
INTEGRATED ENGINEERING & TECH MANAGEMENT	DIR SUPPORT SYSTEMS ENGINEERING.
	DIRECTOR AVIONICS ENGINEERING.
DIRECTORS OF ENGINEERING	DIRECTOR, SYSTEMS ENGINEERING.
	DIRECTOR OF ENGINEERING (F–16).
	DIR OF ENG RECONNAISSANCE & ELEC WARFARE SYS.
	DIR OF ENGINEERING B–2.
	DIR OF ENGINEERING F–22.
	DIR OF ENGINEERING C–17.
SYSTEMS PROGRAM OFFICES	DIR OF ENGINEERING SUBSYSTEMS.
	DIR PROGRAM INTEGRATION & ANALYSIS.
	DEVELOPMENT SYSTEM MANAGER PROPULSION.
WRIGHT LABORATORY	PROGRAM DIR SUBSYSTEMS.
	DIR MANUFACTURING TECHNOLOGY.
MATERIALS DIRECTORATE	DIR, PLANS & PROGRAMS DIRECTORATE.
HUMAN SYSTEMS CENTER	DIR, METALS & CERAMICS DIV.
ARMSTRONG LABORATORY	EXECUTIVE DIRECTOR.
AIR FORCE DEVELOPMENT TEST CENTER	DIRECTOR, PLANS AND PROGRAMS.
AIR FORCE FLIGHT TEST CENTER	EXECUTIVE DIRECTOR.
JOINT LOGISTICS SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	DIR DEPOT MAINTENANCE.
AIR LOGISTICS CENTER, SAN ANTONIO	DIR CORPORATE INTEGRATION.
	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
AIR LOGISTICS CENTER, OKLAHOMA CITY	PRODUCT GROUP MANAGER, PROPULSION SYSTEM.
	DIRECTOR, CONTRACTING.
	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
AIR LOGISTICS CENTER, WARNER ROBINS	DIRECTOR, COMMODITIES MANAGEMENT.
	DIRECTOR, CONTRACTING.
	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
AIR LOGISTICS CENTER, OGDEN	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT
	DIRECTOR, CONTRACTING.
	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
AIR LOGISTICS CENTER, SACRAMENTO	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT
	DIRECTOR, CONTRACTING.
	EXECUTIVE DIRECTOR.
	DIRECTOR CONTRACTING.
	DIRECTOR, FINANCIAL MANAGEMENT.
AIR FORCE AUDIT AGENCY	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT
	DIRECTOR, CONTRACTING.
	AUDITOR GENERAL OF THE AIR FORCE.
	ASST AUD GEN (ACQUISITION & LOG AUDITS).
	ASST AUD GEN (FIELD ACTIVITIES).
	ASST AUD GEN (OPERATIONS).
	ASST AUD GEN (FINANCIAL & SUPPORT AUDITS).
AIR INTELLIGENCE AGENCY	TECHNICAL DIRECTOR (AEROSPACE SYSTEMS).
AIR MOBILITY COMMAND	ASST DIRECTOR PLANS & PROGRAMS.
ORGANIZATION ABOLISHED	CHIEF SCIENTIST TACTICAL AIR WARFARE CTR.
AIR FORCE RESERVES	CHIEF, OPERATIONS ANALYSIS.
	AIR COMMANDER 4TH AIR FORCE.
	AIR COMMANDER 10TH AIR FORCE.
	AIR COMMANDER 22ND AIR FORCE.
AF SPACE COMMAND	SR SCIENTIST & TECH ADVISOR FOR AFSPACECOM.
AF OPERATIONAL TEST & EVAL CTR	TECHNICAL DIRECTOR.
AIR EDUCATION & TRAINING COMMAND	PROVOST, AIR UNIVERSITY.
ORGANIZATION ABOLISHED	SPEC ASST FOR GPALSP.
U.S. CENTRAL COMMAND	SCIENTIFIC ADVISOR.
U.S. STRATEGIC COMMAND	ASSOC DIR FOR STRATEGIC PLANNING.
U.S. TRANSPORTATION COMMAND	DIR PROGRAM ANALYSIS & FINANCIAL MGMT
JOINT COMMAND AND CONTROL WARFARE CENTER	TECHNICAL DIRECTOR.
SHAPE TECHNICAL CENTRE	DEPUTY DIRECTOR.
DEPARTMENT OF ARMY	
OFFICE OF THE UNDER SECRETARY	SPEC ASST FOR AIR & MISSILE DEFENSE.
	SPECIAL ASST FOR FORCES & PROGRAM EVALUATION.
	SPECIAL ASSISTANT FOR SYSTEMS.
	SPECIAL ASSISTANT FOR ELECTRONIC SYSTEMS.
	SPECIAL ASST TO THE UNDER SECRETARY.
OFC OF THE ADMINISTRATIVE ASSISTANT	ADM ASST TO THE SECY OF THE ARMY.
	DEP ADMINISTRATIVE ASSISTANT.
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL (FISCAL LAW & POLICY).

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
HQDA ARMY ACQUISITION EXECUTIVE	DEP PROG MGR, LIGHT HELICOPTER PROGRAM.
	DEPUTY PEO, CLOSE COMBAT VEHICLES.
	DEP PROG EXEC OFCR, COMMAND & CONTROL SYSTEMS.
	DEPUTY PROG EXECUTIVE OFFICER COMM SYSTEMS.
	PROGRAM EXECUTIVE OFFICER STAMIS.
	PROGRAM EXECUTIVE OFFICER, ARMAMENTS.
	PROGRAM MANAGER SUSTAINING BASE AUTOMATION.
	DEP PROGRAM EXECUTIVE OFFICER FOR AVIATION.
	DEP PEO, INTELLIGENCE & ELECTRONIC WARFARE.
	PROGRAM EXECUTIVE OFFICER, COMBAT SUPPORT.
	PROGRAM EXECUTIVE OFCR (TACTICAL MISSILES).
DIR OF INFO SYS FOR COMMAND, CONTROL, COMMS & COMPUTERS.	ARMY SPECTRUM MANAGER.
	DIR OFC US ARMY INFO SYST SEL ACQ AGENCY.
	DIR OF ARMY INFORMATION.
	VICE DIRECTOR TO THE DISC4.
OASA RESEARCH DEVELOPMENT AND ACQUISITION	DEP DIR US CONTRACTING SUPPORT AGENCY.
	ASSISTANT DEPUTY FOR PLANS & PROGRAMS.
	DIRECTOR FOR ASSESSMENT & EVALUATION.
ODASA RESEARCH AND DEVELOPMENT	DAS FOR RES & TECH/CHIEF SCIENTIST.
	DIRECTOR FOR ADVANCED CONCEPTS & SPACE.
	DIRECTOR OF RESEARCH.
	DIRECTOR FOR TECHNOLOGY.
	DIRECTOR FOR LABORATORY MANAGEMENT.
ODASA PROCUREMENT	DEPUTY ASST SECY OF THE ARMY (PROCUREMENT).
	DIRECTOR FOR PROCUREMENT POLICY.
ODASA MANAGEMENT AND PROGRAMS	DIR FOR PROGRAM EVALUATION.
	DEP ASST SECY FOR PLANS & PROGRAMS.
OFC OF ASST SECRETARY (INSTALLATIONS, LOGISTICS & ENVMT).	DEP FOR PROGRAMS & INSTALL ASSISTANCE
	DEP PROGRAM EXEC OFFICER FOR CHEM/DEMIL.
OFC OF ASST SECY (FINANCIAL MGMT)	ASSISTANT DEPUTY ASA FOR ARMY BUDGET.
	DEPUTY FOR COST ANALYSIS.
	DIRT OF INVESTMENT.
	DEP ASST SECY FOR ARMY (FINANCIAL OPERATIONS) SPEC ADV FOR ECONOMIC POC & PRODUCTIVITY PROG
	DEP FOR OPS. SUPPORT & BUSINESS ACTIVITIES.
	SPEC ASST TO THE PRIN DEP ASST SECY OF ARMY.
OFF OF ASST SECRETARY, MANPOWER & RESERVE AFFAIRS.	DAS (DAR BDS & EEO C & C REVIEW).
OFC OF ASST SECRETARY CIVIL WORKS	DEPUTY ASA (POLICY & EVALUATION).
	DEPUTY ASA (MANAGEMENT & BUDGET).
	DEPUTY ASA (PLANNING POLICY & LEGISLATION).
	DEPUTY ASA (PROJECT MANAGEMENT).
OFFICE, DIRECTOR OF ARMY STAFF	DEP ASST CHIEF OF STAFF FOR INSTALLATION MGNT.
OFFICE, DEPUTY CHIEF OF STAFF, INTELLIGENCE	ASST DEP CHIEF OF STAFF FOR INTELLIGENCE.
USA STRATEGIC DEFENSE COMMAND HUNTSVILLE AL OSCA FOA.	PROJ MGR, GROUND BASED INTERCEPTION PROJ OFC.
	DIRECTOR, DIRECTED, ENERGY WEAPONS DIRECTORATE.
	PROJ MGR HIGH ENDO ATMOS DEF INT PROJ.
	D/S LETHALITY & KEY TECHNOLOGIES DIRECTORATE.
	DIR KINETIC ENERGY WEAPON DIRECTORATE.
	CHIEF, BATTLE MANAGEMENT DIVISION.
	PRIN ASSISTANT RESP FOR CONTRACTING.
	CHF, DISCRIMINATION DIV SENSORS DIRECTORATE.
	DIR, ADVANCED TECHNOLOGY DIRECTORATE.
	PROJ MGR, G–B SURVEILLANCE & TRACKING SYST.
	DIRECTOR, SYSTEMS DIRECTORATE.
OPERATIONAL TEST & EVALUATION COMMAND	DIR, US ARMY COMBAT DEV EXPERMENTATION CENTER.
	DEPUTY TO THE COMMANDER TECHNICAL DIRECTOR.
ARMY CENTER OF MILITARY HISTORY	CHIEF HISTORIAN, ARMY CTR OF MILITARY HISTORY.
TEST AND EVALUATION MANAGEMENT AGENCY	DIR, TEST AND EVALUATION MANAGEMENT AGENCY.
OFFICE, DEP CHIEF OF STAFF FOR PERSONNEL	DIRECTOR FOR MANPRINT.
	DIRECTOR OF MANPOWER.
	ASST DEP CHF OF STAFF FOR PERSONNEL (A/C).
DIRECTORATE OF CIVILIAN PERSONNEL	DIRECTOR OF CIVILIAN PERSONNEL.
	DEP DIRECTOR OF CIVILIAN PERSONNEL.
US TOTAL ARMY PERSONNEL COMMAND	DIRECTOR, CIVILIAN PERSONNEL MGT.
ARMY RESEARCH INSTITUTE FOR BEHAVIORAL & SOCIAL SCIENCES.	DIR. TRNG RES LAB & ASSOC DIR. ARI.
	DIR. MANP & PERS RES LAB & ASSOC DIR, ARI
	DIR, US ARMY RES I & C PSYCHOLOGIST, US ARMY.
OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS	ASST DIRECTOR FOR SUPPLY MGMT.
	ASST DIR FOR MAINTENANCE MGMT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASST DIR FOR TRANSPORTATION.
	ASST DIR FOR ENERGY & TROOP SUPPORT.
	DIRECTOR FOR SECURITY ASSISTANCE.
	DIRECTOR FOR RESOURCES AND MANAGEMENT.
	EXECUTIVE DIRECTOR, STRATEGIC LOGISTICS AGCY.
ARMY AUDIT AGENCY	THE AUDITOR GENERAL, U.S. ARMY.
	DEPUTY AUDITOR GENERAL.
	DIRECTOR, LOGISTICAL & FINANCIAL AUDITS.
	DIR, ACQUISITION & FORCE MGMT DIRECTORATE.
	DIR AUDIT POLICY PLANS AND RESOURCES.
	REGL. AUDITOR GENERAL (SOUTHEASTERN REGION).
OFC DEP CHF OF STAFF FOR OPERATIONS & PLANS	TECH ADV. DCSOPS.
	TECHNICAL DIRECTOR, US ARMY NUC & CHEM AGENCY.
	DIR, U.S. ARMY NUCLEAR & CHEMICAL AGENCY.
PROGRAM MANAGER RESERVE COMPONENT AUTOMATION SYSTEM.	PROGRAM MANAGER.
WALTER REED ARMY INSTITUTE OF RESEARCH	CHIEF DEPT OF PHARMACOLOGY.
TRAINING AND DOCTRINE COMMAND (TRADOC)	SCIENTIFC ADVISOR TO CG
	ASST DEPUTY CHIEF OF STAFF FOR RESOURCES MGMT.
	ADCOS FOR TRAINING POLICY PLANS AND PROGRAMS.
	DEPUTY TO THE COMMANDING GENERAL.
	ASST DEP CHIEF OF STAFF FOR BASE OPS SUPPORT.
	ASST DEP CHIEF OF STAFF FOR COMBAT DEVELOP.
TRADOC ANALYSIS COMMAND	DIRECTOR OF OPERATIONS.
	DEPUTY DIRECTOR, TRAC.
	DIRECTOR OF OPERATIONS.
NATIONAL SIMULATIONS CENTER	TECHNICAL DIRECTOR NATIONAL SIMULATIONS CTR.
MILITARY TRAFFIC MGMT COMMD	DEPUTY TO THE COMMANDER.
	SPECIAL ASST FOR TRANSPORTATION ENGINEERING.
U.S. ARMY FORCES COMMAND	CIVILIAN PERSONNEL DIRECTOR.
	DEPUTY COMPTROLLER.
U.S. ARMY CORPS OF ENGINEERS	DIRECTOR OF HUMAN RESOURCES.
	DIRECTOR RESOURCE MANAGEMENT.
	DIR. ENGINEERING AND HOUSING SUPPORT CENTER.
	PRINCIPAL ASST RESPONSIBLE FOR CONTRACTING.
	DEP TO THE COMMANDER FOR PROG & TECH MGNT.
DIRECTORATE OF CIVIL WORKS	DEPUTY DIRECTOR, CIVIL WORKS.
	CHF, PROGRAMS DIV.
	CHIEF, PLANNING DIVISION.
	CHIEF ENGINEERING DIVISION.
	CHF, OPS, CONSTRUCTION & READINESS DIVISION.
DIRECTORATE OF ENGINEERING & CONSTRUCTION	DEPUTY CHIEF CONSTRUCTION DIVISION.
	CHIEF, DAEB, ENGINEERING DIVISION.
DIRECTORATE OF MILITARY PROGRAMS	CHIEF CONSTRUCTION DIVISION.
	DEPUTY DIRECTOR, MILITARY PROGRAMS.
	CHIEF, ENVIRONMENTAL RESTORATION DIVISION.
U.S. ARMY COE WATER RESOURCES CTR	CHIEF, WATER RESOURCES SUPPORT CENTER.
PLANNING DIVISIONS, COE	DIR OF PLANNING, NO PACIFIC.
	DIR OF PLANNING, SOUTH ATLANTIC.
	DIR OF PLANNING, LOWER MISS VALLEY.
	DIR OF PLANNING, SOUTH PACIFIC.
	DIR OF PLANNING, N. ATLANTIC.
ENGINEERING DIVISIONS, COE	DIR OF ENGINEERING, OHIO RIVER.
	DIR OF ENGINEERING, SOUTHWESTERN.
	DIR OF ENGINEERING, NORTH CENTRAL.
	DIR OF ENGINEERING, N ATLANTIC.
	DIR OF ENGINEERING, S. ATLANTIC.
	DIR OF ENGINEERING, LOWER MISS.
	DIR OF ENGINEERING, NORTH PACIFIC.
	DIR OF ENGINEERING, PACIFIC OCEAN.
CONSTRUCTION DIVS-COE	DIR OF CONSTRUC OPS, S ATLANTIC.
	DIR OF CONSTRUC OPS, S WESTERN.
	DIR OF CONSTRUC OPS, OHIO RIVER.
	DIR OF CONSTRUC OPS, LR MS VAL.
	DIR OF CONSTRUC OPS.
	DIR OF CONSTRUC OPS.
	DIR OF CONSTRUC OPS, N ATLANTIC.
	DIR OF CONSTRUC OPS, PACIFIC.
	DIR OF CONSTRUC OPS.
ENGINEERING WATERWAYS EXPERIMENT STATION, COE	DIR WATERWAYS EXPERIMENT STATION.
CONSTRUCTION ENGRG RSCH LAB CHAMPAIGN IL	DIRECTOR.
COLD REGIONS RSCH & ENGRG LAB HANOVER NH	DIRECTOR.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
ARMY MATERIEL COMMAND (AMC)	CHIEF SCIENTIST.
	CHIEF SPECIAL ANALYSIS OFFICE.
OFFICE OF DCS SUPPLY MAINTENANCE & TRANSPORTATION.	ASST DEP CHIEF OF STAFF FOR LOGISTICS.
OFC DEP CMDG RES, DEVELOPMENT AND ACQUISITION	PRIN ASST DEP FOR RES DEVELOP AND ACQUISITION.
	ASST DEP INT'L COOPERATIVE PROGRAMS.
	PRINCIPAL DEPUTY FOR ACQUISITION.
	PRINCIPAL DEPUTY FOR TECHNOLOGY.
DCS FOR DEVELOPMENT ENGINEERING & ACQUISITION	ASST DEP CHIEF OF STAFF FOR ACQ MGT.
DEPUTY CHIEF OF STAFF FOR CONCURRENT ENGINEERING	ADCS FOR RES, D & E FOR POL INTEG & ANALYSIS.
OFC DEPUTY COMMANDING GENERAL FOR MATL READINESS.	PRINCIPAL DEPUTY FOR LOGISTICS.
DEPUTY CHIEF OF STAFF FOR AMMUNITION	ASST DEPUTY CHIEF OF STAFF FOR AMMUNITION.
OFFICE OF DCS FOR READINESS	EXEC DIRECTOR, LOGISTICS SUPPORT ACTIVITY.
OFFICE OF DCS FOR PROCUREMENT	ASST DCS FOR PROCUREMENT.
EXECUTIVE DIRECTOR, TEST, MEASUREMENT & DIAG EQ	DEPUTY EXECUTIVE DIRECTOR FOR TMDE.
DEPUTY CHIEF OF STAFF FOR PERSONNEL	DEP CHIEF OF STAFF FOR PERSONNEL.
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR RES MANAGEMENT.	ADCS FOR RESOURCE MGMT.
	ADCS FOR COST ANALYSIS.
USA SECURITY AFFAIRS COMMAND	DEPUTY.
U.S. ARMY SYSTEMS INTEGRATION AND MANAGEMENT ACTIVITY.	DIR, SYST INTEGRATION MGMT ACTIVITY.
US ARMY ARMAMENT, MUNITIONS & CHEMICAL COMMAND (AMCCOM).	DEPUTY FOR RESOURCES & MANAGEMENT.
	DEP FOR A & S MGR FOR CONVENTL AMMUN (SMCA)
	DEPUTY FOR LOGISTICS READINESS
	DEP FOR PRODUCT A & T & INDUSTRIAL OPS MGMT.
AMCCOM, ARDEC	DIR, U.S. ARMY DEF AMMUNITION CENTER & SCHOOL.
	A/TECH/DIR (SYSTEMS CONCEPTS & TECHNOLOGY).
	TECHNICAL DIRECTOR FOR ARMAMENT.
	A/TECH/DIR (SYS DEVELOPMENT & ENGINEERING).
ARMAMENT ENGINEERING DIRECTORATE	ASSOC TECH DIR (PRODUCIB & PROCESS TECHNOL).
	DIRECTOR, ARMAMENT ENGINEERING DIRECTORATE.
	CHF, ENERGETICS & WARHEADS DIVISION.
FIRE SUPPORT ARMAMENTS CENTER	CHF FIRE CONTROL DIVISION.
	DEP DIRECTOR FIRE SUPPORT ARMAMENTS CENTER.
	CHIEF ARTILLERY ARMAMENTS DIVISION.
CLOSE COMBAT ARMAMENT CENTER	DEPUTY DIRECTOR, CLOSE COMBAT ARMAMENT CTR.
CHEMICAL RESEARCH, DEVELOPMENT & ENGINEERING CENTER.	DIR MUNITIONS DIRECTORATE.
	DIRECTOR, RESEARCH DIRECTORATE.
	TECHNICAL DIRECTOR, CHEMICAL.
U.S. ARMY AVIATION & TROOP COMMAND (ATCOM)	TECH DIR-US ARMY AVIATION SYSTEMS COMMAND.
	DIRECTOR OF ENGINEERING.
	DIR AEROFLIGHT DYNAMICS/DIRECTORATE.
	ACQUISITION DIRECTOR.
	DIRECTOR OF ADVANCED SYSTEMS.
	ASSOC TECH DIR FOR TECH APPL/DIR OF SPEC PROG.
	LOGISTICS DIRECTOR.
	DIRECTOR OF ELECTRONICS & WEAPONIZATION.
BELVOIR RESEARCH & DEVELOPMENT CENTER	TECHNICAL DIRECTOR.
NATICK RESEARCH DEVELOPMENT & ENGINEERING CENTER	TECHN DIR.
	DIR, INDIVIDUAL PROTECTION DIRECTORATE.
	DIRECTOR, SOLDIER SCIENCE DIRECTORATE.
COMMUNICATIONS & ELECT COMD (CECOM)	COMPTROLLER.
	DIR ELECTRONIC INTEGRATION DIRECTORATE.
U.S. ARMY COMMUNICATION ELECTRONICS COMM	DIR CECOM CTR FOR COMMAND, CNTRL & COMMUN SYS.
	DIRECTOR C3I ACQUISITION CENTER.
	DIR, E/W, RECONNAISSANCE, SURVEILLANCE, TAD.
	DIR CENTER FOR SIGNALS WARFARE.
	TECH DIR/DIR, RD & E CENTER.
	ASSOC TECHN DIR (RESEARCH & TECHNOLOGY).
	DEPUTY TO THE COMMANDER.
	DIR FOR C3/INTELLIGENCE C3I, LOG & READINESS.
U.S. ARMY RESEARCH LABORATORY	TECHNICAL DIRECTOR.
	ADCS FOR TECHNOLOGY PLANNING & MANAGEMENT.
	DIRECTOR U.S. ARMY RESEARCH LABORATORY.
	DIRECTOR, S3I PROCESSING.
OPERATIONS	DIR OPERATIONS DIRECTORATE.
ADVANCED CONCEPTS AND PLANS	DIR ADVANCED CONCEPTS & PLANS DIRECTORATE.
SENSORS, SIGNATURES, SIGNAL & INFO PROCESSING	DIRECTOR.
ELECTRONICS & POWERS SOURCES	DIRECTOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
BATTLEFIELD ENVIRONMENT	DIRECTOR.
SURVIVABILITY/LETHALITY ANALYSIS	DIR, BALLISTIC VULNERABILITY DIVISION.
	DIRECTOR.
VEHICLE STRUCTURES	DIRECTOR.
ADVANCED COMPUTING & INFORMATION SCIENCES	DIRECTOR.
VEHICLE PROPULSION	DIRECTOR.
U.S. ARMY WEAPONS TECHNOLOGY DIRECTOR (ARL)	DIRECTOR.
	DIR, PROPULSION & FLIGHT DIVISION.
	DIR, TERMINAL EFFECTS DIVISION.
	DIRECTOR WEAPONS CONCEPT DIVISION.
HUMAN RESEARCH AND ENGINEERING DIRECTORATE	DIRECTORATE EXEC. HUMAN R & E DIRECTORATE.
ARMY RESEARCH OFFICE (AMC)	DIRECTOR ARO.
	DIR ELECTRONICS DIV.
	DIRECTOR, MATERIALS SCIENCE DIVISION.
	DIR PHYSICS DIV.
	DIR, MATHEMATICAL & COMPUTER SCIENCES DIV.
	DIR, ENG & ENVIRONMENTAL SCIENCES DIVISION.
	DIR, RESEARCH & TECHNOLOGY INTEGRATION.
	DIR CHEM & BIO SCI DIV.
U.S. ARMY MATERIALS DIRECTORATE (ARL)	DIR ARMY MTLS & TECH LAB.
U.S. ARMY MISSILE COMMAND (MICOM)	DIRECTOR ACQUISITION CENTER.
	DIR, INTEGRATED MATERIAL MGT CTR.
	ASSOC DIRECTOR FOR PRODUCT ASSURANCE.
	DEPUTY FOR PROCUREMENT AND READINESS.
	DIRECTOR FOR WEAPONS SCIENCES.
RESEARCH DEVELOPMENT & ENGINEERING CENTER	TECH DIR FOR MICOM & DIR.
	DIR FOR SYSTEM ENGINEERING & PRODUCTION.
	DIRECTOR FOR ADVANCED SENSORS.
	DIRECTOR FOR PROPULSION DIRECTORATE.
	DIR FOR SYSTEMS SIMULATION & DEVELOPMENT.
	ASSOCIATE DIRECTOR FOR SYSTEMS.
TANK-AUTOMOTIVE COMD (TACOM)	DIRECTOR OF RESOURCE MGT.
	DIRECTOR OF ACQUISITION CENTER.
	TECHNICAL DIRECTOR.
	DIRECTOR OF PRODUCT ASSURANCE & TEST.
	ASSISTANT DEPUTY FOR SYSTEMS & LOGISTICS.
	DEP TO THE COMMANDER FOR RES. DEV & ENG.
	DEP DIR FOR ENGINEERING & ACQUISITION.
	DIR. TANK-AUTOMOTIVE TECHNOLOGY DIRECTORATE.
	DEPUTY TO THE COMMANDER.
U.S. ARMY TEST AND EVALUATION COMMAND. (TECOM)	SCIENTIFIC DIRECTOR, DUGWAY PROVING GROUND.
	DIR, REDSTONE TECHNICAL TEST CENTER.
	TECHNICAL DIRECTOR COMBAT SYST TEST ACTIVITY.
	TECHNICAL DIRECTOR (ELECTRONIC PROVING GROUND).
	TECHNICAL DIR, NATIONAL RANGE OPERATIONS.
	TECH DIR & CHF SCI.
	TECHNICAL DIRECTOR, YUMA PROVING GROUND.
	DIR FOR TEST AND ASSESSMENT.
U.S. ARMY MATERIEL SYSTEMS ANALYSIS ACTIVITY	DIRECTOR.
	CHF COMBAT SUPPORT DIV.
	CHF AIR WARFARE DIV.
	CHF, RELIABILITY, AVAILABILITY & MAINTAINABIL.
	CHF GROUND WARFARE DIVISION-AMSAA.
ARMY INFORMATION SYSTEMS COMMAND	DEPUTY CHIEF OF STAFF FOR RESOURCE MANAGEMENT.
	DIR, INFO SYSTEMS COMMAND PENTAGON.
	TECHNICAL DIRECTOR.
HEADQUARTERS, US ARMY, EUROPE	ASST DEP CHF OF STAFF, PERSONNEL (CIV PERS).
	ASST DEP CHIEF OF STAFF ENG FOR ENG & HOUSING.
	ASST DEP CHF OF STAFF, RESOURCE MGMT USAREUR.
	ASST DEP CHF STAFF FOR ENG (INTL AFFAIRS).
U.S. ARMY SPECIAL OPERATIONS COMMAND	DIR OF FORCE DEVELOPMENT & INTEGRATION.
ARMY INTEL AND SECURITY COMMAND	DEPUTY & TECHNICAL DIRECTOR, FSTC.
ACISA, NATO	ASST DIR, COMMAND, CONTROL AND COMMS SYST.
JOINT LOGISTICS	PRINCIPAL DEPUTY TO THE COMMANDER.
DOD WAGE FIXING AUTHORITY	DIRECTOR, TECHNICAL STAFF.
NATIONAL DEFENSE UNIVERSITY	DIR, INFORMATION RESOURCES MANAGEMENT COLLEGE.
U.S. SOUTHERN COMMAND	SPEC ASST FOR TECHNOLOGY & REQUIREMENTS INTEG.
DEPARTMENT OF NAVY:	
OFFICE OF THE UNDER SECRETARY OF THE NAVY	ASSISTANT FOR ADMINISTRATION.
OFFICE OF THE AUDITOR GENERAL	AUDITOR GENERAL OF THE NAVY.
NAVALL AUDIT SERVICE	DIRECTOR, PLANS AND POLICY.
	DIR, NAVAL AUDIT SERVICE WESTERN REGION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
OFFICE OF CIVILIAN PERSONNEL MANAGEMENT	DIR, NAVAL AUDIT SERVICE CAPITAL REGION. DIRECTOR, AUDIT OPERATIONS. DIR, CIVILIAN PERSONNEL PROGRAMS DIVISION. DIR, OFC OF CIVILIAN PERSONNEL MANAGEMENT. ASSOCIATE DIRECTOR (OCPM–30). ASSOCIATE DIRECTOR (OCPM–20). ASSOCIATE DIRECTOR (OCPM–10).
OAS OF THE NAVY (RESEARCH, DEV & ACQUISITION)	DIRECTOR, NAVY ACQUISITION R & S IMPROVEMENT. DIRECTOR, PROCUREMENT POLICY. DIRECTOR, PRODUCT INTEGRITY. HEAD, CONTRACT POLICY. DIR, INTL AGREEMENTS, TTSARB & SPECIAL PROJ. DIRECTOR, ACQUISION CAREER MANAGEMENT. DIRECTOR FOR AAW & STRIKE AIR PROGRAMS. DIRECTOR FOR ASW, LASMAP. DIR, NAVY INTERNATIONAL PROGRAMS OFFICE.
PROGRAM EXECUTIVE OFFICERS	DIRECTOR, PLANS & PROGRAMS DIVISION. HEAD FIRE CONTROL SECTION. HEAD OPERATIONS ENGINEERING SECTION. TEST & INSTRUMENTATION BRANCH ENGINEER. BRANCH ENGR, LAUNCHER BRANCH. CHF ENGR, MISSILE BRANCH. CHF ENGR. BR ENGR FIRE CONTROL & GUIDANCE BR. PROG MGR, MK–50 TORPEDO PROG OFC. SECT HEAD, REENTRY SYSTEMS SECT. MISSILE BR. DEP P/E OFFICER FOR UNMANNED AERIAL VEHICLES. DEP PROG EXEC OFFICER FOR THEATER AIR DEFENSE. DIR OF TECHNOLOGY. HEAD, RESOURCES BRANCH. BRANCH ENGINEER, NAVIGATION BRANCH. DEP P/E OFFICER FOR CRUISE MISSILES PROGRAM. PROG MANAGER FOR COMM SATELLITE PROGRAMS. DEP PROG OFFICER SUBMARINES. PROGRAM EXECUTIVE OFFICER, UNDERSEA WARFARE. DEP PROG EXEC OFCR FOR TACTICAL AIR PROGRAMS. DEP PROG EXEC OFFICER, MINE WARFARE. PROG EXEC OFFICER FOR SPACE COMMS & SENSORS. AEGIS DEPUTY PROGRAM MANAGER. PROG EXEC OFFICER ASW ASSAULT & SPEC MISS PRO. ASST DEP COMR & DEP PROG MGR—SHIP SELF DEF. CHIEF ENGINEER, PEO, SCS. PROGRAM MANAGER, SHIP SELF DEFENSE.
NAVAL CENTER FOR COST ANALYSIS	S/A FOR COST A/T DIR, NAVAL CTR FOR COST ANAL.
OFFICE OF THE COMPTROLLER OF THE NAVY	ASSOC DIR, BUDGET & REPORTS/FISCAL MANG DIV. ASST GENERAL COUNSEL (FINANCIAL MANAGEMENT). DIR, INVESTMENT & DEV DIV. DIR, BUDGET & MGMT, POLICY AND PROCEDURES DIV. DIR, OFC OF FIN MGT SYST. DIR, BUDGET EVALUATION GROUP. DIR, RESOURCE ALLOCATION & ANALYSIS DIVISION. DIRECTOR, CIVILIAN-CONTRACTOR MANPOWER DIV.
OFFICE OF THE NAVAL INSPECTOR GENERAL	DEPUTY NAVAL INSPECTOR GENERAL.
OFFICE OF THE GENERAL COUNSEL	ASST GEN COUN (RES, DEV & ACQUISITION). ASST GENERAL COUNSEL (INSTALL & ENVIRONMENT). ASSIST GEN COUN (MANPOWER & RESERVE AFFAIRS).
NAVAL CRIMINAL INVESTIGATIVE SERVICE	DIR, NAVAL CRIMINAL INVEST SERVICE. ASST DIR OF COUNTERINTELLIGENCE. SPECIAL AGENT IN CHARGE, NORFOLK FIELD OFC. SPECIAL AGENT IN CHARGE. ASST DIR OF CRIMINAL INVESTIGATION.
CHIEF OF NAVAL OPERATIONS	HEAD, STUDIES & ANALYSIS BRANCH. ASSOCIATE DIR, SPECTRUM MANAGEMENT & POLICY. ASSOCIATE DIRECTOR, ASSESSMENT DIVISION. TECH DIR, SUBMARINE & SSBN SECURITY PROGRAM. TECHNICAL DIRECTOR. TECHNICAL DIRECTOR. ADVISOR FOR RESEARCH & DEVELOPMENT PROGRAMS. DEPUTY DIRECTOR OF NAVAL INTELLIGENCE. ADVANCED TECHNOLOGY ADVISOR. EXECUTIVE ASSISTANT. DEP DIR, SUPPORTABILITY, M & M DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY DIRECTOR FOR PROGRAMMING. HEAD ASSESSMENT & AFFORDABILITY BRANCH. ASSOC DIR, EXPEDITIONARY WARFARE DIVISION. DIR NAVAL HISTORY/DIR, NAVAL HISTORICAL CTR. DIRECTOR RESOURCES DIVISION. TECHNICAL DIRECTOR. SPECIAL ASST FOR TECHNOLOGY AND ANALYSIS. HEAD, LOGISTICS & FLEET SUPPORT BRANCH. HEAD, DEEP SUBMERGENCE SYSTEMS BRANCH. DEP DIR, ENVIR PROTECTION SAFETY OCCP HEAL DIV. DIRECTOR, ADVANCED TECH DEV BRANCH. DIRECTOR, STRATEGIC SEALIFT DIVISION. ASST FOR EDUCATIONAL RESOURCES. CNO EXECUTIVE FOR TOTAL QUALITY MANAGEMENT. TECHN DIR, NAVAL WARFARE ANAL A/F LEVEL PLANS. ASST FOR WORLD NAVIES AND ANALYSIS.
BUREAU OF NAVAL PERSONNEL	ACNP FOR MPN FINANCIAL MANAGEMENT.
NAVAL OBSERVATORY	DIR, TIME SERVICE DIV.
ORGANIZATION ABOLISHED	TECHNICAL DIRECTOR.
NAVAL TECHNICAL INTELLIGENCE CENTER	TECHNICAL DIRECTOR.
BUREAU OF MEDICINE & SURGERY	DEP COMMANDER FOR FIN MGMT & COMPTROLLER.
MILITARY SEALIFT COMMAND	COUNSEL. ENGINEERING OFFICER. COMPTROLLER. DEPUTY COMMANDER.
NAVAL TACTICAL SUPPORT ACTIVITY	DIR, NAVY TACTICAL SUPPORT ACTY.
ORGANIZATION ABOLISHED	TECHNICAL DIRECTOR.
NAVAL OCEANOGRAPHY COMMAND	TECHNICAL/DEPUTY DIRECTOR.
OFC OF COMMANDER IN CHF/ALLIED FORCES/SOUTHERN EUR.	DIRECTOR, TACTICAL DEVELOPMENT & TRAINING.
OFC OF THE COMMANDER-IN-CHIEF, U.S. PACIFIC COMMAND.	CHIEF, RESEARCH & ANALYSIS.
OFC OF THE CHIEF OF NAVAL EDUCATION AND TRAINING	COMPTROLLER. DIRECTOR NROTC SELECTION AND PLACEMENT.
EXECUTIVE DEVELOPMENT CADRE	TECHNOLOGY ASSESSMENT CONSULTANT.
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS	DEP DIR, FLEET SUPPORT & FIELD ACTIVITY MGMT. EXECUTIVE DIRECTOR, MANAGEMENT, PLANS & PROGR. EXEC DIR ACQUISITION MGT. EXECUTIVE DIRECTOR FOR CONTRACTS. DEPUTY COMPTROLLER. COUNSEL, NAVAL AIR SYSTEMS COMMAND. ASSOC DIRECTOR WEAPONS SYS ENG DIVISION. DIR PROD INTEGRITY & PRODUCTION ENG DIVISION. TEC DIR AVIONICS SYSTEMS ENG DIVISION. DIR, EVALUATION DIV. TECHNICAL DIRECTOR AIR VEHICLE DIVISION. ASSOC DIR, LOGISTICS MANAGEMENT DIVISION. COMBAT AIRCRAFT CONTRACTS DIRECTOR. DIR, MISSILE WEAPONS SYSTEMS CONTRACTS DIV. SPECIAL ASST FOR TOM. DIRECTOR COST ANALYSIS DIVISION. DEPUTY ACQUISITION EXECUTIVE. DIR FOR SYSTEMS DEFINITION & ALTERNATIVES. DIRECTOR, AIRCRAFT DIVISION. ASSOCIATE DIR PROPULSION & POWER DIVISION. ASSOC DIR FOR SYSTEMS ENGINEERING MANAGEMENT. DEPUTY COMMANDER, NAVAL AIR SYS COMMAND. DIR CRUISE MISSILE CONTRACTS DIVISION. DIRECTOR, PROCUREMENT BUDGET DIVISION. DEPUTY COUNSEL, NAVAIR. EXEC DIRECTOR FOR AVIATION DEPOTS. ASST COMMANDER FOR CORPORATE OPERATIONS. DIR, INFORMATION RESOURCES MGMT DIVISION. DIR, TECHNOLOGY MATURATION DIRECTORATE. DIR, ASW/SUPPORT A/A COMPONENTS CONTRACTS DIV.
NAVAL AIR WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION WARMINSTER.	HEAD, AVCSTD. EXEC DIRECTOR. HEAD, MATD. HEAD, SYST & SOFTWARE TECHNOLOGY DEPARTMENT. HEAD, TACTICAL AIR SYSTEMS DEPARTMENT.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION LAKEHURST.	HEAD, WARFARE SYSTEMS ANALYSIS DEPARTMENT. ASSOC DEP HEAD A/W D/HEAD, ASW A/D DIVISION. EXECUTIVE DIRECTOR.
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION	CHIEF ENGINEER. EXECUTIVE DIRECTOR. DIRECTOR, RANGE DIRECTORATE.
NAVAL AIR WARFARE CENTER AIRCRAFT DIV INDIANAPOLIS	DEP COMMANDER, NAWC-AIRCRAFT DIVISION. EXECUTIVE DIRECTOR. DIR OF AVIONIC & ELECTRONIC SYSTEMS DESIGN.
NAVAL AIR WARFARE CENTER WEAPONS DIV, PT. MUGU, CA	DIRECTOR, AESAMT. DIR SEA RANGE DIRECTORATE. DIRECTOR WEAPONS SYSTEMS EVALUATION DIRECT. HEAD ELECTRONIC WARFARE DEP. DEP COMR FOR TEST & EVAL, NAWC-WEAPONS DIV.
NAVAL AIR WARFARE CENTER WEAPONS DIV, CHINA LAKE, CA.	DIR, THREAT SIMULATION DIRECTORATE. HEAD, ATTACK WEAPONS DEPARTMENT. HEAD, RESEARCH DEPARTMENT. DIRECTOR, LAND RANGE DIRECTORATE. HEAD AIRCRAFT WEAPONS INTEGRATION DEPT. HEAD, ENGINEERING DEPARTMENT. HEAD, INTERCEPT WEAPONS DEPARTMENT. HEAD, RANGE DEPARTMENT. DIR, WEAPONS DIRECTORATE. DIR, AIRCRAFT WEAPONS SYSTEMS DIRECTORATE. DEP COMMANDER FOR R&D, NAWC-WEAPONS DIVISION. HEAD WEAPONS PLANNING GROUP.
NAVAL TRAINING SYSTEMS CENTER	DIR, SERVICES & INFORMATION DIRECTORATE. EXECUTIVE DIRECTOR. DIR OF RESEARCH & ENGINEERING.
SPACE & NAVAL WARFARE SYSTEMS COMMAND	DEP DIR OF RESEARCH & ENGINEERING. EXEC DIR, CONTRACTS. DEPUTY COMPTROLLER. COUNSEL SPACE & NAVAL WARFARE SYSTEMS COM. CHIEF ENG COMMS SYS PROGRAM DIRECTORATE. EXEC DIR, COMM SYST PROG DIRECTORATE. CHIEF ENGINEER COMMAND SYS PROG DIRECTORATE. TECH DIR, SUBMARINE COMMUN PROG OFC. ASSOC TECH DIR FOR RESEARCH & TECHNOLOGY. EXEC DIR, SPACE TECHNOLOGY DIRECTORATE. CHIEF ENG SPACE TECH DIRECTORATE. EXEC DIR/COMMUNICATIONS SYST PROG DIRECTORATE. EXEC DIR, UNDERSEA SURVEILLANCE PROG DIR. CHIEF ENG UNDERSEA SURVEILLANCE PROG DIRECT. DIR OF TECH HEAD ENGINEERING TECH GROUP. CHIEF LOGIS/HD ACQUISITION & LOGIS POL APP GRP. DIRECTOR, INFORMATION SYSTEMS SECURITY OFFICE. ASST COMMANDER FOR TALESD. CHIEF ENG SPAWAR. EXEC DIR, NWSAED. ASST COMDR FOR POL, OPS & ACQ SUPPORT DIRECT. DEPUTY COMMANDER. TECHNICAL DIRECTOR.
NAVAL COMMAND CONTROL & OCEAN SURVEILLANCE CENTER	HEAD, SURVEILLANCE DEPT.
NAVAL COMMAND C & O SURVEILLANCE CTR. RDT&E DIVISION.	EXECUTIVE DIRECTOR. DEP EXEC DIRECTOR. HEAD, NAVIGATION & AIR C3 DEPARTMENT. HEAD, COMMAND AND CONTROL DEPARTMENT.
NAV COMMAND CONTROL & OCEAN SURVEIL COMM WEST COAST DIV.	EXECUTIVE DIRECTOR WEST COAST ISE.
EAST COAST ISE DIVISION	EXECUTIVE DIRECTOR EAST COAST.
NAVAL FACILITIES ENGINEERING COMMAND	COUNSEL NAVAL FACILITIES ENGINEERING COMMAND. DEPUTY COMPTROLLER. DIRECTOR FOR CONTRACTS SUPPORT. CHIEF ENGINEER. DIR OF REAL ESTATE SUPPORT. SENIOR EXECUTIVE FOR BASE CLOSURE OFFICE. DIRECTOR FOR ENVIRONMENT. DIRECTOR, PLANNING & ENGINEERING SUPPORT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
NAVAL SEA SYSTEMS COMMAND	SPEC ADVISOR FOR RES DEV, TEST & EVALUATION. COUNSEL NAVAL SEA SYSTEMS COMMAND. ASST DEP COMMANDER FOR CONTRACTS. DEP PROG MGR & TECH DIR, PMS396B. EXECUTIVE DIRECTOR/DEPUTY COMPTROLLER. PROG MGR, MINE WARFARE SHIP PROGRAM. DIR, SUBMARINE SYSTEMS (S5W & S8G) DIVISION. DIRECTOR, REACTOR MATERIALS DIVISIONS. DIRECTOR, SECONDARY PLANT COMPONENTS DIVISION. HEAD, ADVANCED REACTOR BRANCH. DIR NAVAL ARCHITECTURE GROUP. DEPUTY DIRECTOR, SHIP DESIGN GROUP. DIRECTOR COST ESTIMATING & ANALYSIS. DIR, SHIPBUILDING CONTRACTS DIVISION. EXEC DIR, INDUSTRIAL & FACILITY MGMT DIR. EXECUTIVE DIRECTOR, SURFACE SHIP DIRECTORATE. EXEC DIR SUBMARINE DIRECTORATE. DEP PROG MANAGER & TECH DIR SUPPORT SHIP BOAT. DIR, REACTOR PLANT VALVE DIVISION. DIRECTOR, WARFARE SYSTEMS GROUP. DIRECTOR, CORPORATE OPERATIONS. DIR REACTOR MATERIALS DIVISION. DEPUTY COMMANDER FOR FLEET LOGISTICS SUPPORT. DIR, HRO–CC/COMMAND ASST HUMAN RES PROGRAMS. DEP PROG MANAGER TECH DIR ATTACK SUBM PROG. DEP PROGRAM MGR, SURFACE SHIP PROG MGMT OFC. DIR, NUCLEAR PROPULSION LOGISTICS DIVISION. DEP PROG MANAGER, AIRCRAFT CARRIER PROG OFC. DIR, PRODUCT INTEGRITY & ENG SUPPORT GROUP. DIR, ENVIRONMENTAL ENGINEERING GROUP. DIRECTOR FOR SUBMARINE REFUELINGS. DIR SURFACE SHIP SYSTEMS DIVISION. DEPUTY DIRECTOR, NUCLEAR COMPONENTS DIV. DIR, REACTOR PLANT SAFETY & ANALYSIS DIVISION. DIR, SHIP S & S INTEGRITY GROUP. DIRECTOR, PROPULSION SYSTEMS GROUP. DIRECTOR, FIELD ACTIVITY SUPPORT GROUP. DIRECTOR, MATERIALS ENGINEERING OFFICE. DIR ELECTRICAL ENGINEERING GROUP. EXEC DIR, SHIP DESIGN & ENGRNG DIRECTORATE. PROG MGR, AMPHIBIOUS W & S SEALIFT PROGRAM. DIR, NAVAL SHIPYARD MGT GROUP. PROGRAM MANAGER FOR COMMISSIONED SUBMARINES. COMMAND ASST FOR HUMAN RESOURCES PROG & DIR. DIR, SURFACE SYSTEMS CONTRACTS DIVISION. ASSOC DIRECTOR FOR REGULATORY AFFAIRS. ASST DEP COMMANDER, SURFACE & AREA AAW SYST. DIRECTOR, OFFICE OF RESOURCE MANAGEMENT. DIR, REACTOR REFUELING DIVISION. DEPUTY COUNSEL, NAVAL SEA SYSTEMS COMMAND. DIR ENVIRONMENTAL PROTECTION OFFICE. DIRECTOR, SHIP SIGNATURES GROUP. DEP COMR, WEAPONS & COMBAT SYST DIRECTORATE. DIRECTOR, AUXILIARY SYSTEMS GROUP. DIR, COMBAT SYSTEMS DESIGN & ENG GROUP. PROG MGR, DEEP SUBMERGENCE SYST PROG.
NAVAL ORDNANCE CENTER	DEPUTY COMMANDER, NAVAL ORDNANCE CENTER.
NORFOLK NAVAL SHIPYARD	NAVAL SHIPYARD NUCLEAR ENG MANAGER. NAVAL SHIPYARD NUCLEAR ENG MGR PUGET NAL SHIP
NAVAL SURFACE WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL UNDERSEA WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL SHIP SYSTEMS ENGINEERING STATION	DEP DIR, CARDEROCK DIVISION/DIR, NAVSSES.
NAVAL SURFACE WARFARE CENTER, CRANE DIVISION	EXECUTIVE DIRECTOR.
NAVAL UNDERSEA WARFARE CENTER DIV, KEYPORT, WA	EXECUTIVE DIRECTOR. CHF RES SCIENTIST (ARCTIC SUBMARINE TECH).
NAVAL SURFACE WARFARE CENTER, PT. HUENEME DIVISION.	EXECUTIVE DIRECTOR.
NAVAL SURFACE WARFARE CENTER, INDIAN HEAD DIVISION	TECHNICAL DIRECTOR.
COASTAL SYSTEMS STATION	EXECUTIVE DIRECTOR. HEAD, COASTAL TECHNOLOGY DEPARTMENT. HEAD, COASTAL ENG TEST & OPERATIONS DEPART. HEAD, COASTAL WARFARE SYSTEMS DEPARTMENT.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
NAVAL SURFACE WARFARE CENTER, CARDEROCK DIVISION	ASSOC DIR FOR SYST DEVEL/ HEAD, SYST DEPT DIRECTOR.
	ASSOC DIR FOR STRUCTURES/ HEAD, SSPD.
	ASSOC DIR/ HEAD SHIP ACOUSTICS DEPT.
	ASSOC DIR FOR MACHINERY R&D/H, MACHINERY R&D.
	ASSOC DIR FOR HYDROMECHANICS/HEAD, HD.
	ASSOC DIR, MST/HEAD, SMED.
	ASSOC DIR FOR BUSINESS OPS/HBD.
	ASSOC DIR FOR SYST/P & H SHIP S/P DIRECTORATE.
	ASSOC DIR/HEAD SHIP ELECTRO SIGNATURES DEPT.
	ASSOC DIR FOR TECH/DIR OF TECHNOLOGY & PLANS.
	ASSOC DIR FOR SHIP A/E S/H S/DIRECTORATE.
	ASSOC DIR FOR SS & M/HSS & M DIRECTORATE.
	ASSOC DIR FOR MISE/HMIS ENG DIRECTORATE.
NAVAL SURFACE WARFARE CENTER, DAHLGREN DIVISION	EXEC DIRECTOR.
	HEAD, STRATEGIC & SPACE SYSTEMS DEPARTMENT.
	HEAD, WEAPONS SYSTEMS DEPARTMENT.
	HEAD, COMBAT SYSTEMS DEPARTMENT.
	HEAD, SHIP DEFENSE SYSTEMS DEPARTMENT.
	DEPUTY EXECUTIVE DIRECTOR/BUSINESS MANAGER.
	HEAD, WEAPONS RESEARCH & TECHNOLOGY DEPART.
	HEAD, WEAPONS RESEARCH & TECHNOLOGY DEPART.
	HEAD, STRIKE SYSTEMS DEPARTMENT.
	HEAD, SYSTEMS RES & TECHNOLOGY DEPARTMENT.
	HEAD, WARFARE SYSTEMS DEPARTMENT.
	HEAD WARFARE ANALYSIS DEPARTMENT.
NAVAL UNDERSEA WARFARE CENTER DIVISION, NEWPORT, RI.	HEAD, SUBMARINE SONAR DEPARTMENT.
	TECH DIR, CONSULTANT.
	HEAD, COASTAL RES & TECHNOLOGY DEPARTMENT.
	ASSOC TECH DIR FOR SUBMAR COMBAT CONTROL ACOU.
	ASSOC TECHN DIR FOR SUBMARINE WARFARE SYSTS.
	A/T DIR FOR SURFACE ANTI-SUBMARIN WARFARE ASW.
	HD, SUBMARINE ELECTROMAGNETIC SYS DEPT.
	HEAD COMBAT CONTROL SYSTEMS DEPARTMENT.
	HEAD COMBAT SYSTEMS ANALYSIS STAFF.
NAVAL SUPPLY SYSTEMS COMMAND HDQTRS	COUNSEL.
	DIR, DEFENSE PRINTING SERV/DEP COMDR, NAVSUP.
	COMPETITION ADVOCATE GEN/ADC, CONTRACTING MGR.
	DIRECTOR OF CONTRACTING FOR SPECIAL PROGRAMS.
	DEP COMMR FOR INFO RESOURCES MANAGEMENT.
	DEP COMMANDER FOR CORPORATE MANAGEMENT.
	DIR INFO TECH INITIATIVES DIVISION.
NAVY SHIPS PARTS CONTROL CENTER	EXECUTIVE DIRECTOR.
NAVY AVIATION SUPPLY OFFICE	EXEC DIR ACQUISITION & LOGISTICS PLNG & SUPPT.
	EXECUTIVE DIR LOGISTICS PLANNING & SUPPORT.
NAVY FLEET MATERIAL SUPPORT OFFICE	EXEC DIR, ACQUISITION MGMT & PLANNING.
NAVAL SUPPLY CENTER, NORFOLK	EXEC DIR, ADP SYSTEM PLANNING AND DEVELOPMENT.
U.S. MARINE CORPS HEADQUARTERS OFFICE	EXECUTIVE DIRECTOR, PLANNING AND RESOURCES.
	DEP DIR FACILITIES & SERVICES DIVISION.
	FISCAL DIR OF THE MARINE CORPS.
	DIR CONTRACTS DIVISION.
	COUNSEL FOR THE COMMANDANT.
	DEPUTY ASST CHIEF OF STAFF INTELLIGENCE.
	DEPUTY COUNSEL FOR THE COMMANDANT.
	DIRECTOR OF ADMINISTRATION AND RESOURCES.
	ASST DEP CHF OF STAFF FOR INSTALLATIONS & LOG.
	ASST TO THE DEP CHF OF STAFF FOR M & R AFFS.
MARINE CORPS SYSTEMS COMMAND	ASST DEP CHF OF STAFF FOR REQUIREMENTS & PROG.
	EXECUTIVE DIRECTOR.
MARINE CORPS LOGISTICS BASE ALBANY GA	DEPUTY FOR FINANCIAL MANAGEMENT.
OFFICE OF NAVAL RESEARCH	DEPUTY COMMANDER FOR LOGISTICS OPERATIONS.
	DIR ANTI/AIR ANTI/SURF WARF & AERSPACE TEC DV.
	DIR, FIN MGMT/COMPT/SPEC ASST (FM) TO ASN (R, E&S.
	DIR OF PLANNING AND ASSESSMENT.
	DEP DIR FOR TECHNOLOGY PROGRAMS.
	DIRECTOR, COMPUTER SCIENCE DIVISION.
	DIRECTOR, MECHANICS DIVISION.
	DIR OCEAN BIOLOGY/OPTICS/CHEMISTRY DIV.
	SENIOR ADVISOR TO THE NAVY CHAIR.
	DEP CHIEF NAV RES & TECH DIR OFC OF NAV RES.
	DIRECTOR, TECHNOLOGY DIRECTORATE.
	DIR, INDUSTRY INDEPENDENT RES & DEV DIRECT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEP DIR, ONT/DIR, PLNG & ASSESS DIRECTORATE.
	EXECUTIVE DIR FOR ACQUISITION MANAGEMENT.
	DEPUTY COUNSEL (INTELLECUTUAL PROPERTY).
	DIR OCEAN ENG DIV.
	DIR, INDUSTRY INDEPENDENT RES & DEVEL DIR.
	COUNSEL, OFFICE OF NAVAL RESEARCH.
	DIRECTOR, PHYSICS DIVISION.
	DIRECTOR, CHEMISTRY DIVISION.
	DIRECTOR, SCIENCE DIRECTORATE.
	DIR, SUPPORT TECHNOLOGY DIRECTORATE.
	DIR, COGNITIVE & NEURAL SCIENCES DIV.
	DIRECTOR, LIFE SCIENCES DIRECTORATE.
	DIRECTOR, BIOLOGICAL SCIENCES DIVISION.
	DIR, MATHEMATICAL & PHYSICAL SCIENCES DIR.
	DIR, MATHEMATICAL SCIENCES DIVISION.
	DIR, ENGINEERING SCIENCES DIRECTORATE.
	DIRECTOR, ELECTRONICS DIVISION.
	DIR GEO-ACOUSTICS/ARCTIC SCIENCES DIV.
	DIR OCEAN & ATMOSPHERIC PHYSICS DIV.
	DIR OCEAN SCIENCE DIRECTORATE.
	DEPUTY DIRECTOR, TECHNOLOGY DIRECTORATE.
	DIR ANTI SUBMARINE WAREFAE & UNDERSEA TECH.
	DIRECTOR, MATERIALS DIVISION.
	DIR, UNIVERSITY BUSINESS AFFAIRS.
	DIR OPERATIONS RESOURCES & MAGNT DIR.
	SPEC ASST TO THE DIR, ONR FOR OCEANS SCIENCES.
NATO SACLANT ASW RESEARCH CENTER	DIRECTOR NATO SACLANT ASW RESEARCH CENTRE.
NAVAL RESEARCH LABORATORY	SUPERINTENDENT, CHEMISTRY DIVISION.
	SUPERINTENDENT, OPTICAL SCIENCES DIV.
	SUPT MATERIALS SCI AND TECH DIVISION.
	SUPERINTENDENT, PLASMA PHYSICS DIV.
	SUPT CONDENSED MATTER & RADIATION SCI DIV.
	ASSOC DIR OF RES FOR MATL SCI & COMP TECHNOL.
	SUPERINTENDENT, INFO TECHNOL DIV.
	DIR, NAVY TECH CTR FOR SAFETY & SURVIVABILITY.
	CHF SCI, LAB FOR STRUCTURE OF MATTER.
	DIR OF RESEARCH.
	SUPERINTENDENT SPACE SCIENCE DIV.
	SUPT, RADAR DIV.
	SUPT, ACOUSTICS DIV.
	SUPERINTENDENT ELECTRONICS TECHNOLOGY DIV.
	SUPT, TACTICAL ELECTRONIC WARFARE DIV.
	SUPT UNDERWATER SOUND REFERENCE DIVISION.
	TECHNICAL DIRECTOR.
	CHIEF SCIENTIST LAB FOR COMPT PHY FLUID DYNAM.
	HEAD, OFC OF SYST SUPPORT & REQUIREMENTS.
	CHF SCIENTIST & HEAD, SOLAR PHYSICS PROGRAM.
	SUPERINTENDENT, REMOTE SENSING DIVISION.
	ASSOC DIR OF RES FOR BUSINESS OPERATIONS.
	CHIEF SCI & HEAD, BEAM PHYSICS PROGRAM.
	SUPERINTENDENT, MARINE METEOROLOGY DIVISION.
	MGR, JOINT SPACE SYSTEMS TECHNOLOGY PROGRAMS.
	ASSOC DIR RES FOR OCEAN & ATMOSPHERIC SCI TEC.
	HEAD ELECT WARFARE STRATEGIC PLANNING ORG.
	ASSOC DIR OF RESEARCH FOR STRATEGIC PLANNING.
	ASSOC DIR OF RES FOR GEN S & S SYST TECHNOL.
	ASSOC DIR OF RES FOR WARFARE SYS & SENORS RES.
	SUPERINTENDENT, SPACE SYST DEVELOPMENT DEP.
	SUPERINTENDENT, OCEANOGRAPHY DIVISION.
	SUPERINTENDENT, SPACECRAFT ENGINEERING DEP.
	ASSOC TECH DIR&DIR, OCEAN SCIENCE DIRECTORATE.
	ASSOC TECH DIR&DIR OCEAN ACOUSTICS & TECH DIR.
	DIR, NAVAL CENTER FOR SPACE TECHNOLOGY.
	SUPERINTENDENT, MARINE GEOSCIENCES DIVISION.
	HEAD CENTER FOR ENVIRONMENTAL ACOUSTICS.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD	ASST DIR FOR MATERIALS P & E RESTORATION PROG.
	ASST DIR FOR WEAPONS PROGRAMS.
	ASST DIR FOR ENGINEERING.
	ASSISTANT DIRECTOR FOR STANDARDS.
	SITE REVIEW OFFICER.
	DEP GEN COUNSEL FOR POL & LITIGATION.
	CHIEF, HEALTH PHYSICS BRANCH.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY GENERAL MANAGER.
DEPARTMENT OF EDUCATION:	
CHIEF FINANCIAL OFFICER	DIRECTOR, GRANTS AND CONTRACTS SERVICE.
	DEPUTY DIRECTOR FOR FINANCIAL MANAGEMENT.
OFFICE OF HUMAN RESOURCES AND ADMINISTRATION	DIR ADMIN RESOURCE MANAGEMENT SERVICE.
	DIRECTOR PERSONNEL MANAGEMENT SERVICE.
	CHAIRPERSON, EDUCATION APPEAL BOARD.
INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSP GEN FOR POLICY PLNG & MGMT SERV.
	ASST INSPECTOR GENERAL FOR INVESTIGATION.
	DEP ASST INSP GEN FOR AUDIT OPERATIONS.
	DEP ASST INSPECTOR GEN FOR TECHN AUDIT SVC.
	ASSOCIATE INSPECTOR GENERAL.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
GENERAL COUNSEL	ASST GEN COUN FOR BUSIN & ADM LAW.
	ASST GENERAL COUNSEL FOR EDUCATIONAL EQUITY.
	ASST GEN COUNSEL FOR REGULATIONS.
	ASST GEN COUN FOR DIV OF LEGISLATIVE COUNSEL.
	ASST GEN COUN FOR POSTSECONDARY ED & ED RES.
EDUCATIONAL RESEARCH AND IMPROVEMENT	SENIOR ADVISOR ON LIBRARY PROGRAMS.
NATIONAL CENTER FOR EDUCATION STATISTICS	ASSOC COMR, ELEM/SECOND EDUC STAT DIVISION.
	ASSOC COMR, DATA COLLECTION & DISSEMINATION.
	ASSOC COMR FOR STAT STD & METHODOLOGY DIV.
	ASSOC COMM EDUCATION ASSESSMENT DIVISION.
DEPARTMENT OF ENERGY:	
OFFICE OF ECONOMIC IMPACT & DIVERSITY	DIR OF SM AND DISADV BUS UTILZ.
OFFICE OF HEARINGS & APPEALS	DEP DIR FOR LEGAL ANALYSIS.
	DEP DIR FOR FINANCIAL ANALYSIS.
	DEP DIR FOR ECON ANALYSIS.
ASSOCIATE DEPUTY SECRETARY FOR FIELD MANAGEMENT	DIR, PROG/CONST MGM, PROCE & OPERATIONS DIV.
	DIRECTOR, POLICY DEVELOPMENT DIVISION.
	DIR, OFFICE OF CONTRACTOR EMPLOYEE PROTECTION.
	DIR, OFC OF RESOURCE MANAGEMENT & SERVICES.
ALBUQUERQUE OPERATIONS OFFICE	DIR, WEAPONS QUALITY DIVISION.
	DIR TRANSPORTATION SAFEGUARD DIV.
	DIR BUDGET & RESOURCES MGNT DIV.
	DIR, PRODUCTION ASSURANCE & OPS DIVISION.
	DIR, WEAPONS PROGRAMS DIV.
	DIR OF EMERGENCY PLANS & OPERATIONS.
	ASST MANAGER.
	DIR OFC OF MGT PLAN & ANALYSIS.
	DIR, WASTE MGMT & OPERATIONAL SURETY DIV.
	CARLSBAD AREA OFFICE MANAGER.
	CHIEF FINANCIAL OFFICER.
	DIRECTOR, OPS MANAGEMENT DIVISION.
CHICAGO OPERATIONS OFFICE	ASST MANAGER FOR ADMINISTRATION.
	AREA MANAGER BATAVIA AREA OFFICE.
	CHIEF FINANCIAL OFFICER.
IDAHO OPERATIONS OFFICE	DEPUTY MANAGER FOR BUSINESS MANAGEMENT.
	CHIEF FINANCIAL OFFICER.
	ASST MGR OFC OF PROGRAM EXECUTION.
	ASST MANAGER, OFC OF POL, A & R MANAGEMENT.
	ASST MANAGER FOR APPLIED E & T TRANSFER.
NEVADA OPERATIONS OFFICE	CHIEF COUNSEL.
	ASSISTANT MANAGER FOR ADMINISTRATION.
OAK RIDGE OPERATIONS OFFICE	ASST MANAGER FOR ADMINISTRATION.
	CHIEF FINANCIAL OFFICER.
RICHLAND OPERATIONS OFFICE	ASST MGR FOR ADMIN.
	ASSISTANT MANAGER FOR OPERATIONS.
	ASSISTANT MANAGER FOR TECHNICAL SUPPORT.
	ASSISTANT MANAGER FOR PROJECTS.
	CHIEF FINANCIAL OFFICER.
OAKLAND OPERATIONS OFFICE	ASST MGR FOR ADMIN.
	CHIEF FINANCIAL OFFICER.
SAVANNAH RIVER OPERATIONS OFFICE	ASST MGR FOR ADMIN.
	ASST MGR FOR SITE SAFEGUARDS & SECURITY.
	CHIEF FINANCIAL OFFICER.
ROCKY FLATS OPERATIONS OFFICE	MANAGER, ROCKY FLATS OFFICE.
	ASST MGR FOR PROJECT MANAGEMENT & ENGINEERING.
GOLDEN FIELD OFFICE	MANAGER, GOLDEN FIELD OFFICE.
OFFICE OF INSPECTOR GENERAL	ASST INSPECTOR GEN FOR INSPECTIONS & ANALYSIS.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	MANAGER, WESTERN REGIONAL AUDIT OFFICE.
	DIRECTOR, AUDIT POLICY, PLANS & PROGRAMS.
	MANAGER, EASTERN REGIONAL AUDIT OFFICE.
	DIRECTOR AUDIT MANAGEMENT DIVISION.
	DIR CAPITOL REGIONAL AUDIT OFFICE.
	DEPUTY ASST INSPECTOR GEN FOR INVESTIGATIONS.
	SPEC ASST FOR POLICY AND PLANNING.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSPEC GEN FOR POL & PLNG & MGT
	PRINCIPAL DEPUTY INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	DEPUTY INSPECTOR GENERAL FOR INSPECTIONS.
	DEPUTY INSPECTOR GENERAL FOR AUDITS.
ENERGY INFORMATION ADMINISTRATION	DIRECTOR, EIA-ADP SERVICES STAFF.
	DIR, OFC OF OIL AND GAS.
	DIRECTOR PETROLEUM SUPPLY DIVISION.
	DIR OFC OF COAL NUCL ELEC & ALTERN FUELS.
	DIRECTOR, OFC OF ENERGY MARKETS & END USE.
	DIRECTOR ECONOMICS & STATISTICS DIVISION.
	DIR OFC OF STATISTICAL STANDARDS.
	DIRECTOR QUALITY ASSURANCE DIVISION.
	DIR RESERVES AND NATURAL GAS DIVISION.
	DIRECTOR PETROLEUM MARKETING DIVISION.
	DIR, OFC OF INTEGRATION NAL & FORECASTING.
	DIR, EEUISD.
	DIR, ENERGY SUPPLY & CONVERSION DIV.
	DIR, ANALYSIS & SYSTEMS DIV.
	DIR, ENERGY DEMAND & INTEGRATION DIV.
ASST SECRETARY ENERGY EFFICIENCY & RENEWABLE ENERGY.	DIR SURVEY MGMT DIV.
	DIR, GEOTHERMAL DIVISION.
	DIR, WIND/HYDRO/OCEAN TECHNOLOGY DIVISION.
	DIR OFC SOLAR ENERGY CONVERSION.
	ASSOC DEP ASST SECRETARY FOR UTILITY TECH.
	DIR OFC OF WASTE REDUCTION TECH.
ASST SECRETARY ENVIRONMENT, SAFETY & HEALTH	DIRECTOR, OFFICE OF ENVIRONMENTAL AUDIT.
	DIR NUCLEAR SAFETY ENFORCEMENT DIVISION.
	DEP DIR INVEST NUCLEAR SAFETY ENFORCEMENT DIV.
	DIR NUCLEAR OPERATIONS & ANALYSIS.
	DIR OFFICE OF ENVIRONMENTAL COMPLIANCE.
ASSISTANT SECRETARY DEFENSE PROGRAMS	ASSOC DEP ASST SECY FOR MILITARY APPLICATION.
	DIRECTOR OFC MGMT SUPPORT.
	DIR OFC OF PROGRAM ANALYSIS & FINANCIAL MGMT.
	DEP MGR ROCKY FLATS OFFICE.
	ASST MGR FOR ENVIRONMENTAL MGNT.
	TECHNICAL DIRECTOR.
	DIR, OFC OF ENVIRON SAFETY H&Q ASSURANCE.
	DIR, OFC OF RES, DEVELOPMENT & TESTING FACIL.
	NUCLEAR WEAPONS COMPLEX PROJECT MANAGER.
	DEPUTY DIR OFC SELF ASSESS & EMERGENCY MGNT
	DIR OFC OF FIELD SECURITY OVERSIGHT
	DIR OFFICE OF INSPECTIONS.
	ASSISTANT MANAGER FOR ADMINISTRATION.
	ASSOC DAS FOR HUMAN & ADMINISTRATIVE RES.
	DIRECTOR, OFFICE OF SPECIAL PROJECTS.
OFFICE OF ENERGY RESEARCH	ASSOC DAS FOR PROGRAM A&F MANAGEMENT.
	DIR ENGR MATH AND GEO SCI DIV.
	DIR CHEM SCI DIV.
	DIR MAT SCI DIV.
	CHF PROCESSES AND TECH BR.
	DIR HIGH EN PHYSICS DIV.
	DIRECTOR FOR MANAGEMENT.
	DIR HEALTH EFFECTS RESEARCH DIVISION.
	ASSOC DIR, OFC OF SCIENTIFIC COMPUTING.
	DEPUTY DIR FOR NUCLEAR SAFETY SAFEGUARD.
	DIR, INTERNATIONAL PROGRAMS STAFF.
	DIR, CONFINEMENT SYSTEMS DIV.
	DIR, OFFICE OF ASSESSMENT & SUPPORT.
	ASSOC DIR FOR SUPERCONDUCTING SUPER COLLIDE
ASSISTANT SECRETARY FOSSIL ENERGY	DIRECTOR, OFC OF RESOURCE MANAGEMENT
OFFICE OF NUCLEAR ENERGY	DIR SUBMARINE SYSTEMS DIV.
	DIR INSTRUMENTATION & CONTROL DIV.
	DIRECTOR OFFICE OF RESOURCES MANAGEMENT

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASST PROGRAM MANAGER FOR SURFACE SHIPS.
	DEPUTY DIRECTOR FOR NAVAL REACTORS.
	SR. NAVAL REACTORS REP. (NWPT NEWS).
	PROG MGR FOR PROTOTYPES & SAPSO.
	SENIOR NAVAL REACTORS REP (PEARL HARBOR).
	ASST CHIEF PHYSICIST.
	DIRECTOR NUCLEAR TECHNOLOGY DIV.
	DIR REACTOR ENGINEERING DIVISION.
	HEAD, CORE MANUFACTURING BRANCH.
	DEP DIRECTOR REACTOR MATERIALS DIVISION.
	DIRECTOR, FISCAL DIVISION.
	ASST MANAGER FOR OPERATIONS.
	PROGRAM MANAGER FOR SHIPYARD MATTERS.
	DIR NUCLEAR COMPONENTS DIVISION.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	MANAGER, IDAHO BRANCH OFFICE.
	PROG MANAGER FOR ADVANCED SUBMARINES.
	DIR ISOTOPE PRODUCTION & DISTRIBUTION PROG.
	HEAD ADVANCED CONCEPTS BRANCH.
	ASST MANAGER FOR OPERATIONS.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	ENGEL WALTER P.
	DIRECTOR ACQUISITION DIVISION.
	DEP PROGRAM MANAGER FOR SHIPYARD OPERATIONS.
	DIRECTOR FOR SUBMARINE REFUELINGS.
ASSISTANT SECRETARY, HUMAN RESOURCES & ADMINISTRATION.	DIR OFC OF INDUSTRIAL RELATIONS.
	DIRECTOR, ADMINISTRATIVE SUPPORT STAFF.
	DIRECTOR, MANAGEMENT SYSTEMS DIVISION.
	DIR OFC OF ADMIN SVCS.
	DEP DIR OFC OF ADP MGMT.
	DIR OFC OF PROCUREMENT OPERATIONS.
	DIR, ORGANIZATION & MANPOWER ANALYSIS DIV.
	DIR, OFC OF IRM POL, PLANS, & OVERSIGHT.
	ASSOC DIR FOR PROSEAM/PROJ MGT & CTRL.
	DEP DIR OF ADMINISTRATIVE SERVICES (GTN).
	ASSOC DIR, OFC OF PROCUREMENT, ASST & PROPERTY.
	DEP DIR OF ADMINISTRATIVE SERVICES (WASH,DC).
	DIR OF PERSONNEL.
	DIR, OFC OF ORGANIZATION & MANAGEMENT.
	DEP DIR OF PERSONNEL.
	DIR OFC OF INFORMATION RESOURCES MANAGEMENT.
	DIR OFC OF CONTRACTOR MGMT & ADMIN.
	DIR OFC OF CLEARANCE & SUPPORT.
	DIR OFC POLICY.
	DIR OFC OF MAGNT REVIEW & ASSISTANCE.
	DEP DIR, HEADQUARTERS PROCUREMENT OPERATIONS.
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.	ASSOC DIR, OFFICE OF SYSTEM & COMPLIANCE.
OFFICE OF NEW PRODUCTION REACTORS	DEPUTY DIR OFC BUSINESS MANAGEMENT.
ASSISTANT SECRETARY ENVIRONMENTAL MANAGEMENT	DIRECTOR, OFFICE OF RESEARCH & DEVELOPMENT.
	ASSOC DAS FOR OVERSIGHT & SELF-ASSESSMENT.
OFFICE OF NONPROLIFERATION & NATIONAL SECURITY	DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT.
	DIR OFC OF CLASSIFICATION & TECHNOLOGY.
	DIR OFC OF SECURITY AFFAIRS.
OFFICE OF CHIEF FINANCIAL OFFICER	DEP DIR, OFC OF SECURITY AFFAIRS.
	DIR DEP OFC OF BUDGET.
	DEP DIR OFC OF BUDGET.
	DIR OFC OF HEADQUARTERS ACCOUNTING OPERATIONS.
	DIRECTOR, BUDGET OPERATIONS DIVISION.
	DIR OFC OF DEP ACCOUNTING & FIN SYS DEV.
	DIR OFC COMPLIANCE AND AUDIT LIAISON.
	DEPUTY CONTROLLER.
	CONTROLLER.
OFFICE OF SCIENCE EDUCATION & TECHNICAL INFORMATION.	DIR FOR UNIVERSITY & SCIENCE ED PROG.
WESTERN AREA POWER ADMINISTRATION	ASST ADMR FOR MGMT SVCS.
ENVIRONMENTAL PROTECTION AGENCY:	
OFC OF THE ASST ADMR FOR ADMIN & RESOURCES MANAGEMENT.	DEP ASST ADMR FOR FINANCE & ACQUISITION.
	DIRECTOR, OFC OF ENVIRONMENTAL JUSTICE.
	DIR PROGRAM 7 POLICY COORDINATION OFFICE.
OFFICE OF THE COMPTROLLER	DIR OFC OF THE COMPTROLLER.
	DIR, FINANCIAL MGMT DIV.
	ASSOCIATE COMPTROLLER.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIRECTOR, BUDGET DIVISION.
	ASSOC DIR, FINANCIAL MANAGEMENT DIVISION.
	DIR, RESOURCE MANAGEMENT DIVISION.
OFFICE OF ADMINISTRATION	DIR OFC OF ADMINISTRATION.
	DEPUTY DIR OFC OF ADMINISTRATION
	DIR, GRANTS ADMIN DIV.
	DIR, FACILITIES & SUPPORT SERVICES DIVISION.
	DIRECTOR, MANAGEMENT & ORGANIZATION DIVISION.
	DIR, NEW HEADQUARTERS PROJECT STAFF.
	DIR, SFTY, HEALTH & ENVIRONMENTAL MGMT DIV.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DIR OFC OF INFORMATION RESOURCES MANAGEMENT.
	DEP DIR OFC OF INFORMATION RESOURCES MAGNT.
	DIR, ADMINISTRATIVE SYSTEMS DIVISION.
	DIR, INFORMATION MANAGEMENT & SERVICES DIV.
OFC OF ADMINISTRATION & RESOURCES MGMT—CINCINNATI OH.	DIR OFC OF ADMIN AND RESOURCES MANAGEMENT.
OFFICE OF ADMINISTRATION & RESOURCES MGMT—RTP, NC.	DEP DIR OFC OF ADMIN & RESOURCES MGT RTP.
	DIRECTOR OFFICE OF ADMINISTRATION & RES MGMT.
	DIRECTOR, OFFICE OF DATA PROCESSING.
OFFICE OF HUMAN RESOURCE MANAGEMENT	DIRECTOR, OFFICE OF HUMAN RESOURCE MGMT.
	SPECIAL ASST TO DIRECTOR, OHRM.
	DEP DIR FOR POL, PROGRAMS & EXEC RESOURCES.
	DEP DIR FOR OPERATIONS COMM & CLIENT SERVICES.
	DIR EXEC RES & SPEC PROG DIV.
OFFICE OF ACQUISITION MANAGEMENT	DIR, SUPERFUND/RCRA PROCUREMENT OPS DIVISION.
	DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT.
	DEP DIR, OFFICE OF ACQUISITION MANAGEMENT.
OFFICE OF GRANTS AND DEBARMENT	DIRECTOR, OFFICE OF GRANTS & DEBARMENT
OFFICE OF THE ASSISTANT ADMR FOR E & C ASSURANCE	DIR, ADM & RESOURCE MGMT SUPPORT STAFF.
	DIR, ENFORCEMENT CAPACITY & OUTREACH OFFICE.
NATIONAL ENFORCEMENT INVESTIGATIONS CTR-DENVER	DIR NAT'L ENFORCEMENT INVESTIGATIONS CENTER.
OFFICE OF FEDERAL ACTIVITIES	DIR, INTERNATIONAL ENFORCEMENT PROGRAM.
OFFICE OF REGULATORY ENFORCEMENT	DIRECTOR, OFFICE OF REGULATORY ENFORCEMENT.
	DEP DIR, OFFICE OF REGULATORY ENFORCEMENT.
	DIR WATER ENFORCEMENT DIVISION.
	DIR AIR ENFORCEMENT DIVISION.
OFFICE OF CRIMINAL ENFORCEMENT	DIRECTOR, OFFICE OF CRIMINAL ENFORCEMENT.
OFFICE OF SITE REMEDIATION ENFORCEMENT	DIR OFC COMPLIANCE ANALYSIS PROG OPERATIONS.
	DEP DIR, OFC OF COMPLIANCE A & P OPERATIONS.
	DIRECTOR, OFFICE OF COMPLIANCE.
	SENIOR LEGAL ADVISOR.
	DIR, ENFORCEMENT PLANNING, T & D DIVISION.
	DEP DIR, ENFORCEMENT PLANNING, T & D DIVISION.
	DIR, MANUFACTURING, E & T DIVISION.
	DIR, CHEMICAL, COMMERCIAL S & M DIVISION.
	DIRECTOR, OFC OF SITE REMEDIATION ENFORCEMENT.
OFFICE OF POLICY ANALYSIS	DIR WATER & AGRICULTURE POLICY DIV.
	DIR AIR & ENERGY POLICY DIVISION.
	DIR, ECONOMIC ANALYSIS & INNOVATIONS DIV.
OFFICE OF INTERNATIONAL ACTIVITIES	DIR MULTILATERAL STAFF.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	SPEC ASST TO THE INSPECTOR GENERAL.
OFFICE OF INVESTIGATIONS	ASSIST INSPECTOR GEN FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFFICE OF ACQUISITION & ASSISTANCE AUDITS	ASST INSPECTOR GENERAL FOR AUDITS.
	DEP ASST INSPECTOR GENERAL FOR AUDITS.
	ASSOC ASST INSPECT GENERAL FOR AQUIST ASST
OFFICE OF MANAGEMENT & TECHNICAL ASSESSMENT	ASST INSPECTOR GEN FOR MGMT & TECH ASSESSMENT.
OFFICE OF WASTEWATER ENFORCEMENT AND COMPLIANCE.	DIRECTOR ENFORCEMENT DIVISION.
	DIRECTOR, PERMITS DIVISION.
	DIRECTOR, MUNICIPAL SUPPORT DIVISION.
	DEPUTY DIRECTOR, MUNICIPAL SUPPORT DIVISION.
OFFICE OF SCIENCE AND TECHNOLOGY	SENIOR SCIENCE ADVISOR.
	DIR, STANDARDS & APPLIED SCIENCE DIVISION.
	DIRECTOR, ENGINEERING & ANALYSIS DIVISION.
	DIR, HEALTH & ECOLOGICAL CRITERIA DIVISION.
OFFICE OF WETLANDS, OCEANS AND WATERSHEDS	DIR, ASSESSMENT & WATERSHED PROTECTION DIV.
	DIR, OCEANS & COASTAL PROTECTION DIVISION.
	DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT.
OFFICE OF GROUND WATER & DRINKING WATER	DIR, E & P IMPLEMENTATION DIVISION.
	DIRECTOR, DRINKING WATER STANDARDS DIVISION.
	DIRECTOR, GROUND WATER PROTECTION DIVISION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
OFC OF THE ASST ADMR FOR SOLID WASTE AND EMGY RESP.	DIR, SUPERFUND REAUTHORIZATION TASK FORCE.
ORGANIZATION ABOLISHED	DEP DIR, OFFICE OF WASTE PROGRAMS ENFORCEMENT.
	DIR, CERCLA ENFORCEMENT DIVISION.
	DIRECTOR, RCRA ENFORCEMENT DIVISION.
OFFICE OF SOLID WASTE	DIR, CHARACTERIZATION & ASSESSMENT DIVISION.
	DIRECTOR, PERMITS & STATE PROGRAMS DIVISION.
	DIR, MUNICIPAL & INDUSTRIAL SOLID WASTE DIV.
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE	DIRECTOR, HAZARDOUS SITE EVALUATION DIVISION.
	DIR, EMERGENCY RESPONSE DIV.
	DIRECTOR, HAZARDOUS SITE CONTROL DIVISION.
OFFICE OF AIR QUALITY PLANNING AND STANDARDS	DIR, STATIONARY SOURCE COMPLIANCE DIVISION
	DIR, EMISSION STANDARDS DIVISION.
	ASSOC DIR FOR INTERMEDIA & INTGOVT PROG.
	DIRECTOR, AIR QUALITY MANAGEMENT DIVISION.
	DIRECTOR, TECHNICAL SUPPORT DIVISION.
	DEPUTY DIR OFC OF AIR QUALITY PLANNING & STDS.
OFFICE OF MOBILE SOURCES	DIRECTOR CERTIFICATION DIVISION.
	DIR MANUFACTURERS OPERATIONS DIVISION.
	DIR FIELD OPERATIONS & SUPPORT DIVISION.
OFFICE OF RADIATION & INDOOR AIR	DIR, CRITERIA & STANDARDS DIV.
	DIRECTOR, RADON DIVISION.
	DIR RADIATION STUDIES DIVISION.
OFFICE OF ATMOSPHERIC PROGRAMS	DIR GLOBAL CHANGE DIVISION.
	DIRECTOR, ACID RAIN DIVISION.
OFC OF ASST ADMR FOR PESTICIDES & TOXIC SUBSTANCES.	DIR OFC OF PROGRAM MANAGEMENT OPERATIONS.
OFFICE OF PESTICIDES PROGRAMS	DIR-REGISTRATION DIVISION.
	DIRECTOR-PROGRAM SUPPORT DIVISION.
	DIR, BIOLOGICAL & ECONOMIC ANALYSIS DIVISION.
	SENIOR ADVISOR.
	DIR, SPEC REVIEW & REREGISTRATION DIVISION.
	DIR ENVIR FATE AND EFFECTS DIVISION.
	DIR HEALTH EFFECTS DIVISION.
	DIR POLICY & SPECIAL PROJECTS STAFF
OFFICE OF POLLUTION PREVENTION AND TOXICS	DIR, HEALTH & ENVIRONMENTAL REV DIV
	DIRECTOR, ENVIRONMENTAL ASSISTANCE DIVISION.
	DIR, ECONOMICS EXPOSURE AND TECHNOLOGY DIV.
	DIRECTOR, CHEMICAL CONTROL DIVISION.
	DIRECTOR, INFORMATION MANAGEMENT DIVISION.
	DIR, POLLUTION PREVENTION DIV.
	DIR CHEMICAL SCREENING & RISK ASSESSMENT DIV.
	DIR CHEMICAL MANAGEMENT DIVISION.
OFFICE OF HEALTH AND ENVIRONMENTAL ASSESSMENT	DIRECTOR EXPOSURE ASSESSMENT GROUP.
	DIRECTOR, HUMAN HEALTH ASSESSMENT GROUP.
ENVIRONMENTAL CRITERIA & ASSESSMENT OFC (RTP)	DIR ENVIRONMENTAL CRITERIA & ASSES OFC RTP.
ENVIRONMENTAL CRITERIA & ASSESSMENT OFFICE (CN)	DIR, ENVIRONMENTAL CRITERIA & ASSESSMENT OFC.
OFC OF MODEL NG, MONITORING SYSTEMS & QUALITY ASSUR.	DIR, ENVIRONMENTAL M & A PROGRAM CENTER.
ATMOSPHERIC RSCH & EXPOSURE ASSESSMENT LAB, RTP	DIR, ATMOSPHERIC RES & EXP ASSESSMENT LAB.
ENVIRONMENTAL MONITORING SYSTEMS LAB—CINCINNATI	DIR ENVIRONMENT MONITORING SYST LAB.
ENVIRONMENTAL MONITORING SYSTEMS LAB—LAS VEGAS	DIR, ENV MONITORING SYS LAB, LAS VEGAS.
AIR & ENERGY ENGINEERING RESEARCH LABORATORY—RTP.	DIR AIR & ENERGY ENG RES LAB.
RISK REDUCTION ENGINEERING LABORATORY—CINCINNATI	DIR RISK REDUCTION ENGINEERING LABORATORY.
ENVIRONMENTAL RESEARCH LABORATORY—CORVALLIS	DIR, ENV RESEARCH LABORATORY CORVALLIS.
ENVIRONMENTAL RESEARCH LABORATORY—ATHENS	DIR ENVIRONMENTAL RESEARCH LAB ATHENS GA.
ROBERT B KERR ENVIRONMENTAL RES LABORATORY—ADA	DIR, ROBERT S KERR ENVIRONMENTAL RES LAB.
ENVIRONMENTAL RESEARCH LABORATORY—DULUTH	DIR ENVIRONMENTAL RESEARCH LAB—DULUTH.
ENVIRONMENTAL RESEARCH LABORATORY—NARRAGANSETT.	DIR, ENVIRONMENTAL RES LAB, NARRAGANSETT.
ENVIRONMENTAL RESEARCH LABORATORY—GULF BREEZE	DIR ENV LAB GULF BREEZE.
HEALTH EFFECTS RESEARCH LABORATORY—RTP	DIR—HEALTH EFFECTS RESEARCH LAB—RTP.
	DEP DIR HEALTH EFFECTS RES LAB RTP.
OFFICE OF SCIENCE PLANNING & REGULATORY EVALUATION.	DIR, OFC OF SCI, PLANNING & REGULATORY EVAL.
CENTER FOR ENVIRONMENTAL RESEARCH INFORMATION	DIR, CENTER FOR ENVIRONMENTAL RESEARCH INFO.
OFFICE OF EXPLORATORY RESEARCH	DIR, OFC OF EXPLORATORY RESEARCH.
REGION I—BOSTON	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIR WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	ASST REGL ADMR FOR PLANNING & MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
REGION II—NEW YORK	DIR AIR PESTICIDES & TOXICS MANAGEMENT DIV.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	DIRECTOR, WATER MANAGEMENT DIVISION.
	ASST REGL ADMR FOR POLICY AND MANAGEMENT.
	DIR AIR & WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REGION II, NEW YORK.
REGION III—PHILADELPHIA	DIR, OFFICE OF EMERGENCY & REMEDIAL RESPONSE.
	DIRECTOR, WATER MANAGEMENT DIVISION REG III.
	REGIONAL COUNSEL.
	DIRECTOR, HAZARDOUS WASTE MGMT DIV.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	ASST REG ADMIN FOR POLICY & MANAGEMENT.
REGION IV—ATLANTA	DIR, AIR MANAGEMENT DIVISION.
	DIR CHESAPEAKE BAY PROGRAM OFFICE.
	DIR WATER MANAGEMENT DIVISION REGION IV.
	DIRDIR ENVIRONMENTAL SERVICES DIVISION REGION IV.
	ASST REGIONAL ADMIN FOR POLICY AND MGMT.
	REGIONAL COUNSEL, REG IV, ATLANTA, GEORGIA.
REGION V—CHICAGO	DIRECTOR WASTE MANAGEMENT DIVISION.
	DIR AIR MANAGEMENT DIV REGION V.
	DIR ENVIR SERVICES DIV REGION V.
	DIR WATER MANAGEMENT DIV REGION V.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
	REGIONAL COUNSEL.
	DIRECTOR, WASTE MANAGEMENT DIVISION.
	ASSOCIATE DIVISION DIRECTOR FOR RCRA.
	ASSOC DIV DIRECTOR FOR SUPERFUND.
REGION VI—DALLAS	DIR GREAT LAKES NATL PROG OFC.
	DIR AIR & WASTE MANAGEMENT DIV.
	DIR WATER MANAGEMENT DIVISION.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	ASST REGIONAL ADMR FOR MANAGEMENT.
	REGIONAL COUNSEL.
REGION VII—KANSAS CITY	DIR, AIR, PESTICIDES & TOXIC DIVISION.
	DIR WATER MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIRECTOR, WASTE MGMT DIVISION.
	ASST REG ADMIN FOR POLICY & MGNT—REG VII.
REGION VIII—DENVER	DIRECTOR, AIR AND TOXICS DIVISION.
	DIR WATER MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIR AIR TOXICS DIVISION.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
REGION IX—SAN FRANCISCO	DIR, ENVIRONMENTAL SERVICES DIVISION.
	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIRECTOR, AIR MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REG IX, SAN FRAN, CAL.
	DIR, TOXICS & WASTE MANAGEMENT DIV.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
REGION X—SEATTLE	DIR—WATER DIV REG X.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	REGIONAL COUNSEL.
	DIRECTOR AIR AND TOXICS DIVISION.
	DIRECTOR, HAZARDOUS WASTE DIVISION.
	ASST REGL ADMR FOR POLICY & MANAGEMENT.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:	
OFFICE OF THE CHAIRMAN	INSPECTOR GENERAL.
FIELD MANAGEMENT—EAST	DIRECTOR FIELD MANAGEMENT PROGRAMS (EAST)
	PROGRAM MANAGER (BALTIMORE).
	DIST DIR (NEW YORK).
	DIST DIR (ATLANTA).
	DISTRICT DIRECTOR (DETROIT).
	DIST DIR (MIAMI).
	DIST DIR (MEMPHIS).
	DIST DIR—(BIRMINGHAM).
	DIST DIR—(NEW ORLEANS).
	DIST DIR—(CHARLOTTE).
	PROGRAM MANAGER.
FIELD MANAGEMENT—WEST	DIST DIR (PHILADELPHIA).
	PROG MANAGER (DIR FIELD MGT PROGRAMS (WEST).
	DIST DIR (HOUSTON).
	DIST DIR (SAN FRANCISCO).

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIST DIR (DALLAS).
	DIST DIR (CHICAGO).
	DIST DIR (ST LOUIS).
	DIST DIR (INDIANAPOLIS).
	DISTRICT DIRECTOR (LOS ANGELES).
	DIST DIR (DENVER).
	DIST DIR (PHOENIX).
	DISTRICT DIR (SAN ANTONIO).
	PROGRAM MANAGER (SEATTLE).
	PROGRAM MANAGER (MILWAUKEE).
FEDERAL COMMUNICATIONS COMMISSION:	
OFFICE OF INSPECTOR GENERAL	INSPECTOR GENERAL.
OFFICE OF THE MANAGING DIRECTOR	ASSOC MANAGING DIRECTOR/HUMAN RESOURCES MGMT
MASS MEDIA BUREAU	CHIEF AUDIO SERVICES DIVISION.
	CHIEF VIDEO SERVICES DIVISION.
	CHF, ENFORCEMENT DIV.
PRIVATE RADIO BUREAU	CHIEF LAND MOBILE & MICROWAVE DIVISION.
FIELD OPERATIONS BUREAU	CHIEF ENFORCEMENT DIVISION.
COMMON CARRIER BUREAU	CHIEF, TARIFF DIVISION.
	ASST BUREAU CHIEF (INTERNATIONAL).
	CHIEF DOMESTIC FACILITIES DIVISION.
	CHIEF ACCOUNTING & AUDITS DIVISION.
OFC OF ENGINEERING TECHNOLOGY	CHIEF, SPECTRUM ENGINEERING DIVISION.
	ASSISTANT BUREAU CHIEF FOR TECHNOLOGY
FEDERAL EMERGENCY MANAGEMENT AGENCY:	
OFFICE OF THE DIRECTOR	CHIEF OF STAFF.
OFFICE OF GENERAL COUNSEL	DIRECTOR OF SECURITY.
OFFICE OF FINANCIAL MANAGEMENT	CHIEF FINANCIAL OFFICER.
	DEPUTY CHIEF FINANCIAL OFFICER.
OFFICE OF INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
PREPAREDNESS, TRAINING AND EXERCISES DIRECTORATE	DIV DIR, STATE & LOCAL PREPAREDNESS DIVISION.
RESPONSE & RECOVERY DIRECTORATE	DIV DIR, INFRASTRUCTURE SUPPORT DIVISION.
FEDERAL INSURANCE ADMINISTRATION	DEPUTY ADMINISTRATOR.
OPERATIONS SUPPORT DIRECTORATE	ASSOCIATE DIRECTOR.
	DIVISION DIR, ACQUISITION SERVICES DIVISION.
FEDERAL ENERGY REGULATORY COMMISSION (DOE):	
OFC OF CHIEF ACCOUNTANT	DEPUTY CHIEF ACCOUNTANT.
	DIR DIVISION OF AUDITS.
	DIRECTOR, DIVISION OF ACCOUNTING SYSTEMS.
OFC OF HYDROPOWER LICENSING	DIR, DIV OF INSPECTION.
	DIR, DIV OF DAM SAFETY & INSPECTIONS.
FEDERAL LABOR RELATIONS AUTHORITY:	
OFFICE OF THE CHAIRMAN	SOLICITOR.
	CHIEF COUNSEL.
OFFICE OF MEMBER	CHIEF COUNSEL.
OFFICE OF MEMBER	CHIEF COUNSEL.
FEDERAL SERVICE IMPASSES PANEL	EXEC DIRECTOR FSIP.
OFC OF THE EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR.
	DIR, INFORMATION RESOURCES & RESEARCH SERV
OFC OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
	ASST GENERAL COUNSEL (FIELD MANAGEMENT).
	ASST GENERAL COUNSEL (APPEALS).
	REGIONAL DIRECTOR—LOS ANGELES.
	ASST GEN COUNSEL, LEGAL POLICY & ADVICE.
	DIRECTOR OF OPERATIONS & RESOURCES MANAGEMENT
REGIONAL OFFICES	REGIONAL DIRECTOR—WASHINGTON, D.C.
	REGIONAL DIRECTOR—BOSTON.
	REGIONAL DIRECTOR—ATLANTA.
	REGIONAL DIRECTOR—DALLAS.
	REGIONAL DIRECTOR—CHICAGO ILLINOIS.
	REGIONAL DIRECTOR—SAN FRANCISCO.
	REGIONAL DIRECTOR—DENVER.
FEDERAL MARITIME COMMISSION:	
OFFICE OF THE MEMBERS	SECRETARY.
OFFICE OF THE MANAGING DIRECTOR	DEP MANAGING DIR.
	DIR, BUREAU OF ADMINISTRATION.
	PROG MANAGER (DIR BUR OF TRADE M & A).
	PROG MGR (DIR BUR OF TARIFFS C & L).
	DIR, BUREAU OF INVESTIGATIONS.
	DIR, BUREAU OF HEARING COUNSEL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:	DEPUTY MANAGING DIRECTOR.
	ASSISTANT GENERAL COUNSEL (ADMIN).
	ASSISTANT GENERAL COUNSEL (PROGRAMS).
	DIRECTOR OF INVESTMENTS.
	DIRECTOR OF CONTRACTS & ADMINISTRATION.
	DIRECTOR OF AUTOMATED SYSTEMS.
	DIRECTOR OF BENEFITS AND PROGRAM ANALYSIS.
	DIRECTOR OF ACCOUNTING.
	DIRECTOR OF COMMUNICATIONS.
	DEPUTY GENERAL COUNSEL.
FEDERAL TRADE COMMISSION:	
OFFICE OF THE INSPECTOR GENERAL	INSPECTOR GENERAL.
OFC OF EXECUTIVE DIRECTOR	DEPUTY EXEC DIR FOR MANAGEMENT.
	DEP EXEC DIR FOR PLANNING & INFORMATION.
GENERAL SERVICES ADMINISTRATION:	
OFFICE OF MANAGEMENT SERVICES AND HUMAN RESOURCES.	DIRECTOR OF PERSONNEL.
	DIR OF ADMINISTRATIVE PROGRAMS & SUPPORT.
OFFICE OF FTS 2000	DIR TOTAL QUALITY MANAGEMENT & TRAINING.
OFFICE OF THE INSPECTOR GENERAL	DEP ASSOC ADMR FOR NETWORK SERVICES.
	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR AUDITING.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITING.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR ADMINISTRATION.
	ASST INSPECTOR GEN FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR QUALITY MANAGEMENT.
OFFICE OF ACQUISITION POLICY	ASSOC ADMINISTRATOR FOR ACQUISITION POLICY.
	DEPUTY ASSOCIATE ADMR FOR ACQUISITION POLICY.
	DIR OF ACQUIS MGMT AND CONTRACT CLEARANCE.
	DIR, OFFICE OF GSA ACQUISITION POLICY.
	DIR OF MULTIPLE AWARD SCHEDULE PROG MGMT.
OFFICE OF THE CHIEF FINANCIAL OFFICER	DIRECTOR OF FINANCE.
	DIRECTOR OF BUDGET.
	EXEC ASST TO THE CHIEF FINANCIAL OFFICER.
	DEPUTY DIRECTOR OF FINANCE.
	DIR OF FINANCIAL MANAGEMENT SYSTEMS.
FEDERAL PROPERTY RESOURCES SERVICE	ASST COMM FOR REAL ESTATE POLICY/SALES (FPRS).
PUBLIC BUILDINGS SERVICE.	ASST COMM FOR REAL PROP MGMT & SAFETY.
	ASST COMR FOR PHYSICAL SECURITY & LAW ENF.
	ASST COMR FOR PROCUREMENT.
	DEP ASST COMR FOR PROCUREMENT.
	ASST COMR FOR REAL PROPERTY DEVELOPMENT.
	DEP ASST COMR FOR REAL PROPERTY DEVELOPMENT.
	DEP ASST COMM FOR REAL PROP MGMT & SAFETY.
	ASSISTANT COMMISSIONER FOR PLANNING.
INFORMATION RESOURCES MANAGEMENT SERVICE	ASST COMM FOR GOVT WIDE REAL PROP RELATIONS.
	SPEC ASST/ASST COMR FOR REAL PROPERTY DEV.
	ASST COMM FOR INFO RESOURCES PROCUREMENT.
	DEP ASST COMR FOR INFO RES MGMT POLICY.
	ASST COMR FOR GSA INFO RESOURCES MANAGEMENT.
	ASST COMMISSIONER FOR TECHNICAL ASSISTANCE.
	DEP ASST COMR FOR REGL TELECOMM SERVICES.
FEDERAL SUPPLY SERVICE	DIR OF ADMIN AND PLANNING.
	ASST COMMR FOR QUALITY AND CONTRACT ADMIN.
	ASST COMMISSIONER FOR COMMODITY MANAGEMENT.
	ASST COMR FOR TRANSPORTATION & PROPERTY MGT.
	ASST COMMR FOR STRATEGIC BUSINESS PLANNING.
	ASST COMM FOR DISTRIBUTION MGT.
	DEP ASST COMMISSIONER FOR COMMODITY MGR.
	DAS FOR TRANSPORTATION & PROPERTY MGMT.
REGION 2—NEW YORK	ASSISTANT COMMISSIONER FOR FSS INFO SYSTEMS.
	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
REGION 3—PHILADELPHIA	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASST REG ADMR FOR INFO RESO MGMT SER, NE ZONE.
NATIONAL CAPITAL REGION	ASST REGL ADMR FEDERAL SUPPLY SERVICE.
	ASST REGL ADMR FOR INFO RESOURCES MGMT.
	ASST REG ADMR FOR PUBLIC BLDGS SERVICE, NCR.
	DIR OF FED DOMES ASST CTLG STAFF (IRMS) NCR.
	ASSISTANT REGIONAL ADMINISTRATOR, PBS, NCR.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
REGION 4—ATLANTA	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASSISTANT REG ADMIN FOR INFORM RES MGMT–R–4.
	ASST REG ADMR FOR FEDERAL SUPPLY & SERVICES.
REGION 5—CHICAGO	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
REGION 6—KANSAS CITY	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
REGION 7—FORT WORTH	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASST REGL ADMR FOR INFO RESOURCES MGMT R–7.
	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
REGION 8—DENVER	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
REGION 9—SAN FRANCISCO	ASST REGL ADMR FOR PUBLIC BUILDINGS SERVICES.
	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
	ASST REG ADMR FOR INFORMATION RES MANAGEMENT
REGION 10—AUBURN, WASHINGTON	ASST REGIONAL ADMINISTRATOR, PBS REGION 10.
	DEP ASST REGL ADMINISTRATOR, PBS.
DEPARTMENT OF HEALTH AND HUMAN SERVICES:	
ODAS FOR BUDGET	DIR DIV OF INTEGRITY & ORGAN REVIEW.
ODAS FOR FINANCE	DEP ASST SEC, FINANCE.
	DIR, OFFICE OF FINANCIAL POLICY.
ODAS FOR GRANTS & ACQUISITION MANAGEMENT	DIR OFFICE OF GRAN & MGMT.
	DEP ASST SECY, OGAM.
OAS FOR PLANNING AND EVALUATION	DEP TO DEPUTY ASST SECRY FOR PLANN & EVALUAT.
OAS FOR PERSONNEL ADMINISTRATION	ASST SEC FOR PERSONNEL ADMINISTRATION.
	DIR, OFC OF HUMAN RELATIONS.
	DIR, CENTER FOR HUMAN RES STRATEGIC P & P.
ASSOCIATE GENERAL COUNSEL DIVISIONS	ASSOC GEN COUN, BUSINESS & ADM LAW DIVISION.
OFFICE OF THE INSPECTOR GENERAL	PRINCIPAL DEP INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR MGMT & POLICY.
ODIG FOR INVESTIGATIONS	DEP INSP GEN FOR INVESTIGATIONS.
	ASST INSP GENERAL FOR CRIMINAL INVESTIGATIONS.
	ASST INSP GEN FOR CIVIL & ADM REMEDIES.
	ASST INSP GEN FOR INVESTIGATION P & O.
ODIG FOR AUDIT SERVICES	DEP INSPECTOR GENERAL FOR AUDIT SERVICES.
	ASST INSPECTOR GEN FOR SOCIAL SECURITY AUDITS.
	ASST INSP GEN FOR ADM OF C/F & AGIN AUDITS.
	ASST INSPECTOR GEN FOR HEALTH CARE FIN AUDITS.
	ASST INSPECTOR GEN FOR AUDIT POL & OVERSIGHT.
	ASST INSP GEN FOR PUBLIC HEALTH SERV AUDITS.
	ASST I.G. FOR SOCIAL SECURITY AUDITS OFC A/S.
ODIG FOR EVALUATION & INSPECTIONS	DEP INSP GEN FOR EVALUATION & INSPECTIONS.
	ASST INSP GEN FOR ANALYSIS & INSPECTIONS.
OFFICE OF PROGRAM SUPPORT	DIR OFC OF FINANCIAL MANAGEMENT.
OFC OF INFORMATION SYSTEMS/CHILD SUPPORT SYSTEMS	DIR, OFC OF INFORMATION SYSTEMS MANAGEMENT.
OAA FOR MANAGEMENT	DIR, OFFICE OF FINANCIAL MANAGEMENT.
	CHIEF ACTUARY.
	DIR, BUREAU OF DATA MANAGEMENT AND STRATEGY.
	DEP DIR, BUREAU OF DATA MANAGEMENT & STRATEGY
	DIR, OFFICE OF MEDICARE & MEDICAID COST EST
	DIR, OFFICE OF ACQUISITIONS AND GRANTS.
	DEPUTY DIR, OFFICE OF FINANCIAL MANAGEMENT
	DEP DIRECTOR, OFFICE OF THE ACTUARY.
OAA FOR OPERATIONS	DIR, OFC OF CONTRACTING & FINANCIAL MANAGEMENT
	DIR, OFC OF MEDICARE BENEFITS ADMIN.
OAA FOR PROGRAM DEVELOPMENT	DIR, OFFICE OF DEMONSTRATIONS AND EVALUATIONS.
	DIR, OFFICE OF RESEARCH.
OFFICE ASSOC ADMR. FOR OPERATIONS & RES MANAGEMENT.	DIRECTOR, OFFICE OF FINANCIAL & HUMAN RES.
	DIRECTOR, OFFICE OF FINANCIAL MANAGEMENT.
	DEPUTY DIRECTOR, OFC OF FINANCIAL MANAGEMENT.
	DIR, OFC OF MEDICARE BENEFITS ADMINISTRATION.
OAS FOR HEALTH	DEPUTY DIRECTOR, OFFICE OF MANAGMENT.
	DIRECTOR, OFFICE OF RESOURCE MANAGEMENT.
	DIR, DIV OF PUBLIC HEALTH SERVICE BUDGET.
	DIRECTOR, OFFICE OF RESEARCH INTEGRITY
	DEPUTY DIRECTOR, OFFICE OF RESEARCH INTEGRITY
REGIONAL ADMINISTRATORS	REGL HEALTH ADMINISTRATION.
SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION.	ASSOC ADMR FOR EXTRAMURAL PROGRAMS.
CENTER FOR SUBSTANCE ABUSE PREVENTION	DIR, DIV OF COMM PREVENTION & TRAINING.
	DIRECTOR, DIVISION OF WORKPLACE PROGRAMS.
	DIR, DIV OF DEMONSTRATION FOR HIGH RISK POP
CENTER FOR MENTAL HEALTH SERVICES	CHIEF RETROVIRUS BRANCH.
	DIR, DIV OF STSTE & COMMUNITY SYSTEMS DEVELOP.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
CENTER FOR SUBSTANCE ABUSE TREATMENT	DIR, OFC OF SCIENTIFIC ANALYSIS & EVAULATION.
CENTERS FOR DISEASE CONTROL & PREVENTION	SENIOR ADVISOR FOR PUBLIC HEALTH MANAGEMENT.
	SENIOR ADVISOR FOR PREVENTIVE HEALTH SERVICES.
	DIRECTOR, FINANCIAL MANAGMENT OFFICE.
CENTER FOR INFECTIOUS DISEASES	SENIOR ADVISOR FOR MINORITY HEALTH EDUCATION
NATL INSTITUTE FOR OCCUPATIONAL SAFETY & HEALTH	ASST DIR FOR LABORATORY SCIENCE.
	ASSISTANT DIRECTOR FOR SCIENCE.
CENTER FOR ENV HEALTH & INJURY CONTROL	EXECUTIVE OFFICER, NIOSH.
CENTER FOR PREVENTION SERVICES	DIR, DIV OF ENVIRONMENTAL HEALTH LAB SCIENCES.
NATIONAL CENTER FOR HEALTH STATISTICS	DIR, DIV OF STD/HIV PREVENTION.
	ASSOC DIR, FOR ANALYSIS & EPIDEMIOLOGY.
	ASSOCIATE DIR, OFC OF P & E PROGRAMS.
	ASSOC DIR, FOR RESEARCH & METHODOLOGY.
	ASSOC DIR, OFC OF VITAL & HEALTH STATS SYST.
	ASSOC DIR, FOR INTERNAL STATISTICS.
CENTER FOR BIOLOGICAL EVALUATION & RESEARCH	DIR, DIV OF BLOOD COLLECTION & PROCESSING.
	DIRECTOR, DIVISION OF BACTERIAL PRODUCTS.
	DEP DIR, OFC OF BIOLOGICAL PRODUCT REVIEW.
	DIR, DIV OF BIOSTATISTICS & EPIDEMIOLOGY.
	DIR, DIV OF ALLERGENCI PRODUCTS/PARASITOLOGY
	DIR, OFC OF VACCINES RESEARCH & REVIEW.
CENTER FOR DRUG EVALUATION & RESEARCH	DIR, OFC OF THERAPEUTICS RESEARCH & REVIEW.
	DIR, CENTER FOR DRUG EVALUATION & RESEARCH.
	DIRECTOR, OFFICE OF MANAGEMENT.
	DIR, OFFICE OF DRUG EVALUATION I.
	DEP DIR FOR PROGRAM MANAGEMENT.
	DIR, DIV OF CARDIO-RENTAL DRUG PRODUCTS.
	DIR, DIV OF NEUROPHARMACOLOGICAL DRUG PROD.
	DIR, DIV OF MIDICAL IMAGING S & D PRODUCTS.
	DIR, DIV OF G & C DRUG PRODUCTS.
	DIR, DIV OF ANCOLOGY & PULMONARY DRUG PROD.
	DIRECTOR, OFFICE OF DRUG STANDARDS.
	DEP DIR, OFFICE OF DRUG STANDARDS.
	DIR, DIVISION OF OTC DRUG EVALUATION.
	DEP DIR, OFFICE OF GENERIC DRUGS.
	DIR, MONOGRAPH REVIEW STAFF.
	DIR, OFC OF OVER-THE-COUNTER DRUG EVALUATION.
	DEP DIR, OFC OF EPIDEMIOLOGY & BIOSTATISTICS.
	DIR, DIV OF BIOMETRICS.
	DIR, OFFICE OF DRUG EVALUATION II.
	DEP DIR, OFFICE OF DRUG EVALUATION II.
	DIR, DIV OF M & E DRUG PRODUCTS.
	DIR, DIV OF ANTI-INFECTIVE DRUG PRODUCTS.
	DIR, DIV OF ANTI-VIARAL DRUG PRODUCTS.
	DIRECTOR, OFFICE OF COMPLIANCE.
	DIR, DIV OF SCIENTIFIC INVESTIGATIONS.
	DIRECTOR, OFFICE OF RESEARCH RESOURCES.
	DIRECTOR, DIVISION OF BIOPHARMACENTICS.
	DEP DIR, OFFICE OF RESEARCH RESOURCES
CENTER FOR FOOD SAFETY & APPLIED NUTRITION	ASSOC DIRECTOR FOR SCIENCE & MEDICAL AFFAIRS
	DIRECTOR, OFFICE OF SEAFOOD
	DIRECTOR, OFFICE OF SPECIAL RESEARCH SKILLS.
	DIRECTOR, DIV OF TOXICOLOGICAL RESEARCH.
	DIRECTOR, OFFICE OF PHYSICAL SCIENCES.
	DIR, OFC OF PLANT & DAIRY FOODS & BEVERAGES.
	DIRECTOR, OFFICE OF FOOD LABELING.
CENTER FOR DEVICES & RADIOLOGICAL HEALTH	DIR, OFC OF POL, P & S INITIATIVES.
	DIR, OFFICE OF STANDARDS & REGULATIONS.
	DIR, OFFICE OF DEVICE EVALUATION.
	DIR, DIV OF SURGICAL & REHABILITATION DEVICES
	DIR, DIVISION OF CARDOVASCULAR DEVICES.
	DIR, DIV OF GENERAL & RESTORATIVE DEVICES.
	DIR, OFFICE OF COMPLIANCE AND SURVEILLANCE.
	DIR, OFFICE OF SCIENCE AND TECHNOLOGY.
	DEP DIR, OFC OF SCIENCE & TECHNOLOGY.
CENTER FOR VETERINARY MEDICINE	DIR DIV OF REPRODUCTIVE ABDOMINAL EAR THROAT.
	DIRECTOR, OFFICE OF SCIENCE.
	DIRECTOR, OFFICE OF SURVEILLANCE.
	DIR, OFC OF NEW ANIMAL DRUG EVALUATION.
	DEP DIR FOR HFSCS.
	DEP DIR, THERAPEUTIC & PRODUCTION DRUG REVIEW
	DIR, DIV OF BIOMETRICS & PRODUCITON DRUGS.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
OFFICE OF REGULATORY AFFAIRS	ASSOC COMR FOR REGULTORY AFFAIRS.
	DEP ASSOC COMR FOR REGULATORY AFFAIRS.
	REGL FOOD & DRUG DIRECTOR, NE REGION.
	REGL FOOD & DRUG DIRECTOR MID-ATLANTIC REGION.
	REGL FOOD & DRUG DIRECTOR, SOUTHEAST REGION.
	REGL FOOD & DRUG DIRECTOR, MIDWEST REGION.
	REGL FOOD & DRUG DIRECTOR, SOUTHWEST REGION.
	REGL FOOD & DRUG DIRECTOR, PACIFIC REGION.
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	DIRECTOR, DIV OF BIOMETRY.
	DIRECTOR, OFFICE OF RESEARCH.
OFFICE OF HEALTH AFFAIRS	DIRECTOR MED STAFF, OFC OF HEALTH AFFAIRS.
OFFICE OF MANAGEMENT	DIR, PARKLAWN COMPUTET CENTER
BUREAU OF HEALTH RESOURCES DEVELOPMENT	DEP DIR, BUREAU OF HEALTH RESOURCES DEV.
OFFICE OF THE DIRECTOR	DIRECTOR, DIV OF FINANCIAL MANAGEMENT.
	DIRECTOR, DIVISION OF CONTRACTS & GRANTS.
	ASSOCIATE DIRECTOR FOR EXTRAMURAL AFFAIRS.
	ASSOCIATE DIRECTOR FOR DISEASE PREVENTION.
	DIR, OFC OF MEDICAL APPLICATIONS OF RESEARCH
	DIR, OFFICE OF SCIENTIFIC INTEGRITY.
	DEPUTY DIRECTOR FOR MANAGEMENT, NIH.
	DEP DIR FOR SCI POL & TECHNOLOGY TRANSFER.
	ASSOC DIR FOR INFORMATION RESOURCE MGMT
	DIRECTOR, ACQUISITIONS MANAGEMENT.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
NAT'L HEART, LUNG & BLOOD INSTITUTE	ASSOC DIRECTOR FOR REVIEW.
	ASSOC DIR EPIDEMIOLOGY & BIOMETRY PROGRAM.
	CHIEF, SICKLE CELL DISEASE BR.
	DIR DIV OF LUNG DISEASES.
	DIR, DIV OF BLOOD DISEASES & RESOURCES.
	DIR, A/SCLEROSIS, HYPERTENSION & LIP MET PROG.
	DEP DIRECTOR DIV OF EXTRAMURAL AFFAIRS.
	DIRECTOR, DIVISION OF EXTRAMURAL AFFAIRS.
	ASSOC DIR FOR INTERNATIONAL PROGRAMS.
	DIR OFC OF BIOSTATICS RESEARCH.
	DEP DIR DIV OF HEART VASCULAR DISEASES.
	DEP DIR DIV OF EPIDEM & CLINICAL APPLICATION.
INTRAMURAL RESEARCH	DIR, DIVISION OF INTRAMURAL RESEARCH.
	CHF LAB OF BIOCHEMICAL GENETICS.
	CHF LAB OF BIOCHEMISTRY.
	CHIEF LAB OF BIOPHYSICAL CHEMISTRY.
	CHIEF, LABORATORY OF CHEMICAL PHARAMACOLOGY
	CHIEF MACROMOLECULES SECTION.
	CHF, INTERMEDIARY M & B SECTION.
	CHIEF, LABORATORY OF CELLULAR METABOLISM.
	CHF, LAB OF KIDNEY & ELECTROLYTE METABOLISM.
DIVISION OF CANCER BIOLOGY, DIAGNOSIS AND CENTERS	CHIEF LAB OF CARDIAC ENERGETICS.
	DIR, DIV OF CANCER BIOLOGY DIAGNOSIS & CTRS.
	DEP DIR, DIV OF CANCER BIOLOGY DIAG & CENTERS.
	CHF, MICROBIAL G & B SECTION, LAB OF BIOCHEM.
	CHIEF, LAB OF BIOCHEM INTRAMURAL RES PROG.
	ASSOC DIR, EXTRAMURAL RESEARCH PROGRAM.
	CHIEF DERMATOLOGY BR, INTRAMURAL RES PROG.
	CHIEF, CELL MEDIATED IMMUNITY SECTION.
	CHIEF, LAB OF TUMOR & BIOL IMMUNOLOGY, IRP.
	ASSOC DIR, CTRS TRAINING & RESOURCES PROG.
D'VISION OF CANCER ETIOLOGY	CHIEF, LABORATORY OF MOLECULAR BIOLOGY.
	DIR, DIV OF CANCER ETIOLOGY.
	CHIEF LAB OF BIOLOGY.
	CHIEF CLINICAL EPIDEMIOLOGY BRANCH.
	CHIEF LABORATORY OF MOLECULAR CARCINOGENESIS.
	CHF LAB OF EXPERIMENTAL PATHOLOGY.
	HEAD, MATH STATISTICS & APPLIED MATHEMATICS S.
	HEAD IN VITRO CARCINOGENESIS SECTION.
DIVISION OF CANCER PREVENTION & CONTROL	DEP DIR, DIV OF CANCER PREVENTION & CONTROL.
	ASSOCIATE DIR, SURVEILLANCE PROGRAM, DCPC.
	ASSOC DIR, CANCER CONTROL SCI PROGRAM, DCPC
DIVISION OF EXTRAMURAL ACTIVITIES	ASSOC DIR, EARLY D & C ONCOLOGY PROGRAM.
	DIR, DIV OF EXTRAMURAL ACTIVITIES.
DIVISION OF CANCER TREATMENT	DEPUTY DIR, DIV OF EXTRAMURAL ACTIVITIES.
	ASSOC DIR DEVELOPMENT THERAPEUTICS PROG.
	CHF-RADIATION ONCOLOGY BR.
	ASSOC DIR RADIATION RESEARCH PROGRAM.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
NATL INSTITUTE OF DIABETES & KIDNEY DIS	DIR DIV KIDNEY UROLOGIC & HEMATLOGIC DISEASES.
	DIR DIVISION OF EXTRAMURAL ACTIVITIES.
	ASSOC DIRECTOR FOR RESEARCH & ASSESSMENT.
	ASSOC DIR DISEASE PREVENTION TECHNOL TRANSFER
	ASSOC DIR FOR MGT & OPERATIONS.
INTRAMURAL RESEARCH	CHIEF SECTION ON BIOCHEMICAL MECHANISMS.
	CHF SECT ON METABOLIC ENZYMES.
	CHF SECT ON PHYSICAL CHEMISTRY.
	CHIEF, SECTION ON MOLECULAR STRUCTURE.
	SR RES PHYSICIST, MATHEMATICAL RESEARCH BR.
	CHIEF THEORETICAL BIOPHYSICS SECTION.
	CHIEF, LABORATORY OF BIO-ORGANIC CHEMISTRY.
	CHIEF OXIDATION MECHANISMS SECTION L B C.
	CHIEF LABORATORY OF BIOCHEMISTRY & METABOLISM.
	CHF, SEC ON NUCLEAR MAG RES, LAB/CHEM PHYSICS.
	CLINICAL DIR & CHIEF, KIDNEY DISEASE SECTION.
	CHIEF, SECTION ON MOLECULAR BIOPHYSICS.
	CHF, SEC CARBOHYDRATES LAB OF CHEMISTRY/NIDDK.
	CHIEF, METABOLIC DISEASES BRANCH.
	CHIEF, LABORATORY OF NEUROSCIENCE, NIDDK.
	CHIEF EPIDEMIOLOGY & CLINICAL RESEARCH BRANCH.
	CHF, LABORATORY OF MEDICINAL CHEMISTRY.
	CHIEF, MORPHOGENESIS SECTION.
NATL INST OF ARTHR & MUSCULOSKELETAL & SKIN DISEASES.	CHF, LAB OF PHYSICAL BIOLOGY.
	DIRECTOR, EXTRAMURAL PROGRAM.
	DEPUTY DIR.
	CHIEF, LABORATORY OF STRUCTURAL BIOLOGY RES.
	CHIEF, LABORATORY OF SKIN BIOLOGY.
NATIONAL LIBRARY OF MEDICINE	DEP DIR, NATL LIB OF MEDICINE.
	DEP DIR FOR RES AND EDUCATION.
	ASSOCIATE DIRECTOR FOR LIBARY OPERATIONS.
	ASSOC DIR FOR EXTRAMURAL PROGRAMS.
	ASSOC DIR, SPECIALIZED INFO SERVICES.
	DEP DIR LISTER HILL NATL CTR FOR BIOMED COMMS.
	DIRECTOR, INFORMATION SYSTEMS.
	DIR NATL CTR FOR BIOTECH INFO.
	ASSOC DIR FOR HEALTH & INFO PROG DEVELOPMENT.
NATL INST OF ALLERGY & INFECTIOUS DISEASES	DIR, DIV OF ALLERGY/IMMUNOLOGY/TRANSPLANTATN.
	CHF, LAB OF PARASITIC DISEASES.
	DIR, DIV OF MICROBIOLOGY/INFECTIOUS DISEASES.
	CHIEF, LAB OF IMMUNOGENETICS.
	DIR, DIV OF EXTRAMURAL ACTIVITIES.
	CH, LAB OF MICROBIAL STRUCTURE AND FUNCTION.
	CHIEF LAB OF MOLECULAR MICROBIOLOGY.
	DIR, DIV ACQUIRED IMMUNIDEFICIENCY SYNDROME.
	ASSOC DIR FOR ADMINISTRATION & OPERATIONS.
	DEPUTY DIR, DIVISION OF EXTRAMURAL ACTIVITIES.
	CHIEF, BIOLOGICAL RESOURCES BRANCH.
	HEAD, LYMPHOCYTE BIOLOGY SECTION.
	CHIEF, LABORATORY OF INFECTIOUS DISEASES.
	HEAD EXPERIMENTAL PATHOLOGY SECTION.
	DEP DIR DIV OF ACQUIRED IMMUNODEFICIENCY
	HEAD EPIDEMIOLOGY SECTION.
	CHIEF, LABORATORY OF MALARIA RESEACH.
NATL INST ON AGING	SCIENTIFIC DIRECTOR GERONTOLOGY RSCH CNTR.
	CLIN DIRECTOR AND CHIEF CLIN PHYSIOLOGY BR.
	CHIEF LAB OF CELLULAR & MOLECULAR BIOLOGY.
	ASSOCIATE DIR FOR BEHAVIOR SCIENCES RES.
	ASSOC DIR BIOLOGY OF AGING PROGRAM.
	ASSOC DIR, OFFICE OF EXTRAMURAL AFFAIRS.
	ASSOC DIR, EPIDEMI, DEMO, & BIOMETRY PROGRAM.
	ASSOC DIR, OFFICE OF PLNNG, A & I ACTIVITIES.
	ASSOC DIR NEUROSCI & NEUROPSYCH OF AGING PROG.
NATL INST OF CHILD HEALTH & HUMAN DEVELOPMENT	CHIEF, LABORATORY OF MOLECULAR GENETICS.
	DEP DIR CENTER FOR POPULATION RES.
	CHF, ENDOCRINOLOGY & REPRODUCTION RESEARCH BR.
	DIRECTOR CTR FORRES FOR MOTHERS & CHILDREN.
	DIRECTOR CNTR FOR POPULATION RESEARCH.
	CHIEF, SECTION ON GROWTH FACTORS.
	ASSOC DIR FOR PREVENTION RESEARCH.
	CHIEF LABORATORY OF MAMALIAN GENES & DEVELOP

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	CHIEF, SECTION ON MOLECULAR ENDOCRINOLOGY.
	CHIEF, SECTION NUROENDOCRINOLOGY.
	CHIEF SECTION ON MICROBIAL GENETICS.
	CHIEF, LABORATORY OF COMPARATIVE ETHOLOGY.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	DIR, NATL CENTER FOR MEDICAL REHAB RESEARCH.
NATL INST OF DENTAL RESEARCH	CHIEF, LABORATORY OF IMMUNOLOGY.
	CHF, ENZYME CHEMISTRY SECTION.
	DIR, EXTRAMURAL PROGRAM.
	CHIEF NEUROBIOLOGY & ANESTHESIOLOGY BRANCH.
NATL INST OF ENVIRONMENTAL HEALTH SCIENCES	DIR, DIV OF INTRAMURAL, NIEHS.
	CHF LAB OF PULMONARY PATHOBIOLOGY
	CHIEF, LAB OF GENETICS.
	HEAD MUTAGENESIS SECTION.
	HEAD MAMMALIAN MUTAGENESIS SECTION.
	SENIOR SCIENTIFIC ADVISOR.
	DIR, DIV OF TOXICOLOGY RESEARCH & TESTING.
	ASSOCIATE DIRECTOR FOR MANAGEMENT
	CHIEF, SIGNAL TRANSDUCTION SECTION.
	CHIEF LAB OF MOLECULAR CARCINOGENESIS.
	DIR NATL INST OF ENVIRONMENTAL HEALTH SCIENCE
NATL INST OF GENERAL MEDICAL SCIENCES	DEP DIR NATL INSTITUTE OF GENERAL MED SCI.
	DIR, CELL & MOLEC BASIS OF DISEASE PROG.
	DIR GENETICS PROGRAM.
	ASSOC DIR FOR PROGRAM ACTIVITIES.
	DIR PHARMACOLOGY & BIORELATED CHEMISTRY PR BR
	DIR BIO PHYS SCIENCES PROGRAM BRANCH.
	DIR, MINORITY OPPORTUNITIES IN RES PROG BR.
NATL INST OF NEUROLOGICAL DISORDERS AND STROKE	DIR, DIV OF FUNDAMENTAL NEUROSCIENCES.
	DIRECTOR, DIVISION OF STROKE & TRAUMA.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	DIR, BASIC NEUROSCI PROG/CHF/LAB OF NEUROCHEM.
	CHF, LAB OF MOLECULAR & CELLULAR NEUROBIOLOGY
INTRAMURAL RESEARCH	CHIEF LAB OF CENTRAL NERVOUS SYSTEM STUDIES.
	CHF, DEV & METABOLIC NEUROLOGY BRANCH.
	DEPUTY CHIEF, LAB OF CENTRAL NERVOUS SYS STUD.
	HD CELLULAR NEUROPATHOLOGY SECTION.
	CHIEF, NEUROIMAGING BRANCH.
	CHF, SURGICAL NEUROLOGY BRANCH.
	CHIEF BIOMETRY & FIELD STUDIES BRANCH.
	CHIEF, LABORATORY OF NEUROBIOLOGY
	CHIEF, LABORATORY OF NEURA CONTROL.
	CHIEF BRAIN STRUCTURAL PLATICITY SECTION.
	CHF, LAB OF VIRAL & MOLECULAR PATHOGENESIS.
	CHIEF STROKE BRANCH.
NATL EYE INSTITUTE	CHIEF LABORATORY OF RETINAL CELL & MOL BIOLOG.
	CHIEF, LAB OF MOLECULAR & DEV BIOLOGY
	CHIEF, LABORATORY OF SENSORIMOTOR RESEARCH
	CHIEF LABORATORY OF CELLULAR BIOLOGY
NATL INST ON DEAFNESS & OTHER COMMUNICATION DISORDERS.	CHIEF, LABORATORY OF MOLECULAR BIOLOGY
	DIR, DIV OF COMMUNICATION SCIENCES & DISORDER.
	DIR, DIV OF INTRA RES, NID & OTHER COMM DISOR.
	DIR, DIV OF EXTRAM ACT, NID & OTHER COMM DISO.
	DEP DIR, NATL INST ON D & O COMMUNICATION DIS.
NIH CLINICAL CENTER	ASSOC DIR FOR CLINICAL CARE/DIR, CLINICAL CTR.
	HEALTH SYSTEMS ADMINISTRATOR.
	ASSOCIATE DIRECTOR FOR PLANNING.
	ASSOC CHF, POSITION EMISSION T & R.
	DEPUTY DIRECTOR FOR MAGAMENT AND OPERATIONS.
DIVISION OF COMPUTER RESEARCH & TECH	CHIEF, COMPUTER CENTER BRANCH.
	CHIEF, PHYSICAL SCIENCES LAB.
	CHIEF, INFORMATION SYSTEMS BRANCH.
	DEPUTY DIRECTOR.
	ASSOC DIR OFC OF COMPUTING RESOURCES SERVICES.
JOHN E FOGARTY INTL CENTER	ASSOC DIR FOR INTL ADVANCED STUDIES.
NATIONAL CENTER FOR RESEARCH RESOURCES	DEP DIR FOR EXTRAMURAL RESEARCH RESOURCES.
	DIR, NATL CENTER FOR RESEARCH RESOURCES.
	DIR, GEN CLINICAL RES CTR FOR RES RESOURCES.
	DIR, BIOMEDICAL ENGR & INSTRUMENTATION BRANCH.
	DEP DIR, NATL CENTER FOR RESEARCH RESOURCES.
DIVISION OF RESEARCH GRANTS	ASSOCIATE DIRECTOR FOR REFERRAL AND REVIEW

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASSOC DIR FOR STATISTICS & ANALYSIS.
NATIONAL CENTER FOR NURSING RESEARCH	DIRECTOR NATIONAL CNTR FOR NURSING RESEARCH.
NATIONAL CENTER FOR HUMAN GENOME RESEARCH	DEPUTY DIRECTOR.
	DIR DIV OF INTRAMURAL RES NATL CTR H G R.
	CHIEF DIAG DEVEL BR NATL CTR HUMAN GEN RES.
	CHF, LABOR OF GENETIC DIS RES NATL CTR FOR HGR.
NATIONAL INSTITUTE ON DRUG ABUSE	DIRECTOR, DIVISION OF CLINICAL RESEARCH.
	DIR, OFC OF SCI POL, EDUCATION & LEGISLATION.
	ASSOC DIR FOR PLANNING & RESOURCES MANAGEMENT
	DIR, OFFICE OF EXTRAMURAL PROGRAM REVIEW.
	DIRECTOR DIVISION OF CLINICAL RESEARCH.
	DIR, MEDICATIONS DEVELOPMENT DIVISION.
	DIRECTOR, ADDICTION RESEARCH CENTER.
	CHIEF, NEUROSCIENCE RESEARCH BRANCH.
NATIONAL INSTITUTE OF MENTAL HEALTH	DEP DIR, NATIONAL INSTITUTE OF MENTAL HEALTH.
	ASSOCIATE DIRECTOR FOR SPECIAL POPULATIONS.
	ASSOCIATE DIRECTOR FOR PREVENTION.
	EXEC OFCR, NATL INSTITUTE OF MENTAL HEALTH.
	DIR, OFC OF LEGISLATIVE ANALYSIS & COORD.
	DIR, DIV OF NEUROSCIENCE & BEHAVIORAL SCI.
	DIRECTOR, DIVISION OF EXTRAMURAL ACTIVITIES.
	CHIEF, NEUROPSYCHIATRY BRANCH.
	CHIEF, CHILD PSYCHIATRY BRANCH.
	CHIEF, BIOLOGICAL PSYCHIATRY BRANCH.
	CHIEF, LABORATORY PSYCHIATRY BRANCH.
	CHIEF, LABORATORY OF CLINICAL SCIENCE.
	CHIEF, SECTION ON HISTOPHARMACOLOGY
NATIONAL INSTITUTE ON ALCOHOL ABUSE & ALCOHOLISM	DIR, NATL INSTITUTE ON ALCOHOL A & A.
	DIRECTOR, DIVISION OF BASIC RESEARCH.
	DIR, DIV OF BIOMETRY & EPIDEMIOLOGY.
AGENCY FOR HEALTH CARE POLICY & RESEARCH	DIR CTR FOR MEDICAL EFFECTIVENESS RESEARCH.
	DIR, CTR FOR GEN HEALTH SERV INTRAMURAL RES.
	DIR, CTR GEN HEALTH SVCE EXTRAMURAL RESEARCH.
	DIR, OFC OF SCI & DATA DEV/AGCY FOR HCP & RES.
OFC OF ACTUARY	CHF ACTUARY.
	DEP CHIEF ACTUARY (LONG-RANGE)
	DEP CHIEF ACTUARY SHORT RANGE SSA
OFFICE OF FINANCE, ASSESSMENT AND MANAGEMENT	SENIOR FINANCIAL EXECUTIVE.
OFC OF FINANCIAL POLICY & OPERATIONS	ASSOC COMR, OFFICE OF FIN POLICY & OPERATIONS.
	DEP ASSOC COMM FINANCIAL POLICY & OPERATIONS.
OFFICE OF ACQUISITION AND GRANTS	ASSOC COMMISSIONER FOR ACQUISITION & GRANTS.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:	
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUN FOR PROGRAM ENFORCEMENT
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	ASST INSPECTOR GENERAL FOR MANAGEMENT & POL.
	DEPUTY ASST INSPECTOR GEN FOR AUDIT OPERATION.
	DEP ASST INSPECTOR GEN FOR P & O.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
	COUNSEL TO THE INSPECTOR GENERAL.
OFFICE OF THE CHIEF FINANCIAL OFFICER	DEPUTY DIRECTOR OFFICE OF FINANCE & ACCOUNTG.
	ADM COMPTROLLER-DIR, OFC OF FIN & ACCOUNTING.
	DEP CHIEF FINANCIAL OFFICER FOR OPERATIONS.
	DEP CHIEF FINANCIAL OFFICER FOR FINANCE.
	DIR, SECTION 8 SYSTEMS PROJECT STAFF
ASSISTANT SECRETARY FOR ADMINISTRATION	DEP DIR OFFICE OF PERSONNEL.
	DIR, OFC OF BUDGET.
	DEP DIR, OFC OF BUDGET.
	DIRECTOR OFC OF PROCUREMENTS & CONTRACTS
	SPECIAL ADVISOR/COMPTROLLER.
ASSISTANT SECY FOR HOUSING	DIR, MORTGAGE INSURANCE ACCTNG & SERV GROUP
	HOUSING/FED HOUSING ADM COMPTROLLER.
	DIR OFC OF MULTIFAMILY HOUSING PRES PROP DIS.
	DIR OFC OF INSURED MULTIFAMILY HOUSING DEVEL.
	HOUSING-FHA DEPUTY COMPTROLLER.
	DIR, OFC OF POL, P & F SYSTEMS ENHANCEMENTS.
	DIRECTOR, RESPA ENFORCEMENT UNIT.
	DIRECTOR, OFFICE OF EVALUATION.
	PROGRAM SYSTEMS PROJECT OFFICER.
ASST SECY FOR FAIR HOUSING AND EQUAL OPPORTUNITY	DIR, OFC OF FAIR HOUSING I & V PROGRAMS.
ASST SECY FOR COMMUNITY PLANNING AND DEVELOPMENT.	DIR OFFICE OF ENVIRONMENT AND ENERGY.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION	DIR OFC OF BLOCK GRANT ASST. DIRECTOR, OFFICE OF ECONOMIC DEVELOPMENT. VICE PRESIDENT FOR ASSET MANAGEMENT. VICE PRESIDENT FOR MORTGAGE BACKED SECURITIES. VICE PRESIDENT FOR FINANCE.
ASST SECY FOR PUBLIC AND INDIAN HOUSING	GEN DEP ASST SECY FOR PUBLIC & INDIAN HOUSING. DIR RENTAL ASSISTANCE DIVISION. PUBLIC & INDIAN HOUSING-COMPTROLLER. DIR, OFC OF CONSTRUCTION, REH & MAINTENANCE. DIR OFFICE OF ASSISTED HOUSING. DEPUTY PUBLIC & INDIAN HOUSING COMPTROLLER.
NEW YORK (NEW JERSEY)	MANAGER BUFFALO.
SOUTHEAST (ATLANTA)	MANAGER JACKSONVILLE.
MIDWEST (CHICAGO)	MANAGER COLUMBUS. MANAGER DETROIT. MANAGER INDIANAPOLIS. MANAGER MN/ST PAUL.
SOUTHWEST (FORT WORTH)	MANAGER OKLAHOMA
PACIFIC/HAWAII (SAN FRANCISCO)	MANAGER LOS ANGELES.
DEPARTMENT OF INTERIOR:	
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING. ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFC OF THE SOLICITOR	GENERAL COUNSEL. DEPUTY ASST INSPECTOR GENERAL FOR AUDITS. DEPUTY ASSOC SOLICITOR, GENERAL LAW. ASST SOLICITOR BUREAU OF PARKS AND RECREATION SPECIAL ASST TO THE ASSOC SOLICITOR-GEN LAW. DEP ASSOCIATE SOLICITOR-ENERGY & RESOURCES. DEP ASSOCIATE SOLICTOR-INDIAN AFFAIRS.
ASST SECY FOR POLICY, BUDGET & ADMINISTRATION	ASST DIR FOR ECONOMICS. ASST DIR, PROGRAM ANALYSIS STAFF. CHIEF, DIV OF BUDGET OPERATIONS (A). CHIEF DIV OF BUDGET & PROGRAM REVIEW. ASST DIR FOR SPECIAL ANALYSIS. DEP AGCY ETHICS & AUDIT COORDINATION OFFICER. CHIEF DIVISION OF BUDGET OPERATIONS (B). CHIEF DIV OF BUDGET ADMIN. DEPUTY AGENCY ETHICS STAFF OFFICER.
ASST SECRETARY FOR FISH & WILDLIFE & PARKS	EXECUTIVE DIR REGIONAL ECOSYSTEM OFFICE. ASST DIR FOR INFORMATION & TECHNOLOGY SERVICE.
NAT'L PARK SERVICE	PARK MANAGER (SUPERINTENDENT) SENIOR SCIENTIST. SCIENCE & TECHNOLOGY ADVISOR PARK MANAGER EVERGLADES. SPEC ASST TO THE DIR (R & C COUNCIL) PARK MANAGER (SUPERINTENDENT). ASST DIR, DESIGN & CONSTRUCTION (MGR, DSC). PARK MANAGER.
US FISH & WILDLIFE SERVICE	DEP REG DIR REG 8 RSCH & DEV. DEPT ASST DIR—POL, BUDGET, & ADMINISTRATION. RESEARCH DIRECTOR PATUXENT RESEARCH CENTER. SPEC ASST TO THE REG DIR RESEARCH & DEVELOP.
BUREAU OF MINES	RESCH DIR, PITTSBURGH RESEARCH CENTER. RESEARCH DIR, TWIN CITIES RESEARCH CTR. RESEARCH DIRECTOR, ALBANY RESEARCH CTR. CHIEF DIV OF ENVIRONMENTAL TECHNOLOGY. CHIEF DIVISION OF HEALTH SAFETY & MIN TECH. SPEC ASST TO THE DIR, BUREAU OF MINES. SENIOR TECHNICAL ADVISOR.
BUREAU OF RECLAMATION	CHIEF, DIVISION OF RESOURCE EVALUATION. CHIEF, DIVISION OF POLICY ANALYSIS. CHIEF DIV OF RESEARCH & LAB SERVICES DEP ASST COMMISSIONER—ENGINEERING & RESEARCH. DIRECTOR, POLICY & PROGRAMS. SENIOR SCIENTIST. DEPUTY ASST COMMISSIONER—RESOURCES MANAGEMENT. PROJECT MANAGER/ARIZONA PROJECTS OFFICE. CHIEF DIV PROG COORDINATION & FINANCE. DEPUTY AST COMMISSIONER ADMINISTRATION.
US GEOLOGICAL SURVEY	STAFF GEOLOGIST FOR NPRA/ALASKA ACTIVITIES
NATIONAL MAPPING DIV	CHIEF, NATIONAL MAPPING DIVISION ASSOCIATE CHIEF, NATIONAL MAPPING DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
WATER RESOURCES DIV	CHIEF, EROS DATA CENTER. CHIEF WESTERN MAPPING CENTER. CHIEF MID-CONTINENT MAPPING CENTER. CHIEF ROCKY MOUNTAIN MAPPING CENTER. ASST DIV CHIEF FOR INFORMATION & DATA SVC. CHIEF EASTERN MAPPING CENTER. ASST DIV CHF FOR PROGRAM, BUDGET & ADM. ASST DIV CHF FOR RESEARCH. ASST DIV CHF FOR COORDINATION & REQUIREMENTS. ASST DIV CHIEF FOR PRODUCTION MANAGEMENT. SR STAFF SCI FOR MAPPING & GEOGRAPHIC DATA. CHIEF HYDROLOGIST. ASSOC CHIEF HYDROLOGIST. REGL HYDROLOGIST CENTRAL REG LAKEWOOD. REGL HYDROLOGIST SOUTHEASTERN REGION. REGIONAL HYDROLOGIST, WESTERN REGION. REGIONAL HYDROLOGIST, NORTHEASTERN REGION. ASST CHF HYDROLOGIST FOR OPERATIONS. ASST CHIEF HYDROLOGIST FOR SCIEN INFO MGMT. ASST CHF HYDROLOGIST FOR WATER A & D COORD. ASST CHF HYDRO FOR RES & EXTRNL COORDINATION. CHIEF, NATL WATER QUALITY ASSESSMENT (NAWQA). ASST CHF HYDROLOGIST/PROG COORD & TECH SUPP. CHF, OFC OF ATMOSPHERIC DEPOSITION ANALYSIS. CHF, OFC OF HYDROLOGIC RESEARCH. CHIEF, WRSIC PROGRAM. CHIEF OFFICE OF WATER QUALITY. CHF, BR OF WATER INFORMATION TRANSFER. CHIEF, OFFICE OF GROUND WATER. CHIEF OFFICE OF SURFACE WATER. CHF, NATIONAL WATER DATA EXCHANGE PROGRAM.
GEOLOGIC DIV	CHIEF GEOLOGIST. CHIEF, OFC OF EARTHQUAKES, VOLCANOES & ENGR CHIEF, OFC OF SCIENTIFIC PUBLICATIONS. ASSOC CHF GEOLOGIST. CHF OFC OF MINERAL RESOURCES. CHIEF, OFFICE OF ENERGY & MARINE GEOLOGY. CHIEF, OFFICE OF INTERNATIONAL GEOLOGY. CHIEF, OFFICE OF REGIONAL GEOLOGY. ASST CHIEF, OFC OF ENERGY AND MARINE GEOLOGY ASST CHIEF GEOLOGIST FOR PROGRAMS.
BUREAU OF LAND MANAGEMENT	CHIEF, OFFICE OF IRM/MODERNIZATION DEPT ASST DIR LANDS & RENEWABLE RESOURCES. DEP ASST DIR ENERGY & MINERALS RESOURCES.
OFC OF SURFACE MINING RECLAM & ENFORCEMENT	SPEC ASST TO THE DIRECTOR/ FQI REPRESENTATIVE. DEP ASST DIR EASTERN FLD OPS (PROGRAMS OPS) AST DIR FOR EASTERN FIELD OPERATIONS.
MINERALS MANAGEMENT SERVICE	ASSTANT DIRECTOR, WESTERN FIELD OPERATIONS. REGIONAL DIRECTOR, GULF OF MEXICO OCS REGION. DEP ASSOCIATE DIRECTOR FOR OFFSHORE LEASING. CHIEF, LEASING MANAGEMENT DIVISION. REGIONAL MANAGER, ATLANTIC OCS REGION. REGIONAL MANAGER, ALASKA OCS REGION. ASSTANT ASSOC DIR FOR OFFSHORE MINERALS MGT REGIONAL MANAGER, PACIFIC OCS REGION. PROGRAM DIRECTOR FOR INDIAN ROYALTY ASST. DEP ASSOCIATE DIR FOR OFFSHORE OPERATIONS. PROG DIR, OFC OF STRATEGIC & INTERNATL MINLS. DEP ASSOC DIR FOR AUDIT. DEP ASSOC DIR FOR COMPLIANCE.
ASST SECY-INDIAN AFFS	DEPUTY ASSOC DIRECTOR FOR COMPLIANCE. DEPUTY ASSOC DIRECTOR FOR ADMINISTRATION. SPEC ASST TO THE ASST SECY—INDIAN AFFAIRS.
BUREAU OF INDIAN AFFAIRS	ASST DIR OF ADMINISTRATION (FINANCIAL MGMT). SPECIAL ASSISTANT (SPECIAL PROJECTS OFFICER). DEP TO THE DIR INDIAN EDUCATION PROGRAMS.
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY:	
OFFICE OF THE ADMINISTRATOR	SENIOR ADVISOR FOR MANAGEMENT IMPROVEMENT
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF THE INSPECTOR GENERAL	ETHICS OFFICER. ASST INSPECTOR GENERAL FOR SECURITY. ASST INSPECTOR GENERAL FOR INVESTIGATIONS.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	COUNSEL TO THE INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL.
OFFICE OF EQUAL OPPORTUNITY PROGRAMS	DIR OFC OF EQUAL OPPORTUNITY PROGRAMS.
BUREAU FOR GLOBAL PROGRAMS, FIELD SUPPORT AND RESEARCH.	DEP ASST ADMR CTR FOR POP, H/N BFGP, FS/RES.
BUREAU FOR EUROPE AND THE NEW INDEPENDENT STATES.	DEPUTY ASST ADMINISTRATOR.
BUREAU FOR MANAGEMENT	ASSOC ADMIN FOR FINANCE & ADMIN.
	DIRECTOR OFFICE OF PROCUREMENT.
	DEPUTY DIRECTOR OFFICE OF INFOR RES MANAG.
	DEPUTY ASSOCIATE ADMINISTRATOR.
	DIRECTOR OFFICE OF FINANCIAL MGMT.
	DEPUTY DIR OFC OF FINANCIAL MANAGEMENT.
	DIR OFFICE OF INFORMATION RESOURCE MANAGEMENT
	DEPUTY DIRECTOR OFC OF PROCUREMENT.
	DEP, DIR, OFFICE OF HRDM.
	DIR, OFC OF ADMIN SERVICES.
	DEP DIR OFC OF PROCUREMENT BUEAU FOR MAGNT
INTERSTATE COMMERCE COMMISSION:	
OFFICE OF THE CHIEF OPERATING OFFICER	ASSOC MANAGING DIR & DIRECTOR OF PERSONAL.
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUNSEL—LITIGATION.
	SENIOR ASSOC GENERAL COUNSEL—LITIGATION.
OFFICE OF PROCEEDINGS	DEPUTY DIRECTOR—LEGAL COUNSEL II.
	DEPUTY DIRECTOR—LEGAL COUNSEL.
	ASSISTANT DEP DIRECTOR—LEGAL COUNSEL II.
	ASSISTANT TO THE DIRECTOR.
OFFICE OF COMPLIANCE & ENFORCEMENT	ASSOC DIR, OFC OF COMPLIANCE & ENFORCEMENT
	DIRECTOR.
	DEP DIR, SECT OF INVESTIGATIONS & ENFORCEMENT
	ASSOCIATE DIRECTOR POLICY & REVIEW.
	DEPUTY DIRECTOR, SECTION OF TARIFFS.
	DEP DIRECTOR, SECTION OF OPS & INSURANCE.
REGIONAL OFFICES	REGIONAL DIRECTOR (PHILADELPHIA).
	REGIONAL DIRECTOR (CHICAGO).
	REGIONAL DIRECTOR (SAN FRANCISCO).
ORGANIZATION ABOLISHED	DIRECTOR, OFFICE OF TARIFFS.
DEPARTMENT OF JUSTICE:	
OFFICE OF THE ATTORNEY GENERAL	COUNSEL ON PROFESSIONAL RESPONSIBILITY.
	DEP COUNSEL ON PROFESSIONAL RESPONSIBILITY
OFC OF THE LEGAL COUNSEL	SPECIAL COUNSEL.
	SPECIAL COUNSEL.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INSPECTORS.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	ASSISTANT INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSPECTOR GEN FOR MANAGEMENT & PLANNING.
	GENERAL COUNSEL.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFFICE OF THE DEPUTY ATTORNEY GENERAL	DIR EXEC OFC FOR ORGAN CRIME DRUG ENFOR TASK.
	ASSOCIATE DEPUTY ATTORNEY GENERAL.
JUSTICE MANAGEMENT DIVISION	ASST ATTORNEY GENERAL FOR ADMINISTRATION.
	DEPUTY ASST ATTORNEY GENERAL.
	DEP ASST ATTORNEY GEN; PERSONNEL ADM.
	ASST ATTNY GEN E & N RESOURCES.
	DIR, FACILITIES AND ADMINISTRATIVE SVC STAFF
	ASSOCIATE ASST ATTORNEY GENERAL LEGAL COUNSEL.
	DIR TELECOMMUNICATIONS SERVICES STAFF
	ASSOCIATE ASSISTANT ATTORNEY GENERAL.
	DIRECTOR MANAGEMENT AND PLANNING STAFF
	DIRECTOR, BUDGET STAFF.
	SENIOR MANAGEMENT COUNSEL.
	PROCUREMENT EXECUTIVE.
	SENIOR POLICY ADVISOR.
	DEP ASST ATTORNEY GENERAL, INFO RES MGT
	DIR PROCUREMENT SERVICES STAFF.
	DIR, SYSTEMS TECHNOLOGY STAFF.
	GENERAL COUNSEL.
	DIR, EQUAL EMPLOYMENT OPPORTUNITY STAFF
	SENIOR COUNSEL.
OFFICE OF THE CONTROLLER	DEP ASST ATTORNEY GENERAL; CONTROLLER.
	DIR FINANCE STAFF.
	DEP ASST ATTY GEN FOR DEBT COLLECTION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASST DIR, MANAGEMENT & PLANNING STAFF.
OFFICE OF PERSONNEL AND ADMINISTRATION	DIRECTOR PERSONNEL STAFF.
	DIRECTOR, OFC OF ATTY PERS MGMT.
OFFICE OF INFO & ADMIN SERVICES	DIRECTOR, COMPUTER SERVICES STAFF.
	DIRECTOR, SYSTEMS POLICY STAFF.
	DIR, LEGAL AND INFORMATIONS SYSTEMS STAFF.
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW	CHIEF IMMIGRATION JUDGE.
	ASSISTANT TO THE DIRECTOR.
	CHIEF ADMIN HEARING OFFICER.
ANTITRUST DIVISION	SENIOR LITIGATOR.
OFFICE OF LITIGATION	DEP DIR OF OPERATIONS.
	CHIEF, COMPETITION POLICY SECTION.
CIVIL DIVISION	DIRECTOR OF MANAGEMENT PROGRAMS.
COMMERCIAL LITIGATION BRANCH	SPEC LITIGATION COUNSEL (FOREIGN LITIGATION.
	SPEC LITIGATION COUNSEL.
	DEPUTY BRANCH DIRECTOR/COMMERCIAL LITIGATION.
	DEPUTY BRANCH DIR CIVIL FRAUDS.
FEDERAL PROGRAMS BRANCH	SPECIAL LITIGATION COUNSEL (FEDERAL PROGRAMS).
	DEPUTY BRANCH DIRECTOR (FEDERAL PROGRAMS).
TORTS BRANCH	SPEC LITIGATION COUNSEL.
	SPEC LITIGATION COUNSEL.
	SPECIAL LITIGATION COUNSEL (TORT LITIGATION).
	DEPUTY BRANCH DIRECTOR.
	DEPUTY BRANCH DIRECTOR.
	DEPUTY BRANCH DIRECTOR.
	DIRECTOR OFFICE OF CONSUMER LITIGATION.
CIVIL RIGHTS DIVISION	SPECIAL LITIGATION COUNSEL.
OFFICE OF ENVIRONMENTAL RESOURCES	SPECIAL LITIGATION COUNSEL.
	DEP CHF, ENVIRONMENTAL ENFORCEMENT SECTION.
	DEPUTY CHIEF.
DEPUTY ASSISTANT ATTORNEY GENERAL—I	SPECIAL LITIGATION COUNSEL (LEGISLATIVE).
	SR TRIAL ATTORNEY.
	SPECIAL LITIGATION COUNSEL.
	SPEC LITIGATION COUNSEL.
IMMIGRATION AND NATURALIZATION SERVICE	ASSOCIATE COMMISSIONER FOR FINANCE.
	ASST COMMISSIONER FOR DETENTION & DEPORTATION.
	ASST COMMISSIONER FOR ADJUDICATION & NATURAL.
	ASSISTANT COMMISSIONER FOR BORDER PATROL.
	ASST COMM FOR EMPLOYER & LABOR RELATIONS.
	DIRECTOR OF INTERNAL AUDIT.
	DIRECTOR OF SECURITY.
	ASSOC COMR FOR HUMAN RESOURCES & ADMIN.
	ASST COMR, BUDGET.
	REGIONAL DIRECTOR CENTRAL REGION.
ASSOCIATE COMMISSIONER FOR INFORMATION SYSTEMS	ASSISTANT COMMISSIONER FOR RECORDS SYSTEMS.
ASSOCIATE COMMISSIONER FOR EXAMINATIONS	ASST COMM FOR INSPECTIONS.
ASSOCIATE COMMISSIONER FOR ENFORCEMENT	ASSISTANT COMMISSIONER FOR INVESTIGATIONS.
EXECUTIVE ASSOCIATE COMMISSIONER FOR MANAGEMENT	ASST COMMISSIONER FOR ADMINISTRATION.
	ASST COMMR FOR PERSONNEL & TRAINING.
OFC OF THE ASSOCIATE ATTORNEY GENERAL	DEPUTY ASSOCIATE ATTORNEY GENERAL.
EXECUTIVE OFC FOR U.S. ATTORNEYS	DIR OFC OF MGNT INFORMATION SYSTEMS SUPPORT
	DIR, OFFICE OF ADMINISTRATION & REVIEW.
CRIMINAL DIVISION	DEPUTY CHIEF, FRAUD SECTION.
	DIR OFC OF ASSET FORFEITURE.
	SPECIAL COUN FOR INTERNATIONAL PROGRAMS.
	SENIOR COUNSEL.
	SENIOR APPELLATE COUNSEL.
	SENIOR COUNSEL.
	EXECUTIVE OFFICER.
OFC OF SENIOR COUNSELS	SR COUNSEL FOR LITIGATION.
OFC OF DEPUTY ASST ATTORNEY GENERAL I	CNSL TO THE OFC; OFC OF SPEC INVESTIGATIONS.
	COUNSEL TO THE OFFICE FRAUD SECTION.
OFC OF DEPUTY ASST ATTORNEY GENERAL II	CHF PUBLIC INTEGRITY SECTION.
	DEPUTY CHIEF PUBLIC INTEGRITY SECTION.
FEDERAL PRISON SYSTEM	ASST DIR FOR PLANNING AND DEVELOPMENT.
	GENERAL COUNSEL.
	ASSOC COMMR, FED PRISON INDUSTRIES, UNICOR.
	DEP ASSOC COMM FOR FED PRISON INDUSTRIES.
	WARDEN FT WORTH TEXAS.
	WARDEN MARIANNA FL.
	CORTL PROG ADMR ASST DIR FOR HUMAN RES MGMT.
	CORRECTIONAL PROG ADMR ASST DIR FOR PROG REV.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	SEN DEP ASST DIR ADMIN DIV.
	SENIOR DEPUTY ASST DIR HEALTH SERVICES DIV.
	SENIOR DEPUTY ASSISTANT DIRECTOR.
	ASSISTANT DIR, PROGRAM REVIEW DIVISION.
	SR DEP ASST DIR FEDERAL PRISON INDUSTRIES.
	REGIONAL DIRECTOR MID ATLANTIC DIVISION.
	CHIEF OF STAFF TO THE DIRECTOR.
	CORRECTIONAL INSTITUTION ADMINISTRATOR.
	ASST DIR., COMMUNITY CORRECTIONS & DETENTION.
	ASST DIR. INFO, POL, & PUBLIC AFRS DIV.
	WARDEN TALLADEGA AL.
	CIA (WARDEN) FCI, TEXARKANA, TEXAS.
	SEN DEP ASST DIR HEALTH SERVICES DIVISION.
	CORRECTIONAL INSTITUTION ADMIN (WARDEN).
	SR DEP REGL DIRECTOR, MID-ATLANTIC REGION.
	GEN COUNSEL, FED PRISON INDUSTRIES (UNICOR).
	WARDEN, ALLENWOOD, PENNSYLVANIA.
	CHIEF EXECUTIVE OFFICER (WARDEN).
	CORRECTL INSTIT ADMR (WARDEN) FCC,—FLOREN, CO.
	CORRECTIONAL INST ADMR (ARD) SCR, DALLAS, TX.
	CORRL INST ADMR (SDAD), CC & D DIV, WASH, DC.
	WARDEN, USP, FLORENCE, CO.
	CIA (WARDEN) FED MEDICAL CENTER CARSWELL, TX.
	CIA (WARDEN) U.S. PENITENTIARY, ALLENWOOD, PA.
	CORRECTIONAL INSTITUTION ADMIN (WARDEN).
	CORRECTIONAL PROGRAM OFFICER.
OFFICE OF CORRECTIONAL PROGRAMS	ASST DIR CORRECTIONAL PROGRAMS DIV.
NORTHEAST REGION	REGIONAL DIRECTOR.
	WARDEN, LEWISBURG, PA.
	WARDEN DANBURY CONN.
	WARDEN, MCKEAN, PA.
	SENIOR DEPUTY REGIONAL DIRECTOR.
SOUTHEAST REGION	CORRECTIONAL INST ADMR (WARDEN), DAKDALE, LA.
	REGIONAL DIRECTOR.
	WARDEN ATLANTA.
	WARDEN, LEXINGTON KENTUCKY.
	WARDEN BUTNER NORTH CAROLINA.
NORTH CENTRAL REGION	REGIONAL DIRECTOR.
	WARDEN LEAVENWORTH KANSAS.
	WARDEN SPRINGFIELD MO.
	WARDEN MARION IL.
	WARDEN TERRE HAUTE, IN.
	CORRECTIONAL INSTITUTION ADMR.
	WARDEN, FED CORRECTIONAL INSTITUTION.
	CORRECTIONAL INSTITUTION ADMR (WARDEN).
SOUTH CENTRAL REGION	REGIONAL DIRECTOR.
	WARDEN EL RENO OKLA.
	WARDEN MEMPHIS TN.
WESTERN REGION	REGIONAL DIRECTOR.
	WARDEN TERMINAL ISLAND, CA.
	WARDEN, LOMPOC, CA.
	WARDEN PHOENIX AZ.
	WARDEN FEDERAL CORRECTIONAL INSTITUTION.
OFC OF JUSTICE PROGRAMS	COMPTROLLER, OFC OF THE COMPTROLLER.
NATIONAL INSTITUTE OF JUSTICE	ASST DIR, OFC OF DEV TESTING & DISSEMINATION.
BUREAU OF JUSTICE STATISTICS	DEPUTY DIR, BUREAU OF JUSTICE STATISTICS.
U.S. MARSHALS SERVICE	SR MGT COUNSEL (FEDERAL BUREAU OF PRISONS).
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	ASSOCIATE DIRECTOR FOR OPERATIONS.
	ASSISTANT DIRECTOR FOR HUMAN RESOURCES.
	SPECIAL PROJECTS OFFICER.
	ASSOCIATE DIRECTOR FOR OPERATIONS SUPPORT
	ASSOCIATE DIRECTOR FOR ADMINISTRATIVE SERV
	ASST DIR FOR RESEARCH & DEVELOPMENT.
	ASSOC DIRECTOR FOR OPERATIONAL SUPPORT.
	SENIOR MANAGEMENT ADVISOR.
	ASSOCIATE DIRECTOR FOR TRAINING.
DEPARTMENT OF LABOR:	
OFC OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPECTOR GEN FOR AUDIT.
	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIR OFC RESOURCE MGNT & LEGISLATIVE ASSMT.
	ASST INSPECTOR GEN FOR LABOR RACKETEERING.
	COUNSEL TO THE INSPECTOR GENERAL.
OFFICE OF LABOR-MANAGEMENT STANDARDS	DIR OFC OF ELECT TRUSTSHP/INTERN'L UNION AUDIT.
OFFICE OF THE SOLICITOR	DIRECTOR, OFC OF POLICY & PROGRAM SUPPORT.
	DEPUTY SOLICITOR (REGIONAL OPERATIONS).
	ASSOCIATE SOLICITOR FOR LABOR-MANAGEMENT LAWS.
	ASSOC SOLICITOR FOR PLAN BENEFITS SECURITY.
	ASSOC SOLICITOR FOR CIVIL RIGHTS.
	ASSOC SOLICITOR FOR OCCUPATIONAL SAFETY & HLT.
	ASSOC SOLICITOR FOR MINE SAFETY & HEALTH.
	ASSOC SOLICITOR FOR FAIR LABOR STANDARDS.
	ASSOC SOLICITOR FOR EMPLOYEE BENEFITS.
	ASSOC SOL FOR SPEC APPEL & SUP COURT LIT.
	DEP SOLICITOR FOR PLANNING AND COORDINATION.
	DIR, OFFICE OF MANAGEMENT.
REGIONAL SOLICITORS	ASSOCIATE SOLICITOR FOR BLACK LUNG BENEFITS.
	REGIONAL SOLICITOR.
	REGIONAL SOLICITOR REGION IV-ATLANTA.
	REGL SOLICITOR BOSTON.
	REGL SOLICITOR NEW YORK.
	REGIONAL SOLICITOR PHILADELPHIA.
	REGL SOLICITOR DALLAS.
	REGL SOLICITOR KANSAS CITY.
	REGL SOLICITOR SAN FRANCISCO.
OAS FOR ADMINISTRATION AND MANAGEMENT	ASST SEC'Y FOR ADMIN & MGMT.
	DEP ASST SEC FOR ADM AND MGMT.
	DIR OF MANAGEMENT POLICY AND SYSTEMS.
	DIRECTOR OF HUMAN RESOURCES.
	DEPUTY DIRECTOR OF HUMAN RESOURCES.
	DIRECTOR, DIRECTORATE OF CIVIL RIGHTS.
	DIR NATL CAPITAL SERVICE CENTER.
	DIRECTOR OF INFORMATION RESOURCES MANAGEMENT
	DIR, ADMINISTRATIVE & PROCUREMENT PROGRAMS.
	DIRECTOR, DOL ACADEMY.
	DIRECTOR OFFICE OF BUDGET.
	DEPUTY CHIEF FINANCIAL OFFICER.
	DIR OFC OF FIN INTEGRITY.
OFFICE OF MANAGEMENT, ADMINISTRATION AND PLANNING	DIR OFC OF MGMT, ADMINISTRATION AND PLANNING.
OFC OF FEDERAL CONTRACT COMPLIANCE PROGRAMS	DIRECTOR DIVISION OF PROGRAMS OPERATIONS.
WAGE AND HOUR DIVISION	ASST ADMIN FOR POLICY PLANNING & REVIEW.
	DEP WAGE & HOUR ADMIN.
OFC OF WORKERS COMPENSATION PROGRAMS	DIR FEDERAL EMPLOYEES COMPENSATION.
	DIR COAL MINE WORKERS COMPENSATION.
PENSION & WELFARE BENEFITS ADMINISTRATION	DIRECTOR OF ENFORCEMENT.
	DIR OF REGULATIONS & INTERPRETATIONS.
	DIRECTOR OF PROGRAM SERVICES.
	DEPUTY DIRECTOR OF PROGRAM SERVICES.
	SENIOR DIR OF POLICY & LEGISLATIVE ANALYSIS.
	DEP ASST SECY FOR PROGRAM OPERATIONS.
	DIRECTOR OF EXEMPTION DETERMINATIONS.
	SENIOR POLICY ADVISOR.
BUREAU OF LABOR STATISTICS	DIR OF ENFORCEMENT.
	DEPUTY COMMISSIONER.
	ASSOCIATE COMMISSIONER FOR FIELD OPERATIONS.
DATA ANALYSIS	ASSOC COMMR FOR PUBLICATIONS & SPEC STUDIES.
	ASSOC COMMR, ECONOMIC GROWTH.
	ASSOC COMR FOR PRICES AND LIVING CONDITIONS.
	ASSOC COMMR PRODUCTIVITY & TECHNOLOGY.
	ASSOC COMR FOR RESEARCH & EVALUATION.
	ASSOC COMM FOR EMPLOYMENT & UNEMPL STATISTICS.
	ASST COMMR FOR CONSUMER PRICES & PRICE INDEXES.
	ASST COMMR FOR INDUST PRICES & PRICE INDEXES.
	ASSISTANT COMMISSIONER FOR ECONOMIC RESEARCH.
	ASST COMMISSIONER FOR FEDERAL-STATE PROGRAMS.
	ASST COMMISSIONER FOR CURRENT EMPLOY ANALYSIS.
	ASST COMR FOR COMPENSATION LEVELS & TRENDS.
	ASST COMR FOR SAFETY, H & W CONDITIONS.
	ASSOC COMR COMPENSATION & WORKING CONDITIONS.
	ASST COMM FOR SURVEY METHODS RESEARCH.
	ASST COMM FOR INTERNATIONAL PRICES.
ADMINISTRATIVE AND INTERNAL OPERATIONS	DEP COMM FOR ADM AND INTERNAL OPERATIONS.

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Agency/organization	Career reserved positions
	ASSISTANT COMMISSIONER FOR ADMINISTRATION.
	DIRECTOR OF SURVEY PROCESSING.
	DIR OF TECHNOLOGY & COMPUTING SVCS.
	ASST COMR FOR TECHNOLOGY & SURVEY PROCESSING.
	DIR QUALITY & INFO MANAGEMENT.
OFFICE OF WORK-BASED LEARNING	DIRECTOR, OFC OF TRADE ADJUSTMENT ASSISTANCE.
OFFICE OF FINANCIAL & ADMINISTRATIVE MANAGEMENT	COMPTROLLER.
	ADMR, OFC OF FINANCIAL & ADMINISTRATIVE MGMT.
	DIR, OFC OF INFORMATION RESOURCES MANAGEMENT.
ADMINISTRATIVE PROGRAMS	DIR, ADM PROGS.
HEALTH STANDARDS PROGRAMS	DIR HEALTH STANDARDS PROGRAMS.
SAFETY STANDARDS PROGRAMS	DIRECTOR SAFETY STANDARDS PROGRAMS.
FEDERAL/STATE OPERATIONS	DIRECTOR, FEDERAL/STATE OPERATIONS.
TECHNICAL SUPPORT	DIRECTOR, TECHNICAL SUPPORT.
MINE SAFETY AND HEALTH ADMINISTRATION	CHF OF STANDARDS, REGULATIONS & VARIANCES.
	DIRECTOR OF ADMINISTRATION AND MANAGEMENT
	DIRECTOR OF TECHNICAL SUPPORT.
MERIT SYSTEMS PROTECTION BOARD:	
OFFICE OF THE BOARD	DEPUTY GENERAL COUNSEL.
	CLERK OF THE BOARD.
OFC OF THE EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR.
	DEPUTY EXECUTIVE DIRECTOR.
	DIRECTOR, OFFICE OF POLICY & EVALUATION.
	DIRECTOR, OFFICE OF ADMINISTRATION.
	DIR, OFFICE OF MANAGEMENT ANALYSIS.
	DIRECTOR, OFFICE OF REGIONAL OPERATIONS.
REGIONAL OFFICES	REGIONAL DIRECTOR, SAN FRANCISCO.
	REGIONAL DIRECTOR, CHICAGO.
	REGIONAL DIRECTOR, ATLANTA.
	REGIONAL DIRECTOR, PHILADELPHIA.
	REGIONAL DIRECTOR, DALLAS.
	REGIONAL DIRECTOR, WASHINGTON, D.C.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION:	
OFC OF THE ADMINISTRATOR	DIR, BENCHMARKING & EXTERNAL PROGRAMS DIV.
	ASSOCIATE DEPUTY ADMINISTRATOR (TECHNICAL).
	TECHNICAL ASSISTANT TO THE CHIEF ENGINEER.
	DEPUTY CHIEF ENGINEER.
OFFICE OF THE CHIEF FINANCIAL OFFICER/COMPTROLLER	ASSISTANT COMPTROLLER FOR SYSTEMS ANALYSIS.
	DEPUTY CHIEF FINANCIAL OFFICER.
	DIRECTOR, FINANCIAL MANAGEMENT DIVISION.
	DIRECTOR, RESOURCES ANALYSIS DIVISION.
	DEPUTY DIRECTOR FOR PROGRAM RESOURCES.
	ASST COMPTROLLER FOR PROG S & C ASSESSMENT.
OFFICE OF EQUAL OPPORTUNITY PROGRAMS	DIRECTOR, DISCRIMINATION COMPLAINTS DIVISION.
	SPECIAL ASSISTANT TO ASSOCIATE ADMINISTRATOR.
	DIRECTOR, MULTICULTURAL PROG & SUPPORT DIV.
	TECHNICAL ADVISOR FOR SR M QA INITIATIVES.
OFFICE OF HUMAN RESOURCES & EDUCATION	ASSOCIATE ADMINISTRATOR FOR HUMAN RESOURCES.
	DIRECTOR, EDUCATION DIVISION.
	DIRECTOR, PERSONNEL DIVISION.
	DIRECTOR, MANAGEMENT SYSTEMS DIVISION.
	DEP ASSOC ADM FOR HUMAN RES & EDUCATION.
	DIRECTOR, NATIONAL SERVICE OFFICE.
	SPECIAL ASST TO THE ASSOCIATE ADMR.
OFFICE OF PROCUREMENT	ASST ADMR FOR PROCUREMENT.
	DIRECTOR, PROGRAM OPERATIONS DIVISION.
	DIRECTOR, PROCUREMENT POLICY DIVISION.
	DIR PROCUREMENT MANAGEMENT DIVISION.
	DEP ASSISTANT ADMINISTRATOR FOR PROCUREMENT.
	DIR CONTRACT PRICING & FINANCE OFFICE.
	SPEC ASST TO THE ASSOC ADMR FOR PROCUREMENT
	DIR CONTRACT MANAGEMENT DIVISION.
	DIRECTOR HEADQUARTERS AQUISITION DIVISION.
OFFICE OF POLICY COORDINATION & INTERNATIONAL RELATIONS.	DIRECTOR OF SPECIAL STUDIES.
	CHF, U S CIVIL & INTL PAYLOADS BRANCH.
	DEP DIR INDUSTRY AFFAIRS DIVISION.
	DEP ASSOC ADMIN FOR POL COOR & INTEL RELATION.
SPECIAL STUDIES	MANAGER, FLIGHT REQUIREMENTS & ANALYSIS.
	DEP DIR TRANSPORTATION SERVICES DIVISION.
	DIR TRANSPORTATION SERVICES OFFICES.
DEFENSE AFFAIRS	MANAGER NATIONAL SECURITY & DOD AFFAIRS.
	ASST DIR FOR INDUSTRY & TECHNOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
SPACE FLIGHT	DEP DIR, INTERNATIONAL RELATIONS DIVISION.
	DEP SPACE STATION SUPRORT.
	SPEC ASST TO THE DIR INTL RELATIONS DIV.
	SPECIAL ASSISTANT TO THE DIRECTOR.
POLICY COORDINATION	DEP ASSOC ADM FOR SPACE STATION FREEDOM.
	DIRECTOR, SHUTTLE CARRIER SYSTEMS DIVISION.
INTERNATIONAL RELATIONS	MANAGER, HEAVY LIFT LAUNCH VEHICLE.
	DEPUTY MANAGER, INTERNATIONAL PROGRAMS.
	ASSISTANT MANAGER, INTERNATIONAL PROGRAM OFC.
	MANAGER, INTERNATIONAL PROGRAM OFFICE.
	CHIEF, SHUTTLE PROPULSION.
	DIR, PROGRAM PLANNING & CONTROL DIVISION.
ORGANIZATION ABOLISHED	SPECIAL ASST TO THE DIRECTOR.
	CHIEF, SHUTTLE SYSTEMS BRANCH.
	DEP DIR, SYST ENG & ANALYSIS DIVISION.
ORGANIZATION ABOLISHED	CHIEF, SHUTTLE ORBITER/GFE.
	CHIEF, KSC PROJECTS.
ORGANIZATION ABOLISHED	DIRECTOR, OPERATIONS UTILIZATION DIVISION.
ORGANIZATION ABOLISHED	DIR ENGINEERING DIVISION.
	MANAGER, SPECIAL PROJECTS OFFICE.
ORGANIZATION ABOLISHED	DEPUTY MANAGER SPECIAL PROJECTS OFFICE.
	MANAGER SPACE OPERATIONS OFFICE.
	DEP MANAGER, UTILIZATION & OPERATIONS OFFICE.
	MANAGER GROUND OPERATIONS AND LOGISTICS.
	MANAGER MISSION INTEGRATION.
ORGANIZATION ABOLISHED	MANAGER PAYLOAD INTEGRATION.
	DEP MGR MGT INTEGRATION OFFICE.
	MANAGER TECH MGMT & INFO SYSTEM OFFICE.
OFFICE OF MANAGEMENT SYSTEMS & FACILITIES	MANAGER, MANAGEMENT INTEGRATION OFFICE.
	DEP DIR WIND TUNNEL PROJECT.
	TECHNICAL ASSISTANT TO DEPUTY DIRECTOR.
	DEP MGR SPACE STATION FREED PROG & OPERATIONS.
SECURITY, LOGISTICS & INDUSTRIAL RELATIONS	DEP DIR. SPACE STATION FREEDOM P & OPS.
	SPEC ASST TO THE DIR LOGIS AIRCRAFT SEC OFC.
	PROGRAM MANAGER
	CHIEF, INFORMATION SYST & TECHNOL OFFICE.
	DIR. LOGISTICS & SECURITY DIVISION.
AIRCRAFT MANAGEMENT	DIRECTOR, AIRCRAFT MANAGEMENT OFFICE.
INFORMATION RESOURCES MANAGEMENT	DIRECTOR, INFORMATION RESOURCES MGMT DIVISION.
	DEP DIR, INFORMATION RES MGMT DIVISION.
FACILITIES ENGINEERING	DIRECTOR AUTOMATED INFO MGMT. PROG OFC.
	DIR, FAC UTILIZATION, M & E COMPLIANCE DIV.
	DIR FACILITIES PLAN & CONSTRUCTION DIVISION.
	DEPUTY DIRECTOR, FACILITIES ENGINEERING DIV.
OFFICE OF SMALL & DISADVANTAGED BUSINESS UTILIZATION.	DIRECTOR, FACILITIES ENGINEERING DIVISION.
	MANAGER, UTILIZATION & OPERATIONS OFFICE.
	ASSOC ADMR FOR S & D BUSINESS UTILIZATION.
OFFICE OF LEGISLATIVE AFFAIRS	CHIEF, TECHNOLOGY UTILIZATION.
	CHIEF FINANCIAL OFFICER FOR SPACE STATION.
OFFICE OF SPACE FLIGHT	DEP ASSOC ADMIN.
	DEP ASSOC ADMIN FOR PROGRAMS.
	DEPUTY MANAGER PROGRAM ENGINEERING OFFICE.
	MANAGER SYSTEMS ENGINEERING OFFICE.
	MANAGER SYSTEM INTEGRATION.
	SPECIAL ASST TO THE ASSOC ADMR.
	TECH ASST TO DEP ASSOC ADMIN FOR SPACE SHUTTLE.
	MANAGER FOR INTEGRATION.
POLICY & PLANS	MANAGER AVIONICS SYSTEMS.
	DIR POLICY & PLANS.
	MANAGER, MAN-TENDED CAPABILITY.
INSTITUTIONS	DIRECTOR, MISSION OPERATIONS.
	DIRECTOR, RESOURCES MANAGEMENT DIVISION.
	DIR INSTITUTIONS.
CHIEF ENGINEER	MGR. INSTITUTIONAL PLANNING & OPERATIONS.
	MANAGER SYSTEMS ENGINEERING INTEGRATION.
	TECH ASST TO THE CHIEF ENGINEER.
	DEPUTY CHIEF ENGINEER.
MISSION DIRECTOR	MANAGER PAYLOAD INTEGRATION & UTILIZATION OFC.
	DEP ASSOC ADMR FOR SPACE FLIGHT (RUSSIAN AFS).
SPACE SHUTTLE PROGRAM	ASST MISSION DIR MIR.
	MANAGER NATL SPACE TRANS SYST ENG INTEGRATION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY MANAGER FOR INTEGRATION.
	MGR. NATL SPACE TRANS SYST INTEGRATION & OPS.
	ASSISTANT DIRECTOR FOR SPACE SHUTTLE PROGRAM.
	MGR. ASSURED SHUTTLE AVAILABILITY.
	TECHNICAL ASST TO THE ASSOC ADMIR.
	MANAGER, SHUTTLE PROJECTS OFFICE (MSFC).
	MANAGER SPACELAB.
	MANAGER LAUNCH INTEGRATION (KSC) SPACE SHUTTLE.
	DIRECTOR, SPACE SHUTTLE OPERATIONS
	MANAGER, PROGRAM CONTROL (JSC).
SPACE STATION PROGRAM	DIR SPACE STATION OPNS & UTILIZATION DIV.
	MANAGER STRATEGIC UTILIZATION & OPS OFFICE.
	SPACE STATION PROGRAM MANAGER.
	CHIEF UTILIZATION.
	SPACE STATION VEHICLE MANAGER.
	BUSINESS MANAGER, SPACE STATION PROGRAM OFC.
JOHNSON SPACE CENTER	DEPUTY DIRECTOR, SPACE STATION PROGRAM.
	DEP MANAGER, ORBITER & GFE PROJECTS OFFICE.
	COMPTROLLER.
	ASSISTANT DIRECTOR (PLANS).
	DIR OF PUBLIC AFFAIRS.
	SPEC ASST FOR ENGINEERING OPERATIONS & SAFETY.
	MANAGER FOR TECHNICAL PROJECTS.
	DEPUTY MANAGER FOR INTEGRATION.
	DIRECTOR OF HUMAN RESOURCES.
	MANAGER NEW INITIATIVES OFFICE.
	DEP MGR, SPACE STATION PROJECTS OFFICE.
	MANAGER, ORBITER AND GFE PROJECTS OFFICE.
	DEPUTY MANAGER FOR PROJECT CONTROL.
	SPEC ASST FOR COMMUNITY R&S PROJECTS.
	DIR OF TECH TRANSFER & COMMERCIALIZATION.
	CHIEF INFORMATION OFFICER.
	DEPUTY CHIEF INFORMATION OFFICER.
MISSION OPERATIONS	ASSISTANT DIRECTOR, MISSION OPERATIONS.
	DIRECTOR, MISSION OPERATIONS.
	DEPUTY ASST DIR FOR PROGRAM SUPPORT.
	CHIEF FLIGHT DIRECTOR OFFICE.
	DEPUTY DIRECTOR, MISSION OPERATIONS.
	ASSISTANT DIRECTOR FOR PROGRAM SUPPORT.
	CHIEF, SPACE STATION GROUND SYSTEMS DIVISION.
	ASST DIR FOR SPACE SHUTTLE PROGRAM.
	CHIEF, SPACE SHUTTLE GROUND SYST DIVISION.
	CHIEF INTEGRATED PLANNING SYSTEM OFFICE.
	CHIEF, SIMULATOR & TRAINING SYSTEMS DIVISION.
	SPECIAL ASST FOR MANAGEMENT INTEGRATION.
FLIGHT CREW OPERATIONS	CHIEF, AIRCRAFT OPERATIONS DIVISION.
	DEP DIR, FLIGHT CREW OPERATIONS.
	MANAGER ASSURED CREW RETURN VEHICLE PROJECT.
ENGINEERING	DEPUTY DIRECTOR, ENGINEERING.
	CHIEF STRUCTURES AND MECHANICS DIVISION.
	CHIEF, CREW & THERMAL SYSTEMS DIVISION.
	CHIEF, AUTOMATION AND ROBOTICS DIVISION.
	CHIEF, SYSTEMS ENGINEERING DIVISION.
	ASSOCIATE DIRECTOR, ENGINEERING.
	DIRECTOR, ENGINEERING.
	CHIEF ENGINEER, NEW INITIATIVES.
	CHIEF TRACKING & COMMUNICATIONS DIVISION.
	DEPUTY MANAGER, ENGINEERING TECHNOL OFFICE.
	ASSISTANT TO THE DIRECTOR.
SPACE & LIFE SCIENCES	CHIEF, NAVIGATION, CONTRL & AERONAUTICS DIV.
	CHIEF, MEDICAL SCIENCES DIVISION.
	ASSISTANT DIRECTOR FOR ENGINEERING.
	ASSISTANT TO THE DIRECTOR FOR RUSSIAN PROGS.
	CHF, MAN-SYSTEMS DIVISION.
	ASSISTANT DIRECTOR FOR SPACE SCIENCE.
	DEPUTY DIRECTOR, SPACE AND LIFE SCIENCES.
	DIRECTOR, RUSSIAN PROGRAMS.
INFORMATION SYSTEMS	DIR INFO SYSTEMS OFFICE.
	DIRECTOR INFORMATION SYSTEMS.
	DEPUTY DIRECTOR, INFORMATION SYSTEMS.
BUSINESS MANAGEMENT	DIRECTOR OF PROCUREMENT.
	ASST DIR ADMINISTRATION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	SPECIAL ASSISTANT TO THE DIRECTOR.
	ASSISTANT TO THE DIRECTOR.
CENTER OPERATIONS	DEPUTY DIR CENTER OPERATIONS.
	DEPUTY DIRECTOR, ADMINISTRATION.
	DIR CENTER OPERATIONS.
	DEPUTY DIRECTOR CENTER OPERATIONS.
	DEPUTY DIRECTOR, CENTER OPERATIONS.
SAFETY, RELIABILITY & QUALITY ASSURANCE	DIR, SAFETY, RELIABILITY, & QUALITY ASSURANCE.
	DEP DIR, SAFETY, RELIABILITY & QUAL ASSURANCE.
WHITE SANDS TEST FACILITY	MANAGER, NASA WHITE SANDS TEST FACILITY.
KENNEDY SPACE CENTER	DIR, EXEC MANAGEMENT OFC.
	DIR PUBLIC AFFAIRS.
	ASSOCIATE DIRECTOR.
	ASSOCIATE DIRECTOR.
	DEPUTY CONTROLLER.
	SPEC ASST TO THE CENTER DIRECTOR.
SHUTTLE MANAGEMENT & OPERATIONS	DIRECTOR, SHUTTLE OPERATIONS.
	DIR, SHUTTLE LOGISTICS PROJECT MANAGEMENT.
	DIR OF SPACE TRANS SYSTEM MGMT & OPERATIONS.
	DIRECTOR, GROUND ENGINEERING.
	DEP MANAGER, SPACE SHUTTLE SYST INTEGRATION.
SAFETY, RELIABILITY & QUALITY ASSURANCE	DIRECTOR, SAFETY AND RELIABILITY.
	DIR MISSION ASSURANCE.
	DIRECTOR, QUALITY ASSURANCE.
	DIRECTOR MISSION ASSURANCE.
ENGINEERING DEVELOPMENT	DEPUTY DIRECTOR OF ENGINEERING DEVELOPMENT.
	DIR, MECHANICAL ENGINEERING.
	DIRECTOR, ELECTRONIC ENGINEERING.
INSTALLATION MANAGEMENT & OPERATIONS	DIRECTOR OF CENTER SUPPORT OPERATIONS.
	DIRECTOR, FACILITIES ENGINEERING.
	DEPUTY DIR, OF INSTALLATION MGMT & OPERATIONS.
PAYLOAD MANAGEMENT & OPERATIONS	DIRECTOR, STS PAYLOAD OPERATIONS.
	MANAGER SPACE STATION PROJECTS OFFICE.
	DEPUTY DIR, OF PAYLOAD MGMT & OPERATIONS.
	DIRECTOR, EXPENDABLE VEHICLES.
PROCUREMENT	DIRECTOR, PROCUREMENT.
BIOMEDICAL OPERATIONS & RESEARCH	CHF., BIOMEDICAL OFFICE.
MARSHALL SPACE FLIGHT CENTER	DIR, SYSTEMS SAFETY & RELIABILITY OFFICE.
	DIRECTOR, PROCUREMENT OFFICE.
	COMPTROLLER.
	ASSOC DIR FOR ADVANCED PLANNING.
	DIRECTOR, SAFETY & MISSION ASSURANCE OFFICE.
	DIR, HUMAN RES & ADMINISTRATIVE SUPPORT OFC.
	ASSOCIATE DIRECTOR.
	ASSISTANT TO THE ASSOCIATE DIRECTOR.
	ASSISTANT TO THE CENTER DIR FOR SPACE STATION.
PROGRAM DEVELOPMENT	DEPUTY DIRECTOR, PROGRAM DEVELOPMENT.
	DIRECTOR, PRELIMINARY DESIGN OFFICE.
	DEPUTY MANAGER, TECHNOLOGY TRANSFER OFFICE.
	DIR, RESEARCH & TECHNOLOGY OFFICE.
SCIENCE & ENGINEERING	CHIEF, PROPULSION & POWER DIVISION.
	DIRECTOR, SPACE SCIENCES LAB.
	DIRECTOR, PROPULSION LABORATORY.
	DIRECTOR, SYST ANAL & INTEGRATION LABORATORY.
	DEPUTY DIRECTOR, SPACE SCIENCE LABORATORY.
	DEP DIR STRUCTURES & DYNAMICS LABORATORY.
	DEPUTY DIR, MATERIALS & PROCESSES LABORATORY.
	DEP DIR, MISSION OPERATIONS LABORATORY.
	DEP DIR, SYST ANAL & INTEGRATION LABORATORY.
	DEPUTY DIRECTOR, PROPULSION LABORATORY.
	DIR ASTRIONICS LABORATORY.
	DEPUTY DIRECTOR FOR SPACE SYSTEMS.
	DIR STRUCTURES DYNAMICS LABORATORY.
	CHIEF ENGINEER SPACE SHUTTLE MAIN ENGINE PROJ.
	MANAGER, MANAGEMENT INTEGRATION.
	ASSISTANT TO THE DIRECTOR, S & E.
	DIR, MATERIALS & PROCESSES LABORATORY.
	DEP DIR FOR SPACE TRANSPORTATION SYSTEMS.
	MANAGER SPACE STATION FURNACE FACILITY.
	CHIEF ENGINEER HEAVY LIFT LAUNCH VEHICLE.
	MANAGER SPACE TRANSPORTATION MAIN ENGINE SYS.
	DEPUTY MANAGER FOR DEVELOPMENT.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
INSTITUTIONAL & PROGRAM SUPPORT	ASSOC DIR SCI & ENGINEERING DIRECTORATE. DIR ADV TRANSPORTATION TECHN OFFICE. DIRECTOR, MISSION OPERATIONS LABORATORY. DEP MANAGER SUPER LIGHTWEIGHT EXTERNAL TANK. DIR, INSTITUTIONAL & PROGRAM SUPPORT. DEP DIR, INSTITUTIONAL & PROGRAM SUPPORT. DIRECTOR, FACILITIES OFFICE. ASST DIR FOR DATA SYSTEMS.
SPACE SHUTTLE PROJECTS	MANAGER, SPACE STATION PROJECTS OFFICE. MANAGER, EXTERNAL TANK PROJECT. MGR SOLID ROCKET BOOSTER PROJECT. MANAGER SPACE SHUTTLE MAIN ENGINE PROJECTS. MANAGER, ADV X-RAY ASTROPHYSICS FACILITY-S. MGR REDESIGN SOLID ROCKET MOTOR PROJECT. DEPUTY MANAGER FOR ADVANCED LAUNCH SYSTEM. CHIEF ENGINEER, SPACE STATION PROJECTS. MGR, ADVANCED SRMP SPACE SHUTTLE PROJECTS OFC. DEPUTY MANAGER SPACE STATION PROJECTS OFFICE.
SCIENCE & APPLICATIONS PROJECTS	MANAGER, GLOBAL HYDROLOGIC PROJECTS. MANAGER MICROGRAVITY PROJECTS. MANAGER AUTOMATED RENDEZVOUS & CAPTURE PROJ.
OBSERVATORY PROJECTS	MANAGER, OBSERVATORY PROJECTS OFFICE. DEP MGR, OBSERVATORY PROJECTS OFFICE. MGR, ADVANCED X-RAY ASTROPHYSICS FACILITY-I. CHIEF, OBSERVATORIES DEVELOPMENT BRANCH.
PAYLOAD PROJECTS	DEP MANAGER PAYLOAD PROJECTS OFFICE.
TECHNOLOGY TRANSFER	DIRECTOR, TECHNOLOGY TRANSFER OFFICE.
STENNIS SPACE CENTER	MGR EARTH & SPACE SCIENCES PROJECTS. DIR SCI & TECH LAB. DIRECTOR, CENTER OPERATIONS. DEPUTY DIRECTOR, NASA STENNIS SPACE CENTER. ASSOC DIRECTOR FOR INSTITUTION. DIR, PROPULSION TEST OPERATIONS. DIR INFOR MANAGEMENT SYSTEMS.
OFFICE OF SPACE COMMUNICATIONS	MANAGER, WHITE SANDS SPACE NETWORK COMPLEX.
GROUND NETWORKS	CHIEF, COMMUNICATIONS SYSTEMS BRANCH. ASSISTANT ASSOCIATE ADMINISTRATORS (PLANS). DIR PROGRAM INTEGRATION DIVISION. SPECIAL ASST (OPERATIONS).
PROGRAM INTEGRATION	DIR. COMMUNICATIONS & DATA SYSTEMS DIV.
COMMUNICATIONS & DATA SYSTEMS	DIR. GROUND NETWORK DIVISION. DEP DIR. GROUND NETWORK DIVISION.
SPACE NETWORK	DEPUTY DIRECTOR SPACE NETWORK DIVISION.
OFFICE OF SAFETY & MISSION ASSURANCE	DIRECTOR, SAFETY DIVISION. DIR. SOFTWARE INDEPENDENT V & V FACILITY. DIR. RELIABILITY, M/Q ASSURANCE DIVISION. DEP ASSOC ADM FOR SAFETY & MISSION QUALITY. DIR TECHNICAL STANDARDS DIVISION. DIRECTOR, PROGRAMS ASSURANCE DIVISION.
OFFICE OF AERONAUTICS	MGR INTL SP STN INDEP A & O ACT. DIRECTOR, PAYLOADS & AERONAUTICS DIVISION. DIRECTOR, QUALITY MANAGEMENT OFFICE. DIRECTOR STRATEGY & POLICY OFFICE. DEP ASSOC ADMIN FOR AERONAUTICS MGMT. MANAGER TECHNOLOGY TRANSFER.
RESOURCES & MANAGEMENT SYSTEMS	DIR, RESOURCES & MANAGEMENT SYSTEMS OFFICE.
HIGH PERFORMANCE COMPUTING & COMMUNICATIONS	MGR HIGH-PERFORMANCE COMPUTING/COMMUNICATIONS.
HIGH PERFORMANCE AIRCRAFT	ASST DIR FOR AERONAUTICS SUBSONIC AIRCRAFT.
HIGH SPEED RESEARCH	ASST DIR FOR AERONAUTICS (H-S AIRCRAFT). DEPUTY DIR AERODYNAMICS DIVISION.
INSTITUTIONS	ASST DIRECTOR FOR INSTITUTIONS (FACILITIES). ASST DIR FOR INSTITUTION (INFORMATION SYST). DIRECTOR, INSTITUTIONS DIVISION
NATIONAL AERO-SPACE PLANE	NASA DEP PROG MGR, NATL AERO-SPACE PLANE PROG. DEP PROG MANAGER NATL AERO-SPACE PLANE. DEP DIR, NATIONAL AERO-SPACE PLANE OFFICE. DIRECTORM NATIONAL AERO-SPACE PLANE. ASSISTANT DIRECTOR (PROGRAM DEVELOPMENT).
CRITICAL TECHNOLOGIES	DIRECTOR FOR PLANS. DEPUTY DIRECTOR FOR SPACE TECHNOLOGY. ASST DIR FOR SPACE (SPACECRAFT TECHNOLOGY). DIRECTOR FOR SPACE TECHNOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
AMES RESEARCH CENTER	DIRECTOR, CRITICAL TECHNOLOGIES DIVISION. COMPTROLLER. ASST TO CENTER DIR FOR ADVANCED SYS DESIGN. DEPUTY DIRECTOR OF ADMINISTRATION. SPECIAL ASST FOR ADVANCED CONCEPTS. SPECIAL ASSISTANT FOR PROGRAMS.
AEROSPACE SYSTEMS	CHIEF, AERODYNAMICS DIVISION. CHF FLIGHT SYSTEMS & SIMULATION RSCH DIV. DEPUTY DIR AEROSPACE SYSTEMS DIRECTORATE. CHIEF AIRCRAFT TECHNOLOGY DIVISION. MANAGER, ROTORCRAFT TECHNOLOGY PNNG ACTIVITY. CHIEF FLIGHT MGMT & HUMAN FACTORS DIVISION.
FLIGHT OPERATIONS	ASSOCIATE DIRECTOR FOR AERONAUTICS. CHIEF, APPLIED AERODYNAMICS DIVISION. CHIEF, FLUID DYNAMICS DIVISION. CHIEF, SCIENCE & APPLICATIONS AIRCRAFT DIV. CHF, AMES RESEARCH AIRCRAFT OPERATIONS DIV.
AEROPHYSICS	CHIEF, AIRBORNE SCIENCE & FLIGHT RES DIV. DEPUTY CHF, AIRBORNE SCIENCE & FLIGHT RES DIV. DEP DIR OF AEROPHYSICS. CHIEF AERONAUTICAL T & S DIVISION.
SPACE RESEARCH	DEPUTY DIRECTOR OF CENTER OPERATIONS (ADM). CHIEF, SPACE TECHNOLOGY DIVISION. DEPUTY DIRECTOR OF INFORMATION SYSTEMS. CHIEF, SPACE SCIENCE DIVISION. CHIEF, EARTH SYSTEMS SCIENCE DIVISION. CHIEF FULL SCALE AERODYNAMICS RESEARCH CENTER. CHIEF COMPUTER SYSTEMS & RESEARCH DIVISION. CHIEF THERMOSCIENCE DIVISION. CHIEF, ADVANCED LIFE SUPPORT DIVISION. CHIEF, INFORMATION SCIENCES DIVISION.
ENGINEERING & TECHNICAL SERVICES	DEPUTY DIRECTOR OF SPACE RESEARCH. CHF, SYSTEMS ENGINEERING DIV. DEP DIRECTOR ENGINEERING & TECH SVCS.
DRYDEN FLIGHT RESEARCH CENTER	DEPUTY DIRECTOR OF AERONAUTICS. CHIEF AEROSPACE PROJECTS OFFICE. CHIEF RESEARCH ENGINEERING DIVISION. ASSOC DIR, DRYDEN FLIGHT RESEARCH FACILITY. DEP DIR, NASA AMES RES CENTER DFRF.
FLIGHT OPERATIONS	ASST CHIEF, FLIGHT OPERATIONS DIVISION.
RESEARCH ENGINEERING	CHF, FLIGHT OPERATIONS DIVISION.
LANGLEY RESEARCH CENTER	CHF ENGINEER. DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS. CHIEF SCIENTIST. CHIEF ENGINEER. DIR OF EDUCATION PROGRAMS.
AERONAUTICS	ASSISTANT DIRECTOR. DIR OF INTERAGENCY PROGRAMS. CHIEF, AERONAUTICS SYSTEMS ANALYSIS DIV. CHIEF, ADVANCED VEHICLES DIVISION.
SPACE & ATMOSPHERIC SCIENCES	CHIEF, SPACE SYSTEMS DIVISION. CHIEF ATMOSPHERIC SCIENCES DIVISION. CHIEF, ADVANCED SPACE CONCEPTS DIVISION. DEPUTY DIR, S & A SCIENCES PROGRAM GROUP.
RESEARCH & TECHNOLOGY	CHIEF, GAS DYNAMICS DIVISION. CHF. ACOUSTICS DIVISION. CHIEF MATERIALS DIVISION. CHIEF, STRUCTURAL DYNAMICS DIVISION. CHIEF INFORMATION SYSTEMS DIVISION CHF, GUIDANCE AND CONTROL DIVISION. CHIEF, FLUID MECHANICS DIVISION. DEPUTY DIR, RESEARCH & TECHNOLOGY GROUP. CHIEF, FLIGHT APPLICATIONS DIVISION. CHIEF FLIGHT MANAGEMENT DIVISION. MANAGER, SPACE TECHNOLOGY INITIATIVES OFFICE.
INTERNAL OPERATIONS	DIRECTOR, RESEARCH & TECHNOLOGY GROUP. DEP DIR FOR SYST ENGINEERING & OPERATIONS. CHF., ANALYSIS & COMPUTATION DIVISION. CHIEF, PROJECTS DIVISION. CHIEF SYSTEMS ENGINEERING DIV. DEPUTY DIR. INTERNAL OPS GROUP (FE & O) CHIEF FLIGHT ELECTRONICS DIVISION.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	CHIEF INSTRUMENT RESEARCH DIVISION.
	CHIEF EXPERIMENTAL TESTING TECHNOLOGY DIV.
	DEPUTY DIR, FOR ENGINEERING & INFO SYST (IOG).
	CHIEF, AEROSPACE MECHANICAL SYSTEM DIVISION.
	HEAD, PLANNING & RESOURCES MGMT OFFICE.
	CHIEF ENGINEER S E & O.
	CHIEF FACILITIES ENGINEER DIVISION.
HYPERSONIC VEHICLES	DIR, NATIONAL AERO-SPACE PLANE OFFICE.
	CHIEF, FLUID MECHANICS DIVISION.
SAFETY, ENVIRONMENTAL & MISSION ASSURANCE	CHF, SYST SFTY, QUALITY, & RELIABILITY DIV.
COMPTROLLER	COMPTROLLER.
LEWIS RESEARCH CENTER	DIRECTOR OF LEWIS RESEARCH ACADEMY.
AERONAUTICS	CHF, PROPULSION SYSTEMS DIV.
	CHIEF, INSTRUMENTATION & CONTROL TECHNOL DIV.
	CHF, INTERNAL FLUID MECHANICS DIVISION.
	CHIEF TECHNOLOGIST.
	CHF, AEROPROPULSION ANALYSIS OFFICE.
AEROSPACE TECHNOLOGY	CHIEF, SPACE PROPULSION TECHNOLOGY DIVISION.
	CHIEF, STRUCTURAL SYSTEMS DIVISION.
	CHIEF, STRUCTURES DIVISION.
	DEPUTY DIRECTOR OF AEROSPACE TECHNOLOGY.
	CHIEF, SPACE COMMUNICATIONS DIVISION.
	CHIEF, POWER TECHNOLOGY DIVISION.
	CHIEF, INTERDISCIPLINARY TECHNOLOGY OFFICE.
	CHF, AEROPROPULSION FACILITIES & EXPER DIV.
SPACE FLIGHT SYSTEMS	DEP DIR OF SPACE STATION SYSTEMS
	CHF, ADVANCED SPACE ANALYSIS OFFICE.
	MANAGER, ACTS PROJECT OFFICE.
	CHIEF, SPACE EXPERIMENTS DIVISION.
	DEPUTY DIREGTOR OF SPACE FLIGHT SYSTEMS.
	CHIEF, SYSTEMS ENGINEERING & INTEGRATION DIV.
ENGINEERING	CHF, ELECTRONICS & CONTROL SYSTEMS DIVISION.
	CHIEF ELECTRICAL SYSTEMS DIVISION.
	DIRECTOR OF ENGINEERING.
	CHIEF ENGINEER.
	DEPUTY DIRECTOR OF ENGINEERING.
	CHIEF, PROPULSION & FLUID SYSTEMS DIVISION.
ADMINISTRATION & COMPUTER SERVICES	CHIEF, COMPUTER SERVICES DIVISION.
	DIR, ADM & COMPUTER SERVICES DIRECTORATE.
EXTERNAL PROGRAMS	DIRECTOR, EXTERNAL PROGRAMS.
MISSION SAFETY & ASSURANCE	CHF, OFC OF SFTY, RELIABILITY & QUALITY ASSUR.
OFFICE OF SPACE SCIENCE	SPECIAL AST TO THE DEPUTY ASSOC ADMIN.
	ASST ASSOC ADMINISTRATOR (INSTITUTIONS).
	ASST ASSOCIATE ADMR FOR TECHNOLOGY.
	MANAGER, CASSINI PROGRAM.
SOLAR SYSTEM EXPLORATION	DEP ASSISTANT ADMINISTRATOR FOR EXPLORATION.
	ASST DIR FOR SPACE EXPLORATION (PROG DEFIN).
	CHIEF, FLIGHT PROGRAMS BRANCH.
	DEP DIR, SOLAR SYSTEM EXPLORATION DIVISION.
	CHIEF FLIGHT PROGRAMS BRANCH.
SPACE PHYSICS	CHIEF, SOLAR PHYSICS BRANCH.
	DEP DIR, SPACE PHYSICS DIVISION.
	CHIEF FLIGHT PROGRAMS BRANCH.
	DIRECTOR, SPACE PHYSICS DIVISION.
	SPEC ASST FOR SPACE STATION FREEDOM UTLITIZ.
	CHIEF, PLANETARY SCIENCE BRANCH.
TECHNOLOGY & INFORMATION SYSTEMS	CHIEF, MISSION OPS/SMALL MISSIONS DEV BRANCH.
	CHF, HEADQUARTERS INFO SYST & TECHNOL OFFICE.
	CHF, INFORMATION SYSTEMS BRANCH.
LAUNCH VEHICLES	MANAGER, LAUNCH VEHICLES OFFICE.
ASTROPHYSICS	CHF, HIGH ENERGY ASTROPHYSICS BR.
	CHIEF, ASTRONOMY/RELATIVITY BRANCH.
	CHF, ULTRAVIOLET/VISIBLE ASTROPHYSICS BRANCH.
	DEPUTY DIR ASTROPHYSICS DIVISION.
	ASSISTANT DIRECTOR FOR STRATEGIC PLANNING.
	DIRECTOR, RESOURCES ANALYSIS & INTEGRATION.
OFFICE OF CONTINUAL IMPROVEMENT	SPEC ASST FOR EXTERNAL CONT IMPROVEMENT PROGS.
OFFICE OF LIFE & MICROGRAVITY SCIENCES & APPLICATIONS.	DIR, PROPULSION, POWER AND ENERGY DIVISION.
MICROGRAVITY SCIENCE & APPLICATIONS	DEP DIR MICROGRAVITY SCIENCE APPLICATIONS DIV.
	DIRECTOR, PLANNING & ADVANCED PROGRAMS.
	DIR, MICROGRAVITY SCIENCES & APPLICATIONS DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
LIFE & BIOMEDICAL SCIENCES	CHIEF ENVIR SYS & LIFE SUPPORT BRANCH.
	DIR LIFE & BIOMEDICAL SCIENCE & APPLICS DIV.
AEROSPACE MEDICINE & OCCUPATIONAL HEALTH	DIRECTOR, PROGRAM INTEGRATION OFFICE.
FLIGHT SYSTEMS	ASSOCIATE DIRECTOR.
	CHF, SPACE STATION UTILIZATION BRANCH.
	CHIEF MISSION MANAGEMENT BRANCH.
	DEPUTY DIRECTOR, FLIGHT SYSTEMS DIVISION.
	DEPUTY DIR FLIGHT SYSTEMS DIVISION.
	CHIEF, FLIGHT PROGRAMS BRANCH.
OFFICE OF INSPECTOR GENERAL	ASSIST INSPECTOR GENERAL FOR INVESTIGATION.
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
ORGANIZATION ABOLISHED	DIRECTOR ADMINISTRATION.
OFFICE OF SPACE ACCESS & TECHNOLOGY	MANAGER SYSTEMS INTEGRATION.
	DIR, COMMERCIAL DEVELOPMENT DIVISION.
	CHIEF ENGINEER.
	DEPUTY ASSISTANT ADMINISTRATOR (PROGRAMS).
	DIR. SMALL BUSINESS INNOVATION RES OFFICE.
	TECHNICAL ASSISTANT TO THE DIRECTOR.
	SPECIAL ASST FOR INDUSTRY PLANNING.
	SPECIAL ASST TO THE ASSOC ADMINISTRATOR.
	MANAGER, ORBIT MANEUVERING VEHICLES.
	MANAGER, COMMUNICATIONS EXPERIMENTS.
	DEPUTY ASSOC ADMR FOR SPACE ACCESS & TECHNOL.
	DIRECTOR, COMMERCIAL DEV & TECHNOL TRANSFER.
	MANAGER FOR PROPULSION TECHNOLOGY.
	MANAGER FOR PROGRAM INTEGRATION.
	DIRECTOR, SPACE PROCESSING DIVISION.
	DEPUTY DIRECTOR, MANAGEMENT OPS DIVISION.
	SPECIAL ASST TO THE ASSOC ADMINISTRATOR.
	SPECIAL ASST FOR COMMERCIAL DEVELOPMENT.
	SPECIAL ASSISTANT FOR FACILITIES.
	DEPUTY DIR SPACECRAFT SYSTEMS DIVISION.
OFFICE OF MISSION TO PLANET EARTH	DEPUTY DIR COMMERCIAL DEV & TECHNOL TRANSFER.
	DEP ASSOC ADMR FOR MISSION TO PLANET EARTH.
FLIGHT SYSTEMS	SPECIAL ASST FOR INTERGOVERNMENTAL SCI COORD.
OPERATIONS, DATA & INFORMATION SYSTEMS	DIR, FLIGHT SYST AND INSTRUMENT DEVELOPMENT.
	DIRECTOR, OPERATIONS DATA & INFO SYST DIV.
	DIRECTOR SCIENCE DIVISION.
SCIENCE	CHIEF, EARTH SCIENCE D & I SYSTEM BRANCH.
	CHF, UPPER ATMOSPHERIC R/T CHEMISTRY BRANCH.
GODDARD SPACE FLIGHT CENTER	CHF, ATMOSPHERIC DYNAMICS AND RADIATION BR.
	DIRECTOR OF HUMAN RESOURCES.
	DIR OF UNIVERSITY PROGRAMS.
COMPTROLLER	COMPTROLLER.
MANAGEMENT OPERATIONS	DEP DIR OF MANAGEMENT OPERATIONS.
	ASSOCIATE DIRECTOR FOR ACQUISITION.
FLIGHT ASSURANCE	DIRECTOR OF FLIGHT ASSURANCE.
FLIGHT PROJECTS	DEP ASSOC DIR OF FLIGHT PROJ FOR H–S–T.
	(GOES) PROJECT MANGER.
	DEP DIR FLIGHT PROJECT FOR PLNG BUSINESS MGMT.
	MGR HUBBLE SPACE TELESCOPE OPER & GROUND SYST.
	DEPUTY DIRECTOR FOR INSTITUTIONAL PROJECTS.
	PROJECT MGR. EARTH OBSERVING SYST AM PROJECT.
	ASSOC DIR OF FLT PROJ HUBBLE SPACE TELESCOPE.
	PROJ MGR, INTL SOLAR TERR PHYSICS PROJ (ISTP).
	DIR OF FLIGHT PROJECTS.
	PROJ MGR HUBBLE SPC TELESCOPE SYST & SER.
	ASSOCIATE DIRECTOR OF FLIGHT PROJECTS.
	PROJECT MANAGER METEOROLOGICAL (METSAT) PROJEC.
MISSION OPERATIONS & DATA SYSTEMS	CHIEF, INSTRUMENT DIVISION.
	ASST DIRECTOR FOR SYSTEMS ENGINEERING.
	CHIEF, NASA COMMUNICATIONS DIVISION.
	ASSOC DIR OF MISSION OPERATIONS & DATA SYST.
	DEP DIR OF MISSION OPERATIONS & DATA SYSTEMS.
	CHIEF NETWORKS DIVISION.
	CHIEF, FLIGHT DYNAMICS DIVISION.
	PROJECT MGR, EARTH SCI DATA & INFO SYSTEM.
	CHIEF, MISSION OPERATION DIVISION.
	CHIEF MISSION OPERATIONS DIVISION.
SPACE SCIENCES	CHIEF, LAB FOR ASTRONOMY AND SOLAR PHYSICS.
	CHIEF, LAB FOR EXTRATERRESTRIAL PHYSICS.
	DIRECTOR OF SPACE SCIENCES.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	CHIEF, GODDARD INSTITUTE FOR SPACE STUDIES.
	CHIEF LABORATORY FOR HIGH ENERGY ASTROPHYSICS.
	DEPUTY DIRECTOR OF SPACE SCIENCES.
ENGINEERING	DEP DIR OF ENGINEERING.
	CHF, APPLIED ENGINEERING DIV.
	CHIEF ENGINEER.
	CHIEF, SPECIAL PAYLOADS DIVISION.
	DEP DIR OF FLIGHT ASSURANCE.
	ASST DIR OF ENGINEERING FOR DEVELOPMENT PROJ.
	ASSOCIATE DIRECTOR OF ENGINEERING.
	TRACKING & DATA RELAY SATELLITE TDRS PROJ MGR.
	CHIEF, MECHANICAL SYSTEMS DIVISION.
SUBORBITAL PROJECTS & OPERATIONS	CHIEF, OPERATIONS DIVISION.
	CHF, OPERATIONS DIVISION.
	GLOBAL GEOSPACE SCIENCES (GGS) PROJECT MGR.
EARTH SCIENCES	DEPUTY DIRECTOR OF FLIGHT PROJECTS.
	CHIEF LAB FOR HYDROSPHERIC PROCESSES.
	CHIEF, SPACE DATA AND COMPUTING DIVISION.
	DIR OF MISSION TO PLANET EARTH.
	ASST DIR OF EARTH SCI FOR PROJECTS ENG.
	CHF, LABORATORY FOR ATMOSPHERES.
	DEP DIR (RESOURCES) MISSION TO PLANET EARTH.
	DEPUTY DIRECTOR FOR EARTH SCIENCES.
	DIRECTOR FOR EARTH SCIENCES.
	CHIEF LABORATORY FOR TERRESTRIAL PHYSICS.
OFFICE OF POLICY AND PLANS	DIRECTOR OF SPECIAL PROJECTS.
ORGANIZATION ABOLISHED	MANAGER LAUNCH VEHICLE PROJECT OFFICE.
NATIONAL ARCHIVES & RECORDS ADMINISTRATION:	
NATIONAL ARCHIVES & RECORDS ADMINISTRATION	DEPUTY ARCHIVIST OF THE UNITED STATES.
	ASST ARCHIVIST FOR THE NATIONAL ARCHIVES.
	ASST ARCHIVIST FOR PRESIDENTIAL LIBRARIES.
	ASST ARCHIVIST FOR FEDERAL RECORDS CENTERS.
	DIRECTOR OF THE FEDERAL REGISTER.
	ASST ARCHIVIST FOR RECORDS ADMINISTRATION.
	ASST ARCHIVIST FOR MGT AND ADMINISTRATION.
	DIRECTOR, LYNDON B. JOHNSON LIBRARY.
	DIRECTOR, HARRY S. TRUMAN LIBRARY.
	ASST ARCHIVIST FOR SPEC & REGL ARCHIVES.
	ASSISTANT ARCHIVIST FOR ADMINISTRATIVE SERV.
	ASSISTANT ARCHIVIST FOR POLICY & IRM SERVICES.
NATIONAL CAPITAL PLANNING COMMISSION:	
NATIONAL CAPITAL PLANNING COMMISSION STAFF	EXECUTIVE DIRECTOR.
	DEPUTY EXECUTIVE DIRECTOR.
	DIR OF INTERGOVERNMENTAL & PUBLIC AFFAIRS.
	GENERAL COUNSEL.
NATIONAL ENDOWMENT FOR THE ARTS:	
NATIONAL ENDOWMENT FOR THE ARTS	DIRECTOR OF PROGRAM COORDINATION.
	DIRECTOR OF ADMINISTRATION.
NATIONAL ENDOWMENT FOR THE HUMANITIES:	
NATIONAL ENDOWMENT FOR THE HUMANITIES	DIR, OFFICE OF PLANNING & BUDGET.
	ASST CHAIRMAN FOR OPERATIONS.
NATIONAL LABOR RELATIONS BOARD:	
OFC OF THE BOARD MEMBERS	EXECUTIVE SECY.
	DEPUTY EXECUTIVE SECRETARY
	INSPECTOR GENERAL.
DIV OF ENFORCEMENT LITIGATION	DEPUTY ASSOC. GEN. COUNSEL APPELLATE COURT BR.
DIV OF ADVICE	DIRECTOR, OFFICE OF APPEALS.
	ASSOCIATE GEN COUNSEL, DIV OF ADVICE.
DIV OF ADMINISTRATION	DEPUTY ASSOC GEN COUNSEL.
	DIRECTOR OF ADMINISTRATION.
	DEPUTY DIRECTOR OF ADMINISTRATION.
DIV OF OPERATIONS MANAGEMENT	ASSOC GENERAL COUNSEL, DIV OF OPERATION-MGMT.
	DEP ASSO GEN COUNSEL, DIV OF OPERATIONS-MGMT.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASST TO THE GENERAL COUNSEL.
REGIONAL OFFICES	REGL DIR REG 1 BOSTON.
	REGIONAL DIRECTOR, REG. 2, NEW YORK.
	REGIONAL DIRECTOR, REG. 3, BUFFALO.
	REGL DIR REG 4 PHILADELPHIA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	REGIONAL DIRECTOR, REG. 5, BALTIMORE.
	REGIONAL DIRECTOR, REG. 6, PITTSBURGH.
	REGL DIR, REGION 7, DETROIT, MICH.
	REGIONAL DIRECTOR, REG. 8, CLEVELAND.
	REGIONAL DIRECTOR, REG. 9, CINCINNATI.
	REGL DIR REG 10 ATLANTA.
	REGL. DIR., REG. 11, WINSTON SALEM.
	REGIONAL DIRECTOR, REG. 12, TAMPA.
	REGIONAL DIRECTOR, REG. 13, CHICAGO.
	REGL DIR REG 14 ST LOUIS.
	REGL DIR REG 15 NEW ORLEANS.
	REGL DIR REG 16 FT WORTH.
	REGL DIR REG 17 KANSAS CITY.
	REGL DIR REG 18 MINNEAPOLIS.
	REGL DIR REG 19 SEATTLE.
	REGIONAL DIR, REG 20, SAN FRANCISCO.
	REGIONAL DIRECTOR, REG. 21, LOS ANGELES.
	REGIONAL DIRECTOR, REG 22 NEWARK.
	REGIONAL DIRECTOR, REG 24 HATO REY, PUERTO RICO.
	REGL DIR, REG 25, INDIANAPOLIS.
	REGL DIR REG 26 MEMPHIS.
	REGL DIR REG 27 DENVER.
	REGL. DIR. REG. 28 PHOENIX.
	REGL DIR REG 29 BROOKLYN.
	REGL DIR REG 30 MILWAUKEE.
	REGL. DIR., REG 32, OAKLAND.
	REGIONAL DIRECTOR, REG. 33 PEORIA, ILL.
	REGL DIR REG 31 LOS ANGELES.
	REGIONAL DIRECTOR REG 34 HARTFORD.
NATIONAL SCIENCE FOUNDATION:	
OFFICE OF THE DIRECTOR	SENIOR SCIENCE ADVISOR.
	EXECUTIVE ASST & SPECIAL COUNSEL
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF PLANNING AND ASSESSMENT	SENIOR STAFF ASSOCIATE PROGRAM EVALUATION.
	SENIOR STAFF ASSOCIATE POLICY ANALYSIS.
OFFICE OF POLAR PROGRAMS	SENIOR ADVISOR.
	MANAGER POLAR OPS SECTION.
	HEAD, POLAR COORDINATION & INFO SECTION.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY OFFICE DIRECTOR.
	INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT.
	DEP INSPECTOR GEN & SENIOR LEGAL ADVISOR.
	ASST INSPECTOR GENERAL FOR AUDIT.
DIRECTORATE FOR GEOSCIENCES	DEPUTY ASST DIR.
	SENIOR SCIENCE ASSOCIATE.
DIVISION OF ATMOSPHERIC SCIENCES	HEAD, NCAR COORDINATION STAFF.
	SECTION HEAD, UPPER ATMOSPHERE SECTION.
	HEAD LOWER ATMOSPHERE SECTION.
DIVISION OF EARTH SCIENCES	SECTION HEAD, RESEARCH GRANTS SECTION.
	HEAD MAJOR PROJECTS SECTION.
DIVISION OF OCEAN SCIENCES	SECTION HEAD OCEAN SCIENCES RESEARCH SECTION.
DIRECTORATE FOR ENGINEERING	SENIOR ENGINEERING ADVISOR.
DIVISION OF ENGINEERING EDUCATION & CENTERS	DEPUTY DIVISION DIRECTOR (EDUCATION).
	SENIOR STAFF ASSOCIATE.
DIVISION OF DESIGN, MANUFACTURE & INDUSTRIAL INNOVATION.	DEPUTY DIVISION DIRECTOR.
	SENIOR ADVISOR, TECHNOLOGY INTEGRATION
DIV OF ELECTRICAL AND COMMUNICATIONS SYSTEMS	DEPUTY DIVISION DIRECTOR.
DIVISION OF CIVIL AND MECHANICAL SYSTEMS	DEPUTY DIVISION DIRECTOR.
	HEAD HAZARD MITIGATION SECTION.
	HEAD, MECHANICAL & STRUCTURAL SYST SECTION.
ORGANIZATION ABOLISHED	DEP DIR DIV OF INDUSTRIAL INNOVATION INTERF.
DIRECTORATE FOR BIOLOGICAL SCIENCES	EXECUTIVE OFFICER.
DIVISION OF ENVIRONMENTAL BIOLOGY	DEPUTY DIVISION DIRECTOR.
DIRECTORATE FOR MATHEMATICAL AND PHYSICAL SCIENCES.	EXECUTIVE OFFICER.
	SENIOR STAFF ASSOCIATE.
	SENIOR ADVISOR FOR PLANNING, ANALY & POLICY.
DIVISION OF PHYSICS	DEPUTY DIVISION DIRECTOR.
DIVISION OF ASTRONOMICAL SCIENCES	EXECUTIVE OFFICER.
DIVISION OF MATHEMATICAL SCIENCES	DEPUTY DIVISION DIRECTOR.
DIVISION OF MATERIALS RESEARCH	DEPUTY DIRECTOR.
	HEAD, SPECIAL PROGRAMS IN MATERIALS OFFICE.
	EXECUTIVE OFFICER.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	SENIOR STAFF SCIENTIST.
DIVISION OF CHEMISTRY	DEP DIR DIVISION OF CHEMISTRY.
DIRECTORATE FOR EDUCATION & HUMAN RESOURCES	DEPUTY ASST DIRECTOR.
	SENIOR STAFF ASSOCIATE.
	SENIOR STAFF ASSOCIATE.
OFFICE OF SYSTEMIC REFORM	DEPUTY OFFICE HEAD.
DIRECTORATE FOR SOCIAL, BEHAVIORAL AND ECONOMIC SCIENCES.	EXE OFFICER SOCIAL BEHAVIORAL ECON SCIENCES.
	SENIOR ADVISOR PLANNING & POLICY.
DIVISION OF INTERNATIONAL PROGRAMS	DEPUTY DIVISION DIRECTOR.
	SENIOR STAFF ASSOCIATE.
	SENIOR STAFF ASSOCIATE.
	SENIOR STAFF ASSOCIATE.
DIVISION OF SOCIAL, BEHAVIORAL & ECONOMIC RESEARCH	DEPUTY DIRECTOR.
	SENIOR STAFF ASSOCIATE.
DIRECTORATE FOR COMPUTER & INFO SCIENCE & ENGINEERING.	DEPUTY ASST DIR.
DIV OF ADVANCED SCIENTIFIC COMPUTING	DEPUTY DIRECTOR.
DIV OF COMPUTER AND COMPUTATION RESEARCH	DEPUTY DIVISION DIRECTOR.
DIV OF INFORMATION, ROBOTICS & INTELLIGENT SYSTEMS	DEPUTY DIVISION DIRECTOR.
DIVISION OF MICROELECTRONIC INFORMATION PROCESSING SYS.	DEPUTY DIVISION DIRECTOR.
DIV OF NETWORKING & COMM RES & INFRASTRUCTURE	DEPUTY DIVISION DIRECTOR.
OFFICE OF BUDGET, FINANCE AND AWARD MANAGEMENT	DIRECTOR, OFC OF BUDGET, F & A MANAGEMENT.
BUDGET DIVISION	DIRECTOR, BUDGET DIVISION.
DIVISION OF FINANCIAL MANAGEMENT	DIVISION DIRECTOR.
DIVISION OF GRANTS & AGREEMENTS	DIVISION DIRECTOR.
DIVISION OF CONTRACTS, POLICY & OVERSIGHT	DIVISION DIRECTOR.
OFFICE OF INFORMATION AND RESOURCE MANAGEMENT	DEP DIR, OFC OF INFORMATION & RESOURCE MGMT
	SENIOR STAFF ASSOCIATE.
	DIR PLANNING & EVALUATION.
DIVISION OF INFORMATION SYSTEMS	DEP DIR, DIV OF INFORMATION SYSTEMS.
DIVISION OF HUMAN RESOURCE MANAGEMENT	DIV DIR, DIV OF HUMAN RESOURCE MANAGEMENT
DIVISION OF ADMINISTRATIVE SERVICES	DIR, DIVISION OF ADMINISTRATIVE SERVICES.
NATIONAL TRANSPORTATION SAFETY BOARD:	
OFFICE OF THE MANAGING DIRECTOR	DEP MANAGING DIR FOR MGMT & POLICY.
	DEP MANAGING DIR FOR PROGRAM OPERATIONS.
	CHIEF TECHNICAL ADVISOR.
OFFICE OF ADMINISTRATION	DIR OFFICE OF ADMINISTRATION.
OFFICE OF AVIATION SAFETY	DIRECTOR OFC OF AVIATION SAFETY.
	DEPUTY DIRECTOR OFC OF AVIATION SAFETY.
OFFICE OF RESEARCH & ENGINEERING	DIR OFC OF RESEARCH AND ENGINEERING.
	DEPUTY DIR OFC OF RESEARCH AND ENGINEERING.
OFFICE OF SAFETY RECOMMENDATIONS	DIRECTOR OFC OF SAFETY RECOMMENDATIONS.
OFFICE OF SURFACE TRANSPORTATION SAFETY	DIR OFC OF SURFACE TRANSPORTATION SAFETY
	DEPUTY DIRECTOR.
NUCLEAR REGULATORY COMMISSION:	
ATOMIC SAFETY AND LICENSING BRD PANEL	CHAIRMAN ASLBP.
	DEPUTY CHIEF ADMINISTRATIVE JUDGE EXECUTIVE.
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR AUDITS.
DEPUTY GC FOR LICENSING & REGULATION	DEPUTY ASSISTANT GC/LEGISLATIVE COUNSEL.
DEP GC FOR HEARINGS, ENFORCEMENT & ADMINISTRATION	DEPUTY ASSISTANT GC FOR ADMINISTRATION.
ASSISTANT GC FOR HEARINGS AND ENFORCEMENT	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
OFFICE OF COMMISSION APPELLATE ADJUDICATION	DIR OFC OF COMM APPELLATE ADJUDICATION.
DIVISION OF OPERATIONAL ASSESSMENT	CHIEF ENERGY RESPONSE BRANCH.
	CHF, DIAGNOSTIC EVAL & INCIDENT INVEST BRANCH.
DIVISION OF SAFETY PROGRAMS	CHIEF REACTOR ANALYSIS BRANCH.
	CHF RELIABILITY & RISK ASSESSMENT BRANCH.
OFFICE OF ADMINISTRATION	ASSOC DIR FOR CONTRACT, SECURITY, FOI & PUBL.
	DIRECTOR, DIV OF SECURITY.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DEP DIR/LSS ADMR, OFC OF INFO RES MGMT.
OFFICE OF THE CONTROLLER	DEP CHIEF FINANCIAL OFFICER/CONTROLLER.
	DEPUTY CONTROLLER.
	DIR DIVISION OF BUDGET AND ANALYSIS.
	DIR DIVISION OF ACCOUNTING AND FINANCE.
	SPECIAL ASSISTANT FOR INTERNAL CONTROLS.
OFC OF SMALL AND DISADV BUS UTILIZATION/CIVIL RIGHTS	DIRECTOR.
DIRECTORATE FOR INSPECTION AND SUPPORT PROGRAMS BRANCH.	DIR, INSPECTION & SUPPORT PROGRAMS.
	CHIEF, PLNG, PROGRAM & MGMT SUPPORT BRANCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	CHF, INSPECTION PROGRAM BRANCH.
ASSOCIATE DIRECTOR FOR PROJECTS	DIR, COST BENEFITS LICENSE ACT PROGRAMS.
DIVISION OF REACTOR PROJECTS I–II	DEPUTY DIR, DIV OF REACTOR PROJECT I & II
ASSISTANT DIRECTOR FOR REGION I REACTORS	PROJECT DIR, PROJECT DIRECTORATE I–1
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–2.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–3.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–4.
ASSISTANT DIRECTOR FOR REGION II REACTORS	PROJ DIR PROJECT DIRECTORATE II–1.
	PROJ DIR PROJECT DIRECTORATE II 2.
	PROJ DIR PROJECT DIRECTORATE II 3.
ASSISTANT DIRECTOR FOR REGION III REACTORS	PROJ DIR PROJECT DIRECTORATE II–4.
	PROJ DIR PROJECT DIRECTORATE III 1.
	PROJ DIR PROJECT DIRECTORATE III 2.
	PROJ DIR PROJECT DIRECTORATE III 3.
	PROJ DIRECTOR PROJECT DIRECTORATE IV–3.
	PROJ DIR, PROJECT DIRECTORATE IV–1.
	PROJECT DIR, PROJ DIRECTORATE IV–2.
DIVISION OF PROJECT SUPPORT	DEP DIR DIV OF PROJECT SUPPORT.
	CHF, TECHNICAL SPECIFICATION BRANCH.
	CHF, EVENTS A & G COMMUNICATIONS BRANCH.
DIVISION OF ENGINEERING	PROJ DIR, N–P REACTOR D & E PROJ DIRECTORATE.
	CHIEF, MATERIALS & CHEMICAL ENGINEERING BR.
	CHF, MECHANICAL ENGINEERING BRANCH.
	CHIEF CIVIL ENG & GEOSCIENCES BRANCH.
DIVISION OF SYSTEMS SAFETY & ANALYSIS	CHIEF ELECTRICAL ENGINEERING BRANCH.
	CHF, PLANT SYSTEMS BRANCH.
	CHF, REACTOR SYSTEMS BRANCH.
	CHIEF PROBABLISTIC SAFETY ASSESSMENT BRANCH.
DIVISION OF TECHNICAL SUPPORT	CHIEF CONTAINMENT SYS & SEVERE ACCIDENT BRCH.
	CHF, EMERGENCY P & R PROTECTION.
	CHF, VENDOR INSPECTION BRANCH.
	CHF, SAFEGUARDS BRANCH.
	CHF, SPECIAL INSPECTIONS BRANCH.
	CHF, PERFORMANCE & QUALITY EVALUATION BRANCH.
DIVISION OF RADIATION SAFETY AND SAFEGUARDS	CHF, RADIATION PROTECTION BRANCH.
	DEP DIR DIV OF RADIATION SAFETY & SAFEGUARDS.
DIVISION OF REACTOR CONTROLS AND HUMAN FACTORS	CHF, HUMAN FACTORS ASSESSMENT BRANCH.
	CHF, OPERATOR LICENSING BRANCH.
	CHF, INSTRUMENTATION & CONTROL BRANCH.
ASSOCIATE DIR FOR ADVANCED REACTORS & LICENSE RENEWAL.	PROJECT DIR, STANDARDIZATION PROJ DIRECTORATE.
	PROJ DIR LICENSE RENEWAL & ENVIRONMENTAL REV.
DIVISION OF FUEL CYCLE SAFETY & SAFEGUARDS	CHIEF, OPERATIONS BRANCH.
	CHIEF, REGL & INTL SAFEGUARDS BRANCH.
	CHIEF, ENRICHMENT BRANCH.
	CHIEF, LICENSING BRANCH.
DIV OF INDUSTRIAL & MEDICAL NUCLEAR SAFETY	CHIEF, OPERATIONS BRANCH.
	CHIEF, MEDICAL, ACAD & COM USE SFTY BRANCH.
	CHIEF, STORAGE & TRANSPORT SYSTEMS BRANCH.
DIVISION OF WASTE MANAGEMENT	CHIEF SOURCE CONTAINMENT & DEVICES BR.
	CHIEF, GEOLOGY & ENGINEERING BRANCH.
	CHF, HIGH LEVEL WASTE & URANIUM RECOVERY PROJ.
	CHIEF, PERF ASSESS & HYDROLOGY BRANCH.
	CHIEF, ENGINEERING & GEOSCIENCES BRANCH.
	ASST TO THE DIR, DIV OF WASTE MANAGEMENT.
	CHF, LOW LEVEL WASTE & DECOMMISSIONING PROJ.
OFC OF NUC REGULATORY RESEARCH	DIRECTOR: FIN MGT, PROCUREMENT & ADMIN STAFF.
DIVISION OF ENGINEERING	CHIEF, MATERIALS ENGINEERING BRANCH.
	CHIEF, WASTE MANAGEMENT BRANCH.
	CHIEF, ELECTRICAL AND MECHANICAL ENGINEER BRH.
	CHIEF, STRUCTURAL AND SEISMIC ENGINEERING BRH.
DIVISION OF SAFETY ISSUE RESOLUTION	CHIEF, SEVERE ACCIDENT ISSUES BRANCH.
	CHIEF, ENGINEERING ISSUES BRANCH.
DIVISION OF REGULATORY APPLICATIONS	CHIEF REGULATION DEVELOPMENT BRANCH.
	CHF, RADIATION PROTECTION & HEALTH EFFECTS BR.
DIVISION OF SYSTEMS RESEARCH	CHIEF ACCIDENT EVALUATION BRANCH.
	CHF, PROBABILISTIC RISK ANALYSIS BRANCH.
	CHIEF, REACTOR AND PLANT SYSTEMS BRANCH.
	CHIEF HUMAN FACTORS BRANCH.
REGION I	DEPUTY REGIONAL ADMINISTRATOR.
	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
	DIRECTOR DIVISION OF REACTOR SAFETY.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
REGION II	DEP DIR, DIV OF REACTOR SAFETY. DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY REGIONAL ADMINISTRATOR REGION II.
REGION III	DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS. DIRECTOR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF REACTOR SAFETY. DEP REGIONAL ADMINISTRATOR REGION III.
REGION IV	DIRECTOR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF REACTOR SAFETY. DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR DIVISION OF REACTOR PROJECTS. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEPUTY REGIONAL ADMINISTRATOR REGION IV.
WALNUT CREEK FIELD OFFICE	DIRECTOR URANIUM RECOVERY FIELD OFFICE. DIRECTOR DIV OF REACTOR PRJECTS. DEPUTY DIRECTOR, DIV OF REACTOR PROJECTS. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DIR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DIR DIR, DIVISION OF REACTOR SAFETY. DEPUTY REGIONAL ADMINISTRATOR REGION V. DIR DIV OR REACTOR SAFETY AND PROJECTS. DEP DIR DIV OF REACTOR SAFETY AND PROJECTS. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
OFFICE OF GOVERNMENT ETHICS:	
OFFICE OF GOVERNMENT ETHICS	DEPUTY DIRECTOR. DEPUTY DIRECTOR. DEPUTY GENERAL COUNSEL. ASSOC DIR FOR PROGRAM DEVELOP & COMPLIANCE.
OFFICE OF MANAGEMENT AND BUDGET:	
OFFICE OF THE DIRECTOR	ASSISTANT DIRECTOR FOR ADMINISTRATION. DEPUTY ASSOCIATE DIR FOR ECONOMIC POLICY ASSOC DIR FOR LEGISLATIVE REF & ADM. DEP ASSISTANT DIRECTOR FOR ADMINISTRATION.
OFFICE OF GENERAL COUNSEL	DEP GEN COUNSEL. ASSOCIATE GENERAL COUNSEL FOR BUDGET.
LEGISLATIVE REFERENCE DIVISION	ASST DIR LEGISLATIVE REFERENCE. DEP/ASST/DIR FOR LEGISLATIVE REFERENCE. CHIEF, ECONOMICS, SCIENCE & GOVT. BRANCH. CHIEF, RESOURCES-DEFENSE-INTERNATIONAL BRANCH.
OFFICE OF FEDERAL PROCUREMENT POLICY	DEP ADMIN FOR PROCUREMENT LAW & LEGISLATION.
OFFICE OF INFORMATION AND REGULATORY AFFAIRS	ASSOC. ADMINISTRATOR FOR MANAGEMENT CONTROL. CHIEF INFORMATION POLICY BRANCH. CHIEF, HUMAN RESOURCES AND HOUSING BRANCH. CHIEF, COMMERCE AND LANDS BRANCH. CHIEF STATISTICAL POLICY BRANCH. CHIEF, NATURAL RESOURCES BRANCH. CHF, INFO TECHNOLOGY MANAGEMENT BRANCH. ENIOR ADVISOR.
ASSOCIATE DIRECTOR FOR MANAGEMENT	CHIEF MANAGEMENT INTEGRITY BRANCH. CHIEF PERSONNEL & GENERAL SERVICES BRANCH. CHIEF, CREDIT AND CASH MANAGEMENT BRANCH. ASSISTANT DIRECTOR FOR GENERAL MANAGEMENT. DEPUTY ASSISTANT FOR GENERAL MANAGEMENT. BRANCH CHIEF, FEDERAL PERSONNEL POLICY BRANCH. CHIEF, FEDERAL SERVICES BRANCH. BRANCH CHIEF MBO EVALUATION & PLANNING BRANCH CHIEF FIN STANDARDS OF REPORTING BRANCH. CHIEF FEDERAL FINANCIAL SYSTEMS BRANCH. SENIOR ADVISER.
BUDGET REVIEW DIVISION	ASST DIR FOR BUDGET REVIEW. DEP ASSISTANT DIRECTOR FOR BUDGET REVIEW. CHIEF FISCAL ANALYSIS BRANCH. DEP CHIEF FISCAL ANALYSIS BRANCH. DEP ASST DIR FOR BUDGET REVIEW & CONCEPTS. CHIEF, RESOURCES SYSTEMS BRANCH. CHIEF, CENTRAL BUDGET MANAGEMENT STAFF. DEPUTY CHIEF BUDGET PREPARATION BRANCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
ASSOC DIR FOR NATIONAL SECURITY AND INTERNATIONAL AFFS.	DEPUTY ASSOCIATE DIRECTOR FOR SPECIAL STUDIES.
INTERNATIONAL AFFAIRS DIVISION	DEP ASSOC DIR FOR INTERNATL AFFAIRS. CHIEF, STATE-USIA BRANCH. CHIEF, ECONOMIC AFFAIRS BRANCH.
NATIONAL SECURITY DIVISION	DEP ASSOC DIR FOR NATIONAL SECURITY. CHIEF, COMMAND, CTRL, COMMS, & INTELLIG BRANCH. CHIEF, NAVY BRANCH. CHIEF, FORCE STRUCTURE & INVESTMENT BRANCH. CHIEF, OPER & SUPPORT BRANCH.
HEALTH AND INCOME MAINTENANCE DIVISION	DEP ASSOC DIR FOR HEALTH & INCOME MAINTENANCE. CHF, INCOME MAINTENANCE BRANCH. CHIEF HEALTH & SOCIAL SERVICES BRANCH. CHIEF HEALTH & FINANCIAL BRANCH.
LABOR, VETERANS, AND EDUCATION DIVISION	CHIEF, LABOR BRANCH. DEP TO THE DEP ASSOCI DIR FOR HUMAN R/C ED BR. CHF VETERAN AFFAIRS BRANCH.
ASSOCIATE DIRECTOR FOR ECONOMICS AND GOVERNMENT	DEP ASSOC DIR FOR SPECIAL STUDIES. ADVISER TO THE ASSOC DIR FOR ECONOMICS & GOV
TRANSPORTATION, COMMERCE, AND JUSTICE DIVISION	DEP ASSOC DIR FOR TRANSP COMMERCE & JUSTICE. CHIEF COMMERCE & JUSTICE BRANCH. CHIEF TRANSPORT GENERAL SERVICES BRANCH.
HOUSING, TREASURY AND FINANCE DIVISION	DEPUTY ASSOC DIR FOR HOUSING TREASURY FINANCE. CHIEF, TREASURY/POST BRANCH. CHIEF, FINANCIAL INSTITUTIONS BRANCH. CHIEF, HOUSING BRANCH.
ASSOC DIR FOR NATURAL RESOURCES, ENERGY, AND SCIENCE.	DEP ASSOC DIR FOR SPEC STUDIES.
NATURAL RESOURCES DIVISION	DEP ASSOCIATE DIR. FOR NATURAL RESOURCES. CHIEF, WATER RESOURCES BRANCH. CHIEF, AGRICULTURAL BRANCH. CHIEF, ENVIRONMENT BRANCH. CHIEF INTERIOR BRANCH.
ENERGY AND SCIENCE DIVISION	ASST DIVISION CHIEF NRD. DEP ASSOC. DIR FOR ENERGY & SCIENCE. CHIEF, NUCLEAR ENERGY BRANCH. CHIEF SCIENCE AND SPACE PROGRAMS BRANCH. CHIEF NON-NUCLEAR ENERGY BRANCH.
OFFICE OF PERSONNEL MANAGEMENT:	
OFFICE OF THE CHIEF FINANCIAL OFFICER	CHIEF FINANCIAL OFFICER.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL. ASST INSPECTOR GENERAL FOR AUDITS.
OFFICE OF EXECUTIVE RESOURCES	ASST DIR FOR EXECUTIVE & MANAGEMENT POLICY. ASSISTANT DIRECTOR FOR EXECUTIVE RESOURCES.
OFFICE OF INFORMATION MANAGEMENT	EXECUTIVE FOR ADP OPERATIONS.
OFFICE OF ACTUARIES	DIRECTOR, OFFICE OF ACTUARIES.
OFFICE OF INSURANCE PROGRAMS	ASST DIR FOR INSURANCE PROGRAM.
OFFICE OF RETIREMENT PROGRAMS	ASST DIR FOR RETIREMENT PROGRAMS.
OFFICE OF PERSONNEL RESEARCH AND DEV	ASST DIR FOR PERSONNEL RESEARCH & DEVELOPMENT
STAFFING SERVICE CENTER	ASSISTANT DIRECTOR FOR STAFFING AUTOMATION.
OFFICE OF AGENCY COMPLIANCE & EVALUATION	ASST DIR FOR AGENCY COMPLIANCE & EVALUATION.
OFFICE OF CLASSIFICATION	ASST DIR FOR CLASSIFICATION.
OFFICE OF FEDERAL INVESTIGATIONS	ASST DIR FOR FEDERAL INVESTIGATIONS.
OFFICE OF WASHINGTON EXAMINING SERVICES	ASST DIR FOR WASH EXAMINING SERVICES.
OFFICE OF SPECIAL COUNSEL:	
HEADQUARTERS, OFFICE OF SPECIAL COUNSEL	ASSOC SPEC COUNSEL (INVESTIGATION). ASSOC SPECIAL COUNSEL (PROSECUTION). DEPUTY ASSOCIATE SPEC COUNSEL FOR PROSECUTION. DIRECTOR FOR MANAGEMENT.
RAILROAD RETIREMENT BOARD:	
BOARD STAFF	ASSOCIATE SPECIAL COUNSEL FOR PLAN & ADVICE. DIR OF UNEMPLOYMENT & SICKNESS INSURANCE. DIRECTOR OF DATA PROCESSING. DIRECTOR OF ADMINISTRATIVE SERVICES. DIR OF RETIREMENT & SUPERVISOR PROGRAMS CHIEF ACTUARY. DIRECTOR OF FIELD SERVICE. DIRECTOR OF ADMINISTRATION & OPERATIONS DEPUTY GENERAL COUNSEL. ASST INSPECTOR GENERAL FOR INVESTIGATIONS. CHIEF FINANCIAL OFFICER. ASSISTANT INSPECTOR GENERAL FOR AUDIT

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIRECTOR OF SYSTEMS INITIATIVES.
	DIRECTOR OF TAXATION.
	GENERAL COUNSEL.
SECURITIES AND EXCHANGE COMMISSION:	
OFFICE OF THE CHIEF ACCOUNTANT	DEP CHF ACCOUNTANT.
OFFICE OF ADMINISTRATIVE AND PERSONNEL MANAGEMENT.	DEP EXEC DIRECTOR.
	ASSOCIATE EXECUTIVE DIRECTOR (FINANCE).
	ASSOCIATE EXECUTIVE DIRECTOR (ADMINISTRATION).
DIV OF CORPORATION FINANCE	ASSOCIATE DIRECTOR (OPERATIONS).
	ASSOCIATE DIRECTOR (LEGAL).
SELECTIVE SERVICE SYSTEM:	
SELECTIVE SERVICE SYSTEM	ASSOC DIR INFORMATION MANAGEMENT
SMALL BUSINESS ADMINISTRATION:	
OFFICE OF THE ADMINISTRATOR	DEPUTY DIRECTOR OF PROGRAM REVIEW.
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL.
OFFICE OF THE GENERAL COUNSEL	ASST INSPECTOR GENERAL FOR MAGNT LEGAL COUSL
	ASSOCIATE GENERAL COUNSEL FOR GENERAL LAW
	ASSOC GEN COUNSEL LITIGATION.
OFFICE OF EQUAL EMPLOYMENT O & C RIGHTS COMPLIANCE.	ASST ADMR FOR EQUAL EMPLOY O & C RIGHT COMPL
	ASST ADMINSTRATOR FOR HEARINGS AND APPEALS.
OFFICE OF FINANCIAL ASSISTANCE	ASSOC ADMINISTRATOR FOR FINANCIAL ASSIST.
	ASST ADMR FOR PORTFOLIO MANAGEMENT
OFFICE OF GOVERNMENT C & M ENTERPRISE DEVELOPMENT.	DEP ASSOC ADMR FOR FINANCIAL ASSISTANCE.
	DEP ASSOC ADMR FOR POL COOR. PROG C & E.
OFFICE OF MINORITY ENTERPRISE DEVELOPMENT	ASSOC ADMR FOR MSB–COD.
	DEP ASSOC ADMR FOR PROGRAMS (MSB & COD).
OFFICE OF MANAGEMENT AND ADMINISTRATION	CHIEF FIN OFC & ASSOC DEP ADM FOR MGT & ADM.
	DIRECTOR OF PROGRAM REVIEW.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	ASST ADM FOR INFORMATION RESOURCES MANAGEMENT
	DEP ASST ADM FOR INFORMATION RES MGMT.
OFFICE OF PERSONNEL	ASSISTANT ADMINISTRATOR FOR PERSONNEL.
OFFICE OF COMPTROLLER	COMPTROLLER.
DISTRICT DIRECTORS	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
ORGANIZATION ABOLISHED	DEP DIR OF PROG ANALYSIS & QUALITY ASSURANCE
	DEPUTY DIRECTOR OF PROGRAM REVIEW
DEPARTMENT OF STATE:	
BUREAU OF ADMINISTRATION	SUPERVISORY STRUCTURAL ENGINEER.
BUREAU OF ECONOMIC & BUSINESS AFFAIRS	DIR, OFFICE OF EAST–WEST TRADE.
BUREAU OF INTELLIGENCE AND RESEARCH	DIR OFC OF INTELLIGENCE RESOURCES.
OFFICE OF THE INSPECTOR GENERAL	ASSITANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS
	COUNSEL TO THE INSPECTOR GENERAL.
	DEP ASST INSPECTOR GENERAL FOR AUDITS.
	DEP ASST INSPECTOR GEN FOR INVESTIGATIONS.
	ASST INSP GEN FOR POLICY, PLNG AND MANAGEMENT
	DEP ASST INSPECTOR GEN FOR INSPECTIONS.
	DEP ASST INSPT GEN FOR OFC OF SECUR OVERSIGHT
BUREAU OF PERSONNEL	DIRECTOR, OFC OF CIVIL SERVICE PERSONNEL MGMT
INTERNATIONAL BOUNDARY & WATER COMMISSION	SUPERVISORY CIVIL ENGINEER, OPERATIONS.
DEPARTMENT OF TRANSPORTATION:	
OFC OF COMMERCIAL SPACE TRANSPORTATION	SENIOR ADVISOR.
OFFICE OF INSPECTOR GENERAL	ASST INSPE GENERAL FOR AUDITING.
	ASST I/G POLICY, PLANNING AND RESOURCES.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DIR, OFC OF A & S TRANSPORTATION AUDITS.
	DIR., OFC OF MARINE & DEPARTMENT WIDE AUDITS.
	DEP ASST INSPECTOR GENERAL FOR AUDITING.
	DIR, OFC OF INFORMATION TECHNOL & FIN AUDITS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEPUTY INSPECTOR GENERAL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	ASST INSPECTOR GENERAL FOR INSPECTIONS & EVAL.
	DEP ASST INSPECTOR GEN FOR INSPECTIONS & EVAL.
	DEP ASST INSPECTOR GENERAL FOR POLICY PLAN RES.
	DIRECTOR OF ADMINISTRATION.
	DIR OFC ONFO TECH FINANCIAL & SECRETARIAL AUD.
	SENIOR COUNSEL TO THE INSPECTOR GENERAL.
ASST SECRETARY FOR BUDGET & PROGRAMS	DEPUTY CHIEF FINANCIAL OFFICER.
ASST SEC FOR PUBLIC AFFAIRS	ASSOCIATE DIRECTOR PUBLIC INFORMATION DIV.
ASST SEC FOR ADMINISTRATION	ASST SECY FOR ADMINISTRATION.
	SENIOR PROCUREMENT ADVISOR.
OFFICE OF ACQUISITION & GRANT MANAGEMENT	DIRECTOR OFC OF ACQUISITION & GRANT MGNT.
	DEP DIR, OFC OF ACQUISITION & GRANT MGMT.
ASSOC ADM'R FOR SAFETY	ASSOC ADMR FOR SAFETY.
	DIRECTOR, OFFICE OF SAFETY ENFORCEMENT.
ASSOCIATE ADMINISTRATION FOR PIPELINE SAFETY	ASSOC ADMR FOR PIPELINE SAFETY.
OFC OF ASSOC ADMR FOR MARKETING	ASSOCIATE ADMINISTRATOR FOR MARKETING.
OFFICE OF ASSOCIATE ADMINISTRATOR FOR MARITIME AIDS.	ASSOCIATE ADMINISTRATOR FOR MARITIME AIDS.
OFFICE OF ACCOUNTING	DIR OFFICE OF ACCOUNTING.
OFFICE OF AIRPORT PLANNING & PROGRAMMING	DIR, OFFICE OF AIRPORT PLANNING & PROGRAM
	MGR, GRANTS-IN-AID DIVISION.
ASSISTANT ADMINISTRATOR FOR CIVIL AVIATION SECURITY	DEP ASST ADMR FOR CIVIL AVIATION SECURITY.
OFFICE OF CIVIL AVIATION SECURITY POLICY & PLANNING	DIR, OFC OF CIVIL AVN SECURITY POL & PLANNING.
OFFICE OF CIVIL AVIATION SECURITY OPERATIONS	DIR OFC OF CIVIL AVIATION SECURITY OPERATIONS.
	DEP DIR, OFC OF CIVIL AVIATION SECURITY OPS.
OFFICE OF CIVIL AVIATION SECURITY INTELLIGENCE	DIR OFC CIVIL AVIATION SECURITY INTELLIGENCE.
ORGANIZATION ABOLISHED	DIR OFC OF CIVIL AVIATION SECURITY PROG MGMT
ASIA/PACIFIC OFFICE	DIRECTOR ASIA/PACIFIC OFFICE.
ASSOCIATE ADMINISTRATOR FOR AIR TRAFFIC	ASSOC. ADMINISTRATOR FOR AIR TRAFFIC.
	DEP ASSOC ADMIN FOR AIR TRAFFIC
REGIONAL AIR TRAFFIC DIVISIONS	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIV.
	MANAGER, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MANAGER, AIR TRAFFIC DIVISION.
	MANAGER, AIR TRAFFIC DIVISION.
	MANAGER, PROCEDURES DIVISION.
AIR TRAFFIC RULES & PROCEDURES SERVICE	MGR, AIRSPACE-RULES & AERONAUTICAL INF. DIV.
	DIR, AIR TRAFFIC RULES & PROCEDURES SERVICE.
OFFICE OF AIR TRAFFIC SYSTEM MANAGEMENT	DIRECTOR, AIR TRAFFIC SYSTEM MANAGEMENT.
AIR TRAFFIC PLANS AND REQUIREMENTS SERVICE	DIR, AIR TRAFFIC PLANS & REQUIREMENTS SERV
	MANAGER SYSTEM PLANS & PROGRAMS DIV.
	MGR AUTOMATION SOFTWARE POL & PLNNG DIVISION.
OFFICE OF AIR TRAFFIC SYSTEM EFFECTIVENESS	MANAGER ADVANCED SYST & FACILITIES DIV.
OFFICE OF AIR TRAFFIC PROGRAM MANAGEMENT	DIR, OFC OF AIR TRAFFIC SYST EFFECTIVENESS.
ASSOCIATE ADMINISTRATOR FOR AVIAITON STANDARDS	DIR, OFC OF AIR TRAFFIC PROGRAM MANAGEMENT
	ASSOC ADMINISTRATOR FOR AVIATION STANDARDS.
OFFICE OF AVIATION MEDICINE	DEPUTY ASSOC ADMINISTRATOR AVIATION STANDARDS
	AIRCRAFT OVERSIGHT EXECUTIVE.
	FED AIR SURGEON.
	DEPUTY FEDERAL AIR SURGEON.
	MGR, MEDICAL SPECIALTIES DIVISION.
	DIRECTOR CIVIL AEROMED INSTITUTE.
OFFICE OF ACCIDENT INVESTIGATION	DIR, OFFICE OF ACCIDENT INVESTIGATION.
OFFICE OF AVIATION SYSTEMS STANDARDS	DIR, OFC OF AVIATION SYSTEMS STANDARDS
	DEPUTY DIRECTOR.
NAS TRANSITION & IMPLEMENTATION SERVICE	DIR, NAS TRANSITION & IMPLEMENTATION DIR.
OPERATIONAL SUPPORT SERVICE	DIRECTOR OPERATIONAL SUPPORT SERVICE.
SPECTRUM POLICY & MANAGEMENT DIRECTORATE	DIR, SPECTRUM POL & MANAGEMENT DIRECTORATE.
NAS OPERATIONS DIRECTORATE	DIRECTOR, NAS OPERATIONS DIRECTORATE.
ASSOCIATE ADMINISTRATOR FOR REGULATION & CERTIFICATION.	ASSOC ADMR FOR REGULATIONS & CERTIFICATION.
	DEP ASSOC ADMR FOR REGUL & CERTIFICATION.
AIRCRAFT CERTIFICATION SERVICE	DIR, AIRCRAFT CERTIFICATION SERVICE.
	DEPUTY DIRECTOR AIRCRAFT CERTIFICATION SERVIC
	ASST DIR, AIRCRAFT CERTIFICATION SERVICE.
	MANAGER, AIRCRAFT ENGINEERING DIVISION.
REGIONAL AIRPORT CERTIFICATION DIVISIONS	MANAGER, AIRCRAFT MANUFACTURING DIVISION.
	MGR TRANSPORT AIRPLANE DIRECTORATE.
	MGR ENGINE & PROPELLER DIRECTORATE.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
FLIGHT STANDARDS SERVICE	MGR SMALL AIRPLANE DIRECTORATE. MANAGER ROTOCRAFT DIRECTORATE. DIR, FLIGHT STANDARDS SERVICE DEP DIR, FLIGHT STANDARDS SERVICE. MGR, GENERAL AVIATION AND COMMERCIAL DIV MANAGER, AIR TRANSPORTATION DIVISION. MANAGER, AIRCRAFT MAINTENANCE DIVISION. MANGER, FIELD PROGRAMS DIVISION. MANAGER, TECHNICAL PROGRAMS DIVISION.
REGIONAL FLIGHT STANDARDS DIVISIONS	MGR, FLIGHT STANDARDS DIV MGR, FLIGHT STANDARDS DIVISION. MGR, FLIGHT STANDARDS DIV. MANAGER, FLIGHT STANDARDS DIVISION. MGR, FLIGHT STANDARDS DIV. MGR, FLIGHT STANDARDS DIV. MGR, FLIGHT STANDARDS DIVISION. MGR, FLIGHT STANDARDS DIV. MGR, FLIGHT STANDARDS DIVISION.
ASSOC ADMINISTRATOR FOR CONTRACTING & QUALITY ASSURANCE.	MGR, CONTRACTS DIVISION. ASSOCIATE ADMINISTRATOR. DEPUTY ASSOCIATE ADMINISTRATOR.
PROGRAM MANAGER FOR ADVANCED AUTOMATION	PROGRAM MGR FOR ADVANCED AUTOMATION. DEP PROG MGR FOR ADVANCED AUTOMATED SYSTEM. DEP PROG MGR FOR VOICE S & C SYSTEM. PROGRAM MANAGER FOR TERMINAL SYSTEMS. PROGRAM MANAGER FOR ENROUTE SYSTEMS.
PROGRAM DIRECTOR FOR AUTOMATION	PROGRAM DIRECTOR FOR AUTOMATION.
PROGRAM DIR FOR COMMUNICATIONS & AIRCRAFT ACQUISITION.	PROG DIR FOR COMMUNICATIONS & AIRCRAFT ACQ
PROGRAM DIRECTOR FOR NAVIGATION & LANDING AIDS	PROGRAM DIR FOR NAVIGATION & LANDING AIDS.
PROGRAM DIRECTOR FOR SURVEILLANCE	PROG DIRECTOR FOR SURVEILLANCE.
PROGRAM DIRECTOR FOR WEATHER & FLIGHT SERVICE SYSTEMS.	PROGRAM DIR FOR WEATHER & FLIGHT SERVICE SYST
OFFICE ACQUISITION POLICY & OVERSIGHT	DIR, OFC OF ACQUISITION POL & OVERSIGHT
ASSOCIATE ADMINISTRATOR FOR AVIATION SAFETY	ASSOC ADMIN FOR AVIATION SAFETY. DEP ASSOC ADMIN FOR AVIATION SAFETY
FEDERAL HIGHWAY ADMINISTRATION	EXECUTIVE DIRECTOR.
ASSOC ADMR FOR ADMIN	DIRECTOR OFFICE OF FISCAL SERVICES. DIRECTOR OFFICE OF CONTRACTS AND PROCUREMENT
ASSOCIATE ADMINISTRATOR FOR SAFETY & SYSTEM APP	ASSOC ADMR FOR SAFETY & SYSTEM APPLICATIONS.
OFFICE OF HIGHWAY SAFETY	DIR, OFFICE OF HIGHWAY SAFETY.
OFFICE OF MOTOR CARRIER STANDARDS	DIR, OFFICE OF MOTOR CARRIER STANDARDS.
OFFICE OF MOTOR CARRIER SAFETY FIELD OPERATIONS	DIR, OFC OF MOTOR CARRIER S/F OPERATIONS. CHIEF ENVIRONMENTAL OPERATIONS DIVISION.
OFFICE OF ENVIRONMENT & PLANNING	DIR OFC OF RIGHT OF WAY.
OFFICE OF RIGHT OF WAY	CHIEF, OPERATIONS DIVISION.
NATL CENTER FOR STATISTICS AND ANALYSIS	CHF, ACCIDENT INVESTIGATION DIV.
ASSOC ADMR FOR ENFORCEMENT	ASSOC. ADMINISTRATOR FOR ENFORCEMENT
OFC OF DEFECTS INVESTIGATION	DIR-OFC OF DEFECTS INVESTIGATION.
OFC OF VEHICLE SAFETY COMP	DIR-OFC OF VEHICLE SAFETY COMPLIANCE.
OFFICE OF THE CHIEF OF STAFF	CHIEF, PROCUREMENT MANAGEMENT DIVISION.
DEPARTMENT OF TREASURY:	
DEPUTY ASSISTANT SECRETARY (INTL MONETARY POLICY)	DIR OFC OF FOREIGN EXCHANGE OPERATIONS.
FISCAL ASSISTANT SECRETARY	FISCAL ASSISTANT SECRETARY ASSISTANT FISCAL ASSISTANT SECRETARY.
FINANCIAL MANAGEMENT SERVICE	COMMR OF FINANCIAL MANAGEMENT SERVICE. DEP COM FINANCIAL MANAGEMENT SERVICE. DIR, REGIONAL FINANCIAL CENTER (CHICAGO). DIRECTOR, REGL FIN CTR (PHILADELPHIA). DIRECTOR, REGL FIN CTR (SAN FRANCISCO). DIRECTOR, REGL FIN CTR (AUSTIN). DEPUTY DIRECTOR, OPERATIONS GROUP COMPTROLLER. DIRECTOR, SYSTEMS SERVICES DIRECTORATE. ASST COMMISSIONER, INFORMATION RESOURCES. ASSISTANT COMMISSIONER, FEDERAL FINANCE. DIRECTOR OPERATIONS GROUP. DIRECTOR CASH MANAGEMENT DIRECTORATE. ASSISTANT COMMISSIONER, REGIONAL OPERATIONS. ASST COMR, MANAGEMENT (CHIEF FIN OFCR). ASSISTANT COMMISSIONER, AGENCY SERVICES. DIR, SYSTEMS DEVELOPMENT DIRECTORATE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
BUREAU OF THE PUBLIC DEBT	DIR, FIN INFORMATION MANAGEMENT DIRECTORATE. DIR, TECHNOLOGY & INFORMATION GROUP. ASSISTANT COMMISSIONER, FINANCIAL INFORMATION. ASSISTANT COMMISSIONER (AGENCY SERVICES). DIR, FINANCIAL ACCOUNTING & SYST DIRECTORATE. ASSOCIATE DEPUTY COMMISSIONER FOR RE-ENGINEER. COMMISSIONER. DEP COMMR OF THE PUBLIC DEBT. ASST COMMISSIONER (SAVINGS BOND OPERATIONS). ASST COMMR (FINANCING). ASST COMMR (ADMINISTRATION). GOVERNMENT SECURITIES ACT PROGRAM DIRECTOR. GOVERNMENT SECURITIES POLICY ADVISOR. ASST COMMR/SECURITIES & ACCOUNTING SERVICES. ASST COMMISSIONER (AUTOMATED INFO SYSTEMS). ASST COMMISSIONER (PUBLIC DEBT ACCOUNTING).
ASSISTANT SECRETARY (ECONOMIC POLICY)	ASST DIR FOR ECONOMIC FORECASTING. SR ECONOMIST.
OFC OF THE INSPECTOR GENERAL	DEP ASST INSP GEN FOR AUDIT (AUDIT PROG SERV). DEP ASST INSPECTOR GEN FOR AUDIT (AUDIT OPS). AIG FOR POLICY, PLANNING & RESOURCES. ASST INSP GEN FOR OVERSIGHT & QUALITY ASSUR. ASST INSPECTOR GENERAL FOR AUDIT. ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
ASSISTANT SECRETARY (TAX POLICY)	DIR (ECONOMIC MOD & COMPUTER APPLICATIONS).
ASSISTANT SECRETARY (MANAGEMENT)	DIR, MANAGEMENT PROGRAMS DIRECTORATE. DIRECTOR, OFFICE OF PROCUREMENT.
ASSISTANT SECRETARY (ENFORCEMENT)	DIR FIN CRIMES ENFORCEMENT NETWORK. DEP DIR, FINANCIAL CRIMES ENFORCEMENT NETWORK.
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS	DIRECTOR, OFFICE OF LAW ENFORCEMENT. ASSISTANT DIRECTOR INTERNAL AFFAIRS. ASST DIR, CONGRESSIONAL AND MEDIA AFFAIRS. ASST DIR (INTERNAL AFFAIRS). DIRECTOR, LABORATORY SERVICES. DEPUTY DIRECTOR.
OFFICE OF LAW ENFORCEMENT	ASSOCIATE DIRECTOR (LAW ENFORCEMENT). CHIEF, SPEC OPERATIONS DIVISION. CHIEF, PLANNING & ANALYSIS STAFF CHIEF, INTELLIGENCE DIVISION. CHIEF, EXPLOSIVES DIVISION. DEPUTY ASSOC DIR (LAW ENFORCEMENT). CHIEF, FIREARMS DIVISION.
FIELD OPERATIONS	SPECIAL AGENT IN CHARGE (NY DISTRICT OFFICE). SPECIAL AGENT IN CHARGE (LA DISTRICT OFFICE). SPECIAL AGENT IN CHARGE (MIAMI DISTRICT OFC). SPEC AGENT IN CHARGE (WASHINGTON DIST OFFICE). SPECIAL AGENT-IN-CHARGE (NEW YORK FIELD DIV).
OFFICE OF COMPLIANCE OPERATIONS	ASSOCIATE DIRECTOR (COMPLIANCE OPERATIONS). DEP. ASSOCIATE DIR. (COMPLIANCE OPERATIONS). CHIEF, REVENUE PROGRAMS DIVISION. CHIEF, INDUSTRY COMPLIANCE DIVISION.
FIELD OPERATIONS	REGIONAL DIRECTOR (NORTH ATLANTIC REGION).
CHIEF COUNSEL	ASSISTANT CHIEF COUNSEL (CHICAGO). ASSISTANT CHIEF COUNSEL (NEW YORK). STAFF ASSISTANT TO THE CHIEF COUNSEL.
US CUSTOMS SERVICE	REGL COMMR REG 2 NY. REG COMMR, REG 1, BOSTON. ASST REGN COMMR OPERATIONS REG II NEW YORK. ASST COMMISSIONER FOR INTERNAL AFFAIRS. REGL COMMR, REG 4, MIAMI. REG COMMR, REG V, NEW ORLEANS. REGIONAL COMMISSIONER, CHICAGO. ASST REGIONAL COMMR (OPERATIONS). ASST REGL COMMR (OPERATIONS). ASST REGL COMMR (OPERATIONS). ASST REGIONAL COMMR (OPERATIONS). DEPUTY ASST COMR (INTERNATIONAL AFFAIRS ASST COMMISSIONER (OFC OF INFO MGMT). DISTRICT DIRECTOR, MIAMI. DISTRICT DIRECTOR, LAREDO. AREA DIR, NEWARK. ASST COMR (INSPECTION & CONTROL).

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	COMPTROLLER.
	DEPUTY ASST COMMR (INSPECTION & CONTROL).
	AREA DIRECTOR, JFK AIRPORT.
	AREA DIRECTOR, NEW YORK SEAPORT.
	DEPUTY ASSISTANT COMMISSIONER (MANAGEMENT).
	DIRECTOR, OFC OF AUTOMATED SYSTEMS OPERATIONS.
	DIR BUDGET AND PLANNING.
	EXEC DIR THE INTERDICTION COMMITTEE.
	REGIONAL COMMISSIONER.
	ASSISTANT COMMISSIONER, OFFICE OF MANAGEMENT
	DISTRICT DIRECTOR, LOS ANGELES.
	SENIOR ADV FOR AUTO COMM SYS SELECT PROJECTS.
	DEP ASSOC COMR FOR ORGANL EFFECTIVENESS.
	DIR OFC OF HUMAN RESOURCES.
	ASST COMMISSIONER, STRATEGIC TRADE.
	DIRECTOR, OFC OF AUTOMATED COMMERCIAL SYSTEMS.
OFFICE OF REGULATIONS & RULINGS	ASST COMMISSIONER, REGULATIONS & RULINGS.
OFFICE OF INVESTIGATIONS	DEPUTY ASSISTANT COMMISSIONER (ENFORCEMENT).
	SPECIAL AGENT IN CHARGE, MIAMI.
	DIR, OFFICE OF INVESTIGATIVE PROGRAMS.
	DIR, OFFICE OF ENFORCEMENT SUPPORT.
	SPECIAL AGENT IN CHARGE—NEW YORK.
	SPECIAL AGENT IN CHARGE.
	DIR OFC OF DOMESTIC OPERATIONS.
	SPECIAL AGENT IN CHARGE (NEW ORLEANS)
	DIRECTOR OFC OF FOREIGN OPERATIONS.
	ASST COMMISSIONER, INVESTIGATIONS.
	SPECIAL AGENT IN CHARGE.
	DEP ASST COMR, OFC OF A & M INTERDICTION.
	SPECIAL AGENT IN CHARGE (HOUSTON).
	SPECIAL AGENT-IN-CHARGE (SAN DIEGO).
	SPECIAL AGENT-IN-CHARGE (CHICAGO).
	SPECIAL AGENT-IN-CHARGE-DALLAS.
ORGANIZATION ABOLISHED	SPECIAL AGENT IN CHARGE (NEWARK).
OFFICE OF FIELD OPERATIONS	DEPUTY ASST COMM OFC OF REGUL & RULINGS.
	DIR, INTERNATIONAL TRADE COMPLIANCE DIVISION.
	DIR OFC OF REGULATORY AUDIT.
	ASST COMMISSIONER, FIELD OPERATIONS.
	DIR, OFFICE OF TECHNICAL SERVICES.
	DEP ASST COMM (OFC OF TRADE OPERATIONS).
	DEP ASST COMMISSIONER COMMERCIAL OPERATIONS.
	DEP DIR, OFC OF REGULATORY AUDIT.
OFFICE OF FINANCE	DIR, COMMERCIAL RULINGS DIVISION.
	ASSISTANT COMMISSIONER, FINANCE.
OFFICE OF INFORMATION & TECHNICAL SERVICES	ASST COMMISSIONER, INFOR & TECHNICAL SERVICES.
OFFICE OF HUMAN RESOURCES MANAGEMENT	ASST COMMISSIONER, HUMAN RESOURCES MGMT
OFFICE OF STRATEGIC TRADE	ASST REGL COMMR (OPERATIONS).
OFFICE OF THE CHIEF COUNSEL	ASST CHIEF COUNSEL (CUSTOMS COURT LITIGAT).
	MIAMI REGL COUNSEL.
	CHICAGO REGL COUNSEL.
	NEW YORK REGL COUNSEL.
	ASSOCIATE CHIEF COUNSEL ENFORCEMENT.
	ASSOC CHIEF COUNSEL (TRADE TARIFF & LEG).
	REGIONAL COUNSEL (SOUTHWEST REGION).
	REGIONAL COUNSEL (PACIFIC REGION).
US SECRET SERVICE	DIRECTOR OF THE SECRET SERVICE.
	DEPUTY DIRECTOR U.S. SECRET SERVICE.
	ASSISTANT DIRECTOR, ADMINISTRATION.
	ASSISTANT DIRECTOR INSPECTION.
	ASSISTANT DIRECTOR—TRAINING.
	ASST DIRECTOR—GOVT LIAISON AND PUBLIC AFF
	DEP ASST DIR (SPEC AGENT TRNG), OFC OF TRNG.
	DAD—ADMINISTRATION.
	DAD (UNIFORMED FORCES, F & E DEV), OFC TRNG.
	EXEC DIR FOR WORKFORCE PLANN & DIVERSITY MGNT
	SPECIAL ASST TO THE DIRECTOR.
	DEPUTY ASST DIRECTOR OFFICE OF INSPECTION.
OFFICE OF PROTECTIVE OPERATIONS	ASST DIR (PROTECTIVE OPERATIONS).
	DEP ASST DIR (PROTECTIVE OPERATIONS).
	SPEC AGENT IN CHARGE-PRESIDENTIAL PROTECTIVE.
	SPEC AGENT IN CHARGE-VP PROTECT DIV.
	SPEC AGENT IN CHARGE DIGNITARY PROTECTIVE DIV

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DEPUTY SPECIAL AGENT IN CHARGE PRES PROT DIV
	DEPUTY SPECIAL AGENT IN CHARGE—VP PROT DIV
OFFICE OF PROTECTIVE RESEARCH	ASST DIR (PROTECTIVE RESEARCH).
	DEP. ASST. DIR. (PROTECTIVE RESEARCH).
	SPEC AGENT IN CHARGE-TECH SEC DIV.
	SPEC AGENT IN CHARGE-INTELLIGENCE DIV.
	DEP SPEC AGENT IN CHARGE, INTELLIGENCE DIV.
OFFICE OF INVESTIGATIONS	CHF, INFO RESOURCES MANAGEMENT DIVISION.
	ASST DIRECTOR, INVESTIGATIONS.
	DEPUTY ASST DIR INVESTIGATIONS.
FIELD OPERATIONS	DEP ASST DIR INVESTIGATIONS.
	SPECIAL AGENT IN CHARGE, NEW YORK OFFICE.
	SPECIAL AGENT IN CHARGE, CHICAGO.
	SPECIAL AGENT IN CHARGE, LOS ANGELES OFFICE.
	SPEC AGENT IN CHARGE-WASHINGTON FIELD OFFICE.
	SPEC AGENT IN CHARGE-PHILADELPHIA FIELD OFFIC.
	DEPUTY SPECIAL AGENT IN CHARGE, NEW YORK.
	SPC AGENT IN CHARGE SAN FRANCISCO OFFICE.
	SPECIAL AGENT IN CHARGE, DETROIT.
	SPECIAL AGENT IN CHARGE, DALLAS FIELD OFFICE.
	SPECIAL AGENT IN CHARGE—HOUSTON FIELD OFC.
	SPECIAL AGENT IN CHARGE—MIAMI FIELD OFFICE.
	SPECIAL AGENT IN CHARGE—BOSTON FIELD OFFICE.
US MINT	SPECIAL AGENT IN CHARGE—ATLANTA FIELD OFFICE.
	ASSOC DIRECTOR, CHIEF OPERATING OFFICER.
	DEP ASSOC DIR FOR FINANCE & DEP CHIEF FIN OFC.
	ASSOCIATE DIRECTOR FOR MARKETING.
INTERNAL REVENUE SERVICE	ASSOCIATE DIRECTOR FOR MARKETING.
	REGL DIR OF APPEALS-CENTRAL REGION.
	REG DIR OF APPEALS, MID-ATLANTIC REGION.
	REG DIR OF APPEALS-SOUTHWEST REG.
	REGIONAL DIR OF APPEALS NORTH ATLANTIC REGION.
	REGIONAL DIRECTOR OF APPEALS-WESTERN REGION.
	ASST TO THE COMMISSIONER (EQUAL OPPORTUNITY).
	CHIEF APPEALS OFFICE NEW YORK CITY
	DEPUTY COMMISSIONER.
	REGIONAL DIRECTOR OF APPEALS.
	TAXPAYER OMBUDSMAN.
	CHIEF, APPEALS OFFICE, LONG ISLAND.
	REGIONAL DIRECTOR OF APPEALS.
	NATIONAL DIRECTOR OF APPEALS.
	CHIEF COMPLIANCE.
	DISTRICT OFFICE TRANSITION SITE EXECUTIVE.
	COMPUTING CET TRANSITION SITE EXECUTIVE.
	DEPUTY NATIONAL DIR OF APPEALS.
	SUBMISSION PROCESSING TRANSITION SITE EXEC.
	CUSTOMER SERVICE TRANSITION SITE EXECUTIVE.
	ASST TO THE SENIOR DEP COMMISSIONER.
NORTH ATLANTIC REGION	DIRECTOR, OFFICE OF BUSINESS TRANSITION.
	REG COMMR.
	ASST REG COMMR (EXAM) NORTH ATLANTIC REG.
	ARC (CRIMINAL INVESTIGATION).
	ARC (RESOURCES MGMT).
	ARC (COLLECTION) NORTH ATLANTIC REGION.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, ANDOVER, MASS.
	SRVC CTR DIR, BROOKHAVEN.
	DISTRICT DIR, MANHATTAN.
	DISTRICT DIR, BROOKLYN.
	DISTRICT DIR, BOSTON.
	DISTRICT DIR, ALBANY.
	DIST DIR (HARTFORD).
	DISTRICT DIR, BUFFALO.
	ASST DIST DIR, BROOKLYN.
	ASSISTANT DISTRICT DIRECTOR MANHATTAN.
	ASST DISTRICT DIR, BOSTON.
	DISTRICT DIRECTOR PROVIDENCE.
	DIST DIR, AUGUSTA.
	DISTRICT DIRECTOR, PORTSMOUTH.
	DISTRICT DIRECTOR, BURLINGTON.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
MID-ATLANTIC REGION	REG COMMISSIONER.
	ARC (EXAMINATION) MID-ATLANTIC.
	ARC (CRIMINAL INVESTIGATION) MID ATLANTIC REG.
	ASST REG COMMR (COLLECTION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC)
	SERVICE CENTER DIR, PHILADELPHIA.
	DISTRICT DIR, NEWARK.
	DISTRICT DIR, PITTSBURGH.
	DISTRICT DIRECTOR RICHMOND DISTRICT.
	ASST DISTRICT DIR, PHILADELPHIA.
	ASST DISTRICT DIRECTOR (NEWARK).
	ASSISTANT DISTRICT DIRECTOR—BALTIMORE, MD
	DISTRICT DIRECTOR, WILMINGTON.
	DISTRICT DIR, BALTIMORE.
	ASST SERVICE CENTER DIRECTOR.
	CHIEF COMPLIANCE.
	DISTRICT DIRECTOR.
	ASSIST REG'L COMMISSIONER (RESOURCES MGMT)
	DIR OF SUPPORT SERVICES.
SOUTHEAST REGION	REG COMMR.
	ARC (EXAMINATION) SOUTHEAST REGION
	ASST REG COMMISSIONER-CRIMINAL INVESTIGATION
	ASST REG'L COMMR (RESOURCES MANAGEMENT).
	ASST REG (COLLECTION) SE REG ATLANTA.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC)
	SERVICE CENTER DIRECTOR, MEMPHIS.
	SRVC CTR DIR, ATLANTA.
	DISTRICT DIR, JACKSONVILLE.
	DISTRICT DIR, ATLANTA.
	DISTRICT DIRECTOR GREENSBORO.
	DISTRICT DIR, NASHVILLE.
	DISTRICT DIRECTOR BIRMINGHAM.
	DISTRICT DIR, NEW ORLEANS.
	DISTRICT DIRECTOR, COLUMBIA.
	DISTRICT DIRECTOR LITTLE ROCK DISTRICT
	DISTRICT DIRECTOR, JACKSON, MISS.
	ASST DISTRICT DIRECTOR, JACKSONVILLE.
	ASSISTANT DISTRICT DIRECTOR, ATLANTA.
	DIR OF SUPPORT SERVICES.
	ASSISTANT DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
CENTRAL REGION	REGIONAL COMMR, CENTRAL.
	ARC (EXAMINATION) CENTRAL REGION.
	ASST REGL COMR (CRIMINAL INVESTIGATION).
	ASST REG COMM (RESOURCE MANAGEMENT).
	ASSISTANT REGIONAL COMMISSIONER (COLLECTION)
	ASST REGL COMMISSIONER (DATA PROCESSING)
	DIR SERVICE CTR CINCINNATI.
	DISTRICT DIR (CLEVELAND).
	DISTRICT DIRECTOR DETROIT
	DISTRICT DIRECTOR (PARKERSBURG).
	DISTRICT DIRECTOR, INDIANAPOLIS.
	DISTRICT DIRECTOR, LOUISVILLE.
	DISTRICT DIR, CINCINNATI.
	ASST SERVICE CENTER DIRECTOR.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.
	ASSISTANT DISTRICT DIRECTOR.
	ASSISTANT DISTRICT DIRECTOR DETROIT
MIDWEST REGION	REGIONAL COMMR, MIDWEST REGION.
	ASST REG COMMR (RESOURCES MGMT).
	ARC (CRIMINAL INVESTIGATION) MIDWEST REGION
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC)
	ARC (EXAMINATION), MIDWEST REGION.
	ARC (COLLECTION) MIDWEST REGION.
	SRVC CTR DIR, KANSAS CITY
	DISTRICT DIR, CHICAGO.
	DISTRICT DIRECTOR ST LOUIS.
	DISTRICT DIR, ST PAUL.
	DISTRICT DIR, OMAHA.
	DISTRICT DIR, SPRINGFIELD.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DISTRICT DIR, MILWAUKEE.
	ASST DISTRICT DIR, CHICAGO.
	DISTRICT DIRECTOR, FARGO.
	DISTRICT DIRECTOR, ABERDEEN.
	DIR OF SUPPORT SERVICES.
	DISTRICT DIRECTOR, HELENA.
	CHIEF COMPLIANCE DEPT OF THE TREAS.
	DISTRICT DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
SOUTHWEST REGION	REGIONAL COMMISSIONER.
	ASST REGL COMMR (EXAMINATION).
	ARC (CRIMINAL INVESTIGATION) S W REGION.
	ARC (RESOURCES MGMT).
	ASSISTANT REGIONAL COMMISSIONER (COLLECTION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIR, OGDEN.
	SERVICE CENTER DIRECTOR, AUSTIN.
	DISTRICT DIR, AUSTIN.
	DISTRICT DIRECTOR, DALLAS.
	DISTRICT DIRECTOR, WICHITA.
	DISTRICT DIRECTOR, OKLAHOMA CITY.
	DISTRICT DIR, PHOENIX.
	DISTRICT DIR, DENVER.
	ASSISTANT DISTRICT DIRECTOR, DALLAS.
	DISTRICT DIRECTOR, ALBUQUERQUE.
	DISTRICT DIRECTOR, CHEYENNE.
	DISTRICT DIRECTOR, SALT LAKE CITY.
	COMPLIANCE CENTER DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.
	ASSISTANT DISTRICT DIRECTOR, HOUSTON.
WESTERN REGION	DISTRICT DIRECTOR, HOUSTON.
	REG COMMR.
	ARC (CRIMINAL INVESTIGATION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	ASST REGIONAL COMMISSIONER (EXAMINATION).
	ASST REGL COMMR (COLLECTION).
	ASST REGL COMMR/(RESOURCES MANAGEMENT).
	SERVICE CENTER DIRECTOR, FRESNO.
	DISTRICT DIR, LOS ANGELES.
	DISTRICT DIR, SAN FRANCISCO.
	DISTRICT DIRECTOR, PORTLAND DISTRICT.
	DISTRICT DIR, SEATTLE.
	ASST DISTRICT DIR, LOS ANGELES.
	ASST DIST DIR, SAN FRANCISCO.
	DISTRICT DIRECTOR, HONOLULU.
	DISTRICT DIRECTOR, ANCHORAGE.
	DISTRICT DIRECTOR, BOISE.
	DISTRICT DIRECTOR (SACRAMENTO).
	DISTRICT DIRECTOR (LAS VEGAS).
	DISTRICT DIRECTOR, SAN JOSE.
	ASSISTANT DISTRICT DIRECTOR, LAGUNA NIGUEL.
	ASST SERVICE CENTER DIRECTOR.
	CHIEF COMPLIANCE.
	DISTRICT DIRECTOR, LAGUNA NIGUEL.
	DIR OF SUPPORT SERVICES.
	ASSISTANT DISTRICT DIRECTOR.
CHIEF COMPLIANCE OFFICER	ASST COMR (EMPLOYEE P & E ORGANIZATIONS).
	SPECIAL ASST FOR EXEMPT ORGANIZATION MATTERS.
	ASST COMMISSIONER (TAXPAYER SERVICE).
	MODERNIZATION EXECUTIVE.
	ASSISTANT COMMISSIONER (EXAMINATION).
	ASST COMMR (CRIMINAL INVESTIGATION).
	DIR EXEMPT ORGANIZATIONS TECHNICAL DIVISION.
	D/EMPLOYEE PLANS TECH & ACTUARIAL DIVISION.
	DIRECTOR, STATISTICS OF INCOME DIVISION.
	DEPUTY ASSISTANT COMMISSIONER (EXAMINATION).
	DEP ASST COMMR (CRIMINAL INVESTIGATION).
	DIRECTOR, INPUT PROCESSING DIVISION.
	DIRECTOR OF OPERATIONS.
	ASST/DIR EMPLOYEE PLANS TECHN & ACTURIAL DIV

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	OPERATIONS DEP ASST COMR (RETURNS PROCESSING).
	DIRECTOR, COORDINATED EXAMINATION PROGRAM.
	DIR OF INVESTIGATIONS.
	DIRECTOR, OFFICE OF NATIONAL OPERATIONS.
	ASSISTANT DIR, TAXPAYER SERVICE DIVISION.
	D/A COMR (EMPLOYEE PLANS & EXEMPT ORGS).
	DIRECTOR, CASE PROCESSING DIVISION.
	COMPLIANCE 2000 EXECUTIVE.
	BUSINESS INTEGRATION DAC (RETURNS PROCESSING).
	CHIEF OPERATIONS OFFICER.
	ASST COMMISSIONER (RETURNS PROCESSING).
	DIR TAXPAYER SERVICE DIVISION.
	ASSISTANT COMMISSIONER (COLLECTION).
	NATL DIRECTOR CORPORATE EXAMINATIONS.
	EXEC DIR, ENSUING COMPLIANCE CORE BUSIN SYST.
	ASSISTANT COMMISSIONER (INTERNATIONAL).
	NATIONAL DIRECTOR, COMPLIANCE SPECIALIZATION.
	NATIONAL DIRECTOR SPECIALTY TAXES.
	CHIEF COMPLIANCE OFFICER.
	SPEC ASST TO THE ASST COMR (CRIMINAL INVEST).
	DIR INFORMATION REPORTING PROGRAM.
	NATIONAL DIR, RES & STATISTICAL ANALYSIS.
	DEP ASST COMR (TAXPAYER SERVICES).
	DEPUTY ASST COMMISSIONER (INTERNATIONAL).
	DIRECTOR, FED STATE RELATIONS DIVISION.
CHIEF, TAXPAYER SERVICES	EXECUTIVE FOR ELECTRONIC FILING STRATEGY.
	DEP ASST COMMR (COLLECTION).
	NATL DIR, SUBMISSION PROCESSING DIVISION.
	EXECUTIVE OFCR FOR SERVICE CENTER OPERATIONS.
	CHIEF TAXPAYER SERVICES.
	DIR, TAXPAYER SERVICES DESIGN & REVIEW DIV.
CHIEF FINANCIAL OFFICER	CHIEF FINANCIAL OFFICER.
	CONTROLLER NATIONAL DIR FOR FINANCIAL MGMT.
	NATIONAL DIRECTOR FOR BUDGET.
	DEPUTY ASSISTANT COMMISSIONER (PROCUREMENT).
	ACCOUNTS RECEIVABLE EXECUTIVE OFFICER.
	DIR TRAINING & DEVELOPMENT DIVISION.
	DIR, FACILITIES & INFO MGMT SUPPORT DIVISION.
	DIRECTOR, RESEARCH DIVISION.
	DIRECTOR, SUPPORT & SERVICES DIVISION.
	SPEC ASST TO DEP COMR (P & R)/CHF FIN OFFICER.
	PROJECT DIR ADMIN SERVICES CTR PROJECT OFC.
	A/C (PLANNING & RESEARCH).
	DIR, SUPPORT & SERVICES DIVISION.
	DEP ASST COMMISSIONER (PLANNING & RESEARCH).
	DIRECTOR, HUMAN RESOURCES DIVISION.
	ASST COMMISSIONER (FINANCE)/CONTROLLER.
	DEP ASST COMMISSIONER (HUMAN RES & SUPPORT).
	NATIONAL DIRECTOR FOR SYSTEMS & ACCOUNT STDS.
	ASSISTANT COMMISSIONER (HUMAN RES & SUPPORT).
	ASST COMR (PROCUREMENT).
CHIEF, MANAGEMENT & ADMINISTRATION	DEAN SCHOOL OF INFORMATION TECHNOLOGY.
	DEAN SCHOOL OF PROFESSIONAL DEVELOPMENT.
	NATIONAL DIRECTOR OF EDUCATION.
	DIR RESOURCING BUSINESS SYSTEM & INTEGRATION.
	CHIEF MANAGEMENT AND ADMINISTRATION.
CHIEF INFORMATION OFFICER	DIR MARTINSBURG COMPUTING CENTER.
	DIR, IRS DATA CENTER DETROIT.
	DIRECTOR, SYSTEMS DESIGN DIVISION.
	DIRECTOR SYSTEMS ACQUISITION DIVISION.
	DIR INPUT SYSTEMS DIVISION.
	DEP ASST COMMISSIONER (INFO SYSTEMS MGMT).
	DIR PROJECT MGNT DIVISION.
	DIR SYSTEMS MANAGEMENT & OPER SERVICES DIV.
	ASST COMMISSIONER (INFORMATION SYSTEMS DEV).
	PRIVACY ADVOCATE.
	DIR TECHNICAL MANAGEMENT DIVISION.
	DIR CASE SYSTEMS DIVISION.
	DIRECTOR, SYSTEMS INTEGRATION DIVISION.
	DEP ASST CHF INFO OFFICER INFO SYSTEM DEV.
	ASST DIR DETROIT COMPUTING CTR.
	NATL DIR NETWORK & SYSTEMS MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DIR TELECOMMUNICATIONS DIVISION.
	DIR OPERATIONS MANAGEMENT DIVISION.
	DIRECTOR, QUALITY ASSURANCE DIVISION.
	DEAN SCHOOL OF TAXATION.
	CHIEF INFORMATION OFFICER.
	DIRECTOR, CORPORATE SYSTEMS DIVISION.
	ASST COMMISSIONER (INFORMATION SYSTEMS MGMT).
CHIEF, STRATEGIC PLANNING & COMMUNICATIONS	DIRECTOR, TAX FORMS & PUBLICATIONS DIVISION.
	DIRECTOR, LEGISLATIVE AFFAIRS DIVISION.
	NATL DIRECTOR, STRATEGIC PLANNING DIVISION.
	NATIONAL DIRECTOR OF QUALITY.
	DIRECTOR, EXTERNAL LIAISON DIVISION.
	CHIEF STRATEGIC PLANNING & COMMUNICATIONS.
CHIEF, HEADQUARTERS OPERATIONS	CHIEF HEADQUARTERS OPERATIONS.
CHIEF INSPECTOR	CHIEF INSPECTOR.
	DEP CHIEF INSPECTOR.
	ASSISTANT CHIEF INSPECTOR (INT AUDIT).
	ASSISTANT DIRECTOR INTERNAL AUDIT DIVISION.
	ASST CHIEF INSPECTOR (INTERNAL SECURITY).
	ASST DIR, INTERNAL SECURITY DIVISION.
	REGIONAL INSPECTOR, MIDWEST REG.
	REGIONAL INSPECTOR, NORTH ATLANTIC.
	REGIONAL INSPECTOR, WESTERN REGION.
	REGIONAL INSPECTOR, SOUTHWEST REG.
	REGIONAL INSPECTOR, MID-ATLANTIC REG.
	REGIONAL INSPECTOR, CENTRAL.
	REGIONAL INSPECTOR SOUTHEAST.
CHIEF COUNSEL	ASST CHIEF COUNSEL (GENERAL LITIGATION).
	ASST CHIEF COUNSEL (CRIMINAL TAX).
	ASST CHIEF COUNSEL (GENERAL LEGAL SERVICES).
	ASST CHIEF COUNSEL (DISCLOSURE LITIGATION).
	ASSISTANT CHIEF COUNSEL (INTERNATIONAL).
	ASSISTANT CHIEF COUNSEL (CORPORATE).
	DEP ASST CHF COUN (INCOME TAX & ACCOUNTING).
	DEP ASST CHF COUN (PASSTHROUGHS/SPEC INDUST).
	ASST TO THE ASSOC CHF COUN (FIN & MGMT).
	ASST CHIEF COUNSEL (FIELD SERVICE).
	ASST CHF COUN (PASSTHROUGHS/SPEC INDUSTRIES).
	DEPUTY ASST CHIEF COUNSEL (CORPORATE).
	DEP ASSOC CHIEF COUNSEL (FIN & MANAGEMENT).
	SPECIAL APPELLATE COUNSEL.
	DEP ASST CHIEF COUNSEL (FIELD SERVICE).
	DEP ASST CHIEF COUN (FINANCIAL INST & PROD).
	DEP ASSOC CHF COUN (ENFORCEMENT LITIGATION).
	DEP ASSOC CHIEF COUNSEL INTERNATIONAL.
	ASST CHF COUN (FIN INSTITUTIONS & PRODUCTS).
	DEP ASST CHIEF COUN (INCOME TAX & ACCOUNTING).
	DEP ASSOC CHIEF COUNSEL (EBED).
	DEP ASST CHF COUN (INCOME TAX & ACCOUNTING).
	ASST CHIEF COUNSEL (INCOME TAX & ACCOUNTING).
	ASSOC CHIEF COUNSEL (ENFORCEMENT LITIGATION).
	ASSOC CHIEF COUNSEL EMP BENEFITS EXEMPT ORG.
	SPECIAL COUNSEL (LARGE CASE).
	SPECIAL LITIGATION COUNSEL.
	DEPUTY CHIEF COUNSEL.
	DEP ASSOC CHIEF COUNSEL (DOMESTIC) (TECHNICAL).
	ASSOCIATE CHIEF COUNSEL (INTERNATIONAL).
	ASSOC CHF COUNSEL (FINANCE & MANAGEMENT).
	DEP ASSOC CHIEF COUN (DOMESTIC) (FIELD SERV).
	ASSOC CHIEF COUNSEL (DOMESTIC).
REGIONAL COUNSELS	REGL COUNSEL, CENTRAL REG.
	REGIONAL COUNSEL, MID-ATLANTIC REGION.
	REGL COUNSEL MIDWEST REGION.
	REGL COUNSEL, NORTH ATLANTIC REGION.
	DEP REGL COUN (TAX LITIGAT) NO-ATLANTIC REG.
	DEPUTY REGIONAL COUNSEL (GENERAL LITIGATION).
	REGIONAL COUNSEL SE REGION.
	REGL COUNSEL SOUTHWEST REGION.
	REGIONAL COUNSEL.
	DISTRICT COUNSEL—BOSTON.
	DISTRICT COUNSEL—LOS ANGELES
	DISTRICT COUNSEL CINCINNATI.

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POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
	DISTRICT COUNSEL—PHILADELPHIA.
	DISTRICT COUNSEL—NEWARK.
	DISTRICT COUNSEL—CHICAGO.
	DISTRICT COUNSEL—MANHATTAN.
	DISTRICT COUNSEL—DALLAS.
	DISTRICT COUNSEL—SAN FRANCISCO.
	DEP REGIONAL COUNSEL (TAX LITIGATION).
	DEP REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL.
	DISTRICT COUNSEL.
	DEPUTY REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL, WASHINGTON, DC.
	DEPUTY REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL, BROOKLYN, NEW YORK.
	DISTRICT COUNSEL, HOUSTON, TEXAS.
	DISTRICT COUNSEL, DENVER.
U.S. ARMS CONTROL AND DISARMAMENT AGENCY:	
INTELLIGENCE, VERIFICATION & INFORMATION SUPPORT BUREAU.	CHIEF, VERIFICATION DIVISION.
OFC OF ADMINISTRATION	DIRECTOR OF ADMINISTRATION.
STRATEGIC AND EURASIAN AFFAIRS BUREAU	CHF, THEATER & STRATEGIC DEFENSES DIVISION.
	CHIEF, DEFENSE CONVERSION DIVISION.
	CHIEF, STRATEGIC TRANSITION DIVISION.
	CHF, STRATEGIC NEG & IMPLEMENTATION DIVISION.
NON-PROLIFERATION AND REGIONAL ARMS CONTROL BUREAU.	CHIEF SCIENTIST.
MULTILATERAL AFFAIRS BUREAU	CHF, INTERNATIONAL NUCLEAR AFFAIRS DIVISIONS.
	CHIEF SCI & TECHNOLOGICAL DIVISION.
UNITED STATES INFORMATION AGENCY:	
OFC OF THE DIRECTOR	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS.
BUREAU OF MANAGEMENT	DIRECTOR, OFFICE OF PERSONNEL.
	DIRECTOR, OFFICE OF THE COMPTROLLER.
	DIR OFF SECURITY.
	DIR OFC OF CONTRACTS.
	DEP DIRECTOR, OFFICE OF ADMINISTRATION.
	DIRECTOR, OFFICE OF TECHNOLOGY.
BUREAU OF BROADCASTING	DIR ENGINEERING AND TECHNICAL OPERATIONS
	DEPUTY OF SYSTEMS ENGINEERING.
	DEPUTY FOR PROJECTS MANAGEMENT.
	DEPUTY FOR OPERATIONS.
OFC OF THE GEN COUNSEL	DEPUTY GENERAL COUNSEL.
U.S. INTERNATIONAL TRADE COMMISSION:	
OFFICE OF INDUSTRIES	DIR, OFC OF INDUSTRIES.
OFFICE OF INVESTIGATIONS	DIR, OFC OF INVESTIGATIONS.
DEPARTMENT OF VETERANS AFFAIRS:	
OFFICE OF THE INSPECTOR GENERAL	DEP INSPECTOR GENERAL
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSP GEN FOR POLICY, PLAN & RESOURCES.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSELOR TO THE INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR HEALTHCARE INSPECT.
	DIRECTOR FOR NATIONAL AUDITS.
	DEP ASST INSPECTOR GENERAL FOR AUDITING.
BOARD OF VETERANS APPEALS	VICE CHAIRMAN.
	DEPUTY VICE CHAIRMAN.
OFFICE OF FINANCIAL MANAGEMENT	DEP ASST SECY FOR FINANCIAL MANAGEMENT.
	ASSOC DEP ASST SECY FOR FINANCIAL OPERATIONS.
	ASSOC DEP ASST SECY FOR ADP SYSTEMS.
	DIR, AUSTIN FINANCE CENTER, AUSTIN, TX.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DIR, VA AUTOMATION CTR, AUSTIN, TX.
	ASSOC DEP ASST SECY FOR TELECOMMUNICATIONS.
	ASSOC DAS FOR INFO RES PLANS & TECHNOLOGY.
	ASSOC DEP ASST SECY FOR INFO RES MANAGEMENT.
OFFICE OF HUMAN RESOURCES MANAGEMENT	ASSOC DEP ASST SECY FOR HUMAN RES MANAGEMENT.
	ASSOC DEP ASST SECY FOR HUMAN RES MANAGEMENT.
OFC OF THE ASST SECRETARY FOR ACQUISITION AND FACILITIES.	DIR CANTEEN SERVICE.
OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT	DEP ASST SEC FOR ACQUISITION & MATERIEL MGMT.
	ASSOC DEP ASSISTANT SECY FOR ACQUISITIONS.
	ASSOCIATE DEP ASST SECY FOR DEPOTS.
	ASSOC DEP ASST SECY FOR RESOURCES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1994—Continued

Agency/organization	Career reserved positions
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	ASSOC DAS FOR VA NATL ACQ CENTER HINES, IL.
OFFICE OF SECURITY AND LAW ENFORCEMENT	DEP ASST SECY FOR SECURITY & LAW ENFORCEMENT.
VETERANS BENEFITS ADMINISTRATION	DIRECTOR, BUDGET & FINANCE STAFF.
	DEP DIR COMPENSATION & PENSION SERVICE.
	DEP DIR LOAN GUARANTY SVC.
	DIR INFO MANAGEMENT & TECH ASSESSMENT SERVICE
	CHIEF FINANCIAL OFFICER.
VETERANS HEALTH ADMINISTRATION	NORTHEASTERN AREA PROJECT MANAGER.
	SOUTHERN AREA PROJECT MANAGER.
	CENTRAL AREA PROJECT MANAGER.
	WESTERN AREA PROJECT MANAGER.
	DEP DIR, MENTAL H & B SCIENCES SERVICE.
	DIRECTOR, BUDGET OFFICE.
	DEPUTY DIRECTOR, BUDGET OFFICE.
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Part III

Department of Housing and Development

Office of the Secretary

24 CFR Part 81

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) Regulations; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 81

[Docket No. R–95–1754; FR–3481–P–01]

RIN 2501–AB56

The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new regulations implementing the Secretary of Housing and Urban Development's regulatory authorities respecting the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act"), the Secretary has general regulatory authority over Fannie Mae and Freddie Mac ("GSEs").

Status as a GSE provides substantial advantages to Fannie Mae, Freddie Mac, and their shareholders. With such public benefits flow public responsibilities. In the Act, Congress set forth a framework to ensure that the GSEs fulfill the public purposes set forth in their Charter Acts and serve the housing needs of the country, without threatening the GSEs' safety and soundness. Under the Act, the Secretary is responsible for establishing housing goals to require the GSEs to extend access to mortgage credit to very low-, low-, and moderate-income families and families in central cities, rural areas, and other underserved areas. The Secretary is also responsible for advancing fair lending by requiring that the GSEs not discriminate in their mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin. This regulation requires that the GSEs facilitate enforcement of the Fair Housing Act and the Equal Credit Opportunity Act (ECOA) by submitting data on mortgage lenders to assist investigations of possible Fair Housing Act and ECOA violations. The proposed regulation also directs the GSEs to undertake remedial action against sellers found to violate the Fair Housing Act and ECOA and provides for the Secretary periodically to review and comment on each GSE's underwriting and appraisal guidelines. In addition, the regulation sets forth the scope of other Secretarial responsibilities, including the statutory authority to review and approve new programs of the GSEs, obtain data and reports from the GSEs on their housing activities, and disseminate publicly information related to the GSEs' housing activities while protecting proprietary information.

DATES: Comment due date: May 2, 1995.

ADDRESSES: Comments should be sent to Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development (HUD), 451 Seventh Street, SW, Washington DC 20410–0500. Communications should refer to the docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between the hours of 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Harold Bunce, Acting Director, Financial Institutions Regulation, Office of Policy Development and Research, telephone (202) 708–2770; or, for legal questions, Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. General

A. Purpose

This proposed rule would establish new regulations implementing the authorities of the Secretary of Housing and Urban Development ("the Secretary") to regulate the GSEs under the GSEs' respective Charter Acts (the Federal National Mortgage Association Charter Act (Fannie Mae Charter Act), Title III of the National Housing Act, section 301 *et seq.* (12 U.S.C. 1716 *et seq.*); and the Federal Home Loan Mortgage Corporation Act (Freddie Mac Act), Title III of the Emergency Home Finance Act of 1970, section 301 *et seq.* (12 U.S.C. 1451 *et seq.*) and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("FHEFSSA" or "the Act"), enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992, and codified, generally, at 12 U.S.C. 4501–4641). FHEFSSA substantially changed the Secretary's authorities to regulate the GSEs, requiring the Secretary to promulgate new regulations. The Secretary proposes these regulations to implement these new authorities, to replace the Secretary's current regulations governing Fannie Mae and, for the first time, to establish regulations governing Freddie Mac.

B. Background

In 1968, Congress chartered Fannie Mae as a stockholder-owned, privately managed corporation to fulfill various public purposes by providing a secondary market for home mortgages. In 1970, Congress chartered Freddie Mac within the Federal Home Loan Bank System.

The GSEs' Charter Acts set forth identical purposes for Fannie Mae and Freddie Mac[1] to: (1) Provide stability in the secondary market for residential mortgages; (2) respond appropriately to the private capital market; (3) provide ongoing assistance to the secondary

[1] *Cf.* Fannie Mae Charter Act, section 301, to Freddie Mac Act, section 301.

market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and (4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

1. The Current Fannie Mae Regulations

In 1978, the Secretary promulgated regulations governing Fannie Mae.[3] These regulations were issued under the authority of the Fannie Mae Charter Act and, among other things, implemented the Secretary's "general regulatory power" over Fannie Mae and established other specific regulatory powers of the Secretary, including procedures under which the Secretary must approve stock and debt issuances, changes to a statutory debt-to-capital ratio, and new conventional mortgage programs.[4] The regulations also require Secretarial approval of Fannie Mae's underwriting guidelines to implement fair housing requirements and regulate equal opportunity in employment.[5] To ensure that Fannie Mae fulfilled its Charter Act purpose of providing a secondary market for home mortgages for low- and moderate-income families, the regulations required that 30 percent of Fannie Mae's aggregate mortgage purchases be mortgage purchases financing housing secured by mortgages located in central cities and that 30 percent of its aggregate mortgage purchases be mortgages financing housing for low- and moderate-income families.[6] Housing for low- and moderate-income families under the Fannie Mae regulations included multifamily housing insured under Federal Housing Administration (FHA) programs, housing receiving housing assistance payments (HAP), and, for single-family housing, housing purchased at a price not in excess of 2.5 times the area median family income.[7]

2. FIRREA and the Secretary's Assumption of Regulatory Responsibility Over Freddie Mac

Section 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. 101–73, approved August 9, 1989) amended the Freddie Mac Act. The Secretary of HUD was granted general regulatory power and essentially the same specific regulatory powers with respect to Freddie Mac as the Secretary had respecting Fannie Mae, so that the Secretary's regulatory authority was "identical, on all relevant matters, to (the Secretary's) regulatory power over (Fannie Mae)."[8]

3. The Federal Housing Enterprises Financial Safety and Soundness Act

Congress was concerned about the potential for loss to the taxpayers if the GSEs suffered serious losses.[9] In FIRREA, Congress required the Treasury Department, the Congressional Budget Office (CBO), and the General Accounting Office to study the regulation of the GSEs and present recommendations to the Congress.[10] These studies concluded that the current regulatory authorities over the GSEs were inadequate to protect the taxpayer and ensure that the GSEs served the public purposes for which they were chartered. All three agencies recommended that the Government be granted additional authority to regulate the GSEs. The Treasury study formed the basis for a 1991 Administration proposal to create an independent office within HUD to regulate the safety and soundness of the GSEs.

In 1991, the House of Representatives passed H.R. 2900 (102d Cong., 1st Sess. (1991)), establishing an independent office within HUD to regulate the financial safety of the GSEs.[11] The House bill also provided for the establishment of special affordable housing goals to ensure that the GSEs meet the unaddressed needs of very low-income families and lower-income families in lower income areas.[12] The Senate made substantial revisions to the House bill, including changes to clarify the Secretary's authority to establish central cities and low- and moderate-income goals and to modify provisions concerning fair housing.[13]

In 1992—as the Department was preparing regulations governing Freddie Mac and revising its Fannie Mae regulations—Congress enacted FHEFSSA, which revamped the regulatory structure concerning the GSEs and the GSEs' Charter Acts. In FHEFSSA, Congress chose to separate authority over the GSEs' safety and soundness from authority to assure that the GSEs accomplished their public purposes. FHEFSSA established a new Office of Federal Housing Enterprise Oversight (OFHEO) charged with new regulatory powers over the financial safety of the GSEs.[14] FHEFSSA also granted the Secretary more specific powers and authorities over the housing purposes and fair lending responsibilities of the GSEs.

The Act granted the Secretary the power to establish, monitor, and enforce goals for the GSEs' purchases of mortgages financing housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing meeting the unaddressed housing needs of targeted families.[15] Although the authority to establish goals previously existed under the Charter Act and was implemented under the current Fannie Mae regulations,[16] FHEFSSA defined and expanded this authority. Moreover, the Act provided that the goals would be achieved based on income of owners and renters. The regulations, promulgated in 1978, had allowed a proxy of house price[17] that was easier to achieve.

Generally, the Act authorizes the Secretary to establish each of the goals after consideration of certain prescribed factors relevant to the particular goal.[18] However, for a transition period of calendar years 1993 and 1994, the Act established target percentage amounts for purchases by the GSEs of mortgages on housing for low- and moderate-income families and housing located in central cities—which were based on the Fannie Mae regulations—and specific dollar amounts for purchases of mortgages on special affordable

[2] Fannie Mae Charter Act, section 301, and Freddie Mac Act, section 301(b).

[3] 24 CFR part 81.

[4] 24 CFR 81.12, 81.14, 81.15, and 81.16(c).

[5] 24 CFR 81.18 and 81.19.

[6] 24 CFR 81.16(d) and 81.17

[7] 24 CFR 81.2(l).

[8] H.R. Rep. No. 101–54, 101st Cong., 1st Sess., pt. 3, at 2 (1989), and S. Rep. No. 101–19, 101st Cong., 1st Sess. 38 (1989).

[9] *See, e.g.*, H.R. Rep. 101–54, Part 1, 101st Cong., 1st Sess. 389 (1989).

[10] FIRREA, sections 1004 (Comptroller General study) and 1404 (Treasury study), and 2 U.S.C. 621 note (Treasury study and CBO study).

[11] H.R. 2900, section 101.

[12] *Id.*, at sections 121(n) and 122(i).

[13] S. 2733, 102d Cong., 2d Sess., sections 502 504, and 514 (1992).

[14] Section 1311, and *see, e.g.*, section 1313. Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[15] *See generally*, sections 1331–34

[16] *See* 24 CFR 81.16(d) and 81.17

[17] 24 CFR 81.2(l)(3).

[18] Sections 1332(b), 1333(a)(2), and 1334(a).

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housing.[19] For the transition years, the Act set targets for both GSEs that low- and moderate-income and central cities mortgage purchases comprise at least 30 percent of the units financed by the GSEs' total mortgage purchases for these years.[20] The Act also set targets for the special affordable housing goals in the transition years,[21] which, unlike the other goals, were set at no less than a minimum number of dollars of mortgage purchases rather than units financed. For the transition, the Act required that the Secretary establish interim goals to improve the GSEs' performances relative to the statutory targets, so that the GSEs would meet the targets by the end of the transition period.[22]

The Act also established new fair lending requirements for the GSEs under which the Secretary must, by regulation, prohibit the GSEs from discriminating in their mortgage purchases because of "race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect."[23] Under the Act, the Secretary also must: require the GSEs to submit data to assist the Secretary in investigating whether a mortgage lender has failed to comply with the Fair Housing Act and the Equal Credit Opportunity Act (ECOA); obtain and make available to the GSEs information from other regulatory and enforcement agencies on violations by lenders of the Fair Housing Act and ECOA; direct the GSEs to take remedial action against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA; and periodically review and comment on the underwriting and appraisal guidelines of each GSE to ensure that such guidelines are consistent with the Fair Housing Act and the Act.[24]

The Act details the Secretary's authority to review and approve new programs of the GSEs and establishes procedures under which the GSEs may contest determinations on new program requests.[25] The Act affirms the Secretary's authority to require reports from the GSEs[26] and details specific data and reports that the GSEs must provide.[27] The Act assigns the Secretary other responsibilities, including establishing a public use data base and implementing requirements for the protection of proprietary information provided by the GSEs.[28] The Act also requires the Secretary to establish procedures to ensure due process for the GSEs in exercising the Secretary's regulatory authorities.[29]

In light of the $850 billion in mortgage-backed securities that were currently outstanding from the GSEs, their $190 billion combined mortgage portfolios, and the GSEs' importance to the National economy, Congress determined that the taxpayers needed increased protection from potential financial losses or risks posed by the GSEs.[30] The Act therefore established a new independent financial regulator for the GSEs within HUD—the Office of Federal Housing Enterprise Oversight (OFHEO)[31]—to design and administer a stress test for capital adequacy and to carry out all regulatory functions to ensure the financial safety of the GSEs.[32] In establishing a new regulatory framework for regulation of the GSEs' financial safety and soundness, the Act deleted several specific authorities of the Secretary, including authority to approve stock offerings, the rate of dividends, and changes in the GSEs' debt-to-capital ratio.[33] The Act assigns authority to approve dividends to the Director of OFHEO[34] and replaces the debt-to-capital ratio with a risk-based capital standard and stress test administered by the Director of OFHEO.[35] Under the Act, the Secretary retains general regulatory power over both GSEs, "(e)xcept for the authority of the Director of the (OFHEO) described in section 1313(b) and all other matters relating to the safety and soundness of the (GSEs) * * *."[36]

4. Previous Proposed Rule

On August 16, 1991, the Secretary published a proposed rule to update the Fannie Mae regulations and establish new regulations governing Freddie Mac.[37] Prior to the promulgation of a final rule, the President signed FHEFSSA into law on October 28, 1992. Since the new Act required complete revision of the rule, the Secretary is withdrawing the former proposed rule and issuing this new proposed rule.

5. Interim Housing Goals

On October 13, 1993, the Secretary published a Notice in the **Federal Register** establishing the interim goals for the GSEs' purchases of mortgages financing low- and moderate-income housing, housing in central cities, and special affordable housing—applicable to the transition years of 1993 and 1994—and requirements for implementation of the goals.[38]

For the transition period of 1993 and 1994, the Act established annual targets for the purchases by both GSEs of mortgages financing housing for low- and moderate-income families and housing located in central cities.[39] The Act set these targets at 30 percent of the units financed by mortgage purchases of the GSEs;[40] the targets were based on the goals established under HUD's Fannie Mae regulations.[41] For the transition period, the Act provided that, where a GSE was not meeting a target as of January 1, 1993, the Secretary must establish the annual goal so that the GSE would improve its performance relative to the 30 percent target.[42] Where a GSE was meeting a target, the Act required the Secretary to establish the goal so that the GSE would improve its performance relative to the 30 percent target.[43] The Act also established dollar targets for the GSEs' purchases of mortgages financing special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.[44] The Secretary established these goals and implementation requirements in the Interim Notice published in October 1993.[45]

The Notice established the goal that 30 percent of the units financed by mortgages purchased by Fannie Mae in 1993 and 1994 should be housing for low- and moderate-income families.[46] The Notice also established the goal that 28 percent of units financed by mortgages purchased by Fannie Mae in 1993, and 30 percent in 1994, should be on housing located in central cities.[47] For the year 1993, Fannie Mae exceeded the goal for low- and moderate-income housing with 35.58 percent and is performing at a rate for 1994[48] that likely will result in Fannie Mae's exceeding the goal and achieving 40 percent. In 1993, Fannie Mae did not meet the goal for central cities and has developed a housing plan to increase its efforts for 1994.

The Notice established Freddie Mac's goal for purchases of mortgages financing housing for low- and moderate-income families at 28 percent for 1993 and 30 percent for 1994.[49] The Notice established Freddie Mac's goal for purchases of mortgages financing housing located in central cities for 1993 at 26 percent and 30 percent for 1994.[50] For the year 1993, Freddie Mac exceeded the goal for low- and moderate-income housing with 29.18 percent and is performing at a rate for 1994[51] that likely will result in Freddie Mac's exceeding the goal and achieving 35 percent. In 1993, Freddie Mac did not meet the goal for central cities and has developed a housing plan to increase its efforts for 1994.

C. Secretary's Approach to Regulating the Enterprises

The Secretary recognizes that the GSEs occupy a unique position in this country's housing finance system. The GSEs were created by the Congress, chartered for public purposes and receive significant public benefits, but the GSEs are privately owned and operated. Because of their status as government-sponsored enterprises, the GSEs receive significant benefits not enjoyed by any other shareholder-owned corporation in the mortgage market. The explicit benefits the GSEs receive include: (1) conditional access to a $2.25 billion line of credit from the U.S. Treasury;[52] (2) exemption from securities registration requirements of the Securities and Exchange Commission and the states;[53] (3) exemption from all State and local taxes except property taxes;[54] and (4) higher demand for the GSEs' securities, since the Government gives those securities the attributes of and the same preferred investment status as Treasury debt.[55] These explicit benefits are far outweighed by an implicit benefit—the market's assumption that, even though no explicit Federal guarantee exists,[56] should a GSE fail to meet its obligations, Congress, and ultimately the American taxpayer, would assist the GSEs. As a result of this implicit guarantee, the GSEs can borrow at near-Treasury rates, and they can sell securities at prices that exceed those of wholly private firms.[57] Consequently, the GSEs' cost of doing business is less than that of other competitors in the mortgage market.

This competitive advantage, combined with the GSEs' solid management, has resulted in enormous growth for both GSEs. In 1989, the GSEs purchased $171 billion of mortgages; in 1993, $543 billion, a three-fold increase. In 1993, the GSEs collectively purchased 70 percent of the mortgages originated in the conventional conforming loan market.[58] The GSEs' profitability has more than doubled in the same period, with combined profits of $2.7 billion in 1993, compared to $1.2 billion in 1989. At the end of the first quarter of 1994, the combined dollar amount of mortgages held in portfolio and mortgage-backed securities outstanding between the two GSEs is nearly 2.5 times the thrift industry's holdings and twice as large as the holdings by commercial banks.[59]

Because they are publicly created entities that enjoy substantial publicly derived benefits, Congress requires the GSEs to carry out public purposes not required of other private-sector entities in the housing finance industry. The GSEs' Charter Acts require them to assist in the efficient functioning of a secondary market for residential mortgages, including mortgages for low- and moderate-income families, and to promote access to mortgage credit throughout the nation, including central cities, rural areas, and other underserved areas. The Charter Act requirements create an obligation for the GSEs to ensure that citizens throughout the country have the opportunity to enjoy access to the public benefits provided by these federally related entities.

The GSEs have been successful at achieving an important part of their mission of providing stability in primary mortgage markets and bringing liquidity to housing finance markets through standardization and the development of mortgage-backed securities. Many home buyers have benefitted from lower interest rates and increased access to capital as a result of the GSEs' activities. The importance of the secondary market and its impact on who is able to buy a home and which communities have access to mortgage credit is substantial. Even lenders intending to hold loans in portfolio originate loans using the GSEs' standards, so that the lenders have the option to sell to the GSEs at a future date.

The Act and the legislative history make clear that the GSEs should be serving Americans across the income spectrum and throughout the country The GSEs do an excellent job of facilitating the availability of mortgage credit for home buyers with more than moderate incomes and for residents of suburban communities. The GSEs must also use their entrepreneurial talents and position in the marketplace to "ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities."[60] The GSEs are not expected to provide deep subsidies for the financing of affordable housing on the scale needed to solve the nation's housing problems. However, given the purposes for which Congress created these enterprises and the substantial federal benefits that they receive, it is essential that the GSEs' activities promote the achievement of national housing goals.

D. Leading the Industry

During the consideration of the Act, Congress noted its strong concern that the GSEs were not doing enough to benefit low- and moderate-income families or the residents of underserved areas that lack access to credit.[61] The Act specifically requires that in establishing the goals, the Secretary consider the ability of the GSEs to lead the industry. The intent of the Congress was clearly stated: the GSEs should "lead the mortgage finance industry in making mortgage credit available for

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[19] Sections 1332(d), 1333(d), and 1334(d).
[20] Sections 1332(d)(1) and 1334(d)(1).
[21] Section 1333(d) (1) and (2).
[22] Sections 1332(d)(2)(A) and 1334(d)(2)(A).
[23] Section 1325(1).
[24] Section 1325 (2)–(6).
[25] Section 1322.
[26] Section 1327.
[27] *See* sections 1381 (o and p) and 1382 (r and s).
[28] Sections 1323 and 1326.
[29] Sections 1322, 1336, and 1341–49.
[30] *See, e.g.*, S. Rep. No. 102–282, 102d Cong., 2d Sess. 10 (1992) (hereinafter cited as "S. Rep.").
[31] Section 1311.
[32] *See generally*, section 1313.
[33] Sections 1381 (d)(2), (e)(1), and (k), and 1382(e).
[34] Sections 1381(d)(2) and 1382(e).
[35] Sections 1361–64.
[36] Section 1321.
[37] 56 FR 41022 (1991).
[38] 58 FR 53048 and 53072 (1993).
[39] Sections 1332(d)(1) and 1334(d)(1).
[40] Sections 1332(d)(1) and 1334(d)(1).
[41] 24 CFR 81.16(d) and 81.17.
[42] Sections 1332(d)(2)(A) and 1334(d)(2)(A).
[43] Sections 1332(d)(2)(B) and 1334(d)(2)(B).
[44] Section 1333 (a)(1), (d)(1), and (d)(2).
[45] 58 FR 53048 and 53072 (1993).
[46] 58 FR 53048, 53061 (1993).
[47] *Id.* at 53063.
[48] Fannie Mae's report on its performance under the goal for the first three quarters of 1994 provides that 43.29 percent of its mortgage purchases count toward achievement of the goal for low- and moderate-income families.
[49] 58 FR 53072, 53085 (1993).
[50] *Id.* at 53088.
[51] Freddie Mac's report on its performance under the goal for the first three quarters of 1994 indicates that 36.31 percent of its mortgage purchases count toward achievement of the goal for low- and moderate-income families.
[52] Sections 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.
[53] Sections 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.
[54] Sections 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.
[55] *See, e.g.*, 12 CFR 208, App. A, section III.C.2.
[56] The GSEs' obligations are not guaranteed by the United States. *See, e.g.*, sections 1302(4), 1381(f), and 1382(n) (requiring each GSE to state in its obligations and securities that such obligations and securities "are not guaranteed by the United States").
[57] Congressional Budget Office, Controlling the Risks of Government-Sponsored Enterprises, at 10 (April 1991).
[58] Fannie Mae Economics Department.
[59] Commercial banks held $555 billion, thrifts held $458 billion, and the GSEs held or backed $1.164 billion. Federal Reserve Bulletin, Vol. 80, No. 8, Table 1.54, at A38 (August 1994).
[60] S. Rep. at 34
[61] *See, e.g.*, S. Rep. at 34

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low- and moderate-income families".[62] The Act also clarified the GSEs' responsibility to complement the requirements of the Community Reinvestment Act and fair lending laws in order to expand access to capital to those traditionally underserved by the housing finance market.

Fannie Mae and Freddie Mac do not lead the mortgage finance industry in expanding housing opportunities for low-income home buyers and for families who must rent because they cannot afford to be homeowners. The GSEs do not lead the mortgage finance industry in providing access to mortgage credit for residents of communities that are underserved. But the GSEs can and should provide this leadership. As noted in the Act's legislative history, "the GSEs need to provide more leadership in all of these areas, and they have indicated a desire to do so. But direct and potentially forceful federal oversight is the only way to ensure that it will happen."[63]

The Secretary shares the concern of Congress about the GSEs' level of activity in making mortgage credit available for lower-income families. Loans originated for families with incomes below 80 percent of area median income are less likely to be purchased by the GSEs. Five out of six single-family mortgages purchased by the GSEs are for borrowers with incomes above 80 percent of area median income. Almost 60 percent of the GSEs' single-family business is for borrowers with incomes above 120 percent of area median income.

In considering whether the GSEs are leading the industry and in establishing the appropriate levels for the housing goals, the level of originations by the primary market must be examined. The primary market is able to sell to the GSEs more loans for higher-income families than loans for lower-income families. Based on 1993 mortgage market data, the GSEs purchased 55 percent of the loans originated by the primary market for borrowers with incomes above 120 percent of area median income, but only 41 percent of the mortgages originated for borrowers with incomes less than 60 percent of area median income. This occurred notwithstanding that, in response to the Community Reinvestment Act and their desire to meet the mortgage needs of a broad range of families, lenders are originating many more mortgages for very low- and low-income families than the GSEs are purchasing.

[62] S. Rep. at 34.

[63] S. Rep. at 11

E. Establishing the Housing Goals

The Secretary recognizes that both GSEs have improved their performance in 1993 in the provision of mortgages financing for low- and moderate-income home buyers and central city residents. Both GSEs have begun new programs to increase their ability to deliver the benefits of their activities to traditionally underserved borrowers. These activities are commendable and the Secretary looks forward to seeing those initiatives carried forward. Both GSEs have also been engaged in initiatives to communicate to lenders that the GSEs' underwriting guidelines are not intended to prevent lenders from originating loans for previously underserved segments of their communities.

The Secretary notes these initiatives and the performance of the GSEs under the 1993 housing goals. Both Fannie Mae and Freddie Mac have made progress in carrying out their Charter-required activities to expand access to credit. At the same time, greater accomplishments are needed to assure that the GSEs fully realize their Charter Act purposes. To meet the intent of the Act, the GSEs must purchase more loans originated by the market for borrowers with lower incomes.

The Secretary does not intend that the GSEs do less business for borrowers with high incomes in order to increase their purchases of mortgages for lower-income families. Given the capacity of the GSEs, a tradeoff between high-income and low-income business does not need to occur. When the mortgage market spiked to a trillion dollars in volume in 1993, the GSEs demonstrated their capacity to expand their volume tremendously. The Secretary does not believe that the GSEs will have to shrink one portion of their business to expand their focus on achieving their Charter purposes of providing access to credit to all Americans.

This view has also been expressed by James A. Johnson, Chairman and Chief Executive Officer of Fannie Mae, in Congressional testimony in April 1994:

> It is a governmental frame of reference to assume (Fannie Mae's) resources are limited (as appropriations would be for a government department) and then to 'assign' them through numerous subgoals to categories of need. But the fact that Fannie Mae helps moderate-income families in no way diverts (Fannie Mae) from supporting low-income famihes.[64]

[64] Testimony before the Committee on Banking, Finance, and Urban Affairs, Subcommittee on General Oversight, Investigations, and the Resolution of Failed Financial Institutions, U.S. House of Representatives, at 17 (April 20, 1994).

In setting the levels of the housing goals, the Secretary has considered carefully the six factors stipulated in the Act: National housing needs; economic, housing, and demographic conditions; the previous performance and effort of the enterprises in achieving the specific goal; the size of the market for that goal; the ability of the GSEs to lead the industry; and the need to maintain the sound financial condition of the enterprises.[65] The Secretary has concluded that these factors, as well as the requirement that the GSEs lead the industry in affirmative efforts to meet the needs of lower-income families and residents of central cities, rural areas, and other underserved communities, dictate that the levels of the housing goals should be increased for 1995–1996. The Secretary considered the following factors which are analyzed in detail in the appendices:

(1) *Housing Needs.* Homeownership is a key aspiration of most Americans. Homeownership fosters family responsibility and self-sufficiency, expands housing choice and economic opportunity and promotes community stability. A homeowner has the most secure physical environment in which to raise a family. Children of homeowners are more likely to graduate from high school, less likely to commit crime, and less likely to themselves have children as teenagers than children of renters. Recent surveys indicate that lower-income families and minority families who do not own their own homes will make considerable sacrifices to purchase a home.

During the past decade, the goal of homeownership has become more elusive for very low-, low-, and moderate-income families. The homeownership rate in this country declined from on all-time high of 65.6 percent in 1980 to 63.9 percent in 1985, where it has remained essentially unchanged. The families that bore the brunt of this decline in homeownership are households who earn less than the median, particularly single-parent households and households with children.

At the same time, housing needs of families who rent have also increased. Finding affordable housing is by far the most common housing problem for American families nationwide. Poor households compete for a diminishing number of affordable apartments as low-cost units are lost to disrepair or are upgraded to serve higher-income renters. The result is growing numbers of low-income households who pay high shares of their income for

[65] 12 U.S.C. 4562.

inadequate housing. Six million low-income families paid more than 50 percent of their income for rent, leaving them with less money for other necessities like food, clothing, health care, and education. The very lowest income renters (families with incomes below 30 percent of area median income) are particularly hard-hit by high rents relative to their incomes, with over 50 percent of these families spending more than half of their income on rent.

The most unfortunate families have no homes. Precise counts of homeless people are not available. An estimated 600,000 people are homeless on any given night and as many as seven million Americans have experienced homelessness during the late 1980s, some for brief periods and some for years.[66]

(2) *Economic, Housing, and Demographic Conditions.* The Department estimates that in 1995 originations for single-family mortgages will be $615 billion. The demand for purchase mortgages will increase in 1995 and 1996, because of demographic trends, including high levels of immigration, changing age and family composition of households, the growth of the affluent elderly population, and potentially increased homeownership by native-born minorities. In addition, although volatile interest rates strongly influence both housing starts and mortgage market activity, rates that are low by historic standards have improved affordability for first-time home buyers, many of whom were closed out of the market during the 1980s. Increasing income inequality and changes in household composition will continue to create an acute need for rental housing affordable to very low-income families, placing additional pressure on the widespread shortages of rental housing affordable to families with incomes below 30 percent of area median income.

(3) *Previous Performance of the GSEs.* The GSEs exceeded the 1993 goals for low- and moderate-income housing Neither enterprise met the central cities goal for 1993. For the special affordable housing goal, a two-year goal, both GSEs are on track to meet the single-family portion of the goal. Fannie Mae should meet the multifamily portion of the goal by the end of 1994. It is unclear whether Freddie Mac will meet the multifamily portion of the goal by the end of 1994. The Secretary notes that, during the transition period 1993–1994, both GSEs have engaged in new marketing efforts, and introduced new programs, products, and relationships in an effort to achieve the goals.

(4) *Size of the Conventional Market for Each Goal.* The Secretary recognizes the importance of accurately determining, to the extent possible given current data, the size of the various markets applicable to each of the goals. HUD devoted significant analytical resources to estimating market shares, using information from four major data sources: The 1993 purchases by the GSEs, 1993 HMDA data, the American Housing Survey, and the Residential Finance Survey. HUD estimates that 50 to 55 percent of the mortgage market in 1995–1996 will be composed of mortgages from low- and moderate-income households. As a subset of that market, at least 17–20 percent of the conventional conforming market will be composed of mortgages for very low-income households and low-income households in low-income areas. The market share for the central cities, rural areas, and other underserved areas goal (as redefined) is 21–23 percent.

(5) *Ability of the Enterprises to Lead the Industry.* The Secretary believes that the GSEs are well-positioned to provide the leadership that is needed to encourage the mortgage finance industry to better serve very low-, low-, and moderate-income families and residents of communities underserved by the mortgage markets. The GSEs' ability to lead the industry flows from their dominant role in the mortgage market, their ability—through their underwriting standards and new programs and products—to influence the types of loans that primary lenders are willing to make, their development and use of cutting-edge technology, their competent and well-trained staff, and their financial resources.

(6) *Need to Maintain the Sound Financial Condition of the Enterprises.* The enterprises are very substantial corporations as measured by their assets and profits. The Secretary has determined that the GSEs can accomplish the goals established in this regulation in such a way that limited, if any, risk is posed to their safety and soundness. The goals would require reasonable increases in the GSEs' purchases of mortgages that are affordable to very low-, low-, and moderate-income households or finance units located in areas that meet the proposed definition of underserved areas. Given the relatively small size of the proposed increases compared to their current business, the potential increase in the credit risk borne by the GSEs will be limited.

[66] *Priority: HOME! The Federal Plan to Break the Cycle of Homeless*, 17 (1994).

F. Setting the Levels of the Housing Goals

In establishing the housing goals for 1995 and 1996, the Secretary balanced the congressionally mandated factors, *i.e.*, size of the market, housing needs, safety and soundness considerations, economic and demographic conditions, previous performance and the GSEs ability to lead the industry.[67] The Secretary was guided by the overarching principle that both enterprises were created by Congress to serve public purposes for which they receive public benefits, and that their unique status requires that they lead the industry in expanding access to mortgage credit for more Americans and communities. The factors and the public purposes of the GSEs also require that the GSEs lead the industry in affirmative efforts to meet the needs of lower-income families and residents of central cities, rural areas, and other underserved communities.[68]

Based on a consideration of the factors, set forth fully in appendices A, B and C to this rule, the Secretary proposes to establish the goals for 1995 and 1996 for mortgage purchases for low and moderate income housing at 38 percent for 1995 and 40 percent for 1996, the goal for mortgage purchases for central cities, rural areas and other underserved housing at 18 percent for 1995 and 21 percent for 1996, and the goals for special affordable housing at 11 percent for 1995 and at 12 percent for 1996.

Based on a consideration of the factors, set forth in the same appendices to the rule, the Secretary proposes to establish all three goals for 1997 and 1998 so that the goals will move the GSEs steadily over a reasonable period of years, including these two years, to a level of mortgage purchases where the GSEs will be leading the industry in purchasing mortgages meeting the goals In carrying out this objective, the Secretary proposes to establish the goals for 1997 and 1998 at levels ranging from the same amounts established for 1996 to higher levels. The purpose of any higher levels would be to continue to move the GSEs toward purchasing a greater proportion of mortgages originated by the market. The goals for 1997 to 1998 are therefore proposed for comment as a range; in finalizing the goals, the Secretary will specify definite figures on this range. In order to finalize the goals, the Secretary seeks responses from the public on what "leading the industry" should mean and what the goals should be over this period and in

[67] See Appendices A–C for the Secretary's analysis of these factors.

[68] 12 U.S.C. 4501

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the future to achieve this objective. The Secretary anticipates at this time that future market conditions will require additional adjustment of the goals by future rulemaking in the latter part of the 1990s.

(1) Should the goals be established so that the GSEs are required to lead the industry by buying at least the percentages of mortgages that the market originates for each goal? If yes, at what levels and over what period should the GSE goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to meet this objective? In responding, please note:

(A) For the housing goal for low- and moderate-income families—the Secretary determined that for 1995 and 1996, 50 percent of the market is comprised of mortgages qualifying under this goal.

(B) For the special affordable housing goal—the Secretary determined that for 1995 and 1996, 17–20 percent of the market would be mortgages qualifying under this goal.

(C) For the central cities, rural areas, and other underserved areas goal—the Secretary determined that for 1995 and 1996, 21–23 percent of the market would be mortgages qualifying under this goal.

(2) Should leading the industry mean and should the goals be established for future years so that the GSEs are required to purchase (as a percentage of the GSEs' total purchases) a higher percentage of mortgages than are originated by the market under each housing goal? For example, if 16 percent of the mortgages originated and available are expected to be originated for mortgages for very low-income families, should the GSEs be expected to purchase, as a percentage of their overall business, an amount greater than 16 percent of mortgages on housing for very low-income families at some future date? If yes, at what levels and over what period should the goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to achieve this objective? Also, what percentage over the market should be required?

(3) Should the goals be established such that the GSEs purchase an equivalent proportion of loans originated by the market for borrowers under 80 percent of area median income as they do for borrowers over 120 percent of area median income? If yes, at what levels and over what period should the goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to achieve this objective?

(4) Should the goals be adjusted as the GSEs reach or fail to achieve the goals or should the goals be established and the GSEs' performance evaluated against relatively fixed goals? If the commenter believes that the goals should be adjusted, how frequently or under what conditions should the Secretary take action to adjust the goals?

(5) To what extent should the GSEs' share of the overall mortgage market affect the levels of the goals? The GSEs currently purchase approximately 70 percent of all conventional, conforming mortgages originated. Should the goals increase as the GSEs' market share increases? If yes, how should this work? How and in what manner should the goals be adjusted?

G. Principles Governing Regulation

In considering these regulations, the Secretary has set forth the following principles:

(1) To fulfill the intent of the Act, the GSEs should lead the industry in ensuring that access to credit is made available for very low-, low- and moderate-income families and residents of underserved areas. The Secretary recognizes that, to lead the mortgage industry over time, the GSEs will have to stretch to reach certain goals, which is consistent with the Congressional statement that it "fully expects the enterprises will need to stretch their efforts to achieve" the goals.[69]

(2) The Secretary's role as a regulator is to set direction through the goals, but not to dictate the products or delivery mechanisms the GSEs will use to achieve those goals. Regulating two enormous financial enterprises in a dynamic market requires that the GSEs be allowed to use their innovative capacities to determine how best to deliver products to the primary market. Regulation should allow the GSEs to maintain their flexibility and the ability to respond quickly to market opportunities in order to meet the goals stipulated by the Secretary.

(3) Discrimination in lending—albeit often subtle and even unintentional—has denied racial and ethnic minorities the same access to credit to purchase a home that has been available to similarly situated non-minorities. The GSEs have a critical role and position in promoting access to capital by minorities and other historically underserved groups and demonstrating to other private-sector market players the profit potential in these traditionally underserved markets.

[69] S. Rep. at 35.

(4) In addition to the GSEs' core business of purchasing single-family-home loans, the GSEs also must assist in the creation of an active secondary market for multifamily loans. As noted, this country has a critical need for affordable rental housing to provide adequate housing for families who cannot afford to become homeowners. Availability of capital is a key constraint in the expansion of development activity to build more rental housing.

(5) Parity between the two enterprises in the level of the goals they are required to meet should be established. Both enterprises operate in the same markets and have similar opportunities to purchase mortgages that will satisfy the goals. Freddie Mac has no operational or organizational constraints that would prevent it from meeting goals that Fannie Mae could meet.[70]

II. Section-by-Section Discussion of Proposed Changes to Fannie Mae Regulations and New Freddie Mac Regulations (Part 81)

Subpart A—General

Section 81.1—Scope of Part

This section provides that these regulations implement the authority of the Secretary concerning the GSEs under the Charter Acts and FHEFSSA. The section states that subpart A contains definitions applicable to this part; subpart B contains the housing goals; subpart C contains Fair Housing requirements; subpart D sets forth program review procedures for new programs; subpart E contains requirements for reports to the Secretary; subpart F contains regulations dealing with access to information; subpart G contains procedures available to the GSEs; subpart H contains book-entry procedures; and subpart I contains regulations dealing with regulatory examinations and other provisions. The section provides that, except where the

[70] During the transition period of 1993–1994, the Act established annual targets for the purchases by both GSEs of mortgages financing housing for low- and moderate-income families and housing located in central cities. Sections 1332(d)(1) and 1334(d)(1). For both GSEs, the Act set identical targets at 30 percent of the units financed by mortgage purchases of the GSEs. Although the targets were identical, the Secretary established differential goal levels for Freddie Mac and Fannie Mae, in order to allow Freddie Mac sufficient time to reenter the multifamily market in a prudent and organized manner. Freddie Mac had announced its withdrawal from the multifamily market in 1990. In 1993, Freddie Mac announced its reentry into the multifamily market, after it had reorganized its multifamily division, greatly increased its staffing, implemented new information systems, released a new underwriting guide for multifamily properties, and established a network of originators and servicers with proven local expertise.

Secretary and the Director of the Office of Federal Housing Enterprise Oversight share authority, this part does not implement any authority of the Director of OFHEO.

Section 81.2—Definitions

This section defines terms which are relevant to the Secretary's regulatory authorities. These terms relate to the housing goals, fair housing/fair lending, new program approval, and collection, dissemination and protection of GSE information furnished to the Secretary. Some of the terms are defined in FHEFSSA, some are defined under the Freddie Mac Act and the remainder were defined for these regulations.

The Freddie Mac Act defines terms that are relevant to both GSEs although the same terms are not defined under the Fannie Mae Charter Act. The legislative history of FIRREA indicates that Congress intended that competitive parity exist between the GSEs and that the regulatory power granted to the Secretary be identical for both GSEs.[71] The proposed regulation, therefore, defines terms the same for both GSEs even where the definitions were originally provided in the Freddie Mac Act.

Defined terms that are relevant to all of the housing goals include "Balloon mortgage", "Conventional Mortgage", "Dwelling unit", "Mortgage", "Mortgage purchase", "Multifamily Housing", "Refinancing", "Rental housing", "Residence", "Seasoned mortgage", "Single family housing". "Conventional mortgage" is defined as a mortgage other than a mortgage as to which a GSE has the benefit of any guaranty, insurance or other obligation by the United States. "Mortgage purchase" is defined as a transaction where a GSE buys or otherwise acquires with cash or other thing of value a mortgage for its portfolio or for securitization. "Multifamily housing" means a residence having more than four dwelling units. "Single family housing" is a residence consisting of one to four dwelling units."

Terms relating to the low- and moderate-income housing goals include "Low-income", "Median income", "Moderate income", "Rent," "Utilities," and "Utility allowance". The term "Low-income" is defined as income not in excess of 80 percent of area median income, adjusted for family size for rental units but unadjusted for owner-occupied units. "Median income" means, with respect to an area, the unadjusted median family income of the area, as most recently established by the Secretary; an area is the metropolitan statistical area (MSA) if the property is located in an MSA—otherwise, an area is the county in which the property is located. "Moderate-income" means income not exceeding area median income and, in the case of rental units, income not in excess of median income with adjustments for family size. "Rent" is defined as contract rent if the cost of all utilities are included in contract rent; if all utilities are not included, "Rent" is contract rent plus the cost of those utilities or contract rent plus a utility allowance. "Utilities" means charges for electricity, gas, water, sewage disposal, fuel, and garbage collection.

Defined terms concerning the central cities, rural areas, and other underserved areas goal include the terms "Central cities", "Rural" and "Underserved areas". As discussed fully below, in this preamble's discussion of the housing goals, the term "central cities" is defined as the underserved areas of any political subdivision designated as a central city by the Office of Management and Budget. "Rural area" is defined as the underserved areas located outside of any metropolitan statistical area (MSA) designated by the Office of Management and Budget. "Underserved area" is defined as a census tract: With a median income at or below 120 percent of the area median income and a minority population of 30 percent or greater; or with a median income at or below 80 percent of area median income.

The special affordable housing goals have specific rules requiring the definition of certain terms. These terms include "Low-income areas", "Portfolio of loans" and "Very low-income". "Low-income area" means a census tract in which the median income does not exceed 80 percent of area median income. "Portfolio of loans" means ten or more loans. "Very low-income" is defined as income not exceeding 60 percent of the area median income—under the Act's definition, this percentage is adjusted for family size for rental units but is not adjusted for family size for owner-occupied units.

Terms concerning the fair housing provisions of these regulations include "Familial status", "Handicap" and "Minority". The terms "familial status" and "handicap" are defined under these regulations by reference to the definitions contained in the Fair Housing Act regulations at 24 CFR 100.20 and 100.201. "Minority" includes American Indians, Alaskan Natives, Asian and Pacific Islanders, African Americans, and Hispanics.

The defined term pertaining to the Secretary's new program approval authority is "New program." "New program" is defined in the Act and under these regulations as a program for the purchasing, servicing, lending on the security of, or otherwise dealing in conventional mortgages that is significantly different from a program that: Was approved or engaged in by the GSE at the time of the enactment of FHEFSSA; or represents an expansion above limits expressly contained in any prior approval.

Terms that are relevant to both the reports and information provisions of the regulations include "Mortgage data", "Proprietary information" and "Public data". "Mortgage data" is defined as data obtained by the Secretary from the GSEs under the Fannie Mae Charter Act and the Freddie Mac Act relating to the GSEs' mortgage purchases. "Proprietary information" is defined as all categories of information and data submitted to the Secretary by the GSE which contain trade secrets and commercial or financial information of the GSE which is privileged or confidential and which, if released, would cause substantial competitive harm. Although this definition parallels the definition under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), in determining which GSE information is proprietary, the Department will not be bound by FOIA, its legislative history, or Exemption 4 case law. "Public data" means all mortgage data obtained by the Secretary from the GSEs which the Secretary determines is not proprietary and should be made publicly available; Appendix D to the regulations lists and describes this data.

Finally, the proposed regulation defines the terms: "Act," "Day," "Director," and "Secretary." "Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act or FHEFSSA. "Day" is defined as a calendar day rather than a working day. "Director" means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. "Secretary" means the Secretary of Housing and Urban Development.

Subpart B—Housing Goals

Background

The Secretary is required to establish, by regulation, annual housing goals for each GSE. The goals include a low- and moderate-income housing goal,[72] a

[71] H.R. Rep. No. 101–54, 101st Cong., 1st Sess., pt. 3 at 2 (1989), and S. Rep. No. 101–19, 101st Cong., 1st Sess. 38 (1989)

[72] Section 1332.

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special affordable housing goal,[73] and a central cities, rural areas and other underserved areas housing goal.[74] The Act provides that the goals are to be established in a manner consistent with sections 301(3) of the Fannie Mae Charter Act and 301(b)(3) of the Freddie Mac Act, which require the GSEs "to provide ongoing assistance to the secondary market for residential mortgages (including * * * mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) * * *." Under the Act, the Secretary may, by regulation, adjust any housing goal from year to year.[75] The statute provides that, in establishing these goals, the Secretary shall apply certain prescribed factors, as described in Appendices A, B, and C.[76] In this regulation, the Secretary proposes to establish the three housing goals for 1995 and 1996. The Secretary is also planning to establish the level of the goals for 1997 and beyond in the final regulation.

In this regulation, each housing goal requires that a certain percentage of the dwelling units financed by each GSE's total mortgage purchases for the year be the type of dwelling units targeted by the housing goal. For example, for 1995, the housing goal for low- and moderate-income families is established at 38 percent—in other words, 38 percent of the dwelling units financed by each GSE's mortgage purchases would have to be affordable to low- or moderate-income families; thus, if a GSE's mortgage purchases financed 2 million dwelling units, the proposed regulation would require that 38 percent of those 2 million dwelling units, or 760,000 dwelling units, be affordable to low- or moderate-income families.

A single mortgage can count for all three goals. For example, a mortgage that finances a house for a low-income family in a central city would count under the special affordable housing goal (low-income family in a low-income area), the low- and moderate-income housing goal (low-income borrower), and the central cities, rural areas, and other underserved areas goal (central city). Under the housing goals for 1993, the majority of the mortgages that qualified for one goal also qualified for a second goal.

[73] Section 1333.

[74] Section 1334.

[75] Section 1331(c).

[76] Sections 1332(b), 1333(a)(2), and 1334(b).

Housing Goal for Low- and Moderate-Income Families

The Secretary is establishing an annual housing goal for each GSE's purchase of mortgages on housing for low- and moderate-income families ("the low- and moderate-income goal"). The Secretary's detailed findings under the factors for establishing the goal are attached as Appendix A. The annual goal for 1995 for each GSE's purchases of conventional mortgages financing housing for low- and moderate-income families is established at 38 percent of the total number of dwelling units financed by each GSE's mortgage purchases in 1995. The annual goal for 1996 is 40 percent. The final regulation shall establish the annual goals for 1997 and 1998 and the Secretary intends that the 1998 goal apply thereafter, unless revised through subsequent rulemaking; the Secretary seeks comment on the level of the goals for 1997, 1998, and thereafter—see the questions listed above (in the leading the industry discussion) and repeated at the end of this preamble.

Housing Goal for Central Cities, Rural Areas, and Other Underserved Areas

The Secretary is establishing an annual goal for 1995 and 1996 for the GSEs' purchase of mortgages on housing located in central cities, rural areas, and other underserved areas. In accordance with the Act, under this proposed rule, the Secretary is expanding and redefining this goal from the central cities goal, which applied during the transition years of 1993 and 1994, to a goal that is directed to mortgage purchases in central cities, rural areas and other areas, with a focus on underserved areas within those geographic locations. "Underserved areas" are those areas that experience problems with the availability of mortgage credit.

For the transition period of 1993 and 1994, the goal was directed solely to the GSEs' purchases of mortgages financing housing located anywhere in "central cities." The Act defined "central cities" for the transition period as those cities designated as central cities by the Office of Management and Budget (OMB). These provisions were modelled on HUD's existing Fannie Mae regulations. The legislative history of the Act states that for the transition period the goal only applied to purchases in OMB-defined "central cities" to allow time to gather data and establish an appropriate methodology to "redefine and expand" the goal.[77] The legislative history also provides that "following the transition period, geographic areas relating to the goal will be as determined by (the regulator)."[78]

Following the transition period, the Act requires the Secretary to establish an annual goal for the purchase of mortgages located in "rural areas and other underserved areas" as well as "central cities." In establishing the central cities, rural areas, and other underserved areas goal, Congress was concerned with the "acute" "housing problems" in the nation's cities and with the "neglected and decaying" parts of the cities.[79] Congress directed HUD to target "areas with relatively poor access to mortgage credit," areas with "(i)nadequate access to mortgage credit," and areas suffering from "the vestiges of redlining."[80]

The legislative history provides that "(t)he purpose of these goals is * * * to service the mortgage finance needs of low- and moderate-income persons, racial minorities and *inner-city* residents."[81] Congress noted that "* * * mortgage discrimination and redlining have effectively disadvantaged certain geographic areas, particularly *inner city* and rural areas."[82] In explaining the conference bill on the floor of the Congress, Chairman Gonzalez stated: "In establishing the definition of a central city and in determining compliance with such a goal, the Secretary should, to the extent possible, exclude purchases made in non-low income census tracts that happen to otherwise be within the central cities area."[83]

The title of this goal also leads to the conclusion that Congress intended this geographically targeted goal to focus on underserved areas. "Central cities, rural areas, and *other* underserved areas" indicate that central cities and rural areas are intended to be proxies for underserved areas.

[77] *See* S. Rep. at 38 and 65.

[78] S. Rep. at 65.

[79] S. Rep. at 28.

[80] S. Rep. at 38; *see also, id.* at 34 (the GSEs must address "the disinvestment in central cities and rural communities"). "(R)edlining ha(s) effectively disadvantaged certain geographic areas, particularly inner city and rural areas." *Id.* at 41. *See also,* 138 Cong. Rec. S8606 (daily ed. June 23, 1992) (statement of Sen. Riegle) (the bill would provide "a greater flow of credit to people who otherwise have a very difficult time financing home mortgages").

[81] S. Rep. at 34 (emphasis added); *see also, id.* at 32, and 138 Cong. Rec. S8606 (daily ed. June 23, 1992) (statement of Sen. Riegle) ("inner-city lending * * * is a very important part of this legislation").

[82] S. Rep. at 41 (emphasis added).

[83] 138 Cong. Rec. H11453, H11457 (daily ed. Oct. 5, 1992). Rep. Gonzalez made the identical statement at 138 Cong. Rec. H11077, H11099 (daily ed. Oct. 3, 1992).

Expanding and Redefining the Goal

In accordance with the requirements of the Act, the Secretary is expanding this goal for 1995 and 1996 to include rural and other underserved areas as well as central cities. At the same time, the Secretary has redefined the term "central cities" to encompass the underserved areas of central cities and defined "rural areas" as the underserved areas of non-metropolitan areas. The goal is, therefore, intended to focus on communities within central cities, rural areas and other areas which are "underserved" in terms of availability of mortgage credit. This determination is based on the legislative intent, the factors for establishing the goal, HUD's research on underserved areas during the transition period, the results of two public forums held with researchers, public-interest groups, other federal agencies, and the GSEs, and data received from the GSEs during the transition.

Underserved Areas

The Act did not define the term "underserved area" but the legislative history indicates that it should be defined as those areas that lack access to mortgage credit. As detailed in Appendix B, the Secretary considers "underserved" to mean those areas that have an unmet demand for mortgage credit. Using 1993 HMDA data and 1990 Census data, the Department analyzed mortgage application denial and origination rates throughout the country, as well as reports and other research on the availability of mortgage credit and mortgage flows. The research indicated that pervasive and widespread disparities exist in lending across the nation. The Department found, as have other researchers, that the availability of mortgage credit to an area is related to its minority concentration and income characteristics of its residents. Two patterns are clear in the Department's research and that of other researchers:

- Census tracts with higher percentages of minority residents have higher mortgage denial and lower loan origination rates than all-white or predominately white census tracts; and
- Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts.

As Appendix B details, HUD's research and that of others has found that the location of a census tract—whether it is located within a central city or a suburb—has minimal impact on whether the tract is underserved.[84] Mortgage flows in a census tract have far less to do with the physical location of a tract, *i.e.*, central city versus suburb, than the minority concentration and median income of that tract. The most thorough studies available demonstrate that areas with lower incomes and higher shares of minority residents consistently have poorer access to mortgage credit, with higher denial rates and lower origination rates for mortgages. With income, minority composition, and other relevant census tract variables controlled for, differences in credit availability between central cities and suburbs are minimal.

Based on this research, the Secretary has determined that this goal should target those areas in central cities, rural areas, and other areas where: 30 percent or more of the residents in a census tract are minority and the median income of families in the census tract is at or below 120 percent of the area median income; or where the median income of families in the census tract is less than 80 percent of the area median income. The goal therefore is directed to census tracts in central cities, rural areas, and all other parts of the country meeting these criteria. (For purposes of defining "rural areas," the Secretary is seeking comments on whether counties or Block Numbering Areas, which are equivalent to census tracts in rural areas, are the appropriate geographic unit.)

The Department has conducted an intensive research effort on identifying geographic areas underserved by the mortgage markets. This research effort is ongoing and will continue during the period of proposed rulemaking. Research underway includes the analysis of the implications of alternative definitions of underserved areas in urban, suburban, and rural communities. The Department will also engage in a multi-year research effort to identify and analyze indicators of unmet demand for mortgage credit. This long-term research effort will be used by the Department in future years to review the level of the housing goals established for the GSEs. In conducting this research effort on identifying indicators of unmet demand, the Department fully intends to consult with other Federal agencies including Treasury and with the GSEs.

Central Cities

For purposes of this housing goal, the Secretary is defining "central cities" as the underserved areas of any political subdivisions designated as central cities by the Office of Management and Budget (OMB). Directing the goal to all areas of central cities identified by the Office of Management and Budget (OMB) would not appropriately target the GSEs' activities to areas that have a relative lack of access to mortgage credit. OMB defines the central city or central cities of a metropolitan statistical area based on population and other factors that measure job location and commuting patterns. OMB does not take into account mortgage credit availability or measures of economic distress. As a result, the list of 545 central cities includes very affluent and well served cities and excludes other obviously distressed cities. For example, Palo Alto, California—with a per capita income of $32,500 and a poverty rate of 2 percent—is a central city but Compton, California—with a per capita income of $7,800 and a poverty rate of 24 percent—is not a central city.

In addition, there are substantial regional variations in the portion of state urban population that are included in central cities. In the southern and western parts of the country, cities have often expanded by annexing adjacent territory. This option was generally not available to cities in the Northeast, which have retained their historical boundaries. As a result, a substantially greater portion of the population lives in central cities in the South and West than in the more urbanized Northeastern states. This has led to perverse results for the central cities goal in place for 1993: Central cities accounted for more than 50 percent of both GSEs' mortgage purchases in Arizona, New Mexico, and North Dakota. In New Jersey, on the other hand, purchases in central cities accounted for only 4 percent of GSE purchases.

James A. Johnson, Fannie Mae's Chairman and Chief Executive Officer, in April 1994 testimony before a Congressional sub-committee summarized some of the problems with using the OMB designation of central cities:

> Central cities are also of limited value as proxies for distressed, needy, minority or low- and moderate-income census tracts. Especially in older cities that are hemmed in by separately incorporated suburbs and other communities, political jurisdictions enforce artificial barriers to describing areas of need. Conversely, where cities can annex neighboring communities as growth occurs, the result is a central city that encompasses so much territory of such diverse nature that

[84] *See, e.g.*, Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, "Underserved Mortgage Markets: Evidence from HMDA Data," (presented at the Western Economic Association Annual Meetings, Vancouver BC), July 1994, and William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, "Unmet Housing Needs: The Role of Mortgage Markets," unpublished paper, June 1, 1994.

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it loses much of its distinctive urban character.[85]

Rural Areas

Determining how to define "rural areas" within the context of this goal is even more difficult than the complex analyses of HMDA and Census data for cities and suburbs summarized in Appendix B. This occurs for three interrelated reasons: (1) The general lack of accurate data on mortgage flows and credit activity outside metropolitan statistical areas (MSAs), (2) the scarcity of careful current studies on access to mortgage credit in rural locations, and (3) the existence of a variety of statutory and statistical definitions for "rural."

To address the many issues pertinent to developing an appropriate and workable definition of "rural areas" for purposes of this rule, the Department has consulted with rural demographers and economists at the Department of Agriculture's Economic Research Service, the Census Bureau, the Farmers Home Administration, and the Housing Assistance Council. All of these issues were also discussed at a forum attended by researchers from academia, the Department of Agriculture, the Census Bureau, the Housing Assistance Council, the Congressional Budget Office, public-interest groups, and the GSEs. The Secretary's decisions about defining "rural areas" are based on these consultations as well as ongoing analyses of data from the 1990 Census, the American Housing Survey, and the Residential Finance Survey.

Framework for Defining Rural Areas

In considering the issue of how to define rural areas for the central cities, rural areas, and other underserved areas goal, the Department analyzed available data and research on mortgage flows and credit access in rural locations, consulted with rural demographers and economists at government agencies and elsewhere, and considered the multiple existing definitions of "rural" currently in use. Based on the evidence that income and housing needs vary as greatly between nonmetropolitan counties and block numbering areas[86] as they do within MSAs, the Secretary has determined that the basic definition of "underserved areas" developed above—as areas with high minority shares or low median family income—should also apply in rural areas, that is, outside of MSAs. The Secretary has determined that for purposes of this housing goal that "rural areas" are the underserved areas in nonmetropolitan counties, *i.e.*, outside of Metropolitan Statistical Areas.

The Secretary seeks comments on whether the appropriate unit of geographic focus for defining underserved areas in non-MSAs is the county or the Block Numbering Area (the rural equivalent of census tracts). In addition, the Secretary seeks comment on whether this definition of rural should be expanded by including indicators of access to metropolitan areas and/or indicators of jurisdictional size (*i.e.*, include small communities of less than 2,500 people). The following section summarizes the factors the Secretary considered in determining this proposed definition of rural and closes with questions on which the Secretary solicits comments about the proposed definition.

(1) *Unavailability of accurate data on mortgage flows and credit activity in rural locations.* HMDA data, the source used for most of the studies of credit needs summarized in Appendix B, does not provide information on mortgage activity outside of metropolitan statistical areas (MSAs), and within MSAs census tracts may contain both rural and urban segments.[87] Other sources of mortgage flow information, like the Federal Reserve Call Reports, do not detail locations of loans.

(2) *Studies of access to mortgage credit.* Researchers participating in the Department's forum agreed that available studies do not show that rural areas endemically have problems with access to credit, although this (lack of) conclusion may stem from data unavailability. A 1990 study by the Urban Institute, for example, found little evidence of a national rural home credit shortage, and attributed low mortgage activity in some local markets to lack of demand in weak local economies.[88] Yet abundant anecdotal evidence exists that underserved areas in rural communities require a special focus by the GSEs, to redress years of historic neglect by the mortgage market. According to the Housing Assistance Council, access to mortgage credit appears worse as distance from metropolitan centers increases,[89] while Department of Agriculture representatives judge that communities with population below 2,500 or 5,000 are more likely than other rural communities to lack access to credit. More generally, the forum participants agreed that, as found for central cities, rural communities with low income and minority concentrations were those more likely to be underserved by the mortgage markets.

A report by the Economic Research Service of the Department of Agriculture shows that urban proximity is important: economic conditions and housing problems tend to be worse in counties most remote from metropolitan areas or smaller cities.[90] In particular, counties with "persistent low-income," which are disproportionately more rural and remote, have had little recent economic activity, stagnation in real family income during the 1980s, and continue to have the highest incidence of housing lacking complete plumbing. These high poverty counties are concentrated in Appalachia and in areas with high proportions of minority residents.

(3) *Current Definitions of Rural.* In considering a workable definition of "rural areas," the Secretary focused on three major definitions in use: (i) The Census Bureau's official designation; (ii) the Farmer's Home Administration's designation for several of its programs; and (iii) the designation of "non-metropolitan." In this proposed rule, rural areas are defined as "underserved areas" "located outside of any Metropolitan Statistical Area designated by the Office of Management and Budget." The reasons for choosing to focus on non-metropolitan areas are described below:

(a) *Census Bureau definition.* The Census Bureau bases its definition of rural on population size and density.[91] Locations that meet the rural definition are designated once per decade, based on decennial Census results. There are two major disadvantages of using the Census Bureau definition as part of a definition of rural areas for this goal. First, few relevant intercensal data sources are based on the Census Bureau definition, complicating the work required to establish market segments and set the level of the housing goals. Second, geocoding addresses to rural locations based on this definition would be difficult and burdensome for the GSEs, given the current state of geographic information systems software. The Census Bureau's 1992 Tiger/Line file's ability to provide accurate addresses is weakest in rural areas, particularly for rural route addresses.[92]

(b) *Farmers Home Administration's definition of rural.* The Farmers Home Administration (FmHA) defines rural areas eligible for several programs, including the 515 loan program,[93] and the definitions vary among the programs. Generally, more locations qualify as "rural" under these definitions than under the Census Bureau's definition because the FmHA definitions include places with populations above 2,500 and the Bureau would categorize such places as "urban."[94] The most critical disadvantage in using a FmHA definition as the rural identifier is that there is no central or machine-readable source of information on areas defined by FmHA as rural; instead, local maps are marked to show the appropriate boundaries and then stored in field offices.

(c) *Non-Metropolitan Statistical Areas.* The Secretary chose to incorporate this designation into the definition of "rural areas." First, geocoding and reporting would be straightforward, since MSAs are composed of counties in most parts of the country. This definition appears to correspond better to the parts of the country where availability of mortgage credit has been an issue. The availability of mortgage credit in the rural fringes of metropolitan areas appears to be less of a problem than in rural communities distant from metropolitan areas. Finally, most intercensal data, including population and household estimates, employment, income estimates, etc., are produced at least annually at the county level.

Questions Related to the Definition of Rural Areas

The Secretary invites comment on the following questions:

(1) Should rural areas be based on the characteristics of Block Numbering Areas or counties? Which of these two options makes better sense for lenders and for GSE reporting? Which option better directs goal performance at areas with poor access to mortgage credit?

(2) In establishing the definition for rural areas, should the income and minority criteria (used for defining central cities and other underserved areas) be supplemented with other indicator(s) of the needs for better access to mortgage credit? Should population size (*e.g.*, communities below 2500 or non-metropolitan counties below 50,000) be considered as such an indicator?

(3) What are the relative merits of indicators of access to metropolitan areas or nonmetropolitan cities such as the "Beale" or "Ghelfi-Parker" codes?[95]

(4) In New England, where MSAs are not composed of counties, should the definition of rural areas include areas "outside (P)MSAs" or "outside NECMAs"?

Other Underserved Areas

For purposes of this housing goal, the Secretary has determined that "other underserved areas" are census tracts located in metropolitan areas located outside of central cities and having the minority and income characteristics described above. This definition will cover suburban communities that lack access to credit.

Alternative Approaches to Defining the Central Cities, Rural Areas, and Other Underserved Areas Goal

The Secretary considered alternative approaches to establishing this goal. One alternative would be to simply expand the goal by retaining all areas in all 545 OMB-designated central cities, all rural areas, and all other underserved areas. If underserved areas are defined as described above, this alternative approach would result in a goal that targets nearly 70 percent of the country's population. The Secretary decided this approach was inconsistent with the intent of the Act.

Congress established the goals to ensure that Fannie Mae and Freddie Mac take special consideration of specific housing needs in carrying out their work. The goals are intended to be priority areas for the GSEs as they carry out their Charter Act purposes. A goal that encompasses so much of the nation's population and geography would be unlikely to provide the GSEs with appropriate direction. Further, this approach would lead to a dispersion of the GSEs' goal-oriented business to a large number of communities that do not meet the Congressional directive that they be areas with a relative lack of mortgage credit. Finally, an overly-broad approach would result in less support for the critical efforts of cities and rural communities to improve and stabilize neighborhoods that, because of past practices and historic patterns, have an unsatisfactory availability of mortgage credit.

The Size of the Goal

Because this goal has been redefined, the market of mortgages originated and available for GSE purchase is different from and indeed smaller than the market of mortgage originations for the 1993–1994 goal. The Secretary estimates that mortgages originated in underserved areas of central cities, rural areas, and other areas comprise 21 to 23 percent of the conventional conforming mortgage market. Thus, the goal is established at a percentage that is lower than the central cities goal in the transition period (1993–94).

Based on a consideration of the factors for establishing the goal detailed in Appendix B, the Secretary establishes the annual goal for 1995 for each GSE's purchases of mortgages financing housing located in underserved areas at 18 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The goal for 1996 is 21 percent. The final regulation shall establish the annual goals for 1997 and 1998 and the Secretary intends that the 1998 goal apply thereafter, unless revised through subsequent rulemaking the Secretary seeks comment on the level of the goals for 1997, 1998, and thereafter—see the questions listed above (in the leading the industry discussion) and repeated at the end of this preamble. In 1993, 15.9 percent of the dwelling units financed by Fannie Mae's mortgage purchases were in areas defined under the proposed definition of central cities, rural areas, and other underserved areas, while Freddie Mac's performance was 14.4 percent.

Units will count toward this goal if the units are located in a central city as redefined, a rural area as defined, or any other underserved area. Through the use of geocoding or any similarly accurate and reliable method, the GSEs are required to determine whether units

[85] Testimony before the Committee on Banking, Finance, and Urban Affairs, Subcommittee on General Oversight, Investigations, and the Resolution of Failed Financial Institutions, U.S. House of Representatives, at 17 (April 20, 1994).

[86] For data collection in the 1990 Census, block numbering areas (BNAs) are the non-metropolitan equivalent of census tracts—subareas of counties that contain approximately 4,000 people.

[87] Only lending institutions with offices in metropolitan statistical areas (MSAs) report mortgage origination data under HMDA. 12 U.S.C. 2803(a)(1).

[88] The Urban Institute, *The Availability and Use of Mortgage Credit in Rural Areas* (1990), examined data on ownership, mortgage terms and conditions, and Federal program coverage, particularly for moderate-income home buyers.

[89] Statement of Moises Loza, Executive Director of the Housing Assistance Council (HAC), July 21, 1994, to the Subcommittee on Environment, Credit, and Community Development of the House Committee on Agriculture.

[90] *Rural Conditions and Trends*, Vol. 4, No. 3 (Fall 1993), a special 1990 census issue, documents differences between counties in population, education, employment, income, poverty, and housing.

[91] *See* U.S. Bureau of the Census, *1990 Census of Population and Housing, Guide, Part B, Glossary*, 16–17 (1993) (hereinafter cited as "Census Glossary")

[92] The Tiger/Line files are the extract of the Census Bureau's geographic data base and are produced for geocoding by data users. They categorize all polygons and blocks as either rural or urban and have address ranges for most of the country.

[93] 42 U.S.C. 1490.

[94] *Cf.* 42 U.S.C. 1490 to Census Glossary at 16–17

[95] These indicators of urban influence were developed by the Department of Agriculture's Economic Research Service. Linda M. Ghelfi, "County Classifications," Rural Conditions and Trends, 4(3): 6–11 (1993).

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financed under mortgages purchased by the GSEs are located in central cities, rural areas, and other underserved areas as defined by regulation.

Special Affordable Housing Goal—Background

This goal had no antecedent in the current Fannie Mae regulations. The Act requires that the Secretary "establish a special annual goal designed to adjust the purchase by each (GSE) of mortgages on rental and owner-occupied housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families."[96]

During the transition period (1993–1994), the Act required that each GSE's mortgage purchases under the special affordable housing goal be equally divided between mortgages on single family housing and mortgages on multifamily housing.[97] The multifamily goal was further divided, with 45 percent of the goal devoted to mortgages on multifamily housing where dwelling units were affordable to low-income families.[98] The remaining 55 percent of the dollar volume of multifamily mortgages purchased had to comprise mortgages on multifamily housing in which either: (1) "at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent" of area median income;[99] or (2) "at least 40 percent of the units are affordable to very low-income families."[100] Only the portions of qualifying mortgages on multifamily properties that are attributable to units affordable to low-income families contributed to the achievement of this goal.[101] Under the transition standard, where at least 20 percent of the units were affordable to especially low-income families (families whose incomes do not exceed 50 percent of area median income) or at least 40 percent of the units were affordable to very low-income families, all units from such multifamily projects that were affordable to low-income families counted toward the goal.

The Act required that, for each GSE's mortgage purchases financing single family housing to be counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of single family mortgages had to comprise mortgages of low-income families living "in census tracts in which the median income does not exceed 80 percent of the area median income."[102] The remaining 55 percent of the dollar volume of single family mortgage purchases had to comprise mortgages of very low-income families.[103]

The Special Affordable Housing Goal

Following the transition period, the Act does not specify the types of mortgage purchases that shall count toward achievement of the special affordable housing goal.[104] Based on experience during the transition, the Secretary concluded that determining GSE performance under these provisions was cumbersome and did not clearly reflect the number of especially low- and very low-income families actually served under the multifamily portion of the special affordable housing goal. Accordingly, as described below, the proposed regulation simplifies the counting under this portion of the goal.

The proposed regulation would substantially simplify the special affordable housing goal to apply to "rental housing and owner-occupied housing."[105] Under the proposed regulation, rental housing would include all units in multifamily housing and all units in single family rental housing. The proposed regulation makes this change in part because of the high percentage of renters in single family dwelling units—41 percent of rental units in properties secured by conventional, conforming mortgages are located in single family properties.[106]

The rental portion of the special affordable housing goal would be targeted to very low-income families because of the substantial housing needs of these renters. Five-eighths of renters with incomes below 50 percent of area median income pay more than 30 percent of their income for housing, live in inadequate housing, or are overcrowded.[107] Even worse, almost half of the 7.4 million renters with incomes below 30 percent of area median income pay more than half of their income for housing or live in severely inadequate housing.[108] The high incidence of severe housing problems among these extremely-low-income renters reflects the severe shortages of units affordable to them.

Under the proposed regulation, only those rental units that are affordable to very low-income families would count toward the goal rather than all low-income units in buildings that had a certain percentage of very low- or especially low-income units. Under the owner-occupied housing portion of the goal, the dwelling units that count toward the goal are units: (1) Located in low-income areas and owned by low-income families; and (2) owned by very low-income families.

The Act provides that, for each GSE, the special affordable housing goal "shall not be less than 1 percent of the dollar amount of the mortgage purchases by the (GSE) for the previous year."[109] Although the goal has been established to exceed one percent of each GSE's total mortgage purchases in the preceding year, to maintain consistency, the special affordable housing goal, like the other two goals, is expressed as a percentage of dwelling units rather than dollars. The Secretary determined that expressing this goal as a percentage of the previous year's business was not preferable for several reasons: (1) Due to the cyclicality of the mortgage market and the GSEs' business volume, use of a fixed percentage of the previous year's purchases could make such a goal less realistic in a year such as 1995, when total purchases are projected to fall sharply from prior-year levels due to the decline in refinancing activity; (2) conversely, in years of sharply increasing activity, the goal represented by a set percentage of total mortgage purchases in the previous year could represent an insufficient commitment by the GSEs to special affordable housing; and (3) where a GSE purchases (for a given sum) mortgages financing two dwelling units that are affordable to families at 30 percent of area median income, the GSE would be making a greater contribution to affordable housing than if the GSE purchased (for the same sum) one mortgage that was affordable to one family at 60 percent of area median income. A units-based goal takes this consideration into account, but a strict dollar-based goal would not.

The proposed regulation provides that for 1995 the special affordable housing goal will be 11 percent of the total

[96] Section 1333(a)(1).

[97] Section 1333(d)(1)–(2).

[98] Section 1333(d)(3)(A)(i).

[99] Section 1333(d)(3)(A)(ii)(I). The Department defined "especially low-income families" as those with incomes not in excess of 50 percent of area median income.

[100] Section 1333(d)(3)(A)(ii)(II).

[101] Section 1333(d)(3)(C).

[102] Section 1333(d)(3)(B)(i).

[103] Section 1333(d)(3)(B)(ii).

[104] *See* section 1333.

[105] *See* section 1333(a).

[106] Special tabulation derived from Bureau of the Census, Housing and Household Economic Statistics Division, *1991 Residential Finance Survey*.

[107] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991—A Report to Congress*, 4 (June 1994).

[108] U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

[109] Section 1333(a).

number of dwelling units financed by each GSE's mortgage purchases for 1995. The goal will be 12 percent for 1996. The goal is equally divided between rental housing and owner-occupied housing, *i.e.*, for 1995 the goal for rental housing is 5.5 percent and the goal for owner-occupied housing is 5.5 percent. For 1996, the goal is 6 percent for rental housing and 6 percent for owner-occupied housing. The final regulation shall establish annual goals for 1997 and 1998 and the Secretary intends that the 1998 goal apply thereafter, unless revised through subsequent rulemaking; the Secretary seeks comment on the level of the goals for 1997, 1998, and thereafter—see the questions listed above (in the leading the industry discussion) and repeated at the end of this preamble.

Performance Under the Special Affordable Housing Goal

In evaluating each GSE's performance in achieving this goal, the Act requires that the Secretary give full credit toward achievement of the special affordable housing goal for: (1) The purchase or securitization of federally related mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA)[110] or another Federal agency, where the GSE's participation substantially enhances the affordability of the housing subject to such mortgages,[111] and the mortgages are on housing that otherwise qualifies under this goal; (2) the purchase or refinancing of seasoned loan portfolios where the seller has a specific program to use the proceeds of such sales to originate new loans that meet the special affordable housing goal and such purchases or refinancings support additional lending for housing that otherwise qualifies under this goal; and (3) the purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where the loans are not guaranteed by the RTC or the FDIC or other Federal agencies, the loans include recourse provisions similar to those offered through private mortgage insurance or other conventional sellers, and such loans are for the purchase of housing that otherwise qualifies under this goal.[112]

This proposed regulation provides that entities qualify as sellers, under (2) above, where the sellers currently operate on their own or actively participate in an ongoing program that results in the origination of loans meeting the special affordable housing goal; thus, a GSE's purchase of such loans supports additional lending for housing that will qualify under this goal. By encompassing active participation, the proposed regulation allows purchases of portfolios from sellers, who actively participate with qualified housing groups that operate programs resulting in the origination of loans meeting this goal, to count toward achievement of the goal. However, if a GSE wants to count portfolio purchases toward achievement of this goal, it must verify and monitor that the sellers currently operate or actively participate in such ongoing programs that result in the origination of additional loans meeting the requirements of this goal. Where a seller's primary business is originating mortgages on housing that qualifies under the special affordable housing goal, the proposed regulation provides that such a seller is presumed to meet the requirement for actively participating in program(s) supporting lending meeting the special affordable housing goal.

Under the Interim Notices, no credit was given toward achieving the special affordable housing goal for any purchases or securitization of mortgages associated with the refinancing of existing GSE portfolios. The intent of this prohibition was to preclude the GSEs from swapping portfolios toward the end of the year in an effort to achieve the special affordable housing goal. After reviewing the experience of the transition period, the Secretary has determined that wholesale exchanges of mortgages between the GSEs shall not count toward achievement of the housing goal; however, refinancings of individual mortgages should count toward the special affordable housing goal so long as the refinancing is an individual "arms-length" refinancing by a borrower. This is appropriate for several reasons: (1) The GSEs have very little influence on whether a particular single family mortgagor decides to refinance the mortgage—such refinancings are market driven and normally due to decreases in interest rates, and the Secretary concluded that such market driven refinancings should count toward the goal; and (2) determining whether the GSE had purchased the previous mortgage was time consuming and burdensome for the GSEs and for the Department and yielded little incremental value in producing more affordable housing finance.

General Requirements

Performance under the goals is determined by assessing the portion or percentage of each GSE's business that satisfies each goal. In determining this percentage, a fraction is used with the denominator of the fraction measuring all mortgages purchased that could under appropriate circumstances count towards such a goal and the numerator including only those purchases that count toward the goal. The denominator does not include GSE transactions or activities that are not included in the terms "mortgage" or "mortgage purchase." For example, where a GSE purchases a non-conventional mortgage, such as a mortgage insured or guaranteed by the Federal Housing Administration (FHA), such a mortgage purchase shall not be included in the denominator for purposes of determining that GSE's performance under the housing goal for low- and moderate-income housing because "mortgage purchase" does not include the purchase of non-conventional mortgages.

In establishing the goals for housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing, the Secretary may consider the number of housing units financed by any multifamily housing mortgage purchase.[113] The Secretary has decided to count all dwelling units, whether in multifamily or single family housing, under these goals if the units otherwise meet the requirements of the Act and this proposed regulation.

Special Counting Rules Under the Goals

During the transition period, the Department analyzed the impact of requirements under the Interim Notices concerning the extent various types of transactions should count toward achievement of the goals. Based on that analysis, the Secretary is proposing changes to or is clarifying the treatment of certain transactions, including credit enhancements, cooperative loans, refinancings, second loans, and risk-sharing arrangements between the Department and the GSEs. In determining the level of credit for

[110] A mortgage originated more than 2 years before a GSE purchases it is an example of a mortgage that cannot be readily securitized by GNMA.

[111] Mortgages that cannot be readily securitized through GNMA or another Federal agency, and mortgages where a GSE's participation substantially enhances the affordability of the housing subject to the mortgages, include mortgages under the Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program (sec. 255 of the National Housing Act), 12 U.S.C. 1715z–20, and under the Guaranteed Rural Housing Loan program, 7 U.S.C. 1933.

[112] Section 1333(b)(1).

[113] *See* section 1331(b).

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various transactions, the Secretary developed certain principles to guide the determination, and these principles will be used in the future when the Secretary determines whether new types of transactions count toward the goals. The principles are: (1) Where a transaction is substantially equivalent to a mortgage purchase, the transaction generally should receive full credit; (2) where a transaction is less risky than the risk associated with the GSE's mortgage purchases, the amount of credit should be less than full credit; and (3) where a transaction creates a new market or increases liquidity in an existing market, the amount of credit should generally be full credit.

(1) *Credit Enhancements.* Under this proposal, mortgages supported by the following credit enhancements would count toward achievement of the housing goals. Under these credit enhancement transactions, the GSE guarantees housing finance bonds issued by any entity, including a state or local housing finance agency; the GSE provides collateral in the form of specific mortgages owned by the GSE; and the GSE's guarantee has a credit risk substantially equivalent to the credit risk the GSE would have assumed if it had securitized the mortgages financed by the housing bonds. The Secretary will consider whether other types of credit enhancements should count toward the housing goals and, if other types are counted, whether those types of credit enhancements should receive full or partial credit. The Secretary is seeking comments on whether other types of credit enhancements should count.

(2) *REMICs.* The final regulation will provide whether real estate mortgage investment conduits (REMICs) will count toward achievement of any of the housing goals. The Secretary seeks public comment on REMICs and requests views from the public on the following questions:

(i) Where a REMIC contains a GSE's mortgages or mortgage-backed securities (MBS), should that type of REMIC count toward any of the housing goals? How should double counting be avoided?

(ii) Where a REMIC does not contain a GSE's mortgages or MBS, should that type of REMIC count toward any of the housing goals?

(iii) Should other types of REMICs be counted toward any of the housing goals?

(iv) In determining whether any REMICs count toward achievement of the housing goals, what should the Secretary consider?

(v) If any of these REMICs should count toward the housing goals, should the REMICs receive full credit or some level of partial credit? If partial credit, how should the level of credit be determined?

(vi) How should the final regulation deal with types of REMICs that have not yet been created or used in the market? Should such REMICs only count if that type of REMIC is reviewed by the Secretary and the Secretary determines that the type of REMIC should count toward the housing goals?

(3) *Risk-sharing.* Risk-sharing transactions would receive partial credit toward achievement of the housing goals where: (1) The GSE's risk-sharing arrangement is with the Department or another Federal agency; and (2) the GSE and the agency acquire mortgages and share the risks associated with those acquisitions. The credit to be awarded for these risk-sharing activities is to be equal to the amount of the GSE's risk under the risk-sharing arrangement.

For example, under section 542 of the Housing and Community Development Act of 1992, codified as a note to 12 U.S.C. 1707, the Department has entered into separate multifamily risk-sharing agreements with Fannie Mae and Freddie Mac. Under those agreements, each GSE shares risk of mortgage default through re-insurance with HUD on a 50 percent expected loss basis. If, under these agreements, a GSE shares the risk for 1,000 multifamily dwelling units and the GSE certifies that its share of the risk is equal to 50 percent, that GSE's performance under the low- and moderate-income housing goal would include the following calculation: The numerator would include 50 percent of the dwelling units affordable to low- and moderate-income families; and 500 dwelling units would be added to the denominator.

Where a GSE enters a risk-sharing arrangement, to receive credit toward the goals, it must certify what the real percentage of risk is and how that percentage was calculated—that percentage will then be used in calculating the GSE's performance under the relevant goal. The Department notes that in some risk-sharing arrangements, a GSE may assume top loss or catastrophic loss. In those instances, the actual risk assumed by the GSE clearly will not equal the percentage of the risk stipulated, *e.g.*, if a GSE assumes the first 20 percent of the risk, its actual risk is higher than 20 percent.

(4) *Participations.* Where a GSE purchases only a portion of a mortgage, that participation receives partial credit equivalent to the percentage of the mortgage purchased. For example, if a GSE has a 20 percent participation in a mortgage, the denominator shall include 20 percent of the units financed by the mortgage and the numerator will include that portion of the 20 percent of the units that meet the requirements for the particular housing goal.

(5) *Cooperative housing loans.* The purchase of a mortgage on stock in a cooperative housing unit ("a share loan") is counted the same way as the purchase of single family owner-occupied units and, thus, affordability is based on the income of the owners. Where a GSE purchases a mortgage on a cooperative building ("the blanket loan") and share loans for units in the same building, both purchases receive full credit, *i.e.*, the blanket loan counts under the housing goals in the same manner as a multifamily mortgage purchase.

(6) *Seasoned loans.* Purchases of seasoned loans are treated the same as purchases of recently originated mortgages and receive full credit under the goals. However, such purchases shall not count if the GSE already counted the mortgages under these housing goals or the goals in the Interim Notice of Housing Goals. To ensure that the housing covered by seasoned loans is affordable and counts, where a mortgage is more than three (3) years old, affordability must be determined based on income and/or rent level information at the time of purchase by the GSE.

(7) *Second loans.* A second mortgage on a residential property will be counted under the goals, if the property otherwise counts. The Secretary is seeking comment on whether these loans should receive partial or full credit toward the goals and, if partial credit, how the amount of credit should be determined. These loans, many of which are originated to pay for the costs of rehabilitating a single-family home, are an important part of lending in underserved communities. Many low-income homeowners cannot purchase new homes but seek to borrow funds to make repairs to their existing homes to increase their habitability and comfort. In many cases, however, these loans will have smaller unpaid principal balances than loans originated for purchase.

(8) *Tax Credit and Mortgage Revenue Bond Purchases.* The Secretary commends the GSEs' involvement in a wide variety of undertakings, including equity investments in projects eligible for Low-Income Housing Tax Credits (tax credits)[114] and purchases of State and local government housing bonds,

[114] 26 U.S.C. 42.

such as mortgage revenue bonds,[115] which serve significant purposes related to low- and moderate-income housing. The Secretary has concluded, however, that—although important in providing financing for low-income housing development—these activities are not equivalent to "mortgage purchases" and credit will not be granted toward the goals for these activities. This approach is consistent with the language in the Senate report concerning such activities: "The (GSEs) are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation."[116]

(9) *Second homes.* Mortgages financing secondary residences would not count toward achievement of any of the goals because the Secretary has determined that the goals should be directed to increasing the supply of primary residences, not secondary residences.

(10) *Refinancings.* The purchase of refinanced mortgages shall fully count toward achievement of the housing goals except as provided in the specific restrictions under the special affordable housing goal which, generally, permits arms-length borrower-driven refinancings to count toward achievement of the goal but excludes wholesale exchanges of mortgages between the GSEs.

Affordability Determination Under the Goals

In analyzing a GSE's performance in achieving these goals, the Secretary will, for mortgage purchases on owner-occupied dwelling units, consider the mortgagors' income as required by the Act.[117]

For mortgage purchases on rental dwelling units, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available. Where such income information is not available, rent on the dwelling units is used as a proxy and compared to the rent levels affordable to very low-, low-, and moderate-income families.[118] To be considered affordable, the rent cannot exceed 30 percent of the maximum income level of the family's classification, *i.e.*, very low-, low-, or moderate-income, with adjustments for unit size.[119]

Consistent with the Act,[120] the Secretary is requiring that tenants' income information be collected by each GSE where such income information is available. Based on the legislative history, income information is available "when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program."[121] Thus, where, as a condition of an existing federal, state, or local housing program, income information of tenants is required to be collected, such income information is considered as known to a lender and, therefore, available to the GSEs.

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate each GSE's performance in achieving the goals.[122] (The Secretary notes that the 30-percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 80 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term "rent" is not defined in the Act. Where the term "rent" is used in eligibility and affordability requirements for government housing programs, the term means "gross rent," which includes all utilities, based on either actual data or allowances. Likewise, this proposed regulation defines "rent" as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component of housing costs from the rent calculation. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, the Department projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.[123]

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time providing workable means for including those costs, this proposed regulation allows the GSEs to use: Actual data on utilities; utility allowances based on data from the American Housing Survey (AHS) and issued annually by the Secretary; utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The proposed regulation provides that, unless such an alternative approach is approved by the Secretary, the GSEs shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, the Act requires that the test for affordability of rental dwelling units be applied to units "with appropriate adjustments for unit size as measured by the number of bedrooms."[124] Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of bedrooms in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this proposed regulation requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as very low, low, or moderate are established for the HUD Section 8 program and use of these adjustments is also required under this proposed regulation. To determine which rental dwelling units qualify as affordable, this proposed regulation combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate-income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent

[115] 26 U.S.C. 143.

[116] *Id.* at 38. *See also, id.* at 31, and H.R. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991) (hereinafter cited as "H. Rep.").

[117] Sections 1332(c)(1) and 1333(c)(1)(A).

[118] Sections 1332(c) and 1333(c).

[119] Sections 1332(c)(2) and 1333(c)(2).

[120] Sections 1332(c)(1)(B) and 1333(c)(1)(B).

[121] S. Rep. at 35.

[122] See sections 1332(c) and 1333(c).

[123] Using rent as defined in this Notice, consistent with current law, 93 percent of existing rental dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

[124] Sections 1332(c)(2) and 1333(c)(2).

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of area median income.[125] Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LIHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net one-bedroom unit size adjustment factor of 22.5 percent of area median income.[126] Similar interpolations also are made for three-bedroom and five-bedroom units.

In certain rare instances (normally in New England), it may be unclear which area median income should be applied to determine the affordability of certain dwelling units. Under the proposed regulation, where a GSE knows that a property is located in a census tract that is split between two different areas and it is not clear which area median income should be used, the GSE must calculate a median income for the split census tracts. The median income for such split areas equals: (A) The percentage of the population of the census tract that is located in the first area times the median income of that area; plus (B) the percentage of the population of the geographic segment that is located in the second area times the median income of that area.

For example, a GSE purchases a mortgage on a property located in a census tract that is partially in a metropolitan statistical area (MSA) and partially outside the MSA; seventy-five percent of the census tract's population is in the MSA and the remaining 25 percent is outside the MSA; the median income for the MSA is $40,000; the median income for the county outside the MSA is $30,000. The median income for the split census tract would be 75 percent of $40,000 plus 25 percent of $30,000, or $37,500.

HUD seeks guidance on the appropriate reference for income in non-metropolitan areas for determining affordability under the housing goals for low- and moderate-income families and special affordable housing and for defining low-income areas in the goal for central cities, rural areas and other underserved areas. Should borrower and area income in non-metropolitan areas be defined: (1) Relative to the county median income; or (2) relative to the maximum of the county median income or the median income of the non-metropolitan balance of the State?

Housing Plans

The proposed rule provides procedures if a GSE fails to meet any housing goal. If the Secretary determines that either GSE has failed to meet any housing goal or there is a substantial probability that a GSE will fail to meet a housing goal, the Secretary shall, by written notice, preliminarily require that the GSE submit a housing plan.[127] The GSE would then have 30 days (which may be extended by the Secretary) to respond in writing to the Secretary's notice.[128] The GSE's response may include any information that the GSE considers appropriate for the Secretary to consider in determining whether the GSE failed to meet a housing goal, whether there is a substantial probability that the GSE will fail to meet a housing goal, and whether achievement of the housing goal was or is feasible.

After reviewing the GSE's response, the Secretary shall issue a final determination as to whether the GSE has failed or there is a substantial probability that the GSE will fail to meet the housing goal.[129] Additionally, the Secretary shall determine whether achievement of the housing goal was or is feasible based on market and economic conditions and the GSE's financial condition.[130] Where the Secretary determines that the GSE has failed or there is a substantial probability that the GSE will fail to meet the housing goal and that achievement of the housing goal was or is feasible, the Secretary shall require the GSE to submit a housing plan.[131]

Each housing plan must be feasible and sufficiently specific to enable the Secretary to monitor the GSE's performance under and compliance with the plan.[132] A housing plan must describe the specific actions that the GSE will take to achieve the goal in the next calendar year or, where the Secretary has determined that a substantial probability exists that the GSE will fail to meet a goal in the current year, the plan must describe the reasonable improvements the GSE will make in the remainder of the year.[133]

Subpart C—Fair Housing Requirements

The Act requires the Secretary, by regulation, to prohibit the GSEs from discriminating in their mortgage purchase activities and to require that the GSEs submit specified data to the Secretary on mortgage lenders to assist the Secretary's investigative activities under the Fair Housing Act and to assist investigative activities under the Equal Credit Opportunity Act (ECOA).[134] The Act also requires the Secretary to: Obtain and provide to the GSEs information on violators of the Fair Housing Act and ECOA; direct the GSEs to take action against mortgage lenders found to discriminate; and periodically review and comment on the GSEs' underwriting guidelines.[135]

In enacting FHEFSSA, Congress recognized the unique position and responsibilities of the GSEs in the mortgage market and their unparalleled capabilities to effectuate fair housing and fair lending in that market. The GSEs are Federally sponsored and purchase a large majority of all of the conventional mortgages originated by primary lenders. The House Report on the Act stated:

> While the Committee does not intend that the (GSEs) be responsible for investigating and punishing acts of discrimination, the Committee does expect the (GSEs) to use their considerable influence over the mortgage market to ensure that lenders with which they deal are acting in a nondiscriminatory manner.[136]

Discrimination on a prohibited basis is intolerable and socially and economically destructive. The GSEs on many occasions have expressed their commitment to combatting discrimination and advancing fair lending. The Secretary, through this regulation, seeks to make concrete the

[125] Similarly, for purposes of determining affordability to low-income families: An efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

[126] Similarly, for purposes of low-income affordability, the same 75 percent figure is used to obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent

[127] Section 1336(b)(1).

[128] Section 1336(b)(2).

[129] Section 1336(b)(3)(A).

[130] *Id.*

[131] Section 1336(c)(1).

[132] Section 1336(c)(2).

[133] *Id.*

[134] Sections 1325(1)–(3).

[135] Section 1325(4)–(6).

[136] H. Rep. at 57

GSEs' significant fair housing and fair lending responsibilities under the Act.

These provisions are intended ultimately to further fair lending by primary lenders. Accordingly, in developing these sections, the Secretary consulted with Federal agencies that regulate lending institutions including the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Treasury Department, and the Federal Reserve. Those consultations proved extremely beneficial. Responsibility for enforcement of the Act's fair housing provisions is solely vested in the Department of Housing and Urban Development under the Act, including the HUD Office of Federal Housing Enterprise Oversight (OFHEO), and no provisions in this regulation may impede those authorities. However, the Secretary has concluded that in the implementation of these regulations further consultations in the operational arrangements of these regulations would be valuable.

Consultation will assure needed coordination of regulatory actions within the government and the provision of beneficial information and views from the regulators to the Secretary. The regulations, therefore, specifically require that memoranda of understanding will be established with regulators to specify procedures for submission and dissemination of information from the regulators to the Secretary and to the GSEs. Also, prior to directing any remedial action by a GSE against a lender, the Secretary would be required to solicit and fully consider the views of the lender's regulator. Finally, at all points in the process where warranted, including, without limitation, the Secretary's review of the GSEs' underwriting guidelines and business practices affecting lenders, the Secretary will fully consider the views of the appropriate regulators in the standards used by such regulators in similar circumstances.

Prohibitions Against Discrimination

The regulations generally prohibit the GSEs from discriminating *in any manner* in their mortgage purchases because of race, color, religion, sex, handicap, familial status, age or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. The proposed regulation provides that the GSEs are liable for any discrimination by them, or their officers, or employees, or agents in making mortgage purchases. Just as the term "mortgage purchase" includes transactions which are substantively similar to mortgage purchases for purposes of the housing goal provisions, the term is similarly inclusive for purposes of the restrictions against discrimination.

The regulation makes clear that prohibited conduct is subject to certain exemptions. For example, while the regulations generally forbid the GSEs from considering factors concerning the age and location of a dwelling, or the area in which the dwelling is located in a manner that has a discriminatory effect, these factors may be considered in certain cases. The age of a dwelling may be used by an appraiser as a basis for conducting more extensive inspections of structural aspects of the dwelling. Location factors that may have a negative effect on a dwelling's value may be properly considered in an appraisal and in other aspects of the underwriting process.

The GSEs may also consider factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. For example, age or location may be considered in circumstances other than appraisals, including requiring a different loan-to-value ratio for an older, more expensive to maintain, multifamily building. However, where a GSE's consideration of a factor or factors has a disparate result based upon race, color, religion, sex, handicap, familial status, age or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located, in order for the factor or factors to continue to be considered, the factor must be justified by business necessity. The business necessity must be manifest and neither hypothetical nor speculative. Even if consideration of the factor can be justified based on business necessity, its use still may be impermissible if an alternative policy or practice could serve the same purpose with less discriminatory effect.

Business Practices Analysis and Underwriting and Appraisal Guidelines

The regulations provide that following their effective date and periodically thereafter as requested by the Secretary, each GSE shall conduct and submit to the Secretary a Business Practices Analysis to further implement the prohibitions against discrimination under the Act and facilitate the reporting requirements under sections 309(n)(2)(G) of the Fannie Mae Act and 307(f)(2)(G) of the Freddie Mac Act[137] and the underwriting and appraisal guideline review requirements under the Act.[138] The GSEs will develop a methodology for conducting the Business Practices Analyses and the Secretary will review and comment on the methodology.

The Business Practices Analysis must assess the GSE's underwriting standards and appraisal practices, repurchase requirements, pricing, fees, procedures, and other business practices that affect the purchase of mortgages for low- and moderate-income families or that may yield disparate results based on the race, color, religion, sex, handicap, familial status, age or national origin of the borrower. The analysis shall specify revisions that will be made to promote affordable housing and fair lending. If disparate results occur because of any business practices, the GSE must demonstrate that a business necessity exists for the practice or demonstrate how the GSE plans to remedy the situation. The GSEs' Charter Acts as amended by FHEFSSA require an analysis of business practices as part of a required report.[139] The analysis will serve as a baseline for future reporting and as a necessary action by the GSEs toward remedying any systemic practices that are discriminatory and assuring that the GSEs are not in violation of the prohibitions under this subpart.

The Secretary recognizes that, at least initially, this highly important analysis will require a considerable amount of time to complete. Accordingly, the Secretary specifically seeks comments concerning the deadline for completing the initial analysis and the time for review by the Secretary which should be included in the final regulations.

Under the Act, the Secretary is required to review the GSEs' underwriting and appraisal guidelines to ensure compliance with the Fair Housing Act, the regulations promulgated thereunder, section 1325 of the Act, and these regulations.[140] In implementing this responsibility—in a manner intended to maximize industry self-regulation—this proposal places initial responsibility on the GSEs themselves, rather than the Department

[137] These Charter Act sections require that GSEs do "assess underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures, that affect the purchase of mortgages for low- and moderate-income families, or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending."

[138] Section 1325(6)

[139] Fannie Mae Charter Act, section 309(n)(2)(G) and Freddie Mac Act, section 307(f)(2)(G)

[140] Section 1325(a).

to review all current guidelines and future revisions of the guidelines. Review of the GSEs' current guidelines therefore will involve analyses by the GSEs followed by Secretarial review and comment. The GSEs' analyses of the current guidelines will occur for the first time, under this regulation, as part of the Business Practices Analysis. The regulations require that before instituting a revision, the GSE must certify that after reasonable evaluation and analysis, the GSE has determined in good faith that to the best of its knowledge the change will not be discriminatory.

The Secretary will provide comments and recommendations for changes to guidelines and revisions to ensure consistency with the Fair Housing Act. If a GSE does not make such changes or otherwise resolve comments to the satisfaction of the Secretary, the Secretary may take action under the Fair Housing Act.

In addition to requiring an analysis of the GSEs' business practices as a means of effectuating fair lending, the Secretary seeks comment concerning whether the GSEs should be required to develop a fair lending plan to identify and address impediments to fair housing and fair lending in the primary market. Lending discrimination remains a pervasive and persistent problem in the mortgage industry. The Secretary seeks comment on the following questions:

(1) Should the GSEs be required to prepare a fair lending plan?

(2) Could a fair lending plan offer new ways to lead the primary lending market in eradicating discrimination? If so, how?

(3) What are the appropriate components of such a plan? and

(4) How would the plan effectuate fair housing/fair lending objectives?

Submission of Information to Assist the Secretary

The GSEs are required to submit information and data to the Secretary to assist in investigating whether any mortgage lender with which the GSE does business has failed to comply with the Fair Housing Act or ECOA.[141] The regulation requires that the GSEs: (a) Respond to a specific Secretarial request for information on a particular lender or lenders; (b) provide information when the GSE becomes aware of a questionable activity by a lender; and (c) develop and provide data that could be generated by GSE data systems, *e.g.*, relating data on census tracts to lender mortgage sales. When investigating the practices of a particular lender, GSE data could provide the Secretary useful information on lending patterns of that lender and other lenders in the same area.

The Secretary invites the GSEs and the public to provide comments on additional information that the GSEs could usefully gather on lenders for the Secretary's review in connection with the enforcement of the Fair Housing Act.

Submission of Information by the Secretary to the GSEs

The Secretary will obtain information from Federal, State, and local enforcement agencies with information regarding violations of ECOA, the Fair Housing Act, or State and local anti-discrimination laws. The Secretary will provide this information to the GSEs. Such information may indicate violations of the GSEs' underwriting guidelines and/or representations or certifications from lenders. The specific nature of the violation information to be obtained by the Secretary and the procedures for referral applicable to Federal financial regulators will be governed by memoranda of understanding entered into between the Secretary and such regulators. The Secretary shall also consult with such regulators on the nature of the information to be provided to the GSEs. The Secretary is particularly sensitive to ensuring that only relevant and legally appropriate information—considering financial privacy and other pertinent matters—is obtained and provided to the GSEs under this provision. Although other provisions of the Act and regulations described below allow the Secretary to *direct* sanctions against lenders found to discriminate,[142] these information dissemination provisions neither directly nor indirectly require actions by the GSEs based upon violation information provided by the Secretary. The regulations merely provide that the GSEs may take appropriate action under their procedures based on information provided by HUD concerning lender violations of the Fair Housing Act or ECOA, *i.e.*, the GSEs, in their discretion, may choose to take action against lenders based on violations of binding contractual arrangements with the GSEs forbidding discrimination.

Remedial Actions

The Secretary is required to direct the GSEs to take remedial actions—including suspension, probation reprimand, or settlement—against lenders which have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act and ECOA following appropriate proceedings.[143]

For purposes of remedial action, a lender will have been found to have violated ECOA only after a final determination on the matter has been made by an appropriate United States District Court or any other court of competent jurisdiction. A lender will have been found to have violated the Fair Housing Act only after a final determination on the matter has been made by a District Court, a HUD Administrative Law Judge, or the Secretary. Based on such violations, the Secretary shall direct the GSE to take remedial action(s) under this section. Prior to the date the action is to be imposed, the lender may request and, if the request is timely filed, will be entitled to a hearing before a HUD Administrative Law Judge; such hearing shall be limited to review of the appropriateness of the proposed remedial action only. The determination on the underlying violation will not be subject to review at the hearing.

To ensure regulatory coordination and avoid any unnecessary regulatory burden, the Secretary will be required under the proposed regulation, prior to directing any remedial actions under this section, to solicit and fully consider the views of the particular lender's Federal financial regulator concerning the action or actions contemplated. Views will be solicited and considered in accordance with the foregoing memoranda of understanding between the Secretary and such regulators. The regulations address the lenders' due process rights and factors that the Secretary may consider in determining an appropriate action. The Act empowers the Director of OFHEO to enforce violations of section 1325 by the GSEs. Potential violations are to be referred to the Director by the Secretary.

The Fair Housing Act

The Secretary's regulatory authority under section 1325 of the Act is in addition to the Secretary's responsibilities under the Fair Housing Act[144] and Executive Order 12,892.[145] The Fair Housing Act requires that the Secretary administer all HUD programs and activities relating to housing and urban development (which would include GSE oversight responsibilities) so as "to affirmatively further" the purposes of the Fair Housing Act.[146] The Secretary is in the process of developing regulations under the Fair Housing Act that will update HUD's current regulations concerning fair housing and fair lending. Those forthcoming regulations will supplement these GSE regulations. Nothing in these regulations is intended to diminish in any manner the GSEs' responsibilities under the Fair Housing Act.

[141] Sections 1325 (2)–(3).

[142] Section 1325(5).

[143] Section 1325(5).

[144] 42 U.S.C. 3601–19.

[145] 59 FR 2939 (1994).

[146] 42 U.S.C. 3608(e)(5).

Subpart D—Review of New Programs

Background

Under both Charter Acts, prior to amendment by FHEFSSA, the Secretary had statutory authority to approve the GSEs' purchasing, servicing, selling, lending on the security of or otherwise dealing in conventional mortgages. Under provisions of FHEFSSA, the Secretary must approve new programs unless the Secretary determines that the program was not authorized under specific provisions of the GSEs' Charter Acts or that the program was not in the public interest.[147] Until one year after the Director's regulations under section 1361(a) of FHEFSSA are issued, the Director also must review new programs and, if the Director determines that the new program would risk significant deterioration of the GSE's financial condition, the new program must be disapproved by the Secretary.[148] The purpose of the Secretary's approval is "to ensure that (programs) are authorized by the relevant (C)harter Act, not detrimental to housing availability and affordability, and, for an undercapitalized (GSE),to ensure that such programs (will) not worsen the financial condition of the (GSE)."[149]

Scope of Authority

The Secretary intends to make certain that the GSEs continue to have sufficient latitude to develop innovative programs to serve America's housing needs. In the area of housing finance, dramatic innovations have occurred during the last 25 years, with the introduction of the mortgage-backed security, the REMIC, and other financing vehicles that have brought new sources of investment capital into housing. The GSEs have either developed or refined these vehicles. The Secretary wants to ensure that future innovations are also allowed to develop without unnecessary impediment.

As noted in the House Report on the Act, "(t)he Secretary's role with regard to approval authority over new programs is not designed to entangle Fannie Mae and Freddie Mac in unnecessary delays, bureaucratic red tape, or extraneous consideration by HUD."[150] In reviewing new programs, the Secretary will follow judiciously the standards for review in the Act and will only disapprove a request for new program approval where the program is not within the scope of the GSE's statutory authority, the program is not in the public interest, or, during the transition period, where the Director determines that the new program would risk significant deterioration in a GSE's financial condition.[151]

Each GSE is required to obtain the approval of the Secretary for any "new program" before the GSE implements the program.[152] Section 1303(13) of the Act defines "new program" as "any program for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that—(A) is significantly different from programs that have been approved under this Act or that were approved or engaged in by (a GSE) before (October 28, 1992); or (B) represents an expansion, in terms of the dollar volume or number of mortgages or securities involved, of programs above limits expressly contained in any prior approval." (Programs that were specifically approved are referred to as "approved programs.")

Under the Act, all GSE programs engaged in prior to October 28, 1992, which are referred to in the regulations as "authorized programs," are deemed to be approved even where the GSE did not actually obtain approval from the Secretary and such programs need not be submitted to the Secretary for further review. However, where programs are significantly different from authorized programs, unless such programs are otherwise approved they are "new programs" subject to the Secretary's approval.

Under these regulations, the "new program" approval procedure applies to ongoing "programs," pilots, and demonstration programs that "significantly differ" from authorized or approved programs. "New program" also would include a program that is expanded, in dollar volume or number of mortgages or securities involved, above any limits expressly contained in any prior approval by the Secretary.

Where a question exists as to whether an activity is a program, if submission is otherwise required, the GSE must submit the activity for Secretarial review. As noted in the legislative history, where a planned program "could reasonably raise significant questions" as to whether the program is within a GSE's statutory purposes or in the public interest, that program "should be viewed as significantly different from existing programs and, therefore, must be submitted for approval."[153] Accordingly, the GSEs shall submit programs for review if the Secretary could reasonably consider the program to be new, even where the GSE believes the program is not new. Where the GSE does not believe that the program is new, the GSE may, in its submission, fully explain its basis for that position.

Fannie Mae undertakes certain housing related activities under section 309(a) of its Charter Act, which authorizes Fannie Mae "to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business." Freddie Mac has similar authority under which Freddie Mac's "(f)unds * * * may be invested in such investments as (its) Board of Directors may prescribe," and Freddie Mac has the power "to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid."[154] Where any of these activities could be regarded as new programs subject to the Secretary's review, the proposed regulation would require the GSEs to submit requests for program approval for those activities (under sections 309(a) of the Fannie Mae Charter Act or 303(c)(9) or (d) of the Freddie Mac Act). The purpose of this requirement is to ensure that the Secretary appropriately reviews all new programs and ensures that the GSEs do not, through use of their corporate powers, violate any provisions of their Charter Acts such as the prohibition against the GSEs originating mortgage loans.[155]

Although new programs will be subject to Secretarial review, the Secretary does not intend to interfere with the GSEs' other activities under sections 309(a) of the Fannie Mae Charter Act or 303(c)(9) or (d) of the Freddie Mac Act. The Secretary encourages the GSEs to continue their activities under these provisions.

[147] Section 1322(b)(2).

[148] Section 1322(b)(2).

[149] S. Rep. at 15.

[150] H. Rep. at 55.

[151] Section 1322(b)(1).

[152] Sections 1322(a) of FHEFSSA, 305(c) of the Freddie Mac Act, and 302(b)(4) of the Fannie Mae Charter Act.

[153] S. Rep. at 15.

[154] Freddie Mac Act, sections 303 (d) and 303(c)(9).

[155] See sections 304(a)(2)(B) of the Fannie Mae Charter Act and 305(a)(5)(B) of the Freddie Mac Act.

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Products

A program differs from a product. As noted in the legislative history, "(o)nce a program is approved, Fannie Mae and Freddie Mac are expected and encouraged to develop a range of specific products under the umbrella of the new program. The Secretary's prior approval authority does not extend to the introduction of new products under an approved program."[156]

Significantly Different

To determine whether a planned GSE program is "significantly different" from a GSE program that has been approved or authorized, and, therefore, requires the Secretary's approval, the proposed regulation provides that a program is significantly different if it materially differs from the GSE's other approved or authorized programs by entailing substantially greater risk or substantially expanding the GSE's role in the housing markets by involving new categor(ies) of borrowers, properties or other securities, borrowing purposes, or credit enhancements. New programs do not include new activities that are designed to refine approved or authorized programs by repackaging features of those programs, making technical improvements, or creating other nonmaterial variations.

Requested Comments on New Program Approval

In connection with new program approval, the Secretary seeks comments on the following questions:

(1) The Act defines "new program," generally, as a program that is significantly different from GSE programs previously approved or authorized. The Act does not define "program," "product," or "significantly different." Should these term(s) be defined in the final rule and, if so, how should the term(s) be defined?

(2) The Act requires the Secretary to approve a new program unless the program is not authorized by the GSE's Charter Act or the Secretary determines that the new program is not in the public interest. Should the final rule include factors that the Secretary will consider in determining whether a program is not in the public interest and, if so, what factors should be included?

Procedures

Requests from a GSE for new program approval must be submitted in writing and fully explain the program and whether the program is implemented under the authority of sections 305(a)(1), (4), or (5) of the Freddie Mac Act or 302(b)(2)–(5) of the Fannie Mae Charter Act. Each program request shall include: An opinion from counsel setting forth the statutory authority for the new program; a good faith estimate of the anticipated dollar volume of the program over the short- and long-term; a full description of the purpose and operation of the proposed program, the market targeted by the program, the delivery system for the program, the effect of the program on the mortgage market, and material relevant to the public interest.

The Secretary and the Director (where the Director has new program approval authority) may, within 45 days of receiving a request for new program approval, determine that additional information from the GSE is needed to make a decision on the request.[157] When additional information is needed by the Secretary or the Director, the Secretary shall request such information from the GSE. The GSE must provide such information within 10 days of the Secretary's request and, if the GSE fails to do so, the Secretary may deny the request based on the GSE's failure.

The Secretary shall approve or disapprove new program requests within 45 days, or 60 days if additional information is requested from the GSE.[158] When the Secretary approves a new program, the Secretary shall provide written notice of the approval to the GSE. When a new program is not approved, the Secretary shall submit an explanatory report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.[159] If the Secretary fails to approve or disapprove a new program within 45 days (or 60 days where additional information is requested), the request shall be deemed approved.[160]

Where the Secretary disapproves a new program request from a GSE under sections 305(a)(1), (4), or (5) of the Freddie Mac Act or 302(b)(2)–(5) of the Fannie Mae Charter Act and these regulations, the GSE may request within 30 days of the disapproval an opportunity to supplement the administrative record at a meeting with the Secretary or the Secretary's designee or in writing.[161] A meeting will be scheduled within 10 days of a request. Within 10 days after written submission or a meeting, the Secretary will notify the GSE whether the decision is withdrawn, modified or affirmed.

Where the Secretary disapproves a new program because it is not in the public interest or because the Director determined that the program would risk significant deterioration of the GSE's financial condition, the Act[162] and these regulations provide the GSE with notice of and an opportunity for a hearing on the record concerning the disapproval as provided in subpart G.

Subpart E—Reporting Requirements

Sections 309 (m) and (n) of the Fannie Mae Charter Act and 307 (e) and (f) of the Freddie Mac Act require that the GSEs submit data about their mortgage purchases to the Secretary and also submit reports to Congress and the Secretary concerning the GSEs' housing activities. The Act requires that the Secretary report to Congress by June 30 of each year on the activities of the GSEs.[163] These regulations implement all of the applicable reporting requirements so that the Secretary is capable of appropriately monitoring the GSEs' activities and reporting to the Congress.

The current Fannie Mae regulations required Fannie Mae to submit numerous reports to the Secretary. The Secretary has reviewed these reporting requirements and determined that a simpler, more effective and less burdensome reporting system should be instituted for both GSEs.

Under the proposed regulations the following submissions would no longer be required from Fannie Mae and would not be instituted for Freddie Mac: A report on business activities (24 CFR 81.22), including a description of any planned or proposed new business activities and the GSE's competitive position in the marketplace; a general plan for the conduct of the GSE's secondary market operations, a special budget plan for the GSE's secondary market operations, a description of pending legal proceedings, and details on each executive officer's ownership of GSE securities, remuneration, and stock options (24 CFR part 81, App. B); a report on each auction of commitments (24 CFR 81.23(a)(1)); a report on investors purchasing Fannie Mae securities (24 CFR 81.23(a)(3)); a statement of the composition of the GSE's loan portfolio (24 CFR 81.23(a)(4)); a report on the characteristics of home loans purchased (24 CFR 81.23(a)(5)); a report on average yields of mortgage loans purchased (24 CFR 81.23(a)(6)); a report on the lender groups from or to whom the mortgage loans were purchased or sold (24 CFR 81.23(a)(7)); a report on the composition of revenues received, expenditures made, and net income earned (24 CFR 81.23(a)(8)); a report on the distribution of holdings of the GSE's common stock (24 CFR 81.23(a)(9)); and an estimate of the dollar amounts of purchase commitments the GSE expects to issue in its FHA-VA mortgage auction and in its conventional mortgage auction (24 CFR 81.24).

On the other hand, in enacting FHEFSSA, the lack of information on the GSEs' *mortgage purchases* particularly concerned Congress.

> [A]n information vacuum has severely impeded Congressional efforts to measure Fannie Mae's compliance with regulatory housing goals that have been in force since 1978. The Committee believes that enactment of this bill will fill this vacuum on an expeditious basis * * *. The bill requires the collection of data that are central to understanding and evaluating the GSEs' single-family and multifamily businesses.[164]

The Act therefore required detailed reporting of mortgage data and extensive annual reporting on GSE housing activities to both Congress and the Secretary.[165]

To ensure that the Secretary has the information needed to carry out monitoring, compliance, and other regulatory responsibilities, the GSEs shall submit the following:

(1) Quarterly submittals of detailed data and aggregations on mortgage purchases ("the mortgage reports"); and

(2) An annual report ("the annual housing activities report") that details the GSE's actions toward meeting the housing goals and other issues of concern to Congress as well as year-to-date mortgage data.

The GSEs shall also provide a few periodic reports and the Secretary may require special reports, additional analyses, or such underlying data as the Secretary considers appropriate.

Mortgage Data

Each GSE is required to submit on a quarterly basis, except for the fourth quarter, detailed data on each mortgage purchased ("mortgage data") in the previous quarter (within 60 days after the end of the quarter). All data shall be submitted in a format specified by the Secretary and shall be year-to-date data. Data will be provided on an aggregate basis, and also on a loan-level basis (in computer-readable format). Appendix D details the reporting formats and the data elements required on each single-family and multifamily mortgage purchased. The Secretary seeks comment on whether Appendix D should include additional data.

The Annual Housing Activities Report

The regulations require each GSE to provide an Annual Housing Activities Report (within 60 days after the end of each calendar year) concerning its performance during the calendar year in achieving the housing goals. The report must describe actions that the GSE has undertaken during the preceding year or is planning to undertake to: Promote and expand its attainment of its statutory purposes; standardize credit terms and underwriting guidelines for multifamily housing and securitize multifamily housing mortgages; and promote and expand opportunities for first-time home buyers. The report also must include annual compilations of mortgage data year-to-date and any other information that the Secretary considers necessary for the report and requests in writing. To reduce the reporting burden, the Secretary has combined two annual reports required either by the Charter Act or the Act into the Annual Housing Activities Report.

As part of the Annual Housing Activities Report, the Act requires that each GSE include a discussion of its business practices.[166] To the extent a Business Practices Analysis, required under subpart C, encompasses the information required in this report and where the GSE has conducted such a Business Practices Analysis within the preceding three years, the GSE may reference such Analysis and use the Annual Housing Activities Report to update the GSE's progress concerning any problems referenced in the Analysis.

Subpart F—Access to Information

The Act requires the Secretary to establish a public use data base and to release to the public certain categories of information submitted by the GSEs concerning their mortgage purchases.[167] The Act also requires the protection of proprietary information the GSEs submit to the Secretary.[168] In characterizing the lack of information on the GSEs' performance as "an information vacuum,"[169] the Senate Committee noted that "public access and disclosure of information is a key tool for permitting appropriate public scrutiny and oversight of the activities of the [GSEs] and in evaluating possible improvements in housing finance markets."[170] The Act required a public use data base so that the public could obtain information on the GSEs' performance toward meeting their Charter Act purposes of serving a broad range of families and communities. In addition, Congress intended for the GSE public use data base to supplement HMDA data.[171] Finally, the Senate Report stated: "[E]very effort should be made to provide public disclosure of the information required to be collected and/or reported to the (Secretary), consistent with the exemption for proprietary data * * *. The (Secretary) should also take such action as is necessary to protect the privacy concerns of individual borrowers or renters."[172]

Consistent with the legislative intent, the Department shall serve as an information clearinghouse, facilitating an end to the "information vacuum" on GSE activities—as expeditiously as possible. To achieve this objective, the Secretary intends that:

(1) Data on the GSEs' activities be made available to the widest range of housing groups, state and local governmental entities, academicians and other persons and entities so that—the efforts of the GSEs in making housing finance available to all segments of the population can be monitored by housing groups, State, and local governments, and similar entities and areas of partnership with the GSEs can be identified to expand housing opportunities;

(2) Data made available should be as inclusive as possible, balancing the proprietary concerns of the GSEs;

(3) Data should supplement data available under the Home Mortgage Disclosure Act (HMDA) to facilitate fair housing review and enforcement; and

(4) Data should be available by all reasonable means.

Public Use Data Base

Consistent with the Act,[173] the regulations establish a public use data base for mortgage data submitted by the GSEs under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act. This data concerns the characteristics of individual mortgage purchases of the

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[156] H. Rep. at 55

[157] Section 1322(c)(2)

[158] Section 1322(c)(2)

[159] Section 1322(c)(2).

[160] Section 1322(c)(3).

[161] See Section 1322(c)(4)(A).

[162] Section 1322(c)(4)(B)

[163] Section 1324

[164] S. Rep. at 39; *see also*, H. Rep. at 60 ("One reason for adopting the low-income housing provisions set forth in the Committee bill is the Committee's frustration with the lack of concrete information on [the GSEs'] current activity in the area of housing for low-income persons.")

[165] *See, e.g.*, sections 1324, 1327, 1328, 1381 (o and p), and 1382 (r and s).

[166] Sections 1381(p) and 1382(s)

[167] Section 1323(a).

[168] Sections 1323 and 1326

[169] S. Rep. at 39

[170] *Id.* at 44

[171] *See, e.g.*, S. Rep. at 39.

[172] *Id.* at 40

[173] Section 1324(a)

GSEs, including, *inter alia*, census tract, location, race and gender of mortgagors. This data may include other characteristics such as the loan-to-value LTV) ratio of the mortgage, whether the loan was seasoned or whether the units were owner-occupied. In accordance with the Act, these regulations provide that the Secretary may not, by regulation or order, make available to the public data that the Secretary determines are proprietary under section 1326 of the Act *except* that the Secretary may not restrict access to the income, census tract location, race, and gender data of single family properties.[174]

The Secretary shall, from time to time, issues orders providing that certain GSE information is proprietary and shall not be included in the public use data base. The most current Secretarial orders will be periodically published and included as Appendix F of this regulation. On June 7, 1994, the Secretary published a Temporary Order protecting GSE information deemed to be proprietary, pending public comment and further review.[175] As part of the process for establishing the public use data base, the Secretary intends to finalize a revised order early in 1995.

In addition to not including proprietary information of the GSEs, the public use data base will not include information the release of which would invade personal privacy. Additionally, the data base will not include information required to be withheld, including requirements of the Trade Secrets Act, 18 U.S.C. 1905.

The Secretary will routinely disclose to the public information contained in the GSEs' Annual Housing Activities Reports which are submitted to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and comprise a detailed picture of the GSEs' activities each year in relation to the housing goals and the Fair Housing provisions of the Act. Proprietary information from this report may be withheld if the GSEs request its designation as proprietary and the Secretary determines that it is proprietary.[176] Under the Act, none of the information under section 1323 or reports under section 1326 may be disclosed where the Secretary issues a final decision, by regulation or order, determining information is proprietary.[177]

[174] Section 1323(b)(2).
[175] 59 FR 29514 (1994).
[176] Section 1326.
[177] Section 1326(c).

Requests for Proprietary Treatment

The regulations establish procedures for the GSEs to request proprietary treatment of information submitted to the Secretary in reports or otherwise. When a GSE submits information to the Secretary, the GSE shall designate which of the information the GSE deems to be proprietary; the GSE's submission must include the bases for the GSE's assertion and a statement or certification from an officer or authorized representative providing that the information is proprietary and has not been disclosed to the public.

Determinations on Requests

The Secretary will review the information and the GSE's views. If the Secretary determines the information is proprietary, the Department will not disclose the data. The regulations then establish procedures for the Secretary to issue a temporary order, an order or a regulation to withhold proprietary information and to inform the public of the withholding. If the Secretary does not determine that information that is the subject of a GSE request is proprietary, the Secretary shall provide the GSE with an opportunity for a meeting on the matter where the GSE may provide comments and additional information on release. After the meeting date, the Secretary shall determine, in writing, which information is proprietary and shall provide the GSE with 10 days' notice before the information is made available to the public.

FOIA Requests

Information on the GSEs may be requested by the public pursuant to the Freedom of Information Act (FOIA) [178] and these regulations provide guidance on FOIA's applicability to GSE information. For purposes of FOIA, HUD is considered an agency responsible for the regulation and supervision of financial institutions.[179] Accordingly, where appropriate, the Secretary may invoke FOIA Exemption (b)(8) [180] to withhold GSE information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of" the Secretary.

FOIA Exemption 4 [181] allows confidential business information to be protected from disclosure, and the Trade Secrets Act [182] forbids Government officers and employees from releasing trade secret and other confidential business information. Executive Order No. 12,600 [183] requires that agencies notify submitters of FOIA requests for confidential business information and afford submitters an opportunity to comment before releasing information. If an agency determines to release notwithstanding a submitter's objections, the Executive Order requires that the agency notify the submitter a reasonable time prior to release. The President of the United States, by memorandum, dated October 4, 1993, to Heads of Departments and Agencies, emphasized the importance of public disclosures under FOIA and the implementing memorandum from the Attorney General, attached to the President's memorandum, instructs agencies to disclose information unless disclosure would harm an interest protected by a FOIA exemption. The President's and the Attorney General's memoranda do not, however, alter Executive Order 12600.

Congressional Requests

If the Department receives a request on behalf of a Congressional Committee or Subcommittee, the Comptroller General, a subpoena from a court of competent jurisdiction, or is otherwise compelled by law to release information determined to be proprietary, personal, or otherwise withheld from the public, the Department will provide the information in accordance with the request. In releasing proprietary information under this provision, the Department will advise the requester that the Secretary has determined that the information is proprietary and that public disclosure of the information may cause competitive harm to the GSEs. To the extent practical, the Department will provide notice to the GSEs after a request under this paragraph is received and before the Department provides information in response to the request

Subpart C—Procedures for Actions and Review

This subpart establishes procedures for hearings, disclosure of orders and agreements between the Secretary and the GSEs, enforcement of actions by the Secretary, and judicial review. These procedures concern actions by the Secretary to enforce housing goal related matters under subpart B and reporting violations under subpart E, and actions by GSEs seeking review of new program denials under sub part D.

The Act empowers the Secretary to enforce requirements under the housing

[178] 5 U.S.C. 552.
[179] Section 1119F.
[180] 5 U.S.C. 552(b)(8).
[181] 5 U.S.C. 552(b)(4).
[182] 18 U.S.C. 1905.
[183] 3 CFR 235 (1988).

goals provisions through cease-and-desist orders and to assess civil money penalties against the GSEs.[184] In view of the seriousness of these actions, the Act itself details the procedural requirements for enforcement and rights of the GSEs during the sanctions process.[185] Because the Act details procedural requirements, this subpart mainly restates and rarely augments these procedures in the regulations.

Secretarial Enforcement Through Cease-and-Desist Orders and Civil Money Penalties

The Secretary may issue a cease-and-desist order where a GSE fails to: Submit a housing plan that complies with the Act; make a good faith effort to comply with a housing plan approved by the Secretary; or submit any information required under the reporting requirements under the Fannie Mae Charter Act or the Freddie Mac Act.[186] The Secretary will provide the GSEs with written notice of the charges which will fix a date for a hearing to be conducted by a HUD Administrative Law Judge. If, based on the record of the hearing, the Administrative Law Judge finds sufficient facts to sustain the action or the GSE fails to appear at the hearing, the Administrative Law Judge may issue and serve an order. The order may require the GSE to: (1) Submit a housing plan, where the notice of charges was based on the GSE's failure to submit a plan; (2) comply with a housing plan, where the notice was based on the lack of good faith efforts of the GSE to comply with a housing plan; or (3) provide the information, where the notice of charges was based on the GSE's failure to submit information.

Civil Money Penalties

The Secretary may impose civil money penalties on a GSE if the GSE has failed to: Submit a housing plan in substantial compliance with the Act; make a good faith effort to comply with a housing plan approved by the Secretary; or submit information required under the GSEs' Charter Acts.[187] Civil money penalties shall not exceed the following: (1) For failing to submit a housing plan, $25,000 for each day that the failure occurs; and (2) for failing to make a good faith effort to comply with a housing plan or failing to submit information, $10,000 for each day that the failure occurs.[188]

Hearings, Enforcement and Judicial Review

Under this subpart, all hearings are on the record, heard before a HUD Administrative Law Judge, and conducted in accordance with chapter 5 of title 5 of the United States Code and applicable HUD regulations. The Secretary will make available to the public any final order and any written agreement or other written statement for which a violation may be redressed by the Secretary.[189] The Secretary may withhold release of an agreement or statement if the Secretary determines that public disclosure would: seriously threaten the GSE's financial health or security, or be contrary to the public interest.[190]

To enforce any notice or order under this subpart, the Secretary may request that the Attorney General bring an action against the GSE in the United States District Court for the District of Columbia.[191] A GSE may obtain judicial review of a final order by filing a petition praying that the United States Court of Appeals for the District of Columbia modify, terminate, or set aside the order.[192]

Subpart H—Book-Entry Procedures

This subpart authorizes the GSEs' use of book-entry systems to issue and maintain records of the GSEs' securities. The Secretary is authorized to promulgate these provisions under section 1321 of FHEFSSA, which confers on the Secretary general regulatory authority and the authority to "make such rules and regulations as shall be necessary and proper" to ensure that the purposes of the Act, the Fannie Mae Charter Act, and the Freddie Mac Act are accomplished.

The GSEs currently issue and maintain records of their securities by entries in record systems maintained by the Federal Reserve banks; these systems are also used for U.S. Treasury securities. The Treasury Department has promulgated regulations establishing book-entry procedures.[193] Treasury regulations [194] permit the GSEs to use the system provided regulations are in force authorizing book-entry. Since 1978, HUD's Fannie Mae regulations (24 CFR 81.41 *et seq.*), authorized Fannie Mae to use book-entry procedures and recently, by regulation, the Secretary specifically extended the Fannie Mae book-entry regulations to allow Fannie Mae to continue to use the book-entry system pending the issuance of these comprehensive regulations.[195] Freddie Mac currently operates under book-entry regulations (1 CFR part 462) that it promulgated in 1978.

Virtually all of the GSEs' debt and mortgage-backed securities issuances and trading market depend on book-entry procedures. As of September 30, 1994, Fannie Mae debt outstanding was $239.3 billion and Fannie Mae MBS outstanding was $523.5 billion; as of that date, Freddie Mac's debt outstanding was $82 billion and Freddie Mac's MBS outstanding was $464 billion. Providing for use of book-entry GSE securities instead of definitive GSE securities has increased administrative efficiencies for investors, brokers and dealers as well as the GSEs themselves and facilitated the investment of capital in the GSEs' instruments. Use of the book-entry system facilitates the GSEs' Charter Act purposes of assisting the secondary market by improving the distribution of investment capital available for home financing.[196]

The regulations proposed in this subpart track the latest book-entry procedures established by the Department of the Treasury at 31 CFR part 306, subpart O, which are applicable to Treasury securities. The existing Fannie Mae book-entry regulations, 24 CFR part 81, subpart E, tracked an earlier version of Treasury's regulation. Minor changes have been made to adapt the Treasury regulation to the GSEs. In the interest of ensuring that the GSEs may continue to use the book-entry system and, at the same time, ensuring that the GSEs are subject to the same regulations, these regulations would replace Fannie Mae's book-entry regulations at 24 CFR 81.41 *et seq.* and would supersede Freddie Mac's book-entry regulations at 1 CFR part 462.

Subpart I—Other Provisions

This subpart includes miscellaneous regulatory provisions concerning equal employment opportunity and regulatory examinations.

The Secretary has general regulatory power over the GSEs and is directed to make rules and regulations to ensure that the purposes of the Charter Acts are accomplished.[197] To monitor the GSEs' compliance with the Secretary's regulatory authorities under the Charter Acts, these regulations, and the Act, and to verify the GSEs' data submissions and

[184] Sections 1341 and 1345.
[185] *See, e.g.*, sections 1341–1348.
[186] Section 1341(a).
[187] Section 1345(a).
[188] Section 1345(b)
[189] Section 1346(a).
[190] Section 1346(c).
[191] Section 1344(a).
[192] Section 1343(a).
[193] *See* 31 CFR 306.115 *et seq.*
[194] 31 CFR 306.0, n.1
[195] 59 FR 54366 (Oct. 28, 1994).
[196] Fannie Mae Charter Act, sections 301(3) and (4), and Freddie Mac Act, sections 301(b)(3) and (4).
[197] Section 1321

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reports, the Secretary shall conduct regulatory examinations of the GSEs from time to time.

FIRREA and this regulation require that the GSEs comply with sections 1 and 2 of Executive Order 11478, providing for the adoption and implementation of equal employment opportunity requirements.[198]

Specific Areas for Public Comment

Comment is invited on all aspects of the proposed regulation. In addition, the Secretary requests comments on a number of specific issues. A number of these questions are raised in the preamble and are repeated below for the convenience of commenters:

(1) *Measuring the Goals:* The Act does not require that the goals be established as a percentage of units financed by each GSE in any one year (as required during the transition period for the low- and moderate-income and central cities goals). The Secretary is interested in considering alternative ways of measuring the goals.

(a) Should the Secretary establish the goals on a numerical, instead of a percentage, basis? If so, should the goals be established as:

(i) A certain number of mortgages purchased in one year?

(ii) A certain number of units financed in one year?

(iii) A certain dollar volume of mortgages purchased in one year?

(b) Should the Secretary establish the goals as shares of the target mortgage markets, rather than as shares of each GSE's total purchases; *e.g.*, should each GSE purchase a specified percent of mortgages originated for low- and moderate-income families?

If a commenter supports any of these alternatives or others not described, the commenter should explain in full how such goals might be established, taking into account data availability, and how the Secretary would fulfill the responsibility under section 1326 of the Act to monitor each GSE's compliance with the goals.

(2) *Establishing the Future Level of the Goals:* (a) Should the goals be established so that the GSEs are required to lead the industry by buying at least the percentages of mortgages that the market originates for each goal? If yes, at what levels and over what period should the GSE goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to meet this objective? In responding, please note:

(i) For the housing goal for low- and moderate-income families—the Secretary determined that for 1995 and 1996, 50 percent of the market is comprised of mortgages qualifying under this goal.

(ii) For the special affordable housing goal—the Secretary determined that for 1995 and 1996, 17–20 percent of the market would be mortgages qualifying under this goal.

(iii) For the central cities, rural areas, and other underserved areas goal—the Secretary determined that for 1995 and 1996, 21–23 percent of the market would be mortgages qualifying under this goal.

(b) Should "leading the industry" mean and should the goals be established for future years so that the GSEs are required to purchase (as a percentage of the GSEs' total purchases) a higher percentage of mortgages than are originated by the market under each housing goal? For example, if 16 percent of the mortgages originated and available are expected to be originated for mortgages for very low-income families, should the GSEs be expected to purchase, as a percentage of their overall business, an amount greater than 16 percent of mortgages on housing for very low-income families at some future date? If yes, at what levels and over what period should the goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to achieve this objective? Also, what percentage over the market should be required?

(c) Should the goals be established such that the GSEs purchase an equivalent proportion of loans originated by the market for borrowers under 80 percent of area median income as they do for borrowers over 120 percent of area median income? If yes, at what levels and over what period should the goals be established to achieve this objective and, specifically, at what levels should the 1997 and 1998 goals be established to achieve this objective?

(d) Should the goals be adjusted as the GSEs reach or fail to achieve the goals or should the goals be established and the GSEs' performance evaluated against relatively fixed goals? If the commenter believes that the goals should be adjusted, how frequently or under what conditions should the Secretary take action to adjust the goals?

(e) To what extent should the GSEs' share of the overall mortgage market affect the levels of the goals? The GSEs currently purchase approximately 70 percent of all conventional, conforming mortgages originated. Should the goals increase as the GSEs' market share increases? If yes, how should this work? How and in what manner should the goals be adjusted?

(3) *Central Cities, Rural Areas, and Other Underserved Area Goal:* (a) Should rural areas be based on the characteristics of Block Numbering Areas or counties? Which of these two options makes better sense for lenders and for GSE reporting? Which option better directs goal performance at areas with poor access to mortgage credit?

(b) In establishing the definition for rural areas, should the income and minority criteria (used for defining central cities and other underserved areas) be supplemented with other indicator(s) of the need for better access to mortgage credit? Should population size (*e.g.*, communities below 2,500 or nonmetropolitan counties below 50,000) be considered as such an indicator?

(c) What are the relative merits of indicators of access to metropolitan areas or nonmetropolitan cities such as the "Beale" or "Ghelfi-Parker" codes?[199]

(d) In New England, where MSAs are not composed of counties, should the definition of rural areas include areas "outside (P)MSAs" or "outside NECMAs"?

(4) *Counting of Specific Transactions:* (a) *Second mortgages.* Should second mortgages receive full credit or partial credit? If partial credit, how should the level of credit be determined?

(b) *REMICs.*

(i) Where a REMIC contains a GSE's mortgages or mortgage-backed securities (MBS), should that type of REMIC count toward any of the housing goals? How should double counting be avoided?

(ii) Where a REMIC does not contain a GSE's mortgages or MBS, should that type of REMIC count toward any of the housing goals?

(iii) Should other types of REMICs be counted toward any of the housing goals?

(iv) In determining whether any REMICs count toward achievement of the housing goals, what factors should the Secretary consider?

(v) If any of these REMICs should count toward the housing goals, should the REMICs receive full credit or some level of partial credit? If partial credit, how should the level of credit be determined?

(vi) How should the final regulation deal with types of REMICs that have not yet been created or used in the market? Should such REMICs only count if that type of REMIC is reviewed by the Secretary and the Secretary determines that the type of REMIC should count toward the housing goals?

(5) *Fair Lending Plan:* (a) Should the GSEs be required to prepare a fair lending plan?

(b) Could a fair lending plan offer new ways to lead the primary lending market in eradicating discrimination? If so, how?

(c) What are the appropriate components of such a plan? and

(d) How would the plan effectuate fair housing/fair lending objectives?

(6) *Provision of Data:* (a) Is there data, beyond that described in the regulation, that the GSEs could usefully gather on lenders for the Secretary's review in connection with the enforcement of the Fair Housing Act and for review by other agencies in connection with the enforcement of ECOA?

(b) In addition to the loan level data required under Appendix D, what other loan level data should the Secretary collect from the GSEs?

(7) *Affordability in Non-Metropolitan Areas:* HUD seeks guidance on the appropriate reference for income in non-metropolitan areas for determining affordability under the housing goals for low- and moderate-income families and special affordable housing and for defining low-income areas in the goal for central cities, rural areas and other underserved areas. Should borrower and area income in non-metropolitan areas be defined: (a) Relative to the county median income; or (b) relative to the maximum of the county median income or the median income of the non-metropolitan balance of the State?

(8) *New Program Approval:* (a) The Act defines "new program," generally, as a program that is significantly different from GSE programs previously approved or authorized. The Act does not define "program," "product," or "significantly different." Should these term(s) be defined in the final rule and, if so, how should the term(s) be defined?

(b) The Act requires the Secretary to approve a new program unless the program is not authorized by the GSE's Charter Act or the Secretary determines that the new program is not in the public interest. Should the final rule include factors that the Secretary will consider in determining whether a program is not in the public interest and, if so, what factors should be included?

(9) *Indicators of Unaddressed Needs:* The Act states that the special affordable housing goal is designed to meet the "unaddressed needs of * * * low-income families in low-income areas and very low-income families."[200] But the Act does not indicate specifically what these unaddressed needs are. The Department has presented its views regarding "unaddressed needs" in Appendices A–C in detail, and the Secretary will closely review the GSEs' performance relative to the factors discussed therein. Specifically, the Secretary is committed to a monitoring and research agenda that will examine: (i) How the GSEs attempt to reach the 1995–96 goals (*e.g.*, balance of rental and owner occupied properties, single and multifamily loans); (ii) the changing risk profiles of their businesses that result from the 1995–96 goals; (iii) the potential for new affordable housing incentives that could increase the pool of qualifying loans for purchase; (iv) how the goals affect local portfolio lender business incentives (*e.g.*, incentives to sell seasoned portfolios to and obtain pre-origination purchase commitments from the GSEs and competitive pressures on loan originations); (v) how economic conditions affect the pool of potential qualifying mortgage originations; and (vi) the extent to which achieving the housing goals and meeting "unaddressed needs" require the GSEs to take on unduly risky business.

The Secretary welcomes the views of others regarding "unaddressed needs." Specifically:

(a) What are appropriate definitions for and measures of unaddressed needs?

(b) What is the magnitude of unaddressed needs? Are GSE goals consistent with the level of unaddressed needs or do the goals require the GSEs to take on unduly risky business?

(c) How can the Department best monitor unaddressed needs and how the GSEs are addressing them?

(d) How should indicators of unaddressed needs be utilized in setting the various goals for the GSEs?

Other Matters

Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

BURDEN TO RESPONDENTS

Information	Number of respondents	Frequency of response	Hours required	Total hours
Business Practices Analyses	2	1	500	1,000

(Note: this is a one-time report, not an annual report.)

Information	Annual number of respondents	Frequency of response (per year)	Hours required	Total hours
Mortgage Data Reports	2	3	20	120
Annual Housing Activities Report	2	1	40	80
Periodic Reports	2	61	0.08	10
Other Information and Analyses	2	0.25	20	10
Fair Housing Act/ECOA Information	2	1	15	30

[198] FIRREA, section 1216(b), codified as 12 U.S.C. 1833e(b).

[199] These indicators of urban influence were developed by the Department of Agriculture's Economic Research Service. Linda M. Ghelfi, "County Classifications," *Rural Conditions and Trends*, 4(3): 6–11 (1993).

[200] Section 1333(a)(1).

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ANNUAL COSTS TO RESPONDENTS

Information	Hours required	Cost per hour	Total cost
Business Practices Analyses	1,000	$20	$20,000
Mortgage Data Reports	120	20	2,400
Annual Housing Activities Reports	80	20	1,600
Periodic Reports	10	20	200
Other Information and Analyses	10	20	200
Fair Housing Act/ECOA Information from GSEs	30	20	600

ANNUAL COST TO FEDERAL GOVERNMENT (FOR REVIEWING INFORMATION)

Information	Hours required	Cost per hour	Total cost
Business Practices Analyses	4800	$30	$144,000
Mortgage Data Reports	1440	30	43,200
Annual Housing Activities Reports	400	30	12,000
Periodic Reports	122	30	3,660
Other Information and Analyses	10	30	300
Fair Housing Act/ECOA Information from GSEs	40	30	1,200

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, other than those impacts specifically required to be applied universally by the Act.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12866

The Office of Management and Budget reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC. 20410–0500. A Regulatory Impact Analysis (RIA) performed on this proposed rule is also available for review at the same address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item 1722 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57641), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, part 81 in Title 24 of the Code of Federal Regulations is proposed to be revised as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

Subpart A—General

Sec.
81.1 Scope of Part
81.2 Definitions

Subpart B—Housing Goals

81.11 General.
81.12 Low- and moderate-income housing goal.
81.13 Central cities, rural areas, and other underserved areas housing goal.
81.14 Special affordable housing goal
81.15 General requirements.
81.16 Special counting requirements.
81.17 Income level definitions for owner-occupied units, actual tenants, and prospective tenants (if family size is known).
81.18 Income level definitions for prospective tenants (if family size is not known).
81.19 Rent level definitions for tenants (if income is not known).
81.20 Actions to be taken to meet the goals
81.21 Notice and determination of failure to meet goals.
81.22 Housing plans

Subpart C—Fair Housing

81.41 General.
81.42 Prohibitions against discrimination
81.43 Review of underwriting guidelines

81.44 Submission of information to the Secretary.
81.45 Submission of information to the GSEs.
81.46 Remedial actions.
81.47 Violations of provisions by the GSEs.

Subpart D—New Program Approval

81.51 General.
81.52 Requirement for program requests.
81.53 Processing of program requests.
81.54 Review of disapproval.

Subpart E—Reporting Requirements

81.61 General.
81.62 Mortgage data.
81.63 Annual Housing Activities Report.
81.64 Periodic report.
81.65 Other information and analyses.
81.66 Submission of reports.

Subpart F—Access to Information

81.71 General.
81.72 Public use data base and public information.
81.73 GSE request for proprietary treatment.
81.74 Secretarial Determination on GSE request.
81.75 Mortgage data withheld by order and regulation.
81.76 Requests for GSE Information.
81.77 Protection of GSE Information.

Subpart G—Procedures for Actions and Review of Actions

81.81 General.
81.82 Cease-and-desist proceedings.
81.83 Civil money penalties.
81.84 Hearings.
81.85 Public disclosure of final orders and agreements.
81.86 Enforcement and jurisdiction
81.87 Judicial review.

Subpart H—Book-Entry Procedures

81.91 Definition of terms.
81.92 Authority of Reserve Banks.
81.93 Scope and effect of book-entry procedure.
81.94 Transfer or pledge.
81.95 Withdrawal of GSE securities.
81.96 Delivery of GSE securities.
81.97 Registered bonds and notes.
81.98 Servicing book-entry GSE securities; payment of interest, payment at maturity or upon call.
81.99 Treasury Department regulations; applicability to GSEs.

Subpart I—Other Provisions

81.101 Equal employment opportunity.
81.102 Examinations.

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

Subpart A—General

§ 81.1 Scope of part.

(a) *Authority.* This part implements the regulatory power of the Secretary of the Department of Housing and Urban Development over the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (referred to collectively as Government-sponsored enterprises (GSEs).) The Secretary has general regulatory power respecting the GSEs and is required to make such rules and regulations as are necessary and proper to ensure that the provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA or the Act), codified generally at 12 U.S.C. 4501–4641; the Fannie Mae Charter Act, 12 U.S.C. 1716–1723h; and the Freddie Mac Act, 12 U.S.C. 1451–59, are accomplished. Under FHEFSSA, the Secretary's responsibilities include: establishing, monitoring, and enforcing housing goals; regulating fair housing requirements; approving new program requests; disseminating information and protecting proprietary information; and requiring reports and data submissions.

(b) *Subparts.* The provisions of this part are as follows: Subpart A contains definitions and other general provisions relating to the entire part; subpart B implements housing goal requirements; subpart C implements Fair Housing requirements; subpart D sets forth procedures for Secretarial review of requests for new program approval by the GSEs; subpart E contains reporting requirements; subpart F sets forth requirements for access to information; subpart G sets forth procedures for Secretarial actions and review of actions; subpart H contains book-entry procedures; and subpart I contains other provisions.

(c) *Purposes of the GSEs.* The purposes of the GSEs are to: Provide stability in the secondary market for residential mortgages; respond appropriately to the private capital market; provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and promote access to mortgage credit throughout the Nation (including central cities, rural areas, and underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

(d) *Relation between this part and the authorities of OFHEO.* The Director of the Office of Federal Housing Enterprise Oversight (OFHEO) will issue separate regulations implementing the Director's authority respecting the GSEs. In this part, OFHEO and the Director are only referenced when the Director's responsibilities are connected with the Secretary's authorities.

§ 81.2 Definitions.

As used in this part, the term—

The Act or FHEFSSA means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992, and codified generally at 12 U.S.C. 4501–4641.

Affiliate means any entity that controls, is controlled by, or is under common control with, a GSE.

AHS means the American Housing Survey.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least five percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal and/or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Central cities means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act or Charter Acts means the Federal National Mortgage Association Charter Act (Title III of the National Housing Act, 12 U.S.C. 1716 *et seq.*) ("Fannie Mae Charter Act") and/or the Federal Home Loan Mortgage Corporation Act (Title III of the Emergency Home Finance Act of 1970, 12 U.S.C. 1451 *et seq.*) ("Freddie Mac Act").

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the contract rent. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which a GSE has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

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Day means a calendar day.

Director means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family and includes a dwelling unit in a single family property, multifamily property, condominium, cooperative, or planned unit development project.

ECOA means the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*

Familial status has the same definition as is set forth at 24 CFR 100.20.

Family means one or more individuals who occupy the same dwelling unit.

Family size means, for purposes of reporting on single family mortgages purchased, the number of people in a family including the borrower, the borrower's dependents, the co-borrower, and the co-borrower's dependents.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

FHEFSSA or The Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, codified generally at 12 U.S.C. 4501–4651.

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Government-sponsored enterprise or GSE means:

(1) The Federal National Mortgage Association (or "Fannie Mae") and any affiliate thereof; and

(2) The Federal Home Loan Mortgage Corporation (or "Freddie Mac") and any affiliate thereof.

Handicap has the same definition as is set forth at 24 CFR 100.201.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

Low-income area or low-income census tract means a census tract in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary. An area means the metropolitan statistical area (MSA) if the property is located in an MSA; otherwise, an area means the county in which the property is located.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

(2) Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(3) African-American—a person having origins in any of the black racial groups of Africa; and

(4) Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Minority census tract means a census tract in which minority residents comprise 30 percent or more of the total population in the census tract.

Moderate-income means:

(1) In the case of owner-occupied units, income not in excess of area median income; and

(2) In the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

Moderate-income census tract means a census tract in which the median income does not exceed 100 percent of the area median income.

Mortgage means a member of such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Secretary from the GSEs under sections 309 (m) and (n) of the Fannie Mae Charter Act and 307 (e) and (f) of the Freddie Mac Act relating to the GSEs' mortgage purchases. Appendix D of this part lists and details this data.

Mortgage purchase means a transaction in which a GSE buys or otherwise acquires with cash or other thing of value, a mortgage for its portfolio or for securitization.

Multifamily housing means a residence consisting of more than 4 dwelling units.

New program means any program, including a pilot or demonstration program, for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that:

(1) Is significantly different from programs that have been approved under the Act or that were approved or engaged in by Fannie Mae or Freddie Mac before October 28, 1992; or

(2) Represents an expansion, in terms of the dollar volume or number of mortgages or securities involved, of programs above limits expressly contained in any prior approval.

OFHEO means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

Ongoing program means a program that is expected to continue for the foreseeable future.

Owner-occupied unit or owner-occupied dwelling unit means a single family dwelling unit in which the borrower or co-borrower (on the mortgage that financed the dwelling unit) resides.

Participation means a fractional interest in the principal amount of a mortgage.

Portfolio of loans means 10 or more loans.

Proprietary information means all categories of information and data submitted to the Secretary by a GSE that contain trade secrets or privileged or confidential, commercial or financial information that, if released, would cause the GSE substantial competitive harm.

Public data means all mortgage data submitted to the Secretary by the GSEs that the Secretary determines is not proprietary and should be made publicly available.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax exempt entity.

Refinancing means a transaction where an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. Refinancings do not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, where a change in the payment schedule or in collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; and

(6) The renegotiation of a mortgage on a multifamily property where the property has a balloon mortgage and the balloon payment is due within one year of the date of the closing on the renegotiated mortgage.

Rent means:

(1) The contract rent for a dwelling unit, but only where such contract rent includes all utilities for the dwelling unit;

(2) Where the contract rent for a dwelling unit does not include all utilities, the contract rent for the dwelling unit plus the actual cost of utilities not included in the contract rent; or

(3) The contract rent for a dwelling unit plus a utility allowance as set forth in this part.

Rental housing means multifamily dwelling units, and dwelling units in single family housing that are not owner-occupied.

Rental unit or rental dwelling unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single family or multifamily housing.

Rural area means the underserved areas located outside of any metropolitan statistical area (MSA), primary metropolitan statistical area (PMSA), or consolidated metropolitan statistical area (CMSA) designated by the Office of Management and Budget.

Seasoned mortgage means a mortgage where the date of the mortgage note is more than one year before the GSE purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence or second home means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Secretary means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary, including any officer, employee, or agent of the Department.

Single family housing means a residence consisting of one to four dwelling units. Single family housing includes condominiums and dwelling units in cooperative housing projects.

State means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Underserved area means a census tract having:

(1) A median income at or below 120 percent of the area median income and a minority population of 30 percent or greater; or

(2) A median income at or below 80 percent of area median income.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued annually by the Secretary; or

(2) The utility allowance established under the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f) for the area where the property is located.

Very low-income means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

Wholesale exchange means a transaction where one GSE buys or otherwise acquires mortgages held in portfolio or securitized by the other GSE, or where both GSEs swap such mortgages.

Subpart B—Housing Goals

§ 81.11 General.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires that the Secretary establish, by regulation, three annual housing goals for the GSEs: A low- and moderate-income housing goal; a central cities, rural areas, and other underserved areas housing goal; and a special affordable housing goal. The Act requires that the Secretary establish these goals after considering prescribed factors and implement these goals in a manner consistent with Section 301(3) of the Fannie Mae Charter Act and Section 301(b)(3) of the Freddie Mac Act, which provide that one purpose of each GSE is to provide ongoing assistance to the secondary market for residential mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing. This subpart establishes these goals, implements requirements for measuring performance under the goals, and establishes procedures for monitoring and changing the goals. The Act provides that from year-to-year the Secretary may, by regulation, adjust any housing goal.

§ 81.12 Low- and moderate-income housing goal.

(a) *Authority.* Section 1332 of FHEFSSA requires the Secretary to establish an annual goal for the purchase by each GSE of mortgages on housing for low- and moderate-income families ("the low- and moderate-income housing goal").

(b) *Purpose of goal.* This goal is intended to achieve increased purchases by the GSEs of mortgages on housing for low- and moderate-income families.

(c) *Factors.* In establishing the low- and moderate-income housing goals, the Act requires the Secretary to consider:

(1) National housing needs;

(2) Economic, housing, and demographic conditions;

(3) The performance and effort of the GSEs toward achieving the low- and moderate-income housing goal in previous years;

(4) The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;

(5) The ability of the GSEs to lead the industry in making mortgage credit

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available for low- and moderate-income families; and

(6) The need to maintain the sound financial condition of the GSEs.

(d) *Consideration of factors.* The Secretary fully considered these factors in establishing the goals in this section. A statement documenting the Secretary's considerations and findings with respect to these factors, entitled "Secretarial Considerations to Establish the Low- and Moderate-Income Housing Goal," is Appendix A of this part.

(e) *Goals.* Based on the Secretary's consideration of the factors in paragraph (c) of this section, the Secretary has established the following goals for each GSE's purchases of conventional mortgages on housing for low- and moderate-income families:

(1) The annual goal for 1995 shall be 38 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1995;

(2) The annual goal for 1996 shall be 40 percent of the 1996 purchases;

(3) The annual goal for 1997 shall be a number ranging from 40 percent of the 1997 purchases to the proportion or percentage of mortgages qualifying under the goal that are originated by that year's market ("the amount of the market") or the amount of the market plus an additional percentage;

(4) The annual goal for 1998 shall be a number ranging from 40 percent of the 1998 purchases to the amount of the market or the amount of the market plus an additional percentage; and

(5) The annual goal for each succeeding year after 1998 shall be a number ranging from 40 percent of that year's purchases to the amount of the market or the amount of the market plus an additional percentage, or, if the Department does not set an annual goal for such succeeding years, the goal for such years shall be the same as the most recent goal established by the Secretary, pending further adjustment by the Secretary through rulemaking.

(f) The Secretary shall monitor the GSEs' performance under this goal and the GSEs' performance shall be measured as set forth in this subpart.

§ 81.13 Central cities, rural areas, and other underserved areas housing goal.

(a) *Authority.* Section 1334 of FHEFSSA requires the Secretary to establish an annual goal for the purchase by each GSE of mortgages on housing located in central cities, rural areas and other underserved areas.

(b) *Purpose of the goal.* This goal is intended to achieve increased purchases by the GSEs of mortgages financing housing in areas that are underserved by mortgage credit

(c) *Factors.* In establishing the central cities, rural areas, and other underserved areas goals, the Act requires the Secretary to consider:

(1) Urban and rural housing needs and the housing needs of underserved areas;

(2) Economic, housing, and demographic conditions;

(3) The performance and efforts of the GSEs toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;

(4) The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

(5) The ability of the GSEs to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

(6) The need to maintain the sound financial condition of the GSEs.

(d) *Consideration of Factors.* The Secretary fully considered these factors in establishing the goals in this section. A statement documenting the Secretary's considerations and findings with respect to these factors, entitled "Secretarial Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal" is Appendix B of this part.

(e) *Goals.* Based on the Secretary's consideration of the factors in paragraph (c) of this section, the Secretary has established the following goals for each GSE's purchases of conventional mortgages on housing located in central cities, rural areas, and other underserved areas:

(1) The annual goal for 1995 shall be 18 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1995;

(2) The annual goal for 1996 shall be 21 percent of the 1996 purchases;

(3) The annual goal for 1997 shall be a number ranging from 21 percent of the 1997 purchases to the proportion or percentage of mortgages qualifying under the goal that are originated by that year's market ("the amount of the market") or the amount of the market plus an additional percentage;

(4) The annual goal for 1998 shall be a number ranging from 21 percent of the 1998 purchases to the amount of the market or the amount of the market plus an additional percentage; and

(5) The annual goal for each succeeding year after 1998 shall be a number ranging from 21 percent of that year's purchases to the amount of the market or the amount of the market plus an additional percentage, or, if the Department does not set an annual goal for such succeeding years, the goal for such years shall be the same as the most recent goal established by the Secretary, pending further adjustment by the Secretary through rulemaking.

(f) *Measuring performance.* The Secretary shall monitor the GSEs' performance under this goal. The GSEs shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances dwelling unit(s) located in a central city, rural area, or other underserved area.

§ 81.14 Special affordable housing goal.

(a) *Authority.* Section 1333 of FHEFSSA requires the Secretary to establish a special annual goal designed to adjust the purchase by each GSE of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

(b) *Purpose of the goal.* This goal is intended to achieve increased purchases by the GSEs of mortgages meeting the needs of low-income families in low-income areas and very low-income families.

(c) *Factors.* In establishing the special affordable housing goals, the Act requires the Secretary to consider:

(1) Data submitted to the Secretary in connection with the special affordable housing goal for previous years;

(2) The performance and efforts of the GSEs toward achieving the special affordable housing goal in previous years;

(3) National housing needs within the categories set forth in this section;

(4) The ability of the GSEs to lead the industry in making mortgage credit available for low-income and very low-income families; and

(5) The need to maintain the sound financial condition of the GSEs.

(d) *Consideration of Factors.* The Secretary fully considered these factors in establishing the goals in this section. A statement documenting the Secretary's considerations and findings with respect to these factors, entitled "Secretarial Considerations to Establish the Special Affordable Housing Goal" is Appendix C of this part.

(e) *Goals.* Based on the Secretary's consideration of the factors in paragraph (c) of this section, the Secretary has established the following annual special affordable housing goals for each GSE:

(1) *Rental housing.* For purchases of conventional mortgages financing rental housing units meeting the then-existing unaddressed needs of and affordable to very low-income families:

(i) The annual goal for 1995 shall be 5.5 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1995;

(ii) The annual goal for 1996 shall be 6 percent of the 1996 purchases;

(iii) The annual goal for 1997 shall be a number ranging from 6 percent of the 1997 purchases to the proportion or percentage of mortgages qualifying under the goal that are originated by that year's market ("the amount of the market") or the amount of the market plus an additional percentage;

(iv) The annual goal for 1998 shall be a number ranging from 6 percent of the 1998 purchases to the amount of the market or the amount of the market plus an additional percentage; and

(v) The annual goal for each succeeding year after 1998 shall be a number ranging from 6 percent of that year's purchases to the amount of the market or the amount of the market plus an additional percentage, or, if the Department does not set an annual goal for such succeeding years, the goal for such years shall be the same as the most recent goal established by the Secretary, pending further adjustment by the Secretary through rulemaking.

(2) *Owner-occupied housing.* For purchases of conventional mortgages financing owner-occupied dwelling units either located in low-income areas and meeting the then-existing, unaddressed needs of and owned by low-income families, or meeting the then-existing, unaddressed needs of and owned by very low-income families:

(i) The annual goal for 1995 shall be 5.5 percent of the total number of dwelling units financed by that GSE's mortgage purchases in 1995;

(ii) The annual goal for 1996 shall be 6 percent of the 1996 purchases;

(iii) The annual goal for 1997 shall be a number ranging from 6 percent of the 1997 purchases to the proportion or percentage of mortgages qualifying under the goal that are originated by that year's market ("the amount of the market") or the amount of the market plus an additional percentage;

(iv) The annual goal for 1998 shall be a number ranging from 6 percent of the 1998 purchases to the amount of the market or the amount of the market plus an additional percentage; and

(v) The annual goal for each succeeding year after 1998 shall be a number ranging from 6 percent of that year's purchases to the amount of the market or the amount of the market plus an additional percentage, or, if the Department does not set an annual goal for such succeeding years, the goal for such years shall be the same as the most recent goal established by the Secretary, pending further adjustment by the Secretary through rulemaking.

(f) *Performance.* The Secretary shall monitor the GSEs' performance under this goal.

(g) *Double counting.* Each mortgage purchase, or portion of a mortgage where only a portion counts toward achievement of this goal, shall count only once toward achievement of the goal, *i.e.*, shall count under only one subsection of the goal.

(h) *Full credit activities.* (1) As required by FHEFSSA, the Secretary will give full credit toward achievement of the special affordable housing goals for the following mortgage purchases by the GSEs:

(i) (A) The purchase or securitization of federally insured or guaranteed mortgages where:

(*1*) Such mortgages cannot be readily securitized through the Government National Mortgage Association (GNMA) or any other Federal agency;

(*2*) Participation of the GSE substantially enhances the affordability of the housing subject to such mortgages; and

(*3*) The mortgages involved are on housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

(B) Mortgages under the Department's Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z–20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of paragraphs (h)(1)(i)(A) (*1*) and (*2*) of this section.

(ii) The purchase or refinancing of existing, seasoned portfolios of loans where:

(A) The seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal; and

(B) Such purchases or refinancings support additional lending for housing that otherwise qualifies under the goal.

(iii) The purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where such loans are:

(A) Not guaranteed by the RTC, FDIC, or other Federal agencies;

(B) Made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(C) Made for the purchase of housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

(2) For purposes of determining whether a seller is engaging in a specific program to use proceeds of sales to originate additional loans that meet the special affordable housing goal under paragraph (h)(1)(ii) of this section:

(i) A seller must currently operate on its own or actively participate in an ongoing program that will result in originating additional loans that meet the goal. Actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal;

(ii) To determine whether a seller meets the requirement in paragraph (h)(2)(i) of this section, the GSE shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement; and

(iii) Where a seller's primary business is originating mortgages on housing that qualifies under this special affordable housing goal, such seller is presumed to meet the requirements in paragraph (h)(2)(i) of this section.

(3) For purposes of this section, full credit means that each unit financed by a mortgage purchased by a GSE and meeting the requirements of this section shall count toward achievement of the special affordable housing goal for that GSE.

(i) *No credit activities.* As provided in FHEFSSA, neither the purchase nor the securitization of mortgages associated with the refinancing of a GSE's existing mortgage or mortgage-backed securities portfolios shall receive credit toward the achievement of the special affordable housing goal. In applying this restriction, refinancings that result from the wholesale exchange of mortgages between the two GSEs shall not count toward the achievement of this goal; refinancings of individual mortgages shall count toward achievement of this goal where the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph, "portfolios of mortgages" includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 81.15 General requirements.

(a) *General.* The Secretary shall monitor and count the performance of each GSE under each of the housing goals. In determining each GSE's performance, the general requirements in this section shall apply.

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(b) *Calculating the numerator and denominator.* Performance under each of the housing goals is based on a fraction that is converted into a percentage. The numerator of each fraction is the number of dwelling units that count toward achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominators shall not include GSE transactions or activities that are not included in the terms "mortgage" or "mortgage purchase." Where a GSE lacks sufficient information to determine whether a mortgage purchase counts toward achievement of a particular housing goal, such a mortgage purchase shall be included in the denominator for that housing goal.

(c) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the real property securing a conventional mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(d) *Credit toward multiple goals.* For the purposes of counting toward the achievement of the goals, a mortgage purchase (or dwelling unit financed by such purchase) by a GSE in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that particular year.

(e) *Counting owner-occupied units.* For purposes of counting owner-occupied dwelling units toward achievement of the low- and moderate-income housing goal or the special affordable housing goal, mortgage purchases financing such owner-occupied units shall be evaluated based on the income of the mortgagors at the time of origination of the mortgage. To determine whether mortgagors may be counted under a particular family income level, *i.e.*, very low-, low-, or moderate-income, the income of the mortgagors is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under § 81.17.

(f) *Counting rental units.*—(1) *Use of income, rent.*—(i) *Generally.* For purposes of counting rental dwelling units toward achievement of the low- and moderate-income housing goal or the special affordable housing goal, mortgage purchases financing such rental units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information.* (A) Each GSE shall require lenders to provide tenant income information to the GSE, but only where such information is known to the lender.

(B) Where such tenant income information is available for all occupied units, the GSE's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the GSE shall use the income of prospective tenants, if paragraph (f)(4) of this section is applicable. If paragraph (f)(4) (income of prospective tenants) is inapplicable, the GSE shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices.* A model unit or rental office in multifamily properties may count toward achievement of the housing goals only if a GSE determines that:

(i) It is reasonably expected that the space will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal; and

(iii) Such space otherwise meets the requirements for the goal.

(3) *Income of actual tenants.* Where the income of actual tenants is available, to determine whether tenant(s) are very low-, low-, or moderate-income, the income of the tenant(s) shall be compared to the median income for the area, adjusted for family size as provided in § 81.17.

(4) *Income of prospective tenants.* Where income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. Each GSE shall require lenders to provide such prospective tenants' income information to the GSE where such information is known to the lender. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each GSE must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent.* Where the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very low-, low-, or moderate-income families as provided in § 81.19. In determining contract rent for a dwelling unit, the actual rent shall be used where such information (whether computerized, automated, or not) is available.

(6) *Timeliness of information.* In determining performance under the housing goals, each GSE shall use tenant information required under this subsection as of the time of mortgage acquisition or, if underwriting occurs within two years of the GSE's purchasing a mortgage, the time of underwriting.

(g) *Median income.* (1) Where, for purposes of comparing a mortgagor's income to the median income for an area, a GSE cannot precisely determine whether the mortgage is on dwelling unit(s) located in one area but can determine that the mortgage is on dwelling unit(s) located in a census tract, or within a census place code, block-group enumeration district, or nine-digit zip code, or another appropriate geographic segment, that is partially located in more than one area ("split area"), the GSE shall calculate a median income for the split area. The median income for such split areas shall equal:

(i) The ratio of the population of the geographic segment that is located in the first area to the total population of the split area times the median income of that area; plus

(ii) The ratio of the population of the geographic segment that is located in the second area to the total population of the split area times the median income of that area.

(2) Where, for purposes of comparing the median income of a census tract to the area median income, a mortgage is on dwelling unit(s) located in a census tract that is partially located in more than one area ("split area"), the GSE shall calculate a median income for the split area as prescribed in paragraph (g)(1) of this section and that area median income shall be compared to the median income of the census tract.

(h) *Sampling not permitted.* Performance under the housing goals for a particular year shall be based on a complete accounting of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(i) *Newly available data.* Where a GSE uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the GSE need not use the new data until the start of the following quarter; the GSE may continue to use the data that was available at the beginning of the quarter.

§ 81.16 Special counting requirements.

(a) *General.* This section details the extent to which transactions or activities of the GSEs count toward achievement of any of the housing goals and, where the transaction or activity does count, whether full credit or some level of partial credit shall be provided for such transaction or activity. In determining the level of credit to be counted for each transaction or activity, the Secretary considers the following criteria:

(1) Where a transaction or activity is substantially equivalent to a mortgage purchase, the GSE shall receive full credit for the transaction or activity toward achievement of any of the housing goals;

(2) Where a transaction or activity has less than the normative risk associated with the GSE's mortgage purchases, the GSE shall receive less than full credit for the transaction or activity; and

(3) Where a transaction or activity creates a new market or adds liquidity to an existing market, the GSE shall receive full credit for the transaction or activity.

(b) *Not counted.* The following transactions or activities do not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either GSE's performance under the housing goals:

(1) Equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42;

(2) Purchases of State and local government housing bonds, including mortgage revenue bonds;

(3) Purchases of non-conventional mortgages, including mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203 (b) and (i) of the National Housing Act, 12 U.S.C. 1709 (b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs, except where such mortgages are acquired under a risk-sharing arrangement with the Department or another Federal agency and except where such mortgages are permitted to count toward achievement of the special affordable housing goals under § 81.14(h)(1)(i);

(4) Commitments to buy mortgages at a later date or time; and

(5) Mortgage purchases to the extent mortgage purchases finance any dwelling units that are secondary residences.

(c) *Other special rules.*—(1) *Credit enhancements.*

(i) Credit enhancement transactions shall count toward achievement of the housing goals where:

(A) The GSE provides specific mortgages it owns as collateral to guarantee bonds issued to finance housing; such bonds may be issued by any entity, including a State or local housing finance agency; and

(B) The GSE assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by the GSE if it had securitized the mortgages financed by such State or local housing finance agency.

(ii) Dwelling units financed under this type of credit enhancement transaction shall count toward a goal to the extent such dwelling units otherwise qualify under this rule.

(2) *Real estate mortgage investment conduits (REMICs).*

[Reserved pending responses received on the questions contained in the preamble].

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the GSEs and the Department or any other Federal agency under which the GSE and the agency acquire mortgages and share the risk associated with such acquisition shall count toward achievement of the housing goals on a partial credit basis equal to the percentage of risk that the GSE takes under the risk-sharing arrangement multiplied by the number of dwelling units that would have counted toward the goal(s) if the GSE had purchased all of the mortgages. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the risk-sharing arrangement multiplied by the percentage of risk that the GSE takes under the arrangement. The GSE shall provide a certification to the Secretary stating the actual percentage of risk to the GSE for each risk-sharing arrangement and explain how that percentage was calculated; that percentage of risk shall be used to count toward achievement of the housing goals.

(4) *Participations.* Participations purchased by a GSE shall receive partial credit toward achievement of the housing goals equivalent to the percentage of the mortgage that the GSE purchases.

(5) *Cooperative housing.* (i) For purposes of counting a GSE's purchase of a mortgage on a cooperative housing unit ("a share loan") toward achievement of any of the housing goals, such a purchase is counted in the same manner as a mortgage purchase of single family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") shall count toward achievement of the housing goals. Where a GSE purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals except as provided under the special affordable housing goal and except where the GSE has already counted the mortgages under a housing goal applicable to 1993 or any subsequent year. For seasoned, single family mortgages that are more than 3 years old when purchased by a GSE, the affordability of the housing must be determined based on income and/or rent level information at the time of purchase by the GSE. For multifamily dwelling units, a seasoned, multifamily mortgage will be counted toward achievement of the housing goals based on rental information and area median income as of the time that the GSE purchases the mortgage.

(7) *Purchase of refinanced mortgages.* The purchase of a refinanced mortgage by a GSE shall count toward achievement of the housing goals to the extent the mortgage qualifies, except to the extent that the specific restrictions under the special affordable housing goal apply.

(8) *Second mortgages.* [Reserved pending responses received on the questions contained in the preamble]

§ 81.17 Income level definitions for owner-occupied units, actual tenants, and prospective tenants (if family size is known).

In determining whether a dwelling unit is affordable to very low-, low-, or moderate-income families, where (for rental housing) family size is known, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of

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area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

*60% plus (4.8% multiplied by the number of persons in excess of 4).

§ 81.18 Income level definitions for prospective tenants (if family size is not known).

In determining whether a rental dwelling unit is affordable to very low-, low-, or moderate-income families and counts toward achievement of one or more of these goals, the income of the prospective tenants shall be adjusted for family size. If family size is not known, income will be adjusted using unit size:

(a) *For moderate-income*, the income of prospective tenants shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	*

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

§ 81.19 Rent level definitions for tenants (if income is not known).

For purposes of determining whether a rental dwelling unit is affordable to very low-, low-, or moderate-income families, where the income of the family in the dwelling unit is not known, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3)

and

(c) *For very low-income*, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *Missing Information.* Each GSE shall make every effort to obtain the information necessary to make the calculations in this section. If a GSE makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, it shall be assumed that such units are efficiencies.

§ 81.20 Actions to be taken to meet the goals.

To meet the goals established in this rule, each GSE shall:

(a) Design programs and products that facilitate the use of assistance provided by the Federal, State, and local governments;

(b) Develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(c) Develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time home buyers; and

(d) (1) Take affirmative steps to assist:

(i) Primary lenders to make housing credit available in areas with concentrations of low-income and minority families; and

(ii) Insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977.

(2) The steps under paragraph (d)(1) of this section shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures.

§ 81.21 Notice and determination of failure to meet goals.

(a) *Notice.* If, based on a GSE's reports or other data available to the Secretary, the Secretary determines that the GSE has failed or there is a substantial probability that the GSE will fail to meet any housing goal, the Secretary shall, by written notice to the GSE, issue to the GSE a preliminary determination notice that shall propose to require the GSE to submit a housing plan. Such notice shall include:

(1) The preliminary determination;

(2) The reasons for the determination;

(3) The information on which the Secretary based the determination; and

(4) The proposal to require the GSE to submit a housing plan.

(b) *Response period.*—(1) *In general.* The GSE shall have 30 days from the date of the preliminary determination notice ("response period") to submit any written information that the GSE considers appropriate for consideration by the Secretary in determining whether:

(i) The GSE has failed to meet the housing goal;

(ii) A substantial probability exists that the GSE will fail to meet any housing goal; or

(iii) Whether achievement of the relevant housing goal was or is feasible.

(2) *Extended period.* If the Secretary determines that good cause exists for extending the response period, the Secretary may extend the response period for up to 30 days.

(3) *Shortened period.* If the Secretary determines that good cause exists for shortening the response period, the Secretary may shorten the response period.

(4) *Waiver of right to comment.* The GSE's failure to provide any written information during the response period (as extended or shortened, if applicable) shall constitute a waiver of any right of the GSE to comment on the determination or the action of the Secretary on the matters addressed in the notice.

(c) *Consideration of information and final determination.* After the expiration of the response period or upon receipt of the GSE's response, whichever occurs first, the Secretary shall consider the GSE's response to the preliminary notice, if any, and finally determine, in writing, whether:

(1) The GSE has failed or there is a substantial probability that the GSE will fail to meet the relevant housing goal; and

(2) Considering market and economic conditions and the GSE's financial condition, the achievement of the housing goals was or is feasible.

(d) *Notice to Congress.* (1) The Secretary shall provide written notice, including the Secretary's response to any information submitted by the GSE during the response period, of:

(i) Each determination that the GSE has failed, or that there is a substantial probability that the GSE will fail, to meet a housing goal;

(ii) Each determination that the achievement of a housing goal was or is feasible; and

(iii) The reasons for each such determination.

(2) The Secretary shall provide such notice to the GSE; the Committee on Banking and Financial Services of the House of Representatives; and the Committee on Banking, Housing, and Urban Affairs of the Senate.

§ 81.22 Housing plans.

(a) If the Secretary determines, under § 81.21(c), that a GSE has failed or there is a substantial probability that a GSE will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Secretary shall provide notice to the GSE requiring the GSE to submit a housing plan for approval by the Secretary.

(b) *Nature of plan.* Each housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Secretary to monitor compliance periodically;

(3) Describe the specific actions that the GSE will take:

(i) To achieve the goal for the next calendar year; or

(ii) If the Secretary determines that there is substantial probability that the GSE will fail to meet a housing goal in the current year, to make such improvements as are reasonable in the remainder of the year; and

(4) Address any additional matters as required, in writing, by the Secretary.

(c) *Deadline for submission.* The GSE shall submit a housing plan to the Secretary within 30 days after issuance of a notice under paragraph (a) of this section. The Secretary may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Secretary determines an extension is necessary.

(d) *Review of housing plans.*—(1) *Standard.* The Secretary shall approve a housing plan if the Secretary determines that the plan.

(i) Is likely to succeed; and

(ii) Conforms with the appropriate GSE's Charter Act, the Act, and any other applicable laws and regulations.

(2) *Time period.* The Secretary shall review each housing plan and approve or disapprove the plan within 30 days of the Secretary's receipt of the plan. The Secretary may extend this period for one 30-day period if the Secretary determines such an extension is necessary and shall provide written notice to the GSE of such extension.

(3) *Notice to the GSE.* The Secretary shall provide written notice to the GSE of the approval or disapproval of a housing plan. If the Secretary disapproves a housing plan, the notice shall include the reasons for disapproval.

(e) *Resubmission.* If the Secretary disapproves an initial housing plan submitted by a GSE, the GSE shall submit an amended plan acceptable to the Secretary within 30 days of the Secretary disapproving the initial plan; the Secretary may extend the deadline if the Secretary determines an extension is in the public interest. If the amended plan is not acceptable to the Secretary, the Secretary may afford the GSE 15 days to submit a new plan.

Subpart C—Fair Housing

§ 81.41 General.

(a) *Authority.* This subpart is authorized under sections 1321, 1325, and 1327 of the Act; 309(n)(2)(G) of the Fannie Mae Charter Act; 307(f)(2)(G) of the Freddie Mac Act; and the Fair Housing Act (42 U.S.C. 3601–3619).

(b) *Scope.* The Act requires the Secretary, by regulation, to: Prohibit discrimination by the GSEs in their mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of a dwelling or age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect; require that the GSEs submit information to the Secretary to assist Fair Housing Act and Equal Credit Opportunity Act investigations; advise the GSEs of Fair Housing Act and ECOA violations; review the GSEs' underwriting and appraisal guidelines to ensure compliance with the Fair Housing Act; and require that the GSEs take actions

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as directed by the Secretary following Fair Housing Act and ECOA adjudications. The Act provides, generally, that the Director of OFHEO shall enforce violations by the GSEs of FHEFSSA and regulations in this subpart. This subpart establishes requirements implementing the Secretary's authority and provides for referral of cases to the Director.

§ 81.42 Prohibitions against discrimination.

(a) *General.* Neither GSE shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.

(b) *Bases.* In following the prohibition in paragraph (a) of this section, the GSEs shall not discriminate based on:

(1) The race, color, religion, sex, handicap, familial status, age or national origin of:

(i) The borrower or joint borrower, or applicant or joint applicant;

(ii) Any persons associated with the borrower or joint borrower, or applicant or joint applicant in connection with such mortgage or the purposes thereof;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or

(iv) Persons in neighborhoods or communities in which properties secured by mortgages are located; or

(2) The age or location of the dwelling securing the mortgage or the age of the neighborhood or census tract where the dwelling is located or the housing stock in such neighborhood or census tract in a manner that has a discriminatory effect.

(c) *Liability.* Each GSE shall be liable for violations of this subpart that it or its officers, agents, or employees commit.

(d) *Exemptions.* Notwithstanding the prohibitions of paragraphs (a) and (b) of this section:

(1) Certain factors concerning the age and location of a dwelling, or the area in which the dwelling is located, properly may be considered.

(i) The age of the dwelling may be properly considered in the appraisal and underwriting process:

(A) To select comparable properties that have been sold or listed recently in the neighborhood for an appraisal; and

(B) As a basis for conducting more extensive inspections of structural aspects of the dwelling. The structural soundness of a dwelling rather than its age may be considered in appraisal and other aspects of the underwriting process.

(ii) Certain location factors that may have a negative effect on a dwelling's value may be properly considered in an appraisal and in other aspects of the underwriting process. These factors include recent zoning changes, the number of abandoned homes in the immediate vicinity of the property, the condition of streets, parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding, land faults, and other natural or human-made environmental hazards. Such factors, if used, must be specifically documented in the appraisal. Location factors may be used to select comparable properties that have been sold or listed recently in the neighborhood for an appraisal.

(2) This section does not prevent consideration of factors justified by business necessity, including requirements of Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. However, where such factors have a disparate result on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located, as set forth in paragraph (b) of this section, the factors cannot be considered unless they both are justified by business necessity and no less discriminatory alternative to such factors exists.

(3) Age of the borrower or co-borrower may be considered in the underwriting process when required by statute, including the age requirements for Home Equity Conversion Mortgages (HECMs), 12 U.S.C. 1715z–20.

(e) *Business Practices Analysis.* Within ____ days of the effective date of this part, and thereafter periodically as requested by the Secretary, each GSE shall complete a Business Practices Analysis.

(1) Each Business Practices Analysis shall include a complete review of the GSE's business practices respecting the purchase of mortgages, including, without limitation, its underwriting guidelines and appraisal standards, repurchase requirements, pricing criteria, fees, and other procedures and practices affecting mortgage purchases that lead or could lead to discrimination because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. The purpose of the analysis is to determine whether any such business practices yield disparate results because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect, and whether such disparate results are justified by business necessity.

(2) Within ____ days after the effective date of this part, each GSE shall submit for the Secretary's review and comment a detailed outline and methodology for its Business Practices Analysis. Within ____ days following receipt of the outline and methodology, the Secretary will respond with comments, if any.

(3) Following completion of its Business Practices Analysis, each GSE shall report the results of the analysis to the Secretary. If a Business Practices Analysis identifies practices yielding disparate results affecting the protected classes under this subpart, the GSE must:

(i) Set forth fully the basis for the GSE's conclusion that a business necessity exists for the practice;

(ii) Present plans to end the practice; or

(iii) Report that the practice has ended.

§ 81.43 Review of underwriting guidelines.

(a) Each GSE shall analyze its underwriting and appraisal guidelines to determine whether such guidelines comply with the Fair Housing Act, the regulations promulgated thereunder, section 1325 of the Act, and this subpart including whether any of the guidelines are discriminatory on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of a dwelling or age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. Following the analysis, the GSE shall provide to the Secretary a full report on the analysis, including, without limitation, a description of remedies or plans to address any problems reported.

(b) Each GSE shall undertake its first review and analysis of its underwriting and appraisal guidelines as part of its Business Practices Analysis under § 81.42. Thereafter, each GSE shall conduct such a review and analysis periodically as requested by the Secretary.

(c) The Secretary shall review and comment on each report. The Secretary's comments shall specify any guidelines which are, in the Secretary's judgment, inconsistent with the Fair Housing Act or ECOA.

(d) *Revisions to underwriting guidelines.* Each time a GSE revises its underwriting or appraisal guidelines, the GSE shall submit a copy of the revision to the Secretary and a certification by the GSE that after reasonable evaluation and analysis, the GSE has determined in good faith that, to the best of its knowledge, the change does not and will not be discriminatory on the basis of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of age or location of a dwelling, or age of a neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect. To the extent that a revision has or will have disparate results on protected classes under this subpart, the GSE must set forth fully the basis for the GSE's conclusion that a business necessity exists for the practice. The Secretary may review and comment on such changes after they are implemented.

(e) *Additional requests for review.* The GSEs shall, at such times as requested by the Secretary, submit underwriting and appraisal guidelines to the Secretary for the Secretary's review and comment.

(f) *Day-to-day operations.* Review of the GSEs' underwriting and appraisal guidelines and revisions thereto shall not involve the Secretary in the day-to-day operations of the GSEs. The Secretary shall review underwriting guidelines to ensure compliance with the Fair Housing Act, the regulations promulgated thereunder, section 1325 of the Act, and this subpart.

§ 81.44 Submission of information to the Secretary.

(a) *General.* The GSEs shall submit information and data to the Secretary to assist in investigating whether any mortgage lender with which the GSE does business has failed to comply with the Fair Housing Act or ECOA.

(b) *Information requests and submissions.*—(1) *Information requests by the Secretary.* The Secretary may require the GSEs to submit information to assist in Fair Housing Act or ECOA investigations of lenders. Other Federal agencies responsible for the enforcement of ECOA may submit requests for information through the Secretary or directly to the GSEs. Requested information may include, without limitation, information on mortgages sold by the lender or lenders under investigation to the GSE, the mortgage sales of lenders operating in the same or similar areas, and information on representations and certifications to the GSEs by the lender or lenders under investigation.

(2) *Information from established data systems.* The Secretary may request that a GSE generate information or reports from its data system(s) to assist a Fair Housing Act or ECOA investigation. Such information may include, without limitation, comparing the loans purchased by the GSE from a particular lender to data on the racial composition of census tract(s) or providing data on loans sold to the GSE by lenders operating in the same geographical area.

(3) *Information available to a GSE.* Whenever a GSE knows of information relevant to a potential violation of the Fair Housing Act or the Equal Credit Opportunity Act by a particular lender or lenders, the GSE shall report such information to the Secretary.

(4) A GSE receiving any request(s) for information under this subsection shall reply in a complete and timely manner with any and all information that it possesses that is responsive to the request.

(c) *ECOA.* The Secretary shall submit any information received under paragraph (b) of this section concerning compliance with the Equal Credit Opportunity Act to appropriate Federal agencies responsible for ECOA enforcement, as provided in section 704 of ECOA.

(d) *Other assistance.* The GSEs shall, at the request of the Secretary or an official responsible for enforcing ECOA, provide other assistance to the Secretary or other officials in investigating and enforcing Fair Housing Act or ECOA violations. Such assistance may include providing additional relevant materials and testimony concerning information or data produced by the GSE.

§ 81.45 Submission of information to the GSEs.

(a) *Obtaining and disseminating information.* The Secretary shall obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act, the Equal Credit Opportunity Act, and/or State or local fair housing/lending laws, and make such information available to the GSEs as the Secretary deems appropriate in accordance with applicable law, memoranda of understanding, and other arrangements between the Secretary and Federal financial regulators and other agencies.

(b) *Permissible action.* The GSEs may take appropriate action under their procedures based on such information. Such violations may constitute violations of the GSEs' underwriting guidelines and representations or certifications of lenders.

§ 81.46 Remedial actions.

(a) *General.* The Secretary shall direct the GSEs to take one or more remedial actions, including suspension, probation, reprimand or settlement, against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act and ECOA, pursuant to a final adjudication on the record and an opportunity for a hearing under subchapter II of chapter 5 of title 5, United States Code.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

Indefinite suspension means that, until directed to do otherwise by the Secretary, the GSEs will refrain from purchasing mortgages from a lender.

Probation means that, for a fixed period of time specified by the Secretary, a lender, that has been found to have violated the Fair Housing Act or ECOA, will be subject automatically to more severe sanctions than probation, *e.g.*, suspension, if further violations are found.

Remedial action means a reprimand, probation, temporary suspension, indefinite suspension, or other remedial action.

Reprimand means a written letter to a lender from a GSE, which has been directed to be sent by the Secretary, stating that the lender has violated the Fair Housing Act or ECOA and warning of the possibility that the Secretary may impose more severe remedial actions than reprimand if any further violation occurs.

Temporary Suspension means that, for a fixed period of time specified by the Secretary, the GSEs will not purchase mortgages from a lender.

(c) *Institution of remedial actions.* (1) When a charge is issued against a lender for violating the Fair Housing Act or ECOA, the Secretary will notify each GSE. Such notice will inform the GSE of the facts and that the GSE may take action under its procedures.

(2) The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating ECOA only after a final determination on the charge has been made by an appropriate United States District Court or any other court of competent jurisdiction. The Secretary shall direct the GSE to take remedial action(s) against a lender charged with violating the Fair Housing Act only after a final determination on

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the matter has been made by a United States Court, a HUD Administrative Law Judge, or the Secretary.

(3) Following a final determination sustaining a charge against a lender for violating the Fair Housing Act or ECOA in accordance with paragraph (c)(2) of this section, the Secretary shall determine the remedial action(s) that the GSE is to be directed to take for such violation.

(4) In determining the appropriate remedial action(s), the Secretary shall solicit and fully consider the views of the Federal financial regulator responsible for the subject lender concerning the action(s) that are contemplated to be directed against such lender, prior to directing any such action(s). In determining what action(s) to direct, the Secretary in addition will also, without limitation, consider the following:

(i) The gravity of the violation;

(ii) If a judgment by an Administrative Law Judge or a court has previously been rendered against the lender for discriminatory actions, the lender's response to that judgment, including the actions taken and the timeliness of such actions;

(iii) The nature and extent of cases under substantially equivalent State or local laws, or ECOA against the lender including cases which were settled, conciliated, or otherwise resolved;

(iv) The nature and extent of fair housing enforcement actions or judgments by HUD, the Department of Justice, or other regulatory agencies, including cases that were settled or otherwise resolved;

(v) The nature and extent of private fair housing lawsuits and judgments against the lender including cases that were settled, conciliated, or otherwise resolved;

(vi) Whether the lender's actions demonstrate a discriminatory pattern or practice or an individual instance of discrimination;

(vii) The impact or seriousness of the harm;

(viii) The number of people affected by the discriminatory act(s);

(ix) Whether the lender operates an effective program of self assessment and correction;

(x) The extent of any actions or programs by the lender designed to compensate victims and prevent future fair lending violations;

(xi) The effect of the contemplated action(s) on the safety and soundness of the lender (in considering this factor the Secretary shall solicit and fully consider the views of the regulator responsible for regulating the lender and, where warranted, the Director); and

(xii) Any other information deemed relevant by the Secretary.

(d) *Notice of remedial action(s).* (1) Following the Secretary's decision concerning the appropriate remedial action(s) that the GSE is to be directed to take, the Secretary shall prepare and issue to the GSE and the lender a written notice setting forth the remedial action(s) to be taken and the date such remedial action(s) are to commence. The Notice shall inform the lender of its right to request a hearing on the appropriateness of the proposed remedial action(s), within 20 days of receipt of the Notice, by filing a request with the Docket Clerk, HUD Administrative Law Judge (ALJ).

(2) Where a lender does not timely request a hearing on a remedial action, the GSE shall take the action in accordance with the Notice.

(e) *Review and decision on remedial action(s).* (1) Where a lender timely requests a hearing on a remedial action, a hearing shall be conducted before a HUD ALJ and a final decision rendered in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent such provisions are not inconsistent with this subpart or the Act. The lender and the Secretary, but not the GSE, shall be parties to the action. At such hearing, the appropriateness of the remedial action for the violation(s) will be the sole matter for review. The validity or appropriateness of the underlying determination on the violation(s) shall not be subject to review at such hearing.

(2) The Secretary shall transmit to the GSEs each final decision by the Department on a remedial action and any dispositive settlement of a proceeding on such action.

(3) The GSE shall take the action(s) set forth in a final decision by the Department on remedial action(s) or any dispositive settlement of such a proceeding setting forth remedial action(s) in accordance with such decision or settlement.

§ 81.47 Violations of provisions by the GSEs.

(a) The Act empowers the Director of the Office of Federal Housing Enterprise Oversight to initiate enforcement actions for GSE violations of the provisions of section 1325 of the Act and these regulations. The Secretary shall refer violations and potential violations of section 1325 and these regulations to the Director.

(b) Where a private complainant or the Secretary is also proceeding against a GSE under the Fair Housing Act, the Assistant Secretary for Fair Housing and Equal Opportunity shall conduct the investigation of the complaint and make the reasonable cause/no reasonable cause determination required by section 810(g) of the Fair Housing Act. Where reasonable cause is found, a charge shall be issued and the matter will proceed to enforcement pursuant to sections 812(b) and (o) of the Fair Housing Act.

Subpart D—New Program Approval

§ 81.51 General.

Sections 305(c) of the Freddie Mac Act and 302(b)(6) of the Fannie Mae Act provide that neither GSE may implement any new program before obtaining the approval of the Secretary under section 1322 of the Act. Section 1322(a) provides that the Secretary shall require each GSE to obtain the Secretary's approval before implementing any new program. This subpart details the requirements and procedures for review of requests for new program approval by the Secretary.

§ 81.52 Requirement for program requests.

(a) Before implementing a new program, a GSE shall submit a request for new program approval ("program request") to the Secretary for the Secretary's review.

(b) Submission of a program request and Secretarial review is not required where the program that the GSE proposes to implement is not significantly different from:

(1) A program that has already been approved in writing by the Secretary (hereinafter an "approved program"); or

(2) A program that was engaged in by the GSE prior to October 28, 1992, the date of enactment of FHEFSSA (hereinafter an "authorized program")

(c) Section 1303(13) of FHEFSSA approves all authorized programs.

(d) Approved programs remain subject to all limitations and requirements under which such programs were being operated by the GSEs on or before October 28, 1992.

(e) *Significantly different programs.* (1) A significantly different program of a GSE is a program that materially differs from approved or authorized programs of the GSE by:

(i) Entailing substantially greater risk than the average financial risks under approved or authorized programs; or

(ii) Substantially expanding the GSE's role in the housing markets by involving new categories of borrowers, properties or other securities, borrowing purposes, or credit enhancements.

(2) Where a planned program reasonably raises questions as to whether it is significantly different from existing programs, the GSE shall submit a program request and may indicate in its request its views respecting whether the program is subject to the Secretary's review.

(3) New activities that are designed to refine approved or authorized programs by repackaging features of those programs, making technical improvements, or creating other non-material variations are not new programs.

(f) *Requests by the Secretary.* If a GSE does not submit a program request for a program, the Secretary may request information about a program and require that the GSE submit a program request. The GSE shall comply with the request and may indicate in such response its views respecting whether the program is subject to the Secretary's review.

§ 81.53 Processing of Program Requests.

(a) Each program request submitted to the Secretary by a GSE shall be in writing and shall be submitted to the Secretary and the Director, Financial Institutions Regulation, U.S. Department of Housing and Urban Development, Washington, D.C. For those requests submitted prior to the date occurring one year after the effective date of the regulations issued by the Director of OFHEO under section 1361(e) of FHEFSSA establishing the risk-based capital test, the GSE shall simultaneously submit the program request to the Director.

(b) Each program request shall include:

(1) An opinion from counsel stating the statutory authority for the new program (Freddie Mac Act section 305 (a) (1), (4), or (5), or Fannie Mae Charter Act section 302(b) (2)–(5));

(2) A good faith estimate of the anticipated dollar volume of the program over the short- and long-term;

(3) A full description of:

(i) The purpose and operation of the proposed program;

(ii) The market targeted by the program;

(iii) The delivery system for the program;

(iv) The effect of the program on the mortgage market; and

(v) Material relevant to the public interest.

(c) Following receipt of a program request, the Secretary and, where a program request is submitted before the date occurring one year after the effective date of the regulations issued by the Director under section 1361(e) of FHEFSSA establishing the risk-based capital test, the Director shall review the program request.

(d) *Transition standard for approval by the Secretary and the Director.* Program requests submitted by the GSEs before the date occurring one year after the effective date of the regulations issued by the Director under section 1361(e) of FHEFSSA establishing the risk-based capital test shall be approved by the Secretary unless:

(1) The Secretary determines that the new program is not authorized, for a Freddie Mac program, under sections 305(a) (1), (4), or (5) of the Freddie Mac Act, or, for a Fannie Mae program, sections 302(b) (2)–(5) of the Fannie Mae Charter Act;

(2) The Secretary determines that such program is not in the public interest; or

(3) The Director determines that such program would risk significant deterioration of the GSE's financial condition.

(e) *Permanent standard for approval by the Secretary.* Program requests submitted after the date occurring one year after the effective date of the regulations issued by the Director under section 1361(e) of FHEFSSA establishing the risk-based capital test shall be approved by the Secretary unless:

(1) The Secretary determines that the new program is not authorized, for a Freddie Mac program, under sections 305(a) (1), (4), or (5) of the Freddie Mac Act, or, for a Fannie Mae program, 302(b) (2)–(5) of the Fannie Mae Charter Act; or

(2) The Secretary determines that the program is not in the public interest.

(f) *Time for review.* Unless the Secretary and, where appropriate, the Director of OFHEO, need additional information, a program request shall be approved or disapproved within 45 days from the date it is received by the Director, Financial Institutions Regulation and, where applicable, the Director of OFHEO. If within 45 days after receiving a request, the Secretary and/or the Director of OFHEO determine that additional information is necessary to review the matter and request such information from the GSE, the time period for consideration may be extended for an additional 15 days.

(1) Where additional information is requested, the GSE must provide the requested information to the Secretary and, where appropriate, the Director, within 10 days of receipt of the request for additional information.

(2) If the GSE fails to furnish requested information within 10 days after the request for information, the Secretary may deny the GSE's request for approval based on such failure and so report to Congress under paragraph (g) of this section.

(g) *Approval or report.* Within the 45-day period or, if the period is extended, within 60 days following receipt of a program request, the Secretary shall approve the request, in writing, or submit a report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, explaining the reasons for not approving the request. If the Secretary does not act within the time period allowed, the GSE's program request will be deemed approved.

§ 81.54 Review of disapproval.

(a) *Programs disapproved as unauthorized.* Where the Secretary disapproves a program request on the grounds that the new program is not authorized under sections 305(a) (1), (4), or (5) of the Freddie Mac Act, or 302(b) (2)–(5) of the Fannie Mae Charter Act, the GSE may, within 30 days of the date of receipt of the decision on disapproval, request: An opportunity to review and supplement the administrative record for the decision; and/or a meeting with the Secretary or the Secretary's designee. If the request for either is timely, the Secretary shall grant the request.

(1) *Supplementing the record.* A GSE seeking to supplement the record in writing must submit written materials within 30 days after the request to supplement is granted.

(2) *Meeting.* Upon receipt of a timely request from a GSE for a meeting, the Secretary shall arrange such a meeting which shall be conducted by the Secretary or the Secretary's designee within 10 business days of receipt of the request. Such a meeting shall not be on the record and formal rules of procedure shall not apply. The GSE may be represented by counsel and may present all relevant information and materials to the Secretary or the Secretary's designee.

(3) *Determination.* Within 10 days after submission of the information and materials presented in writing or a meeting, the Secretary shall in writing withdraw, modify, or affirm the program disapproval and shall provide the GSE with that decision.

(b) *Program disproved under public interest determination.* Where a program request is disapproved because the Secretary determines that the program is not in the public interest or because the Director determined that the new program would risk significant deterioration of the GSE's financial condition, the Secretary shall provide the GSE with notice of, and an opportunity for, a hearing on the record

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regarding such disapproval. A request for a hearing must be submitted by a GSE within 30 days of the Report to Congress under § 81.53(g). The procedures for such hearings are provided in subpart G of this part.

Subpart E—Reporting Requirements

§ 81.61 General.

Sections 309(m) of the Fannie Mae Charter Act and 307(e) of the Freddie Mac Act require each GSE to collect, maintain, and provide to the Secretary data, in a form determined by the Secretary, on each single family and multifamily mortgage purchased by each GSE. Sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act require each GSE to report on its housing activities under the housing provisions of the Act to the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Secretary. Section 1327 of the Act provides that the Secretary shall require reports from the GSEs as the Secretary considers appropriate, and section 1328 requires the Secretary to submit an annual report to the Congress on the activities of the GSEs. This subpart establishes quarterly and annual data submission and reporting requirements to carry out the requirements of the GSEs' Charter Acts and FHEFSSA.

§ 81.62 Mortgage data.

(a) *Required data.* Under sections 309(m) of the Fannie Mae Charter Act and 307(e) of the Freddie Mac Act, the GSEs are required to provide the Secretary with the following data relating to mortgage purchases:

(1) *For single family mortgages:*

(i) The income, census tract location, race, and gender of mortgagors under such mortgages;

(ii) The loan-to-value ratios of purchased mortgages at the time of origination;

(iii) Whether a particular mortgage purchased is newly originated or seasoned;

(iv) The number of units in the housing subject to the mortgage and whether the units are owner-occupied; and

(v) Any other characteristics that the Secretary considers appropriate and to the extent practicable.

(2) *For multifamily mortgages:*

(i) Census tract location of housing;

(ii) Income levels and characteristics of tenants (where such data is available);

(iii) Rent levels for units in the housing;

(iv) Mortgage characteristics (such as the number of units financed per mortgage and the amount of loans);

(v) Mortgagor characteristics (such as nonprofit, for-profit, limited equity cooperative);

(vi) Use of funds such as new construction, rehabilitation, refinancing);

(vii) Type of originating institution; and

(viii) Any other information that the Secretary considers appropriate, to the extent practicable.

(b) *Data elements and aggregated data.* To implement the data collection and submission requirements for mortgage data under paragraph (a) of this section, each GSE shall collect and compile computerized loan level data on each mortgage purchased. Appendix D of this part details the loan level data.

(c) *Mortgage reports.* Each GSE shall submit to the Secretary quarterly a Mortgage Report consisting of the loan level data compiled under paragraph (b) of this section. Such data shall be aggregated and the mortgage reports shall include the dollar volume, the number of units, and the number of mortgages on owner-occupied and rental properties purchased by the GSE that do and do not qualify under each housing goal and subgoal as set forth in this part and aggregations of the data in the formats specified, in writing, by the Secretary. The GSEs shall submit the Mortgage Report for each of the first three quarters within 60 days of the end of the quarter, and each Mortgage Report shall provide data on both a quarterly and a year-to-date basis. Any time prior to submission of the Annual Housing Activities Report, the GSE may revise any of the quarterly reports for that year. The GSEs shall submit to the Secretary computer-generated data included in the Mortgage Report in the format specified by the Secretary.

§ 81.63 Annual Housing Activities Report.

(a) *General.* Sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act require each GSE to report annually to the Secretary and to the Congress concerning its housing activities under the housing goal provisions of FHEFSSA. Under the Act, the report must include:

(1) In aggregate form and by appropriate category:

(i) The dollar volume and number of mortgages on owner-occupied and rental properties that relate to each of the housing goals;

(ii) The number of families served by the GSE; the income class, race, and gender of home buyers served; the income class of tenants of rental housing (to the extent such information is available); the characteristics of census tracts; and the geographic distribution of the housing financed;

(2) The extent to which the mortgages purchased by the GSE have been used in conjunction with public subsidy programs;

(3) Information on the proportion of mortgages purchased by the GSE and financing housing for first-time home buyers;

(4) In aggregate form and by appropriate category the mortgage data required under § 81.62 for the year;

(5) A comparison of the level of securitization by the GSE versus portfolio activity by the GSE;

(6) An assessment of the GSE's underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures that affect the purchase of mortgages for low- and moderate-income families or that may yield disparate results based on the race of the borrower, including revisions thereto to promote affordable housing or fair lending;

(7) A description of trends in both the primary and secondary multifamily markets, including a description of progress made and any factors impeding progress toward the standardization and securitization of mortgage products for multifamily housing;

(8) A description of trends in the delinquency and default rates for mortgages secured by housing for low- and moderate-income families bought by the GSE, a comparison of these rates with rates for families above median income, and an evaluation of the impact of such trends on the standards and levels of risk of mortgage products serving low- and moderate-income families;

(9) A description of the seller servicing network of the GSE, including the volume of mortgages purchased from minority-owned, women-owned and community-oriented lenders and a description of the GSE's efforts to facilitate relationships with such lenders;

(10) A description of the activities undertaken by the GSE with nonprofit and for-profit organizations and with State and local governments and housing finance agencies, including activities supporting comprehensive housing affordability strategies under section 105 of the Cranston-Gonzalez National Affordable Housing Act; and

(11) Other information that the Secretary considers appropriate.

(b) To implement the requirements in paragraph (a) of this section and to assist the Secretary in preparing the Secretary's Annual Report to the Congress, each GSE shall submit to the Secretary an Annual Housing Activities Report including the information in paragraph (a) of this section and mortgage year-to-date data as specified, in writing, by the Secretary. Each GSE shall submit such report, within 60 days after the end of each calendar year, to the Secretary; the Committee on Banking and Financial Services of the House of Representatives; and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each GSE shall make its Annual Housing Activities Report available to the public at its principal and regional offices. Before making such reports available to the public, the GSE may exclude from the report any information that the Secretary has deemed proprietary.

(c) Subpart C of this part requires each GSE to submit Business Practices Analyses. To the extent such a Business Practices Analysis encompasses the information required under paragraph (a)(6) of this section, and where the GSE has conducted such a Business Practices Analysis within the preceding three years, the GSE may, in connection with meeting the requirements of paragraph (a)(6) of this section, reference such Analysis and use the Annual Housing Activities Report to update the GSE's progress concerning the GSE's most recent Business Practices Analysis.

§ 81.64 Periodic reports.

Each GSE shall provide to the Secretary all releases of information that are disclosed to entities outside of the GSE, at the time such information is disclosed, including, but not limited to:

(a) Material prepared for the GSE's Housing Advisory Council;

(b) Press releases;

(c) Investor reports; and

(d) Proxy statements.

§ 81.65 Other information and analyses.

In addition to the regular reports required under this subpart, the GSEs shall furnish to the Secretary the data underlying the reports required under this subpart and conduct additional analyses, as required by the Secretary. The GSEs shall submit additional reports concerning their activities, as the Secretary considers appropriate and requests.

§ 81.66 Submission of reports.

Each GSE shall submit all hard copy reports or other written information required under this subpart to the Secretary and the Director, Financial Institutions Regulation Staff, Department of Housing and Urban Development, 451 7th Street, SW. Washington, DC. 20410. Each GSE shall submit computerized data, reports, and information required under this subpart to the Director, Financial Institutions Regulations Staff.

Subpart F—Access to Information

§ 81.71 General.

This subpart provides for the establishment of a public use data base to make available to the public mortgage data that the GSEs are required to submit to the Secretary under section 309(m) of the Fannie Mae Charter Act, section 307(e) of the Freddie Mac Act, and subpart E of this part. The Act provides that proprietary information and data may not be made publicly available. This subpart establishes mechanisms for the GSEs to designate information as proprietary and for the Secretary to determine whether information is proprietary and to withhold such proprietary information from the public. This subpart provides procedures for disclosure of information submitted by or relating to the GSEs under the Freedom of Information Act or at the request of Congress and sets forth protections for treatment of GSE information by the Secretary, Departmental officers and employees, and contractors. This subpart provides that information submitted by or relating to the GSEs that would constitute a clearly unwarranted invasion of personal privacy shall not be disclosed to the public.

§ 81.72 Public use data base and public information.

(a) *General.* The Secretary shall establish and make available for public use, in accordance with this section, a public use data base and shall make available for public inspection and copying the GSE's Annual Housing Activities Reports, except for information the Secretary determines to be proprietary.

(b) *Examination of submissions.* Following receipt of mortgage data and Annual Housing Activity Reports from the GSEs and any other information submissions from the GSEs, the Secretary shall, as expeditiously as possible, examine the submissions for information that:

(1) Has been deemed proprietary under this part or subsequent order;

(2) The GSE has designated as proprietary in accordance with § 81.73;

(3) Would constitute a clearly unwarranted invasion of personal privacy if such information were released to the public; or

(4) Is required to be withheld under applicable laws or regulations.

(c) *Public data and proprietary data.* The Secretary shall exclude from the public use data base and from public disclosure all information within the scope of paragraphs (b)(1), (b)(3), and (b)(4) of this section and, following a determination under § 81.74, concerning data identified by the GSE as proprietary, the Secretary shall place all public data in the public use data base.

(d) *Access.* The Secretary shall provide such means as the Secretary determines are reasonable for the public to gain access to the public use data base. To obtain access to the public use data base, the public should contact the Director, Financial Institutions Regulation, 451 7th St. SW. Washington, DC. 20410, (202) 708–1464 (this is not a toll-free number).

(e) *Fees.* The Secretary may charge reasonable fees to cover the cost of providing access to the public use data base. These fees will include the costs of system access, computer use; copying fees, and other costs.

§ 81.73 GSE request for proprietary treatment.

(a) *General.* A GSE may request proprietary treatment of data and information submitted to the Secretary. Such a request does not in any manner affect the GSE's responsibility to provide the information to the Secretary.

(b) *Request for proprietary treatment.* Where a GSE seeks to have information treated as proprietary information by the Secretary and withheld from public disclosure, the GSE shall submit a Request for Proprietary Treatment that shall:

(1) Clearly designate those portions of the information to be treated as proprietary with a prominent stamp, typed legend, or other suitable form of notice, stating "Proprietary Information—Confidential Treatment Requested by [name of GSE]" on each page or portion of each page. If such marking is impractical under the circumstances, the GSE shall attach a cover sheet prominently marked "Proprietary Information—Confidential Treatment Requested by (name of GSE)" to the information for which confidential treatment is requested;

(2) Accompany its request with a certification by an officer or authorized representative of the GSE that the information is proprietary;

(3) Submit a statement explaining the reasons for the assertion that the information is proprietary, including without limitation:

(i) A description of the information;

the nature of the adverse consequences to the GSE, financial or otherwise, that would result from its disclosure and the reasons therefor, including any adverse

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effect on the GSE's competitive position. Conclusory statements that particular information would be useful to competitors or would impair business dealings, or similar statements, ordinarily will not be considered sufficient to justify a determination that the information is proprietary;

(ii) The existence and applicability of any prior determinations by the Department, other Federal agencies, or a court, concerning similar information;

(iii) The measures taken by the GSE to protect the confidentiality of the information in question and of similar information prior to and after its submission to the Secretary;

(iv) The extent to which the information is publicly available from other entities, such as information available to the public through local government offices or records, including deeds, recorded mortgages, and similar documents;

(v) The difficulty of a competitor, including a seller/servicer, obtaining or compiling the information; and

(vi) Such additional facts and such legal and other authorities as the GSE may consider appropriate.

§ 81.74 Secretarial determination on GSE request.

(a) *General.* The Secretary shall review Requests for Proprietary Treatment from the GSEs and other information, if any, that the Secretary may elicit from other sources. The Secretary shall determine whether the information designated as proprietary by the GSE is proprietary information, or whether the information is not proprietary and should be released notwithstanding the GSE's request. During the time a request is pending determination by the Secretary, information submitted by the GSE that is the subject of such request shall not be disclosed to, or subject to the examination of data by, the public or any person or representative of any person or agency outside of HUD.

(b) *Determination to withhold.* (1) Where the Secretary determines that information is proprietary, the Secretary shall notify the GSE that the request has been granted and may, in the discretion of the Secretary, issue a temporary order, a final order or a regulation providing that the information is not subject to public disclosure. Where the Secretary determines that information is proprietary, the Secretary shall not make such information publicly available.

(2) Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the **Federal Register**, except that any portions of an order that would reveal the proprietary information shall be withheld from public disclosure.

(3) Publications of temporary orders shall invite public comments where feasible.

(c) *Determination not to withhold or to seek further information.* Where the Secretary determines, in response to a Request for Proprietary Treatment, that information submitted by the GSE may not be proprietary information, that the request may only be granted in part, or that questions exist concerning the request, the following procedure shall apply:

(1) The Secretary shall provide the GSE with an opportunity for a meeting with departmental officers or employees to discuss the matter, for the purpose of gaining additional information concerning the request. Such meetings shall be informal and not on the record;

(2) Following the meeting, based on the Secretary's review of the information and the GSE's views as to whether the information is proprietary, the Secretary shall make a determination;

(3) If the Secretary determines to withhold the information as proprietary, the procedures in paragraph (b) of this section shall apply; and

(4) If the Secretary determines that any information covered by the request is not proprietary, the Secretary shall provide notice in writing to the GSE of the reasons for this conclusion, and such notice shall provide that the Secretary shall not release the information to the public for 7 days.

§ 81.75 Mortgage data withheld by order and regulation.

(a) *List of withheld data.* Appendix E of this part shall include a list and appropriately identify those categories of mortgage data ("data elements") that the GSEs submit under sections 309(m) of the Fannie Mae Charter Act and 307(e) of the Freddie Mac Act, and that are determined to be proprietary information. Appendix E shall identify the reasons data elements have been withheld.

(b) *Updating of list.* Following issuance of regulations or orders to withhold mortgage data, the Secretary shall expeditiously update Appendix E where needed to inform the public of any modifications to the list of proprietary information.

§ 81.76 Requests for GSE information.

(a) *General.* Information submitted to the Secretary by the GSEs is subject to request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department shall process such FOIA requests in accordance with the Department's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16, and other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12,600.

(b) *Protection from disclosure.* In responding to requests for information submitted by or relating to the GSEs, the Secretary may invoke provisions of the Freedom of Information Act and FHEFSSA to protect information from disclosure.

(1) *Exemption (b)(8).* Under section 1319F of the Act, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD.

(2) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption 4 (5 U.S.C. 552(b)(4)), to withhold from public disclosure confidential GSE business information, and exemption 6 (5 U.S.C. 552(b)(6)), to protect information that would constitute a clearly unwarranted invasion of personal privacy.

(c) *Requests for business information under Executive Order 12600.* The Department will process FOIA requests for confidential business information of the GSEs to which FOIA exemption 4 may apply in accordance with 24 CFR part 15 and the predisclosure notification procedures of Executive Order 12600. Under these procedures, the Secretary will not release records marked by the GSE as proprietary or records that are reasonably expected to contain proprietary materials, if at all, until the following occurs:

(1) The Secretary notifies the GSE that a request for such records has been received;

(2) The GSE is provided a reasonable opportunity to provide detailed comments on and objections to the release of the records; and

(3) Following receipt of any objection by a GSE, if the Secretary determines not to sustain wholly the objection, the GSE must be notified in writing of the Secretary's determination and given a brief explanation of such decision. The Secretary shall provide such notification enough in advance of a specified disclosure date so that the GSE will have an opportunity to obtain judicial review.

(d) *Release in response to requests on behalf of Congress, the Comptroller General, a Subpoena, or Other Legal Process.* If the Department receives a request on behalf of a congressional committee or subcommittee, the Comptroller General, or a subpoena from a court of competent jurisdiction, or is otherwise compelled by law to release information determined to be proprietary under this section, the Secretary shall provide the information in accordance with the request without regard to the provisions of this section. In releasing requested information under this paragraph, the Secretary will, where applicable, include a statement with the information to the effect that the GSE regards the information as proprietary, public disclosure of the information may cause competitive harm to the GSE, and the Secretary has determined that the information is proprietary under this section. To the extent practicable, the Secretary will provide notice to the GSE after a request under this paragraph is received and before the information is provided in response to the request.

§ 81.77 Protection of GSE information.

(a) *Protection of information by officers and employees.* The Secretary will institute all reasonable safeguards to protect GSE information, including, but not limited to, advising all departmental officers and employees having access to information submitted by or pertaining to either GSE of the legal restrictions against unauthorized disclosure of such information under HUD Standards of Conduct regulations, 24 CFR part 0; the government-wide Standards of Ethical Conduct, 5 CFR part 2635; and the Trade Secrets Act, 18 U.S.C. 1905. Officers and employees shall be advised of the penalties for unauthorized disclosure ranging from disciplinary action under 24 CFR part 0 and 5 CFR part 2635 to criminal prosecution.

(b) *Protection of information by contractors.* (1) In relevant contracts and agreements where contractors have access to confidential business information submitted by or pertaining to either GSE, the Department shall include detailed provisions specifying that neither the contractor nor any of its officers, employees, agents, or subcontractors may release data submitted by or pertaining to either GSE without HUD's authorization, and that unauthorized disclosure may be a basis for:

(i) Terminating the contract for default;

(ii) Suspending or debarring the contractor; or

(iii) Criminal prosecution of the contractor, its officers, employees, agents, or subcontractors under the Federal Criminal Code.

(2) Contract provisions shall require safeguards against unauthorized disclosure, including training of contractor and subcontractor agents and employees, and that the contractor indemnify and hold HUD harmless against unauthorized disclosure of data belonging to the GSEs or HUD.

Subpart G—Procedures for Actions and Review of Actions

§ 81.81 General.

This subpart sets forth procedures for the Secretary to issue cease-and-desist orders and institute civil money penalties to enforce housing goal provisions at subpart C of this part and information submission and reporting requirements under subpart E of this part. The subpart also provides procedures for hearings, enforcement of Secretarial actions, public disclosure of agreements, and judicial review of enforcement actions.

§ 81.82 Cease-and-desist proceedings.

(a) *Issuance.* The Secretary may issue and serve upon a GSE a notice of charges for a cease-and-desist order, in accordance with this section, if the Secretary determines:

(1) The GSE has failed to submit a housing plan that substantially complies with § 81.22 within the applicable period for submission under that section;

(2) The GSE is engaging or has engaged, or the Secretary has reasonable cause to believe that the GSE is about to engage, in any failure to make a good faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) The GSE has failed to submit any of the information required under sections 309 (m) or (n) of the Fannie Mae Charter Act, or 307 (e) or (f) of the Freddie Mac Act, or under §§ 81.62 or 81.63 of this part.

(b) *Procedure for issuance.*—(1) *Notice of charges.* The Secretary shall notify the GSE in writing of the notice of charges. The notification shall provide:

(i) A concise statement of the facts constituting the conduct upon which the Secretary has relied in determining that an order should be issued and the violations with which the GSE is charged;

(ii) Notice of the GSE's right to a hearing on the record on the cease-and-desist order;

(iii) A time and date for a hearing on the record on whether the order should issue;

(iv) The consequences of failing to contest the matter; and

(v) The effective date of the order if the GSE does not contest the matter.

(2) *Administrative Law Judge.* The hearing and other proceedings conducted under this section shall be presided over by a HUD Administrative Law Judge, in accordance with § 81.84 and 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent such provisions are not inconsistent with any of the procedures in these regulations or the Act.

(3) *Issuance of order.* If the Administrative Law Judge finds, based on the record, that any of the conduct specified in the notice of charges sufficient to sustain the charges has been established by substantial evidence (or a GSE consents to the order), the Administrative Law Judge may issue and serve upon the GSE an order requiring the GSE to:

(i) Submit a housing plan in compliance with § 81.22;

(ii) Comply with the housing plan; or

(iii) Provide the information required under subpart E of this part.

(4) *Effective date.* An order under this section shall be effective upon the expiration of the 30-day period beginning on the service of the order upon the GSE (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the Secretary stays, modifies, terminates, or sets aside the order as provided in § 81.84(l).

§ 81.83 Civil money penalties.

(a) *Imposition.* The Secretary may impose a civil money penalty, in accordance with the provisions of this section, on a GSE that has failed:

(1) To submit a housing plan that substantially complies with § 81.22 within the applicable period required under the regulations;

(2) To make a good faith effort to comply with a housing plan for the GSE submitted and approved by the Secretary; or

(3) To submit any of the information required under subsection (m) or (n) of Section 309 of the Fannie Mae Charter Act, under subsection (e) or (f) of section 307 of the Freddie Mac Act, or under §§ 81.62 or 81.63.

(b) *Amount of penalty.* The Secretary shall determine the amount of the penalty, and such penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, $25,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a) (2) or (3) of this section.

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$10,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Secretary shall give consideration to such factors as:

(1) The gravity of the offense;

(2) Any history of prior offenses;

(3) The GSE's ability to pay the penalty;

(4) The nature of the injury to the public caused by the failure;

(5) The benefits received by the GSE because of the GSE's failure;

(6) Deterrence of future violations that would result from the penalty; and

(7) Other factors that the Secretary determines in the public interest warrant consideration.

(d) *Procedures.*—(1) *Notice of determination to impose civil money penalties.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties ("Notice of Intent"). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the conduct upon which the Secretary has relied in determining that a civil penalty should be imposed;

(ii) The amount of the civil money penalty that the Secretary intends to impose;

(iii) Notice of the GSE's right to a hearing on the record on the civil money penalty;

(iv) The procedures to follow to obtain such a hearing;

(v) The consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless stayed or rescinded.

(2) To appeal the Secretary's decision to impose a civil money penalty, a GSE shall, within 20 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) The hearing and other proceedings conducted under this section shall be presided over by a HUD Administrative Law Judge, in accordance with § 81.84 and 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent such provisions are not inconsistent with any of the procedures in these regulations or the Act.

(4) *Issuance of order.* If the Administrative Law Judge finds, on the record made at a hearing, that any conduct specified in the notice of charges has been established by a preponderance of the evidence (or a GSE consents to the order pursuant to § 81.84), the Administrative Law Judge may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of the Office of Federal Housing Enterprise Oversight may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* If a GSE fails to comply with an order by the Secretary imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343 of the Act, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the GSE and such other relief as may be available. The monetary judgment may, in the court's discretion, include attorney fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty is not subject to review.

(f) *Settlement by Secretary.* The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

(g) *Deposit of penalties.* The Secretary shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

§ 81.84 Hearings.

(a) *Applicability.* The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that such programs are not in the public interest.

(b) *Hearing requirements*—(1) Hearings shall be held on the record and in the District of Columbia.

(2) Hearings shall be conducted by a HUD Administrative Law Judge authorized to conduct proceedings under 24 CFR part 30.

(c) *Timing.* Unless an earlier or later date is requested by a GSE and such request is granted by the Administrative Law Judge, hearings shall be fixed for a date not earlier than 30 days, nor later than 60 days, after: service of the notice of charges under § 81.82; service of the Notice of Intent to Impose Civil Money Penalt(ies) under § 81.83; or a request for a hearing under § 81.54(b).

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR 30.10, 30.15, and part 30, subpart E, to the extent that such provisions are not inconsistent with any of the procedures in these regulations or the Act.

(e) *Method of service.* Any service required or authorized to be made by the Secretary under this subpart may be made to the Chief Executive Officer of a GSE or such other representative as the GSE may designate in writing to the Secretary.

(f) *Subpoena authority*—(1) *General.* In the course of or in connection with any hearing, the Secretary and/or the Administrative Law Judge shall have the authority to:

(i) Administer oaths and affirmations;

(ii) Take and preserve testimony under oath;

(iii) Issue subpoenas and subpoenas duces tecum; and

(iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

(2) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(3) *Enforcement.* The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the judicial district in which such proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section.

(4) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by the GSE or from its assets.

(g) *Failure to appear.* If a GSE fails to appear at a hearing through a duly authorized representative, the GSE shall be deemed to have consented to the issuance of the cease-and-desist order, the imposition of the penalty, or the disapproval of the new program, whichever is applicable.

(h) *Public hearings.* All hearings shall be open to the public, unless the Secretary, in the Secretary's discretion, determines that holding an open hearing would be contrary to the public interest.

(i) *Decision of Administrative Law Judge.* After each hearing, the Administrative Law Judge shall issue an initial decision and serve the initial decision on the GSE, the Secretary, any other parties, and the General Counsel of the Department.

(j) *Review of initial decision*—(1) *At the Secretary's discretion.* The Secretary, in the Secretary's discretion, may review any initial decision.

(2) *Requested by a party.* Any party may file within 15 days after receipt of the initial decision a notice of appeal to the Secretary seeking review of an initial decision. The Secretary shall decide within 30 days after receipt of a notice of appeal whether to review or to decline review of the initial decision.

(k) *Final decision.* (1) The initial decision will become the final decision of the Department unless the Secretary or the Secretary's designee issues a final decision within 90 days after the initial decision is served on the Secretary. The Secretary by written notice to the parties may extend such 90 day period for an additional 30 days.

(2) *Issuance of final decision by Secretary.* The Secretary or the Secretary's designee may review any finding of fact, conclusion of law, or order contained in the initial decision of the Administrative Law Judge and may issue a final decision in the proceeding. Any decision shall include findings of fact upon which the decision is predicated. The Secretary or the Secretary's designee may affirm, modify, or set aside, in whole or in part, the initial decision or may remand the initial decision for further proceedings. The final decision shall be served on all parties and the Administrative Law Judge.

(l) *Decisions on remand.* If the initial decision is remanded for further proceedings, the Administrative Law Judge shall issue an initial decision on remand within 60 days of the date of issuance of the final decision, unless it is impractical to do so.

(m) *Modification.* The Secretary or the Secretary's designee may at any time, modify, terminate, or set aside any order, upon such notice and in such manner as the Secretary or designee considers proper. When a petition for judicial review is timely filed as provided in § 81.87, and after the Secretary has filed the record in the proceeding with the court, the Secretary or designee may modify, terminate, or set aside any such order with permission of the court.

§ 81.85 Public disclosure of final orders and agreements.

(a) *General.* The Secretary shall make available to the public:

(1) Any written agreement or other written statement for which a violation may be redressed by the Secretary, or any modification to or termination of such agreement or statement, unless the Secretary, in the Secretary's discretion, determines that public disclosure would be contrary to the public interest, or determines under paragraph (b) of this section that public disclosure would seriously threaten the GSE's financial health or security;

(2) Any order that is issued with respect to any administrative enforcement proceeding initiated by the Secretary under this subpart and that has become final in accordance with §§ 81.84 and 81.87; and

(3) Any modification to or termination of any final order made public pursuant to this section.

(b) *Delay of public disclosure under exceptional circumstances.* If the Secretary makes a determination in writing that the public disclosure of any final order pursuant to paragraph (a)(1) of this section would seriously threaten a GSE's financial soundness, the Secretary may delay the public disclosure of such order for a reasonable time.

(c) *Documents filed under seal in public enforcement hearings.* The Secretary may file any document or part thereof under seal in any hearing under this subpart if the Secretary determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Secretary shall keep and maintain a record, for not less than 6 years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to, or in connection with, any enforcement proceeding initiated by the Secretary under this subpart.

(e) *Disclosures to Congress.* This section shall not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

§ 81.86 Enforcement and jurisdiction.

(a) *Enforcement.* If a GSE fails to comply with a final decision, the Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of the notice or order. Such court has the jurisdiction and power to order and require compliance with such notice or order.

(b) *Limitation on jurisdiction.* Except as otherwise provided in sections 1341–49 of the Act, no court has jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under §§ 81.82 or 81.83, or to review, modify, suspend, terminate, or set aside any such notice or order.

(c) *Other relief.* The Secretary may obtain such other relief as may be available, including attorney fees and other expenses, in connection with the action.

(d) *Interest.* In the case of civil money penalties, interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

§ 81.87 Judicial review.

(a) *Commencement.* A GSE may obtain review of any final order issued under § 81.84 by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Secretary be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Secretary and the Chief Docket Clerk, Office of Administrative Law Judges.

(b) *Filing of record.* Upon receiving a copy of a petition, the Chief Docket Clerk, Office of Administrative Law Judges, shall file in the court the record in the proceeding, as provided in 28 U.S.C. 2112.

(c) *Jurisdiction.* Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Secretary shall be exclusive (except as provided in § 81.84(l)), to affirm, modify, terminate, or set aside, in whole or in part, the order of the Secretary.

(d) *Review.* Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) *Order To pay penalty.* Such court has the authority in any such review to order payment of any penalty imposed by the Secretary under this subpart.

(f) *No automatic stay.* The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Secretary.

Subpart H—Book-Entry Procedures

§ 81.91 Definition of terms.

In this subpart, unless the context otherwise requires or indicates:

Book-entry GSE security means a GSE security in the form of an entry made as

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prescribed in this subpart on the records of a Reserve Bank.

Date of call means:

(1) With respect to GSE securities issued by Fannie Mae under section 304 (d) and (e), the date fixed in the authorizing resolution of the Board of Directors of Fannie Mae on which the obligor will make payment of the security before maturity in accordance with its terms;

(2) With respect to GSE securities issued by Fannie Mae under section 304(b) of the Fannie Mae Charter Act, the date fixed in the offering notice issued by Fannie Mae; and

(3) With respect to GSE securities issued by Freddie Mac, the date fixed in the authorizing resolution of the Board of Directors of Freddie Mac on which Freddie Mac will make payment of the security before maturity in accordance with its terms.

Definitive GSE security means a GSE security in engraved or printed form.

GSE security means any obligation of a GSE (except short-term discount notes and obligations convertible into shares of common stock) issued under the Freddie Mac Act, or sections 304 (b), (d), or (e) of the Fannie Mae Charter Act, in the form of a definitive GSE security or book-entry GSE security.

Member bank means any national bank, State bank, or bank or trust company that is member of a Reserve Bank.

Pledge includes a pledge of, or any other security interest in, GSE securities as collateral for loans or advances or to secure deposits of public monies or the performance of an obligation.

Reserve Bank means a Federal Reserve bank and its branches acting as Fiscal Agent of a GSE and, when indicated, acting in its individual capacity or as Fiscal Agent of the United States.

§ 81.92 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with the provisions of this subpart, to:

(a) Issue book-entry GSE securities by means of entries on its records that shall include the name of the depositor, the amount, the loan title (or series), and maturity date;

(b) Effect conversions between book-entry GSE securities and definitive GSE securities;

(c) Otherwise service and maintain book-entry GSE securities; and

(d) Issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) that specifies the amount and description of any securities; that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 81.93 Scope and effect of book-entry procedure.

(a) (1) A Reserve bank as fiscal agent of a GSE may apply the book-entry procedure provided for in this subpart to any GSE securities that have been or are hereafter deposited for any purpose in accounts with it in its individual capacity, under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(i) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;

(ii) By a member bank for its sole account;

(iii) By a member bank held for the account of its customers;

(iv) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or

(v) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

(2) The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such GSE securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depositary with respect to such GSE securities.

(b) A Reserve bank, as fiscal agent of a GSE, shall apply the book-entry procedure to GSE securities deposited as collateral pledged to the United States under current revisions of Department of the Treasury Circulars Nos. 92 and 176 (31 CFR parts 203 and 202), and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other GSE securities deposited with a Reserve bank, as fiscal agent of the United States.

(c) Any person having an interest in GSE securities that are deposited with a Reserve bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry GSE securities pursuant to the provisions of this subpart and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 81.94 Transfer or pledge.

(a) (1) A transfer or a pledge of book-entry GSE securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this subpart, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(i) Have the effect of a delivery in bearer form of definitive GSE securities;

(ii) Have the effect of a taking of delivery by the transferee or pledgee;

(iii) Constitute the transferee or pledgee a holder; and

(iv) If a pledge, effect a perfected security interest therein in favor of the pledgee.

(2) A transfer or pledge of book-entry GSE securities effected under paragraph (a) of this section shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable GSE securities, or any interest therein, that is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this subpart, including securities in book-entry form under § 81.93(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the GSE securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry GSE securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry GSE securities either in its individual capacity or as fiscal agent of the United States is not a bailee for purposes of notification of pledges of those securities under this section, or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. Where transferable GSE securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or similar party that regularly accepts in the course of its business GSE securities as a custodial service for customers and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof, and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given, or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this subpart, notwithstanding any transfer or pledge effected or perfected under this section.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry GSE securities or any interest therein.

(d) A Reserve bank shall, upon receipt of appropriate instructions, convert book-entry GSE securities into definitive GSE securities and deliver them in accordance with such instructions; no such conversion shall affect existing interests in such GSE securities.

(e) A transfer of book-entry GSE securities within a Reserve bank shall be made in accordance with procedures established by the bank not inconsistent with this subpart. The transfer of book-entry GSE securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 81.95 Withdrawal of GSE securities.

(a) A depositor of book-entry GSE securities may withdraw them from a Reserve bank by requesting delivery of like definitive GSE securities to itself, or on its order, to a transferee.

(b) GSE securities that are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

§ 81.96 Delivery of GSE securities.

A Reserve bank that has received GSE securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty, even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve bank shall be fully discharged of its obligations under this subpart by the delivery of GSE securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve bank) may obtain GSE securities in definitive form only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank.

§ 81.97 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry GSE securities of registered GSE securities held by a Reserve bank (in either its individual capacity or as fiscal agent of the United States) on the effective date of this subpart for any purpose specified in § 81.93(a). Registered GSE securities deposited thereafter with a Reserve bank for any purpose specified in section 81.93 shall be assigned for conversion to book-entry GSE securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR part 306, as amended or revised, so far as applicable, shall be to "Federal Reserve Bank of _____, as fiscal agent of [name of the GSE], for conversion to book-entry [name of the GSE] securities."

§ 81.98 Servicing book-entry GSE securities; payment of interest, payment at maturity or upon call.

Interest becoming due on book-entry GSE securities shall be charged on the interest-due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged in the account on the date of maturity or call, and the redemption proceeds, principal and interest shall be disposed of in accordance with the depositor's instructions. For Fannie Mae, interest becoming due on book-entry Fannie Mae securities shall be charged to Fannie Mae's account at the New York Federal Reserve Bank.

§ 81.99 Treasury Department regulations; applicability to GSEs.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than subpart O), as amended or recodified from time to time, shall apply, insofar as appropriate, to GSE obligations for which a Reserve bank shall act as Fiscal Agent of the GSE, and to the extent that such provisions are consistent with agreements between the GSE and the Reserve banks acting as Fiscal Agents of the GSE. Definitions and terms used in Treasury Department Circular No. 300 should read as though modified to effectuate the application of the regulations to the GSEs.

Subpart I—Other Provisions

§ 81.101 Equal employment opportunity.

Fannie Mae and Freddie Mac shall comply with sections 1 and 2 of Executive Order 11478 (3 CFR 803 (1966–70 Compilation), as amended by Executive Order 12106, 3 CFR 263 (1978)), providing for the adoption and implementation of equal employment opportunity, as required by section 1216 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833e).

§ 81.102 Regulatory examinations.

Each GSE may be examined at any time by the Secretary or any contractors, agents, officers, or employees of the Department (hereinafter "the examiners") to monitor compliance with the Secretary's regulatory authorities under these regulations, the Act, or the applicable Charter Act. The examiners shall have access, upon request to a GSE, to any relevant books, accounts, financial records, reports, files, or other papers, things, or property belonging to or in use or used by the GSE.

Appendix A—Secretarial Considerations to Establish the Low- and Moderate-Income Housing Goal

A. Establishment of Goal

In establishing the annual low- and moderate-income housing goal, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires the Secretary to consider:

1. National housing needs;

2. Economic, housing, and demographic conditions;

3. The performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;

4. The size of the conventional conforming mortgage market serving low- and moderate-income families relative to the size of the overall conventional conforming mortgage market;[1]

[1] "Conventional" mortgages are those which do not carry any government guarantee or insurance. That is, conventional mortgages exclude FHA, FmHA, and VA loans. "Conforming" loans are those whose principal amount does not exceed the maximum allowed for purchase by Fannie Mae or Freddie Mac. Currently, this limit is $203,150 for 1-unit properties, except that it is 50 percent higher

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5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and

6. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish these goals, the Secretary relied upon data gathered from the American Housing Survey, the 1990 Census of Population and Housing, the 1991 Residential Finance Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) reports, and the GSEs. The Secretary used data provided by the GSEs to determine their prior performance in meeting the needs of low- and moderate-income families and their financial condition. These data included loan-level information on all mortgages purchased by the GSEs in 1993.

Section C discusses each of the factors listed above. Section D summarizes the Secretary's rationale for selecting the low- and moderate-income goals for 1995 and 1996.

C. Consideration of the Factors

Overview of Sections C.1 and C.2. These sections cover a range of topics on housing needs and economic and demographic trends that are important for understanding mortgage markets. Certain information, such as trends in income inequality, is provided because it helps explain problems that the low- and moderate-income housing goal is intended to address. Other information, such as trends in refinancing activity, is provided because it describes the market environment in which the GSEs must operate and is therefore useful for gauging the reasonableness of specific levels of the low- and moderate-income goal. Finally, information is provided that documents the severe housing problems faced by lower income families.

This information has led the Secretary to the following conclusions:

- Purchasing a home became increasingly difficult for lower income and younger families during the 1980s. Low-income families with children, who could most benefit from the advantages of ownership, bore the brunt of the decline in ownership rates. The share of the nation's children living in owner-occupied homes fell from 71 percent to 63 percent between 1980 and 1991.
- Very low-income renters often must pay an unduly high share of their income for rent.
- Several demographic changes will affect the demand for housing over the next few years. The continued increase in immigrants will increase the demand for both rental and owner-occupied housing. Non-traditional households have become more important as overall household formation rates have slowed. With later marriage, divorce, and other non-traditional living arrangements, the fastest growing household groups are single-parent and single-person households.
- The volume of mortgage originations is expected to fall from its 1993 record level of one trillion dollars to about $600 billion in 1995. Purchase mortgages, including those for first-time homebuyers, will replace refinance mortgages as the dominant mortgage type.
- The predominance of purchase mortgages, as opposed to refinance mortgages, will make it easier for the GSEs to meet a given low- and moderate-income goal. Historically, mortgages for low- and moderate-income borrowers have represented a larger proportion of purchase mortgages than of refinance mortgages.
- The recent rise in interest rates from 25 year lows could make it more difficult for marginal borrowers to afford homeownership. However, interest rates continue to remain lower and housing more affordable than was true for any previous extended period since 1977. Borrowers will also be helped by the rising incomes that accompany economic growth.

1. National Housing Needs

a. Housing Problems Among Low- and Moderate-Income Owners and Renters

Under the income definitions in the Act, almost three-fifths of U.S. households qualified as "low-" or "moderate-"income families in 1991. Almost half of all homeowners (49 percent) had incomes below their (unadjusted) area median family income, while 71 percent of renters had income below their area's HUD-adjusted median family income.[2]

Housing needs in 1991 varied sharply with income. One-eighth of owners with moderate incomes (income 80 to 100 percent of area median) and one-fourth of moderate-income renters had a housing problem, compared to 17 percent of low-income owners and 44 percent of low-income renters (with income 60 to 80 percent of area median). Moreover, two-thirds of the 14 million households with incomes below 30 percent of median paid more than 30 percent of income for housing or lived in inadequate or crowded housing.[3]

b. Affordability Problems and Worst Case Housing Needs

Finding affordable housing is by far the most common housing problem for American families nationwide.[4] Between 1979 and 1991, shares of households paying more than 30 percent of their income for housing fluctuated around 42 percent among renters and rose from 17 percent to 20 percent among owners.[5] Over this period, the number of low-income renter households spending 50 percent or more of their income on housing rose from 4.3 million in 1978 to 6.0 million in 1991.[6] Poor homeowners also pay high proportions of their income for housing costs. Between 1978 and 1989, the share of poor homeowners spending over 60 percent of income on housing rose from 30.6 percent to 33.1 percent.[7]

Although affordability problems affect two-fifths of low-income renters and one-eighth of low-income owners, they are most frequent and severe among the very lowest income owners and renters. In 1991, when the average gross rent/income ratio for renters with incomes above area median income was 23 percent, this ratio was 72 percent for renters with incomes below 30 percent of area median income and 41 percent for renters with incomes between 30 and 49 percent of median.[8]

Priority problems—defined as paying more than half of income for rent and utilities, being displaced, or living in severely inadequate housing—were heavily concentrated among renters with incomes below 50 percent of area median. Half of renters with incomes below 30 percent of median, and one-fourth of those with incomes 31–50 percent of median, had these severe "worst case" housing needs.[9]

According to HUD's third Congressionally-mandated study of worst case needs, severe affordability problems were not only the overwhelming cause of worst case needs but often a family's only housing problem.[10]

in Alaska, Hawaii, Guam, and the Virgin Islands. The conforming loan limit is adjusted annually based on the October-to-October percentage increase in house prices, as determined by the Federal Housing Finance Board's Monthly Interest Rate Survey. In practice, the conforming loan limit has only been increased since 1990; in the case of declines in house prices, the limit has been held constant.

[2] HUD is required by statute to adjust median family income in developing its official income cutoffs for each Metropolitan Statistical Area (MSA) and non-metropolitan county. Income limits based on HUD-Adjusted Area Median Family Incomes (HAMFI) are adjusted (1) With upper and lower caps for areas with low or high ratios of housing costs to income; (2) by setting state nonmetropolitan average income as a floor for nonmetropolitan counties; and (3) by household size. The adjusted annual estimates of area median family income provide the base for the "50 percent" and "80 percent" of HAMFI cutoffs that are assigned to a household of four. Household size adjustments then range from 70 percent of the base for a 1-person household to 132 percent of the base for an 8-person household.

[3] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1991* (April 1993) performed by HUD Office of Policy Development and Research.

[4] Since the early 1980s, "affordable housing" has generally been interpreted as housing in which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[5] U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1991*, April 1993.

[6] 1974–1979 figures from Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed," 3 *Housing Policy Debate* 1, 16, 1992. 1991 figure from *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991* HUD–1481–PDR, June 1994.

[7] Center on Budget and Policy Priorities and Low Income Housing Service, *A Place to Call Home*, April 1989; and U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1989*, July 1991.

[8] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, *American Housing Survey for the United States in 1991*, April 1993, performed by HUD Office of Policy Development and Research.

[9] Congress defines "worst case needs" for housing assistance as unassisted renters with incomes below 50 percent of area median income who have priority problems.

[10] *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991*. HUD–1481–PDR, June 1994.

Fully 94 percent of the 5.3 million households with worst case needs reported severe rent burden as a problem, and for almost three-fourths, severe rent burden was their only problem.

The number of households with worst case needs increased by nearly 400,000 between 1989 and 1991, rising most rapidly among families with children. Large families were more likely than smaller ones to have priority problems and the need to move to another housing unit because of crowding or excessive rent burden. Between 1989 and 1991, worst case needs among very low-income families with three or more children increased from 34.7 percent to 40.2 percent. Elderly households were the least likely to have worst case needs.

c. Increasing Numbers of Homeless Individuals and Families

The homeless clearly have the most acute housing needs. Precise counts of homeless individuals are difficult to determine, but a study by the Urban Institute estimated that there were between 496,000 and 600,000 homeless persons in the United States during a seven-day period in March 1987, and more than one million persons were homeless at some time during that year.[11] The Congressional Budget Office estimated a one-day homeless population of approximately 700,000 for 1991.[12] The Census Bureau supplemented its regular 1990 census operations with a special one-night "Street and Shelter Night" count of the homeless, and found more than 228,000 homeless individuals at emergency homeless shelters and at pre-identified street locations on the night of March 20, 1990.[13] Recent studies of turnover in shelters suggest, moreover, that the number "who experience at least one episode of homelessness * * * (over a one to five-year period) may exceed the best estimates of single-shot street and shelter counts by a factor of ten or more."[14]

d. Unmet Demands for Homeownership

Homeownership is a key aspiration of most Americans and a basic concern of government. Homeownership fosters family responsibility and self-sufficiency, expands housing choice and economic opportunity, and promotes community stability. Ownership also improves access to the larger homes and better neighborhoods particularly needed by those families with children. Children of homeowners are more likely to graduate from high school, less likely to commit crime, and less likely to have children as teenagers than children of renters.[15] Recent surveys indicate that lower-income and minority families who do not own their homes will make considerable sacrifices to attain this goal.

During the 1980s, the goal of homeownership became more elusive for low- and moderate-income families. Ownership rates rose dramatically in the late 1940s and 1950s, increasing from 43.6 percent to 61.9 percent between 1940 and 1960. During the 1960s, homeownership rates rose more slowly, reaching 62.9 percent by 1970, and—after several years of high house price appreciation—an all-time high of 65.6 percent in 1980. In the early 1980s, historically high interest rates, low price appreciation, and a series of deep regional recessions caused the homeownership rate to decline to 63.9 percent by 1985. The rate increased only slightly between 1985 and 1993.

Declines in ownership rates during the 1980s were most pronounced for younger, lower-income households, particularly families with children. Although homeownership rates held steady or increased among families where the head of the household was born before or shortly after World War II, homeownership rates declined among younger households with lower incomes:

Between 1980 and 1992, homeownership among younger households dropped roughly 10 percentage points from 1980 levels, from 43.3 percent to 33.1 percent for households with the head aged 25 to 29, and from 61.1 percent 50.0 percent for households with the head aged 30 to 34. These declines were concentrated among single-parent households and married couples with children.[16]

Homeownership rates fell by 4 percentage points each for moderate-income households and low-income households during the 1980s, and by 3 percentage points for households below 50 percent of area median, adjusted for family size. At each income level, declines were greatest for families with children. Among very low-income families with children, homeownership rates dropped by nearly a fourth.[17]

The stability in ownership after 1985 resulted from increases among elderly households and single individuals, offset by further declines among families with children. Declines among families with children were greatest at incomes 80–100 percent and 30–50 percent of unadjusted area median income.

In sum, the families with children who could most benefit from ownership were most adversely affected by declines in ownership. Between 1980 and 1991, the dip in total ownership rate from 65.6 to 64.2 percent translated into a fall of seven percentage points among families with children, from an ownership rate of 70.4 percent down to 63.4 percent.

e. Obstacles to Increased Homeownership

Insufficient income, high debt burdens, and limited savings pose obstacles for younger families in purchasing a home. As home prices skyrocketed during the late 1970s and early 1980s, real incomes stagnated, with earnings growth particularly slow for blue collar jobs and less educated workers. The combination of relatively high interest rates and slow income growth through most of the 1980s made homeowner mortgage payments claim larger fractions of family income, and increasing rents made saving for home purchase more difficult. Thus, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments. A 1991 survey by the National Association of Home Builders found that one-fifth of first-time homeowners had to rely on their relatives for most of their down payment.[18] A survey by the National Association of Realtors found that approximately one-third of recent first-time homeowners relied on gifts and loans from parents.[19]

In addition to low income, high debts are a primary reason households cannot afford homes. Nearly 53 percent of renter families have both insufficient income and excessive debt problems that may cause difficulty in financing a home purchase. High debt-to-income ratios frequently make potential borrowers ineligible for mortgages based on the underwriting criteria established in the conventional mortgage market.

In a recent study, the Census Bureau estimated that in 1991 nearly 90 percent of renters could not afford a modest home (priced at the bottom twenty-fifth percentile) in their Census division.[20] Seventy-eight percent could not afford a home priced at the tenth percentile. Such affordability problems are especially pronounced among single-parent households. While almost 76 percent of married-couple renter families could not afford a modestly priced home in their area using fixed-rate FHA financing, the figure rises to 90.3 percent for single male householders and 96 percent for households headed by single women.

2. Economic, Housing, and Demographic Conditions

A number of economic, housing, and demographic considerations have influenced the Secretary's determination of housing goals for low- and moderate-income families. Increasing income inequality and changes in household composition suggest that needs for housing affordable to very low-income families will continue to be most acute, placing additional pressure on the widespread shortages of rental housing

[11] Interagency Council on the Homeless, *Executive Summary: The 1990 Annual Report of the Interagency Council on the Homeless*, 1991.

[12] *Ibid.* at 21. This figure was based on a memorandum written by the Congressional Budget Office which used the 1987 Urban Institute study as its starting point and was updated using a 5 percent annual growth rate.

[13] Interagency Council on the Homeless, Fact Sheet, "How Many Homeless People Are There?," April 1991, No. 1–1.

[14] Interagency Council on the Homeless, *Priority: Home! The Federal Plan to Break the Cycle of Homelessness*, 1994, p. 19.

[15] These tendencies are especially strong for lower income households. Children of low-income homeowners are 15 percent more likely to stay in school than children of non-homeowners. Michelle White and Richard Green, "Measuring the Benefits of Homeowning: Effects on Children," University of Chicago, unpublished paper, February 1994.

[16] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing*, 1993, Table A–4.

[17] Kathryn Nelson and Jill Khadduri, "To Whom Should Limited Housing Resources Be Directed?" *Housing Policy Debate* Vol. 3, 1992, pp. 1–55, Table 3.

[18] National Association of Home Builders, *Profile of the New Home Buyer Survey*, 1991.

[19] National Association of Realtors, *Survey of Homeowners and Renters*, 1991.

[20] Howard Savage and Peter Fronczek, *Who Can Afford to Buy A House in 1991?* U.S. Bureau of the Census, Current Housing Reports H121/93–3, July 1993.

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affordable to incomes below 30 percent of median income. Reacting to high vacancy rates in market-rate housing, multifamily starts have been low in the last few years, though starts have picked up in 1994. Although volatile interest rates strongly influence both starts and mortgage market activity, rates that are relatively low by historical standards have improved affordability for first-time buyers.

a. Underlying Demographic Conditions

(1) *Household Formations.* The demand for housing and mortgages depends heavily on household formations. During the 1970s, as the leading edge of the baby boom generation (born between 1946 and 1964) entered adulthood, household formation surged to an annual average of 1.7 million. Aided by rising incomes and low real interest rates, household heads aged 25–34 purchased homes in record numbers. During the 1980s, annual household growth fell slightly to an average of 1.5 million. Many in the "housing upgrade" group (aged 35–44) had benefitted from substantial increases in the prices of their first homes, and were able to afford bigger and higher quality homes during the 1980s. Household formation is expected to drop sharply during the 1990s. The Census Bureau projects that the older baby boomers (aged 45 to 54) will be the fastest growing population group during this decade.

The effects of these demographic trends on housing demand have been debated in the economics literature for several years. In 1989, Gregory Mankiw and David Weil predicted that the aging of the baby boomers and the small size of the following "baby bust" generation would substantially reduce housing demand and cause housing prices to collapse during the 1990s.[21] Other researchers disagree. Reductions in housing demand due to aging of the baby boom generation could be offset by many factors, including rising incomes, pent-up demand for homeownership by those priced out of the housing market during the 1980s, and high levels of immigration.[22]

(2) *Immigration.* The continued increase in immigration during the 1990s will help offset declines in the demand for housing caused by the aging of the baby boom generation. During the 1980s, there were 6 million legal immigrants into the United States, up from 4.2 million during the 1970s and 3.2 million during the 1960s. The Hispanic population residing in the U.S. increased by 50 percent during the 1980s, while the Asian population doubled. About one-quarter of the Hispanics living in the U.S. in 1990 had immigrated during the 1980s. Immigration is projected to add even more new Americans in the 1990s than it did during the 1980s. Asians and Pacific Islanders are expected to be the fastest growing group, with annual growth rates that may exceed 4 percent in the 1990s. Total population is now projected to rise by 25 million in each of the decades from 1991 to 2020. The tendency of immigrants, particularly Hispanics, to locate in certain "gateway" cities (e.g., Los Angeles and Miami) will placed increased demands on the housing stock in some major urban areas.

(3) *Non-traditional Households.* While overall growth in new households has slowed, non-traditional households have become more important. With later marriages, divorce, and other non-traditional living arrangements, household growth has been fastest among single-parent and single-person households. The number of single parents with one or more children under 18 was 10.5 million in 1992; the vast majority of those single parents were women.[23] About 62 percent of Black families with children were single-parent families in 1992, compared with 34 percent for Hispanics and 24 percent for Whites. Since only 35 percent of single-parent households are homeowners compared to 74 percent of married couples, their increase should spur demand for rental housing and for affordable ownership opportunities. In addition, HUD's analysis of the nation's worst case housing needs shows that female-headed households suffer some of the most severe housing problems.

(4) *Single Person Households* are playing an increasingly important role in the housing market. Singles accounted for one-fourth of all households in 1990. While one-half owned their own home, most of these were elderly people with little or no mortgage debt and probably no intention of entering the housing market. Never-married singles, on the other hand, have been a significant factor in the homebuying market in large urban areas, according to the annual Home Buyers Survey of the Chicago Title and Trust Company. They accounted for a third of first-time homebuyers in 1992 and 1993, up from slightly over one-quarter of first-time buyers in 1990 and 1991, and as discussed above, ownership rates among non-elderly single individuals rose steadily during the 1980s.[24] Low interest rates during the past two years apparently enticed even more single renters to become homeowners.

b. Economic Conditions

(1) *Income Inequality.* Growing inequality in the distribution of income makes it more difficult for those at the bottom of the income distribution to purchase adequate shelter. The share of the nation's income received by the richest 5 percent of American families rose from 16.6 percent in 1977 to 24.5 percent in 1990, while the share received by the poorest 20 percent fell from 5.7 percent to 4.3 percent. This widening income inequality was due mainly to wage rates becoming more unequal—as the economy moved away from manufacturing to more advanced computer and knowledge-intensive industries, the wages of unskilled, entry-level, and blue collar workers have fallen relative to the wages of professional and technical workers. The result has been an increase in the working poor and a squeezing of the middle class.

(2) *Interest Rates.* Volatile interest rates continue to be a major determinant of housing and mortgage market activity. As the 1980s began, mortgage interest rates were above 12 percent and rose quickly to over 15 percent. After 1982, they drifted slowly downward to the 9 percent range in 1987 before rising to over 10 percent in the 1989–1990 period. Rates returned to 9.32 percent in 1991 and then fell further to averages of 8.24 percent in 1992 and 7.20 percent in 1993. The October 1993 rate of 6.80 percent was the lowest level in more than twenty years.[25]

During 1992 and 1993, homeowners responded to the record low rates by refinancing existing mortgages. While refinancing accounted for less than 25 percent of mortgage originations in 1989–90 when interest rates exceeded 10 percent, the sharp decline in interest rates led refinancings to account for over 50 percent of all mortgage originations in 1992 and 1993.[26] Because of the heavy refinancing activity, single-family mortgage originations surged from less than $500 billion in 1990 to record levels of $894 billion in 1992 and over $1 trillion in 1993.

Single-family housing starts have also responded to interest rates, with record low volumes in 1981 and 1982, peaks in 1986 and 1987, and less severe lows in 1990 and 1991. Low interest rates and economic recovery in 1992 and 1993 made homeownership more affordable and helped turned the housing market around. Single-family starts increased from less than 900,000 during the recessionary years of 1990 and 1991 to 1.030 million in 1992 and 1.126 million in 1993. Volume in 1993 was almost 35 percent higher than 1991's recessionary low of 840,000.

(3) *First-time Home Buyers.* First-time home buyers have been the driving force in the recovery of the nation's housing market in the past two years. First-time homebuyers are typically people in the 25–34 year-old age group that purchase modestly priced houses. As the post-World War II baby boom generation ages, the percentage of Americans in this age group has shrunk, from 28.3 percent of those over age 25 in 1980 to 25.4 percent in 1992.[27] Nonetheless, as reported in a series of annual Home Buyers Surveys conducted by the Chicago Title and Trust Company, first-time homebuyers have bucked these demographic trends to increase their share of home sales. During the 1980s, first-time buyers accounted for about 40 percent of home sales; this figure rose to 45 percent in 1991, 48 percent in 1992, and 46 percent in 1993.[28] The 1992 figure was the highest percentage for first-time buyers since the annual Home Buyers Survey was initiated in 1976.

Among the active first-time buyers was a record contingent of single-individual households. As noted above, the 1992 and 1993 Home Buyers Surveys found that approximately 30 percent of first-time buyers in these years were single, compared to 21 percent in 1991. The more affluent, move-up home buyers, on the other hand, have recently played a smaller role. A sluggish economy, uncertain outlooks for many white-collar jobs, and slow house price appreciation apparently have kept many trade-up buyers out of the housing market.

Reflecting these trends, the average income for recent home buyers has fallen. In 1991, one of every three buyers had a family income of $50,000 or less; in 1993, those earning less than $50,000 accounted for 44 percent of all home buyers. Apparently, two years of low interest rates induced many renters who had previously been priced out of the market to try homeownership. A strong pent-up demand to own a home should not be surprising given the large reductions in homeownership rates experienced by several groups during the 1980s (see Section C.1.d above). A recent survey of renters by the National Association of Realtors (NAR) indicated that only one-third prefer to remain renters for the foreseeable future.[29] Thus there are many potential home buyers among the 34 million households that are currently renting.

c. Housing Conditions

(1) *Affordability of Home Purchase.* Potential home buyers in 1992 and 1993 enjoyed the most affordable market in almost twenty years. The National Association of Realtors (NAR) tracks housing affordability by measuring the degree to which an average family can afford monthly mortgage payments on a typical house, assuming that the family has enough cash for a 20 percent down payment. Specifically, NAR's composite affordability index measures the ratio of median family income to the income required to qualify for a conventional loan on a median-priced house. After averaging slightly over 110 between 1986 and 1991, the index jumped to 125 in 1992 and 137 in 1993.[30] The 1993 figure indicates that the U.S median family income was 37 percent more than was needed to qualify for a mortgage on the nation's median priced house. The South and North Central census regions were the most affordable for homebuyers, with affordability indexes of 141 and 176, respectively, in 1993. Affordability remained much more of a problem in the Northeast and West, where NAR's indexes were around 110 to 117

In addition to its overall affordability index, NAR also estimates the ability of first-time home buyers to purchase a modestly-priced home. When this index equals 100, the typical first-time buyer can afford the typical starter home under existing financial conditions with a 10 percent down payment. NAR's first-time home buyer index increased from 75 to 89 between 1991 and 1993. The fact that this index remained below 100 indicates that the monthly mortgage payment continued to place a significant burden on first-time home buyers even during a period of record low interest rates. The recent jump in interest rates reduced housing affordability slightly. According to Freddie Mac' primary market survey, interest rates for conventional, 30-year, fixed rate mortgages increased from a 25 year low of 7.05 percent in the fourth quarter of 1993 to 8.46 percent in the third quarter of 1994.[31] This increase can be expected to make it more difficult for potential first-time home buyers to qualify for conventional mortgages, as reflected in the third dip in NAR's composite affordability index from 142 in the fourth quarter of 1993 to 128 in the third quarter of 1994. The first-time home buyer's index dropped from 92.3 to 83.0 during this period. Both indexes would have fallen further if incomes had not risen to partially offset the effects of increased interest rates. However, interest rates continue to remain lower and housing more affordable than was true for any previous extended period since 1977. Moreover, as the economic recovery continues, rising incomes should continue to offset the effects of higher interest rates.

(2) *Declines in the Number of Low Rent Units in the Housing Stock.* The rental housing stock considered affordable to poor families (the number of units with rents less than $300 per month, in constant 1989 dollars) fell from 9.9 million units in 1974 to 9.5 million units in 1985, and to 9.2 million units in 1991.[32] Such declines in the number of low-rent units, combined with sharp increases in the number of poor families, underlie Congressional concerns about the need to expand the supply of affordable rental housing.[33]

Such shortages of rental units relative to renters occur mainly among units affordable to renters with incomes below 30 percent of area median. Analysis of Census data shows that nationally there were only four units for every five renters with incomes below 30 percent of area median in 1990, while for renters with incomes below 50 percent of median nationally there was a *surplus*—1.24 units for every renter.[34] Similarly, at the state level, 30 states had shortages of units affordable below 30 percent of median, while only 3 had shortages of units affordable below 50 percent of median.[35] Such shortages were strongly correlated with the incidence of worst case needs by state. The combined effects of a declining low-rent housing stock and the demand for rental units by young families that are locked out of the homeownership market have kept rents high for poor renter families.

(3) *Multifamily Production and Finance.* This section discusses three important trends in the multifamily industry, including recent shifts in construction levels, projections for the mortgage market, and shifts in financing trends. Peaks and troughs have characterized multifamily construction since 1959. The most recent peak year was 1985, in which 576,000 multifamily units were started.[36] The downturn from this peak was particularly severe, and resulted from lower net household growth and the loss of favorable tax treatment due to the Tax Reform Act of 1986. For the last 3 years, multifamily housing production has been at the lowest levels recorded since the Government began collecting these data 35 years ago. In 1993 only 131,200 multifamily units were started, far below the annual average of 435,000 units from 1964 through 1992.

While multifamily production will probably continue at below-average rates for the next few years, signs indicate that this sector of the housing industry has begun a modest recovery in 1994. Much of what is being produced now is because of Low-Income Housing Tax Credits—about 50,000 units in both 1992 and 1993. In addition, an increasing share is being produced by non-traditional developers, particularly community-based, nonprofit developers. Although current production levels do not meet the demand for low-cost rental housing, housing affordable to moderate income families is capturing a large share of the multifamily units that are being produced.

Multifamily mortgage originations have paralleled the patterns of multifamily construction starts. Conventional mortgage originations peaked at $41 billion in 1986 (a year after the peak in construction starts), and then declined every year to a trough of about $25 billion in 1991 and 1992, while the 1993 level rose to almost $29 billion. The 1994 level is projected to be about $33 billion, with an increase to the $35–$40 billion range for 1995 and 1996.

The decline in total multifamily lending in the late 1980s accompanied a change in the structure of the market.[37] In 1985, thrift institutions originated a peak of 42 percent of multifamily mortgages. However, their holdings have decreased by $41 billion since 1988, due to defaults and write-offs, failure of institutions and refinancing of thrift-held

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[21] W. Gregory Mankiw and David N. Weil, "The Baby Boom, the Baby Bust, and the Housing Market," *Regional Science and Urban Economics*, May 1989.

[22] See, for example, Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 1994*, 1994.

[23] U.S. Department of Commerce, Bureau of the Census, *How We're Changing: Demographic State of the Nation: 1993* Special Studies Series, P–23, No. 184, February 1993.

[24] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America*, January 1992 and January 1993.

[25] Council of Economic Advisers, *Economic Indicators*, September 1994 and *Economic Report of the President*, February 1994.

[26] Monthly average refinancing data obtained from Freddie Mac's *Primary Mortgage Market Survey*

[27] U.S. Department of Commerce, Bureau of the Census, *Money Income of Households, Families, and Persons in the United States: 1992*, Special Studies Series P–60, No. 184, Table B–25, October 1993.

[28] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America*, January 1992, January 1993, and January 1994.

[29] National Association of Realtors, *Survey of Homeowners and Renters*, 1991

[30] See *News Release*, "Housing Affordability Sustained Despite Rise in Interest Rates", National Association of Realtors, August 9, 1994.

[31] The most recent surveys for the last weeks of November showed that interest rates had settled in the neighborhood of 9.25 percent.

[32] 1974 and 1985 figures from Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing*, 1992, p. 35. The 1991 figure is calculated from Exhibit 21 of the 1994 Joint Center report on *The State of the Nation's Housing*.

[33] U.S. Senate, 1992. Report accompanying S.3031, the *National Affordable Housing Act Amendments of 1992* 102d Congress, 2d Session, Report 102–232, p. 8.

[34] Amy Bogdon *et al.*, *National Analysis of Housing Affordability, Adequacy, and Availability*, HUD–1448–PDR, 1994, pp 52–53.

[35] U.S. Department of Housing and Urban Development, *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991*; HUD–1481–PDR, 1994, Table 8.

[36] The record high was 906,200 multifamily units started in 1972.

[37] The following discussion is drawn from The Hamilton Securities Group Inc, The National Multi-Housing Council, and The National Apartment Association, "A Report on the Multifamily Mortgage Industry," 1994.

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mortgages. Multifamily mortgages remained close to 8.5 percent of total thrift assets from 1985 to 1992, but the high failure rate of these institutions has reduced their total assets. The decline of thrift multifamily lending is part of a larger pattern of more concentration in the multifamily finance market. An additional pattern is the decline of long-term and fixed rate financing. Over 60 percent of outstanding multifamily debt either carries a variable interest rate, or will have a balloon payment due in less than 10 years.

The lack of a strong secondary market for multifamily loans has made it more difficult to obtain debt financing for multifamily housing. In 1993, Fannie Mae purchased $4.6 billion in multifamily mortgages, while Freddie Mac purchased $191 million. This compares to almost $20 billion in total multifamily mortgage originations in that year. Thus, the GSEs' purchases amounted to about 17 percent of originations. Given that some of the GSEs' purchases were seasoned loans, their share of the current market is even smaller. Freddie Mac had been out of the multifamily business completely for nearly five years, and only began in December 1993 to fully re-enter the market. In 1993, Fannie Mae and Freddie Mac held or had securitized about 10 percent of outstanding multifamily mortgage debt. State and local housing finance agencies and insurance companies each held another 10 percent of the outstanding debt. Depository institutions held 36 percent, but as mentioned earlier, thrifts have decreased holdings considerably in recent years. GNMA held 12 percent, pension funds held 2 percent, and the remainder was spread in small shares over a number of sources. The decline in direct federal subsidies and the collapse of the thrift industry decreased the lending sources for affordable multifamily housing. The country needs an established secondary market for multifamily mortgages which has the depth and resiliency of the single-family system to bring new sources of primary financing into the market.

3. Performance and Effort of the GSEs Toward Achieving the Goal in Previous Years

Each GSE submitted data on its 1993 performance to the Secretary, in formats specified by the Department, and based on the procedures specified by the Department in the Notice of Interim Housing Goals published in the **Federal Register** on October 13, 1993. This is the first time that such detailed information has been made available on the GSEs' activities, which in 1993 involved the purchase of 2.97 million mortgages on 3.24 million dwelling units by Fannie Mae and the purchase of 2.32 million mortgages on 2.38 million dwelling units by Freddie Mac. Each GSE also submitted detailed loan level data on each loan it purchased in 1993. HUD has done extensive analyses to verify the GSEs' stated performance and to measure aspects of their mortgage purchase activities in 1993 not contained in the tables they submitted to the Department.

Fannie Mae's data for 1993 show that 31.8 percent of single family dwelling units, 95.4 percent of multifamily dwelling units, and 35.6 percent of total units financed by its mortgage purchases were affordable to low- and moderate-income families. Thus there was a significant increase in the low- and moderate-income percentage from 28 percent in 1992, and Fannie Mae's performance substantially exceeded the 30 percent goal established for Fannie Mae by the Secretary.[38]

Freddie Mac's data for 1993 show that 26.9 percent of single family dwelling units, 94.3 percent of multifamily dwelling units, and 29.2 percent of total units financed by its mortgage purchases were affordable to low- and moderate-income families. Thus there was a significant increase in the low- and moderate-income percentage from 24 percent in 1992, and Freddie Mac's performance exceeded the 28 percent goal established for Freddie Mac by the Secretary.

On November 29, 1994 both enterprises reported on their purchases for the first three quarters of the year. Fannie Mae stated that 43.3 percent of its purchases were for low- and moderate-income families, and the corresponding figure for Freddie Mac was 36.3 percent. Thus both enterprises have sharply increased their low- and moderate-income purchases above the 1993 level, and both are running well above the 1994 goal of 30 percent.[39] For all periods, performance would be somewhat higher utilizing the scoring provisions of this regulation, in contrast to those spelled out in the **Federal Register** on October 13, 1993.

For both enterprises, although they surpassed their low- and moderate-income goals in 1993, more than 50 percent of their single-family purchases and their total purchases were for families with incomes in excess of 120 percent of area median income, as indicated in the following table:

DISTRIBUTION OF DWELLING UNITS IN TOTAL GSE PURCHASES BY INCOME CLASS OF MORTGAGOR OR RENTER, 1993

(In percent)

Income of mortgagor(s) or renter(s) relative to area median income	Fannie Mae			Freddie Mac		
	Single-family	Multi-family	Total	Single-family	Multi-family	Total
0%–60%	6.3	43.3	8.7	5.3	71.2	5.6
60%–80%	11.1	43.8	13.2	10.3	19.5	10.4
80%–100%	14.2	8.3	13.9	14.0	3.7	14.0
100%–120%	14.5	1.8	13.7	14.7	2.2	14.6
Exceeds 120%	53.8	2.8	50.6	55.7	3.4	55.4
Total	100.0	100.0	100.0	100.0	100.0	100.0

This indicates that achievement of the low- and moderate-income goal in 1993 did not deter the GSEs from buying many mortgages on properties purchased by higher income families.

4. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

This section explains the Secretary's methodology for estimating the low- and moderate-income ("low-mod") share of the mortgage market. Ideally, computing this share would be straightforward, consisting of three steps:

(1) Projecting the size of the four major property types included in the conventional conforming mortgage market: (a) Single-family owner-occupied dwelling units, (b) single-family owner-occupied, two-to-four units (called "2–4's"), (c) single-family one-to-four investment units (called "1–4's"), and (d) multifamily units (properties with more than 4 units). Property types (b), (c), and (d) consist of rental units. As noted below, property types (b) and (c) must sometimes be combined due to data limitations; in this case, they are referred to as "single-family 1–4 rental units".

(2) Projecting the percentage that are low- and moderate-income for each of the above four property types (for example, the percentage of those single-family owner-occupied dwelling units financed by mortgages in a particular year that are occupied by households with incomes below the area median).

(3) Multiplying the four percentages in (2) by their corresponding market shares in (1), thus arriving at an estimate (weighted average) of the overall share of dwelling units financed by mortgages that are occupied by low- and moderate-income families.

The four property types are analyzed separately because of their differences in low-mod occupancy; rental properties tend to have much higher percentages of low-income occupants than owner-occupied properties. It is often necessary to distinguish between purchase and refinance mortgages because purchase mortgages are more apt to finance units occupied by low-income occupants.

Unfortunately, complete and consistent mortgage data are not readily available to easily carry out the above three steps. Therefore, HUD had to combine information from several data sources in order to estimate the market shares. Two approaches were taken—one based on American Housing Survey and Residential Finance Survey data and one based on 1993 HMDA data and projections of the mortgage market for 1995 and 1996. HUD also relied on the mortgage purchase data for 1993 supplied by the GSEs. The following sections explain HUD's methodology and present results of several sensitivity analyses of the estimated size of the low-mod market.

a. American Housing Survey/Residential Finance Survey Method

To obtain an overall perspective of the mortgage market, data from the American Housing Surveys for 1985, 1987, 1989, and 1991 were analyzed. This data showed that, overall, 30 percent of those families who recently purchased or refinanced their homes, and who obtained conventional mortgages below the conforming loan limits, had incomes below the area median. Restricting the American Housing Survey (AHS) analysis to 1991 (the latest year that for which data is available) yields about the same estimate (31 percent) for the low-mod share of single-family owner-occupied properties.

The AHS does not include data on mortgages for rental properties (1–4 properties including (b) and (c) above and multifamily); rather, it includes data on the characteristics of the existing housing stock and recently completed rental properties. Current data on the income of prospective or actual tenants has also not been readily available for rental properties. Where such income information is not available, the Act provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low-income or moderate-income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

Analysis of the same four American Housing Surveys shows that for 1–4 unit unsubsidized rental properties ((b) and (c) properties are combined), 90 percent of all units, and 69 percent of units constructed in the preceding three years had gross rent (contract rent plus the cost of all utilities) less than or equal to 30 percent of area median family income. For multifamily unsubsidized rental properties, the corresponding figures are 92 percent of all units, and 83 percent of units constructed in the preceding three years. Restricting the analysis to 1991 gave similar results—91 percent and 68 percent for 1–4 properties and 92 percent and 83 percent for multifamily properties. It should be noted that data for recently completed units probably underestimate the low- and moderate-income percentage of rental housing under the Act's definition, because they exclude purchase and refinance transactions on older buildings, which generally charge lower rents than newly-constructed buildings.

The GSEs' 1993 purchase data for rental properties also provides a useful reference point. Freddie Mac's data suggest a 66 percent low-mod share for rental 1–4 properties and Fannie Mae's data suggest a 73 percent low-mod share.[40] The GSE percentages are similar to the AHS low-mod share (69 percent) for recently completed 1–4 properties. On the multifamily side, Fannie Mae's data suggest a 95 percent low-mod share which is about the same as the AHS estimate for existing properties. Freddie Mac's multifamily business is too small to provide reliable data.

To calculate the size of the potential market for mortgages financing housing for low- and moderate-income families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. In determining the proportions of dwelling units in these three different types of properties, HUD used data from the Residential Finance Survey (RFS) on the number of properties with conventional conforming mortgages acquired during the 1987–91 period, and the total number of dwelling units for each type of property, derived from the same source. Based on this data, HUD estimated that, of total dwelling units in properties financed by recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were in 1–4 family rental properties, and 25.6 percent were located in multifamily rental properties.[41] Applying the AHS percentages of affordable dwelling units (30 percent of owner-occupied dwelling units, 69 percent of single-family recently completed rental units, and 83 percent of recently completed multifamily rental units) to these percentages of properties results in an estimate that 51 percent of the dwelling units secured by conventional mortgages, eligible for purchase by the GSEs, are affordable to low- and moderate-income families.[42]

The 51 percent figure is based on the percentage estimates for newly-constructed affordable rental units rather than the higher estimates for all affordable rental units and GSE purchases. Using the AHS low-mod estimates for the existing stock (90 percent for 1–4 properties and 92 percent for multifamily properties) increases the low-mod share to 57 percent. Using the low-mod percentages of Fannie Mae's 1993 rental purchases (75 percent for 1–4 properties and 95 percent for multifamily properties) suggests a 54 percent low-mod share.

One concern with the Residential Finance Survey data is the seemingly high percentage share of multifamily units, given that multifamily mortgage originations have declined from their high levels in the mid- to late-1980s. Between 1987 and 1991, annual multifamily conventional mortgage originations averaged $32 billion, representing 8.8 percent of total conventional mortgage originations. In 1993, conventional multifamily originations stood at $28.5 billion and, because of the record trillion dollars in single-family mortgage originations, the multifamily share had dropped to 3 percent. Based on estimates provided by the GSEs, multifamily originations are expected to be about 7 percent of conventional mortgage originations in 1995 and 1996. This increase in the multifamily share for 1995 and 1996 is mainly due to the projected decline in single family originations caused by the collapse of the refinance market. Conventional multifamily originations are expected to be about $35 billion in 1995 and 1996.

Sensitivity analysis can show the effect of shifting the relative market importance of the different property categories. For example, reducing the multifamily weight from 25.6 percent to 20 percent, and assuming the owner category is 65 percent and the rental 1–4 category is 15 percent, yields the following estimates of the low-mod share of the market: 46 percent using AHS data for recently completed rental properties, 51 percent using AHS data for existing rental properties, and 50 percent using Fannie Mae data to estimate the low-mod shares for rental 1–4 and multifamily properties.

b. HMDA/Market Projection Method

HUD's second approach for estimating the low-mod share more explicitly considers the relative importance of the various property types in the 1995 and 1996 mortgage market. This second approach uses 1993 HMDA data and projections of mortgage originations for 1995 and 1996 including shifts in the mortgage market, such as a reduction in refinance activity.[43] The mortgage origination

[38] Some mortgage purchases are not eligible for possible inclusion under the low- and moderate-income goal, such as federally guaranteed mortgages, second mortgages, mortgages on second homes, and mortgages originated prior to January 1, 1993 that were missing relevant borrower income or rent data. Such mortgages were excluded from both the numerator and the denominator in calculating the low-mod percentage. These exclusions amounted to 14 percent of Fannie Mae's purchases and 9 percent of Freddie Mac's purchases.

[39] A portion of the increase from 1993 reflects a decline in the share of refinancings, which have been less common among low- and moderate-income families.

[40] Disaggregating the rental 1–4 category into its two components, Freddie Mac's data showed a 54 percent low-mod share for rental 2–4's and a 85 percent low-mod share for 1–4 investment properties. Fannie Mae's data showed a 62 percent low-mod share for rental 2–4's and a 86 percent low-mod share for 1–4 investment properties. The low-mod percentages were practically the same for purchase and refinance mortgages.

[41] Restricting the RFS analysis to 1991 resulted in only minor changes to the market shares.

[42] The 51 percent figure was derived by adding the following: (1) 16.95% (percentage of owner-occupied units [56.5%] times percentage of those units that are affordable to low- and moderate-income families [30%]); (2) 12.35% (percentage of rental units in 1–4 family properties [17.9%] times percentage of those units that are affordable to low- and moderate-income families [69%]); and (3) 21.25% (percentage of rental units in multi-family properties [25.6%] times percentage of those units that are affordable to low- and moderate-income families [83%]).

[43] The HMDA data were mainly needed because its census tract level information was necessary for estimating the size of the underserved area market

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projections are based on HUD's Survey of Mortgage Lending Activity (SMLA). The HMDA data are expressed in terms of number of loans rather than number of units, thus undercounting single-family 1–4's and multifamily units. SMLA data are also expressed in dollar terms rather than in terms of the number of dwelling units. Neither data source distinguishes between single-family owner-occupied one-unit properties and single-family owner-occupied rental properties. Therefore, several assumptions must be made to derive low-mod estimates for the conforming conventional market. The following six steps outline how the low-mod share was estimated under this approach:

(1) Single-family (1–4) mortgage originations for 1995 are estimated to be $615 billion, a reduction of $395 billion from the record setting $1,010 billion in 1993.[44] The reduction is due to the decline in refinance activity which is projected to fall from almost 60 percent of originations in 1993 to 15 percent in 1995.

(2) To derive single-family unit projections, the following assumptions were made:[45] the average conventional loan amount equals $107,000; conforming originations equal 81 percent of the conventional market; units per 2–4 rental property equal 2.25; and units per 1–4 investment property equal 1.35. Property shares for the 1995 single-family, conventional conforming mortgage market are assumed to be 88 percent for single-family owner-occupied, 2 percent for single family 2–4's, and 10 percent for single family 1–4's.

(3) Multifamily originations are projected to increase from $30 billion in 1993 to $33 billion in 1995. The average per unit loan amount is projected to be $32,500; sensitivity analysis was conducted for lower amounts.[46]

(4) Under the above "base case" assumptions, shares of dwelling units to be financed in the 1995 mortgage market are projected to be 68 percent for single family owner-occupants, 4 percent for single family 2–4's, 10 percent for single family 1–4's, and 18 percent for multifamily.

(5) Estimates of the percentage of dwelling units occupied by low- and moderate-income families were as follows: 38.2 percent for single family owner-occupied purchase mortgages and 29.3 percent for single family owner-occupied refinance mortgages—both estimates are based on 1993 HMDA data; and 62 percent for single family 2–4's, 91 percent for single family 1–4's, and 93 percent for multifamily. The low-mod percentages for the three rental categories were based on 1993 GSE data and 1991 AHS data.[47]

(6) Applying the above low-mod shares to the property type weights in (4) suggests that 54 percent of the dwelling units financed by conventional conforming mortgages in 1995 will be occupied by low- and moderate-income families.

The 1992 share of the single-family owner-occupied mortgage market accounted for by low- and moderate-income borrowers was less than the 1993 share reported above. According to 1992 HMDA data, 33.5 percent (25.1 percent) of single-family owner-occupied purchase (refinance) mortgages were taken out by low-mod borrowers. Substituting these 1992 figures for the 1993 HMDA data (38.2 percent and 29.3 percent, respectively) in step (5) suggests that 50 percent of the dwelling units financed by conventional conforming mortgages in 1995 will be occupied by low- and moderate-income families. Averaging the 1992 and 1993 HMDA data suggests a 52 percent low-mod share for the market.

When conducting this market analysis, an issue arose concerning interpretation of the above HMDA estimates of the low-mod market. The low-mod shares are derived by comparing individual borrower incomes reported on the mortgage application with the median income of the metropolitan area where the borrower lives. If the borrower's income is less than metropolitan area median income, the borrower's loan is classified as a low-mod loan. Unfortunately, the median income for individual metropolitan areas are only available from the decennial censuses; estimates are required for the years between the censuses. HUD provides area median income projections that are used both by the Federal Reserve Board to classify HMDA loans and by the GSEs to classify their loans for purposes of the low-mod and special affordable housing goals.[48] Recently available Census data on 1993 median income for the nation as a whole suggest that HUD overestimated 1993 area median incomes by about seven percent, on average. Comparing actual borrower incomes to overestimated area median incomes leads to an overestimate of the percentage of low-mod borrowers in the GSE and HMDA data bases. Rerunning the 1993 HMDA data but reducing area median incomes by seven percent causes the low-mod share of purchase mortgages to decline from 38.2 percent to 32.8 percent, and the low-mod share of refinance mortgages to fall from 29.3 percent to 24.2 percent. Substituting these lower, adjusted percentages into steps (5) and (6) above reduces the low-mod share for the overall market to 50 percent.

Because of uncertainty about the property type weights, additional sensitivity analyses were conducted for the market importance of each property type as well as for the low-mod shares of each property type. For example, the property weights in (4) for the three rental categories are less than those referenced earlier based on the Residential Finance Survey data. Because the rental property types exhibit a higher low-mod share, increasing their weights increases HUD's estimate of the mortgage market's low-mod share. The single-family rental property low-mod shares based on GSE data are less than those reported earlier based on AHS data. Therefore, substituting the AHS data for the GSE data increases the overall estimate of the low-mod share of the market.

HUD also conducted several sensitivity analyses of assumptions made in steps (1)–(3); in most instances, the estimated low-mod share was in the 50–55 percent range.

c. Caveat: Low-Mod Market Share Estimate May Be Lower Than Market Share

The above estimate of the low-mod market will continue to be refined as more data become available to HUD. However, two caveats about the 50 percent estimate should be kept in mind. First, the low-mod market may be greater than 50 percent because it was

in Appendix B. However, HMDA data also provide income information for single-family borrowers; thus, it was decided to use these data as an alternative to the AHS data for estimating the low-mod share in this Appendix and for estimating the very low-income share in Appendix C. Unfortunately, HMDA does not provide any useful income information for rental properties. The data used in the analysis exclude loans less than $15,000, those with loan-to-income ratios that exceed six, and loans to non-owner occupants.

[44] Fannie Mae, Freddie Mac, and the Mortgage Bankers Association have provided HUD with estimates of 1995 mortgage originations. The single-family and multifamily origination data reported in this section are based on the projections of these organizations and the Department. Except for a slightly higher estimate for multifamily originations, the 1996 market is expected to be similar to the 1995 market. Therefore, the discussion focuses on the 1995 market. The various market estimates for the 1995 market reported in Appendices A, B, and C serve as a proxy for the 1996 market.

[45] The average loan amount is derived from the Federal Housing Finance Board's monthly survey of major lenders which reports mortgage terms and conditions. The proportions of conventional originations that are conforming is derived from the Residential Finance Survey, and is consistent with GSE estimates.

[46] In 1993, Fannie Mae's per unit multifamily loan amount was $24,679 and Freddie Mac's was $17,895. Both agencies project about $26,000 for 1995. Given the uncertainty about the correct market average per loan amount, sensitivity analysis was done using an average of $30,000 for

the market. This had the effect of raising the estimated low-mod market share in step (6) by less than one percentage point.

[47] Little data exists on the low-mod shares for the two single-family rental property types; for this reason, it was necessary to use the GSE data. Fannie Mae's low-mod percentages for 2–4 and 1–4 properties were 62 percent and 87 percent, respectively. Freddie Mac's were somewhat lower at 54 percent and 85 percent, respectively. The American Housing Survey, which combines these two property categories shows a 69 percent low-mod share for recently build 1–4 rental units and a 91 percent low-mod share for the existing stock. The 2–4 low-mod share (63 percent) is based on Fannie Mae's data which is probably a conservative estimate for the overall 2–4 market. The 1–4 low-mod share (91 percent) is consistent with both the AHS and GSE data. The multifamily low-mod share (93 percent) is consistent with both the AHS and Fannie Mae's data.

[48] To obtain annual estimates of area median incomes, HUD starts with area median incomes from the 1990 census and projects them forward based on trends in national median income which is available annually on a lagged basis. These metropolitan area income projections, which are also used in HUD's rental assistance programs to define eligibly for subsidy, must be made prior to the program year in which they apply. They are made in the quarter preceding the applicable program year and are based on national Census data available at that time. For example, the 1993 income projections were made in the fourth quarter of 1992 and they were based on Census median income data from a March 1992 survey that measured mid-1991 income levels for the nation as a whole. HUD used the survey data to project metropolitan area income estimates from the 1990 Census to mid-1991, and then applied a four percent annual income growth rate to derive a 1993 income estimate for each metropolitan area. For further information, see "FY93 Income Limits Briefing Material" which is available from HUD.

necessary to exclude certain HMDA loans that may be more targeted to low-income borrowers than those loans included in HUD's analysis. Second, the 50 percent estimate does not take into account the fact that small, second loans may qualify as low-mod in 1995 and 1996. This section explains these issues.

(1) *HMDA Data.* The above analysis of HMDA data is limited to those cases where geocoded information is available on the 1993 HMDA file (that is, information is available to identify the census tract and the metropolitan area of the mortgaged property). There were approximately 804,000 conventional conforming loans in the HMDA file without enough information to identify the metropolitan area (or the census tract) where the property was located. These loans represented 13.2 percent of all conventional conforming loans in 1993.[49] The relative income of the borrower (i.e., borrower income relative to the median income of the metropolitan area) could not be computed for these non-geocoded loans.

HUD analysis suggests that the non-geocoded loans are more likely to be loans for low-income borrowers than the geocoded loans used earlier to determine the low-mod market share. HUD repeated its analysis of the geocoded loans but, instead of using the metropolitan area median income as the base for each borrower's income, HUD used the national metropolitan median income as the base income. The national-metro-median-income approach and the metropolitan-area-median-income approach suggested somewhat similar low-mod shares for the conventional conforming market in 1993, 31.9 percent and 29.6 percent, respectively. The incomes of borrowers taking out non-geocoded loans were then analyzed using the national-metro-median-income approach. This suggested a 45.2 percent low-mod share for non-geocoded loans, which is greater than the 31.9 percent obtained for the geocoded loans using the national-metro-median-income approach. Therefore, not including the non-geocoded loans in the analysis leads to an underestimate of the market's low-mod share.

(2) *Eligibility of Second Mortgages.* This regulation might allow the GSEs to count second mortgages for partial credit because they play a role in the financing of rehabilitation in underserved areas.[50] In 1993, the GSEs purchased only a small number of second mortgages: Fannie Mae purchased 641 seconds, representing $28.5 million, and Freddie Mac purchased 27 seconds, representing $1.4 million. It is unclear how the GSEs would react to the fact that seconds might be eligible under the goals. One scenario might involve a substantial increase in their purchases of small home improvement loans in inner city areas which would increase their performance under the goals. Another scenario might involve only incremental changes to their current business which would only marginally increase their performance under the goals. It is also unclear how to delineate the overall market in which the GSEs might be operating, because their past purchases have been so small. Admittedly, they could purchase second mortgages in all segments of the market (from inner city low-income loans to suburban high-income loans); however, given their current small share of the overall market, it might not be appropriate to assume their purchases would cover the entire market.

The HMDA data does include information on home improvement loans (HILs). In 1993, 620,000 home improvement loans were originated, with an average loan amount of $20,700. Using RFS data, for the period 1989–1991, the average loan amount for HILs was $26,700. The loan distribution for all HILs shows that 59 percent of these loans were for amounts less than $15,000. Compared with purchase mortgages, HILs are more targeted to lower income borrowers. Almost 47 percent of conforming conventional owner-occupied HILs went to low-mod borrowers, compared with 31 percent for purchase mortgages.[51]

In 1993, GSE purchases accounted for only 5.7 percent of the HIL market. Fannie Mae bought 21,100 (3.4 percent) of HILs and Freddie Mac bought 14,300 (2.3 percent) of these mortgages. The distribution of HILs purchased by the GSEs differed from the distribution of the total market. Only 31 percent of the GSEs' HILs went to low-mod borrowers, compared with 47 percent for the market as a whole. But 54 percent of the HILs bought by both GSEs were for borrowers with incomes over 120 percent of area median income; this compares with 40 percent for the market as a whole.

d. Conclusions

Based on the above findings as well as numerous sensitivity analyses, the Secretary concludes that 50 percent is a conservative estimate of the mortgage market's low-mod share for 1995 and 1996.

5. GSEs' Ability to Lead the Industry

The Secretary believes that in light of the benefits that Fannie Mae and Freddie Mac receive from their Charter Acts and the "implicit guarantee" of their obligations resulting from their agency status, the GSEs can and should provide the leadership that is needed to encourage the mortgage finance industry to better serve low- and moderate-income borrowers. The GSEs' ability to lead the industry depends on their dominant role in the mortgage market, their ability—through their underwriting standards and new programs and products—to influence the types of loans that private lenders are willing to make, their utilization of cutting edge technology, their highly competent and well-trained staffs, and their financial resources.

a. Dominant Role in Market

Fannie Mae and Freddie Mac together purchased approximately 71 percent of all conventional conforming single-family mortgages in 1993—up from 17 percent in 1980, 33 percent in 1985, 52 percent in 1991, and 65 percent in 1992.[52] Most of the mortgages purchased by both GSEs are securitized, but sizable amounts are held in portfolio—in fact Fannie Mae and Freddie Mac have the first- and fourth-largest mortgage portfolios, respectively, of all mortgage lenders in the United States. The GSEs now hold or securitize about 30 percent of the total dollar volume of mortgages outstanding, compared to about 7 percent in 1980, and they have accounted for over 40 percent of the net increase in mortgages outstanding between 1980 and 1992 and over 70 percent of the net increase between 1989 and 1992.[53]

The dominant position of the GSEs is reinforced by their relationship to other market institutions. Banks and savings and loans are both their competitors and their customers—they compete as portfolio lenders, but at the same time they sell mortgages to the GSEs and buy mortgage securities from them, and also buy the debt securities that the GSEs use to finance their portfolios.[54]

b. Set Underwriting Standards for Market

The GSEs' underwriting guidelines are followed by virtually all mortgage originators, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac.[55] The guidelines are also commonly followed in underwriting "jumbo" mortgages, which exceed the maximum principal amount which can be purchased by the GSEs (the conforming loan limit), because such mortgages might eventually be sold to the GSEs as the principal balance is amortized and the conforming loan limit is increased. By setting the credit standards against which lower income families will be judged, the GSEs can influence the rate at which mortgage funds will flow to low-income borrowers and underserved neighborhoods. Congress realized the crucial role played by the GSEs' underwriting guidelines and it required each enterprise to submit a study on its guidelines to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on

[49] As noted earlier, loans less than $15,000, those with loan-to-income ratios that exceed six, and loans to nonowner-occupants are excluded.

[50] On the other hand, second mortgages may be used for purposes totally unrelated to housing, such as making other purchases, paying off debts, etc. Because the rates on seconds are often below other consumer borrowing rates (especially those on credit card debt) and because interest on second mortgages is tax-deductible, there are strong incentives to use second mortgages for purposes other than housing rehabilitation.

[51] Restricting the analysis to purchase mortgages over $15,000, as was done in the earlier calculation of the low-mod market, gives a 38.2 percent share for borrowers with less than the area median income.

[52] Estimates provided by Fannie Mae's Economics Department, 1993.

[53] John C. Weicher, "The New Structure of the Housing Finance System," *Federal Reserve Bank of St. Louis Review*, July/August 1994, pp. 51–52.

[54] *Id.*, pp. 52–53.

[55] The underwriting guidelines published by the two GSEs are not identical, but they are very similar in most aspects. And since November 30, 1992, Fannie Mae and Freddie Mac have provided lenders the same *Uniform Underwriting and Transmittal Summary* (Fannie Mae Form 1006/Freddie Mac Form 1077), which is used by originators to collect certain mortgage information that they need for data entry when mortgages are sold to either GSE.

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Banking, Housing, and Urban Affairs of the Senate in October 1993. In addition, the Secretary is required to periodically review the GSEs' underwriting and appraisal guidelines.

c. Leading Edge Technology

With regard to technology, both GSEs have been in the forefront of new developments. For example, Fannie Mae has developed FannieMaps®, a computerized mapping service offered to lenders, nonprofit organizations, and state and local governments to help them implement community lending programs in underserved areas. Both enterprises have been developing automated underwriting systems designed to reduce the time required to process loan applications.

d. Staff Resources

Both enterprises are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, researching and developing improvements to the mortgage market in general, developing innovative new programs, and conducting research which may lead to new programs in the future. Their key executives frequently testify before Congressional committees on a wide range of housing issues, and both GSEs have developed extensive working relationships with a broad spectrum of mortgage market participants including various nonprofit groups and government housing authorities.

e. Financial Strength

The benefits that accrue to the GSEs because of their agency status have made them two of the nation's most profitable businesses. Fannie Mae's profits have increased from $807 million in 1989 to $1.2 billion in 1990, $1.4 billion in 1991, $1.6 billion in 1992, and $1.9 billion in 1993, and for the first three quarters of 1994 they were accruing at an annual rate of $2.1 billion. Fannie Mae's return on equity averaged 28.9 percent over the 1989–93 period—far above the rates achieved by most financial corporations. In addition, Fannie Mae's dividends per share more than quadrupled over this period, rising from $0.43 in 1989 to $1.84 in 1993.

Freddie Mac has shown similar trends. Freddie Mac's profits have increased from $414 million in 1990 to $555 million in 1991, $622 million in 1992, and $786 million in 1993, and for the first three quarters of 1994 they were accruing at an annual rate of $975 million. Freddie Mac's return on average equity averaged 22.5 percent over the 1989–93 period—also well above the rates achieved by most financial corporations. Freddie Mac's dividends per share rose 66 percent over this period, rising from $0.53 in 1989 to $0.88 in 1993.

One measure of the strength of the GSEs was provided by a recent Business Week ranking of American corporations. This survey found that Fannie Mae was second of all companies in total assets and Freddie Mac ranked 23rd; with regard to total profits, Fannie Mae ranked 14th and Freddie Mac ranked 55th.[56]

[56] Business Week, March 28, 1994, p. 131.

Under the 1992 Act, beginning with the second quarter of 1994, the GSEs must meet fully phased-in minimum core capital requirements of 2.5 percent of on-balance sheet assets and 0.45 percent of outstanding mortgage-backed securities and other off-balance sheet obligations, except as adjusted by the Director of OFHEO. For the transition period ending in the first quarter of 1994, the corresponding percentages were 2.25 percent and 0.40 percent respectively. The Director has found both GSEs adequately capitalized as of June 30, 1993, September 30, 1993, December 31, 1993, and March 31, 1994. For the last period, both GSEs also exceeded the fully phased-in capital requirements.

f. Conclusions About Leading the Market

In light of these factors, the Secretary has determined that the GSEs have the ability to lead the industry in making mortgage credit available for low- and moderate-income families. However, as discussed in Section D, HUD is concerned about the current level of the GSEs' assistance to the lower-income end of the market. Existing data indicate that there is room for the GSEs to improve their performance—low- and moderate-income units are estimated to comprise at least 50 percent of the conventional conforming market, while in 1993 the GSEs performed at rates of 29 percent (Freddie Mac) and 36 percent (Fannie Mae). The low- and moderate-income goals that HUD sets in Section D (38 percent in 1995 and 40 percent in 1996) are intended to move the GSEs closer to the market standard. By using their immense resources to improve their performance and meet these goals, the GSEs will be making a good first step toward closing their current market gap.

6. The Need To Maintain the Sound Financial Condition of the GSEs

Congress directed the Secretary of HUD to consider the safety and soundness of the GSEs, along with the five other factors, in formulating the level and direction of the housing goals.[57] As part of these regulations, HUD has prepared a Regulatory Impact Analysis (RIA) that examines the costs and benefits of the housing goals. The detailed RIA provides a complete discussion of the issues summarized below as well as quantitative estimates of the impact of the goals on the GSEs. Based on that analysis, HUD concludes that achieving the housing goals described in the proposed rule will result in limited, if any, net increase in risk to the sound financial condition of the GSEs' operations.

The RIA examines the extent to which the three housing goals will affect the capital levels of the GSEs. The RIA does this by assessing the extent to which achieving the housing goals will affect the profitability of the GSEs. Profitability is used as an approximation for sound financial condition, since losses could reduce the GSEs' level of capital. The principal cost from mortgage loan purchases of any kind is that of loan default, or credit risk. Below is a summary of the RIA's main findings regarding the potential credit costs of meeting the three goals.

- Goals-oriented purchases are already made by the GSEs in the course of their ongoing operations. The relevant question is the impact of additional units required in order to meet regulatory targets. The goals are not mutually exclusive, so that loan purchases required to meet them are not additive. Thus the required level of additional purchases is not as great as it would be if each goal were unique to itself. HUD finds that, under a variety of potential GSE strategies, the dollar amounts of additional loan purchases are small relative to the total volume of business being undertaken by the GSEs. For example, baseline projections show Fannie Mae purchasing over $170 billion of loans in 1995. The amount of additional purchases required for it to meet the regulatory targets will likely be less than $1.5 billion. Because its past goals-oriented purchases have been less than Fannie Mae's, Freddie Mac will likely require a larger degree of additional targeted purchasing to meet the goals. HUD's baseline purchase volume projection for Freddie Mac in 1995 is about $130 billion, and additional purchase requirements to satisfy the goals could be as high as $6 billion, depending on Freddie Mac's business strategy.
- The additional loans required to meet the housing goals are profitable business under the baseline consensus economics scenario examined in the RIA.
- Historically, moderate- and middle-income loans have the lowest overall default rates of all borrower income cohorts. If the GSEs continue their 1993 purchase patterns, loans required to meet the low- and moderate-income goal will be primarily from loans to households with incomes in the "moderate" 80–100 percent of median cohort. Therefore, there is unlikely to be any significant increase in credit risk exposure associated with the low- and moderate-income goal.
- The potential size of goals-qualifying purchase pools for single-family owner-occupied property loans is enlarged by the statutory definition of median income used for these rules. HUD must use median family income, unadjusted for household size, to determine eligibility under the housing goals. The median-family income figures then used to determine goals qualification are roughly equal to the median incomes of three-person households. As a result, many smaller-sized households with above median income—when adjusted for family size—will count as below median for purposes of meeting the housing goals.[58] This same issue also enhances the credit quality of special affordable loan purchases. In that case, small-sized owner households can qualify as below 60 percent of median income simply because the dollar threshold is effectively defined for a three-person household.[59]
- Under the special affordable housing goal, the GSEs will increase their purchases of very low-income loans. Historically, these loan purchases have primarily had loan-to-value ratios below 80 percent, so that credit risk is minimal. In 1993, about 75 percent of the very low-income loans purchases by the GSEs had downpayments in excess of 20 percent.
- Under an economic downturn, such as the 1980s-type economics scenario in the RIA, additional goals-oriented loan purchases only have projected losses on Freddie Mac single family special affordable loans. These would be more than offset by remaining profits on other loans. Because of its much heavier use of a retained portfolio, Fannie Mae would have a much larger cushion against losses in an economic downturn.
- The GSEs have the ability to purchase loans with higher default risk without commensurately higher credit risk. They can do this through combinations of requiring deeper mortgage insurance coverage and charging higher guarantee fees.[60] Resulting price increases to lower-income borrowers could be more than offset by other innovations which are now driving down the cost of mortgage originations for all borrowers.
- As a group, multifamily loans have a higher default potential than do single-family loans. Appropriately underwritten multifamily loans also earn higher guarantee fees for the GSEs, offsetting their higher credit risk. Yet the analysis developed in the RIA shows a discernable risk-return tradeoff with respect to multifamily lending: Higher profit margins under stable economic conditions, but larger potential losses in economic downturns. Fannie Mae has virtually eliminated this loss potential by holding a much larger percentage of multifamily loan purchases in retained portfolio. Freddie Mac could follow much the same strategy as it increases its multifamily business. The housing goals are structured such that the GSEs can meet the goals without significantly increasing their credit risk from multifamily purchases much beyond that imbedded in current baseline multifamily purchase targets for 1995 and 1996.
- Guarantee fee income from securitized loans is sufficient to cover the expected credit costs of any additional goals-oriented purchases under baseline consensus economics. The much larger profit margins on their retained portfolios allow the GSEs to compete on guarantee fee prices, and still provide financial cushions against potential economic downturns.
- Increased retention in portfolio of additional, targeted loans purchased to help satisfy the housing goals is one possible way to hedge any increased credit risk. HUD's analysis finds that guarantee fees alone are insufficient to provide the earnings necessary to prevent losses on these loans in the event of a severe economic downturn. Portfolio earnings are five-to-eight times as large as guarantee fee income, as a percent of dollar loan volumes. The increase in total portfolio holdings required to fully protect against credit risk in the economic downturn scenario developed by HUD is so small as to not raise concerns about exposing the GSEs to any greater interest-rate risk.
- Lenders, the GSEs, and private mortgage insurers are implementing changes in mortgage marketing and underwriting that extend homeownership opportunities to below-median-income households without measurably increasing credit risk. These changes are increasing the pool of potential loan purchases that are both sound investments and qualify under the regulatory goals.
- These same risk-mitigation measures and alternative underwriting criteria should increase loan originations in minority and low-income neighborhoods and directly increase the GSEs' abilities to meet the central cities, rural areas, and other underserved areas goal. In addition, about 60 percent of underserved area home buyers have incomes above median income, which strengthens the credit quality of targeted purchases in these areas.

D. Determination of the 1995 and 1996 Low- and Moderate-Income Housing Goals

The annual goal for 1995 for each GSE's purchases of mortgages financing housing for low- and moderate-income families is established at 38 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The 1996 goal is established at 40 percent. These goals represent an increase over the 1994 goal of 30 percent. Several considerations, many of which have been reviewed in earlier sections of this Appendix, led to the choice of these goals.

1. Housing Need

Almost three-fifths of American households qualify as low- and moderate-income under the Act's definitions—half of owners and 70 percent of renters. Data from the Census and from the American Housing Surveys demonstrate that housing problems and needs for affordable housing are indeed substantial among low- and moderate-income families. These households, particularly those with very low incomes, are burdened by high rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations.

With respect to homeownership, many younger, minority, and lower income families did not realize their goal of homeownership during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Recently, low interest rates and low inflation have improved affordability conditions and first-time homeowners have become a major driving force in the home purchase market. A large pent-up demand for homeownership exists on the part of low-income families closed out of the market during the 1980s, particularly families with children in need of larger units and better neighborhoods.

Several demographic changes will put strains on the housing finance system during the 1990s. The continued increase in immigrants will increase demand for both rental and owner-occupied housing. Non-traditional households have become more important as overall household formation rates have slowed. With later marriages, divorce, and other non-traditional living arrangements, the fastest growing household groups are single-parent and single-person households.

2. GSE Performance Shows Mixed Results

The Charter Acts require that the GSEs provide ongoing assistance to the secondary market including mortgages for low- and moderate-income families. The GSEs certainly have been assisting the overall secondary market, increasing their share of purchases of conventional conforming single family mortgage origination from 42 percent in 1989 to 70 percent in 1993. In fact, most industry observers would agree that the recent growth in the secondary market was the reason the decline of the thrift industry had only minor effects on the nation's housing finance system.

However, the Secretary is concerned about the GSEs' assistance to the lower income end of the market. Figure A.1 presents the distribution of the GSEs' single-family mortgage purchases by income category. In 1993, homeowners with incomes less than 60 percent of median represented only 5 percent of GSE purchases, and those with incomes less than 80 percent of median represented only 15 percent of GSE purchases. Families with incomes over 120 percent of median, on the other hand, accounted for over 55 percent of single-family mortgages purchased by the GSEs.

The market is originating many more loans for lower income homebuyers than the GSEs are purchasing. (See Figure A.2, which compares GSE performance with the market). The GSEs, based on 1993 HMDA data, purchased a much smaller proportion of conforming mortgages originated for very low-income homebuyers than of mortgages originated for high-income homebuyers (41 percent versus 55 percent). The HMDA data suggest that there is room in the lower income end of the homebuyer market for the GSEs to improve their performance.

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[57] HUD's independent Office of Federal Housing Enterprise Oversight (OFHEO) has the primary responsibility for monitoring the safety and soundness of the GSEs. OFHEO is currently building the stress-test models necessary for analyzing the capital strength of the GSEs and establishing appropriate capital levels. HUD expects that OFHEO will take into account in its required capital levels the GSEs' housing-goal-related purchases.

[58] HUD adjustments for family size cost-of-living factors would reduce the effective median income measure for 1-person households by 22 percent, that of 2-person households by 11 percent, and would increase that of 4-person households by 20 percent.

[59] Based on national income distributions, there are 4.2 million one- and two-person households who qualify as below median income according to the housing goals, but whose real income is above median when adjustments for size are factored in. Likewise, there are 2.85 million four-to-six person households who do not qualify as having below median income for goals purposes, but whose incomes are below median when adjusted for household size. On net, then, using an overall family median income has the potential for increasing the pool of potentially goals-qualifying mortgage loans for GSE purchase.

[60] The limits to this in the competitive mortgage originations market are not yet known, but both GSEs recently increased the depth of mortgage insurance required on low downpayment loans

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FIGURE A.1

Distribution Of Total Single-Family Dwelling Units In GSE Purchases By Income Class of Mortgagor For 1993

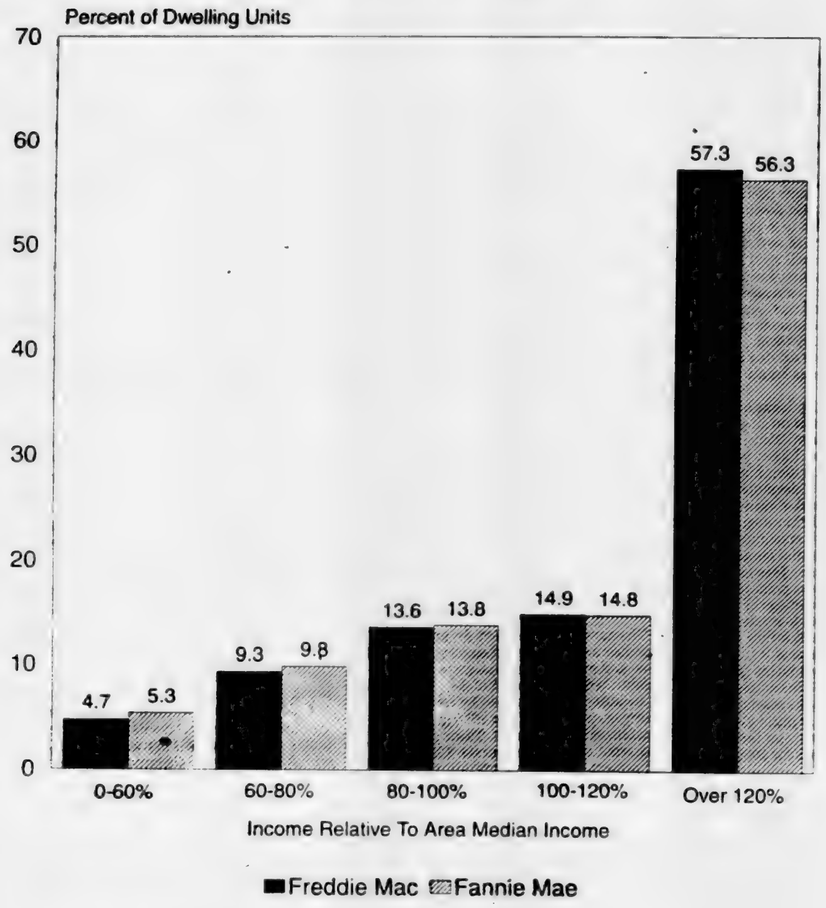

One-unit, owner-occupied units only;
no federal guarantees, second mortgages, or second homes.

FIGURE A.2

GSE Purchases As Share Of Conventional Conforming Mortgage Originations By Borrower Income, 1993

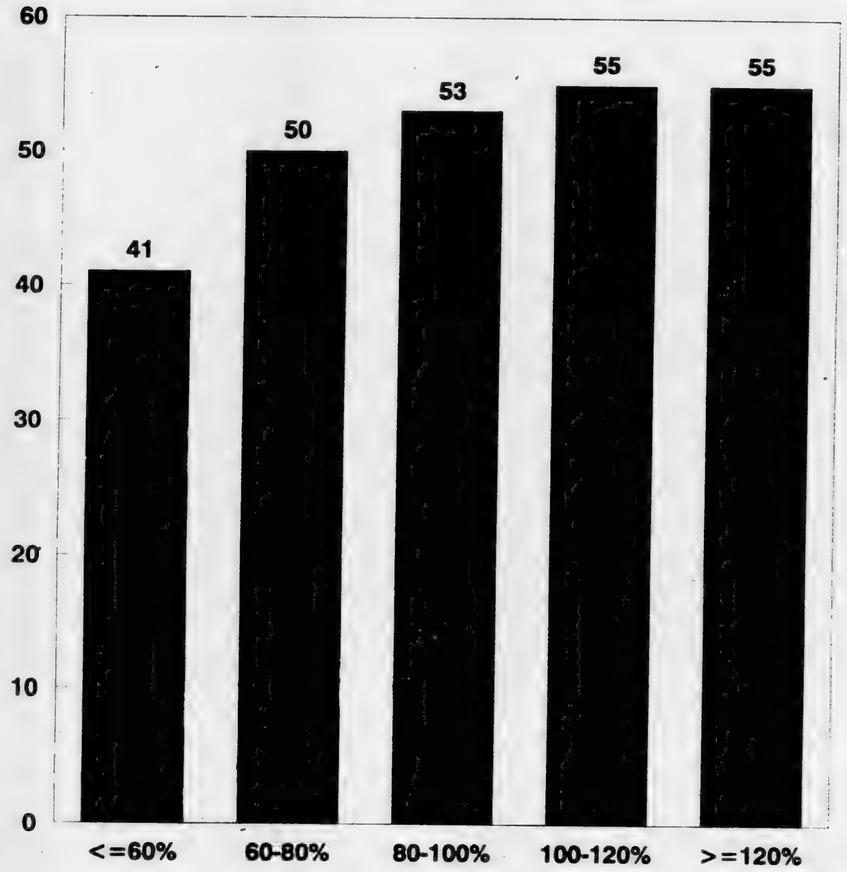

Source: 1993 HMDA data

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The Secretary is particularly concerned about the level of Freddie Mac's activity in the multifamily area. In 1993, Freddie Mac purchased $191 million in multifamily mortgages, compared with almost $5 billion in purchases by Fannie Mae. Given the affordability problems faced by renters and the need for a well-functioning secondary market for multifamily loans, it is imperative that Freddie Mac's multifamily business be increased. The 1995 and 1996 low-mod goals are intended to encourage Freddie Mac's expansion of its multifamily activities.

3. Market Feasibility and Changing Market Conditions

The potential size of the market for low- and moderate-income mortgages is a major determinant of the GSEs' agencies' ability to reach a specific low-mod goal. As detailed in Section C.4, the low-mod mortgage market is quite large, accounting for at least 50 percent of dwelling units financed by conventional conforming mortgages. Figure A.3 compares recent GSE performance, the 1995 and 1996 goals, and the size of the low-mod market. Given the size of the market, the 1995 and 1996 goals are feasible.

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FIGURE A.3

Low- And Moderate-Income Activity And Goals For Freddie Mac And Fannie Mae, 1993-96

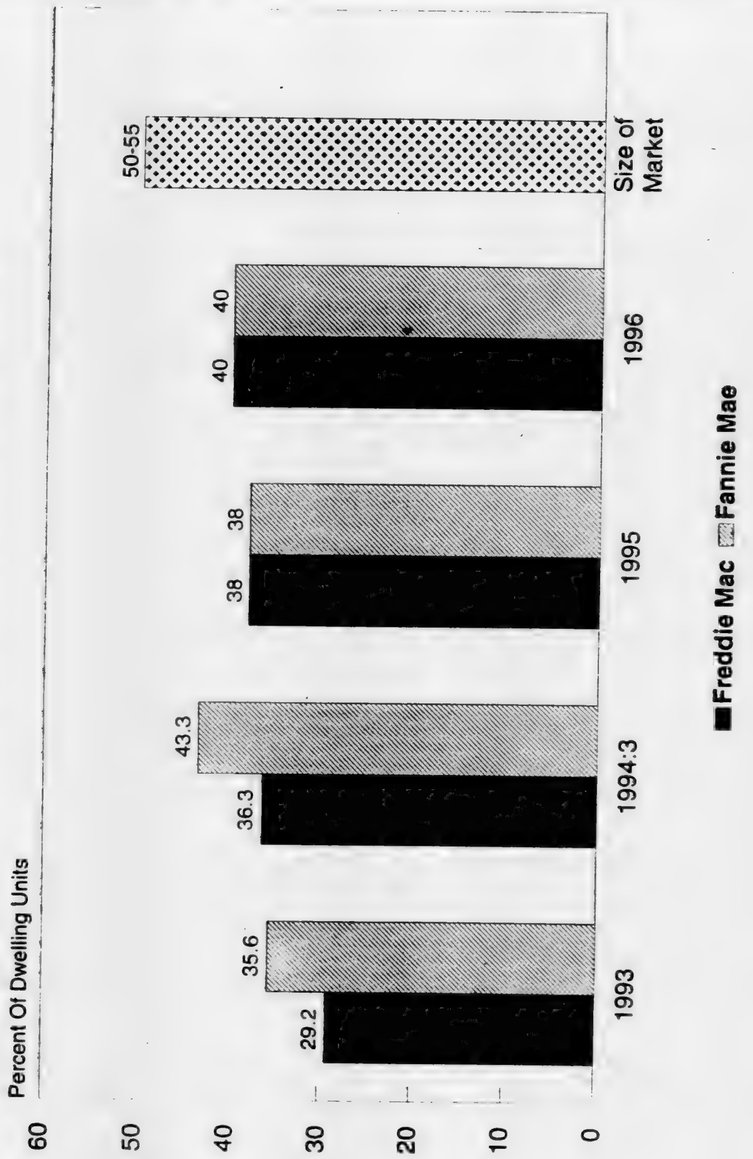

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The GSEs' performance under the housing goals will be heavily influenced by overall housing market activity in 1995 and 1996. Low interest rates caused 1993 to be a record year for mortgage originations as refinancings accounted for about 70 percent of the GSEs' business. First-time home buyers were the driving force on the home-purchase side of the market. As explained above, the 1995 and 1996 market is expected to be quite different. Single-family mortgage originations are projected to decline by almost 40 percent between 1993 and 1995, from one trillion dollars to $615 billion. This market fall-off is due entirely to the collapse of the refinance market which is expected to decline from over 55 percent of mortgage activity in 1992 and 1993 to below 20 percent in 1995 and 1996. HUD considered these expected market changes when setting housing goals for 1995 and 1996. HUD's analysis suggested the following effects:

- The projected market shift from refinance to purchase mortgages should increase the low- and moderate-income proportion of mortgage market activity because purchase mortgages are more apt to be obtained by lower-income borrowers than are refinance mortgages. For instance, in 1993, 33 percent of Fannie Mae's single-family purchase mortgages qualified as low-mod versus only 27 percent of its refinance mortgages.
- The substantial decline in single-family mortgage originations, combined with the GSEs' stated intentions to increase purchases of multifamily mortgages, should increase the low- and moderate-income proportion of each GSE's business because practically all multifamily units qualify as low-mod under the Act's definitions. Section C.4 provided estimates of the increase in the multifamily share of the market in 1995 and 1996.
- The recent rise in interest rates from 25-year lows could make it more difficult for lower-income borrowers to qualify for mortgages underwritten according to GSE guidelines. However, interest rates continue to remain lower and housing more affordable than was true for any previous extended period since 1977. Higher interest rates should be partially offset by other demand factors such as rising incomes during the economic recovery and a continued strong first-time homebuyer market due to the pent-up demand for homeownership on the part of renters left out of the market during the 1980s. Furthermore, lenders, the GSEs, and private mortgage insurers are implementing changes in mortgage marketing and underwriting that will extend homeownership opportunities to lower-income households. These changes are increasing the pool of potential loan applicants that qualify under the low-mod goal.

4. Parity Between the GSEs

The Secretary is establishing identical goals for both Fannie Mae and Freddie Mac. Freddie Mac consistently lags behind Fannie Mae on the housing goals. In part, this is due to Freddie Mac's limited multifamily activity—their 1993 multifamily mortgage purchases accounted for only 1.6 percent of their overall low-mod performance (versus 16 percent for Fannie Mae). Freddie Mac has used the past four years to rebuild its multifamily operations and has recently brought on new staff, developed new systems, and is pursuing an aggressive acquisition strategy. On the single-family side, Freddie Mac serves the same lenders and offers the same products as Fannie Mae. Therefore, it should be able to match Fannie Mae's performance in achieving the goals. Moreover, the legislative history supports the idea of parity after the transition period, noting that "because the enterprises have essentially equal opportunities, their respective annual goals should generally be set at comparable levels."[6]

5. Conclusions

To conclude, the Secretary has determined that the 1995 and 1996 goals set forth above address national housing needs and current economic, housing, and demographic conditions, and that they take into account the GSEs' performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the goals are necessary and achievable.

Based on a consideration of the factors, the Secretary proposes to establish all three goals for 1997 and 1998 so that the goals will move the GSEs steadily over a reasonable period of years, including these two years, to a level of mortgage purchases where the GSEs will be leading the industry in purchasing mortgages meeting the goals. In carrying out this objective, the Secretary proposes to establish the goals for 1997 and 1998 at levels ranging from the same amounts established for 1996 to higher levels. The purpose of any higher levels would be to continue to move the GSEs toward purchasing a greater proportion of targeted mortgages originated by the market.

Appendix B—Secretarial Considerations To Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal

A. Establishment of Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish an annual goal for the purchase of mortgages on housing located in central cities, rural areas, and other underserved areas.

In establishing this annual housing goal, the Act requires the Secretary to consider:

1. Urban and rural housing needs and the housing needs of underserved areas;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;
4. The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and
6. The need to maintain the sound financial condition of the enterprises.

As described in Section 1334(d) of the Act, the annual target for this goal for the 1993-94 transition period was that 30 percent of units financed by mortgages purchased by each enterprise should be located in "central cities," as designated by the Office of Management and Budget. Starting in 1995, this interim target is to be replaced with a goal targeting areas with relatively poor access to credit in "central cities, rural areas, and other underserved areas."[1] The Secretary has defined "central city" as the underserved area of any political subdivision designated as a central city by OMB. The Secretary has defined "rural area" as any underserved area located outside of any metropolitan statistical area (MSA) designated by OMB. The Secretary has determined that "underserved areas" are defined as census tracts or non-metropolitan counties where: Minorities comprise 30 percent or more of the residents and the median income of families does not exceed 120 percent of the area median income; or where the median income of families does not exceed 80 percent of the area median income.

Section B reports findings on access to mortgage credit and Section C addresses the six factors listed above. Section D summarizes the Secretary's rationale for selecting the goals for central cities, rural areas, and other underserved areas for 1995 and 1996.

B. Underlying Data and Identifying Underserved Areas

1. Introduction and Overview

For the post-transition period, the Secretary was charged with redefining and expanding this goal from the transition target of "central cities" to include "rural areas and other underserved areas." The legislative history shows that Congress intended that the goal target geographic areas with "relatively poor" or "inadequate" access to mortgage credit and areas suffering from "the vestiges of redlining."[2]

Data on mortgage credit flows are far from perfect, and issues regarding the identification of areas with inadequate access to credit are both complex and controversial. For this reason, before considering housing needs, past enterprise performance, and the size of the conventional market in "underserved" areas, it is essential to define "underserved areas" as accurately as possible from existing data. To provide essential background for understanding the Secretary's proposed definition of underserved areas for this goal, this section carefully reviews the evolving literature investigating access to credit and reports findings from HUD's analysis of 1993 HMDA data.

Two main points are made in this section:

[6] Senate Report 102-282, p. 36.

[1] FHEFSSA, section 1334(a).

[2] Senate Report at 38.

- The existence of substantial geographic disparities in mortgage credit is well documented. Research has demonstrated that areas with lower incomes and higher shares of minority population consistently have poorer access to mortgage credit, with higher mortgage denial rates and lower origination rates for mortgages. Thus, the income and minority composition of an area is a good proxy for determining whether that area is being underserved by the mortgage market.
- The research strongly supports a targeted definition of underserved areas. Studies conclude that characteristics of the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates. Once these characteristics are accounted for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending.

2. Evidence About Access to Credit

The viability of neighborhoods—whether urban, rural, or suburban—depends on the access of their residents to mortgage capital to purchase and improve houses. While neighborhood problems are caused by a wide range of factors, including substantial inequalities in the distribution of the nation's income and wealth, there is increasing agreement that imperfections in the nation's housing and mortgage markets are hastening the decline of distressed neighborhoods. Disparate denial of credit based on geographic criteria can lead to disinvestment and neighborhood decline. There is growing evidence that discrimination and other factors, such as inflexible and restrictive underwriting guidelines, limit access to mortgage credit and leave potential borrowers in certain areas underserved.[1]

a. Early Credit Flow Studies

Most studies of geographical disparities have used Home Mortgage Disclosure Act (HMDA) data. A number of studies using the early HMDA data sought to test for the existence of geographical redlining, which is the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of the individual applicant.[4] Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[5] However, such analyses were criticized because they did not distinguish between demand and supply effects[6]—that is, whether loan volume was low because people in high-minority and low-income areas were unable to afford home ownership and therefore were not applying for mortgage loans, *or* because lenders refused to make loans in these areas. Moreover, the early HMDA data were incomplete because non-depository lenders (e.g., mortgage bankers, who originate most FHA loans) were not included.

Like early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods.[7] The discrepancies held even after controlling for income, house values and other economic and non-racial factors that might explain differences in demand and housing market activity.[8] In addition, a larger percentage of transactions in such neighborhoods were financed by the seller or other non-traditional institutional lenders (e.g., credit unions, governments, universities, business leaders, real estate trusts, and pension funds). Greater seller financing may suggest unmet demand for mortgages, since it is not likely that minority sellers prefer, more than whites, to finance the sale of their homes rather than being paid in cash.[9] The study concluded that "the housing market and the credit market together are functioning in a way that has hurt Black neighborhoods in the city of Boston."[10]

b. Improved HMDA Data—Wider Coverage and Mortgage Denial Rates

HMDA reporting was expanded in 1990 to provide information on the disposition of loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed), to include the activity of large independent mortgage companies, and to provide information on the race and income of individual loan applicants. An additional expansion in 1993 covered mortgage companies that originated 100 or more home purchase loans in the preceding calendar year. HUD's analysis using the expanded HMDA data for 1993 shows that high-minority and low-income census tracts have both higher loan application denial rates and lower loan origination rates.[11]

Table B.1 presents denial and origination rates by the minority composition and median income of census tracts for metropolitan areas. The tract minority and income data are grouped by deciles. Two patterns are clear:

- Census tracts with higher percentages of minority residents have higher mortgage denial rates and lower mortgage origination rates than all-white or substantially-white tracts. For example, the denial rate for census tracts that are over 80 percent minority is about two-and-a-half times that for census tracts with less than 10 percent minority.[12]
- Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. The average number of mortgage originations in high-income census tracts (i.e., tracts with a median income over 120 percent of area median) was 12.7 per 100 owner-occupants; this compares with a range of 3.6 to 6.6 originations for the census tract deciles with income less than 80 percent of area median.

Denial rates increase in increments ranging from 1.6 to 3.0 percent as one moves from low-minority to 60-percent-minority tracts. They decline in decrements ranging from 1.0 to 3.4 percent as tract income increases from 60 percent of area median to over 120 percent of area median.

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[1] Because of concern about these problem issues, Federal agencies have formed an Interagency Task Force on Fair Lending to establish a uniform policy against discriminatory lending. At the same time, both Fannie Mae and Freddie Mac have made efforts to make their underwriting guidelines more flexible to allow alternative mechanisms for low-income borrowers to demonstrate creditworthiness.

[4] Prior to 1990, HMDA data showed only the total number and aggregate dollar volume of loans made in each census tract for depository institutions; no information was reported on individual borrowers or on applications denied.

[5] These studies, which were conducted at the census tract level, typically involved regressing the number of mortgage originations (relative to the number of properties in the census tract) on characteristics of the census tract including its minority composition. A negative coefficient estimate for the minority composition variable was often interpreted as suggesting redlining. For a discussion of these models, see Eugene Perle, Kathryn Lynch, and Jeffrey Horner, "Model Specification and Local Mortgage Market Behavior," *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 225–243.

[6] For critiques of the early HMDA studies, see Andrew Holmes and Paul Horvitz, "Mortgage Redlining: Race, Risk, and Demand," *The Journal of Finance*, Volume 49, No. 1, March 1994, pp. 81–99; and Michael H. Schill and Susan M. Wachter, "A Tale of Two Cities: Racial and Ethnic Geographic Disparities in Home Mortgage Lending in Boston and Philadelphia," *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 245–276.

[7] Katherine L. Bradbury, Karl E. Case, and Constance R. Dunham, "Geographic Patterns of Mortgage Lending in Boston, 1982–1987," *New England Economic Review*, September/October 1989, pp. 3–30.

[8] Using an analytical approach similar to that of Bradbury, Case, and Dunham, Anne Shlay found evidence of fewer mortgage loans originated in black census tracts in Chicago and Baltimore. See Anne Shlay, "Not in That Neighborhood: The Effects of Population and Housing on the Distribution of Mortgage Finance within the Chicago SMSA," *Social Science Research*, Volume 17, No. 2, 1988, pp. 137–163; and "Financing Community: Methods For Assessing Residential Credit Disparities, Market Barriers, and Institutional Reinvestment Performance in the Metropolis," *Journal of Urban Affairs*, Volume 11, No. 3, 1989, pp. 201–223.

[9] Analysis of 1985 American Housing Survey data also showed a greater reliance on non-institutional financing by low- and moderate-income owners in both metropolitan and rural areas. See the Urban Institute.

[10] Holmes and Horvitz, and Schill and Wachter conduct more rigorous tests of the redlining hypothesis that control for several characteristics of the neighborhood, including credit risk. Their findings are reviewed in Section 2.e below.

[11] HUD's previous analysis of 1992 HMDA produced comparable results. For a similar analysis based on 1992 HMDA data, see Glenn B. Canner, Wayne Passmore, and Dolores S. Smith, "Residential Lending to Low-Income and Minority Families: Evidence from the 1992 HMDA Data," *Federal Reserve Bulletin*, Volume 80, February 1994, pp. 79–108.

[12] The denial rates in Table B.1 are for purchase mortgages. Denial rates are several percentage points lower for refinance loans than for purchase loans, but denial rates follow the same pattern for both types of loans: Rising with minority concentration and falling with increasing income.

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Table B.1

Origination and Denial Rates For Conventional Conforming Mortgages

Tract Minority %	Originations Per 100 Owner-Occupied Units (Purchase and Refinances)	Denial Rate (Purchase)
LT 10%	13.9	10.7%
10-20	13.0	13.1
20-30	11.3	16.1
30-40	10.5	18.2
40-50	9.5	19.8
50-60	8.9	21.7
60-70	8.5	22.3
70-80	8.0	22.6
80-90	6.6	24.4
90-100	3.6	27.9
Tract Income Relative to MSA Median		
LT 20%	*	25.8%
20-30	4.4	23.5
30-40	3.5	25.5
40-50	4.2	26.3
50-60	4.7	24.8
60-70	5.8	23.6
70-80	6.8	21.3
80-90	8.5	18.5
90-100	10.2	15.8
100-110	12.2	13.2
110-120	14.3	11.3
120+	17.7	8.8

* Not applicable due to missing owner occupied data

Source: HUD analysis of 1993 HMDA data.

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Table B.2 aggregates the data in Table B.1 into six minority and income combinations that exhibit very different credit flows. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group had a denial rate of 8.4 percent and an origination rate of 18.0. The high-minority (over 50 percent), low-income (under 80 percent of area median) group has a denial rate of 26.6 percent and an origination rate of only 4.7. The other groupings fall between these two extremes.

The advantages of HUD's underserved area definition can be seen by examining the minority-income combinations highlighted in Table B.2. The sharp differences in denial rates and origination rates between the underserved and remaining served categories illustrate that HUD's definition delineates areas that have significantly less success in receiving mortgage credit. Underserved areas have almost twice the average denial rate of served areas (22.0 percent versus 11.9 percent) and half the average origination rate (7.0 versus 14.1). HUD's definition does not include high-income (over 120 percent of area median) census tracts even if they meet the minority threshold. The mortgage origination rate (14.2) for high-income tracts with a minority share of population over 30 percent is slightly above the average (14.1) for all served areas.

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Table B.2

Mortgage Denial and Origination Rates
By Minority and Income Characteristics
of the Census Tract

Origination Rates (per 100 owner occupants)													
Minority Composition													
Tract Income	LT 30%		30-50%		50-100%		Total						
LT 80%	**6.6**		**5.9**		**4.7**		5.9						
80-120%	11.7		**10.1**		**8.2**		11.3						
120%+	18.0		14.9		13.1		17.7						
Total	13.4		10.1		6.6		12.3						
Denial Rates													
Minority Composition													
Tract Income	LT 30%		30-50%		50-100%		Total						
LT 80%[1]	**20.5**		**22.2**		**26.6**		22.9						
80-120%	13.5		**18.8**		**22.1**		14.4						
120%+	8.4		15.0		16.4		8.8						
Total	11.8		18.9		23.7		13.2						

[1] Includes all tracts designated as underserved by HUD's Underserved Area definition.

Note: Bold categories are included in HUD's Underserved Area definition.
Source: HUD analysis of 1993 HMDA Data

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c. Recent HMDA Studies—Controlling for Applicant Credit Risk

An important question is whether variations in denial rates reflect lender bias against certain kinds of neighborhoods and borrowers, or simply the credit quality of the mortgage (as indicated by the applicant's available assets, credit rating, employment history, etc.). The technical improvements offered by recent studies of credit disparities have attempted to control for credit risk factors that might influence a lender's decision to approve a loan. Without fully accounting for the creditworthiness of the borrower, racial differences in denial rates cannot be attributed to lender bias. The best example of accounting for credit risk is the study by researchers at the Federal Reserve Bank of Boston, which analyzed mortgage denial rates.[13] To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. They found that minorities' higher denial rates could not be explained fully by income and credit risk factors. Blacks and Hispanics were about 60 percent more likely to be denied credit than Whites, even after controlling for credit risk characteristics such as credit history, employment stability, liquid assets, self-employment, age, and family status and composition. Although almost all highly-qualified applicants of all races were approved, differential treatment was observed among borrowers with lesser qualifications.[14]

A recent HUD study also found minority denial rates to be higher in ten metropolitan areas, even after controlling for credit risk.[15] In addition, the higher denial rates observed in minority neighborhoods were not purely a reflection of the higher denial rates experienced by minorities. Whites experienced higher denial rates in some minority neighborhoods than in some predominantly white neighborhoods.

The Boston Fed and HUD studies concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions. Thus, they give some legitimacy to denial rate comparisons such as those in Tables B.1 and B.2. However, the independent race effect identified in these studies is still difficult to interpret. In addition to lender bias, access to credit can be limited by loan characteristics that reduce profitability[16] and by underwriting standards that have disparate effects on minority and lower income borrowers and neighborhoods.[17]

d. Recent HMDA Studies—Controlling for Neighborhood Risk and Demand and Tests of the Redlining Hypothesis

Two recent statistical studies sought to test the redlining hypothesis by more completely controlling for differences in neighborhood risk and demand. These studies do not support claims of racially induced mortgage redlining—the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for. However, these studies cannot reach definitive conclusions about redlining because of the correlation of neighborhood race with other explanatory variables included in their models.

First, Andrew Holmes and Paul Horvitz used 1988–1991 HMDA data to examine the flow of conventional mortgage originations across-census tracts in Houston.[18] Their regression model included as explanatory variables the economic viability of the loan and residents of the tract (e.g., house value, income, age distribution and education level), measures of demand (e.g., recent movers and change in owner units between 1980 and 1990), and measures of credit risk (defaults on government-insured loans and change in tract house values between 1980 and 1990). To determine the existence of racial redlining, the model also included as explanatory variables the percentages of Black and Hispanic residents in the tract and the increase in the tract's minority percentage between 1980 and 1990. Most of the neighborhood risk and demand variables were significant determinants of the flow of conventional loans in Houston. The coefficients of the racial composition variables were insignificant which led Holmes and Horvitz to conclude that allegations of redlining could not be supported, at least in the Houston market.

One of their more interesting findings, however, was that the racial composition variables became significant and negative, thus suggesting the existence of redlining, when they re-estimated their model twice, once without the credit risk variables and once without the demand variables. This finding is consistent with earlier credit flow studies that concluded that redlining exists. Holmes and Horvitz caution against relying on findings from these earlier studies because they did not adequately account for differences in neighborhood risk and demand. The authors conclude that "a claim of racially based geographic discrimination in mortgage lending must be based on a consideration of race *after* (emphasis added) taking account of variables that are rationally connected with the economics of the mortgage lending process."[19]

In the second study, Michael Schill and Susan Wachter attempt to improve on earlier studies of redlining by examining whether mortgage denials are related to neighborhood racial composition.[20] Schill and Wachter argue that HMDA data on mortgage rejections, first released in 1990, allow researchers to address perhaps the major shortcoming of earlier credit flow studies—the inability to separate demand influences from supply influences. Analyzing information on whether lenders accept or reject individual loan applicants permits Schill and Wachter to study the determinants of the supply decision separately.[21]

In their empirical work, Schill and Wachter focused on loan acceptances rather than denials. Their model posits that the probability that a lender will accept a specific mortgage application depends on characteristics of the individual loan application[22] and characteristics of the neighborhood where the property collateralizing the loan is located. Because they rely on public data, Schill and Wachter do not have information on several loan and property risk variables, such as loan-to-value ratio, that are known to affect the mortgage

[13] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M. B. Tootell, "Mortgage Lending in Boston: Interpreting HMDA Data," Federal Reserve Bank of Boston, Working Paper Series, No. 92–7, October 1992.

[14] This study was the subject of substantial criticism with regard to data quality and model specification, but even after accounting for these problems, the race conclusions were found to persist in a re-estimation of the model by Fannie Mae. See James H. Carr and Isaac F. Megbolugbe, "The Federal Reserve Bank of Boston Study on Mortgage Lending Revisited," *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 277–313. Other criticisms, however, have also been mentioned. For instance, the fact that the credit risk variables included in the model are correlated with the minority variable suggests that the latter may be picking up the effects of still other credit risk variables omitted from the model. See John Straka, "Boston Federal Reserve Study of Mortgage Discrimination," *Secondary Mortgage Markets*, Volume 10, No. 1, Winter 1993, pp. 8–9, for a useful discussion of other aspects of the Boston Fed study.

[15] ICF Incorporated, Ann B. Schnare, and Stuart A. Gabriel, "The Role of FHA in the Provision of Credit to Minorities," prepared for the U.S. Department of Housing and Urban Development, April 25, 1994.

[16] Lenders are discouraged from making smaller loans in older neighborhoods. Since upfront loan fees are frequently determined as a percentage of the loan amount, such loans generate lower revenue and thus are less profitable to lenders.

[17] Standard underwriting practices may exclude lower income families that are, in fact, creditworthy. Such families tend to pay cash, leaving them without a credit history. In addition, the usual front-end and back-end ratios applied to applicants' housing expenditures and other on-going costs may be too stringent for lower income households, who typically pay higher shares of their income for housing than higher income households.

[18] Holmes and Horvitz also analyzed the flow of government-insured loans and obtained what are now standard results in the literature—compared with conventional loans, government-insured loans are more targeted to lower income and risky neighborhoods.

[19] Holmes and Horvitz, page 97. The authors recognize that many of the risk and demand variables in their model are rather highly correlated with the racial composition variables also included in their model. Thus, one could argue that their risk and demand variables are serving, to a certain extent, as proxies for race, which would mean that their results suggest a high degree of redlining in the Houston market. Holmes and Horvitz dismiss this argument by stating that several of their non-racial variables are reasonable proxies for other prudent lending variables such as wealth and job stability for which they did not have direct data.

[20] Schill and Wachter. Although its methodology and findings are similar to those of studies discussed in the next section, it is informative to review Schill and Wachter's study in detail because it illustrates issues that must be dealt with before one can reach definitive conclusions about redlining.

[21] Perle also agrees that micro-based models of mortgage denial rates are more appropriate for studying redlining than macro-based credit flow models that fail to separate demand and supply effects.

[22] Individual loan characteristics include loan size (economies of scale cause lenders to prefer large loans to small loans) and all individual borrower variables included in the HMDA data (the applicant's income, sex, and race).

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decision. To compensate for the lack of these variables, the study includes neighborhood risk proxies that are likely to affect the future value of the properties.[23] Finally, to test for the existence of racially-induced lending patterns across census tracts, Schill and Wachter include the percentage of persons in the census tract that are Black and Hispanic.

The authors tested their model for conventional mortgages in Philadelphia and Boston. They first estimated their model including as explanatory variables only the individual loan and racial composition variables. The applicant race variables—whether the applicant is Black or Hispanic—showed significant negative effects on the probability that a loan will be accepted. Schill and Wachter state that this finding does not provide evidence of individual race discrimination because applicant race is most likely serving as a proxy for credit risk variables omitted from their model (e.g., credit history, wealth and liquid assets). In this first analysis, the percentage of the census tract that is Black also shows a significant and negative coefficient, a result that is consistent with redlining. However, when the neighborhood risk proxies are included in the model along with the individual loan variables, the percentage of the census tract that is Black becomes insignificant. Thus, similar to Holmes and Horvitz, Schill and Wachter state that "once the set of independent variables is expanded to include measures that act as proxies for neighborhood risk, the results do not reveal a pattern of redlining."[24]

In their conclusion, however, Schill and Wachter state that while their results do not support the hypothesis of redlining, they cannot say definitively that neighborhood race is unrelated to lenders' decisions to accept or reject loan applications. One reason for their hesitancy is that many of their individual loan variables (as well as their neighborhood risk variables) are correlated with the racial composition of the census tract. For instance, the applicant's race variable (i.e., whether the applicant is Black or Hispanic) remains highly significant and negative in all their estimations. Because of the high degree of racial segregation that exists in urban areas, the applicant race variable is positively correlated with the census tract race variable. It may be that the applicant race variable is picking up effects that should properly be attributed to the census tract race variable.[25] If this were the case, Schill and Wachter's conclusions about the existence of racially induced redlining would necessarily change.

e. Geographic Dimensions of Underserved Areas—Targeted Versus Broad Approaches

An important issue for the GSE regulations is whether geographic areas under this goal should be broadly or narrowly defined. Is central city location an adequate proxy for lack of access to mortgage credit? What is gained by more targeted neighborhood-based definitions of underserved areas? This section reports findings from three studies that address these questions. All three support defining underserved areas in terms of the minority and/or income characteristics of census tracts, rather than in terms of a broad definition such as all areas of all central cities.

HUD's Analysis. Tables B.1 and B.2 documented the relatively high denial rates and low mortgage origination rates in underserved areas as defined by HUD. This section extends that analysis by comparing underserved and served areas within central cities and suburbs. Figure B.1 shows that HUD's definition targets central city neighborhoods that are experiencing problems obtaining mortgage credit. The 22.2 percent denial rate in underserved areas of central cities is twice the 11.2 percent denial rate in the remaining areas of central cities. Similarly, the average mortgage origination rate (per 100 owner occupants) in underserved areas of central cities is 6.2, much lower than the average of 13.1 for the remaining areas of central cities

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[23] Their neighborhood risk proxies include median income and house value (inverse indicators of risk), percent of households receiving welfare, median age of houses, homeownership rate (an inverse indicator), vacancy rate, and the rent-to-value ratio (an inverse indicator). A high rent-to-value ratio suggests lower expectations of capital gains on properties in the neighborhood.

[24] Schill and Wachter, page 271. Munnell, *et al* reached similar conclusions in their study of Boston. They found that the race of the individual mattered, but that once individual characteristics were controlled, racial composition of the neighborhood was insignificant.

[25] In their study of individual loan denial rates, Avery, Beeson, and Sniderman obtain significant and positive coefficients for the individual applicant's race. Unlike Schill and Wachter, they found that denial rates were higher in low-income tracts even after controlling for the effects of the applicant's race and income. Although denial rates were not higher overall for purchase and refinance loans in minority tracts after controlling for the race of the applicant, denial rates were higher in minority tracts for white applicants. In other words, minorities have higher denial rates wherever they attempt to borrow, but whites face higher denials when they attempt to borrow in areas dominated by minorities. In addition, denial rates were higher in minority areas for home-improvement loans. See Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, "Underserved Mortgage Markets: Evidence from HMDA Data," Working Paper Series 94–16, Federal Reserve Bank of Cleveland, October 18, 1994.

FIGURE B.1

Denial And Origination Rates Underserved Areas And Remainder By Central Cities And Suburbs

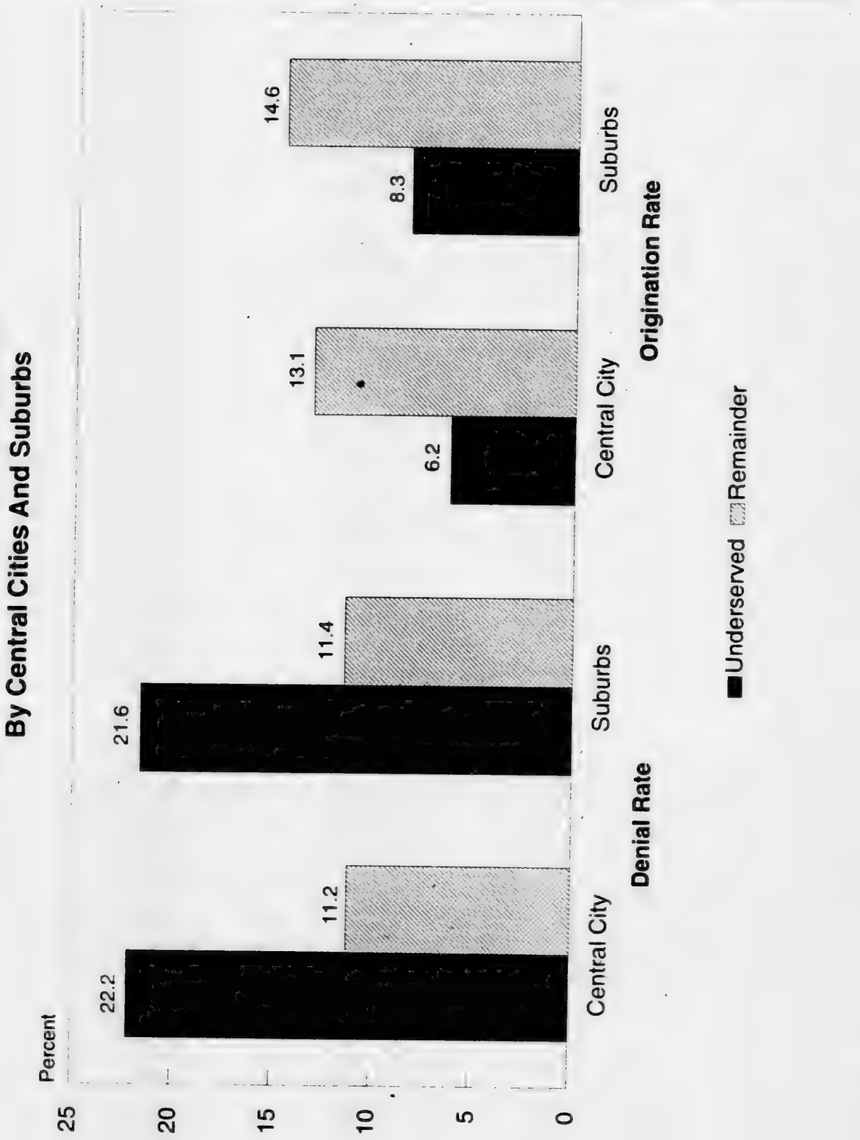

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A broad, inclusive definition of "central city" that includes all areas of all central cities would include the "remaining" portions of central cities. Figure B.1 shows that these areas, which account for approximately half of the central city population, appear to be well served by the mortgage market. They are not experiencing problems obtaining access to mortgage credit.[26]

HUD's definition also targets in the suburbs as well as in central cities—for example, the average denial rate in underserved suburban areas is almost twice that in the remaining areas of the suburbs. Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 23 percent of the suburban population, should also be included in the definition of underserved areas. Thus, the advantage of HUD's targeted definition of underserved areas is illustrated by sharp differences in measures of mortgage access between served and underserved areas within both central cities and suburbs.

William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, economists at Freddie Mac, recently completed an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that also supported a targeted definition of underserved areas.[27] These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that are intended to account for some, but admittedly not all, of the demand and supply (i.e., credit risk) influences at the census tract level. Examples of the demand and supply variables at the census tract level include: Tract income relative to the area median income, the increase in house values between 1980 and 1990, the percentage of units boarded up, and the age distributions of households and housing units. The tract's minority composition and central city location were included to test if these characteristics are associated with underserved neighborhoods after controlling for the demand and supply variables. Several of their findings relate to the issue of defining underserved areas:

- Black and Hispanic census tracts have lower rates of applications, originations, and acceptance rates. For instance, the regression estimates suggest that all-White census tracts would have an average 10.5 originations per 100 properties, while all-Black and all-Hispanic census tracts would have about 7 originations per 100 properties.
- Tract income influences mortgage flows—tracts at 80 percent of median income are estimated to have 8.6 originations per 100 owners as compared with 10.8 originations for tracts over 120 percent of median income.
- Once census tract influences are accounted for, central city location has only a minimal effect on credit flows.

Shear, Berkovec, Dougherty, and Nothaft recognized that it is difficult to interpret their estimated minority effects—the effects may indicate lender discrimination, supply and demand effects not included in their model but correlated with minority status, or some combination of these factors. They explain the implications of their results for measuring underserved areas as follows:

> • • • While it is not at all clear how we might rigorously define, let alone measure, what it means to be underserved, it is clear that there are important housing-related problems associated with certain location characteristics, and it is possible that, in the second or third best world in which we live, mortgage markets might be useful in helping to solve some of these problems. We then might use these data to help single out important areas or at least eliminate some bad choices. • • • The regression results indicate that income and minority status are better indicators of areas with special needs than central city location.[28]

Robert Avery, Patricia Beeson, and Mark Sniderman of the Federal Reserve Bank of Cleveland recently presented a paper specifically addressing the issue of underserved areas in the context of the GSE legislation.[29] Their study examines variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. They seek to isolate the differences that stem from the characteristics of the neighborhood itself rather than the characteristics of the individuals that apply for loans in the neighborhood or lenders that happen to serve them. Similar to the two studies of redlining reviewed in the previous section, Avery, Beeson and Sniderman hypothesize that variations in mortgage application and denial rates will be a function of several risk variables such as the income of the applicant and changes in neighborhood house values; they test for independent racial effects by adding to their model the applicant's race and the racial composition of the census tract. Econometrics are used to separate individual applicant effects from neighborhood effects.

Based on their empirical work, Avery, Beeson and Sniderman reach the following conclusions:

- The individual applicant's race exerts a strong influence on mortgage application and denial rates. Black applicants, in particular, have unexplainably high denial rates.
- Once individual applicant and other neighborhood characteristics are controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts.[30] For white applicants, on the other hand, denial rates were significantly higher in minority tracts.[31] That is, minorities have higher denial rates wherever they attempt to borrow but whites face higher denials when they attempt to borrow in minority neighborhoods. In addition, Avery *et al.* found that home improvement loans had significantly higher denial rates in minority neighborhoods. Given the very strong effect of the individual applicant's race on denial rates, Avery *et al.* note that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted.
- The median income of the census tract had strong effects on both application and denial rates of purchase and refinance loans, even after other variables were accounted for.
- There is little difference in overall denial rates between central cities and suburbs, once individual applicant and census tract characteristics are controlled for.

Avery, Beeson and Sniderman conclude that a tract-level definition would be a more effective way to define underserved areas in the GSE regulation than using central city as a proxy.

Insights Gained About Underserved Areas. HUD's analysis of 1993 HMDA data has led it to propose a targeted definition of central cities, rural areas, and other underserved areas based on the income and minority characteristics of the census tract. The studies by Shear, *et al.* and Avery, Beeson, and Sniderman support a targeted approach to defining underserved areas. HUD recognizes that the mortgage origination and denial rates that served as the basis for determining the tract income and minority thresholds in its definition of underserved areas are the result of a multitude of risk, demand and supply factors operating at the individual applicant and neighborhood levels that analysts have yet to completely disentangle and interpret. Like the above researchers, HUD believes that this technical concern, although important, does not negate the fact that there are widespread and pervasive differences in mortgage credit flows between neighborhoods and that these differences suggest a targeted rather than a broad approach for defining underserved areas. The next section will also document that there are equally widespread and pervasive differences in socioeconomic conditions across neighborhoods, which also supports a targeted definition of central

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[26] Section D below will provide additional reasons why central city location should not be used as a proxy for underserved areas.

[27] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, "Unmet Housing Needs: The Role of Mortgage Markets," presented at mid-year meeting of the American Real Estate and Urban Economics Association, June 1, 1994. See also Susan Wharton Gates, "Defining the Underserved," *Secondary Mortgage Markets*, 1994 Mortgage Market Review Issue, pp. 34–48.

[28] Shear *et al.*, p. 18.

[29] See Avery, *et al.*

[30] Avery *et al.* find very large unadjusted differences in denial rates between white and minority neighborhoods, and although the gap is greatly reduced by controlling for applicant characteristics (such as race and income) and other census tract characteristics (such as house price and income level), a significant difference between white and minority tracts remains (for purchase loans, the denial rate difference falls from an unadjusted level of 16.7 percent to 4.4 percent after controlling for applicant and other census tract characteristics, and for refinance loans, the denial rate difference falls from 21.3 percent to 6.4 percent). However, when between-MSA differences are removed, the gap drops to 1.5 percent and 1.6 percent for purchase and refinance loans, respectively. See Avery, *et al.*, p. 16.

[31] Avery, *et al.*, page 19, note that, other things equal, a black applicant for a home purchase loan is 3.7 percent more likely to have his/her application denied in an all-minority tract than in an all-white tract, while a white applicant from an all-minority tract would be 11.5 percent more likely to be denied.

cities, rural areas, and other underserved areas.

f. Mortgage Access Problems and Socioeconomic Distress

To this point the discussion has focused on the credit problems of minority and low-income neighborhoods. However, there has also been a great deal of concern about poor living conditions in the nation's distressed neighborhoods. This section brings these two issues together, showing that lack of access to credit markets is closely related to distressed living conditions.

HUD's analysis of underserved census tracts shows that they are substantially more distressed than served tracts:

- Poor persons are highly concentrated in underserved areas. In metropolitan areas, 64 percent of all poor people live in underserved areas. The share is even higher in central cities, with 76 percent of poor persons in underserved areas.
- Table B.3 shows that residents in underserved areas have higher poverty rates, higher minority concentration, lower incomes, and higher unemployment rates. For instance, underserved areas show a poverty rate of 23 percent, compared with only 7 percent in served areas.
- In terms of housing, Table B.3 shows that underserved areas have a larger percentage of renters, more boarded-up units, more older housing, and more low-valued housing than do served areas. The average value of owner-occupied housing in underserved areas was $81,681, compared with $127,423 in served areas.

The socioeconomic differences between underserved and served census tracts hold when the comparisons are made separately for central cities and suburban areas. These findings further support the targeting approach and point to the usefulness of the minority and income variables as proxies for underserved conditions.

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Table B.3

Characteristics of Underserved and Served Tracts: Metropolitan Areas

	Central Cities		Suburbs		Metropolitan Areas	
	Underserved	Served	Underserved	Served	Underserved	Served
Number of Census Tracts	12,531	10,629	4,806	16,481	17,337	27,110
Poverty Rate	26.7%	8.4%	16.6%	6.5%	22.7%	7.2%
Tract Income/MSA Income	63	124	77	119	67	121
Minority Percentage	63.3%	13.3%	41.9%	8.7%	54.4%	10.5%
Percent Old Houses *	45.6%	28.9%	26.7%	21.3%	40.3%	24.3%
Median House Value	$75,431	$122,459	$97,975	$130,624	$81,681	$127,423
Percent Renter	58.6%	35.4%	43.5%	23.4%	54.4%	28.1%
Percent Boarded Up	1.31%	.15%	.43%	.12%	1.07%	.13%
Unemployment Rate	12.5%	5.0%	8.7%	4.6%	11.4%	4.8%

*Percent of housing units built before 1950.

Note: Except for the unemployment and poverty rates, percentages represent unweighted averages across census tracts.

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g. Identifying Underserved Locations in Rural Areas

Evaluating which rural locations are underserved in terms of access to mortgage credit cannot be done with HMDA data, the source used for most of the studies of credit needs summarized here, because these data do not provide geographic identifiers on mortgage activity outside of metropolitan statistical areas. Moreover, there are few careful current studies on access to mortgage credit in rural locations. A 1990 study by the Urban Institute, for example, found little evidence of a national rural home credit shortage, and attributed low mortgage activity in some local markets to lack of demand in weak local economies.[32]

To address issues about defining underserved areas in rural contexts, the Department consulted with researchers from academia, the Department of Agriculture, the Census Bureau, the Housing Assistance Council, the Congressional Budget Office, public-interest groups, and the GSEs. Researchers participating in a forum on these issues agreed that available studies do *not* show that rural areas have endemic problems with access to credit, although this conclusion may stem from lack of adequate data. Yet there is much anecdotal evidence that underserved areas in rural communities have less access to credit and particularly to the secondary market. According to the Housing Assistance Council (HAC), access to mortgage credit worsens as distance from metropolitan centers increases,[33] while Department of Agriculture representatives judge that communities with population below 2,500 or 5,000 most often lack access to lenders. In general, the forum participants agreed that, as found for cities and suburbs, rural communities with low income or minority concentrations were those more likely to be underserved.

3. Conclusions From HUD's Analysis and the Economics Literature About Underserved Areas

The implications of studies by HUD and others for defining underserved areas can be summarized briefly. First, the existence of large geographic disparities in mortgage credit is well documented. HUD's analysis of 1993 HMDA data shows that low-income and minority neighborhoods receive substantially less credit than other neighborhoods and, by most reasonable criteria, fit the definition of being underserved by the nation's credit markets.

Second, researchers are beginning to test models that more fully account for the various risk, demand, and supply factors that determine the flow of credit to urban neighborhoods. The studies by Holmes and Horvitz and Schill and Wachter are good examples of this recent research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, as those two studies show, the fact that our urban areas are highly segregated means that the various loan, applicant, and neighborhood characteristics currently being used to explain credit flows are often highly correlated with each other which makes it difficult to reach definitive conclusions about the relative importance of any single variable such as neighborhood racial composition. Thus, the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[34]

Finally, the research strongly supports a targeted definition of underserved areas. Studies by Shear, *et al.* and Avery, Beeson, and Sniderman conclude that characteristics of both the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates—once these characteristics are controlled for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending. HUD's analysis shows that both credit and socioeconomic problems are highly concentrated in underserved areas within central cities and suburbs. The remaining, high-income portions of central cities and suburbs appear to be well served by the mortgage market.

C. Consideration of the Factors

As the above review shows, the most thorough studies available provide strong evidence that in metropolitan areas low income and minority composition identify neighborhoods that are underserved by the mortgage market. Experts on rural housing concur that these dimensions also influence credit availability in rural and non-metropolitan areas. As this section discusses, geographical differentials in housing, social, and economic problems and past discrimination against minorities confirm that problems are greater throughout the nation in the areas identified as underserved under the Secretary's proposed definition. Section C.1. describes housing needs in urban and rural areas generally, after which the extreme social and economic problems of distressed neighborhoods are noted. Section C.2. discusses discrimination and other housing problems faced by minorities. Although few studies have yet analyzed the specific geographic areas targeted by the proposed definition, the segregation of minorities within the nation's inner cities and poorer rural counties makes this information pertinent to analysis of underserved areas and to the goal set by the Secretary.

1. Housing Needs in Urban and Rural Areas

a. Regional and Urban/Rural Differences in Housing Needs

The incidence of housing problems and severe housing problems varies markedly by location. At almost every income level in 1990, both renters and owners were most likely to have housing problems in the West, and residents of central cities more often had problems than those in suburbs or outside metropolitan areas.[35] In each type of location, affordability problems were most common. Although households in non-metropolitan areas, for example, were less likely than those in cities or suburbs to pay more than 30 percent of income for housing in 1991, affordability problems (25 percent) were still much more common for them than physically inadequate housing (10 percent). Three-quarters of non-metropolitan housing units are in the South and the Midwest. These households have a relatively high incidence of substandard housing, but affordability is less of a problem than elsewhere in the nation. Housing conditions are worst in the South, where over one-fourth of non-metropolitan units have some type of physical deficiency.

Very low-income renters similarly were more likely to have worst case problems in the West and Northeast than in the Midwest and South. Nationally, over half of worst case households lived in central cities, while a third lived in the suburbs.[36] In all four regions, renters living outside of metropolitan areas least often had worst case problems.

Although "non-metropolitan," as defined by OMB is often considered equivalent to "rural," as defined by the Census Bureau, almost half of rural households live in metropolitan areas. Moreover, over one-third of non-metropolitan households live in communities the Census Bureau classifies as urban. Thus, any discussion of rural and urban housing needs must define terms carefully. Analysis of 1991 American Housing Survey data reveals that rural households in metropolitan areas actually have higher ownership rates and fewer housing problems than either urban or rural residents of non-metropolitan areas. Furthermore, in non-metropolitan counties, housing problems are more frequent and more often severe, for urban than for rural residents.

The Economic Research Service of the Department of Agriculture shows that urban proximity is important: economic conditions and housing problems tend to be worse in counties most remote from metropolitan areas or smaller cities.[37] In particular, counties with "persistent low-income," which are disproportionately more rural and remote, have had little recent economic activity, stagnation in real family income during the 1980s, and continue to have the highest incidence of housing lacking complete plumbing. These high poverty

[32] The Urban Institute, 1990. *The Availability and Use of Mortgage Credit in Rural Areas* examined data on ownership, mortgage terms and conditions, and Federal program coverage, particularly for moderate-income homebuyers.

[33] Statement of Moises Loza, Executive Director of HAC, July 21, 1994, to the Subcommittee on Environment, Credit, and Community Development of the House Committee on Agriculture.

[34] Methodological and econometric challenges that researchers will have to deal with are discussed in Mitchell Rachlis and Anthony Yezer, "Serious Flaws in Statistical Tests for Discrimination in Mortgage Markets," *Journal of Housing Research*, Volume 4, 1993, pp. 315–336.

[35] Amy Bogdon, Joshua Silver, and Margery A. Turner, *National Analysis of Housing Affordability, Adequacy, and Availability: A Framework for Local Housing Strategies*, HUD–1448–PDR, 1994.

[36] U.S. Dept. of Housing and Urban Development, 1992. *The Location of Worst Case Needs in the Late 1980s: A Report to Congress*. HUD–1367–PDR.

[37] *Rural Conditions and Trends*, Volume 4, No. 3, Fall 1993, a special 1990 census issue, documents differences among counties in population, education, employment, income, poverty, and housing.

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counties are concentrated in Appalachia and in areas with high proportions of minority residents.

Higher proportions of rural households are homeowners than those in urban areas (79 percent versus 60 percent), in part because of wider availability of mobile homes. Because of lower mobility and higher shares of elderly householders who have paid off their mortgages, rural homeowners are less likely to have mortgages than urban homeowners (46 versus 64 percent). Those that do have mortgages are more reliant on non-institutional sources than homeowners in metropolitan areas.[38]

b. Housing Needs in Distressed Neighborhoods

Although analysis of housing problems in areas defined as underserved by the Secretary is still underway, over the past three decades evidence of growing poverty concentrations has caused mounting concern about poor living conditions in the nation's distressed neighborhoods. John Kasarda has focused on trends in the neighborhood concentration of poverty and measures of the "underclass" population such as school dropouts, unemployed and underemployed adult males, single-parent families, and families dependent upon welfare.[39] Kasarda has not only documented the extreme deprivation that exists in minority and low-income neighborhoods throughout our major urban areas, but he has also shown that neighborhood distress and concentrations of residents in tracts with high poverty worsened during the 1980s.

Analysis within 44 major metropolitan areas showed that in the late 1980s renters were most likely to have worst case needs in the poorest neighborhoods.[40] Although only one-tenth of households lived in neighborhoods with poverty rates above 20 percent, those poorest neighborhoods housed almost one-fourth of worst case renters. These poorest zones closely resemble tracts identified as poor ghettos or underclass areas. They contained older, smaller units that were more often physically inadequate and crowded than other housing in the metropolitan areas studied.[41] As discussed earlier, the tracts qualifying as underserved under HUD's definition have similar socioeconomic problems and are substantially worse off than other parts of metropolitan areas in terms of both social and housing problems (see Table B.3).

2. Economic, Housing, and Demographic Conditions

a. Discrimination in the Housing Market

In addition to discrimination in the lending market, substantial evidence exists of discrimination in the housing market. The Housing Discrimination Study sponsored by HUD and conducted in 1989 found that minority home buyers encounter some form of discrimination about half the time when they visit a rental or sales agent to ask about advertised housing.[42] The incidence of discrimination was higher for Blacks than for Hispanics and for homebuyers than for renters. For renters, the incidence of discrimination was 46 percent for Hispanics and 53 percent for Blacks. The incidence among buyers was 56 percent for Hispanics and 59 percent for Blacks.

While discrimination is rarely overt, minorities are more often told the unit of interest is unavailable, shown fewer properties, offered less attractive terms, offered less financing assistance, or provided less information than similarly situated non-minority homeseekers. Some evidence indicates that properties in minority and racially-diverse neighborhoods are marketed differently from those in White neighborhoods. Houses for sale in non-White neighborhoods are rarely advertised in metropolitan newspapers, open houses are rarely held, and listing real estate agents are less often associated with a multiple listing service.[43]

b. Housing Problems of Minorities and their Neighborhoods

Because they face discrimination in access to housing or lending, minorities and their neighborhoods face severe housing problems:

- Discrimination in the housing and lending markets is evidenced by racial disparities in homeownership. In 1991, the homeownership rate was 68 percent for Whites, 43 percent for Blacks, and 39 percent for Hispanics. Although differences in income, wealth, and family structure explain much of the differences, racial disparities persist after accounting for these factors.[44]
- Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between Blacks and Whites in our urban areas.
- Hispanics are the group most likely to have worst case needs for housing assistance, but least likely to receive assistance: in 1991, only 21 percent of very low-income Hispanics lived in public or assisted housing. The 1989 to 1991 increase in worst case needs was the largest for Hispanic households, rising from 39.2 to 44.4 percent of very low-income Hispanic renters.

The housing problems of minorities and the neighborhoods where they live are of growing importance, in part, because minorities, particularly Hispanics, are becoming an increasingly large share of the U.S. population. In Los Angeles and Miami, with rapid growth in Hispanic immigrant population and slow growth in the native-born non-Hispanic White population, minorities already represent more than half the total population.

Homeownership rates vary consistently by neighborhood characteristics. As Table B.4 shows, on average homeownership rates decrease as the minority concentration in census tracts increases, and as income falls relative to the area median. These patterns are consistent with the demographic patterns described earlier, that minorities and low-income households have lower homeownership rates. An exception to this pattern occurs in tracts with incomes below 50 percent of the area median, in which homeownership rates rise with minority concentration in some cases. However, only a very small proportion of households live in these tracts.

3. Previous Performance and Effort of the GSEs In Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

The central cities, rural areas, and other underserved areas goal will be in effect for the first time in 1995, replacing the central city goal. Because it is a new goal, the GSEs did not provide specific reports to HUD regarding their 1993 performance in connection with underserved areas. HUD did examine the GSEs' performance in the areas covered by the newly defined goal using 1993 HMDA data and the loan-level data submitted by the GSEs to HUD for 1991 mortgage purchases.

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[38] The Urban Institute.

[39] "Inner-City Concentrated Poverty and Neighborhood Distress: 1970 to 1990." *Housing Policy Debate*, 4(3): 253–302.

[40] U.S. Dept. of Housing and Urban Development, 1992. *The Location of Worst Case Needs in the Late 1980s: A Report to Congress*. HUD–1387–PDR.

[41] Kathryn P. Nelson, 1993. "Intra-urban Mobility and Location Choice in the 1980s," pp. 53–95 in Thomas Kingsley and Margery Turner, eds., *Housing Markets and Residential Mobility*. Washington, DC: The Urban Institute Press.

[42] Margery A. Turner, Raymond J. Struyk, and John Yinger, *Housing Discrimination Study Synthesis*, Washington, D.C., U.S. Department of Housing and Urban Development, 1991.

[43] Margery A. Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," *Housing Policy Debate*, Vol. 3, Issue 2, 1992, pp. 185–215.

[44] Susan M. Wachter and Isaac F. Megbolugbe, "Racial and Ethnic Disparities in Homeownership," *Housing Policy Debate*, Vol. 3, Issue 2, 1992, pp. 333–370.

Table B.4

Homeownership Rates for Metropolitan Census Tracts

Tract Median Income as % of Area Median	Percentage of Minority Households in Census Tracts										TOTAL
	LT 10%	10-20%	20-30%	30-40%	40-50%	50-60%	60-70%	70-80%	80-90%	90-100%	
30% or Less	7.3%	4.8%	15.3%	17.3%	18.2%	16.1%	16.6%	19.2%	18.9%	16.9%	17.1%
30-40%	18.1%	9.2%	17.9%	22.2%	20.6%	20.0%	23.9%	24.7%	26.5%	27.5%	25.0%
40-50%	30.1%	27.6%	27.1%	25.7%	27.1%	26.4%	26.7%	26.8%	28.8%	32.4%	29.6%
50-60%	54.8%	37.7%	37.6%	30.1%	32.0%	34.7%	35.9%	34.7%	35.8%	39.7%	37.5%
60-80%	62.0%	48.3%	43.1%	41.9%	39.9%	43.1%	43.0%	45.4%	44.9%	48.6%	48.3%
80-100%	70.6%	58.5%	53.3%	51.4%	49.4%	52.5%	52.8%	54.9%	55.9%	62.5%	62.0%
100-120%	76.1%	64.5%	60.3%	57.6%	59.0%	62.0%	65.9%	65.1%	71.2%	64.6%	70.1%
More Than 120%	79.3%	67.3%	65.6%	67.1%	66.4%	66.6%	73.6%	74.7%	69.9%	71.6%	74.0%
TOTAL	74.3%	61.1%	54.6%	50.4%	47.3%	47.2%	46.4%	46.7%	44.1%	39.8%	61.8%

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ii. GSE Performance: 1993 HMDA Data

HMDA data permit examination of the GSEs' performance in metropolitan areas.[45] According to 1993 HMDA data, 13.1 percent of Fannie Mae's single-family business was in underserved areas. Of its total underserved business, 23.8 percent was in low-income tracts (i.e., tracts with income not exceeding 80 percent of area median but with minority population less than 30 percent), 49.8 percent was in high-minority tracts (i.e., tracts with minority population greater than or equal to 30 percent and with incomes between 80 and 120 percent of the area median), and 26.4 percent was in high-minority, low-income tracts.

Based on 1993 HMDA data 13.6 percent of Freddie Mac's single-family business was in underserved areas. Of its underserved business, 23.1 percent was in low-income tracts, 50.0 percent was in high-minority tracts, and 27.0 percent was in high-minority, low-income tracts.

HMDA data can also be used to compare GSE performance in low-income and high-minority census tracts with that of the overall market. Combined, GSE purchases accounted for a higher percentage of loans in high-income census tracts than in low-income census tracts. GSEs purchased 44 percent of the loans in under-50-percent income tracts, 47 percent of the loans in 50–80-percent income tracts, 51 percent of the loans in 80–100-percent income tracts, and 59 percent in the above-median income tracts. The GSE purchase share declined sharply relative to the market in very-high-minority tracts (over 90 percent).

b. GSE Performance: 1993 GSE Data

Table B.5 summarizes GSE purchases in underserved areas using the 1993 loan-level data that Fannie Mae and Freddie Mac submitted to HUD. In 1993, 15.9 percent of Fannie Mae's business and 14.4 percent of Freddie Mac's business was in underserved areas. The share of GSE business in underserved areas varies rather dramatically by property type; for example, about 13 percent of Fannie Mae's single-family owner purchases were in underserved areas compared with over 30 percent for the three rental property types given in Table B.5.

As Table B.6 shows, approximately 40 percent of GSE purchases in underserved areas were mortgages of low- and moderate-income households. Thus above-median income households accounted for 60 percent of the mortgages that the GSEs purchased in underserved areas which suggests these areas are quite diverse. In central cities, one-third of the GSEs' low-mod purchases were in underserved areas, whereas in the suburbs, only 16 percent were. This reflects the much greater concentration of poverty in central cities.

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[45] HMDA data are not useful for examining rural performance. However this, by itself, will have little effect on the estimate of performance because the GSEs do only a small portion of their business in non-metropolitan areas. Share of metropolitan business in underserved areas will be very close to share of total business in underserved areas. Metropolitan underserved share is only an underestimate of total underserved share if the rural business is much more highly targeted to underserved areas than is the metropolitan business.

Table B.5

Share of 1993 Purchases That Were In Underserved Areas

	Fannie Mae	Freddie Mac
SF-Owner	12.7%*	12.8%
SF 2-4	45.2	43.0
SF Investor	35.4	35.6
Multifamily	35.0	37.9
Total	15.9	14.4

* Excluding FHA/VA purchases

* 12.7 percent of Fannie Mae single-family owner-occupied units were in underserved areas

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Table B.6

1993 Fannie Mae And Freddie Mac Mortgage Purchases By Underserved Area And Low- And Moderate-Income

Share of 1993 Underserved Units That Are Also Low- And Moderate-Income Units	Fannie Mae	Freddie Mac
Central City	44.8%*	42.5%
Suburbs	41.6	40.1
Non-metro	20.8	22.8
Total	42.0	39.5
Share Of Low- And Moderate-Income Units That Are In Underserved Areas	**Fannie Mae**	**Freddie Mac**
Central City	33.4%**	32.8%
Suburbs	14.1	14.2
Non-metro	4.8	8.9
Total	18.1	18.0

* 44.8 percent of Fannie Mae's 1993 central city single-family owner-occupied purchases in underserved areas went to low-mod borrowers. (Properties with missing data excluded.)

** 33.4 percent of Fannie Mae's 1993 low-mod units located in central cities are also located in underserved areas. (Properties with missing data excluded.)

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4 Size of the Conventional Mortgage Market for Central Cities, Rural Areas, and Other Underserved Areas Relative to the Overall Conventional Conforming Market

Section C.4 of Appendix A describes HUD's two approaches for estimating the size of the low- and moderate-income market. The first approach cannot be used for underserved areas because American Housing Survey data are not available at the census tract level. The analysis of underserved areas follows the second approach, which is based on HMDA data and projections of the 1995 mortgage market. The methodology involves estimating for each of the various property types (single family owner, single family investment, etc.) the percentage of dwelling units financed by mortgages that are located in underserved census tracts and, then, computing the overall market share for underserved areas by weighting these underserved area percentages by the mortgage originations for each property type in the 1995 market.

This approach follows the same six steps as outlined in Section C.4.b of Appendix A. In steps (5) and (6), underserved area shares are substituted for low-mod shares:

(5) Estimates of the percentage of dwelling units financed by mortgages that are located in underserved areas were: 15.4 percent for single-family owner-occupied purchase mortgages and 14.1 percent for single-family owner-occupied refinance mortgages (both figures based on 1993 HMDA data); and 45 percent for single-family 2–4's, 35 percent for single-family 1–4's, and 43 percent for multifamily (discussed below).

(6) Applying the above underserved area percentages to the property type weights given in step (4) of Section C.4.b of Appendix A gives an overall estimated underserved area share for 1995 of 23.4 percent.

Sensitivity analyses were conducted for the market importance of each property type and for the underserved area shares of each property type, as discussed in Appendix A. Using 1992 HMDA data for the single-family owner-occupied shares in step (5) gave almost identical results. Sensitivity analysis was more important for the three rental categories where data on underserved areas are not readily available. The percentages (45 percent and 35 percent) of single-family rental mortgages located in underserved areas were based on GSE data—the percentages of Fannie Mae's mortgage purchases in underserved areas for 2–4 and 1–4 properties were 45 percent and 35 percent, respectively, and the corresponding percentages for Freddie Mac were 43 percent and 36 percent, respectively.[46] 1993 (1992) HMDA data on mortgages to properties with non-occupant owners were consistent with the GSE data for 1–4 properties—HMDA reports that almost 32 percent (35 percent) of those mortgages were for properties located in underserved areas.

The multifamily underserved area percentage (43 percent) is based on 1992 and 1993 HMDA data which, admittedly, is quite limited.[47] The only other source is Fannie Mae data, because Freddie Mac's purchases of multifamily mortgages in 1993 were limited. In 1993, about 35 percent of Fannie Mae's multifamily business was in underserved areas. Dropping the multifamily percentage from 43 percent to 40 (35) percent would reduce the estimated market share for underserved areas to 22.9 (21.9) percent. These and other analyses leads the Secretary to conclude that the size of the underserved area market is at least in the 21–23 percent range.

5. Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section C.5 of Appendix A for discussion of this factor.

6. Need To Maintain the Sound Financial Condition of the Enterprises

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section C.6 of Appendix A for discussion of this factor.

D. Determination of the 1995 and 1996 Central Cities, Rural Areas, and Other Underserved Areas Goal

This section summarizes the Secretary's rationale for choosing targeted definitions of central cities, rural areas, and other underserved areas, compares the characteristics of served and underserved areas, and addresses other issues related to determining the underserved area goals. The section draws heavily from earlier sections which have reported findings from HUD's analyses of mortgage credit needs as well as findings from other research studies investigating access to mortgage credit.

1. Market Failure

The nation's housing finance market is a highly efficient system where most homebuyers can put down relatively small amounts of cash and obtain long-term funding at relatively small spreads above the lender's borrowing costs. Indeed, the growth of the secondary mortgage market during the 1980s integrated a previously thrift-dominated mortgage market with the nation's capital markets so that mortgage funds are more readily available and mortgage costs are more closely tied to movements in Treasury interest rates.

Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Access to credit all to often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. HUD's analysis of 1993 HMDA data shows that mortgage credit flows are substantially lower in minority and low-income neighborhoods and mortgage denial rates are much higher for minority applicants.

Admittedly, disagreement exists in the economics literature regarding the underlying causes of these disparities in access to mortgage credit, particularly as related to the roles of discrimination, "redlining" of specific neighborhoods, and the barriers posed by underwriting guidelines to potential minority and low-income borrowers. Because the mortgage system is quite complex and involves numerous participants, it will take more data and research to gain a fuller understanding of why these disparities exist. Still, studies reviewed in Section B of this Appendix found that the individual's race and the racial and income composition of neighborhoods influence mortgage access even after accounting for demand and risk factors that may influence borrowers' decisions to apply for loans and lenders' decisions to make those loans. Therefore, the Secretary concludes that lending disparities are glaring and persistent and that minority and low-income communities are underserved by the mortgage system.

2. Selection of Targeted Approach

For 1993 and 1994, the Secretary was required to use the OMB list of "central cities" for the geographic targeting goal; the OMB definition of central city was a temporary measure to allow time for analysis to define a better targeting standard. HUD, along with the GSEs, Congress, and community groups, recognized that central cities as defined by OMB do not satisfactorily measure cities that are underserved by the mortgage market. There are several reasons for this.

First, major portions of central cities house upper-income families and neighborhoods that are well served by the mortgage market. New York's Upper East Side, Chicago's "Gold Coast," Washington's Georgetown and other wealthy areas within central cities across the nation do not fit into any reasonable definition of an "underserved area." The fact that not all parts of central cities lack access to mortgage credit was demonstrated earlier in Figure B.1. Compared to underserved central city census tracts, the remaining "served" tracts have half the denial rate. Mortgage origination rates (per 100 owner occupants) in the served portions of central cities are double the origination rates in the underserved portions of central cities. Thus, central city areas that are not included in HUD's underserved area definition appear to be obtaining mortgage credit. These areas, which account for about half of the central city population, are well served by the mortgage market.

Second, many urban areas not defined as "central cities" by OMB are highly distressed and not well served by the mortgage market. Examples of highly distressed urban areas located outside central cities include East Orange and Paterson, New Jersey and Compton, California. Highly distressed Compton, with a poverty rate of 25 percent, is not on OMB's list, but Palo Alto, California, with a poverty rate of only 2 percent, is on OMB's list.

[46] Unlike the low- and moderate-income percentages reported in Appendix A, the likelihood of the GSEs' mortgages being located in an underserved area did not differ much between purchase and refinance mortgages.

[47] The 1992 HMDA data included only $9 billion of the $25 billion in conventional multifamily mortgages originated during 1992. Similarly, the 1993 HMDA data included $11 billion of the total $29 billion in conventional multifamily mortgages originated in 1993.

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Third, OMB states that:

In cases where there is no statutory requirement and an agency elects to use the (Metropolitan Area (MA)) definitions in a nonstatistical program, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use.[48] Strictly speaking, this OMB statement applies only to MAs, but by logical extension it also applies to the central cities within these MAs. The Secretary has examined OMB's definition of central cities, in accordance with this memorandum, and concluded that it alone does not provide a satisfactory definition of all (or a part) of appropriately-defined "underserved areas."

Finally, there is substantial regional variation in the portion of state urban populations that are included within central cities. In the Southern and Western parts of the United States, cities have often expanded by annexing adjacent territory. This option was generally not available to cities in the Northeast, which have retained their historical boundaries. Thus, a substantially greater portion of the population lives in central cities in South and West than in the more urbanized Northeastern states. Central cities accounted for more than 50 percent of both GSEs' 1993 purchases in Arizona, New Mexico, and North Dakota. In New Jersey, on the other hand, central cities accounted for only 4 percent of GSE purchases.[49]

For 1995 and beyond, Congress directed that the transition "central cities goal" be changed to better emphasize underserved areas. Although Congress did not define "underserved areas," it indicated that they are locations with relatively poor access to mortgage credit. Thus the goal should target those parts of central cities and those parts of rural areas with poor access to mortgage credit, as well as any other areas with problems with access to credit.

Ideally, the definition of areas with poor access to mortgage credit would be based on a clear determination of areas that do not receive the level of mortgage credit they require. Section B reported HUD's analysis of 1993 HMDA data and the main findings of several studies of mortgage lending conducted by community groups, government agencies, and academic researchers. While there is much research left to be done to fully understand mortgage access for different types of persons and neighborhoods, one finding remains clear—minority and low-income neighborhoods have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods.

As mentioned earlier, studies that have controlled for borrower and neighborhood risk characteristics find that racial differentials in denial rates and mortgage flows persist. Recent studies have concluded that characteristics of the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and originations—once these characteristics are accounted for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending.[50] These studies, as well as HUD's own analysis, provide strong support for a targeted approach to identifying underserved areas. In addition, they point to two useful proxy variables for measuring access to mortgage credit—a neighborhood's minority composition and its level of income

3. Identifying Underserved Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of HMDA studies:[51] Application denial rates and mortgage origination rates per 100 owner-occupied units.[52] Tables B.1 and B.2 in Section B presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas.[53] Aggregating those data is useful for examining denial and origination rates for broader groupings of census tracts:

Minority composition (percent)	Denial rate (percent)	Origination rate	Tract income (percent)	Denial rate (percent)	Origination rate
0–30	12	13.4	Less than 80	23	5.9
30–50	19	10.1	80–120	15	11.3
50–100	24	6.6	Greater than 120	9	17.7

Two points stand out from these data. First, census tracts with higher percentages of minority residents have higher denial and lower origination rates. Tracts that are over 50 percent minority have twice the denial rate and half the origination rate of tracts that are under 30 percent minority.[54] Second, census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. Tracts with income less than or equal to 80 percent of area median have almost three times the denial rate and one-third the origination rate of tracts with income over 120 percent of area median.

HUD chose over 30-percent minority and under 80-percent income as the thresholds for defining underserved areas. There are three advantages to HUD's definition. First, the cutoffs produce sharp differentials in denial and origination rates between served and underserved areas. For instance, the overall denial rate (22.0 percent) in underserved areas is almost double that (11.9 percent) in served areas; and the mortgage origination rate (5.4 per 100 owner occupants) in underserved areas is about half that (10.3 per 100 owner occupants) in served areas. Thus, an advantage of a targeted definition of underserved areas is illustrated by sharp differences in measures of mortgage access between served and underserved areas. The less-than-80-percent income cutoff in HUD's definition has the further advantage of consistency with the Community Reinvestment Act (CRA) definition that applies to depository institutions.

A second advantage is that the minority and income cutoffs are useful for defining mortgage problems in the suburbs as well as in OMB-defined central cities. Underserved areas account for 23 percent of the suburban population, compared with 51 percent of the central city population. The average denial rate in underserved suburban areas is almost twice that in the remaining areas of the suburbs. (See Figure B.1 in Section B.) Thus, the minority and income thresholds in HUD's definition identify those suburban tracts that seem to be experiencing mortgage credit problems.

A third advantage is that the minority and income cutoffs identify tracts that resemble distressed neighborhoods. The socioeconomic characteristics of underserved areas are discussed in the next section.

4. Characteristics of Underserved Areas

The Secretary's definition of central cities, rural areas, and other underserved areas includes 17,337 of the 44,447 census tracts in

[48] Office of Management and Budget, Memorandum M–94–22, May 5, 1994.

[49] For more discussion of this issue, see James A. Johnson, Chairman and Chief Executive Officer, Fannie Mae, testimony before the Committee on Banking, Finance, and Urban Affairs Subcommittee on General Oversight, Investigations and the Resolution of Failed Financial Institutions, U. S. House of Representatives, April 20, 1994, p. 16.

[50] Shear, *et al.*, and Avery, *et al*

[51] HMDA data have been expanded in 1993 to cover independent mortgage companies that originated 100 or more home purchase loans in the preceding calendar year. HMDA provides no useful information on rural areas. In addition, although HMDA data now include applications to provide some measure of overall loan demand, pre-screening discrimination can discourage would-be homebuyers from applying for a mortgage, leading to an underestimation of demand. Nevertheless, the HMDA data, while not necessarily definitive, are still useful in helping to define underserved areas.

[52] Analysis of application rates are not reported here. Although application rates are sometimes used as a measure of mortgage demand, they provide no additional information beyond that provided by looking at both denial and approval (origination) rates. Although denial rates vary by census tract characteristics, the patterns observed for application rates are still very similar to those observed for approval rates.

[53] As discussed in Section B, no sharp breaks occur in the denial and origination rates across the minority and income deciles given in Table B.1—mostly, the increments are somewhat similar as one moves across the various deciles that account for the major portions of mortgage activity.

[54] The differentials in denial rates are due, in part, to differing risk characteristics of the prospective borrowers in different areas. However, use of denial rates is supported by the findings in the Boston Fed study which found denial rate differentials to persist, even after controlling for risk of the borrower. See Section B for a review of that study

metropolitan areas, covering 36 percent of the metropolitan population, 51 percent of the OMB-defined central city population, and 23 percent of the suburban population. In rural (non-metropolitan) areas, the underserved area definition includes 3,160 tracts, or 21 percent of the total 15,045 rural tracts, which covers 21 percent of the rural population.[55]

Underserved tracts are substantially more distressed than served tracts. Poor persons are highly concentrated in underserved areas—64 percent of the metropolitan area poor live in underserved areas as do 76 percent of the central city poor. Underserved areas have higher poverty rates, higher minority concentration, lower incomes, and higher unemployment rates. For instance, the average poverty rate in underserved areas is 23 percent, compared with only 7 percent in served areas. Underserved areas also have more boarded-up units, older housing, and lower valued housing than do served areas. The average value of owner-occupied housing in underserved areas was $81,681, compared with $127,423 in served areas. (See Table B.3 in Section B.)

Table B.7 shows that the Secretary's definition covers most of the population of the nation's most distressed OMB-defined central cities: Newark (99 percent), Detroit (94 percent), Hartford (95 percent), Baltimore (85 percent), and Cleveland (80 percent). The nation's five largest cities also contain large concentrations of underserved areas: New York (60 percent), Los Angeles (68 percent), Chicago (72 percent), Houston (66 percent), and Philadelphia (69 percent). It should be noted that HUD's definition of underserved excludes high minority tracts with median income above 120 percent of area median income. As shown in Table B.8, these tracts, which represent about two percent of metropolitan area population, appear to be relatively well off: they have low levels of poverty (7 percent), high house values ($185,000), and incomes almost 50 percent greater than area median. The high income minority tracts are concentrated in a few metropolitan areas: 10 percent of Los Angeles' population lives in them; the corresponding figures are 6% for New York, 24% for Miami, 26% for Honolulu, and 10% for San Antonio. By contrast, most relatively distressed metropolitan areas have few households in such areas—for example, Cleveland and Detroit (1%); and Memphis, Milwaukee, and Philadelphia (0%).

[55] The Preamble discusses issues related to the choice of tracts or counties to define underserved areas in non-metropolitan sections of the country.

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Table B.7

Needy Areas In Central Cities Would Be Covered

Large Central Cities With High Concentrations of Underserved Tracts (Percent of Population)	
Newark	99
Gary	96
Paterson	96
Hartford	95
Detroit	94
Jersey City	92
Miami	91
Baltimore	85
Cleveland	80
St. Louis	79

Five Largest Cities	
New York	60
Los Angeles	68
Chicago	72
Houston	66
Philadelphia	69

Central Cities With Small Concentrations			
Large Cities		**Small Cities**	
Tulsa	31	Naples, FL	2
Raleigh	31	Appleton, WI	4
Colorado Springs	31	Olympia, WA	6
Wichita	32	Wheeling, WV	10
Oklahoma City	33	Dubuque, IA	11
Nashville	34	Salem, OR	11
Jacksonville	37	Elkhart, IN	11
Phoenix	44	Casper, WY	18

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Table B.8

Characteristics of High Income Minority and Moderate Income Tracts

	SERVED TRACTS			UNDERSERVED TRACTS
	HIMTs	80-100% OF AREA MEDIAN INCOME	REMAINING SERVED TRACTS	
Unemployment Rate	5.5%	6.0%	4.2%	11.4%
Tract/MSA Income	147	91	134	67
Median House Value	$185,455	$85,327	$143,723	$81,681
Poverty Rate	7.0%	10.7%	5.7%	22.7%
African American	23.4%	3.8%	2.7%	31.6%
Hispanic	18.2%	3.4%	3.2%	17.6%
Asian	12.1%	1.5%	2.3%	4.2%

Note: High income minority tracts (HIMTs) are census tracts with income greater than 120 percent of area median and minority percentage greater than 30 percent. Moderate income tracts are census tracts with income between 80 and 100 percent of area median and minority percentage less than 30 percent.

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Among other issues considered in setting the underserved definition included setting the income threshold to the area median income, to include more moderate income areas. This alternative would add tracts with incomes between 80 and 100 percent of the area median. However, it should be noted that minority tracts (over 30 percent minority) at this income level are included in the underserved definition described above, and raising the income limit to the area median would add only tracts with low minority concentration (below 30 percent). These areas represent 8296 Census tracts, and comprise 19 percent of metropolitan population.

Low-minority moderate-income tracts have denial rates almost 30 percent below those of tracts that meet HUD's underserved definition (16 versus 22 percent). By contrast, minority moderate-income tracts have a denial rate almost identical to the overall underserved denial rate. The origination rate in moderate-income low-minority tracts (9.7) is noticeably higher than that in underserved tracts (7.0).

Table B.8 compares socio-economic conditions in low-minority moderate income tracts to those in underserved tracts. Low-minority moderate-income tracts appear much better off than underserved tracts. While they have housing prices that are only slightly higher than those in underserved tracts, they have unemployment and poverty rates that are half those in tracts meeting HUD's underserved definition.

5. Other Issues

a. GSE Funding in Central Cities, Rural Areas, and Underserved Areas

In 1993, 15.9 percent of Fannie Mae's business was in underserved areas as was 14.4 percent of Freddie Mac's business. The share of GSE business in underserved areas varies rather dramatically by property type: about 13 percent of single-family owner purchases were in underserved areas compared with over 30 percent for the three rental property types (single-family 2–4's and 1–4's and multifamily). Thus, one reason for Freddie Mac's relatively low share is its low level of multifamily purchases in 1993.

The fact that underserved areas have much lower incomes than other areas does not mean that most of their mortgage activity derives from lower income families. In 1993, above-median income households accounted for 60 percent of the mortgages that the GSEs purchased in underserved areas. This suggests these areas are quite diverse.

b. GSE Performance Relative to the Market

As explained in Section C.4, the Secretary estimates that underserved areas account for about 21–23 percent of the conventional conforming market. GSE performance in 1993 was about 15 percent, or less than three-fourths of the market share for underserved areas. HMDA data suggests that the GSEs are particularly underperforming in lower income census tracts. In 1993, GSE purchases accounted for 44 percent of the conventional conforming market in under-50-percent income tracts and 47 percent in 50–80-percent income tracts; in above-median-income tracts, on the other hand, they accounted for 59 percent of the market.

The profitability of the GSEs, their sophisticated systems for purchasing loans and the size of the underserved market suggest that the GSEs can improve their performance. The Secretary has therefore set annual goals of 18 percent for 1995 and 21 percent for 1996, which will encourage the GSEs to improve their performance relative to the market. Figure B.2 presents these goals in relation to the GSEs' past performance and the size of the market.

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FIGURE B.2
Activity and Goals in Central Cities, Rural Areas, and Other Underserved Areas For Freddie Mac And Fannie Mae, 1993-96

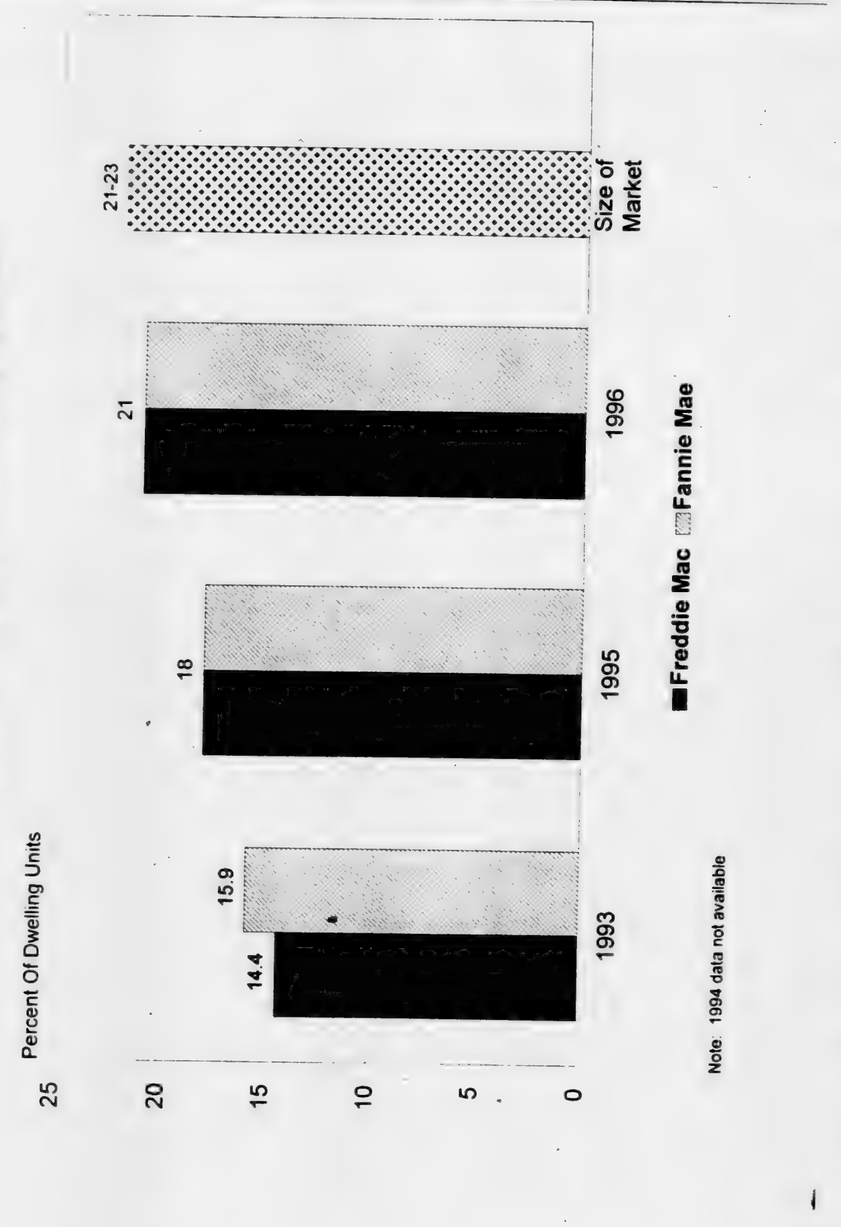

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6. Conclusion

The Secretary has determined that the 1995 and 1996 goals will require the GSEs to address the unmet credit needs of central cities, rural areas, and other underserved areas, and take into account the GSEs' performance in the past in purchasing mortgages in these areas, as well as the size of the mortgage market. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as their financial condition. The Secretary has determined that this goal is necessary and achievable.

Based on a consideration of the factors, the Secretary proposes to establish all three goals for 1997 and 1998 so that the goals will move the GSEs steadily over a reasonable period of years, to a level of mortgage purchases where the GSEs will be leading the industry in purchasing mortgages meeting the goals. In carrying out this objective, the Secretary proposes to establish the goals for 1997 and 1998 at levels ranging from the same amounts established for 1996 to higher levels. The purpose of any higher levels would be to continue to move the GSEs toward purchasing a greater proportion of mortgages originated by the market.

Appendix C—Secretarial Considerations To Establish the Special Affordable Housing Goal

A. Establishment of Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish a special annual goal designed to adjust the purchase of mortgages on rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

In establishing the special affordable housing goal, the Act requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the special affordable housing goal for previous years;
2. The performance and effort of the enterprises toward achieving the special affordable housing goal in previous years;
3. National housing needs of low-income families in low-income areas and very low-income families;
4. The ability of the enterprises to lead the industry in making mortgage credit available for low-income and very low-income families; and
5. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish the special affordable housing goal, the Secretary relied upon data gathered from the American Housing Survey, the Residential Finance Survey, the 1990 Census of Population and Housing, other government reports, Home Mortgage Disclosure Act (HMDA) reports, and the GSEs. The Secretary used loan-level data provided by the GSEs to determine their prior performance in meeting the needs of low-income families in low-income areas and very low-income families.

Section C discusses the factors listed above and estimates the size of the conventional conforming market for special affordable mortgages. Section D gives the Secretary's rationale for establishing the special affordable goals.

C. Consideration of the Factors

1. and 2. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years and Previous Performance and Effort of the GSEs

The discussions of these two factors have been combined because they overlap to a significant degree. The proposed regulation would revise the special affordable housing goal based on the experience of HUD and the GSEs in the transition period, in accordance with FHEFSSA and the legislative history of the Act.[1] For the 1993–94 transition period, the goal requires purchases of special affordable mortgages of at least $2 billion for Fannie Mae and $1.5 billion for Freddie Mac, evenly divided between single family mortgages and multifamily mortgages, and the Senate report states that such amounts shall be "above and beyond existing performance and commitments."[2] In order to determine existing performance, the Secretary required the GSEs to submit good faith estimates of their mortgage purchases that would have qualified for the special affordable goal in 1992. Fannie Mae estimated that such transactions amounted to $5.85 billion in single family purchases and $1.34 billion in multifamily purchases. Freddie Mac estimated that such transactions amounted to $5.19 billion in single family purchases and $0.02 billion in multifamily purchases. The Department doubled these estimates of 1992 purchases and added the increments specified by the Act to obtain the 1993–94 minimum single family special affordable housing goals: $16.40 billion for Fannie Mae, of which at least $12.71 billion was required to be purchases of mortgages on single family housing and $3.68 billion was required to be purchases of mortgages on multifamily housing; and $11.92 billion for Freddie Mac, of which at least $11.13 billion was required to be purchases of mortgages on single family housing and $0.79 billion was required to be purchases of mortgages on multifamily housing.

On March 1, 1994 Fannie Mae reported that qualifying mortgage purchases in 1993 amounted to $8.84 billion single family and $2.06 billion multifamily; thus in 1993 Fannie Mae achieved 70 percent and 56 percent respectively of the two-year goals. On March 1, 1994, Freddie Mac reported that qualifying mortgage purchases in 1993 amounted to $6.60 billion single family and $0.02 billion multifamily.[3] Thus in 1993 Freddie Mac achieved 59 percent and 3 percent respectively of the two-year goals. Freddie Mac's low multifamily performance in 1993 was due to its prolonged absence from the multifamily market to restructure its multifamily operations. Freddie Mac fully completed reentry into the multifamily business in December 1993. Total performance toward the 1993–94 special affordable goals will be determined after the GSEs report on their 1994 special affordable purchases on March 1, 1995.

After the 1993–94 transition period, the Act states that this goal shall be established at not less than one percent of the dollar amount of the mortgage purchases by the enterprise for the previous year. Because the Senate report on the 1992 Act states that one of the purposes of the goal is to increase the GSE's purchases of mortgages serving low-income families "above and beyond" their existing performance, these one percent minimum goals serve as a floor for the setting of the 1995–96 goals.

The 1992 Act requires the Secretary to "establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families."[4]

For 1995 and thereafter, the special affordable housing goal is evenly divided between:

(1) Owner-occupied units affordable to very low-income families or to low-income families in low-income areas; and

(2) Rental units (multifamily or single-family) affordable to very low-income families.

The Department has simplified the multifamily special affordable housing subgoal, as described in the Interim Notice, substantially, while closely adhering to the language of the 1992 Act.

The Department is also proposing to revise the Interim Notices' treatment of refinancings of loans from the existing enterprises' portfolios. Under this provision of the Notices, the Department has not allowed any credit toward the special affordable housing goal during the transition period. This has imposed significant compliance burdens on the enterprises, requiring time-consuming and costly examinations of their mortgage purchases to screen out such refinancings or to estimate the volume of refinancings from the GSEs' portfolios. And this provision is contrary to the common method of financing multifamily properties by relatively short-term balloon mortgages, which by their nature must be refinanced frequently to maintain project viability.

With regard to single family loans, it has been argued that refinancings of mortgages from the GSEs' portfolios add no new financing for affordable housing. But, to the extent that this is the case, it is true for all refinancings, not solely refinancings from the GSEs' portfolios. Clearly Congress could have excluded all refinancings from receiving credit toward the special affordable housing goal, but it chose not to do so.

Thus in measuring past performance, the relevant data is the GSEs' special affordable purchases without excluding estimated refinancings from their own portfolios

[1] "After the experience of the first two years, the (regulator) may redesign the categories to target more effectively low-income family needs and reflect any gaps in GSE performance." S. Rep. No. 102–282, 102d Cong., 2d Sess. 37 (1992).

[2] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[3] Minor revisions were made in Freddie Mac's estimates on April 11, 1994.

[4] Section 1333(a)(1).

In 1993, the special affordable purchases of mortgages on *owner-occupied housing*, including all refinancings, were:

	Fannie Mae		Freddie Mac	
	No. units	Percent units	No. units	Percent units
Low-income families in low-income areas[5]	25,130	0.9	19,870	0.9
Very low-income families[6]	129,622	4.6	95,056	4.4
Subtotal	154,752	5.5	114,926	5.3
Total eligible[7]	2,798,351	100.0	2,161,223	100.0

[5] Excluding very low-income families in low-income areas.
[6] Including very low-income families in low-income areas.
[7] Mortgages eligible to qualify as low- and moderate-income.

In 1993, the GSEs' purchases of mortgages on *rental units* affordable to very low-income families, including all refinancings, were:

	Fannie Mae		Freddie Mac	
	No. units	Percent units	No. units	Percent units
Units in 2–4 unit owner-occupied properties[8]	15,680	0.6	10,035	0.5
Rental units in 1–4 unit investor-owned properties	19,296	0.7	13,236	0.6
Rental units in multifamily properties	67,437	2.4	7,853	0.4
Subtotal	102,413	3.7	31,151	1.4
Total eligible	2,798,351	100.0	2,161,223	100.0

[8] Including owner-occupied units.

Thus in 1993, Fannie Mae's mortgage purchases financed 257,165 dwelling units that would have counted toward the goal, as proposed in this regulation—these units represented 9.2 percent of the total units financed by Fannie Mae in 1993.[9] And Freddie Mac's mortgage purchases financed 146,077 dwelling units that would have counted toward the goal, as proposed in this regulation—these units represented 6.8 percent of the total units financed by Freddie Mac in 1993.

Loan-level data for 1994 to date is not available for the special affordable goal as proposed to be redefined herein. However, data for the first three quarters of 1994 indicate that Fannie Mae's special affordable purchases were more than 14 percent of total purchases, and that Freddie Mac's special affordable purchases were more than 9 percent of total purchases—additional increases are likely as Freddie Mac further steps up its multifamily activities. Thus the 1994 purchase data make it likely that the GSEs will be able to meet the special affordable goals established by the Secretary for 1995 and 1996.

3. National Housing Needs of Low-Income Families in Low-Income Areas and Very Low-Income Families

Detailed analyses of the housing problems and demographic trends for lower income families were contained in Section C of Appendix A. This section focuses on very low-income families with the greatest needs.

a. Housing Problems Among Very Low-Income Families

Data from the 1990 Census and from the 1989 and 1991 American Housing Surveys demonstrate that housing problems and needs for affordable housing are more pressing in the lowest-income categories than among moderate-income families. Analyses of special tabulations of the 1990 Census prepared for use in developing Comprehensive Housing Affordability Strategies (the CHAS database) show clearly that sharp differentials by income characterized all regions of the nation as well as their city, suburban, and nonmetropolitan portions.[10] Nationally, approximately one-fourth of moderate-income renters and owners experienced one or more housing problems, compared to nearly three-fourths of very low-income renters and nearly half of very low-income owners.[11] Severe cost burdens—paying more than half of income for housing and utilities—varied even more markedly by income, troubling fewer than 5 percent of moderate-income households, but more than half of the 7 million renters and 4 million owners with incomes below 30 percent of area median income.

Census counts of inadequate housing are incomplete, and the CHAS tabulations are based on HUD-adjusted median income for both owners and renters, rather than on unadjusted median income for owners, as the 1992 Act specifies.[12] But tabulations of the 1991 AHS using the GSE income definitions reveal the same pattern of problems for lower-income families. As the following table details, for both owners and renters, housing problems are much more frequent for the lowest-income groups.[13] Priority problems of severe cost burden or severely inadequate housing are even more noticeably concentrated among renters and owners with incomes below 30 percent of area median income.

[9] Low-mod eligible units have been used as the denominator because total units include cases with missing information, which are expected to be virtually eliminated in 1995 and subsequent years.

[10] Bogdon *et al.*, 1994.

[11] The problems covered by the Census include paying over 30 percent of income for housing, lacking complete kitchen or plumbing, and overcrowding. See Appendix Tables 18A and 19A of Bogdon *et al.*

[12] To determine eligibility for Section 8 and other HUD programs, the Department adjusts income limits derived from the median family income for household size. The "very low" and "low" income limits at 50 percent and 80 percent of median apply to 4-person households. Relative to the income limits for a 4-person household, the limit is 70 percent for a 1-person household, 80 percent for a 2-person household, 90 percent for a 3-person household, 108 percent for a 5-person household, 116 percent for a 6-person household, etc.

[13] Tabulations of the 1991 American Housing Survey by HUD's Office of Policy Development and Research. The results in the table categorize renters reporting housing assistance as having no housing problems. Almost one-third of renters with incomes 0–30 percent of median and one-fifth of those with incomes 30–50 percent of median are assisted.

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Income as percent of area median income	Renters		Owners	
	Any problems (percent)	Priority problems (percent)	Any problems (percent)	Priority problems (percent)
Less than 30	67	48	66	37
30–50	67	27	31	9
50–60	61	11	20	5
60–80	44	6	17	5
80–100	26	3	12	3

Comparisons by income reveal that low-income owners and renters (those with incomes 60–80 percent of area median) resemble moderate-income households in seldom having priority problems. Priority problems are heavily concentrated among households with incomes below 50 percent of median.[14] In 1991, 5.3 million unassisted renter households with incomes below 50 percent of area median income had "worst case" housing needs. This total does not include homeless persons and families, although they also qualify for preference. For three-fourths of the renter families with worst case problems, the only problem was affordability—they do not have problems with housing adequacy or crowding.

b. Needs for Housing Affordable to Very Low-income Families

It is important to note that the existing housing stock satisfies the physical needs of most very low-income renters. In most cases families are able to find adequate housing. The problem is that much of this housing is not affordable to very low-income families—i.e., these families must pay more than 30 percent of their income for housing. The main exception to this generalization occurs among extremely low-income families with three or more children, 44 percent of whom live in crowded housing. A certain amount of variation in need exists, by region and degree of urbanization. Although 18 percent of worst case renters need other housing (because of crowding or severe inadequacy), this figure varies from 11 percent in the Northeastern suburbs to 30 percent in the South's nonmetro areas. Shortages of housing units are greatest and vacancy rates lowest in California.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of area median income. In 1979, the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income; by 1989, the gap had widened to 39 percent, a shortage of 2.7 million units.[15] This shortage appears to be a problem particularly at the extremely low end of the rent distribution. Both nationally and in most states, there are surpluses of rental housing affordable to families with incomes between 30 and 50 percent of area median income and to those in the 50–80 percent range.[16] Furthermore, in most states, vacancy rates were high in 1990 among units with rents affordable to families with incomes at or below 50 percent of median.[17] Thus, like housing problems, unmet needs for affordable housing are heavily concentrated in rent ranges affordable to renters with incomes below 30 percent of area median income.

4. Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section C.5 of Appendix A for a discussion of this factor.

5. Need To Maintain the Sound Financial Condition of the Enterprises

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section C.6 of Appendix A for discussion of this factor.

6. Size of the Conventional Mortgage Market for Special Affordable Mortgages Relative to the Overall Conventional Conforming Market

This section presents estimates of the special affordable portion of the conventional conforming mortgage market for 1995.

The special affordable goal consists of: (1) single-family owner-occupied dwelling units which are occupied by very low-income families or low-income families in low-income census tracts;[18] and (2) rental units which are occupied by very low-income families. The analysis suggests that the special affordable market is at least 17–20 percent of the conventional conforming market. Section D below provides HUD's rationale for the specific goals selected for 1995 and 1996.

Section C.4 of Appendix A describes HUD's two methodologies for estimating the size of the low- and moderate-income market. Essentially the same methodology is employed here except that the focus is on the very low-income and low-income markets. The basic approach involves estimating for each of the various property types (single-family owner, single-family rental 2–4's and 1–4's, and multifamily) the share of dwelling units financed by mortgages in a particular year that are occupied by very low-income (VLI) families or by low-income families in low-income areas. As explained in Appendix A, HUD has combined mortgage information from several data sources in order to estimate the market shares. Two approaches were taken—one based on American Housing Survey (AHS) and Residential Finance Survey (RFS) data, and one based on 1993 HMDA data and projections of the mortgage market for 1995 and 1996.

a. American Housing Survey/Residential Finance Survey Approach

Data from the American Housing Surveys for 1985, 1987, 1989, and 1991 indicate that 11 percent of those families who recently purchased or refinanced their homes, and who obtained conventional conforming mortgages, had incomes below 60 percent of the area median. It is estimated that 1.8 percent of single-family mortgages will be for families who have incomes between 60 and 80 percent of area median and who also live in low-income census tracts.[19] This suggests that 12.8 percent of single-family owner-occupied mortgages and dwelling units are for very low-income families or low-income families living in low-income areas.

As Appendix A explains, information is not available from the American Housing Survey on mortgages for rental properties; for this reason, the analysis focuses on the income and rent characteristics of the existing and recently completed rental stock. Analysis of the same four American Housing Surveys shows that for 1–4 unit unsubsidized rental properties, 54 percent of all units, and 20 percent of units constructed in the preceding three years had rent affordable to very low-income families.[20] For multifamily unsubsidized rental properties, the corresponding figures are 41 percent of all units and 9 percent of units constructed in the preceding three years. The data for recently completed units underestimate the affordable percentage of rental housing because they exclude purchase and refinance transactions involving older buildings, which generally charge lower rents than newly-constructed buildings.

The other pertinent data for examining this issue were the GSEs' purchase data for rental properties. GSE data for all 1–4 unit properties (i.e., combining 2–4 units and investment 1–4 units) suggest a VLI share of slightly over 20 percent, which is similar to the figure (20 percent) from the AHS for the recently completed stock. On the multifamily side, Fannie Mae's data suggest a 42 percent VLI share, which is consistent with the AHS estimate for existing properties.[21 22]

This section applies weights for single-family rental and multifamily properties to the above estimates of the VLI share.

To calculate the size of the potential market for mortgages financing housing for VLI families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. As Appendix A explains, HUD utilized data from the 1991 Residential Finance Survey on the number of properties with conventional conforming mortgages acquired during the 1987–91 period, and the total number of dwelling units for each type of property, derived from the same source. Based on this data, it was estimated that, of total dwelling units in properties with recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were in 1–4 unit rental properties, and 25.6 percent were located in multifamily rental properties. Applying the percentages of affordable dwelling units from the AHS (12.9 percent for owner-occupied dwelling units, 20 percent for the recently-completed stock of rental 1–4 units, and 41 percent for multifamily rental units) to these percentages of properties results in an estimate that 21.4 percent of the dwelling units secured by conforming conventional mortgages are affordable to very low-income families or low-income families in low-income areas.[23]

Appendix A notes that one concern with the Residential Finance Survey data is the seemingly high percentage share of rental properties, given that multifamily mortgage originations have declined from their high levels in the mid- to late-1980s. This is important because of the relatively high VLI share for multifamily properties. Sensitivity analysis is used to show the effect of shifting the relative importance of the different property categories. Reducing the multifamily weight from 25.6 percent to 20 percent, and assuming the owner category is 65 percent and the rental 1–4 category is 15 percent reduces the estimate of the size of the special affordable market to 19 percent. As noted earlier, the 20 percent estimate of the VLI share for rental 1–4 units is probably too low because it is based on AHS data for the recently completed stock. Assuming a 30 percent VLI share increases the special affordable market share from 19 to almost 21 percent. Using the AHS figure (54 percent) for the existing stock further increases the special affordable market share to 24 percent.

b. HMDA/Market Projection Approach

This approach follows the same six steps as outlined in Section C.4 of Appendix A. In steps (5) and (6), the low-mod shares are adjusted as follows:

(5) Estimates of the percentage of dwelling units occupied by very low-income (VLI) families or low-income families in low-income areas were: 11.8 percent for single family owner-occupied purchase mortgages and 6.9 percent for single family owner-occupied refinance mortgages based on 1993 HMDA data; and 20 percent for single family 2–4's, 30 percent for single family 1–4's, and 42 percent for multifamily. The VLI percentages for the single-family rental categories were based on 1993 GSE data and the VLI percentage for multifamily properties was based on 1993 Fannie Mae data and AHS data for the existing multifamily stock.[24]

(6) Applying the above VLI shares to the property type weights given in step (4) of Section C.4.b of Appendix A suggests that 19 percent of mortgage originations in 1995 will be on housing for very low-income families or low-income families in owner-occupied housing located in low-income census tracts.

Sensitivity analyses similar to those reported in Appendix A for the low-mod goal were also conducted for the special affordable goal. Substituting the lower single-family owner-occupied shares from 1992 HMDA data—9.5 percent for purchase mortgages and 5.3 percent for refinance mortgages—reduced the special affordable market share from 19.1 percent to 17 5 percent. Adjusting 1993 HMDA data for HUD's overprojection of 1993 area median incomes (see Appendix A for explanation) also produced a 17.4 percent market share.

c. Conclusions

Sensitivity analyses were conducted for the market shares of each property type, for the VLI shares of each property type, and for various assumptions in the market projection model, as discussed in Appendix A.[25] These analyses suggest that the size of the special affordable market is at least in the 17–20 percent range.[26]

D. Determination of the Special Affordable Housing Goal

The annual goal for 1995 for each GSE's purchases of conventional mortgages under the special affordable goal is established at 11 percent of the total number of dwelling units financed by each GSE's mortgage purchases. The 1996 goal is established at 12 percent. Each annual goal is to be split equally between:

(a) *Owner-Occupied Units*—Owner-occupied units which are occupied by very low-income families or households who are low income and also live in low-income census tracts. This portion of the goal will be 5.5 percent in 1995 and 6.0 percent in 1996.

(b) *Rental Units*—Rental units which are occupied by very low-income families. No distinction is made between single-family and multifamily rental units because both provide affordable housing to lower income families. This portion of the goal will be 5.5 percent in 1995 and 6.0 percent in 1996.

The special affordable goal provides the opportunity for the Department to focus the GSEs on a sector where they have been underperforming—the low- and very low-income portion of the housing market where housing needs are great. Several considerations, many of which have been reviewed in earlier sections of this Appendix led to the choice of these goals.

1. Severe Housing Problems

The data presented in Section C.3 demonstrate that housing problems and needs for affordable housing are much more pressing in the lowest income categories than among moderate-income families. The high incidence of severe problems among the lowest-income renters reflects severe shortages of units affordable to those renters. At incomes below 30 percent of median, two-thirds of owners and 70 percent of renters pay more than 30 percent of their income for housing, live in inadequate housing, or are crowded. As the following table shows, priority problems—paying more than half of income for housing or living in severely inadequate housing—are heavily concentrated among renters with incomes below 50 percent of median.

[14] For all housing programs of HUD (other than the GSE goals) and the Department of Agriculture, "very low-income" is defined as not exceeding 50 percent of area median income.

[15] Tabulations by HUD's Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989, July 1991.

[16] HUD's Office of Policy Development and Research, *Worst Case Needs for Housing Assistance in the United States in 1990 and 1991*, 1994, Table 8.

[17] Id., Table 6.

[18] This definition includes all very low-income families plus families who have incomes between 60 and 80 percent of area median income and who also live in census tracts with a median income less than 80 percent of area median income.

[19] Low-income census tracts are defined as tracts with a median income less than or equal to 80 percent of the area median. 1993 HMDA data show that 1.9 (1.3) percent of single-family owner-occupied purchase (refinance) mortgages were for families with incomes in the 60–80 percent range and also living in low-income tracts. Applying 85/15 percent purchase/refinance shares gives the 1.8 percent value cited in the text.

[20] Affordable to VLI families is defined as less than or equal to 30 percent of 60 percent of area median family income—that is, less than 18 percent of area median family income, with adjustments for unit size as measured by the number of bedrooms.

[21] The very low-income shares were calculated separately for the GSEs' 1993 refinance and purchase mortgages. The estimates for 1995 were derived by assuming a 18 percent refinance share for small rental properties. The estimates were not very sensitive to reasonable variations in the refinance share.

[22] Freddie Mac's multifamily purchases in 1993 were insufficient to provide an accurate measure of rents for multifamily properties.

[23] 21.4 percent was derived by adding the following: (1) 7.3% (percentage of owner-occupied units [56.5%] times percentage of those units that are affordable to very low-income families or low-income families in low-income areas [12.5%]); (2) 3.6% (percentage of rental units in 1–4 family properties [17.9%] times percentage of those units that are affordable to very low income families [20%]); and (3) 10.5% (percentage of rental units in multifamily properties [25.6%] times percentage of those units that are affordable to very low income families [41%]).

[24] As Appendix A explains, there is little data on the affordable shares for the two single-family rental property types, which necessitated using the GSE data. Assuming a 18 percent refinance share, Fannie Mae's 1993 data suggest VLI percentages for 2–4 and 1–4 properties of 21 percent and 28 percent, respectively. Freddie Mac's data suggest VLI percentages of 18 percent and 30 percent, respectively. The American Housing Survey, which combines these two categories, shows a 20 percent VLI share for recently built 1–4 rental units and a 54 percent VLI share for the existing stock. In step (5) the 2–4 VLI share (20 percent) and the 1–4 VLI share (30 percent) are based on GSE data, which are probably conservative estimates for the overall 2–4 market. The multifamily VLI percentage (42 percent) is consistent with both the AHS and Fannie Mae's data.

[25] For example, reducing the average per unit multifamily loan amount from $42,500 to $30,000 and raising the VLI share of the rental 1–4's from 30 percent to 40 percent increases the special affordable market share estimate from 19.1 percent to 20.4 percent.

[26] Also see Appendix A, for a discussion of why the HMDA data reported in this section may be underestimating the size of the lower income market.

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PRIORITY PROBLEMS BY INCOME AS PERCENT OF MEDIAN INCOME AND TENURE, 1991

Income (percent)	Renters (percent)	Owners (percent)
<30	48	37
30–50	27	9
50–60	11	5
60–80	6	5
80–100	3	3

Lack of housing is particularly severe among very low-income families with three or more children, 44 percent of whom live in crowded housing. The relative decline in low-rent dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of median income. In 1979 the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income, but by 1989 the gap had widened to 39 percent, a shortage of 2.7 million units.

2. GSE Performance and the Market

Limitations of the Low-Mod Goal. The low- and moderate-income goal has not been an effective tool for targeting GSE activity to very low-income families. The bulk of the GSEs' low- and moderate-income mortgage purchases are for the higher income portion of the low-mod category. The lowest income borrowers accounted for a very small percentage of each GSE's purchases. Only 5 percent of the GSEs' 1993 mortgage purchases financed homes for single-family homeowners with incomes below 60 percent of area median. (See Figure A.1 in Appendix A.)

GSE Performance Lags the Market's Performance. Analysis of both American Housing Survey and HMDA data show that the GSEs are purchasing much smaller proportions of very low-income loans produced by the market than they are of higher-income loans. (See Figure A.2 in Appendix A.) For example, in 1993 the GSEs collectively purchased only 41 percent of mortgages originated for borrowers under 60 percent of median income, but 55 percent of mortgages originated for borrowers over 120 percent of median income. This suggests that there is room in the very low-income end of the homebuyer market for the GSEs to improve their performance.

As explained in Section C.6. the Secretary has determined that the very low-income market for both single family and multifamily mortgages is at least 17–20 percent of the overall conventional conforming market. Figure C.1 compares recent GSE performance, the 1995 and 1996 special affordable goals, and the size of the very low income market. In 1993, both Fannie Mae and Freddie Mac fell far short of the 17 percent market share for special affordable mortgages—Fannie Mae by 8 percentage points and Freddie Mac by 10 percentage points. The goals that the Secretary has established for 1995 and 1996 are intended to move the GSEs closer to the market.

Freddie Mac's Multifamily Performance. Nowhere has GSE performance lagged more than Freddie Mac's multifamily performance. Freddie Mac's 1993 multifamily purchases totaled only $191 million, compared with $4.6 billion for Fannie Mae and $28.5 billion for the conventional market. HUD is concerned about the pace of Freddie Mac's re-entry into the multifamily market.

Changing Market Conditions. As Section D in Appendix A notes, several market factors will tend to increase the share of GSE purchases benefitting lower income households: the shift from refinance to home-purchase mortgages, the increase in multifamily activity at the same time that single-family activity is declining, continued strong housing demand on the part of first-time homebuyers, and rising incomes due to economic growth. These market factors will offset other market changes, such as higher interest rates, that tend to reduce the share of GSE purchases going to lower income families.

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FIGURE C.1

Special Affordable Activity And Goals For Freddie Mac And Fannie Mae 1993-96

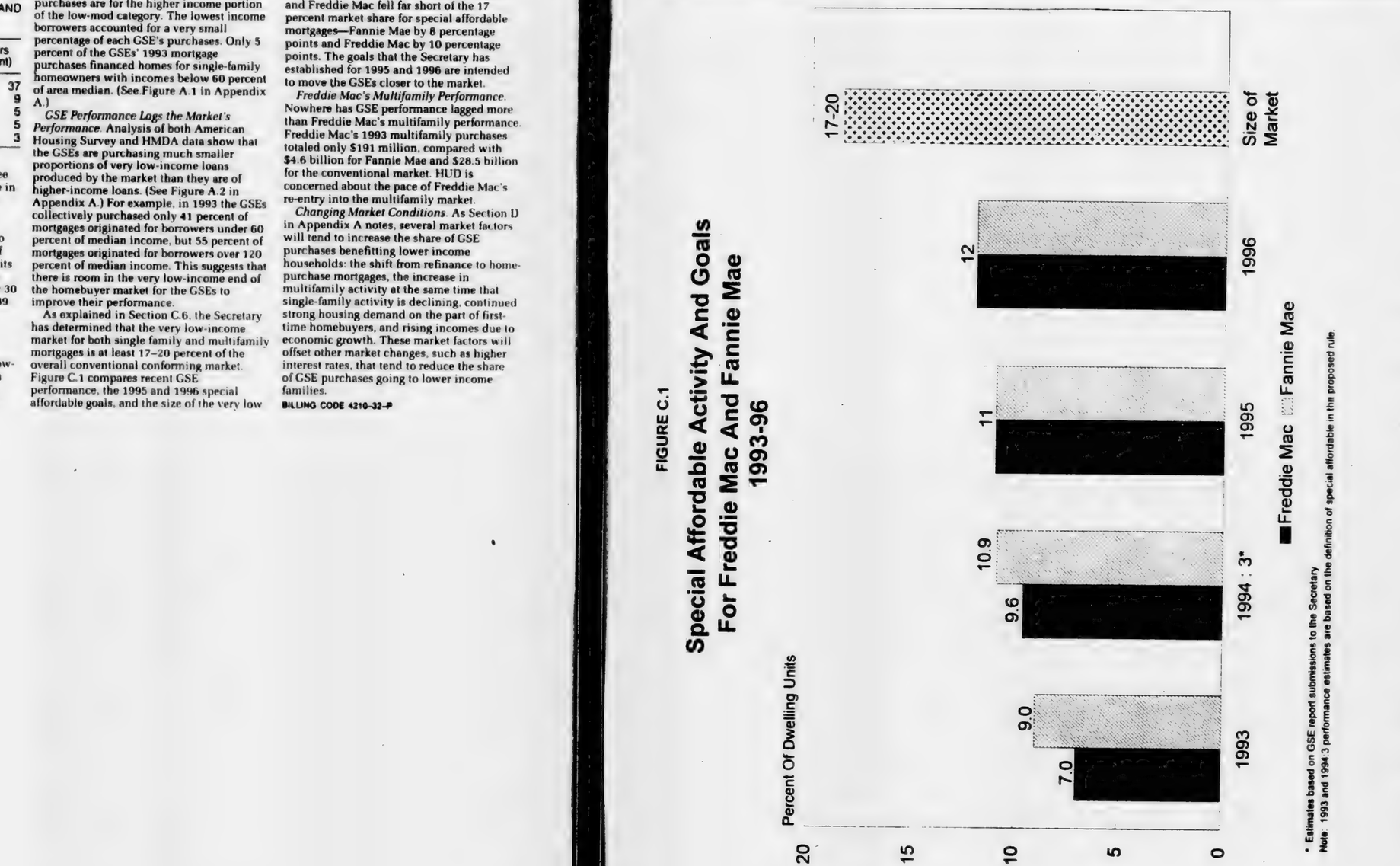

* Estimates based on GSE report submissions to the Secretary

Note: 1993 and 1994.3 performance estimates are based on the definition of special affordable in the proposed rule.

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3. Conclusion

To conclude, the Secretary has determined that the 1995 and 1996 special affordable goals set forth above address national housing needs within the income categories specified for this goal, while accounting for the GSEs' performance in the past in purchasing very low-income mortgages, as well as the size of the conventional mortgage market serving very low-income families. Moreover, the Secretary has considered the GSEs' ability to lead the industry as well as their financial condition. This goal will necessitate an increase in the GSEs' purchases targeted to very low-income families. The Secretary has determined that this goal is necessary and achievable.

Based on a consideration of the factors, the Secretary proposes to establish all three goals for 1997 and 1998 so that the goals will move the GSEs steadily over a reasonable period of years, including these two years, to a level of mortgage purchases where the GSEs will be leading the industry in purchasing mortgages meeting the goals. In carrying out this objective, the Secretary proposes to establish the goals for 1997 and 1998 at levels ranging from the same amounts established for 1996 to higher levels. The purpose of any higher levels would be to continue to move the GSEs toward purchasing a greater proportion of mortgages originated by the market.

Appendix D—Mortgage Reports

As required under Subpart E of this regulation, the GSEs are required to provide to the Secretary the loan level mortgage data listed in this Appendix D.

(a) Loan level data on single family mortgage purchases. Each GSE's submission of loan level data shall include the following information for each single family mortgage purchased by the GSE:

(1) Loan number—a unique numerical identifier for each mortgage purchased;

(2) U.S. postal state—the two-digit numerical state code used in the most recent decennial census by the Bureau of the Census;

(3) U.S. postal zip code—the five digit zip code for the property;

(4) MSA code—the four-digit numerical code for the property's metropolitan statistical area (MSA) if the property is located in an MSA;

(5) Place code—the five-digit numerical Federal Information Processing Standard (FIPS) code;

(6) County—the county, as designated in the most recent decennial census by the Bureau of the Census, in which the property is located;

(7) Census tract—the tract number as used in the most recent decennial census by the Bureau of the Census;

(8) Census tract geographic designation—a numeric code that specifies whether the census tract is entirely within a central city, entirely outside a central city, or a split tract, *i.e.*, partially in a central city and partially outside a central city;

(9) Central city flag 1—for split census tracts, the proportion of a census tract that is located in one geographic area, such as a central city;

(10) Central city flag 2—for split census tracts, the proportion of a census tract that is located in another geographic area, such as another central city;

(11) 1990 census tract—percent minority—the percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census;

(12) 1990 census tract—median income—the median family income for the census tract;

(13) 1990 local area median income—the median income for the area;

(14) Tract income ratio—the ratio of the 1990 census tract—median income to the 1990 local area median income;

(15) Borrower(s) annual income—the combined income of all borrowers;

(16) Area median family income—the current median family income for a family of four for the area as established by the Secretary;

(17) Borrower income ratio—the ratio of borrower(s) annual income to area median family income;

(18) Acquisition UPB—the unpaid principal balance (UPB) in whole dollars of the mortgage when purchased by the GSE; where the mortgage purchase is a participation, the acquisition UPB reflects the participation percentage;

(19) Loan-to-Value Ratio at Origination—the loan-to-value (LTV) ratio of the mortgage at the time of origination;

(20) Date of Mortgage Note—the date the mortgage note was created;

(21) Date of Acquisition—the date the GSE purchased the mortgage;

(22) Purpose of Loan—indicates whether the mortgage was a purchase money mortgage, a refinancing, a second mortgage;

(23) Cooperative Unit Mortgage—indicates whether the mortgage is on a dwelling unit in a cooperative housing building;

(24) Refinancing Loan From Own Portfolio—indicates, where the GSE has purchased a refinanced mortgage, whether the GSE owned the previous mortgage on the same property;

(25) Special Affordable, Seasoned Loan Proceeds Recycled—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in § 81.14(h)(1)(B);

(26) Product Type—indicates the product type of the mortgage, *i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, graduated payment mortgage (GPM) or growing equity mortgages (GEM), reverse annuity mortgage, or other;

(27) Federal guarantee—a numeric code that indicates whether the mortgage has a federal guarantee from: the Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA); the Farmers Home Administration's Guaranteed Rural Housing Loan program; or other federal guarantee;

(28) RTC/FDIC—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in § 81.14(h)(1)(C);

(29) Term of Mortgage at Origination—the term of the mortgage at the time of origination in months;

(30) Amortization Term—for amortizing mortgages, the amortization term of the mortgage in months;

(31) Lender Institution—the name and unique numerical identifier of the institution that loaned the money for the mortgage;

(32) Type of Seller Institution—the type of institution that sold the mortgage to the GSE, *i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller;

(33) Number of borrowers—the number of borrowers;

(34) First-time home buyer—a numeric code that indicates whether the mortgagor(s) are first-time home buyers; second mortgages and refinancings are treated as not first-time home buyers;

(35) Mortgage Purchased under GSE's Community Lending Program—indicates whether the GSE purchased the mortgage under its community lending program;

(36) Acquisition Type—indicates whether the GSE acquired the mortgage with cash or by swap;

(37) GSE Real Estate Owned—indicates whether the mortgage is on a property that was in the GSE's real estate owned (REO) inventory;

(38) Public Subsidy Program—indicates whether the mortgage property is involved in a public subsidy program and which level(s) of government are involved in the subsidy program, *i.e.*, Federal government only, state or local government only, other and private subsidy only, Federal government and either state or local government, Federal government and other, state or local government and other, and Federal, state, or local government and other;

(39) Borrower race or national origin—a numeric code that indicates whether the borrower is: An American Indian or Alaskan Native; an Asian or Pacific Islander; black; hispanic; white; or other;

(40) Co-borrower race or national origin—a numeric code that indicates whether the co-borrower is: An American Indian or Alaskan Native; an Asian or Pacific Islander; black, hispanic; white; or other

(41) Borrower gender—a numeric code that indicates whether the borrower is male or female;

(42) Co-borrower gender—a numeric code that indicates whether the co-borrower is male or female

(43) Age of borrower;

(44) Age of co-borrower;

(45) Family size of borrower—the number of individuals in the borrower's family including the borrower;

(46) Family size of co-borrower—the number of individuals in the co-borrower's family including the co-borrower;

(47) Occupancy Code—indicates whether the mortgaged property is an owner-occupied principal residence, a second home, or a rental/investment property;

(48) Number of Units—indicates the number of units in the mortgaged property

(49) Number of Bedrooms—where the property contains non-owner-occupied dwelling units, the number of bedrooms in each of those units;

(50) Owner-Occupied—where the property has two to four units, indicates whether each of those units are owner-occupied;

(51) Affordability Category—where the property contains non-owner-occupied dwelling units, indicates under which, if any, of the special affordable goals the units qualified;

(52) Reported Rent Level—where the property contains non-owner-occupied dwelling units, the rent level for each unit in whole dollars;

(53) Reported Rent Plus Utilities—where the property contains non-owner-occupied dwelling units, the rent level plus the utility cost for each unit in whole dollars;

(54) Low- and moderate-income housing goal flag—indicates whether the GSE counted the mortgage purchase toward the low- and moderate-income goal;

(55) Special affordable housing goal flag—indicates whether the GSE counted the mortgage purchase toward the special affordable goal and under which part of the goal;

(56) Central cities, rural areas, and other underserved areas goal flag—indicates whether the GSE counted the mortgage purchase toward the central cities, rural areas, and other underserved goal.

(b) Loan level data on multifamily mortgage purchases. Each GSE's submission of loan level data shall include the following information for each multifamily mortgage purchased by the GSE:

(1) Loan number—a unique numerical identifier for each mortgage purchased;

(2) U.S. postal state—the two-digit numerical state code used in the most recent decennial census by the Bureau of the Census;

(3) U.S. Postal Zip Code—the five digit zip code for the property;

(4) MSA code—the four-digit numerical code for the property's metropolitan statistical area (MSA) if the property is located in an MSA;

(5) Place code—the five-digit numerical Federal Information Processing Standard (FIPS) code;

(6) County—the county, as designated in the most recent decennial census by the Bureau of the Census, in which the property is located;

(7) Census tract—the tract number as used in the most recent decennial census by the Bureau of the Census;

(8) 1990 census tract—percent minority—the percentage of a census tract's population that is minority based on the most recent decennial census by the Bureau of the Census;

(9) 1990 census tract—median income—the median family income for the census tract;

(10) 1990 local area median income—the median income for the area;

(11) Tract income ratio—the ratio of the 1990 census tract—median income to the 1990 local area median income;

(12) Area median family income—the current median family income for a family of four for the area as established by the Secretary;

(13) Affordability Category—indicates under which, if any, of the special affordable goals the property qualified;

(14) Acquisition UPB—the unpaid principal balance (UPB) in whole dollars of the mortgage when purchased by the GSE; where the mortgage purchase is a participation, the acquisition UPB reflects the participation percentage;

(15) Participation Percent—where the mortgage purchase is a participation, the percentage of the mortgage that the GSE purchased;

(16) Date of Mortgage Note—the date the mortgage note was created;

(17) Date of Acquisition—the date the GSE purchased the mortgage;

(18) Purpose of Loan—indicates whether the mortgage was a purchase money mortgage, a refinancing, a new construction mortgage, a mortgage financing property rehabilitation;

(19) Cooperative Project Loan—indicates whether the mortgage is a project loan on a cooperative housing building;

(20) Refinancing Loan from Own Portfolio—indicates, where the GSE has purchased a refinanced mortgage, whether the GSE owned the previous mortgage on the same property;

(21) Special Affordable, Seasoned Loans: Proceeds Recycled?—for purposes of the special affordable housing goal, indicates whether the mortgage purchased by the GSE meets the requirements in section 81.14(h)(1) (ii);

(22) Mortgagor Type—indicates the type of mortgagor, *i.e.*, an individual, a for-profit entity such as a corporation or partnership, a nonprofit entity such a corporation or partnership, a public entity, or other type of entity;

(23) Term of Mortgage at Origination—the term of the mortgage at the time of origination in months;

(24) Loan Type—indicates the type of the loan, *i.e.*, fixed rate, adjustable rate mortgage (ARM), balloon, or graduated payment mortgage (GPM);

(25) Amortization Term—for amortizing mortgages, the amortization term of the mortgage in months;

(26) Lender Institution—the name and unique numerical identifier of the institution that loaned the money for the mortgage;

(27) Type of Seller Institution—the type of institution that sold the mortgage to the GSE, *i.e.*, mortgage company, Savings Association Insurance Fund (SAIF) insured depositary institution, Bank Insurance Fund (BIF) insured depositary institution, National Credit Union Association (NCUA) insured credit union, or other seller;

(28) Government insurance—indicates whether any part of the mortgage has government insurance;

(29) Acquisition Type—indicates whether the GSE acquired the mortgage with cash, by swap, other, with a credit enhancement, a bond or debt purchase, or a real estate mortgage investment conduit (REMIC);

(30) GSE Real Estate Owned—indicates whether the mortgage is on a property that was in the GSE's real estate owned (REO) inventory;

(31) Public Subsidy Program—indicates whether the mortgage property is involved in a public subsidy program and which level(s) of government are involved in the subsidy program, *i.e.*, Federal government only, state or local government only, other only, Federal government and either state or local government, Federal government and other, state or local government and other, and Federal, state, or local government and other;

(32) Total Number of Units—indicates the number of dwelling units in the mortgaged property;

(33) Special Affordable—45 Percent—for the special affordable Interim Housing Goal for 1993–94, the dollar amount of the mortgage that counted toward achievement of the goal (based on dwelling units affordable to low-income families);

(34) Special Affordable—55 Percent—for the special affordable Interim Housing Goal for 1993–94, the dollar amount of the mortgage that counted toward achievement of the goal (based on properties where at least 20 percent of the dwelling units were affordable to especially low-income families or at least 40 percent of the dwelling units were affordable to very low-income families);

(35) The following data apply to unit types in a particular mortgaged property. The unit types are defined by the GSEs for each property and are differentiated based on the number of bedrooms in the units and on the average contract rent for the units. The maximum number of unit types in any one property is ten and a unit type must be included for each bedroom size category represented in the property:

(A) Unit Type XX—Number of Bedroom(s)—the number of bedrooms in the unit type;

(B) Unit Type XX—Number of Units—the number of units in the property within the unit type;

(C) Unit Type XX—Average Reported Rent Level—the average rent level for the unit type in whole dollars;

(D) Unit Type XX—Average Reported Rent Plus Utilities—the average reported rent level plus the utility cost for each unit in whole dollars; and

(E) Unit Type XX—Affordability Level—the ratio of the average reported rent plus utilities for the unit type to the adjusted area median income;

(36) Low- and moderate-income housing goal flag—indicates whether the GSE counted the mortgage purchase toward the low- and moderate-income goal;

(37) Special affordable housing goal flag—indicates whether the GSE counted the mortgage purchase toward the special affordable goal and under which part of the goal;

(38) Central cities, rural areas, and other underserved areas goal flag—indicates whether the GSE counted the mortgage purchase toward the central cities, rural areas, and other underserved goal.

Appendix E—Proprietary Information—[Reserved]

Dated: December 23, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–3474 Filed 2–13–95; 8:45 am]

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Thursday
February 16, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs; List; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From The United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Patricia Simmons, Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street N. W., Washington, DC 20240. Telephone number: (202) 208–7445.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published October 21, 1993 (58 FR 54364) to include tribes acknowledged through the Federal acknowledgment process and legislation. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of unusual and complex Native names.

In October 1993, the Department published its most recent list in an effort to bring the list up to date as required by 25 CFR Part 83 and in an effort to clarify the legal status of Alaska Native villages. As described in the preamble to the October 1993 list, the first list of acknowledged tribes was published in 1979. 44 FR 7235 (Feb. 6, 1979). The list used the term "entities" in the preamble and elsewhere to refer to and include all the various anthropological organizations, such as bands, pueblos and villages, acknowledged by the Federal Government to constitute tribes with a government-to-government relationship with the United States. A footnote defined "entities" to include "Indian tribes, bands, villages, groups and pueblos as well as Eskimos and Aleuts." 44 FR 7235 n.1. The 1979 list did not, however, contain the names of any Alaska Native entities. The preamble stated that: "[t]he list of eligible Alaskan entities will be published at a later date." 44 FR 7235.

Under the Department's acknowledgement regulations, publication of the list serves at least two functions. First, it gives notice as to which entities the Department of the Interior deals with as "Indian tribes" pursuant to Congress's general delegation of authority to the Secretary of the Interior to manage all public business relating to Indians under 43 U.S.C. 1457. Second, it identifies those entities which are considered "Indian tribes" as a matter of law by virtue of past practices and which, therefore, need not petition the Secretary for a determination that they now exist as Indian tribes. See 25 CFR 83.3 (a), (b) and 83.6(a) (1993 ed.); 25 CFR 83.3(a), (b) (1994 ed.). Because the Department did not include any Alaska entities in its initial publication and characterized its publication in 1982 of the Alaska entities as a "preliminary list" (47 FR 53133), the intended functions of the publication of the list were not fully implemented for Alaska until October 1993.

The entities listed on the 1982 "preliminary list" parallel the kinds of entities included on the list for the contiguous 48 states. The regional, village and urban corporations organized under state law in accordance with the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) were not listed although they had been designated as "tribes" for the purposes of some Federal laws, primarily the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450b(b). In addition, between 1982 and 1986, a number of Alaska Native entities complained that they had been wrongly omitted from the lists that were published in those years. Some groups in the contiguous 48 states have also complained that they had been wrongly left off the lists and should not have to go through the burdensome process of petitioning. While the Department had conceded that its 1982 list for Alaska was "preliminary," it had made no such concession with regard to groups in the contiguous 48 states. Therefore, the Department required all groups from the contiguous 48 states to petition in order to be placed on the list.

In 1988, in an effort to resolve all pending questions as to the Native entities to be listed and the eligibility of entities described as "tribes" by Congress in post-ANCSA legislation but not otherwise thought of as "Indian tribes," i.e., the state-chartered ANCSA Native corporations, the Department published a new list of Alaska entities. The preamble to the list stated that the revised list responded to a "demand by the Bureau and other Federal agencies * * * for a list of organizations which are eligible for their funding and services based on their inclusion in categories frequently mentioned in statutes concerning Federal programs for Indians." 53 FR 52832.

Unfortunately, the 1988 revisions of the Alaska Native entities list appeared to create more questions than it resolved. The omission from the 1988 preamble of all references acknowledging the tribal status of the listed villages, and the inclusion of ANCSA corporations (which are formally state-chartered corporations rather than tribes in the conventional legal or political sense) generated questions as to the status of all the listed entities. Numerous Native villages, regional tribes and other Native organizations objected to the 1988 list on the grounds that it failed to distinguish between Native corporations and Native tribes and failed to unequivocally recognize the tribal status of the listed villages and regional tribes. That the Department had considered Alaska Native villages to possess tribal status is evident from the Solicitor's 1993 historical review of this matter.

In January 1993 the Solicitor of the Department of the Interior issued a comprehensive opinion analyzing the status of Alaska Native villages as "Indian tribes," as that term is commonly used to refer to Indian entities in the contiguous 48 states. After a lengthy historical review and legal analysis, the Solicitor concluded that:

> For the last half century, Congress and the Department have dealt with Alaska Natives as though there were tribes in Alaska. The fact that the Congress and the Department may not have dealt with all Alaska Natives as tribes at all times prior to the 1930's did not preclude it from dealing with them as tribes subsequently.
>
> Sol. Op. M–36975, at 46, 47–48 (Jan. 11, 1993).

Although the Solicitor found it unnecessary for the purposes of his opinion to identify specifically which villages were tribes, he observed that Congress' listing of specific villages in ANCSA and the repeated inclusion of such villages within the definition of "tribes" in post-ANCSA legislation arguably constituted a congressional determination that the villages found eligible for benefits under ANCSA, referred to as the "modified ANCSA list," were Indian tribes for purposes of Federal law. M–36975 at 58–59.

In response to the guidance in the Solicitor's Opinion, the Bureau of Indian Affairs reviewed the "modified ANCSA list" of villages and the list of those villages and regional tribes previously listed or dealt with by the Federal Government as governments. The result of that review was the list of tribal entities published on October 21, 1993. The October 1993 list represents a list only of those villages and regional tribes which the Department believes to have functioned as political entities, exercising governmental authority. The listed entities are, therefore, acknowledged to have "the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." 25 CFR 83.2 (1994 ed.).

Inclusion on the list does not resolve the scope of powers of any particular tribe over land or non-members. It only establishes that the listed tribes have the same privileges, immunities, responsibilities and obligations as other Indian tribes under the same or similar circumstances including the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes.[1]

Subsequent to the publication of the October 1993 list, Congress enacted two significant pieces of legislation. First, in the Act of May 31, 1994 (P.L. 103–263; 108 Stat. 707), Congress confirmed that the Secretary can make no distinctions among tribes as a general matter of Federal law. Second, in the Act of November 2, 1994 (P.L. 103–454; 108 Stat. 4791), Congress confirmed the Secretary's authority and responsibility to establish a list of Indian tribes and mandated that he publish such a list annually. The following list is published in response to that mandate.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible to Receive Services From the Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona
Alabama and Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mill Reservation, Michigan
Bear River Band of the Rohnerville Rancheria of California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Tribe of South Carolina
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana

[1] Sol. Op. M–36975 concluded, construing general principles of Federal Indian law and ANCSA, that "notwithstanding the potential that Indian country still exists in Alaska in certain limited cases, Congress has left little or no room for tribes in Alaska to exercise governmental authority over land or nonmembers." M–36975 at 166. That portion of the opinion is subject to review, but has not been withdrawn or modified.

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Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Reservation, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown Klallam Tribe of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lac Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muskogee (Creek) Nation of Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Tribe of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of the Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska

Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Nation of Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe of California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington
Quapaw Tribe of Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manuel Band of Serrano Mission Indians of the San Manual Reservation, California
San Pásqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress & Brighton Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California

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Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribes of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend & San Xavier Reservation, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie) of Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai Apache Nation of the Camp Verde Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Native Village of Atka
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Native Village of Deering
Native Village of Dillingham
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Koliganek Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village

Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Lake Village
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Native Village of Mountain Village
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Native Village of Russion Mission (Yukon)
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Native Village of Toksook Bay
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalingin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95-3839 Filed 2-15-95; 8:45 am]

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Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal State Gaming Compact Between the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the State of Oregon, which was executed on December 8, 1994.

DATES: This action is effective February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 2, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3840 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval for Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact For Regulation of Class III Gaming Between the Coquille Indian Tribe and the State of Oregon, which was executed on December 8, 1994.

DATES: This action is effective February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 1, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3841 Filed 2–15–95; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment No. 1 to the Amended Gaming Compact Between the Sisseton-Wahpeton Tribe and the State of South Dakota, which was executed on November 19, 1994.

DATES: This action is effective February 16, 1995.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: January 26, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–3842 Filed 2–15–95; 8:45 am]

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Housing Opportunities for Persons With AIDS; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3873; FR–3853–N–01]

Notice of Funding Availability for Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This Notice announces the availability of up to $19,200,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons with AIDS (HOPWA) program. The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under two categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons.

The NOFA contains information concerning eligible applicants, the funding available, the application package, its processing, and selection of applications. The regulations for the HOPWA program are found at 24 CFR part 574. A Final Rule for this program, amending 24 CFR part 574, was published in the **Federal Register** on April 11, 1994 (59 FR 17194), and was amended by a rule establishing the Consolidated Plan on January 5, 1995 (60 FR 1878).

DATES: Applications for HOPWA assistance must be received at the HUD Headquarters Office listed below by 6:00 p.m. Eastern time on April 17, 1995. Conditionally selected applicants will be notified by HUD of their selection and may be required to submit additional information within two months of the date of their notification from HUD.

FOR A COPY OF APPLICATION PACKAGES CONTACT: A HUD Field Office listed in the appendix to this NOFA.

ADDRESSES: Completed applications must be submitted to the Office of Community Planning and Development, Processing Control Branch, Room 7255, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. HUD will treat as ineligible for consideration applications that are received after the deadline. A copy must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of field offices appears at the end of this NOFA. The Department will not accept any application which is submitted to HUD via facsimile (FAX) transmission.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for the area in which the proposed project is located. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

ELIGIBLE APPLICANTS AND SCHEDULE OF COMPETITIONS IN 1995

Category	Special Projects of National Significance	Projects Which Are Part of Long-Term Comprehensive Strategies for Providing Housing and Related Services
Eligible Applicants	States Local Governments Nonprofit organizations.	States and Local Governments in areas not qualifying for formula allocations.
Approximate funding	$19.2 million	
Maximum Grant Size	$1 million for program activities	
Applications due to HUD Headquarters in Washington.	April 17, 1995, 6:00 PM, Eastern Time	
Applications to be sent to	Original to HUD Headquarters and one copy to the local Field Office	

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0133 (exp. 2/28/97).

I. Purpose and Substantive Description

(a) Purpose

The funds available under this NOFA will be used to fund projects for low-income persons with HIV/AIDS and their families under two categories of assistance: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of eligible persons; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons.

(b) Authority

The assistance made available under this NOFA is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), and was appropriated by the HUD Appropriations Act of 1995 (Pub. L. 103–327, approved September 28, 1994) and by the HUD Appropriations Act of 1994 (Pub. L. 103–124, approved October 28, 1993). The regulations for HOPWA are found at 24 CFR part 574.

(c) Eligibility

(1) States, units of general local government, and nonprofit organizations may apply for grants for special projects of national significance. (2) All States and units of general local government may apply for grants for projects under the second category of grants, except for: (A) any State that was eligible to receive a formula award in fiscal year 1995; and (B) any unit of general local government that was located in a metropolitan area or State that was eligible to receive a formula award in fiscal year 1995. Nonprofit organizations are not eligible to apply for the second category of grants.

(d) Allocation Amounts

Up to $19,200,000 is being made available by this NOFA. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the actual amount available may be less.

The maximum amount that an applicant may receive is $1,000,000, excluding administration costs. HUD reserves the right to fund less than the full amount requested in any application and to modify requests accordingly. If a request is modified by HUD, the conditionally selected applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement.

Funds received under this competition are to be expended within three years following the date of the signing of a grant agreement. Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may also be used to fund applications submitted in response to this NOFA.

(e) Program Goal

Applicants for HOPWA assistance under this NOFA should emphasize the connection between housing assistance and appropriate supportive services in designing their programs. As stated by the National Commission on AIDS in Housing and the HIV/AIDS Epidemic (issued in June 1992) there is "frequently desperate need safe shelter that provides not only protection and comfort, but also a base in which and from which to receive services, care and support."

II. Application Selection Process

(a) Review

Applications will be reviewed to ensure that they meet the following:

(1) *Applicant eligibility.* The applicant and project sponsor(s), if any, are eligible to apply for the specific program;

(2) *Eligible population to be served.* The persons proposed to be served are eligible persons;

(3) *Eligible activities.* The proposed activities are eligible for assistance under the program; and

(4) *Other requirements.* The applicant is currently in compliance with the Federal requirements contained in 24 CFR part 574, subpart G, "Other Federal Requirements."

(b) Rating

Applications under both categories of grant will be rated in a national competition. To rate applications, the Department may establish a panel including persons not currently employed by HUD to obtain outside points of view, including views from other Federal agencies.

(c) Rating of Applications.

(1) Procedure. Applications will be rated based on the criteria listed below in paragraph (2), with a maximum of 100 points awarded. After rating, these applications will be placed in the rank order of their final score for selection.

(2) Rating Criteria. Applications under both categories of grant will be rated on the following criteria:

(A) *Applicant capacity (20 points).* HUD will award up to 20 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed program. With regard to both the applicant and the project sponsor(s), HUD will consider: (a) Past experience in serving persons with AIDS or related diseases and their families; (b) past experience in programs similar to those proposed in the application; and (c) experience in monitoring and evaluating program performance.

As applicable, the rating under this criterion will also consider prior performance with any HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(B) *Need for the project in the area to be served (20 points).* HUD will award up to 20 points based on the extent to which the need for the project in the area to be served is demonstrated by the relative numbers of AIDS cases and per capita AIDS incidence, as reported to and confirmed by the Director of the Centers for Disease Control and Prevention.

(C) *Appropriateness of program activities: Housing, supportive services and other assistance (30 points).* HUD will award up to 30 points based on the extent to which a plan for undertaking and managing the proposed activities:

(a) Describes and responds to the need for housing and related supportive services of eligible persons in the community; or, in relation to technical assistance activities proposed in the application, describes and responds to the technical assistance needs of programs which provide housing and related supportive services for eligible persons;

(b) describes how activities carried out with HOPWA funds and other resources will provide a continuum of housing and services to meet the changing needs of eligible persons, offers a personalized response to those needs which maximizes opportunities for independent living, and in the case of a family, accommodates the needs of families;

(c) provides for monitoring and the evaluation of the assistance provided to participants; and

(d) in relation to technical assistance activities proposed in the application, provides technical assistance related to the development and operation of programs and the capacity of organizations to undertake and manage assistance for eligible persons.

(D) *Extent of leveraged public and private resources for the project (10 points).* HUD will award up to 10 points based on the extent to which resources from other public or private sources have been committed to support the project at the time of application.

(E) *Special projects of national significance (20 points).* Applications for special projects of national significance will be rated on innovative nature of the proposal and its potential for replication. HUD will award up to 20 points based on the extent to which the project involves a new program for, or alternative method of, meeting the needs of eligible persons, when compared to other applications and projects funded in the past. The Department will consider the extent to which the project design, management plan, proposed effects, local planning and coordination of housing programs, the likelihood of the continuation of the State and local efforts, and proposed activities are exemplary and appropriate as a model for replication in similar localities or nationally, when compared to other applications and projects funded in the past.

(F) *Projects which are part of long-term comprehensive strategies for providing housing and related services for eligible persons (20 points).* Applications for projects for this category of assistance will be rated on the extent of local planning and coordination of housing programs. HUD will award up to 20 points based on the extent to which the applicant demonstrates: (a) The proposed project is part of a community strategy involving local, metropolitan or State-wide planning and coordination of housing programs designed to meet the changing needs of low-income persons with HIV/AIDS and their families, including programs providing housing assistance and related services that are operated by Federal, State, local, private and other entities serving eligible persons; and (b) the likelihood of the continuation of the planning and coordination.

(d) Selection. Whether an application is conditionally selected will depend on its overall ranking compared to other applications. The Department will select applications to the extent that funds are available. HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity and to ensure that a minimum number of applications under each category of assistance are among conditionally selected applications.

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In the event of a tie between applications, the application with the highest total points for the criterion need will be selected, and if still tied, the highest total points for the criterion appropriateness of housing and services. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible application during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

III. Application Submission Requirements

The application submission requirements are contained in the application package. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix to this NOFA.

IV. Clarifications and Technical Assistance

(a) Clarification of Application Information. In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(b) Technical Assistance. Prior to the application deadline, HUD field office staff will be available to provide advice and guidance to potential applicants on application requirements and program policies. Following conditional selection, HUD field office staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

V. Grant Award Process

HUD will notify conditionally selected applicants in writing. Such applicants will subsequently be notified of any modification made by HUD, the additional project information necessary for grant award and the date of the two-month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified time period, HUD reserves the right not to award funds and to use the funds available in the next competition for the applicable program.

VI. Other Matters

(a) *Environmental Impact.* A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

(b) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the HOPWA program.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. The statutory authority for the program requires that the funds be targeted to individuals with acquired immunodeficiency syndrome or related diseases and their families. Any funding provided to projects can be expected to enable those families with a participating member who has HIV infection to live in decent, safe, and sanitary housing in connection with the supportive services necessary to live independently in mainstream American society. Since the impact on families is a beneficial one, no further review is necessary.

(d) *Accountability in the Provision of HUD Assistance.* HUD's regulation implementing section 102 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 12, contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. Additional information on the implementation of section 102 was published on January 16, 1992 at 57 FR 1942. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish notice of awards made in response to this NOFA in the **Federal Register**.

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Prohibition on Advance Release of Funding Information.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, found at 24 CFR part 4, applies to the funding competition announced today. The requirements of that rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying Activities.* The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. A standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying", must be used to disclose lobbying with other than Federally appropriated funds at the time of application.

(g) *Section 112 HUD Reform Act.* Section 112 of the HUD Reform Act amended the Department of Housing and Urban Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read that rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (TDD/VOICE); (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(h) *Drug-Free Workplace Certification.* In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD–50070).

(i) *Extenuating Circumstances.* HUD may consider for funding any application received at the HUD Headquarters address shown in the "Addresses" section of this NOFA by 6:00 p.m. Eastern time on the first business day after the deadline shown in the "Date" section if the applicant can show there were circumstances beyond its control that delayed delivery of the application, such as the failure of a delivery service to deliver the application on or before the date it specified.

Dated: February 7, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix 1. List of HUD Field Offices (12–20–94)

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for CPD Directors in HUD Field Offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

ALABAMA
John D. Harmon, Acting Director, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 672–1230; TDD (205) 290–7624.

ALASKA
Dean Zinck, Acting Director, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–4684; TDD (907) 271–4328.

ARIZONA
Lou Kislin, Acting Director, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379–4754; TDD (602) 379–4461.

ARKANSAS
Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

CALIFORNIA
(Southern) Herbert L. Roberts, 1615 W Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.
(Northern) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

COLORADO
Sharon Jewell, Acting Director, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414 TDD (303) 672–5248

CONNECTICUT
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Part VII

Federal Deposit Insurance Corporation

12 CFR Part 327

Assessments; Retention of Existing Rate Schedule for SAIF Member Institutions and New Rate Schedule for BIF Member Institutions; Proposed Rules

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN—3064–AB59

Assessments; Retention of Existing Assessment Rate Schedule for SAIF Member Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: Based upon the results of its semiannual review of the recapitalization of the Savings Association Insurance Fund (SAIF) and of the SAIF assessment rates, the Board of Directors of the FDIC (Board) proposes to retain the existing assessment rate schedule applicable to SAIF-member institutions. The effect of this proposal would be that the SAIF assessment rate to be paid by SAIF members would continue to range from 23 cents per $100 of domestic deposits to 31 cents per $100 of domestic deposits, depending on risk classification. Through this proposed rulemaking, the FDIC is soliciting comments on all aspects of its proposal to retain the existing assessment rate schedule applicable to SAIF-member institutions.

DATES: Written comments must be received by the FDIC on or before April 17, 1995.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838). Comments will be available for inspection in Room 7118, 550 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics (202/898–7027), Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background: SAIF Assessment Rates

Section 7(b) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1817(b)) requires that, if the SAIF reserve ratio is below the designated reserve ratio of 1.25 percent, the FDIC shall set assessments to increase the reserve ratio to the designated reserve ratio.[1] Section 7(b) of the FDI Act also requires a minimum SAIF assessment that is at least as much as would be raised by an average assessment rate of 18 basis points. The minimum assessment requirement is in effect as long as the SAIF is not fully capitalized or has outstanding borrowings under section 14 of the FDI Act. If either of these two conditions exists as of January 1, 1998, the minimum assessment requirement increases to a rate of 23 basis points.

In order to achieve SAIF recapitalization, the FDIC Board of Directors (Board) adopted a risk-related assessment matrix in September 1992 (see Table 1) which has remained unchanged. Previously, in deciding against changes in the SAIF assessment rate, the Board has considered the SAIF's expected operating expenses, case resolution expenditures and income under a range of scenarios. The Board also has considered the effect of an increase in the assessment rate on SAIF members' earnings and capital. When first adopted, the assessment rate schedule yielded a weighted average rate of 25.9 basis points. With subsequent improvements in the industry and the migration of institutions to lower rates within the assessment matrix, the average rate has declined to 24 basis points (based on risk-based assessment categories as of January 1, 1995 and the assessment base as of September 30, 1994—see Table 2).

TABLE 1.—SAIF-MEMBER ASSESSMENT RATE SCHEDULE FOR THE FIRST SEMIANNUAL ASSESSMENT PERIOD OF 1995

[Basis points]

Capital group	Supervisory subgroup		
	A	B	C
Well capitalized	23	26	29
Adequately capitalized	26	29	30
Undercapitalized	29	30	31

TABLE 2.—SAIF-MEMBER ASSESSMENT RATE DISTRIBUTION AS OF SEPTEMBER 30, 1994*

[Billions of dollars]

Capital group		Supervisory subgroup					
		A		B		C	
		Amount	Percent	Amount	Percent	Amount	Percent
Well capitalized	Number	1,585	85.6	139	7.5	35	1.9
	Assets	$526.5	70.7	$109.9	14.8	$20.4	2.7
	Base	386.6	72.3	74.5	13.9	15.3	2.9
Adequately capitalized	Number	28	1.5	34	1.8	21	1.1
	Assets	$25.5	3.4	$22.0	3.0	$32.9	4.4
	Base	15.7	2.9	15.9	3.0	21.5	4.0
Under capitalized	Number	0	0.0	0	0.0	10	0.5
	Assets	$0.0	0.0	$0.0	0.0	$7.4	1.0
	Base	0.0	0.0	0.0	0.0	5.7	1.1

*"Base" is the amount of deposits subject to SAIF assessments.

The primary source of funds for the SAIF is assessment revenue from SAIF-member institutions. Since the creation of the fund and through the end of 1992, however, all assessments from SAIF-member institutions were diverted to

[1] Currently, there is no recapitalization schedule for the SAIF mandated by statute. However, as of January 1, 1998, the Board is required to promulgate a recapitalization schedule that achieves the designated reserve ratio within 15 years, except that the Board may extend the recapitalization date to one which "will, over time, maximize the amount of semiannual assessments received by the SAIF, net of insurance losses incurred by the Fund".

other needs as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).[2] Only assessment revenue generated from Bank Insurance Fund (BIF) member institutions that acquired SAIF-insured deposits under section 5(d)(3) of the FDI Act (12 U.S.C. 1815(d)(3)) (so-called "Oakar" banks) was deposited in the SAIF throughout this period.

SAIF-member assessment revenue began flowing into the SAIF on January 1, 1993. However, the Financing Corporation (FICO) has a priority claim on SAIF-member assessments in order to service FICO bond obligations. Under existing statutory provisions, FICO has assessment authority through 2019, the maturity year of its last bond issuance. At approximately $779 million per year, the FICO draw is substantial, representing nearly 45 percent of estimated assessment revenue for 1995, or 11 basis points of the average assessment rate of 24 basis points. The SAIF had a balance of $1.8 billion (unaudited) on December 31, 1994. With primary resolution responsibility residing with the Resolution Trust Corporation (RTC), there have been few demands on the SAIF, but the authority of the RTC to place failed thrifts in conservatorship or establish receiverships expires June 30, 1995.

In addition to assessment revenues and investment income, there are at least two other potential sources of funds for the SAIF. First, the FDIC has a $30 billion line of credit available with the Department of the Treasury (Treasury) for deposit insurance purposes, although the SAIF has required no extension of credit. Second, the Resolution Trust Corporation Completion Act (RTCCA) authorized the appropriation of up to $8 billion in Treasury funds to pay for losses incurred by the SAIF during fiscal years 1994 through 1998, to the extent of the availability of appropriated funds and provided that certain certifications are made to the Congress by the Chairman of the FDIC. Among these, the Chairman must certify that the FDIC Board has determined that:

(1) SAIF members are unable to pay additional semiannual assessments at the rates required to cover losses and to meet the repayment schedule for any amount borrowed from the Treasury for insurance purposes under the FDIC's line of credit without adversely affecting the SAIF members' ability to raise capital or to maintain the assessment base; and

(2) An increase in assessment rates for SAIF members to cover losses or meet any repayment schedule could reasonably be expected to result in greater losses to the Government.

The RTC's resolution activities and the thrift industry's substantial reduction of troubled assets in recent years have resulted in a relatively sound industry as the July 1, 1995 date for SAIF resolution responsibility approaches. However, with a balance of $1.8 billion beginning 1995, the SAIF does not have a large cushion with which to absorb the costs of thrift failures. The FDIC has significantly reduced its projections of failed-thrift assets for 1995 and 1996, but the failure of a single large institution or an economic downturn leading to higher than anticipated losses could render the fund insolvent.

Furthermore, there may soon be a substantial differential between BIF and SAIF premiums. The BIF is expected to be recapitalized during 1995, at which time BIF premiums can be reduced far below current levels. Largely due to the FICO obligation, the SAIF is not likely to be recapitalized until 2002 (this projection is discussed below in section III). A premium differential may have adverse consequences for SAIF members, including reduced earnings and an impaired ability to raise funds in the capital markets. Among the weakest thrifts, this differential could result in competitive pressures that would lead to additional failures. An analysis over a five year time span suggests that any such increase in failures is likely to be sufficiently small as to be manageable by the SAIF under current interest-rate and asset quality conditions. Moreover, the analysis indicates that under harsher interest-rate and asset-quality assumptions, these economic factors would have a significantly greater effect on SAIF-member failure rates than would a premium differential.

While the premium differential is not expected to lead to significant failures in the near term, it may lead to other adverse results. A premium differential would also create a powerful incentive for SAIF-insured institutions to minimize premium costs by shrinking the base against which assessments are levied (currently domestic deposits). This can be accomplished, despite the moratorium on conversions of SAIF-insured deposits to BIF-insured deposits at these institutions, by substituting nondeposit liabilities for SAIF-insured deposits. These nondeposit liabilities are readily available and include Federal Home Loan Bank (FHLB) advances and reverse repurchase agreements. The net result could be an acceleration of the shrinkage of the assessment base, thereby reducing assessment revenue. This could threaten the ability to service the FICO obligation sometime near or after the year 2000 and, over the longer term, frustrate the capitalization of the SAIF. As shown in the following table, the assessment base has been declining steadily since the fund was established in 1989, although the decline was at a slower rate in 1994.

TABLE 3.—SAIF ASSESSMENT BASE AND INSURED DEPOSITS*

[Dollar amounts in billions]

	Assessment base	Percent change	Est. insured deposits	Percent change
1989	$950.3		$882.9	
1990	877.7	−7.6	830.0	−6.0
1991	820.2	−6.5	776.4	−6.5
1992	760.5	−7.3	729.5	−6.0
1993	729.4	−4.1	695.6	−4.6
1994	716.3	−1.8	687.3	−1.2

*Includes conservatorships and Sasser institutions; adjusted for Oakar deposits. End-of-period domestic deposits are used to approximate the SAIF assessment base. The actual assessment base may be slightly less than domestic deposits due to float adjustments, but period-to-period changes should be similar. Table 3 presents end-of-period figures (the comparable table in earlier proposals used averages) to reflect the quarterly billing system which becomes effective the second quarter of 1995.

[2] From 1989 through 1992, more than 90 percent of SAIF assessment revenue went to the FSLIC Resolution Fund (FRF), the Resolution Funding Corporation (REFCORP) and the Financing Corporation (FICO).

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The FDIC's Legal Division has opined that SAIF assessments paid by BIF-member Oakar banks should remain in the SAIF and are not subject to FICO draws.[3] Further, the Legal Division has opined that SAIF assessments paid by any former savings association that (i) has converted from a savings association charter to a bank charter, and (ii) remains a SAIF member in accordance with section 5(d)(2)(G) of the FDI Act (12 U.S.C. 1815(d)(2)(G)) (a so-called "Sasser" bank), are likewise not subject to draws by FICO.[4] On September 30, 1994, BIF-member Oakar banks held 23.3 percent of the SAIF assessment base (see Table 4), and SAIF-member Sasser banks held an additional 6.9 percent. While the pace of Oakar acquisitions is likely to slow substantially as RTC resolution activity winds down in 1995, Oakar deposits may continue to grow at the same rate as BIF-member deposits and become a greater proportion of the SAIF assessment base.[5] This has the potential result of SAIF's having insufficient assessments to cover the FICO obligation. The rate of Sasser conversions is difficult to predict and is partially dependent on state laws, but any future conversions would also decrease the proportion of SAIF assessment revenues available to FICO. These factors are considered in the projections of SAIF's recapitalization in section III.

TABLE 4.—SAIF-INSURED DEPOSITS HELD BY BIF-MEMBER OAKAR BANKS AS A PERCENT OF SAIF MEMBER DOMESTIC DEPOSITS*

Year	Percent
1991	7.5
1992	9.7
1993	18.4
9/94	23.3

*End-of-period figures; domestic deposits are adjusted for Oakar deposits.

II. Condition and Performance of SAIF-Member Institutions

SAIF-member institutions numbered 1,869 on September 30, 1994, including 1,794 thrift institutions and 75 commercial banks.[6] While the total number of institutions is down from year-end 1993, there is evidence of a growing industry. For the first three quarters of 1994, these institutions increased their total assets by $6.8 billion (0.9 percent) based on loan growth of $6.3 billion. Total capital grew at an even faster pace for the nine months, raising the equity-to-assets ratio to 7.90 percent from 7.74 percent. The industry continued to pare troubled assets during 1994. Noncurrent loans and other real estate owned declined from 1.91 percent of total assets at the beginning of 1994 to 1.43 percent by September 30.

The industry earned a return on assets of 0.62 percent for the first three quarters of 1994. While this is less than the ROA of 0.72 percent earned in 1993, the earlier year included large one-time accounting gains. Also, some institutions incurred large restructuring charges in 1994 in order to dispose of troubled assets, which has positioned them for higher profits in subsequent periods. Earnings in 1994 were hampered by smaller net interest margins, which fell from 3.35 for all of 1993 to 3.24 for the first nine months of 1994. In the rising interest-rate environment, institutions' funding costs rose faster than asset yields, although institutions with higher proportions of adjustable-rate mortgages should be able to reprice a portion of these loans within six months.

This discussion has focused on the improving condition of the SAIF-member thrift industry, but any such discussion must mention the relatively weak economic conditions still confronting a large segment of the industry. Twenty-three percent of all SAIF member's total assets are concentrated in the nation's seven largest thrift institutions, all of which are headquartered in California. This state, in general, has lagged behind most of the nation in recovering from the most recent recession, and many California thrifts have significant exposure in the weakest areas of southern California. Additionally, a few large institutions have raised supervisory concerns due to low earnings and relatively high levels of risk in their loan portfolios. Consequently, despite the improving health of the thrift industry, the SAIF still faces significant risk relative to the fund's current reserve level.

The current assessment rate schedule for SAIF-member institutions has a spread of 8 basis points from the lowest rate to the highest rate, dependent on supervisory factors and capitalization. A proposed assessment rate schedule for BIF-member institutions would increase the spread for BIF members from the current 8 basis points to 27 basis points. This would be accomplished by maintaining the current maximum rate of 31 basis points and dropping the minimum, most favorable rate to 4 basis points. Thus, the weakest BIF members would incur no additional deposit insurance cost. In order to apply a similar 27-basis point spread to SAIF members, it would be necessary to raise the highest SAIF assessment rate to 45 to 50 basis points (based on a lowest rate of 18 to 23 basis points). Because 85 percent of SAIF members would continue to pay the lowest rate, the revenue benefit of a 27-basis point spread would be limited. However, a spread of that magnitude could have significant adverse consequences for the SAIF by greatly increasing expenses of its weakest members and, in all likelihood, causing additional failures.

III. New Projections for the SAIF

In November 1994, the FDIC's interdivisional Bank and Thrift Failure Working Group (Working Group) estimated failed SAIF-insured institution assets at $3 billion for 1995 and $2 billion for 1996. The 1995 estimate of $3 billion is based on the FDIC Division of Supervision's projected failure of specific institutions that likely would occur in the second half of the year, when SAIF assumes resolution responsibility from the RTC. The 1995 and 1996 estimates were used in updating the Division of Research and Statistics' projections of failed thrift assets, the fund balance and reserve ratios.

The updated projection indicates the SAIF reserve ratio will reach 1.25 percent in 2002, which is unchanged from the previous projection. Also, this projection indicates the fund will not encounter problems meeting the FICO obligation through 2012, the last year of the projection. The results are shown in Table 5.

The following assumptions were used:

- Failed-institution assets are based on the Working Group's estimates for 1995 ($3 billion) and 1996 ($2 billion). Beyond 1996, the assumed failed-asset rate for SAIF will be 22 basis points, or about $2 billion per year. This is lower than the historical loss rate for the BIF because of the thrift industry's current low level of problem assets.
- The nominal loss rate on failed thrift assets will be 13 percent.
- The asset growth rate for SAIF members will be zero, based on the industry's recent experience.
- The SAIF assessment base will continue to shrink, at 2 percent per year. Under current conditions, the assessment base for better capitalized thrifts is expected to be stable. Deposit shrinkage was more prevalent at weaker thrifts during periods when some better-managed thrifts experienced deposit growth.[7] However, the emergence of a BIF/SAIF premium differential may encourage less reliance on SAIF-assessable liabilities. The higher overall shrinkage rates of recent years are not expected to continue because a significant portion of the shrinkage was due to depositor flight from the declining or low deposit interest rates which prevailed from 1990 to the latter part of 1994. Another portion of the shrinkage can be attributed to deposit runoff at conservatorships and weakened thrifts.
- The Oakar deposit purchase rate will be zero, but Oakar deposits will grow at 2 percent per year, the estimated growth rate for BIF-member deposits. Under FDICIA, Oakar deposits are adjusted annually by the acquiring institution's overall deposit growth rate. A significant portion of Oakar deposits were acquired from the RTC, and these opportunities have all but disappeared. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 authorizes a bank holding company to acquire out-of-state banks beginning September 29, 1995, and authorizes a bank to establish *de novo* out-of-state branches beginning June 1, 1997 if the host state expressly permits interstate branching through the establishment of *de novo* branches. Thus, banks may no longer be confined to the acquisition of failed or failing charters to enter states previously closed to them.
- The average assessment rate will be 24 basis points until the SAIF is recapitalized, after which assessment rates are reduced to the level necessary to maintain the reserve ratio at 1.25 percent.

TABLE 5.—SAIF FUND BALANCE AND RESERVE RATIO PROJECTIONS

Year-end	Fund balance ($ billions)		Reserve ratio*	
	9/94 Projection	1/95 current projection**	9/94 Projection (percent)	1/95 current projection (percent)
1994	$2.2	$1.8	0.31	0.26
1995	2.9	2.4	0.43	0.35
1996	3.7	3.3	0.55	0.49
1997	4.4	4.1	0.67	0.61
1998	5.1	4.8	0.79	0.74
1999	5.7	5.6	0.92	0.86
2000	6.4	6.5	1.05	1.00
2001	7.1	7.3	1.19	1.14
2002	7.3	8.0	1.25	1.25
2003	6.8	7.9	1.25	1.25
2004	7.0	7.8	1.25	1.25
2005	6.8	7.8	1.25	1.25
2006	6.7	7.7	1.25	1.25
2007	6.5	7.7	1.25	1.25
2008	6.4	7.6	1.25	1.25
2009	6.3	7.6	1.25	1.25
2010	6.2	7.6	1.25	1.25
2011	6.0	7.5	1.25	1.25
2012	5.9	7.5	1.25	1.25

*After reaching 1.25 percent of insured deposits, the fund balance is maintained at 1.25 percent of insured deposits.
**The estimated year-end 1994 fund balance is less than was shown for September because of loss reserves set aside in the fourth quarter. The 1/95 projected fund balance incorporates an Oakar deposit growth factor, whereas the 9/94 projection did not.

As stated earlier, the Board has the authority to reduce SAIF assessment rates to an average of 18 basis points until January 1, 1998, at which time the average rate would rise to 23 basis points until recapitalization occurs. Projections made under this scenario (and using the same other assumptions as above) indicate that the SAIF would recapitalize in 2004, or two years later than under the existing rate schedule.

IV. FDIC Proposal Regarding SAIF-Member Assessment Rates

Given the fund's relatively low balance and the imminent transfer of resolution authority from the RTC to the SAIF on July 1, the SAIF must be built as quickly as possible to its mandated reserve level. It is recognized that a differential between BIF and SAIF premiums could adversely affect some SAIF members, but the thrift industry has demonstrated its ability to generate additional capital and reduce troubled assets while paying deposit insurance premiums at the current levels. Also, a shrinking assessment base is producing declining revenue, which would be cut even further by lower assessment rates. The FDIC staff has recommended that assessment rates within the risk-related assessment rate matrix remain at their current levels for the second semiannual assessment period of 1995. The Board believes that the minimum rate should not be reduced from the current 23 basis points, and that an increase in the current spread of 8 basis points from the lowest to the highest assessment rates would adversely impact weakened institutions already in danger of failure.

V. Summary

Under the existing SAIF assessment rate schedule, which yields an average assessment rate of 24 basis points, the fund is projected to recapitalize in the year 2002, which is unchanged from prior projections. The Board has the authority to reduce SAIF assessment rates to 18 basis points until January 1, 1998, after which the average rate must remain at 23 basis points or higher until recapitalization is achieved. Reducing the average rate to 18 basis points is presently projected to delay SAIF recapitalization for two years, until 2004. Although the industry is relatively healthy, FDIC staff has recommended

[3] See Notice of FDIC General Counsel's Opinion No. 7, 60 FR 7055 (Feb. 6, 1995).

[4] *Id.*

[5] Under section 5(d)(3) of the FDI Act, as amended by FDICIA, SAIF-insured deposits acquired by a BIF member are adjusted annually by the acquiring institution's overall deposit growth rate (excluding the effects of other mergers or acquisitions).

[6] Excluding RTC conservatorships and one self-liquidating institution.

[7] Deposit Flows at SAIF- and BIF-Insured Institutions: December 1988 to September 1992, Policy Research Division, Office of Thrift Supervision, January 1993.

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that the Board retain the existing assessment rate schedule for the second semiannual assessment period of 1995 so that recapitalization is accomplished as soon as possible. The SAIF had an estimated balance of $1.8 billion (unaudited) at year-end 1994, and SAIF assumes resolution responsibility from the RTC on July 1, 1995. Although estimated failed-institution assets appear manageable for 1995 and 1996, the SAIF remains vulnerable in the short run to a single large-institution failure and to any significant increase in anticipated loss rates.

VI. Request for Public Comment

Based upon the results of its semiannual review of the recapitalization of the SAIF and of the SAIF assessment rates, the FDIC is inclined to retain the existing assessment rate schedule applicable to SAIF-member institutions. The FDIC wishes to have the benefit of public comment before ending its review for this period, however. The FDIC therefore requests comment as to whether it is appropriate for the FDIC to retain the existing assessment rate schedule applicable to SAIF-members, or whether the rates should be lowered to the statutory minimum of 18 basis points or some point in between. The FDIC is interested in receiving analyses exploring the impact a differential between BIF and SAIF premiums might have on SAIF members, and the FDIC invites comment as to whether the current spread of 8 basis points from the lowest to the highest assessment rates should be retained for SAIF members. The FDIC solicits comment as to how lower SAIF rates would impact current efforts to recapitalize the SAIF. The FDIC further invites comments as to whether current rates are sufficient to recapitalize the SAIF in an expeditious manner.

VII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this proposed rule. Consequently, no information has been submitted to the Office of Management and Budget (OMB) for review.

VIII. Regulatory Flexibility Analysis

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). This proposed rule will not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers to comply with this proposed rule. Therefore, the provisions of that Act regarding an initial and final regulatory flexibility analysis (Id. at 603 and 604) do not apply here.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, Banking, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Paragraph (c)(1) of § 327.9 as added at 59 FR 67165, effective April 1, 1995, will be retained without change. The text of paragraph (c)(1) is republished for the convenience of the reader to read as follows:

§ 327.9 Assessment rate schedules.

* * * * *

(c) *SAIF members.* (1) Subject to § 327.4(c), the annual assessment rate for each SAIF member shall be the rate designated in the following schedule applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that SAIF member (the schedule utilizes the group and subgroup designations specified in § 327.4(a)):

SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

* * * * *

By the order of the Board of Directors.

Dated at Washington, D.C., this 31 day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3669 Filed 2–15–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB58

Assessments; New Assessment Rate Schedule for BIF Member Institutions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation on assessments to establish a new assessment rate schedule of 4–31 basis points for members of the Bank Insurance Fund (BIF) to apply to the semiannual period in which the reserve ratio of the BIF reaches the designated reserve ratio (DRR) of 1.25% of total estimated insured deposits and to semiannual periods thereafter. The Board is further proposing to amend the assessment risk classification framework to widen the existing assessment rate spread from 8 basis points to 27 basis points.

When the DRR is achieved, the Board is required to set rates to maintain the reserve ratio at the DRR. Based on current projections, the reserve ratio is expected to reach the DRR between May 1 and July 31, 1995. Therefore, the Board is proposing to lower assessment rates to maintain the reserve ratio at the DRR and to maintain a risk-based assessment system. The Board is further proposing to amend the assessments regulation to establish a procedure for adjusting the proposed rate schedule semiannually as necessary to maintain the DRR at 1.25%.

DATES: Written comments must be received by the FDIC on or before April 17, 1995.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christine Blair, Financial Economist, Division of Research (202) 898–3936; or Connie Brindle, Chief, Assessment Operations Section, Division of Finance, (703) 516–5553; or Lisa Stanley, Senior Counsel, Legal Division (202) 898–7494, or Cristeena Naser, Attorney, Legal Division (202) 898–3587, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

At present, BIF members are assessed rates for FDIC insurance ranging from 23 basis points for the best risk classification to 31 basis points for the riskiest classification. This assessment schedule is based on the requirements of section 7(b)(2)(E) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b)(2)(E). That provision was enacted as part of section 302 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236, 2345) which completely revised the assessment provisions of the FDI Act by requiring the FDIC to: (1) establish a system of risk-based assessments; (2) establish rates sufficient to provide revenue at least equivalent to that generated by an annual 23 basis point rate until the BIF reserve ratio achieves the DRR of 1.25% of total estimated insured deposits; (3) when the reserve ratio remains below the DRR of 1.25%, set rates to achieve that ratio within one year or establish a recapitalization schedule to do so within 15 years; and (4) once the DRR is achieved, set rates to maintain the reserve ratio at the DRR.

Based on the financial condition of the BIF, the Board has established two recapitalization schedules, most recently on May 25, 1993, which estimated that the DRR would be achieved in the year 2002. 58 FR 31150 (May 25, 1993). Once the DRR has been attained, the recapitalization schedule will no longer apply. Due to the health of the banking industry, current projections indicate that the BIF will recapitalize sometime between May 1 and July 31, 1995. Accordingly, the Board must implement the statutory provisions which will apply once the DRR is reached. In particular, because the mandate to collect at a minimum average rate of 23 basis points will no longer be operative, the Board must determine when and how much to lower assessments of BIF members.

Following is a discussion of the statutory provisions which must be considered in determining how and when rates may be set, a proposed new assessment rate schedule, a method for applying the proposed rate in the semiannual period during which the DRR is achieved, and a process for adjusting that assessment schedule in future semiannual periods.

II. Statutory Framework for Setting Assessment Rates

A. Summary

Section 7(b) of the FDI Act governs the Board's authority for setting assessment rates for members of the BIF. 12 U.S.C. 1817(b). The assessment rates the Board is authorized or required to set are dependent on whether the fund's reserve ratio has reached its DRR. The reserve ratio is the dollar amount of the BIF fund balance divided by the estimated insured deposits of BIF members. The Board must set semiannual assessments and the DRR for the BIF and the Savings Association Insurance Fund (SAIF) independently. FDI Act, section 7(b)(2)(B).

The DRR for the BIF currently is 1.25% of estimated insured deposits (*i.e.*, $1.25 for each $100 of insured deposits), the minimum level permitted by the FDI Act. FDI Act, section 7(b)(2)(A)(iv). The Board may increase the DRR to such higher percentage as the Board determines to be justified for a particular year by circumstances raising a significant risk of substantial future losses to the fund. However, the Board is not authorized to decrease the DRR below 1.25%. *Id.*

Section 7(b), among other things, directs the Board to:

(1) establish a risk-based assessment system whereby an institution's assessment is based in part on the probability that the deposit insurance fund will incur a loss with respect to that institution [FDI Act, section 7(b)(1)(C)(i)]; and

(2) set assessments, not less than $2000 annually per BIF member, to "maintain" the reserve ratio "at" 1.25% when that ratio has been achieved [FDI Act, section 7(b)(2)(A)(i)(I), (iii)].

In the current economic environment, because of investment income alone, the reserve ratio may continue to grow beyond 1.25%. Moreover, a risk-based assessment system contemplates a range of rates such that even if the least risky institutions pay the lowest rate consistent with a meaningful risk-based assessment system, riskier institutions must pay a higher rate. While the Board must set rates to maintain fund reserves at the 1.25% DRR once that level is achieved, even with assessment rates as low as prudently possible the fund could continue to grow as a result of assessments paid by riskier institutions and investment income. The following sections address these statutory directives.

B. Directive: Set Rates To Maintain the Reserve Ratio at the DRR

Pursuant to section 7(b)(2)(A)(i) of the FDI Act, the Board must set semiannual assessments to maintain the reserve ratio of the BIF at the DRR taking into consideration the following factors: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors the Board may deem appropriate. Section 7(b)(2)(A)(iii) limits the Board's discretion to set assessment rates by imposing a minimum semiannual assessment of $1,000 per BIF member. The directive to "set rates to maintain the reserve ratio at the designated reserve ratio" was enacted as part of the amendments to section 7 made by the FDIC Assessment Rate Act of 1990 (Assessment Rate Act). Public Law 101–508, 104 Stat. 1388, 1388–14. The Assessment Rate Act is Subtitle A of Title II of the Omnibus Budget Reconciliation Act of 1990. While the phrase "set assessments * * * to maintain the reserve ratio at the designated reserve ratio" is not defined in the statute, the legislative history discussed below illuminates Congress' intentions.

1. Interpretations of "maintain * * * at the DRR".

The Board is of the opinion that this phrase establishes the DRR as a target, a position supported both by the difficulty of managing the size of the reserve ratio as well as the statutory history. Changes in the reserve ratio are a function of the size of estimated insured deposits, investment earnings, assessment revenue (which, in turn, is a function of the risk profile of the industry and revenue received from the statutory minimum assessment), and revenue from corporate-owned and other assets, none of which is in the complete control of the FDIC. In addition, operating expenses and insurance losses to the fund will vary.

The primary factors affecting the fund balance are assessment revenues, investment income, operating expenses and insurance losses resulting from bank failures. Assessment revenues depend upon deposit growth, and investment income depends upon interest rate movements as well as factors affecting the fund's investable balance. Deposit growth and interest rate movements in turn are related, but as the number and variety of financial instruments and financial management techniques expand that relationship becomes less predictable. Both deposit growth and interest rates have become more variable and, thus, less predictable

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in recent years. Finally, bank failures and the resulting losses for the insurance fund historically have represented a major source of uncertainty in forecasting the fund balance. Failures can arise from developments in the global marketplace, smaller geographic markets, or specific product markets, and the failure rate is affected by numerous other factors. The 1980s offer strong evidence that changes in these determinants and their implications cannot, as a rule, be anticipated far in advance. The specific timing of failures is particularly difficult to project, even for short forecast horizons. Taken together, the above considerations indicate that the reserve ratio cannot be managed with sufficient precision to achieve a precise target consistently.

Section 208 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended section 7(b) of the FDI Act to establish a DRR and set the level at 1.25%. Public Law 101–73, 103 Stat. 183, 206. Prior to FIRREA, beginning in 1980, the FDI Act required or authorized the Board to adjust the amount of assessment income transferred to the insurance fund, and thereby to increase or decrease the rebate amount, based on the actual reserve ratio of the fund within a range from 1.10 percent to 1.40 percent, with 1.25 percent as the target. See discussion *infra*, Rebates.

FIRREA also prescribed minimum annual assessment rates which could be increased from the scheduled levels, "if necessary to restore the fund's ratio of reserves to insured deposits to its *target level* within a reasonable period of time." [Emphasis added.] H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 396 (1989). Thus, when the DRR was established, Congress appears to have considered the DRR as a target level.

The view that the DRR is a target finds further support in Senate legislation which was considered when enacting the Assessment Rate Act. Section 1(a) of S. 3045, which was sponsored by then Senate Banking Committee Chairman Riegle and other members of the Senate Banking Committee, required the Board to "maintain the reserve ratio at a level equal to the designated reserve ratio". This language was almost identical to the comparable provision of S. 3093, the Administration bill, which ultimately was enacted. The section-by-section analysis of S. 3045 describes Section 1(a) as permitting

> * * * the FDIC to set the assessment rate at the level the FDIC determines to be appropriate: to maintain the Bank Insurance Fund's reserves at the target level (now $1.25 in reserves for each $100 in insured deposits, with the FDIC having the discretion under the current law to increase it to $1.50); or if the Fund's reserves are below the target level, to restore the reserves to the target level. The FDIC would have 'a reasonable period of time' to restore the Fund's reserves to the target level. [Emphasis added.]

The Senate banking committee clearly considered the DRR as a target.

Finally, FDICIA section 104, Recapitalizing the Bank Insurance Fund, amended the assessment rate provisions of section 7(b)(1)(C) (in effect December 19, 1991 through December 31, 1993) as follows:

> If the reserve ratio of the Bank Insurance Fund *equals or exceeds* the fund's designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund as appropriate to maintain the reserve ratio at the designated reserve ratio. [Emphasis added.]

Thus Congress appears to have recognized that the reserve ratio would fluctuate around a target DRR.

Treating the DRR as a target would necessarily include the concept of fluctuations above and below the target, thus incorporating into the rate-setting process a measure of economic reality. If the reserve ratio falls below 1.25% in a semiannual period, the Board could adjust the assessment schedule in the next semiannual period to restore the ratio. Section 7(b)(3)(A) of the FDI Act contemplates precisely that. That section provides that, after the DRR is achieved, if the reserve ratio falls below the DRR, the Board is required to set semiannual assessments sufficient to increase the reserve ratio to the DRR within one year or in accordance with a recapitalization schedule promulgated to restore the reserve ratio to the DRR within 15 years. Conversely, when the reserve ratio rises above the DRR for any semiannual period, the Board could adjust the assessment schedule downward to reflect the increase.

Current projections show, however, that even if the assessment rate for risk classification 1A banks were as low as possible consistent with a meaningful risk-based assessment system, the fund may continue to grow as a result of the revenue from investment income. In such a case where the rates are set as low as possible consistent with a risk-based assessment system and the fund nevertheless continues to grow, the Board considers that it will have complied with the statute because the Board will have *set rates* to maintain the reserve ratio at 1.25% in accordance with statutory requirements for a risk-based assessment system.

Congress could not have understood that the reserve ratio can be maintained precisely at 1.25%. Under this interpretation, amounts in excess of that fixed point should be returned to the industry. However, as discussed above, the FDIC cannot completely control the factors that produce fluctuations in the level of the reserve ratio. Therefore, management of the reserve ratio is necessarily imprecise. In the current economic situation, the fund will likely grow beyond the DRR as a result of investment income alone. Thus, an interpretation which requires the FDIC to maintain the reserve ratio precisely at 1.25% would necessarily require a mechanism for providing assessment credits (known as rebates) to BIF members for amounts in excess of 1.25%. Putting aside issues of whether investment income, reserve corpus or both can be rebated, more importantly, the FDIC's authority in section 7(d), 12 U.S.C. 1817(d), to provide assessment credits was deleted in FDICIA as being obsolete. *See*, section-by-section analysis of section 212(e)(3) of S. 543 which became the language of section 302(a) of FDICIA at 138 *Cong. Rec.* S2073 (daily ed. February 21, 1992). See discussion *infra*, Rebates.

The Board believes that viewing the DRR as a target is the correct position because (1) it reflects economic reality and the impossibility of maintaining the reserve ratio precisely at 1.25%; (2) it gives effect to other relevant requirements in the statute for a minimum assessment, a risk-based assessment system, and maintenance of the DRR; and 3) it better comports with Congressional intent as indicated by the legislative history and the fact that Congress eliminated the rebate authority of section 7(d).

2. BIF Members shall pay a minimum semiannual assessment of $1,000.

Section 302 of FDICIA completely revised section 7(b) of the FDI Act. The minimum assessment language was modified only to reflect the fact that rates are to apply semiannually and to combine separate provisions into a single provision applicable to both the BIF and SAIF as follows:

> The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000. FDI Act, section 7(b)(2)(A)(iii).

After FDICIA, BIF members must pay the greater of their risk-based rate or $2000 each year.

C. The FDIC Shall Establish a Risk-Based Assessment System

In FDICIA, Congress completely restructured the basis upon which assessment rates are determined. Section 302(a) of FDICIA required the FDIC to establish by January 1, 1994, a risk-based assessment system based on:

(i) the probability that the deposit insurance fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent;

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the deposit insurance fund.

Within the scope of these broad factors, FDIC was granted complete discretion to design a risk-based assessment system. *See, i.e.*, S. Rep. No 167, 102d Cong., 1st Sess., 57 (1991). One statutory restraint, however, is that the system must be designed so that as long as the BIF reserve ratio *remains* below the DRR, the total amount raised by semiannual assessments on members cannot be less than the total amount resulting from a flat rate of 23 basis points. FDI Act, section 7(b)(2)(E). This provision currently applies, but will cease to be operative when the BIF meets the DRR. This provision may again become operative if the reserve ratio *remains* below the DRR at some future time. The Board interprets the minimum assessment provision of section 7(b)(2)(E), which requires weighted average assessments of 23 basis points, as applying only when the reserve ratio *remains* below the DRR for at least a year.

Any time the reserve ratio goes below the DRR, the Board must either set rates 1) to restore the reserve ratio within one year or 2) in accordance with a recapitalization schedule not to exceed fifteen years. FDI Act, section 7(b)(3)(A). Because the Board has the discretion to determine the rate necessary to restore the reserve ratio to the DRR within one year, it is reasonable to conclude that the minimum assessment provision (which mandates the Board to set rates sufficient to provide revenue equivalent to that generated by an annual flat rate of .0023) would not apply until the reserve ratio stays below the DRR for at least one year. Moreover, it is unlikely that Congress intended such a drastic result if the DRR falls slightly below the target DRR, when a small adjustment in the assessment schedule for the following semiannual period could bring the fund back up to the DRR. In such a case, if the minimum assessment provision applied, the result would be an enormous overcollection of assessment revenue which, as explained below, the FDIC lacks the authority to rebate.

D. Rebates

It appears, based on the statutory framework and legislative history of section 7 of the FDI Act, that the FDIC has not had authority to provide rebates since the permanent risk-based assessment system took effect on January 1, 1994. Prior to FDICIA, two provisions of section 7 expressly addressed rebates or assessment credits, section 7(d), Assessment Credits, and section 7(e), Refunds to Insured Depository Institutions.

In section 302(e)(3) of FDICIA, Congress removed the assessment credit provisions of section 7(d) of the FDI Act and at the same time established a rate-setting scheme requiring the Board to set rates to maintain the reserve ratio at the DRR. Pub. L. 102–242, 105 Stat. 2236, 2349. As is clear from the statutory history of assessment credits, such credits were intended as a means to provide flexibility to keep the fund balance from growing too large at a time when assessment rates were set in the statute and all institutions paid the same flat rate. See generally, S. Rep. No. 1269, 81st Cong., 2nd Sess. 1–2 (1950); *Cong. Rec.* H10648 *et seq.* (daily ed. July 19, 1950) (statement of Mr McCormack); Federal Deposit Insurance Corporation, The First Fifty Years at 58–60, Wash., D.C. 1984. Because of the large number of bank failures in the mid-to-late 1980s, Congress gradually provided the FDIC with greater flexibility to determine the timing and amount of assessment rates. This culminated in the requirement in FDICIA that the FDIC implement a risk-based assessment system. FDICIA also provided the FDIC with the flexibility, after the DRR was reached, to set assessment rates to maintain the DRR.

1. Statutory History of Section 7(d)

Section 7(d), 12 U.S.C. 1817(d), was enacted in the FDI Act in 1950. Public Law 797, Ch. 967, 64 Stat. 873. At that time all banks paid a flat assessment rate of 0.83 percent. Due to favorable economic circumstances, the fund had built up excess reserves, but the FDIC lacked the authority to return the excess funds to the industry. Congress adopted an assessment credit formula to credit to insured banks 60 percent of the fund's net assessment income and to transfer the remaining 40 percent to the Corporation's surplus (Permanent Insurance Fund). "The committee desires to emphasize that the formula thus provides a flexible method for granting a reduction in the assessments paid by banks in normal years, and in bad years provides for payment of the full assessment if needed. This should reasonably protect the insurance fund in years of extraordinary losses." H. Rep. No. 2564, 81st Cong. 2nd Sess. (1950) reprinted in 1950 U.S.C.C.S. 3770. This formula returned net assessment revenues only; it did not extend to investment income.

The percentage of net assessment income rebated to insured banks was modified from time to time as warranted given the constraints of a statutory flat assessment rate system. In the Consumer Checking Account Equity Act of 1980, enacted as part of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, 94 Stat. 132, Congress tied the amount of the rebate to the status of the reserve ratio. If the reserve ratio was less than 1.10%, the amount transferred to the Corporation's capital account was required to be increased to an amount (not to exceed 50% of net assessment income) that would restore the ratio to at least 1.10% If the reserve ratio exceeded 1.25%, the amount transferred to the capital account could be reduced by such amount that would keep the reserve ratio at not less than 1.25%; finally, if the reserve ratio exceeded 1.40%, the amount transferred to the capital account was required to be increased such that the reserve ratio would be not more than 1.40%. *Id.* at section 308(d).

In section 208 of FIRREA, Congress specified certain flat annual assessment rates to be in effect through 1991, but provided the FDIC with authority to increase those rates as needed to protect the BIF and to raise the DRR from 1.25% to a maximum of 1.50% as justified by circumstances raising a significant risk of substantial future losses. In the event the Board increased the DRR above 1.25%, it was required to establish supplemental reserves for that increased revenue, the income from which was to be distributed annually to BIF members through an Earnings Participation Account. (This was the first time Congress provided any mechanism for returning to the industry any investment income.) In addition, to the extent the supplemental reserves were not needed to satisfy the next year's projected DRR, those amounts were to be rebated. FIRREA, section 208(4). Congress also barred any assessment credits until the DRR was achieved. When forecasts indicated the DRR would be achieved in the following year, the Board was required to provide assessment credits for that following year equal to the lesser of: (1) the amount necessary to

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reduce the BIF reserve ratio to the DRR; or (2) 100 percent of the net assessment income to be received in that following year. *Id.*

In sections 2002 and 2003 of the Assessment Rate Act, Congress provided the FDIC with greater flexibility in both the timing and amount of assessment rates. It also eliminated the requirement that the investment income on the supplemental reserves be distributed annually to BIF members. Assessment Rate Act, section 2004. Because the Board did not increase the DRR above 1.25%, the provision authorizing Earnings Participation Accounts and supplemental reserves never became effective.

In FDICIA, Congress provided for establishment of a risk-based assessment system that, after the DRR was achieved, would provide the FDIC with much greater flexibility to set assessment rates. In 1990, Congress had already provided the FDIC with the authority to adjust assessment rates upward to ensure that the BIF received sufficient revenue. In FDICIA, Congress intended that same rate adjustment authority to operate in lieu of providing assessment credits in the event that the established rates resulted in collection of excess assessment revenue. Therefore, Congress eliminated the assessment credit provisions of section 7(d) in their entirety as being obsolete because the ability to adjust rates would take the place of a rebate mechanism.

The discussion of section 212(e)(3) in the Senate Report on S. 543 (which became the language of section 302(a) of FDICIA) describes Congress' intent:

> Section 212(e)(3) replaces current section 7(d) with a new section 7(d) recodifying current section 7(b)(9). The deleted text, providing for assessment credits to insured depository institutions when deposit insurance fund reserve ratios exceed designated reserve ratios, is obsolete in light of the standards for establishing assessments set forth in new section 7(b)(2)(A)(i) [setting rates to maintain at the DRR]. Under section 7(b)(2)(A)(i), funds that, under current section 7(d), would have been rebated to insured depository institutions through assessment credits will now be rebated through reduced assessments.

138 *Cong. Rec.* S2073 (daily ed. Feb. 21, 1992).

This position finds further support in the language of section 104 of FDICIA (in effect December 19, 1991 through December 31, 1993) which required the Board to set rates to maintain the reserve ratio at the DRR when the reserve ratio equals or exceeds 1.25%. FDICIA, section 104(a) amending section 7(b)(1)(C) of the FDI Act. Clearly, Congress contemplated a situation in which the reserve ratio would rise above the DRR, but nonetheless eliminated rebate authority. Thus, Congress appears to have intended the rate setting process to be the appropriate mechanism for adjustment.

2. Section 7(e) Does Not Provide Rebate Authority

An argument has been raised that section 7(e), 12 U.S.C. 1817(e), authorizes the FDIC to provide rebates of fund assets to keep the reserve ratio at 1.25%. Section 7(e) was enacted in 1950 in the Federal Deposit Insurance Act, along with section 7(d), assessment credits. Section 7(e) has been amended only once—in FIRREA, by changing "insured bank" to "insured depository institution".

Section 7(e) provides that the FDIC:

> (1) may refund to an insured depository institution any payment of assessment in excess of the amount due to the Corporation or (2) may credit such excess toward the payment of the assessment next becoming due from such bank and upon succeeding assessments until the credit is exhausted.

By its terms, the statutory language contemplates that such refunds or credits are to be made in respect of overpayments. The report accompanying the legislation describes section 7(e) as "expressly authoriz[ing] the Corporation to refund any overpayments of assessments or to credit such overpayments on future assessments". H. Rep. No. 2564, 81st Cong., 2d Sess. (1950), reprinted in 1950 U.S.C.C.S. 3771. Because section 7(d) contained express authority to provide rebates, Congress appears to have intended in section 7(e) to provide the FDIC with alternative methods (refunds or credits) to correct computational errors or other forms of overpayments outside of the rebate context so that the FDIC could return funds which clearly did not belong to it.

Because section 7(d) providing assessment credits was adopted as part of the same legislation, an interpretation that section 7(e) also provides the same authority would mean that the provisions were redundant. Rather, each provision has independent meaning and purpose if section 7(d) is interpreted to provide the substantive authority to provide rebates, while section 7(e) grants the FDIC the discretion to choose the method of refunding overpayments, i.e., by either providing an assessment credit or a refund check. Moreover, section 7(e) has never been interpreted as providing rebate authority precisely because until January 1, 1994 when the statutory risk-based assessment system became effective, that authority existed in section 7(d). Given the intent of the drafters as expressed in the section-by-section analysis of S. 543, that rebates will be provided through reduced assessment rates, an interpretation that section 7(e) provides rebate authority outside its historical context would seem to be contrary to Congressional intent.

In sum, the Board believes that the better interpretation of the statute is that the FDIC has no authority to grant rebates and that to do so would be in violation of the statute and contrary to the legislative history. As discussed above, this position is based on:

(1) the statutory history of sections 7(d) and (e); 2) the fact that Congress deleted the rebate authority in section 7(d); and (3) the legislative history indicating that Congress intended that lower rates would be the substitute for rebates.

III. Proposed Assessment Rate Schedule

The Board proposes to set a new assessment rate schedule with a spread of 4 to 31 basis points (see Table 1). The Board further proposes to make adjustments to this schedule by an adjustment factor not to exceed 5 basis points.

The following definitions are used in the proposal:

Assessment Schedule: A set of rates based on the risk classification matrix with a spread of 27 basis points between the minimum rate which would apply to institutions classified as 1A and the maximum rate which would apply to institutions classified as 3C.

Spread: The difference between the minimum and maximum rate in any given assessment schedule.

Adjustment Factor: The maximum number of basis points or a fraction thereof by which the Board would be authorized to increase or decrease the proposed 4–31 basis point assessment schedule without going through the rulemaking process.

A. Statutory Factors

As discussed in Section II, pursuant to sections 7(b)(1) and 7(b)(2)(A)(ii), the Board is required to take into consideration the following factors when setting risk-based assessments: the probability of loss, the amount of such loss, expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. These factors are discussed below.

1. Risk-Based Assessment Schedule

The fundamental goals of risk-based assessment rates are to reflect the risk posed to the insurance fund by insured institutions and to provide institutions with incentives to control risk taking. The maximum rate spread in the existing assessment rate matrix (see Table 1) is 8 basis points. Institutions rated 1A pay an annual rate of 23 basis points while institutions rated 3C pay 31 basis points. A concern is whether 8 basis points represents a sufficient spread for achieving these goals.

In the FDIC's proposal for the current risk-based premium system, the Board sought comment on whether the assessment rate spread embodied in the existing system, *i.e.*, 8 basis points, should be widened. Of the 96 commenters addressing this issue, 75 favored a wider rate spread. In the final rule, the Board expressed its conviction that widening the rate spread was desirable in principle, but chose to retain the proposed rate spread. The Board expressed concern that widening the rate spread while keeping assessment revenue constant, might unduly burden the weaker institutions which would be subject to greatly increased rates. However, the Board retained the right to revisit the issue at some future date. 58 FR 34357 (June 25, 1993).

The current assessment rate spread for BIF institutions has been criticized widely by bankers, banking scholars and regulators as overly narrow, and there is considerable empirical support for this criticism. Using a variety of methodologies and different sample periods, the vast majority of relevant studies of deposit insurance pricing have produced results that are consistent with the conclusion that the rate spread between healthy and troubled institutions should exceed 8 basis points.[1] While the precise estimates vary, there is a clear consensus from this evidence that the rate spread should be widened.

FDIC research likewise suggests that a substantially larger spread would be necessary to establish an "actuarially fair" assessment rate system. Insurance premiums are actuarially fair when the discounted value of the premiums paid over the life of the insurance contract is expected to generate revenues that equal expected discounted costs to the insurer from claims made by the insured over the same period. A 1994 FDIC study used a "proportional hazards" model to estimate the expected lifetime of banks that were in existence as of January 1, 1993. The study estimated the actuarially fair premium that each bank must pay annually so that the cost of each bank failure to the FDIC would equal the revenue collected through insurance assessments. The estimates indicated a rate spread for 1A versus 3C institutions on the order of magnitude of 100 basis points.[2]

The Board is concerned also that rate differences between adjacent cells in the current matrix do not provide adequate incentives for institutions to improve their condition. Larger differences are consistent with historical variations in failure rates across cells of the matrix, viewed in connection with the preponderance of evidence regarding actuarially fair premiums.[3] The precise magnitude of the differences is open to debate, given the sensitivity of any estimates to small changes in assumptions and to selection of the sample period. However, the Board believes that larger rate differences between adjacent cells of the matrix are warranted.

The Board believes that the assessment rate matrix should be adjusted in the direction of an actuarially fair rate structure, as described above. Consistent with the results of the relevant studies on this topic, regardless of the sample period selected, the Board believes at this time that the highest-rated institutions pose a small but positive risk to the insurance fund and that the spread between the highest- and lowest-rated institutions should be widened.

The Board does not wish to adopt major changes in the assessment rate structure at this time. The proposed rate matrix retains the nine-cell structure. As noted above, in the final rule adopting the current assessment rate schedule, the Board expressed its conviction that widening the rate spread was desirable but declined to do so because of the potential hardship for troubled institutions and possible additional losses for the insurance fund. The Board remains unwilling to increase the maximum rate other than by means of the adjustment factor discussed below, without further study regarding the proper insurance pricing structure for the industry.

Accordingly, FDIC staff currently are undertaking a comprehensive reevaluation of the risk-based assessment rate matrix, and will present recommendations to the Board in the near future. Any proposed changes to the risk-based assessment rate structure that may result from this process will be addressed in a separate future notice of proposed rulemaking.

In the interim, the Board believes that the proposed assessment schedule represents an equitable set of rate adjustments. It widens the rate spread between the lowest- and highest-rated institutions, consistent with the implications of the best empirical evidence on this issue and with the Board's previously stated conviction. Moreover, the rate differences between adjacent cells in the matrix are widened providing additional incentive for weaker institutions to improve their condition and for all institutions to avoid excessive risk-taking. This is consistent with the Board's desire to create adequate incentives via the assessment rate structure to encourage behavior that will protect the deposit insurance fund against excessive losses.

2. Expected Operating Expenses and Case Resolution Expenses and Income

Operating expenses are projected to be approximately $260 million for the second half of 1995 (See Table 2). Case resolution expenditures or "insurance losses" for the second half of 1995 are projected to be $130 million. If the 1994 loss experience of $70 million per semiannual period (estimated) continues in 1995, losses may be lower than the projected amount. Insurance losses in 1994 were less than one-quarter of the historical average, relative to insured deposits, and baseline assumptions indicate that losses will begin to revert toward the norm in 1996 (see Tables 2–4). See additional discussion of loss assumptions in Section III.B, below.

3. Impact on Earnings and Capital

Because assessment rates for most BIF members will decline, the impact on earnings and capital will be positive. Lower assessment costs will reduce expenses by approximately $4.6 billion

[1] For a representative sampling of academic studies on this issue, see Estimating the Value of Federal Deposit Insurance, The Office of Economic Analysis, Securities and Exchange Commission (1993); Berry K. Wilson, and Gerald R. Hanweck, A Solvency Approach to Deposit Insurance Pricing, Georgetown University and George Mason University (1992); Sarah Kendall and Mark Levonian, A Simple Approach to Better Deposit Insurance Pricing, Proceedings, Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago (1991); R. Avery, G. Hanweck and M. Kwast, An Analysis of Risk-Based Deposit Insurance for Commercial Banks, Proceedings, Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago (1985).

[2] See, Gary S. Fissel Risk Measurement, Actuarially Fair Deposit Insurance Premiums and the FDIC's Risk-Related Premium System, FDIC Banking Review (1994), at 16–27, Table 5, Panel B. Single-copy subscriptions of this study are available to the public free of charge by writing to FDIC Banking Review, Office of Corporate Communications, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

[3] *Id.*, at Tables 2 and 5.

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per year. Based on the industry's year-end 1993 average tax rate of 31.5 percent, there will be an after-tax impact on profits of approximately $3.15 billion per year. BIF members may pass some portion of the cost savings on to their customers through lower borrowing rates, lower service fees, and higher deposit rates. Their ability to do so will be affected by factors such as the level of competition faced by banks.

4. Other Factors—Consideration of the Impact on the SAIF of Decreased BIF Rates

A question has been raised concerning whether the Board may take into consideration the impact on SAIF in setting BIF rates. Based on recent projections, the BIF is expected to recapitalize between May 1 and July 31, 1995. By contrast, recent projections show that the SAIF will not recapitalize until 2002 because assessments to cover interest payments on bonds issued by the Financing Corporation (FICO) divert about $780 million per year, or about 45 percent of total SAIF assessment revenue. In addition, the SAIF assessment base has been shrinking since the SAIF was created in 1989. The FICO will continue to divert SAIF assessments for interest payments on FICO bonds until 2019 when the bonds mature.

Section 7(b)(2)(A)(ii) of the FDI Act requires the Board to consider certain factors in setting assessment rates, one of which is "any other factors that the Board of Directors may deem appropriate". Section 7(b)(2)(B) of the FDI Act requires the Board to set semiannual assessments for members of each fund "independently" from semiannual assessments for members of the other insurance fund. Read together, these provisions do not specifically prohibit Board consideration of the impact of BIF rates on SAIF members as long as the rates are set independently.

However, section 7(b)(2)(A)(i) requires the Board to set rates to maintain the BIF reserve ratio. If the Board were to take into consideration the impact on the SAIF when it set BIF rates and, as a result, the reserve ratio continued to increase in excess of the DRR, it might be considered a violation of the statute. By contrast, an increase in the reserve ratio due to revenue generated from the minimum assessments and maintaining a risk-based assessment system would not be a violation because those provisions are mandated by the statute.

B. Need for Decreased Rates

As discussed in Section II, management of the reserve ratio is necessarily imprecise because the factors affecting this ratio cannot be predicted with certainty. Changes in the reserve ratio are primarily a function of assessment revenues, investment income, operating expenses and insurance losses resulting from bank failures.

The BIF is expected to recapitalize between May 1 and July 31, 1995. It is unlikely that the BIF will recapitalize prior to the second quarter of 1995 because, after declining from 1992 through mid-year 1994, there are indications that insured deposits have begun to increase.

Other than the revenues that may be necessary to achieve and maintain the DRR of 1.25% in the second half of 1995, projections indicate that the BIF will require little or no assessment income to cover losses and expenses for that period. Investment income is expected to approach $500 million for the second half of the year. As noted above, for the same period insurance losses are projected to be $130 million, and operating expenses are projected to be approximately $260 million. Thus, based on current projections, investment income alone should suffice to cover BIF obligations unrelated to the reserve ratio in the second half of 1995.

The proposed assessment rate schedule is the current, nine-cell matrix with assessment rates ranging from 4 basis points per year for the highest-rated institutions to 31 basis points for the lowest-rated institution (see Table 1, Proposed Rate Schedule). For purposes of maintaining the reserve ratio at 1.25%, the relevant fact is that the estimated 4.5 basis point average assessment rate resulting from this matrix will produce approximately $1.1 billion of annual revenue for the BIF in the short run. If the proposed matrix takes effect at or near the beginning of the second semiannual period in 1995, the reserve ratio will reach nearly 1.3% by year-end, under current assumptions concerning insurance losses, operating expenses, insured deposit growth, and other relevant factors.

However, the staff's baseline assumptions imply that an average assessment rate of 4 to 5 basis points is necessary to maintain the BIF reserve ratio at 1.25% over a 5–7 year horizon (see Tables 2–4). While the baseline assumptions for insurance losses may be characterized as relatively pessimistic given current economic conditions, it is important to recognize that such conditions are rare in the banking industry's recent history. For 1994, the ratio of insurance losses to estimated insured deposits was approximately one-half of 1 basis point (estimated). This ratio had not previously fallen below 1 basis point in any year since 1980, averaging 16 basis points for the 1981–93 period and exceeding 30 basis points in three of those years. Therefore, the staff's baseline loss assumptions may be considered rather optimistic relative to recent historical experience

The proposed matrix would yield assessment revenue sufficient to finance losses equal to the 60-year annual average, nearly 4 basis points of estimated insured deposits, with a margin to absorb losses that moderately exceed the average. In view of the recent experience reviewed above, the staff believes this to be the minimum amount necessary to maintain the DRR consistently over the near-term future.

Given the increasing degree of competition faced by insured institutions, the increasing opportunities for risk-taking as a result of rapid financial innovation, and the increased variability of interest rates as well as other prices due to the globalization of markets and other factors, the staff believes that the loss experience in the banking industry is unlikely to revert to pre-1980 norms. Rather, the average yearly loss ratio is likely to exceed the 60-year average going forward, with large year-to-year variability.

Prudence requires that the Board be provided with the flexibility to adjust assessment rates in a timely manner in response to changing conditions. Accordingly, the Board proposes to increase or decrease the proposed assessment schedule by an adjustment factor of up to 5 basis points or fraction thereof. The adjustment factor is the maximum amount by which the Board could adjust the assessment rate schedule without going through an additional notice and comment rulemaking process. Such adjustments could only be made to the assessment schedule in its entirety, not to individual risk classification cells. Nor could the spread of 27 basis points be changed by means of the adjustment factor. Accordingly, by means of the adjustment factor, the Board could adjust the proposed assessment schedule of 4–31 basis points to a maximum assessment schedule of 9–36 basis points and a minimum assessment schedule of 0–27 basis points.

This adjustment factor would provide the Board with the flexibility to raise a maximum additional $1.2-$1.4 billion in the near term without undertaking a rulemaking. An adjustment factor of 5 basis points appears modest when viewed historically, as the loss-to-insured deposits ratio has been quite variable; the standard deviation was 8.6 basis points for the 1933–93 period and 11.7 basis points for 1983–93. In view of the currently favorable banking environment, however, a 5 basis point adjustment factor should be sufficient to maintain the DRR in the short run.

IV. Application and Adjustment of Proposed Assessment Rate Schedule

A. Summary

The proposal would establish (1) the manner in which the new schedule of assessment rates set forth in Section III. will be applied in the semiannual period during which the DRR is achieved, and (2) a process for adjusting the proposed rate schedule (within prescribed parameters) to maintain the reserve ratio at 1.25% without the necessity of notice and comment rulemaking procedures for each adjustment. In conformity with the statutory directives, the proposed assessment schedule would not become effective unless and until the DRR is, in fact, achieved. Once effective, however, the proposed rate would apply to the remainder of the semiannual period after the DRR is achieved and to semiannual periods thereafter.

For semiannual periods after that period in which the DRR is achieved, the proposed rate would be adjusted semiannually up or down by the adjustment factor of up to and including 5 basis points as necessary to maintain the target DRR at 1.25%. The semiannual assessment schedule, and any adjustment thereto, would be adopted by the Board in a resolution which reflects consideration of the statutory factors upon which it is determined. The Board would announce the semiannual assessment schedule not later than 45 days prior to the November 30 and May 30 quarterly invoice dates, and the adjusted rates would first be reflected in those invoices.

B Semiannual Period During Which DRR Is Achieved

Section 7(b)(2)(E) provides that:

> The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the * * * reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—
>
> (i) section 7(b) as in effect on July 15, 1991 remained in effect; and
>
> (ii) the assessment rate in effect on July 15, 1991 [23 basis points] remained in effect.

Based on the language of this section as well as its legislative history, the Board believes that it has no authority to decrease the assessment rates paid by BIF members until after the reserve ratio has, in fact, reached the DRR, regardless of projections for BIF recapitalization. Section 7(b)(2)(E) indicates that the Board may not lower BIF assessment rates in anticipation of meeting the DRR during the upcoming semiannual period. If the Board were to decrease the rates based on projections for BIF recapitalization, the reserve ratio would "remain" below the DRR at the time of the Board's action and the minimum assessments provisions of section 7(b) would continue to apply.

This interpretation is consistent with Congressional intent that the FDIC maintain a minimum assessment rate of 23 basis points for BIF members until the fund achieves its DRR. In connection with the Senate Banking Committee's consideration of whether to establish a maximum assessment for BIF members, the Committee stated, "[t]he Committee is *firm* in its view that the 23 basis point premium rate now in effect [during the second semiannual period of 1991] should not be reduced until the BIF achieves its designated reserve ratio." [Emphasis added.] S. Rep. No. 167, 102d Cong., 1st Sess., 30 (1991). The Committee believed that, "So long as BIF reserves remain insufficient to cover demands on the BIF as they arise, taxpayers will be at risk" and passed a bill which "encourages the FDIC to begin rebuilding the BIF by restricting the FDIC's discretion to delay recapitalization." *Id.* at 29.

If section 7(b)(2)(E) were further interpreted to mean that the FDIC must wait to reduce BIF rates until the beginning of the semiannual period after the DRR was reached, the FDIC would have collected far in excess of the revenue required to maintain the reserve ratio at the DRR with no mechanism for rebating the excess amounts. This is particularly the case if the BIF recapitalizes early in the semiannual period, as is indicated by current projections. If this provision were interpreted in this manner, the vast majority of the assessment revenue collected would not be needed to maintain the BIF at the DRR.

Although the Board must set semiannual assessments for BIF members, the FDI Act is silent as to when assessments must be announced or set and expressly allows the Board to prescribe the manner and time of assessment collections *See* FDI Act, sections 7(b)(2)(A); 7(b)(3) and 7(c)(2)(B).[4] 12 U.S.C. 1817(b)(2)(A); 1817(b)(3) and 1817(c)(2)(B). Thus, the Board may set semiannual assessment rates to take effect after the DRR has been achieved.

The reserve ratio is the dollar amount of the BIF fund balance divided by the estimated insured deposits of BIF members. Although data for the fund balance is accounted for on a monthly basis, the amount of estimated insured deposits is based on data from the quarterly reports of condition (call reports). Because current projections indicate that the BIF will recapitalize early in the July–December semiannual period, the amount of estimated insured deposits would be determined by the information on the June call reports which are due on July 30 (or for some institutions, August 14). Due to the customary time lag involved in verifying the information from the call reports, it is probable that the determination that the DRR has been achieved will not be made until mid-September. Moreover, because the fund balance is determined only on a monthly, rather than daily basis, the date on which the Board ascertains that the DRR has been attained must necessarily be the last day of the month.

Because the Board cannot lower assessment rates until it is certain that the DRR has been attained, the May 30 quarterly invoice and, very likely, the August 30 quarterly invoice will reflect the pre-DRR rate of approximately 6 basis points (one-quarter of the annual assessment rate of 23 basis points). The June 30 direct debit of the amount specified on the May 30 invoice will proceed as planned. However, in the event it is determined that the DRR has been attained before the September 30 direct debit occurs, the Board proposes to promptly notify BIF members that the September 30 direct debit will be modified to reflect the new assessment rate.

Because the proposed 4–31 basis point assessment rate would apply from the first day of the month after the DRR was achieved for the remainder of the semiannual period, it is likely that some BIF members will have overpaid their semiannual assessments. For example, if the DRR is determined to have been achieved on July 31 and the 4–31 basis point rate becomes effective on August 1, a portion of the assessment paid for the July–September quarter would constitute an overpayment. In such a case, pursuant to section 7(e) of the FDI Act, the FDIC is permitted to refund any assessment overpayment or to credit the overpayment toward the next assessment due until the overpayment amount is exhausted.

Section 7(e) applies in the case of "any payment in excess of the amount

[4] Section 7(b)(1)(A) was amended in FDICIA to permit the FDIC to establish "and, from time to time, adjust the assessment rates * * *" FDICIA section 104(b). This provision was in effect from December 19, 1991 until January 1, 1994 when the risk-based assessment provisions became operative

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due". The FDIC has interpreted this provision to apply case-by-case to an overpayment by an individual institution caused by a computation error or revisions to the institution's reported assessment base. Because individual institutions would have overpaid the amount that actually was due once the proposed rate became effective, section 7(e) should also be applicable in this situation.

On the other hand, if the DRR is not achieved, no action would be required because the existing collection process would simply remain in effect. In such a case, the September 30 direct debit of the amount specified on the August 30 quarterly invoices would go forward. If the DRR were to be reached, for example, on September 30, the proposed rate would nonetheless take effect at that point for the remainder of the July–December semiannual period.

In the event the FDIC collects more assessment revenue from an institution than is required for the July-December semiannual period, a refund of the overpayment, with interest from the time the DRR is achieved, would be provided. The FDIC intends to provide any such refund electronically using the ACH facility, but may do so by check. The same routing transit numbers and accounts used for the direct debit collection would be used for electronic refunds.

C. Semiannual Periods After the DRR Is Achieved

The 4–31 basis point assessment schedule would continue to apply to semiannual periods commencing with the semiannual period after the DRR has been achieved (presumably January 1996). However, to enable the Board to maintain the reserve ratio at the target DRR in future semiannual periods, the proposal would authorize the Board to adjust (by resolution) the proposed assessment schedule by an adjustment factor of up to and including 5 basis points or fraction thereof. By this means the Board proposes to limit its discretion to adjust rates within a range of 5 basis points. As noted above, such adjustments could only be made to the assessment schedule in its entirety, not to individual risk classification cells. Nor could the spread of 27 basis points be changed by means of the adjustment factor. Accordingly, by means of the adjustment factor, the Board could adjust the proposed assessment schedule of 4–31 basis points to a maximum assessment schedule of 9–36 basis points and a minimum assessment schedule of 0–27 basis points. Thus, for example, if the rate for 1A banks was 4 basis points, no matter how many times the assessment schedule were adjusted up or down, the rate for 1A banks could never go above 9 basis points without going through the notice and comment rulemaking process. Finally, if financial conditions warranted a change beyond the maximum amount of the adjustment factor, the Board would make such adjustments through the notice and comment rulemaking process.

The adjustment factor for any particular semiannual period would be determined by (1) the amount of assessment income necessary to maintain the reserve ratio at 1.25% (taking into account operating expenses and expected losses) and (2) the particular risk-based assessment schedule that would generate that amount considering the risk composition of the industry at the time. The Board proposes to adjust the assessment rate schedule every six months by the amount, up to and including the maximum adjustment factor of 5 basis points, necessary to maintain the reserve ratio at the DRR. Such adjustments will be adopted in a Board resolution that reflects consideration of the statutory factors. These include expected operating expenses, projected losses, the effect on BIF members' earnings and capital and any other factors the Board determines to be relevant to the BIF. The resolution will be adopted and announced at least 45 days prior to the invoice date for the first quarter of the semiannual period in which the rate will take effect (*i.e.*, November 30 and May 30 invoice dates). Those invoices would then first reflect the adjusted assessment rate schedule.

V. Request for Comment

The Board invites comments on all aspects of the proposal.

VI. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. *Id.* at 601(2). Accordingly, the statute does not apply to the proposed changes in the assessment rate schedule, the structure of that schedule and future adjustments thereto. In any event, to the extent an institution's assessment is based on the amount of its domestic deposits, the primary purpose of the Regulatory Flexibility Act, that agencies' rules do not impose disproportionate burdens on small businesses, is fulfilled.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, Banking, Financing Corporation Savings associations.

For the reasons stated in the preamble, the Board proposes to amend part 327, as amended at 59 FR 67153 effective April 1, 1995, of title 12 of the Code of Federal Regulations as follows.

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.8 is amended by adding a new paragraph (i) to read as follows:

§ 327.8 Definitions.

* * * * *

(i) As used in § 327.9, the following terms have the following meanings:

(1) *Adjustment factor.* The maximum number of basis points by which the Board may increase or decrease Rate Schedule 2 set forth in § 327.9(a).

(2) *Assessment schedule.* The set of rates based on the assessment risk classifications of § 327.4(a) with a difference of 27 basis points between the minimum rate which applies to institutions classified as 1A and the maximum rate which applies to institutions classified as 3C.

3. Section 327.9 is amended by revising paragraphs (a) and (b), by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 327.9 Assessment rate schedules.

(a) *BIF members.* Subject to § 327.4(c), the annual assessment rate for each BIF member other than a bank specified in § 327.31(a) shall be the rate in the Rate Schedules below applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that BIF member. Until the BIF designated reserve ratio of 1.25 percent is achieved, the rates set forth in Rate Schedule 1 shall apply. After the BIF designated reserve ratio is achieved, the rates set forth in Rate Schedule 2 shall apply. The schedules utilize the group and subgroup designations specified in § 327.4(a):

RATE SCHEDULE 1

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

RATE SCHEDULE 2

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

(b) *BIF recapitalization schedule.* The following schedule indicates the stages by which the Corporation seeks to achieve the BIF designated reserve ratio of 1.25 percent. The schedule begins with the semiannual period ending December 31, 1991 and ends on the earlier of the semiannual period ending June 30, 2002 or the date on which the BIF designated reserve ratio is achieved:

Semi-annual period	Target reserve ratio (percent)
1991.2	−0.36
1992.1	−0.28
1992.2	−0.01
1993.1	0.03
1993.2	0.06
1994.1	0.08
1994.2	0.09
1995.1	0.15
1995.2	0.21
1996.1	0.28
1996.2	0.34
1997.1	0.42
1997.2	0.50
1998.1	0.59
1998.2	0.67
1999.1	0.76
1999.2	0.85
2000.1	0.94
2000.2	1.03
2001.2	1.12
2001.2	1.21
2002.1	1.25

(c) *Rate adjustment; announcement—*(1) *Semiannual adjustment.* The Board may increase or decrease Rate Schedule 2 set forth in paragraph (a) of this section semiannually by an adjustment factor of up to and including 5 basis points or fraction thereof as the Board deems necessary to maintain the reserve ratio at the BIF designated reserve ratio. In no case may such adjustment result in a negative assessment rate. The adjustment factor for any semiannual period shall be determined by:

(i) The amount of assessment revenue necessary to maintain the reserve ratio at the designated reserve ratio; and

(ii) The assessment schedule that would generate the amount of revenue in paragraph (c)(1)(i) of this section considering the risk profile of BIF members.

(2) In determining the amount of assessment income in paragraph (c)(1)(i) of this section, the Board shall take into consideration the following:

(i) Expected operating expenses;

(ii) Case resolution expenditures and income;

(iii) The effect of assessments on BIF members' earnings and capital; and

(iv) Any other factors the Board may deem appropriate.

(3) *Announcement.* The Board shall:

(i) Adopt the semiannual assessment schedule and any adjustment thereto by means of a resolution reflecting consideration of the factors specified in paragraph (c)(2)(i) through (iv) of this section; and

(ii) Announce the semiannual assessment schedule and any adjustment thereto not later than 45 days before the invoice date specified in § 327.4(c) for the first quarter of the semiannual period for which the adjusted assessment schedule shall be effective.

(d) *Special provisions.* The following provisions apply only for the first semiannual period after January 1, 1995 in which the BIF designated reserve ratio is achieved:

(1) Notwithstanding the provisions of § 327.3(c)(2) or § 327.3(d)(2), the Corporation may modify the time of the direct debit of the assessment payment which next occurs after the Board determines that the designated reserve ratio has been achieved; and

(2) Notwithstanding the provisions of § 327.7(a)(3), if the designated reserve ratio is achieved at the end of a month which is not the end of a quarter and, as a result, an institution has overpaid its assessment, the Corporation shall provide interest on any such overpayment beginning on the date the designated reserve ratio was achieved.

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

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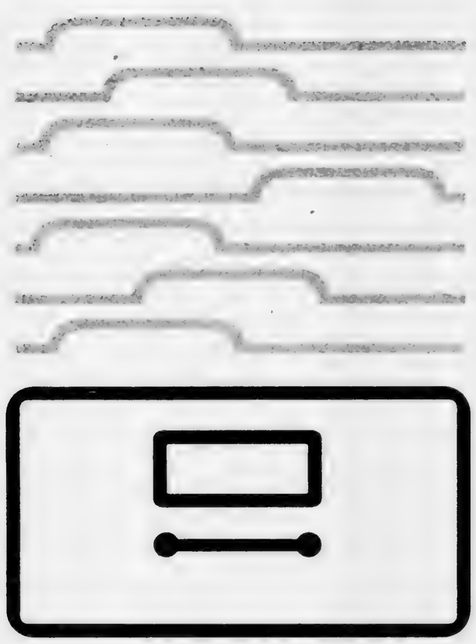

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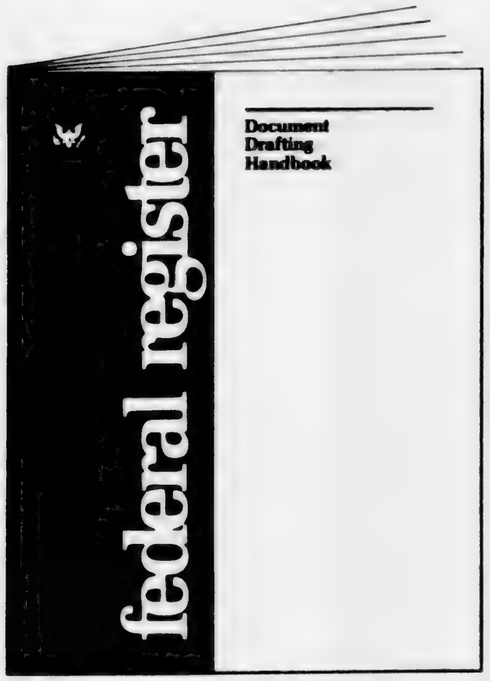

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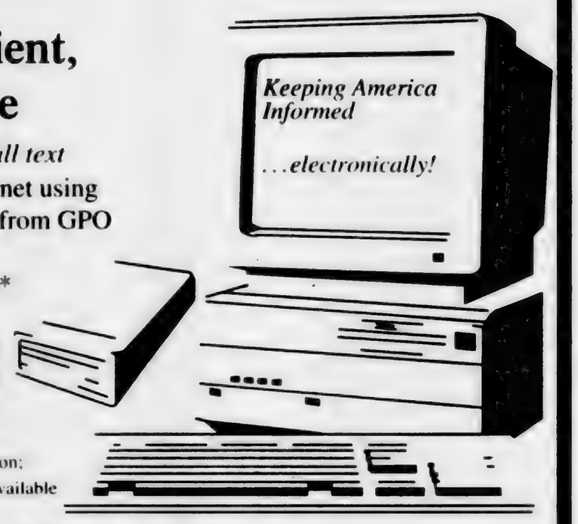

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WASHINGTON, DC
(TWO BRIEFINGS)

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RESERVATIONS: 202–523–4538

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WHEN: March 30 at 9:00 am
WHERE: Conference Room 7A23, Earle Cabell Federal Building and Courthouse, 1100 Commerce Street, Dallas, TX 75242
RESERVATIONS: 1–800–366–2998

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: These amendments to part 201 (Regulation A) were effective February 13, 1995. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Bank's discretion, for extended credit. In increasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The increase was implemented to keep inflation contained, and thereby foster sustainable economic growth.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of this amendment because the Board for "good cause" finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in keeping inflation contained, and thereby fostering sustainable economic growth.[1]

The provisions of 5 U.S.C. 553(d) that prescribe 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. Although the change increases the rate of interest charged to borrowers from Reserve Banks, the Board believes that the higher cost of funds is outweighed by the salutary effect on the economy.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined in the preamble, the Board of Governors amends 12 CFR part 201 as follows:

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.25	February 1, 1995.
New York	5.25	February 1, 1995.
Philadelphia	5.25	February 2, 1995.
Cleveland	5.25	February 9, 1995.
Richmond	5.25	February 1, 1995.
Atlanta	5.25	February 2, 1995.
Chicago	5.25	February 1, 1995.
St. Louis	5.25	February 1, 1995.
Minneapolis	5.25	February 2, 1995.
Kansas City	5.25	February 1, 1995.
Dallas	5.25	February 2, 1995.
San Francisco	5.25	February 1, 1995.

By order of the Board of Governors of the Federal Reserve System, February 13, 1995.

Williams W. Wiles,

Secretary of the Board.

[FR Doc. 95–3993 Filed 2–16–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWP–23]

Amendment to Class E airspace; Page, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class E airspace at Page, AZ. Controlled airspace extending from 700 feet and 1200 feet above the surface is amended to accommodate aircraft executing the VHF Omnidirectional Range (VOR–A) instrument approach procedure. This action will provide adequate Class E

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airspace for instrument flight rules (IFR) operations at Page Municipal Airport.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Page, AZ (59 FR 63938). This action will provide additional controlled airspace to accommodate a VOR-A instrument approach procedure to Runway 15 at the Page Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Page, Arizona, by providing additional controlled airspace for aircraft executing the VOR–A instrument approach procedure to Runway 15 at the Page Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Page, AZ [Revised]

Page Municipal Airport, AZ
(lat. 36°55'34"N, long. 111°26'54"W)
Page VOR/DME
(lat. 36°55'41" N, long. 111°27'02"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Page Municipal Airport, and within 3-miles either side of the Page VOR 340° radial, extending from the 6.5-mile radius to 10 miles northwest of the Page VOR. That airspace extending upward from 1200 feet above the surface within 6.5 mile Northeast and 10 miles Southwest of the Page VOR 340° radial and 160° radial, extending from the 18-miles northwest to 8-miles southeast of the Page VOR.

* * * * *

Issued in Los Angeles, California, on January 27, 1995.

Dennis Koehler,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–4066 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AWP–25]

Amendment of Class E airspace; Red Bluff and Redding, CA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Red Bluff, CA and Redding, CA. This action will provide controlled airspace for the VHF Omnidirectional Range/Distant Measuring Equipment (VOR/DME), VHF Omnidirectional Range (VOR), and Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedures (SIAPs) at the Red Bluff Municipal Airport.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On December 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Red Bluff, CA and Redding, CA (59 FR 65285). This action will provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Red Bluff Municipal Airport.

Interested parties were invited to participate in this proposed rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace areas designated as a surface area for an airport and extending from 700 feet or more above the surface are published in Paragraph 6002 and Paragraph 6005, respectively, of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulation amends the Class E airspace areas at Red Bluff, CA and Redding, CA. This action will provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at the Red Bluff Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP CA E2 Red Bluff, CA [Revised]

Red Bluff Municipal Airport, CA
(lat. 40°09'04"N, long. 122°15'08"W)
Red Bluff VORTAC
(lat. 40°05'56"N, long. 122°14'11"W)
Proberta NDB
(lat. 40°06'51"N, long. 122°14'15"W)

Within a 6.5-mile radius of the Red Bluff Municipal Airport and within 2.6 miles either side of the 161° bearing from the Red Bluff Municipal Airport extending from the 6.5-mile radius to 10 miles south of the Red Bluff Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Red Bluff, CA [Revised]

Red Bluff Municipal Airport, CA
(lat. 40°09'04"N, long. 122°15'08"W)
Red Bluff VORTAC
(lat. 40°05'56"N, long. 122°14'11"W)
Proberta NDB
(lat. 40°06'51"N, long. 122°14'15"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Red Bluff Municipal Airport and within 8 miles east and 4 miles west of the 161° bearing from the Red Bluff Municipal Airport extending from 2 miles south to 17 miles south of the Red Bluff Municipal Airport. That airspace extending upward from 1200 feet above the surface within a 17.4-mile radius of the Red Bluff VORTAC and within 7.8 miles each side of the Red Bluff VORTAC 291° radial, extending from the 17.4-mile radius to 45.2 miles west of the Red Bluff VORTAC and within 26.1-mile radius of the Red Bluff VORTAC, extending from the north edge of V–195 to the west edge of V–23 and within 7.8 miles west of and 8.7 miles east of the Red Bluff VORTAC 342° radial, extending from the 17.4-mile radius to 58.2 miles north of the Red Bluff VORTAC and within 8.7 miles west and 5.2 miles east of the Red Bluff VORTAC 015° radial, extending from the 17.4-mile radius to 48.7 miles north of the Red Bluff VORTAC and within an area bounded by a line beginning at lat. 40°41'27"N, long. 121°54'42"W; to lat. 40°34'40"N, long. 121°52'34"W; to lat. 40°21'46"N, long. 121°56'49"W; to lat. 40°22'35"N, long. 122°01'04"W, to the point of beginning and that airspace within a 20.9-mile radius of the Red Bluff VORTAC, extending from the Red Bluff VORTAC 015° radial clockwise via the 20.9-mile arc to lat. 40°00'00"N.

* * * * *

AWP CA E5 Redding, CA [Revised]

Redding Municipal Airport, CA
(lat. 40°30'32"N, long. 122°17'36"W)
Redding VOR/DME
(lat. 40°30'16"N, long. 122°17'30"W)
Lassn NDB
(lat. 40°23'34"N, long. 122°17'41"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Redding Municipal Airport and within 1.8 miles each side of the Redding Instrument Landing System (ILS) localizer North course, extending from the 4.3-mile radius to 10 miles north of the threshold of Runway 16 and within 8 miles west and 5.5 miles east of the 179°/359° bearing from/to the Lassn NDB extending from 9.5 miles north of the Lassn NDB to 16 miles south of the Lassn NDB and that airspace within a 5.5-mile arc of the Redding VOR/DME from the Redding VOR/DME 100° radial clockwise to the Redding VOR/DME 152° radial. That airspace extending upward from 1200 feet above the surface north of the Redding VOR/DME within an arc of a 20-mile radius of the Redding VOR/DME within an arc of the 20-mile radius of the Redding VOR/DME, extending from the east edge of V–23 clockwise to the west edge of V–25.

* * * * *

Issued in Los Angeles, California, on January 30, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–4067 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–16]

Establishment and Alteration of VOR Federal Airways; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a new Federal airway and modifies existing Federal airways in the Miami, FL, area. This action is necessary because of the commissioning of the Virginia Key, FL, Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME). In addition, the NPRM contained several inadvertent errors. In the description for V–3, the "INT Solberg 0441°" radial should be "INT Solberg 044°" radial; V–159, "INT Vero Beach 319°T (323°M)" radial should be "INT Vero Beach 318°T (322°M)" radial; and V–492, "INT Pahohee 115°" radial should be "INT Pahokee 115°" radial. The description for Federal Airway V–537, "From Vero Beach, FL, via INT Vero Beach 318°" should be "From Vero Beach, FL, via INT Vero Beach 318° and Orlando, FL, 140° radials; INT Orlando 140° and Melbourne, FL, 298° radials;".

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On October 26, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Federal airway and to modify several existing airways (59 FR 53766).

Interested parties were invited to participate in this rulemaking process by submitting written comments on the proposal to the FAA.

Three written comments were received objecting to realignment of

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Federal Airway V–3 in the vicinity of Homestead General Aviation Airport and Homestead Air Reserve Base. In particular, the commenters emphasized two key issues to support their objections to this proposed action.

The first issue concerns the relocation of V–3 in proximity of airspace serving Homestead General Aviation Airport. This airspace has a significant level of aeronautical activity including parachute jumping, ultralight, aerobatics, and gliders. Each of the commenters stated that sports activity would be adversely affected if this airway was realigned as proposed.

This proposal to align V–3 over Homestead General Aviation Airport does not necessitate changes to the current traffic pattern in the Miami airspace. The sports activity in the vicinity of Homestead General Aviation Airport will not be affected by this action because there are no changes to the prevailing air traffic procedures or patterns. Currently, aircraft departing the Miami airspace are radar-vectored to intercept V–3 south of the Homestead Airport and clear of any aviation-related sporting activity using the adjacent airspace. The FAA will continue to use the same established air traffic control procedures, thus realigning this airway will not impact the sports activity at Homestead Airport or compromise safety.

The last issue concerns a possible future alignment of V–3 over the Homestead Air Reserve Base once the new Dolphin Very High Frequency Omnidirectional Range is commissioned. The air reserve base is a joint civil/military-use airport. The commenters suggested that realigning the airway over the base may have an impact on aircraft arriving and departing this facility.

This comment is premature and does not pertain to this action, which aligns V–3 over Homestead General Aviation Airport. The FAA, however, will keep the comment on file for consideration for rulemaking actions in the future.

Except for editorial changes and the correction of several inadvertent errors in the descriptions for V–3, the "INT Solberg 0441°" radial should be "INT Solberg 044°" radial; V–159, "INT Vero Beach 319°T (323°M)" radial should be "INT Vero Beach 318°T (322°M)" radial; V–492, "INT Pahokee 115°" radial should be "INT Pahokee 115°" radial; and the inclusion of an intersection which is necessary to define a dogleg in the description for V–537 "From Vero Beach, FL, via INT Vero Beach 318° and Orlando, FL, 140° radials; INT Orlando 140° and Melbourne, FL, 298° radials;", this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a new Federal airway and modifies the description of existing Federal airways in Miami, FL. This action is necessary because of the commissioning of the new Virginia Key, FL, VOR/DME. Commissioning of the Virginia Key VOR/DME necessitated the establishment of a new airway and the realignment existing airways to support air traffic operations in the Miami area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The original airspace docket was submitted to the Department of Defense and the Department of State in accordance with Executive Order 10854. The application of International Civil Aviation Organization (ICAO) International Standards and Recommended Practices will not be affected by this action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–3 (Revised)

From Key West, FL; INT Key West 083° and Miami, FL, 185° radials; Miami; Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL, Ormond Beach, FL; Brunswick, GA; Savannah, GA; Vance, SC; Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta; Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935 and within Canada is excluded.

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V–7 (Revised)

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

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V–51 (Revised)

From Pahokee, FL; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL.

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V–87 (Revised)

From Miami, FL; INT Miami 313° and La Belle, FL, 137° radials; La Belle; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

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V–157 (Revised)

From Key West, FL; Miami, FL; INT Miami 332° and La Belle, FL, 113° radials; La Belle; Lakeland, FL; Ocala, FL; Gainesville, FL; Taylor, FL; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–2901A and R–6602A is excluded. The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated. The airspace within R–4005 and R–4006 is excluded.

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V–159 (Revised)

From Virginia Key, FL; INT Virginia Key 344° and Vero Beach, FL, 178° radials; Vero Beach; INT Vero Beach 318° and Orlando, FL, 140° radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; Vulcan, AL; Hamilton, AL; Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 336° and St. Joseph, MO, 132° radials; St. Joseph; Omaha, NE; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

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V–267 (Revised)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; Orlando, FL; Craig, FL; Dublin, GA; Athens, GA; INT Athens 340° and Harris, GA, 148° radials; Harris; Volunteer, TN.

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V–295 (Revised)

From Virginia Key, FL; INT Virginia Key 014° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 296° and Orlando, FL, 162° radials; Orlando; Ocala, FL; Cross City, FL; to Tallahassee, FL. The portion outside the United States has no upper limit.

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V–437 (Revised)

From Miami, FL; INT Miami 020° and Pahokee, FL, 157° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; Savannah, GA; Charleston, SC; Florence, SC. The airspace within R–2935 is excluded.

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V–492 (Revised)

From La Belle, FL; Pahokee, FL; INT Pahokee 115° and Palm Beach, FL, 270° radials; Palm Beach; INT Palm Beach 356° and Melbourne, FL, 146° radials; to Melbourne.

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V–509 (Revised)

From St. Petersburg, FL; INT St. Petersburg 110° and Lakeland, FL, 140° radials.

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V–511 (Revised)

From Lakeland, FL; INT Lakeland 140° and Miami, FL, 332° radials; Miami.

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V–521 (Revised)

From Miami, FL; INT Miami 313° and La Belle, FL, 137° radials; INT La Belle 137° and Lee County, FL, 099° radials; Lee County; INT Lee County 014° and Lakeland, FL, 154° radials; Lakeland; Cross City, FL; INT Cross City 287° and Marianna, FL, 141° radials; Marianna; Wirégrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; INT Montgomery 357° and Vulcan, AL, 139° radials; Vulcan.

* * * * *

V–537 (Revised)

From Vero Beach, FL, via INT Vero Beach 318° and Orlando, FL, 140° radials; INT Orlando 140° and Melbourne, FL, 298° radials; INT Melbourne 298° and Ocala, FL, 145° radials; Ocala; Gainesville, FL; Greenville, FL; Moultrie, GA; Macon, GA.

* * * * *

V–599 (New)

From Lee County, FL; INT Lee County 083° and Miami, FL, 332° radials; Miami.

* * * * *

Issued in Washington, DC, on February 6, 1995.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 95–4073 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AGL–34]

Modification of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Sloulin Field International Airport, Williston, ND, to accommodate existing Standard Instrument Approach Procedures (SIAPs) to the airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace area at Williston, ND (59 FR 61301). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class E airspace area at Sloulin Field International Airport, Williston, ND, to accommodate existing SIAPs to the airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

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FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Williston, ND [Revised]

Williston, Sloulin Field International Airport, ND
(Lat. 48°10'41" N., long. 103°38'32" W.)
Williston, VORTAC
(Lat. 48°15'12" N., long. 103°45'02" W.)

Within a 4.1-mile radius of the Sloulin Field International Airport, and within 1.6 miles each side of the Williston VORTAC 135° radial, extending from the 4.1-mile radius to 5.9 miles southeast of the airport, and within 1.8 miles each side of the 124° bearing from the airport, extending from the 4.1-mile radius to 5.6 miles southeast of the airport, and within 1.3 miles each side of the Williston VORTAC 137° and 317° radials, extending from the 4.1-mile radius to 6.3 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois, on February 7, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4070 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–23]

Establishment of Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for comments.

SUMMARY: This action establishes Class E airspace at Wenatchee, Washington. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC. March 30, 1995. Comments must be received on or before March 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System, Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–23, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1994, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Pangborn Memorial Airport, Wenatchee, Washington (59 FR 62365). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. However, in the proposal one line was inadvertently omitted in the airspace description. The line has been inserted and comments are again solicited. After review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. This action is necessary to accommodate a new instrument approach procedure at Pangborn Memorial Airport. The area will be depicted on aeronautical charts for pilot reference. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Wenatchee, Washington. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Wenatchee, WA [Revised]

Wenatchee, Pangborn Memorial Airport, WA
(lat. 47°23'55"N, long. 120°12'24"W)
Wenatchee, VOR/DME
(lat. 47°23'58"N, long. 120°12'39"W)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the 299° radial from the Wenatchee VOR/DME to 13.4 miles northwest of the VOR/DME and within 4.3 miles southwest and 8 miles northeast of the 124° radial from the Wenatchee VOR/DME to 21 miles southeast of the VOR/DME, excluding that portion within the Moses Lake, Grant County, and Quincy Airport, WA, Class E airspace areas; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at:
lat. 47°36'00"N, long. 120°43'00"W;
to lat. 47°36'00"N, long. 119°39'30"W;
to lat. 47°07'00"N, long. 119°39'30"W;
to lat. 47°07'00"N, long. 120°43'00"W;
to the point of beginning. Excluding that portion within the Moses Lake, Grant County Airport, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 1, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4068 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–35]

Establishment of Class E Airspace; Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Austin Straubel International Airport, Green Bay, WI. Presently, the area is designated as Class C airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this airport is closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when this control tower is closed.

EFFECTIVE DATE: 0901 UTC, May 25, 1995

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On December 12, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Green Bay, WI, (59 FR 63939). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Austin Straubel International Airport, Green Bay, WI. Presently, the area is designated as a Class C airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this airport is closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when this control tower is closed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL WI E2 Green Bay, WI [New]

Green Bay, Austin Straubel International Airport, WI
(lat. 44°29'09"N., long. 88°07'46"W.)

Within a 5-mile radius of the Austin Straubel International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Des Plaines, Illinois on February 7, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4069 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28074; Amdt. No. 1651]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL WI E2 Green Bay, WI [New]

Green Bay, Austin Straubel International Airport, WI
(lat. 44°29'09"N., long. 88°07'46"W.)

Within a 5-mile radius of the Austin Straubel International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Des Plaines, Illinois on February 7, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4069 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28074; Amdt. No. 1651]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

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DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC, on February 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/24/95	WI	Madison	Dane County Regional-Truax Field	FDC 5/0303	VOR or TACAN or GPS RWY 18 AMDT 20...
01/24/95	WI	Madison	Dane County Regional-Truax Field	FDC 5/0306	ILS RWY 18 AMDT 6...
01/24/95	WI	Madison	Dane County Regional-Truax Field	FDC 5/0308	ILS RWY 36 AMDT 29...
01/24/95	WI	Madison	Dane County Regional-Truax Field	FDC 5/0496	NDB or GPS RWY 36 AMDT 28...
01/24/95	WI	Madison	Dane County Regional-Truax Field	FDC 5/0496	NDB or GPS RWY 36 AMDT 28...
01/24/95	WI	Madison	Morey	FDC 5/0300	VOR or GPS-B AMDT 5...
01/24/95	WI	Madison	Morey	FDC 5/0302	VOR or GPS-A AMDT 6...
01/25/95	IA	Fort Dodge	Fort Dodge Regional	FDC 5/0332	RNAV or GPS RWY 24, AMDT 5...
01/25/95	ME	Bangor	Bangor Intl	FDC 5/0317	ILS RWY 15 AMDT 2...
01/27/95	FL	Melbourne	Melbourne Intl	FDC 5/0365	VOR RWY 9R AMDT 19...
01/27/95	FL	Melbourne	Melbourne Intl	FDC 5/0366	VOR or GPS RWY 27L AMDT 11...
01/27/95	FL	Melbourne	Melbourne Intl	FDC 5/0368	ILS RWY 9R AMDT 9...
01/27/95	FL	Miami	Kendall-Tamiami Executive	FDC 5/0362	ILS RWY 9R AMDT 7A...
01/27/95	FL	Miami	Kendall-Tamiami Executive	FDC 5/0363	NDB RWY 9R ORIG-A...
01/27/95	FL	Punta Gorda	Charlotte County	FDC 5/0359	VOR or GPS RWY 3 ORIG...
01/27/95	FL	Punta Gorda	Charlotte County	FDC 5/0360	VOR or GPS RWY 21 AMDT 3...
01/31/95	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/0415	NDB RWY 13 AMDT 14A...
01/31/95	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/0416	LOC RWY 9R AMDT 3A...
01/31/95	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/0417	VOR RWY 27R AMDT 10A...
01/31/95	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/0418	LOC RWY 13 ORIG-A...
01/31/95	FL	Kissimmee	Kissimmee Muni	FDC 5/0423	NDB RWY 15 AMDT 9...
01/31/95	FL	Miami	Miami Intl	FDC 5/0425	NDB or GPS RWY 27L AMDT 18...
01/31/95	FL	Miami	Miami Intl	FDC 5/0428	NDB RWY 27R ORIG...
01/31/95	FL	Miami	Miami Intl	FDC 5/0429	ILS RWY 12, AMDT 2A...
01/31/95	FL	Miami	Miami Intl	FDC 5/0431	IL RWY 27L, AMDT 22...
01/31/95	FL	Vero Beach	Vero Beach Muni	FDC 5/0434	VOR/DME RWY 29L, AMDT 2A...
01/31/95	FL	Vero Beach	Vero Beach Muni	FDC 5/0435	NDB RWY 29L, ORIG-A...
01/31/95	GA	Augusta	Bush Field	FDC 5/0441	RADAR-1 AMDT 6...
01/31/95	GA	Elberton	Elberton County-Patz Field	FDC 5/0444	VOR/DME or GPS RWY 10, AMDT 2A...
01/31/95	MS	Bay St. Louis	Stennis Intl	FDC 5/0445	NDB RWY 17 ORIG...
01/31/95	MS	Bay St. Louis	Stennis Intl	FDC 5/0446	RNAV or GPS RWY 17 AMDT 2...
02/01/95	FL	Fort Lauderdale	Fort Lauderdale-Hollywood Intl	FDC 5/0456	RADAR-1 AMDT 3A...
02/01/95	FL	Miami	Miami Intl	FDC 5/0455	ILS RWY 9R AMDT 7...
02/01/95	FL	Pompano Beach	Pompano Beach Airpark	FDC 5/0457	LOC RWY 14 ORIG...
02/01/95	FL	Vero Beach	Vero Beach Muni	FDC 5/0451	NDB RWY 11R ORIG 2A...
02/02/95	AK	Kodiak	Kodiak	FDC 5/0476	NDB-1, RWY 25, AMDT 3...
02/02/95	GA	Macon	Middle Georgia Regional	FDC 5/0500	VOR RWY 13 AMDT 7A...
02/02/95	MN	Grand Marais	Cook County	FDC 5/0483	NDB or GPS RWY 27 ORIG...
02/02/95	MN	Moose Lake	Moose Lake Carlton County	FDC 5/0520	NDB or GPS RWY 4 ORIG...
02/02/95	NY	Islip	Long Island MacArthur	FDC 5/0504	ILS RWY 6 AMDT 21...
02/03/95	AL	Mobile	Mobile Downtown	FDC 5/0541	RADAR-1 ASR RWY 36 ORIG...
02/03/95	CA	San Diego	San Diego Intl-Lindbergh Field	FDC 5/0523	NDB RWY 27 AMDT 1...
02/03/95	CA	San Diego	San Diego Intl-Lindbergh Field	FDC 5/0526	LOC RWY 27 AMDT 2...
02/07/95	MN	Duluth	Duluth Intl	FDC 5/0572	ILS RWY 9 AMDT 18...
02/07/95	NY	New York	John F. Kennedy Intl	FDC 5/0594	ILS/DME RWY 22R ORIG...

[FR Doc. 95-4072 Filed 2-16-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 28073; Amdt. No. 1650]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

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For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form oocuments is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on February 10, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 25, 1995*

Block Island, RI, Block Island State, GPS RWY 28, Orig.
Hereford, TX, Hereford Muni, NDB or GPS RWY 21, Amdt 2

** * * Effective March 30, 1995*

Colorado City, AZ, Colorado City Muni, NDB–A RWY 29, Orig
Hot Springs, AR, Memorial Fld, ILS RWY 5, Amdt 13
Windsor Locks, CT, Bradley Intl, GPS RWY 15, Orig.
Fort Lauderdale, FL, Fort Lauderdale Executive, NDB Rwy 8, Amdt 8
Fort Lauderdale, FL, Fort Lauderdale Executive, ILS RWY 8, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale Executive, VOR/DME RNAV or GPS RWY 8, Amdt 3
Miami, FL, Miami INTL, VOR/DME RNAV or GPS RWY 9L, Amdt 10
Miami, FL, Miami INTL, VOR/DME RNAV or GPS RWY 27R, Orig
Miami, FL, Miami INTL, RNAV RWY 27R, Amdt 5A, Cancelled
Miami, FL, Opa Locka, VOR/DME RNAV RWY 9L, Amdt 8
Miami, FL, Opa Locka, VOR/DME RNAV RWY 27R, Orig
Atlanta, GA, Fulton County Airport-Brown Field, RADAR–1, Amdt 18, Cancelled
Rantoul, IL, Rantoul National Aviation Center, VOR RWY 27, Orig
Shelbyville, IN, Shelbyville Muni, VOR or GPS RWY 18, Amdt 9
Shenandoah, IA, Shenandoah Muni, VOR/DME OR GPS RWY 12, Amdt 3
Rochester, NH, Sykhaven, GPS RWY 33, Orig
Hickory, NC, Hickory Regional, VOR/DME or GPS RWY 6, Orig, Cancelled
Maxton, NC, Laurinburg-Maxton, VOR/DME–A, Orig–A, Cancelled
Sanford, NC, Sanford-Lee County Brick Field, VOR/DME–A, Orig-A, Cancelled
Wilmington, NC, New Hanover County, VOR or TACAN–A, Amdt 2A, Cancelled
Wilmington, NC, New Hanover County, RNAV RWY 24, Amdt 4A, Cancelled
Harrison, OH, Cincinnati West, VOR or GPS RWY 18, Amdt 2
Marysville, OH, Union County, NDB or GPS RWY 27, Amdt 5
Ardmore, OK, Ardmore Muni, ILS RWY 30, Amdt 3
Chambersburg, PA, Chambersburg Muni, VOR/DME–A, Amdt 2, Cancelled
Friday Harbor, WA, Friday Harbor, NDB RWY 34, Orig.

** * * Effective March 2, 1995*

Holland, MI, Tulip City, ILS/DME RWY 26, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 22, Orig

** * * Effective 2 February 1995*

Jacksonville, FL, Jacksonville Intl, ILS RWY 7, Amdt 12

** * * Effective Upon Publication*

Teterboro, NJ, Teterboro, VOR/DME RWY 24, Amdt 8
Santa Fe, NM, Santa Fe County Muni, VOR OR GPS RWY 33, Amdt 8
Castroville, TX, Castroville Muni, NDB OR GPS RWY 33, Amdt 2
Bluefield, WV, Mercer County, VOR/DME or GPS RWY 23, Amdt 4

[FR Doc. 95–4071 Filed 2–16–95; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 15a

[Docket No. 950126028–5028–01]

RIN 0690–AA22

Testimony by Employees and the Production of Documents in Legal Proceedings

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is revising its regulations which prescribes policies and procedures to be followed with respect to the testimony of Department employees regarding official matters, and the production of Department documents in legal proceedings. These regulations will serve as a statement of policy and the amendments expand the scope of the existing regulations and provide for more comprehensive standards and guidelines for Department components, employees, former employees, other federal agencies, and the public in general regarding the appropriate procedures concerning testimony and the production of documents.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: M. Timothy Conner or Donald J. Reed, (202) 482–1067.

SUPPLEMENTARY INFORMATION: Section 301 of Title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. The Supreme Court has upheld the ability of Federal agencies to establish procedures in section 301 regulations governing the production of records and testimony in legal proceedings in which the United States is not a party. *United States ex rel. Touhy* v. *Ragen*, 340 U. S. 462 (1951).

These rules establish Department of Commerce (DOC) policies and procedures applicable to the production of DOC documents and/or testimony by DOC employees in legal proceedings. Basically, the legal proceedings addressed in the rules are any administrative or judicial activities traditionally conducted within the executive or judicial branches of Federal, state, local or foreign governmental entities in which the United States: (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party.

Similarly, the rules will not cover activities that are not legal proceedings such as Congressional request for records or testimony, or requests for records under the Freedom of Information Act, 5 U.S.C. 552. In addition, the rules will not infringe upon or displace responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States.

Finally, the rules will not remove the need to comply with any applicable confidentiality provisions such as the Privacy Act, The Freedom of Information Act or the Trade Secrets Act. In fact, if the requirements of confidentiality statutes or regulations are not met, records or testimony cannot be provided even where the requirements of these regulations are satisfied.

A notice of proposed rule making was published on September 9, 1994, (59 FR 46598). One comment was received regarding the standing of the individual or business entity, from whom the information was obtained, to contest its production or release. This comment did not require a modification in the final rule. The Department of Commerce's *Touhy* regulations cannot, in and of themselves, provide standing to third parties. *Touhy* regulations only provide a procedure whereby the agency can determine whether any evidentiary privileges or statutory requirements of privacy or confidentiality apply, or if there is any other legal basis for withholding information.

This rule has been determined to be "not significant" for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. This is because the rule is established to facilitate the Department's safeguarding, control and preservation of its records, information, papers and property . As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 15a

Administrative practice and procedure, Courts, Government employees.

For the reasons set out in the preamble Part 15a is revised to read as follows:

PART 15a—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Sec.

15a.1 Scope.
15a.2 Definitions.
15a.3 Demands for testimony or production of documents: Department Policy.
15a.4 Demand for testimony or production of documents: Department procedures.
15a.5 Procedures when a Department employee receives a subpoena.
15a.6 Legal Proceedings between private litigants: Expert and/or opinion testimony.
15a.7 Demands or requests in legal proceedings for records protected by confidentiality statutes.
15a.8 Testimony of Department employees in proceedings involving the United States.

Authority: 5 U. S. C. 301; 15 U. S. C. 1501, 1512, 1513, 1515 and 1518; Reorganization Plan No. 5 of 1950; 3 CFR, 1949–1953 Comp., p. 1004; 44 U.S.C. 3101.

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§ 15a.1 Scope.

(a) This part sets forth the policies and procedures of the Department of Commerce regarding the testimony of employees, and former employees, as witnesses in legal proceedings and the production or disclosure of information contained in Department of Commerce documents for use in legal proceedings pursuant to a request, order, or subpoena (collectively referred to in this part as a "demand").

(b) This part does not apply to any legal proceeding in which an employee is to testify while on leave status, regarding facts or events that are unrelated to the official business of the Department.

(c) This part in no way affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act, the Privacy Act or the Trade Secrets Act..

(d) This part is not intended to be relied upon to, and does not, create any right or benefit, substantive or procedural, enforceable at law by any party against the United States.

§ 15a.2 Definitions.

For the purpose of this part:

(a) *Agency counsel* means the chief legal officer (or his/her designee) of an agency within the Department of Commerce.

(b) *Component* means Office of the Secretary or an operating unit of the Department as defined in Department Organization Order 1–1.

(c) *Demand* means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

(d) *Department* means the United States Department of Commerce and its constituent agencies.

(e) *Document* means any record, paper and other property held by the Department, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(f) *Employee* means all current or former employees or officers of the Department, including commissioned officers of the National Oceanic and Atmospheric Administration and any other individual who has been appointed by, or subject to the supervision, jurisdiction or control of the Secretary of the Department of Commerce.

(g) *General Counsel* means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this part.

(h) *Legal proceeding* means all pretrial, trial and post trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings.

(i) *Official business* means the authorized business of the Department.

(j) *Secretary* means the Secretary of the Department of Commerce.

(k) *Solicitor* means the Solicitor of the Patent and Trademark Office.

(l) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents.

(m) *United States* means the Federal Government, its departments and agencies, and individuals acting on behalf of the Federal Government.

§ 15a.3. Demand for testimony or production of documents: Department policy.

No employee shall in response to a demand, produce any documents, or provide testimony regarding any information relating to, or based upon Department of Commerce documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without the prior authorization of the General Counsel, or the Solicitor, or the appropriate agency counsel. The reasons for this policy are as follows:

(a) To conserve the time of Department employees for conducting official business;

(b) To minimize the possibility of involving the Department in controversial issues that are not related to the Department's mission;

(c) To prevent the possibility that the public will misconstrue variances between personal opinions of Department employees and Department policy;

(d) To avoid spending the time and money of the United States for private purposes;

(e) To preserve the integrity of the administrative process; and

(f) To protect confidential, sensitive information and the deliberative process of the Department.

§ 15a.4. Demand for testimony or production of documents: Department procedures.

(a) Whenever a demand for testimony or for the production of documents is made upon an employee, the employee shall immediately notify the General Counsel (Room 5890, U. S. Department of Commerce, Washington, D. C. 20230, (202) 482–1067) or appropriate agency counsel. When a demand for testimony or for the production of documents is made upon an employee of the Patent and Trademark Office, the employee should immediately notify the Solicitor, by phone, (703) 305–9035; by mailed addressed Solicitor, Box 8, Patent and Trademark Office, Washington, D. C. 20231; or in person to 2121 Crystal Drive, Crystal Park 2, Suite 918, Arlington, Virginia 22215.

(b) A Department employee may not give testimony, produce documents, or answer inquiries from a person not employed by the Department regarding testimony or documents subject to a demand or a potential demand under the provisions of this part without the approval of the General Counsel, or the Solicitor, or the appropriate agency counsel. A Department employee shall immediately refer all inquiries and Demands to the General Counsel, or the Solicitor, or appropriate agency counsel. Where appropriate, the General Counsel, or the Solicitor, or appropriate agency counsel, may instruct the Department employee, orally or in writing, not to give testimony or produce documents.

(c)(1) *Demand for testimony or documents.* A demand for the testimony of a Department employee shall be addressed to the General Counsel, Room 5890, Department of Commerce, Washington, D. C. 20230 or appropriate agency counsel. A demand for testimony of an employee of the Patent and Trademark Office shall be mail addressed to the Solicitor, Box 8, Patent and Trademark Office, Washington, D. C. 20231; or in person to 2121 Crystal Drive, Crystal Park 2, Suite 918, Arlington, Virginia 22215.

(2) *Subpoenas.* A subpoena for testimony by a Department employee or a document shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable state procedure and a copy of the subpoena shall be sent to the General Counsel, or the Solicitor, or appropriate agency counsel.

(3) *Affidavit.* Except when the United States is a party, every demand shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or, if an affidavit is not feasible, a statement setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that the desired testimony or document is not reasonably available from any other source, and if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to assist the General Counsel, or the Solicitor, or appropriate agency counsel in making an informed decision regarding whether testimony or the production of a document(s) should be authorized.

(d) A certified copy of a document for use in a legal proceeding may be provided upon written request and payment of applicable fees. Written requests for certification shall be addressed to the agency counsel for the component having possession, custody, or control of the document. Unless governed by another applicable provision of law or component regulation, the applicable fee includes charges for certification and reproduction as set out in 15 CFR part 4.9. Other reproduction costs and postage fees, as appropriate, must also be borne by the requester.

(e) The Secretary retains the authority to authorize and direct testimony in those cases where a statute or Presidential order mandates a personal decision by the Secretary.

(f) The General Counsel, or the Solicitor, or appropriate agency counsel may consult or negotiate with an attorney for a party or the party if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (b) of this section. Failure of the attorney to cooperate in good faith to enable the General Counsel, or the Solicitor, or the Secretary, or the appropriate agency counsel to make an informed determination under this part may serve, where appropriate, as a basis for a determination not to comply with the demand.

(g) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance.

(h) The General Counsel, or the Solicitor, or appropriate agency counsel may waive any requirements set forth under this section when circumstances warrant.

§ 15a.5 Procedures when a Department employee receives a subpoena.

(a) A Department employee who receives a subpoena shall immediately forward the subpoena to the General Counsel, or the appropriate agency counsel. In the case of an employee of the Patent and Trademark Office, the subpoena shall immediately be forwarded to the Solicitor. The General Counsel, or the Solicitor, or appropriate agency counsel will determine the extent to which a Department employee will comply with the subpoena.

(b) If an employee is served with a subpoena that the General Counsel, or the Solicitor, or appropriate agency counsel determines should not be complied with, the General Counsel, Solicitor or appropriate agency counsel will attempt to have the subpoena withdrawn or modified. If this cannot be done, the General Counsel, Solicitor or appropriate agency counsel will attempt to obtain Department of Justice representation for the employee and move to have the subpoena modified or quashed. If, because of time constraints, this is not possible prior to the compliance date specified in the subpoena, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of the Department's regulations and inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand. *United States ex rel. Touhy* v. *Ragen*, 340 U. S. 462 (1951).

(c) Where the Department employee is an employee of the Office of the Inspector General, the Inspector General in consultation with the General Counsel, will make a determination under paragraphs (a) and (b) of this section.

§ 15a.6 Legal Proceedings between private litigants: Expert or opinion testimony.

In addition to the policies and procedures as outlined in §§ 15a.1 through 15a.6., the following applies to legal proceedings between private litigants:

(a) If a Department employee is authorized to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Department employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Department information, subjects or activities except on behalf of the United States or a party represented by the United States Department of Justice. However, upon a showing by the requester that there are exceptional circumstances and that the anticipated testimony will not be adverse to the interest of the Department or the United States, the General Counsel, or the Solicitor, or appropriate agency counsel may, in writing grant special authorization for the employee to appear and give the expert or opinion testimony

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding official DOC information, subjects or activities, which testimony has not been approved in advance in accordance with the regulations in this part, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by the regulations in this part;

(ii) Request an opportunity to consult with the General Counsel, or the Solicitor, or appropriate agency counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony regarding official DOC information, subjects or activities without the opportunity to consult with either the General Counsel, or the Solicitor, or appropriate agency counsel, the witness shall respectfully refuse to provide such testimony. See *United States ex rel Touhy* v. *Ragen*, 340 U. S. 462 (1951).

(c) If an employee is unaware of the regulations in this part and provides expert or opinion testimony regarding official DOC information, subjects or activities in a legal proceeding without the aforementioned consultation, the witness shall, as soon after testifying as possible, inform the General Counsel, or the Solicitor, or appropriate agency counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

§ 15a.7 Demands or requests in legal proceedings for records protected by confidentiality statutes.

Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act, 5 U.S.C. 552a, the Trade

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Secrets Act, 18 U.S.C. 1905 or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes before the records may be provided or testimony given. The General Counsel, or the Solicitor, or appropriate agency counsel should first determine if there is a legal basis to provide the testimony or records sought under applicable confidentiality statutes before applying §§ 15a.1 through 15a.8. Where an applicable confidentiality statute mandates disclosure, §§ 15a.1 through 15a.8 will not apply.

§ 15a.8 Testimony of Department employees in proceedings involving the United States.

The following applies in legal proceedings in which the United States is a party:

(a) A Department employee may not testify as an expert or opinion witness for any other party other than the United States.

(b) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the General Counsel, or the Solicitor, or appropriate agency counsel will make all necessary arrangements for the Department employee to give testimony on behalf of the United States. Where appropriate, the General Counsel, or the Solicitor, or appropriate agency counsel may require reimbursement to the Department of the expenses associated with a Department employee giving testimony on behalf of the United States.

Alden F. Abbott,

Assistant General Counsel for Finance and Litigation.

[FR Doc. 95–3998 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–BW–P

National Oceanic and Atmospheric Administration

15 CFR Part 925

RIN 0648–AC63

Olympic Coast National Marine Sanctuary Regulations

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to Appendix A to the final regulations for the Olympic Coast National Marine Sanctuary which were published on Wednesday, May 11, 1994 (59 FR 24586).

EFFECTIVE DATE: February 17, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Jacobs, Sanctuary Manager, at (206) 457–6622 or Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: The National Oceanic and Atmospheric Administration (NOAA), by the designation document published in the 59 FR 24586, May 11, 1994, designated approximately 2,500 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, off the Olympic Peninsula of Washington State, including the waters of the Strait of Juan de Fuca eastward to Koitlah Point, as the Olympic Coast National Marine Sanctuary (Sanctuary). This notice corrects a discrepancy between the Sanctuary boundary as described in 15 CFR 925.2(b) and the coordinates for that boundary listed in Appendix A. Section 925.2(b) describes the Sanctuary boundary as extending from Koitlah Point due north to the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. Appendix A has been corrected to more accurately represent the U.S./international boundary, which delineates the northern boundary of the Sanctuary. The remaining coordinates have not been changed.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.)

List of Subjects in 15 CFR Part 925

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Accordingly, 15 CFR part 925 is corrected by making the following correcting amendment:

PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY

1. The authority citation for part 925 continues to read as follows:

Authority: Sections 302, 303, 304, 305, 306, 307, 310, and 312 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

2. Appendix A to part 925 is revised to read as follows:

Appendix A To Part 925—Olympic Coast National Marine Sanctuary Boundary Coordinates

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′05″	124°00′00″
4	47°40′05″	124°04′44″
5	47°50′01″	124°05′42″
6	47°57′13″	124°29′13″
7	48°07′33″	125°38′20″
8	48°15′00″	125°40′54″
9	48°18′21.2″	125°30′02.9″
10	48°20′15.2″	125°22′52.9″
11	48°26′46.2″	125°09′16.9″
12	48°27′09.2″	125°08′29.9″
13	48°28′08.2″	125°05′51.9″
14	48°29′43.2″	125°00′10.9″
15	48°29′56.2″	124°59′19.9″
16	48°30′13.2″	124°54′56.9″
17	48°30′21.2″	124°50′25.9″

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
18	48°30′10.2″	124°47′17.9″
19	48°29′36.4″	124°43′38.1″
20	48°28′08″	124°38′13″
21	48°23′17″	124°38′13″

Dated: February 6, 1995.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–4015 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–08–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Appliance Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that Table 1, in § 305.9, which sets forth the representative average unit energy costs for five residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This document revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on January 5, 1995.[1]

DATES: The revisions to § 305.9(a) and Table 1 are effective February 17, 1995. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the Supplementary Information Section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[2] The rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On January 5, 1995, DOE published the most recent figures for representative average unit energy costs. Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in revised Table 1 becomes mandatory in calculating cost disclosures for use in labeling and catalog sales of products covered by the Commission's rule and/or EPCA are as follows:

For 1995 Submissions of Data Under Section 305.8 of the Commission's Rule

Manufacturers no longer need to use the DOE cost figures in complying with the data submission requirements of section 305.8 of the rule. Pursuant to recent amendments to the rule, which were published on July 1, 1994[3] (with extended compliance dates published on December 8, 1994),[4] the estimated annual operating cost is no longer the primary energy usage descriptor for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters. Under the amendments, the energy usage and the ranges of comparability for those product categories must be expressed in terms of estimated annual energy consumption (kilowatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil). Thus, the 1995 (and all subsequent) data submissions under section 305.8 for these product categories (which are to enable the Commission to publish ranges of comparability) must be made in terms of estimated annual energy consumption, for the determination of which the DOE cost figures are unnecessary. The 1995 (and all subsequent) submissions also must be made in terms of the new product sub-categories created by the above-mentioned amendments. The energy efficiency energy usage descriptors for the other products covered by the rule (room air conditioners, furnaces, boilers, central air conditioners, heat pumps, and pool heaters) are unaffected by the amendments mentioned above. The annual data submission requirements for those products, which are not based on the DOE cost figures, will continue to be in terms of energy efficiency (although submissions for room air conditioners, furnaces, and boilers must be made in terms of the new product sub-categories created by the amendments). For convenience, the annual dates for data submissions are repeated here:

Fluorescent lamp ballasts	Mar. 1
Clothes washers	Mar. 1
Water heaters	May 1
Furnances	May 1
Room air conditioners	May 1
Pool Heaters	May 1
Dishwashers	June 1
Central air conditioners	July 1
Heat pumps	July 1
Refrigerators	Aug. 1
Refrigerator-freezers	Aug. 1
Freezers	Aug. 1

For Labeling and Catalog Sales of Products Covered by the Commission's Rule

The July 1, 1994, amendments will require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). These secondary

[1] 60 FR 1773.

[2] 44 FR 66466. Since its promulgation, the rule has been amended four times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), and certain lamp products (59 FR 25176, May 13, 1994). Obligations under the rule concerning fluorescent lamp ballasts, lighting products, and plumbing products are not affected by the cost figures in this notice.

[3] 59 FR 34014.

[4] 59 FR 63688.

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estimated annual operating cost disclosures must be based on the 1995 DOE cost figures published in this notice. The labels must also disclose, under the secondary estimated annual operating cost disclosure, the fact that the estimated annual operating cost is based on the appropriate 1995 DOE energy cost figure. Manufacturers of the above-mentioned products must make these disclosures on the labels required by the amendments and in catalogs beginning ninety days after the Commission publishes new energy consumption ranges of comparability based on the 1995 submissions required by § 305.8. They must continue to use the 1995 DOE cost figures in the manner just described until the Commission publishes new ranges of comparability based on future annual submissions of estimated annual energy consumption data. At that time, these manufacturers must use the then-current DOE energy cost figures when they prepare new labels in response to the new energy consumption ranges of comparability. When such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. As in the past, products that have been properly labeled prior to the effective date of any range modification need not be relabeled.

For Energy Cost Representations Respecting Products Covered by EPCA but Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 1995 representative average unit costs for energy in all operating cost representations beginning May 18, 1995.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1995)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.67¢/kWh [2 3]	$0.0867/kWh	$25.41
Natural Gas	63.0¢/therm [4] or $6.49/MCF [5 6]	0.00000630/Btu	6.30
No. 2 heating oil	1.008/gallon [7]	0.00000727/Btu	7.27
Propane	0.985/gallon [8]	0.00001079/Btu	10.79
Kerosene	1.094/gallon [9]	0.00000810/Btu	8.10

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,030 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalance of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,
Secretary.
[FR Doc. 95–4010 Filed 2–16–95; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to change the function of the Anti-Infective Drugs Advisory Committee and to change the name and the function of the Dermatologic Drugs Advisory Committee. This action is being taken due to an administrative transfer of functions for the committees in the review of human drug products for use in the treatment of ophthalmic disorders.

EFFECTIVE DATE: February 17, 1995.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION:

FDA is revising § 14.100(c)(2) (21 CFR 14.100(c)(2)) to remove the review of human drug products for use in the treatment of ophthalmic disorders from the function of the Anti-Infective Drugs Advisory Committee. The review of human drug products for use in the treatment of ophthalmic disorders has been transferred to the Dermatologic and Ophthalmic Drugs Advisory Committee (formerly the Dermatologic Drugs Advisory Committee). The function of the Anti-Infective Drugs Advisory Committee was revised in the charter renewal dated October 3, 1994. In this document, FDA is formally changing the function of the committee.

FDA is also revising § 14.100(c)(6) to change the name and the function of the Dermatologic Drugs Advisory Committee. The function of the committee has been amended to include the review of human drug products for use in the treatment of ophthalmic disorders. The name was changed to reflect the committee's revised function. In the **Federal Register** of December 6, 1994 (59 FR 62734), FDA published a notice of charter renewals dated October 3, 1994, for the Anti-Infective Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee. In that notice, the agency stated that the name of the Dermatologic Drugs Advisory Committee had been changed to the Dermatologic and Ophthalmic Drugs Advisory Committee. In this document, FDA is formally changing the name and the function of the committee.

Under the Administrative Procedure Act (5 U.S.C. 553(b)(3) and (d)) and under 21 CFR 10.40(c)(4), (d), and (e), notice and public procedure and delayed effective date on this regulation are unnecessary and not in the public interest. The regulation relates to agency organization and procedure. Furthermore, the agency finds good cause to proceed to an immediately effective rule. It would be contrary to the public interest to delay notice to the public and embodiment in the regulations of the administrative change regarding review of information on ophthalmic disorders by the appropriately constituted advisory committee.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising paragraph (c)(2)(ii), the heading of paragraph (c)(6), and paragraph (c)(6)(ii) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(2) * * *

(ii) Function: Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

* * * * *

(6) *Dermatologic and Ophthalmic Drugs Advisory Committee.*

* * * * *

(ii) Function: Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

* * * * *

Dated: February 14, 1995.
Linda A. Suydam,
Interim Deputy Commissioner for Operations.
[FR Doc. 95–4196 Filed 2–16–95; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 221, and 236

[Docket No. R–95–1660; FR–3342–F–03]

RIN 2502–AG04

Deletion of Value Criterion in Section 223(a)(7) Refinancing

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 223(a)(7) of the National Housing Act authorizes HUD to insure mortgages given to refinance existing HUD-insured mortgages. In the past, HUD's implementing regulations have prohibited the refinanced mortgage amount from exceeding a stated percentage of the value of the property. This value criterion precluded some troubled projects from lowering their debt service payments and gaining a more sound financial footing. On October 26, 1993, HUD published an interim rule in the **Federal Register** deleting the value criterion from the HUD regulations implementing Section 223(a)(7), which was extended by a notice published on October 26, 1994. This rule makes final the policies contained in the October 26, 1993, interim rule.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Acting Director, Policies and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410. Telephone number (202) 708–2556; and TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7)) (the Act) authorizes HUD to insure mortgages given to refinance existing HUD-insured mortgages under any section or title of the Act. Due to requirements of the Act, the HUD regulations implementing Section 223(a)(7) limit the principal amount of the refinanced mortgage to the amount of the original insured mortgage. Additionally, HUD's implementing regulations had prohibited the refinanced mortgage amount from exceeding a stated percentage of the Federal Housing Commissioner's estimate of value of the project after completion of any repairs or improvements to the property. Unlike the original-value limitation noted above, this value criterion was not a statutory requirement.

The value criterion precluded many troubled projects from refinancing their HUD-insured mortgages, thus preventing them from lowering their debt service payments and gaining a sounder financial footing. Because Section 223(a)(7) mortgages are already limited by the amount of the original insured mortgage, HUD felt the public interest and HUD's Insurance Fund would be better served by allowing these loans to be refinanced to take advantage of lower interest rates.

Therefore, on October 26, 1993, HUD published an interim rule (58 FR 57558) removing the value criterion from its regulations implementing Section 223(a)(7). The effect of the interim rule was extended by a notice published on October 26, 1994 (59 FR 53731). This rule makes final the policies contained in the October 26, 1993, interim rule.

Comments on the October 26, 1993, Interim Rule

By the expiration of the comment period on the October 26, 1993, interim rule, HUD had received only two comments, both from the same commenter.

The first comment addressed the backlog of applications languishing in some HUD offices and requested that HUD Field Offices be notified that Section 223(a)(7) refinancing applications already in process should be given priority over those received after the effective date of the interim rule. The preamble to the interim rule established processing priorities, in order to better manage the increased workload anticipated as a result of the rule change. Supplemental instructions were provided to HUD Field Office staff and mortgagees through issuance of HUD Notice H93–89 and Mortgagee Letter 93–39, both dated November 24, 1993, addressing processing priorities and other issues. Inasmuch as the

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priorities are no longer applicable, HUD has not adopted the comment in this final rule.

The interim rule's preamble refers to deletion of the 90 percent-of-value criterion. The commenter noted that Section 223(a)(7) applications refinancing loans insured pursuant to section 223(f) of the Act are subject to an 85 percent-of-value limitation, in lieu of 90 percent. The commenter believed this could cause confusion and recommended that the rule explicitly eliminate the 85 percent loan-to-value limitation. Although the specific language of the regulatory change is clear, HUD accepts the commenter's suggestion that the explanation of the change should be clarified to avoid confusion. Because there are also instances (in 24 CFR 221.560(a)(1)(iii) and 24 CFR 236.40(b)(1)(iii)) where the value criterion limited the maximum insurable mortgage amount to 100 percent-of-value in lieu of 90 percent or 85 percent, HUD is revising the preamble simply to state that HUD is deleting the value criterion in Section 223(a)(7) refinancing.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule deletes a counterproductive restriction that unnecessarily limits the refinancing of certain HUD-insured mortgages. By removing this restriction, HUD hopes to avoid unnecessary defaults by viable projects and resulting losses to HUD's Insurance Fund.

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this rule relate only to the establishment of loan limits and approval of mortgage refinancing under section 223(a)(7) of the National Housing Act, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule is limited to removing an unnecessary restriction on refinancing certain HUD-insured mortgages at more favorable rates.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence 1793 in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57654), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the interim rule published in the **Federal Register** on October 26, 1993 (58 FR 57558), entitled, "Parts 207, 213, 221, and 236, Deletion of the 90–Percent-of-Value Criterion in Section 223(a)(7) Refinancing", is adopted as final with the following change:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

The authority citation for part 207 is revised to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

Dated: February 8, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–3975 Filed 2–16–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Notice of Interpretation Concerning the Burning of Liquid Hydrocarbons

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of interpretation.

SUMMARY: This notice presents the intention of the Minerals Management Service (MMS) to restrict the burning of liquid hydrocarbons. Guidance on burning liquid hydrocarbons is necessary because applicable regulations do not provide specific direction on burning liquid hydrocarbons.

EFFECTIVE DATE: February 17, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Requests to burn liquid hydrocarbons (crude oil and condensate) have recently become more prevalent in the Outer Continental Shelf (OCS). The OCS Lands Act requires the Secretary of the Interior to provide for the prevention of waste and conservation of the natural resources of the OCS. Section 250.20(a) provides that lessees perform all operations in a safe and workmanlike manner and maintain all equipment in a safe condition for the protection of the lease and associated facilities, the health and safety of all persons, and the preservation and conservation of property and the environment. Conservation of property and the environment requires that lessees not burn liquid hydrocarbons.

Therefore, it is the intention of MMS to prohibit the burning of liquid hydrocarbons unless the lessee demonstrates to the Regional Supervisor that the amount of liquid hydrocarbons to be burned is minimal or the alternatives are infeasible or pose a significant risk to offshore personnel or the environment. Therefore, lessees must contact the appropriate MMS Regional Supervisor prior to burning liquid hydrocarbons.

The MMS recognizes that the best way to provide restrictions on burning liquid hydrocarbons is by rulemaking. Therefore, MMS is issuing a proposed rule under a separate **Federal Register** Notice that will cover the restrictions on burning liquid hydrocarbons.

The proposed rule will also give the public the opportunity to comment on the restrictions on burning liquid hydrocarbons.

Dated: December 23, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–3985 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400006A; FRL–4929–6]

Butyl Benzyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting a petition to delete butyl benzyl phthalate (BBP) from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of BBP that occurred during the 1994 calendar year and releases that will occur in the future. This relief applies only to reporting requirements under section 313 of EPCRA.

EFFECTIVE DATE: This rule is effective February 17, 1995.

FOR FURTHER INFORMATION CONTACT: For specific information on this rule: Maria J. Doa, Petition Coordinator, Mail Code 7408, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–9592. For more information on EPCRA section 313: Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, In Virginia and Alaska, 703–412–9877 or Toll free TTD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This final rule is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has, from time-to-time, added and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemicals from the section 313 list (59 FR 61439, November 30, 1994).

II. Description of Petition and Proposed Response

On January 12, 1987, EPA received from the Monsanto Company a petition to delete BBP from the list of toxic chemicals subject to reporting under section 313 of EPCRA. BBP was included on the original list of toxic chemicals when EPCRA was enacted. On July 20, 1987, following a review which consisted of a toxicity evaluation and an exposure analysis, EPA proposed to grant the petition to delete BBP from the section 313 list by issuing a proposed rule in the **Federal Register** (52 FR 27226).

The proposal to grant the petition was based upon EPA's preliminary finding that BBP did not meet the listing criteria found in section 313(d) of EPCRA. It was EPA's belief that there was not sufficient evidence to demonstrate that BBP causes or can reasonably be anticipated to cause significant adverse human health or environmental effects.

One concern which remained following the initial review was the apparently widespread presence of BBP in the environment despite low anticipated release levels. Because of this concern, EPA stated in the proposed rule that the delisting would not be promulgated until the 1987 Toxic Chemical Release Inventory (TRI) reports submitted pursuant to section 313 could be examined to confirm that there were no substantial releases of BBP from covered facilities (see unit III. of this preamble).

Only one commenter, the Monsanto Company, responded to EPA's proposal to delete BBP from the section 313 list of toxic chemicals. The Monsanto Company concurred with EPA's proposed deletion but objected to the decision to delay promulgation until the 1987 TRI reports could be reviewed.

Based upon evaluation of the petition, available toxicity and exposure information, the review of the 1987 - 1992 TRI reports, and the comment, EPA affirms its determination that BBP does not meet any of the toxicity criteria listed in section 313(d). Therefore, EPA is deleting BBP from the list of chemicals subject to reporting under section 313 of EPCRA.

BBP also appears on the Priority Pollutant List (PPL) of section 307 of the Clean Water Act (33 U.S.C. 1317); however, at this time EPA believes that insufficient data preclude the derivation of ambient water quality criteria for BBP by the Agency.

This petition does not request that any action be taken under any statutory provision other than EPCRA section 313, and today's rule should not be inferred as an action under any statutory provision other than EPCRA section 313. Each statute prescribes different standards for adding or deleting chemicals of pollutants from their respective list. Specifically, the deletion of BBP from the EPCRA section 313 list does not alter its regulatory status under other statutory provisions. Today's rule is based solely on the criteria in EPCRA section 313.

III. EPA's Review of Butyl Benzyl Phthalate

As discussed in the proposal, EPA preliminarily determined that BBP has low toxicity with respect to human

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health, and moderate environmental toxicity. Under these circumstances, EPA believes that it is appropriate to consider exposure in its listing decisions (see position set out in November 30, 1994 **Federal Register** cited above). Therefore, EPA's review of BBP consisted of two main components: a toxicity evaluation and a release and exposure analysis. EPA has concluded that (1) human health effects from BBP are not expected to be significant for purposes of section 313, and (2) BBP's moderate environmental toxicity, coupled with a low concern for persistence and bioaccumulation, does not represent a significantly high level of risk for the purposes of section 313(d). Details of the review can be found in the proposed rule (52 FR 27226) and in the document entitled "Hazard Assessment of n-Butyl Benzyl Phthalate" in the public docket.

A. Toxicity Evaluation

1. *Human toxicity.* At the time of publication of the proposed rule, EPA had preliminarily placed BBP in EPA's weight-of-evidence cancer risk assessment Category D (i.e., available evidence inadequate to determine human carcinogenic potential). EPA later placed BBP in weight-of-evidence Category C (i.e., a possible human carcinogen based on limited evidence in animals).

BBP's classification is based upon a 1982 study conducted by the National Toxicology Program (NTP). Because of serious flaws in this study, NTP has undertaken a second animal study to evaluate the carcinogenicity of BBP. It was initially expected that results of this study would be available by 1994. EPA has waited for a number of years for the results of this study; however, there is currently no indication that the study will be completed and results made available in the near future. Therefore, EPA has decided to take action on this petition at this time using the existing cancer study. If the results of the NTP study indicate that BBP can reasonably be anticipated to cause cancer, EPA will re-evaluate the chemical and may consider re-adding BBP to the section 313 list of toxic chemicals.

This reclassification resulted from further review of the existing evidence; no new evidence has been found beyond that considered in EPA's initial review of this petition to delete BBP from the section 313 list. Therefore, EPA continues to believe that, while the limited animal evidence available for BBP suggests a possible carcinogenic effect, the study providing this evidence is flawed. Because of the flawed nature of the study, EPA has concluded that BBP exhibits low toxicity for purposes of EPCRA 313(d)(2)(B) listing decisions. Accordingly, exposure consideration will be factored in. EPA has no evidence to indicate other potential human toxicity.

2. *Environmental toxicity.* As discussed in the proposal, EPA has concluded that BBP is moderately but not highly ecotoxic. There is low concern for potential bioconcentration, and the half-life for primary biodegradation of BBP is approximately 2 days, which indicates that the substance should have low persistence in the environment.

B. Release and Exposure Analysis

EPA has received and entered into the section 313 TRI data base more than 100 reports per year for BBP for reporting years 1987 to 1992. EPA examined these reports primarily for water releases, both directly to surface waters and through Publicly Owned Treatment Works (POTWs). For these years, from 18 to 53 companies reported water releases to POTWs and from 1 to 15 reported releases directly to surface water. For the releases to POTWs, EPA assumed (based on the physical and chemical characteristics of BBP) that BBP releases are 90 percent removed in wastewater treatment at the POTW before the final release to surface water.

EPA analyzed the 1987 reported release data to estimate the surface water concentrations based upon mean and low receiving stream flow data, where available. Where stream flow data were unavailable, the POTW mean effluent flow was used as a worst-case estimate. Where BBP releases were reported as a range (e.g., 1 to 499 lb/yr), the upper end of the release range was used as a conservative estimate for purposes of this section 313 analysis.

No firms were identified with a potential surface water concentration at or above the Lowest Effect Concentration (LEC) for BBP of 110 ppb (chronic aquatic ecotoxicity) under mean flow conditions. Under low flow conditions, two firms had a predicted concentration of this magnitude (200 ppb for one firm, and an unquantifiable, high concentration for the other site). The other 17 firms all had estimated surface water concentrations under low flow conditions of 30 ppb or less.

The release patterns from subsequent years were similar, and thus the analyses using 1987 data were considered representative of subsequent years. To confirm this assumption, an additional exposure review was conducted using 1992 release data (the most current data available). Estimates of concentrations downstream from TRI facilities were made using recent stream flow data. Surface water concentrations for the five highest releasers of BBP ranged from 0.03 ppb to 1.0 ppb during mean flow conditions, and from 0.2 ppb to 18.8 ppb during low flow conditions. Only the 18.8 ppb value exceeds the Maximum Acceptable Toxicant Concentrations (MATCs) for several algal species. However, because the low flow conditions are only expected to occur during one 7–day event in 10 years, EPA does not believe that this will result in adverse effects to the environment. Efforts were made to check as many sites as feasible in addition to the five highest releasers, because moderate releases may lead to higher concentrations for streams with less dilution. The surface water concentrations for the stream found to have potentially higher concentrations were estimated to be less than 2 ppb during mean flow conditions, and less than 13 ppb for low flow conditions. Again, although the low flow concentrations may exceed the MATC for certain algal species, the duration of exceedence is not expected to be sufficient to result in significant adverse effects.

Human exposure potential to BBP was also examined. The aquatic concentrations at drinking water utilities under mean flow conditions are expected to be below 1 ppb (i.e., less than 1 microgram per liter). The two largest release facilities are both on the Delaware River, and their combined result (after accounting for treatment) is less than 0.7 ppb under mean flow conditions. These concentrations are not expected to result in significant adverse effects in humans.

IV. Conclusion of EPA's Review

The hazard review conducted in 1987 concluded that BBP has low toxicity with respect to human health and moderate environmental toxicity. There is no new data available which would cause EPA to change this assessment. EPA's review of the 1987 and 1992 TRI reports for BBP uncovered no potentially significant releases at mean flow conditions and only two potentially significant releases at low flow conditions. EPA's conclusion is that these releases do not raise sufficient concern about potential human or environmental exposures to warrant retention of BBP on the section 313 list.

After reviewing available data and the comment on the proposed rule, EPA continues to believe that BBP does not cause, nor can it reasonably be anticipated to cause, the adverse human health or environmental effects set forth in section 313(d). Accordingly, it is appropriate to delete BBP from the list of toxic chemicals in EPCRA section 313.

V. Effective Date

This action becomes effective upon publication. Thus the last year in which facilities had to file a TRI report for BBP was 1994, covering releases and other activities that occurred in 1993. Section 313(d)(4) provides that "[a]ny revision" to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with BBP, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)–(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings (see 59 FR 33205, June 28, 1994).

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

C. Paperwork Reduction Act

This rule relieves facilities from having to collect information on the use and releases of BBP. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 10, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for butyl benzyl phthalate under paragraph (a) and removing the entire CAS No. entry for 85–68–7 under paragraph (b).

[FR Doc. 95–3937 Filed 2–16–95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 33
Friday, February 17, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-95-1]

Petition for Rulemaking: Summary of Petitions Received; Dispositions of Petitions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received April 18, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on February 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27956
Petitioner: Air Line Pilots Association
Regulations Affected: 14 CFR appendixes I and J, part 121
Description of Rulechange Sought: To add procedural safeguards, including notice and hearing requirements, for pilots and other airline employees accused of conduct that would bar them from continuing in their occupations.
Petitioner's Reason for the Request: The petitioner feels that the FAA's permanent ban regulation fails to provide due process of law and should be modified to provide at least the process accorded in a certificate revocation proceeding.

[FR Doc. 95-4074 Filed 2-16-95; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 94-NM-239-AD]

Airworthiness Directives; Bombardier Model CL-600-1A11 (CL-600), -2A12 (CL-601), -2B16 (CL-601-3A, -3R), and -2B19 (Regional Jet Series 100) Series Airplanes, Equipped with Sundstrand Air Driven Generator (ADG) Uplock Assembly

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL-600-1A11, -2A12, -2B16, and -2B19 series airplanes. This proposal would require an inspection to verify the proper operation of the uplock latch of the air driven generator (ADG), and replacement of the uplock latch with a serviceable part, if necessary. This proposal would also require replacing the uplock assembly with a modified uplock assembly, and performing a rigging inspection. This proposal is prompted by a report indicating that, upon operation of the manual release system, the ADG did not deploy due to failure of the shaft pin. The actions specified by the proposed AD are intended to prevent failure of the shaft pin, which could lead to the inability of the pilot to manually deploy the ADG when necessary (i.e., when an airplane's primary electrical power sources are lost and the ADG fails to deploy automatically).

DATES: Comments must be received by March 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103 Attention: Rules Docket No. 94-NM-239-AD, 1601 Lind Avenue, SW , Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Electronics Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7511; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-238-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-239-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL-600-1A11 (CL-600), -2A12 (CL-601), -2B16 (CL-601-3A, -3R), and -2B19 (Regional Jet Series 100) series airplanes, equipped with a certain Sundstrand air driven generator (ADG) uplock assembly. Transport Canada Aviation advises that, upon operation of the manual release system, the air driven generator (ADG) did not deploy. Investigation has revealed that the cause of this failure has been attributed to a broken shaft pin in the ADG uplock assembly. Failure of the shaft pin could lead to the inability of the pilot to manually deploy the ADG when necessary (i.e., when an airplane's primary electrical power sources are lost and the ADG fails to deploy automatically). If this were to occur, all electrical power on the airplane would be lost.

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A1601R-24-019, Revision 'A', dated August 9, 1994 (for Model CL-600-2B19 series airplanes); Canadair Challenger Service Bulletin 600-0638, dated April 25, 1994 (for Model CL-600-1A11 series airplanes); and Canadair Challenger Service Bulletin 601-0430, dated April 25, 1994 (for Model CL-600-2A12 and -2B16 series airplanes). These service bulletins describe procedures for a one-time inspection to verify the proper operation of the uplock latch of the ADG, and replacement of the uplock latch with a serviceable part, if the uplock latch cannot be activated. These service bulletins also describe procedures for replacing the uplock assembly with a modified uplock assembly, and performing a rigging inspection. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF-94-14, dated September 7, 1994 (for Model CL-600-2B19 series airplanes); and Canadian airworthiness directive CF-94-13, dated September 1, 1994 (for Model CL-600-1A11, -2A12, and -2B16 series airplanes); in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to verify the proper operation of the uplock latch of the ADG, and replacement of the uplock latch with a serviceable part, if the uplock latch cannot be activated. The proposed AD would also require replacing the uplock assembly with a modified uplock assembly, and performing a rigging inspection. The actions would be required to be accomplished in accordance with the service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 194 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $69,840, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier Inc. (Formerly Canadair): Docket 94–NM–239–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A, –3R) series airplanes, serial numbers 5001 through 5150 inclusive; Model CL–500–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7040 inclusive; equipped with Sundstrand air driven generator (ADG) uplock assembly having part number 721863, 721863A, or 721863B; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the shaft pin, which could lead to the inability of the pilot to manually deploy the air driven generator (ADG) when necessary (i.e., when an airplane's primary electrical power sources are lost and the ADG fails to deploy automatically), accomplish the following:

(a) For Model CL–600–2B19 (Regional Jet Series 100) series airplanes equipped with Sundstrand ADG uplock assembly having P/N 721863B: Accomplish paragraphs (a)(1), (a)(2), and (a)(3), in accordance with Canadair Alert Service Bulletin S.B. 1601R–24–019, Revision 'A', dated August 9, 1994.

(1) Within 600 flight hours after the effective date of this AD, perform an inspection to verify the proper operation of the uplock latch of the ADG, in accordance with the Accomplishment Instructions of the service bulletin. If the uplock latch cannot be activated, prior to further flight, replace the uplock latch with a serviceable part in accordance with the service bulletin.

(2) Within 12 months after the effective date of this AD, replace the uplock assembly with a modified uplock assembly, in accordance with the Accomplishment Instructions of the service bulletin.

(3) After accomplishment of paragraph (a)(1) or (a)(2) of this AD, perform a rigging inspection in accordance with the Accomplishment Instructions of the service bulletin.

(b) For Model CL–600–2A12, CL–2B16, and CL–600–1A11 series airplanes: Accomplish paragraphs (b)(1), (b)(2), and (b)(3), in accordance with Canadair Service Bulletin 600–0638, dated April 25, 1994 (for Model CL–600–1A11 series airplanes), or Canadair Service Bulletin 601–0430, dated April 25, 1994 (for Model CL–600–2A12 and –2B15 series airplanes), as applicable.

(1) Within 150 flight hours after the effective date of this AD, perform an inspection to verify the proper operation of the uplock latch of the ADG, in accordance with the Accomplishment Instructions of the applicable service bulletin. If the uplock latch cannot be activated, prior to further flight, replace the uplock latch with a serviceable part, in accordance with the applicable service bulletin.

(2) Within 12 months after the effective date of this AD, replace the uplock assembly with a modified uplock assembly, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(3) After accomplishment of paragraph (b)(1) or (b)(2) of this AD, perform a rigging inspection in accordance with the Accomplishment Instructions of the applicable service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 13, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4002 Filed 2–16–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–189–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require an inspection to determine if a travel stop (screw) is installed at the flight control assembly, and various follow-on actions. This proposal is prompted by a report of failure of the travel stop, which allowed the elevator and aileron disconnect handles to rotate within the housing due to migration of the travel stop from its position. The actions specified by the proposed AD are intended to prevent such migration, which could result in the elevator and aileron disconnect system resetting without the use of the reset button; this condition could lead to jamming of the disconnect handles.

DATES: Comments must be received by March 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–189–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that a report has been received indicating that a screw, which is used as the travel stop in both the elevator and aileron disconnect handles, had migrated out of their position. This allowed the elevator and aileron disconnect control handles to rotate within its housing. Such rotation bypassed the operation of the ratchet assembly and allowed the elevator and aileron disconnect system to reset without the use of the reset button. The cause of this migration is unknown at this time; normally, the travel stop screws are retained against vibration (which could cause them to become loose) by means of a screw locking insert. Migration of the travel stop, if not corrected, could result in the elevator and aileron disconnect system resetting without the use of the reset button; this condition could lead to jamming of the disconnect handles.

Jetstream has issued Service Bulletin J41–27–036, dated September 2, 1994, which describes procedures for:

1. Performing an inspection to determine if a travel stop (screw) is installed at the flight control assembly;
2. Installing a new travel stop, if no travel stop is found installed;
3. Performing a rotation to determine the security of the travel stop, if a travel stop is installed;
4. Performing an inspection to detect damage, if the travel stop is found to be loose; and replacing the travel stop with a new travel stop, if damage is found;
5. Applying Loctite Superfast 290 to the travel stop;
6. Permanently marking the flight control assembly; and
7. Performing a functional test of the aileron and elevator disconnect systems and setting them to the locked position.

The service bulletin also describes procedures for an optional installation of a protective spiral wrap cover. The CAA classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine if a travel stop (screw) is installed at the flight control assembly, and various follow-on actions. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,360, or $240 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 94–NM–189–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41039 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the elevator and aileron disconnect handles, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, perform an inspection to determine if a travel stop (screw) is installed at the flight control assembly, in accordance with Jetstream Service Bulletin J41–27–036, dated September 2, 1994.

(1) If no travel stop is found to be installed, prior to further flight, install a new travel stop in accordance with the service bulletin. After installation, accomplish paragraph (a)(2) of this AD.

(2) If such a travel stop is installed, prior to further flight, perform a rotation to determine the security of the travel stop, in accordance with the service bulletin.

(i) If the travel stop is found to be properly secured, no further action is required by paragraph (a) of this AD.

(ii) If the travel stop is found to be loose, prior to further flight, remove it and perform an inspection to detect damage in accordance with the service bulletin. If any damage is found, replace the travel stop with a new travel stop, in accordance with the service bulletin. After replacement, repeat the requirements of paragraph (a)(2) of this AD.

(b) After accomplishment of paragraph (a) of this AD, prior to further flight, accomplish paragraphs (b)(1), (b)(2), and (b)(3) of this AD, in accordance with Jetstream Service Bulletin J41–27–036, dated September 2, 1994.

(1) Apply Loctite Superfast 290 to the travel stop;

(2) Permanently mark the flight control assembly; and

(3) Perform a functional test of the aileron and elevator disconnect systems and set them to the locked position.

Note 2: Procedures for installing a protective spiral wrap cover are contained in Jetstream Service Bulletin J41–27–036, dated September 2, 1994. This installation is recommended, but is not required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 13, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4003 Filed 2–16–95; 8:45 am]

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Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 94–30]

RIN 2125–AD40

Federal-Aid Project Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulation on Federal-aid program approval and project authorization. In light of changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) in the area of statewide planning, and the joint FHWA/Federal Transit Administration (FTA) regulations implementing those changes, this NPRM proposes to remove all other project programming provisions from the FHWA's regulations. This NPRM would also provide more flexible funding arrangements and make the Federal-aid authorization process more flexible. Changes contained in related laws are included.

DATES: Written comments are due on or before April 18, 1995. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Federal Highway Administration, Office of the Chief Counsel, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Jerry L. Poston, Office of Engineering, 202–366–0450, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The initiation of work for transportation projects funded under the Federal-aid highway program is a two-step process. First, the State, in cooperation and consultation with local officials, as appropriate, through the metropolitan and statewide planning process, determines activities which will be advanced with Federal funds made available under title 23, United States Code, and the Federal Transit Act (49 U.S.C. 5301–5338) and develops a statewide program of projects for these activities. Prior to passage of the ISTEA, the requirements for developing the program of projects were found in 23 U.S.C. 105 and the implementing regulations in 23 CFR 630, subpart A. With passage of the ISTEA, title 23, U.S.C., was modified and the new requirements concerning development of a program of projects, now referred to as the Statewide transportation improvement program, are contained in 23 U.S.C. 135. The implementing regulation for this section are at 23 CFR 450 and were initiated through previous rulemaking actions.

Accordingly, those requirements pertaining to a program of projects in 23 CFR 630, subpart A, no longer need to be retained. The FHWA therefore proposes to eliminate §§ 630.106, 630.108, 630.110 and 630.112 along with inappropriate programming references from the existing regulation.

The second step in initiation of work is the project authorization process. The State highway agency (SHA) requests FHWA authorization to proceed with a proposed Federal-aid highway project.

The FHWA authorization commits the Federal Government to participate in the funding of a project, except in those instances where the State requests FHWA authorization without the commitment of Federal funds. In addition, FHWA authorization also establishes a point in time after which costs incurred on a project are eligible for Federal participation. Requirements covering project authorization are also contained in 23 CFR 630, subpart A. The FHWA proposes to modify certain of these requirements, both for clarification and to provide the SHA a greater degree of flexibility on certain funding arrangements. These modifications are discussed in the following section-by-section analysis.

Section-By-Section Analysis

Section 630.102 Purpose

The statement of purpose would be revised to eliminate the reference to programming of projects since this activity would be eliminated from this subpart.

Section 630.104 Applicability

The existing § 630.104, Definitions, would be replaced with a new section to identify the types of projects that are covered by this subpart. FHWA planning and research funds, as defined in 23 CFR 420.103, are authorized using the procedures in the regulations dealing specifically with these types of projects. At times, certain special funding categories may have unique authorization requirements and these types of projects are authorized as set out in implementing instructions or regulations.

Section 630.106 Authorization to Proceed

Current § 630.106, Policy, would be removed. A new § 630.106, Authorization to proceed, would be redesignated from current § 630.114 covering the authorization process. It retains many of the basic principles set forth in existing § 630.114. However, there are modifications to provide greater flexibility in some funding areas and additions for clarification. The following discussion covers proposed § 630.106 by individual paragraph.

Paragraph (a) would retain the requirement that FHWA authorization to proceed with a Federal-aid project will only be given in response to a request from the SHA, and then only if the applicable requirements in law have been satisfied for the project.

Paragraph (b) would retain the longstanding requirement that Federal-aid funds will only participate in costs incurred after the date the FHWA has authorized the State to proceed with the project. However, exceptions to this requirement have been allowed under a process set forth in 23 CFR 1.9(b). For informational purposes, wording has been included in paragraph (b) to identify and cross reference the exception process.

Paragraphs (c), (d) and (e) would retain the requirement that at the time a Federal-aid project is authorized, the appropriate Federal funds for this project must be available. Five general categories for exceptions to this rule are presented, these being the same five categories that are in the existing regulation.

Paragraph (f) is new and would be added for purposes of clarification. The FHWA authorization represents a contractual action by the FHWA and the Federal share of eligible costs must be agreed upon when the authorization occurs. The Federal share may be in the form of a specified percentage of eligible costs or a lump sum amount. Use of the lump sum share is a relatively new concept and is introduced to accommodate those instances where there is a desire to commit a fixed amount of Federal funds to a project. The lump sum amount may not exceed the legal pro rata share for the Federal funds involved. This may require downward adjustment of the lump sum amount when costs of eligible work on a project are less than the initial estimates at the time of FHWA authorization.

The Federal share agreed to at FHWA authorization would continue through the life of the project. Manipulation of funding levels of individual projects to accommodate program funding changes or needs would not be allowed. However, adjustments to the Federal share would be permitted for projects in situations where bid prices are significantly different from the estimates at the time of FHWA authorization.

Paragraph (g) is new and would incorporate the cost sharing principles of title 23, U.S.C., into the regulation. For Federal-aid projects, the Federal share of eligible costs incurred by the State cannot exceed the maximum share permitted by legislation. There is an agreed to Federal share of eligible costs and the non-Federal share of eligible costs must come from State funds (State match). Local government funds are considered to be State funds. Thus, local government funds can be combined with SHA funds to cover the required State match of eligible costs.

Cash contributions from private sources are a different matter. FHWA participates in costs incurred on Federal-aid projects. Donations of private cash contributions for a specific Federal-aid project reduce the cost incurred; therefore, the private funds cannot be used to reduce the required State match. Private cash contributions can be applied to either eligible or ineligible items of work. However, when a private cash contribution is applied to costs eligible for Federal participation, the private cash contribution is considered to have reduced the cost of the project and thus reduced the cost incurred by the State.

On the other hand, if a private cash contribution is made to a State or local government with no designation to a specific project, then the private cash contribution can be treated as funds of the State or local government and may be used in any way State or local funds are authorized to be used, including providing State match on Federal-aid projects.

Contributions of funds from other Federal agencies to a specific project are for the most part treated similarly to private cash donations. These other Federal agency funds may not be used to provide the required State match on a Federal-aid project but, instead, are viewed as having reduced the cost incurred by the State on the project. The only exception is in those cases where the other Federal agency has specific legislative authority to use its funds to match other Federal funds.

Paragraph (h) is new and would require that all contributions to a project be accounted for and properly credited to the project. The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

Paragraph (i) is new and would incorporate into the regulation the provision in 23 U.S.C. 120(i) that allows the State to contribute more than the normal State match on a Federal-aid project. This provision has been interpreted to mean that a State may overmatch without being tied to a mandatory Federal share. However, token financing, such as when the Federal share represents only a minor percentage of eligible work or when large contributions are applied to the project to reduce the total cost, would not be permitted. As a general rule of thumb, it would be expected that the amount of Federal funds requested will represent at least 50 percent of eligible project costs. Exceptions to the 50 percent level should be based on sound project development or management reasons.

The following table is provided to assist the user in locating regulatory

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paragraph changes proposed by this rulemaking:

Old Section	New section
630.102	630.102
630.104	Removed
None	630.104
630.106	Removed
630.108	Removed
630.110	Removed
630.112	Removed
630.114(b)	630.106(a)
630.114(g)	630.106(b)
630.114(h)	630.106(c)
630.114(h)(3)	630.106(d)
630.114(h)(3)	630.106(e)
None	630.106(f) through (i)

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because the proposed amendments would update the Federal-aid project authorization regulation to conform to recent laws, regulations, and to clarify existing policies.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would only clarify or simplify procedures used by SHA's in accordance with existing laws, regulations, or guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising Part 630, subpart A to read as set forth below.

Issued on: February 10, 1995.

Rodney E. Slater,

Federal Highway Administrator.

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Federal-Aid Project Authorization

Sec.

630.102 Purpose.

630.104 Applicability.

630.106 Authorization to proceed.

Authority: 23 U.S.C. 106, 116, 120, and 315; 49 CFR 1.48(b).

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects.

§ 630.104 Applicability.

(a) This subpart is applicable to all Federal-aid projects unless specifically exempted.

(b) Projects financed with FHWA planning and research funds, as defined in 23 CFR 420.103 are not covered by this subpart. These projects are to be handled in accordance with 23 CFR parts 420 and 450.

(c) Other projects which involve special procedures shall be authorized as set out in the implementing instructions.

§ 630.106 Authorization to proceed.

(a) The FHWA issuance of an authorization to proceed with a Federal-aid project shall be in response to a written request from the State highway agency (SHA). Authorization can be given only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied.

(b) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed except as provided by 23 CFR 1.9(b).

(c) Authorization to proceed shall be deemed a contractual obligation of the Federal Government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the agreed Federal share, either pro rata or lump sum, of the cost of eligible work to be incurred by the State except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Bond issue projects authorized under 23 U.S.C. 122.

(3) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(4) Projects for ROW acquisition in hardship and protective buying situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accord with the provisions of 23 CFR part 712.

(5) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(3) through (c)(5) shall contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal Government to provide Federal funds for that portion of the undertaking not fully funded herein."

(e) When a project has received an authorization under 23 CFR 630.106 (c)(3) and (c)(4), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(g) Federal participation is limited to the agreed Federal share of eligible costs actually incurred by the State, not to exceed the maximum permitted by enabling legislation. Any private cash contributions to the project must be credited to, and thereby such contributions reduce, the total project cost and are not considered to be costs incurred by the State. Private cash contributions may be applied to participating or nonparticipating work. Cash contributions provided by a local government are considered the same as State funds.

(h) The sum of cash contributions from all sources plus the Federal funds may not exceed the total cost of the project.

(i) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. However, proposals resulting in token Federal financing of a Federal-aid project shall not be approved.

[FR Doc. 95–4029 Filed 2–16–95; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–62–94]

RIN 1545–AT15

Continuity of Interest in Transfer of Target Assets After Qualified Stock Purchase of Target

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the income tax treatment of the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) after a qualified stock purchase (QSP) of target stock, if a section 338 election is not made. These regulations provide guidance to parties to such transfers and their shareholders. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 7, 1995, must be received by May 19, 1995.

ADDRESSES: Send submissions to: CC:CORP:T:R (CO–62–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:CORP:T:R (CO–62–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Alexander, (202) 622–7780; concerning the submissions and requests for a hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes guidance as to the treatment of transfers of target assets to another corporation after a qualified stock purchase of target stock, if a section 338 election is not made for the target. It addresses the effect of section 338 on the result in *Yoc Heating v. Commissioner* and similar cases.

Under § 1.368–1(b), for a transfer of assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization.

In *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973), a corporation bought 85 percent of a target corporation's stock for cash and notes. As part of the same plan, the target subsequently transferred its assets to a newly formed subsidiary of the purchaser and dissolved. The purchaser received additional stock of its subsidiary in exchange for the purchaser's target stock and the minority shareholders received cash in exchange for their target stock.

The Tax Court, viewing the stock purchase and asset acquisition as an integrated transaction in which the purchaser acquired all of the target's assets for cash and notes, held there was insufficient continuity of interest to qualify the asset transfer as a reorganization under section 368 because the shareholders of the target before the stock purchase received no stock in the acquiring entity. As a result, the subsidiary received a cost basis in the target's assets.

In addition to *Yoc Heating*, there are other cases in which courts have denied reorganization treatment and have given the transferee a stepped-up basis in the target's assets following the purchase of the target's stock and the merger of the target into the purchaser or a related corporation. See, e.g., *Russell v. Commissioner*, 832 F.2d 349 (6th Cir. 1987), *aff'g Cannonsburg Skiing Corp. v. Commissioner*, T.C. Memo 1986–150 (corporation purchased target stock and then target merged into purchaser); *Security Industrial Insurance Co. v. United States*, 702 F.2d 1234 (5th Cir. 1983) (corporation purchased stock of targets and then targets merged into purchaser, which then transferred the target assets to a subsidiary of the purchaser); *South Bay Corporation v. Commissioner*, 345 F.2d 698 (2d Cir. 1965) (individual purchased stock in two targets and then targets merged into a third corporation owned by the individual); *Superior Coach of Florida*

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v. Commissioner, 80 T.C. 895 (1983) (individual purchased target stock and then target merged into another corporation controlled by the individual); *Estate of McWhorter v. Commissioner*, 69 T.C. 650 (1978), *aff'd*, 590 F.2d 340 (8th Cir. 1978) (corporation purchased target stock and then target merged into purchaser); and *Kass v. Commissioner*, 60 T.C. 218 (1973), *aff'd*, 491 F.2d 749 (3d Cir. 1974) (corporation purchased target stock and then target merged into purchaser).

The *Yoc Heating* court's analysis of the transaction as, in substance, a taxable asset acquisition by the subsidiary is consistent with generally applied federal income tax principles. For example, in *Kimbell-Diamond Milling Co. v. Commissioner*, 14 T.C. 74 (1950), *aff'd per curiam*, 187 F.2d 718 (5th Cir.), *cert. denied*, 342 U.S. 827 (1951), an acquiring corporation's purchase of a target corporation's stock followed by the liquidation of the target was treated for federal income tax purposes as, in substance, a direct purchase of the target's assets by the acquiring corporation. The Tax Court's characterization in *Kimbell-Diamond* was based on a finding that the acquiring corporation intended to obtain the target's assets rather than its stock. As a result, the acquiring corporation's basis in the target's assets was determined by reference to the purchase price of the target's stock.

In 1954, Congress codified principles derived from *Kimbell-Diamond* by enacting former section 334(b)(2) of the Internal Revenue Code of 1954, which created an objective test that permitted a stock purchase followed by liquidation of the target to be treated as an asset acquisition. S. Rep. No. 1622, 83d Cong., 2d Sess. 257 (1954).

In 1982, Congress repealed section 334(b)(2) and replaced it with section 338, which provides that, if a corporation makes a qualified stock purchase (QSP) of the stock of a target, the purchasing corporation may elect to have the target treated as having sold all of its assets at the close of the acquisition date in a single transaction and as a new corporation that purchased all such assets at the beginning of the following day. Section 338 was "intended to replace any nonstatutory treatment of a stock purchase as an asset purchase under the *Kimbell-Diamond* doctrine." H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 467, 536 (1982), 1982–2 C.B. 600, 632.

Under section 338(i), the IRS and Treasury are authorized to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 338. The IRS and Treasury believe that the result in *Yoc Heating* is inconsistent with the legislative intent behind section 338. As a result of the enactment of section 338, an intragroup merger or similar transaction following a QSP generally should not be treated as part of an overall asset acquisition. The qualified stock purchase must be accorded its intended effect. *Cf.* Rev. Rul. 90–95, 1990–2 C.B. 67 (applying sections 332 and 334 to a merger of the target into the purchasing corporation following a QSP). If a section 338 election is not made, in a subsequent intragroup merger or similar transaction, the target assets generally should preserve their historic basis maintained in the qualified stock purchase. The IRS and Treasury believe that applying the reorganization rules to the target and purchasing group in mergers and similar transactions following a QSP is the simplest and most effective means of achieving the congressional intent in repealing the *Kimbell-Diamond* doctrine.

Explanation of Provisions

Proposed § 1.338–2(c)(3) applies to the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation (the transferee) following a QSP of target stock, if the purchasing corporation does not make a section 338 election for the target.

As noted above, for the transfer of target assets to be pursuant to a reorganization within the meaning of section 368, there must be a continuity of interest in the target's business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the reorganization. See § 1.368–1(b). The proposed regulations generally provide that, by virtue of the application of section 338, the purchasing corporation's target stock acquired in the QSP represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization for the purpose of determining whether the continuity of interest requirement is satisfied. A corollary provision enables the transfer to satisfy the requirements for an acquisitive reorganization under section 368(a)(1)(D).

Notwithstanding the general rule above, the proposed regulations provide that sections 354, 355, 356 and 358 do not apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization under generally applicable rules without regard to the provisions of the proposed regulations. The legislative history of section 338 does not indicate any intent to eliminate the continuity of interest requirement generally and allow reorganization treatment to shareholders receiving stock in acquisitions where the overall consideration does not preserve continuity of interest. The rules provided in the proposed regulations reconcile Congress' concerns in enacting section 338 with general reorganization principles.

The IRS and Treasury request comments on the proposed rules, including, particularly, comments regarding the collateral consequences of treating the transaction as a reorganization to the target and to the purchasing corporation and its affiliates, but not to persons unaffiliated with the purchasing corporation. The IRS and Treasury also solicit comments as to whether guidance is needed as to the proper treatment of post-QSP mergers and similar transactions if a section 338 election is made for the target.

Proposed Effective Date

Section 1.338–2(c)(3) is proposed to be effective for transfers of target assets occurring on or after the date final regulations are filed with the Office of the Federal Register.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 7, 1995, at 10 a.m. in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by May 19, 1995, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 19, 1995.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William Galanis, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.338–0 is amended by adding entries for § 1.338–2(c)(3) to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c)* * *

(3) Consequences of post-acquisition elimination of target.

(i) Scope.

(ii) Continuity of interest.

(iii) Control requirement.

(iv) Example.

(v) Effective date.

* * * * *

Par. 3. Section 1.338–2 is amended by adding paragraph (c)(3) to read as follows:

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c) * * *

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target.

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization. Notwithstanding the preceding sentence, sections 354, 355, 356 and 358 do not apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer is pursuant to a reorganization under generally applicable rules without regard to this paragraph (c)(3)(ii).

(iii) *Control requirement.* By virtue of section 338, the purchasing corporation is treated as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* This paragraph (c)(3) is illustrated by the following example:

Example. (A) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(B) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(C) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(D) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(E) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 does not apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer is pursuant to a reorganization under generally applicable rules without regard to paragraph (c)(3)(ii) of this section. Under general income tax principles applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating v. Commissioner*, 61 T.C. 168 (1973); *Kass v. Commissioner*, 60 T.C. 218 (1973), *aff'd*, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

(v) *Effective date.* The provisions of this paragraph (c)(3) are effective for transfers of target assets on or after the

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date final regulations are filed with the Office of the Federal Register.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–3771 Filed 2–16–95; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB96

Flaring or Venting Gas and Burning Liquid Hydrocarbons

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the restrictions on flaring or venting gas to include restrictions on burning liquid hydrocarbons. The MMS is proposing to amend these regulations because of the increased interest in burning liquid hydrocarbons and to clarify the restrictions on burning this natural resource. The amendment would conserve liquid hydrocarbons and protect the environment from the possible effects of burning liquid hydrocarbons.

DATES: Comments on this proposed rule must be postmarked or received on or before April 18, 1995 to be considered for this rulemaking.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: Requests for burning liquid hydrocarbons (crude oil and condensate) have become more frequent in the Outer Continental Shelf. In the interest of conserving natural resources, and because of the environmental concerns associated with this burning, MMS proposes to amend the regulations at 30 CFR 250.175, which currently include restrictions on flaring and venting of gas, to include restrictions on burning liquid hydrocarbons.

Under proposed new paragraph (c) of 30 CFR 250.175, lessees will not be permitted to burn liquid hydrocarbons without the prior approval of the Regional Supervisor. To obtain approval, the lessee must demonstrate that the amounts to be burned would be minimal or that the alternatives, such as transporting the liquids or storing and re-injecting the liquids, are infeasible or pose a significant risk to offshore personnel or the environment. The term "lessee" also includes their agents and designees.

Authors

Sharon Buffington and Jo Ann Lauterbach, Engineering and Technology Division, MMS, prepared this document.

Executive Order (E.O.) 12866

The Department of the Interior (DOI) reviewed this proposed rule under E.O 12866 and determined that it is not a significant rule.

Regulatory Flexibility Act

The DOI determined that this proposed rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safety conduct such activities.

Paperwork Reduction Act

The proposed information collection requirements contained in § 250.175 were submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The DOI will not require the collection on this information until OMB has approved its collection.

The MMS estimates the public reporting burden for this information to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2053, 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project (1010–0041), Washington, DC 20503.

Takings Implication Assessment

The DOI determined that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment does not need to be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

E.O. 12778

The DOI certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Pubic lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 23, 1994.

Bob Armstrong,
Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, MMS proposes to amend 30 CFR part 250 to read as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 250.175 is revised to read as follows:

§ 250.175 Flaring or venting gas and burning liquid hydrocarbons.

(a) Lessees must not flare or vent oil-well gas or gas-well gas without the prior approval of the Regional Supervisor except in the following situations:

(1) When gas vapors are flared or vented in small volumes from storage vessels or other low-pressure production vessels and cannot be economically recovered.

(2) During temporary situations such as a compressor or other equipment failure or the relief of system pressures. The following conditions apply:

(i) Lessees must not flare or vent oil-well gas for more than 48 continuous hours without the approval of the Regional Supervisor. The Regional Supervisor may specify a limit of less than 48 hours when necessary to prevent air quality degradation. Flaring or venting gas from a facility must not continue for more than 144 cumulative hours during any calendar month without the approval of the Regional Supervisor.

(ii) Lessees must not flare or vent gas-well gas beyond the time required to eliminate a temporary emergency without the approval of the Regional Supervisor.

(3) During the unloading or cleaning of a well, drill-stem testing, production-testing, or other well-evaluation testing for periods not to exceed 48 cumulative hours per testing operation on a single completion. The Regional Supervisor may specify a shorter period of time, under prior notice, to prevent air quality degradation.

(b) Lessees may flare or vent oil-well gas for a period not to exceed 1 year when the Regional Supervisor approves the request for one of the following reasons:

(1) The lessee initiated an action which, when completed, will eliminate flaring and venting; or

(2) The lessee submitted an evaluation supported by engineering, geologic, and economic data indicating that the oil and gas produced from the well(s) will not economically support the facilities necessary to save and/or sell the gas, or that sufficient quantities of gas are not available for marketing.

(c) Lessees must not burn produced liquid hydrocarbons without the prior approval of the Regional Supervisor. To burn produced liquid hydrocarbons, the lessee must demonstrate that the amounts to be burned would be minimal, or that the alternatives are infeasible or pose a significant risk to offshore personnel or the environment. Alternatives to burning liquid hydrocarbons include transporting the liquids or storing and re-injecting them into a producible zone.

(d) Lessees must prepare records detailing gas flaring or venting, and liquid hydrocarbon burning, for each facility. The records must include, at a minimum:

(1) Daily volumes of gas flared or vented, and liquid hydrocarbons burned.

(2) Number of hours of flaring, venting, or burning on a daily basis.

(3) Reasons for flaring, venting, or burning.

(4) A list of the wells contributing to flaring, venting, or burning, along with the gas-oil ratio data.

(e) Lessees must keep these records for at least two (2) years. Lessees must make the records available for inspection by Minerals Management Service (MMS) representatives at the lessees' field office that is nearest the Outer Continental Shelf facility, or at other locations conveniently available to the Regional Supervisor. Upon request by the Regional Supervisor, lessees must provide a copy of the records to MMS.

[FR Doc. 95–3986 Filed 2–16–95; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–121–FOR; Amendment 94–7]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter referred to as the "Indian program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to the Indiana Surface Coal Mining rules. The amendment is intended to revise 310 IAC 12–5–54.1 and the timing limitations of backfilling and grading for surface coal mining and reclamation operations under IC 13–4.1.

DATES: Written comments must be received by 4:00 p.m., E.S.T. March 20, 1995. If requested, a public hearing on the proposed amendment will be held on March 14, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on March 6, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the first address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendment

By letter dated January 31, 1995 (Administrative Record No. IND–1420), the Indiana Department of Natural Resources (IDNR) submitted to OSM a State program amendment package consisting of revisions to the Indiana program rules. The amendment revises language at 310 IAC 12–5–54.1 concerning the timing limitations for backfilling and grading of surface coal mining and reclamation operations. The following amendments are being proposed.

1. 310 IAC 12–5–54.1 Backfilling and Grading; Timing Limitations

Subsection (a). The word "commission" is being deleted and is replaced by the word "director." The word "paragraphs" is being deleted and replaced by "subsection." The words "of this rule" are being deleted.

Subsection (a)(1). The word "and" is being deleted immediately before "eight (180)." The words "an average of" are being deleted immediately preceding "four (4)." The words "(by length)" are being deleted immediately following "four (4) spoil ridges." With these changes, backfilling and grading for dragline type operations which deposit the overburden into spoil ridges must be

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accomplished within 180 days of deposition, provided that no more than four (4) spoil ridges remain at any one time.

Subsection (a)(4). In the second sentence, the word "commission" is deleted and is replaced by the word "director."

Subsection (b). The changes to this subsection all involve nonsubstantive wording changes.

Subsection (c). Nonsubstantive wording changes are being made to the first sentence. The second sentence concerning the required commission approval of variances is being deleted in its entirety. With these changes, the revised subsection provides that "[t]he director may grant variances to the limitations of subsection (a) for good cause."

The proposed program amendment submitted by Indiana is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Indiana program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on March 6, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 10, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–4063 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions of two previously proposed amendments to the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of January 11, 1995 (Administrative Record No. KY–1332), Kentucky resubmitted a proposed program amendment that completed the Kentucky regulation promulgation process under Kentucky Revised Statutes 9KRS) Chapter 13A. The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) 10:010, 16:010, 16:020 and 18:010 relating to bonding, outcrop barrier and contemporaneous reclamation. Also, included in this reopening is the Statement of Consideration for these regulations dated October 14, 1994 (Administrative Record No. KY–1321). The Statement of Consideration is Kentucky's response to comments on its proposed regulations. This proposed program amendment replaces an earlier proposed program amendment submitted on August 2, 1994 (Administrative Record No. KY–1305), and portions of Kentucky's submittal of July 19, 1994 (Administrative Record No. KY–1304), containing 405 KAR 10:010 General Requirements for Performance Bond and Liability Insurance and 405 KAR 16:020 Contemporaneous Reclamation. The changes to 405 KAR 7:015, 7:095, 16:200, 18:200, the Penalty Assessment Manual and Technical Reclamation Memorandum #21 identified in the submittal of July 19, 1994 (Administrative Record No. KY–1304), are not included in this proposed amendment. These changes have not completed the Kentucky regulation promulgation process under KRS Chapter 13A. They will be resubmitted to OSM when that process is completed.

DATES: Written comments must be received by 4:00 p.m., E.S.T., on March 20, 1995. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on March 14, 1995. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on March 6, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: William J. Kovacic at the address listed below.

Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2894

Department for Surface Mining Reclamation and Enforcement, #2/ Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office Telephone (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. General background information on the Kentucky program including the Secretary's findings, the disposition of comments, and conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning Kentucky's program can be found at 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Proposed Amendment

By letter dated July 19, 1994 (Administrative Record No. KY–1304), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. Kentucky submitted the proposed amendment at its own initiative. The provisions of KAR that Kentucky proposed to amend are 405 KAR 7:015—Documents Incorporated by Reference, 405 KAR 7:095—Assessment of Civil Penalties, 405 KAR 10:010—General Requirements for Performance Bond and Liability Insurance, 405 KAR 16:020—Contemporaneous Reclamation, 405 KAR 16:200—Revegetation for Surface Coal Mining, and 405 KAR 18:200 Revegetation for Underground Mining Operations. OSM announced receipt of the proposed amendment in the August 9, 1994, **Federal Register** (59 FR 40503), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on September 6, 1994.

By letter dated August 2, 1994 (Administrative Record No. KY–1305), Kentucky submitted a proposed amendment to its program pursuant to SMCRA. Kentucky submitted the proposed amendment at its own initiative. The provisions of the regulations that Kentucky proposed to amend are 405 KAR 16:010 and 405 KAR 18:010. OSM announced receipt of the proposed amendment in the September 6, 1994, **Federal Register** (59 FR 46013), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 6, 1994.

By letter dated January 11, 1995 (Administrative Record No. KY–1332), Kentucky resubmitted a proposed program amendment that completed the Kentucky regulation promulgation process under KRS Chapter 13A. This resubmission contains proposed modifications to 405 KAR 10:010 General Requirements for Performance Bond and Liability Insurance, 405 KAR 16:010 General Provisions, 405 KAR 16:020 Contemporaneous Reclamation, and 405 KAR 18:010 General Provisions. Also, included in this reopening is the Statement of Consideration for these regulations dated October 14, 1994 (Administrative Record No. KY–1321). The Statement of Consideration is Kentucky's response to comments on its proposed regulations. This proposed program amendment replaces an earlier proposed program amendment submitted on August 2, 1994 (Administrative Record No. KY–1305), and portions of Kentucky's submittal of July 19, 1994 (Administrative Record No. KY–1304), containing 405 KAR 10:010 General Requirements for Performance Bond and Liability Insurance and 405 KAR 16:020 Contemporaneous Reclamation. Specifically, Kentucky proposes the following changes:

405 KAR 10:010—General Requirements for Performance Bond and Liability Insurance

New Section 2(4) resulted from recommendations in the July 1993, report of the joint steering committee on reclamation bonding, a work group consisting of representatives of the Department of Surface Mining Reclamation and Enforcement, OSM, the Kentucky coal industry, public and environmental interests, and the surety industry. Coupled with the amendments

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to 405 KAR 16:020 (see discussion below), this amendment is intended to reduce the chances that a forfeited bond will be inadequate to reclaim the minesite. New Section 2(4) requires that if a permit revision adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit, or alters the boundary of a permit area or increment, the permittee must submit a rider to his performance bond, confirming coverage of the revision.

New Section 5 incorporates by reference the various forms in use pertaining to performance bonds and liability insurance.

405 KAR 16:020—Contemporaneous Reclamation

The amendments to this regulation also resulted from the recommendations in the July 1993, bonding report discussed above. The amendments to Section 2 and new Section 6 require a permittee to post *supplemental assurance* (certificate of deposit, letter of credit, surety guarantee, etc.) in addition to the normal performance bond whenever he obtains approval of alternate distance limits for backfilling and grading or if additional pits are approved. When the backfilling and grading has progressed to the point that the alternate distance limits are no longer needed, the supplemental assurance is then returned to the person that submitted it. This supplemental assurance is not subject to the normal bond release requirements of 405 KAR 10:040. Supplemental assurance is also required if the permittee wishes to open more than one pit on the permit area.

Section 2 permits an approved backfilling and grading plan to include more than one pit per permit area if certain demonstrations are made by the permittee. Sections 2(1) through 2(5) place limits on the number of mining operations per permit area. Section 2(6) requires that if a mountaintop removal operation begins by mining a contour cut around all or part of the mountaintop, the time and distance limits for contour mining shall apply to that cut unless alternate limits are approved.

New Section 6(7) makes the supplemental assurance requirements applicable to all permit applications submitted on or after December 12, 1994. *Existing operations must come into compliance with the supplemental assurance requirements 180 days after December 12, 1994.*

New Section 7 incorporates by reference two new forms used for supplemental assurance. These are the supplemental assurance form itself, SME–42 (SA), and the escrow agreement form SME–64 (SA).

405 KAR 16:010—General Provisions. (Surface Mines)

405 KAR 18:010—General Provisions. (Underground Mines)

The amendments to these two administrative regulations are intended to reduce occurrences of a rapid release to the land surface of a large volume of water impounded in underground mine workings, often called a "blowout." Blowouts have caused considerable damage to property and the environment, and create a hazard to persons in the areas where they occur. Additionally, an underground mine can become a source of acid mine drainage after a blowout.

Blowouts usually result from underground workings that extend too close to the land surface, leaving an unmined barrier of coal that is too weak to withstand the buildup of water pressure against it. New Section 6 of 405 KAR 18:010 requires that adequate coal barriers be left in areas with blowout potential. Except where surface openings are approved in the permit, the underground mine must leave an unmined barrier of coal where the underground workings dip toward and approach the land surface. This requirement will be waived if accumulation of water in the underground workings cannot reasonably be expected to occur, or if adequate measures to prevent an unmined barrier of coal is required, it must be of sufficient width to prevent failure and sudden release of water. The cabinet may determine on a case-by-case basis the width of the barrier that is necessary. The width must not be less than the width given by the formula: W=50+H, where W is the minimum width in feet and H is the maximum hydrostatic head in feet that can build up on the outcrop barrier pillar; unless the cabinet approves a lesser width based upon the applicant's demonstration that a lesser width is adequate.

A blowout can also result from surface mining activities that remove coal from and thereby weaken, a coal barrier left by underground mining. New Section 8 of 405 KAR 16:010 requires that surface mining activities not remove coal from barriers left by underground mining where the underground workings dip toward and approach the land surface, except when approved by the cabinet. The cabinet will approve the removal if it meets all other applicable requirements and at least one of the following conditions:

(1) The removal will not adversely affect the stability of the barrier;

(2) The removal will completely eliminate or significantly reduce existing underground workings;

(3) The removal will eliminate or significantly reduce an existing or potential threat to the health or safety of the public resulting from the underground workings;

(4) The removal will eliminate or significantly reduce existing or potential adverse impacts of the underground working to the quantity or quality of ground water or surface water; or

(5) The barrier is not necessary to protect the health or safety of the public or to protect the quantity of ground water or surface water.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Kentucky program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. on March 6, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Lexington Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that his rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 9, 1995.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–4064 Filed 2–16–95; 8:45 am]

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30 CFR Part 935

[OH–234; Amendment Number 63R]

Ohio Regulatory and AML Programs; Reduction and Reorganization of Engineering Staff

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for a proposed amendment to the Ohio regulatory program and AML program (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977. This amendment is intended to reduce and reorganize the engineering staff of the Ohio programs in response to recent drops in Ohio coal production. Ohio has resubmitted this amendment in response to OSM's deferral of its decision on the engineering portion of Ohio's overall staffing proposal in the previous submissions of this program amendment.

This document sets forth the times and locations that the Ohio programs and the proposed amendments to those programs will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., e.s.t., on March 20, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m., e.s.t., on March 14, 1995. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., e.s.t., on March 6, 1995.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio programs, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 886–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background of the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning

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the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated March 15, 1993 (Administrative Record No. OH–1845), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 63 (PA 63). In that submission, Ohio proposed to reduce the staff of the Ohio programs by abolishing 28 existing positions. Ohio also proposed to reorganize the remaining staff positions to assume the existing job duties. The amendment contained no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

OSM announced receipt of the proposed amendment in the April 8, 1993, **Federal Register** (58 FR 18185, and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 10, 1993.

OSM and Ohio staff met on May 20, 1993, to discuss OSM's preliminary concerns and questions about PA 63. By letter dated June 16, 1993 (Administrative Record No. OH–1890), Ohio submitted additional information in response to those OSM concerns and questions. Through an oversight, OSM did not reopen the public comment period at that time.

Subsequently, by letter dated November 2, 1993 (Administrative Record No. OH–1948), OSM formally provided Ohio with its questions and comments on the March 15 and June 16, 1993, submissions of PA 63. By letter dated December 6, 1993 (Administrative Record No. OH–1971), Ohio provided its responses to OSM's November 2, 1993, questions and comments.

OSM announced receipt of Ohio's December 6, 1993, response in the January 21, 1994, **Federal Register** (59 FR 3325), and, in the same document, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 7, 1994.

During its review of Ohio's December 6, 1993, response, OSM identified two concerns regarding engineering practices and engineering wordload which OSM staff communicated to the State during a meeting held on April 20, 1994 (Administrative Record No. OH–2012). Ohio responded in a letter dated April 21, 1994 (Administrative Record No. OH–2014), with additional information on both issues. OSM announced receipt of this additional information, along with the explanatory information submitted by Ohio on June 16, 1993, and reopened the comment period for PA 63 in the June 9, 1994, **Federal Register** (59 FR 29748). The public comment period closed on June 24, 1994.

In the September 1, 1994, **Federal Register** (59 FR 45206), the Director of OSM partially approved PA 63 but deferred his decision on the engineering portions of the amendment. The Director based this decision on Ohio's April 21, 1994, letter in which Ohio indicated that the reorganization of its engineering staff was still underway. Ohio stated that the changes to its engineering staff proposed by Ohio in the 1993 submissions of PA 63 no longer accurately reflected Ohio's proposed engineering structure. Ohio was still analyzing the workload and functions of its engineering staff. Ohio stated that when it has finalized its proposed engineering staff configuration, Ohio would resubmit that staff configuration to OSM for review and approval.

On November 29, 1994, OSM and Ohio staff met to discuss Ohio's progress with reorganizing its engineering staff (Administrative Record No. OH–2071). OSM and Ohio staff met again on December 15, 1994 (Administrative Record No. OH–2074), at which time Ohio provided several documents describing Ohio's projection of the engineering resources needed to support its regulatory prgram. On December 30, 1994, Ohio provided a similar analysis of the needs of its AML program (Administrative Record No. OH–2089). On January 23, 1995 (Administrative Record No. OH–2084), OSM provided comments to Ohio on these engineering work projections.

By letter dated February 2, 1995 (Administrative Record No. OH–2088), Ohio submitted its revised engineering staff configuration as Program Amendment Number 63 Revised (PA 63R). In this submission, Ohio is proposing to reduce the engineering staff of the Ohio regulatory and AML programs down to 10.4 full-time positions by abolishing 3.6 of the 14 engineering positions which supported those programs prior to PA 63. As with the previous submissions of PA 63, PA 63R contains no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

The five major parts of Ohio's February 2, 1995, submission of PA 63R are described briefly below:

(1) Description and Justification of Engineering Staff Actions

Ohio is proposing to have a total of 3.2 full-time engineering staff positions dedicated to its regulatory program. These 3.2 positions will be made up of varying percentages of the work hours of 8 employees: 25 percent of 1 Central Office Engineer, 50 percent of 2 Field Engineers, 25 percent of 1 Field Engineer, 20 percent of 1 Surveyor, and 50 percent of 3 Engineering Specialists. This staffing level represents a reduction of 0.8 full-time staff positions from the 4.0 regulatory engineering positions that existed prior to PA 63.

Ohio is proposing to have a total of 7.2 full-time engineering staff positions dedicated to its AML program. These 7.2 positions will be made up of varying percentages of the work hours of 11 employees: 100, 70, and 50 percents of 3 Central Office Engineers, respectively; 65 percent of 1 Field Engineer; 45 percent of 2 Field Engineers; 80 percent of 1 Surveyors; 50 percent of 3 Engineering Specialists; and 100 percent of 1 Drafting Technician. This staffing level represents a reduction of 2.8 full-time staff positions from the 10.0 AML engineering positions that existed prior to PA 63.

As justification for these engineering staff changes, Ohio has submitted a narrative explaining its staffing proposal and summarizing the results of an engineering workload analysis conducted by Ohio with OSM assistance. Ohio has also stated its plans to conduct on-going assessment of any additional engineering support needed by its regulatory and ALM programs.

(2) Proposed Table of Organization for Engineering Staff

Ohio has submitted a proposed table of organization dated January 1995 which shows the proposed 10.4 engineering staff positions.

(3) Proposed Position Descripotion for Engineering Specialists

Ohio has submitted a proposed Position Description for the three Engineering Specialist positions which it plans to create to provide technical assistance to its Central Office and Field Engineers. Ohio has provided an explanation of the need for and responsibilities of these positions in the narrative portion of PA 63R.

(4) Personnel Table

Ohio has submitted a table showing how the work percentages of its 10.4 engineering staff positions will be distributed between Ohio's regulatory and AML programs.

(5) Documents Included by Reference

Following the narrative portion of PA 63R, Ohio has listed eight documents which it considers to be attachments to PA 63R and which include the table of organization, position description, and personnel table listed above. Ohio provided the other five documents to OSM on December 15, 1994 (Administrative Record No. OH–2074); Regulatory Workload Assessment, Regulatory Workload: Geographic Distribution–1993, Regulatory Work Logs-1993, Regulatory ARP Logs-1993) and on December 30, 1994 (Administrative Record No. OH-2089; AML Workload Analysis). Ohio is including these Administrative Record documents in PA 63R by reference.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio programs.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T., on March 6, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contracting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

A. Ohio Regulatory Program

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

B. Ohio AML Program

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

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List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 9, 1995.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–4065 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[I.D. 020795A]

Coral and Coral Reefs of the Gulf of Mexico; Public Hearings on Draft Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on Draft Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs in the Gulf of Mexico. Amendment 3 would close the exclusive economic zone off the Florida Panhandle to live rock harvest, establish an annual commercial live rock harvest quota in the Gulf of Mexico, revise trip limits, define an allowable amount of base rock for octocoral, and consider allowing a personal use harvest limit in the Gulf.

DATES: Written comments on Draft Amendment 3 will be accepted until March 8, 1995. The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Wednesday, March 1, 1995, in Tampa, FL

2. Thursday, March 2, 1995, in Destin, FL

ADDRESSES: Comments should be sent to, and copies of the Draft amendment are available from Mr. Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; FAX: 813–225–7015.

The hearings will be held at the following locations:

1. Tampa, FL—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609

2. Destin, FL—Holiday Inn, 1020 Highway 98 East, Destin, FL 32540

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, 813–228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by February 22, 1995.

Dated: February 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4035 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 33

Friday, February 17, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 10, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC., 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

Cotton Classing, Testing, and Standards

CN–246, CN–247, CN–248, CN–357

Individuals or households; Businesses or other for-profit; 1299 responses; 115 hours.

Elvis W. Morris, (901) 766–2921.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–4040 Filed 2–16–95; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Proposed Establishment of the Ski Fee System Advisory Committee

AGENCY: Department of Agriculture.

ACTION: Notice; proposed establishment of Advisory Committee.

SUMMARY: This notice announces the proposed establishment of a Federal advisory committee by the Secretary of Agriculture in accordance with the provisions of the Federal Advisory Committee Act. The purpose of the committee is to advise the Secretary on developing a new ski area fee system to be administered by the Forest Service on National Forest System lands.

EFFECTIVE DATE: This decision is effective February 17, 1995.

FOR FURTHER INFORMATION CONTACT: Questions about this committee should be addressed to Lyle Laverty, Director, Recreation, Heritage, and Wilderness Resources Staff, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090, (202) 205–1706.

SUPPLEMENTARY INFORMATION: The Forest Service is responsible for developing and administering a permit fee system based on fair market value for the use of National Forest System lands by ski areas, and is developing a revised ski fee system to more closely reflect fair market value. The Secretary of Agriculture (Secretary) proposed to establish the Ski Fee System Advisory Committee (Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. app.), for the purpose of advising the Secretary during the development of the new ski fee system. This advice will include: consideration of diverse interests in the development of a new ski fee system; the methodologies selected and employed by the Forest Service in developing a new ski fee system based on fair market value; implementation options the agency might consider; and other matters relating to the new ski area fee system as deemed necessary by the Secretary.

The Secretary shall appoint the members of the Committee. Equal opportunity practices in line with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations on the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. To achieve a balance of views, members shall represent the ski industry, ski area users, nationally or regionally recognized environmental or resource conservation groups, and employees of State and Federal agencies with jurisdiction over matters related to skiing, public land management, recreational access to public lands, fish and wildlife conservation, or environmental protection. Membership shall include individuals who have expertise through their education or practical experience in ski area permit administration, recreation business management, economic sciences, natural resources management, or similar disciplines.

The Secretary has determined that the Committee is necessary and in the public interest.

Dated: February 10, 1995.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 95–4042 Filed 2–16–95; 8:45 am]

BILLING CODE 3410–11–M

Limited Global Cotton Import Quota Announcement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A limited global import quota for upland cotton equal to 193,632,858 kilograms (426,887,727 pounds) is established in accordance with section 103B(n) of the Agricultural Act of 1949, as amended (1949 Act). This quota is covered under Presidential Proclamation 6301 of June 7, 1991, and is referenced as the Secretary of Agriculture's Limited Global Cotton Import Quota Announcement, chapter 99, subchapter III, subheading 9903.52.00 of the Harmonized Tariff Schedule (HTS).

DATES: The quota is established for the 90-day period beginning on January 6 and ending on April 6, 1995.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Consolidated Farm Service Agency, United States Department of Agriculture, Room 3756–

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S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–8841.

SUPPLEMENTARY INFORMATION: The 1949 Act requires that a limited global import quota for upland cotton be determined and announced immediately whenever the average price of the base quality of upland cotton in the designated spot markets for a month exceeds 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months. The limited global import quota means a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The December 1994 spot market average for base quality cotton was 81.92 cents per pound, which is 136 percent of the 60.06 cents-per-pound average of the previous 36-month period from December 1991 through November 1994.

The 1949 Act requires that if a quota has been established under the authority of section 103(B)(n) during the preceding 12 months, the quantity of the quota shall be the smaller of 21 days of domestic mill consumption at the seasonally-adjusted average rate of the most recent 3 months for which data are available (21-day supply) or the quantity required to increase supply to 130 percent of demand. Since the 21-day supply is smaller than the amount needed to increase supply to 130 percent of demand, the quota is equal to 21 days of domestic mill consumption of upland cotton at the seasonally-adjusted average rate for the period September through November 1994. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations.

Authority: 7 U.S.C. 1444–2 (n) and U.S. Note 6(b), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on February 10, 1995.

Richard E. Reminger,

Acting Secretary.

[FR Doc. 95–4041 Filed 2–16–95; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Notice of the Preparation of the Southern Appalachian Assessment, and the Beginning of the Forest Plan Revision Efforts for the National Forests in Alabama, Chattahoochee-Oconee, Cherokee, and Sumter National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to announce the U.S. Forest Service's participation in the preparation of the Southern Appalachian Assessment (SAA). This Assessment is being prepared by the U.S. Forest Service (the Southern Region of the National Forest System and the Southeastern Forest Experiment Station) in cooperation with the other Federal agencies that are members of SAMAB (Southern Appalachian Man and the Biosphere Cooperative). It will include national forest lands of the George Washington, Jefferson, Nantahala-Pisgah, Cherokee, and Chattahoochee National Forests; and parts of the Sumter and Talladega National Forests. Also involved will be National Park Service lands in the Great Smoky Mountains National Park, Shenandoah National Park, and the Blue Ridge Parkway.

This Notice also announces the beginning of the efforts to revise the Land and Resource Management Plans (Forest Plans) for the National Forests in Alabama, the Chattahoochee-Oconee, the Cherokee, and the Sumter National Forests. This is not the "Notice of Intent" (NOI) for the Environmental Impact Statements that will accompany the Revised Forest Plans. Those NOIs will be issued at a later date.

The Southern Appalachian Assessment will support and facilitate ecosystem management decisions to be made in Forest Plan revisions. As the National Forests in the Southern Appalachians are conducting their local efforts to describe their "Analysis of the Management Situation" (AMS), they will also be providing information for the larger scale Southern Appalachian Assessment.

The Assessment will be used to help determine each National Forests' "Need for Change" section of their AMS. This information will then be used to publish the Notices of Intent to prepare the Environmental Impact Statements, which will begin the NEPA (National Environmental Policy Act) processes associated with each Forest Plan revision.

Public involvement is critical throughout these processes and it will be requested and accepted continually throughout these efforts. Formal public involvement with the Forest Plan revision efforts will also be conducted through "Scoping", following the issuance of the National Forests NOIs.

DATES: The Southern Appalachian Assessment is scheduled to be completed by January 1996.

The National Forests in Alabama, the Chattahoochee-Oconee National Forests, the Cherokee National Forest, and the Sumter National Forest are scheduled to complete the drafts of their Analysis of the Management Situation between October 1995 and January 1996. During this same time period, these Forests are scheduled to issue their Notices of Intent to Prepare an Environmental Impact Statement (NOI) for their Revised Land and Resource Management Plans. A Revised NOI for the Jefferson National Forest will also be issued during this time period.

ADDRESSES: Requests for information, and comments concerning this notice can be sent to:

Director, Planning and Budget, USDA–Forest Service, 1720 Peachtree Rd. NW, Atlanta, Georgia 30367–9102.
Co–Team Leader, Southern Appalachian Assessment, USDA–Forest Service, 1720 Peachtree Rd. NW, Atlanta, Georgia 30367–9102.
Forest Supervisor, National Forests in Alabama, 2946 Chestnut, Montgomery, Alabama 36107–3010.
Forest Supervisor, Chattahoochee-Oconee NFs, 508 Oak Street, NW, Gainesville, Georgia 30501.
Forest Supervisor, Cherokee NF, 2800 N. Oconee St. NE, P.O. Box 2010, Cleveland, Tennessee 37320–2010.
Forest Supervisor, Francis Marion-Sumter NFs, 4931 Broad River, Columbia, South Carolina 29210–4021.
Forest Supervisor, George Washington NF, P.O. Box 233, Harrison Plaza, Harrisonburg, Virginia 22801.
Forest Supervisor, Jefferson NF, 5162 Valley Pointe Parkway, Roanoke, Virginia 24019–3050.
Forest Supervisor, National Forests in North Carolina, 100 Post and Otis Streets, P.O. Box 2750, Asheville, North Carolina 28802.

FOR FURTHER INFORMATION CONTACT: For more information concerning this notice contact: Gary Pierson, Director of Planning and Budget, Southern Region.

For more information on the Southern Appalachian Assessment contact:
Forrest Carpenter, Co-Team Leader, Southern Region.

For more information from the individual National Forests contact:
Rick Morgan, Planning Team Leader, National Forests in Alabama
Caren Briscoe, Planning Staff Officer, Chattahoochee-Oconee NF
Red Anderson, Planning Team Leader, Cherokee NF
Dave Plunkett, NEPA Coordinator, George Washington NF
Nacy Ross, Planning Team Leader, Jefferson NF
Larry Hayden, Planning Team Leader, Nantahala-Pisgah NF
Richard Shelfer, Planning Team Leader, Sumter NF

SUPPLEMENTARY INFORMATION:

The Southern Region of the National Forest System and the Southeastern Forest Experiment Station, in cooperation with the other Federal agencies that are members of the Southern Appalachian Man and the Biosphere Cooperative (SAMAB, i.e., the Environmental Protection Agency, the Forest Service, the Fish and Wildlife Service, the National Park Service, the Tennessee Valley Authority, the Geological Survey, the Department of Energy Oak Ridge National Laboratory, the Economic Development Administration, and the National Biological Survey) have begun conducting a Southern Appalachian Assessment (SAA). The Assessment will include the national forest lands of the George Washington, Jefferson, Nantahala-Pisgah, Cherokee, and Chattahoochee National Forests, and parts of the Sumter and Talladega National Forests. The Assessment will also include National Park Service lands in the Great Smoky Mountains National Park, Shenandoah National Park, and the Blue Ridge Parkway.

The Assessment will facilitate an interagency ecological approach to management in the Southern Appalachian area by collecting and analyzing broad-scale biological, physical, social and economic data to serve as a foundation for more local natural resource management decisions. The Assessment will be organized around four "themes"—(1) Terrestrial (which includes the Health of Forest Ecosystems, and Plant and Animal Resources); (2) Aquatic Resources; (3) Air Quality and (4) the Human Dimension of Ecosystems (which includes Communities and Human Influences; Roadless Areas and Wilderness; Recreation, Wildlife and Fish Supply and Demand; and the Timber Economy of the Southern Appalachians).

Public comment on the SAA process began with a series of open town hall meetings held in Asheville, NC; Gainesville, GA; and Roanoke, VA in August 1994. In addition, interested members of the public were asked for further written comments to be received by September 15. As the Assessment progresses, continued public involvement will be facilitated through additional meetings and newsletters.

2. Beginning of the Forest Plan Revision Efforts for the National Forests in Alabama, the Chattahoochee-Oconee, the Cherokee, and the Sumter National Forests

This Notice announces that the National Forests in Alabama, the Chattahoochee-Oconee National Forests, the Cherokee National Forest, and the Sumter National Forest either have already started or are beginning efforts to revise their Land and Resource Management Plans (LRMP). These Forests are each in the process of preparing their Analysis of the Management Situation (AMS), one of the first steps in the revision process. This step includes updating resource inventories, defining the current situation, estimating supply capabilities and resource demands, and determining the "Need for Change" (36 CFR 291.12(e)(5)).

3. Public Involvement in Developing the "Need for Change" in an AMS

Determining the concerns and expectations of National Forest constituents and getting public input on how well current forest plans are working, or not working, are critical elements of describing the "need to change" a forest plan. An integral part of determining the need for change is public involvement. Each of the National Forests described above either have already, or will soon contact their interested public to solicit their participation in this step of the forest plan revision process.

4. Relationship Between the AMS and a Notice of Intent To Prepare an Environmental Impact Statement

In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" (NOI) was issued at the beginning of the forest planning process, including before the development of the AMS.

This time, we are first defining the current situation and an initial "need for change" in a Draft AMS, and then issuing a NOI prior to developing alternatives. This will allow us to incorporate a more definable "Proposed Action" and "Purpose and Need" into our NOIs, which will begin the formal NEPA process of preparing the Environmental Impact Statements (EIS) that will accompany the Revised Land and Resource Management Plans.

5. Relationship Between the Southern Appalachian Assessment and the Process for Revising the Southern Appalachian National Forests' LRMPs

The public has expressed concern that the Southern Appalachian Assessment will "delay" revising National Forest Land and Resource Management Plans in the Southern Appalachians. However, the SAA is being conducted concurrently, and in support of, the forest plan revisions.

Many of the information needs for the Forest AMSs and for the SAA are the same. The Assessment will support the revision of the LRMPs by determining how the lands, resources, people and management of the National Forests interrelate within the larger context of the Southern Appalachian area. The SAA, however, will not be a "decision document" and it will not involve the NEPA process. As broad-scale issues are identified and addressed at the sub-regional level in the Assessment, the individual National Forest's role in resolving those broad-scale issues will become a part of the "need for change" at the Forest level.

6. Issuing the Notice of Intent to Prepare an EIS

The National Forests identified above will issue their NOIs when enough information from the SAA is available for them to develop the "Need for Change" section of their Draft AMS. The Draft AMSs are scheduled to be completed between October 1995 and January 1996. Their NOIs are also scheduled to be issued during this same time period.

Each NOI will include a description of a preliminary "Proposed Action" and of some preliminary alternatives. Scoping to receive public comments on the preliminary proposed action and preliminary alternatives will begin following the publication of the NOIs. These public comments will be used to further refine the "Proposed Action" and the preliminary alternatives, to possibly identify additional alternatives, and to finalize the AMS and the "Need for Change".

7. Status of the Jefferson, George Washington, and Nantahala-Pisgah National Forests

The Jefferson National Forest, which is also currently working on its Revised LRMP, previously issued a Notice of Intent to Prepare an Environmental Impact Statement for its Revised LRMP on June 28, 1993. A Revised NOI for the Forest will be issued between October 1995 and January 1996, to coincide with the NOIs issued for the other National Forests in the Southern Appalachians.

The George Washington National Forest completed its *Final Revised Forest Plan* on January 21, 1993, and the Nantahala-Pisgah National Forests completed a significant amendment, *Amendment 5 to their Land and*

Resource Management Plan on March 18, 1994. These two forests are not currently involved in the revision process. However, if information from the Southern Appalachian Assessment identifies conditions requiring additions or changes to these plans to ensure consistency between the National Forests in the Southern Appalachians, then amendments to these plans could be considered.

8. The Responsible Official

The Responsible Official for the Revised Land and Resource Management Plans for the National Forests in the Southern Appalachians is Robert C. Joslin, Regional Forester, Southern Region, 1720 Peachtree Road NW, Atlanta, Georgia 30367.

Dated: February 13, 1995.

R. Gary Pierson,

Acting Deputy Regional Forester.

[FR Doc. 95–4000 Filed 2–16–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Environmental Technologies Trade Advisory Committee (ETTAC) Meeting

ACTION: Notice of Open Meeting.

SUMMARY: Pending availability of the Environmental Technologies Trade Advisory Committee (ETTAC) members, ETTAC will hold its next meeting to discuss future projects and current issues which influence the export of U.S. environmental technologies.

DATES: Monday, March 13, 1995, 9:00 am–4:00 pm.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Anne Alonzo, Office of Environmental Technologies Exports, Room 4324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665, TDD 1–800–833–8723.

Dated: February 13, 1995

Carlos Montesinos

Acting Deputy Assistant Secretary for Environmental Technologies Exports

[FR Doc. 95–3997 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–DA–F

National Oceanic and Atmospheric Administration

[I.D. 021095B]

Atlantic Striped Bass Fishery; 1993 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Summary and notice of availability of survey results.

SUMMARY: NMFS announces the availability and summarizes the results of a survey of the Atlantic coast striped bass fisheries for 1993. The Atlantic Striped Bass Conservation Act (the Act), requires NMFS to provide information on the status of the fisheries.

ADDRESSES: Copies of the survey results are available from William T. Hogarth, NOAA/NMFS/FCM3, 1315 East-West Highway, Room 14837 Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William T. Hogarth, (301) 713–2347.

SUPPLEMENTARY INFORMATION:

The Act requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. The following is a summary of the survey for 1993. Management measures restricting the harvest of striped bass by commercial and recreational fisheries remained in place during 1993, as the stocks continue to rebuild.

The 1993 commercial harvest of striped bass was 1,695,000 lb (769.5 mt), an increase of 0.2 percent above the landings of 1,692,000 lb in 1992. The Chesapeake Bay area (Maryland, Virginia, and the Potomac River) accounted for 72 percent of the 1993 commercial landings. The recreational catch in 1993 was an estimated 5.6 million striped bass, of which 561,000 were harvested; the remaining 5.1 million, were released alive. The estimated weight of the recreational harvest was 6.7 million lb (2,986.1 mt), about four times that of the commercial harvest.

Juvenile production in 1993 was above the long-term averages for Maryland, North Carolina, Virginia, and Delaware. Information from sampling the population of striped bass shows an increased relative abundance from recent year classes. Copies of the survey are available upon request (see **ADDRESSES**).

Dated: February 13, 1995.

Richard H. Schaefer,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4037 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–22–F

Monterey Bay National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), Nation Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council open meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: Friday, February 24, 1995, from 8:30 until 5:00. The meeting will be held at the Pacific Grove Natural History Museum, 165 Forest Avenue (intersection of Forest Avenue and Central Avenue), Pacific Grove, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including a report from Fort Ord officials concerning the former marine impact areas, a discussion of Moss Landing Harbor contaminant issues, a discussion of Piedras Blancas elephant seal harassment, a Sanctuary update, and reports from working groups.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4201 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: February 13, 1995.

W. Stanley Wilson,

Assistant Administrator, for Ocean Services and Coastal Zone Management.

[FR Doc. 95–4016 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 020995A]

Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold a public meeting on March 6–10, 1995, at the Holiday Inn and Conference Center, 275 South Airport Boulevard, South San Francisco, CA 94080; telephone: (415) 873–3550. The Council meeting will begin on March 7, 1995, at 8:00 a.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The open session begins at 8:30 a.m. The Council will reconvene at 8:00 a.m. each day, March 8 through March 10, and may continue sessions each day into the evening hours, if necessary, to complete business.

The following items are on the Council agenda:

A. Call to Order

1. Opening remarks, introductions, roll call;
2. Proposed agenda; and
3. Approve minutes of October 1994 meeting.

B. Salmon Management

1. Review of 1994 fisheries and summary of 1995 stock abundance estimates;
2. Endangered Species Act considerations for 1995;
3. Preliminary definition of 1995 management options;
4. Adoption of 1995 management options for Salmon Technical Team analysis
5. Status report on escapement estimation methodology for Oregon coastal natural coho salmon;
6. Review of overfishing definition;
7. Adopt 1995 management options for public review; and
8. Schedule of hearings and appointment of hearing officers

C. Habitat Issues

1. Report of the Habitat Steering Group.

D. Administrative Matters and Other Matters

1. Report of the Budget Committee;
2. Report of the Legislative Committee on Magnuson Fishery Conservation and Management Act (Magnuson Act) amendments;
3. Marine Mammal Protection Act implementation plans;
4. National review of overfishing definitions;
5. Appointments;
6. Revisions to Council rules and procedures; and
7. April 1995 agenda.

E. Coastal Pelagic Species Management

1. Final action on management approach; and
2. Review of overfishing definition.

F. Pacific Halibut Management

1. Status of implementation of catch sharing plan;
2. Results of the International Pacific Halibut Commission annual meeting;
3. Proposed halibut/chinook ratio for the 1995 troll fishery; and
4. Update on estimate of bycatch.

G. Groundfish Management

1. Status of Federal regulations;
2. Consistency of state setnet closure in the exclusive economic zone off Southern California with Groundfish Plan;
3. Progress report on the Oregon Trawl Observer Program; and
4. Groundfish analytical work load and Groundfish Management Team Work Plan.

Other Meetings

The Scientific and Statistical Committee will meet on March 6, at 1:00 p.m., to address scientific issues on the Council agenda.

The Salmon Technical Team will meet, as necessary (irregular hours), throughout the week, March 6–10, to prepare impact analyses of the proposed salmon management measures for 1995.

The Salmon Advisory Subpanel will meet on March 6, at 9:00 a.m., and at 8:00 a.m. each day thereafter through March 10, to address salmon management items on the Council agenda.

The Habitat Steering Group will meet on March 6, at 10:00 a.m., to consider activities affecting the habitat of fish stocks managed by the Council.

The Legislative Committee will meet on March 6, at 1:00 p.m., to discuss reauthorization of the Magnuson Act and other legislative issues impacting Council activities.

The Budget Committee will meet on March 6, at 3:00 p.m., to review the status of the fiscal year 1995 Council budget and other related issues.

The Enforcement Consultants will meet on March 7, at 7:00 p.m., to address enforcement issues related to Council agenda items.

Detailed agendas for the above advisory meetings will be available after February 24, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352, at least 5 days prior to the meeting date.

Dated: February 13, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4036 Filed 2–16–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 20, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 30 and December 30, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 49913 and 67703) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a

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substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Tray, Repositional Note Pad
7520–01–207–4351
7520–01–166–0878

Services

Grounds Maintenance, Military Family Housing, Kelly Air Force Base, Texas
Janitorial/Custodial, Foley Federal Building and U.S. Courthouse, 300 Las Vegas Boulevard, Las Vegas, Nevada.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–4053 Filed 2–16–95; 8:45 am]

BILLING CODE 6820–33–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED PROCUREMENT LIST

Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 20, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Food Service Attendant
VA Medical Center
West Palm Beach, Florida
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida

Operation of Publication Distribution Office
Eglin Air Force Base, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida

Vehicle Maintenance
McClellan Air Force Base, California
NPA: PRIDE Industries, Roseville, California

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Gown, Operating, Surgical
6532–01–058–2518
6532–01–058–2519
6532–01–058–2520
6532–01–058–2521
6532–01–058–2522
6532–01–058–2523
6532–01–058–2524
6532–01–058–2525

Service

Janitorial/Grounds Maintenance, U.S. Coast Guard Loran Station, Malone, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–4054 Filed 2–16–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 20, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 15, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 36169) of proposed addition to the Procurement List.

Comments were received from one of the current contractors, which indicated that addition of these transparency films to the Procurement List would have a severe impact on the company due to lost sales and loss of the ability to purchase raw materials in large enough quantities to get more favorable prices from its suppliers. The percentage of the company's sales which it would lose is not large enough, in the Committee's judgement, to constitute severe adverse impact on the contractor. The contractor did not indicate how great an impact it would sustain by purchasing raw materials in lesser quantities, except to speculate that it could be placed at a great competitive disadvantage in both the commercial and Government markets. Accordingly, the Committee has concluded that even if this impact is added to the sales loss, the contractor will not suffer severe adverse impact as a result of addition of these transparency films to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Transparency Film, Xerographic
7530–00–NIB–0099 (Clear)
7530–00–NIB–0100 (Color)
7530–00–NIB–0101 (Clear w/strip).

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–4052 Filed 2–16–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: March 7, 1995.

Time of Meeting: 1000–1600.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's Acquisition Reform Issue Group will meet to discuss the analysis of "Industry Data Concerning Their Management and Oversight Costs." This meeting will be closed to the public in accordance with Section 552b(c) of Title 5 U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–4216 Filed 2–16–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: March 7 and 8, 1995.

Time of Meeting:
0900–1600, March 7, 1995.
0900–1200, March 8, 1995.

Place: Aberdeen Proving Grounds, MD.

Agenda: The Army Science Board (ASB) Analysis, Test and Evaluation Issue Group will hold a meeting on "The Impact of Personnel Reductions on Mission Accomplishment Within the Army Analytical Community." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–4218 Filed 2–16–95; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement/Environmental Impact Report for Treated Effluent Disposal from Marine Corps Base Camp Pendleton to the City of Oceanside, California

Pursuant to the National Environmental Policy Act as implemented by Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and pursuant to the California Environmental Quality Act (CA Public Resources Code Sec et. seq. 21000) the U.S. Marine Corps and City of Oceanside intend to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to evaluate the environmental effects of the disposal of treated effluent from five existing sewage treatment plants at Marine Corps Base (MCB) Camp Pendleton to the City of Oceanside, California.

The proposed action would construct two new sewage pipelines to connect five existing sewage treatment plants in the Santa Margarita Basin in MCB Camp Pendleton to existing sewage outfalls in the City of Oceanside. One proposed pipeline would transport treated effluent from three existing sewage treatment plants at MCB Camp Pendleton to the existing outfall serving the La Salina sewage treatment plant in the City of Oceanside. A second proposed pipeline would transport treated effluent from two existing sewage treatment plants at MCB Camp Pendleton to the existing outfall serving the San Luis Rey sewage treatment plant in the City of Oceanside. All effluent from these pipelines at MCB Camp Pendleton would then be transported for ocean disposal via existing City of Oceanside land and ocean outfalls. No

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additional treatment of MCB Camp Pendleton effluent would be provided by City of Oceanside sewage treatment plants.

Alternatives currently under consideration that will be addressed in the EIS/EIR include construction of a new tertiary sewage treatment plant at MCB Camp Pendleton, upgrade and consolidation of existing sewage treatment plants, injection wells, percolation ponds, and no action. Alternative pipeline alignments will also be evaluated.

Major environmental issues that will be addressed in the EIS/EIR include land use, hydrology, water quality, air quality, biological resources, cultural resources, noise, traffic/circulation/access, public services and utilities, human health and safety, and hazardous materials and waste management.

The Department of the Navy published a Notice Of Intent in the **Federal Register** on September 26, 1991, initiating a scoping process for preparation of an EIS/EIR for a sewage effluent compliance project at MCB Camp Pendleton for the San Onofre and Santa Margarita Basins. A scoping meeting was held in the City of Oceanside on October 17, 1991, and an EIS/EIR was begun. Since that time, the proposed action has been revised as additional studies have been undertaken, and additional alternatives have been identified that needed to be evaluated. While the EIS/EIR for the San Onofre basin is continuing, the EIS/EIR for the Santa Margarita basin is beginning. Therefore, the scoping process is being reopened until March 6, 1995, in order to collect additional comments on the scope of issues to be addressed in the EIS/EIR for the Santa Margarita basin proposed action. However, no additional scoping meetings will be held.

Agencies and the public are invited and encouraged to provide written comment on scoping issues. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS/EIR should address. Written statements and or questions regarding the scoping process should be mailed no later than March 6, 1995 to Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132-5190, (Attn: Ms. Sheila Donovan, Code 2032), telephone (619) 532-3624.

Dated: February 13, 1995.

Robert Watkins,

Colonel, USMC, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department.

[FR Doc. 95-3983 Filed 2-16-95; 8:45 am]

BILLING CODE 3810-AE-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95-30-000, et al.]

Austin Cogeneration Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Austin Cogeneration Partners, L.P.

[Docket No. EG95-30-000]

On February 6, 1995, Austin Cogeneration Partners, L.P. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant is a Delaware limited partnership formed to acquire an ownership interest in a 255 MW natural gas-fired cogeneration facility to be located in the City of Austin, Texas, and/or operate such facility and engage in project development activities with respect thereto.

Comment date: March 6, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Louis Dreyfus Electric Power, Inc.

[Docket No. ER92-850-010]

Take notice that on January 26, 1995, Louis Dreyfus Electric Power, Inc. (Louis Dreyfus) filed information required by the Commission's December 2, 1992 letter order in Docket No. ER92-850-000. Copies of Louis Dreyfus' informational filing are on file with the Commission and are available for public inspection.

3. North American Energy Conservation, Inc.

[Docket No. ER94-152-004]

Take notice that on January 30, 1995, North American Energy Conservation, Inc. (North American) filed information required by the Commission's February 10, 1994 letter order in Docket No. ER94-152-000. Copies of North American's informational filing are on file with the Commission and are available for public inspection.

4. Howell Power Systems, Inc.

[Docket No. ER94-178-004]

Take notice that on January 30, 1995, Howell Power Systems, Inc. (Howell Power) filed information required by the Commission's January 14, 1994 letter order in Docket No. ER94-178-000. Copies of Howell Power's informational filing are on file with the Commission and are available for public inspection.

5. LG&E Power Marketing, Inc.

[Docket No. ER94-1188-004]

Take notice that on January 30, 1995, LG&E Power Marketing, Inc. (LG&E) filed information required by the Commission's August 19, 1994 order in Docket No. ER94-1188-000. Copies of LG&E's informational filing are on file with the Commission and are available for public inspection.

6. Valero Power Services Co.

[Docket No. ER94-1394-002]

Take notice that on January 30, 1995, Valero Power Services (Valero Power) filed information required by the Commission's August 24, 1994 letter order in Docket No. ER94-1394-000. Copies of Valero Power's informational filing are on file with the Commission and are available for public inspection.

7. Coastal Electric Services Co.

[Docket No. ER94-1450-001]

Take notice that on January 30, 1995, Coastal Electric Services Company (Coastal Services) filed information required by the Commission's September 29, 1994 letter order in Docket No. ER94-1450-000. Copies of Coastal Services' informational filing are on file with the Commission and are available for public inspection.

8. Calpine Power Marketing

[Docket No. ER94-1545-000]

Take notice that on February 8, 1995, Calpine Power Marketing, Inc. (CPMI), filed an amendment to its petition to the Commission for acceptance of CPMI Revised Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. CPMI is a direct subsidiary of Calpine Corporation which, through other subsidiaries, owns and operates non-utility generating facilities and related business ventures in the United States. Calpine Corporation is indirectly and partially owned by CS Holding of Zurich, Switzerland, which, through other subsidiaries, owns utility generating facilities in Europe, financial service providers and other entities.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Gulfstream Energy, LLC

[Docket No. ER94-1597-001]

Take notice that on January 30, 1995, Gulfstream Energy, LLC (Gulfstream) filed information required by the Commission's November 21, 1994 letter order in Docket No. ER94-1597-000. Copies of Gulfstream's informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-3980 Filed 2-16-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER93-327-002, et al.]

Florida Power & Light Co., et al.; Electric Rate and Corporate Regulation Filings

February 9, 1995.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Co.

[Docket No. ER93-327-002]

Take notice that on February 1, 1995, Florida Power & Light Company (F&L), tendered for filing its compliance refund report in the above-referenced docket.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Co.

[Docket No. ER95-299-000]

Take notice that on February 1, 1995, Wisconsin Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Wickland Power Services

[Docket No. ER95-300-000]

Take notice that on February 6, 1995, Wickland Power Services tendered for filing an amendment in the above-referenced docket.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Power Service Corp. on behalf of Monongahela Power Co., and the Potomac Edison Co.

[Docket No. ER95-466-000]

Take notice that on January 20, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (The APS Companies), filed Standard Transmission Service Agreements to add AES Power, Inc. PECO Energy and Electric Clearinghouse, Inc. to The APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date when customers may take service under the proposed rate schedule is January 2, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, and the West Virginia Public Service Commission.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Co.

[Docket No. ER95-494-000]

Take notice that on January 30, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with InterCoast Power Marketing Company under MGE's Power Sales Tariff. MGE requests an effective date of February 1, 1995.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Co.

[Docket No. ER95-529-000]

Take notice that on February 1, 1995, Kentucky Utilities Company (KU), tendered for filing a series of rate schedule amendments to all of the agreements under which KU makes coordination sales in order to assure recovery of the incremental cost of emission allowances associated with coordination sales.

Comment date: February 23, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95-3979 Filed 2-16-95; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2493-006-WA]

Puget Sound Power & Light Co; Notice of Intent to Hold a Public Meeting in Snoqualmie, Washington, and a Public Meeting in Kirkland, Washington, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for the Snoqualmie Falls Hydroelectric Project

February 13, 1995.

On November 15, 1994, the Commission staff mailed the Snoqualmie Falls DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This documents evaluates the environmental consequences of operating the applicant's existing 42-megawatt (MW) hydroelectric project, located on the Snoqualmie River, approximately 25 miles east of Seattle in western Washington.

The applicant proposes extensive structural modifications of the existing project facilities and construction of additional project facilities needed to expand the project from 42 MW to 72

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MW; hydraulic capacity would increase from 2,500 to 3,620 cubic feet per second.

The subject DEIS also evaluates the environmental effects of: additional flow options and supplemental measures with the applicant's proposal; a minor upgrade; decommissioning the project; and the no action alternative.

The public meetings on the Snoqualmie Falls Project will be recorded by an official stenographer. The first meeting will be held from 6:30 P.M. to 11 P.M. on Wednesday, March 1, 1995, at the Mount Si High School in Snoqualmie, Washington. The second meeting will be held from 6:30 P.M. to 11 P.M. on Thursday, March 2, 1995, at Lake Washington Technical College, West Building 4th floor auditorium, 132nd Avenue N.E., Kirkland, Washington.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the Snoqualmie Falls DEIS for the Commission's public record.

For further information, please contact Kathleen Sherman, at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3978 Filed 2–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–27–000]

CGE Fulton, L.L.C.; Notice of Filing

February 14, 1995.

Take notice that on February 13, 1995, CGE Fulton, L.L.C. ("CGE Fulton"), filed a petition for a declaratory order and requested expedited treatment of the petition. CGE Fulton states that it is developing a waste-fired qualifying small power production facility in the City of Fulton, Illinois ("Project"). CGE Fulton will sell electricity from the Project at tariff rates prescribed by Section 8–403.1 of the Illinois Public Utilities Act and regulations of the Illinois Commerce Commission. CGE Fulton seeks a declaratory order that the Illinois statute is not preempted by PURPA, and thus, that the Project is not affected by the Commission's decision in *Connecticut Light & Power Co.*, 70 FERC ¶ 61,012 (January 11, 1995).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such motions or protests should be filed on or before February 28, 1995. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95– 4103 Filed 2–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–200–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

February 13, 1995.

Take notice that on February 8, 1995, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP95–200–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act)18 CFR 157.205, 157.211) for authorization to install a new tap in Jones County, Mississippi, for service to an existing local distribution company customer, Entex, Inc. (Entex), under Koch's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection

Koch proposes to construct and operate interconnecting tap facilities for service to Entex, which will deliver gas to one agricultural customer in Jones County. Koch states that the tap would be used for the deliver of 84 MMBtu equivalent of natural gas on a peak day, transported by Koch under its FTS rate schedule. It is stated that this volume is with Entex's existing certificated entitlement from Koch. The cost of the proposed tap is estimated at $800 and Koch states that it would be reimbursed by Entex for the construction cost. It is stated that Koch's tariff does not prohibit the proposed addition of a delivery tap. It is asserted that Koch as sufficient capacity to make the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, with 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3977 Filed 2–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER95–267–000 and EL95–25–000]

New England Power Co.; Notice of Initiation of Proceeding and Refund Effective Date

February 13, 1995.

Take notice that on February 9, 1995, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL95–25–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL95–25–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4009 Filed 2–16–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. CD–001]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver from the Clothes Dryer Test Procedures to Miele Appliance Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. CD–001) granting a Waiver to Miele Appliance Incorporated (Miele) from the existing Department of Energy (DOE or Department) test procedure for clothes dryers. The Department is granting Miele a Waiver from the Department's test procedures for its condenser clothes dryers, models T1565CA and T1570C, which do not have an outside exhaust. The existing clothes dryer test procedure only applies to clothes dryers that are vented.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set below. In the Decision and Order, Miele has been granted a Waiver for its condenser clothes dryers, models T1565CA and T1570C, which do not have an outside exhaust.

Issued in Washington, DC, February 10, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Miele [Case No. CD–001].

Background

The Energy Conservation Program for Consumer Program Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered consumer products, including clothes dryers. The clothes dryer test procedure, among other things, provides a means of calculating an energy factor, a measure of energy efficiency, which is used to determine if a product is compliant with the minimum energy conservation standards. The Department imposed amended energy conservation standards requiring minimum energy factors for four of the five classes of clothes dryers in a final rule (56 FR 22279) issued May 14, 1991, and which is effective for products manufactured on or after May 14, 1994. Test procedures for clothes dryers appear at 10 CFR Part 430, Subpart D.

The Department amended the prescribed test procedure by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. (45 FR 64108). Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Miele filed a Petition for Waiver and an Application for Interim Waiver on April 5, 1994, which was amended on April 20, 1994, and April 22, 1994, regarding its clothes dryer models T1515A, T1520, T1565CA, and T1570C. Miele's petition submission was primarily based on the reverse tumble design feature which all four models have. However, today's Decision and Order is only applicable to models T1565CA and T1570C, which are condenser dryers. Miele has certified on January 27, 1995, with the Department that its clothes dryer models T1515A and T1520 can be tested using the existing test procedure, and comply with the existing 1994 minimum energy conservation standard. On September 29, 1994, the Department published in the **Federal Register** the Miele petition, and solicited comments, data, and information respecting the petition, and denied the requested Interim Waiver. (59 FR 49658).

Comments were received from Miele and the Association of Home Appliance Manufacturers (AHAM). The Department consulted with the Federal Trade Commission (FTC) concerning the Miele petition. The FTC did not have any objections to the Decision and Order.

Assertions and Determinations

On December 22, 1994, Miele provided comment to the Department that after consultation with AHAM, it had decided to restrict its request to its condenser clothes dryers, models T1565CA and T1570C. Miele indicated that the condenser clothes dryers offer additional utility to the consumer which affects energy consumption. The condenser clothes dryer does not have an outside exhaust and requires more energy to extract the moisture from the drum's exhaust prior to expelling the air back into the surrounding air. This type of product is suited for installation conditions where venting is not practical or cost prohibitive.

Miele stated that the Department's existing test procedure is applicable for vented clothes dryers because the test procedure requires the use of an exhaust restrictor to simulate an installed condition. Miele further stated that since its condenser clothes dryers do not have an exhaust, they cannot be tested in accordance with the Department's test procedure, and the test procedure does not apply to them. Miele added, "Consequently, the DOE energy conservation standard for clothes dryers does not apply to Miele condenser dryers since the DOE standard must be 'determined in accordance with test procedures prescribed under section 6293 of this title.' 42 U.S.C. § 6291(6)."

Miele also proposed that the Department consider adding a class for condenser clothes dryers in the current clothes dryer rulemaking (Docket No. EE-RM–94–403) for minimum energy efficiency standards, which will become effective in the 1999 timeframe, along with an appropriate test procedure.

On December 27, 1994, AHAM provided comment and stated,

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"[AHAM] unanimously supports the position that Miele's condenser clothes dryer provides separate functions and utilities which affect energy use and, therefore, justify creation of a separate class for condenser clothes dryers. A separate clothes dryer standard and modified test procedure applicable to that product class should be promulgated."

The Department agrees with Miele and AHAM that the condenser clothes dryer offers the consumer additional utility, and is justified to consum more energy (lower energy factor) versus non-condenser clothes dryers. Furthermore, the Department believes that the existing clothes dryer test procedure is not applicable to the Miele condenser clothes dryers. This assertion is based on the fact that the existing test procedure requires the use of an exhaust restrictor and does not provide any definition or mention of condenser clothes dryers. The Department agrees with Miele that the current clothes dryer minimum energy conservation standard does not apply to Miele's condenser clothes dryers. Today's Decision and Order exempts Miele from testing its condenser clothes dryer and determining an Energy Factor.

The Department is not publishing an amended test procedure for Miele at this time because there is not any reason to. The existing minimum energy conservation standard for clothes dryers is not applicable to the Miele condenser clothes dryer. Furthermore, the FTC does not have a labeling program for clothes dryers, therefore, Miele is not required to test its condenser clothes dryers.

Presently, the Department is conducting a rulemaking to review the minimum energy conservation standard levels for clothes dryers, clothes washers, and dishwashers, entitled the "Three Cleaning Products Rulemaking" (Docket No. EE-RM-94-403). The Department will consider adding a new product class for condenser clothes dryers in the above mentioned rulemaking. The Department will initiate a clothes dryers test procedure rulemaking to add the capability of testing condenser clothes dryers to the existing test procedure for any potential future use.

Miele and AHAM provided the Department with an agreed upon version of definitions for "condenser clothes dryers" and "electric clothes dryer". The Department will consider these definitions when drafting a revised test procedure.

Miele also voluntarily provided the Department with a statement that it plans on maintaining its condenser clothes dryer energy Factor within 82.5 percent of the existing non-condenser clothes dryer standard. The Department supports this effort, although, this measure will have no bearing on future condenser clothes dryer standards.

Conclusion

(1) The Petition for Waiver filed by Miele (Case CD-001), as modified by Miele's letter of December 22, 1994, is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Miele is not required to test its condenser clothes dryers, models models T1565CA and T1570C. The existing 1994 minimum energy conservation standard for clothes dryers is not applicable to these Miele condenser clothes dryers.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test proccedures and minimum minimum energy conservation standards appropriate to Miele's condenser clothes dryers, model T1565CA and T157OC.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This exemption may be revoked or modified at any time upon a determination that the factual basis underlying the submitted data is incorrect.

Filed in Washington, DC

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95-4049 Filed 2-16-95; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4720-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 16, 1995 Through January 20, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D-AFS-J65225-MT Rating EC2, Crane Mountain Salvage Project, Resource Management, Implementation, Flathead National Forest, Swan Lake Ranger District, Flathead County, MT.

Summary

EPA expressed environmental concerns about the inadequate/identification, delineation and assessment level of wetlands, potential impacts to water quality in Flathead lake; and the inadequacy of the monitoring and evaluation plans.

ERP No. D-NOA-A91061-00 Rating LO, Atlantic Mackerel, Squid and Butterfish Fisheries, Fishery Management Plan, Amendment No. 5, Implementation, Exclusive Economic Zone (EEZ) off the US Atlantic Coast.

Summary

EPA offered suggestions on various aspects to improve the EIS, particularly including more analysis on the possible use of economic forces in limiting catch size.

ERP No. DS-AFS-J65183-UT Rating LO, East Fork Black Forks Multiple Use Management Project, Updated Information, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary

EPA recommends that the Final Supplement include discussion of monitoring data and analyses to support the Forest Service's conclusions regarding water quality impacts.

Final EISs

ERP No. F-MMS-G02004-00 1995 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 152 (April 1995) and 155 (August 1995), Lease Offering, Offshore Marine Environment and coastal counties, AL, MS, LA and TX.

Summary

EPA had no objection to the proposed action.

ERP No. F1-NOA-A90061-00 Deep Seabed Hard Mining Exploration Project, License Issuance for the former Kenecott Mining Site (USA-4) to Ocean Minerals Mining, Pacific Ocean, Central America to HI.

Summary

EPA had no objections to the proposed action. EPA encouraged NOAA to prepare supplemental NEPA documentation when at-sea activities are finally proposed by applicants.

Dated: February 14, 1995.

William D. Dickerson,

Director, Federal Agency Liaison Division, Office of Federal Activities.

[FR Doc. 95-4039 Filed 2-16-95; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4720-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed February 06, 1995 Through February 10, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950043, DRAFT EIS, NPS, FL, Timucuan Ecological and Historic Preserve, General Management Plan and Development Concept Plans, Implementation, Fort Caroline National Memorial Area, Duval County, FL, Due: April 10, 1995, Contact: Suzanne Lewis (904) 221-5568.

EIS No. 950044, DRAFT EIS, FRC, VT, Clyde River Hydroelectric (FERC No. 23306) Project, New License (Relicense) for three Hydroelectric Developments, Construction and Operation, Clyde River within the St. Lawrence River Basin, Orleans County, VT, Due: April 18, 1995, Contact: Kathleen Sherman (202) 219-2834.

EIS No. 950045, FINAL SUPPLEMENT, COE, FL, Palm Beach County Beach Erosion Project, Updated Information, Shore Protection Project, Jupiter/Carlin Segment from Martin Co., Line to Lake Worth Inlet and from South Lake Worth Inlet to Broward General Design Plan, Implementation, Martin and Broward Counties, FL, Due: March 20, 1995, Contact: Michael Dupes (904) 232-1689.

EIS No. 950046, DRAFT EIS, BLM, MT, Sweet Grass Hills Resource Management Plan Amendment, Implementation, West HiLine Resource Management Plan, Toole and Liberty Counties, MT, Due: May 18, 1995, Contact: James Beaver (406) 255-2910.

EIS No. 950047, DRAFT EIS, BPA, WA, OR, WA, Resource Contingency Program, Construction and Operation, Three Proposed Plant Sites, Chelalis Hermiston and Satsop Power Projects, Lewis and Grays Harbor Counties, WA and Washington and Umattilla Counties, OR, Due: April 03, 1995, Contact: Dawn Boorse (503) 230-5678.

Amended Notices

EIS No. 940501, DRAFT EIS, AFS, ID, Stibnite Gold Mine Expansion Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Payette National Forest, Krassel Ranger District, Valley County, ID, Due: February 14, 1995, Contact: Jane Wurster (206) 634-0614. Published FR -12-16-94 Review period extended.

Dated: February 14, 1995.

William D. Dickerson,

Director, Federal Agency Liaison Div., Office of Federal Activities.

[FR Doc. 95-4038 Filed 2-16-95; 8:45 am]

BILLING CODE 6560-50-U

[FRL-5156-1]

Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Environmental Protection Agency is convening an open meeting of the Economic Incentive and Regulatory Innovation Subcommittee of the Clean Air Act Advisory Committee on March 3, 1995. This meeting will concern the development of generic language for a rule on emissions trading. The meeting is open to the public. Seating will be available on a first-come, first-served basis.

DATES: The Subcommittee will meet on March 3, 1995. The meeting will begin at approximately 9 a.m. EST and run until about 1 p.m.

ADDRESSES: The Subcommittee will meet in conference room #3 North located in EPA Headquarters, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Carey Fitzmaurice, US EPA (202) 260-7433 or Scott Mathias, US EPA--OAQPS (919) 541-5310.

Dated: February 9, 1995.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 95-4050 Filed 2-16-95; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. § 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003154-001.

Title: Port of Seattle/Sell Oil Company Preferential Use Agreement.

Parties:

Port of Seattle

Shell Oil Company ("Shell")

Filing Agent: James G. Rice, Senior Property Manager, Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

Synopsis: The proposed amendment authorizes Shell to sell and transfer its rights and obligations to GATX Terminal Corporation. It also adds an annual minimum guarantee and revises certain payment provisions to the Agreement.

Dated: February 13, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-3982 Filed 2-16-95; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North

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Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011432–003.

Title: Pacific Latin America Agreement.

Parties:

Sea-Land Service, Inc.
Central American Container Line, S.A.
A.P. Moller-Maersk Line

Synopsis: The proposed amendment deletes Central America Container Line, S.A., changes the notification period for independent action from two days to five days and authorizes the Conference Chairman or his designee to sign and file any amendments to the basic Agreement.

Dated: February 13, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–3981 Filed 2–16–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISISON

[Docket No. 95–03]

Puerto Rico Frieght Systems, Inc. v. R & S Trading and J.C. Trading; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Puerto Rico Freight Systems, Inc. ("Complainant") against R & S Trading and J.C.Trading ("Respondents") was served February 14, 1995. Complainant alleges that Respondents have violated sections 3, 14, 15, 16, 17, and 18 of the Shipping Act of 1916, 46 U.S.C. app. 804, 812, 814, 815, 816 and 817(b)(1), by issuing false manifests, shipping materials in containers which are not manifested or declared by Respondents, operating without a tariff, waiving fees for ocean freight, competing with other freight operators who adhere to a tariff to their disadvantage, and operating without bills of lading.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 14, 1996, and the final decision of the Commission shall be issued by June 14, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4027 Filed 2–16–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 1 p.m.–5 p.m., March 8, 1995; 9 a.m.–5 p.m., March 9, 1995; 9 a.m.–3 p.m., March 10, 1995.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to explore information needs for health reform; and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: February 13, 1995.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–3999 Filed 2–16–95; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 95M–0023]

Molecular Biosystems, Inc.; Premarket Approval of Albunex®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Molecular Biosystems, Inc., San Diego, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Albunex®. After reviewing the recommendation of the Radiological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 5, 1994, of the approval of the application.

DATES: Petitions for administrative review by March 20, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212.

SUPPLEMENTARY INFORMATION: On February 5, 1991, Molecular Biosystems, Inc., San Diego, CA 92121, submitted to CDRH an application for premarket approval of Albunex®. The device, which is a suspension of air-filled microspheres made from sonicated 5 percent human albumin, is an ultrasound contrast media that is used as an aid for ultrasound contrast enhancement of ventricular chambers and improvement of endocardial border definition in patients with suboptimal echoes undergoing ventricular function and regional wall motion studies.

On July 29, 1992, the Radiological Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 5, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 20, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 7, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–4057 Filed 2–16–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 6, 1995, 8 a.m., Corporate Bldg., conference room 20G, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Radiological Devices Panel, code 12526. If anyone who is planning to attend the meeting will need any special assistance as defined under the Americans with Disabilities Act, please communicate with the contact person.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss clinical data requirements (experimental designs, protocols, quality assurance, etc.) for digital mammography submissions. Copies of a draft protocol are available from the contact person.

Blood Products Advisory Committee

Date, time, and place. March 23 and 24, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 23, 1995, 8 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10 a.m., unless public participation does not last that long ; open committee discussion, 10 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5:30 p.m.; open committee discussion, March 24, 1995, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 5:30 p.m.; Linda A. Smallwood, Center for Biologics

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Evaluation and Research (HFD–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 13, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of March 23, 1995, the committee will discuss and provide recommendations for warnings in the labeling for blood products regarding potential transmission of viral agents. Additionally, the committee will discuss and provide recommendations for the format of blood container labeling. In the afternoon, the committee will discuss the practice of alanine aminotransferase (ALT) testing of blood and plasma donors, and they will provide recommendations. On the morning of March 24, 1995, the committee will discuss pool size for the manufacture of plasma products and, in the afternoon, the committee will participate in a workshop entitled, "Human Tissue Intended for Transplantation and Human Reproductive Tissue: Donor Screening and Infectious Disease Testing." The issues to be discussed at the workshop are: (1) Recommendations for donor screening and infectious disease testing needed to clarify the interim rule for human tissue intended for transplantation (21 CFR 1270) that published in the **Federal Register** of December 13, 1993 (58 FR 65514), (2) draft recommendations for screening and testing donors of human reproductive tissue, and (3) the draft registration form. The agency is announcing the availability, before the meeting, of a draft document on the issues to be discussed at the workshop. Requests for single copies of the draft document may be made to the Division of Congressional, International, and Consumer Affairs, Center for Biologics Evaluation and Research (HFM–11), 1401 Rockville Pike, rm. 200N, Rockville, MD 20857, 301–594–1800.

Joint Meeting of the Nonprescription Drugs and the Dermatologic and Ophthalmic Drugs Advisory Committees, Followed by a Session with Pulmonary-Allergy Drugs Committee Representation, and a Joint Meeting with the Arthritis Advisory Committee

Date, time, and place. March 27 and 28, 1995, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing a separate meeting of the Arthritis Advisory Committee to be held on March 27, 1995.

Type of meeting and contact person. Open committee discussion, March 27, 1995, 8 a.m. to 10 a.m.; open public hearing, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 3 p.m., open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5:30 p.m.; open committee discussion, March 28, 1995, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Nonprescription Drugs Advisory Committee, code 12541.

General function of the committees. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (OTC) (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases. The Dermatologic and Ophthalmic Drugs Advisory Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders. The Pulmonary-Allergy Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms. The Arthritis Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 22, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. During the morning of March 27, 1995, the Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee will discuss data relevant to new drug application (NDA) 18–751 to switch econazole nitrate cream 1% (Spectazole®, Johnson & Johnson Consumer Products, Inc.) from prescription to OTC status for the treatment of tinea pedis (athlete's foot). During the afternoon of March 27, 1995, the Nonprescription Drugs Advisory Committee and representatives of the Pulmonary-Allergy Drugs Advisory Committee will discuss data relevant to the efficacy and use of antihistamines for the treatment of the common cold. In the morning on March 28, 1995, the Nonprescription Drugs Advisory Committee and the Arthritis Drugs Advisory Committee will discuss data relevant to NDA 20–512 for ibuprofen suspension (Motrin®, McNeil Consumer Products) for the treatment of fever and of pain in children between 2 and 12 years of age. During the afternoon, the committees will discuss recommendations regarding appropriate OTC indication(s) for muscle relaxants, OTC dose(s) and duration of use, safety profiles, abuse potential, and pharmacokinetic information.

Subcommittee Meeting of the Antiviral Drugs Advisory Committee on Immunosuppressive Drugs

Date, time, and place. March 30 and 31, 1995, 8 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, March 30, 1995, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 6 p.m.; open committee discussion, March 31, 1995, 8 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 2 p.m.; Lee L. Zwanziger or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before March 22, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On March 30, 1995, the subcommittee will discuss data relevant to NDA 20–513 (250 milligrams (mg) capsules) and NDA 20–514 (500 mg tablets), for mycophenolate mofetil (CellCept®, Syntex Laboratories, Inc.), for use in the prophylaxis of organ rejection and treatment of refractory organ rejection in patients receiving allergenic renal transplants. On March 31, 1995, the subcommittee will discuss data relevant to NDA 50–715 (soft gelatin capsules) and NDA 50–716 (oral solution) for cyclosporine microemulsion (Neoral®, Sandoz Pharmaceuticals Corp.) for prophylaxis of organ rejection in kidney, liver, and heart allergenic transplants.

Immunology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. March 31, 1995, 9 a.m., Corporate Bldg., 9200 Corporate Blvd., main conference room, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Immunology Devices Panel, code 12516.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 15, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a software computer program to assist physicians and laboratory professionals in the database management, calculations, and reporting of results from quantitative measurements of alpha-fetoprotein as an aid in the detection of fetal open neural tube defects.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

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Dated: February 14, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–4194 Filed 2–16–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. March 10, 1995, 9 a.m., Woodmont Office Complex I, conference room 400–N, 1401 Rockville Pike, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion on review of research, 9 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 11:05 a.m.; open public hearing, 11:05 a.m. to 12:05 p.m., unless public participation does not last that long; Jack Gertzog or Sandy Salins, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Allergenic Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion. The committee will discuss the intramural scientific program of the Laboratory of Immunobiochemistry and the clinical research programs of individuals in the Division of Allergenic Products and Parasitology.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Arthritis Advisory Committee

Date, time, and place. March 27, 1995, 8:30 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing a joint meeting on March 28, 1995, with the Nonprescription Drugs Advisory Committee.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 5:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Arthritis Advisory Committee, code 12532.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 16, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the new drug application (NDA) 18–922, Lodine® (etodolac) Wyeth-Ayerst Laboratories, which is proposed for the treatment of rheumatoid arthritis.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drugs. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 14, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–4195 Filed 2–16–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Technology Assessment Conference on Gaucher Disease: Current Issues in Diagnosis and Treatment

Notice is hereby given of the NIH Technology Assessment Conference on "Gaucher Disease: Current Issues in Diagnosis and Treatment," which will be held February 27–March 1, 1995, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on February 27 and 28 and at 9 a.m. on March 1.

Gaucher disease, the inherited deficiency of the enzyme glucocerebrosidase, is the most common lysosomal storage disease and the most frequently inherited disorder in the Ashkenazic Jewish population. In the past decade there has been much progress both in our understanding of the molecular biology of the disease and the ability to treat Gaucher patients. However, many issues regarding diagnosis, population screening, and therapy for Gaucher patients do not have clear consensus. Gaucher disease is characterized by a remarkable degree of clinical heterogeneity, ranging from severely affected infants to totally asymptomatic adults. Patients with Gaucher disease have been classified into three major types on the basis of clinical signs and symptoms: Type 1—non-neuropathic; type 2—acute neuropathic; and type 3—subacute neuropathic.

All types of Gaucher disease result from the deficiency of the same enzyme, glucocerebrosidase, and the diagnosis can be made by measurement of enzyme activity obtained from a tube of blood. The most striking difference between the types is the presence of neurologic manifestations and the rate of progression. Even within the different types there is not a unique clinical presentation. Some patients with type 1 Gaucher disease, which is by far the most common type, may display anemia, low platelets, massively enlarged livers and spleens, and extensive skeletal disease, while others have no symptoms and have been recognized only during screening or evaluation for other diseases.

The gene for glucocerebrosidase on chromosome 1q21 has been characterized and sequenced. Multiple mutations have been identified in the glucocerebrosidase gene in patients' DNA, several of which are encountered frequently. While some patients with similar clinical courses share the same genotype, there are other examples where patients with the same DNA mutations have very different clinical manifestations. It is still not clear to what extent a person's phenotype or prognosis can be accurately predicted on the basis of current DNA mutation analysis. Furthermore, while the availability of molecular techniques has made possible early prenatal diagnosis, heterozygote detection and population screening for Gaucher disease, the advisability and usefulness of these techniques remains unsolved.

Gaucher disease has been traditionally managed by supportive therapy including total and partial splenectomy, transfusions, and

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orthopedic procedures. Bone marrow transplantation has also been successfully performed. More recently enzyme replacement therapy has become available using a mannose terminated form human glucocerebrosidase. This therapy, often costing $100,000 to $300,000 per adult patient annually, has effectively improved biochemical and hematologic manifestations of this disorder in many patients and has reversed hepatosplenomegaly. The optimal dosing for this preparation is still under investigation. Also, other novel strategies for enzyme therapy and gene therapy for Gaucher disease are being actively pursued.

The purpose of this Technology Assessment Conference is to evaluate current concepts concerning diagnosis, genetic counseling, and management of Gaucher disease. The conference will bring together epidemiologists, geneticists, pediatricians, neurologists, obstetricians, orthopedists, hematologists, genetic counselors, clinical pathologists, others involved in health care delivery, as well as representatives of the public to review available data and make recommendations regarding population screening, genetic counseling, and current patient management as well as for future research.

After 1-½ days of presentations and audience discussion, an independent, non-Federal panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The statement will address the following key questions:

What is the natural history of Gaucher disease and what is the appropriate technology to assess the severity and to predict the progression of this disorder?

What are the roles of current molecular and enzymatic assays for ascertaining affected individuals and carriers in various populations?

What are the indications for treatment of patients with Gaucher disease and what are the appropriate modes of therapy?

What are the goals for and consequences of treatment and how can the therapeutic interventions be assessed?

Under what circumstances could genotype/phenotype correlations be used for patient care and counseling?

What are the appropriate directions for future research?

The primary sponsors for this conference are the National Institute of Mental Health and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Child Health and Human Development, the National Institute of Diabetes and Digestive and Kidney Diseases, the National Institute of Neurological Disorders and Stroke, the National Center for Research Resources, and the National Center for Human Genome Research.

Advance information on the conference program and conference registration materials may be obtained from: Debra DeBose, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

The technology assessment statement will be submitted for publication in professional journals and other publications. In addition, the statement will be available beginning March 1, 1995 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: February 10, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–3991 Filed 2–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as a sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Pulmonary Vascular Biology.

Dates of Meeting: March 9, 1995.

Time of Meeting: 8:00 a.m.

Place of Meeting: National Institutes of Health, Building 31C, Conference Room 8, Bethesda, Maryland.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Dorothy B. Gail, Ph.D., 5333 Westbard Avenue, Room 6407, Bethesda, Maryland 20892, (301) 549–7428.

Name of Panel: NHLBI SEP on TB/AIDS.

Dates of Meeting: March 21, 1995.

Time of Meeting: 8:30 a.m.

Place of Meeting: National Institutes of Health, Natcher, Building 45, Conference Room C–1, Bethesda, Maryland 20892.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Hannah H. Peavy, M.D., 5333 Westbard Avenue, Room 6A09, Bethesda, Maryland 20892 (301) 594–7428.

Name of Panel: NHLBI SEP on Critical Care.

Dates of Meeting: March 28, 1995.

Time of Meeting: 8:30 a.m.

Place of Meeting: National Institutes of Health, Natcher, Building 45, Conference Room C–1, Bethesda, Maryland 20892.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Carol H. Bosken, M.D., 5333 Westbard Avenue, Room 6A07, Bethesda, Maryland 20892, (301) 549–7428.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3988 Filed 2–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Demonstration and Education Research Applications.

Date: March 14–15, 1995.

Time: 9:00 a.m.

Place: Stouffer Concourse Hotel, Arlington, VA.

Contact Person: Dr. Louise Corman, 5333 Westbard Avenue, Room 548, Bethesda, MD 20892, (301) 594–7452.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3989 Filed 2–16–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given the following meetings:

Name of Committee: Biological and Clinical Aging Review Committee (Subcommittee A).

Date: March 6, 1995.

Time: 1 p.m. to adjournment.

Place: Gateway Building, Bethesda, Maryland 20892.

Contact Person: Arthur Schaerdel, D.V.M., Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Purpose/Agenda: Teleconference call for the review, discussion, and evaluation of individual research grant applications.

Name of Committee: Biological and Clinical Aging Review Committee (Subcommittee B).

Date: March 7–8, 1995.

Time: March 7–8 to 10 p.m.; March 8–8 a.m. to 12 noon.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20850.

Contact Person: James Harwood, Ph.D., Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

Name of Committee: Neuroscience, Behavior and Sociology of Aging Review Committee (Subcommittee A).

Date: March 19–21, 1995.

Time: March 19—7:30 to 8 p.m.; March 20—8:30 a.m. to 5 p.m.; March 21—8:30 a.m. to 5 p.m.

Place of Meeting: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Maria Mannarino, M.D., Louise Hsu, Ph.D., Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Purpose/Agenda: For the review, discussion, and evaluation of individual research grant applications.

Name of Committee: Neuroscience, Behavior and Sociology of Aging Review Committee (Subcommittee B).

Date: March 13, 1995.

Time: 12:30 p.m. to 5 p.m.

Place: Gateway Building, Bethesda, Maryland 20814.

Contact Person: William Kachadorian, Ph.D., Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Purpose/Agenda: Teleconference call for the review, discussion, and evaluation of individual research grant applications.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: February 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3987 Filed 2–16–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: March 3, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 318A, Telephone Conference.

Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 5333 Westbard Ave., Room 318A, Bethesda, MD 20892, (301) 594–7264.

Name of SEP: Biological and Physiological Sciences.

Date: March 10, 1995.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room 418A, Telephone Conference.

Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 418A, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Chemistry and Related Sciences.

Date: March 8, 1995.

Time: 12:00 p.m. (noon).

Place: NIH, Westwood Building, Room 335, Telephone Conference.

Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 5333 Westbard Ave., Room 335, Bethesda, MD 20892, (301) 594–7302.

Name of SEP: Chemistry and Related Sciences.

Date: March 15, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 335, Telephone Conference.

Contact Person: Dr. Edward Zapolski, Scientific Review Administrator, 5333 Westbard Ave., Room 335, Bethesda, MD 20892, (301) 594–7302.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 9, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3990 Filed 2–16–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 13, 1995.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Drug Addiction and Alcoholism Referral and Monitoring Agency Treatment Requirements Acknowledgement; Drug Addiction and Alcoholism Referral and Monitoring Agency Assessment/Referral and Tracking Summary—0960–NEW. The information is needed to implement the requirements of Public Law 103–296, section 201. The form SSA–386 is used by the Social Security Administration to obtain acknowledgement of the individual's understanding of his rights and responsibilities as a beneficiary receiving drug addiction and alcoholism (DA&A) benefits. The form SSA–387 is used to monitor compliance with treatment requirements of DA&A beneficiaries and to determine eligibility for and retention of DA&A benefits. The respondents are referral and monitoring agencies, treatment facilities and

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beneficiaries who are disabled based on DA&A.
Number of Respondents: 184,000
Frequency of Response: One (SSA–386) One per month (SSA–387)
Average Burden Per Response: 5 minutes (SSA–386) 10 minutes (SSA–387)
Estimated Annual Burden: 395,600 hours

2. Employer Verification of Earnings for Children Under Age 7—0960–0505. The information on form SSA-L3231–C1 is used by the Social Security Administration to ensure that the proper person is credited with earnings reported for a minor under age 7. The respondents are businesses reporting earnings for children under age 7.
Number of Respondents: 20,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 3,333 hours

3. Application for Child's Insurance Benefits—0960–0010. The information on form SSA–4–BK is used by the Social Security Administration to elicit information needed to determine eligibility of benefits to the child of an insured individual retired because of old age or disability, and to a surviving child of a deceased worker. The respondents are children of fully insured wage earners.
Number of Respondents: 1,740,000
Frequency of Response: 1
Average Burden Per Response: Varies—10.5 or 15.5 minutes, depending on type of claim
Estimated Annual Burden: 372,417 hours

4. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. The information on form SSA–781 is used by the Social Security Administration to determine whether the "In Care" entitlement factor is met. The respondents are applicants for benefits whose entitlement depends upon having an entitled child of the wage earner in their care.
Number of Respondents: 14,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 2,333 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: Office of Management and Budget, OIRA New Executive Office Building, Room 10230 Washington, DC 20503.

Date: February 8, 1995.
Charlotte Whitenight,
Reports Clearance Officer, Social Security Administration.
[FR Doc. 95–3672 Filed 2–16–95; 8:45 am]
BILLING CODE 4190–29–P

Substance Abuse and Mental Health Services Administration

Substance Abuse Treatment Conference Grants

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Clarification notice.

SUMMARY: Public notice was given in the **Federal Register** on July 25, 1994, Volume 59, No. 141, pages 37773–37775, that the Center for Substance Abuse Treatment is soliciting applications for domestic conferences for the purpose of coordinating, exchanging and disseminating information in furtherance of its mission to ensure the availability of effective treatment and recovery services for individuals who suffer from problems related to alcohol and other drugs (AOD) of abuse.

On page 37773, under the Program Description section, it states that "CSAT will provide support for up to fifty percent (to a maximum of $50,000) of the total costs of planned meetings and conferences sponsored by new or ongoing constituent organizations or coalitions in their efforts to provide treatment for drugs of abuse."

This funding guideline should have translated into one additional criterion under Award Decision Criteria on page 37775, to read as follows: "7. A budget fully documenting that non-CSAT support equals at least 50% of the total cost of the conference."

All applications received after the publication of this clarification notice will be returned to the applicant if the application does not provide a budget that fully documents that non-CSAT support equals at least 50% of the total cost of the conference.

All future guidance provided to potential applicants who request grant application kits will contain this additional award criterion.

Dated: February 12, 1995.
Richard Kopanda,
Acting Executive Officer, SAMHSA.
[FR Doc. 95–3969 Filed 2–16–95; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–24]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information contact William Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistant Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it is either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 272–1750; U.S. Air Force: Carol Xander, Air Force Real Estate Agency (Area/MI), Bolling AFB, 172 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–5113; (202) 767–6235; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 208–0619; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: February 10, 1995.
Jacquie M. Lawing,
Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 02/17/95

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU–22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011551
Status: Unutilized
Comment: 1080 sq. ft., 1-story frame residence, needs minor repair, most recent use—lock tender's dwelling.

Bldg. TU–21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011552
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011553
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU–24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776–
Landholding Agency: COE
Property Number: 319011554
Status: Unutilized
Comment: 1080 sq. ft.; 1-story frame residence; needs minor repair; most recent use—lock tender's dwelling.

California

Bldg. 604
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010237
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010238
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010239
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010240
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010241
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010242
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010243
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010244
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010245
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Number: 189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing; needs rehab.

Colorado

Former AF Finance Center

3800 York Street
Denver Co: Denver CO 80205–
Landholding Agency: GSA
Property Number: 549310011
Status: Excess
Comment: 293,932 sq. ft., 1-story timber frame with masonry exterior, fair condition, most recent use—storage, office, rehab.
GSA Number: 7–GR–CO–468–D.

Florida

Bldg. SF–97
Port Mayaca Lock & Spillway
9 miles north of Canal Point
Port Mayaca Co: Martin FL 33438–
Landholding Agency: COE
Property Number: 319340001
Status: Unutilized
Comment: 1700 sq. ft., 1-story concrete block/stucco, most recent use—laboratory, off-site use only.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.
Anderson Radio Beacon Annex
In the municipality Dededo
Dededo Co: Guam GU 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.
Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: Various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.
Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.
Bldg. 611
Mountain Home Air Force Base
Mountain Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189440016
Status: Underutilized
Comment: 3200 sq. ft.; 1 story wood frame; needs repair, presence of lead base paint and asbestos; most recent use—base chapel.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.
Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.
Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.
Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.
Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.
Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.
Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.
Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use—storage, pigeon infested.
Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process.
Bldg. 00106, Fort Dodge
Ft. Dodge Co: Webster IA 50501–
Landholding Agency: Air Force
Property Number: 189310051
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use—storage.
Bldg. —Bridgeview
rathbun Lake Project, R.R.#3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340003
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.
Bldg. —Island View
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340004
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Bldg. —Rolling Cove
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 319340005
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only.

Kansas

Trailer—Clinton Lake
Rt. 5, Box 109B
Lawrence Co: Douglas KS 66046–
Landholding Agency: COE
Property Number: 319410003
Status: Excess
Comment: double-wide trailer (24×50), most recent use—residence, needs repair, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.
Kentucky River Lock and Dam 3
Plesureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.
Bldg. 1
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.
Bldg. 2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 3190011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding, needs rehab.
Utility Bldg, Noline River Lake
Moutardier Recreation Site
Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only.

Louisiana

Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles of highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Massachusetts

NPS Tract #250–50
Former Kimpel Property
Sheffield Co: Berkshire MA 01257–
Landholding Agency: Interior
Property Number: 619510004
Status: Excess
Comment: 1724 sq. ft., 2 story frame house w/detached garage; off-site removal only.

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use-communications transmitter building.
Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use-visiting personnel housing.
Bldg. 51
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010791
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 52
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010792
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 53
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010793
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 54
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010794
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 55
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010795
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 56
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010796
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 57
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010797
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 58
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010798
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 59
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010799
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 60
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010800
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 61
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010801
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010802
Status: Excess
Comment: 1134 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 63
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010803
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 64
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010804

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Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 65
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010805
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 66
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010806
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1306 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use-youth center.
Bldg. 72
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010811
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 73
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010812
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 74
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010813
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 75
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010814
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 76
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010815
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 77
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010816
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 78
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010817
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 79
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010818
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 80
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010819
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 81
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010820
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 82
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010821
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 83
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010822
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 84
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010823
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 85
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010824
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 86
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010825
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 87
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010826
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 88
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010827
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010828
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 10

Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.
Bldg. 216
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010847
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 217
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010848
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 218
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010849
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 219
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010850
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 220
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010851
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 221
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010852
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 222
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010853
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 223
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010854
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 224
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010855
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 212
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010859
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010861
Status: Excess
Comment: 780 sq. ft.; 1 story wood frame housing garage.
Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 36
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010872
Status: Excess
Comment: 25 sq. ft.; 1 floor metal; frame; prior use—storage of fire hoses.
Bldg. 37
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010873
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010879
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Minnesota

Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Wood MN 56623–
Landholding Agency: GSA
Property Number: 549230007
Status: Surplus
Comment: 1333 sq. ft.; 1-story frame residence.
GSA Number: 2–U–MN–503–E.
Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Wood MN 56623–
Landholding Agency: GSA
Property Number: 549230008
Status: Surplus
Comment: 1633 sq. ft.; 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.
Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Wood MN 56623–
Landholding Agency: GSA
Property Number: 549230009
Status: Surplus
Comment: 1633 sq. ft.; 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.
Coast Guard Family Housing
404 East Hamilton Avenue
Baudette Co: Lake of the Wood MN 56623–
Landholding Agency: GSA
Property Number: 549230010
Status: Surplus
Comment: 1633 sq. ft.; 1-story wood frame residence.
GSA Number: 2–U–MN–503–E.

Missouri

House No. 2, Clearwater Lake
Rt. HH at the dam
Piedmont Co: Wayne MO 63957–
Landholding Agency: COE
Property Number: 319430009
Status: Excess
Comment: 1600 sq. ft.; 1-story brick veneer residence, off-site use only.

Montana

Bldg.-Conrad Training Site
15 miles east of the City of Conrad
Co: Pondera MT 59425–
Landholding Agency: Air Force
Property Number: 189420025
Status: Unutilized
Comment: 7000 sq. ft.; 1-story brick, most recent use-technical training site.

Nebraska

Bldg. 20, Portion of VA Center
600 South 70th Street
Lincoln Co: Lancaster NE 68510–
Landholding Agency: GSA
Property Number: 549430003
Status: Excess
Comment: 3428 sq. ft.; 2-story, needs major rehab, presence of asbestos, ornamental concrete block structure.
GSA Number: 2–RG–NE–427C.

New Mexico

Socorro Field Division Office
2401 State Road 1
Socorro NM 87801–0678
Landholding Agency: GSA
Property Number: 549510004
Status: Surplus
Comment: 8056 sq. ft.; 1-story wood and metal frame, most recent use-offices/shop/storage, fair condition, off-site removal only.
GSA Number: 7–I–NM–0564.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only.

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31921008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

One Unit/Residence
Conemaugh River Lake, RD #1, Box 702
Saltburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319430011
Status: Unutilized
Comment: 2642 sq. ft., 1-story, 1-unit of duplex, fair condition, access restrictions.

Tract 302A
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430016
Status: Unutilized
Comment: 960 sq. ft., 2-story log structure, most recent use—residential, needs rehab, if used for habitation must be flood proofed or removed off-site.

Tract 302B
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430017
Status: Unutilized
Comment: 502 sq. ft., 2-story, needs repair, most recent use—beauty shop/residence, if used for habitation must be flood proofed or removed off-site.

Tract 314
Grays Landing Lock & Dam Project
Old Glassworks Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430018
Status: Unutilized
Comment: 1864 sq. ft., 2-story, brick structure needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430019
Status: Unutilized
Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 402
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430020
Status: Unutilized
Comment: 728 sq. ft., 2-story, needs repairs, most recent use—residential/parsonage, if used for habitation must be flood proofed or removed off-site.

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract 403C
Grays Landing Lock & Dam Project
Greenboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed.

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site.

Tract 440
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430025
Status: Unutilized
Comment: 1000 sq. ft., 2-story, asbestos shingle siding, most recent use—residential, if used for habitation must be flood proofed or removed off-site.

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31944001
Status: Unutilized
Comment: 1040 sq. ft., 2-story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off-site.

Tract No. 301
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319440002
Status: Excess
Comment: 1330 sq. ft., 2-story brick bldg., needs repair, historic struct., flowage easement, if habitation is desired the property will be required to be flood proofed or removed.

South Carolina

Bldg. 5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft., 1-story masonry frame; possible asbestos; most recent use—storage, off-site removal only.

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage.

Texas

Bldg. 121
Lauglin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420026
Status: Unutilized
Comment: 11202 sq. ft., 1-story, needs rehab, presence of asbestos, secured area with alternate access.

Bldg. 348
Lauglin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420027
Status: Unutilized
Comment: 1799 sq. ft., 1-story, needs rehab, presence of asbestos, secured area with alternate access.

Bldg. 475
Lauglin Air Force Base
Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420028
Status: Unutilized
Comment: 1083 sq. ft., 1-story, needs rehab, secured area with alternate access.

19 Buildings and Land
Subtropical Agricultural Research Worksite
Brownsville Co: Cameron TX 78520–
Landholding Agency: GSA
Property Number: 549440007
Status: Excess
Comment: 25,000 sq. ft., 1-story, pres. of asbestos, most recent use—housing, 18.76 acres which includes 16 acres of vacant land.
GSA Number: 7–A–TX–0451G.

Virginia

Peters Ridge Site
Gathright Dam
Covington VA
Landholding Agency: COE
Property Number: 319430013
Status: Excess
Comment: 64 sq. ft., metal bldg.

Coles Mountain Site
Gathright Dam, Rt. 607
Co: Bath VA
Landholding Agency: COE
Property Number: 319430015
Status: Excess
Comment: 64 sq. ft., 1-story metal bldg.

NPS Tract 422–25
Former White property
County Rd. 602 on Moore Run near 4–H Camp
Front Royal Co: Warren VA 22630–
Landholding Agency: Interior
Property Number: 619440002
Status: Excess
Comment: 864 sq. ft.; 2-story frame residence, w/Natl. Appalachian Trails System Act, off-site use only.

Washington

Park Hdqts. House
McNary Lock & Dam Project
5107 West Columbia Dr.
Kennewick Co: Benton WA 99336–
Landholding Agency: COE
Property Number: 319430014
Status: Unutilized
Comment: 1696 sq. ft.; 1-story brick residence, off-site use only.

Construction Office Bldg.
Roosevelt Way
Coulee Dam Co: Okanogan WA 99116–
Landholding Agency: Interior
Property Number: 619410002
Status: Excess
Comment: 7778 sq. ft.; 1-story frame structure, off-site removal only, most recent use—offices.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2-story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2-story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2-story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2-story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2-story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2-story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2-story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arizona

Tract No. APO–SRP–RB–5
Mesa Co: Maricopa AZ 85213–
Location: 2000' south of Thomas Road at Val Vista Drive
Landholding Agency: Interior
Property Number: 619410005
Status: Unutilized
Comment: 0.57 acre; 20-foot strip of land which is 1,026 ft. long.

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Sections 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road

Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.
Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9494
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.
Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA
Landholding Agency: GSA
Property Number: 549010042
Status: Excess
Comment: 80 acres, 1,560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A.
(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 549310008
Status: Surplus
Comment: Parcel 1–0.15 acre, Parcel 2–0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider.
GSA Number: 9–GR(6)–CA–694A.
L–4 Reservoir
La Quinta Co: Riverside CA 92253–
Location: Borders Adams St., ¼ mile north of Calle Tampico
Landholding Agency: Interior
Property Number: 619410004
Status: Excess
Comment: 1.69 acres; concrete reservoir; most recent use—water retention.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 862 acres; subject to utilities easements.
Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultr IL 62565–9804
Landholding Agency: COE
Property Number: 319240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.
Parcels #2 and #3
Fall River Lake
Section 25 and 26
Co: Greenwood KS
Landholding Agency: GSA
Property Number: 319010066
Status: Excess
Comment: 64.24 acres, most recent use—recreation.
GSA Number: 7–D–KS–0513.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.
Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.
Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.
Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.
Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.
Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.
Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.
Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.
Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; sttep and wooded; no utilities.
Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.
Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.
Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.
Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.
Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.

Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.
Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.
Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.
Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.
Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.
Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.
Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.
Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.
Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.
Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42030–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.
Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.
Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.
Tract 500–2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.
Tracts 5203 and 5204.
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93; rolling, partially wooded; no utilities.
Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.
Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.
Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.
Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements.
Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.
Tract 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.
Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.
Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.
Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.
Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

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Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored.

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036–9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, LA.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760–
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641–
Location: 1 mile from city of Federal Dam, Mn.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18, T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Sections 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15

Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Nevada

Freight Yard
Fallon Rail Facility
Fallon Co: Churchill NV 89406–
Landholding Agency: Interior
Property Number: 619440005
Status: Unutilized
Comment: 6.3 acres; subject to a 10-year lease to the City.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–
Landholding Agency: GSA
Property Number: 319230001
Status: Excess
Comment: Approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities
GSA Number: 2–D–OH–793.

Oklahoma

Parcel No. 44/GSA No. 4
Lake Texoma
Section 15, T5S, R7E
Co: Johnston OK
Location: About ½ mile southeast of Bee
Landholding Agency: GSA
Property Number: 319010475
Status: Excess
Comment: 14.98 acres, no utilities, most recent use—recreation
GSA Number: 7–D–OK–507–H.

Parcel No. 46/GSA No. 5
Lake Texoma
Section 15 and Section 16, T5S, R7E
Co: Johnston OK
Location: About 1 mile southwest of Bee
Landholding Agency: GSA
Property Number: 319010477
Status: Excess
Comment: 23.91 acres, no utilities, most recent use — recreation
GSA Number: 7–D–OK–507–H.

Parcel No. 7
Kaw Lake
Section 27
Co: Kay OK
Landholding Agency: GSA
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use — recreation.

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 66/GSA No. 9
Lake Texoma
Co: Marshall OK 73439–
Location: Sections 12 and 13, 2 1/2 miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess
Comment: 14.05 acres, potential utilities, most recent use — low density recreation/natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H.

Parcel No. 164/GSA No. 16
Lake Texoma
Co: Love OK 73441–
Location. Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use — low density recreation.
GSA Number: 7–D–OK–0507–H.

Parcel No. 165/GSA No. 17
Lake Texoma
Co: Love OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use — low density recreation.
GSA Number: 7–D–OK–0507–H.

Parcel No. 166/GSA No. 18
Lake Texoma
Co: Love OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use — low density recreation.
GSA Number: 7–D–OK–0507–H.

Parcel No. 68/GSA No. 10
Lake Texoma, Sect. 11 T6S, R6E
Cumberland Co: Marshall OK
Landholding Agency: GSA
Property Number: 549240010
Status: Excess
Comment: 29.76 acres, most recent use — recreation
GSA Number 7–D–OK–507–H.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess-
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26 Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities.

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 319430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights.

Puerto Rico

La Hueca — Naval Station
Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549420006
Status: Excess
Comment: 323 acres, cultural site

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Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2 1/2 miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 1/2 miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: 1/2 mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Resorvior
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutheford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 69949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam

Location:
Landholding Agency: COE
Property Number: 3190
Status: Excess
Comment: acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 3190130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Tract A–102
Dale Hollow Lake & Dam Project
Canoe ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 3191400
Status: Underutilized
Comment 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized
Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

TEXAS

Parcel #185/GSA No. 19
Lake Texoma
Co: Cooke TX
Location: Robert Firinash survey A–368
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H.

Parcel #222
Lake Texoma
Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–509
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Parcel No. 201
Lake Texoma
Co: Grayson TX
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use—low density recreation, upland timber wildlife habitat
GSA Number: 7–D–OK–0507–H.

Parcel No. 205
Lake Texoma
Co: Grayson TX
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use—low density recreation and grazing
GSA Number: 7–D–OK–0507–H.

8.83 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440004
Status: Excess
Comment: Land w/former recreation bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

10.75 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440005
Status: Excess
Comment: Land w/former officer's club bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

120.26 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440006
Status: Excess
Comment: Unimproved land containing friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

Washington

Asotin Quarry—Lower Lock & Dam
West of Upriver Road
Asotin Co: Asotin WA 99402–
Landholding Agency: GSA

Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

TEXAS

Parcel #185/GSA No. 19
Lake Texoma
Co: Cooke TX
Location: Robert Firinash survey A–368
Property Number: 319010405
Status: Excess
Comment: 31.64 acres, most recent use—recreation
GSA Number: 7–D–OK–507–H.

Parcel #222
Lake Texoma
Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–509
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Parcel No. 201
Lake Texoma
Co: Grayson TX
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use—low density recreation, upland timber wildlife habitat
GSA Number: 7–D–OK–0507–H.

Parcel No. 205
Lake Texoma
Co: Grayson TX
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use—low density recreation and grazing
GSA Number: 7–D–OK–0507–H.

8.83 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440004
Status: Excess
Comment: Land w/former recreation bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

10.75 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440005
Status: Excess
Comment: Land w/former officer's club bldg., bldg. require repairs, potential utilities, parcel contains friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

120.26 Acre Tract
Portion, former Fort Wolters
Mineral Wells Co: Parker/Palo Pin TX 76067–
Landholding Agency: GSA
Property Number: 549440006
Status: Excess
Comment: Unimproved land containing friable asbestos.
GSA Number: 7–GR–TX–548AA&BB.

Washington

Asotin Quarry—Lower Lock & Dam
West of Upriver Road
Asotin Co: Asotin WA 99402–
Landholding Agency: GSA
Property Number: 549340001
Status: Excess
Comment: 39.42 acres, access easement, most recent use—rock quarry
GSA Number: 9–D–WA–824K.

Wyoming

Wind Site A
Medicine Bow Co: Carbon WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation—easement restrictions.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Ketchikan Ranger House
Ketchikan AK 99901–
Landholding Agency: GSA
Property Number: 549430009
Status: Surplus
Comment: 1832 sq. ft., 2 story residence, needs rehab, on National Register of Historic Places
GSA Number: 9–A–AK–0746.

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706–
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Suppiger Residence
Point Reyes National Seashore
Point Reyes Co: Marin CA 94956–
Landholding Agency: GSA
Property Number: 549410003
Status: Excess
Comment: 850 sq. ft., 2 story frame structure, need repairs, off-site removal only, narrow access road, removal restrictions
GSA Number: 9–I–CA–958B.

Suppiger Residence
Point Reyes National Seashore
Point Reyes Co: Marin CA 94956–
Landholding Agency: GSA
Property Number: 549410003
Status: Excess
Comment: 850 sq. ft., 2 story frame structure, need repairs, off-site removal only, narrow access road, removal restrictions
GSA Number: 9–I–CA–958B.

Colorado

3 Bldgs.
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah Co: Pueblo CO 81023–
Landholding Agency: GSA
Property Number: 549330002
Status: Excess
Comment: 1100 sq. ft. 2-story house, 600 sq. ft. 1-story house and 1800 sq. ft. garage, most recent use—classroom, storage, residence
GSA Number: 7–GR–CO–525.

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft., one floor wood frame, most recent use—residence; secured with alternate access.

Bldg. SF–83
Moore Haven Lock & Dam
Ockeechobee Waterway
Moore Haven Co: Glades FL 33471–
Landholding Agency: COE
Property Number: 319310006
Status: Unutilized
Comment: 1441 sq. ft., 1-story frame residence, average condition, restricted access.

Kansas

U.S. Post Office & Courthouse
812 North 7th Street
Kansas City Co: Wyandotte KS 66101–
Landholding Agency: GSA
Property Number: 549420003
Status: Excess
Comment: 52257 sq. ft., 4-story plus basement, presence of asbestos and lead based paint, most recent use—offices
GSA Number: 7–G–KS–0514.

Kentucky

Federal Building
4th & Main Streets
Danville Co: Boyle KY 40422–
Landholding Agency: GSA
Property Number: 549430015
Status: Excess
Comment: 4890 sq. ft., 3-story, stone-concrete foundation, presence of asbestos, first floor occupied by U.S. Court of Appeals Judge & staff until expiration of his tenure
GSA Number: 4–G–KY–604.

Maine

9 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: GSA
Property Number: 189310052

Status: Surplus
Comment: 2916–7097 sq. ft., 1–2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2–D–ME–526G.

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854–
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283, sq. ft., 3-story concrete and steel bldg., most recent use—storage/office and medical clinic.
GSA Number: 2–G–MA–778

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13,404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2,146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1,546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1,000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2,069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2,069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4,017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3,674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7,216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6,070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1,944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6,171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6,751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3,000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldg. 9
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010835
Status: Excess
Comment: 1,056 sq. ft.; 1 story wood frame residence.

Bldg. 11
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010837
Status: Excess
Comment: 1,056 sq. ft.; 1 floor wood frame residence.

Bldg. 12
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010838
Status: Excess
Comment: 1,056 sq. ft.; 1 story wood frame residence.

Bldg. 13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010839
Status: Excess
Comment: 1,056 sq. ft.; 1 story wood frame residence.

Bldg. 5
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010840
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 6
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010841
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 7
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010842
Status: Excess
Comment: 864 sq. ft.; 1 story wood frame residence; possible asbestos.

Bldg. 8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010843
Status: Excess
Comment: 864 sq. ft.; 1 floor wood frame residence; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment:
314 sq. ft.; 1 floor concrete block; possible concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electric power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; concrete/wood structure; potential utilizes; most recent use—gymnasium facility.

Bldg. 31
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010867
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 32
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010868
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 33
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010869
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 34
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010870
Status: Excess
Comment: 36 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010871
Status: Excess
Comment: 36 sq. ft.; 1 story metal frame; prior use—storage of fire hoses.

Bldg. 39
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010874
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 202
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010880
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 203
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010881
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 204
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010882
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 205
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010883
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 206
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010884
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010885
Status: Excess
Comment: 25 sq. ft.; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Minnesota

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071–
Landholding Agency GSA
Property Number: 549330003
Status: Surplus
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the City.
GSA Number: 2–D–MN–558

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portin near flammable materials; portion on archaeological site; special fencing required.

Montana

Bldg. 00007
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330066
Status: Unutilized
Comment: 992 sq. ft,m 1-story metal, most recent use—auto/hobby shop.

Bldg. 00008
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330067
Status: Unutilized
Comment: 2640 sq. ft., 1-story metal, most recent use—vehicle parking.

Bldg. 00016
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330068
Status: Unutilized
Comment: 3604 sq. ft., 1-story cinder block, most recent use—storage.

Bldg. 00023
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330069

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Status: Unutilized
Comment: 3315 sq. ft., 1-story wood, most recent use—fire station.
Bldg. 00024
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330070
Status: Unutilized
Comment: 5016 sq. ft., 1-story brick, most recent use—dormitory.
Bldg. 00027
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330071
Status: Unutilized
Comment: 14280 sq. ft., 1-story cinder block, most recent use—recreation center and commissary store.
Bldg. 00029
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330072
Status: Unutilized
Comment: 63 sq. ft., 1-story metal.
Bldg. 00031
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330073
Status: Unutilized
Comment: 3130 sq. ft., 1-story cinder block, most recent use—maintenance shop and admin.
Bldg. 00032
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330074
Status: Unutilized
Comment: 64 sq. ft., metal, most recent use—storage.
Bldg. 00035
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330075
Status: Unutilized
Comment: 2252 sq. ft., 4-story metal, most recent use—storage.
Bldg. 00039
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330076
Status: Unutilized
Comment: 21824 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00040
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330077
Status: Unutilized
Comment: 874 sq. ft., 1-story masonry, most recent use—storage.
Bldg. 00041
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330078
Status: Unutilized
Comment: 108 sq. ft., 1-story masonry.
Bldg. 00042
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330079
Status: Unutilized
Comment: 760 sq. ft., 1-story masonry, most recent use—warehouse.
Bldg. 00044
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330080
Status: Unutilized
Comment: 3298 sq. ft., 1-story metal, most recent use—wood hobby shop.
Bldgs. 51, 52, 56, 58
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330081
Status: Unutilized
Comment: 1352 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 53–55, 57, 59, 61, 63, 65, 67, 69, 71
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330082
Status: Unutilized
Comment: 1152 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 60, 62, 64, 66, 68
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330083
Status: Unutilized
Comment: 1361 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 70, 72, 74, 78
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330084
Status: Unutilized
Comment: 1455 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 76, 80
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330085
Status: Unutilized
Comment: 1343 sq. ft. each, 1-story wood, most recent use—residential.
Bldg. 82
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330086
Status: Unutilized
Comment: 1553 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 150, 152, 154, 156, 158, 160, 162, 164, 168, 170, 172, 174, 176, 178, 180, 182, 184
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330087
Status: Unutilized
Comment: 1247 sq. ft. each, 1-story wood, most recent use—residential.
Bldgs. 106–109, 112–113
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330088
Status: Unutilized
Comment: 36 sq. ft., each, most recent use—fire hose house.
Bldgs. 202, 204, 206, 212, 214, 216, 218
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330089
Status: Unutilized
Comment: 72 sq. ft. each, most recent use—storage units.
Bldgs. 208, 210
Havre Air Force Station Co: Hill MT 59501–
Landholding Agency: Air Force
Property Number: 189330090
Status: Unutilized
Comment: 36 sq. ft. each, most recent use—storage.

Nebraska

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Comment: 19370 sq. ft., brick frame, 1-story, possible asbestos, most recent use—recreation.
Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Comment: 4984 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Comment: 2108 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Comment: 2852 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Comment: 2960 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Comment: 2154 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Comment: 2404 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Comment: 3156 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Comment: 2948 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Comment: 2554 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Comment: 2554 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Comment: 2800 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Comment: 2268 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Comment: 2718 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Comment: 2718 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Comment: 3720 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Comment: 2252 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Comment: 2782 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Comment: 2324 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Comment: 3276 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Comment: 2228 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Comment: 2228 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Comment: 2452 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Comment: 2566 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Comment: 3488 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Comment: 3724 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320085
Status: Excess
Comment: 2624 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Comment: 2270 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Comment: 2358 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088

Status: Excess
Comment: 2012 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Comment: 2286 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.
Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Comment: 2176 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.
Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Comment: 2052 sq. ft., 2-story plus 1/2 basement wood frame family housing, possible asbestos.
Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Comment: 2600 sq. ft., 2-story plus 3/4 basement wood frame family housing, possible asbestos.
27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Comment: 280—708 sq. ft., wood frame, accommodates 1 to 3 vehicles, possible asbestos.
Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Comment: 2225 sq. ft., 1-story wood frame, most recent use—offices, needs rehab, possible asbestos.
Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Comment: 3278 sq. ft., 1-story plus basement brick frame, most recent use—storage, possible asbestos.
Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Comment: 115 sq. ft., 1-story metal frame, most recent use—storage, no known utility potential.
Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Comment: 256 sq. ft., 1-story wood frame, most recent use—storage, possible asbestos.
Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Comment: 731 sq. ft., 1-story plus full basement wood frame, most recent use—storage, possible asbestos.
Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Comment: 224 sq. ft., 1-story wood frame, most recent use—storage.

Nevada

17 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood residences, 3 bedrooms/ 1 bathroom, (4 of these residences are unavailable for homeless asst. use due to a compelling Federal need).
GSA Number: 9–U–NV–467–C.
17 Single Family Residences
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430004
Status: Excess
Comment: 1192 to 1378 sq. ft., 1 story wood residences, 3 bedrooms/1 bathroom, (4 of these residences are unavailable for homeless asst. use due to a compelling Federal need).
GSA Number: 9–U–NV–467–C.
1 Single Family Residence
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430005
Status: Excess
Comment: 1527 sq. ft., 1 story wood residence, 4 bedrooms/2 bathrooms.
GSA Number: 9–U–NV–467–C.
1 Single Family Residence
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430005
Status: Excess
Comment: 1527 sq. ft., 1 story wood residence, 4 bedrooms/2 bathrooms.
GSA Number: 9–U–NV–467–C.
Bldg. 111
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 54930006
Status: Excess
Comment: 2507 sq. ft., most recent use—office.
GSA Number: 9–U–NV–467–D.
Bldg. 111
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430006
Status: Excess
Comment: 2507 sq. ft., most recent use—office.
GSA Number: 9–U–NV–467–D.
Bldg. 112
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430007
Status: Excess
Comment: 1920 sq. ft., most recent use—storage.
GSA Number: 9–U–NV–467–D.
Bldg. 112
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430007
Status: Excess
Comment: 1920 sq. ft., most recent use—storage.
GSA Number: 9–U–NV–467–D.
Bldg. 120
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430008
Status: Excess
Comment: 1440 sq. ft., most recent use—motor pool.
GSA Number: 9–U–NV–467–D.
Bldg. 120
Tonopah Housing Complex
Tonopah Co: Nye NV 89049–
Landholding Agency: GSA
Property Number: 549430008
Status: Excess
Comment: 1440 sq. ft., most recent use—motor pool.
GSA Number: 9–U–NV–467–D.

New Hampshire

Bldg. 114
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320055
Status: Excess
Comment: 2606 sq. ft., 1-story, concrete block frame possible asbestos, access restrictions, most recent use—storage.
Bldg. 115
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320056

Status: Excess
Comment: 2606 sq. ft., 1-story, concrete block frame, possible asbestos, access restrictions, most recent use—storage.
Bldg. 127
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

New Mexico

Mobile Home, GQ
Gran Quivira Ruins
Mountainair Co: Socorro NM 87036–
Landholding Agency: Interior
Property Number: 619430003
Status: Excess
Comment: 938 sq. ft.; wood frame/wood siding mobile home; off-site removal only.

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos,
GSA Number: 4–GR–NC–481B.

Pennsylvania

Residence
Crooked Creek Lake, RD #3
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 319430010
Status: Unutilized
Comment: 1847 sq. ft., 1-story wood frame residence, fair condition.
Tract No. 408E
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Landholding Agency: COE
Property Number: 319440003
Status: Excess
Comment: 1187 sq. ft., 2 story brick bldg., historic structure, flowage easement.
Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001–
Landholding Agency: GSA
Property Number: 549330004
Status: Excess
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities
GSA Number: 4–L–PA–766.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Texas

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.
Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.
Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.
Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.
Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.
Bldg. 2
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014815
Status: Unutilized
Comment: 94606 sq. ft.; 1 story wood, masonry, and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 4
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014816
Status: Excess
Comment: 1350 sq. ft.; 1 story structured clay tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 17
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014817
Status: Excess
Comment: 68 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A.
Bldg. 29
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014818
Status: Excess
Comment: 5028 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 30
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014819
Status: Excess
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 18
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014820
Status: Excess
Comment: 9560 sq. ft.; 1 story wood, masonry and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 6
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014821
Status: Excess
Comment: 1258 sq. ft.; 1 story structured clay tile and metal frame; subject to pipeline eaement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 7
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014822
Status: Excess
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 8
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014824
Status: Excess
Comment: 171 sq. ft.; 2 story concrete block and brick; subject to sewer pipeline easement; needs rehab; most recent use—watch tower
GSA Number: 7–D–TX–879A.
Bldg. 16
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014825
Status: Excess
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.
Bldg. 19
Saginaw Army Aircraft Plant

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Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014826
Status: Excess
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 31
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014827
Status: Excess
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 9
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014828
Status: Excess
Comment: 244 sq. ft.; 1 story wood, hollow tile and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 25
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014829
Status: Excess
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.
GSA Number: 7–D–TX–879A.

Bldg. 10
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014830
Status: Excess
Comment: 354 sq. ft.; 1 story concrete block and brick, subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 26
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014831
Status: Excess
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 21
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014832
Status: Excess
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
GSA Number: 7–D–TX–879A.

Bldg. 22
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014833
Status: Excess
Comment: 50581 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Bldg. 27
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014834
Status: Excess
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower
GSA Number: 7–D–TX–879A.

Bldg. 32
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014835
Status: Excess
Comment: 19546 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
GSA Number: 7–D–TX–879A.

Del Rio Federal Building
Main at Broadway
Del Rio Co: Val Verde TX 78840–
Landholding Agency: GSA
Property Number: 549310001
Status: Excess
Comment: 15600 sq. ft. 3-story plus basement, masonry frame, most recent use—offices and courthouse.
GSA Number: 7–G–TX–1034.

Washington

Olympia Federal Building
801 Capitol Way
Olympia Co: Thurston WA
Landholding Agency: GSA
Property Number: 549420002
Status: Excess
Comment: 13,800 sq. ft., 3-story/basement, on Natl Hist. Reg., pres. of lead based paint, city seismic code prohibits residential use, does not meet Federal standards for seismic tests.
GSA Number: G–WA–1040.

West Virginia

Point Pleasant Depot
State Route 35
Point Pleasant Co: Mason MV
Landholding Agency: GSA
GSA Number: 549430013
Status: Excess
Comment: 2400 sq. ft. masonry storage bldg., 936 sq. ft. garage, on 275 acres of land.
GSA Number: WV0015PP.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
GSA Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

Arizona

Land—640 acres
Ave. B—County 23 St.
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619340001
Status: Unutilized
Comment: Desert land, currently no water available, possible lease restrictions.

Tract No. APO–SRP–JL–4
West of 91st Ave. & South of Indian School Rd Co: Maricopa AZ
Landholding Agency: Interior
Property Number: 619340002
Status: Unutilized
Comment: 26 foot strip of land 800 foot long, possible easement restrictions.

Quartermaster Depot
4th Avenue and Colorado River
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420001
Status: Unutilized
Comment: less than 1 acre, dirt and shrubbery along the river, lease restrictions, historical site.

Arkansas

Old Lock & Dam site No. 6
Ouachita-Black Rivers Navigation Proj. Co: Ashley/Union AR
Landholding Agency: GSA
Property Number: 549420007
Status: Excess
Comment: 62.37 acres in two tracts, no known utilities potential.
GSA Number: 7–D–AR–549.

California

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement, 30 + acres undeveloped; potential utilities; secured area; alternate access.

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA.
Landholding Agency: GSA
Property Number: 549010042
Status: Surplus
Comment: 80 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA

Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions.
GSA Number: 9–2–CA–1308.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–
Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Surplus
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities, environmental restrictions.
GSA Number: 9–2–GA–1380.

Dixon Relay Station
7514 Radio Road
Dixon Co: Solano CA 95620–9653
Landholding Agency: GSA
Property Number: 549320002
Status: Surplus
Comment: 787.53 acres, with 7 bldgs. most recent use —transmitter site.
GSA Number: 9–Z–CA–1162B.

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670–
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres; perpetual easement over .25 acre, surrounding land use is commercial.

Georgia

Portion of Tract I–801
Lake Allatoona, Yacht Club Road
Acworth Co: Cherokee GA 30102—
Landholding Agency: GSA
Property Number: 549340009
Status: Excess
Comment: 7.02 acres, no sewer or public water system, most recent use—timber growth.
GSA Number: 4–D–GA–826.

Idaho

Portion
Former Farragut Naval Training Center
Athol Co: Kootenai ID 83801–
Landholding Agency: GSA
Property Number: 549230004
Status: Excess
Comment: 48.42 acres, former railroad right-of-way.
GSA Number: 9–GR(2) –ID–421C.

Indiana

Portion of Tract 1219
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310002
Status: Unutilized
Comment: 0.88 acre, potential utilities.

Portion of Tract No. 1220
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310003
Status: Unutilized
Comment: 0.30 acre, potential utilities.

Portion of Tract No. 1207
Salamonie Lake, SR 9
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310004
Status: Unutilized
Comment: 0.28 acre, potential utilities.

Portion of Tract No. 116
Huntington Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319320001
Status: Excess
Comment: 3.41 acres with road easement.

Kansas

Parcels #2 and #3
Fall River Lake
Section 25 and 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 64.24 acres; most recent use—recreation.
GSA Number: 7–D–KS–0513.

Kentucky

Car Fork Lake
5 miles SE of Hindman, Ky., Hwy. 60
Hinkman Co: Knott KY
Landholding Agency: COE
Property Number: 319240003
Status: Unutilized
Comment: 2.81 acres, most recent use—drainage area for bank stabilization for adjacent cemetery.

Montana

Makoshika Radio Site
Glendive Co: Dawson MT 59330–
Landholding Agency: GSA
Property Number: 549420004
Status: Excess
Comment: 4.13 acres, limited utilities, most recent use—communication site.
GSA Number: 7–B–MT–599.

New Mexico

Western Perimeter Tract
Los Alamos Co: Los Alamos NM
Landholding Agency: GSA
Property Number: 549310010
Status: Surplus
Comment: 194 acres, potential utilities, open area, no roadways through property.
GSA Numbers: 7–B–NM–504–G, 7–GR(1)–NM–504–L.

Ohio

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Excess
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use.
GSA Number: 2–GH–OH–433B.

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Surplus
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004.

Parcel No. 7
Kaw Lake
Section 27 Co: Kay OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Surplus
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0002.

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Surplus
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005.

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Surplus
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009.

Parcel No. 43
Fort Gibson Lake
Section 11 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011371
Status: Surplus
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006.

Parcel No. 49
Fort Gibson Lake
Section 15 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Surplus
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007.

Parcel No. 61
Fort Gibson Lake
Section 13 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Surplus
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008.

Parcel No. 99

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Fort Gibson Lake
Section 21 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Surplus
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013.

45 acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T 2 N, R 18 E Co: Pushmataha OK 74521–
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use—fish and wildlife conservation.

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

Puerto Rico

Parcel C
Naval Station, Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549340004
Status: Excess
Comment: 96.41 acres; subject to water/sewer easement, access restrictions, most recent use—buffer zone.
GSA Number: 7–N–PR–486.

Texas

Part of Tract 340
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.

Virginia

Rutherford Coleman Estate
Goodwin Farm
Norwood Co: Nelson VA 24581–
Landholding Agency: GSA
Property Number: 549410002
Status: Excess
Comment: 468.25 acres, most recent use—timber cutting, some areas environmentally protected.
GSA Number: 4–G–VA–691.

Washington

Portion of Tract 905
Lower Monumental Lock & Dam
½ mi SE of Lyons Ferry Marina Co: Whitman WA
Landholding Agency: COE
Property Number: 319320005
Status: Excess
Comment: 3.788 acres with encroaching private well.

Former Stadium Homes site
1701 28th Avenue, South
Seattle Co: King WA 98144—
Landholding Agency: GSA
Property Number: 549410005
Status: Excess
Comment: 1.46 acres; most recent use—highway equipment storage; potential for city utility services; land slopes.
GSA Number: 9–GR(1)–WA–543.

Sandpoint Control Tower
Near 7600 Sandpoint Way, NE
Seattle Co: King WA 98115–
Landholding Agency: GSA
Property Number: 549440003
Status: Excess
Comment: 11.3 acres, w/deteriorated bldg. and parking lot.
GSA Number: 9–C–WA–1069.

Suitable/To Be Excessed

Buildings (by State)

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story, wood frame on .62 acres; needs rehab; secured area with alternate access.

Nevada

Bldg. 300
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120001
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 301
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120002
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120003
Status: Unutilized
Comment: 1573 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 303
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120004
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 304
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120005
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 305
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120006
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120007
Status: Unutilized
Comment: 2750 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 307
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120008
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 308
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120009
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 309
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120010
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 310
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120011
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 311
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120012
Status: Unutilized

Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 312
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120013
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 313
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120014
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 314
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120015
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 315
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120016
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 316
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120017
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 317
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120018
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 318
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Spring Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120019
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 319
Neilis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120020
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 320
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120021
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 321
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120022
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120023
Status: Unutilized
Comment: 2170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1233 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 324
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120025
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 325
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120026
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120027
Status: Unutilized
Comment: 2424 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 331
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120028
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 332
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120029
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 333
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120030
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 334
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120031
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 335
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120032
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 336
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120033
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 337
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120034
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 338

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Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120035
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 339
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120036
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 340
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120037
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 341
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120038
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 343
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120039
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 345
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120040
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 346
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120041
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 348
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120042
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 349
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120043
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 350
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120044
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 351
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120045
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 352
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120046
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120047
Status: Unutilized
Comment: 1170 Sq. ft., one story family housing, easement restrictions, potential utilities, off–site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 Sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off–site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 Sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off–site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 Sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off–site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 Sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off–site removal only.

Bldg. 3027
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120052
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3029
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120054
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3030
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120055
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3031
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120056
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3032
Nellis Air Force Base
Indian Springs AF Aux. Field

Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120057
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3033
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120058
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3034
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120059
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3035
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120060
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3036
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120061
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3037
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120062
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3038
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120063
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3039
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120064
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120065
Status: Unutilized
Comment: 120 Sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Washington

Quarters No. 1204
604 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330001
Status: Excess
Comment: 850 sq. ft., one story frame residence, asbestos siding.

Quarters No. 1208
608 S. Maple
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330002
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding.

Quarters No. 1301
3 SE and N Warden Road
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 619330003
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding.

Land (by State)

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55 acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Georgia

Lake Sidney Lanier Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 319440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species.

Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503–
Location: Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 319440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species.

Indiana

Cecil M. Harden Lake Project
Rockville Co: Parke IN 47872–
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.

Brookville Lake—Land
Liberty Co: Union In 47353–
Landholding Agency: COE
Property Number: 319440009
Status: Unutilized
Comment: 6.19 acres, limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26 Co: Greenwood KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540–0500
Location: Portion of Tract A–108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: GSA
Property Number: 319011006
Status: Excess
Comment: 3.22
GSA Number: 2–D–MA–0821.

Minnesota

Tract #3
Lac Qui Parle Flood Control Project
County Rd. 13
Watson Co: Lac Qui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340006
Status: Unutilized
Comment: Approximately 2.9 acres, fallow land.

Tract #34
Lac Qui Parle Flood Control Project
Marsh Lake
Watson Co: Lac Aui Parle MN 56295–
Landholding Agency: COE
Property Number: 319340007
Status: Unutilized
Comment: Approx. 8 acres, fallow land.

Ohio

Middleport Public Access Site
Robert C. Byrd Locks & Dam
Middleport Co: Meigs OH 45760–

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Landholding Agency: COE
Property Number: 319230001
Status: Underutilized
Comment: Approximately 17.23 acres including parking lot, flowage easement, right-of-way for city street and utilities.
GSA Number: 2–D–OH–793.

Pennsylvania

Dashields Locks and Dam (Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acre, most recent use—baseball field.

Tracts 1373 and 1374
Tioga-Hammond Lakes Project
Mansfield Co: Tioga PA 16933–
Landholding Agency: COE
Property Number: 319440012
Status: Excess
Comment: 0.74 acre in residential area, possible easement restrictions.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: 1.368 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.661 acres; potential utilities.

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities.
GSA Number: 7–D–TX–0968–A.

Part of Tract 102 Segment 1
Bardwell Dam Road
Ennis Co: Ellis TX 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: Approx. 6.38 acres.
GSA Number: 7–D–TX–738–D.

Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 319240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Wisconsin

Kewaunee Eng. Depot
East Storage Yard
Kewaunee Co: Kewaunee WI 54216–
Landholding Agency: COE
Property Number: 319440013
Status: Excess
Comment: 0.87 acres, limited utilities, secured area w/alternate access.

Unsuitable Properties

Buildings (by State)

Landholding Agency: Air Force
Property Number: 189140024
Status: Unutilized
Reason: Secured Area.

Landholding Agency: Air Force
Property Number: 189140026
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Landholding Agency: Air Force
Property Number: 189140027
Status: Unutilized
Reason: Secured Area.

Alabama

Bldg. 913
Maxwell AFB
Avenue "C"
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189101002
Status: Unutilized
Reason: Secured Area.

Bldg. 927
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Location: Off Avenue "C"
Landholding Agency: Air Force
Property Number: 189010003
Status: Unutilized
Reason: Secured Area.

Bldg. 935
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Location: Off Selfridge Street
Landholding Agency: Air Force
Property Number: 189010004
Status: Unutilized
Reason: Secured Area.

Bldg. 936
Maxwell AFB
Selfridge Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189010005
Status: Unutilized
Reason: Secured Area.

Bldg. 809
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Off Renfroe Street
Landholding Agency: Air Force
Property Number: 189010011
Status: Unutilized
Reason: Secured Area.

Bldg. 861
Gunter AFB
South Drive
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010012
Status: Unutilized
Reason: Secured Area.

Bldg. 1011
Gunter AFB
Avenue "A"
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010013
Status: Unutilized
Reason: Secured Area.

Bldg 1022
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Adjacent to Avenues "A" and "C"
Landholding Agency: Air Force
Property Number: 189010015
Status: Underutilized
Reason: Secured Area.

Bldg 1042
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Between Avenues "A" and "C"
Landholding Agency: Air Force
Property Number: 189010016
Status: Underutilized
Reason: Secured area.

Bldg 1052
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Location: Between Avenues A and C
Landholding Agency: Air Force
Property Number: 189010019
Status: Underutilized
Reason: Secured Area.

Bldg 1060
Gunter AFB
4th Street at Avenue C
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010020
Status: Unutilized
Reason: Secured Area.

Bldg 1061
Gunter AFB
Avenue C
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189010022
Status: Unutilized
Reason: Secured Area.

Bldg 1435
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030220
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg 1436
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030221
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg 1440
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030222
Status: Unutilized
Reason: Floodway; Secured Area.

Bldg 1441
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189030223
Status: Unutilized
Reason: Floodway Secured Area.

Bldg 830
Gunter Air Force Base
Ramp Road
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040853
Status: Underutilized
Reason: Secured Area.

Bldg 421
Gunter Air Force Base
Avenue D
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040854
Status: Underutilized
Reason: Secured Area.

Bldg 426
Gunter Air Force Base
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189040855
Status: Underutilized
Reason: Secured Area.

Petrol OPS Bldg.
Maxwell Air Force Base
1101 Chanute Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189110165
Status: Unutilized
Reason: Secured Area.

Law Center
Maxwell Air Force Base
519 10th Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189110166
Status: Unutilized
Reason: Secured Area.

Bldg. 1011
Maxwell Air Force Base
Dannelly Street
Montgomery Co: Montgomery AL 36112–5000
Landholding Agency: Air Force
Property Number: 189110167
Status: Unutilized
Reason: Secured Area.

HQ Specified Bldg
Maxwell AFB
677 Third Street
Montgomery Co: Montgomery AL 36112
Landholding Agency: Air Force
Property Number: 189120231
Status: Unutilized
Reason: Secured Area.

Base Personnel Office
Maxwell AFB
853 Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189120232
Status: Unutilized
Reason: Secured Area.

Bldg. 932
932 3rd St. & Ave. D, West
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130335
Status: Unutilized
Reason: Secured Area.

Bldg. 8
8 Maxwell Blvd., East
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130336
Status: Unutilized
Reason: Secured Area.

Bldg 712
Avenue "E"
Gunter Air Force Base
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189130349
Status: Unutilized
Reason: Secured Area.

Bldg 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189130369
Status: Unutilized
Reason: Secured Area; Within airport runway clear zone.

Bldg 1006, Reproduction Plant
1006 Kelly Street
Maxwell AIr Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130370
Status: Unutilized
Reason: Secured Area.

Bldg 72, Storage Shed
72 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189130371
Status: Unutilized
Reason: Secured Area.

Bldg. 95, Storage Shed
95 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130372
Status: Unutilized
Reason: Secured Area.

Bldg. 96, Storage Shed
96 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130373
Status: Unutilized
Reason: Secured Area.

Bldg. 97, Storage Shed
97 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130374
Status: Unutilized
Reason: Secured Area.

Bldg. 78, Maintenance Shop
78 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130375
Status: Unutilized
Reason: Secured Area.

Bldg. 79, Warehouse
79 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130376
Status: Unutilized
Reason: Secured Area.

Bldg. 82, Storage CV Facility
82 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130377
Status: Unutilized
Reason: Secured Area.

Bldg. 83, Storage CV Facility
83 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130378
Status: Unutilized
Reason: Secured Area.

Bldg. 88, Maintenance Shop
88 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130379
Status: Unutilized
Reason: Secured Area.

Bldg. 90, Storage CV Facility
90 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130380
Status: Unutilized
Reason: Secured Area.

Bldg. 94, Storage CV Facility
94 Selfridge & Maxwell Blvd.
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189130381
Status: Unutilized
Reason: Secured Area.

Bldg. 135
Gunter Air Force Base
1st Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140001
Status: Unutilized
Reason: Secured Area.

Bldg. 206
Gunter Air Force Base

Off 1st Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140002
Status: Unutilized
Reason: Secured Area.

Bldg. 208
Gunter Air Force Base
1st Street at "D" Streets
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140003
Status: Unutilized
Reason: Secured Area.

Bldg. 420
Gunter Air Force Base
2nd Street at Avenue "D"
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140004
Status: Unutilized
Reason: Secured Area.

Bldg. 559
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140005
Status: Unutilized
Reason: Secured Area.

Bldg. 560
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140006
Status: Unutilized
Reason: Secured Area.

Bldg. 561
Gunter Air Force Base
Off 4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140007
Status: Unutilized
Reason: Secured Area.

Bldg. 562
Gunter Air Force Base
4th Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140008
Status: Unutilized
Reason: Secured Area.

Bldg. 818
Gunter Air Force Base
Foster Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140009
Status: Unutilized
Reason: Secured Area.

Bldg. 807
Maxwell Air Force Base
Maxwell Blvd. & Third Street
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189140010
Status: Unutilized
Reason: Secured Area.

Bldg. 1001
Maxwell Air Force Base
Kelly St., North & Airplane Park. Apron 3001
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189140011
Status: Unutilized
Reason: Secured Area.

Bldg. 1010
Maxwell Air Force Base
Bet. Maxwell Blvd. & Dannelly St
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189140012
Status: Unutilized
Reason: Secured Area.

Bldg. 1039
Maxwell Air Force Base
Kelly Street at Taxiway 3004
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189140013
Status: Unutilized
Reason: Secured Area.

Bldg. 1215
Maxwell Air Force Base
March St. bet. Willow St. & Beech St
Montgomery Co: Montgomery AL 36112—
Landholding Agency: Air Force
Property Number: 189140014
Status: Unutilized
Reason: Secured Area.

Bldg. 823
Gunter Air Force Base
Ramp Road at Second Street
Montgomery Co: Montgomery AL 36114–5000
Landholding Agency: Air Force
Property Number: 189140021
Status: Unutilized
Reason: Secured Area.

Bldg. 81
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220005
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220006
Status: Unutilized
Reason: Secured Area.

Bldg. 1042
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220007
Status: Unutilized
Reason: Secured Area.

Bldg. 1114
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220008
Status: Unutilized
Reason: Secured Area.

Bldg. 1208
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220009
Status: Unutilized
Reason: Secured Area.

Bldg. 1210
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220010
Status: Unutilized
Reason: Secured Area.

Bldg. 1211
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220011
Status: Unutilized
Reason: Secured Area.

Bldg. 1214
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220012
Status: Unutilized
Reason: Secured Area.

Bldg. 1229
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220013
Status: Unutilized
Reason: Secured Area.

Bldg. 1245
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189220014
Status: Unutilized
Reason: Secured Area.

Bldg. 906
Maxwell Air Force Base
Bet. Avenue B & C on Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240013
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 907
Maxwell Air Force Base
Bet. Avenue B & C on Second Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240014
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 931
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240015
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 933
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240016
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 934
Maxwell Air Force Base
Corner of Selfridge & 3rd Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240017
Status: Unutilized
Reason: Secured Area; Other
Comment: Extensive Deterioration.

Bldg. 143
Maxwell Air Force Base
Avenue D
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240018
Status: Unutilized
Reason: Secured Area.

Bldg. 839
Maxwell Air Force Base
1st & Bay Streets at Ash Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189240019
Status: Unutilized
Reason: Secured Area.

Bldg. 603, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310042
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 315, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310043
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 314, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310044
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 301, Maxwell AFB
Gunter Annex
Montgomery Co: Montgomery AL 36114–3112
Landholding Agency: Air Force
Property Number: 189310045
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Water Supply Bldg. Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310046
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Recrea./Library, Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310047
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

BE Storage Shed, Maxwell AFB
1043 Kelly Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310048
Status: Unutilized
Reason: Secured Area.

Data Proc. Bldg., Maxwell AFB
908 Avenue B at Avenue C
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310049
Status: Unutilized
Reason: Secured Area.

Youth Center, Maxwell AFB
712 6th Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189310050
Status: Unutilized
Reason: Secured Area.

Education Center
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320044
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Admin. Office
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320045
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 830, Gunter Annex
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320046
Status: Unutilized
Reason: Secured Area.

Chaplain School
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189320047
Status: Unutilized
Reason: Secured Area.

Recreation Bldg.
Maxwell Air Force Base
690 Ash Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330045
Status: Unutilized
Reason: Secured Area.

Storage Shed
Maxwell Air Force Base
1068 Kelly Street
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330046
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Storage Shed
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330047
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 400
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330048
Status: Unutilized
Reason: Secured Area.

Bldg. 402
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330049
Status: Unutilized
Reason: Secured Area.

Bldg. 408
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330050
Status: Unutilized
Reason: Secured Area.

Bldg. 410
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330051
Status: Unutilized
Reason: Secured Area.

Bldg. 502
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330052
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330053
Status: Unutilized
Reason: Secured Area.

Bldg. 504
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330054
Status: Unutilized
Reason: Secured Area.

Bldg. 505
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330055
Status: Unutilized
Reason: Secured Area.

Bldg. 506
Maxwell Air Force Base
1350 River Road

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Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330056
Status: Unutilized
Reason: Secured Area.
Bldg. 508
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330057
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 509
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330058
Status: Unutilized
Reason: Secured Area.
Bldg. 512
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330059
Status: Unutilized
Reason: Secured Area.
Bldg. 513
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330060
Status: Unutilized
Reason: Secured Area.
Bldg. 715
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330061
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 716
Maxwell Air Force Base
1350 River Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330062
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 820
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330063
Status: Unutilized
Reason: Secured Area.
Bldg. 864
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330064
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Facility 875
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Number: 189330065
Status: Unutilized
Reason: Secured Area.
Bldg. 813
Maxwell Air Force Base
Montgomery AL 36114–
Landholding Agency: Air Force
Property Number: 189430001
Status: Unutilized
Reason: Secured Area.

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010298
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010299
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 130
Sparrevohn Air Foce Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010300
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 11–230
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010303
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 21–116
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010304
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 43–010
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010306
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 63–320
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010307
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010308
Status: Unutilized
Reason: Secured Area; Contamination.
Bldg. 103
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010309
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 110
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010310
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 112
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010311
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 113
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010312
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 114

Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010313
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 115
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010314
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 118
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010315
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1018
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010317
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010318
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010319
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 107
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010320
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 115
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010321
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 113
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010322
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 150
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010323
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 152
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010324
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 301
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010325
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1001
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010326
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1003
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010327
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1055
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010328
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.
Bldg. 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010329
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 103
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010330
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 104
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010331
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 105
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010332
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 110
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010333
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 114
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010334
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 202
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010335
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination
Bldg. 204
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force

Property Number: 189010336
Status: Unutilized
Reason: Secured Area; Isolated area; Not accessible by road; Contamination.

Bldg. 205
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010337
Status: Unutilized
Reason: Secured area; Isolated area; Not accessible by road; Contamination.

Bldg. 1001
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010338
Status: Unutilized
Reason: Secured area; Isolated area; Not accessible by road; Contamination.

Bldg. 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010339
Status: Unutilized
Reason: Secured area; Isolated area; Not accessible by road; Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote; Arctic environment.

Bldg. 1548, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420001
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1568, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420002
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1570, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 18942003
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1700, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420004
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1832, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420005
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1842, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420006
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1844, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189420007
Status: Unutilized
Reason: Floodway; Secured area; Extensive deterioration.

Bldg. 1853, Galena Airport
Elmendorf AFB Co: Anchorage AK 99506-4420
Landholding Agency: Air Force
Property Number: 189440011
Status: Unutilized
Reason: Secured area; Floodway

Bldg. 24-825
Elmendorf Air Force Base
Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189440012
Status: Unutilized
Reason: Secured area; Within airport runway clear zone.

Bldg. 24-820
Elmendorf Air Force Base
Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189440013
Status: Unutilized
Reason: Secured area; Within airport runway clear zone.

Bldg. 21-878
Elmendorf Air Force Base
Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189440014
Status: Unutilized
Reason: Secured area; Extensive deterioration.

Bldg. 10-480
Elmendorf Air Force Base
Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189440015
Status: Unutilized
Reason: Secured area; Extensive deterioration.

USCG MSD Office (2 buildings)
2958 Tongass Avenue
Ketchikan Co: Ketchikan AK 99901-
Landholding Agency: GSA
Property Number: 879130004
Status: Excess
Reason: Extensive deterioration

Arizona

Facility 90002
Holbrook Radar Site
Holbrook Co: Navajo AZ 86025-
Landholding Agency: Air Force
Property Number: 189340049
Status: Unutilized
Reason: Within airport runway clear zone

Arkansas

Silver Hill Cabin
Buffalo National River
St. Joe Co: Newton AR 72675-
Landholding Agency: Interior
Property Number: 619440003
Status: Unutilized
Reason: Extensive deterioration

Paul Ray/Barbara Still House
Hwy. 268
Yellville Co: Marion AR 72687-
Landholding Agency: Interior
Property Number: 619440006
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518-
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 392 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area.

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone; Secured area

Bldg. 152 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010190
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force
Property Number: 189010191
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535-5496
Landholding Agency: Air Force

Property Number: 189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010193
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Lorton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010196
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 100
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010233
Status: Unutilized
Reason: Secured Area.

Bldg. 101
Point Arena Air Force Station
(See County) Co: Mendocino Ca 95468-5000
Landholding Agency: Air Force
Property Number: 189010234
Status: Underutilized
Reason: Secured Area.

Bldg. 116
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010235
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Point Arena Air Force Station
(See County) Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010236
Status: Unutilized
Reason: Secured Area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt. Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546
Status: Unutilized
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010547
Status: Unutilized
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010548
Status: Unutilized
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189010549
Status: Unutilized
Reason: Secured Area.

Bldg. 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189010360
Status: Excess
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 10312
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Landholding Agency: Air Force
Property Number: 189210026
Status: Unutilized
Reason: Secured Area.

Bldg. 10314
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Landholding Agency: Air Force
Property Number: 189210027
Status: Unutilized
Reason. Secured Area.

Bldg. 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Landholding Agency: Air Force
Property Number: 189210028
Status: Unutilized
Reason: Secured Area.

Bldg. 16104, Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Hwy 1, Hwy 246, Coast Rd. Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189230020
Status: Underutilized
Reason: Secured Area.

Bldg. 1791
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Hwy 1, Hwy 246, Coast Rd. PT Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189240044
Status: Unutilized
Reason: Secured Area.

Bldg. 10721
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Hwy 1, Hwy 246, Coast Rd. Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189240048
Status: Unutilized
Reason: Secured Area.

Bldg. 13028
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Hwy 1, Hwy 246, Coast Rd. Pt Sal Road, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189240050
Status: Unutilized
Reason. Secured Area.

Bldg. 5427,Vandenberg Air Force Base
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310014
Status: Unutilized
Reason: Secured Area.

Bldg. 5428, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310015
Status: Unutilized
Reason. Secured Area.

Bldg. 5430, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310016
Status: Unutilized
Reason. Secured Area.

Bldg. 5431, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310017
Status: Unutilized
Reason. Secured Area.

Bldg. 6407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310024
Status: Unutilized
Reason. Secured Area.

Bldg. 6425, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310027
Status: Unutilized
Reason: Secured Area.

Bldg. 6444, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189310028

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Status: Unutilized
Reason: Secured Area.
Bldg. 7303, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310029
Status: Unutilized
Reason: Secured Area.
Bldg. 7304, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310030
Status: Unutilized
Reason: Secured Area.
Bldg. 12406, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310034
Status: Unutilized
Reason: Secured Area.
Bldg. 12407, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310035
Status: Unutilized
Reason: Secured Area.
Bldg. 13010, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310036
Status: Unutilized
Reason: Secured Area.
Bldg. 13014, Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189310039
Status: Unutilized
Reason: Secured Area.
Bldg. 12205
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320020
Status: Excess
Reason: Secured Area.
Bldg. 12206
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320021
Status: Excess
Reason: Secured Area.
Bldg. 12207
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320022
Status: Excess
Reason: Secured Area.
Bldg. 12209
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320023
Status: Excess
Reason: Secured Area.
Bldg. 12210
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320024
Status: Excess
Reason: Secured Area.
Bldg. 12306
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320025
Status: Excess
Reason: Secured Area.
Bldg. 12307
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320026
Status: Excess
Reason: Secured Area.
Bldg. 12309
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320027
Status: Excess
Reason: Secured Area.
Bldg. 12310
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320028
Status: Excess
Reason: Secured Area.
Bldg. 12313
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320029
Status: Excess
Reason: Secured Area.
Bldg. 12314
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320030
Status: Excess
Reason: Secured Area.
Bldg. 12503
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189320031
Status: Excess
Reason: Secured Area.
Bldg. 5437
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330011
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 6206
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330013
Status: Unutilized
Reason: Secured Area.
Bldg. 8215
Vandenberg Air Force Base
Vandenberg Air Force Base Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330016
Status: Unutilized
Reason: Secured Area.
Bldg. 8220
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330019
Status: Unutilized
Reason: Secured Area.
Bldg. 9001
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330028
Status: Unutilized
Reason: Extensive deterioration; Secured Area.
Bldg. 13025
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330032
Status: Unutilized
Reason: Secured Area.
Bldg. 13027
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189330031
Status: Unutilized
Reason: Secured Area.
Bldg. 4412
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340001
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 4415
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340002
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.
Bldg. 1988
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340003
Status: Unutilized
Reason: Other; Secured Area.
Comment: Electrical Power Generator Bldg.
Bldg. 1324
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–

Landholding Agency: Air Force
Property Number: 189340006
Status: Unutilized
Reason: Secured Area.
Bldg. 1341
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340007
Status: Unutilized
Reason: Secured Area.
Bldg. 1955
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340008
Status: Unutilized
Reason: Secured Area.
Bldg. 5007
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340009
Status: Unutilized
Reason: Secured Area.
Bldg. 5107
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340010
Status: Unutilized
Reason: Secured Area.
Bldg. 5118
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340011
Status: Unutilized
Reason: Secured Area.
Bldg. 5120
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340012
Status: Unutilized
Reason: Secured Area.
Bldg. 5132
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340013
Status: Unutilized
Reason: Secured Area.
Bldg. 6008
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340014
Status: Unutilized
Reason: Secured Area.
Bldg. 6418
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340015
Status: Unutilized
Reason: Secured Area.
Bldg. 6420
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340016
Status: Unutilized
Reason: Secured Area.
Bldg. 6429
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340017
Status: Unutilized
Reason: Secured Area.
Bldg. 6441
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340018
Status: Unutilized
Reason: Secured Area.
Bldg. 6442
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340019
Status: Unutilized
Reason: Secured Area.
Bldg. 6443
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340020
Status: Unutilized
Reason: Secured Area.
Bldg. 7301
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340021
Status: Unutilized
Reason: Secured Area.
Bldg. 7306
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340022
Status: Unutilized
Reason: Secured Area.
Bldg. 8309
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340023
Status: Unutilized
Reason: Secured Area.
Bldg. 9310
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340024
Status: Unutilized
Reason: Secured Area.
Bldg. 11190
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340025
Status: Unutilized
Reason: Secured Area
Bldg. 11308
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340026
Status: Unutilized
Reason: Secured Area.
Bldg. 16164
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189340028
Status: Unutilized
Reason: Secured Area.
Bldg. 6521
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410004
Status: Unutilized
Reason: Secured Area.
Bldg. 13019
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189410005
Status: Unutilized
Reason: Secured Area.
Bldg. 501
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189420008
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 13020
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189420011
Status: Unutilized
Reason: Secured Area; Extensive deterioration.
Bldg. 1203
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440001
Status: Unutilized
Reason: Secured Area.
Bldg. 1786
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440002
Status: Unutilized
Reason: Secured Area.

Bldg. 10005
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440003
Status: Unutilized
Reason: Secured Area.

Bldg. 11032
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440004
Status: Unutilized
Reason: Secured Area.

Bldg. 11183
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440005
Status: Unutilized
Reason: Secured Area

Bldg. 11219
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440006
Status: Unutilized
Reason: Secured Area

Bldg. 11238
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440007
Status: Unutilized
Reason: Secured Area

Bldg. 11511
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440008
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 13412
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189440009
Status: Unutilized
Reason: Secured Area

Bldg. 460
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189510019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 6348
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189510020
Status: Unutilized
Reason: Secured Area.

Former Naval Research Bldg.
Pasadena Co: Los Angeles CA 91106–
Landholding Agency: GSA
Property Number: 549430001
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–N–CA–1304A.

NW Seal Rock & Lighthouse
St. George Reef Co: Del Norte CA
Landholding Agency: GSA
Property Number: 549430012
Status: Excess
Reason: Other
Comment: Inaccessible.
GSA Number: 9–U–CA–556B.

Colorado

Bldg. 712
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330002
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 518
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330003
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 505
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330004
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 504
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330005
Status: Unutilized
Reason: Extensive deterioration; Secured Area

Bldg. 503
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330006
Status: Unutilized
Reason: Extensive deterioration; secured Area.

Bldg. 502
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330007
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 32
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330008
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 27
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330009
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 23
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011–9599
Landholding Agency: Air Force
Property Number: 189330010
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Delaware

Bldg. 1900
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Number: 189120230
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 1304 (436 CSG)
Dover Air Force Base
Dover Co: Kent DE 19902–5065
Landholding Agency: Air Force
Property Number: 189140018
Status: Unutilized
Reason: Secured Area; Within airport runway clear zone.

Florida

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area.

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area.

Bldg. 430
Patrick Air Force
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard F: 32025–
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area.

Bldg. 1176
Patrick Air Force Base
1176 School Avenue
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240029
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 1179
Patrick Air Force Base
1179 School Avenue
Co: Brevard FL 32935–
Landholding Agency: Air Force
Property Number: 189240030
Status: Unutilized
Reason: Secured Area; Other

Comment: Extensive Deterioration.

Bldg. 321
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320001
Status: Unutilized
Reason: Secured Area. Within 2000 ft. of flammable or explosive material; Other.
Comment: Extensive Deterioration.

Bldg. 510
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320002
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Other.
Comment: Extensive Deterioration.

Bldg. 558
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320003
Status: Unutilized
Reason: Secured Area. Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Other.
Comment: Extensive Deterioration.

Bldg. 575
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189320004
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Other.
Comment: Extensive Deterioration.

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608-
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Extensive deterioration.

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area.

Bldg. 921
Patrick Air Force Base
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Facility No. 01676V
Cape Canaveral AFS
Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189430003
Status: Unutilized
Reason: Secured Area.

Bldg. 2613
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430004
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 2625
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430005
Status: Unutilized
Reason: Extensive deterioration Secured Area.

Bldg. 2639
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430006
Status: Unutilized
Reason: Extensive deterioration Secured Area.

Bldg. 2642
Tyndall Air Force Base
Panama City Co: Bay FL 32403–
Landholding Agency: Air Force
Property Number: 189430007
Status: Unutilized
Reason: Secured Area Extensive deterioration.

Idaho

Bldg. 1012
Mountain Home Air Force Base
7th Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923
Mountain Home Air Force Base
7th Avenue (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604
Mountain Home Air Force Base
Pine Street (See County) Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone.

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone Secured Area.

Bldg. 3670
Scott Air Force Base
East Drive 375 ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010248
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189010725
Status: Unutilized
Reason: Secured Area.

Bldg. 869
Scott Air Force Base
375 CSG/DEER
Scott AFB Co: St. Clair IL 62225–5045
Landholding Agency: Air Force
Property Number: 189110087
Status: Unutilized
Reason: Secured Area.

Bldg. 865
Scott Air Force Base
Belleville Co: St. Clair IL 62225–
Landholding Agency: Air Force
Property Number: 189130347
Status: Unutilized
Reason: Secured Area.

Indiana

Brookville Lake—Bldg.
Brownsville Rd. in Union
Liberty Co: Union IN 47353–
Landholding Agency: COE
Property Number: 319440004
Status: Excess
Reason: Extensive deterioration.

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310008
Status: Unutilized
Reason: Secured Area.

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station.

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station.

Kansas

Bldg. 1407
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340029
Status: Unutilized
Reason: Within airport runway clear zone Secured Area.

Bldg. 186
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–

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Landholding Agency: Air Force
Property Number: 189340030
Status: Unutilized
Reason: Extensive deterioration Secured Area.

Bldg. 187
McConnell Air Force Base
Wichita Co: Sedgwick KS 67221–
Landholding Agency: Air Force
Property Number: 189340031
Status: Unutilized
Reason: Extensive deterioration Secured Area.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Car Storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Latrine
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Maryland

Bldg. 4
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010261
Status: Unutilized
Reason: Secured Area.

Bldg. 5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010264
Status: Unutilized
Reason: Secured Area.

Bldg. 3427
Andrews Air Force Base
3427 Pennsylvania Avenue
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area.

Bldg. 3492
Andrews Air Force Base
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189340050
Status: Unutilized
Reason: Secured Area.

5 Training Facilities
Interagency Training Center
10530 Riverview Road
Ft. Washington Co: Prince Georges MD 20744–
Landholding Agency: GSA
Property Number: 549440002
Status: Excess
Reason: Secured Area.

Massachusetts

Bldg. 1900
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Number: 189010438
Status: Unutilized
Reason: Secured Area.

Bldg. 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–5000
Landholding Agency: Air Force
Property Number: 189040002
Status: Unutilized
Reason: Secured Area.

Trailers, Former Kimpel Prop.
South Egremont
Sheffield Co: Berkshire MA 01257–
Landholding Agency: Interior
Property Number: 619510003
Status: Excess
Reason: Extensive deterioration

Michigan

Bldg. 560
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: North end of airfield.
Landholding Agency: Air Force
Property Number: 189010522
Status: Unutilized
Reason: Secured Area.

Bldg. 5658
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 590.
Landholding Agency: Air Force
Property Number: 189010523
Status: Unutilized
Reason: Secured Area.

Bldg. 580
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: South end of airfield.
Landholding Agency: Air Force
Property Number: 189010524
Status: Unutilized
Reason: Secured Area.

Bldg. 856
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010525
Status: Unutilized
Reason: Secured Area.

Bldg. 1005
Selfridge Air National Guard Base
1005 C. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010526
Status: Unutilized
Reason: Secured Area.

Bldg. 1012
Selfridge Air National Guard Base
1012 A. Street
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010527
Status: Unutilized
Reason: Secured Area.

Bldg. 1041
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010528
Status: Unutilized
Reason: Secured Area.

Reason: Secured Area.

Bldg. 1412
Selfridge Air National Guard Base
1412 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010529
Status: Unutilized
Reason: Secured Area.

Bldg. 1434
Selfridge Air National Guard Base
1434 Castle Avenue
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010530
Status: Unutilized
Reason: Secured Area.

Bldg. 1688
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010531
Status: Unutilized
Reason: Secured Area.

Bldg. 1689
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Location: Near South Perimeter Road, near Building 1694.
Landholding Agency: Air Force
Property Number: 189010532
Status: Unutilized
Reason: Secured Area.

Bldg. 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Number: 189010533
Status: Unutilized
Reason: Secured Area.

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: Other Comment: Sewage treatment and disposal facility.

Bldg. 99 (WATER WELL).
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010831
Status: Excess
Reason: Other Comment: Water well.

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010832
Status: Excess
Reason: Other Comment: Water well.

Bldg. 118
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010875
Status: Excess
Reason: Other Comment: Gasoline station.

Bldg. 120
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010876
Status: Excess
Reason: Other Comment: Gasoline station.

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Other Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010878
Status: Excess
Reason: Other Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Other Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Other Comment: Water pump station.

Minnesota

Naval Weapons Industrial
Reserve Plant
1902 West Minnehaha
St. Paul Co: Ramsey MN
Landholding Agency: GSA
Property Number: 549410004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 2–N–MN–559.

Missouri

Bldg. 42
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010726
Status: Unutilized
Reason: Secured Area.

Bldg. 45
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010728
Status: Unutilized
Reason: Secured Area.

Bldg. 46
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010729
Status: Unutilized
Reason: Secured Area.

Bldg. 47
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010730
Status: Unutilized
Reason: Secured Area.

Bldg. 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Number: 189010731
Status: Unutilized
Reason: Secured Area.

Tract 2222
Stockton Project
Aldrich Co: Polk MO 65601–
Landholding Agency: COE
Property Number: 319510001
Status: Excess
Reason: Extensive deterioration.

Montana

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental.

Bldg. 627
Malmstrom Air Force Base
2nd St. and I Avenue
Great Falls Co.: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010722
Status: Unutilized
Reason: Secured Area, Other environmental.

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area, Other environmental.

Bldg. 440
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430008
Status: Unutilized
Reason: Extensive deterioration, Secured Area.

Bldg. 444
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430009
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 464
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430010
Status: Unutilized
Reason: Secured Area.

Bldg. 495
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525

Landholding Agency: Air Force
Property Number: 189430011
Status: Unutilized
Reason: Secured Area.

Bldg. 626
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430012
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 1882
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–7525
Landholding Agency: Air Force
Property Number: 189430013
Status: Unutilized
Reason: Secured Area.

Bldg. 205
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510004
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 210
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510005
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 245
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510006
Status: Underutilized
Reason: Secured Area.

Bldg. 246
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510007
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 334
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510008
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 335
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510009
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 365
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510010
Status: Unutilized
Reason: Secured Area.

Bldg. 529
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510011
Status: Underutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Bldg. 622
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510012
Status: Unutilized
Reason: Secured Area

Bldg. 624
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510013
Status: Unutilized
Reason: Secured Area.

Bldg. 625
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510014
Status: Unutilized
Reason: Secured Area.

Bldg. 1880
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189510015
Status: Underutilized
Reason: Secured Area.

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson
Co: Richland MT 57212–
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other
Comment: No public access
GSA Number: 7–F–MT–594.

Nebraska

Offutt Communications Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: former sewage lagoon.

Bldg. 637
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524–
Landholding Agency: Air Force
Property Number: 189230022
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 31
Offutt Air Force Base
Sac Boulevard
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240007
Status: Unutilized
Reason: Secured Area

Bldg. 311
Offutt Air Force Base
Nelson Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240008
Status: Unutilized
Reason: Secured Area.

Bldg. 401
Offutt Air Force Base
Custer Drive
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240009
Status: Unutilized
Reason: Secured Area.

Bldg. 416
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240010
Status: Unutilized
Reason: Secured Area.

Bldg. 417
Offutt Air Force Base
Sherman Turnpike
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240011
Status: Unutilized
Reason: Secured Area.

Bldg. 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189240012
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other Comment: Generator

Bldg. 686
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510021
Status: Unutilized
Reason: Secured Area.

Bldg. 439
Offutt Air Force Base
Offutt Co: Sarpy NE 68113–
Landholding Agency: Air Force
Property Number: 189510022
Status: Unutilized
Reason: Secured Area.

Nevada

Residence
237 Southeast Street
Fallon Co: Churchill NV 89406–
Landholding Agency: Interior
Property Number: 619430013
Status: Unutilized
Reason: Extensive deterioration.

Storage Shed
Fallon Rail Facility
Fallon Co: Churchill NV 89406–
Landholding Agency: Interior
Property Number: 619440004
Status: Unutilized
Reason: Extensive deterioration.

New Hampshire

Bldg. 101
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 102
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

New Mexico

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240032
Status: Unutilized
Reason: Secured Area.

Bldg. 80
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240033
Status: Unutilized
Reason: Secured Area.

Bldg. 98
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240034
Status: Unutilized
Reason: Secured Area.

Bldg. 324
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240035
Status: Unutilized
Reason: Secured Area.

Bldg. 598
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240036
Status: Unutilized
Reason: Secured Area.

Bldg. 801
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240037
Status: Unutilized
Reason: Secured Area.

Bldg. 802
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240038
Status: Unutilized
Reason: Secured Area.

Bldg. 1095
Holloman Air Force Base
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240039
Status: Unutilized
Reason: Secured Area.

Bldg. 1096
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240040
Status: Unutilized
Reason: Secured Area.

Facility 321
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240041
Status: Unutilized
Reason: Secured Area.

Facility 75115
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240042
Status: Unutilized
Reason: Secured Area.

Bldg. 874
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320041
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 1258
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189320042
Status: Unutilized
Reason: Secured Area; Other.
Comment: Extensive Deterioration.

Bldg. 134
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430014
Status: Unutilized
Reason: Secured Area.

Bldg. 640
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430015
Status: Unutilized
Reason: Secured Area.

Bldg. 703
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430016
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 813
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430017
Status: Unutilized
Reason: Secured Area.

Bldg. 821
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430018
Status: Unutilized
Reason: Secured Area.

Bldg. 829
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430019
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 867
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430020
Status: Unutilized
Reason: Secured Area.

Bldg. 884
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430021
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 886
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430022
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Bldg. 908
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189430023
Status: Unutilized
Reason: Secured Area.

Bldg. 599
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510001
Status: Unutilized
Reason: Secured Area.

Bldg. 600
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189510002
Status: Unutilized
Reason: Secured Area.

Tract 102–34 (Gravette Resid.)
Lava Tubes District
Grants Co: Cibola NM 87020–

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Landholding Agency: Interior
Property Number: 619510005
Status: Unutilized
Reason: Extensive deterioration.

Tract 102–37 (Abeita)
Grants Co: Cibola NM 87020–
Landholding Agency: Interior
Property Number: 619510006
Status: Excess
Reason: Extensive deterioration.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 272
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022
Status: Excess
Reason: Secured Area

Bldg. 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140023
Status: Excess
Reason: Secured Area.

Facility 814, Griffiss AFB
NE of Weapons Storage Area
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230001
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 808, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230002
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 807, Griffiss AFB
Perimeter Road
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189230003
Status: Excess
Reason: Within airport runway clear zone; Secured Area.

Facility 126
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240020
Status: Unutilized
Reason: Secured Area.

Facility 127
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240021
Status: Unutilized
Reason: Secured Area.

Facility 135
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240022
Status: Unutilized
Reason: Secured Area.

Facility 137
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240023
Status: Unutilized
Reason: Secured Area.

Facility 138
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240024
Status: Unutilized
Reason: Secured Area.

Facility 173
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240025
Status: Unutilized
Reason: Secured Area.

Facility 261
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240026
Status: Unutilized
Reason: Secured Area.

Facility 308
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240027
Status: Unutilized
Reason: Secured Area.

Facility 1200
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189240028
Status: Unutilized
Reason: Secured Area.

Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondago NY 13211–7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Facility 841
Griffiss Air Force Base
Hanger Road
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area

Bldg. 852
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14304–5000
Landholding Agency: Air Force
Property Number: 189420013
Status: Unutilized
Reason: Secured Area

Naval Indus. Rsv. Ordance Pl.
121 Lincoln Avenue
Rochester Co: Monroe NY 14611–
Landholding Agency: GSA
Property Number: 549430011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
GSA Number: TENT–2–N–NY–592

Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 879420002
Status: Excess
Reason: Floodway; Extensive deterioration
GSA Number: 2–4–NY–817.

North Carolina

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.

Bldg 600, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330035
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 602, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330036
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 603, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330037
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 604, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330038
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 605, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330039
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 606, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330040
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 607, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890

Landholding Agency: Air Force
Property Number: 189330041
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 612, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330042
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg 619, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330043
Status: Unutilized
Reason: Extensive Deterioration; Secured Area.

Bldg. 6606
Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2890
Landholding Agency: Air Force
Property Number: 189330044
Status: Unutilized
Reason: Extensive deterioration; Secured Area.

Bldg. 255, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420019
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 370, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420020
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 904, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420021
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 910, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420022
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 912, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420023
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 914, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2003
Landholding Agency: Air Force
Property Number: 189420024
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 462, Pope Air Force Base
Fayetteville Co: Cumberland NC 28308–2402
Landholding Agency: Air Force
Property Number: 189510003
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: Other
Comment: Garbage incinerator.

Bldg. 119
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320034
Status: Unutilized
Reason: Secured Area.

Bldg. 191
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320035
Status: Unutilized
Reason: Secured Area.

Bldg. 490
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320036
Status: Unutilized
Reason: Secured Area.

Bldg. 509
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320037
Status: Unutilized
Reason: Secured Area.

Bldg. 526
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320038
Status: Unutilized
Reason: Secured Area.

Bldg. 895
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320039
Status: Unutilized
Reason: Secured Area.

Bldg. 1019
Minot Air Force Base
Minot Co: Ward ND 58701–
Landholding Agency: Air Force
Property Number: 189320040
Status: Unutilized
Reason: Secured Area.

Ohio

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area.

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area.

Lab
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510002
Status: Unutilized
Reason: Secured Area.

Storage Facility
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510003
Status: Unutilized
Reason: Secured Area.

Office Building
Ohio River Division Laboratories
Mariemont Co: Hamilton OH 15227–4217
Landholding Agency: COE
Property Number: 319510004
Status: Unutilized
Reason: Secured Area.

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705–5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Pennsylvania

Tract 435
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430003
Status: Unutilized
Reason: Extensive deterioration.

Tract 427
Grays Landing Lock & Dam Project
New Geneva Co: Fayette PA 15467–
Landholding Agency: COE
Property Number: 319430004
Status: Unutilized
Reason: Extensive deterioration.

Tract 426
Grays Landing Lock & Dam Project
New Geneva Co: Fayette PA 15467–
Landholding Agency: COE
Property Number: 319430005
Status: Unutilized
Reason: Extensive deterioration.

Tract 405
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430006
Status: Unutilized
Reason: Extensive deterioration.

Tract 358
Grays Landing Lock & Dam Project

Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430007
Status: Unutilized
Reason: Extensive deterioration.

Tract 356
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 319430008
Status: Unutilized
Reason: Extensive deterioration.

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area.

South Dakota

Bldg. 88513
Ellsworth Air Force Base
Porter Avenue
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189210002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 200, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320049
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 203, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 204, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320052
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206, South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320053
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area.

Bldg. 88535
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340032
Status: Unutilized
Reason: Secured Area.

Bldg. 88470
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340033
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 88304
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340034
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration

Bldg. 9011
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340035
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration

Bldg. 7506
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340037
Status: Unutilized
Reason: Secured Area.

Bldg. 6908
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration.

Bldg. 6904
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Extensive deterioration.

Bldg. 4102
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340040
Status: Unutilized
Reason: Secured Area.

Bldg. 4101
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340041
Status: Unutilized
Reason: Secured Area.

Bldg. 4100
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340042
Status: Unutilized
Reason: Secured Area.

Bldg. 3016
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340043
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area.
Comment: Waste treatment bldg.

Bldg. 1115
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340044
Status: Unutilized
Reason: Secured Area.

Bldg. 1210
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340045
Status: Unutilized
Reason: Secured Area.

Bldg. 1112
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340046
Status: Unutilized
Reason: Secured Area.

Bldg. 1110
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340047
Status: Unutilized
Reason: Secured Area.

Bldg. 606
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 189340048
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 6905, Ellsworth AFB
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189440010
Status: Underutilized
Reason: Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85

Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other.
Comment: water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other.
Comment: water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other.
Comment: water treatment plant.

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 40
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 107
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420015
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 119
Laughlin Air Force Base Co: Val Verde TX 78843–5000
Landholding Agency: Air Force
Property Number: 189420016
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070–
Landholding Agency: GSA
Property Number: 219014823
Status: Excess
Reason: Other
Comment: Pump house.
GSA Number: 7–D–TX–879A.

Utah

Bldg. 789
Hill Air Force Base
(See County) Co: Davis UT 84056–
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Washington

Bldg. 640
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010139
Status: Unutilized
Reason: Secured Area.

Bldg. 641
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010140
Status: Unutilized
Reason: Secured Area.

Bldg. 642
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010141
Status: Unutilized
Reason: Secured Area.

Bldg. 643
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010142
Status: Unutilized
Reason: Secured Area.

Bldg. 645
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010143
Status: Unutilized
Reason: Secured Area.

Bldg. 646
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010144
Status: Unutilized
Reason: Secured Area.

Bldg. 647
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010145
Status: Unutilized
Reason: Secured Area.

Bldg. 1415
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010146
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1429
Fairchild AFB
Fairchild Co: Spokane WA 99011
Landholding Agency: Air Force
Property Number: 189010147
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1464
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010148
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1465
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010149
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 1466
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010150
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3503
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010151
Status: Unutilized
Reason: Secured Area.

Bldg. 3504
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010152
Status: Unutilized
Reason: Secured Area.

Bldg. 3505
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010153
Status: Unutilized
Reason: Secured Area.

Bldg. 3506
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010154
Status: Unutilized
Reason: Secured Area.

Bldg. 3507
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010155
Status: Unutilized
Reason: Secured Area.

Bldg. 3510
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010156

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Status: Unutilized
Reason: Secured Area.
Bldg. 3514
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010157
Status: Unutilized
Reason: Secured Area.
Bldg. 3518
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010158
Status: Unutilized
Reason: Secured Area.
Bldg. 3521
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010159
Status: Unutilized
Reason: Secured Area.
Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 261
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310053
Status: Unutilized
Reason: Secured Area.
Bldg. 284
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310054
Status: Unutilized
Reason: Secured Area
Facility 923
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310055
Status: Unutilized
Reason: Secured Area
Bldg. 1330
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310056
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material
Bldg. 1336
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310057
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2000
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310058
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2143
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310059
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 2385
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310060
Status: Unutilized
Reason: Secured Area.
Bldg. 3509
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310061
Status: Unutilized
Reason: Secured Area.
Bldg. 1405
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310062
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Facility 1468
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310063
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material
Facility 1469
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310064
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Facility 2450
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189310065
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.
Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022–
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area.
Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 1224
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area.
Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189330096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 875
Portion, Ft. Vancouver Barracks
E. 10th & Cabell Road, I–95 North
Vancouver WA
Landholding Agency: GSA
Property Number: 549430002
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–D–WA–500L.
Cabins 896 & 897
Olympic National Park
Port Angeles Co: Clallam WA 98362–
Landholding Agency: Interior
Property Number: 619510002
Status: Unutilized
Reason: Extensive deterioration.

Wisconsin

Bldg. 204, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320032
Status: Unutilized
Reason: Secured Area.
Bldg. 306, 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207–6299
Landholding Agency: Air Force
Property Number: 189320033
Status: Unutilized
Reason: Secured Area.

Wyoming

Bldg. 31
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198
Status: Unutilized
Reason: Secured Area.
Bldg. 34
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010199
Status: Unutilized
Reason: Secured Area.
Bldg. 37
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010200
Status: Unutilized
Reason: Secured Area.
Bldg. 284
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010201
Status: Unutilized
Reason: Secured Area.
Bldg. 385
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010202
Status: Unutilized
Reason: Secured Area.
Bldg. 803
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010203
Status: Unutilized
Reason: Secured Area.
Bldg. 802
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240001
Status: Unutilized
Reason: Secured Area.
Bldg. 804
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240002
Status: Unutilized
Reason: Secured Area.
Bldg. 805
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240003
Status: Unutilized
Reason: Secured Area.
Bldg. 806
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240004
Status: Unutilized
Reason: Secured Area.
Bldg. 2780
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240005
Status: Unutilized
Reason: Secured Area.
Bldg. 2781
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189240006
Status: Unutilized
Reason: Secured Area.
Bldg. 808
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410001
Status: Unutilized
Reason: Secured Area.
Bldg. 844
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410002
Status: Unutilized
Reason: Secured Area.
Bldg. 848
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189410003
Status: Unutilized
Reason: Secured Area.
Bldg. 362
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189420017
Status: Unutilized
Reason: Secured Area.
Bldg. 342
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189420018
Status: Unutilized
Reason: Secured Area.
Bldg. 810
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189510016
Status: Unutilized
Reason: Secured Area.
Bldg. 830
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189510017
Status: Unutilized
Reason: Secured Area.
Bldg. 826
Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189510018
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alabama

Tract A–152, Demopolis Lake
West Jackson Street
Demopolis Co: Marengo AL 36732–
Landholding Agency: COE
Property Number: 319440005
Status: Underutilized
Reason: Floodway
Old Lock 9
Armistead I. Selden
Sec. 5 & 8, Twp. 23 North, Range 4 East Co: Green AL 35462–
Landholding Agency: COE
Property Number: 319440006
Status: Underutilized
Reason: Floodway.

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote area; Arctic environment.
Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote area; Arctic coast.
Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other; Isolated area; Not accessible by road.
Comment: Isolated and remote area; Arctic coast.

Arizona

Portion, Gila River
Buckeye Co: Maricopa AZ 85317–
Landholding Agency: GSA
Property Number: 549240005
Status: Excess
Reason: Floodway
GSA Number: 9–GR–AZ–533
Salt River Vortac
North of intersection of Price Rd. & 1st St.
Mesa Co: Maricopa AZ 85201–
Landholding Agency: GSA
Property Number: 549330008
Status: Excess
Reason: Other
Comment: No legal access.
GSA Number: 9–U–AZ–624
Santa Fe Pacific Pipelines
Avenue 7E North from Hwy. 95
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420005
Status: Unutilized
Reason:: Secured Area

California

Central Valley Project
San Luis Drain
Tracy Co: San Joaquin CA 95376–
Landholding Agency: GSA
Property Number: 549230001
Status: Excess
Reason: Other
Comment: Landlocked
GSA Number: 9–I–CA–1325
Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA

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Property Number: 549310016
Status: Excess
Reason: Other
Comment: Sewage Treatment Plant.
GSA Number: 9–G–CA–580C.

Portion of Lot 7
Former State of California Land/Stockpile
Yreka Co: Siskiyou CA
Landholding Agency: GSA
Property Number: 549330006
Status: Excess
Reason: Other
Comment: Inaccessible.
GSA Number: 9–G–CA–956A.

L–5 Pumping Station
LaQuinta Co: Riverside CA 92253–
Landholding Agency: Interior
Property Number: 619420002
Status: Unutilized
Reason: Secured Area; Other.
Comment: Pumping Station.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.

Illinois

1.6 acres of land
Rock Island Arsenal
South Shore Mississippi River Moline Pool
Moline Co: Rock Island IL 61299–
Landholding Agency: GSA
Property Number: 549310009
Status: Surplus
Reason: Floodway.
GSA Number: 2–D–IL–620–B.

Indiana

Portion of Tract No. 1224
Salamonie Lake
Huntington Co: Huntington IN 46750–
Landholding Agency: COE
Property Number: 319310001
Status: Unutilized
Reason: Other.
Comment: Landlocked.

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US Hwy. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY Hwy. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

Tract 6404, Cave Run Lake
U.S. Hwy 460
Index Co: Morgan KY
Landholding Agency: COE
Property Number: 319240005
Status: Underutilized
Reason: Floodway

Tract 6803, Cave Run Lake
State Road 1161
Pomp Co: Morgan KY
Landholding Agency: COE
Property Number: 319240006
Status: Underutilized
Reason: Floodway.

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 319240007
Status: Underutilized
Reason: Floodway.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other.
Comment: Highway right of way

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway.

Union Lake
Sec 7, Twshp 42 north, Ranger West
Beaufort Co: Franklin MO
Landholding Agency: COE
Property Number: 319240008
Status: Unutilized
Reason: Floodway.

Confluence Levee (32B)
Missouri & Osage Rivers Co: Cole & Osage MO
Landholding Agency: COE
Property Number: 319430001
Status: Unutilized
Reason: Floodway.

Montana

Sherryl Tap Point Site
3 miles south of Drummond, MT Co: Granite MT
Landholding Agency: GSA
Property Number: 549240006
Status: Excess
Reason: Other Comment: Inaccessible
GSA Number: 7–B–MT–0598.

Nevada

Portion, Newlands Project
Lockwood Co: Storey NV
Location: Approx. 8 miles east of Reno on the south side of Peri Ranch Road in NE corner of Louise Peri Park
Landholding Agency: GSA
Property Number: 549430010
Status: Excess
Reason: Other Comment: No Legal Access.
GSA Number: 9–GR(1)–I–NV–478.

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area.

North Carolina

Land—16.02 acres
Portion VA Hospital
Fayetteville Co: Cumberland NC 28302–
Landholding Agency: GSA
Property Number: 549440001
Status: Excess
Reason: Other Comment: Landlocked
GSA Number: 4–GI–NC–437A.

North Dakota

Tracts 1 & 2
Garrison Dam
Lake Sakakawea
Williston Co: Williams ND 58801–
Landholding Agency: COE
Property Number: 319410015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 319440008
Status: Underutilized
Reason: Floodway

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836–
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: GSA
Property Number: 319011687
Status: Excess
Reason: Other Comment: Inaccessible.
GSA Number: 9–D–OR–708.

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project
Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway

Lock and Dam #3
Monongahela River
Elizabeth Co: Allegheny PA 15037–0455
Landholding Agency: COE
Property Number: 319240014
Status: Unutilized
Reason: Floodway

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

South Carolina

Land—2.66 acres
Port Royal Co: Beaufort SC 29902–6148
Landholding Agency: GSA
Property Number: 549240009
Status: Excess
Reason: Floodway
GSA Number: 4–N–SC–0489A.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44 Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway

Tract 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: White Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project

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Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone; Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson, TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake Co: Dallas TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway

Parcel 3, (Byrd Field)
Richomd IAP
5680 Bevlah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 95–3776 Filed 2–16–95; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–054–5–1430–00; AZA 25464, AZA 23255]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to amend previous classification for AZA 25464 and terminate classification for AZA 23255.

In notice document 91–20790 appearing on page 43034 in the issue of Friday, August 30, 1991, AZA 25464 was classified to include the following public lands:

Gila and Salt River Meridian, Mohave County, Arizona

T. 20 N., R. 22 W.,
sec. 12, lot 5;

This notice terminates the classification for AZA 25464 for the following described public lands:

Gila and Salt River Meridian, Mohave County, Arizona

T. 20 N., R. 22 W.,
sec. 12, lot 5 (east of centerline of State Highway 95).

The following described public lands under AZA 25464 have been examined and found suitable for classification for lease or conveyance under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.):

Gila and Salt River Meridian, Mohave County, Arizona

T. 20 N., R. 22 W.,
sec. 12, lots 5 and 6 (west of centerline of state highway 95).

In notice document 88–16492 appearing on page 27770 in the issue of Friday, July 22, 1988, AZA 23255 was classified to include the following lands:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
sec. 12, portion of lots 5 and 6.
Containing 6.9 acres more or less.

This notice terminates the classification for the public lands under AZA 23255.

The lands classified in this notice are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or conveyance when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. Subleases issued under AZAR 035903 to Johannah and Eugene Goad, and Lawrence, Albert H., and Ernestine Warminski are reserved to the United States, together with the right to amend or change their leases. Subleases are located within lot 5, sec. 12, T. 20 N., R. 22 W.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: On or before April 3, 1995, interested persons may submit comments regarding the proposed lease or conveyance of the lands to the Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for recreation and public purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreation and public purposes. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publications of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joe Liebhauser, Lands and Minerals Supervisor, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Detailed information concerning this action is also available for review.

Dated: February 10, 1995.

Judith I. Reed,
District Manager.

[FR Doc. 95–3972 Filed 2–16–95; 8:45 am]
BILLING CODE 4310–32–P

[UT–040–01–5440–10–J401]

Notice of Realty Action, Conveyance of Public Land in Garfield County, UT, Panguitch City Airport, UTU–72799

SUMMARY: Notice is given to the public that the following described parcels of public land have been examined and through resource considerations, regulations, and Bureau policies, have been found suitable for conveyance to Panguitch City Corporation pursuant to the Airport Airway and Improvement

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Act of 1982 (96 Stat. 692; 49 U.S.C. 2215):

Salt Lake Meridian, Utah

Township 34 South, Range 5 West
Section 14, SW¼NW¼SW¼NE¼;
W½SW¼SW¼NE¼;
S½NE¼SE¼NW¼;
SE¼NE¼SE¼NW¼;
E½SW¼SE¼NW¼; SE¼SE¼NW¼;
Section 22, NE¼SE¼SE¼; Section 23, NW¼SW¼SW¼;

Encompassing 50 acres.

Terms and Conditions Applicable to the Conveyance Are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the airport.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance of the land will be subject to all valid existing rights.

4. At the discretion of the Secretary of Transportation, the land shall revert to the United States in the event that the land is not developed for airport purposes or used in a manner consistent with the terms of the patent. If only a portion of the land conveyed is not developed for airport purposes, or is used in a manner inconsistent with the terms of the conveyance, only that specific part shall, at the discretion of the Secretary, revert to the United States.

5. A detailed list of covenants required by the Federal Aviation Administration to be included in the patent document is available for review at the office listed below.

DATES: On or before April 3, 1995, comments concerning the proposal may be submitted to the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720. Comments will be reviewed by the Utah State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the land laws, including mining laws, pending disposition of this action. Additional information concerning the land and terms and conditions of the conveyance may be obtained from the Area Manager, Kanab Resource Area Office, 318 North 100 East, Kanab, Utah 84741, (801) 644–2672.

Dated: February 10, 1995.

A. Jerry Meredith,

District Manager.

[FR Doc. 95–3973 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–060–03–1430–00]

West HiLine Resource Management Plan Amendment; Liberty and Toole Counties, Montana

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice is hereby given that the West HiLine Resource Management Plan will be amended by the Great Falls Resource Area, Great Falls, Montana.

SUMMARY: The Bureau of Land Management (BLM) will amend the West HiLine Resource Management Plan (RMP) for a proposed withdrawal of 19,764.74 acres of Federal mineral estate from locatable mineral entry in the Sweet Grass Hills, Liberty and Toole Counties, Montana. A withdrawal of these lands is not in conformance with the record of decision for the West HiLine Resource Management Plan (RMP) (1992). The Great Falls Resource Area, Lewistown District, Bureau of Land Management will prepare a plan amendment and associated environmental assessment.

PUBLIC PARTICIPATION: Comments and recommendations on this notice to amend the West HiLine RMP should be received on or before March 20, 1995.

ADDRESSES: Comments should be sent to the Great Falls Resource Area, 812 14th. St. N., Great Falls, MT 59401.

FOR FURTHER INFORMATION CONTACT: Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th. St. N., Great Falls, MT 59401, 406–727–0503.

SUPPLEMENTARY INFORMATION: In August 1993, the BLM segregated the Federal mineral estate in the Sweet Grass Hills for a two-year period which closed the area to the location of new mining claims until August 1995. Also in August 1993, the BLM began amending the West HiLine RMP to reevaluate long term management decisions for the Sweet Grass Hills; specific direction for locatable mineral development, oil and gas leasing, off-road vehicle use, and land tenure adjustment. The BLM anticipates completion of this evaluation of long term management in February 1996. Prior to August 1995, the BLM will pursue a withdrawal of 19,764.74 acres to protect the unique resources in the Sweet Grass Hills.

Dated: February 14, 1995.

David L. Mari,

District Manager.

[FR Doc. 95–4217 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–DN–P

[ID–942–04–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., February 9, 1995.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, the subdivision of section 34, the survey of portions of the center line of Old Lemhi Road, and lot 7 in section 34, Boise Meridian, Idaho Group No. 895, was accepted, February 3, 1995.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: February 9, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–3974 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Draft Environmental Assessment of the Proposal To Modify the Operation of McPhee Reservoir and Acquire Additional Water for Fish and Wildlife Purposes, Dolores Project, Colorado River Storage Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Draft Environmental Assessment and Public Comment Period.

SUMMARY: Pursuant to the National Environmental Policy Act and agency policy, the Bureau of Reclamation will provide the public an opportunity to comment on the draft Environmental Assessment (EA) of the proposal to modify the operation of McPhee Dam and acquire additional water for downstream releases to the Dolores River for fishery and wildlife habitat enhancement purposes.

DATES: Comments on the draft EA must be received by April 3, 1995.

ADDRESSES: Comments should be sent to Bureau of Reclamation, PO Box 640, Durango, Colorado 81302.

FOR FURTHER INFORMATION CONTACT: To request a copy of the draft EA, to be placed on a mailing list, or to obtain further information, contact Jon Freeman, Bureau of Reclamation, Environmental & Planning Division, PO Box 640, Durango, Colorado 81302, telephone 303/385–6562.

Dated: February 8, 1995.

Charles A. Calhoun,

Regional Director.

[FR Doc. 95–3968 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

Notice of Availability of Draft General Management Plan/Environmental Impact Statement for the Timucuan Ecological and Historic Preserve, Florida

SUMMARY: This notice announces the availability of a Draft General Management Plan/Environmental Impact Statement (Draft GMP/EIS) for Timucuan Ecological and Historic Preserve. The Draft GMP/EIS presents alternatives for future management and use of the preserve. The preserve lies primarily between the Nassau and St. Johns rivers in Duval County, Florida, east of downtown Jacksonville. This notice also announces public meetings for the purpose of receiving public comments on the Draft GMP/EIS.

DATES: The Draft GMP/EIS will be on public review until April 10, 1995. Any review comments must be postmarked no later than April 10, 1995, and addressed to the Superintendent, Timucuan Ecological and Historic Preserve, 13165 Mt. Pleasant Road, Jacksonville, Florida 32225. The dates of the public meetings for the Draft GMP/EIS are March 7, 1995, from 7 p.m. to 9 p.m. and March 8, 1995, from 6:30 p.m. to 8:30 p.m.; both at the Fort Caroline National Memorial Visitor Center, 12713 Fort Caroline Road, Jacksonville, Florida 32225.

FOR FURTHER INFORMATION CONTACT: Superintendent, Timucuan Ecological and Historic Preserve, 13165 Mt. Pleasant Road, Jacksonville, Florida 32225, Telephone: (904) 221–5568.

SUPPLEMENTARY INFORMATION: The Draft GMP/EIS for Timucuan Ecological and Historic Preserve provides management guidance for concerns of the preserve. This draft GMP/EIS presents four alternative concepts for future management and use of the Timucuan Preserve and presents an overview of potential impacts. The degree to which preserve purposes and management can be fulfilled in each alternative is described. Copies of the Draft GMP/EIS are available for review at the preserve and most local libraries. A limited number of copies are available on request from the Superintendent at the above address.

Dated: February 7, 1995.

Frank Catroppa,

Regional Director, Southeast Region.

[FR Doc. 95–3965 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–70–M

National Capital Region; National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, March 7, 1995, at 1 p.m., at the National Building Museum, room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
The Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The purpose of the meeting will be to consider U.S. Reservation 201 as the site for the Japanese American Memorial.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., room 201, Washington, DC 20242.

Dated: February 8, 1995

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 95–3967 Filed 2–16–95; 8:45 am]

BILLING CODE 4310–70–M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, March 17, 1995; 9:30 a.m. until 12 noon.

Addresses: Sleeping Bear Dunes National Lakeshore Headquarters, Empire, Michigan.

The agenda for the meeting consist of the Chairman's welcome; minutes of the previous meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the Commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, an the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630, (616) 326–5134.

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Dated: February 6, 1995.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 94-3966 Filed 2-16-95; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 332-357]

Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: February 13, 1995.

SUMMARY: The public hearing on this matter, scheduled for February 23, 1995, has been rescheduled to April 6, 1995. The public hearing will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 6, 1995. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., March 23, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 29, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 24, 1995. Notice of institution of the investigation and an earlier scheduled hearing date were published in the **Federal Register** of November 9, 1994 (59 FR 55855). In the event that, as of the close of business on March 23, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202-205-2000) after March 23, 1995, to determine whether the hearing will be held.

FOR FURTHER INFORMATION CONTACT: Information on industry sectors may be obtained from Rose Steller, Office of Industries (202-205-3323) or David Ludwick, Office of Industries (202-205-3329); economic aspects, from Ronald Babula, Office of Industries (202-205-3331); and legal aspects, from William Gearhart, Office of the General Counsel (202-205-3091). The media should contact Margaret O'Laughlin, Office of Public Affairs (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

Background

Following the receipt of a request on October 12, 1994, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332-357, Lamb Meat: Competitive Conditions Affecting the U.S. and Foreign Lamb Industries, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of investigating the competitive conditions affecting the U.S. lamb industry. The Commission plans to submit its report by August 14, 1995.

Written Submissions

As provided for in the Commission's prior notice, in lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on April 24, 1995. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

By order of the Commission.

Issued: February 14, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-4013 Filed 2-16-95; 8:45 am]

BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-678, 679, 681, and 682 (Final)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil, India, Japan, and Spain of stainless steel bar,[2, 3] provided for in subheadings 7222.10.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States,[4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective August 4, 1994, following preliminary determinations by the Department of Commerce that imports of stainless steel bar from Brazil, India, Japan, and Spain were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Watson dissenting.

[3] Commissioner Crawford found two like products in these investigations: hot-formed stainless steel bar and cold-finished stainless-steel bar. She determines that the domestic industry producing hot-formed stainless steel bar is not materially injured or threatened with material injury by reason of imports from all subject countries. She determines that the domestic industry producing cold-finished stainless steel bar is materially injured by reason of subject imports from Brazil, Japan, and Spain, but is not materially injured or threatened with material injury by reason of subject imports from India.

[4] The imported stainless steel bar covered by these investigations comprises articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Except as specified above, the term does not include stainless steel semifinished products, cut-to-length flat-rolled products (i.e., cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 8, 1994 (59 FR 46448). The hearing was held in Washington, DC, on December 15, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 10, 1995. The views of the Commission are contained in USITC Publication 2856 (February 1995), entitled "Stainless Steel Bar from Brazil, India, Japan, and Spain: Investigations Nos. 731-TA-678-679 and 681-682 (Final)."

Issued: February 10, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95-4014 Filed 2-16-95; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6203.

Comments on the following assessment are due 15 days after the date of availability:

AB-290 (Sub-No. 157X), Norfolk Southern Railway Company—Abandonment—Between Alston and Prosperity, South Carolina. EA available 2/3/95.

AB-101 (Sub-No. 11X), Duluth, Missabe and Iron Range Railroad Company—Abandonment in St. Louis County, MN. EA available 2/3/95.

AB-43 (SUB-NO. 167X), Illinois Central Railroad Company—Abandonment Exemption—in St. Tammany Parish and Washington Parish, LA. EA available 2/10/95.

AB-55 (Sub-No. 81X), The Atchison, Topeka and Santa Fe Railway Company Exempt Abandonment of 1.6 Miles of Right-of-Way at Arkansas City Cowley County, Kansas. EA available 2/10/95.

Comments on the following assessment are due 30 days after the date of availability:

AB-167 (SUB-NO. 1145X), Consolidated Rail Corporation—Abandonment Exemption—In Philadelphia County, Pennsylvania. EA available 2/6/95.

AB-433, Idaho Northern & Pacific Railroad Company—Abandonment—In Wallowa and Union Counties, Oregon. EA available 2/8/95.

AB-55 (Sub-No. 497X), CSX Transportation, Inc.—Abandonment in Allegany County, MD and Mineral County, WV. EA available 1/31/95.

AB-427X, Crystal City Railroad, Inc.—Abandonment Exemption—between west of Gardendale and Crystal City and between Crystal City and Carrizo Springs, in LaSalle, Zavala and Dimmit Counties, TX; and

AB-428X, Texas Railroad Switching, Inc.—Discontinuance of Service Exemption—between west of Gardendale and Crystal City and between Crystal City and Carrizo Springs, in LaSalle, Zavala and Dimmit Counties. EA available 2/10/95.

Vernon A. Williams,

Secretary.

[FR Doc. 95-4031 Filed 2-16-95; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-01 (Sub-No. 12X)]

Duluth, Missabe and Iron Range Railway Company—Abandonment Exemption—St. Louis County, MN

Duluth, Missabe and Iron Range Railway Company (DM&IR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.3-mile Missabe Division, Chisolm Branch, extending between milepost 3.1 and the end of the line at milepost 4.7, at Chisolm in St. Louis County, MN.

DM&IR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 19, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by February 27, 1995. Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by March 9, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert J. Koch, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 10, 1995.

By the Commission,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4032 Filed 2–16–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–3 (Sub-No. 120X]

Missouri Pacific Railroad Company—Abandonment Exemption—in Cowley County, KS (Winfield Industrial Lead)

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its railroad, known as the Winfield Industrial Lead, from milepost 513.50 (at the end of the line) to milepost 514.41, near Winfield, a distance of approximately 0.91 mile, in Cowley County, KS.

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 19, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by February 27, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 9, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge St., Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4030 Filed 2–16–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated respond time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Document Verification Request.

(2) G–845. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary=Individuals and Households, Others=None. This form is an integral part of the Systematic Alien Verification for Entitlement (SAVE) Program. It will provide direct access to the Immigration and Naturalization Service's Alien Status Verification Index (ASVI).

(4) 500,000 annual respondents at .083 hours per response.

(5) 41,500 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: February 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–4005 Filed 2–16–95; 8:45 am]

BILLING CODE 4410–10–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Application—Land Border Facilitation PORTPASS Program

(2) I–823, I–823A, I–823B, I–823C, and I–823D. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary = Individuals and Households, Others = None. This form covers two land border programs. At participating ports-of-entry, this form will be used by frequent crossers to voluntarily apply for permission to use the dedicated commuter lane, or to enter through an Automated Permit Port.

(4) 200,000 annual respondents at .73 hours (44 minutes) per response.

(5) 132,800 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: February 13, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–4006 Filed 2–16–95; 8:45 am]

BILLING CODE 4410–10–M

Antitrust Division

United States v. Sabreliner Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Sabreliner Corporation*.

The Complaint in this case alleges that the acquisition of Midcoast Aviation, Inc. ("Midcoast") by Sabreliner Corporation ("Sabreliner") may substantially lessen competition in the sale of jet fuel to transient general aviation aircraft at Lambert-St. Louis International airport ("Lambert") in violation of Section 7 of the Clayton Act.

Sabreliner and Midcoast are the only two fixed base operators ("FBOs") at Lambert Field. Fixed base operators provide terminaling services, such as aircraft cleaning, de-icing and fueling to general aviation aircraft. These services are typically included in the price of jet fuel sold to the general aviation customer. This acquisition, left unchallenged, would result in a monopoly in the provision of jet fuel to transient general aviation customers at Lambert.

The proposed Final Judgment requires Sabreliner to divest either its transient general aviation fueling facilities at Lambert, or, if necessary to attract a purchaser, its entire FBO operation at Lambert. If defendant does not complete the divestiture by the allotted time, a trustee will be appointed to conduct the divestiture.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, Room 9104, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001 (202–307–6351).

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States of America; Plaintiff; vs. Sabreliner Corporation, a corporation; Defendant.

[Docket Number: 95–0241]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

(2) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: November 2, 1994.

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For Plaintiff United States of America:
Anne K. Bingaman,
Assistant Attorney General.
Steven C. Sunshine,
Deputy Asst. Attorney General.
Constance K. Robinson,
Director of Operations.
Roger W. Fones,
May Jean Moltenbrey,
Kelly Signs,
Stephen B. Donovan,
Attorneys.
For Defendant Sabreliner Corporation:
Winthrop, Stimson, Putnam & Roberts,
By: John Gillick,
A Member of the Firm.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on February 6, 1995, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "TWA" means Trans World Airlines, Inc., each of its predecessors, successors, divisions, subsidiaries, and affiliates, each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it, and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Midcoast" means Midcoast Aviation, Inc., each of its predecessors, successors, divisions, subsidiaries, and affiliates, and each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it, and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "Sabreliner" means defendant Sabreliner Corporation, each of its predecessors, successors, divisions, subsidiaries, and affiliates, each person directly or indirectly, wholly or in part, owned or controlled by it, or which owns or controls it, and each partnership or venture to which any of them is a party, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "Sabreliner's Transient Fuel Service Business" means the following assets, owned or controlled by Sabreliner, that are or have been used at Lambert Field to provide fuel and other services to general aviation customers:

1. 5,000 square feet of ramp space located west of Hangar 6;

2. Office space (with associated office equipment), which includes pilot's lounge/flight planning room and access to lobby area, restrooms, conference facilities and canteen;

3. Space on the north side of Hangar 6 sufficient to park any fueling trucks required by the purchaser; and

4. Non-discriminatory access to the Fuel Delivery Cabinet on the west end of Sabreliner's fuel farm, the right to draw from Sabreliner's jet fuel tanks at least 2500 gallons of jet fuel per day, and the right to purchase that jet fuel directly from the fuel supplier from whom Sabreliner obtains its fuel.

E. "Sabreliner's Cargo and General Aviation Business" means the following assets, owned or controlled by Sabreliner, that are or have been used at Lambert Field to provide fuel and other services to general aviation and based cargo customers:

1. Sabreliner's entire leasehold interest in its tank farm, and all improvements and assets used in the business, including five fuel tanks, truck loading cabinet, and associated equipment;

2. All rolling stock, including the fuel trucks, deicing vehicle, ramp tugs, auxiliary power unit and courtesy van;

3. Office space (with associated office equipment), including pilot's lounge/flight planning room and access to lobby area, restrooms, conference facilities and canteen; and

4. The entire ramp area around the west of hangers 6 and 7, comprising approximately eleven (11) acres, subject to access easements of any subtenants in Hangers 6 and 7.

F. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

G. "Lambert Field" means Lambert St. Louis International Airport.

III

Applicability

A. The provisions of this Final Judgment shall apply to the defendant, to defendant's successors and assigns, to defendant's subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. The provisions of Sections IV through VIII of this Final Judgment shall be applicable only upon the consummation of the acquisition of Midcoast by Sabreliner.

C. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, or of the assets required to be divested herein, that the acquiring party agree to be bound by the provisions of this Final Judgment.

D. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV

Divestiture of Sabreliner's Transient Fuel Business

A. Defendant is hereby ordered and directed to divest, to an eligible purchaser, all of its direct and indirect ownership and control of Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business. Nothing contained herein shall preclude Sabreliner from dealing with or contracting for services from the divested entity in the ordinary course of business.

B. Divestiture of Sabreliner's leasehold interest in any of the assets of Sabreliner's Transient Fuel Service Business or Sabreliner's Cargo and General Aviation Business may be by transfer of the entire leasehold interest or by sublease. If divestiture of any or all of the assets is by sublease, each such sublease shall be for the entire term of Sabreliner's lease, including the same rights for renewal Sabreliner has, and the sublease shall specify, for the entire period of the sublease:

1. The price, or a formula for computing the price, for each and every payment due from the purchaser to Sabreliner pursuant to the sublease, including rent, and any uplift or other service charge for the use of Sabreliner's fuel tanks; and

2. The terms and conditions under which Sabreliner may evict the purchaser or exercise any other rights for breach of the sublease; and

3. That the airport authority must specifically approve any action by Sabreliner to exercise any rights under the sublease against the purchaser, unless such approval is arbitrarily and unreasonably withheld in the event of a breach of the sublease by the purchaser, in which case defendant must give a minimum of thirty (30) days notice to plaintiff prior to exercising any rights against the purchaser.

C. If defendant has not accomplished the required divestiture prior to May 1, 1995, plaintiff may, if its sole discretion, extend this time period for an additional period of time not to exceed two months.

D. Defendant agrees to take all reasonable steps to accomplish quickly said divestiture. In carrying out its obligation to divest the Sabreliner's Transient Fuel Business, defendant may divest these operations alone, or may divest along with these operations any other assets of Sabreliner.

E. In accomplishing the divestiture ordered by this Final Judgment, the defendant promptly shall make known in the United States and in other major countries, by usual and customary means, the availability of Sabreliner's Transient Fuel Business for sale as an ongoing business. The defendant shall notify any person making an inquiry regarding the possible purchase of this operation that the sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. The defendant shall also offer to furnish to all bona fide prospective purchasers of Sabreliner's Transient Fuel Business, subject to customary confidentiality assurances, all pertinent information regarding Sabreliner's Cargo and General Aviation Business, including Sabreliner's Transient Fuel Business except such information subject to attorney-client privilege or attorney work product privilege. Defendant shall make available such information to the plaintiff at the same time that such information is made available to any other person. Defendant shall permit prospective purchasers of Sabreliner's Transient Fuel Business to have access to personnel at Sabreliner's Cargo and General Aviation Business, including Sabreliner's Transient Fuel Business, and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale required by this Final Judgment.

F. Unless the plaintiff otherwise consents, divestiture under Section IV.A., or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business can and will be operated by the purchaser as a viable, ongoing business engaged in the provision of fuel and other services to general aviation and cargo customers at Lambert Field. Divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the provision of fuel and other services to general aviation customers at Lambert Field; (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of fuel and other services to general aviation customers at Lambert Field; and (3) none of the terms of any sublease between the purchaser and Sabreliner give Sabreliner the ability artificially to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to provide fuel and other services to general aviation customers at Lambert Field. If the divestiture is of Sabreliner's Transient Fuel Business, it must be demonstrated to plaintiff's satisfaction that the purchaser can operate a transient fueling business on a stand-alone basis with costs and efficiency comparable to those achieved by Sabreliner's current integrated general aviation and cargo business.

G. Except to the extent otherwise approved by plaintiff, any assets divested pursuant to this Final Judgment shall be divested free and clear of all mortgages, encumbrances and liens to Sabreliner or TWA.

V

Appointment of Trustee

A. If defendant has not accomplished the divestiture required by Section IV of the Final Judgment by March 15, 1995, defendant shall notify plaintiff of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section IV(B), whichever is later, plaintiff shall provide defendant with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendant shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendant, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendant, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendant. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendant has not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified in Section IV(C),the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of Sabreliner's Transient Fuel Service Business. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the assets of Sabreliner's Cargo and General Aviation Business.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell Sabreliner's Transient Fuel Service Business and Sabreliner's General Aviation and Cargo Business. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms

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as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VIII of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to a sale of Sabreliner's Transient Fuel Service Business or any or all Sabreliner's Cargo and General Aviation Business by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendant of the proposed sale in accordance with Section VIII of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived from a sale of Sabreliner's Cargo and General Aviation Business and all costs and expenses incurred in connection therewith. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant and the trust shall then be terminated.

E. Defendant shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of Sabreliner's Transient Fuel Service Business or any or all of Sabreliner's Cargo and General Aviation Business and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of Sabreliner's overall business, and defendant shall develop such financial or other information relevant to Sabreliner's Cargo and General Aviation Business.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of Sabreliner's Transient Fuel Service Business or any or all of Sabreliner's Cargo and General Aviation Business as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in Sabreliner's Cargo and General Aviation Business, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section VI of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the term of the trustee's appointment.

VI

Notification

Immediately following entry of a binding contract, contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendant or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant and/or the trustee shall furnish any additional information requested within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendant or the trustee), whichever is later, plaintiff shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant and/or the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under the provisions in Sections VI(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section V shall not be consummated. Upon objection by plaintiff, or by defendant under the priviso in Sections VI(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

Upon filing of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendant shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in Sabreliner's Transient Fuel Business or Sabreliner's Cargo and General Aviation Business, and shall describe in detail each contact with any such person during that period. Defendant shall maintain full records of all efforts made to divest these operations.

VIII

Financing

With prior consent of the plaintift, defendant may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX

Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendant shall take all steps necessary to assure that Sabreliner's Cargo and General Aviation Business will be maintained as separate and independent economically viable, ongoing businesses with Midcoast's assets required for the provision of Midcoast's transient fuel services (including leaseholds, contracts, management, operations, and books and records) separate, distinct and apart from those of Sabreliner. The defendant shall use all reasonable efforts on behalf of Sabreliners's Cargo and General Aviation Business to maintain and increase sales of transient fuel and other services to general aviation customers at Lambert Field, and otherwise maintain the business as a viable and active competitor at Lambert Field.

B. The defendant shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements of substitutes therefore), assets required to be divested pursuant to Sections IV or V except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendant shall provide capital and provide and maintain sufficient working capital to maintain Sabreliner's Cargo and General Aviation Business, as viable, ongoing businesses consistent with the requirements of Section IX(A).

D. The defendant shall preserve the assets required to be divested pursuant to Section IV and V, except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendant shall preserve the documents, books and records of Midcoast until the date of divestiture of Sabreliner' Transient Fuel Business and shall preserve the documents, books and records of Sabreliner's Cargo and General Aviation Business until the date of divesture of that business.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section IX, the defendant shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more executive, managerial, sales, marketing, engineering, or other technical personnel of Sabreliner's Cargo and General Aviation Business, including its Transient Fuel Business, and shall refrain from transferring any employee so employed without the prior approval of plaintiff.

F. Defendant shall refrain from taking any action that would jeopardize the sale of Sabreliner's Cargo and General Aviation Business.

X

Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

United States of America, Plaintiff, v Sabreliner Corporation, Defendant.
Case Number 1:95CV00241
Judge: Stanley Sporkin
Deck Type: Antitrust
Date Stamp: 02/06/95

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. (b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Sabreliner Corporation in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On February 6, 1995, the United States filed a Complaint alleging that the

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acquisition of Midcoast Aviation, Inc. (hereinafter "Midcoast") by Sabreliner Corporation, (hereinafter "Sabreliner") was a violation of Section 7 of the Clayton Act (15 U.S.C. 18). The Complaint alleges that the effect of the merger may be substantially to lessen competition for the sale of jet fuel by fixed base operators ("FBOs") to general aviation aircraft at St. Louis-Lambert International Airport. Sabreliner and Midcoast are the only two providers of jet fuel for transient general aviation customers at Lambert Field.

On February 6, 1995, the United States and defendant also filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger. Under the proposed Final Judgment, as explained more fully below, Sabreliner would be required to sell or assign, by May 1, 1995, certain assets and leasehold interests. If it should fail to do so, a trustee appointed by the Court would be empowered to divest these assets.

The United States and Sabreliner have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify and enforce the Final Judgment, and to punish violations of the Final Judgment.

II

Events Giving Rise to the Alleged Violation

On November 2, 1994, Sabreliner, Midcoast, and Trans World Airlines, Inc. (the parent of Midcoast) entered into an agreement under which Sabreliner would acquire all of the stock of Midcoast for approximately $7.2 million.

Sabreliner, engaged primarily in the business of repairing and overhauling jet aircraft, also operates a FBO service at Lambert Field in St. Louis. Sabreliner's total revenues for fiscal 1994 were over $100 million.

Midcoast has FBO facilities at Adams Field in Little Rock, AK, Bi-State Parks in Cahokia, IL, and St. Louis-Lambert in St. Louis, MO. From these facilities, Midcoast performs repairs, maintenance, and overhauls in addition to other FBO services, including jet fueling. Midcoast had revenues of $41 million in 1993.

FBOs provide aircraft terminaling services to general aviation aircraft customers, typically charter operators or other private operators that provide transportation for business executives. These services principally involve aircraft fueling services and maintenance services, such as aircraft cleaning and de-icing, and also the provision of such facilities as lounges for passengers and flight crews, ground transportation, and canteens. Last year, general aviation customers purchased around $1 billion of jet fuel from FBOs nationwide.

General aviation customers flying into airports other than the airport where they are based are called "transients." If transient general aviation customers need to purchase fuel away from home, they must purchase fuel from an FBO.

Pilots of corporate and charter jets select the airports to which they will fly based on where their passengers need to go, or where their passengers need to be picked up. The pilots will then choose then FBO at that airport offering the most favorable combination of fuel prices and services. There are no alternative sources to which the pilots would switch to obtain jet fuel if the FBOs raise prices.

Although Lambert Field is one of several airports in the St. Louis area servicing general aviation aircraft, Lambert is the only airport in St. Louis that provides commercial scheduled domestic and international service. In addition, Lambert offers close proximity to downtown St. Louis. Both of these features make Lambert attractive to general aviation passengers.

Because of the large volume of commercial traffic served by Lambert, however, the airport is frequently very congested. To avoid this congestion, general aviation pilots prefer to use other airports in the St. Louis area, which accommodate primarily general aviation traffic. General aviation aircraft usually will fly into Lambert only if it is necessary to satisfy a passenger's travel requirements. Those pilots that select Lambert as their destination airport, therefore, are not likely to change their flight plan to obtain lower fuel prices at other airports.

The Complaint alleges that the sale of jet fuel to transient general aviation customers is a relevant product market for antitrust purposes. The Complaint further alleges that Lambert-St. Louis International Airport is a relevant geographic market within the meaning of Section 7 of the Clayton Act. The Complaint refers to the relevant market as the "Lambert transient general aviation jet fuel market."

Sabreliner and Midcoast have been the only two FBOs providing, and capable of providing in the future, fueling services to general aviation aircraft at Lambert Field. Based on jet fuel sales revenue, Sabreliner has 15% of that market and Midcoast has 85%. Transient general aviation customers have benefited from competition between these two firms, receiving lower jet fuel prices and improved FBO services. As a result of its acquisition of Midcoast, Sabreliner now has a monopoly of the Lambert transient general aviation jet fuel market, which, absent relief, will likely cause general aviation customers to pay higher prices for jet fuel and received diminished services.

The St. Louis Airport Authority has committed to expanding the amount of space available at Lambert for scheduled commercial traffic and is unlikely to allocate more space to accommodate another FBO in the near future. Therefore, an increase in the price of jet fuel to transient general aviation customers will not be defeated by a new entrant.

III

Explanation of The Proposed Final Judgment

The United States brought this action because the effect of the acquisition of Midcoast by Sabreliner may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the Lambert transient general aviation jet fuel market. The risk to competition posed by this acquisition, however, would be eliminated if the assets and leases currently held by Sabreliner to operate its Lambert transient general aviation fueling business were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section IV of the proposed Final Judgment requires defendant Sabreliner, by May 1, 1995, to divest either its Transient Fuel Service Business as defined in Section II. D, or its Cargo and General Aviation Business, as defined in Section II. E of the proposed Final Judgment. Divestiture of one of the two groups of assets and leaseholds will cure the potential anticompetitive consequences of Sabreliner's acquisition of Midcoast.

The first group, Sabreliner's Transient General Aviation Business, includes the assets and leases a prospective purchaser would need to effectively operate a stand-alone transient general aviation fueling business. Should a purchaser elect to acquire and operate these assets, the competition lost through Sabreliner's acquisition of Midcoast would be restored. However, Sabreliner's current revenue stream from its transient general aviation fueling business may be too small to attract, or viably support, a satisfactory purchaser. Accordingly, the second group, Cargo and General Aviation Business, is a broader package that includes assets that Sabreliner currently operates to provide fuel and other services to both cargo and general aviation aircraft at Lambert Field.

Under the proposed Final Judgment, Sabreliner must take all reasonable steps necessary to accomplish quickly the divestiture of one of the two specified groups of assets, and shall cooperate with *bona fide* prospective purchasers by supplying all information relevant to the proposed sale. Should Sabreliner fail to complete its divestiture by May 1, 1995, the Court will appoint, pursuant to Section V, a trustee to accomplish the divestiture. The United States will have the discretion to delay the appointment of the trustee for up to an additional two months should it appear that the assets can be sold in the extended time period.

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Sabreliner will be required to pay for all of the trustee's sale-related expenses. It will be in the sole discretion of the trustee to sell either package of assets, or any combination of those assets, necessary to accomplish a timely divestiture of Sabreliner's Transient Fuel Service Business.

Section VI of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Sabreliner or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of the divestiture assets by the defendant Sabreliner, a proposed divestiture may not be completed. Should the United States object to a sale of the divested assets by the trustee, that sale shall not be consummated unless approved by the Court.

Pursuant to Section V.G., should the trustee not accomplish the divestiture within six months of appointment, the trustee and the parties will make recommendations to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Sabreliner must take certain steps to ensure that, until the required divestiture has been completed, the divestiture assets—Sabreliner's cargo and general aviation business—will be maintained as a separate, ongoing, viable business and kept distinct from Midcoast's assets and facilities at Lambert. Until such divestiture, Sabreliner must also continue to maintain and operate the business as a viable, independent competitor at Lambert Field, using all reasonable efforts to maintain and increase transient fuel sales. Sabreliner must maintain the business, so that it continues to be salable, including maintaining all records, loans, and personnel necessary for its operation.

Section X requires the defendant to make available, upon request, the business records and the personnel of its business. This provision allows the United States to inspect and ensure that the defendant is complying with the requirements of the proposed Final Judgment. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedure for Commenting on the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, N.W., Room 9104, Washington, DC 20001.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment requires that the divestiture assets be sold to a purchaser with the capability and present intent of operating them as part of a viable, ongoing business capable of providing transient general aviation fueling services at Lambert Field. Thus, compliance with the proposed Final Judgment and the completion of the sale required by the Judgment should resolve the competitive concerns raised by the acquisition.

Litigation is, of course, always an alternative to a consent decree in a Section 7 case. The United States rejected this alternative because the sale required under the proposed Final Judgment should prevent the acquisition by Sabreliner of Midcoast from having a significant anticompetitive effect in the relevant market alleged.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the proposed merger alleged in the Complaint. Although the proposed Final Judgment may not be entered until the criteria established by the APPA (15 U.S.C. 16(b)(–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendant has stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly

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none are being filed with this Competitive Impact Statement.

Dated: February 6, 1995.

Respectfully submitted.

Roger W. Fones,
Chief.
Donna N. Koopersteia,
Assistant Chief.
Jonathan D. Lee,
Attorney.

Certificate of Service

I hereby certify that I am an attorney for the United States in this action, and have caused a true and correct copy of the foregoing Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement, to be served by first class mail and February 6, 1995 for the defendant at the address below:

John Gillick,
Winthrop, Stimson, Putnam & Roberts.
For defendant Sabreliner Corporation.
Jonathan D. Lee,
Attorney in Charge.

[FR Doc. 95–3889 Filed 2–16–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 27, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 27, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of February, 1995.

Victor J. Trunzo,
Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Allied Signal (wkrs)	Greenville, OH	02/06/95	01/26/95	30,701	Automobile Filters.
Bearings, Inc (wkrs)	Cleveland, OH	02/06/95	01/10/95	30,702	Bearings and Power Transmission
Dauman Dislays (wkrs)	New York, NY	02/06/95	01/22/95	30,703	Glass Display Cabinets.
Lynwood Fashions (ILGWU)	Wilkes-Barre, PA	02/06/95	01/24/95	30,704	Ladies' Dresses.
M.W. Carr Co., Inc (Co)	Somerville, MA	02/06/95	01/20/95	30,705	Wood & Metal Frames.
Xerox Corp (wkrs)	Rochester, NY	02/06/95	01/18/95	30,706	Copiers and Printers.
Tidewater Inc. (wkrs)	New Orleans, LA	02/06/95	01/24/95	30,707	Oilfield Services.
U.S. Dept. of Agri., F.S.I.S.,I.I.D. (wkrs)	New Orleans, LA	02/06/95	01/23/95	30,708	Meat Inspection Services.
Contract Mfg./Monroe Mfg. (ACTWU)	Monroe, LA	02/06/95	01/23/95	30,709	Baby Bottles & Infant Gift Sets.
Crown Cork & Seal (wkrs)	Swedesboro, NJ	02/06/95	01/23/95	30,710	Metal Cans—Baby Formula.
Avenue West Sportswear (wkrs)	Hammonton, NJ	02/06/95	01/09/95	30,711	Ladies Sportswear.
U.S. Information Agency (wkrs)	Mason, OH	02/06/95	01/20/95	30,712	Domestically Produced Radio Programing
Cascade Woolen Mills, Inc (wkrs)	Oakland, ME	02/06/95	01/26/95	30,713	Woolen & Synthetic Fabrics.
Endicott Forgings & Mfg Co(IAMAW)	Endicott, NY	02/06/95	01/26/95	30,714	Metal Forgings.
Hanover Shoe C (Co)	Marlinton, WV	02/06/95	01/25/95	30,715	Men's Dress Shoes.
Hanover Shoe Co (Co)	Franklin, WV	02/06/95	01/25/95	30,716	Men's Dress Shoes.
3m Co (OCAW)	Freehold, NJ	02/06/95	01/25/95	30,717	Electric Tapes.
Q.T. Foundations (ILGWU)	Bergen Field, NJ	02/06/95	01/25/95	30,718	Under Garments.
Joseph Frank (ILGWU)	Passaic, NJ	02/06/95	01/25/95	30,719	Women's Coats.
SNE Enterprises, Inc. (wkrs)	Spokane, WA	02/06/95	01/24/95	30,720	Wood Windows & Doors.
Sunbeam-Oster Household Products (wkrs)	Holly Springs, MS	02/06/95	01/26/95	30,721	Kitchen Appliances.

[FR Doc. 95–4025 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,360 Nylon Hosiery Department TA–W–30,360A Polyester Filament Department]

BASF Corporation, Lowland, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 7, 1994, applicable to all workers of the nylon hosiery department. The certification notice was published in the **Federal Register** on January 3, 1995 (60 FR 148).

The certification was amended on February 3, 1995 to include all the workers of the polyester filament department. This notice will soon be published in the **Federal Register**.

At the request of the workers and with congressional support, the Department again reviewed the certification for workers of the subject firm. New findings show that some workers were laid off just prior to the September 19, 1993 impact date set in the certification. The Department in setting its impact date can go back to August 1, 1993.

Accordingly, the Department is amending the certification by deleting the September 19, 1993 impact date and setting a new impact date of August 1, 1993.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,360 is hereby issued as follows:

All workers of BASF Corporation, Polyester Filament Department and the Nylon Hosiery Department, Lowland, Tennessee who became totally or partially separated from employment on or after August 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C., this 10th day of February 1995.

Victory J. Trunzo,
Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–4020 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,360]

BASF Corporation, Lowland, Tennessee; Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–30,360 which was published in the **Federal Register** on October 21, 1994 (59 FR 53209) in FR Document 94–26176.

This revises the date received and the date of petition on the 1st line of the third and fourth columns in the appendix table on page 53209. The date received and the date of petition should both read "August 1, 1994" in the third and fourth columns on the first line of the appendix table.

Signed in Washington, DC, this 10th day of February, 1995.

Victor J. Trunzo,
Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4021 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–30,259]

Contract Fusing, Duryea, Pennsylvania

Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 19, 1994, counsel for the workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was singed on November 21, 1994 (59 FR 63822).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following conditions:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appear that the determination complained of was based on a mistake in the determination of fact not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers performed various fusing services for various manufacturers.

The Department's denial was based on the fact that the "contributed importantly" test of the workers group eligibility requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of manufacturers for whom the subject firm performed contract work in 1992, 1993 and in the first nine months of 1994 showed that none of the respondents reported importing fused cloth material in the relevant period.

Counsel states that Contract Fusing was a subdivision of Valley Dress whose workers were certified for TAA by the Department. Counsel also states that the issue is not the importation of fused cloth but rather the importation of garments/dresses and that the entire garment industry has been adversely affected by increased imports.

A review of the investigation files for Valley Dress (TA–W–27,889) shows that the workers produced ladies' dresses and suits and the workers were certified for TAA; however, the plant closed permanently on June 15, 1992. The date of the petition for the subject workers of Contract Fusing is August 19, 1994.

To show integration of production between Valley Dress and Contract Fusing, the workers of Contract fusing should have filed 2 to 3 years earlier when Valley Dress was in operation. At this late date the Department sees no effect on Contract Fusing from a certified plant that closed much earlier

Very early in the administration of the worker adjustment assistance program, the courts addressed the issue of components and finished articles. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, ladies' dresses and suits cannot be considered like or directly competitive with fused cloth or other components for ladies' dresses or suits.

Further, the worker adjustment assistance program was not intended to provide TAA to workers who are in some way related to import competition but only for those workers who produce an article and are adversely affected by increased imports of like or directly competitive articles which contributed importantly to sales or production and employment declines at the workers' firm. Fusing cloth (an operation or service) is not like or directly competitive with ladies' dresses or suits.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Departmen of

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Labor's prior decision.Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4019 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,483]

EFR Corporation, Everett, Washington; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 9, 1995, a former company official requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on December 22, 1994 and published in the **Federal Register** on January 20, 1995 (60 FR 4194).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced logs.

In 1994 EFR went into a partnership with Crown Pacific to clear a parcel of land. EFR owned the timber once the logs were cut. EFR sold the logs to one customer. The partnership was dissolved in November 1994.

The Department's denial was based on the fact that the "contributed importantly" test of the worker group eligibility requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's major declining customers. The Department's survey found that the respondents did not import logs or limber in the period relevant to the petition.

Further, foreign competition, in itself, would not form a basis for a worker group certification. The worker group requirements necessary for certification are (1) a significant decrease in employment; (2) an absolute decline in sales or production and (3) increased imports of articles that are like or directly competitive with those produced by the subject firm and which contributed importantly to declines in sales or production and employment. The "contributed importantly" test in this case was not met.

The workers were denied under a NAFTA petition, (NAFTA 274).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 10th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4018 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–30, 579]

McCord Winn Textron, Winchester, MA; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (P. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on December 19, 1994, and filed by a company official and the International Union of Electrical Workers, Local 277, on behalf of workers at McCord Winn Textron, Winchester, Massachusetts. The workers produce automobile fuel pump armatures.

The Department of Labor surveyed the principal customer of the subject firm regarding its purchases of fuel pump armatures in 1992–1993 and January to November, 1993–1994. The survey revealed that the customer is sourcing a large portion of the armatures formerly purchased from the subject firm with armatures produced abroad.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with automobile fuel pump armatures produced at McCord Winn Textron, Winchester, Massachusetts, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of McCord Winn Textron, Winchester, Massachusetts, engaged in employment related to the production of automobile fuel pump armatures who became totally or partially separated from employment on or after December 8, 1993, through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 31st day of January, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4026 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,186]

Owens-Illinois a/k/a Owens Brockway Glass Containers Waco, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 1, 1994, applicable to all workers of Owens-Illinois in Waco, Texas. The certification notice was published in the **Federal Register** on November 16, 1994 (59 FR 59253).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Owens-Illinois, Waco, Texas are being reported under Owens Brockway Glass Containers, Waco, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Owens Brockway Glass Containers, in Waco, Texas, a division of Owens-Illinois irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA–W–30,186 is hereby issued as follows:

"All workers of Owens-Illinois, a/k/a Owens Brockway Glass Containers, Waco, Texas engaged in employment related to the production of glass containers who became totally or partially separated from employment on or after July 24, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 10th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4023 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–30, 361]

Wailuku Agribusiness Company, Inc. Pineapple Division, Wailuku, HI; Notice of Affirmative Determination Regarding Application for Reconsideration

On December 23, 1994, Local #142 of the International Longshoremen's & Warehousemen's Union (ILWU) and the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on November 22, 1994 and published in the **Federal Register** on December 16, 1994 (59 FR 65076).

A review of the findings shows that Wailuku was impacted by imports since its sole customer was certified for TAA (TA–W–30,229).

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4017 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,177 Waterville, ME, TA–W–30,177A Ciales, PR]

Warnaco Men's Apparel Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 7, 1994, applicable to all workers of the Warnaco Men's Apparel Division in Waterville, Maine. The certification notice was published in the **Federal Register** on October 4, 1994 (59 FR 50625).

The Department, at the request of the Amalgamated Clothing and Textile Workers Union (ACTWU), reviewed the certification for workers of the subject firm located in Waterville, Maine.

New findings show that production at the Hawthorn Shirt plant of Warnaco Men's Apparel Division in Ciales, Puerto Rico is integrated with that of the Waterville, Maine plant. Substantial worker separations occurred in Ciales, Puerto Rico in 1994 resulting from a reduced demand from the Waterville plant.

Accordingly, the Department is amending the certification to include the workers of the Ciales, Puerto Rico plant.

The amended notice applicable to TA–W–30,177 is hereby issued as follows:

"All workers of Warnaco Men's Apparel Division in Waterville, Maine and Ciales, Puerto Rico who became totally or partially separated from employment on or after July 25, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 10th day of February 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4022 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

Footwear Management Company; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In the matter of TA–W–30,545 Noconta Boot Company, Nocona, TX; TA–W–30,545A Tony Lama Division, El Paso, TX; TA–W–30,545B Justin Boot Company, Fort Worth, TX; TA–W–30,545C Justin Boot Company, Cassville, MO; TA–W–30,545D Justin Boot Company, Sarcoxie, MO; TA–W–30,545E Justin Boot Company, Carthage, MO.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 26, 1995, applicable to all workers of the Nocona Boot Company, Nocona, Texas who were engaged in employment related to the production of leather boots.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New investigation findings show the Footwear Management Company is the parent company of the Nocona Boot Company; Tony Lama Division, and the Justin Boot Company and that the production is integrated among the firms. These divisions were certified under NAFTA–TAA (NAFTA–00252 A E) on November 14, 1994, amended on December 21, 1994 and on February 6, 1995.

The Department is also amending the original certification (TA–W–30,545) to correct the name and location of the Nocona Boot Company, Nocona, Texas from Nacona Boot Company, Nacona, Texas.

The amended notice applicable to TA—W–30,545 is hereby issued as follows:

"All workers of Footwear Management Company in the following divisions: Tony Lama Division, El Paso, Texas; Justin Boot Company, Fort Worth, Texas; Cassville, Missouri; Sarcoxie, Missouri; and Carthage, Missouri and the Nocona Boot Company in Nocona, Texas who became totally or partially separated from employment on or after November 29, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC., this 9th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4024 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–30–M

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Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

New York
NY94–71 (APR. 15, 1994) NY95–71

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume I

New York
NY950074
NY950075
NY950076
NY950077

Volume III

Mississippi
MS950057

Volume VI

South Dakota
SD950044

Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parenteses following the decisions being modified.

Volume I

Connecticut
CT950002 (Feb. 10, 1995)
CT950003 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950001 (Feb. 10, 1995)
Virginia
VA950026 (Feb. 10, 1995)

Volume III

Florida
FL950045 (Feb. 10, 1995)
Georgia
GA950003 (Feb. 10, 1995)
GA950004 (Feb. 10, 1995)
GA950032 (Feb. 10, 1995)
GA950050 (Feb. 10, 1995)
GA950053 (Feb. 10, 1995)
GA950073 (Feb. 10, 1995)
GA950083 (Feb. 10, 1995)
Kentucky
KY950027 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)
South Carolina
SC950036 (Feb. 10, 1995)

Volume IV

Michigan
MI950007 (Feb. 10, 1995)
Minnesota
MN950005 (Feb. 10, 1995)
MN950007 (Feb. 10, 1995)
MN950008 (Feb. 10, 1995)
MN950012 (Feb. 10, 1995)
MN950015 (Feb. 10, 1995)
MN950027 (Feb. 10, 1995)
MN950031 (Feb. 10, 1995)
MN950035 (Feb. 10, 1995)
MN950039 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950059 (Feb. 10, 1995)
MN950061 (Feb. 10, 1995)
Ohio
OH950002 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
Wisconsin
WI950019 (Feb. 10, 1995)

Volume V

Nebraska
NE950003 (Feb. 10, 1995)
NE950009 (Feb. 10, 1995)
NE950010 (Feb. 10, 1995)
NE950011 (Feb. 10, 1995)
New Mexico
NM950001 (Feb. 10, 1995)

Volume VI

California
CA950002 (Feb. 10, 1995)
CA950004 (Feb. 10, 1995)
Colorado
CO950001 (Feb. 10, 1995)
CO950003 (Feb. 10, 1995)
CO950006 (Feb. 10, 1995)
CO950011 (Feb. 10, 1995)
CO950018 (Feb. 10, 1995)
CO950021 (Feb. 10, 1995)
South Dakota
SD950001 (Feb. 10, 1995)
SD950003 (Feb. 10, 1995)
SD950004 (Feb. 10, 1995)
SD950005 (Feb. 10, 1995)
SD950029 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of February, 1995.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 95–3774 Filed 2–16–95; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; extension of comment period.

SUMMARY: In response to requests from the mining community, the Mine Safety and Health Administration (MSHA) is extending the time period to submit comments regarding the establishment of an advisory committee to eliminate pneumoconiosis among coal miners.

DATES: Comments must be filed on or before March 1, 1995.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 31, 1995, the Secretary of Labor published a notice in the **Federal Register** (60 FR 5947) announcing the establishment of an advisory committee on the elimination of pneumoconiosis among coal miners. Comments regarding the establishment of the committee were due on February 15, 1995.

In response to requests from the mining community, the Agency is extending the comment period until March 1, 1995.

Dated: February 14, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4082 Filed 2–14–95; 4:00 pm]

BILLING CODE 4510–43–P

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Act, Public Law 92–463, as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATES: March 30, 1995.

TIME: 2:00 p.m.—4:00 p.m.

LOCATION: U.S. House of Representatives, Rayburn House Office Building, Conference Room 2261, Washington, D.C. The public is invited.

FOR FURTHER INFORMATION CONTACT: Valerie P. Pinkney, Executive Officer, Washington Office (202) 708–1005.

Dated: February 1, 1995.

Valerie P. Pinkney,

Executive Officer.

[FR Doc. 95–3994 Filed 2–16–95; 8:45 am]

BILLING CODE 4210–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision, or extension: Revision.
2. The title of information collection: 10 CFR 50, Revision of Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."
3. The form number if applicable: Not applicable.
4. How often the data collection is required: Licensees will be required to keep an on-site implementation plan with records of analyses to justify their performance-based test programs and to monitor for effectiveness.
5. Who will be required or asked to report: Commercial power reactor licensees.
6. Estimate of the number of responses: This rulemaking would eliminate about 33 responses annually
7. An estimate of the total number of hours needed annually to complete the requirement or request: Net burden reduction as follows: 4,583 hours per year for all power reactor licensees, including those facilities choosing the proposed option, for an average of about 42 hours per reactor licensee per year.
8. An indication of whether Section 3504(h), Pub L. 96–511 applies: Applicable
9. Abstract: The NRC is proposing to amend its regulations to reduce the frequency of containment structure leak rate testing. This rulemaking allows power reactor licensees to adopt Option B of Appendix J which (a) decreases the frequency of containment structure integrated leak testing (Type A), (b) provides an option to licensees for establishing Type B and C local leak test frequencies based on the performance history of the components (which is expected to result in a decrease in testing frequency for a majority of the components), (c) and eliminates the need for reporting test results to the NRC. The revised Appendix J requires

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licensees to develop an implementation plan with supporting analyses and justifications and to notify NRC of implementation of that plan prior to establishing a performance-based leak test program.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20037.

Comments and questions can be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3085.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 13th day of February, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–4008 Filed 2–16–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to the Illinois Power Company (the licensee) for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The proposed amendment would modify Technical Specifications (TSs) 3.8.2, "AC Sources-Shutdown;" 3.8.5, "DC Sources-Shutdown;" and 3.8.8, "Inverters-Shutdown." The proposed changes revise the operability requirements for the Division 3 diesel generator and the Division 3 and 4 batteries, battery chargers, and inverters to apply only when the high pressure core spray system is required to be OPERABLE.

The onsite Class 1E safety-related power systems at the Clinton Power Station include AC, DC and uninterruptible AC bus power systems. The Class 1E AC power system supplies power to the unit Class 1E loads and consists of 4160–V switchgear, 480–V unit substations, and 480–V motor control centers (some of which include 480–120/208–V transformers and distribution panels). The system includes diesel generators that serve as standby power sources, independent of any other onsite or offsite source. The onsite system is divided into three divisions, each with its own independent distribution network, diesel generator (DG), and redundant load group. Each division is capable of being supplied by one onsite (DG) and two offsite sources of electrical power for serving the unit Class 1E AC loads.

The Class 1E DC power system supplies 125 VDC power to unit Class 1E loads. The primary sources are battery chargers. The system includes batteries, battery chargers, motor control centers, and DC distribution panels. The system is divided into four divisions, each with its own independent distribution network, battery, battery charger and redundant load group.

The Class 1E uninterruptible AC bus power system supplies 120 VAC power to the nuclear system protection system (NSPS) and miscellaneous Class 1E loads. The system is also divided into four divisions and includes uninterruptible power supplies and buses. The uninterruptible AC bus power supply system is designed to provide adequate uninterruptible power to all the NSPS loads during all modes of operation including abnormal and accident conditions. Loads include NSPS logic power, neutron monitoring, process radiation monitoring, portions of the leak detection system, reactor water cleanup and residual heat removal system sample line valves, and scram discharge volume controls and indication. The Division 4 Class 1E power system components, which require AC power to operate are supplied by the Division 2 Class 1E AC power system.

Since safety-related loads supplied power by electrical power distribution subsystems that are "fail-safe" or otherwise do not need an electrical power source to perform their intended safety functions, Illinois Power believes that the technical specification requirements are overly restrictive as related to Division 3 and 4, and place unnecessary constraints on when certain work can be performed or when certain systems can be removed from service relative to an optimal refueling outage work schedule. The applicable loads are primarily supplied by the Division 3 and 4 electrical power systems. Thus, Illinois Power is requesting a relaxation from the technical specification requirements associated with Division 3 and 4 electrical power system requirements that are applicable during plant shutdown conditions.

The need for the technical specification change was recently identified during outage planning in preparation for the fifth refueling outage, scheduled to begin March 12, 1995, at the Clinton Power Station. The change significantly affects "critical path" work activities during the outage and will prevent unnecessary delays in plant startup. Any unnecessary delays would result in a significant financial impact on the utility.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a change to plant design and are limited to requirements for operability of electrical power sources when the plant is not operating in MODES 1, 2, or 3. The proposed changes will still ensure that sufficient electrical power is required to be operable to mitigate the consequences of postulated accidents. As described previously, and except for the source range monitors (SRMs), the reduced redundancy of electrical power sources to non-high pressure core spray (HPCS) system loads is not safety significant due to the fail-safe nature of those loads. With respect to the SRMs, the SRMs are not assumed to function to mitigate any design basis accidents or transients. The SRMs provide monitoring during plant startup and refueling operations. In addition, there are no accidents postulated to occur as a result of a malfunction of electrical power sources with the plant shut down. As a result, the proposed changes will not result in an increase in the probability or consequence of any accident previously evaluated.

(2) The proposed changes do not involve a change to plant design and are limited to requirements for operability of electrical power sources when the plant is not operating in MODES 1, 2, or 3. In addition, there are no accidents postulated to occur as a result of a malfunction of electrical power sources with the plant shut down. As discussed above, the components which receive power from the Division 3 and 4 electrical power distribution subsystems do not require electrical power to perform their safety functions when the HPCS System is not required to be operable for compliance with Limiting Condition for Operation (LCO) 3.5.2, "ECCS-Shutdown." As a result, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As described in the Bases for LCO 3.8.2, "AC Sources-Shutdown," the technical specification requirements ensure that the unit has the capability to mitigate the consequences of postulated accidents. However, as also described in those Bases, a single failure and a concurrent loss of all offsite power or loss of all onsite power is not required to be assumed. The proposed changes only affect the requirements for electrical power sources when the plant is operating outside MODES 1, 2, and 3 and only affect the requirements for the electrical power sources for Divisions 3 and 4. Except when the HPCS System is operable for compliance with LCO 3.5.2, the requirements for the Division 1 and 2 electrical power sources are adequate to mitigate postulated accidents, assuming a single failure or loss of offsite or onsite power. The proposed changes will ensure that both Division 3 and 4 inverters, batteries, battery chargers, and a second qualified offsite circuit or the Division 3 diesel generator is operable when the HPCS System is required operable for compliance with LCO 3.5.2. As a result, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 20, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

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significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Leif Norrholm, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 14, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 15th day of February 1995.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4169 Filed 2–16–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government are changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through February 1996.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Joan B. Arthur,

Associate Director for Administration.

Memorandum for the Heads of Departments and Agencies

From: Alice M. Rivlin

Subject: 1995 Discount Rates for OMB Circular No. A–94

On October 29, 1992, OMB issued a revision to OMB Circular No. A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs." The revision established new discount rate guidelines for use in benefit-cost and other types of economic analysis.

The revised Circular specifies certain discount rates that will be updated annually when the interest rate and inflation assumptions in the budget are changed. These discount rates are found in Appendix C of the revised Circular. The attachment to this memorandum is an update of Appendix C. It provides discount rates that will be in effect for the period March 1995 through February 1996.

The rates presented in Appendix C do not apply to regulatory analysis. They are to be used for lease-purchase and cost-effectiveness analysis, as specified in the Circular.

Attachement

Appendix C

(Revised January 1995)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of February, 1996. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202–395–7332). Updates of this appendix are also available upon request from the Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented in the table below. These nominal rates are to be used for discounting nominal flows, as in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES (IN PERCENT)

3-year	5-year	7-year	10-year	30-year
7.3	7.6	7.7	7.9	8.1

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES (IN PERCENT)

3-year	5-year	7-year	10-year	30-year
4.2	4.5	4.6	4.8	4.9

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 95–4078 Filed 2–16–95; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7135; 34–35368 File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Chairman of the Commission, with the concurrence of the other members of the Commission intends to establish the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes ("Committee"), which will advise the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The first meeting of the Committee will be held on March 6, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C. beginning at 10:00 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Meridith Mitchell, Special Counsel, Office of the General Counsel, at 202–942–0890; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Securities and Exchange Commission has directed publication of this notice that Chairman Arthur Levitt, with the concurrence of the other members of the Commission, intends to establish the "Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes." Chairman Levitt certifies that he has determined that the creation of the Committee is necessary and in the public interest.

The Committee's charter directs the Committee to assist the Commission in evaluating the efficiency and effectiveness of the regulatory process and the disclosure requirements relating to public offerings of securities, secondary market trading and corporate reporting, and in identifying and developing means to minimize costs imposed by current regulatory programs, from the perspective of investors, issuers, the various market participants, and other interested persons and regulatory authorities.

To achieve the Committee's goals, members will be appointed that can represent effectively the varied interests affected by the range of issues to be considered. The Committee's membership may include, among others, persons who can represent investors, issuers, market participants, independent public accountants, regulators and the public at large. The Commission expects that the Committee's members will represent a variety of viewpoints and have varying experience, and that the Committee will be fairly balanced in terms of points of view, backgrounds and tasks. The Chairman of the Committee will be Commissioner Steven M.H. Wallman.

The Committee will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act. The duties of the Committee will be solely advisory. Determinations of action to be taken and policy to be expressed with respect to matters upon which the Advisory Committee provides advice or recommendations shall be made solely by the Commission.

The Committee will meet at such intervals as are necessary to carry out its functions. It is expected that meetings of the full Committee generally will occur no more frequently than nine times; meetings of subgroups of the full Advisory Committee will likely occur more frequently. The Securities and Exchange Commission will provide necessary support services to the Committee.

The Committee will terminate at the end of one year from the date of its establishment unless, prior to such time, its charter is renewed in accordance with the Federal Advisory Committee Act, or unless the Chairman, with the concurrence of the other members of the Commission, determines that continuance of the Committee is no longer in the public interest.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the charter of the Committee will be filed with the Chairman of the Commission, the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Commerce. A copy of the charter will also be furnished to the Library of Congress and placed in the Commisssion's Public Reference Room for public inspection.

Furthermore, upon establishment of the Committee, and in accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the first meeting of the Committee will be held on March 6, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., beginning at 10:00 a.m. The meeting will be open to the public. The purpose of this meeting will be to discuss general organizational matters, to plan the progression of the Committee's work, and to begin discussion of the effects of the current regulatory scheme on capital formation in the United States.

Dated: February 13, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–4058 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35360; File No. SR–Amex–94–50]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Proposed Commentary .02 to Rule 60

February 13, 1995.

Introduction

On November 14, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Amex's agreement with the New York Stock Exchange ("NYSE") whereby the NYSE will not be held liable for damages sustained by an Amex member's or member organization's use of any NYSE system, service, or facility.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35146 (December 23, 1994), 60 FR 516 (January 4, 1995). No comments were received on the proposal.

II. Background and Discussion

The proposed rule change emanates from several licensing agreements between the NYSE and Amex. For example, in 1993 the Amex licensed the NYSE electronic display book for

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

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equities. As part of that licensing agreement, the NYSE required that it be protected from liability for damages sustained by Amex members and member organizations using the display book on the Amex floor. Consequently, the Amex adopted a policy statement disclaiming NYSE liability for such damages.[3]

Most recently, the Amex entered into an agreement with the NYSE to integrate the Amex's Equity Intra-Day Comparison System ("IDC") into the NYSE's On-Line Comparison System ("OCS"), so that Amex equity and bond transactions can be compared through OCS. This will enable members to utilize the same computer terminal for the comparison of both Amex and NYSE securities and thus lessen the cost to the member firm community. The integration is being accomplished in two steps. Amex listed corporate bonds began to be compared through OCS on October 21, 1994, and equities are expected to be phased in by the end of the first quarter of 1995.

As the Amex may enter into additional agreements with the NYSE in the future relating to the use of other NYSE systems, services, or facilities by Amex member firms, this proposal would codify a liability disclaimer provision to cover not only the current situation involving the use of OCS, but also all future situations where Amex member firms are using other NYSE facilities in accordance with similar agreements with the NYSE.[4] The Amex plans to disseminate proposed Commentary .02 to its Rule 60 to the membership, upon SEC approval.

The Commission notes that the Amex Constitution (Article IV, Section 2(e)) currently provides that the Exchange shall not be liable for any damages incurred by a member firm growing out of its use of the facilities afforded by the Exchange for the conduct of its business (which includes the use of the Exchange's trading systems), except as the Exchange may otherwise provide.[5] Further, the NYSE Constitution has a similar provision regarding use of its facilities by its members. Finally, the Commission notes that the terms of the proposed Commentary are merely a codification of the contractual agreements between the Amex and the NYSE wherein the Amex has agreed to disclaim NYSE's liability under the specified circumstances referred to herein.

The Commission believes that it is reasonable for the NYSE to be released from liability for injuries sustained by Amex members and member organizations using the NYSE's OCS. As noted above, the proposed rule change is similar to existing Amex and NSE rules that limit exchange liability. In addition, under similar circumstances, the Commission has allowed licensee exchanges to release licensors from certain liability for damages resulting from use of their product.[5] Finally, the Commission wishes to emphasize that this disclaimer only affects NYSE liability for losses sustained by Amex members and member organizations using OCS and does not extend to customer-related losses.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission also finds that the proposal is consistent with Section 17A[7] in that it furthers the use of new data processing and communications techniques that should result in more accurate clearance and settlement of securities transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–94–50) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4043 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 32140 (April 14, 1993), 58 FR 21327 (April 20, 1993).

[2] The NYSE acknowledges that under New York State Common Law, a liability disclaimer such as the instant one does not insulate the NYSE from loss due to the gross negligence or willful misconduct. Conversation between Steve Abrams and Michael Simon, Milbank, Tweed, Hadley & McCloy, Counsel to NYSE, and Amy Bilbija, Attorney, Commission, dated December 2, 1994.

[3] For example, the Commission has approved limited disclaimers of liability for licensors of the indexes underlying index options. See, e.g., Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (regarding options on Russell 2000 Index); and 19908 (June 24, 1983), 48 FR 30815 (July 5, 1983) (regarding options on Standard & Poor's 500 Stock Price Index).

[4] 15 U.S.C. § 78f(b) (1988).

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. § 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) 1994.

[Release No. 34–35363; International Series Release No. 785 File No. SR–Amex–95–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By the American Stock Exchange, Inc. Relating to the Listing of Warrants Based on the Value of the U.S. Dollar in Relation to the Mexican Peso

February 13, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 106 of the Amex Company Guide ("Guide") warrants based on the value of the U.S. dollar in relation to the Mexican peso ("Mexican Peso Warrants"). The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discuss any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under section 106 (Currency and Index Warrants) of the Guide, the Exchange may approve for listing warrants based on the relation of the U.S. dollar to foreign currencies.[1] The Amex currently trades foreign currency warrants based upon the value of the U.S. dollar in relation to a single foreign currency (*e.g.*, Japanese yen and German mark) as well as warrants based on the value of the U.S. dollar in relation to multiple foreign currencies.[2]

The Exchange represents that Mexican Peso Warrants will conform to the listing guidelines under section 106 of the Guide, which provide, among other things, that: (1) the issuer must have assets in excess of U.S. $100,000,000 and otherwise substantially exceed the size and earnings requirements in section 101(A) of the Guide; (2) the term of the warrants will be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution will be one million warrants, together with a minimum of 400 public holders, and an aggregate market value of at least U.S. $4,000,000 million.

Mexican Peso Warrants generally will be direct obligations of their issuers and will be cash-settled in U.S. dollars. Mexican Peso Warrants will either be exercisable throughout their life (*i.e.*, American-style) or exercisable only during a specified period immediately prior to the expiration date (*i.e.*, European-style). Upon exercise, the holder of a warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Mexican peso has declined in relation to the U.S. dollar below a pre-stated base level. Conversely, upon exercise, holders of a Mexican Peso Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Mexican peso has increased in relation to the U.S. dollar above a pre-stated base level. Mexican Peso Warrants that are "out-of-the-money" at the time of expiration will expire worthless.

Notwithstanding any other Amex rule,[3] the Exchange will require that Mexican Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Amex Rule 921. Additionally, the options suitably standards in Amex Rule 923 will apply to recommendations in Mexican Peso Warrants. Moreover, all discretionary orders in Mexican Peso Warrants must be approved and initialed by a Senior Registered Options Principal or Registered Options Principal. Further, the Exchange will require that customer positions in Mexican Peso Warrants be subject to the margin requirements applicable to foreign currency options.

Finally, prior to the commencement of trading of Mexican Peso Warrants, the Amex will distribute a circular to its membership calling attention to specific risks associated with Mexican Peso Warrants.[4]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] The Commission notes that the Exchange has filed a proposed rule change that would, among other things, revise the criteria pursuant to section 106 for listing stock index and currency warrants. These new standards will apply to Mexican Peso Warrants issued following approval of that proposed rule change. See Securities Exchange Act Release No. 35086 (December 12, 1994), 59 FR 65561 (December 20, 1994) (notice of File No. SR–Amex–94–38).

[2] See Securities Exchange Act Release Nos. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (approval of listing requirements for single foreign currency warrants), and 31627 (December 21, 1992), 57 FR 62399 (December 30, 1992) (approval of listing requirements for multiple foreign currency warrants).

[3] See, e.g., Amex Rule 411, Commentary .01.

[4] The Commission notes that the Amex will be required to submit a draft of the circular to the Commission staff for approval prior to distribution to members.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–04 and should be submitted by March 10, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4044 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35361 International Series Release No. 784; File No. SR–NASD–94–51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Parts VI and X of Schedule C of the NASD By-Laws Relating to Foreign Finders and Foreign Associates

February 13, 1995.

On September 27, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change amends Parts VI and X of Schedule C of

[5] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. Section 78s(b)(1).

[2] 17 CFR 240.19b–4.

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the NASD By-Laws[3] relating to foreign finders and foreign associates.

Under the rule as amended, member firms and persons associated with a member will be permitted to pay transaction-related compensation to non-registered foreign persons based upon the business of customers such persons direct to member firms. The following conditions must be met in order for the "foreign finder" exemption to apply: (1) the member firm must assure itself that the non-registered foreign person who will receive the compensation (the finder) is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws;[4] (2) the member firm must further assure itself that the compensation arrangement does not violate applicable foreign law; (3) the finder must be a foreign national or a foreign entity domiciled abroad; (4) the customers directed to the member firm by the finder must be foreign nationals or foreign entities domiciled abroad transacting business in either foreign or U.S. securities; (5) the customers must receive a descriptive document that discloses the compensation being paid to the finder; (6) the customers must provide written acknowledgement of the existence of the compensation arrangement to the member firm and such acknowledgement must be retained and available for inspection by the Association; (7) records reflecting payments to the finder must be maintained on the member firm's books and the actual agreement between the member firm and the finder must be available for inspection by the Association; and (8) the confirmation of each transaction must indicate that a finder's fee is being paid pursuant to a compensation arrangement.

The amendment also will change the requirements with respect to foreign associates. Those persons designated as foreign associates pursuant to Part X of Schedule C of the NASD By-Laws[5] now will be subject to U–4 registration but still will not be required to pass a qualification examination.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[6] and by publication in the **Federal Register**.[7] No comments were received in response to the notice. This order approves the proposed rule change.

As the NASD indicated in its rule filing, the scope of permissible business activities and the associated regulatory requirements differ between foreign finders and foreign associates. The NASD clarified these differences in a letter to the Commission.[8] The NASD states that, "[t]he foreign associate will be registered with the NASD and will be deemed an associated person or employee of the member. The foreign associate would therefore be allowed to act in any registered capacity on behalf of the member [consistent with its designation as a foreign associate]. This could include acting as a trader or being the registered person responsible for servicing the accounts of [a] foreign national. The foreign finder would not be considered an associated person of the member and [its] activities would, therefore, be limited to those discussed in the rule filing.[9] Under the rule as amended, the sole involvement of a foreign finder in the business of a member firm will be the initial referral of non-U.S. customers to the firm.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations promulgated thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[10] Section 15A(b)(6) requires, in part that the rules of a national securities association be designated to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the amendments to Parts VI and X of Schedule C to the NASD By-Laws[11] are consistent with the foregoing statutory provision. The addition of Part VI, Section 2 will allow member firms to use foreign finders to expand overseas business opportunities while requiring the maintenance of necessary safeguards for investor protection. Further, the changes to Part X of Schedule C will improve regulatory oversight of member firms and their foreign associates. Although foreign associates will continue to be free of the requirement of taking a qualification examination, the amendment will require foreign associates to be subject to U–4 registration.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–94–51 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4045 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[3] *NASD Manual*, Schedules to the By-Laws, Schedule C, Parts VI and X, (CCH) ¶¶ 1787, 1791.

[4] *NASD Manual*, By Laws, Article II, Sec. 4, (CCH) ¶ 1124.

[5] *Supra*, note 3.

[6] Securities Exchange Act Release No. 34941 (November 4, 1994).

[7] 59 FR 56102 (November 10, 1994).

[8] Letter from Craig L. Landauer, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC, (Feb. 8, 1995).

[9] *Id.*

[10] 15 U.S.C. Section 78o–3(b)(6).

[11] *Supra*, note 3.

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–35362; File No. SR–OCC–94–13]

Self-Regulatory Organizations; The Options Clearing Corporation, Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Stockholders Agreement

February 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1994, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend Section 2 of its Stockholders Agreement to extend the voting agreement contained therein for a term coextensive with the term of the Stockholders Agreement and to conform the Stockholders Agreement to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors on OCC's board of directors.[2] OCC also proposes to amend its address and that of the Chicago Board Options Exchange, Inc. as they appear in the Stockholders Agreement.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] For a description of the amendment to OCC's Restated Certificate of Incorporation providing for public directors on OCC's board of directors, refer to Securities Exchange Act Release No. 30449 (March 6, 1992), 57 FR 8949 [File No. 92–02] (order approving proposed rule change).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to amend Section 2 of its Stockholders Agreement to extend the voting agreement for a term coextensive with the term of the Stockholders Agreement. OCC also proposes to amend the Stockholders Agreement so it conforms to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors on the board of directors, which was approved by the Commission on March 6, 1992.[3] In addition, OCC proposes to amend its address and that of the CBOE as they appear in the Stockholders Agreement.

OCC, the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange are parties to a Stockholders Agreement dated January 3, 1975, as amended. Pursuant to Section 13 of the Stockholders Agreement, the voting agreement contained in Section 2 of the Stockholders Agreement will expire on January 3, 1995, unless extended.

In the past, Delaware law required that voting agreements among stockholders be limited to a term of ten years or less. However, a recent amendment to Delaware law eliminated the ten year limitation. Accordingly, the proposed amendment to the Stockholders Agreement would extend the voting agreement contained in Section 2 for a term coextensive with the term of the Stockholders Agreement which is effective until terminated by the mutual agreement of OCC and each stockholder.

OCC also proposes to amend the Stockholders Agreement to conform it to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors. OCC proposes to: (1) define public director in the same manner as defined in OCC's Certificate of Incorporation and By-Laws; (2) to include public directors in Section 2, Voting Shares of Stock; and (3) to add language to Section 3, Clause (ii) regarding the election of public directors. OCC also proposes to amend the addresses of OCC and the CBOE as they appear in Section 15 (a) and (b) of the Stockholders Agreement, respectively.

The Commission believes that the proposed rule change to OCC's Stockholder's Agreement is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(C).[4] Section 17A(b)(3)(C) requires that a clearing agency assure fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The proposed rule change provides fair representation to stockholders by extending their voting rights to a term coextensive with the term of the Stockholders Agreement. The proposed rule change also assures fair representation in the selection of its directors and administration of its affairs by providing for public directors in conformity with OCC's Restated Certificate of Incorporation.

B. Self—Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and pursuant to Rule 19b–4(e)(3)[6] promulgated thereunder, because the proposal is concerned solely with the administration of OCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] *Supra* note 2.

[4] 15 U.S.C. § 78q(b)(3)(C) (1988).

[5] 15 U.S.C. § 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(3) (1994).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–94–13 and should be submitted by March 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4046 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 35–26231]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 10, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by

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March 6, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power System, Inc. (70–8553)

Allegheny Power System, Inc. ("APS"), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

By prior Commission orders in this matter, dated August 5, 1977, April 29, 1980, June 23, 1983, June 19, 1984, March 17, 1987 and September 14, 1990 (HCAR Nos. 20131, 21542, 22985, 23333, 24344 and 25150), APS was authorized to issue and sell a total aggregate number of 12 million shares of its common stock ("Common"), par value $2.50 per share, to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Reinvestment Plan") and to its Employee Stock Ownership and Savings Plan ("ESOSP"). Pursuant to Commission order dated October 21, 1993 (HCAR No. 25911), authorizing a 2 for 1 stock split effective November 4, 1993, the aggregate number of shares of Common was increased to 24,000,000 shares of Common, par value $1.25. As of December 30, 1994, APS has issued 18,294,149 and 4,654,343 shares of Common to the Dividend Reinvestment and ESOSP plans, respectively.

APS now proposes to issue up to 6,025,000 additional shares of its authorized and unissued Common, par value $1.25 per share, as follows: five million shares under its Dividend Reinvestment Plan; one million shares under its ESOSP; and 25,000 shares under its new Restricted Stock Plan for Outside Directors ("Outside Directors Plan"), which has been approved by the Board of Directors and does not require shareholder approval.

The Common will be sold to the Dividend Reinvestment Plan at a price equal to the average of the daily high and low sales prices of APS Common as published in the Wall Street Journal Report of New York Stock Exchange Composite Transactions for the ten trading days prior to the dividend payment date. The Common will be awarded yearly to the Outside Directors as part of their compensation, and will be subject to certain restrictions.

NCP Energy, Inc. (70–8561)

NCP Energy, Inc. ("NCP"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By order dated May 17, 1994 (HCAR No. 26053), Energy Initiatives, Inc. ("EII"), a nonutility subsidiary of GPU, was authorized to acquire from North Canadian Resources, Inc. ("NCRI") all of the common stock of North Carolina Power Incorporated (since renamed NCP). At the closing, the requisite third party consents ("Requisite Consents") to the acquisition of NCRI's interest in the Syracuse Cogeneration Project, which was held by NCRI's subsidiaries, Syracuse Investment, Inc. ("SII") and NCP Syracuse, Inc., had not been obtained. Consequently, SII and NCP Syracuse, Inc. were excluded from the acquisition pending receipt of the Requisite Consents. Pursuant to an amendment to the acquisition agreement and due to an inability to obtain the Requisite Consents, EII subsequently agreed to acquire from SII: (i) a 4.9% limited partnership interest in Syracuse Orange Partners, L.P. ("SOP"), a Delaware limited partnership holding an 89% limited partnership interest in Project Orange Associates, L.P., a Delaware limited partnership and the owner of the Syracuse Cogeneration Project; and (ii) the right to receive distributions ("Distributions") from the balance of SII's limited partner interest in SOP. NCRI has agreed to issue to NCP a promissory note ("Note") to evidence NCP's right to receive the Distributions.

NCP proposes to acquire the Note from NCRI. The Note has an initial principal balance of $2,722,500 and is payable in installments with a final maturity of December 31, 2032. The Note bears interest at the rate of 10.6% per annum, compounding monthly to the extent not paid. Since the Note evidence NCP's right to receive Distributions, principal and interest are payable under the Note only if and to the extent that SII receives Distributions from SOP.

General Public Utilities Corporation (70–8569)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

GPU proposes to amend its Articles of Incorporation to (1) increase the number of authorized shares of GPU common stock, $2.50 par value, from 150,000,000 to 350,000,000 and (2) eliminate preemptive rights of GPU shareholders. GPU proposes to present these amendments for action by its shareholders at GPU's annual meeting of shareholders to be held on May 4, 1995, and seeks authorization to solicit proxies from shareholders in connection with this meeting.

GPU states that it has 115,214,219 shares of its common stock issued and outstanding at January 31, 1995, leaving 34,785,781 shares available for issuance. GPU proposes to increase the number of authorized but unissued shares to provide flexibility to issue additional common stock to finance subsidiaries' construction programs; to make cash capital contributions to its nonutility subsidiaries in connection with the development of and investment in qualifying facilities, exempt wholesale generators and foreign utility companies; to meet general corporate requirements, including requirements under GPU's dividend reinvestment plan and benefit plans; to effect a stock split or stock dividend if the board of directors deems it advisable in the future; and to engage in other transactions requiring the issuance of common stock. If the proposed amendment is adopted, issuances of the additional authorized shares of common stock will not require further shareholder approval (unless otherwise required by law, the Articles of Incorporation or applicable securities exchange requirements), but issuances of additional common stock will be subject to the approval of the Commission under the Act.

GPU also proposes to eliminate a provision in its Articles of Incorporation that prohibits GPU from issuing a significant number of shares of additional common stock for cash except through a public offering without obtaining prior shareholder approval or first offering its shareholders the right to subscribe to purchase such additional shares. GPU states that these limited preemptive rights are no longer a significant benefit to shareholders and that elimination of these rights will give GPU greater flexibility to finance its capital requirements.

GPU proposes to submit the amendments for action at its annual meeting of shareholders to be held May 4, 1995, and to solicit proxies from shareholders in connection with the meeting. GPU states that adoption of each amendment requires the affirmative vote of the holders of a majority of the outstanding share of common stock entitled to vote at the annual meeting.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3976 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20897; 811–4829]

Treasury First Inc.; Notice of Application

February 13, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Treasury First Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 19, 1994 and amended on July 27, 1994 and January 30, 1995.

HEARING OR NOTIFICATION OF HEARING. An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 10, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Edward S. Gelfand, Special Officer, Friedman & Phillips, 10920 Wilshire Boulevard, Suite 650, Los Angeles, CA 90024.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Maryland corporation. On September 4, 1986, applicant registered under the Act as an investment company. On May 19, 1987, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on June 1, 1987, and the initial public offering commenced on the same day.

2. On November 1, 1991, the SEC filed a civil suit against applicant, applicant's adviser, Cheshire Hall Advisers, Inc., (the "Adviser"), and an affiliate of the Adviser, John T. Hall, in the United States District Court, Central District of California alleging various violations of the federal securities laws. The SEC alleged, among other things, the Hall, through the Adviser, misappropriated approximately $2.1 million from applicant. This amount represented approximately 75% of applicant's assets at the time of the alleged misappropriation.

3. As a result of the above action, applicant and the Adviser ceased doing business. On November 14, 1991, the Court issued an order (the "Order") that authorized the appointment of Edward S. Gelfand as Special Officer of applicant and the Adviser for the purpose of supervising and directing the liquidation of applicant and the Adviser as well as the deregistration of applicant under the Act.[1]

4. In November 1991, the Special Officer had control of $2,814,674.78 of applicant's assets. Of this amount, $2,664,674.78 was distributed to applicant's five shareholders *pro rata* in November 1991. The remaining $150,000 was placed in an account (the "Account") maintained by the Special Officer to be used for expenses incurred on applicant's behalf in connection with the winding up of applicant's affairs. From the Account, expenses for applicant totalling $91,623.55 were paid which included compensation and expenses of applicant's accountant.

5. On December 7, 1995, the Court issued a modification of the Order to approve the final report of the Special Officer and to relieve the Special Officer of this responsibility to dissolve and liquidate applicant. This order also authorized the final distribution of cash to applicant's shareholders. Accordingly, on December 30, 1994, the Special Officer distributed $60,165.47, representing the remaining amount in the Account plus interest, *pro rata* among applicant's shareholders.

6. The Special Officer had submitted a claim against a bond issued by Reliance Insurance Company to applicant. In the event of a recovery, the proceeds will be distributed to applicant's shareholders *pro rata*.[2]

7. The Special Officer is not aware of any liabilities other than those set forth in an audited financial statement prepared in 1991 by applicant's accountants.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. If the shareholders decide to dissolve applicant under state law after the claim is resolved, the shareholders would bear the cost associated with such dissolution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4047 Filed 2–16–95; 8:45 am]

BILLING CODE 8010–01–M

[1] On the same date, the Court entered an injunction against the Adviser and Hall permanently enjoining them from future violations of the securities laws.

[2] The Special Officer submitted the claim to the insurance company on March 24, 1992. The bond had been issued in the amount of $300,000 to cover losses resulting from, among other things, dishonest or fraudulent acts committed by an employee of applicant. By letter dated December 9, 1992, the insurance company denied the claim but, nonetheless, requested additional information to evaluate the claim. According to a motion filed by the Special Officer with the Court on November 1, 1994, the Special Officer has retained Robert E. Goldman of Frydrych & Webster to prosecute the Claim. The motion further states that Mr. Goldman serves as counsel to a shareholder of applicant that owns approximately 86% of applicant but that he has agreed to prosecute the claim for the benefit of all shareholders.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 10, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50118
Date filed: February 7, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0675 dated December 2, 1994 Europe-Japan/Korea Resos r-1 to r-54

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Proposed Effective Date: April 1, 1995
Docket Number: 50122
Date filed: February 9, 1995
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0604 dated Dec. 20, 1994 r-1 TC3 Reso/P 0607 dated Dec. 20, 1994 r-2 to r-9 TC3 Reso/P 0609 dated Dec. 20, 1994 r-10 to r-14 TC3 Reso/P 0611 dated Dec. 20, 1994 r-15 to r-17 TC3 Reso/P 0614 dated Dec. 20, 1994 r-18 to r-21 TC3 Reso/P 0618 dated Dec. 20, 1994 r-22 to r-34
Proposed Effective Date: April 1, 1995
Docket Number: 50123
Date filed: February 9, 1995
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/P 0603 dated Dec. 20, 1994 r-1 to r-3 TC3 Reso/P 0605 dated Dec. 20, 1994 r-4 to r-9 TC3 Reso/P 0606 dated Dec. 20, 1994 r-10 to r-17 TC3 Reso/P 0608 dated Dec. 20, 1994 r-18 r-22 TC3 Reso/P 0610 dated Dec. 20, 1994 r-23 to 30 TC3 Reso/P 0612 dated Dec. 20, 1994 r-31 to r-38 TC3 Reso/P 0613 dated Dec. 20, 1994 r-39 to r-42 TC3 Reso/P 0615 dated Dec. 20, 1994 r-43 to r-55 TC3 Reso/P 0616 dated Dec. 20, 1994 r-56 to r-69 TC3 Reso/P 0617 dated Dec. 20, 1994 r-70 to 89 TC3 Reso/P 0619 dated Dec. 20, 1994 r-90 to 95 TC3 Reso/P 0620 dated Dec. 23, 1994 r-96 to r-117 TC3 Reso/P 0621 dated Dec. 23, 1994 r-118 to r-128 TC3 Reso/P 0622 dated Dec. 23, 1994 r-129 to r-138 TC3 Reso/P 0623 dated Dec. 23, 1994 r-139 to r-145
Proposed Effective Date: April 1, 1995

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–4034 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 10, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50114
Date filed: February 6, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1995
Description: Application of American Trans Air, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing ATA to engage in the scheduled foreign air transportation of persons, property and mail between the co-terminal points Indianapolis, Indiana, and Cincinnati, Ohio, on the one hand, and Grand Cayman Islands, on the other hand.
Docket Number: 50124
Date filed: February 9, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 9, 1995
Description: Application of ABX Air, Inc., pursuant to 49 U.S.C., Section 41102 and Subpart Q of the Regulations, for issuance of an amended certificate of public convenience and necessity for Route 377, so as to authorize Airborne to provide foreign air transportation of property and mail between any point or points in the United States, on the one hand, and any point or points in the United States, on the one hand, and any point or points in Canada, on the other hand.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–4033 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular; Weld Repair of Aluminum Crankcases and Cylinders of Piston Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the reissuance of Advisory Circular (AC), No. 33–6, Weld Repair of Aluminum Crankcases and Cylinders of Piston Engines. The AC provides information and guidance concerning an acceptable method, but not the only method, for the development of process specifications for weld repairs on crankcases and cylinders of piston engines.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (617) 238–7113, fax (617) 238–7113.

SUPPLEMENTARY INFORMATION:

Background

This AC was formulated to provide guidelines for applicants in the development of repair procedures for weld repairs on crankcases and cylinders of piston engines. It addresses development of weld repairs which are not contained in the engine manufacturer's "Instructions for Continued Airworthiness" (Maintenance Manual). It provides guidance to clarify the areas which should be addressed by an applicant's repair procedure, and/or substantiating data when seeking an approval for weld repair on crankcases or cylinders.

This AC also includes information on critical areas of welding, qualifications of welders, inspection techniques, the thermal processes, and technical data required; and references industry and military specifications which are acceptable for use by repair stations as approved data.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 49 U.S.C. App. 1354(a), 1421 and 1423, provides guidance for the development of process specifications for weld repairs on crankcases and cylinders of piston engines.

Issued in Burlington, Massachusetts, on February 2, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4075 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 9, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on February 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemptions

Docket No.: 27998
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To permit pilots employed by Petroleum Helicopters, Inc., (PHI) to remove and replace the "quick release" dual controls on PHI's Bell 230 helicopters when maintenance personnel are unavailable.

Docket No.: 28066
Petitioner: The Boeing Company
Sections of the FAR Affected: 14 CFR 25.562(c)(5) and 25.785(a)
Description of Relief Sought: To allow the Boeing Company temporary exemption from the head injury criterion (HIC) of the FAR for front row economy class passenger seats on Boeing Model 777–200 airplanes until April 1, 1996, to implement design solutions.

[FR Doc. 95–4076 Filed 2–16–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 9, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 6, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27662
Petitioner: Boeing
Sections of the FAR Affected: 14 CFR 25.809(f)(1), Amdt. 25–34
Description of Relief Sought: To reconsider Exemption No. 5993, originally a Partial Grant, which was issued for the 767–300F freighter airplanes with supernumerary occupants, and which in part denied a petition to allow a rope in lieu of an escape slide at the entry door. The petitioner cites primarily certain difficulties with reconfiguring the intended freighter rope design back to the existing passenger slide design and indicates an inertial reel installation is being developed for this door.

Docket No.: 27953
Petitioner: Aero Sports Connection, Inc.
Sections of the FAR Affected: 14 CFR part 103
Description of Relief Sought: To allow Aero Sports Connection, Inc., to conduct training by approved flight instructors in two-place ultralight vehicles.

Docket No.: 28029
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.841(a) and 25.1447(c)(1)
Description of Relief Sought: To allow the petitioner exemption from the 15,000 foot cabin pressure control system and cabin oxygen system limit requirements of the FAR to facilitate operation of the Boeing 757–200 airplane, currently certified for operation at a maximum airport altitude of 13,300 feet, to an airport altitude of 14,219 feet. This exemption, if granted, will allow the cabin pressure altitude to exceed 15,000 feet when landing at a high altitude airport or in the event of a pressurization failure, and provide automatic presentation of the cabin oxygen masks at 16,000 feet rather than 15,000 feet, as currently required by the FAR.

Dispositions of Petitions

Docket No.: 21882
Petitioner: China Airlines Limited
Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and 63.23 (a) and (b)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4849, as amended, which permits China Airlines Limited pilots who operate two U.S.-registered Boeing 747–SP, N4508H and N4522V, aircraft to be eligible for special purpose airman certificates. The amendment adds an airbus 300–600R, N88881, aircraft to the list of aircraft that may be operated under this exemption.

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GRANT, January 11, 1995, Exemption No. 4849D
Docket No.: 23358
Petitioner: Clarke Environmental Mosquito Management, Inc.
Sections of the FAR Affected: 14 CFR 91.313(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 5010, as amended, which permits Clarke Environmental Mosquito Management, Inc., to carry passengers in restricted category aircraft (specifically two Bell 47G–5 helicopters) while performing aerial-site survey flights.
GRANT, January 18, 1995, Exemption No. 5010C
Docket No.: 25899
Petitioner: Executive Air Taxi Corp.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To permit Executive Air Taxi Corp., pilots to remove and reinstall passenger seats and approved stretcher bases in its single-engine and multi-engine aircraft.
PARTIAL GRANT, December 13, 1994, Exemption No. 5997
Docket No.: 26804
Petitioner: Mr. Jim Gallagher
Sections of the FAR Affected: 14 CFR 21.19(b)(1)
Description of Relief Sought/ Disposition: To permit Mr. Jim Gallagher to apply for a supplemental type certificate instead of a new type certificate for a design change that adds an engine to the Intrprinderea De Constructii Aeronautice (Romania) Model IS–28B2 glider.
PARTIAL GRANT, December 19, 1994, Exemption No. 6013
Docket No.: 27235
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR appendix H, part 121
Description of Relief Sought/ Disposition: To extend Exemption No. 5807, which permits United Airlines, Inc., to conduct second-in-command initial training and checking (including type ratings when appropriate) in accordance with the Phase III simulator requirements of part 121, appendix H, when the simulator does not meet the motion, buffet, and sound requirements for a Phase III simulator.
GRANT, January 23, 1995, Exemption No. 5807A
Docket No.: 27405
Petitioner: Mandarin Airlines Co., Limited
Sections of the FAR Affected: 14 CFR 61.77 and 63.23
Description of Relief Sought/ Disposition: To extend Exemption No. 5592, which permits the issuance of U.S. special purpose pilot and flight engineer certificates to Mandarin's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting state to ICAO.
GRANT, January 20, 1995, Exemption No. 5592A
Docket No.: 27448
Petitioner: TurboCombustor Technology
Sections of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To allow TurboCombustor Technology to keep copies of its Inspection Procedures Manual at service document stations throughout the shop. The manuals would be available for review by all supervisory and inspection personnel, in lieu of providing a copy to each individual as required by FAR.
GRANT, January 9, 1995, Exemption No. 6014
Docket No.: 27432
Petitioner: Dornier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought/ Disposition: To extend Exemption No. 5765, as amended, which exempts Dornier from the HIC requirements of § 25.562(c)(5) for front row passenger seats located behind bulkheads on Dornier Model 328 airplanes. Dornier's request for this to be a permanent exemption has been denied.
PARTIAL GRANT, December 30, 1994, Exemption No. 5765B
Docket No.: 27650
Petitioner: Reno Air
Sections of the FAR Affected: 14 CFR 47.49 and 91.203 (a) and (b)
Description of Relief Sought/ Disposition: To allow Reno Air to permit airline operations of U.S.-registered aircraft in domestic airline operations without the registration or airworthiness certifications on board the aircraft.
GRANT, January 12, 1995, Exemption No. 6019
Docket No.: 27695
Petitioner: General Electric Aircraft Engines
Sections of the FAR Affected: 14 CFR 21.325(b)(1)
Description of Relief Sought/ Disposition: To allow twenty export airworthiness approvals to be issued for Class I products (engines) that will be located in Europe.
GRANT, January 12, 1995, Exemption No. 6016
Docket No.: 27810
Petitioner: Mr. Hector M. Aguilar, Jr.
Sections of the FAR Affected: 14 CFR 65.71(a)(2)
Description of Relief Sought/ Disposition: To enable Mr. Aguilar to use a sign language interpreter to take the oral and practical examinations for the mechanic certificate and associated ratings, because he is hearing and speech impaired.
GRANT, January 9, 1995, Exemption No. 6015
Docket No.: 27849
Petitioner: Ilyushin Aviation Complex
Sections of the FAR Affected: 14 CFR 25.571(e)(1) and 25.631
Description of Relief Sought/ Disposition: To grant exemption from the bird speed requirements of § 25.571 and to deny exemption from the bird weight requirements of § 25.631.
PARTIAL GRANT, December 30, 1994, Exemption No. 6011
Docket No.: 27852
Petitioner: Higher Power Aviation, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58 (c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61.
Description of Relief Sought/ Disposition: To permit Higher Power Aviation, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61.
GRANT, January 20, 1995, Exemption No. 5986
Docket No.: 27896
Petitioner: Pacific West Training
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2) and (3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A, part 61.
Description of Relief Sought/ Disposition: To permit Pacific West Training to use FAA-approved simulators to meet certain flight experience requirements of part 61.
GRANT, January 20, 1995, Exemption No. 5987

[FR Doc. 95–4077 Filed 2–16–95; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.
ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and requests suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 28, 1995, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on February 28, 1995. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by March 21, 1995 to the address given below. If sufficient time is available, questions received after the March 21 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by March 21 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro Airport, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the March 28, 1995, meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St. SW, Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentation about its research and development programs in a series of quarterly public meetings. The series started in April, 1993. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. This ninth meeting in the series will be held on March 28, 1995.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on February 28, 1995. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to six, in priority order, so that the presentation at the March 28 R&D meeting can be most useful to the audience. Please note that almost all of these topics have been discussed at the previous eight meetings to some extent and that presentations at the ninth meeting will be reports on current status, results, and plans.

Specific Crashworthiness R&D topics are: Improved frontal crash protection, Advanced glazing research, Highway traffic injury studies, Head and neck injury research, Lower extremity injury research, Thorax injury research, Human injury simulation and analysis, Crash test dummy component development, Vehicle agressivity and fleet compatibility, Upgrade side crash protection, Upgrade seat and occupant restraint systems, Child safety research, and Electric and alternate fuel vehicle safety.

Specific Crash Avoidance R&D topics are: Tuck crashworthiness/occupant protection, Truck tire traction, Portable data acquisition system for crash avoidance research, Systems to enhance EMS response (automatic collision notification), Vehicle motion environment, Crash causal analysis, Guidelines for crash avoidance warning devices, Longer combination vehicle safety, Drowsy driver monitoring, Driver workload assessment, and Performance guidelines for IVHS systems (approach).

Specific topics from the National Center for Statistics and Analysis are: National safety belt use survey, New data elements for FARS and NASS, Special crash investigations program regarding air bag performance, Pedestrian special NASS data collection project, and Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

Questions regarding research projects that have been submitted in writing not later than close of business on march 21, 1995, will be answered as time permits. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW, Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m.

NHTSA will provide technical aids to participants as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g. sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers taped texts, braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB March 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Stronbotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930

Issued: February 9, 1995.

George L. Parker,
Associate Administrator for Research and Development.

[FR Doc. 95–4028 Filed 2–16–95; 8:45 am]
BILLING CODE 4910–59–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 33
Friday, February 17, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 6771, February 3, 1995].

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 3, 1995.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Friday, February 10, 1995, at 2:00 p.m., was cancelled.

Commissioner Roberts, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: February 15, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–4154 Filed 2–15–95; 1:14 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
February 17, 1995

Part II

Environmental Protection Agency

40 CFR Part 435

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Oil and Gas Extraction Point Source Category, Coastal Subcategory; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL–5149–7]

RIN 2040–AB72

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Oil and Gas Extraction Point Source Category, Coastal Subcategory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation would limit the discharge of pollutants into waters of the United States and the introduction of pollutants into publicly-owned treatment works by existing and new facilities in the coastal subcategory of the oil and gas extraction point source category.

This proposed regulation would establish effluent limitations guidelines and new source performance standards (NSPS) for direct dischargers based on "best practicable control technology currently available" (BPT), "best conventional pollutant control technology" (BCT), "best available technology economically achievable" (BAT), and "best available demonstrated control technology" (BADCT) for new sources. The proposal also would establish "pretreatment standards for new sources" (PSNS) and "pretreatment standards for existing sources" (PSES) for facilities discharging their wastewaters to publicly-owned treatment works (POTWs).

This regulation will reduce the discharge of pollutants into U.S. coastal water bodies by 4.3 billion pounds, thereby also reducing the impacts these discharges would otherwise incur to aquatic life and/or human health. As a result of consultation with stakeholders, the preamble solicits comments and data not only on issues raised by EPA, but also on those raised by State and local governments who will be implementing these regulations and by industry representatives who will be affected by them.

This proposal does not take into account the regulatory effects of the recently published final EPA Region VI NPDES General Permits for production facilities (January 9, 1995). With these permits in effect, the costs of this proposal will be reduced and the actual reduction of pollutant loadings to coastal waters would be approximately 71 percent less, or 1.25 billion pounds per year, due to today's proposal. EPA will more fully incorporate the regulatory effects of the Region VI General Permits upon promulgation of the final rule.

DATES: Comments on the proposal must be received by May 18, 1995. Two public meetings will be held during the comment period: on March 7, 1995, in New Orleans, Louisiana and on March 21, 1995, in Seattle, Washington. Both meetings will be held from 9:00 am to 12:00 pm.

ADDRESSES: Submit comments in writing to: Ms. Allison Wiedeman, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street, S.W., Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and two copies of your comments and enclosures (including references).

The public record supporting the proposed effluent limitations guidelines and standards is in the Water Docket located in the basement of the EPA Headquarters building, Room L102, 401 M Street S.W., Washington, DC 20460. For access to Docket materials call (202) 260–3027. The Docket staff requests that interested parties call, between 9:00 am and 3:30 pm, for an appointment before visiting the docket. The EPA regulations at 40 CFR Part 2 provide that a reasonable fee may be charged for copying.

The workshops covering the rulemaking will be held at the Minerals Management Service, Gulf of Mexico OCS Region, Office of the Regional Director, 1201 Elmwood Park Boulevard in New Orleans, Louisiana on March 7, 1995, and at the Federal Building, 915 2nd Avenue, North Auditorium in Seattle, Washington on March 21, 1995.

The background documents are available from the Office of Water Resource Center, RC–4100, at the U.S. EPA, Washington, DC address shown above; telephone (202) 260–7786 for the voice mail publication request line.

FOR FURTHER INFORMATION CONTACT: For technical information contact Ms. Allison Wiedeman at (202) 260–7179. For economic information contact Dr. Matthew Clark at (202) 260–7192.

SUPPLEMENTARY INFORMATION:

Public Meeting

No meeting materials will be distributed in advance of these meetings: all material will be distributed at the meetings. See **ADDRESSES** for information on location of the public meetings.

Docket

EPA notes that many documents in the record supporting these proposed rules have been claimed as confidential business information (CBI) and, therefore, are not included in the record that is available to the public in the Water Docket. To support the rulemaking, EPA is presenting certain information in aggregated form or is masking facility identities to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as confidential business information because release of this information could indirectly reveal information claimed to be confidential.

Some facility-specific data, which have been claimed as confidential business information, are available to the company that submitted the information. To ensure that all CBI is protected in accordance with EPA regulations, any requests for company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data. The request must list the specific data requested and include the following statement, "I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it."

Overview

This preamble includes a description of the legal authority for these rules; a summary of the proposal; a description of the background documents that support these proposed regulations and other background information; and a description of the technical and economic methodologies used by EPA to develop these regulations. This preamble also solicits comment and data on specific areas of interest. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble.

Organization of This Document

I. Legal Authority
II. Summary and Scope of the Proposed Regulations
  A. Purpose of this Rulemaking
  B. Summary of Proposed Coastal Guidelines
  C. The EPA Region VI Coastal Oil and Gas Production NPDES General Permit
  D. Preventing the Circumvention of Effluent Limitations Guidelines and New Source Performance Standards
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III. Background
  A. Clean Water Act
  B. Pollution Prevention Act
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  A. Industry Description
  B. Location
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VI. Development of Effluent Limitations Guidelines and Standards
  A. Drilling Fluids and Drill Cuttings (Drilling Wastes)
  B. Produced Water
  C. Produced Sand
  D. Deck Drainage
  E. Treatment, Workover, and Completion Fluids
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VII. Economic Analysis
  A. Introduction
  B. Economic Methodology
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XV. Solicitation of Data and Comments
XVI. Background Documents
Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

I. Legal Authority

These regulations are being proposed under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (CWA), 33 U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361.

II. Summary and Scope of the Proposed Regulations

A. Purpose of This Rulemaking

The purpose of this rulemaking is to propose effluent limitations guidelines and standards for the control of the discharge of pollutants for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. The discharge limitations proposed today apply to discharges from coastal oil and gas extraction facilities, including exploration, development and production operations. The processes and operations which comprise the coastal oil and gas subcategory (Standard Industrial Classification (SIC) Major Group 13) are currently regulated under 40 CFR Part 435, Subpart D. These regulations are being proposed under the authority of the CWA, as discussed in Section I of this notice. The regulations are also being proposed pursuant to a Consent Decree entered in *NRDC et al.* v. *Reilly*, (D D.C. No. 89–2980, January 31, 1992) and are consistent with EPA's latest Effluent Guidelines Plan under section 304(m) of the CWA. (See 59 FR 44234, August 26, 1994). The existing effluent limitations guidelines, which were issued on April 13, 1979 (44 FR 22069), are based on the achievement of best practicable control technology currently available (BPT). This proposed rule is referred to as the Coastal Guidelines throughout this preamble.

This summary section highlights key aspects of the proposed rule. The technology descriptions discussed later in this notice are presented in abbreviated form; more detailed descriptions are included in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, referred to hereafter as the "Coastal Technical Development Document". Today's proposal presents EPA's selected technology approach and several others that were considered in the regulation development process. The proposed rule is based on a detailed evaluation of data acquired during the development of the proposed limitations. As indicated below in the discussion of the specifics of the proposal, EPA welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, EPA is willing to meet with interested parties during the comment period to ensure that EPA has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA emphasizes that it is soliciting comments on all options suggested in and raised by this proposal and that it may adopt any such options or combination of options in the final rule.

B. Summary of Proposed Coastal Guidelines

EPA proposes to establish regulations based on "best practicable control technology currently available "(BPT) for one specific wastestream for which BPT does not currently apply, and "best conventional pollutant control technology" (BCT), "pretreatment standards for existing sources" (PSES), "best available technology economically achievable" (BAT), best available demonstrated control technology (BADCT) for new sources, and "pretreatment standards for new sources" (PSNS) for the remaining waste streams.

Under this rule, EPA is co-proposing three options for the control of drilling fluids and cuttings (including any effluent from dewatering pit closures activities) for BAT effluent limitations guidelines, and NSPS. The three options considered contain zero discharge for all areas, except two of the options contain allowable discharges for Cook Inlet. One of these options, which would allow discharges meeting a more stringent toxicity limitation if selected for the final rule, would require an additional notice for public comment since the specific toxicity limitation has not been determined at this time. The three options are: Option 1—zero discharge of all areas except Cook Inlet where discharge limitations require toxicity of no less than 30,000 ppm (SPP), no discharge of free oil and diesel oil and no more than 1 mg/l mercury and 3 mg/l cadmium in the stock barite, Option 2—zero discharge for all areas except for Cook Inlet were discharge limitations would be the same as Option 1, except toxicity would be set to meet a limitation between 100,000 ppm (SPP) and 1 million ppm (SPP), and Option 3—zero discharge for all areas. EPA is proposing PSES and PSNS prohibiting all discharges of drilling fluids and drill cuttings. BCT for drilling fluids and cuttings is being proposed as zero discharge for the entire subcategory except for Cook Inlet, Alaska. BCT limitations for drilling fluids and cuttings for Cook Inlet would require no discharge of free oil (as determined by the static sheen test).

EPA is proposing to prohibit discharges of produced water from all coastal subcategory operations except those located in Cook Inlet, Alaska,

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under BAT. Proposed BAT for coastal facilities in Cook Inlet would limit the discharge of oil and grease in produced water to a daily maximum of 42 mg/l and a thirty day average of 29 mg/l. EPA is proposing to prohibit discharges of produced water from all coastal subcategory operations under NSPA, PSNS, and PSES. BCT limits for produced waters in all coastal regions (including Cook Inlet) would be set equal to the current BPT limitations, which limit the discharge of oil and grease to a daily maximum of 72 mg/l and a thirty day average of 48 mg/l.

BCT for treatment, workover and completion fluids is proposed to be set equal to current BPT limits prohibiting discharges of free oil, with compliance to be determined by use of the static sheen test. EPA is co-proposing two options for BAT and NSPS limitations for treatment, workover and completion finds. Option 1 would require no discharge of free oil and prohibit discharges to freshwaters of Texas and Louisiana. This option reflects current practice. Option 2 would require the same limitations as the preferred option for produced water. This option would require for BAT that discharges of treatment, workover and completion fluids would be prohibited in all coastal areas except Cook Inlet. In Cook Inlet, these discharges would be required to meet a daily maximum oil and grease limitation of 42 mg/l and a 30 day average of 29 mg/l. Option 2 would require zero discharge of these fluids everywhere for NSPS. EPA proposes zero discharge as PSES, and PSNS for treatment, workover and completion fluids.

BPT, BCT, BAT, NSPS, PSES and PSNS are being proposed for produced sand and would prohibit all discharges of this wastestream. The only BPT effluent limitations guidelines being proposed today are for produced sand which is the only wastestream for which BPT limits have not been previously promulgated.

BCT, BAT, and NSPS limits being proposed for deck drainage would be set equal to current BPT limits prohibiting discharges of free oil, with compliance to be determined by use of the visual sheen test. EPA is proposing zero discharge for PSES and PSNS for deck drainage because collection and capture of this wastestream is technically impractical in many situations (as discussed later in Section VI.D.) such that its direction to POTW's would rarely if ever occur. EPA also believes that combining this wastestream with municipal treatment facilities that may already be at full capacity should not be encouraged.

BCT is being proposed for domestic wastes as equal to BPT (which is no discharge of floating solids) with an additional requirement prohibiting the discharge of garbage. BAT is being proposed for domestic wastes to prohibit discharge of foam. NSPS is being proposed for domestic wastes as equal to BCT and no discharge of foam and no discharge of garbage. No pretreatment standards are being established for domestic wastes.

BCT and NSPS limitations for sanitary wastes are being proposed as equal to the current BPT effluent limitations guidelines. Sanitary waste effluents from facilities continuously manned by ten (10) or more persons would contain a minimum residual chlorine content of 1 mg/1, with the chlorine level maintained as close to this concentration as possible. Coastal facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons must comply with a prohibition on the discharge of floating solids. BAT is not being developed for sanitary wastes because no toxic or nonconventional pollutants of concern have been identified in this waste stream. No pretreatment standards are being established for sanitary wastes.

Compliance with these proposed limitations would result in a yearly decrease of 4.3 billion pounds of toxic, nonconventional and conventional pollutants in produced water, from zero to 23 million pounds of toxic nonconventional and conventional pollutants in drilling fluids and drill cuttings (depending on the option considered), and zero to 3.9 million pounds of toxic, nonconventional, and conventional pollutants in treatment, workover, and completion fluids (depending on the option considered).

EPA expects a variety of human health, and environmental benefits to result from these reductions in effluent loadings. In particular, the benefits include: Relief to coastal waters which support spawning grounds, nurseries and habitats for commercial and recreational fisheries: Reducing documented aquatic "dead zone" impacts; reduction of potential cancer risks to anglers from consuming seafood contaminated by produced water radionuclides; and reducing potential exposure of endangered species to toxic contaminants. This proposal will result in total benefits ranging from $3.2 to $230 million (in 1990 $'s) due to reduced cancer risks and increased recreational values of wetlands.

Since the inception of the project in 1994, there have been periodic meetings with the industry and several trade associations, including the Louisiana and Texas Independent Oil and Gas Associations (TIOGA and LIOGA) and American Petroleum Institute (API) to discuss progress on the rulemaking. The Agency also has met with the Natural Resources Defense Council (NRDC) to discuss progress on this rulemaking. Because all of the facilities affected by this proposal are direct discharges, the Agency did not conduct an outreach survey of POTWs.

The Agency also held a public meeting on July 19, 1994. The purpose of the meeting was to present the project status and discuss the technical options under consideration for this proposal. Representatives from industry trade associations, individual industry companies, state regulatory authorities, the U.S. Department of Energy and Interior (Minerals Management Service) and the Sierra Club Legal Defense Fund attended.

The Agency will continue this process of consulting with state, local, and other affected parties after proposal in order to further minimize the potential for unfunded mandates that may result from this rule. These proposed requirements, when promulgated, will be implemented via the existing regulatory structure and no additional burden is expected.

C. The EPA Region VI Coastal Oil and Gas Production NPDES General Permits

EPA's Region VI has recently published final NPDES General permits regulating produced water and produced sand discharges to coastal waters in Louisiana and Texas (60 FR 2387, Jan. 9, 1995). The permits prohibit the discharge of produced water and produced sand derived from the coastal subcategory to any water subject to EPA jurisdiction under the Clean Water Act.

Much of the industry covered by today's proposed rulemaking is also covered by these General permits. However, a significant difference between the permits and this proposal is that the permits do not cover produced water discharges derived from the Offshore subcategory wells into the main deltaic passes of the Mississippi River, or to the Atchafalaya River below Morgan City including Wax Lake Outlet. The rulemaking being proposed today would cover these discharges (see the discussion below entitled "C. Preventing the Circumvention of Effluent Limitations Guidelines and New Source Performance Standards").

Due to the close proximity of the timing of the publication of the Region 6 permits and this proposal, this preamble presents the costs and impacts of today's rulemaking as if the Region VI General permits were not final. As presented in later sections of this preamble, today's proposal (including the facilities covered by the Region VI permit) would remove 4.3 billion pounds of pollutants in produced water from being discharged per year. The Region VI permit covers approximately 71 percent of the produced water volume being discharged in the coastal subcategory. The remaining 29 percent is derived from coastal facilities treating offshore produced waters and currently discharging them into main deltaic river passes in Louisiana, as well as from other coastal operations in the U.S. Thus, with the Region VI General permits final, this rule would actually result in the removal of 1.25 billion pounds (29 percent of 4.3 billion pounds) of pollutants per year from being discharged into coastal waters.

As also presented in later sections of this preamble, compliance costs of today's rulemaking (including the facilities covered by the Region VI permit) total approximately $40.4 million annually. With the Region VI General permits final, the costs of this rule would be reduced to approximately $19.9 million annually.

EPA will more fully incorporate regulatory effects of the Region VI General permits upon promulgation of the final rule.

D. Preventing the Circumvention of Effluent Limitations Guidelines and New Source Performance Standards

This rule also proposes a provision intended to prevent oil and gas facilities subject to Part 435 of this title from circumventing the effluent limitations guidelines, new source performance standards and pretreatment standards applicable to those facilities by moving effluent from one subcategory to another subcategory. When EPA establishes its effluent limitations guidelines and standards, it does so based on a determination, supported by analyses contained in the rulemaking record, that facilities in that subcategory, among other factors also considered under the CWA, can technologically and economically achieve the requirements of the rule. The purpose of the rule is not accomplished if facilities move effluent from a subcategory with more stringent requirements to a subcategory with less stringent requirements or if facilities move effluent from a subcategory with less stringent requirements to a subcategory with more stringen' requirements and discharge effiuent at the less stringent limitations. Until now, EPA has attempted to prevent this circumvention in the National Pollution Discharge Elimination System (NPDES) permits issued for this industry. EPA believes, however, that it would enhance the enforcement of these provisions to include them as part of the effluent limitations guidelines, new source performance standards and pretreatment standards.

Therefore, this rule proposes to prohibit oil and gas facilities from moving effluent from a subcategory with more stringent requirements to a subcategory with less stringent requirements, unless that effluent is discharged in compliance with the limitations imposed by the more stringent subcategory. For example, facilities could not move produced water generated from the onshore subcategory of the oil and gas industry (which is subject to zero discharge requirements) to the offshore subcategory of the oil and gas industry and dispose of the effluent at the offshore limitations and standards. Similarly, this rule proposes to prohibit facilities from moving produced water generated from the offshore subcategory to the coastal or onshore subcategory and discharging the produced water at the offshore limitations. (An offshore oil and gas facility could, however, pipe produced water to shore for treatment and return it to offshore waters for disposal at the offshore limits. Disposal of such produced water onshore however, would be subject to zero discharge.) EPA intends that these provisions would be applied prospectively in future NPDES permits.

E. Common Sense Initiative

On August 19, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (U.S.C. Appendix 2, Section 9 (c)) requirements. A principal goal of the CSI includes developing recommendations for optimal approaches to multimedia controls for industrial sectors including Petroleum Refining, Metal Plating and Finishing, Printing, Electronics and Computers, Auto Manufacturing, and Iron and Steel Manufacturing. The following are the six overall objectives of the CSI program, as stated in the "Advisory Committee Charter."

- Regulation. Review existing regulations for opportunities to get better environmental results at less cost. Improve new rules through increased coordination.
- Pollution Prevention. Actively promote pollution prevention as the standard business practice and a central ethic of environmental protection.
- Recordkeeping and Reporting. Make it easier to provide, use, and publicly disseminate relevant pollution and environmental information.
- Compliance and Enforcement. Find innovative ways to assist companies that seek to comply and exceed legal requirements while consistently enforcing the law for those that do not achieve compliance.
- Permitting. Improve permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.
- Environmental Technology. Give industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs.

The coastal oil and gas extraction rulemaking effort was not among those included in the Common Sense Initiative. However, many oil and gas producers (mostly large companies) involved in coastal oil and gas extraction activities also have refineries. These companies are projected to incur costs associated with the requirements contained in this proposal, however, these costs are not projected to have an economic impact at the firm level. The Agency believes that the CSI objectives already have been incorporated into the coastal oil and gas extraction industry rulemaking, and the Agency intends to continue to pursue these objectives. The Agency particularly will focus on avenues for giving state and local authorities flexibility in implementing this rule, and giving the industry flexibility to develop innovative and costs effective compliance strategies. In developing this rule, EPA took advantage of several opportunities to gain the involvement of various stakeholders. Sections III. E, V and X of this preamble describe consultations with state and local governments and other parties including the industry. EPA has internally coordinated among relevant program offices in developing this rule as well. Section XIV describes related rulemakings that are being developed by EPA's Office of Air Quality, Planning and Standards, Underground Injection Control Program, and Spill Prevention, Control and Countermeasure Program. EPA will be monitoring these related rulemakings to assess their collective costs to the industry. Section VIII of the preamble describes the non-water quality impacts this proposed rule would have on other media including air emissions and solid waste disposal.

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III. Background

A. Clean Water Act

1. Statutory Requirements of Regulations

The objective of the Clean Water Act (CWA) is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters". CWA § 101(a). To assist in achieving this objective, EPA issues effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These guidelines and standards are summarized below:

a. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

BPT effluent limitations guidelines apply to discharges of conventional, priority, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance by plants in a category or subcategory. In establishing BPT, EPA considers the cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors as the EPA Administrator deems appropriate. CWA § 304(b)(1)(B). Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

b. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from existing industrial point sources. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best existing economically achievable performance of plants in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability across the subcategory. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

d. Best Available Demonstrated Control Technology For New Sources (BADCT)—Section 306 of the CWA

NSPS are based on the best available demonstrated treatment technology and apply to all pollutants (conventional, nonconventional, and toxic). New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

f. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

g. Best Management Practices (BMPs)

Section 304(e) of the CWA gives the Administrator the authority to publish regulations, in addition to the effluent limitations guidelines and standards listed above, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines may contribute significant amounts of pollutants.

h. CWA Section 304(m) Requirements

Section 304(m) of the CWA requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised guidelines for several industry categories, including the coastal oil and gas industry. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (NRDC *et al* v. Reilly, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories, including the Coastal Oil and Gas Industry. The most recent Effluent Guidelines Plan was published in the Federal Register on August 26, 1994 (59 FR 44234). This plan requires, among other things, that EPA propose the Coastal Guidelines by January 1995 and promulgate the Guidelines by July 1996.

2. Prior Federal Rulemakings and Other Notices

Coastal subcategory effluent limitations were proposed on October 13, 1976 (41 FR 44943). On April 13, 1979 (44 FR 22069) BPT effluent limitations guidelines were promulgated for all subcategories under the oil and gas category, but action on the BAT and NSPS regulations was deferred. Table 1 presents the 1979 BPT limitations.

TABLE 1.—COASTAL SUBCATEGORY BPT EFFLUENT LIMITATIONS[2]

Waste stream	Parameter	BPT effluent limitation
Produced Water	Oil and Grease	72 mg/l Daily Maximum 48 mg/l 30-Day Average.
Drilling Cuttings	Free Oil[1]	No Discharge.
Drilling Fluids	Free Oil[1]	No Discharge.
Well Treatment Fluids	Free Oil[1]	No Discharge.
Deck Drainage	Free Oil[1]	No Discharge.
Sanitary-M10	Residual Chlorine	1 mg/l (minimum).
Sanitary-M91M	Floating Solids	No Discharge.
Domestic Wastes	Floating Solids	No Discharge.

[1] The free oil "no discharge" limitation is implemented by requiring no oil sheen to be present upon discharge (visual sheen).
[2] 40 CFR Part 435, Subpart D.

On November 8, 1989, EPA published a notice of information and request for comments on the Coastal Oil and Gas subcategory effluent limitations guidelines development (54 FR 46919). The notice presented information known to date about control and treatment technologies, applicable to oil and gas wastes as well as the Agency's anticipated approach to effluent limitations guidelines development for BAT, BCT, and NSPS. It also solicited comments on the information presented as well as the limitations development approach and requested additional information where available.

B. Pollution Prevention Act

In the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990), Congress declared pollution prevention the national policy of the United States. The PPA declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented or reduced should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be recycled should be treated in an environmentally safe manner wherever feasible; and disposal or release into the environment should be chosen only as a last resort.

Today's proposed rules are consistent with this policy. In fact, for the two major wastestreams generated by this industry, EPA is proposing zero discharge for drilling fluids and cuttings, as well as zero discharge for approximately 80 percent of the volume of produced water. Zero discharge of wastes is an alternative that prevents pollution to the maximum extent possible. As described later in this notice, development of these proposed rules focused on pollution-preventing technologies, such as drilling fluids closed-loop recycle systems and produced water injection systems, that some segments of the industry have already adopted.

C. Coastal Subcategory Definition

The coastal oil and gas regulations at 40 CFR 435.41(e) currently define the coastal subcategory as follows:

"(1) any body of water landward of the territorial seas as defined in 40 CFR 125.1(gg) or (2) any wetlands adjacent to such waters." Part 125 was revised at 44 FR 32948 (June 7, 1979).

EPA proposes to clarify the "coastal" definition in this rule. First, EPA intends to revise the regulation to state that the coastal subcategory would consist of "any oil and gas facility located in or on a water of the United States landward of the territorial seas." As suggested by the preamble to the 1979 guidelines in discussing the coastal definition (44 FR 22017; April 13, 1979), EPA intended the subcategory to cover all facilities located over waters under CWA jurisdiction, including adjacent wetlands. Courts have made it clear that isolated wetlands with an interstate commerce connection, as well as adjacent wetlands, are waters of the United States subject to CWA jurisdiction. *See, e.g., Hoffman Homes, Inc.* v. *Administrator* 999 F.2d 256 (7th Cir. 1993). The revised definition would make it clear that facilities located in or on isolated wetlands would be considered to be coastal. This application of the coastal definition is consistent with the EPA Region 6 final general permit for coastal drilling operations. 58 FR 49126 (September 21, 1993).

In addition, the revised definition would no longer refer to 40 CFR 125.1(gg). Part 125 was revised at 44 FR 32948 (June 7, 1979) and no longer exists in the CFR. That provision, when it did exist, merely cited section 502(8) of the CWA which defines territorial seas as "the belt of seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." 40 CFR 125.1(gg) (July 1, 1978). That statutory definition is still in effect.

Also, EPA would explicitly include in the definition of "coastal" certain wells located in the area between the Chapman line and the inner boundary of the territorial seas that were determined to be coastal as a result of a decision of the U.S. Court of Appeals for the Fifth Circuit. *American Petroleum Institute* v. *EPA*, 661 F.2d 340 (5th Cir. 1981). The Chapman line is formed by a series of 40 latitude and longitude coordinates that roughly parallel the Louisiana and Texas coastline to the Mexican border. EPA's interim final regulations issued in 1976 (41 FR 44942; October 13, 1976) defined "coastal" to include all land and water areas landward of the inner boundary of the territorial seas and eastward of the point defined by 89 degrees 45 minutes West Longitude and 29 degrees 46

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minutes North latitude and continuing west of that point through the series of longitude and latitude coordinates (the Chapman Line) to the point 97 degrees 19 minutes West Longitude and continuing southward to the U.S.-Mexican border.) So defined, the coastal area included areas on the Gulf coast of Texas and Louisiana. The 1976 boundaries were set to include wells located in both water and on land within the geographic area defined as coastal.

On April 13, 1979 (44 FR 22069), EPA redefined the coastal subcategory as set forth at 40 CFR 435.41(e). This new definition eliminated reference to the Chapman line, and instead, defined coastal with respect to a well's location over water bodies or wetlands. Under this definition, certain wells located on land, but discharging to coastal areas, were reclassified into the onshore subcategory and others were reclassified as stripper wells, depending on their production rate. The wells that were classified as onshore were required to meet zero discharge which is the standard applicable to onshore facilities. Industry challenged EPA's 1979 final rule. In *American Petroleum Institute* v. *EPA*, 661 F.2d 340, 354-57 (5th Cir., 1981), the Court held that EPA had failed to consider adequately the cost to the reclassified facilities of this regulatory change. As a result of the Court's decision, EPA suspended the applicability of the onshore subcategory guidelines (40 CFR 435.30) to the reclassified wells and to any wells that came into existence in the affected area after the issuance of the 1979 redefinition. See 47 FR 31554 (July 21, 1982). Thus, the wells affected by this suspension are classified as coastal. To reflect this fact, the definition of coastal in 40 CFR 453.41(e) would be revised to include facilities subject to the suspension.

D. New Source Definition

The definition of "new source" as it applies to the Offshore Guidelines was discussed at length in EPA's 1985 proposal, (50 FR 34617-34619, August 26, 1985) and in EPA's final rule (58 FR 12456-12458, March 4, 1993). EPA proposes that this definition would also apply to the coastal oil and gas industry. As discussed in the 1985 proposal and 1993 final rule, provisions in the NPDES regulations define new source (40 CFR 122.2) and establish criteria for a new source determination (40 CFR 122.29(b)). EPA is proposing special definitions which are consistent with 40 CFR 122.29 and which provide that 40 CFR 122.2 and 122.29(b) shall apply "except as otherwise provided in an applicable new source performance standard." (See 49 FR 38046, Sept. 26, 1984.)

In summary, for coastal operations a drilling operation would be a new source if the drilling rig is drilling a coastal development well (not an exploratory well) in a new water area. Exploratory or development well drilling from an existing platform or rig that has not moved since it drilled a previously existing well would not be a new source. For production, a new source would be a facility discharging from a new site.

EPA invites comments on the definition of new sources as it applies to the coastal oil and gas subcategory.

E. Summary of Public Participation

EPA encourages full public participation in developing the final Coastal Guidelines. During the data gathering activities that preceded development of the proposed rule, EPA received written comments on the 1989 Notice of Information and Request for Comments and has met with representatives from industry and environmental groups, as well as state and other federal agencies. To further public participation on this rule, on July 19, 1994, EPA held a public meeting about the content and the status of the proposed regulation. The meeting was announced in the **Federal Register** (59 FR 31186; June 17, 1994), and information packages were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas to EPA on key issues. EPA will assess all comments and data received at that public meeting along with comments and data received as a result of this proposal as well as the 1989 Notice of Information, prior to promulgation.

During the development of the proposed Coastal Guidelines, EPA sent a questionnaire to industry under authority of section 308 of the CWA. During its design, EPA met with industry trade associations (on March 19, 1992) to discuss its plans to issue a questionnaire. Following the March meeting, EPA distributed a draft of the questionnaire to NRDC, industry representatives, and trade associations for review and comment. On May 7, 1992, EPA met with industry representatives to discuss industry comments. NRDC did not provide comments. A final questionnaire was subsequently completed, reviewed and approved by the Office of Management and Budget (OMB) and sent to coastal oil and gas operators on August 30, 1993.

IV. Description of the Industry

A. Industry Description

Drilling in coastal areas occurs onland as well as over water or wetlands. Drilling occurs in two phases: Exploration and development. Exploration activities are those operations involving the drilling of wells to locate hydrocarbon bearing formations and to determine the size, and production potential of hydrocarbon reserves. Development activities involve the drilling of production wells once a hydrocarbon reserve has been discovered and delineated.

Drilling for oil and gas is generally performed by rotary drilling methods which involve the use of a circularly rotating drill bit that grinds through the earth's crust as it descends. Drilling fluids are injected down through the drill bit via a pipe that is connected to the bit, and serve to cool and lubricate the bit during drilling. The rock chips that are generated as the bit drills through the earth are termed drill cuttings. The drilling fluid also serves to transport the drill cuttings back up to the surface through the space between the drill pipe and the well wall (this space is termed the annulus), in addition to controlling downhole pressure.

As drilling progresses, large pipes called "casing" are inserted into the well to line the well wall. Drilling continues until the hydrocarbon bearing formations are encountered. In coastal areas, wells depths range from approximately 8,000–12,000 feet deep, and it takes approximately 20–60 days to complete drilling.

On the surface, the drilling fluid and drill cuttings undergo an extensive separation process to remove as much solids (e.g., cuttings) from the fluid as possible. The fluid is then recycled into the system, and the cuttings become a waste product. Intermittently during drilling, and at the end of the drilling process, drilling fluids may become wastes if they can no longer be reused or recycled.

Once the target formations have been reached, and a determination made as to which have commercial potential, the well is made ready for production by a process termed "completion". Completion involves cleaning the well to remove drilling fluids and debris, the perforation of the casing that lines the producing formation, insertion of production tubing to transport the hydrocarbon fluids to the surface, and installation of the surface wellhead. The well is now ready for production, or actual extraction of hydrocarbons.

The hydrocarbons extracted from the well usually consist of a combination of oil, gas, and brines (produced water). These fluids are initially directed from the wellhead to a separation facility where gas and oil are separated out and either treated further or sent directly offsite for sales, and the produced waters undergo further separation to remove as much oil as possible from the water.

The separation facilities, or production facilities, consist of the treatment equipment and storage tanks that process the produced fluids. Production facilities may be configured to service one well, or as central facilities which service multiple satellite wells, also known as tank batteries or gathering centers.

Coastal production facilities can be located over water or on land. Production facilities located over water exist in generally two types of configurations: (1) Individual deep water multi-well platforms or; (2) central facilities supported on barges or wooden or concrete pilings that service multiple satellite wells in shallow water. Production facilities on land may service satellite wells in any combination of locations. The type of configuration is an important factor when examining costs of installing pollution control equipment.

Multi-well platforms, such as those found in the Gulf of Mexico offshore region, are not commonly found in the coastal region of the Gulf of Mexico. Based on an earlier mapping effort of all oil and gas wells, EPA determined that there are only four structures owned and operated by four different operators in the coastal Gulf of Mexico region that can be classified as multi-well platforms. However in the Gulf coastal areas, many single wellheads are located throughout the coastal waters, serviced by gathering centers located on-land or on platforms. Although there are some exceptions, in most cases those located on land can be accessed by car or truck (land-access) while those facilities located over water must be accessed by boat or barge (water-access). An analysis of the EPA 1993 Coastal Oil and Gas Questionnaire data results indicates that approximately 34 percent of the production facilities in the Gulf of Mexico are land accessed, and 66 percent are water-accessed facilities. (See Section V.B for description of the Questionnaire). This distinction is important when estimating regulatory compliance costs and impacts as described in sections VI and VIII. On the other hand, all coastal structures in Cook Inlet, Alaska are deep water multi-well platforms, all accessible only by water (or air) transportation.

Depending on operational preference or regulatory requirements, many of the coastal production facilities do not discharge produced water and thus, would not incur costs due to this rulemaking.

B. Location

Coastal oil and gas activities are located on water bodies inland of the inner boundary of the territorial seas. These water bodies include inland lakes, bays and sounds, as well as saline, brackish, and freshwater wetland areas. Although the definition includes water bodies even in all inland U.S. states, EPA knows of no existing operations other than those in certain states bordering the coast. Thus, at this time, the coastal oil and gas operations are located only in coastal states.

Current coastal oil and gas activity exists along the Gulf of Mexico coastal states of Texas, Louisiana, Alabama and Florida, in San Pedro Bay, California and also in Alaska's Cook Inlet and the North Slope areas. The majority of Gulf Coast activity takes place in Texas and Louisiana. There, coastal oil and gas operations exist in a number of topographical situations including bays, sounds, lakes, and wetlands. Coastal oil and gas activity in Alabama is located in Mobile Bay; and a small number of wells are also located in wetlands along the west coast of Florida.

Coastal oil and gas activity in California exists behind the barrier island that forms San Pedro Bay (in Long Beach Harbor). There, four man-made islands have been constructed solely for the purpose of oil and gas extraction.

Roughly one third of all the coastal oil and gas production activity exists in Alaska. Deep water platforms exist in the northern part of Cook Inlet. In addition, operations resembling onshore activities (as opposed to deep water platforms) are located on the tundra wetlands of Alaska's North Slope.

C. Activity

Table 2 summarizes the number of producing wells and annual drilling activities for the coastal subcategory and the number of producing facilities that would incur costs (those still discharging after the projected final date of July 1996) due to this rulemaking, by geographic locations.

TABLE 2.—PROFILE OF COASTAL OIL AND GAS INDUSTRY

Coastal location	Region	Number of producing wells (1992)	Number of production facilities (1992)	Number of production facilities that would incur costs under this rule	Annual drilling activity	Number of operators that would incur costs under this rule
Gulf of Mexico	TX & LA	4675	853	216	686	122
	AL, FL	56	ND [1]	0	7	0
Alaska	Cook Inlet	237	8	8	8	5
	North Slope	2085	12	0	161	0
California	Long Beach Harbor	586	4	0	7	0
Total		7639	877	224	869	127

[1] Not determined.

Eight hundred and seventy seven (877) production facilities listed in Table 1 are currently discharging produced water in the coastal areas of Texas (TX), saline and brackish coastal waters of Louisiana (LA), and the Cook Inlet of Alaska. All coastal production facilities in Mississippi (MS), Alabama (AL), Florida (FL), the North Slope, and California do not discharge treated produced water, but rather inject it either for disposal or for waterflooding.

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There are no discharges of drilling fluids and cuttings from coastal operators except for those in Cook Inlet. The volumes and locations of discharges are discussed in more detail in Section VI. By July 1996, the scheduled date for promulgation of this rule, EPA estimates that there will be 216 facilities operated by 122 operators discharging produced water. This is based on data obtained directly from industry, the 1993 Coastal Oil and Gas Questionnaire, and state permit records.

D. Waste Streams

The primary wastewater sources from the exploration and development phases of the coastal oil and gas extraction industry include the following:

- Drilling fluids.
- Drill cuttings.
- Sanitary wastes.
- Deck drainage.
- Domestic wastes.

The primary wastewater sources from the production phase of the industry include the following:

- Produced water.
- Produced sand.
- Well treatment, workover, and completion fluids.
- Deck drainage.
- Domestic wastes.
- Sanitary wastes.

Drilling fluids and drill cuttings are the most significant waste streams from exploratory and development operations in terms of volume and pollutants. Produced water is the largest waste stream from production activities in terms of volumes of discharged and quantity of pollutants. Deck drainage, sanitary wastes, domestic wastes, produced sand, and well treatment, completion, and workover fluids are often classified under the term miscellaneous wastes.

A summary of the sources and characteristics of each of these wastes is presented in Section VI of this notice. Detailed discussions of the origins and characteristics of the waste water effluents from exploration, development, and production are included in the Coastal Technical Development Document. EPA has primarily focused data gathering efforts and data analyses on drilling fluids, drill cuttings, and produced water due to their volumes and potential toxicity. Information on the other waste streams discussed above is more limited. Their volumes are generally smaller, and in most cases are either infrequently discharged or are commingled with the major waste streams. However, EPA has determined that it is appropriate to propose regulations for these wastes as well.

E. Current NPDES Permits

Discharges from coastal oil and gas operations in the Gulf of Mexico, California, and Alaska are regulated by general and individual NPDES permits based on BPT, State Water Quality Standards, and on Best Professional Judgment (BPJ) of BCT and BAT levels of control. Table 3 lists the requirements in these permits.

EPA's Region VI has developed general NPDES permits for each phase of oil and gas operations (drilling and production). The drilling permits for Louisiana and Texas were proposed in 1990 and a final permits published on September 21, 1993 (58 FR 49126). Region VI proposed general production permits on December 22, 1992 (57 FR 60926), and final permits on January 9, 1995 (60 FR 2387).

EPA's Region X issued a BPT and BPJ general NPDES permit for oil and gas operations in the Upper Cook Inlet. However, although expired, conditions of this general permit are still fully effective and enforceable until the permit is reissued. Region X is currently in the process of reissuing the BPT and BPJ/BAT general permit for this area with proposal expected in early 1995. In addition to the general permit, the Region issued an individual permit regulating discharges from exploratory drilling operations in Upper Cook Inlet in May 1993. The individual permit was also based on BPT and BPJ/BAT.

The State of Alabama, which has been authorized to administer the NPDES program, has also issued a final NPDES general permit covering facilities in state waters, including offshore and coastal facilities (including Mobile Bay). (Permit #ALG280000, May 25, 1994). This permit specifically prohibits the discharge of drilling fluids and cuttings, and produced water. The permit also does not allow the discharge of produced sands or treatment, workover and completion fluids.

Regional permit requirements are based on other factors, in addition to technology pollutant removal performance, including water quality criteria.

TABLE 3.—NPDES PERMIT REQUIREMENTS [1]

[Regional Permit Requirements]

Wastestream	Region X (CI 1986 BPT permit)	Region X exploration permit (1993)	Region VI final drilling permit (1993)	Region VI production permit (final) (1995)	Region IV permit (1994)
Produced Water	Monitor daily flow rate Oil & Grease: Phillips A Platform 20 mg/l daily max 15 mg/l mo. ave. Other facilities: 48/72 mg/l pH=6-9.	Not applicable	Covered in Production Permit.	No Discharge	No Discharge.
Produced Sand	No free oil (Static Sheen)	Not applicable	Not applicable	No Discharge	No Discharge.
Drilling Fluids and Cuttings.	(1) Toxicity: Discharge only approved generic muds. (2) No free oil- static sheen (3) No discharge oil-based muds. (4) 10 percent oil content for cuttings. (5) No diesel oil (6) 1/3 mg/kg Hg/Cd in dry barite. (7) Flow rate >40m = 1000 bbl/hr	(1) Flowrate = 750 bbl/hr (2) Use authorized muds only. (3) Toxicity: 30,000 ppm in SPP. (4) No free oil. (5) No discharge of oil-based fluids. (6) 5 percent (wt) oil content in cuttings. (7) No discharge of diesel oil. (8) 1 mg/kg Hg and 3 mg/kg Cd in stock barite.	No Discharge	Not applicable.	No Discharge

TABLE 3.—NPDES PERMIT REQUIREMENTS [1]—Continued

[Regional Permit Requirements]

Wastestream	Region X (CI 1986 BPT permit)	Region X exploration permit (1993)	Region VI final drilling permit (1993)	Region VI production permit (final) (1995)	Region IV permit (1994)
	>20-40m = 750 bbl/hr. >5-20m = 500 bbl/hr. <5m = No discharge.				
"Dewatering Effluent".	Not separately regulated	Not separately regulated	No free oil 50 mg/l TSS. 125 mg/l COD pH = 6-9. 500 mg/l chlorides. 0.5 mg/l total Cr. 5.0 mg/l Zn Monitor volume.	Not applicable.	Not separately regulated.
Treatment, Completion, Workover Fluids.	No free oil (Static Sheen) No oil-based fluids pH = 6-9 Oil and grease limits apply to combined discharge of any TWC commingled with produced water	No discharge of free oil or oil-based fluids. Monitor frequency of discharge and volume pH = 6.5–8.5. Oil & grease = 72 daily max. & 48 mo. avg	Freshwater: No discharge. Saline water: No toxics, No free oil (visual sheen), pH = 6-9	Not applicable.	No Discharge.
Domestic Wastes	No free oil (No visible sheen) No Floating solids Monitor flow rate	Monitor flow rate No free oil (No visible sheen) No floating solids No visible foam	No discharge of solids ("garbage").	Not applicable.	Flow = 10,000 gpd max. BOD_5 = 45 mg/l daily max. = 30 mg/l (mo. aver.) TSS = 45 mg/l daily max. = 30 mg/l (mo. aver.) Total residual chlorine = 1.0 mg/l (daily min) maintained as close to this value as possible. No Floating Solids.
Deck Drainage	No free oil (Visual Sheen) Monitor flow rate (mo. ave.).	Monitor flow rate (mo. avg.) No free oil (visual sheen).	No free oil (visual sheen) Monitor volume.	Not applicable.	Monitor daily flow No free oil (visual sheen)
Sanitary Wastes	No floating solids As close as possible to, but no less than 1.0 mg/l. BOD & SS [2] 24 hr = 60 mg/l 7 day = 45 mg/l	No free oil (No visible sheen) No floating solids No visible foam As close as possible but no less than 1 mg/l. BOD: 30 day=30 mg/l.	No floating solids BOD = 45 mg/l TSS = 45 mg/l fecal coliforms = 200/100 mls Monitor flow.	Not applicable.	Flow = 10,000 gpd max. BOD_5 = 45 mg/l daily max. = 30 mg/l (mo. aver.) TSS = 45 mg/l daily max. = 30 mg/l (mo. aver.) Total residual chlorine = 1.0 mg/l (daily min) maintained as close to this value as possible. No Floating Solids.

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TABLE 3.—NPDES PERMIT REQUIREMENTS [1]—Continued

[Regional Permit Requirements]

Wastestream	Region X (CI 1986 BPT permit)	Region X exploration permit (1993)	Region VI final drilling permit (1993)	Region VI production permit (final) (1995)	Region IV permit (1994)
	30 day = 30 mg/l	24 hr = 60 mg/l TSS: 30 day = TSS intake + 30 mg/l. 24 hr = TSS intake + 60 mg/l			

[1] For a complete presentation of the effluent limitations and their bases in the permits see the following: Region X Proposed General Permit for Cook Inlet: 50 FR 28974, 7/17/85. Region X Final Permit for Cook Inlet: 51 FR 35460, 10/3/86. Region VI Final General Permit for Drilling Operations: 58 FR 49126, 9/21/93. Region VI Proposed General Permit for Production Operations: 57 FR 60926, 12/22/92. The Region X Exploration Permit and the Region IV Permit are in the record for this rulemaking.

[2] Limits apply only to discharges to state waters and separately for BOD and SS.

V. Summary of Data Gathering Efforts

The major studies presenting information on coastal oil and gas effluents and treatment technologies which have bearing on this proposed rule are summarized in this section. These investigations include: underground injection of produced water and associated produced water treatment technologies; solids control technologies for drilling fluids; drilling fluids and drill cuttings waste generation, treatment, and disposal in coastal Alaska; and commercial non-hazardous oil and gas waste disposal facilities and technologies. In addition, EPA sent a CWA section 308 Questionnaire to the industry to gather information characterizing coastal oil and gas pollution control technology and the costs of such technologies. The questionnaire and results are described below.

A. Information Used From the Offshore Guidelines

Due to certain similarities in the technologies employed and wastes generated by the offshore and coastal subcategories of the oil and gas industry, certain data generated during the Offshore Guidelines development effort have been utilized in the development of this proposed rule where appropriate. Those data most influential in the development of this proposed rule, listed below, are summarized both in the Coastal Technical Development Document and described in more detail in the Development Document for the Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, (hereafter referred to as the Offshore Technical Development Document), Sections V and XVIII (EPA, January 1993).

- Produced water characteristics for Cook Inlet.
- Produced water characteristics for effluent from improved gas flotation.
- Drilling fluids and cuttings waste characteristics.
- Deck drainage characteristics.
- Domestic waste characteristics.
- Sanitary waste characteristics.
- Some non-water quality environmental impacts.

B. 1993 Coastal Oil and Gas Questionnaire

A comprehensive questionnaire entitled the "1993 Coastal Oil and Gas 308 Questionnaire" was developed under the authority of section 308 of the CWA. EPA distributed this questionnaire to all known coastal oil and gas operators. The Questionnaire requested information on oil and gas waste generated, their treatment and disposal methods and costs for waste treatment and disposal. The questionnaire also requested information regarding the financial profile of each operator surveyed.

Upon their return, EPA reviewed the questionnaires for completeness and technical content and then transcribed the responses into a computer readable format using double key-entry procedures. EPA prepared statistical estimates in order to extrapolate the results from the sampled wells and facilities to the entire coastal industry. EPA used the individual data and the statistical reports to determine waste volumes, treatment and disposal methods and costs of treatment and disposal methods. EPA also used the survey results to estimate future industrial activity. The statistical analysis of the questionnaire data is included in the record for this rulemaking.

C. Investigation of Solids Control Technologies for Drilling Fluids

In 1993, EPA collected samples and gathered technical data at three drilling operations in the coastal region of Louisiana. The purpose of this effort was to gather operating and cost information regarding closed-loop solids control technology (See description of this technology in Section VI.A) at active oil and gas well drilling operations. Two of the sites were drilling using land-based rigs, and the other operation was located in an inland bay and used a posted barge rig. One operator was a large independent, the other 2 were majors.[1]

Technical and cost information was collected on the following topics:

- Drilling waste volumes and disposal methods.
- Solids control equipment design and performance.
- Drilling fluids.
- Well design and construction.
- Drilling operations.
- Annular injection.
- Miscellaneous waste volumes and disposal methods.

EPA used the results of this investigation to determine methods and costs of drilling waste disposal, as well as miscellaneous waste volumes, and their treatment and disposal.

D. Sampling Visits to 10 Gulf of Mexico Coastal Production Facilities

EPA visited ten coastal oil and gas production facilities located in Texas and Louisiana to gather operating and cost information regarding produced water injection and to collect samples of produced water and miscellaneous wastes. Samples were analyzed for a variety of analytes in the categories of organic chemicals, metals, conventional and non-conventional pollutants, and radionuclides. Sampling at each site was conducted for one day over a span of eight hours. Technical and cost data were collected in addition to the production waste samples.

EPA was careful, in its selection of Gulf Coast sites, to visit facilities that (1) were located in both Texas and Louisiana, (2) were located in different wetland situations (wetlands, or inland bays), and (3) that ranged in operator size (major to small independent). Nine of the ten facilities visited utilized injection wells for produced water disposal and one utilized surface discharge.

A focus of this site visit program was to investigate the technologies used to treat produced waters prior to injection. Several of the facilities employed cartridge filtration subsequent to BPT treatment (gravity separation sometimes assisted by heat or chemicals).

Aqueous samples were collected from settling tank effluent at all ten facilities, as well as the influent (settling effluent) and effluent of all four filtration systems. Samples were analyzed for the following analytes:

—TSS
—Oil and Grease
—Volatile Organics
—Semi-volatile Organics
—Metals
—Conventional Parameters
—Non-conventional Parameters
—Radionuclides

Cartridge filters were also collected at all the facilities that utilized them, and were analyzed for radionuclides concentrations. Samples of produced sands were also collected where available and analyzed for the same pollutants as for produced water.

In addition to the sampling activities, technical and cost information was collected on the following topics:

- Separator and treatment system technologies and configuration.
- Equipment space requirements.
- Support structures.
- Miscellaneous waste volumes treatment and disposal methods.
- Produced water volumes and disposal methods.
- Energy requirements.
- Injection well remedial work requirements.
- Ancillary equipment requirements (besides the injection well) for injection
- Injection well design and operation.
- Production data.

The results from this study, together with data from the EPA 1993 Coastal Oil and Gas Questionnaire and state permit data, discussed below, formed the basis for EPA's produced water treatment and disposal cost analyses discussed later in Section VI.B. The analytical data was used to characterize produced water effluent characteristics from BPT treatment systems.

E. State Discharge Monitoring Reports

EPA obtained detailed information on produced water discharges from state discharge permits for operators in Texas and Louisiana. The Louisiana Department of Environmental Quality (LADEQ) and the Texas Railroad Commission (TRC) supplied EPA with state permits for all known dischargers in the coastal areas. The state permit information identifies the operator, the name of the producing field, the location of the production facility, the volume of produced water discharged, the location and permit number of the outfall, and in Louisiana only, the compliance date by which the discharge must cease. From these data, EPA estimated that 216 production facilities in both the Texas and Louisiana coastal region will be discharging after July 1996 (the projected date of issuance of this regulation). The list of these facilities is presented in the record for the rulemaking. From this list EPA estimated costs of produced water treatment and disposal on a per facility basis.

F. Commercial Disposal Operations

In May 1992, EPA visited two non hazardous oil and gas waste land treatment facilities and two waste transfer stations in Louisiana. The purpose of these visits was to investigate the transportation, handling, disposal methods employed and associated costs of these operations. Detailed information was gathered concerning the operation of the landfarm treatment process used for the disposal of non-hazardous oil field wastes, transportation equipment, transfer equipment, equipment fuel requirements and costs incurred by the facilities and costs charged to the customers. The information was used in the development of compliance costs and the non-water quality environmental impacts for the various regulatory options under consideration.

In March 1992, EPA visited two commercial produced water injection facilities in Louisiana. The purpose of the visits was to collect information regarding costs of produced water disposal and other operating costs as well as to collect samples of produced water, filter solids, used filters and tank bottoms solids for radioactivity analysis. Both facilities utilized sedimentation and filtration as treatment processes for produced water followed by underground injection. The technical information gathered at these sites was used in developing compliance costs and the non-water quality impacts for the various regulatory options under consideration. The results of the radioactivity analyses were used in an evaluation of radioactivity concentrations in oil and gas wastes.

G. Evaluation of NORM in Produced Waters

EPA reviewed all known data regarding the presence of naturally occurring radioactive materials (NORM) found in discharge of produced water and associated with scales and sludges on oil and gas production equipment.

EPA summarized produced water radioactivity data from 22 available studies focusing on data from coastal sites. Each of these 22 studies was summarized according to the location of the sites, sampling plans, and analytical methods used to measure the radionuclides. This information was used in characterizing NORM in produced water discharges in the Gulf Coast.

H. Alaska Operation

In August 1993, EPA embarked on a fact-finding mission regarding drilling and production operations and practices in both regions of Alaska, Cook Inlet and the North Slope. Information and data were obtained by direct visits to these areas, and by contacting the Alaska Oil and Gas Association (AOGA), state regulatory authorities, and individual operators. In addition, AOGA and individual operators submitted to EPA information on projects and technologies currently being developed and used in Cook Inlet and on the North Slope to dispose of drilling and production wastes, and the costs associated with these projects. Specific operating and cost information was obtained on zero discharge technologies including grinding and injection systems for drilling fluids and drill cuttings as well as produced water injection. EPA used the information obtained during this data gathering effort to estimate costs of treatment and control options for Alaska coastal facilities.

In March 1994, Cook Inlet Alaska oil and gas operators submitted to EPA information on drilling waste disposal alternatives and their costs and on

[1] The term "major" oil and gas company is used here to differentiate it from smaller operators in the industry. Major oil and gas companies are characterized by a high degree of vertical integration, i.e., their activities encompass both "upstream" activities—oil exploration, development, and production and "downstream" activities—transportation, refining, and marketing. As a group the majors generally produce more oil and gas, earn significantly more revenue and income, have considerably larger assets, and have greater financial resources than the independent operators.

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projected drilling schedules. Three alternatives were evaluated by the operators in terms of technological achievability and costs: discharge to Cook Inlet surface water, land-based disposal, and disposal by injection. EPA considered this information during its development of regulatory options and estimation of costs for disposal of drilling wastes in Cook Inlet. These same Cook Inlet operators also submitted to EPA information on the technological and economic feasibility of zero discharge of produced water from the largest shore-based production facility in the Inlet. This information presented the costs and technological achievability for three produced water injection alternatives including (1) Treatment and injection at the platforms, (2) treatment at onshore treatment facilities (for some platform operations) and onshore injection, and (3) treatment at onshore treatment facilities and injection back at the platforms. EPA considered this information during its development of zero discharge option for produced water and cost estimations in Cook Inlet.

I. Region X Drilling Fluid Toxicity Data Study

EPA evaluated a summary data base containing Region X permit compliance monitoring information including toxicity measurements of drilling fluids used in Alaska. The database contains 161 records of 96-hour LC50 data from coastal and offshore oil and gas wells in Alaska from 1985 to 1994. Drilling fluid toxicity levels were characterized for Alaska drilling activities, and particularly for activities in Cook Inlet. This data indicated that drilling fluids and cuttings being discharged in Cook Inlet may be able to meet a toxicity limitation of between 100,000 ppm (SPP) and 1,000,000 ppm (SPP).

EPA measures toxicity using a standard bioassay test known as the "Drilling Fluids Toxicity Test" (See 40 CFR 435 Subpart A, Appendix 2). Under this test, the species mysidopsis bahia is exposed to different concentrations of the drilling fluids and cuttings for a set time, 96 hours. An LC–50 toxicity test is performed by mixing a solution of seawater and drilling fluids and cuttings, allowing the solution to settle for one hour, decanting the liquid off from the settled solids, and then adding to the decant, or suspended particulate phase (SPF), the test organisms and determining the number of organisms alive after 96 hours. Then, by observing mortality rates and by calculation, the concentration required to kill 50 percent of the test animals in 96 hours is determined. The "96-hour LC–50" is defined as the lethal concentration of a toxicant that will kill 50 percent of the test organisms after a 96-hour exposure. Thus, the lower the LC–50 value, the higher the relative toxicity.

J. California Operations

EPA visited coastal oil and gas operations in Long Beach Harbor, California in February 1992. The visit was to one of the four man-made islands that have been constructed in the Harbor for the purpose of oil and gas extraction. The facilities on these islands are operated by THUMS, a consortium of five oil and gas operating companies (Texaco, Humble (now Exxon), Union, Mobil and Shell). EPA met with state regulatory officials and was given a tour of one of the islands by THUMS personnel. Both drilling and production were occurring at the time of the visit.

Information regarding waste generation, treatment, disposal, and costs were obtained during the visit. No discharges are occurring from the THUMS operations. The information provided EPA with specific waste disposal technology and cost information which has, where appropriate, been incorporated into cost analyses, and enabled EPA to characterize California coastal oil and gas operations.

K. OSW Sampling Program

EPA's Office of Solid Waste conducted a sampling program on associated oil and gas wastes in 1992. As part of this effort, samples were obtained for completion, workover, and treatment fluids. The parameters analyzed for were the same as those for produced water samples listed previously in Section V.D. EPA has used this data base to characterize the discharges of these fluids. Seven samples of treatment, workover and completion fluids were collected from operations in Texas, New Mexico and Oklahoma. The samples were analyzed for conventional, nonconventional and priority pollutants.

L. Estimation of the Inner Boundary of the Territorial Seas

As part of the Coastal Guidelines development effort, EPA specifically delineated the seaward boundary of the coastal subcategory (which is the inner boundary of the Territorial Seas). The purpose of this effort was to define an area in order to estimate the number of coastal wells and production facilities operating in that area. The purpose was not to determine a well's subcategory for regulatory permit writers. This delineation is in the form of latitude and longitude coordinates covering that part of the inner boundary of the Territorial Seas along Alaska's North Slope and Cook Inlet, Texas, Louisiana, Alabama and Southern California. Much of this boundary has been delineated on nautical charts published by the National Ocean Service of the National Oceanic and Atmospheric Administration (NOAA). In some locations however, this boundary has not previously been delineated by NOAA, and EPA completed the coordinates using established procedures described in the Convention of the Territorial Seas and the Contiguous Zone, Articles 3–13. The digital coordinates of the inner boundary of the Territorial Seas, for the above mentioned locations and a description of its derivation is included in the record for this rule. This digital boundary assisted EPA in its determination of the number of wells and production facilities that exist in this subcategory.

VI. Development of Effluent Limitations Guidelines and Standards

A. Drilling Fluids and Drill Cuttings (Drilling Wastes)

1. Waste Characterization

Drilling fluid and cuttings discharges are typically generated in bulk form and occur intermittently during well drilling and at the end of the drilling phase.

There are currently no drilling fluids and cuttings discharges in any coastal area except Cook Inlet. In Cook Inlet operators do not currently practice zero discharge, except for a small volume of drilling fluids and cuttings wastes (approximately one percent) which are not discharged because they do not meet current permit limits. Generally, drilling fluids and cuttings volumes average approximately 14,000 barrels (bbl) per new well drilled in Cook Inlet. (NOTE: The barrel is a standard oil and gas measurement and is equal in volume to 42 gallons). Based on industry projections given to EPA, an average of 79,000 bbls drilling fluids and cuttings are generated each year (bpy) in the Inlet. Significant pollutants in these wastes include chromium, copper, lead, nickel, selenium, silver, beryllium and arsenic among the toxic metals. Toxic organics present include naphthalene, fluorene, and phenanthrene.

TSS makes up the bulk of the pollutant loadings, part of which is comprised of the toxic pollutants. TSS concentrations are very high due to the nature of the wastes. And because its TSS concentration is so high, discharges of drilling fluids and cuttings can cause

reduced light penetration resulting in decreased sea life primary productivity, fish kills or reduced growth rate, interference in development of fish eggs and larvae, modifications of fish movement and migration, and reduction of the abundance of food available to fish. Benthic smothering from settleable materials results in potential damage to invertebrate populations and potential alterations in spawning grounds and feeding habitats.

Operators use solids control equipment to remove drill cuttings from the drilling fluid systems which allows drilling fluids to be recycled and reduces the total amount of drilling wastes generated. Depending on the drilling solids control system and the method of waste storage and disposal onsite, a small wastestream, termed "dewatering effluent" may be segregated from the drilling fluids and cuttings. Dewatering effluent may be discharged from reserve pits or tanks which store drilling wastes for reuse or disposal. Dewatering effluent may also be generated in enhanced solids control systems. Enhanced solids control systems, also known as closed-loop solids control operations, remove solids from the drilling fluid at greater efficiencies than conventional solids removal systems. Increased solids removal efficiency minimizes the buildup of drilled solids in the drilling fluid system, and allows a greater percentage of drilling fluid to be recycled. Smaller volumes of new or freshly made fluids are required as a result. An added benefit of the closed-loop technology is that the amount of waste drilling fluids can be significantly reduced. The installation of reserve pits is unnecessary in closed-loop systems for this reason. Dewatering effluent is generated in the process of drilling fluids solids removal and can either be reused (it often contains expensive reusable chemicals), or disposed of.

EPA's general permit for drilling operations for TX and LA included limitations for the discharge of dewatering effluent (See Section VI.E). However, the 1993 Coastal Oil and Gas Questionnaire results show that few operators discharge dewatering effluent as a separate wastestream. Additionally, contacts with industry indicate that the volume of dewatering effluent from reserve pits is small if nonexistent as the use of pits is phasing out due to state permit conditions, environmental or land owner concern, or the expanding use of closed-loop systems. EPA site visits to drilling operations, where these closed-loop systems were in place, showed that none of the dewatering effluent was discharged. Instead, it is either recycled, or sent with other drilling wastes to commercial disposal. Operators at these facilities explained that it is less expensive to send this wastestream along with drilling fluids and drill cuttings for onshore disposal rather than to treat for discharge.

2. Selection of Pollutant Parameters

a. Pollutants Regulated

In the coastal subcategory, EPA is proposing to establish BAT, NSPS, and pretreatment standards that would require zero discharge of drilling fluids and drill cuttings. Where zero discharge is required, EPA would be controlling all pollutants in the wastestream.

EPA is also considering an alternative BAT limit applicable only to Cook Inlet, that in addition to the BPT requirement prohibiting the discharge of free oil, would also prohibit the discharge of diesel oil and limit toxicity and specify the cadmium and mercury content in stock barite. As presented in Section VI of the Offshore Technical Development Document, the prohibitions on the discharge of free oil and diesel oil would effectively remove toxic, nonconventional, and conventional pollutants. Diesel oil and free oil are considered, under BAT and NSPS, to be "indicators" for the control of specific toxic pollutants present in the complex hydrocarbon mixtures used in drilling fluid systems. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. Additionally, diesel oil may contain from 20 to 60 percent by volume polynuclear aromatic hydrocarbons (PAH's) which constitute the more toxic components of petroleum products.

Control of diesel oil would also result in the control of nonconventional pollutants under BAT and NSPS. Diesel oil contains a number of nonconventional pollutants, including PAHs such as methylnaphthalene, methylphenanthrene, and other alkylated forms of the listed organic priority pollutants.

EPA is proposing to establish BCT limitations for drill fluids and drill cuttings that would prohibit discharge of free oil (using the static sheen test) for Cook Inlet, and would require zero discharge everywhere else. The prohibition on the discharge of free oil (in addition to the zero discharge requirement) would effectively reduce or eliminate the oil and grease in these discharges. EPA is limiting free oil under BCT as a surrogate for oil and grease in recognition of the complex nature of the oils present in drilling fluids, including crude oil from the formation being drilled.

Prohibiting the discharge of diesel oil and free oil eliminates discharges of the above-listed constituents, to the extent that these constituents are present in either of these two parameters, and reduces the level of oil and grease present in the discharged drilling fluids and cuttings. Also under this alternative option, limitations on cadmium and mercury content in barite would control toxic and nonconventional pollutants in drilling fluids and cuttings discharges. This limitation would indirectly control the levels of toxic pollutant metals because cleaner barite that meets the mercury and cadmium limits is also likely to have reduced concentrations of other metals. Evaluation of the relationship between cadmium and mercury and the trace metals in barite shows a correlation between the concentration of mercury with the concentration of arsenic, chromium, copper, lead, molybdenum, sodium, tin, titanium and zinc (See the Offshore Technical Development Document in Section VI).

Toxicity of drilling fluids and cuttings is being regulated as a nonconventional pollutant that controls certain toxic and nonconventional pollutants. It has been shown, during EPA's development of the Offshore Guidelines, that control of toxicity encourages the use of less toxic, water-based drilling fluids, and where absolutely necessary, the use of less mineral oil added to a drilling fluid (and the pollutants, such as the PAH's, identified as constituents of mineral oil). A toxicity limitation would thus encourage the use of the lowest toxicity drilling fluids and the use of low-toxicity drilling fluid additives.

b. Pollutants Not Regulated.

Where zero discharge would be required, all pollutants would be controlled in drilling fluids and cuttings discharges. Where discharges with limitations would be required, (specifically if EPA selected the alternative BAT option in Cook Inlet), EPA has determined that it is not technically feasible to specifically control each of the toxic constituents of drilling fluids and cuttings that are controlled by the limits on the pollutants proposed for regulation.

EPA has determined that certain of the toxic and nonconventional pollutants are not controlled by the limitations on diesel oil, free oil, toxicity, and mercury and cadmium in stock barite. EPA exercised its discretion not to regulate these pollutants because EPA did not detect these pollutants in more than a very few of the samples from EPA's field sampling program and does not believe them to be found throughout the

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industry; the pollutants when found are present in trace amounts not likely to cause toxic effects; and due to the large number and variation in additives or specialty chemicals that are only used intermittently and at a wide variety of drilling locations, it is not feasible to set limitations on specific compounds contained in additives or specialty chemicals.

3. Control and Treatment Technologies

a. Current Practice.

BPT effluent limitations guidelines for coastal drilling fluids and drill cuttings prohibit the discharge of free oil (using the visual sheen test). However, because of either EPA general permits, state requirements, or operational preference, no drilling fluids and cuttings discharges are occurring in the North Slope, the Gulf coast states, or California. The only coastal operators discharging drilling fluids and cuttings are located in Cook Inlet. In Cook Inlet, neither diesel nor mineral-oil-based drilling fluids or resultant cuttings may be discharged to surface waters because they have been shown to cause a visible sheen upon the receiving waters. Compliance with the BPT limitations may be achieved either by product substitution (substituting a water-based fluid for an oil-based fluid), recycle and/or reuse of the drilling fluid, or by onshore disposal of the drilling fluids and cuttings at an approved facility.

NPDES permits issued by EPA for Cook Inlet drilling operations have also included BAT limitations based on "best professional judgement" (BPJ). The permit requirements allow discharges of drilling fluids and drill cuttings provided certain limitations are met including a prohibition on the discharges of free oil and diesel oil, as well as limitations on mercury, cadmium, toxicity and oil content. (See Section IV.E for a summary of the permits). Operators may employ any number of the following waste management practices to meet those permit limitations:

* Product substitution—to meet prohibitions on free oil and diesel oil discharges, as well as the toxicity and/or clean barite limitations,
* Onshore treatment and/or disposal of drilling fluids and drill cuttings that do not meet the toxicity or clean barite limitations,
* Waste minimization—enhanced solids control to reduce the overall volume of drilling fluids and drill cuttings, and
* Conservation and recycling/reuse of drilling fluids.

Refer to the Coastal Technical Development Document, Sections VII-VIII for a detailed discussion of each of these waste minimization techniques.

b. Additional Technologies Considered.

EPA has evaluated an additional method for drilling fluid and cuttings control and treatment in order to achieve zero discharge: namely, grinding and injection of drilling wastes. This process involves the grinding of the drilling fluids and drill cuttings into a slurry that can be injected into a dedicated disposal well. The grinding system consists of a vibrating ball mill which pulverizes the cuttings and creates an injectable slurry. Recent information has shown that this comparatively contemporary technology has been successfully demonstrated on the North Slope for drilling waste disposal, and is being introduced both in the Gulf Coast coastal areas as well as in Cook Inlet. EPA, therefore believes that this technology is available to coastal operators.

In addition to grinding and injection, EPA has also investigated the feasibility of onshore disposal of this wastestream. For the coastal subcategory drilling activities, in areas other than Cook Inlet, current permits or practice (in the case of the North Slope) require zero discharge of drilling fluids and cuttings. On-land disposal sites located in Alaska are available in these areas and are being utilized to comply with the zero discharge requirement. On-land disposal sites are also available to two out of the five Cook Inlet operators. These two operators jointly operate an oil and gas landfill disposal site on the west side of the Inlet. Using projected drilling schedules provided by industry, EPA estimated that these two operators would generate approximately 76 percent of the drilling wastes produced by the Cook Inlet operators over the next seven years following the scheduled 1996 promulgation of this rule. EPA has determined that there is sufficient on-land disposal capacity to accept all of the drilling fluids and cuttings generated by these two operators at this disposal facility.

EPA investigated the logistical difficulties of storing and transporting drilling wastes in the Cook Inlet, due to the extensive tidal fluctuations, strong currents, and ice formation during winter months. While these climatological and tidal situations may cause complications, EPA has determined that they do not pose insurmountable technical barriers. EPA has taken into consideration supplementary costs incurred by additional winter transportation and storage of drilling wastes in its cost evaluation of the zero discharge requirement as described later in Section VI.A.

No on-land oil and gas waste disposal facilities are available in Alaska to the other three Cook Inlet operators who plan to drill after promulgation of this rule. EPA investigated the possibility of disposing of drilling wastes at an on-land oil and gas waste disposal site available to Cook Inlet operators located in Idaho. EPA determined that, while it is generally more economical to dispose of drill wastes via grinding and injection, in the case of smaller volumes of drilling wastes, it would be more cost effective to dispose of the wastes by shipping them to the Idaho disposal facility.

Land disposal of oil and gas wastes is also available to Cook Inlet operators at a disposal facility located in Oregon. EPA performed its costing of land disposal assuming the use of the Idaho facility (see discussion of costs later in this section). EPA expects that costs to dispose of the wastes at the Oregon facility would be close to or less than costs using the Idaho facility because transportation of wastes to the Oregon facility would utilize barging to a greater extent, making overall transportation costs less.

The results of this investigation show that the volume of drilling fluids and drill cuttings wastes generated in Cook Inlet can be either disposed of on-land or by grinding and injection. However, during the previous Offshore Guidelines rulemaking affecting Alaska offshore drilling operations, and early in the data gathering stages of this proposed rule, operators raised concerns that compliance with zero discharge could significantly interfere with drilling operations. EPA does not have sufficient information supporting these concerns, and solicits comments on these issues.

Therefore, for this proposal, EPA is also considering options which would allow the discharge of the drilling fluids and drill cuttings in Cook Inlet providing they were to meet certain limitations. These limitations would prohibit the discharge of diesel oil and free oil using the static sheen test, limit cadmium and mercury in the stock barite used in fluid compositions and toxicity at either 30,000 ppm (SPP) or a more stringent toxicity in range of 100,000 ppm (SPP) to 1 million ppm (SPP). Drilling fluids and drill cuttings not meeting these limitations would not be allowed to be discharged, and therefore, would have to be injected or sent to shore for disposal. EPA would base the more stringent toxicity limitations (based on further evaluation as discussed below), in part, on the volume of drilling wastes it determines could be injected or disposed of onshore without interfering with ongoing drilling operations.

Prior to, and during the offshore rulemaking, EPA conducted bioassay tests on eight generic mud types (encompassing virtually all water-based muds, exclusive of specialty additives, primarily used on the outer continental shelf), and, EPA established a toxicity limitation of 30,000 ppm (SPP). Even in offshore Alaska, drilling was not evaluated for specific locations, thus technical drilling requirements for adequate drilling with a focus on small localized areas were not considered in setting the limitation for the offshore rule. One alternative option for the coastal rule would be to set the limitations for Cook Inlet equal to the offshore limitations for Alaska.

As discussed above, another option would retain the offshore limitations but require a more stringent toxicity requirement. The toxicity limit would be based on a relationship between the achievable toxicity of the drilling wastes and the volume of these wastes that could be disposed of onshore or by grinding and injection without interfering with ongoing drilling operations (e.g., some fraction of the volume of wastes generated and covered by the zero discharge option).

In order to determine the appropriate toxicity level for the more stringent toxicity option, EPA attempted to evaluate effluent toxicity test results for Cook Inlet drilling fluids and cuttings discharges. EPA reviewed permit compliance monitoring records, from EPA's Region 10, containing 161 sets of results for toxicity testing of drilling fluids and drill cuttings used in the Alaska offshore and coastal regions between 1985 and 1994. (The measure of toxicity is a 96 hour test that estimates the concentration of drilling fluids suspended particulate phase (SPP) that is lethal to 50 percent of the test organisms.) The records were summarized into a database which was evaluated on the basis of the toxicity of drilling fluids and drill cuttings used in Alaska as a whole and Cook Inlet in particular. After sorting the database to eliminate inadequate data, such as drilling fluids contaminated by pills and incomplete toxicity tests, 104 sets of results were retained for all of Alaska, with 59 of these from Cook Inlet.

Of the Cook Inlet bioassay test results, 83 percent were less toxic than 100,000 ppm (SPP); 60 percent were less toxic than 500,000 ppm; and one percent exhibited no toxic effect (i.e., 1 million ppm or greater with less than 50 percent mortality of the test organism). (Note that toxicity is inversely related to the 96-hour bioassay results so as the values cited above increase, toxicity decreases).

These evaluations utilized an available database obtained from EPA's Region 10, which provides an account of the relationship between toxicity and drilling fluids currently being discharged. The toxicity values are identified in the available database by operator, permit number, well name, date and base fluids system (mud). In addition, some of the values are related to an identified volume of muds discharged. However, many of the values in the summary do not have either a volume identified or whether the drilling fluids were discharged. This available database is presently being updated as EPA continues to identify the volume of drilling wastes having been discharged in Cook Inlet related to specific toxicity test results. EPA solicits any information useful in determining an appropriate toxicity limitation that individual Cook Inlet operators have including data on the specific amounts of drilling wastes generated versus discharged and their corresponding toxicity test results.

4. Options Considered

EPA has developed three options for the control and treatment of drilling fluids and drill cuttings. As mentioned earlier in this preamble, dewatering effluent may be a wastestream generated separately. However, because it consists of constituents that originate entirely within the drilling fluids and cuttings solids control system, EPA will not be regulating dewatering effluent separately. Rather, EPA proposes to make the drilling fluids and cuttings options applicable to the dewatering effluent wherever this wastestream may be generated.

The three options considered by EPA contain zero discharge for all areas, except two of the options contain allowable discharges for Cook Inlet. One of these options which would allow discharges meeting a more stringent toxicity limitation would require an additional notice for public comment since the specific toxicity limitation has not been determined at this time (as discussed in this section). The three options are:

Option 1: Zero discharge for all areas except Cook Inlet where discharge limitations require toxicity of no less than 30,000 ppm (SPP), no discharge of free oil and diesel oil and no more than 1 mg/1 mercury and 3 mg/1 cadmium in the stock barite.

Option 2: Zero discharge for all areas except for Cook Inlet where discharge limitations would be the same as Option 1, except toxicity would be set to meet a limitation between 100,000 ppm (SPP) and 1 million ppm (SPP).

Option 3: Zero Discharge for all areas.

As discussed later in this section, all of the above options are being co-proposed.

Option 1 would require zero discharge of drilling fluids and cuttings for all coastal drilling operations except those located in Cook Inlet. Allowable discharge limitations for drilling fluids and cuttings in Cook Inlet would require compliance with a toxicity value of no less than 30,000 ppm (SPP); no discharge of free oil (as determined by the static sheen test); no discharge of diesel oil and 1 mg/kg of mercury and 3 mg/kg of cadmium in the stock barite. (These are the same limitations as those for offshore drilling operations waste discharges in the Alaska.)

Option 2 would require all operators to meet the same zero discharge limitation for the drilling fluids and cuttings in all areas except for Cook Inlet. In Cook Inlet, the drilling fluids and cuttings discharges would be required to meet the same limitations as in Option 1 except that a more stringent toxicity limitation would be imposed. Instead of meeting a toxicity limitation of 30,000 ppm (SPP), a toxicity limitation between 100,000 ppm (SPP) and 1 million ppm (SPP) would be met.

The toxicity limitation range of between 100,000 ppm (SPP) and one million ppm (SPP) reflects the range of toxicity measurements resulting from EPA's evaluation of the current practice for drilling in Cook Inlet. As discussed previously in this section, an attempt was made in this evaluation to determine the volumes of drilling wastes being discharged and their respective toxicity levels. Because of the lack of identified discharge volumes for some of the toxicity test results, this determination could not be completed. Using the 83 percent of drilling wastes which reflects the fraction of test results less toxic than 100,000 ppm (SPP), and coincidentally also reflects the fraction of identified volumes less toxic than one million ppm (SPP), costs and discharge loadings were developed for this option. (The method used to derive this range is separate and distinct from the statistical methodologies generally used by EPA in effluent guidelines regulations to derive 30-day average and daily maximum limitations calculated from the 95th and 99th percentiles, respectively.) However, due to the above discussed limitations with the data base, EPA is currently only able to estimate an achievable toxicity limit in the range of 100,000 ppm (SPP) to one million ppm (SPP). As described earlier under

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"Additional Technologies Considered" of this section, EPA is continuing to evaluate toxicity test results and volumes and any other data for drilling fluids used and discharged in Cook Inlet in an effort to derive a more specific limitation and resulting revisions of costs and loadings. A supplemental notice presenting the data and revised results and soliciting comment would be necessary prior to promulgation.

Option 3 would prohibit the discharge of drilling fluids and cuttings from all coastal oil and gas drilling operations. This option utilizes grinding and injection and onshore disposal as a basis for complying with zero discharge of drilling fluids and cuttings.

The technology Options 1 and 2 for Cook Inlet have been developed taking into consideration the possibility that Cook Inlet operations are unique to the industry due to a combination of climate, transportation logistics, and structural and space limitations that interfere with the drilling operations. These options are based on a degree of recycling and reuse, onshore disposal and/or grinding and injection of a portion of the wastes if they cannot meet the limitations, in addition to product substitution in order to attain the limitations and be able to discharge a portion of the generated wastes.

EPA solicits comments on the two discharge options containing specific data on the toxicity levels achievable for drilling fluids compositions and drill cuttings and why the more toxic of the compositions must be used in order to successfully drill. Also, information is solicited on the degree to which zero discharge all would interfere with drilling operations in Cook Inlet, given the estimate of a limited amount of drilling planned.

5. BCT Options Selection

a. BCT Cost Test Methodology.

The methodology for determining "cost reasonableness" was proposed by EPA on October 29, 1982 (47 FR 49176) and became effective on August 22, 1986 (51 FR 24974). These rules set forth a procedure which includes two tests to determine the reasonableness of costs incurred to comply with candidate BCT technology options. If all candidate options fail either of the tests, or if no candidate technologies more stringent than BPT are identified, then BCT effluent limitations guidelines must be set at a level equal to BPT effluent limitations. The cost reasonableness methodology compares the cost of conventional pollutant removal under the BCT options considered with the cost of conventional pollutant removal at publicly owned treatment works (POTWs).

BCT limitations for conventional pollutants that are more stringent than BPT limitations are appropriate in instances where the cost of such limitations meet the following criteria:

- The POTW Test: The POTW test compares the cost per pound of conventional pollutants removed by industrial dischargers in upgrading from BPT to BCT candidate technologies with the cost per pound of removing conventional pollutants in upgrading POTWs from secondary treatment to advanced secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.53 per pound ($0.25 per pound in 1976 dollars indexed to 1992 dollars).
- The Industry Cost-Effectiveness Test: This test computes the ratio of two incremental costs. The ratio is also referred to as the industry cost test. The numerator is the cost per pound of conventional pollutants removed in upgrading from BPT to the BCT candidate technology; the denominator is the cost per pound of conventional pollutants removed by BPT relative to no treatment (i.e., this value compares raw wasteload to pollutant load after application of BPT). The industry cost test is a measure of the candidate technology's cost-effectiveness. This ratio is compared to an industry cost benchmark, which is based on POTW cost and pollutant removal data. The benchmark is a ratio of two incremental costs: the cost per pound to upgrade a POTW from secondary treatment to advanced secondary treatment divided by the cost per pound to initially achieve secondary treatment from raw wasteload. The result of the industry cost test is compared to the industry Tier I benchmark of 1.29. If the industry cost test result for a considered BCT technology is less than the benchmark, the candidate technology passes the industry cost-effectiveness test. In calculating the industry cost test, any BCT cost per pound less than $0.01 is considered to be the equivalent of de minimis or zero costs. In such an instance, the numerator of the industry cost test and therefore the entire ratio are taken to be zero and the result passes the industry cost test.

These two criteria represent the two-part BCT cost reasonableness test. Each of the regulatory options was analyzed according to this cost test to determine if BCT limitations are appropriate.

b. BCT Cost Calculations and Options Selection.

(i) Other than Cook Inlet.

In addition to considering setting the BCT limitations equal to BPT, EPA considered two additional BCT options for control of conventional pollutants in drilling fluids and drill cuttings. Both of these options would require zero discharge of drilling fluids and drill cuttings throughout the subcategory except in Cook Inlet. Because all operators throughout the entire subcategory, except in Cook Inlet, are currently meeting a zero discharge requirement, or in the case of dewatering effluent, are practicing zero discharge already, there is zero cost and zero removal of conventional pollutants for this limitation. Thus, EPA has determined that zero discharge passes the BCT cost tests and other statutory factors and proposes a BCT limitation equal to zero discharge for all areas except Cook Inlet.

(ii) Cook Inlet.

In Cook Inlet, EPA considered either zero discharge (Option 3, above), or allowing discharge based on requirements identified in Option 2, above. EPA did not consider Option 1 for Cook Inlet, allowing discharge at the current Offshore Guidelines limitations with a toxicity limit of 30,000 ppm (SPP), as a distinct BCT option because the amount of removal of the conventional pollutant oil and grease, as oil, from discharge by this level of toxicity could not be determined from that removed by the current BPT requirement of no free oil.

The POTW test (first part of the two part cost-reasonableness test) is calculated by comparing the cost per pound of conventional pollutant removed in upgrading from BPT to the BCT candidate options. EPA determined the costs of each BCT option for drilling fluids, drill cuttings, and drilling fluids and drill cuttings combined.

EPA included only oil and grease and TSS in the BCT analysis. EPA did not include BOD because it is not a parameter normally measured in wastewaters from this industry since it is associated with the oil content, e.g., oil and grease measurement. The use of BOD and oil and grease would result in double-counting, thus giving erroneous results. EPA did not include the parameter of settleable solids in the BCT analysis because settleable solids are not a conventional pollutant.

EPA calculated cost of the BPT limitations for drilling fluids and drill cuttings for Cook Inlet using the model well characteristics and disposal costs used for the offshore wells (in the development of the Offshore Guidelines). The volume of wastes (drilling fluids and cuttings) was based on the 1993 Coastal Oil and Gas Questionnaire data for Cook Inlet. EPA based the costs associated with meeting

the BPT requirement of "no free oil" on land-based disposal of oil-based drilling fluids and oil laden cuttings and substitution of mineral oil for diesel oil in pills. As was done in the Offshore Guidelines BCT determinations, oil content, which is normally measured in drilling wastes, was used as surrogate for the oil and grease conventional pollutant in the calculation of pollutant removals. The following are annual BPT costs and conventional pollutant removals per well for drilling fluids and cuttings:

Annual Cost (1992 Dollars):
Drilling Fluids—$40,275
Drill Cuttings—$22,355
TSS Removals (Annual):
Drilling Fluids—267,911 pounds
Drill Cuttings—297,880 pounds
Oil and Grease Removals (Annual):
Drilling Fluids—207,584 pounds
Drill Cuttings—92,895 pounds

The three options for Cook Inlet were evaluated according to the BCT cost reasonableness tests. The pollutant parameters used in this analysis were total suspended solids and oil and grease. All options, except the "BPT" option, no discharge of free oil, fail the BCT cost reasonableness test. Costs for the "BPT" option are equal to zero because it reflects current practice. The results of the POTW test (first part of the BCT cost test) for the zero discharge option (Option 3) is $0.151 per pound of conventional pollutant removed. A value of less than $0.534 per pound (1992$) is required to pass the POTW test. Thus, this option passes the POTW test. The results of the Industry Cost Ratio Test (ICR) is 2.097. As this value of 2.097 is greater than 1.29, zero discharge for drilling fluids and drill cuttings in Cook Inlet fails the second test. Thus, EPA proposes that BCT be equal to BPT for drilling fluids and drill cuttings discharges in Cook Inlet.

EPA conducted the same set of tests for Option 3 for the separate wastestreams of drilling fluids and cuttings. The results of the BCT cost tests for Option 2 and 3 are contained in Table 3 of the preamble, show that drilling fluids fail the second test, and cuttings pass. (Results for Option 1 are equal to zero and are not shown on Table 3).

The same set of tests are conducted for the Option 2, prohibitions on the discharge of free oil and diesel oil, limitations on cadmium and mercury in stock barite and toxicity limitation of between 100,000 and 1 million ppm (SPP) or greater. For the purpose of conducting these calculations, a volume fraction of 0.83 (83 percent) of the drilling fluids and cuttings was anticipated to comply with a toxicity limitation of between 100,000 ppm (SPP) and 1 million ppm (SPP). A summary of the results of these tests, also presented in Table 4, demonstrate drilling fluids and cuttings both fail the cost test. Thus, both candidate BCT options fail the ICR test, and BCT is set equal to Option 1 for this proposal which is equal to zero discharge everywhere except for Cook Inlet where BPT would apply.

The specific calculation of these BCT cost reasonableness tests for the drilling fluids and drill cutting options for Cook Inlet are discussed further in the Coastal Technical Development Document.

TABLE 4.—BCT Cost Test Results for Drilling Fluids and Drill Cuttings for Cook Inlet [1]

Regulatory option	Pollutant removal (lb/well)	Compliance cost [1] ($/well)	BCT cost ($/lb)	Pass POTW (<0.534) [2]	BPT cost ($/lb)	ICR ratio	Pass ICR (<1.29)
Drilling Fluids							
Option 2	191,693	129,026	0.673	No	0.085		
Option 3	1,127,603	418,888	0.371	Yes	0.085	4.365	No.
Drill Cuttings							
Option 2	389,756	30,226	0.078	Yes	0.057	1.368	No.
Option 3	2,292,681	98,258	0.043	Yes	0.057	0.754	Yes.
Drilling Fluids and Cuttings							
Option 2	581,449	159,252	0.274	Yes	0.072	3.806	No.
Option 3	3,420,284	517,146	0.151	Yes	0.072	2.097	No.

[1] Results of Option are equal to zero and are not shown in this table.
[2] Compliance Cost and Conventional Pollutants Removal are incremental to BPT.
[3] 1986 benchmark (0.46) adjusted to 1992 dollars $0.534.

6. BAT and NSPS Options

EPA is co-proposing all three options considered for the BAT and NSPS level of control for drilling fluids and drill cuttings. A discussion of the costs and impacts and description of the selection rationale is contained below.

a. Costs.

No costs would be incurred by the industry to comply with Option 1 because the requirements are reflective of current practice. Costs incurred by the coastal industry to comply with Option 2 would amount to approximately $1.4 million annually. These costs are attributed only to the Cook Inlet operators who would be required to meet the Offshore limitations and a more stringent toxicity limitation based on an estimate that 83 percent of the drilling fluids and drill cuttings would pass a toxicity limitation of between 100,000 ppm (SPP) and 1,000,000 ppm (SPP). Thus, 17 percent of the drilling wastes would need to be disposed of either onshore or by grinding and injection.

Costs to comply with Option 3 (zero discharge all) are attributed only to Cook Inlet operators not currently meeting a zero discharge requirement for drilling fluids and drill cuttings (all other coastal operators including the North Slope of Alaska are already practicing zero discharge). Costs to comply with this option are estimated to be approximately $3.9 million annually for Cook Inlet operators. EPA conducted an extensive analysis of possible waste disposal options available to Cook Inlet operators in order to estimate the costs to comply with a zero discharge requirement. The basis for this cost analysis is that approximately 76 percent of the drilling fluids and

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cuttings generated in Cook Inlet would be hauled to shore for disposal onshore, and the other 24 percent would be injected following grinding, into dedicated disposal wells regulated by the Underground Injection Control (UIC) program.

Of the five Cook Inlet operators, two operators generate about 76 percent of the drilling fluids and drill cuttings in Cook Inlet and, have access to a landfill in Alaska. One operator has no future plans to drill. The remaining two operators, who generate about 24 percent of the drilling wastes, would be expected to, for costing purposes, grind and inject to comply with the zero discharge requirement. Out of the five Cook Inlet operators, information obtained by EPA in 1993 indicated that one of them had no plans to drill in the Inlet. Recent (1995) information from an additional Cook Inlet operator relates that this operator also no longer has plans to drill in the Inlet. EPA conservatively estimated that this operator would have drilled six new wells (out of a total of 36 for all of the Cook Inlet operators) in the next seven years. Due to the fact that this is very recent information, the cost and economic analyses presented in this preamble have not deleted these six drillings. Thus, the analysis was performed assuming only one operator, instead of two, operators will not be drilling. However, retaining these six drillings in the analyses will not only provide a conservative estimate of the costs and economic impacts, but may serve to cover future changes in oil and gas activity should decisions be made to resume drilling.

Costs for land disposal include water vessel transportation, storage prior to transport to the disposal facility, truck transportation to the disposal facility, and landfill disposal costs. Costs for grinding and injection include purchase or rental of the grinding, slurrying and pumping equipment, and costs to drill dedicated injection wells at the drill site.

To determine the volume of drilling wastes requiring disposal, EPA obtained the projected drilling schedules for the Cook Inlet operators using information from the 1993 Coastal Oil and Gas Questionnaire and contacts with industry. EPA's projections estimate that 36 new wells and 19 recompletions will be drilled in the seven years following scheduled promulgation of this rule. (Recompletions are drilling operations which utilize an existing well but drill to a deeper formation than that which the well was previously producing from). Using information about the volume of drilling fluids and drill cuttings generated per well, and the projected amount of drilling over the seven years following scheduled promulgation, EPA estimates that the total amount of drilling fluids and cuttings annually discharged from these drilling operations will be approximately 79,000 barrels.

EPA also considered the logistical difficulties of transporting drilling wastes in the Cook Inlet as part of in EPA's costing analysis of the options. To achieve zero discharge, certain platforms would transport drill wastes to the eastern side of Cook Inlet by supply boat during ice conditions, and store the wastes at a transfer station until they could be transported by barge to an existing landfill facility on the west side of the Inlet. During the summer months, transport of wastes would be accomplished by barge directly to the west side.

Costs for the two operators to dispose of their wastes in the Alaskan landfill average $39/barrel. Costs for the other two operators (one operator has no future plans to drill) to dispose of their wastes by grinding and injection average $53/bbl. A weighted average for disposal of 76 percent of the drilling wastes by Alaskan landfills and 24 percent by grinding and injection equates to $42/bbl. On a per well basis, this amounts to approximately $425,000 and $600,000 for each recompletion and new well drilled, respectively.

The costs to comply with Option 2 are approximately $1.4 million annually. Capital expenditures are close to those incurred to meet Option 3 due to the fact that most operators will be required to install the same equipment regardless of the amount of wastes requiring disposal. The economic impact analysis associated with this option would result in a 1.3 percent reduction in the estimated lifetime production for the existing platforms in Cook Inlet as a result of three wells not being drilled. The net present value of this production loss (reduction in producers' net income) is $263,000 or less than 0.1 percent of baseline net present value. The average well life decreases by 0.2 years as a result of this option.

The results of the economic impact analysis associated with the costs for the zero discharge all option (Option 3) for drilling fluids and cuttings show a 2.7 percent reduction in the estimated lifetime production for the existing platforms in Cook Inlet (an additional 2.6 percent over Option 2). The associated net present value loss of production is approximately $6.1 million. This is reflective of the estimate that Cook Inlet platforms may close on average, 11 months earlier than their projected average lifetime of 11 years without this requirement. There are no well or platform shutdowns or barriers to new drilling activities as a result of these costs. However, three new wells would not be drilled. The results of the economic impact analysis are discussed in Section VII of the preamble. For new sources, EPA expects that the costs of complying with NSPS would be equal to or less than those for existing sources.

An analysis of non-water quality environmental impacts for BAT and NSPS was performed. The estimated impacts for the options are discussed in Section VIII of the preamble. The increased energy use and air emissions and availability of land disposal sites and capacity are identified.

b. Rationale for Option Selection

EPA has not selected a preferred option for control of drilling fluids and drill cuttings under BAT and NSPS but, rather is co-proposing all three options. EPA has determined, based on available information, that all three options are technologically and economically achievable and have acceptable non-water quality impacts. However, due to possible operational interferences (for Option 3), the lack of sufficient data to set a toxicity limitation more stringent than 30,000 ppm (SPP) (for Option 2) and the high cost-effectiveness results for both Options 2 and 3, a preferred option has not been selected. EPA solicits comments on the appropriateness of each option.

A large majority of operators are already discharging at levels less toxic than the toxicity limitations of 30,000 ppm (SPP) contained in Option 1. Thus, this is a no cost option incurring no economic or non-water quality environmental impacts.

Option 2 requires zero discharge for all operators except in Cook Inlet where operators would be required to meet the Offshore subcategory limitations in addition to a toxicity limitation of between 100,000 ppm (SPP) and 1,000,000 ppm (SPP). This option would cost $1.4 million annually and results in less than a 0.1 percent reduction in estimated lifetime production for Cook Inlet platforms which would not significantly reduce the profit potential for these operators. Option 2 would result in the removal of approximately 3.9 million pounds of pollutants being discharged per year (or 1264 pounds in toxic equivalents), assuming a volume of 17 percent of the discharges would not meet a toxicity limit of between 100,000 ppm and one million ppm (SPP) and would therefore be disposed of by grinding and injection or on land. Out of the 3.9 million pounds removed annually less than 0.02 percent consists of toxic priority pollutants (or 642 pounds).

Due to limitations with the data base, EPA is currently only able to estimate an achievable toxicity limit in the range of 100,000 ppm (SPP) to one million ppm (SPP). As described earlier under "Additional Technologies Considered" of this section, EPA is continuing to evaluate toxicity test results and volumes and other data for drilling fluids used and discharged in Cook Inlet in an effort to derive a more specific limitation. A supplemental notice presenting the data and soliciting comment would be necessary prior to promulgation.

Option 3 would cost the industry $3.9 million annually and result in the reduction of 23 million pounds of pollutants being discharged per year (or 7375 in toxic pounds equivalents). Zero discharge of drilling fluids and drill cuttings is widely practiced in other coastal areas other than Cook Inlet, including the Gulf of Mexico, California, and the North Slope of Alaska. In Cook Inlet, zero discharge is not currently practiced but for a small amount of drilling fluids (approximately one percent) that do not meet permit limits. Zero discharge is technologically available because operators are able to comply with zero discharge by either disposing of their drilling fluids and drill cuttings onshore or by grinding and injecting the waste. The costs of this option would result in a 2.7 percent reduction in the estimated lifetime production for Cook Inlet platforms, which would not significantly reduce the profit potential for these operators. Thus, EPA believes these costs are economically achievable. However, concerns have been raised that zero discharge would interfere with drilling operations, in part because the weather conditions and tidal fluctuations in the Inlet pose logistical difficulties for drilling waste transportation especially during winter months. In addition, while Option 3 would result in the removal of 23 million pounds of pollutants per year, less than 0.02 percent of which are toxic pollutants, the $3.9 million annually incurred by industry to remove the 3760 pounds of priority toxic pollutants indicates that this option is not cost effective. (See EPA's cost effectiveness report entitled Cost Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Coastal Oil and Gas Industry in the rulemaking record for this proposal and additional discussion in Section VII of this preamble.) In Cook Inlet, operators are not currently practicing zero discharge. EPA estimates that to comply with a total zero discharge requirement, 24 percent of the drilling fluids and drill cuttings would be ground and injected into dedicated wells, and 76 percent would be disposed of onshore.

EPA is soliciting comments on whether the drilling fluids and cuttings volumes removed by these options are deminimus, and on the effect that weather and transportation logistics, cost effectiveness, and other factors (e.g., types of fluids used and their composition, toxicity values, etc.) may have on the applicability, achievability and practicality of both Options 2 and 3.

EPA does not expect any new source development wells drilled in Cook Inlet in the seven years following the scheduled promulgation of this rule. This is because all development wells are expected to be drilled from existing platforms in Cook Inlet. According to the definition of new sources, these wells would be existing sources. Additionally, any drillings that may occur in the recently discovered Sunfish formation in Upper Cook Inlet, are projected to be exploratory wells, which are also existing sources according to the new source definition. Thus, no costs will be attributed to NSPS in Cook Inlet because no new sources are projected for this area. However, in the case that a new source would be drilled in Cook Inlet, EPA has determined that zero discharge would not pose a significant barrier to entry for the drilling project. The same options are being considered for NSPS as for BAT, and again, no one preferred NSPS option is being selected in this proposal. Costs may be less than BAT because process modifications can be incorporated into the drilling rig design prior to its installation rather than retrofitting an existing operation. Whenever EPA determines that BAT is economically achievable, equivalent NSPS requirements would also be economically achievable, and cause no significant barrier to entry. EPA solicits comments on whether NSPS should be more stringent than BAT for Cook Inlet drilling fluids and cuttings.

EPA also finds the non-water quality environmental impacts of Option 2 and zero discharge (Option 3) to be acceptable. Again, non-water quality environmental impacts attributable to this rule would occur only in Cook Inlet. The air emissions and energy requirements associated with waste transportation were calculated for the two operators expected to utilize onshore landfill disposal to accommodate the wastes from their drilling operations. For the remaining two operators who will be drilling and do not have access to onshore disposal, EPA has calculated the air emissions and energy requirements resulting from grinding and injection to meet zero discharge. EPA has found that these non-water quality environmental impacts represent only a very small fraction of the total air emissions and energy requirements from normal operations, and that these non-water quality environmental impacts are acceptable. As stated above, EPA does not expect any new sources to be initiated in Cook Inlet. EPA, however, believes that the non-water quality environmental impacts resulting from any such activity would be equal to or less than those anticipated for existing sources, which EPA has found acceptable.

8. PSES and PSNS

Section 307 of the CWA authorizes EPA to develop pretreatment standards for existing sources (PSES) and new sources (PSNS). Pretreatment standards are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The pretreatment standards for existing sources are to be technology based and analogous to the best available technology economically achievable (BAT) for direct dischargers. The pretreatment standards for new sources are to be technology-based and analogous to the best available demonstrated control technology used to determine NSPS for direct dischargers. New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies, including process changes, and in-plant controls, and end-of-pipe treatment technologies. EPA determines which pollutants to regulate in PSES and PSNS on the basis of whether or not they pass through, interfere with, or are incompatible with the operation of POTWs.

Based on the 1993 Coastal Oil and Gas Questionnaire and other information reviewed as part of this rulemaking, EPA has not identified any existing coastal oil and gas facilities which discharge drilling fluids and cuttings to publicly owned treatment works (POTW's), nor are any new facilities projected to direct these wastes in such manner. However, due to the high solids content of drilling fluids and cuttings, EPA is proposing to establish pretreatment standards for existing and new sources equal to zero discharge because these wastes are incompatible with POTW operations. For further

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discussion, see the Coastal Technical Development Document. For PSNS, zero discharge would not cause a barrier to entry for the same reasons as discussed previously under Part 6.b. of this Section.

B. Produced Water

1. Waste Characterization

Produced water is brought to the surface during the oil and gas extraction process and includes: formation water extracted along with oil and gas; injection water used for secondary oil recovery that has broken through the formation and mixed with the extracted hydrocarbons; and various well treatment chemicals added during the production and oil/water separation processes. Produced water is the highest volume waste in the coastal oil and gas industry. Depending on the age of a well and site-specific formation characteristics, the produced water can constitute between 2 percent and 98 percent of the gross fluid production at a particular well. Generally, in the early production phase of a well the produced water volume is relatively small and the hydrocarbon production makes up the bulk of the fluid. Over time, the formation approaches hydrocarbon depletion and the produced water volume usually exceeds the hydrocarbon production. Based on information received in the 1993 Coastal Oil and Gas Questionnaire, the average produced water rate from a well is approximately 1180 barrels per day (bpd) in Cook Inlet and 270 bpd in the Gulf coast. EPA estimates that 228 million barrels per year (bpy) of produced water is discharged to surface waters by the coastal oil and gas industry.

As part of this rulemaking, EPA has embarked upon a systematic effluent sampling program to identify and quantify the pollutants present in produced water, with an emphasis toward the identification of listed priority pollutants. Details of EPA's data collection activities are presented in Section V of this notice, with additional detail and sampling results discussed in the Coastal Technical Development Document. The information collected has confirmed the presence of a number of organic and metal priority pollutants in produced water.

Pollutants contained in coastal oil and gas industry produced water discharges from facilities with treatment systems used to meet the BPT level permit limits were identified as part of EPA's sampling effort. A summary of the data from these sampling activities is contained in the Coastal Technical Development Document. EPA's sampling data and the industry-supplied Cook Inlet Study identified many organic priority pollutants and all of the 13 metal priority pollutants as being present in BPT treated produced water discharges following some treatment for oil and grease (oil) removal. The priority organics most often present in significant amounts were benzene, naphthalene, phenol, toluene, 2-propanone, ethylbenzene and xylene. In addition to the priority pollutants, EPA identified total suspended solids, oil and grease, and a number of nonconventional pollutants including barium, chlorides, ammonia, magnesium, strontium and iron present in produced water.

2. Selection of Pollutant Parameters

a. Pollutants Regulated.

Where zero discharge would be required, all pollutants found in produced water discharges would be controlled. Where discharges would be allowed, *i.e.* Cook Inlet, EPA would be regulating oil and grease under BAT as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants. Oil and grease would be limited under BCT as a conventional pollutant and under NSPS as both a conventional pollutant and as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants.

It has been shown previously in the development of the Offshore Guidelines (See the Offshore Technical Development Document, Section VI) that oil and grease serves as an indicator for toxic pollutants in the produced water wastestream, including phenol, naphthalene, ethylbenzene, and toluene. During its development of the Offshore Guidelines, EPA showed that gas flotation technology (the technology basis for the oil and grease limitations) removes both metals and organic compounds, resulting in lower concentration levels in the discharge for the above priority pollutants (See Section IX of the Offshore Technical Development Document).

b. Pollutants Not Regulated.

The feasibility of regulating separately each of the constituents of produced water determined to be present was also evaluated during the development of the Offshore Guidelines (See Section VI of the Offshore Technical Development Document). EPA determined that it is not feasible to regulate each pollutant individually for reasons that include the following: (1) The variable nature of the number of constituents in the produced water, (2) the impracticality of measuring a large number of analytes, many of them at or just above trace levels, (3) use of technologies for removal of oil which are effective in removing many of the specific pollutants, and (4) many of the organic pollutants are directly associated with oil and grease because they are constituents of oil, and thus, are directly controlled by the oil and grease limitation. These reasons also apply to the Coastal Guidelines.

While the oil and grease limitations limit the discharge of toxic pollutants, EPA determined, during the Offshore Guidelines rulemaking, that certain of the toxic priority pollutants, such as pentachlorophenol, 1,1,-dichloroethane and bis(2-chloroethyl) ether would not be controlled by the limitations on oil and grease in produced water. EPA is not proposing to regulate these pollutants in this rule because EPA did not detect them in the samples within the coastal oil and gas data base. (See the Coastal Technical Development Document)

3. Control and Treatment Technologies

a. Current Practice.

Based on information collected by the 1993 Coastal Oil and Gas Questionnaire as well as industry contacts, no coastal oil and gas facilities are discharging produced water in Alabama, Florida, California or Alaska's North Slope. This is due to a combination of factors including operational preference, waterflooding, and/or state requirements. In addition, the Louisiana Department of Environmental Quality issued regulations in 1992 (LAC:33.IX. 7.708) which prohibit discharges of produced water to fresh water areas characterized as "upland" after July 1, 1992. The regulation defines "upland" as "any land not normally inundated with water and that would not, under normal circumstances, be characterized as swamp of fresh, intermediate, brackish or saline marsh". The regulation does, however, allow discharges to the major deltaic passes of the Mississippi River and the Atchafalaya River. The same regulation also requires that discharges inland of the inner boundary of the Territorial Seas into intermediate, brackish or saline waters must either cease discharges or comply with a specific set of effluent limitations. These requirements must be met within a certain time frame, as required in the regulations, but, in most cases, no later than January 1997.

In addition, EPA proposed general NPDES permits (57 FR 60926, December 22, 1992) for production wastes which would impose a prohibition on discharges of produced water in coastal areas of Texas and Louisiana. These permits were finalized January 9, 1995 (60 FR 2387). The permits would not, however, apply to facilities treating offshore waters and discharging into the main passes of the Mississippi and Atachafalaya River. Based on these permits requiring zero discharge, only Alaska's Cook Inlet and two sites in the Gulf of Mexico would be discharging produced water in the Coastal subcategory at the time this final rule is scheduled to be signed, currently July 1996.

The current BPT regulations established for the coastal subcategory limit the oil and grease content in the discharged produced water. Existing technologies for the removal of oil and grease include gravity separation, gas flotation, heat and/or chemical addition to assist oil-water separation, and filtration. Methods for the discharge or disposal of produced water from facilities in the coastal subcategory include free fall discharge to surface waters, discharge below the water surface, use of channels to convey the discharge to water bodies, and injection via regulated Class II Underground Injection Control (UIC) wells into underground formations. As an alternative, a number of production sites transport produced water by pipeline, truck or barge to shore facilities for disposal in UIC Class II wells. At times, this transport consists of the gross fluid produced and the oil-water separation takes place at the off-site facility.

While sampling data has indicated quantifiable reductions of naphthalene, lead, and ethylbenzene by BPT treatment (*i.e.*, by oil-water separation technology), this data also demonstrates the presence of significant levels of priority pollutants remaining in the treated effluent

b. Additional Technologies

In developing the proposed regulation, EPA evaluated several treatment technologies for application to the produced water wastestream. These technologies were considered for implementation at the coastal production sites and at the shore facilities where much of the produced water is currently treated for subsequent discharge to coastal subcategory waters.

(1) Improved Gas Flotation.

Gas flotation is a treatment process that separates low-density solids and/or liquid particles (e.g., oil and grease) from liquid (e.g., water) by introducing small gas (usually air) bubbles into wastewater. As minute gas bubbles are released into the wastewater, suspended solids or liquid particles are captured by these bubbles, causing them to rise to the surface where they are skimmed off.

EPA considered as an option using gas flotation technology with chemical addition as a basis for improving BPT-level performance. This option would require all coastal discharges of produced water to comply with oil and grease limitations of 29 mg/l monthly average and a daily maximum of 42 mg/l. The technology basis for these limitations is improved operating performance of gas flotation technology. EPA has determined that gas flotation systems could be improved to increase removal efficiencies—*i.e.*, the amount of pollutants removed. Specific mechanisms include proper sizing of the gas flotation unit to improve hydraulic loading (water flow rate through the equipment), adjustment and closer monitoring of engineering parameters such as recycle rate and shear forces that can affect oil droplet size (the smaller the oil droplet, the more difficult the removal), additional maintenance of process equipment, and the addition of chemicals to the gas flotation unit. (See Offshore Technical Development Document Section IX).

The addition of chemicals can be a particularly effective means of increasing the amount of pollutants removed. Because the performance of gas flotation is highly dependent on "bubble-particle interaction," chemicals that enhance that interaction will increase pollutant removal.

Gas flotation is a technology which has been used for many years in treating produced water in the offshore subcategory. In developing final effluent limitations guidelines and standards for the offshore subcategory (58 FR 12454; March 4, 1993), EPA evaluated comments and data submitted by the industry which strongly urged EPA to select improved gas flotation technology as the basis for BAT limits and NSPS, based on an Offshore Operator Committee's (OOC's) 83 Platform Composite Study. Industry further noted that chemical additives would improve the amount of oil and grease in produced water that could be removed EPA thoroughly reviewed these comments and additional data, and agreed with industry that improved gas flotation should be used as the technology for setting BAT limits and NSPS in the offshore subcategory.

In establishing BAT limits and NSPS for produced water, EPA evaluated the effluent data from the platforms in the 83 Platform Composite Study identified as using improved gas flotation (e.g., use of gravity separators and chemical additives). First, EPA modeled the offshore platform with "median" oil and grease effluent values (i.e., 50 percent of the platforms in the database had oil and grease effluent values above (and 50 percent below) the median of the effluent values measured at the median platform. Based on the oil and grease measured at the median platform after improved gas flotation treatment, and allowing for average "within-platform" variability, EPA set a daily maximum limit on oil and grease at 42 mg/l, and a 30-day average of 29 mg/l as the BAT limits and NSPS. (See 58 FR 12462, March 4, 1993).

In setting BAT limits and NSPS for the offshore rule, EPA had a choice among several different means of measuring what is termed "oil and grease" in produced water, two of which are known as Method 413.1 and Method 503E.

Under Method 413.1, freon is mixed with a sample of produced water. The container is then left at rest to separate the water phase from the freon phase, which includes those contaminants in produced water that dissolve in freon. The freon layer is then drained from the container and distilled by heating, leaving a residue. The residue is then weighed and reported as the weight of the "oil and grease" in that sample of produced water. The results are typically reported in milligrams of oil and grease per liter of produced water

Under Method 503E the same steps are followed, with one exception. After the freon layer is drained from the container, but prior to distillation, silica gel is added to the freon, and weighed Because the silica gel has the ability to adsorb polar materials (e.g., some of the hydrocarbons and fatty acids present) that otherwise would have been measured as oil and grease in the freon residue by Method 413.1, the analytical result reported under Method 503E is less than that reported under Method 413.1. Because Method 413.1 measures more of the oil and grease in produced water, it gives a more complete picture of the efficiency of the treatment system Because EPA had influent and effluent data showing that oil and grease, measured under Method 413.1, were removed by the use of improved gas flotation (Oil Content in Produced Brine on Ten Louisiana Production Platforms, September 1981) R.I.G. (No. 194), EPA used improved gas flotation as the technology basis for the rule and established the limitations as measured by Method 413.1 (See also Final Report, Analysis of Oil and Grease Data Associated with Treatment of Produced Water by Gas Flotation Technology, January 13, 1993, and 58 FR 12462, March 4, 1993).

(2) Filtration.

The primary purpose of filtration is to remove suspended matter, including

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insoluble oils, from produced water. Additional removal of soluble pollutants can also be achieved, but it is not as significant as the reduction of conventional pollutants such as total suspended solids and oil and grease. EPA has considered several types of filtration systems as part of this rulemaking, including granular, membrane and cartridge filtration technologies. EPA's assessment of granular filtration is based in part on data collected from a coastal oil and gas facility as part of the offshore subcategory rulemaking (Three Facility Study). Although economically achievable, granular filtration was rejected as the technology basis for controlling discharges in this proposed rule. EPA's evaluation of granular filtration performance data indicates that while this technology does provide some removals of priority and nonconventional pollutants, the pollutant removal efficiency of granular filtration (in the range of 46–68 percent oil and grease removal) is generally not as effective as that attainable through improved operation of gas flotation technology (general oil and grease removal efficiency have been shown to be 90–95 percent). In addition, the capital and annual operating and maintenance costs associated with granular filtration are significantly higher than the costs of improving gas flotation systems.

EPA did not select membrane filtration as a technology basis for this proposed rule because it has not been sufficiently demonstrated as available to support national effluent limitations at this time. Membrane filtration is a commercially demonstrated technology in other industries and several manufacturers have been developing this technology for use in treating produced water. Although not yet available to the oil and gas industry, some operators have shown interest in the technology and limited testing of these systems has taken place. In developing the final limitations for the offshore subcategory, EPA determined that because of operational problems (e.g., fouling of the membrane, actual treatment capacity less than design capacity) this technology did not support use as a technology basis for final effluent limitations. (See 58 FR 12481, March 4, 1993.) In the absence of any data to the contrary, EPA believes that this technology still is not available for full-scale systems capable of long-term, effective treatment of produced water.

In evaluating reinjection of produced water, EPA noted that a number of coastal oil and gas sites were using cartridge filters as part of the treatment system. EPA collected wastewater samples to characterize the efficacy of cartridge filtration to determine whether this technology should serve as a basis for effluent limitations and standards. EPA's evaluation of cartridge filtration performance data indicates that this technology is capable of providing oil and grease removal only marginally better than that currently required by the existing BPT effluent limitations. In addition, EPA's evaluation did not identify any significant removals of the priority and nonconventional pollutants present in produced water. Thus, cartridge filtration was not selected as a basis for limiting produced water discharges.

3. Injection

EPA also considered using injection technology as a basis for setting a more stringent requirement under this rule. With the exception of Cook Inlet, injection of produced water is widely practiced by facilities in the coastal subcategory as well as in the onshore subcategory. Injection technology for produced water consists of injecting it, under pressure, into Class II UIC wells into underground formations. This option results in no discharge of produced water to surface waters.

Treatment of the produced water prior to injection is usually necessary, and such treatment often includes removal of oil and suspended matter by BPT oil separation technology followed by filtration technology. The removal of suspended matter prior to injection is required to prevent pressure build-up and plugging of the receiving formation and/or to protect injection pumps from damage.

While EPA determined that filtration was not a technology appropriate for serving as the basis for control of effluent prior to discharge, filtration was considered relevant technology for use as pretreatment prior to injection, thus, it is included as part of the basis for the injection technology option. EPA determined from information gathered on site visits in the Gulf coast area, as well as from industry contacts, that cartridge filtration is generally used following BPT oil/water separation technologies at injecting facilities accessible by water only. For facilities accessible by land, it was determined that rather than pretreat produced water using filtration, it is more cost effective to perform periodic well workovers on the injection well to remove clogged material from the wellbore. However, for facilities treating produced water flows greater than 64,000 bpd, EPA determined that it would be more appropriate to employ granular filtration after BPT separation technology because it is more cost effective to use this technology for higher flows rather than cartridge filtration.

4. Other Technologies

In developing effluent limitations for the offshore subcategory, EPA also considered other technologies such as carbon adsorption, biological treatment, chemical precipitation, and hydrocyclones. (See 56 FR 10688; March 13, 1991.) Carbon adsorption was rejected as a technology basis because the limited use of this technology did not give sufficient performance data to enable a full evaluation. Biological treatment was rejected because of problems associated with biologically treating the high dissolved solids (brine) waters. Operational problems and an inability to quantify reductions of priority pollutant metals led to rejection of chemical precipitation. Hydrocyclones were rejected as a technology basis for BAT/NSPS effluent limits because the performance data available demonstrated only that it was capable of meeting existing BPT limits for oil and grease, and data were lacking regarding removals of priority pollutants. EPA has not received any new information regarding treatment efficacy (as measured by priority pollutant removal) for these technologies, and is not aware of any information which would support conclusions different than those made for the Offshore Guidelines.

5. Options Considered

Five options were considered by EPA in developing BCT, BAT, NSPS, PSES and PSNS limitations for produced water. These options were based on either injection, improved gas flotation, or a combination of these technologies. The 5 options are listed below with limitations for oil and grease associated with the options allowing discharges:

Option 1—(BPT All): EPA has included as an option setting effluent limitations equal to the existing BPT requirements. Oil and grease would be limited in the effluent at 48 mg/l monthly average, and 72 mg/l daily maximum.

Option 2—(Improved Flotation All): All discharges of produced water would be required to meet limitations on oil and grease content of 29 mg/l 30-day average and a daily maximum of 42 mg/l. The technology basis for these limits is improved operating performance of gas flotation. The specific numerical limit of 29 mg/l 30-day average and 42 mg/l (daily maximum) are based on the statistical analyses of performance of improved gas flotation conducted to develop oil and grease limits for the Offshore Guidelines. (See 58 FR 12462, March 4, 1993).

Option 3—(Zero Discharge: Cook Inlet BPT): With the exception of facilities in Cook Inlet, all coastal oil and gas facilities would be prohibited from discharging produced water. Coastal facilities in Cook Inlet would be required to comply with existing BPT effluent limitations (48/72 mg/l described above) for oil and grease.

Option 4—(Zero Discharge: Cook Inlet Improved Flotation): With the exception of facilities in Cook Inlet, all coastal oil and gas facilities would be prohibited from discharging produced water. Coastal facilities in Cook Inlet would be required to comply with the oil and grease limitations of 29 mg/l 30-day average and 42 mg/l daily maximum based on improved operating performance of gas flotation and the statistical analysis conducted for the Offshore Guidelines.

Option 5—(Zero Discharge All): This option would prohibit all discharges of produced water based using injection.

Specific alternatives have been developed for Cook Inlet to account for the different operational practices, and geological situations that exist at these platforms. As previously stated, zero discharge is widely, if not exclusively, practiced in all coastal areas except Cook Inlet. Injection of produced waters is not practiced in Cook Inlet because, where waterflooding is occurring, treated seawater is injected instead. Industry claims that injection of seawater other than produced water for enhanced recovery is practiced primarily because injection of produced water would cause formation fouling. Industry has claimed that fouling would occur due to bacteria and scale formation in produced water, and otherwise not present in seawater. EPA has determined that formation fouling problems associated with produced water injection are not insurmountable because filtration and anti-fouling chemicals can be added prior to injection, and periodic downhole workovers can be performed to reopen clogged formation surfaces.

An additional problem with injecting produced waters is that no other formations exist that can accommodate this wastestream other than the producing formation. Cook Inlet operators would experience significant additional cost associated with piping produced water if zero discharge was required from where it is currently treated to where it could be injected. Of the 13 producing platforms in the Inlet, 9 of them currently direct their extracted hydrocarbon fluids to one of 3 land-based separation and treatment facilities. These land-based facilities separate the hydrocarbons from the produced water, treat the produced water and then discharge it in accordance with EPA's Region X's NPDES general permit requirements. The Alaska Oil and Gas Conservation Commission has confirmed that no geological formations exist beneath the land-based facilities that are large enough to accept the approximately 100,000 barrels per day (bpd) of produced water generated from these facilities. Thus, produced water would be piped back to the platforms for injection if produced water discharges were prohibited. The costs for such piping would comprise 74 percent of the total costs for injection. This would be a major cost factor for the Inlet operations overall since the volume of produced water being discharged from these 3 land-based facilities amounts to approximately 99 percent of that discharged from all 13 platforms.

6. BCT Options

a. BCT Methodology.

The methodology to determine the appropriate technology option for BCT limitations is previously described in Section VI.A.

b. BCT Cost Test Calculations and Option Selection.

The five options previously described, were evaluated according to the BCT cost reasonableness tests. The pollutant parameters used in this analysis were total suspended solids and oil and grease. All options, except the "BPT All" option, fail the BCT cost reasonableness test and thus, EPA proposes to establish BCT limitations equal to BPT. Costs for the "BPT All" option are equal to zero because facilities are complying with the current BPT limitations. The range of the results for the POTW test (first part of the BCT cost test) for the other options is $1.35 to $3.70 per pound of conventional pollutant removed. Since a value of less than $0.53 per pound (1992$) is required to pass the POTW test these four options fail the first BCT cost test. Thus, EPA is proposing to establish the BCT limitations for produced water equal to BPT (48 mg/l monthly average; 72 mg/l daily maximum). The calculations for BCT cost reasonableness test for the produced water options are described in more detail in Section XI of the Coastal Technical Development Document. There are no incremental non-water quality environmental impacts associated with the BCT option because it is equal to BPT

7. BAT and NSPS Options

EPA has selected Zero discharge; Cook Inlet improved gas flotation (Option 4) for the BAT and NSPS level of control for produced water. A discussion of the cost and impacts and a description of the selection rationale is contained below:

a. Costs.

The cost and pollutant removals associated with the options considered for BAT are presented in Table 5.

TABLE 5.—COSTS AND POLLUTANT REMOVALS FOR PRODUCED WATER BAT OPTIONS

Option	Costs (1992$) (x1000)	Pollutant removals (lbs) (x1000)
1. BPT all	0	0
2. Improved gas flotation all	12,400	12,440
3. Zero discharge; cook inlet BPT	28,600	4,306,800
4. Zero discharge; cook inlet improved gas flotation	30,860	4,308,300
5. Zero discharge all	49,700	5,484,800

These estimates are presented incremental to the baseline of current industry operating practices which is equal to BPT where discharges are occurring. Thus, as shown on Table 5, costs attributable to Option 1, which is equal to BPT, is zero. On January 9, 1995 (60 FR 2387), EPA promulgated general NPDES permits that would prohibit discharges of produced water from coastal facilities in Texas and Louisiana. For the purpose of this proposal, EPA's compliance cost estimates and economic impact assessments are determined without considering this permit. Had EPA's costing estimates assumed that the general permit would be in effect, the total estimated cost of the proposed BAT limitations for produced water for the entire coastal subcategory would be $10.4 million instead of $30.9 million annually.

In developing the costs of zero discharge for this option, EPA determined, based on Texas and Louisiana state permit data, the number and volume of produced water discharges that would be discharging by the time this final rule is scheduled to be signed July 1996. This investigation identified, by operator and oil and gas field, 216 produced water separation/treatment facilities that would be discharging approximately 180 million barrels per year (bpy) in Texas and

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Louisiana as of July 1996. Costs are calculated without taking into account the regulatory effects of the zero discharge requirement imposed by the EPA Region VI General Permits (See Section II.C. of this preamble).

In determining the costs associated with zero discharge for the Gulf coast area, EPA utilized the following factors in the costing analyses:

General

* The only areas that will incur compliance costs are Cook Inlet in Alaska, Texas, and parts of Louisiana since all other coastal areas that have oil and gas activities currently practice zero discharge.

For Texas and Louisiana

* Produced water would be injected into Class II UIC injection wells. The capacity of each Class II injection well is 5,000 BPD.
* 90 percent of the injection wells would be converted from previously producing wells or dry holes.
* If a discharge is greater than 108 bpd (for water-based facilities) and 71 bpd (for land-based facilities), then the produced water would be injected onsite; if the discharge is less than those flows then it would be more cost effective to send the produced water offsite to a commercial facility for injection. (EPA's data from Texas and Louisiana coastal permits show that 77 percent of the produced water discharges would inject on-site).
* For purposes of estimation, all Texas separation/treatment facilities are located on land and all Louisiana separation/treatment facilities are located over water. EPA is aware that this is not entirely the case, *i.e.* some facilities in Louisiana are located over land and some Texas facilities are located over water. In the absence of specific location information on all of the 216 discharging facilities, EPA determined this to be a good approximation since the coastal topography of Louisiana consists of more extensive wetlands than that of Texas. (Location is an important factor when determining the cost of drilling an injection well, and the cost of produced water transportation. EPA's state permit data base shows that 24 percent of the produced water discharges are in Texas and the separation/treatment facilities are therefore considered to be on land).
* No pretreatment beyond BPT technology is required prior to injection for land-based facilities because it is more cost effective to perform downhole well workovers twice a year. Pretreatment beyond BPT treatment prior to injection consists of cartridge filtration for water-based facilities. For flows greater than 64,000 bpd, granular filtration is used as pretreatment.
* Capital costs are based on sizing equipment to accommodate future produced water volume, estimated to be approximately 1.5 times current flow.
* Where more than one produced water discharge location exists from one or more production facilities owned by the same operator in the same field, EPA combined the discharges to be injected into a single injection system. By combining discharges a savings would result due to installation of fewer injection wells.

For Cook Inlet

* No geological formations are available for produced water injection except the producing formations.
* No geological formations are available near or below the existing onland separation/treatment facilities. Thus, the produced waters would be required to be piped back to the platforms for injection.
* Pretreatment prior to injection consists of gas flotation and multimedia filtration. However, operators will use existing equipment where it currently exists, and no costs would be incurred for such existing equipment.
* During the development of this proposal, industry provided EPA with information on reservoir plugging and souring that may result from injecting produced water in the Cook Inlet. EPA, in its cost analysis, included costs for the addition of chemicals that would be added to the produced water being injected to alleviate the scaling and hydrogen sulfide (H2S) formation problems associated with injection in this area. Such chemicals include biocides and scale inhibitors. Annual workovers must also be performed on the injection wells.

EPA believes that the cost estimates are conservative for a number of reasons. As discussed previously, EPA determined costs to comply with a zero discharge requirement in the Gulf of Mexico based on the number of facilities that would be discharging after the expected date of promulgation for this rule (July 1996). A total of 216 facilities would still be discharging by then. However, 28 of these facilities in Louisiana will be required to cease discharging by January 1, 1997, because of the state water quality standard's no discharge requirement. Taking this January 1997 requirement into account as a portion of the baseline would further reduce costs by 25 percent.

Furthermore, EPA's cost estimates for zero discharge in the Gulf of Mexico are based on sizing produced water treatment equipment to accommodate future produced water volumes estimated to be approximately 1.5 times current flow. EPA believes using this factor, which is standard engineering practice, has resulted in a conservative cost estimate overall because many operators have indicated that they typically use a factor of 1.2 to 1.25 when sizing and costing produced water treatment equipment. Capital costs would be approximately 12 percent lower if a factor of 1.2 were used. Additionally, while EPA's costing included combining of operator discharges for injection within fields, the analysis showed that costs are not significantly different if they are not combined. This is because the high costs of piping to join discharges closely equal the costs of individual injection well installation.

EPA also calculated capital costs of produced water treatment on the basis that produced water flows increase the same for oil as for gas wells. While produced water volumes from gas producing wells will generally not increase at the rate of 1.5, EPA did not differentiate between the two.

EPA determined that no costs would be attributed to zero discharge for California, Florida, Alabama, certain parts of Louisiana, and the North Slope of Alaska because operators in these areas are already practicing zero discharge of all produced waters.

For improved gas flotation, costs were estimated based on an evaluation of this technology during development of the Offshore Guidelines (58 FR 12463). Improved performance of gas flotation units includes improved operation and maintenance of gas flotation treatment systems and chemical pretreatment to enhance system effectiveness. Costs are based on vendor-supplied data, industry information, cost analyses conducted by the Department of Energy, and EPA projections. Capital and O & M costs were applied specifically to the coastal oil and gas operations using nine modeled flows for land- and water-access production facilities. From these nine modeled flows, EPA conducted regression analyses to derive cost equations that would vary based on flow. These equations were then applied to the actual 216 discharging facilities to estimate costs on a site specific basis. Capital costs include equipment purchase, installation, and platform or concrete pad (for land based operations) retrofit. Operation and maintenance costs are estimated to be 10 percent of capital costs.

EPA solicits comments on these costs and also information regarding the longitude and latitude locations of

discharging produced water separation/treatment facilities in Texas.

The total annual cost of Option 4 for BAT control of produced water discharges from existing facilities is estimated at $30.9 million (1992 dollars) for the entire coastal subcategory. $29.2 million of this total would be incurred by operators in the Gulf Coast states of TX and LA in attaining zero discharge. The remaining $2.3 million would be incurred by Cook Inlet operators in complying with the oil and grease limitations. EPA finds this cost to be economically achievable for the reasons discussed later in Section VII of this preamble but are briefly summarized here. Total production losses realized from this option are expected to total 15.2 million bbls over the lifetime of the wells and platforms subject to this rule which equals up to 1.7 percent of total lifetime production for the Gulf and Cook Inlet combined. The net present value losses of producer income associated with this decrease in production is $153.2 million. A total of 111 wells in the Gulf coast area (2.4 percent of all current Gulf coast wells) and no Cook Inlet platforms are considered likely to shut in immediately when this proposal becomes final. Furthermore, a maximum of 12 Gulf operators might fail as a result of this BAT option (2.8 percent of the current Gulf operators). No company failures are expected in Cook Inlet. This option would reduce the pollutant loading from this wastestream by 4.3 billion pounds per year.

c. Rationale for Selection of BAT.

EPA proposes Zero Discharge; Cook Inlet Improved Gas Flotation Option 4: as BAT for produced water. This option prohibits discharges of produced water from all coastal facilities, except for those facilities located in Cook Inlet. Coastal facilities in Cook Inlet would be required to comply with the oil and grease limitations (29 mg/l 30-day average, 42 mg/l daily maximum) based on improved operating performance of gas flotation. EPA has determined this option to be economically achievable and technologically available, and that it reflects the BAT level of control.

Zero discharge is technologically available because injection of produced water is currently ongoing in much of the coastal subcategory at the present time and adequate geological formations exist to accept produced water. By 1996, 72 percent of the facilities in the Gulf region will be meeting zero discharge. The oil and grease limit applicable to Cook Inlet is technologically available for the reasons discussed elsewhere in this preamble, the record for this rule, as well as in cited portions of the rulemaking record for the Offshore Guidelines.

Option 4 is economically achievable because, as the economic analysis shows (in Section VII), total production losses in terms of oil production as a result of this proposed rule are expected to range between 1.0 percent and 1.7 percent of total lifetime production for both Cook Inlet and the Gulf. Additionally, only 2.4 percent of all current Gulf coastal wells (111 out of 4675 current Gulf coastal wells) and no Cook Inlet platforms are considered likely to shut in as a result of this rule. These shut-in wells tend to be relatively low-producing and marginal wells. At most, only 2.8 percent of the operators in the Gulf (12 of the estimated 435 Gulf coastal operators) might fail as a result of a zero discharge requirement and no firm failure is expected in Cook Inlet, as a result of meeting oil and grease limits of 29 mg/l 30-day average and 42 mg/l daily maximum for produced water. (The range of firm failures in the Gulf is actually 0-12, but because data were not available to rule out the possibility of failures, EPA assumed possible failures to be actual failures.) The "average" Gulf coastal firm does not discharge produced water and coastal firms are expected to face average (medium) declines in equity or working capital of 0 percent. Of the 122 discharging firms, average (medium) declines in equity or working capital of 0.37 percent and 2.63 percent, respectively, are expected to occur. These impacts, combined with the fact that most Gulf coastal operators (72 percent) will not be discharging by 1996, show Option 4 to be economically achievable.

Option 5, zero discharge all was not selected based on the unacceptable economic impacts estimated for the Cook Inlet operators. EPA's economic analysis shows that 3 of 13 platforms would be "shut-in" or closed down and believes that this economic impact is unacceptable in Cook Inlet. EPA did not select the "Flotation All" or "BPT All" options as preferred because they, applied industry-wide, do not represent BAT or NSPS level of control. As stated previously, all coastal operations in California, Alabama, Florida, some parts of Louisiana and the North Slope of Alaska do not discharge produced water, but inject their produced water underground either to comply with permit limitations or to enhance hydrocarbon recovery. EPA has therefore concluded that control options based on the continued discharge of produced water in all areas of the country do not represent BAT or NSPS. Non-water quality environmental impacts for the proposed Option 4 consist of incremental air emissions of approximately 2800 tons/year across the entire subcategory. Given that an average Gulf coast production facility may alone produce approximately 188 tons/year of emissions, this option would increase air emissions by about 13 percent. EPA considers this increase to be acceptable. A description of estimated non-water quality impacts, consisting of additional energy requirement and air emission created by complying with the proposed requirements and other options being considered are discussed in Section VIII of this preamble and in more detail in Chapter XIV of the Coastal Technical Development Document.

d. Rationale for Selection of NSPS.

For NSPS control of produced water discharges from new sources, EPA is proposing the "Zero Discharge All" (Option 5) prohibiting discharges of produced water from all new sources. Option 5 is economically achievable for the reasons discussed in the economic impact analysis and in Section VII, below. This NSPS option is estimated to cost approximately $4.5 million annually for the entire coastal subcategory. This cost would be incurred only by Gulf Coast operators where EPA estimates that approximately 6 new production facilities will be constructed per year. No new sources are expected in the Cook Inlet (See Section VII). However, were new sources to be installed in Cook Inlet, the preferred NSPS option of zero discharge is not expected to cause a barrier to entry because new project operations would still be quite profitable. For a new source, EPA estimates that the decline in internal rates of return would only be reduced from 39 to 37 percent and therefore would not be likely to affect the decision to undertake a new project. In addition, the impact on Net Present Value from the zero discharge requirement (2.9 percent) is not substantially different from the impacts on Net Present Value from the proposed BAT option for Cook Inlet platforms (2.4 percent). Thus existing and new platforms would face similar impacts on Net Present Value and Internal Rate of Return. In addition, as discussed in Section VIII, EPA has determined the non-water quality environmental impacts to be acceptable for the NSPS option for produced water. Total incremental emissions from the proposed option is approximately 64 tons/year for NSPS. As a comparison, an average Gulf coast production facility may produce approximately 188 tons/year of emissions. EPA considers this

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increase in non-water quality impacts to be acceptable.

8. PSES and PSNS Options Selection

Based on the 1993 Coastal Survey and other information reviewed as part of this rulemaking, EPA has not identified any existing coastal oil and gas facilities which discharge produced water to publicly owned treatment works (POTWs), nor are any new facilities projected to direct their produced water discharge in such manner. However, because EPA is proposing a limitation requiring zero discharge for those existing facilities, there is the potential that some facilities may consider discharging to POTWs in order to avoid the BAT and /or NSPS limitations. Pretreatment standards for produced water are appropriate because EPA has identified the presence of a number of toxic and nonconventional pollutants, many of which are incompatible with the biological removal processes at POTWs. Large concentrations of dissolved solids in the form of various salts in the produced water cause the discharge to POTWs to be incompatible with the biological treatment processes because these "brines" can be lethal to the organisms present in the POTW biological treatment systems. (See the Coastal Technical Development Document for detailed information on produced water characterization.) EPA does not have sufficient data for conducting a pass through analysis for reasons discussed further in the Coastal Technical Development Document. EPA solicits data and comment on this particular issue.

EPA is proposing to require pretreatment standards for existing and new sources (PSES and PSNS, respectively) that would prohibit the discharge of produced water. The technology basis for compliance with PSES and PSNS would be the same as that for BAT and NSPS zero discharge limits. The cost projections for both PSES and PSNS are considered to be zero since no existing sources discharge to POTW's and there are no known plans for new sources to be installed in locations amenable to sewer hookup. Also, because no facilities are discharging to POTW's EPA proposes that PSES and PSNS requiring zero discharge be effective as of the effective date of this rule. Because zero discharge for new sources is economically achievable, the costs of complying with zero discharge would not be a barrier to entry. Non-water quality environmental impacts would be similar to those for new sources, which EPA has found to be acceptable. Thus, EPA has determined that pretreatment standards for new sources that are equal to NSPS are economically achievable and technologically available for PSNS and that the non-water quality environmental impacts are acceptable.

C. Produced Sand

1. Waste Characterization

Produced sand consists primarily of the slurried particles that surface from hydraulic fracturing and the accumulated formation sands and other particles (including scale) generated during production. Produced sand is generated during oil and gas production by the movement of sand particles in producing reservoirs into the wellbore. The generation of produced sand usually occurs in reservoirs comprised of geologically young, unconsolidated sand formations. The produced sand wastestream is considered a solid and consists primarily of sand and clay with varying amounts of mineral scale and corrosion products. This waste stream may also include sludges generated in the produced water treatment system, such as tank bottoms from oil/water separators and solids removed in filtration.

Produced sand is carried from the reservoir to the surface by the fluids produced from the well. The well fluids stream consists of hydrocarbons (oil or gas), water, and sand. At the surface, the production fluids are processed to segregate the specific components. The produced sand drops out of the fluids stream during the separation process and accumulates at low points in equipment. Produced sand is removed primarily during tank cleanouts. Because of its association with the hydrocarbon stream during extraction, produced sand is generally contaminated with crude oil or gas condensate.

Produced sand samples were obtained during EPA's sampling visits to 10 production facilities. Analysis of these samples showed oil and grease concentrations of 205 g/Kg. All toxic metals were present except silver, with most notable contributions from copper (32.15 mg/Kg) and lead (171.94 mg/Kg). Naturally Occurring Radioactive Material (NORM) was present at an average of 8.9 pCi/g in the samples which were taken from coastal facilities in the Gulf of Mexico. Toxic organics present were similar to those found in produced water including benzene, ethylbenzene, xylene, toluene, propanone and phenanthrene. All 10 sites disposed of the produced sands at commercial facilities. Produced sand volumes vary from well to well and are a function of produced water production, formation type, and well completion methods. Maximum produced sand volumes (out of these 10 sites) was 400 bpy per production facility. The 1993 Coastal Survey results showed that average volumes of produced sand ranged from 36 to 94 bpy per facility. Additional discussion of produced sand is presented in the Coastal Technical Development Document.

2. Selection of Pollutant Parameters

EPA is proposing to control all pollutants present in produced sand by prohibiting discharge of this wastestream.

3. Control and Treatment Technologies

No effluent limitations guidelines have been promulgated for discharges of produced sand in the coastal subcategory. The final NPDES permits for Texas, Louisiana, and the existing state NPDES permits for Alabama contain a zero discharge limit for produced sand.

Data from the 1993 Coastal Oil and Gas Questionnaire indicate that the predominant disposal method for produced sand is landfarming, with underground injection, landfilling, and onsite storage also taking place to some degree. Because of the cost of sand cleaning, in conjunction with the difficulties associated with cleaning some sand sufficiently to meet existing permit discharge limitations, operators use onshore (onsite or offsite) or downhole disposal. In fact, only one operator was identified in the 1993 Coastal Oil and Gas Questionnaire as discharging produced sand in the Gulf of Mexico, but this operator also stated that it planned to cease its discharge in the near future. All Cook Inlet operators submitted information stating that no produced sand discharges are occurring in this area.

4. Options Considered and Rationale for Options Selection

The only option considered is zero discharge of produced sands. Because current industrial practice for the coastal subcategory is predominately zero discharge, EPA considered this the appropriate option for this wastestream. The zero discharge requirement would eliminate the discharge of toxic pollutants present in produced sand. Because the industry practice of zero discharge is already so widespread, the zero discharge limitation will result in minimal increased cost to the industry

EPA is proposing to set BPT, BCT, BAT and NSPS equal to zero discharge for produced sand. EPA has determined that zero discharge reflects the BPT

BCT, BAT and NSPS levels of control because, as it is widely practiced throughout the industry, it is both economically achievable and technologically available. Zero discharge for NSPS would not cause a barrier to entry because, since it is equal to current practice, it will impose no cost. Zero discharge will have negligible economic impacts on the industry. As zero discharge reflects current practice, there are negligible incremental non-water quality environmental impacts from this option. Since proposed BCT would be set equal to the proposed BPT, there is no cost of BCT incremental to BPT. Therefore, this option passes the BCT cost reasonableness tests.

The technology basis for compliance with PSES and PSNS is the same as that for BAT and NSPS. EPA proposes pretreatment standards for produced sands equal to zero discharge because, like drilling fluids and cuttings, their high solids content would interfere with POTW operations. Because EPA is not aware of any produced sands being sent to POTWs, this requirement is not expected to result in operators incurring costs. Zero discharge for PSNS would not cause a barrier to entry for the same reasons as discussed above for NSPS. There are no additional non-water quality environmental impacts associated with this requirement because it reflects current practice.

D. Deck Drainage

1. Waste Characterization

Deck drainage consists of contaminated site and equipment runoff due to storm events and wastewater resulting from spills, drip pans, or washdown/cleaning operations, including washwater used to clean working areas. Deck drainage is generated during both the drilling and production phases of oil and gas operations. Currently, approximately 11.5 million bpy of deck drainage are discharged by facilities in the coastal subcategory. EPA estimates that 112,000 pounds of oil and grease are discharged in this wastestream annually. In addition to oil, various other chemicals used in drilling and production (actual hydrocarbon extraction) operations may be present in deck drainage. Limited treated effluent data are available for this wastestream, however, EPA has identified the presence of organic and metal priority pollutants in deck drainage. EPA's analytical data for deck drainage comes from the data acquired during the development of the Offshore Guidelines. EPA conducted a three facility sampling program (described in Section V of the Offshore Technical Development Document) during which samples were taken of untreated deck drainage. Eight of the toxic metals were detected, most notably lead (ranging in concentration from 25 - 352 ug/l) and zinc (ranging in concentration from 2970–6980 ug/l). Priority organics were also present including benzene, xylene, naphthalene and toluene. Other nonconventional pollutants found in deck drainage include aluminum, barium, iron, manganese, magnesium and titanium.

The content and concentrations of pollutants in deck drainage can also depend on chemicals used and stored at the oil and gas facility. An additional study on deck drainage from Cook Inlet platforms, reviewed during development of the Offshore Guidelines, showed that discharges from this wastestream may also include paraffins, sodium hydroxide, ethylene glycol, methanol and isopropyl alcohol. (Dalton, Dalton, and Newport, Assessment of Environmental Fate and Effects of Discharges from Oil and Gas Operations, March 1985.)

2. Selection of Pollutant Parameters

EPA has selected free oil as the pollutant parameter for control of deck drainage. The specific conventional, toxic and nonconventional pollutants found to be present in deck drainage are those primarily associated with oil, with the conventional pollutant oil and grease being the primary constituent. In addition, other chemicals used in the drilling and production activities and stored on the structures have the potential to be found in deck drainage. EPA believes that an oil and grease limitation together with incorporation of site specific Best Management Practices, as required under the stormwater program and as discussed below, will control the pollutants in this wastestream.

The specific conventional, toxic, and nonconventional pollutants controlled by the prohibition on the discharges of free oil are the conventional pollutant oil and grease and the constituents of oil that are toxic and nonconventional pollutants (see previous discussion in Section VI.B. describing the chemical constituents of oil). EPA has determined that it is not technically feasible to control these toxic pollutants specifically, and that the limitation on free oil in deck drainage reflects control of these toxic pollutants at the BAT and BADCT (NSPS) levels.

3. Control and Treatment Technologies

a. Current Practice.

BPT limitations for deck drainage prohibit the discharge of free oil. All equipment and deck space exposed to stormwater or washwater are surrounded with berms or collars. These berms capture the deck drainage where it flows through a drainage system leading to a sump tank. Initial oil/water separation takes place in the sump tank which is generally located beneath the deck floor or underground at land-based operations. Effluent from the sump tank may be directed to a skim pile, where additional oil/water separation occurs. (The skim pile is essentially a vertical bottomless pipe with internal baffles to collect the separated oil.)

The deck drainage treatment system is a gravity flow process, and the treatment tanks generally do not require a power source for operation. Thus, deck drainage generated at operations located in powerless, remote situations, (such as satellite wellheads) can be effectively treated.

The difficulties in obtaining a representative sample of deck drainage effluent (due to their submerged or underground location) preclude the use of the static sheen test for this wastestream. Thus, free oil is measured by the visual sheen test. Deck drainage treatment is discussed in more detail in the Coastal Technical Development Document.

b. Additional Technologies Considered.

EPA knows of no additional technologies for the treatment of deck drainage. However, EPA, as described in the proceeding section, has determined that deck drainage could in some circumstances be commingled with either produced water or drill fluids and thus, could become subject to the limitations imposed on these major wastestreams. EPA has also considered requiring best management practices (BMPs) on either a site-specific basis or as part of the Coastal Guidelines (See discussion under part 6.b. in this Section).

4. Options Considered

EPA has developed two options for the control of deck drainage. These are (1) establish limitations equal to BPT; or (2) establish limitations for the "first flush" of deck drainage equal to those for the major wastestreams it can be commingled with, and limitations equal to BPT after the first flush.

In addition to BPT technology described above, EPA examined additional treatment control options based on current industrial practices. The 1993 Coastal Oil and Gas Questionnaire as well as the industry site visits reveal that deck drainage is often commingled with produced waters prior to discharge or injection. Because

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of this practice, EPA investigated an option requiring capture of the "first flush", or most contaminated portion of, deck drainage. Depending on whether the deck drainage is generated from drilling or production (actual hydrocarbon extraction) operations, this first flush would be subject to the same limitations as would be imposed on either produced water or drilling fluids and cuttings based on the assumption that these two wastestreams could be commingled. Thus, for deck drainage during production, EPA considered as an option zero discharge for the first flush everywhere except in Cook Inlet, where oil and grease limitations would apply. Zero discharge would be required for the first flush captured at drilling operations everywhere. After capturing the first flush, BPT limitations would apply to any remaining deck drainage at either production or drilling operations. Capture of all of deck drainage to meet zero discharge requirements would be impractical due to relatively heavy precipitation that occurs in the Gulf areas.

EPA considered employing a 500 barrel tank to capture the first flush. A tank of this size would be installed at production facilities, and would provide enough storage capacity to capture most, if not all, of the rainfall generated during a 3.5 inch rainfall event at an average size facility. Tanks smaller than 500 bbls would not be large enough to effectively capture the first flush of contaminated drainage. Tanks larger than this would be too costly to install. A 3.5 inch, 24 hour rainfall event would generally only be exceeded once per year in southern Louisiana (the coastal area receiving the most rainfall), and at most, two to three times. After collection, the 500 barrels (or less depending on the size storm event) of deck drainage would be directed through the produced water treatment and would be subject to the same limitations as required for produced water.

For drilling operations, the first 500 barrels would be subject to zero discharge. The basis for this requirement would be that the deck drainage would be directed to on-site drilling waste collection vessels or levees where they would be sent off-site for commercial disposal.

After collection and treatment of the first 500 bbls of deck drainage, any remaining discharge would be subject to the BPT limitations on free oil as measured by the visual sheen test.

The first flush option for deck drainage is estimated to eliminate discharge of more than 9 million bpy of deck drainage (about 78 percent of the total currently discharged) resulting in the removal 82,000 pounds per year of oil and grease.

5. BCT Option Selection

EPA conducted the BCT cost test (described previously in Section VI) for the two deck drainage options. The first flush option did not pass the POTW cost test. The result of this test analysis ranged from $2.13 to $3.45 per pound, and to pass the test, this value must be less than $0.534 per pound.

Thus, EPA has selected BPT, or a limitation prohibiting the discharge of free oil as the BCT limit, for deck drainage. This is a no-cost option because it reflects current practice. It is cost reasonable under the BCT cost test because the POTW test result and the industry cost-effectiveness test results are both zero (and therefore pass their respective tests).

6. Rationale for Selection BAT, NSPS, PSES and PSNS

a. Cost.

No costs are incurred by compliance with the option to require BPT limits for deck drainage. Costs to comply with the first flush option for operations in the Gulf of Mexico would be approximately $13.5 million per year. This includes the costs for both production and drilling operations to comply with a zero discharge requirement for the first flush followed by BPT for any remaining discharge after that. Costs to comply with this option for the Cook Inlet would be approximately $699,000 per year. This includes the costs of treating the first flush of deck drainage with produced water to meet oil and grease limitations of 29 mg/l 30-day average, and 42 mg/l daily maximum, followed by BPT for any remaining discharge after that. Total costs for this option would be approximately $14.2 million per year.

b. Rationale for Selection of BAT and NSPS.

EPA has selected BPT as its preferred option for BAT and NSPS for deck drainage. Since free oil discharges are already prohibited under BPT, there are no incremental compliance costs, pollutant removals, or non-water quality environmental impacts associated with this control option. Since this preferred option limits free oil equal to existing BPT standards, it is technologically available and economically achievable.

EPA has rejected the first flush option for control of deck drainage for several reasons primarily relating to whether this option is technically available to operators throughout the coastal subcategory. Deck drainage is currently captured by drains and flows via gravity to separation tanks below the deck floor However, the problems associated with capture and treatment beyond gravity feed, power independent systems, are compounded by the possibilities of back-to-back storms which, may cause first flush overflows from an already full 500 bbl tank. In addition, tanks the size of 500 barrels are too large to be placed under deck floors. Installation of a 500 bbl tank would require construction of additional platform space, and the installation of large pumps capable of pumping sudden and sometimes large flows from a drainage collection system up into the tank. The additional deck space would add significantly, especially for water-based facilities, to the cost of this option. Further, many coastal facilities are unmanned and have no power source available to them. Deck drainage can be channelled and treated without power under the BPT limitations.

Capturing deck drainage at drilling operations poses additional technical difficulties. Drilling operations on land may involve an area of approximately 350 square feet. A ring levee is typically excavated around the entire perimeter of a drilling operation to contain contaminated runoff. This ring levee may have a volume of 6,000 bbls, sufficient to contain 500 bbls of the first flush. However, collection of these 500 bbls when 6,000 bbls may be present in the ring levee would not effectively capture the first flush. Costs to install a separate collection system including pumps and tanks, would add significantly to the cost of this option.

While costs are significant, the technological difficulties involved with adequately capturing deck drainage at coastal facilities is the principal reason why this option was not selected. EPA has selected the option requiring no discharge of free oil for BAT and NSPS control of deck drainage. EPA has determined that these limitations and standards properly reflect BAT and NSPS levels of control. EPA did not identify any other available technology for this waste stream. EPA solicits comments on the existence and practicality of treatment systems other than BPT.

EPA's proposed option does not include best management practices (BMPs) for this wastestream as part of these guidelines. EPA currently believes that current industry practices, in conjunction with the requirements as proposed in the proposed general stormwater rule (58 FR 61262-61268, November 19, 1993), would be sufficient to minimize the introduction of contaminants to this wastestream to the extent possible. These stormwater

requirements, if promulgated as proposed, would require an oil and gas operator to develop and implement a site-specific storm water pollution prevention plan consisting of a set of BMP's depending on specific sources of pollutants at each site. As noted in the stormwater proposal, the two types of BMP's most effective in reducing storm water contamination are to minimize exposure (e.g., covering, curbing, or diking) and treatment type BMP's which are used to reduce or remove pollutants in storm water discharges (e.g., oil/water separators, sediment basins, or detention ponds).

EPA solicits comment as to whether BMPs should be required for deck drainage as part of the Coastal Guidelines. Such BMPs may include (1) segregation of deck drainage from oil leaks from pump bearings and seals by using drip pans and other collection devices, (2) segregation of contaminated process area deck drainage and runoff from relatively uncontaminated runoff from areas such as living quarters, and walkways, (3) installation of roofs and sheds to divert uncontaminated rainfall from areas with a high potential for generating contaminated runoff, (4) careful handling of drilling fluid materials and treatment chemicals to prevent spills, (5) use of local containment devises such as liners, dikes and drip pans where chemicals are being unpackaged and where wastes are being stored and transferred

7. PSES and PSNS

EPA is proposing to limit PSES and PSNS for deck drainage as zero discharge. EPA believes that zero discharge for PSES and PSNS is preferable to establishing a limit equal to BPT because generally slugs of deck drainage would interfere with biological treatment processes at POTW's. This is discussed further in the Coastal Technical Development Document. In addition, EPA did not have sufficient data to conduct a pass through analysis of the pollutants found in deck drainage for the reasons discussed further in the Coastal Technical Development Document. EPA solicits comments and data on this issue. Moreover, technical difficulties associated with capture of deck drainage that make it difficult to require limitations other than the BPT, no free oil limit makes it unlikely that this wastestream would be sent to POTW's. EPA solicits comment on whether it would be possible for collection of deck drainage and transmission to a POTW to occur.

E. Treatment, Workover, and Completion Fluids

1. Waste Characterization

Well treatment, workover, and completion fluids are primarily generated during production. Well treatment and workover fluids are inserted downhole in a producing well to increase a well's productivity or to allow safe maintenance of the well. Completion fluids are also inserted downhole after a well has been drilled, and serve to clean the wellbore, and maintain pressure prior to production. In most operations, these fluids resurface once production is initiated and can either be reused, or must be disposed of.

According to results obtained in the 1993 Coastal Oil and Gas Questionnaire, EPA estimates that approximately 275,000 bbls (205,000 and 70,000 bpy of treatment/workover and completion fluids respectively) or these fluids are discharged annually from coastal oil and gas operations in Texas and Louisiana. This amounts to an average of 587 bbls of treatment and workover fluids discharged per year, per well, from approximately 350 wells. For completion fluids, this amounts to an average of 209 bbls discharged per year per well from 334 wells. The 1993 Questionnaire also provides information showing that treatment, workover and completion fluids discharged are commingled with the produced water in Texas and Louisiana prior to injection or discharge. Florida, Alabama and North Slope coastal oil and gas operators do not discharge these fluids.

Based on the 1993 Coastal Oil and Gas Questionnaire and EPA's Region X Discharge Monitoring Reports (described in Section V) all Cook Inlet operators commingle these fluids with produced water for treatment prior to discharge.

The composition of the discharges is highly dependent on the fluid's purpose, but they generally consist of acids (in the case of treatment) or weighted brines (for workover of completion). The principal pollutant in these fluids is oil and grease ranging in concentration from 15–722mg/l. Total suspended solids, another major constituent in these fluids, is present in concentrations ranging from 65 to 1600 mg/l. Prominent priority metals that exist in these wastes include chromium, copper, lead, and zinc. Priority organics are also present including acetone, benzene, ethylbenzene, xylene, toluene, and naphthalene.

EPA estimates that, approximately 22,000 pounds of oil and grease, 50,000 pounds of TSS, 292 pounds of toxic metals, and 417 lbs of toxic organics are being discharged annually in the Gulf of Mexico. In addition, approximately 3.4 million pounds of nonconventionals are being discharged including boron, calcium, cobalt, iron, manganese, molybdenum, tin, vanadium, and yttrium.

2. Selection of Pollutant Parameters

Where zero discharge would be required, EPA would be regulating all conventional, toxic, and non-conventional pollutants found in well treatment, completion and workover fluids.

In Cook Inlet, where discharge would be allowed under Option 2, the parameter "oil and grease" would be regulated as an indicator for toxic pollutants. EPA has data indicating that the control of oil and grease will control certain toxic pollutants (including phenol, naphthalene, ethylbenzene, toluene and zinc) as discussed in the Offshore Technical Development Document. As presented in Section VI of the Offshore Technical Development Document when discussing the prohibitions on the discharge of free oil, removal of oil from the discharge effectively removes certain toxic pollutants. Free oil is considered to be "indicator" for the control of specific toxic pollutants present in complex hydrocarbon mixtures. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol.

Under EPA's proposed BCT limits, applicable to conventional pollutants, EPA would prohibit the discharge of "free oil," as determined by the static sheen test. EPA would prohibit discharge of "free oil" as a surrogate for control over the conventional pollutant "oil and grease" in recognition of the complex nature of the oils present in drilling fluids, including crude oil from the formation being drilled.

As will also be discussed below, EPA has determined that it is not feasible to regulate separately each of the constituents in these fluids because these fluids in most instances become part of the produced water wastestream and take on the same characteristics as produced water. Due to the variation of types of fluids used, the volumes and their correspondingly variable constituent concentrations, EPA believes it is impractical to measure and control each individual parameter.

While the oil and grease and, in certain instances, the no free oil limitations limit the discharges of toxic and conventional pollutants found in well treatment, completion and workover fluids, certain other pollutants

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are not controlled. EPA proposes to exercise its discretion not to regulate these pollutants because EPA has not detected them in more than a very few of the samples within the subcategory and the pollutants when found are present in trace amounts not likely to cause toxic effects. This is consistent with EPA's findings in the Offshore Guidelines. (See EPA's data base for these fluids in the Coastal Technical Development Document).

3. Control and Treatment Technologies

Current practice in the control of discharges from these fluids is to meet the BPT limitations of no free oil (using the visual sheen test). EPA's final general permit applicable to the discharges from coastal oil and gas drilling operations in Texas and Louisiana further prohibits discharges of treatment, workover and completion fluids to freshwater areas. Methods for treatment and discharge, reuse or disposal include:

* Treatment and disposal along with the produced water
* Neutralization for pH control and discharge to surface waters
* Reuse
* Onshore disposal and/or treatment and discharge in coastal or offshore areas.

4. Options Considered

EPA has considered two options for the treatment of treatment, workover, and completion fluids. These are (1) Prohibit the discharges of free oil (equal to the BPT limits) and prohibit the discharges of these fluids to freshwaters of Texas and Louisiana, (2) Limit the discharges equal to EPA's preferred options for produced waters. For produced water BAT limits, EPA is proposing zero discharge everywhere except Cook Inlet, where the proposed produced water control option is to meet limitations on oil and grease of 42 mg/l daily maximum and 29 mg/l 30-day average. For NSPS, PSES, and PSNS, EPA is proposing zero discharge everywhere for produced water.

There are no additional costs to comply with Option 1 because it reflects the current requirements imposed on the industry.

Option 2 would require for BAT, that zero discharge be met for treatment, completion, and workover fluids for all areas except the Cook Inlet, where operators are currently commingling these wastes with produced water, and would be required to meet oil and grease limitations of 29 mg/l 30-day average and 42 mg/l daily maximum. This would annually remove 72,000 pounds of conventionals, 709 pounds of priority toxic pollutants and an additional 3.4 million pounds of nonconventional pollutants. For NSPS, EPA would require zero discharge everywhere, including Cook Inlet. This would remove annually 9,400 pounds of conventionals, 92 pounds of priority toxic pollutants and an additional 440,000 pounds of nonconventional pollutants. EPA is not applying a separate cost in Cook Inlet to comply with this option because these costs are already included in the costs of complying with the produced water option for Cook Inlet (oil and grease limits of 29 mg/l 30-day average/42 mg/l daily maximum).

However, for the Gulf, costs attributed to this option would be operating and maintenance costs associated with commingling with produced water and on-site injection, or hauling off-site to a commercial disposal facility if commingling is not possible. In costing this option for the Gulf, EPA estimated that 77 percent of treatment, workover and completion fluids currently being discharged would be commingled with produced water. This estimate comes from information indicating that 77 percent of produced water discharges are flows greater than 110 bpd (See Section VI) and would be disposed of by onsite injection because flows greater than 110 bpd will be large enough to accommodate the introduction of treatment, workover and completion fluids without fouling the produced water treatment system. The other 23 percent are less than 110 bpd and therefore it would be more cost effective to send the produced waters off-site for disposal rather than install an injection well. (See the Coastal Technical Development Document, Section XII).

Based on these estimates, EPA calculated the costs of compliance with Option 2. These costs included operating and maintenance costs on a dollar per bbl basis for on-site commingling and injection with produced water, and costs of transportation and disposal for commercial disposal. The BAT limits would cost approximately $610,000 annually in the Gulf.

Costs for NSPS requiring zero discharge for treatment, workover and completion fluids were calculated based on EPA's estimate that 187 new wells will be drilled per year in the Gulf Coast (this estimate was obtained from the 1993 Coastal Oil and Gas Questionnaire results). Of these 187, EPA estimated that 76 percent (142 facilities) would be located in Louisiana freshwaters and would not discharge due to state water quality standards (this estimate is also based on the Questionnaire results). The remaining 45 facilities would each generate approximately 800 bbls of treatment, workover and completion fluids per year. Costs to meet zero discharge, based on commingling these fluids with produced water or directing them separately to commercial disposal facilities, are estimated to be approximately $520,000 per year over the next 15 years. These costs are only for the Gulf coast operations. No new sources are expected to be installed in Cook Inlet.

5. Rationale for Selection of Proposed Regulations

a. BCT, BAT, and NSPS.

EPA is proposing to establish BCT limitations equal to BPT, prohibiting the discharge of free oil in well treatment, workover, and completion fluids. Compliance with this limitation would be determined by the static sheen test. Since BPT reflects current practice, this proposed BCT limitation is cost reasonable under the BCT cost test. Based on the available data regarding the levels of conventional pollutants present in these wastes, EPA did not identify any other options which would pass the BCT cost test other than establishing BCT equal to the existing BPT limits. Additional information regarding the results of the BCT cost test for these wastes is presented in the Coastal Technical Development Document. There are no costs or non-water quality environmental impacts associated with this proposed BCT limitation and, since it is equal to BPT, it is technologically available and economically achievable.

EPA is co-proposing both options considered for well treatment, workover, and completion fluids for BAT and NSPS. EPA has determined that both options are technologically and economically achievable and have acceptable non-water quality impacts.

However, due to the high cost effectiveness results for Option 2 (requiring the same limitations as proposed for produced water) a preferred option has not been selected. EPA solicits comment on the appropriateness of either option. Option 1, which would prohibit the discharge of free oil and prohibit the discharge of treatment, workover and completion of fluids to freshwaters of Texas and Louisiana, reflects current regulatory requirements and thus will incur no additional compliance costs, economic or non-water quality environmental impacts. This option would result in no incremental removal of pollutants from this wastestream beyond the existing BPT requirements.

Option 2 would require for BAT zero discharge of treatment, completion, and workover fluids except for Cook Inlet, where EPA would establish oil and grease limitations of 29 mg/l 30-day average, 42 mg/l daily maximum. For NSPS, this option would require zero discharge of all treatment, completion, and workover fluids from all new sources.

Zero discharge is being achieved by many operators (except those in Texas, saline waters of Louisiana, and Cook Inlet) for the treatment, workover, and completion fluids wastestream. The technology basis for zero discharge is commingling this wastestream with produced water or sending it separately to off-site commercial disposal facilities. For Cook Inlet, this option, which also contains allowable discharge limitations is based on commingling with produced water, because commingling of these wastestreams is currently occurring in this area. The specific oil and grease limits proposed are technologically available for the same reasons they are available for control of produced water, as discussed above.

The zero discharge limitation would eliminate all discharges of toxic, conventional, and nonconventional pollutants. The oil and grease limits would be technologically based on improved gas flotation performance (See Section VI.B. of this preamble) and serve to limit the discharge of toxic and conventional pollutants to surface waters.

Zero discharge for treatment, workover and completion fluids in Cook Inlet was not selected for this BAT option because these fluids are commingled with produced water as an integral part of their operations, and because zero discharge for produced water was determined to be uneconomical for Cook Inlet operators.

The costs to meet Option 2 for BAT ($610,000) are relatively minimal since this amount is negligible in comparison to total annual production revenue from Gulf coastal operations.

Costs to achieve zero discharge everywhere for Option 2 NSPS are expected to be negligible. Out of the 187 new wells that will be drilled in the Gulf Coast, 76 percent will not discharge these fluids in freshwaters because of water quality standards requirements. The remaining 45 facilities will each generate approximately 800 bbls of treatment, workover and completion fluids per year (estimates of volumes from the 1993 Coastal Oil and Gas Questionnaire). While some of these fluids may be directed for treatment and disposal to existing production facilities, EPA is conservatively estimating costs of the Option 2 NSPS assuming all of these fluids would be directed to new production facilities for treatment and disposal (or be treated on-site at the new source). For the Gulf, the NSPS requirements under this Option 2 would be the same as those for BAT, thus costs would either be equal to BAT, or less than BAT since new sources can more efficiently design their facilities to comply with zero discharge. Costs for new sources in the Gulf generating treatment, workover and completion fluids to meet zero discharge would be approximately $520,000 per year which is negligible in relation to annual production revenue from Gulf coastal operators.

For Cook Inlet, costs to meet Option 2 requirements for treatment, workover and completion fluids are included in the cost analysis for produced water because current practice there is commingling of these wastestreams (See Section VI.E.). While EPA does not anticipate any new sources to be constructed in Cook Inlet, and therefore has not attributed any costs to NSPS, the NSPS would not cause a significant barrier to entry. These impacts are only a small incremental increase over the impacts resulting from the controls on produced water and drilling fluids and cuttings. Finally the non-water quality environmental impacts of this Option 2 are believed to be acceptable, because like their volumes, they are relatively small (See Section VIII of this preamble) as discussed below.

Option 2 would result in the removal of 3.9 million pounds of conventional, toxic and non-conventional pollutants annually (a total of 2140 in toxic pound equivalents). However the amount of toxic priority pollutants removed is approximately 0.02 percent of this total. The annual compliance costs of $1.1 million (for BAT and NSPS combined) to remove 800 pounds of priority toxic pollutants indicates that this option is not cost effective. (See also EPA's cost effectiveness analyses entitled Cost Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Coastal Oil and Gas Industry found in the rulemaking record for this proposal).

EPA is soliciting comments on whether the volumes of treatment, workover and completion fluids removed by these options are deminimus, and on the applicability, achievability and practicality of both Options 1 and 2.

b. PSES and PSNS.

Pretreatment standards for treatment workover and completion fluids are being proposed equal to zero discharge. This is because their chemical composition, like produced water, tends to be high in total dissolved solids which may interfere with POTW operations. EPA did not have sufficient data, however, to conduct a pass-through analysis for the pollutants contained in this wastestream. Both interference and pass-through are discussed further in the Coastal Technical Development Document. EPA solicits comments on these issues. Zero discharge for NSPS would not pose barrier to entry for the same reason as discussed under NSPS for this wastestream.

EPA solicits comments on both the occurrence of treatment, workover and completion fluid discharges into POTW's and the appropriateness of pretreatment standards requiring zero discharge for this wastestream.

F. Domestic Wastes

Domestic wastes result from laundries, galleys, showers, etc. Detergents are often part of this wastestream. Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities.

The conventional pollutant of concern in domestic waste is floating solids. The BPT limitations for deck drainage are no discharge of floating solids. To comply with this limit, domestic waste is ground up so as not to cause floating solids on discharge. EPA is proposing to limit floating solids as well for BCT and NSPS. In addition, EPA is proposing to prohibit discharges of foam for BAT and NSPS. Foam is a nonconventional pollutant and its limitation is intended to control discharges that include detergents.

EPA is also proposing to limit discharges of garbage as included in U.S. Coast Guard regulations at 33 CFR Part 151. These Coast Guard regulations implement Annex V of the Convention to Prevent Pollution from Ships (MARPOL) and the Act to Prevent Pollution from Ships, 33, U.S.C. 1901 et seq. (The definition of "garbage" is included in 33 CFR 151.05).

The pollutant limitations described above for domestic wastes are all technologically available and economically achievable and reflect the BCT, BAT and NSPS levels of control. Under the Coast Guard regulations, discharges of garbage, including plastics, from vessels and fixed and floating platforms engaged in the exploration, exploitation and associated offshore processing of seabed mineral resources are prohibited with one exception. Victual waste (not including plastics) may be discharged from fixed

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or floating platforms located beyond 12 nautical miles from nearest land, if such waste is passed through a screen with openings no greater than 25 millimeters (approximately one inch) in diameter. Because vessels and fixed and floating platforms must comply with these limits, EPA believes that all coastal facilities are able to comply with this limit. While not all coastal facilities are located on platforms, compliance with a no garbage standard should be as achievable, if not more so for shallow water or land based facilities that have access to garbage collection services. Further, the final drilling permit promulgated by Region VI for coastal Texas and Louisiana incorporates these Coast Guard regulations.

Since these BCT, BAT and NSPS limitations for domestic waste are already in either existing NPDES permits or Coast Guard regulations, these limitations will not result in any additional compliance cost, and thus these limits are economically achievable. Also, these limits and standards will have no additional non-water quality environmental impacts. There are no incremental costs associated with the BCT limitations; therefore, it is considered to pass the two part BCT cost reasonableness test.

No discharge of visible foam is required by Region X's NPDES permit for Cook Inlet drilling. No discharge of floating solids is included in the Region X's BPT Cook Inlet general permit, the Region X's drilling permit and Region IV's general permit for coastal operators.

Pretreatment standards are not being developed for domestic wastes because they are compatible with POTWs.

G. Sanitary Wastes

Sanitary wastes from coastal oil and gas facilities are comprised of human body wastes from toilets and urinals. The volume of these wastes vary widely with time, occupancy, and site characteristics. A larger facility, such as an offshore platform, typically discharges about 35 gallons of sanitary waste daily. Sanitary discharges from coastal facilities would be expected to be less than this value since the manning levels at most coastal facilities is less than that at offshore locations.

Existing BPT limitations for facilities continuously manned by 10 or more people requires sanitary effluent to have a minimum residual chlorine content of 1 mg/l, with the chlorine concentration to remain as close to this level as possible. Facilities intermittently manned or continuously manned by fewer than 10 people must comply with a BPT prohibition on the discharge of floating solids. EPA's Regions VI and IV NPDES general permits for coastal facilities also impose limits on the discharge of TSS, fecal coliform count, BOD and floating solids. EPA's Region X general NPDES permit for Cook Inlet also requires limitations for these same parameters in addition to requirements for foam and free oil.

EPA considered zero discharge of sanitary wastes based on off-site disposal to municipal treatment facilities or injection with other oil and gas wastes. Off-site disposal would require pump out operations, that while available to certain land facilities, are not available to remote or water-based operations. Because sanitary wastes are not exclusively associated with oil and gas operations, which are routinely injected in Class II wells, zero discharge based on Class II injection was not considered for sanitary wastes. EPA solicits comments on the selected option for sanitary wastes regarding the pollutant regulated, the limitation itself, and other possible disposal options, including marine sanitation devices that are designed to prevent discharge (Type III, 33 CFR 159.3(s)).

EPA is proposing to limit sanitary waste discharges for BCT and NSPS equal to BPT limitations. Sanitary waste effluents from facilities continuously manned by ten (10) or more persons must contain a minimum residual chlorine content of 1 mg/l, with the chlorine level maintained as close to this concentration as possible. Coastal facilities continuously manned by nine or fewer persons or only intermittently manned by any number of persons must comply with a prohibition on the discharge of floating solids.

Since there are no increased control requirements beyond those already required by BPT effluent guidelines, there are no incremental compliance costs or non-water quality environmental impacts associated with BCT and NSPS limitations for sanitary wastes. Since these limitations are equal to BPT, they are available and economically achievable. In addition, the BCT limitation is also considered to be cost reasonable under the BCT cost test. Since the POTW test result and the industry cost-effectiveness test results are both zero (and therefore pass their respective tests), the limitation is cost reasonable.

EPA is not establishing BAT effluent limitations for the sanitary waste stream because no toxic or nonconventional pollutants of concern have been identified in these wastes.

Pretreatment standards are not being developed for sanitary wastes because they are compatible with POTWs.

VII. Economic Analysis

A. Introduction

EPA's economic impact assessment is presented in the Economic Impact Analysis of Proposed Effluent Limitations and Guidelines, and Standards for the Coastal Oil and Gas Industry (hereinafter, "EIA"). This report details the investment and annualized costs of compliance with the rule for the industry as a whole and the impacts of the compliance costs on affected wells, platforms, and operators in the coastal oil and gas industry, both existing and future. The report also estimates the economic effect of compliance costs on Federal and State revenues, balance of trade considerations, and inflation.

EPA also has conducted an analysis o the cost-effectiveness of alternative treatment options. The results of the cost-effectiveness analysis are expressed in terms of the incremental costs per pound-equivalent removed. Pound-equivalents account for the differences in toxicity among the pollutants removed. Total pound-equivalents are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor. The toxic weighting factor is derived using ambient water quality criteria and toxicity values. The toxic weighting factors are then standardized by relating them to a particular pollutant, in this case copper.

Cost-effectiveness is calculated as the ratio of incremental annualized costs of an option to the incremental pound-equivalents removed by that option. This analysis, Cost-Effectiveness Analysis of Effluent Limitations Guidelines and Standards for the Coastal Oil and Gas Industry (hereinafter, the "CE Report"), is included in the record of this rulemaking. Since the discharges are primarily to a marine or brackish environment, salt-water toxic weighting factors (which typically are lower than freshwater toxic weighting factors, thus they generate lower pound-equivalents overall) were used wherever they were available.

Cost-effectiveness is a measure of costs and relative economic efficiency of the technology options being considered to remove toxic pollutants. EPA includes direct compliance costs, such as capital expenditures, operations and maintenance costs and in some cases monitoring costs (*i.e.*, direct compliance costs), when estimating cost-effectiveness. EPA has not included in previous effluent guidelines and standards costs associated with the economic impact of the technology

options in the costs used in the cost-effectiveness analysis. Consistent with this, for this effluent guidelines, EPA has included capital expenditures and operation and maintenance, but not the cost of the lost oil/gas production in its analysis of the incremental cost-effectiveness of different technology options. EPA does consider the lost production as an economic impact on this industry, and has included lost production in its economic impact analysis. During the interagency review a question was raised whether EPA should treat the lost oil/gas production as a compliance cost to the facility. EPA solicits comments on: (1) Whether the possibly permanent loss in oil/gas production associated with premature closing of these wells may be different from lower production of manufacturing goods that occurs in any production period as a result of higher production costs, and (2) whether or not the lost production of oil/gas should be considered when determining the cost-effectiveness on the technology options for this industry.

B. Economic Methodology

The EIA provides the results of a number of measures of economic impact resulting from the proposed Coastal Guidelines. These measures include production losses (measured in terms of total lifetime production lost, losses in net present value (NPV)[2] of production, and years of production lost), impacts on federal and state revenues; impacts on firms; impacts on employment; impacts on inflation and balance of trade; impacts on small businesses; and impacts on new sources in terms of barriers to entry. All impacts measured in this EIA do not take into account the requirements of the EPA Region VI General Permits for the Coastal Oil and Gas Industry covering disposal of produced water.

These impacts are also based on the assumption that oil prices will remain, in real terms, approximately $18 per barrel over the timeframe of the analysis. This assumption is substantiated, at least for this decade, by recent industry forecasts. Note that if the price of oil changes significantly, impacts could also change.

1. Gulf of Mexico

EPA used the 1993 Coastal Oil and Gas Questionnaire authorized under section 308 of the CWA to obtain the information necessary to model impacts at wells determined to be currently discharging and which were determined to be continuing to discharge at least through the third quarter of 1996. Incremental compliance costs specific to these wells or the produced water separation and treatment facilities associated with these wells (prorated on a cost per barrel basis to make them well-specific) were used to derive the incremental costs to the affected wells. By Gulf of Mexico, the EIA does not generally include Gulf coastal facilities in Alabama and Florida, since coastal operators in these states are already required to meet zero discharge, and thus, these facilities would not incur additional costs from this rule.

A financial model showing cash flow over a maximum 30-year time frame (or less if a well's flow becomes negative before 30 years) was developed and adapted to each well using well-specific data in the Questionnaire. Costs included in the models include those associated with current production costs and revenues, which were extrapolated over the lifetime of the project to establish baseline lifetime production. Other baseline summary statistics included years of economic lifetime, corporate cost per barrel of oil equivalent (BOE), and net present value of lifetime production. Then, capital and annual operating and maintenance (O&M) costs associated with various regulatory options were added to the baseline costs. The model recalculates the economic lifetime of the wells, annualizes the regulatory costs over the new project lifetime, and recalculates production and financial summary statistics. Well impacts were evaluated by determining the change from the baseline values caused by the increased regulatory costs. Production losses are measured as reductions in hydrocarbon extraction resulting from immediate closure of existing wells and curtailed lifetimes. These were based on the decrease in production and decrease in net present values for the wells induced by the regulatory costs. That is, if a well became unprofitable with the additional costs, it was assumed to shut in, either in the first year or earlier than it might have under baseline assumptions.

To provide more accuracy in estimating the total annual costs to the Gulf of Mexico (GOM) coastal oil and gas industry, these costs were derived using state permit data on discharging facilities and compliance cost estimates developed on a per-facility basis. Thus costs were not based on extrapolations from survey data. These costs are pre-tax (although the financial models account for impacts based on the appropriate post-tax costs). EPA re-emphasizes that this analysis assumes that the Region VI permit for produced water is not part of the baseline scenario.

EPA also analyzed secondary impacts of the regulation. These include: revenue losses to the federal government due to tax shields on expenditures and loss of taxable revenues, revenue losses to State governments through lower severance tax payments and royalties, changes in the balance of trade and inflation, employment losses (both primary and secondary) based on production losses and firm failures, and employment gains (involved with manufacturing, installing, and operating pollution control equipment). Impacts on new sources also are investigated and a regulatory flexibility analysis is performed.

2. Cook Inlet

The same type of financial model used in the Gulf of Mexico portion of the analysis was adapted to model 14 platforms (one currently shut in but with potential for future production) in the Cook Inlet. The same types of impacts from a variety of regulatory options for this region also were estimated. One difference between the Cook Inlet model and the Gulf model is that the Cook Inlet model operates at the platform level instead of the well level. Impacts are evaluated for platforms, whose production rates change with the addition of new and recompleted wells.

C. Summary of Costs and Economic Impacts

1. Overview of Economic Analysis

The economic analysis has five major components: (1) An estimate of the number of existing wells (Gulf of Mexico) and platforms (Cook Inlet) and projected wells/platforms that incur costs under this rule; (2) an estimate of the annual aggregate (pre-tax) cost of complying with the regulation using capital and O&M costs per Cook Inlet platform or Gulf of Mexico treatment facility as estimated in the Development Document; (3) use of an economic model to evaluate per-well/platform impacts on production and economic life; (4) an evaluation of impacts on firms, future oil and gas production, Federal and State revenues, balance of trade, employment and other secondary effects; and (5) the performance of a regulatory flexibility analysis as required under the Regulatory Flexibility Act to determine whether impacts on small firms are disproportionate to those on large firms.

[2] Net present value is the total stream of production revenues minus costs over a period of years discounted back to present value, under the assumption that a future dollar is worth less than a dollar now.

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The base year for the economic analysis is 1992, so all costs are reported in 1992 dollars. This is the year for which data were gathered in the 1993 Coastal Oil and Gas Questionnaire and was the most recent year for which a complete set of cost, revenue, and production data were available. Any costs not originally in 1992 dollars were inflated or deflated using the Engineering News Record Construction Cost Index, unless otherwise noted in the EIA (see EIA for details).

The industry profile used in this analysis is presented in Section IV. EPA estimates that there are 4,675 existing wells in the Gulf of Mexico Coastal Region, of which 1,588 are estimated to still be discharging produced water in 1996, according to estimates based on Questionnaire 308 survey results. By Gulf of Mexico, EPA has not included Alabama or Florida since these facilities are currently meeting zero discharge. As noted above, this costing approach is conservative because independent of this rule, an additional 28 production facilities (with an estimated 213 wells) in coastal Louisiana will be required by Louisiana state water quality standards to achieve zero discharge by January 1997. Six new production facilities are expected to be built each year in the Gulf region. The costs for these new projects are assigned as NSPS compliance costs. In Cook Inlet, no new facilities are anticipated, thus no NSPS costs are calculated for purposes of estimating the total costs of the rule. EPA has, however, analyzed whether the NSPS requirements for Cook Inlet would create a barrier to entry for any new sources that might begin to operate in Cook Inlet.

EPA examined the effect of BPT, BCT, BAT, and NSPS regulatory options. BPT options have no costs or impacts and are discussed no further here. BCT options were examined using BCT cost tests (see Section VI). BAT and NSPS economic impacts are discussed in this section. The following wastestreams are regulated by this rule: produced water; drilling wastes; well treatment, workover, and completion fluids; produced sand; deck drainage; sanitary wastes; and domestic wastes. For sanitary and domestic wastes, the BAT and NSPS options proposed are current permit conditions, thus no costs or impacts are incurred as a result of BAT or NSPS requirements for these wastestreams. For deck drainage, the limits are based on BPT, thus costs and impacts of BAT or NSPS requirements are zero. For produced sand, current practice is zero discharge, and zero discharge is the only option considered for BPT, BAT or NSPS. Thus, no costs or impacts are expected to result from BAT or NSPS requirements for produced sand. Therefore, the remainder of this section discusses the costs and impacts of BAT and NSPS options only for produced water; drilling waste; and treatment, workover, and completion fluids.

In all, there are 10 BAT regulatory options: 5 for produced water, 3 for drilling wastes, and 2 for treatment, workover, and completion fluids. These options are described in Section VI. The economic impacts from these options are assessed individually in this Section. Selected NSPS options are also discussed in these sections.

2. Total Costs and Impacts of the Regulations

This section presents the costs and impacts of the selected BAT and NSPS regulatory options. The total annual costs of the BAT and NSPS regulatory alternatives are presented in Table 6. Note that the costs and impacts of this rule would be substantially reduced if the effects of the recently finalized EPA Region VI General Permit were to be incorporated in this rule. The preferred BAT regulatory option for produced water is Option 4, zero discharge everywhere except in Cook Inlet where discharges are allowed provided oil and grease limitations, based on improved gas flotations, are met.

TABLE 6.—TOTAL COSTS OF BAT AND NSPS OPTIONS (1992$)

Wastestream[1]	Annual compliance costs ($ million/yr)				
	BAT			NSPS	
Produced water	30.86			4.48	
	Co-proposal			[2] 0	
Drilling fluids and cuttings	Opt 1	Opt 2	Opt 3		
	0	1.4	3.89		
	Co-proposal			Co-proposal	
	Opt 1	Opt 2		Opt 1	Opt 2
Treatment, workover, and completion fluids	0	0.61		0	0.52
Total	30.86–35.36			4.48–5.00	

[1] EPA selected no-cost options for all other wastestreams.
[2] No new sources expected in Cook Inlet.

The three options considered for drilling fluids and cuttings BAT and NSPS contain zero discharge for all areas, except two of the BAT options contain allowable discharges for Cook Inlet. One of these options which would allow discharges meeting a more stringent toxicity limitation if selected for the final rule, would require an additional notice for public comment since the specific toxicity limitation has not been determined at this time. The three options are: Option 1—zero discharge for all areas except Cook Inlet where discharge limitations require toxicity of no less than 30,000 ppm (SPP), no discharge of free oil and diesel oil and no more than 1 mg/l mercury and 3 mg/l cadmium in the stock barite, Option 2—zero discharge for all areas except for Cook Inlet where discharge limitations would be the same as Option 1, except toxicity would be set to meet a limitation between 100,000 pm (SPP) and 1 million ppm (SPP), and Option 3—zero discharge for all areas. EPA is co-proposing two options for BAT and NSPS for treatment, workover and completion fluids. Option 1 would require no discharge of free oil and

NSPS for treatment, workover and completion fluids. Option 1 would require no discharge of free oil and prohibit discharges to freshwaters of Texas and Louisiana. This option reflects current practice. Option 2 would require the same limitations as the preferred option for produced water. This option would require for BAT that, discharges of treatment, workover and completion fluids would be prohibited in all coastal areas except Cook Inlet. In Cook Inlet, these discharges would be required to meet a daily maximum oil and grease limitation of 42 mg/l and a 30 day average of 29 mg/l. Option 2 would require zero discharged of these fluids everywhere for NSPS.

The total cost of compliance with these selected BAT options is $30.9 million to $35.4 million per year in 1992$'s (or $33.5 million to $38.4 million in 1994$'s). Additionally, compliance with the BAT options would result in up to approximately $9.5 million in lost oil and gas revenues, taxes and royalties annually.[3]

NSPS requirements for produced water is zero discharge (only the Gulf is expected to have new sources). The options being co-proposed for NSPS for drilling fluids and cuttings and treatment, workover and completion fluids are the same as those considered for BAT. Total compliance cost of NSPS for this proposal ranges from $4.48 to approximately $5 million annually in 1992 $'s (or $4.9 to $5.4 million annually in 1994 $'s). Additionally, compliance with the selected NSPS options could also result in roughly $1 to 2 million in lost oil and gas revenues, royalties and taxes annually. Costs of NSPS for produced water are associated only with six new source production facilities per year projected in the Gulf region. No new sources are projected in Cook Inlet. For the six new production facilities constructed per year in the Gulf, costs of the produced water NSPS are estimated to be approximately $4.48 million per year or $38.4 million (present value) over a 15-year time frame.

Costs of NSPS for well treatment, workover and completion fluids are based on EPA projections that 45 new source wells would be discharging these fluids (without this rule) in the Gulf region. No new sources are projected in Cook Inlet. For the 45 new source wells in the Gulf region costs of the NSPS options for well treatment, workover and completion fluids are estimated to range from $0.00 to approximately $0.52 million per year or $0.00 to $4.4 million (present value) over a 15-year time frame.

Because current practice for control of drilling fluids and drill cuttings in the Gulf region is zero discharge and no new sources are projected in Cook Inlet, no additional costs will be incurred due to NSPS for drilling fluids and drill cuttings.

Total compliance cost of all BAT and NSPS requirements ranges from $35.34 million to $40.36 million per year in 1992 $'s (or $38.3 million to $43.8 million annually in 1994 $'s). These compliance costs will also result in up to $11.5 million in lost oil and gas revenues, royalties and taxes annually. Note that these costs are a small percentage of coastal revenues and operating costs (the direct costs of operating the business, i.e., not including general and administrative costs, depletion, depreciation, taxes, interest, etc.). Total revenues stemming from coastal operations among coastal firms (Texas, Louisiana, and Cook Inlet, Alaska, only) are estimated to be $6.1 billion per year. Thus the total annual cost of the proposed Coastal Guidelines is estimated to be at most 0.7 percent of annual coastal revenues. The total coastal operating costs among coastal firms is estimated to be $1.2 billion per year, thus annual compliance costs of this proposed rule are estimated to be up to 3.3 percent of total annual operating costs.

BAT production losses under the selected options are expected to total at most 40.2 million barrels of oil equivalent (BOE) over the lifetime of the wells and platforms as a result of the regulatory options (average postcompliance lifetime is 10 years in both the Gulf and Cook Inlet). In Cook Inlet, the production loss over the expected productive lifetime of the platforms is expected to be up to 12.4 million total BOE, which is 3.1 percent of the estimated lifetime production for the region. In the Gulf, the lifetime production loss is expected to be up to 27.9 million total BOE, which is 0.9 percent of a high estimate of lifetime production and 1.7 percent of a low estimate of lifetime production in the Gulf. For the two regions combined, the maximum 40.2 million BOE loss (or 17.9 million BOE in present value) in production is 1.1 percent to 2.0 percent of total lifetime production. These losses are associated with declines in the net present value of producer income totalling up to $144.5 million in the Gulf and $15.9 million in Cook Inlet for a total of $160.4 million or 0.7 to 1.5 percent of total net present value of baseline producer income in the two regions.[4] These losses result from both immediate shut in of wells or platforms and/or shortened economic lifetimes. A total of up to 111 Gulf wells (2.4 percent of all current coastal Gulf wells) and no Cook Inlet platforms are considered likely to shut in at once under the proposed options. These shut-in wells tend to be relatively low-producing or marginal wells as can be seen from the relatively lower percentage of production affected as compared to a higher percentage of wells.

A maximum of 12 firms owning and/or operating Gulf Coastal wells might possibly fail as a result of the proposed regulatory options. Data were not available to rule out the possibility of firm failure, so they were counted as potential firm failures, thus the actual number of firm failures could be as few as none. No failures are predicted for operators in Cook Inlet. It is estimated that the majority (72 percent) of firms in the Gulf Coastal region by 1996 will not discharge produced water. Thus, most firms will incur no compliance costs. The Gulf Coastal firms, therefore, are potentially expected to face average (median) declines in equity or working capital of 0 percent. Discharging firms are potentially expected to face average (median) declines in equity and working capital of 0.37 percent and 2.63 percent, respectively.

The options potentially could result in a present value loss of up to $91 million in federal and state income tax revenues over an average of 10 years, or up to $13.6 million, on average, annually (primarily federal taxes). This loss is only 11 percent of income taxes from discharging wells and platforms alone. Losses to state revenues due to a potential loss of severance taxes total $10.8 million over 10 years, or $1.6 million, on average, annually. This loss is only 3.8 percent of severance taxes from discharging wells and platforms alone. The states could also potentially lose royalties totaling at most, an estimated present value of $39.4 million over 10 years, or $5.9 million, on average, annually, which is only 5.8 percent of royalties collected from discharging wells and platforms alone. These effects are negligible compared to federal and state revenues and royalties collected.

The proposed rule is not expected to affect energy prices, international trade,

[3] The industry will not experience the entire impact of these costs because depreciation allowances and increased costs of production stemming from these compliance costs will serve to reduce taxable income. Thus a portion of these costs will be borne by federal and state governments rather than industry or individual firm owners. This portion is known as industry's "tax shield." This impact to governments is, however, noted in the analyses discussed below.

[4] The losses of $160.4 million included costs of technology and resulting production losses.

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or inflation, and would have a minimal impact on national-level employment. Primary employment losses would be expected to be 181 full-time equivalents (FTEs), which is 3.1 percent of total Gulf and Cook Inlet employment (minus baseline employment losses). Primary and secondary losses are expected to total 518 FTEs. Net employment losses (including secondary effects and accounting for employment gains) are expected to be 121 FTEs. Additionally, an estimated 1,561 FTEs would be lost in the Gulf, on average, five years sooner (in 10 years rather than in 15 years) because of declines in wells' productive lifetimes. However, because these impacts are not felt, on average, for 10 years and because ample time is available for industry to adjust to declines in wells' productive lives through natural job attrition, these impacts are not considered major. This loss is equivalent to declines in total Gulf coastal employment averaging 3 percent per year over a 10-year period under the regulation, compared to declines averaging 2 percent a year over a 15-year period without the regulation or at most 337 FTEs on an equivalent first year loss basis. Table 7 summarizes the impacts discussed above. In Cook Inlet, platforms shut in, on average, 1 year earlier (in 10 years instead of 11 years). This impact is considered minor because ample time is still available for workers to find alternative employment.

TABLE 7.—SUMMARY OF ECONOMIC IMPACTS TO GULF OF MEXICO AND COOK INLET REGIONS FROM THE SELECTED BAT OPTIONS

Impact [1]	Option No. 4 produced water	Drilling waste			TWC		Total impacts [2]
		OPT 1	OPT 2	OPT 3	OPT 1	OPT 2	
Number of wells or platforms shut in:							
Wells	111	0	0	0	0	0	111 wells.
Platforms	0	0	0	0	0	0	0 platforms.
Present value of lost production (million BOE).	15.2	0	2.7	5.4	Negl.	Negl.	15.2 to 17.9.
Total production lost (million BOE)	32.4	0	3.6	7.8	Negl.	Negl.	32.4 to 40.2.
Present value of producer income lost ($000)	$153,209	0	$263	$6,089	Negl.	Negl.	$153,209 to $160,409.
Present value of federal taxes lost ($000)	$84,903	0	$2,586	$7,925	Negl.	Negl.	$84,903 to $90,950.
Present value of lost severance taxes ($000)	$10,676	0	$133	$272	Negl.	Negl.	$10,676 to $10,815.
Present value of lost royalties to states	$34,255	0	$4,274	$9,394	Negl.		$34,255 to $39,375.
Total present value losses ($000) [3]	$283,043	0	$7,256	$23,680	Negl.	Negl.	$283,043 to $301,549.

[1] Impacts from selected options for other wastestreams are expected to be negligible.
[2] Impacts are not additive. Some double counting or undercounting of impacts occurs in the Cook Inlet analysis if produced water impacts are added to drilling waste impacts. The total reflects the removal of double counting, with corrections made for undercounting.
[3] Includes only dollar figures in columns. Losses comprise both compliance costs and value of lost production (net operating costs). Note that these losses are not annual losses.

Based on the impacts predicted, EPA finds the costs of the proposed BAT limitations to be economically achievable for the Coastal Oil and Gas Industry.

NSPS requirements for produced water in the Gulf (Cook Inlet NSPS impacts are discussed below), for drilling wastes, and for miscellaneous wastes are equivalent to BAT requirements. Costs for designing in compliance equipment are typically less than those for retrofitting the same compliance equipment to existing operations. Since new sources would most likely face costs of compliance equal to or less than existing operations, NSPS for Cook Inlet produced water are projected to pose no barriers to entry.

NSPS for produced water in Cook Inlet are more stringent than BAT requirements; however, declines in net present value of production for existing platforms under Coastal Guidelines BAT limitations (2.4 percent) are only negligibly less than net present value declines modeled for new sources under a zero discharge scenario (2.9 percent). Further, the modeled NSPS platform shows excellent internal rates of return (a measure of profitability) postcompliance, so NSPS should not play a major role in a decision to undertake the construction, development, and operation of a platform. Thus EPA finds that no significant barriers to entry will be created by NSPS for produced water in Cook Inlet and that these standards should be economically achievable, given the minimal impact on net present value and the internal rate of return.

D. Produced Water

1. BAT

As noted earlier, this analysis of impacts associated with the effluent guidelines for produced water does not consider the effects of the Region VI General Permit for produced water. Because the Region VI General Permit has been promulgated as zero discharge, the costs and impacts of the limits on produced water in the Gulf of Mexico would be substantially less.

Total production losses associated with the proposed option, Option #4 for produced water (zero discharge except for Cook Inlet), are expected to total 32.4 million BOE (or 15.2 million BOE in present value) over the lifetime of the wells and platforms subject to the rule.[5] In Cook Inlet, the production loss is expected to be 4.6 million BOE, which is 1.6 percent of the estimated lifetime production for the region. In the Gulf, the production loss is expected to be 27.9 million BOE. Lifetime production in the Gulf is estimated to be 1,055 to 3,183 million BOE (693 to 13,910 BOE in present value terms) (over a 30-year time frame, based on a low and high estimate of decline rate in the region). Thus, this lost production is 0.9 to 1.7 percent of expected lifetime production in the Gulf. For the two regions combined, the lost production of 32.4 million BOE would result in a loss of 1.0 percent to 1.7 percent of total lifetime production. These losses are associated with declines in the net present value of producer income totalling $144.5 million in the Gulf and $8.8 million in Cook Inlet for a total of $153.3 million (total lifetime losses). These losses result from both immediate

[5] Total losses calculated independently for produced water and drilling waste will not add exactly to the number cited above for combined losses because the independent estimates double count a very small portion of lost production in Alaska (about 1.3 percent of production).

shut in of wells or platforms and shortened economic lifetimes. A total of 111 Gulf wells (2.4 percent of all current coastal Gulf wells) and no Cook Inlet platforms are considered likely to shut in as a result of this rule. These shut-in wells tend to be relatively low-producing and marginal wells.

At most, 12 firms owning and/or operating Gulf Coastal wells (2.8 percent of the estimated 435 Gulf Coastal region operators) might potentially fail as a result of the selected BAT option (i.e., data are not available to rule out this possibility, although the actual number could be as small as none). No firm failures are predicted for operators in Cook Inlet. The "average" Gulf Coastal firm does not discharge produced water (there are a total of 435 firms and more than 50 percent—actually 72 percent—will not be discharging in coastal areas by 1996). Thus, Gulf Coastal firms are potentially expected to face average (median) declines in equity or working capital of 0 percent since the majority of Gulf firms do not discharge and thus will not incur compliance costs. Of the 122 discharging firms, average (median) declines in equity or working capital of 0.37 percent or 2.63 percent are expected to occur, respectively.

The selected option potentially could result in a $84.9 million loss in federal tax revenues over an average of 10 years, or $12.6 million, on average, annually. This loss is only 10 percent of income taxes collected from discharging wells and platforms alone. Losses to state revenues due to a potential loss of severance taxes total $10.7 million or $1.6 million, on average, annually. This loss is only 3.8 percent of severance taxes from dischargers alone. State royalties lost total $34.3 million, or $5.1 million, on average, annually. This loss is only 5.1 percent of royalties from dischargers alone. These effects are negligible compared to federal and state revenues and royalties collected.

The selected option is not expected to affect energy prices, international trade, or inflation, and will have a minimal impact on national-level employment. Primary employment losses are expected to be 181 FTEs. Primary and secondary losses are expected to total 518 FTEs. Net employment losses (including secondary effects and employment gains) are expected to be 128 FTEs. Table 8 summarizes the impacts from the proposed produced water option.

Based on the minimal impacts predicted, EPA finds that the proposed BAT option for produced water is economically achievable for the Coastal Oil and Gas Industry.

2. NSPS

This section discusses the barrier-to-entry analysis for all regions but Cook Inlet first, then NSPS relative to Cook Inlet is discussed separately. Total annual costs associated with NSPS requirements for produced water in the Gulf of Mexico (the only region where NSPS projects are of concern) are $4.5 million per year. The selected NSPS requirement is equivalent to BAT requirements in this region. Because NSPS is equivalent to BAT outside of Cook Inlet region, and BAT has been found to be economically achievable, NSPS requirements for all but Cook Inlet (which will be discussed separately below) would not pose a barrier to entry and are considered economically achievable.

TABLE 8.—SUMMARY OF ECONOMIC IMPACTS TO GULF OF MEXICO AND COOK INLET REGIONS FROM PRODUCED WATER BAT OPTION NO. 4

[Zero discharge except Cook Inlet]

Impact	Option No. 4 produced water
Number of wells or platforms shut in.	111 wells. 0 platforms.
Present value of production loss (million BOE).	15.2.
Total production lost (million BOE).	32.4.
Net present value of producer income lost ($000).	$153,209.
Present value of federal taxes lost ($000).	$84,903.
Present value of lost severance taxes.	$10,676.
Present value of lost royalties to states.	$34,255.
Total present value losses ($000).	$283,043.
Employment effects	128 FTEs lost.

Two NSPS economic models were run for Cook Inlet in the EIA for the Offshore Effluent Guidelines (EPA, 1993, Table 7–19; Table 7–21).[6] These models include a 24-slot gas/oil platform and a 12-slot gas platform. The gas/oil platform was estimated to incur incremental compliance costs for produced water disposal under a zero discharge requirement of $1.8 million annually (inflated to 1992 dollars). The key impacts affecting whether a new project would be undertaken (which would lead to conclusions about barriers to entry) include impacts on net present value (NPV) and impacts on the internal rate of return (IRR). The gas/oil 24 is projected to face declines in NPV of 2.9 percent from baseline under a zero discharge requirement for produced water. IRR drops 5.1 percent, however, this drop is estimated to be from 39 percent in the baseline to 37 percent in the zero-discharge scenario. These impacts are not likely to affect the decision to undertake a project in Cook Inlet (given production levels similar to existing Cook Inlet platforms). Additionally, the impact on NPV from the zero-discharge requirement is not substantially different from the impacts on NPV from the proposed BAT option under the Coastal Guidelines at existing Cook Inlet platforms. The decline in NPV projected for the Coastal rule BAT option is 2.4 percent. Thus, existing platforms and new platforms will face similar impacts on NPV even though the NSPS requirement is more environmentally stringent than the BAT requirement.

Costs and impacts associated with the Cook Inlet 12-slot platform are much less than those associated with the 24-slot platform or with existing platforms under the proposed BAT option for produced water under the Coastal Guidelines (see EPA, 1993, Table 7–21 and Section D.1 of this preamble).

Based on the analyses performed for the Offshore Guidelines (which continue to be relevant analyses for the Coastal Guidelines), EPA concludes that impacts on new sources in Cook Inlet are minimal and that NSPS requirements should pose no significant barriers to entry for two reasons: (1) declines in returns (measured as NPV and IRR) most likely would not affect the decision to undertake a new project since operations would still be quite profitable and (2) the level of impacts on new sources from NSPS requirements are not substantially greater than those on existing sources from BAT requirements.

E. Drilling Fluids and Drill Cuttings

1. BAT

As noted above, current practice in the Gulf of Mexico region is zero discharge of drilling fluids and drill cuttings; and therefore, this proposed rule would result in no additional costs to Gulf operators. The three options being co-proposed affect Cook Inlet operations. Option 1 would result in no economic impacts. Option 2 would cause a total 3.6 million BOE loss in production over 15 years. This represents a 1.2 percent reduction in the estimated lifetime production for the

[6] NSPS models were run for Cook Inlet in the Offshore EIA because EPA considered including Cook Inlet in the offshore subcategory, but finally included the operations in the Coastal subcategory. The NSPS models constructed for the Offshore EIA were used as the basis for modeling the existing Cook Inlet platforms in the Coastal Guidelines EIA, thus comparisons between NSPS platforms and BAT platforms can be made.

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existing platforms in Cook Inlet as result of three wells not being drilled. The net present value of this production loss (reduction in producers' net income) is $263,000 or less than 0.1 percent of baseline net present value. The average well life decreases by 0.2 years as a result of this option. Additionally, Federal income tax receipts would decline by $2.6 million, state income tax receipts by $133,000 and royalties paid to Alaska by $4.3 million.

Option 3 would cause a production loss of 7.8 million BOE, which is equal to a 2.5 percent decline in the lifetime production in Cook Inlet. No platforms are expected to close. Federal income tax lost (over the life of the platforms) is estimated to decline $7.9 million (3.4 percent of baseline), or $1.3 million, on average, per year. No firm failures are predicted for operators in Cook Inlet. Total state severance tax revenues are predicted to decline by $0.27 million (0.5 percent of baseline), or $0.04 million, on average, annually. Option 3 are not expected to affect energy prices, international trade, or inflation, and would have a minimal impact on national-level employment. Employment losses are not expected. Employment gains (including secondary effects) are expected to be approximately 7 FTEs, under either Option 2 or Option 3.

Based on the impacts predicted, EPA finds that the costs of all three options for drilling wastes are economically achievable for the Coastal Oil and Gas Industry. Table 9 summarizes the impacts from the proposed BAT options for drilling waste.

TABLE 9.—SUMMARY OF TOTAL ECONOMIC IMPACTS FROM DRILLING WASTE OPTION NO. 3

Impact	Option No. 3 drilling waste		
	Opt 1	Opt 2	Opt 3
Number of Wells or platforms shut in:			
Wells	0	0	0.
Platforms	0	0	0.
Present value of total production lost (million BOE)	0	2.7	5.4.
Total production lost (million BOE)	0	3.6	7.8.
Net present value of producer income lost ($000)	0	$263	$6,089.
Present value of federal taxes lost ($000)	0	$2,586	$7,925.
Present value of lost severance taxes ($000)	0	$133	272.
Present value of lost royalties to states	0	$4,274	$9,394.
Total present value losses ($000)	0	$7,256	$23,680.
Employment effects	0	7 FTEs gained	7 FTEs gained.

2. NSPS

The same options are being considered for NSPS as were for BAT. Thus, both new platforms and existing platforms face the same requirements. Since costs for new operations to design in compliance equipment should be as expensive as or less expensive than those for existing operations to retrofit the same compliance equipment, no significant barriers to entry are predicted to exist. Furthermore, since BAT was found to be economically achievable, NSPS is considered economically achievable.

F. Treatment, Workover, and Completion Fluids

1. BAT

No costs are incurred for Option 1. Costs of disposing of treatment, workover, and completion fluids under Option 2 are approximately $610,000 annually for all Gulf wells estimated to discharge treatment, workover, and completion fluids. A typical Gulf Coast well produces an average of 36 barrels of oil per day according to the 1993 Coastal Oil and Gas Questionnaire. At $18 per barrel, total annual production revenue at a typical well is estimated to be $237,000. Treatment, workover, and completion fluids disposal costs are estimated to be 0.74 percent of annual production revenues at a typical Gulf Coastal well, and no major impacts are expected as a result of either of the selected option (refer to Table 6). For this reason, EPA finds that the costs of Option 2 for treatment, workover, and completion fluids should be economically achievable for the Coastal Oil and Gas Industry.

2. NSPS

The options considered for NSPS for treatment, workover, and completion fluids are the same as those for BAT. Because NSPS is equivalent to BAT in the Gulf, new operations face the same or lower costs as existing operations. Thus, treatment, workover and completion fluids disposal costs for Option 2 will be 0.7 percent or less of annual production revenues at a typical Gulf coastal well. In Cook Inlet, there are no costs for zero discharge of this wastestream because this wastestream is commingled with produced water, and thus, the cost has already been accounted for in costing zero discharge for produced water. Option 2 NSPS requirements will not pose a significant barrier to entry. Furthermore, since BAT in the Gulf and NSPS in Cook Inlet is economically achievable, NSPS is economically achievable.

G. Cost-Effectiveness Analysis

In addition to the foregoing analyses, EPA has performed a cost-effectiveness analysis for the selected options for produced water; treatment, workover, and completion fluids; and drilling wastes. According to EPA's standard procedures for calculating cost-effectiveness, all the options considered for each waste stream have been ranked in order of increasing pounds-equivalent (PE) removed (see the introduction to this section for a discussion of pounds-equivalent, a methodology for putting pollutants of differing toxicity on a comparable basis.) Cost-effectiveness is calculated as the ratio of the incremental annual costs to the incremental pounds-equivalent removed under each option. So that comparisons of the cost-effectiveness among regulated industries can be made, annual costs for all cost-effectiveness analyses are reported in 1981 dollars.

In 1981 dollars, the incremental cost-effectiveness for the selected options are:

—$3/PE for produced water
—$0/PE for Option 1, $769/PE for Option 2 and $292/PE for Option 3 for drilling wastes
—$0/PE for Option 1 and $200/PE for Option 2 for treatment, workover, and completion fluids

H. Regulatory Flexibility

All of the firms expected to fail (0 to 12 firms) as a result of the proposed rule

are small entities (i.e., they employ fewer than 500 employees), however, nearly all the firms operating in the Coastal region are small (approximately 372 out of an estimated 435 firms, or 86 percent are small firms). Thus 0 percent to 3 percent of small firms could potentially fail as a result of this rule. The high end of this estimate is very conservative because these firms might not fail; however, but data were unavailable to rule out the possibility. Thus these firms were considered to have the potential to fail as a result of the proposed rule. Due to data constraints, a cash flow analysis was not undertaken, but potential effects on working capital and equity were analyzed. In general, the average small firm that is currently discharging produced water or other wastes will experience a somewhat greater decline in working capital or equity than that for large firms. Among small dischargers, the median change in equity is 1.26 percent as compared with 0.02 percent for large firms, and the change in working capital is 4.54 percent, versus 0.05 percent for large firms. However, the typical small discharging firm will not experience a change in equity or working capital of more than 5 percent. Additionally most small firms are currently not discharging any wastes, thus will experience no change in equity or working capital. When these nondischarging firms are also considered, the median small firm operating in the coastal region will experience no change in equity or working capital. Thus EPA does not find that impacts on small firms will be disproportionately greater than those on large firms.

VIII. Non Water Quality Environmental Impacts

The elimination or reduction of one form of pollution has the potential to aggravate other environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of these regulations on air pollution, solid waste generation and management, consumptive water use, and energy consumption. Because the technology basis for the limitation on drilling fluids and drill cuttings may require transporting the wastes to shore for treatment and/or disposal, adequate onshore disposal capacity for this waste is critical in assessing the options. Safety, and impacts of marine traffic on coastal waterways, were other factors also considered. EPA evaluated the non-water quality environmental impacts on a regional basis because the different regions each have their own unique considerations.

A. Drilling Fluids and Cuttings

The control technology basis for compliance with the options considered for the drilling fluids and drill cuttings wastestreams is a combination of product substitution, grinding followed by injection, and/or transportation of drilling wastes to shore for treatment and/or disposal. The non-water quality environmental impacts associated with the treatment and control of these wastes are summarized in Table 10. These non-water quality environmental impacts are those associated with drilling fluids and cuttings disposal and treatment alternatives only in Cook Inlet. All other coastal areas are currently achieving zero discharge of these wastes and, thus the control options cause no additional impacts. Non-water quality environmental impacts estimates are presented in more detail in the Coastal Technical Development Document.

TABLE 10.—NON-WATER QUALITY IMPACTS FOR DRILLING WASTE CONTROL OPTIONS

Options	Volume of waste transported to onshore disposal[3]	Volume of ground and injected waste (bbls)	Air emissions (tons/yr)	Fuel requirements (BOE)[2]/year
Option 1: Zero for all except BPT for Cook Inlet[1]	0	0	0	0
Option 2: Zero for all except for Cook Inlet with more stringent toxicity limit	93,984	0	9	1,700
Option 3: Zero for all	422,780	130,066	12 5	2,300

[1] Option one represents current standards such that no additional barrels of wastes or resulting air emissions or fuel requirements are required
[2] BOE (barrels of oil equivalents).
[3] The volume of barged waste does not include wastes that would be ground and injected. The air emissions and fuel requirements presented in this table are a result of transporting these barged wastes and for grinding and injecting the rest.

1. Energy Requirements

Energy requirements for Options 2 and 3 were calculated by identifying those activities necessary to support onshore disposal of drilling wastes and injection at the platform. The only landfill available for disposal of drilling wastes in Cook Inlet is privately owned and operated. Access to this landfill is limited to only the two operators that own and operate it. The landfill, which is located on the west side of Cook Inlet, is only operated for four months in the summer because of climate conditions that are specific to Cook Inlet. Drilling wastes are first transported by supply boats from the platform to a temporary storage facility on the east side of Cook Inlet to be unloaded and temporarily stored. Barges are used to transport drilling wastes from the east to the west side of Cook Inlet. Trucks are then used to transport the muds and cuttings to the landfill. For the other operators in Cook Inlet, the technology basis for Option 3 (zero discharge) is grinding followed by injection at the platform. For Option 2 (which includes a 100,000 ppm (SPP) to 1,000,000 ppm (SPP) toxicity limitation that all operators would not be able to meet), the technology basis would be transportation and disposal to the lower contiguous United States for those operators not having access to Alaska landfills Option 2.

EPA used the volumes of drilling waste requiring onshore disposal to estimate the number of supply boat trips necessary to haul the waste to shore. Projections made regarding boat use included types of boats used for waste transport, the distance travelled by the boats, allowances for maneuvering, idling and loading operations at the drill site, and import activities at the marine transfer station. EPA estimated fuel required to operate the cranes at the drill site and import based on projections of crane usage. EPA determined crane usage by considering the drilling waste volumes to be handled and estimates of crane handling capacity. EPA also used drilling waste

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volumes to determine the number of truck trips required. The number of truck trips, in conjunction with the distance travelled between the marine transfer station and the disposal site, enabled an estimate of fuel usage. The use of land-spreading equipment at the disposal site was based on the drilling waste volumes and the projected capacity of the equipment. In evaluating the zero discharge requirement, EPA calculated for those operators that do not have access to the landfill in Cook Inlet, fuel requirements for grinding and injection equipment. The equipment evaluated included the pumps running the cuttings grinding system (the ball mills and conveyors) and the injection pumps. The methodology used to determine fuel consumption is further discussed in the Coastal Technical Development Document. Table 9 summarizes the incremental increase in energy requirements for the drilling fluids and drill cuttings options considered for this rule.

2. Air Emissions

EPA estimated air emissions resulting from the grinding and injection equipment systems, or the operation of boats, cranes, trucks and earth-moving equipment necessary to either dispose of drilling fluids and drill cuttings onshore or to grind and inject these wastes by using emission factors relating the production of air pollutants to time of equipment operation and amount of fuel consumed. The incremental increase in air emissions associated with the control options considered by EPA in this final rulemaking are presented in Table 9.

In developing regulations to control air pollution from OCS sources pursuant to the 1990 Clean Air Act Amendments, the EPA Office of Air Quality Planning and Standards estimated the air emissions associated with various stages of oil/gas resource development activities ("Control Costs Associated With Air Emission Regulations For OCS Facilities," Final Report September 30, 1991. Prepared by Mathtech, Inc. for EPA). In this study, EPA estimated levels of both controlled and uncontrolled emissions from exploration, development, and production operations. Information from this study was used to determine emissions from coastal operations independent of this rule. Nitrogen oxides (NO_X) emissions from exploratory drilling activities were estimated at 78 tons/operation. For comparison, the zero discharge requirement for all drilling activities in the Cook Inlet projected over the next seven years from scheduled promulgation is estimated at approximately 54 tons of NO_X for each well subject to the zero discharge limitations.

3. Solid Waste Generation and Management

The regulatory options considered for this rule will not cause generation of additional solids as a result of the treatment technology. However, as already discussed, spent drilling fluids and drill cuttings may be disposed of onshore to comply with these options.

There are currently no commercially operating disposal sites in Cook Inlet accepting drilling wastes. The only land disposal facility accepting drilling wastes from Cook Inlet operations is privately owned and operated. The lack of commercial disposal sites would require operators that do not own a land disposal facility to either transport the drilling wastes to the nearest known commercial disposal facility located in Idaho or inject the drilling wastes into underground formations.

Capacity estimates for the only available disposal facility in Cook Inlet show that this landfill has enough storage capacity to accept the volume of drilling fluids and cuttings (422,780 bbls over the next seven years following promulgation of this rule) that would be generated under Option 3 (zero discharge) from the two operators that it now serves. The volume of drilling wastes generated by these two operators under the zero discharge option represents about 71 percent of the excess available capacity at this landfill. The other Cook Inlet operators would not dispose of their drilling fluids and cuttings by landfilling, but rather by grinding and injection (See Section VI), which does not require land disposal.

Under Option 2, the estimated volume of drilling fluids and cuttings requiring land disposal is estimated to be approximately 17 percent of the total wastes generated over the next seven years following promulgation of this rule (or 17 percent of 552,846 bbls which is approximately to 94,000 bbls). This is based on the estimate of 83 percent compliance with a toxicity limitation between 100,000 ppm (SPP) and 1,000,000 ppm (SPP). EPA estimates that the two operators having access to the Cook Inlet landfill will send their portion of these wastes there (amounting to approximately 72,000 bbls), and as shown above, there would be sufficient landfill capacity to accommodate this as well as the zero discharge option. The other three operators not having access to the Cook Inlet landfill would most likely dispose of their drilling fluids and cuttings for this option (amounting to approximately 22,000 bbls) in a landfill available in Idaho, rather than grind and inject them (See Section VI), because this is less expensive than installing grinding and injection equipment for these smaller volumes. Because of this small volume of wastes, EPA assumed that there is ample landfill capacity in the lower 48 states for disposal of 22,000 bbls of wastes that would be generated over the seven years following the scheduled promulgation.

4. Consumptive Water Use

Since little or no additional water is required above that of usual consumption, no consumptive water loss is expected as a result of this rule.

5. Safety

EPA investigated the possibility of an increase in injuries and fatalities that would occur as a result of hauling additional volumes of drilling wastes to shore. EPA acknowledges that safety concerns always exist at oil and gas facilities, regardless of whether pollution control is required. EPA believes that the appropriate response to these concerns is adequate worker safety training and procedures as is practiced as part of the normal and proper operation of oil and gas facilities.

6. Increased Vessel Traffic in Cook Inlet

EPA estimates that a total of 231 boat trips would be required to comply with a zero discharge requirement. This estimate is for all drilling that will take place in the next seven years after expected promulgation of the rule. In actuality, EPA determined, from drilling schedules supplied by industry, that drilling would only occur for seven years after promulgation. Thus, these 231 boat trips equate to approximately 33 additional boat trips per year for seven years. EPA does not expect this to cause traffic problems in the Inlet. In fact, it will serve to provide service companies with additional work. EPA has calculated expected job gains associated with the manufacture, installation and operation of technologies required to comply with this rulemaking.

However, job gains could also be realized due to increased boat trips and related work required of service companies. These job gain estimates have not been quantified.

B. Produced Water

In assessing the non-water quality environmental impacts of the options considered for control of produced water, EPA projected the incremental increase in energy requirements and air emissions associated with the regulatory options considered. These non-water quality environmental impacts are presented in Table 11.

TABLE 11.—NON-WATER QUALITY ENVIRONMENTAL IMPACTS FOR PRODUCED WATER

Option	Fuel requirements (BOE/yr)		Total emissions (tons/yr)	
	BAT	NSPS[1]	BAT	NSPS[1]
1. BPT All	0	0	0	0
2. Oil and Grease	28,595	1,712	258	17
3. Zero Discharge; Cook Inlet BPT 48/72	258,946	5,948	2,799	64
4. Zero Discharge; Cook Inlet Oil and Grease	260,376	5,948	2,801	64
5. Zero Discharge All	343,759	5,948	2,899	64

[1] Impacts are associated only with new sources in the Gulf of Mexico. No new sources are expected in other coastal areas.

For small volume production facilities in the Gulf, produced water would be transported to commercial facilities for injection to comply with the options based on either gas flotation or injection because it is less expensive for smaller flows than installing injection or gas flotation equipment on-site. Produced water transportation (via barge or truck), and vacuum pumps to unload produced water at the commercial facilities are sources included in fuel use and air emissions calculations. For medium to large volume facilities in the Gulf and in Cook Inlet, either gas flotation or injection would be the technology bases to comply with the options. EPA determined the fuel requirements and air emissions for these technologies by evaluating:

- Power requirements to operate feed pumps and gas flotation devices
- Injection pumps and feed pumps for injection and pretreatment technology

Energy consumption for the different options was determined based on the produced water flowrates and the associated power requirements for operating treatment and injection systems.

EPA calculated the air emissions for each discharging facility by taking the product of specific emission factors, the usage in hours (that is, hours per year), and the horsepower requirements. EPA calculated total emissions for zero discharge based on the use of reciprocating natural gas fired engines as the power source for the injection pumps. According to industry, these engines are commonly used in coastal production facilities. Air emissions increases calculated for the produced water options include nitrogen oxides (NO_X), sulfur dioxide (SO_2), and hydrocarbons. See the Coastal Technical Development Document for more detail on the estimated compliance costs and EPA's calculation of pollutant removals and non-water quality environmental impacts.

The only increase in vessel waterway traffic due to these options would be for the small facilities that would be required to barge their produced waters to a commercial facility. This amounts to approximately 50 facilities out of a total of 216. Because vessels generally service several facilities on any given trip, EPA expects this increase to be small enough that it will be absorbed into current vessel operations. Additionally, use of the coastal waterways by the oil and gas industry accounts for less than 10 percent of all commercial traffic according to data from the Minerals Management Service. A slight increase in vessel traffic due to this rule would have negligible effect on the water traffic overall.

C. Treatment, Workover and Completion Fluids

The non-water quality environmental impacts associated with disposal of treatment, workover and completion fluids are the fuel requirements and air emissions resulting from transportation to commercial disposal where operators choose this method to comply with the rule. No incremental energy requirements and air emissions have been estimated for existing facilities that treat and discharge or inject treatment, workover and completion fluids onsite. This is because the control options for the facilities that treat and inject onsite are based on commingling treatment, workover and completion fluids with the produced water and, therefore, non-water quality environmental impacts associated with this activity have already been taken into account in assessing the impacts of control options for produced water.

Option 1, requiring BPT limits and zero discharge to freshwaters in Louisiana, would not cause additional non-water quality impacts because it reflects current practice (zero discharge of these fluids is a requirement in the Region VI general drilling permit).

Option 2, requiring limitations equal to those for produced water, would result in the consumption of approximately 1000 and 300 additional BOE per year, for BAT and NSPS respectively, and the generation of 12 and 3 tons of additional emissions per year for BAT and NSPS respectively.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant" regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendation will be documented in the public record for this rulemaking.

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X. Executive Order 12875

Executive Order No. 12875 requires Federal Agencies to consider the impacts that unfunded mandates will have on state, local, or tribal governments. The coastal oil and gas industry is not associated with tribal governments, and the burden to state and local regulatory authorities is expected to be minimal, if not decreased, by the implementation of this rule.

The CWA, section 301 prohibits discharges of pollutants unless permitted under sections 402 or 404 of the CWA. Effluent limitations, guidelines, new source performance standards and pretreatment standards are implemented through the National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the CWA by EPA's Regions or, if delegated NPDES authority, the delegated states. Generally, coastal oil and gas facilities are permitted by EPA Regions, or in the case of Alabama, by the Alabama NPDES program, using general permits which cover an entire area specified in that permit. For example, Region VI's general permit for coastal drilling operations covers all coastal operations in Texas and Louisiana, except for a few facilities whose operations are noted in the permit. Alabama currently requires zero discharge in their permits for coastal oil and gas operations.

These proposed requirements, when promulgated, will be implemented via the existing regulatory structure and no additional burden is expected. In the absence of effluent limitations guidelines, establishing BAT, BCT, NSPS, PSES and PSNS, permit limitations are to be developed on as case-by-case "Best Professional Judgement" (BPJ) basis. In addition, all NPDES permits must incorporate state water quality standards. Once, these Coastal Guidelines are in place, the Regions will no longer be required to expend both in-house and contractor efforts in BPJ developments, and where zero discharge is required, the Regions and states will no longer be required to determine permit limitations based on water quality standards. Thus, these guidelines will actually serve to reduce the regulatory burden on the Regions and states that permit existing sources in the coastal oil and gas industry. As it could take approximately $100,000 for contractor support, and at least one in-house FTE per general permit development based on BPJ and water quality requirements, this could result in substantial savings. However, issuance of NSPS creates a class of facilities that is regulated as new sources which may need to be permitted by the regions and states. Because the number of new sources is projected to be very small and can be permitted by general permits, we expect this to be a minimal resource requirement.

Since the inception of the project in 1994, there have been periodic meetings with the industry and several trade associations, including the Louisiana and Texas Independent Oil and Gas Associations (TIOGA and LIOGA) and American Petroleum Institute (API) to discuss progress on the rulemaking. The Agency also has met with the Natural Resources Defense Council (NRDC) to discuss progress on this rulemaking. Because all of the facilities affected by this proposal are direct dischargers, the Agency did not conduct an outreach survey of POTWs.

The Agency also held a public meeting on July 19, 1994. The purpose of the meeting was to present the project status and discuss the technical options under consideration for this proposal. Representatives from industry trade associations, individual industry companies, state regulatory authorities the U.S. Department of Energy and Interior (Minerals Management Service) and the Sierra Club Legal Defense Fund attended.

The Agency will continue this process of consulting with state, local, and other affected parties after proposal in order to further minimize the potential for unfunded mandates that may result from this rule.

XI. Paperwork Reduction Act

The proposed coastal oil and gas effluent limitations guidelines and standards contain no new information collection activities, and therefore, no information collection request will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

XII. Environmental Benefits Analysis

A. Introduction

The Water Quality Benefit Analysis (Benefit Analysis) evaluates the effect of current discharges and the benefits of proposed limitations for the coastal subcategory of the oil and gas extraction industry on the coastal environment. The benefit analysis considers two separate geographic areas: Gulf of Mexico (Louisiana and Texas) and Cook Inlet, Alaska. The benefit analysis examines potential impacts from current produced water discharges in both geographic areas, and from drilling fluids and drill cuttings discharges in Cook Inlet. Effect of drilling fluids and drill cutting discharges are not evaluated for Gulf of Mexico coastal operations since they are prohibited by state authorities and existing NPDES permits. Three types of benefits are analyzed: quantified and non-monetized, quantified and monetized, and non-quantified and non-monetized benefits.

Coastal waters maintain diverse ecosystems which act as spawning grounds, nurseries and habitats for important estuarine and marine species (finfish and shellfish); support highly valuable commercial and recreational fisheries; and provide critical habitat for seabirds, shore birds and terrestrial wildlife. The commercial fisheries in Texas and Louisiana (finfish, shrimp, crabs and oysters) were valued at $476 million in 1992. Commercial species spend a significant portion of their life cycle in bays and estuaries. The 1993 value of Cook Inlet commercial fisheries (finfish, clams,crabs and shrimp) was $48 million. Approximately $30 million of this total was from Upper Cook Inlet salmon fisheries. The estimated consumer surplus associated with Cook Inlet recreational fisheries is about $26 million per year (in 1993 dollars). In addition, personal use and subsistence fisheries provide food source and cultural values to Alaskan residents and Alaskan native populations. Coastal waters also serve as critical habitats for numerous federally designated endangered and threatened species (including 32 in coastal areas of Texas and Louisiana) , and migrating waterfowl.

Coastal waters are generally shallow, where tidal action has limited effect, and dilution and dispersion are more limited than offshore waters. Additionally, pollutants can migrate much more readily into sediments, where they may have long residence times. Consequently, these receiving environments are highly sensitive to pollutant discharges compared to open offshore areas. Many of the pollutants in coastal oil and gas discharges are either conventional pollutants, aquatic toxicants, human carcinogens, or human systemic toxicants. The impact of these pollutants on aquatic biota include acute toxicity; chronic toxicity; effects on reproductive functions; physical destruction of spawning and feeding habitats; and loss of prey organisms. In addition, many of these pollutants are persistent, resistant to biodegradation and accumulate in aquatic organisms. Chemical contamination of aquatic biota may also directly or indirectly impact local aquatic and terrestrial wildlife and humans consuming exposed biota.

Conventional pollutants, such as TSS and oil & grease can have adverse effects on human health and environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration and thus primary productivity. Suspended solids in the water column can have a direct effect on the fish either killing them, or reducing their growth rate and/or resistance to disease, preventing successful development of fish eggs and larvae, modifying fish movement and migration and reducing the abundance of food available to fish. Settleable materials which blanket the bottom of the water bodies cause benthic smothering, damage invertebrate populations and can alter spawning grounds and feeding habitat. Oil and grease can have lethal effect on fish, by coating surface gills causing asphyxia, or depleting oxygen levels due to excessive biological demand, or reducing reaeration because of surface film. Oil and grease can also have detrimental effects on waterfowl by destroying the buoyancy and insulation of their feathers. Bioaccumulation of oil substances can cause human health problems including tainting of fish and bioaccumulation of carcinogenic polycyclic aromatic compounds.

Benefits of this proposed rule include elimination of toxic, conventional, and nonconventional pollutants, or reduction to levels below those considered to impact receiving water's biota, and elimination or reduced impacts on human health. Potential benefits may ultimately include reduced aquatic habitat degradation; improved recreational fisheries; improved subsistence and personal use fisheries (important to low-income anglers and Alaska's Native anglers, etc.); improved commercial fisheries; improved aesthetic quality of waters; improved recreational opportunities; and decreased harm to threatened or endangered species in Gulf of Mexico and Cook Inlet.

B. Quantitative Estimate of Benefits

(1) Gulf of Mexico. The Gulf of Mexico benefits associated with produced water include: (a) non-monetized benefits (*i.e.*, (i) review of case studies of environmental impacts of produced water that document adverse chemical and biological impacts resulting from its discharge into coastal waters in the Gulf of Mexico; (ii) modeled water quality benefits expressed as reduction/elimination in exceedances of human health or aquatic life state water quality standards; and (iii) estimated reduction of total point source toxic loading contribution to Texas and Louisiana estuarine drainage systems, and (b) monetized benefits (*i.e.*, (i) estimated reduction of carcinogenic risk from consumption of seafood contaminated with Ra^{226} and Ra^{228} based on limited observations and modeled levels; and (ii) estimated ecological benefits of zero discharge of produced water.))

(a) Quantified Non-Monetized Benefits.

(i) Documented Case Studies. A comprehensive review of available data identified 25 study sites (12 in Louisiana and 13 in Texas) that examined impacts of produced water discharges on coastal environment. The majority of evaluated study sites are in water depths less than 3 meters, and include variable environments (*i.e.*, wetlands, saltmarshes, and fresh or brackish marshes), and both relatively low and high energy areas. The documented impacts show elevated hydrocarbons and metals in water column and sediments, and reveal impacts on biota (*i.e.*, depressed community structure such as abundance or diversity) up to 1,000 meters (and more) from the produced water discharge. The salinity effects are typically detected up to 300 meters from the discharge, and up to 800 meters in dead-end canals. A benthic dead zone (no benthic fauna) is documented up to 15 meters and severely depressed benthic communities are noted to 150 to 400 meters from produced water outfalls.

(ii) Projected Water Quality Benefits. The effects of toxic pollutants in current (BPT) produced water discharges on receiving water quality and benefits of proposed effluent guidelines are evaluated. Plume dispersion modeling is performed to project in-stream concentrations of 66 pollutants (representing subcategory-wide produced water discharge) at the edge of the state-prescribed mixing zones for Texas and Louisiana at one and three meters water depths. The in-stream concentrations are compared to Texas and Louisiana state standards: Texas has standards for 12 of the pollutants and Louisiana for 14. The results based on the mean discharge rate show one pollutant (silver) in Texas exceeds its chronic standard at the one meter depth; in Louisiana, one pollutant (copper) exceeds two acute standards (daily average and maximum), two pollutants (copper and lead) exceed two chronic standards, and one pollutant (benzene) exceeds two human health standards at the one meter depth, and at three meter depth one pollutant (copper) exceeds its acute standard, and one pollutant (benzene) exceeds two human health standards at the three meter depth. The proposed BAT zero discharge option would eliminate all projected exceedances.

(iii) Projected Reduction of Point Source Toxic Loading Contribution to Texas and Louisiana Estuarine Drainage Systems. The watershed pollutant loadings from produced water are compared to other industrial and municipal point sources (*i.e.*, excluding pollutant loadings from nonpoint sources and atmospheric deposition) for Texas and Louisiana estuarine drainage systems. At the current (BPT) discharge level, produced water in Texas contributes about 20 percent, and in Louisiana about 60 percent of total point source mass pollutant loadings into their respective watersheds. The proposed zero discharge would eliminate produced water pollutant loading contribution to the Texas and Louisiana coastal watershed.

(b) Quantified Monetized Benefits. (i) Projected Cancer Risk Reduction Benefits. Upper bound individual cancer risks from consuming fish contaminated with Ra^{226} and Ra^{228} from current produced water discharges are estimated for recreational and subsistence anglers, and aggregate human cancer risks are projected and monetized. Risks are estimated using two types of data: (1) Measured field seafood data (*i.e.*, because background levels could not be adequately determined average Ra^{226} and Ra^{228} levels were used based on field samples of fish, crabs and oysters collected within 3,000 meters of produced water discharges in coastal subcategory areas of Louisiana), and (2) modelled effluent data (*i.e.*, using current subcategory-wide produced water concentrations of Ra^{226} and Ra^{228} and plume dispersion model at mean outfall discharge rates to estimate Ra^{226} and Ra^{228} levels in seafood). [Using the estimated Ra^{226} and Ra^{228} concentrations in seafood, EPA estimates individual cancer risks assuming two different consumption rates of 147.3 g/day for subsistence anglers and 15 g/day for recreational anglers]. In addition, all individual cancer risks are adjusted by factors of 0.2 and 0.75 to account for ingestion of seafood from locations some of which are not contaminated with the Ra^{226} and Ra^{228} in coastal produced water discharges. Projected individual cancer risks for both risk assessment approaches are at 10^{-4} level for subsistence anglers, and at 10^{-6} level recreational anglers. The proposed zero discharge of produced water will eliminate these estimated cancer risks over time. Based on measured field data, the proposed BAT is projected to

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eliminate 1.1 to 4.3 annual cancer cases and the monetized benefits from cancer cases avoidance are projected to range from $2.3 to $43 million. Using the modelling approach, the proposed BAT is projected to eliminate 1.2 to 4.6 cancer cases per year, resulting in monetized benefits in $ 2.4 to $46 million per year.

The temporal dynamics of both impacts and benefits assessments is relevant to the human health risk assessment. For the assessments of cancer reduction benefits, the methodology is consistent with estimating costs for the rule, using a one-year "snap-shot" approach. Allocating the full value of annual benefits within one year following cessation of produced water discharges may appear to over-estimate potential annual benefits in cases where incomplete recovery has occurred. However, in such cases where impacts are incompletely recovered, a consideration of total impact would need to include any impacts expected to occur beyond that year. This analysis does not attempt to identify or allocate benefits on a yearly basis, but merely averages total benefits so that monetized benefits may be compared to costs that are developed using the same approach.

(ii) Projected Ecological Benefits for Texas and Louisiana Bays. A potential ecological benefit of zero discharge of produced water in Texas and Louisiana coastal areas is projected from a Trinity Bay case study. This study shows that measures of total benthic abundance and species richness are depressed by discharges, up to distances between 1.7 kilometers and 4 kilometers from the point of discharge. (Data on abundance of other species, such as waterfowl were not collected.) Taking into account the severity of these impacts at different distances, the equivalent acreage affected in this case study ranges from 200 to 2,817 acres. Extrapolating from this case study to the other sites that would be affected by this rule, EPA estimates that the total Texas and Louisiana acreage affected ranges from 14,607 acres to 195,488 acres. EPA identified numerous values for an acre of wetland but none were marginal estimates for Texas or Louisiana, and some did not net out the cost of recreational use. A literature review for wetland value estimates conducted for Mineral Management Services (MMS) in 1991, reports that different studies have estimated recreational and commercial wetland values for coastal Louisiana ranging from $57 to $940 per acre per year (with a median value of $410 per acre per year) in 1990 dollars. Using this range of values, the estimated increase of Texas and Louisiana Bay recreational values ranges from $0.8 million to $184 million per year in 1990 dollars ($1.0 million to $210 million in 1994 dollars). These per acre estimates are consistent with the estimated average recreational value of the acreage of Galveston Bay, which ranges from $336 to $730 per acre. (The Galveston Bay estimates do not net out the cost to recreational users of using the resource.) These estimates may not be marginal values as they are calculated from the total recreational value of Galveston Bay and total acreage of the Bay. There may be concern that the value of wetland recovery diminishes as the amount of recovered acreage increases and therefore these average values would overstate the relevant marginal values by an unknown amount. As these studies use different estimation methods, cover different types of wetlands, marshes and coastal waters which may differ from those affected by this rule, and generally reflect average values rather than the social valuation of small (marginal) changes in acreage, EPA solicits comments on the appropriateness of this benefit analysis and requests data on marginal values of wetlands, in particular in Texas and Louisiana.

(iii) Total Monetized Benefits. EPA estimates that total monetized benefits (*i.e.* combining cancer risk reduction and ecological benefits) resulting from proposed zero discharge of produced water range from approximately $3.2 to $230 million per year in 1990 dollars ($3.7 million to $263 million in 1994 dollars).

(2) Cook Inlet. Quantified benefits analyzed in Cook Inlet include non-monetized quantified benefits associated with proposed regulations of produced water and drilling fluids and drill cuttings. These benefits include modeled water quality benefits expressed: (a) as a reduction of mixing zone needed for produced water discharges to meet Alaska state water quality standards, and (b) as a reduction or elimination in exceedances of Alaska state water quality standards at the edge of mixing zone from drilling fluids and drill cutting discharges.

(a) Produced Water. The effects of toxic pollutants in current (BPT) produced water discharges on receiving water quality and benefits of proposed effluent guidelines are evaluated. Plume dispersion modeling is performed to project in-stream concentration of 21 pollutants at the edge of the mixing zones from eight outfalls representing Cook Inlet produced water discharge; the in-stream concentrations are then compared to the Alaska's state limitations. Unlike the Gulf of Mexico, Alaska state requirements do not have spatially-defined mixing zones. (Alaska determines the extent of the mixing zone needed to achieve compliance with water quality standards and evaluates reasonableness of this calculated mixing zone). The water quality assessment for Cook Inlet therefore determines the spatial extent of mixing zones needed for each evaluated outfall to meet all state standards at current discharge and at the proposed BAT. For the eight outfalls modeled, the distance from each facility where all state standards are met ranges from within 50 feet to 2,500 meters at current (BPT) level, and from within 50 feet to 2,000 meters at proposed BAT.

(b) Drilling Fluids and Drill Cuttings. Discharges of drilling fluids and drill cuttings are modelled using Offshore Operator's Committee (OOC) Mud Discharge Model to project in-stream concentrations of 19 pollutants in water column at the edge of a 100 meter mixing zone. The projected pollutant concentrations are then compared to the Alaska state water quality standards. The discharge rates are modeled in accordance with the maximum discharge rates allowable under the existing NPDES general permit for Cook Inlet (1,000 bph in water depths exceeding 40 meters; 750 bph in water depths from 20 to 40 meters; and 500 bph in water depths from 5 to 20 meters). Discharges are prohibited in waters between the shore and the 5 meter isobath. The modeling results show four standards are exceeded (human health standards for beryllium and fluorene and the drinking water standards for aluminum and iron) at 40 meter water depth; at 20 meters water depth five standards are exceeded (human health standards for beryllium, fluorene, and phenanthrene, and drinking water standards for aluminum and iron); and six standards are exceeded at the 10 meters water depth (human health standards for beryllium, fluorene, and phenanthrene, and drinking water standards for aluminum, antimony, and iron) at both current BPT discharge and the alternative BAT Option 2 which would allow discharge of drilling fluids and drill cuttings with certain limitations. The zero discharge option (Option 3) would eliminate all projected exceedances.

C. Description of Non-Quantified Benefits

The Benefit Analysis attempts to quantify, and whenever appropriate, to monetize specific environmental benefits that may result from the options proposed for this rule. However, some of the potential benefits could not be

quantified or monetized because of the lack of data, or because sufficient information to define the causal relationship between coastal oil and gas production activities and environmental effects is not available. The evaluated non-quantified benefits include: (1) an analysis of environmental equity issues related to this rulemaking; (2) effects on threatened or endangered species and migratory waterfowl, and potential benefits from the proposed rule for ecosystem health for coastal areas of Gulf of Mexico and Cook Inlet.

(1) An Analysis of Environmental Equity Issues. An analysis of potential impacts on socioeconomic and ethnic groups in coastal areas of Texas, Louisiana, and Cook Inlet conducted to address environmental equity issues related to the discharges from coastal oil and gas facilities indicates that the subsistence and personal use of fisheries in both geographic areas may be appreciable, indicating potential environmental equity concerns for low income subsistence and personal use anglers including Alaska's Native populations. These socioeconomic and ethnic groups are known to be frequent recreational or subsistence anglers and are consuming a high rate of seafood, and could consequently be at higher than average risk, providing they consume seafood that may be contaminated with coastal oil and gas pollutants. The subsistence and personal use fisheries in these areas also provide food sources that would otherwise have to be purchased elsewhere. In addition, Cook Inlet fisheries are of cultural value to Alaskan Native populations in that they allow the continuance of a traditional lifestyle dependent on the natural resources of the Inlet. A zero discharge and control of discharges of produced water, and zero discharge of drilling fluids and drill cuttings, and well treatment, workover and completion fluids discharges would reduce these impacts.

(2) Effects on Threatened and Endangered Species. The proposed regulation may also have beneficial effects on 32 threatened and endangered species in coastal area of Texas and Louisiana (such as Brown Pelican, Hawksbill Sea Turtle, Leatherback Sea Turtle, Ocelot, and others) that use these areas as part of their habitat. The Upper Cook Inlet is an important pathway for spawning fish and nonendangered mammals which are resident or occur seasonally in Cook Inlet including sea lion, fur seal, harbor seal, sea otter and beluga whale. The Cook Inlet area is also a critical habitat for seabirds, shorebirds, and migrating waterfowl, including the Cackling Canada Goose, Pacific Black Brant, Emperor Goose, and Tule Goose. There are at least four endangered cetacean species which may occur in or near Cook Inlet. These include the humpback whale, fin whale, sei whale, and gray whale. Endangered avian species which may occur as migrants in or near Cook Inlet include the short-tailed albatross, American peregrine falcon, and Arctic peregrine falcon. Control of produced water and treatment, workover, and completion fluids discharges and zero discharge of drilling fluids and drill cuttings, would reduce these impacts.

D. EPA Region VI Production Permit

The benefits of the proposed rule evaluated in the benefit analysis are based on discharges and discharge locations that were projected for the proposed guidelines (without the published final Region 6 NPDES General permits regulating produced water discharges to coastal waters in Louisiana and Texas in effect). Because of the close timing of the publication of these final General permits and the proposed effluent guidelines, little opportunity for in-depth re-analysis of environmental benefits occurred. The approach selected is to proportionate quantified benefits based on a simple flow proportion (*i.e.*, the 29 percent share of produced water flow), attributable to the facilities excluded from coverage under the General permits but covered by the proposed effluent guidelines. Using this approach, EPA estimates that with the Region 6 General permits final, quantified monetized benefits may be in the $0.9 to $67 million range in 1990 dollars ($1.1 to $76 million in 1994 dollars). EPA will re-evaluate environmental benefits of the coastal oil and gas subcategory effluent guidelines upon promulgation of the final rule.

XIII. Regulatory Implementation

A. Toxicity Limitation for Drilling Fluids and Drill Cuttings

Under the alternative option EPA considered for drilling fluids and drill cuttings, EPA would establish a toxicity limit for this waste stream. The toxicity limitation would apply to any periodic blowdown of drilling fluid as well as to bulk discharges of drilling fluids and drill cuttings systems. The reader is referred to the Offshore Guidelines (58 FR, March 4, 1993, page 12502) for an explanation of the regulatory implementation for the toxicity limit.

B. Diesel Prohibition for Drilling Fluids and Drill Cuttings

Under EPA's alternative option for drilling fluids and drill cuttings, diesel oil and muds and cuttings contaminated with diesel would be prohibited from discharge from Cook Inlet oil platforms. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the implementation of this requirement.

C. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upsets" or "bypasses". The reader is referred to the Offshore Guidelines (58 FR 12501) for a discussion on upset and bypass provisions.

D. Variances and Modifications

Once this regulation is in effect, the effluent limitations must be applied in all NPDES permits thereafter issued to discharges covered under this effluent limitations guideline subcategory. Under the CWA certain variances from BAT and BCT limitations are provided for. A section 301(n) (Fundamentally Different Factors) variance is applicable to the BAT and BCT and pretreatment limits in this rule. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the applicability of variances.

E. Synthetic Drilling Fluids

During the Offshore Oil and Gas Guidelines rulemaking, several industry commenters noted recent developments in formulating new (synthetic) drilling fluids as substitutes for the traditional water-based or oil-based fluids. The newer drilling fluids provide improved environmental and operational benefits when compared to many of the traditional fluids being used. The industry commenters contended that the new drilling fluids are not being used due to potential interpretation of effluent guidelines and permit limitations. Prohibitions on the use of oil-based fluids and inverse emulsions were identified as potential barriers to use. Commenters also specifically identified the sheen test, which is used to prohibit the discharge of fluids and cuttings containing free oil, as giving false positive results due to a discoloration which may occur when cuttings containing small amounts of some of the synthetic fluids are discharged.

Since the promulgation of the Offshore Guidelines, data have been submitted to document the enhanced

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environmental performance of synthetic fluids. These data show lower toxicity than several of the generic fluids used as the basis for the offshore toxicity limit of 30,000 ppm (SPP). Results of laboratory and field (seabed) evaluations of the biodegradation of one synthetic fluid demonstrated good biodegradation. Case histories of field use have documented enhanced operational and environmental performance, which can include reductions in waste generated and improvement of non-water quality impacts. Laboratory data have indicated no detectable priority pollutants to be present in synthetic fluids.

In the preamble to the March 4, 1993, final Offshore Guidelines (58 FR 12496), EPA identified several issues raised by commenters for which additional information was solicited. While EPA wishes to encourage the use of less toxic drilling fluids, EPA was concerned that without a substitute for the static sheen test, it would not be possible to enforce the no free oil limit. EPA also solicited specific data concerning the toxicity of new synthetic drilling fluids. Subsequently, several industry companies have submitted additional information. EPA has reviewed this information and is conducting additional work to further evaluate the issues. This work is related to the analytical capability to identify the synthetic fluids versus diesel, mineral or crude (formation) oils which may cause a sheen when used fluids or cuttings are discharged and the toxicity of the synthetic fluids. Results of the submitted analytical methods investigations, summarized gas chromatography mass copy (GC/MS) identification of polyalphaolafin synthetic fluids. The usefulness and limitations of the methods were discussed. Use of GC equipment shows promise for detecting low concentrations of oil in synthetic fluids, *e.g.*, less than 1 percent, but requires further evaluation. Based on the results of the initial work and work performed as part of the final Offshore Guidelines to differentiate between mineral oil and diesel oil (58 FR 12502), the "methods for the determination of Diesel, Mineral and Crude Oils in Offshore Oil and Gas Industry Discharges" (EPA 821–R–92–008) may be useful, with or without slight modifications, as an alternative or verification step to the free oil and diesel oil discharge prohibitions.

EPA solicits data on the use to-date of synthetic fluids and any data, including well logs, toxicity and analytical methods testing and in-situ seabed and water column physical, chemical and biological testing. EPA will evaluate all submitted data, including information in the offshore rulemaking record, in order to assess the environmental and performance benefits that could be achieved by using synthetic fluids, and take those regulatory actions that may be appropriate to mitigate or eliminate barriers to using these fluids.

F. Removal Credits for Indirect Dischargers

Many industrial facilities discharge large quantities of pollutants to POTWs where their wastewaters mix with wastewater from other sources, domestic sewage from private residences and run-off from various sources prior to treatment and discharge by the POTW. Industrial discharges frequently contain pollutants that are generally not removed as effectively by treatment at the POTWs as by the industries themselves.

The introduction of pollutants to a POTW from industrial discharges may pose several problems. These include potential interference with the POTW's operation or pass-through of pollutants if inadequately treated. As discussed, Congress, in section 307(b) of the Act, directed EPA to establish pretreatment standards to prevent these potential problems. Congress also recognized that, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastewater that would be required pursuant to the pretreatment standard. Consequently, Congress established a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. The credit, in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW and (3) the POTW's discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405].* * *" Section 307(b).

EPA has promulgated removal credit regulations in 40 CFR 403.7. The United States Court of Appeals for the Third Circuit has interpreted the statute to require EPA to promulgate comprehensive sewage sludge regulations before any removal credits could be authorized. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986) *cert. denied*. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987 which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations required by section 405(d)(2)(a)(ii).

Additional discussion of the availability of removal credits is contained in the Coastal Technical Development Document. This rule proposes to establish pretreatment standards for existing and new sources as zero discharge for drilling fluids and drill cuttings; produced water; well treatment, workover, and completion fluids; and deck drainage, and EPA's pretreatment regulations at 40 CFR 403.7(a)(i) limit such authorization to when the POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with 403.7(b), it is highly unlikely that removal credits would be available for these discharges.

EPA welcomes comment on when and how removal credits may be authorized for the pollutants in the circumstances of the coastal oil and gas subcategory.

XIV. Related Rulemakings

In addition to these Coastal Guidelines, EPA is in the process of developing other regulations that specifically affect the oil and gas industry. These other rulemakings, summarized below, are in the developmental stages, and have not, as yet, been proposed. EPA's offices are coordinating their efforts with the intent to monitor these related rulemakings to assess their collective costs to industry.

A. National Emission Standards for Hazardous Air Pollutants

National emission standards for hazardous air pollutants (NESHAP) are being developed for the oil and gas production industry by EPA's Office of Air Quality, Planning and Standards (OAQPS), under authority of section 112 (d) of the Clean Air Act as amended in 1990. Section 112 (d) of the Clean Air Act directs the EPA to promulgate regulations establishing hazardous air pollutant (HAP) emissions standards for each category of major and area sources that has been listed by EPA for regulation under section 112 (c). The 189 pollutants that are designated as HAP are listed in section 112 (d). For major sources, or facilities which emit 10 or more tons per year (TPY) of an individual HAP pollutant or 25 or more TPY of multiple HAPs, the air emission standards are based on "maximum achievable control technology" or MACT.

Major sources within the coastal oil and gas subcategory have been identified by OAQPS as stand alone glycol dehydrators, tank batteries, gas plants, and offshore production platforms. In most cases, OAQPS believes that, in order to be a major source, a coastal production facility must have glycol dehydrators located on-site; a production facility alone may not produce enough emissions to be classified as a major source.

EPA plans to propose MACT standards for the oil and gas industry by June 1995 and promulgate them by June 1996. OAQPS estimates that the total cost of these standards will be $13 million. Offshore production platforms are under the jurisdiction of the Minerals Management Service and thus, are not affected by these MACT Standards. EPA solicits information regarding the percentage of coastal oil and gas operations that will be impacted by this rule.

2. Area of Review Requirements for Injection Wells

The Safe Drinking Water Act of 1974 (SDWA) charges EPA with protecting underground sources of drinking water (USDWs). As part of this mandate, EPA developed a program, known as the Underground Injection Control Program (UIC), to regulate the underground injection of produced water, and promulgate regulations concerning the construction, operation, and closure of Class II injection wells. Such regulations were originally promulgated in 1980 (45 FR 42500, June, 24, 1980).

As a result of a recent 5-year study on the effectiveness of these regulations, EPA concluded that more detailed minimum national standards, than those promulgated in 1980, are necessary to prevent endangerment of USDWs.

EPA is currently in the process of developing such national standards that would establish:

* A minimum national standard for well construction,
* More frequent mechanical integrity testing when the construction of a well does not meet that minimum standard, and
* A requirement for Area of Review studies for wells located in areas where USDWs are subject to significant risk of indirect flow via improperly constructed or abandoned wells.

The schedule for proposal and promulgation of this rulemaking is not specified. Early estimates are that these UIC requirements would cost less than $50 million per year for the entire U.S. oil and gas industry for the first 5 years after promulgation, and are expected to decrease after 5 years.

It is not known at this time what percentage of this cost will be incurred by the coastal oil and gas industry. EPA solicits comment regarding this.

3. Spill Prevention, Control, and Countermeasure

EPA's Oil Pollution Prevention regulation at 40 CFR part 112, otherwise known as the Spill Prevention, Control, and Countermeasure (SPCC) regulation was promulgated in 1973 under section 311 (j) of the CWA. The SPCC regulation applies to all oil extraction and production facilities that have an oil storage capacity above certain thresholds (*i.e.* an overall aboveground oil storage capacity greater than 1,320 gallons or greater than 660 in a single container, or an underground oil storage capacity of greater than 42,000 gallons) and are located such that a discharge could reasonably be expected to reach U.S. waters. EPA estimates that there are approximately 435,000 SPCC-regulated facilities. Approximately 3,000 of these facilities are either coastal or offshore facilities.

Under the SPCC regulations, facility owners or operators are required to prepare and implement written SPCC plans that discuss conformance with procedures, methods, and equipment and other requirements to prevent discharge of oil and to contain such discharges.

On July 1, 1994, (59 FR 34070, July 1, 1994) EPA issued a final rule for certain onshore facilities to prepare, submit to EPA, and implement plans to respond to a worst case discharge of oil to meet section 4202(a) of the Oil Pollution Act (OPA). EPA is in the process of developing requirements to meet Section 420.2(a) of OPA specifically for coastal facilities (Note: Coastal and offshore facilities in the SPCC program are collectively referred to as "offshore". However, this current rulemaking is specifically with respect to facilities landward of the inner boundary of the territorial seas, and that are not onshore.) These regulations will, among other things, require that owners or operators of all coastal facilities prepare and submit to the Federal government a plan for responding to a worst case discharge of oil.

EPA plans to propose these requirements by 1995, and promulgate them by 1996. Costs to the industry to comply with these requirements are as yet unknown. EPA solicits information regarding the storage capacities of coastal oil production facilities to determine the percentage of this industry under the Coastal Oil and Gas subcategory that would be affected by the SPCC regulations.

XV. Solicitation of Data and Comments

EPA encourages public participation in this rulemaking and invites comments on any aspect of these proposed regulations. The EPA asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data where possible. The preceding parts of this notice identify specific areas where comments are solicited. In addition, EPA particularly requests comments and information on the following:

(1) Combining the Onshore and Coastal Subcategories

EPA's proposed coastal rule requires zero discharge for all drilling fluids and cuttings, as well as zero discharge for all produced waters except from Cook Inlet operations. Because the effluent limitations for the onshore subcategory of the oil and gas industry require zero discharge for all oil and gas wastes (44 FR 22069, April 13, 1979), EPA is considering the appropriateness of combining these two subcategories for regulation of the major wastestreams. Combining the subcategories would not only simplify the rule itself but, could result in reduction of administrative burden in permit development, and facility location determination; EPA solicits comment on the appropriateness of combining these two subcategories

XVI. Background Documents

The basis for this regulation is detailed in two major documents, each of which is supported in turn by additional information and analyses in the rulemaking record. EPA's technical foundation for the regulation is detailed in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. EPA's economic analysis is presented in the Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Offshore Oil and Gas Industry. These documents are available from the Office of Water Resource Center. (See **ADDRESSES**) The public record for this rulemaking is available for review at EPA's Water Docket. (See **ADDRESSES**)

Appendix A to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

Act—Clean Water Act.
Agency—Environmental Protection Agency
BADCT—The best available demonstrated control technology, for new sources under section 306 of the Clean Water Act.

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BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act.
bbl—barrel, 42 U.S. gallons.
bpd—barrels per day.
bpy—barrels per year.
BCT—Best conventional pollutant control technology under section 304(b)(4)(B) of the Clean Water Act.
BMP—Best management practices under section 304(e) of the Clean Water Act.
BOD—Biochemical oxygen demand.
BOE—Barrels of oil equivalent.
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act.
CFR—Code of Federal Regulations.
Clean Water Act—Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*).
Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Clean Water Act, including, but not limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH.
CWA—Clean Water Act.
Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States.
EIA—Economic Impact Analysis.
EPA—Environmental Protection Agency.
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works.
IRR—Internal Rate of Return.
LC50—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay
mg/l—milligrams per liter.
Nonconventional pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants.
NORM—Naturally Occurring Radioactive Materials.
NPDES—The National Pollutant Discharge Elimination System.
NPV—Net Present Value.
NSPS—New source performance standards under section 306 of the Clean Water Act
OCS—Offshore Continental Shelf.
OMB—Office of Management and Budget.
POTW—Publicly Owned Treatment Works
ppm—parts per million.
Priority pollutants—The 65 pollutants and classes of pollutants declared toxic under section 307(a) of the Clean Water Act.
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Clean Water Act.
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307 (b) and (c) of the Clean Water Act.
SIC—Standard Industrial Classification.
SPP—Suspended particulate phase.
TSS—Total Suspended Solids.
Coastal Technical Development Document—Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category.
Offshore Technical Development Document—Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category.
U.S.C.—United States Code.

List of Subjects in 40 CFR Part 435

Environmental protection, Oil and gas extraction, Pollution prevention, Waste treatment and disposal, Water pollution control.

Dated: January 31, 1995.

Carol M. Browner,

Administrator

For the reasons set forth in the preamble, 40 CFR part 435 is proposed to be amended as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for part 435 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318 and 1361.

2. Subpart A is proposed to be amended by revising § 435.10 to read as follows:

Subpart A—Offshore Subcategory

§ 435.10 Applicability; description of the offshore subcategory.

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas industry which are located in waters that are seaward of the inner boundary of the territorial seas ("offshore") as defined in section 502(g) of the Clean Water Act.

3. Subpart G consisting of § 435.70 is proposed to be added to read as follows:

Subpart G—General Provisions

§ 435.70 Applicability.

(a) *Purpose.* This subpart is intended to prevent oil and gas facilities subject to this part from circumventing the effluent limitations guidelines and standards applicable to those facilities by moving effluent produced in one subcategory to another subcategory for disposal under less stringent requirements than intended by this part.

(b) *Applicability.* The effluent limitations and standards applicable to an oil and gas facility shall be determined as follows:

(1) An oil and gas facility, operator, or its agent or contractor may move its wastewaters from a facility located in one subcategory to another subcategory for treatment and return it to a location covered by the original subcategory for disposal. In such case, the effluent limitations guidelines, new source performance standards, or pretreatment standards for the original subcategory apply.

(2) An oil and gas facility, operator, or its agent or contractor may move its wastewaters from a facility located in one subcategory to another subcategory for disposal or treatment and disposal, provided:

(i) If an oil and gas facility, operator or its agent or contractor moves wastewaters from a wellhead located in one subcategory to another subcategory where oil and gas facilities are governed by less stringent effluent limitations guidelines, new source performance standards, or pretreatment standards, the more stringent effluent limitations guidelines, new source performance standards, or pretreatment standards applicable to the subcategory where the wellhead is located shall apply.

(ii) If an oil and gas facility, operator or its agent moves effluent from a wellhead located in one subcategory to another subcategory where oil and gas facilities are governed by more stringent effluent limitations guidelines, new source performance standard, or pretreatment standards, the more stringent effluent limitations guidelines, new source performance standards, or pretreatment standards applicable at the point of discharge shall apply.

4. Subpart D is proposed to be amended by revising §§ 435.40 and 435.41 to read as follows:

Subpart D—Coastal Subcategory

§ 435.40 Applicability; description of the coastal subcategory.

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas industry in areas defined as "coastal." The term *coastal* means:

(a) Any oil and gas facility located in or on a water of the United States landward of the territorial seas; or

(b)(1) Oil and gas facilities in existence on April 13, 1979 or thereafter and are located landward from the inner boundary of the territorial seas and bounded on the inland side by the line defined by the inner boundary of the territorial seas eastward of the point defined by 89°45′ W. Longitude and 29°46′ N. Latitude and continuing as follows west of that point:

Direction to west longitude	Direction to north latitude
West, 89°48′	North, 29°50′
West, 90°12′	North, 30°06′
West, 90°20′	South, 29°35′
West, 90°35′	South, 29°30′
West, 90°43′	South, 29°25′

Direction to west longitude	Direction to north latitude
West, 90°57′	North, 29°32′.
West, 91°02′	North, 29°40′.
West, 91°14′	South, 29°32′.
West, 91°27′	North, 29°37′.
West, 92°33′	North, 29°46′.
West, 91°46′	North, 29°50′
West, 91°50′	North, 29°55′.
West, 91°56′	South, 29°50′.
West, 92°10′	South, 29°44′.
West, 92°55′	North, 29°46′.
West, 93°15′	North, 30°14′.
West, 93°49′	South, 30°07′.
West, 94°03′	South, 30°03′.
West, 94°10′	South, 30°00′.
West, 94°20′	South, 29°53′.
West, 95°00′	South, 29°35′.
West, 95°13′	South, 29°28′.
East, 95°08′	South, 29°15′.
West, 95°11′	South, 29°08′.
West, 95°22′	South, 28°56′.
West, 95°30′	South, 28°55′.
West, 95°33′	South, 28°49′.
West, 95°40′	South, 28°47′
West, 96°42′	South, 28°41′.
East, 96°40′	South, 28°28′.
West, 96°54′	South, 28°20′.
West, 97°03′	South, 28°13′.
West, 97°15′	South, 27°58′
West, 97°40′	South, 27°45′
West, 97°46′	South, 27°28′
West, 97°51′	South, 27°22′.
East, 97°46′	South, 27°14′.
East, 97°30′	South, 26°30′.
East, 97°26′	South, 26°11′.

(2) East to 97°19′ W. Longitude and Southward to the U.S.—Mexican border.

§ 435.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in this section, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* is the average of the daily values obtained during any 30 consecutive day period.

(c) The term *Cook Inlet* means all of the production platforms ("existing sources" or "existing dischargers") and exploratory operations ("new dischargers") addressed by EPA's Region X in the general NPDES permit for Cook Inlet.

(d) The term *daily values* as applied to produced water effluent limitations and NSPS refers to the daily measurements used to assess compliance with the maximum for any one day.

(e) The term *deck drainage* refers to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(f) The term *development facility* means any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(g) The term *dewatering effluent* means wastewater from drilling fluids and cuttings dewatering activities (including but not limited to reserve pits or other tanks or vessels, and chemical or mechanical treatment occurring during the drilling solids separation/recycle/disposal process).

(h) The term *diesel oil* refers to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

(i) The term *domestic waste* refers to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(j) The term *drill cuttings* refers to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(k) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-based drilling fluid has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

(l) The term *exploratory facility* means any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(m) The term *garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. MARPOL 73/78 is available from the National Technical Information Service (NTIS) (reference number ADA 183 505), 5285 Port Royal Road, Springfield, VA 22161.

(n) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the maximum concentration allowed as measured in any single sample of the barite.

(o) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water means the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(p) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the minimum 96-hour LC50 value allowed as measured in any single sample of the discharged waste stream. The term *minimum* as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes means the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(q) The term *M9IM* means those coastal facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(r) The term *M10* means those coastal facilities continuously manned by ten (10) or more persons.

(s)(1) The term *new source* means any facility or activity of this subcategory that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 means the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) The term *significant site preparation work* as used in 40 CFR 122.29 means the process of surveying, clearing or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) "New Source" does *not* include facilities covered by an existing NPDES permit immediately prior to the effective date of this subpart pending

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EPA issuance of a new source NPDES permit.

(t) The term *no discharge of free oil* means that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water or fail the static sheen test defined in Appendix 1 to 40 CFR part 435, subpart A.

(u) The term *produced sand* refers to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(v) The term *produced water* refers to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(w) The term *production facility* means any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations. It includes facilities that are engaged in hydrocarbon fluids separation even if located separately from wellheads.

(x) The term *sanitary waste* refers to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(y) The term *static sheen test* refers to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(z) The term *toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(aa) The term *well completion fluids* refers to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(bb) The term *well treatment fluids* refers to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(cc) The term *workover fluids* refers to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(dd) The term *96-hour LC50* refers to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

5. Section 435.42 is proposed to be amended by revising the introductory text and be in the table to paragraph (a) by adding at the end an entry for "Produced Sand" to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) * * *

BPT EFFLUENT LIMITATIONS

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * *	* * *	* * *	*
Produced Sand	zero discharge	zero discharge	NA

* * * * *

6. Sections 435.43 through 435.47 are proposed to be added to subpart D to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this Subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

BAT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BAT effluent limitations
Produced Water:		
(A) All coastal areas except Cook Inlet	.....	No discharge.
(B) Cook Inlet	Oil & Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Drilling Fluids and Drill Cuttings:		
Option 1:		
(A) All coastal areas except Cook Inlet	.....	No discharge.
(B) Cook Inlet	Free Oil[1]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume.[3]
Option 2:		
(A) All coastal areas except Cook Inlet	.....	No discharge.
(B) Cook Inlet	Free Oil[1]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 10 percent to 100 percent by volume.[3]
Option 3:		
All coastal areas	.....	No discharge.
Well Treatment, Workover and Completion Fluids:		
Option 1:		
(A) All coastal areas except freshwater of Texas and Louisiana.	Free Oil[1]	No discharge.
(B) Freshwaters of Texas and Louisiana	.....	No discharge.
Option 2:		
(A) All coastal areas except Cook Inlet	.....	No discharge.
(B) Cook Inlet	Oil and Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand	.....	No discharge.
Deck Drainage	Free Oil[2]	No discharge.
Domestic Waste	Foam	No discharge.

[1] As determined by the static sheen test
[2] As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).
[3] As determined by the toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

BCT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BCT effluent limitations
Produced Water (all facilities)	Oil & Grease	The maximum for any one day shall not exceed 72 mg/l and the 30-day average shall not exceed 48 mg/l.
Drilling Fluids and Drill Cuttings:		
All facilities except Cook Inlet	.....	No discharge.
Cook Inlet	Free Oil	No discharge.[1]
Well Treatment, Workover and Completion Fluids.	Free Oil	No discharge.[1]
Produced Sand	.....	No discharge
Deck Drainage	Free Oil	No discharge.[2]
Sanitary Waste:		
Sanitary M10	Residual Chlorine	Minimum of 1 mg/l maintained as close to this concentration as possible.
Sanitary M91M	Floating Solids	No discharge.
Domestic Waste	Floating Solids and garbage.	No discharge of Floating Solids or garbage.[3]

[1] As determined by static sheen test 40 CFR part 435, subpart A, appendix 1.
[2] As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).
[3] As defined in 40 CFR 435.41(1).

§ 435.45 Standards of performance for new sources (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

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NSPS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	NSPS/PSNS effluent limitations
Produced Water (all facilities)		No discharge.
Drilling Fluids and Drill Cuttings:		
Option 1:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Free Oil [1]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3 percent by volume. [3]
Option 2:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Free Oil [1]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Toxicity	Minimum 96-hour LC50 of the SPP shall be 10 percent to 100 percent to 100 percent by volume. [3]
Option 3:		
All coastal areas		No discharge.
Well Treatment, Workover and Completion Fluids:		
Option 1:		
(A) All coastal areas except freshwater of Texas and Louisiana.	Free Oil [1]	No discharge.
(B) Freshwaters of Texas and Louisiana		No discharge.
Option 2:		
(A) All coastal areas except Cook Inlet		No discharge.
(B) Cook Inlet	Oil and Grease	The maximum for any one day shall not exceed 42 mg/l, and the 30-day average shall not exceed 29 mg/l.
Produced Sand		No discharge.
Deck Drainage	Free Oil [2]	No discharge.
Sanitary Waste:		
Sanitary M10	Residual Chlorine	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M91M	Floating Solids	No discharge.
Domestic Waste	Floating Solids, Garbage [4] and Foam	No discharge of floating solids or garbage or foam

[1] As determined by the static sheen test.
[2] As determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).
[3] As determined by the toxicity test (see appendix 2 of 40 CFR part 435, subpart A).
[4] As defined in 40 CFR 435.41(1).

§ 435.46 Pretreatment Standards of performance for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source with discharges subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and by the effective date of this rule achieve the following pretreatment standards for existing sources (PSES).

PSES EFFLUENT LIMITATIONS

Stream	Poliutant parameter	PSES effluent limitations
Produced Water		No discharge.
Drilling Fluids and Drill Cuttings		No discharge.
Well Treatment, Workover and Completion Fluids		No discharge.
Produced Sand		No discharge.
Deck Drainage		No discharge.

§ 435.47 Pretreatment Standards of performance for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source with discharges subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and by the effective date of this rule achieve the following pretreatment standards for new sources (PSNS).

PSNS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	PSNS effluent limitations
Produced Water(all facilities)		No discharge.
Drilling fluids and Drill Cuttings		No discharge.
Well Treatment, Workover and Completion Fluids		No discharge.
Produced Sand		No discharge.
Deck Drainage		No discharge.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Special Rule.

SUMMARY: The implementing regulations for threatened wildlife generally incorporate the prohibitions of Section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special section 4(d) rule and, therefore, all of the section 9 prohibitions, including the "take" prohibitions, became applicable to the species. Subsequent to the listing of the spotted owl, a Federal Late-Successional and Old-growth (LSOG) forest management strategy (Plan) was developed and then formally adopted on April 13, 1994, in a Record of Decision (ROD) that amended land management plans for Federal forests in northern California, Oregon, and Washington. Although this proposed rule refers to the Federal LSOG forest strategy as the "Forest Plan", it is noted that the strategy is not a stand-alone management Plan but rather effected a series of amendments to Forest Service and the Bureau of Land Management planning documents. In recognition of the significant contribution the Plan does make toward spotted owl conservation and management, the Service now proposes a special rule, pursuant to section 4(d) of the Act, to replace the blanket prohibition against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

DATES: Comments from all interested parties must be received by May 18, 1995.

The Service seeks comments from the interested public, agencies, and interest groups on this proposed special rule and the potential environmental effects of its implementation. A Draft Environmental Impact Statement (DEIS) is being developed to accompany this proposed rule and will be published soon after the proposed rule. The end of the comment period on this proposed rule will be extended to coincide with the end of the public comment period on the DEIS.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The complete file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecosystem, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (206/534–9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecosystem, 911 N.E. 11th Avenue, Portland Oregon 97232–4181, (503/231–6159).

SUPPLEMENTARY INFORMATION:

Abstract

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. When the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special 4(d) rule. Therefore, all of the Section 9 prohibitions for endangered species were made applicable to the spotted owl throughout its range, including the prohibitions against "take" that apply to endangered species under the Act.

Subsequent to the listing of the spotted owl, a new Federal forest management strategy was developed and proposed by the Forest Ecosystem Management Assessment Team (FEMAT), which was established by President Clinton following the April 2, 1993, Forest Conference in Portland, Oregon. FEMAT was established to develop options for the management of Federal LSOG-forest ecosystems in northern California, Oregon, and Washington within the range of the spotted owl. FEMAT outlined those options in the report, *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*, which drew heavily upon previous scientific studies conducted on the northern spotted owl. On July 1, 1993, the President identified "Option 9" in the FEMAT Report as the preferred alternative for managing Federal LSOG-forests in northern California, Oregon, and Washington. The proposed management scenario under Option 9 of FEMAT established a system of late-successional forest and riparian reserves that would, in conjunction with Administratively withdrawn and Congressionally reserved areas, provide the foundation of protected "old growth" habitat that would benefit spotted owls, marbled murrelets, salmon and many other old growth associated species; adaptive management areas (AMAs) and surrounding "matrix" lands would constitute the remaining forest management designations on Federal lands in the planning area. Future timber harvesting activities on Federal lands within the range of the northern spotted owl were expected to occur primarily in AMAs and Federal lands determined to constitute the "matrix."

A draft Supplemental Environmental Impact Statement was issued in July 1993 to assess the environmental impacts of the alternatives which were set forth in the FEMAT Report. A final SEIS was completed in February 1994, and a Record of Decision was signed on April 13, 1994. This process culminated in the formal administrative adoption of Alternative 9 (a revised version of Option 9 as it had been presented in the FEMAT Report), which has now become known, simply, as the Forest Plan or Plan. This Plan provides a firm foundation for the conservation needs of the spotted owl, especially in light of the net addition of approximately 600,000 acres of Federal forest lands to protected reserve status between its original formulation in the FEMAT Report and the Record of Decision. On December 21, 1994, Federal District Court Judge William L. Dwyer, issued his order upholding the adequacy of the Plan. Judge Dwyer said "The order now entered,* * *, will mark the first time in several years that the owl-habitat forests will be managed by the responsible agencies under a plan found lawful by the courts. It will also mark the first time that the Forest Service and BLM have worked together to preserve ecosystems common to their jurisdictions."

Despite enhanced owl protection under the final Forest Plan, however, the Service believes that some supplemental support from non-Federal forest lands remains necessary and

advisable for owl conservation in certain parts of the range of the owl.

Based upon the possibility that the preferred alternative of FEMAT (Option 9) would eventually be adopted, the Service published a Notice of Intent (NOI) in the **Federal Register** (58 FR 69132) on December 29, 1993, and sent out a mailer advising the public of its intention to prepare an Environmental Impact Statement (EIS) for a proposed special rule that would ease restrictions for the spotted owl on certain non-Federal forest lands. In response, the Service received and evaluated more than 8,500 public comments. Taking these comments into consideration, and based upon additional analyses, the Service now proposes a special rule that would reduce the prohibition against incidental take of spotted owls in the course of timber harvest and related activities on specified non-Federal forest lands in Washington and California.

For reasons discussed in more detail later, the Service is not including Oregon, at this time, within the geographic scope of this proposed special rule. The Service is aware of ongoing efforts within Oregon between the Governor's office and large and small landowners to fashion an "Oregon Alternative" to the Service's proposed action for the State, as set out in the December 29, 1993, NOI. The Service is supportive of this effort and will maintain the regulatory status quo for spotted owls in Oregon in anticipation that an "Oregon Alternative" approach to owl conservation will be developed. Thus, by excluding Oregon altogether from this proposed special rule, the Service retains for Oregon the original level of protection against take for the owl established when the species was listed on June 26, 1990.

In assessing the conservation needs of the northern spotted owl on non-Federal lands, the Service was particularly mindful of—(1) The level of protection to be provided the owl under the Federal reserve and riparian buffer systems established under the Forest Plan, as well as the matrix and adaptive management area prescriptions under the Plan; (2) the range, location, and number of spotted owls on non-Federal and Federal lands; (3) recently developed State programs to regulate forest practices to benefit the spotted owl; and (4) emerging non-Federal landowner habitat management and owl conservation strategies such as Habitat Conservation Plans and agreements to avoid the incidental take of owls.

This special rule proposes to replace the currently applicable blanket prohibition against incidental take on non-Federal lands throughout the owls' range with a more particularized set of prohibitions for Washington and California. For the State of Washington, incidental take restrictions would be relaxed for approximately 5.24 million acres of non-Federal land in conifer forests. While only a considerably smaller acreage figure of non-Federal forest land is presently affected by incidental take prohibitions for the spotted owl, the fear of future owl restrictions is a significant concern of forest landowners throughout the range of the spotted owl. This proposed rule would ease incidental take restrictions on designated non-Federal lands by limiting the incidental take prohibition for timber harvest activities to actions that fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. By proposing this action, the Service is not implying that incidental take cannot occur until harvest activities approach and actually invade an owl's activity center. Rather, the Service is proposing that, in certain portions of the owl's range, the incidental take of an owl will no longer be a prohibited activity unless it involves harvest activities within an activity center.

Current incidental take restrictions would be retained for those spotted owls whose site centers are located within six designated zones or "Special Emphasis Areas" (SEAs) in the State of Washington. The six SEAs include the western portion of the Olympic Peninsula, the Finney Block area, the I–90 Corridor, the Mineral Block area, the Siouxon Creek area and the Columbia Gorge/White Salmon areas. These areas were generally chosen to fill in gaps in protection under the Forest Plan where the Federal land base alone appears currently to be inadequate to provide for the conservation of the owl.

In addition, the Service proposes to implement a "Local Option Conservation Planning" program in Washington to provide an opportunity for additional relief from incidental take prohibitions for non-Federal landowners who own between 80 and 5,000 acres of forest lands within an SEA. The Local Option process is envisioned to be the equivalent of a "short form" Habitat Conservation Plan. The local option conservation planning process would not apply to those areas where the Service determines that suitable owl habitat (nesting, roosting or foraging habitat) on non-Federal lands within SEAs can reasonably be expected to provide important demographic support for Federal owl reserves. These "Local Option" conservation plans would provide non-Federal landowners with the flexibility to develop alternative prescriptions or restrictions for their lands which could achieve a level of protection comparable to the conservation objectives set forth for the owl in this rule.

For the State of California, this proposed rule would recognize the significant conservation benefits accorded the northern spotted owl under California law by easing the Federal prohibition against incidental take from timber harvest activities in most of the Klamath province of that State. The zone in which this would occur would be called the Klamath Province Relief Area. The incidental take prohibition for timber harvests in this Relief Area would be limited to actions which fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. Additional relief could be provided to non-Federal landowners in four potential "California Conservation Planning Areas" (CCPAs) referred to as the California Coastal Area, Hardwood Region, Wells Mountain-Bully Choop area, and the California Cascades pursuant to the planning process under the California Natural Communities Conservation Planning (NCCP) Act or through completion of a Habitat Conservation Plan (HCP) under Section 10(a)(1)(B) of the Act (Figure 1 to § 17.41(c)).

Except for acreage actually located within owl activity centers, the Service also proposes that small landowners who own no more than 80 acres of forest lands within a given SEA in Washington or one of the four potential CCPAs in California, as of the publication date of this proposed rule in the **Federal Register**, would be relieved of the general prohibition against incidental take. The only exception to this proposal would be for any small landowner who owns any or all of the 70 acres of forested lands closest to an owl site center. The incidental take restriction would continue to apply within such 70 acres.

The Service also proposes to provide landowners within SEAs in Washington or potential CCPAs in California additional flexibility for avoiding incidental take liability if their lands are intermingled with Federal matrix or Adaptive Management Area (AMA) lands. In such situations, non-Federal landowners would be provided the alternative option at their choosing of adopting the final harvest prescriptions delineated for the surrounding Federal matrix or AMA lands, in lieu of management practices which comply with current incidental take restrictions. The one exception to this policy would

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be where the adoption of final matrix or AMA harvest prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn areas. In such a case, the incidental take restrictions would continue to apply for at least two more years, pending review of the status of owls in affected reserve or withdrawn areas.

For Tribal forest lands in Washington and California, the Service proposes to lift the Federal prohibition against the incidental take of the spotted owl except for harvest activities within the immediate 70 acres around a site center. Timber harvests conducted in accordance with Tribal resource regulations would not be subjected to any additional Federal prohibitions against incidental take of the owl.

Additionally, the Service proposes to include a "sunset" provision that would lift the incidental take restrictions within an SEA or CCPA once the owl conservation goals for that area are achieved. The Service also proposes to provide a "safe harbor" of certainty for harvest activities within SEAs or CCPAs where more than 40 percent suitable owl habitat would be retained after harvest within an owl's median annual home range. In those instances where the "safe harbor" provision would apply, landowners would not be subject to a take prohibition violation under any circumstances should an incidental take of an owl nevertheless occur despite the landowner's efforts to avoid take. The "safe harbor" provision would not apply, however, to any timber harvest activities within the closest 70 acres of suitable owl habitat surrounding an owl site center regardless of the percentage of suitable owl habitat left within an owl's median annual home range.

In addition, the proposal sets out a new approach to provide incentives to non-Federal landowners to restore or enhance degraded spotted owl habitat, or to maintain existing suitable owl habitat, without being penalized if their conservation efforts subsequently attract spotted owls.

Definitions

As used in this proposed rule:

"Activity center" means the closest 70 acres of suitable habitat around the nest tree of a pair of owls or around the primary roost of a non-nesting pair or territorial single owl (see "site center").

"Adaptive management area" means the ten landscape units that were adopted in the April 13, 1994, Record of Decision for development and testing of technical and social approaches to achieving specific ecological, economic, and other social objectives.

"Administratively withdrawn area" means lands that are excluded from planned or programmed timber harvest under current agency planning documents or the preferred alternative for draft agency planning documents.

"California Conservation Planning Area (CCPA)" means areas in which the State of California Resources Agency could conduct planning for spotted owls under the auspices of the California Natural Communities Conservation Planning Act (CNCCPA) of 1991.

"Congressionally reserved area" means those lands with Congressional designations that preclude timber harvest, as well as other Federal lands not administered by the Forest Service or Bureau of Land Management, including National Parks and Monuments, Wild and Scenic Rivers, National Wildlife Refuges, and military reservations.

"Conservation" as defined in the Endangered Species Act generally means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

"Demographic support" refers to the effects on a population from a combination of births and deaths such that the net result is a stable or increasing population. For the spotted owl this would occur through provision and maintenance of: (1) Both suitable and dispersal habitat to support individual owls; (2) small clusters or larger groups of successfully breeding owls; and (3) the successful interaction and movement between individuals and pairs.

"Dispersal" refers to movements through all habitat types by: (1) juvenile spotted owls from the time they leave their natal area until they establish their own territory; (2) non-territorial single spotted owls; or (3) displaced adults searching for new territories.

"Dispersal habitat" means forest stands with adequate tree size, structure, and canopy closure to provide—(1) cover for dispersing owls from avian predators; and (2) foraging opportunities during dispersal events.

"Federal reserve" or "Forest Plan reserve" means those Federal lands delineated in the April 13, 1994, Record of Decision in which programmed timber harvest is not allowed and is otherwise severely limited. There are two types of reserves—late-successional reserves, which are designed to produce contiguous blocks of older forest stands, and riparian reserves, which consist of protected strips along the banks of rivers, streams, lakes, and wetlands which act as a buffer between these water bodies and areas where timber harvesting is allowed.

"Habitat Conservation Plan" (HCP) means an agreement between the U.S. Fish and Wildlife Service and either a private entity, local or county government or State under section 10(a)(1)(B) of the Act that specifies conservation measures that would be implemented in exchange for a permit that would allow the incidental take of a listed species.

"Home range" means the area a spotted owl uses and traverses in the course of normal activities in fulfilling its biological needs during the course of its life span.

"Incidental Take" means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

"Matrix" means those Federal lands generally available for programmed timber harvest which are outside of the Congressionally reserved and Administratively withdrawn areas, Federal reserves and adaptive management areas as delineated in the Standards and Guidelines adopted in the April 13, 1994, Record of Decision.

"Province" or "Physiographic Province" means one of twelve geographic areas throughout the range of the northern spotted owl which have similar sets of biological and physical characteristics and processes due to effects of climate and geology which result in common patterns of soils and broad-scale vegetative communities.

"Record of Decision" means the April 13, 1994, *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (USDA/USDI 1994).

"Site Center" means the actual nest tree of a pair of spotted owls or the primary roost of a non-nesting pair or territorial single owl.

"Special Emphasis Area (SEA)" means one of six specific areas in the State of Washington where the Service has determined that it would be necessary and advisable to continue to apply broad protection from incidental take to support conservation efforts for the spotted owl.

"Suitable Habitat" means those areas with the vegetative structure and composition that generally have been found to support successful nesting, roosting, and foraging activities of a territorial single or breeding pair of spotted owls. Suitable habitat is sometimes referred to as nesting, roosting, and foraging (NRF) habitat.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct with respect to a spotted owl.

"Threatened Species" means a plant or wildlife species defined through the Endangered Species Act that is likely to become within the foreseeable future an endangered species throughout all or a significant portion of its range.

"Timber harvest and related activity" means any activity that would result in the removal or degradation of suitable habitat.

Background

Regulatory History of the Northern Spotted Owl

The Service listed the northern spotted owl as a threatened species on June 26, 1990, because of the past and continued projected loss of suitable habitat throughout its range (55 FR 26114). This habitat loss has been caused primarily by timber harvesting, but has been exacerbated by the effects of catastrophic events such as fire, volcanic eruption, and wind storms.

The inadequacy of regulatory mechanisms existing in 1990 under State and Federal law also contributed to the decision to list the northern spotted owl as a threatened species. During the period immediately prior to listing, when the status of the owl was under review, the annual Federal timber harvest in Oregon and Washington averaged approximately 5 billion board feet per year. Much of that harvest comprised suitable spotted owl habitat. Thus, Federal timber harvest policies at that time contributed significantly to the decline of the owl.

State protection for the owl in 1990 was also inadequate. Since that time, California, Oregon and Washington have all recognized the plight of the owl and have adopted forest management rules designed to protect this threatened species. The degree of protection accorded the northern spotted owl currently varies under State law. The northern spotted owl is listed under Washington law as an endangered species, under Oregon law as threatened, and under California law as a sensitive species.

On January 15, 1992, the Service designated critical habitat for the northern spotted owl (57 FR 1796). The critical habitat designation encompassed 6.9 million acres of Federal land in 190 critical habitat units in the States of California, Oregon, and Washington; non-Federal lands were not included in the critical habitat designation. Of the total acreage that was designated, 20 percent is in California, 47 percent is in Oregon, and 32 percent is in Washington.

Following the April 2, 1993, Forest Conference in Portland, Oregon, President Clinton established a Forest Ecosystem Management Assessment Team (FEMAT) to develop options for the management of Federal LSOG-forest ecosystems to provide habitat that would support stable populations of species associated with late-successional forests, including the northern spotted owl. FEMAT developed ten options for the management of LSOG-forest ecosystems on Federal lands in California, Oregon, and Washington, which are outlined in the Team's report, "Forest Ecosystem Management: An Ecological, Economic, and Social Assessment" (USDA et al. 1993). On July 1, 1993, the President identified Option 9 as the preferred alternative for amending the Federal agencies' land management plans with respect to LSOG forest habitat. A modified version of Option 9 was adopted in the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD). It is based on a system of late-successional reserves, riparian reserves, adaptive management areas, and a matrix of Federal lands interspersed with non-Federal lands. These designations complemented existing Administratively withdrawn and Congressionally reserved lands.

The adoption of the Forest Plan was subsequently upheld in Federal court. On December 21, 1994, Federal District Court Judge William L. Dwyer rejected plaintiffs' challenges and issued an order upholding the President's Forest Plan.

An underlying premise for the President's selection of the Forest Plan was that Federal lands should carry a disproportionately heavier burden for providing for the conservation of the northern spotted owl, enabling an easing of restrictions on incidental take for the owl on large areas of non-Federal lands. President Clinton thus directed the U.S. Fish and Wildlife Service to issue regulations pursuant to section 4(d) of the Act looking to ease, where appropriate, restrictions on the incidental take of spotted owls on non-Federal lands.

On December 29, 1993, the Service published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement in support of a 4(d) rule for the spotted owl (58 FR 69132). The NOI spelled out various alternative approaches for a 4(d) rule, including a preferred approach or proposed action. This provided a preliminary opportunity for public input prior to the actual publication of this proposed rule.

Summary of Public Comments on Scoping Notice on 4(d) Rule

The Service received more than 8,500 comments from the public on its scoping notice for a section 4(d) rule EIS for the spotted owl. Most comments received were in response to a January 3, 1994, special mailer sent by the Service to approximately 80,000 recipients. The Service specifically asked for suggestions on issues to be addressed in the 4(d) rule. In general, the comments reinforced issues and concerns identified in previous planning efforts for the spotted owl.

In the scoping notice, the Service sought comments on ten specific issues. The comments received are summarized below, by issue:

(1) Biological, commercial, trade, or other relevant data on the distribution and abundance of the northern spotted owl on non-Federal lands in California, Washington and Oregon.

No new data or information was provided to the Service relative to this issue.

(2) Biological, commercial, trade or other relevant data on the distribution and abundance of the northern spotted owl that identifies the effects of the alternatives for a section 4(d) rule on the northern spotted owl.

No new data or information was provided to the Service relative to this issue.

(3) The scope of the issues that have been identified for the environmental impact statement on a proposed special rule.

In addition to the issues identified in the scoping notice, commenters identified several additional issues for the Service to consider. Several commenters objected to any provision requiring that 40 percent of suitable habitat be retained within the median annual home range circle of an owl located within SEAs, and, because it means that 60 percent of suitable habita within a home range may be lost, requested an explanation of the biological basis for such a provision. They also requested that the Service consider how habitat modification on non-Federal land will affect owls on adjacent Federal lands.

Comments from non-Federal landowners requested that the Service consider the possible economic benefits of a variety of silvicultural regulations

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to protect owl habitat. They also asked that the Service evaluate whether the SEA concept fully takes into account the contributions already provided by State agencies and those already in place on Federal lands, and whether the regulatory burden of the SEAs is disproportionate to the benefits.

(4) The range of alternatives that have been identified for the environmental impact statement on a proposed special rule.

A number of commenters provided suggestions for additional alternatives for Service consideration. These included requests to increase or relieve the prohibitions against incidental take, to consider the development of a program based entirely on voluntary participation by forest land managers, to not use SEAs and use only 70 acre owl circles rangewide, and to provide incidental take protection only to landowners who sell to domestic markets. Some commenters requested that the Service provide an alternative with incentives for growing habitat, or to buy or exchange land instead of promulgating a section 4(d) rule. Another suggestion was to transplant spotted owls rather than use a special rule to provide for connectivity, and depend on Federal lands to provide the land base for connectivity.

Other suggested alternatives included using existing exceptions to prohibitions, such as the HCP process, in combination with a final recovery plan for the owl; protecting previously proposed critical habitat on private lands in addition to, or instead of, the SEAs; and applying the 50–11–40 rule to SEAs in addition to, or instead of, retaining 40 percent of suitable habitat within a home range.

Modifications of the alternatives were also suggested. Some examples include replacing the SEAs in Washington with the areas proposed to the Washington Forest Practices Board in a report by the Spotted Owl Scientific Advisory Group (SAG report), to add an SEA for southwestern Washington, and to reduce or exclude the Olympic Peninsula SEA.

Comments specific to California alternatives included requests to provide a separate 4(d) rule for California; to apply the Washington/Oregon approach with SEAs to California; to repeal existing owl rules and designate specific "no take" areas; and to maintain existing prohibitions of take and adopt the California Board of Forestry's new late-successional forest rules.

(5) Input on how suitable habitat for the marbled murrelet should be identified and how it should be protected, and data on marbled murrelet distribution and abundance on non-Federal lands.

Numerous comments were received on the marbled murrelet, with most stating that it is inappropriate to include the murrelet in the regulatory process for the spotted owl because not enough information about murrelets is available at this time to attempt a regulatory definition of incidental take, and that any rule for the murrelet should be done separately. One commenter stated that the Service should consider adopting an interim 4(d) rule for marbled murrelets that can be refined at a later date because they are associated with the same forest ecosystem as the spotted owl, and that all suitable murrelet habitat should be addressed including marine habitat. Another suggested that, in identifying marbled murrelet habitat, the emphasis should be on a definition that recognizes large contiguous areas of habitat capable of supporting large numbers of birds, and not on defining the lowest possible quantity and stand size used.

(6) Input on the use of "local options" to allow individuals to propose adjustment to prohibitions against take of northern spotted owls without going through the normal habitat conservation planning process.

The potential use of the local option plan was responded to favorably by many commenters. Most said that a "local option" plan should be included as an additional tool to protect owls and to provide landowner flexibility, and that these should provide the same legal protection as HCPs. Others stated that the rule should provide flexibility for applying local options based on the expertise and knowledge of State forestry associations, State governments, and forest landowners.

(7) Consideration of a small landowner exemption for non-commercial forest land of ten acres or less.

Many commenters addressed this issue with the majority recommending that the Service carefully examine and explain the rationale and biological basis for such an exemption, and suggesting that any provision to have less restrictive measures for small landowners would unfairly shift the burden of responsibility to the larger landowners. Others suggested that such an exemption may tend to break large ownerships into smaller ownerships. Some expressed the view that while appealing, it may set up an arbitrary distinction between landowners based on size, and that the 10 acre size specified in the scoping notice was too small to be meaningful.

(8) Boundaries of the SEAs in the proposed action, including the impacts and effects of alternative boundaries.

Few suggestions were received relative to specific boundary changes. Many comments were received regarding the number of SEAs, the designation or lack of designation of specific SEAs, and the general use of the SEA concept. Among the comments specific to the boundaries was the suggestion that the Mineral Block and I–90 Corridor SEAs should extend no farther west than necessary to provide reasonable connectivity between the Federal conservation areas to the north and south.

Regarding the Olympic Peninsula SEA, comments included the assertion that there should be no SEA on the Olympic Peninsula because Federal lands should be relied on for owl conservation in this area. Another suggestion was that the Service move the southern boundary of the proposed Olympic Peninsula SEA northward to run east and west from the southern boundary of the Olympia National Forest. It was further suggested that only the State of Washington's Olympic Experimental Forest be included in the SEA for the Olympic Peninsula, and that this SEA be rescinded following the approval of an HCP for the State Forest.

Many commenters were specifically concerned about the failure to designate the White Salmon landscape as an SEA to provide demographic interchange between owls on the Yakima Indian Reservation and Federal lands in the eastern Washington Cascades. Other commenters noted that there is no demonstrated need for an SEA in the White Salmon or Hood River areas.

Many commenters asked that the Service provide the scientific basis for determining the configurations and boundaries of the SEAs. There were further suggestions that for SEA boundaries, the rule must specify the requirements of "owl shadows" (restrictions on adjacent lands near an owl site center) both within and outside of SEA's. Some commenters stated that the Service should eliminate all SEAs as they would provide further harvest restrictions which would be unduly burdensome, and that they go beyond the Act by mandating conservation measures on privately owned land.

(9) Possible mitigation measures, such as multi-species Habitat Conservation Plans or conservation agreements that provide long-term enforceable and protective land management prescriptions for non-Federal lands.

Several commenters referenced the use of the HCP process, requesting that the Service clarify the relationship between HCPs and the 4(d) rule. Specifically, they asked, in the absence of an SEA designation, what guarantees would there be that habitat will be protected between the time the 4(d) rule goes into effect (and relief is granted) and the time HCPs are completed. There was also concern expressed that there may be a lack of incentives for other landowners to develop HCPs if there is no SEA designated. Others suggested the 4(d) rule state that it will not apply to lands covered by an approved HCP. Specific to California were recommendations that the Service encourage the State to continue to recognize Federally approved HCPs as a valid means of complying with regulations the State adopts as a result of the 4(d) process.

(10) Retention of Federal incidental take restrictions for Indian forest lands included within the boundary of an SEA.

Many comments were received regarding this issue, and most suggested that it may be inappropriate to impose Federal take prohibitions on tribal lands. One commenter stated that in promulgating the special rule, the Service should direct attention to the special status of Indian tribal lands as distinct and separate in treatment from other non-Federal State and private lands; the Service should adopt a special rule that exempts Indian forest lands from the prohibitions against incidental take, including any that may be in SEAs.

Some proponents of owl protection stated that the Service should not lift take prohibitions on tribal lands in the absence of criteria to ensure that the owl is adequately protected by tribal management practices. They noted that progress on the part of the tribes is variable, and this should be evaluated before lifting restrictions within SEAs. Others commented that the special rule should ensure that measures governing incidental take of the owl on Indian forest lands contribute to the conservation of the species.

In addition to the ten issues for which the Service requested input, comments were received on numerous other issues relative to the proposed action. Three general areas of interest were common in the comments from non-industrial landowners—(1) the proposed section 4(d) rule was a disincentive to grow habitat for spotted owls and to practice good silviculture; (2) the proposed rule represented an unconstitutional taking of private property and that private landowners should be compensated; and (3) the proposed 4(d) rule places an unfair burden on non-Federal lands and actually provides little relief to private lands.

Comments from industrial landowners included a request for "safe harbor" from prosecution if the requirements of the 4(d) rule were met and more that 40 percent suitable habitat was left within an owl circle after harvest; and the suggestion that the 4(d) rule assist in addressing the issue of access across Federal lands to non-Federal lands. Concern also was expressed about potential conflict with anti-trust laws when implementing, among several landowners, the requirement that 40 percent suitable habitat be left within a home range circle, and some asked that an anti-trust exemption be provided for multiple landowners who have to deal with landscape issues. One commenter also asserted that the creation of SEAs is a *de facto* designation of critical habitat that must comply with the requirements of § 4(B)(2). Several commenters stated that there is no legal basis under the Act for burdening private lands with recovery of a threatened species, and that the 4(d) rule was essentially a recovery mechanism being forced on private lands.

Proponents of spotted owl protection alleged that the scientific basis for the proposed action is unclear, and it is particularly unclear in how it relates to the recovery standards and objectives for the owl. They suggested that any special rule for the spotted owl must be part of a coordinated recovery approach among all Federal agencies with responsibility for the owl. There were numerous references to the SAG report, and that the special rule should provide the level of protection as proposed in the SAG report.

Several commenters asked that the rule provide clearer definitions for "take" and "suitable habitat." There were requests for information on the land ownership within SEAs, the number of owls present, and the anticipated level of incidental take. Others also requested information regarding the specific acreage of State and private lands off limits to harvest under the proposed action. There also were questions about how the rule would describe and determine the 70 acres to be protected around active spotted owl nests outside of SEAs.

After reviewing these public comments, as well as other owl management strategies and analyses, the Service now proposes this special rule in response to the President's directive to review the blanket set of incidental take prohibitions for the northern spotted owl that has been in effect since the listing. In particular, this proposed rule would relax incidental take restrictions for the owl for timber harvests for certain non-Federal lands in Washington and northern California. This proposed special rule excludes Oregon, however, and does not propose any changes in the regulatory prohibitions to protect the owl which are currently applicable within that State. In March and December 1994, the Service received letters from the Oregon Congressional Delegation requesting that further work on a 4(d) rule for Oregon be suspended to provide an opportunity for consensus to emerge among State officials and private landowners on a strategy for the conservation of the spotted owl. Recognizing the benefits that such a consensus approach offers, the Service agreed in May 1994, to suspend further work on a federally developed 4(d) special rule proposal for Oregon in order to encourage the development of a "stakeholder" based "Oregon Alternative".

The Governor's office in Oregon has taken the lead in working cooperatively with non-Federal landowners through the Oregon Forest Industries Council, Oregon Small Woodlands Association, Northwest Forestry Association, Douglas County, and others to develop an alternative owl conservation strategy. The Service is supportive of this approach and is willing to review and consider any State conservation proposal which results from this process.

Under the existing regulatory structure implementing section 4(d) of the Endangered Species Act, each section 4(d) "special rule" for a threatened species must contain all of the applicable prohibitions and exceptions for that species throughout its range (50 CFR 17.31(c)). Thus, in the past, Oregon would have been included in this proposed 4(d) rule, even if only to preserve the current regulatory status quo protecting the spotted owl in Oregon.

In reviewing the request for exclusion from Oregon, the Service has assessed whether it would be advantageous to adopt a new approach for dealing with special rule situations in the future by authorizing the revision of a listing of a threatened species through the subsequent publication of a special rule that covers only part of, but not all of, the range of the species. Under this approach, the general prohibitions and exceptions applicable to threatened species not covered by special rules would continue to apply in that part of the range of the species not included under the provisions of a subsequent special rule. After consideration of the

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relevant factors on this matter, the Service has decided to adopt this new approach for special rules and is simultaneously proposing additional technical amendments to 50 CFR 17.11 and 50 CFR 1731(c) to accomplish this change.

In the specific case of the northern spotted owl, the owl was originally listed as threatened without a special rule, and is subject to the same general prohibitions and exceptions which are applicable to endangered species pursuant to the current provisions of 50 CFR 17.31(a). These general prohibitions include a rangewide prohibition against the incidental take or harm of an owl. These prohibitions apply throughout the owl's range, including the State of Oregon. The Service now proposes a section 4(d) special rule for the owl that applies only to the States of Washington and California. Because the proposal for a special rule only encompasses Washington and California, under its current formulation owls in Oregon would remain fully protected against incidental take or harm under the prohibitions established for the owl when it was originally listed. As previously noted, the Service is presently proposing the requisite technical changes to 50 CFR 17.11 and 50 CFR 17.31(c), as discussed above, to allow for the issuance of a special rule that applies to only part of the range of a threatened species like the spotted owl, while retaining the original protective prohibitions for the remainder of the species' range in Oregon.

If a new "Oregon Alternative" proposal for the owl is subsequently developed which is found to be consistent with the requirements of the Act, the Service will initiate an analysis of the new proposal under the National Environmental Policy Act and initiate appropriate regulatory proceedings at that time.

Section 4(d) of the Endangered Species Act

The scope and authority for this proposed rule stems from section 4(d) of the Act, which grants the Secretary of the Interior broad administrative discretion to promulgate regulations that he deems to be necessary and advisable to meet the conservation objectives for a threatened species. The section also confers authority to the Secretary to apply to a threatened species any or all of the prohibitions against take that the Act makes expressly applicable to endangered species. The pertinent parts of section 4(d) provide:

* * * Whenever any species is listed as a threatened species pursuant to subsection (C) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1) . . . with respect to endangered species.* * *

As applied, this provision empowers the Service to promulgate a special rule which adopts species-specific protective regulations upon listing a species as threatened. Such a special rule may include imposition of the section 9(a) prohibition against "take," in some or all of its particular manifestations, and in all or a portion of the species' range, as well as other protective measures. While Congress expressly mandated certain protections for endangered species by statute (the section 9(a)(1) prohibitions), it intended to provide the Service with flexibility in determining what protections are necessary and advisable for threatened species. Section 4(d) is that grant of rulemaking authority, and it provides the Secretary with broad discretion to adopt regulations for the conservation of threatened species.

In many circumstances the Service declines to issue a special rule for a threatened species at the time it is listed, often because the Service does not have sufficiently specific knowledge or the resources necessary to develop a tailor-made rule. In this event, the general threatened species regulations at 50 CFR 17.31 come into effect, which provide for automatic application to threatened species of the prohibitions the Act itself makes applicable to endangered species. These "blanket" prohibitions act as a "safety net" for threatened species until such time as the Service determines that it is appropriate to issue a special rule for the species.

This latter course has been followed with respect to the northern spotted owl. When the species was listed as threatened in June of 1990, the Service did not promulgate a species-specific special take rule under Rule 4(d), and thus the blanket prohibitions were triggered into effect. The Service now has determined that it is appropriate to issue a special rule tailor-made for this species, based on the Service's more particularized knowledge about the respective conservation needs of the owl across the various portions of its range, and the change in LSOG-forest management occasioned by adoption of the Forest Plan. Because this proposed rule does not involve regulated take, e.g., authorization of private predator control or sport seasons, the provisions of section 3(3) regarding examination of population pressures are not invoked.

The adoption of the Forest Plan—a comprehensive, interagency strategy for management of Federal-LSOG forests in the owl's range designating nearly 7.5 million acres as late-successional reserves—is the major predicate for the Service's proposal of this special rule for the owl. Upon issuing the Biological Opinion on the Forest Plan, the Service stated that the plan "will accomplish or exceed the standards expected for the Federal contribution to recovery of the northern spotted owl and assurance of adequate habitat for its reproduction and dispersal." Thus, the Forest Plan is the primary foundation block for owl recovery. This proposed rule would complement the Forest Plan and provide for the conservation of the owl by retaining taking prohibitions on non-Federal lands in a manner designed to build on the protections the Forest Plan has provided. Further, the Service has concluded that the owl take prohibitions that would no longer apply under this proposed rule are no longer either necessary or advisable to provide for the conservation of the owl, especially in light of the Forest Plan's adoption.

In addition, as has been the case in other section 4(d) regulations, the proposed rule ultimately would promote overall owl recovery efforts in other ways. For example, with respect to a 4(d) rule issued for the threatened population of gray wolves (*Canis lupus*) in Minnesota, the Service determined that a government-implemented depredation control program that includes the possibility of lethal control measures would alleviate a source of public hostility to the wolf and would, therefore, be protective of the species (see 50 CFR 17.40(d)). For the Louisiana black bear (*Ursus americanus luteolus*), the Service promulgated a regulation under section 4(d) that authorized the unintentional take of bear incidental to normal forest practices so long as suitable habitat diversity for the bear was maintained (see 50 CFR 17.40(i); 56 FR 588, 593). As another instance, the Service has proposed to authorize the take of the threatened coastal California gnatcatcher (*Polioptila californica californica*) incidental to land use activities conducted in accordance with a State of California-sponsored Natural Community Conservation Plan (58 FR 16758). In the case of the northern spotted owl, the Service is coordinating applicability of the take prohibition with the comprehensive management strategy in the Forest Plan and the initiation of a comprehensive campaign to encourage Habitat Conservation Planning in key portions of the owl's range.

Generally, incidental take could involve either the harm or harassment of a spotted owl. The harassment of the northern spotted owl would occur through disturbance of active nesting pairs or territorial single owls within an activity center; harm would result from significant owl habitat removal around and beyond spotted owl site centers.

Incidental Take of Spotted Owls: "Harassment"

Timber harvest and related activities that disturb the breeding and nesting functions of spotted owls within activity centers during the breeding season can be considered incidental harassment of individual spotted owls. Incidental harassment may include activities that could result in disturbance of nesting spotted owls or the abandonment of eggs, nestlings, or fledgling spotted owls. More specifically, incidental harassment of spotted owls generally can include harvest activities that occur within the closest 70 acres of suitable habitat surrounding a site center during the owl's reproductive period. (The reproductive period generally is between March 1 and September 30 of each year. These dates may be modified where credible scientific information establishes a different time period for a given area.) Actions with the potential to disturb nesting spotted owls include, but are not limited to, harvest related activities such as felling, bucking, and yarding; road construction; and blasting.

A study by Miller (1989) examined the area used by fledgling spotted owl juveniles in Oregon. Radio-telemetry data showed that the average amount of nesting, roosting, and foraging habitat used by fledgling spotted owls prior to dispersal was approximately 70 acres in size. Under existing conditions in many areas, these activity centers are seldom evenly distributed around a nest tree. Mortality rates for juvenile spotted owls are significantly higher than for adults (Forsman *et al.* 1984, Gutierrez *et al.* 1985, Miller 1989). Studies of juvenile dispersal in Oregon and California indicated that few of the juvenile spotted owls survived to reproduce (Miller 1989, Gutierrez *et al.* 1985). These research studies all reported very high mortality during pre-dispersal.

Based on this and other information, the Service believes that the maintenance of the closest 70 acres of existing suitable (nesting, roosting, and foraging) habitat surrounding the nest tree will contribute to a secure core area and is crucial to maximize fledgling success and to provide a partial buffer against disturbance around the site center. To avoid harassment, resident spotted owls are considered to be nesting unless surveys conducted during the breeding season indicate that not to be the case.

Incidental Take of Spotted Owls: "Harm"

To successfully reproduce and maintain populations, studies have suggested spotted owls require substantial quantities of suitable (nesting, roosting, and foraging) habitat arrayed around their site centers.

A number of radio-telemetry studies have described the quantity and characteristics of habitat used by spotted owls. Studies by Hayes *et al.* (1989) found a strong positive relationship between the abundance of spotted owls and the percentage of older forests in the study area. A similar analysis was performed on data collected by Bart and Forsman (1992). The results showed that the number of spotted owls per square mile, pairs of owls per square mile, young per square mile, and young per pair increased with increasing amounts of older forest within the study area. Productivity (number of young fledged per pair) increased significantly with increasing amounts of older forest. Productivity in areas with greater than 60 percent older forest was approximately three times higher than productivity in areas with less than 20 percent older forest.

Documentation in the 1990 Status Review of the Northern Spotted Owl (USDI 1990a) indicates that productivity per pair is lowest in areas with small amounts of older forest. This strongly suggests that, even if some spotted owls persist in such areas, there is reason to believe they are not reproducing and surviving at replacement levels.

The above research findings have supported the determination in the past that reduced quantities of suitable habitat are likely to result in lower spotted owl abundance and productivity rates. It has also been suggested that a significant reduction of nesting, roosting, and foraging habitat within the median annual home range of a spotted owl pair or resident single creates a much higher risk of adverse effects that actually kill or injure owls by significantly impairing essential behavioral patterns, including breeding, feeding, and/or sheltering. These are the primary elements of effects that ultimately can cause harm to, and the incidental take of, spotted owls.

Recognizing the need to assist the public in avoiding the incidental take of listed species, the Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) issued a joint policy statement on July 1, 1994, committing the agencies to provide as much guidance and assistance to the general public as possible so as to avoid liability under the ESA for incidental takings (59 FR 34272, 1994). The policy statement also committed the agencies to designate in future listing packages a key contact person within either the Service or NMFS, as appropriate, to answer incidental take questions from the general public.

In the particular case of the spotted owl, the Service has encouraged the public to conduct owl surveys of property proposed for harvest or development, as a primary means of avoiding harassment or harm to an owl. The Service has recommended that such surveys be conducted according to a March 17, 1992, Service-endorsed survey protocol (USFWS 1992), available upon request from the FWS Ecological Services State Offices listed below:

Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite E–1803, Sacramento, California 95825, 916–978–4866, Attn: Field Supervisor

Oregon State Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266, 503–231–6179, Attn: Field Supervisor

Washington State Office, U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., Suite 102, Olympia, Washington 98501–2192, 206–753–9440, Attn: Field Supervisor

Biology of the Northern Spotted Owl

The spotted owl is a long-lived bird that has a high degree of nest-site fidelity within an established territory. This proposed rule incorporates, by reference, recent documents addressing the biology and ecology of the spotted owl, its habitat, and associated management strategies in Washington, Oregon, and California, including: the final rules listing the spotted owl as threatened and designating its critical habitat; the Interagency Scientific Committee (ISC) report (Thomas *et al.* 1990); the Scientific Analysis Team report (Thomas *et al.* 1993); the final draft Recovery Plan for the Northern Spotted Owl (USDI 1992); the Forest Ecosystem Management Assessment Team (FEMAT) report (USDA *et al.* 1993); the supporting documents for the Forest Plan (USDA/USDI 1994 a and b); and the Contribution of Federal and Non-Federal Habitat to Persistence of the Northern Spotted Owl on the Olympic Peninsula, Washington

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(Holthausen *et al.* 1994). The proposed rule also considered the Washington Spotted Owl Scientific Advisory Group reports (Hanson *et al.* 1993 and Buchanan *et al.* 1994).

The range of the spotted owl has been divided into 12 physiographic provinces (USDA/USDI 1994a): the Eastern and Western Cascades, Western Lowlands, and Olympic Peninsula Provinces in Washington; the Eastern and Western Cascades, Coast Range, Willamette Valley, and Klamath Provinces in Oregon; and the Klamath, Coast, and Cascades Provinces in California. The Klamath province was divided into two subprovinces by State—the Oregon Klamath Province and the California Klamath Province—even though the two provinces are part of the same geographic area (Figure 4 to § 17.41(c)).

Habitat Characteristics

Northern spotted owls generally have large home ranges and use large tracts of land containing significant acreage of older forest to meet their biological needs. The median annual home range size of a northern spotted owl, which varies in size from province to province, is approximated by a circle centered on an owl site center. Estimated median annual home range sizes represent the area used by half of the spotted owl pairs or resident singles studied to date within each province to meet their annual life history needs.

Home range sizes were estimated by analyzing radio-telemetry home range data from studies conducted on the annual movements of spotted owl pairs, referenced in the 1990 Status Review (1990a) and the Interagency Scientific Committee report (Thomas *et al* 1990).

Based on studies of owl habitat preferences, including habitat structure and use and prey preference throughout the range of the owl, spotted owl habitat consists of four components: (1) Nesting, (2) roosting, (3) foraging, and (4) dispersal. Although this habitat is variable over the range of the spotted owl, some general attributes are common to the owl's life-history requirements throughout its range. The age of a forest is not as important for determining habitat suitability for the northern spotted owl as the structure and composition of the forest. Northern interior forests typically may require 150 to 200 years to attain the attributes of nesting and roosting habitat; however, characteristics of nesting and roosting habitat are sometimes found in younger forests, usually those with significant remnant trees from earlier late-successional stands.

The attributes of superior nesting and roosting habitat typically include a moderate to high canopy closure (60 to 80 percent closure); a multi-layered, multi-species canopy with large overstory trees; a high incidence of large trees with various deformities (e.g., large cavities, broken tops, mistletoe infections, and debris accumulations); large accumulations of fallen trees and other debris; and sufficient open space below the canopy for owls to fly (Thomas, *et al.* 1990).

Spotted owls use a wider array of forest types for foraging, including more open and fragmented habitat. Habitat that meets the spotted owl's need for nesting and roosting also provides foraging habitat. However, some habitat that supports foraging may be inadequate for nesting and roosting. In much of the species' northern range, large, dense forests are also chosen as foraging habitat, probably because they provide relatively high densities of favored prey, the northern flying squirrel (*Glaucomys sabrinus*), as well as cover from predators. Because much of the flying squirrel's diet is fungal material, old decadent forests provide superior foraging habitat for owls. In southern, lower-elevation portions of the owl's range, the species often forages along the edges of dense forests and in more open forests, preying on the dusky-footed woodrat (*Neotoma fuscipes*).

In general terms, suitable habitat means those areas with the vegetative structure and composition necessary to provide for successful nesting, roosting and foraging activities sufficient to support a territorial single or breeding pair of spotted owls. Suitable habitat is sometime referred to as nesting, roosting and foraging (NRF) habitat.

Although habitat that allows spotted owls to disperse may be unsuitable for nesting, roosting, or foraging, it provides an important linkage among blocks of nesting habitat both locally and over the range of the northern spotted owl. This linkage is essential to the conservation of the spotted owl. Dispersal habitat, at a minimum, consists of forest stands with adequate tree size and canopy closure to provide some degree of protection to spotted owls from avian predators and to allow the owls to forage at least occasionally.

Suitable and dispersal habitat vary by province and are described separately under the discussion of each province in the following section.

Discussion of Spotted Owl Provinces by State

As previously noted, the range of the northern spotted owl has been subdivided into 12 separate provinces (Figure 4 to § 17.41(c)). For purposes of this rule, the Klamath province has been divided into two provinces by State—the California Klamath province and the Oregon Klamath province—even though the two provinces are part of the same geographic area. In California, the three provinces are the California Cascades, California Klamath, and California Coast. The Oregon Coast Ranges, Willamette Valley, Oregon Klamath, Western Oregon Cascades, and Eastern Oregon Cascades constitute the five provinces of Oregon. The four Washington provinces are the Eastern Washington Cascades, Western Washington Cascades, Western Washington Lowlands, and the Olympic Peninsula. Only the seven provinces in Washington and California are the subject of incidental take prohibition modifications under this proposed rule and will therefore be discussed in more detail below.

Washington

1. Washington Olympic Peninsula Province

The Washington Olympic Peninsula province is bordered by the Pacific Ocean on the west, the Straits of Juan de Fuca on the north, Hood Canal on the east, and State Highway 12 to the south (Figure 4 to § 17.41(c)). Of the three million acres in the province, approximately 51 percent are in Federal ownership. The central portion of the province is high, mountainous terrain, surrounded by lower elevation forest that provides habitat for the spotted owl. Almost all Federal lands on the Peninsula have either been designated as a late successional or riparian reserves under the Forest Plan or have been Congressionally withdrawn from timber harvest; only 8,400 acres of Federal forest land on the Peninsula are available for programmed timber harvest. In general, the province is demographically isolated from other parts of the owl's range. Natural catastrophic events such as windstorms and wildfires are threats that have the capability of destroying thousands of acres of habitat.

The recent report by Holthausen *et al.* concluded that "* * * it is likely, but not assured, that a stable population of owls would be maintained * * *" on Federal lands in the Olympic Peninsula Province. However, the report also notes it would be "unlikely" that owls would persist on "* * * the western coastal strip of the National Park, * * *" if non-Federal habitat on the western side of the Peninsula were excluded from current Federal protection for owls. The report went on to explain that "the retention of non-Federal habitat in the western portion of the peninsula was particularly significant and provided for a larger area of core habitat on Federal land in model analyses. In addition, the retention of this habitat would likely increase the chances of maintaining a population on the coastal strip of the Olympic National Park." When comparing the relative value of an SEA on the western side of the Peninsula with a possible SEA on the northern side of the Peninsula, the report noted that the western SEA "made a much greater contribution to owl numbers and occupancy rates than did the northern SEA * * *. Mean numbers of pairs over the 100-year simulation was as large with the western SEA alone as with both SEAs." Thus, non-Federal lands on the northern portion of the Peninsula were not viewed as having any appreciable capability of making a significant contribution to the long-term conservation of the spotted owl on the Olympic Peninsula.

Finally, the report stated that attempts to maintain a "habitat connection across southwestern Washington * * * would have little effect on the status of the owl population on the Peninsula if that population was stable or nearly stable." In other words, recent analysis suggests that the likelihood of addressing past concerns about the need to connect the Olympic Peninsula owl population to southwestern Washington owls in order to maintain a viable population is very low, given current conditions, especially when relying on the application of incidental take prohibitions. According to Holthausen, et. al, "* * * the populations of owls on the Peninsula is sufficiently large to avoid any short to mid-term loss of genetic variation, * * *" Except for the western portion of the Peninsula where non-Federal lands are still important, the major problem for owls on the Peninsula is the past loss of suitable habitat on Federal lands.

a. *NRF Habitat.* NRF habitat on the Olympic Peninsula consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches in diameter at breast height (dbh); and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat on the Olympic Peninsula consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

2. Western Washington Lowlands Province

This province consists of the lowlands outside of the Olympic Province that extend east from the Pacific Ocean to the western foothills of the Washington Cascades (Figure 4 to § 17.41(c)). The Canadian border forms the northern boundary and the Columbia River the southern boundary of the province. Forest lands in the north and central portions of the province along Puget Sound have been converted to agricultural, industrial and urban areas. The southwestern portion is dominated by commercial tree farming. Of the 6.5 million acres within this province, only one percent is under Federal management.

a. *NRF Habitat.* NRF habitat in the Western Washington Lowlands consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Western Washington Lowlands consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

Spotted owls in this province have extremely low population levels due to isolation of populations within the province and limited nesting, roosting, and foraging habitat. The limited amount of habitat in this province also contributes to the demographic isolation of the Olympic Peninsula Province. As noted previously in the discussion on the Olympic Peninsula, however, the recent study by Holthausen *et al.* suggested that even substantial conservation efforts in Southwest Washington would be unlikely to make any meaningful contribution to maintaining a stable, long-term population of owls on the Olympic Peninsula. Thus, while Southwest Washington is important as part of the historic range of the owl, the continued application of blanket incidental take prohibitions to the exceptionally limited suitable habitat that still exists there makes any contribution to owls on the Olympic Peninsula minimal at best.

Currently, the Service is attempting to address these conservation opportunity limitations through a creative new approach which targets the development of comprehensive multi-species Habitat Conservation Plans with several of the large landowners in this province. The Service has premised this cooperative approach, as opposed to designating this area as a Special Emphasis Area, on the positive commitments it has received from major landowners in this region to negotiate comprehensive HCPs. In addition, one of the landowners has entered into a "take avoidance" agreement while working on their HCP. The take avoidance agreement insures that no owls will be lost as the result of timber harvest during the period in which the HCP is being developed.

3. Western Washington Cascades Province

The Western Washington Cascades province occupies the land west of the Cascades crest, from the Columbia River north to the Canadian Border and west to the Western Washington Lowland province (Figure 4 to § 17.41(c)). This province contains about 6.1 million acres of land, of which approximately 61 percent is in Federal ownership. Most of the non-federal lands occur along the western edge of the province and along the major mountain passes in checkerboard ownership with Federal lands.

a. *NRF Habitat.* NRF habitat in the Western Washington Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Western Washington Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forest with smaller dominant trees or lower canopy closure than NRF habitat; multiple canopy layers of multiple large overstory conifers greater than 10 inches dbh; and a total canopy closure among dominant, co-dominant and understory trees of greater than 60 percent.

A Habitat Conservation Plan (HCP) was recently approved by the Fish and Wildlife Service to cover Murray Pacific Corporation lands in Lewis County in this Province. The permit for this 100-year Habitat Conservation Plan for the northern spotted owl was signed on September 24, 1993, for the Murray Pacific Corporation, a Tacoma,

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Washington, based timber company The plan provides for the development and maintenance of dispersal habitat for the spotted owl that is well distributed over the 54,610 acres of the company's land, while allowing limited taking of spotted owls that is incidental to the company's timber harvest activities.

The Murray Pacific planning area is situated between the Mineral Block (an isolated block of Forest Service land) and the main portion of the Gifford Pinchot National Forest, that is located immediately south of Mt. Rainier National Park. The Mineral Block has been designated as a late-successional Federal reserve under the Forest Plan. The management of Murray Pacific property will promote the opportunity for the dispersal of spotted owls to and from this isolated reserve, providing a link with the Cascade Mountains population. The Mineral Block also hosts the most westerly extension of spotted owls in the Cascade Mountains.

General threats to the spotted owl in this province include low population levels, limited habitat in the northern portion of the province, declining habitat, and dispersal problems in areas of limited Federal ownership.

4. Eastern Washington Cascades Province

This province lies east of the crest of the Cascades Mountains from the Columbia River north to the Canadian Border (Figure 4 to § 17.41(c)). The province extends east to where suitable spotted owl habitat naturally diminishes and drier pine forests become prevalent. Approximately 62 percent of the province's 5.7 million acres is in Federal ownership.

a. *NRF Habitat.* NRF habitat in the Eastern Washington Cascades Province consists, as a general matter, of coniferous forest with stands that contain greater than 20 percent fir (Douglas fir, grand fir) and/or hemlock trees; multiple canopy layers of multiple large overstory conifers greater than 12 inches dbh; and a canopy closure among dominant, co-dominant and understory trees of greater than 50 percent.

b. *Dispersal Habitat.* Dispersal habitat in the Eastern Washington Cascades Province consists, as a general matter, of coniferous forest with stands that contain greater than 20 percent fir trees with smaller dominant trees or lower canopy closure than NRF habitat multiple canopy layers of multiple large overstory conifers of greater than 11 inches dbh; and total canopy closure among dominant, co-dominant and understory trees of greater than 50 percent.

Threats to the spotted owl in this province include natural fragmentation of spotted owl habitat by geological features; loss of spotted owl habitat from wildfires; loss of habitat from timber harvest activities; and low spotted owl populations in some areas of the province.

California

1. California Coastal Province

Extending from the Oregon border south to San Francisco Bay, this province lies west of the Six Rivers and Mendocino National Forests (Figure 4 to § 17.41(c)). It consists of approximately 5.6 million acres, of which about 87 percent is in non-Federal ownership. Timber management is the primary land use on about 2 million acres, and is concentrated in the heavily-forested redwood zone located within 20 miles of the Pacific Ocean coastline. In the more inland and southerly portions of the province, owl habitat is largely confined to the lower portions of drainages and is naturally fragmented by grasslands, hardwoods, and chaparral, as well as by agricultural and urban areas.

a. *NRF Habitat.* NRF habitat in the California Coastal Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Coastal Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh; a total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

This province is unique in that it supports several hundred pairs of spotted owls (over ⅓ of the State's population) within managed second-growth timber stands. Factors that appear to contribute to the suitability of these second-growth stands include the rapid growth of trees in the coastal environment, the prevalence of hardwood understories, and the widespread occurrence of a favored prey species, the dusky-footed woodrat. The primary threat to the spotted owl in this region is habitat alteration, but, due to the spotted owl's widespread distribution, the predominance of selection harvest methods, the rapid regrowth of habitat, and effective and comprehensive State wildlife conservation and forest practice regulations, threats are considered low to moderate in this portion of the spotted owl's range.

Because Federal lands in this province are limited, they play a small role in spotted owl conservation in this province. Significant non-Federal contributions to conservation are in place or under development in this area. In addition to efforts by the state, described in more detail later, several large timber companies in the coastal province have made substantial investments in information-gathering and planning for spotted owl conservation. The Simpson Timber Company has completed a Habitat Conservation Plan and received a section 10(a) permit for the incidental take of a limited number of spotted owls on its 380,000-acre property. Pursuant to this plan, Simpson Timber has set aside 40,000 acres of suitable owl habitat for at least ten years, is conducting research on habitat characteristics, and has banded over 600 spotted owls.

2. California Klamath Province

This province lies to the east of the California Coastal province, and is contiguous with the Oregon Klamath province (Figure 4 to § 17.41(c)). The California Klamath province consists of approximately 6.2 million acres, of which about 76 percent is in Federal ownership. The U.S. Forest Service is the primary land manager. About 25 percent of the Forest Service lands in the province are believed to be currently suitable for nesting, roosting, and foraging by the spotted owl.

a. *NRF Habitat.* NRF habitat in the California Klamath Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Klamath Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh

total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

In many areas of the province, spotted owl habitat is naturally fragmented by chaparral, stands of deciduous hardwoods, and low-elevation vegetation types. In portions of the area, suppression of fire over the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, during the same period, timber harvest has removed substantial amounts of suitable habitat. Owl populations throughout the province were believed to be declining due to habitat loss at the time of listing, and data suggest that populations may well be continuing to decline in the province's only demographic study area (Franklin *et al.* 1992). In the southern portion of the province, especially on the Mendocino National Forest, spotted owls and nesting, roosting, and foraging habitat are more scattered than in northern areas due to both natural conditions and recent harvest. However, despite extensive habitat fragmentation in some areas during the last two decades, spotted owl populations appear to remain distributed throughout most parts of the province.

Until the listing of the spotted owl, continued habitat alteration due to clear-cutting was a primary threat to the species in this province. The most important threat to habitat at the present time is wildfire. In the past six years, large fires have destroyed or degraded substantial quantities of owl habitat on the Klamath, Shasta-Trinity, and Mendocino National Forests.

The Hoopa Valley Indian Reservation occupies about 88,000 acres along the western margin of this province. The Hoopa Tribe has conducted forestry operations under section 7 consultation conducted between the Bureau of Indian Affairs and the Service, and is preparing a comprehensive integrated resource management plan for forestry and wildlife on their lands. The Tribe is also developing a Geographic Information System (GIS) data base to integrate spotted owl conservation into its timber management program. The maintenance of adequate dispersal condition in this area would improve the intra-provincial connectivity and dispersal between Federal reserves.

3. California Cascades Province

This province lies east of the California Klamath province. It consists of approximately 2.5 million acres, of which about 46 percent is in Federal ownership (Figure 3 to § 17.41(c)). Checkerboard Federal and non-Federal ownership patterns predominate. Due to the relatively dry climate and the history of recurrent wildfires in this province, spotted owl habitat is naturally fragmented by chaparral and stands of deciduous hardwoods. As is the case in the California Klamath Province, the suppression of wildfire over the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, timber harvest has removed substantial amounts of suitable habitat. Existing spotted owl sites are widely scattered, and the potential for dispersal across the province appears to be limited. This province provides the demographic and genetic linkage between the northern spotted owl and the California spotted owl of the Sierra Nevada range.

a. *NRF Habitat.* NRF habitat in the California Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches dbh; and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent. Some nest sites may occur in stands of smaller trees or with a lower canopy closure; however, such sites are not typical.

b. *Dispersal Habitat.* Dispersal habitat in the California Cascades Province consists, as a general matter, of coniferous or mixed coniferous/hardwood forests, with smaller dominant trees or lower canopy closure than in NRF habitat; multiple canopy layers, with multiple large overstory conifers greater than 10 inches dbh; a total canopy closure among dominant, co-dominant; and understory trees of greater than 40 percent.

Currently, threats in this province include low population numbers, difficulty in providing for interacting population clusters, and fragmented dispersal habitat. Catastrophic wildfire is also an important threat to habitat. In 1992, a 70,000-acre fire in Shasta County substantially reduced the likelihood of contact between the northern spotted owl and the California spotted owl for the next several decades.

Northern Spotted Owl Populations on Non-Federal Lands

Due primarily to historic timber harvest patterns, approximately 75 percent of the known rangewide population of spotted owls is centered on Federal lands. Owl site centers on non-Federal lands are usually found in remnant stands of older forest, or in younger forests that have had time to regenerate following harvest. In addition, adjacent forested non-Federal lands can provide foraging and dispersal habitat for owls whose site centers are on Federal lands.

As of July 1, 1994, there were 5,431 known locations, or site centers, of northern spotted owl pairs or resident single owls in Washington, Oregon, and California (located between 1989 and 1993)—851 sites (16 percent) in Washington, 2,893 (53 percent) in Oregon, and 1,687 (31 percent) in California. In Washington and Oregon, owl site centers on non-Federal lands are typically widely scattered. Currently, 1,319 or 24 percent of known owl site centers are located on non-Federal lands—140 in Washington, 342 in Oregon, and 837 in California. Of those in California, 631 or 75 percent of the site centers located on non-Federal lands are located in the California Coast Province, where owls are relatively common in second-growth timber stands. Site centers in the interior provinces of California are typically scattered. In addition to the site centers located on non-Federal lands in Washington, Oregon, and California, preliminary analyses indicate that there are 151 site centers in Washington, 810 centers in Oregon, and 204 centers in California, located on Federal lands that are dependent upon some percentage of suitable owl habitat on adjacent non-Federal lands to support the owls.

Non-Federal lands in certain portions of the owl's range are still necessary to support and supplement the Federal lands-based owl conservation strategy. While the type of support needed varies depending on local conditions, the three general types of conservation support needed within specially designated areas are:

(1) Habitat on non-Federal lands near Federal reserves where existing owl populations are low to provide demographic support for owl populations. Areas that are needed to provide demographic support for Federal reserves include, in Washington: the western portion of the Olympic Peninsula Province and portions of the Eastern and Western Cascade provinces; and in California: the Cascades Province and the southern portion of the Klamath Province;

(2) Dispersal habitat between Federal reserves, where Federal lands may not be distributed to prevent isolation of populations, or between non-Federal ownerships where the distance between reserves is not great. Where distances are large, scattered breeding sites may be important to improve connection between populations. Areas that can provide valuable dispersal habitat on non-Federal lands include, in Washington—the western portion of the Olympic Peninsula Province and

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portions of the Eastern and Western Cascade Provinces; and in California—the Coast and Cascades Provinces and small portions of the Klamath Province; and

(3) Suitable habitat for breeding populations in areas where Federal ownership is limited. In these areas, functioning spotted owl populations are desired to maintain a widely distributed population of owls. Areas where non-Federal owl populations are believed to play an important role in this regard include, in Washington—the western portion of the Olympic Peninsula Province; and, in California—the Coast and Cascades Provinces.

Recent Conservation Programs and Strategies for the Northern Spotted Owl

Non-Federal Management Efforts

To varying degrees, the laws, regulations, and policies of California, Oregon, and Washington provide protection and contribute to the conservation of the spotted owl. Each of the three states is a cooperator with the Secretary of the Interior under section 6 of the Act and each State has cooperative agreements with the Service to carry out conservation activities for listed and candidate species of plants and animals. Under these agreements, the States work cooperatively with the Service on endangered and threatened species conservation projects and are eligible for cost-share grant money from the Service to carry out State-directed species research and conservation activities. Since the spotted owl was Federally listed, Washington, Oregon, and California have recognized the Federal status of the spotted owl and have adopted forest management rules offering various levels of protection for the species. In addition, numerous changes have been made to State forest practices rules in the last few years in response to the needs of declining species like the spotted owl, the marbled murrelet, and various runs of salmon. Relevant authorities and programs existing in the States of Washington and California are also briefly described below.

California

California has adopted the most protective forest management regulations for the spotted owl in the Pacific Northwest. The State has also been in the forefront of efforts to approach forest management from an ecosystem perspective.

Pursuant to the California Forest Practice Act, the California Board of Forestry establishes regulations under Title 14 of the California Code of Regulations governing timber harvest on private and State lands (14 CFR § 895, 898, 919, 939). Registered Professional Foresters licensed by the Board must submit Timber Harvest Plans (THP) to the California Department of Forestry and Fire Protection for review and approval. The California Department of Fish and Game is also responsible for reviewing THPs. THPs may be denied on a number of grounds, including potential take of Federally or State listed threatened or endangered species.

Following the Federal listing of the northern spotted owl, the Board of Forestry implemented no-take rules using standards based on biological advice from the Service. These standards include maintenance of over 1,300 acres of suitable owl habitat within 1.3 miles of every spotted owl site center and 500 acres within 0.7 miles. The rules instituted a special review process for all proposed private timber harvest to ensure that incidental take would not occur. The process encouraged surveys for spotted owls in THP areas according to a Service-endorsed protocol (USFWS 1992). The Board's no-take rules have maintained options for future management by providing protection for habitat around every known spotted owl site center, and have resulted in greatly increased knowledge of the species' numbers and distribution. Other Forest Practice Rules, including riparian buffers and limitations on clear-cut size, may provide additional contributions to the maintenance of spotted owl habitat in northern California. These include the 40-acre limitation on clear-cut size, limits on adjacency of clear-cuts, and protection of riparian buffers.

The Board of Forestry (Board) also recently adopted rules establishing regulatory incentives for large-acreage landowners who develop sustained yield plans (SYPs). The SYP rules may provide considerable benefit to spotted owls, because ownerships operating under these rules must maintain specified portions of each watershed in timber stands of large size classes for several decades, thus providing spotted owl habitat components throughout the landscape.

The Department of Fish and Game and Department of Forestry and Fire Protection jointly maintain an interagency data base of Federal and non-Federal spotted owl locations. The Forest Practice Rules require that all information on spotted owl sites that is generated during timber harvest planning be submitted to this data base, and relevant data are made available to all parties planning timber harvest or other activities. Thus, the data base is a functional tool in protection of the species.

Following the listing of the northern spotted owl, the California Board of Forestry directed the Department of Forestry and Fire Protection to prepare a Habitat Conservation Plan (HCP) and section 10(a)(1)(B) incidental take permit application to address all private timber harvest regulated by the Board. Following a three-year planning effort by that Department and a number of cooperators from agencies, industry, and environmental groups, the Board tabled consideration of the draft Habitat Conservation Plan because significant issues remained unresolved, most notably the funding mechanism. The draft plan nevertheless represented a significant cooperative commitment to resolve conservation issues by the State and other concerned parties and many of the biological elements of the draft HCP may have future application.

Washington

The spotted owl is listed under Washington law as an endangered species. The Washington Department of Natural Resources has the responsibility for regulating timber harvest activities on non-Federal lands under the authority of the Washington State Forest Practices Act (76.09 RCW) and its implementing regulations (WAC 222.08–222.50). These regulations are promulgated by the Forest Practices Board.

Recent regulations (WAC 222.16.080(1)(h) have required forest practices on the 500 acres of suitable habitat surrounding the site center of known spotted owls to be reviewed under the State Environmental Policy Act, WAC 222.16.080(1)(h). In practice, this rule has led landowners to avoid applying for permits for forest practices within the 500-acre area. This regulation expired on February 9, 1994, and has been extended pending approval of a final rule. The Forest Practices Board has established a Scientific Advisory Group to recommend the scientific basis for a new rule to replace the current rule. No other forest practices regulation expressly addresses the protection of spotted owl habitat from timber harvest activities. However, the Department notifies individual landowners when a proposed forest practice occurs within the median annual home range of a known spotted owl pair or resident single, and advises the landowner to contact the Service. In addition, several other regulations contribute habitat benefitting spotted owls, including regulations requiring riparian zone protection, wetlands protection, and retention of wildlife reserve trees.

Riparian management zone regulations require the minimum retention of 25-foot wide buffers along the sides of fish-bearing streams with a varying ratio of trees to be retained per 1,000 feet of stream within the buffers, based on stream location, width and bottom composition.

Wetland management regulations require the establishment of a zone surrounding non-forested wetlands which varies in width from a minimum of 25 to 50 feet depending on the size and category of the wetland. The regulations also require the retention of a minimum number of trees (75) per acre and that a percentage of those trees meet minimum size classifications (six inches dbh) depending on the type of wetland. Of this total, 25 trees are to be more than 12 inches dbh, and five of them are to be more than 20 inches dbh, where they exist.

Clear-cut size and green-up regulations limit the maximum size of clear-cut harvest units to 120 acres, unless a State environmental Policy Act review is undertaken that could boost the potential size of the harvest to 240 acres. The perimeter of harvest units must meet minimum stand qualifications to maintain age class diversity adjacent to the harvest unit before harvest may proceed.

Wildlife reserve tree regulations require the retention of three snags (minimum of 12 inches dbh), two green recruitment trees (minimum 10 inches dbh), and two down logs (minimum 12 inches diameter at the small end).

Besides regulating forest practices in Washington, the Department of Natural Resources (WDNR) administers approximately five million acres of State lands, 2.1 million acres of which are forested and managed in trust for various beneficiaries. The WDNR has avoided the take of spotted owls on its lands and has begun preparation of an HCP under section 10(a)(1)(B) of the Act for all State lands in the range of the owl. The WDNR is also developing a conservation strategy for the spotted owl that would be applied to the Congressionally mandated 264,000-acre State Experimental Forest on the Olympic Peninsula.

Apart from these efforts by State government, various private efforts are underway to conserve spotted owls, including the development of, or commitment to, HCPs and "no take" agreements by several major landowners in the State. In addition, the Yakima Indian Nation is developing a conservation strategy for the spotted owl while continuing to follow its previous interim spotted owl strategy and selective timber harvest regime.

Past Federal Management Strategies

Prior to its listing as a threatened species, many different approaches to northern spotted owl management and research were undertaken by Federal and State resource agencies, for example, designation of "spotted owl habitat areas" or "SOHAs." Each of these approaches fulfilled different conservation objectives for the northern spotted owl. The conservation objective of the earliest attempts at spotted owl management, which began in the mid-1970s, was to temporarily protect sites that supported individual pairs of spotted owls. In the 1980s, management strategies were based on conservation objectives that tried to avoid land use conflicts while managing spotted owls and late-successional forest habitat; these management strategies were generally inadequate. A complete discussion of the history and chronology of past spotted owl management attempts can be found in Thomas *et al.* (1990).

Recent (post-listing) Federal northern spotted owl management strategies have been based on the establishment of a system of large, dispersed Federal land reserves, with conservation objectives somewhat different from earlier strategies. These management strategies were designed to meet the following conservation objectives—(1) provide habitat to sustain approximately 20 or more breeding pairs of spotted owls on each Federal reserve; (2) decrease the chance of catastrophic loss of populations in reserves; (3) lower the risk of losing spotted owls from a reserve due to a single catastrophic event; and (4) ensure that adequate habitat existed between the reserves for dispersal of owls throughout its range. To fulfill these objectives, these management strategies proposed establishing a reserve network of Federal lands based on blocks of late-successional habitat of sufficient size and proximity to each other to maintain viable populations of the spotted owl throughout its range. Assessments of these strategies have generally recognized that, in certain areas of the northern spotted owl's range, Federal lands are not, by themselves, adequate to support the full recovery of the owl although they could provide a major contribution toward the owl's conservation in other parts of its range (USDI 1992).

To meet their conservation objectives, these management strategies generally established Federal reserves designed to sustain at least 20 pairs of spotted owls where conditions allowed. These strategies assumed that any smaller late-successional Federal reserves should be placed closer together to increase the probability of successful spotted owl dispersal between the reserves. In addition, plans provided dispersal habitat sufficient to support movements between blocks. For this reserve design, successful dispersal would accomplish two objectives—it would help prevent genetic isolation in individual owl populations and it would allow spotted owls to naturally recolonize important areas that have few or no spotted owls present. By allowing spotted owls to disperse between a series of discrete reserves, this reserve design could maintain a spotted owl population over a large area even if a single reserve was lost to catastrophe.

By way of example, the Interagency Scientific Committee (ISC) developed a conservation strategy based on managing large, well-distributed Federal blocks of suitable spotted owl habitat that were sufficiently connected to maintain a stable and well-distributed population of spotted owls throughout their range (Thomas *et al.* 1990). The ISC did not integrate non-Federal lands into its conservation strategy. To provide dispersal habitat between these reserves, the ISC recommended a "50–11–40 rule" where 50 percent of Federal forest habitat (based on quarter-townships) would be managed to retain dominant or co-dominant trees with an average of 11 inches dbh and provide a minimum 40 percent canopy closure. Canopy closure refers to the degree to which the crowns (tops) of trees obscure the sky when viewed from below. The "50–11–40" rule was set forth as one method of providing for dispersal habitat on Federal forest lands; other prescriptions have been and can be developed which provide comparable dispersal conditions, e.g., Murray Pacific HCP dispersal prescription.

The Federal Forest Plan

The range of the spotted owl includes approximately 24,518,000 acres of Federal lands of which 20,577,000 acres are forested. The Forest Plan represents a management strategy for Federal LSOG-forests in the coastal western states of California, Oregon, and Washington that provides habitat to support the persistence of well distributed populations of species that are associated with late-successional forests, including the northern spotted owl.

The Forest Plan established a network of reserves totalling over 11.5 million acres of Federal land in northern California, Oregon, and Washington. That total includes 7.43 million acres of late-successional reserves, 2.63 million

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acres of riparian reserves, and 1.48 million acres of administratively withdrawn areas. This acreage is in addition to 7.32 million acres of Congressionally reserved lands.

The late-successional reserves currently provide 3.2 million acres of suitable habitat for the spotted owl. The interim riparian reserve provide an additional 0.74 million acres of suitable habitat and the administratively withdrawn areas provide an additional 0.31 million acres of this habitat.

Late-successional reserves are expected to provide the primary contribution to the recovery of the spotted owl by maintaining large clusters of spotted owls and spotted owl habitat throughout a significant portion of the range of the species. The reserves are expected to increase in value for spotted owl recovery as young forested stands grow into suitable habitat and increase their capacity to support additional numbers of stable spotted owl pairs.

Programmed timber harvest operations are not allowed in late-successional reserves under the Forest Plan. However, carefully controlled thinning activities are allowed in any stand of one of these reserves less than 80 years of age. Salvage operations also would be allowed on these reserves in areas where catastrophic loss exceeded ten acres. In both cases, harvest proposals must be reviewed by an interagency oversight group to ensure sound ecosystem management.

No programmed timber harvest is allowed in riparian reserves under the Forest Plan and Federal agencies are required to minimize the effects of roads, cattle grazing, and mining activities in these areas. These riparian reserves are eventually expected to provide a considerable amount of late-successional forest, because they currently represent approximately 31 percent of the lands that would otherwise be designated as Matrix. Based on current information (USDA *et al.* 1993), approximately .74 million acres (28 percent) of the 2.63 million acres in riparian reserves currently provide suitable nesting, roosting, and foraging habitat for spotted owls and 1.42 million (54 percent) of the riparian reserves provide suitable dispersal habitat for spotted owls.

The Forest Plan places 1.5 million acres of Federal land in 10 special "Adaptive Management Areas (AMAs)." Management activities in these AMAs would emphasize innovative forestry techniques with the goal of speeding attainment of late-successional characteristics and on restoring watersheds. These activities are expected to benefit northern spotted owl management in the long-term, but would not be expected to contribute substantially to owl conservation needs in the short-term. Suitable habitat for the northern spotted owl represents approximately 0.37 million acres of the lands that have been designated as AMAs.

Programmed timber harvests also are allowed on approximately four million acres of Federal forests designated as the Matrix under the Forest Plan. The Plan differs from previously proposed strategies in that the 50–11–40 rule does not apply to Matrix areas between late-successional and other Federal forest reserves. The Plan concluded that the need for spotted owl dispersal habitat could be met with the combination of reserves as proposed, plus additional Matrix prescriptions.

In Washington and Oregon, the Plan requires leaving 15 percent of the trees ("green tree retention") in all harvest units on AMAs and matrix areas outside of the Coast Ranges and Bureau of Land Management lands in southern Oregon. The Plan encourages these trees to be left in small clumps with the expectation that they, along with the riparian reserves, would contribute to the creation of dispersal habitat. The Forest Plan adopted this prescription to improve the future condition of these forests. These prescriptions could ultimately be adjusted as a result of watershed analysis and other planning activities related to the implementation of the Forest Plan.

In California, the Forest Plan incorporates the Matrix prescriptions contained in the draft National Forest land management plans. These prescriptions are designed to maintain dispersal habitat in a variety of timber types.

The FEMAT report (p. IV–43 and p. IV–153) stated that implementation of Option 9 (which served as the basis for the Forest Plan) would result in a projected future likelihood of 83 percent that spotted owl "habitat is of sufficient quality, distribution, and abundance to allow the species population to stabilize in well distributed areas of Federal lands," and a projected future likelihood of only 18 percent that "habitat is of sufficient quality, distribution, and abundance to allow the species population to stabilize, but with some significant gaps in the historic species distribution on Federal land. These gaps cause some limitation in interactions among local populations." Moreover, implementation of Option 9 was rated by FEMAT as resulting in a zero likelihood that "habitat only allows continued species existence in refugia, with strong limitations on interactions among local populations", and a similar, zero likelihood that implementation of the option would result in "species extirpation from Federal lands".

These probability judgments reflect the contributions to conservation expected to be provided by the implementation of the Forest Plan on Federal lands. They indicate a high likelihood that, over the long-term, the Forest Plan will provide conditions on Federal lands that would contribute significantly to the conservation and recovery needs of the spotted owl. This assessment is consistent with the Federal policy to provide the predominant protection for spotted owls on Federal lands and it is within this context that the Service proposes to modify the incidental take prohibitions for certain non-Federal lands.

General Approach Used to Develop This Special Rule

The goal of this proposed rule was to identify non-Federal lands that are no longer either necessary or advisable to the conservation of the spotted owl given the contributions of the Forest Plan the likely possibility of numerous large scale, multi-species Habitat Conservation Plans, and other measures and practices in effect. In reviewing the alternatives identified in the NOI, the Service evaluated the contributions to the conservation of the owl provided by the Forest Plan, past Federal owl conservation strategies, existing State forest practices regulations, tribal conservation and private timber management plans, as well as public comments provided in response to the NOI.

The Service considered various factors in identifying areas of non-Federal land where relief could be provided and other areas where incidental take restrictions should be maintained at this time. The Service first considered the conservation benefits that the Federal Forest Plan provided the owl for a given area. These benefits were then compared and contrasted with the conservation goals for the area originally established under the Final Draft Recovery Plan for the northern spotted owl. The Service focused particularly on Forest Plan impacts affecting the conservation of owl habitat and owl numbers, as well as the size and location of Federal reserves. It then identified certain areas of non-Federal land which were still important for owl conservation and what the conservation goals should be for such areas. The Service gave particular care and attention to the non-Federal lands which were noted as important in the Report of the Forest Ecosystem Management Assessment Team (FEMAT), IV 150–151. In identifying boundaries for such areas, the Service considered, among other things, current owl population status on non-Federal lands, the need for owl population support within adjacent Federal reserves, and the need for connectivity between such reserves. The Service also attempted to exclude wherever possible large areas of non-Federal land with little or no owl habitat.

The Forest Plan is a habitat based conservation strategy that would anchor and secure millions of acres of Federal land across the range of the spotted owl, an unprecedented commitment of Federal resources towards the conservation of the owl. Given that commitment to a habitat based strategy and the scope of the Forest Plan, the Service no longer believes that it is essential to the conservation of the spotted owl to continue to prohibit the incidental take of the owl on all non-Federal land located within the range of the owl. The Service also believes that the combination of Federal and non-Federal habitat based strategies for the spotted owl contained in this proposed rule, the Forest Plan and multi-species Habitat Conservation Plans will, over time, further the conservation of the species and its recovery.

When developing objectives for regulatory relief for non-Federal lands which were consistent with the Forest Plan, the Service evaluated past biological information and has concluded that it is still important to retain the closest 70 acres of suitable owl habitat surrounding site center regardless of whether the center is in an area of proposed relief or not. The Service also believes that the substantial loss of suitable habitat within the estimated median annual home range of an owl is likely to result in inadequate nesting, juvenile development, and adult dispersal and survival, and will significantly increase the likelihood of actual harm to, and incidental take of, an owl.

As the riparian reserve, matrix, adaptive management areas, and late-successional reserve management criteria of the Forest Plan are implemented, along with the requirements of underlying State law and other provisions proposed in this rule for owl protection, dispersal and connectivity conditions for the species' survival should improve over time throughout its range. For this reason, the Service has chosen not to include in this proposed rule mandatory dispersal prescriptions such as the 50–11–40 rule which was designed originally to generate dispersal habitat conditions for Federal lands only.

For those areas where satisfactory dispersal conditions likely are not present, the Service believes that such conditions can be achieved over time through other means such as full protection against incidental take, large scale Habitat Conservation Planning (HCPs), Local Option Conservation Plans, or voluntary conservation contributions by non-Federal landowners. Recognizing the limitations on Federal authority to mandate the development of dispersal habitat in these areas, this proposed rule would encourage non-Federal landowners to manage their lands in ways that are more consistent with the conservation of the spotted owl. In some areas it would remove the disincentives associated with maintaining suitable spotted owl habitat, and, would bring more certainty to future planning for timber management as well as for owl conservation activities.

Upon consideration of all of the above factors, the following summarizes the provisions of this 4(d) rule:

Regulatory Provisions Common to Both Washington and California

Some protective measures for the owl would be identical for both the State of Washington and California. The prohibition on killing or injuring of spotted owls would not be relieved in any part of the owl's range by this proposed rule. Similarly, timber harvesting of the closest 70 acres of suitable owl habitat surrounding a site center would remain prohibited throughout Washington and California, unless the site has been determined to be abandoned.

In addition, the Service would retain for an additional two years, the prohibition against incidental take as applied to owls which are dependent upon non-Federal lands and whose site centers are located within Federal Forest Plan Reserves or Congressionally reserved or Administratively withdrawn areas which are outside of Special Emphasis Areas or are on the western portion of the Olympic Peninsula in Washington, or are located on Federal Forest Plan reserves or Congressionally reserved or Administratively withdrawn areas within the Klamath Province in California. At the end of this period, the Service will review any new information or data involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Federal Forest Plan. In particular, the Service would assess on a local area-by-area basis whether the continuation of the incidental take prohibition on affected, adjacent non-Federal lands was still necessary and advisable for achieving the conservation goals of the Forest Plan for that area. The Service would then lift the incidental take restrictions where warranted and require the protection of only the closest 70 acres of suitable habitat surrounding an affected site center.

Relief From Current Incidental Take Provisions in Washington

A total of approximately 10.6 million acres of non-Federal land in the range of the spotted owl in Washington (the Washington Lowlands Province, portions of the Western and Eastern Cascades Provinces and portions of the Olympic Peninsula Province) would be excluded from the boundaries of proposed Special Emphasis Areas (SEAs) and be exempted from the future application of current incidental take restrictions for the northern spotted owl. Of this land base outside SEAs, 8.3 million acres have some sort of forest cover of which 5.24 million acres are in conifer cover. Actually, only a small percentage of these lands are currently affected by present incidental take prohibitions for owls. Absent this proposed rule, however, much of this remaining land could potentially be affected should a spotted owl relocate to any adjacent suitable owl habitat at some point in the future. Approximately 1.7 million acres of non-Federal lands would be left inside of SEAs. Of this acreage figure, 1.3 million acres of non-Federal land is in conifer forest and would remain subject to the incidental take prohibitions for any owl found present in this area. In fact, only a portion of this acreage inside SEAs is currently affected by the presence of owls. Of the approximately 510,000 acres of non-Federal forestland which are today under incidental take restrictions for known owl sites, no less than 325,000 acres or almost 60 percent would be relieved from such restrictions as a result of this rule.

Of the 140 spotted owl site centers on non-Federal lands in Washington, 84 are in the six proposed SEAs and would retain current incidental take protection. Fifty-six spotted owl site centers are outside SEAs on non-Federal lands and would be released from current incidental take prohibitions. There are an additional 121 site centers on Federal lands within the proposed SEA's, of which 68 may be dependent on non-Federal lands. There are also 83 site centers on Federal lands outside the SEAs that may be dependent on non-

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Federal lands. Of the 83 site centers outside of SEAs, 71 site centers are located within either a Federal Forest Plan Reserve or a Congressionally reserved or Administratively withdrawn area. The Olympic Peninsula contains 41 of these sites with the remaining 30 sites located outside of SEAs in the rest of the State.

Activities Outside of Designated SEAs

The Service proposes to reduce the current prohibition against the incidental taking of owls for those non-Federal lands which are located outside of SEAs proposed in Washington. In areas outside of SEAs, a non-Federal landowner would only be required to retain the closest 70 acres of suitable owl habitat surrounding an owl site center. Legal and administrative boundaries were used wherever possible to assist in refining identified SEA boundaries. As noted above, the Service estimates that approximately 10.6 million acres of non-Federal land in Washington lie outside of SEAs, of which 5.24 million acres are forested with conifers. These would be the primary areas receiving relief under this rule for Washington. In these areas, the incidental take of owls would not be prohibited as long as timber harvest activities did not take place within the closest 70 acres of suitable owl habitat immediately surrounding an owl site center.

As noted previously, the above reduction to 70-acres would not be applicable for non-Federal lands affected by any owl site center which is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area which is outside of an SEA. The Service intends to reassess the importance of these sites within the next two years as additional data and planning information is developed under the Forest Plan. The one region in Washington where this two-year retention of prohibitions would not be applied outside of an SEA would be on portions of the Olympic Peninsula. On the northern, eastern, and southern parts of the Peninsula, non-Federal landowners would only be required to preserve the closest 70 acres of suitable habitat surrounding a site center regardless of whether the site center is located within a Federal reserve or withdrawn area. The Service believes that the recent Reanalysis Team Report for the Olympic Peninsula (Holthausen, *et al.*, 1994) addresses the issue of the contribution that such non-Federal areas provide toward achieving the goal of recovery of the owls on the Peninsula. Under these circumstances, the Service does not believe that it is essential that existing incidental take restrictions be retained for an additional two years for these three areas on the Peninsula.

Designation of Special Emphasis Areas

The six areas discussed below (Figure 5 to § 17.41(c)) would be designated as SEAs within Washington:

(a) Columbia River Gorge/White Salmon (Figure 6 to § 17.41(c)).

The Columbia River Gorge portion of this SEA is in the southern portion of the Washington Cascades province, north of the Columbia River and west of the Cascade crest. Non-Federal lands link owls and owl habitat between Federal reserves in the Washington Cascades and Oregon Cascades along the Columbia River Gorge, thereby contributing to the objectives of the Forest Plan.

The White Salmon portion of this SEA is bordered by the Yakima Indian Reservation to the northeast, Federal lands and the Cascade crest to the west and the Columbia River to the south. The White Salmon area was not included within the "Proposed Action" for the December 29, 1993, NOI (58 FR 69132), but was included within "Alternative C" of that NOI. As a result of public comments received in response to the NOI, however, and recent analysis of spotted owl habitat in Washington (Hanson, *et al.* 1993), the Service has concluded that the inclusion of the White Salmon area as part of this SEA is warranted. These non-Federal lands are an important link to the owl population found on the Yakima Indian Reservation to owl populations in Federal reserves to the southwest. This portion of the SEA would provide a route around high-elevation terrain on Federal lands, through lower-elevation forests on non-Federal lands to provide that needed link. It also widens the zone of protection for the Cascades along the Columbia River.

This combined SEA contains 37,000 acres of Federal land and 262,000 acres of non-Federal lands. Sixteen owl site centers are on non-Federal lands and 3 site centers are on Federal land within this SEA, with one site activity center on Federal lands which relies to some degree upon adjacent non-Federal lands. The conservation goals for this combined SEA are to maintain connections between provinces and the owl population on the Yakima Indian Reservation, and to provide demographic support to the owl population in the Federal reserves.

(b) Siouxon Creek (Figure 7 to § 17.41(c)).

This SEA is located along Swift Creek Reservoir and the Upper Lewis River, south of the Mt. St. Helens National Monument. As with the White Salmon SEA, this area was not included within the "Proposed Action" for the December 29, 1993, NOI (58 FR 69132), but was included within "Alternative C" of the NOI. Because of the public comments received in response to the NOI and further analysis of spotted owl habitat in Washington (Hanson, *et al.* 1993), the Service has determined that the inclusion of the Siouxon Creek SEA in the 4(d) Rule is warranted. This SEA contains seven owl site centers, five on non-Federal land and two on Federal land, and includes approximately 44,000 acres of non-Federal land and 1,000 acres of Federal land. Owls on these non-Federal lands are needed to supply demographic support to owl populations on adjacent Federal reserves and dispersal habitat is needed to provide connectivity through the Lewis River Valley between the reserves.

(c) Mineral Block (Figure 8 to § 17.41(c)).

This SEA surrounds a block of Federal land (Mineral Block) that has been designated as a Federal reserve under the Forest Plan. The Mineral Block is about 12 miles west of the main part of the Gifford Pinchot National Forest. It is too small to support a population of 20 owl pairs. Owl site centers on adjacent non-Federal lands would support this population and to provide a link to the Gifford Pinchot National Forest.

This SEA contains 39,000 acres of Federal land and 259,000 acres of non-Federal lands. Twelve owl site centers are on non-Federal lands in the SEA; 17 centers are located on Federal lands of which five rely to some degree upon adjacent non-Federal lands. The conservation goals for this SEA are to provide demographic support for the owl population in the Federal reserve.

(d) I–90 Corridor (Figure 9 to § 17.41(c)).

This SEA is north and south of Interstate-90 (I–90) between North Bend and Ellensburg, Washington. This area is in checkerboard, intermingled Federal and non-Federal ownership, a portion of which is included in the Snoqualmie Pass AMA under the Forest Plan. This general area has been repeatedly identified as being important to the conservation of the owl to maintain a connectivity link between the northern and southern portions of the Washington Cascades (Thomas *et al.*, 1990 and Hanson *et al.* 1993). Existing habitat for spotted owls is locally sparse and highly fragmented.

Non-Federal lands in this SEA would support the efforts of the Forest Plan by providing dispersal habitat (and some nesting, roosting and foraging habitat) for owl populations that are on the north and south sides of I–90, and between Federal reserves and the AMA. Owls that are on non-Federal land would provide valuable demographic support of owl populations in adjacent Federal reserves that are low in numbers. Federal reserves that are in checkerboard ownership are also in need of demographic support for owls because of their fragmented ownership pattern and degraded habitat conditions.

This SEA contains 383,000 acres of Federal land and 400,000 acres of non-Federal lands. Twenty-nine owl site centers are on non-Federal lands in this SEA; 78 site centers are located on Federal lands of which 53 rely to some degree upon adjacent non-Federal lands. Conservation goals for this SEA include demographic support for adjacent late-successional reserves and connectivity between reserves. Changes to the eastern boundaries of this SEA from the NOI in this proposal were made to better promote dispersal success of owls located within the eastern portion of this SEA.

(e) Finney Block (Figure 10 to § 17.41(c)).

This SEA includes the non-Federal lands that surround the Finney Block AMA on the Mt. Baker-Snoqualmie National Forest. This SEA would link owl populations in Federal reserves with the owl population in the AMA. Owls located on non-Federal lands in this SEA also would bolster the owl populations in the Federal reserves and the AMA. These actions would supplement the Federal efforts under the Forest Plan by contributing to the stabilization of owl populations within this portion of the species range.

This SEA contains 196,000 acres of Federal land and 266,000 acres of non-Federal lands. Two owl site centers are on non-Federal land in this SEA; 21 centers are located on Federal lands of which seven rely to some degree upon adjacent non-Federal lands. Conservation goals for this SEA include demographic support for the AMA and Federal reserves and connectivity between Federal reserves.

(f) Hoh/Clearwater (Olympic Peninsula) (Figure 11 to § 17.41(c)).

Upon consideration of a recent reanalysis of owl persistence on the Olympic Peninsula (Holthausen *et al.* 1994) and other data and information, the Service has decided to alter its approach to the Olympic Peninsula from that set out in the NOI in December of 1993. The Service now proposes to significantly scale back the size of the SEA for the Peninsula and to relieve incidental take restrictions for spotted owls for the remainder of the Peninsula. Of the Federal lands on the Olympic Peninsula, only 8,400 acres of suitable owl habitat are available for timber harvest under the Federal Forest Plan.

There has been long standing concern about the viability and persistence of spotted owls on the Olympic Peninsula. A recent reanalysis of the contribution of Federal and non-Federal habitat to persistence of the northern spotted owl on the Olympic Peninsula (Holthausen *et al.* 1994) concluded that there were 155 known owl pairs on the Olympic Peninsula and estimated a total population of between 282 and 321 pairs. These estimates are substantially higher than earlier reported estimates.

The Hoh/Clearwater SEA encompassing the western portion of the Peninsula contains about 1,000 acres of Federal lands and 471,000 acres of non-Federal lands. Twenty owl site centers are located on non-Federal lands in this SEA. Conservation goals for this SEA are to maintain demographic support for Federal reserves, maintain a well-distributed population, and provide connectivity within the province and between late-successional reserves. Changes in this SEA from the NOI were made to support the Federal effort in this province by drawing upon the resources of the remaining non-Federal concentration of owls and owl habitat on the western side of the Peninsula. The reanalysis report assessed the relative value of the Hoh/Clearwater SEA boundaries as proposed by the Service and did not compare or contrast alternative SEA boundary configurations for the western side of the Peninsula.

Although recommendations were included in recent reports (USDI 1992, Hanson *et al.* 1993, Buchanan *et al.* 1994) to retain incidental take restrictions on non-Federal lands in southwestern Washington, the Service believes that current non-Federal conservation planning activities (e.g., multi-species HCPs and no-take plans), new analyses (Holthausen *et al.* 1994), and other relevant factors support the decision not to propose southwestern Washington as an SEA. The Service reached this conclusion on Southwest Washington for a variety of reasons. First, while Southwest Washington constitutes an important part of the historic range of the spotted owl, there presently are only a small number of isolated owl pairs or resident singles across a vast expanse of marginal owl habitat. The inclusion of this area in an SEA would briefly protect home range areas for the few owls in the area, but once those owls die or move away, the protection for their home range areas would fade away as well, resulting in the eventual harvest of the areas. Moreover, while Southwest Washington previously had been assigned an important conservation function for providing connectivity with the isolated population of owls on the Olympic Peninsula in the Final Draft Spotted Owl Recovery Plan, recent reanalysis by Holthausen *et al.* indicates that the feasibility of the area ever serving this connectivity function, especially through application of incidental take prohibitions, is very low.

Apart from considerations involving the Olympic Peninsula, the limited number of owls in southwest Washington and lack of present suitable habitat provide further support to the Service's decision to take an innovative approach to owl conservation in this area. While the Service might be able to prevent someone from destroying certain areas of existing suitable owl habitat where an owl is present, the Act cannot be used to force people to restore or enhance owl habitat that has already been destroyed or degraded. Thus, most landowners in Southwest Washington have little to no incentive at present to develop habitat that is attractive to owls.

The acquisition of sufficient non-Federal land in Southwest Washington to establish a network of owl conservation reserves is not a feasible alternative either. The Final Draft Recovery Plan for the Spotted Owl estimated that the cost of such a reserve network could range from $200 million to $2 billion. Thus, neither land acquisition nor traditional enforcement policies are feasible catalysts for owl conservation in an area such as this which has limited suitable owl habitat.

Recognizing the historic role that Southwest Washington played within the range of the owl, the Service is attempting to address these problems by aggressively moving forward with the development of multi-species Habitat Conservation Plans with several of the large landowners in this province. In addition, one of the landowners has entered into a "take avoidance" agreement covering 100,000 acres while working on their HCP. The agreement ensures that no owls will be taken as the result of timber harvest during the period in which the HCP is being developed. Thus, innovative approaches towards conservation provide the only realistic hope for facilitating long-term owl use and dispersal within Southwestern Washington.

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Retention of Incidental Take Restrictions for Activities Inside of SEAs

Subject to certain specified exceptions, the Service generally would retain existing incidental take protection for owls located within SEAs. The Service also would retain full incidental take protection for any owl whose site center is located within and along the boundary of an SEA and is dependent upon adjacent non-Federal lands located outside of the SEA to avoid harm. Thus, there are two categories of non-Federal lands which could remain subject to existing incidental take restrictions for an owl whose site center is located within the boundary of an SEA—those adjacent non-Federal lands located inside an SEA and those adjacent lands located outside of an SEA boundary but which are still necessary to provide sufficient suitable owl habitat so as to avoid the incidental take of an owl.

One modification that the Service proposes to make to existing incidental take restrictions within SEAs would involve non-Federal lands surrounded by or located in matrix and AMA areas designated under the Federal Forest Plan. The Service proposes to authorize such affected non-Federal landowners involved in harvest activities to apply either the final management prescriptions delineated for the surrounding Federal Matrix/AMA land, as determined through the watershed analysis or AMA planning processes, as appropriate, or such management practices which comply with the current incidental take restrictions.

Application of either management strategy would absolve the affected non-Federal landowner from any liability for incidental take of an owl under the Act. This would result in the application of more uniform owl conservation standards within a matrix or AMA area regardless of land ownership.

The one exception to this policy would be where the adoption of matrix or AMA prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area. As would be the case for similar site centers outside of SEAs, the incidental take restrictions would continue to apply for at least two more years for site centers within reserve or withdrawn areas. At the end of this period, the Service will review any new data or information involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Forest Plan. As noted previously in a discussion of this review process, the Service would assess on an area-by-area basis whether the continuation of the incidental take prohibition on affected non-Federal lands was still necessary and advisable for achieving the conservation goals of the Forest Plan. The Service would lift the incidental take restrictions where warranted and authorize the adoption of the final matrix or AMA prescriptions, at the discretion of the affected non-Federal landowner, as a means of avoiding an unauthorized incidental take of an owl.

One limited exception that the Service proposes to make to current incidental take restrictions within SEAs would involve small landowners. Except for the closest 70 acres of suitable habitat around owl site centers themselves, the Service proposes to relieve incidental take restrictions for small landowners who own, as of the date of this proposed rulemaking, no more than 80 acres of forestlands in a given SEA in Washington. The Service would also extend this proposal to small landowners who are outside of, but adjacent to, an SEA and whose lands are affected by the incidental take restrictions for an owl whose site center is located within the SEA. For these landowners, the maximum ownership figure of 80 acres would be calculated based upon the amount of land they owned inside an SEA and the amount of land outside the boundary of an SEA which was affected by current incidental take restrictions for an owl inside an SEA.

The 80-acre figure for small landowners was selected after an analysis of land ownership patterns and an accounting for the size and location of lands covered by the Forest Plan, State forestlands, industrial forestlands, and known large ownerships of non-industrial forestlands. The Service also considered the fact that past Forest Service studies have shown that only a very small fraction of small landowners own forested lands for the exclusive purpose of economic return from commercial harvest. In addition, most small landowners utilize selective harvest techniques or small clear cuts which would generate only very minor and incremental effects on any particular owl. Despite their normal practices, however, the small landowners of the Northwest have resorted to "panic cutting" over their fear of Federal restrictions to protect owls. It is this category of landowner, in particular, who needs to be provided sufficient assurances of relief so they revert back to their past practices of low impact forestry.

Based on this analysis, the Service concluded that relief from the incidental take prohibition for owls for landowners with less than 80 acres of forestland within, or adjacent to, SEAs would have a *deminimis* impact upon owl conservation across the State. Moreover, given various technology limitations and the potential causation and burden of proof problems associated with proving incidental take to an owl from small scale land use activities of any one particular small landowner, the Service believes that there is a better allocation of its limited law enforcement resources than to attempt to enforce incidental take restrictions on someone owning 80 acres or less of forest land.

The Service also proposes a "Local Option Conservation Plan" or Local Option approach to provide small and mid-sized landowners with additional flexibility in dealing with incidental take restrictions.

The prohibition against incidental take in SEAs indirectly assists in maintaining pockets of suitable and dispersal habitat through the continued protection of suitable owl habitat around site centers. This prohibition also helps provide future stocks of juvenile spotted owls who would be more likely to migrate between key reserves. Since a primary need in many of these connectors is the development and maintenance of spotted owl dispersal habitat, the Service acknowledges that alternative means may be developed for achieving that objective. The use of the general incidental take prohibition in SEAs in Washington is valuable when dealing with a wide-ranging species like the northern spotted owl. Nevertheless, the Service recognizes the value in providing flexibility in a section 4(d) rule to allow for the modification of such prohibitions to better reflect local ecological conditions for a given area. Furthermore, in focusing on a single species objective in Special Emphasis Areas, broader landscape, watershed, or ecosystem conservation possibilities may be foreclosed. One of the key lessons the Service has learned in dealing with northern spotted owl issues over the years is that the variability of habitats and silvicultural practices is such that there might be more than one approach for providing conservation benefits to the owl. For that reason, this rule proposes to establish a Local Conservation Planning Option.

The "Local Option" process would be limited to non-Federal landowners who own, as of the date of this proposed rulemaking, between 80 and 5,000 acres of forestlands in an SEA in Washington.

This process could result in the authorization for the incidental take of an owl in exchange for an agreement to grow or maintain dispersal habitat. The local option conservation planning process would not apply, however, to those particular areas within a given SEA where the continued maintenance of suitable owl habitat on non-Federal lands is determined to be necessary and advisable in order to provide demographic support for adjacent Federal owl reserves.

There is no official acreage designation defining a large acreage landowner that is common to the three States of Washington, Oregon and California. Definitions of small, medium and large land ownerships vary and more often differentiate between non-industrial or non-commercial private landowners. For purposes of various State regulatory analyses, taxation or economic policies, and Association memberships, e.g. Washington Farm Forestry Association, acreages ranging from 2,000 to 10,000 acres have been used to differentiate between industrial and non-industrial landowners. For example, 5,000 acres is generally the for adjacent Federal owl reserves.

There is no official acreage designation defining a large acreage landowner that is common to the three States of Washington, Oregon and California. Definitions of small, medium and large land ownerships vary and more often differentiate between non-industrial or non-commercial private landowners. For purposes of various State regulatory analyses, taxation or economic policies, and Association memberships, e.g. Washington Farm Forestry Association, acreages ranging from 2,000 to 10,000 acres have been used to differentiate between industrial and non-industrial landowners. For example, 5,000 acres is generally the maximum acreage break-off point in Oregon to distinguish a non-industrial forestland owner from an industrial one. Contracts with a mill will also qualify landowners as industrial. Given the range of acreage figures that has been utilized among the three States, the Service believes that a 5,000 acre break point is reasonable for purposes of this 4(d) rule. Accordingly, landowners with less than 80 acres of forestland within an SEA have been treated as small landowners within this rule and have been provided specific relief up front. Landowners with overall forestland holdings greater than 80 acres and not more than 5,000 acres within an SEA are considered to be medium sized landowners and may pursue the "Local Option" process to seek greater flexibility in addressing prohibitions an incidental take. Finally, non-Federal landowners who have 5,000 or more acres of forestlands within an SEA in Washington would only receive relief from incidental take prohibitions for the spotted owl by completing an HCP and obtaining a permit under Section 10(a)(1)(B) of the Act.

The landowner-initiated Local Option process must still provide for the primary spotted owl conservation objective specified for the Special Emphasis Area where the property is located. The Service encourages individual and adjacent multiple landowners to take advantage of this option cooperatively to achieve broader ecosystem conservation objectives which could have these benefits:

—multiple landowners could collaborate to provide greater management flexibility, more effective conservation benefits, and to minimize administrative costs;
—multiple species and habitats could be considered, potentially reducing the need to list declining species or anticipating requirements of future listings;
—land management treatments could become more consistent from Federal to non-Federal lands, particularly in checkerboard areas; and
—landowners could exercise additional flexibility to plan their forestry operations so as to best reflect localized environmental conditions within a Special Emphasis Area.

This proposed rule would provide non-Federal landowners in Washington, in cooperation with the appropriate State agencies, the option of developing cooperative local conservation plans for timber harvests in areas of up to 5,000 acres within SEAs where the incidental take prohibition for the northern spotted owl would not be relieved by this proposed rule. These cooperative plans could provide non-Federal landowners with the opportunity to develop alternative management strategies or prescriptions for addressing the conservation needs of the owl.

The Local Option Conservation Planning process is designed to encourage creative approaches to the conservation of the spotted owl by building flexibility into the regulatory process. Such efforts encourage coordinated management of listed species, like the northern spotted owl and the marbled murrelet. If a Local Option Plan is approved by the Service in consultation with the appropriate State wildlife agency, the prohibition against take of northern spotted owls incidental to timber harvests may be modified, to some degree, as specified in the Plan. The Service will review each proposed Local Option Plan cooperatively with the affected State wildlife agency to ensure that the conservation objectives for the owl in the affected area will not be precluded and that the proposal is complementary to the Federal Forest Plan.

Under the local option process of this proposed rule, the primary focus would be on the spotted owl, although there might be opportunities for conserving other associated plant and animal species. Approval of a local option conservation plan would be an expedited process (compared to the HCP permit mechanism) through incorporation of specific conservation criteria and guidance provided by this proposed rule.

A non-Federal landowner or local or State government may submit an application to the Service for approval of a proposed local option plan. If requested, the Service would provide further guidance for the development of a local option plan for a particular area. However, the applicant is responsible ultimately for the preparation of a local option plan proposal. The Service will be responsible for ensuring the plan's compliance with the National Environmental Policy Act. Appropriate State of Washington agencies may elect to participate with the Service in the review of local option plan proposals for areas within the State. In addition, if the State's regulations are consistent with this rule, a local option plan proposal could be certified through a State review process.

In determining the criteria for approval of a local option plan, the Service has considered the information and approval requirements set forth at 50 CFR 17.32(b) for a section 10 HCP permit. Those requirements have been further streamlined for local option planning and have been tailored to meet the specific conservation needs of the spotted owl.

Service approval of a local option conservation plan will be based on consideration of the information required to be submitted with an application for approval of a plan. Applications for approval of a local option conservation plan must be submitted to the Field Supervisor of the Fish and Wildlife Service office in Olympia, Washington.

One additional proposed provision affecting timber harvest activities within an SEA involves the recognition and establishment of a "safe harbor" from owl incidental take liability where more than 40 percent suitable habitat remains, post-harvest, within an owl's median annual home range. Although

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some studies have suggested that rates of owl reproduction and survival may be affected to some degree at a percent of suitable habitat above 40 percent, the benefits of timber management certainty and the problem of enforcement difficulties tied to issues of causation nevertheless warrant a "safe harbor" approach. Thus, in those instances where more than 40 percent suitable owl habitat remains within an owl's median annual home range after harvest, a landowner would not be liable for prosecution should the incidental take of an owl nevertheless occur despite their best efforts to avoid take.

Relief From Current Incidental Take Provisions in California

This proposed rule contains a shift in approach for California which has evolved since the publication of the NOI in December of 1993. The December 29, 1993, NOI did not specify any particular area in California where incidental take prohibitions would be relaxed, but instead stated the Service's intent to defer to California law to provide for the conservation of the spotted owl. In anticipation of that possibility, the California Board of Forestry considered a May 1994 proposal from the California Resources Agency that would have required maintenance of suitable owl habitat as a portion of every watershed. The timber industry regarded the proposal as too restrictive, and regulatory agencies believed it would be too expensive to administer, so, the Board of Forestry tabled the proposal.

To provide a possible resolution of this impasse, the Service proposes a new structure in this proposed rule as it applies to California which is consistent with the Service's original underlying biological assumptions for the owl in that State, as set forth in the December 29, 1993, NOI. The Service proposes to provide some immediate relief from incidental take in most of the California Klamath Province and for small landowners in the remainder of northern California within the range of the northern spotted owl. To encourage additional comprehensive conservation planning for the spotted owl and other species which is available under the California Natural Communities Conservation Planning program (NCCP), additional relief for four other areas of northern California (the California Cascades, Coastal, Hardwood, and Wells Mountain-Bully Choop Regions) (Figure 1 to § 17.41(c)) would be available contingent upon the successful completion of a NCCP initiative for spotted owls which is complementary to, or not consistent with the owl conservation goals of the Federal Forest Plan as applied in that State. The actual scope and extent of relief for these four areas would be one of the primary issues to be addressed through the NCCP process. These four areas are called potential "California Conservation Planning Areas" (CCPAs) for purposes of this proposed rule.

Relief From Current Incidental Take Restrictions Inside The Klamath Province Relief Area

The proposed rule would result in a reduction of the prohibition against incidental taking of owls for non-Federal lands within most of the Klamath Province in a zone called the Klamath Province Relief Area (Figure 1 to § 17.41(c)). There are 105 spotted owl site centers located on non-Federal land within the Klamath Province Relief Center. An additional 117 site centers are on Federal land within the Relief Area which are dependent to some degree upon adjacent non-Federal lands. Within the area of relief, a landowner would only be required to retain the closest 70 acres of suitable owl habitat surrounding a site center. Thus, the incidental take of the spotted owl would not be prohibited for timber harvest activities outside those 70 acres. Such relief would not be provided throughout the entire Klamath Province however. In particular, it would not be provided in those areas that overlap with the boundaries of potential CCPAs, including the Wells Mountain-Bully Choop and the Hardwood Region Areas of the Klamath Province (Figure 1 to § 17.41(c)). Relief would also not be provided for those owls in the Klamath Province Relief Area whose site centers are located on Federal Forest Plan reserves or Congressionally reserved or Administratively withdrawn areas and are dependent upon adjacent non-Federal lands. As noted previously in a discussion of similar site centers in the State of Washington, the Service will reassess the need for such continued protection over the next two years and will provide additional relief where warranted at the end of this assessment.

The California Cascades, Coastal, Hardwood Region and Wells Mountain-Bully Choop CCPAs

California's NCCP program (California Fish and Game Code 2800 *et seq.*) was initiated in 1991 to develop plans that would preserve biological diversity and reconcile development and wildlife needs on a local and regional level. It is designed to encourage public/private sector cooperation, maintain local control over land use decisions, and meet the objectives of State and Federal laws by preserving species and ecosystems before they are on the verge of extinction. Planning criteria and conservation strategies for certain species and communities are developed by scientific review panels.

The California Resources Agency has indicated a willingness to consider initiating an NCCP process for portions of the range of the spotted owl. The Service would encourage the California Resources Agency to convene key stakeholders and regulatory agencies in an NCCP process for the California Cascades, Coastal, Hardwood and Wells Mountain-Bully Choop areas of the State (Figures 2 and 3 to § 17.41(c)). The Service recognizes that the actual designation of any CCPA is a discretionary administrative matter controlled by the California Resources Agency. Accordingly, this proposed rule would recognize these four regions as potential CCPA areas, serving as a "place holder" in the 4(d) rule until such time as an NCCP planning process is undertaken and completed. One goal of such a planning effort would be to facilitate and encourage the development of ownership-wide or Region-wide management plans and criteria which adequately provide for the conservation needs of the owl and which complement the owl conservation goals of the Federal Forest Plan. The actual content and scope of such plans would be developed through the NCCP process itself. Ultimately, the planning process must address, to the satisfaction of the State regulatory agencies and the Service, an appropriate balance between providing some measure of regulatory relief while achieving or maintaining the conservation goals for the spotted owl for a particular region.

Under the NCCP approach, the incidental take of the spotted owl would not be prohibited under the Act if take were the result of activities conducted according to an approved CCPA plan. This would require the Service to first determine, in consultation with the California Departments of Fish and Game and Forestry and Fire Protection, that the plan meets the overall requirements of the Act and the conservation goals for the owl in that area and is complementary to the Federal Forest Plan. The process should also consider the extent to which new Board of Forestry Sustained Yield Plans (SYPs) could be used as a basis for incidental take authorization, provided that such SYPs had been reviewed and approved by the Service after consultation with appropriate State agencies. A joint State and Federal National Environmental Policy Act/California Environmental Quality Act (NEPA)/(CEQA) document could be prepared to review the environmental effects of each CCPA plan, including any incidental take of owls.

Potential CCPA boundaries described below were derived from earlier planning efforts by the State (CDF 1992) and knowledge of current Federal conservation efforts. To the extent that the boundaries of these potential CCPAs are somewhat different from traditional past descriptions of spotted owl provinces in California, they merely represent sub-units of owl provinces.

The areas discussed below could be designated as CCPAs under the California NCCP Act for purposes of northern spotted owl or possible multi-species conservation planning. Of the 837 spotted owl site centers on non-Federal lands in California, 732 are in the combined, proposed CCPAs. There are an additional 228 site centers on Federal lands within the proposed CCPAs, of which 87 rely to some degree upon adjacent non-Federal lands.

(a) *Coastal Area* (Figure 2 to § 17.41(c)).

Extending from the Oregon border south to San Francisco Bay, this area is west of the Six Rivers and Mendocino National Forests. It consists of approximately 293,000 acres of Federal land, and 3.6 million acres of non-Federal land. Timber management is the primary land use on about 2 million acres and is concentrated in the heavily forested redwood zone within 20 miles of the Pacific Ocean coastline. In the more inland and southerly portions of the area, spotted owl habitat is largely confined to the lower portions of drainages and is naturally fragmented by grasslands, hardwoods, and chaparral.

The coastal area of northern California plays an important role in the conservation of the species. It represents more than 10 percent of the range of the spotted owl and has substantial owl populations in managed forests. Approximately 642 owl site centers located on non-Federal lands are known in this area, virtually all of them are in managed second-growth timber stands; 66 site centers are located on Federal lands of which 30 rely to some degree upon adjacent non-Federal lands.

Due to the owl's widespread distribution, the predominance of selective harvest methods, and the rapid regrowth of habitat, the degree of threat to the species in much of this area appears to be relatively low. According to analyses conducted by the California Resources Agency (Berbach *et al.* 1993), more than 75 percent of the quarter-townships in the three northern coastal counties (Del Norte, Humboldt, and Mendocino) meet or exceed the standard for spotted owl dispersal habitat described by the ISC (Thomas *et al.* 1990). Some degree of incidental take could be accommodated while maintaining a well-distributed spotted owl population. The magnitude of such incidental take, however, would be one of the items to be addressed through the NCCP process.

Because Federal lands are limited, they play a small role in the conservation of the species in the California Coastal area. The Forest Plan has placed most of the existing late-successional forests in the BLM's scattered parcels (a few thousand acres) into reserves, and Redwood National Park also provides late-successional habitat in the northern portion of this area. However, these limited Federal reserves cannot support enough spotted owls to provide for the conservation of the species in the coastal province. Therefore, non-Federal lands are generally very important to the conservation of the spotted owl.

Significant non-Federal conservation efforts are already in place or under development in the California Coastal area. Several timber companies have made substantial investments in information-gathering and planning for owl conservation. The Simpson Timber Company has completed an HCP (Simpson 1992) and received a permit for incidental take of a limited number of spotted owls on its 380,000-acre property. Pursuant to the HCP, Simpson Timber has set aside 40,000 acres for at least 10 years, is conducting research on habitat characteristics, and has banded more than 600 owls. The Pacific Lumber Company is conducting banding and radio-telemetry studies, and has completed a management plan for its 200,000-acre property that maintains owl habitat in every watershed and protects all spotted owl nest sites from take. The Georgia-Pacific and Louisiana-Pacific Corporations have conducted banding and radio-telemetry studies in cooperation with the CDFG; analyses of these data are under way. Numerous smaller-acreage landowners have conducted surveys and provided data to the State's spotted owl database.

Planning a conservation strategy for spotted owls in the California Coastal area is a complex task due to the large number of landowners (conservatively estimated at 30,000 to 50,000 (CDF 1992). Therefore, except for a small landowner exemption for people owning less than 80 acres of forestland within a given CCPA and an additional adjustment for non-Federal lands within matrix and AMA areas, the Service is not proposing to remove the prohibition of incidental take for this area at this time, but will cooperate in anticipated efforts by the California Resources Agency to utilize the NCCP process to further refine an acceptable owl conservation program for this area that addresses the question of additional relief.

(b) *Hardwood Region* (Figure 2 to § 17.41(c)).

In the southern portion of the California Coast Province and the California Klamath Province, suitable habitat is scattered due to effects of climate, soils, and human development. This area, which includes much of Lake, Sonoma, Napa, and Marin Counties is dominated by hardwoods and was designated as the Hardwoods Subprovince during the California HCP planning effort (CDF 1992). It consists of approximately 755,000 acres of Federal land and 2.0 million acres of non-Federal land. Approximately 57 owl site centers located on non-Federal lands are known in this area; 70 site centers are located on Federal land of which 9 rely to some degree upon non-Federal lands. In this area, spotted owls are widely scattered and often isolated in small patches of habitat. Because the area contains minimal Federal land, maintenance of the species' current range would depend almost entirely on providing for owls on non-Federal lands.

(c) *Wells Mountains—Bully Choop* (Figure 3 to § 17.41(c)).

This area is in eastern Trinity County south of the Salmon-Trinity Alps Wilderness, and, as identified in the draft Recovery Plan, provides an important link between the California Klamath Province and the California Cascades Province. This area consists of approximately 116,000 acres of Federal land and 176,000 acres of non-Federal lands, and is managed under Sierra-Pacific Industries' no-take owl management plan. Approximately 13 owl site centers located on non-Federal lands are known in this area; 7 site centers are located on Federal lands of which all 7 rely to some degree upon adjacent non-Federal lands. Conservation goals include maintenance of owl populations and dispersal habitat.

(d) *California Cascades* (Figure 3 to § 17.41(c)).

The California Cascades Province is east of the California Klamath Province. It consists of approximately 1.3 million acres of Federal land and 1.6 million acres of non-Federal land. Checkerboard Federal/non-Federal ownership patterns predominate. Due to the relatively dry climate and the history of recurrent

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wildfires in this province, spotted owl habitat is naturally fragmented by chaparral and stands of deciduous hardwoods. In portions of the province, exclusion of fire during the last century may have encouraged development of mixed-conifer habitat suitable for spotted owls. However, during the same period, timber harvest has removed substantial amounts of suitable habitat. Approximately 105 widely scattered site centers are known. Of these sites, 20 are centered on non-Federal lands and 85 are centered on Federal lands, of which 46 rely to some degree upon adjacent non-Federal lands. The potential for dispersal throughout the province appears to be limited. This province provides the demographic and genetic link between the northern spotted owl and the California spotted owl (*Strix occidentalis occidentalis*) of the Sierra Nevada range.

Currently, threats in this province include low population numbers, the difficulty in providing for interacting population clusters, and fragmented dispersal habitat. Catastrophic wildfire is a significant threat to habitat. In 1992, a 70,000-acre fire in Shasta County substantially reduced the likelihood of contact between the northern spotted owl and the California spotted owl for the next several decades.

Due to the existing habitat condition and the importance of the province in linking the two subspecies, the entire province has been designated as an area of concern by every spotted owl management plan to date. The Forest Plan provides protection of habitat in the home range of each northern spotted owl found in the province. The province contains the 172,000-acre Goosenest AMA on the Klamath National Forest. Sierra-Pacific Industries' owl management plan covers the majority of the extensive non-Federal checkerboard ownership in the province. The primary conservation needs for both Federal and non-Federal lands are research on habitat use by nesting and dispersing spotted owls, and providing habitat for a well-distributed population and dispersal throughout the province. Because of the poor biological status of the owl in this province, the opportunity for large scale relief in this area is very limited at present. Should additional data or information suggest that the status of the owl has stabilized or is improving, options for this Province would be reconsidered.

Other Related Provisions

As is the case in the State of Washington, the proposed rule would also include a "safe harbor" for any timber harvest activity where more than 40 percent suitable habitat remained, post harvest, within an owl's median annual home range. This provision would be relevant for harvest activities within the four potential CCPAs.

The Service proposes to provide immediate relief upon the effective date of the final rule from owl incidental take restrictions for small landowners in California. Such relief would be independent of, and in advance of any Natural Community Conservation Planning (NCCP) process. Except within the 70-acre owl activity centers themselves, the Service proposes to relieve small landowners who own no more than 80 acres of forestland in a given CCPA as of the date of publishing this proposed rule in the **Federal Register**, from the prohibition against the incidental take of owls. The 80 acres/small landowner relief provision would remain in effect regardless of whether an NCCP process was ultimately successful in a given CCPA. The relief provision would be applicable in all four potential CCPAs. It would be unnecessary in the Klamath Province Relief Area, which is the subject of a broader proposal to relax incidental take restrictions.

The Service also proposes to modify existing incidental take restrictions within potential CCPAs that would involve non-Federal lands located amid matrix or Adoptive Management Areas (AMA) designated under the Federal Forest Plan. Where such non-Federal lands are subject to incidental take prohibitions for a given owl, the Service proposes to authorize the affected non-Federal landowners to apply either the final management prescriptions for the surrounding Federal Matrix/AMA land, as determined through the watershed analysis or AMA planning processes, as appropriate, or such management practices which comply with the current incidental take restrictions.

Application of either management strategy would absolve the affected non-Federal landowner from any liability for incidental take of an owl under the Act, resulting in the application of more uniform owl conservation standards within a matrix/AMA area regardless of land ownership.

The one exception to this policy would be where the adoption of matrix or AMA prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn area. In such a case, the incidental take restrictions would continue to apply for at least two more years. At the end of this period, the Service will review any new data or information involving the status of such owls and their habitats in the affected areas, including the results of any completed watershed analysis and other planning efforts under the Forest Plan. As noted previously in a discussion of this review process, the Service would assess on an area-by-area basis whether the continuation of the incidental take prohibition on affected non-Federal lands was still necessary and advisable for achieving the owl conservation goals of the Forest Plan. The Service would lift the incidental take restrictions where warranted and authorize the adoption of the final matrix or AMA prescriptions, at the discretion of the affected non-Federal landowner, as a means of avoiding an unauthorized incidental take of an owl.

Table 1 provides a summary of the various areas where incidental take relief could be provided or prohibitions retained in the two States affected by this proposed rule.

TABLE 1

Landowner type	Washington owl sites outside SEAs	Washington owl sites inside SEAs	California owl sites inside Klamath relief area	California owl sites inside CCPAs
Less than 80 acres.	Relief for all landowners except for 70-acre core.	Relief except for 70-acre core	Relief for all landowners except for 70-acre core.	Relief except for 70-acre core.
80–5,000 Acres	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area (except for Olympic Peninsula).	Matrix/AMA prescription option. Additional relief contingent upon acceptable Local Option Plan.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area.	Matrix/AMA prescription option. Additional relief contingent upon successful completion of NCCP process.
More than 5,000 Acres.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area (except for the Olympic Peninsula).	Matrix/AMA prescription option. Additional relief contingent upon acceptable Local Option Plan.	Relief for all landowners except for 70-acre core or where current restrictions are necessary to protect owls on a Federal reserve or withdrawn area.	Matrix/AMA prescription option. Additional relief contingent upon successful completion of NCCP process.

Incidental Take on Tribal Lands

For Indian forest lands, as that term is defined at 25 CFR 163.1, in California and Washington, the proposed rule would result in the reduction of the current Federal prohibition against the incidental take of the spotted owl. Under this proposal, Tribes would be required to maintain only the closest 70 acres of suitable owl habitat around an owl site center. Any additional restrictions or prohibitions under Tribal law would continue to apply. The Service is proposing this approach in recognition of the conservation benefits provided the northern spotted owl under harvest methods practiced by many Indian Nations, such as the Yakima Indian Nation in Washington. Many tribal lands are already managed under conservation strategies for the owl or are of little habitat value for the bird. Moreover, the Service notes that the Secretary's trust responsibility for Native Americans provides him with additional fiduciary factors to weigh in exercising his broad discretionary authority under Section 4(d) of the Act.

Sunset Provision

The Service proposes a process that could result in the modification of the prohibitions of incidental take that are retained under this proposed rule should future biological information so warrant in either California or Washington.

Under this sunset provision, the Service would periodically evaluate the conservation goals for non-Federal lands within SEAs or possible CCPAs and would decide whether the conservation goals for owls in those areas have been accomplished as a result of future HCPs, no-take agreements, or other affirmative conservation activities. Should the Service conclude that success has been achieved in reaching the conservation needs of the species within a given area, restrictions due to incidental take prohibitions could be further modified or lifted, as information warrants.

Other Federal Mechanisms for Promoting the Conservation of the Spotted Owl

The listing of the spotted owl, the designation of its critical habitat, and the application of Act regulations at 50 CFR Part 17 have extended the protection of the Act to this species. Under section 7 of the Act and the implementing consultation regulations at 50 CFR 402, individual project review occurs through the consultation process for those actions authorized, funded, or carried out by Federal agencies that may affect a listed species like the spotted owl or its designated critical habitat. The Section 7 consultation process is designed to ensure that a proposed action is not likely to jeopardize the continued existence of the species or adversely modify its critical habitat. The consultation process also requires the Service to determine what level of incidental take is likely to occur as a result of that action. After completing this determination, the Service issues an incidental take statement that is designed to minimize both the level and the impact of take on listed species.

In 1982, Congress amended section 10(a)(1)(B) of the Act to provide an additional mechanism for encouraging non-Federal support for the conservation of listed species. More commonly known as Habitat Conservation Planning or HCPs, this mechanism authorizes the incidental take of a listed species in exchange for a commitment from a private developer or landowner for a long-term conservation program for the affected species.

Section 10(a)(1)(B) of the Act, requires non-Federal applicants to develop Habitat Conservation Plans for listed species which would be incidentally taken in the course of otherwise lawful activities, and to submit such plans along with an application for an incidental take permit. Such plans can direct significant private sector resources in support of the overall conservation of the affected species on non-Federal lands. Three section 10(a)(1)(B) incidental take permits for the northern spotted owl have already been issued by the Service. A number of other non-Federal entities are in the process of developing HCPs for the spotted owl. The section 10 HCP process will remain available to non-Federal landowners under the proposed rule and will provide an additional alternative for adjusting the incidental take prohibitions set forth in this proposed rule. The initiation of a major and aggressive Habitat Conservation Planning Program for non-Federal forestlands in the Pacific Northwest is an integral and crucial component of the Administration's overall owl conservation program. When combined with the conservation goals of the Federal Forest Plan and this proposed section 4(d) rule, the Service's Habitat Conservation Planning initiative provides the third element for a comprehensive strategy for the owl

Incentives for Restoring or Enhancing Owl Habitat

Prohibitions against the incidental take of the spotted owl have existed since the species was Federally listed in June of 1990. The Service believes that many landowners have felt threatened by the current regulations which could

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be viewed as a disincentive to enhance, restore, or maintain habitat in a condition that is suitable for owl nesting, roosting, foraging, or dispersal. The disincentive stems from landowners' fears that owls might establish residence on, or move through, their property and impede their ability to manage their timber resources. This disincentive has had the effect of increasing timber harvest of currently suitable owl habitat and younger forests on non-Federal lands which are not presently affected by the presence of an owl. With regard to younger forests in particular, this concern or fear has accelerated harvest rotations in an effort to avoid the regrowth of habitat that is useable by owls.

For those non-Federal lands which are not currently affected by incidental take restrictions for spotted owls, the Service proposes to provide a new incentive to landowners to voluntarily manage their lands in a manner which aids in owl conservation without increased regulatory liability for the landowner. In particular, the Service desires to encourage landowners to restore or enhance former owl habitat which has been previously altered and is of little current value to the owl. The Service is also interested in encouraging owners of current suitable owl habitat to maintain that habitat and to forego premature cutting as the only perceived means of avoiding future incidental take restrictions for the owl.

The Service would offer to work directly with a non-Federal landowner through a written conservation or cooperative agreement for the purpose of managing, restoring or enhancing forest habitat so as to contribute to the survival and recovery of the owl. Working with the affected landowner, the Service would first establish an environmental baseline for the property to confirm that no Endangered Species Act-based spotted owl restrictions currently apply to the land. The Service might provide such other conservation advice or assistance as is feasible and available. The agreement would be of sufficient duration so as to enhance the conservation of the owl or to provide some benefit to the owl while still allowing economic use of the property during the term of the agreement.

At the end of the agreement, or at any time thereafter, the landowner would be free to use his or her property as desired without restrictions under the Act for the spotted owl. This would be the case even if an owl established residence or dependency upon the property at some point during or after the terms of the agreement. During the life of the agreement, the landowner also would be authorized to incidentally take any spotted owl which was otherwise in accordance with the use of the property under the agreement.

The Service believes that an incentives program of this sort will encourage primarily the development of dispersal habitat under restoration and enhancement agreements and will slow down the harvest of suitable owl habitat under habitat maintenance agreements. Under any of these approaches, there is a potential benefit for the spotted owl. Most owls using dispersal habitat are not likely to remain dependent upon that habitat as part of a resident pair or as a single. Instead, they are likely to use the area as a corridor for moving from one block of suitable habitat to another. Under these circumstances, any incidental take that might otherwise occur through land use activities on the property is likely to be inconsequential or very limited in impact or duration.

In addition, the opportunity for subsequent immunity from incidental take restrictions should provide an incentive to owners of suitable owl habitat to forego panic cutting and to enter into habitat maintenance agreements. By discouraging legal but potentially unsustainable harvests now, and stretching the retention of suitable owl habitat for the life of a maintenance agreement, the Service and the landowner would keep such habitat available for owl use during the pendency of the agreement.

Incidental Take of Other Listed Species

Several other Federally-listed species occur in the late-successional and old-growth forests that provide habitat for the spotted owl. The bald eagle (*Haliaeetus leucocephalus*), peregrine falcon (*Falco peregrinus*), gray wolf, grizzly bear (*Ursus arctos*), and marbled murrelet are known to occur on non-Federal lands in the range of the owl; the prohibition of take of these species incidental to timber harvest would remain in place.

The Service is concerned about the effects of harvest activities on the marbled murrelet, particularly since the range of the spotted owl significantly overlaps the range of the murrelet. Some areas of relief under this proposed rule for the spotted owl might also provide habitat that is occupied by the marbled murrelet. Since the date of the original listing of the murrelet, the Service has been acquiring as much additional data and information as possible to identify the constituent elements of suitable murrelet habitat, as well as to expand a landowner's ability to determine whether or not such habitat is occupied. Significant progress also has been made in the development of a draft recovery plan for the murrelet. The draft recovery plan should be available for public comments in two to three months. In order to aid a landowner in determining whether a property is occupied by murrelets, the Service encourages landowners to contact one of the Fish and Wildlife Service's three Ecological Services State Offices noted previously in this document, and request guidance or information on delineating suitable murrelet habitat and conducting murrelet surveys to determine presence of murrelets on a given piece of property. This will ensure that landowners who might receive relief from owl restrictions under this proposed rule are aware of the latest data on occupied habitat for murrelets.

The Service recognizes that additional incidental take of spotted owls may occur in SEAs in Washington and CCPAs in California, as HCPs or other long-term conservation agreements, e.g. local option conservation plans, are implemented and further take is authorized. However, the Service believes that the overall level of incidental take is acceptable in light of the habitat-based conservation strategy in the Forest Plan and the fact that such plans or agreements must satisfy the conservation requirements of the Act. The Service will review the effects of the proposed rule under a section 7 consultation as part of the process to complete this proposed rule.

In Washington and California, the Service believes that the relief from prohibitions for non-Federal landowners outside of SEAs or CCPAs and for non-Federal landowners with holdings of less than 80 acres of forestland in a given SEA or CCPA would not preclude the recovery of the spotted owl and will facilitate the maintenance of habitat conditions in some areas by removing disincentives that currently account for the premature cutting of habitat.

In general, the contributions of Federal, State, Tribal and private land management and conservation efforts for protection of the spotted owl and other species allow for reduction of the prohibitions on incidental take of the owl in many areas on non-Federal lands. As a result of this proposed rule, landowners would have more certainty about the conditions under which incidental take is likely to occur. Finally, the Service points to the long-term benefit to the owl of enhanced public support for the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposed rule would be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule are solicited. In particular, the Service seeks comments on:

(1) The distribution, abundance, and population trends of spotted owls on non-Federal lands in Washington and California as they would relate to the approaches described in this proposed rule;

(2) The boundaries of the proposed SEAs or CCPAs identified for Washington and California and suggestions for modification of these boundaries. In order to better assess available data on the region, the Service particularly would like to encourage public comment on the question of whether it is necessary and advisable for the conservation of the spotted owl to designate a Special Emphasis Area on the western side of the Olympic Peninsula, and if so, whether the present proposed boundaries of the Hoh/Clearwater Special Emphasis Area are warranted or whether they should be reduced in size or significantly reconfigured.

(3) The distribution and abundance of spotted owl populations that are outside of SEAs or CCPAs;

(4) The biological and economic implications of applying the proposed rule in Washington and California;

(5) The applicability of the definitions of suitable habitat and dispersal habitat for the spotted owl, specific to provinces if possible;

(6) The implications of the proposed rule on small-acreage (less than 80 acres), medium-acreage (80 to 5,000 acres), and large-acreage (more than 5,000 acres) non-Federal landowners and comments on how these different ownerships are addressed in the proposed rule;

(7) The scope and effect of the "local option" process for landowners who own 80 to 5,000 acres in SEAs in the State of Washington;

(8) The biological or economic implication of proposing a different SEA/CCPA approach where non-Federal buffers would be retained around any owl site centers located on Federal reserves in designated areas, and whether SEA/CCPA boundaries would change as a result of applying this type of approach; and

(9) Recommendations or comments on how to implement the proposed Habitat Enhancement Agreement conservation program for the owl, particularly with regards to possible provisions of such agreements, scope of duration of such agreements and land use assurances to private landowners which would be necessary to encourage voluntary participation.

Final promulgation of the proposed rule will take into consideration the comments and any information received by the Service. Any information the Service receives during the comment period may lead to a final rule that differs from this proposed rule.

The Act provides for a public hearing on the proposed rule, if requested. Requests must be received within 45 days of the date of publication of this proposed rule. Such requests must be written and addressed to: Regional Director, Region 1, U.S. Fish & Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

Section 7 Consultation

Review, pursuant to section 7 of the Act, will be conducted prior to issuance of a final rule to ensure that the proposed action will not jeopardize the continued existence of the spotted owl or any other listed species.

National Environmental Policy Act

The Fish and Wildlife Service is complying with NEPA in implementing the provisions of this proposed rule. The Service prepared an environmental assessment on this proposal and has decided to engage in a more intensive assessment of impacts through the preparation of an environmental impact statement (EIS). The Service is preparing a draft EIS at this time. The draft EIS will be published and available for public review and comment approximately 60 days after publication of this proposed rule. The end of the public comment period for the proposed rule will ultimately be extended to coincide with the end of the public comment period for the draft EIS.

Required Determinations

This proposed rule was reviewed under Executive Order 12866. The Service has not yet made a determination of the economic effects of the proposed rule on small entities as required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Specific economic effects of the proposed action will be discussed in the economic analysis that is included in the Environmental Impact Statement (EIS) for the proposed action. The EIS will be published and available for public comment at a later date. This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order. The collection of information contained in this proposed rule have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The Service has determined that this proposed action qualifies for categorical exclusion under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights", and preparation of a Takings Implications Assessment is not required. Regulations that authorize take of listed species, as is proposed in this special rule, are designated as categorical exclusions.

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Warm Springs Indian Reservation. 1993. Forest management implementation plan 1992 through 2001. Warm Springs, Oregon.

Authors

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h), is amended by revising the "special rules" column in the table entry for "Owl, northern spotted" under BIRDS to read "17.41(c)" instead of "NA".

3. Section 17.41 is amended by adding paragraph (c) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) Northern spotted owl (*Strix occidentalis caurina*).

(1) *Prohibitions.* Except as provided in this paragraph (c)(1) or by a permit issued under paragraph (c)(2) of this section, the following prohibitions apply to the northern spotted owl.

(i) *Taking.* Except as provided in this paragraph (c)(1)(i), no person shall take a northern spotted owl in Washington or California.

(A) *Taking pursuant to cooperative agreements.* Any employee or agent of the Fish and Wildlife Service (Service), or of a conservation agency of the State of Washington or State of California that is carrying out a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a northern spotted owl covered by an approved cooperative agreement to carry out a conservation program under the agreement in Washington or California.

(B) *Taking by designated officials.* Any employee or agent of the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Washington Department of Wildlife, or California Department of Fish and Game, who is designated by his/her agency for such purposes, may, when acting in the course of his/her official duties, take a northern spotted owl in Washington or California if such action is necessary to:

(*1*) Aid a sick, injured or orphaned owl;

(*2*) Dispose of a dead owl; or

(*3*) Salvage a dead owl which may be useful for scientific study: *Provided*, that any taking pursuant to paragraph (c)(1)(i)(B) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, DC 20036, within 5 days. The specimen may only be retained, disposed of or salvaged in accordance with directions from the Service.

(C) *Incidental Take on Tribal Lands.* On Indian forest lands in Washington and California, as defined in 25 CFR 163.1, any person may, when acting in accordance with tribal forestry rules and regulations, take a northern spotted owl incidental to timber harvest activity if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(D) *Spotted Owl Habitat Enhancement Agreement.* Any person who has voluntarily entered into a Cooperative Habitat Enhancement Agreement (Agreement) with the Service for the purpose of restoring, enhancing or maintaining forestland habitat to aid in the conservation of the spotted owl may, pursuant to the terms of that Agreement, incidentally take spotted owls on the subject lands either during or after the period when the Agreement is in effect: *Provided*, that such Agreements shall only apply to parcels of land that are free of all incidental take restrictions for the spotted owl as of the date that such Agreements enter into force and effect, and that such Agreements must be of sufficient duration to aid in the conservation of the spotted owl.

(E) *Incidental Take in State of Washington.* The provisions of this paragraph (c)(1)(i)(E) shall apply to the incidental take of northern spotted owls from timber harvest activity in the State of Washington.

(*1*) *Outside Special Emphasis Areas (SEA).* Any person may take a northern spotted owl incidental to timber harvest activity outside an SEA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center: *Provided*, that such incidental take is not authorized with regard to an owl whose site center is located within and along

the boundary of an SEA; or a Federal reserve or Congressionally reserved or Administratively withdrawn area which is otherwise located off the Olympic Peninsula.

(*2*) *Inside SEAs—Matrix and Adaptive Management Area authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within an SEA if the harvest is on non-Federal land surrounded by or located within Federal Matrix or Adaptive Management Area lands and complies with the final Federal harvest prescriptions or restrictions adopted for such lands: *Provided*, that this authorization shall not apply to any northern spotted owl whose site center is located within a Federal Reserve or a Congressionally reserved area or Administratively withdrawn area.

(*3*) *Inside SEAs—Small landowners.* Any person who owns, on February 17, 1995, no more than 80 acres of forestland within a given SEA, may take a northern spotted owl incidental to timber harvest activity within such 80 acres if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(*4*) *Inside SEAs—Local option conservation plans.* (*i*) *Authorization.* Any person who owns on February 17, 1995 more than 80 acres, but not more than 5000 acres, of forestland in a given SEA may take a northern spotted owl incidental to timber harvest activity conducted on such land in accordance with a Local Option Conservation Plan approved by the Service.

(*ii*) *Application.* Each application for a Local Option Conservation Plan shall be submitted to the Service's State Supervisor, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501, on an official application (Form 3–200) provided by the Service. Each application must include, as an attachment, a plan that contains a description of the area to be covered by the proposed plan; the size of the affected land ownership(s) and the intended duration of the plan; the number of affected spotted owls and the habitat condition in the area to be covered by the proposed plan, if known; the extent to which the plan will contribute to or be consistent with the owl conservation needs identified for the SEA affected by the plan; the extent to which the incidental take of spotted owls resulting from timber activities under the plan will be complementary with the goals of the Federal Forest Plan for the affected area; the extent to which the land is adjacent to, or interspersed within, Federal Matrix or Adaptive Management Area lands and a description of the final management prescriptions delineated for any such lands, if known; the measures to be taken to minimize and mitigate the impacts of incidental take of spotted owls; the impact of the plan on affected watershed(s); what commitments the landowner(s) will provide to ensure implementation or adequate funding for the plan; what procedures will be used to deal with any unforeseen circumstances which could result in significant adverse effects to spotted owls in the affected area; any additional measures the Service requires as being necessary or appropriate for the goals of the plan to be met, e.g., reporting and review requirements; and, where the State has implemented regulations for a local option conservation plan review process that complements or is consistent with this proposed rule, whether the State has certified the plan.

(*iii*) *Approval.* After consideration of the information submitted with an application and received during a public comment period, the Service shall approve a Local Option Conservation Plan if it finds that any anticipated taking will be incidental; the applicant will minimize and mitigate the impact of such takings; the local option conservation plan contributes to or is consistent with the conservation needs of the northern spotted owl in the affected SEA and will not result in the incidental take of a spotted owl deemed essential for providing demographic support for a Federal reserve established under the Federal Forest Plan as necessary to achieve conservation objectives; the applicant will provide adequate assurances or funding for the implementation of the local option plan; and the taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.

(*5*) *Safe Harbor Authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within an SEA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center, and does not reduce, to less than 40 percent, the amount of nesting, roosting and foraging habitat within the median annual home range of the affected owl.

(*6*) *Sunset provision.* The Service shall periodically review and evaluate the effectiveness of the conservation measures and program for the spotted owl for each SEA. If the review indicates that the conservation goals for an SEA have been effectively achieved, the Service shall propose regulations to modify or withdraw the incidental take prohibitions in this paragraph as appropriate with respect to such SEA.

(F) *Incidental Take in State of California.* The provisions of this paragraph (c)(1)(i)(F) shall apply to the incidental take of northern spotted owls from timber harvest activity in the State of California.

(*1*) *Klamath Province Relief Area.* Any person may take a northern spotted owl incidental to timber harvest activity in the Klamath Province Relief Area (Figure 1 to § 17.41(c)) if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center: *Provided*, that such incidental take is not authorized with regard to an owl whose site center is located within and along the boundary of a Federal reserve or a Congressionally reserved or Administratively withdrawn area.

(*2*) *Potential California Conservation Planning Areas.* (*i*) *Matrix and Adaptive Management Area authorization.* Any person may take a northern spotted owl incidental to timber harvest activity within a potential California Conservation Planning Area (CCPA) if the harvest is on non-Federal land surrounded by or located within Federal Matrix or Adaptive Management Area lands and complies with the final Federal harvest prescriptions or restrictions adopted for such lands: *Provided*, that this authorization shall not apply to any northern spotted owl whose site center is located within a Federal reserve or a Congressionally reserved or Administratively withdrawn area.

(*ii*) *Small landowners.* Any person who owns, on February 17, 1995, no more than 80 acres of forestland within a given potential CCPA may take a northern spotted owl incidental to timber harvest activity within such 80 acres if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center.

(*iii*) *Natural Communities Conservation Plans.* Any person may take a northern spotted owl incidental to timber harvest activity within a potential CCPA if the harvest is conducted in accordance with a Natural Communities Conservation Plan (Plan) for spotted owls prepared by the State of California and approved by the Service. The Service shall approve any such Plan if it finds that the Plan is consistent with achieving the conservation goals for the spotted owl in the affected CCPA, is complementary to the Federal Forest Plan and is consistent with the criteria of section 10(a)(2) of the Endangered Species Act (16 USC 1539(a)(2)).

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(iv) *Safe Harbor Authorization.* Any person may take northern spotted owls incidental to timber harvest activity within a potential CCPA if the harvest does not destroy or degrade the 70 acres of nesting, roosting and foraging habitat closest to an owl site center, and does not reduce, to less than 40 percent, the amount of nesting, roosting and foraging habitat within the median annual home range of the affected owl.

(v) *Sunset provision.* The Service shall periodically review and evaluate the effectiveness of the conservation measures and program for the spotted owl established for each CCPA. If the review indicates that the conservation goals for a CCPA have been effectively achieved, the Service shall propose regulations to modify or withdraw the incidental take prohibitions of this paragraph, as appropriate, with respect to such CCPA.

(ii) *Unlawfully taken owls.* No person shall possess, sell, deliver, carry, transport, or ship, any northern spotted owl taken in violation of paragraph (c)(1)(i) of this section: *Provided*, that Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(iii) *Commercial transportation.* No person shall deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any northern spotted owl.

(iv) *Sales.* No person shall sell or offer for sale in interstate or foreign commerce any northern spotted owl.

(v) *Importation or exportation.* No person shall import into the United States, or export from the United States, any northern spotted owl.

(2) *Permits.* In accordance with the provisions of § 17.32 of this Part, permits are available to authorize otherwise prohibited activities involving the northern spotted owl in Washington and California.

(3) *Definitions.* As used in this paragraph (c):

(i) *Administratively withdrawn area* means lands that are excluded from planned or programmed timber harvest under agency planning documents or the preferred alternative for draft agency planning documents.

(ii) *Adaptive management area* means the 10 landscape units that were adopted in the April 13, 1994 *Record of Decision for Amendments to U.S. Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl* (USDA/USDI 1994) for development and testing of technical and social approaches to achieving specific ecological, economic, and other social objectives.

(iii) *Congressionally reserved area* means lands with Congressional designations that preclude timber harvest, as well as other Federal lands not administered by the Forest Service or Bureau of Land Management, including National Parks and Monuments, Wild and Scenic Rivers, National Wildlife Refuges, and military reservations.

(iv) *Federal Forest Plan* means the Federal forest management strategies, standards and guidelines adopted in the April 13, 1994, Record of Decision for the Final Supplemental Environmental Impact Statement for 19 National Forests and 7 Bureau of Land Management Districts located within the range of the northern spotted owl.

(v) *Federal Matrix Land* means those Federal lands generally available for programmed timber harvest which are outside of the Congressionally reserved and Administratively withdrawn areas, Federal reserves and Adaptive Management Areas as delineated in the Standards and Guidelines adopted in the April 13, 1994, Record of Decision.

(vi) *Federal Reserve* means those Federal lands delineated in the April 13, 1994, Record of Decision on which programmed timber harvest is not allowed and is otherwise severely limited. There are two types of reserves: late-successional reserves, which are designed to produce contiguous blocks of older forest stands; and riparian reserves, which consist of protected strips along the banks of rivers, streams, lakes, and wetlands that act as a buffer between these water bodies and areas where timber harvesting is allowed.

(vii) *Home range* means the area a spotted owl traverses in the course of normal activities in fulfilling its biological needs during the course of its life span.

(viii) *Nesting, roosting and foraging habitat or suitable habitat* means those areas with the following vegetative structure and composition necessary to assure successful nesting, roosting, and foraging activities for a territorial single or breeding pair of spotted owls:

(A) In the California provinces, suitable habitat consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple overstory conifers greater than 16 inches in diameter at breast height (dbh); and total canopy closure among dominant, co-dominant, and understory trees of greater than 60 percent;

(B) In the Western Washington Lowlands province, the Western Washington Cascades province, and the Washington Olympic Peninsula province, suitable habitat consists, as a general matter, of coniferous or mixed coniferous/hardwood forests with multiple canopy layers; multiple large overstory conifers greater than 20 inches dbh, and total canopy closure among dominant, co-dominant and understory species of greater than 60 percent;

(C) In the Eastern Washington Cascades province, suitable habitat consists, as a general matter, of coniferous forests with stands that contain greater than 20 percent fir (Douglas fir, Grand fir) and/or hemlock trees; multiple canopy layers of multiple large overstory conifers greater than 12 inches dbh; and total canopy closure among dominant, co-dominant and understory species of greater than 50 percent.

(ix) *Northern spotted owl, spotted owl, or owl* means any northern spotted owl (*Strix occidentalis caurina*), alive or dead, and any part, egg, nest, or product thereof.

(x) *Person* has the meaning provided in 16 USC 1532(13).

(xi) *Potential California Conservation Planning Area (CCPA)* means any of the following four areas in the State of California (Figure 1 to § 17.41(c)):

(A) *California Coastal Area (Humboldt Meridian and Baseline)* (Figure 2 to § 17.41(c)) Beginning at the intersection of the California-Oregon State Line and the shoreline of the Pacific Ocean, then east along the California-Oregon State Line, then south along the east border of S33 T19NR01E, S04 T18NR01E, S09 T18NR01E, S16 T18NR01E, S21 T18NR01E, S28 T18NR01E, S33 T18NR01E, then west along the south border of S33 T18NR01E, then south along the east border of S05 T17NR01E, S06 T17NR01E, then east along the north border of S16 T17NR01E, then south along the east border of S16 T17NR01E, S21 T17NR01E, S28 T17NR01E, S33 T17NR01E, and S04 T16NR01E, then east along the north border of S10 T16NR01E, then south along the east border of S10 T16NR01E, S15 T16NR01E, then east along the north border of S23 T16NR01E, then south along the east border of S23 T16NR01E and S26 T16NR01E, then east along the north border of S36 T16NR01E, then south along the east border of S36 T16NR01E, then east along the north border of S06 T15NR02E, then south along the east border of S06 T15NR02E, S07 T15NR02E, S18 T15NR02E, then east along the north border of S20 T15NR02E, S21 T15NR02E, S22 T15NR02E, S23 T15NR02E, then north along the west border of S13 T15NR02E, S12 T15NR02E, then east along the north border of S12 T15NR02E, S07 T15NR03E, S08 T15NR03E, then south along the east border of S08 T15NR03E, S17 T15NR03E, then west along the south border of S17 T15NR03E, then south along the east border of S19 T15NR03E, S30 T15NR03E, S31 T15NR03E, then west along the south border of S31 T15NR03E, then south along the east border of T14NR02E, T13NR02, and T12NR02E, then east along the north border of T12NR03E, then south along the east border of T12NR03E and T11NR03E, then east along the north border of S06 T10NR04E, then south along the east border of S06 T10NR04E, S07 T10NR04E, S18 T10NR04E, S19 T10NR04E, S30 T10NR04E, S31 T10NR04E, S06 T09NR04E, S07 T09NR04E, S18 T09NR04E, then southwest along the north border of the Hoopa Valley Indian Reservation, then southeast along the west border of the Hoopa Valley Indian Reservation, then south along the east border of S17 T07NR04E, S20 T07NR04E, S29 T07NR04E, S32 T07NR04E, S05 T06NR04E, S08 T06NR04E, S17 T06NR04E, S20 T06NR04E, S29 T06NR04E, S32 T06NR04E, then east along the north border of S04 T05NR04E, then south along the east border of S04 T05NR04E, then east along the north border of S10 T05NR04E, then south along the east border of S10 T05NR04E, S15 T05NR04E, S22 T05NR04E, then east along the north border of S26 T05NR04E, S25 T05NR04E, then south along the east border of T05NR04E and T04NR04E, then east along the north border of S31 T04NR05E, then south along the east border of S31 T04NR05E, S06 T3NR05E, S07 T3NR05E, S18 T3NR05E, then east along the north border of S20 T03NR05E, S21 T03NR05E, then south along the east border of S21 T3NR05E, S28 T3NR05E, S33 T3NR05E, S04 T02NR05E, S09 T02NR05E, S16 T02NR05E, then east along the north border of S22 T02NR05E, then south along the east border of S22 T02NR05E, then east along the north border of S26 T02NR05E, S25 T02NR05E, then south along the east border of T02NR05E, then east along the north border of T01NR06E, then south along the east border of S03 T01NR06E, S10 T01NR06E, S15 T01NR06E, S22 T01NR06E, then east along the north border of S26 T01NR06E, then south along the east border of S26 T01NR06E, then east along the north border of S36 T01NR06e, S31 T01NR07E, then north along the east border of S29 T01NR07E, then east along the north border of S29 T01NR07E, then south along the east border of S29 T01NR07E, S32 T01NR07E, then west along the south border of T01NR07E, then south along the east border of T01SR06E, then west along the south border of S24 T01SR06E, S23 T01SR06E, S22 T01SR06E, S21 T01SR06E, S20 T01SR06E, S19 T01SR06E, S24 T01SR05E, S23 T01SR05E, then south along the east border of S27 T01SR05E, S34 T01SR05E, then east along the north border of S02 T02SR05E, then south along the east border of S02 T02SR05E, S11 T02SR05E, S14 T02SR05E, then east along the north border of S24 T02SR05E, then south along the east border of T02SR05E, then east along the north border of S31 T02SR06E, then south along the east border of S31 T02SR06E, then east along the north border of S06 T03SR06E, S05 T03SR06E, S04 T03SR06E, S03 T03SR06E, S02 T03SR06E, S01 T03SR06E, then south along the east border of T03SR06E, then west along Ruth Zenia Road, Alderpoint Bluff Road, Zenia Bluff Road, Alder Point Road, then south along Harris Road, Bell Springs Road, and U.S. Highway 101, then west along Sebatopol Road, Bodega Highway, and California Highway 1, then north along California Highway 1, then west along Salmon Creek, then north along the shoreline of the Pacific Ocean to the point of beginning.

(B) *Hardwood Region (Mt Diablo Meridian and Baseline Except Where Township Designation Is Followed by * Which Indicates Humboldt Meridian and Baseline)* (Figure 2 to § 17.41(c)) Beginning at the Intersection of Ruth Zenia Road and the east border of T03SR06E*, then south along the east border of T03SR06E*, then east along the north border of T04SR07E* and T04SR08E*, then south along the east border of T04SR08E* and T05SR08E*./ ****Meridian Change/ then east along the north border of T05SR08E* and T25NR12W, then south along the east border of T25NR12W, then east along the north border of S18 T25NR11W, S17 T25NR11W, S16 T25NR11W, then south along the east border of S16 T25NR11W, S21 T25NR11W, then west along the south border of S21 T25NR11W, S20 T25NR11W, then south along the east border of S30 T25NR11W, then west along the south border of S30 T25NR11W, then south along the east border of T25NR12W, S01 T24NR12W, and S12 T24NR12W, then east and south along the border of the Trinity National Forest, then east along the north border of S32 T24NR11W, then south along the east border of S32 T24NR11W, then east along the north border of S04 T23NR11W, then south along the east border of S04 T23NR11W S09 T23NR11W, S16 T23NR11W, then east along the north border of S22 T23NR11W, S23 T23NR11W, S24 T23NR11W, S19 T23NR10W, then south along the east border of S19 T23NR10W S30 T23NR10W, S31 T23NR10W, then east along California State Highway 162, then south along the eastern border of the East Cascades Province, then north along the shoreline of the Pacific Ocean, then east along Salmon Creek, then south along California Highway 1, then east along Bodega Highway and Sebastopol Road, then north along U.S. Highway 101, Bell Springs Road, and Harris Road, then east along Alder Point Road, Zenia Bluff Road, Alderpoint Bluff Road and Ruth Zenia Road to the point of beginning.

(C) *Wells Mountain-Bully Choop Area (Mt. Diablo Meridian and Baseline)* (Figure 3 to § 17.41(c))

Beginning at the northwest corner of S04 T34NR11W, then east along the north border of T34NR11W, then south along the east border of S03 T34NR11W and S10 T34NR11W, then east along the north border of S14 T34NR11W, S13 T34NR11W, S18 T34NR10W, then north along the east border of S08 T34NR10W, then east along the north border of S08 T34NR10W, then south along the east border of S08 T34NR10W, S17 T34NR10W, S20 T34NR10W, S29 T34NR10W, then east along the north border of S33 T34NR10W, then south along the east border of S33 T34NR10W, then east along the north border of S03 T34NR10W, then north along the west border of S35 T34NR10W, S26 T34NR10W, S23 T34NR10W, then east along the north border of S23 T34NR10W, then north along the west border of S13 T34NR10W, then east along the north border of S13 T34NR10W, S18 T34NR09W, S17 T34NR09W, and S16 T34NR09W, then north along California Highway 3, then east along the border of the Whiskeytown-Shasta-Trinity National Recreation Area, then south along the east border of S03 T34NR09W, then east along the north border of S11 T34NR09W, S12 T34NR09W, then south along the east border of T34NR09W, then east along the north border of S19 T34NR08W, S20 T34NR08W, then south along the east border of S20 T34NR08W, S29 T34NR08W, S32 T34NR08W, then west along the south border of S32 T34NR08W, then south along the east border of S06 T33NR08W, then east along the north border of S08 T33NR08W and S09 T33NR08W, then north along the west border of S03 T33NR08W, then east along the north

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border of T33NR08W and T33NR07W, then south along Trinity Mountain Road, then east along California Highway 299, then south along the east border of S26 T32NR06W, S35 T32NR06W, S02 T31NR06W, then west along the south border of the southeast of S02 T31NR06W, then south along the east border of the northwest of S11 T31NR06W, then west along the south border of the northwest of S11 T31NR06W and northeast S10 of T31NR06W, then south along Mule Town Road, then west along the boundary of the Klamath Province, then north along the west border of the northeast of S20 T30NR09W, then west along the Shasta-Trinity County Line, then north along the west border of T30NR09W, then east along the south border of T31NR09W and T31NR10W, then south along the east border of S05 T30NR10W, then east along the south border of S05 T30NR10W, then north along the west border of S05 T30NR10W, then west along the south border of T31NR10W, then north along the west border of T31NR10W and T32NR10W, then east along California Highway 3, then west along California Highway 299, then north along the west border of S28 T34NR11W, S21 T34NR11W, S16 T34NR11W, S09 T34NR11W, S04 T34NR11W to the point of beginning.

(D) *California Cascades, (Mt Diablo Meridian and Baseline)* (Figure 3 to § 17.41(c))

Beginning at the Intersection of Interstate Highway 5 and the California-Oregon State Line, then east along the California-Oregon State Line, then south along the Eastern Boundary of the California Cascades Province, then north along Mule Town Road, then east along the north border of the southeast of S10 T31NR06W and southwest of S11 T31NR06W, then north along the west border of the northeast of S11 T31NR06W, then east along the north border of the northeast of S11 T31NR06W, then north along the west border of S01 T31NR06W, S36 T32NR06W, and S25 T32NR06W, then west along California Highway 299, then north along Trinity Mountain Road, then east along the south border of T34NR07W and T34NR08W, then south along the east border of S04 T33NR08W, then west along the south border of S04 T33NR08W and S05 T33NR08W, then north along the west border of S05 T33NR08W, then east along the north border of S05 T33NR08W, then north along the west border of S33 T34NR08W, S28 T34NR08W, S21 T34NR08W, then west along the south border of S17 T34NR08W, S18 T34NR08W, then north along the west border of S18 T34NR08W and S07 T34NR08W, then east along the south border of S01 T34NR09W, S02 T34NR09W, then north along the west border of the S02 T34NR09W, then west along the border of the Whiskeytown-Shasta-Trinity National Recreation Area then south along California Highway 3, then west along the south border of S09 T34NR09W, S08 T34NR09W, and S07 T34NR09W, then north along the west border of S07 T34NR09W, then east along the north border of S07 T34NR09W, then north along the west border of S05 T34NR09W, S32 T35NR09W, then west along the south border of S30 T35NR09W, then north along the west border of T35NR09W, then east along the north border of S19 T35NR09W, then north along the west border of S17 T35NR09W, then east along the north border of S17 T35NR09W, S16 T35NR09W, S15 T35NR09W, then north along the west border of S11 T35NR09W, then east along the north border of S11 T35NR09W, then north along the west border of S01 T35NR09W, then east along the north border of T35NR09W and T35NR08W, then north along the west border of S32 T36NR08W and S29 T36NR08W, then east along the north border of S29 T36NR08W, then north along the west border of S21 T36NR08W, S16 T36NR08W, S09 T36NR08W, S04 T36NR08W, then east along the north border of T36NR08W, then north along the west border of S34 T37NR08W, S27 T37NR08W, and S22 T37NR08W, then west along the south border of S16 T37NR08W, S17 T37NR08W, then north along the west border of S17 T37NR08W and S08 T37NR08W, then east along the north border of S08 T37NR08W, then north along the west border of S04 T37NR08W, then east along the north border of T37NR08W, then north along the west border of S36 T38NR08W, then east along the north border of S36 T38NR08W, then north along the west border of S30 T38NR07W, then west along the south border of S24 T38NR08W, then north along the west border of S24 T38NR08W and S13 T38NR08W, then east along the north border of S13 T38NR08W, then north along the west border of S07 T38NR07W, then east along the north border of S07 T38NR07W, S08 T38NR07W, S09 T38NR07W, then north along the west border of S03 T38NR07W, S34 T39NR07W, S27 T39NR07W, S22 T39NR07W, and S15 T39NR07W, then west and north along California Highway 3 and Interstate Highway 5 to the point of beginning

(xii) *Province or physiogrmphic province* means a geographic area having a similar set of biological and physical characteristics and processes due to effects of climate and geology which result in patterns of soils and broad-scale plant communities. Habitat patterns, wildlife distributions, and historical land use patterns may differ significantly from those of adjacent provinces. The seven northern spotted owl provinces in the States of Washington and California are the Olympic Peninsula Province, the Western Washington Lowlands Province, the Western and Eastern Washington Cascades Provinces, and the California Coastal, Klamath and Cascades Provinces (Figure 4 to § 17.41(c)).

(xiii) *Record of Decision (ROD)* means the April 13, 1994, *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl* (USDA/USDI 1994).

(xiv) *Special Emphasis Area (SEA)* means any of the following six areas (Figure 5 to § 17.41(c)) in the State of Washington (references are in relation to the Willamette Meridian and baseline):

(A) *Columbia River Gorge/White Salmon* (Figure 6 to § 17.41(c))

(*1*) *Columbia River Gorge Segment* (Figure 6 to § 17.41(c)) Beginning at the northwest corner of T03NR05E, then east along the north border of T03NR05E, T03NR06E, T03NR07E, T03NR07.5E, and T03NR08E, then south along the east border of T03NR08E, then west along the north Shore of the Columbia River, then north along the west border of T01NR05E, T02NR05E, and T03NR05E to the Point of Beginning.

(*2*) *White Salmon Segment* (Figure 6 to § 17.41(c)) Beginning at the northwest corner of T06NR10E, then east Along the north border of T06NR10E, then north along the west border of T07NR11E, then east along the north border of S19 T07NR11E, S20 T07NR11E, S21 T07NR11E, then south along the east border of S21 T07NR11E, S28 T07NR11E, then south along the west border of the Yakama Indian Reservation, then south along the east border of T05NR11E, T04NR11E, then southwest along Rattle Snake Creek, then south along the east border of T04NR10E and T03NR10E, then west along the north Shore of the Columbia River, then north along the west border of T03NR09E, then east along the north border of T03NR09E, then north along the west border of T04NR10E, T05NR10E, and T06NR10E to the point of beginning

(B) *Siouxon Creek* (Figure 7 to § 17.41(c)) Beginning at the intersection of the south border of S16 T06NR04E and the Cowlitz-Clark County line, then north and east along the Cowlitz-Clark County line, then south along the west border of S31 T07NR05E, then east along the north border of the SW of NW, SE of NW, and SW of NE S31 T07NR05E, then north along the west border of the NE of NE S31 T07NR05E, then east along the Lewis River, then south along the east border of S30 T07NR05E, then east along the north border of S32 T07NR05E, then north along the west border of the SE of SW S29 T07NR05E, then east along the Lewis River, then south along the east border of the SW of SE S29 T07NR05E, then east along the north border of S32 T07NR05E, then north along the west border of S28 T07NR05E, then east along the north border of S28 T07NR05E, then south along the east border of the NE of NE S28 T07NR05E, then west along the south border of the NE of NE S28 T07NR05E, then south along the east border of the SW of NE S28 T07NR05E, then east along the north border of the NE of SE S28 T07NR05E, then south along the east border S26 T07NR05E, then east along the channel of Swift Reservoir and the Lewis River, then south and west along the Gifford Pinchot National Forest boundary, then south along the Clark-Skamania County line, then west along Canyon Creek, then north along the west border of S03 T05NR04E and S34 T06NR04E, then west along the south border of NE of SE, NW of SE, and NE of SW S33 to 6NR04E, then north along the west border of the NE of SW S33 T06NR04E, then east along the north border of the NE of SW S33 T06NR04E, then north along the west border of the NE S33 T06NR04E and SE S28 T06NR04E, then east along the north border of the SE of S28 T06NR04E, then north along the west border of the SE of NE and NE of NE S28 T06NR04E, then east along the north border of S28 T06NR04E, then north along the west border S22 T06NR04E, then west along the south border of S16 T06NR04E to the point of beginning.

(C) *Mineral Block* (Figure 8 to § 17.41(c)) Beginning at the northwest corner of T15NR03E, then east along the north border of T15NR03E, T15NR04E, T15NR05E and T15NR06E, then south along the east border of T15NR06E and T14NR06E, then west along the south border of T14NR06E, then south along the east border of T13NR06E and T12NR06E, then west along the south border of S24, S23, S23, S21, S20, and S19 T12NR06E, then south along the east border of S24 T12NR05E, then west along the south border of S24, S23, S22, S21, S20, and S19 T12NR05E, then north along the west border of T12NR05E, then northwest along U.S. Highway 12, then west along the Tilton River, then north along the west border of T13NR03E, T14NR03E, and T15NR03E, to the point of beginning.

(D) *I–90 Corridor* (Figure 9 to § 17.41(c)) Beginning at the northwest corner of T22NR09E, then east along the north border of T22NR09E and T22NR10E, then north along the west border of T22NR11E, then east along the north border of T22NR11E, then north along the west border of T22NR12E, then east along the north border of T22NR12E, T22NR13E, T22NR14E, T22NR15E, T22NR16E, and T22NR17E, then north along the west border of S34 T23NR17E, S27 T23NR17E, S22 T23NR17E, S15 T23NR17E, S10 T23NR17E, S03 T23NR17E, then east along the north border of S03 T23NR17E, then north along the west border of S34 T24NR17E, S27 T24NR17E, and S22 TNR17E, then east along the north border of S22 T24NR17E, S23 T24NR17E, S24 T24NR17E, S19 T24NR18E, S20 T24NR18E, S21 T24NR18E, then south along the east border of S21 T24NR18E, S28 T24NR18E, S33 T24NR18E, then west along the south border of S33 T24NR18E, then south along the east border of S04 T23NR18E, S09 T23NR18E, S16 T23NR18E, S21 T23NR18E, S8 T23NR18E, S33 T23NR18E, then east along the north border of S04 T22NR18E, then south along the east border of S04 T22NR18E, S09 T22NR18E, S16 T22NR18E, S21 T22NR18E, S28 T22NR18E, S33 T22NR18E, then west along the south border of T22NR18E, T2NR17E, then south along the east border of T21NR16E, then west along the south border of T21NR16E, then south along the east border of T20NR16E, then west along the south border of S13 T20NR16E, S14 T20NR16F, S15 T20NR16E, S16 T20NR16E, S17 T20NR16E, S18 T20NR16E, then south along the east border of T20NR15E, T19NR15E, then east along the north border of T18NR15E, then south along the east border of T18NR15E, T17NR15E, then west along the south border of T17NR15E, then north along the west border of T17NR15E, T18NR15E, then west along the south border of T19NR15E, T19NR14E, T19NR13E, T19NR12E, T19NR11E, T19NR10E, T19NR09E, T19NR08E, then north along the west border of T19NR08E, then east along the north border of T19NR08E, then north along the west border of T20NR09E, T21NR09E, and T22NR09E to the point of beginning.

(E) *Finney Block* (Figure 10 to § 17.41(c)) Beginning at the northwest corner of T36NR07E, then east along the north border of T36NR07E, T36NR08E and T36NR09E, then south along the east border of T36NR09E, then east along the north border of T35NR10E and T35NR11E, then south along the east border of T35NR11E, then west along the south border of T35NR11E, then south along the east border of T34NR10E, T33NR10E, T32NR10E, then west along the south border of T32NR10E, T32NR09E, T32NR08E, and T32NR07E, then north along the west border of S34 T32NR07E, then west along the south border of the southeast of the northeast quarter of S34 T32NR07E, then north along the west border of the southeast of the northeast quarter of S34 T32NR07E, then west along the south border of the northwest of the northeast quarter of S34 T32NR07E, northeast quarter of the northwest quarter of S34 T32NR07E, northwest quarter of the northwest quarter of S34 T32NR07E, and northeast quarter of the northeast quarter of S32 T32NR07E, then north along the west border of the northwest quarter of the northwest quarter of S32 T32NR07E, then west along south border of S29 T32NR07E, S30 T32NR07E, then south along the east border of the northwest of the northeast quarter, the southwest of the northeast quarter, the northwest of the southeast quarter, and the southwest of the southeast quarter of S31 of T32NR07E, then west along the south border of T32NR07E, then north along the west border of T32NR07E, T33NR07E, T34NR07E, T35NR07E, and T36NR07E to the point of beginning.

(F) *Hoh/Clearwater (Olympic Peninsula)* (Figure 11 to § 17.41(c)) (*1*) *Hoh/Clearwater—North.*

Beginning at the Intersection of the Olympic National Park Boundary, and the north border of T30NR15W, then east along the north border of T30NR15W, T30NR14W, T30NR13W, then south along the Olympic National Forest Boundary, then east along the north border of the southwest quarter of the southwest quarter of S23 T29NR13W, then south along the east border of the southwest quarter of the southwest quarter of S23 T29NR13W, then west along the south border of the southwest quarter of the southwest quarter of S23 T29NR13W, then south along the east border S27 T29NR13W, then east along the north border of the southwest quarter of the southwest quarter of S26 T29NR13W, the southeast quarter of the southwest quarter of S26

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T29NR13W, and the southwest quarter of the southeast quarter of S26 T29NR13W, then south along the east border of the southwest quarter of the southeast quarter of S26 T29NR13W, then east along the north border of S35 T29NR13W, then south along the east border of S35 T29NR13W, then east along the north border of the southwest quarter of the northwest quarter of S36 T29NR13W, the southeast quarter of the northwest quarter of S36 T29NR13W, the southwest quarter of the northeast quarter of S36 T29NR13W, and the southeast quarter of the northeast quarter of S36 T29NR13W, then south along the east border of T29NR13W and T28NR13W, then east along the north border of T27NR12W, then south along the Olympic National Park Boundary, then west along the south border of S20 T25NR10W and S19 T25NR10W, then south along the east border of S25 T25NR11W and S36 T25NR11W, then east along the north border of T24NR11W, then south and west along the Olympic National Park Boundary, then west along the north border of the Quinalt Indian Reservation, then north along the Olympic National Park Boundary to the point of beginning.

(2) *Hoh/Clearwater—South.* Beginning at the Intersection of U.S. Highway 101 and the Queets River Road in S34 T24N R12W, then north along the Queets River Road, then south along the east border of S34 T24NR12W, then east along the Olympic National Forest boundary, then south along the east border of T24NR11W and S01 T23NR11W, then east and south along the border of the Quinalt Indian Reservation, then west along U.S. Highway 101 to the point of beginning.

(xv) *Site center* means the actual nest tree of a pair of spotted owls or the primary roost for a non-nesting pair or territorial single.

(xvi) *Timber harvest activity or harvest* means any activity which results in the harvest or felling of trees comprising the suitable habitat of a northern spotted owl.

(4) *Information Collection.* The collection of information requirements contained in § 17.41(c) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. Response is required to obtain or retain a permit. Public burden for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, MS–224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

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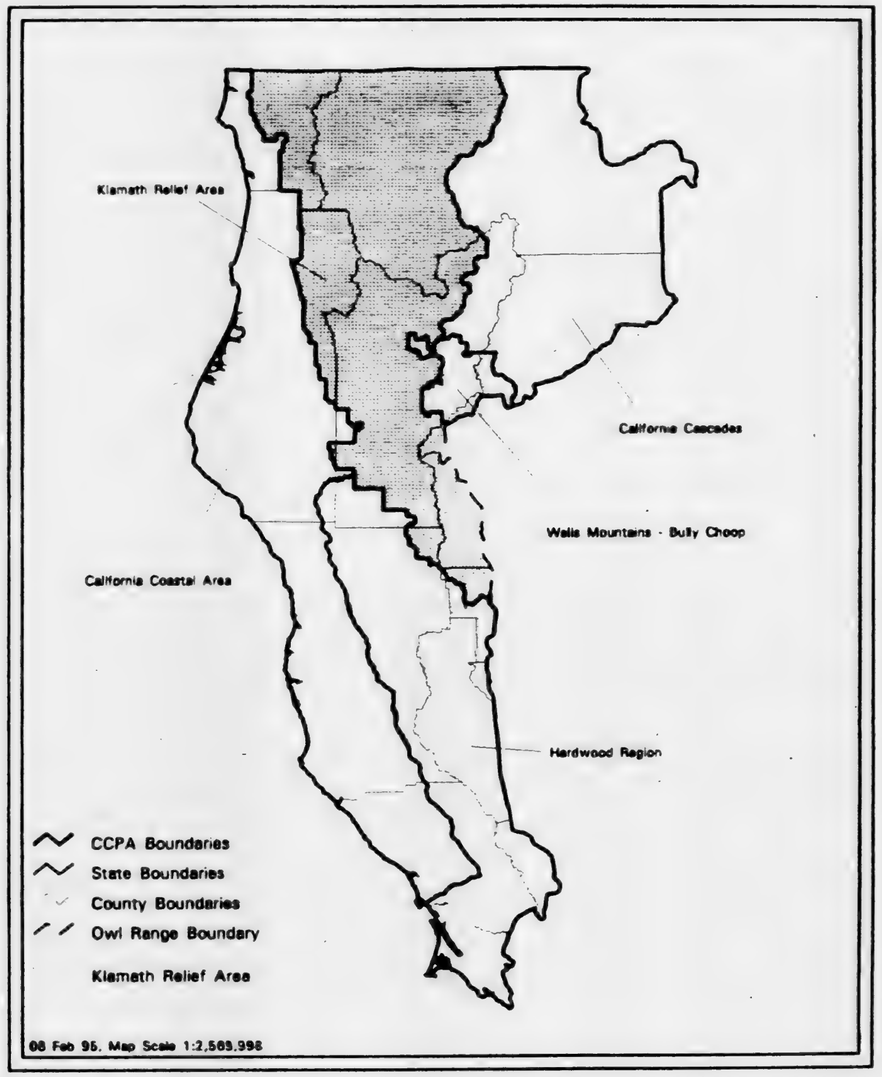

Figure 1 to § 17.41 (c) California Conservation Planning Areas (CCPAs).

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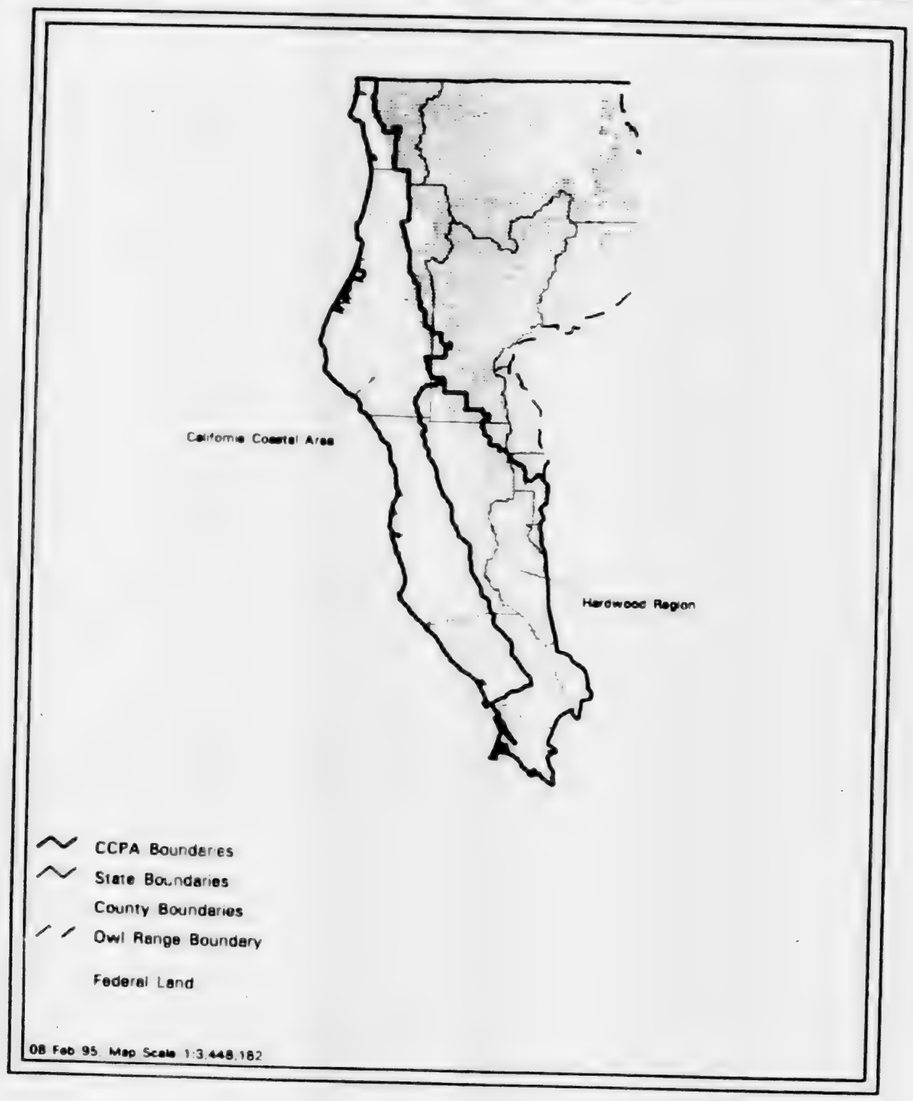

Figure 2 to § 17.41 (c) California Coastal and Hardwood Region Conservation Planning Areas.

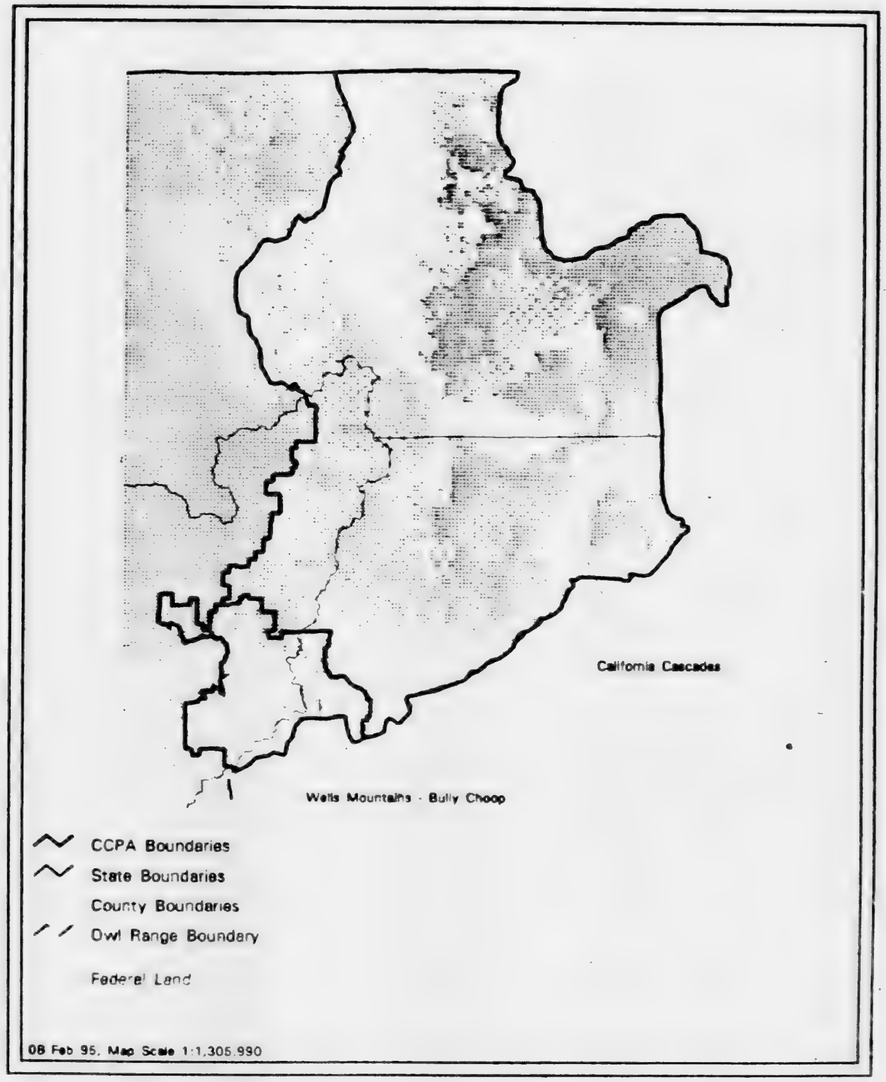

Figure 3 to § 17.41 (c) California Cascades and Wells Mountains - Bully Choop Conservation Planning Areas.

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Figure 4 to § 17.41 (c) Physiographic Provinces within the range of the Northern Spotted Owl.

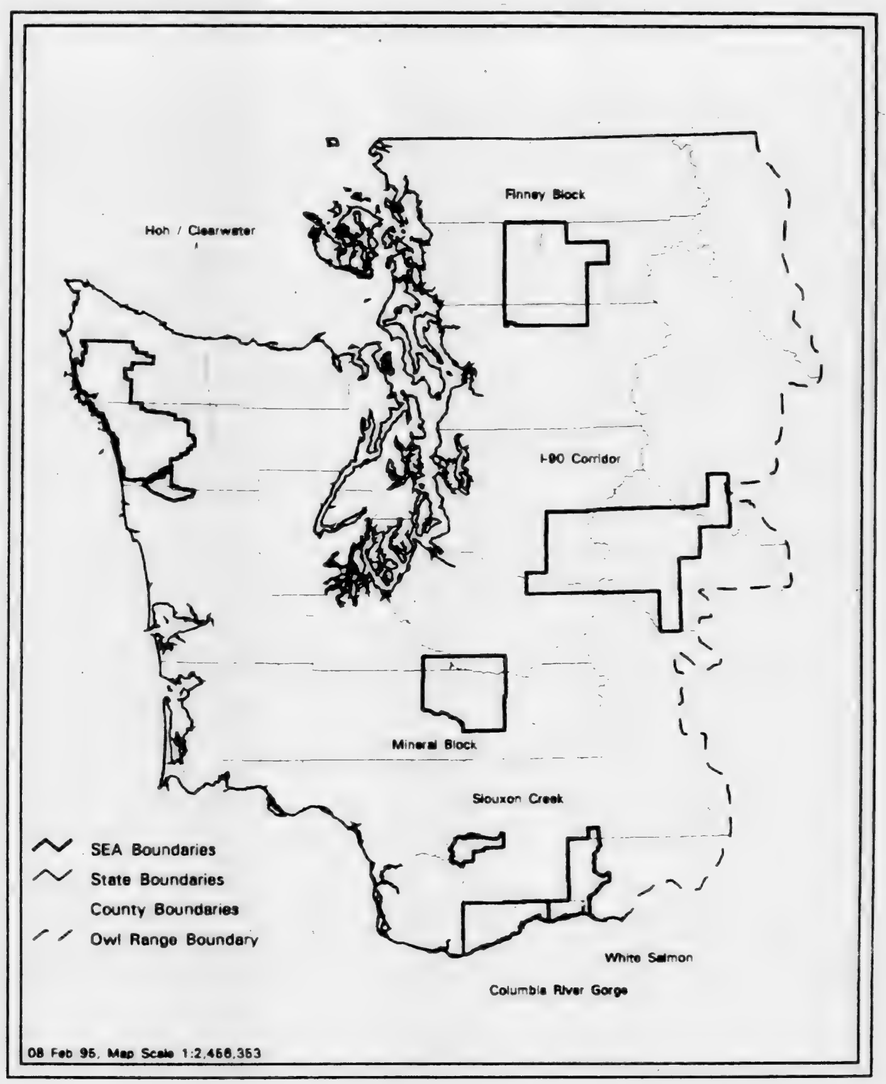

Figure 5 to § 17.41 (c) Special Emphasis Area (SEA) boundaries in Washington.

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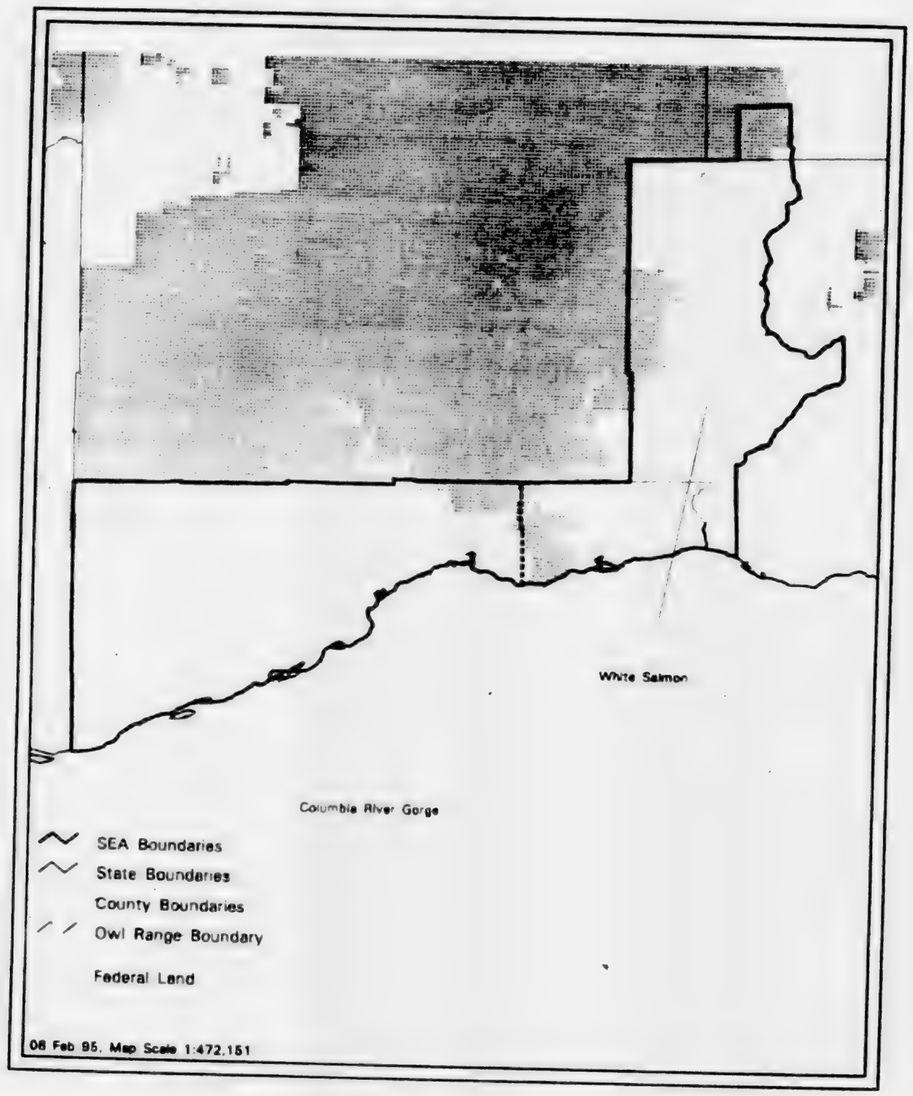

Figure 6 to § 17.41 (c) White Salmon and Columbia River Gorge SEA in Washington.

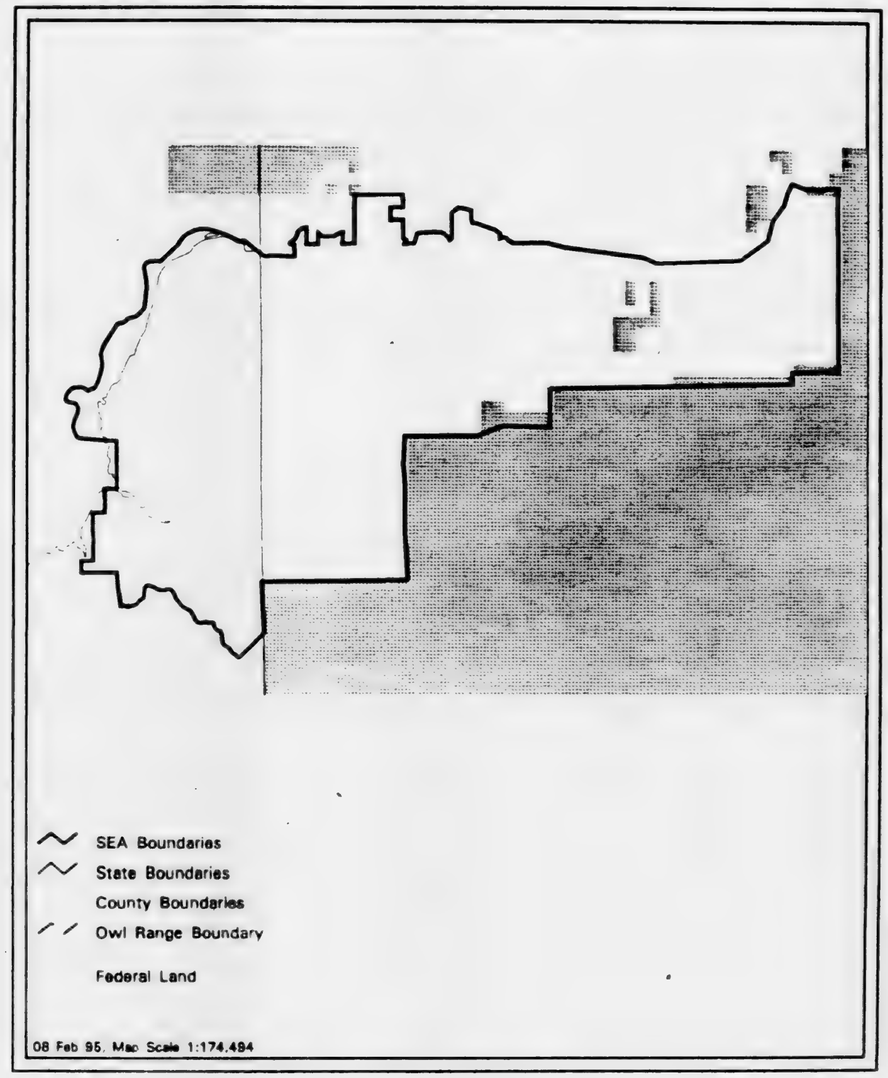

Figure 7 to § 17.41 (c) Siouxon Creek SEA in Washington.

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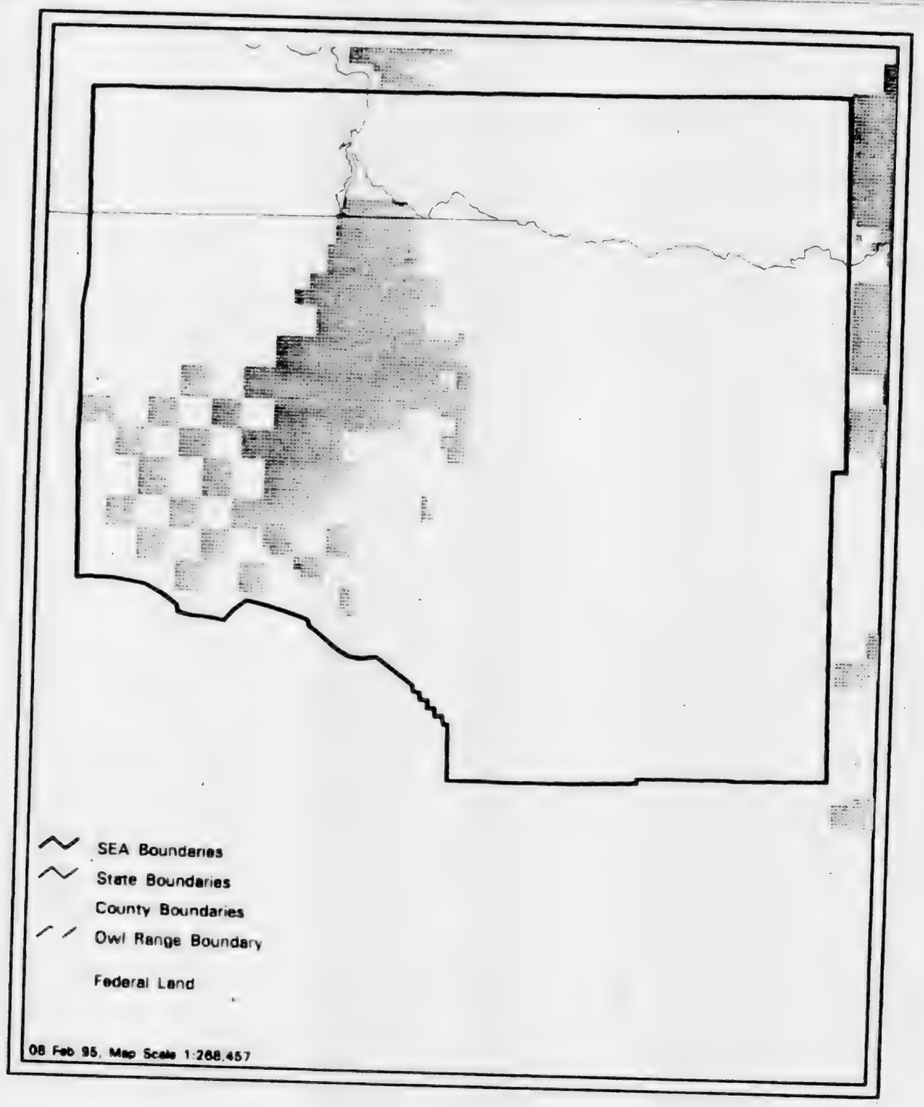

Figure 8 to § 17.41 (c) Mineral Block SEA in Washington.

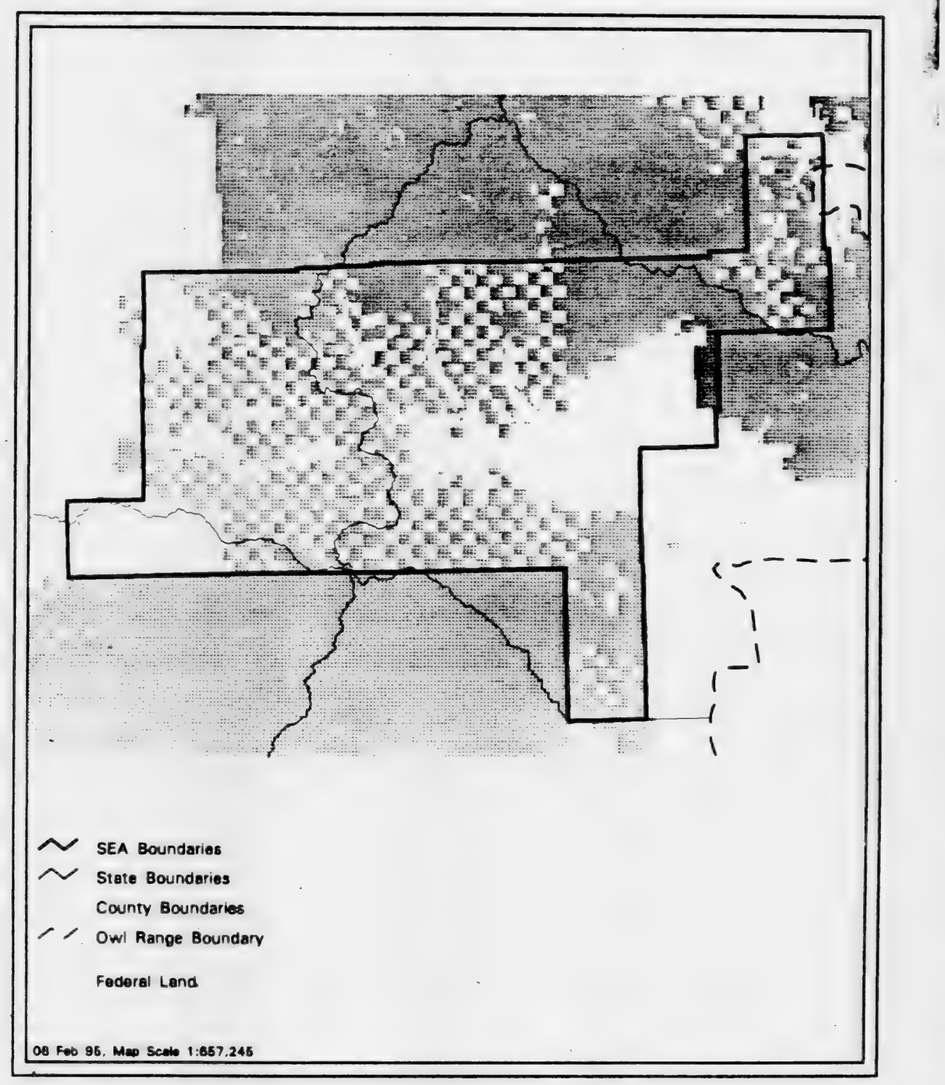

Figure 9 to § 17.41 (c) I-90 Corridor SEA in Washington.

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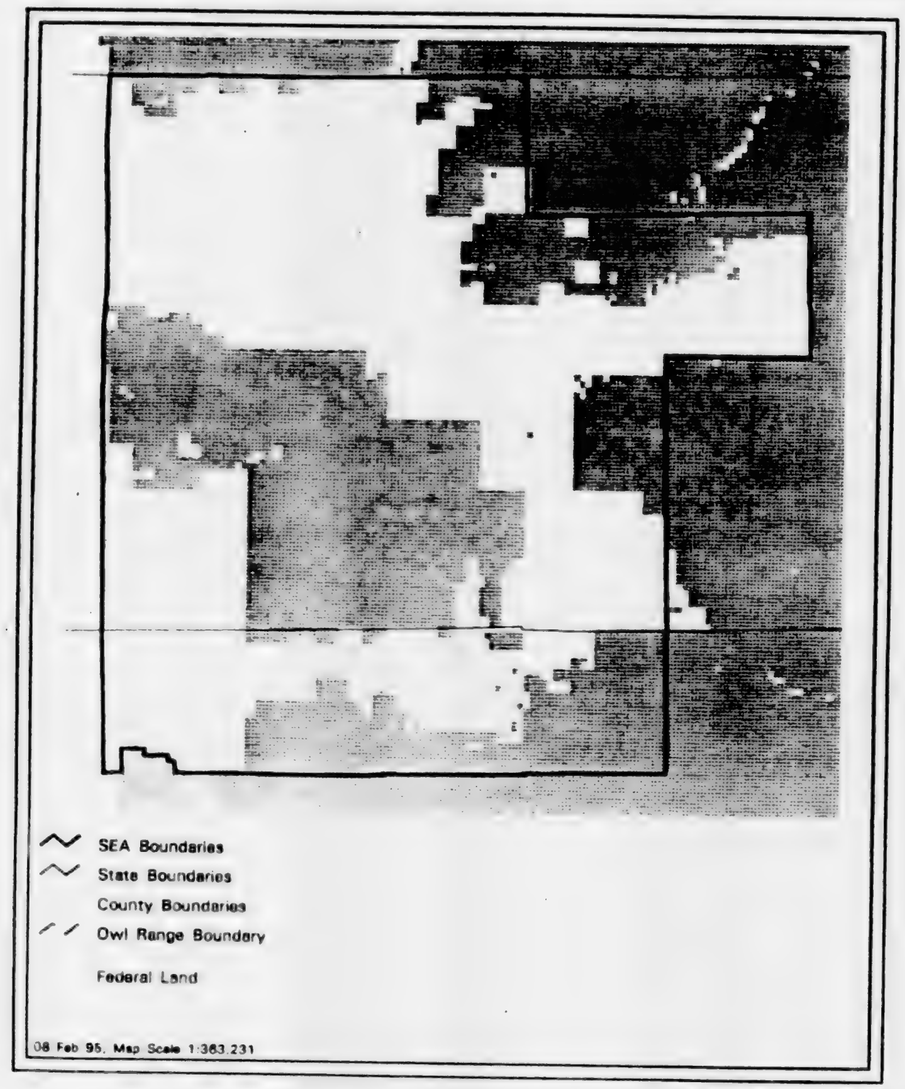

Figure 10 to § 17.41 (c) Finney Block SEA in Washington.

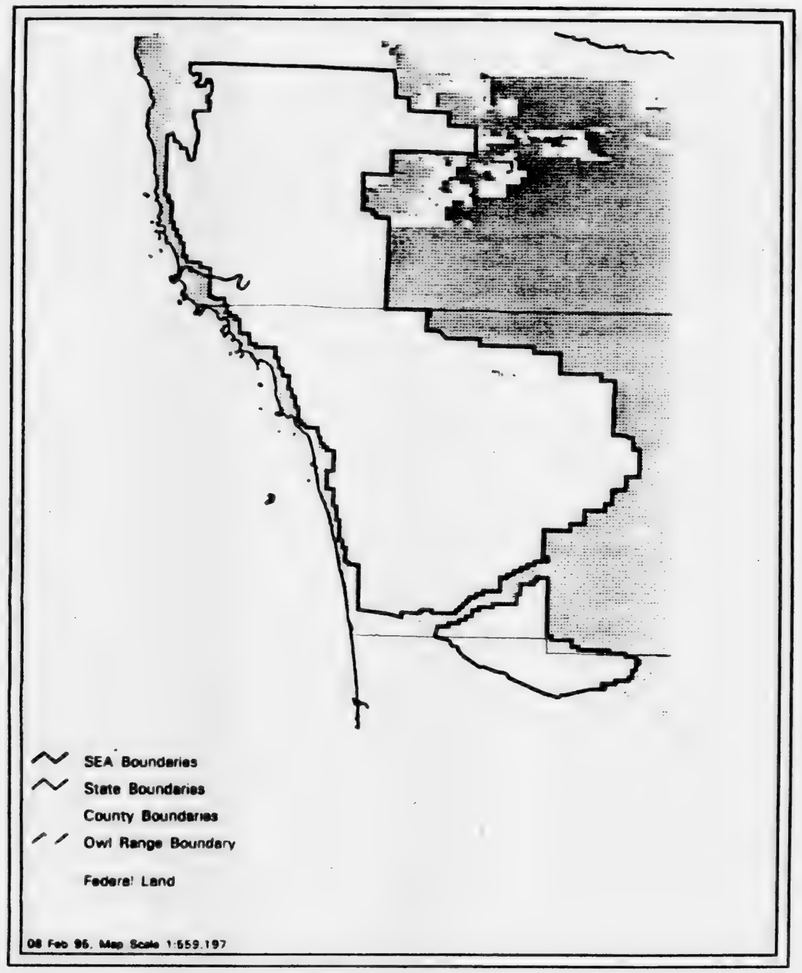

Figure 11 to § 17.41 (c) Hoh / Clearwater SEA in Washington.

Dated: February 13, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–3922 Filed 2–16–95; 8:45 am]

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federal register

Friday
February 17, 1995

Part IV

Department of Housing and Urban Development

Government National Mortgage Association

24 CFR Parts 390 and 395

Guaranteed Multiclass Securities; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Parts 390 and 395

[Docket No. R-95-1698; FR-3554-F-01]

Government National Mortgage Association Guaranteed Multiclass Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: This final rule codifies the provisions of two Notices published in the **Federal Register** on May 26, 1994 and September 30, 1994, as authorized by Congress. Both Notices provided for a comment period. The September 30 Notice responded to comments on the May 26 Notice. This rule provides guidance to entities wishing to participate in the GNMA guaranteed multiclass securities program and describes certain other aspects of the program.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Guy S. Wilson, Vice President, Government National Mortgage Association, Room 6151, 451 Seventh Street SW., Washington, DC 20410–9000, telephone (202) 401–8970. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3649. (These telephone numbers are not toll-free.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3004 of the Omnibus Budget Reconciliation Act of 1993 provides for initial implementation of the Government National Mortgage Association (the "Association" or "GNMA") guaranteed multiclass securities program by a Notice published in the **Federal Register**, effective upon publication, by adding section 306(g)(3)(E)(ii) to the National Housing Act (12 U.S.C. 1721(g)(3)(E)(ii)). The implementation Notice for the initial stage of this program, which provided for participation by a limited number of entities, was published on May 26, 1994 (59 FR 27290) ("May 26 Notice"). A supplemental Notice was published on September 30, 1994 (59 FR 50148) ("September 30 Notice") to implement the full participation stage.

Under section 306(g)(3)(E)(ii), GNMA is required to publish a final rule not later than 12 months after publication of the initial notice, which is May 26, 1995. GNMA has developed the multiclass securities program, and is now ready to publish the final rule.

II. Program Revisions for Final Rule

The Department has decided to make one program revision in this rule to the provisions of the September 30 Notice. For structured securities, GNMA has decided to require applications from Sponsors and Co-sponsors, but not from other participants.

The Sponsor selects the other participants (trust counsel, accounting firms). The Sponsor selects a trustee from institutions approved by GNMA. However, the participants selected by the Sponsor must comply with GNMA program requirements, such as those described in §§ 395.15 and 395.20.

III. Comments and Responses

No comments were received on the September 30 Notice.

IV. Findings and Certifications

A. Environmental Review

A Finding of No Significant Impact with respect to the environment was made when the May 26 Notice was published, in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The changes made in the September 30 Notice and in this final rule do not affect the validity of that Finding. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Regulatory Review

The material in this rule has been reviewed by OMB under Executive Order 12866 as a significant regulatory action. Any changes made as a result of that review are clearly identified in the docket file for this rule, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule only affects participants and investors in the GNMA guaranteed single and multiclass securities industry. States and their political subdivisions would not be affected.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being because it only affects participants and investors in GNMA guaranteed single and multiclass securities.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Regulatory Agenda

This rule was listed as item number 1858 under GNMA in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57666), under Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog

There is no catalog of Federal Domestic Assistance number for the program affected by this rule

List of Subjects

24 CFR Part 390

Mortgages, Securities.

24 CFR Part 395

Mortgages, Securities.

Accordingly and under the authority of 42 U.S.C. 3535(d), Chapter III, Government National Mortgage Association, of Title 24 of the Code of Federal Regulations, is amended as follows:

1. A new subchapter D is added to chapter III as set forth below.

2. In Chapter III, part 390 is transferred from subchapter C to the newly established subchapter D.

3. A new part 395, consisting of §§ 395.1 through 395.60, is added to subchapter D to read as follows:

SUBCHAPTER D—GUARANTEE OF MORTGAGE-BACKED AND MULTICLASS SECURITIES

PART 395—MULTICLASS SECURITIES

Sec.
395.1 Scope of part.
395.5 Definitions.
395.10 Eligible collateral.
395.15 Participation requirements.
395.20 Eligible participants.
395.25 Fees.
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395.35 Investors.
395.40 Consultation.
395.45 Limitation on GNMA liability.
395.50 Administration of multiclass securities.
395.55 Basis for removal from participation.
395.60 Removal procedure.

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

§ 395.1 Scope of part.

The Government National Mortgage Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities that are based on and backed by a trust or pool composed of mortgages that are eligible under section 306(g). The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This part is limited to multiclass securities. It does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties and by the GNMA Multiclass Securities Guide. Further information and copies of the Guide may be obtained from the Government National Mortgage Association, 451 Seventh Street, S.W., Washington, D.C. 20410.

§ 395.5 Definitions.

As used in this part, the following terms shall have the meanings indicated.

Association. The Government National Mortgage Association.

Consolidated securities. A series of multiclass securities each class of which provides for payments proportionate with payments on the underlying eligible collateral.

Depositor. The entity that deposits, or executes an agreement to deposit, as contained in the GNMA Multiclass Securities Guide, eligible collateral into a trust in exchange for consolidated securities.

GNMA. Government National Mortgage Association.

GNMA electronic bulletin board. An information distribution system established by GNMA for the Multiclass Securities program.

GNMA MBS certificates. The GNMA guaranteed mortgage-backed securities issued under part 390.

Government mortgages. Mortgages that are eligible under section 306(g) (12 U.S.C. 1721(g)) for inclusion in GNMA mortgage-backed securities pools.

Participant. For structured securities, the sponsor, co-sponsor, trustee, trust counsel, accounting firm, and their contractors. For consolidated securities, the depositor. Other entities may be designated as participants in the GNMA Multiclass Securities Guide.

Sponsor. With respect to structured securities, the entity that establishes the required trust by executing the trust agreement and depositing the eligible collateral in the trust in exchange for the structured securities.

Structured securities. Securities of a series at least one class of which provides for payments of principal or interest disproportionately from payments on the underlying eligible collateral.

§ 395.10 Eligible collateral.

GNMA, in its discretion, shall determine what collateral is eligible for inclusion in the Multiclass Securities program. Eligible collateral may include GNMA MBS certificates, government mortgages, consolidated securities, and other securities approved by GNMA. Categories of these GNMA MBS certificates, government mortgages, consolidated securities, and other securities as approved by GNMA become eligible collateral when they are published as eligible collateral in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board. Eligibility of collateral previously designated as eligible may be withdrawn by publication in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board. Eligible collateral may differ for various GNMA guaranteed multiclass securities.

§ 395.15 Participation requirements.

To participate in the GNMA Multiclass Securities program, a participant must meet the following criteria:

(a) *Certification.* A participant must submit such certifications and other documents as are required by the GNMA Multiclass Securities Guide.

(b) *Compliance with GNMA Multiclass Securities Guide.* By completing a multiclass securities transaction, a participant is deemed to have represented and warranted to GNMA that it has complied with, and that it agrees to comply with, the GNMA Multiclass Securities Guide in effect as of the date that GNMA's guaranty is placed on the securities.

(c) *Material changes in status.* A participant must report, as required in the GNMA Multiclass Securities Guide, material adverse changes in status including voluntary and non-voluntary terminations, defaults, fines and findings of material non-conformance with rules and policies of state and federal agencies and federal government sponsored enterprises.

(d) *Integrity.* The participant must conduct its business operations in accordance with industry practices, ethics and standards, and maintain its books and records in an appropriate manner, as determined by the Association.

§ 395.20 Eligible participants.

In addition to requirements set forth in this part, a participant must meet the following requirements.

(a) *Structured securities—(1) Description.* GNMA guarantees the payment of principal and interest on structured securities issued by trusts organized by sponsors in accordance with procedures established and approved by GNMA. The structured securities are backed by eligible collateral, as described in this part, held by the trustee.

(2) *Eligibility requirements for participants—*(i) *Sponsors.* A sponsor must:

(A) Apply and be approved;

(B) Demonstrate to the satisfaction of the Association its capacity to accumulate the eligible collateral, as described in this part, needed for a proposed structured securities issuance;

(C) Be in good standing with and either have been responsible for at least one structured securities transaction with the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, or have demonstrated to GNMA's satisfaction its capability to act as sponsor of GNMA guaranteed structured securities;

(D) Have the minimum required amount, as set forth in the Multiclass Securities Guide, in shareholders' equity or partners' capital, evidenced by the sponsor's audited financial statements, which must have been issued within the preceding 12-month period;

(E) Represent the structural integrity of the issuance under all cash flow scenarios and demonstrate to GNMA's satisfaction its ability to indemnify GNMA for a breach of this representation;

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(F) Comply with GNMA's policies regarding participation by minority and/or women-owned businesses and take appropriate measures to assure compliance by the other participants as specified in the GNMA Multiclass Securities Guide; and

(G) Provide GNMA with the opinions of trust counsel and accounting firms which are acceptable to GNMA and on which GNMA may rely.

(ii) *Co-sponsors.* A Co-sponsor must submit an application and a certification, as set forth in the GNMA Multiclass Securities Guide, as to its status as a minority and/or women-owned business.

(iii) *Trustees.* A trustee is selected by the Sponsor from institutions approved by GNMA using such procedures as GNMA deems appropriate.

(b) *Consolidated securities*—(1) *Description.* A depositor delivers, or executes an agreement to deliver, eligible collateral to a trust in exchange for a single GNMA guaranteed multiclass security, as set forth in the GNMA Multiclass Securities Guide.

(2) *Eligibility requirements for participant.* A Depositor must certify that:

(i) It is an "accredited investor" within the meaning of 17 CFR 230.501(a)(1), (a)(3) or (a)(7);

(ii) It has authority to deliver, and will deliver, the collateral to the trustee and that the collateral is free and clear of all liens and encumbrances; and

(iii) The information set forth by the depositor regarding the eligible collateral is true and correct.

(c) *Other types of GNMA guaranteed multiclass securities.* GNMA will set forth the requirements for the guaranty by GNMA of other types of multiclass securities, and the eligibility requirements for the appropriate participants, in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board.

§ 395.25 Fees.

The Association, in its discretion, through publication in the GNMA Multiclass Securities Guide or on the GNMA electronic bulletin board, may impose fees for application, guaranty, transfer, change from book entry to certificated form, or other related fees. Fees may vary, at GNMA's discretion, depending upon, but not limited to, such factors as size, collateral characteristics, expense or risk of the guaranty transaction undertaken.

§ 395.30 GNMA guaranty.

The Association guarantees the timely payment of principal and interest as provided by the terms of the multiclass security. The Association's guaranty is backed by the full faith and credit of the United States.

§ 395.35 Investors.

GNMA guaranteed multiclass securities may not be suitable investments for all investors. No investor should purchase securities of any class unless the investor understands, and is able to bear, the prepayment, yield, liquidity and market risks associated with the class. The Association assumes no obligation or liability to any person with regard to determining the suitability of such securities for such investor.

§ 395.40 Consultation.

The Association may consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the Multiclass Securities program.

§ 395.45 Limitation on GNMA liability.

Except for its guaranty, the Association undertakes no obligation and assumes no liability to any person with regard to or on account of the existence or operation of this part or the conduct of any participants in the Multiclass Securities program.

§ 395.50 Administration of multiclass securities.

The GNMA guaranteed multiclass securities will be administered in accordance with GNMA requirements described in the GNMA Multiclass Securities Guide.

§ 395.55 Basis for removal from participation.

A participant may be removed from the Multiclass Securities program if GNMA, in its discretion, determines that any of the following exists or has occurred:

(a) The participant, at any time, fails to meet any condition for eligibility;

(b) The participant fails to comply with any provision of the GNMA Multiclass Securities Guide or this part;

(c) The participant is unable or fails to truthfully, correctly or fully submit such certifications as are required; and

(d) Such further reasons as GNMA determines necessary to protect the safety and soundness of the Multiclass Securities program, as set out in the GNMA Multiclass Securities Guide.

§ 395.60 Removal procedure.

(a) A participant may be suspended from participation in the Multiclass Securities program upon written notice from GNMA, which shall include the reasons for the suspension. The participant shall have the opportunity to submit a written presentation to the President of GNMA, or designee, in support of its reinstatement, subject to such limitations as GNMA in its discretion may impose as to length, time for submission, or otherwise. A determination by the President of GNMA, or designee, shall exhaust the participant's administrative remedies.

(b) If a participant is suspended from the Multiclass Securities program, GNMA shall have no obligation to complete a pending transaction involving the participant.

(c) After a participant has been removed from the Multiclass Securities program, the participant may request reinstatement. Approval of the reinstatement is at the sole discretion of the Association.

Dated: January 19, 1995.

Dwight P. Robinson,

President.

[FR Doc. 95–3853 Filed 2–16–95; 8:45 am]

BILLING CODE 4210-01-P

federal register

Friday
February 17, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Continuum of Care Homeless Assistance; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3877; FR–3873–N–01]

Notice of Funding Availability for Continuum of Care Homeless Assistance; Supportive Housing Program (SHP); Shelter Plus Care (S+C); Sec. 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This Notice announces the availability of approximately $900 million for applications for assistance designed to help communities develop continuum of care systems to assist homeless persons. These funds are available under three programs to fill gaps within the context of developing coordinated systems for combating homelessness. The three programs are: Supportive Housing; Shelter Plus Care; and Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. Funds will be awarded competitively. This notice of funding availability (NOFA) contains information concerning the continuum of care approach, eligible applicants, eligible activities, application requirements, and application processing.

DEADLINE DATE: All applications are due in HUD Headquarters on or before close of business on April 7, 1995. HUD will treat as ineligible for consideration applications that are received after that deadline. Applications may not be sent by facsimile (FAX).

ADDRESSES: For a copy of application packages, please contact a HUD Field Office or call the American Communities information center at 1–800–998–9999. Prior to close of business on the deadline date completed applications will be accepted at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Attention: Continuum of Care Funding. At close of business on the deadline date applications will be received at either room 7255 or the South lobby of the Department of Housing and Urban Development at the above address. Two copies of the application must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of Field Offices appears in the appendix of this NOFA. Field Office copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at HUD Headquarters in Washington.

FOR FURTHER INFORMATION: Please contact the HUD Field Office for the area in which the project is located for additional information. Telephone numbers are included in the list of Field Offices set forth in the appendix of this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB approval numbers 2506–0131, 2506–0112, and 2506–0118.

I. Substantive Description

(a) Authority

The Supportive Housing program is authorized by title IV, subtitle C, of the Stewart B. McKinney Homeless Assistance Act (McKinney Act), as amended, 42 USC 11381. Regulations for this program are contained in 24 CFR part 583, as amended by an interim rule published in the **Federal Register** on May 10, 1994, and a final rule published in the **Federal Register** on July 19, 1994. Funds made available under this NOFA for the Supportive Housing program are subject to the requirements of the amended regulations.

The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney Act, as amended, 42 USC 11403. Regulations for this program are contained in 24 CFR part 582, as amended by an interim rule published in the **Federal Register** on May 10, 1994. Funds made available under this NOFA for the Shelter Plus Care program are subject to the requirements of the amended regulations.

The Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is authorized by section 441 of the McKinney Act, as amended, 42 USC 11401. Regulations for this program are contained in 24 CFR part 882, subpart H, as amended by an interim rule published in the **Federal Register** on May 10, 1994. Funds made available under this NOFA for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals are subject to the requirements of the amended regulations.

(b) Funding Availability

Approximately $900 million is available under this NOFA. This consists of approximate amounts of $600 million for Supportive Housing, $150 million for Shelter Plus Care, and $150 million for SRO. All of the funds available under this NOFA were appropriated under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994). Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may also be used to fund applications for the same program submitted in response to this NOFA. HUD reserves the right to reallocate funds from one program to another if an insufficient number of approvable applications are received for a program. HUD also reserves the right to fund less than the full amount requested in any application.

(c) Purpose

The purpose of this NOFA is to fund projects and activities which will fill gaps within the context of developing continuum of care systems to assist homeless persons. A continuum of care system consists of four basic components:

(1) A system of outreach and assessment for determining the needs and conditions of an individual or family who is homeless, or whether assistance is necessary to prevent an individual from becoming homeless;

(2) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(3) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to permanent housing and independent living; and

(4) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families.

While not all homeless individuals and families in a community will need to access all four, unless all four components are coordinated within a community, none will be successful. A strong homeless prevention strategy is also key to the success of the continuum of care.

Developing a continuum of care system involves a community process for coordinating resources. The community process should include nonprofit organizations, State and local government agencies, other homeless providers, housing developers and service providers, private foundations, neighborhood groups, and homeless or formerly homeless persons.

(d) Coordinating Resources

The Department recognizes that differing statutory requirements of the three programs covered by this NOFA are barriers to creating continuum of care systems that are truly responsive to community needs. The Department is continuing to pursue legislative changes necessary to provide localities and providers with the flexibility they need to create comprehensive systems that completely address the many dimensions of the problem in a coordinated fashion. Meanwhile, under this NOFA, the Department will continue to move in that direction by using its funding resources to help increase the level of coordination among nonprofit organizations, government agencies and other entities that is necessary to develop systematic approaches for successfully addressing homelessness.

To further the purpose of this NOFA, heavy emphasis is placed upon coordination in the application selection criteria. In preparing its application, the applicant should, to the maximum extent possible, coordinate its efforts with other providers of services and housing to homeless persons, such as nonprofit organizations, government agencies, and housing developers, and consult with homeless or formerly homeless persons.

Scoring high on the "Coordination" selection criteria will be important to the success of an application in this competition. High scores will depend on organizations working together to: create, maintain and build upon a community-wide inventory of current services and housing for homeless families and individuals; identify the full spectrum of needs of homeless families and individuals; and coordinate efforts to obtain resources to fill gaps between the current inventory and needs. Applicants are advised to pay special attention to the "Coordination" selection criteria before beginning the process of developing an application.

(e) Use of NOFA Funds and Matching Funds to Fill Gaps

Funds available under this NOFA and matching funds may be used in the following ways to fill gaps within the context of developing a continuum of care system:

(1) *Outreach/Assessment.* The Supportive Housing program may provide funding for outreach to homeless persons and assessment of their needs. The Shelter Plus Care program requires a supportive services match; outreach and assessment activities count toward that match. The SRO program applicants receive rating points for the extent to which supportive services, including outreach and assessment, are provided.

(2) *Transitional housing and necessary social services.* The Supportive Housing program may be used to provide transitional housing with services, including both facility-based transitional housing and scattered-site transitional services. The Supportive Housing program may also be used to provide a safe haven, as described in section I.(g)(1) of this NOFA.

(3) *Permanent housing or permanent supportive housing.* The Supportive Housing program may be used to provide permanent supportive housing *for persons with disabilities,* including both facility-based and scattered-site permanent supportive housing. The Shelter Plus Care program may be used to provide permanent supportive housing *for persons with disabilities* in a variety of housing rental situations. This program requires a supportive services match; all supportive service activities count toward that match. The SRO program provides permanent housing for homeless individuals with incomes that do not exceed the low-income standard of the Section 8 housing program. The SRO program applicants receive rating points for the extent to which supportive services are provided. Providing permanent housing for homeless families is not available under the SRO program or the SRO component of the Shelter Plus Care (S+C) program because an SRO unit is designed for a single individual. Permanent housing for homeless families is only eligible under the other components of the S+C program and under the Supportive Housing program if an adult member has a disability.

(f) Targeting

This NOFA is targeted to serving persons who are sleeping in emergency shelters (including hotels or motels used as shelter for homeless families), other facilities for homeless persons, or places not meant for human habitation, such as cars, parks, sidewalks, or abandoned buildings. This includes persons who ordinarily live in such places but are in a hospital or other institution on a short-term basis (short-term is considered to be 30 consecutive days or less.) For the Section 8 SRO program, individuals currently residing in units to be assisted and who are eligible for assistance under Section 8 of the United States Housing Act of 1937 may also be served under this NOFA.

(g) Program Summaries

The chart below summarizes key aspects of the Supportive Housing Program, the Shelter Plus Care Program, and the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. Descriptions are contained in the applicable program regulations.

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Element	Supportive housing	Shelter plus care	Section 8 SRO
Authorizing Legislation	Subtitle C of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Subtitle F of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Section 441 of the Stewart B. McKinney Homeless Assistance Act, as amended.
Implementing Regulations	24 CFR part 583, as amended May 10 and July 19, 1994.	24 CFR part 582, as amended May 10, 1994.	24 CFR part 882, subpart H, as amended May 10, 1994.
Eligible Applicant(s)	• States • Units of general local government. • Public housing agencies (PHAs) • Tribes • Private nonprofit organizations • CMHCs that are public nonprofit organizations	• States • Units of general local government. • Tribes • PHAs	• PHAs • Private nonprofit organizations.
Components	• Transitional housing • Permanent housing for disabled persons. • Innovative supportive housing • Supportive services not in conjunction with supportive housing.	• Tenant-based • Sponsor-based • Project-based • SRO-based	• SRO housing.
Eligible Activities	• Safe Havens • Acquisition • Rehabilitation • New construction • Leasing • Operating costs • Supportive services	• Rental assistance	• Rental Assistance.
Eligible Populations	• Homeless persons	• Homeless disabled individuals • Homeless disabled individuals and their families. • Homeless persons who: • are seriously mentally ill • have chronic problems with alcohol and/or drugs. • have AIDS and related diseases.	• Homeless individuals • Section 8 eligible current occupants. • N
Populations Given Special Consideration.	• Homeless persons with disabilities. • Homeless families with children.		
Initial Term of Assistance	3 years	5 years: TRA, SRA, and PRA if no rehab 10 years: SRO and PRA if rehab.	10 years.

(b) Special Program Provisions

(1) Supportive Housing Program

Minimum percentages. Approximately $600 million is available for assistance under the Supportive Housing Program. In accordance with section 429 of the McKinney Act, as amended, HUD will allocate Supportive Housing funds as follows: not less than 25 percent for projects that primarily serve homeless families with children; not less than 25 percent for projects that primarily serve homeless persons with disabilities; and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked applications in a category for which the minimum percent has been achieved in order to achieve the minimum percent for another category. If there are an insufficient number of conditionally selected applications in a category to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable Supportive Housing application.

Safe havens. As described in the program summaries chart above, the Supportive Housing program includes five different types of projects. Safe haven projects are one type. As used in this NOFA, a safe haven is a form of supportive housing designed specifically to provide a safe residence for homeless persons with serious mental illness who are currently residing primarily in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, and who have been unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

For many persons with mental illness who have been living on the street, the transition to permanent housing is best made in stages, starting with a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to relatively few immediate service demands. Traditional supportive housing settings often assume a readiness by the clientele to accept a degree of structure and service participation that could overwhelm and defeat a person with mental illness who has come fresh from the street.

Safe havens are designed to provide persons with serious mental illness who have been living on the streets with a secure, non-threatening, non-institutional, supportive environment. These facilities can serve as a "portal of entry" to the service system and provide access to basic services such as food, clothing, bathing facilities, telephones, storage space, and a mailing address.

Safe havens do not require participation in services and referrals as a condition of occupancy. Rather, it is hoped that after a period of stabilization in a safe haven, residents will be more willing to participate in services and referrals, and will eventually be ready to move to a more traditional form of housing. While all rules applicable to the Supportive Housing Program apply to safe havens, to ensure that safe havens projects are competitive with other Supportive Housing projects, the "Quality of Project Plan" rating criteria in this NOFA have been modified to reflect the special characteristics of safe havens.

Specifically, the term "safe haven" means a structure or a clearly identifiable portion of a structure: (1) that proposes to serve hard-to-reach homeless persons with severe mental illness; (2) that provides 24-hour residence for eligible persons who may reside for an unspecified duration; (3) that provides private or semi-private accommodations; (4) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms; and, (5) in which overnight occupancy is limited to no more than 25 persons. A "safe haven" may also provide supportive services to eligible persons who are not residents on a drop-in basis. To be considered for funding under the Safe Havens component of the Supportive Housing [illegible]gram, a proposed project must be consistent with the five features listed above.

(2) Shelter Plus Care Program

Approximately $150 million is available for assistance under the Shelter Plus Care program. In accordance with section 463(a) of the McKinney Act, as amended by the 1992 Act, at least 10 percent of Shelter Plus Care funds will be allocated for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Section 8 Moderate Rehabilitation of Single Room Occupancy Dwellings for Homeless Individuals (provided there are sufficient numbers of approvable applications to achieve these percentages). After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked applications for a component for which the minimum percent has been achieved in order to achieve the minimum percent for another component. If there are an insufficient number of approvable applications in a component to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable Shelter Plus Care application.

Any applicant that is a unit of general local government, a local public housing authority, or an Indian tribe may submit only one Shelter Plus Care application. Any applicant that is a State or a State public housing authority may submit applications for more than one jurisdiction but must submit a separate application for each and may only submit one application for each jurisdiction. In accordance with section 455(b) of the McKinney Act, no more than 10 percent of the assistance made available for Shelter Plus Care in any fiscal year may be used for programs located within any one unit of general local government. Ten percent for this fiscal year equals $15 million.

With regard to the Shelter Plus Care/Section 8 SRO component, applicant States, units of general local government and Indian tribes must subcontract with a Public Housing Authority to administer the Shelter Plus Care assistance. Also with regard to this component, no single project may contain more than 100 units.

(3) Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

Approximately $150 million is available for assistance under the SRO program. Applicants need to be aware of the following limitations on the allocation of Section 8 SRO funds:

- A separate application must be submitted for each site for which assistance is requested and, under section 8(e)(2) of the United States Housing Act of 1937, no single project may contain more than 100 units;
- Under section 441(c) of the McKinney Act, no city or urban county may have projects receiving a total of more than 10 percent of the assistance made available under this program;
- Applicants that are private nonprofit organizations must subcontract with a Public Housing Authority to administer the SRO assistance; and
- Under section 441(e) of the McKinney Act and 24 CFR 882.805(g)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. For purposes of Fiscal Year 1995 funding, the cost limitation is raised from $15,900 to $16,100 per unit to take into account increases in construction costs during the past 12-month period.

II. Application Requirements

An application for Supportive Housing, Shelter Plus Care, or Section 8 SRO assistance consists of narrative, numerical, and financial information. The application requires a description of: gaps that need to be filled in the community's response to homelessness; how the proposed project will help the community develop a continuum of care system by filling one of these gaps; the proposed project, including the plan for housing and/or services to be provided to participants; resources expected for the project and the amount of assistance requested; the experience of all organizations who will be involved in the project; and the sources and number of proposed participants. An application also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (in most cases) that the proposed activities are consistent with the HUD-approved Consolidated Plan (or Comprehensive Housing Affordability Strategy if still in effect) of the applicable State or unit of general local government.

The specific application requirements will be specified in the application package for each program. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix of this NOFA or by calling the American Communities information center on 1–800–998–9999.

Care should be taken in the selection of projects and in the preparation of applications to ensure that environmental and historic preservation impediments do not cause an application to be denied or approval severely delayed. In general, any application HUD receives from a state or local government will require that the environmental assessment be prepared by the local or state government before the grant application can be approved. The environmental assessments for non-governmental applicants will be conducted by HUD. Questions about which environmental and historic preservation laws may apply should be addressed to the HUD Field Office.

III. Application Selection Process

The Department will use the same review, rating, and conditional selection process for all three programs (S+C, SRO, and SHP):

(a) Review

Applications will be reviewed to ensure that they meet the following requirements:

(1) *Applicant eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(2) *Eligible population to be served.* The population to be served must meet the eligibility requirements of the specific program.

(3) *Eligible activities.* The activities for which assistance is requested must be eligible under the specific program.

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(4) *Fair housing and equal opportunity.* Organizations that receive assistance through the application must be in compliance with applicable civil rights laws and Executive Orders.

(5) *Vacancy rate.* For the Section 8 SRO program, at least 25 percent of the units to be assisted at any one site must be vacant at the time of application.

(b) Rating and Conditional Selection

Applications for S+C, SRO, and SHP grants will be conditionally selected in three separate categories, one for each program. To rate applications, the Department may establish panels including persons not currently employed by HUD to obtain outside points of view, including views from other Federal agencies.

After all points have been awarded, applications will be ranked from highest point score to lowest for each program. A bonus of 2 points will be added in determining the final score of any project that will serve homeless persons living within the boundaries of a federal Empowerment Zone or Enterprise Community. Whether an application is conditionally selected will depend on its overall ranking compared to other applications submitted for the same program, except that HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity; ensure that the overall amount of assistance received by a jurisdiction is not disproportionate to the jurisdiction's overall need for homeless assistance, as calculated from generally available data; or achieve diversity of assistance provided in a community as determined through a comparison of applications from a given jurisdiction.

For all programs, in the event of a tie between applicants, the applicant with the highest score for the coordination criterion will be selected. If a tie remains, the applicant with the highest score for the quality of project criterion will be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that applicant when sufficient funds become available.

For Shelter Plus Care and Supportive Housing, in cases where the applicant requests assistance for more than one of the components of the program within one application, the components will not be rated separately. Rather, the application will be rated as a whole. (For Section 8 SRO, only one project is allowed per application.)

(c) Core Selection Criteria

The following five core selection criteria apply to each of the programs covered by this NOFA and account for 105 of the 110 points available for award.

(1) *Coordination.* HUD will award up to 40 points based on the extent to which the application demonstrates:

- Participation in a community process for developing a continuum of care strategy, which could include nonprofit organizations, State and local governmental agencies, other homeless providers, housing developers and service providers, private foundations, local businesses and the investment banking community, neighborhood groups, and homeless or formerly homeless persons.
- Need for the type of project proposed in the area to be served, and that the proposed project will effectively and appropriately fill a gap in the community's response to homelessness.
- Coordination with other applicants, if any, applying for assistance under this NOFA for projects in the same local jurisdiction. (If more than one organization within a local jurisdiction is submitting an application under this NOFA, higher scores will be assigned where it is clear that the proposed projects have been coordinated within a single, appropriate continuum of care strategy and that each project effectively and appropriately fills a gap in the community's response to homelessness.)
- Use by the project of mainstream services, such as income supports, mental health services, and substance abuse treatment, and how the project uses or will use mainstream housing programs, such as Section 8 rental assistance, HOME, and State programs, and other permanent housing resources to complete the continuum of care.

(2) *Need.* HUD will award up to 20 points based on:

- the jurisdiction's need for homeless assistance, as calculated from generally available data including data on poverty, housing overcrowding, population, age of housing and growth lag; and
- the extent of need in that jurisdiction taking into account the higher rated applications and the extent of need nationwide.

(3) *Quality of project.* HUD will award up to 25 points based on the extent to which the applicant demonstrates that the proposed project will:

- Reach out and engage potential eligible participants. The most needy are homeless persons who are sleeping in places not meant for human habitation, such as cars, tunnels and parks, and persons who are staying at shelters, transitional housing or other facilities for homeless persons who originally came from the streets or emergency shelter.
- Provide appropriate housing. HUD will consider how the housing fits the needs of participants and ensures their safety; empowers participants through involvement in decision-making and project operations; employs participants in the project or otherwise helps increase their incomes; and ensures that transportation is available and accessible. HUD will also consider project staffing and the scale of the project, viewing the concentration of very large numbers of homeless persons at one location unfavorably.

For transitional housing projects, appropriateness of housing also includes how the project assists participants in locating and succeeding in permanent housing, and provides necessary follow-up services upon the completion of transitional housing. For permanent housing projects, appropriateness of housing also includes how the project assists integration of participants into the surrounding community.

- Provide appropriate services. HUD will consider whether the project provides up-front, individualized, needs assessments and ongoing case management, how services fit the needs of participants, and the availability of needed services.
- For projects serving families, the project serves the family together, and works to strengthen the family structure. Projects that mix families with singles populations in the same structure will be viewed unfavorably.
- For safe haven projects, the above factors are modified to award up to 25 points on the extent to which the applicant demonstrates how the project will link persons to other housing and supportive services after stabilization in a safe haven, the availability of basic services in the safe haven, and how the security of participants will be assured by the applicant.

The rating under this criterion will also consider the extent to which the project represents an innovative approach when viewed nationally that promises to be successful and replicable. Applications submitted under the "innovative supportive housing" component of the Supportive Housing Program must achieve points for innovation.

Applications receiving less than 8 points under the quality of project criterion will not be selected for a grant award.

(4) *Capacity.* HUD will award up to 15 points based on extent to which all the organizations involved in the project demonstrate:

- Experience in carrying out similar activities to those proposed either as an ongoing provider of housing and/or services to homeless people, or as an ongoing provider of housing and/or services who is in some way tangibly connected to an ongoing homeless delivery system.
- Timeliness in the speed with which the project will become operational, taking into account differences in the types of projects proposed for funding.

The rating under this criterion will also consider the Department's knowledge of the prior experience of the applicant (and any organizations that will participate in carrying out the program) in serving homeless persons and in carrying out programs similar to those proposed in the application, and the prior performance of the applicant (and any organizations that will participate in carrying out the program) with any HUD administered programs.

An applicant receiving less than 7 points under the capacity criterion will not be selected for a grant award.

(5) *Leveraging.* HUD will award up to 5 points based on the extent to which the amount of assistance to be provided under this grant is supplemented with documented cash or in-kind resources from public and private sources that will be used for the project. For S+C and SRO applications, leveraging will be based on documented resources for supportive services. For SHP applications, leveraging will be based on documented resources for any project activity.

(d) Supportive Housing Additional Selection Criterion

The following selection criterion accounts for the remaining 5 points available for award for SHP applications.

(1) *Cost effectiveness.* HUD will award up to 5 points based on the extent to which supportive services are provided from resources other than the Supportive Housing Program grant.

(e) Shelter Plus Care Additional Selection Criterion

The following selection criterion accounts for the remaining 5 points available for award for S+C applications.

(1) *Serving targeted disabilities.* Within the eligible population to be served, HUD will award up to *5 points* based on the percentage of individuals to be served (beyond 50 percent) who experience serious mental illness, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases in relation to the total number of people proposed to be served.

(f) Section 8 SRO Additional Selection Criterion

The following selection criterion accounts for the remaining 5 points available for award for Section 8 SRO applications.

(1) *Availability of vacant units.* HUD will award up to *5 points* based on the percentage of units (beyond the required 25 percent) proposed for assistance which are vacant at the time of application.

(g) Clarification of Application Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(h) Technical Assistance

Prior to the application deadline, HUD staff will be available to provide advice, guidance and general technical assistance to potential applicants on application requirements and program policies. Following conditional selection, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

IV. Grant Award Process

HUD will notify conditionally selected applicants in writing. As necessary, HUD will subsequently request them to submit additional project information, which may include documentation to show the project is feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review, where applicable; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. SRO and S+C/SRO applicants will be notified of the date of the two month deadline for submission of such information; other S+C applicants and all SHP applicants will be notified of the date of the one month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified timeframe, HUD reserves the right not to award funds to the applicant, but instead to either: use them to select the next highest ranked application(s) from the original competition for which there are sufficient funds available; or add them to funds available for the next competition for the applicable program.

V. Special Incentive for Purchase of HUD-Owned Single Family Properties Under the Single Family Property Disposition Homeless Program

Supportive Housing funds may be used to purchase HUD-owned single family (one- to four unit) properties under the Single Family Property Disposition Homeless Program, provided the properties are used to house homeless persons. This includes both eligible homes owned by HUD and those presently under lease.

The Department is offering a special incentive for the purchase of HUD-owned single family properties located in zip code areas designated by HUD as "revitalization" areas. Lessees and other qualifying nonprofit organizations and governmental entities may purchase uninsurable properties in revitalization areas at a 30 percent discount; FHA insurable properties in revitalization areas are offered at a discount of 10 percent. There are 230 revitalization areas nationwide. Contact your local HUD Office for assistance in identifying revitalization areas.

Qualifying nonprofit organizations and governmental entities may purchase HUD-owned homes outside revitalization areas at a discount approved by the Secretary, usually 10 percent. However, if five or more homes are purchased and closed simultaneously, a 15 percent discount will be applied in all areas. The sales price, to which any discount will be applied, is the current fair market value, or the value established at the time of the lease, whichever is less, provided that the lessee agrees to use the property either to house homeless persons for 10 years or to resell only to a lower-income buyer.

The incentives described above should be especially attractive to organizations currently operating transitional housing for the homeless in homes leased from HUD. Providers with a maximum five-year lease term may purchase uninsurable properties at the 30 percent discount in revitalization

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areas, thus making the purchase of their leased property far more affordable. Lessees operating satisfactory homeless programs, and who purchase, will also have a competitive advantage under the rating criterion, "Capacity", since they may demonstrate experience with HUD homeless programs.

VI. Employment Opportunities for Homeless Persons

A key goal of the continuum of care approach is to assist homeless persons achieve independent living whenever possible. Each of the three programs under this NOFA has as a goal increasing the skill level and/or income of program participants. Employment opportunities not only help achieve these goals but are also important in rebuilding self-esteem.

The McKinney Act recognizes the importance of employment opportunities in requiring that, to the maximum extent practicable, recipients involve homeless persons through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services. Under the Supportive Housing Program, employment assistance activities are eligible, and grant recipients can use these funds for such activities as job training, wages, and educational awards for homeless persons. While Shelter Plus Care Program and SRO Program funds may only be used for rental assistance, employment assistance activities paid from other sources count towards the match requirement of the Shelter Plus Care Program and can also count for purposes of the "leveraging" rating criterion.

Inclusion in the application of employment assistance activities for homeless persons may improve the rating score under the "Quality of Project" criterion, making the application more competitive.

VII. Linking Homeless Assistance Programs and AmeriCorps

The Corporation for National Service, established in 1993 to engage Americans of all ages and backgrounds in community-based service, supports a range of national and community service programs. AmeriCorps, one of the national service programs supported by the Corporation, engages thousands of young Americans on a full or part-time basis to help communities address their toughest challenges, while earning support for college, graduate school, or job training.

Applicants for the Supportive Housing Program are encouraged to link their proposed projects with AmeriCorps. AmeriCorps Members can be an excellent source of committed, caring staff. An applicant may call The Corporation for National Service in Washington, DC, on (202) 606–5000 to ask for the State Commission contact name and phone number. Through the information received from the State Commission, the applicant may contact an AmeriCorps Program Sponsor in the local area. The Sponsor recruits, selects, trains, and places individuals who become AmeriCorps Members.

Full-time AmeriCorps members (those working 1,700 hours over a 9 to 12 month period) are eligible to receive approximately $7,600 as a living allowance, health care and child care if necessary, and a post-service award of $4,725 to be used for current or future college, graduate school, or job training, or to repay existing qualified loans. AmeriCorps is able to support a greater number of Members if other organizations or programs, such as the Supportive Housing Program, can pay the program and Member-related expenses, with AmeriCorps providing the post-service educational awards.

For Supportive Housing, applicants may request funds for paying operating and supportive services costs. These costs may include payment for AmeriCorps Members, such as living allowances, health care costs, and reasonable overhead costs of the AmeriCorps program sponsor, but may not exceed the cost which would be paid by the applicant for the same services when procured from a contractor. An applicant does not fill out a special exhibit for AmeriCorps Members. Instead, the costs for the AmeriCorps Members are included in the operating and supportive services budgets, as appropriate, just as other staff costs are.

If Members are used in operating the Supportive Housing project, the costs are subject to the requirement that operating costs be shared. Examples of how Members may be used in operating a project include maintenance, security, and facility management. Supportive services are not subject to cost-sharing, so if Members are engaged in delivering supportive services, such as substance abuse counseling, case management, or recreational programs, no local share is required.

VIII. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) and (l) of the HUD regulations, the policies and procedures set forth in this document are determined not to have the potential for having a significant impact on the quality of the human environment, and therefore are exempt from further environmental reviews under the National Environmental Policy Act of 1969. (This same determination was made at the time of development of the interim rule on the Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation Single Room Occupany Program for Homeless Individuals, that was published in the **Federal Register** on May 10, 1994 (59 FR 24252).

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would have a significant impact on the formation, maintenance, and general well-being of families, but since this impact would be beneficial, no further analysis under the Order is necessary.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of activities and policies to end homelessness is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Submissions

Applications which are mailed prior to April 7, 1995 but received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no later than April 4, 1995. Overnight delivery items received after April 7, 1995 will be deemed to have been received by that date upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than April 6, 1995.

Authority: 42 U.S.C. 11403 note; 42 U.S.C. 11389; 42 U.S.C. 1437a, 1437c, and 1437f; 42 U.S.C. 3535(d); 24 CFR parts 582, 583, and 882.

Dated: February 8, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix: List of HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—John D. Harmon, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 290–7645; TDD (205) 290–7624.

Alaska—Dean Zinck, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–3669; TDD (907) 271–4328.

Arizona—Lou Kislin, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038. (Northern) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO

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80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

Delaware—John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

District of Columbia—James H. McDaniel, 820 First St., NE, Washington, DC (and MD and VA suburbs) 20002; (202) 275–0994; TDD (202) 275–0772.

Florida—James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 791–1241.

Georgia—John Perry, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 522–8180; TDD (808) 541–1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596;(503) 326–7018; TDD * via 1–800–877–8339.

Illinois—Jim Barnes, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5484; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394; TDD (502) 582–5139.

Lousiana—Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3116; TDD (410) 962–0106.

Massachusetts—Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

Michigan—Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TDD * via 1–800–877–8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TDD (314) 539–6331;. (Western) William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–54843; TDD (913) 551–6972.

Montana—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Lou Kislin, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461; (Remainder of State) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900; TDD (201) 645–3298.

New Mexico—Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768; TDD * via 1–800–877–8339; (Downstate) Jack Johnson, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4005; TDD (910) 547–4055.

North Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—Ted Allen, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747; (Eastern) Joyce Gaskins, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4396; TDD (615) 545–4559.

Texas—(Northern) Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447; (Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Federally Assisted Low Income Housing Drug Elimination Grants; Funding Availability for Fiscal Year 1995; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–95–3869; FR–3858–N–01]

Federally Assisted Low Income Housing Drug Elimination Grants; Notice of Funding Availability—FY 1995

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal year (FY) 1995.

SUMMARY: This NOFA announces HUD's FY 1995 funding of $17,800,737 for Federally Assisted Low Income Housing Drug Elimination Grants. The purposes of the Assisted Housing Drug Elimination Program are to eliminate drug-related crime and related problems in and around the premises of federally assisted low income housing, and to make available grants to help owners of such housing carry out plans to address these issues. This document describes the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results.

DATES: No applications will be accepted after 4:00 p.m. (local time) by the local HUD Office on April 18, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: (a) *Application form:* An application form may be obtained from the local HUD Office having jurisdiction over the location of the applicant project. The HUD Office will be available to provide technical assistance on the preparation of applications during the application period. In addition, applications may be obtained from the Multifamily Housing Clearinghouse by calling 1–800–685–8470; or for hearing- or speech-impaired persons (202) 708–4594 (TDD). (The TDD number is not a toll-free number.)

(b) *Application submission.* Applications (original and one copy) must be received by the deadline at the appropriate HUD Office with jurisdiction over the applicant project, Attention: Director of Multifamily Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

FOR FURTHER INFORMATION CONTACT: For application material and project-specific guidance, please contact the Office of the Director of Multifamily Housing in the HUD Office having jurisdiction over the project(s) in question. A list of HUD Offices is attached to this NOFA.

For other information, contact Lessley Wiles, Office of Multifamily Housing Management, Department of Housing and Urban Development, Room 6176, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2654, Ext. 2618. TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0476.

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et seq.), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA) (Pub. L. 101–625, approved November 28, 1990) and section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

Note: This NOFA does NOT apply to the funding available under the statute for Public and Indian Housing.

(b) Allocation Amounts

(1) Federal Fiscal Year 1995 Funding

The amount available for funding under this Notice of Funding Availability (NOFA) is $17,800,737. Section 581 of NAHA expanded the Drug Elimination Program to include federally assisted low-income housing. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1995, (Pub. L. 103–327, approved September 28, 1994) appropriated $290 million for the Drug Elimination Program, and made not more than $17,406,250 of the total Drug Elimination Program appropriation available for federally assisted low-income housing. The additional $394,487 represent funds available from recaptured and carry-over funds from prior year appropriations for the Federally Assisted Low-Income Housing Drug Elimination Grant Program.

Of the total $290 million appropriated, $247,168,750 will fund the Public and Indian Housing Drug Elimination Program; $13,925,000 will fund the Youth Sports Program; $10 million will fund drug elimination technical assistance and training; and $1.5 million will fund drug information clearinghouse services. The remaining $17,406,250 plus the $394,487 is being made available under this NOFA.

HUD is allocating grant funds under this NOFA to four "Award Offices" on the basis of a formula allocation. This formula allocation reflects the number of eligible federally assisted low-income housing units in specific geographic areas and the level of drug-related crime within each area, according to statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation ("Uniform Crime Reports for Drug Abuse Violations—1990").

(2) Maximum Grant Award Amounts

The maximum grant award amount is limited to $125,000 per project.

(3) Reallocation

Any grant funds under this NOFA that are allocated, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. HUD reserves the right to fund portions of full applications. If the HUD Award Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded in the following manner: HUD Award Offices will submit to Headquarters a list of applications, with their scores and amount of funding requested, that would have been funded had there been sufficient funds in the appropriate allocation to do so. Headquarters will select applications from those submitted by the HUD Award Offices, using a random number lottery overseen by the Offices of Housing, General Counsel, and Inspector General, and make awards from any available reallocated funds.

(4) Reduction of Requested Grant Amounts

HUD may award an amount less than requested if:

(i) HUD determines the amount requested for an eligible activity is unreasonable;

(ii) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant and HUD determines that partial funding is a viable option;

(iii) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(iv) For any other reason where good cause exists.

(5) Distribution of Funds

In past years, funds under this program were allocated to the ten HUD Regional Offices. Due to HUD's reorganization, those offices no longer exist. Therefore, this year HUD is allocating funds to four Award Offices, which will receive the scores from each HUD Office that has received, rated, ranked, and scored its applications. Those Award Offices will, in turn, request funding for the properties with the highest score from each HUD Office. If sufficient funds remain, the next highest scored applications, regardless of HUD Office, will be awarded funds. HUD is allocating grant funds under this NOFA to the four Award Offices, in accordance with the following schedule:

Award office	States covered	Allocation
Buffalo	Maine. New Hampshire. Vermont. Massachusetts. Connecticut. Rhode Island. New York. New Jersey. Pennsylvania. Delaware. Maryland. District of Columbia. West Virginia. Virginia.	$4,414,583
Knoxville	Kentucky. Tennessee. North Carolina. South Carolina. Georgia. Alabama. Puerto Rico. Mississippi. Florida.	4,467,985
Minneapolis	Iowa. Kansas. Missouri. Nebraska. Illinois. Indiana. Minnesota. Wisconsin. Michigan. Ohio.	4,343,380
Little Rock	Arkansas. Louisiana. New Mexico. Oklahoma. Texas. Colorado. Montana. North Dakota. South Dakota. Utah. Wyoming. Arizona. California. Hawaii. Nevada. Alaska. Idaho. Oregon. Washington.	4,574,789

(c) Eligibility

The following is a listing of eligible activities, ineligible activities, eligible applicants, and general grant requirements under this NOFA.

(1) Eligible Activities

Please note that the maximum term of the grant is 12 months.

It is the goal and intent of the Federally Assisted Low-Income Housing Drug Elimination Grant Program to foster a sense of community in dealing with the issues of drug-related criminal activity. Programs that foster interrelationships between the residents, the housing owner and management, the local law enforcement agencies, and other community groups impacting on the housing are greatly desired and encouraged. Resident participation in the determination of programs and activities to be undertaken is critical to the success of all aspects of the program. Working jointly with community groups, the neighborhood law enforcement precinct, residents of adjacent properties, and the community as a whole can enhance and magnify the effect of specific program activities and should be the goal of all applicants.

(i) *Physical Improvements to Enhance Security.* Physical improvements that are specifically designed to enhance security are eligible for funding under this program. The improvements may include (but are not limited to) systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, and locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, HUD is seeking plans that provide successful, proven, and cost effective deterrents to drug-related crime that are designed to address the realities of low-income assisted housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks or buzzer systems are not accessible to persons with limited strength or mobility, or to persons who are hearing-impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) *Programs to Reduce the use of Drugs.* Programs designed to reduce the use of drugs in and around federally assisted low-income housing projects, including drug abuse prevention, intervention, referral, and treatment programs, are eligible for funding under this program. The program should facilitate drug prevention, intervention, and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or provide resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary, and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this NOFA.

(A) Drug Prevention. Drug prevention programs that will be considered for funding under this NOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills, training programs, or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(*1*) Drug Education Opportunities for Residents. The causes and effects of

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illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR part 85.36) with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(*2*) Family and Other Support Services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(*3*) Youth Services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural, and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills, and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(*4*) Economic/Educational Opportunities for Residents and Youth. Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational, and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(B) Intervention. The aim of intervention is to identify federally assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(C) Drug Treatment. (*1*) Treatment funded under this program shall be in or around the premises of the federally assisted low-income housing projects proposed for funding.

(*2*) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement or expansion of such program services for residents.

(*3*) Each proposed drug treatment program should address the following goals:

(*i*) Increase resident accessibility to drug treatment services;

(*ii*) Decrease criminal activity in and around federally assisted low-income housing projects by reducing illicit drug use among residents; and

(*iii*) Provide services designed for youth and/or maternal drug abusers (e.g., prenatal/postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services).

(*4*) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(*i*) Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(*ii*) Provide family/collateral counseling.

(*iii*) Provide linkages to educational/vocational counseling.

(*iv*) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(*v*) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop, and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether:

(*A*) The drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and

(*B*) The drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(*vi*) Funding is not permitted for treatment of residents at any in-patient medical treatment programs/facilities.

(*vii*) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(*viii*) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(iii) *Resident Councils (RCs).* Providing funding to resident councils to strengthen their role in developing programs of eligible activities involving site residents is eligible for funding under this program.

(*2*) *Ineligible Activities.* Funding is not permitted for any activities listed below:

(i) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(ii) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants.

(iii) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(iv) Reimbursement of local law enforcement agencies for additional security and protective services;

(v) The employment of one or more individuals:

(A) To investigate drug-related crime on or about the real property comprising any federally assisted low-income project; and

(B) To provide evidence relating to such crime in any administrative or judicial proceeding;

(vi) The provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.

(3) *Eligible Applicants.* The applicant must be the owner of a federally assisted low-income housing project under:

(i) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act. (Note, however, that only section 221(d)(4) and section 221(d)(3) market rate projects with project-based assistance contracts are considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.)

(ii) Section 101 of the Housing and Urban Development Act of 1965; or

(iii) Section 8 of the United States Housing Act of 1937.

(4) *General Grant Requirements.* The following requirements apply to all activities, programs, or functions used to plan, budget, and evaluate the work funded under this program.

(i) After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(ii) The policies, guidelines, and requirements of this NOFA, 48 CFR part 31, other applicable OMB cost principles, HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(iii) The term of funded activities may not exceed 12 months.

(iv) Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds.

(v) To avoid duplicate funding, owners must establish controls to assure that any funds from other sources, such as Reserve for Replacement or Rent Increases, are not used to fund the physical improvements to be undertaken under this program.

(vi) Employment preference. A grantee under this program shall give preference to the employment of residents, and comply with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135, to carry out any of the eligible activities under this part, so long as such residents have qualifications and training comparable to nonresident applicants.

(vii) Termination of funding. HUD may terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement, adhere to grant agreement requirements or special conditions, or submit timely and accurate reports.

(viii) Subgrants (subcontracting).

(A) A grantee may directly undertake any of the eligible activities under this NOFA or it may contract with a qualified third party, including incorporated Resident Councils (RCs). Resident groups that are not incorporated RCs may share with the grantee in the implementation of the program, but may not receive funds as subgrantees.

(B) Subgrants or cash contributions to incorporated RCs may be made only under a written agreement executed between the grantee and the RC. The agreement must include a program budget that is acceptable to the grantee and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated RC to permit the grantee to inspect and audit the RC financial records related to the agreement, and to account to the grantee on the use of grant funds and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, the scope of the subgrantee's authority, and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(C) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, that apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) Selection Criteria and Ranking Factors

HUD will review each application to determine that it meets the requirements of this NOFA and to assign points in accordance with the selection criteria. A total of 200 points is the maximum score available under the selection criteria. An application must receive a score of at least 151 points out of the maximum of 200 points that may be awarded under this competition to be eligible for funding. After assigning points to each application, HUD Offices will rank the applications in order. The Award Office will select the highest ranking application from each HUD Office whose eligible activities can be fully funded. The Award Office will then select the highest scored unfunded application submitted to it regardless of Field Office and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications for which to award funds. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR 50.4. Each application submitted will be evaluated on the basis of the following selection criteria:

(1) The Quality of the Plan To Address the Problem (Maximum Points: 50)

In assessing this criterion, HUD will consider the following factors:

(i) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for funding, and how well the activities proposed for funding fit in with the plan. (maximum points: 10)

(ii) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug-related crime problems over an extended period. (maximum points: 10)

(iii) How the activities identified in the plan will affect and address the problem of drug-related crime in adjacent properties. (maximum points: 5)

(iv) Evidence that the proposed activities have been found successful in similar circumstances in terms of controlling drug-related crime. (maximum points: 5)

(v) Whether the property is located within an area identified as having a Safe Neighborhood Action Plan (SNAP) or similar plan or program designated for combatting drug-related criminal activity. (20 points if so located, 0 points if not.)

(2) The Support of Local Government/Law Enforcement Agencies (Maximum Points: 20)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that the project owner has sought assistance in deterring drug-related crime problems and the extent to which the owner has participated in programs that are available from local governments or law enforcement agencies; (maximum points: 10) and

(ii) The level of support by the local government or law enforcement agency for the applicant's proposed activities (Maximum points: 10)

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(3) The Extent of the Drug-Related Crime Problem in the Housing Project Proposed for Assistance (Maximum Points: 50)

In assessing this criterion, HUD will consider the degree of severity of the drug-related crime problem in the project proposed for funding, as demonstrated by the information required to be submitted under section III.(h) of this NOFA.

(4) The Support of Residents in Planning and Implementing the Proposed Activities. (Maximum Points: 30)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and the degree to which residents will be involved in implementation. (maximum points: 20)

(ii) Evidence of resident support for the proposed plan. (maximum points: 10)

(5) Capacity of Owner and Management To Undertake the Proposed Activities: (Maximum Points: 50)

In assessing this criterion, HUD will consider the following:

(i) The most recent Management Review completed by the HUD Office. (Note: The HUD Office will conduct another management review after application submission if the most recent management review is more than one year old). (maximum points: 40)

(ii) Submission of evidence that project owners have initiated other efforts to reduce drug-related crime by working with tenant/law enforcement groups (e.g., establishment of "Tenant Watches" or similar efforts). (maximum points: 5)

(iii) Submission of evidence that project management carefully screens applicants for units and takes appropriate steps to deal with tenants known or suspected to exhibit drug-related criminal behavior. (maximum points: 5)

II. Application Process

(a) Application Form

An application form may be obtained from the HUD Office having jurisdiction over the location of the applicant project. The HUD Office will be available to provide technical assistance on the preparation of applications during the application period.

(b) Application Submission

A separate application must be submitted for each project. An application (original and one copy) must be received by the deadline at the appropriate HUD Office with jurisdiction over the applicant project, Attention: Director of Multifamily Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile ("FAX") are not acceptable and will not be considered. Applications received after the deadline will not be considered. No applications will be accepted after 4:00 p.m. (local time) for the appropriate HUD Office on April 18, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

(c) Application Notification

HUD will notify all applicants whether or not they were selected for funding.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(a) Application for Federal Assistance form (Standard Form SF–424 and SF–424A). The form must be signed by the applicant.

(b) A description of the applicant's plan for addressing the problem of drug-related crime in the projects for which funding is sought, which should include the activities to be funded under this program along with all other initiatives being undertaken by the applicant. The description should also include a discussion of:

(1) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug-related crime problems over an extended period.

(2) How the activities identified in the plan will affect and address the problem of drug-related crime in adjacent properties.

(3) Other efforts that project owners have initiated to reduce drug-related crime by working with tenant/law enforcement groups (e.g., establishment of "Tenant Watches" or similar efforts).

(4) Procedures that project management uses to screen applicants for units and steps taken to deal with tenants known or suspected to exhibit drug-related criminal behavior.

(c) Each applicant for funding for physical improvements must submit a written plan fully describing the physical improvements to be undertaken with dollar costs per unit for each item. This plan must be signed by the owner.

(d) Each applicant must submit a letter from the local government or police (law enforcement) agency that describes the type of drug-related crime in the project proposed for grant funding and its immediate environs, and expresses a commitment to assist the owner in taking steps to reduce or eliminate the drug-related crime problems of the project.

(e) A description of the procedure used to involve residents in the development of the plan and written summaries of any comments and suggestions received from residents on the proposed plan, along with evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical.

(f) A description of the support of residents for the proposed activities and the ways in which residents will be involved in implementing the plan. Letters of support from residents or a resolution from the resident organization may be used.

(g) A copy of the most recent management review performed by HUD and evidence supporting the capacity of the owner and management to undertake the proposed activities.

(h) Detailed information, such as local government and police reports, evidencing the degree of drug-related crime in the project and adjacent properties to demonstrate the degree of severity of the drug-related crime problem. This information may consist of:

(1) Objective data. The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but are not necessarily limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the project proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's project (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for

drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the owner's records or those of private groups that collect such data. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20 percent occurrence rate). The data should cover the past three-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the project and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(2) Other data on the extent of drug-related crime. To the extent that objective data as described under paragraph (1) of this section may not be available, or to complement that data, the assessment may use relevant information from other sources that have a direct bearing on drug-related crime problems in the project proposed for assistance. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reason(s) why objective data could not be obtained and what efforts were made to obtain it. Examples of other data include: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted project; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the project proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(i) If applying for drug treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant Single State Agency or other local authority and that it is consistent with the State treatment plan; and that the relevant Single State Agency or other local authority has determined that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(j) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(k) Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. See section VI.(h), below, of this NOFA. If the amount applied for is greater than $100,000, and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include the Disclosure of Lobbying Activities Form (SF–LLL).

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

HUD will notify the applicant within 10 working days of the receipt of the application if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications and signatures) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The owner must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

V. Other Matters

(a) Nondiscrimination and Equal Opportunity

The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) (42 U.S.C. 3600–20) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Environmental Impact

At the time of the publication of the proposed rule for the Federally Assisted Low Income Housing Drug Elimination Program, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The initial finding applies to this NOFA, and is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(c) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA do not have federalism implications within the meaning of the Order. The NOFA announces the availability of funds and provides the application requirements for Federally Assisted Low Income Housing Drug Elimination Grants, which fund activities designed to deter drug-related crime. Deterring drug-related crime is a recognized goal of general benefit without direct implications on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among various levels of government.

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(d) Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have potential for significant impact on family formation, maintenance, and general well-being, except indirectly to the extent of the social and other benefits expected from this program of assistance.

(e) Section 102 HUD Reform Act Applicant/Recipient Disclosures

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified at 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have general questions about what information may be discussed with them during the selection may contact the HUD Office of Ethics (202) 708–3815 or (202) 708–9300 (TDD). (These are not toll-free numbers.)

(g) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(h) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

Authority: 42 U.S.C. 11901 *et. seq.*

Dated: January 31, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A: Field Office Addresses and Telephone Numbers

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—New England Area

Connecticut State Office, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

Maine State Office, 99 Franklin Street, Bangor, ME 04401–4925, (207) 945–0467

Massachusetts State Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5351

Vermont State Office, Room 244, Federal Building, 11 Elmwood Ave., P.O. Box 879, Burlington, VT 05402–0879, (802) 951–6290

HUD—New York, New Jersey Area

New Jersey State Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

Albany Area Office, 52 Corporate Circle, Albany, NY 12203–5121, (518) 464–4200

Buffalo Area Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 846–5755

Camden Area Office, Second Floor, Hudson Building, 800 Hudson Square, Camden, NJ 08102–1156, (609) 757–5081

HUD—Midatlantic Area

Delaware State Office, Suite 850, 824 Market Street, Wilmington, DE 19801–3016, (302) 573–6300

District of Columbia Office, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200

Maryland State Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (401) 962–2520

Pennsylvania State Office, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

Virginia State Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4507

West Virginia State Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000,

Pittsburgh Area Office, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, (412) 644–6428

HUD—Southeast/Caribbean Area

Alabama State Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

Caribbean Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

Florida State Office, Suite 3100, 8600 Northwest 36th Street, P.O. Box 4022, Miami, FL 33166–4022, (305) 717–2500

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–5136

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

Mississippi State Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1016, (601) 965–5308

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

Tennessee State Office, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

Coral Gables Area Office, Gables 1 Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2911, (305) 662–4500

Jacksonville Area Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

Knoxville Area Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

Memphis Area Office, Suite 1200, One Memphis Place, 200 Jefferson Avenue, Memphis, TN 38103–2335, (901) 544–3367

Orlando Area Office, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, FL 32803–3032, (407) 648–6441

Tampa Area Office, Suite 700, Timberlake Federal Building Annex, 501 East Polk Street, Tampa, FL 33602–3945, (813) 228–2501

HUD—Midwest Area

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

Minnesota State Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

Wisconsin State Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

Cincinnati Area Office, Room 9002 Federal Office Building, 550 Main Street, Cincinnati, OH 45202–3253, (513) 684–2884

Cleveland Area Office, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4058

Flint Area Office, Room 200, 605 North Saginaw Street, Flint, MI 48502–1953, (313) 766–5109

Grand Rapids Area Office, 2922 Fuller Avenue, NE, Grand Rapids, MI 49505–3499, (616) 456–2100

Springfield Area Office, Suite 206, 509 West Capitol Street, Springfield, IL 62704–1906, (217) 492–4085

HUD—Southwest Area

Arkansas State Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488 (501) 324–5931,

Louisiana State Office, Fisk Federal Building, 1661 Canal Street, New Orleans, LA 70112–2887 (504) 589–7200,

New Mexico State Office, 625 Truman Street, NE, Albuquerque, NM 87110–6443 (505) 262–6463

Oklahoma State Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, OK 73102–3202, (405) 231–4181

Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

Dallas Area Office, Room 860, 525 Griffin Street, Dallas, TX 75202–5007, (214) 767–8359

Houston Area Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 834–3274

Lubbock Area Office, Federal Office Building, 1205 Texas Avenue, Lubbock, TX 79401–4093, (806) 743–7265

San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–6800

Shreveport Area Office, Suite 1510, 401 Edwards Street, Shreveport, LA 71101–3107, (318) 676–3385

Tulsa Area Office, Suite 110, Boston Place 1516 South Boston Street, Tulsa, Ok 74119–4032, (918) 581–7434

Great Plains

Iowa State Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512

Kansas/Missouri State Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100

Saint Louis Area Field Office, Third Floor Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—Rocky Mountains Area

Colorado State Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440

Montana State Office, Room 340, Federal Office Building, Drawer 10095, 301 S. Park Helena, MT 59626–0095, (406) 449–5205

North Dakota State Office, Federal Building, 653 2nd Avenue North, P.O. Box 2483, Fargo, ND 58108–2483, (701) 239–5136

South Dakota State Office, Suite I–201, 2400 West 49th Street, Sioux Falls, SD 57105–6558, (605) 330–4223,

Utah State Office Suite 550, 257 Tower, 257 East, 200 South, Salt Lake City, UT 84111–2048

Wyoming State Office, 4225 Federal Office Building, 100 East B Street, P.O. Box 120 Casper, WY 82602–1918, (307) 261–5252

HUD—Pacific/Hawaii Area

Arizona State Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434

California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

Hawaii State Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175

Nevada State Office, Suite 205, 1500 E Tropicana Avenue, Las Vegas, NV 89119–6516, (702) 388–6500

Fresno Area Office, Suite 138, 1630 E. Shaw Avenue, Fresno, CA 93710–8193, (209) 487–5033

Los Angeles Area Office, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

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Reno Area Office, Suite 114, 1575 Delucchi Lane, Reno, NV 89502–6581, (702) 784–5356
Sacramento Area Office, Suite 200, 777 12th Avenue, Sacramento, CA 95814–1997, (916) 551–1351
San Diego Area Office, Suite 300, Mission City Corporate Center, 2365 Northside Drive, San Diego, CA 92108–2712, (619) 557–5310
Santa Ana Area Office, Suite 500, 3 Hutton Centre, Santa Ana, CA 92707–5764, (714) 957–7333
Tucson Area Office, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, AZ 85701–1467, (602) 670–6237

HUD—Northwest/Alaska Area

Alaska State Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170
Idaho State Office, Suite 220, Plaza IV, 800 Park Boulevard, Boise, ID 83712–7743, (208) 334–1990
Oregon State Office, 520 S.W. 6th Avenue, Portland, OR 97204–1596, (503) 326–2561
Washington State Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101
Spokane Area Office, Eighth Floor East, Farm Credit Bank Building, West 601 First Avenue, Spokane, WA 99204–0317, (509) 353–2510

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Friday
February 17, 1995

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201
Topical Drug Products Containing Benzoyl Peroxide; Required Labeling; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 92N-0311]

Topical Drug Products Containing Benzoyl Peroxide; Required Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing additional labeling (warning and directions) for all topically-applied acne treatment drug products containing benzoyl peroxide. The warning advises consumers to avoid unnecessary sun exposure and to use a sunscreen when using a benzoyl peroxide product to treat acne. The directions provide information about applying benzoyl peroxide and a sunscreen, and about discontinuing use of both products if irritation or sensitivity develops. Prescription drug products will need a patient package insert to convey this information to product users. The agency is requesting public comment on whether a consumer package insert should be required to provide additional information FDA believes users of these benzoyl peroxide products should have. That information would summarize some problems that occurred when benzoyl peroxide was used in tests on mice and would mention that additional studies are currently being conducted. The final status of benzoyl peroxide in over-the-counter (OTC) drug products and the continued need for the additional labeling will be determined when these additional studies are completed and evaluated.

DATES: Written comments on the proposed regulation by May 18, 1995. Written comments on the agency's economic impact determination by May 18, 1995. FDA is proposing that the final rule based on this proposal be effective 6 months after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 7, 1991 (56 FR 37622), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an amendment of the tentative final monograph for topical acne drug products for OTC human use in which the agency reclassified benzoyl peroxide from its previously proposed monograph status (Category I) to "more-data-needed" (Category III) status. This action (56 FR 37622) was based on new information that raised a safety concern regarding benzoyl peroxide as a tumor promoter in mice (Ref. 1) and a study that reported that benzoyl peroxide has tumor initiation potential (Ref. 2).

Subsequently, a drug manufacturers association submitted data and information in support of the safety of benzoyl peroxide (Refs. 3 through 6). FDA evaluated these data and information and determined that the studies show that benzoyl peroxide is a skin tumor promoter in more than one strain of mice as well as in hamsters. To date, topical studies (which have shown only tumor promotion) have been of short duration (about 52 weeks). Although animal data and human epidemiology data are available, the agency has determined that further studies are necessary to adequately assess the tumorigenic potential of benzoyl peroxide. These studies are currently being conducted (Ref. 7). The agency acknowledges that it may take several years for these studies to be completed and analyzed, and for a final determination to be made on benzoyl peroxide's safety.

Because studies have shown that benzoyl peroxide is a skin tumor promoter in animals, and the relevance of this finding to humans is unknown, the agency was concerned about continued OTC marketing during the several years it will take to resolve the safety issues raised by the studies discussed above. Because of this concern, the agency discussed this matter with its Dermatologic Drugs Advisory Committee (the Committee) on April 10, 1992 (Ref. 8). At that meeting, information was presented by representatives of FDA and industry, consumer, and professional organizations. The Committee was asked to assess the safety and efficacy data available for benzoyl peroxide, to consider the benefit-to-risk ratio, and to recommend whether the product should continue to be available for use while further safety data are developed. The Committee voted unanimously that benzoyl peroxide should remain available as an OTC drug product.

The Committee was also asked whether the OTC labeling of benzoyl peroxide drug products should be changed to include a statement concerning the ingredient's potential to cause skin tumors in animals, what is the relevance of this potential in humans, and how such a statement should be worded for consumers. The Committee recommended by a four to three vote (with one abstention) that information about what is known about benzoyl peroxide should be provided to consumers by some mechanism. Because of the lack of data, however, the Committee recommended that no warning statement concerning cancer should be included in the labeling of benzoyl peroxide products. The Committee recommended unanimously that FDA consider appropriate wording for additional labeling to highlight those areas where there may be risks and that the proposed wording be brought back to the Committee for review.

The Committee was also informed that the agency had previously recommended to industry that a lifetime animal carcinogenicity study to assess benzoyl peroxide's safety include, as part of the protocol, periods of exposure to UV light (Ref. 9). The Committee was asked its opinion on the need for such testing. Industry representatives stated to the Committee that studies already conducted by Iversen (Refs. 10 and 11) showed no evidence that benzoyl peroxide enhanced the carcinogenicity of UV light. After a lengthy discussion, the Committee concluded that the Iversen studies were insufficient to fully resolve this issue because they were not animal lifetime studies and an insufficient number of animals had been used. Further, based on the protocol, it was uncertain that the studies provided assurance that benzoyl peroxide's tumor fostering potential was conclusively assessed. The Committee recommended unanimously that a new photocarcinogenicity study should be conducted (Ref. 12). As noted above, this study is being conducted (Ref. 7).

A comment submitted after the Committee meeting (Ref. 13) from a consumer association urged the agency to move quickly to inform the American public of the possible health and safety risks associated with benzoyl peroxide. The comment did not recommend removal of this drug from the OTC market, but suggested several labeling statements that could be used. Another comment by a national manufacturers association (Ref. 14) suggested that FDA use alternative available methods, rather than labeling, to disseminate information on this subject. The association proposed: (1) Fact Sheets mailed to consumer groups and publishers of medical- and pharmacy-related information, (2) publications in FDA Consumer, and (3) other similar and related mechanisms. The association stated that the OTC label should be maintained as an instructional tool for safe product use rather than for the dissemination of ambiguous, potentially frightening information that the consumer has little ability to make an informed decision about.

The association contended that labeling already proposed by the agency for benzoyl peroxide pertaining to "skin irritation" (50 FR 2172 at 2181, January 15, 1985) would take into account the hypothetical mechanism of skin tumor promotion which—although not known to occur in humans—represents the best model to date to describe the possible risk that is at issue with benzoyl peroxide. The comment concluded that the proposed warning conforms to the Committee's recommendations, i.e., avoids the term "cancer" yet provides information to the public, is instructional and actionable, and allows consumers to take definitive risk avoidance action by not using the product.

The agency has carefully considered the Committee's and the comments' views. The agency agrees that marketing of benzoyl peroxide should continue while the ongoing studies are being completed. The agency agrees that information should be provided to consumers and that no warning statement concerning cancer should be included in the labeling of benzoyl peroxide drug products because currently available data are inconclusive. The agency has given extensive consideration to the potential risks established to date, e.g., sun exposure, and is proposing certain labeling information that it believes should be provided to consumers now. The bases for these proposals follow

Although the skin tumor promotion caused by benzoyl peroxide in mice and hamsters is disturbing, the overall test results are not conclusive, and the risk to humans is unknown. In recent epidemiologic studies (Refs. 15 and 16), Hogan et al. concluded that there is no indication that the normal use of benzoyl peroxide in the treatment of acne is associated with an increased risk of acial skin cancer.

Benzoyl peroxide is a widely used and effective ingredient in the topical treatment of acne. As noted above, the Committee recommended unanimously that benzoyl peroxide should remain available as an OTC drug product while the additional studies to answer the unresolved safety questions are being conducted. When those studies are completed, the monograph or nonmonograph status of benzoyl peroxide will be resolved.

FDA has determined that the results of available animal studies do not provide a sufficient basis to restrict OTC marketing of benzoyl peroxide products at this time. However, the agency has tentatively determined that consumers who choose to use products containing this ingredient need to be informed about an additional condition related to this use, i.e., to avoid unnecessary sun exposure and to use a sunscreen. The agency has also determined that it would be desirable to provide users of benzoyl peroxide products some additional information about this drug based on the studies that have been and are being conducted.

The agency has considered the comments' viewpoints on how consumers should be informed about this new information and finds that the various suggestions have merit. The agency tentatively finds that the best way to directly inform users of benzoyl peroxide drug products about sun exposure and this ingredient is to provide the information in product labeling. The agency will also disseminate this information in other standard ways, e.g., the FDA Consumer and the FDA Medical Bulletin. The agency will be able to provide more detailed information in these publications than can be provided in OTC drug product labeling.

Based on the above discussion, the agency is proposing to require that the labeling of products containing benzoyl peroxide include a new warning and additional directions. The warning advises users of these products to avoid unnecessary sun exposure and to use a sunscreen. The agency believes that the warning information is important enough that it should appear in boldface type as the first statement under the heading "WARNINGS." The additional directions provide information about applying the benzoyl peroxide and sunscreen. For OTC drug products containing benzoyl peroxide, the agency is proposing that the following information be used:

(1) The following statement shall appear in boldface type as the first sentence under the heading "Warnings": "When using this product, avoid unnecessary sun exposure and use a sunscreen."

(2) The following information shall appear in the "Directions" section of the labeling: "If going outside, use a sunscreen. (sentence in boldface type) Allow (insert name of benzoyl peroxide product) to dry, then follow directions in the sunscreen labeling. If irritation or sensitivity develops, discontinue use of both products and consult a doctor."

Prescription drug products will need a patient package insert to convey this information to users of the product. For prescription drug products, the agency is proposing that this same information appear in a patient package insert in accord with 21 CFR 201.57(f)(2) and new § 201.318 (21 CFR 201.318) of this chapter, which is being proposed in this document.

The agency would like public comment on how beneficial it would be to provide users of OTC and prescription drug products containing benzoyl peroxide additional information on what is known about the ingredient. This information would summarize in lay language some problems that occurred when benzoyl peroxide was used in tests in mice and would inform users of the product that additional studies are currently being conducted. The information would also state that consumers can continue to use benzoyl peroxide products while these tests are being done. The agency is contemplating requiring this information to appear in a consumer package insert because it is too extensive to appear on the immediate container or carton labeling. If implemented, the requirement would appear as follows:

The following information shall appear in a package insert under the heading "Additional Information About" (insert brand name of benzoyl peroxide product):

What is in (insert brand name of benzoyl peroxide product)?

The main active ingredient in (insert brand name of product) is benzoyl peroxide. People have used it for more than 25 years to treat pimples and acne. In animal tests, benzoyl peroxide was put on the skin of mice after other chemicals known to cause tumors. Benzoyl peroxide appeared to make the tumors caused by the other chemicals grow faster, but benzoyl peroxide did not cause tumors by itself. Substances that cause tumors to grow or to grow faster in animals raise questions about the possibility of a similar effect in humans. However, many such substances have had no effect on human tumors.

Does Benzoyl Peroxide Cause Tumors to Grow in Humans?

A Canadian survey looked at people who did and did not use benzoyl peroxide. The people who used benzoyl peroxide did not have any more skin tumors than those who did not use it.

No one study can answer all the important questions about the effects of a medicine. This Canadian survey did not consider the effects of using benzoyl peroxide for many years or in places where people may be exposed to other causes of skin tumors, such as locations that get more sunlight. More studies are being done now.

What Should I Do?

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At this time, a group of doctors called together by the Food and Drug Administration believe it is okay to continue to use benzoyl peroxide to help clear up pimples while more studies are being done. There is no evidence that the drug causes tumors or causes tumors to grow faster in humans.

If you decide to use this medicine, you should try to avoid possible causes of tumors. Because sunlight can cause tumors in humans, you should stay out of sunlight as much as possible and use a sunscreen when you go outside.

This leaflet will be revised when more is known about the effects of benzoyl peroxide.

This labeling would apply equally to both OTC and rescription drug products that contain benzoyl peroxide. At this time, only one prescription product (a combination product containing benzoyl peroxide and erythromycin) is subject to an approved application. Other prescription products are currently marketed without approved applications. This labeling would apply to any prescription product containing benzoyl peroxide, whether marketed under or without an approved application.

The agency is especially concerned whether the benzoyl peroxide warning will be read and understood by teenagers, the largest group of targeted consumers of acne drug products, and, if read, if they will comply with the warning. An additional concern is the possibility that the proposed labeling may result in teenagers not treating acne at all, although dermatologists consider this an abnormal skin condition that should be treated. Based on these concerns, the agency invites public comment, particularly with supporting information, regarding label reading, label understanding, and making use of the information, especially with regard to the teenage population. The agency also invites comment on whether the proposed consumer package insert would provide useful information to teenagers. An alternative to the labeling approach that FDA is proposing would be to place the ingredient on prescription status until the testing is completed. At that time, the skin tumor promotion issue and the effects of sun exposure should be resolved, and a final decision can be made on the monograph or nonmonograph status of this ingredient.

Based on all information currently available, the agency considers the known benefits of the OTC availability of products containing benzoyl peroxide to exceed the possible safety risks. However, until a final determination is made on the OTC status of benzoyl peroxide, the agency tentatively concludes that additional information about the ingredient needs to be provided to consumers. The agency considers the labeling being proposed in this document to be in accord with the provisions of sections 201(n) and 502(a) of the act (21 U.S.C. 321(n) and 352(a)).

The agency acknowledges that there currently is a lack of information on possible interactions between products containing benzoyl peroxide and products containing a sunscreen (or sunscreens). There are numerous benzoyl peroxide products in the marketplace, and these products are formulated with a variety of inactive ingredients. Likewise, there are many sunscreens in the marketplace, and these products are formulated with a variety of inactive ingredients, which in some cases are different than those contained in the benzoyl peroxide products. However, the agency is unable to state whether any incompatibilities may occur when the two types of products are used sequentially. The agency believes that users should allow the benzoyl peroxide to dry before applying the sunscreen. This would not be a concern if the benzoyl peroxide is applied at bed time and the sunscreen is applied the following morning. However, some users will reapply the benzoyl peroxide in the morning before going outside. Sunscreen applied soon after the benzoyl peroxide could interact with the benzoyl peroxide product. Therefore, the agency is considering the following product labeling to inform consumers: "There currently is a lack of information on possible interactions between products containing benzoyl peroxide and products containing a sunscreen (or sunscreens)."

The agency is aware that the prescription ingredient tretinoin, which is used for the topical treatment of acne, states in its labeling (Ref. 17) that "Use of sunscreen products and protective clothing over treated areas is recommended when exposure [to sunlight] cannot be avoided." However, the labeling does not provide any directions about the time or method of applying he sunscreen. The same manufacturer also markets benzoyl peroxide acne drug products. Thus, the manufacturer may have information in its files about the use of a sunscreen following topical acne drug products containing benzoyl peroxide. Manufacturers of both benzoyl peroxide and sunscreen products are invited to comment on the appropriateness of a waiting period between application of the two products and to submit any information available in their files on sequential use of these types of products.

Because the agency is encouraging manufacturers of benzoyl peroxide products to voluntarily implement the labeling in this proposal as soon as possible (see discussion below), manufacturers may wish or need to add additional information in their labeling about application intervals as appropriate for their specific product.

References

(1) Slaga, T. J. et al., "Skin-Tumor Activity of Benzoyl Peroxide, A Widely Used Free Radical-Generating Compound," *Science*, 213:1023–1025, 1981.

(2) Kurokawa, Y. et al., "Studies on the Promoting and Complete Carcinogenic Activities of Some Oxidizing Chemicals in Skin Carcinogenesis," *Cancer Letters*, 24:299–304, 1984.

(3) Comment No. RPT, Docket No. 81N–0114, Dockets Management Branch.

(4) Comment No. RPT 00002, Docket No. 81N–0114, Dockets Management Branch.

(5) Comment No. SUP00002, Docket No. 81N–0114, Dockets Management Branch.

(6) Comment No. SUP00003, Docket No. 81N–0114, Dockets Management Branch.

(7) Comments No. C31, PR1, and PR2, Docket No. 81N–0114, Dockets Management Branch.

(8) Transcript of 34th meeting of FDA's Dermatologic Drugs Advisory Committee, April 10, 1992, Bethesda, MD, pp. 10–22, 112–117, 146–149, 177–184, 234–236, and 262–266, OTC vol. No. 07BP, Docket No. 92N–0311, Dockets Management Branch.

(9) Comment No. MM4, Docket No. 81N–0114, Dockets Management Branch.

(10) Iversen, O. H., "Carcinogenesis Studies with Benzoyl Peroxide (Panoxyl gel 5%)," *Journal of Investigative Dermatology*, 86:442–448, 1986.

(11) Iversen, O. H., "Skin tumorigenesis and carcinogenesis studies with 7, 12-dimethylbenz [a] anthracene, ultraviolet light, benzoyl peroxide (Panoxyl gel 5%) and ointment gel," *Carcinogenesis*, 9:803–809, 1988.

(12) Transcript of 34th meeting of FDA's Dermatologic Drugs Advisory Committee, April 10, 1992, Bethesda, MD, pp. 277–279, OTC vol. No. 07BP, Docket No. 92N–0311, Dockets Management Branch.

(13) Comment No. C6, Docket No. 81N–114A, Dockets Management Branch.

(14) Comment No. C7, Docket No. 81N–114A, Dockets Management Branch.

(15) Hogan, D. J., T. To, and E. R. Wilson, "Drug and Non-Drug Risk Factors Associated With Facial Skin Cancer," A report to the Nonprescription Drug Manufacturers Association/the Nonprescription Drug Manufacturers Association of Canada on the Saskatchewan Study, Comment No. 4, Docket No. 81N–114A, Dockets Management Branch.

(16) Hogan, D. J. et al., "A Study of Acne treatments as Risk Factors for Skin Cancer of the Head and Neck," *British Journal of Dermatology*, 125(4):343–348, 1991.

(17) "Physicians Desk Reference—1993," 47 ed., Medical Economics Co., Montvale, NJ, pp. 1736–1737, 1993.

Manufacturers of all drug products containing benzoyl peroxide are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording of the statement, or not require the statement, as a result of comments filed in response to this proposal. Because FDA is encouraging that the proposed labeling statement be used on a voluntary basis at this time the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule is estimated to generate a one-time label modification, the cost of which will not be significant. Similarly, the costs incurred by small businesses are estimated to be insufficient to warrant a regulatory flexibility analysis. FDA believes that small marketers use relatively simple and inexpensive packaging and labeling. Hence, labeling change costs to small firms are not expected to be substantial. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of drug products that contain benzoyl peroxide. Comments regarding the impact of this rulemaking on benzoyl peroxide containing drug products should be accompanied by appropriate documentation. A period of 90 days from the date of pubication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before May 18, 1995, submit written comments to the Dockets Management Branch (address above). Written comments on the agency's economic impact determination may be submitted on or before May 18, 1995. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507,508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. New § 201.318 is added to subpart G to read as follows:

§ 201.318 Labeling for benzoyl peroxide-containing topical preparations; required statements.

(a) Studies have shown that skin tumors were fostered in laboratory animals exposed to benzoyl peroxide and tumor initiators. It is also known that excessive sunlight can cause skin cancer in humans. Animal studies are in progress to investigate whether benzoyl peroxide is a tumor promoter or initiator in the absence and/or presence of sunlight. While these studies are being conducted, and until the results of the studies have been assessed, FDA concludes that the labeling of topical drug products containing benzoyl peroxide should inform users of the product that some harm may result from exposure to sunlight in conjunction with the use of products containing benzoyl peroxide. Accordingly, a warning and additional directions must appear in the labeling of prescription or over-the-counter (OTC) drug products that contain benzoyl peroxide.

(b) Any OTC drug product containing benzoyl peroxide for topical administration shall bear the following statement in its labeling:

(1) The following statement shall appear in boldface type as the first sentence under the heading "Warnings": "When using this product, avoid unnecessary sun exposure and use a sunscreen."

(2) The following information shall appear in the "Directions" section of the labeling: "If going outside, use a sunscreen. (sentence in boldface type) Allow [insert name of benzoyl peroxide product] to dry, then follow directions in the sunscreen labeling. If irritation or sensitivity develops, discontinue use of both products and consult a doctor."

(c) Requirement for a patient package insert for any prescription drug product containing benzoyl peroxide for topical administration. Each topical benzoyl peroxide product restricted to prescription distribution, including any benzoyl peroxide in fixed combination with other drugs, shall be dispensed to patients with a patient package insert containing the information in paragraph (c)(2)(iii) of this section. This requirement applies to any topical benzoyl peroxide drug product that is the subject of a new drug application approved either before or after October 9, 1962, and all identical, related, or similar drug products as defined in § 310.6 of this chapter, whether or not the subject of an approved new drug application.

(1) *Distribution requirements.* For topical benzoyl peroxide drug products, the manufacturer and distributor shall provide a patient package insert in or with each package of the drug product that the manufacturer or distributor intends to be dispensed to a patient. The patient labeling shall be provided as a separate printed leaflet independent of any additional materials provided with the product.

(2) *Patient package insert contents.* A patient package insert for a topical benzoyl peroxide drug product is required to contain the following information:

(i) The name of the drug.

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(ii) The name and place of business of the manufacturer, packer, or distributor.

(iii) The following statement: WARNING: "When using this product, avoid unnecessary sun exposure and use a sunscreen." (sentence and word WARNING in boldface type)

(iv) The following information shall appear in the "Directions" section of the labeling: "If going outside, use a sunscreen. (sentence in boldface type) Allow [insert name of benzoyl peroxide product] to dry, then follow directions in the sunscreen labeling. If irritation or sensitivity develops, discontinue use of both products and consult a doctor."

(v) The date, identified as such, of the most recent revision of the patient package insert.

(3) *Requirements to supplement approved application.* Holders of approved applications for topical benzoyl peroxide drug products that are subject to the requirements of this section must submit supplements under § 314.70(c) of this chapter to provide for the labeling required by paragraph (c) of this section. Such labeling may be put into use without advance approval of the Food and Drug Administration provided it includes only the information included in paragraph(c) of this section.

(d) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after (insert date 6 months after date of publication of the final rule in the **Federal Register**) is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is subject to regulatory action.

Dated: January 31, 1995.

William K. Hubbard,

Interim Deputy Commissioner for Policy

[FR Doc. 95-4007 Filed 2-16-95; 8:45 am]

BILLING CODE 4160-01-F

federal register

Friday
February 17, 1995

Part VIII

Department of Health and Human Services

Public Health Service

42 CFR Part 52a
National Institutes of Health Center Grants; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52a

RIN 0905–AE00

National Institutes of Health Center Grants

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend its center grant regulations in order to incorporate changes necessitated by enactment of the ADAMHA Reorganization Act and the National Institutes of Health Revitalization Act of 1993.

DATES: Comments must be received on or before April 18, 1995. The final rule would become effective 30 days following its publication in the **Federal Register**.

ADDRESSES: Comments should be sent to Mr. Jerry Moore, NIH Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 1B25, 31 DR MSC 2075, 9000 Rockville Pike, Bethesda, Maryland 20892–2340.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, at the address above, or telephone (301) 496–4606. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 10, 1992, the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act, Pub. L. 102–321, was enacted. That Act restructured the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) by transferring the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), and the National Institute of Mental Health (NIMH) to NIH, effective October 1, 1992, and provided for the administration of treatment and service programs under a newly created Substance Abuse and Mental Health Services Administration (SAMHSA). Section 123 of the ADAMHA Reorganization Act added a new section 464N to the PHS Act which authorizes the Director of NIDA to designate National Drug Abuse Research Centers for the purpose of interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse. Under section 464N, the Director of NIDA is authorized to make annual grants to these Centers.

Subsequently, the National Institutes of Health Revitalization Act of 1993, Pub. L. 103–43, was enacted on June 10, 1993. Provisions of that Act authorized several new center grant programs that should be covered by part 52a. Specifically, section 417 of the PHS Act, as added by section 401 of Pub. L. 103–43, authorizes centers for breast cancer research; section 417A of the PHS Act, as added by section 402 of Pub. L. 103–43, authorizes prostate cancer research and demonstration centers; section 422 of the PHS Act, as amended by section 502 of Pub. L. 103–43, authorizes centers for the study of pediatric cardiovascular diseases; section 434 of the PHS Act, as added by section 601 of Pub. L. 103–43, authorizes centers for research and training regarding nutritional disorders including obesity; section 447 of the PHS Act, as added by section 902 of Pub. L. 103–43, authorizes research centers regarding chronic fatigue syndrome; section 452A of the PHS Act, as added by section 1001 of the Pub. L. 103–43; authorizes research centers with respect to contraception and infertility; and section 452C of the PHS Act, as added by section 1021 of Pub. L. 103–43, authorizes child health research centers.

NIH proposes to amend center grant regulations at 42 CFR part 52a to incorporate these new authorities. Specifically, the authority citation would be revised to include the U. S. Code citations of the additional center grant authorities set forth in PHS Act sections 417, 417A, 422, 434, 447, 452A, 452C, and 464N. Section 52a.1 would be amended by adding language specifying the applicability of part 52a to these additional center grant programs, and § 52a.2 would be amended by adding a definition for the term "Director" and a definition of the term "Center" for each new type of center. Section 52a.3 would be amended by adding references to PHS Act sections 417, 417A, 434, 447, 452A and 452C in paragraph (a) and adding a reference to PHS Act section 464N in paragraph (b). The title of § 52a.8 would be revised to add the word "policies." Section 52a.8 would be amended by revising the sixteenth and seventeenth paragraphs and adding a new paragraph referencing the NIH Guidelines on the Inclusion of Women and Minorities as Human Subjects in Clinical Research.

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

The purpose of this notice is to invite public comment on these proposed actions. The following statements are provided as information for the public.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires us to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, we generally prepare a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this rule is economically significant, nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this rule is not inconsistent with the actions of any other agency.

This proposed rule would extend current policies and procedures governing the award and administration of discretionary grants to eligible institutions to support NIH center grant programs authorized by sections 417, 417A, 422, 434, 447, 452A, 452C, and 464N of the PHS Act. While these centers benefit those segments of the public afflicted by the health problems addressed by the centers, and physicians and other health professionals who receive training in those health areas, the centers do not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this proposed rule would only affect those few institutions interested in obtaining financial assistance to carry out a center's authorized programs, subject to the normal accountability requirements for grant funds. No entity is obligated to apply for grant support.

For these same reasons, we certify this rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This NPRM does not contain information collection requirements which are subject to Office of Management and Budget approval under the Paper Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered programs affected by this proposed rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers
93.279 Drug Abuse Research Programs
93.397 Cancer Centers Support
93.837 Heart and Vascular Diseases Research
93.838 Lung Diseases Research
93.839 Blood Diseases and Resources Research
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research
93.849 Kidney Diseases, Urology and Hematology Research
93.855 Allergy, Immunology, and Transplantation Research
93.856 Microbiology and Infectious Diseases Research
93.864 Population Research
93.865 Research for Mothers and Children
93.866 Aging Research

List of Subjects in 42 CFR Part 52a

Grant programs—Health; Medical research.

Dated: November 15, 1994.

Philip R. Lee, M.D.,

Assistant Secretary for Health.

Approved: February 9, 1995.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, part 52a, subchapter D, chapter 1 of title 42 of the Code of Federal Regulations is amended to read as set forth below.

PART 52a—NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

1. The authority citation of part 52a would be revised to read as follows:

Authority: 42 U.S.C. 216, 285a–3, 285a–6(c)(1)(E), 285b–4, 285c–5, 285c–8, 285d–6, 285e–2, 285e–3, 285f–1, 285g–5, 285g–7, 285m–3, 285o–2, 286a–7(c)(1)(G), 300cc–16.

2.–3. Section 52a.1 would be amended by revising paragraph (a) introductory text, to read as follows:

§ 52a.1 To which programs do these regulations apply?

(a) The regulations of this part apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion, and operation of research and demonstration and/or multipurpose centers in the health fields described in this paragraph. Specifically, these regulations apply to National Cancer Research and Demonstration Centers (including payments for construction), as authorized by section 414 of the Act; National Cancer Research and Demonstration Centers with Respect to Breast Cancer, as authorized by section 417 of the Act; National Cancer Research and Demonstration Centers with Respect to Prostate Cancer, as authorized by section 417A of the Act; National Research and Demonstration Centers for Heart, Blood Vessel, Lung, and Blood Diseases, Sickle Cell Anemia, Blood Resources and Pediatric Cardiovascular Diseases (including payments for construction), as authorized by section 422 of the Act; Research and Training Centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act; Research and Training Centers Regarding Nutritional Disorders, as authorized by section 434 of the Act; Multipurpose Arthritis and Musculoskeletal Diseases Centers (including payments for alteration, but not construction), as authorized by section 441 of the Act; Alzheimer's Disease Centers, as authorized by section 445 of the Act; Claude D. Pepper Older Americans Independence Centers, as authorized by section 445A of the Act; Research Centers Regarding Chronic Fatigue Syndrome, as authorized by section 447; Research Centers with Respect to Contraception and Infertility, as authorized by section 452A of the Act; Child Health Research Centers, as authorized by section 452C of the Act; Multipurpose Deafness and Other Communication Disorders Centers, as authorized by section 464C of the Act; National Drug Abuse Research Centers, as authorized by section 464N of the Act; and Centers for Acquired Immunodeficiency Syndrome Research, as authorized by section 2316 of the Act.

* * * * *

4. Section 52a.2 would be amended by revising the definition of "Center" and adding a definition of "Director" to read as follows:

§ 52a.2 Definitions.

* * * * *

Center means:

(1) For purposes of grants authorized by section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(2) For purposes of grants authorized by section 417 of the Act, an agency or institution which provides for planning and conducting basic, clinical, epidemiological, psychosocial, prevention and treatment research and related activities on breast cancer;

(3) For purposes of grants authorized by section 417A of the Act, an agency or institution which provides for planning and conducting basic, clinical, epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer;

(4) For purposes of grants authorized by section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency services) for heart, blood vessel, lung, or blood diseases including sickle cell anemia;

(5) For purposes of grants authorized by section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(6) For purposes of grants authorized by section 434 of the Act, a single institution or a consortium of cooperating institutions, which conducts basic and clinical research, training, and information programs in nutritional disorders, including obesity.

(7) For purposes of grants authorized by section 441 of the Act, a facility which conducts basic and clinical research as well as research into arthritis and musculoskeletal diseases, orthopedic procedures, training, and information programs for the health community and the general public;

(8) For purposes of grants authorized by section 447 of the Act, a single institution or consortium of cooperating institutions which conducts basic and

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clinical research on chronic fatigue syndrome;

(9) For purposes of grants authorized by section 452A of the Act, a single institution or consortium of cooperating institutions which conducts clinical and other applied research, training programs, continuing education programs, and information programs with respect to methods of contraception and infertility;

(10) For purposes of grants authorized by section 452C of the Act, an agency or institution which conducts research with respect to child health, and gives priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children;

(11) For purposes of grants authorized by section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of, advanced diagnostic, prevention, and treatment methods for disorders of hearing and other communication processes and complications resulting from these disorders;

(12) For purposes of grants authorized by section 464N of the Act, institutions designated as National Drug Abuse Research Centers for interdisciplinary research relating to drug abuse and other biomedical, behaviorial, and social issues related to drug abuse; or

(13) For purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency syndrome.

As provided in the section of the Act authorizing the particular program or on the determination of the Director, a center may include the facilities of a single institution or a consortium of cooperating institutions and, if practical, may be part of an equitable geographical distribution of centers with proven research capabilities.

Director means the Director of NIH or the organizational component authorized to award grants to support centers under this part.

* * * * *

5. Section 52a.3 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 52a.3 Who is eligible to apply?

(a) Any public or private non-profit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 414, 417, 417A, 422, 434, 441, 445, 445A, 447, 452A, 452C, and 2316 of the Act.

(b) Any public or private non-profit or for-profit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 431, 464C, and 464N of the Act.

(c) * * *

6. Section 52a.8 would be amended by revising the heading, adding a new paragraph referencing the NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research, and revising the sixteenth and seventeenth paragraphs, to read as follows:

§ 52a.8 Other HHS regulations and policies that apply.

* * * * *

51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules.

Public Health Service Policy on Humane Care and Use of Laboratory Animals, Office for Protection from Research Risks, NIH (Revised September 1986).

59 FR 14508 (as republished March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research .

7. Section 52a.9 would be revised to read as follows:

§ 52a.9 Additional conditions.

The Director may, with respect to any grant award, impose additional conditions prior to or at the time of any award when in the Director's judgment the conditions are necessary to assure the carrying out of the purposes of the award, the interests of the public health, or the conservation of grant funds.

[FR Doc. 95-3926 Filed 2-16-95; 8:45 am]

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federal register

Friday
February 17, 1995

Part IX

Department of Education

International Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.304A]

International Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program: To support international education exchange activities between the United States and eligible countries in civics and government education and economic education.

Eligible Applicants: Independent nonprofit educational organizations that-

(a) Have expertise in international achievement comparisons, and are experienced in—

(1) The development and national implementation of curricular programs in civics and government education and economic education for students from grades kindergarten through 12 in local, intermediate, and State educational agencies, in schools funded by the Bureau of Indian Affairs, and in private schools throughout the Nation with the cooperation and assistance of national professional educational organizations, colleges and universities and private sector organizations;

(2) The development and implementation of cooperative university and school-based inservice training programs for teachers of grades kindergarten through 12 using scholars from such relevant disciplines as political science, political philosophy, history, law and economics;

(3) The development of model curricular frameworks in civics and government education and economic education;

(4) The administration of international seminars on the goals and objectives of civics and government education or economic education in constitutional democracies (including the sharing of curricular materials) for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers; and

(5) The evaluation of civics and government education or economic education programs; and

(b) Have the authority to subcontract with other organizations to carry out these provisions.

Deadline for Transmittal of Applications: April 17, 1995.

Deadline for Intergovernmental Review: June 16, 1995.

Applications Available: February 23, 1995.

Available Funds: $3,000,000.

Estimated Range of Awards: $1,300,000 to $1,700,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR parts 98 and 99.

Priorities: Under 34 CFR 75.105(c)(3) and 20 USC 5951(c)(2)(B) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Absolute Priority 1—International Education Exchange Program in Civics and Government Education.

Absolute Priority 2—International Education Exchange Program in Economic Education.

To meet one of these two priorities, each applicant must propose to carry out the following activities, in either civics and government education or economic education:

(a) Provide eligible countries with—

(1) Seminars on the basic principles of the United States constitutional democracy and economics, including seminars on the major governmental and economic institutions and systems in the United States, and visits to such institutions;

(2) Visits to school systems, institutions of higher learning, and nonprofit organizations conducting exemplary programs in civics and government education and economic education in the United States;

(3) Home stays in United States communities;

(4) Translations and adaptations regarding the United States civics and government education and economic education curricular programs for students and teachers, and in the case of training programs for teachers translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas;

(5) Translation of basic documents of United States constitutional government for use in eligible countries, such as *The Federalist Papers*, selected writings of Presidents Adams and Jefferson, and the Anti-Federalists, and more recent works on political theory, constitutional law and economics;

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and the preservation and improvement of an efficient market economy;

(b) Provide United States participants with—

(1) Seminars on the histories, economies, and governments of eligible countries;

(2) Visits to school systems, institutions of higher learning, and organizations conducting exemplary programs in civics and government education and economic education located in eligible countries.

(3) Home stays in eligible countries;

(4) Assistance from educators and scholars in eligible countries in the development of curricular materials on the history, government, and economies of such countries that are useful in United States classrooms;

(5) Opportunities to provide on-site demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(6) Research and evaluation assistance to determine—

(i) The effects of educational programs on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy; and

(ii) Effective participation in and improvement of an efficient market economy; and

(7) Educational programs which draw upon the experiences of emerging constitutional democracies that are created and implemented for United States students; and

(c) Assist participants from eligible countries and the United States in participating in international conferences on civics and government education and economic education. The primary participants in these conferences shall be leading educators in the areas of civics and government education and economic education, including curriculum and teacher training specialists, scholars in relevant disciplines, and educational policymakers, from the United States and eligible countries. Also, provide a means for the exchange of ideas and experiences in civics and government education and economic education among political, educational, and private sector leaders of participating eligible countries.

Note: For this program, the term "eligible country" means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, Georgia, the Commonwealth of Independent States, and any country that formerly was a republic of the Soviet Union whose political independence is recognized in the United States.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follow:

(3) *Plan of Operation* (34 CFR 75.210(b)(3)). Twelve points are added to this criterion for a possible total of 27 points.

(4) *Quality of Key Personnel* (34 CFR 75.210(b)(4)). Three points are added to this criterion for a possible total of 10 points.

For Applications or Information Contact: Dr. Joseph C. Conaty, U.S. Department of Education, 555 New Jersey Avenue NW., Room 610, Washington, D.C. 20208–5573. Telephone: (202) 219–2079. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8.a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 USC 5951

Dated: February 13, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 95–4060 Filed 2–16–95; 8:45 am]

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Part X

Department of Education

Postsecondary Education: William D. Ford Federal Direct Student Loan Program; Notice

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DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program; Solicitation of Applications

AGENCY: Department of Education.

ACTION: Notice of Solicitation of Applications.

SUMMARY: The Secretary of Education invites applications from schools to participate in the William D. Ford Federal Direct Loan (Direct Loan) Program for the 1996–1997 academic year, which is the academic year beginning July 1, 1996. This notice relates to the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program. On December 29, 1994, the Department of Education published a notice in the **Federal Register** (59 FR 67579) inviting schools to apply to participate in the third year of the Direct Loan Program. That notice included the Secretary's application and selection procedures. However, the version of the application form included with the notice did not contain an expiration date issued by the Office of Management and Budget. The form contained in the appendix to this notice contains this date. Any school wishing to apply to participate in the Direct Loan Program after the date of publication of this notice must use the application form included as an appendix to this notice. If a school has already submitted an application to the Secretary using the form published on December 29, 1994, the school does not have to reapply. Along with the revised application form, the Secretary is republishing the application and selection process for the convenience of schools.

APPLICATION DEADLINE: The deadline date for the transmittal of applications is November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Byron K. Belser, U.S. Department of Education, 600 Independence Avenue SW., Room 3022, Regional Office Building 3, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under Title IV, Part D of the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Background

The HEA directed the Secretary to phase in the Direct Loan Program. The HEA provided that the student loan volume made under the Direct Loan Program should represent five percent of the total student loan volume in academic year 1994–1995, the first year of implementation, and 40 percent for the second year of the program (academic year 1995–1996). For academic year 1996–1997, the HEA directs the Secretary to exercise his discretion in the selection of schools so that the loans made under the Direct Loan Program will represent 50 percent of the new student loan volume for that academic year unless the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the Direct Loan Program that meet the eligibility requirements for participation. See section 453(a)(2) and (3) of the HEA.

Schools participating in the Direct Loan Program transmit and receive loan origination information electronically to and from a Direct Loan Servicer and receive Federal funds electronically. The Secretary provides PC software and mainframe specifications, as well as technical assistance, to schools to facilitate their implementation of the Direct Loan Program.

The standards for institutional participation in the Direct Loan Program for the 1995–1996 and subsequent academic years were published as final regulations on December 1, 1994 (59 FR 61664). See 34 CFR 685.400, and § 685.402. These final regulations were developed after the Secretary received input from the financial aid community and other members of the public through a negotiated rulemaking process and numerous other opportunities for public comment.

Application and Selection Process

The Secretary is directed to increase the loan volume under the Direct Loan Program to 50 percent of the total student loan volume for the 1996–1997 academic year, unless the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the Direct Loan Program and meet the eligibility requirements for participation.

The Secretary will accept applications from schools to participate in the Direct Loan Program through November 1, 1995. The Secretary will select schools to participate in the Direct Loan Program periodically throughout 1995 and will notify the institutions that are selected individually. The Secretary will publish a final list of the schools selected to participate in the Direct Loan Program after he has evaluated all of the applications received on or before November 1, 1995. The Secretary encourages potential participants to submit applications early. This will provide a school with more time to plan for its transition into the Direct Loan Program and to begin the transition process. Further, a school will be able to take advantage of training opportunities and prepare any campus materials it may choose to use in the Direct Loan Program.

A school that has been selected to participate in the Direct Loan Program for the 1995–1996 academic year, and an eligible school that applied to participate in the program for that year but was not selected, need not submit an application for the 1996–1997 academic year. If an eligible school that applied but was not selected for participation in the second year does not wish to be considered for participation in the third year, it should notify the Secretary.

Solicitation of Applications for Participation in the Direct Loan Program—1996–1997 Academic Year

Purpose of Program

To provide loans to enable students and parents of students to pay the students' costs of attendance at a postsecondary school. Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Eligible Applicants

Colleges, universities, graduate and professional schools, and vocational and technical schools that meet the definition of an eligible institution under section 435(a) of the HEA.

Deadline for Transmittal of Applications

November 1, 1995.

For Information Contact

Byron K. Belser, U.S. Department of Education, 600 Independence Avenue SW., Room 3022, Regional Office Building 3, Washington, D.C. 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Application Form and Instructions

The Secretary has developed an application form for a school to use to apply to participate in the Direct Loan Program. A copy of the application form is included as an Appendix to this notice. On this form, the signature of the President or Chief Executive Officer (CEO) of the institution is required. In addition, the school must designate an official at the school to receive Direct Loan materials.

If a school is applying as part of a consortium, it must indicate the exact names of all schools in the consortium and the name of the destination point (school or outside entity) for the consortium.

In order to be considered for participation in the 1996–1997 academic year, a school must complete the application and submit it to the address below as soon as possible, but no later than November 1, 1995.

A school may mail or fax the application to: U.S. Department of Education, Office of Postsecondary Education, ROB–3, Federal Direct Loan Task Force, Room 4025, 600 Independence Avenue SW., Washington, DC 20202–5162, FAX: (202) 260–6718, (202) 260–6705, or (202) 260–6706.

(Catalog of Federal Domestic Assistance Number 84.268, William D. Ford Federal Direct Loan Program)

Dated: February 14, 1995.

David A Longanecker,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–P

1996-97

Form Approved
O.M.B. No. 1840-0664
Expiration Date: 2/28/96

William D. Ford Federal Direct Loan Program Participation Application

Section I: School Information

Please see instructions on back of application.

I-A. School Name: _____

I-B. FFEL Code: _____ I-C. IRS EIN: _____

Official Information

	President/CEO/Other	***Designated Official to Receive Direct Loan Materials***
I-D	Name ☐ Dr. ☐ Ms. ☐ Mr. _____	☐ Dr. ☐ Ms. ☐ Mr. _____
I-E.	Title: _____	_____
I-F	Address: _____	_____
	_____	_____
	_____	_____
I-G	Telephone Number: _____	_____
I-H.	FAX Number: _____	_____

I-I Signature of President or CEO: _____ Date: _____

Section II: School Participation

II-A. Would you like to participate in both the Direct Loan Program and the FFEL Program? Yes ☐ No ☐

II-B. Do you have any delinquent outstanding debts to the federal government? Yes ☐ No ☐

If yes, please indicate the name of the agency or agencies. _____

If you are not applying as a consortium, then you do not need to complete Section III.

Section III: School Consortium Information

Note that all schools in the consortium must file an application and must complete Section III.

Destination Point: _____ **FFEL # of Destination Point** _____

NAME OF SCHOOL _____ **FFEL # OF SCHOOL** _____

_____ _____

_____ _____

_____ _____

Continue on a separate sheet of paper if necessary.

William D. Ford Federal Direct Loan Program Application Instructions

I-A School Name - Enter the name of your school as it appears on the Federal Family Education Loan (FFEL) Program Participation Agreement (PPA). If the name of the school has changed since the PPA was signed, enter the school's new name, which should be currently on file with the Department.

I-B FFEL Code - Enter the six-digit school identification number under which your school receives its FFEL funds and FFEL default rate notifications. Note that only one FFEL code per application will be accepted. Institutions that receive funds from the Department under more than one FFEL code and are consequently notified of more than one default rate must apply for the Direct Loan Program under separate FFEL numbers.

I-C IRS Employer Identification Number - Enter your school's nine-digit IRS employer identification number (EIN). This is the tax identification number the IRS issues to businesses.

I-D Printed Name - Please print the name of the president or chief executive officer authorizing your school's application for the Direct Loan Program and whose signature is in the signature block. Also enter the name of the official designated to receive Direct Loan materials.

I-E Title - Enter the titles of persons indicated in I-D.

I-F Address - Enter the address of the president or chief executive officer who is authorizing the school's application for the Direct Loan Program If the address of the school has changed since the PPA was signed, enter the new address, which should be currently on file with the Department. Also enter the address of the official designated to receive Direct Loan materials.

I-G Telephone Number –Enter the telephone number of the president or chief executive officer who is authorizing your school's application for the Direct Loan Program. Also enter the telephone number of the official designated to receive Direct Loan materials.

I-H FAX Number - Enter the FAX number of the president or chief executive officer who is authorizing your school's application to the Direct Loan Program

I-I President/CEO Signature - The signature of the president or chief executive officer authorizes the school's application to the Direct Loan Program This signature is necessary for a school to be considered for acceptance into the Direct Loan Program. By signing this application you certify that the information provided on the form is true and correct.

II-A Type of Participation - If your school wishes to offer new loans only through the Direct Loan Program, check the "No" box. If your school wishes to offer some students new loans through the FFEL Program and some of its new loans through the Direct Loan Program, check the "Yes" box.

II-B Delinquent Debts - Check the box that indicates whether your school owes a delinquent debt to any federal agency. If yes, provide the name of the agency or agencies.

III Consortium Information - For a school to be part of a consortium it must possess a six-digit school identification number under which it has received its FFEL funds and FFEL default rates. Schools that are part of a consortium will participate in the Direct Loan Program in the same manner as the other Direct Loan schools, except that the communication between the Secretary and the schools in consortia is through a single destination point.

In the space provided, please indicate the name (and FFEL number, if the destination point is a school) of the destination point for your consortium. In the additional space provided, list the names and corresponding FFEL numbers of all members of your consortium.

Applications should be sent to:–

U.S. Department of Education
Office of Postsecondary Education, ROB-3
Direct Loan Task Force, Room 4025
600 Independence Avenue, SW
Washington, DC 20202-5162

FAX (202) 260-6705

Paperwork Reduction Notice

The time required to complete this information collection is estimated to average 0.2 hours (12 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to U.S Department of Education, Washington, DC 20202-4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: **U.S. Department of Education, Office of Postsecondary Education, ROB-3, Direct Loan task Force, Room 4025, 600 Independence Avenue, SW, Washington, DC 20202-5162**

[FR Doc. 95–4059 Filed 2–16–95; 8:45 am]
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Part XI

Department of the Interior

Bureau of Indian Affairs

Blackfeet Irrigation Project O&M Rate Increase, Montana; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Irrigation Project O&M Rate Increase, Montana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate change.

SUMMARY: The Bureau of Indian Affairs is increasing the Blackfeet Irrigation Project's operation and maintenance assessment rate to $11 per assessable acre for the 1995 irrigation season and subsequent seasons. The $3 increase to the current rate of $8 per acre will help offset cost increases for personnel, supplies, materials and services.

DATES: This rate is effective for the 1995 irrigation season and will remain in effect until modified.

FOR FURTHER INFORMATION CONTACT: Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101. Telephone number: (406) 657–6315.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301, and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385), and has been delegated to the Assistant Secretary—Indian Affairs pursuant to Part 209 Departmental Manual Chapter 8.1A and Memorandum, from Chief of Staff, Department of the Interior, to Assistant Secretaries, Heads of Bureaus and Offices, dated January 25, 1994.

The operation and maintenance assessment per assessable acre is based on the estimated normal operation and maintenance cost of the Project for one fiscal year. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including, but not limited to, labor, materials, equipment and services for irrigation canals, dams, flow control gates, pumps and other facilities.

The Notice proposing this increase to the Blackfeet Irrigation Project's operation and maintenance assessment rate was published on November 16, 1994, (59 FR 59244). A 30-day comment period was allowed. The Bureau received 13 comments from water users and other interested persons.

While all 13 comments opposed the rate increase, most recognized that the Project experiences delivery problems and requires better maintenance. The rate increase established herein will allow for the performance of this and will enable the Project to deliver water as required. The commentators failed to identify other means of achieving these goals without raising the operation and maintenance assessment rates. The BIA has therefore determined to proceed with the rate increase as established herein. The BIA will respond to each commentator further by letter.

Without this rate increase, critically needed maintenance cannot be completed, and the project's ability to deliver water will be diminished.

Dated: February 8, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–4056 Filed 2–16–95; 8:45 am]

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Part XII

Department of Education

Telecommunications Demonstration Project for Mathematics; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.286]

Telecommunications Demonstration Project for Mathematics; Notice Inviting Applications for New Awards for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The purpose of the Telecommunications Demonstration Project for Mathematics is to support a grant to a nonprofit telecommunications entity, or partnership of such entities, to carry out a national telecommunications-based demonstration project to improve the teaching of mathematics.

Eligible Applicants: Nonprofit telecommunications entity or partnership of such entities.

Deadline for Transmittal of Applications: April 12, 1995

Deadline for Intergovernmental Review: June 12, 1995

Estimated Available Funds: $2,250,000

Estimated Range of Awards: $2,250,000

Estimated Average Size of Awards: $2,250,000

Estimated Number of Awards: 1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months

Budget Period: 12 months

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provision Act– Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

Description of Program: The Telecommunications Demonstration Project for Mathematics is authorized by Part D of Title III of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6951–6952).

The Secretary is authorized to award a grant to a nonprofit telecommunications entity, or a partnership of such entities, to carry out a national telecommunications-based demonstration project to improve the teaching of mathematics. The project must be designed to assist elementary and secondary school teachers in preparing all students for achieving State content standards. The project must be conducted at elementary and secondary school sites in at least 15 States.

Application Requirements: Each nonprofit telecommunications entity, or partnership of such entities, that desires a grant must submit an application that——

(1) Demonstrates that the applicant will use the existing publicly funded telecommunications infrastructure to deliver video, voice and data in an integrated service to train teachers in the use of new standards-based curricula materials and learning technologies;

(2) Assures that the project for which assistance is sought will be conducted in cooperation with appropriate State educational agencies, local educational agencies, State or local nonprofit public telecommunications entities, and a national mathematics education professional association that has developed content standards; and

(3) Assures that at least 25 percent of the benefits available for elementary and secondary schools from the project for which assistance is sought will be available to schools of local educational agencies which have a high percentage of children counted for the purpose of part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. These are the criteria for evaluating discretionary grants contained in the Education Department General Administrative Regulations (EDGAR).

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.* (1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Part D of Title III of the Elementary and Secondary Education Act of 1965, as amended, including consideration of——

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Part D of Title III of the Elementary and Secondary Education Act of 1965, as amended.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Part D of Title III of the Elementary and Secondary Education Act of 1965, as amended, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact, upon receipt of this notice, the Single Point of Contact for each of those States and follow the procedures established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on June 10, 1994 (59 FR 30214–30216).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.286, U.S. Department of Education, FB–10, Room 6213, 600 Independence Ave., SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, 600 Independence Avenue, SW., Attention: (CFDA# 84.286), Washington, DC 20202–4725.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Room #3633, Attention: (CFDA# 84.286), General Services Administration, National Capital Region, 7th and D Streets, SW., Washington, DC 20202–4725.

Note: Upon receipt of your application, the Department's Application Control Center will assign your organization an identification number which will be returned to you via receipt. Please refer to this number in any future correspondence concerning your application.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Although the Department of Education requires applicants to submit an original and two copies of an application, it has been our experience that the entire review process can be completed faster if applicants voluntarily submit an original and five copies of the application package. The additional copies would be used during the review process.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Applicant Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the closing date of the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Special Budget Instructions

The Department is participating in the Administration's Reinventing Government Initiative. As part of that initiative, the National Performance

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Review urged the Department to "eliminate the continuation application process for budget years within the project period" and replace it with "yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery." The Department is implementing this recommendation for as many programs as possible beginning in fiscal year 1995. This will require all applicants for multi-year awards to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award. A new generic budget form, included in this package, requests the information needed to implement this initiative.

By requesting detailed budget information in the initial application for the total project period, the need for formal noncompeting continuation applications in the remaining years will be eliminated. An annual report will be used in place of continuation application to determine progress, thereby relieving grantees of the burden to resubmit assurances, certifications, etc.

Part III. Application Narrative

Additional Materials: Public Reporting Burden.

Assurance—Non Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transaction (ED 80–0014, 9/90) and instruction.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Adria White, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502, Washington, D.C. 20208–5644. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6951–6952.

Dated: February 14, 1995.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

BILLING CODE 4000–01–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): -

8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 8 6

TITLE: Telecommunications Demonstration Project for Mathematics

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4000–01–C

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assiste .e. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been give an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7 Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4005-01-M

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under Project Year 1. Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY

U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

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Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

BILLING CODE 4000-01-C

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, DC 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary—U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):
For each project year for which funding is requested, shown the total amount requested for each applicable budget category.

Lines 1–11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only year, leave this space blank.

Section B—Budget Summary—Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave the column blank.

Line 12, columns (a)–(e):
Show the total matching or other contribution for each project year

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only year, leave this space blank.

Section C—Other Budget Information—Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to the program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications. The narrative should encompass each function or activity for which funds are being requested and should include the following:

Abstract: Attach a *one-page*, double-spaced abstract following the Federal Assistance Face Sheet, Standard Form 424. This is a key element in all proposed narratives and should include statements about: (i) The need for the project; (ii) the proposed plan of operation; and (iii) the project's significance/intended outcomes.

Narrative: Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package. Provide a description of the applicant entity or partnership, describe the school sites where the demonstration will take place, and address each of the application requirements contained in this notice. Include any other pertinent information that might be useful in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, standard typed pages (on one side only), including appendices, although the Secretary will consider applications of greater length.

Public Reporting Burden: Collection of information necessary to obtain an award under the Telecommunications Demonstration Project for Mathematics affects nine or fewer applicants. Thus, under 5 CFR 1320.4(a), the Assistant Secretary informs potential respondents that the collection of information in this application is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1990.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real

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Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.) (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of applicant

PR/award number and/or project name

Printed name and title of authorized representative

Signature

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR part 85, for all lower tier transactions meeting the threshold and tier requirements stated at section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliable was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage this section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of applicant

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PR/Award number and/or project name

Printed name and title of authorized representative

Signature

Date

BILLING CODE 4000-01-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by O.
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4000–01–P

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

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[FR Doc. 95–4061 Filed 2–16–95; 8:45 am]

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federal register

Friday
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Part XIII

The President

Proclamation 6770—National Poison Prevention Week

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Friday, February 17, 1995

Presidential Documents

Title 3—

The President

Proclamation 6770 of February 15, 1995

National Poison Prevention Week, 1995

By the President of the United States of America

A Proclamation

Children are the future of our country, and protecting them is America's most sacred responsibility. All of us—government leaders, citizens, parents—are bound to do whatever we can to keep them safe and healthy. Simple safety measures—such as using child-resistant packaging correctly, locking cupboards, keeping prescriptions and cleaning supplies out of the reach of a child's hands—all can protect our most precious resource from the dangers of poison and other hazardous substances.

The U.S. Consumer Product Safety Commission (CPSC) has made great progress in safeguarding our young people by mandating child-resistant packaging for medicine and dangerous chemicals. And the invaluable work of the Nation's poison control centers has saved countless lives; both young and old. These public health efforts have reduced childhood poisoning deaths from 450 in 1961 to 62 in 1991

However, according to the American Association of Poison Control Centers, nearly 1 million children each year are exposed to potentially poisonous medicines and household chemicals. Every year we lose children to poisoning—and almost all of these poisonings are preventable. This week—and every week—we must rededicate ourselves to informing everyone of the importance of prevention and to educating all caregivers about ways to prevent childhood poisonings.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by Public Law 87–319 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 19, 1995, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95–4274
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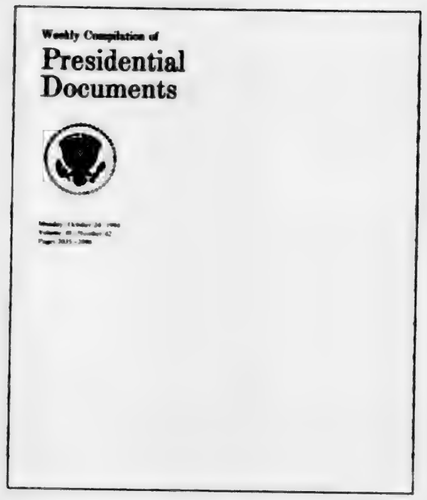

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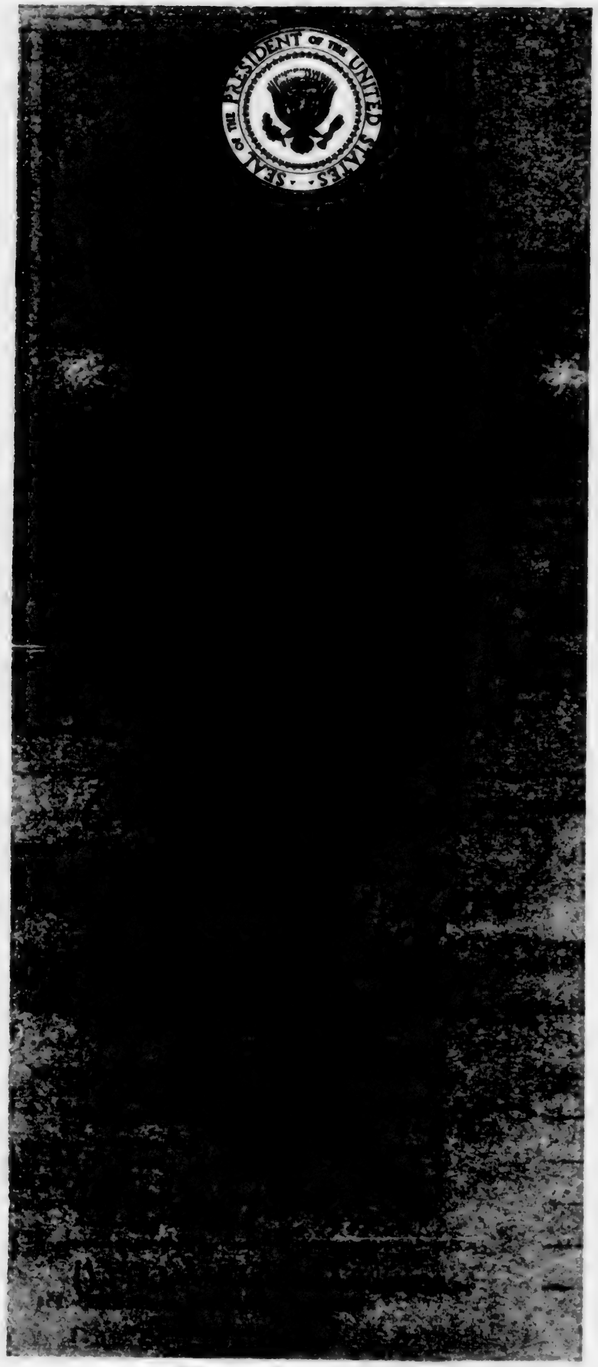

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations concerning methods of withdrawing funds from the Thrift Savings Plan (TSP). These regulations reflect changes made to eligibility requirements for the withdrawal of accounts from the Thrift Savings Plan resulting from the enactment of section 9 of the Federal Workforce Restructuring Act of 1994. That law provides that all of the withdrawal methods formerly reserved for persons retiring from Government employment, and all related spousal rights, would become available to all Thrift Savings Plan participants who separates from Government employment, regardless of the person's length of service or retirement eligibility at the time of separation.

EFFECTIVE DATE: These rules are effective March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Petrick, (202) 942–1661.

SUPPLEMENTARY INFORMATION: The TSP was originally established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335. FERSA set forth provisions, found in subchapter III of chapter 84 of title 5, United States Code, for the administration of the TSP. Provisions concerning TSP withdrawals were found primarily in sections 8433 and 8434 of title 5. Provisions concerning spousal rights relating to withdrawals were found primarily in section 8435 of title 5.

As originally enacted, FERSA conditioned eligibility for the various withdrawal methods upon eligibility for basic retirement benefits. Consequently, persons without such eligibility upon separation from Government employment (generally less than 5 years of service) were not permitted to leave their accounts in the TSP and were only permitted to withdraw them by transferring them to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. They could not receive a cash payment of their account. Persons with 5 or more years of service could leave their accounts in the TSP and had more withdrawal options, but cash payment options were only available to them when they reached retirement age. Spousal rights were also conditioned upon the retirement eligibility of the participant at time of separation.

These rules proved confusing to participants and difficult to administer, requiring, for example, various withdrawal forms depending upon the participant's retirement eligibility. As a result of Public Law 103–226, which was enacted on March 30, 1994, all TSP participants who separate from Government employment will now have the same withdrawal options available to them.

Spousal rights rules were also simplified by Public Law 103–226. Under the new rules, spouses of all FERS participants who separate from Government service with an account balance of more than $3,500 have the right to a survivor annuity, unless the spouse waives that right. The required annuity is a joint life annuity with the spouse with 50 percent survivor benefits, level payments, and no cash refund feature. Spouses of Civil Service Retirement System (CSRS) participants are entitled to notice whether or not the participant separated from Federal service with eligibility for basic retirement benefits. Public Law 103–226 eliminated the requirement to notify former spouses of FERS and CSRS participants who separated from Federal service without eligibility for basic retirement benefits that the participant is withdrawing his or her TSP account.

On December 28, 1994, the Board published a proposed rule in the **Federal Register** (59 FR 66796) proposing a new subpart 1650 reflecting the new simplified TSP withdrawal rules. Previously, on September 13, 1994, the Board had published amendments to spousal rights regulations in the **Federal Register** (59 FR 46934) reflecting the changes in spousal rights rules made by the new legislation. Additionally, the September 13, 1994 proposed amendments also amended the rules for obtaining an exception to the spousal waiver and notice requirements to allow participants seeking such an exception to submit copies of documents rather than originals or certified copies and to use statements instead of affidavits and declarations. Further, those amendments provided that a withdrawal form received within one year of an approved exception may be processed without obtaining a new exception.

The Board is now issuing both sets of regulations in this final rule promulgating new Part 1650. The Board did not receive any comments on the proposed rule issued on December 28, 1994. However, the Board did receive one comment on the proposed changes to spousal rights rules published on September 13, 1994. The comment concurred with the proposed revisions to the spousal rights rules, including the elimination of the word "current" when referring to the spouse. The comment recommended that the word "current" be included in the title to the subpart dealing with spousal rights because subpart A includes a definition of "current spouse." However, in accordance with the changes made by Public Law 103–226, the definitions of both "former spouse" and "current spouse" have been removed from the definitions section of part 1650 and have been replaced by a definition of "spouse." Thus, it is no longer necessary to include the term "current spouse" in the title to the subpart dealing with spousal rights.

The comment also recommended that the title to 5 CFR 1650.17 be revised to replace the word "notification" with the word "notice" to align with title with other changes made to subpart G. This change has been made in the final rule.

The Board has made a number of other changes to the proposed rule published on September 13, 1994. Based upon the experience gained in rewriting the remainder of part 1650, as issued on

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December 28, 1994, the Board has decided to rewrite and reorganize the spousal rights provisions, which the September 13 proposal only amended. This is being done in order to set forth more clearly the simplified spousal rights rules enacted by Public Law 103–226. Therefore, new § 1650.18 deals comprehensively with the rights of spouses of FERS participants, new § 1650.19 deals with the right of the spouses of CSRS participants to notice, and new § 1650.20 deals with spousal rights relating to changes in withdrawal elections. The sections concerning the granting of spousal waivers have been changed only by redesignating some of the paragraphs for the sake of clarity.

The Board has also made one change to the regulations published on December 28, 1994. Previously, the definition of an "insurable interest" found at § 1650.10(b)(4)(i), the existence of which would allow the purchase of a joint life annuity for the participant and a person other than his or her spouse, included a common-law spouse. However, the Board has determined that, if a person is a common-law spouse in a jurisdiction that recognizes common-law marriages, that person is treated under the law as being the spouse in all respects. Therefore, in the final regulations the treatment of a common-law spouse has been moved from the definition of "insurable interest" to the definition of "spouse" found in § 1650.1. This change makes it clear that a common-law spouse will be treated as a legal spouse for all purposes under these regulations.

In reissuing part 1650, the Board also decided to reorganize some of its provisions, to publish some provisions separately, and to eliminate others. Therefore, under this final rule, original subpart G, Spousal Rights, is designated in new part 1650 as subpart D. A new subpart, dealing with minimum distributions and to be designated as subpart E, will be issued separately. The subparts dealing with court-ordered payments from TSP accounts and death benefits are each being issued as separate parts in the Code of Federal Regulations. Experience has shown that each of these areas has complex rules which are different from those used to process withdrawals. Finally, the subpart entitled "Denial of Benefits," which was originally published as subpart K of part 1650, is being eliminated entirely. Experience in paying withdrawal benefits has shown that there is no need for a formal "claims" procedure with respect to those benefits. Participants or others who wish to question or challenge certain aspects of a TSP withdrawal are ..ee to do so simply by contacting the TSP Service Office or the Board. Each case must often be addressed or handled on its own merits, although, as permitted in § 1650.6, the account can be "frozen" while the matter is under review. The Board currently sees no merit in having particular procedures which participants must follow in order to request such a review. Further, participants and beneficiaries remain free to pursue any claim for benefits in Federal court pursuant to 5 U.S.C. 8477.

Section-by-Section Analysis

Subpart A

Subpart A of part 1650 sets forth the general rules affecting a participant's eligibility to withdraw his or her TSP account.

Section 1650.1 sets forth definitions of terms used in part 1650. The TSP is a defined contribution retirement plan, similar to a private sector 401(k) plan, for persons employed by the Federal Government. It is administered by the Board, an independent Federal agency within the Executive Branch, pursuant to the provisions of FERSA. Thus § 1650.1 provides general definitions for the terms "Board," "TSP" and "Plan."

Participants in the Plan are generally covered under either the Federal Employees' Retirement System (FERS), established in 1986 along with the TSP, or the Civil Service Retirement System (CSRS), which was the previous retirement system for Federal employees. However, some Federal employees, such as those employed by the State Department, are covered under separate retirement systems, which are modeled after either FERS or CSRS. Therefore, definitions of "FERS" and "CSRS" are provided which make it clear that these terms also encompass "equivalent retirement systems" such as those for State Department employees.

Definitions are also provided for the terms "account balance," "participant," and "spouse." The term "account balance," is defined to mean the nonforfeitable, valued account balance as of the month-end prior to a withdrawal. Pursuant to 5 U.S.C. 8432(g) and part 1603, Vesting, Agency Automatic (1%) Contributions of persons who separate with less than three years (or in some cases two years) of service are forfeited to the TSP prior to withdrawal of an account. Also, as noted in the discussion of § 1650.7, only the most recent valued account balance is eligible to be withdrawn. Therefore, it was deemed preferable to define "account balance" to mean the nonforfeitable (also referred to as "vested"), valued account balance rather than to repeat both modifiers each time the term was used. The term "participant" rather than "employee" is used to describe persons having a TSP account, since the withdrawal rules primarily affect people who have ceased to be "employed" but who are still participating in the Plan.

The term "spouse" is defined to include any person to whom the participant is married (as determined under the laws of the appropriate jurisdiction) on the date the participant signs a TSP withdrawal form asking him or her to state marital status. This definition recognizes that the TSP does not have information to determine marital status as of the date of separation or as of the date of payment. Instead, the TSP must rely upon the statement of the participant as to his or her marital status when the participant files TSP withdrawal forms. These statements are accompanied by a warning that a false statement is subject to criminal penalties under 18 U.S.C. 1001. The regulation makes it clear that a separated spouse is treated as a spouse under these rules. The regulation also includes in the definition of "spouse" a common-law spouse with whom the person is living in a jurisdiction that recognizes common-law spouses. Again, the participant is responsible for informing the TSP if he or she has common-law spouse under this definition.

Section 1650.2 states the general rule that, as a result of Public Law 103–226, all TSP participants who separate from Government employment have the right to choose any of the TSP withdrawal options. Those withdrawal options are set forth in subpart B. However, the availability of those withdrawal options may be affected by two other sets of rules. First, the spousal rights provisions of FERSA restrict the withdrawal options of married participants covered by the Federal Employees' Retirement System (FERS participants) to the 50 percent joint life annuity with level payments and no cash refund feature unless the spouse waives his or her right to that option. Married participants covered by the Civil Service Retirement System (CSRS participants) are not restricted in their choice of withdrawal options, buy the law requires that their spouses be notified of the withdrawal method the participant chooses. The rules implementing the changes to spousal rights resulting from Public Law 103–226 are found in subpart D.

Second, the rules relating to required minimum distributions, which are found in section 401(a)(9) of the Internal Revenue Code, require tax-qualified

government retirement plans, including the TSP, to begin making distributions to participants by April 1 of the year following the year they become age 70½ or the year they separate from Government employment, whichever is later. These rules also require that, in certain circumstances, minimum distribution amounts be paid directly to the participant rather than transferred to an IRA or other eligible retirement plan or used to purchase an annuity. Consequently, the minimum distribution rules can limit the ability of some participants to have their entire accounts paid according to the withdrawal method they choose under these rules. The Board intends to publish separate rules, adding subpart E to part 1650, describing the effect of minimum distributions on TSP accounts. Reference to the minimum distribution rules is required here because they limit the participant's ability to withdraw the entire account according to his or her choice. Until regulations are issued adding subpart E to part 1650, those rules will simply be referred to as "minimum distribution requirements."

Third, the rules concerning matrimonial court orders and child support and alimony orders can affect the ability of the participant to withdraw his or her account, as well as the amount in the account available for withdrawal. Those rules are being published separately in part 1653.

Section 1650.3 describes what constitutes a "separation from Government employment" for purposes of determining who is entitled to withdraw his or her TSP account. Section 8433 of title 5 limits the ability to withdraw an account from the TSP to persons who have "separated from Government employment." This limitation is in keeping with the primary purpose of the TSP as a retirement plan under which contributions and earnings are afforded favorable tax treatment because they will be used primarily to fund retirement benefits.

Section 1650.3 makes it clear that the term "separation from Government employment" encompasses separation from positions in the Federal Government, the Postal Service, and in organizations that have employees who by statute are eligible to contribute to the TSP. For example, certain employees of employee organizations and employees working for a state or local government on an Intergovernmental Personnel Act (IPA) assignment are eligible to participate in the TSP under the provisions of Public Law 100–238. (See 5 CFR Part 1620). Under these regulations, separation from such positions will be considered a separation from Government employment (unless the participant returns to his or her position with the Federal Government).

Section 1650.3 also makes it clear that the Board interprets the term "separation" to mean separation from Government employment (as described above) for at least 31 full calendar days. Because Congress limited access to the often significant amounts of money in TSP accounts to persons who had separated from Government employment, the Board determined that persons transferring between Government jobs (for example) should not be able to gain access to their TSP accounts after a short break in service. Thus the regulation states that a break in service must be at least 31 full calendar days. Similar rules have been adopted by Congress to limit access to refunds under the FERS and CSRS basic annuity programs.

Section 1650.4 sets forth rules for dealing with employees who are rehired by the Government before they withdraw their TSP accounts. Because the Board has decided to define "separation" to mean a break in service of 31 or more full calendar days, it is necessary to establish procedures to ensure that participants who are withdrawing have the requisite break in service. Therefore, § 1650.4(a) describes the statements that participants must make concerning their employment status and the length of their expected break in service in order to be able to withdraw their TSP accounts.

This "self-certifying" approach was deemed preferable to an approach requiring the agency immediately to report all rehired employees. Because rehired employees are not permitted to resume TSP contributions until the next election period (see 5 U.S.C. 8432(b)), agencies may not need to report transactions to the TSP concerning these employees for up to six months after the date of rehire. Consequently, information concerning the rehired employee would not otherwise be reported to the TSP promptly or within a consistent timeframe after the date of rehire. Also, the Board wanted to avoid imposing upon the employing agencies the administrative burden of reporting every rehire action to the TSP, when only a few of those actions would ever affect TSP withdrawals. Because false information provided by the participant is subject to criminal penalties, self-certification was deemed a reasonable way to ensure that persons who have been rehired (or expect to be rehired) within 31 days are prevented from withdrawing their accounts.

Section 1650.4(b) states the rules for persons who are rehired after 31 full calendar days but still want to withdraw the portion of their accounts attributable to the earlier period of employment. Section 1650.4(b) provides that such a participant can only withdraw the portion of the account balance attributable to the first period of employment. The term "attributable to the first period of employment" means amounts contributed to the account during the period of employment to which the separation relates and any earnings on those amounts as of the date of payment. Amounts contributed after the date of rehire and earnings on such amounts are excluded.

Section 1650.4(b) also provides that, if the amount in the account attributable to the first period of employment is more than $3,500, the participant can withdraw that amount only if he or she submits a valid withdrawal request form prior to the date the participant is rehired. As explained above, this requirement is fulfilled by the requirement that the participant state on the form if he or she has been rehired. It was not feasible to require that withdrawal actually occur before the date of rehire, because administrative delays on the part of the employing agency or the Board might make withdrawal impossible before then. However, it seemed inappropriate to give rehired participants the ability to withdraw their funds at any time (perhaps many years) after they were rehired. Thus, the Board has established the rule that the withdrawal request must be submitted before the date of rehire.

If, however, the amount in the participant's account attributable to the first period of employment is $3,500 or less, the participant is eligible to receive an "automatic cashout" under the procedures set forth in § 1650.17 without submitting any withdrawal forms. Therefore, the participant cannot be required to submit a withdrawal form prior to rehire in order to receive a withdrawal. For such a participant, § 1650.4(b) allows the scheduled automatic cashout of the amount attributable to the first period of employment to proceed, even if the person has already been rehired (after more than 31 days) and no forms are submitted.

Section 1650.5 states the rule that a participant cannot withdraw his or her TSP account until an outstanding loan has either been paid in full or declared to be a taxable distribution. Under the TSP loan program (see 5 CFR Part 1655),

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a participant who separates with an outstanding loan must repay his or her loan in full within 90 days. If the participant does not do so, the outstanding loan balance is declared to be a taxable distribution. The participant can also speed up the declaration of the taxable distribution by signing a statement that he or she does not intend to repay the loan. The withdrawal must be delayed until this process is completed so that, if the participant pays the loan in full, that amount will be available to be included in the withdrawal.

Section 1650.6 recognizes that, in certain circumstances, a withdrawal cannot be paid because a TSP participant's account is "frozen." The most common reason for placing a freeze on an account is that the Board receives a retirement benefits court order or an alimony or child support enforcement order. The Board is required by title 5 to honor the terms of such orders if they meet certain requirements. The requirements for such orders are discussed in part 1653, which was published in proposed form in the **Federal Register** on October 26, 1994 (59 FR 53874). If such orders are found to be qualifying, the account cannot be paid to the participant until the interest of the other party (most frequently a spouse or former spouse) has been determined and paid out. At that point the account can be "unfrozen" and the withdrawal can proceed. See 5 CFR 1653.3. This section also recognizes that the Board may need to place a freeze on an account for administrative reasons. For example, an employing agency error may have caused the account to have the wrong address. Until such an error is corrected, the account should not be paid.

Section 1650.7 discusses the timing of TSP withdrawal payments. The TSP is a "monthly valued" plan. This means that the earnings (either positive or negative) on a TSP account, and thus the "value" of the account, is determined once a month as of the end of the preceding month. For the TSP, this determination occurs at approximately mid-month, although the exact date varies, depending on the availability of the applicable rates of return. A TSP withdrawal cannot occur until the valuation process is completed for a given month; otherwise the amount to be withdrawn cannot be accurately determined. (Since all TSP funds are held in individual accounts, the amount to be withdrawn must be determined precisely; if too much or too little is paid, the difference must be absorbed by all other accounts.) The timing of the withdrawal payments in a monthly valued plan is also important for determining the timing of other actions, such as when a withdrawal election can be changed or canceled (see § 1650.14).

Subpart B of part 1650 describes the basic TSP withdrawal options which, as noted above, are now available to any TSP participant who is eligible to withdraw his or her TSP account balance under the rules stated in subpart A, and subject to the limitations found in the other rules identified in § 1650.2. The conditions for eligibility contained in subpart A are not repeated for each withdrawal method identified in subpart B. Subpart B contains the rules governing the way each withdrawal option can be exercised (for example, the availability of certain annuity options to certain participants), as well as the rules for transferring all or part of certain withdrawal payments to an IRA or other eligible retirement plan, making deferred withdrawal elections, changing withdrawal elections, and imposing limits on the date by which a withdrawal choice must be made.

Section 1650.8 provides that all TSP participants can withdraw their account balances in a single payment. The term "lump sum" is not used, since that term has a specific meaning for the tax treatment of the payment, which may or may not be applicable to all payments made under this method. All or part of the single payment received under this method can be transferred to an IRA or other eligible retirement plan in accordance with the rules set forth in § 1650.11.

Section 1650.9 sets forth the types of monthly payment options a participant can choose. Section 8433 of title 5 requires that the Board offer a participant the opportunity to receive his or her account in "one or more substantially equal payments to be made not less frequently than annually * * * " Under this provision, the board has established three options for calculating monthly payments. The options provide only for monthly payments because this was considered to be consistent with the presumed intent of the law to provide participants with the ability to receive a regular stream of retirement income from their TSP accounts.

Under the first option, described in § 1650.9(a)(1), a participant can choose monthly payments in a fixed dollar amount of his or her choice, with a minimum monthly payment amount of $25. The minimum amount avoids the administrative expense of processing small monthly payments. Under this option, which allows the participant to receive a predictable monthly income, payments continue until the entire account is paid out. When the account decreases to a point that the amount remaining is less than two payments, the remaining amount is paid out in a single payment. Therefore, the last payment may be larger than the chosen amount.

The second option, described in § 1650.9(a)(2), allows the participant to choose a fixed number of monthly payments instead of a fixed monthly payment amount. Under this option, payments are initially calculated by dividing the account balance by the number of payments chosen. Initial payments must be at least $25 for the election to be accepted. Payments are then recalculated each year in January by dividing the immediately preceding December 31 account balance by the remaining number of payments. Although each year's monthly payment amount will be different from that of the previous year, because earnings will be reflected in the annual recalculation, the annual recalculation allows the account to be paid out as evenly as possible within the elected number of payments. Each year's monthly payment amount will be increased to $25, if necessary.

The third option, described in § 1650.9(a)(3), allows a participant to have monthly payments calculated based on Internal Revenue Service (IRS) life expectancy multiple Table No. V, found at 26 CFR 1.72–9. Under this method, the monthly payment amount is calculated by dividing the account balance by the multiple from the table corresponding to the participant's age on his or her birthday in the year payments are being made, and then dividing the result by 12. Payments are recalculated in January of each year based upon the December 31 account balance and the multiple corresponding to the participant's age as of his or her birthday in the new payment year. This method allows a participant to spread monthly payments over his or her entire life expectancy. It also allows a participant who separates from Government employment prior to the year in which he or she becomes age 55 to avoid the 10 percent early withdrawal penalty on monthly payments received before the participant becomes age 59½. This result is allowed under the Internal Revenue Code because payments are based on life expectancy. The early withdrawal penalty cannot be avoided by choosing the other two monthly payment methods. However, payments made under a TSP annuity (see § 1650.10) are also exempted because they are based on life expectancy

Section 1650.9(b) states the rule that a participant cannot change his or her monthly payment election and choose a different calculation method or amount once payments have begun. This restriction is imposed because the statute requires that the payments be "substantially equal." If a participant were able to change the calculation method or amount at will, the payments would not comply with the "substantially equal" requirement. Such a process could also create significant administrative burdens for the Plan.

However, under § 1650.9(c), a participant can decide at any time to receive his or her remaining account balance in a final single payment. This recognizes that participants may have a sudden need to liquidate their account balances, for example in cases where there is a medical emergency. It was determined that the "substantially equal" rule was not violated where the account would be entirely liquidated through a final single payment.

Section 1650.9(d) Provides that, once they begin receiving equal payments, participants may invest their TSP account balances in accordance with the rules provided in part 1601, Participant Choices of Investment Funds. Under current regulations, participant accounts must be invested entirely in the Government Securities Investment Fund (G Fund) while participants are receiving monthly payments. It was originally thought that accounts of persons receiving monthly payments should be invested only in the G Fund to ensure a predictable monthly payment stream. However, with the elimination of the restrictions on participants' investment choices which originally existed, demand has grown to eliminate this restriction also. The calculation methods described above automatically account for positive and negative earnings associated with investing in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Investment Fund (F Fund), thus insuring a relatively predictable income stream. The Board intends in the future to allow participants receiving monthly payments to invest in any investment funds offered by the TSP. When this change is implemented, part 1601 will be amended, and the language of § 1650.9(d) will automatically incorporate the new rules.

Section 1650.10 describes the rules relating to TSP annuities, including the various annuity options and features among which a participant can choose. TSP annuities are monthly payments made to the participant during his or her life or to the participant and a designated joint annuitant while either one is alive. The TSP purchases annuities for participants from a private sector annuity provider using the participant's entire account balance (although in some cases minimum distribution amounts must first be paid directly to the participants).

Section 1650.10(a) describes the basic procedures and rules relating to the purchase of a TSP annuity. Annuities are purchased in the mid-month processing cycle and payments commence within approximately thirty days after purchase. Because it is not practicable to purchase annuities using small account balances, the minimum amount that can be used to purchase an annuity is $3,500. All TSP annuities and annuity features have equivalent actuarial values. This means that selection of additional features will result in a reduction in the amount of the monthly annuity payment.

Section 1650.10(b) describes the basic annuity types. Section 8434 of title 5 requires that the Board offer certain types of annuities for the TSP. The basic types of annuities offered by the TSP conform to the statutory requirement. These are a single life annuity for the participant with level payments (§ 1650.10(b)(1)), a joint life annuity for the participant and his or her spouse with level payments (§ 1650.10(b)(2)), a single life annuity or a joint life annuity with the spouse that has annual increasing payments (§ 1650.10(b)(3)). and a joint life annuity with a former spouse or a person having an insurable interest in the participant (§ 1650.10(b)(4)).

Section 1650.10(b)(3) describes how the annual increase for increasing annuities is calculated. The amount of the increase is based upon the change in the Consumer Price Index. The statute prohibits decreases in annual payments; therefore, the annual increases will be zero in years where the relevant change in the index is either negative or zero. Also, because of Internal Revenue Code limits, the annual increase cannot be more than 3 percent.

Section 1650.10(b)(4) describes the rules for the option of a joint life annuity with a person other than the spouse. As required by the statute, this option can only be used to purchase a joint life annuity with a former spouse or with a person having an "insurable interest" in the participant. The statute gives the Board discretion to define the term "insurable interest" in regulations. The definition of "insurable interest" is based upon the idea that the survivor could be expected to obtain continuing financial benefit from the participant's life. Under this definition, close relatives are presumed to have an insurable interest in the participant. However, a method is also prescribed by which the participant can establish by affidavit that another person, not in the presumed group, has an insurable interest in him or her.

Section 1650.10(c) describes the two levels of survivor benefits that are available for joint life annuities, whether with a spouse or with another person. These particular levels were not prescribed by statute, but rather were adopted by the Board based upon annuity options commonly available in the private sector. A participant who chooses a joint life annuity must also choose one of these levels. The 50 percent survivor benefit provides that, whenever one of the joint annuitants dies, the other will receive, during his or her lifetime, 50 percent of the benefit that was paid to the participant when both were alive. The 100 percent survivor benefit provides that the same amount paid to the participant when both the participant and the joint annuitant are alive will continue to be paid to the survivor during the survivor's lifetime. The initial payment amount will be lower if the 100 percent survivor level is chosen than if the 50 percent survivor level is chosen. Under the IRS minimum distribution rules, the 100 percent survivor benefit cannot be chosen for a joint annuity with someone other than the spouse if the joint annuitant is more than 10 years younger than the participant. This rule is designed to prevent the use of retirement annuities to transfer income to a much younger beneficiary (for example, a child or grandchild). However, the regulations provide (in accordance with IRS regulations) that a 100 percent benefit can be chosen for a joint annuity with any former spouse, regardless of age, if a qualifying court order (as described in part 1653) so provides.

Section 1650.10(d) describes two additional features that can be combined with certain annuities. These features are not required by statute. The Board decided to make them available based upon its evaluation of annuity features that participants would be likely to find attractive. If either feature is chosen, the monthly payment amount is reduced.

The first feature, described in § 1650.10(d)(1), is the "cash refund" feature. This feature, which can be selected for any type of annuity, provides that, if the participant (or the participant and joint annuitant in the case of a joint annuity) dies before the amount used to purchase the annuity has been paid out, the remainder of the amount used to purchase the annuity will be paid in a lump sum to the beneficiary or beneficiaries named by

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the participant. The participant who chooses this feature must, before the annuity can be purchased, complete Form TSP–11–B, Beneficiary Designation for a TSP Annuity, to name the beneficiaries to receive this payment and to state the portion of the payment to be paid to each beneficiary. After the annuity is purchased, the participant may change the beneficiaries. If the annuity is a joint life annuity, the survivor (even if not the participant) may also change the beneficiaries or their shares. Beneficiary changes after the purchase of an annuity are handled between the annuitant and the annuity provider and do not involve the TSP.

The second feature, described in § 1650.10(d)(2), is known as the "10-year certain" feature. This feature provides that, if a single life annuity is chosen, payments will be made for at least 10 years. If the participant dies before the 10-year period expires, payments will be made to a designated beneficiary for the remainder of the period. Beneficiaries under this feature are designated on a Form TSP–11–B, in the same way as under the cash refund feature. The 10-year certain feature is only available for single life annuities, because it is expected that, in most cases, payments under joint life annuities would last at least 10 years.

Section 1650.10(e) provides that the Board can establish other types of annuities and other optional annuity features, as it did in the case of the cash refund and 10-year certain features. The statute makes it clear that the Board can decide to offer additional annuity options.

Section 1650.10(f) reflects the requirement found in the statute that any annuity method must be available to separating participants for at least 5 years after the date it is eliminated. This provision appears to have been designed to prevent the Board from eliminating annuity methods precipitously, when a participant may have been planning to choose such a method. Although the 5 year requirement may have little applicability to younger participants, it appears to be designed to preserve options for those participants who are near retirement age and who might be able to change their retirement date if they knew in advance that an annuity method would cease to be offered. Although the statute only speaks in terms of elimination of a "method of payment," the regulation makes it clear that the Board would apply this rule to any annuity type (other than the statutorily prescribed annuity types), any benefit level, or any other annuity feature (such as the cash refund feature) that the Board has previously decided to offer.

Section 1650.11 describes the situations under which a participant can have the TSP transfer all or a portion of a TSP withdrawal payment to an IRA or other eligible retirement plan, as defined in the Internal Revenue Code. Transfer of the entire account balance to an eligible retirement plan was mandated by Congress in FERSA. At the time of issuance of the original interim regulations in 1987, the participant had to choose to transfer either the entire account balance or nothing at all. However, in 1992 Congress enacted Public Law 102–318, which required all tax-qualified retirement plans (including the TSP), effective in 1993, to allow the transfer to an IRA or other eligible retirement plan of all or part of any "eligible rollover distribution." Any part of an eligible rollover distribution that is not directly transferred is subject to mandatory 20 percent income tax withholding. Therefore, beginning in 1993, the Board implemented changes in the TSP transfer option to comply with the requirements of Public Law 102–318. This means that all TSP withdrawals that are identified as "eligible rollover distributions" can now be transferred, in whole or in part, to an IRA or other eligible retirement plan. Eligible rollover distributions include all single payments, as well as final single payments that end a series of monthly payments. Thus, a participant who wants his or her entire account balance transferred can elect a single payment (which is an option now available to all) and can have the entire payment transferred.

Because the definition of "eligible rollover distribution" in Public Law 102–318 includes monthly payments expected to be made for fewer than 10 years and not based on life expectancy, certain TSP monthly payments also qualify for transfer. Section 1650.11 explains that monthly payments can be transferred if the participant elects fewer than 120 payments (i.e., fewer than 10 years of monthly payments), or the participant elects a monthly payment amount which, when divided into the account balance, yields a number less than 85. This number was chosen based upon an assumed annual earnings rate of 8 percent for the account. This means that a fixed payment amount chosen by the participant that would result in fewer than 85 payments if paid in equal monthly installments from his or her existing account balance could be expected to result in fewer than 120 payments if the account accrued earnings at the rate of 8 percent per year during the payout period. TSP monthly payments calculated based on life expectancy cannot be transferred. This is because the Internal Revenue Code does not allow any payment which is calculated based on life expectancy to be transferred. (This also means that TSP annuity payments and minimum distribution payments cannot be transferred.)

Section 1650.11(d) states the definition of an eligible retirement plan, which is found in section 402(c)(8) of the Internal Revenue Code. An IRA is included in the definition of an eligible retirement plan. The Internal Revenue Code also requires that an IRA or other eligible retirement plan be maintained in the United States, which is defined as the 50 states and the District of Columbia. Plans maintained in foreign countries or in United States possessions, such as Puerto Rico, the Virgin Islands, or Guam, do not qualify.

Section 1650.12(a) contains the basic rule establishing the participant's right to choose that a single payment be made, or that monthly payments or an annuity begin, at a future date of his or her own choosing. This type of election is referred to as a "deferred withdrawal" election, and is specifically authorized in 5 U.S.C. 8433(b).

Section 1650.12(b) describes the time limit placed by 5 U.S.C. 8433(b) upon the participant's right to make a deferred withdrawal election. Under that section, a participant must choose a date for his or her withdrawal to begin that is no later than April 1 of the year following the year the participant becomes age 70½. Because the TSP is a monthly valued plan, as explained in § 1650.7, the month chosen for payment under § 1650.12(b) must be no later than March of the relevant year, so that a payment can be made by April 1. Also, because the first annuity payment is made approximately 30 days after the annuity is purchased, an annuity will be purchased in the monthly cycle prior to the month chosen. Therefore, if a participant chooses an annuity to begin in March of the year following the year in which he or she becomes age 70½ (i.e., the latest possible date), the annuity will be purchased in February of that year. Persons who are already past the limit date (e.g., participants who separate when they are age 73) when they make a withdrawal election cannot make a deferred withdrawal election. They must elect an immediate withdrawal.

The rule stated in § 1650.12(b) generally comports with the minimum distribution requirements found in the Internal Revenue Code. The minimum distribution rules generally require

separated participants to begin receiving payments from their accounts by April 1 of the year following the year they become age 70½. The rule set forth in § 1650.12(b) requires a TSP withdrawal method to begin by the same date. Eventually, the Board expects the rule set forth in § 1650.12(b), in conjunction with the rule set forth in § 1650.13 concerning the date by which an election is required, to eliminate the need for most required minimum distribution payments, except for those made in conjunction with another withdrawal election. However, as explained further in the discussion of § 1650.13, because some participants over age 70½ who leave Government employment with less than 10 years of service will still be able to defer making a decision, minimum distribution payments will continue to be made to this group.

Sections 1650.12 (c) and (d) describe the TSP procedures for notifying participants who have made deferred withdrawal elections of what actions they are permitted or required to take prior to implementation of their election.

Section 1650.13 provides rules for implementing the provisions of 5 U.S.C. 8433(h)(2). This section requires a TSP participant to make a withdrawal election by February 1 of the year following the year in which the later of three events occurs—the participant becomes age 65, the participant separates from Government employment, or the participant has 10 years of Plan participation. The statute expresses the latter event as "the tenth anniversary of the year in which * * * [the participant] became subject to this subchapter." The regulation reflects the Board's interpretation of this language to mean the effective date of the first contribution made to the participant's TSP account, but no earlier than April 1, 1987, the date the TSP first began accepting contributions. The effective date of the first contribution is also chosen for administrative purposes, because it is a date that is clearly reflected in TSP records.

For most participants (i.e., those with 10 or more years of Government service who separate or retire before age 65), this provision will operate to require a choice by February 1 of the year following the year in which the participant reaches age 65. The participant is still permitted to make a deferred election at that time, but the date of the deferral is subject to the limits stated in § 1650.12(b), which require that a deferred election must begin by April 1 of the year following the year a participant becomes age 70½. Together, these provisions ensure that a decision about the method of withdrawing the TSP account is made on or about the time a participant might be expected to retire and that payments begin no later than the year following the year in which the participant becomes age 70½. This allows both the TSP and the participant's spouse, who has certain rights with respect to the election, to be aware of the chosen withdrawal method by the normal retirement age. This also prevents the participant from receiving his or her entire account balance through the minimum distribution process without spousal involvement. However, because TSP participation only began in April 1987, the 10th anniversary of the first TSP contributions will not occur until 1997. Therefore, a withdrawal election will not need to be made under this provision until February 1, 1998, at the earliest.

By establishing a date by which the participant must make an election, the Board has also interpreted the statute as providing that a separated TSP participant need not make any withdrawal election prior to that date. Instead, a participant who separates from Government employment can decide to leave his or her account in the Plan and take no action until the required date.

If a withdrawal election is not made by the required date, the statute provides that the "benefits under this subchapter will be paid as an annuity * * *." Because the 10-year anniversary has not yet occurred for any TSP participant, there has as yet been no need to address participants who do not make an election by the required date. Section 1650.13(d) describes procedures which reasonably accommodate the language of the statute requiring that an annuity be purchased for such persons, yet also recognizes that the TSP may not be able to purchase an annuity for a participant who will not provide required information (such as a current address).

Section 1650.13(d) also provides that, for married FERS participants, the annuity that must be purchased is the required joint life annuity with the spouse. Although this is not explicitly stated in 5 U.S.C. 8433(h)(3), 5 U.S.C. 8435 requires a married FERS participant to purchase the required joint life annuity with his or her spouse if the spouse does not waive that right. If the required joint life annuity were not purchased under § 1650.13, a married FERS participant could effectively avoid the requirement to purchase a joint life annuity with the spouse by refusing to make any election at all. For single participants covered by FERS and all participants covered by CSRS, however, a single life annuity will be purchased, since there is no statutory requirement to purchase a joint life annuity with the spouse.

Section 1650.13(d)(3) recognizes that, in certain cases, the participant will not provide the TSP with adequate information to purchase the required annuity (either single life or joint life with spouse). Because the law does not allow accounts in this status to remain open indefinitely, the regulation describes a procedure whereby an account will be forfeited if there is not adequate information to purchase an annuity. However, if any person (such as the spouse or guardian, for example) can provide such information, the account will be restored and the annuity purchased. At the time of forfeiture, the participant generally would lose the right to choose a different method of withdrawal.

Section 1650.14 sets forth rules concerning participants who change or cancel their withdrawal elections. Generally, participants can change their withdrawal elections as long as they have met any applicable spousal rights requirements with respect to the new election. For example, if a spouse of a FERS participant waives his or her right to a survivor benefit when the participant chooses a single life annuity, the participant can later change his or her election to a single payment without obtaining another waiver from that spouse. However, if the participant has a different spouse when a new election is made, a waiver would be required from the new spouse.

The right both to change and cancel a withdrawal election is also affected by the date the payment is scheduled. As explained in § 1650.7, the TSP is a monthly valued plan. As such, payments are scheduled to occur once a month during the mid-month processing cycle. Participants who have their accounts invested only in the G Fund can change or cancel their election as long as the change or cancellation can be processed prior to the mid-month cycle in which the account is scheduled to pay. This is because the underlying value of investments in the G Fund does not fluctuate. However, if a participant has all or a portion of his or her account invested in the C Fund or the F Fund, the underlying value can fluctuate. Therefore, the change or cancellation must be processed no later than the second-to-last business day (the "cutoff date") of the month preceding the mid-month cycle in which the account is scheduled to pay, so that the amount to be withdrawn can be insulated from

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fluctuations in value after the end of the month. Failure to remove funds scheduled for withdrawal from the C and F Funds on the last day of the month would result in all other accounts having to absorb the fluctuations in the C and F Fund values after the end of the month. However, a person with money in the C or F Funds can change (but not cancel) his or her withdrawal election after the cutoff date if, under the changed election method, there is no change in the amount to be withdrawn from the C and F Funds as originally scheduled.

Section 1650.14(d) provides an example to illustrate the treatment of elections to change withdrawal methods made by participants whose accounts are invested in the C or F Funds.

Subpart C of part 1650 sets forth procedures adopted by the Board for processing TSP withdrawal elections and payments.

Section 1650.15 sets forth the information that must be provided by the employing agency both to the TSP and to the participant at the time of the participant's separation from Government employment.

Section 1650.15(a) requires the agency to inform the TSP recordkeeper of the participant's separation from Government employment. This is done by submitting a code indicating the separation from employment and the date of separation. Until this information is received, the withdrawal cannot be processed. Also, a withdrawal cannot occur until 30 days have elapsed since the date of separation reported by the agency. This interval ensures that normal contributions are received before the date of withdrawal and that the participant has a reasonable period of time after receipt of withdrawal and tax information from the employing agency to make withdrawal and tax withholding decisions. (The 30-day interval described in this section does not operate to enforce the rule stated in § 1650.3 that an employee rehired within 31 days is not permitted to withdraw. As explained earlier, the TSP does not maintain information on the date employees are rehired. Therefore, the 30-day interval could not ensure that employees rehired within that period were not paid. Rather, as provided in § 1650.4, that requirement is enforced by requiring the participant to certify to the length of his or her break in service and his or her employment status.)

Section 1650.15(b) requires the agency to provide certain withdrawal and tax information to the participant at the time he or she separates from employment. The Board relies on the employing agencies to distribute this information to participants. This includes TSP withdrawal materials and forms and the written explanation required by section 402(f) of the Internal Revenue Code. The Code requires plans to furnish this explanation to participants within a reasonable time prior to their withdrawal. In order to facilitate TSP participants' ability to withdraw their accounts in a timely manner, the Board has instructed employing agencies to provide participants with this information when they separate. (The TSP also mails this notice to each participant upon receipt of separation information from his or her agency, unless withdrawal forms have already been received from the participant.)

Section 1650.16 states the basic rule that, in order to withdraw his or her TSP account, a participant must complete the basic TSP withdrawal form (TSP–70) and any other form required by the TSP. As a result of the standardization of TSP withdrawal options accomplished by Public Law 103–226, the Board has been able to devise a withdrawal form that can be used by every participant to make a withdrawal choice under any of the withdrawal methods. Participants with account balances of $3,500 or less are also eligible to receive an "automatic cashout" of their accounts which requires no paperwork, as described in § 1650.17.

Section 1650.17 describes the procedures for paying out TSP accounts of $3,500 or less. These procedures differ from those relating to other TSP accounts because of Public Law 101–335. That statute amended title 5 of the United States Code to provide that a separated TSP participant with an account balance of $3,500 or less will automatically be paid the amount in his or her account in a single payment, unless the participant elects another withdrawal method. This payment is referred to as an "automatic cashout." These participants can also choose to leave their accounts in the Plan.

Section 1650.17(c) states that spousal notice and waiver provisions (to be published as subpart D) do not apply to the withdrawal of accounts of $3,500 or less. This also reflects the provisions of Public Law 101–335.

Section 1650.17(d) confirms that the automatic cashout provisions apply only while the account is $3,500 or less. If the account increase to more than $3,500 (due to additional contributions or earnings), these rules cease to apply and the participant must submit withdrawal forms as required in § 1650.16.

Section 1650.17(e) excludes accounts of less than $5.00 from the automatic cashout procedures. Many participants have contacted the TSP asking that they not continue to be sent information about very small account balances. Often these accounts represent amounts deposited into a participant's account after an initial withdrawal, where a former employing agency has discovered that it owned small amounts of lost earnings to a group of employees. (See part 1605 for rules concerning agency paid lost earnings.) The Board has also determined that, for accounts of less than $5.00, it is not prudent to undertake the administrative processing costs associated with an automatic cashout. The Board plans to forfeit these accounts to the Plan automatically under procedures to be developed. The procedures will allow participants to reclaim these amounts, if they wish.

Subpart D contains rules relating to spousal rights that apply when a TSP participant withdraws his or her account.

Section 1650.18 implements the rules regarding the rights of spouses of FERS employees with respect to TSP withdrawals. These rules are found at 5 U.S.C. 8435. As amended by Public Law 103–226, that section requires that spouses of FERS participants with account balances of more than $3,500 waive their right to a joint and survivor annuity before the participant can choose any other form of TSP withdrawal. Section 8435 further requires the Board, if it offers more than one form of a joint life annuity with the spouse, to choose the particular form of annuity which will be purchased if the spouse does not sign a waiver. In accordance with this requirement, which is referred to as the "signature requirement," the Board has chosen the joint life annuity with 50% survivor benefit, level payments, and no cash refund feature. Therefore, § 1650.18(a) prohibits a FERS participant who is married at the time he or she submits a withdrawal request from selecting a withdrawal option other than this form of joint life annuity unless his or her spouse waives this annuity. Section 1650.18(b) states the forms which the spouse must sign to execute a valid waiver. Section 1650.18(c) confirms that these procedures do not apply to FERS participants whose account balances are $3,500 or less.

Section 1650.19(a) implements the requirement found in 5 U.S.C. 8351 (as amended by Public Law 103–226) that CSRS participants with account balances of more than $3,500 cannot withdraw their accounts until their spouses are sent notice of their withdrawal elections. This is referred to as the "notice requirement." Section 1650.19(b) states that the required notice will be sent to the last know mailing address for the spouse, but that it is the responsibility of the participant to provide that address. Since the TSP does not maintain account information for spouses, and since spouses are usually not employed with the Federal Government, the TSP must rely on the participant to provide this information. The participant who provides false information is subject to criminal prosecution. Section 1650.19(c) confirms that the notice requirement does not apply to CSRS participants whose account balances are $3,500 or less.

Section 1650.20 describes the spousal rights rules that apply when either FERS or CSRS participants change their withdrawal elections. Section 1650.20(a) describes the rules that apply to spouses of FERS participants. The basic rule, as required by 5 U.S.C. 8435, is that spouses of FERS participants must waive their right to the annuity described in § 1650.18 with respect to a changed withdrawal election if the spouse did not waive the annuity right with respect to the original election. Therefore, the regulation states that, unless the same spouse has already signed a waiver of the prescribed form of annuity, the participant cannot change that withdrawal election without obtaining a waiver. If the participant has previously obtained an exception to the same spouse's signature, as described in § 1650.22, the exception is deemed applicable for one year from the date the participant signed the request form. After that date, either a waiver or a new exception must be obtained, because the circumstances surrounding the granting of the earlier exception may have changed.

Section 1650.20(b) states that the spouse of a married CSRS participant must be notified when that participant changes his or her withdrawal election. 5 U.S.C. 8351 requires another notice whenever a change of withdrawal election is made. However, if an exception to the notice requirement for the same spouse has been granted pursuant to § 1650.21, that exception is good for one year, and notice of a changed withdrawal election will not be necessary during that period.

Section 1650.21 provides that the Executive Director may grant an exception to the notice requirement for spouses of CSRS employees (as described in § 1650.19) where the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. Section 1650.21 describes the process for establishing that a spouse's whereabouts are unknown. This section has been revised to allow participants who are seeking an exception to the notice requirement based on whereabouts unknown to submit statements in lieu of affidavits or declarations in support of their requests. These statements must be made pursuant to 18 U.S.C. 1001, which provides that:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

To ensure that the persons making statements are aware of the possible penalty, § 1650.21(c) requires inclusion of the following on each statement: I understand that a false statement or willful misrepresentation is punishable under Federal law (18 U.S.C. 1001) by a fine or imprisonment or both. The Board has determined that this statement and the sanctions of 18 U.S.C. 1001 provide adequate protection against false statements, and therefore participants seeking exceptions can be relieved of the burden of providing notarized affidavits.

Section 1650.22 allows the Executive Director to grant an exception to the requirement to obtain the signature of the spouse of a FERS employee if the spouse's whereabouts cannot be determined (based on the same requirements as stated in § 1650.21) or if "exceptional circumstances warrant the exception." Section 1650.22 describes how a participant can establish that "exceptional circumstances" exist.

Section 1650.22(b)(2)(iii) has been revised to clarify the wording that must be included in a court order to justify the granting of an exception based on the express language of the order.

To ease the burden on participants further, §§ 1650.21 and 1650.22 are also being revised to delete the requirement that the participant seeking an exception from the spouse notice or signature requirements obtain and provide only documents bearing an original signature or which are embossed or which bear the imprint of a seal. Participants may not submit photocopies of documents.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only the ability of Federal employees to withdraw their TSP accounts and Board procedures relating to those withdrawals.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these regulations effective in less than 30 days. The new withdrawal rules will be implemented during the March 1995 payment cycle, which will begin on March 10, 1995. Therefore, the new withdrawal rules must be in place by that date.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director.

Federal Retirement Thrift Investment Board

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is revised to read as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

Subpart A—General

1650.1 Definitions.
1650.2 Eligibility.
1650.3 Separation from Government employment.
1650.4 Rehired employees.
1650.5 Outstanding loans.
1650.6 Frozen accounts.
1650.7 Monthly cycle for withdrawal payments.

Subpart B—Withdrawal Options

1650.8 Single payment.
1650.9 Monthly payments.
1650.10 Annuities.
1650.11 Transfer of withdrawal payments.
1650.12 Deferred withdrawal elections.
1650.13 Required date for making withdrawal election.
1650.14 Changes and cancellation of withdrawal election.

Subpart C—Procedures for Withdrawing TSP Accounts

1650.15 Information to be provided by agency.
1650.16 Accounts of more than $3,500.
1650.17 Accounts of $3,500 or less.

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Subpart D—Spousal Rights

1650.18 Spouses of FERS participants.
1650.19 Spouses of CSRS participants.
1650.20 Spousal rights when participant changes withdrawal election.
1650.21 Executive Director's exception to requirement to notify the spouse.
1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8467(b)(5), and 8474(c)(1).

Subpart A—General

§ 1659.1 Definitions.

As used in this part:

Account balance means, unless otherwise specified, the nonforfeitable valued account balance of a TSP participant as of the most recent month end prior to the date a withdrawal occurs.

Board means the Federal Retirement Thrift Investment Board, established pursuant to 5 U.S.C. 8472.

CSRS means the Civil Service Retirement System established by 5 U.S.C. chapter 83, subchapter III, or any equivalent retirement system.

FERS means the Federal Employees' Retirement System established by 5 U.S.C. chapter 84, or any equivalent retirement system.

Participant means any person with an account in the Thrift Savings Plan.

Spouse means the person to whom a TSP participant is married on the date he or she signs forms requesting spouse information to be submitted to the TSP, including a spouse from whom the participant is legally separated, and including a person with whom a participant is living in a relationship that constitutes a common-law marriage in the jurisdiction in which they live.

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan, established under subchapters III and VII of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8431 *et seq.*

Thrift Savings Plan Service Office means the office established by the Board to service separated TSP participants. This office's current address is: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

§ 1650.2 Eligibility.

A participant who separates from Government employment, as described in § 1650.3, is eligible to withdraw his or her account by one of the withdrawal methods described in subpart B of this part, subject to the rules relating to spouses' rights (set forth in subpart D of this part), minimum distributions, and domestic relations orders. A participant cannot choose a withdrawal method while he or she is employed by the Government.

§ 1650.3 Separation from Government employment.

For purposes of this part, a separation from Government employment occurs when a participant ceases employment with the Federal Government or the U.S. Postal Service (or with any other employer from a position that is deemed to be Government employment for purposes of participating in the TSP) for at least 31 full calendar days.

§ 1650.4 Rehired employees.

(a) A participant who is reemployed in a position in which he or she can participate in the TSP on or before the 31st full calendar day after the date of separation is not eligible to withdraw his or her TSP account. In order to be eligible to withdraw his or her TSP account, a participant must state on Form TSP–70 (Withdrawal Request) that he or she is separated and expects the separation to last at least 31 full calendar days. If a participant is scheduled for an automatic cashout, as described in § 1650.17, the cashout will be canceled if the participant states to the TSP that he or she has been reemployed or expects to be reemployed within 31 full calendar days.

(b) A participant who is reemployed after 31 full calendar days after his or her date of separation in a position in which the participant is eligible to participate in the TSP may withdraw the portion of his or her account balance attributable to the earlier period of employment. However, if the amount in the account attributable to the first period of employment is greater than $3,500, the participant must submit, prior to the date of his or her reemployment, a properly completed withdrawal form (TSP–70) choosing a withdrawal option that results in an immediate withdrawal. A reemployed participant may not make a deferred withdrawal election, as described in § 1650.12, or an election of monthly payments, as described in § 1650.9. If a reemployed participant is already receiving monthly withdrawal payments, such payments will stop.

§ 1650.5 Outstanding loans.

A participant is not entitled to withdraw his or her account balance until any loan outstanding at the time of separation has either been repaid in full or declared to be a taxable distribution.

§ 1650.6 Frozen accounts.

A participant may not withdraw any portion of his or her account balance if the account is frozen as a result of a retirement benefits court order or a child support or alimony enforcement order or as a result of a freeze placed on the account by the Board for another reason.

§ 1650.7 Monthly cycle for withdrawal payments.

The value of a TSP account is determined at approximately mid-month, as of the end of the preceding month, after earnings are allocated to the account. TSP transactions that require valued account balances, such as withdrawals, can only occur after the value of an account has been determined. Because of this, withdrawal payments are generally made once a month, during what is known as the "mid-month processing cycle."

Subpart B—Withdrawal Options

§ 1650.8 Single payment.

A participant can withdraw his or her entire account in a single payment.

§ 1650.9 Monthly payments.

(a) A participant can withdraw his or her account balance in two or more substantially equal monthly payments, to be calculated under one of the following methods:

(1) A fixed monthly payment amount The amount must be at least $25 per month and must satisfy any minimum distribution requirements. Payments will be made each month until the account is expended. If the last scheduled payment would be less than the chosen amount, it will be combined and paid with the previous payment;

(2) A fixed number of monthly payments. The participant's month-end account balance for the month preceding the month of the first payment will be divided by the number of payments chosen in order to determine the monthly amount. If that amount is less than $25, the election is rejected. The payment must also meet any minimum distribution requirements. In January of each subsequent year, the TSP will divide the December 31 account balance from the prior year by the remaining number of payments in order to determine that year's monthly payments. If the monthly payment amount is less than $25, it will be increased to $25. This process will be repeated each year until the account is expended; or

(3) A monthly payment amount calculated using the factors set forth in Internal Revenue Service expected return multiple table V, 26 CFR 1.72–9. There is no $25 minimum monthly payment under this method. In the year payments begin, the monthly payment amount is calculated by dividing the month-end account balance for the month preceding the month of the first payment by the factor from table V based upon the participant's age as of his or her birthday in that year. This amount is then divided by 12 to yield the monthly payment amount. In subsequent years, the monthly payment amount is recalculated each January by dividing the December 31 account balance from the previous year by the factor from Table V based upon the participant's age as of his or her birthday in the year payments will be made. That amount is divided by 12 to yield the monthly payment account.

(b) A participant who chooses to receive monthly payments calculated using one of the three methods set forth in paragraph (a) of this section cannot change the method after payments begin. Also, except as provided in paragraph (c) of this section, the participant cannot change the number of payments or the payment amount after payments begin.

(c) A participant receiving monthly payments can choose to receive the remainder of his or her account balance in a final single payment.

(d) A participant receiving monthly payments may invest his or her account balance as provided in 5 CFR part 1601.

§ 1650.10 Annuities.

(a) A participant can withdraw his or her entire account balance in the form of a life annuity. The participant's account balance must be $3,500 or more in order for the TSP to purchase an annuity. If a participant chooses this method, the TSP will be sent forms asking him or her to choose an annuity method, name a beneficiary (if required), and provide any necessary spousal waiver or spousal information. Upon receipt of the required information, the TSP will purchase the annuity from the TSP's annuity vendor using the participant's entire account balance, except for any amount necessary to satisfy minimum distribution requirements. The first annuity payment will be made approximately 30 calendar days after the purchase of the annuity. The annuity will provide a payment for life to the participant and, if applicable, the participant's survivor, in accordance with the type of annuity chosen.

(b) The following types of annuities are available to participants:

(1) A single life annuity with level payments. This annuity is based upon the life expentancy of the participant at the time of purchase and provides monthly payments to the participant as long as the participant lives.

(2) A joint life annuity for the participant and his or her spouse with level payments. This annuity is based upon the combined life expectancies of the participant and the spouse and provides monthly payments to the participant, as long as both the participant and spouse are alive, and monthly payments to the survivor, as long as he or she is alive.

(3) Either a single life or joint life annuity (as described in paragraph (b)(1) or (b)(2) of this section) where the amount of the monthly payment can increase each year on the anniversary date of the first annuity payment. The amount of the increase is based on the average annual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers as measured between the period of July through September in the second calendar year preceding the anniversary date and July through September in the calendar year preceding the anniversary date. For example, if the anniversary date of an increasing annuity occurs in November of 1995, the amount of the increase will be calculated based upon the change in the index between the July–September period in 1993 and the July–September period in 1994. Monthly payments cannot decrease, nor can they increase more than 3 percent each year. If this option is chosen in conjunction with a joint life annuity with the spouse, the annual increase continues to apply to benefits received by the survivor. (4) A joint life annuity, with level payments, for the participant and another person who either is a former spouse or has an insurable interest in the participant. This annuity is based upon the combined life expectancies of the participant and the other person. It provides monthly payments to the participant as long as both the participant and the joint annuitant are alive, and monthly payments to the survivor as long as he or she is alive. Increasing payments cannot be chosen for a joint annuity with a person other than the spouse.

(i) A person has an "insurable interest" in a participant if the person is financially dependent on the participant and could reasonably expect to derive financial benefit from the participant's continued life.

(ii) A relative (whether blood or adopted, but not by marriage) who is closer than a first cousin will be presumed to have an insurable interest in the participant.

(iii) A participant can establish that a person not described in paragraph (b)(4)(ii) of this section has an insurable interest in him or her by submitting with the annuity request an affidavit from a person other than the participant or the joint annuitant demonstrating that the designated joint annuitant has an insurable interest (as defined in paragraph (b)(4)(i) of this section) in the participant.

(c) Participants who choose a joint life annuity (with either a spouse or a person with an insurable interest) must choose either a 50 percent or a 100 percent survivor benefit. A 50 percent survivor benefit provides a monthly payment to the survivor which is 50 percent of the payment made when both the participant and the joint annuitant are alive. A 100 percent survivor benefit provides a monthly payment to the survivor which is the same amount as the payment made when both the participant and the survivor are alive. Either the 50 percent or the 100 percent survivor benefit may be combined with any joint life annuity option, except that the 100 percent survivor benefit can be combined with a joint annuity with a person other than the spouse (or a former spouse, if required by a retirement benefits court order) only if the joint annuitant is not more than 10 years younger than the participant.

(d) The following mutually exclusive features can be combined with certain types of annuities, as indicated:

(1) *Cash refund.* This feature provides that, if the participant (and joint annuitant, if applicable) dies before an amount equal to the balance used to purchase the annuity has been paid out, the difference between the balance used to purchase the annuity and the sum of monthly payments already made will be paid to the named beneficiaries. The participant (or the joint annuitant, if the participant is deceased) may name or change the beneficiaries. This feature can be combined with any other annuity option.

(2) *Ten-year certain.* This feature provides that, if the participant dies before annuity payments have been made for 10 years (120 payments), monthly payments will continue to be made to the beneficiaries selected by the participant until 120 payments have been made. This feature can be combined with any single life annuity option, but cannot be selected in conjunction with any joint life annuity option.

(e) The Board can, from time to time, establish other types of annuities, other levels of survivor benefits, and other annuity features.

(f) The Board can, from time to time, eliminate a type of annuity (except for those annuities described in paragraph (b) of this section), a survivor benefit level, or an annuity feature. However, if the Board does so, it must continue to

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allow participants to purchase annuities of the eliminated type or containing the eliminated feature for 5 years after the date the decision to eliminate the annuity type or feature is announced in the **Federal Register**.

(g) Once an annuity has been purchased, the type of annuity, any annuity features, and the identity of the joint annuitant cannot be changed, and the annuity cannot be terminated.

§ 1650.11 Transfer of withdrawal payments.

(a) At the participant's request, the TSP will transfer directly to an eligible retirement plan all or part of any withdrawal that is an "eligible rollover distribution," as defined in 26 U.S.C. 402(c)(4). A withdrawal method that is not an eligible rollover distribution cannot be transferred.

(b) The following TSP withdrawal methods are considered eligible rollover distributions:

(1) A single payment, as described in § 1650.8;

(2) Monthly payments, as described in § 1650.9, where payments are expected to last less than 10 years at the time they begin, according to the following rules:

(i) If the participant elects a number of monthly payments, the number of payments must be fewer than 120;

(ii) If the participant elects a monthly payment amount, the amount, when divided into the participant's account balance as of the end of the month prior to the first payment, must yield a number less than 85.

(3) A final single payment, as described in § 1650.9(c).

(c) The following withdrawal methods are not eligible rollover distributions:

(1) Any annuity purchased by the TSP.

(2) Any monthly payment that does not meet the rules set forth in paragraph (b)(2) of this section, including any monthly payment computed based on the Internal Revenue Service expected return multiple table V (see § 1650.9(a)(3)).

(3) Any minimum distribution payment or any portion of another payment which represents a minimum distribution payment.

(d) An eligible retirement plan is a plan defined in 26 U.S.C. 402(c)(8). There are three types of eligible retirement plans: an Individual Retirement Arrangement (IRA) (which can be either an individual retirement account or an individual retirement annuity), a plan qualified under 26 U.S.C. 401(a), and a plan described in 26 U.S.C. 403(a). An IRA or other eligible retirement plan must be maintained in the United States, which means one of the 50 states or the District of Columbia.

§ 1650.12 Deferred withdrawal elections.

(a) Subject to paragraph (b) of this section, a participant who separates from Government employment and elects to withdraw his or her account under one of the methods provided in §§ 1650.8, 1650.9, or 1650.10 may specify a future date (which shall be a month and year) for payment of the withdrawal.

(b) The future date chosen under this section cannot be later than March of the year following the year in which the participant becomes age 70½. If that date has already passed when the participant makes an election, the participant cannot choose a future date.

(c) If the withdrawal method chosen for future payment is a single payment or monthly payments (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen that such payments are scheduled to begin. If the payments are eligible rollover distributions, the participant may choose to transfer all or part of the payments to an Individual Retirement Arrangement (IRA) or another eligible retirement plan.

(d) If the withdrawal method chosen for future payment is an annuity (and the date specified for payment is more than four months in the future on the date the election form is processed), the participant will be notified before the date chosen. At that time, the participant will be sent information asking him or her to choose an annuity method, name a beneficiary (if the cash refund or 10-year certain feature is chosen), and provide any necessary spousal waiver or spousal information.

§ 1650.13 Required date for making withdrawal election.

(a) A participant who separates from Government employment need not elect one of the withdrawal methods provided in §§ 1650.8, 1650.9, or 1650.10 until February 1 of the year following the latest of these dates:

(1) The date upon which the participant becomes age 65;

(2) The date that is 10 years after the effective date of the first TSP contribution made by or on behalf of the participant (but not earlier than April 1, 1987); or

(3) The date the participant separated from Government employment.

(b) A separated participant may make a withdrawal election before the date described in paragraph (a) of this section, but is not required to do so.

(c) A participant will fulfill the requirements of paragraph (a) of this section by making a deferred withdrawal election (as described in § 1650.12) by the required date, provided that the date described in § 1650.12(b) has not already occurred.

(d) If a participant does not make an election by the date required by this section, the TSP will purchase an annuity for the participant in accordance with the following rules:

(1) If a participant is covered by the Federal Employees' Retirement System (FERS) and is married on the date an election is required by this section, the TSP will purchase a joint life annuity with his or her spouse with a 50 percent survivor benefit, level payments, and no cash refund feature.

(2) If the participant is covered by the Civil Service Retirement System (CSRS) or the participant is not married on the date an election is required by this section, the TSP will purchase a single life annuity with no other features.

(3) If the participant fails to provide the TSP with adequate information to purchase one of the annuities described in either paragraph (d)(1) or (d)(2) of this section, as appropriate, by the date an election is required by this section, and such information cannot be obtained by the TSP from other sources, the participant's account will be forfeited. If the TSP is later provided with the required information, the TSP will purchase an annuity in accordance with this section, using the amount forfeited. No earnings will be credited to this amount after the date of forfeiture.

§ 1650.14 Changes and cancellation of withdrawal election.

(a) *Basic rule.* Subject to paragraphs (b) and (c) of this section and the rules relating to spouses' rights, a participant who has separated from Government employment can change his or her withdrawal election to any other withdrawal election or can cancel his or her withdrawal election if the change or cancellation can be processed before the withdrawal election is scheduled for disbursement.

(b) *Cutoff dates.* For participants who have any part of their accounts invested in the Common Stock Index Investment Fund (C Fund) or the Fixed Income Index Investment Fund (F Fund), a withdrawal payment that has been approved is scheduled on the second-to-last business day of the month preceding the month the withdrawal payment is to be made. For participants whose accounts are invested entirely in the Government Securities Investment Fund (G Fund), a withdrawal payment that has been approved is scheduled by the close of business on the day before the mid-month processing cycle in which payments are made.

(c) *Special Rule for C and F Fund Participants.* Participants who have any part of their accounts invested in the C or F Funds may also change to another withdrawal method if the requested change can be processed before the close of business on the day before the mid-month processing cycle in which payment will be made, and provided that under the new withdrawal method the amounts they have invested in the C or F Funds will still be withdrawn as originally scheduled from those Funds during the mid-month processing cycle.

(d) *Example for participants whose accounts are invested in the C or F Funds.* This example illustrates the operation of the rules set forth in paragraphs (b) and (c) of this section for participants who have a portion of their accounts invested in the C or F Funds.

Example 1. Assume that such a participant wishes to withdraw the account by purchasing a single life annuity at the earliest possible date. The participant is married and has obtained the necessary waiver from her spouse for the purchase. All necessary forms have been submitted by the middle of April; thus, on the second-to-last business day in April, the annuity will be scheduled to be purchased in the May mid-month processing cycle. However, in late April, the participant decides that she would rather receive the account in a single payment. The participant must submit a new Form TSP–70 electing the new withdrawal method. (She does not need a new spousal waiver, since her spouse already waived his right to a survivor benefit.) In this case, the participant will be able to change to a single payment if her properly completed Form TSP–70 is received and processed by the TSP recordkeeper by the close of business on the day before the May mid-month processing cycle. If that occurs, she will receive the single payment in May, instead of having the annuity purchased then.

If, on the other hand, the participant wished to cancel her annuity purchase and leave her money in the Plan (or to change to a deferred withdrawal option), the TSP recordkeeper would have to be able to process her cancellation or change no later than the second-to-last business day in April. If that did not occur, the annuity purchase would proceed in May.

Subpart C—Procedures for Withdrawing TSP Accounts

§ 1650.15 Information to be provided by agency.

(a) *Information to be provided to the TSP.* When a TSP participant separates from Government employment, his or her employing agency must report the separation (including the date of separation) to the TSP recordkeeper. Until the TSP recordkeeper receives this information from the employing agency, it cannot process a withdrawal for the participant. A withdrawal cannot occur until at least 30 full calendar days have elapsed after the date of separation.

(b) *Information to be provided to the participant.* When a TSP participant separates from Government employment, his or her employing agency must furnish the participant with the most recent copies of the TSP withdrawal booklet, withdrawal forms, and tax notice. The employing agency is also responsible for counseling participants concerning TSP withdrawals.

§ 1650.16 Accounts of more than $3,500.

A participant whose account balance is more than $3,500 must submit a properly completed withdrawal election on Form TSP–70, Withdrawal Request, and any other form required by the TSP, in order to elect a withdrawal of his or her account balance.

§ 1650.17 Accounts of $3,500 or less.

(a) Unless he or she has already submitted a complete withdrawal election and can be scheduled for payment, a participant whose account balance is $3,500 or less as of the month end following receipt of separation information from the employing agency will be sent a notice informing him or her that the account balance will be paid directly to the participant automatically in the third mid-month cycle following the date of the notice if the account balance is still $3,500 or less on the date of payment. The notice will inform the participant that he or she can:

(1) Choose to transfer all or part of this payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan;

(2) Choose another withdrawal method (as described in subpart B of this part);

(3) Choose to have the payment made directly to him or her as soon as possible; or

(4) Choose to leave his or her money in the Plan.

(b) If the participant does not take one of the actions described in paragraph (b) of this section, payment will be made as scheduled.

(c) No spousal rights attach to any withdrawals made to a participant whose account balance is $3,500 or less.

(d) If a participant's account balance is $3,500 or less after separation but later increases to more than $3,500, this section will cease to apply to that participant.

(e) This section does not apply to accounts containing a balance of less than $5.00.

Subpart D—Spousal Rights

§ 1650.18 Spouses of FERS participants.

(a) A married participant covered by FERS whose account balance exceeds $3,500 must choose to withdraw his or her TSP account by having the TSP purchase a joint and survivor annuity with the spouse. The annuity chosen must have level payments, a 50% survivor benefit, and no cash refund. A married FERS participant may only choose another withdrawal election, a different type of annuity, or different annuity features if the spouse waives his or her right to the required annuity.

(b) A spouse can waive his or her right to the annuity required in paragraph (a) of this section only by signing Form TSP–70, Withdrawal Election, or Form TSP 11–C, Spouse Information and Waiver, in the appropriate place. Once a form containing a waiver is filed with the TSP Service Office, the spouse's waiver is irrevocable.

(c) A married participant covered by FERS whose account balance is $3,500 or less is not required to choose the annuity identified in paragraph (a) of this section and does not need to obtain a waiver from his or her spouse to make any withdrawal election.

§ 1650.19 Spouses of CSRS participants.

(a) The spouse of a married participant covered by CSRS whose account balance exceeds $3500 must be sent notice of the participant's withdrawal of his or her account balance prior to the participant's withdrawal.

(b) The TSP Service Office will send the notice required in paragraph (a) of this section by first class mail to the last address of the spouse on file. The participant is responsible for providing the TSP Service Office with the spouse's correct address.

(c) The spouse of a married participant covered by CSRS whose account balance is $3500 or less is not entitled to the notice prescribed in paragraph (a) of this section.

§ 1650.20 Spousal rights when participant changes withdrawal election.

(a) A married participant covered by FERS who has made a withdrawal election and who wants to change to another withdrawal election other than the annuity required in section 1650.17(a) must obtain a waiver from the spouse to which he or she is married on the date the new withdrawal form is signed, unless:

(1) That spouse previously signed a waiver of the required annuity in connection with another withdrawal election made by the participant; or

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(2) The participant was granted an exception, under the procedures set forth in § 1650.22, to the requirement to obtain that spouse's signature for a withdrawal election made by the participant within one year of the date the form requesting the change is processed by the TSP.

(b) The spouse of a married participant covered by CSRS who has made a withdrawal election and who wants to change to another withdrawal election must be notified again prior to the withdrawal, unless the participant was granted an exception, under the procedures set forth in § 1650.21, to the spouse notice requirement within one year of the date the form requesting the change is processed by the TSP.

§ 1650.21 Executive Director's exception to requirement to notify the spouse.

(a) Wherever in the regulations in this subpart it is required that the Executive Director give notice of an action to the spouse of a participant, an exception to this requirement may be granted in cases in which the participant establishes to the satisfaction of the Executive Director that the spouse's whereabouts cannot be determined. A request for an exception based on whereabouts unknown must be submitted to the Executive Director on Form TSP–16, Exception to Spousal Requirements, accompanied by one of the following:

(1) A judicial determination (court order) which states that the spouse's whereabouts cannot be determined;

(2) A police or Governmental agency determination that is signed by the appropriate department or division head which states that the spouse's whereabouts cannot be determined; or

(3) Statements by the participant and two other persons.

(i) Each statement must be signed and dated and must state the following:

I understand that a false statement or willful misrepresentation is punishable under Federal Law (18 U.S.C. 1001) by a fine or imprisonment or both.

(ii) The participant's statement must give the full name of his or her spouse, declare the inability to locate the spouse, and state the efforts made to locate the spouse. Negative statements such as "I have not seen or heard from him/her" or "I have had no contact with him/her" are not sufficient. Examples of attempting to locate the spouse include checking with relatives and mutual friends or using telephone directories or directory assistance for the city of last known address.

(iii) The statements from two other persons must support the participant's statement that the participant does not know the whereabouts of his or her spouse.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an approved exception apply to exceptions for loans under 5 CFR 1655.18.

§ 1650.22 Executive Director's exception to the requirement to obtain the spouse's signature.

(a) In this subpart, if the spouse's signature is required, the Executive Director may grant an exception to this requirement if the participant can show that:

(1) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.21; or

(2) Due to exceptional circumstances, requiring the spouse's signature would otherwise be inappropriate.

(i) An exception to the spousal signature requirement may be granted based on exceptional circumstances only when the participant presents a judicial determination (court order) or a governmental agency determination signed by the appropriate department or division head. A court order or a determination must contain a finding or a recitation of such exceptional circumstances regarding the spouse as would warrant an exception to the signature requirement.

(ii) Exceptional circumstances is narrowly construed and includes such circumstances as when a court order:

(A) Indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years;

(B) Indicates that the spouse abandoned the participant, but for religious or similarly compelling reasons, the parties chose not to divorce; or

(C) Expressly states that the participant may obtain a loan from his or her Thrift Savings Plan account or withdraw his or her Thrift Savings Plan account balance notwithstanding the absence of the spouse's signature.

(b) A withdrawal election received within one year of an approved exception may be processed so long as the spouse named on the form is the spouse for whom the exception has been approved.

(c) The requirements for establishing an exception for a withdrawal and the one-year period of validity of an approved exception apply to exceptions for loans under 5 CFR 1655.18.

[FR Doc. 95–4062 Filed 2–17–95; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 1240

[AMS–FV–93–704CF]

RIN 0581–AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim final rule which terminated a provision of the Honey Research, Promotion, and Consumer Information Order (Order) and deleted conflicting and confusing language in the Rules and Regulations issued under the Order. This action is being taken to clarify and correct the Order and rules and regulations which were amended in August 1991.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–So., Washington, DC 20090–6456; telephone (202) 720–9915

SUPPLEMENTARY INFORMATION: These amendments are issued pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended on November 28, 1990 [104 Stat. 3904, 7 U.S.C. 4601 *et seq.*], hereinafter referred to as the Act.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulation, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 10 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provision of such order, or any obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a compliant is filed within 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, which include importers, are defined as those having annual receipts of less than $5,000,000.

In accordance with the Paperwork Reduction Act (PRA) of 1980 [44 U.S.C. chapter 35], and OMB regulations [5 CFR Part 1320], the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0581–0093 and 0505–0001.

On November 28, 1990, the Act was amended by the Food, Agriculture, Conservation and Trade Act of 1990. One of the amendments to the Act redefined the requirements for honey that is exempted from assessments under the Act.

Prior to the Act's 1990 amendment, a producer or a producer-packer who produced or handled or produced and handled less than 6,000 pounds of honey per year or an importer who imported less than 6,000 pounds of honey per year were exempt from assessment. Such producers, producer-handlers, and importers applied to the Honey Board for a certificate of exemption which would be presented to the handler of the exemptee's honey. Reporting requirements for handlers included listing those producers claiming exemption.

Under the 1990 amendment to the Act, however, producers, producer-packers, and importers who produce or import during any year less than 6,000 pounds of honey are exempt from paying assessments only if that honey is (1) Consumed at home, (2) donated by the producer or importer to a nonprofit, government, or other entity that is determined appropriate by the Secretary, or (3) distributed directly through local retail outlets (e.g., farmers markets and roadside stands).

Since exempted honey may no longer be sold through handlers, handlers are no longer required to provide information to the Board on exempted honey. However, in the amendment to the Order and rules and regulations published as a final rule in the August 7, 1991, **Federal Register** [50 FR 37453], conforming changes to sections 1240.50 and 1240.114 which incorporated these changes to the Act were inadvertently not made. As published, these sections may be confusing and are in conflict with the amended Order and rules and regulations.

Section 13 of the Act provides that whenever the Secretary finds that any provision of any order issued under the Act obstructs or does not tend to effectuate the declared purpose of the Act, the Secretary shall terminate such provisions. Therefore, an interim final rule deleted obsolete and confusing language from paragraph (a) of section 1240.50 of the Order and from paragraph (b) of section 1240.114 of the regulations issued under the Order.

The interim final rule with request for comments was published in the **Federal Register** on May 2, 1994 (59 FR 22492). The interim final rule erroneously stated that comment were due on May 2, 1994. Therefore, the **Federal Register** printed a correction on May 10, 1994 (59 FR 24217) which stated that the comment period ended on June 1, 1994. No comments were received.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented with regard to the termination of provisions in the Order and the rules and regulations as hereinafter set forth, it is found that these provisions no longer effectuate the declared policy of the Act. Accordingly, the interim final rule is finalized, without change, as published in the **Federal Register** (59 FR 22492, May 2, 1994).

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

Accordingly, the interim final rule amending 7 CFR part 1240, which was published at 59 FR 22492 on May 2, 1994, is adopted as a final rule without change.

Dated: February 13, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 95–4175 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–122–2]

Animal Export Inspection Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by establishing additional standards for export inspection facilities. This action requires that all export inspection facilities have running water and water drainage systems and a telephone. This action also requires facilities where horses are inspected to have walkways in front of stalls and 12 foot high ceilings in areas where horses are inspected.

We are also requiring that animals intended for export be inspected within 24 hours of embarkation and making a minor language change to the regulations for the sake of clarity.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import-Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737–1231. Telephone: (301) 734–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United

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States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet the specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

On June 21, 1994, we published in the **Federal Register** (59 FR 31956–31957, Docket No. 93–122–1) a proposal to amend the regulations to establish additional standards in § 91.14(c) for export inspection facilities. We proposed to require that all export inspection facilities have running water and water drainage systems and a telephone. We also proposed to require that facilities where horses are inspected have walkways in front of stalls and 12 foot high ceilings in areas where horses are inspected. Finally, we proposed to require that animals intended for export be inspected within 24 hours of embarkation.

We solicited comments concerning our proposal for 60 days ending August 22, 1994. We received four comments by that date. They were from animal import/export businesses and from Animal and Plant Health Inspection Service (APHIS) veterinarians.

Three of the commenters generally supported the proposal, but requested that we require that animals intended for export be inspected closer to the time of embarkation than 24 hours. We continue to believe, however, that inspection within 24 hours of embarkation is adequate to prevent unhealthy or infected animals from leaving the United States. Further, this new requirement would not prevent APHIS veterinarians from inspecting animals closer to the time of embarkation, if they preferred.

Also, three commenters objected to the language regarding the new requirement that facilities handling horses have walkways in front of horse stalls. Specifically, commenters objected to language stating that walkways be wide enough that APHIS personnel could "monitor and inspect animals without having to enter animal stalls." One commenter felt that this language implied that APHIS veterinarians carried out animal health inspections without handling animals. Another commenter stated that, although his facility has walkways in front of horse stalls, a person would be unable to see into the stalls from the walkway, as the stalls have solid doors. A third commented that we should specify a minimum width for the walkways.

By proposing the requirement regarding walkways, we had intended only to ensure that APHIS personnel would be able to inspect a dangerous or wild horse without entering that horse's stall and risking injury. We agree that our proposal implied that APHIS personnel could carry out a health inspection without handling the horse concerned. That was not our intention and, accordingly, we are revising the language regarding the walkway requirement, which we feel is still necessary.

This final rule will require that animal inspection facilities have "walkways in front of horse stalls wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection, if necessary." Like the original requirement proposed, this revised requirement will allow APHIS personnel to inspect horses when they are unable to enter safely into horse stalls.

Also as in the proposal, the revised requirement does not specify a minimum width for walkways. We want to permit facilities to use a variety of walkway sizes and configurations, as long as they are wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection.

Finally, one of the commenters objected to several of the proposed requirements as unnecessary for the operation of an animal export facility. His objections and our responses are as follows:

Comment: The 12 foot ceiling height requirement for facilities handling horses is arbitrary. Our ceilings are 10 feet high at some points and we have never encountered any problems.

Response: We had proposed to require that ceilings be 12 feet high anywhere horses are kept. However, since horses in export facilities tend to rear up when they are being handled (especially during inspection), but usually not at other times, we will modify the ceiling height standard and require that ceilings only need to be 12 feet high in areas where horses are inspected. Again, we are making this change because we believe that horses are most likely to rear up while being inspected, and, therefore, this height requirement allows for the safe handling of horses.

Comment: Requiring animal export facilities to have storage areas for equipment accompanying animals is beyond the scope of the regulations, which are intended to facilitate the inspection of animals prior to export and to prevent the export of diseased animals.

Response: We agree that storage areas are not necessary for these purposes and, therefore, we are removing that requirement from this rule.

Comment: The language of the proposed requirement regarding drainage systems is too vague, and compliance, therefore, may be difficult.

Response: The language in this requirement is intentionally general. More specific language could limit facilities to using only certain types of drainage systems. We want to permit the use of a variety of drainage systems, so long as they meet the intent of the requirement, "to control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility."

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This rule establishes additional standards for animal export inspection facilities by requiring all facilities to have adequate running water, water drainage systems, and a telephone. This action also requires facilities where horses are kept to have walkways in front of stalls and ceilings 12 feet high in areas where horses are inspected.

Except for a small number of facilities that do not have water drainage systems and one or two facilities that do not have 12 foot high ceilings, to the best of our knowledge, all of the facilities currently approved for export inspection already meet all of the other additional standards proposed here. We are only codifying, therefore, existing industry practices. We anticipate that this action will have a negative economic impact on the few existing export inspection facilities without drainage systems or 12 foot high ceilings in inspection areas for horses.

Information was not available to us for determining the economic impact of requiring that water drainage systems be installed in facilities not already so equipped. However, we are trying to minimize any economic impact by allowing these facilities 2 years from the effective date of the final version of this rule to install water drainage systems. Allowing these facilities 2 years to install the water drainage systems will ease the economic impact of this new standard, as affected facilities will have additional time to shop for different drainage system options and will be able to spread out the costs of installation. We did not receive any comments objecting to our requiring a water drainage system.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

2. In § 91.3, paragraph (a), the third sentence is amended by removing the phrase "sound, healthy," and adding the word "healthy" in its place.

3. Section 91.14 is amended as follows:

a. Paragraph (c)(2) is amended by adding a new sentence at the end of the paragraph to read as set forth below.

b. Paragraph (c)(4) is amended by adding three new sentences at the end of the paragraph to read as set forth below.

c. Paragraph (c)(5) is amended by adding the word "running," immediately following the phrase "An ample supply of" in the first sentence.

d. Paragraph (c)(11) is amended by adding a new sentence at the end of the paragraph to read as set forth below.

e. A new paragraph (c)(12) is added to read as set forth below.

§ 91.14 Ports of embarkation and export inspection facilities.

* * * * *

(c) * * *

(2) * * * Facilities that inspect horses must have ceilings at least 12 feet high in any areas where horses are inspected.

* * * * *

(4) * * * All facilities must have running water available to wash and disinfect the facilities. On and after March 23, 1995, facilities to be approved must have a drainage system; and, on and after March 23, 1997, every facility approved before March 23, 1995 must have a drainage system. The drainage system must control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility.

* * * * *

(11) * * * The facility must have a working telephone.

(12) *Walkways.* Facilities where horses are inspected must have walkways in front of horse stalls wide enough to allow APHIS personnel to safely remove horses from the stalls for inspection, if necessary.

§ 91.15 [Amended]

8. In § 91.15, paragraph (a), the phrase "within 24 hours of embarkation" is added immediately following the phrase "shall be inspected".

Done in Washington, DC, this 14th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4177 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 94–097–2]

Horses From Spain; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove Spain from the list of countries in which African horse sickness exists. We have determined that Spain is free of African horse sickness, and that restrictions on the importation of horses from Spain to prevent the spread of African horse sickness into the United States are no longer necessary. This action relieves unnecessary restrictions on the importation of horses from Spain.

EFFECTIVE DATE: March 8, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import/Export Products, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) state the provisions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS, a fatal equine viral disease, is not known to exist in the United States. Section 92.308(a)(2) of the regulations lists countries that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS, and sets forth specific requirements for horses which are imported from those countries. APHIS requires horses intended for importation from any of the countries listed, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days.

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On October 31, 1994, we published in the **Federal Register** (59 FR 54398–54399, Docket No. 94–097–1) a proposal to amend the regulations by removing Spain from the list of countries in § 92.308(a)(2), which APHIS considers affected with AHS.

We solicited comments concerning our proposal for 60 days ending December 30, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions which require horses imported from Spain to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from Spain to be shipped to and quarantined at ports designated in § 92.303, and reduces the quarantine period to an average of three days to meet the quarantine and testing requirements specified in § 92.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 92 by removing Spain from the list of countries that APHIS considers affected with AHS. This action relieves unnecessary restrictions on the importation of horses from Spain. The primary impact of this rule will be on U.S. importers of horses from Spain, none of whom can be considered a small entity. These importers will no longer be required to quarantine horses from Spain for 60 days at the New York Animal Import Center in Newburgh, NY. The rule will allow horses from Spain to be shipped to and quarantined at ports designated in § 92.303, and will reduce the quarantine and testing period to an average of three days to meet quarantine requirements specified in § 92.308.

The number of horses imported from Spain each year is extremely small. In 1993, the United States imported 20,715 horses, mules, and burros, of which only nine came from Spain. Removing the requirement for a 60-day quarantine at the New York Animal Import Center in Newburgh, NY, for horses from Spain will make the importation of these horses less expensive and logistically easier. We anticipate that the number of horses imported from Spain may slightly increase. However, with the very small number of horses imported from Spain, we anticipate the overall economic impact on businesses and individuals will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by removing "Spain,"

Done in Washington, DC, this 14th day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4176 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 409

Environmental Review Procedures

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: As part of the implementation of 1992 amendments to the Charter of the Export-Import Bank ("Ex-Im Bank"), Ex-Im Bank is removing its existing environmental regulations at 12 CFR part 409.

EFFECTIVE DATE: The removal of 12 CFR part 409 is effective as of February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Popi Artavanis, Export-Import Bank of the United States, Engineering and Environment Division, 811 Vermont Ave. NW., Washington, DC 20571, tel. (202) 565–3570.

SUPPLEMENTARY INFORMATION: Section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) ("Section 106") provides that Ex-IM Bank shall establish environmental review procedures consistent with the Bank's overall mandate to maintain U.S. export competitiveness. The procedures to be issued under Section 106 are intended to inform relevant decision-makers of potential beneficial and adverse environmental effects of goods and services for which financing is requested, so that such information will be taken into account in the decision to grant or withhold financing. Section 106 also grants the Ex-Im Bank Board of Directors explicit authority to withhold financing in a particular transaction solely for environmental reasons.

Ex-Im Bank is removing the regulations at title 12, chapter IV, of the Code of Federal Regulations, part 409 (promulgated under E.O. 12114), which were issued in 1979. In place of these regulations, the Ex-Im Bank Board of Directors has approved a set of Environmental Procedures and Guidelines after informal consultations with exporters, environmental groups, and other government agencies. The new procedures and guidelines will be effective on a one-year trial basis until February 1, 1996. These procedures and guidelines, designed to comply with the 1992 amendments to Ex-Im Bank's charter, are not subject to notice and comment requirements or to publication in the **Federal Register** pursuant to 5 U.S.C. (a)(2), 553(b)(A), and 553(d)(2). Copies may be obtained by written request from Ex-Im Bank's Engineering and Environment Division, 811 Vermont Avenue NW., Washington, DC 20571.

List of Subjects in 12 CFR Part 409

Environmental impact statements, Foreign Relations.

Accordingly, under the authority of section 106 of the Export Enhancement Act (12 U.S.C. 635i–5) 12 CFR part 409 is removed.

Dated: February 7, 1995.

Carol F. Lee,

General Counsel, Export-Import Bank of the United States.

[FR Doc. 95–3449 Filed 2–17–95; 8:45 am]

BILLING CODE 6690–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–27–AD; Amendment 39–9134; AD 95–02–15]

Airworthiness Directives; Boeing Model 747–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–100 series airplanes, that currently requires repetitive inspections to detect cracking of the wing front spar web above engine numbers 2 and 3, and repair, if necessary. This amendment requires repetitive inspections to detect cracks in the web and cracked or broken fasteners in an area beyond that specified in the existing AD. This amendment also provides an optional terminating action for the repetitive inspections. This amendment is prompted by reports of broken fasteners and cracking of the web common to the upper and lower chords in an area outside the inspection zone specified in the existing AD. The actions specified by this AD are intended to prevent fuel leakage onto an engine and a resultant fire due to cracking or broken fasteners in the wing front spar.

DATES: Effective March 23, 1995.

The incorporation by reference of Boeing Service Bulletin 747–57A2266, dated June 6, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 4, 1992 (57 FR 10415, March 26, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, is approved by the Director of the Federal Register as of March 23, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–07–11, amendment 39–8207 (57 FR 10415, March 26, 1992), which is applicable to certain Boeing Model 747–100 series airplanes, was published in the **Federal Register** on August 23, 1994 (59 FR 43304). The action proposed to require repetitive detailed visual and ultrasonic inspections to detect cracks in an area beyond that specified in the existing AD; repetitive ultrasonic inspections of the fasteners in the web-to-chords, web-to-stiffeners, and web-to-rib posts to detect cracked or broken fasteners between front spar stations (FSS) 570 and 684; and oversizing the fastener holes, performing an eddy current inspection to detect cracking of the fastener holes, and replacing cracked fasteners with oversized fasteners, if necessary.

Discussion of Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Two commenters request that the initial inspection threshold specified in paragraph (b) of the proposal be extended from 1,000 to 2,000 flight cycles (after the immediately preceding inspection) to be consistent with the recommendations of Boeing Alert Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994, which is referenced in the proposal as the appropriate source of service information. The FAA concurs. The FAA finds that such an extension of the inspection threshold will not adversely affect safety. Therefore, the final rule has been revised accordingly. In addition, the FAA has revised the "grace period" of 6 months (after the effective date of the AD), as specified in proposed paragraph (b), to 9 months in order to correspond with the recommendations of the service bulletin.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA delay issuance of this AD until the next revision of Boeing Service Bulletin 747–57A2266 is issued. (Revision 3 of that service bulletin is referenced in the proposal as the appropriate source of service information.) The commenter notes that, in accomplishing the proposed inspection/modification, many of the fastener holes required oversizing beyond the criteria described in the referenced version of service bulletin. The commenter also states that it has found several cracked rivets that had not been identified using the ultrasonic inspection technique recommended in that service bulletin. The commenter indicates that Boeing has advised that it is considering issuance of a revision to the service bulletin to address this concern.

The FAA does not concur with the commenter's request to delay issuance of the final rule. Since the issuance of the proposal, Boeing has issued Revision 4 of Boeing Service Bulletin 747–57A2266, dated November 3, 1994. This revision is essentially the same as the previous version, but specifies the locations of certain fasteners that must be inspected using ultrasonic techniques. The locations of these fasteners are in the web-to-chords, and in the top two and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar. Paragraphs (b)(3) and (c)(3) of the final rule have been revised to specify this.

Revision 4 of the service bulletin also updates certain information concerning parts and materials, adds a reference to an ultrasonic testing procedure in the Nondestructive Test Manual, provides an additional inspection method for detecting cracks inside the fuel tank, and includes an additional method of removing fasteners for inspection. The final rule has been revised to cite the latest revision of the service bulletin as

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an additional source of service information.

In addition, paragraphs (b)(1) and (c)(1) of the final rule have been clarified to indicate that the detailed visual inspections of the wing front spar chords, stiffeners, and rib posts between the fastener heads are to be accomplished between FSS 570 to FSS 684, as specified in Revisions 3 and 4 of the service bulletin.

The FAA points out that Revision 4 of the service bulletin does not recommend increasing the oversize limits of the fastener holes, as mentioned by the commenter. Boeing has advised the FAA that a review of this issue is currently under way. Although this review is not yet completed, preliminary results indicate that only certain holes may be oversized beyond the limits specified in Revision 4 of the service bulletin.

In addition, Boeing indicates that it has examined the cracked rivets discussed by the commenter. Four of the six rivets submitted to Boeing were not cracked. The other two rivets had small cracks that were not detectable by the proposed ultrasonic inspection method. Boeing indicates that the currently recommended ultrasonic inspection method is not sensitive enough to detect small cracks in the rivets; however, it is effective in detecting cracks that penetrate/propagate more than halfway through the rivet, which does provide a safety benefit. Boeing is currently working to refine the ultrasonic inspection method to improve the detectability of small rivet cracks.

In light of the above, the FAA finds that to delay issuance of this final rule would be inappropriate, since an unsafe condition exists and the actions required by this AD must be accomplished to ensure continued safety. Repair of fastener holes with cracks that cannot be removed by oversizing the fastener holes must be accomplished in accordance with a method approved by the FAA, as specified in paragraph (d) of the final rule. The FAA may consider additional rulemaking once the review discussed previously is completed.

Discussion of Other Changes Made to the Final Rule

The applicability statement contained in the proposal referenced airplanes listed in Revision 3 of the service bulletin. Since Revision 4 of the service bulletin contains the same effectivity listing as that specified in Revision 3, the FAA has revised the applicability statement of the final rule to specify that this AD applies to airplanes listed in Revision 4 of the service bulletin.

Paragraph (b)(1) of the final rule has been revised to clarify the FAA's intent that the purpose of the detailed visual inspection is to detect cracking.

As a result of recent communications with the ATA, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

In addition, Boeing has included in Revision 4 of the service bulletin prices for kits necessary to accomplish the optional terminating action. Accordingly, the economic impact information, below, has been revised to reflect these costs, should an operator elect to accomplish the optional terminating action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Impact

There are approximately 190 Model 747–100 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry will be affected by this AD.

The inspections that are required previously by AD 92–07–11, and retained in this AD, take approximately 16 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of that inspection requirement on U.S. operators is estimated to be $91,200, or $960 per airplane, per inspection cycle.

The FAA estimates that it will take approximately 54 work hours per airplane to accomplish the required inspections of the expanded area specified in this AD, and that the average labor rate is $60 per work hour Based on these figures, the future total cost impact of the inspection requirement of the expanded area on U.S. operators is estimated to be $307,800, or $3,240 per airplane.

Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $399,000, or $4,200 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action (fastener replacement between FSS 570 and FSS 684) that is provided by this AD action, it will take approximately 306 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $15,478. Based on these figures, the total cost impact of the optional terminating action will be $33,838 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8207 (57 FR 10415, March 26, 1992), and by adding a new airworthiness directive (AD), amendment 39–9134, to read as follows:

95–02–15 Boeing: Amendment 39–9134. Docket 94–NM–27–AD. Supersedes AD 92–07–11, Amendment 39–8207.

Applicability: Model 747–100 series airplanes as listed in Boeing Service Bulletin 747–57A2266, Revision 4, dated November 3, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage onto an engine and a resultant fire, accomplish the following:

Restatement of Actions Required by AD 92–07–11, Amendment 39–8207:

(a) For airplanes listed in Boeing Service Bulletin 747–57A2266, dated June 6, 1991, on which the optional terminating action (fastener replacement) specified in the original issue, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10 1993; of the service bulletin has not been accomplished: Perform a visual inspection and an ultrasonic inspection to detect cracks of the wing front spar web between front spar station (FSS) 636 and FSS 675 in accordance with Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; Revision 2, dated June 10, 1993; or Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles until the inspections required by paragraph (b) of this AD are accomplished.

(1) For airplanes that have accumulated more than 20,000 total flight cycles as of May 4, 1992 (the effective date of AD 92–07–11, amendment 39–8207): Inspect within 6 months after May 4, 1992.

(2) For airplanes that have accumulated between 15,000 and 20,000 total flight cycles as of May 4, 1992: Inspect within 15 months after May 4, 1992.

(3) For airplanes that have accumulated less than 15,000 total flight cycles as of May 4, 1992: Inspect within 15 months after accumulating 15,000 total flight cycles.

New Actions Required by This AD

(b) For airplanes on which the terminating action (fastener replacement) specified in Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10, 1993; has not been accomplished: Prior to the accumulation of 13,000 total flight cycles, or within 9 months after the effective date of this AD, or within 2,000 flight cycles after the immediately preceding inspection accomplished in accordance with paragraph (a) of this AD, whichever occurs later, accomplish the inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles. Accomplishment of these inspections terminates the inspections required by paragraph (a) of this AD. After the effective date of this AD, the inspections required by this paragraph shall be accomplished only in accordance with Revision 3 or 4 of the service bulletin.

(1) Perform a detailed visual inspection to detect cracking of the wing front spar chords, stiffeners, and rib posts between the fastener heads between FSS 570 and FSS 684; and

(2) Perform an ultrasonic inspection of the web under the upper and lower chord footprints to detect cracking of the wing front spar web between FSS 570 and FSS 684; and

(3) Perform an ultrasonic inspection of the fasteners in the web-to-chords, and of the fasteners in the top two and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar to detect cracked or broken fasteners between FSS 570 and FSS 684.

(c) For airplanes on which the terminating action (fastener replacement) specified in Boeing Service Bulletin 747–57A2266, dated June 6, 1991; Revision 1, dated May 21, 1992; or Revision 2, dated June 10, 1993; has been accomplished: Within 18 months after accomplishing the terminating action specified in the original issue, Revision 1, or Revision 2 of the service bulletin, or within 9 months after the effective date of this AD, whichever occurs later, accomplish the inspections specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994. Repeat these inspections thereafter at intervals not to exceed 2,000 flight cycles. After the effective date of this AD, the inspections required by this paragraph shall be accomplished only in accordance with Revision 3 or 4 of the service bulletin.

(1) Perform a detailed visual inspection of the wing front spar chords, stiffeners, and rib posts between the fastener heads between FSS 570 and FSS 684; and

(2) Perform an ultrasonic inspection of the web under the upper and lower chord footprints to detect cracking of the wing front spar web between FSS 570 and FSS 636 and between FSS 675 and FSS 684; and

(3) Perform an ultrasonic inspection of the fasteners in the web-to-chords, and of the fasteners in the top two rows and bottom two rows in the web-to-stiffeners and web-to-rib posts of the wing front spar to detect cracked or broken fasteners between FSS 570 and FSS 636 and between FSS 675 and 684.

(d) If any crack in the web or any cracked or broken fastener is found during any inspection required by this AD, prior to further flight, oversize the fastener hole, perform an eddy current inspection to detect cracks in the fastener hole, and replace the fastener with an oversized fastener, in accordance with Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994 Thereafter, continue to inspect the remaining fasteners in accordance with paragraph (b) or (c) of this AD, as applicable, until the terminating action specified in paragraph (e) of this AD is accomplished. If any crack is found that cannot be removed by oversizing the fastener hole, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Replacement of the fasteners in the web-to-chords and of the fasteners in the web-to-stiffeners and web-to-rib posts, as specified in Boeing Service Bulletin 747–57A2266, Revision 3, dated March 31, 1994; or Revision 4, dated November 3, 1994; with oversized fasteners on each wing spar in accordance with the service bulletin constitutes terminating action for the repetitive inspections required by paragraph (b) and (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) Certain inspections shall be done in accordance with Boeing Service Bulletin 747-57A2266, dated June 6, 1991, as indicated. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 4, 1992 (57 FR 10415, March 26, 1992). Other inspections and replacement actions, as indicated, shall be done in accordance with Boeing Service Bulletin 747-57A2266, Revision 1, dated May 21, 1992; Boeing Service Bulletin 747-57A2266, Revision 2, dated June 10, 1993; Boeing Service Bulletin 747-57A2266, Revision 3, dated March 31, 1994; and Boeing Service Bulletin 747-57A2266, Revision 4, dated November 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 23, 1995.

Issued in Renton, Washington, on January 24, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-2173 Filed 2-17-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-NM-01-AD; Amendment 39-9152; AD 95-02-51]

Airworthiness Directives; Aerospatiale Model ATR-42 and ATR-72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95-02-51 that was sent previously to all known U.S. owners and operators of Aerospatiale Model ATR-42 and ATR-72 series airplanes by individual telegrams. Unless modifications are accomplished or alternative procedures and training are adopted, this AD prohibits operation of the airplane in certain icing conditions, and requires restrictions on the use of the autopilot in certain conditions. This AD also provides for an optional terminating action, which, if accomplished, would terminate the requirements of this AD. This amendment is prompted by an FAA determination that, during flight in freezing rain or freezing drizzle with the flaps set at the 15-degree position, a ridge of ice can form on the wing. This ridge can interrupt the airflow over the ailerons when the flaps are retracted to the zero-degree position, and can cause an aileron deflection and resultant unusual control forces. The actions specified by this AD are intended to prevent a roll upset from which the flight crew may be unable to recover.

DATES: Effective March 8, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95-02-51, issued January 11, 1995, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-01-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober or Gary Lium, Aerospace Engineers, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187 or (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: On December 9, 1994, the FAA issued telegraphic airworthiness directive (AD) T94-25-51, to address an unsafe condition related to potential hazards associated with operation of Aerospatiale Model ATR-42 and ATR-72 series airplanes in icing conditions. That AD requires an operational limitation that prohibits operation of the airplane when icing conditions [as defined in the Airplane Flight Manual (AFM)] are forecast or reported. It also requires restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed.

That AD action was prompted by data obtained following an accident involving a Model ATR-72 series airplane that occurred when the airplane was enroute from Indianapolis to Chicago. The accident occurred during the initial descent for approach to Chicago. The airplane had been in a holding pattern for more than 30 minutes with flaps at the 15-degree position, and there were icing conditions and turbulence reported in the area.

Although the official cause of the accident has not been determined, preliminary information from the accident investigation indicates that, immediately after the autopilot disconnected, at an indicated airspeed of approximately 185 knots, the ailerons abruptly deflected in the right-wing-down direction, and the airplane entered an abrupt roll to the right, which was not corrected before the airplane impacted the ground.

Prior to the issuance of AD T94-25-51, ATR conducted certain wind tunnel and ground tests in Toulouse, France. Following these tests, ATR contracted with the United States Air Force to conduct a series of flight tests at Edwards Air Force Base, California. The test program was developed in conjunction with the National Transportation Safety Board (NTSB), National Aeronautics and Space Administration (NASA), United States Air Force, representatives from the FAA, and the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France.

During these tests, a Model ATR-72 series airplane flew in close formation behind an "icing tanker," which is a specially modified aerial refueling airplane designed to create icing conditions by spraying supercooled water droplets on a test airplane during flight. Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) defines droplet diameters, liquid water content, temperature, and horizontal extent parameters for testing leading to approval of flight in icing conditions. Water droplet diameters specified in part 25 of the Federal Aviation Regulations (FAR) for certification of transport category airplanes, and larger droplets well outside the diameters specified in part

25 of the FAR (commonly referred to as "freezing rain or freezing drizzle"), were sprayed onto the outer wing leading edges and other airplane surfaces to determine ice accretion characteristics of the various diameter droplets. Droplet diameters larger than those specified in part 25 of the FAR were tested because there is meteorological evidence that the accident airplane encountered such large droplets (freezing rain or freezing drizzle) prior to the accident.

Results of data from the numerous flight tests conducted have revealed the following significant findings:

1. Ice accretion characteristics of the normal diameter droplets, as specified in the FAR, were entirely satisfactory. This confirms that Model ATR-42 and ATR-72 series airplanes comply fully with performance requirements relating to the icing envelope specified in part 25 of the FAR for certification of these airplanes.

2. Additional testing was conducted with large water droplets (outside certification standards), and it was found to be possible for ice to accrete aft of the wing boot surface during a 17-minute exposure to the tanker spray when the aircraft operated in a flaps 15-degree configuration. Flight tests conducted in this configuration indicated that a spanwise ridge could disrupt the flow over the aileron when the flaps are retracted to the zero-degree position. This interruption caused an uncommanded aileron deflection and resultant unusual control forces. However, during the tests conducted, the forces required to control the aircraft were within limits specified by the FAR.

3. Exposure to freezing rain or freezing drizzle on the forward side windows of the cockpit produced ice on all or a substantial part of the forward side windows. This ice accretion on the forward side windows does not appear when the airplane is flying in the icing conditions defined in part 25 of the FAR. This characteristic ice accretion begins to form within 30 seconds of the beginning of the encounter with freezing rain or freezing drizzle. Additionally, test data indicate that the crew can observe the accumulation of ice on the forward side windows at least several minutes before a significant amount of ice accumulates on the wings.

While the cause of the accident is still under investigation, the FAA has determined that if a Model ATR-42 or ATR-72 series airplane is in flight with the flaps set at the 15-degree position during freezing rain or freezing drizzle, an unusual ridge of ice on the wing (aft of the ice protection boots) can occur. This ridge can interrupt the airflow over the ailerons when the flaps are retracted to the zero-degree position. This interruption can cause an aileron deflection and resultant unusual control forces. In actual operations, these unusual forces may result in a roll upset from which the flight crew may be unable to recover.

In an effort to break the chain of events that may lead to an aircraft roll upset, the manufacturer has developed a set of procedures to be followed if the airplane should encounter freezing rain or freezing drizzle conditions. These procedures are based on results of the tests conducted at Edwards Air Force Base. They prohibit dispatch into or operation in known or forecast freezing rain or freezing drizzle, provide the flight crew with a means to identify inadvertent encounters with freezing rain and freezing drizzle conditions, and provide procedures to take appropriate corrective action. Accomplishment of these procedures will ensure safe operation of the airplane while operating in all icing conditions, including inadvertent encounters with freezing rain or freezing drizzle.

The procedures developed by the manufacturer have been incorporated into several documents, including the following:

1. ATR-42 AFM Temporary Revision 18, dated January 10, 1995 (for Model ATR-42 series airplanes); and ATR-72 AFM Temporary Revision 14, dated January 10, 1995 (for Model ATR-72 series airplanes);

2. ATR Icing Conditions Procedures Brochure, Version 1.0;

3. ATR Technical Background Paper, Version 1.0, dated January 6, 1995; and

4. Flight Crew Operation Manual, Revision 20, dated January 11, 1995 (for Model ATR-42 series airplanes); and Flight Crew Operation Manual, Revision 12, dated January 11, 1995 (for Model ATR-72 series airplanes).

Additionally, certain modifications have been proposed by the manufacturer. The FAA finds that such modification is preferable, as a long term solution, to requiring special procedures and special training, which can be used for the short term. This is consistent with the FAA's general policy that long term continued operational safety will be better assured by design changes that will preclude the problem, rather than by long term operational limitations. Such operational limitations may not have the desired long term effect. This, coupled with a better understanding of the human factors associated with such limitations, has led the FAA to consider placing less emphasis on those limitations and more emphasis on design improvements. The optional modification specified in this AD is in consonance with these considerations.

ATR has issued Service Bulletin ATR72-27-1039, dated January 12, 1995, which describes procedures for installation of ATR Modification Number 04213 on Model ATR-72 series airplanes. The modification permits movement of the flaps above limit speed in an emergency to give crews more operational discretion. Accomplishment of the modification eliminates the multi-function computer inhibition against flap extension.

These documents form a basis for providing added information to expand the operation of Model ATR-42 and ATR-72 series airplanes beyond that defined in AD T94-25-51.

The FAA finds that these interim procedures may be permitted until June 1, 1995, at which time an FAA-approved modification must be installed. If such a modification is not installed by June 1, 1995, dispatch into or operation in known or forecast icing, freezing rain, or freezing drizzle conditions is prohibited.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T95-02-51 to minimize the potential hazards associated with operating in icing conditions, as defined in the AFM. This AD supersedes AD T94-25-51. Unless modifications are accomplished or alternative procedures and training are adopted, this AD continues to require an operational limitation that prohibits operation of the airplane when icing conditions (as defined in the AFM) are forecast or reported; and restrictions on the use of the autopilot in inadvertent icing encounters, when the airplane is operated in moderate or greater turbulence, or whenever any unusual lateral trim situation is observed.

This AD permits, as an interim measure prior to installation of an FAA-approved modification, operation of the airplane into icing conditions, provided

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that certain actions have been accomplished. Those actions include the following:

1. The FAA-approved AFM must be revised to incorporate the ATR–42 and ATR–72 AFM revisions described previously.

2. All Model ATR–42 and ATR–72 flight crew members must attend an FAA-approved training course prior to flight in known or forecast icing conditions. This training course will provide instruction in the recognition of characteristic ice accretion on the cockpit forward side windows. This course also will define the procedures designed to escape freezing rain and freezing drizzle conditions, and to minimize the hazard posed by flight in freezing rain or freezing drizzle.

3. Operators must establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process.

4. Operators of Model ATR–72 series airplanes must install ATR Modification Number 04213 to eliminate the multi-function computer inhibition against flap extension.

This AD also provides for an optional terminating action, which, if accomplished, would terminate the requirements of this AD. The optional terminating action involves installing a modification that precludes the formation of hazardous ice accumulation during flight in freezing rain or freezing drizzle conditions. The modification must be approved by the FAA. Upon accomplishment of the optional terminating action, ATR Modification Number 04213 must be removed from Model ATR–72 series airplanes.

As described previously, the existing AD imposes severe restrictions on many airplanes operated in air transportation, causing significant cost to the operators, widespread disruption of passenger travel, and an undermining of public confidence in the safety of the airplane. Based on the results of recent flight tests, if certain procedures and training are accomplished, these restrictions are unnecessary to ensure an acceptable level of public safety. Therefore, the FAA has determined that it would be contrary to the public interest to continue these restrictions during the period of time that would be necessary to issue a notice to solicit public comment on this action and to issue a final rule; such notice is therefore also impracticable. This action is considered to be interim action; once the described modification has been developed, the FAA may consider further rulemaking to mandate that modification.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 11, 1995, to all known U.S. owners and operators of Aerospatiale Model ATR–42 and ATR–72 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–01–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–02–51 Aerospatiale: Amendment 39–9152. Docket 95–NM–01–AD. Supersedes telegraphic AD T94–25–51, issued December 9, 1994.

Applicability: All Model ATR–42 and ATR–72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating in icing conditions, as defined in the Airplane Flight Manual (AFM), accomplish the following:

(a) Except as provided in paragraphs (b) and (c) of this AD, within 24 hours after receipt of telegraphic AD T94–25–51: Incorporate the following into the Limitations Section of the FAA-approved AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"(1) Operation of the airplane into forecast or reported icing conditions, as such conditions are defined in the AFM, is prohibited.

"(2) Use of the autopilot is prohibited during inadvertent flight in icing conditions, as defined in the AFM, or when the airplane is operated in moderate or greater turbulence.

"(3) If any unusual lateral trim situations are observed, such as excessive trim displacement; illumination of the message 'RETRIM ROLL R WING DN' or 'RETRIM ROLL L WING DN' on the advisory display unit (ADU); illumination of the message 'AILERON MISTRIM' on the ADU; or abnormal flight characteristics of the airplane: Disconnect the autopilot and manually fly the airplane prior to adjusting the lateral trim. The autopilot may be re-engaged following manual adjustment of the lateral trim."

(b) Between the effective date of this AD and June 1, 1995, the limitations contained in paragraph (a) of this AD may be removed from the AFM upon accomplishment of the actions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, as applicable. Dispatch into or operation in known or forecast icing conditions, as defined in the AFM, may occur if the actions specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD have been accomplished previously. Except as provided by paragraph (c) of this AD, the limitation required by paragraph (a) of this AD must be reinserted in the AFM no later than June 1, 1995.

(1) ATR–42 AFM Temporary Revision 18, dated January 10, 1995; or ATR–72 AFM Temporary Revision 14, dated January 10, 1995; as applicable; shall be incorporated into the Limitations Section of the FAA-approved AFM.

(2) ATR–42 and ATR–72 flight crew members shall receive FAA-approved training, which consists of the following items.

(i) ATR Icing Procedures Brochure, Version 1.0.

Note 1: The ATR Icing Procedure Brochure specified in this paragraph also has been published as "Version 2.0." That version is acceptable for compliance with this paragraph.

(ii) ATR Technical Background Paper, Version 1.0, dated January 6, 1995.

(iii) ATR–42 AFM Temporary Revision 18, dated January 10, 1995; or ATR–72 AFM Temporary Revision 14, dated January 10, 1995; as applicable.

(iv) Flight Crew Operation Manual, Revision 20, dated January 11, 1995 (for Model ATR–42 series airplanes); or Flight Crew Operation Manual, Revision 13, dated January 11, 1995 (for Model ATR–72 series airplanes); as applicable.

(3) Operators of Model ATR–42 and ATR–72 series airplanes shall establish an FAA-approved system to provide forecasts and reports of freezing rain and freezing drizzle at enroute altitudes along the route of flight and at all airports considered in the flight planning process. Training concerning the use of these icing forecasts and reports shall be accomplished in accordance with Flight Standards Information Bulletin "ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures," dated January 11, 1995.

(4) For Model ATR–72 series airplanes only: Install ATR Modification Number 04213 in accordance with ATR Service Bulletin ATR72–27–1039, dated January 12, 1995.

(c) Installation of a modification that precludes the formation of hazardous ice accumulation during flight in freezing rain or freezing drizzle conditions constitutes terminating action for the requirements of this AD. This modification must be approved by the Manager, FAA, Transport Airplane Directorate, Standardization Branch, ANM–113. Following installation of such modification, the modification required by paragraph (b)(4) of this AD shall be removed from Model ATR–72 series airplanes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Certain actions, when accomplished in accordance with paragraph (b) of this AD, shall be done in accordance with ATR–42 AFM Temporary Revision 18, dated January 10, 1995; ATR–72 AFM Temporary Revision 14, dated January 10, 1995; ATR Icing Procedures Brochure, Version 1.0; ATR Technical Background Paper, Version 1.0, dated January 6, 1995; ATR–42 Flight Crew Operation Manual, Revision 20, dated January 11, 1995; and ATR–72 Flight Crew Operation Manual, Revision 13, dated January 11, 1995; as applicable. Training concerning the use of certain icing forecasts and reports [as specified in paragraph (b)(3) of this AD] shall be accomplished in accordance with Flight Standards Information Bulletin, "ATR–42 and ATR–72 Airworthiness Directive T95–02–51 Compliance Procedures," dated January 11, 1995. Installation of ATR Modification Number 04213 [as specified in paragraph (b)(4) of this AD] shall be accomplished in accordance with ATR Service Bulletin ATR72–27–1039, dated January 12, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 8, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–02–51, issued January 11, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 13, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4001 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–11–AD; Amendment 39–9153; AD 95–04–01]

Airworthiness Directives; Boeing Models 727, 737, and 747 Series Airplanes; McDonnell Douglas Models DC–8 and DC–9 Series Airplanes, Model MD–88 Airplanes, and Models MD–11 and MD–90–30 Series Airplanes; Lockheed Models L–1011–385–1, –385–1–14, –385–1–15, and –385–3 Series Airplanes; and Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain transport category airplanes equipped with Honeywell Standard Windshear Detection and Recovery Guidance System (WSS). This action requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. This amendment is prompted by a report of an accident during which an airplane encountered severe windshear during a missed approached. The actions specified in this AD are intended to ensure that the flight crew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

DATES: Effective March 8, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

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Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–133L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA has received a report of an accident during which the flight crew executed a missed approach following an instrument landing system (ILS) approach. A McDonnell Douglas Model DC–9–31 series airplane equipped with Honeywell Standard Windshear Detection System (WSS) was involved in this accident. Investigation into the cause of this accident revealed that the airplane encountered severe windshear during the missed approach. The FAA has determined that a design feature in the windshear computer delayed detection of windshear when the airplane's flaps were in transition. This condition, if not corrected, could result in the flight crew being unaware of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

The Honeywell WSS is also installed on certain Boeing Models 727, 737, and 747 series airplanes; McDonnell Douglas Models DC–8 and DC–9–10, –21, –41, –51, and –80 series airplanes, Model MD–88 airplanes, and Models MD–11 and MD–90–30 series airplanes; Lockheed Models L–1011–385 series airplanes; and Fokker Models F28 Mark 1000, 2000, 3000, 4000, and 0100 series airplanes. In light of this, the FAA has determined that these airplanes are also subject to this same unsafe condition.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure that the flight crew is aware that there may be significant delays in the WSS detecting windshear when the flaps of the airplane are in transition. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to alert the flight crew of the potential for significant delays in the WSS detecting windshear when the flaps of the airplane are in transition.

This is considered to be interim action. Once a modification is developed, approved, and available, the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–11–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–04–01 Boeing, McDonnell Douglas, Lockheed, and Fokker: Amendment 39–9153. Docket 95–NM–11–AD.

Applicability: The following models and series of airplanes, certificated in any category, equipped with Honeywell Standard Windshear Detection and Recovery Guidance System (WSS):

Boeing Model 727–100 and –200 series airplanes;
Boeing Model 737–100, –200, and –300 series airplanes;
Boeing Model 747–100, –200, and –300 series airplanes;
McDonnell Douglas Model DC–8–50, –60, and –70 series airplanes;
McDonnell Douglas Model DC–9–10, –21, –30, –41, –51, and –80 series airplanes;
McDonnell Douglas Model MD–88 airplanes;
McDonnell Douglas Model MD–11 and MD–90–30 series airplanes;
Lockheed Model L–1011–385–1, –385–1–14, –385–1–15, and –385–3 series airplanes; and
Fokker Model F28 Mark 1000, 2000, 3000, 4000, and 0100 series airplanes;

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is aware of significant delays in the Windshear Detection and Recovery Guidance System (WSS) detecting windshear when the flaps of the airplane are in transition, accomplish the following:

(a) Within 14 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"During sustained banks of greater than 15 degrees or during flap configuration changes, the Honeywell Windshear Detection and Recovery Guidance System (WSS) is desensitized and alerts resulting from encountering windshear conditions will be delayed."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on March 8, 1995.

Issued in Renton, Washington, on February 14, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4123 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–CE–12–AD; Amendment 39–9155; AD 95–04–03]

Airworthiness Directives; Beech Aircraft Corporation 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–08–07, which currently requires inspecting (one-time) the wing front spar carry-through frame structure for cracks on certain Beech 33, 35, and 36 series airplanes, and repairing or reinforcing any cracked wing front spar carry-through frame structure. This action would make this one-time inspection repetitive. This action was prompted by numerous (43) reports received by the Federal Aviation Administration (FAA) of cracks found on the wing front spar carry-through frame structure of the affected airplanes. These cracks were found during the inspection required by AD 92–08–07. The actions specified by the proposed AD are intended to prevent spar carry-through frame structure failure caused by cracking, which, if not detected and corrected, could result in severe structural damage to the wing.

DATES: Effective April 7, 1995.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of March 18, 1992.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech 33, 35, and 36 series airplanes was published in the **Federal Register** on November 2, 1994 (59 FR 54847). The action proposed to supersede AD 92–08–07 with a new AD that would require repetitively inspecting the wing front spar carry-through frame structure for cracks, and repairing or reinforcing any cracked wing carry-through frame structure. The proposed action would be accomplished in accordance with Beech Service Bulletin No. 2360, dated November 1990. The only difference between the proposal and AD 92–08–07 is that the initial inspection required by the existing AD would become repetitive.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from four different commenters.

One commenter points out that the actual AD portion of the proposal specifies no directions for what to do if there are no cracks found, whereas the preamble specifies repetitive inspections, and the AD portion specifies these repetitive inspections after cracks are repaired. The commenter feels that this may have been an oversight on the FAA's part. The FAA concurs. The intent of the proposal was to make the inspection repetitive regardless of whether cracks are found. A paragraph has been added to the AD to ensure that the inspection is repetitive if no cracks are found.

This commenter also states that those owners/operators that have already inspected the airplane as required by AD 92–08–07 (superseded by this action) should not have to inspect again until the next annual inspection. The FAA concurs that a grace period should be given for those airplane owners/operators that have already inspected as required by AD 92–08–07. In addition, AD 92–08–07 superseded AD 91–14–13, which required repetitive inspections. The Compliance section of the AD has been revised to give credit to those airplane operators that have already inspected the wing front spar carry-through frame structure as required by one of the above-referenced AD's.

Two commenters state that AD action requiring a repetitive inspection of the wing front spar carry-through frame structure is unjustified because there are only reports of cracks in this structure on 43 out of over 10,000 affected airplanes. The FAA does not concur that AD action is unjustified. AD's are not issued based on the percentage of the airplanes that have reported problems, but are issued when an unsafe condition exists in a product, and when that condition is likely to exist or develop in other products of the same type design. The FAA reviewed all information relating to the wing front spar carry-through frame structure crack reports on the affected airplanes and determined that AD action was justified and the proposed actions, when accomplished correctly, would eliminate the unsafe condition and prevent it from re-occurring. The AD is unchanged as a result of these comments.

Three of the four commenters state that inspecting the wing front spar carry-through frame structure is part of the affected airplanes' annual inspection program, and thus no AD action is

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justified. The FAA concurs that a visual inspection of this structure is part of the annual inspection program. However, the airplanes referenced in the 43 cracked wing front spar carry-through frame structure reports utilize this annual inspection program. The FAA examined the information regarding these crack reports in determining that a dye penetrant inspection should be accomplished through AD action, as well as the visual inspection already required during the annual inspection. The proposal is unchanged as a result of these comments.

One commenter feels that the FAA has underestimated the financial impact the proposal would have upon U.S. operators of the affected airplanes. The commenter states that each inspection would cost each operator around $300–$400 per inspection. The FAA does not concur that it underestimated the cost impact. The FAA estimates that it will take approximately 8 workhours per airplane to accomplish the inspection, and that the average labor rate is $60 an hour. Based upon these figures, the inspection will cost $480 per airplane. Also, the FAA acknowledges the repetitive inspection cost, but has no way of determining the number of repetitive inspections an owner/operator may incur. The AD is unchanged as a result of this comment.

After careful review, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the paragraph specifying when to accomplish the repetitive inspection if no cracks were found, the revision to the Compliance section of the AD, and minor editorial corrections. The FAA has determined that the addition, revision, and minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

The FAA estimates that 11,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,280,000. This figure does not take into account the cost of repetitive inspections. The only difference between the cost analysis for this action and AD 92–08–07 (which would be superseded by this required action) is the cost of these repetitive inspections. The FAA has no way of determining the number of repetitive inspections an owner/operator may incur.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–08–07, Amendment 39–8218 (57 FR 13004, April 15, 1992), and by adding a new airworthiness directive to read as follows:

95–04–03 Beech Aircraft Corporation: Amendment 39–9155; Docket No. 94–CE–12–AD. Supersedes AD 92–08–07, Amendment 39–8218.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, and F33A	CE–1 through CE–1192.
E33C and F33C	CJ–1 through CJ–179.
H35, J35, K35, M35 N35, P35, S35, V35, V35A, and V35B.	D–4866 through D–10403.
36 and A36	E–1 through E–2397.
A36TC and B36TC	EA–1 through EA–471.

Compliance: Required initially with whichever of the following is applicable, and thereafter as indicated:

- Upon the accumulation of 1,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished;
- Within 500 hours TIS after the inspection required by superseded AD 92–08–07, Amendment 39–8218, or within the next 100 hours TIS after the effective date of this AD, whichever occurs later; or
- Within 500 hours TIS after the last inspection required by AD 91–14–13, Amendment 39–7054 (superseded by AD 92–08–07), or within the next 100 hours TIS, whichevoccurs later.

To prevent spar carry-through frame structure failure, which, if not detected and corrected, could result in severe structural damage to the wing, accomplish the following:

(a) Inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990. Repair or reinforce any cracked wing front spar carry-through frame structure and reinspect as specified in the paragraphs that follow.

(b) If no cracks are found, reinspect as specified in paragraph (a) of this AD at intervals not to exceed 500 hours TIS as long as no cracks are found. When cracks are found, repair or reinforce the wing front spar carry-through frame structure and reinspect as specified in this AD.

(c) If cracks are found in the bend radius and not in the web face in the areas of the huckbolt fasteners during the inspection specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360:

(1) For cracks up to 2.25 inches, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends. Within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) For cracks between 2.25 and 4.0 inches, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure bend radius is found, prior to further flight, stop drill each crack at the crack ends, and within the next 100 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable P/N 36–4004 Kit, and reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(3) For cracks exceeding 4.0 inches, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(d) If cracks are found in the web face in the area of the huckbolt fasteners but not in the bend radius during the inspections specified in paragraph (a) of this AD, accomplish the following at the time specified in accordance with the instructions in Beech SB No. 2360, but do not stop drill the cracks because it is possible to damage the structure behind the web face:

(1) For cracks less than 1.0 inch in length, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web face is found, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure web face, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) For cracks more than 1.0 inch in length, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(3) If a crack passes through two fasteners but is less than 0.5 inches beyond either fastener, accomplish one of the following, as applicable:

(i) If not more than one crack on either side of the wing forward spar carry-through frame structure web area is found, within the next 25 hours TIS, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) If more than one crack is found on either side of the wing forward spar carry-through frame structure bend radius, prior to further flight, install the applicable Beech P/N 36–4004 Kit, reinspect at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(4) If a crack passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(e) If cracks are found in both the web face in the area of the huckbolt fasteners and the bend radius during the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) If only one crack is found on either side of the airplane, prior to further flight, repair each crack in accordance with the criteria and instructions in paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(4) of this AD, as applicable. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(2) If more than one crack is found on either side of the airplane, accomplish one of the following as applicable:

(i) For any crack that is 1.0 inch or more in length, prior to further flight, install the applicable Beech P/N 36–4004 Kit. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(ii) For any crack under 1.0 inch in length, within the next 200 hours TIS and thereafter at intervals not to exceed 200 hours TIS, reinspect each crack for progression and repair accordingly. Upon the installation of the applicable P/N 36–4004 Kit, extend the repetitive inspection time to 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(f) If a fuselage skin crack is found around the opening of the lower forward carry-through fitting, prior to further flight, obtain repair instructions from the manufacturer through the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (h) of this AD, and incorporate these instructions. Reinspect thereafter at intervals not to exceed 500 hours TIS, and repair or reinforce any cracked wing front spar carry-through frame structure as specified in this AD.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(i) The inspections required by this AD shall be done in accordance with No. 2360, dated November 1990. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment (39–9155) supersedes AD 92–08–07, Amendment 39–8218.

(k) This amendment (39–9155) becomes effective on April 7, 1995.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4133 Filed 2–17–95; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; extension of start-up dates for compliance.

SUMMARY: OSHA is extending the start-up dates for some provisions of the asbestos standards until July 10, 1995 to give the public more time to understand the provisions and implement compliance.

DATES: These amendments take effect on February 21, 1995. For Part 1910—General Industry, for § 1910.1001, the start-up dates for compliance for paragraph (g)—methods of compliance, paragraph (h)—respiratory protection, paragraph (j)—hygiene facilities, paragraph (k)—communication of hazards, paragraph (l)—housekeeping, paragraph (m)—medical surveillance and paragraph (o)—competent persons are extended to July 10, 1995. For Part 1915—Shipyards, for § 1915.1001, the start-up dates for compliance for paragraph (d)(2)—initial monitoring, paragraph (e)—regulated area, paragraph (f)(i)—methods of compliance, paragraph (f)(2) compliance program, paragraph (g)—respiratory protection, paragraph (i)—hygiene facilities, paragraph (j)(7) employee information and training, and paragraph (l)—medical surveillance are extended to July 10, 1995. For Part 1926—Construction, for § 1926.1101, the start-up dates for compliance for paragraph (g)—methods of compliance, paragraph (h)—respiratory protection, paragraph (j)—hygiene facilities, paragraph (k)—communication of hazards, paragraph (l)—housekeeping, paragraph (m)—medical surveillance and paragraph (o)—competent person are extended to July 10, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA issued improved asbestos standards for general industry, construction and shipyards on August 10, 1994 at 59 FR 40964 to better protect workers from lung cancer, asbestosis and other diseases caused by asbestos exposure. The new standards took effect on October 11, 1994 and that date was the start-up date for some provisions such as the new lower exposure limit of .1 f/cc. However, various other provisions such as the new medical surveillance, respiratory protection and training provisions and the engineering control requirements had start-up dates from between January 9, 1995 and April 10, 1995.

Various members of the public have in meetings requested that OSHA grant more time for the public to study and comply with some provisions. In addition OSHA intends to publish in the hear future a correction and clarification notice and various compliance and training materials to assist in the understanding of the new standard. The American Petroleum Institute by letter dated February 3, 1995 also requested a delay in the start-up of some provisions.

After considering all these reasons together, OSHA has concluded that it is appropriate to give the public additional time to study and implement some of the provisions of the new asbestos standards which may require more time to implement. Other provisions such as the new exposure limit had a start-up date of October 11, 1995 and OSHA is not extending the start-up date of those provisions. In the interim, the provisions of the preexisting asbestos standards remain in effect for those provisions of the new standards whose start-up dates have been extended.

The provisions extended are listed above in the **DATES** section of this preamble. OSHA has concluded that July 10, 1995 is a reasonable time for employers to fully study and come into compliance with the provisions for which the start-up dates have been extended.

For simplicity and to reduce possible confusion OSHA is setting a single start-up date for those provisions and eliminating the language that required compliance as soon as possible not latter than the start-up date specified. However, some provisions such as exposure monitoring where exposures are over the new limit may need to be completed prior to the implementation of engineering controls. All the provisions whose start-up dates have been extended will be enforced on July 10, 1995.

OSHA is publishing this as an amendment to the new standards so that the new start-up dates will be codified in the Code of Federal Regulations. OSHA finds that there is good cause to issue this extension without notice and public procedure because such is impractical, unnecessary or contrary to the public interest. It is necessary to issue the extension to permit employers sufficient time to come into full compliance and notice and comment would delay the issuance of the extension until past the new start-up dates. For the same reasons OSHA finds good cause for the extension of the start-up date to take immediate effect.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1979 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 5. U.S.C. Sec. 553; and 29 CFR Part 1911; 29 CFR Parts 1910, 1915 and 1926 are amended as set forth below.

List of Subjects

29 CFR Part 1910

Asbestos, Occupational safety and health.

29 CFR Part 1915

Asbestos, Longshore and harbor workers, Occupational safety and health, Vessels.

29 CFR Part 1926

Asbestos, Construction industry, Occupational safety and health.

Signed at Washington, DC this 14th day of February, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

OSHA hereby amends 29 CFR Parts 1910, 1915 and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation of subpart Z of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CAR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Table Z–1, Z–1 and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety and Standards Act, 40 U.S.C. 333 and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; U.S.C. 655, 657.

2. Section 1910.1001 is amended by revising paragraph (o) to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(o) *Dates*—(1) *Effetive date.* This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) Start-up dates. All obligations of this standard commence on the effective date except as follows:

(i) *Exposure monitoring.* Initial monitoring required by paragraph (d)(2) of this section shall be completed by July 10, 1995.

(ii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section as a result of initial monitoring shall be set up by July 10, 1995.

(iii) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided by July 10, 1995.

(iv) *Hygiene and lunchroom facilities.* Construction plans for change rooms, showers, lavatories, and lunchroom facilities shall be completed by July 10, 1995.

(v) *Employee information and training.* Employee information and training shall be provided by July 10, 1995.

(vi) *Medical surveillance.* Medical surveillance not previously required by paragraph (l) of this section shall be provided by July 10, 1995.

(vii) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying by July 10, 1995.

(viii) *Methods of compliance.* The engineering and work practice controls as required by paragraph (f) shall be implemented by July 10, 1995.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

3. The authority citation of 29 CFR part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 6754), 8–76 (41 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

2. Section 1915.1001 is amended by revising paragraph (q) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 and 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) Start-up dates. All obligations of this standard commence on the effective date except as follows:

(i) Methods of compliance. The engineering and work practice controls required by paragraph (g) of this section shall be implemented by July 10, 1995.

(ii) Respiratory protection. Respiratory protection required by paragraph (h) of this section shall be provided by July 10, 1995.

(iii) Hygiene facilities and practices for employees. Hygiene facilities and practices required by paragraph (j) of this section shall be provided by July 10, 1995.

(iv) Communication of hazards. Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by July 10, 1995.

(v) Housekeeping. Housekeeping practices and controls required by paragraph (l) of this section shall be provided by July 10, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by July 10, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by July 10, 1995.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR part 1926 is revised to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926. 1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) This provision of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by July 10, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by July 10, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by July 10, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by July 10, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (l) of this section shall be provided by July 10, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by July 10, 1995.

(vii) The designation and training of competent persons required by

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paragraph (o) of this section shall be completed by July 10, 1995.

* * * * *

[FR Doc. 95–4083 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

RIN 1010–AB81

Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Interim final rule; delay of expiration.

SUMMARY: This document delays the expiration of the interim final rule governing spill-response plans for offshore facilities. The Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA) requires that a spill-response plan be submitted for offshore facilities. The MMS published an interim final rule establishing requirements for spill-response plans for offshore facilities including pipelines on February 8, 1993. The rule was scheduled to expire on February 18, 1995, or when superseded by a final rule. The MMS will not have a final rule in place by February 18, 1995, and therefore will extend the termination date of the interim final rule. This rulemaking is being extended until superseded by a final rule.

EFFECTIVE DATE: The interim rule published February 8, 1993 (58 FR 7489) is extended indefinitely; it will not expire until the interim rule is superseded by a final rule.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Ake, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: On February 8, 1993, MMS published an interim final rule titled "Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines" (58 FR 7489). The interim final rule was given an effective date of February 18, 1993, and was to expire on February 18, 1995, or when superseded by a final rule. At the time of publication of the interim final rule, it was anticipated that a final rule would be in place before February 18, 1995. A final rule on this subject will not be published before the published expiration date, yet there is still a need for a rule that conveys MMS requirements for spill-response plans for offshore facilities. The interim final rule provides necessary guidance to operators for preparing and submitting spill-response plans that are required by OPA. The MMS has determined that an immediate effective date is necessary to provide continuity in the administration, review, and approval of spill-response plans.

Author

This document was prepared by Lawrence H. Ake, Engineering and Technology Division, MMS.

Rulemaking Analyses

E.O. 12866

Non significant.

Regulatory Flexibility Act

No significant impact.

Paperwork Reduction Act

OMB clearance number 1010–0057.

Takings Implication Assessment

No interference with constitutionally protected property rights.

E.O. 12778

Meets applicable standards.

National Environmental Policy Act

The Department of the Interior has determined that this action does not constitute a major federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 95–4110 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH29

Reductions and Discontinuances (Federal Employees' Compensation)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning reduction or discontinuance of VA benefits when a payee is also entitled to benefits under the Federal Employees' Compensation Act (FECA) for the same injury or death for which VA payment is being made. The intended effect of this amendment is to bring VA regulations into conformance with the statutory prohibition against concurrent receipt of VA benefits and FECA benefits for the same injury or death.

EFFECTIVE DATE: This amendment is effective February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8116(a) prohibits a federal employee who is receiving benefits for a work-related injury or death under FECA from receiving benefits from VA for the same injury or death.

Currently the adjudication regulations at 38 CFR 3.500(e) specify that the effective date for reduction of VA benefits based on an election of FECA benefits will be the end of the month following the month in which notice is received from the Department of Labor's Office of Workers' Compensation Programs that a VA payee has elected FECA benefits. The regulations do not prohibit concurrent payment of VA and FECA benefits. Thus, in those cases where FECA payment is authorized prior to a proper election and discontinuance of VA benefits, a potential for duplicate payment exists.

VA is amending 38 CFR 3.500(e) to provide that the effective date for reduction or discontinuance of VA benefits in cases where FECA benefits are elected for an injury or death which is the basis of VA payment will be the day preceding the date on which the FECA award became effective.

The final rule is made effective upon publication, since it makes changes merely to reflect statutory requirements.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will directly affect VA beneficiaries, but will not directly affect small business. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalogue of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 10, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.500, paragraph (e) is amended by removing the first sentence and adding in its place "The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective."; and by adding an authority citation to read as follows:

§ 3.500 General.

* * * * *

(e) * * *

(Authority: 5 U.S.C. 8116)

* * * * * *

[FR Doc. 95–4165 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AH07

Claims Based on Exposure to Ionizing Radiation (Radiogenic Diseases)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning claims based on exposure to ionizing radiation. This amendment is necessary to implement a decision by the United States Court of Appeals for the Federal Circuit and recent legislation providing that VA's regulatory list of radiogenic diseases is no longer an exclusive list of conditions which may be considered service-connected solely on the basis of exposure to ionizing radiation. The effect of this amendment is to provide claimants who base their claims on conditions not on that regulatory list an opportunity to establish service connection by demonstrating that their conditions are radiogenic diseases.

EFFECTIVE DATE: This amendment is effective September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420; telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98–542) required VA to develop regulations establishing standards and criteria for adjudicating veterans' claims for service-connected compensation for diseases arising from exposure to ionizing radiation during service. The law also required that the Secretary, after receiving the advice of the Veterans Advisory Committee on Environmental Hazards, determine which conditions could be considered service-connected on the basis of exposure to ionizing radiation and include those conditions in VA's regulations.

In September 1985 VA published 38 CFR 3.311b, since redesignated as 3.311, to implement the radiation provisions of Pub. L. 98–542. As threshold requirements for entitlement to compensation under this regulation, a veteran must have been exposed to ionizing radiation during atmospheric testing of nuclear weapons, the occupation of Hiroshima and Nagasaki during World War II, or through other activities as claimed, and must have subsequently developed a radiogenic disease within a specified time period. Conditions not specifically listed in the regulation at 3.311(b)(2) as radiogenic diseases were excluded from consideration (See § 3.311(h)). Since 1985, VA has added a number of conditions to the list of radiogenic diseases.

On September 1, 1994, the United States Court of Appeals for the Federal Circuit reversed the decision of the United States Court of Veterans Appeals in *Combee* v. *Brown*, No. 93–7107. The Federal Circuit held that Public Law 98–542 did not authorize VA to establish an exclusive list of radiogenic conditions for which a claimant might establish entitlement to direct service connection under § 3.311. On November 2, 1994, Public Law 103–446, the "Veterans' Benefits Improvements Act of 1994, was signed into law. Section 501(b) of that law amended 38 U.S.C. 1113(b) to clarify that nothing contained in Public Law 98–542 precludes a claimant from attempting to establish direct service connection for a disability or disease based upon exposure to ionizing radiation in service.

The amendment provides that if a claimant cites or submits competent scientific or medical evidence that the claimed condition is a radiogenic disease, the claim will be considered under the provisions of § 3.311. That provision is consistent with a decision by the U.S. Court of Veterans Appeals that, where a determinative issue involves medical causation, competent medical evidence to the effect that the claim is plausible or possible is required to establish that the claim is well grounded. (See *Grottveit* v. *Brown* 5 Vet. App. 91 (1993)) The amendment also deletes 3.311(h), which set out VA's previous policy that the list of radiogenic diseases is an exclusive list, because that policy has been superseded by the Court of Appeals' decision in *Combee* and section 501(b) of Public Law 103–446.

We are making technical changes throughout § 3.311 to conform with the Court of Appeals' decision and Public Law 103–446, including a revision in § 3.311(b)(2) to define the term "radiogenic disease" for the purposes of this regulation as a disease which may be induced by ionizing radiation. We are also replacing all references to "Chief Medical Director" and "Chief Benefits Director" with "Under Secretary for Health" and "Under Secretary for Benefits" respectively, which are the correct statutory titles.

The amendment is effective September 1, 1994, the date of the decision by the United States Court of Appeals for the Federal Circuit in *Combee* v. *Brown*, which changed VA's legal interpretation of this issue. Making the amendment effective that date rather than the date of publication of the final rule works to the advantage of claimants who may be entitled to the effective date considerations of 38 U.S.C. 5010(g) and 38 CFR 3.3114(a) without working to the detriment of any other claimant.

It has been determined that the final rule, insofar as it relates to radiogenic diseases, constitutes an interpretive rule and restatement of statutory provisions, and, consequently, is exempt from the notice and comment provisions and the 30 day delay provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5

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U.S.C. 601 et seq.). Even so, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This amendment will only directly affect VA beneficiaries and will not directly affect any small entities.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 10, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.311 [Amended]

2. In § 3.311 remove the words "Chief Medical Director" and "Chief Benefits Director", wherever they appear, and add in their places the words "Under Secretary for Health" and "Under Secretary for Benefits", respectively.

3. In § 3.311(a)(1), remove ", listed in paragraph (b)(2) of this section,".

4. In § 3.311(b)(1)(ii), remove "specified in paragraph (b)(2) of this section".

5. In § 3.311(b)(1)(iii), remove "(b)(4)" and add in its place "(b)(5)"; and remove "(But see paragraph (h) of this section.)".

6. In § 3.311(b)(2), the introductory paragraph is revised to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) *Initial review of claims.* * * *

(2) For purposes of this section the term "radiogenic disease" means a disease that may be induced by ionizing radiation and shall include the following:

* * * * *

7. In § 3.311(b) redesignate paragraph (b)(4) as paragraph (b)(5), and add new paragraph (b)(4) to read as follows:

§ 3.311 Claims based on exposure to ionizing radiation.

* * * * *

(b) *Initial review of claims.* * * *

(4) If a claim is based on a disease other than one of those listed in paragraphs (b)(2) or (b)(3) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

* * * * *

8. In § 3.311, remove paragraph (h).

[FR Doc. 95–4166 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–71, RM–8134]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the petition for reconsideration filed by Vulture Peak Restoration Group of our *Report and Order*, 59 FR 27505 (May 27, 1994) substituting Channel 231C3 for Channel 229A at Wickenburg, Arizona and modifying the license for Station KMEO(FM) to specify the higher class channel. The Commission determined that Vulture's arguments concerning interference to Television Channels 8 and 10 were speculative. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 93–71, adopted February 7, 1995 and released February 10, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW, Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4079 Filed 2–17–95; 8:45 am]

BILLING CODE 6712–01–F

Proposed Rules

Federal Register
Vol. 60, No. 34
Tuesday, February 21, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA79

Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby proposes specific crop provisions for the insurance of sugarcane to be contained in an endorsement to the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to move the current sugarcane endorsement from 7 CFR 401.133 to the Common Crop Insurance Policy (7 CFR Part 457) for ease of use by the public and conformance among policy terms.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than March 23, 1995 to be sure of consideration.

ADDRESSES: Written comments, data, and opinion on this proposed rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger delivery should be made to 2101 L Street NW., suite 500, Washington, DC. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, NW., 5th Floor, Washington, DC, during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 2000.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget ("OMB").

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this proposed rule have been approved by OMB and assigned OMB No. 0563–0016.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Under the Regulatory Flexibility Act (5 U.S.C. 605), this regulation will not have a significant impact on a substantial number of small entities. This action reduces the paperwork burden on the insured farmer and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR Part 457), a new section to be known as 7 CFR 457.116, Sugarcane Crop Insurance Provisions. The provisions will be effective for the 1996 and succeeding crop years.

The proposed Sugarcane Crop Insurance Provisions will replace the provisions found at 7 CFR 401.133. Upon publication of 7 CFR 457.116 as a final rule, the provisions for insuring sugarcane contained herein will supersede the current provisions contained in 7 CFR 401.133. By separate rule, FCIC will revise § 401.133 to limit its effect to the crop years prior to 1996.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring sugarcane as follows:

1. Subsection 3.(b)—Clarify the one year lag period for reporting production, e.g., 1994 crop year production must be reported to establish the production guarantee for the 1996 crop year.

2. Paragraph 11.(c)(2)—Specify that final sugar extraction records will be used rather than preliminary mill estimates when completing the final claim. This will eliminate potentially incorrect payments created by using preliminary mill estimates.

List of Subjects in 7 CFR Part 457

Crop insurance, sugarcane.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR Part 457), effective for the 1996 and

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succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR Part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l)

2. 7 CFR part 457 is amended by adding § 457.116 to read as follows:

§ 457.116 Sugarcane Crop Insurance Provisions

The Sugarcane Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Crop year*—The period from the day of planting for plant cane, or the day following harvest for stubble cane, until the end of the insurance period. The crop year is designated by the calendar year in which harvest normally begins in the county.

(b) *CFSA*—Consolidated Farm Service Agency (previously the Agricultural Stabilization and Conservation Service).

(c) *Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(d) *Harvest*—Cutting and removing the mature sugarcane from the field.

(e) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(f) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(g) *Local market price*—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugarcane.

(h) *Plant cane*—(See definition of sugarcane).

(i) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Stubble cane*—(See definition of sugarcane).

(k) *Sugarcane*—means either:

(1) Plant cane, which grows from seed planted for the crop year; or

(2) *Stubble cane, which grows from the stubble of sugarcane that was harvested the previous crop year.*

(l) Written agreement—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be contained in the written agreement. Notwithstanding the sales closing date restrictions contained herein, in specific instances a written agreement may be applied for after the sales closing date, and approved if, after physical inspection of the acreage, it is determined that the crop has the expectancy of making at least the guaranteed yield. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Basic Provisions (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable.

(1) *Optional Units by Section, Section Equivalent, or Consolidated Farm Service Agency ("CFSA") Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single CFSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent or CFSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent or CFSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugarcane in the county insured under this policy.

(b) Instead of reporting your sugarcane production for the previous crop year as required by subsection 3.(c) of the Basic Provisions (§ 457.8), you are required to report production for the second previous crop year, e.g., 1994 crop year production must be reported by the required date for the 1996 crop year.

4. Contract Changes

The contract change date is June 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is grown for processing for sugar or for seed; and

(c) That is not interplanted with another crop, unless a written agreement allows otherwise.

7. Insurable Acreage

Paragraph 9.(a)(3) of the Basic Provisions (§ 457.8) is not applicable to the Sugarcane Crop Provisions.

8. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), insurance attaches:

(1) At the time of planting for plant cane unless we agree in writing to a later date;

(2) On the first day following harvest of the previous crop for stubble cane except as set out in paragraph 8.(a)(3);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane:

(i) Damaged during the previous crop year in all states; and

(ii) In Louisiana, after the second crop year.

(b) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8) the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) If applicable, failure of the irrigation water supply due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in the event of damage or loss:

(1) All sugarcane stubble must remain intact for our inspection; and

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. After we receive such notice we will appraise the sugarcane for its sugar potential. If you do not give us notice, the production to count will be the per acre production guarantee for such acreage.

(b) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The stubble must not be destroyed and the required samples must not be harvested until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds of sugar) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the sugarcane stubble is destroyed within 15 days after harvest without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) The difference between the production guarantee and the appraised production for acreage which has an inadequate stand. An appraisal for an inadequate stand will be made if the product of the number of stalks per acre multiplied by 2 and further multiplied by the percentage of sugar contained in the Special Provisions for this purpose does not equal the per-acre production guarantee; and

(v) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage. Final records of sugar production will be used to determine the amount of production to count. Preliminary mill estimates will not be used.

(d) Harvested sugarcane may be adjusted for quality if it is damaged by freeze within the insurance period and cannot be processed for sugar by the boiling house operation. The amount of production to count for such sugarcane will be determined by dividing the dollar value of the damaged production by the local market price per pound for raw sugar. The prices used for this adjustment will be determined on the earlier of the date such quality-adjusted production is sold or the date of final inspection for the unit.

Done in Washington, D.C., on February 10, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–4092 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–08–P

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77, and 92

[Docket No. 93–014–3]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have required certain steers and spayed heifers imported into the United States from Mexico to be sent to a quarantined pasture or feedlot for finish feeding, or to a holding facility for quarantine and a 60-day post-entry tuberculin test. The proposed rule would also have denied claims for indemnity for Mexican-origin steers or spayed heifers that were positive to the 60-day post-entry tuberculin test, and would have denied claims for indemnity for cattle that were exposed to such animals. We are taking this action after considering the comments we received following the publication of the proposed rule.

DATES: The proposed rule is withdrawn February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services,

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Cattle Diseases and Surveillance Staff, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8715.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1994, we published in the **Federal Register** (59 FR 23810–23817, Docket No. 93–014–1) a proposed rule to amend the regulations in 9 CFR parts 50, 77, and 92 to require certain steers and spayed heifers imported into the United States from Mexico to be sent to a quarantined pasture or feedlot for finish feeding, or to holding facility for quarantine and a 60-day postentry tuberculin test. The proposed rule also contained provisions to deny claims for indemnity for Mexican-origin steers or spayed heifers that tested positive to the 60-day post entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals.

We initially solicited comments on the proposed rule for 60 days ending on July 8, 1994. We received several requests for an extension of the comment period to allow interested parties additional time to prepare comments on the proposal. In response to those requests, we published a notice in the **Federal Register** on July 18, 1994 (59 FR 36374, Docket No. 93–014–2) that reopened and extended the comment period for the proposed rule until September 16, 1994.

By the close of the extended comment period, we had received a total of 165 comments. The comments were submitted by representatives of the Mexican Government, animal rights organizations, private citizens, dairies and dairy associations, U.S. and Mexican tuberculosis eradication committees, cattle industry associations, a bank, cattle companies, feedlot operators, veterinary and animal health associations, State agriculture agencies and livestock boards, cattle importers and exporters, a farm bureau federation, government and private veterinarians, ranchers, and universities. None of the commenters supported the proposed rule as written; some offered general suggestions, while others submitted detailed recommendations for changes.

The majority of the commenters believed that the proposed rule would adversely affect the cattle industry and efforts to control tuberculosis in both the United States and Mexico. Many commenters believed that the proposed rule placed the burden of controlling potentially infected Mexican cattle on individual States and failed to provide any incentive to Mexican cattle producers to develop and implement a comprehensive tuberculosis control and eradication program. Other commenters also cited the potential hardship that the proposed rule would place on U.S. and Mexican cattle producers.

After considering all the comments we received, we have concluded that it is necessary to comprehensively reexamine the issues associated with the importation into the United States of cattle from Mexico. Therefore, we are withdrawing the May 9, 1994, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered during the development of any new proposed regulations regarding the importation of cattle from Mexico.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111–113, 114, 114a, 114a–1, 115–117, 120, 121, 125, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4180 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 71

[Docket No. 93–084–3]

Interstate Movement of Mexican-Origin Cattle; Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the regulations concerning the interstate transportation of animals to require that all Mexican-origin cattle moved in interstate commerce be accompanied by a certificate on which each animal is individually identified. We are taking this action after reevaluating the proposed rule in light of the comments we received following the publication of the proposed rule.

DATES: The proposed rule is withdrawn February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Cattle Diseases and Surveillance Staff, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–4923.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1993, we published in the **Federal Register** (58 FR 59959–59962, Docket No. 93–084–1) a proposal to amend the regulations concerning the interstate transportation of animals in 9 CFR part 71 to require all Mexican-origin cattle moved in interstate commerce to be accompanied by a certificate on which each animal is individually identified. The certificate would have been issued by an Animal and Plant Health Inspection Service (APHIS) representative, State representative, or accredited veterinarian in the State from which the cattle were to be moved. We also proposed to make several nonsubstantive changes to the regulations in part 71 for the sake of clarity and accuracy.

We initially solicited comments concerning our proposal for 30 days ending December 13, 1993. We received several requests for an extension of the comment period to give interested parties additional time to prepare comments on the proposal. In response to those requests, we published in the **Federal Register** on December 22, 1993 (58 FR 67708–67709, Docket No. 93–084–2), a document reopening and extending the comment period until February 14, 1994.

We received a total of 41 comments by the close of the extended comment period. The comments were submitted by State departments of agriculture and animal health agencies, veterinarians, private citizens, cattle industry associations, cattle-oriented businesses, and a member of the U.S. House of Representatives. Eight commenters supported the proposed rule as written, while another five commenters offered some support but suggested changes. The remaining 28 commenters opposed the proposed rule.

Some of the commenters questioned the need for individual identification on a certificate, asserting that State veterinarians could be notified by other means of the arrival of Mexican-origin cattle in their States. Many commenters believed that the proposed rule would place a huge new burden on the cattle industry, bringing excessive paperwork requirements, increased labor costs, and expensive time delays. Many of the commenters also believed that APHIS had seriously underestimated the costs that would be associated with completing, handling, and filing the certificates on which the cattle would be individually identified.

We carefully considered all of the comments we received. In light of the issues raised by many of the commenters, we have concluded that additional research is necessary to determine if the proposed rule would likely impose greater logistical and financial burdens on those entities that would be affected by its provisions than we had initially anticipated. Therefore, we are withdrawing the November 12, 1993, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered during the development of any new proposed regulations that would affect the interstate movement of Mexican-origin cattle.

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4179 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 94

[Docket No. 94–058–1]

Importation of Wild Turkey Carcasses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning imported animal products to allow wild turkey carcasses from countries where Exotic Newcastle disease is considered to exist to be brought into the United States if the head, feet, and viscera of the wild turkeys have been removed. Currently, wild turkey carcasses must be cooked before they may be imported. However, we have determined that wild turkey carcasses, once the head, feet, and viscera have been removed, may be imported into the United States without risk of introducing disease. This proposed change in the regulations would reduce restraints on hunters who wish to bring wild turkey carcasses into the United States.

DATES: Consideration will be given only to comments received on or before April 24, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–058–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Import/Export Products, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals, birds, and poultry, and animal, bird, and poultry products to prevent the introduction into the United States of various diseases of livestock and poultry.

Currently, the regulations in § 94.6(c)(3), (c)(4), and (c)(5) require that carcasses, and parts or products of carcasses, of poultry, game birds, or other birds, may be imported from countries where exotic Newcastle disease (VVND) is considered to exist only under certain conditions.

VVND is considered to exist in Mexico. Hunters have requested that they be allowed to return to the United States from Mexico with fresh killed turkey. Currently, the regulations require that turkeys from Mexico and other countries where VVND is considered to exist be cooked, packed in hermetically sealed containers and cooked, or imported under a permit. However, the regulations provide that game birds (defined in § 94.0 as "Migratory birds, including certain ducks, geese, pigeons, and doves") may be imported without cooking or permit if they have been eviscerated, and the heads and feet have been removed. When the turkeys are cooked for later consumption, any VVND virus in the meat will be destroyed. Viscera, heads, and feet for these game birds may not be imported into the United States, since VVND may be spread by these parts. The Animal and Plant Health Inspection Service (APHIS) has determined that turkeys may also be imported without presenting any significant disease risk if the head, feet, and viscera of the turkey are removed before the carcass is presented for entry into the United States.

We propose, therefore, to add wild turkeys to the definition of game birds in § 94.0, and to allow wild turkey carcasses with heads, feet, and viscera removed to be imported from countries where VVND is considered to exist without further restriction. We also propose to amend the definition of poultry in § 94.0 to clarify that, when turkey is commercial, domestic, or pen-raised, it would be poultry under the regulations (as opposed to a wild turkey, which would be a game bird).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule change would affect individual hunters who bring wild turkey carcasses into the United States from countries where VVND exists. This would primarily involve individuals who hunt wild turkeys in Mexico, since we are not aware of any significant interest in bringing wild turkey carcasses into the United States from other countries where VVND exists. Most hunters from the United States who hunt wild turkey in Mexico hunt the Gould turkey (a subspecies not found in the United States) or the Rio Grande turkey. It is estimated that between 50 and 100 wild turkey carcasses are brought into the United States from Mexico annually, by less than 50 U.S. hunters. There are a minimal number of small businesses that assist U.S hunters in booking Mexican guides for these turkey-hunting trips, and booking the trips is only a minor part of their business.

Currently, hunters must cook the wild turkey carcasses before bringing them into the United States from Mexico. This proposed rule would give hunters the option of not cooking the wild turkeys if they remove the head, feet, and viscera. We do not anticipate a significant increase in the number of either U.S. hunters of wild Mexican turkeys, or wild turkey carcasses imported into the United States, as a result of this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

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Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.0 [Amended]

2. In § 94.0, the definition for *Game birds* would be amended by adding ", and wild turkeys" immediately following the word "pheasants".

3. In § 94.0, the definition for *Poultry* would be amended by removing "turkeys," immediately following "Chickens," and adding "turkeys," immediately following "pen-raised".

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4178 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of NRC Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the period covering July through December, of 1994. This agenda provides the public with information about NRC's rulemaking activities. The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 13, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Rockville, Maryland, this 1st day of February 1995.

For the Nuclear Regulation Commission.

Michael T. Lesar,

Acting Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 95–4168 Filed 2–17–95; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 50

RIN 3150–AF00

Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to provide a performance-based option for leakage rate testing of containments of light-water-cooled nuclear power plants. This option will be available for voluntary adoption by licensees, in lieu of compliance with the current prescriptive requirements contained in the current regulation. This action is aimed at improving the focus of the regulations by eliminating prescriptive requirements that are marginal to safety. The proposed rule would allow test intervals to be based on system and component performance, and provide licensees greater flexibility for cost-effective implementation methods of regulatory safety objectives.

DATES: Submit comments by May 8, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystems can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, then the NRC subsystem will be accessed from the main FedWorld menu by selecting the "F—Regulatory, Government Administration and State Systems," then selecting "A—Regulatory Information Mall". At that point, a menu will be displayed that has an option "A—U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, then you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, then you will have full access to all NRC systems, but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Examine comments received, the draft environmental assessment and findings of no significant impact, and the draft regulatory analysis at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343. Copies of the documents may be obtained from the PDR for a fee. These documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

The NRC also requests public comment on Draft NUREG–1493, "Performance-Based Containment Leak Test Program." A free single copy of draft NUREG–1493 may be requested by written request to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, Room P1–37, Washington, DC 20555; fax (301) 504–2260. Comments on draft NUREG–1493 may be submitted to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments on draft NUREG–1493 to 11545 Rockville Pike, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments on draft NUREG–1493 may be submitted electronically as indicated above under the **ADDRESSES** heading.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6443, e-mail mkd@nrc.gov

SUPPLEMENTARY INFORMATION:

Background

The NRC is proposing to amend 10 CFR part 50, appendix J in an effort to relax and allow alternatives to those requirements that are prescriptive and marginal to safety and yet impose a significant regulatory burden on licensees. NRC reactor licensees are required currently to conduct periodic primary reactor containment leakage testing in accordance with 10 CFR part 50, appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Appendix J is currently prescriptive in that it specifies leak test frequencies, pretest requirements, test methods, and reporting requirements.

NRC's Marginal to Safety/Regulatory Improvement Program

In 1984, the NRC staff initiated a program to make regulatory requirements more efficient by eliminating those with marginal impact on safety. The NRC's initiative to eliminate requirements marginal to safety recognizes both the dynamic nature of the regulatory process and that the importance and safety contribution of some existing regulatory requirements may not have been accurately predicted when adopted or may have diminished with time. The availability of new technical information and methods justify a review and modification of existing requirements.

The NRC solicited comments from industry on specific regulatory requirements and associated regulatory positions that needed reevaluation. The Atomic Industrial Forum conducted a survey providing most of industry's input, published for the NRC as NUREG/CR–4330 [1], "Review of Light Water Reactor Regulatory Requirements," Vol. 1, April 1986. A list of 45 candidates for potential regulatory modification were identified. The NRC's review of the list selected Appendix J as one of seven areas requiring further analysis (NUREG/CR–4330, Vols. 2 and 3, dated June 1986 and May 1987). The NRC also conducted a survey of its staff concerning their expertise in a particular area, experience in regulation, and knowledge of regulatory requirements. The NRC staff survey identified 54 candidates, a number of which were previously identified in the earlier survey. The NRC's assessment of this list also selected appendix J as a potential candidate for modification.

The NRC published in the **Federal Register**, for comment, a proposed revision to appendix J on October 29, 1986 (51 FR 39538) to update acceptance criteria and test methods based on experience in applying the existing requirements and advances in containment leak testing methods, resolve interpretive questions, and reduce the number of exemption requests. The October 29, 1986, proposed rule is being withdrawn from further consideration and a more comprehensive proposed rule that accounts for the latest technical information and regulatory framework is being proposed.

The NRC's Marginal-to-Safety initiative is part of a broader NRC initiative for regulatory improvement. Through its Program for Regulatory Improvement, the NRC has institutionalized an ongoing effort to eliminate requirements marginal to safety and to reduce regulatory burden. The NRC staff's plan in SECY–94–090, dated March 31, 1994, which satisfies the recent requirement for a periodic review of existing regulations in Executive Order 12866 of September 30, 1993, was approved by the Commission on May 18, 1994. The Regulatory Improvement Program is aimed at the fundamental principle adopted by the Commission that all regulatory burdens must be justified and that its regulatory process must be efficient. In practice, this means the elimination or modification of requirements where burdens are not commensurate with their safety significance. The activities of the Regulatory Improvement Program should result in enhanced regulatory focus in areas that are more safety significant. As a result, an overall net increase in safety is expected from the program.

The Regulatory Improvement Program will include, whenever feasible and appropriate, the consideration of performance-oriented and risk-based approaches. The program will review requirements or license conditions that are identified as a significant burden on

[1] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013/7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

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licensees. If review and analysis find that the requirements are marginal to safety, they would be eliminated or relaxed. By performance-oriented, the NRC means establishing regulatory objectives without prescribing the methods or hardware necessary to accomplish the objective, and allowing licensees the flexibility to propose cost-effective methods for implementation. By risk-based, the NRC means regulatory approaches that use probability risk analysis (PRA) as the systematic framework for developing or modifying requirements.

The present rulemaking is part of this overall effort and initiative for eliminating requirements that are marginal to safety and is guided by the policies, framework and criteria for the program.

The NRC published a notice in the **Federal Register** on February 4, 1992 (57 FR 4166), presenting its conclusion that appendix J was a candidate whose requirements may be relaxed or eliminated based on cost-benefit considerations. On the basis of NRC staff analyses of public comments on the proposal, the Commission approved and announced on November 24, 1992 (57 FR 55156) its plans to initiate rulemaking for developing a performance-oriented and risk-based regulation for containment testing requirements. On January 27, 1993, (58 FR 6196) the NRC staff published a general framework for developing performance-oriented and risk-based regulations and, at a public workshop on April 27 and 28, 1993, invited discussions of specific proposals for modifying containment testing requirements. Industry and public comments on the proposals, and other recommendations and innovative ideas raised at the public workshop, were documented in the proceedings of the workshop (NUREG/CP–0129, September 1993). Specifically, the NRC concluded that the allowable containment leakage rate utilized in containment testing may be increased and other Appendix J requirements need not be as prescriptive as the current requirements. To increase flexibility, the detailed and prescriptive technical requirements contained in appendix J regulations could be improved and replaced with performance-based requirements and supporting regulatory guides. The regulatory guides would allow alternative approaches, although compliance with current existing regulatory requirements would continue to be acceptable. The performance-based requirements would reward superior operating practices.

Performance-Based Regulatory Approach

In institutionalizing the Regulatory Improvement program and adopting a performance-based regulatory approach, the NRC has formulated the following framework for revisions to its regulations:

(1) The new performance-based regulation will be less prescriptive and allow licensees flexibility to adopt cost-effective methods for implementing the safety objectives of the original rule.

(2) The regulatory safety objectives will be derived, to the extent feasible and practical, from risk considerations with appropriate consideration of uncertainties, and will be consistent with the NRC's Safety Goals.

(3) Detailed technical methods for measuring or judging the acceptability of a licensee's performance relative to the regulatory safety objectives will be, to the extent practical, provided in industry standards and guidance documents which are endorsed in NRC regulatory guides.

(4) The new regulation will be optional for current licensees so that licensees can decide to remain in compliance with current regulations.

(5) The regulation will be supported by necessary modifications to, or development of, the full body of regulatory practice including, for example, standard review plans, inspection procedures, guides, and other regulatory documents.

(6) The new regulation will be formulated to provide incentives for innovations leading to improvements in safety through better design, construction, operating, or maintenance practices.

Current Appendix J Requirements

Appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," became effective on March 16, 1973. The regulatory safety objective of reactor containment design is stated in 10 CFR part 50, appendix A, "General Design Criteria for Nuclear Power Plants," Criterion No. 16, "Containment Design." GDC Criterion 16 mandates "an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment * * *" for postulated accidents. Appendix J to 10 CFR part 50 implements, in part, General Design Criterion No. 16 and specifies containment leakage testing requirements, including the types of tests required. For each type of test required, Appendix J specifies how the tests should be conducted, the frequency of testing, and reporting requirements. Appendix J requires the following types of containment leak tests:

(1) Measurement of the containment integrated leak-rate (Type A tests, often referred to as ILRTs).

(2) Measurement of the leak-rate across each pressure-containing or leakage-limiting boundary for various primary reactor containment penetrations (Type B tests).

(3) Measurement of the containment isolation valves leak-rates (Type C tests).

Type B and C tests are referred to as local leak-rate tests (LLRTs).

Leak-Tightness Requirements

Compliance with 10 CFR part 50, appendix J, requirements is determined by comparing the measured containment leak-rate with the maximum allowable leak rate. Maximum allowable leak-rates are calculated in accordance with 10 CFR Part 100, "Reactor Site Criteria," and are incorporated into the technical specifications. Typical allowable leak-rates are 0.1 percent of containment volume per day for pressurized water reactors (PWRs) and one volume percent per day for boiling water reactors (BWRs).

Test Frequency Requirements

Schedules for conducting containment leak-rate tests are specified in appendix J for both preoperational and periodic tests. Periodic leak-rate tests schedules are as follows:

Type A Tests. (1) After the preoperational leak-rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year service period. The third test of each set must be conducted when the plant is shutdown for the 10-year plant in-service inspection.

(2) The performance of Type A tests must be limited to periods when the plant facility is nonoperational and secured in the shutdown condition under the administrative control and in accordance with the safety procedures defined in the license.

(3) If any periodic Type A test fails to meet the applicable acceptance criteria, the test schedule applicable to subsequent Type A tests will be reviewed and approved by the Commission. If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria, a Type A test must be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria, after which time the regular retest schedule may be resumed.

Type B Tests. (1) Except for airlocks, Type B tests must be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. If opened following a Type A or B test, containment penetrations subject to Type B testing must be tested prior to returning the reactor to an operating mode requiring containment integrity. For primary reactor containment penetrations employing a continuous leakage monitoring system, Type B tests, except for tests of airlocks, may be performed every other reactor shutdown for refueling but in no case at intervals greater than 3 years.

(2) Airlocks must be tested prior to initial fuel loading and at 6-month intervals thereafter. Airlocks opened during periods when containment integrity is not required by the plant's technical specifications must be tested at the end of such periods. Airlocks opened during periods when containment integrity is required by the plant's technical specifications must be tested within 3 days after being opened. For airlock doors opened more frequently than once every 3 days, the airlock must be tested at least once every 3 days during the period of frequent openings. For airlock doors having testable seals, testing the seals fulfills the 3-day test requirement. Airlock door seal testing must not be substituted for the 6-month test of the entire airlock at not less than P_a, the calculated peak containment pressure related to the design basis accident.

Type C Tests. Type C tests must be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

There have been two amendments to this appendix since 1973. The first amendment published September 22, 1980 (45 FR 62789), modified the Type B penetration test requirements to conform to what had become accepted practice through the granting of exemptions. The second amendment published November 15, 1988 (53 FR 45890) incorporated the Mass Point statistical analysis technique as a permissible alternative to the Total Time and Point-to-Point techniques specified in appendix J.

European Experience

A combination of Type A tests and an on-line monitoring (OLM) capability is being actively pursued in Europe, notably in France and Belgium, and is currently being considered in Sweden. OLM is used to identify a "normal" containment pressurization pattern and to detect deviations from that pattern. The Belgians conduct a leak test using OLM during reactor operation after each cold shutdown longer than 15 days with the objective of detecting gross leaks. The objective of the Belgian approach to Type A testing is to reduce the frequency and duration of the tests. The Type A test is conducted at a containment pressure (P_t) not less than half of the peak pressure (0.5 P_a). It is performed once every 10 years.

In France, containment leaktightness is being continuously monitored during reactor operation in all of the French PWR plants using the SEXTEN system. It is also being evaluated by the Swedes for their PWR units. Leaks may be detected during the positive or negative pressure periods in the containment by evaluating the air mass balance in the containment. Type A tests are conducted at containment peak pressure (loss-of-coolant accident pressure) before initial plant startup, during the first refueling, and thereafter every 10 years unless a degradation in containment leak-tightness is detected. In that case, tests are conducted more frequently.

Further details of European approaches to containment testing is provided in Draft NUREG–1493.

Advance Notices for Rulemaking and Public Comments

Over time, it has become apparent that variations in plant design and operation frequently make it difficult to meet some of the requirements contained in appendix J because of its prescriptive nature. Economic and occupational exposure costs are directly related to the frequency of containment testing. Containment integrated leak rate tests (Type A) preclude any other reactor maintenance activities and thus are on the critical path for return to service from reactor outages. In addition to the costs of the tests, integrated leak tests impose the added burden of the cost of replacement power. Containment penetration leak tests (Type B and C) can be conducted during reactor shutdowns in parallel with other activities and thus tend to be less costly; however, the large number of penetrations impose a significant burden on the utilities. Additionally, risk assessments performed to date indicate that the allowable leak rate from containments can be increased, and that control of containment leakage at the current low rates is not as risk significant as previously assumed.[2] [3]

Initial NRC Proposal

In August of 1992, the Commission initiated a rulemaking to modify appendix J to make it less prescriptive and more performance-oriented. The Commission also initiated a plan to relax the allowable containment leak-rate utilized to define performance standards for containment tests. In the **Federal Register** published on January 27, 1993 (58 FR 6196), the NRC indicated the following potential modifications to appendix J of 10 CFR part 50 would be considered:

(1) Increase allowable containment leak-rates based on Safety Goals and PRA technology (i.e., define a new performance standard).

(2) Modify appendix J to be a performance-based regulation:

A Limit the revised rule to a new regulatory objective: In order to ensure the availability of the containment during postulated accidents, licensees should either:

(i) Test overall containment leakage at intervals not longer than every 10 years, and test pressure-containing or leakage-limiting boundaries and containment isolation valves on an interval based on the performance history of the equipment; or

(ii) Provide on-line (i.e., continuous) monitoring of containment isolation status.

B Remove prescriptive requirements from appendix J and preserve useful portions as guidance in a NRC regulatory guide.

C Endorse industry standards on:

(i) Guidance for calculating plant-specific allowable leak-rates based on new NRC performance standard;

(ii) Guidance on the conduct of containment tests; and

(iii) Guidance for on-line monitoring of containment isolation status.

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[2] Severe Accident Risks: An assessment for five U.S. Nuclear Power Plants, Final Summary Report," NUREG–1150, December 1990. Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013/7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

[3] Performance-Based Containment Leak Test Program," Draft NUREG–1493, January 1995. A free single copy of draft-1493 may be requested by those considering public comment by writing to the U. S. Nuclear Regulatory Commission, ATTN: Distribution Section, Room P1–37, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

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D Continue to accept compliance with the current detailed requirements in appendix J (i.e., licensees presently in compliance with Appendix J will not need to do anything if they do not wish to change their practice).

A public workshop on the subject was held by the NRC on April 27 and 28, 1993.[4]

Public Comments and Issues

Listed below are the categories of relevant issues identified by the public, the nuclear industry, and the NRC at the public workshop and in response to earlier solicitations for comments on this rulemaking, and a summary of interests expressed. Summaries of individual comments earlier solicitations were published on November 1992 (57 FR 55156). The comments at the public workshop are documented in NUREG/CP–0129, September 1993. The comments are available for inspection in the NRC Public Document Room.

1. Is there a continuing need for this regulation?

Most commenters agree that there is a continuing need for a regulation on containment leak testing. While some commenters believe the regulation should be tightened, most commenters believe appendix J requirements should be relaxed. Industry representatives presented a wealth of data on the cost and benefits of containment leak testing.

2. Should the NRC replace appendix J to 10 CFR part 50, "Primary Reactor Containment Leak Testing for Water-Cooled Power Reactors," with a non-prescriptive, performance-based rule?

One commenter believed that using conservatism that may far exceed performance-based regulations is in the public's interest. Some misallocation of resources does exist that could be corrected, although there may be varying opinions concerning where they are. One commenter believed that, from a public perception viewpoint, there would be dissatisfaction with changing to performance-based regulation. It appears to represent a streamlining or deregulation of standards. Another view held that because there is no consistent regulatory basis, there are inconsistencies in regulation. Performance-based regulations would get rid of these inconsistencies. A move to performance-based regulations would uncover marginal requirements. Performance-based requirements would depend on the functional importance of a component and might include deterministic performance standards for components. A component that did not meet the performance standard would be rejected. Another view was that the industry can use increased knowledge about reactors and regulations within the existing technology to improve the regulations and reduce risk, without relying on risk assessments. This approach might result in earlier benefits. Industry generally encouraged the NRC to proceed with its initiative to decrease the prescriptiveness of its regulations and adopt more performance-based approaches.

3. Should the NRC increase allowable containment leakage rates?

Some commenters believe that the existing appendix J requirements for allowable leakage should not be relaxed and, based on their interpretation of NUREG/CR–5747, "Estimate of Radionuclide Releases Characteristics into Containment Under Severe Accident Conditions," suggests that more stringent leakage limits, not relaxation of these requirements, is appropriate. Because the current leakage rates specified in plant technical specifications are based on relatively conservative assumptions, the majority of commenters believe that a more realistic representation of loss-of-coolant accidents should be used to calculate dose to the public. These commenters believe that more realistic accident scenarios would support a relaxation in the containment leak-rate.

4. Should the NRC decrease Type A, B, and C test frequencies?

While some commenters had opinions on proper test frequencies, and most believed that test frequencies could be relaxed, overall, the technical community believed that examination of the technical data and the objectives of the test should be used to determine the appropriate test frequency. One commenter believed that both increased and decreased frequencies might be appropriate. For example, tests might be increased in frequency for valves that play a risk-significant role, and test interval or allowable leak-rate could be increased for less important components.

5. Can the new rule and its implementation yield an equivalent level of, or only have a marginal impact on, safety?

Most commenters believe that a move to performance-based regulations would uncover marginal requirements. Some believe that by conserving resources in areas where safety is not a significant issue, more resources can be devoted to more risk-significant areas with a net increase in the overall safety margin.

6. Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged?

Several commenters believe that the regulatory process should integrate deterministic, risk-based, and performance-based regulation and allow for case-specific evaluation, with a goal of protecting the health and safety of the public and at the same time minimizing the cost to the licensee. Others believe that the opinions of public interest groups should also be sought in deriving safety goals/objectives. Overall, no comments were presented that would suggest that a common understanding could not be achieved on goals and performance measurements.

7. Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against?

Several commenters believe that the regulations should be performance-based and the associated guidance documents should be prescriptive so that only the guidance documents not the regulations will need to be changed as more information is gained on compliance issues. Many commenters believe that PRAs should not be the sole basis for regulatory decisions due to the uncertainty in their results; however, if the results indicate that a particular requirement has a contribution to risk significantly below the Safety Goal thresholds, the PRA information should be considered sufficient to justify elimination of the requirement as marginal to safety.

Proposed Revision

Based on several advance notices for rulemaking and significant public comment and discussion, risks and costs evaluated, and consideration of which modifications are feasible and practical at this time, the NRC proposes two phases for modifications of requirements to containment leakage testing. The first phase, for which modifications are proposed in this notice, will allow leak-rate testing intervals to be based on the performance of the containment system structures and components. The second phase will further examine the needed requirements of the containment function (i.e. structural and leak-tight integrity of containment system structures and components, and prevention of inadvertent bypass), and include consideration of the potential of on-line monitoring of containment integrity to verify certain functions. Solicitation of public comments to guide this future work is included later in this notice.

The rule proposed in this notice would apply to all NRC licensees who operate light water power reactors. The proposed rule would allow licensees the option of continuing to comply with the current appendix J or to adopt the new performance-based standards.

The NRC's analyses are based upon the insight gained through the use of probability risk assessment techniques and the significant data base of practical, hands-on operating experience gained since appendix J was promulgated in 1973. This operating experience provides hard evidence of the activities necessary to conduct appendix J testing, and the costs of those activities both in monetary terms and occupational radiation exposure.

The results of the present effort documented in draft NUREG–1493, which are based on NUREG–1150, confirm previous observations of insensitivity of population risks from severe reactor accidents to containment leak-rates.

The current appendix J requirements have achieved the regulatory criteria of assuring an essentially leak-tight boundary between the power reactor system and the external environment (GDC Criterion 16). Costs associated with complying with current appendix J requirements are estimated to be $165,000 for a complete battery of Type B/C tests and $1,890,000 for Type A tests. Over the average reactor's remaining lifetime of 20 years, the present value of all remaining leak testing at a five percent discount rate is about $7 million per reactor. Estimates of the remaining industry-wide costs of implementing current appendix J requirements range from $720 to $1,080 million, approximately 75 percent of which could be averted with a performance-based rule.

The present study found that by allowing requirements with marginal effect on safety, but which impose a significant cost on licensees, to remain in effect is to essentially misallocate a portion of the NRC's and the industry's resources on activities for which there is no commensurate return in safety. The real cost then may be in a missed opportunity to focus NRC and licensee efforts to areas where the return in terms of added public safety is higher.

Specific alternatives for modifying the current appendix J were identified by the public in response to the NRC's **Federal Register** notice published on January 27, 1993 (58 FR 6196). Those whose characteristics matched the NRC's established criteria for the marginal to safety program were selected for further review.

Modifications of Initial Proposals

Allowable Leakage Rate

The NRC had initially planned to establish, by rulemaking, a risk-based allowable leak-rate commensurate with its significance to total public risk. Specific findings from draft NUREG–1493 on the allowable leakage rate include:

1. Allowable leakage can be increased approximately two orders of magnitude (100–200 fold) with marginal impact on population dose estimates from reactor accidents.

2. Calculated mean population risks are several orders of magnitude below the NRC's Safety Goals for all reactors considered, but the tail of the distribution can approach Safety Goals.

3. Increases in the allowable leak-rate is estimated to have a negligible impact on occupational exposure.

Relaxing the allowable leak-rate is estimated to reduce future industry testing costs by $50 to $110 million, a ten percent decrease in overall leak-rate testing costs.

A risk-based allowable leakage rate would be based on an evaluation, using PRA, of the sensitivity and significance of containment leakage to risk, and determining an appropriate containment leakage limit commensurate with its significance to the risk to the public and plant control room operators. However, this would entail a major change in policy and restructuring of the current licensing basis and a more complete understanding of the uncertainties associated with the threat of severe accidents to the containment, and therefore, the NRC plans to consider a modification of the performance standard (allowable leakage level) in the second phase separate from modifications of testing requirements. This modification will be part of a broader effort to further examine the risk significance of various attributes of containment performance, i.e. structural and leak-tight integrity of containment system structures and components, and inadvertent bypass.

On-Line Monitoring (OLM) Systems

Currently, there is no requirement for OLM systems which monitor the containment to detect unintentional breaches of containment integrity.

Studies discussed in draft NUREG–1493, "Performance-Based Containment Leak Test Program," find that, based on operating experience, OLM would not significantly reduce the risk to the public from nuclear plant operation and, thus, cannot be justified solely on risk-based considerations. Specific findings include:

1. Continuous monitoring methods that exist appear technically capable of detecting leaks in reactor containments within 1 day to several weeks. OLM systems are in use or planned in several European countries.

2. OLM systems are only capable of detecting leaks in systems that are open to the containment atmosphere during normal operation (approximately ten percent of the mechanical penetrations).

3. The technical and administrative objectives of OLM systems and Type A tests are different.

4. OLM cannot be considered as a complete replacement for Type A tests because it cannot challenge the structural and leak-tight integrity of the containment system at elevated pressures.

5. Analysis of the history of operating experience indicates limited need for, and benefit of, OLM in the U.S.

Although OLM cannot be justified solely based on risk considerations, a plant already possessing such a system has greater assurance of achieving certain attributes of containment integrity. Therefore, OLM systems could contribute towards an overall leakage monitoring scheme. Some capability for on-line monitoring already exists as a byproduct of specific containment designs. For example, licensees with inerted BWR containments, or subatmospheric PWR containments, would readily detect gross leakages that develop during normal operation.

Given that the application of on-line monitoring is specific to containment design, and generic application cannot be justified solely on risk considerations, the NRC does not propose a requirement for OLMs. However, licensees which already have such a capability (e.g. inerted BWR containments, and subatmospheric PWR containments) are encouraged to propose plant-specific application of such a capability, including credit for any added assurance for certain attributes of containment integrity provided by such a system compared to other testing methods. The NRC will reconsider the role of OLM in the second phase of modifications in this area along with the allowable leakage rate.

Proposed Modification of Type A, B, C Test Intervals

The NRC proposes at this time, for the first phase of modifications, to define a new risk-based regulation by utilizing the performance history of components

[4] "Workshop on Program for Elimination of Requirements Marginal to Safety," NUREG/CP–0129, September 1994.

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(containment, penetrations, valves) as the means to justify an increase in the testing interval for Type A, B, and C tests. The revised regulation would require tests to be conducted on an interval based on the performance of the containment structure, penetration or valves without specifying the interval in the regulation. Currently, three Type A tests are conducted in every 10 year period. Type B (except airlocks, which are tested more frequently) and C tests are conducted on a frequency not to exceed 2 years.

The NRC proposes to base the frequency of Type A tests (ILRTs) on the historical performance of the overall containment system. Specific findings documented in draft NUREG–1493 that justify the proposal include:

1. The fraction of leakages detected only by ILRTs is small, on the order of a few percent.

2. Reducing the frequency of ILRT testing from three per 10 years to one per 10 years leads to a marginal increase in risk.

3. ILRTs also test the strength of the containment structure. No alternative to ILRTs have been identified to provide assurance that the containment structure will meet allowable leakage rates during design-basis accidents.

4. At a frequency of one test per 10 years, industry-wide occupational exposure would be reduced by 0.087 person-sievert (8.7 person-rem) per year.

Based on specific, detailed analyses of data from the North Anna and Grand Gulf plants and data from twenty-two nuclear plants (see draft NUREG–1493), performance-based alternatives to current LLRT methods are feasible with marginal impact on risk. Specific findings that justify the proposal include:

1. Type B and C tests detect a very large fraction, over 97 percent of containment leakages.

2. Of the 97%, virtually all leakages are identified by LLRTs of containment isolation valves (Type C tests).

3. Based on the detailed evaluation of the experience of a single 2-unit station, no correlation of failures with type of valve or plant service could be found.

4. For the 20 years of remaining operations, changing the Type B/C test frequency alone is estimated to reduce industry-wide occupational exposure by 0.72 person-sievert (72 person-rem) per year. If 20-year license extension is assumed, the estimate is 0.75 person-sievert (75 person-rem) per year.

Reducing the frequency of ILRTs will reduce future industry testing costs by approximately $330 to $660 million if tests are conducted once per 10 years versus the current three per ten years. These savings represent about 65 percent of the remaining costs of current appendix J requirements. Performance-based LLRT alternatives are estimated to reduce future industry testing costs by $40 million to $55 million. These savings represent about five percent of the total remaining costs of appendix J testing.

Therefore, based on the risks and costs evaluated, and other considerations discussed above, a performance-based appendix J which encompasses the following principles which differ moderately from those first described in the **Federal Register** (January 27, 1993 58 FR 6197) is proposed:

General. (1) Make appendix J less prescriptive and more performance-oriented; (2) Move details of appendix J tests to a regulatory guide as guidance; (3) Endorse approved industry guideline (NEI 94–01) on guidance on the conduct of containment tests in a regulatory guide. The methods for testing are contained in an industry standard (ANSI/ANS 56.8–1994) which is referenced in the NEI guideline; (4) Allow voluntary adoption of the new regulation, i.e., current detailed requirements in appendix J will continue to be acceptable for compliance with the modified rule.

Leakage Limits. Acknowledge the less risk-significant nature of allowable containment leakage (L_a) but pursue its modification as a separate action.

Type A Test Interval. (1) Based on the limited value of integrated leak-rate tests (ILRTs) in detecting significant leakages from penetrations and isolation valves, establish the test interval based on the performance of the containment system structure; (2) The performance criterion of the test will continue to be the allowable leakage rate (La); (3) The industry guideline allows extension of the Type A test interval to once every 10 years based on satisfactory performance of two previous tests; (4) In the regulatory guide, the NRC has included an exception for the extension of the interval of the general visual inspection of the containment system, and limited the interval to three times every 10 years as is current practice.

Type B & C Test Interval. (1) Allow local leak-rate test (LLRTs) intervals to be established based on the experience history of each component; (2) The performance criterion for the tests will continue to be the allowable leakage rate (La); (3) Specific performance criteria and factors for establishing extended test intervals (up to 10 years for Type B components, and 5 years for Type C components) are contained in the regulatory guide and industry guideline. In the regulatory guide, the NRC has included an exception to the extension of Type C test intervals up to 10 years that is proposed in the NEI industry guideline, and limited such extensions to 5-years.

Specific Areas for Public Comment

In its preliminary criteria for developing performance-based regulations, the NRC identified three issues to be addressed by the rulemaking process as a measure of the viability of the revised rule. These issues have been addressed in the rulemaking package and the NRC is seeking further public input on them.

1. Can the new rule and its implementation yield an equivalent level of, or would it only have a marginal impact on, safety?

The present study analyzed risks to the population and to workers from changes in appendix J requirements. The results of the present analysis confirm that population risks from severe reactor accidents are not sensitive to containment leak-rates. The calculated risks are well below the Safety Goals for all of the reactors considered even at assumed containment leak-rates 100-fold above current requirements. A change in the allowable leak-rate is estimated to have a negligible impact on occupational exposure. Results also show that relaxing the frequency of Type A, B, and C tests leads to an increase in overall reactor risk of approximately two percent. This increase is considered to be marginal to safety. Due to limitations of available plant data, the uncertainties of the risk impact of extending Type C test intervals beyond sixty months needs to be addressed.

Costs associated with complying with current appendix J requirements are estimated to be $165,000 for a complete battery of Type B/C tests, and $1,890,000 for Type A tests. Over the average remaining lifetime of 20 years, the present value of all remaining leak testing is about $7 million per reactor at a five percent discount rate. The estimates of remaining industry-wide costs to comply with the requirements of the current appendix J are approximately $720 to $1,080 million at a five percent discount rate, over 75 percent of which could be averted with a risk-based rule.

Based on the results of the present study, the NRC concludes that its safety objective for containment integrity can be maintained while at the same time reducing the burden on licensees. Thus, the new rule and its implementation can yield an equivalent level of, or only have a marginal impact on, safety.

2. Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged?

Conformance to the new appendix J requirements will be measured by the adequacy of the methods for establishing the frequency of Type A, B and C testing. It is a fundamental principle of this rulemaking that changes to existing leak-test requirements be based objectively upon the performance history of components as analyzed by established methods.

To assist in the common understanding of new methods of establishing Type A, B and C test frequencies between the NRC and power reactor licensees, the NRC has had ongoing discussions with licensees. These discussions included participation in workshops designed to elicit a common understanding. From these efforts, the NRC is proposing to endorse a guidance document from industry which specifies acceptable methods for achieving compliance with Appendix J.

Further, the NRC proposes to require that plant technical specifications provide a general reference to the regulatory guide or other implementation document to ensure the prior review and approval by the NRC of licensee deviations from approved methods. This will help maintain a common understanding in the implementation of the performance-based rule, and ensure adequate basis for licensee deviations.

The NRC expects that its activities to date, the review and endorsement of a industry guideline in a regulatory guide, and the general reference of the regulatory guide in plant technical specifications, will establish regulatory safety objectives in an objective manner, and provide a common understanding on the measures of compliance.

3. Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against?

A guidance document developed by industry and approved for use by the NRC helps to ensure consistent interpretation and application of compliance requirements. As experience is gained under the new rule, adjustments may be reasonably anticipated to the industry's guidance document which will be reviewed and approved by the NRC through the regulatory guide revision process. The NRC's regulatory and inspection personnel shall be trained in the interpretation and use of all relevant implementation documents to assure consistent enforcement.

In addition to the above, the NRC solicits comments on the following two issues.

4. Should the proposed revision be made even less prescriptive?

The proposed rule is less prescriptive than existing requirements and provides licensees with greater flexibility in the implementation of safety objectives established by NRC. This action is proposed based on substantive technical analyses presented in draft NUREG–1493. Regulatory positions were developed by the NRC through insights from probabilistic risk analyses, operating data, and deterministic engineering considerations. The NRC solicits public comment on whether this revision should make the rule even less prescriptive than proposed in this notice; and if so, how?

Specifically, comments are solicited on the potential alternative of further relaxing the test frequency requirements for the Integrated Leak Rate Tests (ILRT) by establishing a fixed ten-year interval based on generic industry data, or perhaps eliminating the tests beyond the first pre-operational test. Analyses of historical test data and risk analyses presented in draft NUREG–1493 indicate that the ILRT interval could be extended beyond the proposed ten-year interval, and perhaps eliminated after the first pre-operational test with marginal impact on safety. Leakages detected by an ILRT are rare and random, and not generally related to previous performance at a plant. However, the NRC considers that a ten-year testing interval, based on satisfactory previous plant-specific performance, is appropriate at this time. It is consistent with current industry practice for testing of pressure vessels, and should detect the potential for aging mechanisms that could affect containment leaktightness. Historical test data have not yet shown evidence of such aging mechanisms but they might develop late in life where little data exists. Comments are solicited on other benefits provided by the ILRT, in addition to determining the leakage rate, that would need to be addressed to justify further relaxations or elimination of the test. NRC's current position is guided by the desire to maintain some conservatism to address uncertainties and adopt an evolutionary approach in the modification of its requirements. However, the NRC does not wish to maintain undue conservatism in its regulations, and therefore, will consider comments received to determine the degree of prescriptiveness, and any further relaxation of the ILRT requirements included in the final rule.

5. Should the proposed revisions be made mandatory?

The NRC is considering whether the proposed rule, which as currently proposed would provide licensees with a non-mandatory alternative to their existing appendix J containment leak testing program, should instead be adopted as a mandatory requirement for all licensees.

The proposed rule is drafted as a non-mandatory alternative to current appendix J requirements because the Staff recognized that some licensees may have technical programs which they may not wish to modify at this time, even though a proposed modification would constitute a "relaxation" from current requirements or provide other regulatory or economic benefit. For these reasons, the Commission earlier approved a Staff policy whereby any proposed revisions to existing NRC requirements developed by the Regulatory Improvement Program (*See* SECY–94–090, "Institutionalization of Continuing Program for Regulatory Improvement," March 31, 1994) would not be mandatory, but would be proposed as alternatives (options) to existing requirements which may be voluntarily adopted by licensees. Given the history of difficulty and low success rate for attempts to resolve new safety issues simultaneously with improvements to regulatory efficiency, the Commission also approved a Staff policy for separating regulatory actions for new safety issues from those for improving regulatory efficiency. Therefore, this proposed rule does not address any new safety issues beyond the scope of the current appendix J requirements and is not aimed at improving safety.

The NRC is interested in the public's view as to whether the proposed rule should be made mandatory, in light of the overall long-term reduction in regulatory burden on licensees and the marginal impact on safety which would be entailed in the relaxation (see previous discussion in "Proposed Modification of Type A, B, C Test Intervals). The NRC is interested in the public's views on using the increase in regulatory efficiency as a potential rationale for making the proposed rule mandatory for all licensees. The NRC also requests public comment on the underlying policy discussed above that NRC rulemakings which are not intended to increase safety, but are only intended to increase regulatory efficiency and reduce the regulatory burden imposed by the NRC's rules,

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should be adopted as alternatives to existing requirements which may be voluntarily adopted by the regulated entity.

The NRC recognizes that if the proposed rule were made mandatory, that several backfitting issues are raised. These backfitting concerns are discussed in more detail in the next section on the "Backfit Rule."

Backfit Rule

As discussed above, the Commission is considering whether the proposed rule, which is currently drafted as providing licensees with a non-mandatory alternative relaxing the requirements for and frequency of containment leakage testing, should be adopted as a mandatory requirement (that is, the requirements of the rule would be imposed on all nuclear power plant licensees). If the alternative is made mandatory, the Commission acknowledges the potential relevance of the Backfit Rule. The Commission believes that the Backfit Rule was intended to constrain the Commission's adoption of mandatory relaxations of Commission requirements, if the mandated change imposed costs upon the licensee and that such mandatory relaxations are "backfits" as defined in § 50.109(a)(1). However, the Commission believes that it has the authority and basis for "waiving" the application of the Backfit Rule to the adoption of this rulemaking. The Commission requests public comments on each of these points.

1. The Proposed Rule Constitutes a "Backfit"

The current version of the Backfit Rule, 10 CFR 50.109, was adopted in substantially its current form in 1985.[5] 50 FR 38097 (September 20, 1985). Based upon a review of the rulemaking record which led to the final 1985 rule, the Commission's objective in adopting the Backfit Rule was to prevent the imposition of new requirements, not otherwise needed to assure adequate protection or compliance, which were of marginal overall safety benefit or involved implementation costs which were out of proportion to the safety benefits. The SOC explained that under the new backfitting standard "the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to the public health and safety or common defense and security, regardless of the implementation costs" (50 FR at 38102). Thus, the aim of the Backfit Rule was to instill into the regulatory process the need for disciplined analysis of proposed new requirements and regulatory initiatives (*See generally* 50 FR at 38101–38102).

The proposed revision relaxes and modifies existing requirements where the Commission believes that the burdens are not commensurate with their safety significance. Furthermore, the proposed rule does not contain any new requirements to address new safety issues not addressed in the original Appendix J rulemaking. However, if imposed as a mandatory requirement the proposed rule would mandate changes in a licensee's program for conducting containment leak rate tests, and would impose short-term costs on the licensee in order to reduce the long-term regulatory burden. However desirable such an imposition may be over the long term, it would nonetheless constitute a "backfit" as defined in § 50.109(a)(1). However, the Commission requests public comment on whether the definition of "backfit" in § 50.109(a)(1) was intended to encompass rulemakings of the type represented by this proposed rule.

2. Waiving the Applicability of the Backfit Rule

The Commission adopted the Backfit Rule as a self-imposed limitation on its rulemaking authority, and under the appropriate circumstances the Commission may "waive" its applicability, subject to the Administrative Procedure Act's requirement in rulemaking for notice and opportunity for public comment. The Commission believes that it is appropriate to "waive" the applicability of the Backfit Rule to the proposed rule if its requirements were made mandatory. The purpose of the rule is to relax and modify existing containment leak rate testing requirements where burdens are not commensurate with their safety significance. It does not contain any new requirements to address new safety issues not addressed in the original appendix J rulemaking. The proposed revision would relax existing marginal-to-safety requirements in order to reduce regulatory burden on nuclear power plant licensees and increase regulatory efficiency. This type of rulemaking complements the objectives of the Backfit Rule by eliminating requirements with little or no positive impact on safety, but whose regulatory burden is substantial. Therefore, if the Commission determines to impose the proposed rule's requirements, the Commission proposes to "waive" this rule from the requirements of the Backfit Rule.

The Commission requests public comment on the proposed rationale for "waiving" the application of the Backfit Rule to this rulemaking.

Regulatory Guide; Issuance, Availability

A draft regulatory guide, temporarily identified by its task number DG–1037, (on the same subject) "Performance-Based Containment Leak-Test Program" is also being published for comment. The regulatory guide endorses an industry standard which contains guidance on an acceptable performance-based leak-test program, leakage rate test methods, procedures, and analyses that may be used to implement these requirements and criteria.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the draft guide. Comments should be accompanied by supporting data. Specific comments are solicited on whether the regulatory guide and the industry guideline it endorses will result in a common understanding between licensees and the NRC on how performance will be measured and judged, and can be objectively inspected against. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by May 8, 1995. Comments on the draft regulatory guide may be submitted electronically as indicated elsewhere under the **ADDRESSES** heading.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced and are available free to the extent of supply) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the Office of Administration, Printing and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. The draft regulatory guide may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking.

Implementation

The proposed Option B to Appendix J specifies that the rule will become effective 30 days after publication. At any time thereafter, a licensee or applicant would notify the NRC of its desire to perform containment leakage rate testing according to Option B. Accompanying this notification, a licensee would submit proposed technical specifications changes which would eliminate those technical specifications which implement the current rule and propose a new technical specification referencing the NRC regulatory guide or, if the licensee desires, an alternative implementation guidance. Implementation must await staff review and approval of the licensee's proposal. The staff anticipates that a generic communication will be issued which will provide the implementation procedure to all power reactor licensees.

Solicitation of Comments for Future Revisions

As indicated earlier in this notice, the NRC plans a second phase of modifications to requirements for containment leakage rate testing to further adopt risk-based methods, and to broadly examine the type of performance-based rule needed to ensure the adequacy of the containment function. This will include increasing the allowable leakage rate based on risk considerations, further examination of the risk significance of various attributes of containment performance (structural and leaktight integrity of containment structures and components, and inadvertent bypass), and consideration of the potential of on-line monitoring of containment integrity to address certain attributes. In order to guide this future effort, the NRC has formulated the following questions and solicits public comments on them:

1. Should NRC pursue a fundamental modification of its regulations in this area by establishing an allowable leakage rate based on risk analysis (as presented in draft NUREG–1493, Chapter 5), as compared to the current practice of using deterministic design basis accidents and dose guidelines contained in 10 CFR part 100; or should the NRC modify the allowable leakage rate within the current licensing basis by revising source terms and updating regulatory guides (R.G.s 1.3 and 1.4)[6] for calculating doses to the public? What are the advantages and disadvantages of the two approaches? What are some other considerations than risk to public, e.g. plant control room habitability, that might limit the allowable leakage rate?

2. If the allowable leakage rate is increased, could on-line monitoring of containment integrity replace other current containment tests? Could the results of the on-line monitoring be used to establish a new performance basis for containment integrity involving less stringent reporting requirements if there is high assurance there are no large leakage paths in containment (> 1 in. diameter).

3. Are there any other regulatory approaches and technical methods by which the NRC can adopt a complete performance and risk basis to its regulations for containment leaktight integrity? What are some of the attributes for performance, and what risk-based methods can be used to analyze these attributes?

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. There will be no radiological environmental impact offsite, and the occupational exposure onsite is expected to decrease by about 0.8 person rem per year of plant operation for plant personnel if licensees adopt the performance-based testing scheme provided in the revised regulation. Alternatives to issuing this revision of the regulation were considered and found not acceptable. Single copies of the environmental assessment and finding of no significant impact can be obtained by submitting a written request to: Dr. Moni Dey, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will relax existing information collection requirements by providing an option to the existing requirements, the public burden for this collection of information is expected to be reduced by as much as 4583 hours per year, including the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information to the Information and Records Management Branch, T–6F33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; phone (202) 634–3273; fax (202) 634–3343.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set

[5] The Backfit Rule was subsequently amended in 1988 (53 FR 20603, June 6, 1988) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit *Union of Concerned Scientists et al. v. U.S. Nuclear Regulatory Commission*, 824 F.2d 103) which remanded the 1985 rule to the NRC because the rule failed to clearly indicate that costs may not be a consideration in determining whether there is adequate protection to the public health and safety.

[6] Copies may be purchased at current rates from the Superintendent of Documents, U. S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 (telephone 202 512–2249 or 202 512–2171); or from the National Technical Information Service by writing NTIS at Port Royal Road, Springfield, VA 22161.

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out in regulations issued by the Small Business Administration in 13 CFR part 121.

Backfit Analysis

This proposed revision to a current regulation by the inclusion of an option that may be voluntarily adopted by licensees, and which relaxes current requirements, is not considered a backfit under 10 CFR 50.109(a). Therefore, a backfit analysis is not necessary.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix J to 10 CFR Part 50 is amended by adding the following language between the heading and the Table of Contents and adding the language for Option B after Section V.B3.

Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.

This appendix includes two options, A and B, either of which can be chosen for meeting the requirements of this appendix.

Options A—Prescriptive Requirements

* * * * *

Option B—Performance-Based Requirements

Table of Contents

I. Introduction.
II. Definitions.
III. Performance-based leakage test requirements.
A. Type A test.
B. Type B and C tests.
IV. Recordkeeping.
V. Implementation.

I. Introduction

One of the conditions required of all operating licenses for light-water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments meet the leakage rate test requirements in either Option A or B of this appendix. These test requirements ensure that (a) leakage through these containments or systems and components penetrating these containments does not exceed allowable leakage rates specified in the Technical Specifications and (b) integrity of the containment structure is maintained during its service life. Option B of this appendix identifies the performance-based requirements and acceptance criteria for preoperational and subsequent periodic leakage rate testing.[7]

II. Definitions

Acceptance criteria means the performance standards against which test results are to be compared for establishing the acceptability of the containment system as a leakage limiting boundary.

Containment system means the principal barrier, after the reactor coolant pressure boundary, to prevent the release of quantities of radioactive material that would have a significant radiological effect on the health of the public.

Overall integrated leakage rate means the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.

La (percent/24 hours) means the maximum allowable leakage rate at pressure Pa as specified in the Technical Specifications.

Pa (p.s.i.g) means the calculated peak containment internal pressure related to the design basis loss-of-coolant accident as specified in the Technical Specifications.

[7] Specific guidance concerning a performance-based leak test program, acceptable leakage rate test methods, procedures, and analyses that may be used to implement these requirements and criteria are provided in draft Regulatory Guide DG–1037, "Performance-Based Containment System Leakage Testing."

III. Performance-Based Leakage Test Requirements

A. Type A Test

Type A tests to measure the containment system overall integrated leakage rate must be conducted under conditions representing design basis loss-of-coolant accident containment peak pressure. A Type A test must be conducted (1) after the containment system has been completed and is ready for operation and (2) at a periodic interval based on the historical performance of the overall containment system as a barrier to fission product releases to reduce the risk from reactor accidents. A general visual inspection of the accessible interior and exterior surfaces of the containment system for structural deterioration which may affect the containment leaktight integrity must be conducted prior to each test, and at a periodic interval between tests based on the performance of the containment system. The leakage rate must not exceed the allowable leakage rate (La) with margin as specified in the Technical Specifications. The test results must be compared with previous results to examine the performance history of the overall containment system to limit leakage.

B. Type B and C Tests

Type B pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage limiting boundaries, and Type C pneumatic tests to measure containment isolation valve leakage rates, must be conducted (a) prior to initial criticality, and (b) periodically thereafter at intervals based on the safety significance and historical performance of each boundary and isolation valve to ensure the integrity of the overall containment system as a barrier to fission product release to reduce the risk from reactor accidents. The performance-based testing program must contain performance goals and acceptance criteria, consideration of factors that affect performance when establishing test intervals, evaluations of performance of containment system components, and comparison to previous test results to examine the performance history of the overall containment system to limit leakage. The tests must demonstrate that (1) the sum of the leakage rates at accident pressure of Type B tests, and pathway leakage rates from Type C tests, is less than the total allowable leakage rate (La) specified in the Technical Specification with margin; and (2) the performance goal for the reliability of the overall containment system to limit leakage during reactor accidents is not exceeded.

IV. Recordkeeping

The results of the preoperational and periodic Type A, B, and C tests must be documented to show that acceptance criteria for leakage have been met. The comparison to previous results of the performance of the overall containment system and of individual components within it must be documented to show that the test intervals established for the containment system and components within it are adequate. These records must be available for inspection at plant sites.

If any Type A, B, or C tests fail to meet their leakage rate acceptance criteria as

defined in the plant Technical Specifications those failures must be assessed for Emergency Notification System reporting under §§ 50.72(b)(1)(ii) and 50.72(b)(2)(i), and for a Licensee Event Report under §§ 50.73(a)(2)(ii).

V. Implementation

A. Applicability

The requirements in either or both Option B, III.A for Type A tests, and Option B, III.B for Type B and C tests, may be adopted on a voluntary basis by an operating nuclear power reactor licensee as specified in § 50.54 in substitution of the requirements for those tests contained in Option A of this appendix. If the requirements for tests in Option B, III.A or Option B, III.B are implemented, the recordkeeping requirements in Option B, IV for these tests must be substituted for the reporting requirements of these tests contained in Option A of this appendix.

B. Effective Date

1. Specific exemptions to Option A of this appendix that have been formally approved by the AEC or NRC, according to 10 CFR 50.12, are still applicable to Option B of this appendix if necessary, unless specifically revoked by the NRC.

2. This amendment to this appendix, by inclusion of an additional option for meeting the requirements of the appendix, is effective (30 days after the publication of the final rule). At any time hereafter a licensee or applicant for an operating license can adopt Option B, or parts thereof, as specified in Section V.A of this appendix, by submitting a notification of its implementation plan and request for revision to technical specifications to the Director of the Office of Nuclear Reactor Regulation.

The regulatory guide or other implementation document used by a licensee, or applicant for an operating license, to develop a performance-based leakage testing program must be included, by general reference, in the plant's technical specifications. The detailed licensee programs must be available at the plant site for inspection thereafter. The programs must contain justification, including supporting analyses, if they deviate from methods approved by the Commission and endorsed in a regulatory guide. The deviations and their justifications must be described in the notification provided by the licensee of its implementation plan and the submittal for revision of plant technical specifications.

Dated at Rockville, MD, this 14th day of February, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 95–4167 Filed 2–17–95; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–120–AD]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, that would have superseded an existing AD to require inspections to detect cracks in the web of the wing front spar, and modification, if necessary. That proposal was prompted by a report of cracking in the web in an area outside the inspection zone specified in the existing AD. A crack in the web that is not detected before it extends outside the chord footprints can allow fuel leakage. This action revises the proposed rule by reducing the compliance time for inspections of certain airplanes. The actions specified by this proposed AD are intended to prevent fuel leakage onto an engine and a resultant fire due to cracking in the web of the wing front spar.

DATES: Comments must be received by March 7, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–120–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 28, 1994 (59 FR 54134). That NPRM would have superseded an existing AD to require repetitive inspections to detect cracks in the web of the wing front spar over engine numbers 2 and 3, and repair, if necessary. That NPRM was prompted by a report of cracking in the web in an area outside the inspection zone specified in the existing AD. That condition, if not corrected, could result in fuel leakage onto an engine and a resultant fire.

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Two commenters support the proposed rule.

One commenter to the NPRM, Boeing, requests that the proposed compliance time of 1,000 landings, specified in paragraph (b) of the NPRM for airplanes on which the terminating modification has not been accomplished, be shortened to 6 months, as recommended in the manufacturer's service bulletin. The FAA concurs with the commenter's request. Due to an error during publication of the NPRM, an incorrect compliance time was specified in paragraph (b). The FAA's intent was that this compliance time coincide with the recommendation of the manufacturer's service bulletin. Paragraph (b) of this supplemental NPRM has been revised to specify a compliance time of "prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of the AD, whichever occurs later."

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this supplemental NPRM to clarify this requirement.

The manufacturer has advised that it is currently developing a modification program for the engine struts on these airplanes that will positively address the fatigue cracking condition and other items associated with the engine struts. Once this modification program is developed and approved, the FAA may consider additional rulemaking.

There are approximately 35 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 22 work hours per airplane to accomplish the proposed inspections (between front spar stations 628 and 675) specified in this AD, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,520, or $1,320 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the terminating modification that would be provided by this AD action, it would take approximately 644 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be $21,800. Based on these figures, the total cost impact of the terminating modification would be $60,440 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6702 (55 FR 33279, August 15, 1990), and by adding a new airworthiness directive (AD) to read as follows:

Boeing: Docket 94–NM–120–AD.

Applicability: Model 747SP series airplanes; variable numbers RG001 through RG142 inclusive, and RG171 through RG222 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage onto an engine and a resultant fire, accomplish the following:

(a) For airplanes on which the "terminating modification" [between front spar station (FSS) 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Within the next six months after September 21, 1990 (the effective date of AD 90–17–18, amendment 39–6702), perform a visual and an ultrasonic inspection of the front spar web between front spar station (FSS) 636 and FSS 675 in accordance with Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990, or Revision 1, dated September 6, 1990. If no crack is found, repeat these inspections at intervals not to exceed 1,000 landings until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes on which the "terminating modification" [between front spar station (FSS) 640 and FSS 670] specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has not been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD to detect cracks in the web between FSS 628 and FSS 675, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. Accomplishment of these inspections terminates the repetitive inspection requirement of paragraph (a) of this AD. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection in the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection in the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection in the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(c) For airplanes on which the "terminating modification" specified in Boeing Alert Service Bulletin 747–57A2259, dated February 15, 1990; or Revision 1, dated September 6, 1990; has been accomplished: Prior to the accumulation of 4,000 total landings on the airplane, or within 6 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD to detect cracks in the web between FSS 628 and FSS 636, in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994. If no crack is found, repeat these inspections thereafter at intervals not to exceed 1,000 landings.

(1) Perform an ultrasonic inspection of the web under the upper and lower chord footprints; and

(2) Perform a high frequency eddy current inspection of the web in an area one inch below the upper chord and one inch above the lower chord footprints; and

(3) Perform a detailed visual inspection of the forward face of the web of the wing front spar at fastener locations in the web-to-stiffeners and web-to-rib posts.

(d) If any crack is found during any inspection required by this AD, prior to further flight, accomplish a terminating modification (between FSS 623 and FSS 670) in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Installation of a terminating modification (between FSS 623 and FSS 670) in accordance with Boeing Alert Service Bulletin 747–57A2259, Revision 2, dated June 9, 1994; or in accordance with a method approved by the Manager, Seattle ACO; constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4122 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–12–AD]

Airworthiness Directives; De Havilland Model DHC–8–102, –103, –106, –301, –311, and –314 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes. This proposal would require modification of a certain battery temperature monitor. This proposal is prompted by reports of failure of the battery temperature monitor, which resulted in smoke in the flight compartment. The actions specified by the proposed AD are intended to prevent failure of the battery monitor, which could result in smoke in the flight compartment.

DATES: Comments must be received by April 3, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

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FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102, –103, –106, –301, –311, and –314 series airplanes equipped with Ametek/Weston battery temperature monitors having part number (P/N) 522487. Transport Canada Aviation advises that reports have been received of failure of the battery temperature monitor, which resulted in smoke in the flight compartment. The cause has been attributed to the failure of a current-limiting resistor in the power supply circuit in the battery temperature monitor. This condition, if not corrected, could result in smoke in the flight compartment.

De Havilland has issued Service Bulletin S.B. 8–24–53, dated September 7, 1994, which describes procedures for modification of a certain battery temperature monitor. This modification involves either replacing the Ametek/Weston battery temperature monitor having part number (P/N) 522487, with a new monitor having P/N 522487–1; or reworking the monitor having P/N 522487, to create a new P/N 522487–1. The rework procedure involves replacing a certain resistor (R1) with a new resistor; adding a certain diode (CR11) to the circuit board; and re-identifying the battery temperature monitor. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–22, dated November 24, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of a certain battery temperature monitor. The actions would be required to be accomplished in accordance with the service bulletin described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

The FAA estimates that 137 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,220, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 95–NM–12–AD.

Applicability: Model DHC–8–102, –103, –106, –301, –311, and –314 series airplanes, serial numbers 003 through 389 inclusive; equipped with Ametek/Weston battery temperature monitor having part number (P/N) 522487; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the battery temperature monitor, which could result in smoke in the flight compartment, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the battery temperature monitor in accordance with de Havilland Service Bulletin S.B. 8–24–53, dated September 7, 1994.

(b) As of the effective date of this AD, no person shall install an Ametek/Weston battery temperature monitor, P/N 522487, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 14, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4121 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 93–CE–03–AD]

Airworthiness Directives; Fairchild Aircraft SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have revised AD 93–19–06, which requires repetitively inspecting acrylic cabin and cockpit windows for cracks on Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limits, replacing that window. The revision document was proposed to more fully define the crack limits and establish clearer repetitive inspection intervals under those crack limits for the affected airplanes. Several incident reports of cockpit side window failures on the affected airplanes that were in compliance with AD 93–19–06 has prompted the FAA to propose a modification to these windows in another AD action, which would supersede the current AD. The FAA is withdrawing the current NPRM and issuing another NPRM to propose this modification.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that would apply to Fairchild Aircraft SA26, SA226, and SA227 series airplanes was published in the **Federal Register** on March 30, 1994 (59 FR 14795). The action proposed to revise AD 93–19–06, Amendment 39–8705, to more fully define the crack limits and establish clearer repetitive inspection intervals under those crack limits for the affected airplanes. AD 93–19–06 requires repetitively inspecting acrylic cabin and cockpit windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limits, replacing that window. The actions are accomplished in accordance with the following service bulletins (SB), as applicable:

Fairchild SB 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992.
Fairchild SB 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993.
Fairchild SB 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991.
Fairchild SB 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since issuance of the NPRM, the FAA has received several incident reports of cockpit side window failures on the affected airplanes. All of the airplanes involved in the referenced incidents are in compliance with AD 93–19–06. After a review of all available information related to the incidents referenced above, the FAA is proposing a modification to these windows in another AD action that would supersede AD 93–19–06, and is withdrawing the current NPRM.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed rule nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 93–CE–03–AD, published in the **Federal Register** on March 30, 1994 (59 FR 14795), is withdrawn.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4129 Filed 2–17–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–CE–22–AD]

Airworthiness Directives; Fairchild Aircraft SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 93–19–06, which currently requires repetitively inspecting acrylic cabin and cockpit side windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limitations, replacing that window. The proposed action would require modifying certain cockpit side windows, and would more fully define the crack limitations and establish clearer repetitive inspection intervals for the affected airplanes. The actions specified by the proposed AD are intended to prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

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Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 93–19–06, Amendment 39–8705 (58 FR 51771, October 5, 1993), currently requires repetitively inspecting acrylic cabin and cockpit side windows for cracks on certain Fairchild Aircraft SA26, SA226, and SA227 series airplanes, and, if cracks are found that exceed certain limitations, replacing that window.

Since issuance of AD 93–19–06, the FAA has received several incident reports of cockpit side window failures on the affected airplanes in compliance with that AD.

After examining the circumstances and reviewing all available information related to the action referenced above including the referenced incident reports, the FAA has determined that (1) A modification should be incorporated on cockpit side windows that do not have inner window panes; (2) the crack limitations specified in AD 93–19–06 should coincide with the applicable service information; and (3) AD action should be taken to prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA26, SA226, and SA227 series airplanes of the same type design, the proposed AD would supersede AD 93–19–06 with a new AD that would maintain the repetitive inspection requirements of AD 93–19–06, and add the modification referenced above. The proposed modification would be accomplished in accordance with the following service bulletins (SB), as applicable:

Fairchild SB 26–56–10–045, which incorporates the following table of effective pages:

Page Nos.	Date
3, 4, 5, and 9	Revised: December 1, 1994.
1, 2, 6, 7, 8, and 10 through 14.	Issued: August 11, 1994.

Fairchild SB 226–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

and Fairchild SB 227–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

The proposed repetitive inspections would be accomplished in accordance with the following SB's, as applicable:

Fairchild SB 226–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 227–56–001, Issued: February 2, 1983; Revised: November 26, 1991.
Fairchild SB 226–56–002, Issued: March 3, 1983; Revised: May 29, 1992.
Fairchild SB 227–56–002, Issued: January 5, 1984; Revised: May 29, 1992, and April 1, 1993.
Fairchild SB 226–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 227–56–003, Issued: September 13, 1984; Revised: November 2, 1989.
Fairchild SB 26–56–10–038, Issued: October 8, 1984; Revised: February 7, 1991.
Fairchild SB 26–56–20–042, Issued: November 28, 1988; Revised: February 7, 1991.

The compliance time for the proposed AD is presented in both hours time-in-service (TIS) and calendar time. The referenced acrylic cabin and cockpit side windows are affected by those conditions present while the airplane is in flight and while the airplane is on the ground. In addition, the utilization rates of the affected airplanes vary among operators. For example, operators in unscheduled service utilize their airplanes an average of approximately 200 to 300 hours TIS annually, while those in commuter service (scheduled) utilize their airplanes an average of approximately 2,000 hours TIS annually. Based on this wide utilization rate variance and the fact that these windows are affected when the airplane is in flight and on the ground, the FAA has determined that the compliance time for the proposed rule should be in hours TIS and calendar time.

The FAA estimates that 633 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 14 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,696,720. AD 93–19–06 currently requires the same inspections as the proposed AD for all of the affected airplanes. Therefore, the cost impact of the proposed inspections (3 workhours×$60×633 airplanes=$113,940) for operators of all affected airplanes is the same as AD 93–19–06. The figure does not take into account the cost of repetitive inspections, and is based on the assumption that no owner/operator has incorporated the proposed modification. The FAA has no way of determining how many repetitive inspections each owner/operator may incur.

In addition, Fairchild Aircraft has informed the FAA that approximately 250 of the 633 affected airplanes are equipped with cockpit side windows with inner window panes, and therefore do not need the proposed modification. With this in mind, the proposed cost impact upon U.S. operators would be reduced about 40-percent from $3,696,720 to $2,218,032.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 93–19–06, Amendment 39–8705 (58 FR 51771, October 5, 1993), and by adding a new airworthiness directive to read as follows:

Fairchild Aircraft: Docket No. 94–CE–22–AD. Supersedes AD 93–19–06, Amendment 39–8705.

Applicability: Models SA26–T, SA26–AT, SA226–T, SA226- T(B), SA226–AT, SA226–TC, SA227–AT, SA227–AC, SA227–BC, and SA227–TT airplanes (all serial numbers for all models), certificated in any category.

Note 1: The applicability of this AD takes precedence over that specified in the service information.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent acrylic cockpit or cabin side window failures, which, if not detected and corrected, could result in airframe damage and decompression injuries, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD or six calendar months after the effective date of this AD, whichever occurs first, modify all single pane cockpit side windows to dual panes (two acrylic cockpit side windows) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the following service bulletins (SB), as applicable:

Fairchild SB 26–56–10–045, which incorporates the following table of effective pages:

Page Nos.	Date
3, 4, 5, and 9	Revised: December 1, 1994.
1, 2, 6, 7, 8, and 10 through 14.	Issued: August 11, 1994.

Fairchild SB 226–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

and Fairchild SB 227–56–005, which incorporates the following table of effective pages:

Page Nos.	Date
3 through 7, and 9 ...	Revised: December 1, 1994.
1, 2, and 8	Revised: August 11, 1994.
10 through 16	Issued: July 31, 1991.

Note 3: The above modification only applies to airplanes without existing inner window panes. The installation requires replacing the existing left and right hand outer window panes, except those panes with part number 26–21363–009/-010 that are installed and are in serviceable condition.

(b) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 1,000 hours TIS or 12 calendar months (compliance with AD 89–06–02 or AD 93–19–06), visually inspect all acrylic cabin and cockpit side windows for cracks in accordance with the following SB's, as applicable:

(1) For acrylic cabin side windows:

Model	Service bulletin
SA26–T	26–56–20–042, Issued: November 28, 1988, Revised: February 7, 1991.
SA26–AT	26–56–20–042, Issued: November 28, 1988, Revised: February 7, 1991.
SA226–T	226–56–001, Issued: February 2, 1983, Revised: November 26, 1991.
SA226–T(B)	226–56–001, Issued: February 2, 1983, Revised: November 26, 1991.
SA226–AT	226–56–002, Issued: March 3, 1983, Revised: May 29, 1992.
SA226–TC	226–56–002, Issued: March 3, 1983, Revised: May 29, 1992.
SA227–AT	227–56–002, Issued: January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–AC	227–56–002, Issued January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–BC	227–56–002, Issued January 5, 1984, Revised: May 29, 1992, and April 1, 1993.
SA227–TT	227–56–001, Issued February 2, 1983, Revised: November 26, 1991.

(2) For acrylic cockpit side windows:

Model	Service bulletin
SA26–T	26–56–10–038, Issued: October 8, 1984, Revised: February 7, 1991.
SA26–AT	26–56–10–038, Issued: October 8, 1984, Revised: February 7, 1991.
SA226–T	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.

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Model	Service bulletin
SA226–T(B)	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA226–AT	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA226–TC	226–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–AT	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–AC	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–BC	227–56–003, Issued: September 13, 1984, Revised: November 2, 1989.
SA227–TT	227–56–003, Issued: September 13, 1984, Revised November 2, 1989.

(c) If cracks are found that meet or exceed 4.3 inches in combined length, prior to further flight, replace the window with a new or serviceable window, and reinspect thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first.

(d) If cracks are found that are less than 4.3 inches in combined length but that meet or exceed .30 inches as specified in the Crack Limitations section of the service information referenced in paragraphs (b)(1) and (b)(2) of this AD, prior to further flight, accomplish one of the following:

(1) Replace the window with a new or serviceable window and reinspect thereafter at intervals not to exceed 1,000 hours TIS or 12 calendar months, whichever occurs first; or

(2) Fabricate a placard with the following words in letters at least 0.10-inch in height and install this placard within the pilot's clear view close to the pressurization controls: "AIRPLANE MUST BE OPERATED UNPRESSURIZED", and accomplish both of the following:

(i) Insert a copy of this AD into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM); and

(ii) Within the next 25 hours TIS or 30 calendar days, whichever occurs first, reinspect the cracked window for crack progression in accordance with the inspections specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable, and accomplish either paragraph (c), (d) or (e) of this AD, as applicable.

(e) If cracks are found that are less than .30 inches as specified in the Crack Limitations section of the applicable service information referenced in paragraphs (b)(1) and (b)(2) of this AD, within the next 25 hours TIS or 30 calendar days, whichever occurs first, reinspect the cracked window for crack progression in accordance with the applicable service information specified in paragraphs (b)(1) and (b)(2) of this AD, and accomplish either paragraph (c), (d), or (e) of this AD, as applicable.

Note 4: The repetitive inspections required by this AD are also referenced in the FAA-approved Fairchild Airframe Airworthiness Limitations Manual, ST–UN–M001.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) This amendment supersedes AD 93–19–06, Amendment 39–8705.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4132 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ANM–5]

Proposed Amendment to Class E Airspace; Sheridan, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Sheridan, Wyoming, Class E airspace. This proposal would amend the Sheridan, Wyoming, Class E airspace from full-time back to part-time. This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Sheridan, Wyoming by designating the Class E airspace as full-time instead of part-time. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows;

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Sheridan, WY [Revised]

Sheridan County Airport, WY
(Lat. 44°46′26″ N long. 106°58′37″ W)
Sheridan VORTAC
(Lat. 44°50′32″ N, long. 107°03′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Sheridan County Airport; that airspace extending upward from 1,200 feet above the surface within 6.1 miles southwest and 8.7 miles northeast of the Sheridan VORTAC 138° and 318° radials extending from 16.1 miles northwest to 29.6 miles southeast of the VORTAC, and that airspace southeast of Sheridan bounded on the north by a line located 4.3 miles south of and parallel to the Sheridan VORTAC 104° radial, on the east by a 30.5-mile radius of the Sheridan VORTAC, and on the south by a line located 8.7 miles north of and parallel to the Sheridan VORTAC 138° radial. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1995.

Bill H. Ellis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4207 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–4]

Proposed Amendment to Class E Airspace; Worland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Worland, Wyoming, Class E Airspace. This proposal would amend the Worland, Wyoming, Class E airspace from full-time back to part-time. This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–4, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–4, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Line Avenue SW., Renton, Washington

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98055–4056. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Worland, Wyoming, by designating the Class E airspace as full-time instead of part-time. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM WY E5 Worland, WY [Revised]

Worland Municipal Airport, WY
(Lat. 43°57'56" N, long. 107°57'01" W)
Worland VOR/DME
(Lat. 43°57'51" N, long. 107°57"03' W)

That airspace extending upward from 700 feet above the surface within 4 miles east and 8.3 miles west of the Worland VOR/DME 352° and 172° radials extending from 16.1 miles north to 5.3 miles south of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within a 20.1-mile radius of the VOR/DME, and that airspace extending upward from 10,500 feet MSL bounded on the north by lat. 44°00'00" N. on the east by the 20.1-mile radius of the Worland VOR/DME, on the south by V–319, and on the west by V–85. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1995.

Bill H. Ellis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4208 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Reconsideration of Final Rule; Opportunity for Written Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Reconsideration of final rule; notice of opportunity for additional written public comment.

SUMMARY: The Commission on February 6, 1995, approved a **Federal Register** notice amending its requirements under the Poison Prevention Packaging Act of 1970 for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated. Immediately thereafter, the Commission became aware of comments on the final rule that had not previously been submitted to the agency during the course of the rulemaking. As a result, the Commission on February 9, 1995, voted to withhold publication of the final rule in order to consider these new arguments.

The new arguments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for "normal adults" to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation.

DATES: Written comments limited to the new issues described below may be submitted on or before March 7, 1995.

ADDRESSES: Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 501, 4340 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Ph.D., Project Manager, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1196.

SUPPLEMENTARY INFORMATION:

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant ("CR") packaging. Under the PPPA, the Commission has defined and established standards for such "special" packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

To comply with the special packaging requirements, a package must resist entry by most young children and must be "not difficult" for "normal adults" to open and properly resecure, within specified time periods. 15 U.S.C. 1471(4). The existing requirements were developed before the widespread use of CR packaging ("CRP") and, therefore, without the benefit of the actual use experience and test data that since have become available.

The current adult test protocol, 16 CFR 1700.20(a)(4) and (5), specifies a test panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be

males. The test period is 5 minutes. The adults are given the test package and asked to open and then properly close the package. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the 5-minute test period. 16 C.F.R. 1700.15(b)(2).

In enacting the PPPA, the Congress was concerned that the elderly or individuals with disabilities would be unable to open CRP. Therefore, the PPPA was drafted to permit substances subject to CRP requirements to be marketed in non-CR packages ("non-CRP") in certain circumstances.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CRP only if (1) the manufacturer (or packer) also supplies the substance in CRP of a popular size and (2) the non-CRP bears conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

Furthermore, prescription substances subject to special packaging standards may be dispensed in non-CRP if directed by the prescriber or requested by the purchaser. PPPA § 4(b), 15 U.S.C. 1473(b).

Thus, persons who find CRP unduly difficult to use may purchase the single size of a nonprescription product that may be provided in noncomplying packaging or may request that his or her prescriptions be supplied in noncomplying packaging, thereby eliminating the protection that CRP provides against poisoning. Consumers are also making a substantial number of CRP ineffective after bringing them home, such as by leaving the package cap off or loose or by placing the package's contents in a non-CR container. The Commission was concerned that these consumer actions, all caused at least in part by packaging that is difficult for normal adults to use properly, were exposing children to avoidable poisonings.

On January 19, 1983, the Commission published an advance notice of proposed rulemaking ("ANPR") outlining its concerns in this area and explaining possible actions to increase the proper use of CRP, simplify the test procedures, and make the test procedures less affected by possible variables. 48 FR 2389. After considering comments on the ANPR and other available information, the Commission decided to propose amendments to the protocol to address this problem. Also, the proposed amendments would change the protocol to make the test results more consistent and make the child test easier to perform. The Commission published its initial proposal in the **Federal Register** of October 5, 1990. 55 FR 40856.

Older adults typically have the most difficulty with CRP. Therefore, in order to eliminate the currently-marketed CR package designs that are most difficult for "normal adults" of all ages to open, the Commission proposed to substitute older adults, ages from 60–75 years, for the current panel of 100 18–45 year-olds.

The original period for written comments on the proposal expired January 3, 1991, and oral comments were received by the Commission on December 5, 1990. The written and oral comments included several requests that the comment period be extended for periods up to 180 days. The requests stated that the testing and evaluations needed to respond to the proposal required the additional time. Some requests also asked for a second opportunity to submit oral comments at the end of the extended period for submitting written comments. The Commission considered these requests and granted an extension of 180 days, until July 1, 1991, for submission of written comments. Additional oral comments were received on September 12, 1991.

During the original comment period, a commenter suggested certain changes to the proposed adult test. The Commission preliminarily concluded that this suggestion might have merit and requested comment on it. 56 FR 9181 (March 5, 1991).

The Commission received a number of comments in response to the proposed rule and the additional request for comment. The Commission then published a further request for comment on additional information used to address comments and on the changes to the test procedures that the Commission preliminarily concluded were appropriate. 59 FR 13264 (March 21, 1994). On December 20, 1994, the Commission was briefed by its staff on the comments on the proposed rule and the changes recommended by the staff.

On January 6, 1995, the Commission met and decided to approve the rule recommended by the staff, but to exclude from the scope of the rule those products that must be packaged in metal cans or aerosol form. The staff made appropriate changes to the draft **Federal Register** notice that would issue the final rule, and that notice was approved by the Commission on February 6, 1995. Immediately thereafter, certain portions of the packaging industry raised concerns about the Commission's action. Some of these concerns already had been addressed in the rulemaking proceeding. Two concerns, however, had not been the subject of specific comments by interested parties in this rulemaking.

Specifically, the new comments can be summarized as follows. First, in establishing an adult test panel consisting of adults aged 60–75, the Commission allegedly exceeded its statutory authority to require that child-resistant packaging not be difficult for "normal adults" to use properly. Second, the rule allegedly addresses consumer convenience, rather than safety, which the comment claims is not properly the subject of a Commission regulation. In addition, the second comment contends that to the extent that child-resistant packages exist that will pass the "senior friendly" test approved by the Commission, market forces will be an adequate and more appropriate mechanism to ensure that the more convenient packaging will be adopted.

The Commission wanted to assure that it had an opportunity to consider these new arguments that had not previously been raised in the rulemaking. Accordingly, on February 8, 1995, the Commission voted unanimously to withhold publication of the **Federal Register** notice that would have issued the final rule, to consider the new arguments. Written comments, limited to these two issues only, may be submitted until March 7, 1995. The Commission will consider any new information and arguments received on these issues alone, and will resolve these points as quickly as possible. Comments addressing other issues will not be considered.

Dated: February 16, 1995.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 95–4307 Filed 2–17–95; 8:45 am]

BILLING CODE 6355–01–P

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Notices

Federal Register
Vol. 60, No. 34
Tuesday, February 21, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–007–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Ciba Seeds seeking a determination of nonregulated status for corn designated as "Event 176 Corn" genetically engineered for insect resistance. The Petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 24, 1995.

ADDRESSES: Please send an original and there copies of your comments to Docket No. 95–007–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–007–01. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number of the agency will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville) or (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Information of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 15, 1994, APHIS received a petition (APHIS Petition No. 94–319–01p) from Ciba Seeds (a division of Ciba-Geigy Corporation) of Research Triangle Park, NC, requesting a determination of nonregulated status under 7 CFR part 340 for insect-resistant corn designated as "Event 176 Corn." Event 176 Corn is genetically engineered with the synthetic gene that codes for an insecticidal protein naturally produced by *Bacillus thuringiensis* subsp. *kurstaki (Btk)*. The Ciba Seeds petition states that the subject corn should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, the subject corn was genetically engineered to produce an insect control protein representing a truncated form of the CryIA(b) protein that occurs naturally in *Btk*, a common gram-positive soil bacterium. This protein is a member of a class of insecticidal proteins, also known as delta-endotoxins, that are produced as parasporal crystals by *B. thuringiensis* in nature, and are known to be quite selective in their toxicity to specific organisms, while nontoxic to all other organisms.

Btk proteins are very effective against certain lepidopteran (caterpillar) insects, including European corn borer (ECB) (*Ostrinia nubilalis* (Hubner)). ECB is a major corn pest that reduces yield by disrupting normal plant physiology and causing physical damage to the plant and ear that results in stalk lodging, dropped ears, and damaged grain. Results of field tests conducted by Ciba Seeds under permits granted by AHPIS and the Environmental Protection Agency (EPA) indicate that corn plants producing the CryIA(b) protein are quite effective in controlling ECB. The corn plants under evaluation preferentially express the insect control protein in leaf tissue and pollen (both feeding sources for ECB), while minimizing its production in other plant tissues, including kernels, where it is not needed for control of the target pest.

As described in the petition, the *cryIA(b)* gene expressed in the transgenic corn plants encodes a protein that is identical to the first 648 amino acids of the full-length, 1,155-amino-acid CryIA(b) protein that occurs in nature. This truncated protein contains the portion of the native protein that is responsible for its insecticidal activity. Two different tissue-specific promoters, both derived from corn, confer protein expression in green tissue and pollen, respectively. In addition to expressing the CryIA(b) protein, the plants also express the enzyme phosphinothricin acetyltransferase, currently used in the plant as a selectable marker. Expression of the selectable market gene is regulated by the 35S promoter, while expression of the CryIA(b) protein is controlled in part by the 35S terminator. The 35S promoter and the 35S terminator are derived from the plant pathogen cauliflower mosaic virus.

Ciba Seeds' Event 176 Corn is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences (vectors, promoters, and terminators) derived from plant pathogenic sources. Event 176 Corn was evaluated in field trials conducted under APHIS permits in 1992 and 1993, and under APHIS notifications in 1993 and 1994. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn is also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Ciba Seeds has submitted to the EPA an application to register this transgenic plant pesticide, the *Btk* CryIA(b) insect control protein as produced in corn. On January 13, 1995, EPA announced receipt of this application (EPA File Symbol 66736–R) in the **Federal Register** (60 FR 3209; OPP–30377; FRL–4928–9).

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA.

Ciba Seeds has also submitted to the EPA a pesticide petition (pp 4F4395) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient *B. thuringiensis* delta-endotoxin as produced in corn by a *cryIA(b)* gene and its controlling sequences. On February 1, 1995, EPA announced receipt of this petition in the **Federal Register** (60 FR 6092–6093; PF–618; FRL–4930–3).

Consistent with the "Coordinated Framework for Regulation of Biotechnology" (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their review of this genetically engineered corn to avoid duplication and assure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the avaible information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Ciba Seeds' Event 176 Corn and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4182 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 95–010–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that seven applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving

interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–355–01	Betaseed Incorporated.	12/21/94	Sugar beet plants genetically engineered to express resistance to the rhizomania virus and tolerance to the herbicide glufosinate.	California, Idaho.
94–362–01	Betaseed Incorporated.	12/28/94	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	Idaho.
94–362–02	University of Wisconsin.	12/28/94	Alfalfa plants genetically engineered to express either a lignin peroxidase or an alpha amylase, and marker genes encoding neomycin phosphotransferase or beta glucuronidase.	Oregon, Wisconsin.
95–003–01	U.S. Department of Agriculture, Agricultural Research Service.	1/03/95	*Fusarium graminearum* genetically engineered to express altered levels of mycotoxin production.	Illinois, Indiana.
95–010–01	Monsanto Company	1/10/95	Wheat plants genetically engineered to express genes for fungal resistance.	Illinois.
95–010–02	Monsanto Company	1/10/95	Wheat plants genetically engineered to express various marker genes.	Illinois, Montana.
95–019–01	Asgrow Seed Company.	1/19/95	Carrot plants genetically engineered to express genes for fungal resistance.	Michigan.

Done in Washington, DC, this 13th day of February 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4181 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Siouxon Timber Sales and Other Integrated Resource Projects, Gifford Pinchot National Forest, Skamania County, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On October 11, 1990, a Notice of Intent to prepare an environmental impact statement (EIS) for the Siouxon Timber Sales and Other integrated Resource Projects on the Wind River Ranger District of the Gifford Pinchot National Forest was published in the **Federal Register** (55 FR 41363). The Forest Service has decided not to prepare an EIS on this proposal; therefore, this Notice of Intent is rescinded.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this cancellation to Julie Knutson, Project Leader, Wind River Ranger District, Carson, Washington 98610; phone (509) 427–5645.

Dated: February 6, 1995.

Ted Stubblefield,

Forest Supervisor.

[FR Doc. 95–4130 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–11–M

China Basin Fire Recovery and Associated Activities Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The China Basin and Quartz 3 Wildfires burned over 7,400 acres of Kootenai National Forest system lands in the late summer of 1994. The Forest Service intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of opportunities designed to recover economic value of burned timber, reduce future fuels accumulations, improve bighorn sheep winter range, rehabilitate existing sediment sources, improve hydrologic conditions in affected watersheds, and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed timber; harvest of fire-killed and green timber in bighorn sheep winter range; reforestation of harvested and severely burned areas; fuels reduction in harvested areas; restoration of roads, revegatation of road cuts and fill slopes, and drainage improvement on existing roads; and providing for immediate and long-term recruitment of instream large woody material within the China Basin decision area. The China Basin decision area is located approximately 5 air miles northwest of Libby, Montana.

The proposal's actions to salvage fire-killed trees and reforest burned areas, harvest green and fire-killed trees in bighorn sheep habitat, restore roads, reduce fuels, and implement watershed recovery projects are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area.

DATES: Written comments and suggestions should be received within 30 days following publication of this notice.

ADDRESSES: The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 HWY 37, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Michele Holman, Planning Forester, Libby Ranger Station. Phone: (406) 293–8861.

SUPPLEMENTARY INFORMATION: During the night of August 14–15, 1994, a lightning storm started 207 fires on the Kootenai National Forest in northwest Montana. Several fires ranging in size from less than one acre to over 7,000 acres occurred on the Libby Ranger District. The china Basin Fire Recovery EIS is being prepared in response to conditions resulting from two fires which burned within the boundary of the 12,000+ acre Libby Fire Complex. An interdisciplinary landscape analysis team used an ecosystem based approach to assess the fires affects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition.

The tree mortality levels which resulted from the China Basin and Quartz 3 wildfires varied considerably. Within the fire perimeters, approximately 1,518 acres average 90% tree mortality, approximately 2,315 acres average 70% tree mortality and approximately 3,643 acres average 30% tree mortality. The China Basin fire burned within and adjacent to a portion of the Kootenai River corridor currently under study for designation as a Recreation River as provided for under the Wild and Scenic Rivers Act. The China basin Fire also burned within and adjacent to the Flagstaff Mountain Roadless Area (X–690).

The China Basin decision area contains approximately 10,300 acres within the Kootenai National Forest in Lincoln County, Montana. A portion of the proposed projects are located in the Quartz Creek drainage, primarily within the Lamoka and West Fork Quartz subdrainages. The remainder of the proposed projects are located within Hunter Gulch, Dad Creek, Burrel Creek and China Creek, which flow directly into the Kootenai River. The legal location of the decision area is as follows: Sections 15, 16, 20, 21, 22, 27, 28, 29, 30 Township 32 North, Range 32 West; Section 36, Township 32 North, Range 33 West; Sections 1, 12, 13, Township 31 North, Range 33 West; Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 Township 31 North, Range 32 West; Principle Montana Meridian. The decision area includes land owned by the Department of Fish, Wildlife and Parks and lands owned by private individuals.

Proposed Action

The primary purposes of the project are to recover valuable timber products from trees burned by wildfires that occurred in 1994; restore watershed conditions within the Quartz Creek and China Creek drainages; and to improve bighorn sheep winter habitat. The Forest Service proposes to harvest approximately 14–19 million board feet of timber by salvaging fire-killed timber and imminently dead trees on approximately 1,955 acres of forest land outside riparian protection areas and to improve bighorn sheep habitat by harvesting approximately 4–5 million feet of fire-killed and green trees from approximately 1,141 acres in an area known locally as the Sheep Range. Only trees that were killed, or are expected to die as a result of the fires, would be harvested in the areas not designed to improve bighorn sheep winter range. The proposal includes prescribed burning of about 600 acres to improve bighorn sheep winter range and about 727 acres to reduce fuel loads in harvested areas. An estimated 1,500 acres of units proposed for harvest would be planted with conifer seedlings to help meet desired conditions for species diversity. An additional 650 acres of existing conifer plantation which burned would be replanted with conifer seedlings. All temporary roads constructed for this project, as well as an estimated 17.5 miles of existing system and non-system road are proposed for restoration to reduce sediment and water yields, and improve grizzly bear and elk habitat security. Stabilization of two slumps and riparian planting of damaged stream banks are included under the proposal. In addition, projects to improve watershed recovery, repair damaged hiking trails, and damaged wildlife structures (guzzler) would be accomplished if adequate funds are available.

Approximately 468 acres of existing old growth burned in the China Basin Fire. These stands no longer provide habitat for old growth dependent species and will be recommended for a change in management to big game summer range. These burned areas of pre-fire old growth have been proposed for salvage. Approximately 764 acres have been recommended for designation as old growth to replace the stands which burned.

The decision area includes a portion of the Flagstaff Mountain Roadless Area (X–690). Most of the proposed units intended to improve bighorn sheep winter range are located within this roadless area. The activities would include harvest and prescribed burning. There is no proposed road construction within the roadless area. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or present legislative wilderness proposals.

Due to the high level of tree mortality in proposed harvest units, most harvested areas would resemble clearcut, seedtree, or shelterwood silvicultural methods. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested, except in the units intended to improve bighorn sheep habitat where live trees would be designated for removal to enhance forage conditions. In addition to most live trees, clumps of snags and downed woody debris would remain on site for cavity habitat and for watershed purposes. Timber harvest is designed to have the minimal amount of ground disturbance. Proposed harvest would be completed by tractor, skyline, cable winching from existing roads and helicopter logging systems.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains nine MA's: 2, 10, 12, 13, 15, 18, and 19. Briefly described, MA 2 is managed to protect and enhance roadless recreation use and provide wildlife values. MA 10 is managed to maintain or enhance habitat effectiveness for winter use by big-game animals and protect scenic quality in areas visible from major travel routes. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 13 is managed to provide the special habitat necessary for old growth dependent wildlife. MA 15 is managed primarily for timber production while providing for other resource values. MA 18 are areas which have regeneration difficulties and are managed by maintaining the vegetation in a healthy condition and maintaining populations of existing wildlife. MA 19 is managed to protect soil stability and water quality by maintaining the vegetation in a healthy condition and minimizing surface disturbance. Timber salvage and fuels reduction is proposed in MA 12 and MA 15. Harvest units and prescribed burns to improve bighorn sheep habitat are proposed within MA 10.

Preliminary Issues

Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water Quality—Streams in the decision area have been impacted by past management and large wildfires. How would the proposed action affect water yield, sediment production, stream stability, and recovery from past impacts?

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• Timber Supply—An estimated 24 million board feet of timber was killed in the China Basin and Quartz 3 fires. Much of this fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?

• Activity in Roadless Areas—What effect would the proposal have on the roadless character of the Flagstaff Mountain Roadless Area?

• Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Yaak grizzly bear ecosystem. How would the proposal maintain and enhance grizzly bear habitat, and contribute to recovery efforts?

• Fisheries—Some streams contain fisheries habitat and resident fish populations, including torrent sculpin (a Region 1 sensitive species), bull trout (currently being considered for listing as a threatened or endangered species), and westslope cutthroat trout (likely hybridized). How would the proposed action affect fisheries habitat and populations?

• Bighorn Sheep Habitat—The proposal contains approximately 1141 acres of "special cuts" intended to improve bighorn sheep habitat. To what extent does the proposed action improve forage for wintering bighorn sheep?

• Visual Quality along Kootenai River—The units proposed to improve bighorn sheep habitat are located along the Kootenai River Corridor and can be viewed in places from HWY 2. To what extent will the viewshed be altered from along HWY 2?

Forest Plan Amendment

The Kootenai National Forest Land and Resource Management Plan has specific management direction for the China Basin decision area. The China Basin proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

Decisions To Be Made

The Kootenai National Forest Supervisor will decide the following:

Should dead and imminently dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented,

What burned areas need to be replanted,

Should dead and green trees be harvested to improve bighorn sheep habitat and it so, how and where, and

If Forest Plan exception or amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping

Some public participation efforts have already been initiated under the Sheep Range Environmental Assessment, prior to the fires. The design of the proposed units to improve bighorn sheep habitat have been altered in response to the Sheep Range project public involvement. Consultation with appropriate State and Federal agencies has been initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the China Basin Fire Recovery Project.

This environmental analysis and decisionmaking process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

• Identifying potential issues.

• Identifying major issues to be analyzed in depth.

• Exploring additional alternatives which will be derived from issues recognized during scoping activities.

• Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing

The draft China Basin Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed in August, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 West, Libby, MT 59923 is the Responsible Official. I have delegated the responsibility to prepare the China Basin Fire Recovery Environmental Impact Statement to Lawrence A. Froberg, District Ranger, Libby Ranger District. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 10, 1995.

Robert L. Schrenk,

Forest Supervisor.

[FR Doc. 95–4084 Filed 2–17–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–93]

Foreign-Trade Zone 92—Gulfport/Biloxi, MS; Application for Subzone; Chevron U.S.A. Products Company (Oil Refinery), Pascagoula, MS; Amendment of Application

Notice is hereby given that the application of the Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting special-purpose subzone status for the oil refinery of Chevron U.S.A. Products Company (Chevron), in Pascagoula, Mississippi (58 FR 41710, 8/5/93) has been amended to expand the scope of authority for activity to be conducted under zone procedures.

The original application indicated that Chevron would accept approval subject to the standard oil refinery restrictions (privileged foreign status on incoming foreign merchandise and full duties on fuel consumed). The amendment requests authority for the option to elect nonprivileged foreign status (NPF option) on foreign-sourced inputs used in the production of petrochemical feedstocks and refinery by-products, including the following: benzene, toluene, xylene, liquified petroleum gas, propane, butane, ethane, ethylene, propylene, butylene, butadiene, petroleum coke, asphalt, sulfur, sulfuric acid, distillates, fuel oils, kerosene.

The application remains otherwise unchanged.

The comment period is reopened until March 23, 1995.

Dated: February 10, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–4198 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–351–825, A–533–810, A–588–833]

Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3320 or (202) 482–6965, respectively.

Scope of Orders

The product covered by these orders is stainless steel bar (SSB). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act of 1930, as amended ("the Act"), on December 19, 1994, the Department of Commerce ("the Department") made its final determinations that SSB from Brazil, India and Japan was being sold at less than fair value (59 FR 66914, 66915, 66930 (Brazil, India and Japan, respectively) December 28, 1994). On February 10, 1995, the International Trade Commission notified the Department of its final determinations, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise.

Therefore, all unliquidated entries of SSB from Brazil, India and Japan entered, or withdrawn from warehouse, for consumption on or after August 4, 1994, which is the date on which the Department published its notices of preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all relevant entries of SSB from Brazil, India and Japan. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject merchandise not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage (percent)
Brazil:	
Acos Villares, S.A.	19.43
All Others	19.43
India:	
Grand Foundry, Ltd.	3.87
Mukand, Ltd.	21.02
All Others	12.45
Japan:	
Aichi Steel Works, Ltd	61.47
Daido Steel Co., Ltd	61.47
Sanyo Special Steel Co., Ltd	61.47
All Others	61.47

This notice constitutes the antidumping duty orders with respect to SSB from Brazil, India and Japan, pursuant to section 736(a) of the Act. Interested parties may contact the

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Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4199 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–003. *Applicant:* The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802–801. *Instrument:* Automatic Grinding, Mixing Stirring and Kneading Machines. *Manufacturer:* Nitto Kagaku Co., Ltd., Japan. *Intended Use:* The instrument will be used to grind and mix raw powders such as BaO TiO_2, and PbO, which will then be used in the processing of ceramic samples. It will ensure homogeneous mixing in half the time since it has dual arms. *Application Accepted by Commissioner of Customs:* January 18, 1995.

Docket Number: 95–004. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for investigations that encompass structural studies of viruses and membranes to better understand processes of viral assembly, attachment, uncoating and replication and energy transduction through membranes. Experiments will include low irradiation transmission electron frozen-hydrated biological macromolecules and on-line image analysis and processing of images recorded on slow-scan, charge-coupled device. In addition, the instrument will be used for educational purposes in the biology courses BIOL 695N, 695M, 698, and 699. *Application Accepted by Commissioner of Customs:* January 19, 1995.

Docket Number: 95–005. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Route 9W, Palisades, NY 10964–000. *Instrument:* Mass Spectrometer, Model VG 5400. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for analysis of He isotope, tritium and Ne concentrations and $^3He/^4He$ ratios of water samples from natural systems (oceans, groundwater, lakes). The objective of these studies is the investigation of flow patterns and mean residence time of aquatic systems. During this research, graduate students will be trained in the methods of noble gas analysis. *Application Accepted by Commissioner of Customs:* January 25, 1995.

Docket Number: 95–006. *Applicant:* Northwestern University, 1847 Sheridan Road, Evanston, IL 60208–150. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to prepare gaseous samples and measure isotope ratios of low atomic weight chemical elements in gaseous chemical compounds. Studies of environmental and/or geological samples of solids, liquids, gases; for example, minerals, waters, petroleum, and microfossil shell and organic materials from sedimentary and aqueous environments will be conducted. In addition, the instrument will be used for training purposes in various graduate, advance undergraduate and sophomore to senior level courses which involve introductions in stable isotope geochemistry. *Application Accepted by Commissioner of Customs:* January 26, 1995.

Docket Number: 95–007. *Applicant:* Ohio State University, Department of Physics, 174 West 18th Avenue, Columbus, OH 43210. *Instrument:* Frequency Synthesizer. *Manufacturer:* KVARTZ Measuring Instruments & Systems, CIS. *Intended Use:* The instrument will be used to study low pressure gases including HNO_3, HOOH, H_2O, H_2S, SO_2 and CH_3F with two basic objectives: (1) to understand molecular structure and the dynamics of collisions between molecules and (2) to determine molecular spectroscopic parameters so that they can be used in remote sensing experiments of molecules in the atmosphere. *Application Accepted by Commissioner of Customs:* January 30, 1995.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 95–4200 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: Baton Rouge, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Baton Rouge Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Baton Rouge, Louisiana Metropolitan Area. The award number of the MBDC will be 06–0–95010–1.

DATES: The closing date for applications is March 20, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 20, 1995. A pre-application conference will be held on March 1, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first first period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to

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DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Office, Minority Business Development Agency.

[FR Doc. 95–4201 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Shreveport Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Shreveport, Louisiana Metropolitan Area. The award number of the MBDC will be 06–10–95004–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before March 20, 1995. A pre-application conference will be held on March 1, 1995, at 10:00 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from June 1, 1995 to June 30, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first first period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4202 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Shreveport, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Shreveport, Louisiana MBDC. This solicitation was originally published in the **Federal Register**, Thursday, November 3, 1994, Vol. 59, No. 212 55079.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4203 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: New Mexico

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its New Mexico Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the New Mexico Metropolitan Area. The award number of the NABDC will be 06–10–95007–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received on or before March 20, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $197,825. The total Federal amount is $197,825 and is composed of $193,000 plus the Audit Fee amount of $4,825.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's

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estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4204 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: North Dakota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its North Dakota Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the North Dakota Metropolitan Area. The award number of the NABDC will be 08–10–95008–01.

DATES: The closing date for applications is *March 20, 1995.* Applications must be received on or before *March 20, 1995.* Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214) 767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $169,125. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for

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lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4205 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

Native American Business Development Center Applications: Oklahoma

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Oklahoma Native American Business Development Center (NABDC).

The purpose of the NABDC is to provide integrated business development services to Native American entrepreneurs. The recipient will provide service in the Oklahoma Metropolitan Area. The award number of the NABDC will be 06–10–95009–01.

DATES: The closing date for applications is March 20, 1995. Applications must be received on or before March 20, 1995. Anticipated processing time of this award is 120 days. A pre-application conference will be held on March 1, 1995, at 2:00 p.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, (202) 482–3763.

FOR FURTHER INFORMATION, CONTACT: Demetrice Jenkins at (214)767–8001.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from August 1, 1995 to August 31, 1996, is estimated at $254,200. The total Federal amount is $254,200 and is composed of $248,000 plus the Audit Fee amount of $6,200.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions. Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of Native American businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. The applicant with the highest point score will not necessarily receive the award.

If an application is selected for funding, MBDA has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of MBDA.

Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Activities—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at the risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award activities.

Recipients and subrecipients are subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the NABDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Indirect Costs—The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100% of the total proposed direct costs dollar amount in the application, whichever is less.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.801 Native American Program
(Catalog of Federal Domestic Assistance)

Dated: February 14, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4206 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–21–P

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, March 22, and Thursday, March 23, 1995, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer sytems. All sessions will be open to the public.

DATES: The meeting will be held on March 22 and 23, 1995 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Agenda

—Welcome and Update
—Overview of Meeting
—Common Criteria and Assurance Issues
—OMB Activites—Briefing and Discussion
—Security in Governmentwide E-Mail
—Security Policy Board
—Key Escrow Update
—Public Participation
—Pending Board Business
—Close.

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the board by March 15, 1995. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4157 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–CN–M

Announcement of the American Petroleum Institute's Standards Activity

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of intent to develop a voluntary standard and request for public comments and participation in standard's development.

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SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice list the standardization effort currently being conducted. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the proposed standard being referenced in this notice.

SUPPLEMENTARY INFORMATION: The American Petroleum Institute is developing a voluntary standard on which to base a voluntary program to accredit laboratories that perform testing on petroleum products [Petroleum Test Laboratories Accreditation Program (PTLAP)]. The program objective is to assist users in identifying laboratories which meet specific industry standards and to improve the quality of petroleum testing results. The proposed standard and subsequent program will consist of the following elements:

- Accredited laboratories having a quality system based on the requirements of ISO Guide 25, *General Requirements of the Competence of Calibration and Testing Laboratories.*
- Labortories submitting to an on-site assessment by API-qualified assessors to establish compliance with program requirements. This assessment includes witnessing of test methods, evaluation of technical competence, and a quality system review.
- Laboratory participation in the ASTM Interlaboratory Crosscheck Program and the successful completion of one unannounced on-site assessment evaluation during the three-year accreditation period.

DATES: The voluntary standard is expected to be completed by March 1995 following peer review and an open meeting.

ADDRESSES: Comments regarding this proposal should be submitted to Roland Goodman, American Petroleum Institute, 1220 L Street NW., Washington, DC 20005, Telephone (202) 682–8189.

FOR FURTHER INFORMATION CONTACT: Roland Goodman, American Petroleum Institute, at above address, (202) 682–8189.

Authority: 15 U.S.C. 272.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4155 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–13–M

[Docket Number 950130031–5031–01]

Proposed Voluntary Product Standard; PS 1–95 "Construction and Industrial Plywood"

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of circulation of proposed Voluntary Product Standard PS 1–95 "Construction and Industrial Plywood."

SUMMARY: This is to advise the public that the National Institute of Standards and Technology is circulating a revision of Voluntary Product Standard PS 1–83 "Construction and Industrial Plywood" for review and comment. The revised standard, PS 1–95 "Construction and Industrial Plywood," is being processed in accordance with the provisions of the Department of Commerce "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10, as amended; published June 20, 1986).

DATES: Written comments regarding the standard should be submitted to the Standards Management Program, Office of Standards Services, on or before May 8, 1995.

ADDRESSES: Written comments and requests for copies of PS 1–95 should be directed to the Standards Management Program, Office of Standards Services, National institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara Meigs, Office of Standards Services, National Institute of Standards and Technology, telephone: 301–975–4025, FAX: 301–963–2871.

SUPPLEMENTARY INFORMATION: The revision, PS 1–95, was developed by the Standing Committee for Voluntary Product Standard PS 1–83, composed of representatives of producers, distributors, and consumers of construction and industrial plywood, and others with an interest in the Standard. Among the major changes for PS 1–83 are the incorporation in PS 1–95 of a performance-based method for evaluating new species not previously listed, desirable due to the changing available timber resource for plywood production; and the elimination of Structural II panel grades since this product has rarely been manufactured since first introduced in 1966. The text of the Standard has been reformatted in some instances, and units of measurement throughout the Standard are provided in both metric and conventional units.

The Standard provides basic technical requirements for the principal types and grades of construction and industrial plywood. It covers the wood species, veneer grading, glue bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content, and packing of plywood intended for construction and industrial uses. The Standard includes test methods to determine product compliance, a glossary of trade terms and definitions, and a quality certification program. Additional information is provided regarding reinspecting practices.

Authority: 15 USC 272.

Dated: February 14, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4156 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

February 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 15, 1995.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The amount of special shift previously applied to Categories 340/640 is being reduced and the limit for Category 840 is being increased (see 59 FR 67702, published on December 30, 1994).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 14152, published on March 25, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreement on Textiles and Clothing and the bilateral agreement, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 15, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 22, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1994 and extends through June 30, 1995.

Effective on February 15, 1995, you are directed to adjust the limits for the following categories, pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka:

Category	Adjusted eighteen-month limit [1]
340/640	1,765,547 dozen of which not more than 711,537 dozen shall be in Categories 340–Y/640–Y [2].
840	252,257 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–4197 Filed 2–17–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD)

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on February 27–28 and March 13–14, 1995 at Science Applications International Corporation (SAIC), McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 15, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4158 Filed 2–17–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Groups will meet on 1–2 March 1995 at the Air Force Operational Test and Evaluation Center (AFOTEC), Kirtland Air Force Base, New Mexico from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to receive briefings and review AFOTEC operational test plans for the B–1 Bomber.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4143 Filed 2–17–95; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Test Center Advisory Groups will meet on 18–19 April 1995 at the Arnold Engineering Development Center, Arnold Air Force Base, Tennessee from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review test center developments and issues of concern to the Commander, AEDC.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4144 Filed 2–17–95; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133D]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Reinviting Applications and of a Pre-application Meeting for a New Award Under the Knowledge Dissemination and Utilization Program (D&U) for Fiscal Year (FY) 1995

Purpose: On February 10, 1995, a notice was published in the **Federal Register** at 60 FR 8126 reinviting applications for new awards under the D&U program for fiscal year 1995 to train persons with rights and duties under the Americans with Disabilities Act (ADA). The date "April 11, 1995" for which applications are available should be corrected to read.

"*Applications Available:* Feb. 21, 1995".

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of

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Education, 600 Independence Avenue SW., Switzer Building, Room 3417, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Dated: February 15, 1995.

Howard R. Moses,

Acting Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–4162 Filed 2–17–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–149–002, et al.]

Alabama Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 13, 1995.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER95–149–002]

Take notice that on January 30, 1995, Alabama Power Company tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Interconnection Agreement Between Alabama Power Company and Alabama Electric Cooperative, Inc., and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–149–000.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER95–357–000]

Take notice that on January 30, 1995, Northeast Utilities Service company (NUSCO), tendered for filing on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), Holyoke Power and Electric Company and Public Service company of New Hampshire (together, the NU System Companies) a missing Schedule B to a Distribution Service Agreement previously filed by NUSCO in the above-referenced docket.

NUSCO renews its request that the proposed rate schedule changes be permitted to become effective January 1, 1995. NUSCO states that a copy of the filing has been mailed or delivered to the affected parties.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Logan Generating Company, L.P.

[Docket No. ER95–471–000]

Take notice that on January 23, 1995, Logan Generating Company, L.P. tendered for filing a Notice of Succession notifying the Commission that Keystone Energy Service Company, L.P.'s name has changed to Logan Generating Company, L.P.

Comment date: February 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems Inc.

[Docket No. ER95–486–000]

Take notice that on January 27, 1995, Midwest Power Systems Inc. (Midwest) tendered for filing amendments to coordination rate schedules provide for the recovery of cost of emission allowances.

Midwest respectfully requests a waiver of Commission rules so that the amendments may be approved retroactive to January 1, 1995. Midwest agrees that any revenues collected from these amendments will collected subject to refund pending Commission action.

Midwest states that copies of this filing were served on the parties identified in Exhibit II of the filing.

Comment date: February 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER95–497–000]

Take notice that on February 1, 1995, the American Electric Power Service Corporation (AEPSC) amended its filing in the above referenced Docket to add one agreement.

A copy of the filing was served upon the parties affected by the amendment and the affected state regulatory commissions for the states of Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–544–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Enron Power Marketing, Inc. (Enron). This Service Agreement specifies that Enron has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and Enron to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 20, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–545–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Louis Dreyfus Electric Power Inc. (Louis Dreyfus). This Service Agreement specifies that Louis Dreyfus has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and Louis Dreyfus to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 28, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–546–000]

Take notice that on January 20, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Long Island Lighting Company (LILCO). This Service Agreement specifies that LILCO has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was filed with the Commission on December 12, 1994 in Docket No. ER95–276–000 and allows GPU and LILCO to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of December 23, 1994 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company

[Docket No. FA92–60–001]

Take notice that on January 27, 1995, Ohio Power Company tendered for filing a Compliance Filing pursuant to the Commission's Letter Order issued December 2, 1994.

Copies of the filing were served upon Wheeling Power Company, the Public Service Commission of West Virginia, the affected municipal customers and the Public Utilities Commission of Ohio.

Comment date: February 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. University Cogeneration, Inc.

[Docket Nos. QF86–529–003 and EL94–76–000]

On February 2, 1995, University Cogeneration, Inc. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the operation of Applicant's cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4109 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–92–000]

Atlantic Gas Systems, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Myer Compressor Station and Request for Comments on Environmental Issues

February 15, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an Environmental Assessment (EA) that will discuss environmental impacts of the construction and operation of the proposed Myer Compressor Station.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Atlantic Gas Systems, Incorporated (Atlantic) wants Commission authorization to construct and operate a new 825-horsepower (hp) compressor station on the site of an existing compressor foundation in Cabell County, West Virginia.

Atlantic would construct the following facilities:

- One skid-mounted 825-hp reciprocating engine-driven compressor unit leased from Cardinal Compression, Inc.;
- An insulated compressor building; and
- An office/control building.

The location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

Atlantic purchased a 3.42-acre site in Cabell County that was previously used for a compressor station. Atlantic would keep all construction disturbance within this site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils

[1] Atlantic Gas Systems, Incorporated's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

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- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Atlantic. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The Myer Compressor Station would be a new source of air pollutant emissions.
- The operating noise of the proposed facility may impact the surrounding residences. The nearest noise-sensitive area is a residence 810 feet south of the Myer Compressor Station.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP95–92–000;
- Send a *copy* of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NW., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before March 15, 1995.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become in intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mr. Steven G. Grape, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4146 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–715–000]

Koch Gateway Pipeline Co.; Notice of Availability of the Environmental Assessment for the Proposed Kiln Compressor Station

February 15, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the Kiln Compressor Station proposed by Koch Gateway Pipeline Company (Koch Gateway) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the Kiln Compressor Station. The project involves construction of a new 8,000-horsepower (hp) compressor station in Hancock County, Mississippi. The proposed facilities include:

- Two 4,000-hp Solar Centaur T–4700 turbine-driven compressor units;
- Two gas discharge coolers;
- Two oil storage tanks;
- One condensate tank;
- One inlet separator;
- One blowdown silencer;
- 70 feet of 30-inch-diameter tie-in pipeline;
- 1,850 feet of 16-inch-diameter pipeline;
- 2,000 feet of 24-inch-diameter suction and discharge headers and associated valves;
- 335 feet of 10-inch-diameter suction and discharge headers;
- A compressor building;
- An office/control building;
- A 200-foot-tall microwave tower;
- An auxiliary building; and
- 700 feet of new gravel road.

Koch Gateway would construct this station to provide greater flexibility and reliability on its system serving the Mobile-Pensacola market. Koch Gateway would be able to move an additional 169,000,000 cubic feet of gas per day (169,000 Mcfd) on its 30-inch-diameter Index 300 mainline that runs from Lirette, Louisiana to Mobile, Alabama.

Additonally, the Kiln Compressor Station would allow Koch Gateway to inject gas into Tennessee Gas Pipeline Company's (Tennessee) existing 30-inch-diameter "500" pipeline at an existing interconnect between Koch Gateway and Tennessee (Kiln Interconnect). Currently, high pressure in Tennessee's 500 pipeline prevents Koch Gateway from injecting gas into Tennessee's pipeline at the Kiln Interconnect. Koch Gateway would use the Kiln Compressor Station to provide up to 377,000 Mcfd to Tennessee.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. Steve Grape, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, PR–11.2, 825 North Capitol Street, N.E., Washington, DC 20426, (202) 208–1046.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–715–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than March 15, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. Steve Grape, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. Steve Grape, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4145 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES95–15–001, ES95–15–002 and ES95–15–003]

Citizens Utilities Company; Notice of Amended Application

February 14, 1995.

Take notice that on February 6, February 9, and February 14, 1995, Citizens Utilities Company (Citizens), filed amendments to its application under § 204 of the Federal Power Act requesting an order: (a) Disclaiming jurisdiction over the assumption by Citizens as guarantor or otherwise of all obligations of a its subsidiaries under a lease facility relating to nonjurisdictional equipment and facilities with a cost of up to $110 million; or (b) in the alternative and without prejudice to any determination of jurisdiction, authorizing the assumption by Citizens as guarantor or otherwise of said lease obligations. Also, Citizens requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4105 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–185–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 14, 1995.

Take notice that on January 30, 1995, Columbia Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP95–185–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new point of delivery for firm transportation service to NEA Cross of N.Y., Inc. (NEA), in Chautauqua County, New York, under its blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that NEA has requested the new point of delivery for firm transportation service for commercial use. Columbia further states that it will provide the transportation service pursuant to its blanket certificate issued in Docket No. CP–86–240–000. Columbia indicates that the estimated maximum daily quantity and the estimated annual quantity of natural gas that it will provide through the new delivery point is 35 Dth and 12,775 Dth, respectively. Additionally, Columbia states that the quantities to be provided through the new delivery point will be provided pursuant to an existing service agreement and therefore, there is no impact on Columbia's existing peak day obligations to its other customers as a result of the construction and operation of the proposed new point of delivery. Columbia indicates that it proposes to convert an existing receipt meter from NEA to a point of delivery to serve a resort area and NEA has agreed to purchase the existing 4-inch receipt meter and appurtenant facilities at a depreciated cost of $1,225. Columbia estimates that the cost to construct facilities is approximately $15,250. According to Columbia, NEA has agreed to reimburse Columbia for the actual total cost of converting the interconnection to a point of delivery.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4107 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–118–000]

East Tennessee Natural Gas Company; Amended Notice of Technical Conference

February 14, 1995.

In response to a request from Atlanta Gas Light Company and Chattanooga Gas Company, intervenors in a certificate proceeding in Docket No. CP95–118–000, and with the concurrence of East Tennessee Natural Gas Company (East Tennessee), East

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Tennessee, its shippers and the commission staff will meet on February 22, 1995, to discuss Order No. 636 restructuring issues that have become known after on year's experience under East Tennessee's restructured tariff. The meeting will take place following a technical conference in Docket No. CP95–118–000 which will commence at 9:30 a.m., in Room 2402–A at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

For additional information, contact Timothy W. Gordon at (202) 208–2265.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4106 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–575–000]

El Paso Natural Gas Company; Notice of Site Visit

February 14, 1955.

On February 23 through 24, 1995, members of the environmental staff of the Federal Energy Regulatory Commission (FERC) will conduct a site visit to facilities being proposed by El Paso Natural Gas Company (El Paso) in the above docket. The site visit will include an inspection of the proposed route of the San Juan Triangle Expansion Project loop pipeline in San Juan County, New Mexico.

Because the proposed loop would be on allotted, trust, and reservation lands administered by the Navajo Nation, the number of people who may participate in the site visit it limited. Interested parties should contact Jeanene Hafen of El Paso at (915) 541–3410. All parties who attend must provide their own transportation. For any other information, contact Paul Friedman, the FERC Environmental Project Manager, at (202) 208–1108.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4102 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–159–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Florida Gas Transmission Company (FGT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Original Sheet No. 125A

FGT states that its currently effective FERC Gas Tariff does not contain provisions for disposition of Unauthorized Gas delivered to FGT's system. Unauthorized Gas is defined in the proposed tariff provisions as volumes of gas delivered to FGT that FGT cannot identify as being delivered pursuant to a transportation nomination on behalf of an existing shipper.

FGT proposes that upon becoming aware of Unauthorized Gas, FGT will post notice on its Electronic Bulletin Board (EBB) the volume, the production month received and the point of receipt of such volumes. From the date of posting, claimants will then have thirty (30) calendar days to provide evidence of ownership. If a valid claim is received in the thirty (30) day period, FGT will purchase the Unauthorized Gas at a price equal to eighty percent (80%) of the Tivoli Index, as contained in the Cash-Out Provisions of Section 14 of the General Terms and Conditions of FGT's tariff, for the month in which the Unauthorized Gas is delivered into FGT or the month of settlement, whichever is less.

FGT states that it shall purchase a maximum of 12,000 MMBtu during a twelve (12) month calendar period from any single claimant or at any single receipt point. FGT has included these provisions to avoid becoming an unwilling "purchaser of last resort" for producers willing to accept 80% of the Tivoli Index who might intentionally deliver Unauthorized Gas to FGT. FGT believes the proposed changes provide an efficient and equitable mechanism for resolving Unauthorized Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4153 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–197–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 14, 1995.

Take notice that on February 3, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP95–197–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities at an existing meter station site in Calcasieu Parish, Louisiana under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to increase natural gas delivery at the existing meter station for serving the Firestone plant on behalf of Koch Gas Services Company (KGSC). The proposed revisions will increase delivery capacity from 2,400 MMBtu to 6,500 MMBtu per day. Koch Gateway states it has been authorized to provide this natural gas transportation service to Firestone on behalf of KGSC under an April 1, 1994 transportation agreement.

Koch Gateway will replace a 2-inch meter with a 3-inch meter and will install a flow computer at an existing meter station site on its Iowa Field-Cities Service Refinery line near Lake Charles in Calcasieu Parish, Louisiana. The delivery tap and meter station construction will be aboveground and entirely within the existing pipeline right of way on Firestone's plant property. The estimated cost is $9,000. Koch Gateway's service provided to KGSC will be interruptible, is within the current certificated level, will have no impact on Koch Gateway's curtailment plan or affect service to other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4108 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–158–000]

Natural Gas Pipeline Company of America Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Eleventh Revised Sheet No. 14 and Ninth Revised Sheet No. 25, to be effective March 1, 1995.

Natural states that the filing is submitted to commence recovering effective March 1, 1995, approximately $41.3 million in known and measurable gas supply realignment (GSR) costs which have been incurred by Natural as a consequence of Order Nos. 636, et seq. Natural states that these costs consist of: (1) $29.1 million in pricing differential costs pertaining to the supply which Natural is obligated to purchase from Mitchell Energy Company and $0.6 million for auctions of other gas supply; (2) $6.8 million representing three (3) months' amortization of buyout/buydown costs previously claimed in Natural's GSR filings in Docket Nos. RP94–122–000 and RP94–249–000; and (3) $1.9 million representing the costs associated with coal gasification supplies. Also reflected in the filing are unrecovered GSR costs totaling $1.0 million based upon comparison of the net deferred account balance of costs and recoveries at December 31, 1994.

Natural requested whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective March 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdiction customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4152 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–013]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 10, 1995, Natural Gas Pipeline Company of America (Natural), filed as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 242, 243, 244, 378H and 378I, to be effective March 1, 1995.

Natural states that the purposes of the filing is to comply with the settlement in Docket No. RP93–36–009 approved by Commission letter order dated January 31, 1995. The settlement required Natural to file revisions to sections 6.1 and 7.2 of the General Terms and Conditions (GT&C) regarding contributions-in-aid of construction and section 38.8 of the GT&C regarding crediting of Rate Schedule ITS revenues by Natural to customers which are not parties to Commission-approved settlements on gas supply realignment cost matters.

Natural states that it previously filed tariff sheets setting out base rate levels consistent with the settlement to be effective February 1, 1995, on January 11, 1995 in Docket No. RP93–36–011.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective March 1, 1995.

Natural states that copies of the filing are being mailed to the parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4147 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[EL95–28–000]

New York State Electric & Gas Corporation; Notice of Filing

February 14, 1995.

Take notice that on February 14, 1995, New York State Electric & Gas Corporation (NYSEG), filed a Petition, for Declaratory Order, Complaint, and Request for Modification of Rates in Power Purchase Agreements Imposed Pursuant to the Public Utility Regulatory Policies Act of 1978 (Petition). The Petition requests that this Commission: (1) issue a declaratory order providing that the Public Utility Regulatory Policies Act of 1978 (PURPA) prohibits NYSEG from being required to pay rates in excess of its avoided cost for energy purchased from Lockport Energy Associates, L.P. (Lockport) and Saranac Power Partners, L.P. (Saranac) under power purchase agreements mandated pursuant to PURPA; (2) promptly take action to modify the rates under the Lockport and Saranac agreements to insure compliance with PURPA's avoided cost rate ceiling; or (3) refer this matter to the New York Public Service Commission (NYPSC) with a declaration that the Commission invests the NYPSC with the authority and obligation to modify the agreements to conform them to PURPA's rate standard.

NYSEG asserts that its agreements with Lockport and Saranac require NYSEG to purchase energy at rates in excess of its avoided cost, in violation of PURPA's avoided cost rate standard, that such rates have never been acceptable to NYSEG, and that NYSEG entered into its agreements with Lockport and Saranac only after being ordered to do so by the NYPSC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 7, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4104 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–53–000]

NorAm Gas Transmission Co.; Notice of Technical Conference

February 15, 1995.

In the Commission's order issued December 23, 1994, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, February 28, 1995, at 2 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4149 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–120–000]

NorAm Gas Transmission Co.; Notice of Technical Conference

February 15, 1995.

In the Commission's order issued February 2, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, February 28, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4150 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–003]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 15, 1995.

Take notice that on February 8, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 10, 1995.

Second Revised Sheet No. 263
First Revised Sheet No. 263A

Northern is filing to roll over the Carlton Resolution for a limited one-year term, by changing the termination date from October 31, 1995 to October 31, 1996.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4148 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–156–000]

Northwest Pipeline Corp.; Notice of Account No. 191 Report

February 15, 1995.

Take notice that on February 8, 1995, Northwest Pipeline Corporation (Northwest), tendered for filing with the Federal Energy Regulatory Commission (Commission) an Account No..191 report pursuant to § 28.7(c) of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1.

Northwest states that § 28.7(c) requires Northwest to file a report with the Commission within 60 days of the amortization period pertaining to the Account No. 191 payments by Rate Schedule DS–1 Customers (as set forth in §§ 28.1 and 28.2) and Rate Schedule ODL–1 Customers (as set forth in §§ 28.4 and 28.5) showing the total amounts billed to each customer and containing workpapers supporting the amounts billed and paid by each customer.

Northwest states that a copy of this filing has been served upon Northwest's affected jurisdictional customers and relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 23, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4151 Filed 2–17–95; 8:45 am]

BILLING CODE 6717–01–M

Cases Filed With the Office of Hearings and Appeals During the Week of January 23 Through January 27, 1995

During the Week of January 23 through January 27 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of Jan. 23 through Jan. 27, 1995]

Date	Name and location of applicant	Case No.	Type of submission
01/24/95	Pitcher Sales, Inc., Lewiston, Utah	VEE–0004	Exception to the Reporting Requirements. If granted: Pitcher Sales, Inc., would not be required to file Form EIA–782B "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
01/25/95	David K. Hackett, P.E., Knoxville, Tennessee.	VFA–0021	Appeal of an Information Request Denial. If granted: David K. Hackett, P.E., would receive a waiver of all fees incurred in processing of a Freedom of Information Request for certain Department of Energy information.
01/26/95	Oregon/Nation Helium, Time Oil, Coline, Belridge, Perry, Gas Palo Pinto.	RQ3–591, RQ334–592, RQ2–593, RQ8–594, RQ183–595, RQ5–596	Application for Second Stage National Helium, Time Oil, Coline, Belridge, Perry Gas, Palo Pinto Refunds. If granted: The second stage refund application submitted by Oregon in the National Helium, Time Oil, Coline, Belridge, Perry Gas and Palo Pinto Refund Proceedings would be granted.
01/27/95	J/R/A Associates, Mitchellville, Maryland	VFA–0022	Appeal of an Information Request Denial. If granted: The December 15, 1994 Freedom of Information Request Denial issued by the DOE Office of Contractor Employee Protection would be rescinded, and J/R/A Associates would receive access to the first page of each complaint of discrimination filed by employees with the DOE Office of Contractor Employee Protection.

Refund Applications Received

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/20/95	Farmers Coop Grain	RG272–19
01/20/95	Farmers Elevator Company	RG272–20
01/24/95	Dal Har Distributing Co.	RG272–21
01/26/95	Ellsworth-Williams	RG272–22

[FR Doc. 95–4189 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of October 3 Through October 7, 1994

During the week of October 3 through October 7, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

E.O. Smelser, 10/4/94, LFA–0420

E.O. Smelser filed an Appeal from a denial by the Bartlesville Project Office of a Request for Information which he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested documents were not "agency records" and so were not subject to the FOIA. Accordingly, the Appeal was denied. In reaching this decision, the DOE considered that although the agency had access to the records, it did not possess the records when the request was made. Furthermore, the grant assistance agreement between the DOE and the grantee did not assign ownership of the records to the DOE.

John P. Connelly, 10/7/94, LFA–0419

John P. Connelly (Connelly) filed an Appeal from a determination issued to him by the Office of the Inspector General (OIG). The determination partially denied a Request for Information which Connelly submitted under the Freedom of Information and Privacy Acts. Connelly requested documents relating to employment announcements made by OIG for the position of Criminal Investigator at various DOE facilities, along with all records created by a former Assistant Inspector General regarding the specified announcements. In its determination, the OIG provided Connelly with various documents responsive to his Freedom of Information Act request. Connelly, in his Appeal, argued that (1) further responsive documents existed, (2) the documents that were provided to him were not provided to him in any logical order, and (3) OIG failed to make a search pursuant to the Privacy Act. In considering the Appeal, the DOE found that (1) the records responsive to his request were not contained in a system of records that was subject to the Privacy Act, (2) OIG had no obligation under the FOIA to provide responsive records in a particular order, and (3) an adequate search had been conducted in response to the request. Accordingly, Connelly's Appeal was denied.

Physicians for Social Responsibility, Inc., 10/6/94, LFA–0426

Physicians for Social Responsibility, Inc. (PSRI) filed an Appeal from a determination issued to it on August 26, 1994, by the Chief of the Freedom of Information and Privacy Acts Branch of the Reference and Information Management Division. In that determination, the Chief stated that responsive documents could not be found pursuant to a Freedom of Information Act request. Specifically, the Chief denied a request for documents relating to a study allegedly done involving the Integral Fast Reactor. PSRI's request and subsequent appeal concerned the identical documents involved in another case. In that case, the DOE had confirmed the possible existence of documents responsive to the appellant's request and remanded the case for a search of the DOE Oak Ridge Operations Office and the DOE

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Office of Nuclear Energy. Accordingly, in view of the fact that the Appeals were identical, the DOE also remanded the PSRI request for a search of the same DOE Offices.

William H. Payne, 10/7/94, LFA–0416

William H. Payne filed an Appeal from a determination issued to him by the Office of the Inspector General (OIG) on a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the OIG did not have the office-wide rosters of contacts between OIG staff members and employees of Sandia National Laboratory and of the Department of Justice that Mr. Payne sought. In addition, the DOE determined that making a burdensome survey of all OIG personnel for such records on an individual basis was not required by the FOIA. Accordingly, the Appeal was denied.

Requests for Exception

Brennan Oil & Heating Company, Inc., 10/3/94, LEE–0130

Brennan Oil & Heating Company, Inc. (Brennan) of North Providence, Rhode Island, filed an Application for Excepton from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report". In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On July 19, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed, the DOE issued the Proposed Decision and Order in final form, denying Brennan's Application for Exception.

Schwebel Petroleum Company, 10/3/94, LEE–0126

Schwebel Petroleum Company (Schwebel) of Bakersfield, California, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On July 18, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed, and the DOE issued the Proposed Decision and Order in final form, denying Schwebel's Application for Exception.

Refund Applications

Mid-State Coop, Tri-County Non-Stock Coop Association, Farmers Cooperative Oil Association, 10/5/94, RF272–92061, RF272–92062, RF272–92063

The DOE issued a Decision and Order concerning the Application for Refund of three cooperatives in the Subpart V crude oil overcharge refund proceeding. Each of the refund applications was filed by the Cooperative Finance Association (CFA) and requested that any refund check be made payable to CFA. The DOE determined that the CFA was not entitled to refunds based upon purchases made by the cooperatives. Accordingly, the Applications for Refund were denied.

Texaco Inc./Major Oils, 10/4/94, RR321–165

The DOE issued a Decision and Order denying a Motion for Reconsideration, filed by George R. Dunn in the Texaco Inc. Subpart V special refund proceeding on behalf of Major Oils. The DOE had previously denied Major Oils' Application for Refund on the basis that Mr. Dunn had failed to establish that Major Oils purchased Texaco products or the volume of any such Texaco purchases. In the Motion for Reconsideration, Mr. Dunn failed to present any compelling reasons or new evidence that would warrant the reconsideration of Major Oils' refund claim. Accordingly, Major Oils' Motion for Reconsideration was denied with prejudice to any further refiling in the Texaco Inc. Subpart V special refund proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Appleton School District City of Tulia	RF272–79246, RF272–83088	10/04/94
Atlantic Richfield Company/Ray's Arco et al	RF304–14673	10/03/94
Callanan Industries, Inc.	RF272–69469	10/07/94
Davidson Cooperative Assoc. et al	RF272–94587	10/07/94
Gulf Oil Corporation/Farley Oil Co	RF300–18716	10/04/94
Gulf Oil Corporation/Line Garage	RF300–20439	10/07/94
Kankakee Valley School Corp. et al	RF272–95533	10/07/94
Melchior Armstrong Dessau Inc. Ray W. Malow Co	RC272–255, RC272–256	10/05/94
Metropolitan Petroleum & Fuel/Michael Campanile et al	RF349–13	10/03/94
Sterling Paving Co	RF272–68993	10/07/94
Sterling Paving Co	RD272–68993	
Sim J. Harris Co	RF272–86593	
Sloan Construction Co	RF272–86920	
Texaco Inc./Buz Olsen's Casino Texaco	RF321–20683	10/07/94
Casino Texaco	RF321–21036	
Texaco Inc./Howard's Texaco et al	RF321–11277	10/03/94
Village of Willowbrook et al	RF272–84678	10/07/94
Wynn-Fowler Trading Co., Inc.	RF272–67234	10/07/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Chester County Aviation	RF272–97996
City of Mananna	RF272–97206
Gackle Cooperative Oil Co	RF272–94980
Garrett County Commissioners	RF272–93478

Name	Case No.
Grizzard West End Texaco	RF321–20446
Guinn Oil Company	Lee–0133
Independent School Dist. 706	RF272–96102
Jackson County Board of Education	RF272–97817
Jordano's Inc.	RF321–20457
Lincoln County Board of Education	RF272–97974
Midwest Aviation	RF272–98732
New Jersey	RM3–271
Oklahoma Natural Gas Co	RF272–93981
Seaboard Coastline R.R.	RF272–93763
Stewart's Texaco	RF321–20606
Town of Murfreesboro	RF272–84705
Western Maryland R.R.	RF272–93752
York Aero, Inc.	RF272–98746

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 9, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4190 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 31 through November 4, 1994

During the week of October 31 through November 4, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cowles Publishing Co., 10/31/94, LFA–0427

Cowles Publishing Company (Cowles) filed an Appeal from a determination issued by the DOE's Richland Operations Office (Richland) in response to a request from Cowles under the Freedom of Information Act (FOIA). Cowles sought the salary information of the president or highest-ranking official of the four major contractors working for Richland: Westinghouse Hanford Company, Battelle Pacific Northwest Laboratory, Kaiser Engineers Hanford Company and the Bechtel corporation. In considering the Appeal, the DOE found that Richland properly withheld the salaries of those positions under Exemption 6 of the FOIA. Accordingly, the Appeal was denied.

Glen M. Jameson 11/1/94, VFA–0001

Glen M. Jameson filed an Appeal from a determination issued by the DOE's Albuquerque Operations Office (Albuquerque) in response to a request from Mr. Jameson under the Freedom of Information Act (FOIA). Mr. Jameson sought the names and numbers of current and former PAI Corporation (PIA) employees working on Albuquerque Contract No. DE–AC04–91AL72747. In considering the Appeal, the DOE found that Albuquerque had mistakenly modified the request to exclude former PAI employees. Accordingly, the Appeal was remanded to Albuquerque to search its records for former PAI employees.

Refund Applications

Mrs. Baird's Bakeries, Inc., 11/4/94, RF272–92316

The DOE issued a Decision and Order concerning an Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by Mrs. Baird's Bakeries, Inc. (Mrs. Baird's). The DOE determined that Mrs. Baird's was not entitled to a refund since it had filed a Surface Transporters Escrow Settlement Claim Form and Waiver. In that filing, Mrs. Baird's had requested a Stripper Well refund from the Surface Transporters escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Parnum Paving Company, 10/31/94, RR272–181

The DOE issued a Decision and Order granting a request for reconsideration in the Subpart V crude oil overcharge refund proceeding. The movant attested that it had made a mistake in answering the DOE's inquiry regarding the firm's use of escalator clauses in its contracts. Based on the corrected information, the DOE determined that the movant was entitled to an additional refund. The refund granted in this Decision was $11,470.

Whitaker Oil Corp./Philip Beamer Distributor, Inc., 11/01/94, RF351–29

The DOE issued a Decision and Order granting an Application for Refund filed by Philip Beamer Distributor, Inc. in the Whitaker Oil Corp. special refund proceeding. The Decision noted that the funds remaining in the Whitaker account are being distributed as required by the Petroleum Overcharge and Distribution and Restitution Act and that, therefore, no more applications will be accepted in the Whitaker proceeding.

Refund Applications

The Office of Hearing and Appeals issued the follow Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/A&B Arco	RF304–13927	11/01/94
City of Roseville et al	RF272–90531	11/04/94
Clinton Milk Co.	RF272–62	11/04/94
Enron Corp./Midpane Gas Company	RF340–74	11/04/94
Suburban Propane	RF340–168	
Gulf Oil Corporation/Forsyth Home, Inc.	RF300–18999	11/01/94

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Gulf Oil Corporation/Graham's Gulf et al	RF300–13656	10/31/94
Gulf Oil Corporation/Town of Springfield et al	RF300–21604	11/04/94
McConnell Drilling Co., Inc. et al	RF272–97046	10/31/94
Oberer Construction EQT Co. et al	RF272–77411	10/31/94
Planters Cooperative Assoc. et al	RF272–94900	11/04/94
Red Top Trucking Co. et al	RF272–80176	11/04/94
Texaco Inc./Ike's Texaco #1 et al	RF321–17167	11/04/94
Texaco Inc./Rice Hill Texaco et al	RF321–4194	11/04/94
Westminster Hide & Tallow Company, Inc.	RF272–69835	10/31/94
Westminster Hide & Tallow Company, Inc.	RD272–69835	

Dismissals

The following submissions were dismissed:

Name	Case No.
Borough of Roselle	RF272–85451
Brown Transport Corporation	RF321–20802
California Highway Patrol	RF321–20753
Canoga Car Wash	RF321–21024
Citizen Action	VFA–0008
Collins & Aikman Corporation	RF321–20115
Falco Services	RF272–93679
Gary Dawley's Texaco	RF321–17134
Gene Defalco	RF272–93678
Jefferson County Commission	RF272–97553
Jefferson County Commission	RF272–97238
Joe Crain's Texaco	RF321–20941
Magma Copper Company	RF321–20754
Marshall Distributing Co., Inc	RF272–93724
Northwestern Steel and Wire Company	RF321–20752
Skip & Paula's Texaco	RF321–21038
Tallmadge Asphalt	RF321–20652
Wilsonville Texaco	RF321–20613

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4191 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of November 28 through December 2, 1994

Office of Hearings and Appeals

During the week of November 28 through December 2, 1994 the decisions and orders summarized below were issued with respect to appeals and for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Weed Associates, 12/2/94, VFA–0009

Weed Associates (Weed) filed an Appeal from a determination issued to it on September 27, 1994, by the Office of Placement and Administration (OPA), an element of the Office of Headquarters Procurement Operations. In that determination, OPA denied in part Weed's request for information filed under the Freedom of Information Act (FOIA). In its Appeal, Weed challenged OPA's application of Exemption 4 to portions of the requested documents and asked that the DOE direct OPA to release the withheld portions of the documents. In considering the Appeal, the DOE found that OPA properly withheld some of the information at issue under Exemption 4. However, DOE found that the release of other portions of information would not cause substantial competitive harm to the submitter, and ordered their release. Therefore, the DOE granted in part Weed's Appeal.

Refund Applications

Miller Drilling Co. et al., 12/1/94, RF272–164 et al.

The Department of Energy denied a Motion for Reconsideration filed by Miller Drilling Co. and six affiliated companies. The movants sought reconsideration of a Decision in which the DOE denied the Applications for Refund that they filed in the Subpart V crude oil refund proceeding. In the Decision, the DOE stated that the earlier denial was based upon a finding that one of the movants' affiliated companies had applied for and received a refund from one of the eight stripper well escrow accounts, and in so doing had executed a valid and binding waiver of its and any affiliate's right to file a subpart V crude oil claim. The movants argued that they should nonetheless receive a Subpart V refund because the gallonages claimed in their respective Subpart V applications were not included in the earlier stripper well claim, and because the movants were owned in part by a company that filed the stripper well claim. The DOE rejected these claims, finding that the waiver was clearly applicable to the movants.

Texaco Inc./David Blvd. Texaco, 11/30/94, RF321–19219

The DOE issued a Decision and Order denying an Application for Refund in the Texaco Inc. special refund proceeding. John Jarovics (Jarovics) and Robert Kapner (Kapner) filed an Application Refund on behalf of Davie Blvd. Texaco, a service station located Ft. Lauderdale, Florida, for its purchases of Texaco petroleum products from Martin Petroleum (Martin). Martin previously had been granted a refund for a service station at the same address as David Blvd. Texaco. Martin informed the OHA that it consigned its Texaco product purchases to various subleases of the station, of which Jarovics and Kapner were one. Jarovics and Kapner could not produce any evidence which could substantiate their claim that they purchased the Texaco products from Martin and did not take the products on consignment. The DOE determined the consignees of purchasers of Texaco products were not eligible for a refund and that Jarovics and Kapner had failed to establish that they in fact purchased the Texaco products from Martin. Consequently, the DOE determined that granting Jarovics and Kapner a refund would not constitute restitution for Texaco's alleged overcharges and their Application for Refund should be denied.

Texas Utilities Company, 11/28/94, RC272–265

A refund was granted to Texas Utilities Company (TUC) in the Subpart V crude oil refund proceeding in a decision dated September 29, 1994 (Case No. RF272–94695). However, a subsidiary of TUC, Texas Utilities Electric Company, had executed a Utilities Escrow Settlement Claim Form and Waiver and Release in the Department of Energy Stripper Well Exemption Litigation. The execution of this form waived the rights of the signatory, its parent and any affiliates to any future crude oil refund payments. Upon discovering the waiver signed by the subsidiary, the refund granted in Case No. RF272–94695 was rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Schock Arco	RF304–15462	11/29/94
Choctaw County et al	RF272–86600	11/30/94
Clark Oil & Refining Corp./Coleman's Clark Service	RF342–327	11/29/94
Farmers Union Oil Co. et al	RF272–86706	12/02/94
Farmers Union Oil Co. of Gary et al	RF272–92058	12/02/94
Glendenning Motorways, Inc.	RC272–266	11/29/94
Ralston Purina Co.	RF272–91916	11/29/94
Ralston Purina Co.	RF272–92153	
Ralston Purina Co.	RF272–97112	
Texaco Inc./Baker's Texaco #2	RF321–21040	12/01/94
Texaco Inc./Curran's Texaco	RF321–21048	11/30/94
Texaco Inc./E.A. Wilson Co.	RF321–12963	12/02/94
Booker Gas & Oil Co.	RF321–20875	
Bryant Oil Co., Inc.	RF321–20964	
Texaco Inc./Lake Worth Texaco et al	RF321–20199	11/30/94
Texaco Inc./Lee's Texaco et al	RF321–9564	11/30/94
Texaco Inc./North Union Texaco et al	RF321–8212	11/30/94
Texaco Inc./Ray Wietor's Texaco et al	RF321–1229	11/30/94
Texaco Inc./Spiros Karamalegos	RF321–21025	12/01/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Arlington School District	RF272–80198
Arnold's Texaco #1	RF321–19807
D. Thurston's Sons, Inc.	RF321–12648
Farmers Union Oil Co. of Gary	RF272–92060
Farmers Union Oil Co. of Gary	RF272–92059
H. C. Petroleum, Inc.	LEE–0094
Leon Clements	RF321–12473
Leon Faddis & Son, Inc.	RF272–94771
Oak Hill Texaco	RF321–12398
Ray Marchand Oil Co.	VEE–0002
Robert Texaco	RF321–12405
Rubicon, Inc.	RR321–172
Supervalu, Inc.	RF321–20514
Wilkinson County	RF272–85575
Wounded Knee School District	RF272–80454

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4192 Filed 2–17–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5156–4]

Public Water Supply Supervision Program; Program Revision for the State of Washington

AGENCY: Environmental Protection Agency.

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ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Washington is revising its approved State Public Water Supply Supervision Primacy Program. Washington has adopted drinking water regulations for certain inorganic, volatile organic and synthetic organic chemicals, collectively known as the Phase II and Phase V contaminants, and for lead and copper. EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. By approving Washington's Phase II/V Contaminants Rule and its Lead and Copper Rule, EPA does not intend to affect the rights of Federally recognized Indian tribes within "Indian Country," as defined in 18 U.S.C. 1151, nor does it intend to limit existing rights of the State of Washington.

All interested parties may request a public hearing. A request for public hearing must be submitted by March 23, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by March 23, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on March 23, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health (DOH), Division of Drinking Water, Airdustrial Center, Building #3, Olympia, Washington
DOH Northwest Regional Office, 1511 Third Avenue, #719, Seattle, Washington
DOH Eastern Regional Office, West 924 Sinto Avenue, Spokane, Washington
Environmental Protection Agency, Region 10 Library 1200 Sixth Avenue, Seattle, Washington

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address given above, telephone (206) 553–1890.

Dated: December 15, 1994.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 95–4186 Filed 2–17–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5156–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 104, Announcement of Extension of Application Deadline for the Competition for Brownfields Economic Redevelopment Initiative Pilots

AGENCY: Environmental Protection Agency.

ACTION: Notice to extend application period.

SUMMARY: The Environmental Protection Agency will accept proposals for Brownfields Economic Redevelopment Pilots beginning immediately. The application period which was to close March 1, 1995, has been extended to close April 17, 1995. For those applications received by March 1, 1995, the Agency intends to competitively select five Pilots by May 17, 1995. For those applications received by April 17, 1995—combined with those applications received by March 1, 1995 but not selected for the May 17, 1995 awards—the Agency intends to competitively select ten Pilots by July 21, 1995.

DATES: This action is effective as of December 1, 1994, and expires on April 17, 1995. All proposals must be received and/or post marked by the expiration date cited above.

ADDRESSES: Applications booklets can be obtained by calling the Superfund Hotline at 800–424–9346, or writing to: U.S. EPA—Brownfields Application, Superfund Document Center 5201G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, 800–424–9346.

SUPPLEMENTARY INFORMATION: EPA's Brownfields Initiative is an organized commitment to help communities revitalize abandoned contaminated properties, and to thereby eliminate potential health risks and restore economic vitality to areas where these properties exist.

The objectives of the initiative are: to build the capacity of affected and interested parties to shape how contaminated sites are cleaned up and productively reused; to stimulate a national search for innovative ways to overcome the current obstacles to the reuse of contaminated properties; and to coalesce federal, state, and municipal efforts to examine new approaches to achieving cleanup and reuse; and to explore the potential for combining an economic stimulus and a speeded-up environmental cleanup to contribute to achieving environment justice.

EPA's Brownfields Pilots (to be funded up to $200,000 each over two years) will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated efforts at the federal, state, and local levels. EPA will develop a coordinated federal strategy to help initiate a significant national effort to clean up and redevelop brownfields. Three national pilot projects already have been awarded.

Cities, counties, towns, states, and Native American tribes are all eligible to apply.

The Brownfields Economic Redevelopment Initiative is founded on the belief that "economic development and environmental protection must go hand in hand," (Carol Browner, Administrator, Environmental Protection Agency, Announcing the Cleveland Brownfields Pilot on November 8, 1993.)

Proposals will be evaluated on the following Criteria (a more detailed and complete set of criteria will be included in the application booklet):

- Demonstrated commitment of public and private leadership to brownfields redevelopment.
- Plans for effective community involvement.

Clear delineation of how federal support will make a difference.

- Potential for national replication.
- Government support and technical, legal, and political capacity to complete goals.
- Clearly outlined potential sources of cleanup funding.
- Contributions to environmental justice goals.
- Well-defined approach to environmental assessment.

Dated: February 13, 1995.

Timothy Fields, Jr.,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–4187 Filed 2–17–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5156–3]

Invitation for Submittal to the Vendor Field Analytical and Characterization Technologies System (Vendor FACTS)

AGENCY: Environmental Protection Agency.

ACTION: Notice of Invitation.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an invitation to vendors of innovative monitoring and measurement technologies for hazardous waste site characterization to participate in the Vendor FACTS database. Vendor FACTS is being developed by EPA's National Exposure Research Laboratory—Las Vegas (NERL–LV) of the Office of Research and Development and the Technology Innovation Office of the Office of Solid Waste and Emergency Response. The purpose of Vendor FACTS is to disseminate much needed information on innovative techniques for site characterization, and to promote the use of more cost effective methods for on-site monitoring and measurement. The system contains information provided by vendors of technologies that meet the eligibility criteria for inclusion in the database. These criteria are listed in the **SUPPLEMENTARY INFORMATION** section below. Vendors will submit information about their technologies on a Vendor Information Form (VIF). Information contained in the database will enable users to screen technologies for consideration in the site remediation process and to identify vendors who provide monitoring and measurement services. Most Vendor FACTS users are expected to be professionals responsible for the assessment or cleanup of Superfund sites, RCRA corrective action sites, state-lead clean-ups, federal facilities, and leaking underground storage tank (UST) sites. To make Vendor FACTS accessible to all system users, EPA will provide the software free of charge to the public.

DATES: Completed VIFs submitted by April 30, 1995, will be considered for inclusion in Vendor FACTS version 1.0 scheduled to be released in the third quarter of 1995.

ADDRESSES: Vendors of innovative monitoring and measurement technologies who wish to participate in Vendor FACTS version 1.0 must complete a Vendor FACTS VIF 1.0 (EPA–542–R–94–007), which can be obtained by faxing requests to U.S. EPA/ National Center for Environmental Publications and Information (NCEPI) at (513) 489–8695. Please include your name, company name, address, and fax number, if available. After you have completed the VIF, send it to: Vendor FACTS System Operator, PRC Environmental Management, Inc., 1505 PRC Drive, Suite 220, McLean, VA 22101. The Vendor FACTS database can be ordered by fax at (513) 489–8695, and for verification, (513) 891–6561. Please include your name, company name, address, and phone number.

FOR FURTHER INFORMATION CONTACT: The Vendor FACTS Hotline at (800) 245–4505 or (703) 883–8448.

SUPPLEMENTARY INFORMATION: Technologies meeting the following criteria will be included in Vendor FACTS: (1) fieldable technologies: portable or transportable equipment for on-site monitoring, screening, and analysis of hazardous substances (equipment used for collecting samples for off-site analysis will not be considered); and (2) technologies to monitor and characterize contaminated sites, not industrial process waste streams; and (3) technologies that fall in one of the categories listed below.

Air Measurement (NAAQS)—This portable or transportable technology includes all means to determine whether air meets the National Ambient Air Quality Standards issued under the Clean Air Act and similar laws and regulations. Target analytes include carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, ozone, photochemical oxidants, and particulate matter. Some versions of the technology are designed for point readings, in time, space, or both, while others are intended to assess over a period of time (hours, days, weeks; as averages or as maxima) or an extent of space (a metropolitan area or neighborhood).

Analytical Detector—The analytical detector is the component of any analytical instrument which senses the analyte (target) and produces a signal, usually electrical. The rest of the instrument consists of (1) a translator which converts the signal from the detector into usable form, (2) the output for the translated signal (meter, digital display, strip chart), and (3) the power supply, controls, case, and other components which support the sensor, translator, and output.

Analytical Traps—This technology consists of means to concentrate a desired target chemical as the sample is being collected. At present, a few variations are in use, such as the charcoal, resins, and bubblers used in collecting air samples. In addition, similar techniques are used in the laboratory for the preparation of analytical samples, including ion-selective (ion-exchange) devices and molecular sieves (working on molecular size). For analytical trap technologies that have been in existence for more than 10 years, the vendor must provide an explanation of why the technology is innovative.

Biosensors—(1) This portable technology includes devices which use derivatives of living organisms (such as enzymes, tissues, microbes, or antibodies) as a biological sensing element. The biological sensing agent is in intimate contact with a physical transducer (such as electrochemical, acoustic, or optical) which together relate the concentrations of an analyte to a measurable electrical signal. They are commonly used in the clinical chemistry laboratory, especially in the form of electrodes sensitive to a target enzyme or chemical.

Chemical Reaction-Based Indicators—This portable technology includes chemicals which convert an inapparent change in the chemical state of the target system to a visible color change or other easily noted indication. Many methods look at chemical species other than the hydrogen atom, such as ferric/ ferrous, chromic/chromate, and oxidizing/reducing species. Some versions of the technology give a graded response, rather than a dichotomous response, similar to wide-range pH paper.

Cone Penetrometer—A technology which uses a cylindrical, cone-tipped instrument, forced into the ground by hydraulic pressure. Built-in load cells measure the forces impinging on the conical tip and along the cylindrical section (friction) just behind the tip. In most instruments, these data are translated into soil classifications so one obtains instantaneous information on the stratigraphy of the soil. The technology has been used in Europe for decades and is becoming popular "in the U.S." The innovations, some being tested by the SITE Program, include additional sensors added to the instrument to detect pollutants in the subsurface. Cone penetrometers themselves are *not* considered innovative for the purpose of Vendor FACTS.

Downhole Sensors—Saturated Zone—These portable or transportable sensors can be used to determine subsurface chemical or physical properties. These sensors must be capable of operation in the saturated zone, in either a dynamic or static mode. The dynamic mode would produce data in real time as the sensor was advanced through the subsurface. The static mode would involve a sensor that either could not provide data as it was advanced, or was not capable of being advanced through

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the saturated zone. The static mode could be used in a borehole with a maximum diameter of six inches or less. Downhole sensors that can be used in a borehole with a diameter of two inches or less are preferred for the Vendor FACTS database. The Vendor FACTS database will not include common geophysical, gamma, spontaneous potential, gamma-gamma, caliper, and neutron logging tools. Vendor FACTS also will not include TV cameras that can be inserted down a borehole.

Downhole Sensors—Vadose Zone—These portable or transportable sensors can be used to determine subsurface chemical or physical properties. These sensors must be capable of operation in the vadose zone, in either a dynamic or static mode. The dynamic mode would produce data in real time as the sensor was advanced through the subsurface. The static mode would involve a sensor that either could not provide data as it was advanced, or was not capable of being advanced through the vadose zone. The static mode could be used in a borehole with a maximum diameter of six inches or less. Downhole sensors that can be used in a borehole with a diameter of two inches or less are preferred for the Vendor FACTS database. The Vendor FACTS database will not include common geophysical, gamma, spontaneous potential, gamma-gamma, caliper, and neutron logging tools. Vendor FACTS also will not include TV cameras that can be inserted down a borehole.

Fiber Optic Chemical Sensors and Analyzers—These field portable sensors employ fiber optics to transmit excitation energy to either a reaction chamber or directly onto a sample matrix. Fiber optics also are used to return the signal produced from either a fiber coating, a reaction chamber, or a sample matrix, directly into some type of detector. Generally colorometric or spectroscopic detectors are used in this process. These sensors produce real time in situ data.

Transportable Technologies—These technologies require a vehicle or mobile lab to get on site, alternating current power source (although not in all cases), and are operated on site.

Portable Technologies—These technologies are manually portable (generally weighing 30 pounds or less), battery operated (can have alternating current power), self-contained, and used on site.

Gas Chromatography (portable only)—These field portable instruments cause a chromatographic separation of chemical constituents. These instruments employ isothermal or temperature programmable ovens, and megabore, capillary, or packed chromatography columns to separate chemical constituents. These instruments use chemical detectors, and data acquisition and integration software to quantitate chemical constituent concentrations. Recent advances in gas chromatography that are considered innovative are portable, weather-proof units that have self-contained power supplies. High-speed gas chromatography is also a recent innovation.

Ground Penetrating Radar—This technology, in use for some years now, consists of emitting pulses of electromagnetic energy into the ground, and measuring its reflection/refraction by subsurface layers and other features (such as buried debris). It is analogous to seismic techniques, but with a pulse of electromagnetic energy, rather than sound (physical) energy.

High Frequency Electromagnetic (EM) Sounding—These technologies, used for nonintrusive geophysical exploration, project high frequency electromagnetic radiation into subsurface and detect the reflection/refraction of the radiation by varying soil layers. Unlike ground penetrating radar, it uses continuous waves, as opposed to pulses.

High Resolution Seismic Reflection—The classic technique of seismic reflection/refraction has been used for decades, primarily for examining relatively large features, such as the salt domes (often containing petroleum) of the Gulf Coast. This technology includes means to refine it to determine smaller scale features, such as debris or the lenses, buried channels, and other features found in till deposits. This technology must be able to measure features of interest within 100 feet of the ground surface to be considered innovative.

Immunoassay—These field portable test kits use immunochemistry to produce compound specific reactions (generally colorometric) to individual compounds, or classes of compounds. These reactions are used to detect and quantify contaminants. The immunochemical reactions center around polyclonal antibodies. These antibodies are engineered to produce compound specific reactions. The methods used to bring the antibodies into contact with a water sample or soil sample extract are variable.

Infrared (Long Path) Monitors—Classic infrared techniques involve a path of one centimeter or less in a solid or liquid. This technology looks at gases in longer path lengths, from a few centimeters to hundreds of meters. In some cases, the path may be inside the instrument. Alternatively, the air being sampled is ambient, not confined to the instrument. The air being sampled may represent a point source, such as a stack being monitored, or it may be an area. The newest variant involves remote reading of a source; this may involve checking the exhaust of a car driving on the road or the reflection from an approaching cloud.

Mass Spectrometry (portable only)—This field portable technology involves modifying a large, laboratory instrument so it can be taken into the field. Mass spectrometry breaks molecules into fragments and determines the concentrations and mass/charge ratios of the fragments. Each molecule generates a distinct pattern of fragments, so a sufficiently sensitive system can provide absolute identification of a contaminant. Less sensitive systems can readily determine class characteristics of molecules by identifying relevant radicals and other less than molecule size groups. Mass spectrometry units that are considered innovative are portable, weather-proof units that have self-contained power supplies.

Nuclear Magnetic Resonance—This field portable and transportable technology involves modifying a large, laboratory instrument so it can be taken into the field. Nuclear magnetic resonance measures the electronic environment (that is, adjacent and nearby chemical bonds) of the nuclei of a particular species of atom. The most common laboratory and clinical use is on protons, but it can be used for any atom with an odd number of protons (such as the alkali metals, aluminum, and phosphorus) or an odd number of neutrons (such as carbon-13, magnesium-25, silicon-29, and chromium-53, all significant fractions of the naturally occurring elements). Thus, it can determine the chemical composition, or variation in chemical composition, throughout the mass of a sample.

Soil Gas Analyzer Systems—These portable systems provide on site or remote monitoring of soil gas constituents. Their main components are a soil gas sampling system, soil gas analyzer, and data storage or transmission station. All of these components are microprocessor controlled and can be programmed to provide routine periodic sampling and monitoring, or on demand sampling and monitoring. These systems also use some type of standard to provide periodic checks of accuracy and precision.

Supercritical Fluid Extraction—These portable and transportable, self contained units use supercritical fluids such as carbon dioxide to extract chemical constituents from environmental matrices.

Thermal Desorption Devices—These portable and transportable, self contained units use high temperatures to volatilize and extract volatile and semivolatile chemical constituents from environmental matrices.

Transient Electromagnetic (EM) Geophysics—These technologies are based on detecting changes in subsurface electromagnetic characteristics. Interpretation of this data provides information on the subsurface environment. This particular technology differs from ground penetrating radar in that it looks more at the shape of the pulse at the sensor, rather than at the pulse's time of arrival.

Voltammetric Stripping—These portable units use electrochemistry to detect and quantify metals in environmental samples. By changing the potential across an anode or cathode, these instruments cause metals in solution to plate-out or be released. By changing the anode and cathode material, specific metals can be targeted for detection and quantitation. This technology is generally applied to water samples, however, it may be possible to use this technology on extracts from soil samples.

X-Ray Fluorescence Analyzers—These self-contained, field portable instruments consist of an energy dispersive x-ray source, a detector, and a data processing system. The combination of a source and data processing system allow for the detection and quantitation of individual metals or groups of metals.

EPA may include additional categories of monitoring and measurement technologies in subsequent versions of Vendor FACTS depending on feedback from the users. Suggestions for additional technologies may be sent to: Vendor FACTS Project Manager, Technology Innovation Office (5102W), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460.

Walter W. Kovalick,

Director, Technology Innovation Office.

[FR Doc. 95-4188 Filed 2-17-95; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before March 23, 1995.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829); for the hearing impaired only, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340)

Request for OMB approval to extend, with revision, the following report:

1. Report title: Country Exposure Report.
Agency form number: FFIEC 009.
OMB Docket number: 7100-0035.
Frequency: Quarterly.
Reporters: State member banks and bank holding companies.
Annual reporting hours: 13,064.
Estimated average hours per response: 23.
Number of respondents: 142.
Small businesses are not affected.

General description of report: This information collection is mandatory to obtain or retain a benefit [(12 U.S.C. 248(a), 1844(c), and 3906)] and is given confidential treatment [(5 U.S.C. 552(b)(4) and (b)(8))].

SUPPLEMENTARY INFORMATION: This interagency report collects information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The proposed changes, which would be effective as of March 31, 1995, are as follows:

(1) A memorandum item, "Revaluation Gains on Off-Balance-Sheet Items Reported in Column 4", would be added as Column 9. This item contains revaluation gains (i.e. assets) from the marking to market of interest rate, foreign exchange rate, and other commodity and equity contracts held for trading purposes.

(2) A memorandum item, "Amounts Reported in Column (4) after Adjustments in Columns 10-15 That Represent Securities Held in Trading Account," would be added as Column 16. The carrying value of any available-for-sale securities or of any loans or leases that are held for sale are not to be reported in this item.

(3) An existing item, "Amount of Claims that Represent Guarantees Issued by the U.S. Government and its Agencies" (Column 13), would be deleted.

(4) Three existing items collecting information on commitments, "Commercial Letters of Credit" (Column 20), "Standby Letters of Credit and Risk Participations Purchased" (Column 21), and "All Other Commitments" (Column 22), would be combined into one item, "All Commitments."

(5) An existing memorandum item, "Trade Financing" (Column 20), would be redefined to include "Commercial Letters of Credit" (Column 20), with the resulting item renumbered as Column 23.

(6) The country list would be updated to replace Belgium-Luxembourg with two countries, Belgium and Luxembourg and to replace Czechoslovakia with two countries, Czech Republic and Slovakia.

In addition, the instructions would be modified to state that all claims consisting of available-for-sale securities in Columns 1-4 are to be reported at amortized cost rather than at fair value. The instructions would also be clarified to state that the report must be completed in a manner consistent with the requirements of Financial Accounting Standards Board Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts." Finally, the definition of "Guaranteed Claims" in the instructions would be broadened to address the treatment of off-balance-sheet items.

Request for OMB approval to extend, without revision, the following report:

2. Report title: Country Exposure Information Report.
Agency form number: FFIEC 009a.
OMB Docket number: 7100-0035.
Frequency: Quarterly.
Reporters: State member banks and bank holding companies.
Annual reporting hours: 2,840.
Estimated average hours per response: 5.

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Number of respondents: 142.
Small businesses are not affected.
General description of report: This information collection is mandatory to obtain or retain a benefit [(12 U.S.C. 248(a), 1844(c), and 3906)] and is not given confidential treatment.

SUPPLEMENTARY INFORMATION: This report is a supplement to the Country Exposure Report (FFIEC 009) and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. Reporting institutions must also furnish a list of countries in which they have lending exposures above .75 percent of total assets or 15 percent of total capital, whichever is less. No changes are proposed to the FFIEC 009a reporting form or instructions.

Board of Governors of the Federal Reserve System, February 14, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-4135 Filed 2-17-95; 8:45am]
BILLING CODE 6210-01-F

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–52–829)
OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–95–340)

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. *Report title:* Annual Survey of Eligible Bankers Acceptances.
Agency form number: FR 2036.
OMB Docket number: 7100–055.
Frequency: Annual.
Reporters: U.S. commercial banks, U.S. branches and agencies of foreign banks and Edge and agreement corporations.
Annual reporting hours: 65.
Estimated average hours per response: 0.65.
Number of respondents: 101.
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. §§ 248(a), 625, and 3105(b)] and is confidential [5 U.S.C. § 552(b)(4)].

This report provides detailed information on eligible U.S. dollar acceptances that are payable in the United States. The data are used for constructing the monetary aggregates and a measure of short-and intermediate-term business credit.
Abstract: The Federal Reserve reduced the reporting frequency from once a month to once a year, and eliminated nine of the thirteen items on the report. The panel selection criterion for future panel additions will change from the 100 most active issuers to those whose acceptances outstanding exceed $50 million on their quarterly condition reports. These revisions reduce the annual reporting burden for this report by 97 percent.

2. *Report title:* Notice by Financial Institutions of, and Termination of, Activities as a Government Securities Broker or Government Securities Dealer.
Agency form number: FR G-FIN and FR G-FINW.
OMB Docket number: 7100–224.
Frequency: On occasion.
Reporters: State member banks, foreign banks, state-chartered branches and agencies of foreign banks, and commercial lending companies owned or controlled by foreign banks.
Annual reporting hours: 37.
Estimated average hours per response: 1.
Number of respondents: 37.
Small businesses are affected.
General description of report: This information collection is mandatory [15 U.S.C. §78o-5(a)(1)(B)(ii)] and is not given confidential treatment.
Abstract: Each financial institution that acts as a government securities broker or dealer is required to notify its appropriate federal regulatory agency of its broker-dealer activities by filing an FR G-FIN, unless exempted from the notice requirement by Treasury Department regulation. Financial institutions that have previously filed an FR G-FIN and that have terminated their broker-dealer activities must notify their appropriate federal regulatory agency by filing an FR G-FINW. The revisions involve clarifying the instructions as to the appropriate regulatory authority for various categories of government securities brokers and dealers to reflect the Government Securities Act Amendments of 1993.

3. *Report title:* Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.
Agency form number: FR MSD–, MSD–
OMB Docket number: 7100–100, 7100–101.
Frequency: On occasion.
Reporters: State member banks who engage in activities as municipal securities dealers, and persons who are or seek to be associated with such dealers as municipal securities principals or representatives.
Annual reporting hours: 303, 33.
Estimated average hours per response: 2.75, 0.25.
Number of respondents: 110, 133.
Small businesses are not affected.
General description of report: This information collection is mandatory [15 U.S.C. §§78o-4(b)(2)(A) and 78o-4(c)(5)] and is given confidential treatment [5 U.S.C. §552(b)(6)].
Abstract: The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The MSD–notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on an interagency computer system of records. The proposed revisions involve changing the phrasing of one item on the FR MSD–.

4. *Report title:* Uniform Form for Registration as a Transfer Agent and for Amendment to Registration.
Agency form number: FR TA–.
OMB Docket number: 7100–099.
Frequency: On occasion.
Reporters: State member banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual reporting hours: 19.
Estimated average hours per response: 0.53.
Number of respondents: 36.

Significant effect on small businesses is not expected.
General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.
Abstract: This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies. Minor changes to the form are proposed to clarify the reporting of information relative to the location(s) where transfer agent activities are conducted and relative to those instances where transfer agents contract to either perform transfer activities for others or have transfer activities performed for themselves.

Final approval under OMB delegated authority of the extension, without revision, of the following report:

1. *Report title:* Notice Claiming Status as an Exempt Transfer Agent.
Agency form number: FR 4013.
OMB Docket number: 7100–137.
Frequency: On occasion.
Reporters: State member banks, bank holding companies, and trust company subsidiaries of bank holding companies that are subject to supervision by the Federal Reserve Board.
Annual reporting hours: 20.
Estimated average hours per response: 2.
Number of respondents: 10.
Small businesses are not affected.
General description of report: This information collection is authorized by law (§17A(c)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78q-1(c)(1) as amended by the Securities Acts Amendments of 1975) and is voluntary. The collection of the data by the Federal Reserve from state member banks, subsidiaries of state member banks, bank holding companies, and subsidiaries of bank holding companies (except national banks and state nonmember banks that are insured by the FDIC) is authorized by law (15 U.S.C. §78c(a)(34)(B)(ii)). Individual respondent data are not regarded as confidential.
Abstract: This voluntary notice provides a method for state member banks, bank holding companies, and trust companies that are subject to Federal Reserve supervision and that are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, February 14, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95–4136 Filed 2–17–95; 8:45AM]
BILLING Code 6210–01–F

FCFT, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FCFT, Inc.*, Princeton, West Virginia; to acquire 10 percent of the voting shares of Bank of Mount Hope, Inc., Mount Hope, West Virginia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Community First Bankshares, Inc.*, Fargo, North Dakota; to merge with Abbott Bank Group, Inc., Alliance, Nebraska, and thereby indirectly acquire The Abbott Bank, Alliance Nebraska.
2. *Duke Financial Group, Inc.*, St. Paul, Minnesota; to acquire 53.06 percent of the voting shares of First National Bank of North County, Carlsbad, California.
3. *Frandsen Financial Corporation*, Forest Lake, Minnesota; to acquire 100 percent of the voting shares of Minnesota Bank Holding Company, Plymouth, Minnesota, and thereby indirectly acquire Citizens State Bank of Montgomery, Montgomery, Minnesota, and Citizens State Bank of Waterville, Waterville, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Lone Star National Bancshares-Nevada, Inc.*, Pharr, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lone Star National Bank, Pharr, Texas.
2. *Lone Star National Bancshares-Texas, Inc.*, Pharr, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lone Star National Bank-Nevada, Inc., Pharr, Texas, and thereby indirectly acquire Lone Star National Bank, Pharr, Texas.

Board of Governors of the Federal Reserve System, February 14, 1995.
Willaim W. Wiles,
Secretary of the Board.
[FR Doc. 95-4137 Filed 2-17-95; 8:45 am]
BILLING CODE 6210-01-F

Quad City Holdings, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

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hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Quad City Holdings, Inc., Bettendorf, Iowa; to engage *de novo* through its subsidiary Quad City Bancorp, Inc. Bettendorf, Iowa, in the transfer of merchant credit card operation, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4139 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

Werner E. Schreiber Blind Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 7, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Werner E. Schreiber Blind Trust, and Marlene I. Havens, Larry W. Jochim, and Jerry J. James as co-trustee, all of Whitefish, Montana; all to acquire 22.89 percent of the voting shares of Flathead Holding Company, Bigfork, Montana, and thereby indirectly acquire Flathead Bank of Bigfork, Bigfork, Montana.

In addition Applicants also propose to acquire a total of 73.95 percent of the voting shares of Mountain Bank System, Inc., Whitefish, Montana, and thereby indirectly acquire Mountain Bank, Whitefish, Montana, and Valley Bank of Belgrade, Belgrade, Montana.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4138 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

Wilson and Muir Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Wilson and Muir Bancorp, Inc., Bardstown, Kentucky; to acquire Bankers Mortgage Corporation, Louisville, Kentucky, and thereby engage in the business of originating and making loans secured by mortgages on, or deeds of trust relating to, real property, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Community Bancorp, Inc., Glasgow, Montana; to acquire First National Agency, Hinsdale, Montana, and thereby engage in operating a general insurance agency in a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 14, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4140 Filed 2-17-95; 8:45 am]

BILLING CODE 6210-01-F

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Harry S Truman Scholarship 1995 Supplemental Competition

AGENCY: Harry S Truman Scholarship Foundation.

ACTION: Notice of closing date for Supplemental Nominations from Eligible Institutions of Higher Education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S Truman Memorial Scholarship Act, Public Law 93-642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 1995 Truman Scholarships. Procedures are prescribed in 45 CFR 1801 (August 22, 1994; vol. 59, no. 161 sec. 13).

In order to be assured consideration, all documentation in support of nominations for the supplemental competition must be received by the Truman Scholarship Review Committee, 2255 N. Dubuque Road, P.O. Box 168, Iowa City, IA 52243 no later than March 31, 1995, from participating two- and four-year institutions.

Dated: February 10, 1995.

Louis H. Blair,

Executive Secretary.

[FR Doc. 95-4091 Filed 2-17-95; 8:45 am]

BILLING CODE 8OAC-95001-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0357]

Surveillance System for Antimicrobial Resistance; Public Hearing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to April 1, 1995, the comment period for the notice of public hearing regarding approaches to surveillance for the development of bacterial resistance to human and animal antimicrobial drugs, which published in the **Federal Register** of October 14, 1994 (59 FR 52168). Interested persons were given until February 1, 1995, to submit comments. FDA is taking this action to provide interested persons with an opportunity to comment on submissions received after the public hearing.

DATES: Submit written comments by April 1, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Transcripts of the November 9 and 10, 1994, hearing are available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Ermona McGoodwin, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1994 (59 FR 52168), FDA announced that it would be holding a public hearing November 9 and 10, 1994, on surveillance systems for antimicrobial resistance. Interested persons were given until February 1, 1995, to submit comments. The purpose of the hearing was to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers, on the issues and concerns relating to approaches for regulatory purposes to surveillance for the development of bacterial resistance to antibacterial agents used in humans and in animals. This hearing was held in response to a recommendation for improved surveillance for the development of antimicrobial resistance in both animals and humans as discussed at the May 11 and 12, 1994, joint meeting of FDA's Anti-Infective Drugs Advisory Committee and the Veterinary Medicine Advisory Committee (see the **Federal Register** of April 15, 1994, (59 FR 18136 at 18137)).

FDA is actively seeking the views of professional and consumer groups regarding the implications of an animal and human bacterial resistance monitoring system for regulatory purposes on their constituent populations. To permit time for all interested persons to comment on submissions received after the public hearing, the administrative record of the hearing will remain open until April 1, 1995. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by April 1, 1995.

Dated: February 14, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-4213 Filed 2-17-95; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Environmental Health Sciences Review Committee

Date: March 27-29, 1995.

Time: 8:30 a.m. to Adjournment.

Place: National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

Contact Person: Dr. Ethel Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541-7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-4114 Filed 2-17-95; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.

Date: March 23-24, 1995.

Time: 8:00 a.m.

Place: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Contact Person: Dr. Jeffrey Hurst, 5333 Westbard Avenue, Room 555, Bethesda, Maryland 20892, (301) 594-7418.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552(b)(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95-4112 Filed 2-17-95; 8:45 am]

BILLING CODE 4140-01-M

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National Heart, Lung, and Blood Institute; Notice of Meeting of the National Center on Sleep Disorders Research Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Center on Sleep Disorders Research Advisory Board, National Heart, Lung, and Blood Institute, March 15, 1995. This meeting will beheld at the National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will open to the public from 9:00 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the National Center on Sleep Disorders Research programs. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. James P. Kiley, Executive Secretary and Acting Director, National Center on Sleep Disorders Research, NHLBI, Building 31, Room 4A11, Bethesda, Maryland 20892, (301) 496–7443, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health).

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 95–4118 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: NHLBI SEP on Dietary Protein and Blood Pressure.

Dates of Meeting: April 20, 1995.

Time of Meeting: 9:00 a.m.

Place of Meeting: National Institutes of Health, Rockledge Building, Conference Room 8115, 8th Floor, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Agenda: The panel will review the current status of research in the designated areas, identify gaps and make recommendations regarding opportunities and priorities for future contract or grant solicitations.

Contact Person: Dr. Jeffrey Cutler, 7550 Wisconsin Avenue, Room 604C, Bethesda, Maryland 20892, (301) 496–2465.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4117 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1995.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meetings and rosters of committee members.

Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator as indicated.

Name of committee: Population Research Committee.

Scientific review administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: March 2–3, 1995.

Place of meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 2, 1995, 8:00 a.m.–9:30 a.m.

Closed: March 2, 1995, 9:30 a.m.–5:00 p.m.; March 3, 1995, 8:00 a.m.–adjournment.

Name of committee: Maternal and Child Health Research Committee.

Scientific review administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 7–8, 1995.

Place of Meeting: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 7, 1995, 8:00 a.m.–9:30 a.m.

Closed: March 7, 1995, 9:30 a.m.–5:00 p.m.; March 8, 1995, 8:00 a.m.–adjournment.

Name of committee: Mental Retardation Research Committee.

Scientific review administrator: Dr. Norman Chang, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 9–10, 1995.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: March 9, 1995, 8:00 a.m.–10:00 a.m.

Closed: March 9, 1995, 10:00 a.m.–5:00 p.m.; March 10, 1995, 8:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4113 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of General Medical Sciences; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following advisory committee meeting of the National Institute of General Medical Sciences.

This meeting will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AS–43, Bethesda, Maryland 20892, (301) 495–7301, in advance of the meeting.

Mrs. Dieffenbach will provide a summary of the meeting and a roster of committee members upon request. Substantive program information may be obtained from the contact listed below.

Committee name: Minority Biomedical Research Support Review Subcommittee, Minority Programs Review Committee.

Meeting date: March 16–17, 1995.

Place: Holiday Inn Chevy Chase, 5522 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: March 16, 8:30 a.m.–9:30 a.m.

Agenda: Special reports related to committee activities.

Closed: March 16, 9:30 a.m.–5 p.m., March 17, 8:30 a.m.–adjournment

Agenda: Review and evaluation of grant applications.

Contact: Dr. Jean Flagg-Newton, Scientific Review Admin., Building 45, Room 1AS–25H, National Institutes of Health, Bethesda, MD 20892, Telephone (301) 594–3663.

This meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasions of personal property.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Date: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4115 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: March 10, 1995.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 306 Telephone Conference.

Contact Person: Dr. Carol Campbell, Scientific Review Administrator, 5333 Westbard Ave., Room 306, Bethesda, MD 20892, (301) 594–7165.

Name of SEP: Chemistry and Related Sciences.

Date: March 13, 1995.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. John Beisler, Scientific Review Administrator, 5333 Westbard Ave., Room 334A, Bethesda, MD 20892, (301) 594–7149.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.

Date: March 23–24, 1995.

Place: Embassy Suites, Washington, DC.

Contact Person: Dr. Eileen Bradley, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10, Bethesda, MD 20892, (301) 594–7391.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: February 14, 1995.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 95–4116 Filed 2–17–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in April 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on services and research related to the integration of services, research, and financing for co-occuring mental illness and substance use disorders. The Council will also be performing review of applications for Federal assistance and individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (3), (4) and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 18C–07, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Dates: April 3–4, 1995.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Closed: April 3, 9 a.m.–11 a.m.

Open: April 3, 11 a.m.–5 p.m., April 4, 9 a.m.–adjournment.

Contact: Anne Mathews-Younes, Ed D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: February 15, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration

[FR Doc. 95–4214 Filed 2–17–95; 8:45 am]

BILLING CODE 4162–20–P

Social Security Administration

Commission on Childhood Disability

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the second meeting of the Commission on Childhood Disability (the Commission)

DATE: Friday, February 24, 1995, 8:30 a.m. to 12:00 p.m. 1:00 p.m. to 5:00 p.m.

ADDRESS: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC, Ballroom D.

FOR FURTHER INFORMATION CONTACT: Elaine Fultz, Commission Staff Director, (202) 690–7409.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Commission on Childhood Disability was established by Congress to assess the Social Security Administration's eligibility criteria for

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Supplemental Security Income (SSI) childhood disability benefits and to consider alternative criteria. The Commission is chaired by the Honorable Jim Slattery and consists of 14 members.

II. Agenda

At its second meeting, the Commission will:

- Review other federal programs for children with disabilities;
- Review the 1990 *Sullivan* v. *Zebley* Supreme Court decision and analyze its requirements;
- Consider issues that have arisen in the Social Security Administration's implementation of the Individual Functional Assessment (IFA) required by the *Zebley* decision;
- Consider profiles of children with several specific disabilities, including mild mental retardation and Attention Deficit Hyperactivity Disorder (ADHD).

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and Social Security and SSI recipients may submit written comments on the issues considered by the Commission. The Commission will not take public testimony at this meeting but will provide ample opportunity for interested individuals and organizations to address it orally at future meetings. Interpreter services for persons with hearing impairments will be provided.

A transcript of the meeting will be available at an at-cost basis. Transcripts may be ordered from the information contact shown above. The transcript and all written submissions will become part of the record of these meetings.

Dated: February 14, 1995.

Ron Sribnik,

Social Security Administration Regulations Officer

[FR Doc. 95–4327 Filed 2–17–95; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–798900

Applicant: Andy G. Grubbs, P.O. Box 208, San Marcos, Texas 78667

The applicant requests a permit to include take activities for the Bee Creek Cave harvestman (*Texella redelli*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

Susan MacMullin,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4128 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of 16 Applications for Incidental Take Permits for Construction of 16 Single Family Residences on Foxtree Cove, Section 4, Block D, Jester Point 2, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Howard L. Burris, Jr. (Applicant) has applied to the Fish and Wildlife Service (Service) for 16 incidental take permits pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned Permit Numbers PRT–798286 and PRT–798288 through PRT–798302. The requested permits, which are for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of 16 single family residences on Foxtree Cove, Section 4, Block D, Jester Point 2, Travis County, Texas

The Service has prepared the final Environmental Assessment/Habitat Conservation Plans (EA/HCP) for the incidental take applications. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the applications and EA/HCP should be received on or before March 23, 1995.

ADDRESSES: Persons wishing to review the applications may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP(s) may obtain a copy by contacting Joseph E. Johnston, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512)/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Written data or comments concerning the applications should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to Permit Numbers PRT–798286 and PRT–798288 through PRT–798302 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Howard L. Burris, Jr. plans to construct single family residences on 16 lots on Foxtree Cove, Section 4, Block D, Jester Point 2 Subdivision, Travis County, Texas. This action will eliminate less than one-half acre of and indirectly impact less than one additional acre of golden-cheeked warbler habitat per residence. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by placing $1,500 for each permit application into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present was not economically feasible.

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4127 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

North American Wetlands Conservation Council; Availability of Document

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a final document, U.S. Grant Application Instructions Package For Funding Consideration Through the North American Wetlands Conservation Council Under Authority of North American Wetlands Conservation Act, is available.

DATES: Proposals may be submitted at any time. FY 1996 proposals will be accepted through August 4, 1995.

ADDRESSES: Copies of this document can be obtained by contacting the U.S. Fish and Wildlife Service, Publications Unit, Mail Stop 130 Webb, 4401 N. Fairfax Drive, Arlington, VA 22203 during normal business hours (7:45 am–4:15 pm) in writing or by phone (703) 358–1711.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Streeter, Coordinator, North American Wetlands Conservation Council at (703) 358–1784.

SUPPLEMENTARY INFORMATION: This document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals submitted for Fiscal Year 1996 funding. This document was prepared to comply with the "North American Wetlands Conservation Act." the Act established a North American Wetlands Conservation Council. This Federal-State-Private body annually recommends wetland acquisition, restoration, and enhancement conservation projects to the Migratory Bird Conservation Commission. These project recommendations will be selected from proposals made in accordance with this document. Proposals from State and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: January 17, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–4131 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–055–1150–00, 5–0151–LM]

Caliente Management Framework Plan Desert Tortoise Amendment

AGENCY: Bureau to Land Management, Interior.

ACTION: Notice to Extend Scoping Period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public scoping period for the proposal to amend the Caliente Management Framework Plan to implement the U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Recovery Plan, from February 17, 1995 to March 7, 1995.

DATES: The 30-day scoping period for public comment on the desert tortoise amendment is extended. Written comments must be submitted and postmarked no later than Tuesday, March 7, 1995.

ADDRESSES: Written comments should be addressed to: Curtis G. Tucker, Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, Nevada, 89126.

FOR FURTHER INFORMATION CONTACT: Kyle Teel, Wildlife Biologist, at the above address or telephone 702–726–8100.

SUPPLEMENTARY INFORMATION: On January 30, 1995, notice was published to initiate a 30-day public scoping period on the subject amendment. The closing date for scoping is extended from February 17, 1995 to March 7, 1995. The 30-day public scoping period is being conducted to give the public opportunity to comment on the proposal to amend the Caliente Management Framework Plan for implementing the U.S. Fish and Wildlife Service Desert Tortoise (Mojave Population) Recovery Plan.

Federal, state and local agencies, and other individuals or organizations who are interested in/or affected by aspects of amending the Caliente Management Framework Plan to implement the desert tortoise recovery plan, are invited to participate in this planning process.

Dated: February 13, 1995.

Thomas V. Leshendok,

Acting State Director, Nevada.

[FR Doc. 95–4215 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[NV–010–1100–00]

Notice of Availability of the Wells Resource Management Plan Proposed Elk Amendment and Environment Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Wells Resource Management Plan Proposed Elk Amendment and Environmental Assessment is available to the public for a 30-day review and protest period. The proposed amendment analyzes the impacts of several alternatives for managing elk in the BLM's Wells Resource Area, Elko County, Nevada.

DATES: A 30-day protest period begins on February 23, 1995. Any protests on the proposed plan amendment must be postmarked no later than March 24, 1995.

ADDRESSES: Protests must be filed with the Director, Bureau of Land Management, Resource Planning Team (WO–480), P.O. Box 65775, Washington, D.C. 20035.

Copies of the proposed amendment may be obtained by writing to: Wells Resource Area, Bureau of Land Management, P.O. Box 831, Elko, Nevada, 89803. Copies may also be picked up in person at the Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

FOR FURTHER INFORMATION CONTACT: Bill Baker, Wells Resource Area Manager, at the above Elko, Nevada address or telephone (702) 753–0200.

SUPPLEMENTARY INFORMATION: Through a review of elk habitat management in the Wells Resource Area, it was determined that elk numbers and habitat use areas are expanding from those identified in the Wells Resource Management Plan Record of Decision, approved July 16, 1985. Elk are recognized as highly adaptable creatures and during recent years have pioneered from the Pilot Mountain Management Area, northwest Utah, and southern Idaho to adjacent previously unoccupied habitats in the Wells Resource Area.

The purpose of this amendment is to establish elk habitat management areas, identify habitat requirements and specific management objectives and practices, establish target elk population management levels, develop factors fo:

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attainment and future adjustments in elk population management levels, and identify constraints on other resources within the Wells Resource Area.

The proposed amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by approval of the proposed plan amendment. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be filed with the BLM National Director at the above address. All protests must be written and must be postmarked on or before March 24, 1995 and shall contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest.

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the document being protested.

(4) A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the records.

(5) A short, concise statement explaining precisely why the BLM Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Decision Record will be issued. The Approved Plan Amendment and Decision Record will be mailed to all individuals who participated in the planning process and all other interested public upon their request.

Dated: February 13, 1995

Jean Rivers-Council,

Associate State Director, Nevada.

[FR Doc. 95–4126 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–95–1420–00]

Colorado: Filing of Plats of Survey

February 9, 1995.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., February 9, 1995.

The plat representing the metes-and-bounds survey in section 10, T. 2 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted August 12, 1994.

The plat representing the metes-and-bounds survey of the boundary line between lots 128 and 129 in section 16, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted August 24, 1994.

The plat representing the dependent resurvey of a portion of the Grand Mesa National Forest Boundary, in section 11, 15, 16, 17 and 18 and portions of Tracts 39 and 40, T. 10 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 973, was accepted September 13, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 9, T. 10 N., R. 74 W., Sixth Principal Meridian, Colorado, Group No. 1004, was accepted November 29, 1994.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 17, T. 7 N., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 1025, was accepted December 13, 1994.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat (in 21 sheets), representing the dependent resurvey of portions of certain mineral claims and a portion of the Silver Plume Townsite in section 13, 14, 23 and 24, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 689, was accepted November 28, 1994.

This survey was executed to meet certain administrative needs of the U.S. Forest Service and this Bureau.

The plat representing the dependent resurvey of a mineral survey number 326, White Elephant Placer, T. 19 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 456, was accepted September 13, 1994.

The plat representing the dependent resurvey of a portion of the south and east boundaries, portions of the subdivisional lines and the subdivision of school section 36, T. 8 N., R. 92 W., Sixth Principal Meridian, Colorado, Group No. 986, was accepted November 29, 1994.

The plat representing the dependent resurvey of portions of the First Standard Parallel North on the south boundary of T. 5 N., R's 59 and 60 W., a portion of the west boundary and subdivisional lines and the subdivision of section 6, T. 4 N., R. 59 W., Sixth Principal Meridian, Colorado, Group No. 1038, was accepted November 29, 1994.

The supplemental plat, creating lots 59, 60, 61, 62, 63, and 64 in the SW1/4 of section 24, T. 1 N., R. 72 W. Sixth Principal Meridian, Colorado, was accepted September 13, 1994.

The supplemental plat (in 2 sheets), creating lots 30, 31, 32, 33, 34, and 35 in section 36, and lots 7 and 8 in section 35, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, was accepted September 16, 1994.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–4088 Filed 2–17–95; 8:45 am]

BILLING CODE 4310–JB(P)

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32653]

Blue Mountain Railroad, Inc.—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) will agree to grant local and overhead trackage rights to Blue Mountain Railroad, Inc. (BMR) over approximately 0.7 miles of BN's rail line between BN milepost 75.8 and BN milepost 76.5 in Pullman, WA.[1] The purpose of this transaction is to facilitate a bridge-widening project by the State of Washington. The trackage rights were to become effective on or after February 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Suite 1035, 1101 Pennsylvania Avenue NW., Washington, DC 20004.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: February 13, 1995.

[1] BMR's local trackage rights will be limited to serving Washington State College located at BN milepost 76.21

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4173 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 484X)]

CSX Transportation, Inc.)—Abandonment Exemption—In the City of Suffolk, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: CSX Transportation, Inc. (CSXT) has petitioned for an exemption from the prior approval requirements of 49 U.S.C. 10903–10904 for the abandonment of its 3.81-mile segment of branch line track from milepost AB–214.0 to the end of the track at milepost AB–210.19 in the City of Suffolk, VA. We will grant the exemption, subject to standard labor protective conditions and a condition that CSXT consult with the City of Suffolk prior to completion of salvage operations.

DATES: This exemption will be effective on March 23, 1995, unless it is stayed or a formal expression of intent to file an offer of financial assistance is filed. Petitions to stay must be filed by March 8, 1995. Petitions for reconsideration or reopening must be filed by March 18, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by March 3, 1995.

ADDRESSES: Send pleadings, referring to Docket No. AB–55 (Sub-No. 484X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC. 20423; and (2) petitioner's representative: Charles M. Rosenburger, 500 Water Street—J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, DC. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.].

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4172 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01P–M

[Docket No. AB–55 (Sub-No. 503X)]

CSX Transportation, Inc.—Abandonment Exemption—McMinn County, TN

CSX Transportation, Inc. (CSXT) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.41-mile rail line between milepost 333.2 and 334.61 in Athens, McMinn County, TN.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective March 23, 1995, unless stayed or a statement of intent to file an OFA is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 13, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 24, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4174 Filed 2–17–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1678–94]

Draft Statement of Standards and Guidelines for Developing an Immigration and Naturalization Services Passenger Accelerated Service System (INSPASS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of availability.

SUMMARY: This notice advises interested parties that the Immigration and

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

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Naturalization Service (Service) has prepared a draft statement of standards and guidelines for developing, building, installing, and operating an automated Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS). These standards and guidelines are available for review and comment by interested parties who may wish to develop an automated system for use by the Service at selected Ports-of-Entry in the United States. The automated passenger accelerated service system is designed to decrease inspection processing time by automating the inspection of low risk frequent travelers to the United States

DATES: Requests for the draft statement and guidelines should be received on or before March 23, 1995. Written comments on the draft statement and guidelines must be received on or before April 24, 1995.

ADDRESSES: Written requests for copies of the draft statement and guidelines should be submitted to the Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536, ATTN: Inspections Division (INSPASS).

Please submit written comments on the draft statement and guidelines, in triplicate, to the Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, Attention: Assistant Chief Inspector Ronald J. Hays.

FOR FURTHER INFORMATION CONTACT: Assistant Chief Inspector Ronald J. Hays, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536, telephone (202) 514–0912 or fax (202) 514–8345.

SUPPLEMENTARY INFORMATION:

Background

The Service developed INSPASS as a pilot program to be used by low risk frequent travelers to facilitate their entry into the United States at designated Ports-of-Entry. Under INSPASS, the applicant fills out an enrollment form, and his or her personal data is fed through a computer that checks with the databases of U.S. Customs, the U.S. State Department, the National Crime Information Center, and the Immigration and Naturalization Service. If the applicant is approved, biometric information is collected through the use of hand geometry. The applicant places his or her hand in an open, box-like structure, onto a small metal plate, and squeezes a few small pegs. The length, thickness and translucency of the hand is noted, and coded. Within seconds, a small credit-card sized INSPASS card is produced.

At the time of arrival at one of the designated Ports-of-Entry, the INSPASS holder proceeds to an automated inspectional booth for accelerated inspectional processing. The captured biometrics (encoded on the INSPASS card) are used to establish his or her identity.

INSPASS, is a subset of the Interagency Border Inspection System (IBIS), and is being pilot tested at the Newark International Airport, as of May 24, 1993; at John F. Kennedy International Airport, as of July 27, 1993; and at Pearson International Airport (Toronto, Canada), as of December 1, 1993. A land border version of INSPASS is under development for testing at Hidalgo, Texas.

INSPASS Hardware and Software Configuration

As currently deployed, INSPASS consists of two primary components: an enrollment center and an inspection kiosk. They include the following equipment:

Enrollment Center

Two 486 personal computers
Hand geometry scanner
Fingerprint scanner
OCR–B card reader
OCR–B card printer
Laser printer

Inspection Kiosk

ATM-like stand
486 personal computer
10 inch monitor
16-key keypad
Hand geometry scanner
OCR–B card reader
Receipt printer
Fingerprint scanner
Electrically locked gate

Results of the INSPASS Pilot Test

The results of the INSPASS pilot test have been very encouraging and have demonstrated the potential to reduce processing times for travelers significantly. However, the Service has identified the following areas in which improvements in the existing hardware configuration are required to reduce the inspection processing time further:

Monitor—to be replaced by a touchscreen.

Card readers—to be replaced by readers which are capable of reading OCR–B and integrated circuit cards. These readers must be styled as ATM card readers.

Printers—to be replaced by a faster, more robust printer. This printer must be capable of detecting the removal of the receipt as this action triggers the opening of the gate.

Fingerprint scanner—to be replaced by a more dependable scanner which complies with the Service's fingerprint capture and storage standards.

Kiosk—must be redesigned to improve ergonomics. Such a redesign must comply with the Americans With Disabilities Act, Occupational Safety and Hazards Act and other applicable laws and regulations.

INSPASS card—to be replaced with a smart card-based medium which contains data elements to be specified by the Service.

Gate—to be replaced by a gate which operates within a time cycle acceptable to the Service and which complies with applicable laws and regulations.

Draft Statement of Standards and Guidelines for Developing an Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS)

During the INSPASS development cycle, numerous individuals and organizations, both public and private, have offered suggestions for improvements. The draft statement of standards and guidelines calls for a new relationship with the travel and tourism industry, based upon some of these suggestions, in which the industry and the Service will cooperate to install INSPASS at specific Ports-of-Entry. The Service will set the system specifications, determine which travelers will be allowed to be enrolled, and bear some of the cost of operations. This new relationship will allow the Government and the travel industry to avoid some costs they might otherwise have had to bear. This is exactly the type of cost saving synergy envisioned by the Vice President's National Performance Review. If the objective of this program is met, the Service will achieve a state-of-the-art automated inspections environment with reliable management information to deliver its services to the public. These standards and guidelines will be provided upon written request for review and comment. Based on any comments/concerns received, the Service may finalize these standards and guidelines, and request formal proposals in accordance with a notice to be published in the Commerce Business Daily and/or the **Federal Register**.

Dated: January 30, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4089 Filed 2–17–95; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1674–94]

RIN 1115–AB93

Extension of the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Visa Waiver Pilot Program (VWPP) until September 30, 1996. Nationals of those countries eligible for participation under the VWPP, may continue to apply for admission to the United States for ninety (90) days or less, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa. This notice also notifies those carriers who have entered into agreements with the Immigration and Naturalization Service (Service) under the provisions of the Visa Waiver Pilot Program, that the agreements will continue in effect until September 30, 1996. These actions will facilitate travel for both the public and United States businesses.

EFFECTIVE DATES: This extension of the Visa Waiver Pilot Program is effective on October 25, 1994, and will remain in effect until September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Immigration and naturalization Service, Room 7228, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–0912.

SUPPLEMENTARY INFORMATION:

Background

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, dated November 6, 1986, added section 217 to the Immigration and Nationality Act (ACT which established the nonimmigrant Visa Waiver Pilot Program. Section 313 of IRCA initially provided for the designation of eight (8) countries to participate in the Visa Waiver Pilot Program. Accordingly, the Service designated by regulations published in the **Federal Register**, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register Citation
1. United Kingdom	July 1, 1988	53 FR 24901, June 30, 1988.
2. Japan	Dec. 15, 1988	53 FR 50161, Dec. 13, 1988.
3. France	July 1, 1989	54 FR 27120, June 27, 1988
4. Switzerland	July 1, 1989	54 FR 27120, June 27, 1989.
5. Germany	July 15, 1989	54 FR 27120, June 27, 1989
6. Sweden	July 15, 1989	54 FR 27120, June 27, 1989
7. Italy	July 29, 1989	54 FR 27120, June 27, 1989.
8. Netherlands	July 29, 1989	54 FR 27120, June 27, 1989.

Section 201 of the Immigration Act of 1990, (IMMACT 90), Public Law 101–649, dated November 29, 1990, further amended the Visa Waiver Pilot Program by removing the eight country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated the following fourteen (14) additional countries by regulations published in the **Federal Register**, to participate in the VWPP:

Country	Effective date	Federal Register Citation
1. Andorra	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991
2. Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
3. Belgium	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
4. Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991
5. Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
6. Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
7. Liechtenstein	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
8. Luxembourg	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
9. Monaco	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
10. New Zealand	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
11. Norway	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
12. San Marino	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
13. Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
14. Brunei	July 29, 1993	58 FR 40581, July 29, 1993.

Extension of the Visa Waiver Pilot Program

On September 27, 1994, the Assistant Commissioner, Office of Inspections, issued a memorandum to those carriers who signed a VWPP agreement with the Service, that during the month of October 1994, the Service would not fine carriers under section 273 of the Act for transporting to the Untied States, visitors without nonimmigrant visitor visas, who would otherwise be eligible for admission to the United States under the Visa Waiver Pilot Program. This action was necessary to accommodate the travelling public who made plans to visit the United States and who were not aware that the Visa Waiver Pilot Program would expire on September 30, 1994 unless the program was extended by Congress.

Subsequently, the Immigration and Nationality Technical Corrections Act of 1994, October 25, 1994 extended the expiration date of the Visa Waiver Pilot Program until September 30, 1996.

Therefore, unless designation is otherwise withdrawn sooner, nationals of those countries eligible for participation under the VWPP may continue to apply for admission to the United States for ninety (90) days or

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less, as nonimmigrant visitors for business or pleasure, without first obtaining a nonimmigrant visa. In addition, the agreements with the Service, which carriers have entered into under the provisions of the Visa Waiver Pilot Program, will remain in Effect until September 30, 1996.

Dated: January 30, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4090 Filed 2–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation: Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Secretary's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation was established in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 82–463)). Pursuant to Section 10(a) of FACA, this is to announce that the Task Force will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Tuesday, March 14, from 9 a.m. to 4 p.m. and on Wednesday, March 15, from 9 a.m. to 3 p.m. in Conference Room N–3437 B–D in the Department of Labor, 200 Constitution Avenue, NW, Washington, DC.

AGENDA: At this meeting, the Task Force intends to hear testimony on and discuss the following topics, among others: (1) public safety, (2) work place attitudes towards collaboration and quality, and (3) polling and survey results of citizens' expectations of government.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact the Task Force to request appropriate accommodations. Individuals or organizations wishing to submit written statements should send 20 copies on or before March 6 to Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2203, Washington, DC 20210. These statements will be thoroughly reviewed and become part of the record.

For the purposes of this meeting, the Task Force is primarily interested in statements that address the topics mentioned above under the heading "Agenda." However, the Task Force continues to welcome submissions that address the questions in the mission statement and the following eight general areas: (1) Finding Models, Ingredients, and Barriers to Service Excellence and Labor-Management Cooperation and, as the following relate to promoting workplace cooperation and excellence; (2) Bargaining and Related Institutions and Practices; (3) Conflict Resolution Skills, Practices, and Institutions; (4) Legal and Regulatory Issues; (5) Financial Background, Financial Security, and Budget Systems; (6) Affects of Civil Service; (7) Political and Electoral Considerations and Relationships; and (8) Providing a Humane Work Environment.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles A. Richards, Designated Federal Official, Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation, U.S. Department of Labor, Room S–2203, Washington, DC 20210, (202) 219–6231.

Signed at Washington, DC this 15th day of February, 1995.

Robert B. Reich,

Secretary of Labor

[FR Doc. 95–4164 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–86–M

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board: Carl Lowe.

For Further Information Contact: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C., 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 14 day of February, 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–4163 Filed 2–17–95; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–021]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 3665, Notice Number 95–004, January 18, 1995.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: February 22, 1995, 8:30 a.m. to 4:30 p.m.; February 23, 1995, 8:30 a.m. to 4:30 p.m.; and February 24, 1995 8:30 a.m. to 11:30 a.m. National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

CHANGES IN THE MEETING: Dates changed to March 29, 1995, March 30, 1995, and March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567

Dated: February 14, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer

[FR Doc. 95–4171 Filed 2–17–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Units 1 and 2; Exemption

I

The Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR–70 and DPR–75, which authorize operation of the Salem Nuclear Generating Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, Salem Nuclear Generating Station, Units 1 and 2, at the licensee's site located in Salem, New Jersey.

II

In its letter dated December 22, 1994, the licensee requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, part 50, section 60 (10 CFR 50.60), "Acceptance Criteria for Fracture Prevention Measures for Light-water Nuclear Power Reactors for Normal Operation," states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's current LTOP analysis, which removes the non-conservatism in a previous analysis by assuming one reactor coolant pump in operation, results in a calculated pressure that exceeds the appendix G safety margins for Salem 1 and falls just within the appendix G safety margins for Salem 2.

The licensee has requested the use of code Case N–514, which allows exceedance of the appendix G safety limits by 10%. Designated Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. The content of this code case has been incorporated into appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. In order to utilize Code Case N–514 and exceed the appendix G safety limits, the licensee has requested an exemption to 10 CFR 50.60 in a letter dated December 22, 1994.

As a result of a teleconference between the licensee and the NRC on December 16, 1994, the licensee summarized in its letter of the same date the administrative controls currently in place for Salem, Units 1 and 2 to prevent the P/T limits from being exceeded due to injection of an Intermediate Head Safety Injection pump. These controls will be removed after the receipt of this approval.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *".

The underlying purpose of 10 CFR 50.60, appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Salem reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology and would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

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Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (60 FR 7804).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 13th day of February 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reaction Regulation.

[FR Doc. 95–4170 Filed 2–17–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35369; File No. SR–CBOE–95–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Amending Its Rules Relating to Certain Procedures Regarding Trading Rotations and Opening Procedures

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") proposes to amend its rules relating to certain procedures regarding trading rotations and opening procedures. These amendments would: (i) Amend Rule 6.2; (ii) amend Interpretations .02 and .03 to Rule 6.2; (iii) add an Interpretation to Rule 6.2; (iv) amend Rule 24.13; and (v) amend Interpretation .03 to Rule 24.13.

The text of the proposed rule changes is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is first to grant two Floor Officials the authority to call for a trading rotation and to delay the commencement of an opening rotation if the Floor Officials believe this will aid in producing a fair and orderly market. The rule changes further allow the Order Book Official to deviate from the rotation order and manner which the Floor Procedures Committee may have established, as long as two Floor Officials first approve such a deviation. If the appropriate Floor Procedures Committee has not established the rotation order and manner for the options under its purview in a particular situation, then the Order Book Official may determine the order and manner of the rotation.

Trading Rotations

Specifically, the proposal would amend Rule 6.2 to grant two Floor Officials discretion to direct that one or more trading rotations be employed on any business day. Presently, pursuant to Rule 6.2, only the Floor Procedures Committee has this discretion. Consequently, if circumstances arose during the day that made an additional rotation appropriate, such as either a rotation following a trading halt or a closing rotation, then the Floor Procedures Committee would have to assemble to make the decision to employ a rotation. CBOE believes it is impractical to assemble the entire Floor Procedures Committee for such an intra-day decision. Furthermore, under Rule 6.6(b)(iii), two Floor Officials already have the discretion to direct that one or more trading rotations be employed on any business day, but only when a fast market has been declared. CBOE believes that this discretion should not be limited only to fast market conditions. By amending Rule 6.2, two Floor Officials would have the discretion to direct that one or more trading rotations be employed, and this discretion would not be limited to a fast market situation.

The proposed rule would further amend Rule 6.2 to grant Order Book Officials more discretion regarding the rotation order and manner. This discretion may be exercised before the rotation begins as well as during a rotation. Presently Rule 6.2 provides that the Floor Procedures Committee shall specify both the particular option contracts to be included in each rotation and the sequence of such option contracts in that rotation. Under the proposed amendment to Rule 6.2, the "appropriate" Floor Procedures Committee, meaning the Floor Procedures Committee that makes policy regarding the particular class of options in question, would still have authority to set policy regarding the rotation order and manner However, if the appropriate Floor Procedures Committee has not acted to establish any policy applicable to a particular situation, then the Order Book Official would be authorized to determine the appropriate order and manner for conducting the rotation. CBOE believes that the proposed amended Rule 6.2 would allow Order Book Officials to respond to particular circumstances the Floor Procedures Committee has not considered and to conduct the rotation as is appropriate under those circumstances.

In addition, pursuant to amended Rule 6.2, the Order Book Official, with the approval of two Floor Officials, would be permitted to deviate from a rotation policy or procedure previously established by the appropriate Floor Procedures Committee. In certain circumstances, it may be appropriate to deviate from the established procedure, but, as stated above, it would be impractical to assemble the Floor Procedures Committee for an intra-day decision allowing such a deviation. Instead of assembling the entire committee, two Floor Officials could act for the entire committee and approve or disapprove an Order Book Official's proposed deviation from the previously established rotation policy or procedure. Presently, pursuant to Interpretation 01(b) to Rule 6.2, with the approval of two Floor Officials or the Floor Procedures Committee, the opening rotation may be conducted in a manner other than that set forth in Interpretation .01(b). Therefore, the proposed amendment would extend this existing policy to all rotations. The proposal would further amend Rule 6.2 so that the Order Book Official, rather than the committee, may prescribe that two or more trading rotations be employed simultaneously. CBOE believes that it would be impractical to assemble the Floor Procedures Committee for an intra-day decision regarding simultaneous trading rotations.

The proposal would further add Interpretation .04 to Rule 6.2 to specify that the decision to conduct an abbreviated rotation is one of the deviations from rotation policy or procedure and one of the modifications of rotation order and manner that is permitted under the amended rule. This change provides only an example of a type of rotation modifications or deviations that may be employed.

The proposal would further amend Rule 6.2 to give two Floor Officials the discretion to delay commencement of the opening rotation in any class of options in the interests of a fair and orderly market. It is CBOE's practice to allow Floor Officials to delay an opening, but no rule explicitly states this practice. CBOE believes that the rules should grant Floor Officials the power to react to market conditions and circumstances by delaying an opening rotation when it is in the interests of a fair and orderly market to do so, for the same reasons that the rules need to grant Floor Officials authority to modify the rotation order or manner. As explained above, pursuant to Interpretation .01(b) to Rule 6.2, two Floor Officials now have the authority to conduct the rotation in a manner other than that set forth in the Rule, but the Rule does not expressly state that the Floor Officials also may delay the opening rotation.

Interpretation .02 to Rule 6.2 lists reasons why it is permissible to conduct a rotation after the end of normal trading hours. CBOE believes that the proposed amendment to Interpretation .02 would clarify both that the reasons listed are not the exclusive reasons why a trading rotation may be employed after the close and that two Floor Officials have the discretion to conduct a rotation after the close for a number of reasons. The proposed amendment also would permit the commencement of more than one trading rotation after 3:10 p.m. (central time), but would make it clear that, in general, no more than one trading rotation will be commenced after 3:10 p.m. (central time). Again, CBOE believes that it is in the interests of a fair and orderly market to allow two Floor Officials to exercise their judgment in response to market conditions or circumstances and that not all of these conditions or circumstances can be enumerated in advance. Nonetheless, the proposal would amend Interpretation .02 to state the current practice of employing a trading rotation after the end of normal trading hours if it is in connection with a year-end rotation or due to the restart of a rotation which is already in progress. In these circumstances, CBOE believes it may be necessary to continue the rotation after the normal close of trading in order to complete the rotation.

Index Options Trading Rotations

Presently, Interpretation .03 to Rule 6.2 provides that "a closing rotation for an expiring series of index options shall not be employed." (Emphasis added). This limitation is not in Interpretation .02 to Rule 6.2 as it is presently written or in the proposed amendment to Interpretation .02. Although closing rotations are not ordinarily employed in expiring series of index options, CBOE believes it is inappropriate to absolutely prohibit closing rotations for such series. CBOE believes the use of the word "shall" could be interpreted to prohibit closing rotations for expiring series of index options in all circumstances. CBOE, therefore, proposes to amend the interpretation to state that a closing rotation for such expiring series is not ordinarily employed. CBOE believes the proposed amendment to Interpretation .03 is necessary to clarify that, unlike the case with equity options, closing rotations are not ordinarily conducted in expiring series of index options, but that such closing rotations are not absolutely prohibited.[1] In addition, Interpretation .03 to rule 6.2 would be amended to give two Floor Officials the ability to deviate from the procedures for closing rotations if they determine such deviation is in the interests of a fair and orderly market. Again, CBOE believes that it is in the interests of a fair and orderly market to allow two Floor Officials to exercise their judgment in response to market conditions or circumstances.

Consistent with the above changes to Rule 6.2 regarding the order and manner of the rotation, the proposal would amend Rule 24.13 to give the Order Book Official the same discretion to determine the appropriate order and manner for conducting the rotation for index options when the appropriate Floor Procedures Committees not acted to establish a policy applicable to a particular situation. Just as in amended Rule 6.2, the Floor Procedures Committee that make policy for index options would have the authority to set policy regarding the order and manner of the opening rotation. However, if a Floor Procedures Committee has not acted to establish a policy applicable to a particular situation, then the Order Book Official would be permitted to determine the appropriate order and manner for conducting the opening rotation.

Consistent with the underlying reasoning for amended Rule 6.2, Rule 24.13 would also be amended by deleting the two sentences that provide that the Order Book Official shall open the nearest expiration series first and thereafter shall open the remaining series in a manner he deems appropriate. CBOE believes that the word "shall" could be interpreted as requiring the Order Book Official to open with the nearest expiration series even if a different order would be appropriate under the circumstances.

Again, just as amended Rule 6.2 provides, the proposal would further amend Rule 24.13 so that Order Book Officials could deviate from the appropriate Floor Procedures Committee's established procedure regarding the order and manner of the opening rotation so long as two Floor Officials approved such deviation. CBOE believes that it would be impractical to assemble a Floor Procedures Committee for an intra-day decision allowing a deviation from establish opening rotation policy or procedure. CBOE proposes to allow two Floor Officials to act for the entire committee and approve or disapprove of such deviation.

Presently, under Interpretation .03 to Rule 24.13, two Floor Officials may delay the commencement of the opening rotation in an *index* option for one or more five (5) minute intervals under certain specified unusual market conditions. The proposal would amend

[1] CBOE believes that a system malfunction or a major announcement in the markets late in the trading days, among other things, may require a closing rotation for expiring series of index options in order to accommodate any order flow problems resulting from such occurrences. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, and John Ayanian, Attorney, OMS, Division, Commission, on Monday, February 13, 1995.

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Interpretation .03 to Rule 24.13 to delete the requirement that any delays in the opening rotation must be in five (5) minute intervals and to give two Floor Officials greater discretion to delay the commencement of the opening rotation. Rather than limiting the circumstances under which two Floor Officials may delay the opening, amended Interpretation .03 would permit Floor Officials to delay the opening rotation at their discretion in the interests of a fair and orderly market. The circumstances outlined in current Interpretation .03 to Rule 24.13, under which two Floor Officials may delay the opening, would remain as factors that Floor Officials may consider in deciding whether to delay the opening rotation. CBOE believes that these amendments to Interpretation .03 are consistent with the amendment proposed for Rule 6.2, which grants two Floor Officials the authority to delay the opening rotation in any class of options in the interests of a fair and orderly market. Current Interpretation .01 to Rule 24.13 provides that the procedures for modification of a rotation and other aspects of the rotation set forth in Rule 6.2 are applicable to index options. CBOE believes that the authority regarding delays in opening contained in Rule 6.2 should therefore apply to index options, so that Floor Officials' discretion to delay the opening is not more restricted in the case of index options.

The present requirement that the delay in the opening rotation for index options may only be in five (5) minute intervals would be deleted because CBOE believes the interests of a fair and orderly market are better served if the Floor Officials may end the delay and commence the opening when it is appropriate to do so, without having to wait until the prescribed five minutes has lapsed. In addition, CBOE believes that for lengthy delays, it is impractical to require two Floor Officials to remain at the index options post for the sole purpose of declaring successive five minute delays.

Conclusion

The proposed rule changes are intended to give Order Book Officials, with the approval of two Floor Officials, the discretion to conduct a trading rotation during the day and to structure the order and manner of the rotation as they consider appropriate under the circumstances. The rule changes would further allow any two Floor Officials to delay the opening rotation if it is in the interests of a fair and orderly market to do so. CBOE believes that the proposed rule changes are consistent with and further the objectives of section 6(b)(5) of the Act, in that the rule changes are designed to perfect the mechanism of free and open market and to protect investors and the public interest by enabling Floor Officials and Order Book Officials to evaluate and consider market conditions and circumstances in determining the appropriate order and manner of the rotation and whether to delay the opening rotation.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number SR–CBOE–95–04 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–4161 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35364; File No. SR–NASD–95–8]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to a Six Month Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature

February 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission in publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposed to extend, until October 2, 1995, the effectiveness of certain rules governing the operation of The Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES"). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993,[2] and recently extended through March 27, 1995,[3] provide for: (1) a reduction in the minimum exposure limit for unpreferenced SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preferenced orders ("SOES Minimum Exposure Limit Rule"); and (2) implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted ("SOES Automated Quotation Update Feature"). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.[4]

[2] 17 CFR 200.30–3(a)(12)(1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) ("Interim SOES Rules Approval Order").

[3] See Securities Exchange Act Release No. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995) ("Interim SOES Rules Extension Order").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 23, 1993, the SEC issued an order approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994. In response to two applications requesting a stay of the Interim SOES Rules Approval Order, however, the SEC granted a partial stay of the effective date of the order through January 25, 1994. Thus, absent further Commission action, the Interim SOES Rules initially were effective from January 26, 1994 through January 25, 1995.[5] On January 25, 1995, the SEC approval an NASD proposal to extend the effectiveness of the Interim SOES Rules through March 27, 1995.[6]

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effect on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors to extend the effectiveness of these rules. In addition, consistent with the termination of the Interim SOES Rule that prohibited the entry of short sales into SOES, the NASD believes its instant proposal to continue the effectiveness of some but not all of the original components of the Interim SOES Rules is appropriate and consistent with the Act. While the NASD believes the Interim SOES Rules collectively have had a beneficial impact on the market, the NASD also believes that each of the Interim SOES Rules has individually had a benefit on the market. Thus, each one of the Interim SOES Rules can be evaluated for consistency with the Act independent of the others. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wide spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are just as compelling today as they were when the SEC relied on them to initially approve the rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contributed to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts.

The NASD also notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweigh any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Section 15A(b)(6) and 16A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.[7]

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions, fair competition among market participants, and the practicality of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.[8]

c. The Commission believes that it is appropriate to restrict trading practices through SOES that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. * * * The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.[9]

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality * * * Active intra-day trading activity through SOES can also contribute to instability in the market. * * *[10]

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility

[4] As first approved by the Commission on December 23, 1993, the Interim SOES Rules had four components: (1) The SOES minimum Exposure Limit; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for execution through SOES from 1,000 shares to 500 shares ("SOES Maximum Order Size"); and (4) the prohibition of short sales through SOES. In light of the SEC's approval of the NASD's short sale rule in June 1994, the NASD did not seek to extend the prohibition against the entry of short sales into SOES. Absent SEC approval of an extension of the effectiveness of the SOES Maximum Order Size rule, the rule will lapse effective March 28, 1995.

[5] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993) (approving the Interim SOES Rules on a one-year pilot basis effective January 7, 1994). See also Securities Exchange Act Release No. 33424 (Jan. 5, 1994) (order denying stay and granting interim stay through January 25, 1994) and Securities Exchange Act Release No. 33635 (Feb. 17, 1994) (order denying renewed application for stay).

[6] See SOES Interim Rules Extension Order, *supra* note 3.

[7] Interim SOES Rules Approval Order, supra note 2, 58 FR at 69423 (footnote omitted).

[8] *Id.* (footnote omitted).

[9] *Id.* at 69424–25.

[10] *Id.* (footnote omitted).

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associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.[11]

f. The Commission does not believe that intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.[12]

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.[13]

h. The Commission * * * has determined that the instant modifications to SOES further objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.[14]

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rules conducted by the NASD's Economic Research Department[15] and an independent economist commissioned by the NASD.[16] When the SEC approved the Interim SOES Rules, it stated that "[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act."[17] In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect, "the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities." Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

- Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market securities experienced a sharp decline from April 28 to May 12 and from June 23 to July 18.[18]
- With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and
- A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study also corroborated the findings of the NASD's study. This study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0 or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.[19] In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid ask spread; (2) there is a significant positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

Therefore, in light of all the above-cited statutory findings made by the SEC when it approved the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, coupled with the NASD's findings that these rules, as well as the rest of the Interim SOES Rules, have been associated with positive market developments in terms of lower spreads on Nasdaq and less stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six-month period. In sum, the NASD believes its study and the Furbush Study affirm the validity and correctness of the SEC's prior statutory findings made in connection with the approval of these rules. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.

In addition, even if the Commission concludes that the Interim SOES Rules have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange ("NYSE") Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension on the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for a six month period.[20] When NYSE Rule 80A was proposed, the Commission received considerable adverse comment to the effect that there was no causal relationship between index arbitrage and market volatility and that activation of the rule during turbulent market conditions could have disastrous effects on related options and futures markets and actually exacerbate market volatility. Despite these comments, the commission approved the proposal on a one-year pilot basis noting that "the NYSE proposal represents a modest step, proposed on a pilot basis, to attempt to address the issue of market volatility."[21] After the one year pilot, the NYSE prepared a report that, in the SEC's words, found that the standard measures of NYSE market quality appear largely unaffected by Rule 80A. Specifically, the NYSE Report indicated that: (1) quotes on the NYSE did not widen after the 50 Dow Jones Industrial Average point trigger was reached; and (2) the imposition of Rule 80A did not have any negative effect on price continuity and depth in the market.[22] In addition, in approving Rule 80A on a permanent basis, the SEC noted that the rule "represents a modest but useful step by the NYSE to attempt to address the issue of market volatility."[23] that the rule "has not been disruptive to the marketplace,"[24] and that there was a "lack of evidence of any harmful effects of Rule 80A."[25] In sum, the SEC discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potentially disruptive trading practices.

The NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the NYSE is proposing to extend the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature for six months because of concerns that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transactions prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NYSE believes the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the Interim SOES Rules should be extended through October 2, 1995, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote feature. Accordingly, the NASD believes that these rules changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES.

[11] *Id.* at 69424–26 (footnote omitted).

[12] *Id.*

[13] *Id.*

[14] *Id.* at 69429.

[15] See letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NASD's NePROVE filing, SR–NASD–94–13).

[16] See The Association Between the Interim SOES Rules and Nasdaq Market Quality, Dean Furbush, Ph.D., Economists, Inc., Washington D.C., December 30, 1994 ("Furbush Study").

[17] Interim SOES Rules Approved Order, *supra* note 2, 59 FR at 69429.

[18] Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in *The Wall Street Journal*, *The Los Angeles Times* and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 24 to July 18.

[19] *See* 1NASD Department of Economic Research Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) ("May 1993 SOES Study"). *See also* Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

[20] Rule 80A provides that when the Dow Jones Industrial Average declines or advances by 50 points or more, all index arbitrage orders to sell or buy must be executed in a market stabilizing manner.

[21] See Securities Exchange Act Release No. 28282 (July 30, 1990), 55 FR 31468, 31472 (Order approving File Nos. SR–NYSE–90–5 and 90–11).

[22] See Securities Exchange Act Release No. 29854 (Oct. 24, 1991), 56 FR 55963 (Oct. 30, 1991) (order approving file SR–NYSE–91–21) ("Rule 80A Approval Order").

[23] Id. 56 FR at 55967

[24] Id.

[25] Id. 56 FR at 55967–68

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When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing public. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferenced orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 7 through 14, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection for copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR-NASD-95-8 and should be submitted by March 14, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority

Margaret H. MacFarland,

Deputy Secretary

[FR Doc. 95-4085 Filed 2-17-95; 8:45 am]

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[Release No. 34-35370; File No. SR-NASD-94-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1995, the National Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Section 32(c) of the NASD Code of Arbitration Procedure ("Code").[1] Below is the text of the proposed rule change Proposed new language is in italics, proposed deletions are in brackets.

Code of Arbitration Procedure

* * * * *

General Provisions Governing Per-Hearing Proceedings

Sec. 32

* * * * *

(c) Pre-Hearing Exchange. At least [ten (10)] *Twenty (20)* calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrators may exclude from the arbitration any documents not exchanged or witnesses not identified. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 32(c) currently requires all parties to serve on each other copies of documents in their possession they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than 10 calendar days prior to the first scheduled hearing date. Parties often request additional discovery as a result of information obtained through the exchange of documents. These requests create a significant burden on the NASD's Arbitration Department, which currently must respond in a short period of time to numerous requests for additional discovery that arise from the exchange of documents intended to be used by the parties at the hearing. These requests also create a significant burden on the arbitrators and the parties. Accordingly, the NASD is proposing to amend Section 32(c) of the Code to increase the amount of time before a hearing where the parties are required to exchange documents from 10 to 20 days.[2] The proposed rule change is intended to reduce the burden to the Arbitration Department, arbitrators and the parties in responding to last minute discovery requests by increasing the time for exchanging pre-hearing memoranda.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that increasing the time for exchange of documents prior to arbitration hearing will facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and by reducing the burdens on the forum staff, arbitrators and the parties in dealing with such requests.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95-4086 Filed 2-17-95; 8:45 am]

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[Release No. 34-35373; File No. SR-NYSE-94-42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Mailing of Interim Financial Statements to Shareholders

February 14, 1995.

On December 1, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to require corporations that distribute interim reports to shareholders to distribute such reports to both registered and beneficial shareholders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35092 (December 12, 1994), 59 FR 65554 (December 20, 1994). No comments were received on the proposal.

Currently, the NYSE requires listed companies to publish interim earnings statements as press reports, but does not require that such statements also be sent to shareholders. The rule change to paragraph 203.02 of the NYSE's Listing Company Manual will continue to make the distribution of interim reports to shareholders voluntary, but will require that corporations choosing to distribute interim reports to shareholders must distribute the reports to both registered and beneficial shareholders.

The NYSE proposal is the product of a review by various industry groups, including the American Society of Corporate Secretaries and the Securities Industry Association, of listed companies' dissemination of interim earnings reports to shareholders. The groups have been attempting to achieve some uniformity among listed companies in the handling of interim earnings reports. Presently, while some listed companies distribute interim reports to both record and beneficial shareholders, some listed companies only send interim reports to record shareholders, and some do not send interim reports to any shareholders. The cost of providing interim reports to beneficial shareholders has been identified as a factor that discourages listed companies from making a full distribution of interim listed companies from making a full distribution of interim reports. Because broker-dealers that hold investors' securities in the

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[1] *NASD Manual*, Code of Arbitration Procedure Part III, Sec. 32(c) (CCH) ¶ 4732

[2] The Securities Industry Conference on Arbitration approved the proposed rule change as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

[3] 15 U.S.C. 78o-3.

[4] 17 CFR 200.30-3(a)(12) (1994)

[1] 15 U.S.C. 78s(b)(1) (1988)

[2] CFR 240.19b-4 (1993).

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broker-dealers' own name ("street-name") charge issuers a fee for distributing interim reports to beneficial shareholders, many listed companies choose not to distribute them.

The industry review considered the cost of requiring interim reports to be mailed to all shareholders, particularly where securities are held in "street-name." In this regard, while the industry groups have not reached an agreement with respect to the fees charged issuers to distribute interim reports to shareholders, they have reached agreement on the need to submit reports to registered and beneficial shareholders. This agreement is reflected in the NYSE's rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[3] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public.

Although the Commission does not require public companies to distribute interim reports to shareholders,[4] it believes that it is appropriate for the NYSE to improve the distribution by its listed companies of interim reports to shareholders. The NYSE proposal will accomplish this by ensuring equal treatment of record and beneficial shareholders in the distribution of reports. In addition, the NYSE's rule change reflects the results of the compromise reached by the various industry groups with regard to distribution of interim reports. The Commission believes the NYSE's adoption of this industry policy should help to create uniformity in the practices of NYSE-listed companies with respect to their distribution of interim financial reports.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NYSE–94–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delayed authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4159 Filed 2–17–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78f(b) (1988).

[4] The interim reports that are the subject of the NYSE's rule change are not the quarterly financial reports required to be filed with the Commiss on on Form 10–Q pursuant to the Commission's authority under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934. *See* 15 U.S.C. §§ 78m(a) and 78o(d) (1988). The reports are voluntarily prepared and published by companies as part of their shareholder relations activities.

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2761]

Washington, Declaration of Disaster Loan Area; Amendment #1

The above-numbered Declaration is hereby amended to include Pierce County in the State of Washington as a contiguous county as a result of damages caused by heavy rains and flooding which occurred throughout December 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 30, 1995, and for economic injury the deadline is October 27, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–4080 Filed 2–17–95; 8:45 am]

BILLING CODE 8025–01–M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on March 7, 1995, from 9 AM through 4 PM, at U.S. Small Business Administration, Office of Small Business Development Centers Conference Room, 4th Floor, 409 3rd Street, SW., Washington, DC 20416.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the SBA, or others present.

For further information, write or call Mary Ann Holl, SBA, 4th Floor, 409 3rd Street, SW., Washington, DC 20416, telephone 202/205–7302.

Dorothy A. Overal,

Director, Office of Advisory Councils.

[FR Doc. 95–4081 Filed 2–17–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket 50125]

Department of Transportation Proposed Environmental Justice Strategy

AGENCIES: Office of the Secretary: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy; DOT.

ACTION: Request for comment on U.S. Department of Transportation proposed environmental justice strategy.

SUMMARY: Executive Order 12898, signed by President Clinton on February 11, 1994, directs each Federal agency to develop a strategy to address environmental justice concerns in its programs, policies and regulations. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

The Department of Transportation (DOT) has prepared a proposed environmental justice strategy. The proposed strategy describes the approach we are considering to achieve environmental justice objectives throughout the Department. To help us formulate the final strategy, we are soliciting comments from a broad range of organizations and individuals with an interest in environmental justice and transportation matters.

DATES: Comments are requested by March 1, 1995. Late-filed comments will be considered to the extent practicable

ADDRESSES: Comments should be sent to Docket Clerk, Docket 50125, Department of Transportation, 400 7th Street, SW., Room PL 401, Washington, DC 20590. To facilitate consideration of the comments, commenters are requested to file six copies of each submission. Comments will be available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday. Commenters who wish the Department to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Ira Laster, Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, telephone (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, telephone (202) 366–9366, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Dated: February 13, 1995.

Antonio Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Attachment

Department of Transportation Proposed Environmental Justice Strategy

Introduction

Background

Executive Order 12898, signed by President Clinton on February 11, 1994, on "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires each Federal agency to develop a specific agency-wide strategy for implementing E.O.'s provisions. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on such populations with respect to human health and the environment.

The Department of Transportation (DOT) is committed to embracing the principles of environmental justice by promoting enforcement of all applicable environmental regulations and legislation, and by promoting non-discrimination in its programs, policies, and activities that affect human health and the environment consistent with the principles of environmental justice. DOT is also committed to bringing government decisionmaking closer to the communities and people affected by these decisions and ensuring greater public participation in decisions relating to human health and the environment.

In the period of the mid 1990's, we are witnessing dramatic changes in the philosophy of private and public decisionmaking. In the private sector, the hierarchical top-down decisionmaking apparatus, so characteristic of the American corporate giants in the past, is giving way to organizational arrangements which bring key decisionmaking authority to these directly performing tasks. Corporations are placing renewed emphasis on listening and responding to the corporate customer and making product quality and service, rather than cost minimization or short-term profit maximization, the top priorities in decisionmaking.

Likewise, American governmental decisionmaking structures are beginning to undergo extraordinary changes. The Vice President's National Performance Review is setting in motion actions that are intended to make government more effective by becoming more friendly to customers and responsive to taxpayers. All these actions are intended to involve stakeholders in decisions by government.

Adherence to environmental justice principles enhances these trends because they involve stakeholders in decisions by government. Key to these principles is an active community public participation process that provides opportunities for persons living in low-income neighborhoods and minority populations to participate more effectively in governmental decisions and programs.

The new emphasis on environmental justice coincides with DOT's previously announced intent to become a model transportation agency for protecting and enhancing the environment and putting people first. Secretary Federico Peña has called for harmonizing transportation policy and environmental concerns as a major objective within DOT. DOT agencies must now become environmental leaders and demonstrate sensitivity both to the natural environment and to neighborhoods and communities in everything DOT does.

Strategy Development Process

Upon receipt of the Executive Order and the accompanying Presidential memorandum, DOT established a Department-wide working group, which is comprised of representatives from appropriate secretarial offices and departmental operating administrations. The DOT Working Group established the overall framework for the development of the DOT environmental justice strategy, and over the course of the past several months, provided much of the information incorporated in this draft strategy.

The fundamental purpose of DOT's proposed environmental justice strategy is to design and implement a flexible process that assures the full use of necessary Departmental resources in identifying and addressing program and constituent needs and opportunities consistent with requirements of the Executive Order.

The Working Group's first major activity was to undertake a survey of DOT's current and proposed activities related to environmental justice. Results of this activity were forwarded to the Environmental Protection Agency (EPA) on July 13, 1994. Elements of DOT that completed the survey are using the results to determine the extent to which environmental justice requirements are being met. Where additional information is needed to determine the present level and scope of implementation, efforts are underway to acquire it.

Elements of the DOT Strategy

1. High Level Involvement

An overview of DOT environmental justice activities was an agenda item at a senior staff meeting in mid-December 1994. The overview consisted of a summary of Executive Order 12898, a discussion of the outline of DOT's proposed strategy, and an overview of operating administrations' responses to the survey of their environmental justice activities. DOT has, to some degree, already incorporated environmental justice principles into its mission through compliance with requirements and principles of the National Environmental Policy Act, Title VI of the Civil Rights Act of 1964, and related statutes.

Secretary Peña will communicate with all appropriate departmental officials expressing his support for the environmental justice executive order and encouraging them to incorporate the principles of environmental justice in program planning, budgeting, program development, program activities, and program evaluation, as appropriate. This will be done in conjunction with a DOT Order on establishing principles and procedures for environmental justice in all DOT programs, policies, and activities.

2. Public Outreach on DOT Environmental Justice Strategy

The following represents steps DOT has or is taking to involve the public in the development and implementation of DOT's Environmental Justice Strategy. All outreach activities described below will be carried out consistent with the requirements of the Federal Advisory Committee Act.

a. National Conference on Transportation, Social Equity, and Environmental Justice in Chicago

This conference, cosponsored by the Federal Transit Administration and the Surface Transportation Policy Project, brought together approximately 150 persons, mostly community activists from around the country, with DOT and other public officials. The meeting, held on November 17–18, 1994, in Chicago identified key transportation-related environmental and social issues of concern to persons living in predominately low-income and minority communities. Suggestions for actions to redress these concerns were also sought. A report of the conference findings is being prepared by the Surface Transportation Policy Project.

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b. Inter-Departmental Public Meeting in Atlanta

On January 20, 1995, DOT participated, along with other Federal departments/agencies, in a public meeting in Atlanta, a portion of which was televised nationwide by satellite to designated downlink sites. The purpose of this public meeting was to provide an opportunity for Federal agency staffs to explain the main tenets of agencies' environmental justice strategies and to raise issues for the consideration and advice of participants.

c. Meeting With the Environmental Justice Network

In response to the Chicago meeting, DOT will discuss with members of the Environmental Justice Network how best to further engage persons living in minority and low-income communities about their environmental justice concerns and their views as to what steps might be taken by DOT to address these concerns.

d. **Federal Register** Notice on Environmental Justice

DOT will publish in the **Federal Register** the key elements of its proposed environmental justice strategy and seek comments on issues still under discussion. The public will be requested to provide comments by March 1, 1995. In addition, specific efforts under development will be made to solicit comments from members of minority populations and low-income populations.

e. Final Publication in the **Federal Register** of DOT environmental Justice Strategy

After considering the comments on the **Federal Register** announcement of the DOT strategy and the lessons learned from early grass-roots working meetings (see item f below), DOT will revise its proposed environmental justice strategy, as necessary, and publish it in the **Federal Register**. The strategy will be a "living document" and be subject to modification as a result of activities described in terms (f) through (h) below.

f. Grass Roots Environmental Justice Meetings

As recommended by participants attending the Chicago Environmental Justice Conference, DOT anticipates holding a series of meetings with community groups, individuals, and business groups, as well as local, public, and transportation officials. The intent will be to discover and understand community-based environmental justice problems and to discuss remedial strategies included in the first version of the DOT environmental justice strategy. The objective will be to build knowledge in an additive manner, so that each successive meeting with groups mentioned above builds upon the last.

Also, in response to requests from the public for educational outreach and training for low-income and minority persons, DOT will provide training to persons affected by the E.O. in how the transportation decisionmaking process works and the role of public participation in it. Persons affected by the E.O. will be afforded opportunities to inform DOT of any barriers to effective participation that may exist.

g. National Meeting on Public Participation and Environmental Justice

A national workshop to be hosted by the Secretary of Transportation would present an opportunity to share experiences from the grass-roots working sessions with a larger constituency of stakeholders, including nationally-based community advocacy groups, and transportation planning coordinators at the state, regional, and local levels. Through combined plenary and small breakout group discussions, participants will consider issues and provide recommendations.

h. DOT Regional Workshops for Grantees, State, and Local Officials

DOT anticipates holding workshops in selected regions for grantees, state and local officials on implementing the DOT Order and agency guidance on DOT's Environmental Justice strategy

3. DOT Order on Environmental Justice

A key component of the DOT environmental justice strategy is a proposed DOT Order prescribing procedures to be followed by the Department and all of its operating administrations to implement Executive Order 12898. The Order will apply to all appropriate DOT regulations policies, guidance, and program activities as well as to any program, project, or activity undertaken by DOT or that receives financial assistance or permits from DOT, which may have environmental justice implications. The proposed DOT Order would ensure that all appropriate components of the Department will apply this strategy to all aspects of their programs, policies, and activities.

While the precise contents of the proposed DOT Order have not yet been fully developed, we anticipate that the Order will achieve three objectives.

First, it would set forth requirements regarding review and revision of DOT regulations, programs, policies, guidance, and procedures that affect human health or the environment. Second, it would provide a methodology for identifying and addressing adverse effects of DOT actions and determining whether such actions are likely to have a disproportionately high or adverse impact on low-income or minority populations. Third, it would, after consideration of mitigation measures, prohibit DOT or its agents from proceeding with any actions that will have a disproportionately high and adverse unmitigated effect on low-income and minority populations except under prescribed circumstances. Each of these objectives is explained more fully below.

a. Review and Revision of Regulations, Programs, Objectives, Policies, Guidance, and Procedures

Under the proposed Order, the Office of the Secretary and each operating administration of DOT would identify and assess regulations, programs, policies, guidance, and procedures that affect human health or the environment using the methodology described below and revise them, as appropriate, to comply with Executive Order 12898. This process would include procedures to provide meaningful opportunities for public involvement by low-income and minority populations, including community input in identifying potential impacts, alternatives, and mitigation measures for DOT actions.

In addition, any long-range or short-range planning and programming processes conducted or funded by DOT that affect human health or the environment would include appropriate actions to address the effects of such planning [including actions, where practicable consistent with the E.O., that may result from such planning] on minority and low-income populations and communities.

Also, under the proposed DOT Order DOT and its operating administrations would develop specific mitigation strategies and measures to address, as appropriate, disproportionately adverse effects of their actions, including pollution prevention measures, consistent with requirements of other statutes and procedures.

The proposed Order also would provide for additional data collection or research as needed to provide information to comply with Executive Order 12898. Public input will be solicited in these activities.

b. Methodology for identifying adverse Effects and Determining Whether They Have a Disproportionately High or Adverse Impact on Minority and Low-Income Communities

The proposed Order would set forth a methodology to be used by DOT grantees, state, and local officials to determine whether a DOT or a DOT-funded program, policy, project, or activity (DOT action) is likely to have a disproportionately high and adverse effect on low-income or minority populations. As part of this process, DOT or its agents will provide appropriate opportunities for comment by representatives of affected communities, both to obtain their input in identifying potential effects of the action and in devising mitigation strategies, where appropriate, to alleviate disproportionately high and adverse effects. Offsetting mitigation measures that will be taken by DOT or its agents, or any other compensatory benefits that will accrue to the affected minority or low-income populations as a result of the action, will be taken into account in determining if there is a disproportionately high and adverse impact.

c. Actions To Address Disproportionately High Adverse Effects

Although the precise standards are yet to be developed, it is anticipated that the proposed DOT Order will provide standards for any action to address disproportionately high adverse effect on minority or low-income populations. It is anticipated that the action will not be carried out unless:

(1) A substantial need for the action, based on the overall public interest, can be demonstrated; and

(2) alternatives that will have a less disproportionate adverse effect on minority or low-income populations would have unacceptable adverse health or environmental impacts (criteria concerning such adverse impacts will be specified in the DOT Order).

(3) In the case of adverse effects on populations protected by Title VI of the Civil Rights Act of 1964, there must also be a demonstration of compliance with Title VI and related statutes.

4. Public Participation

All public participation activities described below will be carried out consistent with the requirements of the Federal Advisory Committee Act.

In accordance with the proposed DOT Order, DOT's public participation processes would be reviewed and revised as necessary to ensure that persons living in minority and low-income communities have timely access to information and meaningful public participation opportunities in transportation decisions affecting such communities.

The proposed Order would provide that opportunity will be afforded the public, including low-income and minority citizens, to comment on any proposed revisions to DOT regulations, policies, and procedures that address human health and the environment in their communities. DOT shall ensure that revisions to DOT policies and procedures include provisions for access to public information relating to human health, the environment, transportation, or other planning regulations and enforcement. DOT will ensure meaningful opportunities for public involvement by affected minority and low-income persons.

DOT will seek minority and low-income involvement in identifying research and data collection needs, and designing environmental justice projects to address those needs.

DOT will conduct training and information outreach workshops for low-income and minority communities on participating in DOT supported programs.

DOT will produce and disseminate user-friendly materials explaining DOT public participation and other program requirements. This may include environmental justice information on public participation and other pertinent program requirements on a community bulletin board or a 1–800 number to answer environmental justice questions. DOT will seek low-income and minority community input in deciding these matters.

DOT has developed a set of principles to guide its public participation activities. These principles are enumerated as follows.

a. Public participation with respect to environmental justice stakeholders will be based on an interactive partnering approach. Environmental justice stakeholders should be involved in designing studies, determining date needs, and planning conferences and meetings.

b. Environmental justice stakeholders should, in most cases, be included in existing participatory activities. Environmental justice should not result in separate activities for environmental justice stakeholders which isolate them from the majority community. It may be necessary to start with activities specifically for environmental justice stakeholders to enable them to participate but the objective is to enlarge the community dialog on DOT initiatives to include these stakeholders.

c. Including environmental justice stakeholders means more than assuring that they receive notices of meetings or other events and that all events are convenient in terms of time and location. In many cases, the real barriers to participation by these stakeholders are attitudinal ("this is not for us" or "they are not really interested"), language barriers, cultural barriers, technical background, literacy, communications style, and privacy issues. Participant training and other approaches to enable environmental justice stakeholders to participate are likely to be the foundation of a successful approach.

d. Participatory efforts should reach out to non-leaders as well as stakeholder leaders through such techniques as focus groups or workshops.

e. Partnering with environmental justice stakeholders will require agencies to review how they do business. We must assure that our processes are accessible to and usable by stakeholders, to the extent possible.

f. The fundamentals of public involvement are that all interested groups and individuals have access to information, to participatory events, and to decisionmaking through a variety of techniques from the earliest stages of an activity through decisionmaking and implementation. all aspects of public involvement should be open to environmental justice stakeholders.

g. Public participation programs are best designed at the local or state level. The Federal role is to set performance standards for public involvement programs and to provide technical assistance in meeting those performance standards, not to require specific actions.

5. Role of Key DOT Elements in Complying With Environmental Justice Executive Order

In connection with implementing the DOT Order on environmental justice and, in some cases, to supplement these actions, each element of the Department will undertake actions. Some of the actions described below will be developed and refined as the Department's strategy evolves.

a. Departmental Office of Civil Rights

Dissemination of information on how Title VI of the Civil Rights Act of 1964 Pertains to Environmental Justice.

The DOT Order described previously will provide the operating administrations with a framework to ensure that their policies, programs, and procedures comply with the intent of the Executive Order, including meeting the requirements of Title VI.

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In addition, the Departmental Office of Civil Rights will provide leadership and technical assistance to the operating administrations and in conjunction with the appropriate administrations, to major recipients of DOT funds in the administration of their Title VI responsibilities which relate to environmental justice. This may take the form of guidelines, memoranda of general applicability, and training designed to achieve environmental justice for members of minority and low-income populations.

b. Federal Aviation Administration (FAA)

The Federal Aviation Administration will adhere to the principles of environmental justice.

In the area of pollution prevention, FAA will:

- Review FAA policies, programs, and activities related to pollution prevention and safety and revise them, where appropriate, in accordance with the E.O. emphasizing their importance in avoiding environmental inequities;
- Review FAA policies, programs, and activities related to enforcing the Hazardous Materials Transportation Act and associated DOT regulations related to aviation;
- Review FAA policies, programs, and activities related to advising the shipping community, including FAA facilities, and other affected parties of their role in avoiding environmental and public health impacts;
- Review FAA policies, programs, and activities related to implementing the various executive orders on pollution prevention and waste reduction. Appropriate data collection, recordkeeping, and public participation and outreach procedures are being developed;
- Review FAA policies, programs, and activities related to complying with other environmental protection laws including, for example, Clean Water Act, Clean Air Act, RCRA, CERCLA, TSCA, FIFRA, SDWA, and related state laws. FAA will comply with OSHA to provide safe and healthful work environment for all its employees and provide training to all employees;
- Review FAA policies, programs, and activities related to aviation and airport safety and revise, where appropriate, consistent with the E.O.;
- Include environmental justice principles, where appropriate, in its environmental liability training.

With respect to NEPA, FAA will:

- Emphasize the important role of appropriate public participation and environmental review under NEPA in avoiding environmental inequities. The agency is revising its various NEPA implementation orders (see section 6 below) to include compliance with E.O. 12898;
- Include environmental justice in its training programs, including, for example, the community involvement training course that is currently being developed and ongoing NEPA and advanced NEPA courses.

In the area of research, FAA will:

- Review the allocation of FAA education and research funds to Historically Black Colleges and Universities and other minority institutions and minority students and faculty in light of E.O. 12898. In addition, FAA will review its research programs to determine whether and how minority and low-income populations may be more appropriately included in the scope of particular research projects. Improved outreach to affected populations will be developed
- Review its research program and consider appropriate research projects for developing data collection methods that may be needed to comply with Executive Order 12898.

c. Federal Transit Administration (FTA)

FTA's Title VI implementing circular requires public transit grantees to perform fixed facility impact analyses for all construction projects to assess the impacts on minority and low-incomes communities. Additionally, public transit grantees with populations of 200,000 or more must describe and establish monitoring procedures to ensure that service levels and quality do not discriminate against persons living in minority communities, and thus, deny them the environmental, human health, social, and economic benefits of local public transit programs. Grantees also must describe efforts to encourage minorities to participate on transit decision making bodies in order to ensure that such boards reasonably reflect the racial/ethnic composition of the community affected by the transit program.

The FTA strategic plan articulates the agency's intent to renew efforts to develop meaningful services for minority and low-income communities by designing new service demonstrations in partnership with such communities. Furthermore, the FTA Strategic Plan calls for a reexamination of how Federal transit investments are made in local areas and the development of appropriate action to encourage equitable distribution of such investments for minorities and transit-dependent persons living in low-income communities. FTA is also participating in the President's Empowerment Zone/Enterprise Community Program aimed at addressing low-income community revitalization.

FTA is launching a new "Livable Communities" Initiative to instill principles in transit programs that support the development of vibrant and healthy communities within the transit service area. This program supports the principles of environmental justice by promoting local community partnerships in local neighborhood and community transportation decision making and by creating transit investments that will serve community goals, including environmental, land use, and human health objectives. This program will encourage the development of transit systems that offer day and health care facilities to patrons; will provide special access to job training and employment to economically disadvantaged citizens will attract shopping and economic development opportunities at transit sites; and will help to shape attractive, people-friendly land use configurations in and around transit stations. The program encourages the development of safe and secure travel and commercial environments as well as fosters the development of local circulation systems that support the vitality and the attractiveness of individual neighborhoods and communities

d. Federal Highway Administration (FHWA)

To encourage that environmental protection and enhancement are integrated into planning and project development processes, FHWA will, in consultation with stakeholders and other appropriate partners, identify exemplary environment/planning processes, projects, and individuals or teams and showcase them

Further, FHWA with provide extensive outreach and training on the role of environmental, neighborhood, , and community values in transportation investments and decisionmaking

With FHWA as lead agency, several DOT agencies are sponsoring a conference in cooperation with the Environmental Justice Resource Center at Clark-Atlanta University to further understand the environmental justice issues surrounding transportation. The conference is tentatively scheduled for March 30-April 1, 1995

e. Federal Railroad Administration (FA)

FRA addressed environmental justice issues in its Final Environmental Impact Statement for the Northeast Corridor Improvement project—Electrification New Haven, CT to Boston, MA and in the recently issued FHWA/FRA Draft Environmental Impact Statement for the Alameda Corridor project in Southern California.

Amtrak's Northeast Corridor Improvement project received direct Federal funding, and environmental justice concerns have been and will continue to be addressed through the NEPA environmental review process. FRA grant activities are currently limited to Amtrak and the state rail assistance program. FRA has no direct control over Amtrak grant funds expenditures, and the state rail grants are small. Construction projects, under the state rail program, have been limited to rehabilitation of existing rail lines in non-urban areas, with minimal environmental impact. If high-speed rail funding is appropriated by the Congress, FRA will incorporate environmental justice considerations into its planning requirements. Environmental justice requirements are being referenced in the new joint Environmental Impact Assessment Procedures under development by FHWA, FTA, and FRA.

f. FTA and FHWA Public Involvement Activities

FTA, in cooperation with FHWA, made a major step toward providing stakeholders with access to the transportation planning, programming, and project development processes with the issuance of the joint regulations on planning, 23 CFR part 450 and 49 CFR part 613, on October 28, 1993. This is accomplished in two ways.

One is by requiring that transportation decisionmaking be done in coordination with affected institutional bodies, including, but not limited to, businesses, major employers, environmental groups, labor unions, local land use planners, human service agencies, and providers. Consulting with these stakeholders is an important step to properly considering the range of factors required as part of an area's transportation planning activities. Requiring the consideration of these factors recognizes the relationship between transportation systems and the economic, environmental, and social well-being of the communities and regions served by them. The intended effect of this transportation planning environment is to promote transportation decisions which complement other state and local policies with an eye toward community well-being.

Another important component to providing for an open decisionmaking process is the requirement that decisionmaking be similarly open to the public. In fact, FTA and FHWA require public involvement to be "proactive and provide[s] complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement" (23 CFR 450.212 and 450.316(15)(1b)), and to be a significant part of all statewide and metropolitan planning processes. In addition, a "process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households which may face challenges accessing employment and other amenities" (23 CFR 450.212(a)(6)). These requirements are treated in the regulatory language as expected outcomes of a public involvement process that is developed to meet the individual needs of the affected Metropolitan Planning Organization (MPO) or state.

To maximize the effective implementation of the above provisions, FTA and FHWA are working toward providing the staffs of MPOs and state departments of transportation with training and guidance on how to achieve these ends. To emphasize the importance of public involvement in local transportation decisionmaking, FTA and FHWA have developed a Policy on Public Involvement. The agencies have also developed guidance specific to implementing the public involvement provisions in the planning regulations. Additional training and assistance in public involvement is being developed to promote high quality public involvement, designed to actively involve the public in decisionmaking activities. A comprehensive course for both staff and decisionmakers of MPOs and state DOTs is under development, to be offered free of charge beginning late in 1995. In addition, there will be a full catalogue of public involvement techniques published to promote creativity in public involvement. .

It is simply not enough to open the door and invite the public in. There needs to be some effort to ensure that persons and groups with substantial interests in their communities have access to the tools necessary for substantive participation in local transportation decisionmaking. Some of the project ideas that have surfaced to address this need include training workshops for community groups and the development of a 'citizens' guide to MPO and statewide transportation planning under Intermodal Surface Transportation Assistance Act (ISTEA), and a similar technical guide for citizens that focuses on transportation modeling, planning assumptions, and transportation's relationship to other community services and resources

g. Maritime Administration (MARAD)

The Maritime Administration has addressed environmental justice issues by complying with the National Environmental Policy Act and the Department of Transportation Administrative Order 600–1. In particular, over the past four years MARAD has completed two successive environmental audit reviews at three MARAD Reserve Fleet facilities (James River, Beaumont and Suisun Bay) and at two other facilities (United States Merchant Marine Academy, Kings Point, N.Y. and the Fire Training Center, Swanton, Ohio). Further, MARAD is currently engaged in a comprehensive review and analysis of requirements relevant to future clean-up of Polychlorinated Biphenyls (PCBs) in its National Defense Reserve Fleets. In its role as the Federal advocate for increased productivity and competitiveness in the Nation's maritime affairs, MARAD will continue to address compliance with applicable environmental laws and regulations by the United States maritime community

6. DOT Training on Environmental Justice

In order to ensure that environmental justice becomes integrated in all appropriate Departmental activities, DOT will hold informational seminars on environmental justice for selected program managers throughout the Department. Representatives of the environmental justice network will be invited to assist in the planning and conduct of these seminars.

7. Review and Revision of DOT Environmental Procedures

The Department will review and update, as appropriate, its Procedures for Considering Environmental Impacts, DOT Order 5610.1C, to ensure that it is consistent with Executive Order 12898 and DOT's proposed order on environmental justice. Attachment 2 to Order 5610.1C sets forth guidance on the format and content of environmental review documents and compliance with the National Environmental Policy Act and other environmental statutes, regulations, and executive orders such as Section 4(f) of the DOT Act. This attachment will be updated to reflect the requirements of Executive Order 12898

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and to outline the need to address potential disproportionate adverse health, or environmental impacts on affected populations and communities. DOT modal administrations also will review and update environmental guidance.

[FR Doc. 95–4134 Filed 2–17–95; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Austin Straubel International Airport, Green Bay, WI

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Brown County for Austin Straubel International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Austin Straubel International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 19, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 20, 1995. The public comment period ends March 21, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Austin Straubel International Airport are in compliance with applicable requirements of part 150, effective January 20, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 19, 1995. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies,and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Brown County submitted to the FAA on July 28, 1993, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise compatibility Study from July 1991 to November 1994. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Brown County. The specific maps under consideration are the 1992 existing Noise Exposure Map and the 1997 future Noise Exposure Map. The FAA has determined that these maps for Austin Straubel International Airport are in compliance with applicable requirements. This determination in effective on January 20, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the prices relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under section 150.21 of FAR part 150, that the statutory required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Austin Straubel International Airport, also effective on January 20, 1995. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 19, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Inerested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for reexamination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, D.C. 20591
Federal Aviation Administration, Minneapolis Airports District Office, Room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450
Office of the Airport Director, Austin Straubel International Airport, 2077 Airport Drive, Green Bay, Wisconsin 54313
Brown County Library, 515 Pine Street, Green Bay, Wisconsin 54301
Wisconsin Bureau of Aeronautics, State Transportation building, Room 701, 4802 Sheboygan Avenue, Madison, Wisconsin 53707.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, January 20, 1995.

Franklin D. Benson,
Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 95–4210 Filed 2–17–95; 8:45 am]
BILLING CODE 4910–13–M

Change #2 to FAA P–8110–2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Change #2 to FAA P–8110–2, Airship Design Criteria (ADC) dated November 2, 1987. This change adds the requirements for fly-by-light control systems. Two new paragraphs have been added to the ADC that cover concerns related to optical couplings and optical degradation. The requirements for a control system not directly (mechanically) connected to the control surface are applicable to both fly-by-wire and fly-by-light. The fiber optics used in fly-by-light systems, though immune to some of the problems associated with fly-by-wire systems, have their own set of problems. Those problems are addressed in this change.

ADDRESSES: Copies of Change #2 can be obtained from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Terre Flynn, Standards Staff (ACE–110), telephone number (816) 426–6941.

Issued in Kansas City, Missouri, February 6, 1995.

Michael K. Dahl,
Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4209 Filed 2–17–95; 8:45 am]
BILLING CODE 4910–13–M

Intent To Rule on Application Use the Revenues From a Passenger Facility Charge (PFC) at Albany County Airport, Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 23, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, Room 305, Valley Stream, New York 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael N. Polovina, Director of the Albany County Airport, at the following address: Albany County Airport, ARFF Building, 2nd. Floor, Albany, New York 12211.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Albany under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, Room 305, Valley Stream, New York, 11581, Tel. (718) 553–18182. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenues from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albany County Airport.

Issued in Jamaica, New York State on February 1, 1995.

Anthony P. Spera,
Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–4211 Filed 2–17–95; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Marion, Lake and Volusia Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Marion, Lake and Volusia Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Travis, Transportation Engineer Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, (904) 942–9579; or Mr. William F. Sloup, P.E., Project Manager, Florida Department of Transportation, 719 S. Woodland Blvd, DeLand, Florida 32720, (904) 943–5406

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service, the U.S. Coast Guard and the Florida Department of Transportation will prepare an EIS for a proposal to improve SR 40 in Marion, Lake and Volusia Counties, Florida. The proposed improvement would involve the reconstruction of SR 40 from the end of the 4-lanes in Silver Springs, Marion County to US 17/92 Barberville, Volusia County, a distance of 40 miles with 27 miles within the Ocala National Forest Improvement to the corridor are considered necessary to provide for projected traffic demands and to meet the required Florida Intrastate Highway Systems (FIHS) minimum standards. The FIHS is a legislatively established interconnected system of limited and controlled access facilities designed for high speed, high volume traffic movements. SR 40 from CR 326 in Marion County to Interstate 95 in Volusia County has been designated as part of the FIHS.

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Alternatives under consideration include: (1) Taking no action; (2) widening to a four lane divided roadway; or (3) providing alternate corridors.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Marion, Lake and Volusia County between February 1995 and October, 1996. In addition at least two public hearings will be held. The Draft EIS will be made available for public and agency review and comment. Formal scoping meetings will be held during the early part of 1995.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301.

(Catalog of Federal Domestic Assistance Program Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued On: February 7, 1995.

Melisa L. Ridenour,

Supervisory Transportation Engineer, Tallahassee, Florida.

[FR Doc. 95–4087 Filed 2–17–95; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–12; OTS No. 03359]

AmericanTrust Federal Savings Bank, Peru, Indiana; Approval of Conversion Application

Notice is hereby given that on February 9, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of AmericanTrust Federal Savings Bank, Peru, Indiana, to covert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4096 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–14; OTS No. 01985]

Avondale Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Avondale Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4098 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–10; OTS No. 04411]

Bank West, F.S.B., Grand Rapids, Michigan; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Bank West, F.S.B., Grand Rapids, Michigan, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4094 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–16; OTS No. 02025]

The Cameron Savings and Loan Association, F.A., Cameron, Missouri; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Cameron Savings and Loan Association, F.A., Cameron, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4100 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–15; OTC No. 06172]

First Federal Savings and Loan Association of Opelousas, Opelousas, Louisiana; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Opelousas, Opelousas, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W. Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4099 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–13; OTS No. 06527]

Queen City Federal Savings Bank Virginia, Minnesota; Approval of Conversion Application

Notice is hereby given that on February 10, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Queen City Federal Savings Bank, Virginia, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4097 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–09; OTS No. 03357]

Reliance Federal Savings and Loan Association of St. Louis County, St. Louis, Missouri; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Reliance Federal Savings and Loan Association of St. Louis County, St. Louis, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 95–4093 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–17; OTS No. 03889]

Sobieski Federal Savings and Loan Association, South Bend, Indiana; Approval of Conversion Application

Notice is hereby given that on February 13, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Sobieski Federal Savings and Loan Association, South Bend, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–4100 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–11; OTS No. 02794]

Teche Federal Savings Bank, Franklin, Louisiana; Approval of Conversion Application

Notice is hereby given that on February 2, 1995, the Deputy Assistant Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Teche Federal Savings Bank, Franklin, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: February 14, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 95–4095 Filed 2–17–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs' Special Medical Advisory Group for fiscal year 1994 has been issued. The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs' Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540

and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, room 819, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: February 6, 1995.

Heyward Bannister,

Committee Management Officer

[FR Doc. 95–4142 Filed 2–17–95; 8:45 am]

BILLING CODE 8320–01–M

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving

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veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent 17–94

Question Presented

May a supervisor for a State Approving Agency (SAA) enroll in and pursue training at a for-profit flight school in a course approved for training under a VA administered education benefits program?

Held

1. An SAA officer or employee will be considered to have received "services" from a for-profit educational institution within the meaning of section 3683 of title 38, United States Code, when the individual receives instruction in a course approved for VA purposes at that institution, even though the official or employee is enrolled in and pursuing the course on the same basis as similarly circumstanced students not so employed.

2. A waiver may be granted by the Director, Education Service, or by the Secretary, pursuant to 38 CFR 21.4005, when the facts show no detriment to the United States, veterans, or eligible persons will ensue from the receipt of such services by the SAA officer or employee.

Effective date: July 18, 1994
O.G.C. Precedent 18–94

Question Presented

Whether service as a precadet at the United States Air Force Academy Preparatory School may be considered "active duty" service for purposes of title 38, United States Code.

Held

Characterization of an individual's service at the United States Air Force Academy Preparatory School (USAFAPS) for purposes of entitlement to veterans' benefits depends upon the status in which the individual enters the USAFAPS. Service by an individual who attends the USAFAPS as a reservist called to active duty for the sole purpose of attending the USAFAPS constitutes "active duty for training." This includes persons who are enlisted directly from civilian life or from the Air National Guard for the sole purpose of attending the USAFAPS, as well as members of reserve components who are called to active duty for this purpose. Service by an enlisted active-duty servicemember who is reassigned to the USAFAPS without a release from active duty constitutes a continuation of the servicemember's "active duty."

Effective date: October 3, 1994
O.G.C. Precedent 19–94

Question Presented

Is the prerequisite of 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) requiring a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee satisfied when a "repeat" claim is filed after a final BVA decision has been issued regarding an earlier, similar claim, *e.g.*, a claim for pension, an increased rating, a total rating based on individual unemployability, or service connection for a prisoner of war (POW) presumptive disease?

Held

The prerequisite of a final decision by the Board of Veterans' Appeals (BVA) prior to charging an attorney fee contained in 38 U.S.C. 5904(c)(1) and 38 CFR 20.609(c)(1) is satified when a "repeat claim" for benefits is filed after a final BVA decision has been issued regarding an earlier, similar claim, *e.g.*, a claim for pension, an increased rating, a total rating based upon individual unemployability, or service connection for a prisoner of war presumptive disease.

Effective date: October 12, 1994
O.G.C. Precedent 20–94

Question Presented

When and under what conditions may the Board of Veterans' Appeals decide issues in a claim following an appeal to the United States Court of Appeals for the Federal Circuit from a decision of the United States Court of Veterans Appeals affirming, or reversing or vacating in whole or in part and remanding, a decision of the Board?

Held

When an appellant files a timely appeal to the United States Court of Appeals for the Federal Circuit from a United States Court of Veterans Appeals decision to affirm or to reverse or vacate in whole or in part and remand a Board of Veterans' Appeals decision, the Board's disposition of all aspects of the matter must await the issuance of the mandate of the Court of Veterans Appeals concluding the appeal.

Effective date: December 2, 1994
O.G.C. Precedent 21–94

Question Presented

Must the need for aid and attendance be permanent in order to qualify for a higher rate of improved pension?

Held

The statutory provisions in 38 U.S.C. 1502(b), 1521(d), and 1541(d), authorizing an increased improved-pension rate for persons in need of regular aid and attendance, do not require that the need be permanent as a predicate to an award of the increased rate. To the extent that the title of 38 CFR 3.352 suggests that the need must be permanent, that title is inconsistent with the governing statutes and should be revised. Increased improved pension based upon the need for regular aid and attendance may be awarded without regard to whether the need is permanent.

Effective date: December 13, 1994
O.G.C. Precedent 22–94

Question Presented

What effect does the judicial invalidation of a portion of the regulations governing effective dates of awards of benefits under the Restored Entitlement Program for Survivors (REPS) have on the payment of benefits under that program?

Held

The United States Court of Veterans Appeals and the United States Court of Appeals for the Federal Circuit, in their decisions in the Skinner and Cole cases, found Department of Veterans Affairs regulations establishing time-specific filing requirements for claims under the Restored Entitlement Program for Survivors (REPS) to be invalid. For new claims filed after issuance of those decisions and for claims pending at the time those decisions were issued, REPS benefits may be awarded without regard to when the claims were filed. Where claimants whose claims were finally decided prior to issuance of those decisions file claims for previously-denied REPS benefits based on the change in interpretation of law reflected in those opinions or on regulations reflecting that changed interpretation, the claims may be considered new claims and previously-denied REPS benefits for which the claimants are otherwise entitled may be awarded without regard to when the claims were filed. Benefits may be paid beginning with the first month in which the claimant became eligible for REPS benefits.

Effective date: December 14, 1994.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 95–4141 Filed 2–17–95; 8:45 am]
BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register

Vol. 60, No. 34

Tuesday, February 21, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

ASSASSINATION RECORD REVIEW BOARD

TIME AND DATE: 1:30 p.m., March 7, 1995.
PLACE: 600 E Street, NW, Second Floor, Washington, D.C. 20530.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. Update by a representative of the National Archives and Records Administration (NARA) on the President John F. Kennedy Assassination Records Collection at NARA.
2. Discussion of written public comments, received as of the date of this meeting, to the proposed interpretive regulations published for public comment by the Assassination Records Review Board in the Federal Register on February 8, 1995 (60 FR 7506, Feb. 8, 1995).
3. Staff reports on upcoming Board activities.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Press and Public Affairs Officer, 600 E Street NW., Second Floor, Washington, DC 20530. Telephone: (202) 724-0088; Fax: (202) 724-0457.

David G. Marwell,
Executive Director.
[FR Doc. 95-4332 Filed 2-16-95; 2:38 pm]
BILLING CODE 6820-TD-M

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, March 3, 1995, 9:30 a.m.
PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.
STATUS: Open to the Public.

Agenda

I. Approval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. Staff Director's Report
V. National Perspectives Hearing: Executive Summary
VI. Future Agenda Items
10:30 a.m. Briefing on Access to Mortgage Lending

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376-8105 (TDD 202-376-8116) at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Dated: February 10, 1995.

Emma Monroig,
Solicitor.
[FR Doc. 95-4325 Filed 2-16-95; 2:07 pm]
BILLING CODE 6335-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 22, 1995.
LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.
STATUS: Closed to the Public.
MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: February 16, 1995.

Sadye E. Dunn,
Secretary.
[FR Doc. 95-4326 Filed 2-16-95; 2:13 pm]
BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

February 15, 1995.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:
DATE AND TIME: February 22, 1995, 10:00 a.m.
PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 625th Meeting—February 22, 1995, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 2459-007, West Penn Power Company
CAH-2.
Docket No. EL94-32-001, Master Power Corporation, Inc.
CAH-3.
Omitted
CAH-4.
Project Nos. 2570-018, 019 and 020, Ohio Power Company
CAH-5.
Project No. 2727-046, Bangor Hydro-Electric Company
CAH-6.
Project No. 3258-005, Joseph M. Keating
CAH-7.
Project No. 4632-018, Clifton Power Corporation
CAH-8.
Project No. 8459-013, Geoffrey Shadroui
CAH-9.
Project No. 9156-003, Silver Star Hydro, Ltd.
CAH-10.
Project No. 6310-011, Gull Industries, Inc.
CAH-11.
Project Nos. 4678-015 and 4679-018, Power Authority of the State of New York

Consent Agenda—Electric

CAE-1.
Omitted
CAE-2.
Docket No. ER95-373-000, Boston Edison Company
CAE-3.
Docket Nos. ER95-371-000 and ER93-777-000, Commonwealth Edison Company
CAE-4.
Omitted
CAE-5.
Docket No. ER94-129-000, Massachusetts Electric Company
CAE-6.
Docket No. ER94-1377-001, Delmarva Power & Light Company
Docket No. TX94-5-001, Old Dominion Electric Cooperative, Inc. v. Delmarva Power & Light Company
CAE-7.
Docket No. ER95-112-002, Entergy Services, Inc.
Docket No. EL95-17-002, Entergy Services, Inc. and Entergy Power, Inc.
CAE-8.

Docket No. ER95-59-001, Southern Company Services, Inc.
Docket No. ER95-138-001, Mississippi Power Company
Docket No. ER95-149-001, Alabama Power Company
CAE-9.
Docket No. ER95-111-001, The Electric Exchange
CAE-10.
Docket No. ER94-1690-001, Engelhard Power Marketing, Inc.
CAE-11.
Omitted
CAE-12.
Docket No. EG95-16-000, Cardinal Power of Canada, L.P.
CAE-13.
Docket No. EG95-27-000, Renewable Energy Ireland Limited
CAE-14.
Docket No. EG95-23-000, Zhuang He Power Partners Limited Partnership
CAE-15.
Docket No. EG95-24-000, El Power (China), Inc.
CAE-16.
Docket No. EG95-25-000, China Power Partners Limited Partnership
CAE-17
Docket No. EG95-26-000, El Power (China) III, Inc.
CAE-18.
Docket No. EG95-17-000, Cowley Ridge Wind Power Company Inc.
CAE-19.
Docket No. EG95-18-000, Cowley Ridge Partnership
CAE-20.
Docket No. EG95-19-000, LG&E-Westmoreland Hopewell
CAE-21.
Docket No. EG95-20-000, LG&E-Westmoreland Southampton
CAE-22.
Docket No. EG95-21-000, LG&E-Westmoreland Altavista
CAE-23.
Docket No. EG95-22-000, LG&E-Westmoreland Rensselaer
CAE-24.
Docket No. AC94-218-000, Pioneer Power & Light Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. PR94-21-000, Llano Inc.
CAG-2.
Docket No. PR94-22-000, Mobil Vanderbilt-Beaumont Pipeline Company
CAG-3.
Docket Nos. RP95-59-001 and RP94-67-018, Southern Natural Gas Company
CAG-4.
Omitted
CAG-5.
Docket No. RP95-139-000, Texas Gas Transmission Corporation
CAG-6.
Docket No. RP95-147-000, Carnegie Natural Gas Company
CAG-7.
Docket No. RP95-149-000, ANR Pipeline Company
CAG-8.
Docket No. RP95-134-000, Natural Gas Pipeline Company of America
CAG-9.
Docket No. RP95-136-000, Williams Natural Gas Company
CAG-10.
Docket No. RP95-137-000, Northern Natural Gas Company
CAG-11.
Docket No. RP95-140-000, Northern Natural Gas Company
CAG-12.
Docket No. RP95-141-000, Pacific Gas Transmission Company
CAG-13.
Docket No. RP95-145-000, Northwest Pipeline Corporation
CAG-14.
Docket No. RP95-151-000, Trunkline Gas Company
CAG-15.
Docket No. ST94-5766-000, NOARK Pipeline System, Limited Partnership
Docket No. ST94-5902-000, East Texas Gas System
Docket No. ST94-5988-000, Valero Transmission, L.P.
Docket No. ST95-272-000, TransTexas Pipeline
Docket No. ST95-390-000, Arkansas Western Gas Company
Docket No. ST95-404-000, Lone Star Gas Company
Docket No. ST95-492-000, Enogex, Inc.
Docket No. ST95-500-000, Arkansas Oklahoma Gas Corporation
CAG-16.
Docket No. RP89-161-030, ANR Pipeline Company
CAG-17
Docket No. RP91-203-046, Tennessee Gas Pipeline Company
CAG-18.
Docket No. RP94-377-000, Texas Gas Transmission Corporation
CAG-19.
Docket No. RP95-128-000, East Tennessee Natural Gas Company
CAG-20.
Docket No. RP94-267-004, Wyoming Interstate Company, Ltd.
CAG-21.
Docket Nos. RP94-274-000, RP94-275-000 and RP94-385-000, Northern Natural Gas Company
CAG-22.
Docket No. RP95-101-000, K N Interstate Gas Transmission Company
CAG-23.
Docket No. RP95-60-002, Alabama-Tennessee Natural Gas Company
CAG-24
Omitted
CAG-25
Docket Nos. RP95-68-001, RP94-223-004 and RP94-379-001, Colorado Interstate Gas Company
CAG-26.
Docket No. RP94-357-002, Texas Eastern Transmission Corporation
CAG-27
Docket No. RP95-112-001, Tennessee Gas Pipeline Company
CAG-28.
Docket Nos. RP95-5-002 and 001, Northwest Pipeline Corporation
CAG-29.
Docket Nos. RP95-15-001, 002 and 004, Texas Eastern Transmission Corporation
CAG-30.
Docket No. GT94-35-002, Northwest Pipeline Corporation
CAG-31.
Omitted
CAG-32.
Docket Nos. RP95-20-001 and 002, Southern Natural Gas Company
CAG-33.
Omitted
CAG-34.
Docket No. AC95-42-000, Koch Gateway Pipeline Company
CAG-35.
Docket No. RP94-389-000, New England Power Company v. Algonquin Gas Transmission Company
CAG-36.
Omitted
CAG-37
Docket Nos. RP92-137-031 and RP93-136-003 (Phase II), Transcontinental Gas Pipe Line Corporation
CAG-38.
Docket No. CP94-196-001, Williams Natural Gas CompanyDocket No. CP94-197-001, Williams Gas Processing—Mid Continent Region Company
CAG-39.
Docket No. RP95-94-003, NorAm Gas Transmission Company
CAG-40.
Omitted
CAG-41.
Docket No. CP94-282-001, Northwest Pipeline Corporation
CAG-42.
Docket No. CP95-19-000, Algonquin Gas Transmission Company
CAG-43.
Docket No. CP94-533-000, Tennessee Gas Pipeline Company
CAG-44
Docket No. CP94-679-000, Great Lakes Gas Transmission Limited Partnership
CAG-45.
Docket No. CP93-689-000, Colorado Interstate Gas Company
CAG-46.
Docket No. RP95-124-000, Gas Research Institute
CAG-47.
Docket No. RP95-135-000, Williams Natural Gas Company
CAG-48.
Docket No. MG88-7-008, Northern Natural Gas Company
CAG-49.
Docket Nos. CP93-281-001 and 002, Paiute Pipeline Company
CAG-50.
Docket No. CP93-567-001, Texas Gas Transmission Corporation
CAG-51
Docket No. IS94-4-000, All American Pipeline Company
CAG-52.
Docket No. CP93-618-003, Pacific Gas Transmission Company

Hydro Agenda

H-1.
Reserved

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Electric Agenda

E–1
Omitted
E–2.
Omitted
E–3.
Docket No. EL95–16–000, Southern California Edison Company
Docket No. EL95–19–000, San Diego Gas & Electric Company Whether the California Public Utilities Commission's determination of avoided costs for determining rates for electric utility purchases from QFs complies with PURPA and Commission regulations implementing PURPA

Oil and Gas Agenda

I Pipeline Rate Matters

PR–1
Reserved

II Pipeline Certificate Matters

PC–1
Reserved

Dated: February 15, 1995

Lois D. Cashell,

Secretary.

[FR Doc. 95–4285 Filed 2–16–95; 11:35 am]

BILLING CODE 6717–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Tuesday, February 28, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item: Proposals regarding actuarial assumptions in Federal Reserve System benefit plans

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 16, 1995

William W. Wiles,

Secretary of the Board

[FR Doc. 95–4343 Filed 2–16–95; 3:19 pm]

BILLING CODE 6210–01–P

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:20 a.m. on Wednesday, February 15, 1995, the members of the Merit Systems Protection Board met in closed session. The purpose of the meeting was to discuss concerns over the delegation of authorities to Board legal offices, and also to consider the composition of the Board's National Performance Review II process team.

In calling the meeting, the Board determined that Board business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and 5 U.S.C. 552b(c)(9)(B)).

The meeting was held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 15, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–4272 Filed 2–16–95; 11:37 am]

BILLING CODE 7400–01–M

federal register

Tuesday
February 21, 1995

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funds Availability for Youthbuild Programs Fiscal Year 1995; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3876; FR–3817–N–01]

Youthbuild: Notice of Funds Availability for Youthbuild Programs Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funds Availability for the FY 1995 Youthbuild Competition.

SUMMARY: This Notice of Funds Availability (NOFA) announces the availability of up to $74.1 million of Fiscal Year 1995 program funds (including Fiscal Year 1994 funds that were merged with the 1995 appropriation) for grant assistance under the Youthbuild Program established by the Housing and Community Development Act of 1992. These funds will be awarded competitively. Both planning and implementation grants will be funded, but combined grants covering both types of awards will not be funded under this current competition. The body of this NOFA contains information on the following: the purpose of the NOFA, information regarding eligibility, available funding, the application process and selection criteria.

APPLICATION SUBMISSION: An original and one copy of the completed application for grant funds must be received in HUD Headquarters prior to close of business on May 8, 1995. Applications will be accepted at the following address: Processing and Control Unit, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7255, Washington, DC 20410. ATTN: Youthbuild. At close of business on the deadline date, applications will be received at either room 7255 or the South Lobby of the Department of Housing and Urban Development at the above address.

Applications which are mailed prior to May 8, 1995, but not received until after the deadline will be deemed to have been received by the date if postmarked by the United States Postal Service by no later than May 5, 1995. Express delivery items received after May 8, 1995, will be deemed to have been received by the deadline upon submission of documentary evidence that they were placed in transit with the express delivery service by no later than May 6, 1995. Applications may not be submitted by facsimile (FAX).

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: The HUD Processing and Control Unit, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7255, Washington, DC 20410. Requests for application packages for the current competition must be made in writing, but may be faxed to (202) 708–3363. (This is not a toll-free number.) Applicants are strongly encouraged to use the fax transmission method to request applications, as it promotes accurate information and expedites HUD's response time. Requests for application packages must include the applicant organization's name, contact person, mailing address, zip code, area code and telephone number, and must refer to "Youthbuild" document FR–3817. The Youthbuild application package contains appropriate instructions, forms and required certifications for completing a grant request. Requests for Youthbuild application packages for the current competition should be made immediately. HUD will distribute application packages as soon as they become available.

FOR FURTHER INFORMATION CONTACT: All procedural and substantive questions should be directed to the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street SW., Washington DC 20410; telephone (202) 708–2035 or TDD (202) 708–1455 for the hearing impaired. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0142, expiration date August 31, 1996.

I. Program Purpose

The purposes of the Youthbuild program are (1) to provide economically disadvantaged young adults with opportunities to obtain education, employment skills and meaningful on-site work experience as a service to their communities and a means to achieve self-sufficiency; (2) to foster the development of leadership skills and commitment to community; and (3) to expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing planning grants for program design and implementation grants for carrying out a Youthbuild Program.

A. Authority

The Youthbuild program is authorized under subtitle D of title IV of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 8011) (the Act), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550). Implementing Regulations are found in the Final Rule published elsewhere is today's **Federal Register**.

B. Funding Availability

This Notice announces the availability of approximately $74.1 million in program funds. HUD intends to use approximately $5 million of this amount for planning grants, with the remainder for implementation grants. Of the total amount of program funds, $26.6 million was originally appropriated by the HUD appropriations act for Fiscal Year 1994 (Pub. L. 103–124, enacted October 28, 1993) and $47.5 million was appropriated by the HUD appropriations act for Fiscal Year 1995 (Pub. L. 103–327, enacted September 28, 1994). The latter act merged these two appropriations. Any unobligated funds from previous competitions or additional funds that become available as a result of deobligations from previous awards may also be used to fund applications submitted in response to this NOFA. Five percent of each fiscal year's program funds may be set aside for emergency purposes.

HUD may use any of the above funds to correct procedural errors from the previous competition in the event that HUD determines that the correction of the errors would have meant that the applications should have been funded under that competition. This provision is restricted to applicants who filed an appeal based on a procedural scoring error, in writing, no later than November 7, 1994 (four months from the announcement of FY 93 awards), and for which HUD determines that there was a procedural error.

In addition to the above program funds, $3.9 million is planned for technical assistance consistent with section 458(d) of the Act

C. Objectives

The Youthbuild program is designed to help disadvantaged young adults who have dropped out of high school to 1) obtain the education and employment skills necessary to achieve economic self-sufficiency and 2) develop leadership skills and a commitment to community development in low-income communities. Grant funds can be used to fund eligible educational and support services and activities, as defined by the Act, composed of basic skills instruction and remedial education, employment skills and leadership development, and counseling and other support services.

Another important objective of the Youthbuild program is to expand the supply of permanent affordable housing for homeless persons and members of low- and very low-income families. Giving disadvantaged young adults meaningful on-site training experiences in housing construction and rehabilitation enables them to provide a service to their communities by helping to meet the housing needs of homeless and low-income families.

An additional purpose of the program is to give, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to low-income persons and business concerns. To that purpose, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) is applicable to Youthbuild implementation grant recipients.

II. Overview of Youthbuild Planning and Implementation Grants

A. Types of Grants

HUD will award Youthbuild planning grants to eligible applicants for the purpose of planning Youthbuild programs in accordance with subtitle D of title IV of the Cranston-Gonzales National Affordable Housing Act (NAHA). HUD will award Youthbuild implementation grants to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D. Applications will be selected in a competition in accordance with the grant selection process described in section V. below.

B. Maximum Awards

Under the competitions established by this NOFA, the maximum award for a Youthbuild planning grant is $100,000 and the maximum award for a Youthbuild implementation grant is $1,000,000. No amendments will be made to awards under this competition that will increase previously approved grant amounts.

C. Locational Considerations

(1) Planning grants: HUD will not approve multiple applications for planning grants in the same jurisdiction, unless HUD determines that the jurisdiction is sufficiently large to justify approval of more than one application.

(2) Implementation grants: Each application for an implementation grant may only include activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed programs are in different jurisdictions. HUD will not approve multiple applications for implementation grants in the same jurisdiction unless HUD determines that the jurisdiction is sufficiently large to justify approval of more than one application.

D. Eligible Applicants

Eligible applicants are public or private nonprofit agencies, state or local housing agencies or authorities, states or units of general local government, Indian tribes or any other entity eligible to provide education and employment training under other Federal employment training programs, as further defined in 24 CFR 585.4.

E. Youthbuild Program Components

Youthbuild programs receiving assistance under this NOFA (for either program planning or implementation) must contain the three components described in items (1), (2) and (4) below. Other activities described in item (3) are optional.

(1) Educational and job training services.

(2) Leadership training, counseling and other support activities.

(3) Special activities such as entrepreneurial training, drivers' education, internships, programs for those with learning disabilities, and in-house staff training. (Optional)

(4) On-site training through actual housing rehabilitation and/or construction work. Each program must be structured so that 50 percent of each participant's time is spent in on-site training.

Refer to 24 CFR 585.3 for a detailed description of program components.

F. Eligible Participants

All participants in a Youthbuild program must be very low-income high school dropouts between the ages of 16 and 24, inclusive, at the time of enrollment. Up to 25 percent of participants may be above very low-income or high school graduates (or equivalent), but must have educational needs that justify their participation in the program.

G. Eligible Activities

(1) Planning grant activities used to develop a Youthbuild program may include:

(a) feasibility studies and research;

(b) establishment of a consortium of public and private participants, including service providers, housing developers, labor unions, etc.;

(c) identification of housing sites and arrangements for participants to have access;

(d) preliminary architectural and engineering work and cost estimates;

(e) the development of the educational, training, leadership development, counseling and other support service components of a Youthbuild program, including the staffing requirements;

(f) the preparation of an implementation grant application; and

(g) administrative costs. Youthbuild funds for these costs may not exceed 15 percent of the total amount of Youthbuild assistance.

Refer to 24 CFR 585.205 for further details on eligible planning activities.

(2) Implementation grant activities used to conduct a Youthbuild program may include:

(a) work and activities associated with the acquisition, rehabilitation, or construction of the housing and related facilities to be used in the program;

(b) relocation payments and other assistance required to comply with 24 CFR 585.308.

(c) costs for the ongoing training and technical assistance needs of the applicant that are related to carrying out a Youthbuild program.

(d) education, job training, counseling, employment and leadership development services and activities;

(e) wages, benefits and need-based stipends for participants; and

(f) administrative costs. Youthbuild funds for these costs may not exceed 15 percent of the total amount of Youthbuild assistance.

Refer to 24 CFR 585.305 for further details on eligible implementation activities.

H. Resources from Other Federal, State, Local or Private Entities

Applicants are encouraged to use existing housing and homeless assistance programs administered by HUD or other Federal, State, local or private housing programs as part of their Youthbuild programs. Use of other Federal, State, local or private funds available for vocational, adult and bilingual education programs or for job training under the JTPA Act and the Family Support Act of 1988 is also

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encouraged. The selection process described in this NOFA provides for applicants to receive points where grant applications contain evidence of interest (for planning applications) or commitments (for implementation applications) from Federal, State, local, or private sources to provide resources to carry out Youthbuild activities.

I. Environmental Procedures and Standards

Implementation grant applicants are encouraged to select hazard-free and problem-free properties for their Youthbuild projects. Environmental procedures apply to HUD approval of implementation grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property proposed for housing project development. Environmental procedures do not apply to HUD approval of implementation applications when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and support services.

For those implementation grant applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit all relevant environmental information in its application to support HUD decision-making in accordance with the environmental procedures and standards set forth in 24 CFR 585.307.

J. Grant Periods

Funds awarded for a planning grant should be used within 12 months of the effective date of the planning grant agreement. Funds awarded for an implementation grant should be used within 30 months of the effective date of the implementation grant agreement.

III. Selection Criteria for Youthbuild Applications

HUD will review each application for a planning or an implementation grant and assign points in accordance with the selection criteria described in this section. Where there are differences between the criteria for planning and implementation applications, they are so noted. Each application will be assigned up to 100 points. In addition, applications may receive up to 5 bonus points for AmeriCorps participation (see section F below), and implementation applications may receive an additional 10 housing priority points (see section G below).

A. Capability: the qualifications, experience, or potential capabilities of the applicant and participating parties. (Maximum Points: 25) The capability of the applicant and participating parties to plan or implement a successful young adult education and training program within a reasonable time period, within budget, and in an effective manner as demonstrated through past performance. In assigning points for this criterion, HUD will consider evidence in the application that demonstrates:

(1) Young adult education and training experience: The past performance and experience of the applicant entity or other participating parties (applicant's partner, member of local Youthbuild consortium, or other entity participating in the program) in planning or implementing young adult education and training programs, including programs for low-income persons from economically distressed neighborhoods, or an explanation of how such capability will be obtained.

(2) Young adult leadership development experience: The past experience of the applicant entity or other participating party in providing leadership development training and activities for young adults, or an explanation of how such capability will be obtained.

(3) Housing experience: The knowledge, experience, and performance of the applicant entity or other participating parties in producing sound and affordable housing for the homeless and low-income families, or an explanation of how such knowledge and experience will be obtained.

B. Need: the need for the proposed program, as determined by the degree of distress of the community. (Maximum Points: 20) In assigning points for this criterion, HUD will consider the relative degree of distress of the jurisdiction(s) from which participants will be recruited and in which the housing will be constructed or rehabilitated. HUD will calculate the degree of need of the jurisdiction(s) in which the program will be located from generally available data. In addition, HUD will consider information provided by the applicant on the distress of target areas within the jurisdiction(s).

C. Program Quality and Feasibility: comprehensiveness and effectiveness of the proposed Youthbuild program. (Maximum Points: 35) HUD will consider the overall quality and feasibility of the proposed program as measured by the principles and goals of the proposed program, whether proposed program activities meet the overall objectives of the Youthbuild program, whether the proposed program activities will be accomplished within a reasonable time and at reasonable expense, whether the proposed program activities are comprehensive and integrated, and the potential success of the proposed program. Planning applications will be evaluated by the extent to which the applicant describes a strategy for developing plans. Implementation applications will be evaluated by the actual plan. Areas to be considered in this evaluation are:

(1) Outreach, recruitment and selection activities: A description of the proposed (a) outreach, recruitment (including specific steps to be taken to attract potential eligible participants who are unlikely to be aware of this program because of race, ethnicity, sex, or disability) and selection strategies; (b) special outreach efforts to recruit eligible young women and young women with dependent children; and (c) recruitment arrangements made with public agencies, courts, homeless shelters, local school systems, community-based organizations, etc.;

(2) Educational and job training services and activities: A description of the educational component of the program, including: (a) the types of instructional services to be provided; (b) the number and qualifications of program instructors and ratio of instructors to participants; (c) realistic scheduling plan for classroom and on-the-job training; and (d) reasonable payments of participant wages, stipends, and incentives.

(3) Leadership development and support services: A description of the leadership development, counseling, and referral services to be offered to participants, including: (a) leadership development strategies and activities and plans to build group cohesion and peer support; and (b) the type of counseling and support services and/or need-based stipends to be provided.

(4) Coordination: A description of how the Youthbuild program will make use of ongoing Federal, State, Indian tribe, local, private and community-based services and activities associated with (a) educational, job training, child care, social services, counseling and referral services; (b) homeless and housing programs; and (c) apprenticeship programs of local building trade unions.

(5) On-site training: A description of (a) the housing construction or rehabilitation activities to be undertaken by participants at the site(s) to be used for the on-site training component of the program, (b) the qualifications and number of on-site supervisors; and (c) the amounts, reasonable wages and/or stipends to be paid to participants during on-site work.

(6) Job placement assistance: A description of the applicant's strategies and procedures for (a) participant placement in meaningful employment, enrollment in post-secondary education programs, job development, starting business enterprises, or other opportunities leading to economic independence; and (b) follow-up assistance and support activities to program graduates.

(7) Program evaluation: A description of a comprehensive evaluation plan that is designed to measure the success of the program.

D. Program Resources: expressions of interest (for planning applications) or commitment of resources (for implementation applications) obtained from other Federal, State, local and private sources. (Maximum Points: 10) In assigning points for this criterion, HUD will consider the extent of interest or level of resources obtained for cash or in-kind contributions to cover the following kinds of areas:

(1) social services (i.e., counseling and training);

(2) use of existing vocational, adult, bilingual educational courses;

(3) use of housing stock and/or housing funds available through existing public or private programs;

(4) construction and/or rehabilitation loans, grants, or interest rate subsidies;

(5) donation of labor, resource personnel, supplies, materials, classroom and/or meeting space;

(6) architectural and engineering work;

(7) public improvements, tax abatements, or other commitments.

E. Empowerment Zone/Enterprise Community: Up to 10 points will be assigned if the proposed Youthbuild program's participant recruitment and housing areas are, in whole or in part, in a Federally designated urban or rural Empowerment Zone, Enterprise Community, or Supplemental Empowerment Zone, as selected by HUD.

F. AmeriCorps Participation Bonus: Up to 5 points may be assigned to Youthbuild applicants who provide evidence of application and/or selection as an AmeriCorps program sponsor.

G. Implementation Applications Only: Housing Program Priority Points: 10 priority points will be assigned to all implementation applications that contain evidence that housing funds from other Federal, state, local or private sources are available to cover the costs, in full, for the following housing activities for the proposed Youthbuild program: acquisition, architectural and engineering fees, construction, and rehabilitation. Implementation applications proposing to use Youthbuild grant funds, in whole or in part, for any one of the housing activities listed above will not be entitled to the ten priority points.

IV. Application Requirements

Applicants must complete and submit applications for Youthbuild grants in accordance with instructions contained in the FY 1995 Youthbuild application package. The application package will request information in sufficient detail for HUD to determine whether the proposed activities are feasible and meet all the requirements of applicable statutes and regulations. In some cases, different information is needed for planning applications than for implementation applications. The application package requires a description of the applicant's and participating parties' experiences in young adult and housing programs, a description of the proposed Youthbuild program, a description of other public and private resources to be used for the program, including other housing resources, a schedule for the program, budgets, identification of housing sites(s), and demonstration of site access. The application package also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, regulations in 24 CFR part 135 with regard to economic opportunities for low-income persons and business concerns, and other Federal requirements. Applicants must also certify that the proposed activities are consistent with the HUD-approved Consolidated Plan in accordance with 24 CFR part 91. Applicants should refer to the Youthbuild application package for further instructions.

V. Selection Process

In order to afford applicants every opportunity to submit a ratable application, while at the same time ensuring the fairness and integrity of the selection process, HUD is adopting the following application submission and selection procedures:

A. Initial Screening: During the period immediately following the application deadline, HUD will screen each application to determine eligibility. Applications will be rejected if they (1) are submitted by ineligible applicants, (2) do not use the current FY 95 application package, (3) propose a program for which significant activities are ineligible, (4) there are any outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance, and (5) are submitted by applicants that have major unresolved audit or monitoring findings.

B. Rating and Ranking: Each eligible application will be rated based upon the criteria described in section III of this NOFA, with a maximum of 105 points assigned for planning applications and 115 points assigned for implementation applications. Using the scores assigned, the applications will be placed in rank order, with separate rankings for planning and implementation applications. Applications will be preliminarily selected for funding in accordance with their rank order. To promote national geographic diversity, HUD reserves the right to select lower-rated applications if necessary or to limit the amount or number of awards per jurisdiction or State.

If two or more applications have the same score and there are insufficient funds to fund all of them, the application(s) with the highest score for the Program Quality and Feasibility criterion shall be selected for funding. If a tie still remains, the application(s) with the highest score for the Capability criterion shall be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that application when sufficient funds become available.

C. Clarification of Application Information: In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision. For the Youthbuild program, these clarification items include, but are not limited to: (a) missing or unsigned program certifications, and (b) budget errors or inconsistencies. For implementation applications only, these clarification items also include: (c) failure to identify the address or equivalent property site identification for the housing project(s) to be used for the on-site training; (d) incomplete documentation to show that the applicant has obtained access to the

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housing site(s) if the applicant does not own it; (e) failure to structure the proposed program so that fifty percent of the time spent by program participants is devoted to educational and support services and activities and fifty percent to on-site training; (f) failure to target the outreach and recruitment efforts to disadvantaged young adults between the ages of 16 and 24 years old; and (g) failure to designate the housing to be produced in conjunction with the program for the use of the homeless and low- and very low-income families. If an applicant fails to provide the clarification as requested, the application may be rejected.

D. Potential Environmental Disqualification: HUD reserves the right to disqualify an implementation application where one or more environmental thresholds are exceeded if it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (See 24 CFR 585.307.)

E. Reduction in Requested Grant Amount: HUD will approve an application for an amount lower than the amount requested by the applicant or adjust line items in the proposed grant budget within the amount requested (or both) if it determines that:

(1) the amount requested for one or more eligible activities is not supported in the application or is unreasonably related to the service or activity to be carried out;

(2) an activity proposed for funding does not qualify as an eligible activity and can be separated in the budget;

(3) the amount requested exceeds the total cost limitation established for a planning or implementation grant; or

(4) insufficient funds remain for the entire request.

F. Notification of Approval or Disapproval: HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to a selected applicant of the amount of the grant award, based on the approved application, will constitute a preliminary approval by HUD, subject to HUD and recipient execution of the grant agreement to initiate program activities.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

B. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that some of the policies contained in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. The expected expansion of the housing supply for homeless and low- and very low-income persons and the provision of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However, since the impact on the family is beneficial and the program involves very little HUD discretion, no further review is necessary.

C. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA do not have "Federalism" implications because they do not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

D. Section 102 of the HUD Reform Act—*Accountability in the Provision of HUD Assistance.*

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five year period beginning not less than thirty days after the award for assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR part 12, subpart B, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also form HUD–2880) will be made available along with the applicants disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (95 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on disclosure requirements.)

E. Section 103 of the HUD Reform Act—*Prohibition of Advance Disclosures of Funding Decisions.*

HUD's regulation implementing section 103 of the Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also, refer to (58 FR 61016), a final rule amending part 4 regarding the regulations of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 or TDD (202) 708–1455 for the hearing-impaired. (These are not toll-free numbers.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

F. Section 112 of the HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act (section 112 of the Reform Act) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912), and is codified as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to: Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD: (202) 708–1455. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

G. Prohibition Against Lobbying Activities.

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87 and 7 CFR part 1944, Subpart G, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Required Reporting

A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the *disclosure* will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, "Disclosure Form to Report Lobbying", which must be used to disclose lobbying with other than Federally appropriated funds at the time of application.

H. Drug-Free Workplace.

The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with the drug- free workplace requirements of the Drug-Free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

I. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program title and number is 14.243.

Authority: 42 U.S.C. 8011; Pub.L. 102–550.

Dated: February 7, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4120 Filed 2–17–95; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 585

Opportunities for Youth: Youthbuild Program; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 585

[Docket No. R-95-1675; FR-3450-F-02]

RIN 2506-AB52

Opportunities for Youth: Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This is the final rule for the Youthbuild Program. The Youthbuild Program provides funding assistance for a wide range of multi-disciplinary activities and services to assist economically disadvantaged young adults. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. Implementation grant funds can be used to fund eligible educational and supportive services and activities composed of basic skills instruction and remedial education, employment skills and leadership development, and counseling, referral and support services. Planning grant funds can be used to develop a Youthbuild program that includes the activities of an implementation grant.

Another important objective of the Youthbuild program is to expand the supply of permanent affordable housing for homeless persons and members of low- and very low-income families. By giving disadvantaged young adults participating in the program meaningful on-site training experiences constructing or rehabilitating housing as a community service, they are helping to meet the housing needs of homeless and low-income families in their community.

EFFECTIVE DATE: March 23, 1995.

FOR FURTHER INFORMATION CONTACT: The Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708-2035; TDD (202) 708-1455. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collection Requirements

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) by the Office of Management and Budget (OMB) and have been assigned OMB control number 2506-0142; expiration date August 31, 1996.

II. Background

Section 164 of the Housing and Community Development Act of 1992 (Pub.L. 102-550) authorized the Youthbuild program under subtitle D of title IV of the National Affordable Housing Act (42 U.S.C. 8011). On September 23, 1993, the Department published a proposed rule (58 FR 49830) and a Notice of Funds Availability (NOFA) (58 FR 49849) for this program.

The Department is now publishing the final rule to be effective 30 days from the date of publication. This final rule does not contain the detailed selection criteria and application processing steps contained in the NOFA for Fiscal Year 1993. Information appropriate for a specific funding competition will now be contained in the NOFA published for the current competition and will not be part of the final rule. The final rule published here is presented in its entirety to reflect the addition of section numbers and all modifications made as a result of public comments and as a result of the Department's experience in running the first competition for Youthbuild grant fund.

III. Discussion of Public Comments on Proposed Rule

The Department received public comments from seven organizations (one state agency, one local government agency, two housing authorities and three nonprofit organizations) in response to the proposed rule published on September 23, 1993, at 58 FR 49830. The following discussion summarizes the comments and provides HUD's responses to those comments.

Comment: Participant eligibility should be extended to include juvenile offenders held in custody at state-operated training facilities. These juveniles meet the qualifications of economically disadvantaged young adults who have dropped out of high school and are in need of assistance to obtain education and employment skills. [one state agency]

Response: Such juvenile offenders would be eligible for a Youthbuild program without any changes to the regulations.

Comment: The paragraph entitled "Lease" included in the provisions on tenant protections under "Project-related restrictions applicable to Youthbuild residential rental housing" [§ 585.309 (b)(1)] calls for a model lease to become an addendum to the grant agreement, remaining in force for ten years. Housing authorities and other owners may have to make changes in lease provisions as required by HUD and state statutes. Provisions must be made to amend leases. [one housing authority]

Response: For grants covered by the requirements of section 585.309(b)(1), if the provisions of the model lease change, such changes will require approval by HUD. No change to the regulations is needed.

Comment: There is a conflict between § 585.309(b)(2) and 24 CFR 966.4(a)(1) and (3) relating to the rules to be followed by a Public Housing Authority for termination of tenancy. [one housing authority]

Response: The provisions of 24 CFR part 966 take precedence for public housing authorities.

Comment: Does the Youthbuild program require a justification of new construction through market and/or feasibility studies? [one nonprofit organization]

Response: No.

Comment: Is a mixed use project an eligible Youthbuild activity and, and if so, are there specific criteria involved? [one nonprofit organization]

Response: Mixed-use projects are eligible as long as the Youthbuild dollars are only used in conjunction with the housing and housing related facilities. See definition of "related facilities" in § 585.4.

Comment: Does the Youthbuild program require that one-third of the housing units assisted be accessible to handicapped people? [one nonprofit organization]

Response: Youthbuild applicants are required to certify that they will comply with the requirements of Section 504 of the Rehabilitation Act of 1973, which specifies the handicapped accessibility standards for housing created with Federal funds.

Comment: Several sources questioned HUD's use of 10 years to define "the remaining useful life" of a Youthbuild assisted property. One commenter thought that 10 years was too long and two thought it was too short. [one housing authority and two nonprofit organizations.]

Response: HUD considered a longer period, but found that a 10-year period was consistent with similar HUD programs. Any Youthbuild recipient organization that wishes to impose longer restrictions on the use of a property could do so on its own.

Comment: HUD should not limit tenants with incomes between 60 and 80 percent of the area median income to only one year. This restriction should be removed. [two public housing authorities]

Response: HUD agrees that the one year limit may be too restrictive and has raised it to two years in § 585.309(a).

Comment: When project-related restrictions apply to Youthbuild residential rental housing, the requirement that units be advertised for low-income people should be reduced from 90-day periods to 60-day periods. [one housing authority]

Response: Because the maximum length of time that a tenant with an income between 60 and 80 percent of the area median income is allowed to rent a Youthbuild-assisted building has been raised from one to two years (see above), HUD believes it is necessary to maintain the 90-day requirement to ensure availability to lower-income tenants.

Comment: When a recipient has successfully completed the activities of a planning grant, it would be rare for such an investment of time and money to yield no workable program. HUD should guarantee that all planning recipients be awarded an implementation grant in the next funding cycle. [one public housing authority]

Response: While HUD agrees that a planning recipient will likely have a viable project at the end of its planning grant term, it may need additional time to be ready to implement a program that is superior to those of other applicants that did not receive planning grants. Further, given the number of planning grants awarded during the first funding round, there are insufficient funds to award implementation grants to each planning grant recipient. Each funding round is statutorily required to be a competition for funds, and fairness dictates that each application for funding be evaluated on its merits, regardless of whether the applicant received a previous planning grant. HUD also believes that the process of planning for a Youthbuild implementation grant is a valuable exercise, whether or not a HUD-funded Youthbuild implementation program is the result.

Comment: HUD should not require programs to channel participants into programs leading to a high school diploma or post-secondary education, because some participants may not be capable of reaching those goals and such expectations may lead them to drop out of the program. [one public housing authority]

Response: HUD believes that earning a high school diploma or its equivalent is crucial to achieving self-sufficiency. However, the educational component of the program does not require that participants achieve a high school equivalency, but merely requires recipients to provide services and activities designed to meet the basic education needs of participants. This requirement is sufficiently flexible to allow recipients to provide educational services that are appropriate to their individual participants.

Comment: HUD should not require applicants for planning grants to present information on the need for the program, considering that feasibility studies are eligible activities under the planning grant. [one public housing authority]

Response: Need, based on distress of the community, is a statutory selection criterion and is fundamentally different from feasibility studies. To present information on the degree of economic distress in a community in response to the Need rating criterion, an applicant must do research on the poverty, unemployment, dropout rate, and other factors currently existing in the community. Feasibility studies are eligible activities under the planning grant. Instead of assessing the current level of economic distress of the community, a feasibility study would focus on the physical environment, housing stock, and the social, human, and financial resources available for a Youthbuild program.

Comment: Given that HUD may approve more than the $1 million maximum if the application proposes to serve a large number of participants, HUD should indicate whether the number of participants is a factor in the rating of an application, and, if so, should specify the average expected number of participants. [one public housing authority]

Response: HUD does not have strict participant enrollment requirements but does consider the reasonableness of cost per student in rating program quality and feasibility. HUD also recognizes that costs may vary depending on the location of the program.

Comment: HUD should allow program recipients to make stipends high enough to compete with illegal endeavors by participants. [one public housing authority]

Response: HUD does not stipulate a stipend level, and leaves the amount up to the individual applicants. Unreasonable and excessive stipend levels will be considered in rating program quality and feasibility.

Comment: HUD should state in the rule that stipends may not result in a rent increase for program participants. [one public housing authority]

Response: The enabling statute and rule state that the Youthbuild program is subject to section 142 of the Job Training Partnership Act. Section 142(b) of the JTPA states that such wages and stipends are not considered as income for any Federal or Federally-assisted program based on need, other than those under the Social Security Act.

Comment: HUD should strike the requirement that applicants may not commit or expend State, local or other funds to undertake property acquisition, rehabilitation or construction until a grant agreement is executed by HUD. [one city housing agency]

Response: This provision only applies when Youthbuild funds have been requested to acquire, rehabilitate, or newly construct a property. The purpose is to allow HUD to conduct an environmental review on the property, which the statute requires to be done before an application can be approved. Applicants that expend their own or other funds on a proposed property are in jeopardy of using their funds on a property that could potentially be deemed ineligible as a result of the environmental review. If an applicant proposes to fund the acquisition, rehabilitation, or new construction entirely with non-Youthbuild funds, there is no restriction on using those funds before notification of grant award. Section 585.307(a)(3) has been changed to clarify this distinction.

Comment: The provision that makes Davis-Bacon prevailing wage rates not applicable to program participants should be expanded to include state and local wage rate restrictions. [one city housing agency]

Response: The provision making Davis-Bacon wage rates inapplicable to Youthbuild trainees is required by a specific statutory provision. HUD has no authority to declare State and local wage regulations inapplicable on the basis of an employee's status as a Youthbuild trainee. However, in this final rule, the Department has revised the provision in the proposed rule regarding the need to apply Davis-Bacon prevailing wage rates to Youthbuild trainees where additional Federal assistance is provided. Subsequent to the issuance of the proposed rule, the Department's attention was drawn to a decision of the United States Department of Labor's Wage Appeals Board in in the matter of

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100 Court Ave. Street Project, Kurtz Building, UDAG Proj. No. B–83–AA–19–0020, Des Moines, Iowa (WAB Case No. 88–9, March 16, 1990). That case concerned a project involving training under the Job Training Partnership Act (JTPA), which excludes trainees from Davis-Bacon requirements, as well as assistance under the Urban Development Action Grant (UDAG) program, which has its own Davis-Bacon provisions. The Wage Appeals Board determined that JTPA's statutory Davis-Bacon exclusion for trainees applied to exclude a JTPA trainee from Davis-Bacon rate requirements even where the trainee was employed on the UDAG project. Since the Housing and Community Development Act of 1992 applies the JTPA Davis-Bacon provision (and its exclusion of trainees from Davis-Bacon rates) to the Youthbuild program, the Department has concluded that the Wage Appeals Board's ruling is applicable to the Youthbuild program. Accordingly, the final rule provides that Davis-Bacon wage rates are not applicable to Youthbuild trainees, regardless of whether other Federal assistance is involved. However, neither the JTPA provision nor the Wage Appeals Board decision excludes trainees from wage rates other than Davis-Bacon wage rates. Therefore, the rule notes that Youthbuild trainees must be paid HUD-determined wage rates on public and Indian housing work where those rates would be applicable to trainees under the United States Housing Act of 1937 (e.g., on work such as "non-routine maintenance"). However, where HUD wage rates are applicable to trainees, the rates determined by HUD to apply to Youthbuild trainees will be trainee wage rates rather than journeyperson rates.

Comment: Limitations on profit imposed on housing should not apply to projects which are owned by governmental agencies. [one city housing agency]

Response: This is a statutory restriction, that has been interpreted to apply only when construction is financed, in whole or in part, with Youthbuild funds. (See § 585.309)

Comment: The rule should include all of the essential purposes of the program that were stated in the legislation. [one nonprofit organization]

Response: The purpose of the Youthbuild program in § 585.2 has been revised accordingly.

Comment: HUD should state that construction site supervisors essential for the training of the participants are not considered construction or rehabilitation costs. [one nonprofit organization]

Response: Section 585.306 has been added to make that clarification.

Comment: Related facilities which stand alone should be considered appropriate construction sites for trainees. [one nonprofit organization]

Response: HUD construes the term "housing and related facilities" to mean residential property, which does not include stand-alone facilities that do not include housing.

Comment: The definition of the term "self-sufficiency" should be providing for oneself and one's immediate "dependents," not "family." [one nonprofit organization]

Response: The definition of "self-sufficiency" has been deleted from the final rule.

Comment: In the list of "Other activities" as delineated in the discussion of program components, "short-term placement with private contractors as internships to enhance the participant's preparation for unsubsidized employment" should be added. [one nonprofit organization]

Response: The list of "other activities" is not exclusive, and a variety of other activities can be done under this heading.

Comment: The Corporation for National and Community Service should be added to the list of other Federal entities from which applicants are encouraged to enlist support. [one nonprofit organization]

Response: The list of potential resources in § 585.105 comes from the statute, and is not intended to be a comprehensive list or limitation of all possible resources that can be used in the program.

Comment: The requirements for the Performance Evaluation Report and Quarterly Progress Report should include additional information. [one nonprofit organization]

Response: All specific reporting elements of the required reports have been deleted from the Rule and are now contained in Youthbuild Program Reports (HUD–40201).

Comment: Additional points should be given for counseling and leadership development services; the points for housing resources and the housing priority points seem excessive; the requirements for public support are not realistic. [one nonprofit organization]

Response: The rule has been amended to state only the statutory rating criteria. The point awards and subcategories of statutory and administratively imposed criteria will be announced for each competition in the NOFA for that fiscal year.

Comment: The discussion of Geographic Diversity provides that lower ranked applications will be selected if any of the 10 HUD Regions receive substantially fewer awards; this language does not reflect the differences in need and interest between the HUD regions. [one nonprofit organization]

Response: HUD regions have been abolished under the Department's recent reorganization. HUD reserves the right to invoke this provision to ensure fairness and meet the needs of distressed communities.

Other Matters

a. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

b. *Regulatory Flexibility Act.* The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the Youthbuild program affects primarily economically disadvantaged young adults by providing assistance for a wide range of multi-disciplinary activities to assist those young adults. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. A related objective of the program is to add to the supply of permanent affordable housing for homeless persons and members of low- and very low-income families by giving young adults participating in the program meaningful on-site training experiences in construction and rehabilitation of housing. It is anticipated that fewer than 120 projects will receive assistance under this program.

c. *Executive Order 12612, Federalism* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

d. *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that some of the policies of this rule would have a potential significant impact on family formation, maintenance, and general well-being. The expected expansion of the housing supply for homeless and low- and very-low income persons and the provision of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However since the impact on the family is beneficial and the rule involves very little HUD discretion, no further review is necessary

e. *Semi-Annual Agenda of Regulations.* This rule was listed as item number 1843 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57663) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

f. *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 585

Grant programs—housing and community development, Homeless, Low- and very low-income families, Reporting and record keeping requirements.

Accordingly, Subchapter C of Chapter V of Title 24 of the Code of Federal Regulations is amended to add a new part 585, consisting of subparts A through F, to read as follows:

PART 585—YOUTHBUILD PROGRAM

Subpart A—General

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585.1 Authority
585.2 Program purpose.
585.3 Program components.
585.4 Definitions.

Subpart B—Application and Grant Award Process

585.100 Notice of funds availability
585.101 Emergency funds.
585.102 Application requirements.
585.103 Combined planning and implementation applications.
585.104 Selection criteria.
585.105 Support of other Federal, State, local or private entities.
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Subpart C—Youthbuild Planning Grants

585.201 Purpose.
585.202 Award limits.
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585.308 Relocation assistance and real property acquisition.
585.309 Project-related restrictions applicable to Youthbuild residential rental housing.
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585.311 Project-related restrictions applicable to Youthbuild homeownership housing.
585.312 Wages, labor standards, and nondiscrimination.
585.313 Labor standards.

Subpart E—Administration

585.401 Recordkeeping by recipients.
585.402 Grant agreement.
585.403 Reporting requirements.
585.404 Program changes.
585.405 Obligation and deobligation of funds.
585.406 Primarily religious organizations.

Subpart F—Applicability of Other Federal Requirements

585.501 Application of OMB Circulars.
585.502 Certifications.
585.503 Conflict of interest.
585.504 Use of debarred, suspended, or ineligible contractors.

Authority: 42 U.S.C. 3535(d) and 8011.

Subpart A—General

§ 585.1 Authority.

(a) *General.* The Youthbuild program is authorized under subtitle D of title IV of the National Affordable Housing Act (42 U.S.C. 8011), as added by section 164 of the Housing and Community Development Act of 1992 (Pub. L. 102–550).

(b) *Authority restriction.* No provision of the Youthbuild program may be construed to authorize any agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials used by any educational institution or school system participating in a Youthbuild program.

§ 585.2 Program purpose.

The purposes of the Youthbuild program are:

(a) To provide economically disadvantaged young adults with opportunities to obtain education, employment skills and meaningful on-site work experience as a service to their communities and a means to achieve self-sufficiency;

(b) To foster the development of leadership skills and commitment to community; and

(c) To expand the supply of permanent affordable housing for homeless and low- and very low-income persons by providing planning grants for program design and implementation grants for carrying out a Youthbuild Program.

§ 585.3 Program components.

A Youthbuild implementation program uses comprehensive and multi-disciplinary approaches designed to prepare young adults who have dropped out of high school for educational and employment opportunities by employing them as construction trainees on work sites for housing designated for homeless persons and low- and very low-income families. A Youthbuild planning grant is designed to give recipients sufficient time and financial resources to develop a comprehensive Youthbuild program that can be effectively implemented. Youthbuild programs must contain the three components described in paragraphs (a), (b) and (d) of this section. Other activities described in paragraph (c) of this section are optional:

(a) *Educational Services,* including:

(1) Services and activities designed to meet the basic educational needs of participants. For example, a Youthbuild program may include basic skills instruction and remedial education, bilingual education for individuals with limited English proficiency, secondary educational services and activities designed to lead to the attainment of a high school diploma or its equivalency (GED), or counseling and assistance in attaining post-secondary education and required financial aid;

(2) Vocational classroom courses geared to construction terminology and concepts; and

(3) Strategies to coordinate with local trade unions and apprenticeship programs where possible.

(b) *Leadership Training, Counseling and Other Support Activities,* including:

(1) Activities designed to develop employment and leadership skills, including support for youth councils;

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(2) Counseling services to assist trainees in personal, health, housing, child care, family or legal problems and/or referral services to appropriate social service resources;

(3) Support services and stipends necessary to enable individuals to participate in the program and, for a period not to exceed 12 months after completion of training, to assist participants through continued support services;

(4) Job development and placement activities and post-graduation follow-up assistance; and

(5) Pre-employment training plan aimed at developing job seeking skills.

(c) *Other activities.* A local program may be designed to include other, special activities such as:

(1) Entrepreneurial training and courses in small business development;

(2) Assistance to correct learning disabilities; or

(3) Drivers' education courses.

(d) *On-site training,* through actual housing rehabilitation and/or construction work. This component must include:

(1) Access to housing sites where construction/ rehabilitation work is being carried out;

(2) Work site training plan for a closely supervised construction site;

(3) Construction or rehabilitation plan and timetable; and

(4) Approaches to work site safety.

(e) The Youthbuild implementation program must be structured so that 50 percent of each full-time participant's time is spent in educational services and activities [paragraphs (a), (b), and (c) of this section] and 50 percent is spent in on-site training [paragraph (d) of this section]. Youthbuild planning grant applications must contain strategies, plans and approaches to be used during the planning process to ultimately implement these program requirements.

§ 585.4 Definitions.

As used in this part:

1937 Act means the United States Housing Act of 1937.

1992 Act means the Housing and Community Development Act of 1992.

Access to housing applies to Youthbuild implementation grants required to document that the program has access to the housing project(s) for young adult on-site training, e.g. program participants have permission to work on the housing site.

Adjusted income has the meaning given the term "adjusted income" in section 3(b) of the United States Housing Act of 1937

Applicable residential rental housing quality standards shall mean those standards of the applicable HUD or other Federal, State or local program providing assistance for residential rental housing involved in a Youthbuild implementation grant as used under section 455(a), Youthbuild Program Requirements, of the Act.

Applicant means a public or private nonprofit agency, including:

(1) A community-based organization;

(2) An administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;

(3) A community action agency;

(4) A State or local housing development agency;

(5) A community development corporation;

(6) A public and/or Indian housing authority and resident management corporations, resident councils and resident organizations;

(7) A State or local youth service or conservation corps; and

(8) Any other entity (including States, units of general local government, and Indian Tribes) eligible to provide education and employment training.

Combined Youthbuild application means the submission by an applicant of a single application to HUD for a planning and implementation grant request for one Youthbuild program.

Community Based Organization means a private nonprofit organization that:

(1) Maintains, through significant representation on the organization's governing board or otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries of programs receiving assistance under this subtitle; and

(2) Has a history of serving the local community or communities where a program receiving assistance under this subtitle is located.

Consolidated Plan means the document that is submitted to HUD that serves as the planning documents (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs which is prepared in accordance with the process described in 24 CFR part 91.

Full-Time Participation for program eligible participants is limited to not less than 6 months and not more than 24 months.

Graduates are those participants who have completed the full-time education/ on-site training components of a Youthbuild program and who are eligible to take advantage of meaningful opportunities in continued education, in owning their own businesses, in meaningful employment or in other means by which the participant can attain economic self-sufficiency

Homeless Act means the Stewart B. McKinney Homeless Assistance Act, as amended, (42 U.S.C. 11301 et seq.).

Homeless individual has the meaning given the term in section 103 of the Stewart B. McKinney Homeless Assistance Act.

Housing development agency means any agency of a State or local government, or any private nonprofit organization that provides housing for homeless or low-income families.

Indian Tribe has the same meaning given such term in section 102(a)(17) of the Housing and Community Development Act of 1974 [42 U.S.C. 5302(a)(17)].

Individual who has dropped out of high school means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

Institution of Higher Education has the meaning given the term in section 120(a) of the Higher Education Act of 1965.

JTPA means the Job Training Partnership Act (P.L. 102–235), as amended.

Limited-English proficiency has the meaning given the term in section 7003 of the Bilingual Education Act.

Low-income Family has the meaning given the term in section 3(b) of the United States Housing Act of 1937

Offender means any adult or juvenile with a record of arrest or conviction for a criminal offense.

Participant means:

(1) An individual who is:

(i) 16 to 24 years of age, inclusive, at time of enrollment;

(ii) A very low-income individual or a member of a very low-income family; and

(iii) An individual who has dropped out of high school.

(2) An exception of not more than 25 percent of all full-time participants is permitted for young adults who do not meet the program's income or educational requirements but who have educational needs despite attainment of a high school diploma or its equivalent

Private Nonprofit Organization means any private nonprofit organization that

(1) Is organized and exists under Federal, State, local, or tribal law;

(2) Has no part of its earnings inuring to the benefit of any individual, corporation, or other entity;

(3) Has a voluntary board;

(4) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(5) Practices nondiscrimination in the provision of assistance.

Project-related restrictions mean Youthbuild housing restrictions applicable only in cases where a Youthbuild implementation grant is providing assistance to residential rental, transitional or homeownership housing projects for specific costs relating to property acquisition, architectural and engineering fees, construction, rehabilitation, operating costs, or replacement reserves.

Recipient means any entity that receives assistance under this part.

Related facilities include cafeterias or dining halls, community rooms or buildings, child care centers, appropriate recreation facilities, and other essential service facilities that are physically attached to the housing to be constructed or rehabilitated. Related facilities which stand alone are not appropriate construction sites for trainees.

Secretary means the Secretary of Housing and Urban Development.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, or any other territory or possession of the United States.

Title IV means title IV of the National Affordable Housing Act, as amended (42 U.S.C. 1437).

Transitional housing means a project that has as its purpose facilitating the movement of homeless individuals and families to permanent housing within a reasonable amount of time (usually 24 months). Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

Useful life shall mean a period of 10 years upon construction completion and issuance of an occupancy permit applicable to a residential rental, transitional or homeownership property acquired, constructed or rehabilitated (including architectural and engineering fees), or maintained (i.e., operating costs or replacement reserves), in whole or in part, with Youthbuild implementation grant funds (as used in section 455(a), Youthbuild Program Requirements, of the Act).

Very low-income family has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

Subpart B—Application and Grant Award Process

§ 585.100 Notice of funds availability.

When funds are made available for assistance, HUD will publish a notice of funds availability (NOFA) in the **Federal Register** in accordance with the requirements of 24 CFR part 12. The notice will:

(a) Give the location for obtaining application packages, which will provide the application requirements and specify the application deadline for the competition;

(b) State the amount of funding available and the kind of grants to be funded under the notice;

(c) Describe the factors relative to each selection criteria and the weight or relative importance given to each criteria as they will be applied to the competition announced in the notice; and

(d) Provide other appropriate program information and guidance.

§ 585.101 Emergency funds.

(a) The Secretary may reserve up to five percent of each Fiscal Year's program funds for implementation grants for emergency purposes to respond quickly to vital needs to stimulate the provision of services to disadvantaged young adults and to expand the supply of affordable housing for the homeless and low- and very low-income persons.

(b) Unforeseen emergency needs may result from natural and other disasters including hurricanes, tornadoes, earthquakes, fires, floods, etc. Other unpredictable and sudden circumstances, such as civil disturbances, may affect the provision of services to young adults or result in housing deprivation and increased demand for housing for low-income persons and the homeless. The Secretary will determine whether the emergency is of sufficient severity to warrant use of Youthbuild funds.

(c) The Secretary will establish a separate and expedited process to award funds for emergency purposes. Specific instructions governing the use of these funds may be published by notice in the **Federal Register**, as necessary. If the set-aside funds are not used for emergency purposes by the time that awards for each fiscal year's funds are to be announced, these funds will be made available for the general implementation grant competition for that year.

§ 585.102 Application requirements.

Applications for grants must be submitted in the form prescribed by HUD in the application kit, must meet the requirements of this part, and must be submitted within the time period established by HUD in the NOFA or application kit. HUD reserves the right to reject applications from any applicant with an outstanding obligation to HUD that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit finding is overdue or unsatisfactory. Applicants should refer to the Youthbuild application package for further instructions.

(Approved by the Office of Management and Budget under control number 2506–0142)

§ 585.103 Combined planning and implementation applications.

(a) If permitted in the NOFA, applicants may apply for both types of grants using one application. In such competitions, the application package will provide instructions on submitting a combined Youthbuild application. Combined planning and implementation grant applications will compete separately during the competition, based on the criteria defined in the NOFA. In such cases, an implementation grant request will be disqualified from the implementation grant competition if its companion planning grant request is not selected for the planning grant competition. However, any implementation grant request failing to be selected under the implementation grant competition will not cause its companion planning grant application to be disqualified from the planning grant competition provided the planning grant qualifies and HUD has determined that the activities proposed in the planning grant request stand alone and are not contingent upon activities proposed in the implementation grant request.

(b) When both parts of a combined application are approved, the receipt of the implementation grant award is conditioned upon the successful completion of the eligible activities funded by the planning grant and submission of the recipient's plan and performance evaluation report to HUD for approval. Upon HUD approval, reserved implementation grant funds would be released to the recipient in accordance with the grant agreement.

(Approved by the Office of Management and Budget under control number 2506–0142)

§ 585.104 Selection criteria.

HUD will review applications and assign rating scores based upon the following criteria, which will be

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described in more detail in the notice published in the **Federal Register** for each funding competition:

(a) Capability.

(b) Need.

(c) Program quality and feasibility.

(d) Program resources.

(e) Housing program priority points (Implementation only).

(f) *Other factors*: HUD may use additional factors to rate an application as defined in the NOFA for an individual competition.

§ 585.105 Support of other Federal, State, local or private entities.

Applicants are encouraged to use existing housing programs administered by HUD or other Federal, State, local or private housing programs as part of their Youthbuild programs. Use of other Federal, State, local or private funds for vocational, adult and bilingual education programs or for job training under the JTPA Act and the Family Support Act of 1988 is also encouraged. The selection process for Youthbuild grants described in a NOFA provides for applicants to receive points where grant applications contain evidence of proposed plans to finance, in whole or in part, Youthbuild activities from other Federal, State, local, or private sources.

§ 585.106 Selection process.

(a) *Clarification of Application Information:* Procedures for clarifying application information or curing deficiencies in technical information that does not affect an applications's score will be explained in the notice of funds availability. For implementation applications such deficiencies include, but are not limited to:

(1) Failure to structure the proposed Youthbuild program so that fifty percent of the time spent by program participants is devoted to educational services and activities and fifty percent to on-site training;

(2) Failure to target the outreach and recruitment efforts to be used by the program to disadvantaged young adults between the ages of 16 and 24 years;

(3) Failure to identify the housing to be used for the on-site training;

(4) Incomplete documentation showing that the applicant has obtained access to the housing site(s) if the applicant does not own the site(s).

(5) Failure to designate the housing to be produced in conjunction with the program for the use of the homeless and low- and very low-income families.

(b) *Potential environmental disqualification:* HUD reserves the right to disqualify an implementation application where one or more environmental thresholds are exceeded and it is determined that the environmental review cannot be conducted and satisfactorily completed by HUD within the HUD review period. (Refer to § 585.307, Environmental procedures and standards, for further information.)

(c) *Selecting applicants.* HUD will rank applications according to total points assigned. Applications will be selected for funding from the rank order. However, HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity.

(d) *Breaking tie scores.* The NOFA for the funding round will indicate which selection criteria will be used to break a tie if two or more applications receive the same number of points and sufficient funds are not available to fund all such applications.

(e) *Reduction in requested grant amount.* HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

(1) The amount requested for one or more eligible activities is not supported in the application or is unreasonable related to the service or activity proposed for the population to be served or the housing to be provided;

(2) An activity proposed for funding does not qualify as an eligible activity;

(3) The amount requested exceeds the cost limitation established for a Youthbuild grant; or

(4) There are insufficient funds remaining to fund the applicant's original grant request.

(f) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than four months after the date applications are due under the applicable NOFA, HUD will notify the selected applicants and the applicants that have not been selected. HUD's notification to the applicant of the grant award amount, based on the approved application, will constitute a preliminary approval by HUD, subject to HUD and recipient execution of a grant agreement to initiate program activities.

§ 585.107 Prohibition of disclosure.

The selection process for assistance under this part is subject to the prohibition of disclosure of covered information regarding the selection process, as described in 24 CFR part 4. Applicants for or recipients of assistance who have received covered selection information may be subject to appropriate sanctions.

Subpart C—Youthbuild Planning Grants.

§ 585.201 Purpose.

HUD will award Youthbuild planning grants to eligible applicants for the purpose of developing Youthbuild programs in accordance with subtitle D of title IV of the National Affordable Housing Act. Applications will be selected in a national competition in accordance with the selection process described in the current NOFA.

§ 585.202 Award limits.

Maximum awards. The maximum amount of a Youthbuild planning grant is $150,000 unless a lower amount is established in the NOFA. HUD may for good cause approve a grant in a higher amount.

§ 585.203 Grant term.

Funds awarded for planning grants are expected to be used within 12 months of the effective date of the planning grant agreement. The award of a Youthbuild planning grant does not obligate HUD to fund the implementation of the program upon completion of the approved planning activities (unless the companion implementation grant was submitted as a combined application and funded in the implementation grant competition).

§ 585.204 Locational considerations.

HUD will not approve multiple applications for planning grants in the same jurisdiction unless it determines that the jurisdiction is sufficiently large to justify approval of more than one application.

§ 585.205 Eligible activities.

Planning grant activities to develop a Youthbuild program may include:

(a) The undertaking of studies and research efforts to determine the feasibility and need for a Youthbuild program in a selected location including whether a proposed program can meet the education and training needs of young adults, aid in the expansion of affordable housing to meet the needs of the community, and achieve financial feasibility;

(b) The formation and establishment of a consortium among Federal, State, or local training and education programs, service providers, housing programs and providers including but not limited to homeless providers, housing owners, developers, and other organizations necessary for the establishment of a Youthbuild program;

(c) The preliminary identification and potential selection of housing for the Youthbuild program including an assessment of the type of housing

program to be used and the method by which program participants will have access to the housing project;

(d) The planning and identification of resources required for basic skills instruction and education, job training and job development, leadership and employment skills development, counseling, referral, and other related support services that will be provided as part of the Youthbuild program;

(e) The preparation of an application for an implementation grant.

(f) Preliminary architectural and engineering (A & E) work for the Youthbuild proposed housing including:

(1) The development of cost and time estimates associated with the amount of work to be done through new construction or the rehabilitation of existing housing;

(2) Technical studies to evaluate environmental problems and to determine whether mitigation is feasible on the potential site; and

(3) The identification and initiation of the permit process required to commence work on the selected site;

(g) The planning and development of multi-disciplinary educational and employment training curricula, leadership development training, counseling, and other supportive services and activities for the Youthbuild program including the identification and training of staff assigned to each program component;

(h) The identification and establishment of relationships with local unions, apprenticeship programs, housing owners, local employers and public or private community organizations for job training, development, and placement opportunities;

(i) *Administration.* Youthbuild funds for administrative costs may not exceed 15 percent of the total amount of Youthbuild program and project costs or such higher percentage as HUD determines is necessary to support capacity development by a private nonprofit organization.

Subpart D—Youthbuild Implementation Grants

§ 585.301 Purpose.

HUD will award Youthbuild implementation grants to eligible applicants for the purpose of carrying out Youthbuild programs in accordance with subtitle D of title IV of the National Affordable Housing Act. Applications will be selected in a national competition in accordance with the selection process described in the current NOFA.

§ 585.302 Award limits.

Maximum awards. The maximum award for a Youthbuild implementation grant will be defined in the NOFA for each competition and may vary by competition. HUD may for good cause approve a grant in a higher amount than the specified limit.

§ 585.303 Grant term.

Funds awarded for implementation grants are expected to be used within 30 months of the effective date of the implementation grant agreement.

§ 585.304 Locational considerations.

Each application for an implementation grant may only include activities to carry out one Youthbuild program, i.e., to start a new Youthbuild program or to fund new classes of Youthbuild participants for an existing program. The same applicant organization may submit more than one application in the current competition if the proposed programs are in different jurisdictions. HUD will not approve multiple applications for implementation grants in the same jurisdiction unless it determines that the jurisdiction is sufficiently large to justify approval of more than one application.

§ 585.305 Eligible activities.

Implementation grant activities to conduct a Youthbuild program may include:

(a) Acquisition of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(b) Architectural and engineering work associated with Youthbuild housing;

(c) Construction of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families;

(e) Operating expenses and replacement reserves for the housing assisted in the Youthbuild program;

(f) Relocation payments and other assistance required to comply with § 585.308, legal fees, and construction management;

(g) Outreach and recruitment activities, emphasizing special outreach efforts to be undertaken to recruit eligible young women (including young women with dependent children);

(h) Education and job training services and activities including work experience, basic skills instruction and remedial education, bilingual education; secondary education leading to the attainment of a high school diploma or its equivalent; counseling and assistance in attaining post-secondary education and required financial aid;

(i) Wages, benefits and need-based stipends provided to participants;

(j) Leadership development, counseling, support services, and development of employment skills;

(k) Defraying costs for the ongoing training and technical assistance needs of the recipient that are related to developing and carrying out a Youthbuild program;

(l) Job placement (including entrepreneurial training and business development), counseling, and support services for a period not to exceed 12 months after completion of training to assist participants; and

(m) *Administration.* Youthbuild funds for administrative costs may not exceed 15 percent of the total amount of Youthbuild program and project costs or such higher percentage as HUD determines is necessary to support capacity development by a private nonprofit organization.

§ 585.306 Designation of costs.

The following budget items are to be considered training or other costs under the Youthbuild implementation grant and should not be considered costs associated with acquisition, rehabilitation, or new construction for the purposes of §§ 585.307, 585.309, 585.310, and 585.311.

(a) Trainees' tools and clothing.

(b) Participant stipends and wages.

(c) On-site trainee supervisors.

(d) Construction management.

(e) Relocation costs.

(f) Legal fees.

(g) Clearance and demolition.

§ 585.307 Environmental procedures and standards.

(a) *Environmental procedures.* Applicants are encouraged to select hazard-free and problem-free properties for their Youthbuild projects. Environmental procedures apply to HUD approval of implementation grants when the applicant proposes to use Youthbuild funds to cover any costs for the lease, acquisition, rehabilitation, or new construction of real property that is proposed for housing project development. Environmental procedures do not apply to HUD

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approval of implementation grants when applicants propose to use their Youthbuild funds solely to cover any costs for classroom and/or on-the-job construction training and supportive services. For those applicants that propose to use their Youthbuild funds to cover any costs of the lease, acquisition, rehabilitation, or new construction of real property, the applicant shall submit all relevant environmental information in its application to support HUD decision-making in accordance with the following environmental procedures and standards.

(1) Before any Youthbuild implementation application that requests funds for acquisition, rehabilitation, or construction can be selected for funding, HUD shall determine whether any environmental thresholds are exceeded in accordance with 24 CFR part 50, which implements the National Environmental Policy Act (NEPA) and the related Federal environmental laws and authorities listed under 24 CFR 50.4.

(i) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct a compliance review of the issue and, if appropriate, establish mitigating measures that the applicant shall carry out for the property;

(ii) In performing its review, HUD may use previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property;

(iii)(A) The application for the Youthbuild implementation grant shall provide HUD with:

(*1*) Applicant documentation for environmental threshold review; and

(*2*) Any previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property.

(B) The applicant is encouraged to contact the local community development agency to obtain any previously issued environmental reviews for the proposed property as well as for other relevant information that can be used in the applicant documentation for the environmental threshold review. In using previous reviews by other sources, HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for any required environmental findings.

(2) HUD reserves the right to disqualify any application where one or more environmental thresholds are exceeded if HUD determines that the compliance review cannot be conducted and satisfactorily completed within the HUD review period for applications.

(3) If Youthbuild funds are requested for acquisition, rehabilitation, or construction, applicants are prohibited from committing or expending State, local or other funds to undertake property acquisition (including lease), rehabilitation or construction under this program until notification of grant award.

(b) *Environmental thresholds:* HUD shall determine whether a NEPA environmental assessment is required. Also, HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed under 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and any property acquisition (including lease), Federal environmental laws and authorities may apply when the property is:

(i) Located within designated coastal barrier resources;

(ii) Contaminated by toxic chemicals or radioactive materials;

(iii) Located within a floodplain;

(iv) A building for which flood insurance protection is required;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property.

(2) For major rehabilitation of a building and also for substantial improvement in floodplains, in addition to paragraphs (b)(1) (i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Has significant impact to the human environment;

(ii) Is a project involving five or more dwelling units severely noise-impacted; or

(iii) Affects coastal zone management.

(3) For new construction, conversion or increase in dwelling unit density, in addition to paragraphs (b)(1) (i) through (vi) and paragraphs (b)(2) (i) through (iii) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(ii) Affects a sole source aquifer;

(iii) Affects endangered species; or

(iv) Is located within a designated wetland.

(c) *Qualified data sources.* The environmental threshold information provided by applicants must be from qualified data sources. A qualified data source means any Federal, State, or local agency with expertise or experience in environmental protection (e.g., the local community development agency; the local planning agency; the State environmental protection agency; the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular property.

(d) *Minor rehabilitation* means proposed fixing and repairs:

(1) Whose estimated cost is less than 75 percent of the property value after completion;

(2) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential;

(3) That does not involve the demolition of one or more buildings, or parts of a building, containing the primary use served by the property; and

(4) That does not increase unit density more than 20 percent.

§ 585.308 Relocation assistance and real property acquisition.

The Youthbuild program is subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and implementing regulations at 49 CFR part 24. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, available from the Relocation and Real Estate Division at the address listed in this section, describes these policies and procedures. Any occupied property used in a Youthbuild program is subject to the URA regardless of the source of the property or construction funds. The URA requires recipients to provide relocation assistance to persons (families, individuals, businesses, and nonprofit organizations) that are displaced as a direct result of acquisition, rehabilitation or demolition for an assisted project. Property occupants who are not displaced also have certain rights. Therefore, if a proposed Youthbuild implementation program involves occupied property, before submitting the application the applicant should consult with staff of the Relocation and Real Estate Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7154, 451 Seventh Street, SW, Washington, DC 20410; telephone: (202) 708–0336. TDD: (202) 708–1455. Fax: (202) 708–1744. (These are not toll-free numbers.)

§ 585.309 Project-related restrictions applicable to Youthbuild residential rental housing.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for residential rental units, and where the costs for these activities are to be funded, in whole or in part, from the Youthbuild grant award, the recipient shall be required to comply with the following Youthbuild project-related restrictions for a period of not less than 10 years:

(a) *Occupancy by low- and very low-income families.* (1) For the 10 year period of the residential rental Youthbuild project, the recipient or rightful owner will be required to maintain at least a 90 percent level of occupancy for individuals and families with incomes less than 60 percent of the area median income, adjusted for family size—"the 90 percent category." The recipient or rightful owner must offer each available rental unit to the 60 percent of area median income group for an advertising period of not less than 90 days upon each vacancy occurrence throughout the 10 year period. Community-wide advertisements for tenants of this income group must be conducted.

(2) In order to maintain the financial stability of the project and to provide flexibility in averting long-term vacancies in the 90 percent category, the rightful owner is permitted, under certain circumstances described below, to execute temporary two year leases with individuals and families with incomes between 60 and 80 percent of the area median income. This temporary deviation is permitted when no qualifying tenant (with an income of 60 percent or less of median) leases the unit upon the end of the 90 day advertising period. The owner may then advertise the unit to individuals and families with incomes less than 80 percent of the area median income, adjusted for family size, for another advertisement period of 90 days. Temporary leases for tenants whose incomes are between 60 and 80 percent of the area median income (exclusive of the 10 percent allowance) shall be limited to two years. Temporary tenants are not covered by Youthbuild tenant protections regarding termination of tenancy [paragraph (b)(2) of this section], tenant selection plan [paragraph (b)(4) of this section] and tenant participation plan [paragraph (d) of this section].

(3) The remaining 10 percent of the units must be made available to and occupied by low-income families—"the 10 percent category." The income test must be conducted for both the 90 percent and 10 percent categories only at time of entry for each unit available for occupancy.

(b) *Tenant protections.* Upon submission of the implementation grant application, the applicant or rightful owner of the residential rental units covered under this paragraph shall certify to the following tenant protections:

(1) *Lease.* As part of the Youthbuild implementation grant application, the applicant or rightful owner of the property shall provide a model lease containing terms and conditions acceptable to HUD. The model lease shall become an addendum to the executed grant agreement and shall remain in force for a period of 10 years. The lease between a tenant and the owner of residential rental housing shall be for a period of not less than one year, unless otherwise mutually agreed to by the tenant and the owner, and shall contain such terms and conditions as HUD determines to be appropriate. Any change to a lease must be approved by HUD.

(2) *Termination of tenancy.* Upon submission of the implementation grant application, the applicant or other rightful owner of the property must certify that the following restrictions will be applied to all lease terminations initiated by the owner. The restrictions must state that an owner shall not terminate the tenancy or refuse to renew the lease of a tenant occupying a Youthbuild residential rental housing unit except for serious or repeated violations of the terms and conditions of the lease, or for violation of applicable Federal, State, or local laws, or for other good cause. Any termination or refusal to renew the lease must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action. With regard to leases for tenants in units controlled by public housing authorities, 24 CFR part 966 shall take precedence over this provision.

(3) *Maintenance and replacements.* Upon submission of the implementation grant application, the applicant or rightful owner of Youthbuild residential rental housing must certify that the premises will be maintained in compliance with all applicable housing quality standards and local code requirements for the 10 year period. HUD's Section 8 housing quality standards apply when no other public assistance is involved other than the Youthbuild grant. In other cases, the applicable HUD or other Federal, State or local program guidelines shall apply.

(4) *Tenant selection.* The applicant or rightful owner of Youthbuild residential rental housing must develop and adopt a tenant selection plan containing selection policies and criteria that are consistent with HUD requirements. The tenant selection plan shall remain in force for the 10 year period. Upon submission of the implementation grant application, the applicant or owner of the property must certify that the plan complies with the following HUD requirements:

(i) The plan is consistent with the purpose of providing housing for homeless and very low-income families and individuals;

(ii) The plan is reasonably related to program eligibility and the applicant's or owner's ability to perform the obligations of the lease;

(iii) The plan gives reasonable consideration to the housing needs of families that would qualify for a preference under section 6(c)(4)(A) of the United States Housing Act of 1937;

(iv) The plan provides for the selection of tenants from a written waiting list in the chronological order of their application, to the extent practicable, and for the prompt notification in writing of any rejected applicant of the grounds for any rejection; and

(v) The plan acknowledges that a family holding tenant-based assistance under section 8 of the United States Housing Act of 1937 will not be refused tenancy because of the status of the prospective tenant as a holder of such assistance.

(c) *Limitation on rental payments.* Upon submission of the implementation grant application, the applicant or other rightful owner of Youthbuild residential rental housing project involved in a Youthbuild program shall certify that tenants in each rental unit shall be not required to pay rent in excess of the amount provided under section 3(a) of the United States Housing Act of 1937.

(d) *Tenant participation plan.* The Youthbuild program shall require a tenant participation plan applicable to the rightful owner of Youthbuild residential rental housing, provided such owner is a nonprofit public or private organization. Upon submission of the implementation grant application, the nonprofit owner shall certify that the tenant participation plan is the plan to be adopted and followed for tenant participation in management decisions for the 10 year period.

(e) *Limitations on profit.* Youthbuild residential rental housing projects

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meeting the requirements of this section shall be restricted from producing profit in excess of the following limitations:

(1) *Monthly rental limitation.* The aggregate monthly rental for each eligible project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a 6 percent return on any equity investment of the project owner.

(2) *Profit limitations on partners.* A nonprofit organization receiving Youthbuild assistance for a residential rental housing project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purposes of providing housing for low- and moderate-income families. Profit-motivated partners in a nonprofit partnership may receive:

(i) Not more than a 6 percent return on their equity investment from project operations; and

(ii) Upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(f) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild residential rental housing project(s) meeting the requirements of this section. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(g) *Ten year restriction.* The restrictions listed in paragraphs (a) through (f) of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for all Youthbuild residential rental housing projects receiving Youthbuild assistance.

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§ 585.310 Project-related restrictions applicable to Youthbuild transitional housing for the homeless.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves of transitional housing units, and where the costs for these activities are funded, in whole or in part, with Youthbuild grant funds, the housing project shall be required to comply with the following Youthbuild project-related restrictions:

(a) *Limitations on profit.* (1) Youthbuild transitional housing projects meeting the requirements of this section shall be restricted from producing profit in excess of the following limitations:

(i) *Monthly rental limitation.* The aggregate monthly rental for each Youthbuild project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a six (6) percent return on any equity investment of the project owner.

(ii) *Profit limitations on partners.* A nonprofit organization receiving Youthbuild assistance for a housing project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purposes of providing housing for low- and moderate-income families.

(2) Profit-motivated partners in a nonprofit partnership may receive:

(i) Not more than a six (6) percent return on their equity investment from project operations; and

(ii) Upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

(b) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild transitional housing projects meeting the requirements of this section. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(c) *Program requirements for Transitional housing.* (1) Youthbuild transitional housing projects meeting the requirements of this section shall adhere to the requirements regarding service delivery, housing standards and rent limitations applicable to comparable housing receiving assistance under the Transitional Housing component of the Supportive Housing Program (title IV of the Stewart B. McKinney Homeless Assistance Act).

(2) The Secretary may waive these requirements to permit the conversion of a Youthbuild transitional housing project to a permanent housing project only if such housing complies with the Youthbuild project-related restrictions for residential rental housing projects found in § 585.309.

(d) *Ten Year Restriction.* The restrictions listed in paragraphs A through C of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for a Youthbuild transitional housing project receiving Youthbuild assistance.

§ 585.311 Project-related restrictions applicable to Youthbuild homeownership housing.

Where the award of a Youthbuild implementation grant includes the eligible activities of acquisition, architectural and engineering fees, construction, or rehabilitation of homeownership housing, and where the costs for these activities are to be funded, in whole or in part, with Youthbuild grant funds, the housing project shall be required to comply with the following Youthbuild project-related restrictions:

(a) *Program compliance.* Each homeownership project meeting the requirements of this section shall comply with the requirements of the HOPE II or HOPE III programs authorized under subtitles B or C respectively of title IV of the National Affordable Housing Act.

(b) *Restrictions on conveyance.* Conveyance restrictions apply to Youthbuild homeownership housing projects meeting the requirements of this part. Ownership of the property may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner for the balance of the 10 year period.

(c) *Ten Year Restriction.* The restrictions listed in paragraphs (a) and (b) of this section shall remain in force for a period of not less than 10 years after construction completion and issuance of an occupancy permit for Youthbuild homeownership housing projects meeting the requirements of this part.

§ 585.312 Wages, labor standards, and nondiscrimination.

Sections 142 (wages and benefits), 143 (labor standards), and 167 (nondiscrimination) of the Job Training Partnership Act shall apply to Youthbuild programs as if the programs were conducted under the Job Training Partnership Act. This provision may not be construed to prevent Youthbuild recipients from using funds from non-Federal sources to increase wages and benefits under such programs, if appropriate.

§ 585.313 Labor standards.

(a) *Trainees.* Davis-Bacon prevailing wage rate requirements are not applicable to trainees on housing projects or in training programs assisted by Youthbuild grant funds, regardless of whether other Federal assistance is involved. However, where the trainees' performance of public and Indian housing work is subject to HUD-determined prevailing wage rates under Section 12 of the United States Housing Act of 1937, trainees must be paid HUD-determined wage rates; as a matter of policy, the wage rates determined by HUD to apply to Youthbuild trainees will be the trainee wage rates rather than journeyperson rates.

(b) *Laborers and mechanics other than Youthbuild Trainees.* (1) All laborers and mechanics (other than Youthbuild trainees) employed by contractors or subcontractors in any construction, alteration or repair, including painting and decorating, of housing that is assisted by a Youthbuild grant shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a through 276a–5). The employment of such laborers and mechanics on assisted housing shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333). Where these requirements are applicable, recipients, sponsors, owners, contractors and subcontractors must comply with all related Department of Labor and HUD rules, regulations and requirements.

(2) The labor standards requirements in paragraph (b)(1) of this section do not apply where a Youthbuild grant is provided solely for classroom and/or on-the-job training and supportive services for Youthbuild trainees, and the grant does not include costs for housing project development involving acquisition (including lease), rehabilitation or new construction of real properties; however, if other Federal programs provide assistance to the housing project, labor standards apply to laborers and mechanics other than Youthbuild trainees to the extent required by the other Federal programs. Applicants need to review applicable Federal regulations to determine which relevant requirements apply to their individual situations.

Subpart E—Administration

§ 585.401 Recordkeeping by recipients.

(a) Each recipient of a planning or implementation Youthbuild grant award must keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose:

(1) The amount and disposition by the recipient of the planning or implementation Youthbuild grants received, including sufficient records that document the reasonableness, accuracy and necessity of each expenditure;

(2) The amount and disposition of proceeds, if any, from financing obtained in connection with the Youthbuild program, e.g., housing sales to eligible low-income families, property sales to other public or private entities;

(3) The total cost from all sources of funding for the Youthbuild program including all educational, training, counseling, placement, and housing activities and services;

(4) The amount and nature of any other assistance, including cash, property, services, materials, in-kind contributions or other items contributed as a condition of receiving an implementation grant;

(5) Any other proceeds received for, or otherwise used in connection with, the Youthbuild program.

(6) *Participant information.* The recipient must maintain records on each Youthbuild participant, including such information as age, high school drop out status, income level, gender, employment status, and racial and ethnic characteristics.

(7) *Housing information.* If Youthbuild grant funds are used for acquisition, architectural and engineering fees, construction, rehabilitation, operating costs or replacement reserves for housing used in a Youthbuild program, the recipient must maintain records on family size, income, and racial and ethnic characteristics of families renting or purchasing Youthbuild properties.

(8) *Relocation Assistance and Real Property Acquisition.* The recipient shall maintain records sufficient to demonstrate compliance with relocation assistance and real property acquisition requirements, as described in Chapter 6 of HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. See § 585.308.

(b) Implementation grant recipients must submit reports pursuant to Section 3 regulations at 24 CFR part 135.

(c) *Access by HUD and the Comptroller General.* For purposes of audit, examination, monitoring, and evaluation, each recipient must give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received.

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§ 585.402 Grant agreement.

(a) *General.* The recipient will provide education and job training in accordance with the requirements of this part as incorporated in a grant agreement executed by HUD and the recipient.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such actions as may be appropriate, including repayment of funds that have already been disbursed to the recipient.

§ 585.403 Reporting requirements.

(a) *Quarterly Progress Reports.* Each recipient of a Youthbuild grant must submit a report on a quarterly basis. The form and substance of the quarterly progress report will be provided to recipients. The Performance Evaluation Report noted in paragraph (b) of this section will constitute the final Quarterly Report.

(b) *Performance Evaluation Report.* Each recipient of a Youthbuild grant must submit a Performance Evaluation Report on activities undertaken and completed in accordance with the grant agreement. The form and substance of the Performance Evaluation Report shall be provided to recipients.

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§ 585.404 Program changes.

(a) There are three basic types of changes that recipients may wish to make to their programs:

(1) Grant Agreement amendments.

(2) Material changes, which include, but are not limited to changes in housing sites, changes in significant participating parties, and changes in approved activities. All material changes require HUD approval.

(3) Self-implementing program changes, which may include changes in recipient staffing and content of curriculum. All self-implementing changes require documentation in the recipient's files.

(b) Approval for Grant Agreement Amendments and material changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

§ 585.405 Obligation and deobligation of funds.

(a) *Obligation of funds.* When HUD and the applicant execute a grant

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agreement, funds are obligated to carry out approved activities consistent with §§ 585.205 or 585.305 of this part and in accordance with the grant agreement.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Deobligation.* (1) HUD may deobligate all or parts of grants if the grant amounts are not expended within the term of the grant or if there is a condition of default as defined in the grant agreement.

(2) HUD may award deobligated funds to applications previously submitted in response to the most recently published NOFA, and in accordance with subpart B of this part.

§ 585.406 Primarily religious organizations.

(a) *Provision of assistance to primarily religious organizations.* (1) HUD will provide Youthbuild assistance to a recipient that is a primarily religious organization if it agrees to provide housing, educational and training activities or supportive services in a manner that is free from religious influences and in accordance with the following principles:

(i) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give employment preference to persons on the basis of religion;

(ii) It will not discriminate against any person applying for Youthbuild activities, supportive services or housing on the basis of religion and will not limit such activities or services or give preference to persons on the basis of religion; and

(iii) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing, education, training activities, or support services.

(2) HUD will provide Youthbuild assistance to a recipient that is a primarily religious organization if the assistance will not be used to construct or rehabilitate a property to be owned by the recipient, except as described in paragraph (b) of this section.

(b) *Rehabilitation and new construction of structures owned by a primarily religious organization.* Grant funds may be used to rehabilitate or newly construct a structure owned by a primarily religious organization if the following conditions are met:

(1) The structure (or portion of the structure) that is to be rehabilitated or newly constructed with HUD assistance has been leased to a recipient that is an existing or newly established wholly secular organization which may be established by the primarily religious organization under the provision of paragraph (c) of this section;

(2) The HUD assistance is provided to the wholly secular organization (and not the primarily religious organization) to make the improvements;

(3) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion;

(4) The lease payments paid to the primarily religious organization do not exceed the fair market rent of the structure before any rehabilitation was completed;

(5) The portion of the costs of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the primarily religious organization;

(6) The primarily religious organization agrees that, if the recipient does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the secular organization, and the secular organization will remit the amount to HUD.

(c) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.*

(1) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a recipient. The wholly secular organization may be eligible to receive other forms of assistance available under this part.

(i) The wholly secular organization must agree to provide housing and support services in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (a) of this section.

(ii) The wholly secular organization may enter into a contract with the primarily religious organization to operate the housing or to provide support services. In such a case, the primarily religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (a) of this section.

(iii) The rehabilitation or new construction grants are subject to the requirements of paragraph (a) of this section.

(2) HUD will not require the primarily religious organization to establish the wholly secular organization before the selection of its application. In such a case, the primarily religious organization may apply on behalf of the wholly secular organization. The application will be reviewed on the basis of the primarily religious organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the wholly secular organization after formation. Access to the housing site is demonstrated if the primarily religious organization provides a commitment to transfer control of the site to the wholly secular organization after its formation. If such an application is selected for funding, the obligation of funds will be conditioned upon the establishment of a wholly secular organization that meets the definition of private nonprofit organization in § 585.4.

Subpart F—Applicability of Other Federal Requirements

§ 585.501 Application of OMB Circulars.

(a) The policies, guidelines and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance and use of assistance under the program by applicable entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes or this part. 24 CFR part 84 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations), OMB Circular A–122 (Cost Principles Applicable to Grants, Contracts and other Agreements with Nonprofit Institutions), and, as applicable, OMB Circular A–21 (Cost Principles for Educational Institutions) apply to the acceptance and use of assistance by covered organizations, except where inconsistent with the provisions of NAHA, other Federal statutes or this part. Recipients are also subject to the audit requirements of 24 CFR part 44 (Audit Requirements for State and Local Governments) and 24 CFR part 45 (Audit Requirements for Institutions of Higher Education and other Nonprofit Institutions), as applicable. HUD may perform or require additional audits as it finds necessary or appropriate.

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.

§ 585.502 Certifications.

In addition to the standard assurances of compliance with Federal rules and OMB Circulars contained in applications for Federal grant assistance, applicants must also make the following certifications:

(a) *Consolidated Plan.* (1) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved Consolidated Plan in accordance with 24 CFR part 91 for the current year and must submit a certification that the proposed activities are consistent with the HUD-approved Consolidated Plan.

(2) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction or jurisdictions in which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's current HUD-approved Consolidated Plan. A required certification must be made by the unit of general local government if it is required to have, or has, a Consolidated Plan. Otherwise the certification may be made by the State.

(3) The Insular Areas of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands are not required to have a Consolidated Plan or to make a Consolidate Plan certification. An application by an Indian tribe or other applicant for a Youthbuild program that will be located on a reservation of an Indian tribe does not require a certification by the tribe or State. However, where an Indian tribe or an Indian Housing Authority (IHA) is the applicant for a Youthbuild program that will not be located on a reservation, the requirement for a certification by the jurisdiction or jurisdictions in which the Youthbuild program will be located under the preceding paragraph applies.

(b) *Fair Housing and Equal Opportunity.* A certification that the applicant is in compliance and will continue to comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing, or, in the case of a Youthbuild application from an Indian tribe or an Indian Housing Authority (IHA), a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(c) *Drug-free workplace.* A certification that the applicant will comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and HUD's implementing regulations at 24 CFR part 24, subpart F.

(d) *Employment opportunities.* A certification that the applicant will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 17017), as implemented by 24 CFR part 135. Section 3 requires that employment and other economic opportunities generated by HUD assisted housing and community development programs shall, to the greatest extent feasible, be directed toward section 3 residents and business concerns.

(e) *Anti-lobbying.* In accordance with the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The Byrd Amendment) and the implementing regulations at 24 CFR part 87, applicants for and recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Applicants and recipients must also disclose where nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. Substantial monetary penalties may be imposed for failure to file the required certification or disclosure.

(f) *Relocation Assistance and Real Property Acquisition.* A certification that the applicant will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24 and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. See § 585.308.

(g) *Use of Housing.* A certification that the housing to be produced in conjunction with the Youthbuild program is to be provided for the homeless and low- and very low-income families.

(h) *Lead-Based Paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR part 35.

(i) *State and Local Standards.* A certification that all educational programs and activities supported with funds provided under this subtitle shall be consistent with applicable State and local educational standards. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in such programs shall be consistent with applicable State and local educational standards.

(j) *Labor Standards.* A certification that the applicant and related parties will comply with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a through 276a-5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333), and HUD Handbook 1344.1, Revision 1, Federal Labor Standards in Housing and Community Development Programs, as applicable, available from the Office of Assistant to the Secretary for Labor Relations, room 7118, 451 Seventh Street, SW., Washington, DC 20410; Telephone (202) 708–0370; FAX, (202) 619–8022; TDD, (202) 708–1455. (These are not toll-free numbers).

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§ 585.503 Conflict of interest.

(a) (1) In addition to the conflict of interest requirements in 24 CFR parts 84 and 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or cooperating entity named in the application and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire an ownership interest.

(2) *Exception.* HUD may grant an exception to the exclusion in paragraph (a)(1) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Youthbuild program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local law. In determining whether to

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grant a requested exception, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Youthbuild program that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a)(2) of this section;

(vi) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(b) [Reserved]

§ 585.504 Use of debarred, suspended, or ineligible contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

Dated: February 7, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4119 Filed 2–17–95; 8:45 am]

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Part IV

Securities and Exchange Commission

17 CFR Parts 275 and 279
Disclosure By Investment Advisers Regarding Soft Dollar Practices; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. 34–35375; IA–1469; S7–5–95]

RIN 3235–AG36

Disclosure by Investment Advisers Regarding Soft Dollar Practices

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Commission is proposing for comment a new rule and form under the Investment Advisers Act of 1940 that would require certain investment advisers to provide clients with an annual report regarding their use of client brokerage. The proposed report would include disclosure about an adviser's use of its clients' brokerage commissions during the previous year, including information about research and other services obtained by the adviser with those commissions. The proposed annual report is intended to provide investment advisory clients with important information about the brokerage commissions they pay and their advisers' receipt of "soft dollar" benefits from those commissions.

DATES: Comments should be received on or before May 19, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–5–95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Eric C. Freed, Special Counsel, or Robert E. Plaze, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment:

(1) rule 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) ("Advisers Act"), which would require an investment adviser registered or required to be registered under the Advisers Act to deliver to its clients an annual report on the adviser's direction of client brokerage transactions and its receipt of research and other services in connection with those transactions; and

(2) Form ADV–B under the Advisers Act, which would set forth the information required to be included in the annual report.

Executive Summary

The Commission is proposing a new rule and form under the Advisers Act to require each investment adviser ("adviser"), registered or required to be registered under the Advisers Act, that has the discretion to direct client brokerage transactions and receives services other than execution in exchange for that brokerage, to provide its clients with a report that would contain information about its use of client brokerage. The report would disclose for the adviser's most recently completed fiscal year, (1) the twenty brokers to which the adviser directed the largest amounts of commissions and certain other transaction-related payments (collectively, "commissions"), (2) the three brokers substantially all of whose services for the adviser were execution services ("execution-only brokers") to which the adviser directed the largest amounts of commissions, (3) the aggregate amount of commissions directed by the adviser to each broker listed and the percentage of the adviser's total discretionary brokerage this amount represents, (4) the average commission rate paid to each broker listed, and (5) for each broker other than an execution-only broker, information concerning products or services obtained from the broker. The report would also disclose the percentages of the adviser's total commissions that are directed to execution-only brokers, to other brokers, and at the request of clients. The report would require only information about an adviser's use of client brokerage on an aggregate basis; it would not require separate information about the brokerage of the adviser's various clients. The report would be provided to existing advisory clients annually and to prospective advisory clients no later than the time that an advisory agreement is entered into.

I. Background

Soft dollar practices are arrangements under which products or services other than execution of securities transactions ("soft dollar services") are obtained by an adviser from or through a broker in exchange for the direction by the adviser of client brokerage transactions to the broker.[1] Soft dollar practices are common in the institutional brokerage market. According to an informal annual survey of investment advisers and other institutions, nearly ninety percent of these institutions engage in soft dollar arrangements, and more than forty percent of commissions are directed primarily for the purpose of obtaining research services.[2]

Soft dollar practices originally developed as a means by which brokers provided discounts on brokerage commissions that were fixed pursuant to exchange and commission rules. In 1975, the Commission prohibited fixed commission rates[3] and, later that year, Congress codified the Commission's action.[4] After the Commission abolished fixed rates, concerns were raised whether the soft dollar practices that had developed in the context of fixed rates would continue to be consistent with various state and federal laws, including the Advisers Act.[5]

Underlying these concerns is an adviser's fundamental obligation under the Advisers Act (and state law) to act in the best interest of its clients.[6] This duty requires the adviser to obtain best execution of client transactions,[7] and precludes the adviser from using client assets for its own benefit or the benefit of other clients, at least without client consent.[8] Upon the Commission's eliminating fixed commission rates, some argued that an adviser could be deemed to have violated this duty if the adviser caused a client's account to pay anything but the lowest commission rates. If this view was upheld, soft dollar arrangements could have been effectively precluded by the decision to eliminate fixed commission rates.

[1] See Securities Exchange Act Rel. No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1986)] ("Release 23170") at § I; Robert J. Moran & Cathy G. O'Kelly, Soft Dollars and Other Traps for the Investment Adviser, 1 DePaul Bus. L.J. 45, 45 n.5 (1989).

[2] Greenwich Associates, Soft-Dollars: Opportunities and Challenges (special presentation of May 10, 1994); Greenwich Associates, Institutional Equity Investors 1994 (statistical supp.) 3, 17.

[3] Securities Exchange Act Rel. No. 11203 (Jan. 23, 1975) (40 FR 7394 (Feb. 20, 1975)).

[4] Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 97, 107–08 (enacting Section 6(e)(1) of the 1934 Act (15 U.S.C. 78f(e)(1))).

[5] S. Rep. No. 75, 94th Cong., 1st Sess. 70 (1975).

[6] *See SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963).

[7] *Delaware Management Co.*, 43 S.E.C. 392, 396 (1967). An adviser is obligated to use reasonable diligence to select a broker who will "execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is most favorable under the circumstances." Securities Exchange Act Rel. No. 23170 (Apr. 23, 1986) [51 FR 16004 (Apr. 30, 1994)] ("Release 23170") at § V (citing *Kidder, Peabody & Co.*, 43 S.E.C. 911, 915 (1968)). An adviser should consider the full range and quality of the broker's services, including the value of research received, in assessing whether a broker will provide best execution. *Id.*

[8] Restatement (Second) of Trusts § 170 comment a, § 216 (1959).

Congress, in codifying the abolition of fixed commission rates, responded to these concerns by enacting Section 28(e) of the Securities Exchange Act of 1934 (the "1934 Act") [15 U.S.C. 78bb(e)], which provides a safe harbor for certain soft dollar arrangements.[9] Section 28(e) provides, in pertinent part, that an adviser with investment discretion over an account will not be deemed to have acted unlawfully or to have breached its fiduciary duty by causing the account to pay a higher commission to a broker that provides research benefiting the adviser's accounts. To rely on the Section 28(e) safe harbor, an adviser must determine in good faith that the commissions paid are reasonable in relation to the value of the brokerage and research services provided, either in terms of the particular transaction or the adviser's overall responsibilities towards its discretionary accounts.[10]

Section 28(e) modifies a fiduciary's strict duty to act in the best interest of each client with respect to the management of each client's assets. Thus, it permits an adviser to cause a client to pay higher commissions than otherwise are available to obtain research that may not be used exclusively for the benefit of the client or used to benefit the client at all. Section 28(e), however, does not afford a safe harbor with respect to all conflicts of interest between the adviser and its clients that may arise from soft dollar arrangements. For example, soft dollar arrangements may cause an adviser, in order to obtain soft dollar services, to violate its best execution obligations by directing client transactions to brokers who could not adequately execute the transactions. Soft dollar arrangements also may give advisers incentives to trade client securities inappropriately to generate credits for soft dollar services.[11]

Soft dollar practices also diminish the ability of a client to evaluate the expenses it incurs in obtaining portfolio management services and may hinder the ability of the client to negotiate fee agreements, because the costs of soft dollar services are "hidden" from investors in brokerage commissions. By permitting advisers to use their clients' transactions to pay for research services that they otherwise would have to purchase with "hard dollars," soft dollar arrangements permit advisers to charge fees that do not fully reflect the cost of portfolio management. Advisers that do not engage in soft dollar arrangements may be put at a competitive disadvantage if they pay for services with hard dollars and attempt to pass the cost of these services on to clients through higher fees.

Congress recognized the conflicts that soft dollar practices present and provided in section 28(e) authority for the Commission to require advisers to disclose to their clients their policies and practices with respect to the use of client commissions.[12] The Commission has never adopted rules under section 28(e),[13] but has instead required certain disclosure in Part II of Form ADV, which specifies the content of the disclosure document or "brochure" that an adviser is required to provide to clients before entering into advisory relationships.[14] If soft dollar arrangements are a factor in selecting brokers to effect client transactions, the brochure must disclose the nature of the adviser's soft dollar practices, including: (i) the services that the adviser obtains through soft dollar arrangements; (ii) whether clients may pay higher commissions ("pay up") as a result of the arrangements; (iii) whether soft dollar services are used to benefit all client accounts or only those accounts the brokerage of which was used to purchase the services; and (iv) any procedures that the adviser uses to allocate brokerage.[15]

Two broker-dealers, Goldman, Sachs & Co. and Morgan Stanley Group Inc., themselves providers of research services to advisers, have strongly criticized the effectiveness of current disclosure requirements.[16] Current disclosure primarily focuses on the policies and practices that the adviser intends to follow with respect to the use of client brokerage.[17] This disclosure does not, Goldman, Sachs and Morgan Stanley assert, adequately disclose to clients the extent to which an adviser has soft dollar commitments or the specific benefits that accrue to the adviser from the use of the client brokerage. These brokers have proposed that the Commission adopt a requirement that advisers periodically report to clients the soft dollar benefits that they have received and the specific value of those benefits, as well as certain information about how the brokerage of each client was directed (the "Goldman/Morgan Proposal").[18] Other participants in soft dollar arrangements, organized by the Alliance in Support of Independent Research, have argued that current client disclosure by advisers is adequate and that the Goldman/Morgan Proposal is anticompetitive and discriminatory.[19]

[9] Securities Acts Amendments of 1975, Pub. L. No. 94–29, 89 Stat. 97, 161–62.

[10] The Commission has stated that a product or service may legitimately be considered a "brokerage or research service" covered by the safe harbor if it provides "lawful and appropriate assistance to the [adviser's] decision-making process." Release 23170, *supra* note 1. The Commission's Division of Market Regulation has addressed the types of transactions that are afforded the protection of the safe harbor. *See* U.S. Department of Labor (pub. avail. July 25, 1990) (safe harbor does not extend to principal, riskless principal and futures transactions); Hoenig & Co. (pub. avail. Oct. 15, 1990) (same); Instinet Corporation (pub. avail. Jan. 15, 1992) (safe harbor does apply to agency transactions in equity securities on a computer-based real time market information and brokerage system and after-hours order matching system).

[11] See *Securities and Exchange Commission* v. *Galleon Capital Management*, Litigation Rel. No. 14315 (Nov. 1, 1994). The Commission's complaint in *Galleon*, in addition to alleging excessive trading in order to generate soft dollar credits, alleged that the adviser requested brokers to make soft dollar payments to a consulting firm, and that these payments eventually were rebated to the adviser. See also Letter from Bradford P. Schaaf, Chairman, and Victor J. Fontana, President and Chief Executive Officer, Autranet, Inc. to Barry P. Barbash, Director, Division of Investment Management and Brandon Becker, Director, Division of Market Regulation (Nov. 10, 1994) ("Autranet Letter") (proposing that the Commission prohibit a broker from requiring an adviser, by contract or understanding, to commit to direct any specified amount of commissions to the broker in order to receive soft dollar services).

[12] Section 28(e)(2) (15 U.S.C. 78bb(e)(2)).

[13] In 1976, the Commission proposed rule 28e2–1 under the 1934 Act, but the rule was never adopted. See note 41 infra.

[14] Rule 204–3 under the Advisers Act (17 CFR 275.204–3) requires that a registered investment adviser deliver the brochure to a prospective client before entering into an advisory contract with the client, and, annually thereafter, provide or offer to provide the client with the brochure. The Commission is not at this time proposing to amend the Form ADV requirements regarding disclosure of soft dollar arrangements. The Commission, however, is considering whether changes to these requirements would be appropriate, and may propose changes in connection with future revisions to Form ADV.

[15] Item 12 of Part II of Form ADV. Registered investment companies are required to include similar disclosure in their Statements of Additional Information. See, e.g., Item 17 of Form N–1A (17 CFR 239.15A, 274.11A).

[16] See Future of the Stock Market: Soft Dollars. Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 1st Sess. (1993) ("1993 Hearings") (testimony of David M. Silfen, Partner, Goldman, Sachs & Co. and Anson M. Beard, Jr., Managing Director, Morgan Stanley Group Inc.).

[17] The Commission has instituted a number of enforcement actions against advisers based, at least in part, on the failure to disclose soft dollar arrangements adequately. See, e.g., Securities and Exchange Commission v. Galleon Capital Management, supra note 11; Kingsley, Jennison, McNulty & Morse, Inc., Investment Advisers Act Rel. No. 1396 (Dec. 23, 1993); DeMarche Associates, Investment Advisers Act Rel. No. 1392 (Nov. 23, 1993); Jack Allen Pirrie, Investment Advisers Act Rel. No. 1284 (July 29, 1991); Robert Michael Lee, Investment Advisers Act Rel. No. 1249 (Sept. 17, 1990); Patterson Capital Corp., Investment Advisers Act Rel. No. 1235 (June 25, 1990).

[18] The Goldman/Morgan Proposal will be placed in the public comment file for the Commission's proposal.

[19] See Letter from The Alliance in Support of Independent Research to Jonathan G. Katz,

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The difference in the views of these two groups may reflect the differences in the ways the two groups provide research services to advisers and the effect that the Goldman/Morgan Proposal would have on each group. Goldman, Sachs and Morgan Stanley operate as "full service brokers" and provide a variety of execution, research and related services to clients. An adviser who executes client securities transactions through these firms typically receives research services developed by the firms ("proprietary" soft dollar services), much of which is provided without being directly requested by the adviser. The cost of such services generally are bundled in the overall commission charged by the full service broker. In contrast, a "soft dollar broker" typically provides advisers with services prepared or produced by parties other than the broker ("third-party" soft dollar services) in exchange for the allocation of specified amounts of commission dollars.[20] In these types of arrangements, an explicit price denominated in commission dollars, rather than in hard dollars, is typically attached to the research.[21]

The Goldman/Morgan Proposal would affect the two groups of brokers differently. Because proprietary soft dollar services are not offered for a specific price in commission dollars, under the Goldman/Morgan Proposal, disclosure would be required only about the price and value of third-party soft dollar services. Soft dollar brokers argue that if the Commission required more extensive disclosure of third-party soft dollar services than proprietary soft dollar services, advisory clients might be led to believe that advisers derive benefits from soft dollar brokers at the clients' expense that they do not derive from full service brokers, when, in fact, both types of firms confer benefits on advisers.[22] As a result, advisers might be discouraged from using soft dollar brokers.

Representatives of some investment advisers have asserted that current disclosure requirements are adequate.[23] According to these advisers, clients rarely request information about the soft dollar benefits that the adviser receives, and those that are interested currently may obtain the information on request.[24] Other investment advisers, however, argue that the nature of the conflicts involved in soft dollar arrangements warrant more extensive client disclosure than is currently required.[25]

The Commission staff considered issues related to soft dollars in its "Market 2000" report on the equity markets released in January 1994.[26] In that report, the staff recommended that quantifiable information about soft dollar services be required to be provided to advisory clients.[27] The report also stated that "[m]ost importantly * * * any new disclosure requirements should apply equitably. Thus, research and other services obtained either from (full service) firms or (soft dollar) firms should be subject to disclosure."

II. Discussion

The Commission believes that, in light of the conflicts of interest presented by soft dollar arrangements, additional disclosure about these practices may be warranted. While current disclosure may provide sufficient notice to a client that the adviser has these conflicts, it may not provide the client with sufficient information to permit it to assess the extent to which the adviser obtains soft dollar services or pays up for those services, or the types of services that the adviser obtains through soft dollar arrangements. Enhanced disclosure may provide existing clients with information useful in negotiating limits on the use of their brokerage, and enable prospective clients to make better informed choices of advisers.

The Commission is therefore proposing that certain registered advisers be required to provide clients with annual reports setting forth certain information about their use of client brokerage and the soft dollar services each adviser received during its most recently completed fiscal year.[28] The proposal is intended to provide an advisory client with information that can be used to evaluate the extent to which the client benefits from the adviser's brokerage practices, the extent to which the adviser benefits, and whether the client should attempt to limit the adviser's use of its brokerage. Consistent with the recommendations of the staff in the Market 2000 report, the proposed disclosure requirements would not impose different requirements on third-party and proprietary soft dollar arrangements.

A. The Annual Report in General

The Commission is proposing a new rule under the Advisers Act, rule 204–4, that would require any adviser, registered or required to be registered under the Advisers Act, that has brokerage discretion[29] over any client account and that receives soft dollar services to deliver an annual report to clients on its use of client brokerage. The contents of the annual report would be specified in new Form ADV–B.

The core of the annual report would be a table disclosing information regarding the adviser's direction of client brokerage. The table would list the twenty brokers other than execution-only brokers ("research brokers") to which the adviser directed the greatest amount of client commissions,[30] and the three execution-only brokers to which the adviser directed the greatest amount of client commissions during its most recent fiscal year.[31] For each broker listed, the table would disclose: the aggregate amount of commissions directed by the adviser to the broker; the percentage of the adviser's discretionary brokerage commissions that this represents; the average commission rate (in cents per share) paid to the broker; and a description of the soft dollar services provided by the broker.[32]

The table would provide an overview of the brokers used by an adviser to execute client transactions, the commissions charged by the brokers, and the soft dollar services received from research brokers. This disclosure is intended to assist an advisory client in evaluating the adviser's use of its brokerage, including whether the client could be paying lower commissions, whether the adviser is obtaining soft dollar services that can be used to benefit the client, and whether the advisory fee charged to the client is appropriate in light of the services that the adviser pays for with client commissions. Institutional clients using the services of more than one adviser and prospective clients considering different advisers will be able to use the table to compare advisers' use of brokerage, including the commission rates that they negotiate and the types of services that they receive. The disclosure regarding execution-only brokers would assist clients in making these determinations by providing information about the availability of brokerage alternatives, and, by implication, the effect that soft dollar services may have on commission rates.[33]

The table would be followed by certain data concerning the adviser's direction of brokerage: the percentages of the adviser's total brokerage that are directed (1) by the adviser to research brokers, (2) by the adviser to execution-only brokers, and (3) pursuant to specific client instructions.[34] This data would provide clients with an overall picture of how the adviser directs brokerage.

B. Disclosure of Brokers

As noted above, the report would be required to include information about twenty research brokers and three execution-only brokers.[35] Limiting the required disclosure to this number of brokers is intended to result in reports that provide useful information in a relatively concise manner. Comment is requested whether the proposed numerical thresholds are appropriate. Comment is also requested whether, as an alternative, disclosure should be required about brokers to which the adviser directed more than a specified percentage of its brokerage, such as one percent.

For the purposes of the amendments, a broker would be considered an "execution-only" broker if substantially all of the services that the broker provides to the adviser are execution services, *i.e.*, effecting securities transactions and performing functions incidental to or required in connection with effecting those transactions.[36] Consequently, a broker would not be permitted to be considered an execution-only broker if it provided any significant amount of soft dollar services to the adviser, even if the services were not solicited or used by the adviser.[37] If a broker provided only execution services to an adviser, however, the adviser would include the broker as execution-only even if the broker provided additional services, such as research, to its other customers. The definition of execution-only broker would include automated trading systems (e.g., the Instinet and Lattice systems) if the adviser received only execution and execution-related services as a result of using the system, regardless of whether the system itself is required to be registered as a broker-dealer under the 1934 Act.[38]

An adviser that did not utilize any research brokers or that did not utilize any execution-only brokers would be required to so state under the appropriate heading in the table.[39] An adviser that directed client commissions to fewer than twenty research brokers and/or fewer than three execution-only brokers would be required to disclose under the appropriate headings those brokers to which it did direct client commissions. As a result, an adviser's annual report would always include some reference to the existence of execution-only brokers. Comment is requested whether there are better ways to disclose to clients the availability and cost of brokerage alternatives. For instance, comment is requested whether an adviser should be required to disclose execution-only brokers that offered to execute client transactions. Similarly, comment is requested whether the table should include

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Secretary, Securities and Exchange Commission (Oct. 17, 1994), Commission File No. S7–22–94 ("Alliance Letter"); see also Autranet Letter, *supra* note 11. The Alliance in Support of Independent Research is "a group of broker-dealers, money managers and research firms sharing a common interest in fostering a favorable regulatory environment in which independent research services and products may be furnished to the money management community."

[20] In 1980, the Commission stated that research provided through third-party arrangements falls within Section 28(e) of the Exchange Act, even if the money manager participates in selecting the research services provided to it and the research is delivered directly to the money manager by the third party. Securities Exchange Act Rel. No. 17371 (Dec. 12, 1980) (45 FR 83707 (Dec. 19, 1980)). The Section 28(e) safe harbor is not available to third-party soft dollar arrangements unless, among other things, the broker is obligated to the third party to pay for the services. Release 23170, *supra* note 1, at § III; *Kingsley, Jennison, McNulty & Morse, Inc.*, *supra* note 17.

[21] Some full service brokers also will enter into third-party soft dollar arrangements with advisers.

[22] See Alliance Letter, *supra* note 19.

[23] See, e.g., 1993 Hearings, *supra* note 16 (statement of Holly A. Stark, Senior Vice President, Dalton, Greiner, Hartman, Maher & Co.).

[24] Many pension plans require some form of soft dollar reporting from their money managers, primarily in response to a pronouncement of the Department of Labor, the principal federal regulator of employee benefit plans under the Employee Retirement Income Security Act of 1974 ("ERISA"), concerning the ongoing duty of plan fiduciaries to monitor the use of soft dollars by managers. See ERISA Technical Release No. 86–1.

Section 15(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(c)) requires the directors of a registered investment company to request and review, and the company's adviser to supply, such information as may reasonably be necessary to evaluate the terms of the advisory contract between the adviser and the investment company. As discussed above, soft dollar arrangements may bear upon the reasonableness of advisory fees. See text accompanying note 12 *supra*. Investment company advisers that engage in soft dollar arrangements therefore must provide their boards of directors with information regarding soft dollar arrangements. See Release 23170, *supra* note 1, at § IV.B.3.

Various institutional investors have expressed their views on soft dollar arrangements. See 1993 Hearings (statement of Fred G. Weiss, Chairman, Financial Executive Institute's Committee on Investment of Employee Benefit Assets ("CIEBA")). Mr. Weiss stated that CIEBA, which represents 150 corporate benefit plan sponsors with assets of approximately $600 billion, was unable to develop a clear consensus on whether soft dollar practices were desirable or not. CIEBA did, however, call for more comprehensive reporting of soft dollar arrangements at a firm-wide level to supplement the client-specific information that most of its members currently receive. Other institutional investors believe that current disclosure is adequate. See 1993 Hearings (written statement of State Board of Administration of Florida). In addition, the Institutional Investors Committee of the National Association of Securities Dealers, Inc. ("NASD Committee"), which includes representatives of institutional investors, advisers, and brokerage firms, submitted a recommendation to the Commission's staff for additional soft dollar disclosure. The NASD Committee's recommendation was approved by the NASD's Board of Governors. The NASD Committee's recommendation will be placed in the public comment file for the Commission's proposal.

[25] See Letter from Louis R. Cohen and Marianne K. Smythe, Wilmer, Cutler & Pickering to Jonathan G. Katz, Secretary, Securities and Exchange Commission (Oct. 17, 1994) (on behalf of Investors Research Corp.) ("Investors Research Letter"), Commission File No. S7–22–94.

[26] See U.S. Securities and Exchange Commission, Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments (Jan. 1994).

[27] *Id.* at V–15.

[28] The proposed amendments would not require that advisers provide each client with information about how that client's transactions were directed. See Section II.F infra.

[29] The definition of "brokerage discretion" is discussed at notes 58–59 and accompanying text infra.

[30] For the purposes of the amendments, "commissions" would include amounts of mark-ups and mark-downs on principal transactions if those amounts are included on the confirmation of the transaction required under rule 10b–10 under the 1934 Act. See Section II.E infra. These mark-ups and mark-downs, however, are not commissions for purposes of Section 28(e). See note 10 supra.

[31] The definition of "execution-only broker" is discussed at notes 36–38 and accompanying text infra.

[32] Items 2–3 of proposed Form ADV–B. For purposes of determining the amount of commissions and the corresponding percentage of the adviser's discretionary brokerage that this amount represents, sales loads on transactions in investment company shares would be considered commissions. Because sales loads typically are not calculated on a cents per share basis and could potentially distort the average commission rate data, sales loads would not be considered in calculating average commission rates. Instruction 3 to Item 2 of proposed Form ADV–B.

[33] The Commission recognizes that the use of execution-only brokers would not be appropriate or possible in many circumstances. The proposed disclosure about execution-only brokers is not intended to imply that such brokers could have been used in all circumstances. Furthermore, an adviser would be permitted to explain its policies regarding the use of execution-only brokers in a narrative portion of the annual report. See General Instruction 6 to Proposed Form ADV–B.

[34] Item 4 of proposed Form ADV–B.

[35] For purposes of the annual report, a "broker" would include a bank that is not registered as a broker-dealer under the 1934 Act. Instruction 1 to Item 2 of proposed Form ADV–B.

[36] Instruction to Item 3 of proposed Form ADV–B. The definition of execution-only broker is derived from Section 28(e)(3)(C) of the 1934 Act [15 U.S.C. 78bb(e)(3)(C)]. Under that section, custody of securities is a function incidental to effecting a transaction in the securities.

[37] A broker would be permitted to be considered an execution-only broker if it provided a minimal amount of soft dollar services to the adviser, such as a single research report or a single contact with a securities analyst.

[38] Instruction to Item 3 of proposed Form ADV–B. Typically, the sponsor of an automated trading system will be required to be registered as a broker-dealer under the 1934 Act. An automated trading system would be included in the definition of broker in Form ADV–B if a fee is charged for using the system, regardless of the basis for the fee (*e.g.* a flat usage fee or transaction-based fees).

[39] Items 2 and 3 of proposed Form ADV–B.

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disclosure regarding *all* brokers used by the adviser.[40]

Comment is requested generally on the definition of an execution-only broker, and whether the proposal's classification of brokers into two types, execution-only and all others, is appropriate or practicable. Instead of classifying brokers by type, the Commission considered proposing that advisers be required to classify brokers or specific trades based upon the purposes for which the trades were directed to the broker (e.g., execution or research). Under this approach, trades directed to a broker that provided soft dollar services could be considered to be directed for the purposes of execution if the services were a minimal factor in directing the brokerage. The Commission is not proposing this approach because determining the purposes for which brokers are used or individual trades are directed may be impracticable and burdensome.[41] The proposed approach, which would not permit an adviser to treat a broker from whom it receives significant soft dollar services as an execution-only broker, seeks to reduce the burden on advisers by providing a more objective basis for classifying brokers. Nevertheless, comment is requested whether the annual report should require advisers to classify brokers or trades by the purposes for which the adviser directed the brokerage.

C. Disclosure of Products and Services Received

The annual report would describe the soft dollar services received by the adviser from each research broker listed. Except as discussed below, soft dollar services would be required to be identified specifically.[42] The producer of a third-party soft dollar service would be identified unless its name was evident from the name of the product. This information is intended to permit a client to assess whether it benefits from the soft dollar services that the adviser receives and, consequently, whether it should attempt to limit the adviser's use of its brokerage.

In many cases, an adviser receives research reports from a broker or is given access to the broker's securities professionals in exchange for the direction of brokerage. An adviser would not be required to list separately every report that it received or each professional with whom it had contact. Instead, an adviser would be permitted to refer to these services generically according to the following categories: (1) Analyses and reports on specific securities, issuers or industries, (2) political or economic analyses or reports, or (3) access to securities analysts.[43] All other services, including computer hardware, software, databases, and on-line services, financial or other publications available by subscription, and any products or services falling outside the scope of Section 28(e) of the 1934 Act, would be required to be identified specifically.

Comment is requested whether soft dollar services should be identified in this manner. Should the Commission require more specific disclosure of research reports or access to securities analysts or other professionals, or permit general descriptions of other services? Comment is requested whether, either in lieu of or in addition to separate identification of the services received, soft dollar services should be required to be classified into specified categories, and, if so, what those categories should be.[44]

In addition to requiring a description of the soft dollar services received, the Goldman/Morgan Proposal would have required that an adviser disclose the price in commission dollars and fair market value of each third-party soft dollar service (which typically will be provided at an explicit price). As noted above, the Goldman/Morgan proposal would not require this disclosure regarding proprietary soft dollar services, as these services are not explicitly assigned a price. Price and fair value information may be useful as an expression of the value of the soft dollar services obtained by the adviser.[45] The Commission is concerned, however, that unless the values of proprietary soft dollar services are also included in the report, the information provided to the client would be incomplete and may distort client understanding about the benefits that advisers receive through client brokerage. Clients, for example, may incorrectly believe that soft dollar services are not a consideration in an adviser's direction of client brokerage to full service brokers or that third-party soft dollar services are of greater value (either to advisers or clients) than proprietary soft dollar services. Moreover, the Goldman/Morgan Proposal may provide an investment adviser an incentive to direct brokerage to a full service broker rather than a soft dollar broker for the same types of soft dollar services, simply because of differing client reporting requirements. This consequence may not be in the best interests of advisory clients and may be unfair to soft dollar brokers. Thus, consistent with the staff's recommendations in the Market 2000 report, the Commission is not proposing that only third-party soft dollar services be valued.

The Commission also considered requiring advisers to report the fair market value of all soft dollar services, regardless of their source. Because there often is no agreed upon price for proprietary soft dollar services, their fair market value may not readily be ascertainable. One approach might be to require advisers to disclose the cost to the broker of producing proprietary soft dollar services. The cost of producing services, however, may not reflect their fair market value, and an adviser may not be able to verify cost information provided by brokers.[46] Alternatively, the value of soft dollar services to the adviser receiving them could be

[40] In order to keep the report at a manageable length, an adviser could be permitted merely to indicate whether or not it received soft dollar services, rather than to identify the services received, from brokers that were not among those it used most frequently (e.g., the top twenty).

[41] In 1976, the Commission proposed rule 28e2–1 under the 1934 Act, which would have required advisers to make certain disclosures to clients concerning soft dollar practices in a separate annual report. Securities Exchange Act Rel. No. 13024 (Nov. 30, 1976) (41 FR 53456 (Dec. 6, 1976)). The proposed rule, which was not adopted, would have required, among other things, narrative disclosure concerning research received "in return for" brokerage. Commenters stated that it was impracticable to determine whether research was obtained "in return for" specific services, particularly when the research was not solicited. *See* Securities Exchange Act Rel. No. 10569 (Jan. 30, 1979) (44 FR 7864 (Feb. 7, 1979)) ("Release 10569").

[42] Instruction 7 to Item 2 of proposed Form ADV–B.

[43] *Id.*

[44] In connection with its annual survey of institutions regarding their brokerage practices, *see* note 2 and accompanying text *supra*, Greenwich Associates uses the following nine categories of soft dollar services: performance measurement, third-party research, corporate fundamental databases, technical analysis software, portfolio modeling and strategy software, on-line stock price quotations, specialized political or economic analyses, terminals and computers, and custody services. Greenwich Associates, Institutional Equity Investors 1994 (statistical supp.) 19

[45] The Commission recently proposed that estimates of the value of non-monetary payments for order flow be disclosed to customers of brokers receiving such payments. Securities Exchange Act Rel. No. 34903 (Oct. 27, 1994) (59 FR 55014 (Nov 2, 1994)). Payment for order flow is payment by a broker, dealer, securities exchange, securities association or exchange member to a broker or dealer in return for the routing of customer orders to the broker, dealer, securities exchange, securities association, or exchange member.

[46] In addition, it is unclear how a broker's "cost" should be determined. An "average cost" could be obtained by dividing the cost of producing the services by the number of recipients. "Marginal cost" would measure the actual cost of providing the research to the last adviser. Full service brokers frequently distribute to advisers and other customers research services that were initially produced for other purposes. The marginal cost of such research might be only the cost of its distribution.

required to be disclosed, but it may be inappropriate and misleading to reflect services that the adviser did not solicit or use as having no value.[47]

An adviser could be required to make a good faith estimate of what the proprietary soft dollar services would have cost in an arms-length transaction.[48] This approach would require advisers to report positive values for unsolicited and unused services, which could lead investors to believe that the adviser (or the client) substantially benefited from the direction of the brokerage when, in fact, receipt of the services was incidental to brokerage direction decisions made wholly on the basis of the broker's execution capabilities. In addition, good faith estimates may be very difficult to make if the services provided are unlike those available for hard dollars. In this regard, the Commission is concerned with the burden that a good faith estimate requirement would impose on advisers and brokers and the accuracy of the information that would be reported to clients.[49]

The disclosure that the Commission is proposing to require is designed to alert a client that the adviser receives soft dollar services from directing client commissions, and provide some indication of the extent to which the client benefits from that direction. The commission rate information, including the commission rates of execution-only brokers, may provide valuable information on the costs of soft dollar arrangements and may render valuation estimates unnecessary. If additional information is desired, the client can request it from the adviser.

Comment is requested whether the commission price and fair market value of particular soft dollar services, or the soft dollar services obtained from a broker in the aggregate, should be required in the annual report. Commenters favoring inclusion of this information should discuss how the price and value of proprietary soft dollar services should be determined.

D. Client-Directed Brokerage

Many clients of investment advisers instruct their advisers to direct some or all of their transactions to a particular broker or brokers. A client may direct its brokerage, among other reasons, to obtain services for its own benefit or because of a pre-existing relationship with the broker.

In addition to disclosing the percentages of an adviser's total commissions that are directed to execution-only and research brokers, the proposed annual report would be required to disclose the percentage of commissions that is directed by clients.[50] Client restrictions on an adviser's brokerage discretion may be of interest to other clients of the adviser because they may cause a larger proportion of the brokerage of the other clients to be used to obtain soft dollar services for the adviser. Information on client-directed brokerage, therefore, may be useful to clients in determining the amount of brokerage available to the adviser to purchase soft dollar services. Comment is requested whether the proposed disclosure of the percentage of client-directed brokerage would be useful, and whether the Commission should require that the data be accompanied by disclosure explaining its usefulness.

E. Principal Transactions

Proposed Form ADV–B would require an adviser to include in the commission and commission rate in the table mark-ups and mark-downs paid in connection with principal transactions if the amounts of these mark-ups or mark-downs are included in the confirmations of the transactions required under rule 10b–10 under the 1934 Act. Rule 10b–10 requires that a dealer include transaction cost data in confirmations of (1) riskless principal transactions in equity securities if the dealer is not a market maker in the securities, and (2) transactions in a listed equity securities and certain Nasdaq securities.[51]

Proposed Form ADV–B would not require disclosure of information about other principal transactions or the mark-ups, mark-downs or spreads paid on these transactions. It may be difficult to accurately determine transaction costs associated with these principal transactions. Furthermore, disclosure about adviser direction of principal transactions may not be necessary, as soft dollar arrangements involving principal transactions may be less common than those involving agency transactions because principal transactions are not afforded the safe harbor provided by Section 28(e).[52]

Comment is requested whether the annual report should include information on all principal transactions, and, if so, how the associated costs should be determined. Comment is also requested whether disclosure requirements that apply primarily to agency transactions would cause more transactions to be executed on a principal basis.

The proposal would require disclosure of the brokers to which the greatest amounts of commissions had been directed. Alternatively, the obligation to disclose information about a broker could be based on the dollar amount of transactions, both principal and agency, directed to the broker. The resulting disclosure might be more useful to clients in assessing any relationship that may exist between the adviser's use of principal transactions and its receipt of soft dollar services. Comment is requested whether the basis for requiring a broker to be listed in the annual report should be the dollar amount of transactions directed to the broker, rather than the amount of commissions.

F. Client-Specific Information

The proposed amendments would not require that an adviser provide each client with information about how that

[47] An adviser could be required to report only those proprietary soft dollar services for which it specifically directed brokerage. Such a limitation, however, would require highly subjective determinations by advisers, and, as a practical matter, might elicit disclosure about only third-party soft dollar services.

[48] This approach was suggested by one commenter on the Commission's recent proposal to require that mutual fund expenses paid by brokers should be included in fund expense and performance data. *See* Investors Research Letter, *supra* note 25. In that proposal, the Commission requested comment whether the value of research services received by a fund's adviser should also be included in fund expenses, and how the research should be valued. *See* Investment Company Act Rel. No. 20472 (Aug. 11, 1994) (59 FR 42187 (Aug. 17, 1994)), at § II.A.1. Most commenters on the proposal, however, opposed the inclusion of research services in fund expenses, and those commenters that favored it generally provided little guidance regarding how to value proprietary services.

[49] In proposing rule 28e2–1, the Commission proposed that the fair value of non-research services be disclosed, and requested comment on the feasibility and desirability of requiring disclosure of specific dollar amounts of brokerage commissions paid to receive research services. Commenters asserted that it would be impracticable to value soft dollar services or to separate commissions into their research and execution components. *See* Release 10569, *supra* note 41

[50] Item 4 of proposed Form ADV–B.

[51] Paragraph (a)(8) of rule 10b–10 (17 CFR 10b–10(a)(8)).

[52] The safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions. *See* note 10 *supra*. Notwithstanding the lack of availability of the safe harbor, the Commission understands that full service brokers sometimes provide research and other services based, at least in part, on principal transactions. If an adviser were required to list a broker in its annual report because the broker is used frequently for agency transactions, the adviser would be required to take all of the soft dollar services obtained from the broker into account in responding to the report's requirement to list the services obtained, even if some of the services could be deemed to be received as a result of principal transactions not within the scope of the proposed amendments. Instruction 7 to Item 2 of proposed Form ADV–B.

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client's brokerage was directed ("client-specific information"). Client-specific information could assist a client in comparing the use of its brokerage with that of the adviser's other clients.[53] The benefits of a requirement to disclose client-specific information, however, may be outweighed by the time and cost to advisers of preparing separate reports for every client. This cost would likely be passed on to advisory clients. Furthermore, advisory clients currently receive or have access to confirmations of their transactions that disclose the identities of the brokers used and the amounts of commissions charged.[54] Comment is requested whether client-specific information should be required in the annual report and, if so, what information should be required.[55]

G. Delivery and Filing

Reports on Form ADV–B would be prepared on an annual basis and would report on brokerage directed during the adviser's most recently completed fiscal year.[56] The report would be required to be filed with the Commission and delivered to clients no later than sixty days after the end of the fiscal year, and delivered to prospective clients no later than the time that an advisory contract is entered into.[57]

Because the report would provide information about brokerage over which the adviser has discretion, the report would be required to be delivered only to those clients over whose accounts the adviser has or will have brokerage discretion. An adviser would be considered to have brokerage discretion over an account if it (1) had the authority to determine, without obtaining specific client consent, the brokers to be used or the commissions paid in connection with any transactions for the account, or (2) significantly influenced the selection of brokers by a client and received soft dollar services from a broker chosen by the client.[58] An adviser would not be required to provide the report to a client that, without the adviser's influence, directed that a single broker execute its transactions, or prior to each transaction approved the broker to be used for the transaction.[59] Comment is requested whether this definition of brokerage discretion is appropriate, and whether the report should be required to be delivered to clients over whose accounts the adviser does not have brokerage discretion.

The Commission is proposing that the report be prepared on an *annual* basis. More frequent reporting would be more costly and may not be necessary for clients to monitor an adviser's brokerage direction practices. Furthermore, an annual report may provide a more representative sample of an adviser's brokerage practices. Comment is requested whether the report should be required to be prepared more frequently than annually, such as quarterly.[60]

H. Goldman/Morgan Proposal

The Goldman/Morgan Proposal differs from the Commission's proposal in a number of respects. The Goldman/Morgan Proposal would, among other things, require quarterly rather than annual reporting, require disclosure of the commission price and value of specific third-party soft dollar services, and require disclosure of certain client-specific information. The Commission has requested comment on these elements of the Goldman/Morgan Proposal separately in this Release. The Commission also requests comment whether the Goldman/Morgan Proposal generally would be preferable to the Commission's proposal.

III. Disclosure By Brokers Providing Soft Dollar Services

The amendments being proposed in this Release would require disclosure by *advisers* that receive soft dollar services from brokers. In a letter to the staff, Autranet, Inc. ("Autranet"), a broker providing third-party soft dollar services to advisers, proposed an entirely different approach that would impose certain recordkeeping and disclosure requirements on *brokers* providing third-party soft dollar services to ensure that the services were provided within the safe harbor of Section 28(e) of the Exchange Act.[61] Under the Autranet

[53] To the extent differences between the manner in which an adviser uses a particular client's brokerage and the brokerage of the adviser's other clients is caused by client-directed brokerage, the requirement of the proposal to disclose the percentage of client-directed brokerage might render client-specific information unnecessary. *See* Section II.D *supra*

[54] *See* rule 10b–10 under the 1934 Act [17 CFR 240.10b–10] (requiring broker-dealers to send immediate confirmations of transactions to their customers). The confirmations, or quarterly statements containing all of the information required in the confirmations, must be sent to the holder of the account, rather than any fiduciary managing the account. *See* Securities Exchange Act Rel. No. 34962 (Nov. 10, 1994) [59 FR 59612 (Nov 17, 1994)] at § II.A.2.

[55] As noted above, an adviser to an investment company is required to provide information about its soft dollar arrangements to the company's board of directors. *See* note 24 *supra*. The information provided by the adviser generally should include specific information about the adviser's use of the investment company's brokerage. The proposed annual report would supplement this fund-specific information.

[56] Paragraph (a) of proposed rule 204–4; General Instructions 1 and 5 to proposed Form ADV–B. The table in the annual report would be required to disclose commissions paid during the adviser's most recently completed fiscal year even if soft dollar services paid for with those commissions had been or will be received during another fiscal year. Conversely, disclosure of soft dollar services received during a fiscal year would be required even if commissions were or will be directed to pay for those services during another fiscal year. General Instruction 5 to proposed Form ADV–B

[57] Paragraphs (a) and (b) of proposed rule 204–4; General Instructions 3 and 4 to proposed Form ADV–B. Rule 204–3 under the Advisers Act, which generally requires advisers to furnish a disclosure brochure to prospective clients no later than 48 hours prior to the time that the advisory contract is entered into, permits the brochure to be delivered at the time that the contract is entered into if the contract can be terminated without penalty within five business days. Paragraph (b)(1) of rule 204–3 [17 CFR 275.204–3(b)(1)]. Proposed rule 204–4 would not similarly differentiate between providing the annual report before or at the time that the contract is entered into. Generally, however, the determination of when a contract is entered into would be the same for the purposes of both rules.

[58] Paragraph (c)(1) of proposed rule 204–4; General Instruction 2 to proposed Form ADV–B. An adviser would not be deemed to have brokerage discretion over an account if substantially all of the client's transactions were directed to a broker that was compensated for executing the transactions based upon a percentage of the assets managed by the adviser, such as in a "wrap fee" program, even if the adviser could in certain circumstances direct the client's transactions to other brokers.

[59] An adviser would be required to deliver the annual report to a client if the adviser had discretion over any of the client's brokerage, even if some or most of the client's brokerage was directed by the client. Delivery of the annual report also would be required if the adviser had the authority to select brokers for particular transactions from a list previously approved by the client.

[60] The Morgan/Goldman Proposal would have required quarterly reporting.

[61] Autranet also has proposed that the Commission prohibit understandings that commit an adviser to a predetermined amount of commissions in exchange for soft dollar services. The Commission requests comment on the feasibility of this proposal. In particular, the Commission requests comment whether prohibiting a stated commission ratio in exchange for soft dollar services will deter the negotiation of commission rates and cause advisers that are less sophisticated or influential to pay higher commissions.

In addition, Autranet proposed that the Commission ensure that an independent research originator make its services available to a number of brokers and not enter into exclusive agreements. For instance, under "bump up" or bonus arrangements a vendor will assign a cash value to its product and offer it to the public at large for a lower price than charged to a broker providing the product pursuant to a soft dollar arrangement. In other arrangements, a vendor will tie the availability of its product to a single affiliated or unaffiliated broker, thus causing all trades to go through that broker in exchange for the service. Autranet believes that by eliminating commission commitments and exclusivity arrangements, a client can be better assured that the adviser obtained the best execution of the client's order. The Commission requests comment on the feasibility of a prohibition on exclusivity and bonus arrangements and whether such a proposal would accomplish the objective of assuring best execution. The Commission also has forwarded these proposals to the NASD for its consideration under its authority to promulgate just and equitable principles of trade.

proposal, these brokers would be required to demonstrate that they incurred a legal obligation to provide soft dollar services to an adviser. This obligation could be demonstrated either by a contract that indicates the broker's financial obligation to purchase the soft dollar services from an independent research originator, or by an invoice showing the broker's payment for the services for those soft dollar services not typically the subject of a contract.

In addition, Autranet proposes that third-party soft dollar brokers be required to provide a description of the soft dollar services provided in an arrangement and specify how the product assists an adviser in its investment decisions. A broker would be required to make this description available to the managed account upon request and provide the managed account a quarterly report showing the cost of the soft dollar service. For products having a mixed-use, Autranet proposes that the broker providing such a product obtain from the adviser a description of the adviser's use of the product and the adviser's allocation between the research and non-research functions of the product.

Autranet proposes that these descriptions be reflected in an annual report that third-party soft dollar brokers would file with the Commission and provide to the advisers receiving soft dollar services and to the clients of those advisers whose commissions were used to obtain the soft dollar services. Autranet proposes that the report include (1) a disclosure statement describing the business of the third party broker; (2) a financial summary, quantifying on an aggregate basis the value by category and, if necessary, sub-category, of the soft dollar services provided; (3) a compliance report, demonstrating that the soft dollar services were in compliance with the requirements set forth above and within the safe harbor of Section 28(e); and (4) an independent auditor's report. Autranet believes that such a reporting requirement would not be costly to third-party brokers because the information required is readily available and the reporting requirements should reflect compliance procedures already established by third-party brokers providing soft dollar services.

The Commission requests comment on whether some or all of the Autranet proposals would be practical additions to the disclosure currently required and proposed of advisers. In particular, the Commission requests comment on the costs associated with this disclosure approach and the ease with which this information could be obtained by brokers and provided to advisers and their clients. In addition, the Commission requests comment on the extent to which full service brokers providing proprietary soft dollar services could or should be subject to any of the reporting requirements proposed by Autranet.

IV. General Request For Comments

Any interested persons wishing to submit written comments on the proposals that are the subject of this Release, to suggest additional changes, or to submit comments on other matters that might have an effect on the proposals that are contained in this Release, are requested to do so.

V. Cost/Benefit Analysis

The rule and form proposed today are intended to provide material information to clients and prospective clients of investment advisers that can be used to evaluate an adviser's brokerage direction and soft dollar practices. The proposals would enable an advisory client to better assess whether its adviser is directing its brokerage in accordance with its best interests, and whether the advisory fee it pays is appropriate in light of the services provided and costs incurred directly by the adviser.

Adoption of the proposal would impose some additional costs on advisers required to prepare the report and deliver it to clients. The Commission believes, however, that the proposals appropriately balance the need for additional disclosure with the costs of providing that disclosure. The information that would be required by the proposal should readily be determinable by an adviser. A number of alternatives that would make the disclosure requirements more burdensome, such as requiring advisers to disclose the value of soft dollar services received or report on the use of each client's brokerage, are not being proposed. Furthermore, because the report would need to be prepared and delivered only annually, the costs of preparing and delivering the report should be minimized. In short, the Commission believes that the costs of the proposals would be outweighed by the benefits to advisory clients in receiving more useful information about their advisers' direction of client brokerage.

VI. Summary Of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the rule and form proposed in this Release are intended to provide investment advisory clients for whom the adviser selects brokers to execute client transactions with information about the services the adviser receives from those brokers and the commissions charged by those brokers. Other aggregate cost-benefit information reflected in the "Cost/Benefit Analysis section of this Release also is reflected in the analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jana M. Cayne, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549

VII. Statutory Authority

The Commission is proposing rule 204–4 and Form ADV–B under the authority set forth in Sections 204, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4) and 80b–11(a)] and Section 28(e)(2) of the 1934 Act [15 U.S.C. 78bb(e)(2)]

Text Of Proposed Rule And Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is amended by adding the following citation:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted

* * * * *

Section 275.204–4 is also issued under 15 U.S.C. 78bb(e)(2)

2. By adding § 275.204–4 to read as follows:

§ 275.204–4 Annual report on brokerage practices.

(a) Each investment adviser, registered or required to be registered under Section 203 of the Act on the last day of its most recently completed fiscal year, that exercised brokerage discretion over the account of any client during that fiscal year *and* obtained services other than execution services from a broker to which it directed client brokerage during that fiscal year shall file a report on Form ADV–B with the Commission no later than 60 days after the end of that fiscal year, unless the investment adviser's registration was

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withdrawn, cancelled or revoked after the end of the fiscal year.

(b) An investment adviser required to file a report on Form ADV–B pursuant to paragraph (a) of this section shall furnish such report for its most recently completed fiscal year:

(1) No later than 60 days after the end of each fiscal year, to each advisory client over whose account the investment adviser exercises brokerage discretion; and

(2) No later than the time that a written or oral investment advisory contract is entered into, to each new or prospective advisory client over whose account the investment adviser will or proposes to exercise brokerage discretion.

(c) For purposes of this section:

(1)(i) An investment adviser exercises "brokerage discretion" over a client's account if it:

(A) Has authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client; or

(B) Significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client.

(ii) An investment adviser does not exercise brokerage discretion over a client's account if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the investment adviser; and

(2) Execution services mean those services set forth in paragraph (e)(3)(C) of Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)(3)(C)).

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 is amended by adding the following citation:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

Section 275.204–4 is also issued under 15 U.S.C. 78bb(e)(2).

4. By adding § 279.9 and Form ADV–B to read as follows:

§ 279.9 Form ADV–B, annual report on investment adviser's brokerage direction practices.

This form shall be filed annually by an investment adviser, registered or required to be registered under the Investment Advisers Act of 1940, that has the authority to select brokers to execute the transactions of any client and that obtains services other than execution from a broker to which it directs client brokerage.

Note: Form ADV–B is attached as Appendix 1 to this document. The Form will not appear in the Code of Federal Regulations.

Dated: February 14, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Appendix 1

OMB Approval
OMB Number:
Expires:
Estimated average burden hours per response:
U.S. Securities and Exchange Commission, Washington, DC 20549

Form ADV–B

Annual Report on Brokerage Practices for Registered Investment Advisers Having Discretion Over Client Brokerage

Applicant: _____

SEC File Number: 801– _____

Date: _____

MM/DD/YY

General Instructions for Preparing and Filing Form ADV–B

1. Applicability of Form Requirement. A report on Form ADV–B must be prepared and filed by every investment adviser that (i) was registered or required to be registered under the Investment Advisers Act of 1940 on the last day of its most recently completed fiscal year (unless the adviser's registration has since been withdrawn, cancelled or revoked), (ii) exercised "brokerage discretion" over the account of any advisory client during that fiscal year, and (iii) obtained services other than "execution services" from a broker to which it directed client brokerage during that fiscal year.

2. Definitions.

Brokerage Discretion. An investment adviser exercises brokerage discretion over a client's account if it (i) has the authority to determine, without obtaining specific client consent, the broker to be used or the commission rates paid in connection with any transaction of the client, or (ii) significantly influences the selection of brokers by the client and receives services other than execution services from a broker chosen by the client. An investment adviser does not have discretion over a client's account, however, if substantially all of the client's transactions were directed to a broker that was compensated for executing such transactions solely based upon a specified percentage of the assets managed by the adviser, even if the adviser has the discretion to direct certain of the client's transactions to other brokers.

Execution Services. Execution services mean those services described in Section 28(e)(2)(C) of the Securities Exchange Act of 1934, *i.e.*, effecting securities transactions and performing functions incidental thereto or required in connection therewith by rules of the Securities and Exchange Commission or a self-regulatory organization.

3. Format and Filing of Report. The report required by this form should be prepared as a separate document, not on copies of this Form. The report shall be filed in triplicate with the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Each copy of the report filed with the Commission should be attached to a completed copy of this page, although only one such copy need be manually executed. The report shall be filed no later than 60 days after the end of the adviser's fiscal year.

Execution: The undersigned represents that he or she has executed this form on behalf of, and with the authority of, said investment adviser. The undersigned and the investment adviser represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete.

Dated the _____ day of _____, 19__

_____
(Name of registrant)

By: _____
(Signature and title)

4. Delivery.

Existing Clients. Rule 204–4 under the Investment Advisers Act of 1940 requires that the report be furnished no later than 60 days after the end of the investment adviser's most recently completed fiscal year to each advisory client over whose account the adviser exercises brokerage discretion (as defined in Instruction 2 above).

Prospective Clients. Rule 204–4 also requires that the report be furnished no later than the time that a written or oral investment advisory contract is entered into to each new or prospective advisory client over whose account the adviser will or proposes to exercise brokerage discretion.

5. Period of Required Data. An investment adviser must provide the requested information for its most recently completed fiscal year. Brokerage commissions directed or services received during a fiscal year should be included in the table, even if the services corresponding to commissions directed during the fiscal year were or will be received during another fiscal year, or the commissions corresponding to services received during the fiscal year were or will be directed during another fiscal year.

6. Additional Information. An investment adviser may, in addition to providing the required information, provide other information, including additional data and explanations of the required information, about its brokerage practices in its response to this Form.

Information Required in Annual Report

Item 1 General Description of Report

In an introduction to the report:

(a) explain that the report contains information about the adviser's practices in selecting brokers to execute transactions for its investment advisory clients that can be used to evaluate whether the adviser directs client transactions consistent with the best interests of its clients;

(b) explain that the information contained in the report is provided on a firm-wide basis, that the report does not include specific information about the brokerage of any particular client or the extent to which services obtained are used for the benefit of any particular client, and that clients should refer to the confirmations or quarterly account statements provided by their brokers or contact the adviser for information about the brokers used to execute their transactions;

(c) explain, if applicable, that the report does not include information about many transactions executed on a "principal" basis, that, in principal transactions, transaction costs typically are included in the price of the securities purchased or sold and are not charged as separate commissions, and that transactions in certain types of securities typically are executed on a principal basis; and

(d) provide an address or phone number at which a client can contact the adviser to request more information.

Item 2. Information Regarding the Twenty Most Frequently Used Brokers

Using the captions and tabular format illustrated below, provide the required information for the twenty brokers (other than "execution-only" brokers as defined in Item 3) to which the investment adviser directed the greatest amount of client commissions. If no or fewer than twenty such brokers were used, state either "no brokers used that provided services other than execution" after the title or "no additional brokers used" after the last broker listed.

THE TWENTY BROKERS TO WHICH THE GREATEST AMOUNTS OF CLIENT COMMISSIONS WERE DIRECTED

Name of broker	Aggregate amount of discretionary commissions paid to broker (in dollars)	Commissions paid to broker (as a percentage of adviser's discretionary commissions)	Average commission rate (in cents/share)	Description of services obtained (other than execution services)

Instructions

1. For the purposes of this Form, brokers include broker-dealers registered under the Securities Exchange Act of 1934, banks, and, as set forth in Item 3, automated trading systems.

2. "Discretionary commissions" are those commissions, mark-ups and mark-downs that are disclosed on the transaction confirmations required under rule 10b-10 under the Securities Exchange Act of 1934 and that are paid in connection with transactions for which the investment adviser had the authority to determine, without obtaining specific client consent, the broker or dealer to be used or the commission rates paid.

3. Commissions include sales loads paid in connection with transactions in investment company shares, although sales loads should not be considered in calculating the average commission rate. If the adviser directed transactions in investment company shares to a broker other than the principal underwriter of the investment company, that broker, rather than the principal underwriter, should be considered to have executed the transaction.

4. For purposes of this Form, commissions do not include fees for brokerage services that are based upon a specified percentage of the assets managed (*i.e.*, fees paid under "wrap fee" programs).

5. Calculate average commission rates on a "share-weighted" basis (*i.e.*, by dividing the total amount of client commissions that the investment adviser directed to the broker by the total number of shares, exclusive of investment company shares, purchased or sold by the broker for the adviser's clients).

6. For the purposes of determining commission amounts and average commission rates, convert any commission charged in foreign currency to dollars (and cents per share). The investment adviser may use any reasonable means and times for determining the applicable exchange rate as long as those means and times are used on a consistent basis.

7. Under "Description of Services Obtained," products or services obtained by the investment adviser from each broker, including computer hardware, software, databases, and on-line services, publications available by subscription, and services falling outside the scope of Section 28(e) of the Securities Exchange Act of 1934, generally should be identified separately and specifically. Research reports and contacts with securities analysts or professionals, however, may be described generally by the following terms: (i) analyses and reports on specific securities, issuers, or industries, (ii) general political or economic analyses or reports, or (iii) contacts with securities analysts. The party that produced a specifically identified product or service should also be identified unless the producer's name is evident from the name of the product or service. An adviser should report all products or services received from a broker, even if some of the services could be deemed to have been received as a result of principal transactions the costs of which are not required to be reported in the table.

Item 3. Information Regarding Three Most Frequently Used Execution-Only Brokers

Using the captions specified under Item 2 (except "Description of Services Obtained"), provide a table titled "The Three Execution-only Brokers to which the Greatest Amounts of Client Commissions were Directed" that includes the required information for the three execution-only brokers to which the investment adviser directed the greatest amount of client commissions. If no or fewer than three execution-only brokers were used, state either "no execution-only brokers used" after the title or "no additional execution-only brokers used" after the last broker listed.

Instruction

For the purposes of this Item, a broker should be considered an execution-only broker if substantially all of the services that it provides to the adviser are execution services (see the definition in Instruction 2 of the General Instructions). An automated trading system should be considered an execution-only broker if substantially all of the services received by the adviser in connection with using the system are execution services and if a fee is charged for using the system, regardless of the basis for the fee (*e.g.*, a flat usage fee or transaction-based charges).

Item 4. Information Regarding Brokerage Business Directed by Clients

Provide the following information under the following captions:

Percentage of Total Commissions Directed to Brokers Providing Research and Other Services in Addition to Execution:

Percentage of Total Commissions Directed to Execution-only Brokers:

Percentage of Total Commissions Directed by Clients:

Instruction

For the purposes of this Item, commissions directed by clients are those commissions paid by accounts managed by the adviser that were directed pursuant to client requests or instructions. Total commissions equal the sum of the adviser's discretionary commissions, as defined in Item 2, and the commissions directed by clients.

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 896
Performance Standard for the Infant Apnea Monitor; Proposed Rule

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DEPARTMENT HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 896

[Docket No. 83N–0193]

RIN 0905–AD83

Performance Standard for the Infant Apnea Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation to establish a mandatory performance standard for infant apnea monitors, which are a subset of breathing frequency monitors also called neonatal apnea monitors. The infant apnea monitor is a system intended for use on infants to detect cessation of breathing. FDA believes that a performance standard is necessary to ensure that infant apnea monitors accurately and reliably detect the absence of effective respiration and provide an alarm in such cases. The objective of this proposed regulation is to establish performance requirements and test methods that will provide reasonable assurance of the safety and effectiveness of the infant apnea monitor.

DATES: Submit written comments by May 22, 1995. FDA is proposing that any final rule that may issue based on this proposal become effective 1 year following its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: James J. McCue, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 1982 (47 FR 39816), FDA issued a final rule under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) classifying the generic type of device, the breathing (ventilatory) frequency monitor (21 CFR 868.2375), into class II (performance standards). In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(b) of the act (21 U.S.C. 360d(b)) and part 861 (21 CFR part 861). The notice provided interested persons with the opportunity to request a change in the classification of the device. In the **Federal Register** of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard pursuant to section 514(c) of the act (21 U.S.C. 360d(c)) and part 861. The notice invited interested persons to submit an existing standard as a proposed performance standard under section 514 of the act for the device, or to submit an offer to develop such a proposed standard. In that notice, FDA limited the proceeding to those breathing frequency monitors commonly called neonatal apnea monitors, which are intended for use on infants to detect cessation of breathing.

In the **Federal Register** of July 1, 1986 (51 FR 23832), FDA announced that, in accordance with the provisions of section 514(e)(3) of the act and § 861.32, the agency might, upon application (which could be made before the acceptance of the offer), agree to contribute to an accepted offeror's cost for developing a proposed standard if FDA were to determine that its contribution would likely result in a more satisfactory standard than would be developed without such contribution. Subsequently, FDA allocated approximately $250,000 to contribute to the cost for the first year of effort in developing a proposed standard.

In the **Federal Register** of April 22, 1988 (53 FR 13296), FDA advised that a notice of grant award (cooperative agreement) had been issued to the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. The cooperative agreement with ECRI was completed on August 31, 1988. Because certain performance requirements for the infant apnea monitor were not addressed in ECRI's draft document, FDA proceeded to develop a proposed standard itself for the infant apnea monitor, using the information developed during the cooperative agreement with ECRI (21 U.S.C. 380d(f)).

In the **Federal Register** of January 4, 1989 (54 FR 187), FDA announced the availability of its "First Draft Proposed Standard for the Infant Apnea Monitor—October 1988," and requested public comments on the draft standard. In accordance with § 861.30, in the same notice, FDA also announced an open public meeting to discuss the draft standard. The meeting was held on January 25, 1989, in conjunction with the Seventh Annual Conference on Apnea of Infancy held in Rancho Mirage, CA.

In the **Federal Register** of July 25, 1989 (54 FR 30951), FDA announced an open public meeting that was held on September 11 and 12, 1989, at the Crowne Plaza Holiday Inn, Rockville, MD, to discuss current sensor modalities and devices used to measure infant apnea, combinations of sensors used to detect apnea and the pathophysiological result of apnea, and currently used test methods.

In the **Federal Register** of December 6, 1989 (54 FR 50437), FDA announced the availability of its "Second Draft Proposed Standard for the Infant Apnea Monitor—October 1989" and again requested public comments on the draft. In the same notice FDA also announced an open public meeting to discuss the draft standard. The meeting was held on January 24, 1990, in conjunction with the Eighth Annual Conference on Apnea of Infancy held in Rancho Mirage, CA.

A summary of the proceedings of the public meetings and all data and information submitted to FDA during these meetings are part of the administrative record of this rulemaking and are available to the public under 21 CFR 20.111 from the Dockets Management Branch (address above).

II. The Proposed Regulation

The second draft proposed standard was based on 22 written comments received in response to the **Federal Register** request for comments on the first draft proposed standard and on the information received at the public meetings. This proposed mandatory standard is based on 22 written comments received in response to the **Federal Register** request for comments on the second draft proposed standard, on information received at the public meeting, and on other information available to FDA.

The proposed standard includes specific requirements for infant apnea monitors in four areas: Patient monitoring, electrical characteristics, mechanical and environmental characteristics, and labeling. FDA has prepared several ancillary documents intended to assist the manufacturer and other interested persons in understanding both the reasons for specific requirements and the recommended means of testing specific devices against the requirements. A document entitled: "Recommended Test Methods—Infant Apnea Monitor Standard" (Ref. 1) recommends test methods and groups them in a similar manner to those in the proposed standard. Another document entitled: "Rationale for Requirements—Infant Apnea Monitor Standard" (Ref. 3) provides a rationale for each of the requirements contained in the standard and an associated bibliography. In developing the proposed standard, FDA has made extensive use of existing international standards, particularly the International Electrotechnical Commission standards. A section on definitions is intended to provide precise meanings for terms used in the proposed regulation.

The section on patient monitoring includes the requirement that each infant apnea monitor system contain a secondary monitoring modality. The purpose of this requirement is to increase the likelihood that the monitor will detect apneic events. Visual and audible alarms (status indicators) are required, as is the availability of a remote alarm unit for monitors intended for home use. In order to alert the care giver to any malfunction before using the device, a self test requirement is included.

The electrical requirements for infant apnea monitors include requirements for battery backup, operation from an administrative source, and limitation of leakage current. An extensive set of requirements is provided to ensure electromagnetic compatibility of infant apnea monitors, which can be a serious device problem. Given the complexity of certain testing for these devices, FDA has prepared a document entitled: "Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard" (Ref. 2), which provides manufacturers some assistance in conducting immunity testing.

The mechanical and environmental requirements mandate tamper proof controls, protection against misconnection of wires and tubing, and the ability to withstand normal shock, vibration, temperature extremes, and fluid spills.

The labeling requirements specify information to be provided by the manufacturer to both operators and health care practitioners, and include specific device labeling requirements.

Recommended test procedures (Ref. 1) are included for each requirement in the standard. These procedures are referee test methods, i.e., they are the methods FDA will use to verify that a specific apnea monitor meets the requirements of the standard. Manufacturers are required, after the effective date of the standard, to meet the requirements of the standard. However, manufacturers may choose to use alternative but equivalent or better test methods for each monitor or, in lieu of individual testing, an analysis for a specific production run of monitors or, in lieu of any specific testing, an analysis which shows that each device meets the requirements of the standard.

The "Rationale for Requirements—Infant Apnea Monitor Standard" (Ref. 3) contains a detailed rationale for each requirement in the proposed standard.

Accordingly, the agency is proposing to add new part 896, to the Code of Federal Regulations, to establish a mandatory performance standard for the infant apnea monitor.

Additional guidance for the tests used to determine the immunity of monitors to radiated electromagnetic fields is provided in a separate document (Ref. 2).

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impactstatement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency has concluded that the proposed rule will have a minimal impact on manufacturers of infant apnea monitors. A copy of this analysis is on file in the Dockets Management Branch (address above).

The proposed rule will require that manufacturers comply with performance requirements in four major areas: Patient monitoring, electrical characterisfics, mechanical and environmental characteristics, and labeling. This is a set of minimal requirements based on existing technologies. Additionally, the proposed rule will not become effective for 1 year after it is issued in final form. Current manufacturers will have ample time to meet these minimum standards as part of a normal cycle of product improvement and development. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections which have been reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and approved under control no. 0910–0073. The title, description, and respondents of the information collections are shown below with the annual recordkeeping burden.

Title: Standard for the Infant Apnea Monitor.

Description: The standard describes basic performance features, and labeling information, for infant apnea monitors which are intended for hospital and/or home use. The monitor shall be a complete system, suitable for its intended purpose of accurately and reliably providing alarms as needed to the caregiver.

Description of Respondents: Manufacturers of apnea monitors. The burden of 360 hours for recordkeeping concerning the design of, and rationale for, the tests used to meet this standard, together with analysis and results of the tests is approved under the OMB information collection 0910–0073. The annual burden for recordkeeping is as follows:

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ANNUAL BURDEN FOR RECORDKEEPING

CFR section	Total annual responses	Hours per response	Total hours
896.59	30	12	360

Organizations and individuals desiring to submit comments regarding this burden or any aspects of these information collection requirements including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Interested persons may, on or before May 22, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Center for Devices and Radiological Health (CDRH), "Recommended Test Methods—Infant Apnea Monitor Standard," September 1993.

2. CDRH, "Additional Guidance for Testing Immunity to Radiated Electromagnetic Fields—Infant Apnea Monitor Standard," September 1993.

3. CDRH, "Rationale for Requirements—Infant Apnea Monitor Standard," September 1993.

List of Subjects in 21 CFR Part 896

Administrative practice and procedure, Incorporation by reference, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that new part 896 be added to read as follows:

PART 896—PERFORMANCE STANDARD FOR INFANT APNEA MONITORS

Subpart A—General Provisions

Sec.

896.10 Scope.
896.11 Applicability.
896.12 Definitions.

Subpart B—Patient Monitoring Requirements

896.20 Primary monitoring modality
896.21 Secondary monitoring modality
896.22 Visual status indicators (alarms).
896.23 Audible status indicators (alarms).
896.24 Remote alarm.
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Subpart C—Electrical Performance Requirements

896.30 Battery power.
896.31 Electrical power indicators.
896.32 Overcurrent protection.
896.33 Dielectric withstand.
896.34 AC (alternating current) power grounding and polarity
896.35 Leakage current.
896.36 Electromagnetic compatibility.
896.37 Auxiliary output.

Subpart D—Mechanical and Environmental Performance Requirements

896.40 Controls protection.
896.41 Connector protective incompatibility.
896.42 Mechanical safety.
896.43 Mechanical vibration and shock resistance.
896.44 Fluid spill resistance.
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896.47 Toxic materials.
896.48 Strangulation.

Subpart E—Labeling Requirements

869.49 General.
896.50 Operator information.
896.51 Health care practitioner information.
896.52 Servicing information.
896.53 Label specifications.
896.54 Controls, connectors, switches, and indicators.
896.55 Standard compliance.
896.56 Switched outlet warning.
896.57 Air mattress warning.
896.58 Monitors intended for hospital use only.
896.59 General test methods.

Authority: Secs. 501, 502, 513, 514, 530–542, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360c, 360d, 360gg–360ss, 371, 374); secs. 351, 361 of the Public Health Service Act (42 U.S.C. 262, 264).

Subpart A—General Provisions

§ 896.10 Scope.

The standard set forth herein describes basic performance features and labeling requirements that infant apnea monitors, intended for hospital and/or home use, are required to meet. The monitor shall be a complete system, suitable for its intended purpose of accurately and reliably providing alarms as needed to the care giver.

§ 896.11 Applicability.

(a) *General.* The provisions of this standard are applicable to all infant apnea monitors manufactured, imported, or offered for import in any State or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico after (insert date 1 year after date of publication of the final rule in the **Federal Register**).

(b) *Applicable documents.* Compliance with certain requirements of this section shall be determined by the standards described in the following references, to the extent specified herein, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of these publications may be purchased from the American National Standards Institute, 11 West 42d St., New York, NY 10036, and may be examined at the Office of Science and Technology, Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC:

(1) "IEC 601–1 (1988): Medical electrical equipment, part 1: General requirements for safety," 2d edition.

(2) "IEC 529 (1989): Classification of degrees of protection provided by enclosures."

(3) "IEC 801–1 (1984): Electromagnetic compatibility for industrial process control equipment."

(4) "IEC 801–2 (1991): Electrostatic discharge requirements."

(5) "IEC 801–3 (1984): Radiated electromagnetic field requirements."

(6) "IEC 801–4 (1988): Electrical fast transient/burst requirements."

(7) "CISPR 11 (1990): Limits and methods of measurement of radio-interference characteristics of industrial scientific, and medical (ISM) equipment."

(8) "CISPR 16 (1987): CISPR specification for radio interference measuring apparatus and measurement methods."

(9) "ANSI C95.3–1991: Recommended practice for the measurement of potentially hazardous electromagnetic fields—RF and microwave."

(10) "IEC 68 (1988): Environmental testing."

(11) "ANSI/AAMI EC13–1983: Standard for cardiac monitors, heart-rate meters and alarms." Copies of this publication may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, suite 1440, Arlington, VA 22201, and may be examined at the Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(12) "MIL–STD–461C (August 4, 1986): Electromagnetic Emissions and Susceptibility Requirements for the Control of Electromagnetic Interference." Copies of this publication may be purchased from the Naval Publishing and Printing Service Office, 700 Robbins Ave., Philadelphia, PA 19111–5094, and may be examined at the Center for Devices and Radiological Health (HFZ–100), 5600 Fishers Lane, Rockville, MD; or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(13) "MIL–STD–462 (July 31, 1967): Standard for the Measurement of Electromagnetic Interference Characteristics." Copies of this publication may be purchased from the Naval Publishing and Printing Service Office, 700 Robbins Ave., Philadelphia, PA 19111–5094.

(c) *Precedence of documents.* All referenced documents shall apply to the extent specified herein. When any requirement of this standard conflicts with a requirement in any of the references specified in paragraph (b) of this section, the following rules of procedence shall apply:

(1) *This standard.* This standard shall have precedence over all applicable subsidiary documents specified in paragraph (b) of this section.

(2) *Referenced documents.* Any referenced document shall have precedence over any applicable subsidiary document referenced therein.

§ 896.12 Definitions.

(a) *Apnea* means cessation of respiratory air flow. The respiratory pause may be central or diaphragmatic (i.e., no respiratory effort), obstructive (usually due to upper airway blockage), or mixed (combination of central and obstructive).

(b) *Artifact* means a signal which may be misinterpreted by the monitor; the three most commonly recognized types of artifacts are cardiogenic, electromagnetic, and motion, as defined in paragraphs (d), (g), and (n) of this section.

(c) *Breath* means an inhalation of a volume of at least 2 milliliters of air per kilogram of body weight.

(d) *Cardiogenic artifact* means an artifact produced by theelectrical and/or mechanical activity of the heart.

(e) *Component* means any material, substance, piece, part, or assembly used during device manufacture that is intended to be included in the finished device.

(f) *Damage* means deformation, loosening, breakage, corrosion, change of fit of any component or part, or any other physical condition resulting in nonconformance of the monitor to the requirements of this standard.

(g) *Electromagnetic artifact* means an artifact produced by extraneous electromagnetic energy.

(h) *Finished device* means a device, or any accessory to a device, which is intended for use, whether or not the device is packaged or labeled for commercial distribution.

(i) *Health care practitioner* means a doctor, nurse, therapist, or other health care provider who is licensed by the State or locality in which he/she practices or is credentialed by a nationally recognized agency.

(j) *Infant apnea monitor* means a complete system intended to alarm upon the cessation of breathing and its consequences that is used on humans less than 3 years of age. The infant apnea monitor includes: Sensors; electrodes; leads; cables; tubing; signal processing systems; alarm systems; power supplies; accessories supplied, recommended, or specified by the manufacturer; complete monitoring systems when the apnea function is supplied as a module; and labeling. The terms "device" and "monitor," when used in this standard, also mean infant apnea monitor.

(k) *Inspection* means any examination, visual or auditory, performed without the use of special laboratory instruments or procedures and/or verification of manufacturing and test records.

(l) *Intended* means the same as "intended uses as specified by the manufacturer."

(m) *Monitor* means an infant apnea monitor.

(n) *Motion artifact* means an artifact produced by movement of the patient.

(o) *Operator* means the individual who applies the infant apnea monitor to the patient, or who monitors the patient and the functioning of the device. The term "operator" includes individuals, such as parents, nurses, therapists, care givers, etc., but does not include business entities, such as hospitals, corporations, partnerships, etc.

(p) *Operator maintenance* means performance by the operator or health care practitioner of those adjustments or procedures specified in the operator or health care practitioner information provided by the manufacturer for the purpose of assuring the continued safe and effective performance of the monitor.

(q) *Patient* means the individual being monitored by the infant apnea monitor.

(r) *Primary monitoring modality* means a method for detecting the cessation of breathing (apnea).

(s) *Secondary monitoring modality* means a method that measures, on a continuous basis, a physiological parameter that responds to the pathophysiological consequences of apnea, such as bradycardia, hypoxemia, or hypercarbia (hypercapnia).

(t) *Service* means performance of the procedures or adjustments described in the manufacturer's service instructions that may affect any aspect of the performance of the infant apnea monitor to which this standard applies.

(u) *Shall* means that a provision is mandatory.

(v) *Should* means that a provision is recommended.

(w) *Status indicator* means a device subsystem that shows, in a timely manner, either the status or condition of a physiological parameter of the patient or a particular characteristic of the device.

Subpart B—Patient Monitoring Requirements

§ 896.20 Primary monitoring modality.

Each monitor shall provide:

(a) A primary monitoring modality which shall incorporate a means for detecting the cessation of breathing or of breathing effort (apnea). The manufacturer shall specify the types of apnea that the primary monitoring modality will detect.

(b) A timer to measure apnea duration, and a system of visual and audible warning status indicators designed to activate (alarm) when the measured apnea duration is greater than the preset time, which shall not exceed 20 seconds. The indicators shall be activated within 1 second after the preset time is exceeded in accordance

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with §§ 896.22 and 896.23. Apnea monitors intended for use on both infants and older patients may provide duration settings beyond 20 seconds only if special tools or procedures are required to effect those settings.

(c) A sensor fault alarm for determining when the signal level from the primary sensor is outside the range of values specified for proper operation by the monitor manufacturer. When this condition occurs, audible and visual warning status indicators shall be activated within 5 seconds.

§ 896.21 Secondary monitoring modality.

Each monitor shall provide:

(a) A secondary monitoring modality, which shall incorporate a means for detecting a pathophysiological consequence of apnea that occurs within 60 seconds of the onset of apnea. This modality shall be designed such that values of the critical physiological parameter that are outside the extremes of the monitor's range are not interpreted as being within range. A monitor that includes heart rate monitoring shall meet the requirements of the standard ANSI/AAMI (American National Standards Institute/ Association for the Advancement of Medical Instrumentation) EC13–1983 for pediatric monitors.

(b) A system of visual and audible warning status indicators designed to activate (alarm) when the measured critical physiological parameter goes above or falls below a selected preset limit. The warning indicators shall be activated within 5 seconds after the measured parameter is outside the range of values specified by the preset limit in accordance with §§ 896.22 and 896.23.

(c) A control for presetting secondary modality alarm limits.

(d) A sensor fault alarm for determining when the signal from the sensor for the physiological parameter is outside the range of values specified for proper operation by the monitor manufacturer. When this condition occurs, audible and visual warning status indicators shall be activated within 5 seconds.

§ 896.22 Visual status indicators (alarms).

(a) Visual status indicators shall be of two visually distinct types:

(1) Warning indicators shall indicate the need for immediate attention to the patient.

(2) Ready indicators shall indicate proper operation of the monitor.

(b) Different colors shall be used to distinguish the two types of visual status indicators as follows:

(1) Red for warning indicators; and

(2) Green for ready indicators.

(c) All visual status indicators shall be visible in both a fully illuminated and a darkened room, and shall be located so that they are not obscured from view in the use orientation of the monitor specified by the manufacturer.

(d) Means for disabling any required visual status indicator during operation shall not be provided.

(e) Reset controls for visual status indicators shall function such that neither continuous activation nor failure of the reset control will permanently disable the status indicators.

(f) Warning indicators shall continue being activated until manually reset even if the condition causing indicator activation resolves.

(g) Visual status indicators shall be subject to the labeling requirements specified in § 896.54.

§ 896.23 Audible status indicators (alarms).

(a) All audible status indicators shall be of two audibly distinct types:

(1) Warning indicators shall indicate the need for immediate attention to the patient.

(2) Ready indicators if provided shall indicate proper operation of the monitor.

(b) Different sound characteristics, i.e., pitch, sound level, and time duration, shall be used to distinguish between the types of audible status indicators as follows:

(1) Warning audible indicators shall sound intermittently at 1-second intervals. Sound level shall be at least 85 decibels at 1 meter for home monitors and 70 decibels for hospital monitors.

(2) Ready audible indicators if provided shall have distinctly different sound characteristics than paragraph (b)(1) of this section.

(c) Means for permanently disabling an audible status indicator during operation shall not be provided. Activation of any manual means (reset) for temporarily silencing an audible status indicator shall be accompanied by an automatic realarming of the audible indicator within 2 minutes, and a clear indication of silencing (reset) shall be provided. The audible indicator may automatically reset if the condition causing indicator activation resolves, but any visual status indicator that correlates with a required audible indicator shall continue being activated until manually reset.

(d) Audible status indicator reset controls shall function such that neither continuous activation nor failure of the reset control will permanently disable the status indicators.

§ 896.24 Remote alarm.

(a) Manufacturers of monitors intended for home use shall provide a remote alarm unit for use with the monitor. The remote alarm unit shall include audible warning status indicators that indicate when a warning status indicator at the site of the patient has been activated and when the unit is unable to detect the status indicator signals from the site of the patient as specified in § 896.23.

(b) The use of a remote alarm unit shall not disable the status indicators at the site of the patient.

(c) The remote alarm unit shall have a visual power ready status indicator (pilot light) and an audible power interrupt warning status indicator. If battery operated, the remote alarm unit shall have audible and visual low battery warning status indicators (alarms) that activate when the battery has sufficient charge remaining to supply power to the remote alarm unit for no more than 15 minutes of operation as specified in §§ 896.22 and 896.23.

(d) If line power operated, battery backup shall be provided that automatically activates within 5 seconds after the power fails for any reason. The battery shall have sufficient capacity, when fully charged, to supply power for normal operation for at least 8 hours.

§ 896.25 Self test.

Monitors shall incorporate a self test, for confirmation by the operator, to operate or exercise all visual and audible status indicators each time the monitor is turned on.

Subpart C—Electrical Performance Requirements

§ 896.30 Battery power.

(a) All line-powered monitors intended for use in the home shall have a battery power backup which shall, unless the overcurrent protection specified in § 896.32 has activated, automatically activate when the power fails. The monitor shall operate in compliance with the standard within 5 seconds after the battery backup power has activated.

(b) Monitors intended for use in the home shall have a battery of sufficient capacity, when fully charged, to supply power for normal operation for at least 8 hours.

(c) Monitors intended for use in the home shall have audible and visual battery depletion warning status indicators that activate when the battery has sufficient charge remaining to supply power for monitor operation in accordance with the standard for at least 60 minutes, and which remain activated until the battery is depleted. The monitor shall have a means for silencing the audible battery status indicator.

(d) Housings containing batteries from which gases can escape during charging or discharging shall be ventilated to minimize the risk of accumulation and ignition. Battery compartments shall be designed to prevent the risk of accidentally short-circuiting the battery.

(e) If a safety hazard or monitor malfunction could result from incorrect connection or replacement of a battery, the monitor shall be designed to prevent incorrect polarity of connection.

§ 896.31 Electrical power indicators.

(a) Visual ready status indicators shall be provided to indicate that the monitor is energized. Such indicators shall be located conspicuously on the device and shall distinguish between battery power and line power sources when both sources are provided.

(b) In monitors incorporating a means for battery charging, the charging mode shall be visible to the operator.

§ 896.32 Overcurrent protection.

(a) Overcurrent protection shall be provided for all line powered monitors.

(b) An audible warning status indicator shall be activated if the overcurrent protection device is activated and the monitor cannot be operated; this status indicator (alarm) shall be capable of sounding for at least 15 minutes.

(c) Monitors shall not be fitted with protective devices which may cause disconnection of the monitor from the power line (supply mains) by producing a short circuit which results in operation of an overcurrent protection device.

§ 896.33 Dielectric withstand.

Power source lines, patient contact circuits, and transducer circuits shall be adequately insulated to assure protection of the patient and monitor from overvoltages. The monitor shall meet the requirements of the standard IEC 601–1, Clause 20.

§ 896.34 AC (alternating current) power grounding and polarity.

All monitors intended for home use that operate or recharge batteries from the AC power line shall comply with this standard when operating from an ungrounded power source. If monitor power line connectors are not polarized, the monitor shall operate in compliance with this standard in both polarities of power line connector insertion.

§ 896.35 Leakage current.

Monitors shall meet the requirements of the standard IEC 601–1 for Type BF equipment.

§ 896.36 Electromagnetic compatibility.

All monitors shall meet the electromagnetic compatibility requirements contained herein. Monitors intended for home use shall also meet these requirements when recharging batteries, or operating, from a grounded or an ungrounded AC power source. If monitor power line plugs are not polarized, the monitor shall meet these requirements in both polarities of power line plug insertion.

(a) *Emissions.* The monitor shall operate in compliance with this standard without emitting electromagnetic energy in excess of the levels specified in paragraphs (a)(1) and (a)(2) of this section. The required emission limit shall be that specified by the referenced document, adjusted downward by the root-mean-square sum of all errors in the measurement of that quantity.

(1) *Radiated and conducted electromagnetic energy.* The monitor shall comply with the relevant requirements of CISPR 11 when tested according to the test methods contained therein. These tests shall be conducted using passive patient simulators, which need not simulate normal patient signals. A 1-kilohm resistor shall be used for impedance and electrocardiograph sensors, room air shall be used for CO_2 sensors, a rigid cylinder shall be used for circumference and cross-sectional-area sensors, and an optical filter having optical density between 2 and 4 at both red and infrared wavelengths shall be used for oxygen saturation sensors.

(2) *Magnetic fields.* The monitor shall comply with the relevant requirements of RE01 of the standard MIL–STD–461C, when tested according to RE01 of the standard MIL–STD–462.

(b) *Immunity.* The monitor shall operate in compliance with this standard during and after exposure to electromagnetic interference at the levels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section. The required immunity level shall be the level stated, adjusted upward by the root-mean-square sum of all errors in the measurement of that quantity, with the exception of the lower steady-state AC voltage limit and the line-voltage sag level, which shall be adjusted downward by the root-mean-square sum of the measurement errors. Unless expressly permitted in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the monitor shall not, as a result of the specified test condition: Detect a false primary or secondary monitoring modality event, indicate a false primary or secondary monitoring modality alarm, indicate an equipment alarm, exhibit temporary degradation or loss of function or performance requiring operator intervention or system reset, or exhibit loss or corruption of stored data. Except as specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, patient simulators shall be used to provide simulated normal stimulus to primary and secondary sensors during electromagnetic immunity testing.

(1) *Electrostatic discharge.* The monitor shall operate in compliance with this standard within 5 seconds of air discharges of 2, 4, 6, and 8 kilovolt and contact discharges of 2, 4, and 6 kilovolt, both positive and negative, to any point on the monitor accessible to the operator or patient, when tested according to the standard IEC 801–2, with the conditions and modifications specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section. The monitor shall operate in compliance with this standard within 5 seconds of when contact discharges are applied to horizontal and vertical conducting planes in the vicinity of the monitor, as specified in paragraph (b)(1) of this section, with the exception that detection of a single false primary or secondary monitoring modality event is permitted as a result of each discharge.

(i) The monitor shall be tested according to the test method described in standard IEC 801–2 for tabletop equipment.

(ii) The relative humidity shall not exceed 50 percent during air discharges.

(iii) Air discharges shall be conducted at 2, 4, 6, and 8 kilovolt. Contact discharges shall be conducted at 2, 4, and 6 kilovolt. Discharges of both positive and negative polarity shall be conducted at each voltage.

(iv) In addition to air and contact discharges directly to the monitor, contact discharges shall be made to the horizontal coupling plane under the monitor and to the vertical coupling plane positioned parallel to the faces of the monitor. At least 10 single discharges at each voltage (2, 4, and 6 kilovolt) and polarity shall be applied to each test point.

(2) *Radiated electromagnetic fields.* The monitor shall operate in compliance with this standard during and after exposure to electromagnetic fields at frequencies between 10 megahertz and 1 gigahertz at field strengths of 0.3, 1, and 3 volts per meter, when unmodulated, amplitude modulated 80 percent with a 0.5-hertz

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sine wave. Test conditions shall be as follows:

(i) The radiated electric-field (E-field) shall be uniform and linearly polarized in a horizontal plane.

(ii) The test shall be performed with each of the six faces of the monitor facing the antenna. All cables shall be aligned with the horizontal E-field vector over the majority of their length throughout the test. For exposure methods in which the monitor cables cannot be extended fully, if the length of any conducting cable is greater than 1.5 meters, the first 0.75 meters of cable (closest to the monitor) shall be aligned with the horizontal E-field vector and the remaining length shall be bundled in a noninductive, serpentine configuration.

(iii) The test shall be performed with all monitor components and cables positioned at an appropriate distance from any radio frequency (RF)-reflecting object and at a distance from any conducting ground plane that is appropriate for tabletop equipment.

(iv) Patient simulators used during the test shall be either simple passive devices, isolated from earth ground using fiber optic links, or battery operated and shielded. For impedance and electrocardiograph sensors, testing for erroneous breath and heartbeat detection shall be performed using a 1-kilohm resistor as a patient simulator, or a more suitable value defined by the manufacturer for a particular model of apnea monitor. Testing for erroneous breath detection shall also be performed using a battery operated simulator set to produce electrocardiograph signals, but not respiration signals (i.e., set to the apnea mode). Testing for all other fault conditions shall be performed using a battery operated simulator set to produce both respiration signals and electrocardiograph signals.

(v) Connections not normally used during monitor operation that are made to the monitor to assess performance during the test shall be isolated using fiber optic links.

(3) *AC voltage fluctuations, transients, and conducted interference.* The following requirements apply to all monitors that recharge batteries or operate from the AC power line:

(i) *Steady-state voltage.* The monitor shall remain in compliance with this standard, without changing a voltage selection switch, when powered from line voltages between 95 and 132 volts root-mean-square. For monitors intended for home use, the battery power backup shall activate automatically when the line voltage falls below the minimum level necessary for line powered monitor operation, which shall be no greater than 95 volts root-mean-square, and line powered operation shall automatically resume when the line voltage returns to the 95- to 132-volt range.

(ii) *Dropout.* The monitor shall operate in compliance with this standard during and after line voltage dropouts for durations of 10 milliseconds and less.

(iii) *Slow sags and surges.* The monitor shall operate in compliance with this standard during and after line voltage surges to 150 volts root-mean-square and sags to 90 volts root-mean-square, for durations of 500 milliseconds and less.

(iv) *Fast transient bursts.* The monitor shall operate in compliance with this standard during and after bursts of transients of 0.5, 1, and 2 kilovolts applied to AC power leads, and transients of 0.25, 0.5, and 1 kilovolts coupled by way of a capacitive clamp to signal leads, when tested according to IEC 801–4, with the exception that the burst repetition frequency shall not exceed 30 per minute.

(v) *Fast surges.* The monitor shall operate in compliance with this standard during and after exposure to common-mode and differential-mode combination voltage/current transients, both positive and negative, applied to AC power leads.

(A) The test generator used shall have the following specifications:

Open-circuit voltage, differential mode: 0.5 and 1 kilovolts.

Open-circuit voltage, common mode: 0.5, 1, and 2 kilovolts.

Open-circuit voltage risetime: 1.2 microseconds.

Open-circuit voltage falltime: 50 microseconds.

Generator source impedance: 2 kilohm.

Short-circuit current risetime: 8 microseconds.

Short-circuit current falltime: 20 microseconds.

Peak short-circuit current: 1 kilo ampere.

(B) Capacitive coupling shall be used to apply the combination wave to the AC power leads of the monitor under test. Surges shall be applied at the point where the monitor normally would be connected to AC line power.

(C) A decoupling network shall be used to isolate the monitor under test from the AC power network.

(D) A line-to-line test (differential mode) shall be performed using 0.5 and 1-kilovolt surges of both positive and negative polarity applied using a generator source impedance of 2 kilohm and coupling capacitance of 18 micro farads.

(E) A line-to-ground and a both-lines-to-ground test (common mode) shall be performed using 0.5, 1, and 2-kilovolt surges of both positive and negative polarity applied using a generator source impedance of 12 kilohm (10-kilohm resistor in series with test generator) and coupling capacitance of 9 micro farads.

(F) Surges at each amplitude and polarity shall be applied at phase angles of 0, 45, 90, 135, 180, 225, and 270 degrees with respect to the AC line.

(G) Each test shall be repeated 10 times at a rate between 1 and 30 surges per minute.

(vi) *Conducted electromagnetic energy.* The monitor shall operate in compliance with this standard during and after exposure to both differential and common mode conducted electromagnetic energy on the AC power leads at frequencies between 150 kilo Hertz and 80 megahertz at voltages of 0.3, 1, and 3 volts root-mean-square (when unmodulated), amplitude modulated 80 percent with a 0.5 hertz sine wave, added to the power line voltage, when tested according to CS02 of the standard MIL–STD–462, with the modifications and additions specified in paragraphs (b)(3)(vi)(A) through (b)(3)(vi)(E) of this section. If continuous sweep of the test frequency is used, the sweep rate shall not exceed 1×10^{-3} decades per second. If discrete frequency steps are used, the maximum step size is 1 percent of the test frequency, and the minimum dwell time is 10 seconds per step.

(A) The impedance of AC inputs shall be stabilized using line impedance stabilization networks appropriate for the test frequency range.

(B) The power leads under test shall be elevated 5 centimeters above the ground plane.

(C) The interference signal shall be injected at a distance of 5 centimeters from the point at which AC line power enters the monitor. For battery chargers which plug directly into AC outlets, a 10 centimeter length of wire shall be added between the line impedance stabilization networks (LISN's) and the charger. The low-voltage output cable of the charger shall be elevated 5 centimeters above the ground plane.

(D) The differential-mode test shall be conducted as specified in CS02 of the standard MIL–STD–462. The lead between the capacitor and the AC line shall be as short as possible.

(E) The common-mode test shall be conducted as specified in paragraph (b)(3)(vi) of this section, except that two identical capacitors shall be used, one connected from the signal source to the AC phase lead and one connected from the signal source to AC neutral.

(4) *Magnetic fields.* The monitor shall operate in compliance with this standard during and after exposure to magnetic fields as specified in RS01 and RS02 of the standard MIL–STD–461C. The standard MIL–STD–462 also shall apply with the exception that the pulse repetition frequency for RS02 shall not exceed 30 per minute.

(5) *Quasi-static electric fields.* The monitor shall operate in compliance with this standard during and after exposure to a 0.5 hertz sinusoidal E-field with a peak field strength of 500, 1,000, and 2,000 volts per meter.

§ 896.37 Auxiliary output.

Where an auxiliary output is provided:

(a) The monitor shall meet all the requirements of this standard during and after application of a short circuit applied to the auxiliary output for 1 minute.

(b) The leakage current requirements of § 896.35 shall not be exceeded upon proper connection of an auxiliary device to the auxiliary output. This proper connection shall be described in the operator's manual as specified in § 896.50(b)(2)(iii).

Subpart D—Mechanical and Environmental Performance Requirements

§ 896.40 Controls protection.

The controls of monitors intended for home use shall be protected from inadvertent or unauthorized changes or adjustment. The means of protection shall be such as to preclude their defeat by patients, siblings, or other unauthorized persons.

§ 896.41 Connector protective incompatibility.

(a) Monitor connectors, including those on wires and tubing, shall be designed such that insertion into a receptacle other than the one into which they are intended to be inserted or into a receptacle using an improper orientation is not possible.

(b) Electrical connectors of a monitor (e.g., electrical lead wires) shall include a mechanism to prevent connection of the patient to a power source that may cause a current flow in excess of that specified in § 896.35.

§ 896.42 Mechanical safety.

Each monitor shall:

(a) Not have any exposed sharp edges.

(b) Be mechanically stable in the intended position(s) of use.

(c) Provide protection to the operator and patient from moving parts.

§ 896.43 Mechanical vibration and shock resistance.

The monitor shall remain in compliance with this standard following mechanical shock and vibration as follows:

(a) Shock test specifications shall be as follows:

(1) Peak acceleration: 100 g (1,000 meters per second^2) (g means acceleration of gravity),

(2) Duration: 6 milliseconds, and

(3) Pulse shape: half sine.

(b) Sinusoidal vibration test specifications shall be as follows:

(1) Frequency range: 10 to 500 hertz,

(2) Acceleration amplitude: 1 g (9.8 meters per second^2), and

(3) Duration: 10 sweep cycles in each axis.

(c) Wide band random vibration test specifications shall be as follows:

(1) Frequency range: 20 hertz to 500 hertz, and

(2) Acceleration spectral density: 0.02^2 per hertz, Duration: 9 minutes.

§ 896.44 Fluid spill resistance.

The monitor shall be so constructed that it will continue to operate in compliance with this standard even in the event that fluids are dripped on it. The monitor shall meet the requirements for drip proof equipment as specified in Clause 44.6 of the standards IEC 601–1 and IEC 529.

§ 896.45 Temperature and humidity.

(a) The monitor shall be in compliance with this standard when operating in the environmental temperature range of 5 °C to 40 °C, and in the environmental humidity range of 15 percent to 95 percent, noncondensing.

(b) The monitor shall not be damaged, and shall remain in compliance with this standard, after storage in the environmental temperature range of -40 °C to 70 °C at 95 percent humidity.

§ 896.46 Surface temperature.

The temperature of all surfaces of the monitor with which an operator might come into contact during operation shall not exceed 50 °C in an ambient of 35 °C. The temperature of surfaces with which the patient can come into contact shall not exceed 40 °C in an ambient of 35 °C. Electrochemical transcutaneous sensors are permitted for hospital use only with maximum temperatures up to 44 °C for less than 4 hours (at the same site) if adequate patient protection procedures are clearly described in the labeling.

§ 896.47 Toxic materials.

No toxic material from a monitor shall come in contact with the patient or operator during normal use as specified in § 896.50(b)(1).

§ 896.48 Strangulation.

Provision shall be made in routing, retention devices, or other means to minimize the risk of strangulation of the patient by wires or tubing.

Subpart E—Labeling Requirements

§ 896.49 General.

In addition to the labeling requirements for prescription devices in part 801 of this chapter, each infant apnea monitor shall comply with the labeling requirements of this section. The labeling for each monitor shall prominently state the intended uses and limitations of the device, provide clear instructions, describe potential device malfunctions, and contain adequate operation, maintenance, and service information.

§ 896.50 Operator information.

Manufacturers of infant apnea monitors intended for home use shall provide, with each monitor, an operator instruction manual for laypersons that has been prepared at the fifth-grade reading comprehension level and that includes numerous supporting illustrations. A means of determining the effectiveness of instruction shall also be provided. The manual shall contain:

(a) A statement of the purpose (indications for use) of the monitor and an explanation of how the monitor accomplishes that purpose, including:

(1) A discussion of the types of apnea that the device monitors as well as the parameters monitored by the secondary monitoring modality.

(2) An explanation of how the monitor accomplishes its purpose, including the type of sensors used.

(b) Information pertaining to operating conditions that may affect the efficacy or safety of the monitor, including the following:

(1) Monitor information, including:

(i) An explanation of the function and meaning of each alarm and indicator provided with the monitor,

(ii) A statement that the monitor may not be able to detect all episodes of inadequate breathing,

(iii) Recommended precautions to minimize the risk of strangulation,

(iv) A list of the toxic materials used in the manufacture of the monitor and protective means employed to prevent contact during normal use,

(v) A discussion of the hazards and risks associated with the monitor.

(2) Operator information, including: General operating information, adequate

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instructions for monitor setup, check-out, operation, operator maintenance, and service, including:

(i) General operating information, including:

(A) A list of additional reference materials available to the layperson about apnea monitoring and the location where such materials can be obtained,

(B) Reprints of applicable FDA safety alerts,

(C) A statement of when it is advisable to contact the prescribing physician or health care professional,

(D) A recommendation that the operator be trained in cardiopulmonary resuscitation (e.g., Red Cross/American Heart Association Certification),

(ii) Setup shall include unpacking instructions, an accessory checklist, and a visual safety inspection of the monitor, including accessories,

(iii) A check-out of the monitor, including:

(A) A step-by-step procedure for checking proper functioning of all controls, indicators, and alarms,

(B) A troubleshooting guide for use when there are indications of a monitor malfunction during checkout and/or operation,

(iv) Simplified diagrams and illustrations of the fully assembled and ready to operate monitor. Information on device operation shall include:

(A) Each step that must be taken by the operator to achieve the clinical purpose of both the primary and secondary modality, as well as the steps required to prepare the monitor for operation,

(B) Proper connection of auxiliary devices,

(C) Any pre-use cleaning or disinfecting procedures for the monitor, including any accessories,

(D) A description of appropriate warm-up procedures and intervals,

(E) A discussion of the positioning of sensors or electrodes, alternate electrode placement, proper preparation of electrodes and patient for electrode attachment, and identification of loose sensors or electrodes,

(F) Diagrams and illustrations showing proper connection of the patient to the monitor and other equipment, if applicable, including alternate recommended electrode or sensor placement,

(G) Legible reproductions of all required labels and hazard warnings, and graphic representation of all controls, alarms, and indicators provided with the monitor. An explanation of the use of the controls, alarms, and indicators,

(H) A list of error messages from the monitor, if applicable, their meaning, and the corrective steps that can be taken by the operator,

(I) Clear warnings concerning the precautions necessary to avoid possible misoperation or unsafe use of the monitor,

(J) Recommended procedures to be followed in the event of a monitor alarm condition,

(K) A discussion of the proper use of remote alarm units, including recommended placement and the importance of the operator being able to access the patient within 1 minute of alarm activation.

(v) Operational maintenance information, including:

(A) Recommendations for methods and materials for cleaning and disinfecting the monitor,

(B) A schedule of operator initiated maintenance necessary to keep the monitor in compliance with this standard,

(C) Battery care and maintenance procedures, including instructions for recharging or replacement,

(D) A description of periodic visual safety inspections that should be performed by the operator,

(vi) Service information, including:

(A) The frequency of any calibration, repair, or periodic inspections of the monitor necessary to keep it in compliance with this standard,

(B) A list of facilities, and their locations, that may provide these services,

(3) Patient information, including:

(i) A description of any clinical circumstances which might require sensor adjustment or checking for proper operation.

(ii) A description of any circumstances in which there is a possibility of allergenic or chemical reactions and instructions for preventing such reactions, e.g., periodically repositioning electrodes.

(4) Facility information, including a description of what should be expected if electricity to the monitor is lost.

(5) Environmental information, discussing known or recognizable conditions of the infant's environment that may affect the safe and effective use or operation of the monitor, such as lint, dust, sun, light, heat, or humidity, including:

(i) A discussion of the effects and possible sources of electromagnetic interference, e.g., conducted and radiated,

(ii) A discussion of the effects and causes of electrostatic discharge,

(iii) A list of other devices that pose potential electrical problems,

(iv) A description of conditions of the sensors or electrodes, such as loosened electrodes, that can cause environmental effects to be more pronounced,

(v) A description of steps which can be taken by the operator to identify and resolve environmental interference with the safe and effective use of the monitor.

§ 896.51 Health care practitioner information.

Manufacturers of monitors shall provide a health care practitioner instruction manual with each monitor. The manual shall contain all of the information specified in § 896.50 in such detail as is sufficient for the needs of the practitioner, but the information need not be restricted to the fifth-grade reading comprehension level. In addition, the manual shall contain:

(a) A description of equipment required for monitor use and mechanical and/or electrical specifications for electrodes, sensors, leads, cables, tubing, batteries, and accessories with which the monitor will operate in compliance with this standard.

(b) Step-by-step procedures necessary to prepare the monitor for initial and subsequent use. If a manual sensitivity control is provided, instructions as to when to use manual sensitivity and how to adjust the control for optimal breath detection.

(c) Step-by-step procedures recommended for determining whether the monitor is susceptible to the levels of electromagnetic interference occurring at the intended-use site, a recommendation to repeat the testing periodically, and recommended action to be taken if the monitor fails the test. The preferred testing procedure for impedance monitors is as follows:

(1) Set the monitor apnea duration to 20 seconds.

(2) Connect the monitor to a patient simulator with all cables in extended rather than coiled configuration.

(3) Determine that the monitor detects normal respiration and heart beats.

(4) Place the simulator in the apnea mode for 2 minutes.

(5) Determine that the monitor continues to alarm for apnea at full volume beginning at 20 seconds. Alarming at reduced volume, false heart rate alarms, or self-silencing of the apnea alarm prior to the end of the simulated apnea constitute failure of this test.

(d) Precautions and a schedule of maintenance and calibrations necessary to keep the monitor in compliance with this standard.

(e) Complete equipment specifications, including signal processing functions, algorithms, and averaging times for any monitor function applicable to the operation and use of the device; statements as to whether or not pacemaker pulse rejection and defibrillator protection are included.

(f) For monitors using heart rate as a secondary monitoring modality, a caution statement that low heart rate may not occur during apnea if the patient is receiving drugs or substances which could affect heart rate, e.g., such as theophylline.

(g) A discussion of the importance of evaluating for each patient the response to apnea of candidate secondary monitoring parameters; how this information should be used in the selection of an appropriate secondary monitoring modality and in setting the secondary parameter alarm limits; and the importance of reevaluating the appropriateness of the secondary monitoring parameter and its alarm limit settings as conditions change.

(h) For monitors intended for home use, a discussion of home apnea monitoring that includes:

(1) Instruction and education of the parent and other care givers in the normal operation and hazards of the device and its limitations.

(2) An explanation of the equipment used in home monitoring.

(i) A list of additional reference materials for the health care practitioner about apnea monitoring.

(j) The date of issuance and the date of any revision of the health care practitioner instruction manual provided.

(k) The results of clinical testing for the specific model of apnea monitor and the methods by which these results were obtained.

§ 896.52 Servicing information.

Manufacturers of monitors shall provide to servicing dealers and distributors adequate instructions for service adjustment and service procedures necessary to keep the device in compliance with this standard, including: Theory of operation, block diagrams, software flow charts, schematics, parts lists, and any necessary test procedures.

§ 896.53 Label specifications.

Labels or other equivalent markings required by this section shall be legible, clearly visible during operation, permanently affixed or inscribed on the exterior of the finished device, and shall resist removal or blurring from disinfectants or other normal use of the device.

§ 896.54 Controls, connectors, switches, and indicators.

All controls, switches, connectors, and indicators shall bear clear, concise labels identifying their functions.

§ 896.55 Standard compliance.

The monitor shall bear a label which states that it has been manufactured in compliance with this standard.

§ 896.56 Switched outlet warning.

Each monitor intended for use in the home that can recharge batteries or operate from the AC power line shall bear a label stating: "DO NOT connect to an electrical outlet controlled by a wall switch".

§ 896.57 Air mattress warning.

Air mattresses shall be permanently labeled with the warning: "Inflate only with room air, do NOT use pure oxygen".

§ 896.58 Monitors intended for hospital use only.

Monitors intended for hospital use only shall be permanently labeled on the front of any module intended to comprise an infant apnea monitor as follows: "NOT FOR HOME USE".

§ 896.59 General test methods.

Information concerning the design of, and rationale for, the tests used to meet this standard, together with analyses and results of these tests, shall be available to any person from the manufacturer upon request. In addition, this information shall be maintained in the manufacturer's device master file for a period of 5 years after production of the device has ceased.

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0073)

Dated: February 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-022-00001-2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869-022-00002-1)	33.00	[1] Jan. 1, 1994
4	(869-022-00003-9)	5.50	Jan. 1, 1994
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Interim rule; extension of comment period.

SUMMARY: The General Accounting Office Personnel Appeals Board is extending until March 15, 1995, the deadline for receipt of public comments on the interim procedural rule that it published in the **Federal Register** on November 16, 1994 (59 FR 59103).

DATES: Comments on the interim rule must be received by the Board on or before March 15, 1995.

ADDRESSES: Comments should be addressed to: Patricia Reardon, Clerk of the Board, General Accounting Office Personnel Appeals Board, Suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Barbara Lipsky, Attorney, Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: On November 16, 1994, the General Accounting Office Personnel Appeals Board published interim procedural regulations in the **Federal Register** (59 FR 59103) and requested public comments on those regulations. The interim regulations provide procedures for the receipt and adjudication of appeals filed by employees of the Architect of the Capitol alleging discrimination on the basis of race, color, sex, national origin, religion, age, or disability. The interim regulations also include a few conforming amendments to the procedures governing appeals filed by employees of the General Accounting Office, and a change to the procedures for obtaining judicial review of Board decisions necessitated by a recent decision of the United States Court of Appeals for the District of Columbia Circuit. The regulations have been in effect on an interim basis since November 16, 1994. In order to ensure that all interested persons have an opportunity to submit comments on the regulations, the deadline for receipt of comments is being extended until March 15, 1995. The Board will carefully consider all comments received by that date in preparing the final regulations.

Beth L. Don,

Executive Director, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc. 95–4287 Filed 2–21–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1404F–92]

RIN 1115–AC34

Fee for Application for Naturalization Under Section 405 of the Immigration Act of 1990; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change, an interim rule published in the **Federal Register** on May 27, 1993, by the Immigration and Naturalization Service (the Service), which amended the existing fee schedule. The fee schedule was amended to recover the cost of providing special services under section 405 of the Immigration Act of 1990 (IMMACT), which allows for the naturalization of certain natives of the Philippines, based upon qualifying active duty military service during World War II, who would not otherwise be eligible for naturalization, and section 113 of the Departments of Commerce, State, Justice, and Related Agencies Appropriations Act of 1993, which permits the interview and naturalization of these persons in the Philippines. The fee for naturalization in those cases was raised to recover the cost of providing those special services and benefits.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: W.R. Tollifson, Adjudications Officer, Naturalization and Special Projects Branch, Immigration and Naturalization Service, 451 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

On May 27, 1993, the Commissioner of the Immigration and Naturalization Service published in the **Federal Register** at 58 FR 30698–30699, an interim rule with request of comments to amend the Service's application fee schedule to include a surcharge for applications for naturalization where the applicant will be naturalized in the Philippines under section 405 of IMMACT.

The public was provided with a 45-day comment period which ended on July 12, 1993. No comments were received during that period. Accordingly, the fee for those applications processed in the Philippines and received by the Service on or after June 28, 1993, will remain $120.00.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule merely adopts without change, an interim rule which has been in effect since June 28, 1993.

Executive Order 12866

This regulation is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not

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have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 103

Administrative practices and procedures, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds, Fees, Forms.

Accordingly, the interim rule amending 8 CFR part 103 which was published in the **Federal Register** on May 27, 1993 at 58 FR 30698–30699 is adopted as a final rule without change.

Dated: February 9, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4258 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 299

[INS No. 1651N–95]

RIN 1115–AD64

Form I–589; Request for Asylum and Withholding of Deportation in the United States: Establishment of Compliance Date

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service's (Service) regulations by updating the listing of forms currently in use by the Service to reflect the current edition date (November 16, 1994) and title of the Form I–589, Application for Asylum and for Withholding of Deportation. This update is necessary to ensure that only the current edition of the Form I–589 listed in the regulations is used. Applications submitted on prior versions of the Form I–589 will not be accepted after March 24, 1995.

DATES: This rule is effective February 22, 1995. Applications submitted on the prior versions of the Form I–589 will not be accepted after March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Office of International Affairs, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, Attn: ULLICO, Third Floor, Telephone: (202) 633–4389.

SUPPLEMENTARY INFORMATION: On November 4, 1994, a notice of revision of the Form I–589 was published in the **Federal Register** at 59 FR 55289. On November 28, 1994, the revised Form I–589 was approved by the Office of Management and Budget (OMB) for use by the Service under the provisions of the Paperwork Reduction Act. This rule amends 8 CFR 299.1 by updating the entry for the Form I–589 to reflect the current title and edition date (November 16, 1994).

The Form I–589 must be submitted when an individual who is present in the United States applies for asylum and for withholding of deportation. Applications submitted using a prior version of the November 16, 1994, Form I–589 will no longer be accepted after March 24, 1995, and the application will be returned by the Service. After March 24, 1995, the 150-day period after which the applicant may file an application for employment authorization in accordance with the regulations will not commence if the applicant submits a version of Form I–589 with a revision date prior to November 16, 1994.

The deadline for use of the prior version of the Form I–589 is, in the view of the INS, a rule of agency procedure or practice. Therefore, it is not subject to the notice and comment requirements of 5 U.S.C. § 553. The INS publishes this rule of procedure or practice in the **Federal Register** for the guidance of the public as required by 5 U.S.C. § 552.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is primarily administrative in nature and merely updates the existing forms listings currently contained in Title 8 of the Code of Federal Regulations.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, part 299 of chapter I of title 8 of the Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

2. Section 299.1 is amended by revising the entry for "Form I–589" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I–589	11–16–94	Application for Asylum and for Withholding of Deportation

* * * * *

Dated: February 14, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4257 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–007; Order No. 563–E]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued February 15, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order granting clarification and extension of time.

SUMMARY: In response to a request for clarification submitted by the Electronic Bulletin Board Working Group, the Federal Energy Regulatory Commission is issuing an order making changes to the fields that report the maximum natural gas pipeline tariff rate related to released capacity. The order clarifies that pipelines must report only the maximum tariff rate related to the type of release involved; e.g., the maximum reservation rate for a reservation rate release and the maximum volumetric rate for a volumetric release. The order also grants an extension of time for pipelines to implement the new fields.

DATES: New fields must be implemented on or before March 17, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 208–0292

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE, Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE, Washington DC 20426.

Order Granting Clarification and Extension of Time

Issued February 15, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr.

On January 24, 1995, the Electronic Bulletin Board (EBB) Working Group filed a request for clarification of the Commission's December 29, 1994 order [1] requiring pipelines to include maximum rate fields as part of the capacity release data sets adopted by the Commission in Order No. 563.[2] The Working Group further requests an extension of time for compliance until the later of 30 days after the Commission issues a clarification order or the Gas*Flow implementation guide is available in the Commission's public reference room. The Commission will grant the requested clarification and will extend the time for compliance until 30 days from the date of this order.

In the December 29, 1994 order, the Commission accepted a proposal by the Working Group to include the maximum tariff rate for capacity posted for release. The Commission required the inclusion in the Award Data Set of the maximum reservation rate and maximum volumetric rate for released capacity. The Working Group had proposed that the fields should be considered optional, meaning that a pipeline would include the fields only if the pipeline chooses to do so or its tariff requires it to include the information. The Commission, however, concluded that the fields should be mandatory, because the Commission needed maximum rate data for all releases from all pipelines.

The Working Group requests clarification, contending that these fields should be designated conditional rather than mandatory, fields. A mandatory designation would mean that data must be included in both of these fields for every release. The Working Group argues that if a release is a reservation rate release, there is no need to include the maximum volumetric rate, and *vice versa*.[3] The Working Group contends, therefore, that the maximum rate fields should be made conditional on the type of release involved, so that only the maximum rate related to the release would be provided; e.g., the maximum reservation rate for a reservation rate release and the maximum volumetric rate for a volumetric release.[4] The Working Group states that changing the field designation to conditional would not disturb the Commission requirement that pipelines provide the maximum rate data for all releases, but would only serve to ensure that unnecessary information would not be provided. The Working Group has included revised data sets to implement this change and stated that the datasets would be provided to the Gas*Flow group for incorporation into the EDI implementation guide.

The Commission will accept the proposed modification to make the fields conditional as described in the data sets. The intent of the December 29, 1994 order was to require pipelines to supply data on the maximum rate for each release, but the Commission did not intend that pipelines report a maximum rate that was unrelated to the type of release involved; e.g., a maximum reservation rate for a volumetric release. Such information

[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563–D, 60 FR 1718 (Jan. 5, 1995), 69 FERC ¶ 61,418 (Dec. 29, 1994).

[2] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[3] If a release is a blended release comprised of both a reservation rate and volumetric component, the Working Group states that data would have to be supplied for both fields.

[4] In the argot of the data sets, they propose that each maximum rate field would be made conditional on the response to the Rate Form Type Code, which is a mandatory field that describes whether the release is a (1) reservation rate, (2) volumetric, or (3) blended release. If the Rate Form Type Code is 1 indicating a reservation rate release, only the maximum reservation rate must be provided. If the Rate Form Type Code is 2 indicating a volumetric release, only the maximum volumetric rate must be provided. If the Rate Form Type Code is 3 indicating a blended release, both the maximum reservation rate and maximum volumetric rate must be provided.

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would be superfluous. Since the Working Group's proposal would require pipelines to provide the relevant maximum rate for all releases, the Commission will accept it.

The Working Group further requests that the Commission provide an extension of time to comply with this requirement until the later of 30 days after the Commission issues a clarification order or the Gas*Flow implementation guide is available in the Commission's public reference room. The Commission will grant an extension of time until 30 days after the issuance of this order.

Unlike the Working Group's previous filing, a proposed EDI implementation guide was not provided along with the proposed change to conditional fields. The Commission needs the information on maximum release rates as promptly as possible and, given the minimum changes necessary to implement the change, the Commission concludes that, if Gas*Flow has not already made the necessary changes, it can make them promptly. Thus, a 30 day delay is adequate to implement the proposed changes. Once the implementation guide is finalized, it must be filed with the Commission. The data sets and EDI implementation guide will then be incorporated into the "Standardized Data Sets and Communication Protocols" which is available at the Commission's Public Reference and Files Maintenance Branch.

The Commission orders: (A) The Commission will grant the requested clarification and accept the conditional fields for maximum reservation rate and maximum volumetric rate as proposed in the January 24, 1995 filing.

(B) Pipelines must implement these new fields within 30 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary

[FR Doc. 95-4233 Filed 2-21-95; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8588]

RIN 1545-AS70

Subchapter K—Anti-Abuse Rule; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the final regulation (TD 8588) which was published in the **Federal Register** for Tuesday, January 3, 1995 (60 FR 23). The final regulation provides an anti-abuse rule authorizing the Commissioner of Internal Revenue, in certain circumstances, to recast a transaction involving the use of a partnership.

EFFECTIVE DATE: January 3, 1995.

FOR FURTHER INFORMATION CONTACT: D. Lindsay Russell or Mary A. Berman at 202-622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections is under section 701 of the Internal Revenue Code.

Need for Correction

As published, TD 8588 inadvertently ommitted language and contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation which is the subject of FR Doc. 94-32331, is corrected as follows:

§ 1.701-2 [Corrected]

1. In the list below, for each Example in § 1.701-2, paragraph (d), indicated in the left column, the language in the middle column is removed, and the language in the right column is added.

§ 1.701-2(d)	Remove	Add
Example 3, heading, p. 28, 3rd column, 2nd line	limitation,	limitation;
Example 7(i), p. 29, 3rd column, 4th line	$100	$100*x*
Example 7(i), p. 29, 3rd column, 6th line	$6	$6*x*
Example 7(i), p. 29, 3rd column, 10th line	$50	$50*x*
Example 9(i), p. 30, 3rd column, 4th line	$9,000, $990, and $10	$9,000*x*, $900*x*, and $10*x*
Example 9(i), p. 30, 3rd column, 8th line	$10,000	$10,000*x*
Example 9(i), p. 30, 3rd column, 13th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 14th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 14th line	$8,100	$8,100*x*
Example 9(i), p. 30, 3rd column, 14th line	$891	$891*x*
Example 9(i), p. 30, 3rd column, 15th line	$9	$9*x*
Example 9(i), p. 30, 3rd column, 16th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 22nd line	$1,000 and $9,000	$1,000*x and $9,000x*
Example 9(i), p. 30, 3rd column, 24th line	$19,000	$19,000*x*
Example 9(i), p. 30, 3rd column, 25th line	$10,000	$10,000*x*
Example 9(i), p. 30, 3rd column, 26th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 27th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 30th line	$9,000, $990	$9,000*x*, $990*x*
Example 9(i), p. 30, 3rd column, 31st line	$10	$10*x*
Example 9(i), p. 30, 3rd column, 32nd line	$8,000	$8,000*x*
Example 9(i), p. 30, 3rd column, 35th line	$1,881 and $19	$1,881*x and $19x*
Example 9(i), p. 30, 3rd column, 36th line	$9,801 and $99	$9,801*x and $99x*
Example 9(i), p. 30, 3rd column, 40th line	$1,000	$1,000*x*
Example 9(i), p. 30, 3rd column, 41st line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 41st line	$8,910	$8,910*x*
Example 9(i), p. 30, 3rd column, 41st line	$90	$90*x*
Example 9(i), p. 30, 3rd column, 43rd line	$891	$891*x*
Example 9(i), p. 30, 3rd column, 44th line	$9	$9*x*
Example 10(i), p. 31, 1st column, 2nd line	$100	$100*x*
Example 10(i), p. 31, 1st column, 2nd line	$60	$60*x*
Example 10(i), p. 31, 1st column, 10th line	$30	$30*x*
Example 10(i), p. 31, 1st column, 28th line	$100	$100*x*

§ 1.701-2(d)	Remove	Add
Example 10(i), p. 31, 1st column, 32nd line	$40	$40*x*
Example 10(ii), p. 31, 1st column, 3rd line	$100	$100*x*
Example 10(ii), p. 31, 1st column, 5th line	$60	$60*x*
Example 10(ii), p. 31, 1st column, 6th line	$40	$40*x*
Example 10(ii), p. 31, 1st column, 9th line	$10	$10*x*
Example 10(ii), p. 31, 1st column, 11th line	$30	$30*x*
Example 10(ii), p. 31, 1st column, 13th line	$20	$20*x*
Example 11(i), p. 31, 2nd column, 7th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 13th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 15th line	$20	$20*x*
Example 11(i), p. 31, 2nd column, 17th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 31st line	that (i) A's	that A's
Example 11(i), p. 31, 2nd column, 34th line	and (ii) because	and because
Example 11(i), p. 31, 2nd column, 38th line	$80	$80*x*
Example 12(i), p. 31, 3rd column, 7th line	$100	$100*x*
Example 12(i), p. 31, 3rd column, 9th line	$60	$60*x*
Example 12(i), p. 31, 3rd column, 9th line	$40	$40*x*
Example 12(i), p. 31, 3rd column, 12th line	$40	$40*x*
Example 12(i), p. 31, 3rd column, 15th line	$100	$100*x*
Example 12(i), p. 31, 3rd column, 20th line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 21st line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 22nd line	$10	$10*x*
Example 12(i), p. 31, 3rd column, 23rd line	$60	$60*x*
Example 12(i), p. 31, 3rd column, 23rd line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 24th line	$10	$10*x*
Example 12(i), p. 31, 3rd column, 25th line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 25th line	$40	$40*x*
Example 13(i), p. 32, 2nd column, 3rd line	$95	$95*x*
Example 13(i), p. 32, 2nd column, 4th line	$5	$5*x*
Example 13(i), p. 32, 2nd column, 10th line	$100	$100*x*
Example 13(i), p. 32, 2nd column, 16th line	$5	$5*x*
Example 13(i), p. 32, 2nd column, 19th line	$100	$100*x*
Example 13(i), p. 32, 2nd column, 22nd line	$50	$50*x*
Example 13(i), p. 32, 2nd column, 24th line	$5	$5*x*
Example 13(i), p. 32, 2nd column, 24th line	$45	$45*x*

2. On page 33, column 1, § 1.701-2, paragraph (f), paragraph (ii) of *Example 2*, line 20, the language "corporation Z stock, and the partners must" is corrected to read "Corporation Z stock, and the partners must".

Dale D. Goode,

Federal Register Liaison Ass't Chief Counsel (Corporate).

[FR Doc. 95-3769 Filed 2-21-95; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 1949-95]

Redelegation of Personnel Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends Department regulations on personnel authorities with respect to Assistant United States Attorneys to specifically allow the Deputy Attorney General to redelegate the authority to take final actions with respect to their appointment, employment, separation, and general administration. The rule is promulgated to clarify the current regulation and reflect the Deputy Attorney General's wide discretion in delegating certain personnel authorities.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Page Newton, Senior Attorney Advisor, Legal Counsel's Office, Executive Office for United States Attorneys, Department of Justice, Room 1644, 10th and Constitution Avenue, NW., Washington, DC 20530; telephone (202) 514-5340.

SUPPLEMENTARY INFORMATION: This order is a matter of internal department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. It does not have Federalism implications warranting the preparation of a Federalism assessment in accordance with section 6 of Executive Order 12612. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

For the reasons set forth in the preamble, Title 28, Chapter I, Part 0 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.15 is amended by revising paragraphs (b)(1)(v), (c), and (e) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * * *

(b) * * *

(1) * * *

(v) The appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and fixing their salaries.

* * * * * *

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1) (i), (ii), (iii), and (v) of this section to take final action in matters pertaining to the employment, separation, and general administratio:

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of attorneys and law students in grades GS–15 and below, to appoint special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b), to appoint Assistant United States Trustees and fix their compensation, and to take final action in matters pertaining to the appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and to fix their salaries.

* * * * *

(e) The officials to whom the Deputy Attorney General delegates authority under paragraph (c) of this section and any of the officials who may be otherwise authorized by the Deputy Attorney General to perform any other attorney personnel duties may redelegate those authorities and duties.

* * * * *

Dated: February 9, 1995

Janet Reno,

Attorney General.

[FR Doc. 95–4226 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA24–1–6519a; FRL–5143–7]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves certain regulations of the Northwest Air Pollution Authority (NWAPA) for the control of air pollution in Island, Skagit, and Whatcom Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These regulations were submitted by the Director of the Washington State Department of Ecology (WDOE) on January 10, 1994. In accordance with Washington statutes, NWAPA rules must be at least as stringent as the WDOE statewide rules.

DATES: This final rule will be effective on April 24, 1995 unless adverse or critical comments are received by March 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT–082), EPA, Docket # WA24–1–6519, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air Programs Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Washington Department of Ecology, PO Box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT–082), EPA, Region 10, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION

I. Background

On January 10, 1994, the Director of WDOE submitted to EPA Region 10 revised and updated regulations for NWAPA affecting Island, Skagit, and Whatcom Counties. NWAPA and WDOE held joint public hearings on April 14, 1993 and September 8, 1993, to receive public comment on the revisions to NWAPA's rules and the submittal to EPA as a revision to the Washington SIP.

These regulations cover such subjects as the adoption of State laws and rules, criminal and civil penalties, notice of construction procedures, registration classes, volatile organic compounds (VOC) controls, and others (please see Description of Plan Revisions, below). NWAPA requested that the WDOE submit these additions for incorporation into the Washington State SIP in an effort to prepare NWAPA for implementation of the operating permit program. EPA granted interim approval to NWAPA's operating permit program effective December 9, 1994. *See* 59 FR 55813 (November 9, 1994).

II. Description of Plan Revisions

The NWAPA amendments submitted by WDOE on January 12, 1994 for inclusion into the Washington SIP are local air pollution regulations which WDOE has certified are at least as stringent as the statewide rules of the WDOE. This rulemaking action approves portions of NWAPA's regulations related to the control of criteria pollutants under section 110 of the Act. EPA is taking no action on certain other portions of NWAPA's regulation. In this rulemaking, EPA is approving the following sections:

100 Name of Authority
101 Short Title
102 Policy
103 Duties and Powers
104.1 Adoption of State Laws and Rules
105 Separability
106 Public Records
110 Investigation and Studies
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180 Sampling and Analytical Methods/References
200 Definitions
300 Notice of Construction when Required
301 Information Required for Notice of Construction and Application for Approval, Public Notice, Public Hearing
302 Issuance of Approval or Order
303 Notice of Completion—Notice of Violation
310 Approval to Operate Required
320 Registration Required
321 General Requirements for Registration
322 Exemptions from Registration
323 Classes of Registration
324 Fees (except for section 324.121)
325 Transfer
340 Report of Breakdown and Upset
341 Schedule Report of Shutdown or Startup
342 Operation and Maintenance
360 Testing and Sampling
365 Monitoring
366 Instrument Calibration
400 Ambient Air Standards—Forward
401 Suspended Particulate Standards (PM–10)
410 Sulfur Oxide Standards
420 Carbon Monoxide Standards
421 Nitrogen Oxide Standards
424 Ozone Standard
450 Emission Standards—Forward
451 Emission of Air Contaminant—Visual Standard
452 Motor Vehicle Visual Standards (except for section 452.5)
455 Emission of Particulate Matter
458 Incinerators—Wood Waste Burners
460 Weight/Heat Rate Standard—Emission of Sulfur Compounds
462 Emission of Sulfur Compounds
466 Portland Cement Plants
510 Incinerator Burning
520 Sulfur Compounds in Fuel
550 Preventing Particulate Matter from Becoming Airborne
560 Storage of Organic Liquid
580 Volatile Organic Compound Control

The following discussion highlights elements of NWAPA's rules that EPA is approving: Section 104.1—Adoption of State Laws and Rules, allows NWAPA to position itself as the primary enforcement agency for the three counties under its jurisdiction. Sections 132 and 133—Criminal Penalty and Civil Penalty, respectively, reflect changes in Washington's Clean Air Act. Maximum fines have increased from $1,000 to $10,000, and civil penalties have been adjusted based on the consumer price index. Timely submittal of information on emissions is the subject of Section 150, which states that if industries do not comply in a timely fashion, fees will be based on potential rather than actual emissions. Sections 300 through 310 establish a preconstruction review program which requires the submittal of a "Notice of Construction and Application for Approval" and receipt of an "Order of Approval" prior to the construction or modification of most air contaminant sources. An "Order of Approval" will be issued after public notice and opportunity for comment, if applicable, provided the new or modified source complies with all applicable State and Federal requirements. Note, however, that the NWAPA regulations do not contain any provisions to implement the major source permitting requirements of Title I, Part C, and Part D of the Act. There are currently no nonattainment areas in NWAPA's jurisdiction and the WDOE implements the Part C "Prevention of Significant Deterioration" permit program under a delegation from EPA. Sections 320 through 325 require the registration of air contaminant sources, and impose an annual registration fee and other fees to cover the costs of regulating sources. "Preventing Particulate Matter from Becoming Airborne," Section 550, aims at preventing material from being deposited in public roadways that may result in fugitive dust problems. Volatile organic compounds (VOCs) are controlled by Section 580, which establishes BACT for all new VOC sources. This section covers petroleum refineries, high vapor pressure volatile organic compound storage tanks, gasoline loading terminals, bulk gasoline plants, gasoline stations, cutback asphalt paving, petroleum refinery equipment leaks, high vapor pressure volatile organic compound storage in external floating roof tanks, leaks from gasoline transport tanks and vapor control systems.

Finally, EPA is taking no action on the following sections which were included in the January 10, 1994 submittal but do not relate to the control of criteria air pollutants under section 110 of the Act.

104.2 Adoption of Federal rules
312 Environmental Policy Guidelines
324.121 Fees (operating permits)
326 Operating Permits
350 Variances
402 Particulate Fallout Standards
426 Hydrocarbons
428 Hazardous Air Pollutants
452.5 Motor vehicle standards for odor
465 Sulfuric Acid Plants
470 Fluorides
600 to 603 Objectives and Planning Criteria

In its January 10, 1994 submission, NWAPA did not submit its rules regarding open burning (Section 501—Outdoor Burning; Section 504—Outdoor Fires—Grass Seed Fields; Section 511—Refuse Burning Equipment—Time Restriction) and for concealment and masking (Section 540—Emission of Air Contaminant—Concealment and Masking) for inclusion in the SIP. Therefore, the statewide rules for open burning and concealment and masking apply within NWAPA's jurisdiction.

III. Summary of EPA Action

In this action, EPA approves the following sections of the NWAPA rules as revisions to the Washington SIP: 100, 101, 102, 103, 104.1, 105, 106, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 130, 131, 132, 133, 134, 135, 140, 145, 150, 180, 200, 300, 301, 302, 303, 310, 320, 321, 322, 323, 324, 325, 340, 341, 342, 360, 365, 366, 400, 401, 410, 420, 421, 424, 450, 451; 452 (except for 452.5.), 455, 458, 460, 462, 466, 510, 520, 550, 560, and 580.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 24, 1995 unless, by March 24, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 24, 1995.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

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this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of **Federal Register** on July 1, 1982

Dated: January 9, 1995

Chuck Clarke,

Regional Administrator

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (50) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(50) By a letter dated December 29, 1993, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the Washington SIP updating the regulations from the Northwes. Air Pollution Authority.

(i) Incorporation by reference.

(A) The December 29, 1993 letter from the Director of the Washington State Department of Ecology submitting the Northwest Air Pollution Authority Regulations as a revision to the Washington SIP.

(B) Regulations of the Northwest Air Pollution Authority—sections 100, 101, 102, 103, 104.1, 105, 106, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 130, 131, 132, 133, 134, 135, 140, 145, 150, 180, 200, 300, 301, 302, 303, 310, 320, 321, 322, 323, 324, 325, 340, 341, 342, 360, 365, 366, 400, 401, 410, 420, 421, 424, 450, 451, 452 (except for 452.5.), 455 458, 460, 462, 466, 510, 520, 550, 560, and 580, effective on September 8, 1993.

[FR Doc. 95–3862 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300366A; FRL–4925–1]

RIN 2070–AB78

Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranyl-N-Methylcarbamate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate (common name "carbofuran") and its metabolites in or on canola at 1.0 part per million (ppm) with an expiration date of 2 years after the beginning of the effective date of the rule. EPA is issuing this rule on its own initiative.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300366A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 1994 (59 FR 55605), EPA issued a proposed rule that gave notice that on its own initiative and under section 408(e) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(e), it proposed a time-limited tolerance for the residues of carbofuran and its metabolites in or on canola at 1.0 ppm. EPA proposed a tolerance because State registrations for the use of carbofuran on canola exist. However, because of EPA's continuing concern for the risk to birds posed by carbofuran use, the Agency is limiting the number of States in which granular carbofuran may be used on canola, and may take regulatory action in the near future to further restrict carbofuran use. Additional registrations will not be permitted until EPA has reached a decision on whether the canola use poses unreasonable risks to birds and wildlife and whether additional restrictions are necessary. The Agency intends to conduct the necessary risk and benefit assessments and anticipates a decision before the 1996 use season.

There are three Special Local Need registrations under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c). Registrations associated with this time-limited tolerance will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

The use of granular carbofuran under this tolerance will be limited to the 1995 growing season because additional residue data have to be submitted for the Agency to make its determination that the tolerance will be protective of the public health. As discussed in the proposed rule, the reference dose is exceeded for nonnursing infants and children ages 1 to 6 if it is assumed that all canola will contain tolerance level residues. EPA believes this assumption overstates the risk. EPA has requested additional data to confirm its view that the risk estimate is overstated. The Interregional Research Project No. 4 (IR-4) is currently conducting residue trials in the U.S. and plans to submit a petition for a permanent tolerance in the spring. EPA will not establish a permanent tolerance until it has received and evaluated the residue data.

Over 100 comments were received in response to the proposed rule. All were in support of establishing the tolerance.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections and the relief sought (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. In § 180.254, by adding new paragraph (c), to read as follows:

§ 180.254 2,3-Dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate; tolerances for residues.

* * * * *

(c) A time-limited tolerance, to expire on February 22, 1997, with regional registration, as defined in § 180.1(n), is established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite, 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodity	Parts per million
Canola (of which no more than 0.2 ppm is carbamate)	1.0

[FR Doc. 95–4303 Filed 2–16–95; 2:39 pm]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300372A; FRL–4933–5]

RIN 2070–AB78

Acrylamide-Potassium Acrylate-Acrylic Acid Copolymer, Crosslinked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acrylamide-potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Kelly Products, Inc., requested this rule.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300372A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1994 (59 FR 61302), EPA issued a proposed

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rule that gave notice that Kelly Products, Inc., P.O. Box 1508, 4132 Highway 278, NW., Covington, GA 30209, had submitted pesticide petition (PP) 4E4348 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of acrylamide potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Acrylamide potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2), minimum number average molecular weight 1,000,000.	.....	Carrier
* * * * * * *		

* * * * *

[FR Doc. 95-4304 Filed 2-16-95; 2:39 pm]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3F4169 and FAP 3H5655/R2090; FRL-4937-3]

RIN 2070-AB78

Pesticide Tolerance for Imidacloprid; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to a final rule on the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites to designate the tolerance for hops as a time-limited tolerance and to correct a typographical error in an expiration date for a tolerance for cottonseed.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis H. Edwards, Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-3686.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1994 (59 FR 61278), EPA revised 40 CFR 180.472 and removed the time-limited designation for commodities listed in paragraph (a). The listing "Hops, dried" at 3.0 ppm inadvertently was left in paragraph (a) in the new list of commodities without a time-limited designation, but hops should have retained the time-limited designation, June 28, 1995, and been moved to a new paragraph. EPA is rectifying this oversight by designating the time-limited tolerance for hops in new paragraph (d) under 40 CFR 180.472. Also, in the November 30, 1994 document (59 FR 61278), a typographical error in 40 CFR 180.472(b), i.e., the November 17, 1994 time-limited designation, is corrected to read "November 17, 1996". The November 17, 1996 expiration date was specified in the preamble of the document, and its is correctly stated in the time-limited tolerance for cottonseed meal in 40 CFR 186.900(b) in the same document.

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, a technical amendment is made to 40 CFR part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, by amending paragraph (a) in the table therein by removing the listing "Hops, dried", by amending paragraph (b) in the introductory text by changing the date "November 17, 1994" to read "November 17, 1996", and by adding new paragraph (d), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(d) A time-limited tolerance, to expire June 28, 1995, is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl)-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Hops, dried	3.0

[FR Doc. 95-4184 Filed 2-21-95; 8:45 a.m.]

BILLING CODE 6560-50-F

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3048, 2F4144, and 6F3318/R2106; FRL-4933-4]

RIN 2070-AB78

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/Esfenvalerate, Tralomethrin, Fenpropathrin, Cyfluthrin, and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for residues of seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, fenpropathrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. FMC Corp. (FMC), Zeneca Ag Products, E.I. DuPont de Nemours & Co., Inc., Hoechst-Roussel Agri-Vet Co., Miles, Inc., and Valent U.S.A Corp., collectively called the industry's Pyrethroid Working Group (PWG), requested this rule to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/R2106], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7605C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product

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Manager (PM) 22, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-6100).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 14, 1994 (55 FR 56454), EPA issued a proposed rule to extend to November 15, 1997, tolerances for the residues of the synthetic pyrethroids permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, fenpropathrin, cyfluthrin, and lambda-cyhalothrin in or on certain commodities. The PWG had submitted petitions to establish tolerances for the synthetic pyrethroids. The data submitted in support of the tolerances and other relevant materials have been reviewed.

The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of April 25, 1979 (44 FR 24287) for permethrin, January 31, 1979 (44 FR 6098) for fenvalerate, September 18, 1985 (50 FR 37581) for tralomethrin, February 21, 1985 (50 FR 7172) for cypermethrin, January 25, 1988 (53 FR 1923) for cyfluthrin, April 14, 1993 (58 FR 19357) for fenpropathrin, and May 24, 1988 (53 FR 18558) for lambda-cyhalothrin.

To be consistent with extensions issued for conditional registrations that have been issued, the Agency is amending and extending tolerances for the synthetic pyrethroids with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rule.

Therefore, based on the information considered by the Agency and discussed in detail in the proposed rule and based on the Agency's conclusion that the tolerances for residues of the synthetic pyrethroids in or on the commodities will protect the public health, the Agency is establishing the tolerances as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Records and recordkeeping.

Dated: February 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1997, are established for residues of the insecticide permethrin [(3-pheoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379, by amending the table in paragraph (a) by revising the footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxy-phenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.2
. . . . .	

[1]The tolerance for cottonseed expires on November 15, 1997

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in the introductory text by changing "November 15, 1994" to read "November 15, 1997".

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tralomethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

§ 180.436 [Amended]

f. In § 180.436 *Cyfluthrin; tolerances for residues*, by amending the entry for cottonseed in the table therein by amending the footnote to the entry by changing "November 15, 1994" to read "November 15, 1997".

g. In § 180.438 by amending the table therein by revising the footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α-(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed	1.0	Nov. 15, 1997.
Cattle, fat	0.02	Do.
Cattle, mbyp	0.02	Do.
Cattle, meat	0.02	Do.
Eggs	0.02	Do.
Goats, fat	0.02	Do.
Goats, mbyp	0.02	Do.
Goats, meat	0.02	Do.
Hogs, fat	0.02	Do.
Hogs, mbyp	0.02	Do.
Hogs, meat	0.02	Do.
Horses, fat	0.02	Do.
Horses, mbyp	0.02	Do.
Horses, meat	0.02	Do.
Milkfat (reflecting 0.02 ppm in whole milk)	0.03	Do.
Poultry, fat	0.02	Do.
Poultry, mbyp	0.02	Do.
Sheep, fat	0.02	Do.
Sheep, mbyp	0.02	Do.
Sheep, meat	0.02	Do.

Commodity	Parts per million
. . . . .	
Cottonseed	[1]0.05
. . . . .	

[1]The tolerance for cottonseed expires on November 15, 1997.

h. In § 180.466, by revising the table therein, to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a), to read as follows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1997, of 2 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

c. In § 185.3225, by revising the table therein, to read as follows:

§ 185.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed oil	3.0	Nov. 15, 1997.

d. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

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PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1997, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate (CAS Reg. No. 69359-37-5)) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

c. By amending § 186.3225 by revising the table therein, to read as follows:

§ 186.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed hulls	2.0	Nov. 15, 1997.

[FR Doc. 95-4305 Filed 2-16-95; 2:39 pm]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Parts 12 and 18

Administrative Requirements and Cost Principles for Assistance Programs—Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); New Restrictions on Lobbying

AGENCY: Office of the Secretary, Interior.

ACTION: Notification of policy change.

SUMMARY: This document announces a change in Departmental policy concerning the acceptance of certification regarding nonprocurement debarment and suspension for primary and lower tier covered transactions; drug-free workplace requirements; and lobbying, including the statement for loan guarantees and loan insurance. Since the use of special Departmental forms to meet regulatory requirements was a statement of Departmental policy, and not regulatory, the Department is using this document to inform potential applicants for grants, cooperative agreements, and loans to the revised policy. This change is in keeping with the philosophies of the National Performance Review to streamline processes. The effect of this change is to allow applicants, at the instruction of the Departmental bureau or office, to use any forms or formats, including electronic equivalents, as long as the certification or statement contains the applicable language required by the regulation.

EFFECTIVE DATE: This policy change is effective on February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208-6431.

SUPPLEMENTARY INFORMATION: The Department jointed in the publication of the Final Rule on Nonprocurement Debarment and Suspension published on May 26, 1988 (53 FR 19161-19211). To implement the certification requirements for participants in primary and lower tier covered transactions included in 43 CFR 12.510 (a) and (b), the Department developed two Departmental forms for use, specifically, DI-1953 (9/88), "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions," and DI-1954 (9/88), "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions." The certification language used in these forms was the same as that appearing in Appendices A and B to Subpart D of 43 CFR Part 12.

With the publication of the Final Rule on Drug-Free Workplace Requirements published on May 25, 1990 (55 FR 21681-21705), the Department adopted a similar approach to implement the certification requirements required by 43 CFR 12.630(a). Specifically, DI-1955 (May 1990), "Certification Regarding Drug-Free Workplace Requirements" was developed for grantees other than individuals, and DI-1956 (May 1990), "Certification Regarding Drug-Free Workplace Requirements," was developed for grantees who are individuals. The certification language used in these forms was also the same as that appearing in Appendix C to Subpart D of 43 CFR Part 12.

The Interim Final Rule on New Restrictions on Lobbying was published on February 6, 1990 (55 FR 6735-6756). As part of its agency-specific preamble, the Department identified two Departmental forms to be used for implementing the lobbying certification and statement requirements included in 43 CFR 18.100 (b) and (d), specifically, DI-1963 (Jan 90), "Certification Regarding Lobbying Form," and DI-1962 (Jan 90), "Statement for Loan Guarantees and Loan Insurance Form."

This policy change will increase the flexibility of the Departmental bureaus and offices for meeting these requirements and will accommodate particular needs of applicants that have the capability of using other methods to provide the certifications or statement. Departmental bureaus and offices will retain the option to continue accepting the existing forms and any subsequent revisions, a consolidated version of the forms, an electronic equivalent, forms of other Federal agencies, if appropriate, or forms prepared by automated systems of applicant organizations as long as the certification or statement contains the applicable language required by the regulation.

In some instances, the certification instructions found on the existing forms may no longer be included in program announcements. Potential applicants needing instructions for completion of a certification may refer to the published regulation or may request printed instructions from the individual named in the specific program announcement or publication.

Dated: January 31, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 95-4288 Filed 2-21-95; 8:45 am]

BILLING CODE 4310-RF-M

FEDERAL MARITIME COMMISSION

46 CFR Part 500

[Docket No. 95-04]

Employee Responsibilities and Conduct

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC"), is repealing its existing agency

standards of conduct regulations that have been superseded by the branch-wide Standards of Ethical Conduct issued by the Office of Government Ethics ("OGE") and by the executive branch financial disclosure regulations. In place of its regulations, the FMC is substituting cross-references to the new branch-wide regulations.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Miles, Designated Agency Ethics Official, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On November 6, 1984, the Federal Maritime Commission adopted administrative regulations governing employee responsibilities and conduct; statements of employment and financial interests; and executive personnel financial disclosure reports. *See* 46 CFR part 500, subpart A, B, C, and D. On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch ("Standards") for codification at 5 CFR part 2635. *See* 57 FR 35006-35007, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992). The Standards, effective February 3, 1993, contain uniform ethical conduct standards applicable to all executive branch personnel, and supersede all existing agency standards of conduct.

Accordingly, the Commission is repealing its existing standards of conduct regulations at 46 CFR Part 500, Subparts A, B, and C, which were superseded by the executive branch-wide Standards on February 3, 1993. In addition, Subpart D of Part 500, dealing with financial disclosure, was also superseded on October 5, 1992, by OGE's executive branch-wide financial disclosure regulation, codified at 5 CFR Part 2634. *See* 57 FR 11800-11830 (April 7, 1992), as amended at 57 FR 21854-21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). In place of its old standards at 46 CFR part 500, the Commission is issuing a residual cross-reference provision, at new 46 CFR 500.101, to refer to both the branch-wide Standards and financial disclosure regulations. The Commission has determined not to supplement the standards with its own agency-specific standards.

The Commission finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this rule and repeals. This rulemaking is related to the Commission's organization, procedure and practice.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions, because it affects only Commission employees.

List of Subjects in 46 CFR Part 500

Conflict of interests, Government employees.

For the reasons set forth above, the Federal Maritime Commission, in concurrence with the Office of Government Ethics, is amending title 46, Subchapter A of the Code of Federal Regulations, by revising Part 500 to read as follows:

PART 500—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

Authority: 5 U.S.C. 553; 5 U.S.C. 7301; 46 U.S.C. app. 1716.

§ 500.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Maritime Commission ("FMC") should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

By the Commission.

Joseph C. Polking,

Secretary

[FR Doc. 95-4238 Filed 2-21-95; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89-552; DA 95-251]

Use of the 220-222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Interpretation; Extension of compliance date.

SUMMARY: Non-nationwide 220-222 MHz licensees are currently required to construct their stations and place them in operation by April 4, 1995. Recently, however, the Commission has received requests from manufacturers of 220-222 MHz radio equipment to extend this deadline. The manufacturers indicate that an extension is necessary because they will not be able to deliver radio equipment to many licensees in time to enable them to construct their stations by April 4, 1995. The Wireless Telecommunications Bureau agrees that some measure of relief should be afforded to non-nationwide 220-222 MHz licensees and has therefore adopted this Order extending the deadline to December 31, 1995 for all non-nationwide 220-222 MHz licensees to construct their stations and place them in operation.

DATES: Compliance date extended to December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martin D. Liebman, Policy Division, Wireless Telecommunications Bureau, (202) 418-0620.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 16, 1995
Released: February 17, 1995

By the Chief, Wireless Telecommunications Bureau:

1. On August 19, 1994, the Private Radio Bureau released a Public Notice (DA 94-902)[1] extending the deadline for construction of non-nationwide 220 MHz stations from December 2, 1994 to April 4, 1995.[2] The Commission, in the *Third Report and Order*, GN Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, released September 23, 1994, 9 FCC Rcd 7988 (1994) 59 FR 59945, November 21, 1994, again identified April 4, 1995 as the construction deadline for non-nationwide 220 MHz stations. In that decision, the Commission noted that the extension "gives these licensees approximately 12 months from the date of * * * [the March 30, 1994 *Order*] * * * to complete construction and commence operations. * * *"[3]

2. Recently, the Wireless Telecommunications Bureau received

[1] The responsibility for licensing the 220 MHz radio service now resides in the Wireless Telecommunications Bureau.

[2] (59 FR 15857, April 5, 1994). The December 2, 1994 deadline was announced in a Private Radio Bureau *Order* released on March 30, 1994 (see 9 FCC Rcd 1739 (1994)). In that *Order*, the Bureau, citing the court appeal challenging the Commission's 220 MHz licensing procedures (see *Evans v. Federal Communications Commission*, Order, per curiam, Case No. 92-1317 (D.C. Cir March 18, 1994)) decided that, upon termination of the appeal, all non-nationwide 220 MHz licensees would be afforded the full 8 months provided under our rules (see 47 C.F.R. § 90.725(f)) to construct and operate their stations. The December 2, 1994 deadline reflected the approximate 8-month period following the March 30, 1994 release of the *Order*.

[3] See 9 FCC Rcd 8077 (1994).

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requests from three 220 MHz radio equipment manufacturers to extend the current construction deadline beyond April 4, 1995. The first of these was submitted by SEA, Inc. (SEA) in a letter sent to Regina M. Keeney, Chief, Wireless Telecommunications Bureau, on January 17, 1995. SEA asks that the deadline be extended to December 31, 1995 for those licensees who have, by placing equipment orders with manufacturers, demonstrated their intent to construct their 220 MHz stations. SEA argues that this extension is needed because the manufacturing capacity of the companies producing 220 MHz equipment "is not sufficient to fill existing orders by the April 4 deadline" and that those licensees who have placed orders "should not be required to forfeit their licenses" due to manufacturers' inability to deliver equipment by that date. As further support for its request, SEA contends that the *Evans v. FCC*[4] court appeal caused licensees to delay placing orders, and that, upon dismissal of the appeal, manufacturers were required suddenly to deliver equipment by a "single, across-the-board" deadline applicable to all licensees. SEA observes that, had the court case not occurred, manufacturers would have had to satisfy the less difficult requirement of filling orders to meet the progressive 8-month construction deadlines of the approximately 3,600 individual stations that were authorized over an extended period.

3. E.F. Johnson Company (EFJ), another 220 MHz equipment manufacturer, in a letter sent to Regina M. Keeney on January 25, 1995, supports SEA's request for an extension until December 31, 1995 for those 220 MHz licensees who have timely placed an equipment order with a manufacturer offering type-accepted equipment. EFJ argues that the current "compressed manufacturing and delivery schedule can simply not be met, even with the considerable resources [the company] will commit to the process" and contends that if an extension is not granted, the Commission will "irreparably harm the nascent 220 MHz industry and seriously set back efforts to employ spectrum efficient narrowband technology on a widespread basis."

4. Finally, the third manufacturer, Linear Modulation Technology Limited (LMT), a wholly-owned subsidiary of the Securicor Group plc, in a letter sent to Regina M. Keeney on February 1, 1995, also expresses support for the granting of an extension to December 31, 1995. LMT claims that, while it will be able to construct a significant number of 220 MHz systems by the April 4, 1995 deadline, it will not be able to deliver and construct by that date many of the orders for the "approximately one thousand full systems that licensees or managers of 220 MHz systems have attempted to place with LMT." LMT contends that, if those licensees who have tried to construct their systems by the deadline lose their licenses due to the unavailability of equipment, the prospects for the successful deployment of the 220 MHz service "will significantly diminish" and the U.S. 220 MHz industry will be placed "in serious jeopardy."[5]

5. The manufacturers of 220 MHz equipment have indicated that, despite their best efforts, equipment ordered by many non-nationwide 220 MHz licensees will not be delivered in time to enable such licensees to construct their stations by April 4, 1995. The Bureau believes that these licensees should be afforded some measure of relief from the current construction deadline. The Bureau is also concerned that a number of licensees, aware of manufacturers' production difficulties, have delayed the placement of orders or have chosen not to place orders at all under the assumption that the orders could not be filled by April 4, 1995. Therefore, to provide relief to all licensees—those that have placed orders as well as those that must still do so—the Bureau extends to December 31, 1995 the deadline for nonnationwide 220 MHz licensees to construct their stations and place them in operation.

6. Accordingly, for good cause shown, *It is Ordered That* the requests by SEA Inc., E.F. Johnson Company, Linear Modulation Technology Limited and other parties for extension of the deadline for construction of non-nationwide 220 MHz stations are *Granted* to the extent indicated herein and otherwise denied.

Federal Communications Commission.

Regina M. Keeney,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 95-4381 Filed 2-21-95; 8:45 am]

BILLING CODE 6712-01-M

[4] See footnote 2, *supra*

[5] In addition to the letters received from these equipment manufacturers, certain other interested parties, including 220 MHz licensees, have submitted requests to the Wireless Telecommunications Bureau asking for construction deadline extensions of up to three years.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends the delegations of authority within the National Highway Traffic Safety Administration by transferring, from the Associate Administrator for Enforcement to the Director, Office of Vehicle Safety Compliance, the responsibility for granting and denying petitions for import eligibility decisions that are submitted to the agency under 49 U.S.C. 30141(a)(1) (formerly section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)).

EFFECTIVE DATE: This delegation is effective as of February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of the Chief Counsel (NCC-10), National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION:

This notice amends the delegations of authority within the National Highway Traffic Safety Administration (NHTSA) to reflect the transfer of responsibilities from NHTSA's Associate Administrator for Enforcement to one of the Associate Administrator's subordinates, the Director of the Office of Vehicle Safety Compliance. Under the existing delegations of authority, the Associate Administrator for Enforcement is responsible for the "[g]ranting and denying of petitions for import eligibility determinations submitted to the NHTSA by motor vehicle manufacturers and registered importers * * *." 49 CFR 501.8(g)(3). Regulations establishing the procedures for making these determinations are found at 49 CFR part 593.

Those regulations implement 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the Act), which provides that a motor vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that it is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable safety standards.

Under 49 U.S.C. 30141(a) (formerly section 108(c)(3)(C)(i) of the Act), these import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)." The Secretary's authority to make these determinations is delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator, in turn, delegated to the Associate Administrator for Enforcement, under 49 CFR 501.8(g)(3), the responsibility for granting and denying petitions for import eligibility determinations submitted to the agency by registered importers and manufacturers.

This notice transfers these responsibilities to the Director of NHTSA's Office of Vehicle Safety Compliance. This transfer will eliminate one level of management review for these actions, thereby reducing the processing time for the petitions and some of the costs associated with the importation of the vehicles to which the petitions relate.

The amendment made through this notice relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. It is therefore not subject to the notice and comment and the effective date requirements of the Administrative Procedure Act. This amendment is also not subject to the requirements of Executive Order 12866 or to the Department of Transportation's regulatory policies and procedures. Notice and the opportunity for public comment are therefore not required, and this amendment is effective immediately upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 501

Authority, Delegations.

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. secs. 105 and 322; delegation of authority at 49 CFR 1.50.

2. Section 501.8 is amended by removing paragraph (g)(3), and by adding a new paragraph (l), to read as follows:

§ 501.8 Delegations.

* * * * *

(l) *Director, Office of Vehicle Safety Compliance, Enforcement.* The Director, Office of Vehicle Safety Compliance, Enforcement, is delegated authority to exercise the powers and perform the duties of the Administrator with respect to granting and denying petitions for import eligibility decisions submitted to the NHTSA by motor vehicle manufacturers and registered importers under 49 U.S.C. 30141(a)(1).

Issued on: February 15, 1995

Ricardo Martinez,

Administrator.

[FR Doc. 95-4264 Filed 2-21-95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AA14

United States Standards for Corn

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: In its periodic review of existing regulations, the Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to amend the U.S. Standards for Corn to: Report test weight (TW) to the nearest tenth of a pound, eliminate the count limit on stones and reduce the U.S. Sample grade aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight, and offers stress crack testing as official criteria. This proposed rule is intended to facilitate the marketing of corn.

DATES: Comments must be submitted on or before April 24, 1995.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623–S, P.O. Box 96454, Washington, DC 30090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection at Room 0623 South Building, 1400 Independence Avenue, SW., Washington, DC during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is exempt from Executive Order 12866 review.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. the United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James Robert Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

Background

During October 1993, the Federal Grain Inspection Service (FGIS), prepared a discussion paper concerning the U.S. Standards for Corn. This paper addressed a number of issues relating to the standards and was distributed throughout the grain industry. The paper also served as a starting point for discussions with producers, trade associations, processors, handlers, and merchandisers to better understand their views on changes needed to improve existing standards. FGIS received positive feedback from the grain industry regarding the corn discussion paper; and, in fact, numerous industry representatives suggested that FGIS continue to develop and distribute similar documents before amending other standards.

FGIS received a total of 12 written comments concerning the discussion paper: 3 from research associations and universities, 1 from a producer organization, 4 from handler and processor associations, 1 from an industry consortium, 2 from grain inspection and weighing associations, and 1 from a grain company. In addition to receiving written comments, FGIS reviewed the corn standards with representatives of the Iowa Department of Agriculture, the Grain Quality Workshops, and other corn-related associations.

On the basis of all comments and other available information, FGIS is proposing three changes to the corn standards that reflect current market needs and also serve to improve the effectiveness of the standards. The proposed amendments include: (1) Reporting TW to the nearest tenth of a pound, (2) eliminating the count limit on stones and reducing the U.S. Sample grade aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight, and (3) offering stress crack testing as official criteria.

Test Weight (TW)

FGIS proposes to revise § 810.102(d) of the United States Standards for Grain to report TW in corn to the nearest tenth of a pound. This change will bring the reporting requirement for TW into line with the reporting requirements for other factors, such as total damaged kernels and broken corn and foreign material (BCFM).

This is not the first time that FGIS has proposed to revise the reporting requirement for TW in corn. In 1986, (51 FR 35224) to promote greater uniformity among the grain standards, FGIS proposed to reformat the grain standards and solicited comments regarding certification requirements for factors not expressed to the nearest tenth. FGIS proposed to report all percentages (except ergot) and all TW values to the nearest tenth. The proposal included TW in corn which is certified in whole and half pounds with fractions of a half pound disregarded.

The majority of commentors who opposed the proposal indicated that sufficient data were not available to determine how a change in reporting requirements would affect reproducibility of results—especially for TW in coarse grains. FGIS decided not to revise the reporting requirements, except for dockage in wheat (52 FR 24414). FGIS does offer, upon request, the recording of TW results to the nearest tenth pound in the Remarks section of the grade certificate.

An extensive review of FGIS grain inspection and monitoring data, which represent over 4,200 samples, provides standard deviation values for each of the mandatory factors across all grade levels within the corn standards. Standard deviation is a measure of variation; and a particular type of standard deviation, the standard deviation of the difference (SDD), can be used as a measure of reproducibility. When a sample is reanalyzed for a particular factor, the reproducibility of results improves as the SDD becomes smaller.

The review of inspection data resulted in separate SDD values for each grade level for both domestic and export corn samples. Only the export SDD values, however, were calculated from raw TW data reported to the nearest tenth of a pound. Comparison of SDD values between factors will therefore focus on the export values. For TW, the SDD value was the same, 0.366, for all grade levels, thus indicating an insignificant range and a consistent reproducibility in TW values across all grade levels. For damaged kernels total (DKT), the SDD values ranged from 0.853 to 1.814 for U.S. Grade Nos. 1 to 5. For BCFM, the corresponding values ranged from 0.197 to 0.359 for U.S. Grade Nos. 1 to 5. The range in SDD values reflects the range in DKT and BCFM levels and the variance in the reproducibility of results across grade levels.

The TW SDD values are either close to or lower than the SDD values for the other factors when all raw data used in the calculation of the SDD values had been reported to the nearest tenth. It can be inferred from SDD values that the reporducibility of TW results is similar to or better than the reproducibility of DKT and BCFM results. The industry accepts the current practice of reporting DKT and BCFM results to the nearest tenth. Therefore, based on the comparison of SDD values, the industry may also find the reporting of TW to the nearest tenth of a pound acceptable.

Another consideration for the industry is that virtually all TW results are currently rounded down. For example, under the current reporting method, a scale reading 53.99 pounds per bushel is certified as 53.5 pounds per bushel which would meet the TW grade limit for U.S. No. 3 corn. If the results, however, were rounded to the nearest tenth of a pound, the resultant 54.0 pounds per bushel would meet the grade limit for U.S. No. 2 corn. In general, the current practice of rounding down causes TW to almost always be underrepresented throughout the marketing channel. Furthermore, the rounding of TW results to the nearest tenth of a pound will not significantly affect the assigned grade, since in most cases the rounded result will fall within the grade requirement.

Stones

FGIS proposes to eliminate the count limit on stones and reduce the aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight. Stones have a harmful effect on corn quality and milling. Several industry representatives have requested that the count limit on stones be eliminated and the aggregate weight tolerance be reduced from more than 0.2 percent by weight to more than 0.1 percent by weight. The elimination of the count limit would serve to further tighten the tolerance of stones by allowing a smaller number of heavy stones to downgrade a sample.

Stress Crack Testing

FGIS proposes to offer corn stress crack (SC) testing as official criteria under the United States Grain Standards Act. This testing service will be optional and FGIS will recover the cost of providing this service through the applicable inspection fees as set forth in section 800.71(a) of the regulations.

Corn kernels which contain stress cracks tend to break apart, and, as a result, are undesirable in the corn dry milling, wet milling, and food manufacturing processes. In the dry milling process, cracked kernels yield lower percentages of large flaking grits which are the highly valued prime product (ref. 1). Starch recovery, which is an essential component of the wet milling process, is also lower from kernels possessing numerous stress cracks. To the food manufacturer, stress cracks are of concern because of the adverse effect on soaking which is an essential component of the manufacturing process. Some snack food companies currently limit the percent of kernels with stress cracks to values less than 20 percent (ref. 2). Cracked corn is also more difficult to store than undamaged corn, since cracked corn is more readily attacked by microorganisms and is difficult to aerate uniformly.

Cracked corn could also contribute to increased elevator dust levels and, thus, negatively impact elevator safety.

Commentors addressed the various detrimental effects of stress cracks and broken corn, and the majority of commentors recommended that FGIS offer stress crack testing as part of the national inspection service. Due to the importance of stress crack testing, GIPSA proposes to offer stress crack testing, upon request, as official criteria. GIPSA and the official agencies of the national inspection system will use the method recommended by the Illinois Crop Improvement Association's Identity Preserved Grain Lab (IPGL) which performs stress crack tests on over 4,000 corn samples per year. FGIS will use this method because it is cost-effective, easy to use, and quick.

As described by the IPGL, stress crack tests are performed on random subsamples of 100 kernels. The kernels are inspected visually on a back lighting lightboard and separated into four categories: no or zero stress cracks, and more than two or multiple stress cracks. The percentage of kernels falling into each category is used to calculate the percentage of stress cracks and a stress crack index as follows:

% TSC = [% single SC + % double SC + % multiple SC]

SCI = [(% single SC) + (% double SC × 3) + (% multiple SC × 5)]

where SC = stress cracks, SCI = stress crack index,

and TSC = total stress cracks

The stress crack index is an indication of the multiplicity of stress cracks in each kernel. The weighting factors indicate that corn kernels with double and multiple stress cracks are more susceptible to breakage than kernels with single stress cracks.

FGIS seeks comments not only on the proposal to offer stress crack testing as official criteria but on the reporting method for results. Since the information will be readily available, commentors should address whether the percentage of stress cracks in each of the three categories, single, double, and multiple, should, be reported. If no comments are received on the reporting method, FGIS will report only the total percent of stress cracks and the stress crack index.

Miscellaneous Changes

FGIS proposes to revise the format of the grade chart in § 810.404, Grades and grade requirements for corn, to improve the readability of the grade chart.

Proposed Action

FGIS proposes to revise § 810.102, Definition of other terms, by revising section (d), Test weight per bushel. It is proposed that TW in corn be reported to the nearest tenth of a pound.

FGIS proposes to revise § 810.404, Grades and grade requirements for corn, by revising the definition of U.S. Sample grade by eliminating the count limit on stones and reducing the aggregate weight criteria from more than 0.2 percent by weight to more than 0.1 percent by weight.

Comments including data, views, and arguments are solicited from interested

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persons. Pursuant to Section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be orally presented in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Administrator, the public health, interest, or safety require that they become effective sooner.

References

(1) Reid, J.F., Kim, C., and Paulsen, M.R. 1991, "Computer Vision Sensing of Stress Cracks in Corn Kernels" ASAE, Sept/Oct, v.34 p. 8–9.
(2) Stroshine, R. 1991, "Breakage Susceptibility Technology, Uniformity by 2000," Scherer communications, Urbana. p. 410–416.

List of Subjects in 7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 810.102(d) is revised to read as follows:

§ 810.102 Definition of other terms.

* * * * *

(d) *Test-weight.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test-weight in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test-weight in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test-weight is recorded to the nearest tenth pound for corn, rye, triticale, and wheat. Test-weight for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test-weight is not an official factor for canola.

* * * * *

3. Section 810.404 is revised to read as follows:

§ 810.404 Grades and grade requirements for corn.

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Maximum limits of:					
Test Weight (lbs/bu)	56.0	54.0	52.0	49.0	46.0
Maximum percent limits of:					
Damaged kernels Heat (part of total)	0.1	0.2	0.5	1.0	3.0
Total	3.0	5.0	7.0	10.0	15.0
Broken corn and foreign material	2.0	3.0	4.0	5.0	7.0
Animal filth	0.2	0.2	0.2	0.2	0.2
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other materials:					
Castor beans	1	1	1	1	1
Cocklebur	7	7	7	7	7
Crotalaria seeds	2	2	2	2	2
Glass	1	1	1	1	1
Unknown foreign substance	3	3	3	3	3
U.S. Sample grade:					
U.S. Sample grade is corn that:					
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, 4, or 5; or					
(b) Has a musty, sour, or commercially objectionable foreign odor; or					
(c) Is heating or otherwise of distinctly low quality.					

Harold W. Davis,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 95–4183 Filed 2–21–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–41]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A series turbofan engines. This proposal would require an initial and repetitive on-wing eddy current inspection or an on-wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if necessary, with serviceable parts. This proposal would also require removal from service of certain CRF's as a terminating action to the on-wing inspection program. This proposal is prompted by a report of a CRF separation that resulted in a rejected takeoff. The actions specified by the proposed AD are intended to prevent a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

DATES: Comments must be received by April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–41." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80A series turbofan engines. The Federal Aviation Administration (FAA) has received a report of a compressor rear frame (CRF) separation on a GE CF6–80A series turbofan engine that resulted in a rejected takeoff. The FAA has also received seventeen additional reports of CRF's found cracked in service. Investigation reveals that axial cracks initiate in the CRF midflange and propagate in fatigue due to a high peak mean stress found at the rib radius tangency point where the rib rises to form the CRF midflange lug. The high peak mean stress is a result of thermal and pressure loading of the CRF midflange. The cracks reach critical size, and may result in a CRF separation. CRF's with modified midflanges exist which decrease the peak mean stress, therefore reducing the chance of a crack initiating. This condition, if not corrected, could result in a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–80A Service Bulletin (SB) No. 72–593, Revision 2, dated March 19, 1992, that describes procedures for the initial and repetitive on-wing eddy current inspection (ECI) and the on-wing spot fluorescent penetrant inspection (FPI).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an initial and repetitive on-wing ECI or on-wing spot FPI of the CRF midflange for cracks, and replacement, if necessary, with serviceable parts. This proposal would also require removal from service of non-modified CRF's as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 81 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 85 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20,644 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,085,264.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 94–ANE–41.

Applicability: General Electric Company (GE) CF6–80A series turbofan engines installed on, but not limited to, Airbus A310 series and Boeing 767 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a compressor rear frame (CRF) separation, which could result in a rejected takeoff and damage to the aircraft, accomplish the following:

(a) Inspect CRF, Part Numbers (P/N) 9283M77G07, 9283M77G08, 9283M77G09, 9283M77G11, 9283M77G14, 7283M77G15, 9283M77G16, 9283M77G17, 9283M77G18, 9283M77G19, 1338M77G01, 1338M77G02, 1338M77G03, 1338M77G04, 1338M77G05, and 1338M77G06, that have not accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A Service Bulletin (SB) No. 72–600 or 72–611, prior to the effective date of this AD, as follows:

(1) Perform an on-wing eddy current inspection (ECI) or an on-wing spot fluorescent penetrant inspection (FPI) of the CRF midflange for cracks in accordance with the Accomplishment Instructions and the schedule outlined in Table 1 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, or within 1,000 cycles in service since the last shop level FPI, whichever occurs later, after the effective date of this AD.

(2) Thereafter, reinspect the CRF midflange for cracks in accordance with the Accomplishment Instructions and schedule outlined in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992.

(3) Remove from service prior to further flight CRF's with cracked midflanges that exceed the on-wing serviceable limits specified in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, and replace with a serviceable part.

(b) Remove from service CRF's identified in paragraph (a) of this AD at the next piece-part exposure, or by December 31, 1996, whichever occurs earlier, and replace with a serviceable part. Removal and replacement of CRF's in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, a serviceable part is defined as a CRF that has accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A SB No. 72–600 or 72–611.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 14, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4249 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–CE–23–AD]

Airworthiness Directives; Jetstream Aircraft Limited (formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document reopens the comment period and proposes to revise an earlier proposed airworthiness directive (AD), which would have required inspecting the main passenger/crew door locking mechanism on certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes to ensure that a taper pin is installed, and installing a taper pin if not already installed. Since publication of that proposal, the Federal Aviation Administration (FAA) has re-examined various service difficulty reports on the affected airplanes, and determined that this is still a valid safety issue, and that a modification to the passenger door warning system should also be included. Since this action adds an additional modification that was not originally proposed, the FAA is allowing additional time for the public to comment. The proposed actions are intended to prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which, if not detected and corrected, could result in passenger injury if emergency evacuation is needed.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on May 26, 1992 (57 FR 21911). The action proposed to require inspecting the main passenger/crew door locking mechanism to ensure that a taper pin is installed, and installing a taper pin if not already installed. The proposed actions would require to be accomplished in accordance with Jetstream Service Bulletin (SB) 52–A–JA 911140, dated February 3, 1992. This proposal was revised to incorporate Jetstream 52–A–JA 911140, Revision 1, dated June 26, 1992, and then republished in the **Federal Register** as a supplemental NPRM on April 26, 1993 (58 FR 21957).

Interested persons were afforded an opportunity to participate in the making of this amendment during both the NPRM and supplemental NPRM stages. No comments were received on the proposed rule or the FAA's determination of the cost to the public in either instance.

Since publication of the proposals, the FAA has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue, but is not considered an urgent safety of flight issue. In addition, the FAA determined that a modification to the passenger door warning system should be incorporated in order to ensure evacuation efficiency in the event of an emergency. Several reports of passenger door warning system malfunctions prompted the FAA to incorporate this modification into the proposal. Accomplishment of the proposed passenger door warning modification would be in accordance with Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through	Original Issue	November 19, 1992.
1, 2, and 3 ...	Revision 1	August 10, 1993.

In addition, JAL has revised certain pages of Jetstream SB 52–A–JA 911140, and the FAA has incorporated these revised pages (Revision 2) into the proposal. Jetstream SB 52–A–JA 911140 now incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original Issue	February 3, 1992.
2	Revision 1	June 26, 1992.
1, 3, 6, and 8	Revision 2	October 6, 1992.

Since this action adds an additional modification that was not originally proposed, the FAA is reopening the comment period to provide additional time for public comment.

The FAA estimates that 200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours (2 workhours for the taper pin installation and 8 workhours for the passenger door warning system modification) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts to accomplish the modifications will be provided by JAL at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $120,000. This figure is based on the assumption that no affected owner/operator has accomplished either of the proposed modifications; that all airplanes would need a taper pin installed on the passenger/crew door locking mechanism; and that no airplane owner/operator has accomplished the passenger door warning system modification. The FAA anticipates that a majority of the affected airplanes would already have taper pins installed and passenger door warning system modifications incorporated, thereby reducing the proposed cost impact upon the public.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Jetstream Aircraft Limited: Docket No. 92–CE–23–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 500 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which, if not detected and corrected, could result in passenger injury if emergency evacuation is needed, accomplish the following:

(a) For all affected airplanes that have a main passenger/crew door installed with one of the following serial numbers, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable:

WIPL–SD–0001 through WIPL–SD–0005, WIPL–SD–0008 through WIPL–SD–0031, WIPL–SD–0034 through WIPL–SD–0046.

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WIPL–SD–0049, WIPL–SD–0051 through WIPL–SD–0065, WIPL–SD–0067, WIPL–SD–0070, WIPL–SD–0071, SDJ10883, SDJ10884A, SDJ10884B, and SDJ10886 through SDJ10891

(1) To ensure that a part number SP28E4 taper pin is installed, visually inspect the passenger/crew door locking mechanism in the area between the locking dog and indicator button assembly in accordance with Part 2 of the Accomplishment Instructions section of Jetstream Service Bulletin (SB) 52–A–JA 911140, which incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original issue	February 3, 1992.
2	Revision 1	June 26, 1992.
1, 3, 6, and 8	Revision 2	October 6, 1992.

(2) If a taper pin (part number SP28E4) is not installed, prior to further flight, accomplish Part 3 of the Accomplishment Instructions section of Jetstream SB 52–A–JA 911140.

(b) For all affected airplanes regardless of the serial number passenger door installed, modify the passenger door warning system in accordance with the Accomplishment Instructions section of Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through 11	Original issue	November 19, 1992.
1, 2, and 3	Revision 1	August 10, 1993.

Note 1: Compliance with a previous revision level of the service bulletins referenced in this AD fulfills the applicable requirements of this AD and is considered "unless already accomplished" for that portion of the AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4252 Filed 2–21–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–254–AD]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Lockheed Model L–1011–385 series airplanes. This proposal would require modifications of various fluid drainage areas of the fuselage. This proposal is prompted by incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to problems associated with corrosion.

DATES: Comments must be received by April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–254–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight.

Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG) was established initially in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AAWG was to sponsor "Task Groups" to:

1. select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. develop corrosion-directed inspections and prevention programs;
3. review the adequacy of each operator's structural maintenance program;
4. review and update the Supplemental Inspection Documents (SID); and
5. assess repair quality.

The L–1011 Structures Task Group, which was assigned by the AAWG to review the Lockheed Model L–1011–385 series airplanes, completed its work on Item 2 in 1991 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Model L–1011 fleet. The program is contained Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," dated March 15, 1991.

The FAA reviewed and approved that Document and, on October 8, 1993, issued AD 93–20–03, amendment 39–8710 (58 FR 60775, November 18, 1993), which is applicable to all Lockheed Model L–1011 series airplanes. That AD requires the implementation of a corrosion prevention and control program (CPCP), comparable to the one outlined in the Lockheed Document, either by accomplishing specific tasks or by revising the FAA-approved maintenance inspection program to include such a program.

Current Service Information

Since issuance of AD 93–20–03, the FAA has reviewed and approved Revision A of Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," dated April 1994. This revision of the Lockheed Document contains Section 7.2, which lists twelve Lockheed service bulletins that have been recommended for mandatory action by the L–1011 Structures Task Group.

The twelve Lockheed service bulletins recommended by the Task Group describe various modifications, installations, and inspections of the fuselage and wings that are intended to decrease the airplane's susceptibility to corrosion in specific areas. The pertinent Lockheed service bulletins are:

1. Service Bulletin 093–51–007, Revision 5, dated December 20, 1973, describes procedures for modifying the afterbody-emennage-wing area to improve drainage capability.
2. Service Bulletin 093–53–061, Revision 1, dated June 20, 1974, describes procedures for modifying the drainage provisions at the surround structure of the C–1, C–2, and C–3 cargo doors.
3. Service Bulletin 093–53–068, dated October 23, 1974, describes procedures for installing a drain at the C–1A cargo door sill.
4. Service Bulletin 093–53–095, Revision 2, dated June 22, 1987, describes procedures for installing additional provisions for drainage at the pressure deck of the nose landing gear.
5. Service Bulletin 093–53–113, dated November 12, 1975, describes procedures for a modifying the area of the stringers at Fuselage Station (FS) 1792 to improve fluid drainage.
6. Service Bulletin 093–53–157, dated May 3, 1977, describes procedures for inspecting and modifying the sealing and drainage provisions at the aft pressure bulkhead.
7. Service Bulletin 093–53–186, Revision 3, dated June 11, 1991, describes procedures for the installing additional drainage provisions in the fuselage drain system.
8. Service Bulletin 093–53–192, Revision 2, dated December 9, 1981, describes procedures for modifying the fuselage drain system.
9. Service Bulletin 093–53–204, Revision 1, dated March 26, 1984, describes procedures for modifying the door sill drain and cargo compartment beam at the galley and door compartments.
10. Service Bulletin 093–53–234, Revision 2, dated November 12, 1992, describes procedures for modifying the galley door sill area to improve corrosion resistance.
11. Service Bulletin 093–57–089, Revision 1, dated October 4, 1976, describes procedures for installing drain provisions and a dam in the main landing gear torque box.
12. Service Bulletin 093–57–138, Revision 1, dated July 17, 1981, and Change Note, dated September 3, 1982, describe procedures for inspecting the lower surface bolts at wing body line (WBL) 115.95 to detect corrosion, and necessary modification.

The FAA has considered the recommendation of the Task Group and concurs with it. The FAA has determined that accomplishment of the actions specified in the twelve Lockheed service bulletins will contribute to positively addressing the unsafe condition presented by the problems associated with corrosion.

Proposed Requirements of AD

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require the accomplishment of the modification, installation, and other actions specified in the twelve Lockheed service bulletins described previously.

Although the proposed AD would be a rulemaking action completely separate from AD 93–20–03, the compliance schedule for the accomplishment of the proposed actions would be consistent with that for the corrosion inspections (tasks) currently required by AD 93–20–03. The initial corrosion tasks required by AD 93–20–03 must be accomplished within various intervals of time, depending on what "airplane zone" is involved; the intervals are measured from a date one year after the effective date of that AD. Accordingly, since the effective date of AD 93–20–03 is "December 17, 1993," the schedule for the actions currently required by that AD is measured from December 17, 1994.

This proposed AD would require accomplishment of the proposed modifications, installations, and

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inspections at the same time that the initial corrosion task in the corresponding airplane zone is required by AD 93–20–03. Scheduling the proposed actions at the same time as the currently-required corrosion tasks will minimize additional work for affected operators by allowing them to perform all actions concurrently. This also will eliminate the necessity of operators having to gain access to subject areas more than once.

Additionally, certain of the modifications described in the twelve Lockheed service bulletins were incorporated previously on some airplanes during production. For such cases, no additional work would be required by this proposed AD.

Economic Impact Information

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 236 work hours per airplane to accomplish the proposed actions, including time to gain access and close up. The average labor rate is currently $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,656,720, or $14,160 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, as indicated previously, some airplanes that would be subject to the proposed AD were modified during production to incorporate certain of the proposed modifications and installations. In light of this, the total cost impact of this proposal would be considerably less that the figure discussed above.

Additionally, the number of required work hours for the proposed requirements of this AD, as indicated above, is presented as if the accomplishment of those actions were to be conducted as "stand alone" actions. However, in actual practice, these actions would be accomplished coincidentally or in combination with actions currently required by AD 93–20–03. Therefore, the actual number of necessary "additional" work hours will be minimal for the majority of affected operators.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 94–NM–254–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to the problems associated with corrosion accomplish the following:

(a) Accomplish the modifications, installations, and inspections described in the Lockheed service bulletins listed in Section 7.2 of Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," Revision A, dated April 1994 (hereafter referred to as "the Document"), in accordance with the following schedule:

Note 2: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished prior to the effective date of this AD or during production are considered to be in compliance with this paragraph.

Note 3: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished previously in accordance with an earlier version of the applicable service bulletin listed in Section 7.2 of the Document, are considered to be in compliance with this paragraph.

Note 4: "Airplane zones," "implementation ages," and "repeat intervals," as referred to in this paragraph, are specified in Section 4.3 of the Document.

(1) For modifications, installations, and inspections located in an airplane zone that has not yet exceeded the "implementation age" (IA) for that zone as of December 17, 1994 (one year after the effective date of AD 93–20–03, amendment 39–8710): Compliance is required no later than the IA plus the repeat (R) interval for the applicable zone.

(2) For modifications, installations, and inspections located in an airplane zone that has exceeded the IA for that zone as December 17, 1994: Compliance is required within one R interval for that zone, measured from December 17, 1994.

(3) For airplanes that are 20 years old or older as of December 17, 1994: Accomplishment of the modifications, installation, and inspections is required within one R interval for the applicable airplane zone, but not to exceed 6 years, measured from December 17, 1994, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4253 Filed 2–21–95; 8:45 am]

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14 CFR Part 39

[Docket No. 93–CE–61–AD]

Airworthiness Directives; Piper Aircraft Corporation PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes. The proposed action would require repetitively inspecting the main gear side brace studs for cracks and replacing any cracked main gear side brace stud. Several reports of main gear side brace stud cracks on the affected airplanes, including seven incidents where the main landing gear (MLG) collapsed, prompted the proposed AD. The actions specified by the proposed AD are intended to prevent a MLG collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be inspected at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of main gear side brace stud cracks on Piper PA24, PA32R, PA34–200, and PA34–200T series airplanes. These reports include an accident in the United Kingdom where the main landing gear (MLG) collapsed on a Piper PA34–200 series airplane because of high cycle fatigue cracking of the main gear side brace stud. Metallurgical examination of the stud revealed that separate fatigue cracks had originated from both the inboard and the outboard edges near the bending radius of the shank. Reverse bending loads then allowed these cracks to extend across approximately 30-percent of the shank cross-section. The remaining 70-percent of the shank cross-section failed because of overstress. Review of service difficulty records in the United Kingdom and Canada, as well as the United States, indicated that this accident was almost identical to other accidents on Piper airplane models of similar type design.

On February 11, 1994, the FAA issued an advance notice of proposed rulemaking (ANPRM) to solicit comments from owners/operators of the affected airplanes in order to adequately make a determination as to what type of action to take (if any). From responses to this ANPRM, the FAA found that most of the owners/operators that responded are currently inspecting the main gear side brace studs on a routine basis (every annual or 100 hours); however, these operators are not removing the studs or using non-destructive inspection methods. Based on its review of the above-referenced incidents, the FAA has determined that, in order to adequately detect any cracks on the main gear side brace studs, these studs must be removed and inspected using dye penetrant or magnetic particle methods.

After examining the circumstances and reviewing all available information related to the incidents and accidents described above, including the comments received in response to the ANPRM, the FAA has determined that AD action should be taken to prevent MLG collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes of the same type design, the proposed AD would require repetitively inspecting (using dye penetrant or magnetic particle methods) the main gear side brace studs for cracks, and replacing any cracked main gear side brace stud.

The FAA estimates that 9,200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours to initially inspect both the right and left main landing gear side brace studs, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,760,000. This figure represents the cost of the initial inspection, and does not reflect costs for

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repetitive inspections or possible replacements. The FAA has no way of determining how many main gear side brace studs may need replacement or how many repetitive inspections each owner/operator may incur.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Piper Aircraft Corporation: Docket No. 93–CE–61–AD. Applicability: PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes (all models and serial numbers), certificated in any category. Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To prevent main landing gear (MLG) collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Remove both the left and right main gear side brace studs from the airplane in accordance with the instructions contained in the Landing Gear section of the maintenance manual, and inspect each main gear side brace stud for cracks, using FAA-approved dye penetrant or magnetic particle methods.

(1) For any main gear side brace stud found cracked, prior to further flight, replace the cracked stud with an FAA-approved serviceable part (part numbers referenced in the table in paragraph (b) of this AD) in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect as specified in paragraph (b) of this AD.

(2) For any main gear side brace stud not found cracked, prior to further flight, reinstall the uncracked stud in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect as specified in paragraph (b) of this AD.

(b) Reinspect both the left and right main gear side brace studs, using FAA-approved dye penetrant or magnetic particle procedures, at the applicable intervals presented below, and replace any cracked stud or reinstall any uncracked stud as specified in paragraphs (a)(1) and (a)(2) of this AD, respectively:

Part number installed	TIS inspection interval	Series Airplanes Installed on
20829–00	1,000 hours ..	PA24.
22512–00	1,000 hours ..	PA24, PA30, and PA39
95299–00 or 95299–02.	500 hours	PA28R, PA32R, PA32RT, PA34–200, PA34–200T, and PA44.
78717–02 (contained in the part number 95643–06 or 95643–07 bracket assembly).	1,000 hours ..	PA28R, PA32R, PA32T, PA34–200, PA34–200T, and PA44.

Note 1: Main gear side brace studs, part numbers, 95299–00 and 95299–02, are no longer manufactured, and any main gear side brace stud found cracked incorporating one of these part numbers may be replaced with a part number 78717–02 main gear side brace stud contained in the part number 95643–06 and 95643–07 bracket assembly.

Note 2: Accomplishing the actions of this AD does not affect the requirements of AD 77–13–21, Amendment 39–3093. The tolerance inspection requirements of that AD still apply for Piper PA24, PA30, and PA39 series airplanes.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Information related to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airpane Directorate, Aircraft Certification Service.

[FR Doc. 95–4251 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–30]

Airworthiness Directives; Superior Air Parts, Inc. Pistons Installed on Teledyne Continental Motors O–470 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Superior Air Parts, Inc. pistons installed on Teledyne Continental Motors O–470 series reciprocating engines. This proposal would require removal from service of certain pistons. This proposal is prompted by reports of piston failures. The actions specified by the proposed AD are intended to prevent piston failure, which can result in engine power loss, engine failure and loss of the aircraft.

DATES: Comments must be received by April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–30, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244–3792; telephone (800) 487–4884. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Richard Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; telephone (817) 222–5195, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–30." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–30, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of failures of Superior Air Parts, Inc. pistons, Part Number (P/N) SA626992, installed on Teledyne Continental Motors O–470 series engines. Investigation revealed that an undetermined number of these pistons had sharp edged casting lines in the area of the piston pin boss that could cause a stress riser. In 1981, Superior Air Parts, Inc. introduced an improved design piston, P/N SA640518, recommended to replace piston, P/N SA626992, at major overhaul. However, the older model pistons, which are subjected to high stresses due to heat, firing pressures, and uneven forces applied to the piston skirt as the clearance between the piston and cylinder barrel increases during service, are being reused over more than one overhaul cycle. This condition, if not corrected, could result in engine power loss, engine failure and loss of the aircraft.

The FAA has reviewed and approved the technical contents of Superior Air Parts, Inc. Service Bulletin (SB) No. 93–007, dated November 18, 1993, that describes identification procedures for determining the piston P/N, and recommends replacement of all affected pistons at major overhaul.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of Superior Air Parts, Inc. pistons, P/N SA626992, at the next access to the piston, top overhaul, or major overhaul. The affected pistons can be identified by either a stamped-in P/N on the piston dome (SA626992 or SA626992P15) or, by a raised number (SA632932) along one of the piston pin bosses on the underside of the piston. The actions would be required to be accomplished in accordance with the SB described previously.

The manufacturer has informed the FAA that 5,585 pistons were shipped between December 1976 and June 1981 and would be affected by this proposed AD. The FAA estimates that it would take approximately 2 work hours per piston to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $156 per piston. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,541,460.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Superior Air Parts, Inc.: Docket No. 94–ANE–30.

Applicability: Superior Air Parts, Inc. pistons, Part Numbers (P/N) SA626992, SA626992P15, and SA632932, installed on

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Teledyne Continental Motors Model O–470–K, –L, –R reciprocating engines. These engines are installed on but not limited to Cessna 182 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent piston failure, which can result in engine power loss, engine failure and loss of the aircraft, accomplish the following:

(a) At the next access to the piston, top overhaul, or major overhaul after the effective date of this airworthiness directive, whichever occurs first, remove from service pistons, P/N SA626992, and replace with a serviceable part.

Note: The affected pistons can be identified by either a stamped-in P/N on the piston dome (SA626992 or SA626992P15) or, by a raised number (SA632932) along one of the piston pin bosses on the underside of the piston.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Fort Worth Special Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Special Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Fort Worth Special Certification Office.

Issued in Burlington, Massachusetts, on February 14, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4250 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353, 355, and 356

[Docket No. 941264–4364]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Advance Notice of Proposed Rulemaking; Extension of Comment Period.

SUMMARY: The Department of Commerce issued an advance notice of proposed rulemaking and request for comments as the first step in the process of conforming the existing antidumping, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act. In an effort to accommodate parties interested in submitting comments in this rulemaking proceeding, the Department is extending the comment period announced in the advanced notice of proposed rulemaking.

DATES: Final comments should be received on or before April 3, 1995.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Uruguay Round Agreements Act. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 482–4412, or David Mason Jr., (202) 482–4969.

SUPPLEMENTARY INFORMATION: On January 3, 1995, the Department of Commerce (the Department) published an Advance Notice of Proposed Rulemaking and Request for Comments in the **Federal Register** *(Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement* ("Advance Notice of Proposed Rulemaking") (60 FR 80) as the first step in the process of conforming the Department's existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act. In its notification, the Department requested initial comments by February 3, 1995 and final comments by February 24, 1995. In an effort to accommodate parties interested in submitting comments in this rulemaking proceeding, the Department now extends the time in which to file final comments pursuant to the Advance Notice of Proposed Rulemaking. The new due date for final comments is April 3, 1995.

FORMAT AND NUMBER OF COPIES: Parties should submit comments in the following format: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth in the Department's Advance Notice of Proposed Rulemaking (60 FR 80; January 3, 1995)); (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of the comment."

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and one paper copy. All documents filed in electronic form must be on DOS formatted 3.5" diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues outlined below.

Comments received on diskette will continue to be made available to the public on Internet under the following address: FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT

In addition, the Department will continue to make comments available to the public on 3.5" diskettes, with specific instructions on accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

List of Subjects in 19 CFR Parts 353, 355, and 356

Business and industry, Foreign trade, Imports, Trade Practices.

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4453 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 63

[WA22–1–6382; FRL–5157–4]

Approval and Promulgation of Implementation Plans, Washington; Approval of Section 112(l) Authority; Preconstruction and Operating Permits; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve in part and disapprove in part, numerous revisions to the State of Washington

Implementation Plan submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on March 8, 1994. The revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act). EPA is also proposing to take no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA also invites public comment on its proposal to approve certain WDOE rules, and certain rules of the Puget Sound Air Pollution Control Agency (PSAPCA) and Southwest Air Pollution Control Authority (SWAPCA), submitted to EPA by the Director of WDOE on September 29, 1994, under the authority of section 112(l) of the Act in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

DATES: Comments must be postmarked on or before March 24, 1995.

ADDRESSES: Written comments should be addressed to: David Bray, Permits Programs Manager, EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Permit Programs Manager, EPA, Air & Radiation Branch (AT–082), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to state implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas). Under the provisions of the Act, revisions to title I, part D (nonattainment area) new source review (NSR) rules were required to be submitted by June 30, 1992 for PM–10 nonattainment areas, by November 15, 1992 for most ozone and carbon monoxide nonattainment areas, and by November 15, 1993 for the remainder of the ozone and carbon monoxide nonattainment areas. The Washington Department of Ecology (WDOE) amended its part D NSR rules on August 20, 1993 and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP.

The Clean Air Act Amendments of 1990 also established a new title V which requires States to develop operating permit programs for most stationary sources. While title V operating permit programs are not intended to be part of the SIP, many provisions of the SIP will interact closely with the title V operating permit program. As such, most States will be revising provisions of their SIPs to facilitate and improve the relationship between their SIP and their title V operating permit program. The WDOE amended several provisions of its current rules for air pollution sources and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP.

Section 112(l) of the Act also enables the EPA to approve State air toxics rules or programs for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants. Approval is granted by the EPA if the Agency finds that: (1) The State rule or program is "no less stringent" than the corresponding Federal program or rule; (2) the State program is supported by adequate authority and resources; (3) the schedule for implementation and compliance of emission standards and other requirements is sufficiently expeditious; and (4) the rules are otherwise in compliance with Federal guidance.

On September 29, 1994, the Director of the WDOE submitted an official application to obtain approval for title V permitting authorities (with the exception of PSAPCA and SWAPCA) in the State of Washington to implement and enforce the statewide rules for "Controls for New Sources of Toxic Air Pollutants" (WAC 173–460) as an interim program to implement section 112(g) of the Act. The Director of the WDOE also submitted an official application on behalf of the PSAPCA and SWAPCA to obtain approval for those local agencies to implement and enforce their own rules (portions of PSAPCA Regulations I and III and SWAPCA Regulation 460) for new sources of toxic air pollutants.

II. Discussion of SIP Submittal

A. Description of SIP Submittal

On March 8, 1994, the Director of the WDOE submitted all of Chapter 173–400 WAC "General Regulations for Air Pollution Sources" (with the exception of WAC 173–400–114) as amended on August 20, 1993, as a revision to the Washington SIP. The amended rules include changes to the following sections: WAC 173–400–030 "Definitions;" WAC 173–400–040 "General standards for maximum emissions;" WAC 173–400–100 "Registration;" WAC 173–400–105 "Records, monitoring, and reporting;" WAC 173–400–110 "New source review (NSR);" WAC 173–400–120 "Bubble rules;" WAC 173–400–131 Issuance of emission reduction credits;" WAC 173–400–136 "Use of emission reduction credits;" WAC 173–400–141 "Prevention of significant deterioration (PSD);" WAC 173–400–171 "Public involvement;" WAC 173–400–180 "Variance;" WAC 173–400–230 "Regulatory actions;" and WAC 173–400–250 "Appeals." The amended rules include the following new sections which are revised and recodified provisions from the previous rules: WAC 173–400–112 "Requirements for new sources in nonattainment areas;" and WAC 173–400–113 "Requirements for new sources in attainment or unclassifiable areas." Finally, the amended rules also include the following entirely new sections: WAC 173–400–081 "Startup and shutdown;" WAC 173–400–091 "Voluntary limits on emissions;" and WAC 173–400–107 "Excess emissions."

With the exceptions discussed in Section II.C. and II.D. below, EPA is proposing to approve the submitted version of Chapter 173–400 WAC as a revision to the Washington SIP. Note that those provisions of WAC 173–400 which were not revised on August 20, 1993 and are not discussed in Sections II.B., II.C., and II.D., below were previously approved by EPA on January 15, 1993 (58 FR 4578).

B. Discussion of Proposed Approvals

1. New Source Review

The existing provisions related to new source review (NSR) were extensively revised to meet the new requirements of Title I, Part D of the Act as set forth in the "State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) and to make the WDOE rules more consistent with EPA's regulations for new source review programs in 40 CFR part 51, subpart I Review of New Sources and Modifications. Specifically:

a. The definitions of the following terms were revised to be consistent with EPA's definitions: "actual emissions" (WAC 173–400–030(1)), "allowable emissions" (WAC 173–400–030(5)), "best available control technology

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(BACT)" (WAC 173–400–030(9)), "Class I area" (WAC 173–400–030(13)), "emission standard and emission limitation" (WAC 173–400–030(22)), "major modification" (WAC 173–400–030(39)), "net emission increase" (WAC 173–400–030(46)), "new source" (WAC 173–400–030(47)), "significant" (WAC 173–400–030(67)), "source" (WAC 173–400–030(69)), and "volatile organic compound (VOC)" (WAC 173–400–030(81)). EPA finds that these revised definitions are consistent with the requirements of 40 CFR Part 51, Subpart I, and therefore proposes to approve them as revisions to the Washington SIP.

b. New definitions of the following terms were added to be consistent with EPA's regulations: "federal land manager" (WAC 173–400–030(28)), "mandatory Class I federal area" (WAC 173–400–030(38)), "major stationary source" (WAC 173–400–030(40)), "modification" (WAC 173–400–030(43)), "order" (WAC 173–400–030(53)), "order of approval" (WAC 173–400–030(54)), and "stationary source" (WAC 173–400–030(74)). EPA finds that these new definitions are consistent with the requirements of 40 CFR part 51, subpart I, and therefore proposes to approve them as revisions to the Washington SIP.

c. WAC 173–400–110 "New Source Review (NSR)" was revised to clarify the applicability of the NSR rule and the procedures for submittal of applications, making completeness determinations and final determinations, and appeals of orders of approval. The section was also revised by revoking provisions and replacing them with two new sections as described below. EPA finds that this revised section is consistent with the requirements of part 51, subpart I, and therefore proposes to approve it as a revision to the Washington SIP.

d. A new section WAC 173–400–112 "Requirements for new sources in nonattainment areas" was added which specifies the requirements for new and modified major and minor stationary sources proposing to locate in designated nonattainment areas. New and modified minor stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not violate the requirements for reasonable further progress established in the SIP and comply with the State's air toxics requirements which EPA is today proposing to approve pursuant to section 112(l) of the Act (see below). New and modified major sources must also comply with all applicable requirements, meet the lowest achievable emission rate (LAER) for the nonattainment air pollutant and BACT for all other air pollutants, comply with the requirements for reasonable further progress by providing adequate offsetting emission reductions from existing sources in the nonattainment area, demonstrate that all other major sources owned or operated in the State of Washington are in compliance (or on a compliance schedule) with applicable requirements, demonstrate through an analysis of alternatives that the benefits of the project significantly outweigh the costs imposed as a result of its location in the nonattainment area, comply with the requirements for prevention of significant deterioration (PSD) if applicable, comply with the State's air toxics requirements, and comply with the visibility protection requirements for mandatory Federal Class I areas.

Section 189(e) of the Act requires part D NSR programs for PM_{10} nonattainment areas to treat PM_{10} precursor emissions in the same manner as PM_{10} emissions unless the Administrator has determined that PM_{10} precursors do not significantly contribute to violations of the PM_{10} NAAQS. However, WAC 173–400–112 does not address PM_{10} precursors nor require them to be treated in the same manner as PM_{10} emissions. The Administrator has previously made a determination that PM_{10} precursors do not significantly contribute to PM_{10} violations in the Thurston County, and Seattle, Tacoma, and Kent PM_{10} nonattainment areas (see 58 FR 40056 (July 27, 1993) and 59 FR 44324 (August 29, 1994)). The submitted control strategies for the Wallula, Spokane, and Yakima PM_{10} nonattainment areas contain sufficient information on the relative contribution of PM_{10} precursors to the nonattainment problem to enable the Administrator to determine at this time that PM_{10} precursors do not significantly contribute to violations of the PM_{10} NAAQS in those three areas. Based on the Administrator's determinations regarding PM_{10} precursors in the three remaining PM_{10} nonattainment areas, EPA finds this new section to be consistent with the requirements of 40 CFR part 51, subpart I, and title I, part D of the Act, as set forth in "State Implementation Plans: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990" (57 FR 13498 (April 16, 1992)) and therefore proposes to approve it as a revision to the Washington SIP.

e. A new section WAC 173–400–113 "Requirements for new sources in attainment or nonclassifiable areas" was added which specifies the requirements for new and modified major and minor stationary sources located in attainment areas. New and modified minor stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not delay the attainment date for any nonattainment area nor cause or contribute to a violation of any ambient air quality standard, and comply with the State's air toxics requirements. New and modified major stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not delay the attainment date for any nonattainment area nor cause or contribute to a violation of any ambient air quality standard, comply with the requirements for PSD if applicable, comply with the State's air toxics requirements, and not cause an adverse impact on visibility. EPA finds that this new section is consistent with the requirements of 40 CFR part 51, subpart I, and therefore proposes to approve it as a revision to the Washington SIP.

2. Startup and Shutdown

The new section on "startup and shutdown" (WAC 173–400–081) establishes a requirement that State and local air pollution control authorities consider any physical constraints on the ability of a source to comply with a standard whenever an authority promulgates a technology-based emission standard or makes a control technology determination. Where the authority determines that the source is not capable of achieving continuous compliance with a standard during startup or shutdown, the authority shall establish appropriate limitations to regulate the performance of the source during startup or shutdown conditions. The allowable emissions during startup or shutdown must be accounted for in any demonstration of attainment or maintenance of ambient air quality requirements. In addition, if such limitations would allow emissions during periods of startup or shutdown which exceed those allowed for under the current EPA-approved SIP, such limitations shall not take effect until approved by EPA as a revision to the SIP. EPA finds this section to be consistent with EPA requirements and proposes to approve it as a revision to the Washington SIP.

3. Excess Emissions

The new section on "excess emissions" (WAC 173–400–107) establishes requirements for reporting periods of excess emissions and the procedures and criteria for determining,

in the context of an enforcement action, when such excess emissions are unavoidable and could therefore be excused and not subject to penalty. The section sets forth separate criteria for periods of excess emissions resulting from startup or shutdown, scheduled maintenance, and upsets. EPA finds this section to be consistent with its requirements for SIP excess emissions rules (February 15, 1983 memorandum entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions" from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators, Regions 1–X) and therefore proposes to approve it as a revision to the Washington SIP. Note that this new section replaces the provisions for excess emissions which were formerly contained in WAC 173–400–105(5) and EPA also proposes to approve the repeal of those provisions.

4. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173–400–091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. Such limitations would be contained in a "regulatory order" issued by the WDOE or a local air authority, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with the limitations.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of Federally enforceable State operating permits. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. The EPA has encouraged States to develop such programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, "Limitation of Potential to Emit With Respect to Title V Applicability Thresholds," dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of hazardous air pollutants (HAP) if the program were approved pursuant to section 112(l) of the Act.

The June 28, 1989 **Federal Register** notice establishes five criteria which must be met in order for EPA to approve a State operating permit program into the SIP: (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) any permit issued under the program must contain terms and conditions that are at least a stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) any permit issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) any permit that is intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

EPA finds that WAC 173–400–091 meets the requirements for Federally enforceable State operating permit programs as set forth in the June 28, 1989 **Federal Register** (54 FR 27274) and proposes to approve it as a revision to the Washington SIP. Furthermore, EPA proposes that, after final approval to this section, "regulatory orders" issued pursuant to the EPA-approved WAC 173–400–091, and terms and conditions contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that section. Sources could, thereafter, rely on "regulatory orders" issued pursuant to this section as a means to limit their potential to emit criteria pollutants and the pollutants regulated under the PSD provisions of the SIP in order to avoid requirements which would otherwise apply to "major stationary sources." EPA requests comment on the appropriateness of making Federally enforceable, as of the date of EPA approval, the terms and conditions of an order that was issued prior to EPA's approval of a State or local rule, provided the order itself complied with all of the requirements of the EPA-approved rule.

5. Miscellaneous Changes

The remaining changes to WAC 173–400–030 "Definitions;" and the changes to WAC 173–400–040 "General standards for maximum emissions;" WAC 173–400–100 "Registration;" WAC 173–400–105 "Records, monitoring, and reporting;" WAC 173–400–171 "Public involvement;" " WAC 173–400–230 "Regulatory actions;" and WAC 173–400–250 "Appeals" are primarily administrative in nature to conform those sections to current State statutes and to other provisions of WAC 173–400. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as revised.

C. Discussion of Proposed Disapprovals

On January 15, 1993 (58 FR 4578), EPA disapproved numerous provisions of Chapter 173–400 WAC. These provisions were resubmitted as part of the March 8, 1994 submittal without the necessary changes to make them approvable. EPA is therefore proposing to again disapprove the following provisions. A complete discussion of the deficiencies and the reasons for disapproval can be found in the September 28, 1992 Notice of Proposed Rulemaking (57 FR 44530).

EPA is proposing to disapprove WAC 173–400–040(1) (c) and (d) which allow for the establishment of alternative opacity limits. EPA is proposing to disapprove the second paragraph of WAC 173–400–040(6) which provides an exception to the sulfur dioxide emission limitation. EPA is proposing to disapprove the exception provision in WAC 173–400–050(3) which allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources. EPA is proposing to disapprove WAC 173–400–180 Variance which allows the WDOE to grant a variance to the requirements governing the quality, nature, duration, or extent of discharges of air contaminants. EPA is proposing to disapprove WAC 173–400–120 Bubble Rules, WAC 173–400–131 Issuance of Emission Reduction Credits, and WAC 173–400–136 Use of Emission Reduction Credits as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986).

EPA is proposing to disapprove WAC 173–400–141 Prevention of Significant Deterioration (PSD) as it does not meet

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the requirements of 40 CFR 51.166. WDOE has adopted, by reference, EPA's PSD regulations (40 CFR 52.21) as in effect on March 3, 1993. However, significant changes to EPA's regulations became effective on July 20, 1993, August 19, 1993 and June 3, 1994. Note that the PSD provisions of the Washington SIP are currently disapproved and EPA's PSD regulations have been promulgated into the Washington SIP (see 40 CFR 52.2497). Until WAC 173–400–141 is revised to meet current EPA requirements and is approved by EPA, WDOE will continue to issue PSD permits under a partial delegation of the EPA PSD permit program.

D. Provisions Unrelated to the SIP

EPA is proposing to take no action on WAC 173–400–040(2) Fallout; WAC 173–400–040(4) Odors; WAC 173–400–070(7) Sulfuric Acid Plants; WAC 173–400–075 Emission Standards for Sources Emitting Hazardous Air Pollutants; and WAC 173–400–115 Standards of Performance for New Sources, as these provisions are not related to the criteria pollutants regulated under the SIP.

III. Discussion of Section 112(l) Submittal

A. Description of Submittal

On September 29, 1994, the Director of the WDOE submitted WAC 173–460 "Controls for New Sources of Toxic Air Pollutants," SWAPCA Regulation 460 "Controls for New Sources of Toxic Air Pollutants," and PSAPCA Regulation I, Article 6 "New Source Review" and Regulation III, Article 2 "Review of Toxic Air Contaminant Sources" for approval under section 112(l) of the Act. These provisions establish requirements for preconstruction permits for new and modified sources of HAP.

B. Discussion of Proposed Approval

1. Permits to Construct for New and Modified Sources of Hazardous Air Pollutants

a. WAC 173–460 "Controls for New Sources of Toxic Air Pollutants" establishes the State of Washington's procedures for regulating new and modified stationary sources of toxic air pollutants. It is a comprehensive regulation which covers more pollutants than the 189 HAP listed in section 112(b) of the Act. In addition, it applies to most stationary sources of toxic air pollutants and not just major stationary sources. Finally, it requires both the application of the best available control technology for toxics (T–BACT) and a demonstration of the protection of human health and safety.

WAC 173–460–010 "Purpose" sets forth the purpose of this regulation and the policy of the State of Washington in regulating toxic air pollutants. WAC 173–460–020 "Definitions" incorporates all of the definitions from WAC 173–400 "General Regulations for Air Pollution Sources" and adds several new definitions specific to the control of toxic air pollutants. WAC 173–460–030 "Requirements, applicability, and exemptions" identifies the source categories subject to WAC 173–460 and certain general and specific exemptions from the regulation.

WAC 173–460–040 "New source review" supplements the new source review requirements of WAC 173–400–110 by adding additional requirements for toxic air pollutant sources. Specifically, it requires any new or modified source subject to WAC 173–460 to submit a notice of construction application and obtain a regulatory order approving the notice of construction prior to commencing construction. This section requires any new or modified stationary source to comply with all applicable requirements, utilize T–BACT, and demonstrate that toxic air pollutant emissions from the source are sufficiently low as to protect human health and safety from potential carcinogenic and/or other toxic effects. Source categories for which WDOE has established T–BACT by rule are exempted from the requirement to demonstrate that their emissions protect human health and safety. This section also specifies the process for making preliminary determinations, including public notice and opportunity for public comment, making final determinations, and appealing the permitting authority's decision.

WAC 173–460–050 "Requirement to quantify emissions" requires new sources to quantify emissions sufficient to perform the analyses required by WAC 173–460 and sets forth the procedures for making appropriate emissions calculations. WAC 173–460–060 "Control technology requirements" establishes the requirement for new and modified sources of toxic air pollutants to utilize T–BACT and establishes T–BACT requirements by rule for perchloroethylene dry cleaners, petroleum solvent dry cleaning systems, chromic acid plating and anodizing, solvent metal cleaners, and abrasive blasting.

WAC 173–460–070 "Ambient impact requirement" requires the owner or operator of a new or modified source of toxic air pollutants to demonstrate that emissions from the source are sufficiently low as to protect human health and safety from potential carcinogenic and/or other toxic effects. Compliance with this requirement must be demonstrated using the procedures set forth in WAC 173–460. WAC 173–460–080 "Demonstrating ambient impact compliance" requires the owner or operator of a new or modified air toxics source to complete an analysis which demonstrates compliance with the acceptable source impact levels (ASIL) established in WAC 173–460. The analysis must utilize dispersion modeling techniques in accordance with EPA guidelines, unless the source qualifies for using specified small quantity emission rate tables.

WAC 173–460–090 "Second tier analysis" provides an alternative approach for demonstrating acceptable impacts if the owner or operator of a proposed new source or modification could not demonstrate compliance with the acceptable source impact levels using the procedures specified in WAC 173–460–080. This section allows the owner or operator of a new or modified source to petition WDOE to perform a second tier analysis evaluation to determine a means of compliance with WAC 173–460–070 and –080 by establishing allowable emissions for the source. A second tier analysis may be requested when a source wishes to more accurately characterize risks, to justify risk greater than acceptable source impact levels, or to otherwise modify assumptions to more accurately represent risks. The WDOE may approve emissions of air toxics from a source where ambient concentrations would exceed acceptable source impact levels only if it determines that T–BACT is utilized and that emissions of certain air toxics are not likely to result in an increased cancer risk of more than one in one-hundred thousand. If the WDOE approves the second tier analysis, the notice of construction approval, following public notice and opportunity for comment, shall specify allowable emissions consistent with WDOE's determination and include all requirements necessary to assure that conditions of WAC 173–460 and WAC 173–400 are met.

WAC 173–460–100 "Request for risk management decision" provides an alternative approach for sources that emit certain toxic air pollutants that are likely to result in an increased cancer risk of more than one in one-hundred thousand. The owner or operator of such a source may request that WDOE make a risk management decision which would allow such greater risk. To receive such approval, the owner or operator of such source must propose allowable emission limits for the source that represent all known available reasonable control technology, apply all known available air toxic pollution prevention methods, and demonstrate that the proposal will result in a greater benefit to the environment as a whole. The source may also propose measures that would reduce community exposure to comparable toxic air pollutants. WDOE's decision on any request for a risk management decision will follow a public notice and opportunity for public comment, including a public hearing, and appropriate conditions on emission controls, pollution prevention, or other measures, shall be included in the approval of the notice of construction.

WAC 173–460–110 "Acceptable source impact levels" establishes the process that the WDOE uses to establish the acceptable source impact levels in this regulation. WAC 173–460–120 "Scientific review and amendment of acceptable source impact levels and lists" establishes an ongoing process for the scientific review of information on toxic air pollutants and acceptable source impact levels. WAC 173–460–130 "Fees" authorizes the WDOE or local air authority to charge fees for the review of notices of construction. WAC 173–460–140 "Remedies" establishes the civil and criminal enforcement authorities for violations of WAC 173–460. Finally, WAC 173–460–150 "Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels" and WAC 173–460–160 "Class B toxic air pollutants and acceptable source impact levels" list the acceptable source impact levels for the toxic air pollutants regulated by WAC 173–460. Note that these levels are criteria used in a permit review process and are not standards which would be enforceable against sources by either the State or EPA.

EPA is proposing to approve WAC 173–460 under section 112(l) of the Act in order to recognize regulatory orders approving notices of construction as Federally enforceable. EPA is also proposing to approve the provisions of WAC 173–400 that are used to implement the requirements of WAC 173–460 (specifically, WAC 173–400–110, –112, –113, and –171) under section 112(l) of the Act. If approved, permitting authorities would be able to utilize regulatory orders issued pursuant to WAC 173–460 to establish Federally enforceable limits on potential to emit for new and modified stationary sources of HAP and to make any case-by-case MACT determinations required under section 112(g) of the Act.

The EPA believes it has authority under section 112(l) to approve State preconstruction review programs for HAP directly under section 112(l). The EPA is therefore proposing approval of WAC 173–460 now so that permitting authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

EPA is aware that WAC 173–460 was not designed specifically to implement section 112(g) of the Act. Furthermore, EPA has acknowledged that States may encounter difficulties implementing section 112(g) prior to promulgation of final EPA regulations (*see* June 28, 1994 memorandum entitled, "Guidance for Initial Implementation of Section 112(g)," signed by John Seitz, Director of the Office of Air Quality Planning and Standards). However, EPA believes that WAC 173–460 can serve as a procedural vehicle to make Federally enforceable any case-by-case MACT determinations required by section 112(g) during the transition period between title V approval in Washington and EPA approval of WDOE regulations to implement EPA's final section 112(g) regulations. EPA believes WAC 173–460 will be adequate for this transition period because it applies to any new source of HAP and any modification to an existing source of HAP. As such, any major source which would be subject to section 112(g) of the Act would be required by WAC 173–460 to obtain a regulatory order containing a T–BACT determination. Furthermore, WAC 173–460 allows permitting authorities to select control measures that would meet MACT, as defined in section 112 of the Act, and after EPA approval, to incorporate these measures into a Federally enforceable regulatory order.

b. SWAPCA Regulation 460 "Controls for New Sources of Toxic Air Pollutants" adopts WAC 173–460 by reference as a local regulation. As discussed in Section III.B.1. above, this WAC 173–460 meets all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. EPA is therefore proposing to approve SWAPCA Regulation 460 under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173–460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If SWAPCA Regulation 460 is revised or revoked, SWAPCA is approved to implement WAC 173–460 as the new source review program for HAP in SWAPCA's jurisdiction until such time as EPA approves the revision or revocation of SWAPCA Regulation 460.

c. PSAPCA Regulation I, Article 6 "New Source Review" and Regulation III, Article 2 "Review of Toxic Air Contaminant Sources" contain requirements for the construction and modification of stationary sources of HAP. Regulation I, Article 6 establishes a comprehensive new source review program that sets forth the process for submitting a "Notice of Construction and Application for Approval" and granting an "Order of Approval" or "Order to Prevent Construction." It applies to new and modified sources of any air contaminant and includes requirements for the content of applications, payment of "Notice of Construction" review fees, and requirements for public notice and comment. Furthermore, Section 6.07(c)(3) requires the utilization of the best available control technology (BACT) for all air contaminants emitted by new and modified stationary sources.

Regulation III, Article 2 establishes additional requirements for new and modified sources of toxic air contaminants and applies to all sources required to submit a "notice of construction and application for approval" under Regulation I, Article 6 except for certain source categories for which PSAPCA has established T–BACT by rule. Section 2.01 "Applicability" states that Article 2 applies to all sources of toxic air contaminants except for the following source categories for which PSAPCA has established T–BACT by rule: asbestos removal operations, chromic acid plating and anodizing tanks, solvent metal cleaners, perchloroethylene dry cleaning systems, petroleum solvent dry cleaning systems, gasoline storage and dispensing operations, graphic arts systems, can and paper coating operations, motor vehicle and mobile equipment coating operations, polyester/vinylester/gelcoat/resin operations, coatings and ink manufacturing, and ethylene oxide sterilizers and aerators. Note that sources exempt from the additional requirements of this section are not exempted from the requirement of Regulation I, Article 6 "New Source Review." Section 2.02 "National Emission Standards for Hazardous Air Pollutants" requires all sources subject to Article 2 to comply with any applicable provision of 40 CFR part 61. Section 2.03 "New or Altered Toxic Air Contaminant Sources" requires that no "Notice of Construction and Application for Approval" shall be issued under Regulation I, Article 6 for a new or modified source subject to

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Article 2 unless the source owner or operator demonstrates that the toxic air contaminant emissions from the source will not result in the exceedence of any Acceptable Source Impact Level (ASIL) contained in Appendix A of Regulation III and does not otherwise cause an air pollution problem.

These PSAPCA regulations have previously been approved as part of the Washington SIP for control of criteria pollutants. They also meet all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. Furthermore, the WDOE has certified that, pursuant to Washington State law, the PSAPCA regulations are at least as stringent as corresponding State regulations, in this case, WAC 173–460 which EPA is also proposing to approve. EPA is therefore proposing to approve these PSAPCA regulations under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173–460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If PSAPCA Regulation I, Article 6 or Regulation III, Article 2 is revised or revoked, PSAPCA is approved to implement WAC 173–460 as the new source review program for HAP in PSAPCA's jurisdiction until such time as EPA approves the revision or revocation of PSAPCA's regulations.

2. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173–400–091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. The provisions of this section are applicable, as a matter of State law, to any air contaminant and not just the criteria pollutants regulated under the EPA-approved Washington SIP. In addition to requesting approval into the SIP, WDOE has also requested approval of this section under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed in Section II.B.4. above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The EPA believes that the five approval criteria for approving State operating permit programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving State operating permit programs under section 112(l) of the Act. The November 3, 1993 guidance document entitled "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director, OAQPS, indicated that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act. The June 28, 1989 notice does not address HAP simply because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. In addition to meeting the criteria in the June 28, 1989 notice, a State operating permit program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) is supported by adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act. The EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as State operating permit programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to State operating permit programs, will mirror those set forth in the June 28, 1989 **Federal Register** notice. The EPA currently anticipates that since State operating permit programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. The EPA is therefore proposing approval of this section now so that permitting authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

As discussed in Section II.B.4. above, EPA believes that this section meets the approval criteria specified in the June 28, 1989 **Federal Register** notice. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes this section contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989 notice is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources. Regarding the requirement for adequate resources, the EPA believes WDOE has demonstrated that it can provide for adequate resources to support the synthetic minor program. Permitting authorities currently cover sources not subject to title V under a "registration" program which assesses fees adequate to cover the costs of implementing and enforcing the terms of regulatory orders issued under this section. The EPA will monitor each permitting authority's implementation of this section to ensure that adequate resources are in fact available. The EPA also believes that this section provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in this section would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

EPA therefore, proposes to approve WAC 173–400–091 under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval to this section, "regulatory orders" issued pursuant to the EPA-approved WAC 173–400–091, and terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that Section. Sources could, thereafter, rely on "regulatory orders" issued pursuant to this section as a means to limit their potential to emit of HAP in order to avoid requirements which would otherwise apply to a "major stationary source" of HAP. EPA requests comment on the appropriateness of making Federally enforceable the terms and conditions of an order that was issued prior to EPA's approval of a State or local rule, provided the order itself complied with all of the requirements of the EPA-approved rule.

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

IV. Summary of Action

EPA is soliciting public comment on its proposed approval in part and disapproval in part of revisions to the State of Washington Implementation Plan. Specifically, EPA is proposing to approve:

WAC 173–400 as in effect on September 20, 1993, except for the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –115; –120; –131; –136; –141; and –180.

EPA is proposing to disapprove the following:

WAC 173–400–040(1)(c) and (d), the second paragraph of –040(6), the exception provision in –050(3), –120, –131, –136, –141, and –180.

EPA is proposing to take no action on the following:

WAC 173–400–040(2), –040(4), –070(7), –075, and –115.

Note that WAC 173–400–114 was not submitted for inclusion in the Washington SIP.

EPA is also soliciting public comment on its proposed approval of certain State and local agency regulations pursuant to the authority of section 112(l) of the Act. Specifically, EPA is proposing to approve the following:

WAC 173–460 as in effect on February 14, 1994;

WAC 173–400–091; –110; 112; 113; and 171 as in effect on September 20, 1993;

SWAPCA Regulation 460 as in effect on June 15, 1993; and

PSAPCA Regulation I, Article 6 as in effect on September 17, 1993 and

Regulation III, Articles 1 and 2 as in effect on September 17, 1993.

Interested parties are invited to comment on all aspects of this proposed approval in part and disapproval in part. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by March 24, 1995, will be considered in the final rulemaking action taken by EPA.

Administrative Review

This action has been classified as a Table 2 SIP action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted Table 2 SIP actions from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Similarly, approvals of State rules under section 112(l) do not create any new requirements. Therefore, because the Federal SIP approval and the section 112(l) approval do not impose any new requirements, I certify that they do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or approval of any State rules pursuant to section 112(l). Each request for revision to any SIP or approval under section 112(l) shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact or entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed approval of the State and local air toxics rules under section 112(l) is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

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Reporting and recordkeeping requirements.

Dated: February 9, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–4291 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA24–1–6519b; FRL–5143–8]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the Northwest Air Pollution Authority (NWAPA). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for the control of air pollution in Island, Skagit, and Whatcom Counties. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by March 24, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT–082), EPA, Region 10, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: January 9, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–3863 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–29–01–6537; A–1–FRL–5156–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Emission Banking, Trading, and Averaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the approval of a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision establishes a program of emission reduction credit (ERC) banking and trading whereby companies who reduce emissions below the level required by State and federal regulation can "bank" the surplus reductions for use at a later date or for transfer to another party. This program has been adopted as a voluntary economic incentive program pursuant to EPA's interim guidance on Economic Incentive Programs. The intended effect of this action is to facilitate cost-effective compliance with other emission reduction requirements required by the Massachusetts SIP. This action is being taken under the Clean Air Act.

DATES: Comments must be received on or before March 24, 1995.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 565–9024.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1993, EPA published proposed rules for Economic Incentive Programs (58 FR 11110). The proposal set forth Economic Incentive Program (EIP) rules which could be adopted by certain ozone and carbon monoxide nonattainment areas which were mandated by sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Clean Air Act (Act) to use or consider as one of three options the use of an economic incentive program to correct attainment plan deficiencies. The notice also served as interim guidance for States to develop discretionary EIPs which is allowed for any criteria pollutant in all areas.

On February 9, 1994, the Massachusetts Department of Environmental Protection (DEP) submitted 310 CMR 7.00 appendix B: Emission Banking, Trading, and Averaging as a revision to its State Implementation Plan (SIP). This regulation was submitted as a discretionary EIP and is described as emission limiting due to the fact that the regulation places limits on total mass emissions, emission related parameters, or specifies levels of emission reductions that participating sources must meet. The regulation is designed to utilize a federally enforceable permit mechanism or single-source SIP revisions to ensure the enforceability of the ERCs. It replaces the former 310 CMR 7.00 appendix B which dealt exclusively with emissions averaging.

The regulation deals separately with ERC banking and trading and with emissions averaging. Section 310 CMR 7.00 appendix B(3) establishes the requirements of the ERC banking and trading portion of the program by which persons and companies who reduce emissions below the level required by State and federal regulation can "bank" the surplus reductions for use at a later date or for transfer to another party. The goal of this part of the program is to encourage the creation and trading of surplus ERCs for the purpose of offsets, netting, and cost-effective compliance without interfering with any applicable requirements concerning attainment, reasonable further progress, or any other applicable air pollution control requirements. As such, 310 CMR 7.00 Appendix B(3) is intended to promote innovative and cost-effective approaches to emission reduction requirements adopted by Massachusetts.

Section 310 CMR 7.00 appendix B(4) is the portion of the program designated for emissions averaging, or bubbling. However, that portion of the regulation was not part of the February 9, 1994 SIP submittal. Section 310 CMR 7.00 appendix B(4) of the regulation has been reserved and is expected to be submitted in the coming months for inclusion into the Massachusetts SIP.

EPA Evaluation and Proposed Action

As submitted, 310 CMR 7.00 appendix B is approvable as a non-generic [1] Economic Incentive Program (EIP). This means that although these regulations provide the general requirements for applying for and implementing an approvable trade under the EIP guidance, the use of all Emission Reduction Credits (ERCs) must be made federally enforceable through a second step, such as the issuance of a federally enforceable permit or as a case-specific SIP revision. Due to a lack of specificity in the emission quantification, compliance assurance, and public participation procedures, these regulations do not qualify as a fully generic EIP for emissions banking and trading. Therefore, this approval does not provide Massachusetts with the authority to issue documents to make ERC generation or use federally enforceable. At a minimum, EPA will still need to review and concur on any documents which are issued by the DEP for ERC use.

In addition to case-specific SIP revisions, there are several available mechanisms for making State documents federally enforceable in the absence of a fully generic EIP. Since documents issued under any of these mechanisms would include public participation procedures, Region I would be able to ensure that replicable and enforceable procedures are incorporated as part of each trade. Other than case-specific SIP revisions, the following three mechanisms could be used for making State documents federally enforceable in the absence of a fully generic EIP. However, as indicated in 310 CMR 7.00 appendix B(3)(g), ERCs generated from the application of mobile source or demand-side management measures would need to be approved through the source-specific SIP revision process, to the extent the specific emissions quantification, compliance assurance, and public participation procedures have not already been approved by EPA as part of the SIP.

First, in the case where Massachusetts issues a preconstruction permit to the owner/operator of a facility seeking to generate and/or use ERCs as offsets under their SIP-approved New Source Review (NSR) program (310 CMR 7.00 appendix A), these banking and trading regulations would be sufficient for the State to set the necessary federally enforceable conditions. Second, at such time as Massachusetts has an EPA-approved title V operating permit program, the State could also use those permits at subject sources to make the necessary conditions of ERC generation or use federally enforceable. However, since Massachusetts does not yet have an approved title V operating permit program, this is not an option.

Alternatively, in the case where state operating permits are issued pursuant to a program which has been approved into the SIP as meeting EPA's June 28, 1989 guidance, "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans" (54 FR 27274), the State could also use those permits to set the federally enforceable conditions for ERC generation or use. At the time Massachusetts proposed changes to 310 CMR 7.00 appendix B, they also proposed changes to 310 CMR 7.02: Plan Approval and Emission Limitations to allow the State to issue to existing sources permits which would meet the EPA's June 1989 guidance. However, since these changes have not been adopted by the State, this is not a viable option at this time.

One issue with the approval of 310 CMR 7.00 appendix B as an EIP framework concerns the provisions which appear to allow a source to accumulate and potentially use ERCs, during years other than the year in which the credits were generated (i.e., inter-temporal use of credits). Historically, EPA has only considered continuous streams of ERCs to be eligible for banking and use on a fixed tons per year basis. In the event that a portion of the continuous stream of credits was not used in a given year, that unused portion of total yearly credit was not normally allowed to be accumulated for use in later years. Similarly, where emission credits were generated by actions which produced only a limited stream of credits, such discrete ERCs were normally only considered surplus during the period of their generation.

As submitted, the Massachusetts' banking and trading regulations deal almost exclusively with the creation (i.e., banking) of ERCs. However, appendix B(3)(d)(2)(d) of 310 CMR 7.00 appears to allow ERCs generated from an action of limited duration (e.g., the use of natural gas instead of coal at a powerplant for one summer season), or the unused portion of ERCs generated from ongoing actions (e.g., reductions from the installation of control equipment), to be banked for use in any future year, including years other than the one in which the credit was generated. Appendix B (3)(d)(2)(d) also specifically states that the use of such accrued credits will be limited by the limits defined by 310 CMR 7.00, which include the requirement that reductions be surplus (i.e., not relied upon for any applicable attainment or reasonable further progress (RFP) milestone demonstration). Therefore, the question of whether accumulated reductions in emissions are surplus only arises with the use of such ERCs.

Under 310 CMR 7.00 appendix B, there are essentially two eligible uses of ERCs: to meet New Source Review (NSR) emissions offsetting requirements and to meet Reasonably Available Control Technology (RACT) limits. Currently, Massachusetts' NSR regulations explicitly require that offsetting credits be consistent with RFP. As for using ERCs to average between sources to meet RACT requirements, Massachusetts currently has no generic authority to allow emissions averaging. Therefore, in either case, the use of ERCs will still need to be made federally enforceable through a second step in the process which involves EPA review and concurrence. EPA's approval of any inter-temporal ERC trade will be predicated on the State documenting how such use of ERCs is consistent with the RFP and attainment plans and areawide RACT requirements applicable at that time. Therefore, since 310 CMR 7.00 appendix B deals almost exclusively with the creation (i.e., banking) of ERCs, and since this notice proposes only to approve 310 CMR 7.00 appendix B as a non-generic EIP, the credit accumulation provisions do not pose any contradiction to the requirements of the Clean Air Act.

Similarly, for the State to receive full approval of an emissions banking and trading EIP, including the generic authority to issue federally enforceable trading documents with inter-temporal banking and trading, they would need to meet an additional requirement to those

[1] EPA's Emission Trading Policy Statement (ETPS) promulgated on December 4, 1986, defines "generic rule" as a rule that assures that emissions trades otherwise requiring case-by-case SIP revisions under sections 110(j) and 110(a)(3) of the Clean Air Act will be evaluated under State procedures that are sufficiently replicable in operation to guarantee that emission limits produced under the rule will not interfere with the timely attainment and maintenance or jeopardize PSD increments or visibility (51 FR 43850).

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deficiencies listed above (i.e., specification of emission quantification, compliance assurance, and public participation procedures). Namely, the State would need to demonstrate that any potential one-time or carry-over ERCs are or will be consistent with the applicable attainment plan or demonstration, reasonable further progress (RFP) plan or milestone demonstration, and surplus to any applicable areawide RACT emission reduction requirements.

Essentially, this means that the State would need to submit documentation showing that the SIP requires, or will require, reductions equivalent to all potential one-time or carry-over ERCs beyond those reductions required from any applicable RACT, RFP, and/or attainment plan regulations, during the year(s) in which such ERCs are allowed to be used. Alternatively, the State could show that their adopted RACT, RFP, and/or attainment control strategies provide for equivalent reductions below the appropriate RFP or attainment target levels, and any applicable areawide RACT requirements. For example, if a State wanted to allow the use of 10 tons per typical summer day from a previous year, the State would need to show that its adopted control strategies provide for reductions that would create a 10 ton per day excess below the appropriate RFP or attainment target level and RACT requirements.

Additionally, appendix B(3)(g)(5) of the rule generally allows the bank to retain credits without confiscation from the State. However, the regulations also provide the State with the authority to make adjustments, including confiscation, to banked credits if needed for Rate-of-Progress (ROP), Reasonable Further Progress (RFP), or attainment requirements, as stated in appendix B(3)(l). According to appendix B(3)(l), the State would need to revise the SIP to take such action. EPA approves these provisions.

Finally, as mentioned above, although subsection (4) of the regulation has been reserved for the emissions averaging (bubbling) provisions, it was not submitted as part of the February 10, 1994 submittal. Therefore, until such time as a separate SIP revision allowing emissions averaging is approved, no generic emissions averaging would be allowed by approval of these rules.

Based on the issues discussed above, EPA is proposing to approve this revision to the Massachusetts SIP. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Proposed Action

EPA is proposing approval as a non-generic economic incentive program of 310 CMR 7.00 appendix B, as submitted to the EPA on February 9, 1994, as part of the Massachusetts SIP.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 31, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–4296 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5160–3]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: The EPA is extending the period for public comment regarding the Agency's proposed standards for hazardous air pollutant emissions from wood furniture manufacturing operations.

DATES: Written comments on the proposed rule must be received on or before March 23, 1995. Written comments pertaining only to the proposed test Method 311 must be received on or before April 24, 1995. Comments should be submitted in duplicate, and on computer disk, if possible.

ADDRESSES: Send comments to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket. Docket No. A–93–10, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. Telephone (202) 260–7548. FAX (202) 260–4400. The proposed regulatory text, proposed test Method 311 and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For information concerning the proposed standards, contact Dr. Madeleine Strum at (919) 541–2383, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For further information concerning the proposed test Method 311, contact Mr. Gary McAlister at (919) 541–1062, Source Categorization Group B, Emissions Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 6, 1994, EPA published proposed standards to limit emissions of hazardous air pollutants (HAP) from existing and new wood furniture manufacturing operations located at major sources. The proposed standards implement section 112(d) of the Clean Air Act as amended, which require the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The EPA also proposed Method 311, to be used to assist in demonstrating compliance with the proposed emission limitations.

The comment period was scheduled to close on February 21, 1995. Industry has requested a 60-day extension of the comment period to complete testing of the proposed test Method 311. In response to this request, the Agency is extending the comment period for the proposed Method 311 to April 24, 1995. The comment period for the proposed rule, however, will be extended by only 30 days, and is thus extended to March 23, 1995. All interested parties are encouraged to submit comments prior to that date.

Dated: February 16, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–4454 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 63 and 430

[FRL–5156–5]

RIN 2060–AD03 and 2040–AB53

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On December 17, 1993, EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry (58 FR 66078). This action announces the availability of additional data that EPA will consider for the promulgation of hazardous air pollutant emission standards for this industry.

DATES: Comments are not solicited at this time.

ADDRESSES: The data being announced today has been placed in Air Docket A–92–40. The docket is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Najarian, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5393.

SUPPLEMENTARY INFORMATION: On December 17, 1993 (58 FR 66078), EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry. The period for receiving public comments on the proposed rule ended on April 18, 1994; however, EPA stated in the preamble to the proposed rule that various industry groups were collecting air emissions data that would not be available until after the comment period and that the Agency would still consider that data for the promulgation of the air emission standards.

The additional data being announced today includes the following items located in Air Docket A–92–40: (1) A 16-mill study conducted by the National Council of the Paper Industry for Air and Stream Improvement (NCASI), items II–I–77 through II–I–79, IV–D–8, IV–D1–20 through IV–D1–22, IV–J–1 through IV–J–4, IV–J–6 through IV–J–14, and IV–J–16; (2) a 10-mill study conducted by International Paper, items IV–J–18 through IV–J–27; (3) a 5-mill study conducted by the Texas Paper Industry Environmental Committee, items II–I–13 to II–I–18; (4) a condensate study, items IV–D1–16 and IV–D1–18. NCASI prepared summaries of their testing program in NCASI technical bulletins, items IV–D1–29, IV–D1–29A, IV–D1–31, IV–D1–33 through IV–D1–35, IV–D1–38, IV–D1–39, IV–D1–41, and IV–D1–42. EPA has also prepared draft summaries of the NCASI and Texas studies, items IV–A–2 and IV–A–3, respectively.

EPA is not soliciting comment on the new data at this time so that the public will have an expanded opportunity to review the data. The reports added to the Air Docket consist of multi-volume test reports from numerous testing programs and summaries of two of the testing programs. The Agency will solicit comment on these data in a subsequent notice.

EPA also anticipates that additional data regarding both air emissions and effluent discharges will be published after today's notice. An additional announcement will be posted at a later date presenting further data and soliciting comments of all announced data.

Dated: February 13, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–4293 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[A–1–FRL–5156–8]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend by one year the attainment date for the Hancock and Waldo Counties, Maine ozone nonattainment area, a marginal nonattainment area. This proposal is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993.

DATES: Comments on this proposal must be received by March 24, 1995.

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ADDRESSES: Comments on this proposal should be submitted to: Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION:

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three-year period is 1991–93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

> Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—
>
> (A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and
>
> (B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.
>
> No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following, minimum, conditions: (i) The State requests a one-year extension; (ii) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (iii) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA Action

EPA is today proposing to grant a one-year extension of the attainment date for the Hancock and Waldo Counties, Maine nonattainment area. Air Quality monitors for this area revealed two exceedances of the ozone National Ambient Air Quality Standard during the three year period from 1991 to 1993. Both exceedances occurred in 1991, at a monitor located in Hancock County at a site operated by the National Park Service. The site had data capture problems in both 1991 and 1992. In 1993 the Maine Department of Environmental Protection took over maintenance of the site and data capture improved greatly. Since 1991 the site has not had any exceedances of the NAAQS.

EPA is proposing that the requirements for a one-year extension of the attainment date have been fulfilled as follows: (i) The State requested a one-year extension in a letter, dated April 11, 1994, from Governor McKernan to EPA Region I Administrator, John Devillars; (ii) in that same letter Maine certified that the State is implementing the EPA-approved SIP; and (iii) the area has monitored no exceedance during 1993.

Accordingly, EPA is proposing to establish a new attainment date for the Hancock and Waldo Counties, Maine area as November 15, 1994. If this proposal is finalized as proposed, the area would remain a marginal ozone nonattainment area, and the requirements for EPA to determine by May 15, 1994 whether the area has reached attainment or whether the area should be reclassified upwards would be extended by one year. Instead, under section 181(b)(2) of the CAA, EPA would determine by May 15, 1995 whether the area has met its revised attainment date based on air quality data during the years 1992–94, except that EPA would consider a second one-year extension if requested by the State.

Solicitation of Public Comment

As described above, EPA is proposing to extend the attainment date of the Hancock and Waldo Counties, Maine ozone nonattainment area for one year, until November 15, 1994. Public comment is solicited on this proposal. All comments received by the close of the public comment period will be considered in the development of EPA's final decision.

Regulatory Process

Under E.O. 12866, this action has been exempted from the Office of Management and Budget's review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Attainment date extensions under section 181(a)(5) of the CAA do not create any new requirements; therefore, I certify that this action will not have a significant impact on small entities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 25, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–4295 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300379; FRL–4934–5]

RIN 2070–AC18

Extended Tolerance on Dried Hops for Imidacloprid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the tolerance for residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (common name "imidacloprid") in or on dried hops at 3.0 parts per million (ppm). On its own inititative, EPA proposes to extend the tolerance to allow time to review a petition from the Interregional Research Project No. 4 (IR-4).

DATES: Written comments, identified by the document control number, [OPP-300379], may be submitted on or before March 24, 1995.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1132, CM #2, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), the Agency established in 40 CFR 180.472 a time-limited tolerance for the residues of imidacloprid on dried hops at 3.0 parts per million (ppm) (see the **Federal Register** of June 28, 1994 (59 FR 33204)). EPA established this tolerance because EPA had granted a petition for an emergency exemption under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136p, for the use of imidacloprid on hops in the States of Washington, Oregon, and Idaho; imidacloprid is used in other countries which export hops to the United States; and the database for imidacloprid is relatively complete. At that time, a third field residue trial was outstanding. Since then, the Interregional Research Project No. 4 (IR-4) has submitted a pesticide petition to the Agency requesting that a tolerance be established in or on dried hops. This petition is currently in review. The Agency may not complete its review of the IR-4 petition before the time-limited tolerance would expire. EPA does not believe that its risk assessment will significantly change as a result of the IR-4 petition. Therefore, the Agency is proposing to extend this tolerance for an additional 1-year period, i.e., to June 28, 1996.

In the **Federal Register** of November 30, 1994 (59 FR 61278), EPA revised 40 CFR 180.472 and removed the time-limited designation for commodities listed in paragraph (a). The listing for "Hops, dried" at 3.0 ppm inadvertently was left in paragraph (a) in the new list of commodities without a time-limited designation. Hops should have retained the time-limited designation, June 28, 1995, and been moved to a new paragraph. This change was made by a technical amendment published in the **Federal Register** of February 22, 1995.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three generation rat reproduction study that showed a NOEL of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females) for noncarcinogenic effects, which included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog feeding study that showed a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified as a "Group E" (no evidence of carcinogenicity for humans) carcinogen by the OPP Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000984 mg/kg/bwt/day and utilizes 2% percent of the ADI.

The nature of the residue in plants and livestock is adequately understood. Spent hops are not considered a poultry feed item; therefore, secondary imidacloprid tolerances for poultry and eggs are not required. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in plants using a permanganate oxidation, silyl derivatization, and capillary GC-MS-selective ion monitoring. The magnitude of the residue crop field trial data for imidacloprid on hops indicates that residues of total imidacloprid will not exceed the proposed tolerance when the formulations are used as directed. The extension for this use will expire on June 28, 1996.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below. Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register**

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that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested person are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP-300379]. All written comments filed in response to this document will be be available in the Public Docket and Freedom of Information Section, at the addressed given above from 8 a.m. to 4 p.m, Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemption from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to as follows:

Authority: 21 U.S.C. 346a and 371.

2. In 180.472, by revising paragraph (d), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(d) A time-limited tolerance, to expire June 28, 1996, is established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Hops, dried	3.0

[FR Doc. 95–4185 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2E4071/P603; FRL 4936–2]

RIN 2070–AC18

Methyl Anthranilate; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of the biochemical methyl anthranilate in or on the raw agricultural commodities blueberry, cherry, and grape when the pesticide is used in accordance with good agricultural practices. The Interregional Research Project No. 4 (IR-4) requested these exemptions in a petition submitted to EPA.

DATES: Comments, identified by the document control number, [PP 2E4071/P603], must be received on or before March 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4071 to EPA on behalf of the Agricultural Experiment Station of Washington. Pesticide petition 2E4071 requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish exemptions from the requirement of a tolerance for residues of the biochemical methyl anthranilate in or on the raw agricultural commodities blueberry, cherry, and grape. Methyl anthranilate will be applied as a dilute foliar spray to these crops to repel birds and reduce bird depredation. Methyl anthranilate is a natural constituent of food that can be found in grape and citrus. Methyl anthranilate is also synthetically produced and used in the purified form (not less than 99 percent pure) as a flavoring agent in beverages, ice cream, candy, baked goods, gelatins, puddings, and chewing gum. The synthetic product mimics the chemical structure and function of the natural plant constituent. Methyl anthranilate is listed by the Food and Drug Administration (FDA) as a flavoring compound under 21 CFR 182.60, and is classified generally recognized as safe (GRAS) by the Expert Panel of the Flavor and Extract Manufacturer's Association (FEMA). Registrants who produce end-use products for this active ingredient that are intended for use on blueberry, cherry, or grape will be required to use methyl anthranilate produced to meet or exceed U.S. Food Chemical Codex and U.S. Pharmacopoeia specifications.

Residue data submitted with the petition indicate that residues of methyl anthranilate would not exceed 35 parts per million (ppm) on blueberry, cherry, and grape from the proposed use. The incremental dietary exposure to methyl anthranilate is not significant compared to naturally occurring levels, or levels resulting from use of the chemical as a flavoring agent. For example, naturally occurring levels of methyl anthranilate are reported at 33 ppm in concord grapes, and the use of methyl anthranilate as a flavoring agent results in residues of approximately 30 ppm in baked goods and hard candies and almost 400 ppm in chewing gum.

Methyl anthranilate is hydrolyzed in the small intestine to form an alcohol and either anthranilic acid or an *N*-alkyl anthranilic acid. Anthranilic acid is a common human metabolite that is excreted in the urine or converted to anthranilic acid glucuronide prior to excretion.

The available information is sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from dietary exposure resulting from the proposed use of methyl anthranilate on blueberry, cherry, and grape.

There is also no reasonable expectation of secondary residues in meat, milk, poultry, or eggs from the proposed use.

No enforcement actions based on the level of residues in food are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to the exemption from the requirement of a tolerance.

Based on the information and data considered, the Agency concludes that tolerances are not needed to protect the public health. Therefore, it is proposed that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4071/P603]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346A and 371.

2. In Subpart D, by adding new § 180.1143, to read as follows:

§ 180.1143 Methyl anthranilate; exemption from the requirement of a tolerance.

Methyl anthranilate, a biochemical pesticide, is exempt from the requirement of a tolerance when used in accordance with good agricultural practices on the following raw agricultural commodities: Blueberry, cherry, and grape.

[FR Doc. 95–4306 Filed 2–16–95; 2:39 pm]

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Notices

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Scenery Fire Recovery; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Scenery Face Fire burned approximately 4700 acres of Kootenai National Forest system lands in the late summer of 1994. The Libby Ranger District on the Kootenai National Forest intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of opportunities designed to recover economic value of burned timber, reduce fuel accumulations, rehabilitate existing sediment sources and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed trees; reforestation of some harvested and severely burned areas; fuels reduction in harvested areas and restoration of non-essential roads. The Scenery decision area is located approximately 1 air mile west of Libby, Montana.

The proposal's actions to salvage fire-killed trees and reforest burned areas, reduce fuels, and restore roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area.

DATES: Written comments and suggestions should be received by no later than March 24, 1995.

ADDRESSES: The Responsible Official is Lawrence A. Froberg, District Ranger, Libby Ranger District, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 US Hwy 37 N, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Leanne Marten, NEPA Coordinator, Libby Ranger District. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: During the night of August 14–15, 1994, a lightning storm started 207 fires on the Kootenai National Forest in northwest Montana. Several of these fires occurred on the Libby Ranger District. The Scenery Fire Recovery EIS is being prepared in response to conditions resulting from one of the largest of these fires, the 4700 acre Scenery Face Fire. An interdisciplinary landscape analysis team is using an ecosystem based approach to assess the fires affects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition.

Burn intensities in the Scenery wildfire varied considerably. Within the fire perimeters approximately 2200 acres burned at moderate intensity (average 55% tree mortality) and approximately 2500 acres burned at low intensity (average 25% mortality). The fire burned within the Cabinet Face East Roadless Area #671.

The Scenery decision area contains approximately 3,300 acres within the Kootenai National Forest in Lincoln County, Montana. The legal location of the decision area is as follows: Sections or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, and 30 and Township 31 North, Range 32 West; Sections or portions of Sections 24 and 25 of Township 31 North, Range 33 West; Principle Meridian. The land in and adjacent to the decision area is primarily federal ownership under the jurisdiction of the Forest Service with some intermixed private ownership.

Proposed Action

The primary purpose of the project is to recover valuable timber products from trees burned by the Scenery Face wildfire that occurred in 1994 (while maintaining ecological processes), with the secondary benefit of reducing fuel loads. Actions are also proposed to enhance watershed recovery and improve grizzly bear habitat security.

The Forest Service proposes to harvest approximately 2.1 million board feet of timber by salvaging fire-killed trees and dying trees on approximately 350 acres of forest land outside riparian protection areas. Only trees that were killed, or are expected to die as a result of the fires, would be harvested. The proposal includes prescribed burning of about 67 acres to reduce fuel loads in harvested areas. An estimated 263 acres of proposed salvage units would be planted with conifer seedlings to help meet desired conditions for species diversity. The Forest Service also proposes to scarify and revegetate an estimated 4 miles of existing non-essential roads to reduce sediment and water yields, and improve grizzly bear habitat security. Non-essential roads are those that are no longer considered a necessary part of the permanent transportation system. Additional road access restrictions may be needed to provide adequate security areas for grizzly bears, however identification of specific road closure proposals is pending further analysis.

The decision area includes a portion of the Cabinet Face East Roadless Area #671. Approximately 330 acres of timber salvage and approximately 250 acres of reforestation would occur within the roadless area. No road construction is proposed within the roadless area. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan.

Due to the high level of tree mortality in proposed harvest units, most harvested areas would resemble clearcut or seed-tree silvicultural methods. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested. Timber harvest would be done by skyline and helicopter yarding, designed to result in minimal ground disturbance, risk of erosion, and compaction.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains four MA's: 11, 12, 14 and 19. Briefly described, MA 11 is managed to maintain or enhance the winter-range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer-range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 14 focuses on maintaining or enhancing grizzly bear habitat, reducing grizzly/human conflicts, assisting in the recovery of the grizzly bear, realizing a programmed yield of timber production, and providing for the maintenance or enhancement of other wildlife species, especially big game. MA 19 is managed to protect soil stability and water quality by maintaining the vegetation in a healthy condition and minimizing surface disturbance. Timber salvage and fuels reduction is proposed in MA 12.

Preliminary Issues

Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water Quality—Streams in the decision area have been impacted by the Scenery Face wildfire. How would the proposed action affect water yield, sediment production, stream stability, and recovery from the wildfire?
- Timber Supply—Much of the fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?
- Activity in Roadless Areas—What effect would the proposal have on the roadless character of the Cabinet Face East Roadless Area #671?
- Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Taak grizzly bear ecosystem. How would the proposal maintain and enhance grizzly bear habitat, and contribute to recovery efforts?
- Visual Quality—The units proposed can be viewed from Highway 2, the Kootenai River Road or the Bighorn Trail. To what extent will the viewshed be altered?

Forest Plan Amendment

The Kootenai National Forest Land and Resource Management Plan has specific management direction for the Scenery decision area. The Scenery proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

Decisions To Be Made

The Libby District Ranger will decide the following:

Should dead and imminent dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented,

What burned areas need to be replanted, and

If Forest Plan exception or amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping

An open house will be scheduled in March, to provide an opportunity for the public to review the proposed action. Consultation with appropriate State and Federal agencies will be initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the Scenery Fire Salvage.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing

The draft Scenery Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed by September, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Lawrence A. Froberg, District Ranger, Libby Ranger District, Kootenai National Forest, 12557 US Highway 37 North, Libby, MT 59923 is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

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Dated: February 10, 1995.

Lawrence A. Forberg,

District Ranger.

[FR Doc. 95–4222 Filed 2–21–95; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will hold its 38th Meeting in Arlington, Virginia, on March 8–9, 1995. On Wednesday, March 8, a Business Session open to the public will convene at 9:00 a.m. in the Fairfax Room of the Holiday Inn, 4610 North Fairfax Drive. Agenda items include: (1) Chairman's Report; (2) Comments from Agencies and Organizations; (3) Recent Research Activities; and (4) Engineering Initiatives/Workshop Plans. On Thursday, March 8, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Icebreaker Notes; (3) Trip Reports; and (3) Correspondence. An Executive Session for Members of the Commission will be held following the Business Session on March 8.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–4231 Filed 2–21–95; 8:45 am]

BILLING CODE 755–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Amended Preliminary Determination: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Katt or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0498 or (202) 482–0186, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the *Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 57 FR 1131 (January 10, 1992) (concerning correction of ministerial errors in a preliminary determination) ("Proposed Regulations") are provided solely for further explanation of the Department's practice and procedures with respect to correction of ministerial errors. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (January 3, 1995).

AMENDED PRELIMINARY DETERMINATION: In accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act), on January 4, 1995, the Department of Commerce (the Department) made its preliminary determination that canned pineapple fruit (CPF) from Thailand was being sold at less than fair value (60 FR 2734, January 11, 1995). On January 10 and 13, 1995, we disclosed our calculations for the preliminary determination to counsel for respondents, the Thai Public Pineapple Company (TIPCO), Siam Agro Industry Pineapple and Others Public Co., Ltd. (SAICO), and Malee Sampran Factory Public Co., Ltd. (Malee), to counsel to respondent Dole Food Company, Inc. and its affiliates, Dole Packaged Foods Company and Dole Thailand, Inc. (collectively Dole) and to counsel for the petitioners, respectively, pursuant to their requests. On January 20, 1995, we received a submission from the petitioners alleging a ministerial error in the Department's preliminary determination calculations. (For specific details of this allegation and our analysis of it, see Memorandum from Gary Taverman to Barbara R. Stafford dated February 8, 1995.)

The petitioners alleged that the Department incorrectly included movement expenses in its deductions for both direct and indirect selling expenses for Dole's third country observations made on an ex-warehouse or delivered basis.

We agree that the error alleged by the petitioners is a ministerial error. This error constitutes a significant ministerial error within the meaning of the Department's Proposed Regulations in that the correction results in a difference between a dumping margin of *de minimis* and a margin greater than *de minimis*. *See* section 353.15(g)(4)(ii) of the Department's Proposed Regulations (57 FR 1131, January 10, 1992). Therefore, consistent with the Department's practice with respect to the correction of ministerial errors, we are amending Dole's preliminary dumping margin. The corrected dumping margin for Dole is 0.78 percent; as a result the "All Others" rate is now 3.92 percent.

Suspension of Liquidation

We are directing the Customs Service to correct our request to suspend liquidation in accordance with section 733(d)(1) of the Act, for all entries of CPF from Thailand.

We are directing the Customs Service to suspend liquidation of all entries of CPF from Thailand from Dole that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination notice in the **Federal Register**. Because Dole's dumping margin is now greater than *de minimis*, and margins greater than *de minimis* are included within the all others rate, we are directing the Customs Service to correct the "All Others" rate so that it will reflect the rates for TIPCO, SAICO, Malee, and Dole.

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CPF from Thailand for TIPCO, SAICO, Malee and All Others that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the revised estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	Original margin percent	Revised margin percent
Dole	[1] 0.30	0.78
TIPCO	7.81	7.81
SAICO	9.55	9.55
Malee	1.12	1.12

Manufacturer/Producer/ Exporter	Original margin percent	Revised margin percent
All Others	6.73	3.92

[1] (De Minimis).

In accordance with section 733(f) of the Act, we have notified the International Trade Commission of our amended preliminary determination.

This amended preliminary determination is published in accordance with section 733(f) of the Act.

Dated: February 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4320 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–505]

Certain Malleable Cast Iron Pipe Fittings From Brazil; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from petitioners, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. This review covers Industria de Fundicao Tupy S.A. (Tupy), a manufacturer and exporter of this merchandise to the United States, and the period May 1, 1993 through April 30, 1994. The firm failed to submit a response to our questionnaire. As a result, we have preliminarily determined to use the best information otherwise available (BIA) for cash deposit and assessment purposes.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733/4477.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59 FR 23051) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On May 4, 1994, we received from the petitioners in this case, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., a request to initiate an administrative review of Tupy, a manufacturer and exporter of this merchandise to the United States. On July 15, 1994, in accordance with CFR 353.22(c), we initiated an administrative review of this order for Tupy covering the period May 1, 1993 through April 30, 1994 (*see* 59 FR 36160).

The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of BIA is appropriate for Tupy. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991); *see* also *Allied-Signal Aerospace Co. v. United States* 996 F.2d 1185 (Fed. Cir. 1993).

Because Tupy refused to respond to our requests for information (*see* letter from the law firm of Sonnenberg, Anderson, & Rodriguez to the Department dated October 31, 1994), we have used the highest rate ever found in this proceeding to establish its margin. This rate is 5.64 percent.

Preliminary Results of Review

We preliminarily determine the margin for this administrative review to be:

Producer/exporter	Margin
Industria de Fundicao Tupy S.A.	5.64

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service

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shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.64 percent, the adjusted "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: February 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4321 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 021595B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Committee will meet on February 23–24, 1995 in the Montgomery B Room of the Philadelphia Airport Days Inn, 4101 Island Avenue, Philadelphia, PA. The meeting will begin at 10:00 a.m. on Thursday, February 23 and adjourn at approximately 1:00 p.m. on Friday, February 24.

The purpose of this meeting is to review comments made on Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, including possible qualifying criteria for limited entry into the squid and butterfish fisheries and other aspects of the management program.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 15, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4246 Filed 2–16–95; 10:14 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1995

February 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

A notice published on December 20, 1994 (59 FR 65531), announced that the 1995 Correlation would be available in late January. There was a further delay.

The 1995 Correlation will be available on February 21, 1995 and may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–4245 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse Final Environmental Impact Statement for England Air Force Base (AFB), Louisiana

On February 3, 1995, the Air Force issued a ROD for the disposal of England Air Force Base (AFB), Louisiana. The decisions included in this ROD have been made in consideration of the Final Environmental Impact Statement (FEIS), which was filed with the Environmental Protection Agency on November 13, 1992.

England AFB was officially closed on December 15, 1992, pursuant to the Defense Base Closure and Realignment Act (Public Law 101–510) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents certain disposal decisions which the Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Environment has made regarding the disposal of England AFB.

The Air Force has decided to dispose of 2279 acres of surplus property to the England Economic and Industrial Development Authority for public airport use and 0.69 acres to the City of Alexandria for continued use as a small arms pistol range and 2.91 acres to the Federal Aviation Administration (FAA) for support of airport activities and operation of their enroute radar facility.

The uses proposed for the property by prospective recipients of property under the ROD are included in the proposed action in the FEIS and are consistent with the community's draft redevelopment plan for the base.

Any questions regarding this matter should be directed to Mr. Charles R. Hatch, Program Manager, Southwest Division. Correspondence should be sent to AFBCA/SW, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4284 Filed 2–21–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 & 16 March 1995.

Time of Meeting: 0800–1700, 15 March 1995.

Place: 0800–1700, 16 March 1995. Pentagon—Washington, DC.

Agenda: The Army Science Board's Ad Hoc Study on "ASB Space and Missile Defense Organization" will have its 4th meeting at the Pentagon on 15 and 16 March. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–4220 Filed 2–21–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Intent To Repay to the Oregon Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Oregon Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the $42,262.39 recovered by the U.S. Department of Education (Department) as a result of final audit determinations for Chapter 1 (Local Educational Agency and Migrant Education Programs) of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1, ESEA). This notice describes the SEA's plan, submitted on behalf of the Klamath County School District (KCSD), the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before March 24, 1995.

ADDRESSES: Comments concerning the portion of the grantback that provides funds under the Chapter 1 basic programs operated by local educational agencies (LEA grants program) should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4400), Washington, D.C. 20202–6132.

All comments concerning the portion of the grantback that provides funds under the Migrant Education Program (MEP) should be addressed to Ms. Bayla F. White, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4100), Washington, D.C. 20202–6135.

FOR FURTHER INFORMATION CONTACT: For the Chapter 1 LEA grants program, S. Colene Nelson, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4400), Washington, D.C. 20202–6132. Telephone: (202) 260–0979. For the MEP, Lori Ahmady, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4104), Washington, D.C. 20202–6135. Telephone: (202) 260–1391. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $42,262.39 from the Oregon Department of Education (SEA) in satisfaction of claims arising from an audit of KCSD covering fiscal year (FY) 1990.

The claims involved the SEA's administration of Chapter 1, ESEA, providing financial assistance to State and local agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families (Chapter 1), as well as the special educational needs of migratory children (MEP). Specifically, the audit determinations, made by an independent auditor acting under the Single Audit Act of 1984 and upheld by the SEA, found that varying percentages of salaries and fringe benefits of five LEA employees tested were charged to Chapter 1 during FY 1990. The auditors also questioned the portion of salary and fringe benefits for one LEA employee charged to the Chapter 1 MEP. In addition, no time distribution records were available to support the charges to either program. Finally, the auditors disclosed that the early retirement pay for one employee was divided equally between the Chapter 1 program and the MEP, even though the employee had worked on these programs for only three of a total of twenty-two years with the district. The auditors, therefore, questioned 19/22 of the early retirement cost charged to Chapter 1 and the MEP grants ($1,813.64 to each). Altogether, disputed costs totaled $31,396.39 for the Chapter 1 grant, and $10,866 for the MEP grant.

The SEA, on August 24, 1992, requested a refund of the full amount of questioned costs from KCSD. On September 15, 1992, the SEA submitted a check to the U.S. Department of Education in the amount of $66,395.52, which included a recovery of $31,396.39 for the Chapter 1 program, as well as $10,866 related to the MEP. The remaining $24,133.13 resulted from audit recoveries from other Federal programs and are not part of this grantback notice.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the SEA or LEA that resulted in the audit

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determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $31,696—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of both educationally deprived children in programs administered under Chapter 1, ESEA (20 U.S.C. 2701 *et seq.*), as well as those of migratory children under the Chapter 1 MEP (20 U.S.C. 2781 *et seq.*).

According to the plan, the LEA will use the grantback funds under Chapter 1 to upgrade its existing Higher Order Thinking Skills program (H.O.T.S.). This computer-assisted instruction has been used successfully in the county for the past two years to improve the skills of educationally deprived children, and the use of the program promotes the purpose of the Chapter 1 program under which funds were allocated (see section 1001(b)).

The KCSD currently has five existing H.O.T.S. Mac Labs, which serve an average of 28 students, in grades 4 through 7. The requested grantback funds will be used to upgrade existing H.O.T.S. sites and allow for another Mac Lab site to be established at Keno Elementary School. Also, software would be purchased for the five existing Mac Labs, as well as for the new Mac Lab.

The grantback funds under the Chapter 1 MEP will be used to purchase computer hardware and software for language instruction to migratory children in four schools in the LEA.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $31,696.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995, in accordance with section 459(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 1995, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: February 8, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies; and Catalog of Federal Domestic Assistance Number 84.011, Chapter 1 Migrant Education Program)

[FR Doc. 95–4247 Filed 2–21–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office; Record of Decision: Stabilization of Plutonium Solutions Stored in the F-Canyon Facility at the Savannah River Site, Aiken, SC

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision, Stabilization of Plutonium Solutions Stored in the F-Canyon Facility at the Savannah River Site, Aiken, South Carolina.

SUMMARY: The U.S. Department of Energy (DOE) has prepared and issued a Final Environmental Impact Statement (EIS) (DOE/EIS–0219, December 30, 1994), to assess the potential environmental impacts of stabilizing approximately 80,000 gallons of plutonium solutions currently stored in tanks in the F-Canyon chemical separations facility at the Savannah River Site (SRS) near Aiken, South Carolina. As long as the plutonium remains in solution there is a risk of releases and subsequent radiation exposure to workers, the public, and the environment from accidental criticality incidents, leaks, and disruptions of engineered systems from earthquakes. The Department has evaluated the impacts of alternative methods that would achieve stabilization of the solutions. The analysis reveals that the potential environmental impacts of implementing alternatives that would eliminate the risk inherent in storing plutonium in liquid form are small. Further, the impacts differ little among the alternatives. DOE currently has available the capability to process the plutonium solutions to a metal form. Given this existing capability, the potential for environmental releases that exists as a result of storing the plutonium in liquid form, and the relative lack of environmental advantages to implementing other options, DOE has decided to process the plutonium solutions to metal form using the F-Canyon and FB-Line facilities at the SRS. DOE has committed that this plutonium metal will not be used for nuclear explosive purposes and intends to offer it for inspection by the International Atomic Energy Agency.

During the time the SRS was actively involved in nuclear material production, DOE transferred irradiated fuels and targets from SRS reactors to disassembly basins, which are water-filled pools, to allow short-lived radioactive isotopes to decay. From the pools, DOE transferred the fuel and targets to canyon facilities in F- and H-Areas, where they were chemically dissolved into liquid solutions. The useful isotopes were recovered, converted to a solid form, and either shipped to other DOE facilities or stored at the SRS. This chemical reprocessing activity has been suspended since 1992, and plutonium solutions have been stored in tanks in the F-Canyon facility since that time. The Final F-Canyon Plutonium Solutions EIS examines alternative methods for stabilizing these solutions.

FOR FURTHER INFORMATION CONTACT: For further information on the stabilization of F-Canyon plutonium solutions or to receive a copy of the Final EIS contact: A. B. Gould, Jr., NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8269.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–4.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE prepared this Record of Decision in accordance with the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). This Record of Decision is based on DOE's Final F-Canyon Plutonium Solutions Environmental Impact Statement, Savannah River Site, Aiken, South Carolina (DOE/EIS–0219).

The SRS occupies approximately 800 square kilometers (300 square miles) adjacent to the Savannah River, mostly in Aiken and Barnwell Counties of South Carolina, about 40 kilometers (25 miles) southeast of Augusta, Georgia, and about 32 kilometers (20 miles) south of Aiken, South Carolina. When established in the early 1950s, SRS's primary mission was to produce nuclear materials to support the defense, research, and medical programs of the United States. The present mission emphasizes waste management, environmental restoration, transition activities, and decontamination and decommissioning of facilities that are no longer needed for nuclear materials production.

In March 1992, DOE suspended chemical processing operations in the F-Canyon to address a potential safety concern. That concern was addressed; however, prior to the resumption of processing, the Secretary of Energy directed that SRS phase out chemical separations activities (i.e., reprocessing). Non-safety-related facility operations have remained shut down since that time (March 1992). Approximately 303,000 liters (80,000 gallons) of solutions containing plutonium have remained in tanks in F-Canyon since the suspension of operation.

In September 1992, the SRS completed a plan that described the actions that DOE would have to take to phase out reprocessing. The plan included actions for removing the material that remained in the canyons as a result of the suspension of chemical separation activities in March 1992. In February 1993, the Site requested approval from DOE to restart F-Canyon after the completion of operational readiness reviews conducted as part of the response to the above-mentioned March 1992 safety concern. The SRS made this startup request in light of the Secretary's direction to accelerate the transition of F-Area reprocessing facilities to a standby condition and because all contemplated actions were typical of previous facility operations.

During this same time period, DOE was drafting new requirements for operational readiness reviews necessary for the startup or restart of nuclear facilities. Under these requirements, facilities had to be able to demonstrate the capability to perform satisfactorily in relation to a broad range of topics associated with the safe operation of a nuclear facility. DOE promulgated these requirements in DOE Order 5480.31, "Startup and Restart of Nuclear Facilities," which it issued in September 1993. DOE decided that the SRS should apply these requirements to the restart of the F- and H-Canyons and, in November 1993, determined that the Site should hold the proposed F-Canyon (and FB-Line) restart in abeyance until it had completed a restart review in accordance with the new Order. In January 1994, DOE determined that unless there was an emergency condition, there should be no processing in F-Canyon before the completion of an environmental impact statement.

On March 17, 1994, DOE published a Notice of Intent (59 FR 12588) to prepare an environmental impact statement on the interim management of nuclear materials at the SRS. The proposed DOE interim management actions are to stabilize those nuclear materials at the SRS that represent a health or safety concern for the public, workers, and the environment and to convert certain materials to a usable form to support DOE program needs. These proposed interim actions would be carried out while DOE makes and implements long-term decisions on the disposition of nuclear materials. DOE is addressing its long-term decisions in a Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials, for which it issued an NOI on June 21, 1994 (59 FR 31985). DOE expects that it could require 10 years or more to make and implement these long-term decisions.

In May 1994, the Manager of the Savannah River Operations Office recommended that the DOE Assistant Secretary for Defense Programs seek alternative arrangements for compliance with the National Environmental Policy Act (NEPA) under the emergency provisions of the Council on Environmental Quality NEPA Regulations, 40 CFR Part 1506.11, to allow immediate stabilization of the plutonium solutions in F-Canyon and the Mark-31 targets stored in the L-Reactor Disassembly Basin. The recommendation was based on the Manager's determination that the materials present risks to workers, the public, and the environment in the form of radiation exposure from normal operations and potential accidents, which DOE could reduce by converting the material to a solid stable form.

The Assistant Secretary for Defense Programs endorsed the Savannah River Operations Office Manager's request and asked that the DOE Office of Environment, Safety and Health perform an independent evaluation to determine if stabilization actions should proceed in advance of the completion of the Interim Management of Nuclear Materials EIS. The DOE Office of Environment, Safety and Health performed this independent evaluation in June 1994. The report from the evaluation characterized the following potential facility accidents to be of serious significance: (1) the potential for inadvertent criticality of plutonium due to precipitation of plutonium from the F-Canyon plutonium solutions, and (2) potential radiological releases to the

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environment due to leakage of plutonium solutions through tank cooling coils. The loss of experienced facility personnel through resignation and retirement was an issue of marginal concern, with the recognition that this could become a serious concern if the current trend continued. The report did not include the Mark-31 targets in the materials of serious concern. DOE evaluated the request to pursue alternative arrangements for compliance with NEPA under the emergency provisions of 40 CFR 1506.11 in light of the Office of Environment, Safety and Health's evaluation and determined that the appropriate action would be to accelerate the evaluation of stabilization alternatives for the F-Canyon plutonium solutions by preparing a separate environmental impact statement on an accelerated schedule.

The vulnerabilities associated with the continued storage of the plutonium in solution have also been documented by the Defense Nuclear Facilities Safety Board (DNFSB). In April 1994, the DNFSB "concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected. . . . The Board is especially concerned about . . . (s)everal large tanks in the F-Canyon at the Savannah River Site (that) contain tens of thousands of gallons of solutions of plutonium and trans-plutonium isotopes. . . . If an earthquake or other accident were to breach the tanks, F-Canyon would become so contaminated that cleanup would be practically impossible. Containment of the radioactive materials under such circumstances would be highly uncertain . . . therefore, the Board recommends . . . (t)hat preparations be expedited to process the dissolved plutonium and trans-plutonium isotopes in tanks in the F-Canyon at the Savannah River Site into forms safer for interim storage. The Board considers this problem to be especially urgent."

While the Defense Nuclear Facilities Safety Board noted that no emergency presently exists, the Board also noted that the plutonium solutions in F-Canyon could present an imminent hazard within two or three years. Given that even the shortest time to complete stabilization is almost two years, the Department concluded that expediting the decision to stabilize plutonium solutions was prudent.

As noted above, DOE determined that there are safety concerns associated with plutonium solutions stored in F-Canyon that warrant consideration of actions prior to the issuance of a Record of Decision for the Interim Management of Nuclear Materials EIS. Therefore, DOE decided to prepare the F-Canyon Plutonium Solutions EIS on an expedited basis. On August 23, 1994, DOE published in the **Federal Register** a notice amending the NOI for the Interim Management of Nuclear Materials at the SRS. The notice explained DOE's decision to prepare the F-Canyon Plutonium Solutions EIS.

The NOI for the Interim Management of Nuclear Materials EIS requested public comments and suggestions for DOE to consider in its determination of the scope of that EIS, and announced a public scoping period that ended on May 31, 1994. DOE held scoping meetings in Savannah, Georgia, North Augusta and Columbia, South Carolina, on May 12, 17, and 19, 1994, respectively. As a result of this public scoping process, DOE received comments applicable to the stabilization of F-Canyon plutonium solutions from individuals, organizations, and government agencies, and has considered these comments in the preparation of the F-Canyon Plutonium Solutions EIS.

On September 9, 1994, the U.S. Environmental Protection Agency published a Notice of Availability (NOA) in the **Federal Register** (59 FR 174, pages 46643–46644), which started the public comment period on the Draft F-Canyon Plutonium Solutions EIS; DOE published a corresponding NOA for the Draft EIS on September 9, 1994 (59 FR 174, pages 46627–46628). The public comment period ended on October 24, 1994.

DOE revised the Draft EIS in response to written and oral comments received during the public comment period from individuals, organizations, and Federal and state agencies. Public hearings were held in Columbia and North Augusta, South Carolina, and Savannah, Georgia (October 4, 6, and 11, 1994, respectively). On December 30, 1994, EPA published a Notice of Availability of the Final F-Canyon Plutonium Solutions EIS in the **Federal Register** (59 FR 250, page 67706), following distribution of approximately 400 copies to government officials and interested groups and individuals.

The Department of Energy received letters from the following organizations following the distribution of the Final EIS: (1) the South Carolina Department of Transportation; (2) the Centers for Disease Control, U.S. Department of Health and Human Services; (3) the National Oceanic and Atmospheric Administration, U.S. Department of Commerce; and, (4) the U.S. Environmental Protection Agency (EPA), Region IV. The EPA Region IV letter indicates that a comment on the Draft EIS concerning impacts to ecological systems is only partially addressed in the Final EIS. The Final EIS briefly considered the potential for impacts to ecological systems and concluded that none of the alternatives discussed in the EIS would affect threatened or endangered species or any of the flora or fauna routinely found in the vicinity of F-Canyon areas. Therefore, DOE did not include a detailed analysis of the impacts on ecological systems in the Final EIS. DOE will be discussing with EPA how to better represent/analyze potential impacts of emissions on ecosystems. The EPA Region IV letter states that the preferred alternative will have the least overall impact and that EPA supports DOE's action. The National Oceanic and Atmospheric Administration concluded that no federally-listed threatened or endangered species under its jurisdiction would be affected by the proposed action. The other organizations had no comments on the Final EIS, and indicated they supported DOE's action plans or provided neither an indication of support nor opposition of DOE's action plans.

II. Alternatives

The proposed action addressed in the Final F-Canyon Plutonium Solutions EIS is to stabilize the plutonium solutions in order to eliminate the risks inherent in storing this plutonium in liquid form. DOE examined four alternatives for stabilizing the solutions, and a no-action alternative, in the Final EIS.

A. No Action

DOE would continue to manage the existing 303,000 liter (80,000 gallon) inventory of solutions in stainless steel tanks in the F-Canyon. The solutions would be monitored and corrective actions taken, as necessary, to minimize the potential for precipitation of the plutonium and the possibility of an inadvertent criticality. This action would continue for the 10-year time period evaluated in the Final EIS.

B. Process to Plutonium Metal (the Preferred Alternative)

Under this alternative, DOE would use the existing F-Canyon and FB-Line processes and equipment to convert the plutonium solutions to metal. The metal would be a chemically stable form of plutonium that DOE could produce without modifying the existing equipment. Because there is no need for additional plutonium for weapons, DOE would not attempt to meet previous isotopic or chemical purity specifications that were applicable for weapons production. In addition, DOE has made a commitment that plutonium-239 from stabilization actions would not be used for nuclear explosive purposes. The plutonium metal would be packaged and stored, similar to other plutonium metal already in vault storage. DOE expects this stabilization alternative could be accomplished in 20 months from the date of a Record of Decision, which would be significantly faster than stabilization could be accomplished under the other alternatives. In conjunction with stabilizing the solutions to metal, DOE would undertake a project to modify a portion of the FB-Line facility to provide the capability to repackage the plutonium metal into a configuration that meets the recently issued DOE standard for long-term storage of plutonium (U.S. Department of Energy Criteria for Storage of Plutonium Metals and Oxides, DOE–STD–3013–94, Washington, D.C.). The new storage standard requires plutonium to be packaged in a form that is stable over an extended period (e.g., 20 years) without human intervention. Plutonium metal would be packaged in sealed metal cans without the presence of plastics. Current SRS plutonium metal packaging requires the use of plastic around an inner can for contamination control purposes. DOE estimates that it could accomplish the modifications to the FB-Line packaging capability by late 1997 at a cost of approximately $3 million. Alternatively, while the solutions are stabilized to metal, DOE could modify a different vault facility to provide the necessary equipment to repackage the metal to meet long-term storage requirements. DOE estimates this could cost between $70 million and $150 million and that it could complete repackaging by the end of 2001.

The stabilization to metal alternative would produce a solid form of plutonium that would be safer and easier to store in the shortest period of time. As a result, this is DOE's preferred alternative.

C. Processing to Plutonium Oxide

DOE would modify the FB-Line to support conversion of the plutonium solutions to a plutonium oxide and to package the material for storage. The objective would be to produce a material form and packaging configuration that met the new DOE standard for long-term storage of plutonium. If the extent of the FB-Line modifications necessary to convert the plutonium solutions to a plutonium oxide and to package the material to meet the long-term storage standard were economically or physically impractical, DOE would perform the stabilization in two phases. DOE would modify FB-Line to be able to convert the material initially to an oxide form and package it in FB-Line. At the same time, DOE would design and construct a new facility to process, package, and store the oxide in accordance with the new standard. DOE estimates that the minimally required modifications to FB-Line to provide the solution-to-oxide conversion capability would cost $7 million and take three years to complete. Following completion and modification, DOE would operate the FB-line for approximately 9 months to convert and package the oxide for storage. Repackaging the oxide to meet the new plutonium storage standard would not occur for another three years when the new facility for packaging were available. This new facility is estimated to cost between $70 million and $150 million; repackaging of the oxide could also be completed by the end of 2001.

D. Vitrification in the Defense Waste Processing Facility

DOE would transfer the plutonium solutions to the SRS waste tank farm. Before transfer, the solutions would be adjusted to ensure the safety of the material in the tanks. DOE has identified several concepts for adjusting the solutions: diluting the solutions with water and chemicals to achieve very low plutonium concentration, diluting the solutions with depleted uranium, or adding iron and manganese or other neutron poisons such as gadolinium. In the waste tanks, high-activity waste would settle to the bottom of the tank in the form of sludge. DOE would transfer highly radioactive sludge to the Defense Waste Processing Facility, where it would be vitrified (converted to a glass-like substance) and stored on the Site until DOE made and implemented final disposition decisions.

DOE estimates it would take approximately six years to perform the technical studies, training, and qualification efforts necessary to ensure safe operations for transferring the solutions for subsequent vitrification under this alternative. The solutions would not be transferred to the high-level waste tanks until all studies for vitrification were final. After these studies were completed, DOE estimates that it would take an additional three years to complete the process of transferring all the plutonium solutions to the high-level waste tanks because of the limited availability of tank space and criticality concerns. The plutonium solutions would remain in the high-level waste tanks until DOE transferred the contents to the Defense Waste Processing Facility for vitrification.

E. Vitrification in F-Canyon

Under this alternative, DOE would vitrify the plutonium into a borosilicate glass matrix using an F-Canyon vitrification facility. Modifications to the F-Canyon would be necessary, and include the installation of a geometrically favorable evaporator to concentrate plutonium solution, and equipment to convert the concentrated plutonium solution to a glass matrix using technology similar to that to be used on a larger scale in the Defense Waste Processing Facility. The capital costs of these modifications would be about $27 million; the facility could be available by January 1999.

When the modifications to the F-Canyon to install the vitrification facility were completed, the plutonium solutions would be transferred to the facility and evaporated. This concentrated plutonium solution would be fed, along with finely ground glass (frit), to a melter to produce a borosilicate glass containing the plutonium. The molten glass would be poured into stainless steel packages and stored in an existing vault at the SRS until final disposition decisions were made and implemented.

Although the vitrification of this plutonium could begin as early as January 1999, DOE analyzed the Vitrification in F-Canyon Alternative as though it began during the first six months of 2000. The Final EIS describes its environmental consequences, which are largely independent of the schedule for vitrification.

F. Other Activities for Reduction of Risk

In addition to the alternatives analyzed in detail in the Final F-Canyon Plutonium Solutions EIS to stabilize the plutonium solutions, DOE identified other activities that have the potential to reduce the risk associated with storing the plutonium solutions in liquid form. These activities are: (1) transporting the solutions to H-Canyon for stabilization, (2) purification of the solutions by processing those that have the greatest criticality risk through the second plutonium cycle in F-Canyon, (3) risk reduction activities identified in the DOE Office of Environment, Safety and Health Assessment of Interim Storage of Plutonium Solutions in F-Canyon and Mark-31 Targets in L-Basin at the Savannah River Site (DOE–EH–0397P/SRS–FCAN–94–01), and (4) shipment of the solutions off the Site for

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stabilization. Activities that involve transportation of the plutonium solutions would involve all the risks associated with the alternatives for stabilization plus the risks and costs associated with transportation of radioactive liquids. Activities such as purification of the plutonium solutions by operating the second plutonium cycle in F-Canyon would reduce but not eliminate the risks associated with storing liquid plutonium solutions. In addition, operation of only the second plutonium cycle to purify plutonium solutions would require process development work and establishment of operating parameters, because the F-Canyon process has never been operated in this manner. One important issue associated with this approach would be unprecedented high levels of radiation in the second cycle portion of the facility due to the greatly increased presence of fission products.

III. Environmental Impacts of Alternatives

The Final F-Canyon Plutonium Solutions EIS evaluated the environmental impacts of the alternatives, including the no action alternative. DOE analyzed the potential impacts that would result from implementation of the alternatives and believes there would be minimal impacts in the areas of geologic resources, ecological and cultural resources, socioeconomics, aesthetics and scenic resources, and noise. This is because implementation of each of the alternatives would occur within the F-Area and mostly within the F-Canyon building. In light of planned SRS workforce reductions, any jobs associated with implementation of any of the alternatives could be filled through reassignment of current workers, resulting in no discernible impact on the regional economy.

Radiological health effects on workers from normal operations would be small for any alternative, much less than one additional cancer death (0.2 latent cancer fatalities for the no action alternative and less for the other alternatives) during the lifetimes of the affected individuals. The effect on the general public could be at most 0.0006 additional cancer deaths (for the processing to oxide and vitrification in F-Canyon alternatives, and less for the other alternatives) in the general population within 80 kilometers (50 miles) of the SRS. This is to say that no latent cancer fatalities in either workers or the general population are expected to occur as a result of routine operations. DOE expects similarly small adverse nonradiological health effects to workers and the public from emissions of toxic pollutants. Because discharges and emissions would vary little among the alternatives, public health effects would vary little among the alternatives. The analysis in the EIS shows that these potential small impacts would not disproportionately affect minority or low income populations.

Implementation of any of the alternatives, including the No Action alternative, would result in a risk of accidents. The Final EIS evaluates a spectrum of potential accidents for each alternative. To enable a relative comparison of potential impacts among the alternatives, the accident with the highest reasonably foreseeable consequence for each alternative was assumed to occur and the maximum potential effects (latent cancer fatalities) were calculated. The projected frequency for these high-consequence accidents ranged from once in 17,000 years for a plutonium solutions fire involving solvents to once in 5,000 years for a severe earthquake. The maximum potential effect accident, although with a low probability, during the storage of plutonium solutions (for the periods prior to stabilization and for the No Action alternative) and during F-Canyon operation for stabilization is about 6 latent cancer fatalities to the exposed offsite population. For the stabilization actions involving FB-Line operations (processing to metal or processing to oxide), the maximum potential effect from an accident is less than 2 latent cancer fatalities in the exposed offsite population. Following stabilization and during stabilized plutonium storage, the maximum potential effect from an accident is less than 1 latent cancer fatality in the exposed offsite population.

The SRS generates several different types of waste, including low-level waste, high-level waste, transuranic waste and mixed waste. The Final EIS lists estimates of waste generation for each alternative. DOE estimates that the smallest increase for all waste types would occur if the processing to plutonium metal alternative were implemented. Implementation of this alternative would eventually result in high-level waste equivalent to 40 Defense Waste Processing Facility (DWPF) high-level waste canisters. The largest increase in high-level waste would occur if the vitrification in DWPF alternative were implemented. The largest increase in saltstone and low-level waste generation would result from implementing the processing to oxide alternative. None of the alternatives is expected to generate substantial quantities of mixed waste. With the exception of vitrification in DWPF, the impact on SRS waste management capacities from implementing any of the alternatives would be minimal because the Site can accommodate all the waste generated with existing and planned radioactive waste storage and disposal facilities.

It would not be appropriate under any of the alternatives that would result in stabilized plutonium to characterize the stabilized plutonium as waste. The alternatives for the disposition of surplus weapons-usable plutonium are currently being examined in a programmatic environmental impact statement that is scheduled for completion early next year. The nitric acid that is associated with the plutonium solutions likewise should not be characterized as waste. The nitric acid historically was introduced into the separations process to dissolve irradiated materials and provide for criticality/radiological safety by maintaining the plutonium in solution pending stabilization. The nitric acid continues to serve this vital safety function. The South Carolina Department of Health and Environmental Control (SCDHEC) agrees with DOE that the F-Canyon plutonium solutions should not be regulated as a mixed waste (Letter, R. Lewis Shaw, SCDHEC to Frank R. McCoy, III, DOE, January 26, 1995).

IV. Other Factors

In addition to examining the environmental impacts of the alternatives, DOE also considered other factors related to the stabilization of the F-Canyon plutonium solutions. These factors are: (1) new facilities that would be required, (2) security and nuclear nonproliferation, (3) implementation schedule, (4) technology availability and technical feasibility, (5) labor availability and core competency, (6) degree of reliance on aging facilities, and (7) post-stabilization custodial care required. The processing to plutonium metal alternative would be the most advantageous for all factors except: (2) security and nuclear nonproliferation and (6) reliance on aging facilities.

The processing to oxide and vitrification alternatives would involve minimal reliance on aging facilities because they would use new facilities for the final step involved in stabilizing the plutonium and for storing the plutonium after completion of stabilization. The processing to metal alternative would use existing facilities to stabilize the plutonium solutions.

The vitrification alternatives would be preferable from the security and nuclear nonproliferation standpoint because vitrification would produce a form of material least likely to be used in manufacturing a nuclear weapon. However, a proliferator could recover the plutonium from the vitrified (glass) matrix if the necessary resources and proper technology were available. The processing to metal alternative would result in a form of plutonium that closely resembles materials used in weapons production. DOE does not believe that processing these solutions to metal and storing the metal in vaults in protected areas of the SRS, adding appreciably less than one percent to the U.S. inventory of many metric tons, would constitute a proliferation risk. DOE has committed to not using plutonium-239 and weapons-usable highly enriched uranium separated or stabilized during the phaseout, shutdown, and cleanout of weapons complex facilities for nuclear explosive purposes. This prohibition would apply to the plutonium metal produced as a result of the decision to process the F-Canyon plutonium solutions to metal. DOE believes that the processing to metal alternative is fully consistent with the Presidential Nonproliferation and Export Control Policy, under which the United States "* * * will seek to eliminate where possible the accumulation of stockpiles of highly-enriched uranium or plutonium, and to ensure that where these materials already exist they are subject to the highest standards of safety, security, and international accountability." Furthermore, in accordance with the provision in this Policy to submit U.S. fissile material surplus to national security requirements to inspection by the International Atomic Energy Agency (IAEA), the Department intends to offer this material along with other material at the SRS for IAEA inspection when the material is in a form and consolidated in a storage facility suitable for safe and effective monitoring by the IAEA.

V. Environmentally Preferable Alternative

As shown in the Final F-Canyon Plutonium Solutions EIS, the potential environmental impacts of implementing any of the alternatives are generally small and within the same range. DOE believes that any of the action alternatives would be preferable to the no action alternative because the inherent risk of storing plutonium in liquid form would be eliminated. DOE considers the processing to metal alternative the environmentally preferable alternative because it would eliminate the inherent risk of maintaining plutonium in solution in the shortest period of time. While the plutonium remains in solution, there is a risk of releases and subsequent radiation exposure to workers, the public, and the environment from accidental criticality incidents, leaks, and disruptions to engineered systems from earthquakes.

VI. Decision

DOE has decided to implement the preferred alternative, processing the F-Canyon plutonium solutions to metal, as discussed in the Final F-Canyon Plutonium Solutions EIS. Concurrent with the processing, packaging and storage of the metal, which is expected to take about 20 months, DOE will undertake activities to modify part of the FB-Line facility to provide the capability to repackage the plutonium metal into a configuration that meets the DOE standard for long-term storage of plutonium. The plutonium metal resulting from this action will not be used for nuclear explosive purposes.

VII. Mitigation

The F-Canyon and FB-Line facilities that will be used to process the plutonium solutions to metal incorporate engineered features to limit the potential impacts of facility operations to workers, the public and the environment. All of the engineered systems and administrative controls are subject to the startup requirements of DOE Order 5480.31, which will assure, prior to startup, the safe operation of the facilities. No other mitigation measures have been identified; therefore, DOE need not prepare a Mitigation Action Plan.

VIII. Conclusion

DOE has determined that the F-Canyon and FB-Line facilities should be operated to process to metal approximately 303,000 liters (80,000) gallons of plutonium solutions currently stored in F-Canyon. In reaching this decision, DOE considered the analysis of the potential environmental impacts of alternatives for stabilizing this material in the Final F-Canyon Plutonium Solutions EIS. This action will produce a solid form of plutonium that will be safer and easier to store than a liquid solution. It will take less time than other alternatives and will therefore eliminate more quickly the risk inherent in storing plutonium in liquid form. The plutonium metal resulting from this action will be stored at the Savannah River Site pending decisions on its disposition and will not be used for nuclear explosive purposes.

Issued at Washington, DC, February 1, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–4308 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Federal Assistance Award to WalMart Stores, Incorporated

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; DE–FG36–95G010057.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to grant funding to WalMart Stores, Incorporated to implement photovoltaics in the City of Industry Environmental Demonstration Store's vestibule to power battery-operated shopping carts, store equipment and an electric demonstration vehicle.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John P. Motz, Contract Specialist. The telephone number is 303–275–4737. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR section 600.14, the unsolicited proposal entitled "Building Integrated Photovoltaic System" and recommends that the unsolicited proposal be accepted for support without further competition in accordance with section 600.14 of the Federal Assistance Regulations.

The proposed WalMart Store for City of Industry, California, has been selected by WalMart as one of the "Environmental Demonstration Stores". WalMart's Environmental Demonstration Store program was established to investigate the feasibility of various environmentally sensitive options for building design and development. The City of Industry store has been designated to test energy efficiency concepts such as the proposed implementation of photovoltaics..

The proposed photovoltaic system will be used as roofing of the entrance vestibule canopy. The energy produced

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by the system is intended to power battery-operated handicap shopping carts, store equipment, and an electric demonstration vehicle. Energy in excess of those needs would be converted to AC and directed into the electric utility grid. The schematic design includes kiosks on both sides of the entry vestibule. One kiosk would house the recharging station for the DC-powered equipment and the other would contain an educational display.

The objectives of this project are to educate the public on global energy sustainability, promote alternative energy sources, and assist in making innovative technology feasible and accessible to mainstream America. Furthermore, the effort may serve as an effective example of corporate response to the Clinton Administration's goal of public-private cooperation to reduce greenhouse gases.

The total program cost is estimated to be $234,400, with the DOE share being $100,000 or 43%. This notice is published for public comment at least fourteen calendar days prior to making an award.

Issued in Golden, Colorado, on February 10, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–4310 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the first meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATE AND TIMES: Thursday, March 9, 1995, 8:30 a.m. to 5:00 p.m.; and Friday, March 10, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: United States Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The purpose of the Committee is to provide the Secretary of Energy, the White House Counsel on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to nuclear safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 24 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, state, Tribal, and industry interests and experience.

Purpose of the Meeting: This is the first meeting of the Committee. The Committee will receive information from DOE officials and begin to organize its future work.

Tentative Agenda:

The meeting will address administrative and organizational issues for the Committee. The Committee will receive presentations on the mission and operations of the Department, the legal framework for current regulation of DOE activities, and DOE practices for oversight of environment, safety and health. The agenda for both days will provide opportunities for public comment. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public are welcome to make oral statements. Those who wish to do so should contact Tom Isaacs at the address or telephone number listed above. Individuals may also register on March 9 and 10, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak. Written comments will be received up to five days after the meeting, and should be mailed to Catherine Volk, 1726 M St. NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on February 16, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4311 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting: State Energy Advisory Board.

Date and Time: March 22–23, 1995 from 9:00 am to 5:00 pm.

Place: The Madison Hotel, 15th and M Streets, Washington, DC, 20005.

Contact: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The report "Alternative Futures for the Department of Energy National Laboratories," prepared by the Secretary of Energy Advisory Board (Galvin Task Force).
- The FY 1996 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Review and approval of current Board Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying

within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 16, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4309 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 1862–014–WA]

City of Tacoma; Notice of Intent To Hold a Public Meeting in Eatonville, Washington To Discuss the Draft Environmental Impact Statement (DEIS) for the Existing Nisqually Hydroelectric Project

February 15, 1995.

In December 1994, the Commission staff mailed the DEIS for the licensing of the existing hydroelectric project, which consists of two adjacent hydroelectric generating facilities in the Nisqually River Basin, to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental and economic consequences of relicensing the applicant's (City of Tacoma (Tacoma)) existing 45 MW Alder facility and existing 69 MW LaGrande facility with enhancements as proposed by Tacoma, and alternatives to the applicant's proposal.

The alternatives to the applicant's proposal include: no action (continued operation without any enhancement); and Tacoma's proposal with alternative operation and enhancements of recreation, fishery, and wildlife resources and other measures requested by conservation intervenors, agencies, and staff.

The public meeting, which will be recorded by an official stenographer, is scheduled for 7:00 p.m. on Wednesday, March 1, 1995 at the Eatonville High School Theater, 302 Mashell Avenue North, Eatonville, Washington.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record. In addition, written comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 until March 14, 1995. All written comments should clearly show the following caption on the first page: Nisqually (P–1862) DEIS.

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4235 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1359–001, et al.]

Consolidated Edison Company of New York, Inc., et al. Electric Rate and Corporate Regulation Filings

February 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1359–001]

Take notice that on January 31, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Compliance Report in the above-referenced docket.

Con Edison states that a copy of this filing has been served by mail upon the New York State Electric and Gas Corporation and the Public Service Commission of the State of New York.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER95–27–000]

Take notice that on January 27, 1995, Carolina Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER95–59–002]

Take notice that on January 30, 1995, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Intercompany Interchange Contract of Southern Companies, various unit power sales agreements, and various interchange agreements with certain neighboring utilities. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–59–000.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Mississippi Power Company

[Docket No. ER95–138–002]

Take notice that on February 1, 1995, Mississippi Power Company tendered for filing a modification to its practice under its interchange agreement with South Mississippi Electric Power Association. The purpose of this modification is to allow for the in kind payment of allowances prior to the EPA reporting date rather than at the time of the transaction.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Company

[Docket No. ER95–149–002]

Take notice that on January 30, 1995, Alabama Power Company tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Interconnection Agreement Between Alabama Power Company and Alabama Electric Cooperative, Inc., and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–149–000.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER95–285–000]

Take notice that on January 31, 1995, Illinois Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER95–335–000]

Take notice that on February 8, 1995, Tampa Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation

[Docket No. ER95–510–000]

Take notice that on February 1, 1995, Allegheny Power Service Corporation tendered for filing an amendment in the above-referenced docket.

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Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. NorAm Energy Services, Inc.

[Docket No. ER95–512–000]

Take notice that on January 30, 1995, NorAm Energy Services, Inc. (NorAm) tendered for filing copies of a Power Sales Agreement between Central Louisiana Electric Company, Inc. and NorAm.

10. New England Power Company

[Docket No. ER95–539–000]

Take notice that on February 2, 1995, New England Power Company tendered for filing a contract with Catex-Vitol Electric, Inc. for the provision of exchange unit capacity.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER95–540–000]

Take notice that on February 2, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a revision to the Annual Charge Rate Calculation, Supplement No. 2 to PacifiCorp Rate Schedule FERC No. 234, for transmission service pursuant to the Operations and Maintenance Agreement for Swift No. 2 between PacifiCorp and the Public Utility District No. 1 of Cowlitz County (Cowlitz), PacifiCorp Rate Schedule FERC No. 234.

PacifiCorp requests that the revised Annual Charge Rate Calculation be accepted within sixty days of the Commission's receipt of this filing.

Copies of this filing were supplied to Cowlitz, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa-Illinois Gas & Electric Company

[Docket No. ER95–541–000]

Take notice that on February 2, 1995, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an initial rate schedule consisting of a Transmission Service Agreement dated as of December 16, 1994 between Iowa-Illinois and Electric Clearinghouse, Inc. (ECI).

Iowa-Illinois states that the terms and conditions of this Agreement are identical in all respects to Iowa-Illinois' Transmission Service Agreement with Enron Power Marketing, Inc. which was accepted for filing by the Commission on January 31, 1995 in Docket No. ER95–334–000 and Iowa-Illinois' Transmission Service Agreement with four other power marketers submitted for filing on January 13, 1995 in Docket No. ER95–426–000. Iowa-Illinois further states that under the Agreement it will provide non-firm transmission service to ECI on a monthly, weekly, daily or hourly basis to transmit power and associated energy from certain defined points to other defined points on Iowa-Illinois' interconnected electric system. Service will be provided upon request by ECI on an as available basis as determined by Iowa-Illinois.

Iowa-Illinois requests a waiver of the Commission's 60-day notice requirement in order to permit the Agreement to become effective on or before March 6, 1995.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission and ECI.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–542–000]

Take notice that on February 2, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide non-firm transmission service to Catex Vitol Electric Inc. (Catex) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to Catex.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER95–543–000]

Take notice that on February 2, 1995, Potomac Electric Power Company submitted an explanation of Pepco's treatment of the cost of emission allowances in its as-available power sales tariff, and makes minor corrections to the original submittal. This filing has no substantive effect upon the services rendered and makes no change in rates. Pursuant to the Commission's "Policy Statement and Interim Rule" on emission allowance costs and with waiver of notice, an effective date of January 1, 1995 is requested.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER95–547–000]

Take notice that on February 3, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, new and amended Exhibits to the Cooperative Communications Agreement, Contract No. DE–MS79–92BP93740, between PacifiCorp and Bonneville Power Administration.

PacifiCorp request that these Exhibits be accepted pursuant to 18 CFR 35.3 of the Commission's Rules and Regulations.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER95–548–000]

Take notice that on February 3, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a Service Agreement dated as of January 23, 1995 between Florida Power Corporation and SCS (as agent for Southern Companies) for service under the Short Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. FA91–53–002]

Take notice that on January 24, 1995, New England Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Power Company

[Docket No. FA92–60–001]

Take notice that on January 27, 1995, Ohio Power Company tendered for filing its compliance report in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4232 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–20–002]

Washington Power Co., L.P.; Notice of Amendment to Filing

February 15, 1995.

On February 14, 1995, Washington Power Company, L.P. tendered for filing an amendment to its January 13, 1995, filing in this docket.

The amendment pertains to technical requirements of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by March 7, 1995, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4234 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11501–000, et al.]

Hydroelectric Applications Putnam Hydropower Inc., et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11501–000.

c. *Date Filed:* September 26, 1994.

d. *Applicant:* Putnam Hydropower Inc.

e. *Name of Project:* Cargill Falls.

f. *Location:* On the Quinebaug River in the Town of Putnam, Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Rosenfield, 87 Senexet Road, Woodstock, CT 06281, (203) 928–7100.

i. *FERC Contact:* Charles T. Raabe (dt), (202) 219–2811.

j. *Comment Date:* April 10, 1995.

k. *Description of Project:* The proposed project would consist of: (1) The existing 200-foot-long concrete dam; (2) a reservoir with a 15-acre surface area and a 60-acre-foot storage capacity at normal surface elevation 254 feet MSL; (3) an intake having 4 wooden gates; (4) a forebay having trashracks; (5) a 300-foot-long covered canal leading to a forebay and a 100-foot-long, 7.5-foot-diameter steel penstock; (6) an existing powerhouse containing a new 650-kW generating unit operated at a 28-foot head and at a flow of 375 CFS; (7) an 800-foot-long stone canal tailrace; (8) a 100-foot-long 480-volt transmission line and a 480-volt/23-kV transformer; and (9) appurtenant facilities.

The applicant estimates that the cost of the studies under the terms of the permit would be $10,000 and the average annual generation would be 3,000,000 kWh. Project power would be sold to Connecticut Light & Power Co. The owners of the facilities are the Town of Putnam and the Polyner Corp.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

2 a. *Type of Application:* Minor license.

b. *Project No.:* 11516–000.

c. *Date filed:* January 25, 1995.

d. *Applicant:* Commonwealth Power Company.

e. *Name of Project:* Irving Dam.

f. *Location:* On the Thornapple River near Irving in Barry County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Jan Marie Evans, 4572 Sequoia, Okemos, MI 48864, (517) 351–5400.

i. *FERC Contact:* Julie Bernt (202) 219–2814.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Description of Project:* The proposed project consists of: (1) An existing 6-foot-high gravity-earth filled dam; (2) an existing reservoir with a surface area of 25 acres at a maximum pool elevation of 738.5 feet USGS and a storage capacity of 100 acre-feet; (3) a 1,200-foot-long head race canal; (4) a powerhouse containing one generating unit with a rated capacity of 600 Kw; and, (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,800,000 Kwh. The project site is owned by Commonwealth Power Company.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11502–000.

c. *Date Filed:* October 3, 1994.

d. *Applicant:* Town of Ely.

e. *Name of Project:* Red Rock.

f. *Location:* On the Des Moines River in Marion County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Thomas J. Wilkinson, Jr., 101 Second Street, S.E., American Building, Suite 300, Cedar Rapids, IA 52401, (319) 366–4990.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* April 22, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red Rock Dam and would consist of: (1) A new intake structure; (2) two 21-foot-diameter steel penstocks; (3) a powerhouse containing two generating units with a total installed capacity of

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30 MW; (4) a tailrace, (5) a 6-mile-long transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual energy production would be 110,000 Mwh and that the cost of the studies to be performed under the terms of the permit would be $200,000. Project energy would be sold to municipalities in the state of Iowa and other users.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

4 a. *Type of Application:* Exemption 5 MW or less (Tender Notice).

b. *Project No.:* 11316–002.

c. *Date filed:* January 31, 1995.

d. *Applicant:* Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. *Name of Project:* Tazimina.

f. *Location:* On the Tazimina River, near Iliamna, Newhalen, and Nondalton, Section 24, Range 32 West, Township 3 South, Seward Meridian, in Southcentral Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Brent Petrie, General Manager, INNEC, P.O. Box 210, Iliamna, Alaska 99606, (907) 571–1259.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. The proposed project would consist of: (1) A 100-foot-long concrete channel control sill; (2) an intake structure about 50 feet downstream and on the opposite side of the concrete sill; (3) a 5-foot-diameter, 430-foot-long welded steel penstock; (4) a powerhouse with two 350-kW units; (5) a 6.7-mile-long transmission line; and (6) other appurtenances.

k. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

5 a. *Type of Application:* Major New License (Notice of Tendering).

b. *Project No.:* 1927–008.

c. *Date filed:* January 30, 1995.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* North Umpqua.

f. *Location:* On the North Umpqua River in Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Stanley A. Desousa, Director, Hydro Resources, PacifiCorp, 920 S.W. Sixth Avenue, Portland, OR 97204, (503) 464–5343

Thomas H. Nelson, Stoel Rives Boley Jones & Grey, 900 S.W. Fifth Avenue, Portland, OR 97204, (503) 294–9281.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.

j. Brief Description of Project: The project consists of: the 29–MW Lemolo No. 1 Development, the 33–MW Lemolo No. 2 Development, the 15–MW Clearwater No. 1 Development, the 26–MW Clearwater No. 2 Development, the 42.5–MW Tokete Development, the 11–MW Fish Creek Development, the 18–MW Slide Creek Development, and the 11–MW Soda Spring Development for a total rated capacity of 185,500 MW. The applicant proposes some modifications to project components including uprating the Fish Creek Development to 14.5 MW.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with section 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in

all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 15, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4286 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5154–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1633.06; Revision of Part 72 of the Acid Rain Program under Title IV of the Clean Air Act Amendments of 1990 (Substitution Plans); was approved 01/09/95; OMB No. 2060–0258; expires 01/31/96.

EPA ICR No. 1717.01; NESHAP for Off-Site Waste Operations—63-DD; was approved 12/30/94; OMB No. 2060–0313; expires 12/31/97.

EPA ICR No. 1136.04; NSPS for Petroleum Refinery Wastewater Systems–Reporting and Recordkeeping–Subpart QQQ; was approved 01/17/95; OMB No. 2060–0172; expires 12/31/97.

EPA ICR No. 1723.01; Reporting and Recordkeeping Requirements for the Importation of Nonconforming Marine Engines; was approved 01/09/95; OMB No. 2060–0320; expires 01/31/98.

EPA ICR No. 1727.01; Evaluation of Mandated Drinking Water Filtration and its Effects on Community Health; was approved 01/09/95; OMB No. 2080–0050; expires 01/31/98.

EPA ICR No. 1071.05; NSPS for Stationary Gas Turbines (Subpart GG)–Information Requirements; was approved 01/09/95; OMB No. 2060–0028; expires 01/31/98.

EPA ICR No. 1731.01; National Survey of Radiological Laboratory Capability; was approved 01/23/95; OMB No. 2080–0051; expires 12/31/97.

OMB Disapprovals

EPA ICR No. 1724.01; Marine Engine Selective Enforcement Auditing, Reporting, and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 1725.01; Marine Engine Manufacturers Assembly-Line Testing; Reporting, and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 0282.07; Motor Vehicle Emissions Defect Information Report and Records; was disapproved 01/09/95.

EPA ICR No. 1722.01; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines, Control of Air Pollution; was disapproved 01/09/95.

EPA ICR No. 0095.07; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 1726.01; Manufacturer-Based in-Use Emission Testing Program; was disapproved 01/09/95.

OMB Extensions of Expiration Dates

EPA ICR No. 1381.03; Recordkeeping/Reporting Requirements for Compliance with the 40 CFR part 258 Solid Waste Disposal Facility Criteria; OMB No. 2050–0122; expiration date extended to 06/30/95.

EPA ICR No. 1488.02; Superfund Site Evaluation and Hazard Ranking System; OMB No. 2050–0095; expiration date extended to 07/31/95.

Dated: February 15, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–4297 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–60–F

[ECAO–RTP–0237; FRL–5157–7]

Draft Health Assessment Document for Diesel Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces the extension of the public comment period for the Health Assessment for Diesel Emissions. This draft document was prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD).

DATES: In the December 23, 1994 **Federal Register** (59 FR 66305), EPA announced that the public review and comment period for the external review draft of this document would be from December 27, 1994, through February 28, 1995. EPA is now extending the comment period through May 1, 1995. Comments must be in writing and must be postmarked by May 1, 1995.

ADDRESSES: To obtain a copy of the external review draft of the Health Assessment Document for Diesel Emissions (Volumes I and II), interested parties should contact the ORD Publications Center, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562 or fax (513) 569–7566. Please provide your name, mailing address, and the EPA document numbers (EPA/600/8–90/057Ba and Bb).

The draft document also is available for inspection at the EPA Headquarters Library, Waterside Mall, 401 M Street, S.W., Washington, DC, between 10:00 a.m. and 2:00 p.m., Monday through Friday, except holidays.

Comments on the draft document should be sent to the Project Manager for Diesel Emissions, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

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FOR FURTHER INFORMATION CONTACT: Mr. William G. Ewald, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–4164.

SUPPLEMENTARY INFORMATION: The draft Health Assessment Document for Diesel Emissions summarizes scientific issues and identifies research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health risks attendant to the use of diesel fuels. In its initial form, the draft health assessment was first reviewed at an expert peer-review workshop in July 1990 (55 FR 28453), which was open to the public. The present draft incorporates revisions made in response to scientific input from the workshop and subsequent comments on targeted issues. After the public comment period and review by EPA's Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), the current draft document will undergo further revision, and a final document will be issued. This document will support EPA's decision-making processes that pertain to the health effects of diesel emissions.

Dated: February 9, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–4292 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5157–9]

Public Water System Supervision Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Primary Program. The State of New York has adopted drinking water regulations that satisfy the National Primacy Drinking Water Regulations for the Lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that New York's Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. EPA's determination to approve the State of New York's revision to its Public Water Supervision Program for compliance with EPA's Lead and Copper Rule is conditional upon New York's State making certain minor changes, no later than January 1, 1996, to the State Sanitary Code and Environmental Health Manual. The changes required, which New York State has agreed to make, include the following:

1. The State must either delete the word "economics" in Sections 5–1.46 and 5–1.47 of the State Sanitary Code or clarify, in the Code, that economics will only be considered in selecting corrosion control treatment when two methods are equally effective.

2. The State must change Section 5–1.43 of the code to read as follows:

(e) *Distribution* Monitoring. All large water systems shall monitor for water quality parameters *in Section 5–1.45 (c)* in each *initial* six month monitoring period they monitor for the first draw lead and copper tap samples. All small and medium water systems shall monitor for water quality parameters *in Section 5–1.45 (c)* during the six month monitoring period which the water system exceeds the copper or lead action level. *After a water system installs optimal corrosion control treatment the water system shall monitor for water quality parameters for two consecutive six month monitoring periods. After the State specifies water quality parameters samples for optimal corrosion control treatment, all water systems shall monitor for water quality parameters at the frequencies stated in 5–1.43 (a) for two consecutive six month monitoring periods.*

A new paragraph Subpart 5–1.43 (d) must be added as follows:

(d) *After State specification of minimum values or ranges for water quality parameters for optimal corrosion control treatment, water systems shall maintain water quality parameter values at or above specified minimum values or within ranges specified by the State. If the water quality parameters value of any sample is below the minimum value or outside the range specified by the State, the water system is out of compliance with the State Sanitary Code.*

The italic words are revisions to the Code.

3. The State must change their definition of "action level" in Section 5–1.41(a) of the State Sanitary Code to be consistent with the language of the Federal definition of "action level" in 40 CFR 141.2.

4. Section (G)(1) of PWS Item No. 51 of the New York State *Environmental Health Manual*, dated March 31, 1993, which contains procedures for making corrosion control treatment determinations must be changed to ensure the State establishes a range of values for pH at entry points to the distribution system and *"at taps throughout the distribution system"*.

5. Section (E)(5) of PWS Item No. 52 of the *Environmental Health Manual*, which contains procedures for making lead service line replacement decisions, must be amended by striking the phrase "less than 16 ug/L" and replacing it with the requirement in 40 CFR 141.84(c), which reads, "less than or equal to 0.015 mg/L."

6. Section 5–1.40 (a)(1) of the State Sanitary Code must be changed by replacing the phrase "3,300 people or less" with the phrase "50,000 people or less".

7. The State must adopt as part of the State Sanitary Code the analytical methods contained in 40 CFR 141.89 of the federal rule.

8. The State must amend the first paragraph in Section 5–1.47 of the State Sanitary Code to include the phrase "within 6 months of exceeding the lead or copper action level".

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:30 pm, Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection, 2 University Plaza/ Western Avenue, Albany, New York 12203–3399, (518) 458–6731

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: January 30, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–4300 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5158–2]

Public Water System Supervision Program Revision for the Government of the Virgin Islands

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Government of the Virgin Islands is revising its approved Public Water System Supervision Primacy Program. The Government of the Virgin Islands has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the Lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that the Virgin Islands' Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that the Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Carl-Axel P. Soderberg—Director, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Planning and Natural Resources, Public Water Supply Supervision Program, Government of the Virgin Islands, Nisky Center, Suite 231, Nisky 45A, St. Thomas, Virgin Islands 00802

U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Victor Trinidad, Chief, Water Management Staff, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907, (809) 729–6951.

(Sec. 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: February 3, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–4298 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–34069; FRL 4931–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 23, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following

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Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 23, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000869–00180	Green Light 10% Sevin Dust	Carbaryl	Poultry houses
019713–00046	Simazine 80W	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00060	Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00252	Simazine 90DF	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00271	Simazine 80W Herbicide	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00273	Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000869	Green Light Company, P.O. Box 17985, San Antonio, TX 78217.
019713	Drexel Chemical Company, P.O. Box 9306, 2487 Pennsylvania St., Memphis, TN 38190.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 10, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–4314 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30380; FRL–4934–6]

LipaTech, Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 24, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30380] and the registration/file number, attention Product Manager (PM) 14, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Product Manager 14, Robert Forrest, Rm. 219, CM #2, (703–305–6600).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included In Any Previously Registered Products

1. File Symbol: 7173–ENU. Applicant: LipaTech, Incorporation, 3101 West Custer Ave., Milwaukee, WI 5320. Product name: Difethialone Technical. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4) 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 97.6 percent. Proposed classification/Use: None. For formulating other registered products. (PM 14)

2. File Symbol: 7173–ENL. Applicant: LipaTech, Inc. Product name: Difethialone Pellets. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4) 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 0.0025 percent. Proposed classification/Use: None. For indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats. (PM 14)

3. File Symbol: 7173–ENA. Applicant: LipaTech, Inc. Product name: Difethialone Pellets Place Packs. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4] 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 0.0025 percent. Proposed classification/Use: None. For indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats. (PM 14)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 7, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–4051 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4198/T669; FRL 4935–9]

Monsanto Co.; Initial Filings and Amendment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established and has amended temporary tolerances for residues of the hybridizing agent Genesis® (Mon 21250) [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire March 4, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 241, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–305–6800.

SUPPLEMENTARY INFORMATION: EPA gives notice that it has established and amended temporary tolerances relating to the initial filing and amendment of tolerances for residues of the hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on certain raw agricultural commodities as follows:

Initial Filing

1. *PP 3G4198.* Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., NW., Washington, DC 20005, has requested in pesticide petition (PP) 3G4198, the establishment of temporary rotational crop tolerances for residues of the wheat hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodities sorghum grain at 5 parts per million (ppm), sorghum fodder at 2 ppm, and sorghum forage at 2 ppm.

Amendment

2. *PP 3G4198.* EPA gives notice that the Agency has received an amendment for pesticide petition (PP) 3G4198, which previously published in the **Federal Register** of April 15, 1994 (59 FR 18118), stating that temporary tolerances had been established for residues of the hybridizing agent Genesis® (Mon 21250) and its metabolites [2-(4-chlorophenyl)-3- ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodities wheat grain at 250 parts per million (ppm), wheat straw at 50 ppm, and wheat forage at 15 ppm.

Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., N.W., Washington, DC 20005, has requested an amendment to (PP) 3G4198 to establish a temporary tolerance for residues the hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodity wheat forage from 15 parts per million (ppm) to 10 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524-EUP-80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 4, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on these pesticides indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

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Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–4313 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1044–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 10, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–4316 Filed 2–21–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011489

Title: Nacional/Ivaran Space Charter and Sailing Agreement

Parties:

Companhia Maritima Nacional

A/S Ivarans Rederi

Synopsis: The proposed Agreement authorizes the parties to charter space from each other and to rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports and points on the east coast of South America.

Dated: February 16, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4315 Filed 2–21–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Marmara, Inc., c/o Cichanowicz, Callan & Keane, 139 So. Street, Suite 103, New Providence, NJ 07974, Officers: Cahit Paksoy, President; Frank J. Fassbender, Vice President

American President Business Logistics Services, Ltd., 1111 Broadway, Oakland, CA 94607, Officers: Joji Hayashi, Director; Rodney W. Miller, Vice President

Alfons Frerika U.S.A., Inc., dba Alfons Freriks Freight Forwarding, 4674 Clark Howell Highway, #4, Atlanta, GA 30349, Officers: Rob Smits, President; Victor Boutier, Vice President

World Cargo Corporation, 4408 NW 74th Avenue, Miami, FL 33166, Officers: Diana Obregon-Bader, President; Liliana Hayes, Vice President

Dated: February 15, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4219 Filed 2–21–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Glenn Fred Bergau; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 7, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Glenn Fred Bergau, Usk, Washington; to acquire an additional 0.996 percent, for a total of 10.39 percent, of the voting shares of Pend Oreille Bancorp, Newport, Washington, and thereby indirectly acquire Pend Oreille Bank, Newport, Washington.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4223 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

First Community Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Community Bancshares, Inc., Houston, Texas; to engage *de novo* in providing economic information and advice, statistical forecasting services, and industry studies, conducting financial feasibility studies, providing advice regarding swaps, caps, and similar transactions related to interest rates or prices and economic indices, pursuant to § 225.25(b)(4) of the Board's Regulation Y. The geographic scope will be limited to employees, shareholders, directors, and their family members, affiliated companies and trusts.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4224 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

First Mariner Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Mariner Bancorp (formerly MarylandsBank Corp.), Towson, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of First Mariner Bank (formerly MarylandsBank, FSB), Towson, Maryland.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 100 percent of the voting shares of Grand Haven Bank, Grand Haven, Michigan, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Place Financial Corporation, Farmington, New Mexico; to acquire 100 percent of the voting shares of Western Bank, Gallup, New Mexico.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4225 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100394 AND 101494

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
General Electric Company, Thomas R. Roos, Island Development Corporation Inc	94–2247	10/03/94
Sterling Software, Inc., KnowledgeWare, Inc., KnowledgeWare, Inc	94–2143	10/04/94
ONEOK Inc., Nelson Bunker Hunt Trust Estate, Creston Partners, L.P	94–2195	10/04/94
Emerson Electric Co., Astec (BSR) PLC, Astec (BSR) PLC	94–2140	10/05/94
TransCanada PipeLines Limited, Northridge Canada Inc., Northridge U.S. Inc	94–2160	10/05/94

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100394 AND 101494—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Corning Incorporated, J. Richard Fennell, Bioran Medical Laboratory	94-2174	10/05/94
Harvest States Cooperatives, H.J. Heinz Company, Portion Pac, Inc	94-2204	10/05/94
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Texas, Inc./Beverly California Corp	94-2209	10/05/94
Klaus J. Jacobs, Brock Candy Company, Brock Candy Company	94-2220	10/05/94
Amoco Corporation, John M. Fox, MarkWest Energy Partners, Ltd	94-2226	10/05/94
Beverly Enterprises, Inc., Eckerd Corporation, Insta-Care Holdings, Inc	94-2229	10/05/94
Arrow Electronics, Inc, Anthem Electronics, Inc., Anthem Electronics, Inc	94-2235	10/05/94
Philip F. Anschutz, Trammell Crow Equity Partners, The Tabor Group Ltd./Tabor Acquisition #1, Inc	94-2244	10/05/94
Dawson Holdings, PLC, The Faxon Company, Inc., The Faxon Company, Inc	94-2246	10/07/94
Mobil Corporation, Mr. Irwin B. Singer, The Atlas Oil Company	94-2159	10/12/94
The Clayton & Dubilier Private Equity Fund IV L.P., The Travelers Inc., American Capital Management & Research, Inc	94-2182	10/12/94
Liberty Brokerage Investment Corp., Liberty Brokerage Investment Corp., Patriot Securities, L.P	94-2196	10/12/94
ANTEC Corporation, Keptel, Inc., Keptel, Inc	94-2214	10/12/94
Airgas, Inc., Post Welding Supply Company, Post Welding Supply Company	94-2239	10/12/94
Jerry Zucker, W.R. Grace & Co., W.R. Grace & Co.-Conn.	94-2240	10/12/94
David J. McGrath, Jr., c/o TAD Resources Int'l., Inc., Thomas L. Kirk, Kirk-Mayer, Inc. (KMI)	94-2248	10/12/94
Charles Schusterman, Oryx Energy Company, Sun Operating Limited Partnership	94-2249	10/12/94
David H. Jacobs Trust (The), Jacobs Properties, Inc., Jacobs Properties, Inc	94-2253	10/12/94
Jacobs Realty Limited Partnership, Jacobs Properties, Inc., Jacobs Properties, Inc	94-2254	10/12/94
Jacobs Realty Limited Partnership, Richard E. Jacobs, Mall A Limited Partnership	94-2255	10/12/94
CGW Southeast Partners I, L.P., The BOC Group plc, Ohmeda, Inc	94-2258	10/12/94
Lincolnshire Equity Fund, L.P., TRW Inc., TRW Inc	94-2259	10/12/94
Clear Channel Communications, Inc., Mario F. Iacobelli, Heritage Broadcasting Company of New York	94-2267	10/12/94
Creative Technology Ltd., Digicom Sytems, Inc., Digicom Systems, Inc	94-2270	10/12/94
The NWNL Companies, Inc., USLICO Corporation, USLICO Corporation	94-2281	10/12/94
AmeriQuest Technologies, Inc., Jonathan O. Lee, Ross White Enterprises, Inc	94-2282	10/12/94
Ford Motor Company, Amoco Corporation, Amoco Oil Company	94-2284	10/12/94
Citicorp, Ground Round Restaurants, Inc., Ground Round Restaurants, Inc	94-2285	10/12/94
Foundation Health Corporation, Thomas-Davis Medical Centers, P.C., Thomas-Davis Medical Centers, P.C	94-2184	10/13/94
K-III Communications Corporation, Irvin J. Borowsky, North American Publishing Company	94-2286	10/13/94
The Methodist Hospital, St. Luke's Episcopal Hospital, St. Luke's Episcopal Hospital	94-2289	10/13/94
St. Luke's Episcopal Hospital, The Methodist Hospital, The Methodist Hospital	94-2290	10/13/94
IBP, Inc., Lakeside Farm Industries Ltd., Lakeside Farm Industries Ltd	94-2210	10/14/94
Loral Corporation, K & F Industries, Inc., K & F Industries, Inc	94-2236	10/14/94
General Electric Company, NEWCO, NEWCO	94-2269	10/14/94
American Premier Underwriters, Inc., Principal Mutual Life Insurance Company, Principal Casualty Insurance Company	94-2273	10/14/94
Japan Nuclear Fuel Company, Ltd., NEWCO, NEWCO	94-2279	10/14/94
Central Life Assurance Company, American Mutual Life Insurance Company, American Mutual Life Insurance Company	94-2288	10/14/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-4278 Filed 2-21-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3149]

Equifax Credit Information Services, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Georgia-based corporation to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports as required by the Fair Credit Reporting Act and to also maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller or Donald d'Entremont, FTC/S-4429, Washington, D.C. 20580. (202) 326-3159 or 326-2736.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Equifax Credit Information Services, Inc., a corporation, hereinafter sometimes referred to as Equifax, and it now appearing that Equifax is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Equifax Credit Information Services, Inc., by its duly authorized officers, and its attorney, and counsel for the Federal Trade Commission that:

1. Equifax Credit Information Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1600 Peachtree Street, N.W., Atlanta, Georgia 30309.

2. Equifax is a consumer reporting agency as defined in Section 603(f) of the Fair Credit Reporting Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Equifax, and the proceeding is in the public interest.

4. Equifax admits all the jurisdictional facts set forth in the draft complaint.

5. Equifax waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

6. This agreement and the order contemplated hereby is for settlement purposes only and neither its execution by the parties hereto, acceptance by the Commission nor entry of the agreed-to order shall constitute any admission by Equifax that any law has been violated. Equifax specifically denies that it has violated the Fair Credit Reporting Act in any respect whatsoever.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Equifax, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Equifax, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Equifax's address as stated in this agreement shall constitute service. Equifax waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Equifax has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Equifax further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this order, the following definitions apply:

"Commission" means the Federal Trade Commission.

"Equifax" means Equifax Credit Information Services, Inc., its successors and assigns, and its officers, agents, and employees acting in such capacity on its behalf, directly or through any corporation, subsidiary, division or other device.

"FCRA" means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.*, as the same from time to time may be amended or modified by statute or by regulations having the effect of statutory provisions.

The terms "Person," "Consumer," "Consumer Report," "Consumer Reporting Agency," "File," and "Employment Purposes" are defined as set forth in Sections 603 (b), (c), (d), (f), (g), and (h), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), 1681a(d), 1681a(f), 1681a(g), and 1681a(h).

"Permissible Purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. § 1681b, for which a Consumer Reporting Agency may lawfully furnish a Consumer Report.

"Subscriber" means any Person who, pursuant to an agreement with Equifax, furnishes Credit Information to Equifax or who requests or obtains a Consumer Report from Equifax, excluding Consumers, public record sources, and independent contractors who provide public record information.

"Prescreening" means the process whereby Equifax, utilizing Credit Information, compiles or edits for a Subscriber a list of Consumers who meet specific criteria and provides this list to the Subscriber or a third party (such as a mailing service) on behalf of the Subscriber for use in soliciting those Consumers for an offer of credit.

"Credit Information" means information described by Section 603(d) of the FCRA, which Equifax maintains with respect to any Consumer, that Equifax obtains from Subscribers, public records or any other sources and from which Equifax creates Consumer Reports.

"Mixed File" means a Consumer Report in which some or all of the information pertains to Consumers other than the Consumer who is the subject of that Consumer Report.

"Consumer DTEC Report" means a type of Consumer Report, by whatever name, containing only Consumer identifying information such as name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, Social Security number or substantially similar identifiers, or any combination thereof, together with information showing employment or employment status.

"Mixed-use Subscriber of Consumer DTEC Reports" means the following Subscribers who obtain Consumer DTEC Reports: attorneys, law firms, detective agencies, private investigators, and protective services firms.

"Joint User" means a user of a Consumer Report jointly involved with a Subscriber in a decision for which there is a Permissible Purpose to obtain the Consumer Report and for which the Consumer Report was initially obtained.

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"Approval Date" means the date on which the Associate Director for Enforcement of the Bureau of Consumer Protection of the Commission notifies respondent that the methodologies required by Paragraph II.1. of this Order have received final approval.

I

It is ordered that Equifax, in connection with the collection, preparation, assembly, maintenance and furnishing of Consumer Reports and Files, forthwith cease and desist from failing to:

1. Maintain reasonable procedures designed to limit the furnishing of Consumer Reports to Subscribers that have Permissible Purposes to receive them under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include but are not limited to:

a. Continuing to require in Equifax's contracts that those who obtain Consumer Reports from Equifax in the form of lists developed through Prescreening make a firm offer of credit to each Consumer on the lists and take reasonable steps to enforce those contracts; and

b. Reasonable procedures to avoid (i) including in a Consumer Report information identifiable as pertaining to a Consumer other than the Consumer for whom a Permissible Purpose exists as to such report; and (ii) displaying Files identifiable as pertaining to more than one Consumer in response to a Subscriber request on one Consumer.

2. Maintain reasonable procedures designed to limit the furnishing of Consumer DTEC Reports to Subscribers under the circumstances described by Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include, with respect to prospective Subscribers of Consumer DTEC Reports, before furnishing any Consumer DTEC Report to such Subscribers, and with respect to current Consumer DTEC Subscribers, within six months after the effective date of this order:

a. Adoption of procedures requiring all Consumer DTEC Subscribers to provide written certification that Subscribers will not share or provide Consumer DTEC Reports to anyone else, other than the subject of the report or to a Joint User;

b. Continuation of procedures requiring all Consumer DTEC Subscribers to provide written identification of themselves; written certification of the Permissible Purpose(s) for which the Consumer DTEC Reports are sought; and written certification that the Consumer DTEC Reports will be used for no other purpose(s) than the purpose(s) certified;

c. With respect to each entity that becomes a Consumer DTEC Report Subscriber on or after the effective date of this order, visitation to its place of business to confirm the certifications made pursuant to Paragraphs I.2.a. and I.2.b. of this order;

d. Refusing to furnish Consumer DTEC Reports to Subscribers who fail or refuse to provide the certifications required in Paragraphs I.2.a. and I.2.b. of this order;

e. Requiring each Mixed-use Subscription of Consumer DTEC Reports to provide a separate certification as to the Permissible Purpose for each Consumer DTEC Report it requests before the Consumer DTEC Report is furnished to it; and

f. Terminating access to Consumer DTEC Reports by any Subscriber who Equifax knows or has reason to know has obtained, after the effective date of this order, a Consumer DTEC Report for any purpose other than a Permissible Purpose, unless that Subscriber obtained such Report through inadvertent error—*i.e.*, a mechanical, electronic, or clerical error that the Subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors.

3. Maintain reasonable procedures as required by Section 607(a) of the FCRA to avoid including in any Equifax Consumer Report, other than a Consumer Report described in Section 605(b) of the FCRA, any information, notice or other statement that indicates directly or indirectly the existence of items of adverse information, the reporting of which is prohibited by Section 605(a) of the FCRA.

4. Follow reasonable procedures to assure maximum possible accuracy of the information concerning the Consumer about whom the Consumer Report relates, as required by Section 607(b) of the FCRA. Such procedures shall include but are not limited to reasonable precedures:

a. To detect, before Credit Information is available for reporting by Equifax, logical errors in such Credit Information.

b. To prevent reporting to Subscribers that Credit Information pertains to a particular Consumer unless Equifax has identified such information by at least two of the following identifiers: (i) the Consumer's name, (ii) the Consumer's Social Security number, (iii) the Consumer's date of birth, (iv) the Consumer's account number with a Subscriber or a similar identifier unique to the Consumer; provided however that,

(A) for public record information only, if such public record information does not contain at least two of the above identifiers, Equifax may identify such public record information by the Consumer's full name (including middle initial and suffix, if available) together with the Consumer's full address (including apartment number, if any); and

(B) in the future Equifax may alternatively identify Credit Information (including public record information) by a discrete identifier that is (*i*) unique to the Consumer, (*ii*) not utilized by Equifax at the time of execution of this agreement, and (*iii*) not susceptible of data entry error.

c. To assure that information in a Consumer's File that has been determined by Equifax to be inaccurate is not subsequently included in a Consumer Report furnished on that Consumer;

d. To prevent furnishing any Consumer Report containing information that Equifax knows or has reason to believe is incorrect, including information that the Consumer or the source or repository of the information has stated is not accurate (including that it does not pertain to the Consumer) unless Equifax has reason to believe that the statement is frivolous or irrelevant or, upon investigation, not valid;

e. To avoid the occurrence of Mixed Files, including but not limited to mixing of Files as the result of entry of data by Subscribers when seeking Consumer Reports; and

f. To avoid reporting in a Consumer Report public record information that pertains to Consumers other than the Consumer who is the subject of the Consumer Report, or which does not accurately reflect information concerning such subject as it appears on public records, including but not limited to following reasonable procedures to sample, verify or otherwise corroborate public record information furnished by Equifax.

5. Maintain reasonable procedures so that information disputed by a Consumer that is deleted or corrected upon reinvestigation by Equifax, does not subsequently appear in uncorrected form in Consumer Reports pertaining to that Consumer; provided, however, that if after Equifax has deleted such information from the File, Equifax reverifies such information, Equifax may reinsert such information in the File and report such information in subsequent Consumer Reports concerning that Consumer if, and only if, Equifax advises the Consumer in writing that the information has been reinserted.

6. Make disclosure of the nature and substance of all information (except medical information) in its Files on the Consumer at the time of the request for disclosure, as required by Sections 609 and 610 of the FCRA, to any Consumer who has requested disclosure, has provided proper identification as required under Section 610 of the FCRA, and has paid or accepted any charges that may be imposed under Section 612 of the FCRA.

7. Reinvestigate and record the current status of items of information the completeness or accuracy of which is disputed by a Consumer, when the Consumer directly conveys the dispute to Equifax, and Equifax does not have reason to believe the dispute is frivolous or irrelevant. Such investigation shall include but not limited to:

a. Completing any reinvestigation, *i.e.*, verifiying, deleting, or modifying all disputed items in the Consumer's File, with thirty (30) days of receipt of the Consumer's dispute; provided, however, that if Equifax in good faith cannot determine the nature of the Consumer's dispute, Equifax shall attempt to determine the nature of the dispute by contacting the Consumer by mail or telephone within five (5) business days of receiving the Consumer's dispute, and complete its reinvestigation within thirty (30) days of the Consumer's response if Equifax in good faith can then determine the nature of the Consumer's dispute;

b. Communicating to the source used to verify the disputed information, a summary of the nature and substance of the Consumer's dispute;

c. Accepting the Consumer's version of the disputed information and correcting or deleting the disputed information, when the Consumer submits to Equifax documentation obtained from the source of the information in dispute which confirms that the disputed information on the Consumer Report was inaccurate or incomplete, unless Equifax in good faith has reason to doubt the authenticity of the documentation, in which case Equifax need not accept the Consumer's version of the dispute if it reinvestigates the dispute by contacting the source of the information and verifies that the documentation is not authentic; and

d. Employing reasonable procedures designed specifically to resolve (i) Consumer disputes that Equifax has reason to believe arise from Mixed Files, and (ii) Consumer disputes that indicate the repeated inclusion in Consumer Reports of previously disputed inaccurate or incomplete items.

8. Reinvestigate Consumer disputes in accordance with Section 611 of the FCRA. In connection therewith, Equifax shall impose no requirements beyond those in Section 611 of the FCRA, including but not limited to requirements that the Consumer:

a. Pay a fee for updating and recording the current status of disputed information;

b. Provide copies of identifying documentation, including but not limited to driver's license, Social Security card, and utility bills; and

c. Provide a written authorization before reinvestigating information the Consumer has disputed.

9. Continue, upon completion of the reinvestigation of information disputed by a Consumer, to write the Consumer and provide the following:

a. The results of the reinvestigation conducted by Equifax; and

b. A statement advising the Consumer of the Consumer's right to request that Equifax furnish notification that information has been deleted, or furnish a copy or codification or summary of any Consumer statement of explanation of the dispute that has been filed by the Consumer, to any Person specifically designated by the Consumer who has within the preceding two years received a Consumer Report for Employment Purposes, or within the preceding six months received a Consumer Report for any other purpose, which contained the deleted or disputed information.

II

It is further ordered that Equifax shall, annually for the five (5) year period following the Approval Date, measure, monitor, and test the extent to which changes in its computer system, including its algorithms, reduce the incidence of Mixed Files.

1. In complying with this Section, Equifax shall submit, within one hundred eighty (180) days of the effective date of this Order, for approval to the Associate Director for Enforcement, Bureau of Consumer Protection, of the Federal Trade Commission ("ADE"):

a. A proposed methodology for establishing a baseline against which changes may be measured, monitored, and tested; and

b. A proposed methodology for accurately measuring, monitoring, testing, and reporting the effects of changes made against the baseline established under the preceding paragraph.

2. For five (5) years following the Approval Date, Equifax shall submit annually to the ADE, in writing, the results of its comparison using the methodologies approved by the ADE as specified in Paragraph II.1. above, and to the extent not otherwise provided, shall include with such reports the results of a statistically significant analysis to determine the incidence of Mixed Files.

III

It is further ordered that Equifax shall, annually for five (5) years following the effective date of this order, submit the following information to the ADE within sixty (60) days of the anniversary of the effective date of this order and with respect to the preceding twelve (12) month period:

1. The total number of File disclosures to Consumers by Equifax;

2. The number of occasions on which Consumers have informed Equifax that they dispute information in files maintained by Equifax;

3. The number of such disputes where the disputed information was verified as accurate;

4. The number of such disputes in which information disputed was deleted from, or modified in, the disputing Consumer's File, after reinvestigation response; and

5. The number of such disputes in which information disputed was deleted from the disputing Consumer's File because no response to Equifax's verification inquiry was received within thirty days.

IV

It is further ordered that, except for Section III above, Equifax shall, until the expiration of five (5) years following the effective date of this order, maintain and upon request make available to the ADE for inspection and copying, all documents demonstrating compliance with this order. Such documents shall include, but are not limited to, representative copies of each form of agreement or contract governing Subscriber access to or use of Credit Information, each periodic audit or similar report concerning the testing or monitoring of its systems for preparation, maintenance, and furnishing of Consumer Reports and files, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to Subscribers in connection with the terms of this order.

V

It is further ordered that Equifax shall deliver a copy of this order to all of its present and future management officials having administrative or policy responsibilities with respect to the subject matter of this order.

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It is further ordered that Equifax shall notify the ADE at least thirty (30) days prior to any proposed change in Equifax that might affect compliance obligations arising out of this order such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VII

It is further ordered that Equifax shall, within one hundred eighty (180) days of service of this order, deliver to the ADE a report, in writing, setting forth the manner and form in which it has complied with this order as of that date. The Commission shall keep such report and its contents, or any report, document, or other information provided under Sections II, III, or IV above, or any notification provided under Section VI above, strictly confidential, in accordance with the Commission's Rules of Practice.

VIII

It is further ordered that if the FCRA is amended (or other similar federal legislation enacted) or the Commission issues any interpretation of the FCRA, relating to any obligation imposed on Equifax herein, which creates any new requirement for compliance with the FCRA that directly conflicts with any obligation imposed on Equifax by this order, Equifax may conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to the requirements of such statutory provision or interpretation; provided, however, that Equifax shall notify the ADE promptly if it intends to change its conduct as provided for in this Section, and provided further that nothing in this provision shall limit the right of the FTC to challenge any determination of direct conflict of Equifax hereunder and to seek enforcement of Equifax's obligations under this order to the extent such determination is erroneous. For purposes of this order, and by way of example only, a "direct conflict" between this order and a new statutory amendment or interpretation shall include a requirement in any such amendment or interpretation that a Consumer Reporting Agency complete a task or obligation addressed in this order in a greater period of time than is specified in the order.

IX

This order does not address the issue of disclosure under Section 609 of Credit Information (whether or not separately maintained in any File), including but not limited to Credit Information utilized for fraud alert or similar application verification services, which categorizes the identifiers on the Consumer or categorizes any other data on the Consumer and is susceptible of being furnished to a Subscriber, and the order does not in any way limit the right of the Commission to take any appropriate action after entry of this order relating to this issue, nor does it limit in any way Equifax's defenses to any such action.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Equifax Credit Information Services, Inc., a corporation ("the respondent"). This agreement, among other requirements, requires the respondent to cease and desist from failing to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports and cease and desist from failing to maintain reasonable procedures to limit the furnishing of consumer reports to subscribers that have permissible purposes to receive them, such as purposes encompassing credit transactions involving the consumer, employment and the underwriting of insurance.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

According to the complaint, the respondent failed to take reasonable steps to reduce the incidence of inaccuracies and obsolete items of information in the consumer reports it furnished and failed to maintain and follow reasonable procedures to assure maximum possible accuracy of the information contained in its consumer reports.

The complaint also alleges that respondent failed to limit the furnishing of consumer reports to only those who possessed a permissible purpose to receive consumer reports. The complaint further alleges that the respondent failed adequately to give disclosures of the nature and substance of all information (except medical information) when consumers properly requested disclosure of the information in their own files. The complaint additionally alleges that the respondent failed to properly reinvestigate disputed items of information in consumer reports.

The complaint alleges that by its failures to comply with the Fair Credit Reporting Act and pursuant to Section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future. Specifically, Part I of the Order requires the respondent to maintain reasonable procedures to assure that information placed in a consumer's file belongs to the consumer in question and is also accurate, complete and up-to-date without obsolete information. Further, the Order requires respondent to reinvestigate disputed items of information in a consumer's file in a timely and reasonable manner, generally within 30 days.

The consent order also contains provisions requiring respondent to maintain reasonable procedures to limit the furnishing of consumer reports (and specifically consumer reports in the form of identification reports containing employment information) to only those with permissible purposes to receive consumer reports. Further, the consent order provides that respondent disclose the nature and substance of all information (except medical information) in its files on a consumer in response to a proper request for disclosure from the consumer who is the subject of the file.

Part II of the Order requires the respondent to submit to the Commission for approval a methodology by which changes to the respondent's computer system will be measured. The incidence of consumer reports containing information of other consumers, not the subject of the report, will be measured against a baseline established by the methodology to determine the efficacy of the computer changes. These measurements will be submitted for five (5) years to the Commission in the form of annual reports.

Part III of the Order requires the respondent to annually for five (5) years submit to the Commission information concerning the numbers of disclosures provided and disputes received by the respondent.

Part IV of the Order requires the respondent for a period of five years to maintain and make available all documents demonstrating its compliance with the Order.

Part V of the Order requires the respondent to deliver a copy of the Order to all of its present and future management officials having administrative responsibilities with respect to the subject matter of the Order.

Part VI of the Order requires the respondent to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect its compliance with the Order.

Part VII of the Order requires the respondent to file a written report with the Commission within one hundred eighty (180) days after service of the Order detailing the manner and form in which it has complied with the Order.

Part VIII of the Order allows respondent to conform the manner in which it conducts its business to any FCRA amendment (or other similar federal legislation enacted) or official Commission interpretation which relates to any obligation imposed on the respondent by the Order and which directly conflicts with an obligation imposed by the Order.

Part IX of the Order specifically reserves for future consideration the issue of disclosure of fraud alert or similar verification services to consumers who properly request disclosure under the FCRA.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4279 Filed 2–21–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0132]

Tele-Communication, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Tele-Communication, Inc. (TCI) to complete its acquisition of TeleCable, on the condition that it divest either its own Columbus cable TV assets, or those of TeleCable, within twelve months. If the divestitures were not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transaction. In addition, TCI, for ten years, would be required to obtain Commission approval before acquiring any cable TV system in the Columbus, GA., area.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580, (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of the common stock of TeleCable Corporation by Tele-Communications, Inc. and the proposed merger of TeleCable Corporation into TCI Communications, Inc., an entity within Tele-Communications, Inc., and it now appearing that Tele-Communications, Inc., hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an order to divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officer and attorney, and counsel for the Commission that:

1. Proposed respondent Tele-Communications, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC Parkway, Englewood, Colorado 80111.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as

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stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "TCI" means (1) Tele-Communications, Inc. and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Tele-Communications, Inc. controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

B. "Control" means (i) the ability or right, contractual or otherwise, to direct the management decisions of an entity, or (ii) an ownership interest of 50% or greater unless a person or entity other than Respondent has the right to direct the management decisions of such entity.

C. "Commission" means the Federal Trade Commission.

D. "Columbus Cable Television System Assets" means either TCI's Cable Television System or TeleCable's Cable Television System now operating in Muscogee and Harris Counties, Georgia, including all properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held or used principally in the provision of Cable Television Service in Muscogee and Harris Counties, including the governmental permits, franchises, intangibles, equipment and real property.

E. "Designated Columbus Cable Television System" means the Cable Television System chosen by TCI pursuant to Paragraph III B. 2. or if TCI fails to designate a Cable Television System pursuant to, and within the time limits of, Paragraph III B. 2., the Columbus Cable Television System Assets.

F. "Cable Television Service" means the delivery of various video entertainment and informational programming via a cable television system.

G. "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming and which is provided to multiple subscribers within a community.

H. "The Relevant Geographic Area" means the counties of Muscogee and Harris in the State of Georgia.

I. "Competitiveness, viability and marketability" of the Columbus Cable Television System Assets means the Respondent shall continue the operation of TCI's and TeleCable's Cable Television Systems in the ordinary course of business without material change or alteration that would adversely affect the value or goodwill of such Cable Television Systems and the Columbus Cable Television System Assets.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, one of the Cable Television Systems constituting the Columbus Cable Television System Assets. Respondent shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the competitiveness, viability and marketability of the Columbus Cable Television System Assets. Respondent shall undertake its best efforts to facilitate any governmental approvals required to effect divestiture of the Columbus Cable Television System Assets and their continued use in Cable Television Service in the Relevant Geographic Area. To ensure the availability of programming to the divested Columbus Cable Television System Assets, Respondent shall waive any exclusive rights to distribute programming by means of Cable Television Systems in the Relevant Geographic Area.

B. Respondent shall divest the Columbus Cable Television System Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Columbus Cable Television System Assets is to ensure the continued use of the Columbus Cable Television System Assets as an ongoing, viable deliverer of Cable Television Service in the Relevant Geographic Area, and to remedy the lessening of competition resulting from the proposed acquisition of TeleCable Corporation by TCI as alleged in the Commission's complaint.

C. Pending divestiture of the Columbus Cable Television System Assets, respondent shall take such actions as are necessary to maintain the competitiveness, viability and marketability of the Columbus Cable Television System Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Columbus Cable Television System Assets except for ordinary wear and tear.

III

It is further ordered that:

A. If TCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Columbus Cable Television System Assets within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Columbus Cable Television System Assets, provided, however, that if the Commission has not approved a proposed divestiture within 120 days of the date the application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, TCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A. of this order,

respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures in the cable television industry. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after appointment of the trustee, respondent shall (1) execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order; and (2) notify the trustee in writing whether TCI chooses to divest the TCI Columbus Cable Television System or the TeleCable Columbus Cable Television System; provided that if TCI fails to make this designation within the specified time period, the trustee is authorized to divest either the TCI or TeleCable Columbus Cable Television System.

3. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Designated Columbus Cable Television System Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B. 2. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Designated Columbus Cable Television System Assets or to any other relevant information as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Designated Columbus Cable Television System Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Designated Columbus Cable Television System Assets.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that respondent shall comply with all terms of the Hold Separate Agreement, attached to this Order and made a part hereof as Appendix I. The Hold Separate Agreement shall continue in effect until such time as the Columbus Cable Television System Assets shall have been divested as required by this order.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engage in Cable Television Service within the Relevant Geographic Area; or

B. Acquire any assets used for or previously used for (and still suitable for use for) Cable Television Service within the Relevant Geographic Area.

Provided, however, that this Paragraph V shall not apply to the acquisition of products or services in the ordinary course of business; and provided further, that this Paragraph V shall not apply to the acquisition of any interest in a concern that is not at the time of the acquisition engaged in Cable Television Service within the Relevant Geographic Area due to the sale within the preceding two years of all assets used for Cable Television Service within

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the Relevant Geographic Area to another party who intended to operate said assets for Cable Television Service within the Relevant Geographic Area.

VI

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint of interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, relating to any matters contained in this order.

Agreement to Hold Separate

This Agreement To Hold Separate ("Agreement") is by and between Tele-Communications, Inc. ("respondent" or "TCI"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC Parkway, Englewood, Colorado 80111; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.*

Whereas, respondent entered into an agreement with TeleCable Corporation ("TeleCable"), a Virginia corporation, whereby respondent will acquire the stock of TeleCable and merge TeleCable into TCI Communications, Inc., an entity within TCI (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Agreement"), which would require the divestiture of either the TCI or TeleCable Cable Television System Assets in Columbus, Georgia, the Commission must place the Consent Agreement on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the TeleCable Columbus Cable Television System Assets during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the assets described in Paragraph II of the Consent Agreement and the Commission's right to have the TeleCable Columbus Cable Television System Assets continue as a viable independent entity; and

Whereas, the purpose of this Agreement and the Consent Agreement is to:

(i) preserve the TeleCable Columbus Cable Television System Assets as a viable independent cable television system pending possible divestiture, and

(ii) remedy any anticompetitive effects of the Acquisition; and

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Agreement to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture pursuant to the Consent Agreement and to seek civil penalties or a court-appointed trustee or other equitable relief, as follows:

1. Respondent agrees to execute and be bound by the attached Consent Agreement.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the divestiture required by the Consent Agreement has been completed.

3. To ensure the independence and viability of the TeleCable Columbus Cable Television System Assets and to assure that no competitive information is exchanged between the TeleCable Columbus Cable Television System and the TCI Columbus Cable Television System, TCI shall operate the TeleCable Columbus Cable Television System separate and apart on the following terms and conditions:

a. To the maximum extent possible, TCI will retain current TeleCable Columbus Cable Television System management and employees ("the management team") to manage and maintain the TeleCable Columbus Cable Television System. The individuals on the management team shall manage the TeleCable Columbus Cable Television System independently of the management of TCI's other businesses, including the TCI Columbus Cable Television System. The individuals on the management team shall not be involved in any way in the operation or management of any other TCI Cable Television System. If any member of the management team is unable or unwilling to continue to serve in his or her current position (or becomes unable to do so during the term of this Agreement) that position will be filled by an individual not involved in any way in the operation or management of any other TCI Cable Television System.

b. The management team, in its capacity as such, shall report directly and exclusively to an individual to be designated by TCI who has no direct responsibilities for Cable Television System operations and who is competent to assure the continued viability and competitiveness of the TeleCable Columbus Cable Television System ("TCI Contact").

c. TCI shall not exercise direction or control over, or influence directly or indirectly the management team or any of its activities relating to the operations of the TeleCable Columbus Cable Television System; provided, however, that TCI may exercise such direction and control over the management team and the TeleCable Columbus Cable Television System Assets as is necessary to ensure compliance with this Agreement and with the Consent Agreement and with all applicable laws.

d. TCI shall maintain the marketability, viability, and competitiveness of the TeleCable Columbus Cable Television System assets and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair their marketability, viability or competitiveness.

e. Except for the TCI Contact and the management team, TCI shall not permit any other TCI employee, officer, or director to be involved in the management of the TeleCable Columbus Cable Television System; provided, however, that TCI employees involved in engineering, construction, customer service, data processing, training, human resources, finance, legal services, tax, accounting, insurance, internal audit, payroll, programming, purchasing, real estate, risk management, telephony, compliance with FCC regulations, contract administration, and similar services ("support service employees") may provide such services to the TeleCable Columbus Cable Television System.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest, TCI, other than the TCI Contact, the management team and support service employees involved in the TeleCable Columbus Cable Television System business, shall not receive or have access to, or the use of any material confidential information about the TeleCable Columbus Cable Television System. ("Material Confidential information," as used herein, means competitively sensitive or proprietary information not otherwise known to TCI from sources other than the TCI Contact, the management team involved in the TeleCable Columbus Cable Television System, or the support service employees.)

g. The management team shall serve at the cost and expense of TCI. TCI shall indemnify the management team against any losses or claims of any kind that might arise out of his or her involvement under this Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team.

h. If any member of the management team ceases to act or fails to act diligently, a substitute member shall be appointed.

4. Should the Federal Trade Commission seek in any proceeding to compel respondent to divest any of the Columbus Cable Television System Assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Agreement or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Radino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Agreement and shall not assert as a defense such contract requirements in any action brought by the Commission to enforce the terms of this Agreement or Consent Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment from Tele-Communications, Inc. ("TCI"), an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days from receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns TCI's proposed acquisition of TeleCable Corporation ("TeleCable"). TeleCable is the 18th largest cable company in the United States, and operates 21 cable systems located in 15 states. The Commission's investigation of this matter focused on the Columbus, Georgia, metropolitan area. There are only three cable

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television providers in Columbus. TCI and TeleCable are the two largest cable television providers in the Columbus area in terms of the number of subscribers and the number of homes passed.

the agreement containing consent order would, if finally issued by the Commission, settle charges alleged in the Commission's complaint that TCI's acquisition of TeleCable would substantially lessen competition in the distribution of multichannel video programming by cable television in the Columbus, Georgia, area, in violation of Section 7 of the Clayton Act. The nature of such competition to be preserved is actual competition to serve existing homes, hotels, and apartment complexes. The order will also preserve competition for providing cable service to new housing developments and other presently cabled portions of the Columbus area. The Commission's complaint further alleges that TCI's merger agreement with TeleCable violates Section 5 of the Federal Trade Commission Act.

The order accepted for public comment would require TCI to divest a cable television system in the Columbus, Georgia, area. If TCI fails to divest a system within one year, the order allows the Commission to appointment a trustee to sell a cable system. A hold separate agreement executed in conjunction with the consent agreement requires TCI, until completion of the divestiture (or as otherwise specified), to maintain TeleCable's Columbus cable system separate from TCI's other operations. For ten (10) years from the date the order becomes final, the order would also prohibit TCI, without obtaining prior Commission approval, from acquiring any cable television system in the Columbus, Georgia, area.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4280 Filed 2–21–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, National Institutes of Health, on Friday March 24, 1995. The meeting will be held in Conference Room H, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 10 am to 5 pm for discussion and review of study progress. Attendance by the public will be limited to space available.

Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Aaron Blair, Executive Secretary, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 418, 6130 Executive Boulevard, Rockville, Maryland 20892 (301/496–9093) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. Aaron Blair, (301) 496–9093, in advance of the meeting.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4244 Filed 2–21–95; 8:45 am]

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National Institute of Health

National Cancer Institute; Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Cancer Institute (NCI) advisory committee meetings.

These meetings will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

Ms. Carole Frank, NCI Committee Management Officer, National Institutes of Health, Executive Plaza North, Room 630E, 6130 Executive Boulevard MSC 7405, Bethesda, Maryland 20892–7405, (301) 496–5708, will provide summaries of the meetings and rosters of committee members upon request. Substantive program information may be obtained from the contacts listed below.

Committee Name: Developmental Therapeutics Contracts Review Committee.
Contact Person: Dr. C. Michael Kerwin, Scientific Review Administrator, DEA, NCI, NIH, Executive Plaza North, Room 601A, 6130 Executive Boulevard, Rockville, MD 20852–7405, Telephone: (301) 496–7421
Date of Meeting: March 3, 1995
Place of Meeting: Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Rockville, MD 20852
Closed: 9 am to adjournment
Agenda: Review, discussion and evaluation of individual contract proposals.

Committee Name: Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers
Contact person: Dr. Ihor J. Masnyk, Executive Secretary, NCI, NIH, Building 31A, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892–2440, Telephone: (301) 496–3251
Date of Meeting: March 6, 1995
Place of Meeting: Building 31C—Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Rockville, MD 20892
Open: 8:30 am to adjournment
Agenda: Discussion and review of the division budget and review of concepts for grants and contracts.

These meetings will be closed, as indicated, in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4242 Filed 2–21–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications
Committee Name: Child Psychopathology and Treatment Review Committee
Date: March 1–3, 1995
Time: 9 a.m.
Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037
Contact Person: Bernice R. Cherry, Grants Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367

Committee Name: Mental Health AIDS and Immunology Review Committee—1
Date: March 2–3, 1995
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814
Contact Person: Regina M. Thomas, Grants Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470

Committee Name: Epidemiology and Genetics Review Committee
Date: March 5–7, 1995
Time: 9 a.m.
Place: Embassy Suites at Chevy Chase, 4300 Military Road, NW., Washington, DC 20015
Contact Person: Bernice R. Cherry, Grants Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367

Committee Name: Mental Health AIDS and Immunology Review Committee—2
Date: March 6–7, 1995
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814
Contact Person: Rehana A. Chowdhury, Grants Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientists Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4243 Filed 2–21–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1995 Notices of Funding Availability

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on February 10, 1995, Volume 60, No. 28, pages 7980–7984, of the funding opportunities for grants and cooperative agreements from the Center for Substance Abuse Prevention (CSAP) during FY 1995. On page 7983, under the Eligible Applicants section of 4.1.3 Community Prevention Coalitions Demonstration Grant Program, a statement was included that "the applicant must be part of an existing community partnership and must be designated to act on behalf of the larger coalition of multiple partnerships proposed in the grant application."

The requirement that the applicant must be part of an existing partnership has been deleted, and the revised Eligible Applicants section now states that "the applicant must be designated to act on behalf of the larger evolving coalition of multiple partnerships proposed in the grant application."

Public notice was also given in the **Federal Register** on: January 4, 1995, Volume 60, No. 2, pages 474–478; January 30, 1995, Volume 60, No. 19, pages 5688–5691; and February 10, 1995, Volume 60, No. 28, pages 7977–7984; of the availability of funds from the SAMHSA Centers—Center for Mental Health Services, Center for Substance Abuse Prevention, and Center for Substance Abuse Treatment—for grant and cooperative agreement activities during FY 1995.

These notices specified that competing grant and cooperative agreement applications should be submitted to the Division of Research Grants, NIH, Westwood Building-Room 240, 5333 Westbard Avenue, Bethesda, MD 20892.

The mailing address for the Division of Research Grants, NIH, is being changed. Effective April 21, 1995, all competing SAMHSA applications must be sent to: Division of Research Grants, National Institutes of Health, 6701 Rockledge Drive MSC–7710, Bethesda, MD 20892–7710.*

Dated: February 16, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4323 Filed 2–21–95; 8:45 am]

BILLING CODE 4162–20–P

Cooperative Agreement with the Pennsylvania Department of Health

AGENCY: Center For Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of a planned single source, cooperative agreement award to support further development and continuation of a model comprehensive substance abuse treatment demonstration program for the City of Philadelphia.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public regarding a planned single source competing continuation award to the Pennsylvania Department of Health for the further development and operation of a model substance abuse treatment demonstration program. The current "Target Cities" project period will be

* Applicants who wish to use express mail or courier service should change the zip code to 20817–7710.

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extended for an additional two years. The first year of the new cycle funding, fourth year of operation, will be funded with approximately $2,500,000 in federal funds. This is not a request for applications. The cooperative agreement will be awarded to the Pennsylvania Department of Health only upon receipt of a satisfactory application which is recommended for approval by an initial review committee and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: The competing continuation award will be made under the authority of Section 510(b)(5) of the Public Health Service Act, as amended (42 U.S.C. 290bb–3).

An award is being made on a single source basis in response to the Senate Committee on Appropriations report 103–318, accompanying HR 4606, which has language that states: "Sufficient funding has been provided for CSAT to conduct an application cycle in fiscal year 1995 to extend from 3 to 5 years funding for the target cities grantee that was funded out of the normal funding cycle in fiscal year 1991." The report further states: "The Committee expects the Center will maintain an application criteria that is consistent with and that meets the review standards and other requirements subject to target city applicants in fiscal year 1993."

BACKGROUND: In fiscal year (FY) 1990, the Office for Treatment Improvement (CSAT's predecessor agency) initiated the Target Cities Cooperative Agreement Demonstration Program to assist major metropolitan areas with linking, integrating, and enhancing the components of their addiction treatment and health and human service systems in order to overcome the problems described below. In 1990, eight target cities were funded for a three-year period. On June 1, 1992 a ninth target city was funded in Philadelphia, Pennsylvania. In 1993 a review cycle for target cities applications was conducted by CSAT. In addition to new applications, each of the original eight cities was given an opportunity to compete for a fourth and fifth year of continuation funding. Because the Philadelphia target city was in its second year of implementation, it was not eligible in 1993 to compete for a fourth and fifth year of funding. In order to address this lack of opportunity, and in response to the Senate Committee on Appropriations report 103–318, referenced above, a competing continuation application is being requested from the State of Pennsylvania for the Philadelphia target city based on the guidelines provided in the 1993 Program Announcement No. AS 93–07.

Many areas of the United States could benefit from additional financial aid designed to improve access to high quality, effective addiction treatment and recovery programs and related health and human services. Some cities are facing demand for these resources in crisis proportions.

Epidemiological data indicate that individuals who live near or below the poverty line in large metropolitan areas tend to exhibit a high prevalence of alcohol and drug use and a concomitantly high incidence of addiction-related medical, psychological and socio-economic problems. Escalating incidence rates for HIV/AIDS, tuberculosis and sexually transmitted diseases in the metropolitan areas are closely linked to alcohol and drug use, as are homelessness, unemployment, crime and violence.

In most metropolitan communities, multiple factors have combined over time to diversify and fragment the components of the health and human services system rather than to integrate and facilitate the provisions of services and case processing alternatives for those who suffer from alcohol and drug problems. In almost all cases, jurisdictions with high demand for addiction treatment and recovery services have lacked sufficient resources for the enhancement or expansion of diagnostic, coordinated case management and evaluation efforts necessary to improve the effectiveness of the services infrastructure. Of great concern from a public health perspective, is that many addiction treatment and recovery programs do not have the resources or appropriate linkages with health care facilities to ensure that individuals with addictive disorders and their sexual partners are screened and treated for HIV, tuberculosis, and other infectious diseases.

In the context of complex and fragmented metropolitan systems of health and human service delivery, it is not likely that the needs of alcohol and drug-involved individuals and their families who live near or below the poverty line will be addressed in a cost-effective manner, for one or more of the following reasons:

(1) The system is not capable of concisely and comprehensively assessing individual and family needs.

(2) The existing infrastructure is designed to provide interventions on a discrete basis rather than to address the bio-psycho-socio-economic needs of the individual and family as part of a coordinated continuum.

(3) Individuals with alcohol and drug problems and their collaterals are not capable of effectively negotiating the complexities of a system composed of discrete, uncoordinated programs and are often unable to locate the treatment program(s) that best suits their needs.

(4) Individuals may be turned away from programs that lack the capacity to provide needed assistance, and may be unaware that there are other treatment alternatives available within or adjacent to the community in which they live.

(5) Individuals may be admitted to programs that are not capable of addressing their unique needs or are not designed to provide services in a cost-effective manner.

(6) Services may be delivered in a manner that is inconsistent with the current racial, ethnic, cultural, socio-economic and practical realities of the individuals and families who request assistance.

Since June 1992, the Philadelphia Target City Project has addressed many of the problems discussed above by directly enhancing the public drug and alcohol service system through eight inter-related components. These components are a central intake unit, a management information system, an enhanced case management system, provider staff enhancements, training and staff development, project evaluation, and two special initiatives. The special initiatives include a Labor Initiative component that is implemented through the Department of Labor's Job Training Partnership Act, and a CSAT Criminal Justice Initiative. The Labor Initiative provides vocational assessment, training and employment opportunities to individuals that have successfully completed treatment. The Criminal Justice Initiative provided funds for the development and implementation of a criminal justice management information system (MIS). This MIS has coordinated services and provided for the tracking of individuals through the Philadelphia treatment and criminal justice systems. The criminal justice MIS has provided for an effective system of early release from criminal justice institutions to treatment providers. These components provide patients access to treatment, standardized assessment, and appropriate referrals to an enhanced, integrated, and comprehensive treatment, medical and social service system. During the period of project implementation 4,000 individuals have been assessed for treatment services and 2,300 admissions to treatment have been accomplished. This single source award is planned to continue the development and implementation of a project that has successfully improved and enhanced substance abuse treatment services for individuals receiving care through the publicly funded treatment system in Philadelphia.

FOR FURTHER INFORMATION CONTRACT: Randolph Muck, Acting Chief, Systems Improvement Branch CSAT/SAMHSA, Rockwall II, Room 618, 5600 Fishers Lane, Rockville, MD. 20857. Telephone: (301) 443–8802.

Dated: February 16, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4322 Filed 2–21–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Finding of No Significant Impact for an Incidental Take Permit for the Proposed Canyon Ridge, Phase A, Section 3 Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment/Habitat Conservation Plan for issuance of a section 10(a)(1)(B) permit amendment for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a residential development in northwest Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit amendment under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler during construction and operation of the Canyon Ridge development on the 24-acre site.

The Applicant plans to construct single-family and multi-family residences in northwest Travis County, Texas. The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the Canyon Ridge, Phase A, Section 3 Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Implementing Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit amendment will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,
3. Alternate site location,
4. Alternate site design,
5. Wait for issuance of a regional Section 10(a)(1)(B) permit.

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the section 10(a)(1)(B) permit amendment for the construction and operation of the Canyon Ridge, Phase A, Section 3 development in northwest Travis County, Texas.

John G. Rogers,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4299 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice of Publication of Final Sample Prospectus and Related Guidelines

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service published notice to rescind Chapter 6, 7, 8 and 11 of NPS–48 ("The Concessions Guidelines") Thursday, March 17, 1994 requesting comments at that time on the replacement document "Sample Prospectus and Related Guidelines." The document includes among other matters, a sample prospectus for solicitation of offers for National Park Service concessions contracts and permits, related evaluation guidelines and application information and criteria.

As an internal staff manual, notice of the Sample Prospectus and Related Guidelines is not required to be published in the **Federal Register** nor was public comment required yet to assure that the view of all interested parties were considered, the National Park Service sought public comment on its Sample Prospectus and Related Guidelines document and considered all comments received and amend the document if it is so warranted. The 60-day comment period has expired, and the public interest would not be served in further delay of the effective date of this document.

General Comments

Only two entities responded to the publication of the notice with comments.

One commenter suggested that we withdraw this proposal until the Senate and House Finalize new legislation on Concession Management in the Parks. The public would not be served to consider this alternative as there exists a large backlog of NPS concession contract renewals which are necessary to complete to allow the commencement of major renovation and construction programs in areas of the nation park system, including improvements necessary to protect the health and safety of park visitors and NPS and concessioner employees. In addition, many concessioners are now operating under the terms of expired contracts and are accordingly, in need of contract renewal actions as soon as possible to permit business planning, actions and investments which require the existence of a new contract for implementation. It is also noted that the Sample Prospectus and Related Guidelines document is intended to provide guidance to NPS personnel concerning possible means to implement new policies and procedures adopted in the new NPS concession contracting regulations and new standard language concession contract, both of which were adopted after extensive public comment periods and consideration by NPS of all comments received.

This commenter discussed some issues that relate to NPS concession contracting regulations which were amended by NPS in furtherance of the objective of the Secretary's concession reform initiative. These issues, Possessory Interest, Compensation, Government Improvement and Capital Improvement accounts * * *are not further discussed here as they were the subject of extensive public comment in the adoption of the amended regulations and standard contract language. The amended regulations were published in final in the **Federal Register** on September 3, 1992 (57 FR 40496) and the Final revision of the Standard Contract Language was published in the **Federal Register** on January 7, 1993 (58 FR 43140).

This commenter cautioned that in the preparation of the Prospectus there are two items listed for the Appendix which related to existing possessory interest and suggest that care be taken to be sure that the incumbent be aware of the value established by the present law. They propose that values supplied by

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the incumbent concessioner would reflect a more accurate assessment of the compensation required, rather than the use of an outside consultant or NPS estimate of this value. NPS acknowledges that the incumbent is entitled to compensation as outlined in a previous contract but that the terms of that contract allow for negotiation between parties, and should they be unable to reach a compromise, an arbitration process for the final determination of that compensable value as purchased by a new offeror.

The commenter expresses concern on the arbitration process utilized to resolve these disputes and states that an incumbent concessioner should not be expected to relinquish his or her rights to legal adjudication of the issue through the courts should it become necessary. NPS does not recognize this as a valid issue in this process as the procedure to settle these issues will not vary from established practice with the enforcement of the final regulations or standard contract language utilized herein.

The commenter acknowledged that the Concessions Management section of the prospectus had some excellent statements but that the "partnership" between NPS and the concessioner needs to be emphasized. They later note that this is emphasized in the contract language. NPS in designing the package took careful steps to avoid repetition in placing information in the prospectus and the contract as they are part of a complete presentation. The proposed contract is included in the package to illustrate the importance of all contract requirements.

Recent changes in the Utilities program as it relates to capital investments were commended.

Concern was expressed regarding the requirement that all concessioners comply with federal, state and local laws. NPS has made this a requirement of all contracts since the labor legislation was enacted. They described the problems recently encountered with the Department of Labor in a case in Nevada involving operations that fall under the Fair Labor Standards Act and the Contract Wage and Hours Standards Act. The Department of Labor has been asked to address this problem but as of yet, they have not issued a decision. This is a non-issue as it relates to this process.

Financial programs and practices were discussed as they relate to the law governing the concessions management program. They state that the NPS statement regarding Fair Return for the Operator appears misunderstood and misapplied. On Page 13 of the prospectus, it states that "it is the responsibility of the offeror to assure itself that the terms of its offer provide it a reasonable opportunity for profit". The commenter states that while they understand that the concessioner ultimately determines by his business practices whether he will realize a profit, the whole intent of the statement in the law is that NPS should realize that its policies could prevent that profit from being realized if they were onerous and confiscatory. NPS makes this statement in the Prospectus to caution the offeror that the terms of an offer being presented must be realistic and achievable allowing a reasonable opportunity for profit. Other devises in the contract such as amendments, franchise fee reviews and arbitrations allow for adjustments necessitated through economic changes, policy review and revision.

A comment was made on the section entitled "The Park Area and Its Mission" regarding the planning documents and maintenance and operating plans for the park that are applicable. They note that plans are only as good as the commitment of those involved to carry out its terms and that no plans can be successful relating to the concession and operations and visitor services unless they involve the concessioner for meaningful input at the time of formulation. It is the standard practice of NPS to involve consultants versed in the type of operation proposed during the planning process. As the practice of awarding the contract for the operation of these facilities is a competitive process, completed at a future date, the actual concessioner cannot be involved in this pre-planning as the contract has not been executed. It is important that the planning, maintenance and operation documents be included in the prospectus so that an offeror can make an informed offer, taking the long and short term requirements into consideration.

The commenter discussed the need for flexibility in the term of the contract; Government Improvement and Capital Improvement accounts; Compensation and Possessory interest. These were issues for comment during the review of the Standard Contract Language and Final Rule for Concession Operations. These comments do not apply to this process.

The proposed application was questioned as it related to the alternatives presented for concessioner entitlement to present contract language on the Preference of renewal. NPS included the alternatives as a guide for future use of this sample. The issue of contract language change was addressed during the review period of that subject and does not apply to this process.

The commenter states that the proposed Application seems inconsistent with the statement that the financial contributions are secondary selection factors, when in fact, additional weight in the scoring process is clearly outlined here for more generous contributions to both the Government and Capital Improvement Accounts and the amount paid in Franchise Fees. They question that if the factors are secondary, why should they be given additional weight? NPS in considering an offer, requires that all the primary factors are met before the secondary factors are considered. In this way, should all offerors satisfy the requirements of the primary factors, there can be a means of determining a better offer by utilizing the secondary factors.

A second commenter expressed concern in regards to removing the possibility of incorporating a numerically-weighted system into the proposed evaluation process. NPS feels that a numerically-weighted system would not allow the flexibility required to deal with the diverse operations it manages. Due to the diversity of the operations, specifically stated criteria are designed for each application that address the unique needs of the park and visitor. A numerically-weighted system must be standardized to be effective, and the diversity of the operations for which concessioners are solicited could not be handled in this manner. The narrative system presents in clear and concise language the exact reasons that the panel would choose one offeror over another. There is no guarantee with a numerically-weighted system to insure that the offer being presented is the best overall offer. Should there become a need to present the reasons for selection at a later time, the justification for a decision based on a numerically-weighted system is not easily presented.

The Sample Prospectus and Related Guidelines document is intended to be only a sample document. It is not meant to be a document which must be used as written in every instance. It is to be modified as appropriate to fit the needs of individual situations. Further, this document is expected to be modified and refined over time as experience indicates that changes are needed and to meet the changing needs of the concession contracting program.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Chief, Concessions Division, National Park Service, Washington, D.C. 20013–7127. Telephone: (202) 343–3784.

Dated: February 3, 1995.

Maureen Finnerty,

Associate Director, Operations.

[FR Doc. 95–3676 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

Jacob Riis Park, Gateway National Recreation Area, NY; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of visitor parking facilities and services for the public at Jacob Riis Park, Gateway National Recreation Area, New York for a period of five (5) years from January 1, 1995, through December 31, 1999.

EFFECTIVE DATE: April 24, 1995.

ADDRESSES: Interested parties should contact the Regional Director, National Park Service, North Atlantic Region, Attention: Division of Concessions Program Management, 15 State Street, Boston, MA 02109–3572, telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on September 30, 1990. However, notwithstanding the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), the concessioner has relinquished and waived its right of preference in the renewal or extension of this permit. The contract will be awarded to the party submitting the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Chrysandra L. Walter,

Deputy Regional Director.

[FR Doc. 95–4318 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of Sub-committee on Design Competition Package.

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Sub-Committee producing the Design Competition Package. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, March 2, 1995, 1:30–5:00 p.m.; and Friday, March 3, 1995, 8:00–12:00 a.m., and 1:30–5:00 p.m.

Address: American Institute of Architects (AIA), Denver Chapter Office, 1526 15th Street, Denver, Colorado 80202: (303) 446–2266.

The Agenda of This Meeting Will Be: Continue work begun by the Indian Memorial Advisory Committee and the National Park Service Support Team to produce a package that establishes the structure, rules, processes that will guide an upcoming national design competition for the creation of a memorial to the Indian participants in the 1876 conflict at Little Bighorn Battlefield National Monument, located at Crow Agency, Montana. This meeting will incorporate help from a select group of four architects under the sponsorship of the AIA. The architects will provide professional insight into formulating and managing design competitions and will help steer the final decisions of the sub-committee. The components of the meeting will consist of a review of project progress to date and discussion/decisions about; competition staging; advertising and promotional strategies; applicant registration, rules, and fees; design competition language; design criteria; base data needs and format; evaluation criteria; jury composition and scoring/selection alternatives; stipends for finalists; awards and commendations (amounts and categories); competition and design development schedule; and transforming the final design into a finished product.

Supplementary Information: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ". . . to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

For Further Information Contact: Ms. Barbara A. Booher, Indian Affairs Coordinator and Indian Advisory Committee Liaison, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: February 9, 1995.

Gerard Baker,

Superintendent, Little Bighorn Battlefield National Monument Designated Federal Official, National Park Service.

[FR Doc. 95–4317 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 11, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 9, 1995.

Carold D. Shull,

Chief of Registration, National Register.

GEORGIA

Bibb County

Macon Historic District (Boundary Increase), Roughly, Adams St. and Linden Ave. S. W and N of Tattnall Sq. and Broadway and Third Sts. between Poplar and Pine Sts., Macon. 95000233

Macon Historic District (Boundary Decrease), Roughly bounded by College Pl., Calhoun and Elm and the CG RR tracks and Monroe, Jefferson, College and Hardeman. Macon, 95000234

MAINE

Cumberland County

Fitch's General Store and House, Long Hill Rd., E side, at jct. with ME 114, East Sebago, 95000215

Oxford County

Philbrook, Samuel D., House, 162 Main St., Bethel, 95000216

Piscataquis County

Slate House, 123 Church St., Brownville, 95000217

Waldo County

Pendleton, James G., House, 81 W. Main St., Searsport, 95000218

NEW JERSEY

Passaic County

Paterson City Hall, 155 Market St., Paterson, 95000232

NEW YORK

Greene County

Van Vechten, John, House, Susquehanna Tpk. (Co. Rd. 23B), Leeds, 95000212

Orange County

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Peachcroft, River Rd., Montgomery, 95000211

Orleans County

Main Street Historic District, Roughly, along Main and Center Sts., West Ave. and Proctor Pl., Medina. 95000213

NORTH CAROLINA

Guilford County

Tabernacle Methodist Protestant Church and Cemetery, 5601 Liberty Rd., Greensboro, . 95000231

Wake County

Apex Historic District (Boundary Increase), (Hake County MPS), Roughly bounded by E. Chatham, S. Hughes, S. Mason and E. Moore Sts., Apex, 95000210

TEXAS

Rusk County

Henderson Commercial Historic District, Roughly bounded by Charlevoix, Marshall, Elk and Van Buren Sts., Henderson, 95000219

VERMONT

Addison County

Field Farm (Agricultural Resources of Vermont MPS), Fuller Mountain Rd., Ferrisburgh, 95000214

WASHINGTON

Pierce County

Building at 1602 South G Street (Hilltop Neighborhood MPS), 1602 S. G St., Tacoma, 95000222

Building at 712–716 Sixth Avenue (Hilltop Neighborhood MPS), 712–716 Sixth Ave., Tacoma, 95000226

House at 1510 Tacoma Avenue South (Hilltop Neighborhood MPS), 1510 Tacoma Ave. S., Tacoma, 95000230

House at 1610 South G Street (Hilltop Neighborhood MPS), 1610 S. G St., Tacoma, 95000223

House at 2314 South Ainsworth Avenue (Hilltop Neighborhood MPS), 2314 S. Ainsworth Ave., Tacoma, 95000220

House at 2326 South L Street (Hilltop Neighborhood MPS), 2326 S. L St., Tacoma, 95000225

House at 605 South G Street (Hilltop Neighborhood MPS), 605 S. G St., Tacoma, 95000221

House at 708–710 South 8th Street (Hilltop Neighborhood MPS), 708–710 S. 8th St., Tacoma, 95000224

House at 802–804 South G Street (Hilltop Neighborhood MPS), 802–804 S. G St., Tacoma, 95000229

McIlvaine Apartments (Hilltop Neighborhood MPS), 920 S. 9th St., Tacoma, 95000227

Schultz Apartments (Hilltop Neighborhood MPS), 1002 S. 12th St., Tacoma, 95000228

[FR Doc. 95–4271 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–380 (1X)]

Huron and Eastern Railway Company, Inc.—Abandonment Exemption—in Huron County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the Huron and Eastern Railway Company, Inc.'s abandonment of a 9.81-mile segment of rail line, from milepost 8.69 near Ruth, to milepost 18.5, at Harbor Beach, in Huron County, MI.

DATES: The exemption will be effective on March 24, 1995, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by March 6, 1995; petitions to stay must be filed by March 9, 1995; requests for public use condition must be filed by March 14, 1995; and petitions to reopen must be filed by March 20, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–380 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., NW., Washington, DC 20423; and (2) Petitioner's representative: Robert A. Wimbish, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5712.]

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4301 Filed 2–21–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 167 (1987).

[Docket No. AB–290 (Sub-No. 166X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Aiken, Lexington, and Orangeburg Counties, SC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a segment of its rail line totalling 28.0 miles between milepost C–124.0, near Edmund, and milepost C–152.0, near Springfield, in Aiken, Lexington, and Orangeburg Counties, SC.

NS has certified that: (1) No local traffic has not moved over the line for at least 2 years; (2) no overhead traffic has not moved for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 24, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns should file its request as soon as possible in order to permit the Commission to review and act on the request before the exemption's effective date.

[2] See Exempt of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

49 CFR 1152.29[3] must be filed by March 6, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 14, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 10, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4302 Filed 2–21–95; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Bankruptcy Rules public hearing scheduled to be held in Washington, D.C. on February 24, 1995, has been cancelled. (Original notice of hearing appeared in the Federal Register of November 18, 1994 (59 FR 59793).

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C., telephone (202) 273–1820.

Dated: February 15, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–4261 Filed 2–21–95; 8:45 am]

BILLING CODE 2210–01–M

[3] The Commission will accept a late-filed trail use statements so long as it retains jurisdiction.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Judgment in *United States* v. *Bostic, et al*, Civil No. 92–101–4 (E.D.N.C), was lodged with the United States District Court for the Eastern District of North Carolina on November 8, 1994.

The Consent Judgment concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), resulting from the defendants' unauthorized conversion of 147 acres of pocosin wetlands on a 194-acre site in Onslow County, North Carolina. Before agreeing to the terms of the Consent Judgment, defendants completed restoration of part of the property to the satisfaction of the U.S. Environmental Protection Agency ("EPA"), the U.S. Army Corps of Engineers ("Corps"), and North Carolina state erosion experts. Under the Consent Judgment, defendants would admit liability for their violations and agree to pay a $60,000 civil penalty to the United States. They would further agree to establish a buffer zone along the southern edge of the violation site to protect nearby Mill Creek from future erosion or development and to then transfer title of this buffer zone to an approved third party grantee, such as the North Carolina Coastal Land Trust, within 180 days of signing the Consent Judgment. Failure to create the buffer zone or to comply with the transfer of title provision would result in the payment to the United States of an additional $40,000 in stipulated penalties.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Russell Young, Esquire, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, should refer to *United States* v. *Bostic, et al.*, Civil No. 92–101–4 (E.D.N.C.), and should also make reference to DJ# 90–5–1–1–3715.

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, P.O. Box 25670, Raleigh, North Carolina 27611.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 95–4227 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Extension of Comment Period for Consent Decrees in United States v. Nalco Chemical Co., et al.

Notice is hereby given that the period for public comments on the two proposed Consent Decrees in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.), lodged on December 22, 1994 with the United States District Court for the Northern District of Illinois, has been extended to and including March 3, 1995. The proposed Consent Decrees resolve certain claims of the United States against the settling parties under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, relating to the Byron Superfund Site in Ogle County, Illinois. Under the *de minimis* Consent Decree, nine settling parties among the "drum" parties in the case will pay the United States $94,405.86. Under the second *de minimis* Consent Decree, six settling parties among the "IPC customer" parties in the case will pay the United States $429,045.17.

The United States published notice of the lodging of the Consent Decrees in the **Federal Register** on January 10, 1995. 60 FR 2613 (1995). In response to a request for an extension of the public comment period, the United States has elected to extend the comment period and to accept public comments received no later than March 3, 1995. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nalco Chemical Company, et al.*, D.J. Ref. No. 90–11–3–687.

The proposed Consent Decrees may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; the Region V Office of the United States, Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the

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proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the first Consent Decree (the "Drum" Decree), please enclose a check in the amount of $7.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the second Consent Decree (the "IPC Customer" Decree), please enclose a check in the amount of $6.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of both Consent Decrees, please enclose a check in the amount of $13.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4282 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Taylor Lumber & Treating, Inc.*, Civil Action No. 93–858–JO was lodged on February 8, 1995, with the United States District Court for the District of Oregon. The Consent Decree settles the claims alleged against defendant, Taylor Lumber & Treating, Inc. ("Taylor") in this action.

The Complaint was brought against Taylor pursuant to section 3008 (a), (g), and (h) of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6928 (a), (g), and (h), for alleged violations associated with Taylor's owning and operating a land disposal facility where hazardous waste was stored and/or disposed of without a permit or interim status authorization ("the concrete vault"). The Complaint sought an order that Taylor pay a civil penalty for violations associated with its storage and/or disposal of hazardous waste in the concrete vault, complete closure of the concrete vault in accordance with Oregon's regulations, and perform corrective action at its facility located near Sheridan, Oregon to address releases of hazardous constituents and hazardous wastes into the environment.

Under the terms of the proposed Consent Decree, Taylor will complete closure of the concrete vault in accordance with Oregon's regulations, conduct a RCRA Facility Investigation and perform corrective action at its facility to address releases of hazardous constituents and hazardous wastes into the environment, and pay a civil penalty of $70,000 for the violations associated with the concrete vault.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Taylor Lumber & Treating, Inc.*, DOJ Ref. 1#90–7–1–667.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $28.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4281 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States of America v. Playmobil USA, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* versus *Playmobil USA, Inc.*, Civil Action No. 95–0214. The Complaint alleged that Playmobil engaged in a combination and conspiracy with dealers to fix the price of children's toys in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment that Playmobil has agreed to prohibits it for a period of ten years from (A) agreeing with any dealer to fix or maintain the resale prices at which Playmobil's products may be sold; (B) discussing or encouraging adherence to Playmobil's suggested resale prices; (C) threatening to terminate or retaliate against a dealer for discounting; and (D) communicating information to any dealer relating to the termination of any other dealer due to discounting. Additionally, for five years Playmobil is barred from (E) terminating any dealer or taking any other action for reasons relating to that dealer's discounting of Playmobil products; (f) announcing that it will adopt any resale pricing policy under which a dealer may be terminated because of discounting; (G) acting, or representing that it will act, upon a dealer's complaint of another dealer's discounting; and (H) establishing any cooperative advertising policy that denies or reduces advertising allowances for any reason related to a dealer's advertised discount prices. These prohibitions are discussed more fully in the Competitive Impact Statement.

Playmobil is also required to appoint an antitrust compliance officer and establish an antitrust compliance program. This program is designed to inform Playmobil employees and agents about the consent decree and the antitrust laws, thereby helping to prevent future violations.

Public comment is invited within the statutory 60-day comment period. Such comments and responses to them will be published in the **Federal Register** and filed with the Court. Comments should be directed to Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3700, Washington, DC 20530 (telephone: 202/514–8368).

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., 11 E. Nicholas Court, Dayton, NY 08810. Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Complaint

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This complaint is filed under section 4 of the Sherman Act, as amended (15 U.S.C. 4), in order to prevent and restrain violations, as hereinafter alleged, by the defendant of section 1 of the Sherman Act (15 U.S.C. 1). This court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1337.

2. Defendant transacts business and is found in the District of Columbia.

II.

Definitions

3. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

4. "Dealer" means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

5. "Playmobil product" means any product sold or distributed by defendant for resale in the United States.

III.

Defendant and Co-Conspirators

6. Playmobil USA, Inc. ("Playmobil") is made a defendant herein. Playmobil is a corporation headquartered in the District of New Jersey, organized and existing under the laws of the State of New Jersey.

7. Various companies and individuals who are dealers, not made defendants in this complaint, have been induced to participate by and have participated with the defendant in the offense charged herein and performed acts and made statements in furtherance of it.

IV.

Trade and Commerce

8. Playmobil is a prominent seller of specialty toys for children in the United States. Playmobil products are manufactured by Playmobil's parent company, Geobra Brandstatter GmbH & Co., KG., in Germany and sold and distributed in the United States by Playmobil.

9. Playmobil sells substantial quantities of Playmobil products to dealers throughout the United States, which in turn resell Playmobil products to consumers.

10. During the period covered by this complaint, there has been a continuous and uninterrupted flow in interstate commerce of Playmobil products from Playmobil's facilities in New Jersey to dealers throughout the United States. The activities of the defendant and its co-conspirators, as hereinafter described, have been within the flow of, and have substantially affected, interstate commerce.

V.

Violation Alleged

11. Beginning at least as early as February, 1990, and continuing at least through August, 1994, the exact dates being unknown to the United States, the defendant and its co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of section 1 of the Sherman Act, as amended (15 U.S.C. 1). This unlawful combination and conspiracy will continue or may be renewed unless the relief prayed for herein is granted.

12. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and its co-conspirators to fix and maintain the resale price of Playmobil products at the amount set by the defendant, Playmobil.

13. In furtherance of this combination and conspiracy, the defendant did the following things, among others:

(a) Established and communicated to dealers minimum resale prices for Playmobil products;

(b) Threatened to terminate dealers for selling or advertising Playmobil products at prices below defendant's minimum resale prices;

(c) Used threats of termination to secure dealers' adherence to defendants' minimum resale prices and to limit the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop "price wars" among them; and

(e) Agreed with dealers on the retail prices for Playmobil products to be charged by the dealers.

VI.

Effects

14. The aforesaid combination and conspiracy has had the following effects, among others:

(a) Resale prices of children's toys have been fixed and maintained; and

(b) Competition in the sale of children's toys by dealers has been restrained, suppressed, and eliminated.

VII.

Prayer for Relief

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendant has combined and conspired to restrain interstate trade and commerce of Playmobil products in violation of section 1 of the Sherman Act.

2. That the defendant, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy herein before alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concern of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That plaintiff have such other relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

Anne K. Bingaman,

Assistant Attorney General

Robert E. Litan,

Mark C. Schechter,

Rebecca P. Dick,

Bruce K. Yamanaga,

Andrew S. Cowan,

Steven Semeraro,

D.C. Bar No. 419612, Attorneys, Department of Justice Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.

Civil Action No. 95–0214

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not

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entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceedings.

For the plaintiff:

Anne K. Bingaman

Assistant Attorney General

Robert E. Litan,

Mark Schechter,

Rebecca P. Dick,

Bruce K. Yamanaga,

Andrew S. Cowan,

Attorneys, U.S. Department of Justice, Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

For the defendant:

Eugene J. Meigher,

Counsel for Playmobil, USA, Inc.

Certificate of Service

I certify that, on this day January 31, 1995, I have caused to be served, by messenger, a copy of the foregoing Stipulation, Final Judgment and Competitive Impact Statement on counsel of record for Playmobil USA, Inc. at the address below:

Eugene Meigher, Arent, Fox 1050 Connecticut Ave NW., 5th Floor, Washington, DC 20036

Andrew S. Cowan

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.

Civil Action No. 95–0214

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on _____, and plaintiff and defendant, Playmobil, USA, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, adjudged and decreed as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II.

Definitions

As used in this Final Judgment:

A. "Cooperative advertising policy" means any policy or program under which defendant provides a dealer with any rebate, allowance, or reimbursement that relates to that dealer's advertising of Playmobil products.

B. "Dealer" means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

C. "Discount" means to offer, sell or advertise any Playmobil product for resale at a price below defendant's suggested resale price.

D. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

E. "Playmobil product" means any product sold or distributed by defendant for resale in the United States.

F. "Promotional event" means a sale of offering of limited duration during which a dealer discounts a Playmobil product.

G. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to Playmobil products sold by dealers.

H. "Suggested resale price" means any resale price level, including those related to everyday pricing or promotional pricing, that is suggested, endorsed, communicated, distributed or determined by defendant.

I. "Terminate" means to refuse to continue selling, either permanently or temporarily, any or all Playmobil products to a dealer.

III.

Applicability

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

Prohibited Conduct

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which defendant's products may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained from (1) discussing, explaining, or encouraging adherence to defendant's suggested resale prices with any dealer, (2) threatening or warning any dealer that it may be terminated or otherwise subjected to any action by the defendant for discounting, and (3) communicating to any dealer information relating to any actual or contemplated termination of any other dealer for any reason related to discounting.

C. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from directly or indirectly announcing to the public or to any present or potential dealer of its products that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for Playmobil products that: (1) Provides that defendant will sell only to a dealer that prices at or above suggested resale prices; (2) provides that defendant may or will terminate, or take any other action related to, a dealer for discounting; or (3) relates to the duration or frequency of any dealer's promotional events.

D. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from (1) representing that it will act on any complaint or communication from a dealer that relates to any other dealer's discounting, (2) discussing any such complaint or communication with the complaining dealer, except that defendant may state that it does not accept dealer complaints or communications that relate to the pricing practices of other dealers, and (3) terminating any dealer or taking any other action for reasons relating to that dealer's discounting.

E. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from adopting, promulgating, suggesting, announcing or establishing any cooperative advertising policy that denies or reduces advertising rebates, allowances or reimbursements to a dealer for any reason related to that dealer's advertised prices.

F. Nothing in this Section IV shall prohibit defendant from (1) establishing suggested resale prices and communicating these prices to dealers, provided that such communications also state that these prices are only suggested prices and that dealers are free to adopt any resale price that they choose, or (2) terminating any dealer for reasons unrelated to that dealer's discountings.

V.

Notification Provisions

Defendant is ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to each dealer who purchased Playmobil products in 1993 or 1994.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases products from defendant within ten (10) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the first shipment of Playmobil products to such dealer.

VI.

Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties include supervisory or direct responsibility for the sale or advertising of Playmobil products in the United States, except for employees whose functions are purely clerical or manual;

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer, employee or agent who succeeds to a position described in Section VI (A);

C. Providing each person designated in Sections VI (A) or (B) with a written explanation in plain language of this Final Judgment, with examples of conduct prohibited by the Final Judgment and with instructions that each person designated in Section VI (A) and (B) shall report any known violations of the Final Judgment to the Antitrust Compliance Officer;

D. Arranging for an annual oral briefing to each person designated in Sections VI (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws, accompanied by a written explanation of the type described in Section VI. (C);

E. Obtaining (1) from each person designated in Sections VI (A) or (B) certification that he or she has read, understands and agrees to abide by the terms of this Final Judgment and is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (2) from each officer, director and employee certification that he or she understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

F. Maintaining (1) a record of all certifications received pursuant to Section VI (E); (2) a file of all documents related to any alleged violation of this Final Judgment; (3) a record of all communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation; and (4) a list of all persons terminated as dealers, or threatened with termination, after the effective date of this Final Judgment and all documents related to any such termination or threatened termination.

VII.

Certification

A. Within 75 days of the entry of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI (A) above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII.

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during the defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an

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opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

IX.

Duration of Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until ten (10) years from the date of entry.

X.

Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI.

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Appendix A

Dear Playmobil Dealer:

Since 1991, Playmobil USA has maintained a Retailer Discount Policy that provided for the termination of any Playmobil dealer that failed to adhere to certain Playmobil suggested price ranges. In January 1995, the Antitrust Division of the United States Department of Justice filed a civil suit that alleged that Playmobil enforced this policy in a manner that violated the antitrust laws by reaching agreements with some of its retailers about what their retail prices would be. Playmobil has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States.

I have enclosed a copy of the Order for your information. Under its terms, you as a Playmobil dealer are absolutely free to sell Playmobil products at whatever resale price you choose. Furthermore, Playmobil may not attempt to influence your discounting of Playmobil products, influence the duration or frequency of your promotional events, or condition advertising allowances on your adhering to Playmobil's suggested resale prices.

If you learn that Playmobil or its agents have violated the terms of the Order at any time after the effective date of the Order, you should provide this information to Playmobil in writing.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,_____

John Thorpe,

President Playmobil USA, Inc. 11 E. Nicholas Court Dayton, NJ 08810

In the United States District Court for the District of Columbia

United States of America, Plaintiff v. Playmobil USA, Inc., Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Competitive Impact Statement

The United States of America, pursuant to section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On January 30, 1995, the United States filed a civil antitrust complaint under section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant Playmobil USA, Inc. ("Playmobil") engaged in a combination and conspiracy, in violation of section 1 of the Sherman Act, 15 U.S.C. 1, to fix the retail prices of Playmobil children's toys throughout the United States. The complaint alleges that, in furtherance of this conspiracy, Playmobil from February 1990 through August of 1994:

(a) Established and communicated to dealers minimum resale prices for Playmobil toys;

(b) Threatened to terminate dealers for selling or advertising Playmobil toys at prices below those minimum resale prices;

(c) Through the threats of termination, secured dealers' adherence to those minimum resale prices and limited the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop price wars among them; and

(e) Agreed with dealers on the retail prices the dealers would charge for Playmobil toys.

The complaint also alleges that as a result of the combination and conspiracy, prices of children's toys have been fixed and maintained, and competition in the sales of children's toys has been restrained.

The complaint alleges that the combination and conspiracy is illegal, and accordingly requests that this Court prohibit Playmobil from continuing or renewing such activity or similar activities.

The United States and Playmobil have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Playmobil, a New Jersey corporation, is a prominent seller of specialty toys for children in the United States, with annual sales at wholesale in excess of $18 million. Playmobil imports its toys from Germany, where its parent company makes them. From New Jersey it distributes to retail toy stores in every state, and these stores in turn sell Playmobil toys to consumers.

Over the past several years, Playmobil regularly published what it termed "Suggested Retail Price Ranges" for all of its products. It also annually issued letters to all of its dealers setting forth a "Retailer Discount Policy." The Playmobil letters facially expressed a well-defined, unilateral, dealer-termination policy under *United States* versus *Colgate & Co.*, 250 U.S. 300 (1919) that even included some safeguards to ensure that Playmobil and its dealers would not enter into resale price agreements. The stated policy said, in effect, that Playmobil would, *entirely on its own*, monitor its retailers and automatically, *without discussion*, refuse to sell to any dealer it determined was discounting beyond the prescribed limits (emphasis supplied). In the letters, Playmobil also committed not to further discuss the policy or anything related to it.

In practice, however, Playmobil ignored these restrictions: Playmobil personnel repeatedly contacted and pressured dealers in over a dozen states who reportedly were discounting below the policy's "suggested" minimum levels. Playmobil secured from a number of its dealers express agreements to follow Playmobil's published retail prices. Playmobil often expressly threatened a dealer with termination in order to obtain its agreement.

Frequently the impetus for Playmobil's actions was pressure from other dealers that did not want to face

price competition in the retail sales of Playmobil toys. Playmobil determined whether an accused dealer was in fact discounting beyond the "suggested" limits, and if it was, Playmobil forcefully "discussed" its resale pricing policy with the offending dealer.

If, after such discussions, the dealer did not agree to raise its prices, Playmobil responded with various threats—additional stores in the immediate area might begin carrying Playmobil toys, Playmobil might improperly process orders, a variety of shipping problems could occur. In some instances, Playmobil refused to sell additional toys to a dealer until after that dealer agreed to adhere to Playmobil's price ranges.

The volume of commerce affected by Playmobil's illegal conduct is difficult to estimate. Playmobil's illegal conduct was concentrated in the more than one dozen states where, at the urging of retail dealers that wanted to prevent price competition, it obtained illegal resale pricing agreements with potential discounters. Thus while it is difficult to estimate the total volume of commerce affected by Playmobil's violations, it clearly was substantial although significantly less than the entire $35 million in annual, nationwide, retail sales of Playmobil toys.

Playmobil, by using the devices described, was usually successful in inducing dealers to raise their prices. Indeed, the power of these actions was such that Playmobil never had to permanently sever its relationship with a dealer because of that dealer's continued discounting. Thus, the result of Playmobil's activities was to fix, raise and stabilize the prices at which toy retailers sold Playmobil products. The courts have routinely found conduct such as Playmobil's here to be a *per se* violation of the prohibition on agreements in restraint of trade under section 1 of the Sherman Act.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any continuation or renewal, directly or indirectly, of the type of combination or conspiracy alleged in the Complaint. Specifically, Section IV A prohibits Playmobil from entering into any agreement or understanding with any dealer to fix, stabilize or maintain any dealer's prices for Playmobil products in the United States.

The law permits a manufacturer unilaterally to announce and unilaterally to implement a policy of terminating discounters. *Colgate, supra.* The manufacturer may not, however, secure a dealer's *agreement* on retail price levels. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960). If a dealer discounts, the manufacturer must choose either to continue to supply that dealer, knowing of its discounting practices, or to forego that retail outlet for its products in the future.

In this case, the Complaint alleges that Playmobil reached illegal agreements with its dealers in the course of discussions about discount pricing. Although discussions between a manufacturer and a dealer about resale pricing do not always result in an agreement about those prices, *see Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752 (1984), the evidence in this case showed, and the Complaint alleges, that Playmobil's discussions clearly led to, and in fact included, illegal agreements. *Isaksen* v. *Vermont Castings*, 825 F.2d 1158, 1164 (7th Cir. 1987), *cert. denied*, 486 U.S. 1005 (1988). To avoid a repetition of such episodes, Section IV B bars Playmobil from discussing, explaining, or encouraging dealers to adhere to suggested prices, threatening to terminate a dealer for discounting, or discussing a dealer's termination with another dealer. This prohibition addresses the central offense in this case and extends for the entire ten-year life of the decree.

The proposed Final Judgment not only bars Playmobil's unlawful practices, but also contains additional provisions that are remedial in nature, intended to restore competitive conditions in retail toy markets and in dealer relationships, both of which have been distorted by Playmobil's conduct from 1990 through August of 1994, as set forth in the Complaint. These provisions bar some activities that are not, in and of themselves, illegal, but which could nevertheless serve the same purpose as Playmobil's outright agreements to fix resale prices—preventing Playmobil dealers from selling or advertising at discount prices.

To establish a new pricing regime to replace the former illegally enforced regime, and to encourage retailers of Playmobil toys that previously could not offer Playmobil products at discount prices, because of Playmobil's illegal conduct, to exercise their ability to discount if they so wish, Sections IV C and D of the Final Judgment prohibit Playmobil for the first five years of the decree from reestablishing its resale price policy in any form, even forms that would be legal if Playmobil had never engaged in the illegal conduct alleged in the Complaint. Thus, Section IV C bars Playmobil from announcing policies to (1) sell only to non-discounting dealers, (2) terminate or hinder dealers for discounting, or (3) control the duration or frequency of a dealer's discounting. Section IV D 3 further ensures that regardless of its stated policies, Playmobil will not terminate or otherwise take actions against any dealer because of discounting. Under the decree, the only thing Playmobil may continue to do is to publish truly suggested retail prices, together with the clear statement that dealers are free to ignore the suggestions.

When it is clear that a manufacturer's suggested retail prices are informational only and strictly optional, they can serve useful market functions without adversely affecting competition. In such an environment, dealers become fully aware of and accustomed to exercising their pricing rights.

Since the problem with Playmobil's policy lay in the implementation of the policy rather than in the policy itself, the prohibition on adopting such a policy extends only for five years. Similarly, since Playmobil never improperly terminated any dealers, the prohibition on terminations also extends only for five years. Playmobil will thereafter regain its *Colgate* right unilaterally to announce a resale pricing policy and unilaterally to terminate non-complying dealers. Throughout the period, Playmobil will be able to disseminate its suggested retail prices, but it must make clear that actual retail sales prices will be set entirely at its dealers' discretion.

Subsections 1 and 2 of Section IV D of the Final Judgment also prohibit Playmobil from accepting dealer complaints about other dealers' pricing. In some cases, Playmobil was acting in response to dealers' complaints when it pressured other dealers to agree to charge higher retail prices. The complaints about discounting were the proximate cause of much of the illegal conduct alleged in the Complaint. Although a manufacturer's merely listening to a dealer's complaint about another's pricing does not necessarily violate the law, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717 (1988), the evidence here showed that the dealer complaints led directly to Playmobil's violations. Accordingly, in order to establish a period of time during which Playmobil's

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and its dealers' conduct can become clearly legal, Playmobil has agreed not even to accept such communications from its dealers for five years.

Section IV E of the Final Judgment prohibits Playmobil from establishing a cooperative advertising program that conditions rebates in any way upon a dealer's adherence to certain advertising price levels. Playmobil did not have a cooperative advertising program, but its illegal price agreements with dealers were often triggered by advertising. In order to avoid any discussions at all with dealers on the sensitive issue of retail pricing, Playmobil has also agreed not to undertake a cooperative advertising program during the first five years of the decree. This will provide a period of time during which market conditions can become more competitive, and Playmobil and its dealers can become more accustomed to remaining within legal parameters.

Section V of the proposed Final Judgment is designed to ensure that Playmobil's dealers are aware of the limitations the Final Judgment imposes on Playmobil. Section V requires Playmobil to send notices and copies of the Judgment to each dealer who purchased Playmobil products from the defendant in 1993 or 1994. In addition, Playmobil must send notices and copies of the Judgment to every other dealer to which it sells Playmobil products within ten years of the date of the Judgment's entry.

Sections VI and VII require Playmobil to set up an antitrust compliance program and designate an antitrust compliance officer. Under the program, Playmobil is required to furnish a copy of the Judgment and a less formal written explanation of it to each of its officers and directors and each of its non-clerical employees, representatives, or agents responsible for the sale or advertising of Playmobil products in the United States.

In addition, the proposed Final Judgment provides methods for determining and securing Playmobil's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, Playmobil shall submit written reports, under oath, with respect to any of the matters contained in the Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents, of Playmobil.

Section IX makes the Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Judgment is in the public interest. The APPA conditions entry of the proposed Final Judment upon a determination by the Court that the proposed Final Judgment is in the public interest.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 3700, Washington, DC 20530.

Under Section X of the proposed Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling either of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment considered by the Government was a full trial on the merits and on relief. Such litigation would involve substantial cost to the United States and is not warranted, because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No particular materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed Final Judgment.

Dated:

Respectfully submitted,

Bruce K. Yamanaga,

Andrew S. Cowan,

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 3700, Washington, DC 20530, (202) 514–8368

[FR Doc. 95–4283 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Serendipity Mining, Inc.

[Docket No. M–95–01–C]

Serendipity Mining, Inc., P.O. Box 1588, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15–17568) located in Whitley County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Windsor Coal Company.

[Docket No. M–95–02–C]

Windsor Coal Company, P.O. Box 39, West Liberty, West Virginia 26074 has filed a petition to modify the application of 30 CFR 75.364(b)(1) and (2) (weekly examination) to its Windsor Mine (I.D. No. 46–01286) located in Brooke County, West Virginia. Due to deteriorating roof and rib conditions in the left side return air course of the East Mains from the 0+00 to 66+00 for a distance of approximately 6,600 feet, traveling or restoration of the affected area would be unsafe. The petitioner proposes to examine the area on a weekly basis by establishing check points G—No. 1 entry at approximately 0+50, and H—No. 1 entry at approximately 66+00; to examine the 1 North bleeder seal, 1 North seals, East Main seals, and 2 North seals (22 seals total); to have a certified person test for methane and the quantity of air at all check points on a weekly basis and record the results in a book kept on the surface and made available for inspection by interested persons; to install stoppings at the equalizing overcasts at approximately 23+00 and 65+00 to prevent the mixing of right side and left side returns; and to install a stopping at approximately 0+50 in the No. 2 entry to direct all air to check point "G". The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Rosebud Mining Company.

[Docket No. M–95–03–C]

Rosebud Mining Company, Box 324 B, R.D. 2, Parker, Pennsylvania 16049 has filed a petition to modify the application of 30 CFR 75.333 (ventilation controls) to its Rosebud No. 3 Mine (I.D. No. 36–07843) located in Armstrong County, Pennsylvania. The petitioner proposes to use temporary ventilation controls on the intake side in the room necking procedure for rooms to be developed less than 600 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. R. & R. Anthracite Coal Company.

[Docket No. M–95–04–C]

R. & R. Anthracite Coal Company, R. R. 2, Box 21 B, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mt. Slope (I.D. No. 36–08498) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternative, when using the gunboat to transport persons, the petitioner proposes to use hoisting rope with a safety factor at least 3 times greater than required and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connection device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Company.

[Docket No. M–94–05–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires and trolley feeder wires, high-voltage cables and transformers) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petitioner proposes to use high-voltage cables (4,160 volts) in by the last open crosscut. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. C. S. & S. Coal Corporation.

[Docket No. M–95–06–C]

C. S. & S. Coal Corporation, P.O. Box 1234, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 7 Mine (I.D. No. 44–06762) located in Russell County, Virginia. The petitioner proposes to operate electric mobile equipment without canopies in seam heights up to 48 inches. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

7. Texasgulf, Inc.

[Docket No. M–95–01–M]

Texasgulf, Inc., P.O. Box 171, Weeping Water, Nebraska 68463 has filed a petition to modify the application of 30 CFR 57.11041 (landings for inclined ladderways) to its Limestone Mine (I.D. No. 25–00554) located in Cass County, Nebraska. The petitioner proposes to have two portals at the mine to serve as the primary and secondary escapeways. The petitioner proposes to have a vertical vent shaft 36 inches in diameter and 125 feet tall as an auxiliary escapeway for a extra safety measure in case the primary and secondary portals become blocked; and as an additional escapeway, the petitioner proposes to install a ladder with rungs 8 inches from the wall to the center of the rung and with a 15 inch x 10 inch step off point every 20 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Aluminum Company of America

[Docket No. M–95–02–M]

Aluminum Company of America, State Highway 35, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.9300 (berms or guardrails) to its Bayer Alumina Plant (I.D. No. 41–00320) located in Calhoun County, Texas. The petitioner requests a modification of the mandatory standard to allow continued use of its already established methods of compliance of having signs posted at the entrances to the impoundment area stating that the roadways are not bermed; delineators at 25 feet intervals along the perimeter of the elevated roadways; the maximum speed limit posted at 15 mph on the elevated roadways; road surfaces well maintained with necessary repairs following periods of inclement weather The petitioner has a locked, remotely operated electric gate at the main entrance to the impoundment area with 24 hour security, 7 days a week via closed circuit camera and TV monitor. Access to the gate is by permission only via telephones which are located outside the gate, or by two-way radios for maintenance personnel. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 222[illegible] All comments must be postmarked

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received in that office on or before March 24, 1995. Copies of these petitions are available for inspection at that address.

Dated: February 10, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–4228 Filed 2–21–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Use of Alternative Means of Dispute Resolution; Policy Statement

AGENCY: National Science Foundation.

ACTION: Notice of policy statement.

SUMMARY: The National Science Foundation (the "Foundation") has developed a policy to address the use of alternative means of dispute resolution (ADR) within its administrative programs, as required by the Administrative Dispute Resolution Act, Public Law No. 101–552.

EFFECTIVE DATE: This policy statement is effective on February 22, 1995. Because it is a general statement of policy and addresses internal agency procedures and practices, no prior notice or opportunity for public comment is required.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Acting General Counsel and National Science Foundation Dispute Resolution Specialist, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

SUPPLEMENTARY INFORMATION: On November 15, 1990, Congress enacted the Administrative Dispute Resolution Act (Public Law No. 101–552). The Act requires agencies to designate a senior official as its dispute resolution specialist and to adopt a policy addressing use of ADR in connection with an agency's administrative programs. Although the Act authorizes and encourages agencies to use ADR techniques as an alternative to traditional dispute resolution mechanisms, use of ADR is subject to agency discretion.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.)

Foundation Policy on ADR

The Foundation encourages the use of alternative methods of dispute resolution within its administrative programs. These methods, which include settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, provide alternatives to traditional adversarial proceedings. ADR techniques should be implemented in a way that will reduce costs and delays associated with adjudication, improve employee and constituent relations, and improve the efficiency and effectiveness of programs.

An ADR Task Force reviewed the types of disputes arising at NSF and the Foundation's procedures for resolving them. The Task Force concluded that existing informal mechanisms for resolving disputes between NSF and grantees are effective and consistent with ADR processes. However, the Task Force did identify one type of dispute which could benefit from the use of ADR techniques—employee discrimination complaints related to equal employment opportunity. As a result, NSF will implement a voluntary mediation program for resolution of employment discrimination complaints filed by NSF employees, and will either train Foundation employees to mediate such disputes or rely on an inter-governmental pool of mediators. The Foundation will make every effort to ensure the confidentiality of information provided to all participants in an ADR proceeding, consistent with applicable laws and regulations.

As circumstances change or new types of disputes arise, the Foundation will consider further use of ADR techniques. The Foundation encourages senior management officials to discuss other situations where ADR may be appropriate with NSF's Deputy General Counsel, who serves as the Foundation's Dispute Resolution Specialist.

Dated: February 14, 1995

Lawrence Rudolph,

Acting General Counsel and Agency Dispute Resolution Specialist

[FR Doc. 95–4221 Filed 2–21–95; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 8, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, March 8, 1995—9:00 a.m.–12 noon.

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–4262 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Extension of Comment Period

The Nuclear Regulatory Commission has extended the public comment period on Draft Regulatory Guide DG–0005, "Applications for Licenses of Broad Scope," until March 31, 1995, to give interested parties adequate time to prepare their comments on this draft guide. DG–0005 is the Second Proposed Revision 2 to Regulatory Guide 10.5, which was issued in October 1994 (noticed at 10 CFR 55141). This guide is being revised to provide guidance on the type and extent of information needed by the NRC staff to evaluate applications for a specific license of broad scope for byproduct material.

Comments received after March 31, 1995, will be considered if it is practical to do so, but the NRC can assure consideration only for comments received by this date. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672.

Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "F—Regulatory, Government Administration and State Systems," then selecting "A—Regulatory Information Mall." At that point, a menu will be displayed that has an option "A—U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md, this 14th day of February 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–4267 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–31252; License No. 35–26996–01; EA 95–018]

Blackhawk Engineering, Inc., and Maria Hollingsworth (dba Blackhawk Engineering, Inc.) Tulsa, OK; Order to Cease and Desist Use and Possession of Regulated Byproduct Material

I

Blackhawk Engineering, Inc. (Blackhawk) was issued Byproduct Material License 35–26996–01 by the Nuclear Regulatory Commission (NRC or Commission) on August 22, 1989. The license authorized the possession and use of cesium–137 and americium–241 in gauges, in accordance with the conditions specified therein. The license expired on August 31, 1994, and the licensee did not submit a renewal application 30 days prior to the expiration date, as required by 10 CFR 30.37. Furthermore, the NRC has determined that Blackhawk Engineering, Inc., has not been recognized as a corporation in the state of Oklahoma since February 20, 1987, when the State of Oklahoma suspended Blackhawk's corporate status. Thus, although Blackhawk has been doing business as Blackhawk Engineering, Inc., it was not a legal corporation recognized by the State of Oklahoma or the NRC. The president of Blackhawk is Maria Hollingsworth.

II

On August 30, 1994, an NRC Region IV employee placed a phone call to Maria Hollingsworth, the president of Blackhawk, to discuss the August 31, 1994 license expiration. Records of that phone call indicate that Ms. Hollingsworth said she had received a renewal package from NRC and that she planned to send a renewal application within 30 days. No renewal application was received. Ms. Hollingsworth has stated in a recent interview with an NRC investigator on January 12, 1995, that she had apparently confused payment of an NRC annual fee with license renewal at the time of the August 1994 call, and stated "I had no idea I had to submit another application."

On November 3, 1994, an NRC Region IV employee again called Ms. Hollingsworth and discussed the fact that Blackhawk's NRC license had expired and, therefore, in accordance with 10 CFR 30.36(c)(1)(i), Blackhawk was no longer authorized to use NRC-regulated gauges listed on the license, *i.e.*, gauges containing sealed sources of radioactive material. During this call, the NRC instructed Ms. Hollingsworth to secure these gauges and maintain them in storage, and confirmed her

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commitment to submit a new license application. These commitments were confirmed by NRC in a November 8, 1994 Confirmatory Action Letter (CAL) to Ms. Hollingsworth. The CAL described the commitments that she had made, including her commitment to "Ensure that licensed material is not used until this matter is resolved and a specific license authorizing possession and use of byproduct material is issued from this office." Her receipt of the CAL was confirmed on November 23, 1994, during another telephone call from NRC Region IV. On December 19, 1994, NRC Region IV conducted an inspection of Blackhawk.

In January 1995, the NRC Office of Investigations began an investigation based on concerns about the accuracy of Ms. Hollingsworth's statements to NRC personnel during the December 19, 1994 inspection. Ms. Hollingsworth was interviewed by an NRC investigator and, in a signed, sworn statement on January 12, 1995, she admitted that she understood in November 1994 that she should no longer use the gauges; admitted that she had used gauges containing byproduct material up until December 22, 1994, to complete a construction job; and admitted that she had not been truthful when she told the NRC inspector, during the December 19, 1994 inspection, that she had not used any gauges since 1992. She stated "I needed to get the job done and I thought by not telling * * * the truth I could go ahead and get the job done."

III

Based on the above, Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., has willfully violated NRC requirements by deliberately using NRC-regulated material in violation of 10 CFR 30.36(c)(1)(i), and by deliberately making false statements to NRC personnel in violation of 10 CFR 30.9. These deliberate violations also constitute a violation of 10 CFR 30.10, which prohibits deliberate misconduct. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. By her actions, Ms. Hollingsworth has demonstrated that she is either unwilling or unable to comply with Commission requirements and cannot be trusted to provide complete and accurate information to the Commission. Furthermore, Ms. Hollingsworth is currently in possession of NRC-regulated byproduct material without a valid NRC license.

Consequently, I lack the requisite reasonable assurance that the health and safety of the public will be protected. Therefore, the public health, safety, and interest require that Blackhawk Engineering, Inc. and Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., be required to cease and desist unauthorized possession of regulated byproduct material and to provide certification to the NRC that all regulated byproduct material has been transferred to authorized recipients.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR parts 20 and 30, it is hereby ordered that Blackhawk Engineering, Inc. and Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., shall:

A. Immediately cease and desist from any further use of byproduct material now in their possession, with the exception that sealed source(s) containing cesium–137 or americium–241 shall be tested for leakage by a person authorized to perform the test prior to the transfer of the source(s) to another person or entity if a leak test has not been performed within the last six months prior to transfer.

B. Maintain safe control over the byproduct material, as required by 10 CFR part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

C. Within 30 days of the date of this Order, transfer all byproduct material to a person authorized to receive and possess it.

D. At least two working days prior to the transfer of the byproduct material, notify Ms. Linda Howell, Region IV, by telephone (817–860–8213) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region IV, in writing, under oath or affirmation: (1) Confirmation, on NRC Form 314, that the byproduct material has been transferred; (2) the last date that the byproduct material was used; (3) a copy of the leak test performed prior to transfer; (4) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v); and (5) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After reviewing the response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

Dated at Rockville, Maryland this 14th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–4269 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

I

The Yankee Atomic Electric Company (YAEC, the licensee) is the holder of Facility Operating License No. DPR–3 issued by the U.S. Nuclear Regulatory Commission (NRC, the Commission) formerly the Atomic Energy Commission, pursuant to 10 CFR Part 50 on July 9, 1960. The license was amended on August 5, 1992, to remove the authority of the licensee to operate the Yankee Nuclear Power Station (YNPS, the plant). The facility is located on the licensee site in the Town of Rowe, Franklin County, Commonwealth of Massachusetts.

II

On October 1, 1991, the plant was shut down for an evaluation of potential reactor vessel integrity problems. In February 1992, all fuel was removed from the reactor vessel to the Spent Fuel Pit. By letter dated February 27, 1992, YAEC informed the NRC that the plant was permanently shut down and that decommissioning would commence. This action initiated the two year clock in 10 CFR 50.82 that requires submittal of a decommissioning plant within that time interval. YAEC submitted the Decommissioning Plan (Plan) on

December 20, 1993 which included an Environmental Report.

On March 29, 1994, in accord with 10 CFR 50.82(e), a Notice of Receipt of Decommissioning Plan and Environmental Report and Opportunity for Public Comments was published in the **Federal Register**, (59 FR 14689). Due to public interest in the decommissioning process, the Federal Register Notice announced a local meeting to provide the public an opportunity to make comments on the Plan. The meeting, an informal public hearing, was held in August 1994 in Franklin County and was transcribed. The public comments have been addressed in Appendix A to the attached Safety Evaluation. In addition, the staff held a second meeting, the day after the meeting on the Plan, to give the public an opportunity to present concerns on issues outside the Plan. This follow-up meeting was also transcribed and the staff has provided separate written responses to all of these concerns by letters dated May 10 and September 23, 1994.

The major concerns of the public are the perceived impacts of Yankee Rowe power generation and decommissioning on the Deerfield River Valley and a claim of denial of public participation in the decommissioning process. This latter concern is at issue in a case heard before the U.S. Court of Appeals for the First Circuit in Boston, Massachusetts on January 10, 1995. A decision will be rendered in the near future. In regard to the first concern, the plant has been required to comply with 10 CFR Part 20 throughout the 31 years of power operation and during the decommissioning process to date, and based on many NRC and Commonwealth of Massachusetts inspections, the staff concludes that there are no impacts resulting from Yankee Rowe that have diminished public health and safety in the Deerfield River Valley.

III

The NRC has reviewed the YAEC Plan with respect to the provisions of the Commission rules and regulations and has found the decommissioning as stated in the YNPS Plan will be consistent with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public.

The staff concluded that this order should contain a condition that specifies the method by which the licensee may make changes to the Plan, the Final Safety Analysis Report, or the facility.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954 (as amended), 10 CFR 50.82, the YNPS Decommissioning Plan is approved and decommissioning of the plant is authorized subject to the following condition:

With the respect to changes to the facility or procedures described in the updated FSAR or changes to the Decommissioning plan, and the conduct of tests and experiments not described in the FSAR, the provisions of 10 CFR 50.59 shall apply.

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

V

For further details with respect to this action see: (1) The application for authorization of decommission the facility, of December 20, 1993, as supplemented August 5, August 22, October 24 and October 26, 1994. These documents are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and at the Local Public Document Room located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland this 14th day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 95–4268 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7137, File No. S7–6–95]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference on uniformity of securities laws and requesting written comments.

SUMMARY: In conjunction with a conference to be held on March 27, 1995, the Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for the conference. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, to maximize the effectiveness of securities regulation in promoting investor protection, and to reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held on March 27, 1995. Written comments must be received on or before March 22, 1995 in order to be considered by the conference participants.

ADDRESSES: Written comments should be submitted in triplicate by March 22, 1995 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should refer to File No. S7–6–95 and will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William E. Toomey or Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with the federal securities laws as well as all applicable state laws and regulations. It has long been recognized that there is a need to increase uniformity between federal and state regulatory systems, and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the

[1] 15 U.S.C. 77a *et seq.*

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enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The policy of that section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and a reduction in the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1995 meeting will be the twelfth such conference.

II. 1995 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are planning the 1995 Conference on Federal-State Securities Regulation (the "Conference") to be held March 27, 1995 in Washington, DC. At the Conference, representatives from the Commission and NASAA will form into working groups in the areas of corporation finance, market regulation, investment management, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives of the Commission and NASAA in an effort to promote frank discussion. However, each working group in its discretion may invite certain self-regulatory organizations to attend and participate in certain sessions.

Representatives of the Commission and NASAA currently are formulating an agenda for the Conference. As part of that process the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects sought to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, and enforcement.

(1) Corporation Finance Issues

a. Forward-looking Information

On October 13, 1994, the Commission issued a concept release[4] regarding disclosure of forward-looking information and the effectiveness of the safe harbor provisions for that type of disclosure.[5] The concept release requests comment from the public on various alternatives to the safe harbor provisions that have been proposed by several people. In addition, the Commission will hold public hearings in Washington, DC and in San Francisco, California on February 13 and 16, 1995, respectively, concerning these issues. The conference participants will discuss and consider the issues regarding the use of forward-looking information in disclosure documents and the Commission's safe harbor provisions.

b. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. The Commission working with the states toward this goal, developed Rule 505 of Regulation D, the federal exemption for certain limited offerings, while NASAA crafted the complementary Uniform Limited Offering Exemption ("ULOE").

ULOE provides the framework for a uniform exemption from state registration for certain issues of securities which would be exempt from federal registration by virtue of Regulation D. To date, more than half the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward its universal adoption. The conferees will discuss the continued usefulness of ULOE, as well as possible steps to encourage its adoption by the remaining states. Further, consideration will be given to whether there are alternative exemptive methods which might be suitable for coordination among the states and the federal system, either within or outside of the ULOE framework.

c. Small Business Initiative

On July 30, 1992, the Commission adopted a number of rulemaking changes, often described as the Small Business Initiative, which were designed to streamline and simplify the Commission's regulatory system applicable to the public sale of securities by small businesses, and to provide new opportunities for investors, consistent with the Commission's obligations to protect such investors.[6] Among other things, the ceiling for the Regulation A exemption was raised from $1,500,000 to $5,000,000, and issuers contemplating a Regulation A offering were, for the first time, permitted to use a written document to "test the waters" for investor interest prior to assuming the expense of an offering.

The participants will discuss the impact of these changes, and the need for any additional exemptive relief in the small business area. The participants will also review their experience with amended Regulation A and the use of "test the waters" documents.

Public comment is invited on the efficacy of the Small Business Initiative as a whole. Comment is also sought with respect to any other exemptions that might be developed to enhance the ability of small issuers to raise capital, while protecting legitimate interests of investors.

d. Disclosure Policy and Standards

The Commission regularly reviews and revises its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination of this effort with the states has been extremely helpful. Commenters are invited to discuss areas, and particularly whether or not there are particular industries, where federal-state cooperation in addressing disclosure standards could be of special significance as well as any ways in which federal-state cooperation could be improved. Comment is also sought on the application of plain language principles to disclosure documents that are becoming increasingly lengthy and complex.

[2] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[4] Securities Act Release No. 7101 (October 13, 1994) (59 FR 52723).

[5] See Securities Act Rule 175, 17 CFR 230.175; Securities Exchange Act Rule 3b–6, 17 CFR 240.3b–6.

[6] Securities Act Release No. 6949 (July 30, 1992) (57 FR 36442).

e. Multinational Securities Offerings

The Commission has recently adopted a number of changes to its rules and forms designed to facilitate access by foreign issuers to the U.S. capital markets. On April 19, and December 13, 1994, the Commission adopted amendments designed to streamline the registration and reporting process for foreign companies accessing the U.S. public markets by expanding the availability of short-form and shelf registration and streamlining the reconciliation and reporting requirements.[7] Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

f. Debt Market Initiatives

On November 10, 1994, the Commission adopted amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 ("Exchange Act") that are intended to improve disclosure in the secondary market for municipal securities.[8] The amendments prohibit a municipal securities dealer from underwriting an issue of municipal securities unless the issuer undertakes to provide annual financial information and notices of material events to the market by lodging that information with informational repositories. The amendments also prohibit the recommendation of a municipal security unless the dealer has procedures in place to provide reasonable assurance that it will receive promptly any event notices with respect to that security.

The amendments follow upon a March 9, 1994 interpretive release issued by the Commission that addressed the disclosure obligations of issuers and other market participants under the antifraud provisions of the federal securities laws in both the primary and secondary markets for municipal securities.[9]

The Conference participants will discuss these developments and other matters with respect to municipal securities. In addition, they will discuss the Commission's recent proposals concerning disclosure of security ratings.[10]

g. Derivatives

Derivatives are financial or commodity instruments which derive their value from an interest rate, equity price, market or other defined index, foreign currency exchange rate, commodity price of other identified measure. While derivatives typically are described as including futures, forwards, swaps and options, other instruments such as structured notes, interest-only and principal-only strips, inverse floaters and indexed debt and equity instruments are included in the broader definition of derivatives because they have similar risk characteristics. Recently published data indicate that the notional amount of derivatives worldwide exceeds $12 trillion.

Investments in derivative and similar instruments expose investors to potential gains or losses linked to the changes in the underlying variable. The increasing complexity and widespread use of derivatives for trading and risk management purpose has generated widespread interest. In 1994 a number of corporate issuers, investment companies and municipalities experienced significant losses on derivative instruments and structured instruments. The Commission has undertaken a number of initiatives to address disclosure, accounting and sales practices involving derivatives and similar instruments. Conferees will discuss the application of federal and state securities laws to derivatives and similar instruments as well as disclosure issues relating to issuances of and investments in these instruments.

(2) Market Regulation Issues

a. Central Registration Depository ("CRD")

The CRD is a computerized filing and data processing system operated by the NASD that maintains information concerning registered broker-dealers and their associated persons. The NASD is currently in the process of implementing a comprehensive plan to redesign the CRD. The redesigned system, which is expected to be fully operational in 1996, will be expanded to enhance its regulatory function for use by the states, self-regulatory organizations, and the Commission. Among the improvements anticipated are (1) Streamlined presentation and capture of data, (2) better access to information (e.g., the ability to create and retrieve standardized and specialized computer searches), and (3) electronic filing of uniform Forms U–4, U–5, and BD, discussed below.

The participants will discuss the status of the CRD redesign project, as well as issues relating to operation of the existing CRD system.

b. Forms Revision

In connection with the CRD redesign, NASAA has adopted amendments to Form U–4,[11] the uniform form for registration of associated persons of a broker-dealer. The revisions to Form U–4 respond to certain recommendations addressed in the CRD redesign and primarily are designed to facilitate the conversion of data from the existing CRD system to the newly designed CRD. The Commission recently has proposed for public comment similar amendments to Form BD, the uniform broker-dealer registration form under the Exchange Act.[12] The proposed revisions to Form BD are intended to facilitate retrieval of disciplinary information by eliciting more precise information about broker-dealers and their securities business, and by reorganizing disclosure items into related categories.

The participants will discuss issues relating to the revisions to Forms U–4 and BD, including the disclosure of customer complaint history of registered personnel of broker-dealers and issues raised by the comment letters on the proposed amendments to Form BD.

c. Bank Securities Activities

The NASD recently has proposed rules that would govern the conduct of member broker-dealers operating on financial institution premises.[13] The proposed rules respond to concerns expressed by NASD members about the lack of clear guidance with respect to the activities of bank-affiliated broker-dealers and third-party broker-dealers operating on the premises of financial institutions pursuant to a networking arrangement. The NASD Notice to Members states that, as proposed, the rules adopt investor protection principles similar to those set forth in a recent no-action letter issued by the staff of the Commission,[14] and an interagency statement issued by the four banking regulators ("Interagency Statement").[15] For example, consistent

[7] Securities Act Release No. 7053 (April 19, 1994) (59 FR 21644); Securities Act Release Nos. 7117, 1778, 7119 (December 13, 1994) (59 FR 65628, 59 FR 65632, 59 FR 65637).

[8] Securities Exchange Act Release No. 34961 (November 10, 1994) (59 FR 59390).

[9] Securities Exchange Act Release No. 33741 (March 9, 1994) (59 FR 12748).

[10] Securities Act Release No. 7086 (August 31, 1994) (59 FR 46314).

[11] See NASAA Reports (CCH) ¶ 4161 (1994).

[12] Securities Exchange Act Release No. 35224 (Jan. 12, 1995), (60 FR 4040).

[13] See NASD Notice To Members 94–94 (Dec. 1994).

[14] See Letter re: Chubb Securities Corporation (Nov. 24, 1994).

[15] See Interagency Statement On Retail Sales Of Nondeposit Investment Products, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of The

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with the staff no-action letter and the Interagency Statement, the rules would require members to enter into a written agreement with the financial institution that describes the responsibilities of the parties and the conditions of the agreement, including the physical location of the broker-dealer, customer disclosures, compensation, supervisory responsibilities, solicitation of customers, and communications with the public.

The participants will discuss these proposed rules and other concerns raised by sales of securities on the premises of financial institutions, including inspections by banking and securities regulators and licensing of financial institution salespersons.

d. Municipal Securities

The Commission has been working with Congress, other regulators, and industry participants on a number of issues relating to the municipal securities market, including ways of improving dissemination of disclosure in the primary and secondary markets. As indicated in the Corporation Finance portion of this tentative agenda, the Commission recently adopted amendments to Rule 15c2–12 in furtherance of this goal.[16]

The Commission also adopted amendments to Rule 10b–10,[17] which will require brokers-dealers to disclose (1) When a debt security is not rated by a nationally recognized statistical rating organization; (2) if they are not members of the Securities Investor Protection Corporation (except, in limited circumstances, for transactions in mutual fund shares); (3) the availability of information with respect to transactions in collateralized debt securities; and (4) the amount of any mark-ups and mark-downs in certain NASDAQ and regional exchange-listed securities that are subject to last sale reporting. In a related release, the Commission adopted Rule 11Ac1–3 and amendments to Rule 10b–10, which, together, will require broker-dealers to disclose on customer confirmations, account statements, and new accounts documents whether payment for order flow is received by the broker-dealer for transactions in certain securities and the fact that the source and nature of the compensation received will be furnished upon written request.[18]

The participants will discuss how Rule 11Ac1–3 and amendments to Rules 10b–10 and 15c2–12 will affect the securities industry. In addition, the participants will discuss the progress made by the Municipal Securities Rulemaking Board and the Public Securities Association toward enhanced price transparency in the municipal securities market.

e. Sales Practice Activities

In May of last year, the Commission released the findings of the Large Firm Project. The Project involved a review of the hiring, supervisory, and retention practices at nine of the country's largest retail brokerage firms conducted by the Commission, the NYSE and the NASD. As a result of the Project, the Commission staff proposed a number of recommendations to strengthen broker-dealer compliance systems, enhance SRO efforts, and reinforce the Commission's principal mandate of investor protection. The participants will discuss the status of those recommendations, as well as other initiatives resulting from the Large Firm Project, including Commission policy on re-entry into the securities industry of individuals subject to a Commission bar.

The Commission is in the process of conducting another joint regulatory examination sweep in coordination with the NASD, the NYSE and NASAA. Rather than focus on particular large firms as the staff did during the Large Firm Project, during this sweep the staff will include firms of all sizes and will target so-called "rogue" or problem registered representatives throughout the industry. Participants will report on the status of the current sweep.

f. Cold Calling

Broker-dealers, like all firms engaged in telemarketing, are subject to the Telephone Consumer Protection Act of 1991 and a Federal Communications Commission ("FCC") rule promulgated thereunder.[19] Pursuant to the FCC rule, telemarketers must establish time-of-day restrictions, "do-not-call" lists, training requirements, supervisory procedures, and identification requirements. Moreover, in August 1994, new legislation entitled the Telemarketing and Consumer Fraud and Abuse Prevention Act was passed that will require the Federal Trade Commission ("FTC") to enact cold-calling rules and to direct the SEC to adopt substantially similar rules within six months of the FTC rules.

The Commission has been considering various methods to curtail abusive cold-calling practices in the securities industry and will discuss with participants what actions might be taken in advance of the FTC rules.

g. Continuing Education

The Industry/Regulatory Council on Continuing Education, composed of representatives from the SROs, a cross-section of firms, and liaisons from NASAA and the SEC, is developing a continuing education curriculum to improve practices throughout the industry. Under the Council's proposed program, every broker-dealer will be required to provide its registered representatives and first-line supervisors with annual continuing education relating to products and services. In addition, the Council proposed that all registered representatives who have been registered less than ten years or who have been the subject of serious disciplinary action receive compliance, ethics, and sales practice training. Two working committees are developing the elements of the program. The committees have drafted enabling rules and designed the program structure, content, and delivery mechanisms. The Council received approval of the rules on February 8, 1995 and expects to implement the program in July 1995. Participants will discuss issues involved in implementing the continuing education program.

h. Three Day Settlement

In October 1993, the Commission adopted Rule 15c6–1 which will become effective June 7, 1995. The rule establishes three business days as the standard settlement time frame for most broker-dealer transactions. Since the date of adoption, many broker-dealers have been encouraging their retail customers to leave securities in street name and to open up money management accounts in order to meet the three day settlement requirements. While this practice is acceptable, it is a misrepresentation to state that the rule requires customers to leave assets with broker-dealers. The participants will discuss potentially abusive sales practices used by broker-dealers including misrepresentation of the requirements of the rule.

(3) Investment Management Issues

a. Investment Company Disclosure

Over the last decade, investment company assets—particularly assets invested in open-end investment companies, or "mutual funds"—have grown steadily. The conferees will discuss a number of Commission initiatives aimed at improving disclosure to mutual fund investors.

The conferees will discuss ways to improve the quality of information regarding mutual funds available to investors, particularly less experienced investors, as well as federal and state efforts toward more uniform federal and state investment company disclosure requirements. The conferees will also discuss the steps they are taking to examine and to improve the clarity and adequacy of mutual fund prospectuses.

In response to a request from certain members of Congress, the Division of Investment Management prepared a study dated September 26, 1994 on the use of derivatives by mutual funds. As part of its study, the Division recommended that the Commission consider seeking public comment in early 1995 on alternatives for improving risk disclosure in mutual fund prospectuses. The conferees are expected to discuss issues relating to investment company risk disclosure, including the possible use of quantitative risk measurement. In addition, the conferees will discuss ways to facilitate investor access to information about portfolio securities held by funds.

The Commission recently proposed rule and form amendments relating to the reporting of expenses by investment companies.[20] The proposed amendments would require an investment company to reflect as expenses in its financial statement certain liabilities of the company paid by broker-dealers in connection with the allocation of the company's brokerage transactions to the broker-dealers. The amendments are intended to enhance the information provided to investors so that they may better assess investment company expenses and performance. The conferees are expected to discuss this proposal and the comments that the Commission has received.

In October of 1994, the Commission adopted significant revisions to the proxy rules applicable to funds.[21] The amended rules are the first significant revisions to the fund proxy rules since 1960 and reflect the Commission's commitment to improved disclosure for fund shareholders. The conferees are expected to discuss the revised rules.

b. Investment Advisers

On March 16, 1994, the Commission proposed two new rules under the Investment Advisers Act of 1940 ("Advisers Act").[22] One of these rules would expressly prohibit investment advisers from making unsuitable recommendations to clients; the other proposed rule would prohibit registered investment advisers from exercising investment discretion over client accounts unless they reasonably believe that the custodians of those accounts send account statements to the clients at least quarterly. The conferees will discuss the status of the proposed rules.

The conferees will also discuss ways in which the Commission and the states can coordinate their respective investment adviser inspection programs and efforts to identify investment advisers that have failed to register as such with the Commission or the appropriate state authorities.

(4) Enforcement Issues

In addition to the above-stated topics, the state and federal regulators will discuss various enforcement-related issues which are of mutual interest.

(5) Investor Education

Recently, the Commission announced a number of initiatives to aid investors in understanding how to invest wisely and protect themselves from abusive and fraudulent industry practices. The States and NASAA have a longstanding commitment to investor education and the Commission is intent on coordinating and complementing those efforts to the greatest extent possible. The participants at the conference will discuss investor education and potential joint projects in each of the working group sessions. They will specifically consider the results of recent Commission activities in this area: Information generated at a series of town meetings and investor forums; public reaction to a new toll-free information line for investors and a new electronic bulletin board which provides information about the Commission and its responsibilities; the usefulness of other explanatory informational materials, including new pamphlets provided by the Commission to the public; and the progress of Commission efforts to develop "plain English" instructions for mandatory disclosure items, and guidelines for simpler summaries of information in required filings. Future projects to be considered will include the following: (1) Developing an "Investor Information Kit" for novice or unsophisticated investors that includes basic information that every investor should know in an easy-to-use format; (2) developing a model curriculum for high school classes and adult seminars on the basics of how to invest wisely and what to do if a problem arises; and (3) designing a distribution plan for Commission educational products to assure that information is provided to investors when they are in the process of making major investment decisions and most likely to need such information.

(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR, the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulations, while helping to maintain high standards of investor protection.

Dated: February 15, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–4237 Filed 2–21–95; 8:45 am]

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Comptroller of the Currency, and Office of Thrift Supervision, (Feb. 15, 1994).

[16] See notes 8 and 9 supra and accompanying text.

[17] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), (59 FR 59612).

[18] Securities Exchange Act Release No. 34902 (Oct. 27, 1994), (59 FR 55886).

[19] Pub. L. No. 102–243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. 227 (1992)); 47 CFR 64.1200 (1992).

[20] Investment Company Act Release No. 20472 (Aug. 11, 1994) (59 FR 42187) (proposing amendments to Rule 6–07 of Regulation S–X).

[21] Investment Company Act Release No. 20614 (Oct. 13, 1994) (59 FR 52689).

[22] Investment Advisers Act Release No. 1406 (March 16, 1994) (59 FR 13464).

[Release No. 34–35378; File No. SR–DTC–95–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Concerning Procedures Relating to Rule 17Ad–16 and Order Designating The Depository Trust Company as the Approved Qualified Registered Securities Depository

February 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 13, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is

[1] 15 U.S.C. 78s(b)(1) (1988).

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publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC, seeks designation as the "appropriate qualified registered securities depository" to receive notices of transfer agent changes pursuant to the recently adopted Rule 17Ad–16 [2] of the Act. This proposed rule change also seeks approval of procedures that DTC has established to receive and transmit such notices to other registered securities depositories, participants, and others.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently adopted Rule 17Ad–16. That rule is designed to address the current and continuing problem of transfer delays due to unannounced transfer agent changes, including the change of a transfer agent for a particular issue and the change of the name or address of a transfer agent. The rule requires a registered transfer agent to send a notice to the "appropriate qualified registered securities depository" [3] when the assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address.

In order to eliminate uncertainty about where registered transfer agents should direct notices required by Rule 17Ad–16 and to reduce unnecessary costs and administrative burdens for transfer agents and registered securities depositories, DTC hereby respectfully requests designation as the "appropriate qualified registered securities depository" in order to be the sole recipient for all such notices sent by transfer agents pursuant to the rule.[4]

DTC has established procedures for providing copies of each such notice received to the other registered securities depositories and to participants and others. Generally, DTC will forward such notices to the Midwest Securities Depository Trust Company ("MSTC") and the Philadelphia Depository Trust Company ("Philadep") by facsimile transmission no later than the business day following DTC's receipt of such notice from the transfer agent. DTC will notify its participants and other interested parties through DTC's Legal Notice System ("LENS") [5] no later than the business day following DTC's receipt of such notice from the transfer agent.

The proposed rule change is consistent with the requirements of Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions as well as the timely transfer of securities certificates resulting in greater number of securities being immobilized promptly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes DTC's proposed rule change is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder applicable to registered securities depositories. The proposed rule change will allow DTC to comply with Commission Rule 17Ad–16 which requires registered securities depository to provide their participants with notices received from a transfer agent, directly or through the appropriate qualified registered securities depository, when the transfer agent is terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. Rule 17Ad–16 became effective on February 6, 1995. DTC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the day of publication of notice of the filing in the **Federal Register** because accelerated approval will permit DTC to comply with the requirements of Rule 17Ad–16. The Commission finds good cause for so approving the proposed rule change on an accelerated basis.

With this order, the Commission also is designating DTC as the appropriate qualified registered securities depository.[6] DTC is the largest holder of record among qualified registered securities depositories for the most issues.[7] Also, as previously stated, both MSTC and Philadep have agreed that DTC should be designated as the appropriate qualified registered securities depository.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Avenue, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Avenue, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to the File No. SR–DTC–95–02 and should be submitted by March 15, 1995.

It is hereby ordered, Pursuant to Section 19(b)(2) that the proposed rule change (File No. SR–DTC–95–02) be, and hereby is approved. *It is further ordered*, pursuant to delegated authority that DTC is designated the appropriate qualified registered securities depository.[8]

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4277 Filed 2–21–95; 8:45 am]

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[2] Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656.

[3] An "appropriate qualified registered securities depository" is defined by Rule 17Ad–16 to mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. A "qualified registered securities depository" is defined by Rule 17Ad–16 to mean a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives.

[4] DTC has consulted with both the Philadelphia Depository Trust Company ("Philadep") and the Midwest Securities Trust Company ("MSTC") regarding DTC's designation as the appropriate qualified registered securities depository. Both Philadep and MSTC have agreed, either orally or in writing, that DTC should be designated as the appropriate qualified registered securities depository. Letter from J. Keith Kessel, Compliance Officer, Philadep, to Walter Harris, Manager, DTC (December 19, 1994). Both of these depositories have filed with the Commission procedures for disseminating to their participants information on transfer agent changes received from DTC. File Nos. SR–MSTC–95–02 and SR–Philadep–95–01.

[5] LENS enables DTC Participants to choose from a menu on their Participant Terminal System screen certain notices received by DTC which they wish to order. The Securities and Exchange Commission issued an order approving DTC's LENS on June 12, 1991 (Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 (File No. SR–DTC–91–08)).

[6] The Commission delegated to the Director of the Division of Market Regulation authority to designate by order the appropriate qualified registered securities depository. Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63565; 17 CFR 200.30–3(a)(56) (1994).

[7] DTC held securities on behalf of participants that equaled $7.5 trillion and 98.8% of the total market value of securities held in total by the three registered securities depositories that handle corporate securities. DTC 1993 Annual Report at 5.

[8] 17 CFR 200.30–3(a)(56) (1994).

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35380; File No. SR–MSTC–95–2]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Modifications of Procedures Implementing Rule 17Ad–16

February 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on January 24, 1995, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

MSTC, a "qualified registered securities depository," [2] as that term is defined in Rule 17Ad–16 [3] under the Act, proposes to adopt procedures to maintain, update, and provide appropriate access to the information it receives pursuant to Commission Rule 17Ad–16. MSTC requests that the Commission designate The Depository Trust Company ("DTC") as the "appropriate qualified registered securities depository" [4] authorized to receive Rule 17Ad–16 notices on behalf of MSTC.

To ensure that Rule 17Ad–16 notices are timely disseminated, DTC and MSTC have agreed that all such notices will be forwarded by DTC to MSTC via facsimile transmission on a daily basis. MSTC proposes to maintain the Rule 17Ad–16 notices received from DTC for at least two years with the first six months being in an easily accessible place on MSTC's premises.

MSTC proposes to maintain conformity with Rule 17Ad–16 by making all material information contained in any Rule 17Ad–16 notice that MSTC receives from DTC available to its participants. This will be accomplished by updating MSTC's security account masterfile on a daily basis. Upon electronic inquiry by a participant, the security account masterfile will provide the participant with on-line information about a security, including the transfer agent's name and address.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

On December 1, 1994, the Commission adopted Rule 17Ad–16.[5] Among other things, the rule requires a transfer agent to file a notice with the appropriate qualified registered securities depository if the transfer agent ceases to perform transfer agent services or assumes transfer agent services on behalf of an issuer or changes its name or address. The rule also requires the appropriate qualified registered securities depository to forward those notices to all qualified registered securities depositories, that in turn must notify their participants of such transfer agent changes. Because MSTC has agreed that DTC should be the appropriate qualified registered securities depository, transfer agents will send these notices to DTC. DTC then will forward a copy of these notices to all qualified registered securities depositories.

MSTC will provide its members on-line access to the information in the notices by updating MSTC's security account masterfile on a daily basis. The purpose of this proposed rule change is to adopt procedures to implement and assure compliance with Rule 17Ad–16 MSTC states that the proposed rule change is consistent with Sections 17A(b)(3) (A) and (F) of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC neither solicited nor received written comments on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Rule 17Ad–16 defines a "qualified registered securities depository" as a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to this section.

[3] 17 CFR § 240.17Ad–16 (1994).

[4] Rule 17Ad–16 defines an "appropriate qualified register securities depository" as the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date.

[5] 17 CFR § 240.17Ad–16. See also Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656 (release adopting Rule 17Ad–16).

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes MSTC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered transfer agents. The proposed rule change will allow MSTC to comply with Commission Rule 17Ad–16 which, among other things, require each qualified registered securities depository to provide its participants the notices it receives from transfer agents, directly or through the appropriate qualified registered security depository, when the transfer agent is terminating or assuming transfer agent services on behalf of an issuer or changing its name or address. Rule 17Ad–16 became effective on February 6, 1995.

MSTC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Accelerated approval will permit MSTC to comply immediately with the requirements of Rule 17Ad–16. Thereby, the Commission finds good cause for so approving the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the File No. SR–MSTC–95–02 and should be submitted by March 15, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) that the proposed rule change (File No. SR–MSTC–95–02) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4276 Filed 2–21–95; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35391; File No. SR–NASD–94–62, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Limit Order Protection for Member-to-Member Limit Order Handling on Nasdaq

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend SR–NASD–94–62 relating to limit order protection for member-to-member limit order handling in the Nasdaq Stock Market. Currently, the NASD's Interpretation to the Rules of Fair Practice [1] makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. In this amendment to its proposed expansion of the Interpretation, the NASD is proposing to amend the Interpretation to clarify that the "terms and conditions" exception to the Interpretation applies only to limit orders from institutional accounts, whether such limit orders come from a firm's own customers or are member-to-member limit orders. The term "institutional account" is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language, including the language that was added in the original proposal, is italicized; language to be deleted is bracketed.

Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. *Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order* In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board.

. A member firm that accepts and holds an unexecuted limit order from a customer *(whether its own customer or a customer of another member)* in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order [under the specific terms and conditions by which the order was accepted by the firm], shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, *provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to the limit order, and provided further, that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders for customer accounts that meet the definition of an "institutional account" as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice.* Nothing in this section, however, requires members to accept limit orders from *any* customer[s].

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers *and the customers of other member firms* that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which *institutional account* customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that the order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment to the proposed rule change is to clarify that the Interpretation's "terms and conditions" exception to the protection of customer limit orders, whether the order is from a member's own customer or is a customer limit order sent to it for execution from another member (so-called "member-to-member" limit orders), is intended to apply only to limit orders from institutional accounts as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. The background and rationale for this amendment to the proposed rule change are discussed below.

On December 23, 1994, the Commission published for comment the NASD's proposed rule to expand the scope of limit order protection beyond that presently afforded by member firms to their customers in the Nasdaq Stock Market.[2] The NASD'S current Interpretation to the Rules of Fair Practice makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. The proposal before the Commission now would extend this protection to limit orders from a customer of a firm that sends that customer's limit order to another member for execution (so-called "member-to-member" limit orders). In addition, the proposal has a phase-in period until September 1, 1995, in which a firm receiving a member-to-member limit order of greater than 1,000 shares would be prohibited from trading for its own account at prices that are superior but not equal to the limit order price. The NASD's proposal also maintained language from the existing Interpretation regarding the member's ability to negotiate with any customer specific terms and conditions regarding its acceptance of limit orders, provided that the member makes these conditions clear to the customer. It is that language that this amendment is intended to affect.

The NASD believes that it is necessary to clarify that the terms and conditions exception to the handling of limit orders is intended to apply only to customer orders from institutional accounts as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. Using that definition, a firm could negotiate limit order terms and conditions if the order came from:

- Banks, savings and loan associations, insurance companies, or registered investment companies;
- Investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and
- Any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

Accordingly, under the amended language, a member firm that accepts a limit order from a person or entity that does not fall within the definition of institutional account may not initiate the negotiation of any terms and conditions on the acceptance of that limit order. On the other hand, if the account placing the limit order meets the terms of the definition of institutional account, the firm may negotiate special terms and conditions with the customer of that account, or its representative, that permit the firm to trade ahead of or at the same price as the limit order. The amended Interpretation would apply to limit orders placed by the firm's own customers and member-to-member limit orders.

The NASD believes that this approach should minimize a retail customer's potential for confusion regarding the acceptance of a limit order that, under the existing Interpretation, could have

[1] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07

[2] Securities Exchange Act Release No. 35122 (Dec. 20, 1994), 59 FR 66389 (Dec. 23, 1994).

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qualified the protection of the limit order rule's scope. At the same time, the amendment accurately reflects the ordinary framework in which firms and institutions typically negotiate the conditions under which an institution's limit order is to be handled. For example, in its approval of the original NASD Interpretation regarding the handling of customer limit orders,[3] the Commission specifically indicated its view that the terms and conditions language of the original NASD Interpretation was included to permit special treatment for institutional customer limit orders. In addition, in its own proposal regarding customer limit order protection for Nasdaq National Market securities, proposed Rule 15c5–1,[4] the Commission solicited comment on the "terms and conditions" provisions in its rule, which would allow the parties to a trade to set special conditions to allow a market maker to employ an appropriate strategy in filling an institutional customer's order without violating the proposed rule. Of course, the clarification of the Interpretation continues to permit a member to establish with its customers or the order entry firm commissioner or commission equivalents regarding the handling of a limit order, provided that the member makes these charges clear to the customer. In this connection, the NASD notes that Nasdaq market makers are free to negotiate additional compensation from order routing firms to the extent that such compensation is economically and competitively justified. Similarly, the Interpretation continues in place the understanding that nothing in the Interpretation would obligate a market maker to accept limit orders from any or all customers or member firms.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Accordingly, while the NASD will monitor carefully for any adverse competitive effects of the Interpretation, it believes that any adverse effects are far outweighed by the enhanced execution opportunities provided public investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–62, Amendment No. 1 and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4358 Filed 2–16–95; 5:00 pm]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[4] *See* Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50866 (Oct. 6, 1994).

[Release No. 34–35376; File No. SR–Phlx–095–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Five Year Long-Term Index Options

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 73s(b)(1), notice is hereby given that on February 8, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend its Rule 1101A to permit the listing of index option series with up to 60 months (five years) until expiration. Currently, Rule 1101A permits "long-term" options up to 36 months until expiration.[1] The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] See Rule 1101A(b)(iii).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory for, the Proposed Rule Change

The purpose of the proposed rule change is to provide investors with the ability to trade additional long-term options by permitting the listing of index options with up to 60 months until expiration. The Exchange represents that the proposed five year long-term options are in response to increasing investor interest in longer-term instruments. In the Exchange's opinion, such instruments will enable investors to trade based on long-term projections, providing added flexibility and trading opportunities in index options trading. The proposed amendment to Rule 1101A will permit five-year long-term options in all of the index options traded on the Phlx, both market (*i.e.*, broad-based indexes) and industry (*i.e.*, narrow-based indexes).

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market, by providing additional trading opportunities for investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–11 and should be submitted by March 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4275 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12) (1994)

[Investment Company Act Release No. 20898; 811–8112]

Transamerica Tax-Free Trust; Notice of Application

February 14, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Transamerica Tax-Free Funds Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATON: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on January 18, 1995.

HEARING ON NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 13, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 1000 Louisiana Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representatives

1. Applicant is an open-end, diversified investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 29, 1993, Applicant registered under the Act and filed its registration statement under the Securities Act of 1933 (the "1933 Act").

2. In December 1994, the Adviser to the applicant determined market conditions for establishment municipal funds of the applicant changed so as to make registration undesirable and requested withdrawal of the registration statement. On April 21, 1994, the applicant received from the Commission an order withdrawing its registration statement pursuant to Rule 477 of the 1933 Act. Accordingly, applicant has not issued or offered any securities.

3. Applicant has no shareholders, liabilities or assets Applicant is not a party to any litigation or administrative proceeding. .

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4236 Filed 2–21–95; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.
OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.
Title: SBA Grants Management Reporting and Recordkeeping Requirements.
Form No.: SBA Forms 1222 and 1224.
Frequency: On Occasion.
Description of Respondents: SBA Grant Applicants and Recipients.
Annual Responses: 1,480.
Annual Burden: 118,920.

Dated: February 16, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–4230 Filed 2–21–95; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.
OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
Title: Settlement Sheet.
Form No.: SBA Form 1050.
Frequency: On Occasion.
Description of Respondents: SBA Borrowers
Annual Responses: 17,000.
Annual Burden: 12,750.

Dated: February 16, 1995.

Cleo Verbillis,

Chief, Administrative, Information Branch.

[FR Doc. 95–4229 Filed 2–21–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Joint Application of NAVCOM Aviation, Inc., Ultrair, Inc., and Paradise Airways, Inc., for Transfer of Certificate Authority Under Section 41105

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 95–2–31) docket 49813.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Paradise Airways, Inc., fit to engage in interstate scheduled air transportation of persons, property, and mail, (2) transfer to it the section 41102 certificate held by Ultrair, Inc., and (3) cancel the interstate and foreign charter certificate authority held by Ultrair, Inc.

DATES: Persons wishing to file objections should do so no later than February 27, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket 49813 and addressed to the Documentary Services Division (C–55 Room PL–401), U.S. Department of Transportation, 400 Seventh Street SW Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–2337.

Dated: February 14, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–4263 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applicants described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo Vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 24, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11385–N	AirTime Aviation, Houston, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize the transportation by commerce of Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Modes 4, 5).
11386–N	Beaver Island Boat Co., Charlevoix, MI	49 CFR 172.101(10), Note (k)(4)	To authorize the transportation in commerce of Division 2.1 material on passenger ferries in DOT-Specification 4BA 240 cylinders. (Mode 3).
11388–N	Nalco Chemical Co., Naperville, IL	49 CFR 173.243, appendix B to subpart B of 49 CFR, part 107.	To authorize the transportation in commerce of certain dual hazard liquids that are both flammable and corrosive in DOT-Specification 57 stainless steel portable tanks. (Modes 1, 2, 3).
11390–N	D&D Air Transport, Inc., Houston, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b) part 107, appendix B.	To authorize the transportation in commerce of Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Mode 4).
11391–N	DHE (Fabrication & Machining), Vereeniging 1930, SA.	49 CFR 178.245–1(b)	To authorize the transportation of non DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3 (Modes 1, 2, 3).
11393–N	Hoechst Celanese Corp., Charlotte, NC	49 CFR 177.834(i)(3)	To authorize the loading and unloading of dimethyl Terephthalate, Class 9, from cargo tank without the physical presence of an unloader. (Mode 1).
11394–N	Amtrol, West Warwick, RI	49 CFR 178.51	To authorize the manufacture, mark and sale of non-DOT specification cylinders of stainless steel comparable to a DOT Specification 4BA. (Mode 1).
11395–N	Dart Polymers, Inc., Leola, PA	49 CFR 173.35	To authorize the transportation in commerce of polystrene beads, expandable, Class 9, in reusable fiberboard bulk boxes. (Modes 1, 2).
11396–N	Laidlaw Environmental Services, LaPorte, TX.	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of certain flammable, non-flammable gases, Division 2.1 and 2.2 in aerosol containers overpacked in strong outside packages with no weight limitations. (Mode 1).
11397–N	Speer Products Inc., Memphis, TN	49 CFR 173.306(a)(3), 173.306(h)	To authorize the transportation in commerce of difluoroethane aerosolsand mixtures, classed as Division 2.2 in DOT-Specification 2Q containers overpacked in strong outside packing without required labeling, placarding and shipping papers. (Mode 1).
11401–N	Hewlett Packard Co., Santa Clara, CA	49 CFR 172, 173.124, 173.125, 174, 175, 176, 177.	To authorize the transportation in commerce of unpowered cesium devices classed as Division 4.3 consisting of a stainless-steel cylinder, overpacked in strong fiberboard boxes. (Modes 1, 2, 3, 5).
11403–N	Telford Aviation Inc., Bangor, ME	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize the transportation in commerce of Division 1.1B explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Mode 4).

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NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11405–N	Hoechst Celanese Corp., Charlotte, NC	49 CFR 100–199	To authorize the transportation in commerce of small quantities of a self-hearing material as essentially non-regulated. (Modes 1, 2, 3, 4, 5).
11406–N	Conference of Radiation Control Program Directors, Pittsburgh, PA.	49 CFR 173.403	To authorize the transportation in commerce of trash/debris containing unknown radionuclides to be transported in conveyances with low external radiation levels if conditions are approved by State radiation protection officials. (Modes 1, 2).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–4266 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 9.

ADDRESS COMMENTS TO: Docket Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
6922–M	Halocarbon Products Corp., N. Augusta, SC (See Footnote 1)	6922
8915–M	BOC Gases, Murray Hill, NJ (See Footnote 2)	8915
9164–M	Fabricated Metals, Inc., San Leandro, CA (See Footnote 3)	9164
10463–M	Allied Universal Corp., Miami, FL (See Footnote 4)	10463
10970–M	Luxfer USA Limited, Placentia, CA (See Footnote 5)	10970
11355–M	Button Transportation, Inc., Dixon, CA (See Footnote 6)	11355

[1] To modify exemption to provide for solid plugs as a replacement for relief devices for DOT-Specification 106A500–X multi-tank car tank, for shipment of Trifluroacetyl Chloride, Division 2.3, PIH, Zone B.

[2] To modify exemption to authorize transportation of silane, Division 2.1, in DOT-Specification 3AL cylinders.

[3] To modify exemption to increase the capacity to 379 gallons for non-DOT specification steel portable tanks, with removable head, for shipment of various Class 3 material.

[4] To modify exemption to provide for transportation of hypochlorite solutions in non-DOT specification 1-gallon polyethylene bottles overpacked in non-DOT specification polyethylene drums without lids.

[5] To modify exemption to increase water capacity to 200 pounds and the service pressure to 5000 psi for aluminum-lined composite cylinders meeting the design and qualification requirements of DOT FRP–1 standard for use in transporting various commodities classed as Division 2.1 and 2.2.

[6] To reissue exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas (LPG), in DOT Specification MC–331 cargo tank motor vehicles manufactured from quenced and tempered steel which are coated on the inside with a cross linked epoxy-phenolic compound.

Application No.	Applicant	Parties to exemption
3549–P	EG&G Star City, Inc., Miamisburg, OH	3549
6743–P	L.P. Rock Corp., Parsippany, NJ	6743
8009–P	Texas Gas Transmission Corporation, Owensboro, KY	8009
8230–P	Olin Corporation, Stamford, CT	8230

Application No.	Applicant	Parties to exemption
8554–P	L.P. Rock Corp., Parsippany, NJ	8554
8845–P	Hitwell Surveys, Inc., Fort Worth, TX	8845
9275–P	Parlux Fragrances, Inc., Pompano Beach, FL	9275
9617–P	Cherokee Products, Inc., Jefferson City, TN	9617
10717–P	Procor Limited, East Chicago, IN	10717
10897–P	ZestoTherm, Inc., Cincinnati, OH (See Footnote 1)	10897
10933–P	Ochoa Environmental Services, San Juan, PR	10933
11000–P	E.I. DuPont de Nemours & Company, Inc., Wilmington, DE	11000
11043–P	Franklin Environmental Services, Inc., Wrentham, MA	11043
11156–P	Maynes Explosives Company, Lee's Summit, MO	11156
11156–P	Dyno New England, Inc., Middlefield, CT	11156
11189–P	Allied Signal Safety Restraint Systems, Knoxville, TN	11189

[1] To authorize party status and modify exemption to provide for transport vehicles and freight containers transporting hazardous materials under terms of the exemption be excepted from Division 4.3 placarding requirements when the gross weight of packages in the vehicle or freight container is less than 220 pounds.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–4265 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–60–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 20 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public. The publication of this notice will be less than 15 days prior to the first meeting of the series due to a scheduling change.

DATES: The 1995 meetings are scheduled as follows: 1. March 2, 9 a.m. to 12:30 p.m., Albuquerque, New Mexico, Region 5 Advisory Board.

2. March 22, 9 a.m. to 12:30 p.m., Charlotte, North Carolina, Region 2 Advisory Board.

3. March 24, 9 a.m. to 12:30 p.m., Boston, Massachusetts, Region 1 Advisory Board.

4. March 29, 9 a.m. to 12:30 p.m., Austin, Texas, Region 4, Advisory Board.

5. April 4, 9 a.m. to 12:30 a.m., Milwaukee, Wisconsin, Region 3 Advisory Board.

6. April 7, 9 a.m. to 12:30 p.m., San Francisco, California, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations: 1. Albuquerque, New Mexico—Doubletree Albuquerque, 201 Marquette NW.

2. Charlotte, North Carolina—Charlotte–Mecklenburg Government Plaza, 600 East 4th Street.

3. Boston, Massachusetts—Boston Back Bay Hilton, 40 Dalton Street.

4. Austin, Texas—Stouffer Austin Hotel, 9721 Arboretum Boulevard.

5. Milwaukee, Wisconsin—Hyatt Regency Milwaukee, 333 West Kilbourn Avenue.

6. San Francisco, California—Parc Fifty-five Hotel, 55 Cyril Magnin.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC-owned real property assets.

Agenda

The Board will address issues surrounding the RTC Environmental and Significant Property Disposition Program. Topics to be addressed at the six meetings will include the identification and number of RTC assets containing special environmental resources, assets sold to conservation or historic preservation agencies, assets covered by the Coastal Barrier Improvement Act and properties subject to environmental hazard remediation. The Boards also will hear from the vice presidents of the RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements

Interested persons may submit to an Advisory Board written statements, data, information or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: February 16, 1995.

Jill Nevius,

Committee Management Officer, Officer of Advisory Board Affairs.

[FR Doc. 95–4260 Filed 2–16–95; 10:30 am]

BILLING CODE 2221–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 14, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

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addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0768
Regulation ID Number: EE–178–78 Final
Type of Review: Extension
Title: Employers' Qualified Educational Assistance Programs T. D. 7898
Description: Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 200
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 615 hours

OMB Number: 1545–1161
Regulation ID Number: CO–8–90 Final
Type of Review: Extension
Title: Consolidated Return Regulations—Deferred Gain or Loss (T.D. 8478)
Description: This regulation requires a statement to be attached to a consolidated federal income tax return by those groups which entered into certain intercompany transactions before the effective date of the temporary regulations (March 15, 1990), and that the treatment of these transactions will be different than that of transactions entered into after March 15, 1990.
Respondents: Business or other for-profit
Estimated Number of Respondents: 2,500
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (one time only)
Estimated Total Reporting Burden: 5,000 hours

OMB Number: 1545–1219
Form Number: IRS Form 8038–T
Type of Review: Revision
Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate
Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.
Respondents: State, Local or Tribal Government
Estimated Number of Respondents/ Recordkeepers: 2,500
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hr., 37 min.
Learning about the law or the form.	3 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS.	3 hr., 46 min.

Frequency of Response: Other
Estimated Total Reporting/ Recordkeeping Burden: 60,925 hours

OMB Number: 1545–1300
Regulation ID Number: FI–46–89 NPRM
Type of Review: Extension
Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions
Description: Recipients of Federal financial assistance ("FFA") must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.
Respondents: Business or other for-profit, Federal Government
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer
[FR Doc. 95–4239 Filed 2–21–95; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 14, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0096
Form Number: PD F 1993
Type of Review: Extension
Title: Reinvestment Application
Description: This form is used to request that proceeds of matured Series H savings bonds be reinvested in Series HH savings bonds.
Respondents: Individuals or households
Estimated Number of Respondents: 270,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 67,500 hours
Clearance Officer: Vicki S Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–4241 Filed 2–21–95; 8:45 am]
BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

February 13, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to insure that the form described below goes to print before February 28, 1995 for immediate distribution to and use by the affected public, the Department of the Treasury, on behalf of the Bureau of Alcohol, Tobacco and Firearms, is requesting Office of Management and Budget (OMB) review and approval by February 21, 1995. Copies of the form may be obtained by contacting the bureau clearance officer listed below.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0520
Form Number: ATF F 5300.35
Type of Review: Extension
Title: Statement of Intent to Obtain a Handgun(s)
Description: This form is used to establish the eligibility of the buyer and to determine if the handgun sale is legal, prior to the actual delivery of the handgun. It becomes part of the dealer's records and is used by the Office of Enforcement in compliance inspections and criminal investigations to trace firearms or to confirm criminal activity of persons who have violated.
Respondents: Individuals or households, Business or other for-profit, Federal Government
Estimated Number of Respondents: 8,000,000
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,293,883 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 95–4240 Filed 2–21–95; 8:45 am]
BILLING CODE 4810–31–P

INTERAGENCY COMMITTEE ON WOMEN'S BUSINESS ENTERPRISE

Notice of Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 103–403 as amended, the Interagency Committee on Women's Business Enterprise announces forthcoming Committee Meetings. The meeting will cover action items to be taken by the Interagency Committee on Women's Business Enterprise in Fiscal Year 1995 including but not limited to increasing procurement opportunities and access to capital for women business owners.

Date: February 24, 1994 from 8:30 am to 1:30 pm.
Address: White House—Old Executive Office Building, rooms 472 and 474.
Status: Open to the public.
Contact: For further information contact Betsy Myers, Associate Administrator, SBA Office of Women's Business Ownership, 409 Third Street, SW., suite 6250, Washington, DC 20416, (202) 205–6673.

Betsy Myers,
Associate Administrator SBA, Office of Women's Business Ownership, and Vice Chairperson of the Interagency Committee.
[FR Doc. 95–4273 Filed 2–21–95; 8:45 am]
BILLING CODE 8025–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVES SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 27, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 17, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4475 Filed 2-17-95; 3:11 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 20, 27, March 6, and 13, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 20

There are no meetings scheduled for the Week of February 20.

Week of February 27—Tentative

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301-415-5972)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Curators of the University of Missouri—Appeal of LBP-91-31 and LBP-91-34 (Tentative)
(Contact: Roland Frye, 301-415-3505)
2:00 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301-415-7266)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 13—Tentative

Tuesday, March 14

10:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301-415-7322)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 17, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95-4461 Filed 2-17-95; 3:11 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket Nos. 92-115, 94-46 and 93-116; FCC 94-201]

Public Mobile Services

Correction

In rule document 94-27415 beginning on page 59502 in the issue of Thursday, November 17, 1994, make the following corrections:

§22.105 [Corrected]

On page 59512, in §22.105, Table B-1 should read as follows:

TABLE B-1.—STANDARD FORMS FOR THE PUBLIC MOBILE SERVICES

Purpose of filing	Form No.	Title of form
• application for new or modified station • major amendment to pending application • application for partial assignment of authorization.	401	Application for Mobile Radio Service Authorization.
• application for renewal of authorization	405	Application for Renewal of Station License.
• application for airborne mobile authorization	409	Application for Airborne Mobile Radiotelephone Authorization.
• application for assignment of authorization	430	Licensee Qualification Report.
• notification of completion of construction • notification of minor modification of station.	489	Notification of Commencement of Service or of Additional or Modified Facilities.
• application for assignment of authorization • application for consent to transfer of control.	490	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee.

§22.361 [Corrected]

On page 59528, in §22.361, in the first column, table C-2 should read as follows:

TABLE C-2.—TECHNICAL REQUIREMENTS FOR DIRECTIONAL ANTENNAS

Frequency range	Maximum beamwidth	Suppression
35 to 512 MHz	80°	10 dB
512 to 1500 MHz	20°	13 dB
1500 to 2500 MHz	12°	13 dB

§22.561 [Corrected]

On page 59537, in §22.561, in the second column, the table should read as follows:

* * * * *

Base	Mobile	Base	Mobile
VHF Channels			
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07
UHF Channels			
454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

§22.591 [Corrected]

On page 59541, in §22591, in the first column the table should read as follows:

* * * * *

VHF Channels

72.02	72.36	72.80	75.66
72.04	72.38	72.82	75.68
72.06	72.40	72.84	75.70
72.08	72.42	72.86	75.72
72.10	72.46	72.88	75.74
72.12	72.50	72.90	75.76
72.14	72.54	72.92	75.78
72.16	72.58	72.94	75.80
72.18	72.62	72.96	75.82
72.20	72.64	72.98	75.84
72.22	72.66	75.42	75.86
72.24	72.68	75.46	75.88
72.26	72.70	75.50	75.90
72.28	72.72	75.54	75.92
72.30	72.74	75.58	75.94
72.32	72.76	75.62	75.96
72.34	72.78	75.64	75.98
72.10	72.46	72.88	75.74
72.12	72.50	72.90	75.76
72.14	72.54	72.92	75.78
72.16	72.58	72.94	75.80
72.18	72.62	72.96	75.82

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72.20	72.64	72.98	75.84
72.22	72.66	75.42	75.86
72.24	72.68	75.46	75.88
72.26	72.70	75.50	75.90
72.28	72.72	75.54	75.92
72.30	72.74	75.58	75.94
72.32	72.76	75.62	75.96
72.34	72.78	75.64	75.98

UHF Channels—State of Hawaii

488.250	491.250	489.750	492.750
488.750	491.750	490.250	493.250
489.250	492.250	490.750	493.750

MICROWAVE CHANNELS

[Bandwidth individually assigned]

2110.1	2160.1
2110.2	2160.2
2110.3	2160.3
2129.9	2179.9

* * * * *

§22.621 [Corrected]

On page 59542, in the second column, in §22.621, the table should read as follows:

* * * * *

Public Mobile Pool

(25 kHz bandwidth)

928.8625	959.8625	928.9375	959.9375
928.8875	959.8875	928.9625	959.9625
928.9125	959.9125	928.9875	959.9875

(12.5 kHz bandwidth)

928.85625	959.85625	928.93125	959.93125
928.86875	959.85625	928.94375	959.94375
928.88125	959.88125	928.95625	959.95625
928.89375	959.89375	928.96875	959.96875
928.90625	959.90625	928.98125	959.98125
928.91875	959.91875	928.99375	959.99375

Private Radio General Access Pool

(25 kHz bandwidth)

956.2825	956.3125	956.3425	956.4125
956.2875	956.3375	956.3875	956.4375
928.0125	952.0125	928.1875	952.1875
928.0375	952.0375	928.2125	952.2125
928.0625	952.0625	928.2375	952.2375
928.0875	952.0875	928.2625	952.2625
928.1125	952.1125	928.2875	952.2875
928.1375	952.1375	928.3125	952.3125
928.1625	952.1625	928.3375	952.3375

(12.5 kHz bandwidth)

956.25625	956.30625	956.35625	956.40625
956.26875	956.31875	956.36875	956.41875
956.28125	956.33125	956.38125	956.43125
956.29375	956.34375	956.39375	956.44375
928.00625	952.00625	928.18125	952.18125
928.01875	952.01875	928.19375	952.19375
928.03125	952.03125	928.20625	952.20625
928.04375	952.04375	928.21875	952.21875
928.05625	952.05625	928.23125	952.23125
928.06875	952.06875	928.24375	952.24375
928.08125	952.08125	928.25625	952.25625
928.09375	952.09375	928.26875	952.26875
928.10625	952.10625	928.28125	952.28125
928.11875	952.11875	928.29375	952.29375
928.13125	952.13125	928.30625	952.30625
928.14375	952.14375	928.31875	952.31875
928.15625	952.15625	928.33125	952.33125
928.16875	952.16875	928.34375	952.34375

Private Radio Power Pool

(25 kHz bandwidth)

928.3625	952.3625	928.6125	952.6125
928.3875	952.3875	928.6375	952.6375
928.4125	952.4125	928.6625	952.6625
928.4375	952.4375	928.6875	952.6875
928.4625	952.4625	928.7125	952.7125
928.4875	952.4875	928.7375	952.7375
928.5125	952.5125	928.7625	952.7625
928.5375	952.5375	928.7875	952.7875
928.5625	952.5625	928.8125	952.8125
928.5875	952.5875	928.8375	952.8375

(12.5 kHz bandwidth)

928.35625	952.35625	928.60625	952.60625
928.36875	952.36875	928.61875	952.61875
928.38125	952.38125	928.63125	952.63125
928.39375	952.39375	928.64375	952.64375
928.40625	952.40625	928.65625	952.65625
928.41875	952.41875	928.66875	952.66875
928.43125	952.43125	928.68125	952.68125
928.44375	952.44375	928.69375	952.69375
928.45625	952.45625	928.70625	952.70625
928.46875	952.46875	928.71875	952.71875
928.48125	952.48125	928.73125	952.73125
928.49375	952.49375	928.74375	952.74375
928.50625	952.50625	928.75625	952.75625
928.51875	952.51875	928.76875	952.76875
928.53125	952.53125	928.78125	952.78125
928.54375	952.54375	928.79375	952.79375
928.55625	952.55625	928.80625	952.80625
928.56875	952.56875	928.81875	952.81875
928.58125	952.58125	928.83125	952.83125
928.59375	952.59375	928.84375	952.84375

Public, Private, Government Shared Pool

(12.5 kHz bandwidth)

932.00625	941.00625	932.25625	941.25625
932.01875	941.01875	932.26875	941.26875
932.03125	941.03125	932.28125	941.28125
932.04375	941.04375	932.29375	941.29375
932.05625	941.05625	932.30625	941.30625
932.06875	941.06875	932.31875	941.31875
932.08125	941.08125	932.33125	941.33125
932.09375	941.09375	932.34375	941.34375
932.10625	941.10625	932.35625	941.35625
932.11875	941.11875	932.36875	941.36875
932.13125	941.13125	932.38125	941.38125
932.14375	941.14375	932.39375	941.39375
932.15625	941.15625	932.40625	941.40625
932.16875	941.16875	932.41875	941.41875
932.18125	941.18125	932.43125	941.43125
932.19375	941.19375	932.44375	941.44375
932.20625	941.20625	932.45625	941.45625
932.21875	941.21875	932.46875	941.46875
932.23125	941.23125	932.48125	941.48125
932.24375	941.24375	932.49375	941.49375

UHF Channels in Specified Urban Areas

Boston

470.0125	473.0125	482.0125	485.0125
470.0375	473.0375	482.0375	485.0375
470.0625	473.0625	482.0625	485.0625
470.0875	473.0875	482.0875	485.0875
470.1125	473.1125	482.1125	485.1125
470.1375	473.1375	482.1375	485.1375
470.1625	473.1625	482.1625	485.1625
470.1875	473.1875	482.1875	485.1875
470.2125	473.2125	482.2125	485.2125
470.2375	473.2375	482.2375	485.2375
470.2625	473.2625	482.2625	485.2625
470.2875	473.2875	482.2875	485.2875

Chicago, Cleveland

470.0125	473.0125	476.0125	479.0125
470.0375	473.0375	476.0375	479.0375
470.0625	473.0625	476.0625	479.0625
470.0875	473.0875	476.0875	479.0875
470.1125	473.1125	476.1125	479.1125
470.1375	473.1375	476.1375	479.1375
470.1625	473.1625	476.1625	479.1625
470.1875	473.1875	476.1875	479.1875
470.2125	473.2125	476.2125	479.2125
470.2375	473.2375	476.2375	479.2375
470.2625	473.2625	476.2625	479.2625
470.2875	473.2875	476.2875	479.2875

New York-Northeastern New Jersey

470.0125	470.1625	476.0125	476.1625
470.0375	470.1875	476.0375	476.1875
470.0625	470.2125	476.0625	476.2125
470.0875	470.2375	476.0875	476.2375
470.1125	470.2625	476.1125	476.2625
470.1375	470.2875	476.1375	476.2875

Dallas-Forth Worth

482.0125	482.1625	485.0125	485.1625
482.0375	482.1875	485.0375	485.1875
482.0625	482.2125	485.0625	485.2125
482.0875	482.2375	485.0875	485.2375
482.1125	482.2625	485.1125	485.2625
482.1375	482.2875	485.1375	485.2875

Detroit

476.0125	479.0125	482.0125	485.0125
476.0375	479.0375	482.0375	485.0375
476.0625	479.0625	482.0625	485.0625
476.0875	479.0875	482.0875	485.0875
476.1125	479.1125	482.1125	485.1125
476.1375	479.1375	482.1375	485.1375
476.1625	479.1625	482.1625	485.1625
476.1875	479.1875	482.1875	485.1875
476.2125	479.2125	482.2125	485.2125
476.2375	479.2375	482.2375	485.2375
476.2625	479.2625	482.2625	485.2625
476.2875	479.2875	482.2875	485.2875

Houston

488.1625	491.1625	488.2375	491.2375
488.1875	491.1875	488.2625	491.2625
488.2125	491.2125	488.2875	491.2875

Los Angeles

470.0125	473.0125	506.0625	509.0625
470.0375	473.0375	506.0875	509.0875
506.0125	509.0125	506.1125	509.1125
506.0375	509.0375		

Miami

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

Philadelphia

500.0125	503.0125	506.0125	509.0125
500.0375	503.0375	506.0375	509.0375
500.0625	503.0625	506.0625	509.0625
500.0875	503.0875	506.0875	509.0875
500.1125	503.1125	506.1125	509.1125
500.1375	503.1375	506.1375	509.1375
500.1625	503.1625	506.1625	509.1625
500.1875	503.1875	506.1875	509.1875
500.2125	503.2125	506.2125	509.2125
500.2375	503.2375	506.2375	509.2375
500.2625	503.2625	506.2625	509.2625
500.2875	503.2875	506.2875	509.2875

Pittsburgh

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

San Francisco

482.0125	485.0125	488.0125	491.0125
482.0375	485.0375	488.0375	491.0375
482.0625	485.0625	488.0625	491.0625
482.0875	485.0875	488.0875	491.0875
482.1125	485.1125	488.1125	491.1125
482.1375	485.1375	488.1375	491.1375
482.1625	485.1625	488.1625	491.1625
482.1875	485.1875	488.1875	491.1875
482.2125	485.2125	488.2125	491.2125
482.2375	485.2375	488.2375	491.2375
482.2625	485.2625	488.2625	491.2625
482.2875	485.2875	488.2875	491.2875

Washington, DC

488.0125	491.0125	494.0125	497.0125
488.0375	491.0375	494.0375	497.0375
488.0625	491.0625	494.0625	497.0625
488.0875	491.0875	494.0875	497.0875
488.1125	491.1125	494.1125	497.1125
488.1375	491.1375	494.1375	497.1375
488.1625	491.1625	494.1625	497.1625
488.1875	491.1875	494.1875	497.1875
488.2125	491.2125	494.2125	497.2125
488.2375	491.2375	494.2375	497.2375
488.2625	491.2625	494.2625	497.2625
488.2875	491.2875	494.2875	497.2875

* * * * *

§22.627 [Corrected]

On page 59544, in the second column, in §22.627(b)(1)(i), the table should read as set forth below:

* * * * *

(i) The protected TV station locations are as follows:

Control transmitter frequency range	Protected TV station location	
470–476 MHz	Jacksonville, IL	39°45'52" 90°30'29".
	Mt. Pleasant, MI	43°34'24" 84°46'21".
	Oxford, OH	39°30'26" 84°44'09".
476–482 MHz	Washington, DC	38°57'17" 77°00'17".
	Champaign, IL	40°04'11" 87°54'45".
	Madison, WI	43°03'01" 89°29'15".
	Parkersburg, WV	39°20'50" 81°33'56".
	Fort Wayne, IN	41°05'35" 85°10'42".
	Lancaster, PA	40°15'45" 76°27'49".
	South Bend, IN	41°36'26" 86°27'48".
	Philadelphia, PA	40°02'30" 75°14'24".
482–488 MHz		None.
488–494 MHz	Johnstown, PA	40°19'47" 78°53'45".
494–500 MHz	Washington, DC	38°57'49" 77°06'18".
500–506 MHz	Waterbury, CT	41°31'02" 73°01'00".
506–512 MHz		

* * * * *

§22.651 [Corrected]

On page 59546, in the first column, in §22.651, the table should read as follows:

* * * * *

Houston

488.0125	491.0125	488.0875	491.0875
488.0375	491.0375	488.1125	491.1125
488.0625	491.0625	488.1375	491.1375

New York-Northern New Jersey

473.0125	479.0125	473.1625	479.1625
473.0375	479.0375	473.1875	479.1875
473.0625	479.0625	473.2125	479.2125
473.0875	479.0875	473.2375	479.2375
473.1125	479.1125	473.2625	479.2625
473.1375	479.1375	473.2875	479.2875

* * * * *

§22.725 [Corrected]

On page 59551, in the third column, in §22.725, on page 59551 the table should read as follows:

* * * * *

Central office	Rural subscriber	Central office	Rural subscriber
VHF Channels			
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07
UHF Channels			
454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

* * * * *

§22.757 [Corrected]

On page 59553, in the first column, in §22.757, the table should read as follows:

* * * * *

UHF CHANNELS—SHARED WITH PRIVATE RADIO SERVICES

Rural subscriber	Central office	Rural subscriber	Central office
816.2375	861.2375	816.1125	861.1125
817.2375	862.2375	817.1125	862.1125
818.2375	863.2375	818.1125	863.1125
819.2375	864.2375	819.1125	864.1125
820.2375	865.2375	820.1125	865.1125
816.2125	861.2125	816.0875	861.0875
817.2125	862.2125	817.0875	862.0875
818.2125	863.2125	818.0875	863.0875
819.2125	864.2125	819.0875	864.0875
820.2125	865.2125	820.0875	865.0875
816.1875	861.1875	816.0625	861.0625
817.1875	862.1875	817.0625	862.0625
818.1875	863.1875	818.0625	863.0625
819.1875	864.1875	819.0625	864.0625
820.1875	865.1875	820.0625	865.0625
816.1625	861.1625	816.0375	861.0375
817.1625	862.1625	817.0375	862.0375
818.1625	863.1625	818.0375	863.0375
819.1625	864.1625	819.0375	864.0375
820.1625	865.1625	820.0375	865.0375
816.1375	861.1375	816.0125	861.0125
817.1375	862.1375	817.0125	862.0125
818.1375	863.1375	818.0125	863.0125
819.1375	864.1375	819.0125	864.0125
820.1375	865.1375	820.0125	865.0125

* * * * *

§22.905 [Corrected]

On page 59561, in the first column, in §22.905, the table should read as follows:

* * * * *

Base	Mobile	Base	Mobile
CHANNEL BLOCK A			
416 communication channel pairs			
869.040	824.040	890.010	845.010
869.070	824.070	890.040	845.040
|	|	|	|
879.990	834.990	891.480	846.480
21 control channel pairs			
	834.390	879.390	
	834.420	879.420	
	|	|	
	834.990	879.990	

CHANNEL BLOCK B

416 communication channel pairs

880.030	835.020	891.510	846.510
880.050	835.050	981.540	846.540
|	|	|	|
889.980	844.980	893.970	848.970

21 control channel pairs

835.020	880.020		
835.050	880.050		
|	|		
835.920	880.620		

* * * * *

§22.1007 [Corrected]

On page 59573, in the third column, in §22.1007, the tables should read as follows:

* * * * *

Central	Subscriber	Central	Subscriber
488.025	491.025	488.225	491.225
488.050	491.050	488.250	491.250
488.075	491.075	488.275	491.275
488.100	491.100	488.300	491.300
488.125	491.125	488.325	491.325
488.150	491.150	488.350	491.350
488.175	491.175	488.375	491.375
488.200	491.200	488.400	491.400

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

Central	Subscriber	Central	Subscriber
488.425	491.425	488.575	491.575
488.450	491.450	488.600	491.600
488.475	491.475	488.625	491.625
488.500	491.500	488.650	491.650
488.525	491.525	488.675	491.675
488.550	491.550	488.700	491.700

(3) These channels may be assigned for use by relay stations in systems where it would be impractical to provide offshore radiotelephone service without the use of relay stations.

Central	Subscriber	Central	Subscriber
488.725	491.725	488.775	491.775
488.750	491.750	488.800	491.800

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(4) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency communications involving protection of life and property.

Central	Subscriber	Central	Subscriber
488.825	491.825	488.875	491.875
488.850	491.850	488.900	491.900

(5) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

Central	Subscriber
488.950	491.950

(6) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency shut-off remote control telemetry, environmental data acquisition and disseminations, or facsimile transmissions.

Central	Subscriber	Central	Subscriber
489.000	492.000	489.200	492.200
489.025	492.025	489.225	492.225
489.050	492.050	489.250	492.250
489.075	492.075	489.275	492.275
489.100	492.100	489.300	492.300
489.125	492.125	489.325	492.325
489.150	492.150	489.350	492.350
489.175	492.175	489.375	492.375

(7) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated for private line service:

Central	Subscriber	Central	Subscriber
489.400	492.400	489.725	492.725
489.425	492.425	489.750	492.750
489.450	492.450	489.775	492.775
489.475	492.475	489.800	492.800
489.500	492.500	489.825	492.825
489.525	492.525	489.850	492.850
489.550	492.550	489.875	492.875
489.575	492.575	489.900	492.900
489.600	492.600	489.925	492.925
489.625	492.625	489.950	492.950
489.650	492.650	489.975	492.975
489.675	492.675	490.000	493.000
489.700	492.700		

* * * * *

(b) *Zone B—Southern Louisiana—Texas.* (1) The geographical area in Zone B is bounded as follows:

From longitude W.87°45′ on the East to longitude W.95°00′ on the West and from the 4.8 kilometer (3 mile) limit along the Gulf of Mexico shoreline on the North to the limit of the Outer Continental Shelf on the South.

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

Central	Subscriber	Central	Subscriber
485.025	482.025	486.025	483.025
485.050	482.050	486.050	483.050
485.075	482.075	486.075	483.075
485.100	482.100	486.100	483.100
485.125	482.125	486.125	483.125
485.150	482.150	485.150	483.150
485.175	482.175	486.175	483.175
485.200	482.200	486.200	483.200
485.225	482.225	486.225	483.225
485.250	482.250	486.250	483.250
485.275	482.275	486.275	483.275
485.300	482.300	486.300	483.300
485.325	482.325	486.325	483.325
485.350	482.350	486.350	483.350
485.375	482.375	486.375	483.375
485.400	482.400	486.400	483.400
485.425	482.425	486.425	483.425
485.450	482.450	486.450	483.450
485.475	482.475	486.475	483.475
485.500	482.500	486.500	483.500
485.525	482.525	486.525	483.525
485.550	482.550	484.560	483.550
485.575	482.575	486.575	483.575
485.600	482.600	486.600	483.600
485.625	482.625	486.625	483.625
485.650	482.650	486.650	483.650
485.675	482.675	486.675	483.675
485.700	482.700	486.700	483.700
485.725	482.725	486.725	483.725
485.750	482.750	486.750	483.750
485.775	482.775	486.775	483.775
485.800	482.800	486.800	483.800
485.825	482.825	486.825	483.825
485.850	482.850	486.850	483.850
485.875	482.875	486.875	483.875
485.900	482.900	486.900	483.900
485.925	482.925	486.925	483.925
485.950	482.950	486.950	483.950
485.975	482.975	486.975	483.975
486.000	483.000	487.050	480.050

* * * * *

(c) *Zone C—Southern Texas.* The geographical area in Zone C is bounded as follows:

Longitude W.94°00′ on the East, the 4.8 kilometer (3 mile) limit on the North and West, a 282 kilometer (175 mile) radius from the reference point at Linares, N.L., Mexico on the Southwest, latitude N.26°00′ on the South, and the limits of the outer continental shelf on the Southeast.

(1) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

Central	Subscriber
476.950	479.950

* * * * *

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federal register

Wednesday
February 22, 1995

Part II

Department of the Interior

Office of the Secretary
Bureau of Land Management

43 CFR Parts 4, 1780, and 4100
Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration; Exclusive of Alaska; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO-400-1110-00 24 1A]

RIN 1004-AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Office of the Secretary and the Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that govern how the Secretary of the Interior, through the Bureau of Land Management (BLM), administers livestock grazing. This rule applies to all lands on which BLM administers livestock grazing. This rule also amends the Department of the Interior's appeals regulations pertaining to livestock grazing to provide consistency with administrative remedies provided for in the grazing regulations, increases public participation in the management of the public grazing lands, and amends the regulations on cooperative relations to reflect changes in the organization of certain advisory committees. The changes will improve the management of the Nation's public rangeland resources.

DATES: This rule will be effective August 21, 1995.

Section 4130.8–1(d) will not be implemented until the grazing year beginning March 1, 1996.

ADDRESSES: Inquiries should be sent to the Director, Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Hunt, 202–208–4256.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Major Elements of the Department's Program To Promote Healthy Rangelands
III. Summary of Rules Adopted
IV. General Comments
V. Section-by-Section Analysis and Responses to Public Comments
VI. Procedural Matters
VII. Regulatory Text

I. Introduction

This rule governs the Bureau of Land Management's (BLM) administration of livestock grazing on public rangelands. The provisions of this rule will ensure proper administration of livestock grazing on the public rangelands. Many of the provisions will result in greater consistency between the administration of grazing c public rangelands by BLM and administration of grazing on National Forest System lands by the United States Forest Service (Forest Service). The rule is promulgated under the principal authorities of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1739, 1740), and the Taylor Grazing Act of 1934 (TGA) (43 U.S.C. 315a–r).

An advance notice of proposed rulemaking was published in the **Federal Register** on August 13, 1993 (58 FR 43208). A notice of intent to prepare an associated environmental impact statement (EIS) was also published in the **Federal Register** on July 13, 1993 (58 FR 37745). The Department also developed a booklet entitled *Rangeland Reform '94*, describing the Department of the Interior's (Department) proposal. Approximately 35,000 copies were distributed in late August and September of 1993 to all BLM grazing permittees and lessees, interested Congressional staff, and other interested parties. The Department received a total of about 12,600 letters from about 8,000 persons on the advance notice of proposed rulemaking, notice of intent to prepare an EIS, and the Rangeland Reform '94 summary booklet. The Department considered these comments in identifying and refining key components of the rangeland improvement effort and in preparing a proposed rule and a draft EIS.

During a three-month period beginning November 17, 1993, Secretary of the Interior Bruce Babbitt (Secretary) met on 20 occasions around the West with groups that included western governors, State and local officials, ranchers, environmentalists and other public land users. He visited local groups in Colorado, Wyoming, and Oregon who were already engaged in addressing how land management decisions should be made, and participated in extensive discussion about the components of rangeland improvement. These meetings resulted in many productive suggestions that were reflected in the proposed rule. Additionally, at the invitation of Colorado's Governor Roy Romer, the Secretary met on nine separate occasions with a group of Colorado State and local officials, ranchers, conservationists and other land users in Denver and Gunnison, Colorado, for discussions regarding a process for building a consensus-driven local approach to rangeland management. Similar meetings and follow-up discussions took place in Idaho, Oregon, and Nevada, in addition to meetings in Arizona, New Mexico, Utah and Wyoming. These meetings with the Secretary involved hundreds of hours of discussion.

On March 25, 1994, the Department published proposed rules in the **Federal Register** (59 FR 14314), with a 120 day comment period to July 28, 1994. Subsequently, at the request of commenters, the comment period was extended through September 9, 1994.

On May 13, 1994, the Department published in the **Federal Register** (59 FR 25118) a notice of availability of the draft EIS. Approximately 11,000 copies of the draft EIS were mailed to State and Federal legislators, western governors, major industry and environmental groups, the media, individuals who had commented on the advance notice of proposed rulemaking, and anyone else who requested a copy. All BLM permittees and lessees were mailed an executive summary, and provided a copy of the full document on request. Copies were also available through all BLM State Offices as well as Forest Service Regional Offices. The draft EIS analyzed in detail the proposed action and alternatives for improving the management of the Nation's public rangelands, including the proposed rule changes. On June 8, 1994, BLM and the Forest Service held 48 hearings throughout the West on the draft EIS and the proposed rulemakings; one hearing was also held that day at BLM's Eastern States Office in Virginia. Hearings were preceded by open houses staffed by Federal personnel to answer individual questions about the proposed rule. The location and procedures for the open houses and hearings were published in the May 16, 1994, **Federal Register** and announced in news releases. More than 1,900 people testified at the hearings. A transcript was made of each hearing. The transcripts are part of the public comment record and were considered during preparation of this final rule.

The Department received and considered more than 20,000 letters from over 11,000 persons on the notice of proposed rulemaking and the draft EIS. These letters included over 38,000 individual comments. The specific aspects of the notice of proposed rulemaking generating the most comments were the definitions, grazing fees, standards and guidelines for grazing, and Resource Advisory Councils (RACs). The objectives statement, mandatory qualifications, cooperative range improvement

agreements, water rights, permits, and prohibited acts also generated a great number of comments. Many letters expressed opinions that the overall rangeland improvement proposal was a disincentive for good stewardship, would have major economic impacts on rural western communities, and would result in the "taking" of private property. Others supported aspects of the proposal, such as broadening participation in the decisionmaking process, requiring permittees or lessees to be good stewards, cancellation of permits for nonuse, and nonmonetary settlement of minor violations. All original letters and transcripts have been kept on file in sequential order.

On December 30, 1994, the Department published in the **Federal Register** a notice of availability of the Final EIS (FEIS). The agency mailed over 14,000 individual copies to Federal agencies, United States Senators and Representatives, the western governors, major environmental and industry groups, individuals who commented either on the draft EIS or the notice of proposed rulemaking or testified at the field hearings, and anyone else who requested copies. Copies are available from any BLM Resource Area office or Forest Service Forest Office throughout the western States.

II. Major Elements of the Department's Program to Promote Healthy Rangelands

This section presents the general provisions of the Department's program to improve the public land grazing program.

Public Participation in Rangeland Management

Allowing more Americans to have a say in the management of their public lands is an important element of improving the management of the public rangelands. The American rangelands can be—and are—used for far more than grazing. Hiking, birding, camping, fishing, hunting, mountain biking and mineral development activities are among the activities that are compatible with sound grazing practices. Section 102(a)(8) of FLPMA makes it clear that the Secretary is to manage the public lands in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air, atmospheric, water resource, and archeological values.

The Department believes that the public interest will be best served if a wide range of interests are represented when decisions are being made. Thus, increased public participation is essential to achieving lasting improvements in the management of our public lands.

Under FLPMA, the Secretary is required to involve the public in many phases of public land management, including the development of regulations (section 102) and plans and programs (section 202). Section 309 authorizes the Secretary to provide for public participation in the preparation and execution of plans and programs for the management of public lands by establishing advisory councils that conform to the requirements of the Federal Advisory Committee Act (FACA).

Consistent with these provisions, the proposed rule gave extensive consideration to public participation in rangeland management. It proposed the creation of RACs in most BLM administrative districts which would be involved in the development of standards and guidelines for grazing. The RACs would have had the option of establishing rangeland resource teams and technical review teams for the purpose of providing input to be used by the RACs in developing recommendations. The RACs could request that the Secretary respond directly to their concerns if the council believed its advice was being arbitrarily disregarded. RAC members would be required to avoid conflicts of interest and to disclose direct or indirect interests in Federal grazing permits or leases, and to have experience or knowledge of the geographic area under the purview of the council.

Many comments were received on the concept of public participation. Almost all commenters supported the central principle—that public participation in decisionmaking on rangeland management should be enhanced. Comments on specific details of the proposal varied widely. Many commenters stressed their belief that the proposal was too complex and the resulting structure would create major administrative and resource needs without significant benefits. Other major comment themes addressed representation of various interests on all levels, requirements that members have local expertise, residency requirements, ability of the committees to participate in the development of standards and guidelines, the opportunity for the councils to request the Secretary to review issues, and the applicability of the FACA to the rangeland resource teams and technical review teams, among others. These comments are discussed in more detail in the section-by-section analysis of this preamble.

The proposed rule also included a detailed discussion of a model for enhanced community-based involvement in rangeland management prepared by the Colorado Working Group on rangeland improvement. This Working Group was convened by Governor Roy Romer, and met between November 1993 and January 1994. Although the Working Group considered this an experimental approach that might not be applicable to other western States, the Working Group's model contained a number of excellent ideas, which, in the Department's judgement, other States might find useful in developing their own structures for public participation. During the comment period, the Department also received a number of suggestions concerning public participation from Governor Mike Sullivan of Wyoming who had convened a Steering Committee on the Management of Federal Lands. While the Committee noted that it did not reach unanimity on all issues, the model for public participation proposed by the group also contained many excellent ideas. The Wyoming and Colorado documents were extremely helpful to BLM in formulating this final rule, and the Department appreciates the work of the individuals who participated in these efforts. Two models of public participation included in the final rule were based heavily on the Wyoming and Colorado proposals. The Wyoming and Colorado proposals suggested that increased flexibility was needed in the development of final requirements for public participation in rangeland management. In response to these and other comments the Department has attempted to develop a final rule that provides maximum flexibility for structuring the public participation process.

FLPMA directs the Secretary to establish advisory councils of not less than 10 and not more than 15 members. Members must be appointed from among representatives of the various major citizens' interests concerned with problems relating to land use planning, or with the management of the public lands located within the area for which an advisory council is established. At least one member must be a publicly elected official. The Department envisions that the RACs formed in each State under the final rule will fulfill these statutory requirements. The RACs would also be subject to FACA (5 U.S.C. Appendix).

The rules as finalized today are designed to implement certain basic requirements that are essential to fulfilling the requirements of FACA, FLPMA, and the needs of the

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Department's program to improve management of the public rangelands:

—A RAC of 10–15 members, as required by § 309 of FLPMA;
—Openness and balance as required by FACA, assuring participation of commodity, environmental, and other interests;
—Consensus decisionmaking, with a majority of each group required to send recommendations forward;
—A RAC that is strictly advisory, as required by FACA and other statutes.

Consistent with many comments received, the rule provides a high degree of flexibility so that decisions can be made locally about how to structure the councils. Section 1784.6–1 of this final rule sets forth basic requirements that must be met by all councils. Three general interest groups will be represented, from which 10 to 15 members must be chosen in a balanced fashion. The first group includes various commodity industries, such as grazing and mineral interests, and other interests that benefit from use of public lands, such as outfitters. The second group includes nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, and representatives of dispersed recreational activities, such as birders or hikers. The third group includes persons who hold State, county, or local elected office, the public-at-large, Indian tribes within or adjacent to the area covered by the advisory council, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands.

RAC members will be appointed by the Secretary. This is a requirement of both FLPMA and FACA. Governors of States in which the councils will be organized will be requested to provide a list of nominees for the Secretary's consideration. The Secretary encourages Governors to formulate nominations through a process open to the public. In addition, a public call for nominations will be made through a notice in the **Federal Register** and other appropriate publications. Persons can nominate themselves for membership. Membership of each RAC will reflect a balance of views to ensure that the council represents the full array of issues and interests within the area covered by the council associated with public land use, management, protection and an understanding of the Federal laws and regulations governing public lands. Individuals can qualify to serve on a RAC if they possess relevant experience or expertise and have a commitment to collaborative effort, successful resolution of resource management issues and application of the relevant law. Members must have experience or knowledge of the geographic area under the purview of the council, must be residents of a State in which the area covered by a RAC is located, and must be supported by letters of recommendation from the groups or interests they will represent. An individual may serve on only one RAC. All members must receive training on issues related to rangeland management.

All RACs will be required to have specified quorum and voting rules, including the requirement that a majority of members from each category support a proposal before a recommendation can be forwarded to the authorized officer. Travel and per diem will be paid, and BLM will provide administrative support for the councils. A BLM employee will be named "designated Federal officer" as required by FACA.

All members of the council will be subject to conflict of interest provisions. To facilitate implementation of Federal conflict of interest requirements, council members will have to disclose their direct or indirect interest in BLM leases, licenses, permits or contracts. This does not mean that individuals with such interests cannot serve on councils; however, no member can participate in specific issues in which he or she has an interest.

The role of the RAC is to provide advice to BLM. Each RAC will focus on the full array of multiple use issues associated with public lands within its area of jurisdiction. They will consult on the preparation of standards and guidelines for grazing administration. The RACs will advise the Secretary and BLM—and other agencies as appropriate—on matters relating to multiple use issues associated with public lands and resources. They will also provide advice on preparation, amendment, and implementation of land use management plans and activity plans and consult in planning for range development and improvement programs. RACs will not provide advice on internal BLM management concerns such as personnel or budget expenditures.

Final § 1784.6–2 provides three models that supply additional detail on the structuring of public participation. Decisions about which model will be used in particular areas will be made by the State Directors of BLM, in consultation with affected Governors and other interested parties. Model A is based heavily on the suggestions made by the Colorado Working Group. It includes three levels of groups—the RAC itself, local five member rangeland resource teams appointed by the RAC based either on its own initiative or as a result of local requests, and technical review teams established directly by BLM to solve specific, short-term technical issues. The RACs would have 15 members and would be established on BLM District boundaries, ecoregions, or resource areas. A 60% vote of the RAC membership (including a majority of each category of users) would be required to send suggestions to BLM.

Model B is based heavily on the suggestions made by the Wyoming Steering Committee. It includes 3 levels of groups—the 15 member RAC, formed on either a Statewide or ecoregion basis, a more local 10 member rangeland resource team formed by the RAC, and technical review teams established directly by BLM to solve specific, short-term technical issues. In addition to requiring membership to be balanced among the commodity, environmental and local interest groups specified in § 1784.6–1(c), the RAC would include individuals representing wildlife, grazing, minerals and energy, and established environmental interests. An 80% vote of the RAC membership (including a majority of each interest group) would be required to send suggestions to BLM.

Model C was developed by BLM in response to additional issues raised by the commenters. In addition to the requirements specified in § 1784.6–1, this model accommodates formation of the RACs, and any type and number of subgroups as needed. The RAC can be formed along State, BLM district, or ecoregion boundaries. A majority of each of the three categories of users must vote affirmatively to send suggestions to BLM. General function subgroups at the local level can be formed on the initiative of the RAC or by local initiative. Special function groups formed to solve special technical problems would be constituted by BLM on its own initiative or in response to requests from RACs or any of the subgroups under the RACs.

The Department expects that most, if not all, public land managed by BLM will fall under the purview of one of these councils. Exceptions will be made where BLM State Director determines that there is insufficient interest to form a council or that it would be impossible for such a council to have effective participation due to the location of the public lands with respect to the population. Implementation of the principles discussed above will result in enhanced public involvement in rangeland management, as envisioned throughout FLPMA.

The Department intends to start using the RACs for advice shortly after the rule becomes effective on August 21, 1995. This will require the selection of the advisory council model for each State and the nomination of advisory council members within the six-month period before this rule becomes effective. The decision regarding which advisory council model will be implemented in each State will be based on recommendations from BLM State Directors following consultation with the respective Governors and input from the public. Once the preferred model is identified, the internal process of developing the council charters can begin. The Department will also seek nominations for membership on the advisory councils from Governors and through a public call for nominations, pursuant to 43 CFR 1784.4–1. Finally, charters for the advisory councils will be drafted and reviewed by the Department, the Office of Management and Budget, and the General Services Administration. The timely establishment of the advisory councils will help ensure that there is adequate time for the councils to participate in developing State or regional standards and guidelines.

Range Improvements and Water Rights

The final rule conforms with common law concepts regarding retention of the title of permanent improvements in the name of the party that holds title to the land. Accordingly, after August 21, 1995, the title to all new grazing-related improvements constructed on public lands, or improvements related to the vegetation resource of public lands, except temporary or removable improvements, will be in the name of the party that holds title to the land, i.e. the United States. This provides consistent direction within BLM and makes BLM practice consistent with that of the Forest Service. Permanent range improvements will be approved through a cooperative range improvement agreement. A permittee's, lessee's, or cooperator's interest for contributed funds, labor, and materials will be documented. This documentation is necessary to ensure proper credit for purposes of reimbursement pursuant to section 402(g) of FLPMA, which requires compensation for the permittee's or lessee's authorized permanent improvements whenever a permit or lease is cancelled, in whole or in part, in order to devote the lands to another public purpose. Title to improvements existing before the effective date of this rule is not affected.

The final rule adopts without change the language of the proposed rule relating to water rights. The final rule provides consistent direction for BLM regarding water rights on public lands for livestock watering purposes. It is intended to make BLM's policy consistent with Forest Service practice, and with BLM policy on asserting water rights for livestock grazing prior to changes in the early 1980's. This section provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where state policy permits it; for example, the Wyoming policy is consistent with the rule. Development of new water sources on public lands associated with a grazing permit or lease will be subject to cooperative range improvement agreements as provided in section § 4120.3–2.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note: disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Administrative Practices

With this final rule, BLM has made a number of changes to improve the administration of grazing on lands managed by BLM. These changes principally affect public participation in range decisions, administrative appeals and implementation of decisions, disqualification of applicants for grazing permits and leases based on a prior record of noncompliance, acts prohibited by the regulations, and the definition and implementation of conservation use.

Interested public. An important element of rangeland improvement involves facilitating effective public participation in the management of public lands. To implement this goal, the term "affected interests" is removed throughout the rule and replaced with the term "interested public." The rule also removes the authorized officer's discretion to determine whether an individual meets the standards for "affected interest" status. The final rule adopts the definition of "interested public" as set forth in the proposed rule.

This change provides a consistent standard for participation by the public in decisions relating to grazing. Any party who writes to the authorized officer to express concern regarding the management of livestock grazing on specific grazing allotments will be recognized as a member of the "interested public."

Requirements for consultation with the interested public have been added in various sections of the rule, including those that deal with permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs.

Appeals. Comments on the appeals procedures contained in the proposed rule suggested that the provisions were not clear. A number of changes have been made in the final rule to clarify the provisions. Most importantly, the final rule now references existing procedures in 43 CFR part 4, rather than repeating language from that part.

Under the final rule, persons choosing to appeal a decision of the authorized officer will normally be provided a 30-day period in which to file an appeal. Appellants may also petition the Director of the Office of Hearings and Appeals (OHA), or the Interior Board of Land Appeals (IBLA) to stay the decision until the appeal is decided. Where a petition for stay has been filed with an appeal, the Department's OHA has 45 days from the expiration of the 30-day appeal period either to grant or deny the petition for stay, in whole or in part. Thus, in cases where a person has filed a petition for stay of the decision of the authorized officer along with an appeal, and where the request for stay is denied, implementation of the decision would be delayed up to 75 days. In the event a stay of the decision is granted in whole or in part, the decision will be stayed until such time as a determination on the appeal is made.

This rule clarifies that the authorized officer can issue final decisions and

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place them in effect immediately when it is necessary to protect rangeland resources from damage in situations described under § 4110.3–3(b). The rule also adds a provision that decisions to close areas to specified kinds of livestock use when it is necessary to abate unauthorized use, as provided in § 4150.2(d), may be issued as final decisions. In these cases, the permittee or lessee will still have 30 days to appeal the decision and petition for a stay, and the OHA will have 45 days to evaluate the petition; however, the decision will be in effect on the date specified in the decision and will remain in effect unless a stay is granted.

The objective of placing decisions in immediate effect under the circumstances specified in the rule is to provide for timely action to benefit rangelands and to reduce administrative delays. The rule does not take away the ability of affected parties to file an appeal, as provided by Section 9 of TGA, or to request a stay of the decision until such time as the appeal is decided. The Department believes making decisions under §§ 4110.3–3(b) and 4150.2(d) effective immediately under the standards provided for in this final rule is critical to meeting the goals of sound rangeland management.

Qualifications. The final rule makes no substantive change from the proposed rule. It includes a provision to disqualify applicants for new or additional grazing permits and leases if: (1) The applicant or affiliate has had any Federal grazing permit or lease, or any State grazing permit or lease within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or (2) the applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

These requirements do not apply to applicants for renewal of grazing permits or leases. The final rule gives the authorized officer the authority to consider whether an applicant for renewal is in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought.

Prohibited acts. The final rule adopts provisions of the proposed rule, except that provisions from § 4170.1–3, as proposed, have been moved to a new paragraph in § 4140.1. Minor clarifying changes are also made. As in the proposed rule, Subpart 4140, "Prohibited Acts," is revised to modify the list of actions that are defined as prohibited acts. Penalties applicable to prohibited acts are set forth in § 4170.

The proposed rule amended the list of prohibited acts to include violations of Federal and State laws and regulations concerning water pollution, certain predator control activities; application or storage of pesticides, herbicides or other hazardous materials; alteration or destruction of natural stream courses; wildlife destruction; and removal or destruction of archeological resources. It also added violations of State laws regarding the stray of livestock to the list.

The final rule adopts these provisions. It does not attempt to list in the text of the regulations all of the specific Federal and State laws which, if violated, could constitute prohibited acts. A list of such laws was included in the preamble to the proposed rule at 59 FR 14323–4. It is not the intent of this rule for the authorized officer to take direct enforcement action under the provisions of these laws; or to take enforcement steps involving the grazing permit or lease for any and all violations, no matter how *de minimis* or technical; or for violations of laws that, while they do deal with violations of State and Federal laws dealing with water pollution and other matters, do not reflect meaningfully upon the ability of the permittee or lessee to be a good steward of the public lands. The final rule clarifies that violations of these State and Federal laws would constitute prohibited acts only where three conditions are met: (1) The violations involve or affect BLM lands; (2) the violation is related to grazing use authorized by a permit or lease, and (3) the permittee or lessee has been convicted or otherwise found to be in violation of the State or Federal laws by final court or agency action. The final rule also moves similar provisions regarding the Bald Eagle Protection Act, the Endangered Species Act (ESA), and the Wild Free-roaming Horse and Burro Act from § 4170 to § 4140 to increase clarity and readability.

Conservation use. The final rule adopts the proposed definition with one clarifying change. Conservation use benefits the range by facilitating improvement in forage conditions, watersheds, riparian areas, and so on. It provides flexibility that is needed to enable permittees or lessees to undertake activities on a portion or all of an allotment to promote resource protection or enhancement, which includes making progress toward resource condition objectives.

The Department believes that this provision will provide permittees and lessees with an additional tool to manage grazing operations properly, provided that the conservation use is consistent with land use plans. Allotments in conservation use will not be subject to grazing fees since no forage will be consumed by livestock. However, permittees and lessees requesting conservation use will be required to maintain existing improvements so that when the allotment is returned to actual use such improvements will be in good working order. A service charge can be charged for conservation use, as it is for actual use. Conservation use will be initiated by request of the permittee or lessee. The BLM will *not* impose conservation use on an unwilling permittee or lessee.

The advantage of conservation use to the operator is that it allows increased flexibility. The operator will be able to enjoy the benefits of a long-term rest of the allotment from grazing while preserving the ability to resume grazing in the future. During the conservation use, BLM will not consider allowing another operator to use any resulting forage.

Resource Management Requirements, Including Standards and Guidelines. The final rule adopts the substance of the provisions proposed in subpart 4180. The Department has reorganized and rewritten the subpart to improve clarity and incorporate more fully a watershed management approach.

The Fundamentals of Rangeland Health. The final rule establishes the fundamentals of rangeland health for grazing administration (formerly referred to as the national requirements). These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards and objectives, and habitat for threatened or endangered species or other species of special interest. The Department believes that these provisions are critical to ensuring that BLM's administration of grazing helps preserve currently healthy rangelands and restore healthy conditions to those areas that currently are not functioning properly, especially riparian areas.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1. Fundamentals of rangeland health, are met or significant progress is being made to meet these conditions, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

State or Regional Standards and Guidelines. Standards and guidelines are to be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs.

State or regional standards and guidelines will be developed, under the umbrella of the fundamentals and consistent with the guiding principles of this final rule, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

The guiding principles for the development of standards presented in this final rule pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. The guiding principles for guidelines direct the identification of acceptable or best grazing management practices that will result in or ensure significant progress towards fulfillment of the standards.

State or regional standards and guidelines will provide the resource measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

Once standards and guidelines are in effect, the authorized officer is required to take appropriate action under 43 CFR part 4100 as soon as practical, but not later than the start of the next grazing year, upon determining that existing grazing management practices are significant factors in failing to meet the standards and conform with the guidelines. Appropriate actions may include reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Fallback Standards and Guidelines. The Department recognizes the importance of putting standards and guidelines in place in a timely manner, and has provided a mechanism for doing so in this rule. This final rule includes a provision for fallback standards and guidelines that would become effective 18 months after this rule becomes effective in the event that State or regional standards and guidelines have not been developed and put into effect. They will remain in effect until State or regional standards and guidelines are in effect.

The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles for State or regional standards discussed above. Similarly, the fallback guidelines include grazing management practices while the guiding principles for State or regional guidelines refer more generally to the types of concerns to be addressed. The BLM State Directors can adjust the fallback standards and guidelines, subject to approval of the Secretary, to fit State or local conditions.

Fallback standards and guidelines will be applied in the same manner as standards and guidelines developed for a particular State or region, which are discussed above.

NEPA and Implementation of Standards and Guidelines. The fundamentals of rangeland health proposed in this rule, and all standards and guidelines whether fallback, State, or regional, will be implemented subject to the National Environmental Policy Act of 1969 (NEPA) and applicable land use planning regulations. The fundamentals of rangeland health, the guiding principles for the development of State and regional standards and guidelines and the fallback standards and guidelines were analyzed in the FEIS for this final rulemaking. Any additional NEPA analysis required during development of State or regional standards and guidelines could tier to the analysis of the fundamentals of rangeland health and standards and guidelines presented in the FEIS.

BLM planning regulations direct that actions be in conformance with BLM land use plans. In some instances, the standards and guidelines may be consistent with existing land use plans and implementation may proceed without further action. In many cases, however, land use plans will require modification to ensure conformance with the land use plan and the standards and guidelines. The Department intends to develop State or regional standards and guidelines, complete plan conformance tests, and undertake necessary plan amendments within 18 months of the effective date of this rule. State or regional standards and guidelines will be implemented as they are finalized and approved by the Secretary.

The Federal Grazing Fee and Subleasing

Grazing fees. The fee portion of the proposed rule generated numerous public comments with diverse and conflicting views about the impact of an increased fee and the calculation of the fee formula. The Department has decided not to promulgate the fee increase provision of the proposed rule in order to give the Congress the opportunity to hold additional hearings on this subject and to enact legislation addressing appropriate fees for grazing on public lands. Other changes not pertaining to fees proposed in section 4130.7–1, redesignated as § 4130.8–1 in the final rule, remain a part of this rulemaking package.

As proposed, this section would have been amended by revising the grazing fee formula, with a provision for phasing in the grazing fee increase over the years 1995 through 1997. The proposed rule provided for a 30% incentive fee reduction. The incentive was to have been implemented after BLM developed separate rules describing the eligibility criteria for this incentive based fee. The proposed rule also provided that the full fee increase would not go into effect in the event that a separate final rule prescribing qualification criteria for the incentive-based fee was not completed. Multiple-year billing would have been allowed in certain circumstances. In addition, the proposed rule provided for a 25 percent cap on changes in the calculated fee from year to year. These proposals are not adopted in the final rule.

As adopted by today's action, Section 4130.8–1 clarifies the definition of billing unit, provides for assessing a surcharge in certain instances for the public landlord's share of authorized pasturing agreements associated with public land grazing, and clarifies that grazing use occurring before a bill is paid is an unauthorized use that may be dealt with under the settlement and penalties sections of this rule and may

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result in the limitation of flexibility otherwise provided under an allotment management plan.

Subleasing. The Department's proposed rule would have imposed a surcharge on authorized leasing or subleasing in two situations: (1) the subleasing of public land grazing privileges associated with the leasing of privately-owned base property; (2) the pasturing of livestock owned by someone other than the grazing permittee or lessee where the permittee or lessee controls such livestock. This proposal was made in response to findings of the General Accounting Office (GAO) (see, e.g., RCED–86–168BR), and the Office of the Inspector General (OIG) (see report #92–1–1364) that permittees and lessees who sublease are unduly benefitting from their permits or leases. Sons and daughters of grazing permittees and lessees were exempted from the surcharge.

In response to comments that putting a surcharge on authorized subleasing would adversely affect the ability of new ranchers with limited capital to enter the livestock business, the Department has not included the surcharge associated with the authorized leasing or subleasing of public land grazing privileges associated with base property in the final rule. However, in order to address the Secretary's intent to establish a fair and reasonable return to the public, the surcharge on pasturing agreements is adopted in the final rule. The Department recognizes the need to avoid penalizing children of grazing permittees and lessees who graze cattle under their parents' permits or leases and has included an exemption from the surcharge for pasturing for sons and daughters of public land permittees and lessees. The Department believes that, as landlord of the public lands, it must obtain a fair share, on behalf of the American public, of any income received by the permittee for pasturing cattle belonging to others. Additionally, the policy of charging a surcharge for pasturing is consistent with standard practices on most State grazing lands.

Commenters also stated that the proposed method for calculating the surcharge did not reflect local conditions. The Department has addressed this concern by modifying the method for calculating the surcharge on pasturing agreements. The final rule provides that the surcharge on pasturing agreements will be equal to 35 percent of the difference between the Federal grazing fee per AUM and the prior year's private lease rate for the appropriate State for forage used by livestock owned by another party other than the permittee or lessee. A surcharge of 35 percent of the difference between the Federal grazing fee and the private lease rate for the appropriate State will recover an appropriate "landlord's share" and will result, on the average across all States, in a surcharge approximating the surcharge presented in the proposed rule and analyzed in the EIS for this rule. Pasturing agreements must have authorization from the authorized officer. Under this final rule, to calculate the surcharge BLM will use the per animal unit month (AUM) private grazing land lease rate for the appropriate State as reported annually by the National Agricultural Statistics Service (NASS).

III. Summary of Rules Adopted

These final rules revise Parts 4, 1780, and 4100 of Title 43. The following summary highlights changes from the current regulations, most of which were also included in the proposed rule. The following provisions are included:

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477, Effect of decision suspended during appeal, is revised to reflect that grazing decisions will no longer be suspended automatically when an appeal is filed. Instead, final grazing decisions will be subject to the provisions of 43 CFR 4.21, which governs the effect of administrative decisions pending appeal before the Department's OHA.

Part 1780—Cooperative Relations

Section 1784.0–5 is amended by replacing the term "Authorized representative" with the term "Designated Federal officer." These changes provide consistency with the terminology of FACA.

Section 1784.2–1, Composition, is amended to remove the eligibility requirement for grazing advisory board members. The final rule also adds a requirement that advisory committee members have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Section 1784.2–2, Avoidance of conflict of interest, is amended to provide that no advisory committee member, including members of RACs, can participate in any matter in which such member is directly interested, and must disclose his or her direct or indirect interest in Federal permits, leases, licenses, or contracts administered by BLM.

Section 1784.3, Member service, establishes that appointments to advisory committees will be for two-year terms unless otherwise specified in the committee charter or appointing document. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments and terms and election procedures have been removed. The rule also provides that travel and per diem will be paid to committee members but not to members of any subgroups formed under the committees.

Sections 1784.5–1, Functions and 1784.5–2, Meetings, are amended by replacing the term "authorized representative" with the term "designated Federal officer." These changes provide consistency with the terminology of FACA.

Section 1784.6–1, Resource Advisory Councils—Requirements, establishes requirements for RACs. It provides that, with certain exceptions, councils will be established to cover all BLM lands. RACs will provide advice to the BLM official to whom they report regarding the preparation, amendment and implementation of land use plans and the development of standards and guidelines. The councils will also assist in establishing other long-range plans and resource management priorities, including plans for expending range improvement funds. RACs will not provide advice on personnel management, nor on the allocation and expenditure of funds subsequent to budget planning.

Appointments to RACs will be made by the Secretary. In making appointments, the Secretary will consider nominations from the Governor of the affected State and nominations received in response to a public call for nominations. All nominations will be required to be accompanied by letters of recommendation from interests or organizations to be represented, and members must be residents of a State in which the area covered by the council is located.

Council members will be selected in a balanced manner from persons representing interest groups. There are 3 general groups: Commodity Industries—including ranching and developed recreational activities; Recreational/Environmental—nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, dispersed recreational activity interests—such as bicyclists and hikers; and Local Area Interest—persons who hold State, county, or local elected office, representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of natural resources, water quality, water rights, and State lands. At least one of the members appointed to each council must hold elected State, county, or local office. An individual may not serve on more than one RAC at any given time. Council members must have demonstrated experience or knowledge of the geographic area for which the council provides advice and a commitment to collaborative decisionmaking.

All members of RACs must attend a course of instruction in the management of rangelands that has been approved by BLM State Director.

Each RAC will have requirements for quorums and for making recommendations to the Department. Councils can request that the Secretary respond directly where the council believes its advice has been arbitrarily disregarded by the BLM manager. If requested, the Secretary will respond directly to a council's concerns within 60 days. Such a request would require agreement by all members of the council. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

Administrative support for a council will be provided by the office of the designated Federal officer.

Section 1784.6–2, RACs—Optional features, establishes optional features for RACs. Three different models are provided, and BLM State Director, in consultation with the Governor and other interested parties, will determine which model will best suit the needs of the State. General characteristics of the three models are presented above, in the section on "Public Participation in Rangeland Management" under the discussion of "Major Elements of the Department's Program to Promote Healthy Rangelands." The first model is based largely on the model developed by the Colorado Working Group. The second model is based largely on the model developed by the Wyoming Steering Committee. The third model was developed by BLM after consideration of public comment.

Previous sections 1784.6–1, National Public Lands Advisory Council, 1784.6–4, District advisory councils, and 1784.6–5, Grazing advisory boards, are removed.

Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2, Objectives, is amended by revising the statement of objectives to include promoting healthy, sustainable public rangelands; accelerating restoration and improvement of public rangelands to properly functioning conditions; promoting the orderly use, improvement and development of the public lands; establishing efficient and effective administration of grazing of public rangelands; and providing for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

Section 4100.0–5, Definitions, is amended by removing the definition of "Affected interests," "Grazing preference," and "Subleasing"; revising the definitions of "Active use," "Actual use," "Allotment management plan (AMP)," "Consultation, cooperation and coordination," "Grazing lease," "Grazing permit," "Land use plan," "Range improvement," "Suspension," and "Utilization"; and by adding in alphabetical order the definitions of "Activity plan," "Affiliate," "Annual rangelands," "Conservation use," "Ephemeral rangelands," "Grazing preference or preference," "Interested public," "Permitted use," "Temporary nonuse," and "Unauthorized leasing and subleasing."

Section 4100.0–7, Cross-references, is amended to guide the public to the applicable sections of 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, to 43 CFR part 1600 regarding the development of land use plans, and to 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9, Information collection, is added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this rule, why the information is being collected, and what the information will be used for by BLM.

Subpart 4110—Qualifications and Preference

Section 4110.1, Mandatory qualifications, is amended to require that applicants for renewal or issuance of new grazing permits or leases, and any affiliates of such applicants, must be determined by the authorized officer to have a satisfactory record of performance. Applicants and any affiliates for renewal must be determined to be in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought, and with applicable regulations. Applicants and any affiliates who have had a Federal grazing permit or lease, or a State grazing permit or lease for lands within the Federal grazing allotment for which application is made, cancelled within 36 months preceding application shall be deemed not to have a satisfactory record of performance. Applicants and their affiliates that are barred from holding a Federal grazing permit or lease by court order are also disqualified from receiving a new permit or lease. The amendments to this section also clarify that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, but who meet the criteria of this section, are qualified for a grazing permit or lease.

Section 4110.1–1, Acquired lands, is amended to clarify that existing grazing permits and leases on lands acquired by BLM are subject to the permit or lease terms and conditions that were in effect at the time of acquisition. Following expiration of the pre-existing permit or lease, applicants for grazing permits or leases will be subject to the provisions of § 4110.1 of this final rule.

Section 4110.2–1, Base property, is amended to clarify that base property must be capable of serving as a base for livestock operations but it need not actually be in use for livestock production at the time the authorized officer finds it to be base property. Further, the final rule makes clear that where authorized water developments on public lands that have been previously recognized as base property require reconstruction or replacement in order to continue to service the same area, and the reconstructed or new development has been authorized through a cooperative range improvement agreement, the permittee's or lessee's interest in the new or reconstructed water development will continue to be recognized as base property.

Section 4110.2–2, Specifying permitted use, is retitled to reflect the redefinition of the term "grazing preference," and amended to replace the term "grazing preference" with "permitted use." Also, the section is amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount

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of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

Section 4110.2–3, Transfer of grazing preference, is amended to reflect the new requirements of § 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum of three years, unless a shorter term is approved by the authorized officer.

Section 4110.2–4, Allotments, is amended to clarify that designation and adjustment of allotment boundaries includes the authority for, and the practice of, combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency. The section clarifies that modification of allotments must be done through agreement or decision of the authorized officer, following consultation, cooperation and coordination with involved persons, including the interested public.

Section 4110.3, Changes in permitted use, is amended by replacing the term "grazing preference" with "permitted use," and by clarifying that changes in permitted use will be supported by monitoring data, field observations, land use planning decisions, or data collected through other studies.

Section 4110.3–1, Increasing permitted use, is amended by including the requirement that a permittee, lessee, or other applicant must be determined to be qualified under subpart 4110, by substituting the term "permitted use" in place of "grazing preference," and by clarifying the requirements for consultation. Also, reference to a permittee's or lessee's demonstrated stewardship is added to factors to be considered in allocating available forage.

Section 4110.3–2, Decreasing permitted use, is amended by revising the heading, revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary, and by deleting paragraph (c), which contained provisions for suspended use. The amendment adds ecological site inventory and other recognized methods for determining forage production as methods of identifying when use exceeds the livestock carrying capacity of the area considered. Monitoring remains as a means of determining forage production. The amendment also adds a reference to the fundamentals of rangeland health and standards and guidelines.

Section 4110.3–3, Implementing reductions in permitted use, is retitled and previous paragraph (a) and other requirements for phased-in reductions in permitted use are removed. Previous paragraph (b) is amended to remove the term "suspension of preference" and add in its place the term "reductions in permitted use." The phrase "when continued grazing use poses a significant risk of resource damage from these factors" is amended to read "when continued grazing use poses an imminent likelihood of significant resource damage." This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Additionally, paragraph (b) provides, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction, and clarifies the action of the field manager, requirements for consultation, cooperation and coordination with involved persons, including the interested public. Previous paragraph (c) is redesignated as paragraph (b) and amended to remove the word "temporary" to recognize that the influences of natural events such as drought can significantly affect vegetation health and productivity for several months or years after a drought has passed. Redesignated paragraph (b) retains the special provisions for making decisions effective upon issuance or on the date specified in the decision when action is needed to protect rangeland resources.

Paragraph (a) of § 4110.4–2, Decreases in land acreage, is amended by removing reference to suspended use. Reductions in authorized use under preference permits or leases will no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2, Allotment management plans and resource activity plans, is amended by revising the heading and by adding a reference to other activity plans that may prescribe grazing management. The final rule clarifies that draft AMPs or other draft activity plans may be prepared by other agencies or permittees or lessees, but that such plans do not become effective until approved by the authorized officer. AMPs must include standards and guidelines. Paragraph (a) is also amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process.

The final rule also provides that permits and leases must include in their terms and conditions a requirement for conformance with AMPs or other applicable activity plans. Further, it provides that flexibility granted to permittees or lessees under a plan will be determined on the basis of demonstrated stewardship. The rule clarifies the existing provision that the inclusion of lands other than public lands in an AMP or other activity plan is discretionary. Finally, this section references the NEPA analysis and related public participation that is required for the planning and revision of allotment or activity plans, and provides that the decision document that follows the environmental analysis serves as the proposed decision for purposes of subpart 4160.

Section 4120.3–1, Conditions for range improvements, is amended by specifying in paragraphs (b) and (e) that "cooperative agreements" refers to cooperative range improvement agreements, and by inserting a new paragraph (f) addressing reviews of decisions associated with range improvement projects. The amendment clarifies the process for administering protests and appeals of decisions and provides that appeals are subject to the administrative remedies process set forth in 43 CFR part 4160.

The heading of § 4120.3–2, Cooperative range improvement agreements, is revised to clarify that this section deals with cooperative range improvement agreements as opposed to "cooperative agreements" with other Federal or State agencies. The section is amended to clarify that title will be in the United States for all new permanent grazing-related improvements constructed on public lands.

Title to temporary grazing-related improvements used primarily for livestock handling or water hauling can still be held by the permittee or lessee. The amendment will not affect ownership or rights currently held in a range improvement.

The provisions pertaining to title do not affect the existing practice of retaining a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be used in determining compensation due the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose, including disposal of the lands. This record may also be considered during

the transfer of grazing preference to ensure that all interests in range improvements have been assigned to the transferee.

The amendment does not change agreements currently in effect. The amendment also clarifies that permanent water improvement projects will be authorized through cooperative range improvement agreements.

Section 4120.3–3, Range improvement permits, is amended to make it clear that a permittee or lessee may hold title to removable livestock handling facilities and to temporary improvements such as troughs for hauled water or loading chutes. The amendment will not affect ownership or rights currently held in a range improvement.

The final rule provides that BLM may mediate disputes when necessary about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use. Finally, the rule removes as unnecessary the provision that permittees or lessees can control their livestock's use of ponds or wells.

A new section § 4120.3–8, Range improvement fund, is added to address the distribution and use of the "range betterment" funds appropriated by Congress through section 401(b) of FLPMA for range improvement expenditures by the Secretary. The range betterment fund has been called the range improvement appropriation by Congress, and is known by that title in BLM. The final rule provides for distribution of the funds by the Secretary, with one-half of the range improvement fund to be made available to the State and District from which the funds were derived. The remaining one-half is to be allocated by the Secretary on a priority basis. All range improvement funds will be used for on-the-ground rehabilitation, protection and improvements of public rangelands.

The final rule further clarifies that range improvement includes activities such as planning, design, layout, modification, as well as maintaining, monitoring and evaluating the effectiveness of specific on-the-ground range improvements in achieving resource condition and management objectives.

The final rule also requires consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs will also be consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities.

Section 4120.3–9, Water rights for the purpose of livestock grazing on public lands, is added to provide consistent direction for BLM regarding water rights on public lands for livestock watering purposes. This section provides that the United States will acquire, perfect, maintain, and administer any rights to water obtained on public land for livestock watering on public land in the name of the United States to the extent allowed by State law.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Section 4120.5 is added to recognize and encourage cooperation with, among others, State, county, Indian tribal, and local government entities and Federal agencies.

Section 4120.5–1, Cooperation with State, county, and Federal agencies, is amended to recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships.

Subpart 4130—Authorizing Grazing Use

This section is reordered to follow a more logical sequence. This discussion will use the new numbers and cross reference the old numbers. A table showing old and new numbers is included in the section-by-section discussion of this subpart.

Section 4130.1, Applications, is added. This action merely adds a title for purposes of the reorganization of the subpart.

Section 4130.1–1, Filing applications, is renamed from the proposed "Applications" and amended slightly to accommodate the new category of use, conservation use, which is adopted in this final rule.

Section 4130.1–2, Conflicting applications, is amended to add criteria to be considered in granting a use authorization or permit or lease. The rule incorporates the history of applicants' and affiliates' compliance with the terms and conditions of Federal and State grazing permits and leases and demonstrated stewardship of the public lands as criteria for granting permits or leases where there is more than one qualified applicant.

Section 4130.2, Grazing permits or leases, is amended so that permits and leases will continue to be offered for 10 year terms except in specified circumstances. The final rule also clarifies that all grazing permits and leases issued, including the transfer or renewal of permits and leases, will include terms and conditions addressing the fundamentals of rangeland health and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other factors that will assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands. The final rule also provides that the authorized officer must consult with interested parties prior to the issuance or renewal of grazing permits and leases and prohibits the offering or granting of permits and leases to applicants who refuse to accept the terms and conditions of the offered permit or lease.

The final rule clarifies the process of application for and granting of conservation use and temporary nonuse. Conservation use is established as one of the allowable uses for which a permit or lease may be granted when it is in conformance with the applicable land use and activity plans and the appropriate standards and guidelines.

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse have been developed in response to a recommendation from the March 19, 1986, OIG's review of the grazing management program.

Section 4130.3, Terms and conditions, is amended through a minor addition to reflect the requirement to conform with the fundamentals of rangeland health and standards and guidelines of subpart 4180.

Section 4130.3–1, Mandatory terms and conditions, is amended through minor additions and deletions which

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clarify that use must not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section is further amended to add a paragraph (c) that requires that the fundamentals of rangeland health and the appropriate standards and guidelines be reflected in the terms and conditions of permits, leases and other authorizations.

Section 4130.3–2, Other terms and conditions, is amended to provide for proper rangeland management and to remove unnecessary language. The final rule allows terms and conditions to provide for improvement of riparian area functions and protection of rangeland resources and values consistent with applicable land use plans. Paragraph (b) affirmatively states that BLM will have reasonable administrative access across the permittee's or lessee's owned or leased private lands for the management and protection of public land.

Section 4130.3–3, Modification, is amended to clarify consultation requirements in the modification of terms and conditions of permits and leases. The rule provides for greater State and public participation when changes are proposed that are not within the scope of the existing permit or lease. The rule also provides for increased State and public participation during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management.

Section 4130.4, Authorizations within terms and conditions of permits and leases, is amended to allow field managers to make temporary changes in authorized use that are within the scope of existing permits and leases.

Section 4130.5, Free-use grazing permits, is modified to reflect new circumstances under which the authorized officer may grant free-use permits. This new provision was contained in § 4130.7–1 of the proposed rule.

The final rule provides that free use can be permitted where the primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage, to conduct scientific research or administrative studies, or to control noxious weeds.

Section 4130.6–1, Exchange of use grazing agreements, is amended to specify that exchange of use grazing agreements must be consistent with management objectives and compatible with existing livestock operations. The agreements will be required to address the fair sharing of maintenance and operation of range improvements and will be approved for the same term as any leased lands that are offered.

Section 4130.6–2, Nonrenewable grazing permits and leases, is modified to require the authorized officer to consult with the affected permittee or lessee, the State, and the interested public before issuing a nonrenewable permit.

Section 4130.6–3, Crossing permits, is modified to specify that crossing permits are a form of temporary use authorization.

Section 4130.7, Ownership and identification of livestock, is amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee must have an approved use authorization and must have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources.

Sons and daughters of permittees or lessees are exempted from the provisions of this section in specified circumstances. This is necessary to allow sons and daughters, who are grazing livestock on public lands under their parents' permit or lease in specified circumstances, to avoid the pasturing surcharge provided in § 4130.8.

Section 4130.8–1, Payment of fees, is amended to make clear the definition of a billing unit, to provide for the assessment of a surcharge for authorized pasturing of another owner's livestock and to clarify that grazing use that occurs before a bill is paid is an unauthorized use, may be dealt with under the settlement and penalties sections of these regulations. Also, the section is amended to clarify that delays in payment of actual use billings and noncompliance with the terms and conditions of permits or leases may result in the loss of after-the-grazing-season billing privileges authorized under an AMP. For administrative convenience, the assessment of pasturing surcharges will not begin until the start of the next grazing year, March 1, 1996.

The final rule recognizes two types of authorized subleasing. The first is the sublease of public land grazing privileges along with the base property associated with the permit or lease. Such a sublease of the public land grazing privileges must be accompanied by a lease or sublease of the associated base property and the BLM authorized officer must approve the transfer of the grazing permit or lease. Such transfers shall be for a minimum of three years unless it is determined by the authorized officer that a shorter period is consistent with management and resource condition objectives. The second is a pasturing agreement under which livestock not owned by the permittee or lessee, but under the control of the permittee or lessee, is allowed to graze on the public lands that are subject to a permit or lease. The BLM authorized officer must approve such pasturing agreements. Other types of subleasing arrangements will be considered unauthorized. A surcharge for the lease or sublease of public land grazing privileges associated with base property is not adopted in the final rule.

The final rule provides for the collection of a surcharge for authorized pasturing activities associated with a Federal permit or lease. The final rule provides for a surcharge of 35 percent of the difference between the grazing fee per AUM rate and the prior year's private lease rate for the appropriate State as determined by the NASS for forage used by livestock owned by another party other than the permittee or lessee.

The final rule excludes from the pasturing surcharge sons and daughters of permittees or lessees grazing livestock on public lands as part of an educational or youth program pertaining to livestock rangeland management, or when establishing a livestock herd in anticipation of assuming part or all of the family ranch operation.

Section 4130.8–3, Service charge, is amended to include temporary nonuse and conservation use in the list of items for which BLM may assess a service charge. The service fee will offset the costs of processing such applications.

Subpart 4140—Prohibited Acts

Section 4140.1, Prohibited acts on public lands, is amended to clarify that failure to make substantial use as authorized is a prohibited act, but that approved temporary nonuse, conservation use, and use temporarily suspended are not prohibited acts.

This section also clarifies that it is prohibited to use public lands for grazing without a permit or lease and an annual grazing authorization. Furthermore, mere receipt of a grazing fee bill does not authorize grazing use of the range; the bill must actually be paid. (However, § 4140.1(c) specifically provides for civil penalties only where violations, including unauthorized use resulting from payment by a check that is not honored, are repeated and willful.) The final rule also makes it clear that the permittee is responsible for controlling livestock so cattle do not

stray onto "closed to range" areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. The final rule specifies that permittees or lessees are subject to penalties if they violate Federal or State laws pertaining to protection of bald eagles, endangered or threatened species, and wild horses and burros; the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides or other hazardous materials; alteration of stream courses without authorization; pollution of water sources; illegal take; destruction or harassment of fish and wildlife; and illegal removal or destruction of archeological or cultural resources when public lands are involved or affected.

Other changes in the section clarify that it is unlawful to harm livestock authorized to graze on public land, and to interfere with other lawful uses of the land. These provisions include a prohibition on obstructing free transit across public land.

Finally, provisions which specify that violations subject to penalty under § 4170.1–1 are limited to those where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by permit or lease, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, are moved from proposed § 4170–1–3 and incorporated into this final section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1, Violations, is reorganized for clarity and amended to add the requirement that the authorized officer must determine whether a violation is nonwillful, willful, or repeated willful. This clarifies subsequent sections of the rule.

Section 4150.2, Notice and order to remove, is amended to provide authority for the authorized officer to exercise discretion in determining how nonwillful violations will be settled, close areas temporarily for a period of up to 12 months to specified classes and kinds of livestock in order to abate unauthorized use, and allow notices of closure to be issued as final decisions.

Section 4150.3, Settlement, is amended to provide the authorized officer with the authority to consider nonmonetary settlement for unintentional incidental trespasses, in cases when the authorized officer determines the livestock operator is not at fault, when an insignificant amount of forage has been consumed, when damage to the public lands has not occurred, and when nonmonetary settlement is in the best interest of the United States. The method for determining settlement amounts is amended. Settlement for nonwillful violations equals the value of forage based on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in the State in which the violation occurred.

Subpart 4160—Administrative Remedies

Subpart 4160, Administrative remedies, is amended to improve organization, clarify administrative processes and requirements, provide for application of the Departmental rule located at § 4.21 of this title regarding effectiveness of a decision pending appeal and procedures for obtaining a stay, and provide for the issuance of decisions that take effect immediately.

Section 4160.1, Proposed decisions, is amended to clarify that a final decision may be issued without first issuing a proposed decision when action under paragraph 4110.3–3(b) of this part is necessary to protect rangeland resources, or when action is taken under paragraph 4150.2(d) to close an area to unauthorized grazing use. Other provisions clarify the information that must be contained in a proposed decision, and specify that decisions will be served by certified mail or personal delivery.

Sections 4160.1–1 and 4160.1–2 are removed.

Section 4160.3, Final decisions, is amended to clarify the process for filing an appeal and a petition for a stay of a final decision. It provides that decisions will be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA will have up to 45 days to act on the petition. If the petition is granted, the decision will be stayed until resolution of the appeal.

The final rule also clarifies the amount of grazing use that is authorized when a decision has been stayed by OHA. Where an appellant has had no authorized grazing use during the preceding year, the authorized grazing use must be consistent with the decision, pending a final determination on appeal. Where a decision proposes a change in the amount of authorized grazing use, the authorized grazing use during the time an appeal is pending will not exceed the appellant's previously authorized use.

Finally, this section provides authority to the authorized officer for making decisions effective immediately, unless a stay is granted, when it is necessary to protect rangeland resources under the standards imposed by § 4110.3–3(b), or to facilitate abatement of unauthorized use by closing an area temporarily to grazing use under § 4150.2 of this part.

Section 4160.4, Appeals, provides instructions regarding the filing of appeals and petitions to stay decisions When a final decision is issued, any person whose interest has been adversely affected may file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, OHA is allowed 45 days from the end of the appeal period to review a petition for stay.

Subpart 4170—Penalties

Section 4170.1–1, Penalty for violations, is amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the state in which the violation occurred as supplied annually by the NASS, as well as reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation.

Section 4170.1–2, Failure to use, is amended to provide that if a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation with the permittee or lessee, may cancel whatever amount of permitted use the permittee or lessee has failed to use

Section 4170.1–3, Federal or State animal control and environmental protection or resource conservation regulations or laws, is removed. The substance of this section is incorporated in § 4140.1(c) of this final rule.

Section 4170.2–1, Penal provisions under TGA, is revised slightly to specify that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500.

Section 4170.2–2, Penal provisions under FLPMA, is amended to adopt the alternative fines provisions of Title 18 U.S.C. section 3571.

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Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1. The fundamentals of rangeland health (titled National Requirements for Grazing Administration in the proposed rule) for grazing administration, are added to establish fundamental requirements for achieving functional, healthy public rangelands. These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards, and habitat for threatened or endangered species or other species of special interest.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1, Fundamentals of rangeland health, are met or significant progress is being made to meet the fundamentals, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Section 4180.2, Standards and guidelines for grazing administration, is added to direct that standards and guidelines will be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs. Once standards and guidelines are in effect, the authorized officer shall take appropriate action as soon as practical, but not later than the start of the next grazing year upon determining that existing grazing management practices are significant factors in failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

Section 4180.2(d) lists factors that, at a minimum, must be addressed in the development of State or regional standards. The guiding principles for the development of standards pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. Section 4180.2(e) lists guiding principles to be addressed in the development of guidelines.

The rule provides that where State or regional standards and guidelines are not completed and in effect by February 12, 1997, the fallback standards and guidelines included in the text of the rule will be implemented. The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles presented in § 4180.2(d). Similarly, the fallback guidelines include grazing management practices while the guiding principles of § 4180.2(e) refer more generally to the types of concerns to be addressed in the development of State or regional guidelines.

Standards and guidelines will be applied through terms and conditions of grazing permits, leases and other authorizations, through AMPs and other activity plans, and through the conditions of cooperative range improvement agreements and range improvement permits. The Department recognizes that rangelands within a given area may be in functional, healthy conditions even though individual isolated sites do not meet the standards or guidelines. However, the Department believes that general failure to meet the benchmarks across a broader area, such as a typical BLM grazing pasture or BLM allotment, would be reliable evidence that the area is not in healthy, functional condition.

IV. General Comments

Numerous comments addressed the overall rulemaking. These comments asserted several central themes which crosscut different sections of the rulemaking. Accordingly, BLM has decided to address these central issues in this portion of the preamble. Within the context of such discussion, particular sections of the proposed and final rules will be referred to as necessary. Nevertheless, in these responses, BLM focuses upon central issues that were of concern to commenters throughout the proposal. Comments that were more specific to a particular section are discussed in the following section entitled Section-by-Section Analysis and Responses to Public Comments.

Rangeland Reform Is Not Needed

Some commenters took the position that general rangeland improvement is unnecessary. Their view was that current legislation, regulations, and procedures provide enough latitude and capability for the government to administer the public rangelands properly, therefore there is no justification for designing and implementing the rangeland improvement program. They stated that the initiative should be dropped or abandoned immediately. They asserted that the government has not shown that the proposal will benefit the western range and many of the elements of the rule are more appropriately dealt with in manuals, instruction memos, and policy guidance.

In addition, the comment was often made that the National Research Council study commissioned by the National Academy of Sciences reports that the conditions of rangeland health in the West are largely unknown. If the conditions are unknown, stated the commenters, it is impossible to demonstrate a need for the proposed rule. Some commenters stated that the entire proposal and EIS were politically driven and did not relate to the resource protection issues of public land administration.

The Department believes that there is a need for changes in public rangeland grazing administration. The Department has been collecting data on the condition of the rangelands for over 60 years. The Department does have considerable information on all BLM lands, based on these years of data collection, although the same level of detailed knowledge may not be available on every allotment. The information available is sufficient to identify trends in rangeland health across the western rangelands.

The status and trends of the western rangelands upon passage of the Public Rangelands Improvement Act (PRIA) in 1978 indicated that western rangelands were producing below their potential and that rangelands would remain in unsatisfactory condition or decline further unless the unsatisfactory conditions could be addressed and corrected by intensive public rangelands maintenance, management and improvement. Congress articulated its view in PRIA that such unsatisfactory conditions on public rangeland present a risk for soil loss, siltation,

desertification, water loss, loss of wildlife and fish habitat, loss of forage for livestock and other grazing animals, degradation of water quality, flood danger, and threats to local economies. In addition, BLM National Public Lands Advisory Council recommended in 1992 that "* * * foremost consideration needs to be given to protecting the basic components of soil, water and vegetation. Without assurances for the future well-being of these basic natural resources, there is little to squabble about."

BLM's research has concluded that in the long term under current management practices 22 million acres of BLM uplands would be functioning but susceptible to degradation, and about 20 million acres would be nonfunctioning. The vegetation in some areas would change from potential natural communities to mid seral or late seral stages because of overgrazing, fire, or drought. Conditions would be worse in riparian and wetland areas. The overall trends would be a slow, steady, long-term decline in conditions. Approximately 466,000 acres of riparian areas (43 percent of the total) on BLM land would be functioning but susceptible to degradation, and 219,000 acres (21 percent) would be nonfunctioning. The results of these studies are reported in detail in the FEIS on this rulemaking. These studies show that without some changes in the current program conditions in critical riparian areas would continue to decline.

The program of rangeland improvement responds to the needs of BLM to ensure the efficient administration and management of public rangelands, as well as to the findings expressed by Congress most recently in PRIA, the National Public Lands Advisory Council, and the Western Governors' Association. The program has included and will continue to include significant public involvement. The FEIS associated with the rulemaking examined several alternatives, including continuing grazing administration under current rules and procedures. The impact analysis in Chapter 4 of the EIS demonstrates there would be substantial improvement in riparian areas, uplands, and only slightly reduced forage availability under the alternative adopted today when compared to a continuation of current management.

Some commenters asserted that rangeland improvement is unnecessary because it will not improve the condition of the public rangelands. The Department disagrees. Commenters argued that few permittees or lessees are poor stewards of the public rangelands. They stated that the program will alienate many conscientious ranchers. The commenters asserted that the agencies and public may lose the service and support of these users in maintaining and improving the conditions of the public rangelands, and that rangeland conditions are likely to degrade. Therefore, they claimed, the initiative should be abandoned. However, the Department believes that improving administration of public rangelands will improve their condition, which will benefit all uses, including livestock grazing. This is discussed more fully in the FEIS on this rulemaking.

The standards and guidelines in the final rule are aimed at improving the ecological health of the rangelands. The analysis in the FEIS indicates there will be significant improvements.

The Department recognizes that the majority of public land grazing permittees and lessees are conscientious stewards. However, it also notes that line managers need clear authority and guidance to help correct problems in grazing use and to improve the degraded condition of some areas expeditiously. This program is intended to facilitate cooperation between BLM employees and public land users in making those improvements. Also, by making BLM and Forest Service management more similar, it will be easier for permittees and lessees to comply with land use requirements. Good stewards will not be adversely affected by this initiative and will have an opportunity to work with the Department to sustain the economic vigor of their industry while maintaining or improving the ecological health of the public lands. The Department recognizes that it is in the best interests of the users, the public, and BLM to cooperate in meeting these objectives.

Commenters also stated that the Department has gone through the formalities of public input but has failed to make public the findings and statistics of the letters and meetings. During development of the final rule, the Department considered all comments, and as a result has modified the language of the proposed rule. All comments received are available for review in BLM's administrative record. The section-by-section portion of this preamble explains the changes made to the proposed rule in this final rule.

Rangeland Improvement Is Inconsistent With Current Laws

Conflicts with TGA, FLPMA, and other laws. A number of comments questioned whether the proposed amendments to the grazing rule conflict directly with TGA, FLPMA, PRIA and other related Federal laws. The BLM's main statutory authorities for regulating grazing on the public lands are TGA, FLPMA and PRIA. In TGA Congress directed the Secretary to bring order to the management of the public rangelands and improve range conditions.

Specifically, Section 2 of TGA provides:

> The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts * * * and he shall make such rules and regulations * * * and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *.

The TGA authorizes the Secretary to, among other things, establish fees, issue permits and leases and prescribe terms and conditions for them, issue range improvement permits, and provide for local hearings on appeals. The emphasis on disposal of Federal lands changed with the Classification and Multiple Use Act in 1964 and FLPMA in 1976. In FLPMA Congress articulated the national policy that "the public lands be retained in Federal ownership." 43 U.S.C. 1701. FLPMA also directs that land management be on the basis of multiple use and sustained yield, thus clarifying that other uses of public lands are equally appropriate. FLPMA did not repeal TGA, but did provide additional management direction. For example, section 402 of FLPMA provides that grazing permits and leases shall be:

> [S]ubject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

In 1978 Congress again focused on the public rangelands when it passed PRIA. In Section 2 of that Act Congress found that "vast segments" of the public rangelands were "producing less than their potential for livestock, wildlife habitat, recreation, forage and water and soil conservation benefits," and so were considered to be in an unsatisfactory condition." Congress went on in Section 2 to reaffirm a national commitment to "manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values." The

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Department has concluded that the amendments to the grazing rule are within the statutory authority granted by Congress to the Secretary to administer the public lands under TGA, FLPMA, PRIA, and related acts.

NEPA issues. A number of commenters asserted that the draft EIS was inadequate. The commenters asserted that more local EISs were required. The FEIS prepared for the rangeland improvement program describes the environmental impacts that would result from several proposed alternatives for managing BLM administered rangeland and for changing the fees charged to permittees and lessees. Any subsequent narrower decisions, such as the state or regional standards and guidelines or, if necessary, more local determinations, will tier to the broader national FEIS. Tiering is appropriate when a subsequent EIS or environmental assessment is prepared on an action included in the overall EIS, in this case, the FEIS prepared for the overall program. Additional NEPA analysis will be conducted as appropriate as local or regional decisions are made.

FACA Issues. A number of commenters stated that some of the proposals relating to RACs, especially the provisions regarding task forces of those councils, were violations of FACA. The Department disagrees. The final rules adopted today provide that any subcommittee will report directly to the chartered advisory council. The advisory council will then independently review the input from the subcommittee prior to presenting any consensus advice to the agency. As long as subcommittees report to the agency through the chartered advisory committee, and do not provide advice directly to the agency, their operation is consistent with the requirements of FACA.

Takings. Some commenters asserted that various sections of the proposed rule raise the possibility of a "taking" of private property rights without "just compensation." The United States Constitution gives Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Article IV, § 3, cl. 2. The power includes authority to control the use and occupancy of Federal lands, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them. *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 405 (1917).

In a series of laws, Congress has delegated primary responsibility and authority to manage livestock grazing on public lands to the Secretary, acting through BLM. The basic laws are TGA, FLPMA and PRIA. In authorizing the issuance of grazing permits in TGA, Congress expressly provided that the "issuance of a permit * * * shall not create any right, title, interest, or estate in or to the [public] lands." 43 U.S.C. 315b. In FLPMA, Congress authorized the Secretary to "cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions" of the permit or lease. 43 U.S.C. § 1752(a). The same section also authorizes the Secretary to "cancel or suspend a grazing permit or lease for any violation of a grazing rule or of any term or condition of such permit or lease." These statutes are implemented by BLM's regulations at 43 CFR Part 4100 *et seq.*, including the amendments adopted here.

The Fifth Amendment to the United States Constitution provides in relevant part that no person shall be denied property without due process of law, and no private property shall be taken for public use, without just compensation. This Amendment protects private property. Because Congress made clear in TGA that grazing permits create no private property interest in public lands, the Fifth Amendment's protection is not implicated. The Courts have long held that no taking of private property occurs in the course of lawful administration and regulation of Federal grazing lands because the grazing permit represents a benefit or privilege bestowed by the Federal government upon a private individual and not a compensable property interest under the Fifth Amendment.

Thus, an authorized officer's decision to change permitted use (§ 4110.3), decrease permitted use (§ 4110.3–2), implement a reduction in permitted use (§ 4110.3–3), decrease land acreage (§ 4110.4–2), approve an AMP (§ 4120.2), or approve a cooperative range improvement agreement (§ 4120.3–2) does not give rise to a takings claim.

Some commenters asserted that permittees and lessees should be compensated for any indirect adverse impact that cancellation, nonrenewal, suspension or modification of grazing permits might have on the permittee's base property. While base property is private property protected by the Fifth Amendment, the United States Supreme Court, in an opinion by Chief Justice Rehnquist, specifically considered and rejected the argument that the increment of value added to a private ranch by a public land grazing permit is a compensable property interest, *United States* v. *Fuller*, 409 U.S. 488 (1973).

Even if, in other words, cancellation, nonrenewal, suspension, or changes in the terms and conditions of a grazing permit might have some negative effect on the value of the base property, the Supreme Court has made clear this is not a "taking."

Some commenters asserted that the proposal to clarify title to future permanent range improvements on the public lands in the name of the United States constitutes a "taking" of private property. The BLM has concluded that proper management of the public lands requires title to permanent improvements on the public lands to remain with the land and be held in the name of the United States. This clarification brings BLM in line with Forest Service policy. This provision is prospective in application; that is, it will not affect ownership or rights that may currently be held in a range improvement. In FLPMA, Congress provided for limited compensation for permanent improvements when a permit or lease is cancelled in whole or in part, in order to devote the public lands to another public purpose, including disposal. 43 U.S.C. 1752(g) To be faithful to this Congressional directive, the amendment requires the authorized officer to retain a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be available for use in determining any compensation owed the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose.

Comments were also received on a proposed amendment to require permittees or lessees, as a term or condition of a grazing permit or lease, to allow BLM reasonable administrative access across non-Federal lands under its control for the orderly management and protection of the public lands. Sometimes, because of the location and configuration of public and non-Federal lands, BLM personnel need reasonable access across non-Federal lands under the control of permittee or lessee to access Federal land in order to carry out its management responsibilities on public land. Providing for such access is a reasonable condition to attach to the permit or lease authorizing livestock grazing on public lands.

Administrative appeals procedures. Many commenters raised questions of fairness and appeals; many of these commenters referred to these as "due process" issues. The existing administrative and applicable judicial protections afforded permittees and

lessees pertaining to the issuance, modification, suspension, cancellation, renewal and general administration of grazing permits and leases will continue. For example, some commenters read the proposal to amend § 4.477 to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. A permittee will not have to choose between an appeal and requesting a stay. Both will be available.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Departmental procedures for other types of appeals. Any person whose interest is adversely affected by a decision of the authorized officer has full appeal rights. Standing to maintain an appeal will continue to be determined by OHA. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), BLM will issue proposed decisions, which may be protested. Except in situations where immediate action is needed for resource protection in accordance with the standards set for in §§ 4110.3–3(b) and 4150.2(d), no decisions will be effective until after the 30-day appeal period. The applicant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision may be temporarily stayed for up to 45 days after the end of the 30-day period for filing an appeal while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal. Finally, parties have the option to seek administrative or judicial review of a decision that is put into immediate effect.

V. Section-by-Section Analysis and Responses to Public Comments

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would have revised the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160, and would also have removed other references to suspension of the decision of the authorized officer upon appeal.

Comments on this section addressed several major issues. Some commenters asserted that the proposal did not provide adequate opportunity for administrative appeals and violated various statutory provisions. Some read the proposal to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. Other commenters were concerned about possible fiscal impacts of the provision. Other commenters stated that the proposed provision would speed implementation of needed grazing decisions.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Department procedures for other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. Any person whose interest is adversely affected by a decision of the authorized officer still has full appeal rights. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), decisions will not be in effect until after the 30-day appeal period. An appellant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision will be temporarily stayed for up to 45 days after the end of the period for filing an appeal (for a total of up to 75 days) while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal.

The provision will not require an appellant to choose between this process and the hearing on the evidence granted by TGA. The hearings referenced in this provision do include a review of the evidence on the case. A permittee will not have to choose between having such a hearing and requesting an appeal. Both will be available.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed. The phrase "pertaining to the period during which a final decision will not be in effect" is added to clarify that the reference to § 4.21(a) relates to those specific provisions.

Part 1780—Cooperative Relations

Section 1784.0–5 Definitions

The proposed section would have replaced the term "authorized representative" with "designated Federal Officer" to make the terminology of the rule more consistent with the terminology of FACA and 41 CFR 101–6.1019.

The Department received very few comments on this initial section of the discussion of cooperative relations. The most common issue raised was the abolition of grazing advisory boards (GABs). This issue is covered below under the discussion of § 1784.6–5.

Some comments suggested that the change from "authorized representative" to "designated Federal officer" was designed to give greater authority and stature to Federal personnel.

Each RAC or other advisory committee will have a "designated officer of the Federal Government," as required by section 10(d) of FACA, who will chair or attend each meeting. The regulations implementing FACA, 41 CFR subpart 101, use the term "designated Federal officer" and prescribe the authority and responsibility of that position. As required by FACA, this officer will call the meetings of the committees and will develop the agendas of the meetings.

In accordance with the above discussion, the Department has concluded that the final rule will include these changes as proposed, because it intends that cooperative relations be conducted in conjunction with FACA and the language and requirements of this final rule should be consistent with FACA.

Section 1784.2–1 Composition

Under the proposed rule, this section would have been amended by eliminating paragraph (b), and amending existing paragraph (c), which is redesignated new paragraph (b). Previously, paragraph (b) established an eligibility requirement for grazing advisory board members. This requirement would no longer have been necessary with the discontinuance of the grazing advisory boards.

New paragraph (b) would have added to existing education requirements for committee membership new requirements that individuals can qualify to serve on advisory committees if they have experience or knowledge of the geographic area covered by the committee, and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Many commenters expressed confusion about the Department's use of the terms "board," "council" and "committee." In this final rule, "council" is used to refer exclusively to the RACs. "Committee" is used in §§ 1784.0–5, 1784.2–1, 1784.2–2, 1784.3, 1784.5–1, and 1784.5–2. These

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sections have application to all types of advisory committees, not just RACs. A RAC is a type of advisory committee. Sections 1784.6–1 and 1784.6–2 concern RACs. "Board" is not used in this final rule.

Many commenters on this section supported the concept of broadening membership on the councils. Commenters noted that because useful knowledge and expertise is widely distributed in society, membership of advisory committees should be broadened to take advantage of this.

Some commenters specifically objected to changing this section. There were a number of comments about the specific composition of the councils. Most of these comments were also addressed to subsequent sections, especially § 1784.6–1. Since these comments related to the Department's proposals concerning the makeup of the RACs, they are discussed under that section, below.

Some commenters made an identical suggestion to change the last clause of § 1784.2–1(b) by striking the requirement that council members have "demonstrated a commitment to collaborate in seeking solutions to resource management issues." One comment stated that commitment without necessary concurrent expertise is useless, and that accommodation for regional differences in a broad range of specific information on each area should be a necessity. A number of commenters questioned who or what should determine adequate experience, and others suggested a better definition was needed.

A commitment to collaborative decisionmaking is critical to the success of these committees. The Department has concluded that the final rule will adopt the proposed language requiring both appropriate expertise and a commitment to collaborative decisionmaking, because such a balance is the best way to assure the success of any advisory committee.

FACA requires that the head of an agency appoint members to any committee providing consensus advice to the agency. In the case of RACs, the Secretary must appoint members. In making final selections of RAC members, the Department will make determinations as to what is adequate experience. Since geographic areas covered by individual RACs will be highly variable it would be difficult to define this term too narrowly without unduly limiting the flexibility which will be needed to ensure that each council includes members who will represent a broad range of interests and make a substantive contribution to the committee's deliberations.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 1784.2–2 Avoidance of Conflict of Interest

In the proposal, paragraph (a)(1) of this section would have been amended to allow permittees and lessees to serve on any advisory committees, including RACs and their subgroups. This change would have been made to ensure that permittees and lessees, as important stakeholders in the management of public lands, could provide input to advisory committees so that the committees would have been able to develop recommendations based on direct community and user input. Paragraph (b) would have clarified that no advisory committee member could have participated in any matter in which the member had a direct interest. The proposal included a new paragraph (c), which would have provided that members of RACs have to disclose their direct or indirect interest in Federal grazing permits or leases administered by BLM.

The Department received many comments on this section. Many commenters believed the conflict of interest provisions applied only to ranchers, and stated that such provisions were unfair and should apply to all members of the councils. Many commenters spoke to the membership of environmentalists on the councils. Commenters asserted that environmental groups have a direct conflict of interest. Some asserted that all users of specific areas have an interest in that area, and should be excluded from serving on a council studying the situation in that area. Commenters stated that allowing members of national or regional environmental groups to serve violated the local concept of the RACs.

A number of commenters asserted that permittees or lessees who were involved in an issue should be involved in the process, so they would have ownership of or support the solution developed in a RAC. Others suggested that since permittees and lessees are bound by the terms and conditions of their permits or leases, and by the provisions of AMPs, it would seem only proper to allow permittees or lessees on a council to provide input into the management decisions which will affect that grazing allotment. One comment suggested that individuals with an interest in an issue should be allowed to participate in the discussions of the issue, but should be excluded from any voting required.

Another commenter provided a suggested definition of indirect interest that includes any situation in which outside interests, of whatever nature, might lead to substantial interference with or disregard for a duty of serving on a grazing council or committee.

Commenters challenged the legal basis for a conflict of interest provision. They asserted that if it is based on the Ethics in Government Act, that the law is limited to Federal employees or paid advisors, and that ethical standards under Federal law are not limited to financial gain but include the use of one's official position to promote a personal viewpoint.

"Conflict of interest" is an accepted legal concept that generally refers to "a clash between public interest and the private pecuniary interest of the individual concerned." (Black's Law Dictionary, 5th Edition, 1979, p. 271). The concept applies to situations where a committee member, who is serving a public interest, has private financial interests that might conflict with his or her public role. This would include holding a permit that might be impacted by the deliberations of a RAC.

The provision does not apply only to permittees or lessees. It applies to all advisory committee members. The provision does not apply to situations in which an individual's interest in the deliberations of a committee is not financial. The provision does not refer to cases where an individual has a membership in an organization that is in litigation with the government, unless the individual has a pecuniary interest in the outcome of the litigation. Furthermore, it does not refer to cases where an individual might develop reports for another organization that in turn might influence agency decisions.

Permittees and lessees were specifically mentioned in this provision to draw attention to the fact that the proposed rule *broadened* the opportunities for participation by such persons. Under the previous regulations at § 1784.2–2, permittees and lessees normally would have been prohibited from serving on any committees advising BLM except for grazing advisory boards. Under the provision adopted today, permittees and lessees can participate on the broader based RACs or on any other advisory committee.

The concepts of "direct" and "indirect" interest refer back to the basic principle of conflict of interest, and refer to financial matters. Both terms are defined in common usage. "Direct" interest refers to an interest

which is certain, not in doubt or contingent on some other factor. "Indirect" interest refers to an interest contingent on another factor, or through a third party. In the case of permittees, an indirect interest will generally be an interest in a permit or lease that is through a third party, such as a child, spouse, business partner, or other affiliate.

The rule as finalized allows permittees and lessees with financial interests to serve on committees, thus broadening the base of advice available to the Department. This provision simply requires *disclosure* of interests by advisory committee members, and prohibits them from participating in *specific matters* in which they have such interests. It does not prevent persons with a legal interest from serving on committees.

Comments concerning application of conflict of interest provisions caused the Department to reexamine the types of interests that would have to be disclosed by committee members. In the final rule, as detailed below, the Department has expanded the list of interests that might be held by persons who might serve on RACs and which must be disclosed.

In the final rule, the Department has sought to correct any confusion between the terms "council," "committee," and "board," as discussed at § 1784.2–1. Conflict of interest provisions apply to *all* advisory committees that advise the Department as well as to the RACs.

In accordance with the above discussion, the Department has concluded that the final rule should adopt a modified version of the proposed rule. Modifications have been made to ensure consistency in the use of the terms "council" and "committee," and for consistency with other changes to the proposal regarding the structure of RACs, discussed below under §§ 1784.6–1 and 6–2. Additionally, the word "multiple" is eliminated in this section, and in all subsequent sections. The Department has made this decision to simplify the name of the councils.

In final paragraph (c), the phrase "leases, licenses, permits, contracts, or claims which involve lands or resources, or in any litigation which involve lands or resources administered by the Bureau of Land Management," is substituted for the phrase "Federal grazing permits or leases." This last change is made for consistency with the principle that this provision applies to *all* types of financial interests. The phrase adopted is consistent with that in existing paragraph (a) of this section. While persons who hold such interests will still not normally be allowed to serve on advisory committees, except for the general exception introduced by this rule for grazing permittees or lessees; under special circumstances such a person may serve on a committee. In such case, the person would be required to disclose his or her interests.

Section 1784.3 Member Service

The proposed rule would have established that appointments to advisory committees would have been for two-year terms unless otherwise specified in the charter. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments, terms and election procedures, would have been removed.

Also, the provisions for reimbursement of committee members' travel and per diem expenses would have been modified to make clear that individuals selected by committees to provide input, but who themselves are not appointed committee members, would not have been eligible for reimbursement. This provision was necessary to limit costs.

Several comments were received on the charters and chartering process for advisory committees. Some comments indicated that as proposed, the changes would create the need for a new charter for each committee which would result in a lack of continuity in committee functioning.

Today's action amends the general advisory committee regulations found at 43 CFR Subpart 1784. These general regulations contain standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary and BLM on matters relating to public lands and resources under the administrative jurisdiction of BLM. The proposed amendments must comply with the requirements of FACA. Thus the Department's discretion is limited by the terms of FACA.

FACA directs that advisory committees shall terminate within two years of establishment, unless renewed. At the time of renewal a new charter must be filed. The Department expects that charters will look substantially the same each time they are renewed, although changes may be made if experience suggests revisions are needed. The charter will meet the requirements of FACA, but will be relatively general in nature. Charters will include provisions such as council purpose and responsibilities, membership requirements, and terms of appointments. Bylaws may be prepared by individual councils if needed to provide additional procedural guidance.

Many comments were received on membership service and tenure. Comments included the following: a public official's term on a committee should coincide with the term of office, vacancies should be filled in the same manner as positions were originally filled, members should be selected on the basis of merit, and membership should be staggered to achieve continuity. Several comments suggested that members should serve for longer than two years so they would become familiar with issues. Some comments indicated that two-year limits should be established. Other comments supported the view that charters should allow lifetime membership. Some comments suggested that members should be elected. Some of these comments suggested that members should be elected by grazing permittees and lessees.

Under FACA, the Department has some discretion regarding the terms of service for members. Generally, member terms are coterminous with the term of the charter. The Department intends to follow this general practice with RACs, except where special circumstances require otherwise. For example, the Department intends to appoint initial members to staggered terms, so members' terms will not all terminate in the same year. This ensures that there will always be experienced members on a council. The Department expects that some members will be reappointed, providing additional continuity to the councils. These practices have been used successfully in the past.

As explained in the discussion of § 1784.2–1, appointments to the advisory councils will be by the Secretary, as required by FACA. Secretarial appointment is also required by FLPMA. The Department will seek nominations from Governors, interested groups and private citizens. Members will qualify to serve on advisory committees because their education, training, or experience enables them to give informed and objective advice on matters of interest to the committee. Decisions about replacing members appointed to fill the position of the local elected official when the member's elective term expires will be made on a case-by-case basis. Existing paragraph (b)(2), which by today's action is redesignated (a)(2), provides for filling vacancies occurring by reason of removal, resignation, death, or departure from elective office. Such vacancies are to be filled using the same method by which the original appointment was made. Under existing

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paragraph (b)(1), which by today's action is redesignated (a)(1), BLM must replace members of committees who are serving in the elected official position, and who leave office. It may be possible in some cases for the member to continue to serve on the council in another appointed position.

Comments were received both for and against BLM payment of travel and per diem for council members. Some comments suggested that members should volunteer their time and expenses and some comments suggested that non-resident members should pay for their own travel. Other comments questioned whether advisory committee costs would escalate over time and whether councils would be in session all of the time. One comment questioned why members of resource area councils should be reimbursed, but not rangeland resource teams or technical review teams, and suggested that BLM establish technical teams and reimburse the technical team members.

FLPMA (43 U.S.C. § 1739), as amended by PRIA (43 U.S.C. 1908), requires establishment of advisory committees representative of major citizen interests concerned with resource management planning or the management of public lands. The RACs will fulfill this requirement. Section 309 of FLPMA provides that "members of advisory councils shall serve without pay, except travel and per diem will be paid each member * * *" Regulations at 43 CFR subpart 101, Federal Advisory Committee Management, also allow payment of travel expenses and per diem.

The objective of RACs established under these regulations is to make available to the Department and BLM the advice of knowledgeable citizens and public officials regarding both the formulation of operating standards and guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment. The Department has concluded that to ensure broad and regular participation by members, it will continue to compensate advisory committee members for travel and per diem expenses. The Department does not anticipate that operating these committees will generate a need for substantial increases in Federal funds in the future. In any event, funding is subject to future review in the budget and appropriations process. Moreover, advisory committees are required under FLPMA and the Department has concluded the committee structure adopted in the rule will reap tangible rewards in improved land management and increased cooperation among stakeholders.

The Department anticipates that the localized teams will be in existence for limited time periods and will focus on fairly narrow issues. As a result, the Department has concluded that members of these teams who are not also members of the parent advisory council will not be reimbursed for travel and per diem. The Department is also making the decision not to reimburse expenses of these localized teams in order to limit the expenses incurred by BLM and the Department. However, the final rule allows BLM to constitute a special function subgroup such as a technical review team and reimburse RAC members for travel expenses. In addition, the Department has the authority to purchase services in support of an advisory council, and on occasion may do so.

In accordance with the above discussion, the Department has decided to adopt a version of the proposed rule. Several minor changes are made in paragraph (d). All of these changes are intended to clarify that this section applies to all advisory committees, not just RACs. References to resource review teams and technical review teams are omitted from the final version of the rule for that reason, and for consistency with the models of RACs finalized today in §§ 1784.6–1 and 6–2. Those terms are replaced with a more general reference to "subgroups."

Section 1784.5–1 Functions and Section 1784.5–2 Meetings

These sections would have been amended by replacing the term "authorized representative" with the term "designated Federal officer." These changes would have provided consistency with the terminology of FACA.

No comments were received that pertained solely to these sections. The Department has decided to adopt this provision as proposed.

Section 1784.6–1 National Public Lands Advisory Council, Reserved Sections 1784.6–2 and 1784.6–3, Section 1784.6–4 District Advisory Councils, and Section 1784.6–5 Grazing Advisory Boards

References to the National Public Lands Advisory Council, district advisory councils and grazing advisory boards would have been removed in their entirety and replaced with three new sections that would have established multiple resource advisory councils and associated input teams. Sections 1784.6–4 and 1784.6–5 would have been removed. Reserved sections 1784.6–2 and 1784.6–3 would have been replaced by new sections.

No comments were received on the proposals relating to §§ 1784.6–2 and 6–3. A number of comments were received concerning §§ 1784.6–4 and 6–5. Comments directed to § 1784.6–1 have been addressed below in the discussion of the new provisions in that section.

Many commenters stated that the grazing advisory boards' members had both knowledge of and an interest in the land. Some commenters who supported establishment of the RACs stated that the grazing advisory boards should also be retained; others stated that the grazing advisory boards should be abolished.

Grazing advisory boards have served a useful purpose in providing the Department with valuable input from permittees regarding grazing issues. However, the statutory provision in FLPMA, section 403, establishing grazing advisory boards expired by its own terms on December 31, 1985. Since then, the boards have been authorized only by Secretarial order. For several reasons, the Department has concluded that it will proceed with its proposal to abolish the boards and to rely on one general form of advisory committee, the RACs. While grazing advisory boards have been useful, the Department believes that more collaborative public rangeland management requires a broader scope of interests advising BLM. The function of grazing advisory boards, as defined by FLPMA, was limited to making recommendations to management concerning the development of AMPs and the utilization of range betterment funds. While grazing advisory boards may have included some individuals not involved in grazing, this was not uniformly the case. RACs will address a full range of resource management issues, including AMPs and planning for the expenditure of range betterment funds and will broaden public involvement in the process.

All groups that provide advice to the Federal government are subject to the requirements of FACA, unless specifically excluded by statute. FACA specifies a series of requirements for committees and other bodies advising the Federal government, including that they be balanced in terms of representation, have notices of meetings published in the **Federal Register** and be open to the public, keep various types of records, and implement other procedural safeguards that will assure public involvement in resource management issues. The Department believes it is important that management of the public rangelands involve a wide range of public involvement. To achieve this, and to comply with FACA, the Department has concluded that grazing advisory boards should be abolished and RACs created.

In accordance with the above discussion, the Department has concluded that the final rule should adopt provisions as proposed because these provide the best alternative for promoting cooperative relationships in resource management.

Section 1784.6 Membership and Functions of Resource Advisory Councils and Council Subgroups

In the proposal, the title of this section would have been changed for consistency with subsequent changes in §§ 1784.6–1 through 6–3. It would have referenced multiple resource advisory councils (MRACs), as well as rangeland resource teams and technical review teams.

A few comments were addressed to this section, but covered issues relating to the substance of the following sections. They will be discussed under the pertinent sections below.

Because the Department has concluded that the final rule should adopt a more flexible model for public participation than was envisioned in the proposal, it has changed this title to reflect the three model version of RACs adopted in final rule §§ 1784.6–1 and 6–2. References to rangeland resource teams and technical review teams are changed to "subgroups" for that reason, and "multiple" is omitted from the name of the RACs, as discussed at § 1784.6–1.

Section 1784.6–1 Resource Advisory Councils—Requirements

Under the proposed rule, this section would have provided for the establishment of MRACs. One MRAC has been established for each BLM administrative district except when prohibited by factors such as limited interest in participation, geographic isolation in terms of proximity to users and public lands, or where the configuration and character of the lands is such that organization of councils along BLM district boundaries is not the most effective means for obtaining advice on the management of all the resources across an entire area. The exceptions would have been intended to provide for situations such as those encountered in Alaska where it is difficult for interested persons to participate because of extreme travel distances, or situations where management of neighboring BLM districts or portions of districts involving similar lands can best be served by organizing an MRAC along boundaries other than BLM district administrative boundaries. The determination of the area for which an MRAC would have been organized would have been the responsibility of the affected BLM State Director. Organization by ecoregion boundaries would have been encouraged where appropriate. The Governors of the affected States and established MRACs could have petitioned the Secretary to establish an MRAC for a specific BLM resource area.

MRACs would have provided advice to BLM officials to whom they report regarding the preparation, amendment and implementation of land use plans. The councils would also have assisted in establishing other long-range plans and resource management priorities in an advisory capacity. The Department intended that this would have included providing advice on the development of plans for range improvement or development programs and included in the proposed amendments to 43 CFR subpart 4120 a requirement for consultation with MRACs in the planning of range improvement or development programs. MRACs would not have provided advice on personnel management, nor would they have provided advice on the allocation and expenditure of funds subsequent to budget planning.

Appointments to MRACs would have been made by the Secretary. In making appointments, the Secretary would have considered nominations from the Governor of the affected State and nominations received in response to a public call for nominations. The Secretary would have encouraged Governors to develop their nominations through an open public process. In reviewing nominations submitted by the Governors, the Secretary would have considered whether an open public process was used. All nominations would have been required to be accompanied by letters of recommendation from interests or organizations to be represented that are located within the area for which a council is organized.

The Secretary would have appointed 15 members to each MRAC. Five members would have been selected from persons representing commodity industries, developed recreational activities, or the use of public lands by off-highway vehicles; five would have been selected from representatives of nationally or regionally recognized environmental or resource conservation groups and wild horse and burro interest groups, from representatives of archeological and historical interests, and from representatives of dispersed recreational activities; and five would have been selected from persons who hold State, county, or local elected office, and representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands. The proposed rule would have required that at least one of the members appointed to each council must hold elected State, county, or local office. An individual would not have been allowed to serve on more than one MRAC at any given time.

The proposed rule would have required council members to have demonstrated experience or knowledge of the geographic area for which the council provides advice. It would have required that all members of MRACs attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. This requirement was intended to ensure a common general understanding of the resources management principles and concerns involved in management of the public lands.

The proposed rule would have provided that an official meeting of an MRAC required at least three members from each of the three broad categories of interests from which appointments were made. Formal recommendations of the council would have required agreement by at least three members of each of the three broad categories of interests that attend an official meeting.

MRACs would have had the option of requesting a Secretarial response where the MRAC believed its advice had been arbitrarily disregarded by the BLM manager. If requested, the Secretary would have responded directly to a council's concerns within 60 days. Such a request would have required agreement by all 15 members. The Secretary's response would not have constituted a decision on the merits of any issue that is or might become the subject of an administrative appeal and would not have precluded an affected party's ability to appeal a decision of the authorized officer.

The Department received many comments on this section of the proposal. Many commenters were opposed to the abolition of the grazing advisory boards. Comments on the grazing advisory boards have been covered above in the discussion of § 1784.6–5. Many were opposed to the formation of the MRACs. Others said that the proposed system was in direct conflict with the requirements for BLM

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to coordinate with State and local government in the decisionmaking process because the new system would be unwieldy and expensive. Some commenters stated that the councils would not bring about significant changes in the health of our public lands, but would perpetuate local control of public lands.

Other commenters were opposed to the MRACs because they said that the Federal agencies were being paid to manage the public land for public benefit, and they should do so. Some commenters charged that the Department was trying to subordinate or eliminate its legal obligations under sections of PRIA. Others stated that the public is involved in range decisions through the NEPA process and so MRACs were unnecessary.

Many commenters supported establishment of the MRACs. A typical comment stated they were an improvement over the grazing advisory board system. Several of the commenters who supported establishment of the councils suggested they be tried on an experimental basis.

Many commenters spoke to the make-up of the MRACs. Most of these commenters stated that ranchers would be under-represented. Some pointed out that the practical, ecological and managerial knowledge of permittees is essential, and that therefore they should be a required component. Some suggested that council membership should reflect the major users of the land in each specific area.

Some commented that it was discrimination to require environmentalists to be members of national organizations. Others said it was unfair to exempt the staffs of environmental organizations from the residency requirements which they believed were imposed on all other council members.

Many commenters spoke to participation of government employees on the councils. Some supported such participation especially by representatives of State wildlife agencies. Others were opposed to participation by government employees because they believed BLM would coordinate with such agencies anyway, and the councils should be for the government to get public input.

Some stated that prospective members should be supported by letters of recommendation from individuals and local associations of the area they would represent. Others specifically were opposed to the requirement for letters of recommendation. Commenters said that to require letters of recommendation from "local interests" would prevent the councils from being balanced and violates FACA. One comment stated that because salmonids were so important in many areas, someone on the council should be knowledgeable of salmonids.

Other comments regarding membership addressed lending institutions, academicians, Indian tribes, and other specific groups.

Many commenters said that it was important for the MRACs to be made up of people who had local interests and knowledge, and stated that all members should be local. Other related comments addressed the need for local expertise, a financial stake in the land, and other factors. Some asserted that council members must share a primary commitment to improving grazing as a land use. Some of these same commenters asserted that all members should be required to demonstrate their knowledge of rangeland, vegetation, and livestock management, or related areas.

Many commenters were concerned with the process of selecting members. Suggestions included that members be elected by the permittees, or appointed by the county commissioners or the Governor. Others objected to their being appointed by the Governor or by the Secretary. Many commenters objected to self-nomination of individuals to the MRACs.

A number of commenters spoke on operation of the MRACs. Some stated that no expenses should be paid. Some suggested that strict standards on conduct and meetings should be developed to prevent one interest from dominating. Others suggested that recommendations from the local council should have some jurisdiction over the actions of the Federal land management agency. Some commenters stated that the provision prohibiting councils from providing advice on funding and personnel matters was too restrictive. Some objected to the Secretarial appeal provision. Several asked whether the MRACs would give recommendations or advice, or suggested that the advisory council serve as a reviewer of proposed decisions of the authorized officer. Some commenters raised a concern about the development and content of the charter, and about evaluation of the councils. Others were concerned about the requirement for consensus because they thought it would result in a serious delay in decisionmaking.

Some commenters spoke to the jurisdiction of the MRACs and how that would be determined. A number stated they should be based on BLM districts or on ecoregions. Some objected to the State Director being authorized to determine the area covered by a council.

A number of commenters spoke to council size. Some stated they were too large, a few thought they were too small. Some stated that the basic principle should be balanced and broad representation of public concerns, not a specific number. A number of specific recommendations for MRAC membership and size were made.

Numerous substantive suggestions were made for the course of study. Other comments included a statement that the proposal differed in several material respects from the products of the Colorado Working Group. Some commenters suggested that various terms be defined including ecosystem, biodiversity, environmentalist, rangeland ecosystem, historical and archeological interests, direct interest, dispersed recreational activities, insufficient interest, unbalanced viewpoint, nationally or regionally recognized, and ecosystem boundaries. Some commenters suggested that the MRAC should take no actions to which the permittees or lessees involved did not agree.

The Department's decisions to form the RACs and to abolish grazing advisory boards have been discussed at § 1784.6–5, as is the need for greater public involvement than that provided by the grazing advisory boards. General requirements of FACA, which have dictated a number of the provisions adopted today, are discussed at § 1784.2–1, Composition. Under the requirements of FACA, members of committees advising the Federal government must be appointed by the head of the agency, in this case the Secretary. State and local government will be included in the process through representation on the RACs, as well as being consulted on numerous specific types of decisions, such as on designation or adjustment of allotment boundaries (§ 4110.2–4), increasing permitted use (§ 4110.3–1), implementing reductions in permitted use (§ 4110.3–3), development of AMPs (§ 4120.2), and other BLM decisions. See the discussions below on those sections for additional information.

The Department has concluded that the new system will be workable and neither unwieldy nor excessively expensive. Obtaining input from all interested parties on BLM decisions early in the process will in the long run reduce objections and appeals. The Department anticipates that this will not only expedite implementation of agency actions, but concurrently will reduce overall rangeland management expenses by making the program more efficient. For example, the Department does not expect travel expenses to be

significantly greater than they were for the grazing advisory boards, particularly with the addition of a residency requirement. The issue of costs of advisory committees is discussed further at § 1784.3, Member service.

The system will not necessarily be a multilevel structure. Under the provisions adopted today, only the RACs themselves will be required. The other subgroups will be discretionary. While the groups will be local, in a broad sense, the Department believes that providing for diverse participation through implementation of the provisions adopted in this section of the final rule will ensure that all interests are fairly represented. Furthermore, the requirement for consensus, which is retained in the final rule, will ensure that the three groups represented will have an equal say in making decisions, and no one interest will be isolated by majority vote.

The Department acknowledges that it is the responsibility of BLM to manage the public grazing lands. However, several different statutes, including FLPMA, PRIA, and NEPA, call for public participation in decisionmaking processes regarding such programs. A purpose of these RACs is to facilitate such participation, and their formation and structure is fully consistent with those legal requirements. While there may be some initial complications in establishing the RACs, the Department believes that they are critical to long-term improvements in the management of our public grazing lands. For that reason, the Department has decided not to try them on only an experimental basis. The Department has carefully considered the structure and functions of the MRACs. In response to the concerns about under representation of grazing interests, the Department agrees that, to the extent possible, the make-up of the commodity group on the council should reflect the distribution of commodity interests in the area represented by the specific council. For example, if approximately 3/5ths of the commodity interests in an area are grazing operators, 1/5th are timber harvesters, and 1/5th are miners, the commodity group on the council should include 3 permittees or lessees, 1 timber harvester, and 1 miner. Such a distribution will ensure that the necessary expertise is present to deal with technical issues which might come before a council representing that specific geographic area. While the Department does not agree that it is necessary or desirable to specify this in the text of the rule, since in some cases it may be impossible to achieve these optimal numbers, the Department will strive to arrive at this outcome during the appointment of council members.

Under the rule adopted today, environmental members will not have to be members of national groups. All nominees to the RACs will be required to have letters of recommendation, but because the final rule requires residency in one of the States within which the area to be covered by the council is located, the letter need not come from a local source. These requirements apply equally to all council members, environmentalists as well as commodity interests. Additionally, all members will be required to have some expertise or knowledge that will be useful to a council's deliberations.

The Department agrees that representatives of other Federal agencies should not be members of the RACs. Other Federal agencies are normally consulted about issues that affect them through other formal processes and do not need to be provided access through the RAC structure. However, under FACA, each council must have one "designated Federal official" present at each meeting. State agencies are a different matter. While it is true that BLM will coordinate on many issues with State agencies, nevertheless the Department believes it will be useful, in some cases and depending on local circumstances, to include State employees on the RACs. However, in the final rule, the Department has revised the discussion of the third group to limit participation of State employees to representatives of State agencies responsible for managing land, natural resources, or water.

The Department believes that the requirement to have broad representation from the three groups specified in this section of the final rule is a reasonably specific provision. It is not feasible to specify in more detail exactly what types of persons should be selected to ensure such representation. That is a decision that will have to be made on a case-by-case basis, depending on the nature of the population in an area covered by a RAC, and on the specific types of interest groups present in that area. The Secretary, based in part on nominations from the Governors, will strive to ensure that each RAC is fairly representative of those groups. Certainly, in many cases, tribal representatives should—and will—be included on the councils. The provisions of this section of the final rule allow inclusion of mining, timber, and other interests. However, this section deals specifically with the RACs that will be formed to provide advice on the public lands grazing program, and it is not appropriate to specify requirements related to the mining or timber industries here.

The Department does not agree that lending institutions should be specified as a group to be represented on all RACs. Of course, persons from such institutions could serve on the councils as representatives of the local public, local elected officials, or other interests listed in this section of the final rule. Similarly, academicians are listed as possible members because of their ability to contribute to technical discussion of rangeland issues. Therefore, the Department believes it is appropriate to limit membership of academicians, per se, to those involved in the natural sciences. However, an academician with some other specialty could participate as a member of the local public, as a representative of one of the other specified groups. Academicians who are not in the natural sciences are not prevented from serving on the councils.

The Department agrees that local expertise is essential to effective councils. The rule adopted today requires that members of RACs, rangeland resource teams and other local general purpose subgroups must reside in the State, or one of the States, within the jurisdiction of the council or subgroup. Additionally, the rule requires demonstrated knowledge of the geographic area. The Department does not agree that national environmental groups should be excluded, but again, representatives of such groups should have local knowledge and meet residency and other membership criteria.

Furthermore, the Department does not agree that all members should have a financial stake in the land or pay user fees. Anyone with a genuine interest in the management of the public lands, and with expertise to make a contribution, should be eligible to be considered for council membership, so long as the person meets other membership criteria.

Similarly, the Department does not agree that council members must share a primary commitment to improving grazing as a land use. While clearly the councils should provide advice on improving the grazing uses of the land, and grazing expertise will be an important component on the councils, many other issues are legitimate concerns, including non-grazing uses of the public rangelands. This is consistent with BLM's responsibility to multiple resources and uses.

Issues regarding selection of members have been discussed at § 1784.2–1, Composition. The Department believes that self-nomination is an appropriate

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method of identifying individuals with an interest in the management of the public lands. All nominations must be accompanied by letters of reference from interests or organizations to be represented. The Secretary will not be able to appoint to the councils all individuals who are nominated, either by themselves or by other groups. During the selection and appointment process, the Department will strive to establish council membership that represents the three groups in a balanced fashion, and that includes only members who meet the requirements to be informed, objective, knowledgeable about the local area, and committed to collaborative decisionmaking.

Issues concerning payment of per diem to council members have been discussed at § 1784.3, Member service.

The Department believes that the requirements for consensus decisionmaking and balanced membership will prevent one group from dominating the councils. Issues such as rules of operation can be handled by the individual councils after they are constituted, as long as they fulfill the requirements of FACA and this rule. The councils cannot legally be given jurisdiction over the actions of the Federal land manager. While the Department expects that the recommendations of the councils will be carefully considered by local Federal managers, ultimately the Federal agency remains responsible for all decisions made.

BLM is constrained legally in many matters regarding personnel or funding. The BLM could not be bound by advice from the RACs on such matters. However, some funding matters clearly can be considered by the councils. For example, expenditure of range improvement funds will be considered. By advising the agency on priorities, the RACs may impact the expenditure of other funds as well.

The councils cannot appeal to the Secretary, but they can request Secretarial response, under the provisions of § 1784.6–1(i) of the final rule. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

While any interested person can provide input to the charters, the Department will be responsible for establishing a charter for the advisory councils. These charters must be consistent with the requirements of FACA, and must be reviewed by the General Services Administration and approved by the Office of Management and Budget. Definition of the groups to be represented on each council in the charters must be consistent with the requirements of § 1784.6–1(c). Specific operating procedures for each council can be developed by that council and incorporated into a set of bylaws or other operational instrument. Development of the charter and issues of the councils giving advice or recommendations are also discussed above in § 1784.2–1, Composition. The Department rejects the suggestion that permittees not be bound by the recommendations of the councils unless they agree in writing. The councils will provide recommendations to BLM, not directly to the permittees. Furthermore, the councils provide only advice. They do not make decisions. It is the statutory responsibility of BLM, through the authorized officer, to make final decisions regarding the management of the public rangelands. Permittees and lessees will be bound to follow those decisions, subject to the administrative remedies provisions in subpart 4160.

The Department understands that it may in some cases be difficult to achieve consensus, and that the development of consensus may be a time-consuming process. However, consensus decisionmaking is at the heart of improving the grazing management program. The Department is committed to the concept that all groups should work together to develop recommendations regarding the management of the public rangelands. Decisions reached in this way will be owned by all parties involved, and there will be significantly less likelihood of appeals and disputes, and greater likelihood that effective actions will be identified and implemented. In the long run, the Department believes that consensus-based decisionmaking will actually shorten the time required to reach a decision and implement it on the ground.

In response to the comments on jurisdiction, the Department has decided to allow considerable flexibility in the area covered by any one RAC. To that end, and to provide flexibility in other aspects of the RACs so they can be constituted to suit local needs, the Department has incorporated into this final rule provisions allowing adoption of any one of three models. Those models allow RACs to be formed on the basis of State boundaries, BLM districts, or ecoregions. The boundary of the RACs will be determined by the State Director, in consultation with the Governor and other interested parties.

Size and composition of the councils are discussed at § 1784.2–1, Composition. Additionally, the Department notes that one of the purposes of the RACs is to fulfill the requirements of section 309(a) of FLPMA, which requires the Department to form councils of 10 to 15 members. Furthermore, FACA requires that councils advising the Federal government have a balanced membership made up of all groups having an interest in the issue on which the council provides advice. The provisions for membership included in the rule adopted today at this section will ensure implementation of those statutory requirements.

The Department agrees that input from the Governor is critical to the success of the councils. However, under the provisions of FACA, the Secretary must appoint the members of the councils. The Secretary will carefully consider nominees sent forward by the Governors. Furthermore, discussions between the State Director and the Governor will be important in determining whether councils will be set up on a State, District, or ecoregion basis. The Department will develop a course of study to ensure that council members are fully qualified to make recommendations to BLM concerning grazing management issues.

The RAC provisions as proposed differed in some ways from the Colorado model. While they were based to a considerable extent on that model, certain statutory requirements, including the provision in FACA that council members be appointed by the agency head, in this case the Secretary, dictated that some provisions of the Colorado model be revised. This final rule adopts three RAC models, one of which, Model A, is based largely on the Colorado model. Again, however, certain changes had to be made to accommodate legal requirements and the goals of this public rangelands management program.

Many of the terms for which commenters requested definitions have been discussed in the FEIS. Direct interest is discussed at § 1784.2–2, Avoidance of conflict of interest. "Dispersed recreational activities" is a term used by BLM to refer to recreation that takes place outside of developed recreational areas. Birding, hiking and hunting are dispersed recreational activities. Definition of the term is outside the scope of these grazing regulations.

The Department has corrected any confusion resulting from the proposed rule's use of the terms council, board, and committee. This is discussed at § 1784.2–1.

Many of the commenters' concerns and suggestions could not be reconciled within the framework of the specific proposal made on March 25, 1994. In order to be more responsive to those concerns, the Department has made a number of changes from the proposal in this final rule.

The section is retitled, to indicate that it now specifies those elements of advisory councils which will be required to implement provisions of FACA, FLPMA, or the goals of improving the rangeland management program. Optional features are provided at final § 1784.6–2. The word "multiple" is eliminated throughout the section.

Most significantly, the Department has dropped much of the detail regarding RAC requirements from this section of the final rule, and has substituted language that allows a more flexible structure. Coupled with the provisions adopted in final § 1784.6–2 this will allow a model for public participation to be selected for each State that best suits the State's own needs.

Many of the wording changes in the final rule are consistent with the goal of introducing flexibility. References to rangeland resource teams and technical review teams have been replaced with "subgroups." Provisions in paragraph (a) that would have been specific to District based councils have been eliminated, since this final rule allows councils to be formed along State, District, or ecoregion boundaries.

Provisions in paragraph (c) regarding membership have been changed to eliminate specific numbers of members, since these can vary under the provisions of final § 1784.6–2. The language regarding the membership of a local official is adjusted to conform to FLPMA. A provision is added requiring that council members must reside within one of the States within the geographic jurisdiction of the council. This wording was selected to accommodate those cases where ecoregion-based councils may cover an area in more than one State. Provisions regarding membership of State employees have been consolidated for clarity. Other minor revisions have been made in this section for clarity.

Final paragraph (e) is modified from the proposal to specify that the letters of recommendation required of nominees to the councils do not have to be from a locally based group. Since the Department has decided to introduce a residency requirement, as discussed above, there is no need to require that letters of nomination also be local.

Provisions in proposed paragraph (h) regarding quorums and voting requirements have been revised consistent with the flexible models of public participation adopted today. Rather than numbers of members being specified, the final provision requires that council charters all contain rules defining a quorum and establishing procedures for sending recommendations forward to BLM, and that such recommendations require agreement of at least a majority of the members of the three groups defined in paragraph (c). This establishes a minimum requirement. Each council's charter could require higher levels of agreement.

Taken together, the Department believes the provisions adopted today fulfill the goal of broadening the base of public participation in rangeland management decisions, while ensuring that advice provided to the Department represents the views of a council which is balanced in its membership, knowledgeable about the land and issues, and committed to consensus decisionmaking.

Section 1784.6–2 Resource Advisory Councils—Optional Features

The proposed section would have provided for the formation of rangeland resource teams by an MRAC on its own motion or in response to a petition by local citizens. Rangeland resource teams would have been formed for the purpose of providing local level input and serving as fact-finding teams for issues pertaining to grazing administration issues within the area for which the rangeland resource team is formed. They would not have provided advice directly to the Federal land manager.

Rangeland resource teams would have consisted of five members selected by the MRAC, including two permittees or lessees, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Members representing grazing permittees or lessees and the local public-at-large would have been required to have resided within the area for which the team would have provided advice for at least two years prior to their selection. The proposed rule would have required that at least one member of the rangeland resource team be selected from the membership of the parent MRAC.

Rangeland resource team members would have had to be qualified by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations for membership would have required letters of recommendation from the local interests to be represented. The membership provisions were intended to ensure that rangeland resource teams were able to represent key stakeholders and interests in providing input to the more broadly organized MRACs.

The proposed rule would have required that all members of rangeland resource teams attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. The Colorado Working Group developed a proposal for a "Range Ecosystem Awareness Program" that would have established a basic curriculum including basic rangeland ecology, human resource development, the relationship of public land resources to private lands and communities, and the pertinent laws and regulations affecting rangeland management.

Rangeland resource teams would have had opportunities to raise any matter of concern with the MRAC and to request that the MRAC form a technical review team, as described below, to provide information and options to the council for their consideration.

Although no specific provision was made in the proposed rule, rangeland resource teams could have petitioned the Secretary for chartered advisory committee status. Chartered rangeland resource teams would have been subject to the general provisions of 43 CFR part 1780 and the provisions of the charter prepared pursuant to FACA.

Many of the commenters on this section opposed the formation of rangeland resource teams. Many reasons were given for this opposition.

Some asserted that both rangeland resource teams and the technical review teams would be subject to FACA, unless they could be sequestered from BLM. A commenter suggested requiring that the subgroups be fairly balanced. Others opposed any requirement for members to be local residents.

Some other commenters stated that the teams violate the requirement of Section 8 of PRIA to consult, coordinate, and cooperate. Many of the same commenters asserted that the Department cannot change the groups targeted by Section 8. Some commenters stated that the teams were not needed, would not be effective, would be costly, or would slow the planning and implementation process.

Some were concerned about how the teams would be formed. Some stated that they should be created by and report to BLM; others suggested that the

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interested public should be able to request BLM to form a team; still others said they should be formed by the RACs. Others suggested that the regulations should be flexible enough to let these teams consider issues other than grazing.

A number of commenters spoke to the make-up of the rangeland resource teams. Many supported a local residency requirement for all members, others opposed the emphasis on local residency. Many stated that all members should have a high level of expertise in rangeland issues.

Many different specific suggestions about team make-up were received. Others were concerned that these teams be formed for a limited time, so that they would not be too expensive or perpetuate themselves. A number of specific comments were made on the content of courses to be offered to team members. Another asked how rangeland resource teams would bring on-going consensus efforts like the Trout Creek Work Group "closer to the process."

Many of the above concerns about rangeland resource teams have been addressed in the foregoing discussion of § 1784.6–1. As noted there, the Department has decided to make significant changes from the proposal in this final rule.

The Department has not adopted the suggestions on the makeup and structure of the teams, and has decided to retain the original proposal. However, as discussed below, the final rule will accommodate other models of public participation. If the rangeland resource team structure does not suit local conditions, a different model can be chosen. Similarly, groups such as the Trout Creek Work Group can be incorporated into the process through the use of another model which allows the inclusion of groups of different sizes.

Rangeland resource teams or other subgroups serving similar functions will now be optional features under the required RACs. The final rule does not provide for chartering of any subgroups under FACA, and such subgroups will not advise BLM directly, but will provide assistance to the chartered council to improve its ability to function effectively. All special purpose, short term groups will be formed exclusively by BLM and will be made up of Federal employees, whether regular staff or contract employees. Regarding residency requirements, the Department in the final rule at § 1784.6–1 has decided to require that all RAC members and members of general purpose local subgroups must be residents of one of the States in which the area covered by the specific council is located. The Department believes this structure both assures compliance with FACA and encourages local level participation in the decision-making process.

The development of the training course is discussed at § 1784.6–1.

This section, which in the proposal was exclusively about rangeland resource teams, now presents three alternate models for public participation, any of which can be chosen by a State Director, in consultation with a Governor and other interested persons. Each model provides specific details about four attributes of the councils: council jurisdiction, membership, quorum and voting requirements, and subgroups.

Model A is based on the work of the Colorado Working Group on rangeland improvement. It has the following characteristics:

(i) *Council jurisdiction.* The geographic jurisdiction of a council will coincide with BLM District or ecoregion boundaries. The Governor of the affected State(s) or existing RACs may petition the Secretary to establish a RAC for a specified BLM resource area.

(ii) *Membership.* Each council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least three council members from each of the three groups from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a RAC provides advice, down to the level of a single allotment. These local teams will provide local level input to the advisory council. These teams may be formed under the auspices of a RAC on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the RAC on issues pertaining to grazing administration within the area for which the rangeland resource team is formed. Rangeland resource teams will consist of five members selected by the RAC. Membership will include two persons holding Federal grazing permits or leases, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least one member must be selected from the membership of the RAC. Members of the rangeland resource teams must be residents of the State in which the area covered by the team's jurisdiction is located.

The RAC will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the RAC and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

Technical review teams can be formed by the BLM-authorized officer on the motion of BLM or in response to a request by the RAC or a rangeland resource team to gather and analyze data and develop recommendations to aid the decisionmaking process. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

Model B is based on the work of the Wyoming Steering Committee on the Management of Federal Lands. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The council will promote Federal, State, and local cooperation in the management of natural resources on public lands, and coordinate the development of sound resource management plans and activities with other States. It will provide an opportunity for meaningful public participation in land management decisions at the State level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c) above, and will include at least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor will chair the council.

(iii) *Quorum and voting requirements.* The charter of the council will specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM. Formal recommendations require agreement of at least three council members from each of the three groups.

(iv) *Subgroups.* Local rangeland resource teams can be formed under the auspices of the Statewide council, down to the level of a 4th order watershed. These local teams will provide local level input to the advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the RAC, an 80% affirmative vote will be required to send a recommendation to BLM.

Rangeland resource teams will not exceed 10 members and will include at least two persons from environmental or wildlife groups, two grazing permittees, one elected official, one game and fish district representative, two members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for two-year terms by the RAC and may be reappointed. No member may serve on more than one rangeland resource team.

In addition, technical review teams can be established on an as-needed basis by the BLM authorized officer in response to a request by a RAC or rangeland resource team, in response to a petition of local citizens, or on BLM's own motion. These teams will address specific unresolved technical issues. When the team is requested by the RAC or a rangeland resource team, its charge will be established jointly by BLM and the council; membership will be determined by BLM and will be limited to Federal employees and paid consultants. Technical review teams will be limited to tasks relating to fact-finding within the geographic area and scope of management actions for which the rangeland resource team or RAC provides advice. Technical review teams will terminate upon completion of the assigned task.

Model C was developed by BLM to accommodate other structures of public participation, consistent with the requirements of FACA, FLPMA, and the goals of this rangeland management program. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council will be 10 to 15 members, distributed in a balanced fashion among the three groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each group must be present to constitute a quorum and conduct official business, and that a majority of each group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* RACs may form local rangeland resource teams to obtain general local level input necessary to the successful functioning of the RAC. Such subgroups can be formed in response to a petition from local citizens or on the motion of the RAC. Membership in any subgroup formed for the purpose of providing general advice to the RAC on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c). Additionally, BLM may form technical review teams as needed to gather and analyze data and develop recommendations to aid the council. These teams may be formed at BLM's own option or in response to a request from the advisory council.

The Department believes that the above three models for public participation can be adapted to satisfy the concerns and needs of all areas which include public lands or other lands administered by BLM.

Section 1784.6–3 Technical Review Teams

Under the proposed rule an MRAC could have established technical review teams, as needed, in response to a petition of an involved rangeland resource team or on its own motion. Rangeland resource teams chartered under FACA could also have established technical review teams. Technical review teams would have conducted fact finding and provided input to the parent advisory council or chartered rangeland resource team. Their function would have been limited to specific assignments made by the parent council, and been limited to the geographical management scope of the MRAC or chartered rangeland resource team. Technical review teams would have terminated upon completion of the assigned task.

Members of technical review teams would have been selected by the MRAC or chartered rangeland resource team on the basis of their knowledge of resource management or their familiarity with the issues involved in the assigned task. At least one member of each technical review team would have been required to be selected from the membership of the parent advisory council or chartered rangeland resource team.

Some of the commenters on this section specifically opposed the concept of technical review teams, saying they would not streamline administrative functions, were not needed, would be obstacles to change, and would be expensive. Other commenters asserted that any such teams should be formed by BLM under the provisions of FACA. A number of commenters wrote to the make-up and operation of the teams, and asserted that members must be technical experts and should be local residents.

Most of the commenters' concerns about technical review teams have been addressed in the discussions of §§ 1784.6–1 and 6–2. In response to commenters' concerns, the Department has decided to require that any such technical team be formed exclusively by BLM. Because of the requirements of FACA, they will be made up exclusively of Federal employees, either regular staff or contract employees. Such technical teams could be formed under any of the three models presented in § 1784.6–2, either at the request of a chartered committee or on BLM's own motion. The Department believes this is the best way to ensure that the requirements of FACA are fulfilled, but that the RACs have available to them special expertise to address technical issues when needed.

Consistent with the above discussion, and the discussions of final §§ 1784.6–1 and 6–2, the Department is not adopting this provision in the final rule. Provisions allowing the formation of technical teams by BLM, as needed, are found in final § 1784.6–2.

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Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska: General

Section 4100.0–2 Objectives

The proposed rule would have amended the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury, the enhancement of productivity for multiple use purposes, the maintenance of open spaces and integral ecosystems, and stabilization of the western livestock industry and dependent communities.

The Department received many comments on this section. Many commenters said that the proposed objectives statement was vague, subjective, not achievable, and unmeasurable. Others said that it was antagonistic, and assumed that ranching operations are destructive. Some asserted the statement ignored the valuable contribution made by livestock grazing as well as the improvements ranchers had made on the Federal lands. Some pointed out that proper grazing does not harm the resources.

Many commenters suggested additions to the list of objectives of the rules. Many of these commenters supported using the objectives identified by the Colorado Working Group. It was suggested that the objectives should have a greater emphasis on ecosystem management, and should include standards and guidelines pertinent to the economic and social factors which affect the human environment.

Many commenters objected to the terms "destruction and unnecessary injury." This objective had been included to highlight the Department's responsibility under Section 315a of TGA which requires the Department to "preserve the land and its resources from destruction or unnecessary injury." Others asserted that the view that ecosystems are static and can be "preserved" was out of date. Many commenters spoke to the objective of maintaining the public values associated with open spaces and integral ecosystems, asserting that this was not an appropriate objective for grazing regulations.

A number of commenters spoke on the objective concerning stabilization of the livestock industry and dependent communities. A typical comment asserted that small ranches are often dependent on second jobs in town, and that actually the ranches are dependent on the communities, not vice versa. Some suggested deleting "dependent communities." Some commenters took strong exception to this particular objective. They asserted that the Department was, with this objective, singling out the livestock industry for favored treatment.

Regarding the objective on enhancing productivity for multiple use purposes, commenters offered suggestions that enhancement for multiple uses should not be allowed to conflict with grazing and that enhancing for multiple use purposes must be subject to maintaining a healthy ecosystem.

Many commenters were concerned with the references to "ecosystems" and asked for a definition of the term. Some asked for a definition of "integral ecosystem" while others were concerned that the term would be used to regulate private lands.

This final section is substantially revised from the objectives presented in the proposed rule. The provision as adopted today includes the following objectives: to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote orderly use, improvement and development of the public rangelands, to establish efficient and effective administration of grazing of public rangelands; and to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

The new statements are based largely on commenters' concerns. While all those concerns could not be accommodated, the Department believes that the final rule represents the best summary of the objectives of this rangeland management program.

The first objective, to promote healthy sustainable rangelands, is the key component of the Department's program. The statement is based on the work of the Colorado Working Group and responds to the Department's and some commenters' concerns that the objectives should clearly state the objective of achieving healthy, functional rangelands. It reflects the Department's intent to make decisions regarding grazing on the public lands that will promote healthy conditions across all the grazing lands. This embodies the concept that such decisions must be made on a coordinated basis and must consider other resource values that contribute to the health of the land.

The second objective, to accelerate restoration and improvement of public rangelands to properly functioning conditions, embodies the concept that BLM, in order to fulfill its statutory responsibilities to the public rangelands, must renew its efforts to restore those areas that are not functioning properly. It emphasizes that attainment of healthy conditions is a process that requires constant effort; West-wide healthy conditions cannot be attained overnight.

The third objective, to promote orderly use, improvement and development of the public rangelands, is unchanged from the proposal. It is drawn directly from TGA (43 U.S.C. 315(a)). It emphasizes that the rangelands are to be used and developed, but also that such use and development must be done in an orderly way, and that an integral part of the process should be improvement of the rangelands.

The fourth objective, to establish efficient and effective administration of grazing of public rangelands, is based on the work of the Colorado Working Group. The statement emphasizes that BLM's administration of its program must be both efficient and effective. The rules adopted by today's action are an important part of the Department's efforts to ensure that objective can be achieved.

The final objective, to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands, is a modified version of an objective included in the proposal. It asserts that BLM has a responsibility to recognize the effects its actions may have on the western livestock industry. However, the Department has reworded this objective from the proposal because it agrees with commenters' concerns that BLM's program, in and of itself, cannot "stabilize the western livestock industry."

Largely as a result of public comment, the Department has decided not to adopt the proposed objectives concerning preservation of rangeland resources from destruction and unnecessary injury; maintenance of the public values provided by open spaces and integral ecosystems; and enhancement of the productivity of public lands for multiple use purposes by prevention overgrazing and soil deterioration. These themes of the proposed amendments are sufficiently covered in the more general objectives adopted in this final rule. The objective of the previous regulations pertaining to providing for the inventory and categorization, trends and monitoring of public lands on the basis of range conditions, is omitted as an unnecessary

statement of BLM's internal working procedures.

In accordance with the above discussion, the Department has adopted the objectives statement as amended.

Section 4100.0–5 Definitions

The proposal would have removed definitions of "Affected interests," "Grazing preference," and "Subleasing." It would have amended definitions of "Active use," "Actual use," "AMP," "Consultation, cooperation and coordination," "Grazing lease," "Grazing permit," "Land use plan," "Range improvement," "Suspension," and "Utilization"; and would have added in alphabetical order definitions of "Activity plan," "Affiliate," "Conservation use," "Grazing preference or preference," "Interested public," "Permitted use," "Temporary nonuse," and "Unauthorized leasing and subleasing." This final rule adds definitions "Annual rangelands," and "Ephemeral rangelands."

The final rule makes changes to the proposed definitions of "affiliate" and "consultation, cooperation and coordination." It makes minor technical and clarifying changes to the proposed definitions of "conservation use," "grazing lease," "grazing permit," "land use plan," "range improvement," "unauthorized leasing and subleasing," and "utilization." It adds definitions of "annual rangelands" and "ephemeral rangeland." Otherwise, the definitions are adopted as proposed.

The following specific actions are taken by this final rule.

Active use is redefined to include conservation use and exclude temporary nonuse or suspended use.

A definition of *Activity plan* is added to mean a plan for managing a use, or resource value or use. An AMP is one form of an activity plan.

Actual use is redefined to clarify that the term may refer to all or just a portion (e.g., a pasture) of a grazing allotment.

A new definition of *Affiliate* is added for use in determining whether applicants have satisfactory records of performance for receiving permits or leases or in receiving additional forage that becomes available for allocation to livestock grazing.

Allotment Management Plan is redefined to describe more clearly the focus and purpose of the plan, and to make clear that an AMP is a form of activity plan.

A definition of *Annual rangelands* is added to mean those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years

A definition of *Conservation use* is added to mean an activity on all or a portion of an allotment for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term includes improving rangeland conditions and the enhancement of resource values or functions.

Consultation, cooperation and coordination is redefined to mean a process for communication between representatives of BLM and the parties involved for the purpose of sharing information, obtaining advice, and exchanging opinions.

A definition of *Ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, these rangelands receive less than eight inches of rainfall each year and lie below 3,200 feet elevation.

Grazing lease and *Grazing permit* are redefined to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference is redefined to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee, lessee, or applicant. The definition omits reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the Forest Service, BLM will identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

A definition of *Interested public* is added to mean an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments.

Land use plan is redefined to remove the implication that all management framework plans will be replaced by resource management plans.

A definition of *Permitted use* is added to define the amount of forage in an allotment that is allocated for livestock grazing and authorized for use, or included as suspended nonuse, under a grazing permit or lease. The term replaces the AUMs of forage use previously associated with grazing preference.

Range improvement is redefined to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

Suspension is redefined to reflect the revision of the definition of the term "preference." Within this definition the term "preference" is replaced with "permitted use."

A definition of *Temporary nonuse* is added to refer to permitted use that may be temporarily made unavailable for livestock use in response to a request by the permittee or lessee.

A definition of *Unauthorized leasing and subleasing* is added to mean the lease or sublease of a Federal grazing permit, associated with the lease or sublease of base property, to another party, without approval of the authorized officer, the assignment of public land grazing privileges to another party without the assignment of the associated base property, or allowing another party to graze livestock that are not owned or controlled by the permittee or lessee on the permittee's or lessee's public land grazing allotment. This changes the existing definition which could be read to imply that no forms of third party lease arrangements could be authorized.

Utilization is redefined to mean the consumption of forage by all animals consistent with the definitions in BLM Technical Reference 4400–3 and the Bureau Manual System for Inventory and Monitoring.

The Department received many comments on this section. Some commenters wanted original definitions left unchanged; others suggested further revisions, still others asked that additional new definitions be added.

Many comments were received on the definitions of *active use, actual use, conservation use, grazing preference or preference, permitted use, suspension,* and *temporary nonuse.* A number of commenters expressed uncertainty regarding the concept of conservation use, some objecting to the inclusion of conservation use as an active use. Others indicated that the concept of conservation use may be inconsistent with the policy objectives articulated in various statutes.

Other concerns with the concept were that it implied that grazing is harmful to the range, and that permittees applying for conservation use should pay the grazing fee and be required to maintain improvements. These and other comments on conservation use are more appropriately addressed in the discussion of § 4130.2.

The Department intends that *conservation use* be an active use rather than merely a non-use. Conservation use is intended to protect the land and its resources from destruction, improve rangeland conditions, or enhance resource values. All of these goals are

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fully consistent with the requirements of governing statutes. In fact, conservation use includes a variety of activities to improve rangeland conditions. Because the land and the forage involved are actively being devoted to accomplishing specific conservation-oriented objectives, they are deemed actively used. The concept of conservation use, and its application to this program, are discussed more fully at § 4130.2.

In general, commenters expressed some confusion regarding application of the concepts of suspension and temporary non-use under the proposed definitions of these terms. In particular, some commenters were concerned that the definitions might be used by BLM to restrict active use.

Temporary nonuse and *suspension* remain options under the rule finalized today. Temporary nonuse is for the convenience of a permittee's or lessee's livestock operation and must be included as a part of his or her application each year. Therefore, BLM does not believe temporary nonuse should be considered active use. The BLM will authorize changes in temporary nonuse from year to year, but temporary nonuse may only be approved by the authorized officer for up to three consecutive years. With regard to changes in use initiated by the permittee or lessee, the concept of temporary nonuse is expected to continue as the common practice used to respond to fluctuations in the weather, the livestock market or other factors beyond the control of the operator.

Suspension of grazing use is initiated by the authorized officer, and may be agreed to by the permittee or be the result of a decision by the authorized officer. It results, for example, from situations requiring a reduction of use of the rangeland to protect the resource or where there has been noncompliance. *See* also the discussions of subparts 4110 and 4130.

Regarding *active use*, BLM intends to continue allowing changes in active use from year to year, depending on conditions. The authorized officer can adjust active use and other factors under a permit or lease *as long as the changes are within the terms and conditions of the permit or lease.* If the authorized officer determines that changes in use must be made outside the terms and conditions, it will be done in consultation with the permittee or lessee, the State and other interested parties.

Numerous comments were received on proposed changes to the definition of "grazing preference," including the addition of the term "preference." Many commenters interpreted the proposed changes to mean that preference was being abolished. Others were concerned that unless preference refers to a specified quantity of forage, ranching operations would be negatively impacted. They stated that preference, tied to a specific amount of AUMs, adds value and stability to ranching operations, for example, by enhancing the operator's ability to borrow money. They also maintained that a preference is a property right and that the proposed rule could result in a "taking." And some commenters expressed the view that the proposed definition excluded owners of water or water rights and that such owners deserve priority consideration.

The Department has changed "grazing preference" to *preference or grazing preference* because the terms are used interchangeably and to clarify that the term refers only to a person's priority to receive a permit or lease, and not to a specific number of AUMs. The term "preference" was used during the process of adjudication of available forage following the passage of TGA to establish an applicant's relative standing for the award of a grazing privilege. At one time in the evolution of grazing administration preference was the amount of use expressed in AUMs that any particular permittee may have made during the "priority period"—the four years following passage of TGA. Preference is still defined as the relative standing of an applicant as reflected in historic records. Through time, common usage of the term evolved to mean the number of AUMs attached to particular base properties. But this usage dilutes the original statutory intent of the term as an indication of relative standing. The term "permitted use" captures the concept of total AUMs attached to particular base properties, and use of this term does not cancel preference. The change is merely a clarification of terminology. Issues of valuation of permits are discussed in more detail in the FEIS, and takings are discussed under "Takings" in the General Comments section of this preamble.

With regard to owners of water or water rights, the evolution of the term preference was similar. The status of waters and water rights that have been recognized as base property would not be affected by the rules adopted today. Waters recognized as base property would continue to qualify as such. The preference for receiving a grazing permit or lease that is attached to base property would not be affected. The Department believes that permitted use is the more appropriate term to describe and quantify the number of AUMs of forage being allocated.

The comments on the proposed definition of *permitted use* were similar to those relating to preference. Some commenters asked what would happen to existing suspended AUMs under the new concept of permitted use. Some suggested that the proposed rule would limit grazing to what is stated in the land use plan, and that this would effectively cancel the grazing preference. These commenters suggested that the result would be significant reductions in grazing, and that the regulation would thus "take" the rights of the permittee.

As they did with respect to preference, some commenters stated that the definition of permitted use would result in reduced economic stability and would eliminate the collateral value of grazing permits. They expressed concern that the new definition would negatively affect property values and would adversely affect the ability of the permittee to obtain financing.

Commenters further opposed the use of the Land Use Plan to determine the permitted grazing use. They argued that these plans are not site specific documents, and that it is arbitrary for the Department to use them to make site specific decisions. They advocated that BLM use actual range condition and trend data on individual allotments to make these decisions. Some commenters took the position that the proposed definition of permitted use was contrary to statute.

Permitted use is an end product of the process of renewal or issuance of permits or leases. The land use plan provides guidance for allocation of land or forage to various uses on a regional scale. In the context of grazing, the land use plan sets the basic parameters by which permits and leases are issued or renewed. The objectives set in the plan are refined in the permit or lease, and permitted use is then expressed in AUMs of active use, including both livestock use and conservation use, as well as suspended use and temporary nonuse during a particular time period. This process and terminology are fully consistent with TGA, FLPMA and PRIA. The land use plan allows adjustment of the AUM amounts and seasons based on monitoring, other studies, or where changes in permitted use or terms and conditions are necessary to meet land use plan objectives. Where changes in the situation are major, it may be necessary to amend the land use plan, thus re-initiating the process. In the absence of a major change in the overall

situation and where these objectives are being met, changes in permitted use through BLM initiative are unlikely. This provides a high level of security, stability and predictability from year to year.

Few comments were received on the proposed definitions of *actual use or utilization*. One comment stated that the proposed definition had changed the concept from a record of livestock use to a plan for actual use, and that the permittee should be able to make good faith changes to protect rangeland by changing grazing schedules to respond to weather forces. Others suggested that the Department was exceeding its authority in applying actual use to the "number, kind or class of livestock." Still others suggested that actual use must include all animals which consume forage, not just domestic animals. Many commenters on the proposed definition of *utilization* recommended that BLM link utilization to actual use and include use of forage by horses, burros and wildlife.

The Department has the authority to apply the concept of *actual use* to "number, kind or class of livestock." Under section 315 of TGA, the Secretary has the authority to specify "numbers of stock and seasons of use." Additionally, under FLPMA, the Secretary has the authority to establish terms and conditions for grazing leases and permits. The reporting of actual use is necessary to evaluate the effect of grazing practices, and is a fundamental tenet of the science of range management. AUMs are a unit of measure of forage consumption and allocation. Knowing the number of animals involved and the duration of grazing in a specific situation is essential to quantifying the AUMs consumed and in setting future numbers and seasons. Actual use and *utilization* or use patterns, when considered either with the current year's weather or over time, provides a very complete picture of the impact of grazing use on rangeland resources. The same information also provides significant insight into opportunities to alter management, to improve livestock distribution, plan range improvements or to accurately predict the future consequences of continuing the current grazing practices.

Actual use, in the context of this final rule, refers strictly to domestic livestock grazing. However, the Department concurs that when it is used to evaluate the effect of a particular grazing practice, BLM must consider the use made by all grazing animals including wildlife and wild horses and burros where they are present. Actual use data can be used both for billing purposes and to analyze the impact of grazing. Where its intended use is strictly for billing, the data may be aggregated for the entire allotment area and entire billing period. Where the data are to be used for analytical purposes, it must be broken out by the treatment area (frequently a pasture).

Some commenters submitted comments on the definition of *activity plan. Most questioned the relationship between the concept and the AMP specified in FLPMA. Some asserted that since FLPMA uses the term AMP, there is no authority for an activity plan, or that activity plans could not relate to grazing and therefore have no place in grazing regulations. Others suggested narrowing the concept by applying it specifically to grazing areas and for the purpose of achieving grazing objectives in order to maintain desirable range conditions.*

Activity plans have been included in the definitions and the text of this final rule because there are efficiencies to be gained by considering a variety of uses simultaneously in one planning document. The Department disagrees that just because FLPMA uses the term AMP, the Department has no authority for an activity plan. The Secretary has ample authorities under FLPMA, TGA, and PRIA to undertake any planning activities necessary to implement the grazing program.

Many comments were received on the concept of *affiliate*. Many commenters stated that the proposal was vague, discriminatory against ranch operators and that it will lead to capricious and arbitrary enforcement by BLM. Other commenters stated that "control" was poorly defined and that the concept should be applied to other parties such as the RAC members.

Some commenters expressed concern about the liability provisions. They stated that because of potential liability resulting from this provision, banks and other businesses will be less likely to do business with ranchers who have grazing permits or leases. Moreover, some asserted that ranchers will be less responsible if they know that they are not solely liable for their actions. Other commenters asked if permittees must have control of affiliates and if affiliates' records of performance would be considered when issuing a permit.

The purpose behind the use of the term *affiliate* is to promote accountability among all parties involved in the control of a grazing operation. The term is commonly used in business to identify persons having legal ties to each other where accountability is in some manner shared. Some permits or leases are issued in the name of one person when in actuality there may be other persons closely involved in the management of the operation. In the final rule, the Department has not adopted proposed provisions referencing percentage of ownership and specific relationships such as officers and directors. The term "entity" includes partnerships, corporations, associations, and other such organizations. The Department believes that the definition adopted better addresses the affiliate relationships typically associated with livestock grazing operations.

The Department does not intend the term "affiliate" to be applied in an over broad or burdensome manner but rather in a manner that recognizes ordinary business relationships. Normally, affiliates will be partners, agents and their principals, family members, and trusts or corporations involving such individuals. It is unlikely that "affiliate would include financial institutions.

Numerous comments were received on the definition of *Allotment Management Plan* and *consultation, cooperation and coordination*. The commenters stated that the proposed definition of the latter term is contrary to FLPMA, particularly because they believed it eliminates consultation, cooperation and coordination with the lessee or permittee. Other commenters stated that the definition did not meet standards for local involvement under Section 8 of PRIA, and did away with a special and contractual relationship between permittees and BLM.

The Department intended the change proposed in this definition to simplify references to consultative activities and to make usage consistent throughout the regulations. Throughout these rules, the Department has specifically increased—not decreased—opportunities for interaction with the permittee, lessee, States, and the interested public. However, because of the confusion generated by the language in the proposal, the Department has decided to use the term "consultation, cooperation, and coordination" as it is used in existing rules.

A number of comments were received on the definition of *interested public*. Comments addressed the effects of broadening the public role in land use decisions, including the need for BLM to make timely decisions. Some comments offered more restrictive definitions of "interested public." Other comments supported the change in definition and requested that the Department clarify in the rule that members of the public are not any less

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affected by livestock decisions than are permittees.

The Department does not agree that the regulations include excessive public involvement by expanding opportunities for input into grazing management to the *interested public*. Anyone with a high level of interest in shaping objectives, planning courses of action, and evaluating results associated with management of the public lands should have an opportunity for involvement. Congress has acknowledged this interest and makes provisions for it in FLPMA, NEPA, FACA and the Administrative Procedure Act (APA). Experience has shown that the greater and more meaningful the participation during the formulation of decisions and strategies for management, the higher the level of acceptance and thus the lower the likelihood of a protest, an appeal or some other form of contest. Nevertheless, it will remain the responsibility of BLM to make timely decisions. These rules do not change existing time frames for public comment or for protests or appeals.

Some comments were received on the definition of *grazing permit* or *grazing lease*. Commenters asserted that the definition failed to make adequate distinction between Section 3 and Section 15 allotments. The distinction between Section 3 and Section 15 lands is made at § 4110.2–1(a).

The Department received a few comments on the definition of *land use plan*. Some commenters wanted the definition to require BLM planning documents to conform to State or local land use plans. Other commenters wanted BLM land use plans to give guidance to the designation of lands for grazing. *Land use plans* provide guidance on a regional scale and allocate resource uses and objectives. FLPMA and the subsequent planning regulations provide sufficient authority to prevent grazing in areas where grazing would conflict with other objectives. Local and State governments will be considered members of the interested public and invited to participate in the development of land use plans. It is not necessary for Federal plans to conform to local or State plans in all cases. FLPMA requires the Department's planning process to be as consistent as possible with local or State plans, but not to be in conformance with them.

A few comments were received on the definition of *range improvement*. Some commenters supported the use of the range improvement fund to benefit livestock; others sought to expand use of the fund to support projects intended to improve rangeland. FLPMA directs that "* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *" All uses authorized by FLPMA, including improvements to the health of the rangeland, will remain valid under this rule.

The Department received a few comments on the definition of *unauthorized leasing and subleasing*. Commenters stated that the proposed subleasing definition limited subleasing, which is necessary to rural economic health. The Department believes the final provisions relating to *unauthorized leasing and subleasing* do not discourage subleasing that may be necessary to sustain rural economic health. Indeed, the current definition of subleasing implies that no subleasing is allowed. This new definition, by addition of the word "unauthorized," clarifies that the Department *will* approve subleasing under certain conditions. The Department believes that it is simply good land management for it to know to whom permittees or lessees have subleased their grazing privileges, and under what circumstances.

In response to concerns raised by the commenters, the Department has decided to delete provisions requiring the payment of a surcharge on subleasing grazing privileges in conjunction with the lease or sublease of base property. This is discussed in detail in the section of this preamble relating to final § 4130.8 (§ 4130.7–1 in the proposed rule).

The Department also received requests that it define *de minimus*, biological diversity, ecosystem, environmentalists, ecosystem management, ecosystem management framework and viable population. Some commenters suggested that a definition of grazing association be added. A number of commenters requested a definition of "substantial compliance." The Department believes that these terms are adequately defined by common usage.

In accordance with the above discussion, the Department has decided to adopt the proposed definitions, with some changes.

The definition of *affiliate* is revised to eliminate references to percentage of ownership and specific relationships such as being an officer, director, or controlling fiscal or real property resources. The Department believes the definition adopted adequately encompasses such relationships. The language is also amended by adding reference to "applicant" as well as "permittee or lessee." Finally, "is controlled by, or is under common control with," is added after "controls," to clarify what types of relationships are covered by the provision.

A new definition of *annual rangelands* is added in response to commenters' requests. The term means those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years. This is a technical term associated with the rangeland management program, and the Department agrees that a definition will provide clarity to the application of these provisions.

The definition of *conservation use* is revised to clarify that it can apply to all or a portion of an allotment.

The definition of *consultation, cooperation, and coordination* is revised to mean a process for communication between BLM and parties involved in particular rangeland management decisions.

A definition of *ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, such areas receive less than 8 inches of rainfall each year and lie below 3,200 feet elevation. This is a technical term associated with the rangeland management program and the Department believes that a definition will provide clarity to the application of these provisions.

The definitions of *grazing lease* and *grazing permit* are revised by the addition of the phrase "the area authorized for grazing use, or both," to accommodate situations such as ephemeral or annual rangeland in which the area authorized for grazing is used in place of AUMs to specify permitted use, because of inconsistent production of forage. The definition of *land use plan* is revised to clarify that the term refers to plans developed under 43 CFR Part 1600.

The definition of *range improvement* is revised to remove the phrase "or provide habitat for" to "to benefit" livestock. This change was made to avoid confusion with the concept of wildlife habitat.

The definition of *utilization* is revised to clarify that it refers to a "portion" of forage consumed, which reflects actual practices. The proposal used the term "percentage."

Section 4100.0–7 Cross-References

This section would have been amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and to 43 CFR part 1780 regarding advisory committees.

No comments were received on this section and it is adopted as proposed.

Section 4100.0–9 Information Collection

The proposed rule would have added this section to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section would have disclosed to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and how the information will be used by BLM. Several comments were received on this section addressing information resources and questions of timeliness relating to compliance.

The intent of this section is to comply with a statutory requirement to disclose how much time will be required for regulated persons to comply with the information collection requirements of these regulations. Which sources of information the Department will use to obtain local input is not a germane issue, nor is the time required by commenters to comment on these regulations.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4110.1 Mandatory Qualifications

In the proposed rule, this section would have provided that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. The section would have discussed what satisfactory record of performance means for both renewals and new permits. For renewals, the proposal would have provided that it means being in substantial compliance with the rules and regulations issued and the terms and conditions of the existing permit or lease for which renewal is sought. In assessing whether an applicant for renewal is in substantial compliance, the authorized officer would consider the number of prior incidents of noncompliance with the requirements of 43 CFR Part 4100. The authorized officer can include in this consideration the nature and seriousness of any noncompliances. For new permits, it would have meant not having had any State grazing permit or lease within the Federal grazing allotment, or any Federal grazing permit or lease, cancelled within the previous 36 months, and not being barred from holding a Federal grazing permit or lease by court order.

The proposal further discussed the determination of affiliation. It would have provided that in determining affiliation, the authorized officer would have considered all appropriate factors including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships. This provision would have ensured that all parties who had the ability to control operations on a permit or lease, not just the immediate permittee or lessee, had a record of good stewardship of the land.

Additionally, the proposal would have clarified that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, could meet the criteria for qualifications for a grazing permit or lease.

Finally, the proposal would have required applicants to submit applications and any other information requested by the authorized officer to determine that all qualifications have been met. This provision would have clarified that applicants cannot refuse to provide BLM with information needed to evaluate applications for permits or leases.

The Department received a substantial number of comments on this section. Major themes expressed in the comments pertained to the Department's rationale and legal authority for the provisions, opposition to finding applicants to be qualified in cases where the applicant was not actively involved in the livestock business, concerns about how various terms would be defined and applied in determining qualification, the perceived potential of the provision to adversely affect permit tenure, property values, and financing, and BLM's ability to implement the provisions as worded.

Many comments opposed allowing persons not engaged in the livestock business to qualify for grazing permits and leases. Some commenters asserted that this provision, in combination with provisions for conservation use, would result in non-grazing interests acquiring and retiring grazing permits, would cause deterioration of the land, and would be inconsistent with TGA. Similar comments were also received on § 4100.0–5 Definitions and § 4130.2 Permits or leases.

There was also considerable concern about the requirement that permit applicants have a satisfactory record of compliance. In particular, commenters asked how terms such as "permit violations" and "satisfactory record of performance" would be defined, who would make the determination of satisfactory performance, and whether the provisions would be applied consistently across BLM administrative boundaries. One comment suggested that BLM and permittees or lessees should agree to how terms will be defined and applied prior to the issuance of a new permit, to enable both parties to understand their status. Others asserted there was no statutory basis for this provision. Some had a concern that evaluating compliance was unduly burdensome on the agency.

One comment stated that the basic principle of having a satisfactory record was reasonable because it was "little different than a private landowner refusing to lease to a troublesome individual." The same commenter was concerned, however, that the provision gave authorized officers broad investigative powers that could result in an invasion of privacy. Commenters also expressed the opinion that only serious violations of permits or leases should be considered in applying the qualification provisions to prevent arbitrary adverse action.

Some commenters questioned the validity of considering the historical record of compliance, asserting that current performance is what is relevant. Still others stated that the provision did not go far enough in conditioning qualification on past performance. For instance, one commenter stated that any revoked State or Federal lease or permit should be the basis for denying new or renewed permits, asserting this indicated the permittee is unable or unwilling to be a responsible steward of public lands. Some commenters stated that 36 months was too short a time, and advocated a five or six year review period. Additionally, it was suggested that willful, repeat violators, reflected by multiple revocations of Federal or state permits, should be permanently barred from grazing Federal lands. It was also suggested that the burden of proof should be on the permittee or lessee.

Some commenters expressed opposition to considering performance connected with State leases in determining qualifications, questioning the Department's authority and the constitutionality of the provision. One comment said that it would discourage

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permittees from leasing State lands, and in turn would hurt State income.

Several comments specific to qualifications for renewals stated that the concept of denial for noncompliance would decrease a permittee's security of tenure, in turn leading to less investment in permits and a decreased ability to achieve rangeland objectives. Some commenters were concerned that nonrenewal of a permit would decrease the value of the permittee's or lessee's private property and improvements, affected their ability to secure financing, and not renewing the lease constituted a "taking," and the provision was contrary to TGA. Some asserted that disqualification on the basis of cancellations of other permits and leases should extend to renewals, not just new permits. Others suggested that applicants be disqualified when other permits or leases are suspended (in addition to cancelled permits and leases) or when not in compliance with other permits and leases at the time of application.

There was also some concern about the ability of BLM personnel to determine affiliation. One commenter asked whether he would be responsible for the actions of someone he sold his ranch to. An Indian tribe that holds permits and subsequently leases the permits to individual tribal members expressed concern that the tribe would be judged by the behavior of the individual permittees under the concept of affiliation.

The statutory basis for these regulations is found in FLPMA and TGA. FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate rules and regulations necessary to implement the requirements of the Act. Regarding requirements for first priority for renewal, 43 U.S.C. 1752 requires among other things that applicants must be found to be in compliance with the terms and conditions of the permit and pertinent rules and regulations. The amendments pertaining to the disqualification of applicants are intended to reflect the requirements of TGA and FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources. The Department believes that the provisions of this section of the rule are critical to BLM's ability to ensure that permittees and lessees are good stewards of the land. The provisions will benefit good stewards by ensuring tenure in the renewal of permits and leases and by giving them an advantage in the issuance of new permits and leases. Comments on "takings" are discussed in the General Comments discussion above.

Neither conservation use nor elimination of the requirement that applicants must be engaged in the livestock business is inconsistent with TGA. The TGA gives preference to landowners engaged in the livestock business but does not require it. This change is made necessary by the increasing number of part time ranchers, permits held by financial institutions and other non-ranching organizations, and permits where the livestock operator is in an initial developmental stage and is not yet ready to run cattle on the range.

The concepts of "permit violations," "satisfactory record of performance" and "substantial compliance" are defined in general terms by the text of this final rule. Application on a case-by-case basis will be done by the authorized officer, within the framework established by this final rule, based upon review of the record. For renewals, it will extend only to review of the permittee's record on the permit or lease for which renewal is sought. On new permits, it will include a review of State and Federal leases within the prior 36 months, and of any existing judicial bar on holding a permit. References to permits cancelled for violations are used to distinguish such cancellations from administrative cancellations such as those that might occur when the land is to be devoted to another public purpose. Basing qualifications on whether past permits and leases have been cancelled for violation is intended to focus attention on those types of violations that justified decisive and substantial corrective action. As with all decisions under 43 CFR part 4100, denial of permit and lease applications under these provisions is subject to appeal under subpart 4160.

Consistency in application of the qualification requirements is of concern to the Department. These regulations will assist in achieving standardization, as will periodic information bulletins, instruction memoranda, technical guides, handbooks and training. The comment suggesting that permittees and BLM seek a mutual understanding of these provisions at the time of permit issuance is the type of guidance that may be provided. An appeal process is available under subpart 4160 when the permittee or lessee believes the regulations have been inappropriately interpreted in a specific circumstance.

Determining compliance with the terms and conditions and rules and regulations at the time of permit renewal stems from a statutory provision (43 U.S.C. 1752(c)). The Department expects that a finding of noncompliance will be an exception rather than a common occurrence. It is not feasible to require the authorized officer to investigate applicants to identify unrecorded instances of noncompliance, as suggested by several commenters. The resources required to conduct such a check would not be worth the results.

The Department disagrees that looking back at an applicant's history of performance on Federal or State grazing leases will violate privacy protections. The information used to evaluate historical performance will be established records that are available to the public. As stated above, the Department will use records of performance to confirm the ability of the applicant to be a steward of the public land. Although current performance may indicate stewardship, it does not provide as complete information as does the applicant's longer-term record of performance. However, consideration of the record is not without limitation. The Department chose the 36-month cut off of consideration of applicant and affiliate performance as a fair yet sufficiently rigorous measure of potential stewardship. The 36-month look-back applies only to applications for new permits or leases.

In regards to the comment that willful and repeated violations should result in a permanent debarment, the Department has chosen to reject the recommendation as excessively harsh. Due to the severity of such a penalty it is best left to the judicial system.

In essence, where there is a record of prior noncompliance, the burden of proof is on the permittee. The record of compliance will be determined based upon a review of the public record. If there are any extenuating circumstances to be considered, it will be the responsibility of the permittee to support them.

An applicant's record on State permits is relevant to consideration of the applicant's compliance record for purposes of obtaining new permits. If an applicant has violated the terms and conditions of a State lease to such an extent that the lease was cancelled, it is reasonable to assume that person is more likely to violate the terms or conditions of a Federal lease than is a person with a good record of compliance on State leases or permits. This is particularly true since consideration of State leases is limited to the allotment for which a new Federal permit or lease is sought. The Department disagrees that these provisions will discourage leasing of State lands. Only those few persons who commit violations that result in the cancellation of their State permits will be affected.

The requirement of applicants for renewal to be found to be in compliance with terms and conditions and the pertinent rules and regulations on the permit or lease for which renewal is sought is not new; it stems directly from FLPMA (43 U.S.C. 1752(c)). While disqualification from obtaining a new permit or lease or a renewal of a permit or lease under this provision may in some instances affect financing or other aspects of ranch economics, the principal objective of these provisions—encouraging and recognizing stewardship—is consistent with the long-term stability and economic viability of a ranch operation.

The Department does not agree that suspensions, in addition to cancellations, should serve as a basis for disqualifications. Suspensions may be imposed for a wide range of problems. While some may be serious enough to warrant denial of additional permits, others may not be. If a person continues to perform so poorly that BLM suspends one or more permits, the authorized officer has the discretion to take the next step, cancellation. In that case, the person would become ineligible for a new permit for the next 36 months.

In regards to difficulties in determining affiliation, the Department does not intend that such a determination will require an in-depth investigation. Rather, the authorized officer will rely on readily available information and material provided by the permittee or lessee through the normal permit or lease application process.

Once an individual has sold his ranch and a permit has been transferred, the original owner will not be considered responsible for it. The concept of affiliate is intended to take into account those persons who actually have the ability to control the manner by which a grazing operation is conducted. The Department does not believe this extends to buyer-seller relationships unless as a result of the transaction the seller retains some interest in the operation, such that it meets the definition of "affiliate."

The concern of the tribal government is well founded. If the tribe receives permits and in turn leases them to individual tribal members, the Department assumes that the tribe's relationship to the tribal members meets the definition of control. Through the terms of the leases, if by no other means, the tribe can exercise control over its members.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the text subdivided and redesignated and headings added for clarity. Additionally, the word "relevant" is added to paragraph (d) to modify "information" to clarify that the authorized officer is authorized to request information from the applicant that is relevant to the application process, not just any type of information.

Section 4110.1–1 Acquired Lands

The proposed rule would have revised this section to clarify that BLM will apply the terms and conditions of existing grazing permits on leases on newly acquired lands in effect at the time of acquisition of the lands. This change was proposed to make clear that terms and conditions of permits and leases in effect at the time land is acquired will be honored subject to the provisions of the transfer of ownership (statute, title, etc.). Mandatory qualifications will not apply to such permits or leases until the expiration of their current term.

The Department received very few comments on this section. Some expressed concern that this provision would mean that lands grazed at the time of acquisition might later be turned to conservation use.

It is true that, under this provision, lands which were grazed at the time of acquisition could, with the expiration of the permit, be turned to conservation use. However, the commenters should keep in mind that conservation use will be issued only at the request of the permittee, and will be required to be consistent with applicable land use plans. Additional information on conservation use can be found in this preamble in the discussion of § 4130.2.

The Department has decided to adopt this provision as proposed.

Section 4110.2–1 Base Property

Under the proposed rule, this section would have been amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property.

A provision would have been added to clarify that the permittee's or lessee's interest in a base water previously recognized as base property would still qualify as base property following authorized reconstruction or replacement required to continue to service the same area.

The Department received comments on this section ranging from those who questioned the justification for implementing the concept that base property be capable of supporting livestock use to those who questioned how the Department would determine what was capable of supporting livestock and what was not. Others questioned whether base property must be contiguous.

The Department has introduced the concept of "capability" of base property to support livestock in order to a) recognize that not all private land holdings are of sufficient size and character to support a livestock operation, and b) provide for situations where persons or organizations other than traditional livestock operators, such as insurers, financial organizations, or conservation organizations, acquire a ranch but may not at the moment be in the livestock business at that location. The Department believes this is in the public interest. As long as the base property is capable of supporting a livestock operation, the property should be eligible to be considered a base of livestock operations. The provision is not intended to remove the requirement for permit applicants to have base property, nor is the provision intended to circumvent BLM's authority to decide whether public lands should or should not be grazed.

The Department does not believe it is necessary for the base property to be supporting a livestock operation at present to be eligible to be considered base property. The proposal would allow for the acquisition or retention of a grazing permit or lease during periods when cattle are not actually being grazed, as long as it were possible to conduct grazing operations. For example, an operation could be in a start-up phase, planned to last for several years, prior to actually placing cattle on the land. While some permittees may not intend to initiate a grazing operation, under the proposal any extended conservation use would be allowed by BLM only if in conformance with approved land use plans or other activity plans and standards and guidelines.

The Department disagrees that contiguous property should automatically be considered capable, or that only contiguous properties should be considered capable of serving as a base. In some cases, there is more than one contiguous property, and a decision must be made as to which would serve best as base property. Also, some contiguous properties may not actually be capable of supporting grazing

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operations, due to their size or character. For example, some may have been so sub-divided that they could no longer support such operations. Finally, statutory provisions in TGA clearly allow non-contiguous property to be considered base.

Under the final rule adopted today, property merely has to be capable of supporting an operation. Property currently serving as base property would in all likelihood be found to be capable of serving as a base of livestock operations.

The Department intends the provision regarding water to recognize that in some cases base waters need to be redeveloped, and the holders of those base waters should not lose base property status just because they had to redevelop the water.

For the reasons discussed above, the Department has decided to finalize the provision as proposed, with one minor change. The words "would utilize" is substituted for "utilizes" for consistency with the concept that base property need only be capable of supporting a grazing operation; no operation need be in existence at the time the property is determined to be suitable as base property.

Section 4110.2–2 Specifying Permitted Use

In the proposed rule, this section would have been renamed "Specifying permitted use" replacing the existing title "Specifying grazing preference." It would also have been amended by replacing the term "grazing preference" with "permitted use" because the latter is more appropriate terminology to describe and quantify the number of AUMs of forage being allocated in a permit or lease. Also, the section would have been amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

The Department received a number of comments concerning the proposal to substitute "permitted use" for "grazing preference" and the corresponding change in policy in the concept of preference being limited to a priority position for the purpose of obtaining a grazing permit or lease. Comments ranged from those who felt the amendment was a good idea to those who believed the change would lead to financial insecurity for grazing operations. Others asked for definitions of the terms "annual rangelands" and "ephemeral rangelands."

The Department has decided to adopt the proposed provision, with several clarifying changes to reflect the initial intent of the proposed rule. Reference to authorizing use "where livestock use is authorized based upon forage availability" is moved to modify "ephemeral rangeland." This clarifies that it is ephemeral rangelands where use must be determined based on actual forage availability. The word "authorized" is replaced by "permitted" in the third sentence for consistency with other provisions in this final rule, including the first sentence of this paragraph. The phrase "activity plan, or decision of the authorized officer" is added after "land use plan" to clarify that such plans or decisions may be the basis for determining permitted use. Finally, the word "occasional" is deleted in two places. While ephemeral rangelands are used only occasionally, due to lack of forage availability under normal conditions, annual rangelands are generally available for grazing. Since this provision refers to both types of rangelands it is inaccurate to use the term "occasional" to refer to forage availability.

The Department has considered the suggested wording changes and has determined that the proposed language best represents the intent of this section, with the exceptions noted. The new definition of the term "preference" is considered at § 4100.0–5.

The final rule does eliminate the concept of "preference AUMs" and replaces this term with the term "permitted use." Permitted use is not subject to yearly change. Permitted use will be established through the land use planning process, a process which requires data collection and detailed analysis, the completion of appropriate NEPA documentation, and multiple opportunities for public input. Establishing permitted use through this planning process will increase, not decrease, the stability of grazing operations. The rule clearly defines preference to be a superior or priority position for the purpose of receiving a grazing permit or lease. Therefore, the Department does not anticipate there will be a decrease of financial stability for grazing operations.

There is no need to eliminate the concept of "grazing preference" totally. The concept of assigning first priority to certain persons is well-established in TGA and is an appropriate way to contribute to the stability of dependent livestock operations and the western livestock industry. The redefinition of preference is intended to resolve the confusion and misinterpretation of the concept that has developed over the years. In particular, the redefinition eliminates the shorthand jargon of "preference AUMs" that has developed to refer to the number of AUMs included in a permit or lease offered to a holder of grazing preference.

In response to commenters' suggestions, definitions of annual and ephemeral rangelands are added to this final rule. They can be found in § 4100.0–5. Regarding permitted use for annual rangelands, the Department has made some minor wording changes in this final rule for clarity.

The provisions pertaining to ephemeral ranges address designated ephemeral ranges—specific areas that have been recognized through BLM's provisions for ephemeral grazing. There are some smaller areas scattered throughout the desert southwest and Great Basin that produce amounts of forage sufficient for livestock grazing only occasionally and that are included in perennially-grazed allotments. These generally isolated areas can be recognized at the time livestock carrying capacity is determined and can receive further protection through the standards and guidelines that will be developed as a result of this final rule.

Section 4110.2–3 Transfer of Grazing Preference

In the proposal, this section would have been amended to reflect the new requirements of § 4110.1 that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. It would also have been amended by the addition of a new paragraph (f) requiring that new permits or leases stemming from the transfer of base property be for a minimum period of three years. The Department proposed this provision to enhance the protection and improvement of rangelands and to reduce the administrative work of processing transfers. The section would also have been amended by the substitution of the term "permitted use" for the term "grazing preference" where the reference pertains to an amount of livestock forage. This change is discussed at § 4110.2–2.

Most of the comments submitted on this proposed section addressed the 3-year limitation on transfers, which some viewed as arbitrary and without rational basis. Others read the proposal to mean that three years was an *upper* limit on transfers, and suggested that a 10-year term was needed to provide stability to the ranching operation, and to assist in obtaining operating capital from lenders. Others questioned the accuracy

of the cross-reference in the proposed language.

The Department disagrees that the 3-year minimum for transfers stemming from base property leases is arbitrary and without rational basis. This minimum is intended to reduce administrative burden and to promote good stewardship of the land. The TGA requires the Department to ensure "orderly use, improvement, and development of the range." Rapid turnover of permit and lease holders is not consistent with this requirement. Persons who hold preference on an allotment but who sublease their public land grazing privileges to short term occupants rather than using the allotment for grazing cattle are not making productive use of the land nor promoting the stability of the livestock industry.

The Department does not envision that the 3-year minimum for transfers will impact the normal transactions in the livestock business. It will not interfere with the sale of private lands or with the subsequent transfer of the permit or lease to the new owner. The provision does not encumber private lands—it only affects the privileges associated with a grazing permit or lease. The effects of the 3-year limit on transfers on a public lands rancher's equity has been addressed in detail in the FEIS. The final rule provides for transfers of less than three years in specified circumstances, for example where base property changes ownership. Transfers are allowed for *up to* 10 years. Three years is a lower limit.

Regarding qualifications for a permit, transferees should be expected to meet the same qualification criteria as other public land permittees or lessees. Upon the completion of a transfer the transferee will become the permit or lease holder. Given that some short-term transferees may be less motivated to manage for the long-term health of the rangelands, ensuring that transferees have a history of compliance is of great importance.

The cross reference is intended to ensure that transferees meet the mandatory qualifications and own or control base property. While the language in the proposal, referring to general § 4110.2 is not incorrect, more specific references to the provisions which the transferee must meet, those in §§ 4110.2–1 and 2–2, may be more useful. The final language is modified accordingly.

The Department has decided to adopt a final version of the proposed rule with only one minor change, which reflects the new cross reference.

Section 4110.2–4 Allotments

In the proposed rule, this section would have been expanded to clarify that the authorized officer's existing authority to designate and adjust allotment boundaries included the authority to combine or divide allotments when necessary for efficient management of public rangelands. The proposal also would have specified that modification of allotments must be done through agreement or decision of the authorized officer. These two changes were intended to provide administrative clarity to the process. The proposal also would have added a requirement expanding consultation to the State having lands or responsible for managing resources in the area, and the interested public, as well as the affected grazing permittees or lessees. Finally, consistent with the change in definition of consultation, cooperation, and coordination discussed in § 4100.0–5, the proposal would have eliminated the words "cooperation and coordination."

The final rule adopts the language of the proposed rule except that the terminology "consultation, cooperation, and coordination" is included in the final rule.

Most of the comments on this proposed section addressed two issues: deletion of the terms "coordination and cooperation" and inclusion of States and, particularly, the interested public in the consultation process. Deletion of the terms "coordination and cooperation" was viewed by some commenters as a violation of the intent of Section 8 of PRIA which would prevent affected interests from exercising their right to consult, cooperate, and coordinate.

Some commenters objected to the inclusion of the interested public in the consultation process on changing allotment boundaries because they believed that it would interfere with currently established boundaries, create uncertainty for operators, and decrease the incentive to maintain improvements. Other comments suggested that consultation on allotment boundary changes should be with the RAC, not the interested public.

Few comments were addressed specifically to the provision allowing the authorized officer to combine or divide allotments. Commenters asked how deeded lands within allotment boundaries would be handled, and stated that adjusting allotment boundaries was a taking of private property. Others asked who would bear any expenses associated with boundary changes. Still others raised takings issues, and asked who would bear the expense associated with boundary changes.

As noted above in the discussion of § 4100.0–5, because of the confusion caused by the proposed deletion of "cooperation and coordination" the Department has decided to use the full phrase "consultation, cooperation and coordination" in cases where broad based input in agency deliberations are encouraged.

The Department believes that inclusion of the interested public is important because the public is a stakeholder in the administration of the public lands. Additionally, decisions regarding designation and adjustment of allotment boundaries are subject to NEPA, and the public must be involved in decisions subject to the NEPA process, because of the requirements of that statute. Currently, BLM notifies all affected interests of actions such as allotment boundary changes. The Department does not expect there will be significant changes in current BLM procedures to accommodate the requirements for consultation with the interested public, beyond including any interested persons in such routine notifications. Thus, the Department does not anticipate any increased uncertainty or decreased incentive to maintain improvements. While RACs might be consulted in certain cases, such as a controversial adjustment or where significant funding is required, the Department does not believe it is feasible to involve RACs in every routine action.

The Department envisions that most adjustments in allotment boundaries would have little effect on ranch units. Typically, such adjustments are to realign boundaries to be consistent with actual use of the allotment. For instance, an allotment boundary may be adjusted to allow an adjacent ranch to make use of public lands that because of natural physical barriers are not readily available to the current permittee. Adjustments in allotment boundaries will in no way affect the ownership of private lands.

The Department does not believe that this provision would involve any "takings" issues. Permits and leases to graze public lands within grazing allotments do not constitute property rights. Adjustments in allotment boundaries that result in a transfer of grazing preference will be subject to the provisions of § 4120.3–5 pertaining to the assignment of range improvements and corresponding compensation for such improvements. Takings issues are addressed further in the General Comments discussion in this preamble.

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Decisions on who should bear the expense of constructing fences made necessary by adjustments in allotment boundaries will be made on a case-by-case basis. Depending on the circumstances, BLM, the grazing permittee or lessee, or others may bear the costs. For instance, an adjustment to an allotment boundary made at the request or for the benefit of a permittee may be made subject to the permittee's acceptance of fencing costs. Where a fence is to be constructed to enhance the establishment or re-establishment of, for example, bighorn sheep, BLM or State wildlife management agency may assume the costs.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one change. The terms "cooperation and coordination" are included in the opening sentence.

Section 4110.3 Changes in Permitted Use

This section would have been amended by replacing the term "grazing preference" with "permitted use." This change is discussed at § 4110.2–2. The section would also have clarified that changes in permitted use must be supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer. This change would have broadened the sources of information that could be relied upon by BLM as a basis for changing permitted use.

The Department received a number of comments on this section. The majority of the comments dealt with the information that BLM would use to establish permitted use. Other commenters added that BLM should consider the vegetation impacts that come from other resource uses in calculating permitted use. Some commenters stated that no grazing should be permitted until an accepted monitoring plan is carried out or that permitted use in riparian areas should be evaluated every three years and adjusted as needed.

The Department agrees that professionally accepted and scientific information is needed to justify changes in permitted use. Many factors affect the type of information needed, the appropriate level of detail, and the time span over which such information should be acquired—resource conditions, resource values, climate, local environmental conditions, etc. The BLM can obtain information from a number of sources in evaluating the need to change permitted use, in addition to the traditional source, monitoring data. Other valid sources of information include direct observation, ecological site inventory and trend data. There is no sound scientific reason to limit the authorized officer's flexibility by restricting him or her to one source of information or to place specific timeframes for monitoring in the regulations.

Changes in permitted use are subject to consultation with permittees, States having lands or managing resources in the area, and interested publics. Furthermore, permittees and lessees can appeal final decisions regarding changes in permitted use (*See* §§ 4110.3–1 and 4110.3–2 and subpart 4160). Given these constraints, the Department does not agree that the authorized officer has too much latitude.

The Department agrees that other resource uses should be evaluated in calculating permitted use. At the present time, wildlife and wild horse and burro utilization levels are used in the calculations of permitted use within an allotment.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the following minor changes. The phrase "assist in" is added before the words "restoring ecosystems to properly functioning condition." These words have been added to emphasize that the Department does not expect that rangeland health will be restored as a result of single grazing management decisions, such as changes in permitted use on one permit. Rather, restoration of rangeland health will result from a series of decisions and actions over time, including actions pertaining to uses other than grazing, all of which will work together to establish significant improvements in the condition of the rangelands.

Further, the phrase "to conform with land use plans or activity plans" is added as one objective of changes in permitted use to clarify that, under 43 CFR Part 1600 and provisions in subpart 4120 of this final rule, BLM is required to conform with decisions made in the land use plans or other activity plans. Where grazing use does not conform with such plans it must be modified.

Section 4110.3–1 Increasing Permitted Use

The proposed rule would have revised this section by requiring that a permittee, lessee or other applicant be determined to be qualified under subpart 4110, in order to be apportioned additional forage under subsection (c), by substituting the term "permitted use" in place of "grazing preference," and by clarifying the requirements for consultation. Also, reference to a permittee's or lessee's demonstrated stewardship would have been added to factors to be considered in allocating available forage.

The final rule adopts the text of the proposed rule, except that the final rule requires that "consultation, cooperation, and coordination" take place prior to the apportionment of additional forage under paragraph (c).

The largest group of comments on this section asserted that the interested public should not be involved in BLM's decisions to increase forage temporarily. Others expressed concern about involvement of State agencies or that increases should be subject to local government land use plans. Other commenters stated that considering demonstrated performance and compliance made decisions to increase permitted use uncertain. Others stated that increases should be processed using the established consultation, coordination and cooperation procedures including Section 8 consultation.

The Department believes that it is appropriate to involve the public in the management of the public rangelands. Similarly, State and local governments will be given an opportunity to comment on such decisions. This is consistent with Section (202)(f) of FLPMA. Thus, any decisions to increase or decrease permitted use or forage within a grazing allotment will include not only the permittee but also the interested public and the State having lands or managing resources in the area. However, the BLM authorized officer will retain the authority and responsibility to make final decisions on increased permit usage.

Additional forage available for livestock grazing on a sustained yield basis is first apportioned to permittees or lessees in proportion to their stewardship efforts which resulted in increased forage production. Any additional forage (AUMs) following this apportioning could be available to other permittees/lessees or outside interested applicants, assuming they are qualified under § 4110.

Record of performance and compliance are criteria for adjudicating conflicting applications, not for allocating additional forage, unless the grazing allotment is a community grazing allotment involving several different permittees/lessees. Any final decision by the agency can be appealed under the procedures set forth in subpart 4160.

The Department agrees that increases should be done with consultation, coordination, and cooperation, and the final rule makes this change. For further discussion, see § 4110.0–5. Otherwise, the provision is adopted as proposed.

Section 4110.3–2 Decreasing Permitted Use

The proposed rule would have amended this section by revising the heading to change the term "active use" to "permitted use." This change would have been consistent with the proposed definitions of these two terms, as discussed at § 4100.0–5. Paragraph (b) also would have been amended to provide that when monitoring and field observations show grazing use or patterns of grazing use are not consistent with the fundamentals of rangeland health (titled "national requirements" in the proposed rule) or standards and guidelines or are otherwise causing an unacceptable level or pattern of utilization, the authorized officer must reduce permitted grazing use or otherwise modify management practices. Paragraph (b) would also have added ecological site inventory and other acceptable methodologies to monitoring as ways of estimating rangeland carrying capacity as the basis for making adjustments in grazing use. Subsequent adjustments could be made as additional data were collected and analyzed.

Paragraph (c) would have been deleted to remove the provision requiring the authorized officer to hold those AUMs comprising the decreased permitted use in suspension or in nonuse for conservation purposes. Existing paragraph (a) of this section, which was not proposed to be changed, would continue to provide for the temporary suspension of active use due to drought, fire, or other natural causes, or to installation, maintenance, or modification of a range improvement.

Some commenters stated that the proposed language is inconsistent with legal requirements. Some commenters stated that the term "corrective action" is "vague and subjective."

Numerous commenters stated that it is necessary for the authorized officer to determine the cause of range problems before decreasing permitted use and questioned whether methods other than monitoring would be suitable for determining carrying capacities. Some of these comments suggested correcting other uses, such as wild horses and wildlife, before permitted use is reduced. Some commenters expressed concerns on the monitoring and inventory methodologies BLM would use. Others stated that reductions should be placed in suspended use rather than eliminated.

This regulation is not inconsistent with statutory requirements. A discussion pertaining to legal authorities and requirements is presented under "General Comments."

The BLM authorized officer will make a determination on a case-by-case basis as to what corrective actions are appropriate. In some cases the corrective action may not result in a reduction in permitted AUMs. For instance, a change in use periods or a temporary suspension in use may be determined to be the appropriate action. In other instances, data may show that other uses of the public lands need to be modified. The Department believes that it would be inconsistent with its mandate to manage the public rangelands to allow an allotment to continue to deteriorate while prolonged monitoring studies are conducted in those instances where other reliable measures of rangeland health indicate a need for action.

BLM uses a variety of accepted methodologies and available data to determine carrying capacities of grazing allotments and to identify unacceptable levels or patterns of use. Typically, findings of one form of data collection are corroborated with other data before making reductions in livestock use. The BLM Technical Reference 4400–5 (*Rangeland Inventory and Monitoring Supplemental Studies*) describes acceptable methodologies for estimating forage production. Additionally, BLM intends to develop rapid assessment techniques that can be used to evaluate rangeland health as represented by established standards and the guidelines to be followed in meeting standards and the fundamentals of rangeland health. (*See* subpart 4180.)

Although in some cases reductions made under this section of the rule may be carried in temporary suspension, the Department does not believe that it serves the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit, unless there is a realistic expectation that the AUMs can be returned to active livestock use in the foreseeable future. Should additional forage become available there are provisions at § 4110.3–1 to address increases in permitted use. Decisions resulting in a decrease in permitted grazing use are subject to the administrative remedies outlined in subpart 4160, including a right of appeal.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one minor change. The term "authorized grazing use" in paragraph (b) is changed to "permitted grazing use," to make this provision more consistent with the definitions included in this final rule.

Section 4110.3–3 Implementing Reductions in Permitted Use

The proposed rule would have renamed the section and removed existing paragraph (a) and other requirements for phased-in reductions in grazing use. This proposal was intended to provide the authorized officer more flexibility to deal with situations in which immediate action was necessary to protect rangeland resources; phase-in periods for reduction in grazing use could still have been available if determined by the authorized officer to be appropriate.

The proposal would also have redesignated existing paragraph (b) as paragraph (a) and amended it by removing the requirements to phase-in reductions in use over a five year period. The proposal also would have removed the terms "consultation, coordination and cooperation," and "suspension of preference" and added in their place the terms "consultation" and "reductions in grazing use," respectively. These changes would have been consistent with changes in definitions discussed at § 4100.0–5. It would also have provided, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction.

Existing paragraph (c) would have been redesignated as paragraph (b) and amended to remove the word "temporary" because that term implies that protection would be needed for only one season. In actuality, the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought has passed. Other minor amendments would have clarified action to be taken by the field manager and made the language concerning provisions for making decisions effective when necessary to protect the resource consistent with language on that provision in proposed subpart 4160. Language would have been added specifying that such decisions would have remained in effect pending any appeal of the decision, unless a stay were granted by the OHA. The overall intent of the changes in this paragraph was to provide the authorized officer with the authority needed to implement decisions to close allotments or portions of allotments or modify authorized grazing use when immediate action was

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necessary to protect rangeland resources.

A number of commenters stated that the phase-in of reductions should not be eliminated because it promotes industry stability and gives livestock operators a chance to adjust their operation. Others suggested that the authorized officer should restrict access for a temporary period of time rather than making reductions in "emergency" situations. Commenters also objected to removal of the terms "coordination and cooperation" in redesignated paragraph (a) as being a violation of PRIA. Others objected to involvement of the interested public.

Numerous commenters raised concerns over the lack of documentation required to implement reductions in grazing use, and stated that prolonged monitoring should be required. Others stated that "full force and effect" provisions should not apply to reductions and that the RACs should be consulted prior to reductions and emergency closures.

The Department will implement any increase or decrease as outlined in the final rule by documented agreement or by decision of the authorized officer. These documents may include a provision for a phase-in period. However, in some situations, immediate action is needed to protect rangeland resources, including wildlife and riparian areas, because of conditions such as drought, fire, flood, insect infestation or other conditions that present an imminent likelihood of significant resource damage. The Department has concluded that in these situations immediate corrective action is warranted, without the constraints of a phase-in period. Of course, even where a decision is implemented immediately, an adversely affected party would retain the ability to petition the OHA for a stay of the decision.

The Department disagrees that the provisions of this section are inconsistent with any statutory requirements. These issues are covered more fully above in the General Comments section of the preamble. The words "cooperation and coordination" have been added to paragraph (a). As noted at § 4100.0–5, the Department has decided to use the phrase "consultation, cooperation, and coordination" in cases where broad based input into agency deliberations is sought. The Department believes that such input is critical to effective management of public rangeland.

The authorized officer will make decisions about implementing reductions in permitted use based on monitoring, field observations, ecological site inventory or other acceptable data. The final rule at 4110.3–2(b) covers adequate monitoring and documentation necessary to implement reductions. The Department believes that the language in the rule expanding the sources of information that the authorized officer can use to implement such changes is desirable to provide flexibility to the process and to ensure that the authorized officer can take immediate action to protect the resource, including making decisions effective immediately or on a specific date, when conditions require it.

While in some specific circumstances a RAC may be involved in a decision to reduce permitted use, the Department does not believe it is feasible to consult the councils for every grazing management decision.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with the following changes. The term "cooperation and coordination" is added back into paragraph (a). In paragraph (b), the phrase "when continued grazing use poses a significant risk of resource damage from these factors" is amended to read "when continued grazing use poses an imminent likelihood of significant resource damage." This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Such decisions may be placed into effect upon issuance or on a specified date and will remain in effect during any appeal unless a stay is granted.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would have amended paragraph (a) by removing the words "suspend" and "suspension" and by changing the term "grazing preference" to "permitted use" consistent with other changes throughout the proposal. As a result, decreases in public land acreage available for grazing would no longer have associated forage allocations carried on a permit or lease as suspended use.

The major concerns commenters raised with respect to this section involved compensation for lost range improvements and AUMs and the elimination of the terms "suspend" and "suspension." The existing regulation provides for compensation to the permittee for his or her contribution in the permanent range improvements developed within areas that are being devoted to a public use that precludes livestock grazing. Compensation is not required for the reduction or loss of available livestock forage due to a change of use, which would include cases of use being reduced to protect the rangelands. This provision is not being changed.

The final rule has removed "suspend" and "suspension" because it does not serve the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit unless there is a realistic expectation that the AUMs can be increased due to increased forage availability. If such numbers are carried, the permittee or lessee may have an unrealistic expectation for increases in AUMs in the future. In cases where the acreage is being reduced, it is not likely that such an increase will occur. Therefore, there appears to be no good reason to refer to suspended AUMs in the regulation covering decreases in land acreage. If rangeland conditions improve to the extent that increased usage is possible, the provisions of § 4110.3 can be used to increase permitted use accordingly.

All decisions pertaining to a grazing permit or lease will involve consultation with the affected permittee and affected interests. All final decisions of the authorized officer will be subject to the administrative remedies discussed in subpart 4160, including the right of appeal.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4120.2 Allotment Management Plans and Resource Activity Plans

The proposed rule would have amended this section by revising the heading and by adding reference to other activity plans that may prescribe grazing management. This provision was intended to reflect BLM's belief that activity plans that provide direction for the major resources and uses of a particular area are more effective management tools, and are more consistent with an ecosystem approach, than are single source planning documents.

The proposed rule would have clarified that draft AMPs, or other draft activity plans, could be developed by other agencies, permittees or lessees, or interested citizens. This provision was intended to broaden the base of participation in the planning process, and to provide interested parties, including interested citizens, an opportunity to facilitate the planning process through such participation.

Another proposed provision would have clarified that AMPs or other activity plans, including those prepared by other parties, would not have become effective until approved by the authorized officer. This provision is consistent with authority granted to the Secretary by 43 U.S.C. 1752.

Paragraph (a) would have been amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process. This change would have been made for conformance with the proposals on subpart 1780, and with the Department's intent to broaden the base of participation in the grazing management process.

Another amendment would have changed the existing provision regarding the flexibility granted to permittees or lessees under an AMP to specify that it would be determined on the basis of demonstrated stewardship. The requirement for earning flexibility was intended as an incentive for grazing operators to manage for the improvement of rangeland conditions. Additionally, it was intended to recognize that permits and leases operated by good stewards require less administration.

The proposed rule would have clarified that the inclusion of other than public lands in an AMP or other activity plan is discretionary. The use of "shall" in the existing regulation could have been read to require inclusion of such lands.

The amendment would also have specified that a requirement of conformance with AMPs be incorporated into the terms and conditions of the grazing permit or lease. This proposal would have changed a provision in existing paragraph (c) which required that the plan itself, rather than a requirement to conform with the plan, be included in the terms and conditions of the permit or lease. This provision was intended to conform with existing practice regarding how AMP decisions are reflected in permits and leases.

Proposed paragraph (c) would have been a new provision. It would have provided that the authorized officer give an opportunity for public participation in the planning and environmental analysis of proposed AMPs affecting the administration of grazing and give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing them. It would also have provided that the decision document following the environmental analysis would be considered the proposed decision for the purposes of subpart 4160 of this part. This provision was intended to streamline administrative processes by allowing BLM to combine NEPA analysis with the activity plan process. Additionally, the provision assists the grazing permittees and lessees by clarifying that decisions regarding AMPs can be appealed through the standard appeals process specified in subpart 4160.

The Department received a number of comments on this section. Most frequent comments reflected perceptions that the proposed rule would eliminate the requirement that BLM "consult, coordinate and cooperate" with the permittee. Many stated that to allow participation by the interested public would severely delay the process. Others said some provisions, such as using resource activity plans to serve as the functional equivalents of AMPs, are outside the Secretary's jurisdiction. Some respondents raised questions such as whether development of the AMP was discretionary, and whether standards and guidelines would be imposed retroactively on existing plans.

A number of other comments were received on various details of the process and scope of AMPs and other activity plans. These comments will prove useful in developing subsequent guidance for BLM's field management staff.

The proposed rule included the term "consultation, cooperation and coordination" in the requirements for preparing AMPs and other activity plans under paragraph (a) but used the term "consultation" in paragraph (e) pertaining to revising and terminating such plans. In the rule adopted today, the term "consultation, cooperation and coordination" is substituted for "consultation" in paragraph (e) and remains as proposed in paragraph (a).

The Department disagrees that involvement of the interested public will delay the final outcome of the planning process. While at some stages, involvement of the interested public in AMPs may slow the process, their involvement also will result in fewer drawn-out protests and appeals and more rapid implementation on the ground. The Department intends that interested parties will be involved in all levels of planning, including the development of land use plans and the preparation of site-specific management activity plans such as AMPs. It remains the responsibility of BLM to make timely decisions. These rules do not change existing time frames processes such as protests or appeals.

The provision allowing resource activity plans to serve as the functional equivalent of AMPs is not outside the Secretary's authority, and the final rule retains this provision. The concept of more integrated resource activity plans better meets the statutory requirements of FLPMA and NEPA, provides a more efficient way to plan for the management of a specified area, and allows more complete analysis of public comment and cumulative effects. Activity plans that serve as the functional equivalent of AMPs will meet the FLPMA definition of AMPs (43 U.S.C. 1702(k) and 1752(d)) by addressing the specific conditions of rangelands within the grazing allotments covered by such plans.

The Department does not intend that standards and guidelines will automatically be incorporated into plans upon the effective date of this rule. Rather, standards and guidelines will be incorporated into individual plans as the need for modification of the plans is identified. Subpart 4180 directs the authorized officer to take action no later than the start of the next grazing year to initiate significant progress toward rangeland health in cases where the authorized officer determines that existing management practices are failing to ensure significant progress toward meeting the standards or toward conforming with the guidelines. Under this provision, terms and conditions of existing permits could be revised, under the procedures specified in new § 4130.3–3, to incorporate new terms and conditions to address resource condition issues. Such decisions by the authorized officer will be subject to rights of appeal under subpart 4160, as will decisions to adopt, terminate or modify an AMP or its functional equivalent.

In accordance with the above discussion, § 4120.2 is adopted as proposed with the exception of minor edits, the addition of the explicit reference to other activity plans serving as the functional equivalent of AMPs, and the substitution of the term "consultation, cooperation and coordination" for the term "consultation" in paragraph (e).

Section 4120.3–1 Conditions for Range Improvements

The proposed rule would have amended this section by inserting a new paragraph (f) specifying that range improvement projects would be reviewed in accordance with NEPA requirements, and that the decision document issued as a result of that review would be considered the proposed decision for purposes of subpart 4160 of this part.

This provision would not have introduced any new requirement. Rather, it would have clarified in these

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regulations requirements that already exist under NEPA. The provision would also have ensured that the same document would have been used to satisfy NEPA requirements and to provide a final—and appealable—decision to a permittee or lessee. This would have prevented duplication of effort on the part of the agency or the permittee or lessee.

In effect, the provision that the NEPA decision document would have served as the proposed decision of the authorized officer for purposes of subpart 4160 would have directed appeals of those decisions through the administrative remedies process provided in that subpart. Under the proposal, that subpart would have provided an opportunity for a field hearing on the facts of the case by an administrative law judge, rather than requiring the appeal to go directly to the Interior Board of Land Appeals. This would have streamlined the appeals process.

The Department received few comments on this section. Most expressed concern that following the NEPA process would result in unnecessary delay in approving environmentally sound range improvement projects, or would discourage such improvements from being made.

The Department has decided to adopt this provision as proposed, with one minor change. The term "range improvement" is added between the words "cooperative" and "agreement" in paragraphs (b) and (e). This term was added for consistency with other provisions in the final rule. This change clarifies that the cooperative agreements being referred to are range improvement agreements, not cooperative agreements between BLM and the States, or any other type of cooperative agreement.

The Department does not expect that the NEPA review process will unduly delay implementation of range improvement projects. The rule retains the NEPA requirement. Following the NEPA process is a requirement of law and is current practice; it is not just a requirement of this regulation.

Section 4120.3–2 Cooperative Range Improvement Agreements

In the proposed rule, the heading of this existing section would have been revised to clarify that this section deals with cooperative range improvement agreements as opposed to "cooperative agreements" with other Federal or State agencies. The proposed rule would have amended this section to specify that the United States would have title to all new permanent grazing-related improvements constructed on public lands. The proposed section would have provided that title to temporary grazing-related improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. This change would have conformed with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with existing Forest Service policies. The amendment would not have changed any agreements currently in effect.

The Department received many comments on this section. Some commenters expressed concern that the provisions would lead to fewer range improvements and declining ranch values, range conditions and wildlife populations. Others questioned if reconstructions were considered new improvements and whether existing improvements would be affected by the requirement that the United States retain title to improvements. Many stated that the provision could afford environmental groups the opportunity to take control of range improvements and felt livestock operators should be consulted if improvements are planned. Others raised takings questions.

The Department has adopted a modified version of the proposal. The title of the final rule is changed to clarify that the section affects cooperative range improvement agreements. Paragraph (b) is revised by adding examples of types of permanent range improvements that will be authorized by cooperative range improvement agreements. The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee, or shared in proportion to the amount of contribution, in the case of situations covered by § 4120.3–2. This final rule clarifies further these provisions regarding temporary and permanent improvements. The United States will have title to new permanent range improvements. The rule conforms BLM policy with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with current Forest Service administrative provisions.

Additionally, the adopted language clarifies that the provision applies to cooperative range improvements agreements after the effective date of the rule. The final rule does not adopt proposed paragraph (c), regarding temporary structural range improvements, as that paragraph duplicates requirements in final § 4120.3–3, Range improvement permits.

Finally, a statement is added to clarify that any contribution made by a permittee or lessee to such a permanent improvement will be documented by BLM to ensure proper credit for the purposes of § 4120.3–5, Assignment of range improvements, and § 4120.3–6(c), Removal and compensation for loss of range improvement.

The Department disagrees that this provision will result in fewer range improvements and declining range values, range conditions, and wildlife populations. The Forest Service's experience does not support this contention. Improvements add to the management effectiveness and the value of the ranch operation. Any contributions the permittee makes to range improvements are recognized and documented. The incentive for a permittee to invest in range improvements is that it is in his or her financial interest to improve use of the grazing allotment.

Reconstruction within the bounds of the original range improvement permit will not require a new agreement. However, work that is outside of the original range improvement permit or authorization will be considered a new improvement. Determinations as to whether a particular instance is a reconstruction or a new construction will be made on a case-by-case basis.

The Department disagrees that this provision will allow other parties to take control of range improvements. New permanent range improvements will be issued by cooperative range improvement agreement with the permit holder, and will be in the name of the United States, regardless of who the permittee is. Responsibilities of each cooperator, the grazing permit holder and the United States will be documented in the cooperative range improvement agreement.

The provision does not limit the Secretary's authority to cooperate with other agencies and organizations to plan, develop, and maintain improvements on the public lands to the benefit of other public land resources. Where such developments may affect livestock operations, permit holders will be consulted. Decisions to determine the need for range improvements will not be affected by this provision. The rule continues the policy that range improvement needs may be identified by the operator, BLM, or interested members of the public. The responsibility for cost to be borne by the respective cooperators in new range improvement projects will be described in the cooperative range improvement agreement, and will be determined on a case-by-case basis.

For discussion of takings issues, see the General Comments section of this preamble.

Section 4120.3–3 Range Improvement Permits

Paragraph (a) of this section would have been amended to change existing provisions authorizing permittees or lessees to apply for a range improvement permit to install, use, maintain, or modify range improvement projects. Two changes would have been made to this provision. First, the reference to permanent improvements would have been deleted. This change would have been consistent with the proposed revisions to § 4120.3–2 above, which would have consolidated all provisions regarding permanent improvements in that section. Secondly, the phrase "within his or her designated allotment," which referred to improvements needed to achieve management objectives, would have been changed to "established for the allotment in which the permit or lease is held." This change was intended to provide clarity to the provision and to remove the gender references in the existing text.

Existing paragraph (b) would have been amended to add a list of types of improvements the Department considers to be temporary. The amendment would have clarified that permanent water improvement projects would be authorized through cooperative range improvement agreements consistent with existing Department policy. The proposed rule would have clearly established that title to permanent range improvements authorized after the effective date of the rule would be held by the United States. It would also have added a companion provision specifying that a permittee's or lessee's contribution to an improvement would have been documented by the authorized officer, to ensure proper credit for purposes of §§ 4120.3–5 and 4120.3–6(c).

The proposed rule would have removed existing paragraph (c). The proposal would have created a new paragraph (c). This paragraph would have provided that the permittee or lessee must cooperate with other operators that may be temporarily authorized to use forage. Furthermore, this new provision would have specified that a permittee or lessee would be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use; the authorized officer may resolve questions concerning compensation. Where a settlement cannot be reached, the authorized officer would issue a temporary grazing authorization to compensate the preference permittee or lessee. The intent of this proposal was to protect the interest of the permittee or lessee in range improvements in those infrequent cases where a third party makes use of the allotment.

Many commenters questioned whether the proposal was within the authority of TGA. They also stated that the provisions pertaining to title of range improvements would remove incentives for permittees to make improvements, would make it difficult to obtain financing, would adversely affect wildlife and local economies because fewer improvements would be built, and could jeopardize existing "Section 4" (TGA) permits.

Other commenters were concerned that the Department would require permittees or lessees to construct range improvements at their expense. Some commenters asked what requirements there would be for maintenance. They also expressed concern about whether there would be a problem of access to improvements to which they did not have title.

Commenters expressed opposition to provisions in proposed paragraph (c) because, in their view, it seemed to be a new provision to allow nonpermittees to graze within another's grazing allotment.

Under the provisions adopted here, livestock operators may hold title to removable and temporary improvements authorized under range improvement permits. Such improvements are largely funded by livestock operators.

The Department disagrees with the assertion that the provisions of this section are outside the Secretary's authority as established in TGA. Section 4120.3–3, as proposed and adopted in this final rule, implements the provisions of TGA found at 43 U.S.C. 315. The Department also disagrees with the contention that the title provisions will significantly affect either the amount of permittee and lessee contributions to range improvement or their ability to secure financing for range improvement. The installation of range improvements will remain in the permittee or lessee's interest as long as the improvement assists in the management of the livestock operation or results in an improvement in the condition and long-term productivity of the range. The Forest Service has long had a policy of retaining title to permanent improvements and has not observed that private contribution has been discouraged. Similarly, financial institutions, in reviewing loan applications, consider the value of the range improvement in terms of how the improvements will affect the profitability of the ranch operation.

This rule affects the title of improvements authorized after the effective date of this rule. Title to currently authorized improvements will not be affected.

The provisions pertaining to the use of range improvements by parties temporarily authorized to use an allotment would not have established new policy toward the *issuance* of nonrenewable permits. Proposed paragraph (c) would merely have made explicit how the renewable permit or lease holder's interests in range improvements would be protected in those instances where another party is authorized to graze within the allotment on a temporary nonrenewable basis.

In accordance with the above discussion, the Department has decided to adopt this section as proposed, with one major change. In the rule as adopted, the Department has removed reference to permanent water developments from this section. The provision dealing with water improvements and their authorization through cooperative range improvement agreements is moved to final § 4120.3–2, thus consolidating all provisions regarding permanent improvements in that section.

The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee. This final rule clarifies further these provisions regarding temporary and permanent improvements. Because the discussion of permanent improvements no longer occurs in this section, the provision regarding documentation of a permittee's or lessee's contributions to such improvements is no longer pertinent to new range improvement permits. However, the provision for documenting contributions is added to § 4120.3–2.

Two other minor changes were made in the final language. The surplus word "established" is not included in final paragraph (a). For clarity, the Department has added "structural" as a modifier of "temporary improvements" in final paragraph (b).

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Section 4120.3–8 Range Improvement Fund

The proposed rule would have added a new section to this part that addressed the distribution and use of the range betterment funds appropriated by Congress through Section 401(b) of FLPMA for range improvement expenditure by the Secretary. The proposed amendment would have provided for distribution of the funds by the Secretary or designee; one-half of the range improvement fund would have been made available to the State and District from which the funds were derived, the remaining one-half would have been allocated by the Secretary or designee on a priority basis. All range improvement funds would have been used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would have corrected the imbalance by ensuring that the funds are distributed on a priority basis.

The proposed rule would have clarified that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives. Maintenance of range improvements and costs associated with the contracting of range improvements was added to the list of activities for which range improvement funds may be used. Maintenance was an allowable use of range improvement funds prior to a policy change made in 1982.

The proposed rule would have required consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs would also have been consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities. The provisions are adopted as proposed.

The Department received a few comments on this section. Most concerns were about how funds would be expended. Some commenters asserted that the proposal was inconsistent with the Department's statutory authority, that all funds, not just a portion, should return to the District or State from which they came and that all funds should go to construction, not to planning or projects not directly related to livestock production. Others stated that all funds should be used for ecosystem enhancement projects or supported the concept that some funds should be spent on projects to rehabilitate the range and distributed on the basis of priority needs.

Commenters also stated there should be requirements to spend funds in a cost-effective manner. Some supported involvement of the RACs and the interested public in the decisionmaking process on expenditure of the funds. Other commenters asserted that the change will result in fewer improvements being constructed, and that BLM should not require permanent range improvements be constructed at the expense of a permittee or lessee as a requirement to obtain or hold a permit or lease.

The Department's authority for this provision is found in Section 401 of FLPMA, which directs that 50% of the monies put in the range betterment account be authorized to be appropriated and "* * * made available for use in the district, region, or national forest from which such monies were derived * * *" It further provides that the remaining 50% "* * * shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs." While it has been common practice for the Secretary to return the discretionary 50% to the District of origin in recent years, that is not required in FLPMA. The Department intends to allocate the discretionary 50% on a priority basis to better meet BLM management objectives and respond to resource condition concerns.

FLPMA also provides that funds can be expended on projects other than those directly related to livestock-oriented projects. The act specifies that "* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *" FLPMA also allows the expenditure of funds for activities necessary to put projects on the ground such as project planning, design, layout, modification and monitoring. An important goal of the Department in expending the range betterment fund will be to improve the health of the public rangelands. However, all uses authorized by FLPMA will remain valid under this rule including improvements that primarily benefit livestock management.

FLPMA does not specify in what proportions the funds should be spent. The Department believes that the provision, adopted today, providing the maximum flexibility allowed by law in the distribution and use of these funds, will improve the effectiveness of the program and result in increased overall improvement to the public rangelands. Grazing advisory boards received an accounting of the fund expenditures. It is anticipated that RACs will be afforded the same information.

Because under the rule as adopted the Department will be able to expend some funds on a priority basis, rather than returning 100% of the funds to the State or District of origin, the distribution of range improvement projects may shift somewhat. However, this does not mean that the total number of projects will decline. The BLM will not require livestock operators to fund the construction of range improvements. Operators' participation in the development of range improvements will be voluntary. However, there may be some cases where BLM will have to alter grazing use in the absence of needed improvements.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing on Public Lands

Today's action adopts with one addition this section of the proposed rule which provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. This section is prospective, clarifies BLM's water rights policy for livestock watering on public lands, and makes BLM policy consistent with that of the Forest Service.

The section does not create any new Federal reserved water rights, nor does it affect valid existing rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and Section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the proposal does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where State policy permits it; for example, the Wyoming policy is consistent with this final rule.

Some comments questioned whether the language violates State or Federal law. Some commenters questioned whether the language would deny permittees the full use of water and what the impact would be on transferring the point of use of water from or to public lands. Some commenters suggested that the regulation should state that BLM will not have special priority in water adjudications and that the regulation does not affect water on private lands.

The Department's intent in adopting this section is to provide consistent water policy guidance to BLM personnel. It is not the Department's intent to create any new Federal reserved water right, nor does it affect valid existing rights. It has been BLM's policy to seek water rights under State substantive and procedural requirements; the language adopted today does not alter that policy.

The language adopted today clarifies that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Questions such as qualified applicants, what constitutes beneficial use, and quantity and place of use are addressed through State procedural and substantive law. Thus, the Department is not attempting, through the language adopted today, to prejudge the outcome of proceedings under State water law. For the same reason, the Department has not adopted suggestions to include language relating to priority of rights or water rights on private lands. These matters are addressed by State substantive and procedural requirements.

Other comments questioned whether the provision would have a negative impact on adjacent private property, wildlife, and range conditions. Clarification of BLM water rights policy regarding livestock watering on public lands should not have a negative impact on adjacent property. The provision does not address water rights on non-Federal lands. The language adopted today also does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses. The Department has concluded that wildlife and range conditions will be benefited by clarifying BLM water policy. It is the Department's intent in adopting the language of this section to promote the use of the public lands on a sustained yield basis for multiple use purposes.

Section 4120.5 Cooperation in Management

The proposed rule would have added a new section on cooperation in management to recognize and regulate cooperation with, among others, State, county, Indian tribal, local government entities and Federal agencies. The provision is adopted as proposed.

Very few comments were received on this section, and most commenters combined their comments with comments on § 4120.5–1. Some commenters requested that "coordinate and consult" be added after "cooperate" and that the Department remove references to "institutions, organizations, corporations, associations, and individuals." Others asked that the Department give special consideration to the customs, culture and economic impact of projects on existing local communities.

The Department will ensure public involvement and cooperation, in the management of the public lands to the maximum extent possible. All citizens have a stake in the management of the public lands. FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent possible under Federal law and the purpose of the Act.

The section deals with the requirement for cooperation in management. There is no basis to add the terms "coordinate and consult." Section 315 of TGA specifically calls for "cooperation" with agencies engaged in conservation or propagation of wildlife, local associations of stockmen, and State land officials.

All proposed project and planned actions undertaken to implement these regulations will require more local level assessments. Regulations dealing with impact assessment require consideration of socio-economic impacts.

Section 4120.5–1 Cooperation With State, County, and Federal Agencies

This section would have recognized existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships. The TGA, Noxious Weed Control Act, FLPMA, PRIA and other statutes and agreements require cooperation with State, county and local governments, and Federal agencies.

Many commenters wanted the Department to strengthen the language requiring cooperation with local and county governments and their land use planning efforts. Other commenters wanted the list to include private land owners, only groups that can prove an affected interest in the livestock business or only individuals who have invested as much money as the livestock operators. Many commenters requested that the Department strike references to the Wild Free-Roaming Horse and Burro Act and expressed that Animal Damage Control and similar predator control agencies should be listed as a cooperating partner.

Other commenters wanted the Department to show greater deference to State wildlife agency decisions on critical range for wildlife species, to strengthen cooperation on noxious weeds, and to use its authority to reduce the spread of noxious weeds by requiring certified weed free forage and by spending more rangeland improvement funds on weed control.

The Department believes that the provision as proposed adequately addresses its legal responsibilities and its desire to cooperate with State, county and Federal agencies, and has adopted it with no changes.

This section requires cooperation in management. It does not deal with the Department's responsibilities to consult with permittees or lessees or other private parties. The section derives in part from the statutory provision in section 315h of TGA, which requires the Secretary to provide, by suitable rules, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. While other authorities would allow the Secretary to expand the reach of this provision, under TGA the Secretary could not limit it to those with

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an "affected interest." That terminology relates to different statutory provisions, and is not germane here.

Additionally, FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent consistent with Federal law and the purpose of the Act.

The Department will ensure public involvement and cooperation, including State wildlife agency input, in the management of the public lands to the maximum extent possible. However, it is not appropriate to single out wildlife agencies for greater deference in these regulations. On a case-by-case basis, such deference may be appropriate.

The specifics of noxious weed programs are not germane to this section. It is the intent of this rangeland management effort to improve the Department's ability to address such issues, including through increased cooperation with State agencies responsible for weed control.

Subpart 4130—Authorizing Grazing Use

Many sections of subpart 4130 have been redesignated from the existing CFR section identifiers. These changes are intended to put the various sections into more logical groupings. The following table shows the relationship between section numbers in the existing rules and section numbers in the rule adopted today:

Old CFR section	Final rule section
4130.1	4130.1–1
4130.1–1	4130.4
4130.1–2	4130.1–2
4130.2	4130.2
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130.3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

In addition to changes in many section numbers, the headings of several of the sections have been revised to provide more descriptive titles. The following discussion will use the new numbers and cross reference the old numbers.

Section 4130.1 Applications

A new title, Applications, is added at § 4130.1, to improve the logical structure for the subpart.

Section 4130.1–1 Filing Applications (Formerly Section 4130.1)

In the proposal, there would have been two minor changes in this section from the existing rule. "Conservation use" would have been substituted for "nonuse" in the parenthetical phrase to clarify that such use must be specified in the application. Another new phrase would have specified that applications for annual grazing authorizations, which in the proposal included active grazing use and temporary nonuse, also had to be filed with BLM.

The Department received very few comments on this section. The few comments that the Department did receive concerned the concept of "conservation use." This term is discussed at § 4130.2.

Upon further consideration, the Department believes that substituting "conservation use" for "nonuse" may be confusing, because conservation use is actually a subcategory of active use. Furthermore, the meaning of the other phrase proposed to be added to this section can be covered by existing language. Accordingly, the Department has decided not to finalize the proposed changes to this section. However, to improve the structure and logic of the subpart, and to clarify the purpose of this section, it is retitled, "Filing Applications."

Section 4130.1–2 Conflicting Applications (Section Number Remains the Same)

The proposed rule would have amended paragraph (b) of this section to expand the criteria used in evaluating conflicting applications to include the applicant's ability to provide for proper use of rangeland resources. When two or more otherwise qualified applicants apply for the same permit or lease, such considerations are legitimate methods of determining which applicant should be selected.

The new criteria would have promoted BLM's ability to award permits to good stewards of public lands in cases where there were competing applicants by taking into account the applicant's ability to manage the land. The criteria included the applicant's history of compliance with the terms and conditions of Federal and State grazing permits and leases.

The few comments that the Department received on this section addressed primarily the expansion of the criteria to include the applicant's history of compliance. Others inquired about additional definitions.

The Department declines to accept the commenters' suggestions to define additional terms because they are defined by common usage in rangeland management or law.

Although TGA does not specifically deal with competing applications, the Department does not believe that Congress, in passing TGA, intended the Department to issue grazing permits to documented violators of statutory provisions related to grazing use. Additionally, improvement of the rangeland under a specific permittee or lessee's livestock management is a valid factor to be considered, when evaluating conflicting applications. Furthermore, this review should extend to all persons who control a permit or lease, not just the specific applicant.

In accordance with the above discussion, the Department has decided to adopt this section as proposed.

Section 4130.2 Grazing Permits or Leases (Section Number Remains the Same)

Under the proposed rule, permits and leases would have continued to be offered for 10-year terms except in specified circumstances. The proposed rule would have clarified that all grazing permits and leases issued, including the transfer or renewal of permits and leases, would have included terms and conditions addressing the national requirements and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other terms and conditions that would assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands.

The proposal also would have clarified the requirements for consultation with interested parties prior to the issuance or renewal of grazing permits and leases. The proposal also would have clarified that the provision prohibiting the offer or grant of permits and leases when the applicant refuses to accept the terms and conditions of the offered permit or lease would have applied to applicants for renewals and new permits and leases.

The proposed rule also would have clarified the granting of conservation use and temporary nonuse. Conservation use would have been established as one of the allowable uses a permittee or lessee may be granted, when in conformance with applicable land use plans, activity plans and standards and guidelines. Finally, the proposed rule would have provided that forage made available as a result of temporary nonuse may be authorized for temporary use by another operator, although forage used for conservation purposes would not be available to other livestock operators.

The Department received numerous comments on this section. Major themes expressed in the comments were objections to conservation use, concern that expanded public involvement would negatively affect applicants for permits and leases, and opposition to what was perceived as provisions to limit permit and lease tenure.

Many commenters expressed objections to the proposal for conservation use, asserting that conservation use would hurt rangelands and should only be allowed where scientific data demonstrates that rest from grazing will benefit the land. Many held the perception that conservation use would be required by the authorized officer. Others thought the proposal would remove the requirement for base property, would jeopardize water rights, would result in inadequate maintenance of range improvements, would reduce tax revenues, should require payment of grazing fees for conservation use, would lead to reduced fees available for rangeland improvements, would adversely affect operators on isolated or scattered public lands, and would result in purchase of permits for conservation purposes. Others asserted that conservation use was a closing of the range that would require following certain notice and comment requirements of FLPMA, while still others thought conservation use should be offered for a term of greater than 10 years. Some commenters thought that allotments that are not being grazed should be retired or reallocated rather than placed in conservation use. Finally, some comments were concerned that conservation use would be severely limited by existing land use plans because the concept is new and has not been considered in past planning efforts.

Considerable concern was expressed about the addition of public involvement prior to the issuance or renewal of grazing permits and leases. Some commenters opposed the expansion of public input opportunities on the grounds that such opportunities are not part of making decisions in other resource programs and that grazing decisions would be unduly delayed to the detriment of the permittee and lessee. Others suggested that the requirement to consult should be changed to "consultation, coordination, and cooperation." Some commenters believed that public input should only be made part of NEPA analysis and planning efforts affecting grazing. Others stated that authorized officers should be able to issue or renew permits to permittees who demonstrate good stewardship without input from the public.

Some commenters held the perception that the proposed rule would significantly affect the term of permits and were concerned that decisions to issue permits and leases for terms of less than 10 years could be subjective and unfair. Others asserted that terms of less than 10 years would be contrary to FLPMA while still others suggested that only five-year permits and leases should be offered to poor stewards. Still others suggested that permits should be made available for competitive bid at the end of the 10-year term.

A number of respondents suggested provisions pertaining to temporary nonuse should be more flexible, that decisions to not make livestock use should be left to the ranchers, and that leaving forage placed in nonuse available to other applicants would discourage good stewards from resting areas (i.e., others would reap the benefits of the range the permittee protected).

Some concern was expressed about the provisions allowing the authorized officer to deny permits and leases to applicants who refuse to accept terms and conditions. Some commenters believed this provision would result in "arbitrary" terms and conditions. Some commenters suggested a one year continuance of a permit where a permittee or lessee seeking renewal refuses to accept proposed terms and conditions in order to provide time to reach agreement.

Some reviewers suggested a review to determine "suitability" of the range to support livestock grazing should be required prior to permit or lease issuance and offered criteria to be followed. Some commenters asserted that issuance of 10-year permits requires NEPA compliance and should be subject to administrative appeal, and that annual authorizations to be made in the absence of approved activity plans should be subject to administrative appeal.

Many comments received in this section that pertained to the definition of "temporary nonuse" are addressed at § 4100.0–5.

The Department disagrees with assertions that conservation use will be detrimental to the health of the land. Existing data should generally be adequate to make conservation use decisions. Conservation use will only be approved when it is found to be in conformance with land use plans and when it is determined it will promote resource protection or enhancement. This determination may require additional data in a few cases but the Department anticipates that available data and input from the permittee or lessee and others will usually prove sufficient. In addition, allotments placed in conservation use will be monitored in a fashion similar to other allotments to determine whether such use is consistent with standards and guidelines, and established resource management objectives. These requirements, as well as the 10-year limit on permits specifying conservation use, will discourage persons from obtaining permits for the sole purpose of placing them in conservation use.

Conservation use is requested by the permittee and approved by the authorized officer based on the provisions in the applicable land use plan. The BLM will not impose conservation use on an unwilling permittee. Conservation use must be included as part of an application by a permittee or lessee and must be found to be consistent with the land use plan. Appropriate terms and conditions will be attached to permits that specify conservation use, and permittees will be subject to all applicable requirements under the grazing program rules. This includes the requirement for base property. *See* discussion of § 4110.2–1.

Whether placing all or portions of allotments in conservation use will affect water rights will depend on the applicable State laws. However, resting grazing land is a commonly accepted grazing practice. Permit and lease holders possessing rights to water, as well as BLM, will need to consider potential effects on water rights in deciding to apply for or approve conservation use.

With regard to maintenance and operation of range improvements where the forage has been devoted to conservation use, the Department intends that in most, if not all, cases, permittees will be required to maintain improvements during the term of the conservation use. Requirements for maintaining range improvements will be made a condition of any permit specifying conservation use. Occasionally, where an existing improvement enhances neither the goals of conservation use nor the goals of grazing use or any other multiple use, maintenance may not be required. Depending upon the circumstances, specific activities to improve range

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conditions might also be incorporated in the terms or conditions of a permit.

Significant reductions in tax revenues or available range improvement funds are not expected to result from conservation use. While grazing fees will not be collected for conservation use, since no forage is being consumed, the Department considers that the benefits to be derived by the conservation use will offset the relatively minimal decrease in grazing receipts. The FEIS analyzes the economic effects of the various management alternatives considered in arriving at this final rule.

Concerning the perceived problems associated with scattered intermingled public lands, conservation use is at the option of the permittee or lessee subject to approval of BLM. If intermingled lands create a problem for the permittees or lessees, they may decide not to apply for conservation use.

The Department disagrees that conservation use constitutes a "closing of the range" that is subject to notice and comment requirements of FLPMA. Presumably the commenter was referring to requirements involved when a major use is eliminated from very large tracts of public land (43 U.S.C. 1712); however, this statutory provision does not pertain to conservation use which does not constitute an exclusion of a major use. Conservation use is a grazing management practice and does not constitute a permanent retirement of a grazing allotments. Decisions to retire grazing allotments are considered through BLM's land use planning process.

The 10-year limitation on conservation use is consistent with the statutory requirements for permit limitations. As adopted today, conservation use could be approved for up to 10 years. FLPMA (43 U.S.C. 1752(a)) requires that grazing permits or leases be issued for a term of 10 years or, in circumstances specified at 43 U.S.C. 1752(b), less. This limit also recognizes that conservation oriented objectives may be met or revised and the forage may then be re-allocated for use by livestock. This also is the rationale for why the grazing privilege is not cancelled or "retired" or why the area is not closed to livestock grazing.

To clarify how a permittee can change back to active use, the final rule is modified from the proposal to include conservation use in § 4130.4(b), "Approval of changes in grazing use within the terms and conditions of permits."

In regards to the comment that the ability to authorize conservation use will be severely limited because current land use plans don't consider conservation use specifically, it is not a requirement that conservation use be explicitly addressed in plans. Rather, it must be found to conform with the land use plan. The Department believes that conservation use will conform with land use plans in most cases.

For responses to general comments concerning public involvement please see §§ 1784.0–5 and 4100.0–5. Analysis of permit or lease issuance currently requires NEPA compliance which in turn provides for broad public input. In addition, issuance or denial of an application constitutes a decision of the authorized officer and, as such, is protestable and appealable under subpart 4160. Careful consideration of public input early in the process for issuing or renewing permits should minimize the time spent in resolving protests and appeals. In response to comments, consultation, coordination, and cooperation is inserted in the language adopted today.

Concerning the comments that expressed concerns over permit tenure, the proposed rule and the rule being adopted today vary little from the existing rule. The principal change pertaining to permit tenure that was proposed was establishing permit and lease terms to coincide with the terms of any base property leases. The authority for this and other tenure provisions is clearly established by FLPMA (43 U.S.C. 1752(b)) which states permits and leases may be issued for terms less than 10 years when determined to be "* * * in the best interest of sound land management." Decisions to approve or deny a permit or lease application are appealable under subpart 4160. The Department does not agree with the suggestions to end preference for renewal in favor of competitive bidding. Given the intermingled patterns of some public lands, statutory provisions pertaining to renewal of permits, and administrative obstacles, competitive bidding would not serve as a viable option in many instances. Competitive bidding for permits and leases was analyzed in the FEIS.

The rule as proposed and adopted today provides a great deal of flexibility to permit and lease holders in terms of temporary nonuse. Under this rule, applications for temporary nonuse will generally be approved. Where the limitations placed on temporary nonuse (maximum of three years and open to other applicants) prevent the permittee or lessee from meeting their needs, the option of applying for conservation use remains.

The provision that applicants who refuse to accept the terms and conditions of the offered permit or lease will be denied will not result in arbitrary terms and conditions. The general requirements of the previous rule for determining appropriate terms and conditions have been retained in this rule. Also, should the applicant believe terms and conditions are not appropriate, the applicant may appeal the decision of the authorized officer under subpart 4160. If, after communication with the involved parties, the decision to deny or approve an application is appealed, the authorized officer would have the option to issue a temporary nonrenewable permit pending resolution of the appeal.

The Department has chosen not to incorporate suggestions pertaining to suitability determinations prior to permit or lease issuance. FLPMA sets forth specific factors BLM must consider in connection with land use planning and use authorizations. A rigid suitability review is not specifically required by FLPMA. Moreover, the process associated with land use planning and decisions on use authorizations, including NEPA compliance and application of standards and guidelines, adequately address concepts of suitability. The fundamentals of rangeland health, guiding principles for State or regional standards and guidelines, and the fallback standards and guidelines, presented in subpart 4180 of this final rule, will focus on attaining and maintaining healthy rangelands.

The use of suitability determinations was considered in the FEIS under the alternative titled Environmental Enhancement. Readers are encouraged to review the discussion of suitability in that document.

This rule will not change existing NEPA implementation procedures. As stated above, decisions under this section are appealable under subpart 4160. Appealable decisions include the issuance or denial of permits and leases and modification of terms and conditions. As explained at § 4130.4, annual "authorizations" are merely validations that the requested use falls within the terms and conditions of the permit or lease. Normally, they do not require further NEPA analysis or public input. However, issuance of a grazing permit or lease, even a one-year or nonrenewable permit or lease, does not all under the provisions of the new § 4130.4, and would therefore be subject of NEPA analysis, consultation requirements, and the right of protest and appeal.

In accordance with the above discussion, the Department has decided to adopt this section as proposed except for replacing "consultation" with "consultation, cooperation and coordination" in reference to obtaining public input, replacing proposed language pertaining to issuance of permits and leases for a period of less than 10 years with wording taken directly from FLPMA (43 U.S.C. 1752), and adding to the requirement that temporary nonuse and conservation use be in conformance with plans, standards, and guidelines a requirement for conformance with the fundamentals of rangeland health presented in § 4180.1.

Section 4130.3 Terms and Conditions (Formerly, Section 4130.6)

This section would have required that permits and leases incorporate terms and conditions that ensure conformance with the national requirements and established standards and guidelines. This requirement would have established that terms and conditions of permits and leases are the principal vehicle for implementing the standards and guidelines and thereby the precepts of ecosystem management.

A few commenters stated that the national requirements and established standards and guidelines and are not linked to livestock grazing, are unattainable due to their lack of site-specific analysis and contradict Congressional intent.

Other commenters asserted that maintenance of national standards and guidelines should be made a condition of the permit and that livestock operators should have to get approval from the authorized officer before making use of any resource beyond their permitted forage such as water, wildlife, etc. and that permits should include a schedule for monitoring.

The fundamental requirements, guiding principles and fallback standards are all linked directly to livestock grazing. Developing standards and guidelines at the local level, with heavy reliance on public involvement through the RACs, will assure that they are attainable and consistent with local conditions. The fundamental requirements and guiding principles are based upon ecological principles. The Department believes this is consistent with the intent of Congress which has mandated the Secretary in FLPMA to protect the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resources, and archaeological values and to assure the proper use of the public land resources to assure sustainability.

The standards and guidelines will be made part of the terms and conditions of the permit in accordance with § 4130.3. Levels of permitted use are subject to adjustment, depending in part on resource condition concerns, in accordance with § 4110.3–2. Livestock operators are required to get approval from the authorized officer before making use of any resource beyond the uses of public resources directly associated with livestock grazing, as provided in their permit or lease. Monitoring schedules may become part of the terms and conditions of some permits and leases, especially where activity plans have been completed for the allotment.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4130.3–1 Mandatory Terms and Conditions (Formerly, Section 4130.6–1)

This section would have been amended to remove reference to acceptable methods for determining carrying capacity and to remove the cross references for those sections of the rule that detail how stocking levels are adjusted. This change was made to recognize the use of methods other than monitoring in determining carrying capacity and to streamline the wording of the mandatory terms and conditions by removing unnecessary cross references. Other provisions in the proposal, such as § 4110.3, would have broadened the sources of information that could be relied upon by BLM as a basis for making decisions about permitted use, carrying capacity, and other factors. The section would have been further amended by adding a paragraph (c) that would have required that standards and guidelines be reflected in the terms and conditions of permits and leases. This provision would have ensured that individual permits or leases contribute to the maintenance or enhancement of healthy rangelands and is the principal mechanism for implementing standards and guidelines.

Many commenters asserted that monitoring should be retained as a requirement for determining carrying capacity and that the Department should add a requirement that the level of use should only be part of the terms and conditions if accepted uncontested by the affected permittee or lessee. Commenters also asserted that conformance with the national requirements, standards, and guidelines would be impossible. Other commenters stated that if the agency cannot afford to protect the public lands used for grazing through monitoring, then grazing should not be allowed.

Use of other sources of information besides monitoring are discussed above, principally at § 4110.3 and also at § 4110.3–2. Carrying capacity for the allotment is set by the permit or lease. Changes in permitted use, including the requirement that they be supported by monitoring, field observations, ecological site inventory or other data is addressed at § 4110.3. The methods to be used are more appropriately dealt with under subpart 4110 rather than being included as a parenthetical statement in § 4130.3–1.

The fallback standards and guidelines are reasonable and achievable. Field testing during development of this proposal showed significant conformance between fallback standards and guidelines and existing land use plans. Regional standards and guidelines will be developed with full public participation (including grazing permittees and lessees) and in consultation with the RAC. This level of public involvement will help ensure that the regional standards and guidelines developed will be realistic and achievable. Issues relating to the standards and guidelines are discussed more fully at subpart 4180.

Reference to "monitoring" was eliminated from this section not because the Department does not intend to monitor range conditions, but because other sources of information are legitimate means for BLM to evaluate range conditions and because this section does not establish the practices to be followed in estimating carrying capacity (*See* §§ 4110.3–1 and 4110.3–2).

In accordance with the above discussion the Department has decided to adopt the provision as proposed, with one change. The words "the national requirements, standards, and guidelines pursuant to" have not been included in the final rule. Actual achievement of national requirements, (which have been modified from the proposed rule and are now reflected in fundamentals of rangeland health), standards, and guidelines may not be immediately possible but rather may depend on a series of actions taken over a period of time.

Section 4130.3–2 Other Terms and Conditions (Formerly, Section 4130.6–2)

Paragraph (f) of this section would have been amended to allow terms and conditions to provide for temporary changes in livestock use for the improvement of riparian area functions and for protecting other rangeland resources and values consistent with

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applicable land use plans. The amendments would have been consistent with the themes of protection, improvement, and restoration of the rangelands to increase overall productivity, and would have enhanced multiple-use management as required by applicable laws. Furthermore, the amendments would have allowed responsive action in preventing damage that could result from grazing during nontypical natural conditions (such as delaying spring turnout during extreme drought).

Additionally, the section would have been amended by the addition of a new paragraph, (h), allowing terms and conditions to specify that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands for purposes of administering the public lands. This provision would have addressed attempts to prevent BLM from performing functions such as range use supervision, compliance checks, and trespass abatement that are needed to administer the Federal grazing permit or lease.

This section attracted a number of comments. Many of the comments expressed concern over the proposed language of paragraph (h). Comments ranged from opposition to paragraph (h) on the grounds that a requirement for administrative access was an "unwarranted intrusion" to asserting that such a condition on a permit would constitute a "taking."

Other commenters recognized a need for BLM to conduct administrative functions on the public land. They stated that the rule needs to make it clear this provision can only be used by BLM personnel to conduct "BLM business on the Federal lands." Commenters also expressed concerns that paragraph (f) would allow for "permit cancellation" without notifying or consulting the permittee. Other commenters viewed the riparian improvement provisions of paragraph (f) as vague.

The provisions of paragraph (h) regarding administrative access refer to access across private lands to reach public lands in order for agency staff to perform necessary resource management activities on the public lands. These include such activities as monitoring of resource conditions, range use supervision, and evaluating the conditions of or the need for range improvements. Land management agencies, like any landowner, need appropriate access to the lands they administer. Efficient access to allotments is needed and is consistent with the partnership between permittees or lessees and the agency to manage rangelands properly. In cases where BLM is unable to obtain permission to cross private lands to perform necessary administrative functions on public lands, BLM may not be able to allow grazing or other use.

A discussion regarding "takings" can be found above in the General Comments section of this preamble.

This provision does not pertain to public access across private lands. The need for public access is typically considered through the land use planning process. Efforts are made through agreement and acquisition of easements to acquire access where appropriate.

Paragraph (f) of the proposed rule was intended only to provide for temporary delays, cessation, or modification of livestock grazing, not permanent actions. The word "temporary" is moved in the final rule adopted today to make clear that paragraph (f) does not provide for permanent changes in livestock use. In all cases the permittee or lessee will be given reasonable notice, subject to the limitations that result from unforeseen natural factors such as drought or flood.

The Department disagrees with the commenters' assertions that provisions of paragraph (f) pertaining to riparian areas are vague. The importance of riparian areas in the stabilization of soils, maintenance of water quality, reduction of flood hazard and provision of habitat have been well established. Although the standards for proper functioning conditions for specific riparian sites are not provided in this rule, the basic factors of healthy riparian areas are presented in subpart 4180 and will be addressed in the development of State or regional standards and guidelines. The development of these standards and guidelines will involve public input and consultation with the RAC, which will help ensure that they are reasonable and implementable.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4130.3–3 Modification of Permits or Leases (Formerly, Section 4130.6–3)

The proposed rule would have amended this section to provide for consultation with States and the interested public concerning modification of permits or leases. It would also have added lack of conformance with the national requirements or the standards and guidelines as a reason to modify terms and conditions of a permit or lease. Finally, it would have broadened opportunities for input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to change grazing use or terms and conditions. These changes were intended to enhance opportunities for input by permittees, lessees, States, and the interested public in decisions regarding the management of the public rangelands.

The Department received a few comments on this section. Commenters objected to the deletion of the terms "cooperation and consideration;" to use of land use plan objectives as a test of whether grazing is being properly managed; and to the involvement of nongrazing interests in making forage allocation decisions. Some were concerned that the authorized officer would use land use plan objectives as a reason to reduce grazing use without evidence that a problem was caused by such use. Others supported an annual public review of allotments to determine whether they are in compliance with the land use plan.

The rule as adopted today includes the terms "cooperation and coordination." This decision is discussed at § 4100.0–5. Conformance with land use plan objectives is a reasonable test of whether livestock grazing is being properly managed. Land use plan objectives form the basis for all management decisions within the area covered by the plan. Should actions taken on a given allotment not lead to achieving those objectives it is incumbent upon the authorized officer to take appropriate action to assure that they do. In the final rule adopted today, language is added to clarify that this section relates to the "active use or related management practices." This specifies that the authorized officer can modify terms and conditions of a permit or lease when the grazing use is the cause of a failure to meet land use plan objectives. Additionally, decisions to increase or decrease the grazing use or to change the terms and conditions of a permit or lease must be based upon monitoring and other data.

The final rule requires the authorized officer to provide the public with the opportunity for review and comment and to give input during the preparation of reports that evaluate monitoring. The Department believes that providing the maximum opportunity for public input assures that all factors are adequately considered by the authorized officer when he/she is making allocation decisions.

The Department does not agree that the rule should require an annual evaluation of all allotments to determine

if they are in conformance with the land use plan, AMP, or other activity plan. Frequency of monitoring and evaluation should be dictated by local conditions rather than by general rule.

In accordance with the above discussion, the Department has decided to adopt the provisions, with some changes. The only substantive change is the addition of the phrase "active use or related management practices" as clarification that the basis for modifying terms and conditions of permits or leases when management objectives are not being met is use related to grazing. The title of the final section is changed to "Modification of Permits or Leases" to further clarify the intent of the section.

Section 4130.4 Authorizations within the Terms and Conditions of Permits and Leases (Formerly, Section 4130.1–1 Changes in Grazing Use).

In the proposed rule, this section would have provided for field managers to make temporary changes in authorized use, either increases or decreases, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would have provided latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration.

The Department received a few comments on this section. Most commenters were concerned about the 25 percent or 100 AUMs limit on increases or decreases in grazing use. Some stated the limits were unreasonable, especially in respect to ephemeral ranges. They stated that in some areas occasional very wet years might produce great amounts of forage, so that use could reasonably be increased by much more than the 25 percent limitation. A few cited potential impacts of the provision such as foregone employment associated with higher use levels and increased fire hazard if forage is not harvested. Some commenters suggested changes in use should only be limited by the terms and conditions of the permit or lease.

Some commenters opposed the provision that the authorized officer could impose such a change without the permittee's consent. A few held concerns that the consultation provisions would be burdensome, while others thought consultation should be expanded to "consultation, coordination and cooperation."

Some commenters were confused by this section and asked what would happen if changes greater than 25 percent were needed and how the provision affected temporary nonuse and permitted use.

Some reviewers had concerns with how ephemeral grazing would be affected by the provision and expressed the opinion that grazing should not be permitted in the hot desert biome. It was suggested that this provision exclude areas receiving less than 10 inches of rainfall annually.

Based largely on the comments on this section, the Department has retitled the section and removed references to limitations of 25 percent or 100 AUMs and the authorized officer requiring increases or decreases in use. The changes made in this final rule are intended to clarify how proposed changes in grazing use in any given year may be approved when the changes requested by the permittee or lessee are consistent with the terms and conditions of the permit or lease.

Changes in use under this provision would constitute the authorized officer's ministerial validation that the specific kind and numbers of livestock, the dates of use, and other conditions of use requested by the permittee or lessee fall within the terms and conditions of the permit. This process ensures that use is consistent with resource management objectives and that operators and BLM have documented how use will be made for the upcoming grazing year for purposes of maintaining use data and supervising use. (Application for grazing use outside of the terms and conditions of the permit or lease would be considered under other provisions of this final rule. (*See*, for instance, §§ 4110.3–2, 4110.3–3, and 4130.3–3.) Consultation is not required under this section because (a) the request under consideration will come from the permittee or lessee, and (b) in the future consultation will have taken place at the time the permit or lease was issued (*see* § 4130.2) and at any time the terms and conditions of the permit or lease are modified (*see* § 4130.3–3).

This provision for validation of requested grazing use when such use falls within the terms and conditions of the permit or lease does not apply to the issuance of permits or leases. Issuance of permits or leases, including short-term permits or leases, constitute direct Federal actions that are subject to NEPA analysis as well as the provisions of § 4130.2 of this final rule.

Examples of the types of changes that would be considered under this section are the activation of previously approved temporary nonuse or conservation use, placing permitted use in temporary nonuse or conservation use, changes in dates and class, and the use of forage temporarily available on ephemeral or annual ranges. On other than established ephemeral range, use of forage in amounts greater than permitted use that has temporarily been made possible by factors such as above-normal precipitation would require the issuance of a separate nonrenewable permit under § 4130.6–2 of this final rule.

Decisions pertaining to permitting ephemeral grazing use and the establishment of terms and conditions of use are not governed by this section of the rules. These types of decisions typically require NEPA compliance and public involvement. The concerns of commenters about authorizing ephemeral grazing use are best addressed in the planning and NEPA analysis processes.

In accordance with the discussion above, the rule adopted today will provide that the authorized officer may approve requested changes in grazing use when the changes fall within the terms and conditions established in the grazing permit or lease.

Section 4130.5 Free-Use Permits (Formerly, Section 4130.3)

This section was originally proposed as part of § 4130.7–1, however it is moved to the newly redesignated § 4130.5 to consolidate provisions concerning free-use permits. This section would have provided for free-use under three specified circumstances.

The Department received a few comments on this provision. Commenters stated that free use should be allowed only for scientific research projects. Commenters also stated it should not be authorized to control noxious weeds, since overgrazing facilitated the spread of noxious weeds in the first place.

The Department foresees that this provision will be used only when it is a desirable means of accomplishing a particular task. It will also give on-the-ground managers an additional tool to meet resource objectives. For example, there are some circumstances where carefully managed grazing can be used to control noxious weeds. Often, management prescriptions can be developed within existing permits and leases. However, there are some occasions where a free-use permit could be a valuable alternative.

In accordance with the above discussion, the Department has decided

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to adopt the final rule language as proposed with the exception of its relocation from the proposed §§ 4130.7–1 to 4130.5 of the final rule.

Section 4130.6–1 Exchange-of-Use Grazing Agreements (Formerly, Section 4130.4–1)

This proposed section would have included requirements that agreements for exchange of use must be in harmony with management objectives, and compatible with existing livestock operations. The agreements would have been required to address the fair sharing of maintenance and operation of range improvements and would have been approved for the same term as any leased lands that are offered.

The Department received comments expressing a desire that all non-Federal lands which are unfenced and intermingled with public land be covered by an exchange-of-use agreement and that lands must be located within the permittee's area of use and not in another permittee's area of use in order for the carrying capacity of the non-Federal lands to be credited to the permittee without charge. Other commenters objected to unnecessary requirements or restrictions on agreements and possible impacts to private and state trust lands.

The Department disagrees that all non-Federal lands should be covered by an exchange-of-use-agreement. It is necessary for the authorized officer to have the flexibility to deal with local situations and use exchange of use where appropriate. The Department agrees that the lands involved in an exchange-of-use-agreement should be within the allotment. This is current BLM practice and will not be altered by this rule.

The Department disagrees that the only restriction should be that such agreements not exceed grazing capacity Grazing capacity is a critical factor to achieving management objectives: however, it is not in the Department's interest to enter into agreements which are not in harmony with management objectives and compatible with existing grazing operations.

Exchange of use agreements are initiated at the permittee's request. Lands voluntarily included in an exchange of use agreement would be subjected to the terms and conditions of the permit or license.

The requirement that an exchange of use agreement contain provisions for the equitable sharing of operation and maintenance of range improvements will not result in the maintenance of improvements that are of no value. The necessity of range improvements to achieve allotment objectives as well as maintenance requirements are addressed in allotment plans and permit terms and conditions and are not affected by an exchange of use agreement.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of a modification to clarify that the lands subject to the exchange-of-use agreement must be within the applicant's BLM grazing allotment.

Section 4130.6–3 Crossing Permits (Formerly Section 4130.4–3)

The proposed provisions would have clarified that crossing permits are a form of temporary use authorization for grazing, and that the terms and conditions must be contained in the temporary use authorization.

The Department received very few comments on this section. Commenters suggested that the proposed changes would slow down the approval process and create legal risks.

The Department has adopted the provision as proposed. The provisions adopted today are consistent with current practice in the field. These procedures have not resulted in unusual delay or legal risk.

Section 4130.7 Ownership and Identification of Livestock (Formerly, Section 4130.5)

This section would have been amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

The proposed rule would also have added an exemption from some of the requirements for ownership of livestock for sons and daughters of permittees or lessees in specified circumstances.

The Department received a few comments on the section. Many commenters wanted grandchildren and other family members or private business partnerships to be covered by the exemption and for the restrictions to be modified or removed.

The Department believes that excluding sons and daughters from the requirements of this section is a reasonable compromise which will address the vast majority of cases and has chosen not to extend the exclusion to other family members or private business partnerships.

The Department believes it is necessary to have all four conditions of approval for granting the exclusion. The Department believes that if livestock owned by sons and daughters exceeds 50% of the total number authorized then consideration should be given to issuing the permit in the name of the person owning the majority of the livestock.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications to clarify the language that was originally proposed.

Section 4130.8–1 Payment of Fees (Formerly Section 4130.7–1)

The fee portion of the proposed rule generated numerous diverse and conflicting public comments. As noted in the August 1993 advance notice of proposed rulemaking, there are a number of alternative base values and alternative fee formulas that could be used to set fees for grazing public lands. There have been numerous studies and much public debate concerning what is a reasonable, fair, and equitable fee for grazing Federal rangelands.

The draft EIS for Rangeland Reform '94, published in May 1994, analyzed seven fee alternatives: PRIA or No Action, *i.e.*, the current fee; Modified PRIA; BLM-Forest Service Proposal; Regional Fees; Federal Forage Fee Formula; PRIA with Surcharges; and, Competitive Bidding. Each was analyzed in conjunction with management alternatives.

The preamble to the proposed rule published in the March 25, 1994 **Federal Register** described the pros and cons of adopting an increased grazing fee. The formula set forth in the proposed rule would have addressed the disparity between rates charged for livestock forage on private and State lands versus the rate charged for Federal lands.

The preamble acknowledged that some permittees and lessees that are highly dependent on Federal forage, do not have off-ranch income, and have heavy debt loads, might be required to make financial adjustments. These adjustments, in some circumstances, might have included sale of the ranch. However, it was expected that such sales would occur in only limited circumstances. It was further noted that such sales occur now and could be expected to continue even if the fee proposal were not adopted. However, the preamble noted that the economic impact on western communities was expected to be localized and, in most areas, not significant because the portion of the local economy dependent upon the use of Federal forage is relatively minor.

The rule proposed March 25, 1994, discussed the criteria identified by BLM and the Forest Service by which a new fee proposal should be measured:

1. The fee charged for livestock grazing should approximate market value. Using market value helps assure that the public receives a fair return for use of publicly owned resources.
2. The fee should not cause unreasonable impacts on communities that are not economically diverse or to livestock operations that are greatly dependent on public land forage.
3. The grazing fee should recover a reasonable amount of government costs involved in administering grazing permits and leases and should provide increased funds to improve ecological conditions.
4. The fee system should be understandable and reasonably easy to administer.

Public comments on the proposal regarding payment of fees addressed how the fee formula should be derived, impacts of an increase, differences between Federal and private lands rates, non-fee costs associated with Federal lands, fair market value for public land grazing, fair return to the public for livestock grazing use on public lands, recovery of costs for BLM's range program, whether the fee represents a subsidy for public lands ranchers, and funds for range improvements.

Commenters recommending no change to the existing fee formula anticipated that an increase in fees would have adverse effects on individual operations and rural western counties. Some commenters suggested that other factors be considered in setting fees, including regional economic differences and resource conditions.

The final rule will not include the fee provision, thus giving the Congress the opportunity to address appropriate fees for grazing on public lands. In the FY94 Interior Appropriations bill, the Senate voted for a moratorium on the completion of the rangeland reform regulations. Although the House later approved grazing reform by a vote of 314 to 109, the Senate did not approve the measure.

Subsequently, the Department resumed this rulemaking. Five Congressional hearings were held in the field and in Washington following release of the proposed rule. Correspondence from Members of Congress through the process has suggested the need for Congressional involvement and possible action. A few Members of Congress commented that some increase in grazing fees is needed while others indicated that the proposed fee would have a heavy negative impact on public lands ranching. Some Congressional commenters suggested alternative methods of setting fees and leasing land.

Some commenters opposed the proposed fee formula asserting that it would promote poor resource use and would not reflect a fair return for the public. Some public comments suggested a link between the fee formula and overgrazing. Analysis of the relationship between livestock grazing use on BLM lands and the fee indicates that there is little correlation between the two at the current fee level and the fee levels considered by the proposed rule. First, the amount of livestock grazing allowed on Federal lands is set by BLM and is independent of the fee. Second, even within the allowed limits, there is no indication that the proposed fee would have reduced livestock grazing on Federal lands. From 1982 to 1983, while the fee decreased by 25 percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985, 1986 and 1987, livestock use decreased by nearly seven percent from 1985 to 1986 and increased about seven percent from 1986 to 1987. Moreover, from 1992 to 1993 when the fee decreased, livestock grazing use decreased also, instead of increasing. Therefore, it appears that even within the allowable limits of livestock grazing use, the fee level does not have a dominant effect on livestock use. Apparently other factors such as livestock prices, livestock inventories, cost of production, drought, availability of other forage and market conditions play a substantial role in determining livestock grazing use.

Based on the above statistics, it appears that as long as the Federal forage is not priced above market value the forage will continue to be used, if not by the current permittee, then by a new permittee. The grazing fee analyzed in the preferred alternative was not above the market value for Federal forage. Therefore, it would not have significantly affected the amount or type of grazing use or, in turn, rangeland health.

Other factors, such as proper planning and grazing management based on sound technical and scientific data and professional skills, conformance of terms and conditions with effective management practices such as those embodied in the fundamentals of rangeland health and the standards and guidelines of subpart 4180 of this final rule and timely and appropriate responses to conditions of resource deterioration that are essential to improving rangeland health. Based on the historical data cited above, management practices and market conditions have a greater impact on rangeland health than does the specific fee level.

The Department has concluded that, due to the great amount of comment received against the fee (either because it was being changed too much or too little), significant Congressional interest, and the severability of the fee and management portions of the proposed rule, it is appropriate to retain the current fee structure at this time. This will provide an opportunity for Congress to consider the need to legislate a fee increase.

Other proposals also are not adopted in the final rule. The surcharge associated with base property leases and multiple year billing provisions have not been adopted. As many commenters pointed out, authorized subleasing is a long-standing practice that provides benefits to both the rancher and the public. First, it helps facilitate the entry of new ranchers into the livestock business in Federal land areas. Second, unlike Forest Service lands, many BLM lands are intermingled with private lands, and therefore are affected by and affect the management of intermingled private land and improvements. The Department has decided that the proposed surcharge on the transfer of Federal permits and leases resulting from base property leases would have had negative effects that would have outweighed the benefits of the surcharge, and has not carried this form of surcharge forward into the final rule.

However, the final rule adopts the proposed provision that when the lease or permit is transferred to the base property lessee, it must be issued for a period of not less than three years. Such a lease of the base property constitutes a substantial long-term commitment of resources thus reducing the potential for large short-term windfall profits, as identified by the General Accounting Office (RCED–86–168BR) and the Office of the Inspector General (92–1–1364), and helping to ensure good stewardship. The authorized officer has the discretion to approve a transfer for a shorter period when consistent with management and resource condition objectives.

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Other changes proposed in § 4130.7–1 also are adopted in this final rule. In the proposed rule, these changes would have amended § 4130.7–1 to make clear the definition of billing unit, to provide for assessing a surcharge in certain instances for the public landlord's share of authorized livestock pasturing agreements associated with Federal land grazing, to clarify that grazing use that occurs before a bill is paid is an unauthorized use and may be dealt with under the settlement and penalties sections of these rules, and that noncompliance with terms and conditions may result in the loss of after-the-grazing-season billing privileges. These provisions are adopted as proposed. The proposed provision to provide for free use where the primary objective of livestock use is to benefit resource conditions or management, such as scientific study or the control of noxious weeds, is moved to § 4130.5 in the final rule.

The Department received comments that were both supportive and critical of the proposed pasturing agreement surcharge. Commenters criticized the approach to calculating the surcharge because they believed it did not reflect the regional differences in forage value. Other commenters opposed absolutely any pasturing on BLM lands because, they maintained, it results in large windfall profits from sale of public resources. Still other commenters asserted that permittees are entitled to profit from pasturing other operators' cattle on their Federal grazing permits or leases.

The Department believes pasturing agreements have a potential for short-term windfall profits and do not provide an appropriate incentive for good stewardship. Therefore, the provision for a surcharge on pasturing agreements has been adopted in this final rule. However, the calculation of the surcharge is changed to reflect the regional differences in forage value using State private grazing land lease rates, as calculated by NASS. The consideration of the private grazing land lease rate for each State, rather than an average of all States, is intended to reflect the value of the Federal forage involved in a more equitable and efficient manner. After consideration of private land lease rates in the western states, the Department has decided that 35 percent of the difference between the private grazing land lease rate in each respective State and the Federal grazing fee represents a reasonable balance that will allow the permittee or lessee to cover costs that may arise from pasturing other livestock operators' cattle, will provide the government a reasonable rate of return, and will aid in ensuring good stewardship. Sons and daughters of permittees or lessees will be exempt from the surcharge, as set forth in the final rule.

A number of comments were also received on free use, which was originally proposed in this section. Most of the comments expressed concern that the provision would lead to numerous free use grazing permits. This provision is intended to provide for the use of grazing, at the discretion of BLM, for limited scientific and vegetation manipulation objectives. For example, intense grazing by goats may serve as an effective method for the control of weeds such as leafy spurge.

The Department has decided to adopt the provision with the changes discussed above.

Section 4130.8–3 Service Charge (Formerly Section 4130.7–3)

Section 4130.7–3 would have been amended by redesignating the section as section 4130.7–4, and by adding to applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

The Department received very few comments on this section. Accordingly, the Department has decided to adopt the final rule language as proposed with the exception of a minor clarifying change.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

As proposed, paragraph (a)(2) of this section would have been amended to clarify that approved temporary nonuse, conservation use, or temporarily suspended use would be excepted from the requirement to make substantial use, and, therefore would not have been subject to penalty action under § 4170.1. Other proposed amendments to this section would have clarified paragraph (b)(1) to establish that grazing bills for which payment has not been received do not constitute authorization to graze. Paragraph (b)(9) would have been amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to "closed to range" areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. To be consistent with the Forest Service this section would have restored two provisions that existed in this subpart prior to 1984. These provisions would have made subject to penalty permittee or lessee violations of the Wild and Free Roaming Horse and Burro Act of 1971 and violations of Federal or State laws or regulations concerning animal damage control, application or storage of pesticides, herbicides or other hazardous materials, illegal alteration or destruction of stream courses, pollution of water resources, illegal take, destruction or harassment of fish and wildlife resources, or illegal destruction or removal of archeological resources.

Further provisions would have been added to clarify that attempted payment by a check that is not honored by the bank does not constitute payment and would result in unauthorized use. (However, § 4140.1(c) specifically provides for civil penalties only where payment with insufficiently funded checks is repeated and willful.) The proposal also would have provided for reclamation of lands, property or resources when damaged by unauthorized use or actions.

The proposed rule also would have added reference to the types of violations of Federal and State laws and regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment that would be prohibited acts subject to penalty under subpart 4170 where public lands are involved or affected.

The Department received many comments on this section. A number of the comments revealed some confusion as to the interaction between § 4140.1, prohibited acts, and subpart 4170, the penalties section of the grazing rules. Section 4140.1 provides a list of prohibited acts. Specifically, § 4140.1(a) lists prohibited acts for which permittees and lessees might be subject to civil penalties; § 4140.1(b) lists prohibited acts for which all persons using the rangelands might be subject to civil and criminal penalties, and new § 4140.1(c), which incorporates what was proposed as § 4170.1–3, lists additional prohibited acts and establishes the conditions that must be fulfilled before the Department may impose civil penalties on those committing these prohibited acts. Sections 4170.1 and 4170.2 set forth the penalties, both civil and criminal, for committing prohibited acts.

Many commenters objected to including violations of State and Federal statutes related to water pollution, wildlife protection, and other matters, as prohibited acts. Some commenters asserted that this provision exceeded the Secretary's authority, and violated Section 302(c) of FLPMA (43 U.S.C. 1732(c)). In particular, these commenters contended that FLPMA provides only for the revocation or suspension of authorizations for the use, occupancy, or development of public lands on the basis of violations of State or Federal acts or regulations applicable to air or water quality. Furthermore, these commenters asserted that Section 302(c) of FLPMA provides for the suspension, revocation, or cancellation of authorizations to use, occupy, or develop public lands only when violations of terms and conditions occur on public lands in connection with the exercise of rights and privileges of the use authorization. Others were concerned that penalties would be imposed for even *de minimus* violations.

Although Section 302(c) of FLPMA contains specific references to Federal and State air and water quality standards, its language is expansive. It allows enforcement of terms and conditions, "including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands * * *." The Department has concluded that these provisions of FLPMA would encompass the activities prohibited in § 4140.1 of this rule. Moreover, the Department has concluded that good stewardship of the public lands, as well as the intent and specific language of FLPMA, are served by expanding the prohibited acts section to include violations of State and Federal laws related to natural resources, and that expanding the list of prohibited acts provides the regulated community and the public with improved notice of the prohibited acts.

The final rule as adopted provides penalties where violations are more than *de minimus* and concern, in a more than remote way, the use of the public lands. The Department has addressed commenters' concerns that the provisions should be restricted to violations of terms and conditions that occur on public lands and in connection with the exercise of rights and privileges of the use authorization by adding to § 4140.1 the list of conditions formerly included under § 4170.1–3. Under § 4140.1(c) of this final rule, violations of other State or Federal laws or regulations will not constitute prohibited acts unless public land administered by BLM is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by BLM, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding. This consolidates in one section the list of the types of violations and the three conditions that must be met before a violation of State, Federal, and local laws and regulations constitutes a prohibited act. This reorganization of the provisions from proposed §§ 4140.1 and 4170.1–3 into final § 4140.1 improves the clarity of the final rules by eliminating cumbersome cross-references.

A number of commenters expressed concerns about procedural protection in connection with the imposition of penalties. Under this final rule, enforcement of the penalty provisions is subject to the same Departmental appeal procedures as other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. These provisions provide adequate procedural safeguards, set conventional burdens of proof and provide fair enforcement of the rules. Therefore, the Department has not modified the rule language in response to these concerns.

There was also considerable comment about prohibited acts regarding transit between public and private lands, trespass, straying, and gate closure. Commenters expressed concern about whether the provisions affected the ability of landowners to protect private property or range improvements from trespass and vandalism. Others were concerned that the provisions would affect Department of Agriculture or State agency predator control activities.

Nothing in these rules prohibits landowners from protecting private property from trespass or vandalism, or prohibits the landowner from keeping their gates closed to protect private property. The final rule regarding gates is clarified by the addition of the words "during periods of livestock use." The Department does not intend this provision to apply to situations where gates are left open to give cattle access to forage and water. Closing a gate and consequently denying cattle access to needed forage or water could be covered by the provisions in § 4140.1(a)(5). Nothing in this rule is intended to prevent legitimate use of gates to move and control livestock. The provision of § 4140.1 relating to public access merely reiterates existing requirements. The intent of the provision is to prevent individuals from interfering with lawful uses of the public lands.

The provisions in subpart 4140 apply to BLM's administration of the grazing program on the public lands, and nothing in the subpart prevents the landowner from placing signs on private property to prevent trespass and destruction. Furthermore, nothing in this provision affects Department of Agriculture or State agencies' predator control activities. However, the Department has no authority to prevent human trespass on private lands. Trespass is governed under the State laws in each State.

Stray livestock are a serious problem on public lands. In addition to being an unauthorized use of forage, stray livestock present hazards to vehicles and public land users, carry a potential to transfer disease from sick to healthy stock, disrupt other animals, and cause undesired breedings and unplanned mixtures of livestock gene pools.

It is the responsibility of the permittee to control his or her livestock. However, in evaluating violations, the authorized officer can consider factors beyond the control of the permittee or lessee. For example, the authorized officer could consider the fact that a third party, without any knowledge on the part of the permittee, had destroyed the permittee's fence and as a result livestock had strayed from authorized areas. In contrast, repeated incidents of apparently incidental strays could signify a more serious problem of range management. In such cases, the authorized officer needs authority to penalize the permittee or lessee for the problem.

Some commenters expressed the view that conservation use should not be exempted from the prohibition against failing to make substantial grazing use. Commenters' concerns about conservation use are discussed elsewhere in this preamble, especially at § 4130.2. Failure to make substantial use is discussed at § 4170.1–2.

Some commenters asked whether the rule prohibited alteration of stream courses that might be needed as part of the maintenance of improvements. The proposed and final language indicates that *customary* maintenance of diversion points is an authorized activity. Others were concerned about the provision specifying that attempted payment by a check that is not honored does not constitute a grazing authorization. In response, the language at final § 4140.1(b)(9) has been revised to specify that payment with insufficiently funded checks *on a repeated and willful basis* is a prohibited act.

Other commenters were concerned about the provisions on leasing and subleasing. Nothing in this provision prohibits *authorized* leasing or subleasing. The final rule has been amended to clarify that only unauthorized leasing or subleasing is a prohibited act. The Department understands that transactions that

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include the leasing or subleasing of base property and pasturing agreements can be a necessary component of a grazing operation. However, the Department also believes that it has a responsibility to ensure that sublessees are qualified and will be good stewards, that appropriate base property is available, and that livestock grazed pursuant to pasturing agreements must be under the control of the permittee or lessee. Subleasing will be permitted if the authorized officer determines the above criteria are met.

In accordance with the above discussion, § 4140.1 of the proposed rule is adopted as final with the exception of adding the conditions formerly provided at § 4170.1–3 to § 4140.1, addition of the phrase "repeated and willful" to paragraph (b)(9), and making minor edits for clarity. Comments on the provisions proposed as § 4170.1–3 are discussed also at that section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

Under the proposal, this section would have been reorganized for clarity and would have added the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated and willful.

The Department received a few comments on this section. Commenters expressed concerns about the definition of violations and penalties to be imposed, and about the process to be followed by the authorized officer in making decisions about violations and penalties. A typical concern was the investigation of violations. Related concerns included how the authorized officer would determine if a violation had occurred.

Other comments included suggestions that violators not be held liable unless violations were repeated and willful, that damages should be limited to that actually sustained, and that various words be defined.

The Department has decided not to adopt any specific definition for terms that are legal standards and are not unique to BLM rules.

The rule adopted today requires that BLM follow a fair, orderly process when investigating violations and assessing penalties. An appeal process is available under subpart 4160 when the violator believes the rules have been inappropriately interpreted. The Department acknowledges that in any regulatory program there is a potential for inconsistent decisions, and intends that this regulatory reform will improve the consistency of rangeland administration throughout the Bureau. Consistency will be enhanced further through additional information and training.

It is not appropriate to limit liability to cases where violations are repeated and willful, because in some cases a single violation can be considerably damaging to the public lands. However, the final rules provide for nonmonetary settlement of nonwillful violations in some cases. Similarly, the Department does not believe it is appropriate to limit penalties to the cost of correcting the problem. The availability of penalties is a common enforcement mechanism that acts as a deterrent to violations and an incentive to comply.

In accordance with the above discussion, § 4150.1 is adopted as proposed.

Section 4150.2 Notice and Order to Remove

In the proposal, this section would have been amended to grant the authorized officer authority to determine if a nonwillful violation is incidental in nature, to outline a process for doing so, and to clarify actions for expeditious resolution of these innocent or unintended trespasses. The ability to close areas for a period of up to 12 months to specified class and kinds of livestock for the sole purpose of abating unauthorized use was also proposed, as was a provision that would have allowed such decisions to be effective upon issuance or on a specified date, and to remain in effect pending a decision on an appeal. Reference to the agents of livestock owners would also have been added to allow the authorized officer to notify an agent of a nonwillful and incidental violation.

The Department received very few comments on this section, most of which related to the administrative burden of pursuing incidental violations and land closures. The Department agrees that pursuing violations for incidental unauthorized use increases the workload for BLM and has provided for relief by making final the provision of the proposed rule that allows for nonmonetary settlement of nonwillful trespass under specific conditions.

In accordance with the above discussion, the Department has adopted § 4150.2 as proposed except for minor changes to eliminate redundancy between § 4150.2 and § 4150.1.

Section 4150.3 Settlement

Under the proposed rule this section would have been amended to provide guidelines for nonmonetary settlements where fees could be waived for unintentional incidental trespasses in a fair manner. The authorized officer could have made a nonmonetary settlement only under the following conditions: the operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would have been amended to base the value of forage on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in each of the 17 western States. Other proposed amendments would have reduced the potential for abuse of discretion by clarifying when a nonmonetary settlement for nonwillful violations may be made.

The Department received very few comments on this section. Nearly all commenters supported the basic principle of nonmonetary settlement but suggested alternatives for implementation. Commenters also sought additional definition or suggested that nonmonetary settlement should be excluded from the record to prevent every violation from being appealed.

The Department believes that the proposed conditions under which the nonmonetary settlement would be used are defined in sufficient detail and are appropriate. The specific circumstances of each case vary greatly and will have to be evaluated in view of the conditions in the rules by the authorized officer to make a determination of nonmonetary settlement.

The Department does not agree with some commenters' suggestions that nonmonetary settlements should be excluded from the record. The purpose of the provision is to ease the administrative burden for the agency and relieve the financial burden for the operator. While nonmonetary settlement may be appropriate under the terms of this rule, unauthorized use should be documented in the record.

The Department has decided to revise the provision of the proposed rule that would have based the settlement fee for unauthorized use on the average of private grazing land lease rates in the 17 western States as reported annually by the Department of Agriculture's National Agriculture Statistics Service. This provision would have provided for an unauthorized use settlement that would have been uniform across all public lands administered by BLM as well as western National Forest System lands. Also, the settlement fee would have been based on the same data set

that would have been used to calculate the forage value index included in the proposal to amend the grazing fee formula, which has not been carried forward in this final rule. The Department has decided to base settlement of unauthorized use on the average private grazing land lease rate, reported annually by the National Agriculture Statistics Service, for the individual State in which the unauthorized use occurs rather than on an average across the 17 States. This change will provide for a more fair settlement across all affected States.

In accordance with the above discussion, the proposed rule is adopted as final except for the noted change from the average private grazing land lease rate for all 17 western States to the average private grazing land lease rate for each individual State.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

The proposed rule would have amended this section to provide clarification that a final decision may be issued without first issuing a proposed decision when action under § 4110.3–3(b) of this part is necessary to stop resource damage, or when action is taken under § 4150.2(d) to close an area to unauthorized grazing use. It would have served to expedite the decision process where immediate action is necessary and would have clarified what information must be contained in a proposed decision. The provision is adopted as proposed.

A number of comments objected to the use of the term "interested public." Comments indicated a concern that the use of the term broadens public participation which may result in delays due to administrative appeals and thus uncertainty for permittees. Comments questioned whether the "interested public" would have an interest in the matter they appeal and whether the "interested public" would automatically have "standing" to challenge the final decision of an authorized officer. One commenter suggested that decisions should be sent to affected public land users, and any party showing a concrete and particular injury from the decision.

The term "interested public" replaces the term "affected interest" in the existing rules. The definition of the term "interested public," adopted by today's action, appears at § 4100.0–5. One of the goals in adopting the changes to this section is to clarify that the "interested public" will be notified of all proposed decisions in order to involve the public in an early stage of the decision making process. Under the existing rules "affected interests" were notified of proposed decisions on permits and leases. Today's change provides for notification to the "interested public." The Department expects that by involving the interested public early in the decision making process on such issues as permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs, there will be fewer protests and appeals because parties will have a better understanding of the final decision and the factors considered in reaching the decision. The determination of whether a person has "standing" to appeal a final decision of the authorized officer has not been changed. Any person whose interest is "adversely affected" by a final decision of the authorized officer may appeal the decision. The OHA determines if a party is "adversely affected" and thus has standing to bring an appeal. The Department did not adopt the suggestion to send decisions to only affected public land users and parties showing a concrete and particular injury from the decision since this would have the affect of limiting public participation.

Comments were received on the proposed clarifying amendment to allow the authorized officer to forgo issuance of a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Some comments were supportive of the change. Others indicated that the change was not needed because BLM currently has the ability to place decisions in effect on issuance or on a date specified in the decision without issuing a proposed decision. Other commenters asserted that the provision raises procedural questions, does not provide security of tenure, impacts private and State lands, removes incentives to settle appeals, creates uncertainty for lending institutions, and lowers property values and thus the local tax base.

The changes adopted today clarify that in the case of determinations under § 4110.3–3(b) or § 4150.2(d), the authorized officer does not have to first issue a proposed decision. The Department is making this change to clarify what had been implicit in the existing rules. This is consistent with the interpretation in the existing BLM Manual.

These changes clarify that the authorized officer may act quickly to arrest damage to rangeland resources resulting from conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage. There continues to be a provision to consult with the affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area. The authorized officer will have developed a record prior to taking action which will allow permittees and lessees, the interested public, and the affected State the opportunity to provide pertinent information and to discuss the impacts of adopting a final decision without a protest period. The changes being made preserve the rights of appeal and the ability to seek a stay by those affected by BLM's decisions. Clarifying the existing provision and practice should not create uncertainty for lending institutions nor lower property values and thus the local tax base. Nor should it raise concerns with security of tenure or remove incentives for settling appeals. The Department's intent in adopting this provision is to clarify that the authorized officer does not have to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §§ 4110.3–3(b) or 4150.2(d).

Other comments recommended a notification period for violations, sought an expansion of the protest time period, and suggested a definition of repeated willful violations. The Department is not adopting these suggestions because existing early communication provides sufficient notification and time for protest. Regarding the willful violation suggestion, the Department has concluded that it is more effective to retain discretion to consider each violation of the grazing rules individually to determine the appropriate action.

Section 4160.3 Final Decisions

Under the proposed rule, this section would have been amended to clarify the process for filing an appeal and a petition for a stay of a final decision. Decisions would have been implemented at the end of a 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would have suspended the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to situations where

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immediate action was required are automatically stayed upon the timely filing of an appeal.

The amendment also would have clarified how the Departmental rule at § 4.21 would have been applied and the amount of grazing use that would be allowable when a decision has been stayed. Where an appellant had no authorized grazing use the preceding year, the authorized grazing use would have been required to be consistent with the decision pending a final determination on appeal. Appellants affected by this provision would have included persons that are applicants for permit or lease transfers. Where a decision proposed to change the amount of authorized grazing use, the permitted grazing use would not have exceeded the appellant's previously determined permitted use during the time an appeal is pending. Reference to ephemeral use would have been added to the amendments which would have pertained to levels of use pending determination on appeal. This amendment would also have provided for making decisions effective upon issuance or on a date specified in the decision when necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under §§ 4110.3–3 and 4150.2 of this part. These provisions are being adopted as proposed, with minor changes to add references to annual rangeland and OHA and to clarify that the proposed term "previously permitted use" means "authorized use in the last year during which any use was authorized."

Many comments addressed the proposed change to conform the grazing appeals process with the general appeals provisions of the Department. Some comments supported the changes, while others reflected the same concern expressed in response to § 4160.1, above. Responses to those comments are not repeated here.

Some commenters questioned if the change would provide sufficient procedural protections for the permittee or lessee, and add to the number of stays sought from OHA. Other commenters questioned the authorized officer's discretion to make a decision effectively immediately; whether stay provisions would apply; whether the stay process was in conflict with the factual hearing process; and whether decisions should be placed in immediate effect only if "required for the orderly administration of the range or for the protection of other resource values."

It is the Department's intent in making the grazing appeals process consistent with the Department's general appeals process to put decisions in place in a timely manner unless OHA grants a stay. The amendments adopted by today's action preserve the ability to file an administrative appeal and a petition to stay a final decision. The stay provision allows OHA to determine if it is appropriate to stay all or a portion of a final decision.

The rule adopted today provides for two separate mechanisms for the issuance and appeal of decisions: (1) Making decisions effective at the end of a 30-day appeal period and, if a petition for stay is filed, upon any denial of the petition but not later than 75 days from the date of the decision, or (2) making decisions effective upon issuance or on a date specified in the decision to stop or prevent imminent damage to resources, in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d). The first mechanism is expected to serve as the usual way in which decisions will be made. Making decisions effective during the 30 day appeal period will be reserved for situations where immediate action is needed to protect rangeland resources or to abate unauthorized use, in accordance with the standards set forth herein.

The rules governing the consideration of petitions to stay a decision pending appeal are provided at 43 CFR 4.21(b)(i) through (iv), and are not changed by this rulemaking. The standards are (i) the relative harm to the parties if the stay is granted or denied; (ii) the likelihood of the appellant's success on the merits; (iii) the likelihood of immediate and irreparable harm if the stay is not granted; (iv) whether the public interest favors granting the stay. As it does currently, BLM will make available to involved persons the required components of an appeal and petition to stay a decision at the time a final decision is issued. A party will not have to choose between a hearing or seeking a stay. A hearing before an administrative law judge will review the facts associated with an appeal, while OHA will consider stay petitions consistent with the standards at 43 CFR 4.21(b)(1).

In the case of decisions under §§ 4110.3–3(b) and 4150.2(d), the Department has concluded that the rule and BLM Manual provide sufficient guidance to the authorized officer. For this reason, the Department has not adopted the suggestion to place decisions in effect immediately only if "required for the orderly administration of the range or the protection of other resource values." As discussed above, the Department has concluded that this authority is needed to stop or prevent imminent damage to rangeland resources or to abate unauthorized use. The amendments adopted today may result in an increased number of stay petitions, but this is balanced by the benefits of making the grazing appeals process consistent with the general Departmental process.

Section 4160.4 Appeals

Under the proposed rule, this section would have provided instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected would have been able to file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, the OHA is allowed 45 days from the end of the appeal period to review the petition and issue a determination. Under the proposal, a decision would not have been in effect during the consideration of a petition for stay unless it were made effective for reasons under § 4110.3–3(b) or 4150.2(d). The provision would have included a requirement for prompt transmittal by the authorized officer of appeals and petitions for stay to the OHA. These provisions are being adopted as proposed.

Comments filed on this section suggested alternative time limits and questioned if the amendments would encourage appeals by the interested public. Commenters also inquired whether there should be a presumption of grazing use when an applicant had no grazing use the preceding year.

The Department has not adopted the suggestion that the time for appeal or OHA review of petitions for stay should be expanded or limited. Past experience with the timing periods for appeals and stays has indicated that these timing requirements are reasonable. A permittee or lessee will almost always be aware of impending implementation of a decision before the final decision is issued. In addition, except for some cases that require that decisions be placed in immediate effect, the permittee or lessee is provided with a proposed decision, which may be protested, at least 15 days before a final decision is issued. It is the Department's intent in involving the interested public at early stages to reduce the number of protests and appeals because all of the parties will have an understanding of the factors considered in issuing a decision.

The Department has not adopted the view that applicants without grazing use the preceding year should not be allowed to graze livestock at the levels allowed by a decision that is under appeal. This provision is consistent with the basic concept of subpart 4160 and 43 CFR 4.21 that the decision of the authorized officer will be put into effect unless a stay is granted. The Department intends that this concept apply consistently throughout the rules pertaining to livestock grazing.

Subpart 4170—Penalties

Section 4170.1–1 Penalty for Violations

The proposed rule would have been amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the 17 western States as supplied annually by the National Agricultural Statistics Service, plus all reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation. This penalty would have been more consistent with the penalties provided for unauthorized use and simpler to administer than the penalty provided in the existing rules. This would have facilitated consistent application of the provisions by BLM. The Department has adopted the provision as proposed, with minor clarifying changes. The Department received few comments on this section. Some suggested that penalties should be based on public land AUM values, not private land values. Others stated that the rate suggested in the proposal was punitive. The concept of assessing penalties upon "value of forage" removed is not new. Under PRIA and the existing Federal grazing fee formula (from 1985 to present), BLM has assessed penalties for unauthorized use on that basis.

Others stated that using twice the average private rate of all 17 states would be a bargain in some cases, or that BLM should use the private rate for each area. The Department agrees that the private rate for each State should be used to calculate the fee. The final language of the rule is revised to clarify this point.

Some commenters stated that violations should not be penalized unless they were willful. One common comment suggested that penalties should apply to other public land users, not just grazing permittees. Others suggested that the authorized officer should have the authority to cancel a lease or permit, but not be required to do so.

Regarding commenters' concerns about willful violations, the penalties discussed in this section apply specifically to unauthorized leasing and subleasing. Leasing or subleasing agreements are oral or written contractual arrangements between permittees or lessees and third parties, even though the grazing privileges obtained by Federal permittees or lessees is not transferrable or assignable without approval. Such arrangements are willful actions. The authorized officer must produce competent evidence to support a finding that the permittee has in fact violated § 4140.1(a)(6). This section does not alter the procedural rights of permittees under this part. It merely establishes the penalty for unauthorized grazing of livestock owned by persons other than the permittee or lessee or their sons and daughters as provided in this part. It does not apply to authorized base property leases or subleases or authorized pasturing agreements. Other penalties set forth elsewhere in these rules do pertain to public land users who enter public lands without authorization and remove publicly-owned assets or damage public lands.

Some commenters suggested that payment of expenses should be limited to specific legal costs, and that payment of salaries of Federal personnel should not be included. Others stated that none of the statutes listed by BLM provide for revocation of permits as a permissible penalty. The Secretary has adequate legal authority to provide for penalties for such violations. The penalties adopted in this section are fair and consistent with other similar programs, and contribute to BLM's effective enforcement of the grazing program. Pricing Federal forage at market rates can be a very effective deterrent to the use of unauthorized grazing of livestock owned by persons other than the permittee or lessee except for sons and daughters of permittees and lessees.

A typical comment discussed the fact that the proposal imposes the same penalty for unauthorized subleasing as for willful trespass, and suggested that this was excessive since the livestock involved with the subleasing were probably included in an existing authorized permit and therefore a permittee subject to a penalty for subleasing would have paid the grazing fee for authorized use plus the penalty. The Department believes that individuals who have violated the subleasing provisions should be penalized to the same extent as those who have trespassed. In some cases, trespass violations determined to be repeated and willful will result in a penalty of three times the private grazing land lease rate, plus administrative expenses. Experience in resolving cases of livestock trespass has shown a need for a gradient of penalties that can be specific for certain nonwillful, willful, and repeated willful offenses. In the Department's determination, unauthorized pasturing or other unauthorized subleasing will constitute a willful violation of the rules pertaining to grazing and will be discouraged by the penalty of twice the private rate plus administrative expenses. Should such violations be repeated, other enforcement mechanisms are available.

Others stated that the proposal does not take into account use upon intermingled private land maintenance of improvements, or suggested that some sort of penalty should be available to the authorized officer to penalize a permittee, short of cancelling a permit. Differing land ownership patterns could make these provisions more difficult to enforce. However, the provisions adopted do provide for authorizing grazing of public lands by livestock owned by persons other than the permittee or lessee. Penalties for violations of the subleasing or pasturing provisions would be limited to the public land forage AUMs consumed. The authorized officer does have discretion to use lesser sanctions than permit cancellation when warranted.

Others asserted that the penalties were not serious enough to be effective, and suggested that there should be a debarment provision. The penalty established in the final rule is intended to serve as a strong deterrent to unauthorized pasturing of livestock owned by other than permittees, lessees, or their sons or daughters. Setting the penalty at two times the private grazing land lease rate plus administrative expenses will ensure that there is no financial impetus for committing such a violation, i.e. an effective penalty must result in a cost greater than the reward. The provisions adopted today ensure this by using the private land rate, which in itself should generally exceed the cost of public land forage, and then doubling that figure. Administrative costs to be added to the penalty merely serve as a further disincentive to violate the provision and highlight the expenses to the public that result from the detection and resolution of violations of the provisions.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with a few changes. The phrase "for the 17 western States" is revised to "in each State" and is moved to modify the phrase "required to pay" to provide a penalty that is tied to the private land

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lease rate in each individual State. This responds to commenters' suggestions and makes the penalty more proportionate to the benefit received from the unauthorized use.

Section 4170.1–2 Failure To Use

This section would have been amended to clarify the consultation requirements imposed on BLM when an authorized officer is considering taking action to cancel, in whole or in part, a permit or lease in response to failure to use. This section also would have clarified that failure to make substantial grazing use as authorized means failure to make active grazing use as approved on a grazing use authorization. Failure to make authorized use may result in monitoring studies providing false information which can cause decisions to over-obligate the forage resource of the rangeland.

Permittees and lessees would have been required to apply and receive approval for nonuse or conservation use. Failure to apply for conservation use or nonuse prevents BLM from having an opportunity to determine if conservation use or nonuse is in conformance with the rules at 43 CFR 4130.2(g) and applicable planning documents.

The proposal would also have included failure to maintain or use water base property in the grazing operation as a type of failure to use. Providing for the use of such waters is critical to the effective administration of grazing within an allotment. Water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to overuse the service areas of the remaining waters.

BLM received very few comments on this section. The Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The most common issue raised was what readers viewed as an exemption from the "substantial use" provisions for conservation use. Some commenters who specifically supported cancellation for non-use objected to the exemption for conservation use. Others stated this was a double standard, and that it made no difference to the resource if someone with grazing use simply did not use the permit or if someone had conservation use. Still others stated that permittees with conservation use should be subject to the cancellation provisions for failure to maintain or use water base property

The Department disagrees that conservation use is an exemption from the substantial use standard. Conservation use is an active use, and therefore provisions regarding failure to use do not apply. Issues regarding conservation use are discussed at § 4130.2.

Some comments asserted there should be no penalty for using a permit less than the permitted use, and that fees collected should be based on actual AUMs used. Others asserted that the proposed changes eliminate any incentive on the part of BLM to reach an agreement with the permittee, and suggested limiting cancellation to situations where the permittee or lessee has failed to maintain use without reason, has unreasonably failed to maintain or use base property or to install or maintain range improvements.

There is no penalty for using less than permitted use provided that the authorized officer has approved either temporary nonuse or conservation use. The Department does not believe that the provisions will be a disincentive to reach an agreement. The provision does not displace the cooperative processes set out in FLPMA, as amended by PRIA. Parties to be consulted are limited to permittees and lessees because any action taken in response to failure to make use will be a ministerial action addressing a requirement of the rule and permit or lease.

Other commenters asked what "failure to maintain or use water-based property in the grazing operations for two consecutive grazing fee years" meant. "Failure to maintain or use water-based property. . . for two consecutive grazing fee years" means that the permittee has not had cattle on the range for two consecutive years, has not allowed livestock to use the base water, has neglected to conduct necessary repair and maintenance activities of the base water for two consecutive years, or a combination of these three. In response to the commenters' concerns, the final rule as adopted is revised to clarify this point.

One commenter stated that the provision assumes the permittee has the funds to purchase livestock or maintain base property. The commenter was concerned that if the permittee could not get funding, BLM might place a lien on the permittee's base property, thus reducing its collateral value. The Department does assume that the permittee has the funds necessary to maintain a grazing operation, including the purchase or lease of livestock and the maintenance of base water facilities. The BLM will not place liens on base property. If a permittee cannot afford to make use of, or maintain, base water in any one year, there will be no penalty under thus provision. However, if the situation extends into the second year, then BLM will consider cancelling whatever amount of permitted use the permittee or lessee has failed to use, as provided in this section of the final rule.

Regarding specific requests for definitions, the Department believes the use of the term "substantial use" is sufficient without definition for purposes of national rules. The meaning of the word "substantial" in a legal context has been well-established in the courts.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The language in the final section is rewritten to clarify the meaning of the "2 consecutive grazing fee years" provision.

Section 4170.1–3 Federal or State Animal Control and Environmental Protection or Resource Conservation Regulations or Laws

The proposed rule would have amended this section to make subject to penalty under § 4170.1–1 violations of Federal or State regulations or laws that are listed as prohibited acts under § 4140.1 and that pertain to predator animal and pest control, wild free-roaming horses and burros, natural and cultural resources, resource conservation, or the environment. The heading of this section would have been amended to reflect the change in scope. These changes were proposed to conform with similar amendments in § 4140. The types of violations that may result in the withholding, suspension or cancellation of a permit or lease under § 4170.1–1(a) would have been expanded to include violations of regulations and laws that pertain to the protection of the environment and conservation of natural and cultural resources where public lands are involved or affected, the violation is related to grazing use authorized by the permit or lease, and the permittee or lessee has been found to be in violation by the relevant court or other authority and no appeals are outstanding. Principal users of the rangelands should be expected to comply with such laws and regulations. The proposed amendments would have adopted language of the grazing administration regulations that existed before 1984. Today's action adopts the provision with minor clarifying changes, and also moves the entire provision to § 4140.1(c) for clarity.

Commenters on this section were strongly divided on its provisions. Some asserted, as they had on § 4140.1 of the proposal, that inclusion of other statutes

in the penalty provisions of the grazing program was outside the Secretary's legal authority, which they asserted applies only to public lands governed by a grazing permit. Others asserted that the provisions placed too much emphasis on other values, that under this program only grazing values should be considered.

Section 2 of TGA directs the Department to preserve public rangeland and its resources from destruction or unnecessary injury and to provide for the orderly use, improvement, and development of the range to ensure that the public grazing lands are administered in a reasonable and orderly fashion. The Department believes that the language of this section represents a reasonable and practical balance between those responsibilities and limitations placed on it by resource and other practical considerations.

The Secretary has full authority to establish terms and conditions for grazing permits to ensure compliance with the laws affecting public lands. Consideration of natural and cultural resource values is fully consistent with the Department's responsibility for multiple resource management under its statutory authorities. The Department cannot condone violations of other statutes and expects that principal users of public lands, such as grazing permittees, will comply with these statutes in the conduct of their activities. These related statutes do have separate enforcement provisions that would be unaffected by this rule. However, as discussed at § 4140.1, there are limitations placed on the Secretary's authority to impose penalties for violations under other laws. These limitations are that public land administered by the Bureau of Land Management must be involved or affected, the violation must be related to grazing use authorized by a permit or lease, and the permittee or lessee must be convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, with no further appeals outstanding.

Some commenters asked whether lesser violations of State laws would be cause for loss of a permit, or suggested that only repeated, willful violations should be penalized. Others asserted that paragraph (c) should be amended to limit the provision to penalizing violations resulting from court decisions.

The Department does not intend that *de minimis* violations of State or even Federal laws or regulations will result in penalties affecting the grazing permit or lease under this provision. However, the rule as adopted will not affect how violations of State or Federal law or regulations are dealt with initially by the various enforcement or regulatory agencies.

Others stated that the provisions were too narrow, and should apply to additional statutes addressing natural resource protection. One specific suggestion was the American Indian Religious Freedom Act. Some of these commenters suggested that penalties for violation be nondiscretionary. Other comments suggested omitting paragraph (c) altogether on the basis that there is no legal argument to support such a limitation on the Department's responsibility under FLPMA and TGA to promulgate and enforce its own regulations.

As stated in the preamble to the proposed rule, a list of relevant laws will be made available to grazing permittees and lessees. No State or Federal statutes were added to the list presented in the preamble to the proposed rule.

In accordance with the above discussion, the Department has decided to retain the substance of § 4170.1–3, as proposed. However, in response to comments on §§ 4140.1 and 4170.3, the Department has moved the entire section establishing conditions limiting when violations of certain laws and regulations would constitute prohibited acts for the purposes of grazing administration to § 4140.1(c). This change from the proposed rule is intended to clarify the provision by removing cumbersome cross-references and by consolidating discussions of prohibited acts. Further discussion of this provision can be found at that section.

Section 4170.2–1 Penal Provisions Under the Taylor Grazing Act

Under the proposal, this section would have clarified a confusing existing statement by rewriting the provision to state that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500, under the penal provisions of TGA.

The Department received no comments on this section, and it is finalized as proposed.

Section 4170.2–2 Penal Provisions Under the Federal Land Policy and Management Act

The proposed rule would have amended this section to adopt the alternative fines provisions of Title 18 U.S.C. section 3571, which was enacted after enactment of FLPMA. This action would have strengthened the protection of natural or cultural resources under the grazing program. Other language changes consistent with similar changes to § 4170.2–1 regarding willful commission of acts prohibited under § 4140.1(b) would also have been made.

The Department received very few comments on this section. The major theme of the comments was that the establishment of civil and criminal sanctions are outside the authority of the Secretary, but rather are within the exclusive jurisdiction of the legislature.

The Department disagrees that the provisions of this section are outside the authority of the Secretary. The Secretary has full authority to enforce provisions of FLPMA, TGA and other statutes, and has authority to promulgate rules to implement FLPMA and other statutes pertaining to public lands (43 U.S.C. 1740). Section 4170.2–2 establishes the penalty provision for criminal acts.

Subpart 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration (Titled "National Requirements and Standards and Guidelines for Grazing Administration" In Proposed Rule)

Under the proposed rule, this subpart would have been added to establish national requirements for the administration of grazing on public lands. It would also have included a provision for the development of State or regional standards and guidelines for grazing administration. These requirements, standards, and guidelines were proposed to establish clear direction for managing rangelands in a manner that would achieve or maintain ecological health, including the protection of habitats of threatened or endangered species and candidate species, and the protection of water quality.

The heading of the subpart is modified from the proposed rule, as noted above.

Section 4180.1 Fundamentals of Rangeland Health (Titled "National Requirements for Grazing Administration" In Proposed Rule)

Under the proposed rule, this new section would have established national requirements for grazing administration on public rangelands. Permits, leases, other grazing authorizations and grazing related plans and activities on public lands would have incorporated, as applicable, grazing practices that help achieve healthy, properly functioning ecosystems and riparian systems. All

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grazing-related actions on public lands would have been required to conform with the national requirements. Where the national requirements were not being met, the authorized officer would have been required to take corrective action prior to the start of the next grazing season. This would have included actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements. Nothing in the national requirements relating to riparian systems was to be construed to create a water right based on Federal law. The national requirements presented in the proposed rule have been retitled "fundamentals of rangeland health" to better reflect the Department's view that they represent the basic components of healthy rangelands. These components will be referred to as the "fundamentals of rangeland health" in the discussion below.

The Department received many comments on this section. Comments suggested that establishing fundamentals that were unique to grazing administration discriminated against public land livestock operators and questioned the statutory authority of the Secretary to promulgate such provisions. Other comments expressed the view that the provisions were too lax; still others asserted that the section discounted the role that herbivores have played in the history of the public rangelands and would create problems and complexities in BLM grazing program due to the variation in standards and guidelines.

It is the Department's intent to establish through the fundamentals of rangeland health and the applicable standards and guidelines appropriate grazing practices to help ensure productive rangelands. These fundamentals will guide BLM in the development of plans for public lands and in the authorization of grazing-related activities, consistent with the provisions of FLPMA and TGA, that lead toward or maintain healthy, sustainable rangelands. It is not unusual for BLM programs to have unique requirements that pertain to a particular group of activities on the public lands, for example the Onshore Orders regulating portions of the oil and gas program.

The fundamentals are statements of the conditions that are representative of healthy rangelands across the West, and, as such, are relatively broad as pointed out in some comments. The fundamentals establish the Department's policy of managing for healthy rangelands. State or regional standards and guidelines will be developed, under the umbrella of the fundamentals, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. State or regional standards and guidelines will provide the measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

The focus on the fundamental requirements of healthy rangelands does not discount the role played by herbivores. Applying the principles of ecosystem management to grazing administration requires consideration of herbivores, both wild and domestic. The historical role of herbivores is discussed in some detail in the FEIS on this rule.

The intent in adopting this section is to facilitate compliance with relevant requirements of Acts such as the ESA and the Clean Water Act and to ensure functional rangelands in order to improve ecological conditions while providing for sustainable development. The Department does not agree with some commenters who asserted that the fundamentals would exceed the requirements of the relevant statutes. The fundamentals, along with State or regional standards and guidelines, will be used to establish management practices that are appropriate for the particular region that lead toward or maintain healthy, sustainable rangelands and provide security of tenure for permittees and lessees.

Regarding comments that the section creates complexities and problems for BLM's grazing program due to State or regional variations, the Department has concluded that such variation is necessary to address the specific conditions present within individual areas. The fundamentals, however, provide the basic components of healthy rangelands that will apply to all States and regions (exclusive of Alaska). These overarching principles will be supplemented by standards and guidelines that will be tailored to more local conditions.

Finally, some commenters also asserted that the fundamentals of rangeland health and the standards and guidelines would result in a "taking" if grazing use was modified as a result of this section. Issues associated with "takings" are discussed in the General Comments section.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed with reordering and modifications for clarity, adding wording that requires significant progress toward meeting the fundamentals, and rewording to incorporate more fully a watershed management approach.

Section 4180.2 Standards and Guidelines for Grazing Administration

Under the proposed rule, this new section would have established the requirements for the development of standards and guidelines for grazing administration on public lands, and guiding principles for their development. All grazing related actions within the affected area would have been required to conform with the appropriate standards and guidelines. The geographical area to be covered by the standards and guidelines to be developed pursuant to this section were to be determined by the BLM State Director. Standards and guidelines would have been required to be developed for an entire State, or for an ecoregion including portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands could not be ensured by using standards and guidelines developed for a larger geographical area. The preparation of standards and guidelines would have involved consultation with multiple resource advisory councils, coordination with Indian tribes, and Federal agencies responsible for the management of lands within the affected area. Public participation would have included the involvement of the interested public.

The proposed rule would have established guiding principles to be addressed in the development of standards and guidelines. The guiding principles for standards to be developed were to have pertained to the minimum soil, water and biological conditions required for rangeland ecosystem health. All standards for grazing administration would have been required to address factors relating to soil stability and watershed function, the distribution of nutrients and energy and the recovery mechanisms of plant communities and riparian functioning conditions. The guiding principles for the development of guidelines for grazing administration were to have pertained to the types of management actions necessary to ensure that the standards could be met. Included in these guiding principles were the requirements that State or regional guidelines address grazing practices that can be implemented to benefit threatened or endangered species and candidate species, and to maintain, restore or enhance water quality; critical periods of plant growth or regrowth and the need for rest from livestock grazing; situations in which continuous season-long grazing, or use of ephemeral rangelands, could be authorized; the allowable types and location of certain range improvements and management practices; and utilization or residual vegetation limits.

The proposed rule would have provided that where State or regional standards and guidelines were not developed within 18 months after the effective date of the proposed rule, fallback standards and guidelines included in the text of the rule would be implemented. The fallback standards addressed the same factors relating to soil stability and watershed function, the distribution of nutrients and energy, the recovery mechanisms of plant communities, and riparian functioning condition as provided for under the guiding principles. The fallback guidelines addressed the grazing management practices that would be acceptable across a broad variety of rangelands. Both the proposed fallback standards and fallback guidelines were general in order to be applicable to most western rangelands.

As with the previous section, some commenters questioned whether the provisions for standards and guidelines were discriminatory and whether they exceeded the requirements of numerous statutes. These comments were addressed above under the discussion of § 4180.1. Some commenters expressed views that the standards and guidelines should be developed in coordination, cooperation and consultation with permittees, that local grazing advisory boards should be retained and involved, and that local and county government should be consulted. Some commenters questioned the expertise of the RACs to develop standards and guidelines and questioned why the interested public and the public in general is included in the development process.

Some commenters asserted that the 18-month development period is too short and that the fallback provisions should be eliminated. Others questioned whether there should be any waiting period before the fallback standards and guidelines come into effect.

Some commenters asserted that the standards and guidelines should be developed through the land-use planning process. Comments were received that questioned the efficacy of the standards and guidelines while some felt the standards and guidelines were too strict and would harm livestock operations. Finally, a few commenters questioned the intent and wording of individual guiding principles and fallback standards and guidelines.

The Department recognizes the need for an effective partnership with livestock operators and will continue to work closely with them. The Department has also concluded that public land management in general will be improved by providing for a more inclusive partnership which extends to RACs, the interested public, and State and local government. The RACs, the interested public and the public in general will be involved in the development of the standards and guidelines. RAC members will have a variety of qualifications that will contribute to the standards and guidelines development process. Grazing permittees and lessees will be represented on the RACs and will have a variety of opportunities to provide input to BLM through the RACs and public forums during the development of State or regional standards and guidelines. The RACs and their subgroups will be able to provide technical advice in a manner similar to the former grazing advisory boards, while at the same time representing a broader array of interests. For further discussion of member qualifications and experience, see section-by-section analysis of subpart 1780.

The Department has concluded that the 18-month time frame for development of the State or regional standards and guidelines will provide adequate time to develop appropriate standards and guidelines for several reasons. First, the standards and guidelines build off of current range science, existing policies and land-use planning decisions concerning grazing activities. Second, it is anticipated that any additional NEPA analysis that may be needed can be tiered from the FEIS for this rule and incorporate analyses of other NEPA documents. The Department believes that an 18-month period is necessary to allow opportunity to consider local needs and concerns. In the long term, the Department believes that a development process that considers local circumstances along with national priorities will produce superior standards and guidelines.

The fallback standards and guidelines are intended to provide protection should the development of the State or regional standards take longer than anticipated. The fallbacks are relatively general because they are intended to be applicable wherever State or regional standards and guidelines have not been put into effect within 18 months of the effective date of this final rule. The fallback provisions cannot be as specific or detailed as State or regional standards and guidelines that will be tailored to the conditions and needs of each State or region.

Concerning the comment that the standards and guidelines should be developed through the land-use planning process, State or regional standards or guidelines that are inconsistent with existing land use plans will be analyzed in land use plan amendments. Management decisions such as resource condition objectives, thresholds, stipulations, and terms and conditions of BLM use authorizations that have been or are developed for purposes other than State or regional standards and guidelines for grazing administration are not subject to the provisions of developing and approving standards or guidelines presented in § 4180.2. For example, an AMP decision that livestock use should not exceed a specified level of usage would not constitute a standard that would be subject to the provisions of § 4180.2, but would remain as an AMP decision. However, the Department expects that the merits of officially adopting existing land use plan and other management decisions as State or regional standards or guidelines will be considered and that many proven practices will serve as the basis for State or regional standards or guidelines.

The fundamentals of rangeland health, guiding principles for standards and the fallback standards address ecological components that are affected by all uses of public rangelands, not just livestock grazing. However, the scope of this final rule, and therefore the fundamentals of rangeland health of § 4180.1, and the standards and guidelines to be made effective under § 4180.2, are limited to grazing administration. Under this final rule, actions are to be taken by the authorized officer upon determining that grazing management practices and levels of use on public lands are significant factors in preventing achievement of the standards and conformance with the guidelines. Application of the principles contained in subpart 4180 to uses of public rangelands other than authorized grazing activities would require separate action by BLM or the Department.

Some commenters questioned how the PACFISH standards and guidelines affect the standards and guidelines developed in this section. The Department recognizes that

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coordination between the PACFISH effort and BLM range program is essential. The Rangeland Reform '94 EIS considered cumulative impacts of PACFISH and rangeland reform. Nothing in subpart 4180 is intended to affect special planning efforts such as those related to anadromous fish habitat (PACFISH) or the Upper Columbia River Basin EIS. These are separate efforts that will be coordinated, as appropriate, with activities under subpart 4180.

Concerning the comment that the standard and guideline provisions are too strict and will drive livestock operators out of business, the guiding principles for the State or regional standards and guidelines are designed to allow State and regional issues to be considered while still resulting in significant progress toward established goals. Specific quantitative assessment methods for the listed items were not proposed because the Department believes specific assessment methodologies should be chosen in light of more site-specific considerations.

The guiding principles for standards and guidelines require that State or regional standards and guidelines address the basic components of healthy rangelands. The Department believes that by implementing grazing-related actions that are consistent with the fundamentals of § 4180.1 and the guiding principles of § 4180.2, the long-term health of public rangelands can be ensured. The fallback standards and guidelines will also lead to improved rangeland health, but the fallbacks do not provide the same opportunities for tailoring to meet more-local resource conditions and livestock management practices.

Standards and guidelines will be implemented through terms and conditions of grazing permits, leases, and other authorizations, grazing-related portions of activity plans (including AMPs), and through range improvement-related activities. The Department anticipates that in most cases the standards and guidelines themselves will not be terms and conditions of various authorizations but that the terms and conditions will reflect the standards and guidelines. For example, a standard for maintaining water quality may be implemented via a condition of a permit that livestock will not be allowed to occupy specified riparian areas during a certain time of year. In assessing the health of rangelands to determine whether action of the authorized officer is necessary, the BLM will generally consider the extent to which standards are being met and guidelines followed across the area of a grazing allotment or group of allotments. The Department intends that failing to comply with a standard in an isolated area would not necessarily result in corrective action.

The Department recognizes that it will sometimes be a long-term process to restore some rangelands to properly functioning condition. The Department intends that the standards and guidelines will result in a balance of sustainable development and multiple use along with progress towards attaining healthy, properly functioning rangelands. For that reason, wording has been adopted in this final rule that will require the authorized officer to take appropriate action upon determining that existing grazing management practices are failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines.

Also, the Department recognizes that it is not possible to complete all assessments of rangeland health and to take appropriate corrective action, pursuant to § 4180.2(c) of this final rule, immediately upon completion of the State or regional standards and guidelines or upon the fallbacks taking effect. The Department intends that assessments and corrective actions will be undertaken in priority order as determined by BLM.

In some areas, it may take many years to achieve healthy rangelands, as evidenced by the fundamentals, established standards, and guidelines. The Department recognizes that, in some cases, trends may be hard to even document in the first year. The Department will use a variety of data including monitoring records, assessments, and knowledge of the locale to assist in making the "significant progress" determination. It is anticipated that in many cases it will take numerous grazing seasons to determine direction and magnitude of trend. However, actions will be taken to establish significant progress toward conformance as soon as sufficient data are available to make informed changes in grazing practices.

Many commenters had suggestions or concerns specific to one or more of the guiding principles or fallback standards or guidelines. Commenters asserted the requirement pertaining to A-horizon soils was unrealistic, that suitability determinations need to be addressed, and that greater specificity should be provided for water quality and the protection of riparian areas. Commenters also stated that the standards and guidelines should include a prohibition on exceeding the livestock-carrying capacity and should require an upward trend in soil and vegetation.

The Department agrees that the A-horizon requirement would not serve as a useful standard on some BLM-administered lands since some naturally-occurring soil structures do not conform to this requirement. The standard that referenced "A" soil horizons has not been carried forward in this final rule. Comments suggesting the addition of suitability determinations have been addressed in the section-by-section analysis for § 4130.2. This final rule does not add a requirement for suitability determinations. The Department has decided not to add more detailed guidance pertaining to water quality or riparian areas but the wording of the guiding principles and fallbacks has been modified from that of the proposed rule to provide greater focus on watershed function. The Department intends that more specific provisions will be considered in the development of State or regional standards and guidelines following consideration of public input and the site-specific characteristics of the public rangelands. The concern that grazing use not be allowed to exceed the livestock carrying capacity is dealt with in §§ 4110.2–2 and 4110.3 of this final rule. The suggestion that public rangelands be required to exhibit an upward trend in condition is adopted, in part, through the addition of the requirement that action be taken to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines when the authorized officer determines that grazing management practices or levels of use are significant factors in failing to meet the standards or conform with the guidelines.

References to meeting the minimum requirements of the ESA and State water quality standards have been removed from the fallback standards and guidelines. Both ESA requirements and water quality standards are included in the fundamentals presented in § 4180.1 of this final rule and, therefore, do not need to be restated in the fallbacks. The fallback guidelines retain reference to promoting the restoration and maintenance of habitats of special status species, to make clear that it is the Department's intent to take reasonable measures to interrupt the decline of such habitats.

References to minimum ESA requirements and State water quality standards have been retained in the guiding principles for the development of State or regional standards and guidelines. The Department intends that, as State or regional standards and guidelines are developed, more specific and useful application of ESA requirements and water quality standards can be made. For instance, habitat requirements may be presented in measurable terms or tied to specific areas within the State or region.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications for clarity, consolidation and reordering of paragraphs, clarifying the concept of upward trend by adding the requirement for making "significant progress" toward fulfilling the standards and toward conforming with the guidelines, removal from the fallbacks the redundant reference to ESA requirements and State water quality standards, and to incorporate more fully a watershed management approach and current science consistent with rangeland health goals.

VI. Procedural Matters

NEPA

The BLM analyzed the impacts of these final rules in its "Rangeland Reform '94: Final Environmental Impact Statement," in accordance with section 102(2)(C) of the NEPA of 1969 (42 U.S.C. 4332(c)(C)).

A Record of Decision for the EIS for Rangeland Reform '94 was issued on February 13, 1995. The Department's decision is represented in the rule adopted today. The ROD departs from the preferred alternative in the FEIS in that it retains the existing grazing fee formula, identified as the PRIA (No Action) alternative, and makes minor modifications to the Preferred Management alternative. Changes made from the Preferred Management alternative of the FEIS, and adoption of the No Action Fee alternative, which are represented in the Record of Decision and this final rule, were found to be within the range of alternatives considered in the FEIS. Also, these changes were found not to affect the analysis of environmental consequences presented in the FEIS.

Executive Order 12778: Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of Executive Order 12778, Civil Justice Reform (56 FR 55195). The requirements of the Executive Order are covered by the preamble discussion of this rule. The Department certifies that this rule meets the applicable standards provided in Section 2(a) and 2(b)(2) of that Order. Where applicable, the recommendations and analyses required under Section 2(d) of that Order are attached to the certification and included in the administrative record of this rule.

Regulatory Flexibility Act

The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility analysis has been prepared and may be requested from the following address: Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240. The final rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Executive Order 12630

This rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule if it were promulgated as currently drafted. Because the relevant statutes and rules governing grazing on Federal land and case law interpreting said statutes and rules have consistently recognized grazing on Federal land as a revocable license and not a property interest, it has been determined that this final rule does not present a risk of a taking.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by OMB under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Author

The principal authors of this final rule are Annetta L. Cheek and Charles Hunt, Regulatory Management Team, with the assistance of many other staff members of the Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining.

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

For the reasons stated in the preamble and under the authority of the FACA (5 U.S.C. Appendix), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), the TGA of 1934 (43 U.S.C. 315, 315a–r), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (43 U.S.C. 1181d), and the FLPMA of 1976 (43 U.S.C. 1739, 1740), part 4 of subtitle A of title 43, and part 1780, group 1700, subchapter A, and part 4100, group 4100, subchapter D, of subtitle B of chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

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PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. The authority citation for subpart E of part 4 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

3. Section 4.477 is amended by removing paragraph (a); removing the paragraph designations (b) (1), (2), and (3); and revising the first sentence of the paragraph to read as follows:

§ 4.477 Effect of decision suspended during appeal.

Notwithstanding the provisions of § 4.21(a) of this part pertaining to the period during which a final decision will not be in effect, and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

4. The authority citation for part 1780 is revised to read as follows:

Authority: 5 U.S.C. App. (Federal Advisory Committee Act); 43 U.S.C. 1739.

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

5. Section 1784.0–5 is amended by removing from paragraph (d) the term "Authorized representative" and adding in its place the words "Designated Federal officer".

6. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter; they have demonstrated experience or knowledge of the geographical area under the purview of the advisory committee; and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

7. Section 1784.2–2 is amended by revising paragraphs (a)(1), and (b), and by adding a new paragraph (c) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees, including resource advisory councils, and may serve on subgroups of such advisory councils;

* * * * *

(b) No advisory committee members, including members of resource advisory councils, and no members of subgroups of such advisory committees, shall participate in any matter in which the members have a direct interest.

(c) Members of advisory committees shall be required to disclose their direct or indirect interest in leases, licenses, permits, contracts, or claims and related litigation which involve lands or resources administered by the Bureau of Land Management. For the purposes of this paragraph, indirect interest includes holdings of a spouse or a dependent child.

8. Section 1784.3 is amended by removing paragraphs (a), (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1) and (b)(2) as paragraphs (a)(1) and (a)(2), respectively; adding introductory text before newly redesignated paragraph (a)(1); removing from newly redesignated paragraph (a)(1) the word "district" and adding in its place the words "geographical area"; removing paragraph (b) and redesignating paragraphs (e) and (f) as paragraphs (b) and (c), respectively; removing the words "his authorized representative" from newly redesignated paragraph (c) and adding in its place the words "the designated Federal officer"; and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703. No reimbursement shall be made for expenses incurred by members of subgroups selected by established committees, except that the designated Federal officer may reimburse travel and per diem expenses to members of subgroups who are also members of the parent committee.

§ 1784.5–1 and 1784.5–2 [Amended]

9. Sections 1784.5–1 and 1784.5–2 are amended by removing the phrase "his authorized representative" and adding in its place the phrase "the designated Federal officer."

10. Section 1784.6 is revised to read as follows:

§ 1784.6 Membership and functions of resource advisory councils and sub-groups

11. Section 1784.6–1 is revised to read as follows:

§ 1784.6–1 Resource advisory councils—requirements.

(a) Resource advisory councils shall be established to cover all lands administered by the Bureau of Land Management, except where—

(1) There is insufficient interest in participation to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed; or

(2) The location of the public lands with respect to the population of users and other interested parties precludes effective participation.

(b) A resource advisory council advises the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area. Except for the purposes of long-range planning and the establishment of resource management priorities, a resource advisory council shall not provide advice on the allocation and expenditure of funds. A resource advisory council shall not provide advice regarding personnel actions.

(c) The Secretary shall appoint the members of each resource advisory council. The Secretary shall appoint at least 1 elected official of general purpose government serving the people of the area to each council. An individual may not serve concurrently on more than 1 resource advisory council. Council members and members of a rangeland resource team or other local general purpose subgroup must reside in 1 of the States within the geographic jurisdiction of the council or subgroup, respectively. Council members and members of general purpose subgroups shall be representative of the interests of the following 3 general groups:

(1) Persons who—

(i) Hold Federal grazing permits or leases within the area for which the council is organized;

(ii) Represent interests associated with transportation or rights-of-way;

(iii) Represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(iv) Represent the commercial timber industry; or

(v) Represent energy and mineral development.

(2) Persons representing—

(i) Nationally or regionally recognized environmental organizations;

(ii) Dispersed recreational activities;

(iii) Archeological and historical interests; or

(iv) Nationally or regionally recognized wild horse and burro interest groups.

(3) Persons who—

(i) Hold State, county or local elected office;

(ii) Are employed by a State agency responsible for management of natural resources, land, or water;

(iii) Represent Indian tribes within or adjacent to the area for which the council is organized;

(iv) Are employed as academicians in natural resource management or the natural sciences; or

(v) Represent the affected public-at-large.

(d) In appointing members of a resource advisory council from the 3 categories set forth in paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Secretary shall provide for balanced and broad representation from within each category.

(e) In making appointments to resource advisory councils the Secretary shall consider nominations made by the Governor of the State or States affected and nominations received in response to public calls for nominations pursuant to § 1784.4–1. Persons interested in serving on resource advisory councils may nominate themselves. All nominations shall be accompanied by letters of reference from interests or organizations to be represented.

(f) Persons appointed to resource advisory councils shall attend a course of instruction in the management of rangeland ecosystems that has been approved by the Bureau of Land Management State Director.

(g) A resource advisory council shall meet at the call of the designated Federal officer and elect its own officers. The designated Federal officer shall attend all meetings of the council.

(h) Council charters must include rules defining a quorum and establishing procedures for sending recommendations forward to BLM. A quorum of council members must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least a majority of each of the 3 categories of interest from which appointments are made.

(i) Where the resource advisory council becomes concerned that its advice is being arbitrarily disregarded, the council may request that the Secretary respond directly to such concerns within 60 days of receipt. Such a request can be made only upon the agreement of all council members. The Secretary's response shall not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal, and shall not be appealable.

(j) Administrative support for a resource advisory council shall be provided by the office of the designated Federal officer.

12. A new § 1784.6–2 is added to read as follows:

§ 1784.6–2 Resource advisory councils—optional features.

(a) Resource advisory councils must be established consistent with any 1 of the 3 models in paragraphs (a)(1), (a)(2), and (a)(3) of this section. The model type and boundaries for resource advisory councils shall be established by the BLM State Director(s) in consultation with the Governors of the affected States and other interested parties.

(1) Model A

(i) *Council jurisdiction.* The geographic jurisdiction of a council shall coincide with BLM District or ecoregion boundaries. The Governor of the affected States or existing resource advisory councils may petition the Secretary to establish a resource advisory council for a specified Bureau of Land Management resource area. The councils will provide advice to the Bureau of Land Management official to whom they report regarding the preparation, amendment and implementation of land use plans. The councils will also assist in establishing other long-range plans and resource management priorities in an advisory capacity, including providing advice on the development of plans for range improvement or development programs.

(ii) *Membership.* Each council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least 3 council members from each of the 3 categories of interest from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least 3 council members from each of the 3 categories of interest from which appointments are made.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a resource advisory council provides advice, down to the level of a single allotment. These teams may be formed by a resource advisory council on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council regarding issues pertaining to the administration of grazing on public land within the area for which the rangeland resource team is formed.

(A) Rangeland resource teams will consist of 5 members selected by the resource advisory council. Membership will include 2 persons holding Federal grazing permits or leases. Additional members will include 1 person representing the public-at-large, 1 person representing a nationally or regionally recognized environmental organization, and 1 person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least 1 member must be selected from the membership of the resource advisory council.

(B) The resource advisory council will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

(C) All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by the BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the resource advisory council and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

(D) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team.

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The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(2) Model B

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The purpose of the council is to promote federal, state, and local cooperation in the management of natural resources on public lands, and to coordinate the development of sound resource management plans and activities with other states. It will provide an opportunity for meaningful public participation in land management decisions at the state level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c), and will include at least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor shall chair the council.

(iii) *Quorum and voting requirements.* The charter of the council shall specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Local rangeland resource teams may be formed by the Statewide council, down to the level of a 4th order watershed. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the resource advisory council, an 80% affirmative vote will be required to send a recommendation to the resource advisory council.

(A) Rangeland resource teams will not exceed 10 members and will include at least 2 persons from environmental or wildlife groups, 2 grazing permittees, 1 elected official, 1 game and fish district representative, 2 members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for 2 year terms by the resource advisory council and may be reappointed. No member may serve on more than 1 rangeland resource team.

(B) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team. The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(3) Model C

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council shall be 10 to 15 members, distributed in a balanced fashion among the 3 interest groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each interest group must be present to constitute a quorum and conduct official business, and that a majority of each interest group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Resource advisory councils may form more local teams to provide general local level input to the resource advisory council on issues necessary to the successful functioning of the council. Such subgroups can be formed in response to a petition from local citizens or on the motion of the resource advisory council. Membership in any subgroup formed for the purpose of providing general input to the resource advisory council on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c).

(A) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a local team. The purpose of such technical review teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(B) [Reserved]

§ 1784.6–3 through 1784.6–5 [Removed]

13. Sections 1784.6–3 through 1784.6–5 are removed.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

14. The authority citation for part 4100 is revised to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

15. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

16. Section 4100.0–5 is amended by removing the definition of "Affected interests," "Grazing preference," and "Subleasing"; revising the definitions of

"Active use," "Actual use," "Allotment management plan (AMP)," "Consultation, cooperation and coordination," "Grazing lease," "Grazing permit," "Land use plan," "Range improvement," "Suspension," and "Utilization"; and by adding in alphabetical order the definitions of "Activity plan," "Affiliate," "Annual rangelands," "Conservation use," "Ephemeral rangelands," "Grazing preference or preference," "Interested public," "Permitted use," "Temporary nonuse," and "Unauthorized leasing and subleasing" to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

* * * * *

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term "control" means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

* * * * *

Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of—

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving rangeland conditions; or

(3) Enhancing resource values, uses, or functions.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

* * * * *

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference or *preference* means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

* * * * *

Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.

* * * * *

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

* * * * *

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

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17. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

18. A new § 4100.0–9 is added to read as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Subpart 4110—Qualifications and Preference

19. Section 4110.1 is amended by redesignating the introductory text of the section, and paragraphs (a), (b), and (c) as the introductory text of paragraph (a), (a)(1), (a)(2), and (a)(3), respectively, revising the introductory text of newly redesignated paragraph (a), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.5, and 4130.6–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when—

(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(d) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

20. Section 4110.1–1 is revised to read as follows:

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of § 4110.1.

21. Section 4110.2–1 is amended by revising paragraphs (a)(1), (a)(2) and (c) to read as follows:

§ 4110.2–1 Base Property.

(a) * * *

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

* * * * *

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

* * * * *

22. Section 4110.2–2 is amended by removing the term "grazing preference" from paragraph (c) and adding in its place the term "permitted use" and by revising the section heading and paragraph (a) to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

* * * * *

23. Section 4110.2–3 is amended by redesignating paragraph (f) as paragraph (g), removing from paragraph (b) the term "grazing preference" and adding in its place the term "permitted use," revising paragraph (a)(1), and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) The transferee shall meet all qualifications and requirements of §§ 4110.1, 4110.2–1, and 4110.2–2.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

24. Section 4110.2–4 is revised to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

25. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

26. Section 4110.3–1 is amended by removing the words "grazing preferences" from paragraph (b) and adding in their place the words "suspended permitted use"; removing from paragraph (c)(2) the term "grazing preference" and adding in its place the term "permitted use" and removing the words "and/or" and adding in their place the word "and"; revising the section heading, paragraph (a), the introductory text of paragraph (c), and paragraph (c)(1), to read as follows:

§ 4110.3–1 Increasing permitted use.

* * * * *

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

* * * * *

(c) After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

27. Section 4110.3–2 is amended by revising the section heading, removing from paragraph (a) the term "Active" and adding in its place the term "Permitted," removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing permitted use.

* * * * *

(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

28. Section 4110.3–3 is revised to read as follows:

§ 4110.3–3 Implementing reductions in permitted use.

(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing § 4110.3–2 shall be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

29. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available

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forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

30. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§ 4130.3, 4130.3–1, 4130.3–2 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the multiple resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

31. Section 4120.3–1 is amended by adding the words "range improvement" immediately before the word "agreement" in paragraphs (b) and (e), and by adding a new paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

32. Section 4120.3–2 is revised to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

(a) BLM may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by BLM to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by BLM does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

33. Section 4120.3–3 is amended by revising the first sentence of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 4120.3–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. * * *

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

34. Section 4120.3–8 is added to read as follows:

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which BLM is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

35. Section 4120.3–9 is added to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

36. Section 4120.5 is added to read as follows:

§ 4120.5 Cooperation.

37. Section 4120.5–1 is added to read as follows:

§ 4120.5–1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

38. Section 4120.5–2 is added to read as follows:

§ 4120.5–2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

39. Sections 4130.1 through 4130.8 are redesignated as follows:

Old section	New section
4130.1	4130.1–1
4 0.1–1	4130.4
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–2
4130.4–3	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130 3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

40. Section 4130.1 is added to read as follows:

§ 4130.1 Applications.

41. Newly redesignated § 4130.1–1 is amended by revising the heading to read as follows:

§ 4130.1–1 Filing applications.

42. Section 4130.1–2 is amended by revising paragraph (b), removing the word "and" from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources;

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

43. Section 4130.2 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (i), respectively, revising paragraphs (a) and newly redesignated paragraph (d) and by adding new paragraphs (b), (f), (g), and (h) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits and leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

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(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

* * * * *

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

* * * * *

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, AMP or other activity plans and the provisions of subpart 4180 of this part.

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.6–2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.6–2.

* * * * *

44. Newly redesignated § 4130.3 is revised to read as follows:

§ 4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

45. Newly redesignated § 4130.3–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.3–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

46. Newly redesignated § 4130.3–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding an "; and" and by adding a new paragraph (h) to read as follows:

§ 4130.3–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

* * * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

47. Newly redesignated § 4130.3–3 is revised to read as follows:

§ 4130.3–3 Modification of permits or leases.

Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

48. Newly redesignated § 4130.4 is amended by revising the heading and paragraph (b) to read as follows:

§ 4130.4 Approval of changes in grazing use within the terms and conditions of permits and leases.

* * * * *

(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.

49. Newly redesignated § 4130.5 is amended by designating the text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 4130.5 Free-use grazing permits.

* * * * *

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

50. Reserved §§ 4130.5–1 through 4130.5–3 are removed.

51. In newly redesignated § 4130.6–1, paragraph (a) is revised to read as follows:

§ 4130.6–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

52. Newly redesignated § 4130.6–2 is amended by adding a sentence to the end to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

* * * The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.

53. Newly redesignated § 4130.6–3 is revised to read as follows:

§ 4130.6–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

54. Newly redesignated § 4130.7 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 4130.7 Ownership and identification of livestock.

* * * * *

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

55. Newly redesignated § 4130.8–1 is amended by revising paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, adding a new paragraph (d) and amending newly designated paragraph (e) by adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of entering the public lands or other lands administered by BLM; by any such weaned animals regardless of age; and by such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of AUMs.

(d) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in § 4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per AUM for the appropriate State as determined by the National Agricultural Statistics Service.

(e) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. * * * Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

* * * * *

56. The first sentence of newly designated § 4130.8–3 is revised to read as follows:

§ 4130.8–3 Service charge.

A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

Subpart 4140—Prohibited Acts

57. Section 4140.1 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2), (a)(6), the introductory text of paragraph (b), paragraphs (b)(1)(i), (b)(5), (b)(7), (b)(9), and (b)(10); and by adding paragraphs (b)(11), and (c) to read as follows:

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§ 4140.1 Acts prohibited on public lands.

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under § 4170.1:

* * * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.

* * * * *

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts related to rangelands to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

* * * * *

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

* * * * *

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) Performance of an act listed in paragraphs (c)(1), (c)(2) or (c)(3) of this section where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, constitutes a prohibited act that may be subject to the civil penalties set forth at § 4170.1–1.

(1) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(2) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(3) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

58. Section 4150.1 is amended by designating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

59. Section 4150.2 is amended by redesignating paragraph (b) as paragraph (c), and adding new paragraphs (b) and (d) to read as follows:

§ 4150.2 Notice and order to remove.

* * * * *

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

60. Section 4150.3 is amended by removing the quotation mark, semicolon, and the word "and" at the end of paragraph (c), and removing the first sentence of the introductory text, and revising the sentence following the new first sentence of the introductory text, and revising paragraph (a) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

61. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§ 4130.8 and 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d).

§§ 4160.1–1 and 4160.1–2 [Removed]

62. Sections 4160.1–1 and 4160.1–2 are removed.

63. Section 4160.3 is amended by removing from paragraph (b) the words "on other affected interests" and adding in their place the words "the interested public," revising paragraph (a), and paragraph (c), and adding new paragraphs (d), (e), and (f) to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

* * * * *

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§ 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

(f) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in § 4.21(a)(1) of this title.

64. Section 4160.4 is revised to read as follows:

§ 4160.4 Appeals.

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in § 4.470 of this title. As stated in that part, the decision must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in § 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

Subpart 4170—Penalties

65. Section 4170.1–1 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person found to have violated the provisions of § 4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. * * *

66. Section 4170.1–2 is revised to read as follows:

§ 4170.1–2 Failure To use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

§ 4170.1–3 [Removed]

67. Section 4170.1–3 is removed.

68. Section 4170.2–1 is revised to read as follows:

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than $500.

69. Section 4170.2–2 is revised to read as follows:

§ 4170.2–2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

70. Subpart 4180 is added to read as follows:

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Sec.

4180.1 Fundamentals of rangeland health.

4180.2 Standards and guidelines for grazing administration.

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Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of § 4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

(1) Watershed function;

(2) Nutrient cycling and energy flow;

(3) Water quality;

(4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, and other special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section.

(1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) *Fallback guidelines.* (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Bruce Babbitt,

Secretary of the Interior.

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 886, 887, and 888
Abandoned Mine Reclamation Grant Procedures; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 886, 887, and 888

RIN No. 1029–AB72

Abandoned Mine Reclamation Grant Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: These regulations incorporate new grant procedures implemented by OSM and make editorial changes to ensure consistency with the statutory changes to Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95–87.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rules and Disposition of Comments
III. Procedural Matters

I. Background

A. Summary of the Abandoned Mine Land (AML) Program

The AML Program was established by SMCRA, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, in response to concern over extensive environmental damage caused by past coal mining activities. In effect, the Abandoned Mine Reclamation Fund (Fund) and the program it supports is the coal industry's equivalent to the "Superfund" administered by the Environmental Protection Agency to address hazardous waste discharges.

The eligibility requirements for reclamation of abandoned mine lands are contained in Section 404 of SMCRA. Funding of reclamation projects is subject to a priority schedule. For example, "Priority 1" projects concern those that involve the protection of public health, safety, general welfare, and property from extreme danger of the adverse effects of coal mining practices. "Priority 3" projects, on the other hand, concern environmental problems associated with past coal mining practices that do not necessarily constitute a public health or safety threat or affect the general welfare.

The Fund, administered by the Secretary of the Interior through OSM, is financed by a reclamation fee assessment on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal, and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress.

The Fund is divided into the State/Indian tribe and Federal shares with each State or Indian tribe under a federally approved reclamation program entitled to fifty percent of the reclamation fees collected from coal operations within the State or respective Indian lands. Annually, these States/Indian tribes receive grants to carry out reclamation projects under their AML programs. States are authorized to use up to $3 million of their State-share funds to establish State coal mine subsidence insurance programs, and are also authorized to deposit up to ten percent of their annual grants into special interest-bearing State trust accounts available for future reclamation purposes or for acid mine drainage reclamation projects.

The Federal expenses share of the Fund is allocated among a number of programs such as Federal emergency projects (involving sudden and life-threatening situations that demand immediate attention), high-priority reclamation projects in States and Indian lands without federally approved reclamation programs (referred to as "nonprogram" States/Indian tribes), and the Small Operator Assistance Program, which provides financial assistance to small coal operators to help defray certain costs associated with the surface coal mining permitting process. At present, 23 States and three Indian tribes have OSM approved abandoned mine reclamation programs.

B. Proposed Rules

OSM published proposed rules at 58 FR 59334–59342 (November 8, 1993) concerning abandoned mine reclamation grant procedures and requested comments from the public. During the comment period on the proposed rules, OSM received comments from a variety of sources.

Pursuant to Executive Order 12866, every Federal agency is required within applicable statutory limits to select regulatory goals that maximize benefits to society and to select the most effective means to achieve these goals. To this end OSM has received comments and recommendations from the public and representatives of coal mining States/Indian tribes.

All comments received during the comment period were considered in this rulemaking process, and all substantive comments received are addressed in the following preamble. All comments received are available for inspection in the OSM Administrative Record, room 660, 800 North Capitol Street, NW, Washington, D.C. 20001.

C. Overview of Changes to Abandoned Mine Land Grant Regulations

Over the years, Congress has made several amendments to the provisions in Title IV of SMCRA. These amendments have been, or are in the process of being, implemented by OSM. In addition, the Department has adopted the governmentwide Grants Management Common Rule (43 CFR part 12; subpart C). Due to these changes, certain regulatory references are now outdated or refer to statutory provisions that no longer exist. Therefore, in this rulemaking OSM is editing the AML regulations in 30 CFR chapter VII, subchapter R, to ensure that they will be consistent with agency practice and all past amendments to Title IV of SMCRA. The specific changes proposed to the AML rules are set forth below.

II. Final Rules and Disposition of Comments

Part 870–Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting

Section 870.5 is revised to include Indian tribes in the definition of "agency" to reflect the OSM has approved Abandoned Mine Reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. See Section 405(k) of Pub. L. No. 100–71, 101 Stat. 416 (1987). No comments were received on this section which is adopted as proposed.

Part 886—State Reclamation Grants

Section 886.1 is revised by adding the term "Indian tribes" and deleting specific reference to "State reclamation plan[s]" to reflect that OSM has approved abandoned mine reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. In every instance in this document where Indian tribe has been inserted, the purpose is to add clarity and avoid confusion by reflecting the fact that OSM approval has been extended to Indian tribal programs as well as State programs. See Pub. L. No. 100–71, 101 Stat. 416 (1987). No comments were received on this section which is therefore adopted as proposed.

OSM also amended § 886.3 by making certain editorial changes. Subsection (b) has been deleted and the subsection designation for subsection (a) removed. The word "allocated" has also been replaced with "distributed annually."

This revision clarifies that AML grant funds as "distributed" to States and Indian tribes. The previous use of the word "allocated" was, in the context used, inappropriate. Allocation means the administrative identification in the records of OSM of monies in the Fund for a specific purpose, e.g. identification of monies for exclusive use by a State/Indian tribe, whereas "distribution" is the process by which OSM makes those monies available to States/Indian tribes after the monies are appropriated from the AML Fund by Congress. Throughout this final rule, editorial changes have been made to clarify this terminology. In addition, the word "annually" is added to reflect the current procedure that exists for AML grant distribution. States/Indian tribes with approved AML programs are eligible to submit AML grant requests on an annual basis.

Subsection 886.3(b) has been deleted due to the legislative changes effectuated by the 1990 amendments to Title IV of SMCRA. See the Abandoned Mine Reclamation Act (AMRA) of 1990, Pub. L. 101–508 (November 5, 1990). All funds are now allocated for a specific purpose (see 30 U.S.C. 1232(g)). Accordingly, the reference to 30 CFR § 886.3 concerning "remaining funds" is no longer relevant.

No comments concerning this section were received from the public, thus, this section is adopted as proposed.

Section 886.10 addresses information collection requirements and the appropriate OMB clearance number. OSM revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides OSM and OMB addresses were comments regarding the information collection requirements may be sent. No comments were received on this section which is adopted as proposed.

Section 886.11 is amended to reflect that OSM has approved Abandoned Mine Reclamation plans for three Indian tribes: the Crow, Hopi, and Navajo. No comments were received on this section, which is thus adopted as proposed.

Section 886.12(a) is amended by removing the word "State." This amendment would reflect that Tribal programs have been approved by OSM.

Section 886.12(b), which outlines the permissible uses for grant moneys under this part, is amended by revising the subsection to reflect specific changes made by the 1990 amendments to Title IV of SMCRA. See Pub. L. No. 101–508.

Rather than listing certain reclamation objectives, OSM is referencing specific statutory and regulatory provisions that detail eligibility requirements. This change avoids confusion and provides clearer direction for the States/Indian tribes.

One commenter observed that the last sentence of subsection (b) appears to require the use of fuels other than petroleum or natural gas where public facility projects are constructed with abandoned mine land grant funds. This commenter was unclear as to why such a requirement has been included, and further felt that this restriction was inappropriate in the context of these regulations.

OSM responds that this provision stems from Executive Order 12185 which requires, to the extent technologically and economically feasible, that public facilities planned, constructed or modified in whole or part with Federal funds (e.g., abandoned mine land grant funds) should utilize fuel other than petroleum or natural gas. This provision has been in the regulations since 1982. If a State/Indian tribe determines that a public facility project incorporating such provisions is not technologically or economically feasible, then compliance with this requirement would not be required.

Subsection 886.13(a) is revised by deleting any reference to administrative grants as being separated grants in and of themselves. This change reflects the current OSM policy of awarding all AML funds through a single grant. Administrative costs in this grant would no longer require a second grant, but would cover only the first year of the grant.

Two commenters expressed concern on behalf of their members regarding the requirement to begin the 12-month administrative period at the beginning of the grant since it may not coincide with the grantee's fiscal year. The proposed rule would require grantees to shift their construction grant period to coincide with the fiscal year, thereby losing much of the favorable construction season. The commenter suggests that grantees be allowed to assign the 12-month performance period for the administrative portion of a grant to any 12-month period within the first 18 months of a grant. This additional flexibility would allow the grantee's administrative cost period to coincide with it's fiscal year, while the construction portion of a grant can be scheduled to coincide with the construction season.

OSM has not accepted this comment and does not believe that a change to the proposed rule language is required since sufficient flexibility exists under the current system and the proposed rule as evidenced by several States that already have made determinations to adjust their administrative period to coincide with the start of their fiscal year.

Section 886.13(b) is also revised in order to implement changes made by the 1990 amendments to SMCRA. These statutory amendments deleted a reference to "impact assistance funding" in Section 402(g) of SMCRA (30 U.S.C. § 1232), and moved these reclamation objectives to the non-coal provisions in new SMCRA Section 411 (30 U.S.C. § 1240(a)). A similar change has been made in these regulations. Additionally, and to avoid confusion, OSM has replaced the specific reference to Sections 403 and 409 (30 U.S.C. §§ 1233 and 1239), of SMCRA with a general reference to SMCRA.

OSM also has deleted paragraphs (b)(2) and (b)(3) of § 886.13 which refer to specific AML projects. Under the revised AML grant procedures, project specific information would be, in part, in Abandoned Mine Land Inventory System and, in part, submitted at the time of project activation. This change will decrease certain administration costs of States/Indian tribes, thereby allowing more AML funds to be used for specific AML reclamation purposes.

Two commenters suggested that open-ended grants be allowed, in lieu of the current 3-year limitation, so as to accommodate longer performance periods.

OSM accepts the comment to provide flexibility in the grant period. This change is being made to accommodate longer performance periods where a need is demonstrated by a State/Indian tribe. Since no grant period is specified in the statute, OSM believes that it has the requisite authority under Subsection 413(a) of SMCRA to alter the current 3-year grant period. OSM acknowledges, however, that longer grant periods may pose certain processing and fiscal problems. Accordingly, OSM is planning to examine this concept, developing proposed specific procedures for an open-ended grant program and testing the procedures by means of selected State programs before making a final policy decision.

The existing § 886.14 includes a reference to Section 405(f) of SMCRA, relating to project information required from applicants. Since § 886.14 is revised to relate solely to budget information, submission of information relating to Section 405(f) now is discussed in the preamble to § 886.16.

Section 886.14 is revised to reflect that OSM will not require annual budget estimates. This clarifies that States/Indian tribes should no longer submit site specific information to OSM as part

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of this process. The budget information called for by this revision would provide information that OSM needs to formulate its own budget requests to Congress. In addition, the deletion of the word "administrative" is because under the new procedures outlined in this proposed rule, administrative grants would no longer be separate grants. Other changes to this section are editorial in nature and are designed to reflect existing OSM practice and procedure.

Since no comments were received on this section, it is adopted as proposed.

Section 886.15(c) is renumbered as § 886.15(a) and revised by replacing the word "allocated" with "distributed" in order to clarify that AML funds are "distributed" to States/Indian tribes annually. See the discussion above of proposed revisions to § 886.3. In addition, the previous paragraphs (c)(1)–(6), which refer to specific forms, are deleted in favor of a generalized instruction to use approved forms. This change eliminates the need to amend these regulations if there needs to be a change in form requirements, e.g., when a new Federal law is passed.

Section 886.15(a) is renumbered as § 886.15(b) and amended by revising subsection (a) which allows OSM 90 days in which to act upon a grant application. This amendment would require OSM action on a grant application within 60 days of submittal. This change promotes the overall goal of expediting the AML granting process.

In the interests of greater precision and clarification, OSM has also made an editorial change to the redesignated Subsection 886.15(b) which eliminates "* * * act upon * * *" and substitutes "* * * approve or disapprove * * *". The use of this language is consistent with the wording of subsequent sections.

One commenter stated that the prior § 886.15(a) provides that grants shall be approved by the Director. The commenter pointed out that under the current system, grants are approved by the Field Office Director. The commenter asked whether this regulatory language signals a change from the current practice.

OSM has not changed the regulatory language that provides authority to the Director to approve grants to the States/Indian tribes. OSM points out, however, that the Director has formally delegated this authority to the Field Office level.

Section 886.15(b), which has been redesignated as § 886.15(c), gives OSM 30 days to approve or disapprove a revised application, is revised to allow OSM to treat the revised application as an original. OSM would then have 60 days (under the new § 886.15(b)) to approve or disapprove the application. This change reflects OSM's view that 30 days could be an insufficient amount of time for it to evaluate revised applications. OSM considers 60 days to be a more realistic time frame in which to execute this task.

Several commenters stated that in the prior Subsection 886.15(b), OSM should define what constitutes a minor revision to the grant application. In their view, these minor revisions should not start the 60-day clock for OSM review and approval. In addition, one commenter provided the opinion that the 60-day review and approval process should be shortened to a period of 30 days.

OSM does not agree with these comments. It does not believe that a 30-day period provides sufficient time to review and process grants and agree upon specific details with States/Indian tribes. Accordingly, OSM has not acted upon that part of the comment to reduce the grant processing time period. Furthermore, because of the variation in eligible grant activities and projects, OSM does not believe that the States/Indian tribes would be better served by attempting to further define what is or is not a "minor revision." By trying to list or define items that may or may not occur, one assumes the risk of being over or under inclusive in the class of items described. This ultimately leads to further administrative problems between the States/Indian tribes and OSM. The agency's goal has been and will continue to be to process all grant applications within the 60-day period contemplated by the regulations. Where revisions are required and are submitted accurately and timely by the States/Indian tribes, OSM will attempt in good faith either to meet or take action quicker than the 60-day time period. It must be understood, however, that if there are time delays in obtaining the necessary revisions, it may not be possible in all cases to meet the 60-day period. However, it is a goal that OSM will continue to strive toward.

Section 886.15(d) is revised by inserting the requirement that States/Indian tribes comply with all Federal laws in order to apply for grants under this Part. The deletion of the reference to OSM implementing regulations is merely an editorial change.

Section 886.15(f) is removed because the requirements of this subsection are redundant. Specifically, the information called for in this subsection is also required when States/Indian tribes submit reclamation plans for OSM approval. See 30 CFR 884.13(c)(7).

Section 886.16 is amended to make some editorial and substantive changes. Specifically, § 886.16(a) is revised by deleting reference to Director approval of an agency's grant application. This is an editorial change; the deleted language is superfluous in light of the fact that a "grant agreement" is in fact the document that represents approval of the agency's grant application. Therefore, the existence of a grant agreement denotes that OSM has in fact approved the agency's grant application.

Paragraph (3) of § 886.16(a) requires that the grant agreement include project specific amounts. This paragraph is deleted in order to simplify the AML granting process. Specifically, the deletion of paragraph (a)(3) provides that individual projects will no longer be included in the grant agreement. Instead, this information will be submitted to OSM Field Offices on a project-by-project basis before OSM approves the expenditure of funds for individual projects. Current provisions of these regulations (See recordkeeping and reporting requirements discussed in §§ 886.23 and 886.24), combined with the National Environmental Policy Act (NEPA) compliance process discussed in revised Subsection 886.16(d) below, alleviate the need for approval of specific project amounts in the grant agreement.

Paragraph (a)(4) of § 886.16 requires that the grant agreement include allowable transfers of funds. Likewise, paragraph (b) of 886.16 requires Director approval of agency assignment of functions and funds. Paragraph (a)(4) is removed, and paragraph (b) is revised to give the States/Indian tribes more flexibility in administering their AML grant monies. The revision to paragraph (b) would alleviate the need for Director approval prior to assignment by the States/Indian tribes. In the view of OSM, States/Indian tribes are in the best position to dictate which entities are better suited to carry out day-to-day reclamation activities. With OSM approval no longer necessary, paragraph (a)(4) becomes irrelevant and is therefore removed.

Section 886.16(c) is also deleted and paragraph (d) is revised and renumbered as paragraph (c) to reflect changes in the procedures required to effectuate a grant agreement between OSM and a State/Indian tribe. This amendment reflects a change in the technical administration of the grant agreement process. Specifically, this amendment requires that the Director sign and transmit only two copies of the grant agreement to the agency, instead of the four required prior to amendment. In addition, this amendment changes the time period for the agency to execute the grant from 3 weeks to 20 days. For purposes of this

section, the agency is now required to sign the agreement and return it to OSM within the 20-day period. Since the grant, when signed by the Director, would obligate funds, subsection (c) states that failure of the State/Indian tribe to execute the grant within 20 days would result in a deobligation of the total Federal grant amount. Thus, if the signed agreement is not returned to OSM by the close of business on the 20th day after the designated OSM official signs it and OSM has not granted an extension, OSM will initiate deobligation procedures.

Several commenters have stated that OSM should allow liberal extensions of the 20-day period to execute a grant agreement based upon reasonable justification provided by the State/Indian tribe. Otherwise, commenters note, grantees could be faced with automatic premature deobligations simply because they are unable to obtain the appropriate approvals and authorizing signatures within the 20 calendar day period.

OSM has accepted this comment and made a change in the language of § 886.16(c) to provide that an extension of time may be approved verbally or in writing by the individual delegated the authority to sign grant agreements. Specifically, the word "formally" has been deleted to allow an oral or other less formal mechanism of approval. OSM notes that the States/Indian tribes are the primary delivery mechanism for the AML program. The actual signing of the grant agreements is not a complex matter; OSM will endeavor to continue to keep it as uncomplicated as possible.

In addition, one commenter has requested that the 20-day period of § 886.16(c) be lengthened to 45 days to allow sufficient time to execute grant agreements.

OSM has declined to extend the 20-day period based upon experience over the past decade that reflects that there has been few if any problems encountered by the involved parties in meeting the specified time period.

New §§ 886.16(d) and 886.16(e) are added to clarify that compliance with NEPA is required before AML grant funds may be used by the State/Indian tribe and that a completed Form OSM–76 must be submitted prior to the use of funds for construction activities. Currently, OSM grant procedure requires NEPA compliance at the construction grant award stage. Since the issuance of a grant need not contain authorization of expenditures for any specific project, that action should not require NEPA compliance. Instead, NEPA compliance is deferred until the State/Indian tribe requests authorization to expend funds under the grant. The actual initiation of each project is the action that might have a significant effect on the environment. Under these procedures, NEPA documentation would be developed as a normal part of project planning rather than up front in a grant application. Although OSM field office approval would still be required before the States/Indian tribes are authorized to proceed with individual projects, OSM believes that the overall management of the grant by the States/Indian tribes is enhanced by this action.

One commenter stated that § 886.16(d) should be revised to clarify that the provisions of the National Environmental Policy Act of 1969 apply to coal AML projects only and not to noncoal projects.

OSM disagrees with this comment. NEPA applies to both coal and noncoal projects. NEPA compliance must occur for every project.

Prior to the time that authorization to expend funds for construction activities is requested, information specific to the project is provided to the OSM field office by the State/Indian tribe. The required information is provided on the Form OSM–76, Abandoned Mine Land Problem Area Description (OMB No. 1029–0081). This information conforms to that required in section 405(f) of SMCRA.

Several commenters asked for clarification on whether the filing of Form OSM–76 with grant applications applies to both coal and noncoal projects. Commenters objected to having to file a Form OSM–76 with noncoal projects.

Although unfunded noncoal problem areas/projects do not have to be included in the AML inventory, if such projects are funded, OSM is required under section 403(c) of SMCRA to establish procedures for, and to track, accomplishments. This is being implemented for all Title IV projects through States/Indian tribes submitting information on Form OSM–76.

It is noted that budgets are "revised" and grants are "amended." Because of the method of approving an AML grant, a budget by itself is not required to be revised. Thus, the title of Section 886.17 would be changed from "Grant and budget revisions" to read "Grant amendments."

Section 886.17 is amended by revising paragraph (a)(1) which refers to OMB Circular A–102. This editorial change properly refers to the Grants Management Common Rule. This editorial change has been made throughout this rule.

Paragraph (a)(2) of § 886.17, which discusses events that trigger notification requirements, is revised by deleting subparagraphs (i) and (ii) and inserting language specifying that notification is necessary for changes that will result in an extension of the grant period, or require additional funds, or make a budget transfer from administrative costs to project costs or vice versa. This revision eliminates the need to notify OSM of project-specific changes, but retains the mandates of the Grants Management Common Rule. This simplifies the grant process; OSM would not require project-by-project approval of State/Indian tribe AML projects at the time of initial grant approval. Thus, a grant amendment would not be necessary merely due to changes in individual projects that do not effect the overall grant period, funding, or cost category.

Several commenters stated that § 886.17(a)(2) should be revised to clarify that budget transfers, from administrative costs to project costs to indirect costs and vice versa, require notification only and do not require a grant amendment.

OSM disagrees with the comments. The Grants Management Common Rule, (43 CFR part 12, subpart C.30(c)(3)), requires that when a grant provides funding for both construction and nonconstruction activities, the grantee must obtain prior written approval from the awarding agency before making any fund or budget transfers from nonconstruction to construction or vice versa. This requirement is being implemented by the grantee formally amending its approved budget.

Likewise, paragraphs (b)(1) and subparagraphs (b)(3) (i)–(iii) of section 886.17, which require OSM approval for budget revisions of $5,000 or 5 percent of the grant amount, except in certain enumerated circumstances, are removed by these amendments. Thus, the requirements in paragraphs (b)(1) and (b)(3) (i)–(iii) of section 886.17 are deleted in favor of the new instructions in revised paragraph 886.17(a)(2). This is a conforming change that is brought about by the Grants Management Common Rule and would codify existing practices.

In addition, paragraph (b)(2) of section 886.17 is revised to allow OSM 30 days, instead of the current 15 days, in which to either approve or disapprove the amendment. Paragraph (b)(2) is redesignated as subsection (b). The proposed 30-day time limit reflects OSM's evaluation of the time needed to complete its review of the amendment

In regard to paragraph 886.17(b)(2), one commenter stated that they prefer 15 days instead of the specified 30-day

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period to approve or disapprove grant amendments.

Based on past experience, OSM is of the opinion that a 30-day period provides a reasonable and sufficient time to review and approve or disapprove a grant amendment. Accordingly, OSM has not acted upon this comment and will endeavor to process all grant amendments as quickly as possible within the 30-day period contemplated by the regulation.

Section 886.18, discussing conditions for grant reduction, suspension, and termination, is amended by revising paragraph (a)(2) to make a minor editorial change to the reference from 30 CFR 872.11(b)(2) to 30 CFR 872.11(b)(1) and 872.11(b)(2). This is a conforming change made necessary by rulemaking to implement the AMRA, Pub. L. 101–508.

In the interest of clarity, OSM has decided to substitute the word "obligate" for "expend" in paragraph 886.18(a)(2). Paragraph 402(g)(1)(D) of SMCRA uses the term "expended," but the term "obligate" is deemed to be a more technically correct financial term to reflect an irrevocable commitment of funds by a grantee.

In regard to paragraph 886.18(a)(2), one commenter observed that if a grantee fails to expend distributed funds within a 3-year grant period, those funds will be expended by the Secretary to accomplish the purposes of Title IV. The commenter disagrees with this section due to annual distribution decreases and anticipated future decreases due to the amendments to SMCRA. The commenter feels that all distributed funds should be utilized only by the respective State/Indian tribe for the purposes of Title IV.

Except for the editorial change previously mentioned, OSM does not believe that any changes should be made to this regulation. Section 402(g)(1)(D) of SMCRA specifically provides for the Secretary to use moneys granted, but not expended, within 3 years after the grant award. Note however, that even though the language of this provision has not been modified, OSM has always been able to work with the States/Indian tribes on expending appropriated funds.

Paragraph (a)(3) of section 886.18 is also revised by specifying that certain Indian tribes may receive reclamation funds without having an approved regulatory program. Under the 1987 amendments to SMCRA, the Crow, Hopi, and Navajo Indian tribes do not have an approved Title V program prior to being eligible to receive AML funds. See 30 U.S.C. 1235(k) (1988).

Subsection 886.18(b) is replaced by a new subsection (b). The new subsection (b) incorporates remedial measures outlined in the Grants Management Common Rule.

Also, the current subsection (b) is revised and redesignated as subsection (c). This new subsection (c) contains editorial changes to indicate that the "OSM official delegated grant signature authority" is the person who would give notice of grant reduction, suspension, or termination of a grant. In addition, subsection (c) requires certified mail transmittal of the required written notice. Subsection (c) also adds a new paragraph (7) that would incorporate the concept of mutual termination of a grant as outlined in the Grants Management Common Rule.

Likewise, the current subsection 886.18(c) is redesignated as subsection (d) and revised to clarify that State or Tribal appeals of OSM decisions to reduce, suspend, or terminate a grant are evaluated to the Director of OSM. This rule provides that the Director would have 30 days from receipt to decide the appeal. The Director's decision could then be appealed to the Secretary.

These appeals would be processed in accordance with existing OSM procedures. OSM has elected not to codify the details of this process since the procedures may be amended as necessary.

One commenter stated that, before reduction or termination of a grant, the grantee should be allowed to complete the appeal process provided in Subsection 886.18(d). Hence, paragraph 886.18(c)(2) should be revised to provide for the initiation and completion of the appeals process before any final action is taken to reduce or terminate a grant.

OSM accepts this comment and notes that no regulatory language change is required because the authority to appeal a reduction, suspension or termination of a grant exists in paragraph 886.18(d). Under this paragraph the Director must decide the appeal within 30 days of receipt. Further, a grantee can then appeal the Director's decision to the Secretary who also has 30 days to act upon the appeal.

Section 886.19, which explains requirements for an audit, is revised to remove an outdated reference to OMB Circular A–102.

Two commenters requested further clarification of Section 886.19 by incorporating appropriate reference to specific published Office of Management and Budget guidance.

In order to provide guidance to grantees, OSM has revised section 886.19 to state that the agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget. This revision is being done in a general fashion because the applicable circulars and other guidance documents could be modified and/or combined in the future.

Section 886.20, which outlines administrative procedures for agencies under this Part, is revised by replacing references to OMB Circular A–102 with the Grants Management Common Rule. This change will alleviate the need for rulemaking to effectuate every minor change in form requirements. No comments were received on this section which is adopted as proposed.

Section 886.21, outlining allowable costs, is revised by deleting the work "project" in paragraph (a). As discussed throughout this rulemaking, these amendments eliminate certain project specific grant procedures under the AML program. The revision will have little substantive effect since previous grants, although containing project-specific information, were for overall reclamation activities.

One commenter has noted that "acquisition of land" is an allowable cost. That commenter has stated that OSM may want to clarify § 886.21(a) to note that acquisition is limited to lands affected by coal and noncoal mining, i.e., does not include public facility projects authorized under Section 411(f) of SMCRA.

OSM has not made any change to § 886.21. This is a general provision that addresses grants as a whole; if specific limitations exist in Title IV of SMCRA, those limitations would have to be complied with as required.

Section 886.22(a) contains some editorial changes in order to properly reference the Grants Management Common Rule. In addition, subsection (d), mandating that drawdowns be made by the agency as closely as possible to the time of making disbursements, is revised by requiring that when advances are appropriate, they should be made as closely as possible to the actual time of disbursement. This change will reflect current practice and procedure. No comments were received on this section which is thus adopted as proposed.

Section 886.23 is amended by replacing the semi annual reporting requirement with an annual reporting requirement. In the view of OSM, annual reporting is sufficient to ensure proper Federal oversight. The AML program has been in effect in most States for over a decade. This change represents the growing maturity of these programs and the confidence that OSM has in their management.

In order to maintain consistency in the regulatory language, OSM is making a technical change and thereby deleting reference to "cooperative agreements" in § 886.23. The term "grant" as used in this regulation includes financial assistance in the form of grants and/or cooperative agreements.

Several commenters stated their support of the OSM proposal in § 886.23(a) to change the reporting requirements to an annual cycle rather than semi annual.

OSM agrees with the commenters that this change will assist in reducing administrative burdens on grantees and recognizes the superior performance of the States/Indian tribes in administering their AML programs over the years.

In addition, existing paragraph (a) and (b) are revised by deleting references to specific form requirements. This is accomplished by deleting a portion of paragraph (a), all of paragraphs (a)(1)–(2), and all of paragraph (b). In place of these references to specific forms, this amendment directs agencies to submit reporting forms specified by OSM. This change eliminates the need for rulemaking procedures to amend these regulations in every instance when form requirements change. In addition, many of the forms required by this section anticipate the need for project-specific information. In light of the changes that are made by these amendments, specific information no longer needs to be submitted to OSM in advance. Some project-specific information would be provided to OSM at the time a grantee requests approval for expenditures of funds for individual projects. Additional detailed information would also be available in the grantee's files.

A revised paragraph (b) is added to § 886.23 which requires, at the completion of a grant, agency submission of closeout reports as specified by OSM. Specifically, subsection (b) requires submission of Form OSM–76 upon project completion. This submission is necessary to comply with the requirement in section 403(c) of SMCRA that on a regular basis OSM note on its inventory those projects completed under Title IV.

Section 886.23(c) is deleted, since the requirement to submit Form OSM–76 upon project completion is now contained in revised subsection (b), as noted above.

Several commenters observed that § 886.23(b) states that a completed Form OSM–76 shall be submitted upon project completion, not grant expiration. Because of the 3-year limitation for construction grants and the fact that many projects may not begin until the end of the first construction season due to fiscal year constraints, some projects may require funding from more than one grant. Consequently, some projects may not be completed when grant closeout reports are due, and a Form OSM–76 sent at that time would be incomplete. Because of this situation, the commenters suggest that OSM needs to define "project completion" within the framework of this section.

OSM agrees in part. However, the term "project completion" refers to when the actual construction/reclamation work is completed. This could involve more than one grant; likewise, it means that if the reclamation is completed at a site after one year of the grant, the Form OSM–76 is due at that time. This is necessary to fulfill the mandate of Section 403(c) requiring that the inventory be updated annually with all completed projects.

Section 886.24 is amended by revising subsection (a) which requires agencies to keep records in accordance with OMB Circular A–102. OSM is revising this subsection to properly reference the Grants Management Common Rule, which supersedes Circular A–102 for purposes of this Part.

Section 886.24(b), which mandates certain recordkeeping requirements for subgrantees and contractors, is deleted. Designation of subsection (a) is removed and paragraph (1) and (2) are redesignated as subsections (a) and (b) respectively. In OSM's judgment, the information called for by this subsection would be redundant in light of the requirements of the Grants Management Common Rule.

No comments were received on this section. This section is being adopted as proposed.

OSM adds a new § 886.25 to simplify the existing regulation by including special Indian land procedures (formerly part 888) in part 886.

New § 886.25(a) discusses the Director's authority to mitigate emergencies or extreme dangers resulting from past coal mining practices and to perform other reclamation on Indian lands not subject to an approved reclamation program.

New § 886.25(b) is a conforming change that would incorporate the language of deleted subsection 888.11(a).

New § 886.25(c) is a conforming change that would incorporate the language of deleted subsection 888.11(b).

New § 886.25(d) is a conforming change that would incorporate the language of deleted subsection 888.11(c).

New § 886.25(e) is a conforming change that would incorporate the language of deleted subsection 888.11(d).

No comments were received on this section, which is therefore adopted as proposed.

Part 887—Subsidence Insurance Program Grants

Section 887.3 discusses the Director s authority to approve or disapprove grants for subsidence insurance up to a total of $3 million in States with approved reclamation plans. The reference to section 402(g)(2) of SMCRA is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph.

Section 887.10 deals with information collection requirements and their submission to OMB for approval. The collection of this information will not be required until it has been approved by OMB. OSM has revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 887.11 discusses eligibility for subsidence insurance program grants under this Part. This section is revised by making minor editorial changes. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph. In addition, the reference to SMCRA section 402(g)(2) is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA.

Section 887.12 is amended by replacing all references to OMB Circular A–102 with references to the Grants Management Common Rule. As discussed above, this change reflects the fact that the Grants Management Common Rule supersedes OMB Circular A–102 for the purposes of this Part.

In addition, § 887.12(b), which specifies the contents of a grant application under this Part, is revised by adding a reference to the procedures of 30 CFR part 886. This amendment advances the goal of simplifying the AML grants process by providing a uniform set of procedures for the grant application process. The effect of this amendment is to combine the process of applying for reclamation grants under

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part 886 and for subsidence insurance program grants under this Part.

Section 887.13 is amended by replacing reference to OMB Circular A–102 with reference to the Grants Management Common Rule. As discussed above, this change is made throughout these amendments.

No comments were received in regard to any of the above sections contained in part 887, hence these sections are adopted as proposed.

Part 888—Indian Reclamation Programs

OSM deletes part 888 and incorporates its provisions into new section 886.25. *See the discussion of proposed revisions of section 886.25 above.* No comments were received concerning this deletion.

III. Procedural Matters

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029–0059, 1029–0090, and 1029–0107.

Author

The principal author of this rule is Norman J. Hess, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202–208–2949.

Executive Order 12866

This rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSM has prepared a final environmental assessment (EA) of this rule, and has made a finding that this rule will not significantly affect the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI), has been approved for this final rule in accordance with OSM procedures under NEPA. The EA and FONSI are on file in the OSM Administrative Record, room 660, 800 N. Capitol Street NW., Washington, DC

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule specifies procedures for the Federal grants program under Title IV of SMCRA. This rule is not intended to preempt State law except that to the extent States wish to participate in the program, they must comply with the Federal rules.

B. What is the effect on existing Federal law or regulations, if any, including all provisions repealed or modified?

This rule modifies the AML grant process regulations pursuant to SMCRA as described herein, and is not intended to modify the rules or provisions of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under Section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of this rule, however, administrative procedures must be exhausted.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statues that explicitly define those items?

Terms that are important to the understanding of this rule are set forth in 30 CFR 870.5 and 887.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

List of Subjects

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 886

Grant programs—natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 887

Grant programs—natural resources, Insurance, Surface mining, Underground mining.

30 CFR Part 888

Indian land, Surface mining, Underground mining.

Dated: January 18, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

Accordingly, 30 CFR parts 870, 886, 887, and 888 are amended as set forth below:

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORT

1. The authority citation for part 870 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

2. Section 870.5 is amended by revising the definition of "Agency" to read as follows:

§ 870.5 Definitions

* * * * *

Agency means the State agency designated by the Governor, or in the case of Indian tribes, the Tribal agency designated by the equivalent head of an Indian tribe, to administer the State/Indian tribe reclamation program and to receive and administer grants under this part.

* * * * *

3. The heading of part 886 is revised to read as follows:

PART 886—STATE AND TRIBAL RECLAMATION GRANTS

4. The authority citation for part 886 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

5. Section 886.1 is revised to read as follows:

§ 886.1 Scope.

This part sets forth procedures for grants to States/Indian tribes having an approved plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980) should be used as applicable.

6. Section 886.3 is revised to read as follows:

§ 886.3 Authority.

The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress. Such moneys are distributed annually to the States/Indian tribes.

7. Section 886.10 is revised to read as follows:

§ 886.10 Information collection.

The collections of information contained in 30 CFR part 886 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0059. The information will be collected to meet the requirements of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with the Grants Management Common Rule (43 CFR part 12, subpart C) and sound principles of grants management. The obligation to respond is required to obtain a benefit in accordance with Pub. L. 95–87. Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0059), Washington D.C. 20503.

8. Section 886.11 is revised to read as follows:

§ 886.11 Eligibility for grants.

A State/Indian tribe is eligible for grants under this part if it has a reclamation plan approved under part 884 of this chapter.

9. Section 886.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 886.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this Part to administer the approved reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87.

(b) Grants shall be approved for reclamation and eligible lands and water in accordance with 30 U.S.C. 1234 and 1241 and 30 CFR 874.12, 875.12, and 875.14, and in accordance with the priorities stated in 30 U.S.C. 1233 and 1241 and 30 CFR 874.13 and 875.15. To the extent technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should use fuel other than petroleum or natural gas.

* * * * *

10. Section 886.13 is revised to read as follows:

§ 886.13 Grant period.

(a) The period for administrative costs of the authorized agency should not exceed the first year of the grant.

(b) The Director shall approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of 30 U.S.C. 1201 *et seq.*

11. Section 886.14 is revised to read as follows:

§ 886.14 Annual submission of budget information.

The agency shall cooperate with OSM in the development of information for use by the Director in the preparation of his/her requests for appropriation of moneys for reclamation grants. OSM shall determine the schedule for submitting this information on an annual basis. Funds required to prepare this submission may be included in the grants under 30 CFR 886.12.

12. Section 886.15 is amended by revising and redesignating paragraph (a) as (b); by revising and redesignating paragraph (b) as (c); by revising and redesignating paragraph (c) as (a); by revising paragraph (d); and by removing paragraph (f) to read as follows:

§ 886.15 Grant application procedures.

(a) An agency shall use application forms and procedures specified by OSM. A preapplication is not required if the total of the grant requested is within the amounts distributed to the State/Indian tribe annually by the Director based on the Congressional appropriation.

(b) OSM shall approve or disapprove a grant application within 60 days of receipt. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(c) If the application is not approved, OSM shall inform the agency in writing of the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall process the revised application as an original application.

(d) The agency shall agree to perform the grant in accordance with the Act, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

* * * * *

13. Section 886.16 is amended by revising paragraphs (a) and (b); by removing paragraph (c); by redesignating paragraph (d) as (c); by revising redesignated paragraph (c); by redesignating paragraph (e) as (f); and by adding new paragraphs (d) and (e) to read as follows:

§ 886.16 Grant agreements.

(a) OSM shall prepare a grant agreement that includes:

(1) A statement of the work to be covered by the grant; and

(2) A statement of the approvals of specific actions required under this subchapter or the conditions to be met before approvals can be given if moneys are included in the grant for these actions.

(b) The State/Indian tribe may assign functions and funds to other Federal, State, or local agencies. The grantee

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agency shall retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall sign two copies of the agreement and transmit them either by certified mail, return receipt requested, or by hand delivery, to the agency for countersignature. The grant constitutes an obligation of Federal funds at the time the Director signs the agreement. The agency shall have 20 calendar days from the date of the Director's signature to execute the agreement in order to accept its terms and conditions. Unless an extension of time is approved by the Director, failure to execute the agreement within 20 calendar days shall result in an immediate deobligation of the total Federal grant amount.

(d) Although the funds are obligated when the Director signs the agreement, for any expenditure requiring compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), funds may not be used by the State/Indian tribe until all actions necessary to ensure compliance with NEPA are taken.

(e) The agency shall submit a completed Form OSM–76 (Abandoned Mine Land Reclamation Problem Area Description) showing proposed funding for any planned non-emergency project work to the applicable OSM field office before it may use funds for construction activities.

* * * * *

14. Section 886.17 is revised to read as follows:

§ 886.17 Grant amendments.

(a) Grant amendments. (1) A grant amendment is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for grant amendments shall conform to those in 43 CFR part 12, subpart C.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes that may require a grant amendment. The agency shall notify the Director in advance of changes that will result in an extension of the grant period or require additional funds, or when the agency plans to make a budget transfer from administrative costs to project costs or vice versa.

(b) OSM shall either approve or disapprove the amendment within 30 days of its receipt.

15. Section 886.18 is amended by revising paragraphs (a)(2) and (a)(3); by redesignating paragraphs (b) and (c) as paragraphs (c) as (d) respectively; by adding a new paragraph (b); and by revising the newly redesignated paragraphs (c) and (d) to read as follows:

§ 886.18 Grant reduction, suspension, and termination.

(a) * * *

(2) If an agency fails to obligate moneys distributed and granted within three years from the date of grant award, or within an extension granted under § 886.13 or § 886.17, OSM may reduce the grant in accordance with § 872.11 (b)(1) and (b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under part 735 of this chapter is terminated, OSM shall terminate the grant awarded under this part. This paragraph does not apply to Indian tribes who receive reclamation funds without having an approved regulatory program.

* * * * *

(b) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance in a State plan or application, a notice of award, or elsewhere, OSM may take one or more the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(c) *Grant reduction, suspension, and termination procedures.* (1) The OSM official delegated grant signature authority shall give the agency at least 30 days written notice of intent to reduce, suspend, or terminate a grant. OSM must send this notice by certified mail, return receipt requested. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action before reducing or terminating a grant.

(3) The OSM official delegated grant signature authority shall notify the agency of the termination, suspension, or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, the agency shall retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(5) Upon receiving notification of OSM's intent to terminate the grant, the agency shall not make any new commitments without OSM's approval.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A–87

(7) Either OSM or the agency may terminate or reduce a grant if both parties agree that continuing the program would not produce beneficial results commensurate with the further expenditure of funds. Such a termination for convenience shall be handled as an amendment and shall be signed by the OSM official delegated grant signature authority.

(d) *Appeals.* (1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Director.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Director shall decide the appeal within 30 days of receipt.

(2) Within 30 days of the Director's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Secretary shall act upon the appeal within 30 days of receipt.

16. Section 886.19 is revised to read as follows:

§ 886.19 Audit.

The agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget.

17. Section 886.20 is revised to read as follows:

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in 43 CFR part 12, subpart C and use the property form specified by OSM and

approved by the Office of Management and Budget.

18. Section 886.21 is amended by revising paragraph (a) to read as follows:

§ 886.21 Allowable costs.

(a) Allowable reclamation costs include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of the acquisition of land.

* * * * *

19. Section 886.22 is amended by revising paragraphs (a) and (d) to read as follows:

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of 43 CFR part 12, subpart C. Accounting for grant funds must be accurate and current.

* * * * *

(d) When advances are made, they should be made as closely as possible to the actual time of the disbursement.

* * * * *

20. Section 886.23 is revised to read as follows:

§ 886.23 Reports.

(a) For each grant, the agency shall annually submit to OSM reporting forms specified by OSM.

(b) At the completion of each grant, the agency shall submit a completed Form OSM–76 and any other closeout reports specified by OSM.

21. Section 886.24 is amended by revising paragraph (a) and deleting its designation as (a); revising paragraph (a)(1) and redesignating as (a); redesignating paragraph (a)(2) as (b); and by removing the existing paragraph (b) to read as follows:

§ 886.24 Records.

The agency shall maintain complete records in accordance with 43 CFR part 12, subpart C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(a) The amount and disposition of all assistance received for the program; and

(b) * * *

22. Section 886.25 is added to read as follows:

§ 886.25 Special Indian lands procedures.

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this Section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under § 872.11(b)(5).

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

23. The authority citation for part 887 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

24. Section 887.3 is revised to read as follows:

§ 887.3 Authority.

The Director is authorized to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b) of this chapter and Section 402(g)(1) of Pub. L. 95–87 (30 U.S.C. 1232).

25. Section 887.10 is revised to read as follows:

§ 887.10 Information collection.

The collections of information contained in 30 CFR part 887 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1029–0107. The information will be used to grant funds to State regulatory authorities and Indian tribes to administer their subsidence insurance program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0107), Washington, D.C. 20503.

26. Section 887.11 is revised to read as follows:

§ 887.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under part 884 of this chapter and if it has funds available under § 872.11(b) of this chapter and Section 402(g)(1) of SMCRA, as amended, 30 U.S.C. 1232.

27. Section 887.12 is amended by revising paragraph (a), the introductory sentence of paragraph (b), and paragraph (e) to read as follows:

§ 887.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with the Grants Management Common Rule (43 CFR part 12, subpart C).

(b) The grant application shall be submitted under the procedures of 30 CFR part 886 and contain the following:

* * * * *

(e) Insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR part 12, subpart C.

28. Section 887.13 is revised to read as follows:

§ 887.13 Grant period.

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to the 43 CFR part 12, subpart C.

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PART 888—[REMOVED]

29. Part 888 is removed.

[FR Doc. 95–4259 Filed 2–21–95; 8:45 am]
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federal register

Wednesday
February 22, 1995

Part IV

Department of Labor

Mine Safety and Health Administration

Program Policy Letters: Public Input in Development and Withdrawals; First Aid Training for Selected Supervisors; and Examination of Working Places; Notices

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Public Input in Development of Program Policy Letters; Withdrawal of Program Policy Letters

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is inaugurating a process to voluntarily solicit public comment on certain draft policy statements before the statements are final. MSHA also announces the withdrawal of the following Program Policy Letters (PPL): PPL No. P94–IV–2, First Aid Training For Selected Supervisors; PPL No. P94–IV–4, Ventilation Plan; and PPL No. P94–IV–5, Examination of Working Places.

FOR FURTHER INFORMATION CONTACT: Marvin Nichols, Administrator for Coal Mine Safety and Health, 703–235–9423, or Vernon Gomez, Administrator for Metal and Nonmetal Mine Safety and Health, 703–235–1565.

SUPPLEMENTARY INFORMATION:

Public Input in Program Policy Letters

MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters. These Program Policy Letters are not regulations and impose no new regulatory requirements. The Program Policy Letters are Agency interpretations of what existing MSHA regulations require and explain how regulations work or apply. Program Policy Letters are used by MSHA and the mining community, including mine operators, miners, and equipment manufacturers, as guidance in determining how best to comply with MSHA safety and health regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution both within the Agency and in the public.

The mining community has expressed concerns about MSHA's process for interpreting mandatory standards. MSHA believes that compliance may be improved if the interested public has the opportunity to provide input and so participate in the development of policy.

Accordingly, MSHA is announcing a new process to voluntarily solicit public comment on certain draft Program Policy Letters. MSHA will publish a Notice in the **Federal Register** explaining the need for the draft policy statement and requesting public comment on the designated draft policy. The public will have a reasonable period of time to comment. This period of time will allow persons time to formulate comments without impeding timely issuance of the policy statement. MSHA also will make efforts to notify interested persons such as company safety directors and miners' representatives directly. This will further assure that those individuals have the opportunity to comment on issues of immediate concern to them and provide MSHA useful feedback from the mining community at large. MSHA will also experiment with other methods of encouraging input from affected miners and operators including public meetings in the mining communities and use of local media outlets. MSHA will consider the public comments before taking final action on the policy statement.

MSHA emphasizes that it is not legally required to submit its draft policy statements for public comment. The Agency has determined as a matter of discretion that public participation in the policy setting process may be beneficial as discussed above. The Agency will select the new or revised Program Policy Letters that it considers appropriate for public comment. Policies which respond to safety and health emergencies or pertain to routine, non-controversial matters will not be considered for public comment. This new process is subject to change by the Agency as experience and circumstances dictate. This policy making process is not rulemaking; therefore, Agency decisions made pursuant to this process are not subject to judicial review under section 101(d) of the Federal Mine Safety and Health Act of 1977. When enforcement actions are taken consistent with a Program Policy Letter they are subject to review by the independent Federal Mine Safety and Health Review Commission.

Withdrawal of Program Policy Letters

In initiating the new process for public input to Program Policy Letters, MSHA is withdrawing three recent Program Policy Letters. These Program Policy Letters are PPL No. P94–IV–2 (30 CFR 56/57.18010—First Aid Training For Selected Supervisors), PPL No. P94–IV–4 (30 CFR 57.8520—Ventilation Plan), and PPL No. P94–IV–5 (30 CFR 56/57.18002—Examination of Working Places).

Two of those Program Policy Letters (First Aid Training for Selected Supervisors and Examination of Working Places) are the subject of notices soliciting public comment elsewhere in this edition of the **Federal Register**.

Dated: February 16, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4340 Filed 2–16–95; 4:31 pm]

BILLING CODE 4510–43–M

First Aid Training for Selected Supervisors

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is voluntarily requesting comments on a draft Program Policy Letter concerning first aid training for selected supervisors which is required by 30 CFR 56/57.18010.

DATES: Written comments must be submitted on or before April 10, 1995.

ADDRESSES: Send written comments to Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, Virginia 22203, Fax: 703–235–9173. Commenters are encouraged to send commends on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Richard H. Judd, Mine Safety and Health Specialist, Metal and Nonmetal Mine Safety and Health, 703–235–8480.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPSs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution.

To increase public participation on selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is requesting comments on a draft PPL concerning first aid training for selected supervisors, as required by 30 CFR 56/57.18010. These standards were first promulgated as advisory standards in July 1969 and became mandatory in August 1973. MSHA will consider all timely submitted comments before taking final action on the PPL.

Draft Policy

Background

Standard 56/57.18010, First Aid Training, states, "Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees."

The intent of the standard is to provide first aid capability at each mine so that timely and appropriate treatment may be given in the event a miner is injured. Questions raised by industry and labor indicate that compliance and enforcement guidance is needed to clarify the requirements of the regulation. In a recent five year period, more than 2,200 violations of the standard have been cited. Many of these citations were issued under circumstances where no one at the mine site had been given first aid training. Therefore, MSHA is considering issuing a PPL on this subject. It is MSHA's policy that a sufficient number of supervisors must be selected and trained to ensure that a responsible person is available to administer first aid at the mine site on all working shifts.

Selected Supervisors To Be Trained

Selected supervisors can include shift bosses, foremen, superintendents, or other designated individuals in a supervisory position. In order to provide first aid assistance to sick or injured employees, trained supervisors should be selected to provide coverage on each working shift.

Course Content

The word "trained" refers to a performance capability. A person trained in first aid must be able to provide the necessary level of treatment consistent with accepted first aid practices. The first aid course for supervisors, therefore, should include, at a minimum, the following fundamental topics which are consistent with those of nationally recognized courses: patient assessment, artificial ventilation, control of bleeding, control of shock, wounds and dressings, burns and scalds, musculoskeletal injuries, and handling and transportation.

Accepted Courses

Training courses which include the fundamentals identified above, and are sponsored or sanctioned by a recognized organization (American Red Cross, National Safety Council, etc.) meet the requirements of 30 CFR 56/57 18010. First aid training conducted by MSHA-certified instructors also meets the requirements of the standard, provided that the topics, as detailed above, are included in the course. 30 CFR Part 48 training requirements address only a limited form of first aid training for all miners and, therefore, is unacceptable for compliance with 30 CFR 56/57.18010.

A certificate of course completion provided by the trainer or the recognized training organization, or a written statement by the mine operator certifying course completion, will serve as evidence to MSHA of current training.

Refresher Training

In order for first aid capability to remain effective, it is necessary for persons who have received the training to maintain an adequate competency level and, thus, remain "trained." Refresher training prevents the loss or diminution of competency over a period of time. When a recognized course is used to comply with the standard, retraining should be conducted within the recommended frequency and course content established by the providing organization.

Availability Of Training For Employees

Availability of training for interested employees may be announced by posting the course schedule on the mine bulletin board, or by notifying employees through other means. The course should be given at a location and time convenient to employees.

Dated: February 16, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4342 Filed 2–16–95; 4:31 pm]

BILLING CODE 4510–43–M

Examination of Working Places

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is voluntarily requesting comments on a draft Program Policy Letter concerning examination of working places which is required by 30 CFR 56/57.18002.

DATES: Written comments must be submitted on or before April 1, 1995.

ADDRESSES: Send written comments to Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, Virginia 22203, Fax: 703–235–9173. Commenters are encouraged to send comments on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Roderick Breland, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, 703–235–8480.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPLs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution.

To increase public participation on selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is requesting comments on a draft PPL concerning examination of working places, as required by 30 CFR 56/57.18002. These safety standards were first promulgated as advisory standards in July 1969 and became mandatory in August 1979. MSHA will consider all timely submitted comments before taking final action on the PPL.

Draft Policy

Background

Standard 56/57.18002, Examination of Working Places, contains the following requirements:

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

The intent of the standard is to require regular close examination of the total mining environment to find eliminate potential hazards caused

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unsafe conditions and practices that may be present. However, in a 5-year period, MSHA has investigated 17 serious and fatal accidents where working place examinations were not conducted or were inadequately conducted. In a significant number of these accidents, failure to conduct working place examinations was a contributing cause. Therefore, rigorous working place examinations are a fundamental accident prevention tool for the mining industry. The Federal Mine Safety and Health Act of 1977 (Mine Act) holds mine operators responsible for preventing the existence of unsafe conditions and practices and the correction of hazards before miners are exposed to them. MSHA is revising its policy concerning 30 CFR 56/57.18002 to better assure that operators conduct rigorous working place examinations.

Recordkeeping

The standard requires a record that working place examinations were conducted. Those records are required to be retained by the mine operator for one year, and made available to the Secretary of Labor or his authorized representative. MSHA has accepted annual certification of work place examinations as an alternative to the standard's recordkeeping requirement, when such certification is made available at the time of an inspection. However, given the serious and fatal accidents that have occurred, annual certification of work place examinations will no longer be accepted for compliance.

To be effective, work place examinations must be timely, made by a competent person, made in the areas where miners work, and hazardous conditions must be promptly corrected. Therefore, for an operator to be in compliance, each working place examination record must include information essential and necessary to accomplish the intent of the standard: (1) the date and time the examination was made; (2) by whom the examination was made; (3) the area(s) examined; and (4) any hazardous conditions found. These records would need to be made available upon request to the Secretary's authorized representative.

Competent Person

A "competent person," according to 30 CFR 56/57.2, is "* * * a person having abilities and experience that fully qualify him to perform the duty to which he is assigned." This definition includes any person who is fully qualified to perform the assigned task. Examinations may be made by a mine foreman, a mine superintendent, another person associated with mine management, or a miner, provided the person is fully qualified to perform the task. Fully qualified means having had adequate experience in the task or having been trained in the recognition of hazards in the working place.

Working Place

The phrase "working place" is defined in 30 CFR 56/57.2 as "* * * any place in or about a mine where work is being performed." As used in the standard, the phrase applies to those locations in a mine or mill where persons work during a shift in the mining or milling processes. The working place for an individual assigned to perform maintenance or repair duties, for example, is the area where the individual performs the maintenance or repair work. For an operator to be in compliance, that area would need to be examined by a competent individual for hazardous conditions and any hazardous conditions would need to be promptly corrected. A hazardous condition is any condition or practice which poses a risk of harm to a miner or could result in a violation of a mandatory health or safety standard.

Standard 56/57.18002 does not apply to access or other roads not directly involved in the mining process, administrative office building, parking lots, lunchrooms, toilet facilities, or inactive storage areas. Isolated, abandoned, or idle areas of mines or mills need not be examined, unless persons perform work in these areas during the shift.

Frequency of Examination

The standard requires working place examinations to be performed "at least once each shift." Although the standard permits the examination to be made at any time during the shift, MSHA strongly recommends in keeping with the remedial intent of the Mine Act and the standard that this examination be conducted before work begins on a shift or before work is performed in an area. To be in compliance with the standard, the mine operator must promptly initiate the correction of any hazardous conditions that are found. If an imminent danger is found during an examination, the operator must also withdraw all persons from the affected area except those necessary for the correction of the condition.

Dated: February 16, 1995

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 51

Grade Standards: Florida Grapefruit, Oranges, Tangelos, and Tangerines; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 51

[Docket Number FV-93-301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. The recommended revisions would: Redefine terms to more clearly reflect current cultural and marketing practices; add and revise the grades so as to make them uniform and consistent with each other and other recently revised U.S. grade standards; revise the existing tolerances and the application of tolerances from allowing specific numbers of defective fruit to percentages of defective fruit; revise the size sections to give industry greater flexibility in marketing and packaging new varieties of fruit; and, delete references to a visual aid which is no longer available. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

DATES: Comments must be postmarked or courier dated on or before April 24, 1995.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Florida Grapefruit, the United States Standards for Grades of Florida Oranges and Tangelos, and the United States Standards for Grades of Florida Tangerines were last revised in December 1980. The Florida Citrus Packers (FCP), which represents the majority of citrus growers and packers in Florida, have requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The FCP contends that due to new improved varieties, that changes to the current standards are necessary.

The main purpose of the proposal is set forth in order to bring the standards into conformity with current harvesting and marketing practices. In addition, the standards have been reviewed for need, clarity, and effectiveness as part of a periodic review. Accordingly, we propose to amend the regulations as discussed below.

Presently, in the U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines, the U.S Fancy, U.S. No. 1, and U.S. No. 2 grades are required to be "free from" bruises, and the U.S. No. 3 grade is required to be "free from very serious damage." "Free from" being any amount of bruising would be scored against the U.S. Fancy, U.S. No. 1 and U.S. No. 2 grades. However, it would have to be "free from very serious damage" to be scored against the U.S. No. 3 grade. There currently is no definition of very serious damage by bruising in the standards, and this may create confusion in the marketplace. Therefore, it is proposed to delete "free from" bruises and add "free from injury," "free from damage," and, "free from serious damage" to the U.S. Fancy, U.S. No. 1 and U.S. No. 2 grades, respectively ("free from very serious damage" will remain as it is currently in the U.S. No. 3 grade). The terms will be defined in the "classification of defects" section. The definitions for injury, damage, and serious damage by bruising are the same due to the severity of the defect, thereby, bruising will be scored as serious damage when "segment walls are collapsed, or rag is ruptured and juice sacs are ruptured," and scored as very serious damage when "fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than 3/4 inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit."

Currently, in the U.S. Standards for Grades of Florida Grapefruit, and U.S. Standards for Grades of Florida Oranges and Tangelos, the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. No. 3 grades are required to be "free from cuts not healed." It is proposed to delete this requirement, and add the requirement "free from unhealed skin breaks" to the above grades. This will encompass all types of fresh skin breaks no matter what the cause, and will create uniformity among the three standards.

It is proposed to delete the "growth crack" requirements from the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. No. 3 grades of Florida Grapefruit, and Florida Oranges and Tangelos. Any unhealed growth crack would be treated as an "unhealed skin break," and any amount would be scored. Healed growth cracks would be considered as a "scar" and scored based on the scar definitions in the "classification of defects" section.

This will also create more uniformity among the three standards.

The U.S. No. 1 Bright, U.S. No. 1 Golden, and, U.S. No. 2 Bright grades were added to the U.S. Standards for Grades of Florida Tangerines in order to give industry more flexibility in the marketing of tangerines and to create uniformity (the other standards already have these grades included).

All of the grades in the U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines were put in the same order for the purposes of uniformity and ease of use. Also, grades which previously referenced "Tables" for the allowable number of defective fruit would be changed to percentages.

Currently, in the U.S. No. 1 Bronze grades there is a requirement that "all fruit must show some discoloration." In application, this means, that if one fruit did not have any discoloration on it at all, the whole load and/or lot would not meet a U.S. No. 1 Bronze grade. This requirement is too restrictive because one fruit with no discoloration puts a load and/or lot of citrus out of grade. Therefore, it is proposed that "all fruit must show some discoloration" be deleted from the requirements of U.S. No. 1 Bronze grades. However, at least 30 percent of the fruit shall have one-third of its surface affected by discoloration, predominately rust mite type, is still part of the requirements for a U.S. No. 1 Bronze grade.

The definition of "poorly colored" was moved from the requirements of the U.S. No. 3 grade in the U.S. Standards for Grades of Florida Grapefruit, and U.S. Standards for Grades of Florida Oranges and Tangelos to the "definition" section to create greater uniformity and consistency among the Florida citrus standards.

The unclassified designations would be eliminated in each standard because it is not a grade and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it should be discontinued.

It is proposed that the tolerances for defects and discoloration be determined based on percentages rather than a specific number of defective fruit, in order to create greater ease of use within the marketplace. Currently, if applicants do not have a copy of the standards with the table specifying the number of fruit permitted in a load and/or lot, they will not know if a load and/or lot of citrus meets a specified grade. Therefore, these percentages will create a more common trading language, and greater uniformity due to the fact that most of our current standards are based on a percentage of defects rather than number of defective fruit permitted. Also, separate tolerances for shipping point and en route or at destination are included to allow for more defects of a progressive nature, consistent with perishability.

The current standards contain tables specifying the total number of fruit permitted in individual samples. However, it is proposed that the tolerances be changed from specific number of defective fruit to percentages of defective fruit, thereby eliminating the existing tables. Therefore, it is proposed that an "Application of Tolerances" section be inserted in each of the regulations to provide percentage limitations of defective fruit in individual samples. This is done to create clarity and consistency among other U.S. standards.

The FCP requested that the "Size" sections of the standards be revised to allow greater flexibility in the packing of numerous varieties of fruit in various types and sizes of containers. It is proposed that the "size" section be revised as follows: "fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods; fairly uniform in size means that not more than 9 percent of the grapefruit, 10 percent of the oranges, tangelos, or tangerines, per sample may vary more than one-half inch in diameter; and, in order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size." "Approved and recognized methods" means that the fruit size will be determined at shipping point using specific pack patterns in a standard 4/5 bushel container, and that containers shall be well filled. Well filled being when at least one-half of the top layer fruit is not more than one-half inch below the top or two inches above the top of the container. Each sample would be allowed three grapefruit or five oranges, tangelos, and tangerines to vary more than one-half inch in diameter within a sample and still meet fairly uniform in size, provided that the entire lot averages not more than ten percent. If the lot does not meet these requirements it would fail to meet the size requirements, however, it could still meet the grade requirements as these are separate.

Definitions for "well colored," "fairly well colored," "slightly colored," "reasonably well colored," and "poorly colored" would be revised to include "color characteristic for the variety" in order to allow more flexibility in marketing varieties of fruit with different colors.

In the U.S. Standards for Grades of Florida Grapefruit, the definitions for "smooth texture," "fairly smooth texture," and "slightly rough texture" would be revised to include definitions for thickness of skin. In the past there was confusion as to what was considered thin skin, fairly thin skin, and slightly thick skin, however, with definitions for these terms the confusion would be alleviated.

The definitions for "green spots" in the "classification of defects" section are proposed to be aggregate areas instead of number of spots. "Green spots" are currently too restrictive, in that they allow not more than 10 spots for damage, and not more than 25 spots for serious damage, regardless of the size of the fruit. All of the other defects in the standards vary with the size of the fruit, larger areas allowed on larger fruit and smaller areas allowed on smaller fruit, therefore, this is too stringent. It is proposed to determine "green spots" based on an aggregate area; aggregate area being, clustering the spots into the area specified for the grade and commodity. If the "green spots," when clustered together are outside of the specified area it will be scored as a defect, keeping in mind that larger areas are allowed on larger fruit and smaller areas on smaller fruit. For example, "green spots" on a 4⅛ inch diameter grapefruit, if they were clustered into a circle of more than ¾ inches, the "green spots" would be considered damaged.

The definitions for "oil spotting" and "skin breakdown" in the "classification of defects" sections in all standards are being revised. The "oil spotting" would be changed by deleting the number of spots affected, which is thought to be too restrictive for perfectly edible fruit; and, increasing the aggregate area allowed, in order to bring the definitions into conformity with other citrus standards. The definitions for "skin breakdown" would be revised to bring them more in line with "oil spotting," as it is often difficult to distinguish between "oil spotting" and "skin breakdown" in its early stages.

Due to the similarity in defects caused by hail, thorn scratches, and scars, it is proposed that the definitions in the "classification of defects" sections be revised to score them all on the same basis as "scars." Although they will still be described as "hail," "thorn scratches," or "scars," they will all be scored on the same basis.

In the U.S. Standards for Grades of Florida Grapefruit, because sprouted seeds undermine the quality of fruit regardless of whether the sprouts are green or not, the "sprouting" definitions

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in the "classification of defects" section would be revised by deleting reference to "green" sprouts and revising the allowable lengths for sprouts. However, the FCP suggests that the sprouted seeds should have an allowable length before scoring them. Therefore, it is proposed that: "not more than six seeds have sprouts of more than ¼ inch in length, or more than 3 seeds with sprouts over ¾ inch in length" for damage; "not more than six seeds have sprouts of more than ½ inch in length, or more than 3 seeds with sprouts over 1 inch in length" for serious damage; and, "not more than six seeds have sprouts more than ¾ inch in length, or more than 3 seeds with sprouts over 1¼ inch in length" for very serious damage.

The "Note" at the end of the "classification of defects" section references the size of the fruit in which to apply the aggregate area or length of defects. Currently it references a specific size fruit. However, due to the change in the "size" section, the specific size referenced would no longer be applicable. Therefore, it is proposed that the basis for scoring defects shall be based on a fruit with a specific diameter measurement; 4⅛ inches in diameter for grapefruit, 2⅞ inches in diameter for oranges and tangelos, and 2¼ inches in diameter for tangerines.

Finally, the sections that reference the visual aid would be deleted because changes in some of the definition of defects which would make certain parts of the visual aid obsolete and because the visual aids are no longer available.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Subpart—United States Standards for Grades of Florida Grapefruit is revised to read as follows:

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

Sec.
51.750 U.S. Fancy.
51.751 U.S. No. 1 Bright.
51.752 U.S. No. 1.
51.753 U.S. No. 1 Golden.
51.754 U.S. No. 1 Bronze.
51.755 U.S. No. 1 Russet.
51.756 U.S. No. 2 Bright.
51.757 U.S. No. 2
51.758 U.S. No. 2 Russet.
51.759 U.S. No. 3.

Tolerances

51.760 Tolerances.

Application of Tolerances

51.761 Application of tolerances.

Sample for Grade Determination

51.762 Sample for grade determination.

Size

51.763 Size.

Definitions

51.764 Similar varietal characteristics.
51.765 Well colored.
51.766 Firm.
51.767 Well formed.
51.768 Mature.
51.769 Smooth texture.
51.770 Injury.
51.771 Discoloration.
51.772 Fairly well colored.
51.773 Fairly smooth texture.
51.774 Damage.
51.775 Fairly firm.
51.776 Slightly misshapen.
51.777 Slightly rough texture.
51.778 Serious damage.
51.779 Slightly colored.
51.780 Poorly colored.
51.781 Misshapen.
51.782 Slightly spongy.
51.783 Very serious damage.
51.784 Diameter.
51.785 Classification of defects.

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

§ 51.750 U.S. Fancy.

"U.S. Fancy" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.771.);
(2) Firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Smooth texture;
(6) Well colored; and,
(7) Well formed.
(b) Free from:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Decay;
(5) Scab;
(6) Sprayburn;
(7) Unhealed skin breaks; and,
(8) Wormy fruit.
(c) Free from injury caused by:
(1) Bruises;
(2) Green spots;
(3) Oil spots;
(4) Scale;
(5) Scars;
(6) Skin breakdown; and,
(7) Thorn scratches.
(d) Free from damage caused by:
(1) Dirt or other foreign material;
(2) Disease;
(3) Dryness or mushy condition;
(4) Hail;
(5) Insects;
(6) Sprouting;
(7) Sunburn; and,
(8) Other means.
(e) For tolerances see § 51.760.

§ 51.751 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.752 U.S. No. 1.

"U.S. No. 1" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.771.);
(2) Fairly smooth texture;
(3) Fairly well colored;
(4) Firm;
(5) Mature;
(6) Similar varietal characteristics; and,
(7) Well formed.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Sprayburn;
(17) Sprouting;
(18) Sunburn;
(19) Thorn scratches; and,
(20) Other means.
(d) For tolerances see § 51.760.

§ 51.753 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.754 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each of these fruits shall be of rust mite type. For tolerances see § 51.760.

§ 51.755 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.760.

§ 51.756 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.757 U.S. No. 2.

"U.S. No. 2" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.771.)
(2) Fairly firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Slightly colored;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Sprayburn;
(17) Sprouting;
(18) Sunburn;
(19) Thorn scratches; and,
(20) Other means.
(d) For tolerances see § 51.760.

§ 51.758 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.760.

§ 51.759 U.S. No. 3.

"U.S. No. 3" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(4) Rough texture, not seriously bumpy;
(5) Similar varietal characteristics; and,
(6) Slightly spongy.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Disease;
(6) Dryness or mushy condition;
(7) Hail;
(8) Insects;
(9) Oil spotting;
(10) Scab;
(11) Scale;
(12) Scars;
(13) Skin breakdown;
(14) Sprayburn;
(15) Sprouting;
(16) Sunburn; and,
(17) Other means.
(d) For tolerances see § 51.760.

Tolerances

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:
(a) *Defects.*
(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet.
(i) *For defects at shipping point*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided*, that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.
(2) U.S. No. 3.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided*, that included in this amount not more than 1 percent shall be for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 3 percent for decay or wormy fruit.
(b) *Discoloration.*
(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further*, that the entire lot averages within percentage specified.
(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further*, that the entire lot averages within the percentage specified.
(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

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surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further*, that the entire lot averages within the percentage specified.

(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further*, that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.761 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance less than 10 percent: *Provided*, that at least one decayed or wormy fruit may be permitted in any package: *And provided further*, that the averages for the entire lot are within the tolerances specified for the grade.

Sample for Grade Determination

§ 51.762 Sample for grade determination.

Each sample shall consist of 33 fruit. When individual packages contain at least 33 fruit, the sample is drawn from one package; when individual packages contain less than 33 fruit, a sufficient number of adjoining packages are opened to form a 33 fruit sample.

Size

§ 51.763 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.

(b) "Fairly uniform in size" means that not more than 9 percent of the grapefruit per sample may vary more than one-half inch in diameter.

(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.764 Similar varietal characteristics.

Similar varietal characteristics means that the fruits in any container are similar in color and shape.

§ 51.765 Well colored.

Well colored means that the fruit has characteristic color for the variety with practically no trace of green color.

§ 51.766 Firm.

Firm means that the fruit is not soft, or noticeably wilted or flabby, and the skin is not spongy or puffy.

§ 51.767 Well formed.

Well formed means that the fruit has the shape characteristic of the variety.

§ 51.768 Mature.

Mature shall have the same meaning currently assigned the term in §§ 601.16, 601.17, and 601.18 of the Florida Citrus Code of 1949, as amended (chs. 28090 and 29760, Laws of Florida, 1953 and 1955), or as the definition of such term may hereafter be amended.

§ 51.769 Smooth texture.

Smooth texture means that the skin is thin and smooth for the variety and size of the fruit. "Thin" means that the skin thickness does not average more than 3/8 inch (9.5 mm), on a central cross section, on grapefruit 4 1/8 inches (104.8 mm) in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.770 Injury.

Injury means any specific defect described in § 51.785, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.771 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck-type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 51.772 Fairly well colored.

Fairly well colored means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the characteristic color predominates over the green color.

§ 51.773 Fairly smooth texture.

Fairly smooth texture means that the skin is fairly thin and not coarse for the variety and size of the fruit. "Fairly thin" means that the skin thickness does not average more than 1/2 inch (12.7 mm), on a grapefruit 4 1/8 inches (104.8 mm), allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.774 Damage.

Damage means any specific defect described in § 51.785 Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.775 Fairly firm.

Fairly firm means that the fruit may be slightly soft, but not bruised, and the skin is not spongy or puffy.

§ 51.776 Slightly misshapen.

Slightly misshapen means that the fruit has fairly good shape characteristic of the variety and is not more than slightly elongated or pointed or otherwise deformed.

§ 51.777 Slightly rough texture.

Slightly rough texture means that the skin may be slightly thick but not excessively thick, materially ridged or grooved. "Slightly thick" means that the skin thickness does not average more than 5/8 inch (15.9 mm), on a central cross section, on a grapefruit 4 1/8 inches (104.8 mm), allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.778 Serious damage.

Serious damage means any specific defect described in § 51.785, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.779 Slightly colored.

Slightly colored means that except for an aggregate area of green color which does not exceed the area of a circle 2 inches (50.8 mm) in diameter, the fruit surface shows some characteristic color.

§ 51.780 Poorly colored.

Poorly colored means that not more than 25 percent of the surface may be of a solid dark green color.

§ 51.781 Misshapen.

Misshapen means that the fruit is decidedly elongated, pointed, or flatsided.

§ 51.782 Slightly spongy.

Slightly spongy means that the fruit is puffy or slightly wilted but not flabby.

§ 51.783 Very serious damage.

Very serious damage means any specific defect in § 51.785, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.784 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.785 Classification of defects.

TABLE I

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type.	Scars are cracked or dark and aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than 3/4 inch (19.1 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.
Buckskin		Aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface..	Aggregating more than 50 percent of the surface
Caked melanose		Aggregating more than a circle 3/4 inch (19.1mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Dryness or mushy condition.		Affecting all segments more than 1/4 inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 1/2 inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 3/4 inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter, caused by scale.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter, caused by scale.	Aggregating more than a circle 1 inch (25.4 mm) in diameter, caused by scale.	Aggregating more than 1/3 of the surface, caused by scale.
Oil spots	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than a circle 1 1/2 inches (38.1 mm) in diameter.	Aggregating more than 1/3 of the surface
Scab		Materially detracts from the shape or texture, or aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle 7/8 inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Blotch aggregating more than a circle 3/4 inch (19.1 mm) in diameter, or occurring as a ring more than a circle 1 1/4 inches (31.8 mm) in diameter.	Blotch aggregating more than a circle 1 inch (25.4 mm) in diameter, or occurring as a ring more than a circle 1 1/2 inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, Hail, or Thorn scratches.	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Very deep or very rough aggregating more than a circle 1/2 inch (12.7 mm) in diameter; deep or rough aggregating more than a circle 1 inch (25.4 mm) in diameter; slightly rough or of slight depth aggregating more than 10 percent of fruit surface.	Very deep or very rough aggregating more than a circle 1 inch (25.4 mm) in diameter; deep or rough aggregating more than 5 percent of fruit surface; slight depth or slightly rough aggregating more than 15 percent of fruit surface.	Very deep or very rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface

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TABLE I—Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Sprayburn		Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Hard and aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprouting		More than six seeds have sprouts of more than ¼ inch (6.4 mm) in length, or more than 3 seeds with sprouts over ¾ inch (19.1 mm) in length.	More than six seeds have sprouts of more than ½ inch (12.7 mm) in length, or more than 3 seeds with sprouts over 1 inch (25.4 mm) in length.	More than six seeds have sprouts of more than ¾ inch (19.1 mm) in length, or more than 3 seeds with sprouts over 1¼ inches (31.8 mm) in length.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

Note: References to area or aggregating area, or length are based on a grapefruit 4⅛ inches (104.8 mm) in diameter.

3. Part 51, Subpart—United States Standards for Grades of Florida Oranges and Tangelos is revised to read as follows:

Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

Sec.
51.1140 General.

Grades

51.1141 U.S.Fancy.
51.1142 U.S.No. 1 Bright.
51.1143 U.S.No. 1.
51.1144 U.S.No. 1 Golden.
51.1145 U.S.No. 1 Bronze.
51.1146 U.S.No. 1 Russet.
51.1147 U.S.No. 2 Bright.
51.1148 U.S.No. 2.
51.1149 U.S.No. 2 Russet.
51.1150 U.S.No. 3.

Tolerances

51.1151 Tolerances.

Application of Tolerances

51.1152 Application of tolerances.

Sample for Grade Determination

51.1153 Sample for grade determination.

Size

51.1154 Size.

Definitions

51.1155 Similar varietal characteristics.
51.1156 Well colored.
51.1157 Firm.
51.1158 Well formed.
51.1159 Mature.
51.1160 Smooth texture.
51.1161 Injury.
51.1162 Discoloration.
51.1163 Fairly smooth texture.
51.1164 Damage.
51.1165 Fairly well colored.
51.1166 Reasonably well colored.
51.1167 Poorly colored.
51.1168 Fairly firm.
51.1169 Slightly misshapen.
51.1170 Slightly rough texture.
51.1171 Serious damage.
51.1172 Misshapen.
51.1173 Slightly spongy.
51.1174 Very serious damage.
51.1175 Diameter.
51.1176 Classification of defects.

Standards for Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

51.1177 U.S.Grade AA Juice (Double A).
51.1178 U.S.Grade A Juice.
51.1179 Maximum anhydrous citric permissible for corresponding total soluble solids.
51.1180 Method of juice extraction

Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

§ 51.1140 General.

The standards contained in this subpart apply only to the common or sweet orange group and varieties and hybrids of varieties belonging to the Mandarin group, except tangerines, and to the citrus fruit commonly known as "tangelo"—a hybrid between tangerine or mandarin orange (citrus reticulata) with either the grapefruit or pomelo (C. paradisi and C. grandis). Separate U.S. standards apply to tangerines. The standards for internal quality contained in §§ 51.1177 through 51.1180 apply only to common sweet oranges (citrus sinensis (L) Osbeck).

Grades

§ 51.1141 U.S. Fancy.

"U.S. Fancy" consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.);
(2) Firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Smooth texture;
(6) Well colored; and,
(7) Well formed.
(b) Free from:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Creasing;
(5) Decay;
(6) Scab;
(7) Split navels;
(8) Sprayburn;
(9) Undeveloped segments;
(10) Unhealed skin breaks; and,
(11) Wormy fruit.
(c) Free from injury caused by:
(1) Bruises;
(2) Green spots;
(3) Oil spots;
(4) Rough, wide or protruding navels;
(5) Scale;
(6) Scars;
(7) Skin breakdown; and,
(8) Thorn scratches.
(d) Free from damage caused by:
(1) Dirt or other foreign material;
(2) Disease;
(3) Dryness or mushy condition;
(4) Hail;
(5) Insects;
(6) Riciness or woodiness;
(7) Sunburn; and,
(8) Other means.
(e) For tolerances see § 51.1151.
(f) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1142 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1143 U.S. No. 1.

"U.S. No. 1" consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Color;

(i) Early and midseason varieties shall be fairly well colored.

(ii) For Valencia and other late varieties, not less than 50 percent, by count, shall be fairly well colored and the remainder reasonably well colored.

(2) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.);
(3) Fairly smooth texture;
(4) Firm;
(5) Mature;
(6) Similar varietal characteristics; and,
(7) Well formed.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Riciness or woodiness;
(14) Scab;
(15) Scale;
(16) Scars;
(17) Skin breakdown;
(18) Split, rough or protruding navels;
(19) Sprayburn;
(20) Sunburn;
(21) Thorn scratches; and,
(22) Other means.
(d) For tolerances see § 51.1151.
(e) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1144 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1145 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit shall be of rust mite type.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1146 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1147 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1148 U.S. No. 2.

"U.S. No. 2" consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.)
(2) Fairly firm;
(3) Mature;
(4) Reasonably well colored;
(5) Similar varietal characteristics;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Riciness or woodiness;
(14) Scab;
(15) Scale;
(16) Scars;
(17) Skin breakdown;
(18) Split, rough or protruding navels;
(19) Sprayburn;
(20) Sunburn;
(21) Thorn scratches; and,
(22) Other means.
(d) For tolerances see § 51.1151.
(e) Internal quality: Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1149 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1150 U.S. No. 3.

"U.S. No. 3" consists of oranges which meet the following requirements:

(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(4) Rough texture, not seriously lumpy;
(5) Similar varietal characteristics; and,
(6) Slightly spongy.
(b) Free from:

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(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.

(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Disease;
(7) Dryness or mushy condition;
(8) Hail;
(9) Insects;
(10) Riciness or woodiness;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Split navels;
(16) Sprayburn;
(17) Sunburn; and,
(18) Other means.

(d) For tolerances see § 51.1151.

(e) Internal quality. Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

Tolerances

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *Defects.*

(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet grades.

(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided,* that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.

(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.

(2) U.S. No. 3.

(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided,* that included in this amount not more than 1 percent shall be for decay or wormy fruit.

(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 3 percent for decay or wormy fruit.

(b) *Discoloration.*

(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further,* that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.1152 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151: *Provided,* that individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Sample For Grade Determination

§ 51.1153 Sample for grade determination.

Each sample shall consist of 50 fruit. When individual packages contain at least 50 fruit, the sample is drawn from one package; when individual packages contain less than 50 fruit, a sufficient number of adjoining packages are opened to form a 50 fruit sample.

Size

§ 51.1154 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.

(b) "Fairly uniform in size" means that not more than 10 percent of the oranges per sample may vary more than one-half inch in diameter.

(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.1155 Similar varietal characteristics.

Similar varietal characteristics means that the fruits in any container are similar in color and shape.

§ 51.1156 Well colored.

Well colored as applied to common oranges and tangelos means that the fruit has characteristic color for the variety with practically no trace of green color.

§ 51.1157 Firm.

Firm as applied to common oranges and tangelos means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), "firm" means that the fruit is not extremely puffy, although the skin may be slightly loose.

§ 51.1158 Well formed.

Well formed means that the fruit has the shape characteristic of the variety.

§ 51.1159 Mature.

(a) *Mature* for other than Temple oranges shall have the same meaning currently assigned that term in section 601.19 and 601.20 of the Florida Citrus Code of 1949, as amended (ch. 25149, Laws of Florida, 1949), or as the definition of such term may hereafter be amended;

(b) *Mature* for Temple oranges shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended; and,

(c) *Mature* for Tangelos shall have the same meaning currently assigned that term in section 601.231 and 601.232 of the Florida Citrus Code of 1949, as amended (ch. 29757, Laws of Florida, 1955), or as the definition of such term may hereafter be amended.

§ 51.1160 Smooth texture.

Smooth texture means that the skin is thin and smooth for the variety and size of the fruit.

§ 51.1161 Injury.

Injury means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1162 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 51.1163 Fairly smooth texture.

Fairly smooth texture means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 51.1164 Damage.

Damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1165 Fairly well colored.

Fairly well colored as applied to common oranges and tangelos means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the characteristic color predominates over the green color.

§ 51.1166 Reasonably well colored.

Reasonably well colored as applied to common oranges means that the characteristic color predominate over the green color on at least two-thirds of the fruit surface, in the aggregate.

§ 51.1167 Poorly colored.

Poorly colored as applied to common oranges means that not more than 25 percent of the surface may be solid dark green color.

§ 51.1168 Fairly firm.

Fairly firm as applied to common oranges and tangelos, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), means that the skin of the fruit is not extremely puffy or extremely loose.

§ 51.1169 Slightly misshapen.

Slightly misshapen means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

§ 51.1170 Slightly rough texture.

Slightly rough texture means that the skin is not of smooth texture but is not materially ridged, grooved, or wrinkled.

§ 51.1171 Serious damage.

Serious damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1172 Misshapen.

Misshapen means that the fruit is decidedly elongated, pointed or flatsided.

§ 51.1173 Slightly spongy.

Slightly spongy means that the fruit is puffy or slightly wilted but not flabby.

§ 51.1174 Very serious damage.

Very serious damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1175 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.1176 Classification of defects.

TABLE I

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type.	Scars are cracked or dark and aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch (19.1 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

TABLE I—Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Buckskin		Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing		Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition.		Affecting all segments more than 1/4 inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 1/2 inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 3/4 inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter, caused by scale.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter, caused by scale.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter, caused by scale.	Aggregating more than 1/3 of the surface, caused by scale.
Oil spots	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter.	Aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter.	Aggregating more than 1/3 of the surface.
Scab		Materially detracts from the shape or texture, or aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, hail, or thorn scratches.	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Deep or rough aggregating more than a circle 1/4 inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle 7/8 inch (22.2 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1 1/4 inches (31.8. mm) in diameter.	Deep or rough aggregating more than a circle 1/2 inch (12.7 mm) in diameter; slightly rough with depth aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter; smooth or fairly smooth with slightly depth aggregating more than 10 percent of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle 1/4 inch (6.4 mm) in diameter.	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Hard and aggregating more than a circle 1 1/2 inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface
Split, rough, protruding navels.	Split is unhealed, or more than 1/8 inch (3.2 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from the appearance.	Split is unhealed, or more than 1/4 inch (6.4 mm) in length, or more than three well healed splits, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed, or more than 1/2 inch (12.7 mm) in length, or two or more splits aggregate more than 1 inch (25.4 mm) in length, or navel protrudes beyond general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed or fruit is seriously weakened
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

Note: References to area or aggregating area, or length are based on an orange or tangelo 2 7/8 inches (73.0 mm) in diameter.

Standards For Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

§ 51.1177 U.S. Grade AA Juice (Double A).

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade AA Juice (Double A)":

(a) Each lot of fruit shall contain an average of not less than 5 gallons (18.9 liters) of juice per standard packed box of 1 3/5 bushels.

(b) The average juice content for any lot of fruit shall have not less than 10 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table II of § 51.1179.

§ 51.1178 U.S. Grade A Juice.

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade A Juice":

(a) Each lot of fruit shall contain an average of not less than 4 1/2 gallons (17.0 liters) of juice per standard packed box of 1 3/5 bushels.

(b) The average juice content for any lot of fruit shall have not less than 9 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table II of § 51.1179.

§ 51.1179 Maximum anhydrous citric acid permissible for corresponding total soluble solids.

For determining the grade of juice, the maximum permissible anhydrous citric acid content in relation to corresponding total soluble solids in the fruit is set forth in the following Table II together with the minimum ratio of total soluble solids to anhydrous citric acid:

TABLE II

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
9.0	0.947	9.50–1
9.1	.963	9.45–1
9.2	.979	9.40–1
9.3	.995	9.35–1
9.4	1.011	9.30–1
9.5	1.027	9.25–1
9.6	1.043	9.20–1
9.7	1.060	9.15–1
9.8	1.077	9.10–1
9.9	1.094	9.05–1
10.0	1.111	9.00–1
10.1	1.128	8.95–1
10.2	1.146	8.90–1
10.3	1.164	8.85–1
10.4	1.182	8.80–1
10.5	1.200	8.75–1
10.6	1.218	8.70–1
10.7	1.237	8.65–1
10.8	1.256	8.60–1
10.9	1.275	8.55–1
11.0	1.294	8.50–1
11.1	1.306	8.50–1
11.2	1.318	8.50–1
11.3	1.329	8.50–1
11.4	1.341	8.50–1
11.5	1.353	8.50–1
11.6	1.365	8.50–1
11.7	1.376	8.50–1
11.8	1.388	8.50–1
11.9	1.400	8.50–1
12.0	1.412	8.50–1
12.1	1.424	8.50–1
12.2	1.435	8.50–1
12.3	1.447	8.50–1
12.4	1.459	8.50–1
12.5	1.471	8.50–1
12.6	1.482	8.50–1
12.7	1.494	8.50–1
12.8	1.506	8.50–1
12.9	1.517	8.50–1
13.0	1.530	8.50–1
13.1	1.541	8.50–1
13.2	1.553	8.50–1
13.3	1.565	8.50–1
13.4	1.576	8.50–1
13.5	1.588	8.50–1
13.6	1.600	8.50–1
13.7	1.612	8.50–1
13.8	1.624	8.50–1
13.9	1.635	8.50–1
14.0	1.647	8.50–1
14.1	1.659	8.50–1
14.2	1.671	8.50–1
14.3	1.682	8.50–1
14.4	1.694	8.50–1
14.5	1.705	8.50–1
14.6	1.718	8.50–1
14.7	1.729	8.50–1
14.8	1.741	8.50–1
14.9	1.753	8.50–1
15.0	1.765	8.50–1
15.1	1.776	8.50–1
15.2	1.788	8.50–1
15.3	1.800	8.50
15.4	1.812	8.50–1
15.5	1.824	8.50–1
15.6 or more		8.50–1

§ 51.1180 Method of juice extraction.

The juice used in the determining of solids, acids and juice content shall be extracted from representative samples as thoroughly as possible with a hand reamer or by such mechanical extractor or extractors as may be approved. The juice shall be strained through cheese cloth or other approved straining device of extra fine mesh to prevent passage of juice cells, pulp, or seeds.

4. Part 51, Subpart—United States Standards for Grades of Florida Tangerines is revised to read as follows:

Subpart—United States Standards for Grades of Florida Tangerines

Grades

Sec.
51.1810 U.S. Fancy.
51.1811 U.S. No. 1 Bright.
51.1812 U.S. No. 1.
51.1813 U.S. No. 1 Golden.
51.1814 U.S. No. 1 Bronze.
51.1815 U.S. No. 1 Russet.
51.1816 U.S. No. 2 Bright.
51.1817 U.S. No. 2.
51.1818 U.S. No. 2 Russet.
51.1819 U.S. No. 3.

Tolerances

51.1820 Tolerances.

Application of Tolerances

51.1821 Application of tolerances.

Sample for Grade Determination

51.1822 Sample for grade determination

Size

51.1823 Size.

Definitions

51.1824 Mature.
51.1825 Firm.
51.1826 Well formed.
51.1827 Damage.
51.1828 Highly colored.
51.1829 Discoloration.
51.1830 Well colored.
51.1831 Fairly well colored
51.1832 Fairly firm.
51.1833 Fairly well formed.
51.1834 Serious damage.
51.1835 Reasonably well colored.
51.1836 Very serious damage.
51.1837 Diameter.
51.1838 Classification of defects.

Subpart—United States Standards for Grades of Florida Tangerines

§ 51.1810 U.S. Fancy.

"U.S. Fancy" consists of tangerines which meet the following requirements.

(a) Basic requirements:

(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);

(2) Firm;

(3) Highly colored;

(4) Mature; and,

(5) Well formed.

(b) Free from:

(1) Caked melanose;

(2) Decay;

(3) Unhealed skin breaks; and,

(4) Wormy fruit.

(c) Free from damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Creasing;

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(5) Dirt or other foreign material;
(6) Dryness or mushy condition;
(7) Disease;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Sprayburn;
(17) Sunburn; and,
(18) Other means.
(d) For tolerances see § 51.1820.

§ 51.1811 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1812 U.S. No. 1.

"U.S. No. 1" consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);
(2) Fairly well colored;
(3) Firm;
(4) Mature; and,
(5) Well formed.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 51.1820.

§ 51.1813 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1814 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit shall be of rust mite type. For tolerances see § 51.1820.

§ 51.1815 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.1820.

§ 51.1816 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1817 U.S. No. 2.

"U.S. No. 2" consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);
(2) Fairly firm;
(3) Fairly well formed;
(4) Mature; and,
(5) Reasonably well colored.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 51.1820.

§ 51.1818 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.1820.

§ 51.1819 U.S. No. 3.

"U.S. No. 3" consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Not flabby; and,
(3) Not seriously lumpy.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Caked melanose;
(4) Creasing;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Hail;
(9) Insects;
(10) Scab;
(11) Scale;
(12) Scars;
(13) Skin breakdown;
(14) Sprayburn;
(15) Sunburn; and,
(16) Other means.
(d) For tolerances see § 51.1820.

Tolerances

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:
(a) *Defects.*
(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet grades.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided,* that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade:

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

Provided, that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.
(2) U.S. No. 3.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided,* that included in this amount not more than 1 percent shall be for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 3 percent for decay or wormy fruit.
(b) *Discoloration.*
(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further,* that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.1821 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820: *Provided,* that individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Sample for Grade Determination

§ 51.1822 Sample for grade determination.

Each sample shall consist of 50 fruit. When individual packages contain at least 50 fruit, the sample is drawn from one package; when individual packages contain less than 50 fruit, a sufficient number of adjoining packages are opened to form a 50 fruit sample.

Size

§ 51.1823 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.
(b) "Fairly uniform in size" means that not more than 10 percent of the tangerines per sample may vary more than one-half inch in diameter.
(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.1824 Mature.

Mature shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951) or, as the definition of such term may hereafter be amended.

§ 51.1825 Firm.

Firm means that the flesh is not soft and the fruit is not badly puffy and that the skin has not become materially separated from the flesh of the tangerine.

§ 51.1826 Well formed.

Well formed means that the fruit has the characteristic tangerine shape and is not deformed.

§ 51.1827 Damage.

Damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1828 Highly colored.

Highly colored means that the ground color of each fruit is a deep tangerine color, or characteristic color for the variety, with practically no trace of yellow color.

§ 51.1829 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 51.1830 Well colored.

Well colored means that a good yellow or better ground color predominates over the green color on the entire fruit surface with no distinct green color present, and that some portion of the surface has a reddish tangerine blush, or characteristic color for the variety.

§ 51.1831 Fairly well colored.

Fairly well colored means that the surface of the fruit may have green color which does not exceed the aggregate area of a circle 1¼ inches (31.8 mm) in diameter and that the remainder of the surface has a yellow or better ground color with some portion of the surface showing reddish tangerine blush, or characteristic color for the variety.

§ 51.1832 Fairly firm.

Fairly firm means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.

§ 51.1833 Fairly well formed.

Fairly well formed means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.

§ 51.1834 Serious damage.

Serious damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

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§ 51.1835 Reasonably well colored.

Reasonably well colored means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggregate, and that each fruit shall show practically no lemon color.

§ 51.1836 Very serious damage.

Very serious damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1837 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.1838 Classification of defects.

TABLE I

Factor	Damage	Serious damage	Very serious damage
Ammoniation	Not occurring as light speck type, or detracts more than discoloration permitted in the grade.	Scars are cracked or dark and aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ½ inch (12.7 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.
Buckskin	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose	Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing	Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition	Affecting all segments more than ⅛ inch (3.2 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle ½ inch (12.7 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Oil spots	Aggregating more than a circle ½ inch (12.7 mm) in diameter.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scab	Materially detracts from the shape or texture, or aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, Hail, and Thorn scratches	Deep or rough aggregating more than a circle ¼ inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle ¾ inch (19.1 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1⅛ inches (28.6 mm) in diameter.	Deep or rough aggregating more than a circle ½ inch (12.7 mm) in diameter; slightly rough with slight depth aggregating more than a circle 1⅛ inches (28.6 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10 percent of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle ½ inch (12.7 mm) in diameter.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn	Skin is hard and aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Skin is hard and aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn	Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

NOTE: References to area or aggregate area, or length are based on a tangerine 2½ inches in diameter (63.5 mm).

Dated: February 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95-4312 Filed 2-21-95; 8:45 am]

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Wednesday, February 22, 1995

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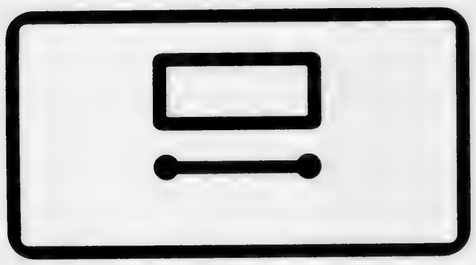

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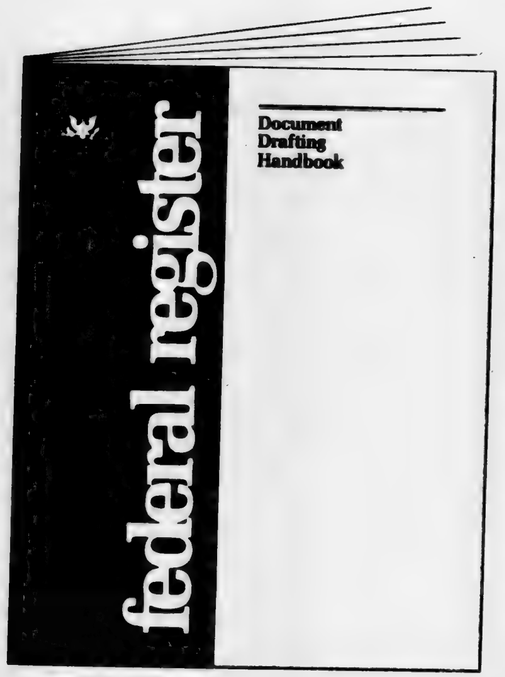

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 302

RIN 3206–AF53

Temporary, Seasonal, and Intermittent Employment in the Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations to consolidate excepted service authorities for filling temporary, intermittent, and seasonal jobs, to remove coverage for appointments that no longer meet the criteria for exception, and to establish a new excepted service authority which could be used by agencies to meet urgent, short-term hiring needs.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

SUPPLEMENTARY INFORMATION: These regulations implement the National Performance Review's recommendations to reduce the number of Federal hiring authorities and decentralize many personnel decisions. The regulations eliminate overlapping and obsolete appointing authorities and establish two authorities to meet common needs that may be used by any agency without obtaining specific OPM approval.

On September 26, 1994 (59 FR 49034), OPM published proposed regulations to revise and consolidate paragraphs (i) and (m) of section 213.3102, which both cover temporary, intermittent, and seasonal employment in the excepted service. We proposed to establish Governmentwide Schedule A authorities for temporary and less-than-full-time positions in remote or isolated locations involving no more than 1,040 working hours of employment in a service year and for short-term appointments to meet special hiring needs that would not exceed 30 days, plus one 30-day extension. We also proposed to allow OPM to authorize Schedule A appointments in other circumstances and requested comments on the need to include authority to make Schedule A temporary appointments (i.e., appointments limited to 1 year or less) in connection with post-doctoral fellowships, internships, and similar programs.

We received comments from six Federal agencies. All six supported the proposed Schedule A authority, although one suggested additional exceptions and two made technical and editorial suggestions.

Comments on Coverage

With regard to fellowship programs, the agencies indicated that such appointments are usually made for periods longer than 1 year and that an authority limited to temporary employment would have little use. We have, therefore, decided not to include a specific provision for fellowship appointments in the Schedule A authority for temporary, intermittent, and seasonal employment. Any agencies that wish to make temporary appointments in connection with post-doctoral fellowship programs may, however, request OPM's approval to use the Schedule A authority for that purpose.

One agency suggested that Schedule A appointments should be permitted for short-term work lasting up to 90 days (instead of 30 days as proposed), with an additional 30-day extension, and for all nonsupervisory temporary and seasonal laborer positions at WG–3 and below. We did not adopt those suggestions because we cannot find that use of competitive hiring procedures to fill the jobs would be impracticable.

Agencies may make temporary appointments in the competitive service using the applicant supply file procedures set out in 5 CFR part 333. Those procedures are very similar to the procedures for making temporary Schedule A appointments set out in 5 CFR part 302. The only differences are qualification requirements and public notice.

Agencies making temporary appointments under part 333 must apply competitive qualification standards. However, those standards contain only basic generic requirements, to which agencies may add specific requirements related to their jobs. For most jobs, there is little practical difference between the competitive standards and the standards agencies would develop under part 302.

Agencies making competitive temporary appointments must also notify OPM and State Employment Service offices of the vacancies. However, there are no mandatory minimum publicity requirements.

The agencies decide how widely to distribute notices and how long the notices will remain open.

We believe that the competitive hiring procedures are flexible enough to meet all but the most urgent staffing needs. We also believe that exceptions to basic hiring procedures should be authorized only when clearly necessary. Competitive hiring is not impracticable in all cases for temporary laborer jobs or for project jobs involving 3 or 4 months of work. Therefore, we are not establishing a general Schedule A authority for such positions. Any agency that needs to fill particular jobs more quickly than the competitive process would permit may, of course, request OPM's approval to make Schedule A appointments to those jobs.

Technical and Editorial Comments

With regard to procedural requirements, one agency asked whether the ranking and referral requirements of 5 CFR part 302 will apply to 30-day special need appointments under the new Schedule A authority. Formal ranking and referral procedures have not previously been required for 30-day special need appointments because the time needed for that process is not commensurate with the extremely short period of employment. That is still true. Accordingly, as provided in 5 CFR 302.101(c), we are granting an exception from the procedural requirements of part 302 for appointments made under the new Schedule A special need authority. Agencies must, however, apply veterans' preference to the extent administratively feasible.

The same agency also asked why the service limitation in the proposed Schedule A authority for positions in remote or isolated locations should apply to all employment in the same agency. The agency suggested that the limit should apply only to excepted

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employment in the same or successor positions. We have adopted that suggestion in part. We agree that the limit should apply separately to positions having different job duties and qualification requirements. While a few individuals might be qualified and available to perform unrelated functions (e.g., surveyor and pilot), it would not be practical for the agency to create a job combining such distinct duties. We have rewritten the Schedule A authority to clarify that the limit applies to employment in jobs having related duties and comparable qualification requirements.

We have not adopted the suggestion that only excepted employment in an identical or successor position should count against the limit. Such a broad exclusion from the service limit would undermine the justification for the excepted authority. Examining for jobs in remote or isolated locations is impracticable when: only residents of the immediate area can be expected to reach the work site whenever they are needed; the amount of employment involved would not encourage outside applicants to move to the isolated area; and staff from an OPM or agency examining office could not readily reach the location to administer the competitive hiring process. If an agency can make competitive appointments to some jobs in a location, can combine related work to afford a substantial amount of employment, and/or can readily attract candidates from outside the immediate locality, the conditions for exception would not be met.

Another agency suggested that the authority should provide for OPM approval of Schedule A appointments for additional "circumstances" rather than additional "positions." The agency notes that it is not always possible to identify in advance all specific positions that may be needed in connection with a particular program or situation.

The wording of the Schedule A authority reflects Civil Service Rule VI (5 CFR 6.1), which authorizes OPM to except positions from the competitive service. This language does not preclude exception of positions based on the circumstances under which they are filled. OPM has previously approved Schedule A authorities that cover all positions meeting certain conditions or all positions filled in connection with a particular program, without listing those positions specifically. We will entertain similar requests submitted under this new Schedule A authority.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

List of Subjects in 5 CFR Parts 213 and 302

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management

James B. King,

Director.

Accordingly, OPM is amending 5 CFR parts 213 and 302 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185.

2. In § 213.3102, paragraph (i) is revised and paragraph (m) is removed and reserved, to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 workings hour in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended for up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

* * * * *

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

3. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et. seq.

4. In § 302.101, paragraph (c)(11) is added, to read as follows:

§ 302.101 Positions covered by the regulations.

* * * * *

(c) * * *

(11) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

[FR Doc. 95–4394 Filed 2–22–95; 8:45 am]

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA17

Freedom of Information Act Rules and Schedule of Fees for the Production of Public Financial Disclosure Reports

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule which establishes procedures for the implementation of the Freedom of Information Act (FOIA). The rule also establishes a schedule of fees which will be charged for the reproduction and mailing of public financial disclosure reports (SF 278s).

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Janet K. Roell, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

SUPPLEMENTARY INFORMATION: In this rulemaking document, the Office of Government Ethics is adopting final rules under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and for fees for copies of SF 278 reports requested under the Ethics in Government Act. As noted in OGE's proposed rules published at 59 FR 50171–50179 (October 3, 1994), this FOIA regulation, being codified at 5 CFR part 2604, will incorporate many of OGE's existing practices for the implementation of the FOIA and follows applicable guidance of the Department of Justice and the Office of Management and Budget. The regulation will also set separate schedules of fees for FOIA requests and for larger SF 278 requests.

The proposed rules provided a 60-day comment period and invited comments by agencies and the public. Only one comment was received. That comment did not suggest any specific changes to the regulations as proposed, but rather recommended more disclosure of certain activities of Federal officials. With respect to disclosure of activities, OGE believes that the existing system of public financial disclosure reporting of high-level officials under title I of the Ethics Act, as implemented for the executive branch by OGE's regulation at 5 CFR part 2634, as well as other pertinent laws and regulations adequately address that separate subject matter. Therefore, in adopting the proposed rules as final, the Office of Government Ethics is not making any substantive changes. The only changes reflect correction of a couple of minor typographical errors (including indication of the correct March 1 due date for annual FOIA reports) and clarification of two passages —§ 2604.102(c) to expressly indicate that a requester can opt for regular FOIA processing in lieu of alternative access for OGE items also available via the Government Printing Office or the National Information Technical Service of the Department of Commerce and § 2604.302(c) to state that OGE will generally provide *nonexempt* responsive records in existing formats to FOIA requesters.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: January 11, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding the text of and an authority citation for part 2604, previously reserved, and by revising the title thereof to read as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

Subpart A—General Provisions

Sec.
2604.101 Purpose.
2604.102 Applicability.
2604.103 Definitions.

Subpart B—Public Reading Room and Index Identifying Information for the Public

Sec.
2604.201 Public reading room.
2604.202 Index identifying information for the public.

Subpart C—Production and Disclosure of Records Under FOIA

Sec.
2604.301 Requests for records.
2604.302 Response to requests.
2604.303 Form and content of responses.
2604.304 Appeal of denials.
2604.305 Time limits.

Subpart D—Exemptions Under FOIA

Sec.
2604.401 Policy.
2604.402 Business information.

Subpart E—Schedule of Fees

Sec.
2604.501 Fees to be charged—general.
2604.502 Fees to be charged—categories of requesters.
2604.503 Limitations on charging fees.
2604.504 Miscellaneous fee provisions.

Subpart F—Annual Report to Congress

Sec.
2604.601 Submission of report.
2604.602 Contents of the report.

Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

Sec.
2604.701 Policy.
2604.702 Charges.

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 2604.101 Purpose.

This part contains the regulations of the Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA) and Executive Order 12600. It describes how any person may obtain records from OGE under the FOIA. It also implements section 105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

§ 2604.102 Applicability.

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provisions

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of the Privacy Act as well as the FOIA. OGE will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will explain how the record may be obtained through those channels. If the requester, after having been advised of such alternative access, asks for regular FOIA processing instead, OGE will provide the record in accordance with its usual FOIA procedures under this part.

§ 2604.103 Definitions.

As used in this part,

Agency has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

Business information means trade secrets or other commercial or financial information, provided to the Office by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

Business submitter means any person who provides business information, directly or indirectly, to the Office and who has a proprietary interest in the information.

Commercial use means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Direct costs means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

Duplication means the process of making a copy of a record. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

Freedom of Information Act or *FOIA* means 5 U.S.C. 552.

General Counsel means the General Counsel of the Office of Government Ethics. The General Counsel may delegate any of his responsibilities in handling FOIA requests in this part to a designee on OGE's staff.

He, his and *him* include she, hers and her.

Noncommercial scientific institution means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

Office or *OGE* means the United States Office of Government Ethics.

Person has the meaning given in 5 U.S.C. 551(2).

Records means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards, magnetic tapes, cards or discs, paper tapes, audio or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by the Office and are under Office control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

Request means any request for records made pursuant to 5 U.S.C. 552(a)(3).

Requester means any person who makes a request for records to OGE.

Review means the process of initially, or upon appeal (see § 2604.501(b)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search means the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Working days means calendar days, excepting Saturdays, Sundays, and legal public holidays.

Subpart B—Public Reading Room and Index Identifying Information for the Public

§ 2604.201 Public reading room.

(a) *Location of public reading room.* The Office of Government Ethics maintains a public reading room at its offices located at 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. Persons desiring to utilize the reading room should contact the Office, in writing or by telephone at (202) 523–5757 or FAX (202) 523–6325, to arrange a time to inspect the materials available there.

(b) *Records available.* The Office of Government Ethics public reading room contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying, including:

(1) Any final opinions, as well as orders, made in the adjudication of cases;

(2) Any statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under section (b) of the FOIA; and

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published.

(c) *Copying.* The cost of copying information available in OGE's public reading room shall be imposed on a requester in accordance with the provisions of subpart E of this part.

§ 2604.202 Index identifying information for the public.

(a) The Office of Government Ethics will maintain and make available for public inspection and copying a current index of the materials available at its public reading room which are required to be indexed under 5 U.S.C. 552(a)(2).

(b) The Director of the Office of Government Ethics has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). The Office will provide copies of such indexes upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

Subpart C—Production and Disclosure of Records Under FOIA

§ 2604.301 Requests for records.

(a) *Addressing requests.* Requests for copies of records may be made in person or by telephone, (202) 523–5757, during normal business hours at the Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917 or by mail addressed to the General Counsel of OGE. Although oral requests may be honored, a requester generally will be asked to submit his request under the FOIA in writing. In the case of a written request, the envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Office operations.

(1) Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the General Counsel determines that a request does not reasonably describe the records sought, he will either advise the requester what additional information is needed to locate the record, or otherwise state why the request is insufficient. The General Counsel will also extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under subpart E of this part, up to $25.00, unless a waiver of fees is sought. The request may also specify a limit on the amount the requester is willing to spend, or may indicate a willingness to pay an amount greater than $25.00, if applicable. In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee.

(d) *Requests for records relating to corrective actions.* No record developed pursuant to the authority of 5 U.S.C. app. (Ethics in Government Act of 1978, section 402(f)(2)) concerning the investigation of an employee for a possible violation of any provision relating to a conflict of interest shall be made available pursuant to this part unless the request for such information identifies the employee to whom the records relate and the subject matter of any alleged violation to which the records relate. Nothing in this subsection shall affect the application of subpart D of this part to any record so identified.

§ 2604.302 Response to requests.

(a) *Response to initial request.* The General Counsel is authorized to grant or deny any request for a record and to determine appropriate fees.

(b) *Referral to another agency.* When a requester seeks records that originated in another Government agency, OGE will normally refer the request to the other agency for response. If OGE refers the request to another agency, it will notify the requester of the referral. If release of certain records may adversely affect United States relations with foreign governments, the Office will usually consult with the Department of State. A request for any records classified by some other agency will be referred to that agency for response.

(c) *Creating records.* If a person seeks information from OGE in a format that does not currently exist, OGE will not ordinarily reformat the information for the purpose of responding to the request. OGE will advise the requester that it does not have the record in the format sought, but will provide whatever nonexempt records in existing formats that would reasonably respond to the request. Additionally, OGE will not generally develop a new record of information to satisfy a request.

(d) *Record cannot be located.* If a requested record cannot be located from the information supplied, the General Counsel will so notify the requester in writing.

§ 2604.303 Form and content of responses.

(a) *Form of notice granting a request.* After the General Counsel has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt the operations of the Office. The response letter will also inform the requester in the response of any fees to be charged in accordance with the provisions of subpart E of this part.

(b) *Form of notice denying a request.* When the General Counsel denies a request in whole or in part, he will so notify the requester in writing. The response will be signed by the General Counsel and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the General Counsel has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 2604.304 of this subpart, and a description of the requirements of that section.

§ 2604.304 Appeal of denials.

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to the Deputy Director of the Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 30 days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the request for the record. Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act Appeal."

(c) *Action on appeal.* The disposition of an appeal will be in writing and will

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constitute the final action of the Office on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, the Office will notify the person making the request of his right to seek judicial review under 5 U.S.C. 552(a)(4).

§ 2604.305 Time limits.

(a) *Initial request.* Following receipt of a request for records, the General Counsel will determine whether to comply with the request and will notify the requester in writing of his determination within 10 working days.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 2604.304 will be issued within 20 working days after receipt of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances up to a total of 10 working days, after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made.

(d) For the purposes of paragraph (c) of this section, *unusual circumstances* means that there is a need to:

(1) Search for and collect records from archives;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various OGE components that have substantial subject matter interest in the records requested.

Subpart D—Exemptions Under FOIA

§ 2604.401 Policy.

(a) *Policy on application of exemptions.* Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552. In making its determination on withholding, OGE will consider whether another statute, Executive order or regulation prohibits release or, if not, whether there is a need in the public interest to withhold material which is otherwise exempt under FOIA.

(b) *Pledge of confidentiality.* Information obtained from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute, Executive order or regulation, will not be disclosed to the extent it can be withheld under one of the exemptions. However, this paragraph does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Office of Government Ethics.

(c) *Exception for law enforcement information.* The Office may treat records compiled for law enforcement purposes as not subject to the requirements of the Freedom of Information Act when:

(1) The investigation or proceeding involves a possible violation of criminal law;

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of its pendency; and

(3) The disclosure of the existence of the records could reasonably be expected to interfere with the enforcement proceedings.

(d) *Partial application of exemptions.* Any reasonably segregable portion of a record will be provided to any person requesting the record after deletion of the portions which are exempt under this subpart.

§ 2604.402 Business information.

(a) *In general.* Business information provided to the Office of Government Ethics by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The General Counsel will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The General Counsel has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* A submitter has five working days from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement shall specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The General Counsel will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the General Counsel decides to disclose business information over the objection of a submitter, he will send the submitter a written notice at least 10 working days before the date of disclosure containing:

(1) A statement of the reasons why the submitter's objections were not sustained;

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester shall also be notified of the General Counsel's determination to disclose records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The General Counsel determines that the information should not be disclosed;

(2) The information has been published previously or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the General Counsel will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Subpart E—Schedule of Fees

§ 2604.501 Fees to be charged—general.

(a) *Policy.* Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 2604.502 for services rendered in responding to and processing requests for records under subpart C of this part. All fees shall be charged to the requester, except where the charging of fees is limited under § 2604.503(a) and (b) or where a waiver or reduction of fees is granted under § 2604.503(c). Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches*—(i) *Manual searches for records.* Whenever feasible, the Office will charge at the salary rate (i.e., basic pay plus 16%) of the employee making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g., all clerical time or all professional time) the Office will charge $10.00 per hour for clerical time and $20.00 per hour for professional time. Charges for search time will be billed by fifteen minute segments.

(ii) *Computer searches for records.* Requesters will be charged the actual direct cost of conducting a search using existing programming. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the cost of operator/programmer salary apportionable to the search. The Office will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* The Office will charge search fees even if no records are found which are responsive to the request, or if the records found are exempt from disclosure.

(2) *Duplication.* The standard copying charge for documents in paper copy is $.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and discs, the requester may be charged the direct costs of the tape, disc, or whatever medium is used to produce the information, as well as any related reproduction costs.

(3) *Review.* Costs associated with the review of documents, as defined in § 2604.104(q), will be charged at the salary rate (i.e., basic pay plus 16%) of the employee conducting the review. Except as noted below, charges may be assessed only for review at the initial level, i.e., the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to a particular record or portion of the records. A requester will not be charged for review at the administrative appeal level concerning the applicability of an exemption already applied at the initial level. However, when a record has been withheld pursuant to an exemption which is subsequently determined not to apply and the record is reviewed again at the appeal level to determine the potential applicability of other exemptions, the costs of such additional review may be assessed.

(4) *Other services and materials.* Where the Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

§ 2604.502 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* The paragraphs below state, for each category of requester, the type of fees generally charged by the Office. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 2604.503. In determining whether a requester belongs in any of the following categories, the Office will determine the use to which the requester will put the documents requested. If the Office has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, the Office will seek clarification before assigning the request to a specific category.

(b) *Commercial use requester.* The Office will charge the full costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction as described in § 2604.503(a); however, the de minimis fees provision of § 2604.503(b) does apply to such requesters.

(c) *Educational and noncommercial scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Office will charge only for duplication of documents, excluding charges for the first 100 pages.

(d) *All other requesters.* If the request is not one described in paragraph (b) or (c) of this section, the Office will charge the full and direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages of duplication and the first two hours of search time.

§ 2604.503 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 2604.502(b), the Office will provide, without charge, the first 100 pages of duplication and the first two hours of search time, or their cost equivalent.

(b) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(c) *Waiver or reduction of fees.* Records responsive to a request under 5 U.S.C. 552 will be furnished without charge or at a reduced charge where the Office determines, based upon information provided by a requester in support of a fee waiver request, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Office will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.* The subject matter of the requested records, in the context of

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the request, must specifically and directly concern identifiable operations or activities of the Federal Government. Furthermore, the records must be sought for their informative value with respect to those Government operations or activities;

(ii) *The informative value of the information to be disclosed: Whether the information is likely to contribute to an understanding of Government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information which is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record;

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to convey information to the general public—will be considered; and

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be significantly enhanced by the disclosure.

(2) In determining whether disclosure of the requested information is not primarily in the commercial interest of the requester, the Office will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than the requester's commercial interest in disclosure. The Office will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

§ 2604.504 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with Office personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and charge accordingly. The Office will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payments.* An advance payment before work is commenced or continued will not be required unless:

(1) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). In such cases the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (e) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(3) When the Office requests an advance payment of fees, the administrative time limits described in subsection (a)(6) of the FOIA will begin to run only after the Office has received the advance payment.

(d) *Billing and payment.* Normally the Office will require a requester to pay all fees before furnishing the requested records. However, the Office may send a bill along with, or following the furnishing of records, in cases where the requester has a history of prompt payment.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) including the use of consumer reporting agencies, collection agencies, and offset.

Subpart F—Annual Report to Congress

§ 2604.601 Submission of report.

On or before March 1 of each calendar year, a report of OGE's activities over the preceding year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

§ 2604.602 Contents of the report.

The annual report to Congress will include for the relevant reporting period:

(a) The number of FOIA requests made to OGE, determinations made by OGE not to comply with requests for records made to it under the FOIA and the reasons for each such determination;

(b) The number of appeals made by persons under the FOIA, the results of such appeals, and the reasons for the action by OGE upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the FOIA;

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of the FOIA, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by OGE regarding the FOIA;

(f) A copy of the fee schedule and the total amount of fees collected by OGE for making records available under the FOIA; and

(g) Such other information as indicates efforts by OGE to administer fully the FOIA.

Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

§ 2604.701 Policy.

Fees for the reproduction and mailing of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter shall be assessed according to the schedule contained in § 2604.702. Requesters shall pay fees by check or money order made payable to the Treasury of the United States. Except as provided in § 2604.702(d), nothing concerning fees in subpart E of this part supersedes the charges set forth in this subpart for records covered in this subpart.

§ 2604.702 Charges.

(a) *Duplication.* Except as provided in paragraph (c) of this section, copies of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter will be provided upon payment of $.03 per page furnished.

(b) *Mailing.* Except as provided in paragraph (c) of this section, the actual direct cost of mailing public financial disclosure reports will be charged for all forms requested. Where the Office elects to comply, as a matter of administrative discretion, with a request for special mailing services, the actual direct cost of such service will be charged.

(c) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(d) *Miscellaneous fee provisions.* The miscellaneous fee provisions set forth in § 2604.504 apply to requests for public financial disclosure reports pursuant to § 2634.603 of this chapter.

[FR Doc. 95–4347 Filed 2–22–95; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–23]

Establishment of Class D Airspace; Akron-Canton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Akron-Canton Regional Airport, Akron, Ohio. Currently, the airspace at Akron-Canton Regional Airport is designated as Class C airspace. During certain periods of time, the Akron-Canton Air Traffic Control Tower (ATCT) radar approach control facility is not operational. However, the ATCT at Akron-Canton Regional Airport is full-time. The intended effect of this proposal is to provide accurate reference to Class D airspace at Akron-Canton Regional Airport.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On August 24, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Akron-Canton Regional Airport, Akron, Ohio (59 FR 43517).

Currently, the airspace at Akron-Canton Regional Airport is designated as Class C airspace. During certain period of time, the Akron-Canton ATCT radar approach control facility is not operational and traffic is re-routed to Cleveland ARTCC during those times. However, the ATCT at Akron-Canton Regional Airport is full-time. The intended effect of this proposal is to correctly reference Class D airspace in aeronautical maps and charts. This action does not change the existing method of handling air traffic operations at Akron-Canton ATCT.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Eight (8) letters of objection were received in response to the proposal. These objections were based on concerns for safety. The following concerns were raised:

1. Establishing Class D airspace at Akron, Ohio would jeopardize safety at Akron-Canton Regional Airport for air traffic operations during the hours that Class D airspace would be in effect. VFR traffic should be separated from IFR traffic.

2. Within the Weather Bureau closing, the airport would be unattended for the hours of Class D operation (midnight to 6:00 a.m. local time) and therefore there would be no controllers at the ATCT to observe and instruct snow removal from the runways during these times. This was of concern to the commenter because the airport is in the snow belt of Lake Erie.

3. Akron-Canton ATCT needs more controllers to handle the existing and increasing traffic so as not to jeopardize the continued growth of Akron-Canton Regional Airport.

All of these comments were considered and evaluated. They are responded to as follows:

1. There is no change to the existing method of handling air traffic operations at Akron-Canton Regional Airport. Class D airspace has existed at Akron-Canton Regional Airport for several years; however, it is not correctly indicated on aeronautical maps and charts. During

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this time period of Class D operations, there has been no derogation of safety. The purpose of this docket is to initiate action to reference correctly Class D airspace in aeronautical directories and charts.

2. Responding to the issue of the airport being closed for snow removal, changing aeronautical maps and charts to reflect existing airspace will not impact the length of time that the airport would be closed for snow removal. The City of Akron, OH is responsible to remedy airport conditions caused by inclement weather. Comments regarding actions taken for snow removal at the airport can be directed to the City of Akron airport authorities. This comment addresses issues beyond the scope of the action proposed in this notice.

3. Implementation of the proposal on Class D airspace will not affect staffing at the Akron-Canton ATCT. Accordingly, the comment regarding staffing is beyond the scope of this notice.

A minor modification has been made to the legal description from that shown in the notice to exclude the airspace within the Akron-Canton Regional Airport Class C airspace area. This modification is required in accordance with new guidelines.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Akron-Canton Regional Airport, Akron, Ohio during certain periods of time when the Akron-Canton ATCT radar approach control facility is not in operation. Currently, the airspace at Akron-Canton Regional Airport is designated as Class C airspace only. The intended effect of this proposal is to provide reference to Class D airspace to maintain the two-way radio communications requirements when the radar approach control facility is not in operation at the airport. This action does not change the existing method of handling traffic but will allow for action to be taken to correctly reference the airspace in aeronautical directories and charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

AGL OH D Akron-Canton, OH [New]

(Lat. 40°54'59" N., Long. 81°26'32" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.3-mile radius of the Akron-Canton Regional Airport, excluding that airspace within the Akron-Canton Regional Airport, OH Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on February 9, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4439 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–23]

Amendment to Class E Airspace; Millington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Millington, TN, to accommodate a VOR/DME RWY 22 Standard Instrument Approach Procedure (SIAP) at the Memphis NAS/Millington Municipal Airport. This amendment also makes a technical correction to the name of the airport, which is now joint use, and a minor correction to the geographic position coordinates of the airport.

EFFECTIVE DATE: 0901 UTC, March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Millington, TN (59 FR 64878). The proposed action would provide additional controlled airspace to accommodate a VOR/DME RWY 22 SIAP at the Memphis NAS/Millington Municipal Airport. A technical correction is also being made to the name of the airport and a minor correction is being made to the geographic position coordinates of the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E airspace area at Millington, TN, to accommodate a VOR/DME RWY 22 SIAP at the Memphis NAS/Millington Municipal Airport. This amendment also makes a technical correction to the name of the airport, which is now joint use, and a minor correction to the geographic position coordinates of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet Above the Surface of the Earth.

* * * * *

ASO TN E5 Memphis NAS/Millington Municipal, TN [Revised]

Memphis NAS/Millington Municipal Airport, TN
(Lat. 35°21'20" N, Long. 89°52'10" W)
Arlington Municipal Airport
(Lat. 35°16'59" N, Long. 89°40'22" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Memphis NAS/Millington Municipal Airport and within a 7-mile radius of Arlington Municipal Airport.

* * * * *

Issued in College Park, Georgia, on February 10, 1995.

Walter R. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–4434 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–23–001; Docket No. RM93–25–001]

Project Decommissioning at Relicensing; Use of Reserved Authority in Hydropower Licenses To Ameliorate Cumulative Impacts; Order Dismissing Requests for Rehearing and Denying Requests for Reconsideration

Issued February 9, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Policy statements; order dismissing requests for rehearing and denying requests for reconsideration.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order that dismisses requests for rehearing, and denies requests for reconsideration, of the two policy statements that were issued on December 14, 1994. The Commission, in Docket No. RM93–25–000, adopted a policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate cumulative impacts of such projects in the same river basin. In Docket No. RM93–23–000, the Commission adopted a policy statement that addressed issues related to relicensing and decommissioning of hydropower projects. The Commission found that, because there is no aggrievement, rehearing does not lie and that no particular circumstances requiring reconsideration of the policy statements have been shown.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this documents during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3104, 941 North Capitol Street NE., Washington, D.C. 20426.

Order Dismissing Requests for Rehearing and Denying Requests for Reconsideration

Issued February 9, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F Santa, Jr.

On December 14, 1994, the Commission issued policy statements in each of the two above-captioned dockets.[1]

On January 13, 1995, the American Public Power Association (APPA) filed a request for reconsideration or rehearing of both policy statements. APPA expressed the view that rehearing does not lie, because the policy statements do not give rise to "aggrievement" within the meaning of Section 313 of the Federal Power Act,[2] but requested rehearing in the event that the Commission determined that it was appropriate.

On January 13, 1995, the National Hydropower Association filed a "statement in opposition" to the policy statement on decommissioning issued in Docket No. RM93–23–000, but did

[1] The policy statement issued in Docket No. RM93–23–000 (69 FERC ¶ 61,336) was published in the **Federal Register** on January 4, 1995 (60 FR 339). The policy statement issued in Docket No. RM93–25–000 (69 FERC ¶ 61,337) was published in the **Federal Register** on December 28, 1994 (59 FR 66714).

[2] 16 U.S.C. 825/ (1992).

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not request rehearing, stating (correctly) that "its members will have the opportunity to challenge any Commission assertion of decommissioning authority in the context of actual proceedings where this becomes an issue." Similarly, on January 31, 1995, the Edison Electric Institute filed comments on the policy statement on reserved authority issued in Docket No. RM93–25–000, as well as on the policy statement in Docket No. RM93–23–000.

Also on January 13, 1995, three requests for rehearing of the policy statement on decommissioning, in Docket No. RM93–23–000, were filed: (1) By the Hydropower Reform Coalition;[3] (2) by (jointly) the U.S. Department of Commerce and the U.S. Department of the Interior (the U.S. Departments);[4] and by (jointly) Edwards Manufacturing Co., Inc. and the City of Augusta, Maine (Edwards and Augusta).[5] The pleading filed by the U.S. Departments is styled as a petition for "clarification, reconsideration and rehearing."

The above-captioned policy statements issued on December 14, 1994, provide only notice of the Commission's general views and intentions with respect to a broad range of potential issues that may come before it in future cases. The policy statements do not apply those views and intentions to the specific facts of any particular case, nor do they purport to resolve any specific case or controversy. They do not impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process. Therefore, as there is no aggrievement, rehearing does not lie. Nor have the petitioners shown any particular circumstances requiring that we reconsider our positions taken in these policy statements.[6] Accordingly, the above-described requests for rehearing of the policy statements issued on December 14, 1994, in the above-captioned dockets are dismissed to the extent that they seek rehearing of either or both of those two policy statements, and are denied to the extent that they seek reconsideration of either of both of those policy statements.

The Commission Orders

The request for reconsideration and rehearing filed by the American Public Power Association in Docket Nos. RM93–23–001 and RM93–25–001, and the requests for rehearing, reconsideration and/or clarification filed by the Hydropower Reform Coalition, by the U.S. Departments of Commerce and the Interior, and by Edwards Manufacturing Company, Inc. and the City of Augusta, Maine, in Docket No. RM93–23–001, are rejected as requests for rehearing and are denied as requests for reconsideration or clarification.

By the Commission. Commissioner Bailey dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Bailey, Commissioner, *dissenting in part.*

For the reasons discussed in my earlier dissent, I would grant reconsideration of the Decommissioning Policy Statement (Docket No. RM93–23–001).

Vicky A. Bailey,

Commissioner.

[FR Doc. 95–4354 Filed 2–22–95; 8:45 am]

BILLING CODE 6717–01–P

[3] In the alternative, the Coalition requests reconsideration or clarification of the policy statement.

[4] The pleading filed by the U.S. Departments also requests rehearing of a companion order issued on December 14, 1994 (69 FERC ¶ 61,338), that removed a standard reservation of authority article from approximately 60 licenses. That portion of the pleading is not affected by this order.

[5] The pleading filed by Edwards and Augusta also requests rehearing of another companion order issued on December 14, 1994 (69 FERC ¶ 61,335), which amended their license for the Augusta Hydroelectric Project (Edwards Dam). That portion of the pleading is not affected by this order.

[6] See Papago Tribal Utility Authority v. FERC, 628 F.2d 235, 239 (D.C. Cir. 1980).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 207

[Docket No. R–95–1768; FR–3753–I–01]

RIN 2502–AG34

Multifamily Cooperative Refinancing and Conversion Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD's multifamily mortgage insurance regulations are being amended to revise the occupancy requirements for rental projects converted to cooperative ownership. The amended regulations replace the strict 70 percent owner-occupant subscription requirement with one that varies according to the loan-to-value ratio. This flexibility will allow the Federal Housing Commissioner to expand affordable housing opportunities.

DATES: Effective date: March 27, 1995.

Expiration date: Section 207.32a(h)(2) will expire on September 23, 1996.

Comments due date: April 24, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Director, Office of Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410–0500, telephone (202) 708–3000. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the National Housing Act of 1934, specifically section 223(f) (12 U.S.C. 1715n(f)), authorizes HUD to insure mortgages for multifamily rental units through the Federal Housing Administration (FHA). The regulations implementing section 223(f) are codified at 24 CFR 207.32a. The section 223(f) regulations were amended June 24, 1985 (50 FR 25940), to include cooperative mortgagors. The regulations, as amended in 1985, expand section 223(f) to provide mortgage insurance for the refinancing of existing cooperative projects and the purchase/conversion of existing rental projects by cooperative sponsors.

Paragraph (h)(2) of § 207.32a sets forth the occupancy requirements for rental projects converted to cooperative ownership. At least 70 percent of the total units in the project must be subscribed to on a cooperative basis before endorsement of the mortgage for insurance by the Federal Housing Commissioner. This interim rule replaces the strict 70 percent subscription requirement of § 207.32a(h)(2) with one that varies according to the loan-to-value ratio.

The amended regulation provides that with respect to a cooperative project, the following pre-sale and loan-to-value ratios apply: (1) A 70 percent loan-to-value ratio loan will require that 51 percent of the project's units be pre-sold and occupied by the owners as a principal residence prior to endorsement; (2) an 80 percent loan-to-value ratio loan will require that 60 percent of the project's units be pre-sold and occupied by the owners as a principal residence prior to endorsement; and (3) a 90 percent loan-to-value ratio loan will require that 70 percent of the project's units be pre-sold and occupied by the owners as a principal residence prior to endorsement.

These amendments will minimize HUD's risk in insuring mortgages on cooperative projects while at the same time, providing a mechanism for development of a wide range of cooperative projects. In general, the higher the pre-sale rate, the more likely a project will succeed as a cooperative. Likewise, the greater the loan-to-value ratio, the higher HUD's risk in most cases. Therefore, the amendment requires a higher pre-sale rate in order to secure a higher loan-to-value ratio loan. Conversely, the smaller the loan-to-value ratio, the less substantial HUD's risk, and, thus, the lower the required pre-sale.

Furthermore, this interim rule also creates a new § 207.32a(h)(2)(iv) mandating that voting control of the cooperative project rest with the owner-occupants. Since owner-occupant control is a distinguishing feature of cooperatives, this requirement will ensure that the insured mortgage is associated with a legitimate cooperative project.

These amendments not only increase program flexibility with respect to the insurance of mortgages on cooperative projects, but will promote HUD's policy of revitalizing neighborhoods and communities. HUD believes these amendments will help make affordable housing a reality for more families everywhere and help revitalize "communities in peril."

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that in this case prior public comment is contrary to the interest of the public. This interim rule removes a strict regulatory and administrative requirement in order to increase program flexibility and expand homeownership opportunities. Although HUD believes the public will benefit from immediate implementation of this interim rule, HUD welcomes public comment. All comments will be considered in the development of the final rule.

The Department has adopted a policy of setting an expiration date for an interim rule unless a final rule is published before that date. This "sunset" provision appears in § 207.32a(h)(2)(v), and provides that the interim rule will expire on a date 18 months from its effective date.

III. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this interim rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this interim rule is directed towards applicants and participants in HUD's multifamily mortgage insurance program. It effects no changes in the current relationships between the federal government, the states and their political subdivisions in connection with these programs.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule only governs the procedures under which the Department insures multifamily cooperative projects, and will not have any meaningful economic impact on any entity.

E. Regulatory Agenda

This interim rule was listed as sequence number 1773 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57634) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 207 is amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z-11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

2. In § 207.32a, paragraph (h)(2) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(h) * * *

(2) With respect to a cooperative project:

(i) At least 51 percent of the total units in the project must be subscribed to on a cooperative basis and occupied by the owners as a principal residence before endorsement of the mortgage for insurance by the Commissioner in order to obtain a 70 percent loan-to-value ratio loan;

(ii) At least 60 percent of the total units in the project must be subscribed to on a cooperative basis and occupied by the owners as a principal residence before endorsement of the mortgage for insurance by the Commissioner in order to obtain an 80 percent loan-to-value ratio loan; and

(iii) At least 70 percent of the total units in the project must be subscribed to on a cooperative basis and occupied by the owners as a principal residence before endorsement of the mortgage for insurance by the Commissioner in order to obtain a 90 percent loan-to-value ratio loan.

(iv) Voting control of the cooperative rests with the owner-occupants.

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(v) This paragraph (h)(2) expires on September 23, 1996, unless a **Federal Register** notice extending its effectiveness is published prior to this expiration date.

* * * * *

Dated: December 27, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–4366 Filed 2–22–95; 8:45 am]

BILLING CODE 4210–27–P

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 597

[Docket No. R–95–1702; FR–3580–N–06]

RIN 2506–AB65

Notice of Designation of Empowerment Zones and Enterprise Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of designation of Empowerment Zones and Enterprise Communities.

SUMMARY: On January 18, 1994, HUD published an interim rule that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of urban Empowerment Zones and Enterprise Communities. On January 18, 1994, HUD also published a notice inviting applications for designation of Empowerment Zones and Enterprise Communities.

This notice announces the jurisdictions that were designated urban Empowerment Zones and Enterprise Communities by HUD. This notice also announces the designation of two Supplemental Empowerment Zones and four Enhanced Enterprise Communities.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development, Room 7136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2290; TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 18, 1994 (59 FR 2790), HUD published an interim rule that implemented that portion of Subchapter C, Part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 which addresses the designation of urban Empowerment Zones and Enterprise Communities. This interim rule was made final by a final rule published on January 12, 1995 (60 FR 3034).

Title XIII also provides for the designation of rural Empowerment Zones and Enterprise Communities. As noted in the January 18, 1994 interim rule, the urban part of the program is administered by HUD as a Federal-State-local partnership. The rural part of the program is administered by the Department of Agriculture, which also published an interim rule on January 18, 1994 (59 FR 2686).

On January 18, 1994 (59 FR 2711), in addition to publication of the interim rule, HUD published a notice inviting applications from States and local governments for nomination of urban areas as Empowerment Zones and Enterprise Communities. The January 18, 1994 notice provided for an application deadline of June 30, 1994. HUD carefully considered all applications, and on December 21, 1994, President Clinton announced the urban areas that were designated by HUD as Empowerment Zones and Enterprise Communities, and the rural areas that were designated by the Department of Agriculture as rural Empowerment Zones and Enterprise Communities.

On that date, President Clinton announced the designation of two Supplemental Empowerment Zones and four Enhanced Enterprise Communities that will receive HUD economic development grants. The Supplemental Empowerment Zone and Enhanced Enterprise Community grants are provided under HUD's economic development initiative (EDI), which enables communities to provide financing for economic development, housing rehabilitation, and essential development projects.

Appendix A to this notice announces the urban areas that were designated urban Empowerment Zones and Enterprise Communities by HUD. Appendix A to this notice also announces the two Supplemental Empowerment Zones and the four Enhanced Enterprise Communities.

Dated: February 10, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

EMPOWERMENT ZONE, SUPPLEMENTAL EMPOWERMENT ZONE, ENHANCED ENTERPRISE COMMUNITY AND ENTERPRISE COMMUNITY DESIGNEES

State	City
Alabama EC	Birmingham.
Arizona EC	Phoenix.
Arkansas EC	Pulaski County.
California SEZ	Los Angeles City & County.
California EEC	Oakland.
California EC	Los Angeles/Huntington Park.
Do	San Diego.
Do	San Francisco/Bayview/Hunters Point.
Colorado EC	Denver City & County.
Connecticut EC	Bridgeport.
Do	New Haven.
Delaware EC	Wilmington, New Castle Co.
District EC	District of Columbia.
Florida EC	Dade County, Miami.
Do	Tampa.
Georgia EZ	Atlanta.
Georgia EC	Albany.
Illinois EZ	Chicago.
Illinois EC	East St. Louis.
Do	Springfield.
Indiana EC	Indianapolis.
Iowa EC	Des Moines.
Kentucky EC	Louisville.
Louisiana EC	New Orleans.
Do	Ouachita Parish.
Maryland EZ	Baltimore.
Massachusetts EEC	Boston.
Massachusetts EC	Lowell.
Do	Springfield.
Michigan EZ	Detroit.
Michigan EC	Flint.
Do	Muskegon.
Minnesota EC	Minneapolis.
Do	St. Paul.
Mississippi EC	Jackson.
Missouri EEC	Kansas City (Mo and Kans).
Missouri EC	St. Louis, St. Louis County, Wellston.
Nebraska EC	Omaha.
Nevada EC	Clarke County/Las Vegas.
New Hampshire EC	Manchester.
New Jersey EC	Newark.
New Mexico EC	Albuquerque.
New York EZ	New York, Bronx County.
New York EC	Albany.
Do	Buffalo.
Do	Newburgh/Kingston.
Do	Rochester
No. Carolina EC	Charlotte.
Ohio SEZ	Cleveland.
Ohio EC	Akron.
Do	Columbus.
Oklahoma EC	Oklahoma City
Oregon EC	Portland

EMPOWERMENT ZONE, SUPPLEMENTAL EMPOWERMENT ZONE, ENHANCED ENTERPRISE COMMUNITY AND ENTERPRISE COMMUNITY DESIGNEES—Continued

State	City
Pennsylvania EZ	Philadelphia, Camden N.J.
Pennsylvania EC	Harrisburg.
Do	Pittsburgh & Allegheny Co.
Rhode Island EC	Providence.
So. Carolina EC	Charleston.
Tennessee EC	Memphis.
Do	Nashville.
Texas EEC	Houston.
Texas EC	Dallas.
Do	El Paso.
Do	San Antonio.
Do	Waco.
Utah EC	Ogden.
Vermont EC	Burlington.
Virginia EC	Norfolk.
Washington EC	Seattle.
Do	Tacoma.
West Virginia EC	Huntington.
Wisconsin EC	Milwaukee.

[FR Doc. 95–4365 Filed 2–22–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 351

Offering of United States Savings Bonds, Series EE

CFR Correction

In title 31 of the Code of Federal Regulations, part 200 to end, revised as of July 1, 1994, on page 265, § 351.2 (e)(1) is corrected to read as follows:

§ 351.2 Description of bonds.

* * * * *

(e) * * *

(1) *Guaranteed minimum investment yield.* The guaranteed minimum investment yield of a bond from its issue date to each semiannual interest accrual date occurring on or after 5 years from issue up to original maturity will be 7.5 percent per annum, compounded semiannually, for a bond bearing an issue date of November 1, 1982, through October 1, 1986, and 6 percent per annum, compounded semiannually, for a bond bearing an issue date of November 1, 1986, through February 1, 1993; and, 4 percent per annum, compounded semiannually, for a bond bearing an issue date of March 1, 1993, or thereafter. Interest that accrues on a Series EE bond becomes part of its redemption value and is paid, as set out in § 351.2 (h).

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD05–94–088]

RIN 2115–AA98

Anchorage Regulations Anchorage 7 off Marcus Hook; Delaware River, Southeast Side of the Channel Along Marcus Hook Range

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the boundaries of Anchorage 7 off Marcus Hook on the southeast side of the channel along the Marcus Hook Range of the Delaware River. It corrects the published coordinates to reflect those coordinates of the Army Corps of Engineers maintained anchorage, and clearly designates an area large enough to accommodate modern, large vessels requiring examination by public health, customs or immigration authorities.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: LCDR Tom Flynn, Assistant Chief, Planning and Waterways Management Section, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004, (804) 398–6285.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR Tom Flynn, project officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District and LT Andy Norris, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory History

On November 8, 1994, the Coast Guard published a notice of proposed rulemaking entitled Anchorage Regulations; Anchorage Grounds: Anchorage 7 off Marcus Hook; Delaware River, Southeast Side of the Channel Along Marcus Hook Range in the **Federal Register** (59 FR 55598). The comment period expired on January 9, 1995. The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Section 7 of the Act of March 4, 1915, as amended (33 U.S.C. 471), authorizes the establishment of anchorage grounds for vessels in the navigable waters of the United States whenever it is apparent that such grounds are required by the maritime or commercial interests of the United States for safe navigation. A Coast Guard initiated Waterways Analysis and Management System Study (WAMS) of the Delaware River, conducted in 1989, determined that a discrepancy existed between the charted anchorage, the Army Corps of Engineers maintained anchorage, and the anchorage coordinates published in 33 CFR 110.157(a)(8). WAMS was developed to serve as the basis for a systematic analysis and management of the aids to navigation in our nation's waterways. WAMS is intended to identify the navigational needs of the users of a particular waterway, the present adequacy of the aids system in terms of those needs, and what is required in those cases where the users' needs are not being met. The WAMS process also looks into the resources—physical, financial, and personnel—needed to carry out the Aids to Navigation program responsibilities. The analyses of each waterway and the attendant resources are then integrated to provide documentation for both day to day management and future planning within the Aids to Navigation program. Anchorage 7, off Marcus Hook, as defined in 33 CFR 110.157(a)(8), does not correctly delineate the anchorage as currently maintained by the Army Corps of Engineers nor as charted by the National Ocean Service. The preferential area in this anchorage designated for the use of vessels awaiting quarantine inspection is vaguely defined and may not provide adequate room for modern, large vessels. This rule will correct those discrepancies.

Discussion of Comments and Changes

No comments were received concerning the notice of proposed rulemaking. There are no substantive differences between the proposed rule and this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this

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final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The basis for this finding is that Anchorage 7 is already being utilized within the boundaries set forth in this final rule.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this final rule is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this final rulemaking will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This final rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.e of Commandant Instruction M16475.1B. It has been determined that a Categorical Exclusion Determination statement is not required (see 59 FR 38654, July 29, 1994).

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

Final Regulations

For the reasons set out in the preamble, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.157 paragraph (a)(8) is revised to read as follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(8) *Anchorage 7 off Marcus Hook.* (i) On the southeast side of the channel along Marcus Hook Range, bounded by a line connecting the following points:

Latitude	*Longitude*
39°49'17.254" N	75°22'50.0994" W
39°48'39.984" N	75°23'17.238" W
39°47'45.309" N	75°25'01.278" W
39°47'43.111" N	75°26'00.186" W

(DATUM: NAD 83)

(ii) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities shall anchor in the preferential area of this anchorage designated for the use of vessels awaiting quarantine inspection, this area being the waters bounded by the arc of a circle with a radius of 366 yards and with the center located at:

Latitude	*Longitude*
39°48'46.334" N	75°23'26.881" W

(DATUM: NAD 83)

(iii) Should the remainder of the anchorage be in use, the preferential area, when available, may be used by vessels not subject to quarantine inspection.

* * * * *

Dated: January 23, 1995.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 95–4410 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 162

[CGD09–95–006]

Temporary Speed Limits for the St. Marys River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is making a temporary amendment to the speed limits for the St. Marys River during the 1994–95 icebreaking season. This amendment reduces the speed limit by 2 miles per hour through that part of the system, between Munuscong Lake Lighted Buoy 8 (LLNR 13065) and Lake Nicolet Light 80 (LLNR 13465) upbound and between Lake Nicolet Light 80 (LLNR 13465) and West Neebish Channel Light 9 (LLNR 13715) downbound. These temporary changes to the speed regulations are a precautionary measure to minimize any possible damage to the environment due to movement of large commercial vessels through the ice.

EFFECTIVE DATE: This regulation is effective from February 9, 1995, through April 15, 1995.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott J. Smith, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–3990 or Ensign William B. Morgan, Group Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783, (906) 635–3303.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Publication of a notice of proposed rulemaking and delay in the effective date would be contrary to the public interest because immediate action is necessary to prevent possible damage to the environment. Additionally, the Coast Guard issued this temporary rule for the 1993–94 icebreaking season and no comments were received. Therefore, nothing would apparently be gained by pre-publication.

Discussion of Proposed Regulations

In a letter received on February 26, 1993, the Michigan Department of Natural Resources advised the Commander of the Ninth Coast Guard District of concerns over the environmental impact of ship transits through the St. Marys River during the period of March 21 to April 1. March 25 is the fixed date for the opening of the locks at Sault St. Marie, which allows large commercial shipping access to the St. Marys River from Lake Superior. In accordance with an agreement reached on June 29, 1993, with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the Michigan Department of Natural Resources, the Coast Guard is making this temporary change to the speed regulations during periods when icebreaking is being conducted in the vicinity of Neebish Island, St. Mary's River, Michigan, as a precautionary measure to minimize any possible damage to the environment. The speed limit is being reduced by 2 statute miles per hour in the area between Munuscong Lake Lighted Buoy 8 (LLNR 13065) and Lake Nicolet Light 80 (LLNR 13465), upbound, and between Lake Nicolet Light 80 (LLNR 13465) and West Neebish Channel Light 9 (LLNR 13715), downbound. The West Neebish Channel Light 9 checkpoint has been added to extend the reduced speed limit area past Winter Point, thereby protecting the sensitive environment between Winter Point and West Neebish Channel Light 9. Speed limits apply to the average speed between established reporting points.

Drafting Information

The drafters of this regulation are Lieutenant J.G. Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation & Waterways Management Branch, and Lieutenant and Karen E. Lloyd, Project Attorney, Ninth Coast Guard District Legal Office.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

A recent environmental impact study by the United States Army Corps of Engineers indicated that March 21 is the optimal opening date. [see U.S. Army Corps of Engineers Draft Environmental Impact Statement, Opening Operations of the Lock Facilities on March 21 (February 1993), Supplement III to the Final Environmental Impact Statement, Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan (July 1977)]. The same study by the Corps of Engineers indicates that there is not significant impact on fish populations due to movement of large commercial vessels through the ice. However, the Michigan Department of Natural Resources asserts that there may be such an impact during the early period of March 21 to April 1.

The Ninth Coast Guard District has adopted the U.S. Army Corps of Engineers EIS, EIS Supplements, and EIS studies on Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan. In addition, the Coast Guard is preparing a supplement for the 1974 Ninth Coast Guard District EIS regarding icebreaking activity on the Great Lakes.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 162

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard temporarily amends Part 162 of Title 33, Code of Federal Regulations, as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for 33 CFR Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. From February 9, 1995 through April 15, 1995, paragraph (g) in § 162.117 is suspended and a new paragraph (i) is added to read as follows:

§ 162.117 St. Marys River, Sault Ste. Marie, Michigan.

(i) *Speed rules.* The following speed limits indicate the average speed over the ground between reporting points:

The speed limit between	Speed limit	
	Miles/hr	Knots
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Light and Point Aux Frenes Light 21	14	12.2
Munuscong Lake Lighted Buoy 8 and Everns Point	10	8.7
Everns Point and Reed Point	7	6.0
Reed Point and Lake Nicolet Lighted Buoy 62	8	7.0
Lake Nicolet Lighted Buoy 62 and Lake Nicolet Light 80	10	8.7
Lake Nicolet Lighted Buoy 80 and Munuscong Lake Light 9 (downbound, West Neebish Channel)	8	7.0
Lake Nicolet Light 80 and Winter Point (West Neebish Channel)	8	7.0
Lake Nicolet Light 80 and Six Mile Point Ranger Rear Light	10	8.7
Six Mile Point Range Rear Light and lower limit of the St. Marys Falls Canal:		
Upbound	8	7
Downbound	10	8.7
Upper limit of the St. Marys Falls Canal and Point Aux Pins Main Light	12	10.4

Dated: February 9, 1995.

Thomas A. Trosvig,

Captain, U.S. Coast Guard Commanding Officer, VTS St. Marys River

[FR Doc. 95–4412 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Contents of Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On July 20, 1994, the Postal Service published a proposed rule for public comment in the **Federal Register** (59 FR 37011–37018) that would revise the current standards in the Domestic Mail Manual (DMM) on materials eligible for mailing at second-class rates with authorized second-class publications. This final rule adopts most of the proposed changes to the standards governing the contents and characteristics of second-class mail.

The final rule adopts the proposed objective criteria for determining which materials may be mailed at second-class rates, revises the regulations on pages with "novel characteristics," and liberalizes the standards governing the mailing of products and product samples. The final rule adds instructions specifying how advertising content is measured and a new definition of public service announcements. The Postal Service has decided not to adopt the proposal to remove the current advertising

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limitation on loose supplements to bound publications.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268–5188, or Alixe M. Johnson, (312) 765–5487.

SUPPLEMENTARY INFORMATION: The proposed rule discussed in detail efforts on the part of the Postal Service in recent years to adopt standards that satisfy and protect the interests of both the mailing public and the Postal Service regarding the mailing of additional materials, such as supplements, at second-class rates. Changes in technology, such as a publisher's ability to enclose a publication with supplemental materials in a polybag, have led to a renewed debate over the limits to which the standards should allow loose pieces, such as advertising supplements, to be mailed with a publication at second-class rates. Difficulty in consistent interpretation of the current standards has been a major concern for the Postal Service. This difficulty has required the need for additional Postal Service resources for training and mail acceptance and has compromised the ability of the Postal Service to consistently collect the correct postage on second-class mail.

At the behest of the second-class mailing industry, the Postal Service agreed to review the standards governing the contents of second-class mail and solicit public comment on proposed changes. As a result, the Postal Service published the proposed rule on July 20, 1994.

The comment period ended on September 19, 1994, and 27 written comments were received from interested associations, publishers, and individuals. Having given thorough consideration to these comments, the Postal Service is now publishing its final rule. This final rule completely reorganizes and renumbers DMM C200, using a format with four main headings (as described in the proposed rule): 1.0 Permissible Mailpiece Components, 2.0 Impermissible Mailpiece Components, 3.0 Mailpiece Construction, and 4.0 Printed Features. Following this new format, each section and the comments applicable to that section are summarized and discussed below. Affected sections of modules A, E, and P of the DMM are also listed and discussed in detail.

Not specifically discussed below is one comment received that stated general acceptance of the entire proposal. In addition, one comment was received requesting that the Postal Service amend the mailing standards governing carrier route second-class mail. This comment is outside the scope of this rulemaking and is not addressed in the final rule. One commenter noted an error in proposed C200.4.3 referring to an exception in C200.1.4d although no subsection C200.1.4d was shown in the proposal. This omission is corrected in the final rule.

Discussion of Comments

Additional Standards for Second-Class Mail (A010.7.0)

1. Preparation (A010.7.1)

This section, which provides the basic standards for addressing second-class mail, is moved intact from current A200.1.1. No comments were received. The proposal is adopted.

2. Address Labels (A010.7.2)

Current text from A200.1.2 forms this new section. No comments were received. The proposal is adopted.

3. Address Placement (A010.7.3)

Current A200.1.3 is also relocated to these general standards for addressing second-class mail. The section is revised for clarity. No comments were received. The proposal is adopted.

4. Return Address (A010.7.4)

Instructions on mail requiring a return address when it is endorsed "Return Postage Guaranteed" are relocated from current A200.1.4. No comments were received. The proposal is adopted.

Permissible Mailpiece Components (C200.1.0)

5. Pages (C200.1.1)

One commenter expressed concern over the proposed language that states, in part, "no page may have dimensions (when folded, if folded) that exceed the dimensions of the cover of the publication." This commenter was concerned about covers that are slightly shorter than the full dimensions of the publication. The Postal Service believes that this commenter's concern has merit. The Postal Service has removed the reference to the cover of the publication. The pertinent phrase now reads "that exceed the dimensions of the publication." Three commenters remarked favorably on proposed language that would allow small amounts of fastening material such as grommets, string, or rubber bands when used to assemble a page. No negative comments were received. The proposed language is adopted with the revision noted above.

6. Parts and Sections (C200.1.2)

Although no substantive change concerning parts or sections was proposed, four commenters offered remarks on the reorganized language that carries forward the standards governing parts and sections. These commenters suggested that the language providing that "parts or sections produced by someone other than the publisher may not be mailed at second-class rates if these parts or sections are prepared by or for advertisers or if they are provided to the publisher free or at a nominal charge" is unnecessary and/or confusing and should be eliminated. This language essentially prohibits parts or sections produced for advertising purposes. Such parts or sections have historically been restricted from second-class eligibility and that restriction remains in place. The Postal Service believes that the language in question is useful in making it clear that pieces that are not eligible as supplements may not be prepared as parts or sections in order to qualify for mailing at second-class rates. The language is also useful in providing a clear distinction between parts and sections and other components such as supplements. The proposed language is adopted with a minor revision providing that any postal official, not just the rates and classification service centers, may request publishers to submit contracts entered into with producers of parts or sections.

7. Enclosures at First- or Third-Class Rates (C200.1.3)

This section clarifies the standards governing enclosures at First- or third-class rates. No comments were received. The proposal is adopted.

8. Enclosures at Second-Class Rates (C200.1.4)

Three commenters favored the proposed language clarifying that permissible enclosures allowable at second-class rates are not counted when determining the percentage of advertising in a second-class publication, but instead are included in the total weight of the publication reported on the mailing statement, either PS Form 3541–R or PS Form 3541–N. Another commenter suggested that the section allowing a receipt or request for a subscription to be accompanied by a single sheet of printed matter containing information related exclusively to it (proposed C200.1.4b) be revised to permit two separate sheets rather than one. The revision to DMM language that allowed for a separate single sheet was in response to industry requests for production flexibility, particularly to allow extended forms to be divided into two separate sheets (e.g., order form and related promotional information). See Postal Bulletin 21848 (August 19, 1993). The Postal Service believes that it is inconsistent with the limited nature of loose enclosures to consider allowing any additional material as enclosures. The section is adopted as proposed.

9. Supplements (C200.1.5)

The proposed rule explained in detail the concerns expressed by many publishers over a course of several years regarding the mailing standard requiring that 25% nonadvertising content be included in all loose supplements to bound second-class publications. Publishers have asserted that this requirement is a burden to the industry and unnecessarily restricts publishers from including desired advertising and other supplemental materials with the host publication. At the urging of those publishers, the Postal Service agreed to propose, for public comment, elimination of the 25% nonadvertising requirement for loose supplements to bound second-class publications. Two commenters offered historical reviews of the regulations concerning second-class supplements to support their position that relaxing the current standard would damage the integrity of second-class mail. These commenters were joined by eight other commenters who also opposed eliminating the 25% nonadvertising requirement. Most often the reason given was that the elimination of this requirement could diminish the distinction between second-class and other classes of mail and eliminate the preferential rate treatment accorded to second-class mail. In one commenter's opinion, postal operations would also be negatively impacted because more publishers would use polywrapping.

On the other hand, seven commenters offered support for the elimination of the 25% nonadvertising requirement, although some expressed concern about the continued viability of second-class mail if safeguards are not taken to monitor second-class mailings strictly to ensure that typical third-class matter not be allowed to be mailed at second-class rates. For the most part, these seven commenters viewed the elimination of the 25% nonadvertising requirement as an improvement and believed that the overall limit on advertising is adequate to protect the integrity of second-class mail.

The comments received on the elimination of the 25% nonadvertising requirement indicate that there is no consensus within the second-class industry on this proposal. Based on this lack of consensus, the Postal Service has concluded that there is insufficient support for a change to the existing standards at this time. Thus, the Postal Service will retain the 25% nonadvertising requirement for loose supplements to bound second-class publications.

Eight commenters supported the retention of the "Supplement to" endorsement requirement as a safeguard against the inclusion of third-class material being carried as a supplement. One commenter favored the complete elimination of the "Supplement to" endorsement. The Postal Service believes that it is necessary to retain the "Supplement to" requirement as an indication that the material was designed for inclusion with the publication. Therefore, this part of the rule is adopted as proposed. Six commenters requested that the Postal Service clarify that supplements to unbound publications do not require the endorsement "Supplement to" unless the supplement is included loose outside the publication. This final rule does so.

Three commenters expressed a concern that the proposed definition of supplements would exclude from second-class eligibility special supplemental advertising materials that are bound into a second-class publication. The Postal Service considers such an advertisement to be an integral part of the publication. It is not a "supplement" within the meaning of this section. Six other commenters requested that the Postal Service better define the term "supplement" to avoid any misunderstanding over its use. Although, as indicated, some publishers use the term "supplement" to refer to items that are either bound into a bound publication or included loose with a bound publication, the Postal Service considers the definition in the proposal to be less confusing than prior definitions and a more accurate description of what is acceptable as a supplement. The proposed definition is adopted in the final rule.

One commenter disagreed with the requirement that the external dimensions of a supplement (its length and height) may not exceed the dimensions of the host publication. The commenter suggested that this restriction be dropped if the publication and its supplement or supplements are polybagged. The Postal Service considers the height and length restriction on supplements to be a necessary requirement to aid in recognizing the second-class piece as the host piece to ensure proper handling as a time-value publication. Additionally, this restriction promotes the production of a mailpiece (i.e., host and supplement) that is easier to process. The proposal is adopted.

10. Covers (C200.1.6)

No comments were received concerning the proposed language in this section. The proposal is adopted.

11. Mailing Wrappers (C200.1.7)

One commenter suggested that the definition of a wrapper include the words "partial wrapper," consistent with the use of this term elsewhere in these standards (see C200.3.4). The Postal Service agrees. This wording is added and the proposal is adopted.

12. Attachments (C200.1.8)

The rule as proposed in C200.1.8a allows for stickers of any size and shape to be attached to the cover, protective cover, or mailing wrapper if no portion of the publication name is obscured. One commenter requested that this reference to stickers as attachments be clarified to state that stickers attached to a page using any manufacturing process are allowable. The Postal Service believes that the suggested reference to "any manufacturing process" is too broad and all inclusive and that the proposed language is sufficiently clear and accommodating. No other comments were received. This section is adopted as proposed.

13. Printed Additions (C200.1.9)

This section consolidates the list of words, characters, figures, and phrases that may be added to a copy of a second-class publication after it is printed or placed on the protective cover or mailing wrapper. No comments were received. The proposal is adopted.

14. Label Carriers (C200.1.10)

One commenter suggested that a label carrier should be permitted with publications enclosed within polywrap or a partial wrapper (such as a sleeve). The Postal Service believes that there is merit in this suggestion and has amended this section accordingly in the final rule.

Impermissible Components (C200.2.0)

15. General Standard (C200.2.1)

This section describes materials not eligible for second-class rates. No comments were received. The proposal is adopted.

16. Prohibited Matter (C200.2.2)

This section describes those materials that are prohibited from being mailed at

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second-class rates whether as a loose supplement, as a bound-in "preprint," or as a run-of-press (ROP) page. One commenter stated that the prohibitions should be applicable to loose supplements only and not to preprints or ROP pages. The Postal Service considers that, by definition, certain materials are not eligible to be mailed at second-class rates. Further, the Postal Service does not find the manner in which matter would be incorporated in a host publication (e.g., as a loose supplement or bound-in advertisement) to be a relevant factor in determining second-class eligibility. The Postal Service believes that the listed elements for prohibited matter should apply to all material offered for entry at the second-class rates.

It was further suggested by a commenter that a USPS number be added to the list of prohibited matter. Although separate second-class publications may be combined under certain specified conditions, the Postal Service believed that it was understood that a second-class publication could not be mailed as a supplement. Seeing some merit in this suggestion, the Postal Service has added a USPS number to the list of prohibited matter (see C200.2.2e) to clarify this point.

Two commenters strongly favored the Postal Service's new list of objective criteria for defining those independent publications that are ineligible to be mailed at second-class rates. One commenter stated that the list of prohibited items does not go far enough to ensure that prohibited independent publications not be allowed to mail at second-class rates, and suggested that the standards be revised to retain a specific prohibition against "independent publications" and to treat the list of components as creating a strong presumption that the item is (or is not) an independent publication. The commenter also suggested that the list be expanded to include a separate table of contents, pagination, and masthead as indicators of a publication's possible independence. Eliminating the confusion surrounding what constitutes an independent publication is a major objective of this rulemaking. The Postal Service believes that the proposed rule as written serves to eliminate such confusion and that it is not necessary to adopt requirements more stringent than those in the proposed rule, especially because the 25% nonadvertising requirement for loose supplements to a bound publication has been retained. Therefore, except for the aforementioned amendment, the proposal is adopted.

17. Products (C200.2.3)

The following proposed language concerning products drew numerous comments: "Printed pages, including oversized pages and calendars, are not considered products if they are not separately distributed or offered for sale, bear the name of the host publication and the issue date, and relate to other advertising or nonadvertising content of the host publication." Five commenters objected to this language as being both too vague and too stringent (except for the prohibition against such pages as calendars being offered for sale). Seven commenters were in favor of the Postal Service's position that noncommercially available oversized pages and calendars be permitted to be mailed at second-class rates. The Postal Service intended this proposed revision to allow pages (specifically pages prepared as posters) and calendars that are not commercially sold or offered for sale by the publisher to be included in publications mailed at the second-class rates. The requirement for including the host publication name, issue date, and the relation of the page or calendar to other advertising or nonadvertising content of the host publication was intended to demonstrate the piece's relationship to the host piece, thereby reinforcing its acceptability. To minimize the likelihood of misinterpretation, however, the Postal Service has reworded portions of this section for greater clarity.

One commenter suggested that publishers should be allowed to sell their own reprints and other reader service items to their subscribers without paying a "postage penalty." The Postal Service does not believe that it is appropriate to allow publishers to obtain preferential second-class rates for material that is also designed for separate sale. This view is consistent with the exclusion from eligibility for second-class rates of items bearing a separate price (see C200.2.2a). Three commenters suggested that the word "Poster" be included. The Postal Service does not wish to limit oversized pages to posters because other items (e.g., maps, wall charts, and patterns) will also be acceptable at second-class rates if not commercially available or offered for sale.

18. Fourth-Class Mail (C200.2.4)

One commenter suggested that this section be revised to allow second-class matter to be mailed with fourth-class matter at fourth-class rates. However, the proposed section pertains to what may be mailed at second-class rates. The comment goes beyond the scope of this rulemaking. No other comments concerning this portion of the proposal were received. The proposal is adopted as written.

19. Nonprinted Sheets (C200.2.5)

This section makes clear that any matter not formed of printed sheets (except for small amounts of fastening material such as grommets, string, or rubber bands needed to assemble the page [see C200.1.1b]) is not eligible for second-class rates. No comments were received. The proposal is adopted.

Mailpiece Construction (C200.3.0)

20. Bound/Unbound (C200.3.1)

This section defines bound and unbound publications for the purposes of second-class mail. No comments were received. The proposal is adopted.

21. Physical Size (C200.3.2)

This section explains that publications claimed at certain rates may need to comply with other DMM standards regarding size or weight. Additionally, it provides that requester publications must contain at least 24 pages per issue. No comments were received. The proposal is adopted.

22. Without Wrapper (C200.3.3)

One commenter suggested that the tolerance for protective covers (i.e., ¾ inch of the edge opposite the fold or binding) in C200.3.5 be allowed for attachments to covers as well. The Postal Service agrees that the standards governing protective covers and attachments to covers should be consistent and has added language to permit acceptable attachments to covers (as outlined in C200.1.8b) that come within ¾ inch opposite the fold or binding to be mailed without a wrapper The proposal is adopted with this clarification.

23. With Wrapper (C200.3.4)

No comments were received concerning the proposed language in this section. The proposal is adopted.

24. Protective Cover (C200.3.5)

Two commenters supported the proposed language in C200.3.5, which would allow a protective cover to be up to ¾ inch shorter than the cover of the edge opposite the fold or binding. No negative comments were received. The proposal is adopted.

25. APO/FPO Copies (C200.3.6)

This section requires that any single copy of an unbound publication that includes any enclosures, supplements, or more than one part or section and that is mailed to an APO/FPO address to be completely enclosed in a wrapper. No comments were received. The proposal is adopted.

26. Sealing (C200.3.7)

This section explains that second-class mail must be prepared so that it can be easily examined. No comments were received. The proposal is adopted.

Printed Features (C200.4.0)

27. Publication Name; Notices (C200.4.1)

This section details how and where the publication name and any notices must be displayed on the publication and any protective cover or mailing wrapper. No comments were received. The proposal is adopted.

28. Endorsements (C200.4.2)

This section pertains to endorsement placement on second-class mailing wrappers. No comments were received. The proposal is adopted.

29. Advertising (C200.4.3)

This section explains that, regardless of location, an advertisement must be prepared as an integral part of the publication. This section also details acceptable preparation standards for advertisements. No comments were received. The proposal is adopted.

30. Marking of Paid Reading Matter (18 U.S.C. 1734) (C200.4.4)

This section on the marking of paid reading matter is carried word for word from the current DMM. No comments were received. The proposal is adopted.

Standards Applicable to All Second-Class Mail (E211)

31. Printed Sheets (E211.3.0)

Two commenters opposed the revision to this section, with one commenter suggesting that the additional language would "limit the types of publications included within 'printed sheet' and would exclude publications printed on computer-readable plastic or metal sheets from second-class eligibility." The language in E211.3.0 was not revised, but taken word for word from current module C, Characteristics and Content, of the DMM. The Postal Service did not propose to make any change in its policy or interpretation concerning what constitutes a printed sheet. Rather, the proposal was solely intended to move this provision to a more appropriate position in module E, Eligibility. Four commenters suggested that the section be revised to include "plastic" to describe permissible sheets mailed at second-class rates, and one commenter suggested that the section be revised to include "a small swatch of cloth, fabric, wallpaper, or plastic." The current language does not exclude materials such as plastic, and the Postal Service believes that retention of the words "or other similar materials" is preferable to an attempt to set forth a complete list of eligible materials. The language is adopted as proposed.

32. Contents (E211.7.3)

Five commenters suggested that this section be revised to include "buyers' guides" as permissible contents to issues of a second-class publication. The Postal Service believes that this is a reasonable suggestion and has revised the wording accordingly. The proposal is adopted with this change.

33. Back Numbers and Reprints (E211.9.0)

This section rewords for clarity current DMM requirements governing back numbers and reprints. No comments were received. The proposal is adopted.

34. Public Service (E211.11.2)

One comment was received concerning the Postal Service's proposed definition of what constitutes a public service announcement, expressing the concern that material on behalf of advertisers might be published as part of a public service announcement. The Postal Service's definition of advertising states, in part, "articles, items, and notices in the form of reading matter inserted by custom or understanding that textual matter is to be inserted for the advertiser or the advertiser's products in the publication in which a display advertisement appears is 'advertising.'" The Postal Service believes that this provision is adequate to protect against the commenter's concerns. Therefore, the definition as proposed is adopted.

Mixed Classes (P070)

35. Enclosures in Second-Class Publications (P070.2.0)

This section contains the general rule for postage payment on enclosures in second-class mail. Current P070.2.4, which contains instructions on how to mark mail including First- or third-class enclosures, is moved from module P, Postage and Payment Methods, to the revised module C (see C200.2.8b). No comments were received. The proposal is adopted.

36. Computing Permit Imprint Postage (P070.2.8)

This section clarifies the procedures to follow when computing permit imprint postage. No comments were received. The proposal is adopted.

Basic Information (P200.1.0)

37. Measuring Advertising (P200.1.7)

One commenter asserted that this section is "self-contradictory" because some advertising space (e.g., columns as well as borders) is required to be counted twice under these instructions. The proposed standard does not require that advertising be counted twice. Consistent with past practice, this provision provides that the publisher must use the same method to compute the advertising/nonadvertising percentage (e.g., column inches, square inches, or pages) consistently throughout the measurement process. Instructions concerning the measurement of portions of a page or blank borders are only meant to ensure that if an advertising rate is paid for the material, it must be included in the advertising percentage. For example, if an advertiser who pays for a full page of advertising to be measured in column inches chooses to produce a small advertisement surrounded by blank space on a full page that contains 27 column inches, the entire 27 column inches must be claimed at the advertising rate even though a majority of the page is blank space. The Postal Service believes, therefore, that the standard as proposed should be adopted.

Two commenters found the final sentence confusing in the section that reads "[w]hen two or more sheets or parts thereof are glued together, the surface area of each sheet (front and back) is included when measuring the advertising or nonadvertising portion." The Postal Service agrees with this assessment and has changed the language to read "[w]hen two or more sheets are permanently glued together to form a single sheet, the surface area of the resulting sheet (front and back) is included when measuring the advertising or nonadvertising portion." The proposal is adopted with this minor clarification.

List of Subjects in 39 CFR Part 111

Postal Service.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111.1).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

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Authority: 5 U.S.C. 552(a), 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001

2. Renumber existing Domestic Mail Manual A200.1.0 (including Exhibit 1.3) as A010.7.0; renumber subsections accordingly and revise as shown below; delete remainder of existing A200

A010 General Information

* * * * *

7.0 ADDITIONAL STANDARDS FOR SECOND-CLASS MAIL

7.1 Preparation

[Insert text of existing A200.1.1.]

7.2 Address Labels

[Insert text of existing A200.1.2.]

7.3 Address Placement

The delivery address must be clearly visible on or through the outside of the mailpiece, whether placed on a label or directly on the host publication, a component, or the mailing wrapper. If placed on the mailing wrapper, the address must be on a flat side, not on a fold (see Exhibit 7.3). If a polybag is used, the address must not appear on a component that rotates within the bag, and the address must remain visible throughout the addressed component's range of motion.

7.4 Return Address

The return address must appear on any mailing wrapper that is endorsed "Return Postage Guaranteed."

3. Replace current Domestic Mail Manual C200, Second-Class Mail, with the following:

C200 Second-Class Mail

1.0 PERMISSIBLE MAILPIECE COMPONENTS

1.1 Pages

Pages are the printed sheets forming the publication or one of the mailpiece's components, bearing advertising, nonadvertising, or both, including pages having textual and graphic matter (see E211), blank spaces for writing or marking, and material to be completed or used by the reader. A minor portion of the pages in a second-class mailpiece may have unusual characteristics, such as a different size, shape, or construction, or portions that may be wholly or partially separable; and pages prepared for folding out. No page may have dimensions (when folded, if folded) that exceed the dimensions of the publication. Pages are also subject to these standards:

a. A detachable coupon, application, or order form must relate directly to advertising or nonadvertising matter printed on the page of which it is a part or to which it is attached.

b. Multilayer pages (including pages formed by sheets glued together and pages that have unusual shapes, such as cutouts, movable flaps, or "pop-ups") may include small amounts of fastening material such as grommets, string, or rubber bands as needed to assemble the page. Multilayer pages may also be formed as pouches or pockets but may contain only permissible loose enclosures (see 1.4) or other securely affixed permissible components.

c. Multiple pages may be held together by staples or other means separate from and in addition to the regular binding of the publication.

d. Oversized pages may be used for illustrations, charts, maps, and other advertising and nonadvertising content.

1.2 Parts and Sections

Parts and sections are pages (subject to 1.1) that are physically separate subdivisions of the publication, as identified by the publisher. Each part or section must show the publication name, and the number of parts or sections in the issue must be stated on the cover of the first part or section. Parts or sections produced by someone other than the publisher may not be mailed at second-class rates if these parts or sections are prepared by or for advertisers or if they are provided to the publisher free or at a nominal charge. On request, publishers must submit contracts entered into with producers of parts or sections.

1.3 Enclosures at First- or Third-Class Rates

Matter to be paid at the applicable First- or third-class rate may be enclosed in a second-class mailpiece subject to these conditions:

a. The total weight of all enclosed third-class matter must be less than 16 ounces.

b. Postage and fee payment is subject to P070. A permit imprint that may appear on a First- or third-class enclosure must not be visible when the mailpiece is prepared for mailing except as provided under P070.

c. When enclosing nonincidental First- or any third-class mail, combination envelopes or containers with separate parts for the two classes of mail may be used. If both the sender's and addressee's names and addresses are not on both pieces, the sender's name and address must be placed on one piece and the addressee's name and address on the other. Combination containers with inseparable parts may bear the names and addresses on only one part.

d. The applicable "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" marking must be placed on or in the host publication if it contains a nonincidental First- or any third-class enclosure. If placed on the outer wrapper, polybag, envelope, or cover of the host publication, the marking must be set in type no smaller than any used in the required "POSTMASTER: Send change of address * * *" statement. If placed in the identification statement, the marking must meet the applicable standards. The marking must not be on or in copies not accompanied by a First- or third-class enclosure unless additional information is provided under the applicable postage payment standards in P070.

1.4 Enclosures at Second-Class Rates

Only the following material may be included loose as an enclosure in a second-class mailpiece and be paid at second-class rates, subject to the corresponding conditions:

a. An incidental First-Class piece must be closely related but secondary to the second-class publication with which it is enclosed and must consist of matter that, if mailed separately, would require First-Class postage. Examples of an incidental First-Class enclosure are a bill for the publication, a statement of account for past publication purchases, or a personal message or greeting included with the publication.

b. A receipt, request, or order for a subscription may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for the host and one or more second-class publications issued by the same publisher; arranged to include a coin receptacle; and inserted in an envelope within the publication. The receipt or request may be part of or accompanied by a single sheet of printed matter containing information related exclusively to a receipt or request or order for a subscription to the host second-class publication (or a combination of the host and other second-class publications of the same publisher) if that printed matter does not advertise, promote, or offer for sale other products or services.

c. A card or form for the recipient's use in providing address correction information to the publisher may be printed or written; prepared as a card or envelope, including business reply, or as a combination form for two or more second-class publications issued by the same publisher; inserted in an envelope that is attached to, bound in, or loose within the publication; or prepared as a detachable part of another permissible enclosure.

d. Enclosures listed in 1.4b and 1.4c are not counted when determining the percentage of advertising in the publication, but they are included in the total weight of the publication reported on the mailing statement. If the publication otherwise consists entirely of nonadvertising matter, an incidental First-Class enclosure as described in 1.4a may be treated as nonadvertising matter. In all other cases, an incidental First-Class enclosure is considered part of the advertising portion of the publication.

1.5 Supplements

A supplement is one or more pages (subject to 1.1) formed by one or more printed sheets that are not bound into a publication. A supplement may be devoted to a single topic and may contain material different from that in the host publication. The external dimensions of a supplement (i.e., its length and height) may not exceed those of the host publication. Supplements are also subject to these conditions as applicable:

a. A loose supplement to a bound second-class publication must contain at least 25% nonadvertising matter and bear the endorsement "Supplement to" followed by the name of the publication or the publisher. A bound publication with one or more supplements must be enclosed in a wrapper under 3.4. If a supplement to a bound publication is formed of more than one sheet, all sheets making up the supplement must be bound together.

b. A supplement to an unbound publication must be combined with and inserted within the publication under 3.3. If the supplement is included loose outside the unbound publication, the publication and its supplement must be enclosed in a wrapper or envelope under 3.4 and the supplement must bear the endorsement "Supplement to" followed by the name of the publication or publisher.

1.6 Covers

A cover may be placed on the outside of a second-class publication. A protective cover is an additional cover placed around the outside of a publication; preparation is subject to 3.5. Advertising, nonadvertising, or both may be printed on the cover or protective cover. The cover and protective cover on a publication are included when measuring advertising percentage. Nothing may be attached to the cover or protective cover except as permitted under 1.8.

1.7 Mailing Wrappers

A mailing wrapper is an envelope, sleeve, partial wrapper, or polywrap used to enclose the mailpiece. Advertising may be printed on the mailing wrapper and is included when measuring advertising percentage. Nothing may be attached to the mailing wrapper except as permitted under 1.8.

1.8 Attachments

The following may be attached to a page, cover, protective cover, or mailing wrapper of a publication:

a. Stickers of any size and shape. If stickers are attached to the cover, protective cover, or mailing wrapper, no portion of the publication name may be obscured.

b. Material allowed as a loose enclosure described in 1.3 or 1.4. When nonincidental First- and/or any third-class enclosures (see 1.3) are attached, the marking "First-Class" or "Letter Enclosed" must be on a First-Class attachment; "Third-Class," on a third-class attachment.

1.9 Printed Additions

Only the following may be printed on a copy of a second-class publication after it is printed or placed on its cover, protective cover, or mailing wrapper:

a. The name and address of the intended recipient or of the publisher or sender.

b. The printed title of the publication and its place of publication.

c. The expiration date of the subscription.

d. Requests for address-correction information from the addressee.

e. The words "Sample Copy" (on a sample), "Marked Copy" (when the copy contains a marked item or article), or "Return Postage Guaranteed" (when the copy is to be returned to the sender if undeliverable as addressed).

f. The number of copies enclosed (on the outside of a package) or a package count (e.g., "2 of 4") (on a package wrapper).

g. Corrections of typographical errors or a mark, except by written or printed words, to call attention to a word or passage.

h. Printed messages not required to be mailed as First-Class Mail or Express Mail.

1.10 Label Carriers

A label carrier is a single unfolded, uncreased sheet of card or paper stock, securely affixed to the cover of the publication or large enough so that it does not rotate inside the wrapper (as defined in 1.7) or cover the publication title (if placed over the front cover), that is used to carry the delivery address for the mailpiece, subject to these conditions:

a. The label carrier must bear the title of the second-class publication; the second-class imprint or "Second-Class" endorsement in the upper right corner of the address side (unless "Second-Class" is printed on the address side of the polybag); and the address to which the mailpiece can be returned if undeliverable (if endorsed "Return Postage Guaranteed").

b. If the address remains clearly visible, the label carrier may also bear a request for address correction from the addressee; information for requesting or subscribing to the publication; or a subscription or request form.

c. As applicable, the label carrier may show the endorsement "First-Class Mail Enclosed" or "Third-Class Mail Enclosed" or the permit imprint used to pay postage for the First- or third-class enclosure if that permit imprint is below the second-class imprint or the endorsement "Second-Class."

d. Other printed information, whether advertising or nonadvertising, is permitted only on the back of the label carrier and is subject to measurement and postage payment accordingly. A single line of text calling attention to information on the reverse may be placed on the front of the label carrier. If any information on the reverse of the label carrier is advertising, the line of text on the front is also treated as advertising.

2.0 IMPERMISSIBLE COMPONENTS

2.1 General Standard

Regardless of preparation or characteristics, or whether otherwise meeting the standards in 1.0, the materials described in 2.2 through 2.5 are not eligible for second-class rates.

2.2 Prohibited Matter

Material that contains any one of the following printed items or that is referred to in a component of the second-class mailpiece (by the use of one of these items) is ineligible to be mailed at second-class rates:

a. A separate price or subscription instructions different from those of the host publication.

b. The word "Catalog."

c. A First-, third-, or fourth-class permit imprint.

d. An ISBN (International Standard Book Number).

e. An ISSN (International Standard Serial Number) or USPS number different from that of the host publication.

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2.3 Products

Products may not be mailed at second-class rates. Examples include stationery (such as pads of paper or blank printed forms); cassettes; floppy disks; merchandise; envelopes containing enclosures, other than receipts, orders for subscriptions, and incidental First-Class matter; and wall, desk, and blank calendars. Printed pages, including oversized pages and calendars, are not considered products if they are not offered for sale.

2.4 Fourth-Class Mail

Fourth-class mail may not be combined with a second-class publication.

2.5 Nonprinted Sheets

Any matter not formed of printed sheets (except as permitted under 1.1b) is not eligible for second-class rates.

3.0 MAILPIECE CONSTRUCTION

3.1 Bound/Unbound

Publications may be prepared in either a bound or unbound form, with or without wrappers unless required by 3.6. A bound publication is a publication in which pages are securely held together by two or more staples, spiral binding, glue, stitching, or other permanent fastening. All other publications are unbound, including folded multisheet and single-sheet publications and those in which pages are loose and collated ("nested") or in which pages are held together by a single staple.

3.2 Physical Size

Standards for size or weight may apply to publications claimed at certain rates. Requester publications must contain at least 24 pages per issue.

3.3 Without Wrapper

When the mailpiece does not have a mailing wrapper, all the components of an unbound publication must be combined with and inserted inside the publication.

Only enclosures mailable at second-class rates under 1.4 may be included loose inside a bound unwrapped publication. An enclosure under 1.3 or 1.4 may be securely attached on the outside of an unwrapped publication along the bound edge if it does not exceed any dimension of the cover of the publication and comes within 3/4 inch of the edge opposite the fold or binding.

3.4 With Wrapper

Except as provided in 1.5, when the mailpiece is completely enclosed in a mailing wrapper, there are no restrictions on where the components may be located within that wrapper. When a sleeve or other partial wrapper is used, the components must be secured so that they do not fall out during handling. Bound publications carrying loose supplements or prepared in physically separate parts or sections must be either completely enclosed in an envelope, plastic wrapper (polybag), or paper wrapper or inserted within a sleeve so that the component parts do not become separated while in the mail.

3.5 Protective Cover

If the mailpiece is not completely enclosed in a mailing wrapper, any protective cover must cover both the front and back of the host publication and extend to within at least 3/4 inch of the edge opposite the fold or binding. If the host publication is bound, the protective cover must be permanently attached to the publication.

3.6 APO/FPO Copies

Any single copy of an unbound publication that includes any enclosures, supplements, or more than one part or section and that is mailed to an APO/FPO address must be completely enclosed in a mailing wrapper.

3.7 Sealing

Second-class mail must be prepared so that it can be easily examined. The mailing of publications at second-class postage rates represents consent by the sender to USPS inspection of the contents whether loose or inserted in envelopes, wrappers, or other covers. Mailers who want to ensure that publications are not opened for postal inspection must pay First-Class rates and mark such mail accordingly.

4.0 PRINTED FEATURES

4.1 Publication Name; Notices

The publication name must be displayed prominently on the publication, and the name must be visible through or displayed prominently on any protective cover or mailing wrapper. The publication name, followed immediately by the USPS publication number (or ISSN if one has been assigned), and the mailing address to which undeliverable copies or change-of-address notices are to be sent may be shown in the upper left corner of the address side of a mailing wrapper or directly on the outside of the host publication if it can be read when the mailing wrapper is in place. The publication number includes an alpha prefix and is to be within parentheses, e.g., THE NATIONAL WEEKLY (ISSN 9876–543X) or THE COMMUNITY (USPS 123–456).

4.2 Endorsements

Mailing wrappers that completely enclose the host publication must bear the words "Second-Class" in the upper right corner of the address area. If a clear plastic wrapper is used, those words may appear anywhere on the address side of the wrapper or the topmost item inside.

4.3 Advertising

Advertising (as defined in E211) may be printed on the pages of any component of a publication, subject to the corresponding standards. Regardless of location, an advertisement must be prepared as an integral part of the publication. Except for advertisements in supplements and on printed matter included as part of a receipt or order (or request) for a subscription, all advertisements in a bound publication must be permanently attached. Except as provided in 1.4d, all advertising must be included in the advertising portion of the issue measured under P200. Different advertising may occupy the same space in different editions of the same issue.

4.4 Marking of Paid Reading Matter (18 USC 1734)

If a valuable consideration is paid, accepted, or promised for the publication or any editorial or other reading matter in a second-class publication, that matter must be plainly marked "advertisement" by the publisher. When a single item of paid editorial or other reading matter occupies more than one page, it need only be marked "advertisement" on the first page. The word "advertisement" may be included in a statement that explains why the material is marked "advertisement." Such a statement must be prominent on the first page of the material and the word "advertisement" in the statement must be in bold or italicized print or otherwise emphasized so that it can be plainly seen. Editors or publishers who print such matter without plainly marking it "advertisement" are subject to a fine of not more than $500.

4. Revise Domestic Mail Manual E211, Standards Applicable to All Second-Class Mail, to read as follows:

E211 Standards Applicable to All Second-Class Mail

* * * * *

3.0 PRINTED SHEETS

[Insert the following after the first sentence:]

* * * Sheets may be die cut or deckle-edged and may be made of paper, cellophane, foil, or other similar materials. * * *

* * * * *

7.0 ISSUES

* * * * *

7.3 Contents

Issues may include annual reports, directories, buyers" guides, lists, and similar material prepared as part of the contents if copies of these issues bear the publication name and are included in the regular subscription price.

* * * * *

9.0 BACK NUMBERS AND REPRINTS

[Combine 9.1 and 9.2; revise as follows:]

Second-class rates may be paid on mailings of back issues (if the publication's second-class entry is in effect). Reprint copies of daily publications printed within 1 week of the issue date and reprint copies of other than daily publications printed before the next issue is printed are also mailable at second-class rates. Other mailings of reprint or back issues, including permanently bound reprint or back issues, are subject to the applicable First-, third-, or fourth-class rates.

* * * * *

11.0 ADVERTISING STANDARDS

* * * * *

11.2 Public Service

Public service announcements are announcements for which no valuable consideration is received by the publisher, which do not include any matter related to the business interests of the publisher, and which promote programs, activities, or services of federal, state, or local governments or of nonprofit organizations, or matters generally regarded as in the public interest. Public service announcements are not treated as advertising.

* * * * *

5. Revise Domestic Mail Manual P070, Mixed Classes, to read as follows:

P070 Mixed Classes

* * * * *

2.0 ENCLOSURES IN SECOND-CLASS PUBLICATIONS

* * * * *

[Delete existing 2.4; renumber succeeding sections accordingly.]

* * * * *

2.8 Computing Permit Imprint Postage

[Renumber as 2.7 and insert the following after the first sentence:]

* * * The enclosure is eligible for the rate for its class of mail that is most comparable to the presort and destination discounts that apply to the second-class host piece. For example, a third-class enclosure is eligible for the SCF entry discount if the publication is deposited at the destinating SCF. When more than one enclosure of the same class of mail is enclosed with a publication, the enclosures are treated as a single enclosure for computing postage. * * *

* * * * *

6. In Domestic Mail Manual P200, Second-Class Mail, renumber current 1.7 through 1.11 as 1.8 through 1.12, respectively; delete current 2.3; renumber 2.4 and 2.5 as 2.3 and 2.4, respectively; add new 1.7 to read as follows:

P200 Second-Class Mail

1.0 BASIC INFORMATION

* * * * *

1.7 Measuring Advertising

The total advertising and nonadvertising portions may be determined by column inches, square inches, pages, or by another recognized unit of measure if the same unit of measure is used for both portions. One full page of advertising must equal one full page of nonadvertising regardless of the amount of blank space between each advertisement or nonadvertising article on a page. If measured in column inches, nonadvertising inches are determined by subtracting the total measured advertising inches from the total column inches of the publication. A blank page, portion of a page, or blank border or margin is counted as advertising if consideration was received for the whole page, the blank portion, or the blank border or margin. The border of a page is otherwise considered neither advertising nor nonadvertising and is not measured, but it is included in the total weight of the publication for purposes of postage calculation. When measuring nonrectangular sheets, the measurement is based on the smallest rectangle that could contain the irregular sheet; exact measurement is not attempted. When two or more sheets are permanently glued together to form a single sheet, the surface area of the resulting sheet (front and back) is included when measuring the advertising or nonadvertising portion.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–4333 Filed 2–22–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

OMB Approvals Under the Paperwork Reduction Act

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 1 to 51, revised as of July 1, 1994, in § 9.1, in the Standards of Performance for New Stationary Sources table, the OMB control number for the entry "60.703–60.705" is corrected to read "2060–0269".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order 7116

[AK–932–1430–01; AA–58374]

Public Land Order No. 7104, Correction; Partial Revocation of Executive Order dated October 6, 1914, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the legal description in Public Land Order No. 7104.

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The legal description, as stated in Public Land Order No. 7104, 59 FR 62609, December 6, 1994, is hereby corrected to show the lands following the word "except" are now being revoked. The changes are as follows:

On page 62609, third column, delete lines 4 through 8. In line 9, delete the words "discharge; except" and in line 16, delete the word "except".

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Dated: February 6, 1995.

Bob Armstrong

Assistant Secretary of the Interior.

[FR Doc. 95–4345 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–JA–P

Office of the Secretary

43 CFR Part 2

Records and Testimony; Freedom of Information Act

CFR Correction

In title 43 of the Code of Federal Regulations, parts 1 to 999, revised as of October 1, 1994, the text for appendix B to part 2 was inadvertently omitted.

On page 35, following the text of appendix A, appendix B should read as follows:

Appendix B to Part 2—Bureaus and Offices of the Department of the Interior

1. *Bureaus and Offices of the Department of the Interior.* (The address for all bureaus and offices, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Secretary of the Interior, Office of the Secretary
Office of Administrtative Services (for Office of the Secretary components)
Assistant Secretary, Territorial and International Affairs
Commissioner, Bureau of Indian Affairs
Director, U.S. Fish and Wildlife Service
Director, National Park Service, P.O. Box 37127, Washington, DC, 20013–7127
Commissioner, Bureau of Reclamation
Director, Bureau of Land Management
Director, Minerals Management Service
Director, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241
Director, Geological Survey, The National Center, Reston, VA 22092
Director, Office of Surface Mining Reclamation and Enforcement
Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Inspector General, Office of Inspector General
Solicitor, Office of the Solicitor

2. *Freedom of Information Officers of the Department of the Interior.* (The address for all Freedom of Information Officers, unless otherwise indicated, is U.S. Department of the Interior, Washington, DC 20240.)

Director, Office of Administrative Services (for Office of the Secretary components), U.S. Department of the Interior
Director, Office of Administration, Bureau of Indian Affairs
Freedom of Information Act Officer, Bureau of Land Management
Assistant Director, Finance and Management, Bureau of Mines, Columbia Plaza, 2401 E Street NW., Washington, DC 20241
Freedom of Information Act Officer, Bureau of Reclamation
Chief, Division of Media Information, National Park Service
Chief, Regulatory Development and Issues Management, Office of Surface Mining Reclamation and Enforcement
Chief, Directives Management Branch, Policy and Directives Management, U.S. Fish and Wildlife Service,
Chief, Paperwork Management Unit, U.S. Geological Survey, The National Center, Reston, VA 22092
Freedom of Information Act Officer, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091
Information Officer, Office of Inspector General

3. *Office of Hearings and Appeals*—Field Offices:

Administrative Law Judge, 710 Locust St., Federal Building, Suite 116, Knoxville, TN 37902
Administrative Law Judges, 6432 Federal Bldg., Salt Lake City, UT 84138
Administrative Law Judge, 2901 N. Central Ave., Suite 955, Phoenix, AZ 85012–2739
Administrative Law Judge, 2020 Hurley Way, Suite 150, Sacramento, CA 95825
Administrative Law Judges, Bishop Henry Whipple Federal Building, 1 Federal Drive, rooms 674 and 688, Fort Snelling, MN 55111
Administrative Law Judge, 1700 Louisiana N.E., Suite 220, Albuquerque, NM 87110
Administrative Law Judge, 215 Dean A. McGee Ave., room 507, Oklahoma City, OK 73102
Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, 515 9th St., Suite 201, Rapid City, SD 57701
Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, Rm. 3329, 316 N. 26th St., Billings, MT 59101

4. *Office of the Solicitor*—Field Offices.

Regional Solicitors

Regional Solicitor, U.S. Department of the Interior, 701 C Street, Anchorage, AK 99513
Regional Solicitor, U.S. Department of the Interior, Room E–2753, 2800 Cottage Way, Sacramento, CA 95825
Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225
Regional Solicitor, U.S. Department of the Interior, Richard B. Russell Federal Building, 75 Spring Street, SW., Suite 1328, Atlanta, GA 30303
Regional Solicitor, U.S. Department of the Interior, Suite 612, One Gateway Center, Newton Corner, MA 02158
Regional Solicitor, U.S. Department of the Interior, Room 3068, Page Belcher Federal Building, 333 West 4th Street, Tulsa, OK 74103
Regional Solicitor, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah, Portland, OR 97232
Regional Solicitor, U.S. Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, UT 84138

Field Solicitors

Field Solicitor, U.S. Department of the Interior, Suite 150, 505 North Second St., Phoenix, AZ 85004
Field Solicitor, U.S. Department of the Interior, P.O. Box M, Window Rock, AZ 86515
Field Solicitor, U.S. Department of the Interior, Box 36064, 450 Golden Gate Avenue, Room 14126, San Francisco, CA 94102
Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building, U.S. Courthouse, 550 West Fort Street, Boise, ID 83724
Field Solicitor, U.S. Department of the Interior, 686 Federal Building, Twin Cities, MN 55111
Field Solicitor, U.S. Department of the Interior, Room 5431, Federal Building, 316 N. 26th Street, Billings, MT 59101
Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504
Field Solicitor, U.S. Department of the Interior, Osage Agency, Grandview Avenue, Pawhuska, OK 74056
Field Solicitor, U.S. Department of the Interior, Suite 502J, U.S. Post Office and Courthouse, Pittsburgh, PA 15219
Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, TN 37901
Field Solicitor, U.S. Department of the Interior, 1100 South Fillmore, Amarillo, TX 79101
Field Solicitor, U.S. Department of the Interior, 603 Morris Street, 2nd Floor, Charleston, WV 25301.

[52 FR 45593, Nov. 30, 1987, as amended at 53 FR 16128, May 5, 1988; 58 FR 48973, Sept. 21, 1993]

BILLING CODE 1505-01-D

Bureau of Reclamation

43 CFR Part 426

[RIN 1006–AA33]

Administrative Fee Provision of the Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: The purposes of this rule are to improve compliance with the form submission requirements of the Reclamation Reform Act of 1982 (RRA) and the Acreage Limitation Rules and Regulations in order to ensure that irrigation water is delivered only to eligible landholders (landowners and lessees), and to recoup administrative costs that the Bureau of Reclamation (Reclamation) incurs due to noncompliance with the RRA reporting requirements. The rule adds a section that imposes fees on districts when they do not meet statutory and regulatory requirements for submitting RRA forms.

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225, Telephone: (303) 236–1061, extension 224.

SUPPLEMENTARY INFORMATION: The RRA limits the amount of owned land on which a landholder can receive irrigation water and places a limit on the amount of leased land that can receive such water at a subsidized water rate. In order to ensure compliance with the ownership limitations and the limitations on subsidies, certain statutory and regulatory requirements must be met.

One of these requirements applies to all landholders whose landholdings in districts subject to the acreage limitation provisions total more than 40 acres. These landholders must complete RRA certification or reporting forms before receiving irrigation water. The forms must be completed annually and submitted to each district in which the landholder receives irrigation water. Landholders must disclose on the forms all the land they own and lease directly or indirectly in Reclamation projects that are subject to the acreage limitation provisions. The forms must be resubmitted whenever a landholding change occurs. If a landholding does not change, a verification form to that effect must be submitted each year.

While the RRA and the Acreage Limitation Rules and Regulations (43 CFR Part 426) set limits on the receipt of irrigation water and establish requirements that must be met in order to receive such water, the current rules do not address situations in which water has been delivered to landholders who failed to meet all the requirements and thus, were ineligible to receive the water. These situations were not addressed because the RRA does not contemplate such deliveries.

Districts, rather than Reclamation, generally control the deliveries of irrigation water to landholders. Under their contracts with the United States, districts are legally obligated not to deliver irrigation water to landholders who do not meet the eligibility requirements of the RRA.

With respect to the form requirements discussed previously, § 426.10(k) specifically states that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive irrigation water. However, during its water district reviews, Reclamation has found that in some instances, districts have delivered irrigation water to landholders who had failed to meet the form requirements and other requirements of the law and rules.

In 1988, Reclamation adopted a compensation policy whereby full-cost charges were assessed for irrigation water that had been delivered to ineligible landholders. This policy is based on the legal theory of conversion in that when irrigation water is delivered to ineligible recipients, it is an unlawful conversion of the Government's property interest in the water, and the Government is therefore entitled to be compensated for the conversion. Since Reclamation cannot recover the water that was delivered to the ineligible recipients, it has been Reclamation's position that it is entitled to recover the value of its property interest in that water and that the full-cost water rate prescribed in the RRA is an appropriate measure of the water's value.

In 1993, Reclamation decided to review certain agency policies, one of which was the full-cost compensation policy for RRA form violations. The Commissioner of Reclamation asked the Department of the Interior's Office of the Solicitor whether Reclamation is permitted to impose charges other than full-cost compensation charges for such violations. In a July 23, 1993, memorandum, the Associate Solicitor, Division of Energy and Resources, advised the Commissioner that several laws "* * * authorize Reclamation to promulgate regulations necessary to carry out its mission, including those which would assess fees. This means that Reclamation may, by regulation, impose administrative fees or other charges designed to recover the costs it incurs for processing improperly submitted forms or for collecting forms from those who have not submitted them." The Associate Solicitor further concluded that "* * * Reclamation has considerable discretion in determining how to calculate those costs, so long as the charges imposed bear a demonstrable relationship to the costs incurred by the agency and have the intended effect of improving compliance with the Act and achieving congressional objectives."

Based on the Associate Solicitor's conclusions, Reclamation decided to amend the Acreage Limitation Rules and Regulations by adding a provision to impose assessments to recover its administrative costs when landholders do not comply with the RRA form requirements. Reclamation notified the public of its intent in the **Federal Register** (see 58 FR 59427) Nov. 9, 1993, and published the proposed rule at 59 FR 33251, June 28, 1994.

Summary of Amendment to the Rules

The amendment to the Acreage Limitation Rules and Regulations provides that Reclamation will assess a district for administrative costs when RRA forms are not submitted before receipt of irrigation water. The assessment will be applied on a yearly basis in each district for each landholder that failed to comply with the form requirements. A district will also be assessed for administrative costs when corrections to RRA forms are not provided within a 60-day grace period. The assessment will be applied on a yearly basis for each landholder for which corrected forms are not provided within the grace period. These assessments for administrative costs will replace the full-cost charges that Reclamation has assessed in the past for form violations under its compensation policy. The administrative cost assessments will not be subject to the underpayment interest component set forth in § 426.23.

The assessment for administrative costs shall be set periodically on the basis of the average costs associated with performing activities to address RRA form violations. The assessment reflects the average direct and indirect costs incurred Reclamation-wide for: (1) Communicating with district representatives or landholders to obtain missing or corrected forms, (2) assisting landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements, (3) performing onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms, and (4) performing other activities necessary to address form violations. Initially the amount of the assessment will be $260. The amount is based on a review of the costs Reclamation incurred in 1991, 1992, and 1993 performing activities to address RRA form violations. The assessment will be reviewed at least once every 5 years and, if needed, will be adjusted to reflect new cost data.

As with other assessments, districts will be held responsible for payment of the assessments because of their contractual obligation with the United States. Charges collected through the imposition of assessments for administrative costs will be credited to the general fund of the Treasury as miscellaneous receipts.

Payment of the assessments set forth in the proposed rule does not exempt districts and landholders from the form requirements of the RRA or Acreage Limitation Rules and Regulations.

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Districts are not permitted to continue water deliveries to ineligible recipients simply because they are willing to pay the assessments. Reclamation will take all necessary actions to prevent the delivery of irrigation water to ineligible land.

Comments About the Proposed Rule

During the public comment period from June 28, 1994, through August 29, 1994, Reclamation received 48 responses on the proposed rule. The responses were submitted by or on behalf of 40 districts, 7 water user associations, 5 landholders, one Federal agency, and one U. S. Congressman.

Approximately 80 percent of the respondents either approved of the proposed rule entirely or in part. Many of these respondents stated that the administrative cost assessment will provide a reasonable and equitable means for addressing RRA form violations and will be a vast improvement over Reclamation's past policy of assessing compensation charges for nonsubmission of RRA forms.

Approximately 20 percent of the respondents were opposed to the rule, mainly because they think the administrative cost assessments are unnecessary or excessive. Several respondents objected to the rule because they do not think Reclamation has the legal authority to impose such assessments.

General Comments

Following are the general comments received about the proposed rule and our response to each:

Comment 1: Two respondents commented that the rule should make it clear that the administrative cost assessment will be the sole economic ramification for RRA form violations.

Response: The respondent's comment has not been accommodated because we think such language would be superfluous. First, the main purpose of the rule is to set forth the charges that will be assessed in cases of RRA form violations, which it does. In addition, it was stated previously in this preamble that the administrative cost assessment will replace the compensation charges Reclamation previously assessed for form violations. This statement clearly sets forth Reclamation's intent with regard to assessments for form violations.

Comment 2: Four respondents commented that the rule should clearly state that the administrative cost assessments will be applied prospectively only.

Response: The rule will be applied prospectively. The rule will be effective March 27, 1995. This date is printed at the beginning of this preamble, under **EFFECTIVE DATE**. We do not think it is necessary to repeat the effective date in the rule itself.

Comment 3: Nineteen respondents commented that the administrative cost assessments should be applied retrospectively to past RRA form violations instead of the compensation rate.

Response: As stated in the response to the preceding comment, the rule will be applied prospectively. However, Reclamation is currently considering a plan whereby issued and pending compensation bills for RRA form violations would be reviewed using the dollar amount in § 426.24(e) as the basis for possible action.

Comment 4: One respondent commented that Reclamation needs to define "$260 per form violation" and asked how many RRA forms are required of a farmer in a single year.

Response: We assume the phrase the respondent is referring to is from a statement in the preamble of the proposed rule. The complete sentence reads as follows: "The assessment for administrative costs is initially set at $260 per form violation." The sentence in question is a general statement, the main purpose of which was to make the reader aware of the amount of the administrative cost assessment; i.e., $260. Sections 426.24(a) and (b) describe how the assessment will be applied to form nonsubmissions and form errors.

Regarding the respondent's question, a landholder generally needs to submit just one RRA form annually; however, in some cases, additional forms may be required. Regardless of the number of forms required, the $260 assessment for forms nonsubmission will be based on a landholder's entire RRA form effort for the water year in question, for each district in which land is held. For example, if Landholder A held land in District B and received irrigation water in 1995 despite the fact that he/she submitted neither of two RRA forms required for that water year, the assessment would be $260, not $520.

Comment 5: One respondent commented that the proposed rule did not adequately comply with the Regulatory Flexibility Act because it did not explain why the rule would not have a significant effect on a substantial number of small entities.

Response: The explanatory language referred to by the respondent has been added to the preamble of this final rule. By doing so, Reclamation believes it is in full compliance with the requirements of the Regulatory Flexibility Act.

Comment 6: Five respondents questioned Reclamation's authority to impose administrative cost assessments. Several of the respondents commented that the assessments are actually penalties, and since the RRA does not include a penalty provision, the assessments cannot be charged.

Response: Reclamation is authorized to promulgate regulations and to collect all data necessary to carry out its mission. 43 U.S.C. § 373; 43 U.S.C. 390 ww(c); 31 U.S.C. § 9701.

Reclamation determines eligibility to receive water, in large part, based on the information provided on RRA certification and reporting forms. Section 426.10(k) of the regulations requires that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive water.

In issuing the administrative fee rule, Reclamation has properly exercised its authority to promulgate regulations for ensuring the delivery of irrigation water only to eligible landholders. The fee is intended to improve compliance with RRA certification requirements and ensure that irrigation water is delivered only to those landholders eligible under the RRA and to recoup certain administrative costs Reclamation incurs due to noncompliance with RRA reporting requirements.

Reclamation, as a Federal agency, also may impose remedial measures. Courts have recognized an agency's authority to impose measures if they reasonably relate to the purpose of the enabling statute and further congressional objectives. *Gold Kist, Inc. v. Department*, 741 F.2d 344, 348 (11th Cir. 1984); *West v. Bergland*, 611 F.2d 710, 725 (8th Cir. 1980); *United States v. Frame*, 885 F.2d 1119 (3d Cir. 1989).

The $260 charge provided for in this rule is an administrative fee designed to improve compliance with the acreage limitation requirements and to recover Reclamation's costs in helping landholders to meet the eligibility requirements of the Act. As such, the fee is remedial in nature rather than punitive.

In addition, Reclamation possesses authority to "* * * prescribe regulations establishing the charge for a service or thing of value provided by the agency." 31 U.S.C. § 9701. As discussed above, under Reclamation law, any landholder who received irrigation water prior to submitting the requisite certification forms failed to meet the criteria which Congress established for eligibility. When Reclamation becomes

aware of the violation and undertakes a variety of additional activities to obtain the forms and the necessary information, Reclamation is helping that landholder establish eligibility for receiving the "service or thing of value"—irrigation water. Certainly, these additional Reclamation activities are valuable services the agency provides districts and landholders who would otherwise not be in compliance with applicable Federal laws, regulations and contracts.

Finally, it should be noted that Reclamation's authority to promulgate these regulations was not diminished by the court's decision in *Orange Cove Irrigation District v. United States*, 28 Fed. Cl. 790 (1993). That case did not involve the issue of Reclamation's authority to assess administrative fees or to issue rules. The plaintiff in that case, Orange Cove Irrigation District (OCID), brought suit against the United States to recover money it paid to Reclamation at the time OCID renewed its water service contract in 1988. Reclamation had assessed the district full-cost charges for water delivered in 1987 to certain district landholders before they submitted RRA certification forms. On August 12, 1993, the court rendered its decision in favor of OCID. The case was resolved on the narrow issue of breach of contract and should only be read in light of facts specific to that controversy.

Although not necessary to its holding, the Court also determined that the assessment of full cost constituted an unauthorized penalty under the facts of this case and that the United States had not violated any notice and rulemaking requirements of the Administrative Procedure Act.

Comment 7: Twenty-one respondents commented that the rule should include a provision to increase the 40-acre exemption threshold for RRA form requirements. Ten of the respondents suggested the threshold be increased to 320 acres; six of them suggested a 160-acre threshold. The remainder were not specific as to what the revised threshold should be. Many of the respondents stated that an increased threshold would help to decrease the cost and burden placed on districts and landholders and yet provide adequate means for proper enforcement of the RRA. Several respondents also stated that Reclamation ensured water users in the past that the 40-acre threshold would be increased. One respondent commented that the 40-acre threshold should not be reduced.

Response: As stated in the preamble to the proposed rule, the 40-acre threshold issue is outside the scope of this rulemaking. This rulemaking action was limited to administrative cost assessments in an effort to expedite the process. Reclamation is currently engaged in a rulemaking action in which we will review the Acreage Limitation Rules and Regulations in their entirety. The exemption threshold will be addressed in that rulemaking. The proposed rule for that rulemaking action is scheduled to be published in February 1995.

Comment 8: One respondent asked why the Government tells landholders the amount of land they may farm in order to make a living.

Response: The RRA does not limit the amount of land landholders may farm. It does, however, limit the amount of owned land on which any one landholder can receive irrigation water from Reclamation projects and the amount of leased land that can receive such water at a rate that is less than the full-cost rate. The reason for this is to ensure that the benefits from the Reclamation program are widely distributed rather than concentrated in the hands of a few landholders.

Specific Comments

The following comments refer to specific provisions within the proposed rule and are followed by Reclamation's response to each.

Section 426.24(a)—Forms Submittal

Comment 1: Eleven respondents commented that the rule needs to define the terms "direct landholder" and "indirect landholder," as used in §§ 426.24(a) and (b). Several of the respondents stated that the words "direct" and "indirect" should be deleted because the term "landholder" is sufficient by itself.

Response: The terms "direct landholder" and "indirect landholder" were included in the proposed rule so readers would be aware that in applying the administrative cost assessment to legal entities, Reclamation will treat compliance by an entity independently from compliance by its part owners or beneficiaries. For example, if three shareholders in a corporation submit their RRA forms, but the entity and the remaining two shareholders do not, the administrative cost assessment would be applied to the entity and each of the two shareholders that were not in compliance, for a total of $780. Reclamation has decided to clarify §§ 426.24(a) and (b) by deleting the words "direct" and "indirect" and adding a sentence to address application of the administrative cost assessment when legal entities are involved as described above.

Comment 2: One respondent commented that if an entity completes the required RRA form, but one or more of the part owners does not, this should be treated as a form correction and not failure to file a form.

Response: Part owners of legal entities are required to file forms separately from those of the entities in which they have an interest. The reason for this is that the acreage limitation entitlements and other requirements of Reclamation law apply to part owners in the same manner as they apply to any other landholder. Since the part owners may own or lease land in addition to the land that is attributable to them through interest in the entity, it is not sufficient for the entity's form to be submitted in order to determine if all acreage limitation entitlements have been met. Therefore, if a part owner does not submit the required RRA forms, this is not viewed as a correctable error on the part of the entity, but rather as nonsubmission of forms by the part owner. Thus, in the case presented by the respondent, the $260 administrative cost assessment would be applied for each part owner that received irrigation water without having submitted the required forms. However, an additional assessment would not be applied as a result of the entity's actions, because it was in compliance with the RRA form requirements.

Comment 3: One respondent requested that the following statement in the preamble to the June 28, 1994, proposed rule be clarified: "A district will be assessed for administrative costs when RRA forms are not submitted prior to receipt of irrigation water." The respondent questioned whether this statement referred to the receipt of irrigation water to landowners or to the district.

Response: The statement refers to the receipt of irrigation water by landholders subject to the RRA form requirements. We believe the language in § 426.24(a) is clear on this point; therefore, the rule was not revised to accommodate the comment.

Section 426.24(b)—Forms Corrections

Comment 1: Four respondents commented about the 45-day grace period provided for form corrections. One respondent thought landholders/districts should be given a longer period of time in which to correct RRA forms before imposition of the $260 assessment. Three of the landholders thought the 45-day grace period was fair.

Response: This section has been revised to increase the length of the grace period from 45 days to 60 days.

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The grace period was lengthened to account for any additional time districts and landholders may need for mailing the forms in question. This section was also revised to clarify that the 60-day grace period will be based on calendar days rather than working days.

Comment 2: Three respondents commented that the $260 assessment for administrative costs is excessive for cases where RRA forms are not corrected.

Response: Reclamation believes the $260 assessment is reasonable to cover the additional costs it incurs to obtain corrections on RRA forms. In addition, any financial hardships can be avoided because the assessment will not be applied if the corrected forms are submitted within the 60-day grace period.

Comment 3: One respondent understood the provision to mean that $260 would be assessed for every error Reclamation identified on an RRA form.

Response: The assessment will be applied on a yearly basis for each landholder for which corrected forms are not submitted within the grace period. Therefore, if Landholder A did not submit timely corrections for four errors on his 1995 forms, the assessment would be $260, not $1,040. The application of the $260 assessment for form corrections is explained in § 426.24(b); therefore, no revisions were made to accommodate this comment.

Comment 4: Three respondents commented that mistakes occur on RRA forms because the forms are very complicated and are revised annually. Therefore, they were opposed to assessments for form errors.

Response: The assessment for form corrections will not be applied immediately when Reclamation identifies errors on landholder forms. Landholders/districts have 60 days in which to submit corrected forms before the $260 assessment will be charged. To the extent possible, Reclamation is also willing to provide assistance if help is needed in completing RRA forms. Because of the preceding, we find the rule to be reasonable, even if the forms are perceived by some to be difficult to complete.

Comment 5: Six respondents commented that the $260 assessment for RRA form corrections should not be charged for inadvertent errors. Four of the respondents thought the assessment was appropriate only in cases involving fraud.

Response: Reclamation realizes that inadvertent errors will sometimes be made on RRA forms. On the other hand, these errors cannot be overlooked because complete and accurate information is needed in order to determine if a landholder is within applicable entitlements and meets other requirements of the RRA. Section 426.24(b) resolves both the potential for inadvertent errors and the need for accurate information by providing landholders a 60-day grace period in which to submit corrected forms before imposition of the $260 assessment. This assessment is not appropriate in cases involving fraud because the consequences for fraudulent actions are set forth in 18 U.S.C. 1001. These consequences, as related to the RRA forms, are discussed in § 426.10(j).

Comment 6: Two respondents did not think the assessment would help reduce the number of RRA form problems. One of the respondents thought the assessment would only cause antagonism. The other respondent stated that the fee would be too high in cases where the errors were inadvertent and too low in cases of fraud.

Response: Reclamation believes the assessment will provide an equitable method for addressing errors on RRA forms while recovering the incremental costs it incurs to address such problems. We also think the assessment is reasonable, and in most cases, will provide an incentive for landholders and districts to complete their forms properly in future water years. The applicability of the administrative cost assessment to fraudulent actions is discussed in the response to the preceding comment.

Comment 7: Three respondents maintained that the assessment for RRA form corrections should not be a flat fee, but should be based on the severity of the error.

Response: All the information landholders are required to disclose on the forms is needed for Reclamation to have adequate information to determine if landholders are in compliance with the acreage limitations and enforce other requirements of the RRA. Therefore, all omissions and errors identified by Reclamation are considered to be of equal severity. It must also be remembered that even in those cases where errors are perceived to be insignificant, the $260 assessment will not be charged if corrections are made within the grace period.

Comment 8: One respondent asked if the assessment for administrative costs will be applied to RRA form errors as well as to the nonsubmission of such forms.

Response: Section 426.24(a) provides for the imposition of the $260 administrative cost assessment in cases of form nonsubmission. Section 426.24(b) provides for the assessment in cases of form errors. However, in the case of errors, the assessment will not be charged if corrected forms are submitted within the grace period. The assessment in § 426.24(a) will be applied independently from the assessment in § 426.24(b). Sections 426.24(a) and (b) were revised to clarify this point.

Comment 9: One respondent commented that the assessment for form corrections should be applied to landholders for whom corrected forms are not provided within the grace period only if irrigation water has been received by the landholder.

Response: Reclamation agrees with this comment and § 426.24(b) has been revised accordingly. However, Reclamation will proceed to prepare the bill for the administrative cost assessment after expiration of the grace period. If the landholder did not in fact receive irrigation water during the year in question, the district will need to provide evidence to this effect before the assessment will be retracted.

Section 426.24(c)—Parties Responsible for Paying Assessments

Comment 1: Twenty respondents disagreed with this provision. For legal reasons and from the standpoint of equity, they think Reclamation should collect the payment of administrative cost assessments from landholders rather than districts.

Response: This comment has not been accommodated. Reclamation contracts almost exclusively with districts rather than individual water users. In general, districts agree in their contracts that the delivery of irrigation water is subject to Reclamation law as amended and supplemented. Based on the preceding, Reclamation will hold districts ultimately responsible for payment of the administrative cost assessments. However, § 426.24(c) does not preclude districts from collecting the assessments from the involved landholders.

Section 426.24(e)—Assessment for Administrative Costs

Comment 1: One respondent thought that it was unfair to impose the same fee on all districts in every instance of noncompliance.

Response: The type of violations for which the assessments will be charged are the same in all districts. Therefore, we believe it is fair to establish Reclamation's average costs and impose the same assessment westwide. In fact, landholders and districts have frequently requested that such a uniform fee be established.

Comment 2: One respondent suggested that the bill for each landholder be based on an hourly rate that is consistent Reclamationwide.

Response: This comment has not been accommodated. Reclamation analyzed the costs it incurred in the past to address RRA form violations and has determined it is fair and reasonable to charge an average assessment that is uniform in all districts.

Comment 3: Two respondents commented that the $260 assessment does not accurately reflect Reclamation's costs to bring landholders into compliance because Reclamation only identifies the violations; the district performs all the other work.

Response: Reclamation acknowledges that districts frequently take actions to bring landholders into compliance. However, in most cases, Reclamation also performs additional activities to address noncompliance problems. Examples of such activities were listed previously in this preamble. Districts may not be aware of these activities because they are not always conducted at the site of the district office.

Comment 4: One respondent did not think it was fair that Reclamation can adjust the administrative cost assessment every 5 years without input from the districts.

Response: The basic methodology for determining the assessment was set forth in the proposed rule, which was open for public comment. The methodology was explained again previously in this preamble. Since adjustments will generally only be made to reflect new cost data and a notice of the revised assessment will be published in the **Federal Register**, we do not think another comment period is necessary before the adjustments are made.

Comment 5: One respondent questioned whether the costs will continually increase until they are equal to the compensation rate.

Response: Reclamation's goal is to establish fair and reasonable charges to recover the costs it incurs to address RRA form violations. The process will be reexamined should the assessments ever reach a point where this goal can no longer be achieved.

Comment 6: One respondent commented that the administrative cost assessment should not be based on 1991, 1992, and 1993 costs because Reclamation keeps changing the RRA forms, which is confusing to landholders.

Response: The changes that were made to the RRA forms during 1991, 1992, and 1993 were relatively minor. Reclamation finds no evidence to support a conclusion that the noncompliance level increased because of form revisions.

Comment 7: One respondent commented that the rule is too vague with regard to the basis for the administrative cost assessment.

Response: Reclamation agrees that the rule does not provide a detailed description of the basis for the administrative cost assessment. However, it would be inappropriate to include the complete cost analysis in either the rule or the preamble. In the final rule, the description has been deleted from § 426.24(e). However, it has been retained in the preamble so readers will be aware of the general basis for the $260 assessment.

Comment 8: One respondent wanted clarification as to whether the administrative cost assessment is a combination of a penalty and costs incurred by Reclamation.

Response: The assessment is based strictly on Reclamation's costs and is remedial in nature. It does not include a penalty factor.

Comment 9: One respondent commented that overhead costs should not be included in the administrative cost assessment.

Response: Reclamation thinks it is reasonable to recover all additional costs incurred to address RRA form violations. Overhead costs are part of these costs; therefore, they have been included in the assessment.

Comment 10: One respondent commented that the administrative cost assessment should not include the cost of Reclamation's audits, because that is the Government's job.

Response: The assessment does not include costs for reviewing a district's compliance with the RRA or audits of individuals. It includes only those additional costs Reclamation incurs to address RRA form violations after they have been found.

Comment 11: One respondent commented that some districts are not always able to terminate deliveries of irrigation water to just those landholders that have not submitted the required RRA forms. The reason for this is that several landholders, some of whom may be in compliance, are located on the same ditch with the same delivery point.

Response: Despite the circumstances described by the respondent, districts are not permitted to deliver irrigation water to landholders that are not in compliance with the RRA form requirements. In the case described, districts may need to take extra measures to encourage all landholders located on the same ditch to submit the required forms. To the extent possible, Reclamation will work with districts to help resolve such situations.

Comment 12: Two respondents stated that Reclamation is not permitted to terminate water deliveries in cases where landholders fail to submit the required forms. The respondents maintain that landholders must first be provided with a notice or hearing before such deliveries can be terminated.

Response: These comments were not accommodated. Reclamation believes it is permitted to terminate water deliveries in such cases because: (1) Pursuant to the requirements in §§ 206, 224(c), and 228 of the RRA and § 426.10(e) of the Acreage Limitation Rules and Regulations, landholders are required to submit RRA forms as a condition for receipt of irrigation water. (2) The consequence for noncompliance with this requirement has been clearly set forth in § 426.10(k) since the Acreage Limitation Rules and Regulations were first promulgated in 1983. That is, failure to submit the required forms results in loss of eligibility to receive irrigation water by the landholder.

As stated previously, Reclamation is currently engaged in a rulemaking action in which we will review the Acreage Limitation Rules and Regulations in their entirety. As part of that rulemaking action, we will consider the comment regarding notices or hearings prior to termination of water deliveries.

Executive Order 12866

This rule does not constitute a significant regulatory action under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

National Environmental Policy Act

Neither an environmental assessment nor an environmental impact statement is required for this rulemaking because, pursuant to 40 CFR 1508.4 and Departmental Manual part 516 DM 6, Appendix 9, § 9.4.A.1, this action is categorically excluded from the provisions of the National Environmental Policy Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as is required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1006–0005 and 1006–0006.

Small Entity Flexibility Analysis

Reclamation identified approximately 500 landholders with RRA form violations during the 1990, 1991, and

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1992 water years. This represents 1.1 percent of the 45,000 landholders subject to the RRA form requirements and 0.2 percent of the 230,000 landholders in districts subject to the RRA. The violations were found in 60 different districts, which is approximately 20 percent of the districts subject to the ownership and full-cost pricing provisions of the RRA and about 10 percent of the total districts that have entered contracts with the United States for receipt of irrigation water.

The administrative cost assessment of $260 will in most cases be less than the full-cost charges that Reclamation previously assessed for RRA form violations pursuant to its compensation policy. Therefore, in comparison, the assessment will generally have a positive economic effect on most landholders and districts involved with form violations.

Based on the preceding, Reclamation has certified that the rule will not have a significant economic effect on a substantial number of small entities. Small entities also are able to avoid all negative effects by complying with the form requirements of the RRA and Acreage Limitation Rules and Regulations.

Civil Justice Reform

The Department of the Interior has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Authorship

This proposed rule was prepared by staff in the Reclamation Law, Contracts, and Repayment Office, D–5200, Bureau of Reclamation, Denver, Colorado.

List of Subjects in 43 CFR Part 426

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 43 CFR Part 426 is amended as follows:

Dated: January 11, 1995.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

1. The authority citation for Part 426 is revised to read as follows:

Authority: 43 U.S.C. 371–383; 43 U.S.C. 390aa–390zz–1; 31 U.S.C. 9701.

2. Section 426.24 is redesignated as § 426.25, and new section 426.24 is added to read as follows:

§ 426.24 Assessments of administrative costs.

(a) *Forms submittal.* A district will be assessed for the administrative costs described in paragraph (e) of this section when irrigation water has been delivered to landholders that did not submit certification or reporting forms before receiving irrigation water in accordance with § 426.10(e). The assessment will be applied on a yearly basis in each district for each landholder that received irrigation water but failed to comply with § 426.10(e). In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries. The assessment in this paragraph will be applied independently of the assessment set forth in paragraph (b) of this section.

(b) *Forms corrections.* Where corrections are needed on certification or reporting forms, the requirements of § 426.10(a) will be deemed to have been met so long as the district provides corrected forms to Reclamation within 60 calendar days of the date of Reclamation's written request for corrections. A district will be assessed for the administrative costs described in paragraph (e) of this section when corrected forms are not provided within this 60-day time period. The assessment will be applied on a yearly basis in each district for each landholder that received irrigation water and for whom corrected forms are not provided within the applicable 60-day time period. In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries. The assessment in this paragraph will be applied independently of the assessment set forth in paragraph (a) of this section.

(c) *Parties responsible for paying assessments.* Districts shall be responsible for payment of the assessments described in paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* The administrative costs assessed and collected under paragraphs (a) and (b) of this section will be deposited to the general fund of the United States Treasury as miscellaneous receipts.

(e) *Amount of assessment.* The assessment for administrative costs shall be set periodically on the basis of the average costs associated with performing activities to address certification and reporting form violations. Initially the amount shall be $260. This assessment for administrative costs will be reviewed at least once every 5 years and adjusted, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the **Federal Register** in December of the year the data is reviewed.

[FR Doc. 95–4416 Filed 2–22–95; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7611]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard

areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Alabama: Clayhatchee, town of, Dale County	010415	January 6, 1995.	
Georgia: McDonough, city of, Henry County	130342	.....do	December 28, 1979.
North Carolina:			
Huntersville, town of, Mecklenburg County	370478	January 11, 1995.	
Matthews, town of, Mecklenburg County	370310	.....do.	
Texas: Point Blank, city of, San Jacinto County	481528	January 13, 1995	May 1, 1979.
Georgia:			
Butts County, unincorporated areas	130518	January 24, 1995.	
Jasper County, unincorporated areas	130519	.....do.	
Oklahoma: Harmon County, unincorporated areas	400545	January 27, 1995.	
North Dakota:			
Ramsey County, unincorporated areas	380092	January 31, 1995.	
Benson County, unincorporated areas	380682	.....do.	
Amenia, city of, Cass County	380019	.....do.	
New Eligibles—Regular Program			
Mississippi: Flora, town of, Madison County[1]	280399	January 31, 1995	April 15, 1994.
Reinstatements—Regular Program			
Indiana: Steuben County, unincorporated area	180243	August 26, 1975, Emerg.; July 3, 1986, Reg.; October 4, 1994, Susp.; January 11, 1995, Rein.	July 3, 1986.
Illinois: Barrington Hills, village of, Cook, Kane, McHenry and Lake Counties	170058	April 3, 1975, Emerg.; August 10, 1979, Reg.; January 5, 1995, Susp.; January 13, 1995, Rein.	August 10, 1979.
North Carolina: North Wilkesboro, town of, Wilkes County	370257	December 28, 1973, Emerg.; February 15, 1978, Reg.; February 20, 1978, Susp.; January 31, 1995, Rein.	February 15, 1978.

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State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Georgia: Clayton, city of, Rabun County	130157	July 25, 1975, Emerg.; August 13, 1984, With.; January 13, 1988, Rein.; January 13, 1988, Reg.; January 19, 1994, Susp.; January 31, 1995, Rein.	June 19, 1989.
Regular Program Conversions			
Region III:			
Pennsylvania: Allentown, city of, Lehigh County	420585	January 5, 1995, suspension withdrawn.	January 5, 1995.
Virginia:			
Dumfries, town of, Prince William County	510120	....do	Do.
Manassas, city of, Independent city	510122	....do	Do.
Manassas Park, city of, Independent city	510123	....do	Do.
Occoquan, town of, Prince William County	510124	....do	Do.
Prince William County, unincorporated areas	510119	....do	Do.
Kentucky:			
Beaver Dam, town of, Ohio County	210184	January 19, 1995, Suspension Withdrawn.	September 29, 1989.
Henderson County, unincorporated areas	210286	....do	February 6, 1991.
Lewisburg, city of, Logan County	210149	....do	June 17, 1977.
Loyall, city of, Harlan County	210589	....do	December 11, 1981.
Maysville, city of, Mason County	210168	....do	March 7, 1980.
Murray, city of, Calloway County	210033	....do	April 1, 1980.
Region IV:			
Arkansas: Bentonville, city of, Benton County	050012	....do	September 18, 1991.
Region VII:			
Nebraska:			
Bellevue, city of, Sarpy County	310191	....do	January 19, 1995.
La Vista, city of, Sarpy County	310192	....do	Do.
Papillion, city of, Sarpy County	315275	....do	Do.
Sarpy County, unincorporated areas	310190	....do	Do.
Springfield, city of, Sarpy County	310194	....do	Do.

NOTE: The Town of Batesburg, South Carolina has merged with the Town of Leesville to become one governmental jurisdiction. The new name is the "Town of Batesburg-Leesville." Community number 450130 will be maintained for the new community.

[1] The Town of Flora has no special flood hazard areas (NSFHA). The town is a part of Madison County's countywide Flood Insurance Rate Map (FIRM) issued 4–15–94.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 16, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–4414 Filed 2–22–95; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 21, and 94

[WT Docket No. 94–148, DA 95–140]

Terrestrial Microwave Fixed Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of time.

SUMMARY: The Order provides additional time to respond to the revision of the Commission's rules regarding the establishment of a new part for terrestrial microwave fixed radio services. This action was in response to a request from the Telecommunications Industry Association (TIA). It will allow ITA and others to prepare better reponses to the complex changes proposed to the microwave rules.

DATES: Comments are due on or before February 17, 1995 and reply comments are due on or before March 17, 1995.

FOR FURTHER INFORMATION CONTACT: Robert James Federal Communications Commission Washington, D.C. (202) 418–0680.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 31, 1995.
Released: February 2, 1995.
By the Chief, Wireless Telecommunications Bureau:

1. Before the Bureau is a request for additional time within which to respond to the Commission's *Notice of Proposed Rulemaking* (NPRM) in WT Docket No. 94–148, filed by Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association (TIA). In support of this request, TIA states that the proposed changes are complex. As the principal industry association representing microwave manufacturers, it needs time to coordinate among its members to ensure that the Association's comments reflect industry consensus.

Additionally, it notes, the *Notice of Proposed Rulemaking* was released during the year-end holidays, which reduced the amount of available time for review.

2. For the foregoing reasons, It Is Hereby Ordered that the time within which to file comments in this proceeding is extended to February 17, 1995 and the deadline for filing reply comments is extended to March 17, 1995.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Radio.

47 CFR Part 21

Communications equipment.

47 CFR Part 94

Communications equipment.

Federal Communications Commission.

Robert H. McNamara,

Acting Chief, Private Radio Division, Wireless Telecommunications Bureau.

[FR Doc. 95–4389 Filed 2–22–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 950209046–5046–01; I.D. 021495B]

RIN 0648–AG82

Pacific Coast Groundfish Fishery; Modification of Nontrawl Sablefish Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: By a separate notice in the **Federal Register**, NMFS will publish proposed regulations that would establish a new season structure for the nontrawl sablefish component of the Pacific Coast Groundfish (PCG) limited entry fishery. The proposed new regular season would begin at noon August 6 each year. Under the regulations currently governing the fishery, the PCG nontrawl sablefish regular season could start as early as February 26, 1995, preceded by a 72–hour closure beginning on February 23. This early season is unacceptable to the industry for a number of reasons, particularly safety, but also because at that time the quality and market value of sablefish is lower and there are alternative fishing opportunities. Accordingly, NMFS is temporarily amending the current regulations to prevent the PCG nontrawl sablefish regular season from opening pending the completion of the above-mentioned rulemaking to establish a new season structure for the fishery.

EFFECTIVE DATE: This rule is effective from February 17, 1995, through September 1, 1995.

ADDRESSES: Information relevant to this temporary rule is available for public review during business hours at the Office of the Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; and at the Office of the Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) can be obtained from the Pacific Fishery Management Council (Council), 2000 SW First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION:

By a separate notice in the **Federal Register**, NMFS, based on a recommendation of the Council, will propose regulations that would establish a new season structure for the nontrawl sablefish component of the PCG limited entry fishery. The proposed new regular season would begin at noon August 6 each year. Both the limited entry and open-access fisheries would be required to remove all nontrawl gear from the water for the 72–hour period just prior to the start of the regular season for the limited entry fishery, except that baited pot gear may be deployed 24 hours prior to the start.

Under section IV.E.(3)(c) of the current annual specifications for the fishery, the limited entry sector of the nontrawl sablefish fishery is subject to a 300-lb (136 kg) daily trip limit when N. of 36°00′00″ N. lat. and a 350–lb (159 kg) daily trip limit when S. of 36°00′00″ N. lat. (60 FR 2331, 2343, January 9, 1995). Under the current regulations (50 CFR 663.23(b)(2)(i)), the opening of the PCG nontrawl sablefish regular season is linked to the first nontrawl sablefish season opening in the Gulf of Alaska (GOA), which normally occurs in May. Under the new GOA Individual Fishing Quota (IFQ) program, which is governed by 50 CFR part 676, the Alaska season could start as early as March 1, 1995, causing the PCG fishery to open on February 26, 1995, preceded by a 72–hour closure beginning on February 23. This early season is unacceptable to the industry for a number of reasons, particularly safety, but also because at that time the quality and market value of sablefish is lower and there are alternative fishing opportunities.

Accordingly, NMFS is temporarily amending the current regulations to prevent the PCG nontrawl sablefish regular season from opening pending the completion of the above-mentioned rulemaking to establish a new season structure for the fishery.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA), has determined that this temporary rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, the Magnuson Fishery Conservation and Management Act, and other applicable law.

This temporary rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an Environmental Assessment (EA) for the proposed establishment of a new season structure for the nontrawl sablefish component of the PCG limited entry fishery.

On the basis of the EA, the AA concluded that there would be no significant impact on the environment.

NMFS is taking this action under the abbreviated rulemaking authority of the FMP (see 50 CFR part 663, Appendix III.B.3). This action and the proposed establishment of a new season structure was discussed, and was subject to public comment and scrutiny during Council meetings in August and October, 1994. The date the season would have opened under the existing rule is still uncertain, but the opening is tied to the opening date of the nontrawl sablefish season in the GOA and would probably be February 26. A late February opening is not desirable for several reasons, including potentially unsafe fishing conditions due to rough winter weather along much of the coast.

Accordingly, the AA has determined under 5 U.S.C. 553(b)(B) that it is unnecessary and contrary to the public interest to provide prior notice in the **Federal Register** and to provide an opportunity for public comment on preventing the PCG nontrawl sablefish regular season from opening pending the completion of the above mentioned rulemaking to establish a new season structure for the fishery.

For the same reasons, the AA also finds good cause under 5 U.S.C.

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553(d)(3) not to delay the effectiveness of this temporary rule for 30 days. Otherwise the regular season could open as early as February 26, 1995, preceded by a 72–hour closure beginning on February 23.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 16, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is temporarily amended effective February 17, 1995, through September 1, 1995, as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.23, paragraphs (b)(2)(i) through (b)(2)(iv) are suspended, and paragraph (b)(2)(v) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(2) * * *

(v) The regular season for the nontrawl sablefish fishery is postponed pending the establishment of a new season structure. Trip landing, frequency, and/or size limits may be imposed under paragraph (c) of this section.

* * * * *

[FR Doc. 95–4445 Filed 2–17–95; 3:02 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 021795B]

Groundfish of the Bering Sea and Aleutian Islands Area; Offshore Component Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by vessels catching pollock for processing by the offshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first allowance of the pollock total allowable catch (TAC) for the offshore component in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 21, 1995, until 12 noon, A.l.t., August 15, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the first seasonal allowance of pollock for vessels catching pollock for processing by the offshore component in the BS was established by the final groundfish specifications (60 FR 8479, February 14, 1995), as 310,781 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined in accordance with § 675.20(a)(8), that the first allowance of pollock TAC for the offshore component in the BS soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 300,781 mt with consideration that 10,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the BS.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1995.

Alfred Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4446 Filed 2–17–95; 3:15 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 021795A]

Groundfish of the Bering Sea and Aleutian Islands Area; Rock Sole/Flathead Sole/"Other Flatfish"

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), February 21, 1995, until 12 noon, A.l.t., March 30, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The first seasonal bycatch allowance of Pacific halibut for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(2), was established as 428 metric tons (mt) by the 1995 initial specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1995.

Alfred Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4447 Filed 2–17–95; 3:15 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 36
Thursday, February 23, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems; Correction

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Consumer Service is correcting errors in the preamble and in the regulatory text to the proposed rule published on January 27, 1995, (60 FR 5513) entitled National School Lunch Program and School Breakfast Program: Compliance with the *Dietary Guidelines for Americans* and Food-Based Menu Systems.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302; by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1995, the Department published a proposed rule to implement provisions of the Healthy Meals for Healthy Americans Act of 1994, requiring that a variety of meal planning approaches be made available to school food authorities, including "food-based menu systems," and that school meals comply with the *Dietary Guidelines for Americans*, as the Department also proposed on that date. However, the proposed rule as published contains errors in the preamble and regulatory text that need correction. In addition, readers should note that a portion of Appendix A-Regulatory Cost/Benefit Assessment: Food-Based Menu Systems, reflects an early draft of the proposal. The discussion of burden was based on a provision that contained recordkeeping/reporting requirements that the Department subsequently decided not to propose.

Correction of Publication

Accordingly, the publication on January 27, 1995, is corrected as follows:

1. On page 5517, first column, in the first paragraph under the heading "*Grains/Breads*", the third to last sentence is corrected to read "For children in grades 7 through 12, the number of servings would be increased from 8 (10 recommended) to 15 *per week*."

2. On page 5518, in the second column, in line 11 of the first full paragraph, the reference to "June 10, 1995," is corrected to read "June 10, 1994."

§ 220.8 [Corrected]

3. On page 5521, in the chart entitled "Minimum Quantities:"

a. in the column entitled "Ages 1–2," the reference in the second line to "½ ounce plus" is removed;

b. in the column entitled "Preschool," the reference in the second line to "½ ounce plus" is removed;

c. in the column entitled "Grades K–12," the reference in the second line to "1 ounce plus" is removed;

d. in the column entitled "Grades 7–12," the reference in the second line to "2 ounces plus" is removed, the reference to "(4 ounces)" in line 9 is corrected to read "(2 ounces)," and the word "ounce" in line 10 is corrected to read "serving."

Dated: February 16, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–4404 Filed 2–22–95; 8:45 am]

BILLING CODE 3410-3-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–9]

Proposed Amendment to Class E Airspace; Milledgeville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Milledgeville, GA. A LOC RWY 28 Standard Instrument Approach Procedure (SIAP) has been developed for Baldwin County Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IRF) operations at the airport.

DATES: Comments must be received on or before March 30, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–9, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Michael J. Powderly, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Milledgeville, GA. A LOC RWY 28 SIAP has been developed for Baldwin County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at the airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994, which is incorporated by reference in CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria for the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet Above the Surface of the Earth.

* * * * *

ASO GA E5 Milledgeville, GA [Revised]

Baldwin County Airport, GA
(Lat. 33°09'15" N, long. 83°14'26" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Baldwin County Airport and within 2.1 miles each side of the 098° bearing from the Culver LOM, extending from the 7-mile radius to 7 miles east of the LOM.

* * * * *

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–4435 Filed 2–22–95; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 110

[CGD11–95–001]

RIN 2115–AA98

Anchorage Grounds; Pacific Ocean at Santa Catalina Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to reduce the Isthmus Cove Anchorage Grounds off Santa Catalina Island, CA to exclude the area designated as the Wrigley Marine Science Center Marine Life Refuge, formerly known as the Catalina Marine Science Center Marine Life Refuge, from the Isthmus Cove Anchorage Grounds. The Coast Guard proposes to voluntarily reduce the geographic limits of the Anchorage Grounds at the suggestion of the State of California. In establishing the Marine Life Refuge, California has prohibited unauthorized anchoring in the affected area under state law. In order to reduce confusion among recreational and commercial mariners, and in order to enhance the safety of navigation in support of the efforts of the State of California, the Coast Guard proposes to exclude the area encompassed by the Marine Life Refuge from the Anchorage Grounds.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments may be mailed to Commander (oan), Eleventh Coast Guard District, 501 W. Ocean Blvd., Suite 6200, Long Beach, CA 90822–5399, Attn: CGD11–95–001, or may be delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant P. C. Barnett, Aids to Navigation and Waterways Management Branch, telephone (310) 980–4300, extension 513.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this proposed rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD11–95–001) and the specific section of the proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. The request should include reasons why a hearing would be

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beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant P.C. Barnett, Eleventh Coast Guard District, Aids to Navigation and Waterways Management Branch, Project Officer, and Lieutenant R.J. Barber, Eleventh Coast Guard District Legal Office, Project Attorney.

Background and Purpose

The Isthmus Cove Anchorage Grounds (the Anchorage) were codified by final rulemaking CGFR 67–46, published in 32 FR 17728 (December 12, 1967). The Wrigley Marine Science Center (the Center) was built during that same year. The Center's primary function was and continues to be to provide an environment that facilitates scientific investigation. It was intentionally located in close proximity to a virtually undisturbed marine environment to allow researchers the opportunity to conduct long-term underwater investigations of sea life under conditions where human influences are minimal.

In 1988, the state of California established the Wrigley Marine Science Center Marine Life Refuge (the Refuge), formerly known as the Catalina Marine Science Center Marine Life Refuge, near the Center. A portion of the waters of the Refuge is located within the waters of the Anchorage.

In order to protect and preserve the delicate ecosystem of the Refuge and to prevent damage caused by anchors to the valuable scientific equipment being used to conduct research within the Refugee, the state of California, as part of the original legislation establishing the Refuge, prohibits unauthorized anchoring and mooring within the Refuge.

Discussion of Proposed Regulations

The proposed amendment to the Isthmus Cove Anchorage Grounds regulation seeks to reduce the size of the Anchorage by removing from it the waters located in Fisherman Cove and those waters shoreward from a line extending approximately 50 yards from shore connecting Blue Cavern Point to Fisherman Cove. In order to reduce confusion among recreational and commercial mariners, and in order to enhance the safety of navigation in support of the efforts of the State of California, the Coast Guard proposes to exclude the area encompassed by the Marine Life Refuge from the Anchorage Grounds.

The proposed amendment to the regulation also describes the Anchorage more accurately by using coordinates in addition to making reference to well-known landmarks.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Department of Transportation regulatory policies and procedures is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal would have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.216 is amended by revising paragraph (a)(2) to read as follows:

§ 110.216 Pacific Ocean at Santa Catalina Island, CA

(a) * * *

(2) *Isthmus Cove.* All the waters bounded by a line connecting the following coordinates, beginning at 33°–27′–12″ N, 118°–30′–05″ W (the promontory known as Lion Head); thence southeast to 33°–26′–55.5″ N, 118°–28′–44″ W; thence west-southwest to 33°–26′–50″ N, 118°–29′–08″ W; thence southwest to 33°–26′–39″ N, 118°–29′–19″ W; thence along the shoreline returning to the point of origin, excluding the following-described non-anchorage area: an area 300 feet wide (170 feet west and 130 feet east of the centerline of the Catalina Island Steamship Line pier), extending 1600 feet from the root of the pier, and an area 150 feet seaward of the shoreline extending approximately 1500 feet east and 1500 feet northwest of the centerline of said pier.

* * * * *

Dated: January 19, 1995.

D.D. Polk,

Captain, U.S. Coast Guard Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 95–4409 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 154 and 156

[CGD 93–056]

RIN 2115–AE50

Facilities Transferring Oil or Hazardous Materials in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the regulations covering facilities transferring oil or hazardous material in bulk. These revisions are intended to update and clarify the current regulations. The revisions should result in regulations that are more effective in providing a high level of safety and environmental protection.

DATES: Comments must be received on or before May 24, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 93–056), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Marine Environmental Protection Division, (202) 267–6714.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–056) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Until 1990, the regulations covering the transfer of products between vessels and facilities capable of transferring oil or hazardous materials in bulk to or from a vessel with a capacity of 250 barrels or more were contained in two different parts of the Code of Federal Regulations. Facilities transferring oil in bulk were covered by 33 CFR part 154, while those transferring hazardous materials in bulk were covered by 33 CFR part 126 (Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities). The Coast Guard consolidated and revised the provisions into part 154 (Facilities Transferring Oil or Hazardous Material in Bulk) in a final rule published on September 4, 1990 (55 FR 36252). Since that time, numerous comments have been received from Coast Guard personnel and industry about problems in working with part 154. Coast Guard personnel and industry advisory groups have provided numerous suggestions for improving part 154. In 1992, a Coast Guard task force, chartered as the result of a General Accounting Office report on the Coast Guard's facility inspection program, recommended a number of changes to 33 CFR part 154. Based on the task force's recommendations, the Coast Guard decided to initiate a rulemaking project to review all of 33 CFR part 154. A solicitation was sent to all Coast Guard Marine Safety Officers and Captains of the Ports asking for assistance in identifying problem areas. Every unit solicited responded with comments identifying changes to provisions that, if adopted, would greatly improve their facility oversight and enforcement operations, and thereby enhance industry's ability to comply with the regulations.

Discussion of Proposed Changes

Section 154.100 Applicability

There has been confusion regarding the applicability of the regulations in 33 CFR part 154. Particularly, there has been confusion over whether applicability is determined by the capacity of the facility or the capacity of the vessel. The proposed rule seeks to clarify that the total capacity of the vessel is the determining factor. Part 154 applies to facilities transferring oil or hazardous materials to vessels capable of carrying 250 barrels or more of oil or hazardous materials, or a combination of oil types, or hazardous materials, or both.

Also, a new paragraph is proposed to be added to the applicability section which would specify all of the requirements that are applicable to mobile transfer facilities. Both industry and Coast Guard personnel have indicated that such a provision would be helpful. Inclusion of this paragraph should eliminate confusion in determining which requirements are applicable to mobile facilities.

Included in the proposed list of requirements that would apply to mobile facilities are certain safety requirements found in § 154.735 that do not currently apply to mobile facilities. These include standards for access to the mobile facility by firefighting personnel, proper storage of hazardous material, sufficient fire extinguishers, rubbish containment, protective equipment, heating equipment placement, electrical wiring and three way warning signs. Additionally, this NPRM proposes to subject mobile facilities to the "person in charge requirements" of 33 CFR 154.710. Comments on the cost of applying these regulations to mobile facilities are requested.

Section 154.105 Definitions

A definition for "caretaker status", and revisions to the definitions of "facility", and "transfer" are proposed.

"Caretaker status" is proposed to be defined as a facility that is free of oil or hazardous material, certified as gas free and where specified piping has been blanked off and the letter of adequacy has been suspended by the COTP.

The proposed revisions to the definition of "facility" clarify that tank cleaning and stripping facilities, and floating docks or barges used as part of the transfer platform, are considered to be within the definition of facility. The proposed rule also makes it clear that barges and other floating structures used to support an intricate part of the facility's operation, such as piping for

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the facility, are to be considered part of the facility.

Finally, the proposed revision to the definition of "transfer" would specify that a transfer begins once the transfer hose is connected, thereby requiring owners and operators to comply with the safety requirements pertaining to the transfer of oil or hazardous material at an early stage of the process. Safety measures at this stage are crucial because as soon as a transfer hose is connected, there is a risk of oil or hazardous material being inadvertently transferred, resulting in a spill. Therefore, hose connections should be made only while complying with the supervisory and other requirements specified in part 154.

Section 154.107 Alternatives

This section is proposed to be revised to provide that the Captain of the Port (COTP) will take final approval or disapproval action within 60 days, rather than 30 days, of a request from a facility operator to use alternate methods, procedures or equipment standards from those required by part 154. The additional 30 days will allow more time for the COTP to thoroughly evaluate requests. Every effort will be made to respond to requests in less than 60 days if possible.

Section 154.110 Letter of Intent

This NPRM proposes to require that the facility owner's name, address, and telephone number be included in the letter of intent required by § 154.110. Currently, this information is required of the facility operator only. This additional information will be of great assistance in determining and locating the responsible party during a spill or other emergency.

Section 154.310 Operations Manual: Contents

This NPRM proposes to require that a map of the facility, drawn to scale, be included in the operations manual. In the past there has been confusion among industry and enforcement personnel over the boundaries of various facilities subject to regulation. The required map would depict the physical boundaries of the facility and include all structures, such as wharfs, and would indicate which piping in the facility is subject to the testing requirements of 33 CFR 156.170(c)(4). This revision would assist Coast Guard and industry personnel in more readily determining which pipes are subject to Coast Guard inspection as opposed to those regulated by the Environmental Protection Agency. The accuracy of the facility operator's determinations as to which pipes are subject to Coast Guard inspection under § 156.170 would be reviewed by the COTP when the operations manual is submitted to the COTP for a review of adequacy under § 154.300. This revision would help the Coast Guard and facility owners and operators ensure that all piping subject to the regulations is properly tested.

The proposed rule seeks to simplify for industry the information retention requirements of part 154. Currently, § 154.310(a)(5) requires facility operators to retain specified information about the products handled by the facility. This NPRM proposes that Material Safety Data Sheets be retained rather than the information currently required by § 154.310(a)(5). This revision would provide the Coast Guard access to information of equivalent value, while providing an easier method of recordkeeping for facility operators.

In the past there has been confusion regarding the appropriate state and local personnel to contact in the event of a spill or other emergency. Therefore, this NPRM proposes to add a requirement that the names and telephone numbers of state and local officials be included in the list of names and addresses currently required under § 154.310(a)(7). This would require the facility owners to determine who the appropriate state and local officials to contact are in advance, so that time will not be wasted in the event of an emergency. Also, this NPRM proposes to require that the name and telephone number of the "qualified individual" listed in the facility response plan required by 33 CFR 154.1026 be included. This is also vital information in the event of an emergency.

Currently, § 154.310(a)(16) requires that the operations manual include the maximum relief valve setting for each transfer system. This rule proposes that the Maximum Allowable Working Pressure (MAWP) also be recorded. This revision is necessary because of proposed changes to § 154.500 which would no longer require that each hose assembly have a MAWP of 150 pounds per square inch. Recording of the MAWP will ensure that tests conducted under 33 CFR 156.170 are conducted using the correct MAWP for the transfer piping system being tested.

Section 154.320 Operations Manual: Amendment

Currently, under § 154.320(a)(1), facility operators have 14 days to respond to a notice from the COTP regarding any inadequacies in the operations manual. Industry has indicated that 14 days is an insufficient amount of time to respond to a COTP's request for amendments to the operations manual. This NPRM proposes a 45 day response period starting from the date of the COTP's notice. Also, § 154.320(a)(1) provides that the COTP shall notify the facility operator of any amendment required or adopted, and that such amendment becomes effective 30 days after the facility operator receives notice. This NPRM proposes to delay the effective date of such amendments until 60 days after notification of the facility operator.

Section 154.500 Hose Assemblies

In the past there has been confusion regarding the maximum allowable working pressure (MAWP) to be used for the testing requirements in 33 CFR 156.170. Part of this confusion was caused by the fact that a minimum (MAWP) was specified for hose assemblies. This forced industry to test their hose assemblies, and usually their piping systems, at a minimum of 225 pounds per square inch. It is more reasonable for the MAWP to be based on the actual design of the transfer system, rather than a pre-specified number. The proposed changes to this section would eliminate a minimum burst pressure and MAWP for hose assemblies. With this revision, industry could develop their tests and inspection criteria based on the actual needs of their systems, and avoid unnecessary expense testing to a level higher than that of their systems' designs.

Section 154.520 Closure Devices

Under the current regulations, industry must have enough valves to blank off a transfer hose, even when it is stored, unless it is new and unused. The proposed change would clarify that such hoses must be blanked off during transfer. Also, the revisions would allow for treating a hose that is cleaned of product in the same manner as a new, unused hose.

Section 154.530 Small Discharge Containment

Experience reveals that many small spills occur during the coupling and uncoupling of transfer hoses, and from coupled joints. Present regulations require containment around manifold areas, but do not specifically require containment around those areas where coupled hoses may cross or are uncoupled or coupled. Therefore, a paragraph is proposed to be added to § 154.530 that would require that fixed or portable containment be placed under each hose connection during coupling, uncoupling, and transfer. Comments on the viability and costs of this proposed revision are solicited.

Section 154.540 Discharge Removal

The current regulations require that facilities have a means to safely and quickly remove oil and hazardous material from the containment required by § 154.530. To provide greater specificity, this NPRM proposes that facilities must have a means to remove discharged oil or hazardous material from the containment within one hour.

Section 154.545 Discharge Containment Equipment

This NPRM proposes to add a paragraph to § 154.545 that would specify that equipment required to be retained under this section may be used in the planning requirements of the facility response plan required by subpart F.

Section 154.560 Communications

This NPRM proposes to revise § 154.560 to require that only intrinsically safe radios that have been marked accordingly by the manufacturer of the radio may be used to meet the requirements of § 154.560(a). This requirement would help to ensure that appropriate communications equipment is used. Also, the references included in § 154.560(e) regarding the definition of "intrinsically safe" are incorrect. Instead of the current references, the NPRM requires that a qualified testing laboratory, such as Underwriters Laboratories, certify that a radio is intrinsically safe and is marked accordingly. In most cases, radios used by facilities already meet the requirements of this proposed regulation.

Section 154.710 Persons in Charge: Designation and Qualification

Numerous spills have been caused by the inattention or poor training of the person in charge at some facilities. Therefore, it is proposed that the facility operator must certify that the person in charge has completed a training program that has been approved by the Captain of the Port, in accordance with revised § 154.710(c) and (d). This revision is intended to ensure that the person in charge has received the basic training necessary to properly operate transfer equipment and has a thorough understanding of the hazards involved in a transfer of oil or hazardous materials, and what his duties are relative to that operation in the event of emergency. The proposed requirement would, however, allow facility operators the flexibility to develop their own training program, appropriate to the needs and operation of their facility. The list of those persons certified would be kept with the operations manual.

Comments are solicited from industry on what specific basic training requirements should be required for the person in charge, what established industry training already exists to ensure their competence, and the cost of such training.

Additionally, there has been confusion as to where the person in charge is to be during the transfer, as required by 33 CFR 156.120(t)(1). This NPRM adds the requirement that the person in charge is to be in visual sight of the transfer system from the time a hose connection is completed, until the time when the connection is broken.

Given the importance of the person in charge, it is also proposed that this section apply to mobile transfer facilities.

Section 154.735 Safety Requirements

This NPRM proposes that § 154.735 be revised to abolish the current "hot work permit" program which is cumbersome and obsolete. Under the current program a permit must be obtained from the Captain of the Port, prior to conducting welding or hot work at a facility. A new provision is proposed to be added which would place responsibility for the safety of all hot work at the facility, and the vessels moored to it, on the facility's owner and operator.

Currently, § 154.735(s) provides that tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures must be conducted in accordance with specified sections of the International Safety Guide for Oil Tankers and Terminal(s) (ISGOTT). Experience with use of the ISGOTT standards has revealed that, particularly in reference to barges, some of the ISGOTT provisions are problematic. A provision would be added to allow facility owners or operators to request authorization from the COTP, in accordance with § 154.107, to follow an alternative method of compliance based on sound industry practices. An example of guidelines that could be approved for use by the COTP are the "Safety Guidelines for Tank Vessel Cleaning Facilities", First Ed., 1992, developed by the American Waterways Shipyard Conference. Copies of these guidelines may be obtained from American Waterways Shipyard Conference, 1600 Wilson Blvd., Suite 1000, Arlington, VA 22209.

The current regulations are vague regarding security at a facility. The proposed rule would require that access to the marine transfer area from the shoreside or waterside is limited to facility personnel, delivery and service personnel, Coast Guard personnel, and other authorized persons. It further proposes that these personnel have identification. These parameters are similar to those found in 33 CFR 127.703 and therefore should be better understood by both industry and inspection personnel.

Currently part 154 does not prohibit smoking. This NPRM would propose to limit smoking in the same manner as the provisions of 33 CFR 126.15(b). Most facilities already follow this standard.

This NPRM proposes to require that three way warning signs, similar to those required under 33 CFR 126.15(o)(2)(i), be displayed on the facility at the point of transfer, without obstruction, at all times on a fixed facility and during coupling, transfer operation, and uncoupling on a mobile facility. Many of the facilities previously covered by part 126 still have these warning signs. Both industry and Coast Guard personnel have suggested that these signs would be valuable for all facilities covered by 33 CFR part 154.

Section 154.740 Records

One of the primary goals of this rulemaking is to consolidate documents and descriptions of procedures and tests required by part 154 into one centralized location that would greatly facilitate inspections and ensure that this information is immediately available in the event of a spill or other emergency. Therefore, this NPRM proposes that the records required by this section, such as the Letter of Intent, Letter of Adequacy, person-in-charge qualifications, and the piping and hose tests be maintained in the same location as the operations manual but not as a part of the operations manual.

33 CFR Part 156

Conforming changes to certain sections of 33 CFR part 156 have been proposed as discussed below to ensure consistency with the changes proposed for part 154.

Section 156.120 Requirements for Transfer

This section is proposed to be revised to explicitly state that a transfer begins when a connection of any transfer hose or loading arm is made. At that point, all elements required to conduct a transfer must be in place. This revision is consistent with the proposed definition of "transfer" in § 154.105 and is intended to prevent an accidental spill from the transfer of oil or hazardous material before all protections required during a transfer are in place.

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Section 156.160 Supervision by Person in Charge

To conform with the training requirements set forth in § 154.710, a provision is proposed to be added to § 156.160 to clarify that the person in charge must visually monitor the transfer, throughout the transfer.

Section 156.170 Equipment Tests and Inspections

Revisions are proposed to this section to complement the testing records required to be kept with the operations manual by § 154.720.

The revisions clarify that a static liquid pressure test is acceptable, and the test medium for transfer hoses is not required to be water. Those facilities in a caretaker status or that only transfer infrequently will now be required to test 30 days before their first transfer occurring more than one year from their last tests and inspections. This inspection schedule will allow a reduction in costs for facilities that transfer infrequently while still providing an appropriate level of environmental protection.

It would also be made clear that the COTP has the authority to allow alternative methods of compliance to the testing requirements in this section.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Evaluation is summarized as follows.

It is estimated that 2591 fixed and 539 mobile marine transportation related facilities will be affected by these regulations. Many of the proposed revisions are clarifying changes that will pose no additional costs on facilities presently in compliance with the regulations. For example, certain information previously kept separately would now be required to be kept in the same location as the operations manual but requires little additional information not already prescribed by some other regulation. Since this information is not required to be included in the operations manual no additional cost is incurred for review by the Coast Guard or the facility.

There are some new requirements associated with this NPRM. These requirements include a map showing the boundaries of the Coast Guard's jurisdiction (§ 154.310(a)(2)); additional requirements for mobile transfer facilities including standards for access by firefighting personnel, proper storage of hazardous material, sufficient fire extinguishers, rubbish containment, protective equipment, heating equipment placement, three way warning sign, electrical wiring and the "person in charge requirements" (§ 154.100(d)); a more extensive training and qualification program for persons in charge (§ 154.710(c)); containment under each hose connection during coupling, uncoupling, and transfer (§ 154.530(a)(3)); and three way warning signs (§ 154.735(v)).

However, other proposed revisions lessen the burden on industry in such areas as the use of the material safety data sheets rather than maintaining this information separately (§ 154.310(a)(5)); deletion of the requirement that transfer hoses have a minimum maximum allowable working pressure of 150 psi (§ 154.500(b)); and the deletion of the requirement for a facility to obtain a hot work permit (§ 154.735(i)).

Comments are requested on the cost of the small discharge containment proposed by § 154.530(a)(3); the additional requirements for mobile facilities proposed by § 154.100(d); and the training and qualification program for persons in charge proposed by § 154.710(c) and the overall cost of all of the proposed regulations to consumers. Comments are also solicited on the cost saving from deleting the requirement that transfer hoses have a minimum, maximum allowable working pressure of 150 psi (§ 154.500(b)).

In consideration of the additions and deletions to part 154 and 156 it is estimated that the annual net cost to all facilities, would be $7,665,971, where captial costs are incurred over a five year period.

The overriding benefit to industry and the Coast Guard of the proposed rules would be the establishment of rules that are easier to understand and that would therefore facilitate and foster industry compliance, leading to a higher level of environmental protection.

The direct monetary benefit of increased protection would come from the reduction of spills resulting from facility operations. These proposed regulations are designed to achieve an overall reduction of oil and hazardous materials spilled into the water from facilities by 20%. The weighted average of the annual volume of bulk oil and hazardous material spilled from 1987–1991 from facilities was 436,147 gallons. The estimated costs of spill cleanup, third party damages, and natural resource damages resulting from this volume totals $8,722,940. A 20% reduction will give an annual benefit of $1,744,588.

Comparing the monetary benefits of the proposed provisions against the compliance cost to industry, the annual cost of the regulations is estimated to be $5,921,383.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The majority of facilities are owned by large corporations. The new requirements proposed by this NPRM, measured against the proposed relief from other requirements currently in effect, will result in a negligible cost increase for facilities that presently comply with part 154.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains new collection-of-information requirements in the following sections: § 154.310, § 154.710 and § 154.560. The following particulars apply:

DOT No: 2115.

OMB Control No.: 2115–0078.

Administration: U.S. Coast Guard.

Title: Changes to regulations covering Facilities Transferring Oil or Hazardous Materials in Bulk.

Need for information: It is proposed that information presently kept separately, now be kept in the same location as the operations manual by § 154.740. However, little new information is required and since it is proposed that the information be kept with the operations manual, not in it, no additional review requirements are proposed. Maintaining all records in one location where it is readily assessable will encourage facility owners and operators to be better prepared and thereby help to prevent spills and accidents resulting from improper procedures. Also, consolidation of the information with the operations manual will assist Coast Guard enforcement personnel in performing their duties in an efficient and effective manner. Section 154.710 would require a facility to submit a training program for persons in charge to the COTP for review and approval. Training programs are necessary to ensure the competency of the personnel filling this critical position. The proposal allows facility operators the flexibility of designing a program that meets their needs.

Proposed use of information: To determine regulatory compliance.

Frequency of response: Occasional and annual.

Burden estimate: 7,258.

Respondents: 3,130 operators of bulk oil and hazardous material transfer facilities.

Form(s): Not applicable.

Average burden hours per respondent: 1.9

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard intends to preempt State and local law only to the extent that compliance with the State law would preclude compliance with these proposed requirements.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

The majority of the proposed changes are administrative in nature and involve the maintenance of records and descriptions of procedures to be retained in the operations manual. Other proposed revisions involve changes in equipment or procedures that are designed to enhance environmental protection by attempting to prevent spills of oil and hazardous materials from bulk liquid facilities or minimize the effects of such occurrences. Therefore, these revisions should have only a positive affect upon the environment.

List of Subjects

33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR parts 154 and 156 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIALS IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321 (j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

Subpart A—General

2. In § 154.100, paragraph (a) is revised and a new paragraph (d) is added to read as follows:

§ 154.100 Applicability.

(a) This part applies to each facility that is capable of transferring oil or hazardous material, in bulk, to or from a vessel, where the vessel has a total capacity, from a combination of all bulk products carried, of 250 barrels or more. This part does not apply to the facility when it is in a caretaker status.

* * * * *

(d) The following sections of this part apply to mobile facilities:

(1) Section 154.107 Alternatives.

(2) Section 154.108 Exemptions.

(3) Section 154.110 Letter of intent.

(4) Section 154.120 Facility examinations.

(5) Section 154.300 Operations manual: General.

(6) Section 154.310 Operations manual: Contents. Paragraphs (a)(2) through (a)(7), (a)(9), (a)(12), (a) (14) through (17), (a) (20) through (24), (c), and (d).

(7) Section 154.320 Operations manual: Amendment.

(8) Section 154.325 Operations manual: Letter of adequacy.

(9) Section 154.500 Hose assemblies. Paragraphs (a)(1), (b)(1), (c), (d) (1) through (3), and (e) (1) through (4).

(10) Section 154.530 Small discharge containment. Paragraphs (a) (1) through (2), and (d).

(11) Section 154.545 Discharge containment equipment.

(12) Section 154.550 Emergency shutdown.

(13) Section 154.560 Communications.

(14) Section 154.570 (c) and (d) Lighting.

(15) Section 154.700 General.

(16) Section 154.710 Persons in charge: Designation and qualification.

(17) Section 154.730 Persons in charge: Evidence of designation.

(18) Section 154.735 Safety requirements. Paragraphs (a) through (d), (f) through (g), (i), (j) (1) through (2), (k) (1) through (2), (l) through (m), (o) through (q), (r) (1) through (3), (s), and (u) through (v).

(19) Section 154.740 Records. Paragraphs (a) through (f).

(20) Section 154.750 Compliance with operations manual.

3. In § 154.105, the following definition *Caretaker status* is added in alphabetical order, and the definitions of *Facility*, and *Transfer* are revised, to read as follows:

§ 154.105 Definitions.

* * * * *

Caretaker status denotes a facility where all piping, storage tanks, and related equipment is completely free of oil or hazardous material; that has been certified as being gas free; where piping terminating near any body of water has been blanked; and where the letter of adequacy has been suspended by the COTP upon request of the facility.

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Facility means either an onshore or offshore facility and includes, but is not limited to, structures, equipment, and appurtenances thereto, used or capable of being used to transfer oil or hazardous material to or from a vessel or public vessel. Also included are facilities that tank clean or strip and any floating structure that is an intricate part of the facility's operation. A facility includes Federal, State, municipal, and private facilities.

* * * * *

Transfer means any movement of oil or hazardous material to, from, or within a vessel by means of pumping, gravitation, or displacement. A transfer is considered to begin when all connections are made so that such movement is possible, regardless of when the actual movement begins.

* * * * *

4. In § 154.107, paragraph (b) is revised to read as follows:

§ 154.107 Alternatives.

* * * * *

(b) The COTP takes final approval or disapproval action on the request, submitted in accordance with paragraph (a) of this section, in writing, within 60 days of receipt of the request.

5. In § 154.110, paragraph (b)(1) is revised to read as follows:

§ 154.110 Letter of intent.

* * * * *

(b) * * *

(1) The names, addresses, and telephone numbers of the facility operator and the facility owner;

* * * * *

Subpart B—Operations Manual

6. In § 154.310, paragraphs (a)(2), (a)(5), (a)(7), (a)(16) and (a)(22) are revised and paragraph (a)(23) is added to read as follows:

§ 154.310 Operations manual: Contents.

(a) * * *

(2) A physical description of the facility including a map of the facility, drawn to scale, showing the boundaries of the facility, mooring areas, transfer locations, control stations, wharfs, the extent and scope of piping subject to the tests required by § 156.170(c)(4) of this chapter, and the locations of safety equipment;

* * * * *

(5) A copy of the Material Safety Data Sheet for each product transferred at the facility;

* * * * *

(7) The names and telephone numbers of the qualified individual identified under § 154.1026 and the Coast Guard, State, local, and other personnel who may be called by the employees of the facility in an emergency.

* * * * *

(16) The maximum allowable working pressure (MAWP) of each loading arm, transfer pipe system, and hose assembly required to be tested by § 156.170 of this chapter, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system;

* * * * *

(22) Statements explaining that each hazardous materials transfer hose is marked with either the name of each product which may be transferred through the hose or with letters, numbers or other symbols representing all such products and the location in the operations manual where a chart or list of symbols used and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer; and

(23) For facilities that tank clean or strip, a description of their procedures.

* * * * *

7. In § 154.320, paragraph (a)(1) is revised to read as follows:

§ 154.320 Operations manual: Amendment.

(a) * * *

(1) The COTP will notify the facility operator in writing of any inadequacies in the operations manual. The facility operator may submit written information, views, and arguments regarding the inadequacies identified, and proposals for amending the manual, within 45 days from the date of the COTP notice. After considering all relevant material presented, the COTP shall notify the facility operator of any amendment required or adopted, or the COTP shall rescind the notice. The amendment becomes effective 60 days after the facility operator receives the notice, unless the facility operator petitions the Commandant to review the COTP's notice, in which case its effective date is delayed pending a decision by the Commandant. Petitions to the Commandant must be submitted in writing via the COTP who issued the requirement to amend the operations manual.

* * * * *

Subpart C—Equipment Requirements

8. In § 154.500, paragraphs (a) and (b) are revised to read as follows:

§ 154.500 Hose assemblies.

* * * * *

(a) The minimum design burst pressure for each hose assembly must be at least four times the sum of the pressure of the relief valve setting (or four times the maximum pump pressure when no relief valve is installed) plus the static head pressure of the transfer system at the point where the hose is installed.

(b) The maximum allowable working pressure (MAWP) for each hose assembly must be more than the sum of the pressure of the relief valve setting (or the maximum pump pressure when no valve is installed) plus the static head pressure of the transfer system at the point where the hose is installed.

* * * * *

9. Section 154.520 is revised to read as follows:

§ 154.520 Closure devices.

(a) Except as provided in paragraph (b) of this section, each facility to which this part applies must have enough butterfly valves, wafer-type resilient seated valves, blank flanges, or other means acceptable to the COTP to blank off the ends of each hose or loading arm that is not connected for the transfer of oil or hazardous material. Such hoses must be blanked off during the transfer of oil or hazardous material.

(b) New, unused hose, and hose that has been cleaned and is gas free, is exempt from the requirements of paragraph (a) of this section.

10. In § 154.530, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 154.530 Small discharge containment.

(a) Except as provided in paragraphs (c), (d) and (e) of this section, each facility to which this part applies must have fixed catchments, curbing, or other fixed means to contain oil or hazardous material discharged in at least—

(1) Each hose handling area (that area on the facility that is within the area traversed by the free end of the hose or loading arm when moved from its normal stowed or idle position into a position for connection);

(2) Each hose connection manifold area; and

(3) Under each hose connection during coupling, uncoupling, and transfer.

* * * * *

(e) Fixed or portable containment may be used to meet the requirements of paragraph (a)(3) of this section.

11. Section 154.540 is revised to read as follows:

§ 154.540 Discharge removal.

Each facility to which this part applies must have a means to safely remove discharged oil or hazardous material, within one hour of its release, from the containment required by § 154.530 without discharging the oil or hazardous material into the water.

12. In § 154.545, paragraph (e) is added to read as follows:

§ 154.545 Discharge containment equipment.

* * * * *

(e) Equipment and procedures maintained to satisfy the provisions of this chapter may be utilized in the planning requirements of subpart F of this part.

13. In § 154.560, paragraph (e) is revised to read as follows:

§ 154.560 Communications.

* * * * *

(e) Portable radio devices used to comply with paragraph (a) of this section during the transfer of flammable or combustible liquids must be marked as intrinsically safe by the manufacturer of the device and certified as intrinsically safe by a national testing laboratory or other certification organization approved by the Commandant.

Subpart D—Facility Operations

14. In § 154.710, paragraphs (c) and (d), introductory text, (d)(7) and (d)(8) are revised and paragraph (d)(9) is added to read as follows:

§ 154.710 Persons in charge: Designation and qualification.

* * * * *

(c) That person has completed a training program, established by the facility operator and approved by the Captain of the Port in accordance with §§ 154.720(a)(23) and 154.325, that provides the person with the knowledge and training necessary to properly operate the transfer equipment at that facility, perform the duties described in paragraph (d) of this section, follow the procedures required by this part, and fulfill the duties required of a person in charge during an emergency, except that for new facilities, the Captain of the Port may authorize alternative experience and training requirements and;

(d) The facility operator must certify that the person in charge has the knowledge and skills necessary to—

* * * * *

(7) Follow local discharge reporting procedures;

(8) Carry out the facility's response plan for discharge reporting and containment; and

(9) Visually observe transfers continuously throughout the transfer operations to ensure compliance with the procedures required by this part and be immediately available to the transfer personnel.

15. In § 154.735, the introductory text, paragraphs (l), and (s) through (t) are revised and paragraphs (u) through (w) are added to read as follows:

§ 154.735 Safety requirements.

Each operator of a facility to which this part applies shall ensure that the following safety requirements are met at the facility:

* * * * *

(l) All welding or hot work conducted at the facility, or on any vessel moored to the facility, is the responsibility of the facility owner and operator.

* * * * *

(s) Tank cleaning or gas freeing operations conducted by the facility on vessels carrying oil residues or mixtures shall be conducted in accordance with sections 8.1, 8.2, 8.3, and 8.5 of the International Safety Guide for Oil Tankers and Terminals (ISGOTT). Except that—

(1) Prohibitions in ISGOTT against the use of recirculated wash water do not apply if the wash water is first processed to remove product residues;

(2) The provision in ISGOTT section 8.2.10 concerning flushing the bottom of tanks after every discharge of leaded gasoline does not apply;

(3) The provision in ISGOTT section 8.2.11 concerning the removal of sludge, scale, and sediment does not apply if personnel use breathing apparatus which protect them from the tank atmosphere; and

(4) Upon the request of the facility owner or operator in accordance with § 154.107, the COTP may allow the use of alternative standards to ISGOTT if the COTP determines that the alternative standards provide an equal level of protection to the ISGOTT standards.

(t) Guards shall be stationed, or equivalent controls acceptable to the COTP shall be used, to detect fires, report emergency conditions, and ensure that access to the marine transfer area from the shoreside and waterside is limited to—

(1) Personnel who work at the facility including persons assigned for transfer operations, vessel personnel, and delivery and service personnel in the course of their business;

(2) Coast Guard personnel;

(3) Other Federal, State, or local governmental personnel; and

(4) Other persons authorized by the operator.

(u) Except for those specified in paragraphs (t)(1) and (2) of this section, no person is to be allowed into the marine transfer area unless that person is identified by a facility-issued identification card or other identification card displaying his or her photograph, or is an escorted visitor displaying an identifying badge.

(v) Smoking shall be prohibited at the facility except that facility owners or operators may authorize smoking in designated areas if—

(1) The designated smoking areas are in accordance with local ordinances and regulations;

(2) Signs are conspicuously posted marking such authorized smoking areas; and

(3) "No Smoking" signs are conspicuously posted elsewhere on the facility.

(w) Warning signs shall be displayed on the facility at the point of transfer, without obstruction, at all times for fixed facilities and for mobile facilities during the coupling, transfer operation, and uncoupling. The warning signs shall conform to 46 CFR 151.45–2(e)(1) or 46 CFR 153.955.

16. In § 154.740, the introductory text and paragraph (b) are revised to read as follows:

§ 154.740 Records.

Each facility operator shall maintain in the same location as the operations manual and make available for examination by the COTP:

* * * * *

(b) The name of each person designated as a person in charge of transfer operations at the facility and certification that the person in charge has completed the training requirements of § 154.710;

* * * * *

PART 156—OIL AND HAZARDOUS RING OIL OR HAZARDOUS MATERIALS IN BULK

17. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Subpart B also issued under 46 U.S.C. 3715(b).

Subpart A—Oil and Hazardous Material Transfer Operations

18. In § 156.120, the introductory paragraph is revised to read as follows:

§ 156.120 Requirements for transfer.

A transfer is considered to begin when a physical connection of any transfer hose or loading arm is made and no person shall conduct an oil transfer operation unless—

* * * * *

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19. In § 156.160, paragraph (c) is revised to read as follows:

§ 156.160 Supervision by person in charge.

* * * * *

(c) No person shall transfer oil or hazardous material to or from a vessel unless each person in charge can visually observe the transfer operation continuously throughout the transfer and each person in charge is immediately available to the transfer personnel.

20. In § 156.170, paragraphs (c)(1)(iv) and (f)(1) are revised, paragraph (f)(2) is redesignated as (f)(3) and revised and new paragraphs (f)(2) and (h) are added to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(c) * * *

(1) * * *

(iv) Hoses not meeting the requirements of paragraph (c)(1)(i) of this section, may be acceptable after a static liquid pressure test is successfully completed in the presence of the COTP.

* * * * *

(f) The frequency of the tests and inspections required by this section must be—

(1) For active facilities, annually or within 30 days of the first transfer conducted past one year from the date of the last tests and inspections;

(2) For a facility in caretaker status, within 30 days of the first transfer after the facility is removed from caretaker status; and

(3) For vessels, annually or as part of the biennial and mid-period inspections.

* * * * *

(h) Upon the request of the owner or operator, the COTP may allow alternative methods of compliance to the testing requirements of paragraph (c) of this section if the COTP determines that the alternative methods provide an equal level of protection.

Dated: February 14, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–4405 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 266 and 268

[SW–FRL–5157–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed rule on standards for the management and use of slag residues derived from HTMR treatment of K061, K062, and F006 wastes, which appeared in the **Federal Register** on December 29, 1994 (see 59 FR 67256). This extension of the comment period is provided to allow commenters an opportunity to finalize their data gathering efforts and comments to the Agency's proposal.

DATES: EPA will accept public comments on this proposed decision until April 14, 1995. Comments postmarked after the close of the comment period will be stamped "late."

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–SRTP–FFFFF, room 2616 (Mail Code 5305), 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4787.

SUPPLEMENTARY INFORMATION:

I. Background

On December 29, 1994, EPA proposed to conditionally allow residual materials ("slags") resulting from the high temperature metal recovery (HTMR) treatment of specified hazardous wastes (*i.e.*, electric arc furnace dust, steel finishing spent pickle liquor, and electroplating sludges) to be used in road construction and as an anti-skid/deicing material on road surfaces. These slags are generated by HTMR units processing hazardous wastes solely for metal recovery pursuant to § 266.100(c)—in essence, devices processing particular hazardous wastes with high recoverable metal content, minimal hazardous organic constituents, and low BTU. EPA's proposal was based on the results of a risk assessment conducted for these HTMR slags. See 59 FR 67256 for a more detailed explanation of the Agency's proposed action. Of course, until this proceeding is concluded, EPA has made no final determination that any of these slag dispositions are safe.

On January 17 and January 24, 1995, the Agency received requests from two commenters to extend the comment period. Basically, these commenters are seeking additional time to thoroughly evaluate all aspects of the risk assessment used by EPA to support the proposed rule and also to prepare written comments based on their evaluations. Among the issues raised are whether the slags' total metal concentrations are adequately characterized, and whether risk to sensitive populations was adequately considered (see RCRA docket for the proposed rule). The Agency considered these commenters' requests and has decided to extend the comment period until April 14, 1995.

One issue not discussed in EPA's proposal is whether legitimate recycling is occurring (and, accordingly, whether § 266.20 even applies to these dispositions of the slags). See 59 FR 48026 (September 19, 1994). Such a determination typically involves a case-by-case consideration, and the agency has enumerated relevant factors which ordinarily play a part in that analysis. See, *e.g.*, 53 FR 17606 (May 17, 1988). EPA made no such determination in the proposal, and does not intend to do so in this proceeding.

The public comment period for the proposed rule was originally scheduled to end on February 13, 1995. This notice extends the comment period for the proposed rule to allow commenters an opportunity to finalize their data gathering efforts and responses to the Agency's proposed decision.

Dated: February 9, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–4289 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 700 and 723

[OPPTS–50596C; FRL–4939–2]

RIN 2070–AC14

Premanufacture Notification and Exemptions; Notification of Technical Workshops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of technical workshops.

SUMMARY: EPA will hold technical workshops on the proposed revisions of the Toxic Substances Control Act (TSCA) section 5 premanufacture notification (PMN) regulations and exemptions for chemicals in quantities of 1,000 kilograms or less and for polymers, which were published in the **Federal Register** of February 8, 1993. EPA is conducting the workshops at the request of the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association to provide an opportunity for interested persons to become familiar with the technical provisions of the regulations which will affect the manufacture of new chemical substances. The workshops will address the eligibility criteria and other technical aspects of the proposed polymer exemption and low volume exemption rules, the "two percent" rule for polymers, and procedures for developing and submitting Chemical Abstracts names for new chemical substances.

DATES: The technical workshops will be held on March 14 and 21, 1995, from 12:30 p.m. to 5 p.m. in Washington, DC.

ADDRESSES: The March 14, 1995 meeting will be held at the Environmental Protection Agency, Education Center, 401 M St., SW., Washington, DC 20460. The March 21, 1995 meeting will be held at the General Services Administration, Regional Office Building Auditorium, Rm. 1041, First floor, National Capital Region, 7th and D Sts., SW., Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, Fax: (202) 554–5603. Persons wishing to attend the workshops should contact the office listed above and provide their name, organization, preferred meeting date, and a daytime telephone number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 1993, EPA published its proposed amendments to the PMN regulations, exemptions for chemicals in quantities of 1,000 kilograms or less (58 FR 7646), exemption for polymers (58 FR 7679), and an amendment to the expedited process for issuing SNURs (58 FR 7676). A public hearing on the proposed regulations was held on April 26 and 27, 1993, in Washington, DC. EPA expects to promulgate final regulations in the near future. The regulations would become effective 60 days following publication in the **Federal Register**.

List of Subjects in Parts 700 and 723

Environmental protection, Chemicals, Hazardous materials, Premanufacture notification, Reporting and recordkeeping requirements, Significant new use.

Dated: February 16, 1995.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–4473 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 94–029]

RIN 2115–AE94

Modernization of Examination Methods

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the rules that require Coast Guard-administered written examinations for merchant marine license and unlicensed rating applicants to remove references to "written" examinations and to broaden the scope of those authorized to perform the testing of applicants. These changes reflect the Coast Guard's efforts to develop alternative media testing and the use of private and public sector testing services for examination of these applicants. The development of more effective and modernized testing of applicants for merchant marine licenses and unlicensed ratings will enhance the safety of the maritime environment.

DATES: Comments must be received on or before May 24, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–029), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MVP–3), (202) 267–0224.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–029) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Currently, Coast Guard regulations require that applicants for merchant

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marine licenses and unlicensed ratings pass written examinations. During the latter part of 1993, the Coast Guard conducted focus group meetings and discussions which addressed the future of Coast Guard licensing. Specifically, the group looked at ways to improve and modernize merchant mariner examinations. Although the focus group was composed entirely of military and civilian Coast Guard members, maritime industry representatives are participating in the implementation of focus group report recommendations.

The "Licensing 2000 and Beyond" Focus Group Report (November, 1993), a copy of which is available in the public docket for this rulemaking [94–029] where indicated under **ADDRESSES** above, recommends that the Coast Guard's Marine Licensing Program adopt new methods of verifying competency, including practical demonstrations and the use of simulators. Practical demonstrations and simulators would provide more effective means of testing the skills of the applicants by requiring proper actions and reactions during real-time, real-world scenarios. Electronic methods of examination are employed by private and public sector organizations. There is increasing use of "Third or Fourth Party" testing systems that maximize the significant benefits new technology offers. The Focus Group Report defined a "Third Party" as one who trains or teaches the mariner, and a "Fourth Party" as someone, other than the Coast Guard or a Third Party trainer, who administers a test or makes a subjective judgement about the competency of an individual applicant. The Coast Guard is exploring the possibility of implementing electronic testing methods and the use of "Third-" or "Fourth-Party" testing services.

However, 46 CFR 10.205, 10.207, 10.901, 12.05–9, 12.10–5, 12.15–9, and 12.20–5, specify that applicants pass written (or oral) examinations. Because the Coast Guard is considering the use of other proven methods of proficiency testing which could significantly improve a very critical aspect of the Coast Guard's qualification system, this final rule removes the word "written" from the regulations governing merchant marine examinations and makes minor revisions to reflect the possible use of private and public sector testing services.

By a later notice in the **Federal Register**, the Coast Guard will provide results of its efforts to modernize the examinations and will describe the new examination methods before they are implemented.

Discussion of Proposed Rules

This NPRM proposes to remove the word "written" from the regulations pertaining to Coast Guard administered examinations for merchant marine license and raise of grade of license applicants (46 CFR 10.205(i)(1), 10.207(d)(1), 10.217(a)(1),(2), and 10.901(a)), and for unlicensed rating applicants (46 CFR 12.05–9(a) and (b), 12.10–5(a) and (b), 12.15–9(a) and (c), and 12.20–5). Also, minor revisions are proposed which would allow the Coast Guard Officer in Charge, Marine Inspection (OCMI) to authorize the testing of applicants through use of private and public sector testing services. These revisions reflect the Coast Guard's efforts to develop more modern, efficient, and effective examination methods.

Sections 12.05–9(b), 12.10–5(a), 12.15–9(a), and 12.20–5 regarding examinations for able seaman, lifeboatman, qualified member of the engine department and tankerman, respectively, continue to require that the examinations be conducted in the English language. This requirement continues to be necessary to ensure that personnel in these critical positions will sufficiently understand orders that could come under the stress of an emergency situation. The ability to understand orders under such conditions could make the critical difference in life-threatening situations.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects no economic impact from this rule, and a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The revisions made reflect the Coast Guard's efforts to improve and modernize examination methods for mariners. The revisions would result in no additional costs to the industry.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This proposal would place no additional costs on the public. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no new collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to develop and administer examinations for merchant marine license and document applicants has been committed to the Coast Guard by Federal statutes. The Coast Guard does not expect this proposal to raise any preemption issues, however, the Coast Guard does intend to preempt State and local actions on the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The proposal is an administrative matter within the meaning of paragraph 2.B.2.1. of Commandant Instruction M16475.1B that clearly has no environmental impact.

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, schools, Seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2103, 7101, 7106, 7107; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. In § 10.205, paragraph (i)(1) is revised to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(i) *Professional Examination.* (1) When the applicant's experience and training are found to be satisfactory and the applicant is eligible in all other respects, the OCMI authorizes the examination of the applicant in accordance with the following requirements:

(i) Applicants for deck or engineer licenses limited to vessels not exceeding 500 gross tons, and licenses limited to uninspected fishing industry vessels, may request an oral-assisted examination in lieu of any written or otherwise textual examination(s). If there are textual questions these applicants have difficulty reading and understanding, the oral-assisted examination shall be offered. Any license based on oral-assisted examination is limited to the specific route and type of vessel upon which the majority of service was obtained.

(ii) The instructions for administration of examinations and the lists of subjects for all licenses are contained in subpart I of this part. A record indicating the subjects covered is placed in the applicant's license file.

* * * * *

3. In § 10.207, paragraph (d)(1) is revised to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(d) *Professional Examination.* (1) When an applicant's experience and training for raise of grade are found to be satisfactory and he or she is eligible in all other respects, the OCMI authorizes the examination of the applicant. Oral-assisted examinations may be administered in accordance with § 10.205(i)(1). A record indicating the subjects covered is placed in the applicant's license file. The general instructions and list of subjects are contained in subpart I of this part.

* * * * *

4. In § 10.217, the second sentences of paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) * * * For a Coast Guard administered examination, the examination fee set out in § 10.109 must be paid prior to taking the first examination section. * * *

(2) * * * For a Coast Guard administered examination, the examination fee set out in § 10.109 must be paid prior to taking the first examination section. * * *

* * * * *

5. In § 10.901, paragraph (a) is revised to read as follows:

§ 10.901 General provisions.

(a) An applicant for any license listed in this part must pass examinations on the appropriate subjects listed in this subpart, except as noted in § 10.903(b).

* * * * *

PART 12—CERTIFICATION OF SEAMEN

6. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2103, 2110, 7301, 7302; 49 CFR 1.46.

7. In § 12.05–9, paragraph (a) and the introductory language of paragraph (b) are revised to read as follows:

§ 12.05–9 Examination and demonstration of ability.

(a) Before an applicant is certified as able seaman, he or she shall prove to the satisfaction of the Coast Guard by oral or other means of examination and by actual demonstration, his or her knowledge of seamanship and the ability to carry out effectively all the duties that may be required of an able seaman, including those of a lifeboatman. The applicant shall demonstrate that he or she—

(1) Has been trained in all the operations connected with the launching of lifeboats and liferafts, and the use of oars and sails;

(2) Is acquainted with the practical handling of boats; and

(3) Is capable of taking command of the boat's crew.

(b) The examination, whether administered orally or by other means, shall be conducted only in the English language and shall consist of questions regarding:

* * * * *

8. In § 12.10–5, paragraph (a) and the introductory language of paragraph (b) are revised to read as follows:

§ 12.10–5 Examination and demonstration of ability.

(a) Before a lifeboatman's certificate may be granted, he or she shall prove to the satisfaction of the Coast Guard by oral or other means of examination and by actual demonstration, his or her knowledge of seamanship and the ability to carry out effectively all the duties that may be required of an able seaman, including those of a lifeboatman. The applicant will demonstrate that he or she—

(1) Has been trained in all the operations connected with the launching of lifeboats and liferafts, and the use of oars and sails;

(2) Is acquainted with the practical handling of boats; and

(3) Is capable of taking command of the boat's crew.

(b) The examination, whether administered orally or by other means, shall be conducted only in the English language and shall consist of questions regarding:

* * * * *

9. In § 12.15–9, the first sentence of paragraph (a), and paragraph (c) are revised to read as follows:

§ 12.15–9 Examination requirements.

(a) An applicant for certification as a qualified member of the engine department in the ratings of oiler, watertender, fireman, deck engineer, refrigeration engineer, junior engineer, electrician, and machinist shall be examined orally or by other means and only in the English language on the subjects listed in paragraph (b) of this section. * * *

* * * * *

(c) An applicant for certification as a qualified member of the engine department in the ratings of pumpman shall, by oral or other examination, demonstrate sufficient knowledge of the subjects peculiar to that rating to satisfy the Officer in Charge, Marine Inspection, that he or she is qualified to perform the duties of that rating.

* * * * *

10. In § 12.20–5, the first sentence is revised to read as follows:

§ 12.20–5 Examination requirements.

Any applicant for certification as tankerman must prove to the satisfaction of the Coast Guard by oral or other examination conducted only in the English language that he or she is familiar with the general arrangement of cargo tanks, suction and discharge pipelines and valves, cargo pumps and cargo hose, and has been properly trained in the actual operation of cargo pumps, all other operations connected with the loading and discharging of cargo, and the use of fire-extinguishing equipment. * * *

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Dated: February 16, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–4406 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CI Docket No. 95–6, FCC 95–24]

Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FCC proposes to amend its regulations regarding forfeitures by adding a note incorporating guidelines for assessing forfeitures. This action is being taken in response to a decision by the United States Court of Appeals for the District of Columbia which vacated the Commission's 1993 Forfeiture Policy Statement because the Court found it should have been subject to Notice and Comment rulemaking proceedings. The Commission is requesting comments on the advantages or disadvantages of adopting forfeiture guidelines, and on the reasonableness of proposed base forfeiture amounts applicable to violations in the various services.

DATES: All comments must be received by March 27, 1995. Reply comment period April 17, 1995.

ADDRESSES: Comments must be submitted be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Magalie Salas, (202) 418–1150, or Ana Curtis, (202) 418–1160, Compliance and Information Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted January 13, 1995, and released on February 10, 1995. The complete text of this Commission action is available for copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C., 20554. The complete text of this Notice of Proposed Rulemaking may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, NW, Suite 140, Washington, D.C. 20037, telephone number (202) 857–3800.

Summary of Notice of Proposed Rulemaking

1. The Commission is proposing forfeiture guidelines which would be used to aid the Commission in determining the appropriate range of forfeitures for various offenses, ensure treatment of similarly situated offenders and provide clearer guidance to the public regarding the forfeitures that can be expected in response to specific violations.

2. If adopted, § 1.80 of the Communication's rules would be amended to include a note incorporating the 1993 version of the Commission's Forfeiture Policy Statement, see Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd 5339 (1992), revised, 8 FCC Rcd 6215 (1993).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–4330 Filed 2–22–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 68

[CC Docket No. 94–102: DA 95–141]

Ensuring Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments.

SUMMARY: By Order adopted February 1, 1995, the Commission granted a request for extension of time of the reply comment period in this proceeding concerning enhanced 911 emergency calling systems. This action was taken as a result of motions filed by the Personal Communications Industry Association (PCIA) and the Association of Public-Safety Communications Officials-International, Inc. (APCO). Intended effect of action is to develop a more complete record.

DATES: Reply comments are due on or before March 17, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan A. Thomas, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1802.

SUPPLEMENTARY INFORMATION: This is a summary to two Motions for Extension of Time for filing reply comments to the Commission's Notice of Proposed Rule Making (NPRM) in CC docket No. 94–102, released October 19, 1994 [59 FR 54878, November 2, 1994.] The comment date was January 9, 1995, and the original reply comment date was February 8, 1995. The Commission noted that extension of time are not routinely granted; however, the public safety issues in this proceeding are obvious and significant. Given the over 1500 pages already filed, the Commission agreed that it would be in the public interest to extend the time in which to file reply comments.

Federal Communications Commission.

Kathleen M.H. Wallman,

Cheif, Common Carrier Bureau.

[FR Doc. 95–4331 Filed 2–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Alexander Archipelago Wolf as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Alexander Archipelago wolf (*Canis lupus ligoni*) under the Endangered Species Act, as amended. After review of all available scientific information, the Service finds that listing this species is not warranted at this time.

DATES: The finding announced in this document was made on February 15, 1995.

ADDRESSES: Comments and materials concerning this petition should be sent to U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Hohn, Assistant Regional Director, Ecological Services (see **ADDRESSES** section) (telephone 907/786–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding within 12 months of the date of the receipt of a valid petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On December 17, 1993, the Service received a petition dated December 13, 1993, from the Biodiversity Legal Foundation, Eric Holle and Martin J. Berghoffen, to list the Alexander Archipelago wolf (*Canis lupus ligoni*). A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced on May 20, 1994 (59 FR 26476). A status review was initiated on May 20, 1994, and the public comment period was open between May 20 and October 1, 1994.

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and consulted with biologists and researchers familiar with the Alexander Archipelago wolf. On the basis of the best scientific and commercial information available, the Service finds the petition is not warranted at this time.

In the 90-day finding the Service recognized the petitioners concerns for the long-term survival of the Alexander Archipelago wolf; however, the best available information indicates that the subspecies' population is currently stable. The Alexander Archipelago wolf's range lies almost entirely on lands managed by the Tongass National Forest. The U.S. Forest Service is evaluating its land management practices through the development of interim management guidelines to maintain viable populations of native wildlife, and considering long-term management actions through revision of the Tongass National Forest Land and Resource Management Plan. The Service believes that there is opportunity to manage for the long-term viability of the Alexander Archipelago wolf through the implementation of interim guidelines and the revised Tongass Land and Resource Management Plan. However, it is clear by our analysis that without significant changes to the existing Tongass National Forest Land and Resource Management Plan, the long-term viability of the Alexander Archipelago wolf is seriously imperiled. The Alexander Archipelago wolf will therefore be retained on the Service's list as a category 2 candidate species. If additional data become available, the Service may reassess the listing priority or the need to list this species.

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 15, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–4421 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 60, No. 36
Thursday, February 23, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Little Wolf Fire Recovefy; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Little Wolf Fire burned over 15,000 acres of Kootenai National Forest System lands, Flathead National Forest System lands and Plum Creek Timber Company lands in August of 1994. The Forest intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of opportunities designed to recover economic value of burned timber, reduce fuel accumulations, reforest unstocked lands, rehabilitate existing sediment sources, improve hydrologic conditions in affected watersheds, and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed timber; reforestation of severely burned areas; fuels reduction in harvested and unharvested areas; drainage improvement and revegetation of road surface, cuts and fill slopes on existing roads; providing for immediate and long-term recruitment of instream large woody material; and revegetation in riparian areas within the Little Wolf decision area. The Little Wolf decision area is located approximately 35 air miles southeast of Libby, Montana.

The proposal's actions to salvage fire-killed trees, reduce fuels, reforest burned areas, construct temporary roads, restore drainage and vegetation on existing road surface, cuts and fill slopes, restrict road access and implement watershed recovery projects are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired future condition of the area.

DATES: Written comments and suggestions should be received on or before March 27, 1995.

ADDRESSES: The Responsible Official is Robert L. Schrenk, Forest Supervisor, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 US Highway 37, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Jeff Scussel, Planning Staff, Libby Ranger District. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: During the night of August 14–15, 1994, a lightning storm started 207 fires on the Kootenai National Forest in northwest Montana. Several fires ranging in size from less than one acre to almost 5000 acres occurred on the Libby Ranger District. The Little Wolf Fire Recovery EIS is being prepared in response to conditions resulting from the 4700 acres of the Little Wolf Fire that is within the Kootenai National Forest. An interdisciplinary team is using an ecosystem based approach to assess the fire affects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition.

Burn intensities on National Forest System lands in the Little Wolf Fire were mostly stand replacing. Within the fire perimeter on the Libby Ranger District, approximately 1848 acres burned at high intensity (average 90% to 95% tree mortality), 845 burned at moderate intensity (average 70% to 75% mortality), and 237 acres burned at low intensity (average 30% mortality). The fires burned in the upper end of the Little Wolf Creek drainage.

The Little Wolf decision area contains approximately 4700 acres within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects are located in the Little Wolf drainage. The legal location of the decision area is as follows: Sections 7, 8, 17 and 18, of Township 29 North, Range 25 West; Sections 1, 2, 3, 10, 11, 12, 13, and 14 of Township 29 North, Range 26 West; and Sections 34, 35 and 36 of Township 30 North, Range 26 West; Principle Montana Meridian. The land in and adjacent to the decision area is within federal ownership under the jurisdiction of the Forest Service or Plum Creek Timber Company lands.

Proposed Action: The purposes of the project are to recover valuable timber products from trees burned by wildfires that occurred in 1994 (while maintaining ecological processes); to enhance watershed recovery: and improve big game and grey wolf security habitat as timely as possible and to reduce fuel loading. The Forest Service proposes to harvest approximately 7 million board feet or timber by salvaging fire-killed timber and imminently dead trees on approximately 841 acres of forest land outside riparian protection areas. Only trees that were killed, or are expected to die as a result of the fire, would be harvested. The proposal includes prescribed burning of about 42 acres, excavator piling on 160 acres of harvested areas to reduce natural and activity fuels and an additional 20 acres of grapple piling in unharvested areas to reduce natural fuels. An estimated 685 acres of proposed salvage units would be planted with conifer seedlings to help meet desired conditions for species diversity and 80 acres of annual rye and native shrubs would be planted in riparian areas for watershed restoration. The Forest Service proposal also includes approximately 1.8 miles of temporary road construction, of which 1.2 miles would be constructed using low impact snow road construction and would be completely rehabilitated and recontoured. The remaining .6 miles of temporary road would be ripped and seeded. Drainage improvement activities (such as surface ripping, drainage structure improvement, and seeding) would be implemented on all roads within National Forest System lands, (approximately 7 miles), with the intent of restoring natural drainage and reducing sediment. These roads will be needed for future management access, and would remain a part of the permanent transportation system. Additional road access restrictions in cooperation with Plum Creek Timber Company are proposed to provide adequate security areas for big game and grey wolf. Additional projects to improve watershed recovery, reforestation of severely burned areas not proposed for salvage, fuel reduction in areas not proposed for salvage, and repair of damaged hiking trails would be accomplished if adequate funds are available.

Due to the high level of tree mortality in proposed harvest units, most harvested area would retain green tree numbers similar to clearcut with reserves or seed-tree silvicultural methods. Although the numbers would be similar, the green tree retention would not be evenly distributed but would be in islands, stringers or groups where they exist. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested. In addition to the live trees that would be retained, a minimum of 3–5 high quality, large diameter snags per acre would be retained in all harvested areas if available. Timber harvest would be done by skyline, cable, or winter tractor, and designed to result in minimal ground disturbance, risk of erosion, and compaction.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains three MA's: 12, 13, and 18. Briefly described, MA 12 is managed to maintain or enhance the summer-ranger habitat effectiveness for big-game species and produce a programmed yield of timber. MA 13 is managed to provide the special habitat necessary for old growth dependent wildlife. MA 18 is managed to protect existing vegetation as establishing coniferous regeneration is determined to be difficult. Timber salvage and fuels reduction is proposed in MA 12 and MA 18.

Preliminary Issues: Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water quality—Streams in the decision area have been impacted by past management and the Little Wolf Fire. How would the proposed action affect water yield, sediment production, stream stability, and recovery from past impacts?
- Timber Supply—An estimated 16 million board feet of timber on National Forest System lands was killed in the Little Wolf Fire. Much of this fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?
- Grey Wolf—The decision area lies within grey wolf habitat. How would the proposal maintain and enhance grey wolf habitat, and contribute to recovery efforts?
- Old Growth—An estimated 240 acres of designated old growth was destroyed by intense, stand replacing wildfire. What options are available to manage for suitable levels of old growth habitat in the decision area?
- Fisheries—Little Wolf contains fisheries habitat and resident fish populations, including Eastern Brook trout, Rainbow trout, Redside Shiner and an undetermined species of sculpin. How would the proposed action affect fisheries habitat and populations?

Forest Plan Amendment: The Kootenai National Forest Land and Resource Management Plan has specific management direction for the Little Wolf decision area. The Little Wolf proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

Decisions To Be Made: The Kootenai National Forest Supervisor will decide the following:

Should dead and imminently dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented, what burned areas need to be replanted, what areas need fuel reduction treatment, how and where will replacement old growth be designated, what road access restrictions would be implemented to provide security for big game and the grey wolf, and if Forest Plan exception or amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping: An open house will be scheduled in March to provide an opportunity for the public to review the proposed action. Consultation with appropriate State and Federal agencies has been initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the Little Wolf Fire Recovery.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS.

The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing: The draft Little Wolf Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed by September, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

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Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: Robert L. Schrenk, Forest Supervisor, Kootenai National Forest, 506 US Highway 2 West, Libby, MT 59923 is the Responsible Official. I have delegated the responsibility to prepare the Little Wolf Fire Salvage and Restoration Environmental Impact Statement to Lawrence A. Frobert, District Ranger, Libby Ranger District. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 13, 1995.

Robert L. Schrenk,

Forest Supervisor,

[FR Doc. 95–4344 Filed 2–22–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Encryption Software Marketing Survey.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection — prompt review requested.

Burden: 450 hours.

Number of Respondents: 150.

Avg Hours Per Response: 3 hours.

Needs and Uses: Commerce is surveying encryption software producers to evaluate the impact of U.S. export controls on the international competitiveness of the U.S. industry. BXA will share this information with the Interagency Working Group on Encryption and Telecommunications Policy. This report will assist the Administration in determining what, if any, changes should be made in export controls affecting encryption software.

Affected Public: Businesses or other for–profit institutions.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: February 16, 1995

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–4380 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey – June 1995 Marital History and Fertility Supplement.

Agency Approval Number: 0607–0610.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 5,035 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 5.3 minutes.

Needs and Uses: The Current Population Survey (CPS) is a survey conducted in a sample of approximately 57,000 households monthly throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics also uses the data in its monthly calculations of employment and unemployment. The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. The marital history and fertility supplement provides data on marital stability and fertility and childbearing characteristics of female household members by various demographic characteristics. The data collected from this supplement are used primarily by government and private analysts to project future population growth, to analyze child spacing patterns and marital stability, and to assist policymakers in making decisions that are affected by changes in family size and composition. Questions on marital history have been asked in the CPS every 5 years since 1975. We have collected data on fertility and birth expectations in the CPS annually since 1971 (with the exception of 1989, 1991, and 1993).

Affected Public: Individuals or households.

Frequency: See above.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 16, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–4375 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Advance Monthly Retail Sales Survey.

Form Number(s): B–104(92).

Agency Approval Number: 0607–0104.

Type of Request: Extension of a currently approved collection.

Burden: 3,363.

Number of Respondents: 3,363.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Bureau of the Census conducts the Advance Monthly Retail Sales Survey to collect monthly sales data from a national sample of retail establishments on a timely basis in order to provide an early indication of changes in current retail trade activity at the United States level. Policy makers such as the Federal Reserve Board need to have the most timely estimates in order to anticipate economic trends and act accordingly. The Bureau of the Census releases the advance sales estimates 9 days after the end of the data month in a press release called "Advance Monthly Retail Sales Report." Without these early estimates, the next available measure of retail sales is the "preliminary" estimate released about 40 days after the data month. Other users of the advance sales estimates include the Council of Economic Advisors, Bureau of Economic Analysis, Federal Reserve Board, other government agencies, and businesses.

Affected Public: Businesses or other for–profit organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 16, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–4374 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–412–810]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by a manufacturer/exporter, United Engineering Steels Limited (UES), the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty order on certain hot-rolled lead and bismuth carbon steel products (lead and bismuth steel) from the United Kingdom (U.K.). The review covers one manufacturer/exporter, UES, and entries of the subject merchandise into the United States during the period September 28, 1992 through February 28, 1994. We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Nooshen Amiri or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1994, the Department published in the **FEDERAL REGISTER** (59 FR 10368) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on lead and bismuth steel from the U.K. (58 FR 15324). On March 31, 1994, a manufacturer/exporter, UES, requested that we conduct an administrative review in accordance with section 353.22(a) of the Department's regulations (19 CFR 353.22(a)). We published the notice of initiation of the antidumping duty administrative review on April 15, 1994 (59 FR 18099), covering the period September 28, 1992 through February 28, 1994. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)). except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50;7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. HTSUS subheadings are provided for convenience and Customs purposes. The written product description remains dispositive.

This review covers sales of the subject merchandise manufactured by UES and entered into the United States during the period September 28, 1992 through February 28, 1994.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Act, in calculating USP for UES because all sales were made directly to unrelated parties prior to importation into the United States. USP was based on packed, delivered prices to customers in the United States. We made deductions, where applicable, for cash discounts, rebates, foreign inland freight, FOB charges in the U.K., ocean freight, marine insurance, U.S. Customs duties and merchandise processing fees, harbor maintenance fees, brokerage and handling charges, and U.S. inland freight charges. We also made an adjustment for invoice corrections (billing adjustments) made after shipment. While UES's shipments to the Untied States are transported by a related carrier, British Steel Shipping,

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UES established that the related carrier charges UES arm's-length rates. Therefore, we used actual ocean freight rates reported.

We adjusted USP for value-added taxes (VAT) in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994). No other adjustments were claimed or allowed.

We used the date of shipment as the date of sale for both U.S. sales and home market sales because a substantial percentage of both U.S. orders and home market orders were significantly amended subsequent to the original purchase order, and the price and quantity were set on the date of shipment.

Foreign Market Value

In calculating FMV for UES, the Department used home market sales or constructed value (CV), as defined in section 773 of the Act.

To determine whether there were sufficient sales of lead and bismuth steel in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. We found that sales in the home market constituted a sufficient basis for FMV, in accordance with 19 CFR 353.48(a).

Many of UES's home market sales were made to related customers. In order to determine whether sales to related parties might be appropriate to use as the basis of FMV, the Department compares prices of those sales to prices to unrelated parties, on a model-by-model basis. When possible, the Department uses unrelated party sales at the same level of trade as the related party sales for this comparison. UES did not have sales to unrelated customers in the home market at the same level of trade and in similar quantities as those to related customers. In the home market, UES sold to related cold finishers and unrelated resellers. Home market sales to related cold finishers were generally large quantity sales, while home market sales to unrelated resellers were generally small quantity sales. In the U.S. market, UES sold to unrelated cold finishers in large quantities.

UES claimed that its home market sales to related finishers were made at arm's-length prices, and that any price differences among customers reflect market factors and the fact that high-volume, long-term customers are able to negotiate lower prices than smaller customers, related or not. In support of its argument, UES submitted a comparison of related prices with unrelated prices, allegedly showing that UES's related-party prices satisfy the Department's customary arm's-length test. UES also submitted an analysis of prices to a party that was acquired by UES during the period of review, in support of its contention that relationship does not determine price levels. Finally, UES submitted a number of sample invoices it issued to an unrelated third-country customer, which it claimed was comparable in size and purchase volume with UES's major related home market customers, to show that its related-party prices were market-based.

Petitioner, Inland Steel Bar Company, asserted that home market sales to related parties were not made on an arm's-length basis and that UES's analysis did not take into account all customer rebates and discounts. Petitioner further asserted that UES failed to perform its arm's-length test on a model-specific basis. Regarding the comparison of prices paid by a party before it was acquired by UES with the prices paid after it was acquired, petitioner claimed that the comparison was inapposite, as market pricing conditions changed significantly since the company was acquired, and home market prices increased for all customers. Regarding UES's comparison of prices in a third-country market with prices to related customers in the home market, petitioner claimed that prices charged by UES in third countries have no bearing on this review because market conditions in third countries vary from those in the home market.

We agree with petitioner that differences in market conditions across countries or time periods could invalidate certain of UES's analyses. We further agree with petitioner that UES's analysis of data from this review fails to provide an accurate assessment of whether its related-party sales were made at arm's length because it did not account for certain rebates and it did not perform its arm's-length test on a model group-by-model group basis.

For these reasons, we used the only information that was available in the record, we compared related-customer sales with unrelated-customer sales on a model group-by-model group basis regardless of level of trade. When sales to related customers were made at arm's-length prices, we included them in the calculation of FMV. UES made no claim for an adjustment due to differences in quantities. We invite comments on the issue of how to perform an arm's-length test in cases such as this, where home market sales to related and unrelated customers are made at different levels of trade and in different quantities.

In accordance with 19 CFR 353.58 and 353.55, we compared U.S. sales to home market sales made at the same level of trade, and in similar commercial quantities, where possible. That is, we compared U.S. sales of 25 metric tons (MT) or more with home market sales of 25 MT or more, and U.S. sales of less than 25 MT with home market sales of less than 25 MT, because surcharges apply to home market sales of less than 25 MT, but not to home market sales of 25 MT or more. Quantity surcharges do not apply to any U.S. sales.

Because the Department found sales at less than their cost of production (COP) during the less-than-fair-value (LTFV) investigation, in accordance with our standard practice, we found reasonable grounds to believe or suspect that UES had made sales at prices below its COP in the home market during the period of review (POR). Thus, in accordance with section 773(b) of the Act, we investigated whether UES had home market sales that were made at less than their COP over an extended period of time, and in substantial quantities during this POR.

To determine whether home market prices were below the COP, we calculated the COP based on the sum of UES's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). We made the following adjustments to UES's reported costs: (1) we increased cost of manufacturing for labor-related expenses; and (2) we increased general and administrative expenses for costs attributed to discontinued operations. The latter were part of UES's general and administrative expenses that UES had failed to include in its reported costs. We compared home market selling prices, net of movement charges, rebates, and invoice corrections, to each product's COP. We found that certain sales were made at prices below the COP.

To determine whether the below-cost sales were made in substantial quantities over an extended period of time, we applied our following standard practice. If over 90 percent of a UES's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities over an extended period of time. If between 10 and 90 percent of UES's sales of a given model were at prices above the COP, we disregarded only the below-cost sales, if we found that these

had been made over an extended period of time. Where we found that more than 90 percent of a UES's sales were at prices below the COP over an extended period of time, we disregarded all sales for that model and calculated FMV based on CV.

To determine if sales below cost were made over an extended period of time, we compared the number of months in which sales below cost had occurred for a particular model to the number of months in which the model was sold. If the model was sold in three or fewer months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost of that model in each month. If a model was sold in more than three months, we did not find that below-cost sales were made over an extended period of time unless there were sales below cost in at least three of the months in which the model was sole. *See, e.g., Tapered Roller Bearings from Japan, Final Results of Antidumping Duty Administrative Review*, 58 FR 64720 (Dec. 9, 1993). *See also Antifriction Bearings from France, et al., Preliminary Results of Antidumping Duty Administrative Review, 59 FR 9463 (Feb. 28, 1994).*

For those models for which there was an adequate number of sales at prices above the COP, we based FMV on home market prices to related and unrelated purchasers, in accordance with 19 CFR 353.45(a). We used prices to related purchasers only if such prices were made at arm's length (see arm's-length discussion above). We calculated FMV based on packed, delivered prices. We made deductions, where appropriate, for rebates and invoice corrections. Pursuant to section 773(a)(4)(B) of the Act, and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, warehousing expenses, inland freight, and commissions. We also made a circumstance-of-sale adjustment for differences in credit insurance expenses. Credit insurance charges for U.S. sales were assessed on a sale-by-sale basis, while in the home market, a single amount was charged for insurance, regardless of the level of sales. We therefore preliminarily determine as we determined in the final determination of sales at LTFV for this case, that credit insurance is a direct expense in the U.S. market, and an indirect expense in the home market. Accordingly, we made this adjustment by adding the amount of credit insurance assessed on each U.S. sale to the FMV. When commissions were paid on the U.S. sale and not on the home market sale, we made an adjustment for indirect selling expenses in the home market to offset the commissions in the U.S. market.

Because the home market prices were reported net of VAT, we added to the home market price the amount of VAT incurred on each individual home market sale.

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

Petitioner argued against using differences in "residuals," or trace elements, as a criterion in determining whether home market merchandise was most similar to merchandise sold to the United States. However, product differences due to residuals are commercially significant and not incidental, as they are designed into the product. Therefore, we continued to consider residuals in model matching, as we did in the LTFV investigation of this case.

For those models without an adequate number of sales made at prices above the COP, in accordance with section 773(b) of the Act, we based FMV on CV. We calculated the CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing cost, and profit, in accordance with section 773(e) of the Act. We adjusted UES's CV data in the same manner as we adjusted its COP data as discussed above. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM). For profit we used the actual profit earned by UES where the actual figure was higher than the statutory minimum of eight percent of the sum of COM and general expenses, or the statutory minimum of eight percent where the actual profit was lower, in accordance with section 773(e)(1)(B)(ii) of the Act. We made circumstance-of-sale adjustments, where appropriate, for differences in direct selling expenses, including credit, credit insurance, warranty, inland freight, and policy stock warehousing.

No other adjustments were claimed or allowed.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following dumping margin exists for the period September 28, 1992 through February 28, 1994.

Manufacturing/ exporter	Period of review	Margin
United Engineering Steels Ltd. (UES)	9/28/92–2/28/94	4.03

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the result of its analysis of issues raised in any such case briefs.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse for consumption, on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company shall be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 25.82 percent, the all others rate established in the LTFV investigation.

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These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement will result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 15, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–4456 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–815]

Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3464.

Scope of Order

The merchandise subject to this amended final determination and antidumping duty order is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the investigation also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines.

Imports of WSSP are currently classifiable under the following HTSUS subheadings: 7306.40.1000, 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Background

On November 4, 1992, the Department of Commerce made its final determination that certain WSSP from the Republic of Korea (Korea) were being sold at less than fair value (57 FR 53693, November 12, 1992).

On October 7, 1993, the CIT, in *Federal-Mogul Corp. and the Torrington Co. v. United States*, 834 F. Supp. 1391 (CIT 1993) (*Federal-Mogul*), rejected the Department's methodology for calculating an addition to United States price (USP) under section 772(d)(1)(C) of the Tariff Act of 1930, as amended (the Act), to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, 834 F. Supp. at 1397.

On November 18, 1993, the CIT, in *Avesta Sheffield, Inc., et al. v. United States*, Slip Op. 93–217, Court No. 93–01–00062 remanded the final determination of WSSP from Korea to the Department for recalculation. In *Avesta*, the CIT remanded the Department's final determination to recalculate foreign market value (FMV) with no circumstance of sale adjustment for value added tax and to reconsider the Department's VAT U.S. price methodology for Sammi Metal Products Co., Ltd. and Pusan Steel Pipe Co., Ltd. (Slip Op. 93–217 at 17).

Final Remand Results

In accordance with the *Avesta* and *Federal-Mogul* decisions, we conformed our tax methodology to the instructions of the CIT, and adjusted U.S. price for tax by multiplying the Korean tax rate by the price of the U.S. merchandise at the point in the U.S. chain of commerce that is analogous to the point in the Korean chain of commerce at which the Korean government applies the consumption tax.

In this investigation, the tax levied on the subject merchandise in Korea is 10 percent. We calculated the appropriate tax adjustment to be 10 percent of the price of the U.S. merchandise reflected on the invoice at the time of sale (which, in this case, is the point in the U.S. chain of commerce that is analogous to the point in the Korean market chain of commerce at which the Korean government applies the consumption tax). We then added this amount to the U.S. price. We also calculated the amount of the tax adjustment that was due solely to the inclusion of expenses in the original tax base that are later deducted from the price to calculate USP (*i.e.*, 10 percent of the sum of any adjustments, expenses and charges that were deducted from the price of the U.S. merchandise). We reduced this tax adjustment to take into account the adjustment to U.S. price for duty drawback (*i.e.*, 10 percent of the duty drawback amount that was excluded from the tax base). We deducted this amount after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

We included in FMV the amount of the consumption tax collected in the Korean home market. We also calculated the amount of the tax that was due solely to the inclusion of expenses in the original tax base that are later deducted from home market price to calculate FMV (*i.e.*, 10 percent of the sum of any adjustments, expenses, charges, and offsets that were deducted from the home market price). We deducted this amount after all other additions and deductions were made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero. In addition, we calculated a re-adjustment of the amount of tax to take into account the amount of packing expenses added to FMV (*i.e.*, 10 percent of the packing expenses).

Final Results of Redetermination

On June 14, 1994, the CIT affirmed our redetermination (Slip Op. 94–99). In accordance with that affirmation, we are amending the final determination of sales at less than fair value and antidumping duty order. In accordance with section 736 of the Act, the Department will direct Customs to require, on entries of WSSP from Korea entered, or withdrawn, from warehouse for consumption on or after the date of this notice, at the same time as importers would normally deposit estimated duties, the following cash deposits:

Manufacturer/producer/exporter	Margin percentage
Pusan Steel Pipe Co., Ltd.	2.67
Sammi Metal Products Co., Ltd.	7.92
All Others	7.00

If entries of WSSP from Korea entered on or after June 25, 1994, the effective date of the CIT's decision, are liquidated without review pursuant to 19 CFR 353.22(e), the Department will direct Customs to liquidate such entries in accordance with these rates.

This notice constitutes the amended final determination and antidumping duty order with respect to welded stainless steel pipe from the Republic of Korea. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This amended final determination and order is published in accordance with sections 735(a) and 736(a) of the Act and 19 CFR 353.20(a)(4) and 353.21.

Dated: February 16, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–4457 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–840]

Notice of Postponement of Preliminary Antidumping Duty Determination: Manganese Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: February 23, 1955.

FOR FURTHER INFORMATION CONTACT: Cameron Werker (202–482–3874), Office of Antidumping Investigations Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230.

POSTPONEMENT OF PRELIMINARY DETERMINATION:

On November 28, 1994, the Department of Commerce ("the Department") initiated the antidumping duty investigation of manganese metal from the People's Republic of China (PRC) (59 FR 61869, December 2, 1994). The notice of initiation incorrectly reported the date of the preliminary determination as April 27, 1995. The correct date is April 17, 1995.

On December 27, 1994, the U.S. International Trade Commission determined that there is a reasonable indication that a U.S. domestic industry is threatened with material injury by reason of imports of manganese metal from the PRC (60 FR 146–147, January 3, 1995).

Information available to the Department indicates that there may be many producers/exporters of the subject merchandise. Further, although requested, the PRC government has not yet identified those PRC exporters that sold manganese metal to the United States during the period of investigation. The Department is still attempting to identify these PRC companies. This process of identifying all PRC producers/exporters of the subject merchandise during the POI requires that we determine that this investigation is extraordinarily complicated and that additional time is necessary to make the preliminary determination. Furthermore, the respondent parties in this investigation have thus far cooperated with the requests of the Department. Therefore, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), we are postponing our preliminary determination in this investigation until no later than June 6, 1995.

This notice is published pursuant to section 733(c)(2) of the Act, as amended, and 19 CFR 353.15(d).

Dated: February 15, 1995.

Barbara R. Stafford

Deputy Assistant Secretary for Investigations.

[FR Doc. 95–4458 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–DS–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On February 8, 1995 Cinsa, S.A. de C.V. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the administrative review respecting Porcelain-on-Steel Cookware from Mexico. This determination was published in the **Federal Register** on January 9, 1995 (60 FR 2378) and Amended on February 8, 1995 (60 FR 7521). The NAFTA Secretariat has assigned Case Number USA–95–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 8, 1995, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 10, 1995);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the

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final determination may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is March 27, 1995); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: February 17, 1995.

Caratina L. Alston,

Deputy U.S. Secretary NAFTA Secretariat.

[FR Doc. 95–4459 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

SUBJECT: National Weather Service Modernization and Associated Restructuring.

ACTION: Notice.

SUMMARY: On November 4, 1994, the Department of Commerce requested comments identifying service areas where it is believed that current weather services may be degraded as existing radars are decommissioned or as field offices are closed, consolidated, automated or relocated during the modernization of the National Weather Service (59 FR 55254). Appendix 1 to the November 4, 1994 notice contained Study Guidelines which specified the procedures the Secretary of Commerce will follow during modernization of the National Weather Service with respect to the identified areas of concern.

Today's notice lists the areas of concern that were identified as a result of the comments that were received, briefly describes the remaining steps in the process, and reiterates the modernization actions that are prohibited in an identified area of concern until the process described in the Study Guidelines is completed. Appendix 1 to this notice contains the complete Study Guidelines.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413 or Nick Scheller at 301–713–0454.

SUPPLEMENTARY INFORMATION: Public Comments Received: Over 67,000 written comments were received during the 60 day public comment period which closed on January 3, 1995. Written comments were in the form of letters, postcards, facsimile transmissions, electronic mail messages, and signed petitions. The Secretary of Commerce appreciates the thoughtful and valuable inputs on the National Weather Service and its modernization program that were contained in the comments. All such comments have been forwarded to the National Academy of Sciences' National Research Council (NRC) for consideration during their study on the adequacy of planned NEXRAD radar coverage and the effect of field office consolidation. A number of late comments were also received, i.e., postmarked after January 3, 1995. These late comments have been forwarded to the NRC for whatever consideration they may choose to give them.

Areas of Concern: Under the provisions of the Study Guidelines, a single timely comment was sufficient to establish an area as an area of concern. The areas of concern identified are listed below.

Areas of Concern

WSO Asheville, NC
WSO Astoria, OR
WSO Athens, GA
WSO Baton Rouge, LA
WSO Cape Hatteras, NC
WSO Caribou, ME
WSO Charlotte, NC
WSO Chattanooga, TN
WSO Colorado Springs, CO
WSO Del Rio, TX
WSO Elkins, WV
WSO Erie, PA
WSO Evansville, IN
WSO Fort Smith, AR
WSO Fort Wayne, IN
WSO Grand Island, NE
WSO Greensboro, NC
WSO Harrisburg, PA
WSO Huntsville, AL
WSO International Falls, MN
WSO Kalispell, MT
WSO Key West, FL
WSO Lexington, KY
WSO Montgomery, AL
WSO Redding, CA
WSO South Bend, IN
WSO Toledo, OH
WSO Wichita Falls, TX
WSO Williston, ND
WSO Wilmington, DE
WSO Hondo, TX
central Oregon/central Washington

Generally, areas of concern are denoted by National Weather Service Offices (WSO) and extend throughout the pre-modernization geographical area for which what WSO was responsible for providing weather services. One area is denoted by a National Weather Service Meteorological Observatory (WSMO) and extends throughout the area for which the existing radar operated by that WSMO provides coverage. The final area of concern listed is identified as central Oregon/central Washington. The concerns expressed for this area was not about any specific existing radar or weather office, but rather about the general adequacy of NEXRAD coverage in central Oregon and central Washington under the planned NEXRAD network.

Remaining Steps in the Process: The NRC will continue the study it began in October 1994 under an amendment to the National Oceanic and Atmospheric Administration contract #50–DGNW–0–00041. This study is an independent scientific assessment of proposed NEXRAD radar coverage and consolidation of field offices in terms of the "no degradation of services" requirement of Public Law 102–567, and in light of public comments received. The NRC will also establish criteria for identifying service areas where the decommissioning of existing radars could degrade services. The NRC will document its findings and recommendations in a report to the Secretary of Commerce. The contractually specific date for delivery of this report is May 17, 1995. The Study Guidelines' due date of 180 days for delivery of this report could not be achieved by the NRC.

The Secretary of Commerce will then apply the NRC's criteria, and other applicable criteria previously approved by the NRC pursuant to the Weather Service Modernization Act, to the above identified areas of concern, and taking into account public comments received, will identify where actions to decommission a radar, or to close, consolidate, relocate, or automate a field office are not likely to satisfy the "no degradation of services" requirement of Public Law 102–567. The Secretary of Commerce will document any recommended adjustments to the National Weather Service modernization plan for these areas of concern to ensure "no degradation of services" in a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives. The estimated time frame for delivery of this report is fall 1995.

Prohibited Actions in an Area of Concern: Until the above process is completed and a 30-day grace period from the date of the Secretary of Commerce's report to Congress has elapsed, there will be no decommissioning of any existing radar; or closure, consolidation, relocation, or automation certification at any of the weather offices identified as areas of concern as listed above.

Dated: February 17, 1995.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

Appendix 1—Study Guidelines

Section 1

(a) Modernization of the NWS is essential to public safety and should proceed without unnecessary delay.

(b) The WSMA establishes procedures that assures that the modernization of the NWS will not result in the degradation of weather services currently provided to the public but these procedures do not provide for the independent review of decisions until shortly after the actual event; and

(c) It is appropriate to review the adequacy of the Nation's overall NEXRAD coverage, to ensure a solid scientific and technical basis for the decision-making process, and to assure meaningful participation by the public.

Section 2

The purposes of this document are to provide the fullest opportunity for public participation in the modernization process without unduly delaying this process; and to ensure, through the application of independent scientific criteria that weather services provided in each service area will not be degraded as obsolete radars are decommissioned or as field offices are closed, consolidated, relocated or automated.

Section 3

The definitions contained in section 702 of the WSMA shall apply to the terms in this document. In addition, the term "area of concern" means a service area identified in a timely public comment in response to the **Federal Register** notice required by section 4 of this document.

Section 4

Within 30 days the Secretary shall publish a notice in the **Federal Register** requesting comments on service areas where it is believed that current weather services may be degraded as existing radars are decommissioned or as field offices are closed, consolidated, automated or relocated. The notice shall allow 60 days for the submission of comments. Persons submitting comments shall state the basis for their belief as fully as possible, and shall include a description of local weather characteristics (including unique weather phenomena) and weather related concerns which involve a substantial threat to public safety which they believe affect the weather services provided in areas of concern. All comments received by the Secretary shall be provided promptly to the NRC.

Section 5

(a) Within 30 days the Secretary shall contract with the NRC, or amend an existing contract as necessary, to conduct an independent scientific assessment of proposed NEXRAD radar coverage and consolidation of Field Offices in terms of "no degradation of services" and to establish criteria for identifying service areas where the decommissioning of existing radars could degrade service to affected users.

(b) Within 180 days, but not earlier than 60 days after the close of the comment period provided in the **Federal Register** notice of Section 4, the NRC shall furnish to the Secretary the assessment and criteria required by subsection (a) together with recommendations regarding the need and timing for any future independent studies by the NRC.

Section 6

(a) After receipt of the NRC report, the Secretary shall apply the NRC criteria and other applicable criteria previously approved by the NRC pursuant to the WSMA to areas of concerns and, taking into account the comments received in response to the **Federal Register** notice of Section 4, identify those where he/she believes that actions to decommission a radar or to close, consolidate, relocate, automate a field office noted in the current version of the NIP are not likely to satisfy the requirements of the WSMA. The Secretary shall report the results of his/her review to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives. If the Secretary believes that additional radars are needed to satisfy the requirements of the WSMA, he/she shall also identify the number and location of the radars needed.

(b) Submission of a report under this section shall not relieve the Secretary from the requirement of Section 706(b) of the WSMA to certify no degradation of service when he/she restructures a field office. If the field office is located in an area of concern, the Secretary shall provide all comments relating to that area of concern received pursuant to Section 4 to the MTC during the certification process.

Section 7

(a) The Secretary shall not close, consolidate, relocate, or automate any field office or decommission any NWS radar until the public has had an opportunity to identify areas of concern.

(b) Regardless of the contents of the most recent NIP, the Secretary shall not decommission a radar or close, consolidate, automate or relocate a field office in an area of concern unless—

(1) The Secretary has reported to the Congress as provided in section 6 that he/she believes that the action contemplated would not result in a degradation of service; and

(2) 30 days have expired from the date the report was submitted to Congress.

[FR Doc. 94–4443 Filed 2–22–95, 8:45 am]

BILLING CODE 3510–12–M

[I.D. 020895A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P580).

SUMMARY: Notice is hereby given that Ms. Carol Anne Conway, 407 Garces Drive, San Francisco, CA 94132, has applied in due form for a permit to import blue whale (*Balaenoptera musculus*) tissue samples from Newfoundland, Canada, for purposes of scientific research.

DATES: Written comments must be received on or before March 27, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The applicant proposes to import blue whale samples from Canada. The samples are to be used in a study of the sexual composition of the blue whale population off the western coast of the United States using molecular genetic techniques. Since the Canadian samples are from ice-entrapped animals for which the sex was visually determined, they will be used as positive controls for the genetic technique. Samples from live populations off the western coast were collected under another permit (No. 675), and subsamples will be provided to the applicant by the permittee.

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Dated: February 16, 1995.

P.A. Montanio,

Acting Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 95–4370 Filed 2-22-95; 8:45 am]

BILLING CODE 3510-22-F

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Time and Location of Hearing on Integration of the Textile and Clothing Sectors Into the World Trade Organization

February 16, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of the time and location of the public hearing on integration.

FOR FURTHER INFORMATION CONTACT: Julie Carducci, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3588.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Uruguay Round Agreement on Textiles and Clothing (ATC), approved by Congress as part of the Uruguay Round Agreements Act, provides for the integration of the textiles and clothing sectors into the World Trade Organization.

On January 30, 1995, the Committee for the Implementation of Textile Agreements (CITA) published a Federal Register notice (60 FR 5625) announcing the proposed list of products for integration in the second and third phases of the integration. CITA requested interested parties to submit comments on the proposed list, and announced a hearing to address any significant issues related to the second and third phases of the integration. The notice informed interested parties of the deadlines, given below, for participating in the hearing and submitting written testimony.

The hearing will be held from 10 a.m. to 1 p.m. on March 20, 1995 in the Main Hearing Room at the International Trade Commission, 500 E Street, SW., Washington, DC. Parties wishing to participate in the hearing should contact Julie Carducci, (202) 482–3588; fax (202) 482–0858, no later than February 23, 1995 to arrange for their appearance. The time available for individual presentations will be based on the number of participants attending the hearing. Note there will be reasonable time limits on parties' participation in the hearing.

Written testimony and other comments to be presented at the hearing must be submitted to the Chairman of CITA on or before March 2, 1995. Submissions in triplicate may be addressed to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

All information submitted in response to this notice will be available for public inspection at the same address. Protection of proprietary or business confidential information from disclosure is limited to the requirements of the Freedom of Information Act (5 U.S.C. 552). Therefore, if a participant deems it necessary to submit information intended to be business confidential, the information must be designated as such and accompanied by a non-confidential version. Information designated business confidential will be protected from disclosure only to the extent required by law.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–4455 Filed 2–22–95; 8:45 am]

BILLING CODE 3510-DR-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Civilian Community Corps Advisory Board Meeting

AGENCY: Corporation for National Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service, gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The board advises the Director of the CCC concerning the administration of the program and assists in the development and administration of the Corps. This meeting of the Board will discuss the progress to date and future direction of the program. The meeting will be open to the public up to the seating capacity of the room.

DATES: March 7, 1995, 6:00pm–9:00pm; March 8, 1995, 9:00 am–5:00pm.

ADDRESSES: Crystal City Doubletree Hotel, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: To assure adequate accommodation, contact Ms. Carla Sims, Protocol Officer, CCC at 1201 New York Avenue, NW., Washington, DC 20525; (202) 606–5000 ext. 179 or (202) 606–5000 (TDD) prior to March 7, 1995.

Donald L. Scott,

Director, NCCC.

[FR Doc. 95–4462 Filed 2–22–95; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF DEFENSE

Department of the Navy

Correction to Notice of Public Hearings for the Draft Environmental Impact Statement for the Disposal and Reuse Naval Hospital Long Beach, Long Beach, CA

Correction is hereby made to paragraph seven, first sentence of the Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for the disposal and reuse of Naval Hospital Long Beach, California that appeared in the **Federal Register** on February 14, 1995 (60 FR 8345). The sentence should read: "In the interest of available time, each speaker will be asked to limit their oral comments to three minutes".

Dated: February 16, 1995.

M.D. Schetzsle,

Lt., JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–4423 Filed 2–22–95; 8:45 am]

BILLING CODE 3810-FF-P

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on March 16, 1995, from 9:00 a.m. to 4:00 p.m. The meeting will be held at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on strategies for an uncertain future to include current intelligence, wargaming, and current Navy Staff hedging strategies. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: February 16, 1995.

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95-4424 Filed 2-22-95; 8:45 am]

BILLING CODE 3810-FF-F

DEPARTMENT OF ENERGY

Finding of No Significant Impact Proposed Remedial Action at Two Uranium Processing Sites Near Slick Rock, CO

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (EA) (DOE/EA–0339) of the proposed remedial action at two uranium processing sites near Slick Rock in San Miguel County, Colorado. These sites contain radioactively contaminated materials that would be removed and stabilized at a remote location. Based on the information and analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), as amended. Therefore, preparation of an environmental impact statement is not required, and the DOE is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Single copies of the ea are available from: Charles Cormier, Uranium Mill Tailings Remedial Action Acting Project Manager, U.S. Department of Energy, Uranium Mill Tailings Remedial Action Project Office, 2155 Louisiana NE, Suite 4000, Albuquerque, New Mexico 87110 (505) 845–4628.

FOR FURTHER INFORMATION ON THE NEPA PROCESS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25 U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, Public Law (PL) 95–604, authorized the DOE to perform remedial action at two uranium processing sites near Slick Rock, Colorado, to reduce the potential health effects from the radioactive materials at the sites and at vicinity properties associated with the processing sites. The U.S. Environmental Protection Agency (EPA) promulgated standards for the UMTRCA in Title 40, Code of Federal Regulations, Part 192 (40 CFR Part 192). These standards contain measures to control the contaminated materials and to protect groundwater quality. Remedial action at the Slick Rock sites must be performed in accordance with these standards and with the concurrence of the U.S. Nuclear Regulatory Commission (NRC) and the state of Colorado.

Site Descriptions

The Slick Rock uranium processing sites consist of the Union Carbide and North Continent sites. The Union Carbide processing site is approximately 2 road miles northwest of the unincorporated town of Slick Rock in San Miguel County, Colorado. The North Continent processing site is approximately 1 road mile east of the Union Carbide site. Both sites are on the west bank of the Dolores River in the floodplain, and the nearest residence to either site is approximately 0.3 air mile. Both the Union Carbide and North Continent sites are privately owned. Almost all the land surrounding the processing sites is administered by the Bureau of Land Management (BLM) and is used for livestock grazing. County Roads S8, S9, and 10R traverse the area of the processing sites and connect with State Highway 141 approximately 0.75 road mile south of the North Continent site.

Contaminated materials at the Union Carbide and North Continent processing sites cover approximately 55 and 12 acres, respectively. There are also 17 acres of contaminated materials across the Dolores River from the Union Carbide site. The contaminated materials consist of the uranium mill tailings from the uranium ore processing operations, soils beneath the tailings, and windblown and waterborne contamination from the tailings. The total volume of contaminated materials at both processing sites is estimated to be 618,300 cubic yards. In addition, approximately 2500 cubic yards of contaminated materials at four nearby properties (vicinity properties) are associated with the processing sites.

The proposed Burro Canyon disposal site is approximately 5 road miles east of the Slick Rock processing sites via County Roads S8 and 10R and State Highway 141. The site is above the 1000-year floodplain of the Dolores River. The disposal site is on land administered by the BLM and used primarily for livestock grazing. The town of Slick Rock is approximately 2 air miles southwest of the disposal site.

Proposed Action

The proposed remedial action is relocation of the contaminated materials from the Slick Rock processing sites to the Burro Canyon disposal site. At the disposal site, the contaminated materials would be stabilized in a partially below grade disposal cell and covered with approximately 5 feet of earth and rock. The disposal cell would cover approximately 12 acres and the final disposal site would cover approximately 57 acres. The final disposal site would be permanently transferred from the BLM to the DOE, and any future use of the disposal site would be precluded. Approximately 178 acres at the Burro Canyon site would be used for the disposal cell, final disposal site, and temporary construction facilities. Soil excavated at the disposal site would be used to construct the disposal cell; any remaining soil would be left at the disposal site, graded, and reseeded. Ground water at the disposal site would be protected by the claystones and mudstones in the geological formations below the disposal site. These natural foundation materials would inhibit any downward migration of contaminated water from the contaminated materials. The disposal cell cover system would inhibit infiltration of rainfall and runoff through the disposal cell.

After remedial action, the Slick Rock processing sites would be backfilled with clean fill material, recontoured to promote surface drainage, and revegetated. The processing sites would then be released for any uses consistent with existing land use controls. The DOE will evaluate the need for ground water compliance at the processing sites during the Uranium Mill Tailings Remedial Action (UMTRA) Ground Water Project.

The proposed remedial action includes the application of supplemental standards to approximately 17 acres of BLM-administered land across the Dolores River from the Union Carbide processing site. This area contains riparian habitat, and there is no access

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to the area. Cleaning up this area would result in the destruction of riparian habitat and would be very costly because it would be necessary to construct a temporary bridge across the Dolores River. Furthermore, without the cleanup, the long-term health impacts to individuals and the general public residing in the vicinity of the area would be negligible. If this application of supplemental standards were approved by the NRC and the state of Colorado, the contamination in this area would not be cleaned up.

The remedial action would require the use of earthen and rock materials. Earthen materials would be obtained from the Disappointment Valley borrow site on BLM-administered land that is used primarily for livestock grazing. This borrow site is approximately 7 road miles east of the Slick Rock processing sites and 4.4 road miles southeast of the Burro Canyon disposal site. Approximately 65 acres would be temporarily disturbed at the Disappointment Valley borrow site, and the borrow site would be restored in accordance with the Free Use Permit issued by the BLM. Rock materials would be obtained from the Dolores River borrow site, which is on privately owned land that is used for pasture and growing hay. This borrow site is just north of the Dolores River, midway between the Slick Rock processing sites. Approximately 25 acres would be temporarily disturbed at the Dolores River borrow site and would be restored in accordance with the land use agreement negotiated between the DOE and the land owner.

The contaminated materials and borrow materials would be transported by truck between the processing, disposal, and borrow sites along County Roads S8 and 10R, State Highway 141, and a new 0.5-mile haul road from State Highway 141 to the Burro Canyon disposal site. Approximately 0.25 mile of County Road S8 crosses the southern portion of the Union Carbide processing site and would be temporarily relocated approximately 400 feet south, to allow cleanup of the processing site. Most of the land crossed by County Roads S8, S9, and 10R and the new haul road is administered by the BLM, and the use of these roads for the proposed remedial action would be authorized by rights-of-way issued by the BLM.

Remedial action is scheduled to take 19 months with two winter shutdown periods of 5 months each (mid-November to mid-April). It is estimated that the remedial action would require an average work force of 100 workers and would cost $7.5 million.

Environmental Impacts

The EA for the Slick Rock UMTRA Project sites assesses the environmental impacts that may result from the proposed remedial action and proposes mitigative measures that would reduce the severity of the impacts. This FONSI is based on the information and analyses in the EA, which are summarized below.

Supplemental Standards

The proposed remedial action includes the application of supplemental standards to one area east of the Dolores River opposite the Union Carbide processing site. If this application of supplemental standards were approved by the NRC and state of Colorado, this area would not be cleaned up. Additional areas at and adjacent to the Slick Rock processing sites may be considered for the application of supplemental standards.

Air Quality

The proposed action would have temporary minimal impacts to air quality. None of the impacts are expected to violate air quality regulations. The most important air pollutant created by the remedial action would be uncontrolled fugitive dust. Much of the fugitive dust would be produced along County Roads S8, S9, and 10R and the haul road to the Burro Canyon disposal site. An Air Pollution Emissions Notice and Emission Permit would be obtained from the state of Colorado prior to the beginning of the remedial action.

This permit would require the implementation of a dust control plan that would include measures such as covering haul trucks, treating haul roads and disturbed areas with water or chemical additives, limiting speeds on unpaved haul roads, and stopping work during windy periods. A monitoring plan to ensure that air quality standards are not exceeded would be developed by the remedial action contractor and must be approved by the state of Colorado and San Miguel County before any ground-disturbing activities are initiated.

Health Effects Related to Radiation

The proposed action would have a long-term positive impact on health by controlling and stabilizing the source of radiation. It is estimated that the proposed 19-month remedial action would result in 0.0004 total excess health effects for the general public. No action at the processing sites would result in an estimated total of 0.0001 excess health effects for the general public during the same 19 months; however, the increased risk of excess health effects would continue for thousands of years without remedial action. It is estimated that 5 years of no action at the processing sites would result in 0.0003 excess health effects for the general public. In addition, continued dispersion or unauthorized removal and use of the contaminated materials could result in greater excess health effects than those estimated for no action. The 19 months of remedial action would result in a calculated total of 0.0015 excess health effects for remedial action workers. Environmental monitoring would be performed at the processing and disposal sites and radiological control measures would be implemented to ensure that the public health is adequately and appropriately protected in accordance with DOE Order 5400.5, Radiological Protection of the Public and the Environment. Radiological exposures of remedial action workers would be controlled in accordance with DOE Order 5480.11, Radiation Protection for Occupational Workers. Operational measures that include wetting the work area, covering haul trucks, or temporarily stopping work during high winds would be implemented to reduce airborne radioactive particulate matter concentrations to below harmful levels.

Surface Water

No adverse impacts to surface water quality would occur. Cleanup of contaminated materials at the Slick Rock processing sites would result in surface disturbance; surface water runoff from disturbed areas could be contaminated. In addition, contaminated wastewater would be generated by activities such as equipment washing. The remedial action design includes the construction of drainage and erosion controls, including lined wastewater retention ponds and silt fences or berms, to prevent the discharge of contaminated water from the sites. Appropriate drainage and erosion controls would also be used at the disposal and borrow sites to prevent or minimize erosion and any associated surface water impacts. Excavation of the North Continent site would be scheduled for the dry summer months to reduce the impact caused by precipitation and runoff. The DOE would comply with all applicable state of Colorado storm water regulations. After remedial action, surface water runoff would not cause erosion of the disposal cell and transport contaminants into local surface waters because erosion-control features such as limiting the topslope of the disposal cell and the placement of rock erosion protection are designed to withstand long-term erosive forces. Disturbed areas would be graded to promote drainage and would be revegetated when remedial actions are complete.

Ground Water

The proposed action would have a positive effect on ground water below the processing site by removing the source of contaminants. No impacts are expected to ground water below the disposal cell. The disposal cell at the Burro Canyon site is designed to control radioactive and nonradioactive contaminants in compliance with the EPA's proposed ground water protection standards. The protection of human health and the environment at the Burro Canyon disposal site would be ensured by a combination of design features and advantageous hydrogeologic conditions. There is no existing or potential use of ground water in the uppermost aquifer in the immediate vicinity of the Burro Canyon site because sustainable amounts of ground water are not available from the aquifer. The cleanup and/or control of existing ground water contamination at the Union Carbide and North Continent processing sites will be evaluated during the ground water compliance phase of the UMTRA Project.

Flora and Fauna

Flora and fauna would be affected directly and indirectly by the proposed remedial action. Direct effects would include the loss of habitat, loss of less-mobile wildlife species, and displacement of other wildlife species. Indirect effects would arise from increased fugitive dust, noise levels, and human activity. The duration of the direct effects would depend on the restoration of disturbed areas. Indirect effects would continue for the duration of the remedial action or less.

Mitigative measures to protect bighorn sheep that could be killed accidentally by haul trucks would be speed limits and driver education. Removal of water from the Dolores River would be limited to amounts that would be protective of fish and wildlife that require an adequate flow in the river.

Mineral Resources and Soils

No impacts to mineral resources would occur. Temporary impacts to soils would occur during the proposed action. Disturbed soils would undergo restoration after remedial activities are complete. Topsoils would be excavated, stored, and then replaced during restoration. A loss of mining claims on the proposed Burro Canyon disposal site would occur. The DOE would compensate valid claim holders to the extent required by law.

Threatened and Endangered Species

Impacts to fish and their critical habitat would occur as a result of the proposed action. The use of water from the Dolores River for remedial action would cause a net depletion of approximately 150 acre-feet of water in the upper Colorado River basin. This has resulted in a "may affect" determination for the endangered Colorado squawfish, humpback chub, bonytail chub, and razorback sucker and their critical habitat. These determinations required formal consultation with the FWS, which resulted in the identification of mitigation consisting of a one-time payment of $11.98 per acre-foot of water based on an average annual use. The funds would be used to improve conditions for endangered fish species.

The southwestern willow flycatcher has been proposed as threatened and endangered. This bird species was not present in the area of the Slick Rock processing sites in 1990, 1991, and 1994, but potential habitat for this species does occur at the sites. A survey for this species would be conducted prior to the remedial action. If it is determined that the southwestern willow flycatcher nests at or near areas that may be disturbed by the remedial action, formal consultations with the FWS would be initiated and a mitigation plan would be prepared. Similarly, surveys were conducted at the proposed disposal site for black-footed ferrets; none were found.

Floodplains and Wetlands

During the proposed remedial action at the Slick Rock processing sites, contaminated materials would be removed from the 100-year floodplain of the Dolores River. Approximately 28 and 13 acres would be disturbed within the 100-year floodplain at the Union Carbide and North Continent sites, respectively. After the remedial action, the disturbed areas would be backfilled with clean fill material to approximate the original 100-year floodplain. However, the man-made ground elevations of the tailings pile at the Union Carbide site would not be reestablished, which would increase the area of the 100-year floodplain at the site by approximately 7 acres. Remedial action at the North Continent site would not increase the size of the 100-year floodplain.

Flooding is not a hazard at the Burro Canyon disposal site. The site is above the 100-year floodplain of the Dolores River and is 60 feet higher in elevation than the closest intermittent drainage area. Remedial action activities at the Dolores River borrow site probably would occur within the 100-year floodplain of the Dolores River. Upon completion of the remedial action, the disturbed area at the Dolores River borrow site would be restored, but the area of the 100-year floodplain at the borrow site would be slightly increased. Remedial action activities at the Disappointment Valley borrow site would not occur within a 100-year floodplain.

The proposed remedial action would disturb riparian plant communities along the Dolores River. Approximately 42 acres of riparian plant communities would be disturbed at the Union Carbide and North Continent processing sites. It was determined that 10 acres of these riparian plant communities meet the USACE definition of a wetland. These wetlands are regulated by the USACE through its Section 404 Permit process, and the DOE would mitigate remedial action impacts to wetlands as determined by this process. Approximately 17 acres of riparian plant communities across the Dolores River from the Union Carbide site are contaminated but are not proposed for cleanup during the remedial action by the application of supplemental standards. The application of supplemental standards to the other 42 acres of riparian plant communities at the Union Carbide and North Continent sites would not be feasible due to the relatively high levels of contamination in these areas.

The no action alternative would leave the contaminated materials in the floodplain and wetland areas of the Dolores River and continue to adversely impact the floodplains and wetlands by not controlling the source of contamination. The proposed action involves action within the floodplain and wetland areas. Based on the Floodplain/Wetlands Assessment, the DOE has determined that there is no practical alternative to the proposed activities in the floodplain and wetlands areas and that the proposed remedial action has been designed to minimize potential harm to or within the floodplain and wetland areas.

The Floodplain/Wetlands Assessment in the EA and this Floodplain Statement of Findings were prepared pursuant to Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands, and 10 CFR Part 1022, Compliance With Floodplain/Wetlands Environmental Review Requirements. Mitigation measures to reduce impacts to floodplain disturbance would be to backfill disturbed areas with clean fill

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material to approximate the original 100-year floodplain. However, the man-made ground elevations of the tailings pile at the Union Carbide site would not be reestablished, which would increase the area of the 100-year floodplain at the processing site by approximately 7 acres. Remedial action at the North Continent site would not increase the size of the 100-year floodplain.

Historical and Cultural Resources

Two cultural resource sites, one near the Union Carbide processing site and the other near the Burro Canyon disposal site, are not expected to be affected by remedial action activities. Both of these cultural resource sites would be fenced and avoided during remedial action, and the site near the Union Carbide processing site would be further protected by a barrier to shield against dust, rocks, and exhaust fumes. If any additional cultural resources are identified during the remedial action (e.g., subsurface resources), work would stop in the area of the cultural resources, and the appropriate state and Federal agencies would be consulted to determine the significance of and protection for the resources. The Ute Mountain, Southern, and Northern Ute Tribes were also consulted to determine whether the proposed remedial action would impact any tribal cultural use areas. No impacts were identified.

Land Use

The remedial action would result in the temporary and permanent disturbance of approximately 335 acres of land. This would result in the temporary and permanent loss of grazing forage at the Slick Rock processing sites, Burro Canyon disposal site, and Dolores River and Disappointment Valley borrow sites. The DOE would mitigate the temporary and permanent loss of grazing forage in accordance with land-use agreements negotiated with affected grazing lessees and private landowners.

The final restricted Burro Canyon disposal site would encompass approximately 57 acres, and any future use of this area would be precluded. After remedial action, the Slick Rock processing sites would be released for any use consistent with existing land-use controls.

Six unpatented mining claims exist within the proposed permanent withdrawal area. The DOE would compensate valid claim holders to the extent required by law.

Socioeconomics

The remedial action impacts on employment, housing, community services, and the economy would be minimal due to the short duration of the remedial action and the relatively small number of workers required. These impacts would be expected to be distributed among numerous nearby and more distant communities; consequently, no single community would be affected substantially by the remedial action. The wages and salaries paid to remedial action workers and expenditures for equipment, materials, and supplies would have direct, positive impacts on the economies of San Miguel, Dolores, and Montezuma Counties. The local economies also would benefit indirectly as these wages, salaries, and expenditures are respent locally on other goods and services. Direct and indirect expenditures would generate tax revenues that would be available to local and state government use.

Transportation

The remedial action would increase the traffic volume on County Roads S8, T11 and State Highway 141. A portion of County Road S8 would be relocated to allow cleanup of the Union Carbide processing site. These roads and highway would be improved as necessary, and other mitigative measures (e.g., trained flag persons and temporary warning signs) would be implemented as required to mitigate the potential traffic hazards. After remedial action, these roads and highway would be returned to their original locations and conditions. The public would be restricted from access to County Roads S9 and 10R and a private disposal site access road off T11 during remedial action, which is expected to last 19 months.

Alternative to the Proposed Action

No Action Alternative

The no action alternative would consist of leaving the contaminated materials in their present conditions and locations at the Slick Rock processing sites. The contaminated materials would continue to be exposed to erosion, and eventual erosion of the contaminated materials would result in the transport of contaminants into the Dolores River. The processing sites and adjacent areas would remain unusable. The contaminated materials would also be susceptible to unauthorized removal and use by humans, which could cause more widespread contamination and increased public health hazards. The no action alternative is not a legal alternative for the DOE and would not satisfy the requirements of the UMTRCA (PL 95–604).

Alternatives Considered and Rejected

The DOE's analysis of disposal site alternatives encompassed technical, environmental, and cost factors, as well as the risks associated with each alternative. Alternatives evaluated but rejected were 1) stabilization of the mill tailings in place at the processing sites, 2) stabilization of the mill tailings at other locations near the processing sites, and 3) colocating the mill tailings at other uranium mill tailings sites. The first alternative was rejected because the major portion of the tailings would be stabilized in the flood plain of the Dolores River and water resources protection would be inadequate. The second was rejected due to the other sites' proximity to ground water. The third was rejected because the cost of disposal would result in significant increases in cost by a factor of two and six, respectively, over the cost of disposal at Burro Canyon.

Determination

Based on the information and analyses in the EA, the DOE has determined that the proposed remedial action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA. Therefore, the preparation of an environmental impact statement is not required.

Signed in Albuquerque, New Mexico, this 27th day of January, 1995.

Bruce G. Twining,

Manager.

[FR Doc. 95–4428 Filed 2–22–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Nuclear Energy

Nuclear Energy Financial Assistance Program for University Reactor Sharing

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Nuclear Energy (NE), U.S. Department of Energy (DOE), hereby announces that invitations have been sent to all U.S. colleges and universities with a licensed, operating nuclear reactor that have an interest in making their reactor facility available to other educational institutions.

The objectives of the program are to provide opportunities needed by educational institutions, without these facilities, for research, education and training of their faculty and students in the nuclear sciences and technology. The grants are used to offset costs of materials, irradiation services, technical services, etc., incurred by the host university. Each grantee is responsible for announcing the availability of the reactor sharing program to other educational institutions in their geographical region.

DATES: The deadline date for applications is March 24, 1995.

ADDRESSES: Four copies of the application should be submitted to: U.S. Department of Energy, Office of Nuclear Energy, Office of Policy and Management, Information and Contract Management Branch, NE–133, Washington, D.C. 20585.

The application should be signed on the cover sheet by the person initiating the application and by the authenticating university official.

Telephone inquiries requesting information concerning this solicitation should be directed to Mr. E. G. Tourigny (301) 903–3679.

Completed applications delivered by U.S. Postal Service Express Mail, any commercial mail delivery service, or when handcarried by the applicant must be submitted to: U.S. Department of Energy, Office of Nuclear Energy, Office of Policy and Management, Information and Contract Management Branch, NE–133, 19901 Germantown Road, Germantown, Maryland 20874.

Anyone interested in more detailed information may write to the address below:

U.S. Department of Energy, Office of Nuclear Energy, Facilities Division, Technical Support Branch, NE–443, Washington, D.C. 20585 or call Area Code 301–903–3679.

SUPPLEMENTARY INFORMATION: The Reactor Sharing Program derives its statutory authority from the Department of Energy Organization Act, Public Law 95–91, which was enacted to provide for the development of technologies and processes to reduce total energy consumption and enhance energy production. The purpose of this program is to increase the availability of university nuclear reactor facilities to nonreactor owning colleges or universities and other educational institutions—(user institutions). This is accomplished by providing grants to reactor-owning universities (host institutions). These grants provide funds against which reactor operating costs may be charged when the facilities are utilized by regionally affiliated user institutions for student instruction or for student or faculty research. Under this program, allowable reactor operating costs are restricted to the categories delineated below under the heading, Financial Arrangements.

The objectives of the program are to strengthen nuclear science and engineering instruction in the curricula of the nonreactor owning colleges and universities, as well as to provide research opportunities and to enable the application of nuclear analytical techniques by faculty and students in the sciences. University reactors are extremely versatile neutron sources and research facilities; thus the availability of a nuclear reactor contributes particularly and significantly to research and educational opportunities at both the graduate, undergraduate and precollege levels. DOE anticipates that approximately $500,000 will be available from the Office of Nuclear Energy for support of these activities during Fiscal Year 1995.

In accordance with 10 CFR–600.7(b)(1), eligibility for these grants is restricted to U.S. colleges and universities with nuclear reactor facilities because they have a unique opportunity to enable other institutions to participate in important aspects of the Nation's nuclear science and engineering educational programs.

Individual award amounts will be determined by a DOE proposal review panel and will be based on (1) availability of the reactor to outside users, (2) the type of reactor sharing activities and the number of students and/or faculty traditionally served by the proposer, and (3) evidence of interest on the part of potential user institutions to utilize the proposer's facility during the proposed grant period. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this invitation. Negotiation, award, and administration will be in accordance with the DOE Financial Assistance Policy.

General Information

Institutional Eligibility

Any educational institution within the United States which operates a research or training reactor is eligible to submit a new award or renewal application to participate in the University Reactor Sharing Program. In evaluating applications, preference is given to institutions that can show an affiliation with a substantial number of regional educational institutions who have indicated interest in using the applicant's reactor facility, or who have used the facilities during the previous grant year.

User Institutions

User institutions eligible for participation in the program are primarily educational institutions such as universities and colleges, junior colleges, technical and community colleges, high schools and junior high schools. User groups or individuals affiliated with the host institution are not eligible for assistance under this program. Also excluded are research activities undertaken by an educational institution for which grant or contract funding is provided by other sources. The selection and scheduling of user institution participants is the responsibility of the host institution.

Scope of Program Projects

The projects may range from tours/demonstrations, experiments, workshops and seminars for middle and high school groups to faculty research projects and M.S./Ph.D. thesis or dissertation research. Reactor utilization may range from simple service irradiations and analytical support to basic research studies requiring the facilities' most sophisticated equipment.

Financial Arrangements

Duration of Grants

Funds for the University Reactor Sharing Program will be provided through an assistance grant with host institutions. Charges may be made against grant funds for services rendered to user institutions. The terms of a grant normally will be one year, subject to modifications and renewals.

Reimbursable Costs

Costs for reimbursement are limited to: (1) Payments for irradiation services not to exceed the established, published schedule of the host institution, (2) payments for use of the reactor and related facilities based upon established rates of the host institution, (3) costs of technical assistance furnished by the host institution for conduct of studies by a user institution, and (4) costs of materials and supplies consumed in user institution projects. Charges should not be made to the grant for costs that are already incurred as part of the normal operating expenses of the facility. Laboratory apparatus and instrumentation are not eligible items for reimbursement. Indirect or overhead costs are not allowed. Costs for individual or group travel or subsistence are normally not allowed or encouraged; exceptions are permitted, under unusual circumstances, with the approval of the project director.

Reports

An annual report summarizing activities supported under the grant is required from the host institution. *This report is due within 90 days after the*

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end of the grant period. The report should contain specific information in the format shown below.

University: _____
Project Director: _____
Grant Number: _____
Location: _____
Telephone Number: _____
Reactor Type: _____
Power Level: _____

Participating institution	Principal investigator	No. of student/faculty involved	Description of project/program	Reactor sharing support
XXXXX	XXXXX	(Indicate Academic Level)	(Thirty words or less)	XXXX

It is requested that standard size (8 ½ x 11) paper be used.

Application Preparation

An application should include at least the following items.

1. A statement of the relative availability of the reactor to outside users.

2. An assessment on a regional basis of the colleges, universities or precollege institutions that can be served by the proposing institution's reactor facility.

3. Evidence of interest on the part of potential or former user institutions which contain brief statements of interest and plans for utilizing the applicant's reactor facility during the proposed grant period.

4. Applications must include a completed Standard Form 424, "Application for Federal Assistance"; a 424A, "Budget Information"; and 424B, "Assurances," as well as the Drug-Free Workplace, Debarred, and Lobbying Certifications.

Terry R. Lash,

Director, Office of Nuclear Energy.

[FR Doc. 95–4429 Filed 2–22–95; 8:45 am]

BILLING CODE 6450–01–P

Office of the Secretary

Strategic Alignment Initiative; Notice of Open Meeting

AGENCY: U.S. Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: The Steering Committee for the Department of Energy (DOE) Strategic Alignment Initiative, studying the organizational structure and staffing resources of the Department, will hold an open meeting on March 1, 1995.

DATES: March 1, 1995, 8:30 a.m.—5:00 p.m., at the Omni Shoreham Hotel, 2500 Calvert St., N.W., Washington, DC, (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: Peter Richards or Howard Landon, Strategic Alignment Team, (202) 673–3804.

SUPPLEMENTARY INFORMATION: In December 1994, the Secretary of Energy announced a four month effort to realign the organizational structure, functions, and financial and human resources of the Department. Planning for this effort began with the release of DOE's Strategic Plan in April 1994.

A team of DOE employees, is reviewing the functions and activities of the Department. The team will recommend a more efficient organizational structure that supports the business lines identified in the Strategic Plan. The review draws on private sector experience to eliminate low-priority work, reduce layers of management, and streamline the workforce.

The employee team will present progress reports to the Steering Committee at the March 1 meeting.

Tentative Agenda Items

- Opening Remarks—Secretary Hazel O'Leary.
- Overview and Progress Reports.
- Public Comment Period.

PUBLIC PARTICIPATION: Persons wishing to speak should pre-register at the door. Speakers will be accommodated on a first-come basis to the extent time allows. To ensure that as many persons as possible have the opportunity to speak, a time limitation may be used.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 95–4609 Filed 2–21–95; 1:20 pm]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP95–102–001]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 16, 1995.

Take notice that on February 13, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Tariff, First Revised Volume No. 1, the following tariff sheets:

Effective February 1, 1995

Substitute Fifth Revised Seventh Revised Sheet No. 10
Substitute Fifth Revised Fourth Revised Sheet No. 11
Substitute Third Revised First Revised Sheet No. 11.1
Substitute First Revised First Revised Sheet No. 15
Substitute First Revised First Revised Sheet No. 16

Effective March 1, 1995

Substitute Sixth Revised Seventh Revised Sheet No. 10
Substitute Sixth Revised Fourth Revised Sheet No. 11
Substitute Fourth Revised First Revised Sheet No. 11.1

and;

a revised Statement in compliance with the provisions in Docket No. RP95–102 as directed in the "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions" issued January 27, 1995 (70 FERC 61,088).

Texas Gas states that the filing contains a revised statement reflecting:

(1) The aggregate amount of Gas Supply Realignment Costs incurred and allocated to be collected during the twelve-month period November 1, 1993, through October 31, 1994, from Rate Schedule IT; and

(2) The aggregate amount of Gas Supply Realignment Costs deemed collected during the same period by Texas Gas under Rate Schedule IT, as determined pursuant to Section 33.3(g) of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1.

Additionally, the filing reflects an Interruptible Revenue Credit Adjustment which proposes to reduce base rates under Rate Schedules FT, NNS, and SGT, effective February 1, 1995.

Texas Gas states that copies of the instant filing are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests

should be filed on or before February 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4353 Filed 2–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–163–000]

CNG Transmission Corporation Complainant v. Tennessee Gas Pipeline Company Respondent; Notice of Complaint

February 16, 1995.

Take notice that on February 13, 1995, CNG Transmission Corporation (CNG) filed a complaint against Tennessee Gas Pipeline Company (Tennessee).

CNG states that by letter dated and faxed October 5, 1994, Tennessee notified CNG that effective for gas flow at 7:00 a.m. CST, on October 6, 1994, that Tennessee would no longer accept nominations on CNG's Service Package #3919 for delivery to non-CNG delivery points (i.e., secondary delivery points) in Tennessee's Zone 4 and/or 5, unless CNG agreed in writing to pay Tennessee's maximum applicable rates for secondary point deliveries into Tennessee's Zone 4 and/or Zone 5.

CNG states that in CNG's Order No. 636 restructuring proceeding, parties, including Tennessee, entered into a settlement agreement, filed March 31, 1993, and accepted by the Commission by orders issued July 16, September 17, and December 16, 1993, in Docket No. RS92–14–000, *et al.* As part of the Restructuring Settlement, CNG agreed to assign to its firm customers the portion of CNG's pre-existed capacity on Tennessee from the production area to a pooling point located in Tennessee's Zone 3; CNG retained control of the firm capacity on Tennessee from that same pooling point in Zone 3 downstream to Tennessee's Zones 4 and 5. The Restructuring settlement expressly provided that CNG retained the downstream portion of its pre-existing capacity on Tennessee to enable CNG to facilitate dispatching and no-notice deliveries to CNG's customers.

CNG states that in a meeting held in Washington, D.C., on November 7, 1994, CNG and Tennessee requested the Commission's Enforcement Task Force to provide an informal opinion regarding the immediate dispute. The Enforcement Task Force affirms CNG's position that the language of the Restructuring settlement gives CNG a contractual guarantee of the incremental rate for service to all of CNG delivery points (both primary and secondary) in Zones 4 and 5. As the explicit language of the settlement states, the incremental reservation charge is established as the maximum reservation charge for all service from Zone 3 to Zone 4 or Zone 5, whether CNG uses primary or secondary delivery points.

CNG states that Tennessee has rejected the informal opinion of the Enforcement Task Force, and subsequent efforts by CNG and Tennessee to negotiate a settlement of the dispute have failed.

Comments by Tennessee on the complaint, as well as motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 27, 1995. CNG or any other party that wants to file reply comments must file those reply comments on or before March 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4355 Filed 2–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–161–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 16, 1995.

Take notice that on February 13, 1995, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective March 15, 1995:

First Revised Sheet No. 215

Northern states that its filling is to revise Section 7, "Liability of Parties", of the General Terms and Conditions of its Tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before February 24, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4356 Filed 2–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–160–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 16, 1995.

Take notice that on February 13, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with an effective date of March 15, 1995:

Second Revised First Revised Sheet No. 230

Texas Gas herein modifies Section 33.3(f) of its General Terms and Conditions in order to clarify the original intent of this provision, while complying with the Commission's interpretation and rulings as stated in its January 27, 1995, Order.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

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available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4357 Filed 2–22–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of December 12 Through December 16, 1994

During the week of December 12 through December 16, 1994, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Olympic Oil Co., Inc., 12/14/94, LEE–0160

Olympic Oil Co., Inc. (Olympic) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Olympic claimed that it should be relieved of the requirement because it had been filing the form since January 1993 and because the task took the firm's limited office staff over four hours to complete each month. In considering this request, the DOE found that Olympic was not suffering gross inequity or serious hardship. Accordingly, on October 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. Neither Olympic nor any other party filed an Objection to that Proposed Decision and Order, so the DOE issued it in final form.

Refund Applications

Garrison Fuel Oil of L.I., Inc., 12/12/94, RF272–92317

The DOE issued a Decision and Order concerning the Application for Refund of a claimant in the Subpart V crude oil overcharge refund proceeding. The DOE determined that the applicant resold the refined petroleum products that formed the basis of its application and thus passed on the costs of any overcharges to its customers. The DOE concluded that the claimant had not shown that it was injured by any of the overcharges associated with the gallons that it purchased. Accordingly, the DOE denied the Application for Refund.

Texaco Inc./D & B Texaco, 12/14/94, RF321–20008, RF321–2009

Donald Maile requested refunds based on purchases of Texaco products made by two service stations that he operated. Mr. Maile's estimates of the outlets' purchases were based only on his memory of his businesses, and the DOE relied instead on information obtained from Texaco; in one case, the purchase volume provided by Texaco was much lower than Mr. Maile's estimate. In addition, the evidence submitted strongly suggested that Mr. Maile's businesses were operated as partnerships. Accordingly, the DOE issued a Decision granting Mr. Maile one-half of the refund due to each station.

Texaco Inc./H&R Texaco Station, 12/13/94, RR321–168

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Howell and Richard Sumrall in the Texaco Inc. special refund proceeding on behalf of H&R Texaco Station (H&R), a reseller located in Evansville, Indiana. A refund previously had been granted for purchases made by the station from 1972 through January 1977. However, it came to the attention of the DOE that this refund was incorrectly based on a time period during which the Sumralls did not operate the station. In the Motion, the Sumralls satisfactorily documented the time period during which they operated the station and established that the correct refund amount was in excess of the previously received refund amount. The total amount of the additional refund granted to the Sumralls in this Decision was $579 ($404 principal plus $175 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Lowell O. Volden	RF304–13926	12/12/94
Atlantic Richfield Company/Rice Brothers Service	RF304–15451	12/13/94
Avis Rent A Car	RF272–93539	12/14/94
Bellmawr Borough School Dist. et al	RF272–79811	12/13/94
Bjorklund Trucking Inc	RC272–276	12/15/94
Blackwell Cooperative Elevator Association et al	RF272–94767	12/13/94
Chatham County Board of Education et al	RF272–94931	12/14/94
Enron Corp./Jayson's Bottle Gas	RF340–111	12/12/94
Frankston Reliance Gas Co., Inc	RF340–121	
Gulf Oil Corporation/Leo J. Ketchell, Inc	RF300–14544	12/14/94
Hefley Trucking Co. et al	RF272–84988	12/13/94
Kentucky Transfer Line, Inc., et al	RF272–96127	12/14/94
Texaco Inc./Charles H. Fortinberry et al	RF321–6754	12/15/94
Texaco Inc./Crestwood Service et al	RF321–19335	12/15/94
Texaco Inc./Gold Beach Texaco et al	RF321–20269	12/15/94
Texaco Inc./Goodyear Tire & Rubber Company et al	RF321–20607	12/13/94
Texaco Inc./National Steel Corporation et al	RF321–20800	12/15/94
Texaco Inc./Tipton's Service Station et al	RF321–12779	12/13/94
Union Camp Corporation	RF272–95151	12/14/94
Union Camp Corporation	RF272–95162	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.R. Fuels, Inc	RF321–20370
Alaska Aerofuel, Inc	LEE–0129
American Synthetic Rubber Corporation	RF321–20788

Name	Case No.
Apex Management	RF321–12882
Apex Management	RF321–12886
Arcal Energy	RF321–19776
Carolina Freight Carriers Corp	RF321–20367
Commonwealth Propane Co	RF321–20689
Curtis Beard	RF321–14019
East Irondequoit Central Schools	RF272–94795
Francis E. Behrens, Jr	RF304–13308
Gateway Texaco	RF321–12659
GCO Minerals Company	RF321–20822
Gebbie's	RF321–19778
Green's Transport Co., Inc	RF304–13549
Hewlett-Woodmere UFSD	RF272–82414
Ila Mae Welch	RF321–20160
Indiana Bell Telephone Co., Inc	RF321–20371
Interstate Brands Corp	RF321–20368
Jersey Central Power & Light Company	RF321–20787
Kinderhook Central School District	RF272–95678
Lakeside Texaco	RF321–20405
Midwest Petroleum Company	RF321–20450
Munir A. Malik	VFA–0014
Munir A. Malik	VFA–0013
Paul Kelm Arco Service	RF304–14717
Quik Start Food & Texaco	RF321–12872
Teter's Texaco	RF321–20017
The John Stapf Corporation	RF300–18648
Vin's Service	RF321–20806
West End Texaco	RF321–20161

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 14, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4426 Filed 2–22–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of December 19 through December 23, 1994

During the week of December 19 through December 23, 1994 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

E.O. Smelser, 12/21/94, VFA–0011

E.O. Smelser filed a Motion for Reconsideration of the denial by the Office of Hearings and Appeals of his previous Freedom of Information Act (FOIA) Appeal. In his original FOIA request, Mr. Smelser had requested copies of computer tapes for databases created under a grant program which the DOE had funded. In considering the Motion, the OHA found that Mr. Smelser did not introduce any new evidence or changed circumstances that would warrant granting the motion for reconsideration. Accordingly, the Motion was denied.

Requests for Exception

Bender Oil Company, 12/19/94, LEE–0150

Bender Oil Company (Bender) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Bender did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Berreth Oil, Inc., 12/20/94, LEE–0093

Berreth Oil, Inc. (Berreth) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report," and Form EIA–821, the "Annual Fuel Oil and Kerosene Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On July 25, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objections to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Berreth's Application for Exception.

Personnel Security Hearing

Albuquerque Operations Office, 12/22/94, VSO–0001

The Office of Hearings and Appeals issued the first Hearing Officer Opinion addressing the continued eligibility of an individual for access authorization under the newly amended provisions of 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After carefully considering the record in view of the standards set forth in 10 C.F.R. Part 710, the Hearing Officer found that the individual had engaged in criminal behavior which tended to show that she was not honest, reliable, or trustworthy, and that she had omitted significant information from a Questionnaire for Sensitive Positions. The Hearing Officer also found that there were no mitigating

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factors present in the case which can overcome the security concerns raised by the Department of Energy. Accordingly, the Hearing Officer found that the individual's access authorization, which had been suspended, should not be restored.

Refund Applications

Hunt-Wesson, Inc., Hunt-Wesson, Inc., Waterloo Industries, Aristokraft, Inc., Playtex Products, 12/23/94, RF272–73865, RD272–73865, RF272–97916, RF272–97941, RF272–98638

The DOE issued a Decision and Order concerning Application for Refund submitted in the Subpart V crude oil refund proceeding by four former affiliates of Beatrice Co., Inc. Hunt-Wesson, Inc., Waterloo Industries, Aristokraft, Inc., and Playtex Products. The four applicants were found to have been affiliated with Arrowhead Drinking Water Company (Arrowhead) on August 7, 1986. Arrowhead had filed in the Surface Transporters Stripper Well proceeding. In doing so, Arrowhead had executed a waiver and release waiving its rights and the rights of its affiliates on August 7, 1986, to receive crude oil overcharge refunds. Accordingly, the DOE denied these four Applications for Refund. Because the DOE denied these Applications, the DOE also dismissed as moot a Motion for Discovery filed by a consortium of States and two Territories to Hunt-Wesson, Inc.'s Application for Refund.

Texaco Inc./Carlton Hills Texaco, Harry's Texaco, 12/23/94, RF321–20424, RF321–21044

Dale Fuller filed an Application for Refund in the Texaco, Inc. special refund proceeding on behalf of a retail outlet located on Carlton Hills Boulevard in Santee, California. Mr. Fuller's claimed dates of ownership conflicted with the dates claimed by Harry Orsulak, in Case No. RF321–18438, redesignated Case No. RF321–21044, and another applicant Mitchel Carter, in Case No. RF321–9802, both of whom had previously received refunds for purchases made by that outlet. The OHA determined that Mr. Orsulak was not entitled to the refund which he received for purchases made by the Carlton Hills outlet beginning in March 1973. In addition, the OHA determined that Mr. Fuller was eligible for a refund for the purchases made from March 1973 through November 1976, when Mr. Carter assured operation of the outlet. The OHA issued a Supplemental Decision and Order, granting Mr. Fuller's Application for Refund for the period March 1973 through November 1976, and instructing Mr. Orsulak to repay his refund.

Texaco Inc./Guttman Oil Company, 12/20/94, RF321–17026

Guttman Oil Company (Guttman) filed an Application for Refund in the Texaco Inc. special refund proceeding. Rather than accept $50,000, the maximum refund under the medium-range presumption of injury, Guttman attempted to show that it was injured in its purchases of Texaco products. With respect to motor gasoline, Guttman sought a refund of 43 percent of the volumetric amount based upon a claim that it absorbed that percentage of the overcharges. Guttman sought an above-volumetric refund with respect to its diesel fuel purchases based upon a disproportionate overcharge.

The DOE rejected Guttman's contention that lower than historical profit margins in its resale of motor gasoline implied that it was injured. The DOE noted that Guttman's profit margin analysis showed little more than its bank calculations and that depressed profit margins could have resulted from causes unrelated to the price it paid Texaco for product.

The DOE agreed with Guttman that it had sustained a disproportionate overcharge based upon the findings of a Remedial Order that had been issued to Texaco concerning diesel fuel transactions. The DOE, however, found that Guttman's calculation of banked costs had to be adjusted to take into account the findings in another Remedial Order that had been issued to it. A revised bank calculation showed that in September 1975, Guttman had a bank of unrecovered product costs of $1,949, but that subsequent to that month the firm had a sufficient bank to justify the overcharge claims. This indicated that the firm had passed through to its customers all but $1,949 of the diesel fuel overcharges that occurred through September 1975. The DOE found that Guttman had absorbed $67,095 in diesel fuel overcharges between September 1975 and June 1976, and that Guttman was entitled to pre-settlement interest (for the period between the date of the overcharge and the date Texaco paid the settlement to DOE) on this amount. Since the Texaco consent order settled the alleged violations at a fraction of their value, the DOE reduced the resulting overcharge amount to 57.5 percent (the ratio of the consent order amount to the total overcharges that had been alleged by DOE). Guttman was accordingly granted a refund of $160,645, plus interest that has accrued on this amount since the Texaco funds were placed in an escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A–1 Truck & Trailer Rentals, Inc	RC272–267	12/20/94
Al Tech Specialty Steel Corp. et al	RF272–93541	12/20/94
Atlantic Richfield Company/John Pellegrino Arco et al	RF304–14707	12/19/94
Burnup & Sims, Inc. et al	RF272–92013	12/19/94
City of Athens, Texas et al	RF272–85535	12/21/94
Gloucester County, NJ et al	RF272–96502	12/21/94
Gulf Oil Corporation/Chicot Implement Co. et al	RF300–18845	12/19/94
Gulf Oil Corporation/Sherman Foundry, Inc. et al	RF300–21525	12/20/94
Gulf Oil Corporation/U.S. Radium Corporation et al	RF300–21605	12/21/94
Gulf Power Company	RF272–93556	12/23/94
Duke Power Company	RF272–93569	
Halltown Paperboard Company	RF272–67486	12/21/94
Richmond County et al	RF272–95512	12/20/94
Shawano-Greshan Sch. Dist. et al	RF272–80955	12/23/94
Shell Oil Company/Silver Port Shell	RF315–3393	12/20/94
Stratton Equity Coop Co. et al	RF272–92372	12/23/94
Texaco Inc./Art & Jim's Texaco Service et al	RF321–20808	12/20/94
Texaco Inc./Crowley Texaco et al	RF321–20204	12/23/94
Texaco Inc./Don Fortunati's Texaco et al	RF321–20408	12/20/94
Texaco Inc./Don's Service Station et al	RF321–12545	12/23/94

Texaco Inc./Landry & Martin Oil Co., Inc	RF321–20444	12/20/94
Texaco Inc./Maverick Oil Co	RF321–19887	12/20/94
Maverick Oil Co	RF321–19888	
Maverick Oil Co	RF321–19889	
Maverick Oil Co	RF321–19890	
Maverick Oil Co	RF321–19891	
Texaco Inc./Walker's Service Station et al	RF321–19892	
	RF321–12775	12/23/94

Dismissals

The following submissions were dismissed:

Name	Case No.
72nd Street Association	RF272–77810
Ambassador Towne House Associates	RF272–77814
C.W. Faust & Sons	RF272–94798
Central School District #1	RF272–96535
Gracie Towne House	RF272–77856
Morton Pickman	RF272–77826
Orleans County Hwy. Dept.	RF272–96534
Pepperidge Farm, Inc.	RF272–93551
Rocky Flats Field Office	VSO–0006
Salt Lake County, UT	RF272–96642
Savannah Electric and Power Co.	RF321–20919
Sunnyside Shell	RF321–8231
Tanner's Shell	RF315–9719
Ten East Housing Company	RF272–77825
The Pillsbury Company	RF321–20776
Thelma Realty	RF272–77848
University Associates	RF272–77812

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 15, 1995.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 95–4427 Filed 2–22–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5160–2]

Notice of Open Meeting of the Brownfields Redevelopment Workgroup of the Environmental Financial Advisory Board on March 27–28, 1995

The Brownfields Redevelopment Workgroup of the Environmental Financial Advisory Board (EFAB) will hold an open meeting on financing brownfields redevelopment. The meeting is scheduled for March 27–28, 1995 in Capital Room II of the Westin Hotel Indianapolis located at 50 South Capitol Street, Indianapolis, Indiana, 46204. The March 27 session will begin at 1:00 p.m. and adjourn at 5:00 p.m. The March 28 session will run from 8:30 a.m. to 4:00 p.m.

EFAB is a federally chartered advisory board that provides analysis and advice to the U.S. Environmental Protection Agency (EPA) on environmental finance issues. The purpose of this workgoup meeting is to gather information and facilitate discussion on barriers and incentives to the redevelopment of abandoned industrial or commercial sites (known as "brownfields") in Indianapolis and other cities. Several invited speakers will make presentations and the public is welcome, but seating is limited. The meeting will serve as an opportunity for the workgroup to address issues raised and begin development of model financing options that can be tested at brownfield pilot sites.

The meeting is being held in cooperation with the City of Indianapolis at the request of Mayor Stephen Goldsmith, who is an EFAB member. Representatives from the Indiana Department of Environmental Management and the U.S. Environmental Protection Agency have been invited. Parties who wish to attend the meeting are encouraged to contact Ms. Amy Mack of the Indianapolis Department of Public Works, Environmental Resources Management Division, at (317) 327–2288. The EFAB staff contacts for the meeting are Time McProuty at (202) 260–8436 and Eugene Pontillo at (202) 260–6044.

Dated: February 15, 1995.

George Ames, Acting Director,

Resource Management Division.

[FR Doc. 95–4468 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5157–6]

Public Meeting of the Sanitary Sewer Overflows Dialogue

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is convening a public meeting of the Sanitary Sewer Overflows (SSOs) dialogue on March 9 and 10, 1995. The meeting has several purposes: (1) to discuss goals, objectives and desired outcomes for the SSO policy dialogue, such as ensuring national consistency and adequate municipal investment in collection system operation and maintenance; (2) to report on information needs to support an evaluation of the costs and benefits of selected policy options as well as identify other information needs associated with developing other products; (3) to provide an overview of

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the Agency's approach to enforcement; (4) to identify and discuss the appropriateness of nonregulatory and regulatory tools available for addressing reporting of SSOs, collection system evaluations, sewer design, collection system operation and maintenance, and system rehabilitation; and (5) to discuss how watershed concepts could be incorporated into SSO efforts. The meeting is open to the public without need for advance registration.

DATES: The Dialogue will be held on March 9 and 10, 1995. On the 9th, the meeting will begin at approximately 9 a.m. EST and run until about 5 p.m. On the 10th, the meeting will run from about 9 a.m. until completion.

ADDRESSES: The Dialogue will be held at the Sheraton Suites Hotel, 801 Asaph Street, Alexandria, VA 22314. The hotel telephone number is (703) 836–4700.

FOR FURTHER INFORMATION CONTACT: Kevin Weiss of EPA's Office of Wastewater Management, at (202) 260–9524.

Dated: February 13, 1995.

Michael Cook,

Director Office of Wastewater Management, Designated Federal Official.

[FR Doc. 95–4290 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5158–9]

RIN–2060–AE61

Federal Radiation Protection Guidance for Exposure of the General Public

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period for proposed recommendations.

SUMMARY: In response to several requests, EPA is extending the comment period for thirty (30) days on the proposed recommendations for the new guidance to Federal agencies in their formulation of regulations and conduct of programs for the protection of the general public from exposure to ionizing radiation.

DATES: The comment period originally given in the previous notice on Friday, December 23, 1994 (59 FR 66414), has been extended for thirty (30) days. Written comments in response to this notice must be received on or before March 31, 1995, to be ensured full consideration.

ADDRESSES: Written comments (in duplicate) should be submitted to: Central Docket Section (6102J), Room M1500 at Waterside Mall, Attn: Docket No. A–83–41, U.S. Environmental Protection Agency, Washington, DC 20460. The docket section is open to the public between 8:00 am to 5:00 pm on weekdays.

FOR FURTHER INFORMATION CONTACT: Allan C.B. Richardson, Deputy Director for Federal Guidance, or Eleanor Thornton, Program Analyst, Criteria and Standards Division, Office of Radiation and Indoor Air (6602J), U.S. EPA, Washington, DC 20460, telephone (202) 233–9213; FAX (202) 233–9629 concerning this extension.

SUPPLEMENTARY INFORMATION: This notice does not effect the public hearing dates as noted in the previous notice issued December 23, 1994, (59 FR 66414). All other aspects of this rulemaking remains the same.

Dated: February 15, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–4469 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5159]

Ecological Risk Assessment Issue Paper Reports

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of two reports on ecological risk assessment. An EPA Risk Assessment Forum report entitled "Ecological Risk Assessment Issue Papers" (EPA/630/R–94/009) contains nine papers on topics relevant to ecological risk assessment as described in EPA's "Framework for Ecological Risk Assessment" (EPA/630/R–92/001). The issue papers were peer reviewed at a workshop in August 1994. Workshop comments are contained in the report "Peer Review Workshop Report on Ecological Risk Assessment Issue Papers" (EPA/630/R–94/008), along with identification of cross-cutting issues, future research needs, and suggestions for possible structures for a future EPA ecological risk assessment guideline. Both reports provide useful source materials of EPA's first Agency-wide ecological risk assessment guideline.

ADDRESSES: To obtain a single copy of either report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, FACS: (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA number.

FOR FURTHER INFORMATION CONTACT: Dr. William van der Schalie, U.S. Environmental Protection Agency (8101), 401 M Street, S.W., Washington, DC, 20460, Telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: The nine issue papers in the report "Ecological Risk Assessment Issue Papers" (EPA/630/R–94/009) are part of a long-term effort to develop an Agency-wide ecological risk assessment guideline for EPA. Preliminary work on the guideline began in 1989 and has resulted in the publication of an ecological risk assessment Framework Report and two volumes of ecological assessment case studies. The issue papers, which were authored by experts outside of EPA, are the next step in the guideline development process. Many of the issue paper topics correspond directly to sections of EPA's ecological risk assessment framework (conceptual model development, characterization of exposure, effects characterization, and risk integration methods), while other focus on cross-cutting issues (ecological significance, biological stressors, ecological recovery, uncertainty, and ascertaining public values in ecological risk assessment).

The issue papers were peer reviewed at a workshop in August 1994. The report from this workshop, "Peer Review Workshop Report on Ecological Risk Assessment Issue Papers" (EPA/630/R–94/008), includes recommendations for revising the draft issue papers, identification of cross-cutting issues and future research needs, and suggestions for possible structures for a future EPA ecological risk assessment guideline. The issue papers were revised prior to publication based on workshop discussions.

The issue paper set, along with the Framework Report, case studies, and other materials, provide scientific and technical information that will help bridge the gap between the preliminary Framework Report and the first Agency-wide ecological risk assessment guideline document now being written.

Dated: January 24, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–4470 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–400091; FRL–4936–6]

Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements; Notice of Federal Facility Workshops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a series of 3–day workshops for Federal agencies' personnel on the requirements of Presidential Executive Order (EO) 12856 "Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements." The workshop is targeted at all Federal agency personnel responsible for compliance with the provisions of EO 12856. It consists of a series of presentations covering the requirements of EO 12856 and the applicable sections of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act. After an overview of EO 12856 and EPCRA section 302–312 provisions, the course focuses on the EPCRA section 313 Toxic Chemical Release Inventory (TRI). A variety of hands-on exercises using the TRI reporting Form R and associated guidance materials are used to help participants understand the TRI reporting process.

DATES: The Federal facility workshops will be held on the following dates in the following locations:

March 15–17, 1995, in Arlington, VA
March 21–23, 1995, in Atlanta, GA
April 4–6, 1995, in Dallas, TX
April 10–13, 1995, in Denver, CO
April 18–20, 1995, in Seattle, WA
April 25–27, 1995, in Kansas City, KS
May 2–4, 1995, in Boston, MA
May 8–10, 1995, in San Francisco, CA
May 16–18, 1995, in Edison, NJ
May 23–25, 1995, in Chicago, IL

FOR FURTHER INFORMATION CONTACT: Eileen Fesco, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–218–2709, Fax: 703–934–9740. The Agency continues to provide training, known as Train-the-Trainer courses to private sector industries covered under EPCRA section 313. For information on these trainings in your area, contact the EPCRA Information Hotline (5101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 1–800–535–0202.

SUPPLEMENTARY INFORMATION: Registration will be taken on a first-come-first-served basis until 2 weeks prior to the start of each workshop. Persons who should consider attending are Federal facility staff responsible for implementing Executive Order 12856 and consulting firms who may be advising Federal facilities on EPCRA compliance. There is limited space available for each workshop. To register, contact by either telephone, fax, or in writing, the person listed under **FOR FURTHER INFORMATION CONTACT.** Notification will be sent to each applicant regarding their acceptance for the training session. There is no registration fee for this training. If there is insufficient interest in any of the workshops, they may be canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or hotel accommodation reservations.

List of Subjects

Environmental protection.

Dated: February 15, 1995.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–4474 Filed 2–22–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

February 9, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0496.

Title: ARMIS Operating Data Report, FCC Report 43–08.

Expiration Date: 11/30/97.

Estimated Annual Burden: 8,000 total annual hours; 160 hours per response.

Description: ARMIS Operating Data Report, FCC Report 43–08, is one of several reports comprising the automated reporting system. It is an annual report which consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability. The information contained in the automated reports provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0438.

Title: Transmittal Sheet for Cellular Applications for Unserved Areas, FCC Form 464.

Expiration Date: 11/30/97.

Estimated Annual Burden: 3,320 Total annual hours; .166 (10 minutes) hours per response.

Description: FCC Form 464 is designed to facilitate application intake and other processing functions by serving as a cover sheet to the application. The applicant must certify on the form that the application is complete in every respect and contains all the information required by the Commission's cellular rules. The information is used by the Commission to determine whether the applicant is qualified legally, technical, and financially to be licensed as a cellular operator. FCC Form 464 has been updated to reflect the new expiration date. The January 1995 edition of the form is available for public use. The previous edition of the form (10/94) is acceptable until further notice.

OMB Control No.: 3060–0484.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions—Section 63.100.

Expiration Date: 06/30/96.

Estimated Annual Burden: 1040 total annual hours; 5 hours per response.

Description: In the *Second Report and Order*, in CC Docket No. 91–273, released August 1, 1994, the Commission amended 47 CFR Section 63.100 to expand the present telephone service outage reporting requirements. The reporting requirements provide the Commission with a systematic means for receiving prompt notice and allow the Commission to perform detailed analysis of significant telecommunications service outages. The amendments will improve the Commission's ability to monitor the reliability of the telephone networks locally, regionally and nationally. The Commission will also be able to determine whether carriers are aware of and are implementing recommended industry "best practices" applicable to outages experienced by their networks, the extent to which these best practices are effective in reducing telephone service outages and whether any additional best practices need to be formulated.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–4390 Filed 2–22–95; 8:45 am]
BILLING CODE 6712–01–F

[WT Docket No. 95–11; DA 95–171]

Designation of Amateur License Renewal Application for Hearing

AGENCY: Federal Communications Commission.
ACTION: Hearing designation order.

SUMMARY: This Order designates the application of Herbert L. Schoenbohm to renew his amateur radio station license (KV4FZ) and his Amateur Extra Class operator license for hearing on the basis of a criminal conviction.

FOR FURTHER INFORMATION CONTACT: Thomas D. Fitz-Gibbon, Enforcement Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 418–0693.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Order adopted February 6, 1995, and released February 15, 1995. The complete text of this Order may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

2. The Order asserted that Mr. Herbert L. Schoenbohm has applied for renewal of his amateur service station and operator licenses.

3. The Order asserted further that, in *Government v. Schoenbohm*, No. Crim: 1991/0108 (D.V.I. Dec. 30, 1992), Mr. Schoenbohm was convicted in the U.S. District Court for the District of the Virgin Islands (District Court) of violating 18 U.S.C. § 1029(a)91) (fraudulent use of counterfeit access device); and that, on appeal, the U.S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction. *United States v. Schoenbohm*, No. 93–7516 (Third Circuit July 22, 1994).

4. The Order alleged that, in view of the criminal conviction described above, Mr. Schoenbohm apparently lacks the requisite qualifications for a renewal of his amateur service licensee.

5. The Order designated Mr. Schoenbohm's application for hearing before an Administrative Law Judge and at a time and location determined by the order of the Chief Administrative Law Judge released on February 2, 1995, upon the following issues:

(a) To determine whether, in light of the conviction described above, Herbert L. Schoenbohm is qualified to renew his amateur service licenses.

(b) To determine, in light of the foregoing issue, whether granting Herbert L. Schoenbohm's application would serve the public interest, convenience and necessity.

6. The Order placed the burden of proceeding with the introduction of evidence and the burden of proof upon the respondent as to all issues.

Federal Communications Commission.
Robert H. McNamara,
Acting Chief, Private Radio Division.
[FR Doc. 95–4386 Filed 2–22–95; 8:45 am]
BILLING CODE 6712–01–M

Addendum to Report 2051, Released 1/13/95; Additional Petition for Reconsideration of Action in Rulemaking Proceeding: MM Docket No. 92–266 and MM Docket No. 93–215

Date: February 15, 1995.

Engle Broadcasting has demonstrated that the following Petition for Reconsideration was timely filed at the FCC on January 5, 1995. Consequently, it should have appeared on Public Notice on January 13, 1995 with nine other timely filed Petitions for Reconsideration on MM Docket No. 92–266 and MM Docket No. 93–215. Since it was omitted from that public notice, a new filing period for Oppositions to this Petition for Reconsideration will be established.

This Petition for Reconsideration have been filed and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed on or before March 10, 1995. See Section 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section of The Cable Television Consumer Protection and Competition Act of 1992—Rate Regulations (MM Docket No. 92–266 and MM Docket No. 93–215).

Number of Petition Filed: 1

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–4329 Filed 2–22–95; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App.), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue Response System.
Date of Meeting: March 17, 1995.
Place: Fair Oaks Holiday Inn, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.
Time: 8:30 a.m.–5 p.m.
Proposed Agenda: The committee will be briefed on the program update, disaster activities, strategic plan, equipment cache, task force activation rotational schedule, additional task force positions, and restructuring of the Advisory Committee. An ethics briefing will also occur.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Mark Russo at 202–646–2701.

Minutes of the meeting will be prepared and will be available for public viewing at the Federal Emergency Management Agency, Operations Division, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 16, 1995.

Richard W. Krimm,
Associate Director, Response & Recovery Directorate.
[FR Doc. 95–4413 Filed 2–22–95; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Stine Family Partnership; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stine Family Partnership, Grand Island, Nebraska; to become a bank holding company by acquiring 57.58 percent of the voting shares of United Nebraska Financial Co., Grand Island, Nebraska, and thereby indirectly acquire United Nebraska Bank, Grand Island, Nebraska.

In connection with this application, Applicant also has also applied to acquire Burwell Insurance Agency, Inc., Burwell, Nebraska, which is an existing subsidiary of United Nebraska Financial Co., and thereby engage in acting as agent for the sale of general insurance in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-4352 Filed 2-22-95; 8:45 am]
BILLING CODE 6210-01-F

Old Second Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Second Bancorp, Inc., Aurora, Illinois; to acquire 100 percent of the voting shares of Bank of Sugar Grove, Sugar Grove, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Golden Bancshares, Inc., Golden, Illinois; to acquire 100 percent of the voting shares of Maurice L. Quinn Properties, Inc., Northbrook, Illinois, and thereby indirectly acquire Brown County State Bank, Mount Sterling, Illinois.

2. Lima Bancshares, Inc., Lima, Illinois; to acquire at least 81.11 percent of the voting shares of Wemple State Bank, Waverly, Illinois.

3. NC Bancorp, Inc., Shepherdsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Nelson County Banking Company, Bardstown, Kentucky, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Star Valley State Bank, Inc., Afton, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Star Valley State Bank, Afton, Wyoming (in organization).

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Farmington Bancorp, Seattle, Washington, and Farmington Finance Corporation, Hong Kong; to become bank holding companies by acquiring 100 percent of the voting shares of Farmington Finance State Bank, Farmington, Washington.

Board of Governors of the Federal Reserve System, February 16, 1995.
William W. Wiles,
Secretary of the Board.
[FR Doc. 95-4351 Filed 2-22-95; 8:45 am]
BILLING CODE 6210-01-F

Marshall & Ilsley Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

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conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall & Ilsley, Milwaukee, Wisconsin; to acquire a 50 percent interest in a newly formed company and thereby engage *de novo* in the marketing of data processing and transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4350 Filed 2-22-95; 8:45 am]

BILLING CODE 6210-01-F

Fifth Third Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 8, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Falls Financial, Inc., Cuyahoga, Falls, Ohio, and indirectly acquire Falls Savings Bank, FSB, Cuyahoga, Falls, Ohio, and thereby engage in operating a savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to acquire Citizens National Life Insurance Corporation, Tell City, Indiana, and thereby engage in underwriting credit life, accident and health insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its subsidiary Norwest Mortgage, Inc. Des Moines, Iowa, the mortgage servicing rights from Barclays American/Mortgage Corporation, Charlotte, North Carolina, and thereby engage in mortgage servicing activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4349 Filed 2-22-95; 8:45 am]

BILLING CODE 6210-01-F

Swiss Bank Corporation, Basel, Switzerland; Application to Engage in Nonbanking Activities

Swiss Bank Corporation, Basel, Switzerland (Applicant) has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) (BHC Act) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire and retain indirect ownership, control and power to vote up to 100 percent of the voting shares of Brinson Partners, Inc. (Brinson Partners) and Brinson Trust Company (Brinson Trust) and to thereby to engage in the following nonbanking activities: (1) providing investment and financial advisory services; (2) providing investment advice to nonaffiliated persons with respect to (A) the purchase and sale of financial futures contracts and options on such futures contracts as set forth in 12 CFR 225.25(b)(19), and (B) the purchase and sale of those futures contracts and options on futures contracts based on bonds, interest rates and stock and bond indexes that the Board has approved previously; and (3) providing trust company services. Applicant proposes to provide investment advice to clients directly and through limited partnerships, for which Brinson Partners would act as investment advisor and in some cases as general partner.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, determines by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory standard requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form.

National Courier Ass'n v. Board of Governors, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has previously approved, by regulation, providing investment and financial advisory services, 12 CFR 225.25(b)(4)(i)-(v) and (vi)(A)(1) and (2), providing investment advice to non-affiliated persons with respect to the purchase and sale of financial futures contracts and options on such futures contracts, 12 CFR 225.25(b)(19) and trust services, 12 CFR 225.25(b)(3). Applicant has stated that it would conduct these proposed activities subject to the requirements and limitations of the Board's Regulation Y.

The Board also has previously determined by order that the provision of investment advisory services with respect to financial futures and options on futures contracts on bonds, interest rates and stock and bond indexes is a permissible activity pursuant to Section 4(c)(8) of the BHC Act. *See* SR 93-27; *National Westminster Bank PLC*, 78 Federal Reserve Bulletin 953 (1992); *Manufacturers Hanover Corporation*, 76 Federal Reserve Bulletin 774 (1990); and *The HongKong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990). The Board has also approved the providing of investment advice through limited partnerships. *See Meridian Bancorporation*, 80 Federal Reserve Bulletin 736 (1994). Applicant proposes to comply with commitments similar to those relied on by the Board in *Meridian*, but seeks, in the alternative, a determination that Brinson Partners does not control the limited partnerships for purposes of the Bank Holding Company Act, or, if it is deemed to control the partnerships, "grandfather" treatment for four existing limited partnerships that Brinson Partners serves as general partner.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by providing access by customers of Applicant to the institutional asset management experience and expertise of Brinson Partners and by permitting Applicant to draw on such experience and expertise to enhance its investment advisory products and services. Applicant believes that competition will be fostered by enhancing the ability of Applicant to compete in the asset management arena with sophisticated competitors as a result of the combination of Applicant's existing institutional asset management business with that of Brinson Partners and Brinson Trust. Applicant further believes that the proposal will not result in adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 8, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 16, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4348 Filed 2-22-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 013095 AND 021095

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Foothill Group, Inc., Norfolk Shipbuilding & Drydock Corporation, Flagship Financial Corporation	95-0835	01/30/95
Cilluffo Associates, L.P., Stone & Webster, Incorporated, Stone & Webster, Incorporated,	95-0795	01/31/95
Cilluffo Associates, L.P., GRC International, Inc., GRC International, Inc.	95-0796	01/31/95
AT&T Corp., GFC Financial Corporation Greyhound Financial Corporation	95-0881	01/31/95
BASF Aktiengeseilschaft, The Boots Company, The Boots Company (USA) Inc.	95-0830	02/01/95
Value Health, Inc., Group Hospitalization and Medical Services, Inc., Health Management Strategies International, Inc.	95-0832	02/01/95
Sears, Roebuck and Co., Federated Department Stories, Inc., Stern's Department Stores, Inc.	95-0834	02/01/95
E. I. DuPont de Nemours and Company, Amoco Corporation, Amoco Production Company	95-0859	02/01/95
Amoco Corporation, E. I. DuPont de Nemours and Company, Conoco, Inc.	95-0860	02/01/95
Kidd, Kamm Equity Partners, L.P., Irving and Audrey Gronsky, Bristol Foods, Inc.	95-0896	02/01/95

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 013095 AND 021095—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Harbour Group Investments III, L.P., DelCorp Incorporated, DelCorp Incorporated	95-0901	02/01/95
Penn Virginia Corporation, United Meridian Corporation, UMC Petroleum Corporation	95-0903	02/01/95
Philipp Holzmann, A.G., Costain Group PLC, The Dolet Hills Mining Venture	95-0905	02/01/95
North Shore Regional, Health System, Huntington Hospital, Huntington Hospital	95-0822	02/03/95
Archer-Daniels-Midland Company, Archer-Daniels—Midland Company, Independent Soy Processors Company	95-0895	02/03/95
USF&G Corporation, Victoria Financial Corporation, Victoria Financial Corporation	95-0897	02/03/95
La-Z Boy Chair Company, England/Corsair, Inc., England/Corsair, Inc.	95-0912	02/03/95
Siemens Aktiengesellschaft, Pyramid Technology Corporation, Pyramid Technology Corporation	95-0913	02/03/95
Corporate Express, Inc., G. Lynn Shostack, Joyce International, Inc.	95-0926	02/03/95
HBE Corporation, Barclays PLC, Pawnee-Daytona Inc.	95-0965	02/03/95
Logicon, Inc., Harnischfeger Industries, Inc., Syscon Corporation	95-0920	02/06/95
Corning Incorporated, Corning BioPro Inc., Corning BioPro Inc	95-0928	02/06/95
United Healthcare Corporation, Luis A. Salgado Torres, Group Sales and Service of Puerto Rico, Inc.	95-0958	02/06/95
Molex Incorporated, Mod-Tap W Corp., Mod-Tap W Corp.	95-0886	02/07/95
Alma Energy Corp., Unocal Corporation, Union Oil Company of California	95-0932	02/07/95
The Horne Family Voting Trust, Anderson Family Trust, Anderson-Barrows Metals Corporation	95-0943	02/07/95
Pharmacia AB, Ms. Jacqueline Hoefer, Hoefer Scientific Instruments	95-0756	02/09/95
Mallinckrodt Group Inc., The Procter & Gamble Company, J. T. Baker Inc.	95-0737	02/10/95
Coats Viyella Plc, BACE Manufacturing, Inc., BACE Manufacturing, Inc.	95-0918	02/10/95
Ronald O. Perelman, Abex Inc., Abex Inc.	95-0929	02/10/95
The News Corporation Limited, SCS Communications, Inc., Westview Press, Inc.	95-0944	02/10/95
Ashland Oil, Inc., Mr. Ira L. Morris and Mrs. Betty Sue Morris, Waco Oil & Gas Co., Inc.	95-0949	02/10/95
Vincent J. Ryan, James F. Knott, National Business Archives, Inc.	95-0955	02/10/95
VIAG AG, AmeriQuest Technologies, Inc., AmeriQuest Technologies, Inc.	95-0956	02/10/95
Beverly Enterprises, Inc., Pharmacy Management Services, Inc., Pharmacy Management Services, Inc.	95-0960	02/10/95
Pennzoil Company, Limited Liability Company, Limited Liability Company	95-0961	02/10/95
The Brooklyn Union Gas Company, Limited Liability Company, Limited Liability Company	95-0962	02/10/95
Phillips-Van Heusen Corporation, Crystal Brands, Inc. (Debtor-In-Possession), Crystal Brands, Inc. (Debtor-In-Possession)	95-0963	02/10/95
Precision Castparts Corp., Columbus II Limited Partnership, Quamco, Inc.	95-0970	02/10/95
William Herbert Hunt Trust Estate, Texaco Inc., Texaco Exploration and Production Inc.	95-0978	02/10/95
National Gaming Corp., Part-A-Dice Gaming Corporation, Par-A-Dice Gaming Corporation	95-0980	02/10/95
Sonat Inc., Hardy Oil & Gas PLC (a Britishcompany), Hardy Holdings, Inc.	95-0993	02/10/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-4396 Filed 2-22-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Draft U.S. Public Health Service Recommendations for HIV Counseling and Testing for Pregnant Women

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability for review and comment of a draft document entitled "U.S. Public Health Service Recommendations for HIV Counseling and Testing for Pregnant Women." The document was prepared by CDC staff in collaboration with other internal PHS and external consultants.

DATES: To ensure consideration, written comments on this draft document must be received on or before April 10, 1995.

ADDRESSES: Requests for copies of the draft recommendations must be submitted to the CDC National AIDS Clearinghouse, P.O. Box 6003, Rockville, MD 20849-6003, telephone (800) 458-5231. Written comments on the draft document should be sent by mail or facsimile to the Technical Information Activity, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Mailstop E-49, 1600 Clifton Road, NE., Atlanta, GA 30333, facsimile (404) 639-2007, for receipt by April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Technical Information Activity, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Mailstop E-49, Atlanta, GA 30333.

SUPPLEMENTARY INFORMATION: In February 1994, the National Institutes of Health announced interim results from AIDS Clinical Trial Group (ACTG) protocol 076 indicating that zidovudine (ZDV) therapy administered to a select group of HIV-infected pregnant women and their newborns reduced the risk of perinatal HIV transmission by approximately two thirds. In April 1994, provisional recommendations for the use of ZDV therapy in HIV-infected pregnant women and their newborns were published. In June 1994, representatives from Federal and nonfederal health agencies and other organizations attended a meeting in Bethesda, Maryland, to discuss development of U.S. Public Health Service recommendations to prevent perinatal HIV transmission and the implications of those recommendations for HIV treatment, counseling, and HIV testing. In August 1994, the U.S. Public Health Service published recommendations for ZDV therapy to reduce the risk of perinatal transmission of HIV (also available from the CDC National AIDS Clearinghouse, telephone (800) 458-5231).

The draft recommendations for HIV counseling and voluntary testing for pregnant women have been developed to provide a framework to enable pregnant women to know their HIV infection status; advise HIV-infected pregnant women of ways to prevent perinatal, sexual, and other transmission of HIV; facilitate appropriate follow up for HIV-infected women and their infants; and assist uninfected pregnant women in identifying methods to reduce their risk of acquiring HIV infection.

Dated: February 15, 1995.

Jack Jackson,

Acting Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95-4368 Filed 2-22-95; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 88N-0319]

Home Specimen Collection Kit Systems Intended for Human Immunodeficiency Virus (HIV-1 and/or HIV-2) Antibody Testing; Revisions to Previous Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising its previous guidance for the approval of home specimen collection kit systems intended for the detection of antibodies to Human Immunodeficiency Virus type 1 (HIV-1), that was published in the **Federal Register** of February 17, 1989, and July 30, 1990.

DATES: Submit written comments by April 10, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary Gustafson, Center for Biologics Evaluation and Research (HFM-370), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-2012.

SUPPLEMENTARY INFORMATION:

I. Background

FDA announced in the **Federal Register** of February 17, 1989 (54 FR 7279), the scheduling of an open public meeting and invited written comments on blood collection kits and home test kits designed to detect HIV-1 antibody. The document listed five factors that the agency was applying to the review of applications for premarket approval of blood collection kits labeled for HIV-1 antibody testing. At that time, FDA believed that blood collection kits labeled for HIV-related testing should be restricted to professional use in a health care environment. On April 6, 1989, FDA held an open public meeting to obtain comments on the issues related to applications for premarket approval of blood collection kits labeled for HIV-1 antibody testing. Comments also were solicited on kits for home collection and home testing of blood for evidence of HIV-1 infection.

In the **Federal Register** of July 30, 1990 (55 FR 30982), FDA announced the availability of a letter to firms and individuals who previously had asked FDA about the potential marketing of blood collection kits labeled for HIV-1 testing. In that document, which included the full text of the letter, FDA indicated its willingness to accept investigational device exemptions (IDE's) and to review applications for blood collection kits for HIV-1 testing intended for home use, but did not revise the list of factors, previously set forth in the February 17, 1989, **Federal Register** (54 FR 7279) document, that the agency would consider in evaluating the safety and effectiveness of specimen collection kits.

In light of scientific and technological developments and the changing nature of the HIV epidemic, FDA announced in the **Federal Register** of June 9, 1994 (59 FR 29814), that the agenda for FDA's Blood Products Advisory Committee meeting, scheduled for June 21 and 22, 1994, would include a discussion of issues related to home specimen collection kits labeled for HIV antibody testing, and that the discussion would reexamine FDA's approach to evaluating the safety and effectiveness of such kits. More than 60 members of the public, including potential product sponsors, academicians, physicians, clergy, HIV counselors, and representatives of various interest groups, made public presentations before the Blood Products Advisory Committee prior to the committee's discussion of these issues. Most of the advisory committee members believed that the potential benefits of over-the-counter (OTC) home specimen collection kits outweighed the potential risks.

II. The Revision

In this document, FDA is revising the previous guidance for blood sample collection kits labeled for HIV antibody testing set forth in the February 17, 1989, **Federal Register** document and in the July 30, 1990, **Federal Register** document. This revised guidance addresses only OTC products intended for the home collection of specimens (including blood and non-blood based specimens) for HIV antibody testing (including HIV-1 and/or HIV-2), and supersedes prior guidance about such home specimen collection kits. This revised guidance does not address professional use specimen collection kits for HIV testing or kits for home testing of specimens for evidence of HIV infection.

After significant consideration, including discussion at two public meetings, FDA has concluded that OTC home specimen collection kit system for HIV testing may be approvable. Each premarket approval application (PMA) for an OTC home specimen collection kit system labeled for HIV-1 and/or HIV-2 antibody testing will be evaluated for safety and effectiveness based on the proposed intended use. In general, sponsors should include information on the following points:

(1) Appropriate preclinical studies and clinical trials conducted under an approved IDE should validate all technical aspects of the home specimen collection and testing system and demonstrate the reproducibility, sensitivity, and specificity of test results in comparison with an approved, professional use system for the collection and testing of blood or any other appropriately validated specimen. Field trials should be conducted in a population likely to resemble the intended market for the collection kit. Lay comprehension of the instructions and educational materials, the ability of individual consumers to accurately identify whether the test is applicable to them, adequacy of home collection and shipment of the specimen by consumers, the adequacy of pretest and post-test counseling, and the ability of consumers to take appropriate followup action when indicated should be addressed. Safe handling and transport of the specimen and safe disposal of potentially hazardous materials also should be demonstrated. Sponsors additionally should document adequate quality assurance related to product manufacture, testing of the specimen (including laboratory proficiency controls) in a laboratory that is in compliance with the Clinical Laboratories Improvement Act of 1988 (CLIA), maintenance of test records, and a system for reporting of adverse events or device failures.

(2) The testing for all specimens collected using the home specimen collection kits should include the use of

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a licensed screening test for HIV–1 and/or HIV–2 antibodies and, for those specimens testing repeatedly reactive by the screening test, the use of a licensed, more specific test (e.g., Western blot, immunofluorescence assay, or comparable test). Both the screening and confirmatory tests should be validated and labeled for use on the particular home specimen collection kit system specimens.

(3) Results of testing should be reported to test subjects by persons appropriately trained in HIV notification and counseling. Counseling of persons with confirmed positive test results should include referral to medical and social support services in the area where the person lives.

(4) The sponsor should also consider the gathering and reporting of demographic data as appropriate. In addition, the sponsor should discuss proposals for appropriate postmarketing studies to assess the public health impact of OTC home specimen collection kit systems for HIV testing.

FDA approval of a PMA would be based upon a finding that information and data submitted in the PMA demonstrate the safety and effectiveness of the home specimen collection kit system (including counseling), and that facility inspections (including any dedicated testing and counseling sites) demonstrate compliance with current good manufacturing practices for medical devices.

This document represents current agency guidance on OTC products intended for the home collection of specimens (including blood and non-blood based specimens) for HIV antibody testing. Other guidance may be developed over time in response to developing technology, public health concerns, consumer preferences, and product submissions.

A manufacturer who wishes to pursue the marketing of a home specimen collection kit system for HIV–1 and/or HIV–2 antibody testing is invited to consult with FDA about the information that should be included in the IDE and PMA submissions. For further information contact Mary Gustafson, Director, Division of Blood Applications, Center for Biologics Evaluation and Research, FDA, at 301–594–2012.

III. Request for Comments

Interested persons may, on or before April 10, 1995, submit to the Dockets Management Branch (address above) written comments regarding the modifications to this guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–4465 Filed 2–22–95; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of General Medical Sciences, Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Pharmacology.
Date: March 7.
Time: 9:30 a.m.—adjournment.
Place: Sheraton International Airport Hotel, Baltimore-Washington Airport, Baltimore, MD 20805.
Contact Person: Dr. Helen Sunshine, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS-13F, Bethesda, MD 20892-6200.
Purpose: To review and evaluate grant applications.

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Chemistry.
Date: March 8.
Time: 8:30 a.m.—adjournment.
Place: Plaza Hotel and Conference Center, 1900 E. Speedway Blvd., Tucson, AZ 85719.
Contact Person: Dr. Arthur Zachary, Scientific Review Administrator, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892–6200.
Purpose: To review and evaluate grant applications.

Committee Name: National Institute of General Medical Sciences, Special Emphasis Panel—Pharmacology.
Date: March 11.
Time: 7 a.m.—adjournment.
Place: Radisson Hotel, Clayton, 7750 Carondelet, Clayton, MO 63105.
Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200.
Purpose: To review and evaluate grant applications.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel—Trauma and Burn.
Date: March 14.
Time: 9:30 a.m.—adjournment.
Place: Hyatt Regency Hotel, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Dr. Bruce Wetzel, Scientific Review Administrator, 45 Center Drive, Room 1AS–19K, Bethesda, MD 20892–6200.
Purpose: To review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4339 Filed 12–22–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: March 15–16, 1995.
Time: 9:00 a.m.
Place: Renaissance Hotel, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Ave., Room 319C, Bethesda, MD 20892, (301) 594–7358

Purpose/Agenda: To review individual grant applications.
Name of SEP: Microbiological and Immunological Sciences.
Date: March 8, 1995.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 403D, Telephone Conference.
Contact Person: Dr. Howard Berman, Scientific Review Administrator, 5333 Westbard Ave., Room 403D, Bethesda, MD 20892, (301) 594–7234.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 9, 1995.
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room 403D, Telephone Conference.

Contact Person: Dr. Howard Berman, Scientific Review Administrator, 5333 Westbard Ave., Room 403D, Bethesda, MD 20892, (301) 594–7234.

Name of SEP: Clinical Sciences.
Date: March 20, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

Name of SEP: Clinical Sciences.
Date: March 21, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594–7130.

Name of SEP: Chemistry and Related Sciences.
Date: March 21, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 335, Telephone Conference.
Contact Person: Dr. Edward Zapolski, Scientific Review Admin., 5333 Westbard Ave., Room 335, Bethesda, MD 20892, (301) 594–7302.

Name of SEP: Clinical Sciences.
Date: March 22, 1995
Time: 8:30 a.m.,
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 5333 Westbard Ave., Room 219C, Bethesda, MD 20892, (301) 594–7130.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 94.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4338 Filed 2–22–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 28, 1995 at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6.

This meeting will be open to the public on March 28, 1995 from 8 a.m. to approximately 5 p.m. The topic will be: The Human Genome Project.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301–496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4A34, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4337 Filed 2–22–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: March 8, 1995.
Time: 8:30 a.m.
Place: OMNI Shoreham Hotel, Washington, DC.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7257.

Name of SEP: Biological and Physiological Sciences.
Date: March 9, 1995.
Time: 2:30 p.m.
Place: NIH, Westwood Building, Room 418A, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 418A, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Multidisciplinary Sciences.
Date: March 9, 1995.
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 2A11, Telephone Conference.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 5333 Westbard Ave., Room 2A11, Bethesda, MD 20892, (301) 594–7276.

Name of SEP: Behavioral and Neurosciences.
Date: March 14, 1995.
Time: 12:30 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Admin., 5333 Westbard Ave., Room 321, Bethesda, MD 20892, (301) 594–7245.

Name of SEP: Clinical Sciences.
Date: March 16, 1995.
Time: 8:30 a.m.
Place: NIH, Westwood Building, Room 203B, Telephone Conference.
Contact Person: Dr. H. M. Stiles, Scientific Review Administrator, 5333 Westbard Ave., Room 203B, Bethesda, MD 20892, (301) 594–7194.

Name of SEP: Biological and Physiological Sciences.
Date: March 22, 1995.
Time: 2:30 p.m.
Place: NIH, Westwood Building, Room 349, Telephone Conference.
Contact Person: Dr. Everett Sinnett, Scientific Review Admin., 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7220.

Name of SEP: Microbiological and Immunological Sciences.
Date: March 27, 1995.
Time: 2:00 p.m.
Place: NIH, Westwood Building, Room 238, Telephone Conference.
Contact Person: Dr. Martin Slater, Scientific Review Admin., 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

Name of SEP: Biological and Physiological Sciences.
Date: March 28, 1995.
Time: 10:00 a.m.
Place: NIH, Westwood Building, Room 349, Telephone Conference.
Contact Person: Dr. Everett Sinnett, Scientific Review Admin., 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7220.

Name of SEP: Chemistry and Related Sciences.
Date: March 28, 1995.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 349, Telephone Conference.
Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7166.

Name of SEP: Multidisciplinary Sciences.
Date: April 6–7, 1995.
Time: 9:00 a.m.
Place: Marriott Hotel, Dulles, VA.
Contact Person: Dr. Harish Chopra, Scientific Review Admin., 5333 Westbard Ave., Room 2A18A, Bethesda, MD 20892, (301) 594–7342.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 11, 1995.
Time: 10:00 a.m.

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Place: NIH, Westwood Building, Room 353, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Admin., 5333 Westbard Ave., Room 353, Bethesda, MD 20892, (301) 594–7338.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–4336 Filed 2–22–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Notice of Meeting

Notice is hereby given of a meeting of the *Ad Hoc* Review Committee for the Recombinant DNA Advisory Committee on March 8, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines.* In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 95–4335 Filed 2–22–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Friday, March 10, 1995, 8:30 a.m. to 5:00 p.m. and Saturday, March 11, 1995, 9:00 a.m. to 12:00 noon.

ADDRESSES: The National Rural Electric Cooperative Association (NRECA), 1800 Massachusetts Avenue, NW, Washington, DC 20036, (202) 857–9500.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Room 624D, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; By telephone—(202) 205–4861; By telefax—(202) 205–4879.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27 (60 FR 3416) and February 10–11 (60 FR 5433).

II. Agenda

The following topics will be presented and discussed:

- Report on Trends and Issues in Retirement Saving;
- Report on Assumptions and Methods used in projecting the financial status of the Social Security Trust Funds;
- Alternative measures for taxing Social Security Benefits;
- Outline of options/issues relating to mandatory/voluntary "second pillar" arrangements; and
- Overview of tax policy issues affecting voluntary retirement saving.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council. (Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: February 13, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–4397 Filed 2–22–95; 8:45 am]

BILLING CODE 4190–29–P

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces Public Meetings to be held by the 1994–95 Advisory Council on Social Security (the Council).

DATES: Wednesday, March 8, 1995, 9:00 a.m. to 5:00 p.m. and Thursday, March 9, 1995, 9:00 a.m. to 5:00 p.m.

ADDRESSES: The National Rural Electric Cooperative Association (NRECA), 1800 Massachusetts Avenue, NW, Washington, DC, 20036, (202) 857–9500.

FOR FURTHER INFORMATION CONTACT: By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Room 624D, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; By telephone—(202) 205–4861; By telefax—(202) 205–4879.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January 27 (60 FR 3416) and February 10–11 (60 FR 5433).

II. Agenda

The Council will consider views and comments from the public on the following subjects:

- Achieving long-term stability in financing the Social Security program including possible increases in contribution rates;
- Changing the normal and early retirement ages and other approaches to lowering benefits;
- Ensuring adequate retirement income and determining the role of private pensions and savings; and
- Ensuring equitable treatment under Social Security for dependents, disabled, survivors as well as retirees.

The agenda items are subject to change as priorities dictate.

The meeting is open to the public to the extent that space is available. Public officials, representatives of professional and advocacy organizations, concerned citizens, and Social Security and SSI recipients may speak and submit written comments on the issues considered by the Council. Interpreter services for persons with hearing impairments will be provided.

In order to ensure that as many speakers as possible are given the opportunity to speak in the time allotted for public comment, each person will be limited to a maximum of 5 minutes. Because of the time limitations, individuals are requested to present comments in their order of importance. A written copy of comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of all of each speaker's concerns, we welcome written comments that provide a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Persons unable to attend the meeting also may submit written comments. Written comments will receive the same consideration as oral comments.

To request to speak, please telephone the Council at the information contact shown above, and provide the following: (1) Name; (2) business or residence address; (3) telephone or fax number (including area code) during normal working hours; and (4) capacity in which presentation will be made; i.e., public official, representative of an organization, or citizen. For planning purposes, we will appreciate receiving requests to speak 7 days before the date of the meeting.

A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council. (Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.) The transcript and all written submissions will become part of the record of these meetings.

Dated: February 13, 1995.

David C. Lindeman,

Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–4398 Filed 2–22–95; 8:45 am]

BILLING CODE 4190–29–P

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3889]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 14, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Deficiency Judgment Demand Letters
Office: Housing
Description Of The Need For The Information And Its Proposed Use: Debt Collections Letters are the initial and subsequent demand letters used by HUD to collect monies on delinquent property improvement and manufactured housing loans assigned to the Federal Government after the lender has exhaused its efforts and is submitting a claim for a loan reimbursement.
Form Number: None
Respondents: Individual or Households
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,258		1		1		1,258

Total Estimated Burden ours: 1,258
Status: Extension, no changes
Contact: Anne Baird-Bridges, HUD (202) 755–7570; Joseph F. Lackey, Jr., OMB (202) 395–7316.
Date: February 9, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Agreement to Avoid Judgment
Office: Housing
Description Of The Need For The Information And Its Proposed Use: Form HUD–56145 is used by HUD to obtain information on the debtor's ability to pay the debt in full; the ability to pay in installments; and/or justification for a compromise in given cases of Title I Home Improvement and Mobile Home Loans.
Form Number: HUD–56145
Respondents: Individual or Households
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56145	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258
Status: Extension, no changes
Contact: Anne Baird-Bridges, HUD (202) 755–7570; Joseph F. Lackey, Jr., OMB (202) 395–7316.
Date: February 9, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Repayment Agreement
Office: Housing
Description Of The Need For The Information And Its Proposed Use: Form HUD–56146 will be used by the debtor to indicate agreement to repay a HUD insured loan.
Form Number: HUD–56146
Respondents: Individuals or Households
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56147	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258
Status: Extension, no changes
Contact: Anne Baird-Bridges, HUD, (202) 755–7570; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Confession of Judgment Note
Office: Housing
Description Of The Need For The Information And Its Proposed Use: Adequate case maintenance is essential for establishing the legal debt. The Debt Servicing Representative obtains a written repayment agreement and the written agreement shall be accompanied by a Confession of Judgment Note (HUD–56147). These forms should be filed in the official case binder.
Form Number: HUD–56147
Respondents: Individuals or Households
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56147	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258
Status: Extension, no changes
Contact: Anne Baird-Bridges, HUD, (202) 755–7570; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1995.

[Docket No. R–95–1754; FR–3481–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collection the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 14, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (FR–3481)
Office: Housing
Description Of The Need For The Information And Its Proposed Use: Under P.L. 102–550, the Secretary of HUD must collect information to monitor performance under, and ensure accomplishment of Fannie Mae's and Freddie Mac's mortgage purchase activities and the collection of information related to the violations of the Fair Housing Act and Equal Credit Opportunity Act.
Form Number: None
Respondents: Businesses or Other For-Profit
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2		9.5		66		1,250

Total Estimated Burden Hours: 1,250
Status: New
Contact: Stephanie Smith, HUD (202) 708–0579; Joseph F. Lackey, Jr., OMB (202) 395–7316.
Date: February 14, 1995.

[FR Doc. 95–4363 Filed 2–22–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3737; FR–3659–N–03]

Public and Indian Housing Drug Elimination Program; Announcement of Funding Awards for FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA)

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for Public and Indian Housing Drug Elimination Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunication device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. [These are not toll-free telephone numbers.]

SUPPLEMENTARY INFORMATION: The Drug Elimination Program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by section 581 of the National Affordable Housing Act of 1990, (Pub. L. 101–625, approved November 28, 1990), and Section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

The Fiscal Year 1994 competition was announced in a NOFA published in the **Federal Register** on April 1, 1994 (59 FR 15575). The NOFA announced the availability of $231,978,631 for use in eliminating drug-related crime. Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names and addresses of the housing authorities which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 16, 1995

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS

Funding recipient (name and address)	Amount approved
Program Name: FY 1994 Public and Indian Housing Drug Elimination Program (PHDEP) Statute: Public Law 100–690, November 18, 1988	
Housing Authority of the City of Bridgeport, 150 Highland Ave., Bridgeport, CT 06604–3503	$732,250
Housing Authority of the City of Waterbury, 70 Lakewood Road, Waterbury, CT 06704–2498	224,400
Housing Authority of the City of Danbury, P.O. Box 86, Danbury, CT 06813–0086	121,200
Housing Authority of the Town of Stratford P.O. Box 344, Stratford, CT 06497–6911	119,100
Housing Authority of the City of Middletown, 40 Broad St., Middletown, CT 06457–3249	125,819
Housing Authority of the Town of Greenwich, P.O. Box 141, Greenwich, CT 06836–6620	93,000
Housing Authority of the City of Meriden, P.O. Box 911, Meriden, CT 06451	145,500
Housing Authority of the Town of East Hartford, 546 Burnside Ave., East Hartford, CT 06108	141,662
Housing Authority of the City of Norwalk, P.O. Box 508, Norwalk, CT 06854–0508	247,500
Housing Authority of the City of New Haven, P.O. Box 1912, New Haven, CT 06509	879,250
Housing Authority of the City of Ansonia, 75 Central Street, Ansonia, CT 06401–2042	80,700
Housing Authority of the City of Bristol, P.O. Box 918, Bristol, CT 06011–0918	165,900
Housing Authority of the City of Stamford, P.O. Box 1376, Stamford, CT 06904–1376	300,000
Housing Authority of the City of New Britain, 34 Marimac Rd., New Britain, CT 06053–2699	242,000
Housing Authority of the City of New London, P.O. Box 119, New London, CT 06320–0119	67,500
West Haven Housing Authority, 15 Glade St., West Haven, CT 06516–2607	175,378
Somerville Housing Authority, 30 Memorial Road, Somerville, MA 02145	131,100
Chelsea Housing Authority, 54 Locke Street Chelsea, MA 02150–2209	105,000
Worcester Housing Authority, 40 Belmont Street, Worcester, MA 01605	300,000
Taunton Housing Authority, 30 Olney Street, Taunton, MA 02780–4197	97,800
New Bedford Housing Authority, P.O. Box A–2081, New Bedford, MA 02741–2081	412,500
Lynn Housing Authority, 174 So. Common St., Lynn, MA 01905–2513	139,200
Gloucester Housing Authority, P.O. BOX 1599, Gloucester, MA 01931–1599	30,000
Springfield Housing Authority, P.O Box 1609, Springfield, MA 01101–1609	292,900
Lawrence Housing Authority, 353 Elm Street, Lawrence, MA 01842	300,000
Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139–3360	460,250
Fall River Housing Authority, P.O. Box 989, Fall River, MA 02722–0989	426,750
Brockton Housing Authority, P.O. Box 240, Brockton, MA 02403	240,600
Lowell Housing Authority, P.O. Box 60, Lowell, MA 01853–0060	414,450
Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302	3,113,500
Chicopee Housing Authority, 128 Meetinghouse Road, Chicopee, MA 01013–1896	81,872
Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101–4935	300,000
Dover Housing Authority, 62 Whittier Street, Dover, NH 03820–2994	137,400
Nashua Housing Authority, 101 Major Drive, Nashua, NH 03060–4783	198,600
Manchester Housing & Redevelopment Authority, 198 Hanover St., Manchester, NH 03104–6125	299,542
Providence Housing Authority, 100 Broad Street, Providence, RI 02903–4129	619,620
Pawtucket Housing Authority, 214 Roosevelt Ave., Pawtucket, RI 02862–1303	298,750
Woonsocket Housing Authority, 679 Social Street, Woonsocket, RI 02895–3251	300,000
Newport Housing Authority, One York Street, Newport, RI 02840–1212	300,000
Neptune Housing Authority, 1810 Alberta Ave., Neptune, NJ 07753–4817	103,500
Plainfield Housing Authority, 510 East Front Street, Plainfield, NJ 07060–1443	140,700
Perth Amboy Housing Authority, P.O. Box 390, Perth Amboy, NJ 08862–0390	226,200
North Bergen Housing Authority, 6121 Grand Ave., North Bergen, NJ 07047–5436	293,100
Millville Housing Authority, P.O. Box 803, 122 E. Main, Millville, NJ 08332–0803	141,000
Salem Housing Authority, 205 Seventh St., Salem, NJ 08079–1040	77,400
Hightstown Housing Authority, 131 Rogers Ave., Hightstown, NJ 08520–3725	30,000
Edison Housing Authority, Willard Dunham Drive, Edison, NJ 08837–3560	47,400

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
New Brunswick Housing Authority, P.O. Box 110, New Brunswick, NJ 08903–1368	168,300
Orange Housing Authority, 340 Thomas Blvd., Orange, NJ 07050–4121	158,700
Newark Housing Authority, 57 Sussex Ave., Newark, NJ 07103–3992	2,658,750
Asbury Park Housing Authority, 1000½ Third Ave., Asbury Park, NJ 07712–3847	176,100
Passaic Housing Authority, 333 Passaic Street, Passaic, NJ 07055–5896	207,300
Elizabeth Housing Authority, 688 Maple Ave., Elizabeth, NJ 07202–2690	417,250
Wildwood Housing Authority, P.O. Box 1379, Wildwood, NJ 08260–6135	51,000
Camden Housing Authority, 517 Market St., Camden, NJ 08102–1293	582,250
Atlantic City Housing Authority, P.O. Box 1258, Atlantic City, NJ 08404–7549	500,645
Trenton Housing Authority, 875 New Willow St., Trenton, NJ 08638–0000	473,500
Rahway Housing Authority, 165 East Grand Ave., Rahway, NJ 07065–5491	82,500
Carteret Housing Authority, 96 Roosevelt Ave., Carteret, NJ 07008–2490	75,600
West New York Housing Authority, 6100 Adams Street, West New York, NJ 07093–1537	212,400
Long Branch Housing Authority, P.O. Box 336, Long Branch, NJ 07740–0336	190,500
Jersey City Housing Authority, 400 U.S. Hwy. 1, Jersey City, NJ 07306–6731	938,430
Vineland Housing Authority, 191 Chestnut Avenue, Vineland, NJ 08360–5499	200,000
Glassboro Housing Authority, 737 Lincoln Blvd., Glassboro, NJ 08028–0563	54,000
Irvington Housing Authority, 624 Nye Ave., Irvington, NJ 07111–2302	202,200
East Orange Housing Authority, 160 Halsted St., East Orange, NJ 07018–4228	136,800
Paterson Housing Authority, 160 Ward St., Paterson, NJ 07505–1998	537,000
Bridgeton Housing Authority, 110 E. Commerce St., Bridgeton, NJ 08302–2606	135,000
Bayonne Housing Authority, 50 E. 21st Street, Bayonne, NJ 07002–3761	338,000
Woodbridge Housing Authority, 10 Bunns Lane, Woodbridge, NJ 07095–1726	167,100
Hoboken Housing Authority, 400 Harrison Street, Hoboken, NJ 07030–6299	336,250
Municipal Housing Authority of the City of Utica, 509 Second Street, Utica, NY 13501–2450	296,250
Niagara Falls Housing Authority, 744 Tenth Street, Niagara Falls, NY 14301–1852	261,300
Elmira Housing Authority, 346 Woodlawn Avenue, Elmira, NY 14901–1397	149,700
Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299	1,247,000
Troy Housing Authority, 1 Eddy's Lane, Troy, NY 12180–1498	313,750
Syracuse Municipal Housing Authority, 516 Burt Street, Syracuse, NY 13202–3999	617,750
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202–1637	434,500
Watervliet Housing Authority, 2400 Second Avenue, Watervliet, NY 12189–2746	91,800
Amsterdam Housing Authority, 52 Division Street, Amsterdam, NY 12010–4002	79,500
Municipal Housing Authority of Schenectady, 375 Broadway, Schenectady, NY 12305–2595	300,000
Rochester Housing Authority, 140 West Avenue, Rochester, NY 14611–2744	614,750
Municipal Housing Auth. for the City of Yonkers, P.O. Box 35, Yonkers, NY 10710–0035	637,750
New York City Housing Authority, 250 Broadway, New York, NY 10007–2516	38,827,377
Port Chester Housing Authority, P.O. Box 347, Port Chester, NY 10573–0347	102,000
Town of Hempstead Housing Authority, 760 Jerusalem Ave., Uniondale, NY 11553–2929	327,250
Kingston Housing Authority, 202 Flatbush Ave., Kingston, NY 12401–2630	39,300
Long Beach Housing Authority, 500 Centre Street, Long Beach, NY 11561–2099	113,000
Newburgh Housing Authority, P.O. Box 89, Newburgh, NY 12550–3601	40,500
Freeport Housing Authority, 3 Buffalo Ave., Freeport, NY 11520–4098	108,300
Poughkeepsie Housing Authority, P.O. Box 630, Poughkeepsie, NY 12601–0632	108,000
Greenburgh Housing Authority, 9 Maple Street, White Plains, NY 10603–2623	73,800
Monticello Housing Authority, 76 Evergreen Drive, Monticello, NY 12701–1630	29,400
Peekskill Housing Authority, 807 Main Street, Peekskill, NY 10566–2028	84,600
Village of Hempstead Housing Authority, 260 Clinton Street, Hempstead, NY 11550–5599	108,600
New Rochelle Municipal Housing Authority, 50 Sickles Avenue, New Rochelle, NY 10801–4029	162,900
D.C. Department of Public and Assisted Housing, 1133 N. Capitol St. NE., Washington, DC 20002–7599	2,872,000
Wilmington Housing Authority, 400 Walnut Street, Wilmington, DE 19801	645,000
Delaware State Housing Authority, 18 The Green, Dover, DE 19903	121,200
Dover Housing Authority, 1266–76 White Oak Rd., Dover, DE 19901–3437	75,240
Anne Arundel County Housing Authority, P.O. Box 817, Glen Burnie, MD 21060–2817	300,000
Housing Authority of the City of Annapolis, 1217 Madison Street, Annapolis, MD 21403	292,000
Housing Authority of Baltimore City, 400 East Fayette St., Baltimore, MD 21202	4,373,826
St. Michaels Housing Authority, P.O. Box 296, St. Michaels, MD 21663	22,500
Housing Authority of Frederick, 209 Madison Street, Frederick, MD 21701	136,800
Housing Opportunity Commission, Montgomery County, 10400 Detrick Avenue, Kensington, MD 20895	322,000
York Housing Authority, P.O. Box 1963, York, PA 17405	300,000
Reading Housing Authority, 400 Hancock Blvd., Reading, PA 19611	402,500
Wilkes-Barre Housing Authority, Lincoln Plaza, Wilkes-Barre, PA 18702–5198	250,000
Lancaster Housing Authority, 333 Church Street, Lancaster, PA 17602–4253	167,896
Harrisburg Housing Authority, P.O. Box 3461, Harrisburg, PA 17105–9713	433,500
Allentown Housing Authority, 1339 Allen Street, Allentown, PA 18102–2143	343,432
Bethlehem Housing Authority, 645 Main Street, Bethlehem, PA 18018–3845	300,000
Bucks County Housing Authority, P.O. Box 1329, Doylestown, PA 18901–0967	194,400
Chester Housing Authority, 1010 Madison Street, Chester, PA 19013–4210	426,750
Cumberland County Housing Authority, 114 N. Hanover St., Carlisle, PA 17013–2407	59,700
Pittsburgh Housing Authority, 200 Ross St., Pittsburgh, PA 15219–2068	1,974,280
Johnstown Housing Authority, P.O. Box 419, Johnstown, PA 15907	285,654

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APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Fayette County Housing Authority, P.O. Box 1007, Uniontown, PA 15401	418,500
Lawrence County Housing Authority, P.O. Box 988, New Castle, PA 16103	279,300
Erie Housing Authority, 606 Holland Street, Erie, PA 16501–1285	464,500
Beaver County Housing Authority, 300 State Avenue, Beaver, PA 15009–1798	482,750
Fairfax County Redevelopment & Housing Authority, 3700 Pender Drive, Fairfax, VA 22030–7444	284,100
Alexandria Redevelopment & Housing Authority, 600 N. Fairfax St., Alexandria, VA 22314–2094	250,000
Petersburg Redevelopment & Housing Authority, P.O. Box 311, Petersburg, VA 23804–0311	143,881
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266–1328	92,700
Suffolk Redevelopment & Housing Authority, P.O. Box 3079, Suffolk, VA 23439	139,800
Chesapeake Redevelopment & Housing Authority, P.O. Box 1304, Chesapeake, VA 23327–1304	120,600
Norfolk Redevelopment & Housing Authority, P.O. Box 968, Norfolk, VA 23501–0968	1,034,750
Richmond Redevelopment & Housing Authority, P.O. Box 26887, Richmond, VA 23261–6887	1,109,015
Bristol Redevelopment & Housing Authority, 650 Quarry Street, Bristol, VA 24201–4390	144,300
Portsmouth Redevelopment & Housing Authority, P.O. Box 1098, Portsmouth, VA 23705–1098	476,500
Hampton Redevelopment & Housing Authority, P.O. Box 280, Hampton, VA 23669–0280	298,800
Newport News Redevelopment & Housing Authority, P.O. Box 77, Newport News, VA 23607–0077	498,198
Charlottesville Redevelopment & Housing Authority, P.O. Box 1405, Charlottesville, VA 22902–1405	112,200
Waynesboro Redevelopment & Housing Authority, P.O. Box 1138, Waynesboro, VA 22980–0821	51,000
Housing Authority of the City of Charleston, P.O. Box 86, Charleston, WV 25321–0086	392,250
Housing Authority of the City of Clarksburg, 916 W. Pike Street, Clarksburg, WV 26301–2250	97,800
Housing Authority of the City of Parkersburg, 1901 Cameron Avenue, Parkersburg, WV 26101–9316	42,500
Jefferson County Housing Authority, 2100 Walker Chapel, Fultondale, AL 35068	152,700
Housing Authority of the City of Jacksonville, 100 Roebuck Manor, Jacksonville, AL 36265	45,000
Housing Authority of the Birmingham District, P.O. Box 55906, Birmingham, AL 35255–5906	1,679,125
Mobile Housing Board, P.O. Box 1345, Mobile, AL 36633–1345	1,045,250
Housing Authority of the City of Auburn, 931 Booker Street, Auburn, AL 36830	127,200
Housing Authority of the City of Piedmont, P.O. Box 420, Piedmont, AL 36272–0420	63,000
Housing Authority of the City of Foley, 302 Fourth Ave., Foley, AL 36535	25,800
Housing Authority of the City of Greenville, P.O. Box 521, Greenville, AL 36037–0521	59,700
Housing Authority of the City of Dothan, P.O. Box 1727, Dothan, AL 36302–1727	201,000
Housing Authority of the City of Jasper, P.O. Box 582, Jasper, AL 35501–0582	101,700
Housing Authority of the City of Montgomery, 1020 Bell St., Montgomery, AL 36104	651,500
Anniston Housing Authority, P.O. Box 2225, Anniston, AL 36202–2225	223,500
Housing Authority of the City of Bessemer, P.O. Box 1390, Bessemer, AL 35020	300,000
Tuscaloosa Housing Authority, P.O. Box 2281, Tuscaloosa, AL 35403–2281	297,429
Housing Authority of the City of Phenix City, P.O. Box 338, Phenix City, AL 36868–0338	280,500
Fairfield Alabama Housing Authority, P.O. Box 352, Fairfield, AL 35064–0352	86,400
Housing Authority of the City of Troy, P.O. Drawer 289, Troy, AL 36081–0321	129,600
Housing Authority of the City of Prichard, P.O. Box 10307, Prichard, AL 36610	128,700
Housing Authority of the City of Ozark, P.O. Box 566, Ozark, AL 36361–0566	129,900
Housing Authority of the City of Decatur, P.O. Box 878, Decatur, AL 35602	236,400
Greater Gadsden Housing Authority, P.O. Box 1219, Gadsden, AL 35902–1219	300,000
Selma Housing Authority, P.O. Box S, Selma, AL 36701	181,500
Housing Authority of the Town of York, P.O. Box 9, York, AL 36925–0009	26,400
Florence Housing Authority, 303 N. Pine St., Florence, AL 35630	198,000
Housing Authority of the City of Huntsville, P.O. Box 486, Huntsville, AL 35804–0486	466,250
Dade County HUD, 1401 NW. 7th Street, Miami, FL 33125	2,792,500
Tampa Housing Authority, 1514 Union Street, Tampa, FL 33607	300,000
Housing Authority of the City of Sarasota, 1300 Sixth Street, Sarasota, FL 34236	168,300
Ocala Housing Authority, 1415 NE. 32nd Terrace, Ocala, FL 34470	95,100
Housing Authority of the City of Cocoa, P.O. Box 540338, Merritt Island, FL 32954–0338	132,000
Tallahassee Housing Authority, 2940 Grady Road, Tallahassee, FL 32312–2398	189,700
Housing Authority of the City of Key West, P.O. Box 2476, Key West, FL 33040–2476	177,000
Housing Authority of the City of Titusville, P.O. Box 540338, Merritt Island, FL 32954–0338	75,600
Hialeah Housing Authority, 70 East 7th Street, Hialeah, FL 33010–4465	372,000
Palatka Housing Authority, 400 N. 15th Street,. Palatka, FL 32077	144,000
Alachua County Housing Authority, 636 N.E. First St., Gainesville, FL 32601	82,500
Housing Authority of the City of Orlando, 300 Reeves Court, Orlando, FL 32801–3199	425,750
DeLand Housing Authority, 300 Sunflower Circle, DeLand, FL 32724–5556	59,700
Housing Authority of the City of Daytona Beach, 118 Cedar Street, Daytona Beach, FL 32114–4904	300,000
Housing Authority of the City of Lakeland, P.O. Box 1009, Lakeland, FL 33802–1009	209,700
Riviera Beach Housing Authority, 2014 West 17th Court, Riviera Beach, FL 33404	46,800
Panama City Housing Authority, 804 E. 15th Street, Panama City, FL 32405	135,000
Gainesville Housing Authority, P.O. Box 1468, Gainesville, FL 32602	189,300
Housing Authority of the City of Ft. Pierce, 707 N. 7th St., Ft. Pierce, FL 34950	238,360
Housing Authority of the City of Fort Lauderdale, 437 S.W. 4th Avenue, Fort Lauderdale, FL 33315	266,100
Housing Authority of the City of Ft. Myers, 4224 Michigan Avenue, Ft. Myers, FL 33916	291,600
Housing Authority of the City of St. Petersburg, P.O. Box 12849, St. Petersburg, FL 33733–2849	265,800
Monroe County Housing Authority, P.O. Box 2476, Key West, FL 33040	15,000
Area Housing Commission, P.O. Box 18370, Pensacola, FL 32523–8370	216,900

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Housing Authority of New Smyrna Beach, P.O. Box 688, New Smyrna Beach, FL 32170–0688	37,800
Broward County Housing Authority, 1773 N. State Road 7, Lauderhill, FL 33313	232,800
Housing Authority of the City of Bremen, P.O. Box 776, Bremen, GA 30110–2160	33,600
Housing Authority of the City of Moultrie, P.O. Box 1048, Moultrie, GA 31768	98,400
Housing Authority of the City of Warner Robins, P.O. Box 2048, Warner Robins, GA 31099–2048	133,200
Housing Authority of the City of Valdosta, P.O. Box 907, Valdosta, GA 31601	162,300
Housing Authority of the City of College Park, 1908 West Princeton, College Park, GA 30337–2418	126,300
Housing Authority of the City of Tifton, P.O. Box 12, Tifton, GA 31794–0012	107,700
Housing Authority of the City of Covington, P.O. Box 1367, Covington, GA 30209–1367	84,000
Housing Authority of the City of Douglas, P.O. Box 917, Douglas, GA 31533	122,700
Housing Authority of the City of Calhoun, 111–F South Fair St., Calhoun, GA 30701–2369	75,000
Housing Authority of the City of Savannah, P.O. Box 1179, Savannah, GA 31402–1179	650,233
Housing Authority of the City of Elberton, 12 North McIntosh St., Elberton, GA 30635–1552	55,500
Housing Authority of the City of Eatonton, P.O. Box 3700, Eatonton, GA 31024–0072	34,200
Housing Authority of the City of Canton, 1 Shipp Street, Canton, GA 30114–2813	45,600
Housing Authority of the City of Waycross, P.O. Box 1407, Waycross, GA 31502–1407	163,795
Housing Authority of the City of Albany, P.O. Box 485, Albany, GA 31702–0485	298,200
Housing Authority of the City of Augusta, P.O. Box 3246, Augusta, GA 30901	693,500
Housing Authority of the City of Athens, P.O. Box 1469, Athens, GA 30603–1469	318,000
Housing Authority of the City of Monroe, P.O. Box 550, Monroe, GA 30655–0550	161,700
Housing Authority of the City of Decatur, P.O. Box 1627, Decatur, GA 30031–1627	294,600
Housing Authority of the City of Hartwell, 500 W. Franklin Pl., Hartwell, GA 30643–0745	53,700
Housing Authority of the City of Rome, P.O. Box 1428, Rome, GA 30161–2737	300,000
Housing Authority of the City of Dublin, P.O. Box 36, Dublin, GA 31040	165,000
Housing Authority of the City of Lawrenceville, 502 Glenn Edge Drive, Lawrenceville, GA 30245	63,600
Housing Authority of the City of Newton, P.O. Box 247, Camilla, GA 31730	12,000
Housing Authority of the City of Gainesville, P.O. Box 653, Gainesville, GA 30503–0653	134,500
Housing Authority of the City of Macon, P.O. Box 4928, Macon, GA 31208–4928	543,250
Housing Authority of the County of Fulton, 10 Park Place, S.E., Atlanta, GA 30303	153,300
Housing Authority of the City of Winder, P.O. Box 505, Winder, GA 30680–0505	95,700,
Housing Authority of the City of Camilla, P.O. 247, Camilla, GA 31730–0247	137,400
Housing Authority of the City of Carrollton, P.O. Box 627, Carrollton, GA 30117–0627	84,000
Housing Authority of the City of Atlanta, 739 W. Peachtree, NE., Atlanta, GA 30365	3,205,750
Housing Authority of the City of Columbus, P.O. Box 630, Columbus, GA 31993	534,250
Housing Authority of the City of Royston, P.O. Box 86, Royston, GA 30662–0066	44,000
Housing Authority of the City of Brunswick, P.O. Box 1118, Brunswick, GA 31521–1118	182,100
Housing Authority of the City of Eastman, P.O. Box 100, Eastman, GA 31023–0100	65,700
Housing Authority of Richmond, P.O. Box 447, Richmond, KY 40475	100,500
Housing Authority of Morgantown, P.O. Box 628, Morgantown, KY 42261	54,000
Housing Authority of Fulton, 200 N. Highland Dr., Fulton, KY 42041	56,904
Housing Authority of Bowling Green, P.O. Box 116, Bowling Green, KY 42101	157,068
Housing Authority of Paducah, 2330 Ohio St., Paducah, KY 42002	300,000
Housing Authority of Lexington, 635 Ballard Street, Lexington, KY 40508	415,500
Housing Authority of Covington, 2940 Madison Ave., Covington, KY 41015	288,600
Housing Authority of Hopkinsville, P.O. Box 437, Hopkinsville, KY 42240	95,500
Housing Authority of Frankfort, 590 Walter Todd Dr., Frankfort, KY 40601	71,528
Housing Authority of Louisville, 420 South Eighth St., Louisville, KY 40203	1,460,000
Housing Authority of the City of Oxford, P.O. Box 488, Oxford, MS 38655	53,400
Housing Authority of the City of Tupelo, P.O. Box 3, Tupelo, MS 38802–0003	122,100
Housing Authority of the City of Holly Springs, P.O. Box 550, Holly Springs, MS 38635	27,000
Mississippi Regional Housing Authority No. VIII, P.O. Box 2347, Gulfport, MS 39505–2347	450,500
Housing Authority of the City of Natchez, 160 St. Catherine St., Natchez, MS 39120	88,500
Housing Authority of the City of Clarksdale, P.O. Box 908, Clarksdale, MS 38614	88,800
Housing Authority of the City of Meridian, P.O. Box 870, Meridian, MS 39302–0870	299,600
Mississippi Regional Housing Authority No. IV, P.O. Box 1051, Columbus, MS 39703–1051	105,190
Housing Authority of the City of Columbus, P.O. Box 648, Columbus, MS 39703–0648	144,000
City of Albemarle, Dept. of Housing, P.O. Drawer 1367, Albemarle, NC 28002	60,000
Housing Authority of the City of Asheville, P.O. Box 1898, Asheville, NC 28802	364,915
Asheboro Housing Authority, P.O. Box 609, Asheboro, NC 27204	60,000
Chapel Hill Dept. of Housing & Community Develop., 317 Caldwell Street, Chapel Hill, NC 27516	92,878
City of Concord, Department of Housing, P.O. Box 308, Concord, NC 28026	45,600
Housing Authority of the City of Charlotte, P.O. Box 36795, Charlotte, NC 28236	962,154
Housing Authority of the City of Durham, P.O. Box 1726, Durham, NC 27702	420,715
Elizabeth City Housing Authority, P.O. Box 1485, Elizabeth City, NC 27906	98,060
Fairmont Housing Authority, P.O. Box 661, Fairmont, NC 28340	15,000
Fayetteville Metropolitan Housing Authority, P.O. Box 2349, Fayetteville, NC 28302	300,000
Housing Authority of the City of Goldsboro, P.O. Box 1403, Goldsboro, NC 27533	300,000
Housing Authority of the City of Greensboro, P.O. Box 21287, Greensboro, NC 27420	608,750
Hamlet Housing Authority, P.O. Box 1188, Hamlet, NC 28345	69,000
Housing Authority of the City of High Point, P.O. Box 1779, High Point, NC 27261	337,000
Maxton Housing Authority, P.O. Box 126, Maxton, NC 28364	27,000

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APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Housing Authority of the City of Lumberton, P.O. Drawer 709, Lumberton, NC 28359	218,400
Housing Authority of the City of New Bern, P.O. Box 1486, New Bern, NC 28563	173,700
Housing Authority of the City of Rocky Mount, P.O. Box 4717, Rocky Mount, NC 27803	229,500
Housing Authority of the City of Raleigh, P.O. Box 28007, Raleigh, NC 27611	519,250
Rowan County Housing Authority, 121 W. Council St., Salisbury, NC 28144	60,000
Smithfield Housing Authority, P.O. Box 1058, Smithfield, NC 27577	61,500
Selma Housing Authority, 711 Lizzie St., Selma, NC 27576	54,900
Sanford Housing Authority, P.O. Box 636, Sanford, NC 27331	139,200
Housing Authority of the City of Salisbury, P.O. Box 159, Salisbury, NC 28145	166,800
Williamston Housing Authority, P.O. Box 709, Williamston, NC 27892	44,700
Housing Authority of the City of Winston-Salem, 901 Cleveland Ave., Winston-Salem, NC 27101	540,750
Housing Authority of the City of Wilmington, P.O. Box 899, Wilmington, NC 28402	430,250
City of Hickory Public Housing Authority, P.O. Box 2927, Hickory, NC 28603	93,300
Housing Authority of the City of Greenville, P.O. Box 1426, Greenville, NC 27835–1426	213,600
Redevelopment Commission of the Town of Tarboro, P.O. Box 1144, Tarboro, NC 27886	57,900
Housing Authority of the City of Laurinburg, P.O. Box 1437, Laurinburg, NC 28353	141,600
Monroe Housing Authority, P.O. Box 805, Monroe, NC 28111–0805	61,800
Lincolnton Housing Authority, P.O. Box 753, Lincolnton, NC 28093	73,900
Morganton Housing Authority, P.O. Box 1053, Morganton, NC 28680–1053	75,000
Puerto Rico Public Housing Administration, P.O. Box 363188, San Juan, PR 00936–3188	14,289,750
Cheraw Housing Authority, P.O. Drawer 969, Florence, SC 29503–0969	208,794
Anderson Housing Authority, 1335 East River St., Anderson, SC 29624–2908	71,100
Spartanburg Housing Authority, P.O. Box 2828, Spartanburg, SC 29306	394,750
City of Charleston Housing Authority, 20 Franklin Street, Charleston, SC 29401–6907	351,087
Greenville Housing Authority, P.O. Box 10047, Greenville, SC 29603–0047	292,501
York Housing Authority, Post Office Box 687, York, SC 29745–0687	37,200
Conway Housing Authority, 2303 Leonard Avenue, Conway, SC 29527–4515	72,000
Columbia Housing Authority, 1917 Harden Street, Columbia, SC 29204–4307	285,000
Knoxville's Community Development Corporation, P.O. Box 3550, Knoxville, TN 37927	993,500
Chattanooga Housing Authority, P.O. Box 1486, Chattanooga, TN 37401–1148	724,540
Johnson City Housing Authority, P.O. Box 59, Johnson City, TN 37605–0059	225,300
Cleveland Housing Authority, P.O. Box 2846, Cleveland, TN 37311–2846	129,200
Franklin Housing Authority, P.O. Box 304, Franklin, TN 37065–0304	91,200
McMinnville Housing Authority, 301 Hardaway Street, McMinnville, TN 37110	128,390
Springfield Housing Authority, P.O. Box 398, Springfield, TN 37172–0398	122,665
Gallatin Housing Authority, P.O. Box 1923, Gallatin, TN 37066–1923	104,000
Clarksville Housing Authority, P.O. Box 603, Clarksville, TN 37041–0603	152,598
Metropolitan Development & Housing Agency, P.O. Box 846, Nashville, TN 37202–0846	1,591,750
Dyersburg Housing Authority, P.O. Box 824, Dyersburg, TN 38025–0824	157,756
Jackson Housing Authority, P.O. Box 3188, Jackson, TN 38303–0188	300,000
Memphis Housing Authority, P.O. Box 3664, Memphis, TN 38103–0664	1,741,759
Virgin Islands Housing Authority, P.O. Box 7668, St. Thomas, VI 00801–7668	1,086,500
Seminole Tribe of Florida, 3101 North 63rd Avenue, Hollywood, FL 33024	133,800
Cook County Housing Authority, 59 E. Van Buren Street, Chicago, IL 60605	545,500
Joliet Housing Authority, P.O. Box 2519, Joliet, IL 60434–2519	300,000
Housing Authority City Bloomington, 104 E. Wood, Bloomington, IL 61701–6768	189,900
St. Clair County Housing Authority, 100 N. 48th ST., Belleville, IL 62223	300,000
Alexander County Housing Authority, 100 The Riverview, Cairo, IL 62914	171,093
Waukegan Housing Authority, 200 S. Ubca Street, Waukegan, IL 60085	134,000
Housing Authority City Danville, P.O. Box 312, Danville, IL 61834–0312	215,400
Randolph County Housing Authority, 214 Opdyke Street, Chester, IL 62233	66,300
Madison County Housing Authority, 1609 Olive Street, Collinsville, IL 62234	255,000
Freeport Housing Authority, 10 N. Galena, Freeport, IL 61032–4302	135,900
Decatur Housing Authority, 1808 E. Locust Street, Decatur, IL 62521–1409	262,500
Springfield Housing Authority, 200 N. 11th St., Springfield, IL 62703–1004	363,000
Rockford Housing Authority, 330 15th Ave., Rockford, IL 61108	525,500
Jackson County Housing Authority, 300 N. 7th St., Murphysboro, IL 62966	238,984
Kankakee County Housing Authority, P.O. Box 1289, Kankakee, IL 60901–1289	105,900
Chicago Housing Authority, 22 W. Madison Street, Chicago, IL 60602	9,920,000
LaSalle County Housing Authority, P.O. Box 782, Ottawa, IL 61350–0782	282,000
Rock Island City Housing Authority, 111 20th St., Rock Island, IL 61201–8827	181,800
Peoria Housing Authority, 100 S. Sheridan Rd., Peoria, IL 61605–3905	486,540
Housing Authority East St. Louis, 700 N. 20th St., East St. Louis, IL 62205	586,500
Hammond Housing Authority, 7329 Columbia Circle, Hammond, IN 46324–2819	177,500
Gary Housing Authority, 578 Broadway, Gary, IN 46402–1986	621,500
Muncie Housing Authority, 409 East First Street, Muncie, IN 47302–2495	184,884
South Bend Housing Authority, P.O. Box 11057, South Bend, IN 46634–0057	256,800
Evansville Housing Authority, P.O. Box 3605, Evansville, IN 47735	297,549
Fort Wayne Housing Authority, P.O. Box 13489, Fort Wayne, IN 46809–3489	233,400
East Chicago Housing Authority, P.O. Box 498, East Chicago, IN 46312–0498	243,000
Indianapolis Housing Authority, 410 North Meridian, Indianapolis, IN 46204–1790	673,129

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Pleasant Point Passamaquoddy Reserv. Housing Auth., P.O. Box 339, Perry, ME 04667	42,000
Pontiac Housing Commission, 132 Franklin Blvd., Pontiac, MI 48341	238,500
Saginaw Housing Commission, 2811 Davenport St., Saginaw, MI 48602–3747	289,200
Ecorse Housing Commission, 266 Hyacinth Street, Ecorse, MI 48229–1699	60,000
Flint Housing Commission, 3820 Richfield Road, Flint, MI 48506–2616	300,000
Ypsilanti Housing Commission, 601 Armstrong Drive, Ypsilanti, MI 48197–5224	65,400
Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141–1871	255,930
Port Huron Housing Commission, 905 Seventh Street, Port Huron, MI 48060–5399	132,000
Muskegon Heights Housing Commission, 615 East Hovey Ave, Muskegon Heights, MI 49444	106,500
Albion Housing Commission, P.O. Box 630, Albion, MI 49224	65,378
Benton Harbor Housing Commission, 925 Buss St., Benton Harbor, MI 49022	107,400
Lansing Housing Commission, 310 Seymour Avenue, Lansing, MI 48933	257,900
Sault Ste. Marie Tribal Housing Authority, 2218 Shunk Road, Sault Ste. Marie, MI 49783	84,900
Saginaw Chippewa Housing Authority, 2451 Nish-Na-Be-Anong Rd., Mt. Pleasant, MI 48858	32,100
Public Housing Agency of the City of Saint Paul, 480 Cedar Street, St. Paul, MN 55101–2240	1,058,500
Rochester Housing Authority, 2116 Campus Drive SE., Rochester, MN 55904–4744	26,700
Minneapolis PHA in and for the City of Minneapolis, 1001 Washington Ave., Minneapolis, MN 55401–1043	1,086,802
Housing & Redevelopment Authority of Duluth, P.O. Box 16900, Duluth, MN 55816–0900	300,000
White Earth Reservation Housing Authority, P.O. Box 418, White Earth, MN 56591	105,600
Mississippi Band of Choctaw Indians, P.O. Box 6010 Choctaw Bra., Philadelphia, MS 39350	205,500
Qualla Housing Authority, P.O. Box 1749, Cherokee, NC 28719–1749	300,000
North Carolina Indian Housing Authority, P.O. Box 2343, Fayetteville, NC 28302	76,200
Dayton Metropolitan Housing Authority, 400 Wayne Avenue, Dayton, OH 45410–1106	1,119,500
Butler Metropolitan Housing Authority, P.O. Box 357, Hamilton, OH 45012–0357	312,500
Zanesville Metropolitan Housing Authority, 863 Durban Drive, Zanesville, OH 43701	200,100
Springfield Metropolitan Housing Authority, 437 East John, Springfield, OH 45505	265,800
Youngstown Metropolitan Housing Authority, 131 Boardman Street, Youngstown, OH 44503–1329	510,962
Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113–3101	2,957,750
Lucas Metropolitan Housing Authority, P.O. Box 477, Toledo, OH 43692–0477	806,250
Akron Metropolitan Housing Authority, 180 West Cedar St., Akron, OH 44307–2546	1,398,000
Trumbull Metropolitan Housing Authority, 1977 Niles Road, Warren, OH 44484–5197	360,308
Lorain Metropolitan Housing Authority, 1600 Kansas Avenue, Lorain, OH 44052–2602	345,750
Jefferson Metropolitan Housing Authority, 815 N. Sixth Avenue, Steubenville, OH 43952–1847	242,100
Stark Metropolitan Housing Authority, 1800 W. Tuscarawas, Canton, OH 44708–4997	622,043
Superior Housing Authority, 1219 North Eighth St., Superior, WI 54880–6699	122,410
Ho-Chunk Housing Authority, P.O. Box 546, Tomah, WI 54660	45,300
Oneida Housing Authority, P.O. Box 68, Oneida, WI 54155	77,400
Lac du Flambeau Chippewa Housing Authority, P.O. Box 187, Lac du Flambeau, WI 54538–0187	97,283
Menominee Tribal Housing Authority, P.O. Box 459, Keshena, WI 54135–0459	137,000
Housing Authority of the City of Camden, Box 39, Camden, AR 71701–0039	162,000
Housing Authority of the City of Conway, 335 S. Mitchell, Conway, AR 72032	45,900
Housing Authority of the City of Forrest City, Box 997, Forrest City, AR 72335–0997	135,000
Housing Authority of the City of Fort Smith, 2100 North 31st St., Fort Smith, AR 72904–6199	134,521
Housing Authority of the City of Hot Springs, Box 1257, Hot Springs, AR 71901–1257	110,969
Housing Authority of the City of Little Rock, 1000 Wolfe Street, Little Rock, AR 72202	411,000
Housing Authority of the City of North Little Rock, Box 516, North Little Rock, AR 72115–0516	300,000
Housing Authority of the City of Texarkana, 110 Bramble Courts, Texarkana, AR 75502	120,900
Sac & Fox Housing Authority of Missouri, Route 1, Box 97, Unit 12, Reserve, KS 66434	11,400
Housing Authority of St. James Parish, P.O. Box 280, Lutcher, LA 70071–0280	95,400
Housing Authority of DeRidder, P.O. Box 387, DeRidder, LA 70634–0387	35,700
Housing Authority of Lake Charles, P.O. Box 1206, Lake Charles, LA 70602–1206	199,000
Housing Authority of New Orleans, 918 Cardonlet St., New Orleans, LA 70130	3,446,642
Housing Authority of Rapides Parish, 119 Boyce Gardens, Boyce, LA 71409	53,000
Housing Authority of Natchitoches Parish, P.O. Box 255, Natchitoches, LA 71458–0255	27,600
Housing Authority of Lafourche Parish, P.O. Drawer 499, Raceland, LA 70394–0499	82,800
Housing Authority of the City of Natchitoches, P.O. Box 754, Natchitoches, LA 71457–0754	121,194
Housing Authority of Morgan City, P.O. Box 2393, Morgan City, LA 70381–2393	95,390
Housing Authority of Bogalusa, 1015 Union Avenue, Bogalusa, LA 70427–1113	91,520
Housing Authority of Monroe, P.O. Box 1194, Monroe, LA 71201–1194	380,500
Housing Authority of Ruston, P.O. Drawer 1283, Ruston, LA 71270–1283	90,000
Housing Authority of East Baton Rouge Parish, 4546 North Street, Baton Rouge, LA 70806–3422	296,972
Housing Authority of Patterson, P.O. Box 329, Patterson, La 70392–0329	31,700
Housing Authority of the City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103–1293	300,000
Housing Authority of the City of Las Cruces, 926 S. San Pedro St., Las Cruces, NM 88001	95,700
Housing Authority of the City of Alamogordo, P.O. Box 336, Alamogordo, NM 88310–0336	66,000
Housing Authority of the City of Las Vegas, P.O. Box 179, Las Vegas, NM 87701–0179	111,600
Housing Authority of the City of Santa Fe, P.O. Box 4039, Santa Fe, NM 87502–4039	138,300
Housing Authority of the City of T or C, 108 South Cedar, Truth or Consequence, NM 87901	30,000
Housing Authority of the County of Santa Fe, 52 Camino de Jacobo, Santa Fe, NM 87501–9203	66,000
Oklahoma City Housing Authority, 1700 NE Fourth St., Oklahoma City, OK 73117	785,500
Housing Authority of the City of Hugo, P.O. Box 727, Hugo, OK 74743–0727	67,800

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Funding recipient (name and address)	Amount approved
Housing Authority of the City of McAlester, P.O. Box 819, McAlester, OK 74501–0819	82,200
Housing Authority of the City of Tulsa, P.O. Box 6369, Tulsa, OK 74148–0369	649,093
Kiowa Tribe, P.O. Box 369, Carnegie, OK 73015	51,900
Absentee-Shawnee Housing, P.O. Box 425, Shawnee, OK 74802–0425	204,300
Cherokee Nation Housing Authority, P.O. Box 1007 Tahlequah, OK 74465–1007	645,000
Chickasaw Nation Housing Authority, P.O. Box 668 Ada, OK 74820–0668	486,500
Choctaw Nation Housing Authority, P.O. Box G Hugo, OK 74743	457,500
Delaware Housing Authority, #6 Delaware Acres, P.O.B 33, Chelsea, OK 74016–0334	9,975
Kaw Housing Authority, 9 Kanza Lane, P.O. Box 3, Newkirk, OK 74647–0371	23,100
Sac & Fox Housing Authority of Oklahoma, 201 N. Harrison, P.O.B 1252, Shawnee, OK 74801–1252	118,800
Comanche Housing Authority, P.O. Box 1671, Lawton, OK 73502–1671	111,000
Housing Authority of El Paso, P.O. Box 9895, El Paso, TX 79989–9895	1,368,832
Housing Authority of Fort Worth, P.O. Box 430, Fort Worth, TX 76101–0430	356,500
Housing Authority of Dallas, 3939 N. Hampton Rd., Dallas, TX 75212–0000	1,711,250
Housing Authority of Waco, P.O. Box 978, Waco, TX 76703–0978	265,500
Housing Authority of Waxahachie, 208 Patrick, Waxahachie, TX 75165–2918	31,200
Housing Authority of Lubbock, P.O. Box 2568, Lubbock, TX 79408–2568	156,300
Housing Authority of Denison, P.O. Box 447, Denison, TX 75020–0447	60,000
Housing Authority of McKinney, 1200 N. Tennessee, McKinney, TX 75069–9977	60,000
Housing Authority of Temple, P.O. Box 634, Temple, TX 76503–0634	97,800
Housing Authority of Paris, P.O. Box 688, Paris, TX 75461–0688	62,400
Housing Authority of Sherman, P.O. Box 2147, Sherman, TX 75091–2147	89,400
Housing Authority of Plano, 1581 Avenue "K", Plano, TX 75074–6231	15,000
Housing Authority of Slaton, P.O. Box 317, Slaton, TX 79364–0317	21,000
Housing Authority of Abilene, P.O. Box 60, Abilene, TX 79604–0060	63,900
Housing Authority of the City of Bay City, 3012 Sycamore, Bay City, TX 77414	147,614
Housing Authority of the City of Nacogdoches, 715 Summit, Nacogdoches, TX 75961	22,500
Housing Authority of the City of Baytown, 805 W. Nazro Street, Baytown, TX 77520	63,000
Housing Authority of the City of Beaumont, P.O. Box 1312, Beaumont, TX 77704–1312	227,400
Housing Authority of the City of Orange, P.O. Box 3107, Orange, TX 77631–3107	117,600
Housing Authority of the City of Texas City, 817 Second Ave. North, Texas City, TX 77590	39,000
Housing Authority of the City of Houston, 2640 Fountainview, Houston, TX 77057	1,011,000
Housing Authority of the City of Port Arthur, 920 DeQueen, Port Arthur, TX 77643–2295	106,800
Housing Authority of the City of Galveston, 920 53rd Street, Galveston, TX 77551–1099	348,500
Pharr Housing Authority, 211 W. Audrey, Pharr, TX 78577	109,500
Starr County Housing Authority, P.O. Box 50, Rio Grande City, TX 78582–0050	23,400
San Benito Housing Authority, P.O. Box 1950, San Benito, TX 78586–1950	90,000
Mission Housing Authority, 906 E. 8th Street, Mission, TX 78572	61,400
Corpus Christi Housing Authority, P.O. Box 7019, Corpus Christi, TX 78467–7019	474,724
San Antonio Housing Authority P.O. Drawer 1300, San Antonio, TX 78295–1300	1,986,060
Austin Housing Authority, P.O. Box 6159, Austin, TX 78762–6159	482,000
La Joya Housing Authority, P.O. Box 1409, La Joya, TX 78560–1409	9,400
Lawrence Housing Authority,1600 Haskell Avenue, Lawrence, KS 66044	102,900
Kansas City, Kansas Housing Authority, 1124 North 9th St., Kansas City, KS 66101–2197	520,800
Topeka Housing Authority, 215 E. 7th Street, Topeka, KS 66612	219,300
Saint Louis Housing Authority, 4100 Lindell Blvd., St. Louis, MO 63108–2999	1,594,750
Housing Authority of the City of Fulton, P.O. Box 814, Fulton, MO 65251–0814	59,700
Housing Authority of Saint Louis County, P.O. Box 23886, St. Louis, MO 63121–0580	261,000
Housing Authority of the City of Columbia, 301 N. Providence, Columbia, MO 65203–4091	218,700
Kansas City Housing Authority, 299 Paseo, Kansas City, MO 64106–2608	459,000
Omaha Housing Authority, 540 South 27th St., Omaha, NE 68105–1521	748,000
Housing Authority of the City and County of Denver, Bx 4305, Santa Fe Station, Denver, CO 80204	890,250
Housing Authority of the City of Pueblo, 1414 N. Santa Fe Ave., Pueblo, CO 81003	270,000
Helena Housing Authority, 812 Abbey Street, Helena, MT 59601	109,800
Chippewa Cree Housing Authority, P.O. Box 872, Box Elder, MT 59521	83,700
Crow Tribal Housing Authority, P.O. Box 99, Crow Agency, MT 59022	150,900
Blackfeet Housing Authority, P.O. Box 790, Browning, MT 59417	280,178
Turtle Mountain Housing Authority, P.O. Box 620, Belcourt, ND 58316	326,000
Cheyenne River Housing Authority, P.O. Box 480, Eagle Butte, SD 57625	284,100
Standing Rock Housing Authority, P.O. Box 484, Fort Yates, SD 58538	237,900
Sisseton-Wahpeton Housing Authority, P.O. Box 687, Sisseton, SD 57262	180,300
Rosebud Housing Authority, P.O. Box 69, Rosebud, SD 57570	300,000
Housing Authority of the County of Salt Lake, 1962 South 200 East, Salt Lake City, UT 84115	179,700
Housing Authority of Salt Lake City, 1776 S.W. Temple, Salt Lake City, UT 84115	191,100
Wind River Housing Authority, P.O. Box 327, Fort Washakie, WY 82514	167,700
Phoenix Housing Department, 830 E. Jefferson St., Phoenix, AZ 85034–2230	624,000
Pinal County Housing Department, 970 N. 11 Mile Corner Rd., Casa Grande, AZ 85222–9621	48,000
Nogales Housing Authority, P.O. Box 777, Nogales, AZ 85628–0777	53,000
Housing Authority of the City of Yuma, 1350 W. Colorado Street, Yuma, AZ 85364–1336	55,500
Chandler Housing and Redevelopment Division, 99 N. Delaware Street, Chandler, AZ 85225–5577	60,000
Glendale Community Housing Services Department, 6842 N. 61st Avenue, Glendale, AZ 85301–3199	46,500

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF FINAL FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Gila River Housing Authority, P.O. Box 251, Maricopa, AZ 85239	264,250
Navajo Housing Authority, P.O. Box 387, Window Rock, AZ 86515	995,916
Sacramento City Housing & Redevelopment Agency, P.O. Box 1834, Sacramento, CA 95812–1834	422,383
Sacramento County Housing & Redevelopment Agency, P.O. Box 1834, Sacramento, CA 95812–1834	290,493
Housing Authority of the County of San Joaquin, P.O. Box 447, Stockton, CA 95201	300,000
Housing Authority of the County of Santa Barbara, P.O. Box 397, Lompoc, CA 93438–0397	157,500
Housing Authority of the City of Santa Barbara, 808 Laguna Street, Santa Barbara, CA 93101–1590	143,100
San Diego Housing Commission, 1625 Newton Street, San Diego, CA 92113	317,000
Imperial Valley Housing Authority, 1401 D Street, Brawley, CA 92227	147,000
Community Development Commission, County of L. A., 2525 Corporate Place, Monterey Park, CA 91754	708,000
Housing Authority of the City of Calexico, 1006 E. 5th Street, Calexico, CA 92231	90,600
Housing Authority of the City of Los Angeles, P.O. Box 17157, Los Angeles, CA 90017	2,181,250
Housing Authority of the County of Kern, 525 Roberts Lane, Bakersfield, CA 93308–4799	299,100
Housing Authority of the City of Oxnard, 1470 Colonia Rd., Oxnard, CA 93030–3714	234,000
Housing Authority of the County of San Bernardino, 1053 N. "D" Street, San Bernardino, CA 92410–3854	299,988
City & County of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102	1,681,750
Housing Authority of the County of Monterey, 123 Rico Street, Salinas, CA 93907	192,834
Housing Authority of the County of Marin, P.O. Box 4282, San Rafael, CA 94913–4282	89,309
Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612	824,756
Housing Authority of the County of Stanislaus, 1701 Robertson Road, Modesto, CA 95352–3958	191,128
Housing Authority of the County of Fresno, P.O. Box 11985, Fresno, CA 93776–1985	297,000
Housing Authority of the City of Fresno, P.O. Box 11985, Fresno, CA 93776–1985	300,000
Housing Authority of the County of Contra Costa, P.O. Box 2759, Martinez, CA 94553	267,628
Housing Authority of the City of Eureka, 735 West Everding, Eureka, CA 95503	59,400
Housing Authority of the City of Madera, 205 North 10th St., Madera, CA 93637	60,000
Northern Circle Indian Housing Authority, 694 Pinoleville Drive, Ukiah, CA 95482	54,000
State of Hawaii Housing Authority, P.O. Box 17907, Honolulu, HI 96817	1,315,750
Mescalero Apache Housing Authority, P.O. Box 176, Mescalero, NM 88340	127,200
Northern Pueblos Housing Authority, P.O. Box 3502, Pojoaque, NM 87501	147,000
Housing Authority of the City of Las Vegas, P.O. Box 1897, Las Vegas, NV 89125	641,250
Housing Authority of the City of Reno, 1525 East Ninth St., Reno, NV 89512–3012	215,100
Housing Authority of the County of Clark, 5390 E. Flaminggo Rd, Las Vegas, NV 89122–5308	254,700
Tlingit-Haida Regional Housing Authority, P.O. Box 32237, Juneau, AK 99803	102,620
Interior Regional Housing Authority, 828 27th Avenue, Fairbanks, AK 99701	135,000
Housing Authority of the City of Salem, P.O. Box 808, Salem, OR 97308–0808	101,100
Housing Authority of the County of Clackamas, 13950 S. Gain, Oregon City, OR 97045	169,667
Housing Authority of Portland, 135 SW. Ash, Portland, OR 97204	668,500
Siletz Indian Housing Authority, P.O. Box 549, Siletz, OR 97380	16,172
Umatilla Indian Housing Authority, P.O. Box 1658, Pendleton, OR 97801	70,200
King County Housing Authority, 5455 65th South, Seattle, WA 98188–2583	777,750
Housing Authority of the City of Bremerton, P.O. Box 631, Bremerton, WA 98337	174,600
Spokane Housing Authority, West 55 Mission St, Spokane, WA 99201–2044	27,000
Kitsap County Consolidated Housing Authority, 9265 Bayshore Dr., Silverdale, WA 98383	37,800
Housing Authority of the City of Tacoma, 1728 East 44th St., Tacoma, WA 98404–4699	364,250
Housing Authority of the City of Seattle, 120 6th Avenue North, Seattle, WA 98109	1,629,750
Makah Tribe Indian Housing Authority, P.O. Box 88, Neah Bay, WA 98357	54,300
Southern Puget Sound Indian Housing Authority, S.E. 11 Squaxin Drive, Shelton, WA 98584	99,600
Yakima Nation Indian Housing Authority, 611 South Camas Ave., Wapato, WA 98951–1499	204,300
Total Dollars Awarded	228,884,574
Total Number of Grant Awards = 520	

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–95–3891; FR–3883–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge. Three committees were established by the Task Force members: (1) Finance Committee; (2) Liability Committee; and (3) Implementation Committee. The members of these

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committees are members of the Task Force.

DATES: The last Task Force Meeting will be held on March 13, 14, & 15, 1995 from 9:00 a.m. to 5:00 p.m. at the Georgetown University Conference Center, located at 3800 Reservoir Road NW., Washington, DC 20057, telephone number (202) 687–3242.

ADDRESSES: Members of the public are invited to provide written material to: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., Room B–133, Washington, DC 20410; telephone (202) 755–1805. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the a "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The previous Task Force Committee meetings were held on November 15 & 16, 1994 in Chicago, Illinois. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: February 13, 1995.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 95–4364 Filed 2–22–95; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–95–3890; FR 3882–N–01]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of a Computer Matching Program—HUD and Department of Veterans Affairs (DVA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Veterans Affairs (DVA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DVA's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or DVA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records from the Departments of Veterans Affairs, Education, Agriculture, and the Small Business Administration, and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which if a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant, until an officer or employee of such agency has independently verified such information.

EFFECTIVE DATE: Computer matching is expected to begin at least 40 days from the date this computer matching notice is published, provided no comments are received which would result in a contrary determination. It will be accomplished 18 months from the beginning date.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, 451 7th Street SW., Room 4178, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free number).

FOR FURTHER INFORMATION RECIPIENT AGENCY CONTACT: Mary C. Felton, Control and Analysis Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number (202) 708–4256.

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Dan Osendorf, Director, VA Debt Management Center, Bishop Henry Whipple Federal Building, One Federal Drive, Ft. Snelling, MN 55111, telephone number (612) 725–1841. [These are not toll-free numbers.]

Reporting

In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report, in duplicate, are being provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program may be conducted pursuant to Pub. L. 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives To Be Met by the Matching Program

The matching program will allow DVA access to a system which permits prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to DVA debtor data for prescreening purposes.

Records To Be Matched

HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and coborrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans, or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs form HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The DVA will provide HUD with debtor files from two systems of records: 58VA 21/22/28, Compensation, Pension, Education and Rehabilitation Records-VA; and 55VA26, Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records-VA. HUD is maintaining DVA's records only as a ministerial action on behalf of DVA, not as a part of HUD's HUD/DEPT–2 system of records. DVA's data contain information on individuals who have defaulted on their guaranteed loans. The DVA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for DVA's data.

Notice Procedures

As a condition of matching, HUD has made modifications to the loan application forms for the participating programs to expand the Privacy Act statements on the individual application forms in the notation "that the information provided by the applicant can be used for computer matching purposes and to collect debts owed to the Federal government." Any deficiencies as to direct notice procedures to the individual for the matching program are cured by the indirect or constructive notice that will be afforded to the subjects when the public notice of the proposed match is published by HUD in the Federal Register as required by subsection (e)(12) of the Privacy Act.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories or records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which could result in a contrary determination.

Issued at Washington, DC February 6, 1995.

Marilynn A. Davis,

Assistant Secretary for Administration.

[FR Doc. 95–4361 Filed 2–22–95; 8:45 am]

BILLING CODE 4210–32

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–6978–A; 5–00163]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Kootznoowoo Incorporated, for approximately 1,015 acres. The lands involved are on Prince of Wales Island, Alaska.

Copper River Meridian, Alaska

T. 77 S., R. 87 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 27, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–4373 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–JA–P

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[CO-017-1610-00]

Notice of Extension of Public Comment Period and List of Proposed Areas of Critical Environmental Concern

AGENCY: Bureau of Land Management, Department of the Interior

ACTION: Notice of extension of public comment period and list of proposed areas of critical environmental concern.

SUMMARY: The Bureau of Land Management, White River Resource Area, Meeker, Colorado, is extending its public comment period for the Draft White River Resource Management Plan and Environmental Impact Statement (RMP/EIS). The comment period for the draft RMP/EIS will now end on March 31, 1995, instead of February 10, 1995. Thirteen new areas of critical environmental concern (ACECs) are being considered for designation in the draft RMP/EIS under one or more of the alternatives. The time period for commenting on the thirteen proposed ACECs will end on April 24, 1995.

DATES: Comments on the draft RMP/EIS will be accepted until March 31, 1995. Comments on the eleven proposed ACECs will be accepted until April 24, 1995

ADDRESSES: Address for written comments, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, CO 81641; FAX 303-878-5757.

FOR FURTHER INFORMATION CONTACT: Jonn Graham, RMP Team Leader, Bureau of Land Management, White River Resource Area, Meeker, CO 81641; Telephone 303-878-3601; Fax 303-878-5717

SUPPLEMENTARY INFORMATION: Following is a description of the thirteen ACECs being considered for designation in the draft RMP/EIS under one or more alternatives.

1. South Cathedral Bluffs—Addition (1,010 acres). Contains sensitive plants and remnant vegetation associations. No surface occupancy (NSO) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and record of decision (ROD).

2. Raven Ridge-Addition (1,890 areas). Contains candidates threatened and endangered (T/E) plants, sensitive plants, paleontological values, fragile soils. No surface occupancy (NSO) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

3. Ryan Gulch (1,440 acres). Contains T/E plants. Controlled surface use (CSU) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

4. White River Riparian (950 acres). Contains important biologically diverse plant communities. Bald eagle roosts, federally-listed Colorado River squawfish below Taylor Draw Dam. CSU stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in a travel management plan prepared following publication of the approved RMP and ROD. Pending publication of a travel management plan, motorized vehicle travel is limited to existing roads and trails.

5. Coal Oil Rim (3,210 acres). Small aspen clones and other biologically diverse plant communities, riparian habitats. CSU stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

6. Moosehead Mountain (8,940 acres). Contains important biologically diverse plant communities, riparian habitats, and cultural resources. No surface occupancy (NSO) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

7. Oil Spring Mountain (18,260 acres). Contains spruce-fir and important biologically diverse plant communities.

CSU stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in a travel management plan prepared following publication of the approved RMP and ROD. Pending publication of a travel management plan, motorized vehicle travel is limited to existing roads and trails.

8. Black's Gulch (800 acres). Contains paleontological values. No surface occupancy (NSO) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

9. Coal Draw (1,840 acres). Contains paleontological values. No surface occupancy (NSO) stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and record of decision.

10. East Douglas Creek (47,610 acres). Contains important biologically diverse plant communities, riparian habitat, and federal candidate Colorado River cutthroat trout habitat. CSU stipulation area for surface-disturbing activities Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in travel management plan(s) prepared after publication of the approved RMP and ROD. Pending publication of a travel management plan(s), motorized vehicle travel is limited to existing roads and trails.

11. Duck Creek (3,430 acres) Contains T/E plants and cultural resources. Duck Creek wickiup site (3 acres) within Duck Creek ACEC NSO for surface-disturbing activities. The remainder of the ACEC proposed for CSU stipulation. Stipulations could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in the approved RMP and ROD.

12. North Cathedral Bluffs (5,730 acres). Contains sensitive plants, scenic values. CSU stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in travel management plan(s) prepared following publication of the approved RMP and ROD. Pending publication of a travel management plan, motorized vehicle travel is limited to existing roads and trails.

13. Texas-Missouri-Evacuation Creek (22 510 acres). Contains abundant cultural resources. CSU stipulation area for surface-disturbing activities. Stipulation could be exempted, modified, or waived by the Area Manager under certain conditions. Motorized vehicle travel limited to designated roads and trails. Roads and trails would be designated in a travel management plan prepared following publication of the approved RMP and ROD. Pending publication of a travel management plan, motorized vehicle travel is limited to existing roads and trails.

Scott Wintemute,

Acting District Manager.

[FR Doc. 95-4452 Filed 2-22-95; 8:45 am]

BILLING CODE 4310-SB-M

[AZ-026-05-1430-10; AZA-29011; 5-00162]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice

SUMMARY: The following public lands in Maricopa County, Arizona have been examined and found suitable for classification for lease or conveyance to the State of Arizona, Department of Administration, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The State of Arizona proposes to use the lands for a correctional facility.

Gila and Salt River Meridian, Arizona

T. 2 S., R. 3 W.,
Sec. 7, lots 1 to 4, inclusive, E½, E½W½;
Sec. 8, all;
Sec. 17, all;
Sec. 18, lots 1 to 4, inclusive, E½, E½W½.
T. 2 S., R. 4 W.,
Sec. 11, lots 1, 4, 5 and 8;
Sec. 12, lot 1, E½, SW¼, E½NW¼, SW¼NW¼;
Sec. 13, all;
Sec. 14, lots 1, 4, 5 and 8.
Containing 3,958.96 acres.

The lease and conveyance will be processed if found to be in the public interest and in compliance with current and ongoing BLM land use planning. The State of Arizona will be required to submit an environmental impact statement which the BLM will review and then make a final determination as to the suitability of the lease and conveyance.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Those rights for transmission line purposes granted to Arizona Public Service Company by Right-of-Way Numbers AZAR-004861 and AZA-9002.

5. Those rights the grazing permittee, Art Arnold, may have to continue his current grazing use for two years from receipt of a cancellation notice. (Grazing Record No. 022304)

For detailed information concerning this action, contact Hector Abrego or Angela Mogel, at the office of the Bureau of Land Management, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona, (602) 780-8090.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a correctional facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a correctional facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 15, 1995.

David J. Miller,

Associate District Manager

[FR Doc. 95-4372 Filed 2-22-95; 8:45 am]

BILLING CODE 4310-32-P

[CA-066-1430-01; CACA-13781]

Realty Actions; Sales; Leases; Etc.: California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification for Lease and Conveyance, California—Correction to Volume 49 of the Federal Register, pages 19418 and 19419, dated Monday, May 7, 1994. Partial Termination of Classification.

SUMMARY: This notice will correct the legal description from San Bernardino Meridian, San Diego County, California. T. 12 S., R. 1 E., Sec. 29: NE¼NW¼, to:

San Bernardino Meridian, San Diego County, California

T. 12 S., R. 1 E.,
Sec. 29: NW¼NW¼

This parcel of public land was classified but not included in the above notice in the Federal Register, and is included at this time:

San Bernardino Meridian, San Diego, County, California

T. 12 S., R. 1 W.,
Sec. 25: SE¼

BLM made the decision to issue the R&PP lease under CACA-13781; however, the application was for conveyance. All the lands in this R&PP were classified as suitable for lease and conveyance. The conveyance was not addressed in the above-mentioned Federal Register Notice, and is included at this time.

1. This action partially terminates the above-mentioned Notice which classified these public lands as suitable for recreation and public purposes—San Bernardino Meridian, San Diego County, California, T. 12 S., R. 1 W., Sec. 27: NE¼NE¼, containing 40 acres, more or less.

2. At 10:00 a.m. on March 27, 1995, the lands described in paragraph 1 will be opened to operation of the public land laws subject to valid existing rights and the provisions of applicable law

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FOR FURTHER INFORMATION CONTACT: Verla Harle, Realty Specialist, Palm Springs-South Coast Resource Area, (619) 251–4849.

Dated: February 9, 1995.

Lucia Kuizon,

Acting District Manager, California Desert.

[FR Doc. 95–4559 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Fort Worth Zoological Park, Ft Worth, TX, PRT–798968

The applicant requests a permit to import two captive-born female Asian elephants (*Elephas maximus*) from African Lion Safari, Cambridge, Ontario, Canada, for the purpose of enhancement of propagation and survival of the species through captive-breeding and conservation education.

Applicant: Mark D. Rohde, Kentwood, MI, PRT–788774

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M.G. Wienand, "Longwood", Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Texas A & M University, College Station, TX, PRT–796331

The applicant requests a permit to import blood samples taken from 250 wild and captive Galapagos tortoise (*Geochelone elephantopus*), in Australia, Bermuda, Ecuador, New Zealand, Singapore, and Tahiti for the purpose of scientific research to enhance the survival of the species.

Applicant: Michel C. Bergerac, New York, NY, PRT–796661

The applicant requests a permit to import the sport-hunted trophy of one male (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by E.V. Pringle, "Huntely Glen", Bedford, Republic of South Africa for the purpose of enhancement of survival of the species.

Applicant: Exotic Feline Breeding Compound, Inc., Rosamond, CA, PRT–79877

The applicant request a permit to import 1 captive-born female Chinese leopard (*Panthera pardus japonensis*) from Menagerie Du Jardin Des Plantes, Paris, France for the purpose of enhancement of the survival of the species through propagation.

Applicant: North Gulf Oceanic Society, Homer, AK, PRT–796751

The applicant request a permit to export a total of 40 skin tissue samples taken from wild humpback whale (*Megaptera novaeangliae*). Samples were taken by biopsy dart in Prince William Sound, Alaska, for the purpose of scientific research to enhance the survival of the species.

Applicant: Gilda Cristiani, Sarasota, FL, PRT–690576

The applicant requests a permit to export and re-import one male and two female captive-bred leopards (*Panthera pardus*) and one male captive-bred snow leopard (*Panthera uncia*) for the purpose of enhancement of the survial of the species through conservation education.

Applicant: Stephen Hall, St. Louis, MO, PRT–796988

The applicant requests a permit to purchase in interstate commerce two hatchling radiated tortoise (*Geochelone radiata*) for the purpose of enhancement of the propagation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 17, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–4420 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Victor J. Hardaswick, Centerville, SD. The applicant wishes to amend his approved cooperative breeding program to include two additional subspecies of Northern Goshawk: *Accipiter gentilis buteoides and Accipiter gentilis albidus*. The applicant wishes to be an active participant in this program with three other private individuals. The South Dakota Raptor Trust maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 16, 1995.

Susan Lieberman,

Chief Branch of Operations Office of Management Authority

[FR Doc. 95–4419 Filed 2–22–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–367]

Certain Facsimile Machines and Components Thereof; Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Samsung Electronics, Co, Ltd. and Samsung Electronics America, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 13, 1995.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–1802. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, S.W., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission. Telephone (202) 205–1802.

By order of the Commission.

Issued: February 13, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–4431 Filed 2–22–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–363 & 364 (Final) and 731–TA–711–715 (Final)]

OCTG From Argentina, Austria, Italy, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final countervailing duty investigation and final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution and scheduling of countervailing duty investigation No. 701–TA–363 (Final) and antidumping investigations Nos. 731–TA–711–715 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Austria, Italy, Japan, and Korea of oil country tubular goods (OCTG),[1] provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the schedule to be followed in the ongoing countervailing duty investigation regarding imports of OCTG from Italy (inv. No. 701–TA–364 (Final)), which the Commission instituted effective December 2, 1994 (60 F.R. 2983, January 12, 1995).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 23, 1995 (inv. No. 701–TA–364 (Final)) and January 30, 1995 (invs. Nos. 731–TA–711–715 (Final)).

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—The subject investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters in Austria of OCTG and that imports of OCTG from Argentina, Austria, Italy, Japan, and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). These investigations were requested in petitions filed on June 30, 1994, by Bellville Tube Corp. (Bellville, TX); IPSCO Steel, Inc. (Camanche, IA); Koppel Steel Corp. (Beaver Falls, PA); Maverick Tube Corp. (Chesterfield, MO); North Star Steel Ohio (Youngstown, OH); U.S. Steel Group (Pittsburgh, PA); and USS/Kobe Steel Co. (Lorain, OH).

Participation in the investigations and public service list.—Any person having already filed an entry of appearance in the countervailing duty investigation on OCTG from Italy is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after

[1] For the purposes of these investigations, OCTG are hollow steel products of circular cross-section. These products include oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes). This investigation does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium.

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the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on June 14, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 27, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 20, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 22, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony in camera.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is June 21, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 6, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 6, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: February 17, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–4430 Filed 2–22–95; 8:45 am]

BILLING CODE 7020–02–P

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: International Trade Commission.

ACTION: Request for proposals to amend the international Harmonized System nomenclature.

SUMMARY: The Commission is soliciting proposals from interested parties and agencies to amend the international Harmonized Commodity Description and Coding System (Harmonized System), including the rules of interpretation, section and chapter notes and the texts of the headings and subheadings, with a view to keeping the System current with changes in technology and trading patterns. Specific proposals in this connection will be reviewed by the Commission staff for potential submission to the Customs Co-operation Council, now known as the World Customs Organization (WCO), in Brussels, Belgium.

EFFECTIVE DATE: February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs & Trade Agreements (O/TA&TA) (telephone (202) 205–2592) or Holm J. Kappler, Deputy Director (O/TA&TA) ((202) 205–2598), U.S. International Trade Commission, Washington, D.C. 20436.

BACKGROUND: Beginning with its 11th Session in March, 1995, the HS Review Sub-Committee of the WCO will initiate its second major review of the Harmonized System. Administered by the WCO, the Harmonized System provides the basis for the customs tariff and statistical nomenclatures of all major trading countries of the world, including the United States.

The Harmonized System was established by an international convention, which, *inter alia*, provides that the System should be kept up-to-date in the light of changes in technology and patterns of international trade.

The Commission, the U.S. Customs Service and the Bureau of the Census have been assigned responsibilities for the development of U.S. technical proposals related to the Harmonized System under section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3010). As indicated in a 1988 notice issued by the United States Trade Representative (USTR) (53 FR 45646 of Nov. 10, 1988), the Commission is the lead agency in considering proposals for amendments to the Harmonized System that are intended to ensure that the System is kept abreast of changes in technology and patterns of international trade.

REQUESTS FOR PROPOSALS: In accordance with the USTR notice, the Commission is seeking proposals for specific modifications to the Harmonized System (including the rules of interpretation, section and chapter notes and the texts of the headings and subheadings) that will further the above goals. *No proposals for changes to the national-level provisions (which include U.S. 8-digit subheadings, statistical annotations and rates of duty) will be considered by the Commission as a part of this review.* Interested parties, associations and government agencies should submit specific language for proposed amendments to the Harmonized System together with appropriate descriptive comments and, to the extent available, trade data.

As part of this review, the Commission particularly invites proposals concerning the following matters:

—The separate identification in the HS of waste products of environmental concern,
—The separate identification of dangerous or toxic chemicals,
—The deletion of HS headings or subheadings with low trade volume,
—The identification of new products important in international trade,
—The simplification of the HS, e.g., by the elimination of classification provisions which are difficult to administer.

WRITTEN SUBMISSIONS: Interested parties, including other Federal agencies, are invited to submit written proposals concerning this review of the Harmonized System. Proposals must be submitted by not later than *May 15, 1995*, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission

Issued: February 14, 1995

Donna R. Koehnke,

Secretary.

[FR Doc. 95–4432 Filed 2–22–95; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–67]

Barry S. Gleken, D.M.D.; Denial of Application

On June 27, 1994, the Deputy Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Barry S. Gleken (Respondent), of Methuen, Massachusetts, proposing to deny his application for a DEA Certificate of Registration, as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated, *inter alia*, on Respondent's lack of authorization to handle controlled substances in the Commonwealth of Massachusetts. 21 U.S.C. 824(a)(3). The Order to Show Cause also alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) based on a number of other allegations, including that Respondent materially falsified his present application by indicating that he was currently authorized to handle controlled substances in the state he was proposing to operate, when, in fact, he was not so authorized.

The Order to Show Cause was sent to Respondent by registered mail. Respondent, through counsel, timely filed a request for a hearing. On August 18, 1994, the Government filed a motion for summary disposition based upon documentation that Respondent did not possess a valid Massachusetts Controlled Substances Registration and that such a registration was necessary before DEA could issue Respondent a registration to handle controlled substances in the Commonwealth of Massachusetts.

Respondent filed a response which did not deny that Respondent was not currently authorized to handle controlled substances in Massachusetts. Respondent, however, urged the administrative law judge to recommend that Respondent be allowed to withdraw his application without prejudice and that no further action be taken by DEA Respondent maintained that such action be taken because he intended to apply for a Massachusetts Controlled Substances Registration in the future.

Respondent, in support of his response, asserted that Massachusetts recently enacted regulations requiring all dentists to be registered with the State Department of Health for authorization to handle controlled substances and that Respondent had just become aware of this requirement.

On September 6, 1994, in his opinion and recommended decision, the administrative law judge found that Respondent was not currently authorized to handle controlled substances in Massachusetts. The administrative law judge also found that Respondent wanted to properly apply for a Massachusetts registration, thereby eliminating the "procedural" defect to obtaining a DEA registration. Consequently, he concluded that no prejudice would accrue to DEA if Respondent were allowed to withdraw his application rather than denying the application based upon his lack of state authorization to handle controlled substances in Massachusetts. The administrative law judge recommended that Respondent be permitted to withdraw his application without prejudice.

On September 26, 1994, the Government filed exceptions to the opinion and recommended decision of the administrative law judge, contending that Respondent's application should be denied based upon the lack of state authorization rather than allowing Respondent to voluntarily withdraw his application. The Government argued in the alternative, that the Deputy Administrator remand the case back to the administrative law judge to allow the Deputy Assistant Administrator, Office of Diversion Control, to decide whether to permit Respondent to withdraw his application, as provided under 21 CFR 1301.37 and 28 CFR 0.104 Appendix to Subpart R, Section 7(a). Respondent did not file a response to the Government exceptions.

The Deputy Administrator finds that, pursuant to 28 CFR 0.104 Appendix to Subpart R, Section 7(a), it is within the discretion of the Deputy Assistant Administrator, Office of Diversion Control, to permit Respondent to withdraw his application after an Order to Show Cause has been filed. However, the Deputy Administrator has concluded that rather than remand the matter for consideration of a withdrawal of the application, the application should be denied based on Respondent's current lack of authorization to handle controlled substances in Massachusetts.

As detailed in the Order to Show Cause, Respondent is alleged to have committed numerous wrongful acts, one of which is the falsification of the present application. Permitting the withdrawal of this application would be prejudicial to the Government and potentially the public. It would eliminate an important factor, the alleged falsification of an application, which should be considered in determining whether future applications should be granted.

The Deputy Administrator finds that Respondent does not currently have state authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which he proposes to be registered with the DEA. The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. *See* 21 U.S.C. 823(f). The Deputy Administrator and his predecessors have consistently so held. *See Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86–54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85–57, 51 FR 23481 (1986); and cases cites therein. Since there is no disagreement that Respondent was not currently authorized to handle controlled substances in Massachusetts when he filed his application, the Deputy Administrator concludes that the Government's motion for summary disposition should be granted.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104

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hereby orders that the application for a DEA Certificate of Registration, submitted by Barry S. Gleken, D.M.D., be, and it is hereby denied. This order is effective February 23, 1995.

Dated: February 16, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–4334 Filed 2–22–95; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

Implementation of The Communications Assistance for Law Enforcement Act

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Notice.

SUMMARY: The Federal Bureau of Investigation (FBI) is providing notice of initial steps being taken to implement, on behalf of the Attorney General, certain provisions in the Communications Assistance for Law Enforcement Act.

FOR FURTHER INFORMATION CONTACT: Telecommunications Industry Liaison Unit, (TILU), FBI, 1–800–551–0336.

SUPPLEMENTARY INFORMATION: On October 25, 1994, the President signed into law the Communications Assistance for Law Enforcement Act (Pub. L. 103–414) (the Act). This law requires telecommunications carriers, as defined in the Act, to ensure law enforcement's ability, pursuant to court order or other lawful authorization, to intercept communications notwithstanding advanced telecommunications technologies.

Under the Act, certain implementation responsibilities are conferred upon the Attorney General. The Attorney General has, pursuant to an Attorney General Order, as codified at 28 CFR 0.85(o), delegated responsibilities set forth in the Act to the Director, FBI, or his designee. The Director, FBI, has designated personnel in the Engineering Section, Information Resources Division, to carry out these responsibilities.

To effectively implement this law, the Engineering Section has established the Telecommunications Industry Liaison Unit (TILU) to specifically address the responsibilities set forth in the Act. TILU personnel will respond to questions and inquiries concerning this Act, and act as the designated contact point for facilitating communication with the telecommunications industry.

Definition of "Telecommunications Carrier"

The Act defines a "telecommunications carrier" as any "person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire" (section 102(8)(A)), and includes any "person or entity engaged in providing commercial mobile service, (as defined in section 332(d) of the Communications Act of 1934, as amended (47 U.S.C. 332(d))" (section 102(8)(B)). This definition includes but is not limited to local exchange and interexchange carriers; competitive access providers; resellers, cable operators, utilities, and shared tenant services to the extent that they offer telecommunications services as common carriers for hire; cellular telephone companies; personal communications services (PCS) providers; satellite-based mobile communications providers; specialized mobile radio services (SMRS) providers, and enhanced SMRS providers; and paging service providers.

The definition does not include persons or entities insofar as they are engaged in providing information services such as electronic publishing and messaging services.

Capability Requirements

The Act requires telecommunications carriers to ensure that, within four years from the date of enactment, their systems have the capability to meet the assistance capability requirements as described in section 103 of the Act. A document entitled *Law Enforcement Requirements for the Surveillance of Electronic Communications*, clarifies the generic law enforcement assistance capability requirements set forth in the Act and gives additional guidance to telecommunications carriers. This document is available upon request from TILU.

Under section 107(a)(2) of the Act, a carrier will be deemed to be in compliance if it adheres to publicly available technical requirements, feature descriptions, or standards adopted by an industry association or standard-setting organization relevant to the Act. Telecommunications carriers may also develop their own solutions. In any case, carriers must meet the requirements set forth in section 103 of the Act. If no such technical requirements or standards are issued, or if they are challenged as being deficient, upon petition, the Federal Communications Commission (FCC) has authority to develop them through a rule making.

Notice of Maximum and Actual Capacity Requirements

Within one year after enactment, the Attorney General is required to publish in the **Federal Register**, and to provide to appropriate telecommunications industry associations and standard-setting organizations, notice of the estimated electronic surveillance capacity requirements as of October 24, 1998, as well as the estimated maximum capacity required to accommodate such surveillance thereafter.

Compliance, Payment, Enforcement, Exemption, Extensions, Consultation, Systems Security, Cooperation

The mandated compliance with the requirements set forth in section 103 of the Act is affected by a number of interrelated factors, including whether the Attorney General is required to, and has agreed to, pay for needed modifications; whether the equipment, facility, or service was deployed on or before January 1, 1995; and whether such modifications are reasonably achievable under criteria set forth in the Act. Under certain circumstances, telecommunications carriers also may petition regulatory authorities to adjust changes, practices, classifications, and regulations to recover costs expended for making needed modifications. Unexcused noncompliance can lead to civil enforcement actions by the Attorney General and imposition of civil fines. The Act also includes provisions for exemption, extension of the compliance date, consultation with industry, and systems security. In addition, it requires telecommunications transmission and switching equipment manufacturers, as well as providers of telecommunications support services, to cooperate with telecommunications carriers in achieving the required capacities and capabilities.

Commerce Business Daily Notice

The FBI Telecommunications Contracts Audit Unit will issue a Notice in the *Commerce Business Daily* soliciting comments from the telecommunications industry concerning cost accounting procedures and other rules regarding payment procedures and criteria.

Dated: February 16, 1995.

Louis J. Freeh,

Director.

[FR Doc. 95–4376 Filed 2–22–95; 8:45 am]

BILLING CODE 4410–02–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Audit of the National Drug Intelligence Center.

(2) None. Office of Inspector General, United States Department of Justice.

(3) Primary = Federal Government, Other = State, Local or Tribal Government. Information is requested in other to determine: 1. Customers satisfaction with NDIC reports, and 2. Customers opinions of the quality of NDIC reports. The results of the survey will be a factor in the auditors' assessment of the efficiency and effectiveness of NDIC.

(4) 290 annual respondents but it is projected that only 58 will respond at .5 hours per response.

(5) 29 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: February 16, 1995.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 95–4360 Filed 2–22–95; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Office for Victims of Crime

[OJP (OVC) NO. 1003–F]

RIN 1121–AA21

Victims of Crime Act Victim Compensation Grant Program

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Final program guidelines.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is publishing Final Program Guidelines to implement the victim compensation grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.* (hereafter referred to as VOCA).

EFFECTIVE DATE: February 23, 1995.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Hightower, Acting Director, State Compensation and Assistance Division, 633 Indiana Avenue NW., Washington, DC 20531; telephone number (202) 307–5947. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: VOCA provides Federal financial assistance to States for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of Federal crimes.

These Program Guidelines provide information on the administration and implementation of the VOCA victim compensation grant program as authorized in Section 1403 of VOCA, Public Law 98–473, as amended, codified at 42 U.S.C. 10603, and contain the following information: Summary of the Comments to the Proposed Program Guidelines; Background; Funding Allocation and Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained and legal opinions rendered during the first nine years of the grant program and are in accordance with VOCA. These Final Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Policy Development, DOJ, and the Office of Information and Regulatory Affairs, OMB, has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866 and, accordingly, this rule was not reviewed by the Office of Management and Budget (OMB).

In addition, these Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information described in the Program Requirements section has been approved by the Office of Management and Budget (OMB) as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121–0014.)

Summary of the Comments to the Proposed Program Guidelines

On December 17, 1993, the Office for Victims of Crime (OVC) published proposed VOCA Victim Compensation Program Guidelines in the **Federal Register**, Vol. 58, No. 164, pages 66023 through 66028. These proposed Guidelines were published for the purpose of soliciting comments on the revised rules for the VOCA victim compensation grant program from all interested individuals and organizations. OVC received six letters from interested individuals and organizations and had conversations with many State VOCA compensation administrators. In total, over twenty-four different issues, questions, recommendations, and comments were received, which often reflected a variety of perspectives.

Respondents included individuals as well as representatives of State and national organizations concerned with various aspects of the implementation of State crime victims compensation benefits and the VOCA victim compensation grant program. The national organizations included the National Association of Crime Victim Compensation Boards (NACVCB) and

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the National Indian Justice Center (NIJC). There were also comments submitted by four State VOCA compensation administrators.

In addition, on September 18, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994. This comprehensive anti-crime legislation contained a number of victim related provisions. The following four amendments to the Victims of Crime Act (VOCA) directly affect the VOCA victim compensation grant program:

(1) modification of the VOCA formula for distribution of the Crime Victims Fund dollars; (2) establishment of State compensation programs as the "payors of last resort"; (3) authorization for use of up to 5 percent of VOCA victim compensation and assistance grant funds for administrative costs; and (4) requiring states to maintain previous level of funding support in administering the VOCA compensation grant program. The following paragraphs incorporate comments from the field and reflect new policy guidance from OVC.

OVC appreciates the time and effort each respondent invested in reading and commenting upon the proposed Guidelines. All comments were carefully considered in developing these Final Program Guidelines. As a result, OVC rewrote, deleted, and incorporated additional information to further clarify various sections of the Guidelines. Explanation of our resolutions and final determinations are presented in the following analysis of each of the modified sections.

A. Background

A number of respondents expressed concern that the current language of this section speaks only of reimbursement paid directly to crime victims when in fact many programs pay providers of services such as hospitals, physicians, dentists, and attorneys directly. Thus, we have revised the language in this section to provide that State crime victim compensation programs may use VOCA compensation grant funds to pay for eligible expenses to, or on behalf of, an eligible crime victim except for property damage and losses. We feel that this modification will address any ambiguity regarding payments made directly to providers of services on behalf of victims.

B. Availability of Funds

Since 1989, OVC has received questions regarding the obligation and expenditure of grant funds, particularly with regard to the grant period. In an attempt to address this issue, these Final Program Guidelines clarify that funds are available for obligation beginning October 1 of the year of the award through September 30 of the following Federal Fiscal Year (FFY). Thus, States are permitted to pay compensation claims retroactively from the start of the project period, even though the VOCA grant may not be awarded until later in the grant period.

C. Application Process

1. Eligible State Payment Certification. Each year States submit a Crime Victim Compensation Eligible State Payments Certification Form with their application for a Federal VOCA victim compensation grant award. The amount certified on this form is used by OVC to determine the amount of each eligible State's annual grant allocation. Previously, OVC required that the designated State certifying official was limited to the Governor, the Attorney General, or the Secretary of State. Since 1989, certifications of several States have been delayed because of this requirement, thus delaying grant awards to all States. In response, OVC now will accept the signature of the authorized individual within the agency designated by the Governor to administer the state compensation program on the annual certification of state payouts form. The NACVCB responded in support of the change and indicated that the modification will promote the timely implementation of the VOCA grant program.

2. Civil Rights Information. One respondent raised a concern regarding the collection of personal information such as race, national origin, gender, age, and handicap. Many States are prohibited from mandating that victims provide such information. Therefore, qualifying language has been added in the *Application Process* section of these Final Program Guidelines.

D. Program Requirements

1. State Eligibility Criteria. One respondent petitioned OVC to seek a legislative amendment to VOCA, which would allow for direct funding of compensation programs operated by tribal governments. Throughout the Legislative History of VOCA, Congress explicitly rejects the notion of funding separate programs to compensate crime victims because such action would result in duplication of effort. Rather, as a condition of eligibility for a VOCA crime victim compensation grant, a State must provide compensation to victims of Federal crime, including Native Americans, on the same basis as such program provides compensation to victims of State crimes. OVC must conform with the mandate of Congress on this matter.

Another respondent pointed out that the definition of "State" which is provided in VOCA did not appear in the proposed Guidelines. This omission was inadvertent, and the definition has been included in the Program Requirements section of these Final Program Guidelines.

2. Victim Cooperation with Law Enforcement. OVC received numerous inquiries concerning the VOCA provision which requires, as a condition of eligibility, that a program promote victim cooperation with the reasonable requests of law enforcement. The proposed Program Guidelines provided that a State may, at its discretion, impose reasonable requirements, but must, at a minimum, require that the victim report the crime to the "appropriate law enforcement agency." Several programs have sought clarification as to the extent of discretion afforded States through this provision.

OVC is aware that in many jurisdictions, adult and child abuse reports may be filed with protective services agencies or may be filed with family or domestic courts. Hence, these Final Program Guidelines provide that States may utilize any of the following criteria to meet this VOCA Requirement or any other criteria the State believes is necessary to encourage victim cooperation with law enforcement and to verify that a crime occurred: a) require a victim to report the crime to the appropriate law enforcement agency; or b) require a victim to report the crime to an appropriate governmental agency, such as child and/or adult protective services, or family or juvenile court. In addition, for the purposes of meeting this VOCA program requirement States may accept the results of a medical evidentiary examination in lieu of a law enforcement report.

In assessing victim cooperation, State crime victim compensation programs are encouraged to carefully consider compelling health or safety reasons which may influence the extent of victim cooperation with law enforcement. Such considerations may include apprehension regarding personal safety, fear of retaliation, and intimidation by the offender or others.

3. Compensation for non-residents. With regard to the requirement that States offer compensation to non-residents who are victimized within their borders, and the requirement that States offer compensation to their own residents who are victimized in States without eligible compensation programs, some respondents requested that the Guidelines specify that in both situations, claimants must meet the eligibility requirements of the applicable State statute. These Final Program Guidelines stipulate that claimants are eligible to apply for crime victim compensation from the State in which the crime occurred if the State's statutory eligibility requirements are met. However, if the State in which the crime occurred does not have an eligible compensation program, the crime victim should apply in the State in which he or she resides. Victim eligibility and the extent to which an eligible victim will be compensated are established by the respective State statute.

E. State Certification

In response to a request from one respondent, the definition of a "compensable crime" has been further defined to include not only crimes of violence but other crimes in which the victim suffers psychological or emotional trauma although there may not be any physical injury. While most State statutes explicitly define the crimes which will be covered under their program, questions have been raised as to whether certain crimes which involve emotional abuse, but did not involve physical injury, would be considered compensable under VOCA. Hopefully, this modification clarifies the type of crimes which may be considered compensable.

One respondent expressed concern regarding the availability of compensation for traditional healing and burial expenses. The respondent noted that there is great variation among the States as to the type and extent of expenses which are eligible for compensation. OVC appreciates the cultural and financial issues, as well as the need for each State to recognize and support various methods available and preferable to victims in their recovery and/or stabilizing their lives after a victimization. However, determinations as to the extent of benefits available to crime victims remains solely within the prerogative of each State. VOCA does not stipulate with any specificity the extent or any qualifying factors for the payment of expense categories.

In connection with the payment of forensic sexual assault examinations, one respondent recommended that clarification be given regarding inclusion of payments made for forensic sexual assault examinations in a State's certified payments. Specifically, the respondent suggested that the Guidelines advise that although the eligibility criteria for a VOCA compensation grant require that a victim report to local law enforcement, States may waive the reporting requirement in the following circumstances: (1) the primary purpose of the examination is to collect forensic evidence; (2) such payments are allowable under the State's statute or administrative rules; and (3) such payments are made from funds administered by the compensation program.

Guidelines for Crime Victim Compensation Grants

Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits from fines and penalties levied on criminals convicted of Federal crimes. This Fund provides the source of funding for carrying out all of the activities mandated by VOCA.

OVC was established in 1984 as the Justice Department's chief advocate for America's crime victims. OVC's program activities are consistent with VOCA. These Final Program Guidelines address the specific program and financial requirements of the VOCA crime victim compensation grant program.

OVC makes annual VOCA crime victim compensation grants from the Fund to eligible States. The primary purpose of these grants is to supplement State efforts to provide financial assistance and reimbursement to crime victims throughout the Nation for costs associated with being a victim of a crime, and to encourage victim cooperation and participation in the criminal justice system. State crime victim compensation programs may use VOCA compensation grant funds to pay for eligible expenses provided by the State compensation statute except for property damage and property losses.

The 1994 amendments to VOCA made a number of changes affecting the crime victim compensation program. These amendments can be found in sections 1402(d) which describe the distribution of the Crime Victim Fund and section 1403 of VOCA, which describes the requirements and eligibility criteria for a VOCA victim compensation grant award.

For the first time since the inception of the State VOCA victim compensation program, States may use up to five percent of their grant award for administrative purposes. This provision will apply to State VOCA victim compensation grants for Federal Fiscal Year 1995. Guidance as to the conditions, limitations, and reporting requirements on the expenditure of administrative funds is set forth the *Availability of Funds* section of these Final Program Guidelines.

States have the responsibility for establishing guidelines and procedures for applying for crime victim compensation benefits which meet the minimal statutory requirements outlined in VOCA and the requirements in these Program Guidelines.

Funding Allocation and Application Process

A. Distribution of Crime Victim Fund

OVC administers the deposits made into the Fund for programs and services, as specified in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund in the preceding Federal Fiscal Year.

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with Federal Fiscal Year (FFY) 1993 deposits. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund. Thus, under current legislation, the Fund will receive deposits indefinitely.

The Violent Crime Control and Law Enforcement Act of 1994 provides that the deposits into the Fund are to be distributed as follows:

1. The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter is available to the Administrative Office of United States Courts for administrative costs to carry out the functions of the judicial branch under Sections 3611 of Title 18, U.S. Code.

2. Of the next $10,000,000 deposited in the Fund a particular fiscal year,

a. 85 percent shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;

b. 15 percent shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for Assisting Native American Indian Tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.

3. The remaining Fund deposits are distributed as follows:

a. 48.5 percent is available for victim compensation grants;

b. 48.5 percent is available for victim assistance grant;

c. 3 percent is available for support of services to Federal crime victims and for demonstration, training, and technical assistance grants to eligible crime victim programs.

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B. Availability of Funds

The Director of OVC will make an annual grant to eligible State crime victim compensation programs equal to 40 percent of the amounts awarded by the State program to victims of crime from State sources of revenue during the fiscal year preceding the year of deposits in the Fund (two years prior to the grant year). Note: Amounts paid to compensate victims for property damage or property loss can not be included in a state's certification for a VOCA victim compensation grant award. If the amount in the Fund is insufficient to award each State 40 percent of its prior year's compensation payout, Section 1403(a)(2) of VOCA provides that all States will be awarded the same reduced percentage of their prior year payout from the available funds.

Funds are available for expenditure throughout the FFY of award as well as in the next FFY. The FFY begins on October 1 and ends on September 30. State crime victim compensation programs may pay compensation claims retroactively from October 1, even though the VOCA grant may not be awarded until later in the grant period. Funds that are not obligated by the end of the grant period must be returned to the General Fund of the U.S. Treasury. Therefore, States are encouraged to monitor closely the expenditure of VOCA funds prior to the end of the grant period.

Administrative Costs

The Victims of Crime Act (VOCA) now allows up to five percent of VOCA crime victim compensation grant funds to be used for administering the state crime victim compensation grant program(s). It is in the State's discretion to use the allowable five percent for administration. However, any part of the allowable five percent which is not used for administrative purposes must be used for awards of compensation to crime victims.

The intent of this new provision of VOCA is to support and advance program administration in all operational areas including claims processing, staff development and training, public outreach, and program funding by supporting those activities that will improve program effectiveness and service to crime victims. If a state elects to use up to five percent of their VOCA compensation grant for administrative purposes, only those costs directly associated with administering the program, enhancing overall program operations, and ensuring compliance with Federal requirements, can be paid with limited administrative grant funds. Further, States must certify that VOCA funds used for administrative purposes will not be used to supplant State or local funds but will be used to increase the amount of State funds that would be available for administering the compensation program. For the purpose of establishing a baseline level of effort, States should maintain documentation as to the overall administrative commitment of the State prior to their use of VOCA administrative grant funds.

Allowable administrative costs include but are not limited to the following: program personnel, salary and benefits; travel costs for attendance at state, regional, and national compensation training conferences; computer equipment and support services; costs involved in the production and distribution of program brochures and posters, and other program outreach activities; professional fees for computer services and peer review of compensation claims; agency membership dues for victim compensation organizations; program enhancements such as toll-free numbers; special equipment and materials to facilitate service to persons with disabilities, and other reasonable costs directly related to administering a compensation program. Indirect costs expressed as a percentage of state-wide joint costs will not be considered as allowable.

Staff supported by 5% of the VOCA compensation administrative funds under the VOCA Crime Victim compensation grant must work directly for the compensation program in the same proportion as their level of support from VOCA grant funds. If the staff have other functions, the proportion of time working on the compensation program must be documented using some reasonable method at regular intervals such as time and attendance records on all funded staff which demonstrate the portion of staff time spent on compensation related activities. The documentation must provide a clear audit trail for the expenditure of grant funds.

Only staff activities directly related to compensation functions can be funded with VOCA administrative funds. Similarly, any equipment purchases or other expenditures charged to the VOCA compensation grant should only be charged proportionate to the percentage of time utilized by the compensation program.

Temporary or periodic personnel support, such as qualified peer reviewers for medical and mental health claims, and data processing support services are also allowable. These services may be obtained through contract using VOCA administrative funds.

Those States that elect to utilize administrative funds under the VOCA compensation grant, shall include with their annual application a general description of how the administrative funds will be used. This description should include an itemization of the state's projected expenditures for allowable administrative cost. A state may modify projections set forth in their application by providing OVC a revised description of their planned use of administrative funds in writing, subsequent to submitting their annual application. However, the revised description must be reviewed prior to the obligation of any Federal funds.

Those States that elect to utilize administrative funds under the VOCA crime victim compensation grant, shall include a narrative description of the impact of VOCA administrative funds with their annual performance report.

C. Application Process

Each year, OVC issues to each eligible State a Program Instruction and Application Kit, which contains the necessary forms and detailed information required to make application for VOCA crime victim compensation grant funds. The amount for which each State may apply is included in the Application Kit. States shall use the Standard Form 424, Application for Federal Assistance, and its attachments to apply for VOCA victim compensation grant funds. Applications for VOCA crime victim compensation grants may only be submitted by the State agency designated by the Governor to administer the VOCA grant.

Completed applications must be submitted on or before the stated deadline, as determined by OVC. If an eligible State fails to apply for its crime victim compensation allocation by the prescribed deadline, OVC will redistribute Federal VOCA crime victim compensation dollars to the VOCA victim assistance grant program as provided by Section 1404(a)(1) of VOCA (42 U.S.C. 10603 (a)(1)), assuming all states have received the statutorily prescribed 40% (percent) of their prior years payouts.

In addition to submission of the Application for Federal Assistance, States shall:

1. Specify their arrangements for complying with the provisions of Circular A–128 (Audits of State or Local Government.)

2. Submit Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance, and any other certifications required by OJP and OVC. Additionally, States must complete a disclosure form specifying any lobbying activities that are conducted.

3. Submit a Crime Victim Compensation Eligible State Payments Certification Form which is furnished by OVC.

The amount certified on this Form is used by OVC to determine the annual Federal grant award to each eligible State in the following year. This form must be completed and signed by the authorized individual within the agency designated by the Governor to administer the VOCA crime victims compensation grant. For Further information concerning the State certification, see the Program Requirements section.

4. Submit the following assurances and information:

a. An assurance that the program will comply with all applicable nondiscrimination requirements;

b. An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, or disability against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

c. The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

d. An assurance that programs will maintain information on crime victims receiving services by race, national origin, sex, age, and disabilities, where such information is voluntarily furnished by claimants. A State may, at its discretion, use the following language when soliciting claimant responses: "The submission of information regarding race/ethnic background or disabilities is strictly voluntary. A decision to not supply this information will not affect your eligibility for compensation benefits without this information. However, this information is important. We use it to study the extent to which members of minorities and persons with disabilities are recipients of compensation benefits and to determine the extent to which outreach efforts should be enhanced to ensure access and services to these populations."

Program Requirements

A. State Eligibility Criteria

The fundamental criteria for eligibility is the grantee must be an operational State-administered crime victim compensation program. The term "State" includes the District of Columbia, the Virgin Islands, and any other possession or territory of the United States. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under Section 1403(b)(1) of VOCA, the program would not be entitled to a VOCA grant because it had not awarded any benefits that could be matched under Section 1403(a)(1). VOCA compensation grant funds may not be used as "start-up" funds for a new State program.

Section 1403 of VOCA prescribes the conditions and eligibility criteria related to crime victim compensation grants. In order for a State to meet or maintain eligibility for a crime victims compensation grant, it must satisfy the following eligibility requirements:

1. The program must be operated by a State and offer compensation to victims and survivors of victims of "compensable crimes," including drunk driving and domestic violence. The term "compensable crime" means a crime, the victims of which are eligible for compensation under the State's eligible crime victim compensation program statute or rule. The range of expenses for which States may award crime victims compensation varies nationwide, although all States must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses.

2. The program must promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit to promote this cooperation and to verify that a crime has occurred. Encouraging victims to cooperate with law enforcement and to report the crime is important to the effective functioning of the criminal justice system and to preventing further victimizations.

In assessing a victim's cooperation with law enforcement, State crime victim compensation programs are encouraged to consider carefully any compelling health or safety reasons that may influence the extent of victim cooperation with law enforcement. Such considerations might include concerns regarding personal safety and retaliation, as well as threats or intimidation of the victim by the offender or others.

3. The State must certify that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation or to administer the state crime victim compensation program.

The nonsupplantation provision is intended to assure that States use VOCA funds to augment, not replace, otherwise available State funding for crime victim compensation. More specifically, the States may not decrease their financial commitment to crime victim compensation solely because they are receiving VOCA funds for the same purpose.

4. The State, as to compensable crimes occurring within the State, must make compensation awards to victims who are non-residents of the State on the basis of the same criteria used to make awards to victims who are residents of such State.

This provision is intended to ensure that non-residents of a State, who are victimized in a State that has an eligible compensation program, are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The provision of reciprocal agreements with certain other States or foreign countries will not suffice to meet this criteria. Eligibility for VOCA funds requires the State program to extend its coverage to all non-residents victimized in the State. Note: For the purposes of this provision, the term "non-resident" must, at a minimum, include anyone who is a resident in one State but victimized in another. A State may, at its discretion, broaden its definition of non-resident to include anyone victimized in the State regardless of whether the victim is a United States citizen.

5. The State must provide compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes.

For example, a victim of a rape, occurring on a Federal installation or Indian reservation inside the State, must be afforded the same benefits that would be available to the victim if the rape were classified as a crime against the State. This provision is intended to cover those individuals victimized on military installations, national parks and highways, Native American reservations, and under other circumstances where Federal jurisdiction exists since there is no Federal compensation program which provides benefits to victims covered under Federal jurisdiction.

6. The State must provide compensation to residents of the State who are victims of crimes occurring

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outside the State, if the crimes would be compensable crimes had they occurred inside that State and the crimes occurred in a State not having eligible crime victim compensation programs.

This provision is intended to cover those residents of a State who are victimized in a State which does not have a crime victim compensation program.

This requirement protects residents of a State who are victims of criminal violence in another State which does not have an eligible crime victims program for which the victim qualifies. In such instances, the victim would be eligible to apply for crime victim compensation from the State in which he or she resides. If a person from one State is victimized in another, which has an eligible compensation program, the State in which the crime was committed must offer compensation to the victim according to its own eligibility requirements and allowable expenses, without regard to the non-residence status of the victim.

7. Except pursuant to rules issued by the compensation program to prevent unjust enrichment of the offender, the State cannot deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender.

Unjust enrichment, as the basis for denying crime victims compensation, must be based upon written rules issued by the State crime victims compensation program. "Rules" mean either written policies or directives developed and distributed by State crime victim compensation programs or rules adopted by legislative or administrative bodies. Such rules cannot have the effect of denying compensation to a substantial percentage of domestic violence victims. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end.

In developing rules, the States are encouraged to consider the following:

a. Legal responsibilities of the offender to the victim under the laws of the State and collateral resources available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crime, victims of domestic violence should not be penalized when collateral sources of payment are not viable, e.g., when the offender refuses to, or cannot, pay restitution or other civil judgements within a reasonable period of time or when the offender otherwise impedes direct or third party (i.e., insurance) reimbursements.

b. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant. For example, denial of medical or dental expenses solely because the offender has legal responsibility for the charges, but is unwilling, or unable to pay them, could result in the victim's inability to receive treatment.

c. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims.

d. The special needs of child victims of criminal violence especially when the perpetrator was the parent who may or may not have lived in the same residence.

8. The State must provide such other information and assurances as the Director of OVC may reasonably require.

9. If the compensation paid by an eligible crime victim compensation program would cover the costs that a Federal program, or a Federally financed State or local program, would otherwise pay such crime victim compensation program shall not pay that compensation; and the other program shall make its payments without regard to the existence of the crime victim compensation program.

B. State Certifications

Guidelines on amounts to be included as well as amounts to be excluded in a State's certification of payments of crime victims compensation from State funding sources are furnished below:

1. Program Revenue. States must report on the certification form all sources of State revenue available to the crime victims compensation program during the Federal Fiscal Year. In some instances, funds are made available to the crime victims compensation program from other departments or agencies, from supplemental appropriations, donations, or carried over from prior years appropriations. All State funds which are available during the Federal Fiscal Year should be reported. The amount of certified revenue, excluding VOCA funds, must meet or exceed the amount of certified payments to crime victims.

2. Amounts to be Included. The total amount to be certified by the State program must include only those amounts paid from State funding sources to or on behalf of crime victims during the Federal Fiscal Year (October 1 to September 30).

3. Compensable Expenses. The range of expenses for which States may award crime victims compensation varies nationwide, although all States must award compensation for medical expenses, including mental health counseling and care; loss of wages; and funeral expenses. Note: The term "medical expenses" includes, to the extent provided under the State crime victim compensation program statute, expenses for eyeglasses and other corrective lenses; dental services, devices, and prosthetic devices; and for services rendered in accordance with a method of healing recognized by the law of the State. "Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

Compensable expenses to be included in the annual certification must be authorized by State statute or rule, providing there is rule making authority in State law. States may include expenses, not specifically identified in VOCA, such as pain and suffering; crime scene clean up; replacement costs for clothing and bedding held as evidence; annuities for child victims for loss of support; medically-necessary building modification; medically-necessary devices; and attorney fees related to a victim's claim for compensation.

States may also include payments related to forensic sexual assault examinations, even if the victim did not report the crime to law enforcement if such payments are made from funds administered by the compensation program and are allowable under the state's statute or administrative rules.

4. Amounts to be excluded. States must exclude, in the certification, VOCA grant funds, compensation for property losses or property damage, audit costs, personnel costs, and any other program administrative costs.

5. Applicable Credits. Any "applicable credits" must be deducted from the State certification. The term "applicable credits" refers to those receipts or reduction of expenditures, which offset or reduce expense items that are allocable to a particular crime victim compensation claim. Typical examples of applicable credits in State crime victims compensation programs include funds received through a State's subrogation interest in a claimant's civil law suit recovery, restitution, refunds, or other reimbursements. Refunds include amounts from overpayment, erroneous payments made to claimants, uncashed checks, etc. Additional guidance regarding applicable credits can be found in OMB Circular A–87, "Cost principles for State and Local Governments."

States must determine how to account for both the receipt and expenditure of restitution and refunds. Note: A State is not required to reduce its certified payment figure by the amount of restitution recoveries received by the State which are not directly related to the payment of crime victim compensation benefits, nor when such reimbursements were from payments to victims prior to receiving a VOCA award.

6. Recovery Costs. Expenses incurred by State compensation programs, which are directly attributable to the recovery of restitution, refunds, and other reimbursements, may be offset against the amount of income received from such reimbursements. Expenses directly attributable to recovery income shall be limited to the percentage of those salaries incurred by the State for employees whose primary responsibilities (not less than 75 percent of their time) are directly and specifically related to recovering restitution and other reimbursements. Recovery costs can not be claimed for employees whose salary is derived from Federal administrative grant funds.

7. There is no financial requirement that State compensation programs identify the source of individual payments to crime victims as either Federal or State dollars.

C. Incorrect Certifications

If it is determined that a State has made an incorrect certification of payments of crime victims compensation from State funding sources and a VOCA crime victim compensation grant is awarded in error, one of the following two courses of action will be taken:

1. In the event that an over certification comes to the attention of OVC or the Office of the Comptroller, OJP, the necessary steps will be taken to recover funds which were awarded in error. OVC does not have the authority to permit States to keep amounts they were not entitled to as a result of overcertification.

2. If a State under-certifies amounts paid to crime victims, OVC will not supplement payments to the State in a subsequent year to correct the State's error. Once OVC awards funds in a given FFY, there are no excess funds available to remedy errors of this nature.

D. Program Reporting Requirements

States receiving VOCA crime victims compensation grant funds are required to prepare an Annual Performance Report that is provided by OVC. The Report requests specific information about claims for compensation, such as types of crimes committed, including drunk driving and domestic violence, disposition of claims, and payments for compensable expenses. The Performance Report covers the Federal Fiscal Year ending September 30 and is due to OVC by December 30 of the same year.

E. Additional Requirements

1. Civil Rights—Prohibition of Discrimination for Recipients of Federal Funds. No person in any State shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving Federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*; and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

2. Confidentiality of Research Information. Except as otherwise provided by law, no recipient of monies under VOCA shall use or reveal any research or statistical information gathered under this program by any person, and identifiable to any specific private person, for any purpose other than the purpose for which such information was obtained, in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. [See Section 14007(d) of VOCA, codified at 42 U.S.C. 10604(d)].

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to employees of VOCA-funded victim compensation programs. However, there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of a suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981).

Financial Requirements

As a condition of receiving a grant, States agree to insure adherence to the general and specific requirements as set forth in the "Financial and Administrative Guide for Grants," OJP M7100.1D (effective edition) and applicable OMB Circulars and Common Rules. This includes the maintenance of books and records in accordance with generally accepted government accounting principles. States further agree to identify state fiscal year and Federal cognizant audit agency. This section describes the payment of grant funds, termination of advanced funding; financial status reports, and audit requirements.

A. Audit Responsibilities for States

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), States that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. States receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. State and local governments receiving less than $25,000

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in any fiscal year are exempt from audit requirements.

B. Audit Costs

Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (State) level are determined to be an administrative expense.

C. Financial Status Report for States

Financial Status Reports (269A) are required from all State agencies. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred. Financial Status Reports shall be submitted to the Office of the Comptroller, by the State, within 45 days after the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 90 days after the end of the VOCA grant, no later than December 31.

D. Termination of Advance Funding

If the State grantee receiving cash advances by Letter of Credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, OJP may terminate advance funding and require the State to finance its operations with its own working capital. Payments to the State will then be made by the direct Treasury check method, which reimburses the State for actual cash disbursements.

Monitoring

A. Office of the Comptroller/General Accounting Office/Office of the Inspector General

The Office of the Comptroller, the General Accounting Office, and the Office of the Inspector General conducts periodic reviews of the financial policies and procedures and records of VOCA States. Therefore, upon request, States must give authorized representatives the right to access and examine all records, books, papers, case files, or other documents related to the grant.

B. Office for Victims of Crime

Beginning with the FFY 1991 grant period, OVC implemented an on-site monitoring plan in which each State grantee is visited a minimum of once every three years. While on site, OVC personnel will review various documents and files such as (1) financial and program manuals and procedures governing the crime victim compensation grant program; (2) financial records, reports, and audit reports for the State grantee; (3) the State's compensation application, procedures, and guidelines for awarding compensation benefits; (4) a random sampling of victim compensation claim files; and (5) all other applicable State records and files.

Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a State has failed to comply substantially with VOCA, the M7100.1D (effective edition), the Final Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the State and/or take other appropriate action. At such time, States may request a hearing on the justification for the suspension and/or termination of VOCA funds.

Approved by:

Aileen Adams

Director, Office for Victims of Crime, Office of Justice Programs.

[FR Doc. 95–4417 Filed 2–22–95; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1 (a)(3), that the National Indian Gaming Commission has adopted a preliminary annual fee rate of 0.6% (.006) for calendar year 1995. The rate shall apply to all assessable gross revenues (tier 1 and tier 2) from each class II gaming operation regulated by the Commission.

FOR FURTHER INFORMATION CONTACT: Cindy Altimus, National Indian Gaming Commission, 1850 N Street, NW., Suite 250, Washington, DC 20036; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating Class II gaming on Indian lands.

The regulations of the Commission (25 CFR Part 500) provide for a system of fee assessment and payment that is self-administered by the Class II gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and this rate are effective for calendar year 1995. Therefore, all Class II gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission before the end of the first quarter of 1995 (March 31), and quarterly thereafter.

Harold A. Monteau,

Chairman, National Indian Gaming Commission.

[FR Doc. 95–4463 Filed 2–22–95; 8:45 am]

BILLING CODE 7565–0–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (AOs), "Report to Congress on Abnormal Occurrences: July-September 1994" (NUREG–0090, Vol. 17, No. 3).

Under the Energy Reorganization Act of 1974, which created NRC, an AO is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." NRC has made a determination that an incident or event involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material is an AO.

This report addresses five AOs at NRC-licensed facilities. One involved a medical brachytherapy misadministration, two involved medical teletherapy misadministrations, one involved a medical sodium iodide misadministration, and one involved a medical sodium iodide event. One AO report submitted by an Agreement State is included. It involved the loss of management and procedural control of a radioactive source.

The report also contains updates of six AOs previously reported by NRC licensees and three AOs previously reported by Agreement State licensees. Two "Other Events of Interest" concerning nuclear power reactors are also reported. One involved the fracture of a frozen pipe at Dresden Unit 1 with a consequent release of water, and the other involved the possible deliberate exposure of a contract laborer to radiation at Quad Cities Nuclear Power Station.

Section 208 of the Energy Reorganization Act of 1974, as amended, also requires NRC to provide a wide dissemination of information relating to these reported occurrences. Descriptions of the NRC licensee AOs for the third quarter of calendar year 1994, are provided below and have been reported to Congress in NUREG–0090, Vol. 17, No. 3.

NRC Material and Medical Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

94–15 Sodium Iodide Event at Welborn Memorial Baptist Hospital in Evansville, Indiana

The following information pertaining to this event is also being reported concurrently in the **Federal Register.** Appendix A (see General Criterion 1) of this report notes that a moderate exposure to, or release of, radioactive material licensed by or otherwise regulated by the Commission can be an abnormal occurrence.

Date and Place—March 9, 1994; Welborn Memorial Baptist Hospital, Inc.; Evansville, Indiana.

Nature and Probable Consequences—On May 16, 1994, the licensee reported to NRC that a pregnant patient was administered 185 megabecquerel (MBq) (5 millicurie [mCi]) of sodium iodide-131 (I–131) on March 9, 1994, as prescribed in the written directive for the treatment of Graves' disease (hyperthyroidism). The licensee did not know that the patient was pregnant at the time of the administration. On May 10, 1994, the licensee was informed by a private practice physician that the patient was 22-weeks pregnant at the time of treatment. As a result, the patient's fetus received an unintended radiation dose.

The patient was referred to the licensee with possible hyperthyroidism. To confirm the suspect condition, the licensee administered a 440.3 kilobecquerel (11.9 microcurie) I–131 capsule of the patient on March 7, 1994, and measured an 82-percent thyroid uptake over the ensuing 25 hours. The licensee stated that prior to administering the I–131 diagnostic capsule on March 7, 1994, the patient was questioned and informed both the treating physician and the nuclear medicine technologist administering the capsule that she was not pregnant. The licensee diagnosed the patient's condition as Graves' disease and the treating physician perscribed a 185 MBq (5 mCi) I–131 therapy treatment. On March 9, 1994, a 185 MBq (5 mCi) I–131 capsule was orally administered by one of the licensee's nuclear medicine technologists, as prescribed. Prior to the treatment on March 9, 1994, the technologist questioned the patient once more and was again informed by the patient that she was not pregnant.

Oak Ridge Institute for Science and Education calculated the fetal whole body and thyroid doses at NRC request. The fetal dose to the thyroid was calculated as 7,000–12,000 centigray (cGy) (7,000–12,000 rad), and the fetal whole body dose was calculated as 0.55 cGy (0.55 rad). Based on the calculated fetal dose there are a range of possible consequences, the most likely being no significant harm to the fetus. At NRC request, the Radiation Emergency Assistance Center/Training Site in Oak Ridge, Tennessee, contacted the licensee to discuss the dose assessment and potential fetal effects.

On May 10, 1994, a physician specializing in maternal fetal medicine, not affiliated with the licensee, discussed the incident with the licensee. The patient was informed of the exposure and possible consequences to the fetus by the material fetal specialist.

NRC Region III learned the patient was aware that she was being administered radioactive materials, and subsequent to the administration she realized she was pregnant. It should be noted that since this was not a misadministration, there was no requirement to notify the patient.

Cause or Causes—The principal cause for the event was licensee reliance on the patient's assurance of non-pregnancy. Licensee procedures do not require determination of pregnancy status through serum testing, or other appropriately documented means, for all female patients of child bearing age. The patient was apparently unaware of her pregnancy status at the time of I–131 administration on March 9, 1994.

Action Taken To Prevent Recurrence

Licensee—The licensee is in the process of developing internal policies which will address options for pregnancy status determination including serum pregnancy testing or suitable written proof, such as evidence of a hysterectomy. The legal implications and options for written proof of non-pregnancy are being evaluated by the licensee. Until policies have been finalized, the licensee plans to administer pregnancy tests to all female patients of child bearing age, unless appropriate proof of non-pregnancy is available as determined by the authorized user. For patients unwilling to undergo pregnancy testing, radiopharmaceuticals will not be administered and the authorized user will be consulted for the appropriate course of action.

NRC—NRC Region III conducted a safety inspection from May 18 through June 8, 1994, to review the circumstances surrounding the event and to evaluate aspects of the licensee's radiopharmaceutical Quality Management Program (Reg. 1). No regulatory violations associated with the event were identified. The licensee's procedure appears to have been followed in this specific case. NRC regulations do not include requirements for patient pregnancy verification prior to administration of radiopharmaceuticals. However, NRC is in the process of developing regulations which will address the administration of radiopharmaceuticals to breast feeding and pregnant patients.

94–16 Teletherapy Misadministration at Medical Center Hospital in Chillicothe, Ohio

The following information pertaining to this event is also being reported concurrently in the **Federal Register.** Appendix A of this report notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—July 21 and 22, 1994; Medical Center Hospital; Chillicothe, Ohio.

Nature and Probable Consequences—On July 27, 1994, the licensee reported that a patient received a radiation dose of approximately 300 centigray (cGy) (300 rad) to an unintended treatment site using a cobalt-60 teletherapy unit.

A patient was scheduled to receive 1400 cGy (1400 rad) in a series of seven treatments for cancer of the esophagus. Each of the treatments was to consist of two radiation exposures of 100 cGy (100 rad) each delivered from different angles. The first treatment was performed on July 21. Following the first of the to exposures during the second treatment on July 22, the technologist found inconsistencies in the angles of treatment documented in the written directive and in the patient simulation sheet. Upon further review, the licensee determined that the wrong treatment angles had been used during the first treatment and part of the second treatment.

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As a result of the incorrect angles of exposure, the treatment site received only part of the prescribed dose and adjacent tissue received a higher does than intended. The licensee estimates a dose of 300 cGy (300 rad) to the unintended site. Under normal conditions, the unintended site would have received approximately 20–50 cGy (20–50 rad).

The treatment angles were corrected on the patient's chart, and the radiation dose was modified to compensate for the reduced dosage delivered in the initial treatments. The patient was informed and no adverse medical effects are expected.

The patient was notified verbally on July 26, 1994 and in writing as required by 10 CFR 35.33. According to the medical consultant, there will be no medical consequences as a result of the misadministration.

Cause or Causes—The error occurred because the simulated gantry angles had not been converted to the treatment unit gantry angles, and gantry angle conversion factors were not included in the licensee's treatment chart checks conducted by the technologists.

The root causes of the problem were discussed with the licensee on September 1, 1994, during an Enforcement Conference. The causes appeared to be the following: (1) Written procedures were not developed to address gantry angle conversions; (2) the technologists did not have an adequate understanding of the informal gantry angle conversion procedures; (3) the informal gantry angle conversion procedure was not part of the licensee's annual refresher training program; (4) technologists did not fully understand their responsibilities to resolve discrepancies in a treatment plan; and (5) gantry angle conversion factors were not included in the licensee's treatment chart checks conducted by the technologists.

Action Take To Prevent Recurrence

Licensee—The licensee's corrective actions included: (1) Revising the simulation data form to include a specific location to document the converted gantry angles; (2) initialing all angle conversions by the person performing the conversion, and having a second individual independently verify the conversions prior to treatment; (3) instructing the technologists to review all treatment information and to resolve any discrepancy prior to continuing treatment; (4) performing all future gantry angle conversions by the licensee rather than by the licensee's simulation contractor; and (5) conducting a review of past treatment plans back to 1988, with emphasis on those which did not identify any additional errors.

NRC—NRC Region III conducted an inspection on August 1, 1994, to review the circumstances surrounding the misadministration (Ref. 2). NRC also retained a medical consultant to review the case. An Enforcement Conference was held on September 1, 1994, to discuss the inspection findings and actions taken by the licensee. On September 20, 1994, NRC Region III issued a Notice of Violation with a Severity Level III (Severity Levels I through V range from the most significant to the least significant) violation with no civil penalty assessed. The licensee's corrective and preventive actions will be reviewed during the next NRC inspection of the licensed program.

94–17 Sodium Iodide Misadministration at St. Joseph Mercy Hospital in Pontiac, Michigan

The following information pertaining to this event is also being reported concurrently in the **Federal Register**. Appendix A of this report notes that administering a diagnostic dose of a radiopharmaceutical differing from the prescribed dose by more than 50 percent in which the event results in adverse health effects worse than expected for the normal range of exposures prescribed for the diagnostic procedure can be considered an abnormal occurrence.

Date and Place—July 26, 1994; St. Joseph Mercy Hospital; Pontiac, Michigan.

Nature and Probable Consequences—On July 27, 1994, the licensee reported to NRC that a misadministration occurred involving a patient receiving the wrong radiopharmaceutical for a diagnostic procedure.

The patient's referring physician requested a thyroid scan which involves administration of a standard prescription at St. Joseph Mercy Hospital of a 9.25 megabecquerel (MBq) (0.25 millicurie [mCi]) sodium iodide–123 (I–123) capsule. However, the licensee administered a 92.5 MBq (2.5 mCi) I–131 capsule. The amount of activity that was administered is normally used following removal of the thyroid to examine a patient for the spread of cancer from the thyroid through the body.

NRC retained a medical consultant to review the case. The medical consultant concluded that the resultant unnecessary dose to the patient's thyroid would result in a low, but finite, probability of hypothyroidism developing in the future. Also, there is a lifetime probability of developing radiation-induced thyroid cancer of 10 percent, including a risk of fatal thyroid carcinoma of approximately 1 percent. The licensee has arranged for the patient to be seen by a endocrinologist, and for repeat thyroid imaging with I–123 to be performed several months after the misadministration.

The patient was notified in person by the Radiation Safety Officer on July 27, 1994. Subsequently, the patient was also given a written report that was dated August 5, 1994.

Cause or Causes—Part of the cause of the misadministration was the lack of the treating physician's involvement in the patient's examination prior to the I–131 administration. The administrative staff and technologists failed to have the examination clarified by a treating physician with the referring physician prior to administration of the I–131. Causal factors for this event also included the failure of licensee management to ensure implementation of the licensee's written Quality Management Program. Contributing factors also appear to include deficiencies in training, and a failure to follow through on matters.

Action Taken To Prevent Recurrence

Licensee—The licensee took the following corrective actions: (1) Held a training session which included the Radiation Safety Officer, treating physicians and technologists; (2) instituted a limit on the number of individuals who will be involved in the use of I–131; and (3) required a written directive to be filled out and signed by a treating physician.

NRC—NRC Region III conducted an inspection on August 1, 1994, to review the misadministration (Ref. 3). A Conformatory Action Letter (CAL) was issued to the licensee on August 2, 1994, which described the commitments made by the licensee as to which actions will be taken prior to the administration of I–131. An Enforcement Conference was held on August 24, 1994, to discuss the inspection findings and actions taken by the licensee in response to the CAL.

In October 1994, NRC proposed an $8,000 fine against the licensee for violations of NRC requirements involved in a diagnostic procedure using radioactive iodine at the hospital. The violations involve: (1) Failure to have signed written directives by an authorized user prior to administration of I–131 in quantities greater than 1.11 MBq (0.03 mCi) on July 26, and in two previous instances where the I–131 was the intended radiopharmaceutical; (2) failure to have a clinical procedure for the proper administration of I–131 for

whole body scans; and (3) failure to provide proper instruction to the nuclear medicine staff. The licensee paid the civil penalty.

94–18 Multiple Teletherapy Misadministrations at Sinai Hospital in Detroit, Michigan

The following information pertaining to this event is also being reported concurrently in the **Federal Register**. Appendix A of this report notes that a therapeutic dose that results in any part of the body receiving unscheduled radiation can be considered an abnormal occurrence.

Date and Place—July 28 and August 3, 1994; Sinai Hospital; Detroit, Michigan.

Nature and Probable Consequences—On July 28, 1994, and August 3, 1994, misadministrations occurred on two separate patients when the licensee's therapists failed to verify correct teletherapy machine parameters prior to treatment.

Beginning on July 19, 1994, a patient was to received 4500 centigray (cGy) (4500 rad) in a series of 25 treatments to the left neck area. The first seven treatments were completed without incident. However, on the eighth treatment on July 28, one faction was set up using the wrong treatment angle. This resulted in a radiation dose of 90 cGy (90 rad) being received by the right shoulder and neck area instead of the left neck area.

Beginning July 5, 1994, another patient was to receive 5000 cGy (5000 rad) in a series of 25 treatments to the right shoulder area. The first 20 treatments were completed without incident. However, on the 21st treatment on August 3, the teletherapy unit was positioned using the wrong treatment angle. This resulted in a radiation dose of 100 cGy (100 rad) being received by the right lung area instead of the right shoulder area.

An NRC medical consultant reviewed both cases and concluded that no significant adverse side effects or tissue injury are expected.

Cause or Causes—The cause of both misadministrations was human errors by several of the licensee's therapists. The therapists failed to verify the collimator angle, the wedge setting, and the treatment site before administering the teletherapy dose to the patients.

Action Taken To Prevent Recurrence

Licensee—The corrective actions taken included: (1) Suspending all teletherapy treatments pending an internal investigation, and identification of appropriate corrective actions prior to re-start of the teletherapy treatments; (2) developing procedures which require independent verification of proper treatment parameters during patient set-up; and (3) installing a record-and-verify system on the teletherapy unit to ensure that all major treatment parameters are checked prior to a treatment.

NRC—NRC Region III conducted an inspection July 29 through August 12, 1994, to review the circumstances surrounding the two misadministrations (Ref. 4). NRC also retained a medical consultant to review the case. An Enforcement Conference was held on September 8, 1994, to discuss the inspection findings and actions taken by the licensee. On September 21, 1994, NRC Region III issued a Notice of Violation with a Severity Level III (Severity Levels I through V range from the most significant to the least significant) violation with no civil penalty assessed. The licensee's corrective and preventive actions will be reviewed during the next NRC inspection of the licensed program.

As required by 10 CFR 35.33(a), the licensee, for each misadministration, notified the referring physician and patient after the discovery of the incident and submitted a written report to the patient, including a statement that the report submitted to NRC Region III will be made available upon request.

94–19 Brachytherapy Misadministration Involving the Use of a Strontium-90 Eye Applicator at the University of Massachusetts Medical Center in Worcester, Massachusetts

The following information pertaining to this event is also being reported concurrently in the **Federal Register**. Appendix A (see Event Type 5 in Table A–1) of this report notes that a therapeutic dose that results in an actual dose less than 0.5 times the prescribed dose can be considered an abnormal occurrence. In addition, Criterion No. 11 under "For All Licensees" in Appendix A notes that a serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—July 29, 1994; University of Massachusetts Medical Center; Worcester, Massachusetts.

Nature and Probable Consequences—NRC Region I was notified on August 1, 1994, by the licensee of a brachytherapy misadministration involving the use of a strontium-90 (Sr-90) eye applicator. On July 29, 1994, a physician performed an ophthalmic treatment on a patient using a Sr-90 eye applicator without first removing the stainless steel mask from the source. Because of this oversight, the licensee estimated that the treatment site received 107 centigray (cGy) (107 rad) of radiation, rather than the 1250 to 2000 cGy (1250 to 2000 rad) that was intended. In addition, whereas the beta radiation from the eye applicator source only affects the surface of the eye, the bremsstrahlung radiation resulting from the interaction of the beta particles on the stainless steel mask is more penetrating. The patient returned on August 2, 1994, for the completion of the therapy to bring the total dose delivered within the originally prescribed range. The licensee expects that the clinical outcome of the misadministration will be inconsequential for the patient.

Cause or Causes—According to the licensee a combination of factors led to the misadministration: (1) Infrequent use of the ophthalmic applicator and the fact that its appearance with the mask is similar to its appearance with the mask removed; (2) the event occurred on a Friday afternoon and the stress of the week's work affected the alertness of the individuals involved; and (3) the most experienced physicists were not available, and a relatively inexperienced physicist prepared the source and was unaware that the source was equipped with a stainless steel mask.

Actions Taken to Prevent Recurrence

Licensee—The licensee is reviewing the feasibility of modifying the mask in some manner to make it more easily distinguished from the unmasked source. In addition, the licensee has employed two new radiation oncology physicians and a new chief physicist.

NRC—NRC conducted a special inspection on August 3, 1994. The inspector determined that the physician was assisted by a dosimetrist who had not previously been directly involved with the procedure. When the physician requested that the dosimetrist provide him with the eye applicator source in order to perform the treatment, the dosimetrist handed him the source with the stainless steel mask in place. The dosimetrist stated that she was unaware that the source was equipped with a mask and that the mask needed to be removed. The physician and other licensee staff stated that it is the assistant's responsibility, in this case the dosimetrist's responsibility, to remove the stainless steel mask from the source before handing the eye applicator to the physician. The treatment was administered by the physician with the mask in place. While cleaning the eye applicator later that same day, the licensee determined that the treatment had been performed with the mask in place. The licensee stated that the patient and the patient's physician were notified that there had been an

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underdose and the patient returned on August 2, 1994, for the completion of the therapy. The patient was given a written report of the misadministration on August 9, 1994. The licensee submitted a report for the misadministration on August 10, 1994. NRC Region I has enlisted the services of a medical consultant to evaluate the clinical consequences of this misadministration and awaits his report.

A copy of NUREG–0090, Vol. 17, No. 3 is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C. 20037, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of this report (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 16th day of February, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 95–4382 Filed 2–22–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352 and 50–353]

In the Matter of: Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2); Exemption

I.

Philadelphia Electric Company (the licensee), is the holder of Facility Operating License Nos. NPF–39 and NPF–85, which authorize operation of the Limerick Generating Station (LGS), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect. The facilities consist of two boiling water reactors located in Montgomery County, Pennsylvania.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. Sections II.H.4 and III.C.2 of Appendix J to 10 CFR Part 50 require leak rate testing of Main Steam Isolation Valves (MSIVs) at the calculated peak containment pressure related to the design basis accident, and Section III.C.3 requires that the measured leak rates be included in the combined local leak rate test results. The proposed deletion of the MSIV Leakage Control System (LCS), and proposed use of an alternate leakage pathway affects the description of an existing exemption which allows the leak rate testing of the MSIVs at a reduced pressure and the exclusion of the measured leakage from the combined local leak rate test results. The original exemption is contained in the LGS Safety Evaluation Report (SER) (NUREG–0991, and its Supplement 3).

By letter dated December 22, 1994, the licensee requested an exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," Sections II.H.4, III.C.2, and III.C.3, to allow alternative testing pressure and leakage limits for the MSIVs and to exclude MSIV leakage from the combined local leak rate test results after deletion of the LCS.

The staff issued for LGS, Units 1 and 2, the current exemption from 10 CFR Part 50, Appendix J, Sections II.H.4, III.C.2, and III.C.3, based on the conclusion that the LGS, Units 1 and 2, MSIV leak testing methods were acceptable alternatives to the requirements. This conclusion was included in the LGS SER (NUREG–0991, and its Supplement 3). The SER also described that in the event of a loss-of-coolant-accident (LOCA), the MSIV LCS will maintain a negative pressure between the MSIV and the effluent will be discharged into a volume where it will be processed by the standby gas treatment system before being released to the environment. The licensee had performed a radiological analysis based on an assumed leak rate limit of 11.5 standard cubic feet per hour (scfh), and the MSIVs were planned to be periodically tested to ensure the validity of the radiological analysis. The staff concluded that the current LGS testing procedure, where two valves on one steam line are tested simultaneously, between the valves, utilizing a reduced test pressure (i.e., half a peak containment pressure of 22 psig applied between the MSIVs) was acceptable. Also, the staff excluded the MSIV test leakage rate from the combined local leak rate because the MSIV leakage had been accounted for separately in the radiological analysis of the site.

By letter dated January 14, 1994, the licensee submitted a Technical Specifications (TS) amendment request for LGS, Units 1 and 2, which supports the planned modification to eliminate the MSIV LCS and utilize an alternate leakage pathway (main steam lines and condenser). This proposal is based on the Boiling Water Reactor Owners Group (BWROG) method summarized in General Electric Report NEDC–31858P, Revision 2, "BWROG Report for increasing MSIV Leakage Rate Limits and Elimination of Leakage Control System." Therefore, the description of the MSIV LCS and the assumed MSIV leak rate are no longer accurate once the proposed TS modification is performed and implemented.

The licensee's January 14, 1994, TS (amendment) request states that a plant-specific radiological analysis has been performed in accordance with NEDC–31858P, Revision 2, to assess the effects of the proposed increase to the allowable MSIV leakage rate in terms of Main Control Room (MCR) and off-site doses following a postulated design basis LOCA. This analysis utilizes the hold-up volume of the main steam piping and condenser as an alternate method for treating MSIV leakage. The radiological analysis uses standard conservative assumptions for the radiological source term consistent with Regulatory Guide (RG) 1.3, "Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss-of-Coolant-Accident for Boiling Water Reactors," Revision 2, dated June 1974. The analysis results demonstrate that dose contributions from the proposed MSIV leakage rate limit of 100 scfh per MSIV, not to exceed 200 scfh for all four main steam lines, and considering the proposed deletion of the MSIV LCS, result in an acceptable increase to the LOCA doses previously evaluated against the regulatory limits for the off-site doses and MCR doses contained in 10 CFR Part 100, and 10 CFR Part 40, Appendix A, General Design Criteria (GDC) 19, respectively. The proposed calculated off-site and MCR doses resulting from a LOCA are the sum of the LOCA doses previously evaluated (currently described in the Updated Final Safety Analysis Report), and the additional doses calculated using the alternate MSIV leakage treatment method. The method of calculating the revised doses is conservative, since the LOCA doses previously evaluated already include dose contributions from MSIV leakage at the maximum leakage rate currently permitted by the TS. Appendix 2 of Attachment 3 of the January 14, 1994, submittal shows the previously calculated doses and the new calculated doses resulting from the proposed changes.

The staff concluded that the current exemption was acceptable based on: The method of MSIV testing (i.e., 22 psig test pressure when applied between MSIVs on a single steam line); a radiological analysis that assumed a 11.5 scfh MSIV leak rate, and the licensee's commitment that the MSIVs would be periodically tested to ensure the validity of the radiological analysis (i.e., verify that the MSIV leakage rate during testing is accounted for separately in the radiological analysis of the site. The proposed changes do not affect the bases for the current exemption. The modification and implementing TS change request: Will not alter the procedure method of MSIV testing (i.e., test pressure will remain at 22 psig when applied between MSIVs) and are based on the results of a radiological analysis where the proposed leakage rate and the resulting doses are still within regulatory limits. Also, the MSIVs will be periodically tested to assure the validity of the analysis (i.e., verify that the proposed MSIV leakage rate assumed in the radiological analysis is not exceeded per proposed TS 3.6.1.2.c), and the MSIV leakage will still be accounted for separately in the radiological analysis of the site.

For the reasons set forth above, the NRC staff concludes that there is reasonable assurance that: The current MSIV leak testing method (i.e., test pressure of 22 psig when applied between MSIV) is an acceptable method; the proposed alternate MSIV leakage pathway (main steam lines and condenser), and the calculated doses obtained by performing radiological analysis (calculated using an MSIV leakage rate limit of 100 scfh per MSIV not to exceed 200 scfh for all four main steam lines) are within the limits of 10 CFR Part 100 and GDC 19. The staff finds it acceptable to continue to exclude the measured MSIV leakage rate from the combined local rate, since the leakage is accounted for separately and continues to meet the underlying purpose of the rule. Therefore, the staff finds the requested exemption presented in the licensee's December 22, 1994, submittal acceptable.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *."

The underlying purpose of the rule is to assure that the total valve leakage is within the limits of 10 CFR Part 100 and GDC–19. The licensee's analysis has demonstrated that an adequate margin can be maintained even if leakage from the MSIV is considered separately and subject to a leakage restriction of 100 scfh per MSIV, not to exceed a total of 200 scfh for all four main steam lines.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted from the requirements of Sections II.H.4, III.C.2(a), and III.C.3 of Appendix J to 10 CFR Part 50. The exemption allows (1) leakage testing of the MSIVs after deletion of the LCS, using a test pressure of 22 psig applied between MSIVs and a leakage rate limit of 100 scfh per MSIV, not to exceed 200 scfh for all main steam lines, and (2) exclusion of the measured MSIV leakage rate from the combined local leak rate.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 7226).

The exemption is effective upon issuance and will be implemented prior to startup of Cycle 4 for LGS, Unit 2, and prior to startup of Cycle 7 for LGS, Unit 1.

Dated at Rockville, Maryland this 16th day of February 1995.

[FR Doc. 95–4383 Filed 2–22–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–353]

Philadelphia Electric Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 53 to Facility Operating License No. NPF–85 issued to Philadelphia Electric Company, which revised the Technical Specifications for operation of the Limerick Generating Station, Unit 2, located in Montgomery County, Pennsylvania.

The amendment is effective as of the date of issuance. The amendment modified the Technical Specifications to permit an increase in the allowable leak rate for main steam isolation valves (MSIV), and delete the MSIV leakage control system (LCS). The main steam drain lines and the main condenser would be utilized as an alternate MSIV leakage treatment system.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 26, 1994 (59 FR 49089). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7226).

For further details with respect to the action see (1) the application for amendments dated January 14, 1994, and supplemented by letters dated August 1, October 25, December 13, December 22, 1994 (two submittals), and February 7, 1995 (2) Amendment No. 53 to License No. NPF–85, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at

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the Pottstown Public library, 500 High Street, Pottstown, PA.

Dated at Rockville, Maryland, this 16th day of February 1995.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95-4384 Filed 2-22-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-29343; License No. 29-19310-02 (Expired); EA 94-226]

Environmental Testing Laboratories, Inc., Philadelphia, Pennsylvania; Order Imposing a Civil Monetary Penalty

I

Environmental Testing Laboratories (ETL), Inc. (Licensee), is the holder of expired Byproduct Materials License No. 29-19310-02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on July 31, 1986. The License authorized the possession and use of nickel-63 in plated sources or foils, not to exceed 15 millicuries per foil, in accordance with the conditions specified therein. The License expired on August 31, 1991.

II

ETL did not submit an application for renewal of the License under 10 CFR 30.37 prior to its expiration on August 31, 1991, nor did ETL notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License 30 days prior to its expiration. Although Mr. Walter Holm, Jr., the Radiation Safety Officer, stated ETL's intentions in a letter dated May 15, 1991, to terminate the license, until January 24, 1995, ETL had not transferred the licensed material to an authorized recipient, nor had ETL applied for an NRC license.

On January 14, 1993, NRC Region I issued a Notice of Violation (NOV) at Severity Level IV to ETL, mailed to Mr. Walter Holm, for possession of byproduct material without a valid NRC license. The letter forwarding the NOV directed the Licensee to lace the byproduct material in secure storage, not to use the material, and promptly transfer the byproduct material to an authorized recipient. The Licensee did not respond to that NOV. In a June 7, 1994 letter, the NRC again reminded ETL of the need to respond to the NRC Notice of Violation. ETL did not respond. In addition, ETL did not respond to a telephone message left on October 26, 1994. On November 10, 1994, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice); Notification of Consideration of the Imposition of Daily Civil Penalties; and Order to Cease and Desist Use and Possession of Regulated Byproduct Material were served upon ETL. The Notice categorized the violation at Severity Level III since ETL had not transferred the material nor responded to the NOV issued on January 14, 1993. ETL has not responded in writing to the Notice, even though a response was required by December 10, 1994, and even though the NRC contacted ETL on January 3, 6 and 18, 1995, regarding submittal of a response. ETL has not responded to the Order to Cease and Desist as required. However, NRD, a sub-contractor of Perkin-Elmer (an authorized recipient) received the sealed source from ETL on January 24, 1995.

III

The NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, and that a penalty of $3,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

ETL pay a penalty in the amount of $3,000 within 30 days of the date on this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville, MD 20852-2738.

V

ETL may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If ETL fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event ETL requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether ETL was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland this 15th day of February 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Violations and Conclusion

On November 10, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued based on a review of communications (and associated documents) conducted between the NRC and Environmental Testing Laboratories, Inc. (ETL) between November 1991 and October 26, 1994. ETL has not responded to the Notice, even though a response was required by December 10, 1994, and even though NRC contacted ETL on January 3, 6 and 18, 1995, to remind them of need to respond. The violations set forth in the Notice, as well as the NRC conclusion on this matter, are as follows:

1. Restatement of Violations

A. 10 CFR 30.3 states, in part, that except for persons exempt as provided in 10 CFR Parts 30 and 150, no person shall possess or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in this chapter.

Contrary to the above, from January 14, 1993 through October 31, 1994, ETL has been in possession of byproduct material not authorized under a specific or general license, and ETL is not exempt as provided in 10 CFR Parts 30 and 150. (01013)

B. 10 CFR 30.36(b) requires, in part, that each licensee notify the Commission promptly, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license.

10 CFR 30.36(c)(1) requires, in part, that if a licensee does not submit an application for license renewal under 10 CFR 30.37, the licensee shall, on or before the expiration date specified in the license, terminate use of byproduct material; properly dispose of byproduct material; submit a completed form NRC-314, which certifies information concerning the disposition of material; and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey.

Contrary to the above, as of August 31, 1991, the NRC license issued to ETL expired and the licensee did not submit an application for license renewal nor did it notify the Commission and request termination of its license, dispose of its byproduct material, submit a completed form NRC-314, and submit a report of the results of a survey of the premises where the licensed activities were carried out. (01023)

2. NRC Evaluation and Conclusion

ETL has failed to respond to the Notice. The November 14, 1993 letter accompanying the Notice provided a full explanation as to why a civil penalty was warranted in this matter. Absent a response from ETL, the NRC has no basis to retract the violations or withdraw the civil penalty. Since a response to the Notice was due by December 10, 1994, and ETL has not responded, despite several reminders, the NRC concludes that a civil penalty in the amount of $3,000 should be imposed.

[FR Doc. 95-4385 Filed 2-22-95; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 9-11, 1995, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register Notice on Wednesday, December 28, 1994 (59 FR 66977).

Thursday, March 9, 1995

8:30 A.M.-8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.-10:30 A.M.: Proposed Final Amendment to 10 CFR Part 54, Nuclear Power Plant License Renewal (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final amendment to 10 CFR Part 54.

Representatives of the industry will participate, as appropriate.

10:45 A.M.-12:00 Noon: Rulemaking to Obtain Equipment Reliability Data from Licensees (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed rule to obtain equipment reliability data from licensees.

Representatives of the industry will participate, as appropriate.

1:00 P.M.-2:30 P.M.: Decommissioning of Nuclear Power Reactors (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute regarding the proposed rule on decommissioning of nuclear power reactors.

2:30 P.M.-4:00 P.M.: Wolf Creek Event—Loss of Reactor Coolant Inventory During Shutdown (Open)

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the safety significance of the event at the Wolf Creek Nuclear Power Plant which involved loss of reactor coolant inventory during shutdown.

Representatives of the industry will participate, as appropriate.

4:15 P.M.-5:15 P.M.: Methods for Estimating (Seismic) Core-Damage Frequency from a Seismic Margin Analysis (Open)—The Committee will hear presentations by and hold discussions with the ACRS Fellow regarding the status of Committee activities in developing a methodology for estimating the core-damage frequency from seismic events, given that a plant has performed a seismic margin analysis. (This is part of the Committee's efforts to provide guidance and insights to the Commission for determining where the current population of operating plants, both individually and collectively, fall in relation to the safety goals.)

5:15 P.M.-6:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on certain matters considered during this meeting.

Friday, March 10, 1995

8:30 A.M.-8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.-9:30 A.M.: Kobe Earthquake (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the impact of the recent Kobe earthquake on nuclear power plants and other structures located in the vicinity of the earthquake.

9:30 A.M.-10:15 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

10:30 A.M.-11:00 A.M.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

11:00 A.M.-11:15 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

11:15 A.M.-12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on certain matters considered during this meeting.

1:00 P.M.-3:15 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on certain matters considered during this meeting.

3:30 P.M.-3:45 P.M.: Subcommittee Activities (Open)—The Committee will hear a report by the Chairman of the ACRS Thermal Hydraulic Phenomena Subcommittee regarding the February 15-16, 1995 meeting.

3:45 P.M.-5:00 P.M.: New Research Needs (Open)—The Committee will discuss new research needs.

5:00 P.M.-6:30 P.M.: Strategic Planning (Open)—The Committee will discuss items that are of significant importance to the Committee and the Commission.

Saturday, March 11, 1995

8:30 A.M.-10:30 A.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of ACRS reports on certain matters considered during this meeting.

10:45 A.M.-11:45 A.M.: Strategic Planning (Open)—The Committee will continue to discuss items that are of significant importance to the Committee and the Commission.

11:45 A.M.-12:00 Noon: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussions of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only

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during the open portions of the meeting, and questions may be asked only by members of the Committee, it consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least five days before the meeting if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements an the time allotted therefore can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 A.M. and 4:15 P.M. EST.

Dated: February 17, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–4460 Filed 2–22–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for an Expedited Review of a Revised Information Collection Form RI 25–14

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for expedited review of a revised information collection. Form RI 25–14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(c), and Section 8441, title 5, U.S. Code, to receive benefits as a student.

Approximately 14,000 Self-Certification of Full-Time School Attendance forms are completed annually; each requires approximately 12 minutes to complete, for a total public burden of 2,800 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before February 28, 1995. OMB has been requested to take action no later than March 3, 1995.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW. Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:

Mary Beth Smith-Toomey, Management Services Division, (202) 606–4025, Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

Form Approved:
OMB No. 3206-0032

United States
Office of Personnel Management
Retirement Programs
P.O. Box 956
Washington, D.C. 20044-0956

Information and Instructions for Completing the Self-Certification of Full-Time School Attendance

The retirement law provides for payment of a monthly annuity to unmarried sons and daughters who are: 1) age 18 to 22 and are full-time students in accredited schools or 2) age 18 or older and incapable of self-support because of a mental or physical disability that began before age 18 and is expected to continue for at least one year.

Use the enclosed form to apply for the student benefit. Do **not** use this form to apply for a student benefit if the son or daughter is disabled. Instead, write to OPM, Retirement Operations Center, Boyers, PA 16017 or call (202) 606-0500 to ask about a disabled child's benefit. We will send you the instructions you need to document the child's disability. Adult children who qualify are paid a benefit as long as they are disabled and are not married.

Full-time students must be taking sufficient courses to allow them to graduate within the minimum time which is considered normal for a full-time student of the school. For example, usually a college student must be enrolled for a minimum of 12 credit hours per semester to be considered a full-time student. If you need additional information about what is considered full-time attendance, please call us at (202) 606-0249.

A recognized educational institution for the purpose of these benefits is a school that: 1) has a faculty and requires study or training at the school; and 2) is accredited as an educational institution. Such schools are: high schools, trade schools, technical or vocational schools, colleges, junior colleges, universities or similar educational institutions.

Not included as "recognized" or accredited educational institutions for purposes of receiving student benefits are: correspondence schools, elementary schools, the Government service academies such as the U.S. Naval Academy, or any training program where the trainee receives pay primarily as an employee, such as apprenticeship programs or the Job Corps.

Benefits (payments) must stop if the student:

1. dies,
2. marries,
3. discontinues full-time schooling,
4. enters military service on active duty,
5. enters any of the service academies,
6. transfers to a non-recognized school, or
7. attains age 22.

Students who attain age 22 during the school year (between September 1 and June 30) may receive benefits through the end of the month preceding the month in which full-time schooling stops or June 30, whichever occurs first.

Since you are the payee, you must notify us immediately if any one of these events occurs. If you are paid benefits after any of these events, you will be indebted to the retirement system and we will have to recover the money from you.

If you believe you are eligible to receive survivor benefits for a full-time student, complete the enclosed form after you read the back of this notice.

Privacy Act and Public Burden Statements

The Office of Personnel Management (OPM) administers the Civil Service Retirement System (Chapter 83, of title 5, U.S. Code) and the Federal Employees Retirement System (Chapter 84, title 5, U.S. Code.) The information requested on the enclosed form is needed to document a retirement benefit or claim. The information may be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national, state, local or other charitable or social security administrative agencies in order to determine benefits under their programs, to obtain information necessary for determination or continuation of benefits from OPM, or to report income for tax purposes. It may also be shared and verified, as noted above, with law enforcement agencies when they are investigating a violation or potential violation of civil or criminal law. Provision of the information is voluntary; however, failure to supply all the requested information may delay or prevent action on the benefit or claim. Intentionally false statements and/or suspected illegal activities are reportable by us to appropriate law enforcement agencies.

We think this form takes an average 12 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project (3206-0032), Washington, D.C. 20503.

Please Carefully Review The Example On The Reverse Side

Previous edition is not usable.

RI 25-14A
Revised February 1995

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Instructions for Completing the Enclosed Form

It Is Important That You Follow All Of The Instructions Below.

1 The enclosed form has been designed to allow your answers to be read using optical scanning equipment. Therefore please use a pencil to blacken the ovals and circles. If you make a mistake, erase it completely and blacken the correct ovals and circles. *(Do **not** use a correction fluid on the enclosed form.)*

2 Complete the form as illustrated in the example below.

EXAMPLE

Item 10 of the form is reproduced here to illustrate how you should make your entries on this form. The example below illustrates how this question would be completed for a student whose school year ends or will end on June 7, 1996.

Write the month, day, and year in the boxes. If the month is June, enter JUN.

Blacken the corresponding circle below each box. For example, if the number is "0," blacken the circle with a "0" in it.

10. Enter the date this school attendance will end or ended. If the student plans to attend for the full school year, you should show the ending date of the full school year *(NOT the semester)*. This date must be later than the date shown in block 9.

Month	*Day*	*Year*
JUN	07	96

	Month	Day	Year
JAN		0	0
FEB		1	1
MAR		2	2
APR		3	3
MAY		4	4
● JUN		5	5
JUL		6	
AUG		●	7
SEP		8	8
OCT		9	9
NOV			
DEC			

3 Please review your entries to avoid delays in your payments due to errors or incomplete data.

4 **DO NOT** copy or duplicate this form. If you need another form, write to the address shown in item 5 or contact us on (202) 606-0249.

DO NOT staple, damage, or mutilate this form.

5 The person who is the payee must be sure to sign this form and mail it within 30 days in the enclosed envelope to:
U.S. Office of Personnel Management
P.O. Box 956
Washington, D.C. 20044-1956

If you need assistance:

If, after carefully reading the instructions, you need assistance to complete the form, you may contact us weekdays from 8:00 a.m. to 5:00 p.m. (Eastern Time) on (202) 606-0249.

Revised February 1995

Self-Certification of Full-Time School Attendance For The School Year:

Show any change of address on this form below.

Form Approved: OMB No. 3206-0032

U.S. Office of Personnel Management
Retirement and Insurance Group, Washington, DC 20415-0001

A	0	0	0	0	0	0	0	0	0
F	1	1	1	1	1	1	1	1	1
	2	2	2	2	2	2	2	2	2
	3	3	3	3	3	3	3	3	3
	4	4	4	4	4	4	4	4	4
	5	5	5	5	5	5	5	5	5
	6	6	6	6	6	6	6	6	6
	7	7	7	7	7	7	7	7	7
	8	8	8	8	8	8	8	8	8
	9	9	9	9	9	9	9	9	9

1. Student's name and date of birth	For Agency Use Only: I II III IV
	Claim number
2. Currently certified thru	Date

IMPORTANT: Please read the enclosed instruction sheet before completing this form. To avoid interruption of payments, please complete this form immediately, using a pencil and darkening the entire circle; so our computer can process your form without delaying your payments. *Please complete this form for the entire school year **(not just one semester)** if plans are known; and complete it for one school year only.* Please do **not** take this form to the school. The person in the address above must sign in block 17. This is a personalized form, precoded for only the student shown in item 1.

3. Is the student's date of birth correct as shown in block 1 above?
Yes
No. Show the correct date below and **attach a birth certificate.**

Month	*Day*	*Year*

	Day	Year
JAN	00	00
FEB	11	11
MAR	22	22
APR	33	33
MAY	44	44
JUN	55	55
JUL	66	66
AUG	77	77
SEP	88	88
OCT	99	99
NOV		
DEC		

4. Student's Social Security Number

Social Security Number

0	0	0	0	0	0	0	0	0
1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	2
3	3	3	3	3	3	3	3	3
4	4	4	4	4	4	4	4	4
5	5	5	5	5	5	5	5	5
6	6	6	6	6	6	6	6	6
7	7	7	7	7	7	7	7	7
8	8	8	8	8	8	8	8	8
9	9	9	9	9	9	9	9	9

5. Is the student currently married?
No
Yes. Show the marriage date below.

Month	*Year*

	Year
JAN	00
FEB	11
MAR	22
APR	33
MAY	44
JUN	55
JUL	66
AUG	77
SEP	88
OCT	99
NOV	
DEC	

6. During the past 12 months, did the student stop school before the end of the school term, or change from full-time to part-time status?
Yes. Show date full-time attendance ended.
No

Month	*Year*
	9

	Month
JAN	0
FEB	1
MAR	2
APR	3
MAY	4
JUN	5
JUL	6
AUG	7
SEP	8
OCT	9
NOV	
DEC	

Blocks 7 - 16 must be completed if the student returned or will return to school full-time on or after the date they are currently certified through for payment shown in block 2 above.

7. Show the school's name and address *(including ZIP code)*:

Phone number *(if available & area code)*:
( )

8. Is this school accredited by a nationally recognized accrediting agency or association?
No
Yes

Previous editions are not usable

RI 25-14
Revised February 1995

9. Enter the date the student began or will begin full-time school attendance for the school year you are certifying. Date should be on or after date shown in block 2.

Month / Day / Year (9)

○ JAN ○ FEB ○ MAR ○ APR ○ MAY ○ JUN ○ JUL ○ AUG ○ SEP ○ OCT ○ NOV ○ DEC

10. Enter the date this school attendance will end or ended. If the student plans to attend for the full school year, you should show the ending date of the full school year *(NOT the semester)*. This date must be later than the date shown in block 9.

Month / Day / Year (9)

○ JAN ○ FEB ○ MAR ○ APR ○ MAY ○ JUN ○ JUL ○ AUG ○ SEP ○ OCT ○ NOV ○ DEC

11. Is the date given in block 10 the end of the school year?

○ Yes ○ No

12. Does the student intend to return to school full-time after the date shown in block 10, with less than a 5 month break?

○ Undecided

○ No

○ Yes. Show the beginning date of the next school year in block 13.

13. Enter the *estimated* date the student will begin full-time school attendance for the next school year after the school year shown in blocks 9 - 10.

Month / Year (9)

○ JAN ○ FEB ○ MAR ○ APR ○ MAY ○ JUN ○ JUL ○ AUG ○ SEP ○ OCT ○ NOV ○ DEC

14. Type of School

○ High School

○ Trade/Technical/or Vocational

○ Jr. College/College/ Community College/or University

○ Other

15. Hours of School Attendance

Mark only one (A or B) below

○ A: Classroom Hours per week, such as for High Schools or trade schools. (Combine work/ study hours if in a high school work study program.)

○ B: Credit Hours such as for college.

Total Hours / *Total Hours*

16. Is the student in a school-sponsored co-op or internship program?

○ Yes (Attach a letter from the school explaining the program.)

○ No

WARNING: *Any intentionally false statements or willful misrepresentations are punishable by fine, imprisonment, or both (18 USC 1001).*

17. I certify that all information given in this certification is true and correct to the best of my knowledge and belief. I understand that I must immediately notify the Office of Personnel Management (OPM) if the student transfers to another school, discontinues school attendance, reduces attendance to less than full-time, marries or dies. I agree to return all overpayments of student benefits, including over-payments that may be made after I notify OPM of any terminating event. I understand OPM may ask the school to verify the accuracy of the information I am furnishing.

Signature of payee *(person who is receiving the payments)*

Daytime telephone number *(including area code)* ( )

Date *(mm/dd/yy)*

6

Reverse of RI 25-14
Revised February 1995

[FR Doc. 95–4395 Filed 2–22–95; 8:45 am]
BILLING CODE 6325–01–C

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of Meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-third meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public. In addition, notice is hereby given that the meeting previously scheduled for February 28, 1995 (60 FR 513, January 4, 1995), has been canceled.

DATES: March 14, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–4393 Filed 2–22–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 20901; 811–8622]

Transamerica Strategic Income Fund; Notice of Application

February 16, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Transamerica Strategic Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on January 18, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 13, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1000 Louisiana Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On July 14, 1994, Applicant registered under the Act and filed a registration statement under the Securities Act of 1933.

2. In September 1994 both the registration statement and amendment thereto were held in abeyance pending the outcome of the then proposed transaction whereby the applicant's adviser, Transamerica Fund Management Company ("TFMC") would be acquired by John Hancock Advisers, Inc. ("John Hancock Advisers"). Accordingly, applicant has not issued or offered any securities.

3. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4402 Filed 2–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20902; File No. 812–9300]

New England Variable Life Insurance Company, et. al.

February 16, 1995.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: New England Variable Life Insurance Company ("NEVLICO"), New England Variable Annuity Separate Account ("Variable Account"), and New England Securities Corporation ("New England Securities") (Collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a morality and expense risk charge from the assets of the Variable Account and any other separate accounts established by NEVLICO in the future in connection with the issuance and sale of certain flexible and single purchase payment deferred variable annuity contracts ("Contracts") and any contracts that are similar in all material respects to the Contracts.

FILING DATE: The application was filed on October 20, 1994, and amended on February 10, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 13, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

APPLICANTS: Marie C. Swift, New England Variable Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance

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Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. NEVLICO is a Delaware stock life insurance company chartered in 1980. NEVLICO is a wholly owned subsidiary of New England Mutual Life Insurance Company ("The New England"), a Massachusetts mutual life insurance company.

2. The Variable Account is a segregated investment account established by NEVLICO under Delaware law to act as a funding medium for variable annuity contracts. The Variable Account is divided into 12 subaccounts ("Subaccounts") for investment in shares of a designated investment portfolio of the New England Zenith Fund, which is registered under the 1940 Act as an open-end diversified management company of the series type. The shares of each of the portfolios will be purchased by NEVLICO for the corresponding Subaccount at the portfolio's net asset value per share, without the deduction of any sales load. The Variable Account assets attributable to the Contracts are not chargeable with liabilities arising out of any other business of NEVLICO. Income, gains and losses, realized or unrealized, of a Subaccount are credited to or charged against the Subaccount without regard to other income, gains or losses of NEVLICO. The Variable Account is registered under the 1940 Act as a unit investment trust.

3. New England Securities, a wholly owned subsidiary of The New England, will serve as the distributor and principal underwriter for the Contracts. New England Securities is registered as a broker-dealer under the Securities Exchange Act of 1934.

4. The Contracts are flexible and single purchase payment deferred variable annuity contracts. Interests in the Contracts are registered under the Securities Act of 1933. The minimum initial purchase payment is $2,000 for Contracts qualifying for special tax treatment under Section 408 of the Internal Revenue Code of 1986, as amended. The minimum initial purchase payment for non-qualifying Contracts is $5,000. The minimum subsequent purchase payment is $250 for all Contracts. Purchase payments can be allocated to one or more Subaccounts and/or NEVLICO's general account (the "Fixed Account").

5. A death benefit is payable to the Beneficiary in the event that the Contract Owner dies prior to the maturity Date or earlier annuitization (the "Death Proceeds"). The Death Proceeds equal a greater of (1) the Contract Value next determined after the later of the date when due proof of death is received at the Administrative Office and the date when an election of payment in one sum or under a payment option is received at the Administrative Office, or (2) the guaranteed minimum Death Proceeds on that date. On the date of issue, the guaranteed minimum Death Proceeds will equal the initial purchase payment. Thereafter, until the end of the seventh contract year, the guaranteed minimum Death Proceeds will be equal to the aggregate purchase payments paid, less any pro rata reductions caused by previous surrenders.

On the seventh Contract Anniversary, and every seventh year anniversary thereafter until the Contract Owner's 76th birthday, the guaranteed minimum Death Proceeds will be recalculated to determine whether a higher guarantee will apply. The guaranteed minimum Death Proceeds on each seven year anniversary is the greater of (a) the Contract Value on that date, or (b) the guaranteed minimum Death Proceeds amount that applied to the Contract just before the recalculation. In between seven year anniversaries, the guaranteed minimum Death Proceeds is adjusted for any interim purchase payments and surrenders.

6. At any time prior to the Maturity Date, a Contract may be surrendered for all or part of the Contract Value. The proceeds, after applicable charges are assessed, can be paid in cash or applied to a payment option. A Contract also contains a transfer provision providing for up to 12 free transfers of Contract Value among Subaccounts and the Fixed Account per year.

7. Two forms of administrative charges are deducted from the Contracts to compensate NEVLICO for certain administrative services. First, an annual Administration Contract Charge of $30 or, if less, 2% of the total Contract Value will be deducted from the Contract Value in the Variable Account on each Contract anniversary for the prior Contract Year, and will be deducted on a pro rata basis on the Maturity Date or upon a full surrender if it is not on a Contract anniversary. The charge will be waived for a Contract Year, except on full surrender or at the Maturity Date, if (1) the Contract Value at the end of the year was at least $50,000, or (2) additional net deposits (purchase payments minus partial surrenders) of at least $1,000 were made during the Contract Year and the Contract Value at the end of the previous Contract Year was at least $25,000. Second, NEVLICO will also deduct from the Variable Account a daily Administration Asset Charge equal to an effective annual rate of 0.10% of the average daily net assets of the Variable Account. This charge will continue to be assessed after annuitization if annuity payments are made on a variable basis. Applicants state that these administration charges are guaranteed not to increase. Applicants represent that these charges will be deducted in accordance with Rule 26a–1 under the 1940 Act. NEVLICO states that it neither anticipates nor intends to make a profit from the charges and will periodically monitor the administrative charges to determine whether they exceed the actual cost of providing administrative services for the Contracts.

8. NEVLICO currently allows 12 free transfers of Contract Value from one or more Subaccounts or the Fixed Account to another one or more of the Subaccounts or to the Fixed Account. NEVLICO assesses a $10 transfer charge on the thirteenth and each subsequent transfer during a single Contract Year prior to annuitization.

9. Contingent Deferred Sales Charge ("CDSC") of up to 7% may be deducted in the event of (1) a full or partial withdrawal from the Contract Value, (2) in certain circumstances, the withdrawal of the amounts applied to a payment option prior to the Maturity Date, and (3) under Contracts issued in Pennsylvania or New York, the Maturity Date if at that date a purchase payment has been invested for less than seven years (collectively referred to as "CDSC events"). The CDSC is calculated as a percentage of purchase payments withdrawn or applied. the CDSC declines with respect to each purchase payment based on the number of years for which the payment has been invested. Purchase payments will be treated as withdrawn on a first in, first out basis. The following table shows the schedule of the sales charge that will be applied at the occurrence of a CDSC event:

Number of full contract years since purchase payment	Applicable charge (percent)
1	7
2	6
3	5
4	4
5	3
6	2
7	1
Thereafter	0

10. The Contracts provide that several types of withdrawals can be made without incurring a sales charge. In any Contract Year, the Contract Owner may surrender a portion of Contract Value without incurring any CDSC. The free withdrawal amount is equal to the greater of (1) 10% of the Contract Value at the beginning of the Contract Year during which the CDSC event occurs, or (2) the excess of Contract Value over purchase payments subject to the sales charge on the date of the CDSC event. A surrender will be attributed first to the free withdrawal amount. If the surrendered amount is greater than the free withdrawal amount, the excess will be attributed to purchase payments on a first in, first out basis.

The CDSC will be waived on full or partial surrenders if the Contract Owner is terminally ill, has been confined to a nursing home for more than 90 continuous days, or is permanently and totally disabled, as those terms are defined in the registration statement for the Contracts.

The CDSC may be waived if the Contract Owner applies the proceeds from a surrender to certain payment options as described in the Contract. The CDSC will also be waived (except in Pennsylvania and New York) if, under a spousal continuation provision, the Contract's Maturity Date is reset to a date that is less than seven years after the most recent purchase payment made under the Contract.

The Contracts may also be sold directly, without the application of the Contingent Deferred Sales Charge, to employees, officers, directors, trustees and registered representatives of NEVLICO, The New England and their affiliated companies, to employees, officers, directors, trustees and registered representatives of any broker/dealer authorized to sell the Contracts and of any subadivsor to the portfolios, and to the spouses and immediate family members of any of the foregoing.

11. NEVLICO will deduct premium tax charges from the Contract Value in states that impose premium taxes on annuity purchase payments received by insurance companies. Deductions for premium tax charges currently range from 0% to 3.5% of Contract Value.

12. For all Contracts issued in connection with the Variable Account, NEVLICO deducts a Mortality and Expense Risk Charge that is equal, on an annual basis, to 1.25% of the average daily net assets of the Variable Account: approximately 0.70% for mortality risks and 0.55% for expense risks. This charge will continue to be assessed if annuity payments are made on a variable basis either before or after the Maturity Date. NEVLICO guarantees that this charge will not increase over the life of the Contract.

The mortality risks assumed by NEVLICO arise in part from NEVLICO's guarantee to make annuity payments at least equal to payments calculated based on annuity tables provided in the Contracts, regardless of how long an annuitant lives and regardless of any improvement in life expectancy.

NEVLICO also assumes a mortality risk in connection with the provision of a death benefit. If the Contract Owner dies prior to the Annuity Date, NEVLICO will pay the beneficiary the greater of (1) the Contract Value next determined after the later of the date when due proof of death is received at the Administrative Office and the date when an election of payment in one sum or under a payment option is received at the Administrative Office, or (2) the guaranteed minimum Death Proceeds on that date.

The expense risk assumed by NEVLICO is the risk that NEVLICO's administrative charges will be insufficient to cover actual administrative expenses over the life of the Contract.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Variable Account under the Contracts. Applicants request that the order also permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established by NEVLICO in the future to support variable annuity contracts similar in all material respects to the Contracts.

4. Applicants submit that their request for an order that applies to future separate accounts issuing contracts that are similar in all material respects to the Contracts is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for NEVLICO to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. Applicants argue that the elimination of the delay and expense of redundant filings would enhance the ability of NEVLICO to effectively take advantage of business opportunities as they arise. Applicants further represent that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Investors would not receive any additional benefit or protection by requiring NEVLICO to repeatedly seek exemptive relief with respect to the same issues addressed in this application.

5. NEVLICO states that it is entitled to compensation for its assumption of mortality and expense risks, and it represents that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. NEVLICO bases this representation on the analysis of the mortality risks, taking into consideration such factors as annuity purchase rate guarantees, death proceeds guarantees, other contract charges, the frequency of charges, the administrative services performed by NEVLICO with respect to the Contracts, the means of promotion, the market for the Contracts, investment options under the Contracts, purchase payment, transfer, dollar cost averaging and systematic withdrawal features, and the tax status of the Contracts. NEVLICO represents that it will maintain at its principal office a memorandum, available to the Commission, setting forth in detail this analysis.

6. NEVLICO acknowledges that its revenues from the Contingent Deferred Sales Charge could be less than its costs of distributing the Contracts. If a profit is realized from the Mortality and Expense Risk Charge, all or a portion of such profit may be viewed as being

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offset by distribution expenses not reimbursed by the Contingent Deferred Sales Charge. In such circumstances, a portion of the Mortality and Expense Risk Charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. NEVLICO represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract Owners. The basis for such a conclusion with be maintained in a memorandum at NEVLICO's principal office and available to the Commission upon request.

7. NEVLICO represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board of directors, a majority of whom are not "interested persons" of the company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that, for the reasons and the facts set forth above, the requested exemptions from Section 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge from the assets of the Variable account under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4399 Filed 2–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35388; File No. SR–CBOE–95–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Related to Retail Automatic Execution System

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules to allow the Exchange's Control Room to turn off the Retail Automatic Execution System ("RAES"). The amendments would add an Interpretation to Exchange Rules 24.15 and 6.8. The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to grant the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Specifically, the proposal would add a rule interpretation to Exchange Rules 24.15 and 6.8 to grant the senior person then in charge of the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.

When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for a bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade. Trades are assigned to these participating market makers on a rotating basis. Therefore, by agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important that the prevailing market quote be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote.

In addition, if there is a quote dissemination problem such that incorrect quotes are being displayed, it could result in a customer's order being filled at a price other than the quote the customer sees on display.

The proposed interpretations are necessary to prevent market makers from being assigned trades based on inaccurate or "stale" market quotes and to prevent customer orders from being filled based on such inaccurate or "stale" market quotes. The proposed Interpretations are also necessary to prevent a situation where customers' orders are filled at prices other than the prices the customers see displayed. Pursuant to the proposed interpretations, the senior person then in charge of the Exchange's Control Room will have the ability to act quickly to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Since RAES trades are based on the current disseminated quote, RAES trades would be based on inaccurate or "stale" quotes during a system malfunction that interferes with dissemination of current quote information. The Exchange believes it is important for the Control Room to have this power to turn off RAES since the Control Room will most likely learn of the system malfunction before Floor Officials or other Exchange Staff and consequently the Control Room can act in a timely manner to prevent trades based on "stale" market quotes.

If RAES is turned off, the orders that would have been routed to RAES will be re-routed to the Floor Broker routing printer in the trading crowd or to the member firm booths. Where the order is rerouted depends upon the parameters member firms have set for their customers' orders prior to entering the orders onto RAES.[1]

[1] CBOE understands that when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conservation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin, and Waite, Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, and John Ayanian, Attorney, OMS, Division, Commission, on Monday, February 13, 1995.

Pursuant to the proposed interpretations, once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room, or the Order Book Official, or the RAES Supervisor may re-start RAES.

Conclusion

CBOE believes that the proposed rule change is consistent with and further the objectives of Section 6(b)(5) of the Act, in that the rules change is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by enabling the Control Room to turn off RAES to prevent trades based on inaccurate market quotes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–95–06 and should be submitted by March 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4401 Filed 2–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35389; File No. SR–NASD–94–78]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Exercise Cut-Off Procedures for Expiring Equity Options Contracts

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on December 23, 1994, the National Association of Securities Dealers, Inc. ("NASD") submitted to the securities and Exchange Commission ("Commission") a proposed rule change relating to the exercise procedures for expiring equity options contracts. The proposal was published for comment in the **Federal Register** on January 25, 1995.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

Currently, with regard to expiring standardized equity options, Section 63 of the NASD's Uniform Practice Code ("Practice Code") provides that NASD members and their customers are required to indicate their exercise decisions to clearing members no later than 5:30 p.m. (E.S.T.) on the business day immediately prior to the expiration date of the options ("Exercise Cut-Off Time").[4] This is the latest time by which an exercise instruction[5] may be: (1) Prepared by a clearing member for positions in its proprietary trading account; (2) accepted by a clearing member from a non-clearing member; or (3) accepted by a member from any customer.[6]

The only exceptions to the Exercise Cut-Off Times contained in Section 63 of the Practice Code are: (1) To remedy mistakes or errors made in good faith; (2) to take appropriate action as the result of a failure to reconcile an unmatched option transaction; (3) where exceptional circumstances relating to a customer's or member's ability to communicate exercise instructions to a member (or a member's ability to receive such exercise instructions) prior to the Exercise Cut-Off Time warrant such action; and (4) with respect to options contracts in an account maintained for another member in which only positions of customers of such other member are carried. Members are required to prepare a memorandum of every exercise instruction received from a customer stating the time when such instruction was received. In addition, in the event a member receives and acts on an exercise instruction pursuant to one of the exceptions noted above, the member must prepare a memorandum setting forth the circumstances giving rise to the exception. If the member is relying on either the first or the third exception described above, the member must promptly file a copy of the memorandum with the NASD.

Thus, it is presently a violation of Section 63 of the Practice Code for clearing members to accept exercise instructions after the Exercise Cut-Off Time, except in reliance on one of the exceptions noted above. Because

[2] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* Securities Exchange Act Release No. 35235 (January 18, 1995), 60 FR 4936 (January 25, 1995).

[4] Generally, the rules of the options exchanges provide that equity options may be traded up until the close of business on the last business day before expiration, which is generally the third Friday of the expiration month ("Expiration Friday"). *See, e.g.* CBOE Rule 11.1 and Phlx Rule 1042.

[5] For customers, an exercise instruction is a notice delivered to a member to exercise an option. For a clearing member of The Options Clearing Corporation ("OCC") or a market maker or floor broker on a national options exchange, an exercise instruction is a notice to OCC to exercise an option that would not be automatically exercised pursuant to OCC's exercise-by-exception procedure ("OCC Rule 805"), or not to exercise an option that would otherwise be automatically exercised pursuant to OCC Rule 805. *See infra* note 9. The OCC has separate rules regarding the cut-off time by which exercise notices must be delivered to OCC by OCC clearing members. The proposed rule change does not in any way affect OCC rules.

[6] In most cases, exercise instructions are electronically transmitted to OCC clearing members through the Clearing Management and Control System ("C/MACS").

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exercise instructions are submitted to the clearing members, without having the audit trail pass directly through the NASD or the particular options exchange(s) trading the expiring option, it is difficult for the NASD to surveil for violations of Section 63. In fact, there have been some situations where members have either delayed making exercise decisions until after the Exercise Cut-Off Time in anticipation of the release of significant news concerning a particular underlying company or, having made exercise decisions prior to the Exercise Cut-Off Time, changed these decisions based upon such news. In one notable situation, certain firms that anticipated the release of material news regarding a particular company allegedly delayed making their exercise decisions until after the Exercise Cut-Off Time, causing firms who claimed to have been disadvantaged by such conduct to commence a series of highly publicized arbitration proceedings and lawsuits.[7]

Accordingly, in order to enable the options exchanges and the NASD to determine whether options holders have made their final exercise decisions no later than the prescribed Exercise Cut-Off Time and not on the basis of market developments occurring after the Exercise Cut-Off Time, the NASD proposes to amend Section 63 of the Practice Code to provide for an exercise advice procedure. Specifically, the proposed rule change will alter the existing exercise instruction procedures by requiring the final exercise decisions also be submitted to the relevant options exchange(s) trading a particular equity option. The clearing members will still be responsible for delivering exercise notices to OCC, however, the proposed rule change will allow the NASD, in conjunction with the options exchanges, to accurately document when each exercise instruction was received by a member or clearing member or delivered by a clearing member to OCC.[8] The Exercise Cut-Off Time will still be 5:30 p.m. (E.S.T.) on the business day immediately prior to the expiration date.

In particular, under the proposal, there will be two means of exercising an expiring equity option: (1) Take no action and allow exercise determinations to be made in accordance with OCC Rule 805;[9] or (2) members may submit a contrary exercise advice (*i.e.*, a notice committing an option holder either to exercise an option that would not otherwise be exercised automatically pursuant to OCC Rule 805, or not to exercise an option that otherwise would be exercised automatically pursuant to OCC Rule 805) ("Contrary Exercise Advice"). A Contrary Exercise Advice will be submitted by NASD members: (1) to a place designated for that purpose by any national options exchange of which they are a member and where the particular equity option is listed; (2) to a place designated for that purpose by any national options exchange that lists and trades that equity option via a member of such exchange if the member is not a member of such exchange; (3) to any national options exchange of which they are a member and where the equity option is listed via OCC in a form prescribed by OCC;[10] or (4) to any national options exchange where the equity option is listed via OCC in a form prescribed by OCC, provided the member is a member of OCC. In those instances where OCC Rule 805 has been waived by OCC,[11] the proposal provides that a Contrary Exercise Advice must be submitted prior to the Exercise Cut-Off Time by members wanting to exercise an option that would not have been automatically exercised, or not to exercise an option that would have been automatically exercised, had OCC's exercise-by-exception procedure been in effect.[12] The applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for the underlying security.

The proposal also requires that members maintaining proprietary or public customer positions in expiring options take necessary steps to ensure that final exercise decisions are properly indicated to the relevant national options exchange with respect to such positions. In addition, the proposal provides that members who have accepted the responsibility of indicating final exercise decisions on behalf of another member also shall take necessary steps to ensure that such decisions are properly indicated to the relevant national options exchange. In this regard, the proposal also provides that members may establish an internal processing cut-off time prior to 5:30 p.m. (E.S.T.), at which time the member will no longer accept final exercise decisions from its customers in expiring options.

With certain minor modifications,[13] the proposal maintains the current exceptions to Section 63 of the Practice Code. The proposal, however, does add language to Section 63(b)(3) to expressly state that the burden of establishing an exception to the Exercise Cut-Off Time for a proprietary or customer account of a member rests solely on the member seeking to rely on such exception.

In the event a member does not timely submit a Contrary Exercise Advice pursuant to an exception, the responsible member must prepare a written memorandum describing the circumstances surrounding the late submission of the Contrary Exercise Advice and stating the time when such final exercise decision was made or, in the case of customer, was received. The member must also file a copy of the memorandum with the market surveillance department of the national options exchange trading the option, if it is a member of such exchange, or the NASD's Market Surveillance Department, if it is not a member of such exchange, no later than 12:00 p.m. (E.S.T.) on the business day following that expiration.

Furthermore, in order to highlight the seriousness of violating Section 63 of the Practice Code, the proposed rule language expressly states that submitting or preparing an exercise instruction after the Exercise Cut-Off Time in any expiring equity option on the basis of material information released after the Exercise Cut-Off Time is activity inconsistent with just and equitable principles of trade. The proposal also states that the requirements specified in Section 63(b) will not apply to standardized foreign currency options or standardized index option products.

The NASD represents that the proposed rule change reflects a coordinated effort among all the options exchanges, the NASD, and OCC. In particular, the NASD represents that the proposed exercise advice procedure has been reviewed and endorsed by the Intermarket Surveillance Group ("ISG"),[14] which has approved the issuance by the options exchanges of a circular explaining the operation of the new exercise cut-off provisions. The NASD notes that the Commission has already approved similar rule proposals from each of the national options exchanges.[15]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 15A(b)(6) of the Act.[16] Specifically, the Commission believes that the NASD's proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors and the public interest.

Although, as noted by the NASD, all options exchanges currently have a uniform 5:30 p.m. (E.S.T.) Exercise Cut-Off Time on Expiration Fridays for expiring equity options, OCC's rules permit OCC to accept exercise notices for expiring equity options from clearing firms until 12:00 a.m. (E.S.T.) on the expiration date (*i.e.*, the Saturday after an Expiration Friday). This additional time within which to receive exercise notices from clearing members was provided to accommodate corrections of mistakes made in good faith, trade reconciliations, and certain exceptional circumstances that affected a customer's ability to inform its brokerage firm or affected a firm's ability to receive final exercise decisions before the Exercise Cut-Off Time. Nevertheless, in order to prevent situations such as the one cited by the NASD,[17] the Commission believes that it is appropriate for the Exchange to make it clear in its rules that the submission of a Contrary Exercise Advice on the basis of material information released after the Exercise Cut-Off Time will be activity deemed inconsistent with just and equitable principles of trade.[18]

The Commission believes that the proposed exercise procedures should enhance the NASD's ability to surveil for violations of Section 63 of the Practice Code by providing an enhanced audit trail for identifying late exercises. Specifically, every time an exercise decision is made contrary to OCC Rule 805, a Contrary Exercise Advice must be filed as discussed above, in addition to submitting an exercise instruction to a clearing member as is currently required by either the rules of the options exchanges or by exchange clearing members.[19] Similarly, the proposal requires that documentation must be prepared and submitted either to the proper options exchange or to the NASD whenever a late exercise decision is made in reliance on one of the exceptions to Section 63, with the burden of establishing the existence of the exception on the party submitting the Contrary Exercise Advice. The proposed rule change, therefore, should facilitate the Exchange's ability to monitor and enforce compliance with Section 63. Accordingly, because the proposed rule change significantly bolsters the NASD's existing procedures regarding the exercise of expiring equity options and helps to ensure compliance with their rules, the Commission believes that the proposal is consistent with the Act.[20]

Even though the proposed rule change significantly improves the NASD's audit trail with respect to late exercises, the Commission believes that the NASD should continue to examine ways of ensuring compliance with the Exercise Cut-Off Time and the other requirements of Section 63.[21] Furthermore, the Commission also encourages the NASD to review the permitted exceptions to Section 63 and consider ways of establishing parameters as to the extent of the exceptions.[22]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the Commission notes that the proposed rule change is substantively similar to proposals submitted by the national options exchanges and recently approved by the Commission.[23] Additionally, the proposals by the other options exchanges are being implemented in time for the next Expiration Friday on February 17, 1995.[24] Accelerated approval of the NASD's proposal is therefore necessary in order to ensure that the options exchanges and their members as well as the NASD and its members are operating under uniform procedures for exercising expiring equity options. Finally, the proposal was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

It Is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the

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[7] *See, e.g., In re Farmers Group Stock Options Litigation*, Master File No. 88–4994 (E.D.Pa).

[8] Because OCC's rules are not affected by this rule proposal, the reporting of final exercise decisions as contemplated by the revised rule does not serve to substitute as the effective exercise notice to OCC for the exercise or nonexercise of expiring options.

[9] OCC Rule 805 provides for the automatic exercise of in-the-money options at expiration without the submission of an exercise notice to OCC if the price of the security underlying the option is at or above a certain price for calls or at or below a certain price for puts; and the non-exercise of an option at expiration if the price of the security underlying the option does not satisfy such price levels. *See* OCC Rule 805.

[10] Even through this may be accomplished by submitting exercise decisions directly to the relevant options exchange, the more likely manner of accomplishing this will be to submit the exercise decisions to the options exchanges through C/MACS. The OCC has represented that all necessary systems modifications have been made and fully tested in order for the proposed exercise procedures described herein to be implemented for the next Expiration Friday on February 17, 1995. *See* Letter from James Young, First Vice President and General Counsel, OCC, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated February 13, 1995.

[11] This could happen when an underlying security is not traded on its primary market on the trading day immediately preceding an expiration date and, as a result, OCC determines not to fix a closing price for that security. *See* OCC Rule 805(1).

[12] *See supra* note 9.

[13] Specifically, in order to conform the NASD's proposed rule with the rules of the options exchanges, the NASD proposes to delete the exemption that applies to "option contracts carried in an account maintained for another member in which only positions of customers of such other member are carried."

[14] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Sharing Group Agreement, July 14, 1983. The members of ISG are the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[15] *See* Securities Exchange Act Release Nos. 34806 (October 7, 1994), 59 FR 52339 (October 17, 1994) (order approving File No. SR–PHLX–93–37); 34807 (October 7, 1994), 59 FR 52329 (October 17, 1994) (order approving File No. SR–CBOE–94–06); 34808 (October 7, 1994), 59 FR 52324 (October 17, 1994) (order approving File No. SR–AMEX–94–01); 34810 (October 7, 1994), 59 FR 52334 (October 17, 1994) (order approving File No. SR–PSE–94–12); and 34818 (October 11, 1994), 59 FR 52331 (October 17, 1994) (order approving File No. SR–NYSE–94–12).

[16] 15 U.S.C. 78o(b)(6) (1982).

[17] *See supra* note 7.

[18] The Commission believes that the Exercise Cut-Off Time serves an important investor protection function. Specifically, the Exercise Cut-Off Time protects holders of short positions in equity options from unanticipated events occurring after the close of the market. As the Commission has previously stated, if expiring equity options were allowed to be exercised after the Exercise Cut-Off Time for reasons other than the exceptions set forth above, the Commission believes that options writers could be unfairly disadvantaged with respect to options holders by not having the same opportunity to react to such unanticipated events. *See* Securities Exchange Act Release No. 19589 (March 10, 1983), 48 FR 11196 (March 16, 1983).

[19] *See supra* note 5.

[20] The Commission notes that the NASD has distributed a notice to member organizations describing the new procedures set forth above and notifying member organizations as to the scheduled implementation of those procedures in time for the next Expiration Friday on February 17, 1995. *See* NASD Notice to Members 94–102, "New Exercise Advice Procedures for Expiring Equity Options," dated December 23, 1994.

[21] For example, the NASD may wish to consider adopting additional penalties in those situations where a member organization is unable to establish the existence of one of the exceptions to Section 63 of the Practice Code for a particular trade or trades.

[22] For example, the NASD may want to define expressly in the rule the circumstances that qualify for a good faith exception.

[23] *See supra* note 15.

[24] *See supra* note 10.

[25] 15 U.S.C. 78s(b)(2). (1982).

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proposed rule change (File No. SR–NASD–94–78) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4400 Filed 2–22–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2168]

Policy on Munitions Export Licenses to Ecuador and Peru

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Ecuador or Peru are suspended until further notice pursuant to Sections 38, and 42 of the Arms Export Control Act.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Christopher Kavanagh, Office of Export Control Policy, Bureau of Political-Military Affairs, Department of State (202–647–4231).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all requests for licenses and other approvals to export or otherwise transfer defense articles and defense services to Ecuador or Peru. In addition, the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Ecuador or Peru. This action has been taken in response to the continuing conflict on the border between Ecuador and Peru.

The licenses and approvals subject to this policy include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Ecuador or Peru and which are subject to controls under the Arms Export Control Act. This policy also prohibits the use in connection with Ecuador or Peru of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130), with the exception of those exemptions specified in Section 126.1(a), unless a specific written exception is provided by the Office of Defense Trade Controls.

Exceptions to this policy will be made for certain U.S. Munitions List Category XIII(B)(1) items from banking and financial institutions.

This action has been taken pursuant to Sections 38 and 42 of the Arms Export Control Act (22 U.S.C. §§ 2778, 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States.

Dated: February 9, 1995.

Eric D. Newsom,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 95–4346 Filed 2–22–95; 8:45 am]

BILLING CODE 4710–25–M

[26] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–017]

In the Matter of Shanghai Hai Xing Shipping Company: Proposed Assessment of Class II Administrative Penalty

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to comment.

SUMMARY: The Coast Guard gives notice of and provides an opportunity to comment on the proposed assessment of a Class II administrative penalty to Shanghai Hai Xing Shipping Company for violations of the Federal Water Pollution Control Act (FWPCA). The alleged violations involved the spill of approximately 3,000 gallons of intermediate fuel oil from the M/V AN PING 6 on January 10, 1994 into the Columbia River in the vicinity of Longview, Washington. Interested persons may submit written comments on the proceeding, including comments on the amount of the proposed penalty, or written notice of intent to present evidence at any hearing held in the proceeding. If no hearing is held, an interested person may, within 30 days after insurance of an order, petition to set aside the order and to provide a hearing.

DATES: Comments or notice of intent to present evidence at a hearing must be received not later than March 27, 1995.

ADDRESSES: Comments and requests for a hearing may be mailed to the Hearing Docket Clerk, Office of the Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 6302 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Filings should reference docket number 95–0001–CIV. The administrative record for this proceeding is available for inspection at the same address and times.

FOR FURTHER INFORMATION CONTACT: Mr. George J. Jordan, Judicial Administrator, Office of the Chief Administrative Law Judge, Commandant (G–CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2940.

SUPPLEMENTARY INFORMATION: Notice of this proceeding is given pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Oil Pollution Act of 1990. The proceeding is initiated under Section 311(b) of the FWPCA (33 U.S.C. 1321(b)).

This proceeding results from an alleged spill of approximately 3,000 gallons of intermediate fuel oil from the M/V AN PING 6 on January 10, 1994 into the Columbia River in the vicinity of Longview, Washington. Under the Coast Guard's Class II Civil Penalty regulations in 33 CFR Part 20, the Coast Guard publishes notice of the proposed issuance of an order assessing a Class II penalty in the Federal Register (33 CFR § 20.402). A person who wishes to be an interested person must file written comment on the proceeding or written notice of intent to present evidence at any hearing held in the proceeding with the Hearing Docket Clerk not later than March 27, 1995 (33 CFR § 20.404). Interested persons will be given notice of any hearing, a reasonable opportunity to be heard and to present evidence during any hearing, and notice of the decision. Although a hearing is not yet scheduled, the Coast Guard has asked that any hearing be held in Seattle, WA. If no hearing is held, an interested person may, within 30 days after issuance of an order, petition the Commandant of the Coast Guard to set aside the order and to provide a hearing (33 CFR § 20.1102).

The following additional information is provided:

Respondent: Shanghai Hai Xing Shipping Co., 20 Canton Rd., Shanghai, China 200002; M/V AN PING 6 (L8301929)
Complaint Filed: February 2, 1995; Seattle, WA
Docket Number: 95–0001–CIV
Amount of Proposed Penalty: $120,000
Charges:
Count 1—Improper Discharge of Oil
Count 2—Violations of Pollution Prevention Regulations: Contents of Transfer Procedures
Count 3—Violations of Pollution Prevention Regulations: Requirements of Transfer

Dated: February 16, 1995.

George J. Jordan,

Judicial Administrator, Office of the Chief Administrative Law Judge, U.S. Coast Guard

[FR Doc. 95–4407 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–14–M

Office of Commercial Space Transportation

Environmental Impact Statement; Sierra and Doña Ana Counties, NM

AGENCY: Office of Commercial Space Transportation (OCST), DOT.

ACTION: Notice of intent.

SUMMARY: The Office of Commercial Space Transportation (OCST) is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared and scoping meetings held on the proposed phased development of the Southwest Regional Spaceport in southern New Mexico.

FOR FURTHER INFORMATION CONTACT: Sharon D.W. Boddie, Office of Commercial Space Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2929. Lucy Dunn, New Mexico Office of Space Commercialization, Department of Economic Development, 1990 E. Lohman Avenue, Atrium Suites 201, Las Cruces, New Mexico, 88001. Telephone: (505) 524–6829.

SUPPLEMENTARY INFORMATION: The Department of Transportation's (DOT) Office of Commercial Space Transportation (OCST), in cooperation with the State of New Mexico's Office of Space Commercialization (NMOSC) and Department of Economic Development, will prepare a joint Federal/State EIS for the proposed commercial Southwest Regional Spaceport in southern New Mexico. The operator of the spaceport will require a license from OCST in accordance with the Commercial Space Launch Act of 1984, as recodified at 49 U.S.C. Subtitle IX, ch. 701—Commercial Space Launch Activities, 49 U.S.C. §§ 70101–70119 (1994). An EIS is necessary for OCST to make a licensing determination and comply with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*

The State of New Mexico proposes the establishment of a commercial spaceport on lands located generally in the Sierra and Doña Ana Counties, between the cities of Truth Or Consequences and Las Cruces, New Mexico, as a key element of the State's efforts to bring regional assets together as a consortium to form the Southwest Space Complex. Other major elements of the Southwest Space Complex include the Department of Defense-owned White Sands Missile Range and the National Aeronautics and Space Administration-owned White Sands Test Facility. The New Mexico State University's Physical Sciences Laboratory, USAF Phillips Laboratory, and the Department of Energy's Sandia and Los Alamos National Laboratories are among the research and development or educational institutions that would be available for additional support as required.

Development of the Southwest Regional Spaceport, and other elements of the Southwest Space Complex, will occur in phases over a number of years. The proposed action encompassed by the EIS includes the construction of launch and associated support facilities and the extension of roads and utilities necessary to parallel the phased development of single-stage-to-orbit (SSTO) technology and to support other existing or developmental rocket systems, such as sounding rockets and expendable launch vehicles. Initial launch operations are anticipated to begin as early as mid-1996. The State of New Mexico anticipates a completed Southwest Regional Spaceport early in the next century.

The purpose of the Southwest Regional Spaceport project is to provide launch, recovery, and associated support facilities to the developing commercial space industry. The State is proposing to locate the Southwest Regional Spaceport in southern New Mexico because it views the altitude, climatic, population density, and existing infrastructure conditions as highly favorable. The State anticipates that this project will enhance space-related economic development within the State of New Mexico generally and throughout the southwest, as well as increase the ability of the U.S. launch industry to recapture a share of the international satellite launch market.

Alternatives to the proposed action include no action and alternative sites for launch and support facilities within the general area.

Two public scoping meetings will be held in New Mexico to solicit comments on significant environmental issues associated with the proposed action. The specific dates and locations are:

(1) March 22, 1995, 7:00–9:00 PM, City Council Chambers, 200 N. Church Street, Las Cruces, New Mexico.

(2) March 23, 1995, 7:00–9:00 PM, Convention Center, 300 Daniel Street, Truth Or Consequences, New Mexico.

Comments are solicited from Federal, State, and local agencies, private organizations and citizens who have previously expressed or are known to have an interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties no later than March 27, 1995. Comments and questions concerning this proposed action should be directed to OCST in duplicate (i.e. two copies) at the address provided above.

Issued in Washington, DC on February 16, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–4392 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Rockford Airport Authority for Greater Rockford Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96 193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Greater Rockford Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 30, 1995.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 31, 1995. The public comment period ends April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Federal Aviation Administration, Chicago Airports District Office, CHI–ADO–640.8, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, (708) 294–7524.

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SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Greater Rockford Airport are in compliance with applicable requirements of Part 150, effective January 31, 1995. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 30 1995. This notice announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operators will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Greater Rockford Airport Authority submitted to the FAA on May 3, 1994 noise exposure maps, descriptions and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) Study at Greater Rockford Airport from February 1993 to May 1994. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Rockford Airport Authority. The specific maps under consideration are Noise Exposure Maps: Official 1993 Noise Exposure Map and Official 1998 Noise Exposure Map. They are included along with supporting documentation found in the Part I Noise Exposure Map Documentation of the Part 150 Study in the submission. The FAA has determined that these maps for Greater Rockford Airport are in compliance with applicable requirements. This determination is effective January 31, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Greater Rockford Airport, also effective January 31, 1995. Preliminary review of submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 30, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Airport Manager's Office, Greater Rockford Airport Authority, 3600 Airport Drive, Rockford, Illinois 61125–0063

Rockford City Clerk's Office, Rockford City Hall, 1201 Broadway, Rockford, Illinois

Winnebago County Courthouse, County Clerk's Office, 400 West State, Rockford, Illinois

Rockford Public Library, 215 North Wymann, Rockford, Illinois

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Drive, Capitol Airport, Springfield, Illinois

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on January 31, 1995.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 95–4437 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–13–M

Airport Surface Movement Conference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: The FAA is issuing this notice to advise the public of a conference on Airport Surface Movement. FAA will solicit the public for input on technologies and procedural changes needed to implement and improve the airport safety and surface movement effort.

DATES: The conference will be held on Wednesday, March 8, 1995, through March 10, 1995.

ADDRESSES: The conference will be held at the Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, Virginia.

FOR ADDITIONAL INFORMATION OR TO RECEIVE A REGISTRATION FORM: Call (301) 949–7477, or Fax inquiries to (301) 949–5154, to the attention of Deana Lou.

Issued in Washington, D.C. on February 1, 1995.

Michael J. Harrison,

Airport Surface Manager

[FR Doc. 95–4436 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Airport Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss airport certification issues.

DATES: The meeting will be held on March 2, 1995, at 10:00 a.m. Arrange for oral presentations by February 21, 1995.

ADDRESSES: The meeting will be held at FAA Headquarters, Conference Room 600E, 6th Floor, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Marisa Mullen, Federal Aviation Administration, Office of Rulemaking (ARM–205), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9781; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 2, 1995, at FAA Headquarters, Conference Room 600E, 6th Floor, 800 Independence Avenue, SW., Washington, DC 20591. The agenda will include.

- Committee administration.
- Review and Dispose Working Group Work plan.
- Discuss proposed new task to extend 14 CFR part 139 (airport certification) to airports served by scheduled commercial air carriers with 10 to 30 seats.
- A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by February 21, 1995, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 16, 1995.

Robert E. David,

Assistant Executive Director for Airport Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–4433 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–3–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Worcester Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Worcester Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Nolan, Acting Airport Director for Worcester Municipal Airport at the following address: Worcester Municipal Airport, 375 Airport Drive, Worcester, Massachusetts 01602.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Worcester under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Worcester Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 6, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the City of Worcester was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than May 6, 1995.

The following is a brief overview of the use application.

Level of the proposed PFC: $3.00

Charge effective date: October 1, 1992

Estimated charge expiration date: October 1, 1997

Total approved net PFC revenue: $2,301,382

Total estimated net PFC revenue to be used on projects in this application: $220,780

Brief description of use projects:

Reconstruct Terminal Apron and Taxiway "B"

Groove and Mark Runway 11–29

Install Centerline Lights and Touchdown Zone Lights Runway 11–29

Install Perimeter Fencing

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None Excluded.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Worcester Municipal Airport, 375 Airport Drive, Worcester, Massachusetts.

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Issued in Burlington, Massachusetts on February 15, 1995.

Bradley A. Davis,

Assistant Manager, Airports Division, New England Region

[FR Doc. 95–4438 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–918]

American President Lines, Ltd.; Notice of Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as amended, To Permit Foreign-Flag Slot Charters

American President Lines, Ltd. (APL), by application dated February 10, 1995, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended, (Act), for foreign-flag slot charters by APL on vessels of Orient Overseas Container Line Inc. (OOCL) and Mitsui O.S.K. Lines, Ltd. (MOL) pursuant to APL's participation in a reciprocal slot exchange and coordinated sailing agreement, designated Federal Maritime Commission (FMC) No. 203–011468, and in a Master Slot Charger Agreement, both among APL, OOCL, and MOL.

APL is currently a party to a reciprocal slot exchange and coordinated sailing agreement, designated FMC No. 203–011340 (AO–SEA) and a Master Slot Charter Agreement, both between APL and OOCL. APL has been operating under those agreements since originally granted a section 804 waiver September 27, 1991.

The new agreements which are the subject of the current application would replace the AO–SEA agreements. The replacement agreement, the APL/MOL/OOCL Asia-Pacific Alliance Agreement (A–PAC Agreement) and the Master Slot Charter Agreement (MSCA) are substantially similar to the AO–SEA agreements, and are, in effect, a continuation of the AO–SEA agreements, with the addition of one new partner—MOL—and an increase in the number of line haul strings from five to six.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on March 8, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: February 17, 1995.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 95–4440 Filed 2–22–95; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 9; 4–00236]

Surety Companies Acceptable on Federal Bonds: Chartwell Reinsurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code, effective January 30, 1995. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34148 to reflect this addition:

Chartwell Reinsurance Company. Business Address: 300 Atlantic Street, Suite 400, Stamford, CT 06901 Telephone No. (203) 961–7300. Underwriting Limitation b/: $8,110,000. Surety Licenses c/: AL, AK, AZ, CA, DE, DC, ID, IL, IN, KS, KY, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, PA, TN, TX, UT, WA, WV, WI, WY. Incorporated In: Minnesota.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782. Telephone (202) 874–6696.

Dated: February 15, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 95–4388 Filed 2–22–95; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Tax on Certain Imported Substances (Cyclododecanol, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include cyclododecanol, 1,5,9-cyclododecatriene, and adiponitrile.

EFFECTIVE DATE: This modification is effective July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On February 7, 1995, the Secretary determined that cyclododecanol, 1,5,9-cyclododecatriene, and adiponitrile should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1995.

The rate of tax prescribed for cyclododecanol, under section 4671(b)(3), is $6.21 per ton. This is based upon a conversion factor for butadiene of 1.22 and a conversion factor for methane of 0.08.

The rate of tax prescribed for 1,5,9-cyclododecatriene, under section 4671(b)(3), is $5.64 per ton. This is based upon a conversion factor for butadiene of 1.16.

The rate of tax prescribed for adiponitrile, under section 4671(b)(3), is $5.72 per ton. This is based upon a conversion factor for methane of 0.52, a conversion factor for ammonia of 0.42, and a conversion factor for butadiene of 0.58.

The petitioner is E. I. du Po.it de Nemours and Company, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Cyclododecanol

HTS number: 2906.19.00
CAS number: 1724–39–6

Cyclododecanol is derived from the taxable chemicals butadiene and methane. Cyclododecanol is a solid produced predominantly by air oxidation of cyclododecane. Cyclododecane is produced by hydrogenation of 1,5,9-cyclododecatriene which is produced by the trimerization of butadiene.

The stoichiometric material consumption formula for cyclododecanol is:

$3\ C_4H_6$ (butadiene) + $0.75\ CH_4$ (methane) + $1.5\ H_2O$ (water) + $0.5\ O_2$ (oxygen) ——> $C_{12}H_{24}O$ (cyclododecanol) + $0.75\ CO_2$ (carbon dioxide)

Cyclododecanol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 80.18 percent by weight of the materials used in its production.

1,5,9-cyclododecatriene

HTS number: 2906.19.00
CAS number: 4904–61–4

1,5,9-cyclododecatriene is derived from the taxable chemical butadiene. 1,5,9-cyclododecatriene is a solid produced predominantly by trimerization of butadiene in the presence of a coordination-type catalyst.

The stoichiometric material consumption formula for 1,5,9-cyclododecatriene is:

$3\ C_4H_6$ (butadiene) ——> $C_{12}H_{18}$ (1,5,9-cyclododecatriene)

1,5,9-cyclododecatriene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

Adiponitrile

HTS number: 2926.90.50
CAS number: 111–69–3

Adiponitrile is derived from the taxable chemicals methane, ammonia, and butadiene. Adiponitrile is a liquid produced predominantly by the reaction of butadiene with hydrogen cyanide (derived from ammonia and from methane in natural gas).

The stoichiometric material consumption formula for adiponitrile is:

$2\ CH_4$ (methane) + $2\ NH_3$ (ammonia) + C_4H_6 (butadiene) + $3\ O_2$ (oxygen) ——> $C_6H_8N_2$ (adiponitrile) + $6\ H_2O$ (water)

Adiponitrile has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 55.55 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–4441 Filed 2–22–95; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Hexabromocyclododecane, et al.); Filing of Petitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of petitions requesting that hexabromocyclododecane and ethylenebistetrabromophthalimide be added to the list of taxable substances in section 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

DATES: Submissions must be received by April 24, 1995. Any modification of the list of taxable substances based upon these petitions would be effective October 1, 1993.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Petition) Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petitions were received on December 30, 1992 (hexabromocyclododecane) and December 23, 1992 (ethylenebistetrabromophthalimide). The petitioner is Ethyl Corporation, a manufacturer and exporter of these substances. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

Hexabromocyclododecane

HTS number: 2903.59.00.00
CAS number: 3194–55–6

This substance is derived from the taxable chemicals bromine and butadiene. Hexabromocyclododecane is a solid produced predominantly by reacting cyclododecatriene with bromine in a solvent system, followed by a neutralization, a centrifugation, a strip, a wash, drying, and grinding (as required).

The stoichiometric material consumption formula for this substance is:

$3\ Br_2$ (bromine) + $3\ C_4H_6$ (butadiene) ——> $C_{12}H_{18}Br_6$ (hexabromocyclododecane)

According to the petition, taxable chemicals constitute 100 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.55 per ton. This is based upon a conversion factor for bromine of 0.747 and a conversion factor for butadiene of 0.253.

Ethylenebistetrabromophthalimide

HTS number: 2925.19.10.00
CAS number: 32588–76–4

This substance is derived from the taxable chemicals bromine, ethylene, xylene, ammonia, and chlorine. Ethylenebistetrabromophthalimide is a solid produced predominantly by sulfonating and brominating phthalic anhydride in the presence of oleum and then hydrolyzing the resulting tetrabromophthalic anhydride in the presence of a solvent system and reacting it with ethylene diamine. The resulting ethylenebistetrabromophthalimide is centrifuged, washed, dried/converted, milled, and packaged.

The stoichiometric material consumption formula for this substance is:

$4\ Br_2$ (bromine) + C_2H_4 (ethylene) + $2\ C_8H_{10}$ (o-xylene) + $2\ NH_3$ (ammonia) + Cl_2 (chlorine) + $6\ O_2$ (oxygen) +

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8 SO_3 (sulfur trioxide) ——> $C_{16}H_4O_4N_2Br_8$ (ethylenebistetrabromophthalimide) + 8 H_2O (water) + 4 SO_2 (sulfur dioxide) + 4 H_2SO_4 (sulfuric acid) + 2 HCl (hydrochloric acid)

According to the petition, taxable chemicals constitute 54.18 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $4.51 per ton. This is based upon a conversion factor for bromine of 0.672, a conversion factor for ethylene of 0.029, a conversion factor for xylene of 0.223, a conversion factor for ammonia of 0.036, and a conversion factor for chlorine of 0.075.

Comments and Requests for a Public Hearing

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 95–4442 Filed 2–22–95, 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Professional Development of South African Radio Station Owners and Managers

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Citizen Exchanges of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501 (c)(3) may apply to develop a two-way exchange project for South African radio station owners and managers. The project should be designed to enhance participations' skills in managing their broadcasting operations and assist them to develop strategies to operate their stations as successful business enterprises. The project should provide U.S.-based activities for approximately 9–12 South African radio station owners and managers. The project also should provide in-country workshops or consultancies to assist participating broadcasters implement appropriate business management strategies. The program should being in summer/fall 1995. Consultation with the U.S. Information Service (USIS) posts in South Africa in the development of the project proposal is encouraged.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interest, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–95–49.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC. time on Friday, April 14, 1995. Faxed documents will not be accepted, nor will documents postmarked on April 14, 1995 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Africa/Near East/South Asia Division of the Office of Citizen Exchanges, U.S. Information Agency, 301 4th Street, S.W., Room 220, Washington, D.C. 20547, tel. 202–619–5319, fax 202–619–4350, Internet address STAYLOR@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Stephen Taylor on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions provided in the Solicitation Package and send fully completed applications. Send the original and 14 copies to:

U.S. Information Agency, Ref.: E/P–95–49, Office of Grants Management, E/EX, Room 336, 301 4th Street, S.W., Washington, D.C. 20547

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

Background: The transition to nonracial democracy in South Africa is providing greater access to the nation's radio and television broadcasting airways, opening new opportunities for independent broadcasters. the government-owned South African Broadcasting Corporation (SABC) has been the country's dominant broadcaster, with three television services and 23 radio stations. These outlets include commercial as well as public service stations. The SABC and a small number of other broadcasters have been the major source of broadcasting management expertise. South Africa's Independent Broadcasting Authority (IBA), created in 1994 to shield the broadcast media from direct political controls, is responsible for regulating the airwaves and granting commercial, public service and community broadcasting licenses. During the next several months, the IBA will be issuing licenses that will enable a wide range of independent radio stations to begin broadcasting for the first time. While many of these new licensees may have some on-air experience, they may lack backgrounds in radio management. These owners and other new managers could benefit from a project focused on fundamental broadcasting management practices to help enhance the prospects for the longer term viability of their stations.

Program Overview. The Office of Citizen Exchanges (E/P) proposes development of a two-way exchange project for South African participants designed to promote development of business management skills applicable to radio station management. This two-way exchange should include activities for 9–12 South African participants in the United States and opportunities for American specialists to share their expertise in South Africa. While the project should introduce participants to a variety of radio broadcasting operations, the program should concentrate on activities and site visits appropriate to the technology and infrastructure available in South Africa. The project should be designed to accommodate participants new to broadcasting management. Participants should study station management practices, business planning strategies and marketing concepts. They also should analyze the standards of professional journalism which managers must oversee and identify strategies to promote staff development.

This two-way exchange also should promote informal ties, opening channels of communications between U.S. and South African broadcasters to help enhance the viability of independent radio stations in South Africa. This might include informal advice on broadcasting management issues. The project should begin in summer/fall 1995.

Project Objectives

The project should be designed to:

—Introduce participants to fundamental business management skills applicable to station management including financial planning, cash management and staff development;

—Analyze income resources for radio stations including advertisements, and examine strategies for surviving the initial stages of launching a new broadcasting service;

—Examine marketing strategies aimed at attracting advertisers and, where appropriate, study the interrelationship among programming content, objective news reporting and maintaining advertisers as clients;

—Develop strategies for implementing improved station management practices;

—Examine media-government relations and demonstrate how the independent reporting of political and economic developments helps shape government policy and public opinion;

—Provide an overview of journalistic ethics and the standards of professional journalism; and

—Establish informal ties between South African station owners and U.S. counterparts, providing a resource for occasional advice on station management matters.

Participants

The project participants will be owners and managers of radio stations in South Africa. Many of the participants will be newly licensed station owners or recently hired management staff. The U.S. phase of the project should be designed for 9–12 participants. All participants will have strong English language skills. USIS personnel in South Africa will select the participants, although recommendations from the grantee institution are welcome.

For program activities in South Africa, the grantee institution will select the American presenters in consultation with USIA.

USIS offices will facilitate the issuance of visas for the South African participants and can help with the distribution of program-related materials in South Africa.

Programmatic Considerations

USIA will give careful consideration to proposal which demonstrate:

(1) In-depth, substantive knowledge of the strategies and practices involved in managing a broadcasting operation as a successful business enterprise;

(2) First-hand connections with a variety of American radio operations, as well as public and private sector organizations responsible for promoting journalistic professionalism and successful business management;

(3) The capacity to organize and manage international exchange programs, including the handling of pre-departure arrangements, orientation activities, monitoring and problem-solving involved in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which are very general in nature will not be competitive. The Office of Citizens Exchanges does *not* award grants to support projects whose focus is limited to technical matters, or to support scholarly research projects, development of publications for dissemination in the United States, individual student exchanges, film festivals or exhibits. The Office of Citizens Exchanges does *not* provide scholarships or support for long-term (one semester or more) academic studies. Competitions sponsored by other Bureau offices also are announced in the **Federal Register** and may have different application requirements as well as different objectives.

Program Suggestions

The proposed project should include at least one phase for South African participants in the United States and at least one phase for American specialists in South Africa. Programming elements might include in-country workshops or seminars led by American experts, specialized consultancies developed for radio station owners in South Africa, a study tour in the United States for selected South African participants and U.S.-based professional attachments for South African broadcasters. A planning visit overseas by the American organizer also could be considered if crucial to successful development and implementation of the program.

The project should include formats which maximize interaction between the South African participants and the program presenters. Participants should observe the full range of business management and financial planning activities on the part of radio station owners and managers. They might also observe the interaction of station owners with public and private sector organizations involved in formulating, implementing and evaluating policies that affect U.S. broadcasting, such as professional associations, advertising agencies, trade unions, government agencies and community groups. Participants also should visit university-based radio stations to observe training programs and study the role of such stations in the broadcasting industry. The program design should provide adequate time for participants to meet individually with American professionals who have similar interests and specializations. While not required, the presenters' familiarity with radio broadcasting in South Africa is desirable.

Program Responsibilities

The grantee institution's responsibilities include: Selecting presenters, themes and topics for discussion; organizing a coherent progression of activities; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the visiting South African participants and the U.S presenters who travel to South Africa; and overseeing the project on a daily basis to achieve maximum program

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effectiveness. The grantee institution is responsible for coordinating plans and project implementation with E/P, USIS officers in South Africa and South African collaborating institutions.

At the start of each phase, the grantee institution will conduct an orientation session and, at the conclusion, conduct participant evaluations. The institution will submit a report at the conclusion of each program phase, including a final program report summarizing the entire project and resulting organizational links. The institution must also submit a final financial report. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward a set of preliminary materials which might include an introduction to the U.S. system of government, American notions of free speech and freedom of the press, the practices of U.S. broadcasters and other background information about the project. E/P will ask the South African participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the South African participants' backgrounds, interests and concerns.

Other Program Considerations

Consultation with USIS officers in South Africa in the development of the project proposal is encouraged. Letters of commitment from participating U.S. and South African institutions and individuals would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities, libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms might be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

The grantee institution should maximize cost-sharing in all elements of the project and seek to stimulate U.S. private sector support, including from foundations and corporations.

All participants will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Funding

Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider funding up to approximately $120,000, but grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive line item budget for the entire program based on the specific guidance in the Solicitation Package. Applicants must provide a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For further clarification, applicants may provide optional, separate sub-budgets for each program phase or activity in order to facilitate USIA decisions on funding. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs.

2. *Per diem:* For foreign participants during activities in the United States, organizations have the option of using a flat rate of $140/day or the published Federal Travel Regulations (FTR) per diem rates for individual American cities. (Note: U.S. institutional staff must use the published FTR per diem rates, not the flat rate.) For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. *Escort-interpreters:* Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

4. *Book and cultural allowances:* Participants are entitled to a one-time book allowance of $50 plus a cultural allowance of $150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to $150.00.

5. *Consultants:* Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed $250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. *Materials development:* Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed $250/day.

8. One working meal per project, for which per capita costs may not exceed $5–$8 for a lunch or $14–$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. *Return travel allowance:* $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of African Affairs and the USIA post overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final

technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Institutional Reputation and Ability:* Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. *Project Personnel:* The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. *Program Planning:* A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. *Thematic Expertise:* Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. *Cross-Cultural Sensitivity and Area Expertise:* Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. *Ability to Achieve Program Objectives:* Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

9. *Cost-Effectiveness:* Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

11. *Follow-on Activities:* Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 17, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: February 14, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–4193 Filed 2–22–95; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of the West Bank and Gaza Strip as a Beneficiary of the GSP Program; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of the West Bank and Gaza Strip for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of the West Bank and Gaza Strip as a beneficiary of the GSP program and solicits public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 513, Washington, D.C. 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if the West Bank and Gaza Strip meet the designation criteria of the GSP law and should be designated as a beneficiary for purposes of the GSP program, which is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in sections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of the West Bank and Gaza Strip for designation as a GSP beneficiary. The designation criteria mandate determinations related to such practices as: participation in commodity cartels, preferential treatment provided to other developed countries, expropriation without compensation, enforcement of arbitral awards, support of international terrorism, and protection of internationally recognized worker rights. Other practices taken into account include: the extent of market access for goods and services, investment practices and protection of intellectual property rights.

Comments must be submitted in 15 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, N.W., Room 513, Washington, D.C. 20506. Comments must be received no later than 5 p.m. on Wednesday, March 15, 1995. Information and comments submitted regarding the West Bank and Gaza Strip will be subject to public

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inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, 15 copies of a nonconfidential version of the submission along with 15 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–4444 Filed 2–17–95; 2:20 pm]

BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Notice of Establishment of the Advisory Committee on Minority Veterans

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App.I) 9(c), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Advisory Committee on Minority Veterans in compliance with Public Law 103–446, Title 5, Section 510. VA has determined that this action is in the public interest.

SUPPLEMENTARY INFORMATION: The objectives of this committee are to advise the Secretary of Veterans Affairs with respect to the administration of benefits by the Department for veterans who are minority group members through review of reports and studies pertaining to such veterans concerning compensation, health care, rehabilitation, outreach and other benefits and programs administered by the Department.

The Committee will make an assessment of the needs of veterans who are minority group members and review VA programs and activities designed to meet such needs. The Committee will submit a report no later than July 1 of each year to the Secretary on the programs and activities of the Department that pertain to veterans who are minority group members.

The Committee membership will be selected based on the criteria enumerated in the authorizing statute. That is: (i) Representatives of veterans who are minority group members; (ii) individuals who are recognized authorities in fields pertinent to the needs of veterans who are minority group members; (iii) veterans who are minority group members who have experience in a military theater of operations; (iv) and veterans who are minority group members who do not have such experience. The Committee will include as ex officio members the following: (i) The Secretary of Labor (or a representative designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment); (ii) The Secretary of Defense (or a representative designated by the Secretary of Defense); (iii) The Secretary of Interior (or a representative designated by the Secretary of interior); (iv) The Secretary of Commerce (or a representative designated by the Secretary of Commerce); (v) The Secretary of Health and Human Services (or a representative designated by the Secretary of Health and Human Services; and (vi) the Under Secretary for Health and the Under Secretary for Benefits, or their designees. Minority group member means an individual who is—(1) Asian American; (2) Black; (3) Hispanic; (4) Native American (including American Indian, Alaskan Native, and Native Hawaiian); or (5) Pacific Islander American. The Secretary may invite representatives of other departments and agencies of the United States to participate in the meetings and other activities of the Committee. Appointments will be for two years unless otherwise directed by the Secretary of Veterans Affairs.

The Designated Federal Official for the Committee is Anthony T. Hawkins, Executive Director, Center for Minority Veterans.

By Direction of the Secretary.

Dated: February 14, 1995.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–4387 Filed 2–22–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 36
Thursday, February 23, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 28, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

TATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 2, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of Minutes.
Advisory Opinion 1994–36: Susan M. Frank on behalf of Science Applications International Corporation (SAIC).
Advisory Opinion 1995–05: Gregory Galassini on behalf of the 14th District TRIM Committee.
Administrative Matters.

DATE AND TIME: Thursday, March 2, 1995 at 2:00 p.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This oral hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Buchanan for President, Inc.—Oral Hearing.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–4635 Filed 2–21–95; 3:25 pm]

BILLING CODE 6715–01–M

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Corrections

Federal Register
Vol. 60, No. 36
Thursday, February 23, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 220

RIN 0584-AB94

National School Lunch Program and School Breakfast Program: Compliance With the Dietary Guidelines for Americans and Food-Based Menu Systems

Correction

In proposed rule document 95–2044 beginning on page 5514 in the issue of Friday, January 27 1995 make the following corrections:

§210.10 [Corrected]

1. On page 5520, in §210.10(c)(1), the Minimum Quantities table, should read as set forth below:

MINIMUM QUANTITIES					
	REQUIRED FOR				OPTION FOR
	AGES 1–2	PRESCHOOL	GRADES K–6	GRADES 7–12	GRADES K–3
MEAL COMPONENT					
MILK	6 OUNCES	6 OUNCES	8 OUNCES	8 OUNCES	8 OUNCES
MEAT OR MEAT ALTERNATE	1 OUNCE	1½ OUNCES	2 OUNCES	2 OUNCES	1½ OUNCES
FRUITS AND VEGETABLES	⅛ CUP	⅛ CUP	¾ CUP PLUS ADDITIONAL ½ CUP OVER A WEEK	1 CUP	¾ CUP
GRAINS AND BREADS	5 SERVINGS PER WEEK—MINIMUM OF ½ PER DAY [2]	8 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY [1]	12 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY [1,2]	15 SERVINGS PER WEEK—MINIMUM OF 1 PER DAY [1,2]	10 SERVINGS PER WEEK MINIMUM OF 1 PER DAY [1,2]

[1] FOR THE PURPOSES OF THIS CHART, WEEK EQUALS FIVE DAYS.
[2] UP TO ONE GRAINS/BREADS SERVING PER DAY MAY BE A DESSERT

§220.8 [Corrected]

2. On page 5521, in §220.8(a)(1), in the Minimum Quantities table, in the "Milk (Fluid)" servings, "Ages 1-2" reads "1¼" should read "1/2".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent

Correction

In notice document 95–3472 appearing on page 8220 in the issue of February 13, 1995, make the following correction:

On page 8220, in the third column, in the fourth line, under the heading "**Summary**" and following the word "Quincy" the words "Soybean Company of Quincy" should be added.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]
RIN 0960-AD96

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Benefit Reforms for Individuals Disabled Based on Drug Addiction or Alcoholism

Correction

In rule document 95–3369 beginning on page 8140 in the issue of Friday, February 10, 1995, make the following corrections:

§404.315 [Corrected]

1. On page 8145, in the first column, in amendatory instruction 2., in the second line, "test" should read "text"

PART 416 [CORRECTED]

2. On page 8149, in the third column, in the authority citation, in the first line, after "1611(c)" remove the comma.

BILLING CODE 1505–01–D

federal register

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Part II

Department of Agriculture

Rural Utilities Service

7 CFR Part 1726

Electric System Construction Policies and Procedures; Final Rule

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1726

RIN 0572–AA47

Electric System Construction Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS), successor to the Rural Electrification Administration (REA), hereby amends its regulation on Electric System Construction Policies and Procedures. This action codifies the policies and the procedures applicable to RUS electric borrowers when purchasing materials and equipment, and when constructing system facilities by contract or force account. These policies and procedures were contained in six REA bulletins. The changes made pertain to RUS approval of contracts, subcontracts and amendments to contracts; documentation of contracting activity by RUS borrowers; procurement procedures to be used by RUS borrowers; and closeout procedures for construction contracts.

EFFECTIVE DATE: This rule is effective March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 720–1398.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of the Act, the information collection and recordkeeping requirements contained in this rule have been approved by OMB under control number 0572–0107. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 10102, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this order.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will not: (1) Preempt any State or local laws, regulations, or policies; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Background

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936, as amended, (the RE Act) (7 U.S.C. 901 *et seq.*). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this final rule that was previously proposed by REA. Pursuant to the RE Act, RUS hereby amends 7 CFR chapter XVII, by revising Part 1726, Electric System Construction Policies and Procedures. This revised part contains the policies and the procedures applicable to RUS borrowers and contractors when purchasing materials and equipment and constructing electric system facilities by contract or force account (the RUS borrower's own construction crews).

These policies and the procedures implement certain provisions of the RUS standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standard forms and procurement procedures helps assure RUS that: (1) appropriate standards and specifications are maintained; (2) RUS's loan security is not adversely affected; and (3) loan and loan guarantee funds are used effectively and for the intended purposes.

The previous policies and procedures were set forth in REA Bulletin 40–6, Construction Methods and Purchase of Materials and Equipment; REA Bulletin 40–8, Construction Specifications, Drawings and Contract Forms for Distribution, Transmission and Generation Facilities; REA Bulletin 81–6, Closeout Procedures and Documents for Contract Construction of Distribution and Transmission Facilities; REA Bulletin 85–1, Closeout Procedures and Documents for the Contract Construction of Generating Facilities and Associated Buildings; REA Bulletin 86–1, Closeout Procedures and Documents for the Construction of Buildings Other than Generating Plants; and REA Bulletin 86–3, Headquarters Facilities for Electric Borrowers. The previous policies and procedures are being changed and updated by this rule. When this rule is effective, Bulletins 40–6, 81–6, 85–1, 86–1, and 86–3 will be superseded in their entirety and rescinded, and Bulletin 40–8 will be superseded with respect to the contract forms listed in this rule.

Bulletin 40–8 will be superseded in its entirety and rescinded when all forms referenced therein have been promulgated.

Major Changes

The major substantive changes are as follows:

(a) This rule applies to procurement and construction for all projects which are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. REA Bulletin 40–6 contained the requirements for all procurement and construction, regardless of the source of funds.

(b) This rule eliminates the previous requirement that RUS approve subcontracts. (Subcontracts for generating projects were already exempt from RUS approval.)

(c) This rule changes the dollar thresholds that determine which procurement procedure is to be used for a project.

(d) This rule raises the dollar thresholds that determine whether RUS approval of a contract is required and eliminates the requirement of RUS approval of certain contract amendments.

(e) This rule eliminates the requirement of RUS approval of borrowers' contracts for headquarters facilities.

(f) This rule adds procedures for procurement of communication and control facilities.

(g) This rule simplifies the procedures for the closeout of construction contracts by reducing the number of forms to be submitted to RUS.

(h) This rule revises the RUS standard contract forms. The major changes in the contract forms are as follows:

(1) Change the forms to reflect the changes listed above.

(2) Change the insurance and bonding dollar limits as outlined in 7 CFR part 1788.

(3) Change the forms to require prequalification of all bidders.

(4) Change the interest rate on overdue accounts.

(5) Change the "Buy American" provision to include Mexico and Canada in accordance with the North American Free Trade Agreement Implementation Act of December 8, 1993, Pub. L. 103–182.

(6) Change the indemnification clause (also called "hold harmless clause") to reflect RUS's current policy.

(7) Incorporate certain technical changes relating to wood treating and right-of-way clearing chemicals. In order to reduce printing cost and volume, the forms included in this part are condensed, especially the tables. Also, several forms refer to guide drawings, which do not contain requirements, and, hence, will not be included. RUS intends to reformat these forms similar to their current configuration (including the tables and drawings) and make them available in that format either from RUS or for purchase from the Government Printing Office. See § 1726.300 for a list of the standard forms of electric contracts and where each may be obtained.

This rule was published as a proposed rule at 59 FR 28924, June 3, 1994. In addition, "Permitted Contract Modifications—Indemnification," dealing with indemnification of the owner by the contractor in RUS's standard contract forms, was published as a proposed rule at 59 FR 4603, February 1, 1994. This rule incorporates the changes and addresses the comments resulting from the proposed rule "Permitted Contract Modifications—Indemnification."

Comments

A total of 45 organizations submitted comments on the proposed rule, including 27 borrowers, the National Rural Electric Cooperative Association, 6 engineers and engineering organizations, the Power and Communication Contractors Association, two insurance companies, two state borrower associations, and 6 others. RUS considered all comments received. The more significant and most commonly made comments are addressed herein.

Applicability

Many commenters suggested changes or clarification as to when this rule applies. This rule has been clarified to state that it applies when materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. A statement regarding jointly owned projects has also been added. Competitive bidding for new capacity resources, however, is outside the scope of this rule.

Threshold Limits

There were many comments suggesting changes in the various dollar limits regarding forms to be used, bidding procedures to be followed, RUS approvals, etc. Several comments also suggested making the dollar limits more consistent. RUS has increased the contract approval limit for transmission construction and for load control, communication, and SCADA systems for power supply borrowers. RUS believes that the limits, as revised, are a reasonable balance that allows the borrower reasonable flexibility while assuring RUS that loan funds are being used properly. A number of clarifications have been added to avoid potential ambiguities.

Several commenters expressed concern about using a calendar year limit, since one or two large procurements could consume the entire limit, and very small procurements thereafter would be subject to more stringent requirements. This situation is inherent in any calendar limit, and RUS expects each borrower to manage its procurement program by using the procurement procedure (e.g., formal competitive bidding) or the contract form not subject to the calendar year limit for large procurements and prudently utilizing the flexibility provided by this rule so that the calendar year limits are not exceeded.

Bidders Qualifications and Competition

Several commenters suggested that a bidder's performance record, safety record, and similar factors should be considered when evaluating bids. RUS strongly disagrees with this. RUS believes that such factors can and should be considered when determining the bidder's qualifications to be invited to bid, but it is inappropriate and unacceptable to evaluate these factors when evaluating a bid from a qualified and invited bidder. Language has been added to the rule clarifying this position.

Other comments concerned how to deal with a potential conflict of interest with a bidder. This rule places primary responsibility on the borrower's board of directors to determine if a potential conflict of interest is significant, and RUS believes this is appropriate.

A number of commenters suggested that fewer than three bidders could represent adequate competition. RUS believes that, for most procurement, three or more bidders are needed to assure adequate competition. We have, however, eliminated the requirement that RUS concurrence be obtained prior to awarding a contract based on fewer than three bids, providing that the borrower documents that all reasonable measures were taken to assure adequate competition.

Engineer

Many commenters noted that borrowers often utilize staff engineers, but the language of the rule generally implies that the engineer is an outside consultant. RUS agrees with this position and has revised the language accordingly.

One commenter noted that several engineering contract forms were not included in the list of RUS standard contract forms. Such forms are still available and in some cases mandatory, but are outside the scope of this rule and are contained in other RUS rules.

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Definitions

Various commenters recommended clarifications and changes to the definitions as well as the addition of several more definitions. RUS has revised several definitions and added two new definitions. The other proposed definitions appear to be self-explanatory without modification.

Several commenters suggested that the contracting committee was not needed or should have a different make-up. RUS believes that this committee, required only under informal competitive bidding and multiparty negotiation, is needed as specified to insure the integrity of these procedures.

RUS Approvals

Some commenters suggested that RUS approval be automatic after a specified time period (30 or 60 days) without RUS action. Due to numerous factors which may affect RUS approval, including other agency priorities, human resources, and unresolved issues, this change was not made.

Other commenters felt that RUS approval should not be required to purchase used equipment and materials. Since most RUS loans are long-term, RUS must be satisfied that the physical security is adequate, so RUS will continue to require new equipment and materials unless specifically approved by RUS.

Many commenters objected to RUS reserving the right to require contract construction in lieu of force account construction (§ 1726.22). While RUS has rarely exercised this right in the past and does not expect to use it often in the future, there are circumstances where such authority has been and may again be needed, therefore, the language of the rule has not been changed.

Many commenters also objected to certain amendments being subject to RUS approval even if the original contract was not. The purpose of this requirement was to prevent changing the RUS approved form of contract by amendment where the borrower is not permitted to make such changes in the form without RUS approval. The language of the rule has been changed to indicate that the approved form of contract cannot be changed either prior to bidding or by amendment without prior RUS approval, but the actual amendment would not be subject to RUS approval.

Other commenters suggested that a RUS approved form of contract should only be required if RUS approval of the contract is required. RUS disagrees with this. RUS has eliminated many of the requirements for RUS approval of contracts based on the requirement that the borrower use certain forms and procedures for other contracts. This also applies to the amendment forms, although RUS has determined that special requirements for amendments for payment for material delivered are not necessary, so § 1726.26, along with RUS Form 800, have been deleted.

Documents Submitted to RUS

Many commenters suggested that certain of the documents submitted to RUS are unnecessary. With regard to "Proof of Insurance," RUS agrees and has deleted this requirement. RUS believes that the remaining documents to be submitted are needed to assure that loan funds are being used properly.

Procurement Procedures

Several commenters requested clarification of the applicability of some of the procedures and changes to some of the details of the requirements. Several changes have been made in this area. Other commenters suggested that the informal bidding procedure and the multiparty negotiation procedure be changed to allow clarifying discussions or negotiations, respectively, with only the apparent low evaluated bidder. This change has not been made. RUS believes that meeting with at least the three apparent lowest evaluated bidders will insure adequate competition and fairness without undue burden on the borrower.

Forms

A number of commenters suggested that computer generated versions of RUS standard contract forms should be acceptable in addition to the preprinted versions. RUS agrees with this only for those forms which are primarily tables (Forms 251 and 254). For the remainder of the contract forms, RUS continues to believe that the most effective means of maintaining accurate and recognizable forms is to continue to use the preprinted version.

Commenters suggested that RUS Form 792 be modified to allow multi-year contracting and to allow RUS Form 786 to be modified to be a "purchase only" contract form. These changes have been made. One commenter suggested that all contract bonds use RUS Form 168c instead of RUS Form 168b. Form 168c is currently used when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less. RUS Form 168b has proved to be a satisfactory bond form for other contracts, so RUS has determined that it will require the RUS Form 168b where the Form 168c is not applicable.

A number of other suggestions were made regarding changes to the contract forms. Some minor changes have been made, but RUS intends to thoroughly review and revise these forms in the near future, so other comments will be considered at that time.

Two commenters suggested that RUS prepare a standard form for "Engineer-Procure-Construct" (EPC) or "Turnkey" type projects. RUS's experience with such projects indicate that each one tends to be unique and not well suited to a standard contract form, so therefore, no attempt has been made to develop such a standard form at this time.

Indemnification

RUS requires borrowers to use standard contract forms for certain construction, material supply, equipment supply, architectural services, and engineering services contracts. The construction contract forms contain a standard indemnification clause (also called "hold harmless") pursuant to which the contractor agrees to indemnify the owner against certain risks. Some borrowers have requested approval to incorporate an alternative indemnification clause in certain contracts. They believe that it provides them indemnification in addition to that afforded by the currently required clause. Some contractors have expressed concern about the extent of their potential liability under such a modified indemnification provision, particularly for certain actions of the owner. RUS has determined that it is in the Government's and the borrowers' best interest to have a reasonable and balanced indemnification provision: one that provides adequate protection for the borrower while not placing an unreasonable business risk on the contractor. An indemnification provision that does not adequately protect the borrower could expose the borrower to liability for damages which could endanger the Government's loan security. An indemnification provision which places an unreasonable business risk on the contractor could result in qualified, capable contractors declining to bid under such conditions, which could result in reduced competition and higher costs. It could even result in the borrower being exposed to increased liability if only financially weak contractors bid, since the contractor may be financially unable to meet its indemnification obligations. In response to these requests, "Permitted Contract Modifications—Indemnification," was published as a proposed rule at 59 FR 4603, February 1, 1994. This final rule incorporates the changes concerning the indemnification clause in the contract forms proposed by both of these rules.

In response to the proposed "Permitted Contract Modifications—Indemnification," the issue which drew the most comments was whether to extend the indemnification to the borrower's engineer. Nine organizations (generally engineers or engineering organizations) are in favor of including the engineer, while two commenters opposed their inclusion. Since the engineer is independent of the borrower and has no direct contractual relationship with the contractor, RUS has determined that a clear separation should be maintained between the engineer and the contractor. Therefore, the indemnification clause does not extend to the engineer.

Many commenters expressed the view that the borrower (owner) should be named as Additional Insured on the contractor's liability insurance policies. Others felt that the engineer should also be named as Additional Insured. It appears that naming the borrower (but not the engineer) as Additional Insured will further RUS'S overall objective without adding significantly to the cost of the contract. RUS has decided, therefore, to add a requirement to name the owner as Additional Insured on the contractor's liability insurance policies.

Several commenters suggested minor wording changes under certain circumstances to insure that the language accomplishes its purpose. A section has been added under Section H allowing the borrower to make certain changes in the language if appropriate in its jurisdiction. One commenter found the indemnification language to be "weak at best," while two commenters felt that it placed too much burden on the contractor. RUS believes that the final language included in this rule reasonably balances the interests of the borrower, the engineer, and the contractor.

Other Comments

A number of comments were received suggesting or requesting clarifications or corrections to the language of the rule. These have generally been made, although certain areas which appeared reasonably clear were not clarified further.

List of Subjects in 7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, RUS hereby amends 7 CFR chapter XVII by revising part 1726 to read as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subpart A—General

Sec.
1726.1–1726.9 [Reserved]
1726.10 Introduction.
1726.11 Purpose.
1726.12 Applicability.
1726.13 Waivers.
1726.14 Definitions.
1726.15 "Buy American".
1726.16 Debarment and suspension.
1726.17 Restrictions on lobbying.
1726.18 Preloan contracting.
1726.19 Use of competitive procurement.
1726.20 Standards and specifications
1726.21 New materials.
1726.22 Methods of construction.
1726.23 Qualification of bidders.
1726.24 Written contracts.
1726.25 Subcontracts.
1726.26–1726.34 [Reserved]
1726.35 Submission of documents to RUS.
1726.36 Documents subject to RUS approval.
1726.37 OMB control number.
1726.38–1726.49 [Reserved]

Subpart B—Distribution Facilities

1726.50 Distribution line materials and equipment.
1726.51 Distribution line construction.
1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

1726.75 General.
1726.76 Substation and transmission line materials and equipment.
1726.77 Substation and transmission line construction.
1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

1726.125 Generating plant facilities.
1726.126–1726.149 [Reserved]

Subpart E—Buildings

1726.150 Headquarters buildings.
1726.151–1726.174 [Reserved]

Subpart F—General Plant

1726.175 General plant materials.
1726.176 Communications and control facilities.
1726.177–1726.199 [Reserved]

Subpart G—Procurement Procedures

1726.200 General requirements.
1726.201 Formal competitive bidding.
1726.202 Informal competitive bidding.
1726.203 Multiparty negotiation.
1726.204 Multiparty unit price quotations.
1726.205 Multiparty lump sum quotations.
1726.206–1726.249 [Reserved]

Subpart H—Modifications to RUS Standard Contract Forms

1726.250 General.
1726.251 Prior approved contract modification related to price escalation on transmission equipment, generation equipment, and generation construction contracts.
1726.252 Prior approved contract modification related to liability for special and consequential damages.
1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.
1726.254 Prior approved contract modifications related to RUS approval of contracts and amendments and modified bidding requirements.
1726.255 Prior approved contract modifications related to indemnification.
1726.256–1726.299 [Reserved]

Subpart I—RUS Standard Forms

1726.300 List of RUS standard contracting forms for electric systems.
1726.301 Use of printed forms.
1726.302 RUS approved forms of contract.
1726.303 Interest on overdue accounts
1726.304–1726.309 [Reserved]
1726.310 Contractor's bond, RUS Form 168b.
1726.311 Contractor's bond, RUS Form 168c.
1726.312 Construction contract amendment, RUS Form 180.
1726.313 Certificate of completion, contract construction for buildings, RUS Form 181.
1726.314 Certificate of completion, contract construction, RUS Form 187.
1726.315 Equipment contract, RUS Form 198.
1726.316–1726.319 [Reserved]
1726.320 Construction contract, generating, RUS Form 200.
1726.321 Right-of-way clearing contract, RUS Form 201.
1726.322 Transmission system right-of-way clearing contract, RUS Form 203.
1726.323 Certificate (Buy America), RUS Form 213.
1726.324 Waiver and release of lien, RUS Form 224.
1726.325 Certificate of contractor, RUS Form 231.
1726.326 Construction or equipment contract amendment, RUS Form 236
1726.327 Material receipt, RUS Form 251.
1726.328 Construction inventory (for labor and material contract), RUS Form 254
1726.329 Contract to construction buildings, RUS Form 257.
1726.330 [Reserved]
1726.331 Bid bond, RUS Form 307.
1726.332–1726.339 [Reserved]
1726.340 Substation and switching station erection contract, RUS Form 764.
1726.341 Electric system communications and control equipment contract, RUS Form 786.
1726.342 Distribution line extension construction contract (labor and materials), RUS Form 790.
1726.343 Distribution line extension construction contract (labor only), RUS Form 792.
1726.344 [Reserved]
1726.345 Certificate of contractor and indemnity agreement (line extensions), RUS Form 792b.
1726.346 Supplemental contract for additional project, RUS Form 792c.
1726.347–1726.350 [Reserved]

1726.351 Electric system construction contract (labor and materials), RUS Form 830.
1726.352 Electric transmission construction contract (labor and materials), RUS Form 831.
1726.353–1726.399 [Reserved]

Subpart J—Contract Closeout

1726.400 Final contract amendment.
1726.401 Material contract closeout.
1726.402 Equipment contract closeout.
1726.403 Project construction contract closeout.
1726.404 Non-site specific construction contract closeout.
1726.405 Inventory of work orders (RUS Form 219).

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart A—General

§§ 1726.1–1726.9 [Reserved]

§ 1726.10 Introduction.

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Utilities Service (RUS) and its electric borrowers. Unless prior written approval is received from RUS, borrowers are required to comply with RUS policies and procedures as a condition to RUS providing loans, loan guarantees, or reimbursement of general funds for the construction and improvement of electric facilities. Requirements relating to RUS approval of plans and specifications, duties and responsibilities of the engineer and architect, and engineering and architectural services contracts, are contained in other RUS regulations. The terms "RUS form", "RUS standard form", "RUS specification", "and RUS bulletin" have the same meanings as the terms "REA form", "REA standard form", "REA specification", "and REA bulletin", respectively, unless otherwise noted.

§ 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. RUS, as a secured lender, has a legitimate interest in accomplishing RUS's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

§ 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction are financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, the borrower must comply with the procedures required by this part. In the case of jointly owned projects, RUS will determine on a case by case basis the applicability of the requirements of this part.

§ 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. RUS reserves the right, as a condition of providing loans, loan guarantees, or other assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator.

§ 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

Approval of proposed construction means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Bona fide bid means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

"Buy American" certificate means a certification that the contractor has complied with the "Buy American" requirement (see § 1726.15).

Competitive procurement means procurement of goods or services based on lowest evaluated bid for similar products or services when three or more bids are received.

Construction unit means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

Contracting committee means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarifying discussions or negotiations under informal competitive bidding or multiparty negotiation, respectively.

Encumbrance means the process of approval for advance of loans funds by RUS.

Engineer means a registered or licensed person, who may be a staff employee or an outside consultant, to provide engineering services and duly authorized assistants and representatives.

Equipment means a major component of an electric system, e.g., a substation transformer, heat exchanger or a transmission structure.

Force account construction means construction performed by the borrower's employees.

Formal competitive bidding means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

Goods or services means materials, equipment, or construction, or any combination thereof.

Informal competitive bidding means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

Material means miscellaneous hardware which is combined with equipment to form an electric system, e.g., poles, insulators, or conductors.

Minor error or irregularity means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction. A minor error or irregularity is not an exception for purposes of determining whether a bid is responsive.

Minor modification or improvement means a project where the cost is less than $50,000, exclusive of the cost of owner furnished materials.

Multiparty lump sum quotations means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received. (See § 1726.205).

Multiparty negotiation means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

Multiparty unit price quotations means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (See § 1726.204).

Net utility plant (NUP) means Part C, Line 5 of RUS Form 7 for distribution borrowers or Section B, Line 5 of RUS Form 12a for power supply borrowers for the immediately preceding calendar year.

Procurement method means a procedure, including, but not limited to, those in subpart G of this part, that a borrower uses to obtain goods and services.

Owner furnished materials means materials or equipment or both supplied by the borrower for installation by the contractor.

Responsive bid means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

RUS approval means written approval by the Administrator or a representative with delegated authority. RUS approval must be in writing, except in emergency situations where RUS approval may be given over the telephone followed by a confirming letter.

Unit prices means individual prices for specific construction units defined in accordance with RUS approved units specified in RUS standard contract forms.

§ 1726.15 "Buy American".

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by RUS complies with the "Buy American" provisions of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended by the North American Free Trade Agreement Implementation Act (107 Stat 2129). When a "Buy American" certificate is required by this part, this must be on RUS Form 213.

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, e.g., procurement contracts for goods or services.

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1726.18 Preloan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

§ 1726.19 Use of competitive procurement.

RUS borrowers' procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See Part 1728, Electric Standards and Specifications for Materials and Construction, of this chapter, which is applicable regardless of the source of funding.)

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless otherwise approved by RUS, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall (acting through its engineer, if applicable) review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience. It is also important to consider the firm's performance record, safety record, and similar factors in determining whether to include that firm on the QBL, since the borrower may not evaluate these factors when evaluating a bid from a qualified and invited bidder.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Written contracts.

(a) *General.* Procurement of goods or services must be by written contract or written purchase order. The borrower

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shall use a RUS Approved Form of Contract for such contracts where required by subparts B through F of this part.

(b) *Amendments to contracts.*—(1) *Contract forms.* The borrower must use RUS Form 180, Construction Contract Amendment, for any change or addition in a distribution line construction contract. The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any other contract for construction, or for materials or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements associated with the proposed construction have been met.

(3) *Amendment approval requirements.* (i) If a RUS approved form of contract is required by this part, an amendment must not alter the terms and conditions of the RUS approved form of contract without prior RUS approval.

(ii) The borrower must make a contract amendment subject to RUS approval if the underlying contract was made subject to RUS approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(iii) Contract amendments, except as provided in paragraph (b)(3)(ii) of this section, are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1726.25 Subcontracts.

The contractor or supplier may use RUS Form 282, Subcontract, for subcontracts on construction, material or equipment contracts. Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1726.26–1726.34 [Reserved]

§ 1726.35 Submission of documents to RUS.

(a) *Where to send documents.* Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's respective RUS Regional Director, the Power Supply Division Director, or such other office of RUS as designated by RUS (see part 1700 of this chapter.)

(b) *Borrower certification.* When a borrower certification is required by this part, it must be made by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with RUS.

(c) *Contracts requiring RUS approval.* The borrower shall submit to RUS three copies of each contract that is subject to RUS approval under subparts B through F of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation of the contracting committee (See §§ 1726.202 and 1726.203).

(3) Three copies of an executed contractor's bond on RUS approved bond forms as required in the contract form (at least one copy of which must be an original signed in ink) and one copy of the bid bond or facsimile of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) A certified copy of the board resolution awarding the contract.

(6) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(7) Documentation that all reasonable measures were taken to assure competition if fewer than three bids were received.

(d) *Contract amendments requiring RUS approval.* The borrower must submit to RUS three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to RUS approval under § 1726.24(b). Each contract amendment submittal to RUS must be accompanied by:

(1) A certified copy of the board resolution approving the amendment; and

(2) A bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to RUS approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, provided it meets all applicable RUS requirements.

(3) For generation project contracts not subject to RUS approval, the borrower must submit to RUS the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;

(iii) Contractor's name;

(iv) Contract amount;

(v) Bidding procedure used;

(vi) Borrower certification that:

(A) The board of directors approved the contract;

(B) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;

(C) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract have not been altered;

(D) If RUS has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and

(E) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

(4) *Contract amendments.* (i) For amendments subject to RUS approval, the submittals required under paragraph (c) of this section will initiate RUS action to encumber loan or loan guarantee funds for contract amendments requiring RUS approval.

(ii) For amendments not subject to RUS approval (except generation projects), loan or loan guarantee funds will normally be encumbered using RUS Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable RUS requirements.

(iii) For each generation project contract amendment not subject to RUS approval, the borrower must submit to RUS the following information and documentation:

(A) The contract name and number;

(B) The amendment number;

(C) The amendment date;

(D) The dollar amount of the increase or the decrease of the amendment;

(E) Borrower certification that:

(*1*) The amendment was approved in accordance with the policy of the board of directors (the borrower must ensure that RUS has a certified copy of the board resolution establishing such policy);

(*2*) If a RUS approved form of contract is required by this part, the terms and conditions of the RUS approved form of contract has not been altered; and

(*3*) No restriction has been placed on the borrower's right to assign the contract to RUS or its successors.

§ 1726.36 Documents subject to RUS approval.

Unless otherwise indicated, the borrower shall make all contracts and amendments that are subject to RUS approval effective only upon RUS approval.

§ 1726.37 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 0572–0107.

§§ 1726.38–1726.49 [Reserved]

Subpart B—Distribution Facilities

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 173, Materials Contract, RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction.

(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use RUS Form 201, 790, 792, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use RUS Form 790, Distribution Line Extension Construction Contract (Labor and Materials), or RUS Form 792, Distribution Line Extension Construction Contract (Labor only) under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use RUS Form 790 or 792 for contracts, up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment

(2) The borrower must use RUS Form 830, Electric System Construction Contract (Labor and Materials), for all other distribution line construction. Where distribution lines are being constructed incidental to transmission line construction, the borrower must use RUS Form 831, Electric Transmission Construction Contract.

(3) The borrower must use RUS Form 201, Right-of-Way Clearing Contract, for new distribution line construction right-of-way clearing when done separately from work performed under RUS Form 830.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) In addition to the cumulative total stipulated in paragraph (b)(1) of this section, a borrower may use Multiparty Unit Price Quotations to award contracts in amounts of up to a cumulative total of $350,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(3) The borrower shall use formal competitive bidding for all other distribution line contract construction. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(4) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Contracts for distribution line construction are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

§ 1726.75 General.

As used in this part, "substations" includes substations, switching stations, metering points, and similar facilities.

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower must use RUS Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is $500,000 or more.

(2) The borrower may, in its discretion, use RUS Form 173, Materials Contract, RUS Form 198, Equipment Contract, or a written purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of RUS standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain RUS approval prior to purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in

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substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* (1) The borrower must use RUS Form 764, Substation Erection Contract, for construction of substations, except for minor modifications or improvements. The borrower must use RUS Form 831, Electric Transmission Construction Contract for projects where substations are incidental to transmission line construction and are to be constructed under the same contract.

(2) The borrower must use RUS Form 831, Electric Transmission Construction Contract, for construction of transmission lines (except for minor modifications or improvements).

(3) The borrower must use RUS Form 203, Transmission System Right-of-Way Clearing Contract, for new transmission line construction right-of-way clearing when right-of-way clearing is performed separately from work performed under RUS Form 831.

(b) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of substation and transmission line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.

(2) The borrower shall use formal competitive bidding for all other contract construction, including all contracts requiring RUS approval. The amount of contracts bid using the formal competitive bidding procedure do not apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(3) An amendment which increases the scope of the contract by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(1) of this section.

(c) *Contract approval.* Individual contracts in amounts of $250,000 or more or one percent of NUP (not to exceed $500,000 for distribution borrowers or $1,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

§§ 1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

§ 1726.125 Generating plant facilities.

This section covers the construction of all portions of a generating plant, including plant buildings and the generator step-up transformer. Generally, the transmission switchyard will be covered under this section during initial construction of the plant. Subpart C of this part covers subsequent modifications to transmission switchyards. Warehouses and equipment service type buildings are covered under subpart E of this part.

(a) *Contract forms.* (1) The borrower must use RUS Form 198, Equipment Contract, for the purchase of generating plant equipment in the amount of $1,500,000 or more and for any generating plant equipment contract requiring RUS approval.

(2) The borrower must use RUS Form 200, Construction Contract—Generating, for generating project construction contracts in the amount of $1,500,000 or more and for any generating project construction contract requiring RUS approval.

(3) The borrower may, in its discretion, use other contract or written purchase order forms for those contracts in amounts of less than $1,500,000 and that do not require RUS approval.

(b) *Plans and specifications.* The borrower shall obtain RUS approval of the plans and specifications for generating plant equipment prior to issuing invitations to bid for any contract subject to RUS approval as determined under this subpart and for any contract for generating plant equipment or construction which will cost $1,500,000 or more. Plans and specifications for other equipment and construction contracts do not require RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) *Procurement procedures.* (1) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of less than $1,500,000 each.

(2) If the amount of the contract is $1,500,000 or more or if the contract requires RUS approval, the borrower must use formal or informal competitive bidding to award the contract.

(3) Where formal or informal competitive bidding is not applicable, or does not result in a responsive bid, multiparty negotiation may be used only after RUS approval is obtained.

(d) *Contract approval.* During the early stages of generating plant design or project design, RUS will, in consultation with the borrower and its consulting engineer, identify the specific contracts which require RUS approval based on information supplied in the plant design manual. The following are typical contracts for each type of generating project which will require RUS approval. Although engineering services are not covered by this part, they are listed in this paragraph (d) to emphasize that RUS approval is required for all major generating station engineering service contracts in accordance with applicable RUS rules. For types of projects not shown, such as nuclear and alternate energy projects, RUS will identify the specific contracts which will require RUS approval on a case by case basis.

(1) *Fossil generating stations.* Engineering services, steam generator, turbine generator, flue gas desulfurization system, particulate removal system, electric wiring and control systems, mechanical equipment installation (including turbine installation and plant piping), power plant building (foundation and superstructure), site preparation, coal unloading and handling facilities, main step-up substation, cooling towers, and dams or reservoirs.

(2) *Diesel and combustion turbine plants.* Engineering services, prime mover and generator, building (foundation and superstructure), and electrical control systems.

(3) *Hydro installations.* Engineering services, turbine/generator, civil works and powerhouse construction, electrical control system, and mechanical installation.

§§ 1726.126–1726.149 [Reserved]

Subpart E—Buildings

§ 1726.150 Headquarters buildings.

This section includes headquarters buildings such as warehouses and equipment service type buildings. Generating plant buildings are covered under subpart D of this part.

(a) *Contract forms.* The borrower must use RUS Form 257, Contract to Construct Buildings, for all contracts for construction of new headquarters facilities, and additions to, or modifications of existing headquarters facilities (except for minor modifications or improvements).

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts in amounts of up to a cumulative total of $250,000 or one percent of NUP (not to exceed $1,000,000), whichever is greater, per calendar year of headquarters construction (including minor modifications or improvements.) The borrower must use formal competitive bidding for all other headquarters contract construction.

(c) *Contract approval.* Contracts for headquarters construction are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§§ 1726.151–1726.174 [Reserved]

Subpart F—General Plant

§ 1726.175 General plant materials.

This section covers items such as office furniture and equipment; transportation equipment and accessories, including mobile radio systems, stores and shop equipment, laboratory equipment, tools and test equipment.

(a) *Contract forms.* The borrower may, in its discretion, use RUS Form 173, Material Contract, RUS Form 198, Equipment Contract, or a written purchase order.

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of general plant material and equipment.

(c) *Contract approval.* Contracts for the purchase of general plant items are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

§ 1726.176 Communications and control facilities.

This section covers the purchase of microwave and power line carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems. Mobile radio systems are covered as general plant materials in § 1726.175.

(a) *Power line carrier systems.* Power line carrier equipment will frequently be purchased as part of a substation and will be included in the complete substation plans and specifications. When purchased in this manner, the requirements of subpart C of this part, Substation and Transmission Facilities, will apply. If obtained under a contract for only a power line carrier system, the requirements of paragraph (b) of this section apply.

(b) *Load control systems, communications systems, and SCADA systems*—(1) *Contract forms.* The borrower must use RUS Form 786, Electric System Communication and Control Equipment Contract. This form may be modified to be a "purchase only" contract form.

(2) *Procurement procedures.* (i) It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring RUS approval in amounts of up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of communications and control facilities construction (including minor modifications or improvements.), exclusive of the cost of owner furnished materials and equipment.

(ii) The borrower must use multiparty negotiation for all other communications and control facilities contract construction, including all contracts requiring RUS approval. The amount of contracts bid using the multiparty negotiation procedure do not apply to the cumulative total stipulated in paragraph (b)(2)(i) of this section.

(iii) An amendment which increases the scope by adding a project is not considered competitively bid, therefore, the amount of that amendment does apply to the cumulative total stipulated in paragraph (b)(2)(i) of this section.

(3) *Contract approval.* Individual contracts in amounts of $250,000 or more or one percent of NUP (not to exceed $500,000 for distribution borrowers or $1,500,000 for power supply borrowers), whichever is greater, exclusive of the cost of owner furnished materials and equipment, are subject to RUS approval.

§§ 1726.177–1726.199 [Reserved]

Subpart G—Procurement Procedures

§ 1726.200 General requirements.

The borrower must use the procedures described in this subpart where such procedures are required under subparts B through F of this part. The borrower must ensure that arrangements prior to announcement of the award of the contract are such that all bidders are treated fairly and no bidder is given an unfair advantage over other bidders.

§ 1726.201 Formal competitive bidding.

Formal competitive bidding is used for distribution, transmission, and headquarters facilities, and may be used for generation facilities. The borrower must use the following procedure for formal competitive bidding:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its QBL for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and taking any other action necessary to procure full, free and competitive bidding. The borrower should send out a sufficient number of invitations in order to assure adequate competition and so that at least three bids will be received. Subject to the foregoing criteria, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(d) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(e) *Bid openings.* Bid openings are generally conducted by the engineer in the presence of bidders and a representative of the borrower and the borrower's attorney. Each bona fide bid must be opened publicly and reviewed for any irregularities, errors, or exceptions. It must be verified that any addendum or supplement to the specification has been acknowledged by the bidder. The adequacy of bid bonds or certified checks must be verified at this time.

(f) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This

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determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(3) *Minor errors or omissions in the specification.* If minor errors or omissions in the specification are found, the borrower must issue an addendum to each prospective bidder correcting the error or omission prior to opening any bids. After bid opening, the error or omission must be corrected in the executed contract.

(4) *Minor errors or irregularities in bid.* The borrower may waive minor errors or irregularities in any bid, if the borrower determines that such minor errors or irregularities were made through inadvertence. Any such minor errors or irregularities so waived must be corrected on the bid in which they occur prior to the acceptance thereof by the borrower.

(5) *Non-minor error or irregularity in bid.* If a bid contains a non-minor error or irregularity, the bid must be rejected and the bid price must not be disclosed.

(6) *Unbalanced bid.* If a bid contains disproportionate prices between labor and materials or between various construction units, the borrower may reject the bid.

(7) *No acceptable price quoted.* If none of the bidders quote an acceptable price, the borrower may reject all bids.

(g) *Evaluating bids.* The borrower (acting through the engineer, if applicable) must conduct the evaluation of bids on the basis of the criteria set out in the "Notice and Instructions to Bidders." The contract, if awarded, must be awarded to the bidder with the lowest evaluated responsive bid.

(h) *Announcement of bids.* If possible, the borrower will announce bids at the bid opening. However, where extensive evaluation is required, the borrower may elect to adjourn and make formal written announcement to all bidders at a later time. Any discrepancy in a rejected bid must be indicated in the bid announcement.

(i) *Award of contract.* Upon completion of the bid evaluations and based upon the findings and recommendations of the borrower's management and engineer, the borrower's board of directors will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certification by the borrower and its engineer.* The borrower shall certify and the engineer shall certify as follows: "The procedures for formal competitive bidding, as described in 7 CFR 1726.201, were followed in awarding this contract." The certification executed by and on behalf of the borrower and its engineer shall be submitted to RUS in writing where required by subpart A of this part.

§ 1726.202 Informal competitive bidding.

Informal competitive bidding may be used for equipment purchases and generation construction. The borrower must use the following procedure for informal competitive bidding:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Clarification of proposals.* The contracting committee may elect not to hold any clarifying discussions and recommend awarding the contract to the low responsive bidder. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to participate in discussions for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Such discussions may be held by telephone or similar means provided at least each of the three apparent lowest evaluated bidders have an equal opportunity to participate. Upon completion of the clarifying discussions, the contracting committee will determine the lowest evaluated responsive bid. If no bids are responsive after the contracting committee has completed clarifying discussions, no contract award can be made under the informal bidding procedure.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.202 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to RUS in writing where required by subpart A of this part.

§ 1726.203 Multiparty negotiation.

Multiparty negotiation may only be used where permitted under subpart F of this part or where prior RUS approval has been obtained. The borrower must use the following procedure for multiparty negotiation:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and so that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct negotiations with the bidders. If such negotiations are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Negotiations.* The contracting committee may elect not to hold any negotiations and recommend award of the contract. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to participate in negotiations for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Such discussions may be held by telephone or similar means provided at least each of the three apparent lowest evaluated bidders have an equal opportunity to participate. Upon completion of the negotiations, the contracting committee will determine the bid that is in the borrower's best interest.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the selected bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for multiparty negotiation as described in 7 CFR 1726.203 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to RUS in writing where required by subpart A of this part.

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§ 1726.204 Multiparty unit price quotations.

The borrower or its engineer must contact a sufficient number of suppliers or contractors to assure competition and so that at least three bids will be received. On the basis of written unit price quotations, the borrower will select the supplier or contractor based on the lowest evaluated cost.

§ 1726.205 Multiparty lump sum quotations.

The borrower or its engineer must contact a sufficient number of suppliers or contractors to assure competition and so that at least three bids will be received. On the basis of written lump sum quotations, the borrower will select the supplier or contractor based on the lowest evaluated cost.

§§ 1726.206–1726.249 [Reserved]

Subpart H—Modifications to RUS Standard Contract Forms

§ 1726.250 General.

RUS provides standard contract forms for procurement of materials, equipment, and construction, for contract amendments and subcontracts, and various related forms for use by RUS borrowers. See § 1726.300 for a listing of these forms and how to obtain them. The standard contract forms shall be used by the borrowers in accordance with the provisions of this part. RUS will give prior approval to certain modifications to these forms without changing the applicable requirements for RUS approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior RUS approval.

§ 1726.251 Prior approved contract modification related to price escalation on transmission equipment, generation equipment, and generation construction contracts.

(a) *General.* Where the borrower encounters reluctance among manufacturers, suppliers, and contractors to bid a firm price on transmission equipment or generation equipment, materials or construction, modifications may be made in the RUS standard form of contracts. These modifications, if applicable, may include, as an alternative to the standard form, provisions for adjusting a base price either upward or downward as determined by changes in specified indexes between the time of the bid and the time the work is performed or materials are procured by the contractor for such work. A large number of labor and materials indexes are published monthly by the Bureau of Labor Statistics (BLS). The borrower (acting through its engineer, if applicable) will select the indexes for the particular item to be used in the price adjustment clause. Suppliers' corporate indexes may not be used. Labor and materials indexes are reported in the BLS's monthly publications entitled "Employment and Earnings" and "Producer Prices and Price Indexes." These publications may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or any of the BLS regional offices.

(b) *Material and equipment contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the material or equipment contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the Notice and Instructions to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm prices. The prices are subject to adjustment upward or downward based on change in the Bureau of Labor Statistics labor and material indexes.

A proportion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent labor cost and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate____ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for labor costs shall be obtained by applying the percentage of increase or decrease in such index, calculated to the nearest one-tenth of one percent, to the percentage of the contract prices deemed to represent labor costs. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, material index ____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the labor cost adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____."

(3) For equipment that uses a large quantity of insulating oil, the borrower may insert the following in the contract documents under the "Proposal" section:

"The price for insulating oil shall be adjusted upward or downward based on the change in the Bureau of Labor Statistics Refined Petroleum Rate (057) from the month in which the bids are opened to the month in which the oil is purchased by the equipment supplier. Contracts shall be evaluated based on an estimated cost of ____ cents per gallon [the borrower will enter the appropriate cost] for oil. Such adjustment, if any, shall not change the contract amount for purpose of applying any other adjustments to the contract prices."

(c) *Construction contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the construction contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the "Notice and Instructions" to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm Prices—The prices are subject to adjustment upward or downward based on changes in the Bureau of Labor Statistics labor and material indexes.

A proportion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent shop labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate ____ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for shop labor costs shall be obtained by applying the percentage increase or decrease in such index, to the percentage of each partial payment deemed to represent shop labor costs. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract prices shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Producer Price Index, ____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the shop labor costs adjustment. A portion of ____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent field labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate ____ [the borrower will enter the appropriate BLS index], for the period and in a manner similar to the shop labor costs adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____."

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

This section applies only to transmission equipment purchases and generation contracts. Where the borrower anticipates difficulty in obtaining responsive bids on RUS standard contract forms due to a lack of limitation with respect to special and consequential damages, and where the borrower believes that such a modification will encourage competition through the receipt of an alternative bid which limits the bidder's liability for special and consequential damages, the borrower may make the following approved phrase modifications in the RUS standard contract form on which the borrower solicits bids:

(a) Insert new paragraphs in the "Notice and Instructions to Bidders" as follows:

"Proposals are invited on the basis of alternative Liability Clauses Numbers 1 and 2. The Owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the Owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the Owner and attached hereto:

'Except for the Seller's willful delay or refusal to perform the contract in accordance with its terms, the Seller's liability to the Owner for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to ____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.'"

(b) Insert the following in the contract documents under the "Proposal" section:

"Price $ (Based on Liability Clause 1)_____
Price $ (Based on Liability Clause 2)_____"

(c) Insert the following in the acceptance section of the standard contract form:

"This contract is based on Liability Clause Number_____."

(d) In RUS Form 200, the word "Bidder" would replace the word "Seller" in the Liability Clause in paragraph (a) of this section.

§ 1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.

When construction is to be performed over an extended period of time, but large quantities of material are to be purchased by the contractor at the beginning of the project (e.g., cable for URD installations), the borrower may allow alternative bids providing for payment to the contractor of 90 percent of the cost of such materials within 30 days of delivery of those materials at the job site. The borrower will retain the right to award the contract with or without the alternative payment provision, however, the contract still must be awarded on the basis of the lowest evaluated responsive bid for the alternative accepted.

§ 1726.254 Prior approved contract modifications related to RUS approval of contracts and amendments and modified bidding requirements.

It will be necessary for borrowers to make certain modifications to various RUS contract forms to implement the provisions of this part. If a RUS approved form of contract is required to be used by this part and private bid opening is permitted by this part, the "Notice and Instructions to Bidders" of the contract form may be modified accordingly. Other modifications are needed to indicate that certain provisions related to RUS approval are not applicable under specified circumstances. These modifications are as follows:

(a) *RUS Form 173 Materials Contract.* No modifications.

(b) *RUS Form 180 Construction Contract Amendment.* No modifications.

(c) *RUS Form 198 Equipment Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) Change Section 5(e) of the "Equipment Contract" to read as follows:

"(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser, and further the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser."

(2) Delete Section 5(f) of the "Equipment Contract."

(d) *RUS Form 200 Construction Contract—Generating.* For contracts Not requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Contractor's Proposal, Article II, Section 3(a), Sentence 2.* Delete the words "and the Administrator."

(2) *Contractor's Proposal, Article II, Section 3(d), Sentence 2.* Delete the words "and approved by the Administrator[1]" and the associated footnote.

(3) *Contractor's Proposal, Article VI, Section 7.* Change to read as follows:

"Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner and the Surety or Sureties, if any."

(4) *Contractor's Proposal, Article VI.* Delete Section 10.

(5) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(e) *RUS Form 201 Right-of-Way Clearing Contract.* No modifications.

(f) *RUS Form 203 Transmission System Right-of-Way Clearing Contract.* For contracts Not requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows.

(1) *Notice and Instructions to Bidders, Section 8.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1(a).* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 3(d), Sentence 1.* Delete the words "and with the approval of the Administrator[1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 3(d), Sentence 3.* Delete the words "and approved by the Administrator[2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1(b).* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1(e).* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1(d).* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI* Delete Section 10.

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(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(g) *RUS Form 238 Construction or Equipment Contract Amendment.* If the contract amendment does not require RUS approval, in accordance with § 1726.24(b), the borrower may delete from RUS Form 238 the following sentence:

"(The Administrator of RUS is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval.)"

(h) *RUS Form 257 Contract to Construct Buildings.* No modifications.

(i) *RUS Form 282 Subcontracts.* The applicable modifications are as follows:

(1) *Section 6, line 3.* Delete the words "and the Administrator of the Rural Utilities Service (hereinafter called the Administrator)."

(2) *Section 7, line 2.* Change Section 7, line 2 to read as follows:

"approved in writing by the Owner and the Surety, if any; provided, * * *"

(3) *Section 7, line 3.* Delete the words "and the Administrator."

(j) *RUS Form 764 Substation and Switching Station Erection Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.a.* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 1.d, Sentence 1.* Delete the words "and with the approval of the Administrator[1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 1.d, Sentence 2.* Delete the words "and approved by the Administrator[2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(k) *RUS Form 786 Electric System Communications and Control Equipment Contract (including installation).* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Article I, Section 2.* Delete the words "subject to the approval of the Administrator[1]" and "and approved by the Administrator[2]" and the associated footnotes.

(2) *Article II, Section 1, Sentence 2.* Replace the word "Administrator" with "Purchaser."

(3) *Article II, Section 5.* Delete the words "subject to the approval of the Administrator[3]" and "subject to the approval of the Administrator[4]" and the associated footnotes.

(4) *Article III, Section 2, Sentence 3.* Replace the words "if the Administrator shall so approve" with the words "if the Purchaser shall so approve."

(5) *Article VI.* Delete Section 7.

(6) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(l) *RUS Form 790 Distribution Line Extension Construction Contract (Labor and Materials).* No modifications.

(m) *RUS Form 792 Distribution Line Extension Construction Contract (Labor Only).* No modifications.

(n) *RUS Form 830 Electric System Construction Contract.* No modifications.

(o) *RUS Form 831 Electric Transmission Construction Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.d.* Delete the words "with the approval of the Administrator[1]" and "and approved by the Administrator[2]" and the associated footnotes.

(3) *Contractor's Proposal, Article II, Section 4.a.* Delete the words "and approved by the Administrator[3]" and the associated footnote.

(4) *Contractor's Proposal, Article III, Section 1.a. Sentence 4.* Delete the words "and the Administrator."

(5) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(6) *Contractor's Proposal, Article III, Section 1.c.* Delete the words "and the Administrator" in four places in the referenced section.

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 11.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

§ 1726.255 Prior approved contract modifications related to indemnification.

(a) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions requiring specific language concerning the requirement that the indemnitor indemnify the indemnitee for the indemnitee's own negligence, the borrower may add the words "otherwise this provision shall apply to any alleged negligence or condition caused by the Owner" so that the first paragraph reads as follows:

"i. To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner."

(b) As an alternative to the indemnification provision required in RUS standard construction contract forms in those jurisdictions that have a legal prohibition against one party indemnifying another for the other's negligence, the borrower may replace the words "defend, indemnify, and hold harmless" with the words " shall pay on behalf of" so that the first paragraph reads as follows:

"i. To the maximum extent permitted by law, Bidder shall pay on behalf of Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner, otherwise this provision shall apply to any negligence or condition caused by the Owner."

(c) If the alternative indemnification provision in paragraph (a) or (b) of this section is chosen by the borrower, the language of paragraph (a) or (b) of this section would be inserted in lieu of subsection (i) of the section indicated in the RUS standard construction contract forms as follows:

RUS form No.	Title	Designanted section
200	Construction Contract—Generating	Article IV, Section 1(c).
201	Right-of-Way Clearing Contract	Article IV, Section 1(e).
203	Transmission System Right-of-Way Clearing Contract	Article IV, Section 1(f).
257	Contract to Construct Buildings	Article IV, Section 1(b).
764	Substation and Switching Station Erection Contract	Article IV, Section 1(f).
786	Electric System Communications and Control Equipment Line	Article IV, Section 1(c).
790	Distribution Line Extension Construction Contract (labor & materials)	Article IV, Section 1(f).
792	Distribution Line Extension Construction Contract (labor only)	Article IV, Section 1(f).
830	Electric System Construction Contract (labor & material)	Article IV, Section 1(f).
831	Electric Transmission Construction Contract (labor & material)	Article IV, Section 1(f).

(d) In RUS Forms 201, 790, and 792, the word "Contractor" would replace the word "Bidder" in the alternative indemnification clause in paragraph (a) or (b) of this section.

(e) In RUS Form 786, the word "Seller" would replace the word "Bidder" and the word "Purchaser" would replace the word "Owner" in the alternative indemnification clause in paragraph (a) or (b) of this section.

§§ 1726.256–1726.299 [Reserved]

Subpart I—RUS Standard Forms

§ 1726.300 List of RUS standard contracting forms for electric systems.

The following is a list of the current RUS standard contracting forms that RUS has prepared for use by electric borrowers when purchasing materials and equipment and constructing facilities with a RUS loan or loan guarantee. Copies of the contract forms are available from the sources indicated in the listing. A notice of any change in these contract forms will be published in the **Federal Register**.

RUS Electric Program Standard Contract Forms

RUS form No.	Issue date	Title	Purpose	Source of copies [1]
168b	2–95	Contractor's bond	Used in RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830 & 831.	In respective contract form.
168c	2–95	Contractor's bond (less than $1 million).	In lieu of RUS Form 168b, used when contractor's surety has accepted a Small Business.	RUS.
172	9–58	Certificate of Inspection Contract Construction.	Administration guarantee—Used to notify RUS that construction is ready for inspection.	RUS.
173	3–55	Materials contract	Used for distribution, transmission, and general plant material purchases.	RUS.
180	2–95	Construction Contract Amendment	Used to amend distribution line construction contracts	RUS.
181	2–95	Certificate of Completion Contract Construction for Buildings.	Used for the closeout of RUS Form 257	RUS.
187	2–95	Certificate of Completion Contract Construction.	Used in RUS Forms 200, 203, 764, 786, 830, and 831.	In respective contract form.
198	2–95	Equipment Contract Construction Contract—Generating.	Used for equipment purchases	RUS.
200	2–95	Construction Contract Generating	Used for generating plant construction or for the furnishing and installation of major items of equipment.	RUS.
201	2–95	Right-of-Way Clearing Contract	Used for distribution right-of-way clearing work which is to be performed separate from line construction.	RUS.
203	2–95	Transmission System Right-of-Way Clearing Contract.	Used for transmission line right-of-way clearing work which is to be performed separate from line construction.	RUS.
213	2–95	Certificate ("Buy American")	Used to document compliance with the "Buy American" requirement.	RUS.
219	10–88	Inventory of Work Orders	Used to encumber funds	RUS.
224	2–95	Waiver and Release of Lien	Used in RUS Forms 200, 203, 764, 786, 830, and 831.	In respective contract form.
231	2–95	Certificate of Contractor	Used in RUS Forms 200, 203, 764, 786, 830, and 831.	In respective contract form.
238	2–95	Construction or Equipment Contract Amendment.	Used to amend contracts except for distribution line construction contracts.	RUS..
251	2–95	Material Receipt	Used in RUS Forms 764, 830, and 831	In respective contract form.

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RUS ELECTRIC PROGRAM STANDARD CONTRACT FORMS—Continued

RUS form No.	Issue date	Title	Purpose	Source of copies[1]
254	2-95	Construction Inventory	Used with the closeout of RUS Forms 203, 764, 830, and 831.	RUS.
257	2-95	Contract to Construct Buildings	Used to construct headquarters buildings and other structure construction.	GPO.[2]
270	7-70	Equal Opportunity Addendum	Addendum to contracts not having current equal opportunity provisions.	RUS
274	6-81	Bidder's Qualifications	Used to document Bidder's Qualifications	RUS.
282	11-53	Subcontract	Used for subcontracting	RUS.
307	2-95	Bid Bond	Used In RUS Forms 200, 203, 257, 764, 830 and 831.	In respective contract form.
458	3-55	Material Contract	Used to obtain generating plant material and equipment purchases over $10,000, not requiring acceptance tests at the project site.	RUS.
764	2-95	Substation and Switching Station Erection Contract.	Used to construct substations and switching stations	RUS
786	2-95	Electric System Communications and Control Equipment Contract.	Used for delivery and installation of equipment for system communications.	RUS.
790	2-95	Distribution Line Extension Construction Contract (labor & materials).	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792	2-95	Distribution Line Extension Construction Contract (labor only)	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792b	2-95	Certificate of Construction and Indemnity Agreement.	Used in RUS Forms 201, 790, and 792	In respective contract form.
793	2-95	Supplemental Contract for Additional Project.	Used in RUS Forms 201, 790, and 792	In respective contract form.
830	2-95	Electric System Construction Contract (labor & material).	Used for distribution and/or transmission project construction.	GPO.[2]
831	2-95	Electric Transmission Construction Contract (labor & material)	Used for transmission project construction	GPO.[2]

Notes:

[1] A single copy of the form will be furnished by RUS upon request. Additional copies may be duplicated or reproduced. Requests for copies should be sent to: Director, Administrative Services Division, U.S. Department of Agriculture, Rural Utilities Service, Washington, DC 20250.

[2] Requests for copies should be submitted to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 Telephone orders may also be placed, using Mastercard or Visa, by calling (202) 512-1800

§ 1726.301 Use of printed forms.

If a RUS contract form is required by this part, the borrower shall use the form in the format available from RUS or GPO (photocopying or other exact reproduction is acceptable.) The contract forms are not to be retyped, changed, modified or altered in any manner not specifically authorized in this part or approved by RUS in writing. Any modifications approved by RUS must be clearly shown so to indicate that such are different from the standard form. Electronic reproduction is acceptable for RUS Forms 251 and 254 only.

§ 1726.302 RUS approved forms of contract.

If a specific RUS contract form is required by a particular section of this part, the borrower shall use that form without changes or modifications or alterations unless, prior to issuing the bid package to bidders, RUS has specifically approved any such changes to that form for that borrower, nor shall any change be made to the form by amendment of an executed contract without prior RUS approval. Any proposed changes shall not relieve the contractor or the borrower of the basic responsibilities required by the standard RUS contract form, and, shall not alter any terms and conditions required by law. Changes permitted or required by subpart H of this part or by part 1788, RUS Fidelity and Insurance Requirements for Electric and Telephone Borrowers, of this chapter are approved by RUS under the circumstances indicated.

§ 1726.303 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

§§ 1726.304–1726.309 [Reserved]

§ 1726.310 Contractor's bond, RUS Form 168b.

The bond form in this section shall be used when a Contractor's Bond is required by RUS Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Utilities Service Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____, 19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any character whatsoever.

4. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

5. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto, and they, and each of them, are hereby made obligees hereunder with the same force and effect as if their names were written herein as such, and they and each of them may sue hereon.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19____.

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety_____ (Seal)
By _____
Attest: _____ Secretary
_____ Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.311 Contractor's bond, RUS Form 168c.

The bond form in this section shall be used when a Contractor's Bond is required by RUS Form 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

(Use only when contract is less than $1 million and Surety has accepted an SBA (Small Business Administration) Guarantee)

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Utilities Service Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____, 19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for

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the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. Provided, that the liability of the Principal and Surety hereunder to the Government shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the Owner, provided, however, that the Government may, at its option, perform any obligations of the Owner required by the contract.

4. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any character whatsoever.

5. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

6. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto. Provided, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms and corporations having a direct contract with the Principal or its subcontractors.

7. Provided, further, that no suit or action shall be commenced hereunder by any person, firm, or corporation who performed work or labor or who furnished materials for the project: (a) Unless such person, firm, or corporation, other one having a direct contract with the Principal (or with the Government in the event the Government is performing the obligation of the Owner), shall have given detailed written notice of claim to: The Principal, and the Owner, within ninety (90) days after such person, firm, or corporation did or performed the last of the work or labor, or furnished the last of the materials for which such claim is made. (b) After the expiration of one (1) year following the date on which Principal ceased work on said contract, it being understood, however, that if any limitation embodied in the Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to equal to the minimum period of limitation permitted by such law.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19___.

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety _____ (Seal)
By _____
Attest: _____ Secretary
_____ Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.312 Construction contract amendment, RUS Form 180.

The amendment form in this section shall be used when required by this part.

Construction Contract Amendment

Instructions—Submit 3 copies of this form & 3 copies of all attachments to Administrator, Rural Utilities Service, U.S. Department of Agriculture, Washington, DC 20250.

1. Project Designation _____
2. Amendment No. _____
3. Date _____
4. Details of changes are tabulated on sheet _____ to _____ attached and are part of this amendment.
5. The following changes in Construction Contract Number _____ dated _____, 19____ are hereby submitted for your approval.
6. Data pertinent to the original contract and amendments including this amendment are as follows (decrease to be preceded by (−) minus sign):

	Miles	Consumers		Price
		Signed	Potential	
Original Contract				
Amendment No. 1				
Amendment No. 2				
Amendment No. 3				
Amendment No. 4				
Amendment No. 5				
Amendment No. 6				
Total with this Amendment				

7. Changes in materials furnished by Owner: This amendment provides for an increase/decrease of $_____ in the amount of materials furnished by Owner. The details of changes in items, quantities, or prices are tabulated on sheet _____ to _____ attached and made a part hereof.
8. Bond extension attached ____ Yes ____ No
9. The construction period will be changed _____ days.
10. New counties (if any) _____
11. Description and reason for change:
_____ This amendment providing for an increase/decrease of $_____ in the amount of said construction contract is submitted pursuant to the provisions thereof and pursuant to the loan contract between the United States of America and the undersigned borrower. You are hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet with your approval. To the extent the items hereof are approved by you the construction contract shall be amended.

Accepted
_____ Contractor
By _____ President-Owner-Partner (Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with RUS.)
_____ Date
_____ Owner
By _____ President-Board of Directors
_____ Date
Approved
_____ Date
_____ Engineer for the Borrower

Details of Contract Amendment
Item No. _____
Assembly Unit Designation _____
Quantity Previously Approved _____
Net Change Number Of Units _____
Contract Amended To Read (Show quantities and prices as revised by this amendment):
Number of Units _____
Unit Price:
Labor _____
Material _____
Total _____
Total Price _____
Total Increase Price _____
Total Decrease _____
Totals _____
Net Total _____

[End of clause]

§ 1726.313 Certificate of completion, contract construction for buildings, RUS Form 181.

The closeout form in this section shall be used when required by this part.

Certificate of Completion; Contract Construction for Buildings

_____ (Project Designation)

I, the undersigned Architect of the above-designated Rural Utilities Service Project, hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____, including all approved amendments, (hereinafter called the "Project") between _____("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including the Plans and Specifications and all modifications thereto.
2. To the best of my knowledge, payment in full has been made to all persons who have furnished labor for the Project.
3. The Contractor has, to the best of my knowledge, obtained valid releases of lien from all Manufacturers, materialmen, and subcontractors that furnished materials or services or both which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered to the Owner.
4. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.
5. The final Contract Price of the Project as completed is _____ dollars ($_____).

_____Date
_____Representative of Architect
_____Title

Acceptance
_____Date
_____Representative of Contractor
_____Title
_____Date
_____Name of Owner
_____President, Board of Directors

[End of clause]

§ 1726.314 Certificate of completion, contract construction, RUS Form 187.

The closeout form in this section shall be used when required by this part.

Certificate of Completion; Contract Construction

To: Administrator
Rural Utilities Service
U.S. Department of Agriculture Washington, D.C. 20250
_____ (Project Designation)

I, the undersigned Engineer of the above-designated Rural Utilities Service Project do hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____◆ including all approved amendments, (hereinafter called the "Project") between _____ ("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including all Plans, specifications, maps, and drawings and all modifications thereto.
2. Payment in full has been made to all persons who have furnished labor for the Project.
3. The Contractor has obtained valid releases of lien from all persons, firms and/or corporations furnishing materials, supplies, and appliances which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered by the Contractor to the Owner.
4. If applicable, the Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of all work performed in accordance with the Construction Contract.
5. If applicable, the staking sheets and tabulation of staking sheets upon which the Final Inventory is based show the accurate location, number, and kind of all units of construction of the project and show all work performed in accordance with the Construction Contract.
6. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.
7. The total cost of the Project as completed is _____ dollars ($_____). The Project consists of facilities shown on the Statement of Construction which is true and correct and which is attached hereto and made a part hereof.

Dated this _____ day of _____, 19____.
_____ Name of Engineer
By _____
_____ Title
_____ Date
Approved as to Items 1 and 6 above:
_____ RUS Field Engineer

We, the undersigned Owner and Contractor, do hereby certify that:

1. The Project has been completed in accordance with the provisions of the Construction Contract, dated _____ 19____, provided, however, that acceptance of the Project by the Owner shall not be deemed to relieve the Contractor of its obligations contained in the Construction Contract with respect to defective workmanship or, materials discovered within one year after the date of completion.
2. If applicable, the Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of work performed in accordance with the Construction Contract.

_____ Owner
By _____ President
_____ Date
_____ Name of Contractor
By _____
_____ Title
_____ Date

[End of clause]

§ 1726.315 Equipment contract, RUS Form 198.

The contract form in this section shall be used when required by this part.

Equipment Contract

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing and delivery f.o.b. _____ of equipment for the _____ (hereinafter called the "Owner") which is to be part of the project known as _____ will be received by the Owner on or before _____ o'clock, ____ M., _____ 19____, at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.
2. The Plans and Specifications, together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____ at the latter's office at _____. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer

A copy of the loan contract (if the Project is to be financed in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender, may be examined at the office of the Owner.

3. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

4. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans and Specifications and forms of Equipment Contract on file with the Secretary of the Owner and with the Engineer, and all other matters, including transportation facilities, that may affect the cost and the time of completion of the work.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following: _____.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the Owner or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any contract which may be awarded thereon.

9. The Owner reserves the right to reject any or all Proposals.

_____ Owner

By _____

_____ Date

Proposal

To: _____ (hereinafter called the "Owner".)

1. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans and Specifications attached hereto and made a part hereof for the following prices: Item _____.

2. The prices of Equipment set forth herein shall include the cost of delivery to _____. Such delivery shall be made within _____ days after the receipt of the written order of the Owner.

3. This Proposal is made pursuant to the provisions of the Notice and Instructions to Bidders, if any shall be attached hereto, and the Bidder agrees to the terms and conditions thereof.

4. The Bidder warrants the accuracy of all statements contained in the Bidder's Qualifications, if any shall be submitted, and agrees that the Owner shall rely upon such accuracy as a condition of the Contract in the event that this Proposal is accepted.

5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any other person or persons bidding for the same work.

6. The Bidder agrees that, in the event this Proposal is accepted, it will execute a Contract in the form attached hereto.

7. The Bidder warrants that the Equipment will conform to the performance data and guarantees which are attached hereto and by this reference made a part hereof.

8. If, in submitting this Proposal, the Bidder has made any change in the form of Proposal or Contract furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the Contract.

9. The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

10. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

_____ Name of Bidder

_____ Address of Bidder

By _____

_____ Title of Officer

_____ Date

Equipment Contract

Agreement made _____ 19___, between _____ (hereinafter called the "Purchaser") and _____ (hereinafter called the "Seller"), a corporation organized and existing under the laws of the State of _____.

Whereas, the Purchaser desires to purchase and the Seller desires to sell the equipment described herein for the project financed in part or whole by a loan to the Purchaser from the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") which project is designated _____.

Now therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Section 1—Acceptance of Proposal

(a) The Purchaser accepts the Proposal which is attached hereto and by this reference made a part hereof, and the parties hereto agree that the Seller shall sell and deliver to the Purchaser and the Purchaser shall purchase and receive from the Seller the equipment (hereinafter called the "Equipment") described in the Proposal upon the terms and conditions herein stated.

(b) The prices set forth in the Proposal include the cost of delivery to _____.

(c) The prices set forth in the Proposal do not include any sums which are or may be payable by the Seller on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Purchaser.

Section 2—Delivery

The Seller shall deliver the Equipment within _____ days after receipt of the written order or orders of the Purchaser. The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, and floods.

Section 3—Payment

Upon the shipment of any Equipment hereunder, the Seller shall submit to the Purchaser a detailed statement of the Equipment shipped. The Purchaser shall, upon receipt of the Equipment, pay the Seller ninety percent (90%) of the contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Purchaser, the Purchaser shall make final payments therefor to the Seller; provided, however, such final payment shall be made not later than one-hundred eighty (180) days after delivery of the Equipment, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 4—Defective Material and Workmanship

(a) All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator and the Seller shall furnish all information required concerning the nature of source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Seller.

(b) The Equipment furnished hereunder shall become the property of the Purchaser upon delivery, provided, however, that the Purchaser or the Administrator, within one year after delivery or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Seller and the manufacturer. Upon any such rejection, the Seller shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Purchaser and in the event of failure by the Seller so to do, the Purchaser may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Seller.

Section 5—Miscellaneous

(a) All manufacturers' guarantees of Equipment, if any, shall be transferred and assigned to the Purchaser upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Seller by other provisions of this Contract.

(b) The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for infringement of any patent or patents covering Equipment purchased hereunder.

(c) In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

(d) During the performance of this contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Seller's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interest of the United States.

(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, that the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser and the Administrator, and further that the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser.

(f) This contract shall become effective only upon approval by the Administrator. Neither this contract nor any provision thereof shall be modified, amended, rescinded, waived, or terminated without the approval in writing of the Administrator. Amendments executed on RUS Form 238 are not subject to approval of the Administrator, except that when a contract amendment along with all previous amendments to this contract cause the total amended contract price to exceed 120 percent of the original contract price, as stated in the Seller's proposal and accepted by the Owner, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[1] In Witness Whereof, the parties hereto have caused this contract to be signed in their respective corporate names by their presidents and their corporate seals to be hereunto affixed and attested by their secretaries, all as of the day and year first above written.

_____ Purchaser

By _____ President

Attest: _____ Secretary

_____ Seller

By _____ President

Attest: _____ Secretary

[2] In Witness Whereof, the Purchaser has caused this contract to be signed in its corporate name by its President and its corporate seal to be hereunto affixed and attested by its Secretary, and the Seller has (have) set his (their) hand(s), all as of the day and year first above written.

_____ Purchaser

By _____ President

Attest: _____ Secretary

[1] When Seller is a corporation this section of agreement to be used.

[2] When Seller is an individual or partnership this section of agreement to be used. If a partnership—all partners shall sign.

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_____ Seller
_____ Name
_____ Title

[End of clause]

§§ 1726.316–1726.319 [Reserved]

§ 1726.320 Construction contract, generating, RUS Form 200.

The contract form in this section shall be used when required by this part.

Construction Contract—Generating

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing, delivery and installation of equipment and materials for the electric generating plant of _____ (hereinafter called the "Owner") which is to be part of the system known as _____ will be received by the Owner on or before ____ o'clock __.M., _____, 19__, at ____, at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Obtaining Documents. The Plans and Specifications together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____, at the latter's office at _____ upon the payment of $_____, all of which will be refunded to each bona fide bidder within ten days after the bid opening. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through The Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), and of the Loan Contract between the Owner and any other lender may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineers. Bids will be accepted only from the original purchasers.

3. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations of interlineations will be permitted, unless made before submission and initiated and dated.

4. Familiarity with Conditions. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings and forms of Contractor's Proposal and Acceptance, and Contractor's Bond on file with the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the ecological and environmental criteria to be followed, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. The Time for Completion of the Project shall be as specified by the Engineer in the Proposal.

7. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

8. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties in a penal sum not less than the Contract price.

9. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts of the Proposal or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts of the proposal or to furnish a satisfactory Contractor's Bond (where required.)

10. Factors in Deciding the Award of the Contract. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the prices quoted in the Proposals, the following: _____.

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals.

14. Definition of Terms. The terms "Administrator", "Engineer", "Supervisor" "Project", "Completion of Construction" and "Completion of the Project," as used throughout this Contract, shall be as defined in Article VI, Section 1 of the Contractor's Proposal.

15. The Owner Represents:

(a) If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available to the successful Bidder at the locations specified before the time such materials are required for construction.

(b) All funds necessary for prompt payment for the construction of the Project will be available. If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations, provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion, and provided, further, that such extension; if any, of the time of the completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a, hereof.

_____ Owner
By _____
____, 19__

Contractor's Proposal

To Furnish, Deliver and Install Equipment and Materials

To: _____ (hereinafter called the "Owner")

Article I—General

Section 1. Offer to Furnish, Deliver and Install. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish, deliver and install the materials, supplies and equipment (hereinafter called the "Project") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto and made a part hereof, financed in part or whole by a loan to the Owner by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") and designated _____.

Section 2. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, the ecological and environmental criteria to be followed, state and local laws and regulations which would affect work on the proposed construction.

Section 3. License. The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's License No. ____ of the State of ____, in which the Project is located and said license expires on ____, 19__.

Section 4. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 5. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract Price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

The Bidder understands, that, if in submitting this Proposal, the Bidder has made any change in the form of Proposal furnished by the Owner, that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the contract.

Article II—Construction

Section 1. Bid Price. The Bidder will construct the Project for the following sum:

Base Bid _____ Dollars ($_____)
Alternate No. 1 _____ Dollars ($_____)
Alternate No. 2 _____ Dollars ($_____)

Section 2. Taxes. The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project. The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

Section 3. Time and Manner of Construction.

(a) The time of Completion of Construction of the Project is of the essence of this Contract. The Bidder will commence the work within ____ calendar days after the Owner shall have given the Bidder written notice to commence construction, will prosecute diligently and complete such construction to the satisfaction of the Owner and the Administrator within ____ calendar days after giving of such notice.

(b) The time of Completion of Construction shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without fault of the Bidder, including Acts of God, fires, strikes, floods, inability to obtain materials, changes in the Specifications as herein provided and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) In the sequence of construction, the Owner, acting through the Engineer, shall have the right to direct the Bidder to perform any part or parts of the work which is to be performed at the site of the Project before any other part or parts, of such work and the Bidder agrees to comply with all such directions. The Bidder shall comply with all other reasonable directions of the Owner.

(d) The Owner, acting through the Engineer, may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans and Specifications and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. If the cost of the Project to the Bidder to make the change shall be increased or decreased, the contract price shall be amended by an amount equal to the reasonable cost hereof in accordance with a construction amendment signed by the Owner and the Bidder and approved by the Administrator [1], but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The reasonable cost of any increase or decrease in the contract price covered by contract amendment as outlined above, in the absence of other mutual agreement, shall be computed on the basis of the direct cost of materials, f.o.b. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance), plus ____ percent of the direct cost of materials and labor. Labor costs shall be limited to the direct costs for workmen and foremen. Costs for profit and overhead for subcontractors, if any, Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 4. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 5. Supervision and Inspection.

a. The Bidder will give sufficient supervision to the work, using its best skill and attention. The Bidder will carefully study and compare all drawings, specifications and other instructions and will at once report to the Owner any error, inconsistency or omission which it may discover. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kinds of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RUS Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner through its Engineer, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 6. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, including the installation and removal thereof, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment, or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding the acceptance of workmanship, materials, supplies or equipment, or the giving of any certificate with respect to the completion of the work, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of the Contract or the Specifications, the workmanship, materials, supplies or equipment shall be found to be defective or not in conformity with the requirements of the Specifications, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice of the existence thereof shall have been given to the Bidder by the Owner. In event of failure by the Bidder to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

Article III—Payments and Release of Liens

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of estimates thereof certified to by the Bidder, and approved by the Engineer and by the Owner solely for the purpose of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials; and provided further, that in estimating the amount of construction accomplished, consideration shall be given only to equipment and materials incorporated into the Project and equipment and materials delivered to the site in accordance with approved shipping schedule. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project. Upon completion by the Bidder of the construction of the Project, the Engineer shall inspect the work performed hereunder and if he shall find the work acceptable and all provisions hereunder fully performed, he shall so certify to the Owner and shall certify the balance found to be due the Bidder.

The Certificate of Completion, Contract Construction, RUS Form 187, a copy of which is attached hereto, after it has been signed by the Engineer and certified to by the Owner and the Bidder shall thereupon be submitted to the Administrator for his approval and when such approval has been given, the Owner shall make payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder unless withheld because of the fault of the Bidder.

b. Interest at the rate of _____ percent [2] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due the Bidder commencing fifteen (15) days after the due date: Provided that the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of construction completed during the preceding month, and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for any reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection "b" shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

c. No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens and Certificate of Contractor. (See Sample RUS Form 224, Waiver and Release of Lien, and sample RUS Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the total cost of construction, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto, from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project and a certificate in the form attached hereto to the effect that all labor used on or for the project has been paid and that all such releases have been submitted to the Owner for approval

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. The Bidder shall at all times exercise reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the work he shall remove all rubbish from and about the Project and all his tools, scaffolding and surplus materials and shall leave his work "broom clean". The Bidder shall dispose of waste material by burying it on the work site or in a manner approved by local authorities, but shall not dispose of any waste materials or rubbish by open burning. The Bidder shall provide chemical sanitary facilities which may be required in compliance with applicable local, State and Federal laws or regulations.

(b) The Bidder will perform the work in such a manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape, erosion of soils and oil spillage. There will be no depositing of trash in streams or waterways. Herbicides, other chemicals or their containers will not be deposited in or near streams or waterways.

(c) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control, in whole or in part as hereinafter provided, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials, supplies and equipment to be used therein shall be borne by the Bidder, except risk of loss or of damage to materials or equipment furnished for or used in connection with the Project by the Owner, Bidder or any subcontractor, caused by fire, lightning, wind damage, explosion, riot or civil commotion, aircraft and other vehicles, and smoke damage (against which perils the Owner will maintain insurance, hereinafter called "Builder's Risk Insurance"). The Bidder will make good and fully repair all injuries and damages to the Project, or any portion thereof under the control of the Bidder by reason of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence, except damage covered by the Owner's Builder's Risk Insurance.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents giving such data as may be prescribed by the Engineer.

(e) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Section 4. Delivery of Possession and Control to Owner. Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Article IV, Section 1 c. hereof with respect to such portion so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof

Article V—Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and

[2] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

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prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third parties in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy which the Owner may exercise hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

Article VI—Miscellaneous

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term "Engineer" shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term "Supervisor" shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term "Completion of Construction" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Purchase of Materials. The Bidder shall purchase all materials, supplies, and equipment outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. All materials, supplies and equipment shall be new and shall become the property of the Owner when erected in place, or when the Owner shall have made any payment to the Bidder in respect of such materials; whichever shall occur first.

Section 3. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. Section 287 and 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner, the Surety or Sureties, if any, and the Administrator.

Section 8. Subcontracts. The Bidder shall not enter into any subcontract or subcontracts with any person, firm or corporation for the performance of the Bidder's obligation hereunder in any aggregate amount in excess of 40% of The Bidder's obligations (to be calculated on the basis of the total contract price) nor shall the Bidder enter into any subcontract in excess of $20,000, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Administrator for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval of the Administrator. The acceptance of this Proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within sixty (60) days after the date set for the opening of proposals.

_____ (Bidder)
By _____ (President)
_____ (Title)
_____ (Address)
Attest:
_____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, the Owner, _____, hereby accepts the Proposal of the above-named Bidder for the construction of the Project therein described for the Base Bid of $ _____ and
Alternate No. 1 $_____
Alternate No. 2 $_____
The total contract price is $_____
_____ (Owner)
By _____ President
Attest:
_____ (Secretary)
_____ Date of Contract

[End of clause]

§ 1726.321 Right-of-way clearing contract, RUS Form 201.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from RUS (see § 1726.300.).

Right-of-Way Clearing Contract

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

Article I—General

Section 1. Offer to Clear. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for the rural electric system bearing the RUS Designation _____ in strict accordance with the Specifications and Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Project. The Project will consist of approximately _____ miles of right-of-way clearing. The Project is located in _____ counties in the State of _____.

Section 3. Description of Contract. The Description of Units, Specifications, Drawings and Plans attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the Contract. The Plans consisting of maps and plan and profile sheets if transmission clearing is included, showing the number and types of right-of-way units that are to be cleared, along with other special drawings are identified as follows:

Section 4. Familiarity with Conditions. The Contractor warrants that it has made careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractors' Bond attached hereto, and has become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 5. License. The Contractor warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's license number ____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 6. Contractor's Bond. If the estimated cost of the clearing of a Section shall exceed $100,000, the Contractor agrees to furnish, prior to the commencement of work on such Section, a bond in the penal sum of not less than the estimated cost of the Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 7. Taxes. The unit prices for Right-of-Way Clearing Units in this Proposal include any sums which are or may be payable by the Contractor on account of taxes imposed by any taxing authority on payments for materials furnished or services

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performed by the Contractor under the terms of this Contract.

Article II—Construction

Section 1. Time and Manner of Work.

(a) The Contractor agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Owner after its acceptance of this Proposal, but in no event will the Commencement Date be later than ____ calendar days after date of acceptance of this Proposal. The Contractor further agrees to prosecute diligently and to complete clearing in strict accordance with the Specifications and Drawings within ____ (____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Contractor, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Contractor subject to the approval of the Owner.

(d) The Owner may from time to time during the progress of the work on the Project make such changes in, additions to or subtractions from the Specifications, Drawings and sequence of work provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the work to be done shall require an extension of time, a reasonable extension will be granted if the Contractor shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Contractor of completion of the Project shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Contractor will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Contractor shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Contractor shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Supervision and Inspection.

(a) The Contractor shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Contractor shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Contractor.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner, but the failure of the Owner to give any such directions shall not relieve the Contractor of its obligations to complete the work within the time and in the manner specified in this Proposal.

(c) The manner of performance of the work, and all equipment used therein, shall be subject to the inspection and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner shall determine that the work contains or may contain numerous defects, it shall be the duty of the Contractor and the Contractor's Surety or Sureties to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Contractor suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the Contract: Provided, however, that the Contractor shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this Contract. In the event that work is suspended by the Contractor with the consent of the Owner, the Contractor before resuming work shall give the Owner at least twenty-four (24) hours' notice thereof in writing.

Section 4. Unsuitable Workmanship. The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Contractor. The Contractor shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been remedied.

Article III—Payment

Section 1. Payments to Contractor.

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for work accomplished during the preceding calendar month on the basis of a statement of completed clearing units furnished and certified to by the Contractor and approved by the Owner solely for the purposes of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such statement approved during the clearing of a Section shall be paid by the Owner to the Contractor prior to completion of the Section Upon completion by the Contractor of the clearing of a Section, the Contractor shall prepare a Final Inventory of the Section showing the total number and character of clearing units and shall deliver to the Owner a Certificate of Contractor and Indemnity Agreement in the form attached hereto, showing the total cost of the work performed and stating (1) that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full and (2) that the Contractor shall hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner. Upon the approval of such certificate, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

(b) The Contractor shall be paid on the basis of the number of clearing units actually completed at the direction of the Owner shown by the Final Inventory: Provided, however, that the total cost shall not exceed

the total contract price for the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Owner.

(c) No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of the Contract.

(d) If no Sections are designated in Article II, Section 1 (c) the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3 (b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the total contract price as stated in the Acceptance.

(e) Interest at the rate of ____ percent [1] (____%) per annum shall be paid by the Owner to the Contractor on all unpaid balances due on monthly statements, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Contractor. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Contractor on or before the fifth day of such month shall have submitted its certification of right-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If for reasons not due to the Contractor's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (e) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(f) Interest at the rate of ____ percent [2] (____%) per annum shall be paid by the Owner to the Contractor on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Owner of the Final Inventory and receipt of the Certificate of Contractor and Indemnity Agreement as conditions precedent to the making of final payment.

Section 2. Payments to Subcontractors. The Contractor shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of services performed by each subcontractor.

Article IV—Particular Undertakings of the Contractor

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, state, and municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, state, or municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Contractor shall so conduct work on the Project as to cause the least possible obstruction of public highways.

(b) The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

(c) The Contractor shall do all things necessary or expedient to properly protect any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of work on the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(d) Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during work on the project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to work on the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by work on the Project. The right-of-way for purposes of this said section shall consist of an area extending ____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Contractor for access to the route of the Project lines from public roads to carry on the work.

(e) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the work on the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of an act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(f) Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures.

(g) Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

(h) The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(i) The Contractor shall not proceed with the cutting of trees or clearing of right-of-way

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

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without written notification from the Owner that proper authorization has been received from the owner of the property and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Contractor shall take out and maintain throughout the period of this Agreement the following minimum amounts of insurance:

(a) Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to the Owner.

(a) Upon written request of the Owner, the Contractor shall deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of the work of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1(e) of this Article IV with respect to such portion so delivered to the Owner, shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1 (c) and Article III, Section 1 (d) shall have been completed by the Contractor, the Owner agrees, after receipt of a written request from the Contractor, to accept delivery of possession and control of such Section upon having inspected the Section and having found the work acceptable. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Contractor as set forth in Article IV, Section 1 (e) hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner prior to the time the Contractor receives final payment for any Section.

Article V—Remedies

Section 1. Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith.

Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the work on the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. The time of the Completion of Clearing is of the essence of the Contract. Should the Contractor neglect, refuse or fail to complete the clearing within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such monies which may be then due, or which may become due and payable to the Contractor the sum of ____ dollars (____) per day for each and every day that such work is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Contractor to complete the clearing within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions.

(a) The term "Engineer" shall mean the engineer employed by the Owner to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives. The term "Engineer" will mean "Owner" if no engineer is employed by the Owner to provide engineering services.

(b) The term "Completion of Clearing" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof except the Contractor's obligations in respect of furnishing (1) the "Certificate of Contractor and Indemnity Agreement" and (2) the Final Inventory both referred to in Article III, Section 1 hereof.

(c) The term "Completion" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 2. Patent Infringement. The Contractor shall save harmless and indemnify the owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4. Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances,

rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 286, 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

(a) *Contractor's Representations.*

The Contractor represents that:

It has __, does not have __, 100 or more employees, and if it has, that it has __, has not __, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontractor for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100. The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify, the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, state, county, municipal or other authority; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Contractor shall not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date of Proposal _____

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

Right-of-Way Clearing Units:

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up of the width specified on one side of the line of poles carrying primary conductors. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the

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ground line. All trees and underbrush across the width of the right-of-way, as designated by the Engineer shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Engineer (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–12. The unit is 1,000 feet in length and ____ (____) feet in width (to be measured ____ (____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed ____ in height, shall be clear from the ground up on one side of the line poles carrying conductors. (See Detail A, Drawing TM–12–2A). The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be ____ (____) feet wide (to be measured ____ (____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TMC–12, TMC–12(1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way The Engineer will select those trees of the right-of-way that he deems to be a hazard to the line and will designate them to the Contractor in writing as danger trees. When so designated, the Contractor shall remove or top such trees at his option except that the Contractor shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees).

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G, and H, Drawing TM–12–2A). Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A). Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G, and H, Drawing TM–12–2A, total 1 of a TM–13 unit).

TM–14. The unit is 1,000 feet in length and ____ (____) feet in width (to be measured ____ (____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be ____ (____) feet wide (See Detail D, Drawing TM–12–2A).

TM–15. The unit is 1,000 feet in length and ____ (____) feet in width (to be measured ____ (____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line. (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way, in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be ____ (____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than ____ (____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared, and trees trimmed so that the right-of-way shall be clear from the ground up or as specified Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right-of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where RC or TMC units are specified, the right-of-way shall be cleared in accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer

Right-of-Way Units

DISTRIBUTION CLEARING UNITS

Unit No.	No. of units	Unit price	Extended price

Total _____

TRANSMISSION CLEARING UNITS

Unit No.	No. of units	Unit price	Extended price

Total _____
Total Distribution and Transmission _____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Contractor, _____ for the following:
Total Distribution Clearing: $_____
Total Transmission Clearing: $_____
The total contract price is $_____
_____ Owner

By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.322 Transmission system right-of-way clearing contract, RUS Form 203.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from RUS (See § 1726.300.).

Transmission System Right-of-Way Clearing Contract

Notice and Instructions to Bidders

1. Sealed proposals for the clearing of underbrush and trees from right-of-way, including the supply of necessary labor and equipment, of a rural electric system of ____ (hereinafter called the "Owner") bearing the RUS Designation ____ will be received by the Owner on or before ____ o'clock __M., ____ 19____, at its office at ____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project. The Project will consist of approximately: ____ miles of right-of-way clearing. The Project is located in ____ Counties in the State of ____.

3. Obtaining Documents. All necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer ____ at the latter's office at ____. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the Administrator), and any other lender's contract may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the recipient will be recorded by the Engineer. Bids will be accepted only from the original recipient.

4. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

5. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Specifications, Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

6. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

7. The time for Completion of the Project shall be as specified by the Engineer in the Proposal.

8. Bid Bond. Each Proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such bid bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposals is not one of the three low Proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

9. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

10. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals

14. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

15. The Owner represents:

a. All easements and rights-of-way, except as shown on maps included in the Specifications, have been obtained from the Owners of the properties across which the project is to be carried out (including tenants who may reasonably be expected to object to such clearing). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

b. Prompt payment for the work to be done will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the

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foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing.

_____ Owner

By _____

_____, 19___

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

Article I—General

Section 1. Offer to Clear. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for rural electric system bearing the RUS Designation ____ in strict accordance with the Specifications and Drawings therefore, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Contract. The Notice and Instructions to Bidders and Specifications attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the contract. The Specifications consisting of maps, plan and profile sheets showing the number and types of right-of-way units that are to be cleared for each parcel, along with other special drawings are identified as follows: ____.

Section 3. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 4. License. The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's license number _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 6. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefore or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Article II—Construction

Section 1. Time and Manner of Work.

(a) Bidder agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Specifications and Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omission of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer _____.

(d) The Owner, acting through the Engineer and with the approval of the Administrator[1], may from time to time during the progress of the work on the Project make such changes in additions to or subtractions from the Specifications, Drawings, and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increase by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Bidder and approved by the Administrator[2], but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There should be no deposition of trash in streams or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures. The Bidder will be required to follow, under the general direction of the engineer, the criteria relating to environmental protection as specified herein by the engineer.

Section 3. Supervision and Inspection.

(a) The Bidder shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Bidder shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this proposal.

(c) The manner of carrying out the Project, and all materials and equipment used therein, shall be subject to the inspection,

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RUS Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner, or the Administrator, shall determine that the work contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 4. Unsuitable Workmanship. The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Bidder. The Bidder shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been remedied.

Article III—Payments and Release of Liens

Section 1. Payments to Bidder.

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for work accomplished during the preceding calendar month on the basis of completed rights-of-way clearing units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of rights-of-way clearing units and, after checking such inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payments shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

(b) The Bidder shall be paid on the basis of the number of rights-of-way clearing units actually completed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

(c) Notwithstanding the provisions of Section 1 (a) above, the Bidder may, by giving written notice thereof to the Owner elect to receive payment in full for any Section of the Project upon:

(1) completion of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner and the Administrator of the inventory in respect of such Section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of Project.

If no Sections are designated in Article II, Section 1 (c), the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3 (b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1.

(d) Interest at the rate of ____ percent[3] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of rights-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (d) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(e) Interest at the rate of ____ percent[4] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

(f) No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample RUS Form 224, Waiver and Release of Lien and sample RUS Form 231, Certificate of Contractor.) Upon the Completion of Clearing by the Bidder (or any Section thereof if the Bidder shall elect to receive payment in full for any section when completed as provided above) but prior to final payment to the Bidder the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Subcontractors. The Bidder shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

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allowed the Bidder for and on account of work performed by each subcontractor.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

(b) The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of Public highways.

(c) The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

(d) The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(e) Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

(f) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(g) Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses. There should no disposition of trash in streams or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures.

(h) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

(i) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(j) The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

(a) Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1(f) hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 4 hereof.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1 (c) and Article III, Section 1(c) shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1(f) hereof with respect to such Section so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Article V—Remedies

Section 1. Completion of Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties if any, the Owner may take over the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties if any, shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands. Section 2. Liquidated Damages. The time of the Completion of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the Project within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the Project within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions.

(a) The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

(b) The term "Engineer" shall mean the engineer employed by the Owner with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

(c) The term "Supervisor" shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

(d) The term "Completion of Clearing" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Clearing.

Section 2. Patent Infringement. The Bidder shall save harmless and indemnity the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 4. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. Sections 286, 287 and 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies leaving jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current

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report on Form 100. The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts of federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10 000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total contract price. The Bidder shall not assign the contract effected by an acceptance of this proposal or any interest in any funds that may be due or become due hereunder or enter into contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligation hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties, if any, on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and Agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator. No acceptance of this Proposal shall become effective until approval in writing of the Administrator: Provided, however that no obligations shall arise hereunder unless such approval is given within sixty (60) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the Corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When Specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as an Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

Transmission Right-of-Way Units

Unit No.	No. of units	Unit price	Extended price

Total _____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

The total contract price is $_____

_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared, and trees trimmed so that the right-of-way shall be clear from the ground up as specified in the Proposal. Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right-of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where TMC–12, TMC–12–(1) units are specified, the right-of-way shall be cleared in accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer.

[End of clause]

§ 1726.323 Certificate (Buy America), RUS Form 213.

The closeout form in this section shall be used when required by this part.

Certificate

With respect to compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938).

Rural Utilities Service Project _____

The undersigned, being, the _____[1], in a certain contract No. _____ dated _____, 19 ___, between the undersigned and _____[2], does hereby certify that in the performance of the said contract there have been used or furnished no unmanufactured articles, materials or supplies which have not been mined or produced in the United States, Mexico, or Canada and no manufactured articles, materials or supplies which have not been manufactured in the United States, Mexico, or Canada substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be in the United States, Mexico, or Canada, except to the extent that compliance with the

[1] Insert "Contractor," "Subcontractor," "Seller", Or "Materialman," as the case may be.
[2] Insert the name of the RUS Borrower.

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second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 938 (Public Resolution No. 122, 75th Congress, approved June 22, 1938) has been waived by the Administrator of the Rural Utilities Service.

_____
By _____
Date _____, 19___

[End of clause]

§ 1726.324 Waiver and release of lien, RUS Form 224.

The closeout form in this section shall be used when required by this part.

Waiver and Release of Lien

Whereas the undersigned, _____ (name of manufacturer, materialman or subcontractor) has furnished to _____ (name of contractor) the following: _____ (kind of material and services furnished) for use in the construction of a Project belonging to _____ (name of borrower) and designated by the Rural Utilities Service as _____ (RUS project designation.)

Now, Therefore, the undersigned, _____ (name of manufacturer, materialman or subcontractor) for and in consideration of $_____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of said _____ (name of contractor) for said project

Given under my(our) hand(s) and seal(s) this _____ day of _____, 19___.

_____ Name of manufacturer, materialman or subcontractor

By _____ President, vice president, partner or owner, or, if signed by other than one of foregoing, accompanied by power of attorney signed by one of the foregoing in favor of the signer. (use designation applicable)

[End of clause]

§ 1726.325 Certificate of contractor, RUS Form 231.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor

_____, certifies that he is the _____ (Title of Office) of _____ (Name of Contractor), the Contractor, in a Construction Contract No. _____ dated _____, 19___, entered into between the Contractor and _____ (Name of Borrower) the Owner, for the construction of a Project, which bears the Rural Utilities Service Project Designation _____ and that he is authorized to and does make this certification on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of said Construction Contract.

Undersigned further says that all persons who have furnished labor in connection with said construction have been paid in full, that the names of manufacturers, materialmen and subcontractors that furnished material or services or both in connection with such construction and the kind or kinds of material or services or both so furnished are:

Name _____
Kind of material and service _____
and that the releases of liens executed by all such manufacturers, materialmen and subcontractors have been furnished the Owner

Date _____
Signature _____

[End of clause]

§ 1726.326 Construction or equipment contract amendment, RUS Form 238.

The amendment form in this section shall be used when required by this part.

Construction Or Equipment Contract Amendment

Project Designation _____
Date _____
Amendment No. _____
Contract No. _____
Bond extension attached ___ Yes ___ No
Delivery or Completion Date: Original _____ As Amended _____

Instructions: 1. The Architect-Engineer shall submit three (3) copies of this form for each contract which has been approved by RUS, to the Owner. 2. The Owner will submit the three (3) copies of this form to RUS for approval

Reasons for, and details and description of the amendment _____

(If additional space is needed, use reverse or separate sheet)

A summary of the original contract price and amendments thereto, including this amendment, follows:

(Amendments which decreased the price are preceded by a (–) minus sign)

Original Contract Price $_____
Amendment Number 1 $_____
Amendment Number 2 $_____
Amendment Number 3 $_____
Amendment Number 4 $_____
Amendment Number 5 $_____
Amendment Number 6 $_____
Amendment Number 7 $_____
Amendment Number 8 $_____
Amended Contract Price $_____

This amendment, providing for an increase of $_____ / decrease of $_____ in the contract price is submitted pursuant to the provisions of said contract. [The Administrator of RUS is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval].

To the extent the items hereof are approved the contract shall be amended

Accepted
_____ Contractor
By _____ President-Owner-Partner (Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with RUS.)
_____ Date
_____ Owner
By _____ President-Board of Directors
_____ Date
Approved
_____ Architect-engineer
_____ Date

Item No.	Reasons for and description of contract amendment No. ___	Labor or installation[1]	Material or equipment[1]	Total
Net total				

[1] Changes in Cost (decrease preceded by (–) minus sign.) To be filled in when applicable.

[End of clause]

§ 1726.327 Material receipt, RUS Form 251.

The receipt form in this section shall be used when a Material Receipt is required by RUS Form 764, 830, or 831.

Materials Receipt

Item[1]	Quantity	Description of item	Manufacturer and catalog No.	Unit price	Extended price

Instructions: Prepare three (3) copies. Forward original to Owner, one copy to Contractor and one copy to Engineer

Date _____

Item[1]	Quantity	Description of item	Manufacturer and catalog No.	Unit price	Extended price
Total					

Notes: 1. Item corresponds with item in list of materials in construction drawings.

Received by _____
For:
_____ Contractor
_____ Owner

[End of clause]

§ 1726.328 Construction inventory (for labor and material contract), RUS Form 254.

The closeout form in this section shall be used when required by this part.

Construction Inventory (For Labor and Material Contract)

Date _____
Project Designation _____
Borrower _____
Engineer _____
Contractor _____

Amount Payable to Contractor

A. Total Cost of Standard, New And Conversion Assembly Units Installed (Total No. 6, RUS Form 254a) $_____

B. Cost To Remove "I" Units (Total No. 7, RUS Form 254a) $_____

C. Amount To Be Credited To Contractor For Materials Removed From Existing Facilities And Returned (Total No. 14, RUS Form 254b) $_____

Subtotal $_____
Deduct:

D. Amount Chargeable To Contractor For Materials In Assembly Units Removed (Total No. 9, RUS Form 254a) $_____

E. Net Amount Of Owner-furnished Materials (Total No. 24 RUS Form 254c) $_____

F. Net Amount Due Contractor (In making final payment to Contractor, the net amount due the Contractor, as shown by this Certification, will be reduced by the sums, if any, due the Owner for liquidated damages, payment made to date, or other sums which the Owner has the right to retain under the terms of the Contract, and signature by all parties does not preclude the retention by the Owner of such amounts.) $_____

Certificate of Engineer

I certify that to the best of my knowledge and belief the attached final inventory correctly shows the total number and character of assembly units installed and removed by the Contractor and that the net amount of $_____ due the Contractor, as shown above, is true and correct.

Engineer _____
By _____
Date _____

Acceptance by Owner

Owner _____
By _____ President
Date _____

Acceptance by Contractor

Firm _____
By _____
Date _____

Instructions

(See RUS Bulletin 1767B–3, Preparation and Use of RUS Form 254, for additional instructions.)

The Engineer will prepare 5 copies of RUS Form 254 and 254a, also 5 copies of Forms 254b and 254c when applicable. Original and 1 copy to be forwarded to RUS, 1 copy to Contractor, 1 copy to Owner, and 1 copy to be retained by Engineer.

Calculation of amount payable to Contractor will employ data taken from Nos. 1 through 25, RUS Forms 254, 254a, 254b, 254c. The amounts to be inserted opposite Items A, B, C, D, and E on RUS Form 254 are indicated in the texts of those items.

Nos. 1 through 17, Forms 254a and 254b: (Form 254b is required only when "I" removal units are included in the Contract.)

No.—Source of Information

1 and 2—From tabulation of staking sheets.[1]
3 and 4—From Contract.
5—No. 3 plus No. 4.
6—No. 1 multiplied by No. 5.
7—No. 1 multiplied by No. 3 (for "I" units only).
8—From Table C of Contract.
9—No. 1 multiplied by No. 8 for "I" removal units only. (Table C relates solely to "I" units.)
10, 11, and 12—From Engineer's and Owner's records.
13—From Table D in Contract.
14—No. 12 multiplied by No. 13.
15—From Engineer's records. (Quantities shall be listed opposite the appropriate material items described in No. 11.)
16—From individual stock record card for each material item listed.
17—No. 15 multiplied by No. 16.

Data shown on Form 254c to be presented under the following headings, as appropriate:

Part I Material Items Included in Lists Set Forth in Construction Contract

Part II Other Material Items Furnished by Owner

Nos. 18 through 25: (Form 254c is required only when there are owner-furnished materials.)

No.—Source of Information

18 and 19—From Contract and Material Receipts.
20—From charge-out and credit tickets covering materials issued to and returned by the Contractor.[2]
21—From average unit costs on charge-out and credit tickets relating to this construction, such costs in turn being taken from the average unit costs reflected by the stock record cards for the applicable period.
22—No. 20 multiplied by No. 21.
23—For Part I, from the unit prices specified in the Contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered."

For Part II, from the actual unit costs to Owner—the same as used in No. 21.

24—No. 20 multiplied by No. 23.
25—No. 24 minus No. 22. (if a minus quantity, enter in parentheses:)

See 7 CFR 1726, Electric System Construction Policies and Procedures, for instructions regarding distribution of the completed form.

Reference should be made to RUS Bulletin 1767B–3, Preparation and Use of RUS Form 254, for instruction in accounting for all contract costs, including the retirement of units removed by the Contractor and the unitization by record units of costs of construction assemblies installed by the Contractor.

RUS Form 254a

Assembly Units

1. Quantity _____
2. Standard (N—New, H—Conversion, I—Removal) _____

Due to Contractor for Units Installed, Converted, and Removed

3. Labor (Unit Price) _____
4. Material Unit Price (Except I Units) _____
5. Total Unit Price (No. 3 + No. 4) (Except I Units) _____
6. Cost of Construction (No. 1 x No. 5) (Except I Units) _____
7. Cost to Remove "I" Units (No. 1 x No. 3) _____

Amount Chargeable to Contractor for Materials in Assemblies Removed

8. Unit Values (Table C in Contract) ___
9. Total (No. 1 x No. 8) _____
Total (No. 6) _____
Total (No. 7) _____
Total (No. 9) _____

[1] Standard units will be listed first, followed by new units and conversion units, in that order, with all "I" removal units being listed last.

[2] The quantities shown in No. 20 should agree with Materials Receipts (RUS Form 251) prepared in connection with the contact. The types of items of material and the quantity of any item of material listed under Part I of the tabulation should be limited to the type of items and should not exceed the quantity of any item of material specified in the construction contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered." Any additional items of material or excess quantities over the items specified in such lists are to be shown under Part II of the tabulation.

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RUS Form 254b

Summary and Classification Of Materials Returned to Owner by Contractor from "I" Removal Units

Amounts to be Credited to Contractor for Materials Returned

10. Item Designation _____
11. Description of Material _____
12. Quantity _____
13. Item Value—Table D in Contract _____
14. Total Credit to Contractor (No. 12 x No 13) _____

Returned Materials Declared Reusable by Engineer

15. Quantity of Items _____
16. Stock Card Item Price _____
17. Salvage Value (No. 15 x No. 16) _____
Total (No. 14) _____
Total (No. 17) _____

RUS Form 254c

Tabulation of Net Amount of Materials Furnished by Owner

18. Item Designation _____
19. Description of Material _____
20. Quantity _____

Actual Cost to Owner

21. Unit Cost _____
22. Extended Cost (No. 20 x No. 21) _____

Amount Chargeable to Contractor at Contract Price

23. Unit Cost _____
24. Extended Cost (No. 20 x No. 23) _____
25. Excess of No. 24 over No. 22 _____
Total (No. 22) _____
Total (No. 24) _____
Total (No. 25) _____

(End of clause)

§ 1726.329 Contract to construction buildings, RUS Form 257.

The contract form in this section shall be used when required by this part.

Contract to Construct Buildings

Notice and Instructions to Bidders

1. **Proposals:** Sealed proposals for the construction, including the furnishing of all materials, machinery, labor and equipment, water, heat, utilities, transportation, and other means necessary for construction of the building(s) listed below (hereinafter called the "Project") to be financed _____ not to be financed _____ pursuant to a loan contract between _____ (hereinafter called the "Owner") and the United States of America, by the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") and designated as Project _____ will be received by the Owner on or before _____ o'clock ___ M _____ Time, _____, 19___, at its office located at _____ at which time and place the proposals will be publicly opened and read The Rural Telephone Bank may also be a party to the loan contract.

Name or Kind of Building _____
Location _____

2. **Obtaining Documents:** The Plans and Specifications together with all other necessary forms and documents for bidders may be secured from _____ at _____ upon payment of _____ Dollars ($_____) which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. Additional sets of Plans and Specifications may be obtained upon payment of _____ Dollars ($_____) which payment will not be subject to refund. The Plans and Specifications may be examined at the office of _____. A copy of the loan contract may also be examined at the office of the Owner.

3. **Manner of Submitting Proposals:** Proposals and all supporting documents required to be attached thereto must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope, addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

4. **Familiarity with Conditions:** Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, forms of Construction Proposal and Acceptance, and Contractor's Bond on file with Secretary of the Owner and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of the soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions, and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors and the so called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. **Proposals** will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. **Time of Completion of Construction:** The time of completion of construction of the Project shall be as specified by the Architect in the Proposal.

7. **Bid Bond:** Each proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder shall agree, provided its proposal is one of the three low proposals, that by filing its proposal together with such bid bond or check in consideration of the Owner's receiving and considering such proposal, said proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond (or Builder's Risk Policy) is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of proposals, whichever period shall be the shorter. If such proposal is not one of the three low proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the respective Bidder.

8. **Contractor's Bond or Builder's Risk Policy:** The successful Bidder will be required to execute two additional counterparts of the Proposal and to furnish

(a) For contracts in amounts in excess of $100,000, a Contractor's Bond in the form attached to the Proposal with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

(b) For contracts in amounts of $100,000 or less, either a Contractor's Bond or a Builder's Risk Policy, whichever the Owner has specified below: (Check One)

_____ Contractor's Bond
_____ Builder's Risk Policy

9. **Failure to Furnish Contractor's Bond or Builders Risk Policy:** Should the successful Bidder fail or refuse to furnish a Contractor's Bond (or Builder's Risk Policy) satisfactory to the Owner within fifteen (15) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled: (a) To enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference between the amount of the Proposal and such larger amounts for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has failed to furnish a satisfactory Contractor's Bond (or Builder's Risk Policy).

10. **Contract is Entire Agreement:** The contract, effected by acceptance of the Proposal, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

11. **Minor Irregularities:** The Owner reserves the right to waive minor irregularities or minor errors in the Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence.

Any such irregularities or errors so waived must be corrected on the Proposal prior to its acceptance by the Owner.

12. **Rejection of Proposals:** The Owner reserves the right to reject any or all proposals.

13. **Discrepancies:** Where a discrepancy appears between the sum of the Base Bids of each building and the Total Base Bid, the correct addition of the Base Bid price for each building shall control.

14. **The Owner Represents:**

(a) If by provisions of the Proposal, the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations which may be determined by the bidders' inquiry of the Architect, or if such materials are not on hand, they will be made available by the Owner to the successful Bidder before the time such materials are required for incorporation into the Project.

(b) Title to the property on which the Project is to be constructed has been obtained.

(c) All funds necessary for prompt payment of the construction of the Project will be available. If the owner should fail to comply with any of the undertakings contained in the foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to an extension of the time of completion of Construction for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure to comply with any of the foregoing representations.

_____ Owner
By _____
Dated _____

Proposal

To: _____ (hereinafter called the "Owner"). The undesigned (hereinafter called the "Bidder") proposes to construct the buildings(s) listed in Section 1 of Article I (hereinafter called the "Project"), financed _____, not to be financed _____, in whole or in part by a loan to the Owner by the United States of America, by the Administrator of the Rural Utilities Service (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, designated _____ and to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials, machinery, and equipment, water, heat, utilities, transportation and other means required to construct the Project in accordance with the plans and specifications (hereinafter called the "Plans and Specifications"), prepared by _____ (hereinafter called the "Architect") and dated _____, 19___, and approved by the Rural Utilities Service on _____, 19___, and by this reference made a part hereof. The Bidder has made a careful examination of the site(s) on which the Project to be constructed, has become informed as to the kind of facilities required before and during the construction of the Project and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if his bid is accepted, the following terms shall govern.

Article I—Amount of Proposal

Section 1. Bid Price: The Bidder will construct the Project for the following sum:

Name or Kind and Location of Building

_____

Base Bid _____
Total of Bid $_____
Alternate Bid No. 1 (add) (deduct) $_____
Alternate Bid No. 2 (add) (deduct) $_____
Alternate Bid No. 3 (add) (deduct) $_____
Alternate Bid No. 4 (add) (deduct) $_____

Section 2. Taxes: The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project.

The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

Article II—Construction

Section 1. Time of Construction:

(a) The Bidder, after notification in writing of approval of the Construction Contract by the Administrator, if approval of the Administrator is required, will commence construction of the Project within _____ (_____) calendar days after the Owner shall have given the Bidder written notice to commence construction which notice shall be given:

(1) Not later than _____ (_____) calendar days after approval of the Construction Contract by the Administrator, if approval of the Administrator is required.

(2) On a date to be determined by the Owner.

(The Architect will cross out the inapplicable statement (1) or (2) above before requesting bids.)

(b) The Bidder will prosecute diligently and complete construction of the Project in strict accordance with the Plans and Specifications and directions of the Architect within _____ (_____) calendar days after the expiration of the time specified to commence construction.

(c) The time for Completion of Construction herein set forth shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, direction by the Architect to cease construction during periods when in the judgment of the Architect it is impractical to perform any operation of construction and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible, provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes or from any changes in construction which may be made pursuant to Subsection (d) of this Section shall result in any liability on the part of the Owner.

(d) The Owner, acting through the Architect and with the approval of the Administrator, if approval of the Administrator is required, may from time to time during the progress of construction make revisions in the Project. If the revision is such as to require on extension in the time of construction, a reasonable extension shall be granted if the Bidder shall make a written request therefor to the Owner prior to the commencement of work in connection with such revision. If the cost of the Project to the Bidder to make revision shall be increased or decreased, the contract price shall be amended by an amount equivalent to the reasonable cost thereof by a Construction Contract Amendment signed by the Owner and the Bidder, and approved by the Administrator, if approval of the Administrator is required; but no claim for additional compensation for any revision will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such revision. The reasonable cost of any increase or decrease in the contract amendment as outline above, in the absence of any other mutual agreement, shall be computed on the basis of the direct cost of materials, F.O.B. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance) plus twenty-five percent (25%) of the direct cost of materials and labor. Labor cost shall be limited to the direct costs for workmen and foremen. Costs for Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 2. Supervision: The Bidder will give sufficient supervision to the work, using his best skill and attention. He will carefully study and compare all drawings, specifications and other instructions, and report at once to the architect any error, inconsistency or omission which he may discover. The Bidder will make available during construction a competent superintendent and any necessary assistants, all satisfactory to the architect. The superintendent shall not be changed except with the consent of the Architect unless the superintendent proves to be unsatisfactory to the Bidder and ceases to be his employ. The superintendent shall represent the Bidder in his absence and all directions given to him shall be as binding as if given to the Bidder. When requested, such directions shall be confirmed in writing.

Section 3. Shop Drawings: The Bidder, after reviewing, will submit to the Architect with such promptness as to cause no delay in the work two copies of all shop or setting drawings and schedules required for the work of the various trades, and the Architect shall pass on them with reasonable promptness, requesting corrections required thereto to be made. The Bidder will make any corrections required and file with the Architect three corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Bidder of responsibility for deviations from the Plans and Specifications. The Bidder will keep one copy of the contract documents on the site, in good order, available to the Architect. All drawings and specifications will be returned to the Architect upon completion of construction.

Section 4. Samples: The Bidder will furnish for approval, all samples as directed

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by the Architect, and will perform the work in accordance with such approved samples.

Section 5. Inspection and Tests: The manner of construction of the Project and all materials and equipment used or to be used therein shall be subject to the inspection, tests and approval of the Architect and the Administrator, and the Bidder will furnish all information required by the Architect or the Administrator concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect all records of the Bidder and of any subcontractor relevant to the work. The Bidder will make available at the site of the Project, telephone service where obtainable, the payroll, invoices of material and other data and records of the Bidder relevant to the work. The Bidder will provide all reasonable facilities necessary for such inspection and tests. If the specifications, the Architect's instructions, laws, ordinances or any public authorities require any work to be specially tested or approved, the Bidder will give the Architect timely notice of its readiness for observation by the Architect or inspection by an authority other than the Architect, and if the inspection is by such other authority, of the date fixed for such inspection, testing or approval. The Bidder will bear all costs of such inspections, tests and approvals unless otherwise provided, obtain required certificates and deliver them to the Architect. Observations by the Architect shall be promptly made, and where practicable at the source of supply. If any work should be covered without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Bidder's expense.

Re-examination of questioned work may be ordered by the Architect and if so ordered the work must be uncovered by the Bidder. If such work be found in accordance with the contract documents the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract documents the Bidder will pay such cost.

Section 6. Employees: The Bidder will at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the task assigned him. The Architect and the Owner shall have the right to require the removal from the Project of any employee of the Bidder or subcontractor if in their judgment such removal shall be necessary to protect the interest of the Owner.

Section 7. Defective Workmanship and Materials: Notwithstanding the acceptance of workmanship, materials (except owner-furnished materials) or equipment or the giving of any certificate with respect to the Completion of Construction, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of this Proposal, the workmanship, materials or equipment shall be found to be defective or not in conformity with the requirements of the Plans and Specifications, the Bidder will remedy or replace such workmanship, materials or equipment within thirty (30) days after written notice of the failure of the Bidder to conform with the applicable provisions of the contract documents shall have been given to the Bidder by the Owner.

Article III—Payment and Releases of Liens

Section 1. Payments to Bidder:

(a) On or before the fifth (5) day of each Calendar Month, the Bidder will make application for payment, and the Owner, on or before the fifteenth (15) day of such month, shall make partial payment to the Bidder for construction accomplished during the preceding Calendar Month and partial payment for materials not incorporated in the Project. The payment shall be made on the basis of a schedule of values and receipts or other vouchers, submitted by the Bidder to, and approved by, the Architect, showing payments for labor and materials, payments to subcontractors, and such other evidence of the Bidder's right to payment for construction accomplished, and bills of sale or such other procedure as will establish the Owner's title to materials not incorporated in the Project but delivered and suitably stored on the site or at any other location agreed upon in writing by the Owner. Approval by the Architect of the application for payment is solely for the purposes of payment and shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate of the cost for construction accomplished and approved and fifty percent (50%) of the cost of materials not incorporated in the Project shall be paid by the Owner to the Bidder prior to Completion of Construction.

The Bidder will, before the first application, submit to the Architect, a schedule of values of the various parts of the work, including quantities, aggregating the total contract price, divided so as to assist in determining the accuracy of payments to subcontractors and of the applications for payment.

(b) Upon Completion of Construction, the Architect shall inspect the Project, and if he shall find the work acceptable and all provisions hereunder fully performed, he shall furnish the Owner two copies of a Certificate of Completion, on forms satisfactory to the Administrator, and shall certify thereon the final Contract Price. The Certificate of Completion shall show thereon the Acceptance of the Contractor. Upon acceptance of the Certificate of Completion by the Owner, the Owner shall make final payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder, except that, for contracts requiring approval of the Administrator, the Owner shall submit one copy of the Certificate of Completion to the Administrator for approval. Upon notice of approval by the Administrator, the Owner shall make final payment to the Bidder.

(c) Interest at the rate of ____ percent [1] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date, provided the delay in payment beyond the due date is not caused by any condition within control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth (15th) day of each Calendar Month provided (1) The Bidder on or before the fifth (5th) day of such month shall have submitted its certified estimate of construction completed during the preceding month and (2) the Architect on or before the fifteenth (15th) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval of the Architect shall not have been given on or before the fifteenth (15th) day of such month, the due date for purposes of this Subsection shall be the fifteenth (15th) day of such month notwithstanding the absence of the Architect's approval of the certification.

(d) Interest at the rate of ____ percent [2] (____%) shall be paid by the Owner to the Bidder on the final payment commencing fifteen (15) days after the due date. The due date for the purposes of such final payment shall be sixty (60) days after the date of certification by the Architect in the Certificate of Completion or the date of approval by the Administrator of the Certificate of Completion when approval thereof is required by the Administrator.

(e) No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal, and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens: Upon Completion of Construction of the Project, but prior to the payment to the Bidder of any amount withheld in accordance with Section 1, (a) of Article III, the Bidder shall furnish the Owner, on forms satisfactory to the Administrator releases of all liens, and of all rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the construction of the Project, and a Certificate of Contractor on a form satisfactory to the Administrator, to the effect that all labor used on or for the Project has been paid and that all such releases have been submitted to the Owner.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property: The Bidder will, at all times, take all reasonable precautions for the safety of employees on the Project, and of the public and all other persons who may be affected thereby, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes.

The Bidder will protect from loss or damage all materials and equipment to be incorporated in the Project, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, paved surfaces, structures and utilities not designated for

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See footnote 1.

removal, relocation or replacement in the course of construction. The Bidder will provide and maintain guard lights, watchman or other protection for persons and property, and physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with or less strict than those of any public authority having jurisdiction thereon, or instructions of the Architect.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder will at all times, keep the premises free from accumulation of waste material or rubbish caused by his employees or work, and at the completion of construction he will remove all rubbish from and about the Project, and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Project from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, will be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials to be used therein will be borne by the Bidder. The Bidder will make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder, by reason of any act of God or other casualty or cause, whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(c) The Bidder will confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect, and shall not unreasonably encumber the premises with his materials.

(d) The Bidder will not load or permit any of the structure to be loaded with a weight that will endanger its safety.

(e) The Bidder will submit to the Owner, monthly reports in duplicate of all accidents giving such data as may be prescribed by the Architect.

(f) Upon violation by the Bidder of any of the provisions of this section, the Bidder will, after written notice of such violation given to the Bidder by the Architect or the Owner, immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense; provided, however, that the Owner may, if it deems necessary or advisable, correct such violation at the Bidder's expense without such prior notices to the Bidder.

(g) The Bidder will be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the construction of the Project.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Purchase of Materials: The Bidder will purchase all materials (except owner-furnished materials) and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. All materials and supplies shall become the property of the Owner when erected in place or at such earlier time as the parties may agree pursuant to Section 1(a) of Article III. Unless otherwise specified, all materials shall be new.

Section 4. Assignment of Guarantees: The Bidder will obtain from manufacturers, materialmen, and subcontractors and furnish to the Owner all guarantees and will transfer or assign to the Owner such guarantees as run in favor of the Bidder, prior to the time the Bidder receives final payment. The guarantees shall be in addition to and not limited by any other provisions of the contract documents, guarantee or remedy required by law.

Section 5. Royalties and Patent Infringement: The Bidder will pay all royalties and license fees, and will hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment, materials, supplies or construction methods used in the work.

Section 6. Compliance with Statues and Regulations: The Bidder will comply with all applicable statues, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with The Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 7. Delivery of Possession and Control to Owner: Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any

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portion of the Project provided the Bidder shall have been paid at least 90 percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of such portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Section 1(b), Article IV hereof with respect to such portion so delivered to the Owner shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective workmanship or materials as provided in Section 7, Article II.

Section 8. Occupancy Before Completion: Exception as provided in Section 7, the Owner shall not occupy any portion of the Project prior to the time of completion without the written approval of the Bidder. It is agreed that such occupancy of any such portion of the Project will not constitute acceptance of workmanship or materials used in construction of the Project as provided in Section 7, Article II, and that such occupancy will not relieve the Bidder from his obligation to complete any part of the Project in compliance with the contract. The Owner agrees to permit the Bidder to fulfill the requirements of the contract in accordance with instructions issued to the Bidder by the Architect upon occupancy by the Owner.

Article V—Remedies

Section 1. Liquidated Damages: The time of Completion of Construction of the Project is of the essence of this Contract. Should the Bidder neglect, refuse or fail to complete construction within the time herein agreed upon, after giving effect to extensions of time, if any herein provided for, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due or which may become due and payable to the Bidder, the sum of _____ Dollars ($_____) per day of each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty. If the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deduced or claimed as liquidated damages was computed.

Section 2. Completion on Bidder's Default: If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder, such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall be made by the Bidder or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder and the Bidder and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Proposal and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 3. Cumulative Remedies: Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of Section 1 of this Article V shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions: (a) The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested in the duties and functions which the Administrator is now authorized by law to perform.

(b) The term "Architect" shall mean the person or organization employed by the Owner to provide architectural services for the Project, and the Architect's duly authorized assistants and representatives. If an Architect is not employed, the term shall apply to the duly authorized agent of the Owner.

(c) The term "Completion of Construction" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, and (2) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The date of signature by the Architect of the Certificate of Completion shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Bond or Builder's Risk Policy: (a) The Bidder will furnish to the Owner, for a contract in an amount in excess of $100,000, a bond in a penal sum not less than the Total Contract Price and in the form attached hereto and with a Surety or Sureties listed by the United States Treasury Department as Acceptable Sureties.

(b) The Bidder will furnish to the Owner for a contract in an amount of $100,000 or less, a Builder's Risk Policy or a bond like that required in the preceding paragraph, whichever the Owner has specified under Paragraph 8 of the Notice and Instructions to Bidders. The Builder's Risk Policy shall be on a completed value form, effective from the date equipment or materials is first delivered to the building site, and shall name both the Owner and the Contractor as insureds. The policy shall insure against loss by fire or lightning and the named perils in the extended coverage endorsement. The amount of coverage shall not be less than the replacement value of the property constructed, including all materials to be used in the construction and stored at the site or at any other location whether furnished by the Owner or the Contractor. When directed, the Bidder shall furnish evidence of compliance with these requirements. The evidence shall be in the form of a certificate of insurance by the insurance company and shall include a provision that no change in or cancellation of the policy shall be made without prior written notice to the Owner and the Administrator.

Section 4. Subcontracts and Nonassignment: (a) Within ten (10) days after acceptance of the Proposal by the Owner and before awarding any subcontracts, the Bidder will notify the Architect, Owner and Surety in writing, of the names of the subcontractors proposed for the principal parts of the work, and will not enter into any subcontract for such work if written objection thereto is received from the Architect, Owner, Surety or Sureties within fifteen (15) days after receipt of such notice. The Bidder will be as fully responsible to the Owner and the Administrator for the acts and omissions of each subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it. The Bidder will not subcontract on aggregate amount in excess of sixty-five percent (65%) of its obligations, (to be calculated on the basis of the Total Contract Price) without approval of

the Architect, Owner, and Surety or Sureties on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. Nothing contained in the Construction Contract shall create any contractual relation between any subcontractor and the Owner.

(b) The Bidder will not assign the contract effected by the acceptance of this Proposal or any part thereof without approval in writing of the Owner, Surety or Sureties, and the Administrator if the Construction Contract was approved by the Administrator.

Section 5. Equal Opportunity Provisions: (a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have____, 100 or more employees, and if it has, that it has ____, has not____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows: (1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. License: The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7. Extension to Successors and Assigns: Each and all of the covenants and agreements contained in the contract effected by the Acceptance of this Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

Section 8. Description of Contract: The Notice and Instructions to Bidders, the Proposal, the Acceptance, the Contractor's Bond or Builder's Risk Policy, the Plans and Specifications and all amendments or revisions thereto constitute the Construction Contract.

Section 9. Contractor: Upon acceptance of this Proposal the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator: No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within sixty (60) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

_____ Bidder
By _____ President
_____ Address
Attest: _____ Secretary
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the Proposal of _____ for the construction of the Project therein described for the:

Base Bid of _____ and alternate bids as follows (Show plus or minus):

Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.

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Alternate bid No. _____, $_____.
The Total Contract Price is $_____
_____ Owner
By _____ President
Attest: _____ Secretary
Dated _____
[End of clause]

§ 1726.330 [Reserved]

§ 1726.331 Bid bond, RUS Form 307.

The bond form in this section shall be used when a Bid Bond is required by RUS Form 200, 203, 257, 764, 830, or 831.

Bid Bond

1. KNOW ALL MEN that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereafter called the "Owner") in the penal sum of ten percent (10%) of the amount of the bid referred to in paragraph 2 below, but not to exceed _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents:

2. WHEREAS, the Principal has submitted a bid to the Owner for the construction of the Rural Utilities Service Project known as Project _____.

3. NOW, THEREFORE, the condition of this obligation is such that if the Owner shall accept the bid of the Principal, and

(a) The Principal shall execute such contract documents, if any, as may be required by the terms of the bid and give such Contractor's Bond or Bonds for the performance of the contract and for the prompt payment of labor and material furnished for the Project as may be specified in the bid, or

(b) In the event of the failure of the Principal to execute such contract documents, if any, and give such Contractor's Bond or Bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof, between the amount specified in the bid and such larger amount for which the Owner may in good faith contract with another party to construct the Project, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of_____, 19___

Principal _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)
Surety _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)
[End of clause]

§§ 1726.332–1726.339 [Reserved]

§ 1726.340 Substation and switching station erection contract, RUS Form 764.

The contract form in this section shall be used when required by this part.

Substation and Switching Station Erection Contract

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project _____ will be received by the Owner on or before _____ o'clock ____ M., 19____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of the following Substations and other Major Facilities:

Name _____ KVA ____ Voltage _____
Name _____ KVA ____ Voltage _____
Name _____ KVA ____ Voltage _____

The Project is located in _____ Counties, in the State of _____ all as more fully described in the Plans, Specifications for Construction, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner Furnished Materials. The unit prices in the Contractor's Proposal should include provisions for Owner Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining Documents. The Plans, Specifications for Construction and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____ upon payment of $_____, which payment will not be subject to refund. The Plans, Specifications for Construction and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications for Construction and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers.

5. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications for Construction, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kickback Statute" (48 Stat. 948) and regulations issued pursuant thereto

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate Designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications for Construction and offered in the Proposals.

9. The time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to Furnish Contractor's Bond Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Propose, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Rejection of Bids. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in Unit Prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Bidding and Acceptance. If the Project includes more than one substation, bidders may bid on one or more substations. The Owner may award (1) a contract for all of the substations on the basis of the low total bid or, (2) separate contracts for one or more substations based on the low bids for the respective substations.

18. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

19. The Owner represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. Title to the property on which the Project is to be constructed has been obtained.

c. All funds necessary for prompt payment for the construction of the Project will be available.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. hereof.

_____ Owner
By _____
_____, 19___

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

Article I—General

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications for Construction and Construction Drawings for the prices hereinafter stated.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page 10) and the Bidder will give a receipt (see page 12) therefore in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page 11) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon Completion of Construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work.

Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner

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may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications for Construction, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

Section 7. License. The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 8. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 9. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contractor on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 10. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 11. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this Proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item [1]	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total. Above Matenals are Located at:					

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item [1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total. Above Material to be Delivered to:							

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

Article II—Construction

Section 1. Time and Manner of Construction.

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications for Construction and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of substations or other major facilities (hereinafter called the "Stations") corresponding to the numbers or names shown on the maps attached hereto, or if no Stations are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer and with the approval of the Administrator,[1] may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans, Specifications for Construction, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make changes in construction previously installed in the Project by the Bidder as required by the Owner. The compensation for such changes shall be as agreed upon in writing by the Bidder and the Owner prior to commencement of work in connection with such changes.

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications for Construction.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, as agreed upon by the Owner and Bidder prior to the commencement of work.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RUS Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

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any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that portion of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case maybe, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

Article III—Payments and Release of Liens

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer, and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid, provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Station of the Project upon:

(1) completion of construction of such Station as certified by the Engineer and approved by the Owner and the Administrator;

(2) submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner and the Administrator of the inventory in respect of such Station; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Station prior to Completion of the Project. d. Interest at the rate of _____ percent [3] (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ——— percent [4] (———%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Station thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample RUS Form 224, Waiver and Release of Lien and sample RUS Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project (or any Station thereof if the Bidder shall elect to receive payment in full for any Station when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Station and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Station has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. Temporary water, light, power and other utility service shall be arranged for by the Bidder for construction purposes at its own expense.

e. The Bidder shall do all things necessary or expedient to properly protect any and all adjacent lines, highways and any and all property of others from damage, and in the event that any such lines, highways or other property are damaged in the course of construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Station as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Station upon the issuance by the Engineer of a written statement that the Station has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Station to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Station so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Article V—Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory, to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys

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which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder, shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term "Engineer" shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term "Supervisor" shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term "Project" shall mean the substations or other major facilities described in the Plans, Specifications for Construction, and Construction Drawings.

e. The term "Completion of Construction" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____; 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor

issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; or any agreements between the Owner and third parties with respect to any matters incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety and Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator. No acceptance of this Proposal shall become effective until approved in writing by the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)

By _____ (President)

_____ (Address)

Attest: _____ (Secretary)

Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Specifications for Construction

Section 1. Scope of Work. The work covered by this Proposal embraces the complete construction of one or more substations or other major facilities as specified in the Acceptance, any omissions or discrepancies notwithstanding. All material furnished by the Bidder shall be new and in conformance with the Specifications for Construction. All construction work shall be done in a thorough and workmanlike manner in accordance with the Plans, Specifications for Construction and Construction Drawings. Deviations from the Plans, Specifications for Construction, and Construction Drawings shall not be permitted except upon the written permission of the Owner given with the approval of the Administrator.

This contract does not include _____ which is to be done by others.

Section 2. Materials. It is the intent of these specifications that insofar as materials required are included in the Rural Utilities Service "List of Materials Acceptable for use on Systems of RUS Electrification Borrowers," such materials only shall be used. In the event that any materials are required beyond the scope of the "List of Materials Acceptable for use on Systems of RUS Electrification Borrowers," specifications for such materials will be included on the drawings or in a supplement to these specifications.

Section 3. Drawings. The Drawings and Specifications collectively, show the specifications of the material and equipment shown thereon, and include schedules of conduit, cable and other items not readily ascertained from the picture drawings. Such schedules show the quantities, sizes, types and other pertinent information; method of installation, and construction details are indicated clearly. The drawings and specifications in the attached List of Drawings are made a part of these contract Specifications.

Section 4. Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation or switching station as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation shall be shown on the drawings. Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance With the drawings. The bill of material drawing for each station should contain adequate identification of the Construction Units under which the material is to be installed and should show what items of material may be partly or entirely found in the lists of owner-furnished materials. All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A.

Each Construction Unit shall be designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment shall carry the same Construction Unit designation in all the stations. Items of equipment designated by the same Construction Unit in one station shall be of only one kind as to voltage, type and other specifications. The bid sheet for each station shall be prepared separately from other stations and shall contain all unit prices for Construction Units contained in the station. It is intended that in all cases the "Name and Description of Construction Unit" column of the Bid Sheets shall contain sufficient information to identify the Construction Unit.

Additional description to one or more of the Groups may be provided by the Engineer if deemed necessary to clarify the intent of these Specifications for Construction.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the station, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

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Group B. Three-Pole Group Operated Air Break Switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning Arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single Pole Disconnecting Switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil Circuit Reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, Relays and Instrument Transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage Regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and Supervisory Control Equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and Cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site Preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station Grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ Station construction Units
Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following substations or other major facilities:

_____ Substation, $_____
_____ $_____
The total contract price is $_____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract
[End of clause]

§ 1726.341 Electric system communications and control equipment contract, RUS Form 786.

The contract form in this section shall be used when required by this part.

Electric System Communications and Control Equipment Contract (Including Installation)

Proposal to Furnish, Deliver, and Install Equipment and Materials

To:_____ (hereinafter called the "Purchaser")

The undersigned (hereinafter called the "Seller") hereby proposes to furnish, deliver, install, align and test the equipment and materials, (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto identified as _____ and made a part hereof, and other Attachments identified as _____ and made a part hereof, for the electric system designated _____, financed in whole or in part by a loan to the Purchaser by the United States of America, acting through the Administrator of the Rural Utilities Service (hereinafter called the "Administrator").

The Seller has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the delivery and installation of the Equipment and has become acquainted with the labor conditions which would affect the work as well as the ecological and environmental criteria to be followed. The Seller agrees that if its Proposal is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Seller has made any change in the form of Proposal furnished by the Purchaser, the Seller understands that the Purchaser and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration.

Article I

Section 1. Proposal Price. The Seller will furnish, deliver, install, align and test the Equipment described in the Specifications for the following sum:

Total Contract Price $_____
Delivery time is _____ calendar days.
Completion time is _____ calendar days.

A detailed price breakdown by locations, showing equipment pricing and installation pricing, is given in the Attachment identified as _____ and made a part hereof.

Section 2. Changes. The Purchaser, subject to the approval of the Administrator,[1] may from time to time during the performance of the work make such changes, additions to or subtractions from the Specification's which are part of the Proposal as conditions may warrant; provided, however, that, if any change in the work shall require an extension of time, a reasonable extension will be granted if the Seller shall make a written request therefor to the purchaser within ten (10) days after any such change is made and, provided further, that, if the cost to the Seller shall be increased or decreased by any such change or addition, the contract price shall be increased or decreased by the reasonable cost thereof, in accordance with a contract amendment signed by the Purchaser and the Seller and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Seller shall have made a written request therefor to the Purchaser prior to the commencement of work in connection with such change or addition.

Section 3. Taxes. The prices herein set forth do not include any sums which are or may be payable by the Seller or the Purchaser on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment or labor of installation. If any such tax is applicable, the amount thereof shall be stated separately and added to the Proposal price and paid by the Purchaser.

Article II—Delivery and Installation

Section 1. Time of Completion. The time of delivery of the Equipment and of completion of the work is of the essence of this Contract. The seller will deliver the Equipment within the number of calendar days specified in Article I, Section 1, after the Administrator shall have approved this contract in writing and will prosecute

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RUS Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

diligently and complete the work within the number of calendar days specified in Article I, Section 1, after such approval. The time for such delivery and completion shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Purchaser with respect to matters for which the Purchaser is solely responsible; provided, however, that no delay in such time for delivery or completion of the work or in the progress of the work shall result in any liability on the part of the Purchaser, and provided further that any claim for extension of time shall be adjusted at the time any such delay occurs or any such change is made.

Section 2. Supervision and Inspection. The Seller will give adequate supervision to the work. He will carefully study and compare all drawings, specifications, and other instructions and will at once report to the Purchaser any error, inconsistency or omission which he may discover. The Seller will keep on his work during its progress a competent superintendent and any necessary assistants, all satisfactory to the Purchaser. The Superintendent shall represent the Seller in his absence and all directions given to him shall be as binding as if given to the Seller. When requested, such directions shall be confirmed in writing.

Section 3. The Purchaser will make available during installation a competent representative to coordinate installation activities with the Seller.

Section 4. Alignment, Inspection and Tests. The Seller shall adjust and align the Equipment to perform in accordance with the Specifications and furnish in writing to the Purchaser data to show the state of adjustment of the Equipment. Immediately upon completion of the installation and alignment of the Equipment the Seller shall provide the necessary test equipment and perform the inspections and tests specified in the Specifications under the direct supervision of the Purchaser or its Engineer. A competent representative of the Purchaser or his Engineer will be available to supervise and witness these tests immediately upon completion of installation and alignment by the Seller and to determine for the purchaser that the performance of the equipment meets the Specifications. Such determination, however, shall not preclude subsequent rejection pursuant to Section 7 of this Article II. The Seller shall furnish in writing to the Purchaser the results of all tests. All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator. The Purchaser and the Administrator shall have the right to inspect all records of the Seller and of any subcontractor relevant to the installation work. The Seller shall provide all reasonable facilities necessary for such inspection and tests.

Section 5. If as a result of the tests and measurements set forth in Section 4 above, the Performance Specifications of the Equipment cannot be met due to inaccuracies, or inadequacies in the system data provided in the Specifications, the Purchaser and Seller shall determine what corrective measures are necessary and whether these corrections shall be made by the Purchaser or the Seller.

If it is determined that the Seller shall make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator,[3] for such reasonable additional expenses for the corrections, realignment and retesting the Seller is required to perform pursuant to this amendment.

Where it is determined that the Purchaser will make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator,[4] for such reasonable additional expenses for realignment and retesting the Seller is required to perform pursuant to this amendment, including, if necessary, the added expense of returning to the project, where necessary, for reperforming alignment and testing.

Section 6. Employees. The Purchaser shall have the right to require the removal from the work of any employee of the Seller if in the judgment of the Purchaser such removal shall be necessary in order to protect the interest of the Purchaser.

Section 7. Defective Workmanship and Materials. Notwithstanding the acceptance of workmanship, materials or equipment or the giving of any certificate with respect to the Completion of the Work, if during performance hereunder or within one year after completion or within such longer period as the Equipment or any part thereof may be guaranteed by the Seller and Manufacturer, the workmanship, materials or equipment, except as may be otherwise provided in the Specifications, shall be found to be defective or not in conformity with the Specifications, the Seller shall remedy or replace at its expense such workmanship, materials or equipment within thirty (30) days after notice of the existence thereof shall have been given to the Seller by the Purchaser.

Article III—Payments and Releases of Liens

Section 1. Payment to Seller.

(a) The Purchaser shall pay the Seller upon the basis of estimates by the Seller recommended by the supervising engineer, if any, and approved by the Purchaser of the work completed, the following percentages of the price of the equipment for each location set forth in Article I, Section 1, as and if revised: 45% when 50% of the equipment for each location has been delivered at the site of the Project; 90% when all the equipment for each location has been delivered at the site of the Project.

(b) Upon completion of installation of the equipment for each location, the Purchaser shall pay the Seller 90% of the Total price for such location.

(c) Upon Completion of the Installation of the Equipment, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the supervising engineer, if any, of the Purchaser or the Purchaser shall inspect the work performed hereunder and if the work shall be found acceptable and all provisions hereunder fully performed, the supervising engineer, if any, of the Purchaser shall certify as to that fact and as to the amount of the balance found to be due to the Seller. Upon acceptance by the Purchaser, the Purchaser shall pay to the Seller all unpaid amounts to which the Seller shall be entitled hereunder; provided, however, such final payments shall be made not later than 120 days after completion of the work, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 2. Release of Liens. Upon the Completion of the Installation of the Equipment by the Seller, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the Seller will deliver to the Purchaser, in duplicate, releases of all liens and of rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the work and a certificate by the Seller in a form approved by the Administrator, to the effect that all labor has been paid and that all such releases have been submitted to the Purchaser for approval

In lieu of releases of liens, and if the Administrator shall so approve, the Seller may deliver to the Purchaser, in duplicate, (1) a certificate, in a form approved by the Administrator, that all manufacturers, materialmen and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Purchaser harmless against any liens arising out of the Seller's performance hereunder which may have been or may be filed against the Purchaser.

Article IV—Particular Undertakings of the Seller

Section 1. Protection to Persons and Property. At all times when Equipment is being delivered and installed the Seller will exercise reasonable precautions for the safety of employees on the work and of the public, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machine and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Seller will at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work, and at the completion of the work he will remove all rubbish and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Seller will perform work in such manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There will be no depositing of trash in streams or waterways. Herbicides, other

[3] See Footnote 1.

[4] See Footnote 1.

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chemicals or their containers will not be deposited in or near streams, waterways or pastures. The Seller will follow, under the general direction of the Purchaser, the criteria relating to environmental protection as specified herein by the Purchaser.

(c) The work, from its commencement to completion, or to such earlier date or dates when the Purchaser may take possession and control, shall be under the charge and control of the Seller and during such period of control by the Seller all risks in connection therewith and the materials to be used therein, whether owned by the Seller or Purchaser, shall be borne by the Seller. The Seller will make good and fully repair all injuries and damages to the work or any portion thereof under the control of the Seller by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Seller's negligence.

(i) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Seller's employees) and loss, damage to or destruction of Purchaser's property or the property of any other person or entity (including but not limited to Seller's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Seller, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Seller liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Purchaser.

(ii) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all liens and claims filed or asserted against Purchaser, its directors, officers, and employees, or Purchaser's property or facilities, for services performed or materials or equipment furnished by Seller, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Seller shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Purchaser promptly when it has done so. If Seller does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Purchaser shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Seller.

(iii) Seller shall provide to Purchaser's satisfaction evidence of Seller's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) Monthly reports of all accidents will be promptly submitted by the Seller, giving such data as may be prescribed by the Purchaser.

Section 2. Delivery of Possession and Control to Purchaser. Upon written request of the Purchaser, the Seller shall deliver to the Purchaser full possession and control of any completed location included in the work, provided the Seller shall have been paid at least 90% of such Total Location Price. Upon such delivery of the possession and control of any such location to the Purchaser, the risks and obligations of the Seller, as set forth in Article IV, Section 1(b) hereof, with respect to such location shall be terminated; provided however, that nothing herein contained shall relieve the Seller of any liability with respect to defective workmanship or materials as specified in Article II, Section 7, hereof.

Section 3. Insurance. The Seller shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Purchaser shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Purchaser shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Purchaser. The Seller shall furnish the Purchaser a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Purchaser of any cancellation or material change in the insurance.

Section 4. Purchase of Materials. The Seller shall purchase all materials and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the Seller any right, title or interest therein. Materials and Supplies shall become the property of the Purchaser as the Purchaser makes payments therefor to the Seller in accordance with Article III, Section 1(a). Unless otherwise specified, all materials shall be new.

Section 5. Assignment of Guarantees. All guaranties of materials and workmanship running in favor of the Seller shall be transferred and assigned to the Purchaser on completion of the work and at such time as the Seller receives final payment.

Section 6. Patent Infringement. The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any, equipment, materials, supplies, or installation methods used in the work. The Seller shall, at its own cost (and Purchaser agrees to permit Seller to do so) defend any suits which may be instituted by any, party against the Seller for alleged infringement of patents relating to the Seller's performance hereunder.

Section 7. Compliance with Statutes and Regulations. The Seller shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Seller acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statutes (48 Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287,1001 as amended and the Seller agrees to comply with the provisions of all of such statutes and regulations.

Article V—Remedies

Section 1. Completion on Seller's Default. If default shall be made by the Seller or by any subcontractor in the performance of any of the work hereunder, the Purchaser, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Seller and the surety or sureties upon the Seller's Bond or Bonds, if any, a written notice requiring the Seller to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Seller such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Purchaser and the Administrator, shall be made by the Seller or its surety or sureties, the Purchaser may take over the performance of the Seller's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Seller, and the Seller and its surely or sureties shall be liable to the Purchaser for any cost or expense in excess of the contract price occasioned thereby. In such event, the purchaser may take possession of and utilize, in completing the work, any tools, supplies, equipment, appliances and plant belonging to the Seller which may be situated at the site of the installation work. The Purchaser, in such contingency, may exercise any rights, claims or demands which the Seller may have against third persons in connection herewith and for such purpose the Seller does hereby assign, transfer and set over unto the Purchaser all such rights, claims and demands.

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Purchaser exercise any right or enforce any remedy which the Purchaser may exercise or enforce hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Purchaser or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

Article VI—Miscellaneous

Section 1. Definitions. (a) The contract documents shall consist of the Proposal and Acceptance, the Contractor's Bond and the Specifications.

(b) The term "Completion of Installation" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof, except that it shall not include the final acceptance tests nor performance of the Seller's obligations in respect of (i) releases of liens and Certificate of Seller under Article III, Section 2 hereof, (ii) other final documents. The term "Completion of the Work" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the supervising engineer and approved by the Purchaser or signed by the Purchaser, if the Purchaser shall not employ an Engineer, and approved in writing by the Administrator within a reasonable time after completion shall be conclusive evidence as to the fact of completion and the date thereof.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Equal Opportunity Provisions.

(a) Seller's Representations.

The Seller represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Seller agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Seller agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000 the Seller will file such report, as required by law, and notify the Purchaser in writing of such filing prior to the Purchaser's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Seller will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 21, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Seller's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and the Seller may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Seller certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Seller agrees that (except where it has obtained identical certificates from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 4. Bond. The Seller will furnish to the Purchaser, for a contract in excess of $100,000 a bond in a penal sum not less than the Proposal price and in the form attached hereto and with a Surety or Sureties listed by the United States Treasury Department as acceptable Sureties.

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Section 5. License. The Seller shall comply with all applicable construction codes.

(a) The Seller warrants that he possesses contractor's license number ____ issued to him by the State of ____ in which the work is located, and said license expires on ____, 19____.

(b) The Seller warrants that no license is required in the State in which the work is located.

(Cross out that subsection which does not apply.)

Section 6. Nonassignment of Contract. The Seller will not assign the Contract effected by acceptance of this Proposal, or any part thereof, or enter into any contract with any person, firm or corporation, for the performance of the Seller's obligations hereunder or any part hereof, without the approval in writing of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any; provided, however, the Seller may subcontract the whole or any part of the installation work to be performed at the installation site (as distinguished from furnishing and delivery of equipment and materials). If the Seller, with the consent of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any, shall enter into any subcontract with any subcontractor for the Performance of any part of the installation work to be performed at the installation site, the Seller shall be as fully responsible to the Purchaser and the United States of America for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Seller would be for its own acts and omissions and those of persons directly employed by it.

Section 7. Approval of the Administrator. The acceptance of this Proposal by the Purchaser shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date of the Proposal.

_____ Seller

By _____

_____ Title

Date of Proposal _____

(If executed by one other than President, Vice-President, a partner or the individual owner, a power of attorney authorizing execution should accompany this proposal.)

Acceptance

Subject to the approval of the Administrator, the Purchaser hereby accepts the Proposal of _____ (Dated _____) for the Equipment herein described for the Total Base Price of $_____ and the following options for:

Spare Parts $_____

Maintenance Tools $_____

Test Equipment $_____

Other Options: (Describe) $_____

Total Contract Price $_____

_____ Purchaser

By _____ President

Attest _____ Secretary

Date of Acceptance _____

[End of clause]

§ 1726.342 Distribution line extension construction contract (labor and materials), RUS Form 790.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor and Materials)

Proposal

To: _____ (hereinafter called the "Owner").

Article I—General

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish labor, materials, and equipment for, and construct for the prices hereinafter stated, the rural electric project ____—19____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least ____ dollars ($____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the owner and the Contractor may enter into negotiations for the performance of work at prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner, may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation. The unit labor prices herein set forth are applicable to work performed on unenergized lines. Such unit labor prices shall be increased by ____ (____) percent for all units installed on energized lines in accordance with instructions of the Owner, as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in: RUS Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction; RUS Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction; RUS Form 806, Specifications and Drawings for Underground Electric Distribution; as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials and with the labor conditions which would effect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is ____ is not ____ required, and if required, it possesses Contractor's License No. ____ for the State of ____ in which the Project is located, and said license expires on ____, 19____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis: The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal.

No payment shall be made to the contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Section 9—Materials and Equipment. The Contractor agrees to furnish and use in the construction of the Project under this Proposal, only such materials and equipment as are included on the current "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to construction.

The Contractor further agrees to furnish and use guy wire with ASTM Class ____ (Owner to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using ____ (Owner to insert stranded soft drawn copper or aluminum alloy) conductor. All conductor ties on insulators shall be of the materials and methods shown in the following Type Guide Drawings: ____ (Owner to insert appropriate drawing numbers.)

Ground rods and butt-type grounding plates shall be ____(Owner to insert galvanized steel or copper.)

Underground primary cables shall have ____ coated copper neutral (Owner to insert round or flat.)

The Contractor further agrees to furnish poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with RUS standards and requirements.

Crossarms shall be ____ (Owner to insert Douglas Fir or Southern Yellow Pine), treated with ____ (Owner to insert type of preservative.)

The Contractor agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection or insured warranty. The Contractor further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivery timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 10—Owner-Furnished Materials. a. The Contractor understands and agrees that the Owner may, with approval of the Contractor, furnish to the Contractor some of the materials and equipment required for construction of the Project, (hereinafter called "Owner-Furnished Materials"). The quantity, type, and value of Owner-Furnished Materials for each Section shall be as agreed upon by the Contractor and Owner prior to the start of construction of each Section of the Project. The Owner shall make such materials and equipment available to the Contractor as provided in Article II, Section 1, b, and the Contractor will give to the Owner a receipt in such form as the Owner shall approve.

b. The value of the completed Construction Units certified to by the Contractor each month pursuant to Article III, Section 1, a, of this Proposal shall be reduced by an amount equal to the value of the Owner-Furnished Materials installed by the Contractor during the preceding month. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Section. Owner-Furnished Materials, if any, not required for the Section, shall be returned to the Owner by the Contractor upon Completion of Construction of the Section. The value of all Owner-Furnished Materials not installed in the Section of the Project or returned to the Owner shall be deducted from the final payment to the Contractor for the Section.

Section 11—References to Materials. The references in this Proposal to "Materials", except in Article IV, Section 1.f, shall be understood to mean only materials to be furnished by the Contractor.

Section 12—Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Contractor or the Owner in connection with construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment to be incorporated in the Project as part of such Construction Units. The Contractor agrees to pay all such taxes except on Owner-Furnished Materials and it is understood that, as to Owner-Furnished Materials, the values as agreed to by the Owner and Contractor for such materials include such taxes, if applicable. The Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to materials used on construction of the Project except as to Owner-Furnished Materials.

Article II—Construction

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of the acceptance of the Proposal. The Contractor agrees to commence construction of a Section within ____ (____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list including appropriate Unit prices, of the Owner-Furnished Materials to be used in the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at ____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion: provided, however, that the required completion time for any Section shall not be less than ____ (____) days or ____ (____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any. The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Owner snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible; Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection. a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee

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of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kinds of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Materials and Workmanship. a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Contractor. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Contractor shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Contractor shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Contractor shall deenergize that section of the Project involved in such work. In the event of failure by the Contractor to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Contractor shall pay to the Owner the cost and expense thereof.

Section 5—Materials Removed. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor.

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of one year ____, two years ____ following acceptance of this Proposal by the Owner.

Article III—Payment

Section 1—Payments to Contractor. a. Within the first fifteen (15), days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is ____ dollars ($____). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of 90 percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and all manufacturers, materialmen, and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

Article IV—Particular Undertakings of the Contractor

Section 1—Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II, Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction of the Project, the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor to do so the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employee or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy of policies of insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article II, Section 4.

Section 5—Purchase of Materials. The Contractor shall purchase all materials and supplies outright and not subject to any conditional sales agreement, bailment lease, or other agreement reserving to the selier any right, title, or interest therein. All materials and supplies shall become the property of the Owner when erected in place.

Section 6—Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on Completion of Construction and at such times as the Contractor receives final payment.

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Article V—Remedies

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the tetms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Article VI—Miscellaneous

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Contractor agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions. a. Contractor's Representations.

The Contractor represents that:

It has ___, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964. The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows: (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6—Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossings or any other matter incident to the construction and operation of the Project.

Section 7—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8—Definitions. a. The term "Owner" shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal.

b. The term "Completion of Construction" shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, Section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 1a hereof.

c. The term "Completion" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 9—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 25–6 means a pole 25 feet long, class 6.)

Species of Timber: _____
Kind of Preservative: (Check one)
1. Creosote _____; 2. Pentachlorophenol _____; 3. Copper Naphthenate _____; 4. Waterborne preservative—CCA _____ ACZA _____
Method of Treatment: (Check one)
1. Pressure _____; 2. Thermal process: _____
Pole Plan Under Which the Poles are to be Furnished: (Check one)
1. Insured Warranted _____; 2. Independently Inspected _____; 3. Quality Assured _____; 4. Either Insured
Warranted, Independently Inspected, or Quality Assured _____
(Owner to complete above)

Unit No.	Unit price		
	Labor	Materials	Labor & materials

Section A—Single Phase Pole Top Assembpy Units

Section B—V Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x1/8 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
A			
B			

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x1/8 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
C			

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
D			

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
E			

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
F			

Section G—Transformer Assembly Units

A transformer assembly unit consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the pole top, secondary, service, or grounding assemblies.

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Unit No.	Unit price		
	Labor	Materials	Labor & materials
G			

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
J			

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
K			

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respec tive drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
M			

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed ____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-way, as designated by the Owner, shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.)

The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) ____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than ____ (____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) ____.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
R			

Section S—Substation Assembly Units

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
S			

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner).[1,2] In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[3] The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the ____. (Owner to insert Owner or Contractor.)

Unit No.	Unit price		
	Labor	Materials	Labor & materials
UD			

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place. This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching. For submersible transformers, it includes the cable terminations, the enclosure and cover, drainable material (when specified [4]), and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

[1] ____ Owner check here if primary splices are permitted:

[2] ____ Owner check here if secondary and service splices are permitted.

[3] ____ Owner check here if 12 feet of service conductor is to be left as a coil three feet from the building with ends capped instead of connection to meter box.

[4] ____ Owner check here if drainable material is specified.

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Section UK—Underground Secondary and Service Assembly Units

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
UK			

Section UM—Miscellaneous Underground Assembly Units

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad in place.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
UM			

Section UR—Underground Excavation Assembly Units

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T" This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D)3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measure parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T" This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a two-inch bed of clean and or soil placed in the trench under the cable and a four-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No.	Unit price		
	Labor	Materials	Labor & materials
UR			

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units;
Section I—Removal assembly units;
Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under

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New Construction. Where the descriptions are not correct or sufficiently explicit or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines. The Contractor will so plan and perform its work that it will be possible to satisfy reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

Section H—Conversion Assembly Units

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit or poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner.

Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1- A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pin-type insulator, single upset bolt and neutral spool and furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under Section I and the new conductor installed under Section N.

Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under Section I and the new pole and pole-top assembly will be installed according to Section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit

Unit	Description

Subsection H (B–A)—1 Phase to V Phase

Unit No	Unit price		
	Labor	Materials	Labor & materials
H			

Subsection H (C–A)—1 Phase to 3 Phase

Unit No	Unit price		
	Labor	Materials	Labor & materials
H			

Subsection H (C–B)—V Phase to 3 Phase

Unit No	Unit price		
	Labor	Materials	Labor & materials
H			

Section I—Removal Assembly Units

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner. All materials removed remain the property of the Owner. The provisions for Owner-Furnished materials in the Proposal shall apply if such materials are reused for construction of the Project.

The unit removal prices shall include all materials and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground, thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus I–G Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary Units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused. In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service Unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price
I	

Section N—New Assembly Units

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Unit No.	Unit price		
	Labor	Materials	Labor & materials
N			

Acceptance

The undersigned hereby accepts the foregoing Proposal of _____, dated _____, to construct the rural electric Project _____ 19__ Line Extensions

_____ (Owner)

By _____ (President)

_____ Secretary

_____ Date of Contract

[End of clause]

§ 1726.343 Distribution line extension construction contract (labor only), RUS Form 792.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor Only)

Proposal

To: _____ (hereinafter called the "Owner").

Article I—General

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to construct for the prices hereinafter stated, with materials furnished by the Owner, the rural electric project _____, 19____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least _____ dollars ($_____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the Owner and the Contractor may enter into negotiations for the performance of work at labor prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation. The unit prices herein set forth are applicable to work performed on unenergized lines. Such unit prices shall be increased by _____ (_____) percent for all units installed on energized lines in accordance with instructions of the Owner as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in: RUS Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction; RUS Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction; RUS Form 806, Specifications and Drawings for Underground Electric Distribution; as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials to be furnished by the Owner and with the labor conditions which would affect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is is not ____ required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis: The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal. No payment shall be made to the Contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Article II—Construction

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of acceptance of the Proposal. The Contractor agrees to commence construction of a Section within _____ (_____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list of the materials required for the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at _____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion; provided, however, that the required completion time for any Section shall not be

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less than _____ (_____) days or _____ (_____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any. The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Owner snow, rain, or wind or the results of snow, rain, or frost make it impracticable to perform any operations of construction; provided further that the contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a written request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection. a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of performance of the work, and all equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Workmanship. The acceptance of any workmanship by the Owner shall not preclude the subsequent rejection thereof if such workmanship shall be found to be defective after installation, and any such workmanship found defective before final acceptance of the work or within one (1) year after completion shall be remedied or replaced, as the case may be, by and at the expense of the Contractor. In the event of failure by the Contractor so to do, the Owner may remedy such defective workmanship and in such event the Contractor shall pay to the Owner the cost and expense thereof. The Contractor shall not be entitled to any payment hereunder so long as any defective workmanship, in respect of the Project, of which the Contractor shall have had notice, shall not have been remedied or replaced, as the case may be.

Section 5—Materials. At or prior to the commencement of construction of each Section, the Owner shall make available to the Contractor all materials for such Section which the Owner has on hand, and from time to time as such additional deliveries of materials, if any, are received by the Owner, the Owner shall make such materials available to the Contractor: Provided, however, that the Contractor or his authorized representative will give to the Owner a receipt in such form as the Owner shall approve for all materials furnished by the Owner to the Contractor. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor.

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of 1 year _____, 2 years _____ following acceptance of this Proposal by the Owner.

Article III—Payment

Section 1—Payments to Contractor. a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is _____ dollars ($_____). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the Completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of ninety percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

Article IV—Particular Undertakings of the Contractor

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II, Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction of the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have

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limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies or insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article 11, Section 4.

Article V—Remedies

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands

Article VI—Miscellaneous

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 3—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287,1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 4—Equal Opportunity Provisions.

a. Contractor's Representations.

The Contractor represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100. The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 5—Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossing or any other matter incident to the construction and operation of the Project.

Section 6—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 7—Definitions.

a. The term "Owner" shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal.

b. The term "Completion of Construction" shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, Section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 1a hereof.

c. The term "Completion" shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 8—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of the installation of one pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 25–6 means a pole 25 feet long, class 6.)

Unit No.	Unit labor price

Pole Top Assembly Units

A pole top assembly unit consists of the installation of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors.

Section A—1 Phase

Unit No.	Unit labor price

Section B—V Phase

Unit No.	Unit labor price

Section C—3 Phase

Unit No.	Unit labor price

Section D—Conductor

A conductor assembly unit consists of the installation of 1,000 feet of conductor or cable for primaries, secondaries or services. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stales shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Unit labor price

Section E—Guy Assembly Units

A guy assembly unit consists of the installation of the hardware and wire, and guy insulator where necessary. An overhead guy assembly unit does not include the associated pole and down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit labor price

Section F—Anchor Assembly Units

An anchor assembly unit consists of the installation of an anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit labor price

Section G—Transformer Assembly Units

A transformer assembly unit consists of the installation of the transformer, its protective equipment and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the installation of the pole top, secondary, service, or grounding assemblies.

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Unit No.	Unit labor price

Section J—Secondary Assembly Units

A secondary assembly unit consists of the installation of the hardware, insulators, etc., to support the secondary conductor or cable. It does not include the installation of the secondary conductor or cable, or of any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit labor price

Section K—Service Assembly Units

A service assembly unit consists of the installation of the hardware, insulators, etc. to support the service conductors or cable. It does not include the installation of the service conductor or cable, or of any hardware, insulators etc. required to support secondary conductors or cable.

Unit No.	Unit labor price

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of the installation of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes the installation of grounding assemblies, fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit labor price

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed ____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors.

This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-ways as designated by the Owner shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.)

The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) ____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than ____ (____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe)____.

Unit No.	Unit labor price

Section S—Substation Assembly Units

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit labor price

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of the installation of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the labor for the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and the labor for making all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner [1,2].) In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed includes all installation of cable in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes [3]. The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the ____ (Owner to insert Owner or Contractor).

Unit No.	Unit labor price

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the installation of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and its hardware and leads with their connectors and supporting insulators. This unit also includes the installation of primary cable terminations but not of lightning arresters, fault indicators or ground rods, nor does it include any trenching. For pad-mount transformers, it does not include installation of the pad, drainable material, backfilling, compaction, or site preparation which are included in the pad assembly units. For submersible transformers it includes the installation of cable terminations, of the enclosure and cover, of drainable material (when specified [4]) and the excavation.

Unit No.	Unit labor price

Section UK—Underground Secondary and Service Assembly Units

An underground secondary and service assembly unit consists of the installation of the secondary or service cable terminal housing. It includes the installation of the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the installation of the cable terminations, ground rod, or pad, when required.

[1] ____ Owner check here if primary splices are permitted.

[2] ____ Owner check here if secondary and service splices are permitted.

[3] ____ Owner check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box.

[4] ____ Owner check here if drainable material is specified.

terminations, ground rod, or pad, when required.

Unit No	Unit labor price

Section UM—Miscellaneous Underground Assembly Units

A miscellaneous underground assembly unit consists of the installation of an additional unit needed in the Project for new construction, but not otherwise listed in the Proposal. This section includes the installation of the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include the installation of a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the installation of the stress cone, and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the installation of the bedding, drainable material (when specified), cable slot, and site preparation, backfilling and tamping.

Unit No.	Unit labor price

Section UR—Underground Excavation Assembly Units

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D) 3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of the installation of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of the installation of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. The installation of underground cable in the pipe is not included in this unit.

UR6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. The installation of underground cable in the pipe is not included in this unit.

Unit No.	Unit labor price

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units
Section I—Removal assembly units.
Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New Construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines.

The Contractor will so plan and perform its work that it will be possible to safely reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

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Section H—Conversion Assembly Units

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner. Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pin-type insulator, single upset bolt and neutral spool and installs the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator supplied by the Owner required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under Section I and the new conductor installed under Section N.

Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under Section I and the new pole and pole-top assembly will be installed according to Section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit

Unit	Description

Subsection H (B–A)—1 Phase to V Phase

Unit No.	Unit labor price

Subsection H (C–A)—1 Phase to 3 Phase

Unit No.	Unit labor price

Subsection H (C–B)—V Phase to 3 Phase

Unit No.	Unit labor price

Section I—Removal Assembly Units

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner.

The unit removal prices shall include all labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the Specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground, thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus, I–G Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary Units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the Specifications.

h. Service Unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No	Unit labor price

Section N—New Assembly Units

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price

Acceptance

The undersigned hereby accepts the foregoing Proposal of ____, dated ____, to construct the rural electric Project ___ 19 Line Extensions.

(Owner)

By ____ President
Secretary
Date of Contract

[End of clause]

§ 1726.344 [Reserved]

§ 1726.345 Certificate of contractor and indemnity agreement (line extensions), RUS Form 792b.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor and Indemnity Agreement (Line Extensions)

_, certifies that he is the ____ (title or designation), of ____ (name of contractor), the Contractor, in a contract dated ____ 19___ entered into between the Contractor and ___ (name of RUS Borrower) ____, the Owner, for the construction of a rural electric Project (hereinafter referred to as Project), which bears the Project Designation ____ 19___ Line Extensions, and that he is authorized to and does make this Certificate and Indemnity Agreement on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of the said contract.

Undersigned further says that all persons who have furnished labor in connection with the Section of the Project represented by the Final Inventory dated ____, in the amount of $ ___, have been paid in full; that all manufacturers, materialmen and subcontractors which furnished any materials or services, or both, for the said Section of the Project have been paid in full; that no lien has been filed against the Project and no person has any right to claim any lien against the Project.

Undersigned further says that if the Owner pays the Contractor the contract price for the said Section of the Project the Contractor will indemnify and hold harmless and does hereby undertake and agree to indemnity and hold harmless the Owner from any claim or lien arising out of the negligence or other fault of the Contractor in respect of the performance of the contract which may have been or may be filed against the Owner.

___ Signature of Contractor (President, Vice-President, Partner or Owner, or, if signed by other than one of foregoing, Power of Attorney signed by one of the foregoing should be attached. Indicate applicable designation.)

[End of clause]

§ 1726.346 Supplemental contract for additional project, RUS Form 792c.

The form in this section shall be used when required by RUS Form 201, 790, or 792.

Supplemental Contract For Additional Project

Date ___
To: ___ Contractor

Pursuant to Article I, Section 2 of the Contractor's Proposal dated ____, for the rural electric Project ____, we request that you construct Additional Project No. ____, consisting of approximately the following system improvement and line extension work: ____.

The Additional Project is to be constructed in accordance with all of the provisions of the Contractor's Proposal, except:

1. The time for completion of the Additional Project shall be ____

2. The prices for Construction Units for the Additional Project are attached.

Please indicate your acceptance of the foregoing by signing below, return two signed copies and retain one copy.

Sincerely,

___ Owner

By ____ President, Vice President (strike out inapplicable designation.)

Acceptance:

___ Contractor

By ____ President, Vice President, Partner (strike out inapplicable designation.)

Date ____

[End of clause]

§§ 1726.347–1726.350 [Reserved]

§ 1726.351 Electric system construction contract (labor and materials), RUS Form 830.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric System Construction Contract (Labor and Materials)

Notice And Instructions To Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of ____ (hereinafter called the "Owner") to be known as ____ Project will be received by the Owner on or before ____ o'clock ____ M., ____, 19____, at its office at ____ at which time and place the proposals will be publicly opened and read. Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Overhead Distribution Line Construction

___ miles of ____ kV Single Phase Lines
___ miles of ___ kV V-Phase Lines
___ miles of ____ kV Three-Phase Lines
___ miles of secondary on secondary poles
___ miles of services for ____ consumers

Underground Distribution Facilities

___ miles of ___ kV Single-Phase Construction
___ miles of ___ kV V-Phase Construction
___ miles of ___ kV Three-Phase Construction
___ miles of ___ Volt Secondary and Service

Construction for ____ Consumers.

Distribution Line Changes, Conversion, and Removal

___ miles of ____

Transmission Line Construction

___ miles ___ kV; ___ miles ___ kV
___ miles ___ kV underbuild

Substations and Other Major Facilities

___ kVA ___ Voltage ___ Name

This Project is located in ____ Counties, in the State(s) of ____ all as more fully described in the Plans, Specifications, Construction Drawings, and Contractor's Proposal therefore hereinafter referred to.

3. Work on Energized Lines. Unless stated below all construction work including attachments to existing poles and line changes, is to be done with the line deenergized. The hours during which existing lines will be deenergized are shown in the Contractor's Proposal. Approximately ____ miles of the line changes are to be made with the lines energized and such lines are in the following locations or areas: ____ and are more fully described in the Plans, Specifications, and Contractor's Proposal. For work in these locations the Bidder must provide personnel capable of working on energized lines. All such work shall be performed to meet at least the safety rules and regulations prescribed by the Owner for its own employees including the use of rubber gloves, hot sticks and associated protective equipment, a copy of which rules and regulations may be examined at the office of the Owner.

4. Owner-Furnished Materials. The unit prices in the Contractor's Proposal should include provisions for Owner-Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner-Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

5. Obtaining Documents. The Plans, Specifications and Construction Drawings, together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer ____ at the latter's office at ____ upon the payment of $____, which payment will not be subject to refund. The Plans, Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Utilities Service and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each

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set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

6. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

7. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back Statute" (48 State. 948) and regulations issued pursuant thereto.

8. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

9. Alternate Designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

10. Proposals for Distribution and Transmission Facilities. If the Project includes both distribution and transmission facilities, bidders shall bid on both of the facilities and the Owner will evaluate the Proposals on the basis of low total bid for both facilities.

11. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

12. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

13. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

14. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

15. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

16. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

17. Balanced Bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

18. Discrepancy in Unit Prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials," and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

19. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor "Project," "Completion of Construction," and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

20. The Owner Represents: a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Where underground distribution construction is required, permission has been obtained from state and local highway and road authorities to install underground distribution power facilities and set pedestals, if any, on the highway and road right-of-way in the Project area. Notwithstanding such permission granted to the Owner, each Bidder is responsible for ascertaining that the equipment, methods of construction, and repair proposed to be used on the Project will meet all requirements of public authorities having jurisdiction over highway and road right-of-way. The successful Bidder will be required to furnish proof satisfactory to the Owner of compliance with this requirement. If required by highway or road authorities, the successful Bidder will furnish to such authorities a bond or meet other guaranty requirements to assure the prompt repair of all damages to highways and roads and their associated rights-of-way caused by the Bidder during construction of the Project. This requirement is in addition to and independent of the Contractor's Bond required under this Contract. The acceptance of a bid from any Bidder is not to be construed as approval of the Bidder's equipment or proposed construction methods by or on behalf of the highway and road authorities. Bidders may obtain information concerning the requirements of highway and road authorities by communicating with the following ____.

e. All funds necessary for prompt payment for the construction of the Project will be

available. If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

Owner ____
By ____
19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: ____ (hereinafter called the "Owner")

Article I—General

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project ____ in strict accordance with the Plans, Specifications and Construction Drawings for the prices hereinafter stated.

The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors, plus the length of service drops, if any, measured horizontally from center of last pole to the point of attachment to the consumer's building.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such "fully listed" and "conditionally listed" materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening. The use of "conditionally listed" materials and equipment requires prior consent by the Owner or Engineer. For distribution lines, the Bidder further agrees to furnish and use guy wire with ASTM Class ____ (Engineer to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using ____ (Engineer to insert standard soft drawn copper or aluminum alloy) conductor. All conductor ties on insulators shall be of the materials and methods shown in the following Tying Guide Drawings: ____ (Engineer to insert appropriate drawing numbers).

Ground rods and butt-type pole grounding plates shall be ____ (Engineer to insert galvanized steel or copper).

Underground primary cable shall have ____ coated copper neutral (Engineer to insert round or flat).

For transmission lines, the Bidder further agrees to furnish and use guy wire, overhead ground wire, and pole ground wire with ASTM Class ____ (Engineer to insert A, B, or C) zinc coating. Guy wire shall be the same size and grade as the overhead ground wire. Where overhead ground wire is not specified, the guy wire shall be ____ size, ____ grade.

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with RUS standards and requirements.

Crossarms shall be ____ (Engineer to insert Douglas fir or Southern Yellow Pine), treated with ____ (Engineer to insert type of preservative.)

The Bidder agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection, insured warranty, or quality assurance. The Bidder further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivered timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ____) and the Bidder will give a receipt (see page ____) therefore in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the List and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of the Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work. Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished By Owner. The Bidder will purchase all materials and equipment (other than Owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The Notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in:

RUS Bulletin 50–3, Specifications and Drawings for 12.5/7.2 kV Line Construction;

RUS Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

RUS Form 806, Specifications and Drawings for Underground Electric Distribution;

RUS Bulletin 50–2, RUS Specifications T–805A, Electric Transmission Specifications and Drawings, 34.5 kV through 69 kV;

RUS Bulletin 50–1, RUS Specification T–805B, Electric Transmission Specifications and Drawings for 115 kV through 230 kV; as applicable, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows: ____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of

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the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws, and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is ____ is not ___ required, and if required it posses Contractor's License No. ____ for the State of ____ in which the Project is located and said license expires on ____, 19____.

Section 9. Warranty of Good Faith. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. Warranty of Financial Resources. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Department of Treasury as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the Owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than fifteen percent (15%) and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such fifteen percent (15%) shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item [1]	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total: Above Materials are Located at:					

Notes: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item [1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total: Above Material to be Delivered to:							

Notes: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

Article II—Construction

Section 1. Time and Manner of Construction.

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost on the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Bidder will not be required to perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefore to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner

c. The sequence of construction shall be as set forth below, the number or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer may from time to time during the progress of the construction of the Project make such changes, additions or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder, but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, consideration of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Tools, Equipment, and Qualified Personnel. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously erected in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon by the Bidder and the Owner, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications. Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved; and multiplying the cost of materials for the unit in question by this ratio: Provided, however, that in respect of sections H, M, and N, the ratio shall be calculated for only those units of the section which are similar to the new unit for which a price is to be determined.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and acceptance by the Owner and the Administrator and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except Owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

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b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except Owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

Article III—Payments and Release of Liens

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner. Upon the approval by the Owner and the Administrator of a Certificate of Completion—Contract Construction, RUS Form 187, showing the total cost of the construction performed, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance plus the costs of any additional change orders, unless such excess shall have been approved in writing by the Owner.

c. Notwithstanding the provisions of Section 1.a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of such Section as certified by the Engineer and approved by the Owner;

(2) submission to the Owner of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner of the inventory in respect of such Section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project. If no Sections are designated in Article II, Section 1c, the term "Section" shall mean for purposes of this subsection c and Article IV, Section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of ____ percent [1] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment or interest on all unpaid balances shall be the fifteenth (15) day of each calendar month provided (1) the Bidder on or before the fifth (5) day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth (15) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth (15) day of such month, the due date for purposes of this subsection d shall be the fifteenth (15) day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent [2] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment or interest on all unpaid balances shall be the date of approval by the Owner of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See RUS Form 224, Waiver and Release of Lien and RUS Form 231, Certificate of Contractor). Upon the completion by the Bidder of the construction of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, material suppliers, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner.

Section 3. Payments to Material Suppliers and Subcontractors. The Bidder shall pay each material supplier, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each material supplier or each subcontractor.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending ____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless materials shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

k. The Bidder will furnish, prior to the commencement of underground distribution construction, proof, satisfactory to the Owner, of compliance with requirements of highway and road authorities having jurisdiction, including without limitation, the furnishing of a bond or other guaranty, and approval by such authorities of the equipment and methods of construction and repair to be used by the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

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and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment

Article V—Remedies

Section 1. Completion on Bidder's Default If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term "Engineer" shall mean the Engineer employed by the Owner, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term "Supervisor" shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term "Project" shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings.

e. The term "Completion of Construction" shall mean full performance by the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five percent (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Distribution Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 35–5 means a pole 35 feet long, class 5.)

Species of Timber: _____

UMI

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Kind of Preservative: (Check one)
1. Creosote ___; 2. Pentachlorophenol ___; 3. Copper Naphthenate ___; 4. Waterborne preservative—CCA ___ ACZA ___
Method of Treatment: (Check one)
1. Pressure ___; 2. Thermal Process ___

Pole Plan Under Which the Poles are to be Furnished: (Check one)
1. Insured Warranted ___; 2. Independently Inspected ___; 3. Quality Assured ___; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ___
(Engineer to complete above)

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 1—_____

Section A—Single Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section A—_____

Section B—V Phase Pole Top Assembly Units

A pole top assembly units consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section B—_____

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section C—_____

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary.

Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Engineer. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Bidder for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section D—_____

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy markers are designated separately.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
E					

Total, Section E—_____

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
F					

Total, Section F—_____

Section G—Transformer Assembly Units

A transformer assembly units consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. this units does not include the pole top, secondary, service, or grounding assemblies.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section G—_____

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc. required to support service conductors or cable.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
J					

Total, Section J—_____

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
K					

Total, Section K—_____

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respective drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

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Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
M					

Total, Section M—_____

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The segmental length of actual clearing shall be measured in a straight line parallel to the transmission centerline using the maximum dimension of foliage cleared and projected to the ground line. All trees and underbrush across this width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Bidder, of danger trees outside of the right-of-way when so designated by the Engineer. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that the width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that the width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by one of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than ____ (____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
R					

Total, Section R—_____

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner[3, 4].) In computing the compensation to the Bidder for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[5] The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Bidder and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____. (Engineer to insert Owner or Bidder).

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UD					

Total, Section UD_____

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place.

[3] ____ Engineer check here if primary splices are permitted.

[4] ____ Engineer check here if secondary and service splices are permitted.

[5] ____ Engineer check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box.

This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching. For submersible transformers, it includes the cable terminations, the enclosure and cover, drainable material (when specified[6]), and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UG					

Total, Section UG—_____

Section UK—Underground Secondary and Service Assembly Units

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UK					

Total, Section UK _____

Section UM—Miscellaneous Underground Assembly Units

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad in place.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UM					

Total, Section UM—_____

Section UR—Underground Excavation Assembly Units

UR 1–S(d) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR 1–S(D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications, the Owner may specify UR 2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. Example: UR1–S(D) 3c for 3 cables plowed at one time.

UR 2–S(D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, under-ground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR 2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR 2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width(W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of

[6] ____ Engineer check here if drainable material is specified.

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streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–5( ) Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UR					

Total, Section UR—_____

Distribution Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portion thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portion thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units.
Section I—Removal assembly units;
Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Section H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Engineer in the respective sections.

Work included in these section shall be performed under the schedule as set forth below: _____

SCHEDULE OF DEENERGIZATION OF EXISTING DISTRIBUTION LINES UNDER WHICH WORK UNDER SECTIONS H, I, AND N SHALL BE PERFORMED

Line section (To be designated by point to point description on detail map)	Hours and days of week when lines will be deenergized to permit line changes

The Bidder will so plan and perform its work on the above lines that it will be possible for the Owner to safely reenergize all lines involved at the expiration of the time limits set up in the above schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, the Bidder will notify the Owner in writing thereof, designating the lines to be deenergized and upon receipt of such notice the Owner will deenergize such lines. Upon completion of work each day on such deenergized lines, the Bidder will notify the Owner thereof in writing or in such other manner as the circumstances permit designating the lines to be reenergized and stating that such lines may be safely reenergized and upon receipt of such notice the Owner will reenergize such lines.

Section H—Conversion Assembly Units

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. The unit prices for materials should include only additional material that is required to complete the new unit, less suitable allowance for material removed. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit become the property of the Bidder and may, with the permission of the Engineer, be reused by the Bidder in the construction of other assembly units called for in the Construction Contract. Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, a H B1-A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Bidder utilizes the existing pin-type insulator, single upset bolt and neutral spool in the construction of the new assembly unit. The Bidder furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Bidder takes possession of the pole-top pin and two machine bolts and with the permission of the Engineer may reuse these elsewhere in the construction of the Project. The Bidder will not be held accountable to the Owner for the materials he so acquires.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under Section I and the new conductor installed under Section N.

Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under Section I and the new pole and pole-top assembly will be installed according to Section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those units not sufficiently explicit.

Unit	Description
H	

Section H—Conversion Assembly Units

Subsection H (B–A) 1 Phase to V Phase

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Section H (B–A)—_____

Section H—Conversion Assembly Units

Subsection H (C–A) 1 Phase to 3 Phase

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C–A)—_____

Section H—Conversion Assembly Units

Subsection H (C–B) V Phase to 3 Phase

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C-B)—_____
Total, Subsection H (B-A)—_____
Total, Subsection H (C-A)—_____
Total, Section H—_____

Section I—Removal Assembly Units

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as approved by the Engineer.

The Bidder will be charged by the Owner for the full value of all materials removed under this section at the value shown in Table C. Such charges will be placed against the Bidder as units are removed and the value will be deducted from the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

Of the materials listed in Table C to be removed from existing lines, certain materials will be reused in the construction of the Project. Such materials to be reused are listed in Table C–1. Materials other than those listed in Table C–1 shall, if not damaged in handling, be returned to the Owner for full credit at the values shown in Table D. The Bidder will be allowed full credit for all material items, other than those listed in Table C–1, returned to the Owner which, in the opinion of the Engineer, were not damaged by the Bidder in removal and handling even though the materials may not be reusable for reasons of obsolescence or deterioration. Such credits shall be allowed the Bidder as materials are returned to the Owner's warehouse and shall be added to the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

The unit removal prices shall include all material and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Bidder will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I-A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units: _____.

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Bidder is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-Top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and reinstalling of such conductor in accordance with the specifications; for example, an I-A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Bidder or the Owner. The Owner will furnish to the Bidder reels if it is to be returned to the Owner's warehouse on reels. The Bidder will retain possession of all jumpers, tie wire, armor rods, connectors, and other conductor accessories removed. These items will not be returned to the Owner. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I-D–6ACWC signifies the removal unit for 1,000 feet of 6A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I-E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Bidder in anchor removal units. The anchor will be left in the ground; thus an I-F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-Protected Transformer

Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 25 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus IG Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 25 kVA.

g. Secondary Units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service Unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	No. of units	Labor	
		Unit price	Extended price

Total, Section I—_____

TABLE C.—UNIT MATERIAL VALUES OF I UNITS CHARGEABLE TO BIDDER

Unit No.	No. of units	Unit material value [1]	Extended value

Notes: 1. Unit values are based on item values from Table D.

TABLE C–1—MATERIAL ITEMS TO BE REUSED

RUS item letter designation [1]	Description of material item	No. of items

Notes: 1. See "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers"

TABLE D. VALUES OF MATERIAL ITEMS CREDITABLE TO BIDDER

RUS item letter designation [1]	Description of material item	Item value

Notes: 1. See "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers".

Section N—New Assembly Units

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Distribution Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Section N—New Assembly Units

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
N					

Total, Section N—_____

Proposal Summary

Recapitulation of Sections

New Construction

Overhead

Section—1 _____ $_____
Section—A _____ _____
Section—B _____ _____
Section—C _____ _____
Section—D _____ _____
Section—E _____ _____
Section—F _____ _____
Section—G _____ _____
Section—J _____ _____
Section—K _____ _____
Section—M _____ _____
Section—R _____ _____
Total Overhead _____

Underground

Section—UD _____ $_____
Section—UG _____ _____
Section—UK _____ _____
Section—UM _____ _____
Section—UR _____ _____
Total Underground _____
Total New Construction $_____

Line Changes

Section—H _____ $_____
Section—I _____ _____
Section—N _____ _____
Total Line Changes $_____
Total Distribution Line Construction $_____

Transmission Construction Units

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 60–3 means a pole 60 feet long, class 3.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ___; 2. Pentachlorophenol ___; 3. Copper Naphthenate ___; 4. Waterborne preservative—CCA ___ ACZA ___

Method of Treatment: (Check one)

1. Pressure _____; 2. Thermal Process _____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ___; 2. Independently Inspected ___; 3. Quality Assured ___; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ___

(Engineer to complete above)

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
Total, Section 1—					

Section 2—Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
TH					
TP					
TS					
TSS					
TSZ					
Total, Section 2—					

Section 3—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
Total, Section 3—					

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:

Diameter Bull Wheel _____ in.
Diameter Groove _____ in.
Conductor Bending Radius _____ In.
Thickness of Neoprene at Bottom of Groove _____ in.
Stringing Sheave Diameter; Tangent _____ in., Large Angle _____ in.

Section 4—Guy Assembly Units (TG Units)

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
TG–1					
TG–2					
TG–3					
TG–4					
TG–5					
Total, Section 4—					

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire.

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Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
TA–1–5 TA–1–8 TA–3 Total, Section 5—					

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
TM Total, Section 6—					

Section 7—Right-of-Way Clearing Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors. (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line. (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of 1,000-foot TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures). (See Detail D, Drawing TM–12–2A.) TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit, or ornamental trees unless otherwise directed by the Engineer in writing. (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of the length of clearing off the right-of-way shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line. (See Details E, F, G, and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000, shall give the number of TM–13 units. (Example: Details E, F, G, and H, Drawing TM–12–2A, total .1 of a TM–13 unit.)

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way centerline) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet in width (to be measured _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of-way centerline) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements (When specifying TM units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	No. of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor and materials	
Total, Section 6—					

Proposal Summary

Recapitulation of Sections:

Section—1 _____ $_____
Section—2 _____ _____
Section—3 _____ _____
Section—4 _____ _____
Section—5 _____ _____
Section—6 _____ _____
Section—7 _____ _____
Total Transmission Line Construction _____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found on the lists of Owner-furnished materials. All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A.

Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications. The tabulation of Construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-Pole Group Operated Air Break Switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning Arresters. A Construction Unit consists of one single arrester.

Group D. Single Pole Disconnecting Switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil Circuit Reclosers. A Construction Unit consists of a complete single-phase or three phase oil circuit recloser as specified in the drawings.

Group G. Meters, Relays and Instrument Transformers. A Construction Unit consists of one meter, relay potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage Regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and Supervisory Control Equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and Cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site Preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station Grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ Station Construction Units

Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Proposal Summary

___ Substation $_____
_____ Substation _____
_____ Substation _____
_____ Switching Station _____
_____ Switching Station _____
Total Station Construction $_____

Proposed Recapitulation

Distribution line construction $_____
Transmission line construction _____
Substation and Switching Station Construction _____
Total $_____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

Distribution Construction Units: Sections: _____

Transmission Construction Units: Sections: _____

Substation and Switching Station Construction: Stations (name): _____

_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

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[End of clause]

§ 1726.352 Electric transmission construction contract (labor and materials), RUS Form 831.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric Transmission Construction Contract (Labor and Materials)

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project will be received by the Owner on or before _____ o'clock _____ M., _____, 19_____ at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Transmission Line Construction

_____ miles _____ kV; _____ miles _____ kV

_____ miles _____ kV underbuild

Substations and Other Major Facilities

_____ kVA _____ Voltage _____

Name

The Project is located in _____ Counties, in the State of _____ all as more fully described in the Plans, Specifications, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner Furnished Materials. The unit prices in the Contractor's Proposal shall include provisions for Owner Furnished Materials since as stated in Article 1, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining Documents. The Plans, Specifications and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer, _____ at the latter's office at _____ upon the payment of $_____, which payment will not be subject to refund. The Plans, Specifications and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Utilities Service (hereinafter called the Administrator) and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

5. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate Designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

9. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) To enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Balanced Bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in Unit Prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

18. The Owner Represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Prompt payment for the construction of the Project will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time and completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a hereof.

_____ Owner

By _____

_____, 19___

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

Article I—General

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications and Construction Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated. The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of RUS Electrification Borrowers," including revisions adopted prior to the Bid Opening.

The Bidder further agrees to furnish:

	Type	Size	Galvanizing class
Overhead ground wire			
Guy wire			
Structure ground wire			

(Engineer to insert Type, Size and Galvanizing Class as appropriate)

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with RUS standards and requirements.

Crossarms shall be _____ (Engineer to insert Douglas Fir or Southern Yellow Pine), treated with _____

(Engineer to insert type of preservative.)

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ____) and the Bidder will give a receipt (see page ____) therefor in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1(a) of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists, Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnished, and the Bidder accepts, materials in excess therefor, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work.

Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The Notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in the Electric Transmission Specifications & Drawings, RUS Form 805, as applicable, together with the Proposal and Acceptance constitute the Contract. The plans, consisting of maps and special drawings, are identified as follows:

_____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted

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with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is ___ is not ___ required, and if required it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19___.

Section 9. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the Inventory. If the Owner changes the quantity of any Assembly Unit or Assembly Units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

Section 13. Description of Contract. The Notice and Instructions to Bidders, Plans, Specifications for Construction and Construction Drawings, all attached hereto and made a part hereof together with the Proposal and Acceptance constitute the contract. The Plans and Construction Drawings are identified as follows: _____

LIST OF OWNER'S MATERIALS ON HAND

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total Above materials are located at:					

Notes: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item[2]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price
Total Above material to be delivered to:							

Notes: 2. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

Article II—Construction

Section 1. Time and Manner of Construction

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than ___ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within ___ (___) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles or install anchors if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: *Provided, however*, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no

Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer and with the approval of the Administrator,[1] may from time to time during the progress of the construction of the Project make such changes in, additions to or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously installed in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner and approved by the Administrator[3] prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RUS Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

[3] See Footnote 1.

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shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

Article III—Payments and Release of Liens

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Assembly Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the Maximum Contract Price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of Assembly Units and, after checking such Inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator[4].

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of construction of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner and the Administrator of the inventory in respect of such Section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

If no Sections are designated in Article II, Section ic, the term "Section" shall mean for purposes of this subsection c and Article IV, Section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of ____ percent[5] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent[6] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample RUS Form 224, Waiver and Release of Lien and sample RUS Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

Article IV—Particular Undertakings of the Bidder

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements.

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

[4] See Footnote 1

[5] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[6] See Footnote 5.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending ____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million for each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or polices of insurance, primary and excess including umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million for each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The Owner shall be named as Additional Insured on all policies of insurance required in subsections "b" and "c" of this Section.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

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b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion, or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Article V—Remedies

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of ____ dollars (____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

Article VI—Miscellaneous

Section 1. Definitions.

a. The term "Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term "Engineer" shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term "Supervisor" shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term "Project" shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings and maps attached hereto.

e. The term "Completion of Construction" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator No acceptance of this Proposal shall become effective until approval in writing of the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Transmission Construction Units

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A

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(Example: 45–3 means a pole 45 feet long, class 3.)
Species of Timber: _____
Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)
1. Pressure ____; 2. Thermal process: ____

Pole Plan Under Which the Poles are to be Furnished: (Check one)
1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 1— _____

Section 2—Pole-Top Assembly Units

A pole-top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TH					
TP					
TS					
TSS					
TSZ					
TUS–1					
TUS–2					

Total, Section 2— _____

Section 3—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

____ Tension Stringing (Engineer check when required.)

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 3— _____

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:
Diameter Bull Wheel _____ in.
Diameter Groove _____ in.
Conductor Bending Radius _____ in.
Thickness of Neoprene at Bottom of Groove _____ in.
Stringing Sheave Diameter: Tangent _____ in., Large Angle _____ in.

Section 4—Guy Assembly Units

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TG–1					
TG–2					
TG–3					
TG–4					
TG–5					

Total, Section 4— _____

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire.

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TA–1–5					
TA–1–8					
TA–3					

Total, Section 5— _____

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TM					

Total, Section 6— _____

Section 7—Right-of-Way Clearing Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line, parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming. TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and _____ feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way, to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct Engineer to strike out methods not to be used)
   1. Burned
   2. Piled on one side of right-of-way
   3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
   4. Other (Describe)_____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

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1 Burned
2 Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)_____

Transmission Right-of-Way Unit

Unit No.	No. of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total Section 7—_____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found in the lists of owner-furnished materials. All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A.

Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications. The tabulation of construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-Pole Group Operated Air Break Switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning Arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single Pole Disconnecting Switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil Circuit Reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, Relays and Instrument Transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage Regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and Supervisory Control Equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and Cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site Preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station Grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ Station Construction Units
Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices _____
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Proposal Summary

Recapitulation of Sections:

Section—1 _____ $ _____
Section—2 _____ $ _____
Section—3 _____ $ _____
Section—4 _____ $ _____
Section—5 _____ $ _____
Section—6 _____ $ _____
Section—7 _____ $ _____
Section—8 _____ $ _____
Total _____ $ _____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

Transmission Construction Units: Sections:
_____

The total contract price is $ _____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§§ 1726.353–1726.399 [Reserved]

Subpart J—Contract Closeout

§ 1726.400 Final contract amendment.

As needed, a final contract amendment will be prepared and processed in accordance with § 1726.24(b) prior to or in conjunction with the closeout of the contract.

§ 1726.401 Material contract closeout.

This section is applicable to contracts executed on RUS Form 173.

(a) *Delivery inspection.* The borrower (acting through its engineer, if applicable) will verify that all materials are delivered in proper quantities, in good condition, and in compliance with applicable specifications.

(b) *Closeout documents.* The borrower (acting through its engineer, if applicable) will obtain from the supplier a "Buy American" certificate, RUS Form 213, any manufacturer's guarantee(s) and, if applicable, a copy of RUS Form 224, Waiver and Release of Lien. Closeout documents for materials contracts need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower shall make final payment to the supplier in accordance with the provisions of the material contract or written purchase order.

§ 1726.402 Equipment contract closeout.

This section is applicable to contracts executed on RUS Form 198.

(a) *Final inspection and testing of equipment.* The borrower (acting through its engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, engineer, and the supplier or manufacturer. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from the engineer, and submit a copy to the supplier or manufacturer. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Closeout documents.* (1) The borrower (acting through its engineer, if applicable) will obtain the following executed documents:

(i) Certification by the project engineer in accordance with paragraph (a) of this section.

(ii) All guarantees or warranties.

(iii) A "Buy American" certificate, RUS Form 213, from the supplier or manufacturer.

(2) Closeout documents for materials contracts need not be submitted to RUS unless specifically requested by RUS.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower will make final payment to the supplier or manufacturer in accordance with the provisions of the equipment contract.

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on RUS Forms 200, 203, 257, 764, 786, 830, and 831.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower (acting through its architect or engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its architect or engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, architect or engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its architect or engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from its architect or engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from its architect or engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by its architect or engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify the architect or engineer when construction is complete. The borrower (acting through the architect or engineer, if applicable) will schedule such final inspection at a time mutually agreeable to the borrower, architect or engineer, contractor, and the respective RUS General Field Representative (GFR), if the GFR has notified the borrower or its architect or engineer of a desire to observe the final inspection. The borrower (acting through its architect or engineer, if applicable) will perform a final inspection of the construction and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower (acting through its architect or engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on RUS Form 257), or RUS Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(ii) RUS Form 213, "Buy American" certificate.

(iii) RUS Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) RUS Form 231, Certificate of Contractor.

(v) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c, construction change orders, and amendments for contracts executed on RUS Forms 203, 764, 830 or 831.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts subject to RUS approval, the borrower will submit the following closeout documents for RUS approval (through the GFR except for generation projects):

(A) RUS Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on RUS Form 257), or RUS Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(B) RUS Form 231, Certificate of Contractor.

(C) RUS Form 254, Construction Inventory, including all supporting documents, such as RUS Forms 254a-c and construction change orders, for

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contracts executed on RUS Forms 203, 764, or 831.

(iii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval. The borrower will send one copy of RUS Form 181 or RUS Form 187 (as applicable) to RUS for information prior to or in conjunction with the applicable RUS Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to RUS unless specifically requested by RUS.

(d) *Final payment.* (1) The borrower will make final payment to the contractor upon completion of approval of all closeout documents by the parties to the contract, in accordance with the terms of the construction contract.

(2)(i) Upon receipt of final payment by the contractor, the borrower will obtain from the contractor a certification of receipt of final payment in the following form:

"The undersigned acknowledges receipt of the final contract payment of $____ as satisfaction in full of all claims of the undersigned under the construction contract between the undersigned and ____ (borrower), dated as amended, and as complete performance by the latter of all obligations to be performed by it pursuant thereto. The total amount received under this contract is shown above."

(ii) The certification in paragraph (d)(2)(i) of this section is to be executed for the contractor by: the sole owner, a partner, or an officer of the corporation. Where this certification is executed for the corporation by a person other than the president, a certified copy of the authorization from the corporate board must be included with the certification. This certification is not a replacement for itemized invoices.

§ 1726.404 Non-site specific construction contract closeout.

This section is applicable to contracts executed on RUS Forms 201, 790, and 792.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower (acting through its engineer, if applicable) will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower (acting through its engineer, if applicable) will schedule such inspection and testing at a time mutually agreeable to the borrower, its engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower (acting through its engineer, if applicable) will prepare a report of the inspection and testing, obtain a copy of the report from its engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify its engineer when construction of a section of the project is complete. The borrower (acting through its engineer, if applicable) will schedule such final inspection at a time mutually agreeable to the borrower, its engineer, contractor, and the respective GFR, if the GFR has notified the borrower or its engineer of a desire to observe the final inspection. The borrower (acting through its engineer, if applicable) will perform a final inspection of the construction of that section of the project and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction of a section of the project (including all changes and corrections by the contractor), the borrower (acting through its engineer, if applicable) will obtain executed copies of the following documents:

(i) RUS Form 792b, Certificate of Contractor and Indemnity Agreement

(ii) RUS Form 213, "Buy American" certificate.

(iii) Certification by the project engineer in accordance with paragraph (a) of this section, if applicable.

(iv) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable RUS requirements regarding retention of records.

(ii) For contracts not subject to RUS approval, the closeout is not subject to RUS approval and the closeout documents need not be sent to RUS unless specifically requested by RUS.

§ 1726.405 Inventory of work orders (RUS Form 219).

Upon completion of the contract closeout, the borrower shall complete RUS Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

Dated: February 1, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–2843 Filed 2–22–95; 8:45 am]

BILLING CODE 3410–15–P

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Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1995.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of February 1, 1995, of seven deferrals contained in two special messages for FY 1995. These messages were transmitted to Congress on October 18, and December 13, 1994.

Rescissions

As of February 1, 1995, no rescission proposals were pending before the Congress.

Deferrals (Table A and Attachment A)

As of February 1, 1995, $2,707.0 million in budget authority was being deferred from obligation. Attachment A shows the status of each deferral reported during FY 1995.

Information from Special Messages

The special messages containing information on the deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

59 FR 54066, Thursday, October 27, 1994

59 FR 67108, Wednesday, December 29 1994

Alice M. Rivlin,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1995 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	4,699.1
Routine Executive releases through February 1, 1995	-1,992.1
Overturned by the Congress.....	---
Currently before the Congress.....	2,707.0

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[FR Doc. 95-4324 Filed 2-22-95; 8:45 am]
BILLING CODE 3110-01-C

ATTACHMENT A
Status of FY 1995 Deferrals - As of February 1, 1995
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-95
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D95-1	53,300		10-18-94					
	D95-1A		1,173,948	12-13-94	107,148				1,120,100
Foreign military financing grants	D95-2	3,139,279		10-18-94	1,800,000				1,339,279
Foreign military financing program account	D95-3	47,917		10-18-94					47,917
Military-to-military contact program	D95-4	2,000		10-18-94					2,000
Agency for International Development									
International disaster assistance, executive	D95-5	169,998		10-18-94	54,994				115,004
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D95-6	7,319		10-18-94					7,319
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D95-7	105,300		10-18-94	30,000				75,300
TOTAL, DEFERRALS		**3,525,113**	**1,173,948**		**1,992,142**				**2,706,919**

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Part IV

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure Meeting; Notice

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on The National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice of Open Meeting: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Friday, March 10, 1995 from 9:00 a.m. until 4:15 p.m.

ADDRESSES: The NII Advisory Council meeting will take place at the Universal Amphitheatre, 100 Universal City Plaza, Building SC24, Universal City, California 91608.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Nogales (or Ms. Tiffani Burke, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

SUPPLEMENTAL INFORMATION:

Agenda

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Discussion of 1995 Plan*
   CAPstone-21 Project
   Outreach Program
   Mega-Project Work
3. *Outreach Presentation*
4. *Public Discussion, Questions and Answers*
5. *Next Meeting Date and Agenda Items.*

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Tiffani Burke at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov or from the U.S. Department of Commerce National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–4391 Filed 2–22–95; 8:45 am]

BILLING CODE 3510–60–P

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February 23, 1995

Part V

Department of the Interior

Fish and Wildlife Service

Coastal Barrier Improvement Act; Technical Corrections to the Coastal Barrier Resources System; Notice

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act; Technical Corrections to the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice.

SUMMARY: The Department of the Interior (Department), through the Fish and Wildlife Service (Service) has prepared a final map for a portion of the "otherwise protected area" designated as TX–06P, Matagorda Island, Texas, that was inadvertently not included in the set of final maps of the Coastal Barrier Resources System (System) printed and distributed June 6, 1991 (56 FR 26304) as required by Section 4 of the Coastal Barrier Improvement Act of 1990 (CBIA) (Pub. L. 101–591). In addition to this mapping change, the Service has completed modification to the boundaries of certain other areas within the System as required by Section 1 of Public Law 103–461, November 2, 1994. The purpose of this Notice is to give notice of the filing, distribution, and availability of these maps.

FOR FURTHER INFORMATION CONTACT: Linda Kelsey, U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Department of the Interior, Washington, DC 20240, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4 of the Coastal Barrier Improvement Act of 1990 (CBIA), describes a series of maps approved by Congress entitled "Coastal Barrier Resources System" dated October 24, 1990. These maps identify and depict those coastal barriers located on the coasts of the Atlantic, Gulf of Mexico, and the Great Lakes that are subject to the limitations outlined in the CBIA. These maps also depict those undeveloped coastal barriers on the Atlantic and Gulf coasts that are identified as "otherwise protected areas" held for conservation purposes under Federal, State, or local law, or held by an organization within the scope of section 170(h)(3) of the Internal Revenue Code of 1954 primarily for conservation purposes. Section 9 of the Act amends section 1321 of the National Flood Insurance Act of 1968, as amended, to state that structures built within these "otherwise protected areas" after November 16, 1991, will not be eligible for Federal flood insurance unless the structures "are used in a manner consistent with the purpose for which the area is protected." These maps are in the official custody of the U.S. Fish and Wildlife Service.

Sections 3 and 4 of the CBIA define the Department's responsibilities regarding the System maps. These responsibilities include preparing and distributing copies of the maps. Using the original maps submitted to the Department by the Congress, the Department reproduced these maps for distribution. Notification of the filing, distribution, and availability of the maps entitled "Coastal Barrier Resources System" dated October 24, 1990, was published in the **Federal Register** on June 6, 1991, (56 FR 26304–26312).

In the course of preparing and distributing the final maps as required by Section 4 of the CBIA, the Department inadvertently failed to print and distribute the final map depicting a portion of the "otherwise protected area", Matagorda Island, TX–06P located in Calhoun County, Texas. This final map has subsequently been printed and distributed and is shown in Appendix B as "TX–06P Matagorda Island (5 of 5 maps)—18E."

Section 1 of Public Law 103–461, November 2, 1994, requires the Department of the Interior to revise the following maps of the Coastal Barrier Resources System:

NY–75, Butterfly Swamp
VA–62P, Back Bay
FL–05P, Butler Beach
P11A, Frank B. McGilvrey
FL–15, Blowing Rocks
FL–36P, El Radabob Key
P17, Lovers Key Complex
P17A, Bodwitch Point
P18P, Sanibel Island Complex
P19P, North Captiva Island
FL–72P, Lido Key
P31P, St. Andrew Complex
FL–95P, Grayton Beach
AL–01P, Perdido Key
MI–21, Arcadia Lake

The maps have been filed with the Committee on Resources and the Committee on Banking and Financial Services of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

Copies of these maps have been distributed to the Chief Executive Officer (or representative) of (a) each State and county (or equivalent jurisdiction) in which a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved and in which a System unit is located, and (c) each appropriate Federal agency. Copies are also available for inspection through the U.S Fish and Wildlife Service of the Department of the Interior and appropriate Regional Offices and Field Offices (see addresses in appendix A). Interested organizations and individuals may purchase System maps from the U.S. Geological Survey (see appendix B).

The prohibition on Federal flood insurance within the "otherwise protected area", Matagorda Island, TX–06P, became effective on November 16, 1991. The boundary revisions to the areas described in Public Law 103–461 became effective November 2, 1994.

Coastal Barrier Resources System Revised Maps

The Service has made the following revisions to System units and "otherwise protected areas" as required by Section 1 of Public Law 103–461:

New York

NY–75 Butterfly Swamp. A portion of this unit that was developed prior to enactment of CBIA has been excluded. The remainder of the unit will remain in the System.

Virginia

VA–62P Back Bay. The northeast boundary of this "otherwise protected area" is modified to only include lands owned by the City of Virginia Beach.

Florida

FL–05P Butler Beach. This "otherwise protected area" is removed from the System.

P11A Frank B. McGilvrey. The north boundary of this unit is modified to only include areas that were undeveloped at the time of their inclusion in the System.

FL–15 Blowing Rocks. The north and south boundaries of this unit are modified to only include areas that were undeveloped at the time of their inclusion in the System.

FL–36P El Radabob Key. The northwest boundary of this "otherwise protected area" is modified to only include lands owned by the State of Florida.

P17 Lovers Key Complex. The southwest boundary of this unit is modified to only include areas that were undeveloped at the time of their inclusion in the System.

P17A Bodwitch Point. The south boundary of this unit is modified to only include areas that were undeveloped at the time of their inclusion in the System.

P18P Sanibel Island Complex. The northwest boundary of this "otherwise protected area" is modified to only include lands within the J.N. (Ding) Darling National Wildlife Refuge.

P19P North Captiva Island. The north boundary of this "otherwise protected area" is modified to only include areas that were undeveloped at the time of their inclusion in the System.

FL–72P Lido Key. The northwest boundary of this "otherwise protected area" is modified to only include areas that were undeveloped at the time of their inclusion in the System.

P31P St. Andrew Complex. The north boundary of this "otherwise protected area" is modified to only include areas that were undeveloped at the time of their inclusion in the System.

FL–95P Grayton Beach. The west boundary of this "otherwise protected area" is modified to only include lands owned by the State of Florida.

Alabama

AL–01P Perdido Key. The boundary of this "otherwise protected area" is modified to only include lands owned by the State of Alabama.

Michigan

MI–21 Arcadia Lake. A portion of this unit that was developed prior to enactment of CBIA has been excluded. The remainder of the unit will remain in the System.

APPENDIX A—LOCATION OF MAPS AVAILABLE FOR REVIEW

U.S. Fish and Wildlife Service	States of—
REGIONAL OFFICES	
Regional Director, Region 2, U.S. Fish & Wildlife Service, 500 Gold Ave. SW., Albuquerque, New Mexico 87103 (505) 766–2914.	Texas.
Regional Director, Region 3, U.S. Fish & Wildlife Service, BHW Federal Building, 1 Federal Dr., Ft. Snelling, Minnesota 55111–4056 (612) 725–3536.	Ohio, Michigan, Wisconsin, Minnesota.
Regional Director, Region 4, U.S. Fish & Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345 (404) 679–7125.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, Virgin Islands.
Regional Director, Region 5, U.S. Fish & Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413) 253–8200.	Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia.
FIELD OFFICES	
Field Supervisor, U.S. Fish & Wildlife Service, 10711 Burnet Rd., Suite 200, Hartland Bank Bldg., Austin, Texas 78758 (512) 490–0057.	Texas.
Field Supervisor, U.S. Fish & Wildlife Service, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068 (614) 469–6923.	Ohio.
Field Supervisor, U.S. Fish & Wildlife Service, 1405 S. Harrison Rd., East Lansing, Michigan 48823–5202 (517) 337–6650.	Michigan.
Field Supervisor, U.S. Fish & Wildlife Service, 1015 Challenger Ct, Green Bay, Wisconsin 54311–8331 (414) 433–3803.	Wisconsin.
Field Supervisor, U.S. Fish & Wildlife Service, 4101 E. 80th St, Bloomington, Minnesota 55425–1665 (612) 725–3548.	Minnesota.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 33726, Raleigh, North Carolina 27636–3726 (919) 856–4520.	North Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412 (803) 727–4707.	South Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, 801 Gloucester St., Brunswick, Georgia 31520 (912) 265–9336.	Georgia.
Field Supervisor, U.S. Fish & Wildlife Service, 6620 S. Point Dr. South, #310, Jacksonville, Florida 32216 (904) 232–2580.	Florida: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, Florida 32961 (407) 562–3909.	Florida: Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1612 June Ave., Panama City, Florida 32405–3721 (904) 769–0552.	Florida: Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia Counties.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Drawer 1190, Daphne, Alabama 36526 (205) 441–5181.	Alabama, Mississippi,
Field Supervisor, U.S. Fish & Wildlife Service, 825 Kaliste Saloom, #102, Lafayette, Louisiana 70508 (318) 262–6630.	Louisiana.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico, 00622 (809) 851–7297.	Puerto Rico, Virgin Islands.
Field Supervisor, U.S. Fish & Wildlife Service, 22 Bridge St., Concord, New Hampshire 03301–4901 (603) 225–1411.	Maine, Massachusetts, Rhode Island, Connecticut.
Field Supervisor, U.S. Fish & Wildlife Service, 3817 Luker Rd., Cortland, New York 13045 (607) 753–9334.	New York (except Long Island; see below).
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 608, Islip, NY 11751 (516) 581–2941.	Long Island, New York: Queens, Nassau & Suffolk Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 927 N. Main St., Bldg. D–1, Pleasantville, New Jersey 08232 (609) 646–9310.	New Jersey.
Field Supervisor, U.S. Fish & Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401 (410) 573–4501.	Delaware, Maryland.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 480; White Marsh, Virginia 23183 (804) 693–6694.	Virginia.

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Appendix B—Map Order Form

Coastal Barrier Resources System Maps

This order form replaces the order form published in the **Federal Register** on November 15, 1993 (58 FR 60288–60301) and may be used to order copies of some or all of the 625 Coastal Barrier Resources System (CBRS) maps adopted by Congress pursuant to the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591), as amended.

The price of *EACH* paper print is $4.00 and includes reproduction, shipping, and handling costs. All maps are cataloged by State, County (Town or Parish), Unit number and Unit name. The maps are approximately 22 inches by 27 inches in size. Please indicate the number of maps of each unit you want to order on the appropriate space. Copies of an entire State may be obtained by checking the space next to the State name.

Requests for copies must be prepaid by check or money order (no cash or stamps) and directed to: U.S. Geological Survey, ESIC–CBRS, P.O. Box 25286, Denver, CO 80225. Make checks payable to: Department of the Interior—USGS.

FOR PROMPT ACCURATE SHIPMENT, PLEASE PROVIDE YOUR MAILING ADDRESSES:
Name _____
Company _____
Street Address _____
_____
City _____
State _____
Zip Code _____

Please include a telephone number where you can be reached weekdays between 8:00 a.m. and 4:00 p.m. Mountain Standard Time.
Area Code (_____) Number _____

Information regarding your order or the availability of Coastal Barrier Resources Maps may be obtained by calling (303) 236–7476.

Unit number(s)	Unit name(s)
___STATE OF MAINE (22 maps)	
Washington County:	
___ME–02	Birch Point—1.
___A01	Lubec Barriers—2.
___A01A	Baileys Mistake—3.
___ME–03P & ME–04	Grassy Point & Seal Cove—4.
___A03	Jasper—5.
___A03B, ME–06 & ME–07P	Starboard, Bare Cove & Roque Bluffs—6.
___A03C & ME–08	Popplestone Beach/Roque Island and Flake Point—7.
___ME–01	Carrying Place Cove—8.
___ME–09P	Petit Manan/Bois Bubert—9.
___ME–10/ME–10P	Over Point—10.
Hancock County:	
___ME–11	Pond Island—11.
___ME–12	Thrumcap—12.
Waldo County:	
___A05A	Seven Hundred Acre Island—13.
Knox County:	
___ME–14	Nash Point—14.
Sagadahoc County:	
___ME–15P	Little River—15.
___ME–16/ME–16P, ME–17 & A058	Hunnewell Beach, Small Point Beach & Head Beach—16.
Cumberland County:	
___ME–18	Stover Point—17.
___A05C	Jenks Landing/Waldo Point—18.
___ME–19/ME–19P, A06, & A07	Crescent Beach, Cape Elizabeth, & Scarborough Beach—19.
York County:	
___A08 & ME–20P	Crescent Surf & Ogunquit Beach—20.
___ME–23	Phillips Cove—21.
___A09	Seapoint—22.
___STATE OF MASSACHUSETTS (44 maps)	
Town of Salisbury:	
___MA–01P	Salisbury Beach—1.
Town of Newbury:	
___MA–02P	Plum Island—2.
Town of Ipswich:	
___C00 & MA–03	Clark Pond & Castle Neck (MA–03 also in Essex)—3.
Town of Gloucester:	
___MA–03, C01 & C01B	Castle Neck, Wingersheek and Brace Cove—4.
___C01A	Good Harbor Beach/Milk Island (Milk Island in Rockport)—5.
Towns of Manchester & Beverly:	
___MA–04	West Beach—6.
Town of Swampscott:	
___MA–06	Phillips Beach—7.
Town of Quincy:	
___MA–08P, MA–09P & MA–10P	Snake Island (in Winthrop), Wollaston Beach & Merrymount Park—8.
Town of Boston:	
___C01C & MA–11	West Head Beach & Peddocks/Rainsford Islands (also in Hull)—9.
Town of Scituate:	
___MA–12 & C02	Cohasset Harbor (also in Cohasset) & North Scituate—10.
Town of Marshfield:	
___C03 & C03A	Rivermoor (also in Scituate) & Rexhame—11.
Town of Plymouth:	
___MA–13 & C04	Duxbury Beach (also in Marshfield & Duxbury) & Plymouth Bay—12.
___C06	Center Hill Complex—13.
Town of Sandwich:	
___MA–14P & C08	Town Neck & Scorton—14.
Town of Barnstable:	
___C09/C09P	Sandy Neck (also in Sandwich & Yarmouth)—15.
___C14 & C15/C15P	Squaw Island and Centerville—16.
___C16 & C17	Dead Neck & Popponesset Spit (also in Mashpee)—17.
Town of Dennis:	
___C09, MA–15P, MA–16 & C10	Sandy Neck (in Yarmouth), Chapin Beach, Nobescusset, and Freemans Pond (also in Brewster)—18.
Town of Eastham:	
___C11, C11A/C11AP MA–20P	Namskaket Spits (in Brewster & Orleans), Boat Meadow & Nauset Beach/Monomoy (also in Orleans)—19.
Town of Truro:	
___MA–17AP, MA–17P, MA–18 & MA–18P	Lieutenant Island (in Wellfleet), Griffin/Great Islands Complex (in Wellfleet), Pamet Harbor & Ballston Beach—20.
Town of Provincetown:	
___MA–19P	Provincetown (also in Truro) (1 of 2 maps)—21A.
___MA–19P	Provincetown (2 of 2 maps)—21B.
Town of Chatham:	
___MA–20P	Nauset Beach/Monomoy (1 of 2 maps)—22A.
___MA–20P	Nauset Beach/Monomoy (2 of 2 maps)—22B.
___C12	Chatham Road—23.
Town of Yarmouth:	
___MA–23P & C13/C13P	Davis Beach (also in Dennis) & Lewis Bay (also in Barnstable)—24.
Town of Falmouth:	
___C18/C18P C18A	Waquoit Bay (also in Mashpee) & Falmouth Ponds—25.
___C19 & MA–24	Black Beach & Naushon Island Complex (in Gosnold)—26.
Town of Gosnold:	
___MA–24	Naushon Island Complex—27.
___C31 & MA–25P	Elizabeth Islands & Penikese Island—28.
Town of Nantucket:	
___C20 & C21	Coatue Sesachacha Pond—29.
___C22 & C23	Cisco Beach & Esther Island Complex—30.
___C24 & C25	Tuckernuck Island & Muskeget Island—31.
Town of Edgartown:	
___MA–26, MA–27P, C26, C27, MA–28P & C28	Harthaven (in Oak Bluffs), Edgartown Beach (in Oak Bluffs), Eel Pond Beach, Cape Poge, Norton Point & South Beach—32.
Town of Chilmark:	
___C28	South Beach (also in West Tisbury)—33.
___C29/C29P & MA–29P	Squibnocket Complex (also in Gayhead) & Nomans Land—34.
Towns of Tisbury & West Tisbury:	
___C29A & C29B	James Pond (in West Tisbury) & Mink Meadows (in Tisbury)—35.
Town of Bourne:	
___MA–30, MA–31, MA–32 & MA–33	Herring Brook, Squeteague Harbor (in Falmouth), Bassetts Island & Phinneys Harbor—36.
Towns of Wareham, Marion & Mattapoisett:	
___C19A & MA–35	Buzzards Bay Complex & Planting Island (in Marion)—37.
Town of Fairhaven:	
___C19A & C31A	Buzzards Bay Complex (in Mattapoisett) & West Sconticut Neck—38.
___C31B	Harbor View—39.
Town of Dartmouth:	
___MA–36, C31, MA–37P & C33	Round Hill, Mishaum Point, Demarest Lloyd Park & Little Beach—40.
Town of Westport:	
___C33, C34/C34P & C35	Little Beach (in Dartmouth), Horseneck Beach & Richmond/Cockeast Ponds—41.
Town of Swansea:	
___C34A	Cedar Cove—42.
___RHODE ISLAND (15 maps)	
Town of Little Compton:	
___D01 & D01P	Little Compton Ponds & Tunipus Pond—1.
___RI–01, D02 & RI–02	Brown Point, Fogland Marsh (also in Tiverton), & Sapowet Point (in Tiverton)—2.
Town of Portsmouth:	
___RI–02A & RI–03P	McCurry Point & Sandy Point—3.
___D02B	Prudence Island Complex—4.
Towns of Barrington & Warwick:	
___D02B/D02BP	Prudence Island Complex—5.
Towns of Warwick & North Kingstown:	
___D02B	Prudence Island Complex—6.
Towns of Middletown & Newport:	

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___RI–04P, RI–05P, RI–06	Sachuest Point, Easton Beach, Almy Pond & Hazards Beach—7.
Town of North Kingstown:	
___D02C	West Narragansett Bay Complex—8.
Towns of Jamestown & Narragansett:	
___RI–08/RI–08P, RI–09, & RI–10/RI–10P	Fox Hill Marsh, Bonnet Shores, & Narragansett Beach (also in South Kingstown)—9.
Town of Narragansett:	
___RI–11/RI–11P & RI–12/RI–12P	Seaweed Beach & East Matunick Beach (also in South Kingstown—10.
Town of South Kingstown:	
___D03/D03P & D04	Card Ponds & Green Hill Beach—11.
Towns of Charlestown & Westerly:	
___D05/D05P & D06	East Beach & Quonochontaug Beach—12.
Town of Westerly:	
___RI–13P & D07	Misquamicut Beach & Maschaug Ponds—13.
___D08/D08P	Napatree—14.
Town of New Shoreham:	
___D09/D09P	Block Island—15.
___CONNECTICUT (12 maps)	
Town of Stonington:	
___CT–00	Barn Island—1.
___E01, E01A & CT–01	Wilcox Beach, Ram Island & Mason Island—2.
Towns of Groton & Waterford:	
___CT–02/CT–02P & E02	Bluff Point & Goshen Cove—3.
Towns of Waterford & East Lyme:	
___E03, E03A & CT–03	Jordan Cove, Niantic Bay, & Old Black Point—4.
Towns of Old Lyme & Old Saybrook:	
___CT–04, CT–05, CT–06, CT–07 & E03B	Hatchett Point, Little Pond, Mile Creek, Griswold Point, & Lynde Point—5.
Towns of Old Saybrook & Westbrook:	
___CT–08 & E04	Cold Spring Brook & Menunketesuck Island—6.
Towns of Clinton & Madison:	
___CT–09, E05/E05P, CT–10 & CT–11	Harbor View, Hammonasset Point, Tom's Creek, & Seaview Beach—7.
Town of Branford:	
___CT–12 & CT–13	Lindsey Cove & Kelsey Island—8.
Towns of New Haven & West Haven:	
___CT–14P & CT–15P	Nathan Hale Park & Morse Park—9.
Town of Milford:	
___E07/E07P	Milford Point—10.
Town of Bridgeport:	
___CT–18P & E08A	Long Beach & Fayerweather Island—11.
Towns of Wesport & Norwalk:	
___E09/E09P	Norwalk Islands—12.
___NEW YORK (49 maps)	
Nassau County:	
___NY–03 & NY–04P	Sands Point & Prospect Point—1.
___NT–05P, NY–06/NY–06P, & NY–07P	Dosoris Pond, The Creek Beach, & Centre Island—2.
___NY–59	Fire Island (1 of 8 maps) (See Suffolk County for maps 3 through 8)—3A.
___NY–59/NY–59P	Fire Island (2 of 8 maps) (See Suffolk County for maps 3 through 8)—3B.
Suffolk County:	
___NY–09P & NY–10	Lloyd Beach & Lloyd Point—4.
___NY–11/NY–11P, NY–12, NY–13, & F02	Lloyd Harbor, Centerpoint Harbor, Hobart Beach & Eatons Neck—5.
___NY–14	Crab Meadow—6.
___NY–15 & NY–16	Sunken Meadow & Stony Brook Harbor—7.
___F04	Crane Neck—8.
___F05 & NY–17/NY–17P	Old Field Beach & Cedar Beach—9.
___NY–18 & NY–19	Wading River & Baiting Hollow—10.
___NY–20P & NY–21P	Luce Landing & Mattituck Inlet—11.
___NY–22P	Goldsmith Inlet—12.
___NY–23P	Truman Beach—13.
___NY–24 & NY–25	Plum Island & Orient Beach—14.
___NY–26, NY–27, NY–28, NY–29P, NY–30 & NY–31/NY–31P	Pipes Cove, Conking Point, Southold Bay, Cedar Beach Point, Hog Neck Bay & Little Creek—15.
___NY–32 & NY–33	Downs Creek & Robins Island—16.
___NY–34, NY–35, NY–36, NY–37, & NY–38	East Creek, Indian Island, Flanders Bay, Red Creek Pond & Squire Pond—17.
___NY–39 & NY–40/NY–40P	Cow Neck & North Sea Harbor—18.

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___NY–41/NY41P, NY–42, NY–43/NY–43P, NY–44, NY–45, NY–46, NY–47, F06, NY–48, NY–49 & NY–50.	Clam Island, Mill Creek, Short Beach, Gleason Point, Shell Beach, Crab Creek, Hay Beach Point, Shelter Island Barriers, Mashomack Point, Smith Cove & Fresh Pond—19.
___NY—51/NY–51P, F08a, & NY–52	Northwest Harbor, Sammys Beach, & Hog Creek—20.
___F08B & F09	Acabonack Harbor & Gardiners Island Barriers—21.
___F01	Fisher Island Barriers—22.
___NY–53, NY–54 & NY–55	Big Reed Pond, Oyster Pound, & Montauk Point—23.
___F10	Napeague—24.
___NY–56/NY–56P & NY–57	Amagansett & Georgica/Wainscott Ponds—25.
___NY–58 & F11	Sagaponack Pond & Mecox—26.
___F12 & F13/F13P	Southampton Beach & Tiana Beach—27.
___NY–59P	Fire Island (3 of 8 maps) (See Nassau County for Maps 1 & 2)—28A.
___NY–59P	Fire Island (4 of 8 maps) (See Nassau County for maps 1 & 2)—28B.
___NY–59P	Fire Island (5 of 8 maps) (See Nassau County for maps 1 & 2)—28C.
___NY–59P	Fire Island (6 of 8 maps) (See Nassau County for maps 1 & 2)—28D.
___NY–59–/NY–59P	Fire Island (7 of 8 maps) (See Nassau County for maps 1 & 2)—28E.
___NY–59/NY–59P	Fire Island (8 of 8 maps) (See Nassau County for maps 1 & 2)—28F.
Queens County:	
___NY–60P	Jamaica Bay (1 of 2 maps)—29A.
___NY–60P	Jamaica Bay (2 of 2 maps)—29B.
Jefferson County:	
___NY–61, NY–62, NY–63, NY–64 & NY–65	Wilson Bay, Grenadier Island, Fox Island, The Isthmus & Point Peninsula—30.
___NY–66 & NY–67	Hounsfield & Dutch John Bay—31.
___NY–68 & NY–69	Sherwin Bay & Association Island—32.
Oswego County:	
___NY–72	North Pond—33.
___NY–73 & NY–74	Deer Creek Marsh & Grindstone Creek—34.
___NY–75	Butterfly Swamp—35.
___NY–76	Walker—36.
___NY–77	Snake Swamp—37.
Cayuga & Wayne Counties:	
___NY–78 & NY–79	Juniper Pond & Blind Sodus Bay (NY–79 in Wayne County)—38.
Wayne County:	
___NY–82	Port Bay—39.
___NY–84	Maxwell Bay—40.
Monroe County:	
___NY–86	Bogus Point—41.
Erie County:	
___NY–87	Big Sister Creek—42.
___NEW JERSEY (16 maps)	
Middlesex & Monmouth Counties:	
___NJ–02, NJ–03P & NJ–04	Seidler Beach, Cliffwood Beach & Conaskonk Point (NJ–03P & NJ–04 in Monmouth County—1.
Monmouth County:	
___NJ–01P	Sandy Hook—2.
___NJ–04A	Navesink/Shrewsbury Complex—3.
Ocean County:	
___NJ–04B/NJ–04BP	Metedeconk Neck—4.
___NJ–05P	Island Beach (1 of 2 maps)—5A.
___NJ–05P	Island Beach (2 of 2 maps)—5B.
___NJ–06/NJ–06P	Cedar Bonnet Island—6.
Ocean, Atlantic & Burlington Counties:	
___NJ–07P	Brigantine (1 of 4 maps)—7A.
___NJ–07P	Brigantine (2 of 4 maps)—7B.
___NJ–07P	Brigantine (3 of 4 maps)—7C.
___NJ–07P	Brigantine (4 of 4 maps)—7D.
Cape May County:	
___NJ–08P	Corson Inlet—8.
___NJ–09/NJ–09P	Stone Harbor—9.
___NJ–10P & NJ–11P	Cape May & Higbee Beach—10.
___NJ–12/NJ–12P & NJ–13	Del Haven & Kimbles Beach—11.
Cape May & Cumberland Counties:	
___NJ–14/NJ–14P	Moores Beach—12.
___DELAWARE (7 maps)	
Kent County:	
___DE–01/DE–01P	Little Creek—1.
___H00/H00P	Broadkill Beach (1 of 2 maps)—2A.
Sussex County:	
___H00/H00P	Broadkill Beach (2 of 2 maps)—2B.
___DE–02P	Plum Beach Island—3.

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___DE-03P & DE-06	Cape Henlopen & Silver Lake—4.
___DE-07P & H01	Delaware Seashore & North Bethany Beach—5.
___DE-08P	Fenwick Island—6.
___MARYLAND (25 maps)	
Worcester County:	
___MD-01P	Assateague Island (1 of 3 maps)—1A.
___MD-01P	Assateague Island (2 of 3 maps)—1B.
___MD-01P	Assateague Island (3 of 3 maps)—1C.
Somerset County:	
___MD-02 & MD-03	Fair Island & Sound Shore—2.
___MD-04P	Cedar/Janes Island—3.
___MD-04P, MD-06, MD-07P, & MD-08P	Cedar/Janes Island, Joes Cove, Scott Point & Hazard Island—4.
___MD-09P	St. Pierre Point—5.
___MD-11 & MD-12	Little Deal Island & Deal Island—6.
___MD-14/MD-14P, MD-15, & MD-16	Franks Island, Long Point, & Stump Point (MD-16 in Wicomico County)—7.
___MD-17P	Martin—8.
___MD-18P	Marsh Island—9.
Dorchester County:	
___MD-19 & MD-20	Holland Island & Jenny Island—10.
___MD-21P	Barren Island—11.
___MD-22 & MD-24	Hooper Point & Covey Creek—12.
Talbot County:	
___MD-25, MD-26 & MD-27	Castle Haven Point (in Dorcester County), Boone Creek & Benoni Point—13.
___MD-28, MD-29 & MD-30	Lowes Point, Rich Neck & Kent Point (in Queen Annes County)—14.
Queen Annes County:	
___MD-32 & MD-33	Stevensville & Wesley Church—15.
Kent County:	
___MD-34P & MD-35	Eastern Neck Island & Wilson Pond—16.
Calvert County:	
___MD-37P & MD-38	Flag Ponds & Cove Point Marsh—17.
St. Marys County:	
___MD-39, MD-40 & MD-41	Drum Point (in Calvert County), Lewis Creek & Green Holly Pond—18.
___MD-44	St. Clarence Creek—19.
___MD-45, MD-46, MD-47 & MD-48P	Deep Point, Point Look-In, Tanner Creek & Point Lookout—20.
___MD-49 & MD-50	Bisco Creek & Chicken Cock Creek—21.
___MD-51, MD-52, MD-53 & MD-54	Piney Point Creek, McKay Cove, Blake Creek & Belvedere Creek—22.
___MD-55P & MD-56	St. Clements Island & St. Catherine Island—23.
___VIRGINIA (39 maps)	
Accomack County:	
___VA-01P	Assateague Island (1 of 2 maps)—1A.
___VA-01P	Assateague Island (2 of 2 maps)—1B.
___VA-02P & VA-03P	Assawoman Island & Metomkin Island—2.
___VA-03P	Metomkin Island—3.
___K03	Cedar Island—4.
___VA-16 & VA-17	Scarborough Neck & Craddock Neck—5.
___VA-18, VA-19 & VA-20P	Hacks Neck, Parkers/Finneys Islands & Parkers Marsh—6.
___VA-21 & VA-22	Beach Island & Russell Island—7.
___VA-23	Simpson Bend—8.
___VA-24	Drum Bay—9.
___VA-25	Fox Islands—10.
___VA-26	Cheeseman Island—11.
___VA-27 & VA-28	Watts Island & Tangier Island—12.
Northhampton County:	
___VA-04P	Parramore/Hog/Cobb Islands (also in Accomack County) (1 of 2 maps)—13A.
___VA-04P	Parramore/Hog/Cobb Islands (2 of 2 maps)—13B.
___VA-04P & K04	Parramore/Hog/Cobb Islands & Little Cobb Island—14.
___VA-05P	Wreck Island—15.
___VA-05P & VA-06P	Wreck Island & Smith Island (1 of 2 maps)—16A.
___VA-05P & VA-06P	Wreck Island & Smith Island (2 of 2 maps)—16B.
___VA-06P & K05/K05P	Smith Island & Fishermans Island—17.
___VA-09 & VA-10	Elliotts Creek & Old Plantation Creek—18.
___VA-11	Wescoat Point—19.
___VA-12, VA-13 & VA-14	Great Neck, Westerhouse Creek, & Shooting Point—20.
Westmoreland County:	
___VA-29	Elbow Point—21.
___VA-30, VA-31 & VA-32	White Point, Cabin Point, & Glebe Point—22.
___VA-33	Sandy Point—23.
Northumberland County:	

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___VA-34	Judith Sound—24.
___VA-35, VA-36 & VA-37	Cod Creek, Presley Creek, & Cordreys Beach—25.
___VA-38 & VA-39P	Marshalls Beach & Ginny Beach—26.
___VA-40, VA-41, VA-42, VA-43, VA-44 & VA-45	Gaskin Pond, Owens Pond, Chesapeake Beach, Fleet Point, Bussel Point & Harveys Creek—27.
___VA-46, VA-47, VA-48 & VA-49	Ingram Cove, Bluff Point Neck, Barnes Creek & North Point (in Lancaster County)—28.
Lancaster & Middlesex Counties:	
___VA-50, VA-51, VA-52, VA-53 & VA-54	Windmill Point, Deep Hole Point, Sturgeon Creek, Jackson Creek & Stove Point—29.
Mathews County:	
___VA-55	Rigby Island/Bethal Beach—30.
___VA-55 & VA-56	Rigby Island/Bethal Beach & New Point Comfort—31.
Gloucester County:	
___VA-57 & VA-58	Ware Neck & Severn River—32.
Poquoson & Hampton Cities:	
___VA-59P & VA-60/VA-60P	Plum Island & Long Creek (in Hampton City)—33.
Virginia Beach City:	
___VA-61P	Cape Henry—34.
___VA-62P	Back Bay (1 of 2 maps)—35A.
___VA-62P	Back Bay (2 of 2 maps)—35B.
___NORTH CAROLINA (31 maps)	
Currituck County:	
___L01	Currituck Banks—1.
___L01/L01P	Currituck Banks—2.
___NC-01	Pine Island Bay—3.
Dare County:	
___NC-02	Nags Head Woods—4.
___NC-03P	Cape Hatteras (1 of 14 maps)—5A.
___NC-03P	Cape Hatteras (2 of 14 maps)—5B.
___NC-03P	Cape Hatteras (3 of 14 maps)—5C.
___NC-03P	Cape Hatteras (4 of 14 maps)—5D.
___NC-03P & L03	Cape Hatteras & Hatteras Island (5 of 14 maps)—5E.
___NC-03P & L03	Cape Hatteras & Hatteras Island (6 of 14 maps)—5F.
___NC-03P	Cape Hatteras (7 of 14 maps)—5G.
Hyde County:	
___NC-03P	Cape Hatteras (also in Dare County) (8 of 14 maps)—5H.
___NC-03P	Cape Hatteras (9 of 14 maps)—5I.
___NC-03P	Cape Hatteras (also in Carteret County) (10 of 14 maps)—5J.
Carteret County:	
___NC-03P	Cape Hatteras (11 of 14 maps)—5K.
___NC-03P	Cape Hatteras (12 of 14 maps)—5L.
___NC-03P	Cape Hatteras (13 of 14 maps)—5M.
___NC-03P	Cape Hatteras (14 of 14 maps)—5N.
___NC-03P & L03AP	Cape Hatteras & Shackleford Banks—6.
___L03AP & NC-04P	Shackleford Banks & Fort Macon—7.
___NC-05P	Roosevelt Natural Area—8.
Onslow County:	
___NC-06P	Hammocks Beach—9.
___L05	Onslow Beach Complex (1 of 2 maps)—10A.
___L05	Onslow Beach Complex (2 of 2 maps)—10B.
___L06	Topsail—11.
Pender County:	
___L07	Lea Island Complex—12.
New Hanover County:	
___L08 & L09	Wrightsville Beach & Masonboro Island—13.
___L09	Masonboro Island—14.
Brunswick County:	
___NC-07P	Cape Fear (also in New Hanover County) (1 of 2 maps)—15A.
___NC-07P	Cape Fear (2 of 2 maps)—15B.
___M01	Waites Island Complex (1 of 2 maps) (also in South Carolina)—16.
___SOUTH CAROLINA (25 maps)	
Horry County:	
___M01	Waites Island Complex (2 of 2 maps) (also in North Carolina)—1.
___SC-01	Long Pond—2.
Georgetown County:	
___SC-03	Huntington Beach—3.
___M02	Litchfield Beach—4.
___M03	Pawleys Inlet—5.
___M04 & SC-04	Debidue Beach & North/South Islands—6.
___SC-04	North-South Islands—7.

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Charleston County:	
___SC–05P	Santee (also in Georgetown County) (1 of 2 maps)—8A.
___SC–05P	Santee (2 of 2 maps)—8B.
___SC–05P & SC–06P	Santee & Cape Romain (1 of 2 maps)—9A.
___SC–05P & SC–06P	Santee & Cape Romain (2 of 2 maps)—9B.
___SC–06P	Cape Romain (1 of 2 maps)—10A.
___SC–06P	Cape Romain (2 of 2 maps)—10B.
___SC–07P	Capers Island—11.
___M05	Dewees Island—12.
___M06	Morris Island Complex—13.
___M07/M07P	Bird Key Complex—14.
___M08	Captain Sams Inlet—15.
___M09/M09P	Edisto Complex—16.
Colleton County:	
___M10	Otter Island—17.
Beaufort County:	
___M11	Harbor Island—18.
___SC–09P	Hunting Island—19.
___M12	St. Phillips Island (1 of 2 maps)—20A.
___M12	St. Phillips Island (2 of 2 maps)—20B.
Beaufort & Jasper Counties:	
___M13 & SC–10P	Daufuski Island & Turtle Island (SC–10P in Jasper County)—21.
___GEORGIA (18 maps)	
Chatham County:	
___N01	Little Tybee Island (1 of 2 maps)—1A.
___N01	Little Tybee Island (2 of 2 maps)—1B.
___N01A/N01AP	Wassaw Island—2.
___GA–02P	Ossabaw Island (1 of 2 maps)—3A.
___GA–02P	Ossabaw Island (also in Bryan County) (2 of 2 maps)—3B.
Liberty County:	
___GA–02P & GA–03P	Ossabaw Island & St. Catherine Island (also in McIntosh County)—4.
McIntosh County:	
___GA–03P & GA–04P	St. Catherine Island & Blackbeard/Sapelo Islands—5.
___GA–04P	Blackbeard/Sapelo Islands (1 of 3 maps)—6A.
___GA–04P	Blackbeard/Sapelo Islands (2 of 3 maps)—6B.
___GA–04P	Blackbeard/Sapelo Islands (3 of 3 maps)—6C.
___GA–04P & GA–05P	Blackbeard/Sapelo Islands & Altamaha/Wolf Islands—7.
___GA–05P	Altamaha/Wolf Islands—8.
Glynn County:	
___N03	Little St. Simons Island—9.
___N04	Sea Island—10.
___GA–06P	Jekyll Island—11.
Camden County:	
___N05 & N06/N06P	Little Cumberland Island & Cumberland Island—12.
___N06/N06P	Cumberland Island (1 of 2 maps)—13A.
___N06/N06P	Cumberland Island (2 of 2 maps)—13B.
___FLORIDA–EAST COAST (52 maps)	
Nassau County:	
___FL–01P	Fort Clinch—1.
Duval County:	
___P02/P02P	Talbot Islands Complex (also in Nassau County)—2.
St. Johns County:	
___FL–03P	Guana River (1 of 3 maps)—3A.
___FL–03P	Guana River (2 of 3 maps)—3B.
___FL–03P	Guana River (3 of 3 maps)—3C.
___P04A & P05/P05P	Usinas Beach & Conch Island—4.
Flagler County:	
___P05A/P05AP & FL–06P	Matanzas River (also in St. Johns County) & Washington Oaks—6.
Volusia County:	
___P07/P07P	Ormond-by-the-Sea (P07P also in Flagler County)—7.
___P08	Ponce Inlet—8.
___FL–07P	Canaveral (1 of 6 maps)—9A.
Brevard County:	
___FL–07P	Canaveral (also in Volusia County) (2 of 6 maps)—9B.
___FL–07P	Canaveral (also in Volusia County) (3 of 6 maps)—9C.
___FL–07P	Canaveral (4 of 6 maps)—9D.
___FL–07P	Canaveral (5 of 6 maps)—9E.
___FL–07P	Canaveral (6 of 6 maps)—9F.
___FL–13P & P09A	Spessard Holland Park & Coconut Point—10.
Indian River County:	
___P10/P10P	Vero Beach (also in Brevard County)—11.

Unit number(s)	Unit name(s)
St. Lucie County:	
___P10A	Blue Hole (also in Indian River County)—12.
___FL–14P	Pepper Beach—13.
___P11	Hutchinson Island (1 of 2 maps)—14A.
___P11	Hutchinson Island (2 of 2 maps)—14B.
Martin County:	
___P11AP & P11A	Joes Point & Frank B. McGilvery—15.
___P12/P12P	Hobe Sound—16.
Palm Beach County:	
___FL–15, FL–16 & FL–17P	Blowing Rocks (in Martin County), Jupiter Beach & Carlin—17
___FL–18P	Macarthur Beach—18.
Broward County:	
___FL–19P	Birch Park—19.
___FL–20P & P14A	Lloyd Beach & North Beach—20.
Dade County:	
___FL–21	Haulover Beach—21.
___FL–22P, FL–23P & FL–34P	Virginia Beach/Crandon Park, Cape Florida & Biscayne Bay—22.
___FL–34/FL–34P	Biscayne Bay—23.
___FL–34P	Biscayne Bay (1 of 3 maps)—24A.
___FL–34P	Biscayne Bay (2 of 3 maps)—24B.
___FL–34P	Biscayne Bay (3 of 3 maps)—24C.
Monroe County:	
___FL–34P & FL–35	Biscayne Bay & North Key Largo—25.
___FL–34P & FL–35/FL–35P	Biscayne Bay & North Key Largo—26.
___FL–35	North Key Largo—27.
___FL–35/FL–35P & FL–36P	North Key Largo & El Radabob Key—28.
___FL–36P & FL–37	El Radabob Key & Rodriquez Key—29.
___FL–39 & FL–40	Tavernier Key & Snake Creek—30.
___FL–41P	Lignumvitae/Shell Keys—31
___FL–42P	Long Key—32.
___FL–43 & FL–44	Channel Key & Toms Harbor Keys—33.
___FL–45	Deer/Long Point Keys—34.
___FL–46	Boot Key—35.
___FL–47P, FL–48P & FL–50	Key Deer/White Heron, Bahia Honda Key & No Name Key—36.
___FL–51	Newfound Harbor Keys—37.
___FL–47P & FL–52	Key Deer/White Heron & Little Knockemdown/Torch Keys Complex—38.
___FL–53	Budd Keys—39.
___FL–47P, FL–54 & FL–55	Key Deer/White Heron, Sugarloaf Sound & Saddlebunch Keys—40.
___FL–47P, FL–55, & FL–57	Key Deer/White Heron, Saddlebunch Keys, & Cow Key—41.
___FL–47P, FL–59P & FL–60P	Key Deer/White Heron, Fort Taylor & Key West NWR—42.
___FL–61P	Tortugas—43.
___FLORIDA—WEST COAST (55 maps)	
Collier County:	
___P15 & FL–63P	Cape Romano & Tigertail—1
___P16	Keewaydin Island (1 of 2 maps)—2A.
___P16	Keewaydin Island (2 of 2 maps)—2B.
___FL–64P	Clam Pass—3.
___FL–65P	Wiggins Pass—4.
Lee County:	
___P17/P17P	Lovers Key Complex—5.
___P17A & FL–67	Bodwitch Point & Bunch Beach—6.
___P18P	Sanibel Island Complex—7.
___P18/P18P	Sanibel Island Complex—8.
___P19/P19P	North Captiva Island—9.
___P20/P20P	Cayo Costa—10.
___FL–70P	Gasparilla Island—11
Charlotte County:	
___P21/P21P	Bocilla Island—12.
Sarasota County:	
___P21A/P21AP	Manasota Key—13.
___FL–71P	Venice Inlet—14.
___P22	Casey Key—15.
___FL–72P	Lido Key—16.
Manatee County:	
___P23/P23P	Longboat Key—17.
___FL–73P, FL–78 & FL–82	De Soto, Rattlesnake Key & Bishop Harbor—18.
___FL–80P	Passage Key—19.
Hillsborough County:	
___FL–81/FL–81P	Egmont Key—20.
___FL–83	Cockroach Bay—21.
Pinellas County:	

Unit number(s)	Unit name(s)
___P24/P24P	The Reefs—22.
___FL–85P	Sand Key—23.
___P24A & FL–86P	Mandalay Point & Caladesi/Honeymoon Islands—24.
___FL–87P	Anclote Key (also in Pasco County)—25.
Levy County:	
___P25/P25P	Cedar Key (1 of 2 maps)—26A.
___P25/P25P	Cedar Keys (2 of 2 maps)—26B.
Dixie County:	
___P26	Pepperfish Keys—27.
Franklin County:	
___P27A	Ochlockonee Complex (also in Wakulla County)—28.
___FL–89	Peninsula Point—29.
___P28	Dog Island—30.
___FL–90P	St. George Island—31.
___FL–90/FL–90P	St. George Island—32.
___FL–90P & FL–91P	St. George Island & St. Vincent Island—33
___FL–91P	St. Vincent Island—34.
Gulf County:	
___FL–92	Indiana Peninsula—35.
___P30/P30P	Cape San Blas (1 of 2 maps)—36A.
___P30/P30P	Cape San Blas (2 of 2 maps)—36B.
Bay County:	
___P31	St. Andrew Complex (1 of 2 maps)—37A.
___P31	St. Andrew Complex (2 of 2 maps)—37B.
___P31/P31P	St. Andrew Complex—38.
___FL–93P	Phillips Inlet—39.
Walton County:	
___FL–94	Deer Lake Complex—40.
___FL–95P & FL–96	Grayton Beach & Draper Lake—41.
___P31A	Four Mile Village—42.
___P32	Moreno Point (also in Okaloosa County)—43.
Escambia County:	
___FL–98P	Santa Rosa Island—44.
___FL–98/FL–98P	Santa Rosa Island—45.
___FL–98P & FL–103P	Santa Rosa Island & Perdido Key—46.
___FL–103P	Perdido Key—47.
Santa Rosa County:	
___FL–97	Navarre Beach—48.
___FL–99	Tom King—49.
___FL–98P & FL–100	Santa Rosa Island (also in Escambia County) & Town Point—50.
___FL–98P, FL–101 & FL–102	Santa Rosa Island, Garcon Point & Basin Bayou—51.
___ALABAMA (9 maps)	
Baldwin County:	
___AL–01P & AL–02P	Perdido Key & Gulf Park—1.
___AL–02P	Gulf Park—2.
___AL–03, AL–04P & Q01P	Skunk Bayou, Cypress Point & Mobile Point—3.
___Q01/Q01P	Mobile Point (1 of 2 maps)—4A.
___Q01/Q01P	Mobile Point (2 of 2 maps)—4B.
Mobile County:	
___Q01P, Q01A, & AL–05P	Mobile Point (in Baldwin County), Pelican Island & Alligator Lake—5.
___Q02/Q02P	Dauphin Island—6.
___Q02	Dauphin Island (1 of 2 maps)—7A.
___Q02	Dauphin Island (2 of 2 maps)—7B.
___MISSISSIPPI (10 maps)	
Jackson County:	
___MS–01P	Gulf Islands (1 of 4 maps)—1A.
___MS–01P	Gulf Islands (2 of 4 maps)—1B.
___MS–01P	Gulf Islands (3 of 4 maps)—1C.
___MS–01P	Gulf Islands (also in Harrison County) (4 of 4 maps)—1D.
___R01	Round Island—2.
___R01A	Belle Fontaine Point—3.
Harrison County:	
___MS–01P	Gulf Islands—4.
___MS–02 & R02	Marsh Point (in Jackson County) & Deer Island—5.
___R03	Cat Island—6.
Hancock County:	
___MS–04	Heron Bay Point—7.
___LOUISIANA (52 maps)	
St. Bernard Parish:	

Unit number(s)	Unit name(s)
___LA–01	Isle au Pitre—1.
___LA–02	Grand Island—2.
___LA–03P	Chandeleur Islands (1 of 7 maps)—3A.
___LA–03P	Chandeleur Islands (2 of 7 maps)—3B.
___LA–03P	Chandeleur Islands (3 of 7 maps)—3C.
___LA–03P	Chandeleur Islands (4 of 7 maps)—3D.
___LA–03P	Chandeleur Islands (also in Plaquemines Parish) (5 of 7 maps)—3E
___LA–03P	Chandeleur Islands (6 of 7 maps)—3F
___LA–03P	Chandeleur Islands (7 of 7 maps)—3G.
Plaquemines Parish:	
___S01	Bastian Bay Complex (1 of 2 maps)—4A.
___S01	Bastian Bay Complex (2 of 2 maps)—4B.
___S01 & S01A	Bastian Bay Complex & Bay Joe Wise Complex—5.
___S01A	Bay Joe Wise Complex—6.
Plaquemines & Jefferson Parishes:	
___S02 & LA–04P	Grand Terre Islands & Grand Isle (S02 in Plaquemines Parish)—7
Lafourche Parish:	
___S03	Caminada (also in Jefferson Parish) (1 of 3 maps)—8A.
___S03	Caminada (2 of 3 maps)—8B.
___S03	Caminada (3 of 3 maps)—8C.
___S04	Timbalier Bay—9.
___S05	Timbalier Islands (1 of 3 maps)—10A.
___S05	Timbalier Islands (also in Terrebonne Parish) (2 of 3 maps)—10B.
Terrebonne Parish:	
___S05	Timbalier Islands (3 of 3 maps)—10C.
___S06	Isles Dernieres (1 of 3 maps)—11A.
___S06	Isles Dernieres (2 of 3 maps)—11B.
___S06	Isles Dernieres (3 of 3 maps)—11C.
___S07	Point au Fer (1 of 4 maps)—12A.
___S07	Point au Fer (2 of 4 maps)—12B.
___S07	Point au Fer (3 of 4 maps)—12C.
___S07	Point au Fer (4 of 4 maps)—12D.
Iberia Parish:	
___LA–05P	Marsh Island/Rainey (1 of 7 maps)—13A.
___LA–05P	Marsh Island/Rainey (2 of 7 maps)—13B.
___LA–05P	Marsh Island/Rainey (3 of 7 maps)—13C.
___LA–05P	Marsh Island/Rainey (4 of 7 maps)—13D.
___LA–05P	Marsh Island/Rainey (5 of 7 maps)—13E.
___LA–05P	Marsh Island/Rainey (also in Vermilion Parish) (6 of 7 maps)—13F
Vermilion Parish:	
___LA–05P	Marsh Island/Rainey (7 of 7 maps)—13G.
___LA–05P, S08, & LA–07	Marsh Island/Rainey, Cheniere au Tigre & Freshwater Bayou—14.
___LA–07	Freshwater Bayou (1 of 2 maps)—15A.
___LA–07	Freshwater Bayou (2 of 2 maps)—15B.
___S09	Rollover—16.
Cameron Parish:	
___LA–08P	Rockefeller (also in Vermilion Parish) (1 of 3 maps)—17A.
___LA–08P	Rockefeller (2 of 3 maps)—17B.
___LA–08P	Rockefeller (3 of 3 maps)—17C.
___LA–08P & S10	Rockefeller & Mermentau River—18.
___S10	Mermentau River—19.
___LA–09	Cameron (1 of 2 maps)—20A.
___LA–09	Cameron (2 of 2 maps)—20B.
___LA–10	Calcasieu Pass (1 of 2 maps)—21A.
___LA–10	Calcasieu Pass (2 of 2 maps)—21B.
___S11	Sabine (1 of 4 maps)—22A.
___S11	Sabine (2 of 4 maps)—22B.
___S11	Sabine (3 of 4 maps)—22C.
___S11	Sabine (4 of 4 maps)—22D.
___TEXAS (55 maps)	
Jefferson County:	
___T01P	Sea Rim—1.
___T01/T01P	Sea Rim—2.
___TX–02P	McFaddin (1 of 2 maps)—3A.
___TX–02P	McFaddin (2 of 2 maps)—3B.
___TX–02P & T02A	McFaddin & High Island (also in Chambers County)—4.
Galveston County:	
___T02A	High Island—5.
___T03A	Bolivar Peninsula—6.
___T03A/T03AP	Bolivar Peninsula—7.
___TX–04/TX04P	Swan Lake—8.
___TX–05P	Galveston Island—9.

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Unit number(s)	Unit name(s)
Brazoria County:	
___T04/T04P	Follets Island (1 of 2 maps)—10A.
___T04/T04P	Follets Island (2 of 2 maps)—10B.
___T05/T05P	Brazos River Complex—11.
___T05/T05P & T06P	Brazos River Complex & Sargent Beach (in Matagorda County)—12.
Matagorda County:	
___T06/T06P	Sargent Beach—13.
___T07/T07P	Matagorda Peninsula (1 of 6 maps)—14A.
___T07/T07P	Matagorda Peninsula (2 of 6 maps)—14B.
___T07/T07P	Matagorda Peninsula (3 of 6 maps)—14C.
___T07/T07P	Matagorda Peninsula (4 of 6 maps)—14D.
___T07/T07P	Matagorda Peninsula (5 of 6 maps)—14E.
___T07/T07P	Matagorda Peninsula (6 of 6 maps)—14F.
___T07	Matagorda Peninsula—15.
___TX–09	Coon Island Bay—16.
___TX–10	Shell Beach—17.
Calhoun County:	
___TX–06P	Matagorda Island (1 of 5 maps)—18A.
___TX–06P	Matagorda Island (2 of 5 maps)—18B.
___TX–06P	Matagorda Island (3 of 5 maps)—18C.
___TX–06P	Matagorda Island (4 of 5 maps)—18D.
___TX–06P	Matagorda Island (5 of 5 maps)—18E.
___TX–06P & T08	Matagorda Island & San Jose Island Complex—19.
___TX–06P & T08/T08P	Matagorda Island & San Jose Island Complex (also in Aransas County)—20.
Aransas County:	
___T08/T08P	San Jose Island Complex (also in Calhoun County) (1 of 5 maps)—21A.
___T08/08P	San Jose Island Complex (2 of 5 maps)—21B.
___T08/08P	San Jose Island Complex (3 of 5 maps)—21C.
___T08/08P	San Jose Island Complex (4 of 5 maps)—21D.
___T08/08P	San Jose Island Complex (5 of 5 maps)—21E.
Nueces County:	
___TX–15P	Mustang Island—22.
___TX–17/TX–17P	Shamrock Island—23.
Kleberg County:	
___TX–16P & T10/T10P	Four Mile Hill (in Nueces County) & North Padre Island—24.
___T10P	North Padre Island (1 of 7 maps)—25A.
___T10P	North Padre Island (also in Kennedy County) (2 of 7 maps)—25B.
___T10P	North Padre Island (3 of 7 maps)—25C.
___T10P	North Padre Island (4 of 7 maps)—25D.
___T10P	North Padre Island (5 of 7 maps)—25E.
___T10P	North Padre Island (6 of 7 maps)—25F.
___T10P	North Padre Island (7 of 7 maps)—25G.
___TX–19 & TX–21	Starvation Point & Kleberg Point—26.
Willacy County:	
___T10P & T11/T11P	North Padre Island & South Padre Island—27.
___T11P	South Padre Island—28.
Cameron County:	
___T11	South Padre Island (also in Willacy County)—29.
___T11/T11P	South Padre Island (also in Willacy County) (1 of 3 maps)—30A.
___T11/T11P	South Padre Island (2 of 3 maps)—30B.
___T11/T11P	South Padre Island (3 of 3 maps)—30C.
___T11/T11P & TX–22P	South Padre Island & Andy Bowie—31.
___T12/T12P	Boca Chica—32.
__PUERTO RICO (32 maps)	
Municipio de Rio Grande:	
___PR–02, PR–03 & PR–04P	Ensenada Comezon, Rio Mameyes & Punta la Bandera (in Luquillo Mun.)—1.
Municipio de Fajardo:	
___PR–05, PR–06, PR–07, PR–08P & PR–08AP	Luquillo Spit (in Luquillo Mun.), Juan Martin Spit (in Luquillo Mun.), Laguna Aquas Prietas, Cabo San Juan & La Cordillera—2.
___PR–08A/PR–08AP	La Cordillera—3.
___PR–09P & PR–10	Rio Fajardo & Punta Barrancas—4.
Municipio de Culebra:	
___PR–12P, PR–13P, PR–14P, PR–15P & PR–16P	Playa Flamenco, Playa Brava, Playa Larga, Isla Culebrita & Puerto del Manglar—5.
Isla de Vieques:	
___PR–17P	Ensenada Sombe—6.
Municipio de Naquabo:	
___PR–18P	Cayo Algodones—7
Municipio de Yabucoa:	

Unit number(s)	Unit name(s)
___PR–39	Puerto Yabucoa—8.
Municipio de Maunabo:	
___PR–40 & PR–41	Punta Tuna & Rio Maunabo—9.
Municipio de Patillas:	
___PR–42 & PR–43/PR–43P	Punta Viento & Punta Guilarte—10.
Municipio de Guayama:	
___PR–44 & PR–45/PR–45P	Las Mareas & Bahia de Jobos—11.
Municipio de Salinas:	
___PR–45P & PR–46	Bahia de Jobos & Cayos de Barca/Ratones Complex—12.
___PR–47, PR–48P & PR–49P	Arenal, Arrecife Media Luna, & Punta Aguila (In Santa Isabel Mun.)—13.
Municipio de Juana Diaz:	
___PR–50, PR–50P, PR–51 & PR–52P	Chardon (in Santa Isabel Mun.), Cayo Berberia, Rio Descalabrado & Punta Pastillo—14.
Municipio de Ponce:	
___PR–53, PR–54, PR–55 & PR–56	Bajio de Marea (in Juana Diaz Mun.), Rio Jacaguas, Isla del Frio & Punta Cabullones—15.
___PR–57/PR–57P & PR–58P	Punta Cucharas & Bahia de Tallaboa (in Penuelas Mun.)—16
Municipio de Guanica:	
___PR–59, PR–60P & PR–61	Punta Ballena (also in Yauco Mun.), Punta Jacinto & Ensenada las Pardas—17.
___PR–62P, PR–63P & PR–64P	Punta Manglillo, Cayo don Luis & Bahia Montalva (also in Lajas Mun.)—18.
Municipio de Cabo Rojo:	
___PR–65P	Islas Cueva/Guayacan (also in Lajas Mun.)—19.
___PR–65P & PR–66/PR–66P	Islas Cueva/Guayacan & Cabo Rojo—20.
___PR–67P, PR–68, PR–69 & PR–70	Bahia de Boqueron, Boca Prieta, Punta Carenero & Belvedere—21
Municipio de Mayaquez:	
___PR–72	Rio Guanajibo—22.
Municipio de Aquadilla:	
___PR–75/PR–75P	Espinar—23.
Municipio de Isabela:	
___PR–76 & PR–77	Punta Agujereada (in Aguadilla Mun.), & Bajura—24.
___PR–78	Coto—25.
Municipio de Camuy & de Hatillo:	
___PR–79 & PR–80	Penon Brusi & Punta Maracayo—26
Municipio de Arecibo:	
___PR–81	Puerto de Arecibo—27
Municipio de Manati:	
___PR–82P	Punta Manati—28.
___PR–83 & PR–84	Tortuguero (Also in Vega Baja Mun.) & Punta Garza (in Vega Baja Mun.)—29.
Municipio de Toa Baja:	
___PR–86P	Punta Salinas—30
Municipio de Loiza:	
___PR–87P	Punta Vacia Talega—31.
___PR–87	Punta Vacia Talega (also in Carolina Mun.)—32.
___U.S. VIRGIN ISLANDS (7 maps)	
St Croix:	
___VI–01, VI–02, VI–03, VI–08 & VI–09	Rust Up Twist, Salt River Bay, Altona Lagoon, Canegarden Bay & Krause Lagoon—1.
___VI–04/VI–04P, VI–05, VI–06 & VI–07	Southgate Pond, Coakley Bay, Robin Bay & Great Pond—2.
___VI–10 & VI–11/VI–11P	Long Point & Westend Saltpond—3.
St John:	
___VI–12P, VI–13P VI–14P, VI–22P, VI–23P, VI–24P & VI–25	Cinnamon Bay, Maho Bay, Francis Bay, Great Lameshur Bay, Europa Bay, Reef Bay, & Fish Bay—4.
VI–15P, VI–16 VI–17 VI–18, VI–19P, VI–20P, & VI–21P	Leinster Bay, Newfound Bay, Pond Bay, Lagoon Point, Ram Head, Kiddel Bay & Grootpan Bay—5.
St Thomas	
VI–26, VI–27, VI–28 & VI–29	Sprat Point, Limestone Bay, Perseverance Bay & Magens Bay—6.
VI–30, VI–31, VI–32, VI–33, VI–34 & VI–35P	Mandal Bay, Smith Bay, Vessup Bay, Great Bay, Jersey Bay & Buck Island—7.
__OHIO (7 maps)	
Lake County	
OH–01	Arcola Creek—1.
OH–02	Mentor—2.
Erie County	
OH–03	North Pond—3.
OH–04 & OH–05	Old Woman Creek & Sheldons Marsh—4.
Ottawa County:	
OH–06	Bay Point—5.

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Unit number(s)	Unit name(s)
OH–07, OH–08 & OH–09	Middle Bass Island, North Bass Island & Fox Marsh—6.
OH–10	Toussaint River—7.
MICHIGAN (37 maps)	
Monroe County:	
MI–02	Toledo Beach—1.
MI–03	Enrico Fermi—2.
Wayne County:	
MI–04	Sturgeon Bar—3.
Huron County:	
MI–05	Huron City—4.
MI–06 & MI–07	Alaska Bay & Pointe aux Barques—5.
Arenac County:	
MI–08	Charity Island—6.
Alpena County:	
MI–13	Squaw Bay—7.
MI–14	Whitefish Bay—8.
Presque Isle County:	
MI–17	Swan Lake—9.
Benzie County:	
MI–20	Lower Herring Lake—10.
Manistee County:	
MI–21	Arcadia Lake—11.
Muskegon County:	
MI–22	Sadony Bayou—12.
Menominee County:	
MI–24	Deadmans Point—13.
Delta County:	
MI–25	Squaw Point—14.
Schoolcraft County:	
MI–28 & MI–29	Goadreaus Harbor & Seul Choix—15.
Mackinac County:	
MI–31	Fox Point—16.
MI–32	McNeil Creek—17.
MI–33, MI–34, & MI–35	Millecoquins Point, East Mile Creek & Mattix Creek—18.
MI–36 & MI–37	Borgstrom Creek & Davenport Creek—19.
MI–38 & MI–39	Hudson & Epoufette—20.
MI–40	Green Island—21.
MI–41	Big St. Martin Island—22.
MI–42	Bass Cove Lake—23.
MI–43	Whitefish Point—24.
MI–44	Albany Island—25.
Chippewa County:	
MI–45	St. Vital Bay—26.
MI–46	Espanore Lake—27.
MI–49, MI–51 & MI–52	Shelldrake, Marsh Lake, & Superior—28.
MI–53	Vermilion—29.
Luce County:	
MI–55	Little Two Hearted River—30.
Alger County:	
MI–59	Laughing Whitefish River—31.
Marquette County:	
MI–62	Saux Head—32.
MI–63 & MI–64	Iron River & Squaw Beach—33.
MI–65	Salmon Trout Bay—34.
Baraga County:	
MI–66	Lightfoot Bay—35.
Keweenaw County:	
MI–71	Jacobs Creek—36.
MI–74	Gratiot River—37.
WISCONSIN (5 maps)	
Manitowoc County:	
WI–01	Two Creeks—1.
Brown County:	
WI–02	Point au Sable—2.
Marinette County:	
WI–03 & W–04	Peshtigo Point & Dyers Slough—3.
Bayfield County:	
WI–05	Bark Bay—4.
WI–06 & WI–07	Herbster & Flag River—5.

Unit number(s)	Unit name(s)
MINNESOTA (1 map)	
St. Louis County:	
MN–01	Minnesota Point—1.

Dated: January 30, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Human Drugs: Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of the Tentative Final Monograph for Combination Drug Products; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N–052G]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of the Tentative Final Monograph for Combination Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the tentative final monograph for over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to classify combination drug products containing the ingredients diphenhydramine citrate or diphenhydramine hydrochloride. The agency recently amended the final monograph for OTC antitussive drug products (products used to relieve cough) to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. The agency also previously included diphenhydramine citrate and diphenhydramine hydrochloride in the final monograph for OTC antihistamine drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments or objections by May 9, 1995; written comments on the agency's economic impact determination by May 9, 1995.

ADDRESSES: Written comments or objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products. In that notice, the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) discussed OTC cough-cold combination drug products, including combinations containing an oral antitussive and/or an antihistamine (41 FR 38312 at 38327). The Panel considered combinations containing the ingredient diphenhydramine hydrochloride. (Diphenhydramine citrate was not submitted for the Panel's consideration.) The Panel recommended that diphenhydramine hydrochloride be Category I (generally recognized as safe and effective) as both an oral antitussive and an antihistamine. However, the Panel recommended a Category II classification (not generally recognized as safe and effective or misbranded) for any combination containing an oral antitussive ingredient and an antihistamine if the antitussive ingredient is also a Category I antihistamine or if the antihistamine is also a Category I antitussive. Diphenhydramine hydrochloride was the only ingredient that the Panel classified in Category I for both antitussive and antihistamine use.

In the **Federal Register** of August 12, 1988 (53 FR 30522), FDA published the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products. FDA did not include specific combinations for OTC cough-cold drug products containing diphenhydramine citrate or diphenhydramine hydrochloride for OTC oral antitussive use in that tentative final monograph. At that time, these ingredients were not included in the final monograph for OTC antitussive drug products because adequate data to support monograph status were not publicly available. Subsequently, data were submitted to the rulemaking for OTC antitussive drug products (see discussion below).

In the tentative final monograph, the agency discussed combinations containing a drug recognized as both an antitussive and an antihistamine combined with another oral antitussive and/or antihistamine (53 FR 30522 at 30539). The agency proposed that such combinations be Category III (available data are insufficient to classify as safe and effective, and further testing is required).

In the **Federal Register** of December 9, 1992 (57 FR 58378), the agency proposed that diphenhydramine citrate and diphenhydramine hydrochloride be included in the final monograph for OTC antitussive drug products as single ingredients. This action was taken because the data needed to support monograph status had been made publicly available. The proposal was recently finalized in the **Federal Register** of June 3, 1994 (59 FR 29172). In that final rule, the agency stated that it would address the following matters in a future issue of the **Federal Register**: (1) OTC cough-cold combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride for antitussive use, (2) concurrent antitussive and antihistamine use of diphenhydramine ingredients (either in an OTC cough-cold single-ingredient or combination drug product) for concurrent symptoms, and (3) "multiuse" labeling for OTC drug products containing an ingredient that may be used separately for more than one indication for nonconcurrent symptoms--with full, separate labeling for each indication. The first two subjects are addressed in this proposed rule. The third will be addressed in a future issue of the **Federal Register**. Labeling issues relating to that topic are broader than diphenhydramine, applying to other OTC drug ingredients that have more than one pharmacologic activity and that are included or proposed for inclusion in more than one OTC drug monograph. For example, sodium bicarbonate has a number of drug uses.

II. The Agency's Proposals for OTC Cough-Cold Combination Drug Products Containing Diphenhydramine Citrate or Diphenhydramine Hydrochloride for Antitussive Use

In this proposed rule, the agency has considered all OTC cough-cold combination products classified in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522) that could include diphenhydramine as an oral antitussive or as an antihistamine. The agency is proposing only a few changes in the classification of these combinations when diphenhydramine is included in the combination as an antitussive or an antihistamine (see section III). The following table lists the combinations that were considered:

Table 1

Cough-Cold Combinations Considered in the Tentative Final Monograph That Contain an Antihistamine or an Antitussive

A. Combinations containing an oral antitussive, but not an antihistamine

1. Analgesic-antipyretic(s) and oral antitussive
2. Analgesic-antipyretic(s) and oral antitussive and oral nasal decongestant
3. Oral antitussive and expectorant (if labeled for nonproductive cough)
4. Oral antitussive and oral nasal decongestant
5. Oral antitussive and expectorant and oral nasal decongestant (if labeled for nonproductive cough)
6. Oral antitussive and anesthetic/analgesic (if available only in a solid dosage form)
7. Oral nasal decongestant and oral antitussive and anesthetic/analgesic (if available only in a solid dosage form)
8. Oral antitussive and oral demulcent (if available in a solid dosage form)
9. Oral nasal decongestant and oral antitussive and oral demulcent (if available only in a solid dosage form)
10. Oral antitussive and anesthetic/analgesic and oral demulcent (if available only in a solid dosage form)
11. Oral nasal decongestant and oral antitussive and anesthetic/analgesic and oral demulcent (if available only in a solid dosage form)
12. Oral antitussive and debriding agent/oral wound cleanser
13. Oral antitussive and astringent
14. Oral bronchodilator and oral antitussive (if labeled for cough associated with asthma)
15. Oral antitussive and bronchodilator used as an antitussive (if labeled for productive cough)
16. Oral antitussive and expectorant (if labeled for productive cough)
17. Oral antitussive and expectorant and oral nasal decongestant (if labeled for productive cough)
18. Analgesic-antipyretic(s) and oral antitussive and expectorant and oral nasal decongestant

B. Combinations containing an antihistamine, but not an oral antitussive.

1. Analgesic-antipyretic(s) and antihistamine
2. Analgesic-antipyretic(s) and antihistamine and oral nasal decongestant
3. Antihistamine and oral nasal decongestant
4. Antihistamine and debriding agent/oral wound cleanser
5. Antihistamine and astringent
6. Antihistamine and expectorant
7. Oral bronchodilator and antihistamine
8. Antihistamine and anticholinergic
9. Anticholinergic and antihistamine and oral nasal decongestant
10. Combinations containing an antihistamine for the relief of symptoms of allergic rhinitis and an additional antihistamine which is added exclusively for sedation, and the product contains labeling which represents the additional antihistamine as a sleep-aid
11. Combinations containing an antihistamine with a sleep- aid claim
12. Antihistamine and oral anesthetic/analgesic
13. Antihistamine and oral demulcent
14. Antihistamine and nasal decongestant (administered topically as spray or drops)

C. Combinations containing both an oral antitussive and an antihistamine.

1. Antihistamine and oral antitussive (if labeled "May cause marked drowsiness")
2. Analgesic-antipyretic(s) and oral antitussive and oral nasal decongestant and antihistamine
3. Antihistamine and oral antitussive and oral nasal decongestant
4. Antihistamine (if antihistamine is also a Category I antitussive) and oral antitussive
5. Oral antitussive (if antitussive is also a Category I antihistamine) and antihistamine

A. OTC cough-cold combinations containing: (1) An oral antitussive, but no antihistamine and (2) an antihistamine, but no antitussive.

1. Comparison of Category I Antitussive Combinations With Category II and III Antihistamine-containing Combinations.

The agency has compared all of the Category I combinations containing an oral antitussive, but not an antihistamine (in Table 1, A.1. through A.11.), with all of the Category II and III combinations containing an antihistamine, but not an oral antitussive (in Table 1, B.4. through B.14.). The agency compared the classes of ingredients included with an oral antitussive in Category I and the classes included with an antihistamine in Categories II and III to determine which combinations similar to the Category II and III antihistamine combinations were included in the Category I antitussive combinations. The following table lists these combinations:

Table 2

Category I Oral Antitussive Combination	Corresponding Category II or III Antihistamine Combination
Oral antitussive and an expectorant	Antihistamine and expectorant
Oral antitussive and an expectorant and a nasal decongestant (if labeled for nonproductive cough)	None
Oral antitussive and an anestehetic/analgesic in a solid dosage form	Antihistamine and an anesthetic/analgesic in a solid dosage form
Oral antitussive and an demulcent in a solid dosage form	Antihistamine and a demulcent
Oral nasal decongestant and an oral antitussive and an anesthetic/analgesic in a solid dosage form	None
Oral nasal decongestant and an oral antitussive and a demulcent in solid dosage	None

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(a) *Combination drug products containing an expectorant and an oral antitussive that is also an antihistamine.* The Panel recommended a Category I classification for combinations containing an oral antitussive and an expectorant that is labeled for nonproductive cough (41 FR 38312 at 38328). The agency concurred in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30556). However, the Panel recommended a Category II classification for combinations containing an antihistamine and an expectorant. In this combination, the anticholinergic effect (drying action) of the antihistamine would produce the opposite effect of the secretory action of the expectorant ingredient. Thus, the combination would be medically irrational (41 FR 38312 at 38326). The agency concurred with the Panel in the OTC cough-cold combinations tentative final monograph (53 FR 30522 at 30556). Because diphenhydramine is an antihistamine as well as an antitussive, it would have anticholinergic effects whether it is included in a combination as an oral antitussive or as an antihistamine. Accordingly, the agency is proposing a Category II classification for all combinations containing an expectorant and an oral antitussive if the antitussive is also an antihistamine. The agency is revising proposed § 341.40(g) and (i) to replace the phrase "Any single oral antitussive active ingredient identified in § 341.14(a) * * *" with the phrase "Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) * * *." This revision specifically excludes combinations containing diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive.

(b) *Combination drug products containing an anesthetic/analgesic and/or a demulcent (in a solid dosage form) and an oral antitussive that is also an antihistamine.* The Cough-Cold Panel reviewed data relating to combination drug products containing cough-cold and oral health care active ingredients with claims for relief of sore throat (41 FR 38312 at 38325). The Panel established specific criteria for the treatment of symptoms with combination products and based its Category I recommendations on whether the combination is rational concurrent therapy for a significant and existing population. The Panel determined that products containing an antitussive or a nasal decongestant combined with an oral anesthetic/analgesic in a lozenge dosage form are rational and recommended a Category I classification for these combinations. The agency concurred with the Panel in the tentative final monograph for OTC cough-cold combination drug products. However, the agency determined that such a combination could be rational only if the combination drug product were in a solid dosage form so that the anesthetic/analgesic ingredient or the demulcent ingredient may exert its topical effect and the antitussive can be ingested (53 FR 30522 at 30536 and 30537).

The Panel did not discuss combinations containing an antihistamine with an anesthetic/analgesic or a demulcent. However, the agency considered such combinations in the OTC cough-cold combinations tentative final monograph (53 FR 30522 at 30537). The agency stated that the combination of an antihistamine and an oral anesthetic/analgesic or an oral demulcent could be rational if the combination drug product is in a solid dosage form. In addition, the symptoms of allergic rhinitis and minor throat irritation that may result from the nasal congestion that often occurs with allergic rhinitis and subsequent breathing through the mouth could be treated concurrently with such combinations. However, the agency also stated that it was unaware of any currently marketed drug product that contains such a combination and that no data were submitted to demonstrate a significant target population with concurrent symptoms that would benefit from such a combination. Therefore, the agency proposed a Category III classification for the combination of an antihistamine with an oral anesthetic/analgesic or an oral demulcent. The agency has since determined that data do exist to support a target population for such combinations based on epidemiological data accepted by the Panel (41 FR 38312 at 38325). The agency believes that a Category I classification is appropriate for combinations containing an oral antitussive (which is also an antihistamine, although antihistamine claims cannot be made for these combinations) with an oral anesthetic/analgesic or an oral demulcent if in a solid dosage form. Thus, the agency is proposing to include diphenhydramine citrate and diphenhydramine hydrochloride in combinations specified in § 341.40(j), (q), (u), (w), (x), and (z). At this time, sufficient data have not been provided to support a suitable target population with concurrent symptoms of sufficient duration to justify an antihistamine claim for any of these combination drug products. Therefore, any of these combinations that contain diphenhydramine citrate or diphenhydramine hydrochloride as the antitussive cannot also make antihistamine claims.

2. Category II and III Combinations Containing an Antitussive.

The agency has considered all OTC cough-cold combinations containing an oral antitussive, but no antihistamine, that were placed in Category II or III in the OTC cough-cold combinations tentative final monograph (combinations in Table 1 under A.1. through A.18.). The agency has determined that these combinations would be categorized in the same manner if diphenhydramine were used as the antitussive. The agency is not aware of any data or information that would support reclassification of any of these combinations because they contain diphenhydramine rather than any other monograph oral antitussive ingredient.

3. Combinations Containing an Antihistamine With no Corresponding Category I Antitussive Combination.

The agency considered all antihistamine combinations (not including an oral antitussive) that did not have a corresponding Category I antitussive combination (not including an antihistamine), e.g., an antihistamine and an anticholinergic. The agency is not changing the classification of any of these combinations because they do not contain an antitussive component. Thus, these combinations are not pertinent to combinations that include an antitussive that is also an antihistamine.

B. OTC cough-cold combinations containing: (1) An oral antitussive and an antihistamine if the antitussive is also a antihistamine or (2) an antihistamine and an oral antitussive if the antihistamine is also an antitussive.

The Panel recommended a Category II classification for combinations containing: (1) An oral antitussive and an antihistamine if the antitussive is also a Category I antihistamine, and (2) an antihistamine and an oral antitussive if the antihistamine is also a Category I antitussive (41 FR 38312 at 38326). Such combinations include diphenhydramine and dextromethorphan or diphenhydramine and chlorpheniramine. The Panel stated that the combinations are not safe because the side effects of two drugs having the same action may combine. For example, the drowsiness effect of each ingredient may be additive and result in an unacceptable level of drowsiness for the combination drug product.

In the proposed rule for OTC cough-cold combination drug products (53 FR 30522 at 30539), FDA did not include any specific OTC cough-cold combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride as oral antitussive active ingredients. These ingredients were not included in the final monograph for OTC antitussive drug products because of a lack of publicly available data that would support the antitussive effectiveness of diphenhydramine. (See the **Federal Register** of October 19, 1983, 48 FR 48576.) However, the agency did discuss combinations containing a drug that is both an antitussive and an antihistamine (such as diphenhydramine) combined with another oral antitussive or antihistamine (53 FR 30522 at 30539). The agency considered such products to be combinations containing two ingredients from the same pharmacologic group and proposed a Category III classification based on the agency's "General Guidelines for OTC Drug Combination Products" (Ref. 1). Under the guidelines, Category I active ingredients from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage over the single ingredient in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation. However, the guidelines also state that such ingredients may be combined in selected circumstances to treat the same symptoms or conditions if the combination meets the OTC drug combination policy in all respects, the combination offers some advantage over the active ingredients used alone, and the combination is, on a benefit-risk basis, equal to or better than each of the active ingredients used alone at its therapeutic dose.

Accordingly, the agency is proposing to place combinations containing a drug recognized as both an antitussive and an antihistamine with another oral antitussive and antihistamine in Category III. At the present time, this proposal only involves combinations containing diphenhydramine citrate or diphenhydramine hydrochloride with any monograph antihistamine in § 341.12 or any monograph antitussive in § 341.14. The agency is revising proposed § 341.40(d), (e), and (f) to replace the phrase "Any single antihistamine active ingredient identified in § 341.12 * * *" with the phrase "Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) * * *." This revision specifically excludes combinations containing diphenhydramine citrate or diphenhydramine hydrochloride as an antihistamine with an antitussive.

The agency is also revising proposed § 341.40(d), (e), and (f) to replace the phrase "any single oral antitussive active ingredient identified in § 341.14(a) * * *" with the phrase "any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) * * *." This revision specifically excludes combinations containing diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive with an antihistamine.

The agency has also considered combinations containing a dose of diphenhydramine as the oral antitussive component and an additional dose of diphenhydramine as the antihistamine. The agency concludes that such a combination would contain too large a dose of diphenhydramine to be safe. Thus, the agency is proposing that such a combination be Category II.

The use of a single dose of diphenhydramine as an antitussive and antihistamine for treating concurrent symptoms in either a single-ingredient or combination drug product is discussed in section III.

Reference

(1) Food and Drug Administration "General Guidelines for OTC Drug Combination Products, September 1976," Docket No. 78D–0322, Dockets Management Branch.

III. Use of a Single Dose of Diphenhydramine Citrate or Diphenhydramine Hydrochloride as an Antitussive and Antihistamine for Treating Concurrent Symptoms (in Either a Single-Ingredient or Combination Drug Product)

In the **Federal Register** of December 9, 1992 (57 FR 58378), the agency proposed to amend the final monograph for OTC antitussive drug products to add diphenhydramine citrate and diphenhydramine hydrochloride. In response, one comment stated that a single-ingredient drug product containing diphenhydramine hydrochloride for concurrent use as both an antihistamine and an antitussive should be labeled with a broader dosing range (e.g., diphenhydramine hydrochloride, 25 to 50 milligrams (mg) every 4 to 6 hours, not to exceed 300 mg in 24 hours) to eliminate confusion to consumers (Ref. 1). The comment also contended that the broader dosage range should be permitted to provide the maximum antihistamine effectiveness for consumers. In addition, the comment stated that the labeling of products for concurrent antihistamine/antitussive use should include the appropriate warnings for both indications.

The Panel believed that the interests of consumers are best served by exposing the user of OTC drug products to the smallest number of ingredients possible at the lowest possible dosage consistent with a satisfactory level of effectiveness (41 FR 38312 at 38322). Thus, an OTC drug product in which diphenhydramine citrate or diphenhydramine hydrochloride serves both as the antitussive and antihistamine component for treating concurrent symptoms would reduce the number of ingredients in the product. For example, a Category I combination drug product containing diphenhydramine as an antihistamine and antitussive combined with a nasal decongestant would contain only two ingredients. Such a combination would contain one less ingredient than a similar combination product containing three different ingredients for the same therapeutic uses. Similarly, an antihistamine-antitussive combination could contain only diphenhydramine to serve both functions.

In a final rule that amended the OTC antitussive monograph to include diphenhydramine citrate and diphenhydramine hydrochloride (59 FR 29172), the agency determined that the available clinical data and marketing history of products containing these ingredients for antitussive use do not support a broader dosage range. The agency concluded that it could not generally recognize as safe and effective an antitussive dosage (25 to 50 mg every 4 to 6 hours for diphenhydramine hydrochloride) that is not supported by clinical data. The dosage for diphenhydramine hydrochloride in § 341.74(d)(1)(v) of the antitussive monograph (21 CFR 341.74(d)(1)(v)) reads:

Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The dosage for diphenhydramine citrate in § 341.74(d)(1)(iv) of the antitussive monograph (21 CFR 341.74(d)(1)(iv)) reads:

Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6

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to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The dosage for diphenhydramine hydrochloride in § 341.72(d)(7) of the antihistamine monograph (21 CFR 341.72(d)(7)) reads:

Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The dosage for diphenhydramine citrate in § 341.72(d)(6) of the antihistamine monograph (21 CFR 341.72(d)(6)) reads:

Adults and children 12 years of age and over: oral dosage is 38 to 76 milligrams every 4 to 6 hours, not to exceed 456 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 to 38 milligrams every 4 to 6 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The agency believes that an OTC drug product containing diphenhydramine citrate or diphenhydramine hydrochloride that is labeled both as an antitussive and an antihistamine should conform to the same labeling restrictions that apply to combination drug products containing a different antitussive and antihistamine ingredient. In the tentative final monograph for OTC cough-cold combination drug products, the agency proposed that when there is a difference in the directions established for the individual ingredients in a combination drug product, e.g., when the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph (53 FR 30522 at 30554). Therefore, when diphenhydramine citrate or diphenhydramine hydrochloride is labeled for both antitussive and antihistamine use, the limiting factor for directions for use for both the dosage amount and dosing interval for OTC labeling is the antitussive dosage in § 341.74(d)(1)(iv) and (d)(1)(v). However, the limiting factor for directions for use for professional labeling is the antihistamine dosage in § 341.90(j) and (k) (21 CFR 341.90(j) and (k)), respectively. As noted above, the Panel believed that the interests of consumers are best served by exposing the user of OTC drug products to the smallest number of ingredients possible at the lowest possible dosage consistent with a satisfactory level of effectiveness (41 FR 38312 at 38322).

The comment also questioned how the statements of identity, indications, and warnings required for both OTC antitussive and antihistamine drug products could be combined when the product contains diphenhydramine for concurrent antitussive and antihistamine use. The agency has determined that the labeling of such products should conform to the labeling requirements for combination drug products containing an antitussive and an antihistamine. The proposed labeling section for OTC cough-cold combinations (§ 341.85) states that the statements of identity, indications, and warnings may be combined to eliminate duplicative wording or phrases so that the resulting information is clear and understandable (53 FR 30522 at 30562).

When applied to diphenhydramine for concurrent use, the statement of identity would be "antihistamine/cough suppressant" or "antihistamine/antitussive (cough suppressant)." The indications would be combined from §§ 341.72(b) and 341.74(b). The warnings would be combined from § 341.72(c)(1), (c)(2), (c)(4), and (c)(6) and § 341.74(c)(1), (c)(2), (c)(3), and (c)(4). The warnings for diphenhydramine for antitussive use in § 341.74(c)(4) encompass all of the same warnings for diphenhydramine for antihistamine use in § 341.72(c)(1), (c)(2), (c)(4), and (c)(6). In addition, the product would need to have the required warnings for antitussive use in § 341.74(c)(1), (c)(2), and (c)(3), as applicable (depending on the ages for which the product is labeled). Thus, an easy rule to follow when using diphenhydramine citrate or diphenhydramine hydrochloride as a single ingredient for both antihistamine and antitussive use is to follow all of the warnings in § 341.74(c) of the antitussive monograph. This example illustrates how a single uniform warning results when the duplicative words or phrases from the respective warnings are eliminated.

Accordingly, the agency is proposing the following labeling for drug products that contain diphenhydramine citrate or diphenhydramine hydrochloride for concurrent antitussive and antihistamine use: *Labeling of drug products containing diphenhydramine citrate or diphenhydramine hydrochloride for concurrent antitussive and antihistamine use either as a single ingredient product or as a single ingredient in combination with other active ingredients.* The statements of identity, indications, and warnings required for antitussive and antihistamine use may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. The directions for OTC labeling shall follow § 341.74(d)(1)(iv) or (d)(1)(v), as applicable. The directions for professional labeling shall follow § 341.90(j) or (k), as applicable.

The agency notes that allowing the use of diphenhydramine in the same product as both an antitussive and antihistamine for treating concurrent symptoms is a new concept. Therefore, the agency would like to receive public comment on the proposed new concept and on the proposed labeling approach before marketing begins. Although the agency is proposing in this amendment to the cough-cold combination tentative final monograph to allow the use of diphenhydramine in the same product as both an antitussive and an antihistamine, OTC marketing may not begin at this time. The agency is providing a short comment period of 75 days and plans to issue a notice of enforcement policy at a later date to state whether marketing may begin prior to the issuance of the final monograph for OTC cough-cold combination drug products.

Reference

(1) Comment No. C0001, Docket No. 89P–0040, Dockets Management Branch.

IV. Summary of the Agency's Proposals for OTC Cough-Cold Combinations Containing Diphenhydramine as an Antitussive

The agency has reviewed all combinations containing an oral antitussive and/or an antihistamine that were classified as Category I, II, or III in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30556 and 30557), to clarify the use of diphenhydramine citrate and diphenhydramine hydrochloride as antitussive active ingredients in these combinations. For the convenience of the reader, the following table is included as a summary of the proposed classification changes by the agency of combinations containing an antitussive in the tentative final monograph for OTC cough-cold combination drug products (53 FR 30522 at 30556 and 30557) and the proposed classification by the agency of these combinations when the antitussive or the antihistamine active ingredient is either diphenhydramine citrate or diphenhydramine hydrochloride. Table 3 includes only the proposed changes in classification made in § 341.40 of the cough-cold combination drug products tentative final monograph. All other combination classifications remain the same:

Table 3

Cold-Cough Combinations	Tentative Final Monograph Proposed Classification	New Proposed Classification for Dephenhydramine-Containing Combinations
Oral antitussive and expectorant (if labeled for nonproductive cough)	I	II
Oral antitussive and expectorant and oral nasal decongestant (if labeled for nonproductive cough)	I	II
Oral antitussive and bronchdilator used as an antitussive (if labeled for productive cough)	III	II
Oral antitussive and expectorant (if labeled for productive cough)	III	II
Oral antitussive and expectorant and oral nasal decongestant (if labeled for productive cough)	III	II
Analgesic-antipyretic(s) and oral antitussive and expectorant and oral nasal decongestant	III	II
Antihistamine and oral antitussive (if labeled "May cause marked drowsiness")	I	III
Analgesic-antipyretic(s) and oral antitussive and oral nasal decongestant and antihistamine	I	III
Antihistamine and oral antitussive and oral nasal decongestant	I	III

1. The agency is revising proposed § 341.40(d), (e), and (f) to replace the phrase "Any single antihistamine active ingredient identified in § 341.12 * * *" with the phrase "any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) * * *" to exclude the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. (See section II.B.)

2. The agency is revising § 341.40(d) through (g) and (i) to replace the phrase "Any single oral antitussive active ingredient identified in § 341.14(a) * * *" with the phrase "Any single oral antitussive active ingredient identified in § 341 14(a)(1) through (a)(4) * * *" to exclude the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. (See sections II.A.(i) and II.B.)

3. The agency is proposing to include diphenhydramine citrate and diphenhydramine hydrochloride in combinations specified in § 341.40(h), (j), (k), (q), (u), (w), (x), and (z). (See section II.A.(ii).)

4. The agency is proposing in § 341.40(d), (e), and (f) the use of diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341 14(a)(6) as both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70.

5. The agency is revising § 341.40(f) and (k) to include the specific section numbers for allowed internal analgesic ingredients.

6. In the oral health care tentative final monograph published on September 24, 1991 (56 FR 48302), the agency redesignated the active anesthetic/analgesic ingredients previously proposed in § 356.10 as § 356.12. Accordingly, the agency is revising § 341.40(j), (q), (x), and (z) to replace the phrase "any single oral anesthetic/analgesic active ingredient identified in § 356.10 * * *" with the phrase "any single oral anesthetic/analgesic active ingredient identified in § 356.12 * * *".

7. The agency is proposing to add to § 341.70 labeling for diphenhydramine-containing drug products for concurrent antitussive and antihistamine use under the heading: *Labeling of drug products containing diphenhydramine citrate or diphenhydramine hydrochloride for concurrent antitussive and antihistamine use either as a single ingredient product or as a single ingredient in combination with other active ingredients.* (See section III.)

V. Effective Date

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the

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proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed rule clarifies the use of diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive active ingredient in OTC cough-cold combination drug products and proposes marketing of either a single-ingredient or a combination drug product containing one of these ingredients for concurrent antitussive and antihistamine use. Manufacturers may market such products at their option when marketing is allowed to begin. (See marketing discussion in section III.) Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC cough-cold combination drug products. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Request for Comments

Interested persons may, on or before May 9, 1995, submit to the Dockets Management Branch (address above) written comments or objections. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 341 (as proposed in the Federal Register of August 12, 1988 (53 FR 30522)) be amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.40 is amended by revising paragraphs (d) through (k), (q), (u), (w), (x), and (z) to read as follows:

§ 341.40 Permitted combinations of active ingredients.

* * * * *

(d) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) provided that the product is labeled according to § 341.85(c)(5). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70.

(e) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) and any single oral nasal decongestant active ingredient identified in § 341.20(a). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70.

(f) Any single antihistamine active ingredient identified in § 341.12(a) through (e) and (h) through (m) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) and any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single analgesic-antipyretic active ingredients identified in § 343.10 of this chapter, or any combination of acetaminophen with other analgesic-antipyretic active ingredients identified in § 343.20(a) of this chapter, or any aspirin and antacid combination identified in § 343.20(b)(3). Diphenhydramine citrate in §§ 341.12(f) and 341.14(a)(5) or diphenhydramine hydrochloride in §§ 341.12(g) and 341.14(a)(6) may be both the antihistamine and the antitussive active ingredient provided that the product is labeled according to § 341.70.

(g) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(4) may be combined with any single expectorant active ingredient identified in § 341.18.

(h) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) provided the product contains only the labeling claims identified in this paragraph.

(i) Any single oral antitussive drug ingredient identified in § 341.14(a)(1) through (a)(4) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single expectorant active ingredient identified in § 341.18.

(j) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.12 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

(k) Any single oral antitussive drug ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single analgesic-antipyretic active ingredients identified in § 343.10 of this chapter, or any combination of acetaminophen with other analgesic-antipyretic active ingredients identified in § 343.20(a) of this chapter, or any aspirin and antacid combination identified in § 343.20(b)(3) provided the product contains only the labeling claims identified in this paragraph and provided the product contains only the labeling claims identified in this paragraph.

* * * * *

(q) Any single oral nasal decongestant active ingredient identified in § 341.20(a) may be combined with any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) and any single oral anesthetic/analgesic active ingredient identified in § 356.12 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

* * * * *

(u) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

* * * * *

(w) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

(x) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral anesthetic/analgesic active ingredient identified in § 356.12 of this chapter and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

* * * * *

(z) Any single oral antitussive active ingredient identified in § 341.14(a)(1) through (a)(6) may be combined with any single oral nasal decongestant active ingredient identified in § 341.20(a) and any single oral anesthetic/analgesic active ingredient identified in § 356.12 of this chapter and any single oral demulcent active ingredient identified in § 356.18 of this chapter provided that the product is available in a solid dosage form to be dissolved in the mouth and swallowed and provided the product contains only the labeling claims identified in this paragraph.

3. New § 341.70 is added to subpart C to read as follows:

§ 341.70 Labeling of drug products containing diphenhydramine citrate or diphenhydramine hydrochloride for concurrent antitussive and antihistamine use either as a single ingredient product or as a single ingredient in combination with other active ingredients.

The statements of identity, indications, and warnings required for antitussive and antihistamine use may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. The directions for OTC labeling shall follow § 341.74(d)(1)(iv) or (d)(1)(v), as applicable. The directions for professional labeling shall follow § 341.90(j) or (k), as applicable.

Dated: January 31, 1995.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

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Part VII

Department of Energy

Office of Policy

10 CFR Part 600

Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Policy

10 CFR Part 600

[Docket No. PO–RM–95–101]

Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (Department or DOE) today gives notice of a proposed general statement of policy to guide DOE officials in making eligibility determinations required by section 2306 of the Energy Policy Act of 1992. The proposed general statement of policy includes procedures and interpretations related to the statutory limits placed by section 2306 on eligibility to receive financial assistance under DOE programs authorized by Titles XX through XXIII of that Act.

DATES: Written comments (9 copies) must be received by DOE on or before April 24, 1995. A public hearing will be held on April 19, 1995 beginning at 9:30 a.m. at the address listed below. Requests to speak must be received by April 17, 1995, by calling (202) 586–3012.

ADDRESSES: Written comments and requests to speak must be submitted to: Dr. Robert C. Marlay, Office of Science Policy, Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–3012.

Telecopied comments will not be accepted. The public hearing will be held in Room 1E–245, U.S Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. See Section V. for additional information concerning public comment procedures.

FOR FURTHER INFORMATION CONTACT: Dr. Robert C. Marlay, Office of Science Policy (Mail Stop PO–81), Office of Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–3900. Paul Sherry, Esq., Office of General Counsel (Mail Stop GC–61), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–2440.

SUPPLEMENTARY INFORMATION:

I. Background

This notice sets forth a proposed general statement of policy, including procedures and interpretations, concerning implementation of the requirements of section 2306 of the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13525). The general statement of policy, when finalized, will guide implementing DOE officials in making a special eligibility determination prerequisite to a financial assistance award to a company under Titles XX through XXIII of EPAct. Those titles relate to research, development, demonstration and commercialization programs in diverse areas of energy efficiency, energy supply, and related basic research.

The Department has decided to adopt a general statement of policy and to codify that policy in the part of the Code of Federal Regulations containing the Department's financial assistance regulations. Such a codified policy statement is needed to communicate guidance on these implementation issues to Departmental officials and potential DOE program applicants. This policy statement applies only to DOE's implementation of section 2306 of EPAct; it is not intended to apply to any other agency or to the implementation of any other statutory eligibility requirement.

The eligibility restrictions addressed in this policy statement apply to a broad range of DOE programs (see list of covered programs below), many of which pre-dated enactment of EPAct. These programs are conducted by a large number of program and contracting officials located in regional and field offices as well as DOE headquarters. This policy statement provides uniform guidance for DOE officials and for applicants to the broad array of covered programs.

Section 2306 does not require the Department to conduct a rulemaking. Further, notice and comment rulemaking is not required by law for general statements of policy. However, DOE has chosen to publish the proposed general statement of policy in the **Federal Register** in order to ensure a full opportunity for public comment and input prior to finalizing the policy.

Section 2306 provides for a two-part determination. An applicant must be found to satisfy the conditions of both parts in order to be eligible.

The first part, set out in section 2306(1), involves a finding with regard to whether an award to the applicant would be in the economic interest of the United States. 42 U.S.C. 13525(1). The statute provides some illustrative examples of the kinds of evidence that would support such a finding: Investments in the United States in research, development, and manufacturing; significant contributions to employment in the United States; and agreements, with respect to any technology arising from financial assistance provided, to promote the manufacture within the United States of products resulting from that technology and to procure parts and materials for such manufacture from competitive suppliers.

The second part of the determination, section 2306(2), involves two subparts, one of which must be satisfied. 42 U.S.C. 13525(2). The first subpart is satisfied if the applicant is a "United States-owned company." The second subpart is satisfied if the applicant is found to be incorporated in the United States and the applicant's parent company is incorporated in a foreign country that: (a) Affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to access to government-supported joint ventures in energy research and development; (b) affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to general investment opportunities; and (c) affords adequate and effective protection to intellectual property rights owned by United States-owned companies.

None of the statutory terms used in section 2306 is defined by EPAct, and the legislative history sheds no light on the intended meaning of such terms. Consequently, the Department's proposed interpretations are based on the common usage of these terms, as informed by their usage in similar contexts.

The Department is of the view that the proposed general statement of policy sets forth a reasonable decisionmaking framework for the guidance of implementing officials. If any of the provisions of the policy would be unreasonable as applied, those officials would have the discretion to depart from its terms based upon particular facts and circumstances. Department officials must, in all cases, comply with the requirements of the statute.

II. Applicability of Eligibility Requirements

Section 2306's eligibility requirements apply to applicants for "financial assistance under Titles XX through XXIII of this Act." 42 U.S.C. 13525. EPAct does not define "financial assistance." Consistent with the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308, and the practices of other Executive agencies, DOE currently defines financial assistance instruments to include grants and cooperative agreements, but not contracts and subcontracts. 10 CFR 600.3 ("financial assistance instruments are grants and cooperative agreements and subawards"). Contracts and subcontracts do not constitute financial assistance but instead provide for payment in exchange for procured products or services. *See* 31 U.S.C. 6303. Thus, the Department concludes that contracts and subcontracts, including cost-shared contracts and subcontracts, fall outside the scope of financial assistance and does not propose modifying the current definition of financial assistance in 10 CFR 600.3 for purposes of this subpart.

The Department's current definition of financial assistance also excludes cooperative research and development agreements (CRADAs). The Stevenson-Wydler Technology Innovation Act, 15 U.S.C. 3710a, which authorizes the use of CRADAs, does not authorize the transfer of funds to a CRADA participant and specifically distinguishes CRADAs from cooperative agreements. Thus any assistance provided under CRADAs would not be "financial" assistance as the term ordinarily is understood. We note as well that existing law governing the use of CRADAs contains a set of considerations for the selection of CRADA participants that address similar policy objectives. 15 U.S.C. 3710a(c)(4).

Section 2306 applies to financial assistance "under Titles XX through XXIII" of EPAct. The intended effect of this statutory phrase is ambiguous. The Department proposes to interpret the range of activities covered by section 2306 to include all Department of Energy research and development programs either mentioned specifically in the text of Titles XX through XXIII or suggested by references to similar and related research and development activities in the conference reports on the Appropriations Acts for Energy and Water Development and for Interior and Related Agencies. This includes many programs and program activities that were initiated prior to the enactment of EPAct under authority of pre-existing law. Thus, for many programs, there are now two or more authorities. Comment is requested on this interpretation.

A list of covered programs for fiscal year 1995 (FY95) is set forth in the discussion of the term "covered program" in section III below. This list will be updated each fiscal year and published in the **Federal Register** to account for changes in appropriated activities undertaken under Titles XX through XXIII of EPAct.

III. Section-By-Section Analysis

Today's proposed policy statement would be codified as a new subpart F in 10 CFR part 600 where the Department's general financial assistance regulations are codified. The following is a discussion of the new sections that would make up subpart F.

§ 600.500 Purpose and scope.

This section states that the subpart provides procedures and interpretations to guide DOE officials in making eligibility determinations under section 2306 of the EPAct.

§ 600.501 Definitions.

The definition section begins by alerting readers that the existing definitions in § 600.3 of the general subpart are applicable to the new subpart F. Section 600.3 contains definitions of "applicant," "cooperative agreement," "financial assistance," "grant," and "State."

The term "company" is defined to mean any for-profit business entity. The eligibility requirements of section 2306 would apply only to companies. This definition, based on common usage of the term company, is intended to include for-profit corporations, general or limited partnerships, sole proprietorships, and other forms of business entities. It is also intended to cover joint ventures involving one or more such entities. The definition does not include governmental entities, and thus such entities would not be subject to this restriction on eligibility to receive financial assistance. Moreover, the definition does not include non-profit organizations. The Department invites comment on whether it is appropriate to exclude all non-profit organizations from this definition, or whether it would be more appropriate to exclude a narrower class of educational and charitable organizations, such as organizations exempted from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The term "covered program" is defined in order to have a convenient term for referring to the list of activities under Titles XX through XXIII of the Energy Policy Act of 1992 to which the section 2306 eligibility restrictions apply. Set out below is the proposed list of covered programs for FY95:

COVERED PROGRAMS—FY 95

Fossil energy R & D	EPACT sections
Petroleum:	
All Programs	§ 2011, 2012
Gas:	
Natural Gas Research	§ 2013–2015, 2112
All programs, including:	
Resource & Extraction	§ 2013, 2014
Delivery & Storage	§ 2013, 2014
Utilization	§ 2013, 2014
Turbines	§ 2112
Environmental Research & Regulatory Analysis.	§ 2013, 2014
Midcontinent Energy Research Center.	§ 2013, 2015
Fuel cells:	§ 2115
All Programs, including:	
Advanced Research	§ 2115
Molten Carbonate Systems.	§ 2115
Advanced Concepts	§ 2115
Energy conservation:	
Transportation	§ 2021–2025, 2027, 2028, 2112
Alternative Fuels Utilization.	§ 2021, 2023
Materials Development	§ 2021
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propulsion Development.	§ 2021, 2025
Implementation & Deployment.	§ 2021
Management	§ 2021
Capital Equipment	§ 2021
Advanced Automotive Fuel Economy.	§ 2021, 2022
Biofuels User Facility	§ 2021, 2024
Advanced Diesel Emissions Program.	§ 2021, 2027
Telecommuting Study	§ 2021, 2028
Utility:	§ 2101
All programs.	
Industry	§ 2101–2108
All Programs, Including:	
Industrial Wastes	§ 2101
Municipal Solid Wastes	§ 2101
Cogeneration	§ 2101
Electric Drives	§ 2101, 2105
Materials and Metals Processing.	§ 2101, 2107
Other Process Efficiency.	§ 2101
Process Heating & Cooling.	§ 2101, 2102
Implementation & Deployment.	§ 2101
Management	§ 2101
Capital Equipment	§ 2101
National Advanced Manufacturing Tech Initiative.	§ 2101, 2202
Pulp & Paper	§ 2101, 2103
Steel, Aluminum, and Metal Research.	§ 2101, 2106
Energy Efficient Environmental Program.	§ 2101, 2108
Buildings	§ 2101–2108
All Programs, including:	
Federal Energy Management Program.	§ 2101
Implementation & Deployment.	§ 2101

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COVERED PROGRAMS—FY 95—Continued

Fossil energy R & D	EPACT sections
Management and Planning.	§2101
Capital Equipment	§2101
Advanced Buildings for 2005.	§2101, 2104
Building Systems	§2101
Building Envelope	§2101
Building Equipment	§2101
Codes and Standards	§2101
Energy Supply R & D	
Energy Research	
Fusion Energy	§2114
All Programs, including:	
Confinement Systems.	§2114
Development & Technology.	§2114
Applied Plasma Physics.	§2114
Planning & Projects.	§2114
Inertial Fusion Energy.	§2114
Program Direction-Op Exp.	§2114
Capital Equipment & Construction.	§2114
Basic Energy Sciences	§2203
All Activities, including: Materials Sciences.	§2203
Chemical Sciences.	§2203
Energy Biosciences.	§2203
Engineering & Geosciences.	§2203
Applied Math Sciences.	§2203, 2204
Advanced Energy Projects.	§2203
Program Direction.	§2203
Capital Equipment.	§2203
Advisory & Oversight/Program Direction.	§2203
Advanced Neutron Source	§2203.
Energy Research Analysis	§2203
University & Science Education Programs.	§2203
Experimental Program to Stimulate Competitive Research.	§2203
Laboratory Technology Transfer.	§2203
Multi-Program Laboratory Support.	§2203
Nuclear Energy:	
Light Water Reactor	§2123, 2126
Advanced Reactor R & D	§2121, 2122, 2124, 2126
Facilities	§2126
Solar & Renewables:	
Solar & Other Energy	§2021, 2026, 2111, 2117

COVERED PROGRAMS—FY 95—Continued

Fossil energy R & D	EPACT sections
All Programs, including:	
Photovoltaics	§2111
Biofuels	§2021, 2013, 2024, 2111
Solar Technology Transfer.	§2111
Program Direction—Other Solar Energy.	§2111
Solar Building Technology Research.	§2111, 2104
Solar Thermal Energy Systems.	§2111
Wind Energy Systems	§2111
Ocean Energy Systems	§2111
International Solar Energy Program.	§2111
Resource Assessment	§2111
Program Support	§2111
Geothermal	§2111
Hydrogen Research	§2026
Electric Energy Systems including: Superconductivity.	§2117, 2111
Energy Storage Systems	§2111
Environmental Rest & Waste Management:	
Facility Transition—Fast Flux Test Facility.	§2116
Civilian Waste R & D	§2113
Electric & Magnetic Fields Research and Public Dissemination Program.	§2118
Spark M. Matsunaga Renewable Energy & Ocean Technology Center.	§2111, 2119

The term "parent company" is defined as a company that exercises ultimate ownership of the applicant company. The parent company would be identified by first determining whether any company owns a majority of the applicant company's voting securities. If so, then the same test would be applied to that company, *i.e.*, does any company own a majority of that company's voting securities? The parent company would be the company that exercises control over the applicant company by means of this chain of majority stock ownership, and which itself is not subject to the majority stock ownership of any other company.

DOE would interpret the term "parent company" to mean the ultimate parent company as just described in order to avoid confusion in cases where an applicant company and its immediate parent are both organized in the U.S., but where the immediate parent is, in turn, owned by a company organized abroad.

The Department recognizes that there may be situations in which one company effectively controls the actions of another without owning a majority of its voting securities. However, given that the sole purpose of this inquiry into corporate lineage would be to identify the foreign country with which a non-U.S.-owned applicant can be most directly associated, this approach is felt to be both adequate and appropriate.

The definition of "United States" is a standard definition used in many of the Department's programs. It includes the 50 States, the District of Columbia, and all commonwealths, territories and possessions of the United States.

The term "United States-owned company" is a key part of section 2306(2). The Department proposes to permit an applicant to use either of two alternative definitions of this term: (1) A company that has majority ownership by individuals who are citizens of the United States, or (2) a company organized under the laws of a State that either has no parent company or has an ultimate parent company that is organized under the laws of a State.

The first alternative is based on the statutory definition of the term "United States-owned company" used in a similar eligibility limitation, which defines United States-owned company in terms of majority ownership or control by citizens of the United States. 15 U.S.C. 278n(j)(2). This test of ownership is based on the citizenship of individual owners or shareholders. Where an applicant company is a wholly- or majority-owned subsidiary of a parent company, or a majority of its stock is held by other corporations or institutional investors rather than individuals, the ownership analysis would be applied to these corporations or institutional investors to determine whether they are owned by individuals who are citizens of the United States.

The second alternative definition of United States-owned company is a company organized under the laws of a State that either has no parent company or has an ultimate parent organized under the laws of a State. This alternative is based on a presumption that companies incorporated or organized in the U.S. that are not majority-owned by a foreign company will not have sufficiently strong connection to any foreign country to justify using the section 2306(2)(B) reciprocity determinations. The Department will request applicants claiming to be U.S.-owned companies to make a certification to that effect.

The term "voting security," which is used in the definition of parent company, is defined by reference to the statutory definition in the Public Utility Holding Company Act. 15 U.S.C. 15b(17). This broad definition includes any security that gives the holder a vote in the direction or management of the company, such as common stock in a corporation and partnership interests in a partnership.

§ 600.502 What DOE Must Determine

This section follows the sequence of provisions of section 2306 which provide for the two mandatory elements of the eligibility determination. The first mandatory element is a finding that the applicant's participation in a particular program is in the economic interest of the United States. The second mandatory element has two alternative subparts—either (a) the company is a U.S.-owned company; or (b) the company is found to be incorporated in the U.S. and the government of the parent company's country of incorporation affords U.S.-owned companies local investment opportunities comparable to those offered to any other company on investment and access to energy research and development, and protects U.S.-owned intellectual property in that country.

In order to avoid seemingly unintended consequences in interpreting section 2306(2)(B), the Department proposes interpreting the statutory phrase "company * * * incorporated in the United States" to include both corporations incorporated in the U.S. and other companies, defined as for-profit business entities, organized under the laws of any State in the U.S. Thus, for example, a partnership organized under State law in the U.S. would be included. Similarly, the Department proposes interpreting the statutory phrase "parent company which is incorporated" in a foreign country to include both corporations and other for-profit business entities organized under foreign law.

The Department invites comment on how to make the required determination in the context of relatively small financial assistance awards. Under the proposed rule, all applicants would need to submit the same types of information and the Department would undertake the same type of determination. One possible alternative is to ask applicants for awards below $100,000 to certify that they satisfy all the eligibility requirements of section 2306(1) and (2)(a), if applicable, and to rely on such a certification unless the Department has reason to believe that further investigation is warranted. This approach would permit the Department to target its administrative resources to making eligibility determinations for larger awards, and at the same time preserve the Department's appropriate role in reviewing eligibility for smaller awards where there is reason to question an applicant's eligibility. The Department invites comment on such an alternative for small awards.

§ 600.503 Determining the economic interest of the United States.

This section provides guidelines as to information that may support an affirmative determination that a financial assistance award would be in the economic interest of the United States. Section 600.503 describes examples, based on the statute, of the type of evidence that may be considered. Section 600.503 of the general statement of policy makes it clear that any other evidence that shows that an award would be in the economic interest of the United States can be considered. Determinations concerning the economic interest of the United States will be based on consideration of all available evidence.

The evidence to be considered concerning investments or employment in the U.S. may include evidence related to affiliates of the applicant company (e.g., the parent company of an applicant corporation, the general partners in an applicant partnership). DOE will consider the facts relating to each applicant in context.

Where the applicant for financial assistance is a joint venture, DOE would apply the economic interest test of section 2306(1) to the joint venture as a whole. Under section 2306(2), however, DOE would apply the relevant tests to each company participating in the joint venture.

In evaluating whether an applicant's participation is in the economic interest of the United States, DOE may consider the activities of the applicant's contractors or suppliers or other companies that would have a significant role in the government-supported work. In determining which contractors, suppliers or other companies may be considered in assessing an applicant's eligibility, DOE would consider whether the company's participation is a factor advanced by the applicant for consideration in evaluating the merits of the application. For example, where an applicant chooses to rely on the qualifications of named component suppliers or other contractors in making an application to a covered program, the activities of any such named contractors or suppliers may be evaluated in determining whether the applicant's participation is in the economic interest of the United States.

§ 600.504 Information an applicant must submit.

This section makes clear that the burden of producing information to support an affirmative determination concerning the economic interest of the United States and the ownership status of the applicant would rest on the applicant. The allocation of this burden to the applicant is appropriate because the applicant will usually be in the best position to provide relevant information. The Department may request that information needed to make an eligibility determination be submitted with the application for financial assistance, or may specify, in the solicitation, a later stage in the process for submission of such information.

If an applicant for financial assistance proposes to demonstrate that an award is in the economic interest of the United States by asserting that it will undertake future action, such as promoting manufacture of products in the United States or procuring parts and materials from competitive suppliers, DOE will require it to provide an appropriate certification concerning such future action. In support of such certifications, the applicant should also provide a brief commercialization plan for the technology that is expected to result from the program-supported research and development. The Department expects to give considerable weight to these plans in assessing whether the applicant's participation is in the economic interest of the United States.

In order to be treated as a "United States-owned company" for eligibility purposes, an applicant would be required to submit an appropriate certification that it satisfies the definition in § 600.501.

The section concludes with a paragraph providing for DOE requests for information in addition to that submitted with the application for financial assistance, if necessary.

§ 600.505 Other information DOE may consider.

This section identifies certain kinds of information, in addition to the information provided by the applicant, that may be relevant in making the required findings. DOE, in making the findings required under section 2306(2)(B), intends to consult with and seek information from a number of sources, including, but not limited to, appropriate agencies of the federal government as well as publicly available information.

With respect to whether a foreign government "affords to United States-owned companies opportunities,

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comparable to those afforded to any other company, to participate in any joint venture similar to those authorized by the Act," DOE expects to consider the regime that governs eligibility of U.S.-owned companies seeking to participate in research and development sponsored by that government.

The DOE analysis of this issue would consider discrimination against foreign subsidiaries of U.S.-owned companies relative to any other company in providing access to research and development programs. DOE would consider both discriminatory policies and discriminatory practices. Where a foreign government does not have research and development programs comparable to those authorized by EPAct, the absence of such programs would not preclude companies headquartered in that country from participating in DOE programs.

The statutory phrase "joint venture similar to those authorized under this Act" has uncertain meaning given that EPAct authorizes a number of government-supported programs, but the Department has not, to date, used joint ventures per se. Given the apparent intent of the statute to promote opportunities comparable to those afforded to any other company in energy research and development programs, DOE would construe this phrase to mean government-supported research and development programs similar to those covered by section 2306.

With regard to whether a foreign country "affords to United States-owned companies local investment opportunities comparable to those afforded to any other company," DOE expects to consider a review of applicable international obligations to provide to U.S. investors opportunities comparable to those offered to other companies.

With regard to protection of intellectual property rights in foreign countries, DOE expects to consider certain lists that contain relevant information prepared by other Executive agencies, such as the "Special 301 Priority Foreign Country List," issued by the U.S. Trade Representative.

In making the determinations required under section 2306(2)(B), the Department expects to seek the advice of other appropriate federal agencies.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was reviewed by the Office of Information and Regulatory Affairs.

The draft of today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review as provided in the **ADDRESSES** section of this notice.

B. Review Under Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, the Department has determined that today's regulatory action is categorically exempt as a procedural rule for implementation of statutory requirements.

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's action interprets the section 2306 eligibility requirements to be inapplicable to State applications for financial assistance. Therefore, the Department has determined that they will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. The Department certifies that today's regulatory action meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

V. Opportunity for Public Comment

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Nine copies of written comments should be submitted to the address indicated in **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Financial Assistance Rules: Eligibility Determination for Certain Financial Assistance Programs, Docket No. PO-RM–95–101." In the event any person wishing to provide written comments cannot provide nine copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Office Reading Room, 1E–090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information and to treat it accordingly under 10 CFR 1004.11.

B. Public Hearing

One public hearing will be held pursuant to this notice at the time, date and place indicated above in the **DATES** and **ADDRESSES** sections of this notice. Any person who has an interest in making an oral presentation should make a written request to speak. Such a request should be sent to the address given in the **ADDRESSES** section of this notice and must be received by 4:30 p.m. on the date specified in the **DATES** section. The person also should provide a daytime phone number where the person may be reached. Those persons requesting an opportunity to make an oral presentation should bring nine (9) copies of their statement to the hearing.

DOE will establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to ten (10) minutes. A DOE official will preside at the hearing, and may ask questions. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

If DOE must cancel the hearing, DOE will make every effort to give advance notice of the cancellation. The hearing may be cancelled in the event no requests to speak are received by the deadline for submission of such a request.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Grant programs.

Issued in Washington, D.C., on this 17th day of February 1995.

Susan F. Tierney,

Assistant Secretary, Policy, Planning, and Program Management.

For the reasons stated in the preamble, part 600 of title 10, Subchapter H of the Code of Federal Regulations is proposed to be amended as set forth below:

Part 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256; 31 U.S.C. 6301–6308, unless otherwise noted.

2. New subpart F, consisting of §§ 600.500 through 600.505, is added to read as follows:

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

Sec.

600.500 Purpose and scope.
600.501 Definitions.
600.502 What must DOE determine.
600.503 Determining the economic interest of the United States.
600.504 Information an applicant must submit.
600.505 Other information DOE may consider.

Subpart F—Eligibility Determination for Certain Financial Assistance Programs—General Statement of Policy

§ 600.500 Purpose and scope.

This subpart implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

§ 600.501 Definitions.

The definitions in § 600.3 of this part are applicable to this subpart, and in addition, as used in this subpart:

Act means the Energy Policy Act of 1992.

Company means any for-profit business entity.

Covered program means a program under Titles XX through XXIII of the Act, as listed separately and updated annually by the Department of Energy for each fiscal year.

Parent company means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through a series of one or more intermediate subsidiary companies, and

(2) Is not itself subject to the ultimate ownership control of another company.

United States means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-owned company means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.

Voting security has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

§ 600.502 What must DOE determine.

A company shall be eligible to receive financial assistance only if DOE finds that—

(a) Consistent with § 600.503, the company's participation in a covered program would be in the economic interest of the United States; and

(b) The company is either—

(1) A United States-owned company; or

(2) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(i) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(ii) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(iii) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

§ 600.503 Determining the economic interest of the United States.

In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under paragraph (a) of § 600.502, DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(a) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(b) Significant contributions to employment in the United States by the applicant company and its affiliates; and

(c) An agreement by the applicant company, with respect to any technology arising from the financial assistance being sought—

(1) To promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry); and

(2) To procure parts and materials from competitive suppliers.

§ 600.504 Information an applicant must submit.

(a) Any applicant for financial assistance in a covered program shall submit with the application for financial assistance, or at such later time as may be specified by DOE, evidence for DOE to consider in making findings required under § 600.502(a) and findings concerning ownership status under § 600.502(b).

(b) The applicant for financial assistance has the burden of producing sufficient information to warrant making each required finding under § 600.502.

(c) If an applicant for financial assistance is submitting evidence relating to future undertakings, such as an agreement under paragraph (c) of § 600.503 to promote manufacture in the United States of products resulting from a technology developed with financial assistance or to procure parts and materials from competitive suppliers, the applicant shall submit a certification affirming acceptance of these undertakings. The applicant should also

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briefly describe its plans, if any, for any manufacturing of products arising from the program-supported research and development, including the location where such manufacturing is expected to occur.

(d) If an applicant for financial assistance is claiming to be a United States-owned company, the applicant must submit a certification affirming that it falls within the definition of that term provided in § 600.501.

(e) DOE may require submission of additional information deemed necessary to make any portion of the determination required by § 600.502

§ 600.505 Other information DOE may consider.

In making the determination under paragraph (b)(2) of § 600.502, DOE may—

(a) consider information on the relevant international and domestic law obligations of the country of incorporation of the parent company of an applicant;

(b) consider information relating to the policies and practices of the country of incorporation of the parent company of an applicant with respect to:

(1) The eligibility criteria for, and the experience of United States-owned company participation in, energy-related research and development programs;

(2) Local investment opportunities afforded to United States-owned companies; and

(3) Protection of intellectual property rights of United States-owned companies;

(c) seek and consider advice from other federal agencies, as appropriate; and

(d) consider any publicly available information in addition to the information provided by the applicant.

[FR Doc. 95–4425 Filed 2–22–95; 8:45 am]

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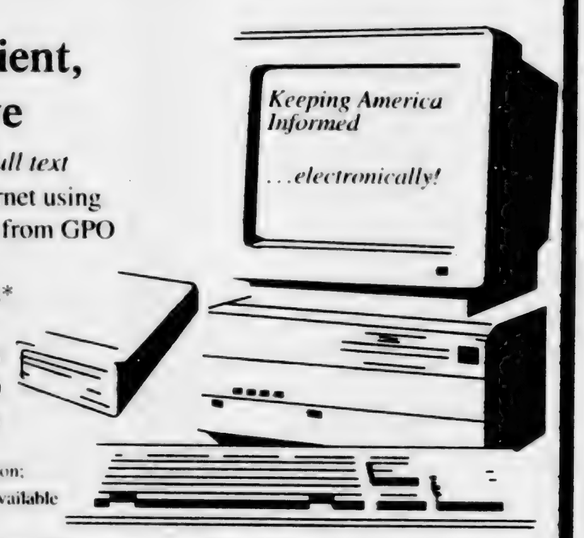

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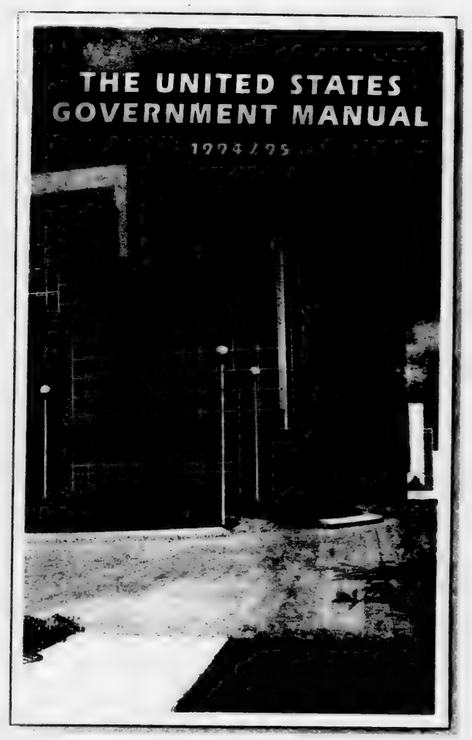

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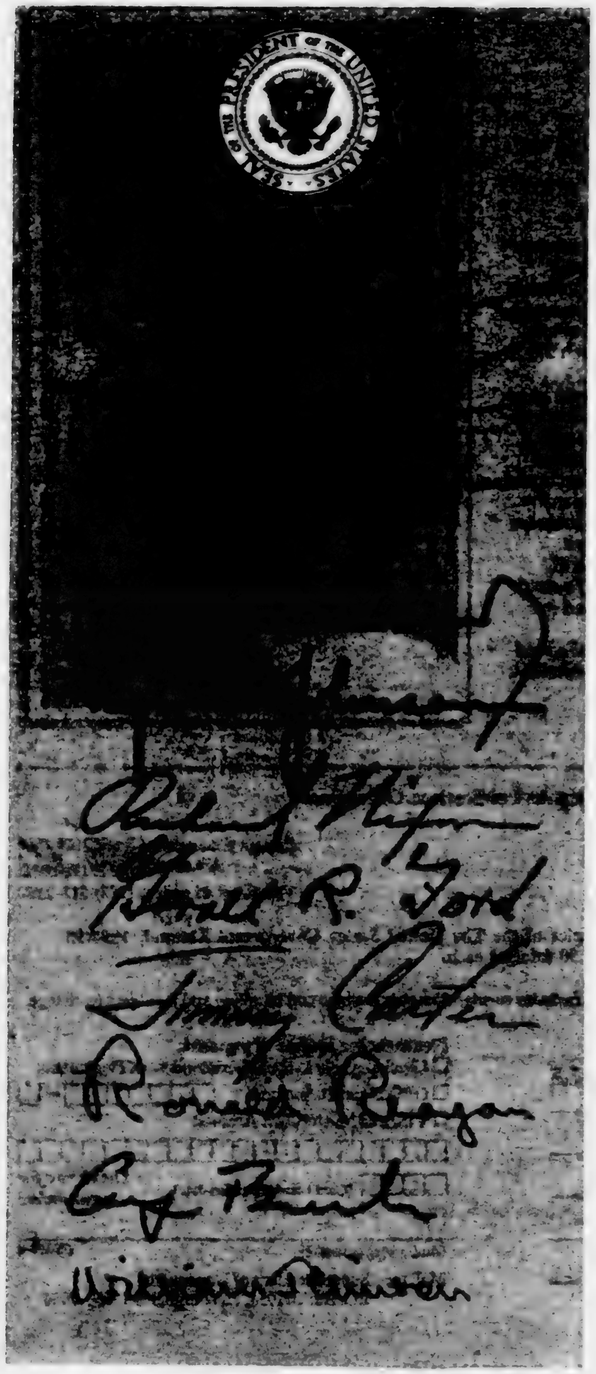

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 60, No. 37
Friday, February 24, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Chapter VIII

7 CFR Chapter I, Part 68

9 CFR Chapter II

Use of Direct Final Rulemaking

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Policy statement.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing a new rulemaking procedure to expedite making noncontroversial changes to regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. {"Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.} Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

ADDRESSES: If you wish to submit comments on this notice, please send them to George Wollam, USDA, GIPSA, room 0623–S, P.O. Box 96454, Washington, DC 20090–6454. Comments received may be inspected at USDA, room 0623, South Building, 14 and Independence Ave SW, Washington, DC between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: George Wollam, address same as above, (202) 720–0292

SUPPLEMENTARY INFORMATION: GIPSA is committed to improving the efficiency of its regulatory processes to fulfill agency missions in a manner that imposes the least necessary burden. In pursuit of this goal, GIPSA plans to employ the rulemaking technique known as "direct final rulemaking" to promulgate some of its rules.

The Direct Final Rule Process

Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Such direct final rules advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

By "adverse comment" we mean comments that suggest that the rule should not be adopted or that suggest that a change should be made to the rule. A comment expressing support for the rule as published would obviously not be considered adverse. Neither would a comment suggesting that requirements in the rule should, or should not, be employed by GIPSA in other programs or situations outside the scope of the direct final rule.

In accordance with the rulemaking provisions of the Administrative Procedures Act (5 U.S.C. 553), this procedure gives the public general notice of GIPSA's intent to adopt a rule and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if GIPSA receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the rule will become effective without the need to publish a separate rule.

If GIPSA receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register** and a proposed rule will be published establishing a comment period for the rule making action. Following the close of the comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if GIPSA receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the direct final rule will become effective 60 days following publication. However, GIPSA will publish a notice in the **Federal Register** indicating that no adverse comments were received on the direct final rule, and confirming that it is effective on the date indicated in the direct rule.

Determining When To Use Direct Final Rulemaking

Not all GIPSA rules are good candidates for direct final rulemaking. Many GIPSA rules address complex marketing and regulatory situations where the trade and public may have a variety of opinions to offer on the need for the rule, or possible alternative methods for achieving the purpose of the rule. In these cases, GIPSA plans to continue to publish a proposed rule and establish a comment period to allow submission of comments, followed by a final rule addressing the comments.

GIPSA plans to use direct final rulemaking on a case-by-case basis when we do not anticipate adverse comments. The decision to use direct final rulemaking for a rule would be based upon our experience with similar rules. If similar rules were published in the past as proposals that did not elicit adverse comments, we would consider publishing such rules in the future as direct final rules.

Dated: February 15, 1995

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–4496 Filed 2–23–95; 8.45 am]

BILLING CODE 3410–EN–M

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Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–029F–C]

Nutrition Labeling of Meat and Poultry Products; Codification; Correction

AGENCY: Food Safety and Inspection Service, USDA

ACTION: Final rule; correction

SUMMARY: The Food Safety and Inspection Service (FSIS) is correcting an amendment to its final nutrition labeling regulations. The amendment was published in the **Federal Register** on January 3, 1995 (60 FR 174).

EFFECTIVE DATE: February 24, 1995

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Need for Correction

On January 3, 1995, FSIS published in the **Federal Register** (60 FR 174) an amendment to its final nutrition labeling regulations. The amendment provided codified language for provisions that previously cross-referenced those requirements that FSIS adopted, which were contained in the Food and Drug Administration's (FDA) final nutrition labeling regulations. In the January 3, 1995, publication, FSIS inadvertently omitted a provision in the poultry products inspection regulations that relates to the modified nutrition label format. Paragraph (g)(4) of 9 CFR 381.409 (which was paragraph (f)(4) in the nutrition labeling final rule (58 FR 632)) was omitted when revising 9 CFR 381.409. Therefore, FSIS is adding paragraph (g)(4) to § 381.409 of the poultry products inspection regulations.

List of Subjects 39 CFR Part 381

Food labeling, Poultry and poultry products.

Accordingly, the codification of the final rule on nutrition labeling of meat and poultry products, published January 3, 1995, (60 FR 174), is corrected as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

2. Section 381.409 is corrected by adding paragraph (g)(4) to read as follows:

§ 381.409 Nutrition label content.

* * * * *

(g) * * *

(4) Presenting the required information on any other label panel.

* * * * *

Done at Washington, DC, on February 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety

[FR Doc. 95–4521 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–DM–P

9 CFR Parts 318 and 381

[Docket No. 90–010F]

Incorporation by Reference; Updating of Text; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food Safety and Inspection Service is amending the meat and poultry products inspection regulations to correct references to the "Official Methods of Analysis of the Association of Official Analytical Chemists" book of methods.

EFFECTIVE DATE: February 24, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Paula M. Cohen, Director, Regulations Development, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–7164.

SUPPLEMENTARY INFORMATION: Title 1 of the Code of Federal Regulations (1 CFR part 51) requires that an Agency seeking approval of a change to a publication that is approved for incorporation by reference in the Code of Federal Regulations publish notice of the change in the **Federal Register** and amend the Code of Federal Regulations. The Agency must also ensure that a copy of the amendment or revision is on file at the Office of the Federal Register and notify the Director of the Federal Register in writing that the change is being made.

On June 30, 1994, at 59 FR 33641, the Food Safety and Inspection Service published a final rule updating references to the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC) book of methods in various sections of the Federal meat and poultry products inspection regulations. 9 CFR 318.19(b) contains two footnote reference errors. These errors are corrected by removing footnote 1 from the first sentence of section 318.19(b) and renumbering footnote 2 of section 318.19(b) as footnote 1. In addition, there is also an incorrect footnote number in section 318.21(b)(3)(viii). Footnote five to section 318.21(b)(3)(viii) now reads as footnote 4. Finally, footnote 4 of 9 CFR 381.153(b)(3)(viii) was inadvertently omitted from the final regulations. It is now included as part of the text of section 381.153(b)(3)(viii).

The "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC) book of methods has been previously approved for incorporation by reference. Because this amendment merely corrects errors in footnote references, it is found upon good cause that public participation in this rulemaking procedure is unnecessary and good cause is found for making the amendment effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects

9 CFR Part 318

Accredited laboratory program, Cured pork products, Incorporation by reference, Meat inspection.

9 CFR Part 381

Accredited laboratory program, Incorporation by reference, Poultry products inspection.

For reasons set out in the preamble, 9 CFR parts 318 and 381 are amended as set forth below

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.19(b) is amended by removing footnote 1 from the first sentence, republishing the second and third sentences, and redesignating footnote 2 as footnote 1 to read as follows:

§ 318.19 Compliance procedure for cured pork products.

* * * * *

(b) *Normal Compliance Procedures.* * * * Analyses shall be conducted in accordance with the "Official Methods of Analysis of the Association of Official Analytical Chemists §§ 950.46, and 928.08 (Chapter 39).[1] The "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th edition, 1990, is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.* * *

* * * * *

3. Section 318.21(b)(3)(viii) is republished and footnote number 5 is redesignated as footnote 4 to read as follows:

§ 318.21 Accreditation of chemistry laboratories.

* * * * *

(b) * * *

(3) * * *

(viii) Use official AOAC methods[4] on official and check samples. The "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th edition, 1990, is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

[1] A copy of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th edition, 1990, is on file with the Director, Office of the Federal Register, and may be purchased from the Association of Official Analytical Chemists, Inc., 2200 Wilson Boulevard, Suite 400, Arlington, Virginia 22201.

[4] A copy of the "Official Methods of Analysis of the Association of Analytical Chemists," 15th edition, 1990, is on file with the Director, Office of the Federal Register, and may be purchased from the Association of Official Analytical Chemists, Inc., 2200 Wilson Boulevard, Suite 400, Arlington, Virginia 22201.

Done at Washington, DC, on February 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety

[FR Doc. 95–4522 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–DM–P

9 CFR Part 327

[Docket No. 94–010F]

Imported Product: Withdrawal of Czechoslovakia; Addition of the Czech Republic to the List of Eligible Countries

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations (9 CFR 327.2) to affirm that the newly formed country of the Czech Republic continues to be eligible to have its meat products imported into the United States. The regulations are also amended to delete Czechoslovakia from the list of countries eligible to have their meat products imported into the United States.

Based on mutual agreement, Czechoslovakia peacefully divided into the Czech Republic and the Slovak Republic on January 1, 1993. The meat inspection program recognized by the United States as meeting the requirements of the Federal meat inspection regulations and eligible to have its meat products imported into the United States is a program of the Czech Republic.

DATES: This rule will be effective on April 25, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 27, 1995.

ADDRESSES: Adverse comments or notice of intent to submit adverse comments should be sent in triplicate to Regulations Development, Policy, Evaluation and Planning Staff, Attention: Diane Moore, FSIS Docket Clerk, Food Safety and Inspection Service, Room 3171, South Agriculture Building, U. S. Department of Agriculture, Washington, DC 20250. Comments should refer to Docket No. 94-010F. All comments will be available for public inspection from 8:30 a.m. to 1 p.m. and 2 p.m. to 4:30 p.m., Monday through Friday, in Room 3171, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Deputy Administrator, International Programs, Food Safety and Inspection Service, USDA, Washington, DC 20250 (202) 720-2644.

SUPPLEMENTARY INFORMATION:

Background

In 1972, Czechoslovakia completed the eligibility process for importation of meat products into the United States. The country maintained its eligibility until it split into two separate republics on January 1, 1993: the Czech Republic and the Slovak Republic.

In October 1993, inspection officials of the Czech Republic notified FSIS that the new country continues to maintain a meat inspection system under the same laws and regulations as existed when it was a part of Czechoslovakia. These laws and regulations were previously determined by FSIS to be "at least equal to" the meat inspection standards applied to products produced in the United States. Further, FSIS recently determined that the Czech Republic employs qualified and competent inspectors to ensure that the standards are effectively enforced for products prepared for importation into the United States.

The part of Czechoslovakia which became the Slovak Republic has never had any certified meat inspection plants nor had any meat or meat products imported into the United States. Due to this history and absence of other pertinent information, FSIS is uncertain if the Slovak Republic's meat inspection system is "at least equal to" that of the United States. Therefore, the Slovak Republic will be required to request and receive approval from FSIS before it will be deemed eligible to have its meat and meat products imported into the United States.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, April 25, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments by March 27, 1995. Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register**

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withdrawing this rule before the effective date and publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication.

Executive Order 12866

This rule has been determined not to be significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This direct final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Effects on Small Entities

The Administrator has made a determination that this direct final rule would not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). This action adds the Czech Republic to the list of countries eligible to have their meat products imported into the United States and removes Czechoslovakia. The current amount of product exported to the United States from the Czech Republic is expected to remain the same as was exported to the United States from the former Czechoslovakia.

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.17, 2.55.

§ 327.2 [Amended]

2. Paragraph (b) of § 327.2 is amended by removing "Czechoslovakia" and adding the "Czech Republic" to the alphabetical list of countries eligible to have their products from cattle, sheep, swine, and goat imported into the United States.

Done at Washington, DC, on February 14, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95-4520 Filed 2-23-95; 8:45 am]

BILLING CODE 3410-DM-P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0871]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule delegates to the General Counsel of the Board of Governors of the Federal Reserve System (Board) the authority to approve requests for assistance from, and to share information with, foreign banking authorities pursuant to the Federal Deposit Insurance Act (FDI Act). This delegation of authority is intended to aid in the expeditious processing of requests for assistance from foreign banking authorities.

EFFECTIVE DATE: February 17, 1995.

FOR FURTHER INFORMATION CONTACT: Paul A. Vogel, Attorney (202/452-3428), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Dorthea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 8(v) of the FDI Act (12 U.S.C. 1818(v)) permits the Board to provide assistance to a foreign banking authority if such authority states that it is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any banking or currency transaction law or regulation administered or enforced by the requesting authority. Section 8(v) of the FDI Act permits the Board, in its discretion, to investigate and to collect and disclose information to a foreign banking authority upon the request of such authority. Any such investigation shall comply with the laws of the United States and the policies and procedures adopted by the Board. In deciding whether to provide assistance to the foreign banking authority, the FDI Act requires the Board to consider (1) whether the requesting authority has agreed to provide reciprocal assistance to the Board and to the other Federal banking agencies and (2) whether compliance with the request would prejudice the public interest of the United States.

The Board has delegated to its General Counsel the authority to approve requests for assistance from foreign banking authorities pursuant to section 8(v) of the FDI Act. This delegation of authority is consistent with previous Board action with respect to cooperation with foreign supervisors. On January 28, 1993, (58 FR 6348) the Board issued a final rule implementing portions of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA). The final rule included a provision delegating to the General Counsel the authority to make the determinations necessary to disclose information to foreign bank supervisory authorities pursuant to the FBSEA. Section 206 of the FBSEA (12 U.S.C. 3109) permits the Board to share supervisory information with its foreign counterparts after, among other things, obtaining an agreement to maintain the confidentiality of the information when necessary under applicable law. Because the cooperation authorities under the FDI Act and the FBSEA are overlapping, the Board has delegated to the General Counsel the authority to approve requests for assistance from foreign banking authorities pursuant to section 8(v) of the FDI Act.

The provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The APA grants a specific exemption from its requirements relating to notice and public participation in this instance (12 U.S.C. 553(b)(3)(A)), and good cause exists to find that the nature of this amendment makes a notice and public comment procedure unnecessary.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601-612), the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks banking, Federal Reserve System.

For the reasons set out in the preamble, the Board is amending 12 CFR Part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.6 is amended by revising paragraph (b)(2) and by adding paragraph (b)(3) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(b) * * *

(2) *Disclosure to foreign authorities.* To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law.

(3) *Assistance to foreign authorities.* To approve requests for assistance from any foreign bank regulatory or supervisory authority that is conducting an investigation regarding violations of any law or regulation relating to banking matters or currency transactions administered or enforced by such authority, and to make the determinations required for any investigation or collection of information and evidence pertinent to such request. In deciding whether to approve requests for assistance under this paragraph, the General Counsel shall consider:

(i) Whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency;

(ii) Whether compliance with the request would prejudice the public interest of the United States; and

(iii) Whether the request is consistent with the requirement that the Board conduct any such investigation in compliance with the laws of the United States and the policies and procedures of the Board.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 17, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-4547 Filed 2-23-95; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-41-AD; Amendment 39-9136; AD 95-02-18]

Airworthiness Directives; Beech Aircraft Corporation Models 1900, 1900C, and 1900D Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 95-02-18 concerning Beech Aircraft Corporation Models 1900, 1900C, and 1900D airplanes, which was published in the **Federal Register** on February 3, 1995 (60 FR 6652). That publication inadvertently referenced an incorrect repetitive inspection interval for Models 1900 and 1900C airplanes with a part number 129-910032-79 engine truss installed. The inspection interval in sections B and C of the engine truss should be 3,000 hours time-in-service (TIS) instead of 100 hours TIS. This action corrects the AD to reflect this repetitive inspection interval.

EFFECTIVE DATE: March 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4124; facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: On January 26, 1995, the Federal Aviation Administration (FAA) issued AD 95-02-18, Amendment 39-9136 (60 FR 6652, February 3, 1995), which applies to Beech Models 1900, 1900C, and 1900D airplanes. This AD supersedes AD 92-06-09, Amendment 39-8189, with a new AD that requires repetitively inspecting the engine trusses for cracks, repairing or replacing any cracked engine truss, and installing reinforcement doublers on certain airplanes.

The AD inadvertently references an incorrect repetitive inspection interval for Beech Models 1900 and 1900C airplanes with a part number 129-910032-79 engine truss installed. The inspection interval in sections B and C of the engine truss should be 3,000 hours TIS instead of 100 hours TIS. This action corrects the AD to reflect this repetitive inspection interval.

Need for Correction

As published, the final regulations have incorrectly referenced the repetitive inspection interval for Beech Models 1900 and 1900C airplanes with a part number 129-910032-79 engine truss installed. The way the final regulations are currently written will make operators repetitively inspect Sections B and C of the engine truss more often than was intended or proposed in the notice of proposed rulemaking.

Correction of Publication

Accordingly, the publication of February 3, 1995 (60 FR 6652) of Amendment 39-9136; AD 95-02-18, which was the subject of FR Doc. 94-2403, is corrected as follows:

§ 39.13 [Corrected]

On page 6653, in paragraph (b), in the Chart that spreads across all three columns, change the second entry in the Repetitive Inspection column from "Every 100 hours TIS." to "Every 3,000 hours TIS." The chart will now read as follows:

Models	Area specified in figure 1 of Beech SB No. 2255, rev. VI	Initial inspection	Repetitive inspection
1900 and 1900C	A	Upon accumulating 1,400 hours TIS*	Every 100 hours TIS.
1900 and 1900C	B and C	Upon accumulating 3,200 hours TIS*	Every 3,000 hours TIS
1900D	A	Upon accumulating 3,200 hours TIS*	Every 450 hours TIS.
1900D	B and C	Upon accumulating 3,200 hours TIS*	Every 3,000 hours TIS

*Or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.

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Issued in Kansas City, Missouri, on February 15, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-4371 Filed 2-23-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-ANE-57; Amendment 39-9150; AD 95-03-14]

Airworthiness Directives; Teledyne Continental Motors IO-346, IO-520, and IO-550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series reciprocating engines, that currently requires initial and repetitive inspections of the engine mount brackets for cracks, and if found cracked, replacement with improved design engine mount brackets. All engine mount brackets require replacement with improved design engine mount brackets at the next engine removal after the effective date of that airworthiness directive (AD). This amendment clarifies the identification procedures to determine which engine mount brackets must be inspected. This amendment is prompted by reports that the engine mount bracket part numbers, which are ink stamped, can be easily obliterated. The actions specified by this AD are intended to prevent engine separation from the aircraft due to cracks in the engine mount brackets

DATES: Effective March 13, 1995

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 1995.

Comments for inclusion in the Rules Docket must be received on or before April 25, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-57, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438-3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Ave., Suite 2-160, College Park, GA 30337-2748; telephone (404) 305-7371, fax (404) 305-7348.

SUPPLEMENTARY INFORMATION: On April 19, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94-09-07, Amendment 39-8896 (59 FR 23148, May 5, 1994), applicable to certain Teledyne Continental Motors (TCM) IO-346, IO-520, and IO-550 series reciprocating engines, to require initial and repetitive dye penetrant inspections for cracks in certain lower left engine mount brackets, Part Number (P/N) 630695. If the lower left engine mount bracket is found cracked, that AD requires replacing both the lower left and lower right engine mount brackets with improved design engine mount brackets, P/N 653306 and 653305, respectively. If a crack is not detected, the lower left engine mount bracket requires repetitive inspections at intervals not to exceed 500 hours time in service (TIS) until the next engine removal, at which time engine mount brackets, P/N 630694 and 630695, are replaced with improved design engine mount brackets, P/N 653306 and 653305. Installation of these improved design engine mount brackets constitutes terminating action to the inspection requirements of that AD. That action was prompted by reports of cracks in engine mount brackets on engines that have completed at least one overhaul cycle. That condition, if not corrected, could result in engine separation from the aircraft due to cracks in the engine mount brackets.

Since the issuance of that AD, the FAA has received reports of difficulty in identifying the engine mount brackets that must be inspected. The P/N is ink-stamped on the part and is quite easily obliterated. The problem arises when the Casting Number (C/N), which is different from the P/N, is mistaken for the P/N, and the AD is incorrectly believed to not apply.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. MSB94-9, dated October 21, 1994, that provides positive identification of affected engine mount brackets that require inspection, and replacement, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 94-09-07 to clarify the identification procedures to determine which engine mount brackets must be inspected. The actions are required to be accomplished in accordance with the MSB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-ANE-57." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-8896 (59 FR 23148, May 5, 1994), and by adding a new airworthiness directive, Amendment 39-9150, to read as follows:

95-03-14 Teledyne Continental Motors: Amendment 39-9150. Docket 94-ANE-57. Supersedes AD 94-09-07, Amendment 39-8896.

Applicability: Teledyne Continental Motors (TCM) engine models IO-346A, IO-346B, IO-520C, IO-520CB, and IO-550C; rebuilt engine model IO-520C with serial numbers (S/N) 287051-R and lower; rebuilt engine model IO-520CB with S/N 282226-R and lower; rebuilt engine model IO-550C with S/N 271742-R and lower; and all factory overhauled IO-520C, IO-520CB, and IO-550C engines with a build date prior to August 6, 1992. These engines are installed on but not limited to Beech model A23, A23A, 95-C55, 95-C55A, D55, D55A, E55, E55A, 58, and 58A airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine separation from the aircraft due to cracks in the engine mount brackets, accomplish the following:

(a) For engines with engine mount brackets that have completed at least one engine overhaul or rebuild cycle, or have accumulated 2,500 or more hours time in service (TIS) on the effective date of this airworthiness directive (AD), inspect the lower left engine mount bracket, Part Number (P/N) 630695 or Casting Number (C/N) 630724, for cracks using the dye penetrant techniques specified in this paragraph and in accordance with TCM Mandatory Service Bulletin (MSB) No. MSB94-9, dated October 21, 1994, within the next 50 hours TIS after the effective date of this AD.

Note 1: TCM MSB No. MSB94-9, dated October 21, 1994, differs from TCM MSB No. M92-13, dated September 4, 1992, which was referenced in AD 94-09-07, only in clarification of part identification by utilizing a cross reference table for P/N and C/N.

Note 2: The P/N is ink stamped on the part and may not be visible. The engine mount bracket can be identified by the C/N which is cast in the engine mount bracket.

(1) Perform the dye penetrant inspection as follows:

Note: Military Specification MIL-I-6866 and American Society of Testing Materials specifications ASTM E1417-93 and E165-94 contain additional information on dye penetrant inspection processes.

(i) *Preparation:* clean and dry all parts in such a manner as to leave the surfaces free from grease, oil, soaps, alkalies, and other substances which would interfere with inspection. Vapor degreasing is generally suitable for this purpose.

(ii) *Penetrant Application Procedure:* after preparation, spray or brush the parts with the penetrant, and allow to stand for not less than 5 minutes. The effectiveness of the penetrant increases if left standing for a longer time, as the penetrant will reach finer discontinuities.

(iii) *Penetrant Cleaning:* clean the parts thoroughly using a medium which will remove penetrant from the surfaces of parts; wash with water when the penetrant is water soluble. When other than water soluble penetrants are used, the penetrant shall be removed with a suitable cleaner. Avoid excessive cleaning which would remove the penetrant from discontinuities.

(iv) *Drying:* dry the parts as thoroughly as possible. Drying of parts may be accomplished by evaporation at room temperature or by placing the parts in a circulating warm air oven or in the air stream of a hot air dryer. Avoid excessive drying time or drying temperatures above 75°C (165°F) to prevent excessive evaporation of the penetrant. If heat is used for drying parts, cool parts to approximately 50°C (120°F) before proceeding to the developing procedure.

(v) *Developing:* apply the developer to the dry parts as lightly and as evenly as possible using as thin a coating of developer as is possible. A translucent film is adequate. Mix wet developer by agitation immediately prior to applying it. After applying the developer, take care that no penetrant indication is disturbed or obliterated in subsequent handling.

(vi) *Examination:* examine the developed penetrant indications in accordance with the dye penetrant manufacturer's instructions. Examine parts for indications of discontinuities open to the surface.

(vii) *Final cleaning:* clean the parts following the inspection to remove penetrant and developer.

Note 1: *Caution:* because of differences among penetrants, take care to ensure that the final cleaner, the penetrant, the penetrant remover, and the developer are suitable for use with each other.

Note 2: *Caution:* all penetrant materials should be kept as free from moisture as possible.

Note 3: *Caution:* most penetrants, chemical agents, and developer suspensions are low flash point material; use caution to prevent fires.

(2) If no crack is detected, inspect in accordance with paragraph (a) of this AD at intervals not to exceed 500 hours TIS since the last inspection.

(3) If a crack is detected, prior to further flight replace both the lower left engine mount bracket, P/N 630695 or C/N 630724 and lower right engine mount bracket, P/N 630694 or C/N 630723, with improved design engine mount brackets, P/N 653306 or C/N 653299, and P/N 653305 or C/N 653298, respectively.

(b) For all engines, replace both the lower left engine mount bracket, P/N 630695 or C/N 630724, and lower right engine mount bracket, P/N 630694 or C/N 630723, with improved design engine mount brackets P/N 653306 or C/N 653299, and P/N 653305 or C/N 653298, respectively, at the next engine removal after the effective date of this AD.

(c) Installation of the improved design engine mount brackets, P/N 653306 or C/N 653299, and P/N 653305 or C/N 653298, constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection may be performed.

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(f) The inspections and replacement shall be done in accordance with the following service document:

Document No.	Pages	Date
TCM MSB No. MSB94–9, Total pages: 2.	1–2	Oct. 21, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (334) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 13, 1995.

Issued in Burlington, Massachusetts, on February 8, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4124 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 300 and 385

[Docket No. 48582]

RIN 2105–AB89

Rules of Conduct in DOT Proceedings

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department of Transportation is amending its procedural regulations to permit Department staff to communicate informally with applicants and any objectors or other commenters in the investigation stage of docketed air carrier initial certificate application and continuing fitness cases (collectively referred to as "fitness cases") where the issues are limited solely to fitness and/or U.S. citizenship. Such communications may be initiated only by Department career staff for the purpose of clarifying information filed, or by an applicant or other interested party upon grant of a limited waiver of the regulations in order to engage in substantive communication with Department staff. In other respects, the Department's current *ex parte* restrictions will continue to govern substantive communications both before and after a show-cause order or an order instituting a formal proceeding has been issued. The amendment being promulgated differs from that proposed in the Notice of Proposed Rulemaking (NPRM) in that the latter did not restrict the permitted *ex parte* communications to those initiated by Department staff or by other interested persons only pursuant to a waiver. The amendment will give the Department an added degree of flexibility in seeking information from all interested parties and will decrease the burden on applicants as well as objectors and other commenters. However, it will still provide those parties a fair and complete opportunity to be heard and ensure an adequate record for the proceeding.

EFFECTIVE DATE: The rule shall become effective on March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, the Department issued an NPRM (58 FR 516, January 6, 1993) to amend its procedural regulations (14 CFR Part 300) to permit Department staff to communicate informally with applicants and any objectors or other commenters in docketed cases involving determinations of air carrier fitness and/or U.S. citizenship only, during the initial investigation stages before the issuance of a show-cause order or an order instituting a formal proceeding. After the issuance of either of those orders, the Department's current *ex parte* restrictions would apply.

The amendment was designed to eliminate unnecessary delays and complications in processing initial certificate applications and docketed continuing fitness cases that arise because, under the current rule (14 CFR 300.2), the Department may not discuss informally, either orally or in writing, substantive aspects of the cases with the applicants or objecting parties once a written objection is filed. Instead, the Department's staff routinely goes through the burdensome task of putting all of its questions in writing, filing them in the docket, and serving them on all parties. The applicant must likewise respond in writing through the docket, with copies to all parties. Often responses to staff questions need clarification or spawn further inquiries. Moreover, questions asked of the applicant by the Department's staff may themselves require clarification before a proper response can be made. As a result, often matters that could be cleared up in minutes by telephone or in a meeting can drag on for days or weeks solely due to the procedures of the on-the-record communications required under the current rules. Overall, the process is often cumbersome and time-consuming.

Carrier applicants are not the only persons who suffer as a result. For example, the Department's staff may not under present *ex parte* rules ask simple questions of an objector in an effort to verify the facts contained in the filing objecting to the application without similar written procedures. The amendment would allow the Department the flexibility to seek clarifications and additional information from interested persons in an informal manner, thereby relieving all parties of the burden of having to file such communications in the docket and serve them on all interested persons. Since the current *ex parte* communication rules would continue to apply after the issuance of a show-cause order or an order instituting formal procedures, the amendment would ensure that all parties would have a fair and complete opportunity to be heard and that an adequate record would be assembled for the proceeding.

Comments on the NPRM were received from American Airlines, Inc. (American), Delta Air Lines, Inc. (Delta), United Air Lines, Inc. (United), and the Regional Airline Association.

Summary of Comments

The Regional Airline Association stated that it supported the Department's proposed amendment to Part 300. American declared that it had no objection to the proposed change if limited to docketed initial fitness proceedings. Delta objected to *ex parte* communications in any "controversial cases involving significant issues of law and/or public policy." United stated that it did not object to a change allowing *ex parte* communications for the purpose of clarifying factual issues in routine fitness cases, such as financial documents, personnel backgrounds, or safety violations, but maintained that *ex parte* communications were not appropriate in any type of fitness proceeding that involved citizenship issues.

Delta declared that the proposed change would allow "secret" communications between the Department and the subjects of fitness reviews in contested, controversial cases where prohibitions on such communications are particularly needed to protect the rights of all parties and the integrity of the Department's

procedures. Delta suggested that the Department add a provision to § 300.2 allowing an applicant or respondent in a docketed case in which an objection has been received to request a limited waiver of § 300.2(a) to permit *ex parte* communications with Department staff prior to the issuance of a show-cause order or an order instituting further procedures. Such a request would be filed in the docket, with a copy to each party, so that interested persons could comment on the appropriateness and scope of the proposed waiver.

American, Delta, and United also provided comments and suggestions concerning the use of *ex parte* communications in undocketed continuing fitness reviews, particularly those involving citizenship issues.[1] Those remarks, however, are beyond the scope of this rulemaking, which is confined to docketed initial and continuing fitness cases.

Discussion

After re-examining the need to ensure full appearance of fairness in our proceedings and the comments received on the NPRM, we now consider that the relaxation proposed in the NPRM was overly broad, going beyond the relief from the restrictions that we were seeking. As a remedy, we have decided to add two limitations to the change we proposed.

First, we will limit the exemption for *ex parte* communications allowed before the issuance of a show-cause order or order instituting a formal proceeding to those initiated by Department career staff for the purpose of investigating or clarifying information filed by the applicant or other interested person, and responses thereto. Such an exception corresponds to that granted to Department staff in § 300.2(c)(3) in connection with the investigation phase of enforcement proceedings.

Second, we believe that there is merit in Delta's suggestion that if an applicant or other interested person needs to discuss a substantive matter with Department staff involving a docketed proceeding in which an objection has been received, but before the issuance of a show-cause order or an order instituting further procedures, that person should be able to file in the docket and serve on all parties, using the guidelines set forth in Rule 18 (14 CFR 302.18), a request for a waiver from § 300.2(a), setting forth the scope of the proposed waiver and the reasons for the request. Any interested person could then file an answer to the waiver request, commenting on its merits or scope, which comments the Department would consider in ruling on the request. The responsibility for ruling on such waiver requests would be delegated to the Director of the Office of Aviation Analysis, Office of the Assistant Secretary for Aviation and International Affairs.

By thus limiting the instigation of *ex parte* communications, we intend to forestall even the appearance of improper influence on the Department's decision-making process. However, this limitation by no means precludes any interested person from providing unsolicited written comments containing relevant information concerning the initial or continuing fitness or citizenship of an applicant or air carrier at any time, including in response to either an application or to any show-cause order that may be issued, whether or not a public proceeding is in progress. If any such information is provided, it will be placed in any open docket and may be discussed in a show-cause or other order.

Conclusion

After carefully weighing the comments provided in response to the NPRM, and for the reasons discussed above, we have decided to finalize the proposed amendment with the changes described above. We are also amending 14 CFR Part 385 to add a new subparagraph (§ 385.14(p)) stating the authority of the Director of the Office of Aviation Analysis to approve or deny requests for waivers from § 300.2(a) in docketed air carrier initial certificate application and continuing fitness cases.

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of this amendment and has determined that they are not "significant" within the meaning of Executive Order 12866. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is not required.

DOT Regulatory Policies and Procedures

The amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather it is being made solely for the purpose of facilitating communication between Department staff and the air carriers subject to its regulatory oversight. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. As a result of the adoption of this amendment, fitness application costs to carriers and costs to opposing parties should be slightly lower due to the less formal procedures that would replace the current procedures.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. Based upon this evaluation, the Department certifies that the amendment would not have a significant economic impact on

[1] The three carriers all asserted that *ex parte* communications were not appropriate in continuing fitness reviews of major carriers where their citizenship was at issue, even if the case was undocketed. Delta recommended that the Department amend Part 302 of its procedural regulations to require the issuance of a public notice by the Department upon receiving continuing fitness information concerning, or a request for a disclaimer of jurisdiction or approval of a proposed transaction involving, the acquisition of potential control over a U.S. carrier by a foreign air carrier (*e.g.*, by acquiring more than 15 percent of a U.S. carrier's voting interest and/or more than 25 percent of its total equity). If, in response to the public notice, any interested person were to file an answer requesting the establishment of a public proceeding to consider issues of fact, law or policy with respect to the proposed transaction, the Department would publish an order instituting the public proceeding.

United urged the Department to establish standards for determining when a continuing fitness proceeding will be docketed and, when not docketed, what *ex parte* rules will apply. United further recommended that the Department establish either a written or an oral public proceeding in any fitness review that involves some type of adjudication, although, in cases not involving citizenship issues, the Department may conduct fact-finding on an *ex parte* basis, but should institute a public proceeding, and issue a reviewable order, if any "substantive issue" relative to a carrier's fitness is discovered.

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a substantial number of small entities. As stated above, the Department believes that the amendment would create a slight economic benefit for parties in fitness cases

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government

National Environmental Policy Act

The Department has also analyzed this rule for the purpose of the National Environmental Policy Act. The rule would not have any significant impact on the quality of the human environment

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with this rule

List of Subjects

14 CFR Part 300

Administrative practice and procedure, Conflict of interests

14 CFR Part 385

Organization and functions (Government agencies)

For the reasons set out in the Supplementary Information, title 14, chapter II of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465

2. Section 300.2 is amended by adding new paragraph (c)(10) to read as follows:

§ 300.2 Prohibited communications.

* * * * * *

(c) * * *

(10) Information given at the request of a DOT career employee in the course of investigating or clarifying information filed, or pursuant to a waiver granted to an applicant or other interested person, in docketed proceedings involving determinations of fitness and/or U.S. citizenship only, for that portion of the proceeding that precedes the issuance of a show-cause order or an order instituting a formal proceeding. Motions for such waivers and any answers shall be filed in the applicable docket in accordance with § 302.18 of the Department's Procedural Regulations (14 CFR 302.18) and served upon all parties to the proceeding.

* * * * *

PART 385—[AMENDED]

3. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. chapters 401, 411 413, 415, 417, and 419

4. Section 385.14 is amended by adding new paragraph (p) to read as follows:

§ 385.14 Authority of the Director, Office of Aviation Analysis.

* * * * *

(p) Approve or deny requests for waivers from 14 CFR 300.2(a) in docketed air carrier initial certificate application and continuing fitness proceedings

* * * * *

Issued in Washington, DC, on February 16, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs

[FR Doc. 95–4328 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 943

[Docket 950207042–5042–01]

RIN 0648–AB49

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: This document adopts as final regulations without change the interim final portion of regulations implementing the designation of the Flower Garden Banks National Marine Sanctuary, published on December 5, 1991 (56 FR 63634).

EFFECTIVE DATE: March 27, 1995.

FOR FURTHER INFORMATION CONTACT: Edward Lindelof, Gulf and Caribbean Regional Manager, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC–4, Silver Spring, MD 20910 (301/713–3137).

SUPPLEMENTARY INFORMATION: Section 101 of P.L. 102–251, signed into law on March 9, 1992, provides that the designation of the Flower Garden Banks National Marine Sanctuary took effect on January 17, 1992. Both final and interim final regulations implementing the designation were published on December 5, 1991 (56 FR 63634); NOAA invited comments on the interim final regulations to be submitted in writing on or before February 3, 1992. NOAA received one comment, which is discussed below under Background. The comment results in no change. Accordingly, the interim final portions of 15 CFR part 943 (§ 943.3(a)(5), (6), (7), (9), (12), (14), and (15), § 943.5 (a)(1), (11) (12) (13), and (e), and § 943.6, published at 56 FR 63634, December 5, 1991) are adopted as final regulations without change.

I. Background

As indicated above, NOAA invited comments on the interim final regulations to be considered if submitted in writing on or before February 3, 1992. The following comment was received by NOAA in response to the interim final regulations prohibiting exploring for, developing or producing oil, gas or minerals within a no-activity zone (15 CFR § 943.5(a)(1)).

(1) *Comment:* The commenter recommends that the prohibition against exploring for, developing or producing oil, gas or minerals within a no-activity zone not apply to geophysical surveys and seismic exploration.

Response: The prohibition against exploring for, developing or producing oil, gas or minerals within a no-activity zone does not apply to geophysical surveys and seismic exploration. However, seismic techniques involving possessing or using explosives, or releasing electrical discharges, are prohibited in the Sanctuary by regulation 15 CFR § 943.5(a)(14).

The use of air guns involved in seismic surveys in the Flower Garden Banks National Marine Sanctuary has been listed for possible regulation, so that if the use of air guns in seismic surveys is later demonstrated to have an adverse impact on Sanctuary resources, additional regulations can be proposed. If such regulations are eventually proposed, the public will have an opportunity to comment on them at that time.

Because air gun use in seismic operations may cause short-term behavioral changes in marine organisms (especially sharks and rays which school in the Sanctuary), and interfere with recreational diving, NOAA will seek additional information on these effects, and also identify time periods when air gun operations will have the least potential for impacts on Sanctuary resources and recreational divers. Because air gun operations may result in accidental loss of mooring buoys at the Sanctuary site, NOAA has requested that the Minerals Management Service require seismic surveyors to:

—Remove mooring buoys immediately before, and replace immediately after, a seismic survey is run through the Sanctuary;

—Announce the time that the mooring buoys will not be available in a Notice to Mariners.

II. Miscellaneous Rulemaking Requirements

The information in the December 5, 1991, **Federal Register** document addressing miscellaneous rulemaking requirements has not changed. There are no additional collection of information requirements.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: February 15, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

PART 943—FLOWER GARDENS BANKS NATIONAL MARINE SANCTUARY

Accordingly, the interim final rule portion of 15 CFR part 943, which was published at 56 FR 63634 on December 5, 1991, is adopted as a final rule without change.

[FR Doc. 95–4534 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–94–019]

RIN 2115–AE46

Annual Marine Events Within the Eighth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes permanent special local regulations for the annual marine events within the Eighth Coast Guard District. This, in turn, reduces the number of annual requests for temporary final rules for regattas and marine parades by codifying these marine events in the Code of Federal Regulation. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during these events.

EFFECTIVE DATE: March 27, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of Commander, Eighth Coast Guard District (dl), 501 Magazine St., room 1311 (Hale Boggs Federal Building), New Orleans, Louisiana 70130–3396 between 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6188.

FOR FURTHER INFORMATION CONTACT: LT C.D. Michel, Eighth Coast Guard District Legal Office, at Hale Boggs Federal Building, 501 Magazine, room 1311, New Orleans, Louisiana 70118. Telephone: (504) 589–6188.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR T.P. Marian, Project Manager, and LT C.D. Michel, Project Counsel, Eighth Coast Guard District Legal Office.

Regulatory History

On September 7, 1994, the Coast Guard published a notice of proposed rulemaking entitled Annual Marine Events within the Eighth Coast Guard District in the **Federal Register** (59 FR 172). The Coast Guard received 1 (one) letter commenting on this proposal. No public hearing was requested, and none was held.

Background and Purpose

Currently, Coast Guard units responsible for overseeing the safety of marine events prepare temporary rules each year for each event. This rule eliminates the need to prepare annual temporary final rules for those annual marine events that have few or no changes from year to year. This streamlines the marine event process for those regattas and marine events that have very little annual variation and would significantly reduce the Coast Guard's administrative burden for managing these type events.

Table 1 delineates the events, their sponsors, dates, and locations. Each event occurs annually on or about the date given. The course will be patrolled by patrol vessels. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area at *NO WAKE SPEED* at the discretion of the Coast Guard Patrol Commander.

Discussion of Comments and Changes

One comment was received from Commanding Officer, U.S. Coast Guard Marine Safety Office Morgan City. This comment referred to Table 1 of the proposed rulemaking and noted that the Louisiana Shrimp and Petroleum Festival also included an evening fireworks display.

The fireworks are launched from a barge stationed in Berwick Bay between the railroad and highway bridges. Commanding Officer, U.S. Coast Guard Marine Safety Office Morgan City requested that this event be amended to reflect the existence of a fireworks display by changing the marine event's title from, "The Blessing of the Fleet" to, "The Blessing of the Fleet *and Fireworks Display*." Since the fireworks display takes place after sunset Commanding Officer, U.S. Coast Guard Marine Safety Office Morgan City also requested changing the duration of this event from, "8:30 a.m. through 1 p.m" to, "8:30 p.m. through 1 p.m., *and 9 p.m. through 10 p.m.*"

Implementing these requested changes will not have any significant impact upon the public. The notice of proposed rulemaking had included a fireworks display and no comments were received on that event. Furthermore, this specific change does not pertain to the regulations that were specified in the notice to proposed rulemaking but is limited rather to the title and the duration of the marine event.

The change to Table 1 of this rule is limited in nature and provides for one additional hour of oversight by the Coast Guard in the interest of public safety. Therefore, Table 1 will be amended to reflect the information provided by Commanding Officer, U.S Coast Guard Marine Safety Office Morgan City.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the

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regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This is attributed to the fact that the proposal merely codifies existing marine events and is also reflected by the fact that no public comments were received on this rule. Furthermore, each of the marine events in Table 1 will require that the navigable waterways delineated be closed for only a short period of time.

As demonstrated by past experience, these events have been successfully overseen by the Coast Guard for several years in cooperation with both the organizers of these events and the boating public. The same event regulations will be implemented for each marine event listed in Table 1 and the Coast Guard will continue to ensure that these recurring marine events are safely managed. Once the marine event is terminated the role of the Coast Guard in monitoring the marine event ceases.

No comments were received from the public on this issue. Implementing the change requested in the one comment received will not have any significant impact upon the public. The notice of proposed rulemaking had included a fireworks display and no comments were received on that event. Furthermore, this specific change does not pertain to the regulations that were specified in the notice to proposed rulemaking but is limited rather to the title and the duration of the marine event.

The change to Table 1 of this rule is limited in nature and provides for one additional hour of oversight by the Coast Guard in the interest of public safety.

Small Entities

No comments were received from the public on this issue. None of the marine events listed in Table 1 would exceed three days in duration and most of them are for only several hours of one day. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been demonstrated that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No comments were received from the public concerning this issue. Furthermore, the change to Table 1 of this rule will not have any impact in this area.

Environment

This rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.e.(35) of Coast Guard Commandant Instruction M16475.1B. No comments were received from the public concerning this issue.

Each of these events is a routine marine parade taking place in commercialized areas involving less than 100 participating low-speed craft and less than 200 spectator boats. Fireworks displays are over water and less than 30 minutes in duration. All of these events have been held previously with no adverse environmental impact.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A new section 100.801 is added to read as follows:

§ 100.801. Annual Marine Events in the Eighth Coast Guard District.

The following regulations apply to the marine events listed in Table 1 of this section. These regulations will be effective annually, for the duration of each event listed in Table 1. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will also be published in local notices to mariners. *Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15.*

(a) The Coast Guard will patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign "PATCOM."

(b) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(c) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(d) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(e) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(f) Any spectator vessel may anchor outside the regulated area specified in Table 1 of this section, but may not anchor in, block, or loiter in a navigable channel.

(g) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(h) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Table 1 of § 100.801

The Blessing of the Fleet and Fireworks Display, Morgan City, Louisiana
Sponsor: Louisiana Shrimp and Petroleum Festival & Fair Association, Inc.
Date: First Sunday of September
Duration: 8:30 a.m. through 1 p.m. and 9 p.m. through 10 p.m.
Location: Berwick Bay from the junction of the Lower Atchafalaya River at Morgan City, Louisiana, to Berwick Locks Buoy 1 (LLNR 18445).

The Contraband Days Fireworks Display, Lake Charles, Louisiana
Sponsor: Contraband Days Festivities, Inc.
Date: First Saturday of May
Duration: 9 p.m. through 12 a.m. (midnight)
Location: A 500 foot radius from the fireworks barge in Lake Charles anchored in approximate position 30°13'54" N, 093°13'42" W.

Neches River Festival, Beaumont, Texas
Sponsor: Neches River Festival, Inc.
Date: Third weekend of April
Duration: First day—8 a.m. through 9:30 p.m.; Second day—8 a.m. through 6 p.m.
Location: The Neches River from Colliers Ferry landing to Lawson's Crossing at the end of Pine Street.

The Blessing of the Shrimp Fleet, Galveston, Texas
Sponsor: Blessing of the Fleet, City of Galveston, Texas
Date: Fourth Saturday of April
Duration: 9:30 a.m. through 5:30 p.m.
Location: The Galveston Ship Channel from the Pelican Island Bridge to Pier 14 at Galveston, Texas.

Dated: January 24, 1995.

Robert C. North,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 95–4411 Filed 2–23–95; 8:45 am]

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33 CFR Part 117

[CGD02–95–001]

RIN 2115–AE47

Drawbridge Operation Regulation; Illinois Waterway

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing operating conditions for the remote operation of the Elgin, Joliet and Eastern Railway (EJ&E) Bridge over the Illinois Waterway at mile 290.1 at Joliet, Illinois. This action is being taken at the request of the Elgin, Joliet and Eastern Railway Company. The change to remote operation will permit more efficient operation of the railway bridge, while continuing to provide for the reasonable needs of navigation.

EFFECTIVE DATES: This interim rule is effective on February 24, 1995. Comments must be received on or before April 25, 1995.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, Attention: Bridge Administrator. Comments may also be delivered to Room 2.107 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (314) 539–3724. The Bridge Branch, Second Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of the public docket and the docket will be available for inspection or copying in room 2.107B at the above address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are David H. Sulouff, Project Officer, Bridge Branch and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. The Coast Guard is soliciting comments on the operation of the new system until April 25, 1995. The Coast Guard will consider all comments received during the comment period.

Publication History

On September 1, 1994, the Coast Guard published a proposed rule (59 FR 45252) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated September 20, 1994. Interested parties were given until October 31, 1994 to submit comments. The Coast Guard received comments from the Illinois Department of Conservation and the Illinois River Carriers Association, representing approximately 34 river towing companies.

Background and Purpose

The EJ&E Railway has requested permission from the Coast Guard to change the operation of the EJ&E Bridge over the Illinois waterway at mile 290.1 at Joliet, Illinois from having a manned on-site bridge tender to a remote operating system. This regulation change establishes the remote operating system and the required equipment. Under the previous regulation, the drawspan was maintained in the closed to navigation position and manned by an on site bridge tender, opening on demand for the passage of river traffic. Communication between the bridge tender and vessel operators was conducted via marine radio.

EJ&E has installed remote operating equipment and a control system, including radar, infrared boat detectors, motion detectors and communications equipment. This equipment will facilitate operation of the drawspan from Gary, Indiana. The drawspan can also be operated at the bridge site. Under this regulation, the drawspan will be maintained in the open to navigation position except for the passage of rail traffic or maintenance. The equipment can detect any malfunction in the drawspan operation. In the event of a malfunction the remote operator can ascertain the position of the drawspan at any time. The marine radio system allows communication between the remote operator and marine traffic at the bridge on the VHF marine frequencies authorized by the Federal Communications Commission. The radar system is designed to scan upstream and downstream of the bridge. A radar antenna has been installed on the bridge.

The received radar signal is transmitted by fixed lines to the remote operator. Infrared scanners and motion detectors are located in the channel drawspan to detect vessels under the drawspan. If an obstruction is detected beneath the drawspan during the closing cycle, before the drawspan is seated and locked, the drawspan will automatically stop lowering and shall be raised to the fully open position by the remote operator until the channel is clear. Once lowered and locked in the closed to navigation position, the boat detectors will not raise the drawspan.

During the drawspan closing cycle, the bridge operator shall make a radio broadcast indicating drawspan status. At the appropriate times in the cycle, the bridge operator shall announce that the drawspan will close to navigation, that the drawspan is closed to navigation, or that the drawspan has reopened to navigation.

Discussion of Comments and Changes

In response to the Notice of Proposed Rule Making, two comments were received. Both the Illinois Department of Conservation and the Illinois River Carriers Association (IRCA) expressed no objection, though the IRCA expressed two concerns. The first concern of the IRCA was whether the drawspan will be operated exactly as proposed; and second, whether or not the drawspan could accidentally be

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lowered on or in front of a tow. The IRCA also recommended implementation of a trial period monitored by the Coast Guard to ensure safe operation and quick return of the on site bridge tender if needed.

The bridge owner has no objection to the trial period and expects Coast Guard evaluation of the operation. EJ&E has reported the remote operator cannot "accidentally" lower the drawspan. A series of commands from a dispatcher control console must be initiated to lower the drawspan. Radar at the bridge allows the remote operator to view the river and radio broadcast requirements provide communication with river traffic. Interruption of the boat detectors will result in halting of the drawspan lowering sequence. If this occurs, the drawspan will return to the full open to navigation position until the obstruction is clear.

Based on the owner's response to comments on the remote operation of this bridge, the Coast Guard is amending the proposed operating requirements. Paragraphs 8 and 9 were added for additional safety measures. Paragraph 8 adds a requirement that the remote operator broadcast on the marine radio when the span is closed to navigation. Paragraph 9 adds a condition that a malfunction of any portion of the remote operating system will require immediate return of a qualified bridge tender to the bridge for on-site operation until repairs are completed.

Good cause exists for making this rule effective on publication. The old regulation required that the bridge be constantly manned to allow for the opening of the draw on demand. This new rule allows the bridge to be left open unless rail traffic or maintenance requires its closure. Vessel traffic will benefit from this rule by having the bridge maintained in the open to navigation position. For these reasons the Coast Guard has determined that there is no need to delay implementation of this rule.

Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

After considering comments received, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has reviewed the environmental impact of this rule and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B (as revised by 59 FR 38654, July 29, 1994) this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have significant effect on the human environment. A Categorical Exclusion Determination is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. § 499; 49 CFR § 1.46; 33 CFR § 1.05–1(g).

2. In Section 117.395 the existing text is designated as paragraph (a) and paragraph (b) is added to read as follows:

§ 117.395 Illinois Waterway.

(a) * * *

(b) The drawspan of the Elgin, Joliet and Eastern Railway bridge, mile 290.1 at Joliet, Illinois, is operated by remote operator located at the Elgin, Joliet & Eastern offices in Gary, Indiana as follows:

(1) The drawspan is normally maintained in the fully open to navigation position displaying green center span navigation lights to indicate that the drawspan is fully open.

(2) The bridge is equipped with the following:

(i) A radiotelephone link direct to the remote operator;

(ii) A radar antenna on top of the drawspan capable of scanning the river one mile upstream and one mile downstream;

(iii) Infrared boat detectors under the drawspan, to allow the remote bridge operator to detect vessels under the drawspan.

(iv) Electronic motion detectors under the drawspan to allow the remote bridge operator to detect vessel movement under the drawspan.

(v) A siren for sound signals, and

(vi) Red and green center span navigation lights.

(3) The remote bridge operator shall maintain a 24 hour VHF marine radio channel 16 watch for mariners to establish contact as they approach the bridge to ensure that the drawspan is open or that it remains open until passage of river traffic is complete.

(4) When rail traffic approaches the bridge, and the drawspan is in the open position, the remote bridge operator initiates a one minute warning period before closing the drawspan. During this warning period, the remote operator shall broadcast at least twice, via marine radio, channel 16, that: "The drawspan of the EJ&E Railroad bridge will be lowered in one minute." A siren on the bridge sounds for 20 seconds, to warn anyone on or under bridge that the drawspan will be lowered.

(5) If a vessel is approaching the bridge upbound or, departing the Lockport Lock and Dam at mile 291.1, downbound, with intentions of passing through the drawspan, they shall respond to the remote bridge operator's marine radio broadcast, or initiate radio contact, indicating their proximity to the bridge and requesting an opening of the drawspan or that the drawspan remain open until the vessel passes. If any approaching vessel is detected or if a radiotelephone response is received, the remote operator shall not close the drawspan until the vessel or vessels have cleared the bridge.

(6) At the end of the one minute warning period, if no river traffic is approaching or under the drawspan, the remote bridge operator may begin lowering the drawspan. Navigation lights located at the center of the drawspan change from green to red when the drawspan is not in the fully open to navigation position. The drawspan takes approximately 90 seconds to lower.

(7) If the presence of a vessel or other obstruction is discovered approaching or under the drawspan, during the lowering sequence, before the drawspan is fully lowered and locked, the drawspan shall be stopped and raised to the fully open position. When the vessel or obstruction has cleared the drawspan, the remote operator shall confirm that the channel is clear and reinitiate the one minute warning cycle before lowering the drawspan.

(8) If no marine traffic is present the drawspan may be lowered and seated. When the drawspan is lowered and locked in the closed to navigation position, the remote bridge operator broadcasts, at least twice, via marine radio channel 16, that: "The drawspan of the EJ&E Railroad bridge is closed to navigation."

(9) Failure of the radar system, radio telephone system, infrared boat detectors or electronic motion sensors shall prevent lowering the drawspan from the remote location.

(10) When rail traffic has cleared the bridge, the remote bridge operator shall raise the drawspan to the fully open to navigation position. When the drawspan is raised and in the fully open to navigation position, the remote bridge operator broadcast, at least twice, via marine radio channel 16, that: "The drawspan of the EJ&E Railroad bridge is open to navigation." The center drawspan navigation lights change from red to green when the drawspan is fully open to navigation.

Dated: January 23, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 95–4408 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska, Subparts C & D; Board Determinations and Subsistence Taking of Fish and Wildlife Regulations; Correcting Amendments

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: These corrections amend the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on May 29, 1992, and June 3, 1994, implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. These corrections will allow rural Alaska residents to continue to harvest fish and wildlife resources on Federal public lands.

EFFECTIVE DATE: Effective July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman Howse, Assistant Director, Subsistence, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed these corrections and agree with their substance. Because Subparts C and D relate to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical correcting text will be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Final Subpart C regulations were published on June 29, 1992, in the **Federal Register** (57 FR 22957–22964) and were amended on May 27, 1994 (59 FR 27462). Proposed Subpart D regulations for the 1994–1995 seasons and bag limits, and methods and means were published on September 2, 1993, in the **Federal Register** (58 FR 46678–46706). A 60-day comment period providing for public review of the proposed Subpart D rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change to

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Subpart D. The public then had an additional 60 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils (Regional Councils) met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. The final regulations, published on June 3, 1994, (59 FR 29032–29063) reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board during their April meeting. Additional Regional Council meetings were held during October 1994, and the Board heard public testimony and deliberated Requests for Reconsideration and Special Action in public forum on November 14, 1994. The sections dealing with shellfish were published on June 1, 1993, (58 FR 31252–31295) and their effective period was revised by an interim rule published on June 27, 1994, (59 FR 32923–32925).

These correcting amendments are a result of deferred proposal from the Board's April meeting, Requests for Reconsideration of some of the Board's decisions in April, some requests for Special Action as a result of resource concerns, and some administrative errors, omissions and typographical mistakes that have been brought to our attention. Below are summaries of each action.

Subpart C

Unit 12—Sheep—A transcription error from State records was made in the Customary and Traditional use eligibility determination for sheep in Unit 12. This document corrects that error.

Unit 18—Caribou—The Board acted on a request for Special Action for a season on caribou north of the Yukon River in Unit 18. Preliminary data indicates that a number of villages have traditionally harvested caribou in that area. Therefore, the Board has made an interim finding of customary and traditional use eligibility determination for the villages of Alakanuk, Andreafsky, Emmonak, Kotlik, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Sheldon Point, and Stebbins for caribou in Unit 18 north of the Yukon River. This action was supported by the affected Regional Council.

Subpart D

Units 7 and 15—Black Bear—A typographic error is being corrected identifying the Units in which sealing is required for the hide and skull of black bears.

Unit 6(D)—Goat—A typographical error identifying a harvest area is being corrected.

Units 6, 11–14, 16, 20 and 25(C)—Lynx—The Board acted on a request from the Alaska Department of Fish and Game (ADF&G) to close the trapping season for lynx in Units 6, 14 and 16, lengthen the season in Units 11 and 13, and shorten the season in Units 12, 20 and 25(C). This follows the Board's previous agreement to follow a harvest tracking strategy where possible. The strategy calls for shortening or closing trapping seasons when lynx numbers are low and lengthening or opening seasons when lynx are abundant. The Regional Councils affected supported this action to protect the viability of the lynx populations in those Units.

Unit 9(C)—Caribou—The Board received a request to close Federal lands to the non-subsistence hunting of caribou in order to ensure the continued viability of the North Alaska Peninsula caribou herd. The population of this herd has declined 20 percent over the last year. On the recommendation of the Regional Council, the Board acted to close the lands for the current regulatory year.

Unit 12—Sheep—The transcription error that was made in the customary and traditional use eligibility determination also incorrectly omitted a season for sheep in this Unit. This document inserts the correct season.

Unit 18—Caribou—Upon receipt of a request for Special Action, the Board, at its November 17, 1994, meeting deliberated the issue of opening Unit 18 north of the Yukon River to caribou hunting. There appears to be an influx of caribou into the area, primarily from the Western Arctic caribou herd which currently numbers about 500,000 animals. The Board opened a season to coincide with the State season. They also indicated that if large numbers of animals move into Unit 18, they will further increase the harvest limit.

Unit 19(A)—Moose—This proposal was a carry-over from the April 1994 Board meeting. One of the two Regional Councils that were affected by this 1994–95 proposal had not reviewed it prior to the April meeting, so the Board delayed action. During the October round of Regional Council meetings, the two Regional Councils reached consensus and the Board passed their compromise version that established a subarea and revised the season structure.

Unit 21(E)—Moose—This proposal was also a carry-over from the April 1994 Board meeting. One of the two Regional Councils that were affected by this 1994–95 proposal had not reviewed it prior to the April meeting, so the Board delayed action. The proposal would prohibit hunting within one-half mile of the Yukon River during the February season. Although the two involved Regional Councils could not agree, data indicated that harvest by residents of one region was almost nonexistent in the affected area. The Board therefore adopted the recommendation of the region primarily impacted and instituted the one-half mile restriction.

Unit 26(A)—Moose—A typographic error is being corrected, identifying a subarea of Unit 26(A).

Kodiak Area—Shellfish—The Board received a Request for Reconsideration from the Alaska Department of Fish and Game (ADF&G) to institute a minimum shell size on king crabs taken for subsistence uses. A full review of the issue and a concern for the viability of the population led the Board to close Federal waters to the non-subsistence taking of king crab. This action was supported by the Regional Council.

Only the items described above are being changed; but for clarity, the entire table or text section for the pertinent species in each Unit is reproduced. The above actions were supported as indicated by the Regional Councils in the affected areas. Notice of the Board meeting and the subjects to be considered were widely circulated and the public had an opportunity to comment and participate.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for this extension are impracticable, unnecessary, and contrary to the public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this rule correction. The Board also finds good cause under 5 U.S.C. 553(d)(3) to make this rule correction effective July 1, 1994, the effective date of the Subsistence Management Regulations for Public Lands in Alaska.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through

public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule is not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; Lou Waller, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedures, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section __.24(a)(1) is amended in the table under "Area," "Species," and "Determination" by removing the entry for "GMU 12" "Sheep" and adding two new entries in its place to read as follows:

§ __.24 Customary and traditional use determinations.

(a) * * *

(1) * * *

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Area	Species	Determination
. . . . .		
12 Tok Management area	Sheep	No subsistence.
12 Remainder	Sheep	No determination.
. . . . .		

3. Section __.24(a)(1) is amended in the table under "Area," "Species," and "Determination" by removing the two entries for "GMU 18" "Caribou" and adding three new entries in their place to read as follows:

§ __.24 Customary and traditional use determinations.

(a) * * *

(1) * * *

Area	Species	Determination
. . . . .		
18	Caribou (Kilbuk caribou herd only)	Residents of Kwethluk.
18 North of the Yukon River	Caribou (except Kilbuk caribou herd)	Residents of Alakanuk, Andreafsky, Emmonak, Kotlik, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Sheldon Point, and Stebbins.
18 Remainder	Caribou (except Kilbuk caribou herd)	Residents of Kwethluk.
. . . . .		

* * * * *

4. Section __.25(e)(1) is revised to read as follows:

§ __.25 Subsistence taking of wildlife.

(e) * * *

(1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–7, 11–16, and 20.

* * * * *

5. Section __.25(k)(6)(iii)(B) is amended in the table under "Hunting" by revising the entry for Goat to read as follows:

* * * * *

(k) * * *

(6) * * *

(iii) * * *

(B) * * *

Harvest limits	Open season
Hunting:	
. . . . .	. . . . .
Goat:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat	
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands	No open season.
. . . . .	. . . . .

* * * * *

6. Section __.25(k)(6)(iii)(B) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(6) * * *

(iii) * * *

(B) * * *

Harvest limits	Open season
. . . . .	
Trapping:	
. . . . .	. . . . .
Lynx	No open season.
. . . . .	. . . . .

* * * * *

7. Section __.25(k)(9)(ii)(E) is amended in the table under "Hunting" by revising the entry for Caribou to read as follows:

* * * * *

(k) * * *

(9) * * *

(ii) * * *

(E) * * *

Harvest limits	Open season
Hunting:	
. . . . .	. . . . .

Harvest limits	Open season
Caribou:	
Unit 9(A) and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30. Public lands in Unit 9(C) are closed for the hunting of caribou except by qualified rural Alaska residents during the seasons identified above	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however no more than 2 may be bulls	Aug. 1–Apr. 15.
Unit 9(D)	No open season.
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9	July 1–Apr. 30.
Remainder of Unit 9(E)—4 caribou	Aug. 10–Apr. 30.
. . . . .	. . . . .

* * * * *

8. Section ____ .25(k)(11) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(11) * * *

Harvest limits	Open season
Trapping:	
. . . . .	. . . . .
Lynx:	
No limit	Dec. 1–Jan. 15.
. . . . .	. . . . .

* * * * *

9. Section ____ .25(k)(12) is amended in the table under "Hunting" by adding an entry for Sheep to read as follows:

* * * * *

(k) * * *

(12) * * *

Harvest limits	Open season
Hunting:	
. . . . .	. . . . .
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
. . . . .	. . . . .

* * * * *

10. Section ____ .25(k)(12) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(12) * * *

Harvest limits	Open season
. . . . .	
Trapping:	
. . . . .	. . . . .
Lynx:	
No limit	Dec. 1–Jan. 15.
. . . . .	. . . . .

* * * * *

11. Section ____ .25(k)(13)(iii) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(13) * * *

(iii) * * *

Harvest limits	Open season
. . . . .	
Trapping:	
. . . . .	. . . . .
Lynx:	
No limit	Dec. 1–Jan. 15.
. . . . .	. . . . .

* * * * *

12. Section ____ .25(k)(14)(iii)(B) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(14) * * *

(iii) * * *

(B) * * *

Harvest limits	Open season
. . . . .	
Trapping:	
. . . . .	. . . . .
Lynx	No open season.
. . . . .	. . . . .

* * * * *

13. Section ____ .25(k)(16) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *

(16) * * *

(iii) * * *

Harvest limits	Open season
. . . . .	
Trapping:	
. . . . .	. . . . .
Lynx	No open season.
. . . . .	. . . . .

* * * * *

14. Section _____.25(k)(18)(iii) is amended in the table under "Hunting" by revising the entry for Caribou to read as follows:

* * * * *

(k) * * *

(18) * * *

(iii) * * *

Harvest limits	Open season
Hunting:	
. . . . .	. . . . .
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total Unit harvest of 130 bulls has been reached in either or both hunts administered by the Board or ADF&G.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Unit 18—that portion north of the Yukon River—1 caribou.	Feb. 1–Mar. 31.
Remainder of Unit 18	No open season.
. . . . .	. . . . .

* * * * *

15. Section _____.25(k)(19)(iii) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * *

(k) * * *

(19) * * *

(iii) * * *

Harvest limits	Open season
Hunting:	
. . . . .	. . . . .

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Harvest limits	Open season
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(A)—remainder—1 bull.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull.	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1–Sept. 30. Dec. 1—Feb. 28.
Remainder of Unit 19(D)—1 antlered bull.	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
• • • • •	• • • • •

* * * * *

16. Section _____.25(k)(20)(iii)(C) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *
(20) * * *
(iii) * * *

(C) * * *

Harvest limits	Open season
• • • • •	
Trapping:	
• • • • •	• • • • •
Lynx:	
No limit	Dec. 1–Jan. 15.
• • • • •	• • • • •

* * * * *

17. Section ____.25(k)(21)(iii)(D) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * *

(k) * * *
(21) * * *
(iii) * * *
(D) * * *

Harvest limits	Open season
Hunting:	
• • • • •	• • • • •
Moose:	
Unit 21(A)—1 antlered bull.	Sept. 5–Sept. 30 Nov. 1–Nov. 30.
Unit 21 (B) and (C)—1 antlered bull.	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21—Sept. 25 and Feb 1—Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25. Feb 1–Feb 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5—Sept. 25; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25. Feb 1–Feb. 10
• • • • •	• • • • •

* * * * *

18. Section ____.25(k)(25)(iii)(b) is amended in the table under "Trapping" by revising the entry for Lynx to read as follows:

* * * * *

(k) * * *
(25) * * *
(iii) * * *

Harvest limits	Open season
• • • • •	
Trapping:	
• • • • •	• • • • •
Lynx:	
Unit 25(C)—No limit .	Dec. 1–Jan. 15.
Remainder of Unit 25—No limit.	Nov. 1–Feb. 28.
• • • • •	• • • • •

* * * * *

19. Section ____.25(k)(26)(iii)(B) is amended in the table under "Hunting" by revising the entry for Moose to read as follows:

* * * * *

(k) * * *
(26) * * *
(iii) * * *
(B) * * *

Harvest limits	Open season
Hunting:	
• • • • •	• • • • •
Moose:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandler River drainage—1 moose; however, no person may take a cow accompanied by a calf..	Aug. 1–Mar. 31
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf..	Aug. 1–Dec. 31
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26(B) Remainder and (C)—1 moose.	Aug. 1–Dec. 31
• • • • •	• • • • •

* * * * *

20. Section ____.27 is amended by adding a new paragraph (f)(3)(iv)(E) to read as follows:

§ ___.27 Subsistence taking of shellfish.

* * * * *

(f) * * *
(3) * * *
(iv) * * *

(E) the waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified rural Alaska residents;

* * * * *

Dated: December 19, 1994.
William L. Hensley,
Chair, Federal Subsistence Board.

Dated: December 29, 1994.
Phil Janik,
Regional Forester, USDA-Forest Service.

[FR Doc. 95–4359 Filed 2–23–95; 8:45 am]
BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–27–1–6735a; FRL–5145–8]

Approval and Promulgation of Implementation Plans South Carolina: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of South Carolina through the South Carolina Department of Health and Environmental Control for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), which will be fully implemented by November 15, 1994. This implementation plan was submitted by the State on January 20, 1993, to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA).

DATES: This final rule is effective April 25, 1995 unless notice is received March 27, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of South Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

State of South Carolina Department of Health and Environmental Control, Environmental Quality Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4195.

SUPPLEMENTARY INFORMATION: Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA and the EPA guidance document *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments.* In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. The plan must also determine the eligibility of small business stationary sources for assistance in the PROGRAM. The plan includes the duties, funding and schedule of implementation for the three PROGRAM components.

Section 507(a) and (e) of the CAA set forth requirements the State must meet to have an approvable PROGRAM. The State of South Carolina has addressed these requirements and established a PROGRAM as described below

1. Small Business Assistance Program (SBAP)

South Carolina has established a mechanism to implement the following six requirements set forth in section 507 of title V of the CAA:

A. The establishment of adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the CAA;

B. The establishment of adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

C. The development of a compliance and technical assistance program for small business stationary sources which assist small businesses in determining applicable permit requirements under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors, or at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State of South Carolina acknowledges the heart of the PROGRAM is the Small Business Assistance Program (SBAP), which resides within the Department of Health and Environmental Control. The SBAP

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will provide an information clearinghouse and refer small businesses to State technical experts within the Department who are trained to handle specific questions relevant to achieving compliance with the CAA. In addition, the SBAP will provide for the collection and dissemination of information to small businesses on determining applicable requirements under the CAA, permit issuance, small businesses' rights and obligations, compliance methods, acceptable control technologies, pollution prevention, accidental release prevention and detection, audit programs and procedures, and other matters deemed useful or necessary by the Department. The specific mechanisms for collection and dissemination of information will be developed by the Ombudsman. The SBAP also will consider requests from small business stationary sources for modifications of work practices, technological methods of compliance, or compliance procedures and provide guidance as necessary. The SBAP will utilize, on an as needed basis, the services of other in-state entities with expertise in various aspects related to the PROGRAM.

The dissemination of information to small businesses in South Carolina through the SBAP involves both a proactive and a reactive component. The Ombudsman will actively advertise the SBAP to ensure the regulated communities are aware of their obligations under the CAA. The reactive component takes place after the regulated community recognizes that there is or could be some obligation on their part to comply with the CAA. The Department is committed to supporting the proactive component of the program through newspapers, radio, and TV announcements and advertisements. Public service announcements will be used to the maximum extent possible. Informational packets will be distributed. Other avenues for disseminating information will be utilized through the Secretary of State's office, the South Carolina State Development Board, the Environmental Quality Control Advisory Board, the Federal Small Business Assistance Office, the Chambers of Commerce's Technical Committee, the General Assembly's Joint Liaison on Small Business, other appropriate State offices, public hearings, and by the identification of potentially affected sources by the Department. Reactive components of the SBAP include the installation of a toll-free hot line to facilitate contacting the Department and the designation of the point-of-contact on the Department's staff to handle inquiries. The Ombudsman will be the primary point-of-contact who will either handle the question or direct the inquirer to the appropriate source within the Department for assistance. Other sources of information include the following: public hearings on rule changes, control technology guidelines, EPA's Control Technology Center, the Emissions Measurement Technical Information Center, the Emergency Planning and Community Right to Know Hotline, EPA Regional Offices, other state's air programs and industry and trade groups.

The SBAP will assist small businesses in determining applicable requirements and will provide information on permit issuance, compliance methods, acceptable control technologies, pollution prevention, accidental release prevention and detection, and audit programs. The SBAP will inform small businesses about their rights under the CAA; assist in the preparation of guidance documents and ensure that technical and compliance information is available to the small business community and the general public; answer regulatory questions raised by small businesses and provide them with clean air compliance information; obtain information and counsel from other appropriate state agencies; and participate and sponsor meetings and conferences on air quality requirements, pollution prevention, and other regulatory issues.

The Department will maintain lists of environmental consulting companies that perform auditing services and will make the lists available upon request. For those sources unable to afford consultants, the Department will conduct a consultation audit to assess the need for control measures and/or a permit to operate.

A small business may petition the Department to modify work practices, compliance methods or implementation schedules in accordance with established procedures as described in the SIP.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. South Carolina has appointed a Small Business Ombudsman and established the Office of the Ombudsman within the Department of Environmental Quality Control. Through that office, the Ombudsman will have direct access to the Governor, the Commissioner, the Chief of the Air Pollution Program, and other state and Federal agencies. The Ombudsman will have the necessary autonomy to function independently of the air program.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses. Four members will be selected by the state legislature who are owners, or represent owners, of small businesses. The majority and minority leadership in both the house and the senate shall each appoint one member of the panel. One member will be selected by the head of the agency in charge of the Air Pollution Permit Program. South Carolina established a CAP with a membership consistent with the aforementioned CAA requirements. The SBAP will serve as the secretariat to the CAP in the development and dissemination or reports, advisory opinions, and other information.

The duties of the CAP include: providing advisory opinions to the EPA and the Department regarding the effectiveness of the state PROGRAM and the difficulties encountered by small businesses in meeting the mandates of the CAA; reviewing information for small business stationary air pollution sources to assure such information is understandable to the lay person; and to make periodic reports to the Administrator of the Environmental Protection Agency in accordance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.

4. Source Eligibility

South Carolina has incorporated section 507(c)(1) and defined a Small Business Stationary Source as a source that:

(1) Is owned or operated by a person who employs 100 or fewer individuals;

(2) Is a small business concern as defined in the Small Business Act;

(3) Is not a major stationary source; and

(4) Does not emit 50 tons per year (tpy) of any regulated pollutant and emits less than 75 tpy of all regulated pollutants.

South Carolina has established the following mechanisms as required by section 507: (1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA; (2) a process for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and (3) a process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the Department determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the PROGRAM SIP revision submitted by the State of South Carolina through the Department of Health and Environmental Control. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective April 25, 1995. However, if notice is received by March 27, 1995 someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

By today's action, the EPA is approving a State program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *Environmental Protection Agency*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: January 12, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(38) to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(38) The South Carolina Department of Health and Environmental Control has submitted revisions to the South Carolina Air Quality Implementation Plan on November 12, 1993. These revisions address the requirements of section 507 of title V of the Clean Air Act and establish the Small Business Stationary Source Technical and Environmental Program.

(i) Incorporation by reference.

(A) The submittal of the state of South Carolina's Small Business Assistance Program which was adopted on September 9, 1993.

(ii) Additional material. None.

[FR Doc. 95–4629 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 52 and 81

[FL56–1–6883a; FRL–5148–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 8, 1993, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted a maintenance plan and a request to redesignate the Southeast Florida area from moderate nonattainment to attainment for ozone (O_3). The Southeast Florida O_3 nonattainment area consists of Dade, Broward and Palm Beach Counties. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data are available to warrant such revisions and the CAA redesignation requirements are satisfied. In this action, EPA is approving Florida's request because it meets the maintenance plan and redesignation requirements set forth in the CAA, and EPA is also approving the 1990 base year emission inventory for the Southeast Florida area. The approved maintenance plan will become a federally enforceable part of the State Implementation Plan (SIP) for the Southeast Florida area.

DATES: This final rule is effective April 25, 1995, unless adverse or critical comments are received by March 27, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air,

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Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215. Reference file FL56–1–6883.

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1977 (1977 Act) required areas that were designated nonattainment based on a failure to meet the O_3 national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The Miami-Fort Lauderdale-West Palm Beach area (Southeast Florida), comprised of Dade, Broward, and Palm Beach Counties, was designated under section 107 of the 1977 Act as nonattainment with respect to the O_3 NAAQS on March 3, 1978. (43 FR 8964, 40 CFR 81.310) In accordance with section 110 of the 1977 Act, the State submitted a part D O_3 SIP on April 30, 1979, which was supplemented on August 27, 1979, and January 23, 1980, which EPA conditionally approved on March 18, 1980, and fully approved on May 14, 1981, as meeting the requirements of section 110 and part D of the 1977 Act.

On November 15, 1990, the CAA Amendments of 1990 were enacted (1990 Amendments). (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q) The nonattainment designation of Southeast Florida was continued by operation of law pursuant to section 107(d)(1)(C)(i) of the 1990 Amendments. Furthermore, it was classified by operation of law as moderate for O_3 according to section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.310).

Southeast Florida more recently has ambient monitoring data that show no violations of the O_3 NAAQS, during the period 1990 through 1993. In addition, there have been no exceedences reported for the 1994 O_3 season. Therefore, in an effort to comply with the 1990 Amendments and to ensure continued attainment of the NAAQS, Florida submitted an O_3 maintenance SIP for the Southeast Florida area on November 8, 1993, and also requested redesignation of the area to attainment with respect to the O_3 NAAQS.

The 1990 Amendments revised section 107(d)(1)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;

2. The area must meet all relevant requirements under section 110 and part D of the CAA;

3. The area must have a fully approved SIP under section 110(k) of the CAA;

4. The air quality improvement must be permanent and enforceable; and

5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

The Florida redesignation request for the Southeast Florida area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how the State has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. Attainment of the O_3 NAAQS

The Florida request is based on an analysis of quality assured O_3 air quality data which is relevant to the maintenance plan and to the redesignation request. The most recent ambient O_3 data for the calendar years 1990 through 1992 shows an exceedence rate of less than 1.0 per year of the O_3 NAAQS in the Southeast Florida area. (See 40 CFR 50.9 and appendix H). Because the Southeast Florida area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Southeast Florida area has met the first statutory criterion of attainment of the O_3 NAAQS. In addition, there have been no ambient air exceedences in 1993 or to date in 1994 for O_3. Florida has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Meeting Applicable Requirements of Section 110 and Part D

On May 14, 1981, EPA fully approved Florida's SIP for the Southeast Florida area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act (46 FR 26640). The 1990 Amendments, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the SIP to ensure that it contains all measures that were due under the 1990 Amendments prior to or at the time the State submitted its redesignation request. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the state has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable at those later dates (see section 175A(c)) and, if the redesignation is disapproved, the state remains obligated to fulfill those requirements.

A. Section 110 Requirements

Although section 110 was amended by the 1990 Amendments, the Southeast Florida SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, (see 57 FR 27936 and 23939, June 23, 1993), many are duplicative of other requirements of the CAA. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before Southeast Florida may be redesignated to attainment, it also must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Southeast Florida area was classified as moderate (See 56 FR 56694, codified at 40 CFR

81.530). Therefore, in order to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is subject to requirements of subpart 2 of part D.

B.1. Subpart 1 of Part D—Section 172(c) Plan Provisions

Under section 172(b), the Administrator established that States containing nonattainment areas shall submit a plan or plan revision meeting the applicable requirements of section 172(c) no later than three years after an area is designated as nonattainment, i.e., unless EPA establishes an earlier date. EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable as the State of Florida submitted this redesignation request on November 8, 1993. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures (RACM) beyond what may already be required in the SIP are no longer necessary, since no earlier date was set for these measures and as RFP was not due until November 15, 1993.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (in this action) of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the section 172(c)(5) NSR requirement, EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. *See Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed below, the State of Florida has demonstrated that the Southeast Florida area will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for Southeast Florida.

Finally, for purposes of redesignation, the Southeast Florida SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, EPA believes the SIP satisfies all of those requirements.

B.2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by the States must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (*see* 57 FR 13498, 13557 (April 16, 1992)).

EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62118) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the State of Florida is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, the State of Florida is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals did not come due until after the submission of the redesignation request for Southeast Florida, they are not applicable requirements under section 107(d)(3)(E)(v) and, therefore, do not affect the approval of this redesignation request.

B.3. Subpart 2 of Part D—Section 182(a) and 182(b) Requirements

Southeast Florida is a moderate ozone nonattainment area. Under subpart 2 of part D, such areas must meet the requirements for marginal areas under section 182(a)(1) as well as the requirements for moderate areas contained in section 182(b). As discussed above, for purposes of this redesignation, the Southeast Florida area need only meet those requirements of section 182(a) and (b) that came due prior to or at the time of the submittal of a complete redesignation request (which was November 8, 1993, in this instance). Section 182(b)(1) of the CAA required states to submit a revision to the SIP by November 15, 1993, to provide for volatile organic compound (VOC) emission reductions by November 15, 1996, of at least 15% from baseline emissions accounting for any growth in emissions after the date of enactment of the CAA. The State failed to submit the required revisions and as a result, on January 28, 1994, EPA issued a finding letter notifying Florida of a finding of failure to submit. This finding of failure to submit triggered the: (1) 18-month time clock for mandatory application of sanctions under section 179(a); (2) the Administrator's discretionary authority to impose sanctions under section 110(m); and (3) the 2-year time clock for promulgation of the Federal Implementation Plan (FIP) 15% regulations for this area as required by section 110(c)(1). However, the letter acknowledges the submittal of this redesignation request to attainment and stated that if the redesignation request to attainment is approved then requirements for a 15% plan SIP will be unnecessary for the Southeast Florida area. Therefore, upon approval of this redesignation request, the sanctions and FIP clocks will stop. As the requirement to submit a 15% plan did not come due until November 15, 1993, the 15% plan requirement is not an applicable requirement for purposes of the evaluation of this redesignation request. EPA has analyzed the SIP and determined that Florida has met all applicable 182(a) and (b) requirements for redesignation.

a. Emissions Inventory

Section 182(a)(1) of the CAA required an inventory of all actual emissions from all sources to be submitted by November 15, 1992. As described below, the State has submitted such an

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inventory, and EPA is approving that inventory with this action.

b. Reasonably Available Control Technology

To be redesignated, all SIP revisions required by section 182(a)(2)(A) and 182(b)(2) concerning RACT requirements must have been submitted to EPA and fully approved. Florida has met all RACT requirements except for categories that do not have an approved control technique guideline (CTG). Florida's non-CTG RACT rule was submitted on January 8, 1993. This rule is being acted on in a separate document and final action will be taken prior to this redesignation becoming final.

c. Emissions Statements

Section 182(a)(3) of the CAA required a SIP submission by November 15, 1992, to require stationary sources of NO_X and VOCs provide statements of actual emissions. Florida submitted an annual emissions statement SIP revision on November 13, 1992. This revision was approved in the **Federal Register** on August 4, 1994.

d. New Source Review

As explained above, EPA has determined that areas need not comply with the part D NSR requirements of the CAA in order to be redesignated provided that the area is able to demonstrate maintenance without part D NSR in effect. As maintenance has been demonstrated for the Southeast Florida area, EPA is not requiring that the area have a fully-approved part D NSR plan meeting the requirements of sections 182 (a) and (b) prior to redesignation.

e. Motor Vehicle Inspection and Maintenance (I/M)

The Southeast Florida area has an approved I/M program that meets the requirements of the CAA. Furthermore, the area meets the requirements for areas redesignating, i.e., the State has legal authority for I/M and the contingency plan includes enhanced I/M which more than meets the requirement for a contingency measure to be an upgraded I/M program.

f. Stage II

Section 182(b)(3) of the CAA required moderate areas to implement Stage II gasoline vapor recovery systems unless and until EPA promulgated onboard vapor recovery regulations. On January 24, 1994, EPA promulgated the onboard rule. As section 202(a)(6) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II, the Stage II vapor recovery requirement is no longer an applicable requirement. However, Stage II vapor recovery has been approved and implemented in the Southeast Florida area.

3. Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the 1990 Amendments, EPA has determined that the Southeast Florida area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the pre-amended CAA, EPA approved the Florida SIP control strategy for the Southeast Florida nonattainment area, satisfied that the rules and the emission reductions achieved as a result of those rules were enforceable. The control measures to which the emission reductions are attributed are VOC RACT regulations, the Federal Motor Vehicle Control Program (FMVCP), and lower Reid Vapor Pressure (RVP). VOC emissions were reduced by 9% in 1990 due to VOC RACT. The FMVCP reduced VOC emissions from motor vehicles by 54% from 1980 to 1990. The reduction in RVP from 11.5 psi in 1985 to 7.8 psi in 1992 has reduced summertime VOC mobile source emissions by 32%.

In association with its emission inventory discussed below, the State of Florida has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient O_3 levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. In this document, EPA is approving the State of Florida's maintenance plan for the Southeast Florida area because EPA finds that Florida's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 16, 1992, the State of Florida submitted comprehensive inventories of VOC, NO_X, and CO emissions from the Southeast Florida area. The inventories include biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. EPA is approving the 1990 base year inventory in this action.

The State submittal contains the detailed inventory data and summaries by county and source category. The comprehensive base year emissions inventory was submitted in the NEDS format. Finally, this inventory was prepared in accordance with EPA guidance. It also contains summary tables of the base year and projected maintenance year inventories. EPA's TSD contains more in-depth details regarding the base year inventory for the Southeast Florida area.

VOC EMISSIONS INVENTORY SUMMARY
[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	29.43	31.57	27.33	24.34	24.26
Stationary Area	295.21	280.90	230.48	232.17	220.50
On-Road Mobile	336.64	206.83	189.86	176.74	170.25

VOC EMISSIONS INVENTORY SUMMARY—Continued
[Tons per day]

	1990	1994	1997	2000	2005
Non-Road Mobile	128.98	134.81	142.87	149.79	158.35
Biogenic	325.33	325.33	325.33	325.33	325.33
Total	1115.59	979.44	915.87	908.37	898.69

NO_X EMISSIONS INVENTORY SUMMARY
[Tons per day]

	1990	1994	1997	2000	2005
Stationary Point	180.34	183.92	150.88	151.66	151.70
Stationary Area	17.10	17.97	18.81	19.38	20.23
On-Road Mobile	254.48	239.70	230.79	220.26	214.34
Non-Road Mobile	93.85	98.47	104.42	109.60	118.85
Total	545.77	540.06	504.90	500.90	505.12

CO EMISSIONS INVENTORY SUMMARY
[Tons per day]

	1990
Stationary Point	26.82
Stationary Area	182.53
On-Road Mobile	2565.60
Non-Road Mobile	837.80
Total	3612.75

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 base year out to 2005, with interim years of 1994, 1997, and 2000. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC and NO_X emissions are not expected to exceed the level of the base year inventory during this time period.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the Southeast Florida area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to submitting periodic inventories of VOC and NO_X emissions every three years. The contingency plan for the Southeast Florida area is triggered by two indicators, a violation of the O_3 NAAQS or a periodic inventory update that shows emissions of VOCs have increased by at least five percent above the 1990 levels.

D. Contingency Plan

The level of VOC emissions in the Southeast Florida area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Florida has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as reinstatement of NSR, less volatile or reformulated gasoline, expansion of control strategies to adjacent counties for VOC and/or NO_X and to new CTG categories, and an enhanced vehicle emissions inspection program. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this action, EPA is approving the Southeast Florida area O_3 maintenance plan submitted on November 8, 1993, because it meets the requirements of section 175A. In addition, the Agency is approving the request and redesignating the Southeast Florida nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. This action stops the sanctions and federal implementation plan clocks that were triggered for the Southeast Florida area by the January 28, 1994, findings letter. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 25, 1995 unless, within 30 days of its publication, by March 27, 1995, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 25, 1995.

The O_3 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-

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implementation (section 173(b) of the CAA) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects

40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 24, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(86) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(86) The maintenance plan for Southeast Florida submitted by the Florida Department of Environmental Protection on November 8, 1993, as part of the Florida SIP.

(i) Incorporation by reference.

(A) Southeast Florida Ozone Ten Year Maintenance Plan including Emissions Inventory Summary and Projections effective on November 8, 1993.

(ii) Other material. None.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.310 the attainment status table for "Florida-Ozone" is revised to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Tampa-St. Petersburg-Clearwater Area:				
Hillsborough County		Nonattainment		Marginal.
Pinellas County		Nonattainment		Marginal.
Rest of State		Unclassifiable/ Attainment.		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County	April 25, 1995.			
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
Dade County	April 25, 1995.			
De Soto County				
Dixie County				
Duval County	March 6, 1995.			

FLORIDA—OZONE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				
Osceola County				
Palm Beach County	April 25, 1995.			
Pasco County				
Polk County				
Putnam County				
Santa Rosa County				
Sarasota County				
Seminole County				
St. Johns County				
St. Lucie County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 95–4537 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 281

[FRL–5161–3]

Final Approval of State Underground Storage Tank Program; Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on State of Arkansas application for final approval.

SUMMARY: The State of Arkansas has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Arkansas application and determined, subject to public review and comment, that the Arkansas underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting approval to the State to operate its program unless adverse public comment shows the need for further review. The Arkansas application for final approval is available for public review and comment.

EFFECTIVE DATE: Final authorization for the Arkansas underground storage tank program shall be effective at 1:00 p.m. on April 25, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this final rule. All comments on the Arkansas final

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approval application must be received by the close of business on March 27, 1995.

ADDRESSES: Copies of the Arkansas final approval application are available during the hours between 8 a.m. and 4:30 p.m. at the following addresses for inspection and copying: Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72219, Phone: (501) 562–6533; U.S. EPA Headquarters, Office of Underground Storage Tanks Docket Clerk, Room 2616, 401 M Street SW., Washington, DC 20460, Phone: (202) 260–9720; and US EPA, Region 6 Library, 12th floor, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214) 665–6424. Written comments should be sent to Ms. Guanita Reiter, Chief, RCRA Programs Branch, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Arkansas State Program Officer, Underground Storage Tank Program, Mr. John Cernero, US EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Phone: (214) 665–2233.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. To qualify for final authorization, a State's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement (Sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991(c)(b)).

On September 26, 1994, the State of Arkansas submitted an official application for final approval. Prior to its submission, the State of Arkansas provided an opportunity for public notice and comment in the development of its underground storage tank program as required under 40 CFR 281.50(b). The State then adopted by reference the corresponding Federal UST regulations in its Regulation Number 12, which became fully effective on April 22, 1990. However, the definitions of "owner" and "release" in the State's Regulation Number 12 were not adopted verbatim per the Federal regulations. Due to the possibility that the State's definition could be misinterpreted, language was included in the Memorandum of Agreement and in the State Attorney General's Statement, which states that the State will revise the regulation to remove any ambiguities in the two definitions during its next applicable legislative session and will interpret the definition of "owner" and "release" in the same manner as EPA, until such time that the regulations are amended.

B. Decision

After reviewing the Arkansas application, I conclude that the State's program meets all of the requirements necessary to qualify for final approval. Accordingly, the State of Arkansas is granted final approval to operate its underground storage tank program. The State of Arkansas now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program. The State of Arkansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take enforcement actions under section 9006 of RCRA 42 U.S.C. 6991e.

The State of Arkansas is not authorized to operate the UST program on Indian lands and this authority will remain with EPA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. The approval effectively suspends the applicability of certain Federal regulations.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 14, 1995.

William Hathaway,

Acting Regional Administrator.

[FR Doc. 95–4596 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 950214049–5049–01; I.D. 011295B]

RIN 0648–XX10

Taking and Importing of Marine Mammals; Yellowfin Tuna Imports; Spain and Ecuador

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of affirmative findings.

SUMMARY: NMFS announces that the Republic of Spain and the Republic of Ecuador have submitted documentation establishing that they continue to be in compliance with the requirements of the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the eastern tropical Pacific Ocean (ETP). Affirmative findings have been issued that will allow yellowfin tuna and tuna products harvested by vessels of Ecuador and Spain to be imported into the United States through December 31, 1995.

DATES: The affirmative findings were effective December 29, 1994, for Spain, and December 30, 1994, for Ecuador, and remain in effect through December 31, 1995, unless revoked.

FOR FURTHER INFORMATION CONTACT: LT Dana Wilkes (310) 980–4019, FAX (310) 980–4047.

SUPPLEMENTARY INFORMATION: NMFS regulations establish provisions for timely consideration and granting of an affirmative finding to a nation that prohibits its vessels from intentionally setting on marine mammals in the course of harvesting yellowfin tuna by purse seine in the ETP (50 CFR 216.24(e)(5)). With an affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by that nation's purse seine vessels may be imported into the United States.

On December 29, 1994, after consultation with the Department of State, NMFS made an affirmative finding that the Republic of Spain had submitted acceptable documentary evidence that its regulatory program continues to comply with the yellowfin tuna import regulations. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels may be imported into the United States through December 31, 1995.

The Republic of Ecuador also submitted a request for renewal of an affirmative finding. NMFS reviewed information submitted by the Republic of Ecuador in compliance with 50 CFR 216.24(e)(5)(ix) - (xi). That documentation shows that, from May 24, 1994, until June 3, 1994, the Ecuadorian-flag purse seine vessel *Connie F.* fished for yellowfin tuna in the ETP without an observer on board. As a result, Ecuador automatically entered into a 1-year probationary status, beginning on June 3, 1994, as required under 50 CFR § 216.24(e)(5)(x)(B)(*1*). On December 30, 1994, after consultation with the Department of State, NMFS made an affirmative finding that the Republic of Ecuador had submitted acceptable documentary evidence that its regulatory program complies with the yellowfin tuna import regulations and that Ecuador may continue to export yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels to the United States, in a probationary status, through December 31, 1995.

Dated: February 17, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–4519 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 642

[Docket No. 940710–4292; I.D. 021795C]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in the southern zone to 500 lb (227 kg) per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

EFFECTIVE DATE: The 500–lb (227–kg) commercial trip limit is effective February 21, 1995, and remains in effect through March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

An adjusted allocation and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 642.27(b), the adjusted allocation is 4.35 million lb (1.97 million kg). In accordance with 50 CFR 642.27(a)(2)(iv), after 100 percent of the adjusted allocation of Atlantic group Spanish mackerel from the southern zone is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel in a day in amounts exceeding 500 lb (227 kg).

NMFS has determined that 100 percent of the adjusted allocation for Atlantic group Spanish mackerel from the southern zone will be taken by February 20, 1995. Accordingly, the 500–lb (227–kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 12:01 a.m., local time, February 21, 1995.

The southern zone of Atlantic group Spanish mackerel extends from the Georgia/Florida boundary (30°42′45.6‴ N. lat.) southward to the Dade/Monroe County, FL, boundary (25°20.4′ N. lat.).

Classification

This action is taken under 50 CFR 642.27(a)(2)(iv) and (b) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1995.

Fred Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4499 Filed 2–17–95; 4:42 pm]

BILLING CODE 3510–22–F

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Proposed Rules

Federal Register
Vol. 60, No. 37
Friday, February 24, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Public hearing.

SUMMARY: The Department of Agriculture will hold a public hearing on March 10, 1995, to permit interested persons to present their views and comments on changes to the Import Regulation on dairy products subject to import licensing.

DATES: The hearing will be held on March 10, 1995, at 9:30 a.m. Interested persons wishing to testify at the hearing must make a written request to testify to the address indicated below by noon on March 8, 1995. Following the hearing, persons may submit written rebuttal statements to the address indicated below by noon March 17, 1995.

ADDRESSES: The hearing will be held in Room 107, Administration Building, the U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C.

Address requests to testify to Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, Room 5531–S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C. 20250 1000. Requests to testify may also to be submitted to Mr. Warsack via FAX, (202) 720–6556.

All written material received in response to this notice will be available for public inspection in Room 5531, South Building, 14th and Independence Avenue, SW, Washington, D.C. between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Programs Group, Import Policies and Programs Division, Room 5531–A, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250–1000, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION: In the request to testify, the following information must be provided: name, address, telephone number, and firm or affiliation of each witness. Testimony at the hearing will be limited to 10 minutes. Written rebuttal statements must be in English and should be strictly limited to demonstrating errors of fact or analysis not pointed out in the hearing, and should be as concise as possible.

Certain cheese and non-cheese dairy products may only be imported into the United States by or for the account of a person or firm to whom an import license has been issued by the Department of Agriculture (the Department) and only in accordance with the terms and conditions of a license issued pursuant to Import Regulation 1, Revision 7 (7 CFR 6.20–6.34) (Import Regulation), and the Harmonized Tariff Schedule of the United States (HTS). On June 2, 1994, an Advanced Notice of Proposed Rulemaking (ANPR) was published in the **Federal Register** that the Department was considering revising the Import Regulation to implement commitments undertaken by the United States under the Uruguay Round of Multilateral Trade Negotiations and to make various changes. The comment period on the ANPR concluded on August 1, 1994. The Department received 44 submissions which provided a wide range of views including methods of allocating licenses for imported dairy products and suggestions on various other changes intended to update and strengthen the Import Regulation. The Department is scheduling a public hearing for the presentation of views and comments by interested persons with respect to the ANPR.

As described in the ANPR, the Import Regulation provided for the issuance of licenses to importers of certain dairy products which were subject to import quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624) (Section 22). The absolute quotas on dairy products pursuant to Section 22 were converted to tariff-rate quotas under the HTS on January 1, 1995 under Presidential Proclamation 6763 of December 23, 1994 which implemented trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations. That Proclamation also allocated the in-quota quantity of dairy products subject to tariff-rate quotas among supplying countries. The importation of most dairy products subject to the in-quota tariff rates will be administered by the Department through a licensing system in accordance with the Import Regulation. The Department published an Interim Rule in the **Federal Register** on January 6, 1995, which amended the Import Regulation to make import licensing applicable to the quantities of dairy products subject to in-quota tariff rates as of January 1, 1995 under the HTS including quantities of dairy products that had been subject to quotas under Section 22 and new quantities negotiated in the Uruguay Round for the 1995 quota year. The Interim Rule also established eligibility standards for non-cheese dairy products to ensure that licenses are granted to commercial operations importing, exporting, or manufacturing dairy products, and established a rank-order lottery system for non-cheese dairy products. Butter substitutes and butteroil were made subject to licensing in view of the significant increase in the quantities of these products which may enter at the in-quota tariff rate. The Interim Rule amended the Import Regulation to implement the U.S. Uruguay Round commitments, but did not include fundamental changes in the operation of the administration of the import licensing system set forth in the Import Regulation as envisaged in the ANPR.

At this time, the Department is considering the broader fundamental changes to the Import Regulation as envisaged in the ANPR. The Department will conduct a public hearing to permit interested parties to orally present their views, suggestions, and concerns on changes to the provisions of the Import Regulation including modifications, revisions, and updating with respect to: definitions, eligibility requirements, transfer of eligibility, allocation of annual in-quota tariff-rate quantities, issuance of licenses, issuance of ex-quota permits, sales in-transmit, record and inspection, suspension and revocation procedures, and amendments to the Import Regulations implemented in the Interim Rule. Interested persons are encouraged to present testimony on proposed changes as well as any other

comments that they may feel appropriate.

Signed at Washington, D.C., the 16th day of February, 1995.

R.E. Rominger,

Acting Secretary of Agriculture.

[FR Doc. 95–4592 Filed 2–23–95; 8:45 am]
BILLING CODE 3410–10–P

Agricultural Marketing Service

7 CFR Part 28

[CN–95–001]

RIN 0581–AB15

Revision of User Fees for 1995 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to reduce user fees for cotton producers for 1995 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1994 user fee for this classification service was $1.80 per bale. This proposal would reduce the fee for the 1994 crop to $1.60 per bale. The proposed reduction in fees is due to increased efficiency in classing operations and is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: Comments must be received by March 27, 1995.

ADDRESSES: Comments and inquiries should be addressed to Lee Cliburn, Cotton Division, AMS, USDA, room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this proposal on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are about 40,000 cotton growers who voluntarily submit their cotton for the classification service. The majority of the growers are small businesses under the criteria established by the Small Business Administration. The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services;

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 1995, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.80 per bale during the 1994 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.60 per bale during the 1995 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1994. Therefore, the 1995 producer's user fee for classification service is based on the 1994 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1994 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $1.96 per bale. A 2.3 percent, or five cents per bale increase due to the implicit price deflator of the gross domestic product added to the $1.96 would result in a 1995 base fee of $2.01 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1995 crop is estimated at 19,202,000. The 1995 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 30 cents per bale reduction and was subtracted from the 1995 base fee of $2.01 per bale, resulting in a fee of $1.71 per bale.

Assuming a fee of $1.71 per bale, the projected operating reserve would be 30 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.71 must be reduced by 11 cents per bale, to $1.60 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1995 season fee at $1.60 per bale.

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Accordingly, § 28.909, paragraph (b) would be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at five cents per bale, and it would be applicable even if the same method was requested. The other provisions of § 28.910 concerning the fee for an owner receiving classification data from the central database and the fee for new classification memoranda issued for the business convenience of such an owner without reclassification of the cotton would remain the same.

The fee for review classification in § 28.911 would be reduced from $1.80 per bale to $1.60 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

PART 28—[AMENDED]

1. The authority citation for Part 28 is revised to read as follows:

Authority: 7 U.S.C. 473a, 7 U.S.C. 473c.

2. Section 28.909, paragraph (b) would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.60 per bale.

* * * * *

3. In Section 28.911, the last sentence of paragraph (a) would be revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.60 per bale.

* * * * *

Dated: February 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4737 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–02–P

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 68

United States Standards for Beans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.[1]

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to revise the United States Standards for Beans at the request of elements within the Bean Industry. Specifically, FGIS is proposing to eliminate the factor "clean-cut weevil-bored beans" from the grade requirement for the class Blackeye beans and change the grade limits for the factors "total defects," "blistered, wrinkled and/or broken beans," and "splits" for the class Baby Lima beans. FGIS is proposing to change the standard to facilitate marketing of beans.

DATES: Comments must be received by May 25, 1995.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA–FGIS, USDA, Room 0623 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in Room 0623 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Department is issuing this proposed rule in conformance with Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in Part 68 have been approved previously by OMB and assigned OMB No. 0580–0013.

Review of Standards

On September 22, 1993, FGIS published in the **Federal Register** (58 FR 49248) a request for public comments on several changes to the United States Standards for Beans that had been suggested by the California Bean Shippers Association (CBSA), with the concurrence of the California Dry Bean Advisory Board. Specifically, CBSA recommended that the grading factor "clean-cut weevil-bored beans" be eliminated from the grade requirements for the class Blackeye beans and that "clean-cut weevil-bored beans" be considered as "worm-cut" or "insect damaged" beans. They also recommended that the limits for "total defects," "blistered, wrinkled, and/or broken beans," and "splits" in the class Baby Lima beans be changed to coincide with the grade limits for similar factors in other classes of beans.

Interested parties were invited to participate in the rulemaking process by submitting written comments and/or recommendations regarding the official standards. During the 60-day comment period, one written comment was received from a European industry group. This group recommended that Blackeye beans in grades U.S. Nos. 1, 2, and 3 should not contain more than 0.0, 0.1, and 0.2 percent, respectively, of "clean-cut weevil-bored beans and weevilled beans, total."

"Clean-Cut Weevil-Bored Beans" in Blackeye Beans

The present U.S. standards define "clean-cut weevil-bored beans" as beans from which weevils have emerged, leaving a clean-cut open cavity free from larvae, webbing, refuse, mold, or stain. "Clean-cut weevil-bored beans" are considered as a separate grading factor in only two classes: Blackeye and Mung beans. According to the U.S. Standards for Beans, Blackeye beans in grades U.S. Nos. 1, 2, and 3 may not contain more than 0.0, 0.2, and 0.5 percent, respectively, of "clean-cut weevil-bored beans." In all other classes, "clean-cut weevil-bored beans" are included with the grading factor "total damage" and/or "total defects."

Blackeye bean growers and shippers feel that including the factor "clean-cut weevil-bored beans" in the Blackeye bean standards should be changed because the grade requirements for Blackeye beans are more stringent than those of similar classes of beans; e.g., Yelloweye and Cranberry beans. Since Blackeye beans are predominately grown in California, these groups believe that the Blackeye bean standards should reflect the marketing concerns of that bean industry.

The Federation Nationale du Legume (FNL), a European industry group, recommended that Blackeye beans in grades U.S. Nos. 1, 2, and 3 should not contain more than 0.0, 0.1, and 0.2 percent, respectively, of "clean-cut weevil-bored beans and weevilled beans, total." FGIS appreciates FNL's concern about the quality of U.S. Blackeye beans. However, regardless of the factors or factor limits specified by the standards for a particular class of beans, buyers and sellers are free to specify different factor requirements in their contracts.

FGIS has no information that would indicate that eliminating "clean-cut weevil-bored beans" as a separate grading factor from the grade requirements for the class Blackeye beans would have a noticeable effect on the quality or appearance of Blackeye beans, or harm the United States' reputation for producing and marketing high-quality Blackeye beans. Therefore, FGIS is proposing to revise the U.S. Standards for Beans to eliminate the factor "clean-cut weevil-bored beans" as a separate grading factor in the class Blackeye beans and consider "clean-cut weevil-bored" Blackeye beans as "damaged beans," included in the grading factor "total damage."

"Total Defects," "Blistered, Wrinkled, and/or Broken Beans," and "Splits" in Baby Lima Beans

Currently, Baby Lima beans in grades U.S. Nos. 1, 2, and 3 may contain not more than 2.0, 3.0, and 5.0 percent, respectively, of "total defects" and not more than 3.0, 5.0, and 8.0 percent, respectively, of "blistered, wrinkled, and/or broken beans" or "splits." The grade limits for the factors "total defects" (which includes "splits") and "total damaged" for most other classes of beans (e.g., Great Northern, Small White, Kidney, Small Red, Pink, Black Turtle Soup, Blackeye, Cranberry, and Mung beans) is 2.0, 4.0, and 6.0 percent, for grades U.S. Nos. 1, 2, and 3, respectively.

The present limits for "total defects," "blistered, wrinkled, and/or broken beans," and "splits" in the class Baby Lima beans are inconsistent with the standards for other classes of beans. This has caused confusion among some users of the standards. To provide greater uniformity within the U.S. bean standards and to better facilitate the marketing of Baby Lima beans, FGIS is proposing to change the grade limits for these factors in the class Baby Lima beans to 2.0, 4.0, and 6.0 percent, for grades U.S. Nos. 1, 2, and 3, respectively.

Proposed Action

Based on current market needs and other available information, FGIS is proposing to revise:

1. Section 68.134 by eliminating the grading factor "clean-cut Weevil-Bored" and by eliminating footnote 2 which states that "Beans with more than 0.5 percent clean-cut weevil-bored beans are graded U.S. Sample grade." Footnotes that are presently numbered 3 and 4 are proposed to be renumbered 2 and 3, respectively.

2. Section 68.140 by changing the grading limits for the factors "total defects," "blistered, wrinkled, and/or broken beans," and "splits" to 2.0, 4.0, and 6.0 percent for U.S. Nos. 1, 2, and 3, respectively.

Comments including data, views, and suggestions regarding the proposed changes to the U.S. Standards for Blackeye and Baby Lima beans are solicited from interested parties.

List of Subjects in 7 CFR Part 68

Administrative practice and procedures, Agricultural commodities, Beans.

For reasons set forth in the preamble, 7 CFR Part 68 is proposed to be amended as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

2. Section 68.134 is revised to read as follows:

§ 68.134 Grades and grade requirements for the class Blackeye Beans.

Grade	General appearance	Percent maximum limits of—				
		Moisture[1]	Total defects (DKT, FM, CCL, & SP)	Total damaged	Foreign material	
					Total	Stones
U.S. No. 1	The special grade off-color may be applied after the removal of total defects.	18.0	4.0	2.0	0.5	0.2
U.S. No. 2		18.0	6.0	4.0	1.0	0.4
U.S. No. 3		18.0	8.0	6.0	1.5	0.6

Grade	Percent maximum limits of—	
	Contrasting classes[2]	Classes that blend[3]
U.S. No. 1	0.5	5.0
U.S. No. 2	1.0	10.0

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Grain Inspection, Packers and Stockyards Administration (7 U.S.C. 75a; 7 CFR 68.5).

Grade	Percent maximum limits of—	
	Contrasting classes[2]	Classes that blend[3]
U.S. No. 3	2.0	15.0

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
U.S. Substandard: U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
U.S. Sample grade: U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.

3. Section 68.140 is revised to read as follows:

§ 68.140 Grades and grade requirements for the classes Baby Lima and Miscellaneous Lima Beans.

Grade	General appearance	Percent maximum limits of—				
		Moisture[1]	Total defects (DKT, FM, CCL, & SP)	Badly damaged	Foreign material	
					Total	Stones
U.S. No. 1	The special grade off-color may be applied after the removal of total defects.	18.0	2.0	1.0	0.5	0.2
U.S. No. 2		18.0	4.0	1.5	1.0	0.3
U.S. No. 3		18.0	6.0	2.0	1.5	0.6

Grade	Percent maximum limits of—			
	Contrasting classes[2]	Blistered, wrinkled, and/or broken	Splits	Classes that blend[3]
U.S. No. 1	0.5	2.0	2.0	5.0
U.S. No. 2	1.0	4.0	4.0	10.0
U.S. No. 3	2.0	6.0	6.0	15.0

[1] Beans with more than 18.0 percent moisture are graded High moisture.
[2] Beans with more than 2.0 percent contrasting classes are graded Mixed beans.
[3] Beans with more than 15.0 percent classes that blend are graded Mixed beans.
U.S. Substandard: U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.
U.S. Sample grade: U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.

Dated: February 16, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–4495 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Chapter IX

[Docket No. N–95–3858; FR–3647–N–01]

RIN 2577–AB44

Vacancy Rule: Notice of Establishment of a Negotiated Rulemaking Advisory Committee and of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of establishment of a negotiated rulemaking committee and of first meeting.

SUMMARY: The Department is announcing the establishment of a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act (FACA). The purpose of the Committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units. The Committee consists of representatives with a definable stake in the outcome of a proposed rule. A charter for the Committee has been approved pursuant to the FACA, Executive Order 12838, and the implementing regulations. This notice also announces the time and place of the first Committee meeting, which will be open to the public.

DATES: The first meeting of the Committee will take place March 7–9, 1995. On March 7, the meeting will start at 10:00 a.m. and run until completion; on March 8, the meeting will start at 9:00 a.m. and run until completion; and on March 9, the meeting will start at 9:00 a.m. and run until approximately 1:00 p.m.

ADDRESSES: The first meeting of the Committee will be held in the Captain's Room of the Channel Inn Hotel; 650 Water Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 431 Seventh Street SW., Washington, DC 20410–0500; telephone (202) 708–1872, or (202) 708–0850 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995, HUD published a notice of intent to establish a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units (60 FR 304) ("January 3 notice"). Subsequent to the publication of the January 3 notice, a charter for the Committee was approved pursuant to the FACA, Executive Order 12838, and the implementing regulations at 41 CFR 101–6.1007.

The January 3 notice requested comment concerning the issues it should consider and the proposed membership of the Committee. The Department received two comments on the notice of intent. One commenter was a public housing agency (PHA) from the State of Alaska requesting Committee membership. The other commenter was a national association, the Council of Large Public Housing Authorities (CLPHA), with comments on membership balance and the efficacy of changing the current subsidy payment system in light of HUD's proposal to transform the public housing program. After review of the comments and for the reasons stated in the notice of intent, the Department has determined that established a negotiated rulemaking advisory committee on this subject is necessary and in the public interest.

Facilitators

As stated in the notice of intent, the Federal Mediation and Conciliation Service (FMCS) will provide facilitators for this effort.

Substantive Issues for Negotiation

The convening report identified the following issues to be addressed by the Committee:

- What constitutes an acceptable level of vacancies for housing authorities of various size classifications?
- What criteria should be used for providing less than full subsidy?
- What criteria should be used for providing full subsidy despite less than full occupancy?

CLPHA suggested that HUD delay negotiated rulemaking on these vacancy rule issues until HUD and Congress resolve the broader issues concerning HUD's future role in the area of public housing. While it is true that the Department is seeking to transform public housing and convert operating subsidies to PHAs into rental assistance to residents, that transformation will not be completed for a period of at least 6 years. The Department believes that changes are needed now to correct inequities and inefficiencies in the current rule and that to maintain the status quo is not good public policy.

Committee Membership

The FMCS conveners consulted and interviewed over 30 officials of various organizations interested and affected by the vacancy rule. Three national Housing Agency (HA) associations—the Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Redevelopment Officials (NAHRO), and the Public Housing Authority Directors Association (PHADA)—worked together to suggest for committee membership executive directors of HAs that would reflect a balance among HAs in terms of size and number of vacant units. The national associations committed themselves to serving as staff support to the HAs selected for membership.

The members of the Committee are the following:

Housing Agencies

- Housing Authority of the city of Houston, TX.
- Cuyahoga Metropolitan Housing Authority, Cleveland, OH.
- Birmingham, AL Housing Authority.
- New York City, NY Housing Authority.
- Newark, NJ Housing Authority.
- Reno, NV Housing Authority.
- Littleton, CO Housing Authority.
- Housing Authority of the city of South Bend, IN.

Tenant Organizations and Public Interest Groups

- National Tenants Organization, Ft. Pierce, FL.
- Bromley Health Tenant Management Corporation, Jamaica Plains, MA.
- New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ.
- National Housing Law Project, Washington, DC.
- Housing and Development Law Institute, Washington, DC.
- Illinois Association of Housing Authorities.

Federal Government

- U.S. Department of Housing and Urban Development

The Executive Director of the Kodiak Island, AK, Housing Authority asked that she or another qualified Alaska housing representative be a member of the committee, saying that the interests

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of remote housing authorities administering Indian housing programs should be represented. However, the Department has recognized the unique and special circumstances of administering public housing programs in Alaska by not applying the performance funding system (PFS) regulations to housing owned by HAs in Alaska, as well as the Virgin Islands, Puerto Rico, and Guam. Operating subsidy payments to these HAs are based upon budgets approved by HUD on a case-by-case basis. Since the purpose of the committee is to develop a proposed rule that would change the current PFS approach to payment of operating subsidies to vacant units, HAs that use a non-PFS approach do not have a direct interest that should be represented on the committee.

CLPHA commented that large housing authorities that are directly experiencing serious vacancy problems should constitute the majority of the committee. The Department notes that housing authorities now have 8 of the 14 committee memberships and that 1 of the public interest groups given membership is an association representing housing authorities in Illinois. Of the eight HA members, six are currently dealing with vacancy problems or have done so in the recent past. Clearly, the collective interests of HAs are well represented, as are the interests of those large authorities with vacancy problems. It should also be emphasized that the committee will try to achieve its goals of developing a new proposed vacancy rule through measures that seek to achieve a consensus among all committee members.

Tentative Schedule

HUD will hold the first meeting of the committee on March 7–9, 1995. On March 7, the meeting will start at 10:00 a.m. and run until completion; on March 8, the meeting will start at 9:00 a.m. and run until completion; and on March 9, the meeting will start at 9:00 a.m. and run until approximately 1:00 p.m. The location of the meeting will be the Captain's Room of the Channel Inn Hotel, 650 Water Street, SW, Washington, D.C. 20024. The purpose of the meeting will be to orient members to the negotiated rulemaking (reg-neg) process, establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and begin to address the issues. This meeting is open to the public.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register** if time permits.

To prevent delays that might postpone timely issuance of a proposed rule, HUD intends to terminate the committee's activities if it does not reach consensus within 5 months of the first meeting. The process may end earlier if the FMCS conveners/facilitators believe that sufficient progress cannot be made or that an impasse has developed that cannot be resolved.

Authority: 42 U.S.C. 1437g, 3535(d).

Dated: February 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–4614 Filed 2–21–95; 2:31 pm]

BILLING CODE 4210–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 184

[DoD 4145.26–M]

Contractor's Safety for Ammunition and Explosives

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 16 1994, 59 FR 64911, the Department of Defense published a proposed rule which codifies its revised explosives safety standards for ammunition and explosives (A&E) work performed under DoD contracts. The proposed rule is necessary to minimize the potential for mishaps that could interrupt DoD operations, delay project completion dates, adversely impact DoD production base or capability, damage or destroy DoD-owned material/equipment, cause injury to DoD personnel, or endanger the general public. Comments were requested by February 14, 1995. The DoD Explosives Safety Board has been requested by several interested contractors to extend the comment period to provide time for a more detailed technical review. In the interest of all concerned parties, including the DoD and its potential A&E contractors, notice is hereby given of an extension of the Comment period from February 14, 1995 through May 15, 1995.

DATES: Comments are requested by May 15, 1995.

ADDRESSES: Send comments to: Chairman, Department of Defense Explosives Safety Board, (DDESB), 2461 Eisenhower Avenue, Alexandria, VA 22331–0600.

FOR FURTHER INFORMATION CONTACT: Ray B. Sawyer, Director, Technical Programs Division, DDESB, telephone (703) 325–8624.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4494 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–27–1–6735b; FRL–5145–9]

Approval and Promulgation of Implementation Plans South Carolina: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of South Carolina for the purpose of establishing a small business assistance program (SBAP). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 27, 1995.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of South Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

State of South Carolina Department of Health and Environmental Control, Environmental Quality Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 12, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–4630 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 52 and 81

[FL54–1–6026b; FRL–5148–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Florida for the purpose of redesignating the Southeast Florida ozone nonattainment area to attainment. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 27, 1995.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext.4215. Reference file FL54–1–6026.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 24, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–4538 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–17; FCC 95–35]

Protection of Radio Astronomy Operation on TV Channel 37

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its broadcast station rules to protect radio astronomy activity on TV Channel 37. This action is necessary to ensure the most efficacious use of extremely sensitive, state-of-the-art radio astronomy equipment. The intended effect is to maximally enhance radio astronomy observations without imposing a significant burden on television broadcasters.

DATES: Comments must be filed by March 31, 1995. Reply comments must be filed by April 21, 1995.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr. or Gordon W. Godfrey, Mass Media Bureau, Engineering Policy Branch, (202) 418–2190

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 95–17 adopted January 27, 1995, and released on February 21, 1995. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239), 1919 M Street NW., Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Synopsis of Notice of Proposed Rulemaking

Introduction

1. The Commission proposes a number of actions designed to protect radio astronomy operations on Channel 37 of the UHF television broadcasting band. Specifically, it proposes to amend Parts 73 and 74 of our rules to include the geographical coordinates of thirteen radio astronomy sites where TV Channel 37 frequencies (608–614 megahertz) are used for radio astronomy observations. The sites are at the following locations:

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Location	N. latitude	W. longitude
Kitt Peak, AZ	31°57'23"	111°36'45"
Owens Valley, CA.	37°13'54"	118°16'34"
Mauna Kea, HI.	19°48'16"	155°27'29"
North Liberty, IA.	41°46'17"	91°34'27"
Hancock, NH	42°56'01"	71°59'12"
Los Alamos, NM.	35°46'31"	106°14'44"
Pie Town, NM.	34°18'04"	108°07'09"
Socorro, NM	34°03'43"	107°37'04"
Arecibo, PR .	18°20'46"	66°45'11"
Fort Davis, TX.	30°38'06"	103°56'41"
Saint Croix, VI.	17°45'31"	64°35'03"
Brewster, WA.	48°07'52"	119°41'00"
Green Bank, WV.	38°25'59"	79°25'59"

The Commission also proposes a means by which such sites may be protected from interference by television stations operating on Channels 36 and 38. Further proposed is that the one currently authorized TV station which does not provide the proposed protection would be allowed to continue operating with its authorized facilities, but would not be allowed to increase its field strength in the direction of the affected radio astronomy site. Finally, the Commission proposes to delete one vacant TV allotment that is located near one of the radio astronomy sites.

Background

2. The Commission has reserved TV Channel 37 exclusively for radio astronomy service. Footnote US74 in Section 2.106 of the Commission's Rules states in part that "the radio astronomy service shall be protected from extraband radiation only to the extent that such radiation exceeds the levels which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates." Thus, a radio astronomy site is afforded any limited and uncertain protection by the rules. The Commission's rules do not identify the locations of radio astronomy operations using Channel 37, which prevents TV station applicants from considering these operations as they design their proposed TV facilities. As a result, the Commission could properly but inadvertently authorize TV facilities at locations closer to radio astronomy observation sites than may be desirable.

3. To prevent such actions in the future, the National Academy of Sciences' Committee on Radio Frequencies (CORF) petitioned the Commission to amend the rules to include the locations of thirteen radio astronomy sites that currently or will make use of Channel 37, to adopt an 87.7 kilometer (54.5 mile) separation requirement applicable to adjacent channel television stations and to delete Channel 38 at Hilo, Hawaii, from the TV Table of Allotments.

Discussion

4. The Commission believes that CORF's proposal merits consideration and wishes to examine whether some additional protection can be afforded to radio astronomy sites without significant adverse impact on broadcast services. The Commission recognizes that the sensitivity of radio astronomy equipment today is undoubtedly much greater than it was in 1963. Also, the identified radio astronomy locations are mostly in rural areas. Comment is sought on whether TV spectrum is scarce is any of these areas, either for the existing TV service or considering the new advanced TV service that the Commission is proposing in MM Docket No. 87–268.

5. The Commission also requests comments on an alternative approach which is functionally equivalent to the one advocated by CORF but which is more flexible than a fixed distance separation requirement and thus less burdensome to broadcasters. The Commission proposes to set a limit on the field strength that a TV station on Channel 36 or 38 could produce at the coordinates of radio astronomy sites designated by CORF. Basing the proposed protection on field strength will permit stations to be located closer to the radio astronomy sites than the fixed distance separation would allow, if the signal radiated toward the radio astronomy site is suppressed by an appropriate amount.

6. A maximum facility UHF–TV station would deliver a field strength of approximately 72 dBu at 87.7 kilometers. However, the Commission believes that CORF may not have intended to imply that a 72 dBU field strength restriction would provide adequate protection. A lower field strength value is more consistent with the power and antenna height at which UHF–TV stations typically operate. Rather than using maximum allowable facilities, a more typical UHF station has an effective radiated power (ERP) between 1 and 5 MW and an antenna height above average terrain (HAAT) in the vicinity of 350 meters (1150 feet). These facilities produce a field strength of 57 to 64 dBu at 87.7 kilometers (km). Thus, the Commission proposes to use 64 dBu as the limit on the field strength that a Channel 36 or 38 TV station is permitted to produce at a radio astronomy site.

7. The Commission proposes to apply the same field strength limit to low power TV stations, TV translators and TV boosters. Since such stations operate with significantly smaller facilities than full service UHF–TV stations, the proposed approach would permit them much greater flexibility in terms of location, while providing the radio astronomy sites a level of protection equal to that provided by the more powerful full service stations. Compliance with the field strength restriction would be determined using the standard prediction methods and the Commission's F(50, 50) propagation curves. Comments should address whether 72 dBu, 64 dBu or some other field strength value provides adequate protection for the Channel 37 radio astronomy operations and whether these values impose a significant burden on TV use of these two channels. Parties that favor a fixed separation distance as proposed by CORF should identify the distance they believe is correct and support their choice.

8. A review of Commission records indicates that only one full service TV station currently operates with facilities that produce a predicted field strength in excess of 64 dBu at any of the identified radio astronomy sites. WJWN–TV, Channel 38, San Sebastian, PR, is licensed at an ERP of 85.1 kW and HAAT of 332 meters (m). At 90 degrees True, which is toward the Arecibo radio astronomy site, the WJWN–TV facilities are 85.1 kW at 232 m. With the distance between sites of 45.1 km, the predicted field strength at the radio astronomy facility is 67 dBu. While no other station currently authorized on Channels 36 or 38 would exceed the proposed field strength of 64 dBu, there are three other full service stations that would be precluded from increasing to the maximum normally permitted facilities by adoption of the proposed protection standard. They are KQCT (TV) on Channel 36 in Davenport, Iowa, WSBK–TV on Channel 38 in Boston, Massachusetts and WDWL (TV) on Channel 36 in Bayamon, Puerto Rico.

9. In light of the preceding discussion, the Commission believes that a general grandfathering provision, covering any existing or proposed facilities, is unnecessary. The WJWN–TV situation discussed above would be considered as a waiver of the proposed rule. WJWN–TV would not be permitted to modify its facilities in such a way as to increase its predicted field strength at the Arecibo radio astronomy site. All other existing and future stations would be required to comply with the proposed 64 dBu limit when planning future facilities.

10. Comment also is requested on whether applicants for new facilities (or those proposing to modify existing facilities) on Channel 36 or Channel 38 that would be within 87.7 kilometers (55 miles) of a listed radio astronomy site should be required to notify CORF (or some other appropriate radio astronomy representative) concerning their proposed facilities. The proposed rules, coupled with the Commission's application processing procedures, are probably sufficient to ensure protection to radio astronomy facilities. However, comment is sought on whether notification procedures similar to those contained in Section 73.1030 would serve any useful purpose. Moreover, if such notification is considered expedient, comment is sought on the most appropriate entity to notify. While the proposed rules do not contain a notification requirement, the Commission may adopt such a requirement if the comments indicate that a significant benefit may be afforded by such notification.

11. Finally, with respect to the allotment aspects of CORF's petition, the Commission proposes to delete the Channel 38 allotment currently specified for Hilo, Hawaii. This proposal appears to have only a very minimal impact on the TV broadcast service because both channels 20 and 26 would remain available as vacant non-reserved channel allotments in Hilo. Further, the Commission proposes to require that petitions for rulemaking proposing Channel 36 or 38 allotments which would be located within 87.7 kilometers (55 miles) of a radio astronomy site, must demonstrate compliance with the radio astronomy facility protection criteria adopted as a result of this proceeding.

Administrative Matters

Ex Parte Rules—Non-Restricted Proceeding

12. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before March 31, 1995 and reply comments on or before April 21, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

Regulatory Flexibility Act

14. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

Reason for Action

Footnote US74 to the Table of Frequency Allocations contained in Section 2.106 of the Commission's rules specifies that radio astronomy facilities using the spectrum 608 to 614 MHz (TV Channel 37) are to "be protected from extraband radiation only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates." This language is not sufficiently clear to precisely establish the protection that radio astronomy facilities should be afforded. Also, because the locations of radio astronomy facilities were not known to broadcast applicants, the Commission has authorized construction of full service and low power television stations in close proximity to radio astronomy facilities, thereby potentially causing interference.

Objectives

This action is intended to eliminate the possibility of future authorization of facilities in excessive proximity to radio astronomy operations. The Commission proposes to amend its rules to specify the latitude and longitude of thirteen radio astronomy sites and to impose a simple field strength restriction that would apply to stations authorized on adjacent channels (i.e., Channels 36 and 38). This would effectively preclude interference to radio astronomy facilities.

Legal Basis

Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

Reporting, Recordkeeping, and Other Compliance Requirements

None.

Federal Rules which Overlap, Duplicate, or Conflict With the Proposed Rule

None.

Description, Potential Impact and Number of Small Entities Involved

Because radio astronomy installations are located in rural areas, the number of station applications which may be affected by the field strength requirement should be very small, perhaps averaging less than one per year. In such cases, the applicant would need to design the facilities to limit the field strength produced at the radio astronomy site or possibly select another site. But because the protection requirement would be known in advance, there would be no relocation cost. There would be no impact on current broadcast licensees.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

There are none apparent.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–4556 Filed 2–23–95; 8:45 am]

BILLING CODE 6712–01–M

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Status Review for the Queen Charlotte Goshawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the comment period on the status review of the Queen Charlotte goshawk (*Accipiter gentilis laingi*) is reopened. On August 26, 1994, (59 FR 44124) the Service announced that sufficient information was presented in the petition to list the Queen Charlotte goshawk as endangered and opened a comment period until November 25, 1994. On January 4, 1995, (60 FR 425) the Service extended the comment period until February 9, 1995. This notice further extends the comment period until February 28, 1995. All interested parties are invited to submit comments regarding this species' status.

DATES: Written comments and materials must be received by February 28, 1995.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Lindell, Endangered Species Biologist (see **ADDRESSES** above) (907)/586–7240).

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1994, the Service received a petition from Mr. Peter Galvin of the Greater Gila Biodiversity Project and nine copetitioners requesting listing of the Queen Charlotte goshawk as endangered under the Endangered Species Act (16 U.S.C. 1533(a)(1)). A notice of positive 90-day finding and request for additional information was published on August 26, 1994, (59 FR 44124) regarding this petition. The Queen Charlotte goshawk occurs from Vancouver Island British Columbia, Canada, northward through insular British Columbia, insular and adjacent mainland Alaska west of the coastal mountain range, to the northern portion of the Alexander Archipelago, in southeast Alaska. The subspecies may be endangered by past and planned removal and fragmentation of mature forest habitat by clearcut logging.

The initial comment period for the status review originally closed on November 25, 1994. Since that date, parties have expressed interest in submitting substantive comments. In order to accommodate these parties, the Service is extending the comment period until February 28, 1995. Written comments may be submitted to the Service office noted in the Address section.

Author

The primary author of this notice is John Lindell, U.S. Fish and Wildlife Service, Ecological Services Field Office, Juneau, AK 99801.

Authority

The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 16, 1995.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 95–4747 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 37

Friday, February 24, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 17, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

• Consolidated Farm Service Agency
Annual Certification Requirements (Part 12 and 718) Assignment of Payments (Part 1404) and Power of Attorney (Part 720)—Addendum
AD–1026, 1026B, 1026C, 1026U/CCC–502U, 1068, 1069, 1026A
Supplement; ASCS–578, 492, 211, 211–1; CCC–21, 36, 37, 251, 252
Individuals or households; Farms; 7,298,538 responses; 2,946,473 hours
Carol Ernst (202) 720–7634

• Agricultural Marketing Sevice
Filberts/Hazelnuts Grown in Oregon and Washington; Marketing Order 982 FV–136, FV–137, FV–137A, FV–138, and FV–139
Business or other for-profit; Farms; 1,557 responses; 352 hours
Teresa Hutchinson (503) 326–2724

Extension

• Cooperative State Research, Education, and Extension Service Grant Application Forms for the Small Business Innovation Research Program
Form CSRS–667 and Form CSRS–668
Business or other for-profit; 480 responses; 1,920 hours
Melanie Mychulis (202) 401–5050

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–4602 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 94–032N]

FLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda which were issued by the Food Labeling Division (FLD), Regulatory Programs, Food Safety and Inspection Service (FSIS). These memoranda contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2590.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Federal Meat Inspection Act (21 U.S.C. 607 *et seq.*) and section 8 of the Poultry Products Inspection Act (21 U.S.C. 457 *et seq.*), and the regulations promulgated thereunder (9 CFR 301.1 *et seq.* and 9 CFR 381.1 *et seq.*), meat and poultry products which do not bear approved labels or other labeling may not be distributed in commerce for use as human food. Accordingly, FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on or in conjunction with federally inspected meat and poultry products.

FSIS's prior labeling approval program is conducted by labeling review experts within FLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which FLD must resolve as part of the prior labeling approval process. In interpreting the Acts and regulations to resolve these issues, FLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by FLD are issued as policy memoranda. This notice lists three FLD policy memoranda which were issued during the period of April 1, 1994, through October 1, l994.

Persons interested in obtaining copies of the FLD policy memoranda or in being included on a list for automatic distribution of future FLD policy memoranda may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

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Memo No.	Title and date	Issue	Reference
016B	Combinations of Ground Beef or Hamburger and Soy Products, August 18, 1994.	Labeling of combinations of ground beef or hamburger and soy products.	(Supersedes Policy Memo 016A); 9 CFR 317.2(j)(1) and 319.15(c).
019B	Negative Ingredient Labeling, August 18, 1994.	Labeling of meat and poultry products bearing negative ingredient statements.	(Supersedes Policy Memo 019A).
114A	Point of Purchase Materials, August 18, 1994.	Use of point of purchase promotional materials for meat and poultry products.	(Supersedes Policy Memo 114).

The FLD policies specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on October 19, 1994.

Cheryl Wade,

Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 95–4603 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–DM–P

Forest Service

Ski Fee System Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Forest Service seeks nominations for the Ski Fee System Advisory Committee established by the Secretary of Agriculture. The purpose of the committee is to advise the Secretary on development of a new ski area permit fee system to be administered by the Forest Service on National Forest System lands.

DATES: Nominations must be received in writing by March 27, 1995.

ADDRESSES: Send nominations to the Director, Recreations, Heritage, and Wilderness Resources Staff (4 CEN AUD; 2300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 or FAX to (202) 205–1145.

FOR FURTHER INFORMATION CONTACT: Questions about this committee and nominations should be addressed to Lyle Laverty, Director, Recreation, Heritage, and Wilderness Resources Staff, Forest Service, (202) 205–1706.

SUPPLEMENTARY INFORMATION: The Forest Service is responsible for developing and administering a permit fee system based on fair market value for the use of National Forest System lands by ski areas. The current graduated rate fee system, in effect since 1972, has been the subject of several appeals and litigation. Further, studies by the General Accounting Office and the Office of Inspector General have concluded this system does not ensure the agency receives a fee from ski areas under special use permits that represents fair market value.

The Secretary of Agriculture has established the Ski Fee System Advisory Committee (the Committee) to provide advice from a diversity of interests on: The development of a new ski area permit fee system based on fair market value; the methodologies selected and employed by the Forest Service in developing this new system; implementation options the agency might consider; and other matters relating to the new ski area permit fee system as deemed neccesary by the Secretary (60 FR 9321, February 17, 1995).

The Secretary has directed the Forest Service to request and coordinate nominations for this committee. The Secretary will appoint the members of the Committee. Nominations should be sent to the address listed earlier in this notice. All appointments to the Committee will follow equal opportunity practices consistent with USDA politics. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department and the Forest Service, membership will include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. To achieve a balance of views, members will represent the ski industry, ski area users, nationally or regionally recognized environmental or resource conservation groups, and employees of State and Federal agencies with jurisdiction over matters related to skiing, public land management, recreational access to public lands, fish and wildlife conservation, or environmental protection. Also, individuals selected for membership will have expertise through their education or practical experience in ski area permit administration, recreation business management, economic sciences, natural management, or similar disciplines.

Dated: February 21, 1995.

David G. Unger,

Associate Chief.

[FR Doc. 95–4560 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–11–M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces that the public is invited to participate in an open house/information exchange regarding the California Spotted Owl Draft Environmental Impact Statement, as it affects the Lake Tahoe Basin Management Unit.

DATE AND TIME: March 21, 1995; 2 p.m. to 7 p.m.

ADDRESSES: The workshop will be held at the El Dorado County Library, 1000 Rufus Allen Boulevard, in South Lake Tahoe, California.

FOR FURTHER INFORMATION CONTACT: Linda Massey, Public Affairs Officer or Robert McDowell, Planning Staff Officer; USFS-Lake Tahoe Basin Management Unit; 870 Emerald Bay Road, South Lake Tahoe, CA 96150; (916) 573–2600.

SUPPLEMENTARY INFORMATION: The Forest Service has released a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province forest plans with new management direction for the California Spotted Owl. The purpose of this meeting is to exchange information with the public regarding how the DEIS and the preferred alternative will affect the Lake Tahoe Basin.

The workshop will be informally structured and includes no formal presentations. Participants may drop in at their convenience anytime during workshop hours to meet one-on-one with Forest Service representatives who can answer questions and otherwise discuss the DEIS. Informational displays and copies of the DEIS will be available for viewing.

Robert McDowell,

Planning Staff Officer.

[FR Doc. 95–4563 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–11–M

Notice of the Preparation of the Southern Appalachian Assessment, and the Beginning of the Forest Plan Revision Efforts for the National Forests in Alabama, Chattahoochee-Oconee, Cherokee, and Sumter National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to announce the U.S. Forest Service's participation in the preparation of the Southern Appalachian Assessment (SAA). This Assessment is being prepared by the U.S. Forest Service (the Southern Region of the National Forest System and the Southeastern Forest Experiment Station) in cooperation with the other Federal agencies that are members of SAMAB (Southern Appalachian Man and the Biosphere Cooperative). It will include national forest lands of the George Washington, Jefferson, Nantahala-Pisgah, Cherokee, and Chattahoochee National Forests; and parts of the Sumter and Talladega National Forests. Also involved will be National Park Service lands in the Great Smoky Mountains National Park, Shenandoah National Park, and the Blue Ridge Parkway.

This notice also announces the beginning of the efforts to revise the Land and Resource Management Plans (Forest Plans) for the National Forests in Alabama, the Chattahoochee-Oconee, the Cherokee, and the Sumter National Forests. This is not the "Notice of Intent" (NOI) for the Environmental Impact Statements that will accompany the Revised Forest Plans. Those NOIs will be issued at a later date.

The Southern Appalachian Assessment will support and facilitate ecosystem management decisions to be made in Forest Plan revisions. As the National Forests in the Southern Appalachians are conducting their local efforts to describe their "Analysis of the Management Situation" (AMS), they will also be providing information for the larger scale Southern Appalachian Assessment.

The Assessment will be used to help determine each National Forests' "Need for Change" section of their AMS. This information will then be used to publish the Notices of Intent to prepare the Environmental Impact Statements, which will begin the NEPA (National Environmental Policy Act) processes associated with each Forest Plan revision.

Public involvement is critical throughout these processes and it will be requested and accepted continually throughout these efforts. Formal public involvement with the Forest Plan revision efforts will also be conducted through "Scoping", following the issuance of the National Forests NOIs.

DATES: The Southern Appalachian Assessment is scheduled to be completed by January 1996.

The National Forests in Alabama, the Chattahoochee-Oconee National Forests, the Cherokee National Forest, and the Sumter National Forest are scheduled to complete the drafts of their Analysis of the Management Situation between October 1995 and January 1996. During this same time period, these Forests are scheduled to issue their Notices of Intent to Prepare an Environmental Impact Statement (NOI) for their Revised Land and Resource Management Plans. A Revised NOI for the Jefferson National Forest will also be issued during this time period.

ADDRESSES: Requests for information, and comments concerning this notice can be sent to:

Director, Planning and Budget, USDA-Forest Service, 1720 Peachtree Rd. NW, Atlanta, Georgia 30367–9102.

Co-Team Leader, Southern Appalachian Assessment, USDA-Forest Service, 1720 Peachtree Rd. NW, Atlanta, Georgia 30367–9102.

Forest Supervisor, National Forests in Alabama, 2946 Chestnut, Montgomery, Alabama 36107–3010.

Forest Supervisor, Chattahoochee-Oconee NFs, 508 Oak Street NW, Gainesville, Georgia 30501.

Forest Supervisor, Cherokee NF, 2800 N. Oconee St. NE., P.O. Box 2010, Cleveland, Tennessee 37320–2010.

Forest Supervisor, Francis Marion-Sumter NFs, 4931 Broad River, Columbia, South Carolina 29210–4021.

Forest Supervisor, George Washington NF, P.O. Box 233, Harrison Plaza, Harrisonburg, Virginia 22801.

Forest Supervisor, Jefferson NF, 5162 Valley Pointe Parkway, Roanoke, Virginia 24019–3050.

Forest Supervisor, National Forests in North Carolina, 100 Post and Otis Streets, P.O. Box 2750, Asheville, North Carolina 28802.

FOR FURTHER INFORMATION CONTACT: For more information concerning this notice contact: Gary Pierson, Director of Planning and Budget, Southern Region. For more information on the Southern Appalachian Assessment contact: Forrest Carpenter, Co-Team Leader, Southern Region. For more information from the individual National Forests contact: Rick Morgan, Planning Team Leader, National Forests in Alabama; Caren Briscoe, Planning Staff Officer, Chattahoochee-Oconee NF; Red Anderson, Planning Team Leader, Cherokee NF; Dave Plunkett, NEPA Coordinator, George Washington NF; Nancy Ross, Planning Team Leader, Jefferson NF; Larry Hayden, Planning Team Leader, Nantahala-Pisgah NF; Richard Shelfer, Planning Team Leader, Sumter NF.

SUPPLEMENTARY INFORMATION:

1. Preparation of the Southern Appalachian Assessment

The Southern Region of the National Forest System and the Southeastern Forest Experiment Station, in cooperation with the other Federal agencies that are members of the Southern Appalachian Man and the Biosphere Cooperative (SAMAB, i.e., the Environmental Protection Agency, the Forest Service, the Fish and Wildlife Service, the National Park Service, the Tennessee Valley Authority, the Geological Survey, the Department of Energy Oak Ridge National Laboratory, the Economic Development Administration, and the National Biological Survey) have begun conducting a Southern Appalachian Assessment (SAA). The Assessment will include the national forest lands of the George Washington, Jefferson, Nantahala-Pisgah, Cherokee, and Chattahoochee National Forests, and parts of the Sumter and Talladega National Forests. The Assessment will also include National Park Service lands in the Great Smoky Mountains National Park, Shenandoah National Park, and the Blue Ridge Parkway.

The Assessment will facilitate an interagency ecological approach to management in the Southern Appalachian area by collecting and analyzing broad-scale biological, physical, social and economic data to serve as a foundation for more local natural resource management decisions. The Assessment will be organized around four "themes"—(1) Terrestrial (which includes the Health of Forest Ecosystems, and Plant and Animal Resources); (2) Aquatic Resources; (3) Air Quality and (4) the Human Dimension of Ecosystems (which includes Communities and Human Influences; Roadless Areas and Wilderness; Recreation, Wildlife and Fish Supply and Demand; and the

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Timber Economy of the Southern Appalachians).

Public comment on the SAA process began with a series of open town hall meetings held in Asheville, NC; Gainesville, GA; and Roanoke, VA in August 1994. In addition, interested members of the public were asked for further written comments to be received by September 15. As the Assessment progresses, continued public involvement will be facilitated through additional meetings and newsletters.

2. Beginning of the Forest Plan Revision Efforts for the National Forests in Alabama, the Chattahoochee-Oconee, the Cherokee, and the Sumter National Forests

This notice announces that the National Forests in Alabama, the Chattahoochee-Oconee National Forests, the Cherokee National Forest, and the Sumter National Forest either have already started or are beginning efforts to revise their Land and Resource Management Plans (LRMP). These Forests are each in the process of preparing their Analysis of the Management Situation (AMS), one of the first steps in the revision process. This step includes updating resource inventories, defining the current situation, estimating supply capabilities and resource demands, and determining the "Need for Change" (36 CFR 219.12(e)(5)).

3. Public Involvement in Developing the "Need for Change" in an AMS

Determining the concerns and expectations of National Forests constituents and getting public input on how well current forest plans are working, or not working, are critical elements of describing the "need to change" a forest plan. An integral part of determining the need for change is public involvement. Each of the National Forests described above either have already, or will soon contact their interested public to solicit their participation in this step of the forest plan revision process.

4. Relationship Between the AMS and a Notice of Intent to Prepare an Environmental Impact Statement

In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" (NOI) was issued at the beginning of the forest planning process, including before the development of the AMS.

This time, we are first defining the current situation and an initial "need for change" in a Draft AMS, and then issuing a NOI prior to developing alternatives. This will allow us to incorporate a more definable "Proposed Action" and "Purpose and Need" into our NOIs, which will begin the formal NEPA process of preparing the Environmental Impact Statements (EIS) that will accompany the Revised Land and Resource Management Plans.

5. Relationship Between the Southern Appalachian Assessment and the Process for Revising the Southern Appalachian National Forests' LRMPs

The public has expressed concern that the Southern Appalachian Assessment will "delay" revising National Forest Land and Resource Management Plans in the Southern Appalachians. However, the SAA is being conducted concurrently, and in support of, the forest plan revisions.

Many of the information needs for the Forest AMSs and for the SAA are the same. The Assessment will support the revision of the LRMPs by determining how the lands, resources, people and management of the National Forests interrelate within the larger context of the Southern Appalachian area. The SAA, however, will not be a "decision document" and it will not involve the NEPA process. As broad-scale issues are identified and addressed at the sub-regional level in the Assessment, the individual National Forest's role in resolving those broad-scale issues will become a part of the "need for change" at the Forest level.

6. Issuing the Notice of Intent To Prepare an EIS

The National Forests identified above will issue their NOIs when enough information from the SAA is available for them to develop the "Need for Change" section of their Draft AMS. The Draft AMSs are scheduled to be completed between October 1995 and January 1996. Their NOIs are also scheduled to be issued during this same time period.

Each NOI will include a description of a preliminary "Proposed Action" and of some preliminary alternatives. Scoping to receive public comments on the preliminary proposed action and preliminary alternatives will begin following the publication of the NOIs. These public comments will be used to further refine the "Proposed Action" and the preliminary alternatives, to possibly identify additional alternatives, and to finalize the AMS and the "Need for Change."

7. Status of the Jefferson, George Washington, and Nantahala-Pisgah National Forests

The Jefferson National Forest, which is also currently working on its Revised LRMP, previously issued a Notice of Intent to Prepare an Environmental Impact Statement for its Revised LRMP on June 28, 1993. A Revised NOI for the Forest will be issued between October 1995 and January 1996, to coincide with the NOIs issued for the other National Forests in the Southern Appalachians.

The George Washington National Forest completed its Final Revised Forest Plan on January 21, 1993, and the Nantahala-Pisgah National Forests completed a significant amendment, Amendment 5 to their Land and Resource Management Plan on March 18, 1994. These two forests are not currently involved in the revision process. However, if information from the Southern Appalachian Assessment identifies conditions requiring additions or changes to these plans to ensure consistency between the National Forests in the Southern Appalachians, then amendments to these plans could be considered.

8. The Responsible Official

The Responsible Official for the Revised Land and Resource Management Plans for the National Forests in the Southern Appalachians is Robert C. Joslin, Regional Forester, Southern Region, 1720 Peachtree Road NW, Atlanta, Georgia 30367.

Dated: January 18, 1995.

Lynn C. Neff,

Acting Regional Forester.

[FR Doc. 95–4570 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–11–M

Forest Products Laboratory Wood Utilization Research

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Products Laboratory, Madison, Wisconsin, will host a meeting March 27–30, 1995, to brief industry and the public on Forest Service programs in wood utilization research. The Forest Service will be presenting the status and description of pending research initiatives and programs. Advice and recommendations to the Forest Service will not be solicited or accepted during the meeting; rather, input as a result of reviews may be submitted in writing after the meeting.

DATES: The meeting will be held March 27–30, from 8 a.m. to 5 p.m. (M-Tu); 8 a.m. to 3 p.m. (W); 8 a.m. to 10 a.m. (Th).

ADDRESSES: The meeting will be held at the Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin.

Send written comments to Diann L. Campbell, Meeting Coordinator, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

FOR FURTHER INFORMATION CONTACT: Diann Campbell, telephone: (608) 231–9244.

SUPPLEMENTARY INFORMATION: The Forest Service conducts major research in the area of wood utilization at its Forest Experiment Stations and in Madison at the Forest Products Laboratory. Current research programs focus on: Wood properties, engineering, and improved design procedures; softwood and hardwood lumber; construction technologies; wood drying, processing, preservation, and finishing; adhesives; composites and panels. Forest Service scientists will provide presentations on research at the forefront of wood manufacturing and utilization technology. Members of the American Forest & Paper Association, Committee on Research and Evaluation (AF&PA-CORE) will chair panel discussions on nine selected topics related to wood utilization.

Dated: February 17, 1995.

Kenneth R. Peterson,

Deputy Director.

[FR Doc. 95–4573 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.30(a)(4), Natural Resources Conservation Service (formerly the Soil Conservation Service), United States Department of Agriculture gives notice of a change in the wording of the criteria used to generate the list of hydric soils of the United States as published in the third edition of Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

For further information contact: Craig A. Ditzler, Chair, National Technical Committee for Hydric Soils, National Soil Survey Center, NRCS, Room 152, Mail Stop 33, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866, Telephone (402) 437–5353.

SUPPLEMENTARY INFORMATION: The list of hydric soils was created by computer using criteria that were developed by the National Technical Committee for Hydric Soils. The criteria are selected soil properties that are documented in Soil Taxonomy and were designed primarily to generate a list of hydric soils from the national database of Soil Interpretations Records. Criteria 1, 3, and 4 serve as both database criteria and as indicators for identification of hydric soils. Criterion 2 serves only to retrieve soils from the database.

The wording of criterion 2 has been changed to incorporate recent changes in Soil Taxonomy and delete references to water-table frequency and duration. Until all soils have been reclassified, the computer program will continue to select soils under their former classification. The water-table frequency and duration data are not contained on the Soil Interpretations Records and, therefore, were not selection criteria.

The wording of criterion 2 also has been changed to clarify the way in which water-table data were used to select soils from the Soil Interpretations Records database. Because the water-table depths on the Soil Interpretations Records are entered in 0.5 ft. increments, previous versions of criterion 2 used water tables at less than 0.5, 1.0, and 1.5 ft. in order to extract hydric soils from the database with actual recorded water tables of 0.0, 0.5, and 1.0 ft.

It is important to note that these changes do not cause any soils to be added or deleted from the list.

Criteria for Hydric Soils

1. All Histosols except Folists, or

2. Soils in Aquic suborders, great groups, or subgroups, Albolls suborder, Aquisalids, Pachic subgroups, or Cumulic subgroups that are:

a. somewhat poorly drained with a water table equal to 0.0 foot (ft) from the surface during the growing season, or

b. poorly drained or very poorly drained and have either:

(1) water table equal to 0.0 ft. during the growing season if textures are coarse sand, sand, or fine sand in all layers within 20 inches (in), or for other soils, or

(2) water table at less than or equal to 0.5 ft. from the surface during the growing season if permeability is equal to or greater than 6.0 in/hour (h) in all layers within 20 in, or

(3) water table at less than or equal to 1.0 ft. from the surface during the growing season, if permeability is less than 6.0 in/h in any layer within 20 in, or

3. Soils that are frequently ponded for long duration or very long duration during the growing season, or

4. Soils that are frequently flooded for long duration or very long duration during the growing season.

Dated: January 26, 1995.

Richard W. Arnold,

Director, Soils Division.

[FR Doc. 95–4604 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–16–M

Rural Business and Cooperative Development Service

Inviting Applications for Rural Technology Development Grants

AGENCY: Rural Business and Cooperative Development Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business and Cooperative Development Service (RBCDS) announces the availability of approximately $1.75 million in competing Rural Technology Development Grant (RTDG) funds for fiscal year (FY) 1995. The intended effect of this notice is to solicit applications for FY 1995, notify applicants of RBCD's objectives for FY 1995, and award grants before May 25, 1995. The purpose of the grant program is to establish and operate centers for rural technology or cooperative development.

DATES: The deadlines for receipt of a preapplication is April 10, 1995. Preapplication received after the date will not be considered for FY 1995 funding.

ADDRESSES: Entities wishing to apply for assistance should contact Rural Economic and Community Development (RECD) State Offices to receive further information and copies of the preapplication package. The program will be operated by RECD at the State level.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Room 6304, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700, Telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION: Refer to 7 CFR part 4284–F, published in the **Federal Register** on August 12, 1994 (59 FR 41429) for the information collection requirements of the RTDG program. The RTDG program was previously administered by the former Rural Development Administration. Under the reorganization of the Department of Agriculture, the responsibility for administering this program was transferred to RBCDS. Part 4284–F of title 7 of the Code of Federal

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Regulations provides details on what information must be contained in the preapplication package.

The RTDG program is authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). The primary objective of the program is to improve the economic condition of rural areas. The RTDG. program will achieve this objective by supporting the creation or enhancement of institutions capable of promoting the development and commercialization of new services, products, processes, and enterprises. RBCDS encourages applications for projects that emphasize the creation of local capacity to promote economic development that is sustainable over the long term through local effort. The economic development should lead to improvements in the quality as well as the quantity of economic activity in the community and should be based on the application of new and existing technologies. Grants may be used to pay up to 75 percent of the cost of the project and administrative costs; the applicant must contribute at least 25 percent.

RTDG grants are competitive and will be awarded to nonprofit institutions and public bodies based on specific selection criteria, as required by legislation and set forth in 7 CFR part 4284–F. Project selection will be given to those projects that contribute the most to the improvement of economic conditions in rural areas.

Preference will be given to those projects that will create industries or agribusinesses where few exist, increase employment where unemployment is high, stem the flow of out migration of people, businesses and industries, and increase the level of per capita income where such income is low. Applicants must provide data to support these criteria. The information submitted should provide an accurate picture of the economic conditions of the rural areas to be served. The Agency will use the information provided to select the best projects for funding. Part 4284 of title 7 to the Code of Federal Regulations contains general information on the selection criteria.

As consistent with the regulatory selection procedures, RBCDS desires to fund projects from FY 1995 funds that promote one or more of the following policies:

1. Projects that assist rural communities and businesses that are experiencing erosion in their economic base. A critical need exists for actions leading to long-term enhancements in the ability of communities and businesses to adjust to changed conditions in a smooth manner and to achieve, over the long term, improvements in the quality of community life and the competitiveness and profitability of businesses.

The proposed activity should result in economic activity that is sustainable by the community over the long term through local actions (without the need for continued subsidies by governments or nongovernmental organizations). The project should lead to improvements in the quality of economic activity within the community, as evidenced by employment leading to higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the local economy.

2. Projects that assist rural communities that have remained persistently poor. A critical need exists for actions to develop and implement broad strategies to create new sources of economic activity in these communities, and to promote development of human resources within the community, including organizational development, entrepreneurship, and workforce training.

3. Projects that assist rural communities and businesses in areas that have experienced long-term population decline and job deterioration. A critical need exists for the broadened application of new technologies to develop business opportunities in remote rural locations. This can be accomplished, for example, by creating new products or services that are related to the traditional industrial base or that use locally-available natural resources, or by developing new methods of conducting business from remote locations through the applications of telecommunications technology or other business methods.

RBCDS encourages applications for projects that have the following characteristics:

1. The proposed use of funds should have a catalytic impact on the local economy by providing support for a critical element of a larger program of economic development by leveraging major additional investments from other contributors, or by enhancing the quality of the design of the project or the capacity of the community to implement it successfully.

2. The proposed project should use exemplary methods or practices of rural community and economic development that have potential applicability in a wide range of areas.

3. The proposed activity should be consistent with local and areawide strategic plans for community and economic development and be a part of a broader program of community development activity that involves partnerships with other local organizations and other organizations providing support to the community. It must be jointly assisted by resources from other local, State, Federal or private resources.

4. The proposed activity should be representative of and serve a diverse population of economic and social groups within the community, and the planning and project development should involve active participation by a diverse range of community residents.

1995 Application Submission

Due to the short application period for FY 1995 funds, qualified applicants should begin the preapplication process as soon as possible. Preapplications must include a clear statement of the goal(s) and objective(s) of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284–F. Each application received in the State Office will be reviewed for eligibility.

All eligible applications will be referred to the National Office for scoring and selection for award. The State Director or his/her designee will provide comments on each application forwarded to the National Office documenting whether the proposal promotes any of the policies set forth in this issuance. Any other comments helpful to the National Office's review are also welcome. The National Office will provide funds for projects based on the grant selection criteria set forth in 7 CFR part 4284–F and the availability of funds. Grants will be selected for award by May 25, 1995. No grants may be awarded after July 13, 1995 under the authority of 7 CFR part 4284–F. Successful applicants will be notified by the RECD State Office or the RBCDS National Office.

Dated: February 15, 1995.

Dayton J. Watkins,

Acting Administrator, Rural Business and Cooperative Development Service.

[FR Doc. 95–4497 Filed 2–23–95; 8:45 am]

BILLING CODE 3410–32–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene on Friday, March 17, 1995, at 10:00 a.m. and adjourn at 5:00 p.m. at the Holiday Inn-Marine World, 1000 Fairgrounds Drive, Vallejo, California 94589. The purpose of the meeting is to conduct a public forum to discuss civil rights issues in Vallejo, California.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Carney, 213–580–7900, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–4528 Filed 2–23–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1:00 p.m. and recess at 5:00 p.m., on Wednesday, March 15, 1995, at the Days Inn-Vanderbilt, West End Room, 1800 West End Avenue, in Nashville. The purpose of the session is to discuss civil rights progress and/or problems in the State and review the draft report on racial tensions in Tennessee. The meeting will reconvene on Thursday, March 16, at 10:30 a.m., and adjourn at 5:00 p.m., at Tennessee State University, Williams Campus, 330 Tenth Avenue, North, Room 354, Nashville, Tennessee 37203. The purpose of the meeting on March 16 is to review a planned project on enforcement in Tennessee of Title VI of the Civil Rights Act of 1964, and to hold a roundtable discussion with guests on that topic.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–4529 Filed 2–23–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will be held on Wednesday, March 8, 1995, from 9:30 a.m. to 12:00 p.m. at the Sixth Avenue Inn, 2000 Sixth Avenue, Seattle, Washington 98121. The purpose of the meeting is to review current civil rights developments in the State and plan future project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson William Wassmuth, 206–233–9136, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 9, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–4530 Filed 2–23–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held March 16, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Reports from Working Groups.
4. Update on Export Administration.
5. Report on Regulations Reform.
6. Discussion on Automated Export System.
7. Presentation on European Union export control regulations.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address; Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 22, 1994, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

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Dated: February 21, 1995.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 95-4618 Filed 2-23-95; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 5-95]

Proposed Foreign-Trade Zone—Olympia/South Puget Sound Area, WA (Port of Olympia Customs Port of Entry Area) Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Olympia (a Washington non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone at sites in Thurston, Lewis, Mason and Kitsap Counties, Washington, adjacent to the Port of Olympia Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 16, 1995. The applicant is authorized to make the proposal under Title 24, Revised Code of Washington, Section 24.46.020.

The proposed zone would consist of twelve sites (3,254 acres) in a four-county area known as "South Puget Sound": *Site 1* (Port of Olympia—283 acres)—located within the Port of Olympia port terminal facility on the Budd Bay Inlet of Puget Sound, adjacent to Interstate Highway 5, Thurston County; *Site 2* (Olympia Airport—800 acres)—within the Olympia Airport/Industrial Park complex, Thurston County; *Site 3* (Marvin Road Industrial Area—389 acres)—adjacent to Interstate Highway 5 and Washington State Highway 510, City of Lacey (Thurston County); *Site 4* (Yelm Industrial Area—109 acres)—adjacent to Washington State Highways 507 and 510, City of Yelm (Thurston County); *Site 5* (Port of Centralia Industrial Park—165 acres)—within the Port of Centralia, Lewis County; *Site 6* (Chehalis Industrial Area—87 acres)—adjacent to Interstate Highway 5, City of Chehalis (Lewis County); *Site 7* (Port of Chehalis Industrial Park—303 acres) (includes Braun Northwest parcel)—within the Port of Chehalis, adjacent to Interstate Highway 5, Lewis County; *Site 8* (Klein/South Prairie Industrial Park—39 acres)—adjacent to Washington State Highway 12, Lewis County; *Site 9* (Sanderson Field—420 acres)—within the Port of Shelton, adjacent to Highway 101, Mason County; *Site 10* (John's Prairie Industrial Park—130 acres)—within the Port of Shelton, adjacent to Highway 101, Mason County; *Site 11* (Bremerton Airport South—217 acres)—within the Port of Bremerton complex, Highway 3, Kitsap County; and, *Site 12* (Olympia View Industrial Park—312 acres)—within the Port of Bremerton complex, Highway 3, Kitsap County.

The application contains evidence of the need for zone services in the South Puget Sound region. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as toys, bicycles, ambulances, lumber, wood products and electronics. No manufacturing approvals are being sought at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on March 22, 1995, at 9 a.m., at the Worthington Center, St. Martin's College, 5300 Pacific Avenue SE., Lacey, Washington.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 915 Washington Street NE., Olympia, Washington 98501–6931

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: February 17, 1995.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 95-4633 Filed 2-23-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-580-008]

Color Television Receivers From Korea; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 1, 1988, the Department of Commerce (the Department) issued the final results of its administrative review of the antidumping duty order on color television receivers from Korea. After publication of our final results, we received comments from certain parties to the proceeding alleging ministerial errors. We corrected the ministerial errors on September 26, 1988. Because the final results had already been appealed to the Court of International Trade (the Court), on October 13, 1988, the Department was enjoined from publishing the amended results without an order from the Court. *Zenith Elec. Corp.* v. *United States*, 699 F. Supp. 296 (CIT 1988), *aff'd*, 884 F.2d 556 (Fed. Cir. 1989). On July 8, 1994, the Court vacated the injunction and authorized the Department to liquidate the entries in accordance with the amended final results. Publication of the amended final results of review for Daewoo Electronics Co., Ltd. (Daewoo), is a prerequisite to liquidation of entries for the third administrative review. Attached is the notice of *Amendment to Final Results of Antidumping Duty Administrative Review*, as signed on September 26, 1988.

The review covers one manufacturer/exporter of subject merchandise, Daewoo, and the period April 1, 1985 through March 31, 1986. The final margin is 15.23 percent.

EFFECTIVE DATE: February 24, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5831/4114.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended.

Dated: February 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Attachment—Color Television Receivers From Korea; Amendment to Final Results of Antidumping Duty Administrative Review

[A-580-008]

Agency: International Trade Administration/Import Administration Department of Commerce.

Action: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

Summary: On July 1, 1988, the Department of Commerce published the final results of its administrative review of the antidumping duty order on color television receivers from Korea. The review covered the period April 1, 1985 through March 31, 1986.

After publication of our final results, we received comments from certain parties to the proceeding alleging ministerial errors. We have corrected the ministerial errors and have amended the final results of review for Daewoo.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 24975) the final results of its administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). After publication of our final results, we received comments from certain parties to the proceeding alleging ministerial errors. We have corrected the ministerial errors and have amended the final results of review for Daewoo.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amends section 735 of the Tariff Act of 1930, authorizes Commerce to establish procedures for the correction of ministerial errors in final determinations. Congress has defined the term "ministerial error" to specifically include errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like.

Ministerial Errors

We have corrected the following ministerial errors:

Daewoo

1. Misidentification of data base resulting in mismatch of several models in the purchase price (PP) calculation.
2. Transposition of numbers in the figure for the home market credit adjustment for the period April 1985 through October 1985 in the PP calculation.
3. Typographical errors in model designations "DCB–419PW", "TCK–405PRW"; and "TCK–405Q" used to program instructions in the PP calculation.

Goldstar

1. Transportation of numbers in the figure for the packing adjustment for model CM–1900 in the exporter's sales price calculation. Correction of this ministerial error did not result in a change to the cash deposit rate.

Amended Final Results of the Review

We have amended the final results for appraisement and for cash deposit purposes listed in our final results of review. The amended cash deposit rates are as follows:

Manufacturer/Exporter	Time period	Previous (%) cash deposit	Amended (%) cash deposit
Daewoo Electronics Co.	04/85–03/86	23.30	15.23
New Shippers ...	04/85–03/86	23.29	15.23

The Department will amend its instructions to Customs to assess antidumping duties on all appropriate entries, and will instruct Customs to adjust the cash deposit of estimated antidumping duties as noted above.

Dated: September 26, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 95-4319 Filed 2-23-95; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 950207043-5043-0]

RIN 0625-ZA03

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: The mission of ITA is to promote U.S. exports and to strengthen the international trade position of the United States. Building partnerships with the private sector enhances ITA's ability to fulfill its mission. To encourage such partnerships, ITA has created the Market Development Cooperator Program (MDCP) to develop, maintain and expand markets for nonagricultural goods and services produced in the United States. The MDCP aims to:

- Challenge the private sector to think strategically about foreign markets;
- Be the catalyst that spurs private sector innovation and investment in export marketing; and
- Increase the number of American companies taking decisive export actions.

The advantage of a joint effort is that it permits the Government to pool expertise and funds with non-Federal sources so that each maximizes its market development resources. Partnerships of this sort also may provide a sharper focus on long-term export market development than do traditional trade promotion activities and serve as a mechanism for improving Government-industry relations.

While the Department of Commerce sponsors, guides and partially funds the MDCP with a matching requirement by the recipient, the Department of Commerce expects applicants to develop, initiate and carry out market development project activities. As an active partner, ITA will provide assistance identified by the applicant as being essential to the achievement of project goals and objectives. U.S. industry is best able to assess its problems and needs in the foreign marketplace and to recommend innovative solutions and programs that can be the formula to success in international trade.

Examples of activities that might be included in an applicant's project are described below. No one of these activities or any combination of these activities must be included for a proposal to receive favorable consideration. The Department of Commerce encourages applicants to propose activities that (1) Would be most appropriate to market development needs of their industry or industries; and (2) display the imagination and innovation of the applicant working in partnership with the Government to obtain the maximum market development impact.

A public meeting for parties considering applying for funding under the MDCP will be held on March 27, 1995. Attendance at this public meeting is not required of potential applicants. The purpose of the meeting is to provide general information regarding the MDCP procedures, selection process, and proposal preparation to potential applicants unfamiliar with the MDCP. No discussion of specific proposals will occur at this meeting.

DATES: The public meeting will be held March 27, 1995. Completed applications must be received no later than April 21, 1995. Competitive application kits will be available from the Department of Commerce starting February 24, 1995.

ADDRESSES: The public meeting will be held at the Herbert Clark Hoover Building, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. Contact the information contact for room location.

To obtain an application kit, please send a written request with a self-

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addressed mailing label to Mr. Greg O'Connor, Manager, Market Development Cooperator Program, Trade Development/OPCRM, Room 3211, U.S. Department of Commerce, Washington, DC 20230. Application kits may also be picked up in Room 3211, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. The application kit contains all forms necessary to participate in the MDCP.

Please send completed applications to the Office of Planning, Coordination and Resource Management, Trade Development, Room 3211, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Greg O'Connor, Manager, Market Development Cooperator Program, Trade Development, Room 3211, Washington, D.C. 20230, (202) 482–3197.

SUPPLEMENTARY INFORMATION:

Authority

The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723.

Catalog of Federal Domestic Assistance (CFDA)

No. 11.112, Market Development Cooperator Program.

Program Description

The goal of the MDCP identified in authorizing legislation is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States. For purposes of this program, "nonagricultural goods and services" means goods and services other than agricultural products as defined in 7 U.S.C. 451. "Produced in the United States" means having substantial inputs of materials and labor originating in the United States, such inputs constituting at least 50 percent of the value of the good or service to be exported. The intended beneficiaries of the program are U.S. producers of nonagricultural goods or services that seek to export such goods or services.

MDCP funds should not be viewed as a replacement for funding from other sources, either public or private. An important aspect of this program is to increase the sum of Federal and non-Federal export market development activities. This result can best be achieved by using program funds to encourage new initiatives. In addition to new initiatives, expansion of the scope of an existing project also may qualify for funding consideration. The Department of Commerce will consider such projects as entirely new initiatives.

The Department of Commerce encourages applicants to propose activities that would be most appropriate to the market development needs of their industry or industries. The following are examples of activities which applicants might include in an application (no one of these activities or any combination of these activities must be included for an application to receive favorable consideration):

(1) Opening an overseas office or offices to perform a variety of market development services for companies joining a consortium to avail themselves of such services; such an office should not duplicate the programs or services of the U.S. and Foreign Commercial Service (US&FCS) post(s) in the region;

(2) Detailing a private sector individual to a US&FCS post in accordance with 15 U.S.C. 4723(c);

(3) Entering into a contract with a bona fide market research company to conduct detailed, product-specific market research;

(4) Assigning industry specialists to work with Department of Commerce/U.S. Executive Director Procurement Liaison Offices at the Multilateral Development Banks to seek out and develop procurement opportunities;

(5) Underwriting the cost of overseas market research or overseas trade exhibitions and trade missions to promote U.S. exports, or covering the expenses of reverse trade missions and/or foreign buyer group travel to U.S. domestic trade shows;

(6) Overseas product demonstrations;

(7) Export seminars in the United States or market penetration seminars in the market(s) to be developed;

(8) Technical trade servicing that helps overseas buyers to choose the right U.S. good(s) or service(s) and to use the good or service efficiently;

(9) Joint promotions with foreign customers;

(10) Training of foreign nationals to perform after-sales service or to act as distributors;

(11) Working with organizations in the foreign marketplace responsible for setting standards and for product testing to improve market access;

(12) Publishing an export resource guide or an export product directory for the industry or industries in question if no comparable one exists; and

(13) Establishing an electronic business information system to identify trade leads and facilitate matches with foreign partners.

Funding Availability

The total amount of funds available for this program is $2.5 million for fiscal year (FY) 95. The Department expects to conclude a minimum of four (4) cooperative agreements with eligible entities for this program. Each cooperative agreement will not exceed a total of $500,000, regardless of the duration of the award.

Special Program Set-Aside to Encourage Diversity

On July 20, 1994, Secretary of Commerce Ronald H. Brown issued his policy on diversity. As part of this policy, Secretary Brown directed that "diversity * * * be taken into consideration in every aspect of the business of Commerce—in training, seminars, grant work, procurement, technology and trade programs, travel and trade missions, regulatory activities, business liaison and in every program area of the Department."

In the spirit of Secretary Brown's pronouncement, ITA will set aside $250,000 of the funds available for the MDCP to make awards of at least $50,000, but less than $100,000. The opportunity to compete for small awards hopefully will encourage organizations to apply that previously felt themselves either at a competitive disadvantage or unable to match a larger MDCP grant. Many organizations that represent a preponderance of companies from traditionally disadvantaged or under-served groups such as small business, women-owned business, African Americans, Asian Americans, Hispanic Americans, Native Americans, Gay and Lesbian Americans or Physically Challenged Americans may fall into this category. At least one, but not more than five awards, will be made from this program set-aside. Funds not awarded from the program set-aside will be channeled back into the regular MDCP competition.

Eligible organizations that choose to compete for funds in the program set-aside will compete *only* against other organizations selecting the set-aside option. Organizations seeking smaller awards need not meet diversity criteria to compete for set-aside funds. Conversely, organizations seeking smaller awards that meet diversity criteria can choose to compete in the regular MDCP award competition instead of for set-aside funds. Program requirements and evaluation criteria will be the same for applications considered under the set-aside option as they are for the regular MDCP award competition.

Matching Requirements

Applicants will be expected to supply two thirds (2/3) of total project costs, with the Federal portion to be one third (1/3). The Department of Commerce will support only a portion of the direct costs of each project. Each applicant will support a portion of the direct costs (to be specified in the application). Generally, direct costs are those that are specifically associated with an award, and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations relating directly to program activity. Allowable costs will be determined on the basis of the applicable cost principles, i.e., OMB Circulars A–21, A–87, and A–122; and 48 CFR Part 31. Applicants will support all indirect costs.

A minimum of one half (½) of each applicant's support must be in the form of new cash outlays expressly for the project. The balance of the applicant's support may consist of in-kind contributions (goods and services). In the proposed budget, all in-kind contributions to be used in meeting the applicant's share of costs should be listed in a separate column from cash contributions. A separate budget narrative describing these in-kind contributions should also be included with the proposal. This information should be in sufficient detail for a determination to be made that the requirements of OMB Circular A–110, section 23 (a), and 15 CFR Part 24.24 (a) and (b) are met.

Applicants may charge companies in the industry or other industry organizations reasonable fees to take part in or avail themselves of services provided as part of applicants' projects. Applicants should describe in detail plans to charge fees.

Type of Funding Instrument

Since ITA will be substantially involved in the implementation of each project for which an award is made, the funding instrument for this program will be a cooperative agreement.

Eligibility Criteria

Trade associations, nonprofit industry organizations, state trade departments and their regional associations including centers for international trade development, and private industry firms or groups of firms in cases where no entity described above represents that industry are eligible to apply for cooperative agreements under this program. For the purpose of this program, a "nonprofit industry organization" is defined as any nonprofit organization (such as some chambers of commerce and world trade centers) made up of firms in an industry, or which is established or funded by *and* which operates on behalf of an industry. For the purpose of this program, a "trade association" is defined as consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

Eligible entities may join together to submit an application as a joint venture and to share costs. For example, two trade associations representing different segments of a single industry or related industries may pool their resources and submit one application. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share the costs of proposed projects. The Department of Commerce will accept applications from eligible entities representing any industry, subsector of an industry or related industries. Each applicant must permit all companies in the industry in question to participate, on equal terms, in all activities that are scheduled as part of a proposed project whether or not the company is a member or constituent of the eligible organization.

Eligible entities desiring to participate in this program must demonstrate the ability to provide a competent, experienced staff and other resources to assure adequate development, supervision and execution of the proposed project activities. Applicants must describe in detail all assistance expected from the Department of Commerce or other Federal Government agencies to implement project activities successfully. Each applicant must provide a description of the membership of the eligible entity, the degree to which the entity represents the industry or industries in question, and the role, if any, foreign membership plays in the affairs of the eligible entity. Applicants should summarize both the recent history of their industry or industries' competitiveness in the international marketplace and the export promotion history of the eligible entity or entities submitting the application.

Project proposals must be compatible with U.S. trade and commercial policy.

Award Period

Funds may be expended over the period of time required to complete the scope of work, but not to exceed three (3) years from the date of the award.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. Department of Commerce funds can not be used to pay indirect costs.

Application Forms and Kit

Standard Forms 424 (Rev. 4–92), 424A (Rev. 4–92), and 424B (Rev. 4–92) and other Department of Commerce forms, which are required as part of the application, are available from the contact person indicated above. Applicants must submit a signed original and three (3) copies of the application and supporting materials.

Project Funding Priorities

Applications may be targeted for any market in the world. In ITA's view, projects in the following sectors and countries present opportunities to develop, maintain and expand overseas markets and enhance jobs through U.S. exports:

(a) Sectors: Environmental technologies, transportation technologies, energy technologies, information technologies, health technologies, and financial services; and

(b) Geographic Markets: Argentina, Brazil, China, Hong Kong, India, Indonesia, Korea (South), Mexico, Poland, Russia and the Newly Independent States of the former Soviet Union, South Africa, Taiwan, and Turkey.

Developing a project plan requires solid background research. Applicants should study, and applications should reflect such study of, the following:

1. The market potential of the good(s) or service(s) to be promoted in a particular market(s),

2. The competition from host-country and third-country suppliers, and

3. The economic situation and prospects that bear upon the ability of a country to import the good(s) or service(s).

Applicants should present in their applications an assessment of industry resources that can be brought to bear on developing a market; the industry's ability to meet potential market demand expeditiously; and the industry's after-sales service capability in a particular foreign market(s).

After describing their completed basic research, applicants should develop marketing plans that set forth the overall objectives of the projects and the specific activities applicants will undertake as part of these projects. Applications should display the

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imagination and innovation of the private sector working in partnership with the Government to obtain the maximum market development impact.

Evaluation Criteria

The Department of Commerce is interested in projects that demonstrate the possibility of both significant results during the project period and lasting benefits extending beyond the project period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

(1) Projected:

(a) Increase in U.S. exports generated (per dollar of cooperator program funds spent) by the proposed expenditure of funds; and

(b) Increase in the U.S. industry's foreign market share. Applicant should provide quantifiable estimates of projected project results, along with detailed explanations, for (1)a and (1)b above.

(2) Projected:

(a) Increase in the number of U.S. companies operating in the market(s) selected (multiplier effect); and/or

(b) Increase in the number of companies currently in the market that are undertaking new export initiatives. Applicant should provide quantifiable estimates of projected project results for either (2)a or (2)b above, or for both where proposed project increases are anticipated.

(3) Export potential of the good(s) and/or service(s) to be promoted.

(4) Size of the cash portion of the applicant's funding for the proposed project and reasonableness of the itemized budget for project activities.

(5) The institutional capacity of the applicant to carry out the work plan and the degree to which a proposal initiates or enhances partnership with the Department of Commerce.

(6) Creativity and innovation displayed by the work plan while at the same time being realistic.

(7) Willingness and ability of the applicant to back up promotional activities with aggressive marketing and after-sales service and probability that the project can be continued on a self-sustained basis after the completion of the award.

(8) Intent and capability of the applicant to enlist the participation of small and medium size American companies in consortia and activities that are to be part of the proposed project.

Evaluation criteria 1–4 are of utmost importance in the selection process and will be worth 70 out of a possible 100 points as follows:

Criterion #1—maximum 20 points
Criterion #2—maximum 20 points
Criterion #3—maximum 15 points
Criterion #4—maximum 15 points

The remaining evaluation criteria will be valued as follows:

Criterion #5—maximum 10 points
Criterion #6—maximum 10 points
Criterion #7—maximum 5 points
Criterion #8—maximum 5 points

Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted under the program. The Review Panel, consisting of at least three people, will review all applications based on the criteria stated above. The Review Panel will identify and rank the top ten proposals in the regular MDCP competition and the top seven proposals submitted under the set-aside option and make recommendations to the Assistant Secretary for Trade Development concerning which of the proposals should receive awards. The Assistant Secretary for Trade Development will make the final selection regarding the funding of applications from the group of ten in the regular competition and the group of seven under the set-aside option identified by the Review Panel.

In making his decision, the Assistant Secretary for Trade Development will consider the following:

1. The evaluations of the individual reviewers of the Senior Officer Panel;
2. The degree to which applications satisfy the MDCP's goals and objectives;
3. The geographic distribution of the proposed awards;
4. The diversity of industry sectors covered by the proposed grant awards;
5. The diversity of project activities represented by the proposed awards;
6. The promotion of equitable access to MDCP funding for traditionally disadvantaged or under-served groups;
7. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and
8. The availability of funds.

Performance Measures

On August 3, 1993, the Government Performance and Results Act (GPRA) was enacted into law (Public Law 103–62). Section 4 of the GPRA requires each agency to submit to the Office of Management and Budget (OMB), beginning with FY 99, a strategic plan for program activities. Among other things, each plan is to include "performance indicators to be used in measuring or assessing the relevant outputs, service levels and outcomes of each program activity."

OMB has decided not to wait to begin development of the new performance indicators called for in GPRA. As part of the process of preparing the President's FY 1996 budget, OMB has asked agencies to submit prospective GPRA-type performance indicators they intend to use in future years.

Accordingly, current MDCP participants have been asked to identify new GPRA-type performance indicators as part of their FY 1995 operating plans. These indicators will include not only program inputs and outputs, but also measures that may be applied to determine outcomes (what happens as a direct result of an output being created) or final impacts (the effect of an outcome).

Applicants for this year's MDCP competition should describe in their proposals performance indicators of the type envisioned by GPRA that they intend to use to measure the results of their MDCP projects. Applicants should consult the MDCP application kit for more information, key terms and definitions used in developing performance indicators under GPRA.

Other Requirements

(1) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) *Preaward Activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover preaward costs.

(4) *No Obligation for Future Funding*—If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(5) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to the Department of Commerce are made.

6. *Name Check Review*. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

7. *Primary Applicant Certifications*. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension*. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. *Drug-Free Workplace*. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. *Anti-Lobbying*. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. *Anti-Lobbying Disclosures*. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

8. *Lower Tier Certifications*. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF-LLL submitted by any tier recipient or subrecipient should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

9. *False Statements*. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

10. *Intergovernmental Review*—Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

11. *Requirement to Buy American-Made Equipment or Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b). Adequate justifications will be required for any proposed purchases of equipment or products that are not American-made.

Classification

This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms reference in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act.

Dated: February 21, 1995.

Jerome S. Morse,

Director, Resource Management and Planning Staff, Trade Development.

[FR Doc. 95–4584 Filed 2–23–95; 8:45 am]

BILLING CODE 3510-DR-P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On February 15, 1995 Northwest Horticultural Council filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination made by the Deputy Minister of National Revenue, Customs & Excise respecting Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples Originating in or Exported from the United States of America. This determination was published in the Canada Gazette on January 21, 1995 (Vol. 129, No. 3, p. 132). The NAFTA Secretariat has assigned Case Number CDA–95–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on February 15, 1995, requesting panel review of the final antidumping duty determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is March 17, 1995);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first

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Request for Panel Review (the deadline for filing a Notice of Appearance is April 3, 1995); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: February 21, 1995.

James R. Holbein,

United States Secretary NAFTA Secretariat.

[FR Doc. 95–4619 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 021695B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting via conference call of its Standing and Special Reef Fish Scientific and Statistical Committees (SSC) on Tuesday, March 7, 1995, from 10:00 a.m. - 12:00 noon eastern standard time (EST) / 9:00 a.m. - 11:00 a.m. central standard time (CST).

The purpose of this meeting is to consider recreational landings information and analyses for bag and size limits for red grouper and a report by the Reef Fish Stock Assessment Panel related to a change in the size limit for red grouper and impacts on the stock and recreational allocation. The SSC will assess the validity of these data, analyses and reports and provide its recommendations to the Council. Listening phones will be established at four locations for interested persons to listen to the discussion and participate in the meeting.

ADDRESSES: The listening phone locations will be as follows:

1. Miami, FL; NMFS Southeast Fisheries Science Center, Room 200, 75 Virginia Beach Drive, Miami, Fl 33144; telephone: 305–361–5761.

2. Panama City, FL; NMFS Southeast Fisheries Science Center, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408; telephone: 904–234–6541.

3. Pascagoula, MS; NMFS Southeast Fisheries Science Center, Pascagoula Facility, 3209 Frederic Street, Pascagoula, MS 39567; telephone: 601–762–4591.

4. St. Petersburg, FL; NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 813–570–5301.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, Florida 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by February 28, 1995.

Dated: February 17, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4623 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 020995C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 943 (P430A) and permit 648A (P45N)

On October 26, 1994, notice was published (59 FR 53780) that an application had been filed by Thomas F. Savoy and Deborah J. Shake of the Connecticut Department of Environmental Protection (P430A) to take listed shortnose sturgeon (*Acipenser brevirostrum*) in the Connecticut River as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on February 17, 1995, as authorized by the provisions of the ESA, NMFS issued Permit No. 943 to take shortnose sturgeon for measuring, examining, and tagging, subject to certain conditions set forth therein.

Notice is hereby given that on February 21, 1995, NMFS issued Permit 648A to the U.S. Fish & Wildlife Service to maintain captive listed shortnose sturgeon (*Acipenser brevirostrum*), pursuant to section 10 of the ESA.

Issuance of these permits, as required by the ESA, were based on findings that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of these permits; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250) for Permit 943; or

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141) for Permit 648A.

Dated: February 21, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–4621 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021695A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an extension to permit 777 (P496).

On January 12, 1995, an application was received by NMFS from the Army Corps of Engineers, Waterways Experiment Station, for an extension to Permit 777 which authorizes the take of listed sea turtle species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on February 17, 1995, as authorized by the provisions of the ESA, NMFS issued an Extension to Permit Number 777 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit extension, as required by the ESA, was based on a finding that such permit extension: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit extension was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Dated: February 17, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–4622 Filed 2–23–95; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

[Docket No. 950217053–5053–01]

The Global Information Infrastructure: Agenda for Cooperation

AGENCY: National Telecommunications and Information Administration.

ACTION: Administration policy statement.

SUMMARY: On February 15, 1995, the Administration released an "Agenda for Cooperation" for the Global Information Infrastructure. The Agenda for Cooperation sets forth the Administration's vision for developing a GII that meets the needs of the people around the world. The Global Information Infrastructure: Agenda for Cooperation incorporates and expands upon five principles Vice President Gore presented last year to the first World Telecommunication Development Conference: Encourage private investment; promote competition; provide open access to the network for all formation providers and users; create a flexible regulatory environment that can keep pace with rapid technological and market changes; and ensure universal service.

The report addresses the policy issues critical to encouraging the use of the Global Information Infrastructure (GII), including information policy and content issues and measures by governments and industry to demonstrate the benefits of the GII. The report also is intended to serve as the basis for engaging other governments in a consultative, constructive, and cooperative process that will ensure the productive development of the GII.

DATES: Comments may be filed at any time.

ADDRESSES: Comments may be sent to: IITF Secretariat, NTIA, U.S. Department of Commerce, Room 4898, 14th Street and Constitution Avenue NW., Washington, DC. 20230.

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SUPPLEMENTARY INFORMATION:

The Global Information Infrastructure

Agenda for Cooperation

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Preface

Let us build a global community in which the people of neighboring countries view each other not as potential enemies, but as potential partners, as members of the same family in the vast, increasingly interconnected human family.

With these words, Vice President Al Gore introduced the U.S. vision for the Global Information Infrastructure (GII) at the first World Telecommunication Development Conference in March 1994. The Conference, held in Buenos Aires, Argentina, signalled a new undertaking by the International Telecommunication Union (ITU). Vice President Gore called upon every nation to establish an ambitious agenda to build the GII, using the following five principles as the foundation:

- Encouraging private sector investment;
- Promoting competition;
- Providing open access to the network for all information providers and users;
- Creating a flexible regulatory environment that can keep pace with rapid technological and market changes; and
- Ensuring universal service.

Leaders from the world telecommunications community incorporated these five principles into the ITU's "Buenos Aires Declaration on Global Telecommunication Development for the 21st Century."

The purpose of this "GII: Agenda for Cooperation" is to amplify these five principles and to identify the steps the United States, in concert with other nations, can take to make the vision of the GII a reality. We hope that it will also serve as the basis for engaging other governments in a consultative, constructive, and cooperative process that will ensure the development of the GII for the mutual benefit of all countries.

In proposing this initiative, we recognize that market forces and technological advances have already begun to expand existing interconnections among our respective nations:

- Current state-of-the-art fiber optic systems can now transmit the equivalent of 80,000 simultaneous telephone conversations over a single optical fiber and will soon carry 320,000 conversations over a fiber pair;
- Advances in digital compression have vastly improved the performance and capacity of existing networks by allowing more volume, including data and video, to be transmitted;
- Advances in computer technology will soon offer storage capacity so great that an individual using a hand-held device will be able to carry the informational equivalent of a small library and remotely access many times this amount; and
- New digital wireless systems and proposed constellations of telecommunications satellites have the potential to provide telephone and data services to any point on the planet.

A nascent GII already exists. What we seek is a superior GII, one that has higher capacity, is fully interactive,

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faster, and more versatile. One that is less expensive to use than existing systems, and more accessible to all the people of the world. But our goal is not merely technological advancement—more bandwidth, faster switching, more powerful processing capability, and greater compression and storage capacity. We view technology not as an end in itself but as the means through which the GII can realize its potential to improve the well-being of all people on this planet.

This "Agenda for Cooperation" sets forth the U.S. Government's vision for developing a GII that can yield the benefits described above and more. It identifies specific areas where intergovernmental, as well as government-private sector, cooperative efforts are needed. Also identified are proposals for concrete actions that the United States can take, by itself or with other nations, to accelerate the pace of development of the GII. While we believe the private sector will build, own, and operate the GII, governments have the power to take actions that can either accelerate or retard its development. We believe that a concerted and coordinated international effort can achieve the former and avoid the latter, and we invite other countries to join us in this cooperative venture.

I. Introduction

A. Technological Convergence and the New Information Age

As we approach the end of the twentieth century, information is a critical force shaping the world's economic system. In the next century, the speed with which information is created, its accessibility, and its myriad uses will cause even more fundamental changes in each nation's economy.

These changes will be the result of technological convergence of the previously distinct telecommunications, information, and mass media industries. Boundaries that once separated the types of networks used to deliver voice, data, and video services are increasingly blurred. In a digital world, these services can be combined and offered over the same transmission system.

Multiple networks composed of different transmission media, such as fiber optic cable, coaxial cable, satellites, radio, and copper wire, will carry a broad range of telecommunications and information services and information technology applications into homes, businesses, schools, and hospitals. These networks will form the basis of evolving national and global information infrastructures, in turn creating a seamless web uniting the world in the emergent Information Age. The result will be a new information marketplace, providing opportunities and challenges for individuals, industry, and governments.

B. New World Vision Through Communications: The GII as a Product of Technological Convergence and Competition

The Clinton Administration has made the development of an advanced National Information Infrastructure (NII) and the GII top U.S. priorities. A major goal of the NII is to give our citizens access to a broad range of information and information services. Using innovative telecommunications and information technologies, the NII—through a partnership of business, labor, academia, consumers, and all levels of government—will help the United States achieve a broad range of economic and social goals.

Similarly, other governments have come to recognize that the telecommunications, information services, and information technology sectors are not only dynamic growth sectors themselves, but are also engines of development and economic growth throughout the economy. With this realization, governments have sharply focused their public policy debates and initiatives on the capabilities of their underlying information infrastructures. The United States is but one of many countries currently pursuing national initiatives to capture the promise of the "Information Revolution." Our initiative shares with others an important, common objective: to ensure that the full potential benefit of advances in information and telecommunications technologies are realized for all citizens.

The GII is an outgrowth of that perspective, a vehicle for expanding the scope of these benefits on a global scale. By interconnecting local, national, regional, and global networks, the GII can increase economic growth, create jobs, and improve infrastructures. Taken as a whole, this worldwide "network of networks" will create a global information marketplace, encouraging broad-based social discourse within and among all countries.

The GII will depend upon an ever-expanding range of technology and products, including telephones, fax machines, computers, switches, compact discs, video and audio tape, coaxial cable, wire, satellites, optical fiber transmission lines, microwave networks, televisions, scanners, cameras, and printers—as well as advances in computing, information, and networking technologies not yet envisioned.

But the GII extends beyond hardware and software; it is also a system of applications, activities, and relationships. There is the information itself, whatever its purpose or form, *e.g.*, video programming, scientific or business databases, images, sound recordings, library archives, or other media. There are also standards, interfaces, and transmission codes that facilitate interoperability between networks and ensure the privacy and security of the information carried over them, as well as the security and reliability of the networks themselves. Most importantly, the GII includes the people involved in the creation and use of information, development of applications and services, construction of the facilities, and training necessary to realize the potential of the GII. These individuals are primarily in the private sector, and include vendors, operators, service providers, and users.

The GII will both stimulate and respond to global demand for new information technologies and services.[1] The GII can offer consumers in each country unprecedented access to information from a variety of sources on a global basis. With appropriate changes in regulatory structure, the GII can also help usher in an environment more responsive to user demands by providing companies opportunities to offer any information or telecommunications product or service to any customer, rendering obsolete past regulatory labels or technological niches.

The business community has become the principal force for the pro-competitive restructuring of telecommunications and information markets. Business users, whose commercial activities are becoming increasingly global, require access to advanced services at higher speeds and capabilities, and at lower costs, to manage their global operations effectively. When the national carriers cannot provide the unified international networks and services that companies need to conduct business and research, frustrated users develop their own international "private" networks, often leasing private lines from different national carriers. However, these private networks—even the most sophisticated—still suffer from the high cost of leased lines in most countries and the difficulties inherent in attempting to create global networks based on a patchwork of services subject to widely varying capabilities and regulation.

[1] In general throughout this report, references to "information services" are meant to be broad and to include all services, content, and applications to be provided over the networks of the GII. However, for specific statistics cited from other sources, the definitions from those sources apply.

The scientific and academic communities also have stringent demands for access to information resources and powerful computing capacity around the world. The international research and academic community was instrumental in developing the Internet, an already global mass of interconnected computer networks. The astonishing growth rate of the Internet network—over ten per cent per month for more than five years—is just one indication of the growing demand for and supply of digital information.

C. Cornerstone of the GII: A Community of Global Interest

The nations of the world are diverse in size, levels of economic development, political, economic and social structures, and language and culture. We believe, however, that despite these differences a broad community of interest exists among countries to better the lives of the citizens of the world—all citizens. Regardless of a country's overall level of technological development, active participation in the evolving GII can provide the tools to improve the quality of life.

For example, the GII can facilitate health care delivery through telemedicine, linking rural physicians to major medical facilities for off-site consultations on difficult diagnoses. If only a computer and a wireless link are available, they can provide a data base search and on-line questioning of a consulting expert. If fiber optic networks are available, telemedicine services can include remote visual examination. Such services are a boon to rural physicians. Similarly, the GII can quicken response time for disaster relief. It can transform education with computer-based multimedia systems that teach with both sight and sound, greatly increasing retention rates and providing children access to greater educational opportunities. It can provide new tools to assist persons with disabilities. The GII can also make factories more efficient, speed the creation of new and better goods and services, cut the cost of business by improving efficiency, develop new jobs and markets, increase trade, and facilitate flows of information across borders.

That is not all. A well-developed GII can enhance democratic principles and limit the spread of totalitarian forms of government. Representative democracy is founded on the premise that the best political processes are those in which each citizen has the knowledge to make an informed choice and the power to express his or her view. The GII will allow wider and greater citizen participation in decision-making by providing the additional means for individuals to keep informed, as well as to express their opinions. Through the GII, the world's citizens will have the opportunity to share information and cultural values, fostering a greater sense of global community. By encouraging exchanges of ideas, goods, and services among all countries, the GII can contribute to a framework for lasting peace.

Realizing these benefits will not be easy—our vision of the GII presents a challenge that cannot be undertaken by a single country, nor overcome by government fiat. Rather, its success will depend in large measure on innovation and investment by the private sector. As the principal source of expertise and capital, the private sector should, in response to marketplace demands, determine what technologies to pursue, set the pace of development, establish the appropriate standards, and develop new services and applications. For their part, governments can facilitate these activities by creating a legal and regulatory environment that supports efficient investment and innovation, and promotes full and fair competition. Governments can also provide leadership by supporting testbeds for new technologies, fostering the transfer of resulting technologies to the private sector, promoting the assimilation and use of applications and technology through government procurement, and developing applications that support government operations and dissemination of government information.

II. Building a Foundation for the GII—Five Basic Principles

The United States believes that five basic principles—encouraging private investment, promoting competition, providing open access to networks and services for providers and users, creating a flexible regulatory environment to keep pace with technological and market developments, and ensuring universal service—should serve as the foundation for the development of the GII. In our view, this foundation will facilitate information infrastructure development in individual countries and the interconnection of networks on a global basis. It will also accelerate development of useful applications, and increase sharing of information among people around the world. We believe these principles apply equally to the telecommunications, information technology, and information services industries. In partnership with the private sector and all users, we believe that governments should take action to adopt, apply, and advance these principles at national, regional, and global levels.

A. Encouraging Private Investment

Given the facts that the worldwide market for information technology, products, and services is currently valued at $853 billion, and that worldwide investment in telecommunications infrastructure alone is expected to exceed $200 billion by 2004, both developed and developing countries need to find ways to share in this growth and prosperity. Attracting private sector investment is the most effective way for countries to do so—as well as to improve their networks and services, promote technological innovation, and succeed within the competitive global economy. The reasons extend beyond the purely financial: In addition to providing inflows of capital, private investment also stimulates development of new technologies, equipment, services, new sources of information, and managerial skills—all of which help speed infrastructure growth and improvements, increase efficiency in the provision of services, and permit greater responsiveness to consumer needs.

To attract greater investment from both domestic and foreign sources into their telecommunications sectors, nations are adopting a variety of approaches, ranging from revenue sharing initiatives and joint ventures to direct foreign investment, licensing of privately-owned competitors, build-operate-own or -transfer schemes, and privatization of government-owned public telecommunications operators. Countries as diverse as Chile, India, Jamaica, Japan, Malaysia, New Zealand, the United Kingdom, the United States, and Venezuela have encouraged multiple private companies to provide telecommunications services, drawing in private investment to varying degrees and leading to lower service prices and improved communication.

In other countries where privatization is not currently considered a politically viable option, governments have taken steps to attract foreign investment in the form of joint ventures for the provision of new services, such as cellular telephone and Very Small Aperture Terminal (VSAT)-based overlay networks for business users. Some countries have permitted lease and franchise arrangements that include private expansion of part of the

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telecommunications infrastructure, often allowing the private equity share in the network operation to build up over time. Although providing fewer benefits than full privatization might, these approaches can also be attractive to private investors, and they provide quantifiable benefits—new lines, upgraded switching capabilities, new services and sources of information, and lower costs to consumers.

The need for capital investment is particularly acute in countries with underdeveloped telecommunications infrastructures, where limited government resources often make private financing a necessary complement. To attract private capital, many countries that seek to improve their information infrastructures, which will improve interconnection to the evolving GII, are taking concrete steps to:

- Create a stable operating environment supported by transparent regulation;
- Establish fair and open bidding practices for all communications and information infrastructure projects;
- Recognize the return on capital that potential investors require;
- Establish sound repatriation policies; and
- Demonstrate a political commitment to private investment through appropriate modifications in the legal framework.

The information services sector, traditionally privately-owned, has experienced tremendous growth due to the largely open investment and competitive market environments in most countries around the world. In the United States, for example, the largely unregulated information services market is projected to have reached $135.9 billion in revenues in 1994.[2]

Removing barriers to private investment—and providing incentives for the creation and dissemination of information services through effective protection of intellectual property rights—is the best means of sustaining this worldwide growth.

Recommended Action

From the wide range of available options, governments can develop a strategy best suited to their particular needs. At the same time, they must institute the appropriate regulatory, legislative, and market reforms to create the conditions necessary to attract private investment in their telecommunications, information technology, and information services markets. To facilitate this process, the United States will join with other governments to:

- Identify and seek to remove barriers to private investment, and develop policies and regulations that improve investment incentives in both growing and mature telecommunications and information markets;
- Ensure that applicable laws, regulations, and other legal rules governing the provision of telecommunications and information services and equipment are reasonable, nondiscriminatory, and publicly available;
- Engage in bilateral, regional, and multilateral discussions to exchange information on the various options that have been successfully pursued to attract private investment, including, but not limited to, privatization, liberalization, and market reforms;
- Work with major international lending institutions, such as the World Bank and the regional development banks, and major private financial institutions to determine the best means of attracting both private and public capital, and establish workshops to train officials in the different liberalization approaches; and
- Encourage international lending institutions to recognize the ways in which funded social projects, such as the delivery of education and health care services, can be advanced through improved information infrastructures.

B. Promoting Competition

Nationally and internationally, the information technology and information services markets have flourished in the past decade. The highly competitive computer equipment, software and networking industries are among the most dynamic in global markets, providing users with steadily increasing computing power and functionality and stimulating further demand for more advanced, integrated capabilities. Similarly, the information services industry has expanded as barriers to cross-border trade and investment have been removed. In many countries there are few or no restraints on the services provided. In other markets there are varying, but fairly light, degrees of regulation. As a result, the world market for information services is expected to grow from $275 billion in 1993 to $465 billion in 1998, a growth rate of 11 percent annually.[3]

One important exception has been a tendency in a few countries to erect barriers to foreign competition in entertainment programming services. There is no body of evidence that limiting foreign competition has been successful in achieving the desired effect of stimulating local entertainment programming industries. The effects of such measures in retarding the development of private investment in infrastructure also deserves greater attention.

In contrast to the liberal market and regulatory environment for information technology and information services, the pace and scope of liberalization and privatization in the telecommunication sector is varied, ranging from competition in particular market segments to full liberalization. For example, there has been a discernable trend over the past decade toward increased competition in the provision of both value-added services and telecommunications terminal equipment. Some countries have liberalized further, taking steps to open their long distance, local fixed telephony, cellular, communications satellite, cable, and broadcast markets.

Evidence of positive results from such increased competition is mounting: Networks have steadily incorporated innovative technologies, producing greater efficiencies; both residential and business users enjoy lower prices and greater choices in equipment and services; service providers are more responsive to user needs; and lower costs of service have stimulated increased network usage.

However, in the largest and most profitable market segments—basic public voice telephone services and the underlying network infrastructure—both competition and foreign investment have been restricted. Maintaining barriers against potential new entrants in these markets will inhibit infrastructure deployment. Moreover, these barriers will retard the introduction of new information and telecommunications services that require competitive access to underlying networks in order to flourish.

Competition in basic telecommunications services has been growing, however, in a number of key markets around the globe. In countries such as Australia, Canada, Chile, Japan, New Zealand, Sweden, the United Kingdom, and the United States, the introduction of alternative service providers and networks, which often deploy advanced technologies at lower costs, has reduced bottleneck control by the dominant facilities-based providers. These results have spurred other countries to reconsider their policies. The member countries of the European Union (EU), for example, have agreed to introduce competition in the provision of basic telecommunications services and infrastructure by 1998. The EU considers these steps to be critical to advancing the goals of their action plan to create a European Information Society.

Increasingly, countries with national monopoly operators have begun to question whether they can compete effectively in the dynamic international telecommunications market. Difficulties in raising capital and in meeting users' demands for low cost, sophisticated network capabilities and services are forcing a reconsideration of the monopoly approach to telecommunications. A recent Organization for Economic Cooperation and Development (OECD) study comparing the relative cost of providing international service among OECD members found that the performance of countries with competitive international markets was superior to the average of all OECD members. Furthermore, the OECD study revealed that the quality of service had improved simultaneously with the implementation of competition.[4]

Competition within the communications satellite market has also burgeoned. The intergovernmental International Telecommunications Satellite (Intelsat) and International Mobile Satellite (Inmarsat) organizations now face competition from several separate satellite systems, including Astra, Columbia, AsiaSat, Orion, and PanAmSat. Due in part to competitive pressures from these separate satellite systems and from alternative technologies, serious consideration is being given to restructuring both Intelsat and Inmarsat. Each of these organizations is engaged in an internal effort to review a range of options for reorganization, from reform of the cooperative model, to corporatization, to full privatization.

As governments liberalize particular market segments, regulators, operators, and new market entrants must grapple with evolving definitions of the boundary between those networks and services reserved to the monopoly operator and those open to competition. During the transition from monopolistic to competitive telecommunications markets, incumbent operators still play a dominant role as network infrastructure providers. Incumbent operators not only control underlying facilities and services that new entrants often need to deliver their services, but frequently compete directly with these new service providers in particular market segments. In these circumstances, effective competition cannot emerge and flourish unless incumbents are subject to competitive safeguards while they maintain market power over critical bottleneck facilities and services.

Competitive safeguards serve two main purposes. Some are intended to eliminate or reduce barriers to entry for new service providers that are seeking to challenge the incumbent operator. Other safeguards serve to ensure that incumbent firms with market power do not employ anticompetitive means to prevent or hinder the development of truly competitive markets. Market entry opportunities are effective only if the incumbent service provider is required to compete fairly. For this reason, some administrations have required incumbent carriers to permit resale of their networks and services. Resale provides an important source of competition in markets in which telecommunications infrastructure costs are high. Similarly, market entrants that choose to provide facilities-based services in competition with the incumbent service provider typically will need to interconnect their facilities with a dominant service provider's network. In a pro-competitive environment, the terms and condition of interconnection would be reflected in published rates that include nondiscriminatory cost-based access charges and technological "equal access" to bottleneck facilities.

Incumbent carriers may also be required to "unbundle" network facilities and services so that telecommunications and information service providers can order only those elements of the dominant provider's network they need to provide a service. Finally, establishment of a transparent regulatory scheme open to all interested parties, and administered by a regulatory authority independent of the incumbent service provider, helps ensure that rules governing competition are fair and that private investment is given a reasonable degree of security.

While the political challenges posed by attempting to restructure the telecommunications market are significant, the increased opportunities provided by introducing competition far outweigh the potential difficulties of pro-competitive market reform. Further, the interconnection of competitive national information infrastructures can increase the pace of development of the GII. The more competitive an information and telecommunications market, the more productive will be its interaction with other markets participating in the development of the GII.

Recommended Action

The most effective means of promoting a GII that delivers advanced products and services to all countries is through increased competition at local, national, regional, and global levels. To that end, the United States will join with other governments to:

- Assess, through information exchanges and existing multilateral organizations, the positive experiences of different countries in introducing competition and progressively liberalizing their telecommunications, information technology, and information services markets;
- Work constructively to remove barriers to competition in telecommunications, information technology, and information services markets;
- Include timetables for increased competition in basic telecommunications infrastructure and services in national information infrastructure development plans, and, as an interim step, increase the pace of liberalization through the expansion of resale;
- Encourage new entrants by adopting competitive safeguards to protect against anticompetitive behavior by firms with market power, including measures designed to prevent discrimination and cross-subsidization;
- Implement specific regulations to facilitate competitive entry in the telecommunications sector, including the following essential elements: (1) Interconnection among competing network and service providers; (2) "unbundling" of bottleneck facilities of dominant network providers; (3) transparency of regulations and charges; and (4) nondiscrimination among network facilities operators and between facilities operators and potential users, including resellers;
- Ensure that government-sponsored technical training activities incorporate programs specifically related to the development of pro-competitive markets and regulations (including such issues as competitive safeguards and interconnection);
- Pursue a successful conclusion to the General Agreement on Trade in Services (GATS) discussions on basic telecommunications to obtain the opening of markets for basic telecommunications services through facilities-based competition and the resale of services on existing networks

[2] International Trade Administration, U.S. Department of Commerce, "U.S. Industrial Outlook 1994", at 25–1, January 1994.

[3] U.S. Department of Commerce, International Trade Administration, Office of Service Industries, 1994.

[4] "The Benefits of Telecommunications Infrastructure Competition," (DSTI/ICCP, TISP(93)/Rev 1), p. 23, February, 1994.

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on nondiscriminatory terms and conditions; and

• Consider the full range of options for promoting competition in Intelsat and Inmarsat, including: (1) Pursuing changes designed to increase the operational efficiency of Intelsat and Inmarsat, retaining their fundamental intergovernmental character, but substantially reducing the scope of the current intergovernmental agreements by removing provisions that convey unfair advantage and inhibit efficient functioning; (2) transforming the organizations into private corporations; and (3) transforming the organizations into multiple private service providers that compete with one another, as well as with others.

In selecting among these options, the goal must be to enhance competition and not diminish it.

C. Providing Open Access

Achieving the goal of a global information market will require government action to ensure that all information service providers have access to facilities, networks, and network services on a nondiscriminatory and low cost basis. By ensuring open access to facilities and networks, and thus promoting competition, governments can dramatically increase the availability of information services to all consumers.

Maximizing consumer choice among diverse sources of information should be the primary objective. As the information needs among consumers will vary, both within and among nations, attempts to predict the information resource requirements of citizens should be avoided. Rather, governments should foster market and regulatory climates conducive to the broadest possible access to and distribution of information. As countries accelerate the development of their respective information infrastructures, more and more consumers will seek access to networks and services that cross national and international boundaries. Improving consumer access to diverse sources of information has direct social and economic benefits. The ability to generate, exchange, and use information, technology, and ideas is central to economic growth and development, increased competitiveness in a range of industries, and to the improvement of the quality of life.

An essential technical element of the open access concept is interoperability, i.e., the ability to connect applications, services, and/or network components so that they can be used together to accomplish tasks. As the GII will be based on many different existing and emerging components at local, national, and global levels, it is imperative that these components be interoperable. The key to interoperability is the development of global standards. We believe such standards should be voluntary and developed through a process that is largely market-driven and that takes into account the views of both the large and well established and the smaller, newer market players.

Three principal international standards organizations involved in the development of information technology and telecommunications standards are the International Organization for Standards (ISO), the International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU). The ISO and IEC develop information technology standards through the ISO/IEC Joint Technical Committee 1, while the ITU concentrates on telecommunications standards. Further, there has long been coordination and collaboration between the ISO/IEC Joint Technical Committee 1 and the ITU, which has helped minimize the duplication of standards development work and the possibility of conflicting information technology and telecommunication standards.

The vast majority of countries adhere to the processes of developing international standards and the resulting recommendations from all three organizations. In the U.S., and increasingly in other countries, the private sector plays an essential role in these international standards development processes by providing the technical expertise and resources to develop standards at national and international levels.

It may also be constructive to consider encouraging greater collaboration and cooperation both domestically and internationally among the different standards bodies, including less formal organizations. In recent years in the United States, a significant number of new standards consortia, whose principal focus is in the standards implementing arena, have been established outside of the traditional national standards development organizations. These new consortia have often sped up the widespread adoption of internationally generated standards, and their memberships have included small and medium-sized companies.

Given the convergence of technologies and the rapid changes in national and international market structures, the development and acceptance of voluntary, international standards are critical to the development of the GII. The international standards organizations and their memberships must redouble their efforts to ensure that standards are developed that assist the rapid delivery of information. Moreover, the pace of the work in international bodies must continue to increase to better reflect marketplace needs for technological development, so as not to impede the realization of the GII. In the absence of timely development and implementation of standards on a global basis, the benefits of improved interoperability will be delayed.

Recommended Action

In partnership with the private sector, governments can take action to improve access to facilities and networks, and promote the availability of a wide range of diverse services and information, including strong support for the development of international standards that promote interoperability. To achieve these goals, the United States will join with other governments to:

• Develop appropriate policies that encourage increased access by citizens to diverse sources of information;

• Provide unrestricted and equitable access to networks for providers and consumers of services and content, based on sound commercial practices;

• Hold regular bilateral and multilateral dialogues on ways of increasing the flow of information across borders to facilitate greater access to content by consumers;

• Encourage an open, voluntary standards-setting process that does not denigrate intellectual property rights and which includes the participation of a broad group of interests, including the private sector, consumers, and, as appropriate, government agencies;

• Work through regional and international bodies to increase the pace of consensus-based, voluntary, and transparent standards development and adoption, and to promote the broad dissemination of standards-related information;

• Work together and with national, regional, and international standards bodies to identify priority areas for increased coordination among different private national and international bodies in support of interoperability of networks and services on the GII.

D. Creating a Flexible Regulatory Environment

Policymakers worldwide face a daunting challenge: Creating an appropriate regulatory regime that minimizes regulation and fosters competition through transparent rules and processes and is sufficiently flexible to be responsive to changing technologies and markets. As the pace of technological innovation quickens, this will become increasingly difficult and yet increasingly necessary.

With the U.S. experience as our guide, we offer the following observations about the characteristics of telecommunications legislation that are necessary to respond to changes in this dynamic sector. The optimal regulatory and legislative frameworks will:

• Identify the goals and objectives of the law, including the promotion of competition;

• Be sufficiently flexible to permit the introduction of new services and technologies without requiring amendments to the legislation;

• Delegate broad powers to a regulatory authority independent of a national operator and charge that independent authority with keeping abreast of technological and market developments;

• Establish a transparent and open process whereby the public and interested parties are informed and can participate in rulemaking and adjudicatory proceedings; and

• Aim towards open market access based on nondiscrimination principles.

We recognize that regulatory reform can take many paths. Some countries have established a regulatory entity responsible for both formulating and implementing telecommunications and mass media policy, as well as overseeing the activities of these sectors. Others have relied on the separation of operational and regulatory functions of the government-owned and/or franchised national operator, with government bodies assuming responsibility for regulatory decisions. Still others rely more heavily on national competition law and policy for oversight.

Regardless of the regulatory model that countries adopt, regulations should clarify the respective rights and obligations of incumbent operators and new entrants. New market entrants need assurances that incumbent operators will not be allowed to use their dominant market positions to hinder the evolution of successful competition. Similarly, public and transparent regulatory processes create stable commercial environments, which are necessary to attract private investment. As such, rules and regulations should clearly indicate:

• The scope of permissible competition, e.g., the particular market segments open to new entrants;

• The means by which new entrants can gain market access, e.g., private investment, licensing requirements, and cross-border services;

• The nondiscriminatory terms and conditions of interconnection to an incumbent operator's network and of supplying information services over the network; and

• The procedures by which new entrants and users can bring complaints and obtain redress from the regulator, e.g., enforcement mechanisms.

Additionally, it is critical that a pro-competitive regulatory regime ensure:

• The establishment of other structural or nonstructural safeguards to protect against the anticompetitive exploitation of market power by the incumbent service provider to the detriment of the new entrants;

• The appropriate balancing of public service obligations among operators/carriers;

• Charging and pricing policies that are based on the costs of providing service; and

• The efficient, effective, and pro-competitive management of scarce resources, especially the radio frequency spectrum.

In light of the increasing demands on the radio spectrum for the introduction of new wireless communications systems and services, the last point merits particular emphasis. Among these new technologies, none better embodies the need for an open regulatory model embracing competition and careful management of the spectrum than the nascent hand-held mobile satellite services. If these services are to achieve their global potential, cooperation among national spectrum regulators will be required, as will a willingness to permit multiple market entrants to ensure that new satellite services do not become the exclusive property of a sole provider.

Governments should avoid burdensome regulation that stifles innovation and new service offerings. Governments must guard against the expansion of regulation into market segments that have not traditionally been subject to regulations and that have functioned extremely well on an unregulated basis. The examples of Australia, Canada, and the United States in computer and business information services are illustrative. They are among the leading nations in personal computer penetration rates among consumers. Not coincidentally, they also provide an open, dynamic, and almost totally unregulated market for information technology and services. Equally important, while some government regulation is necessary as a marketplace transitions from a monopoly to a competitive structure, once competition is achieved, continued regulation can be unnecessary or even counterproductive in promoting efficiency, innovation, and customer responsiveness. In short, governments must be prepared, and must invest their regulatory agencies with the authority, to adjust regulatory structures as the demands of the marketplace and technology require.

Just as national regulatory environments need to be responsive to emerging market and technological developments, so too must the overarching international environment continually adapt to new developments. The successful efforts of governments and industry to improve global interconnectivity and liberalize international telecommunications demonstrate the value of working together in various international fora to promote progressive and flexible national regulations. These efforts must continue.

Recommended Action

Although national regulatory environments necessarily reflect the specific social, economic, and political needs of each individual country, the essentially global nature of the markets for telecommunications, information technologies, and information services require that national regulations be responsive to global developments. The United States will join with other governments to:

• Re-examine and adapt regulations and legislation to accommodate market and technological developments at national and global levels in support of the five GII principles;

• Create, through regulatory and/or legislative reform, a pro-competitive, technology-neutral regulatory environment to maximize consumer choice, to provide fair access to networks, and to stimulate infrastructure development, the introduction of new services, and the wider dissemination of information;

• Exchange views and information on national regulatory and legislative initiatives and seek to identify common challenges and options for developing flexible and transparent regulations in support of the development of the GII;

• Work collectively in regional and international organizations to convene meetings devoted specifically to encouraging the adoption of regulatory policies that will promote the GII; and

• Encourage creation of independent national regulatory authorities for telecommunications separate from the operator that shall promote the interest of consumers and ensure effective and efficient competition. Such authorities should have sufficient powers to carry out their missions and should operate

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with transparent decisionmaking processes that are open to all interested parties.

E. Ensuring Universal Service

The goal of providing access and affordable service to all members of society is fundamental to the development of the GII. The definition of universal service, however, necessarily varies from country to country—ranging from the provision of high quality telephone service to every home and business in most industrialized countries to access to a public telephone in many developing countries.

The ability to provide universal service on a national basis depends upon a number of factors, including the level of infrastructure development, the reach and technological capabilities of national networks, and the cost of access to the network and services. Other factors to be considered include the availability and use of advanced methods of network planning and maintenance, and explicit performance and service quality goals.

The definition of universal service is also being expanded by the advent of digital technologies. In many countries, including the United States, policymakers face increasing pressure to expand universal service beyond "plain old telephone service" to include a broader array of new telecommunications and information services. In fact, universal service has always been an evolutionary concept, expanding as the capabilities of the network and the types of service demanded by the great majority of users have increased. For example, in the United States fifty years ago, a party-line was deemed sufficient for universal service purposes; now an individual line for each subscriber is generally viewed as a component of universal service, together with such features as direct dialing for long distance calls and 911 emergency service.

In both developed and less developed countries, wireless technologies can help meet the needs for both basic and more advanced services. For example, by augmenting terrestrial-based facilities with satellite facilities and services, national networks can maximize their potential. The point-to-multipoint and mobile communications capabilities of satellites, which are global in reach, permit the extension of services to even the most remote regions.

Moreover, in helping meet universal service goals, one option for governments to consider is the establishment of community "access points." For example, institutions such as schools, libraries, or hospitals could be equipped with basic and advanced information and communications technologies for use by members of the public. Such community access points would facilitate the efficient provision of broader public access to a core set of services.

Although several countries have raised concerns that competition diverts revenues from the public operator and undermines its ability to provide universal service, experience shows that access to the telephone has been improved in the most liberal national markets. In the United Kingdom, for example, many customers are ordering a telephone for the first time largely because increased competition—cable television companies are now offering telephone service—has made it more affordable. In the United States, concerns were raised a decade ago that increased competition in the provision of long distance services, which had traditionally subsidized basic local rates, would threaten universal service. These concerns abated as competition spurred innovation and price reductions, which in turn have expanded universal service. Further, studies by the OECD indicate that telephone penetration has not been eroded in any member country that has introduced infrastructure competition. The OECD concluded, "Universal service has not been impaired by market liberalization; (rather) facilities competition can be applied to complement and enhance universal service."[5] Indeed, many now argue that full and open facilities-based competition, by reducing prices, is the most effective way to promote universal service.

As together we strive to expand the worldwide telecommunications infrastructure and build the GII, we must all keep the goal of universal service constantly in mind. With significant decreases in the costs of information transmission and processing, the creation of the Information Society has the potential to improve the quality of life of all citizens. Recognizing that information leads to empowerment, the nations of the world must work together to ensure that as many citizens as possible in all societies have access to the resources of the Information Age.

Recommended Action

Although the provision of universal service varies from country to country, the goal of providing all people with greater access to both basic and advanced services is a crucial element of the GII. The United States will join with other governments to:

- Consider, at the local and national levels, the benefits afforded by the introduction of competition and private investment in meeting and expanding universal service;
- Exchange information at the bilateral and multilateral level to address the range of available options to meet universal service goals; and
- Consider, at the national and international levels, ways to promote universal access as a means of providing service to currently underserved and geographically remote areas.

III. Encouraging the Use of the GII

While we believe that the adoption, application, and advancement of the five core principles are necessary to create an environment in which the GII can realize its full potential, such actions alone are insufficient to guarantee it. Regardless of the sophistication of the technology or services being offered, users must be assured that they can allow the GII entry into their homes, offices, and lives to access and share information safely and without forfeiting any of their rights. Governments, companies, and public-interest groups, by working together on information policy and content issues, must address these concerns.

An equally important task for governments and private sectors is to demonstrate the potential benefits of the GII to citizens. It is only when people see tangible results of applications that they will begin to appreciate how it can be used to improve their lives. This appreciation is the key to stimulating demand for the services and content of the GII, which in turn will provide the impetus to remove institutional and regulatory barriers to its full utilization.

A. Information Policy and Content Issues

Developing an effective information policy will provide governments with perhaps their greatest challenge. The central objectives of information policy include ensuring that: (1) The privacy of individuals and organizations using the GII is protected; (2) the security and reliability of the networks and the information that passes over them are preserved; and (3) the intellectual property rights of those who create the information, education, and entertainment content are protected. To assure the growth of an information infrastructure accessible and accountable to the citizens of the world, governments must develop and implement these objectives in close

[5] Ibid, p.3.

partnerships with each other and with representatives from business, labor, academia, and the public.

1. Privacy Protection

By bringing news and information to people on a global basis, and thereby allowing them to communicate more freely with each other, communications technologies serve a democratizing function. These same technologies also permit both governments and the private sector to transmit, process, and store vast amounts of information about individuals. While these capabilities are increasingly essential for governments to function effectively and for businesses to operate efficiently, questions continue to grow about an individual's right to privacy and the accompanying responsibilities of holders and transmitters of this information to safeguard this right.

In many nations, the past two decades have seen the primary gatherers and users of personal data shift from government entities to private sector firms. In the 1970's and 1980's, businesses were quick to exploit the explosive growth in low cost, high performance computers, adapting this technology to a wide range of economic, financial, and marketing applications. As electronic commerce spread during the 1980's, there was growing recognition that the electronic transfer of data across national boundaries required an international consensus on individual privacy protection.

In 1980, the OECD developed and adopted a set of voluntary privacy guidelines that were accepted by its 24 member-countries. In 1981, the Council of Europe, whose membership consists of the European Union Member States and other European countries, adopted "fair information practices", similar to those of the OECD to regulate the collection, storage, and automated processing of personal data, and transborder data flow. Both the OECD and Council of Europe privacy guidelines, which generally recognize that the free flow of information is critical to transborder economic activity, provide a framework for domestic legislation that has been used by both member and non-member nations. They also recognize diverse means of protecting information privacy, including self-regulation and industry codes of conduct. The North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS) Annex on Telecommunications also contain provisions that recognize national privacy protection regulations.

The United States and other countries around the world are re-examining existing privacy policies to ensure that they apply comprehensively to the transfer of personal data over global networks. A balanced privacy policy—preserving the individual's right to privacy while maintaining the free flow of information across national borders—is important to the development of global networks and services. Working together, nations should ensure that the transport of personal data adequately takes into account the following agreed-upon international privacy principles:

- Personal data should be collected only for specified, legitimate purposes;
- The dissemination, sharing, and reuse of information should be compatible with the purposes for which it was originally collected;
- Personal data should be accurate, relevant, and up-to-date;
- Individuals should be informed how personal data will be used and should be allowed to examine and correct this information; and
- Transmission of personal data should not be unduly restricted or subject to burdensome authorization procedures.

Recommended Action

In order to foster consumer confidence in the GII and to encourage the growth of interconnected global networks, users must feel that they are afforded adequate privacy protection. To this end, the United States will join with other governments to:

- Identify key privacy issues that need to be addressed in relation to the development of national and global information infrastructures;
- Work with both the public and private sectors to achieve consensus on a set of fair information principles for the collection, transfer, storage, and subsequent use of data over national and global information infrastructures;
- Ensure that privacy protection does not unduly impede the free flow of information across national borders;
- Share information on new privacy protection policy developments and on new technologies and standards for privacy protection; and
- Encourage the use of voluntary guidelines developed by international bodies, such as the OECD, as the best means of ensuring the protection of privacy on an international basis.

2. Security and Reliability

A network as vast and complex as the GII will pose difficult security challenges for all nations. The same modern technology that makes communication faster and easier also makes communications systems vulnerable to ever greater security risks. These risks are not new—most are well-known among security managers. What is new is that these risks are much more widespread, are potentially much more serious, and affect a population of users who do not have the information or training to deal with them.

The anonymous and impersonal nature of computer crime, for example, makes this problem particularly unsettling, for legal systems depend upon their ability to identify the malfeasors. Yet serious violation of privacy or property rights can be accomplished by destruction or alteration of information by anonymous individuals in remote locations, with not a fingerprint in sight. The technical challenges of protecting the privacy and integrity of information stored in computer systems are even greater than those that apply to information transmitted by telephone. And as was true with the telephone, legal as well as technological solutions are needed.

Security includes the integrity, confidentiality, and reliability of the networks and of the information they carry. If users do not believe that an information infrastructure is a trustworthy, reliable system, they will be reluctant to use it, thereby diminishing its value. To gain maximum benefit from global networks, users must be confident that the messages they receive are authentic, that sensitive information is available only for authorized use, and that unauthorized users cannot access, alter, or destroy information.

In addition to protecting the security of information that is transported over the GII, governments and industry must guarantee the reliability of the network itself. In the event of breakage or service interruption, network operators must work quickly and cooperatively to repair damage and provide backup systems to minimize the duration of any such interruptions. To have a truly global infrastructure, greater emphasis must be placed on resolving reliability concerns, including such issues as network performance, network connections and interoperability, the development of new technology, and regional and demographic differences in reliability.

Recommended Action

To promote the development of a secure and reliable GII, the United States will join with other countries to:

- Work collectively to increase the reliability and security of national and international information infrastructures;
- Initiate a broad international dialogue among users, providers, and all

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other participants in the GII on issues related to protecting the confidentiality and integrity of information transmitted and stored on global networks;

• Exchange information and encourage further cooperation within regional and international organizations such as the ITU and the OECD on measures to ensure network security and reliability, including the sharing of outage information;

• Share information regarding the best means available to advance security goals while not impeding progress on other GII principles, such as the promotion of competition and open access; and

• Exchange information about, and accelerate efforts to develop new technologies needed to improve the security of the GII (e.g., encryption, digital signatures, and firewalls.)

3. Intellectual Property Protection

Protection of intellectual property rights is essential to the development of a successful GII. In order to promote creativity and provide the broadest possible access to the world's media and information sectors under viable commercial conditions, countries will need to protect the creative content of the GII—text, images, computer programs, databases, video and sound recordings, as well as multimedia products.

Providing for adequate and effective protection of intellectual property in the digital environment requires complex legal and technical solutions. Some of these solutions may be viewed as controversial by some users of the system. However, the cost to society of inadequate intellectual property protection far outweighs these concerns. Inadequate protection of intellectual property discourages the creation of copyrighted works, creates barriers to innovation, stifles the use of new applications, and diminishes foreign investment. It jeopardizes the work of researchers, creative artists, and a wide variety of entrepreneurs.

It goes without saying that if creative works are not adequately protected, their creators will be reluctant to permit them to be distributed over the GII. For this reason, rightsholders must not be compelled to license rights to their works. Instead, GII participants should cooperate to find legal, market-based alternatives to compulsory licensing. Reliable and efficient means of transferring intellectual property rights must also be assured. They might, for example, adopt various licensing arrangements, such as on-line and off-line licensing, direct licensing, and voluntary collective licensing. More sensitive issues, however, may have to be addressed on an individual basis. For example, licensing of rights may be done on a per-use, per-work, or other basis. Licensing of rights for multimedia works, which involve a number of copyrights—not all of them with obvious attributions—could be facilitated by special licensing arrangements.

Recommended Action

The GII cannot achieve its promise if authors, producers, and other content creators are not guaranteed adequate protection of their intellectual property rights. To achieve this protection, the United States will join with other governments to:

• Cooperate in national, bilateral, regional and international fora (such as the World Intellectual Property Organization) to achieve high levels of intellectual property and technical protection in order to guarantee to rightsholders the technical and legal means to control the use of their property over the GII;

• Ensure that voluntary licensing regimes provide rightsholders and potential users of copyrighted works maximum flexibility in negotiating the conditions governing the use of copyrighted works, eliminate compulsory licensing, and guard against the imposition of standards that would impede the free-flow of information;

• Provide effective enforcement against the unauthorized use of a copyrighted work (infringement), including severe legal penalties and vigilant monitoring. Enforcement is particularly critical as technological innovations jeopardize the existing ability of rights holders to protect their works;

• Encourage the development and use of technological capabilities and safeguards, such as software envelopes, headers, assurances of authenticity, and encryption methods to complement existing copyright management techniques and prevent infringement at all levels. Cooperative efforts to develop testbeds, define standards, and construct infrastructure components for these safeguards should be encouraged, as should measures to prevent or render illegal the use of devices to overcome these safeguards; and

• Work in collaboration with intellectual property-based industries towards greater efforts to educate others about the importance of intellectual property protection.

B. Applications: Delivering the Benefits of the GII

Given that the value of the GII will be determined by how people benefit from it, governments must cultivate active participation by consumers and businesses in the application of new technologies. By working together in creative partnerships, the public and private sectors can apply information and telecommunications technology to a variety of critical and complex issues: improving productivity and economic growth in an increasingly competitive and interdependent global economy; providing adequate health care; ensuring the development of workforce skills through education and training; providing equitable access to information through public institutions, such as libraries; enhancing leisure-time activities; protecting natural resources and the environment; and ensuring the delivery of government services and information.

Many governments are already examining ways to promote the development of the information infrastructure and to demonstrate, through pilot projects and testbeds, the myriad benefits of new technologies. In the United States, the National Information Infrastructure (NII) initiative includes a Federal matching grant program that provides support for planning and demonstration projects initiated by state and local governments and non-profit entities in such fields as health care and education.[6] The U.S. NII initiative also includes a number of other federally supported applications in the areas of environmental monitoring, digital libraries, international transportation and trade, and the electronic dissemination of government information.[7]

The reach of applications being developed around the world can be expanded internationally through collaborative projects among

[6] Administered by the National Telecommunications and Information Administration, the basic objective of the Telecommunications and Information Infrastructure Assistance Program (TIIAP) is to provide clear and visible demonstrations to people at the local level of the advantages that can be accrued in their daily lives as a result of having access to a modern, interactive information infrastructure.

[7] Additional information on how information infrastructure applications can benefit people can be found in two reports from the U.S. Information Infrastructure Task Force's Committee on Applications and Technology: "Putting the Information Infrastructure to Work," National Institute of Standards and Technology Special Publication 857, Gaithersburg, MD., 1994; and "The Information Infrastructure: Reaching Society's Goals," National Institute of Standards and Technology Special Publication 868, Gaithersburg, MD., 1994.

commercial entities, academic institutions, and private, voluntary, and multilateral organizations. International applications have the unique potential to permit countries not only to bring diverse global resources to bear upon local problems and needs, but also to find solutions to needs that transcend national boundaries, such as environmental monitoring and global trade and commerce.

These applications can transform the possibilities of the GII into realities for citizens around the world. What follows is an illustrative, but not exhaustive, list of examples that demonstrate the value of expanding collaborative efforts in the development of international applications:

• Distance learning projects can make available a wealth of educational resources to improve local educational and training capabilities, offering cost-saving, effective alternatives to overseas studies;

• Computer networks linking medical school libraries and remote sites can improve the delivery of health care services, particularly to rural communities, by expanding access to demographic, epidemiological, and medical reference materials. In Zambia, district hospitals are being linked for clinical consultation, distance learning, health literature dissemination, and epidemiological data exchange. African medical libraries are linking up with libraries overseas for research and document delivery services;

• Satellite and radio-based systems that collect and disseminate health statistics can be used to identify underserved segments of the population and to target those areas for expanded delivery of family health services;

• Remote sensing can be used to identify and protect important ecological systems. The Administration is promoting an international partnership, known as Global Learning and Observation to Benefit the Environment (GLOBE), that will allow children all over the world to collect and share environmental data. Students will work with teachers and environmental scientists to expand knowledge about weather, air and water chemistry and quality, biodiversity, and other "vital signs" of the Earth. The combined data will be transformed into striking "pictures" of the entire planet, allowing each student to see how their school's observation is an important part of the global environment;

• Computer and satellite networks can provide monitoring and, in some cases, early warning of natural disasters, allowing for better coordination of humanitarian assistance efforts between host and donor countries, speeding the delivery of aid and assistance. In the South Pacific, the PEACESAT satellite network has been used to coordinate emergency assistance after typhoons and earthquakes, and to summon medical teams during outbreaks of cholera and dengue fever;

• Computerized market price data for agricultural and horticultural products can provide new agribusiness opportunities and can facilitate direct links between exporters and clients;

• Access to international markets, particularly for small and medium sized businesses, can be created by providing electronic access to information such as transportation schedules and costs, insurance and customs data. The United Nations Conference on Trade and Development (UNCTAD) trade points system uses electronic data interchange and other technologies to establish a network of trade points around the globe. In Algeria, for example, the introduction of a computer-mediated trade point has stimulated an increase in the number of companies involved in international trade from twenty to 2,500;

• Electronic data interchange technologies, which can reduce the administrative cost of international trade transactions by as much as twenty per cent, can help companies increase productivity by streamlining manufacturing and service delivery. Through industry-led consortia such as CommerceNet, companies can explore collaborative engineering, on-line catalogs of products and services, and mechanisms for electronic payments;

• Scientists can continue to explore the use of "collaboratories," tools and virtual environments that allow scientists to work together without regard to space or time. Scientists need the ability to share data and the tools for data analysis, visualization, and modeling, to control remote instruments, and to communicate with their colleagues;

• Using the World Wide Web, individuals and institutions all over the globe have begun to create distributed "virtual libraries" on specific subjects. As these opportunities continue to grow, tools for information discovery and retrieval and protection of intellectual property rights will become increasingly important.

In our view, public-private sponsorship of GII pilot projects and testbeds is worthwhile. It will help identify and address a number of technical, policy, and regulatory barriers to the realization of the GII. These include issues of privacy, security, interoperability, and intellectual property protection, as well as artificially high prices for telecommunications services and outdated rules and regulations designed for paper-based transactions. A strategy that concentrates on "learning by doing" is far more likely to resolve these barriers.

The roles played by governments, the private sector, academic institutions, and non-profit organizations will vary depending on the nature of the application. In some cases, such as global electronic commerce and entertainment services, the private sector should take the lead, while in other areas, such as international public health, cooperation between public health agencies, hospitals, clinics, and universities would be appropriate. Whatever the application, governments must recognize that while they can play an important catalytic role in fostering international collaboration, they should not attempt "top-down" management of this process. The Administration hopes and expects that many of the best ideas for global cooperation will bubble up from the grassroots with little or no government involvement.

Successful applications will set in motion a continuous cycle of demand that will encourage future development of the GII. Demonstrating the power of the GII to successfully address pressing problems will stimulate consumer demand for a variety of products and services at affordable prices. This demand will provide the necessary incentive for the private sector to broaden the reach and expand the capabilities of the GII, enhancing its ability to deliver benefits to people and again increasing demand. As a "network of networks" linking people and information, the GII can leverage the collaborative potential of existing efforts and provide real solutions to existing and emerging global issues.

Recommended Action

International applications are the best way to demonstrate the potential power of the GII to affect lives all over the world. The United States will join with other countries to:

• Support, along with the private sector, the initiation of pilot projects and testbeds that demonstrate the benefits of the GII, in areas such as electronic commerce, health care, digital libraries, environmental monitoring, and life-long learning, with opportunities for participation by both developed and developing countries;

• Cooperate in the facilitation of electronic information exchanges in support of global trade and commerce;

• Facilitate the sharing of information in the public domain with other

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countries on government-funded and private sector applications projects to promote a broader understanding of the diversity of technology that can be applied to meet various public needs;

• Encourage the assignment of a higher priority for innovative applications of information technology, which will encourage increased use of the GII;

• Encourage private sector-led efforts to develop application-level standards (e.g. data interchange formats, application program interfaces) to ensure interoperability at the application level; and

• Work constructively to assess and eliminate the barriers to the development and deployment of GII applications.[8]

IV. Implementing the GII

The various approaches governments have taken in response to the technological convergence of telecommunications and information industries have resulted in the development of asymmetric markets and regulatory environments around the world. These asymmetries often impede the cross-border transfer of services and information among business users, entertainment providers, and consumers. The United States believes that these differences can be overcome, in part through the work of market forces and technological developments, but also in part through collective agreement among all countries to adopt, advance, and apply the core principles of the GII. By working through existing international and regional organizations, and engaging in bilateral efforts, government and industry can remove obstacles blocking the effective development of the GII.

Multilateral organizations will play a vital role in this effort. In particular, the International Telecommunication Union (ITU), the Organization for Economic Cooperation and Development (OECD), the International Organization for Standardization (ISO), and the World Intellectual Property Organization (WIPO) are uniquely able to contribute practical solutions to problems affecting the development of the GII.

As the preeminent international organization dealing with telecommunications issues, the United Nations' ITU was the first multilateral forum in which the GII was discussed. With its broad membership of 185 developed and developing countries, the consensus-based ITU serves as a global forum for technical discussions ranging from voluntary standards development and frequency allocation activities to network development. Accomplishments already achieved under ITU auspices in technical telecommunications and development issues suggest that the ITU can play a significant role in the GII development process.

The OECD, an international think tank which undertakes economic research on various aspects of its members' economies and policy concerns, has been constructively addressing telecommunications and information policy issues for several years. Its policy and statistical analyses have contributed to a broader understanding of the economic benefits of liberalization in the information and telecommunications sectors.

Organizations such as the ISO and the WIPO, which deal with specific cross-sectoral issues, can serve as important fora to discuss and advance issues of open access and information policy. For example, any changes made to bilateral or regional intellectual property regimes may ultimately become issues in the WIPO.

In addition, both Intelsat and Inmarsat, the treaty-based satellite communications organizations that have played a significant role in advancing global telecommunications, are now contemplating options for restructuring. Because of these organizations' broad international memberships, they could serve as useful fora for review of commercialization alternatives.

The General Agreement on Tariffs and Trade (GATT) is a multilateral agreement setting out the rules and principles by which countries trade, primarily in the area of goods. The Uruguay Round of GATT negotiations led to the establishment of the World Trade Organization (WTO), which deals with services, investment, and intellectual property—areas that substantively affect telecommunications trade. The General Agreement on Trade in Services (GATS), under the new WTO, includes an Annex on—access to and use of—the telecommunications networks of WTO members, and includes substantive commitments from a number of parties on value-added telecommunications services. More generally, the GATS—access to and use of—telecommunications annex applies to all services for which countries have scheduled market access commitments. Now that it is in effect for the U.S. and most of its major trading partners, the GATS can substantially reinforce the principles of the GII. In addition, there are on-going negotiations, to be concluded by April 1996, to liberalize basic telecommunications services through the Negotiating Group on Basic Telecommunications.

Regional organizations also have important roles in achieving regional consensus on issues pertaining to telecommunications and information markets. Organizations such as the Inter-American Telecommunication Commission (CITEL) of the Organization of American States (OAS), the Asia Pacific Economic Cooperation (APEC), the Southern Africa Transportation and Communications Commission (SATCC) and the European Conference on Postal and Telecommunications Administration (CEPT), among others, frequently serve as fora for the exchange of valuable information and as test sites for implementation of the most expedient and beneficial policies. These bodies also serve as effective vehicles for improving and enhancing network development and technical cooperation among participants on a regional basis.

Finally, plurilateral and bilateral dialogues can be arranged among and between nations to focus on particular issues. In addition to the deliberations in regional and international organizations, these discussions can become building blocks for cooperation as together we seek to construct a truly global GII. For example, the G–7 Ministerial Conference scheduled for February 1995 is one of several such opportunities for focused, high-level discussion of the Global Information Infrastructure.

As important as these international governmental organizations are, perhaps even more important are the numerous formal and informal groups within the private sector. These groups, which range from international trade organizations to professional associations to advocacy groups to industry-led standard-setting bodies, provide communication channels between the people who will actually build and use the GII. Such private sector groups facilitate the international teaming and strategic alliances that will ensure the development of a truly seamless "network of networks," rather than a patchwork of incompatible systems and services.

V. Conclusion

As Vice President Gore noted in Buenos Aires, it is possible to create a global information network that transmits messages and images with the speed of light from the largest city to the smallest village. Through the interconnection of disparate but interoperable networks, these information highways will allow us to communicate as a global community—giving individuals, businesses, and economies greater access to each other and to a wider range of information. Equally important, the GII will offer governments an unprecedented opportunity to equalize global disparity in telecommunications and maximize the economic and social benefits of the Information Age for their citizens.

Harnessing the global potential of information and communications technologies to this end will require collaboration among the industries that will build, operate, provide, and use services and information available over the evolving national networks. It will also require cooperative efforts among countries, working together bilaterally, regionally, and through multilateral organizations, to facilitate the interconnection of their respective networks and the sharing of information among nations.

In our interdependent world, technological and regulatory choices made in one country can affect those made in neighboring countries, creating a multiplier effect for the GII's development. To help guide this development, the Administration proposes five core principles—private investment, competition, open access, a flexible regulatory environment, and universal service. These principles, we believe, along with effective information policies, will provide a foundation upon which the GII can be built.

The overarching goal of the "Agenda for Cooperation" is to foster the cooperation that will be needed to spur the transformation of a thousand discrete networks into a connected, interoperable global information infrastructure. As all nations take steps to develop and upgrade national information infrastructures, we invite you to join with us in ensuring that the benefits of the GII will be available throughout the world.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–4546 Filed 2–23–95; 8:45 am]

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[8] A report of the Conference on Breaking the Barriers to the National Information Infrastructure can be obtained from the Council on Competitiveness in Washington, D.C. The conference was co-sponsored by the Council and the Clinton Administration's Information Infrastructure Task Force.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List tabulating machine paper to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 29, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 38586) of proposed addition to the Procurement List.

Comments were received from a contractor for this type of paper and two trade associations. One of the trade associations objected to the proposal because it is concerned about the impact of taxpayer-sponsored printing operations, largely in the Federal Prison Industries, on an industry which it claims has very small profit margins. The other trade association reiterated its earlier objections to the Committee's 1991 addition of this paper to the Procurement List, which centered on the action's substantial adverse impact on the entire business forms industry. The association stated, without providing specific details, that the industry's experience since that supported its earlier contentions.

Neither trade association provided any data that would support a contention that the Committee's action in adding a portion of the Government requirement for this particular type of paper to the Procurement List would have a severe adverse impact on the entire business forms industry. The Committee believes that what it is adding to the Procurement List is only a small part of the total demand for this paper, as the Government version is identical to what is widely used in the private sector and the private market is considerably larger than the Government market. Moreover, other types of business forms are purchased in both the Government and commercial markets. Consequently, the Committee does not believe that its action with respect to one particular type of paper purchased by the Government will have a severe impact on the entire business forms industry.

The contractor submitted information on several firms in the industry which had suffered from declining Government sales, including itself, and claimed that the 1991 addition of this paper to the Procurement List had caused these impacts, as it indicated Government sales had declined but commercial sales had not. The contractor also attempted to incorporate in its comments by reference all materials submitted by all parties to the 1991 addition of the paper to the Procurement List, the Committee's subsequent reconsideration of its addition decision, and resulting litigation, including all court opinions filed by the trial and appellate courts.

The Committee rejected the attempted incorporation by reference as unreasonably burdensome on the Committee's resources, and asked the contractor to provide the documents which it considered relevant to its present arguments. While it provided an extensive collection of documents in response, the contractor indicated that the Committee should not consider the contractor's contentions to be limited to what appeared in those specific documents. The contractor also indicated that all the materials supported its contention that the Committee is required to make four determinations, which the contractor enumerated, before it can decide in accordance with its regulations that a commodity or service may be added to the Procurement List.

Accordingly, the Committee believes that its duty to explain its conclusion that the paper may be properly added to the Procurement List will be met by addressing these four determination requirements and the contractor's industry impact contentions.

These determinations are that: (1) The nonprofit agencies have the capacity to produce the paper; (2) the level of blind employment claimed by the nonprofit agencies will be used in producing the paper; (3) the nonprofit agencies can produce the paper at the fair market price established by the Committee; and (4) there will not be a severe adverse impact on current suppliers. These determinations are the contractor's summation of the Committee's regulatory criteria for adding a commodity or service to the Procurement List.

The Committee's determinations that the nonprofit agencies have the capacity

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to produce the paper and will use the amount of blind direct labor claimed by the participating nonprofit agencies are supported by the Committee's industrial engineer's assessments of the data submitted and inspection of a producing facility. In addition, the nonprofit agencies successfully produced the paper for some time before the previous addition to the Procurement List was voided by the appellate court. As a result of this performance, the Federal agency which buys paper for the Government waived its opportunity to conduct its own inspection of the nonprofit agencies to determine their capability.

The Committee does not agree with the contractor that its regulations require it to make a determination that the nonprofit agencies can produce the paper at the fair market price. The contractor's contention is based on its reading of a Committee regulation in effect in 1991. That interpretation of the regulatory language was not consistent with the Committee's statute, which separates the establishment of a fair market price from the suitability determination which is subject to the rulemaking requirements of the Administrative Procedure Act. To remove the appearance of inconsistency, the Committee in 1994 amended its regulations to remove the fair market price determination from the factors the Committee must consider to decide that an item is suitable for addition to the Procurement List. The Committee does require the nonprofit agencies to agree to provide the item in question at the fair market price when it adds a commodity or service to the Procurement List, and all five nonprofit agencies which will produce this paper have provided their agreement to provide it at the fair market price established by the Committee.

The commenting contractor is the current supplier of this paper to the Government. The Committee used the sales figure provided by the contractor for its fiscal year 1994, adjusted to account for the fact that the figure includes no Government sales of the paper, as the basis of its impact determination for the contractor. The Committee has also reduced the portion of the Government requirement for the paper being added to the Procurement List by approximately 25 percent from the original proposal, by removing the requirement for one of the purchasing agency's four depots from the scope of the addition. This reduced addition represents a percentage of the contractor's adjusted sales which is well below the level the Committee normally considers to constitute severe adverse impact. Because the contractor will continue to have an opportunity to supply the paper to the Government, and because the contractor also supplies other paper items to the Government regularly, the Committee believes that the other economic impacts on itself cited in the contractor's comments do not add sufficiently to the impact to raise it to a severe level. The contractor appears to concur, as it recently informed the Committee that it would not challenge the Committee's action if the Committee added to the Procurement List only the supply requirements for the three depots covered by this rulemaking.

While the commenting contractor submitted more information to support a claim of industry impact than did the trade associations, it did not establish conclusively that this impact was due to the Committee's action in 1991, rather than to Government downsizing or other factors. Consequently, the Committee believes that the conclusion it reached in rejecting the association's claims of industry impact would apply as well to the contractor's claim, for the reasons already stated.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe adverse impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48C) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Paper, Tabulating Machine
7530–00–800–0996
(Requirements for the Palmetto, GA; Fort Worth, TX; and Stockton, CA depots only)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 95–4702 Filed 2–23–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 12, October 21, November 14 and December 30, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 41434, 53141, 56467, and 67703) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cassette, Mailing Container
8115–00–NIB–0001
(Remaining Government requirement for the Library of Congress, Washington, DC)

Coat and Trousers, Chemical Protective
8415–00–NSH–0109 thru –0150 (Sizes S/SX, S/S, M/S, M/R, M/L, L/R and L/L)
(Requirements for the U.S. Marine Corps, Quantico, Virginia)

Trunk Locker, Barracks
8460–00–243–3234
(Additional 15% of the Government's requirement)

Services

Administrative Services, Federal Highway Administration, Central Federal Lands Highway Division, 555 Zang Street, Denver, Colorado

Grounds Maintenance, Basewide (except Military Family Housing), Kelly Air Force Base, Texas

Janitorial/Custodial, U.S. Army Reserve Center, Bakersfield, California

Janitorial/Custodial, Social Security Administration Building, Los Angeles, California

Janitorial/Custodial, Federal Office Building, Ontario Street & Division, Sandpoint, Idaho

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 95–4748 Filed 2–23–95; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 27, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Cassette, Mailing Container
8115–00–NIB–0003
(Requirements for the Library of Congress, Washington, DC)
NPA: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi

Jersey, Flight Deck, Crewman's
8415–00–914–0312
8415–00–914–0313
8415–00–914–0314
8415–00–914–0315
8415–00–914–0316
8415–00–914–0317
8415–00–914–0318
8415–00–914–0319
8415–00–914–0321
8415–00–914–0322
8415–00–914–0323
8415–00–914–0324
8415–00–914–0325
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8415–00–914–0333
8415–00–914–0334
8415–00–914–0335
8415–00–914–0336
8415–00–914–0337
8415–00–914–0338
8415–00–914–0339
8415–00–914–0340
8415–00–914–4143
8415–00–914–9481
NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee

Services

Commissary Shelf Stocking, Custodial and Warehousing, U.S. Air Force Academy, Colorado
NPA: Goodwill Industrial Services Corporation, Colorado Springs, Colorado

Janitorial/Custodial, Department of the Army, Jimmy Doolittle Building, Columbia Metro Airport, West Columbia, South Carolina,
NPA: Babcock Center, Inc., Columbia, South Carolina

Janitorial/Custodial, Jack Brooks Federal Building, U.S. Post Office and Courthouse, Willow and Broadway Streets, Beaumont, Texas
NPA: Goodwill Industries of Southeast Texas, Inc., Beaumont, Texas

E.R. Alley, Jr.,
Deputy Executive Director.
[FR Doc. 95–4749 Filed 2–23–95; 8:45 am]
BILLING CODE 6820–33–D

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Review

ACTION: Notice.

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The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Repatriation Automated Accounting and Reporting System, DD Form 2585, 0704–0334.

Type of Request: Extension.
Number of Respondents: 5,000.
Responses per Respondent: One.
Annual Responses: 5,000.
Average Burden Per Response: 20 minutes.
Annual Burden Hours: 1,667.

Needs and Uses: This information collection provides evacuee information necessary to account for any military or civilian, regardless of nationality, evacuated from any country to the United States. The information obtained from the DD Form 2585, which is associated with this collection, is entered into an automated system and a series of reports are generated and made available to the Department of Defense, Federal and State agencies, as required.

Affected Public: Individuals or households, State or local governments, Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation; Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FR Doc. 95–4492 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Number: Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States, DD Form 2168, 0704–0100.

Type of Request: Reinstatement.
Number of Respondents: 4,000.
Responses per Respondent: 1.
Annual Responses: 4,000.
Average Burden per Response: .5 hours.
Annual Burden Hours: 2,000.

Needs and Uses: Pub. L. 95–202, Section 401, directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active duty. This information collection provides the necessary information to assist each of the Military Departments in determining if an applicant was a member of a group which has performed active military service. Those individuals who have been recognized as a member of an approved group are eligible for benefits provided for by laws administered by the Veteran's Administration.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4493 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Panel Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: February 28, 1995 and March 1, 1995 8:30 a.m. to 4 p.m.

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4489 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Readiness, Phase II

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Readiness, Phase II will meet in closed session on April 18, 1995 at the Pentagon, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4488 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program, Scientific Advisory Board; Meeting

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: March 7–8, 1995 from 0830 to approximately 1630.

Place: To be determined—in the Washington, DC area.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds will be reviewed. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board. For further information Contact: Ms. Amy Levine, 901 North Stewart Street, Suite 303, Arlington, VA, 22203, (703) 696–2124.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4491 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on March 7, 1995; March 14, 1995; March 21, 1995; and March 28, 1995, at 10 a.m. in Room 800, Hoffman Building #1, Alexandria, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: February 17, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4490 Filed 2–23–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 27, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available for Patrick J. Sherrill at the address specified above.

Dated: February 17, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: NEW.
Title: William D. Ford Federal Direct Loan Program Electronic Debit Account Brochure and Authorization Form.
Frequency: Annually.
Affected Public. Individuals or households.
Reporting Burden:
Responses: 11,220
Burden Hours: 374
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be the means by which a Direct Loan borrower authorizes establishment of an Electronic Debit Account.

Office of Bilingual Education and Minority Languages and Affairs

Type of Review: NEW.
Title: Application for New Grants under Bilingual Education and Foreign Language Programs.
Frequency: Annually.
Affected Public: Not-for-profit, institutions; State Local or Tribal Governments.
Reporting Burden:
Responses: 1,500
Burden hours: 180,000.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State and local educational agencies, institutions of higher education, and community-based organizations to apply for funding under the Bilingual Education and Foreign Language Programs. The Department will use the information to make grant awards.

[FR Doc. 95–4487 Filed 2–23–95; 8:45 am]

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Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 27, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 17, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: NEW.
Title: Education Flexibility Partnership Demonstration Program.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 58.
Burden Hours: 4,880
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Secretary invites application for the Ed-Flex program. The program is an educational flexibility program under which the Secretary may grant up to six SEAs the authority to waive certain Federal statutory or regulatory requirements for the SEA, or for any LEA or school within the State.

[FR Doc. 95–4486 Filed 2–23–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 27, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Revision.
Title: Application for Emergency Immigrant Education Program.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Reporting Burden:
Responses: 57.
Burden Hours: 9,177.
Recordkeeping Burden
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Emergency Immigrant Education Program. The Department will use the information to make grant awards.

[FR Doc. 95–4561 Filed 2–23–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 24, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: February 21, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Continuation Application for Grants Under the Civic Education Program.
Frequency: One time.
Affected Public: Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.
Reporting Burden:
Responses: 125
Burden Hours: 5,000.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.
Abstract: State and local educational agencies and other public and private nonprofit agencies, organizations and institutions are required to submit an annual application to receive funds under the Civic Education Program. Applications are analyzed to insure the funds are distributed fairly and projects are cost effective.
Additional Information: Clearance for this information collection is requested for February 24, 1995. An expedited review is requested in order to implement the program before the start of the new year.

Office of Elementary and Secondary Education

Type of Review: Expedited.
Title: Application for Grants—Public Charter Schools Program.
Frequency: annually.
Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Reporting Burden:
Responses: 1.
Burden Hours: 2,000.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State educational agencies, authorized public chartering agencies, and charter schools must submit an application to receive funds. Applications are analyzed to ensure that funds are distributed fairly and projects are cost effective.
Additional Information: Clearance for this information collection is requested for February 24, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–4562 Filed 2–23–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Seattle Regional Support Office; Updating State and Local Government Building Energy Codes for Developmental States

AGENCY: Department of Energy.

ACTION: Notice of competitive financial assistance.

SUMMARY: The Department of Energy Seattle Regional Support Office (SRSO), on behalf of the Office of Building Technologies, announces its intention to issue a competitive solicitation and make financial assistance awards to States and territories that are developing, implementing, and/or enforcing building energy code compliance programs. This action is subject to the DOE Financial Assistance Rules (10 CFR part 600).

ADDRESSES: To obtain a copy of the solicitation once it is issued on or after January 30, 1995, write to the Department of Energy's Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104, Attn: Ms. Carol A. Curtis, Grants//Contracts Specialist. Only written requests for this solicitation will be honored. For convenience, requests for the solicitation may be faxed to Ms. Curtis at (206) 553–2200. Please reference solicitation DE–PS51–95R020543.

SUPPLEMENTARY INFORMATION: The DOE Office of Building Technologies, in conjunction with the DOE Office of Technical and Financial Assistance and through the DOE Regional Support Offices, will award and provide funding for the grants to the states and serve as administrators for the Federal Government. The SRSO will be the lead Regional Support Office.

This solicitation is intended to support actions to develop and improve residential and commercial building energy codes. These actions will additionally enhance the energy efficiency of residential and commercial building stock in the United States as well as provide environmental benefits. Actions implemented under this solicitation address Action No. 10 of the Climate Change Action Plan (CCAP) which is designed to reduce greenhouse gas emissions in the year 2000. Action No. 10 builds on Section 101 of the Energy Policy Act of 1992 (EPAct) to further address use and enforcement of building energy codes. Under Section 101 of EPAct, States are required to upgrade their commercial building codes to meet or exceed ASHRAE/IES Standard 90.1—1989 and to consider whether to update their residential codes to meet or exceed the 1992 Model

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Energy Code (MEC). The Department of Energy is required to provide technical assistance and incentive funding to States to respond to the legislative requirements.

This solicitation specifically targets States that are deemed "developmental" in that they have conceived a code compliance program but little or no action has been taken, because financial assistance is needed to supplement existing staff or hire a FTE to begin action on the program. Approximately twenty awards, totaling roughly $500,000, to be specifically utilized for funding full-time equivalents (FTE), will be granted to states whose programs are in the "developmental" stage. For DOE funds to be awarded, it is required that a state provide a minimum of 25% cost-sharing match for the total project cost. A state that is deemed developmental shall not be eligible for progressive program funding under a separate solicitation. Exemplary state programs will not be considered for funding through this solicitation, and State officials who consider their program to be exemplary should call 1–800–270–CODE for additional information on how to obtain funding for their program.

All 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States are eligible. More than one State or State organization can be involved on a proposal, as long as the lead State agency or organization and lead grant management responsibilities are clearly defined. Support may come from one or more code-related organizations or trade associations in the affected local area, and shall be in the form of cost-sharing or other significant participation, which demonstrates a substantial interest in the proposed project.

This solicitation will be issued on or about January 30, 1995, and will contain detailed information on funding, cost-sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due in March 1995, and award announcements will be made in May 1995. All responsible sources are encouraged to submit an application.

Issued in Seattle, Washington: February 14, 1995.

Julie A. Riel,

Contracting Officer.

[FR Doc. 95–4610 Filed 2–23–95; 8:45 am]

BILLING CODE 6450–01–P

Seattle Regional Support Office; Updating State and Local Government Building Energy Codes for Progressive States

AGENCY: Department of Energy.

ACTION: Notice of competitive financial assistance.

SUMMARY: The Department of Energy Seattle Regional Support Office (SRSO), on behalf of the Office of Building Technologies, announces its intention to issue a competitive solicitation and make financial assistance awards to States and territories that are developing, implementing, and/or enforcing building energy code compliance programs. This action is subject to the DOE Financial Assistance Rules (10 CFR part 600).

ADDRESSES: To obtain a copy of the solicitation once it is issued on or after January 30, 1995, write to the Department of Energy's Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104, Attn: Ms. Carol A. Curtis, Grants/Contracts Specialist. Only written requests for this solicitation will be honored. For convenience, requests for the solicitation may be faxed to Ms. Curtis at (206) 553–2200. Please reference solicitation DE–PS51–95R020534.

SUPPLEMENTARY INFORMATION: The DOE Office of Building Technologies, in conjunction with the DOE Office of Technical and Financial Assistance and through the DOE Regional Support Offices, will award and provide funding for the grants to the states and serve as administrators for the Federal Government. The SRSO will be the lead Regional Support Office.

This solicitation is intended to support actions to upgrade, implement, enforce, and update residential and commercial building energy codes. These actions will additionally enhance the energy efficiency of residential and commercial building stock in the United States as well as provide environmental benefits. Actions implemented under this solicitation address Action No. 10 of the Climate Change Action Plan (CCAP) which is designed to reduce greenhouse gas emissions in the year 2000. Action No. 10 builds on Section 101 of the Energy Policy Act of 1992 (EPAct) to further address use and enforcement of building energy codes. Under Section 101 of EPAct, States are required to upgrade their commercial building codes to meet or exceed ASHRAE/IES Standard 90.1–1989 and to consider whether to update their residential codes to meet or exceed the 1992 Model Energy Code (MEC). The Department of Energy is required to provide technical assistance and incentive funding to States to respond to the legislative requirements.

This solicitation specifically targets States that are deemed "progressive" in that they have begun a code compliance program but need additional support to expand or enhance this program in order to equal or exceed both the 1992 MEC and ASHRAE/IES standard 90.1–1989. The DOE anticipates awarding between 10–20 incentive grants totaling approximately $4.6 million to states whose programs are considered to be in the "progressive" stage. For DOE funds to be awarded, it is required that a state provide a minimum of 25% cost-sharing match for the total project cost. A state that is deemed progressive shall not be eligible for developmental program funding under a separate solicitation. Exemplary state programs will not be considered for funding through this solicitation, and State officials who consider their program to be exemplary should call 1–800–270–CODE for additional information on how to obtain funding for their program.

All 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States are eligible. More than one State or State organization can be involved on a proposal, as long as the lead State agency or organization and lead grant management responsibilities are clearly defined. Support can come from one or more code-related organizations or trade associations in the affected local area, and shall be in the form of cost-sharing or other significant participation, which demonstrates a substantial interest in the proposed project.

This solicitation will be issued on or about January 30, 1995, and will contain detailed information on funding, cost-sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due in March 1995, and awards announcements are anticipated to be made in May 1995. All responsible sources are encouraged to submit an application.

Issued in Seattle, Washington on February 14, 1995.

Julie A. Riel,

Contracting Officer.

[FR Doc. 95–4608 Filed 2–23–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency Standards: Evaluation Criteria for the Voluntary Program to Provide Energy Efficiency Information for Commercial Office Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Notice of public meeting.

SUMMARY: The Energy Policy Act of 1992 requires the Department of Energy (DOE or Department) to support a voluntary national testing and information program for those types of commercial office equipment that are widely used and show potential for significant energy savings. Not later than October 24, 1995, DOE must determine whether the voluntary program, thus created by an appropriate organization of interested persons, is consistent with the objectives set forth in the legislation. In order to assist the development of the voluntary program, the Department has developed a set of evaluation criteria that will be used as the basis for assessing the effectiveness of the commercial office equipment testing and information program. The Department will hold a public meeting on Wednesday, March 8, 1995, to discuss the proposed criteria with persons interested in the development of the voluntary program. All persons are hereby given notice of the opportunity to submit written comments, and to attend the public meeting.

DATES: Written comments in quadruplicate must be received by March 31, 1995. The public meeting will be held on Wednesday, March 8, 1995.

ADDRESSES: Written comments should be labeled "Voluntary Program to Promote Energy Efficiency in Commercial Office Equipment" and submitted to Ms. Barbara Twigg, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–8714; FAX: (202) 586–4617.

The meeting will begin at 10:00 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room GH–027, 1000 Independence Avenue SW., Washington, DC.

Copies of the draft evaluation criteria may be requested from Barbara Twigg at the above address. Copies are available in the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC, (202) 586–6020 between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8714

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, created the Energy Conservation Program for Consumer Products other than Automobiles. The most recent amendment, the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, 106 stat. 2776, identified several new categories of products and equipment beyond the existing residential appliances for inclusion in various required and voluntary testing and information programs to promote energy efficiency. Voluntary programs were specified for commercial office equipment, window rating and labeling, and luminaires.

As described in Section 125 of EPACT, the Secretary of Energy, after consulting with industry associations and other interested organizations, is to provide technical and financial assistance to support a voluntary national testing and information program for those types of commercial office equipment that are widely used, and for which there is a potential for significant energy savings as a result of such programs. Such program will provide information that when conveyed to consumers, will enable purchasers of the equipment to make more informed decisions about the energy efficiency and costs of alternative products.

The voluntary program should determine the types of commercial office equipment to be covered, include specifications for testing procedures, and include information which may be disseminated through catalogs, trade publications, labels, or other mechanisms that will allow consumers to assess the energy consumption and potential cost savings of alternative products. Such program shall be developed by an appropriate organization (composed of interested persons), according to commonly accepted procedures for the development of national testing procedures and labeling programs.

Not later than three years after the date of enactment of EPACT (October 24, 1995), the Secretary shall make a determination as to whether the voluntary program is positioned to achieve the objectives established for the testing and rating of commercial office equipment. If the Secretary determines that the voluntary program is not consistent with the objectives of the legislation, the Secretary shall, after consultation with the National Institute of Standards and Technology, develop test procedures for those types of commercial equipment designated as part of the program. One year later, the Federal Trade Commission would prescribe labeling rules.

2. Background

Since the passage of EPACT, the Department of Energy has monitored the efforts of the commercial office equipment industry to develop a testing and information program through the Council on Office Products Energy Efficiency (COPEE), a working group composed of the Information Technology Industry Council, formerly the Computer and Business Equipment Manufacturers Association, office equipment manufacturers, environmental organizations, designers, national laboratories, and other office equipment professionals. On May 26, 1994, DOE held a public meeting, at which interested persons were invited to offer suggestions concerning methods of evaluation, and to obtain updates on the progress of COPEE's voluntary program. Comments were invited through June 15, 1994. Additional suggestions and information were supplied by the COPEE on July 15, 1994.

3. Discussion

The purpose of the meeting is twofold: (1) To discuss the proposed evaluation criteria; and (2) to provide an opportunity to inform DOE of the progress of the voluntary program, and establish a timetable for the evaluation of the program. After the meeting and comment period, the Department will consider all comments and publish the evaluation criteria in the **Federal Register**.

4. Public Meeting Procedure

The meeting will be informal. Participants are requested to review a

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copy of the draft evaluation criteria before the meeting.

Issued in Washington, DC, February 21, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–4607 Filed 2–23–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–26–000, et al.]

Richmond Power Enterprises, L.P., et al.; Electric Rate and Corporate Regulation Filings

February 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Richmond Power Enterprises, L.P.

[Docket Nos. EL95–26–000 and QF90–104–002]

Take notice that on February 8, 1995, Richmond Power Enterprises, L.P. tendered for filing an application for compliance determination and for waiver of certain Commission regulations.

Comment date: March 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. National Electric Associates Limited Partnership

[Docket No. ER90–168–019]

Take notice that on January 30, 1995, National Electric Associates Limited Partnership (NEA), filed certain information as required by ordering paragraph (L) of the Commission's order in Docket No. ER90–168–000, 50 FERC ¶ 61,378. Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

3. Florida Power & Light Company

[Docket No. ER93–327–002]

Take notice that on February 1, 1995, Florida Power & Light Company tendered for filing a compliance report for refund made pursuant to the Commission's December 27, 1994 Order.

4. Enron Power Marketing, Inc.

[Docket No. ER94–24–006]

Take notice that on February 1, 1995, Enron Power Marketing, Inc. tendered for filing a summary of activity of Enron's quarter ending December 31, 1994.

5. AES Power, Inc.

[Docket No. ER94–890–004]

Take notice that on February 1, 1995, AES Power, Inc. (AES) filed information as required by the Commission's April 8, 1994 letter order in Docket No. ER94–890–000. Copies of AES's filing are on file with the Commission and are available for public inspection.

6. Midcon Power Services Corporation

[Docket No. ER94–1329–002]

Take notice that on January 30, 1995, Midcon Power Services Corporation (Midcon) filed information as required by the Commission's August 11, 1994 order in Docket No. ER94–1329–000. Copies of Midcon's filing are on file with the Commission and are available for public inspection.

7. Destec Power Services, Inc.

[Docket No. ER94–1612–001]

Take notice that on January 31, 1995, Destec Power Services, Inc. (Destec) filed information as required by the Commission's January 20, 1995 letter order in Docket No. ER94–1612–000. Copies of Destec's filing are on file with the Commission and are available for public inspection.

8. Associated Power Services, Inc.

[Docket No. ER95–7–001]

Take notice that on January 30, 1995, Associated Power Services, Inc. (Associated) filed information as required by the Commission's December 16, 1994 letter-order in Docket No. ER95–7–000. Copies of Associated's filing are on file with the Commission and are available for public inspection.

9. Entergy Power, Inc.

[Docket Nos. ER95–172–000, ER95–314–000]

Take notice that on February 14, 1995, Entergy Power, Inc. tendered for filing Amendment No. 1 to an Interchange Agreement filed in Docket No. ER95–172–000, and Amendment No. 1 to a Monthly Purchase and Sale Agreement filed in Docket No. ER95–314–000.

EPI requests an effective date for the amendments that is the same as those for the Interchange Agreement and Monthly Purchase and Sale Agreement previously filed, in accordance with Section 35.2 of the Commission's regulations.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc., Aquila Power Corporation

[Docket No. ER95–203–000, Docket No. ER95–216–000 (Not Consolidated)]

Take notice that on February 10, 1995, UtiliCorp United Inc. ("UtiliCorp") tendered for filing firm and interruptible tariffs for its West Virginia Power division as required by the January 13, 1995 order in these proceedings. UtiliCorp states that this filing is an alternative and without prejudice to its January 18, 1995 informational compliance filing in this proceeding.

A copy of the filing was served on each party to these proceedings and the Public Service Commission of the State of West Virginia.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. KCS Energy Marketing, Inc.

[Docket No. ER95–209–000]

Take notice that on February 10, 1995, KCS Energy Marketing, Inc. tendered for filing a letter requesting that the Application for Blanket Authorization, Certain Waivers and Order Approving Rate Schedule be withdrawn.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Transco Power Trading Company

[Docket No. ER95–305–000]

Take notice that on February 9, 1995, Transco Power Trading Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Proven Alternatives, Inc.

[Docket No. ER95–473–000]

Take notice that on February 10, 1995, Proven Alternatives, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Power & Light

[Docket No. ER95–528–000]

Take notice that on February 1, 1995, Puget Sound Power & Light Company tendered for filing an executed Service Agreement-Schedule DV between Puget and Black Creek Hydro, Inc. as a Supplement to Original Sheet Nos. 74–89 of Puget Rate Schedule FERC Electric Tariff, Original Volume No. 4.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Southwestern Public Service Company and Texas-New Mexico Power Company

[Docket No. ER95–538–000]

Take notice that on February 1, 1995, Southwestern Public Service Company (Southwestern) filed, pursuant to section 205 of the Federal Power Act and Part 33 of the Commission's regulations, a notice of termination of the Contract for Wholesale Electric Power Service, dated June 11, 1984, between Southwestern and Texas-New Mexico Power Company (TNP). Southwestern states that, as a result of Southwestern's acquisition of facilities owned by TNP in the northern Texas Panhandle, there will no longer be any need for the wholesale contract between Southwestern and TNP.

Southwestern requests an effective date for the termination of the wholesale contract which coincides with the date of its closing of the acquisition of facilities from TNP.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Ohio Edison Company

[Docket No. ER95–549–000]

Take notice that on February 3, 1995, Ohio Edison Company, tendered for filing an amendment to the Power Purchase and Sale Agreement with CNG Power Services Corp. The purpose of this filing is to amend the energy rate contained in the foregoing Agreement to reflect the recovery of energy-related emission allowance costs incurred by Ohio Edison Company to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Edison Company

[Docket No. ER95–550–000]

Take notice that on February 3, 1995, Ohio Edison Company, tendered for filing a Power Purchase and Sale Agreement with CNG Power Services Corp. dated December 31, 1994. This initial rate schedule will enable the parties to purchase or sell capacity and energy in accordance with the terms and conditions set forth herein.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. The Washington Water Power Company

[Docket No. ER95–551–000]

Take notice that on February 3, 1995, The Washington Water Power Company, tendered for filing a request to cancel its Firm Wholesale Service Rate Schedule 61. The cancellation of Schedule 61 is being requested since no customers are served under Schedule 61 and the tariff will not be offered to new customers. The last two customers formerly served under Schedule 61 ceased being served under the schedule in 1994.

No other parties have been served with a copy of the filing since there are no customers served under Schedule 61.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER95–552–000]

Take notice that on February 3, 1995, Commonwealth Edison Company (ComEd), submitted a Service Agreement, dated January 11, 1995, establishing Carolina Power and Light Company (CP&L) as a customer under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of January 11, 1995, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon CP&L and the Illinois Commerce Commission.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

][Docket No. ER95–553–000]

Take notice that on February 6, 1995, PECO Energy Company (PECO), tendered for filing an Agreement between PECO and Consolidated Edison Company of New York, Inc. (Con Edison) dated January 31, 1995.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to Con Edison. The Agreement supersedes an agreement between PECO and Con Edison dated April 13, 1993 which is on file with the Commission as PECO's Rate Schedule FERC No. 66. In order to optimize the economic advantage to both PECO and Con Edison, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on February 8, 1995.

PECO states that a copy of this filing has been sent to Con Edison and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER95–554–000]

Take notice that on February 6, 1995, New England Power Company (NEP), tendered for filing a Service Agreement with Montaup Electric Company under NEP's FERC Electric Tariff, Original Volume No. 6 and a Notice of Termination for service to EUA Services Corp. under the same tariff.

Comment date: March 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4501 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2444–002–WI]

Northern States Power Co., Wisconsin Notice of Availability of Draft Environmental Assessment

February 17, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent minor license for the White River Project, located in Ashland County, Wisconsin, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project,

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with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch,, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix Project No. 2444 to all comments. For further information, please contact Sabina Joe at (202) 219–1648.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4518 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–96–011 and RP94–213–008 (consolidated)]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1995.

Take notice that on February 15, 1995, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Tariff Sheet and Proposed Effective Date

4th Substitute 1st Revised Sheet No. 31—July 1, 1994
3rd Substitute 1st Revised Sheet No. 201—July 1, 1994
2nd Substitute 2nd Revised Sheet No. 31—October 1, 1994
2nd Substitute 3rd Revised Sheet No. 31—November 1, 1994

CNG states that these tariff sheets are being filed in compliance with the Commission's January 31, 1995, letter order in the captioned proceedings.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All protests should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4502 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–206–000]

Columbia Gas Transmission Corporation; Notice of Application

February 17, 1995.

Take notice that Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed on February 15, 1995, an abbreviated application pursuant to Section 7 of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain LNG vaporization facilities, as more fully described in the application.

Columbia requests NGA Section 7(c) authorization to provide a total of 35,000 Dth/d of increased liquefaction demand to its LNG customers, the City of Richmond (10,000 Dth/d increase), Commonwealth Gas Services, Inc. (9,585 Dth/d increase), and to Virginia Natural Gas, Inc. (15,415 Dth/d increase), and to construct and operate a new vaporization unit at its Chesapeake, Virginia LNG facility. The estimated cost of the proposed construction is $2,388,000 to be paid by the LNG customers.

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and section 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4503 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP94–2–002]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 17, 1995

Take notice that on February 14, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing a refund report for the refund made by Columbia on November 16, 1994, pursuant to orders issued in Docket No. GP94–2. As a result of the Commission's June 23, 1994 order in that docket, Columbia was required to make an additional refund for the difference between the accrued restricted investment arrangement (RIA) interest that has been refunded and interest recalculated using the Commission-prescribed interest rates from the time the RIA refunds were received through March 2, 1993, the date the RIA was established.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filings are on file with the Commission and are available to public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4504 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–138–004]

Florida Gas Transmission Company; Notice of Revised Pro Forma Tariff Sheets

February 17, 1995.

Take notice that on February 10, 1995, Florida Gas Transmission Company (FGT) tendered for filing the following revised pro forma tariff sheets in response to the Commission's Order dated January 12, 1995 in the captioned dockets:

Pro Forma Sheet No. 121
Pro Forma Sheet No. 121A
Pro Forma Sheet No. 144
Pro Forma Sheet No. 145
Pro Forma Sheet No. 146

On September 1, 1994, FGT, along with numerous of its customers, filed as part of a Stipulation and Agreement of Settlement ("September 1 Settlement") in Docket No. RS92–16–009, pro forma tariff sheets designed to implement the terms and conditions of a new capacity curtailment plan. On January 12, 1995, the Commission issued an Order ("January 12 Order") which, among other things, accepted and clarified the September 1, Settlement and required FGT to make certain changes relative to curtailment and curtailment-related scheduling procedures. (The January 12 Order also required certain tariff modifications regarding the release of segments of capacity which will be filed under separate cover letter.) The Commission also determined that certain scheduling issues that arose in Docket No. RP91–138–000 had been resolved by the intervening actions taken by the Commission in FGT's Order No. 636 restructuring proceeding, and directed FGT to clarify its scheduling procedures to provide certain protections for Exempt Uses (as defined in the September 1 Settlement) consistent with those provided in the new curtailment plan.

Specifically, FGT was required to: (i) Include in its scheduling provisions a limited exemption from pro rata scheduling for Exempt Uses, so as to correspond with the protections from pro rata curtailment provided in the new curtailment plan for such uses; (ii) provide that service serving Priority 2 Uses will be curtailed before any curtailment of service serving Priority 1 Uses; (iii) remove references to FERC's participation on the Data Verification Committee; and (iv) remove the proposal that a maximum rate of 125% of FGT's highest authorized rate for firm transportation service would be available for relinquishments made during periods of diminished capacity expected to extend for a period exceeding five (5) days. The Commission also required that the new curtailment plan, as modified under the January 12 Order, be implemented by November 1, 1995. The Commission directed FGT to file revised pro forma tariff sheets conforming to the requirements of its January 12 Order within thirty (30) days. In the instant filing, FGT states that it is complying with the January 12 Order. (FGT states that it will file appropriately numbered tariff sheets prior to the November 1, 1995 implementation.)

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4505 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–157–000]

K N Interstate Gas Transmission Co.; Notice of Filing of Report on First Year Storage Operations Under Order No. 636

February 17, 1995.

Take notice that on February 10, 1995, K N Interstate Gas Transmission Co. (KNI) tendered for filing its report on first year of operation under restructured services pursuant to Order No. 636.

KNI states that the purpose of this filing is to comply with the Commission's Order on Compliance and Restructuring Rule, issued August 2, 1993 in Docket No. RS92–19–000.[1] The August 2 order directed KNI to file a report within 90 days after the first year of operations under its restructured services indicating the use of the retained pipeline transportation capacity. KNI states that the report is being filed in compliance with the referenced order.

KNI states that copies of the filing are being served upon all parties in Docket No. RS92–19–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4506 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[1] 64 FERC ¶61,154 (1993).

[Docket No. RP95–80–001]

National Fuel Gas Supply Corp.; Notice of Compliance Filing

February 17, 1995.

Take notice that on February 14, 1995, National Fuel Gas Supply Corporation (National) tendered worksheets in the above-captioned proceeding in compliance with the Letter Order issued by the Commission on December 30, 1994.

National states that these worksheets clarify the interest calculations related to the flow through of refunds in National's Account Nos. 191 and 186 received from Tennessee Gas Pipeline Company and Transcontinental Gas Pipe Line Company. National further states that the National Fuel Customer Group has resolved its concerns.

Any person desiring to protest said compliance filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4507 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–162–000]

Panhandle Eastern Pipe Line Company; Notice of Filing

February 17, 1995.

Take notice that on February 14, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing, pursuant to section 4 of the Natural Gas Act, a notice of termination of gathering service upon the transfer of Panhandle's gathering facilities to Panhandle Gathering Company. Panhandle Gathering Company will contribute the facilities to Western Gathering Company (Westana), a joint venture between Panhandle Gathering Company and WGR—Oklahoma, Inc. Westana will continue to offer gathering service to all existing shippers. Panhandle states it was ordered to make this filing in compliance with an order on rehearing issued February 1, 1995, in an abandonment proceeding in Docket Nos. CP93–505–001 and CP93–506–001. Panhandle also states that it has filed, contemporaneously with this filing, a default contract in the abandonment proceeding.

Panhandle has proposed an effective date of April 1, 1995 for the termination of gathering services on its gathering facilities in north central Oklahoma.

Panhandle states that in accordance with the Commission's regulations, a copy of the filing has been mailed to all of Panhandle's customers and interested state commissions as well as to all parties to these proceedings in Docket Nos. CP93–505–000 and CP93–506–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4508 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–000, et al. (Phase II)]

Tennessee Gas Pipeline Co.; Notice of Informal Settlement Conference

February 17, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, February 24, 1995, promptly at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of discussing the remaining PCB issues in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Donald Williams (202) 208–0743 or Dennis H. Melvin (202) 208–0042.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4509 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–425–004]

Tennessee Gas Pipeline Co.; Notice of Filing

February 17, 1995.

Take notice that on February 6, 1995, Tennessee Gas Pipeline Company (Tennessee) submits Substitute Tenth Revised Sheet No. 30 of its FERC Gas Tariff, Fifth Revised Volume No. 1 to be effective January 1, 1995. On November 30, 1994, Tennessee filed Tenth Revised Sheet No. 30 to reflect a revision to its Transportation Cost Rate Adjustment. Subsequently, Tennessee made a compliance filing on December 15, 1994, in Docket No. RP94–425, restating its GSR surcharge effective November 1, 1994. In that filing Tennessee should have included an additional sheet No. 30 to be effective January 1, 1995 which would supersede the November 30th sheet and effectuate the reduced GSR surcharge. Tennessee is hereby effectuating the change to the reduced GSR surcharge.

Tennessee states that copies of the filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to affected parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed before February 27 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4511 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–148–004, RP94–276–000, RP95–62–000, RP95–63–000, RP95–64–000, RP95–88–000, RP95–90–000, and RP95–112–000]

Tennessee Gas Pipeline Co.; Notice of Conference Schedule and Location

February 17, 1995.

On February 3, 1995, notification was issued of a technical conference concerning the above dockets to be held the week of March 6, 1995. Docket No. RP95–90–000 has been added and issues concerning Tennessee's IT refund report will also be addressed. The first three days of the conference (March 6–8) will tentatively be at the Georgetown University Conference Center, 3800 Reservoir Road, NW. The fourth and possibly fifth day of the conference will be held in Hearing Room 1 at 810 North Capitol Street.

March 6

9:00 am–12:00 pm—Presentation by Tennessee
12:00 pm–1:00 pm—Lunch
1:00 pm–3:00 pm—EBB Demonstrations by Tennessee and Indicated Shippers, and Questions
3:00 pm–5:00 pm—Discussion of Operational Issues

March 7

9:00 am–12:00 pm—Discussion of Operational Issues Continued
12:00 pm–1:00 pm—Lunch
1:00 pm–5:00 pm—Any Wrap Up of Operational Issues, Begin Discussion of Proposed Tariff Changes

March 8–10

9:00 am–5:00 pm—Continued Discussion of Proposed Tariff Changes, Discussion of Account No. 858 Issues, and Discussion of Remaining Issues (such as the GSR Legal Costs)

The first day will cover Tennessee's operations including concerns about the EBB; nominations, scheduling and billings issues; and retained and offsystem storage. Any party that wishes to explain to staff at the technical conference its concerns on the operational issues should contact Chris Young at (202) 208–0620 or Robert McLean at 208–1179 by February 28, 1995, to indicate who will speak; the amount of time desired; the specific issues that will be covered. Priority will be given to speakers representing groups of parties.

The second day will start with a continuation of any operational issues from the first day and any response by Tennessee. A discussion of specific tariff sheets will begin on the second day of the conference. The proposed changes filed by Tennessee will be discussed line by line. However, changes generating the most widespread concern such as cash out, imbalances, capacity path, FT–A extended and fixed rate contracts will be discussed first. After all the proposed tariff changes are reviewed, Account No. 858 issues will be discussed. At that point any remaining issues (such as GSR legal costs) will be discussed and a schedule for parties to file additional comments will be established.

A more detailed schedule for the conference, with speakers, will be made available on CIPS by Friday, March 3. Any further questions concerning the conference should also be directed to Chris Young or Robert McLean. There are lodging accommodations available at the Georgetown Conference Center as well as other hotels in the immediate vicinity. If you are interested in staying at the conference site, call 1–800–446–9476 and refer to the Tennessee Gas Pipeline Technical Conference.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4510 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–164–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 17, 1995.

Take notice that on February 15, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 255
Original Sheet No. 255A

Texas Eastern states that by this filing, it proposes to modify Section 2.2 of Rate Schedule TABS–1 to allow TABS–1 Parties to provide rankings for service agreements nominated out of TABS–1 Service Points.

The proposed effective date of the tariff sheets is March 17, 1995, a date which corresponds to the date that necessary changes to Texas Eastern's procedures and LINK System can be implemented to accommodate the proposed tariff changes.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All motions or protests should be filed on or before February 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4512 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–137–016 and RP93–136–000 (Phase II)]

Transcontinental Gas Pipe Line Corp.; Notice of Informal Settlement Conference

February 17, 1995.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on March 2, 1995, at 10:00 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Donald Heydt at (202) 208–0740 or Kenneth Ende at (202) 208–0762.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4513 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–202–000]

Venice Gathering Co.; Notice of Petition for Declaratory Order

February 17, 1995.

Take notice that on February 3, 1995, Venice Gathering Company (Venice), 1350 South Boulder, Tulsa, Oklahoma, 74119, filed in Docket No. CP95–202–000 a petition for declaratory order with the Commission requesting that the Commission declare (1) Venice's gathering facilities as non-jurisdictional gathering facilities exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act (NGA), and (2) that connecting gas to Venice's facilities via gathering lines owned by interstate pipelines would not affect its nonjurisdictional status, all as more fully set forth in the application which is open to the public for inspection.

Venice states that is owns the Venice Gathering System (VGS), which gathers natural gas from fields in various West Delta, Grand Isle, South Pelto, and South Timbalier blocks, offshore Louisiana. Venice states that the VGS gathers gas from the offshore fields for onshore delivery at the Venice Processing Plant in Venice, Plaquemines Parish, Louisiana. Venice also states that its gathering lines range between 8 and 26 inches in diameter and between 2,000 feet and 73 miles in length. Venice further states that the VGS gathering lines operate at 750 to 1050 psig. Venice does not propose to construct and operate any facilities in this petition.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 10, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

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therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–4514 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–110–002]

Williston Basin Interstate Pipeline Co.; Notice of Compliance Filing

February 17, 1995.

Take notice that on February 15, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing Substitute Tenth Revised Sheet No. 18 to Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheet is being filed in compliance with a Commission Letter Order issued February 10, 1995 in the above-referenced dockets to reflect a revision to the base rate unit cost component of Rate Schedule IT–1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 27, 1995. Protests will be consideration by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4515 Filed 2–23–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5159–7]

National Environmental Education and Training Foundation, Inc., Announcement of a New Appointment to the Board of Directors

The National Environmental Education and Training Foundation was created by Public Law #101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation will develop and support a grant program that promotes innovative environmental education and training programs; it will also develop partnerships with government and other organizations to administer projects that promote the development of an environmentally literate public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act, announces the appointment of Dwight C. Minton to the National Environmental Education and Training Foundation, Inc. Board of Directors.

Dwight Minton is Chairman and Chief Executive Officer of Church & Dwight Co., Inc., in Princeton, New Jersey. Mr. Minton joined Church & Dwight in 1961 and would appointed to its Board in May 1965. He has served as the Board's Vice President, President, and Chief Executive Officer. In addition to his responsibilities at Church & Dwight, Mr. Minton's governance experience includes trusteeships for several schools and colleges and for both the North Shore Wildlife Sanctuary and the Greater Yellowstone Coalition.

Mr. Minton graduated from Yale University in 1959 and received his M.B.A. from Stanford University in 1961. The term of office for Mr. Minton is four years.

This appointee will join the eleven current Board members, who include: Edward Bass, Chairman and CEO of Fine Line, Inc. and Chairman of Space Biospheres Ventures; Dr. James Crowfoot, Professor of Natural Resources and Urban and Regional Planning at the University of Michigan; Mark De Michele, President and CEO of Arizona Public Service Company; James Donnelley, Vice Chairman of the Board of R.R. Donnelley & Sons; Dr. Bonnie F. Guiton, Dean of the McIntire School of Commerce at the University of Virginia; Rebecca Rimel, Executive Director of the Pew Charitable Trusts; Fred Krupp, Executive Director of the Environmental Defense Fund; Sara Muyskens, Management Consultant; Leslie Dach, Executive Vice President and General Manager, Edelman Public Relations; and Francis Pandolfi, President and CEO of Times Mirror Magazines, Inc. and Chairman of the Board of The Sporting News Publishing Company.

Great care has been taken to assure that new appointees not only have the highest degree of expertise and commitment, but also bring to the Board diverse points of view relating to environmental education and training.

Dated: February 16, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–4594 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5160–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees, for access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia Powers, National Program Director, Senior Environmental Employment Program (8701), Environmental Protection Agency, 401 M Street SW., Washington, DC 20560. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (P.L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support for Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorize representatives of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement No.	Organization
CQ822768–01	National Council of Senior Citizens.
CQ822769–01	National Council of Senior Citizens.
CQ822770–01	National Council of Senior Citizens.
CQ822771–01	American Assoc. of Retired Persons.
CQ822805–01	National Council on Aging.
CQ822810–01	American Assoc. of Retired Persons.
CQ822828–01	National Council of Senior Citizens.
CQ822844–01	American Assoc. of Retired Persons.
CQ822911–01	American Assoc. of Retired Persons.
CQ822912–01	American Assoc. of Retired Persons.
CQ822985–01	American Assoc. of Retired Persons.
CQ823043–01	American Assoc. of Retired Persons.
CQ823144–01	American Assoc. of Retired Persons.
CQ823596–01	American Assoc. of Retired Persons.
CQ823655–01	American Assoc. of Retired Persons.
CQ823905–01	American Assoc. of Retired Persons.
CQ823934–01	American Assoc. of Retired Persons.
CQ823952–01	American Assoc. of Retired Persons.
CQ823893–01	American Assoc. of Retired Persons.
CQ823973–01	American Assoc. of Retired Persons.
CQ823047–01	National Assoc. for Hispanic Elderly.
CQ823447–01	National Cau. & Ctr on Black Aged, Inc.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.301(h)(2)(iii). This notice is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: February 14, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–4595 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4720–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 23, 1995 Through January 27, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1994 (59 FR 16807).

Draft EISs

ERP No. D–AFS–J35009–UT Rating EC1, Upper Provo River Reservoirs Stabilization Project, Implementation, Wasatch-Cache National Forest, Kamas Ranger District, Summit County, UT.

Summary: EPA supported alternative 4, but expressed environmental concerns about stabilization efforts that may result in the inundation of sedge meadow, mudflat and rockflat wetlands. EPA requested that the FEIS clarify which lakes could be stabilized at natural lake levels to minimize impacts to terrestrial wetlands.

ERP No. D–DOD–K11027–HI Rating EC2, Kauai Acoustic Thermometry of Ocean Climate (ATOC) Project and Marine Mammal Research Program (MMRP), Funding, Marine Manual Research Permit and COE Section 10 Permit Issuance, Kauai, HI.

Summary: EPA expressed environmental concerns with the lack of essential information for determining potential impacts, the purpose and need for the project, potential cumulative impacts, and the lack of consensus within the scientific community regarding potential impacts. EPA stressed the importance of a complete and open reevaluation of the ATOC in light of MMRP results and suggested a more moderate research approach which would focus on developing information and supporting technology prior to full commitment to ATOC technology. If a 10 year follow-on project is proposed EPA recommended that DOD develop a broad programmatic EIS with tiered NEPA documents for each new sound source.

ERP No. D–DOD–K11057–CA Rating EC2, California Acoustic Thermometry of Ocean Climate (ATOC) Program and Marine Mammal Research Program (MMRP), Funding, Marine Mammal Research Permit and COE Nationwide Permits Issuance, Monterey County, CA.

Summary: EPA expressed environmental concerns with the lack of essential information for determining potential impacts, the purpose and need for the project, potential cumulative impacts, and the lack of consensus within the scientific community regarding potential impacts. EPA stressed the importance of a complete and open reevaluation of the ATOC in light of MMRP results and suggested a more moderate research approach which would focus on developing information and supporting technology prior to full commitment to ATOC technology.

ERP No. D–NPS–J61094–00 Rating LO, Fishing Bridge Campsite Replacement Project, Implementation, Yellowstone National Park, Fremont County, ID; Park and Gallatin Counties, MT and Park and Teton Counties, WY.

Summary: EPA recommended that the "No Action" alternative be expanded and discribed in greater detail in the Final EIS.

Final EISs

ERP No. F–USA–K11051–CA Sacramento Army Depot Disposal and Reuse, Implementation, Sacramento, El Dorado, Placer and Yolo Counties, CA.

Summary: EPA had no objection to the preferred alternative.

Dated: February 21, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–4612 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4720–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed February 13, 1995 Through February 17, 1995 Pursuant to 40 CFR 1506.9.

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EIS No. 950048, DRAFT EIS, AFS, OR, Santiam Pass Forest Health Project, Implementation, Willamette National Forest, McKenzie Ranger District, Linn County, OR, Due: April 10, 1995, Contact: John P. Allen (503) 822–3381.

EIS No. 950049, DRAFT EIS, COE, NC, Buckhorn Reservoir Expansion, Construction of a Dam to Impound Water on the Contentnea Creek, COE Section 404 Permit, City of Wilson, Wilson County, NC, Due: April 10, 1995, Contact: William Adams (910) 251–4748.

EIS No. 950050, DRAFT EIS, SCS, NB, Wahoo Creek Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 Permit, Saunders County, NB, Due: April 11, 1995, Contact: Ronald E. Moreland (402) 437–5300.

EIS No. 950051, DRAFT EIS, COE, LA, Amite River and Tributaries Flood Control Project, Implementation, East Baton Rouge Parish Watershed, Florida Parishes, LA, Due: April 14, 1995, Contact: Bill Wilson (504) 862–2527.

EIS No. 950052, DRAFT EIS, SCS, MO, IA, East Fork of the Grand River Watershed Plan, Implementation, Watershed Protection and Flood Prevention, Funding, Ringgold and Union Counties, IA and Harrison and Worth Counties, MO, Due: April 10, 1995, Contact: Russell C. Mills (314) 876–0901.

EIS No. 950053, FINAL SUPPLEMENT, NPS, MO, Page Avenue Extension, Bennington Place to US 40, Creve Coeur Lake Memorial Park Conservation of Land for Construction of a 10–Lane Elevated Extension of Page Avenue, Approval, St. Louis and Charles Counties, MO, Due: March 27, 1995, Contact: William W. Schenk (402) 221–3431.

EIS No. 950054, LEGISLATIVE DRAFT, AFS, ID, North Fork of the Clearwater River Drainage Kelly Creek and Cayuse Creek, Wild and Scenic River Study, Suitability or Nonsuitability for Designation or Nondesignation in the National Wild Scenic River System, Clearwater National Forest, Clearwater and Idaho Counties, ID, Due: May 25, 1995, Contact: Brian Hensley (208) 476–3775.

EIS No. 950055, FINAL EIS, UAF, OH, Rickenbacker Air National Guard Base (ANGB), Disposal and Reuse of Portons, Implementation, Franklin and Pickaway Counties, OH, Due: March 27, 1995, Contact: Ltc. Terry D. Armstrong (210) 536–3907.

EIS No. 950056, DRAFT EIS, USN, CT, GA, VA, Seawolf Class Submarine Homeporting Program on the East Coast of the United States, Site Selection, COE Section 404 Permit and Implementation, CT, VA and GA, Due: April 10, 1995, Contact: Robert Ostermueller (610) 595–0759.

Dated: February 21, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–4613 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5160–9]

Fiscal Year 1995 Solicitation for Socioeconomic Projects Related to Pollution Prevention

Introduction

This Announcement describes a solicitation of the U.S. Environmental Protection Agency (EPA) to support projects directed toward furthering the objectives of the President's Environmental Technology Initiative (ETI). The ETI is an integral part of the Administration's broad new technology policy, which is outlined in "Technology for America's Economic Growth: A New Direction to Build Economic Strength". This government-wide policy recognizes that industry is the primary creator of new technology and the main engine of sustained economic growth. The policy assigns the federal government a catalytic role in promoting the development of new technologies for use across a range of sectors including auto manufacturing, computers and electronics, iron and steel, metal finishing and plating, petroleum refining, and printing—as well as converting defense technologies to civilian applications. The ETI addresses all of the above sectors that are concerned with environmental protection.

EPA seeks proposals to conduct socioeconomic initiatives related to pollution prevention—i.e., projects focused on policy reforms, opportunities for building innovation capacity, and diffusion of innovative prevention technologies. EPA's interests in this instance are clearly distinct from conventional socioeconomic research and development. That is, they go beyond study and analysis of issues to apply existing knowledge in pioneering attempts to effect social or institutional change with respect to promoting development and implementation of innovative technology.

EPA is directing approximately $3.5 million this fiscal year (FY) in awards under this initiative to nonprofit organizations. Proposals averaging $150,000 per year with a maximum duration of 2 years are sought.

Nonprofit organizations are generally defined as those organizations that qualify for such status under Section 501(c) of the Internal Revenue Service tax code. Examples of nonprofit organizations include public and private universities, as well as trade associations, professional societies, research consortia, and community development corporations.

This Announcement can be accessed on the Internet at the following Gopher and World Wide Webb (WWW) addresses:

Gopher: GOPHER.EPA.GOV
WWW: HTTP://WWW.EPA.GOV

Rationale

EPA has structured its ETI project-selection process for FY95 to conform to the strategic ETI objectives contained in the Agency's Draft Technology Innovation Strategy (EPA 543–K–93–002), January 1994. This strategy has the following objectives (please refer to the draft Strategy document for more detail on these objectives):

(1) *Policy Framework:* Adapt EPA's policy, regulatory, and compliance framework to promote innovation;

(2) *Innovation Capacity:* Strengthen the capacity of technology developers and users to succeed in environmental innovation;

(3) *Diffusion:* Accelerate the diffusion of innovative technologies at home and abroad; and

(4) *Environmental and Pollution Prevention Technologies:* Strategically invest funds in the development and commercialization of promising new technologies.

This solicitation is focused on pollution prevention-related proposals that support the first three objectives. Proposals relevant to the fourth objective are being sought jointly by the National Science Foundation (NSF) and EPA through a contemporaneous solicitation. Information about the joint solicitation can be obtained from either NSF (pfirth@nsf.gov; voice 703/306–1480) or EPA (202/260–7474).

The 1990 Pollution Prevention Act declares pollution prevention to be national policy and states that "* * * pollution should be prevented or reduced at the source whenever feasible." Pollution prevention is now considered EPA's preferred choice for environmental protection, and the Agency is seeking to integrate prevention as an ethic throughout all of its activities. Pollution prevention includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in industrial housekeeping, operational maintenance, employee training, or inventory control.

On July 22, 1994, EPA Administrator Browner announced the new environmental policy Common Sense Initiative, which is designed to shift environmental protection from the current "pollutant-by-pollutant, end-of-pipe, command-and-control" approach to an "industry-by-industry, multi-media, prevention-oriented" approach. Six pilot industries were identified for CSI: auto manufacturing, computers and electronics, iron and steel, metal finishing and plating, petroleum refining, and printing. Proposals with relevance to these industries will receive priority consideration.

Program Scope

This EPA grant solicitation is intended to finance prevention-related projects supporting policy analysis (frameworks), institution building (innovation capacity), and domestic and international diffusion. Descriptions of each of the program areas that are addressed in this solicitation are as follows.

Policy-framework topics of interest include: (1) Strengthening incentives for the development and use of innovative prevention technologies; and (2) identifying and reducing barriers to innovation. Aspects to be addressed include regulations and implementation mechanisms (e.g., permitting and compliance policies and programs).

This program area encompasses all environmental media (water, air, etc.) and emphasizes pilot projects not analytical studies. Policy framework proposals often address issues that have a broader focus than pollution prevention alone. Such proposals are welcomed so long as they are also applicable to pollution prevention technologies or issues.

Policy framework focuses on environmental regulatory programs in the broadest sense, from regulation through compliance and enforcement. Projects selected in this areas will address regulatory programs in order to:

- Identify and enhance incentives for the development and use of prevention technologies;
- Minimize barriers to the development and use of such technologies; and
- Incorporate provisions into new and existing regulations and programs that maximize flexibility and widen the range of technologies accepted for use.

Special attention will be given to the use of market-based instruments for creating flexibility and incentives to innovate.

Innovation capacity proposals should be focused on how to assist, or catalyze, prevention technology development and commercialization efforts. Examples of possible work in these areas are programs or projects to:

- Establish programs to standardize testing protocols and verify the cost and performance of innovative prevention technologies;
- Provide pollution prevention technology testing centers;
- Catalyze the efforts of many organizations to promote innovation by convening partnerships;
- Develop and communicate timely information about high priority prevention technology gaps; and
- Work jointly with organizations in the public and private sectors to identify and address non-regulatory sources of market inefficiency and failure in the environmental technology sector.

Proposals on diffusion of information should focus on new and improved means of fostering information networks, technical assistance, and outreach activities. Both domestic and international applications are encouraged. For example, there is a need to enhance the capacity of existing or newly created public and private sector diffusion activities to serve the potential users of pollution prevention technologies both domestically and abroad. Proposals may include activities relating to market demand, availability, cost, performance, opportunities for business development, and regulatory requirements.

General Selection Criteria

The objective of this solicitation is to harness the capability of the nonprofit sector to help address the goals of the ETI. EPA will not accept proposals that are not directly related to one of the areas of ETI focus previously mentioned. Moreover, proposals must address barriers to the development and use of innovative pollution prevention approaches to be eligible unless they are addressing policy framework issues that will also benefit pollution prevention approaches as well as their target.

Each proposal will only be evaluated against one strategy objective based the information provided above. Proposals with relevance to industries highlighted by the Common Sense Initiative and the Design for Environment Program will receive priority consideration. Special consideration will also be given to projects that support small businesses and/or small communities. This focus on a select few industries is intended to provided concentrated support for cleaner technology development and commercialization and sustainable economic growth and increased competitiveness.

Many barriers to development and application of pollution prevention exist because of the lack of flexibility in the policy infrastructure. Thus, proposals that seek to make the implementation of environmental policy a process that is more friendly to technology innovation will also receive additional attention. This is the one area in which projects may go beyond the pollution prevention domain.

The most significant problems and creative solutions most likely will be identified by nonprofit organizations and industrial investigators, working together on challenges posed by real problems. Projects must show appropriateness to current national concerns for pollution reduction or prevention; vague arguments that the proposed project may eventually be of value are not compelling.

This initiative particularly seeks innovative and high risk/high payoff ideas. It does not invite studies of "the problem" but rather specific approaches to possible solutions. Since the preparation of competitive proposals is very time consuming, it is also well to present the following examples of what this initiative is not:

- Not basic research;
- Not technology development for pollution prevention, remediation, or control;
- Not diffusion of pollution control technology; and
- Not activities addressing processes to remove pollutants from waste streams or remediate waste problems.

Specific Selection Criteria

Proposals will be evaluated against the following factors:

- Does the project reduce uncertainty, improve flexibility, speed timing, enhance cost-effectiveness, address liability constraints, and/or diminish restraints on technology innovation?
- Is there broad applicability of the project's expected results (i.e., across levels of government, different states, or environmental media)? Is the problem clearly defined?
- Does the project complement current environmental legislative initiatives or significantly strengthen the Nation's ability to meet existing statutory or regulatory goals?
- Will the project produce measurable, visible results in an expeditious time-frame? Action projects will be emphasized over studies. Do project participants have the authority to implement programmatic changes?

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• Does the project support multi-organizational partnerships across the public and private sectors? Will the project include leveraging funds among the partnering organizations? Applicant's proposals will be given more consideration to the extent that matching funds or in-kind services from participating partners are included.

• Does the proposal address global, transboundary, or other international environmental issues directly affecting the United States or lower the cost of innovative technologies for use in the United States.

In addition, the following considerations relate to particular subtopics:

• Policy framework proposals will be reviewed with respect to their capability to advance the goals and activities of ETI; breadth of applicability of the expected results; and potential to reduce barriers and create incentives; and projected probability of success.

• Proposals embracing the theme of innovation capacity should specifically be designed to be self-sustaining after ETI funds are expended.

• Domestic diffusion proposals must be customer-based, and should emphasize pollution prevention technology approaches. Special consideration will be given to projects that support small businesses and/or small communities.

• International diffusion proposals should address global or international environmental issues that directly affect the United States. Proposals should also result in improving U.S. competitiveness and trade objectives in the international arena.

The Application

Application forms and instructions are available in the EPA Research Grants Application Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits can be obtained at the following address: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington DC 20460.

Each application for assistance must consist of Application for Federal Assistance Forms (Standard Forms (SF): 424 and 424A), separate sheets that provide the budget breakdowns for each year of the project, the resumes of the principal investigator and co-workers, the abstract of the proposed project, and a project narrative. All certifications must be signed and included with the application.

The closing date for application submission is COB May 1, 1995.

To be considered, the original and eight copies of the fully developed research grant application, prepared in accordance with the instructions in the Application for Federal Assistance Forms, must be received by the EPA Office of Exploratory Research no later than the above closing date. Informal, incomplete, or unsigned proposals will not be considered. Completed applications should be sent via regular or express mail to: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington DC 20460

Applications sent via express mail should have the following telephone number listed on the express mail label: (202) 260–7445.

Special Instructions

The following special instructions apply to all applicants responding to this request for application.

• Applications must unbound and clipped or stapled. The SF–424 must be the first page of the application. Budget information should immediately follow the SF–424. All certification forms should be placed at the end of the application.

• Applicants must be identified by printing "ETI95" in block 10 of the SF–424. This will facilitate proper assignment and review of the application.

• A one-page abstract must be included with the application.

• The "project narrative" section of the application must not exceed 25, consecutively-numbered, 8½ x 11 inch pages of standard type (i.e.,12 point), including tables, graphs, and figures. For purposes of this limitation, the "project narrative" section of the application consists of the following five items:

1. Description of Project
2. Objectives
3. Results or Benefits Expected
4. Approach
5. General Project Information.

Any attachments, appendices, and other references for the narrative section may be included but must remain within the 25-page limitation. Appendices will not be considered an integral part of the application.

Items not included under the 25-page limitation are the SF–424 and other forms, budgets, resumes, and the abstract. Resumes must not exceed two consecutively-numbered pages for each investigator and should focus on education, positions held, and most recent or related publications.

Applications not meeting these requirements will be returned to the applicant without review.

Guidelines and Limitations

All recipients are required to provide a minimum of 1% of the total project cost, which may not be taken from Federal sources. Subcontracts for research to be conducted under the grant should not exceed 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

Nonprofit institutions located within the U.S., including public and private colleges and universities, are eligible under all existing authorizations. Federal agencies and federal employees as well as state and local governments are not eligible to participate it this program. Potential applicants who are uncertain of their eligibility should contact EPA's Grants Operations Branch at (202) 260–9266.

Proprietary Information

By submitting an application in response to this solicitation, the applicant grants EPA permission to share the application with technical reviewers both within and outside of the Agency.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

Funding Mechanisms

The funding mechanism for all awards issued under this solicitation will consist of a grant agreement between EPA and the recipient. In accordance with Public Law 95–225, a grant is used to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition for the direct benefit of the Agency.

Minority Institution Assistance

Pre-application assistance is available upon request for potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges or Universities (HBCUs), Hispanic Association of Colleges and Universities (HACUs), or Native American or Tribal Colleges. For further information on minority assistance, contact Charles Mitchell by telephone at (202) 260–7448, by faxing a written request to (202) 260–0211, or by mailing it to the address for EPA's Office of Exploratory Research shown below.

Contacts

Additional general and technical information on this solicitation and the grants program may be obtained by contacting: U.S. Environmental Protection Agency, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460, Phone: (202) 260–7474/Fax: (202) 260–0211.

Dated: February 16, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research & Development.

[FR Doc. 95–4597 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5161–7]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the U.S. Environmental Protection Agency (EPA) is holding public meetings related to the Agency's drinking water program over the next several months. Descriptions of the subject areas for the meetings are provided below, along with initial meeting dates, times and locations. Names and phone numbers of EPA contact persons are also provided. Additional information about a particular subject area, as well as dates of additional meetings, may be obtained by calling the EPA contact person listed for that subject area.

The purpose of the meetings is to provide EPA with ideas, suggestions and options either for proceeding with specific activities related to the drinking water program or which can serve as the basis for strategic decisions on program directions and resource allocations. The intent is to provide EPA with the full array of viewpoints, ideas and concerns which are held by its multiplicity of stakeholders. Summaries of the ideas and suggestions from the public meetings will be provided to EPA senior managers in the drinking water program for further consideration.

Some of the meetings will focus on how to carry out specific activities which the agency perceives as ripe for action and which can be undertaken within EPA's existing resource constraints. Others will be used to seek broad input on options for prioritizing among other possible activities within a subject area, including suggestions for other ways to do business. In some cases, these two approaches will be combined in a single meeting.

For some of the eight subject areas, only one or two public meetings may prove necessary. For others, such meetings may take place more frequently over a period of several months. Most of the meetings will be in Washington, D.C. Because EPA will not be able to fund travel for any participants, all meetings will be teleconferenced to enable participation by persons in other locales.

Where the Agency has chosen to proceed with a specific activity, such as revising the State Programs Priorities Guidance for the Public Water Systems Supervisory Program, we will also solicit participation in stakeholder forums in order to enable us to receive additional feedback. These forums will include the array of stakeholder interests. Members of the public may attend and observe the forums. As with the public meetings, the purpose of the forums will be to provide EPA with individual stakeholder views rather than to seek an opinion from the group as a whole.

Where EPA is seeking to prioritize among possible activities, the Agency will convene a senior EPA management group to review the public meeting summaries. That group will assemble the information and develop a program action plan consistent with available resources. The plan will be submitted to the National Drinking Water Advisory Council for its comment. Final decisions on priorities will be made by Assistant Administrator Robert Perciasepe. EPA will continue to seek further stakeholder input on how to proceed after priority activities have been determined.

Alternatively or in addition to attending any particular meeting, members of the public may submit written comments to the EPA contact person for up to fifteen days after the meeting. General questions about the meeting process should be directed to Charlene Shaw with EPA's Office of Ground Water and Drinking Water at (202) 260–2285.

Subject Areas and Initial Meeting Schedules

Regulatory Reassessment

EPA will hold a public meeting on regulatory reassessment on March 13, 1995, from 1:00 to 4:00 p.m. at the St. James Hotel, 950 24th Street NW., Washington, D.C. 20037. Meetings under this subject area will provide EPA with stakeholder input on priorities for regulating drinking water contaminants. There is a wide variability among the regulations in terms of the relative risk reductions they will produce. Also, EPA does not believe it has the resources to continue working on all regulations currently required in a timely and high quality fashion.

In addition to discussing regulation priorities, meeting participants may also suggest criteria for prioritizing rulemaking efforts. EPA will consider comments provided by participants in developing a prioritized list of regulatory activities. The priority list will be used to identify which regulations can be developed in the near term and which are appropriate for a much longer time frame for development. With this information, EPA hopes to renegotiate current court-ordered schedules and more effectively direct federal, State and local resources. EPA Contact: Jan Auerbach, (202) 260–5274.

Scientific Data Needs

EPA will hold a public meeting on scientific data needs on March 30, 1995, from 1:00 to 4:00 p.m. at the EPA Auditorium, 401 M Street, S.W., Washington, D.C. 20460. Up to date information and quality models and methodologies are essential to sound regulatory and programmatic decision-making. They form the foundation for the more visible Agency actions and products. Since data collection and analysis is resource and time intensive, some trade-offs are inevitable. EPA will seek input regarding identification of the most critical needs. Meetings under this subject area would also seek input on other factors which may merit consideration.

This subject area encompasses a wide range of questions, including the following. Within the context of statutory goals and timetables, what types of data should be assembled and considered in chemical assessment? What levels of monitoring data are required at all stages of the contaminant evaluation process, from selection to actual regulatory decisions? What are the other key data needs with respect to regulatory impact assessment? What should the balance be between investing in more sophisticated cost estimate models versus reducing uncertainty in other areas such as health assessment? Within the context of statutory guidelines and available public and private resources, do interested parties believe surrogate indicators (such as volumes of pesticides used) are adequate for contaminant selection for Maximum Contaminant Level (MCL) development, or should public water supply monitoring and federal reporting of those data precede MCL development? Beyond contaminant selection, cost and benefit assessments will be discussed.

This subject area also includes discussion of data needs related to source water protection, including drinking water occurrence, locational and well characteristic data which

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would help guide development of prevention programs. Such data would assist in developing prevention programs tailored to local conditions and would enable local, State and federal agencies to more effectively target their activities to prevent pollution of drinking water. EPA Contact: Ben Smith, (202) 260–3026

Treatment Technology

EPA will hold a public meeting to discuss treatment technology on March 7, 1995, from 2:00 to 5:00 p.m. at the Holiday Inn Capitol, 550 C Street SW., Washington, D.C. 20024. Under the Safe Drinking Water Act (SDWA) treatment technology is important in the establishment of National Primary Drinking Water Standards and determining when allowable flexibility in the form of variances and exemptions is appropriate. EPA is considering ways to improve treatment technology determinations and associated issues. The Agency will seek input on critical issues, including criteria for determining best available technologies and treatment technique requirements; ways for EPA to promote the development and applications of innovative technologies; and the need for toxicological evaluation and certification of treatment chemical and system component safety. EPA Contact: Steve Clark, (202) 260–7575.

Health Assessment

EPA will hold a public meeting on health assessment on March 14, 1995, from 2:00 to 5:00 p.m. at the Holiday Inn Capitol, 550 C Street SW , Wahsington, D.C. 20024. Under this subject area, EPA is seeking stakeholder views on revisiting the methodology for determining Maximum Contaminant Level Goals (MCLGs) for drinking water, including the Agency's current policy of setting zero goals for carcinogens. In regulating drinking water contaminants which may cause adverse health effects, EPA sets non-enforceable MCLGs to protect against these effects, incorporating a margin of safety. EPA also sets a Maximum Contaminant Level (MCL), which is enforceable and may be less stringent than the MCLG depending on feasibility.

Several activities planned or ongoing may improve the characterization of the variability and uncertainty associated with the risk assessment for a contaminant. These include noncancer risk assessment methodologies such as the bench mark approach and categorical regression models, revision of the Cancer Risk Assessment Guidelines, revision of the relative source contribution policy, evaluation of risk assessment methods for chemical mixtures and development of a risk characterization policy. EPA Contact: Jennifer Orme-Zavaleta, (202) 260–7586.

Analytical Methods

EPA will hold a public meeting on analytical methods in Cincinnati, Ohio. The schedule for this meeting may be obtained by calling Herb Brass at (513) 569–7936. This subject area encompasses the need to set priorities for enhancing the analytical methods approval process and laboratory certification program within the context of developing and implementing drinking water regulations. EPA is seeking stakeholders' suggestions for making improvements while assuring the comparability and quality of measurement data. Specific issues to be addressed include: streamlining the drinking water methods approval process, including the use of performance-based methods; approaches for standardizing the detection and quantification of contaminants in water: laboratory certification; opportunities for integrating methods across Agency water programs; and the relationship to methods organizations inside and outside of the Agency. EPA Contact: Herb Brass, (513) 569–7936.

Source Water Protection

EPA will hold a public meeting on source water protection on March 23, 1995, from 1:00 to 4:00 p.m. at the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024. This subject area is to address preparations for an EPA-sponsored National Source Water Protection Workshop in 1996 which will provide communities with tools and information to enable them to protect their sources of drinking water. The teleworkshop will be targeted to communities which have delineated their source water protection areas and carried out source identification and will assist such communities in moving to source management. EPA is seeking to work with States, communities, interest groups and business leaders, including from the agricultural community, to maximize participation in the teleworkshop.

This subject area will also address the development of source water protection approaches for communities which rely on surface water and the development of a new consumer information provision to inform ratepayers about local water quality and source water protection. EPA Contact: Bob Barles, (202) 260–7077.

Small Systems Capacity Building

EPA will hold a public meeting on small systems capacity building on March 29, 1995, from 2:00 to 5:00 p.m. at the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024. This subject area is to address options and priorities for building small system capacity, including the areas of management and operations, technology, and financing. EPA will be seeking suggestions on how best to focus and follow-up on current activities relative to voluntary State viability program development and small systems restructuring. EPA will also be seeking ideas and viewpoints on issues associated with technical assistance and training for small systems, as well as how best to identify and promote use of appropriate small systems technologies. Contact: Peter Shanaghan, (202) 260–5813.

Focusing and Improving Implementation

EPA will hold a public meeting on focusing and improving implementation on March 6, 1995, from 1:00 to 4:00 p.m. at the St. James Hotel, 950 24th Street, N.W., Washington, D.C. 20037. This subject area encompasses several topics, as follows. EPA is generally seeking stakeholder views on which of these or other implementation activities the Agency should undertake. Where the Agency plans to carry out a particular activity, as in reviewing the State Drinking Water Program Priorities Guidance, stakeholder views on appropriate approaches will be sought.

Review of State Drinking Water Program Priorities Guidance

Recognizing the limited resources that States have to keep pace with expanding federal drinking water program requirements, EPA issued guidance in June 1992 to focus EPA and State resources on the highest priorities first and allow States time to build resources in order to fully implement the program. The priority scheme was to be effective between 1993 and 1998, during which time States are expected to aggressively develop adequate funding to oversee the entire Public Water Supply Supervision (PWSS) program. The guidance does not change or defer statutory or regulatory requirements for EPA, State agencies or public water systems. States have used the guidance successfully in addressing their most important implementation, enforcement and resource challenges. EPA believes that it is time to re-examine this guidance, based upon the experience gained over the past two years, and determine if any changes are needed to more appropriately focus resources on the highest risks first. We also need to determine how to include new requirements in the priority scheme. EPA Contact: Connie Bosma, (202) 260–5526.

Revising Chemical Monitoring Requirements and Defining Source Water Protection as Best Available Technology

Public water systems are required to monitor for 66 different inorganic (e.g., mercury), synthetic organic (e.g., atrazine) and volatile organic compounds (e.g., benzene) found in drinking water. Costs to collect and analyze these chemicals can be several thousands of dollars per year, which can be beyond the resource capacities for small systems. Several statutory (Chafee-Lautenberg Amendment) and regulatory (e.g., grandfathering data, compositing, State-approved waivers) provisions have provided flexibility to systems to reduce or forego monitoring for at least some chemicals. EPA believes it would be appropriate to consider other revisions to chemical monitoring requirements by, for example, targeting systems at risk of contamination, targeting vulnerable time periods and allowing States greater flexibility to integrate source water protection efforts. EPA also believes it might be useful to consider regulatory changes to allow water systems to use source water protection as an alternative form of treatment for certain contaminants under limited conditions, provided such an alternative provides equivalent health protection. EPA Contact: Mike Muse, (202) 260–3874.

Other Revisions to Strengthen Enforcement and Implementation

Recognizing the limited resources in the drinking water program, EPA is interested in hearing ideas to further strengthen the public health protection provided by the SDWA and the regulations while at the same time streamlining the program. These activities could take the form of outreach, technical assistance and capacity building, or use of authorities provided under other environmental statutes. For example, some potential activities in this area might include the production of special health notifications for serious drinking water contamination, particularly for sensitive subpopulations; additional joint State/EPA efforts to develop State capacity to implement and enforce the drinking water program; and streamlining and strengthening EPA's ability to collect information from drinking water systems (particularly in cases where contamination is suspected or where a system is required to monitor on a greatly reduced basis). The activities in this area would be designed to ensure greater public health protection and would link to the actions being proposed in other areas (e.g., regulatory realignment, review of priority guidance and greater emphasis on source water protection.) EPA Contact: Bob Blanco, (202) 260–5522.

Dated: February 21, 1995.

Peter L. Cook,

Deputy Director, Office of Ground Water and Drinking Water

[FR Doc. 95–4598 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5156–6]

Administrative Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h), Resource Services, Inc. Site, Springfield, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that an administrative cost recovery settlement concerning the Resource Services, Inc. Site ("the Site") located in Springfield, Missouri, was entered into by the Environmental Protection Agency ("the Agency") on December 22, 1994. The settlement resolves certain Agency claims under section 107 of CERCLA against the Settling Parties who are named in an attachment to the settlement which is available at EPA Region 7 at the address shown below. The settlement requires the Settling Parties to pay $50,000.00 to the Hazardous Substance Superfund toward past response costs incurred in relation to the Site.

For thirty (30) days following the date of the publication of this notice, the Agency will accept written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region 7 Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before March 27, 1995.

ADDRESSES: The settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region 7 Office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the settlement may be obtained from Venessa Cobbs, Regional Docket Clerk, EPA Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: (913) 551–7630.

Comments on the settlement should reference the Resource Services, Inc. Site, in Springfield, Missouri, and EPA Docket No. VII–92–F–0015 and should be addressed to Ms. Cobbs at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Toevs Sullivan, Associate Regional Counsel, EPA Region 7, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101 telephone: (913) 551–7010.

Dated: February 7, 1995.

Delores Platt,

Acting Regional Administrator, Region 7

[FR Doc. 95–4294 Filed 2–23–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Oconomowoc Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

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Comments regarding this application must be received not later than March 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Oconomowoc Bancshares, Inc., Oconomowoc, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of First Bank of Oconomowoc, Oconomowoc, Wisconsin.

Board of Governors of the Federal Reserve System, February 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4548 Filed 2–23–95; 8:45 am]

BILLING CODE 6210–01–F

Susquehana Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 9, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Susquehanna Bancshares, Lititz, Pennsylvania; to acquire Atlanfed Bancorp, Inc., Baltimore, Maryland (a thrift holding company), and thereby indirectly acquire Atlantic FSB, Baltimore, Maryland, and engage in owning, controlling or operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; originating loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; real estate appraisal services, pursuant to § 225.25(b)(13) of the Board's Regulation Y; retail securities brokerage, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y; retail securities brokerage in combination with investment advisory services, pursuant to §§ 225.25(b)(15)(ii) and (b)(4) of the Board's Regulation Y; and providing real estate settlement services, pursuant to *Norwest Corporation*, 80 FRB 453 (1994). The geographic scope of these activities is Maryland.

2. Susquehanna Bancshares, Lititz, Pennsylvania; to acquire Reisterstown Holdings, Inc., Reisterstown, Maryland (a thrift holding company), and thereby indireectly acquire Reisterstown FSB, Reisterstown, Maryland, and engage in owning, controlling or operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; making and servicing loans including real estate settlement services, pursuant to § 225.25(b)(1) of the Board's Regulation Y and Norwest Corporation, 80 FRB 453 (1994); investment advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; sale of credit insurance in the form of mortgage insurance disability and life insurance products to customers of affiliates, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; retail securities brokerage, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y; retail securities brokerage in combination with investment advisory services, pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y. The geographic scope for these activities is Maryland.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F & M National Corporation, Winchester, Virginia; to acquire Farland Investment Management, Inc., Winchester, Virginia, and thereby engage in portfolio investment advice and financial planning services to individuals, corporations, banks, pension and profit sharing plans, trusts, estates, and charitable organizations, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 17, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4549 Filed 2–23–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Regional Public Hearing of the Commission on Research Integrity in Chicago, IL

Pursuant to Pub. L. 92–463, notice is hereby given of a regional public hearing and meeting of the Commission on Research Integrity, respectively on Thursday and Friday, March 9 and 10, 1995, at the De Paul University, Chicago, IL. On the 9th, the Commission will meet from 8:30 a.m. until 11:15 a.m. at the De Paul Center on 1 East Jackson Boulevard. The afternoon session, 12:30 p.m. until 5 p.m., will be held in the De Paul University Administration Center, 9th floor, on 243 South Wabash Avenue. The sessions will be open to the public and will continue on the 10th from 9 a.m. to 4:45 p.m. at 249 South Wabash Ave. Interested parties are advised to call the Executive Secretary shortly before the meeting to verify the date, place, and agenda.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services (DHHS) and the Congress on the administration of section 493 of the Public Health Service Act, as amended by and added to by section 161 of the NIH Revitalization Act of 1993.

In its deliberations, the Commission has confirmed that there are no quick and easy answers for fair, effective, and realistic administrative solutions to a number of issues in scientific misconduct and research integrity. An essential component of the Commission's information-gathering is to interact extensively with all relevant constituencies of the scientific community—including junior and senior scientists, witnesses,

respondents, academic administrators, as well as students—to understand their particular experiences and perspectives and to explore possible improvements.

Three major areas are currently of great interest to the Commission:

1. *A New Definition of Research Misconduct.* The Commission believes that any definition needs to address the full extent of serious research misconduct, but must avoid a definition that is too broad, vague, and potentially unfair. In addition, a two-tiered approach for research integrity, or failures thereof, would be useful; it would emphasize institutional responsibility, and reserve an oversight role for the Federal Government.

2. *Assurance for Institutions and Accountability for Federally-Funded Research.* The Commission is considering that each institution receiving Federal funds develop and submit for Federal review and approval assurances concerning the establishment and implementation of: (a) Good research practices and professional norms; (b) procedures for disseminating that information throughout its community; and (c) educational activities designed to foster practice of the highest ethical standards in the conduct of research for all researchers. Topics affecting good research practices that might be addressed in institutional assurances include: data recording and retention; supervisory responsibility; authorship practices; protection of witnesses; and other professional conduct bearing directly on the integrity of Federally supported research.

3. *Bill of Rights for Witnesses.* Testimony from witnesses (also called "whistleblowers") who had challenged perceived research misconduct reaffirms the Commission's mandate to propose effective whistleblower protection rules. Witnesses have stated that retaliation occurs with sufficient frequency and impact to have a chilling effect on potential witnesses throughout the research community. The Commission is considering a Witness Bill of Rights and procedures for its implementation.

The Commission will also continue its discussion of other issues on which the Commission is planning to make recommendations in its final report.

The Commission is inviting oral or written statements from interested parties. Lengthy statements exceeding 10 or 15 minutes of oral presentation should be submitted in writing to the Executive Secretary before or at the meeting. Each statement will be reviewed by Commission Members.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, at Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300 or (301) 443–9369 (voice mail), will furnish the Committee charter, a roster of the Committee members upon request, a preliminary report of the Commission, and a meeting agenda upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Henrietta D. Hyatt-Knorr,

Executive Secretary, Commission on Research Integrity.

[FR Doc. 95–4550 Filed 2–23–95; 8:45 am]

BILLING CODE 4160–17–P

Agency for Health Care Policy and Research

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to Section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Annual Reports prepared for the public by the committees set forth below have been filed with the Library of Congress:

Health Care Policy and Research Special Emphasis Panel
Health Care Technology Study Section
Health Services Research and Developmental Grants Review Committee
Health Services Research Dissemination Study Section
National Advisory Council for Health Care Policy, Research and Evaluation

Copies of these reports, prepared in accordance with Section 10(d) of the Federal Advisory Committee Act, are available to the public for inspection at: (1) The Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 a.m. and 4:30 p.m.; and (2) the Information Resource Center, Agency for Health Care Policy and Research, Suite 501, 2101 East Jefferson Street, Rockville, Maryland, on weekdays between 9 a.m. and 4:30 p.m.

Copies may be obtained from Mr. James E. Owens, Committee Management Officer, Agency for Health Care Policy and Research, Suite 601, 2101 East Jefferson Street, Rockville, Maryland 20852.

Dated: February 14, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–4551 Filed 2–23–95; 8:45 am]

BILLING CODE 4160–90–P

Agency for Health Care Policy and Research Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of March 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: March 9–10, 1995, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Parklawn Room, Rockville, Maryland 20852.

Open March 9, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications on research that will provide convincing evidence for or against the effectiveness and cost effectiveness of alternative interventions used to prevent, diagnose, treat, and manage common clinical conditions.

Agenda: The open session of the meeting on March 9, from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing grant applications dealing with complex clinical medical effectiveness issues in response to the medical treatment effectiveness PORT II initiative. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 16, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–4552 Filed 2–23–95; 8:45 am]

BILLING CODE 4160–90–M

Health Care Financing Administration

[OPL–004–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

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SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 13, 1995, from 8 a.m. until 4 p.m. e.s.t. (Additional meetings are tentatively scheduled for June 12, September 11, and December 11, 1995.)

ADDRESSES: The meeting will be held in Room 5051 (The Snow Room) of the Cohen Building, 300 C Street, SW., Washington, DC 20201–0001.

FOR FURTHER INFORMATION CONTACT: Martha DiSario, Executive Director, Practicing Physicians Advisory Council, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms.

The current members are: Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Harvey P. Hanlen, O.D.; Kenneth D. Hansen, M.D.; Isabel V. Hoverman, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; William D. Kirsch, D.E., M.P.H.; Marie G. Kuffner, M.D.; Katherine L. Markette, M.D.; Kenton K. Moss, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; Kenneth M. Viste, Jr., M.D.; and James C. Waites, M.D. The chairperson is Richard B. Tompkins, M.D.

The twelfth meeting of the Council will be held on March 13, 1995. The following topics will be discussed at that meeting:

- The history and role of Carrier Advisory Committees (CACs) and how physicians can more effectively participate with CAC efforts.
- Agency efforts to revise the rules governing concurrent care. Concurrent care occurs when two or more physicians bill for multiple patient management visits during a hospital stay. The discussion will include a presentation of specialty practice data recently developed by HCFA.

Individuals or organizations who wish to make 5-minute oral presentations on the above issues must contact the Executive Director to be scheduled. Written testimony must be submitted to the Executive Director no later than 12:00 noon, March 1, 1995. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. The number of oral presentations may be limited by the time available.

Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, March 1, 1995. The meeting is open to the public, but attendance is limited to the space available on a first-come basis.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 9, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–4797 Filed 2–23–95; 8:45 am]

BILLING CODE 4120–01–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Reports Clearance Office on 202–690–7100.

The following requests have been submitted for review since the list was last published on Friday, February 10.

1. Healthy Start Evaluation

Survey of Postpartum Women—New—As part of the national evaluation of the Healthy Start demonstration program, a survey will be conducted of postpartum women who have received services under Healthy Start and a comparison group from the same area. Data will be collected on risk factors, services received, and related topics. Respondents: Individuals or households; Number of Respondents: 4,500; Number of Response per Respondent: 1; Average Burden per Response .58 hour; Estimated Annual Burden: 2,625 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

2. 1995 National Household Survey on Drug Abuse Pilot Test

New—The pilot test sample will consist of 300 persons living in two Primary Sampling Units. The data collection is necessary to determine how two proposed question modules for the 1996 NHSDA, on HIV/AIDS risk behaviors and drug-related driving behaviors, will affect core NHSDA data and response rates. In addition, the appropriateness of new question content, wording, and format will be evaluated quantitatively and qualitatively. Respondents: Individuals or Households; Number of Respondents: 1,002; Number of Responses per Respondent: 1; Average Burden per Response: 0.431 hour; Estimated Annual Burden: 432 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individuals designated.

Dated: February 21, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–4634 Filed 2–23–95; 8:45 am]

BILLING CODE 4160–17–M

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part *HB* (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services is amended to reflect the addition of the Bone Marrow Program.

Under HB–20, Organization and Functions amend the functional statements for the Bureau of Health Resources Development (HBB), Health Resources and Services Administration (HB) by deleting the functional statement for the Division of Organ Transplantation (HBB3) and substituting the following:

Division of Organ Transplantation (HBB3). Plans, directs, coordinates, and monitors a broad range of activities relating to the field of organ procurement and transplantation. Specifically: (1) Develops, implements, and maintains a program of grants to organ procurement organizations (OPOs); (2) provides technical assistance to OPOs receiving Federal funds; (3) establishes and maintains an Organ Procurement and Transplantation Network; (4) establishes and maintains a scientific registry for organ transplantation recipients; (5) administers and monitors the contracts governing the National Marrow Donor Program; (6) conducts a program of public information to inform the public of the need for organ donations; (7) monitors trends and analyzes data on the efficiency and effectiveness of organ procurement, bone marrow donation, the allocation of organs among transplant centers and transplant patients, and on other aspect of organ transplantation, and prepare reports as needed; (8) in conjunction with the Division of Information and Analysis, coordinates collection of information with other units of the Federal Government concerned with organ and bone marrow recovery and transplantation (e.g., the National Center for Health Services Research and Health Care Technology Assessment, the Health Care Financing Administration, the National Institutes of Health, the Department of the Navy, the Food and Drug Administration, and the Centers for Disease Control); (9) maintains working relationships with State activities and professional organizations in the field of organ transplantation; (10) maintains and/or fosters new relationships with public and private organizations (e.g., the North American Transplant Coordination Organization, the American Hospital Association, the American Society of Transplant Surgeons, and the American Society of Transplant Physicians) to promote the concepts of organ and bone marrow donation, to follow trends in organ procurement, and to maintain working knowledge of clinical status of organ and bone marrow transplantation; and (11) develops and provides information on organ and bone marrow recovery and transplantation for professional associations, health providers, consumers, health insurers, medical societies, State health departments, and the general public.

This addition is effective upon date of signature.

Dated: February 7, 1995.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 95–4553 Filed 2–23–95; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–25]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact William A. Molster, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free) or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

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Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William A. Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Rm 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: February 17, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 02/24/95

Suitable/Available Properties

Buildings (by State)

Iowa

8 Army Reserve Centers
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk, IA 50315–
Landholding Agency: COE—BC
Property Number: 329510023
Status: Pryor Amendment
Base closure: Number of Units: 8
Comment: 8434–13874 sq. ft., brick frame, needs rehab, presence of asbestos, multiple floors, incs. bldgs. P–55, P–56, P–58 thru P–62, P–81.

4 Maintenance Shops
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk, IA 50315–
Landholding Agency: COE—BC
Property Number: 329510024
Status: Pryor Amendment
Base closure: Number of Units: 4
Comment: 952–13530 sq. ft., brick frame, needs rehab, presence of asbetos, inc. bldgs. P–75, P–126, P–127, P–139.

13 Storehouses
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk, IA 50315–
Landholding Agency: COE—BC
Property Number: 329510025
Status: Pryor Amendment
Base closure: Number of Units: 13
Comment: 160–16346 sq. ft., brick frame, needs rehab, presence of asbestos, incs. P–70 thru P–73, P–68, P–83, P–84, P–86, P–122, P–123, P–133, –135, P–137.

2 Administration Facilities
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk, IA 50315–
Landholding Agency: COE—BC
Property Number: 329510026
Status: Pryor Amendment
Base closure: Number of Units: 2
Comment: 12057 sq. ft., brick frame, needs rehab, presence of asbestos, incs. P–63 & P–64, multiple floors.

3 Miscellaneous Facilities
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk, IA 50315–
Landholding Agency: COE—BC
Property Number: 329510027
Status: Pryor Amendment
Base closure: Number of Units: 3
Comment: 1749–4536 sq. ft., Brick frame, needs rehab, presence of asbestos, incs. P–69, P–308, P–309, (dispensary, commissary, and dining hall).

Ohio

4 Hangars
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 505, 594, 595, 597
Landholding Agency: Air Force-BC
Property Number: 199510001
Status: Pryor Amendment
Base closure: Number of Units: 4
Comment: 11500–28800 sq. ft., wood or metal frame, most recent use—airport hangars, on 1335 acres improved w/airport, runways and navigational aids.

6 Miscellaneous Facilities
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 500, 502, 503, 506, 670, 894
Landholding Agency: Air Force-BC
Property Number: 199510002
Status: Pryor Amendment
Base closure: Number of Units: 6
Comment: 344–8600 sq. ft., wood or masonry frame, most recent use—office trailer, control tower, test stand, fire dept., etc.

Unsuitable Properties

Buildings (by State)

Iowa

P–138
Fort Des Moines
225 E. Army Post Road
Des Moines Co: Polk IA 50315–
Landholding Agency: COE–BC
Property Number: 329510028
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Ohio

Bldgs. 892 & 897
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Landholding Agency: Air Force–BC
Property Number: 199510003
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Other
Comment: Detached latrines.

Bldgs. 898 & 899
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Landholding Agency: Air Force–BC
Property Number: 199510004
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Other
Comment: Pump houses.

8 Storage Facilities
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 550, 555, 705, 811, 824, 825, 905 and 908
Landholding Agency: Air Force–BC
Property Number: 199510005
Status: Pryor Amendment
Base closure Number of Units: 8
Reason: Within 2000 ft. of flammable or explosive material.

3 Utility Buildings
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 188, 600 and 871
Landholding Agency: Air Force–BC
Property Number: 199510006
Status: Pryor Amendment
Base closure Number of Units: 3
Reason: Within 2000 ft. of flammable or explosive material.

4 Offices
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 370, 868, 901, 907
Landholding Agency: Air Force–BC
Property Number: 199510007
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material.

4 Warehouses
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 441, 846, 848, 849
Landholding Agency: Air Force–BC
Property Number: 199510008
Status: Pryor Amendment
Base closure Number of Units: 4
Reason: Within 2000 ft. of flammable or explosive material.

5 Miscellaneous Facilities
Rickenbacker Air Natl. Guard Base
Columbus Co: Franklin OH 43217–5910
Location: Inc. bldgs. 428, 431, 806, 863 and 864
Landholding Agency: Air Force–BC
Property Number: 199510009
Status: Pryor Amendment
Base closure Number of Units: 5
Reason: Within 2000 ft. of flammable or explosive material.

[FR Doc. 95–4532 Filed 2–23–95; 8:45 am]

BILLING CODE 4210–29–M

Office of the Secretary

[Docket No. N–95–3862; FR–3846–N–03]

Funding Availability for Fiscal Year 1995 for Innovative Project Funding Under the Innovative Homeless Initiatives Demonstration Program; Notice of Waiver

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waiver.

SUMMARY: This notice announces a waiver, granted by the Secretary, of the minimum 30-day application period required under section 102(a) of the HUD Reform Act for the Innovative Homeless Initiatives Demonstration, which was announced in the **Federal Register** notice, published on January 25, 1995 (60 FR 4996). A notice extending the deadline for applications was published in the **Federal Register** on January 27, 1995 (60 FR 5434).

DATES: February 24, 1995.

FOR FURTHER INFORMATION CONTACT: David Pollack, Director, Program Development Division, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410. Telephone (202) 708–1234 (voice) or (202) 708–9300 or 1–800–877–8339 (only the 800 number is a toll-free number).

SUPPLEMENTARY INFORMATION: Section 102(a) of the HUD Reform Act (42 U.S.C. 3545(a)) sets out the requirements for notice to the public regarding assistance available from HUD. Section 102(a)(3) requires **Federal Register** publication of selection criteria not less than 30 days before the deadline for applications or requests for assistance. On January 25, 1995, the Department announced the availability of $25 million in funds under the Innovative Homeless Initiatives Demonstration Program, which was authorized by the HUD Demonstration Act of 1993 (Pub.L. 103–120, approved October 27, 1993). The January 25, 1995 notice (NOFA) announced that all applications received at HUD Headquarters, Office of Community Planning and Development, at the address shown in the **Addresses** section of the January 25, 1995 NOFA by 6 p.m. local time on February 6, 1995, would be considered for funding. In a notice published in the **Federal Register** on January 27, 1995 (60 FR 5434), the application deadline date was extended until 6:00 p.m. local time on February 13, 1995, with the same requirements as listed above. The time period was less than the 30-day minimum application requirement under section 102(a)(3).

Section 102(a)(5) of the Reform Act permits the Secretary to waive the minimum 30-day application period "if the Secretary determines that the waiver is required for appropriate response to an emergency." The Secretary is also required to publish, in the **Federal Register**, his reasons for granting such a waiver.

The Department established a short application period for this NOFA in an effort to make funding quickly available to applicants who are in need of funding to assist homeless persons, especially during this time when harsh weather conditions necessitate greater and more immediate assistance to homeless persons. The Secretary determined that the continuing tragedy of homelessness, the desperate need for innovative solutions, the availability of funding under the Innovative Homeless Initiatives Demonstration, the unprecedented demand for assistance from HUD to fight homelessness, and the harsh weather conditions, when considered in combination, demonstrate that an emergency existed that justified the granting of a waiver of the 30-day application period required under section 102 of the HUD Reform Act.

Dated: February 21, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–4628 Filed 2–23–95; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of "Exxon Valdez" Oil Spill Public Advisory Group

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Group to be held on Thursday and Friday, March 23–24, 1995, at 8:30 a.m. in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The agenda will include the orientation of new Public Advisory Group members, the review of habitat protection efforts, the review of restoration activities, and discussion of long-range restoration science planning.

Dated: February 17, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–4632 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–RG–M

Fish and Wildlife Service

Finding of No Significant Impact for an Incidental Take Permit for the Proposed Barton Creek Property Development, Southwest of Austin, Travis County, TX

AGENCY: Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment for issuance of a Section 10(a)(1)(B) permit for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a residential/commercial development in southwest Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit under Section 10(a)(1)(2) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler.

The Applicant plans to construct single-family, multi-family, and villa residences and commercial development on 4,684 acres southwest of Austin, Travis Country, Texas. The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the FM Properties Operating Company (Applicant) Barton Creek Property development Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Implementing Agreement and Habitat Maintenance Agreement. These conservation plan actions ensure that the criteria

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established for issuance of an incidental take permit will be fully satisfied.

Alternatives Considered

1. Proposed action.
2. No action.
3. Alternate project design.
4. Wait for the City of Austin's Regional Conservation Plan.

Determination

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment with the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the Section 10(a)(1)(B) permit for the construction and operation of the Barton Creek Property development, southwest of Austin, Travis County, Texas.

John G. Rogers,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4541 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–65–M

Availability of an Environmental Assessment and an Application for an Incidental Take Permit to Implement the Red-cockaded Woodpecker "Safe Harbor" Program in the Sandhills Region of North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service's (Service) Red-cockaded Woodpecker Recovery Coordinator (Applicant) is seeking an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the take of the federally endangered red-cockaded woodpecker *Picoides borealis* (RCW) at some point in the future, incidental to such lawful activities as timber harvesting, residential development, etc., on private and other public land (excluding Federal land and the Sandhills Game Lands, which are managed by the North Carolina Wildlife Resources Commission) in the six-county Sandhills Region of North Carolina. Specifically, the plan area boundary includes land south of N.C. Highway 24/27 in Moore County; east of U.S. Highway 220 and north of U.S. Highway 74 in Richmond County; north of U.S. Highways 74 and 401 in Scotland County; north of U.S. Highway 401 in Hoke County; west of Interstate 95 in Cumberland County; and south of N.C. Highway 27 and west of U.S. Highway 401 in Harnett County. The permit would authorize incidental take only on land that is enrolled in the proposed "safe harbor" program, which is described in the Supplementary Information Section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Regional Permit Coordinator in Atlanta, Georgia, at the address shown below and should be received on or before March 27, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office; the Sandhills Field Office in Southern Pines, North Carolina; or the Asheville, North Carolina, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit number PRT–798839 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345 (Telephone 404/679–7110, Fax 404/679–7280).

Sandhills RCW Biologist, U.S. Fish and Wildlife Service, P.O. Box 119, 225 N. Bennett Street, Southern Pines, North Carolina 28388 (Telephone/Fax 910/695–3323).

Field Supervisor, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195, Fax 704/665–2782).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Cantrell at the Sandhills Red-cockaded Woodpecker Field Office in Southern Pines, North Carolina; Ms. Janice Nicholls at the Asheville Field Office, Asheville, North Carolina; or Mr. Rick G. Gooch at the Southeast Regional Office, Atlanta, Georgia.

SUPPLEMENTARY INFORMATION: The Sandhills area of North Carolina supports one of the largest remaining populations of federally endangered red-cockaded woodpeckers (RCWs) in the nation and is identified in the RCW recovery plan as 1 of the 15 populations across the species' range that must be viable in order to recover the species. Unlike the other 14 recovery populations, however, a significant portion (approximately 30 percent) of the Sandhills RCW groups known are on private land and could potentially contribute to a Sandhills recovery population. RCWs on private land in the Sandhills have declined significantly over the past decade. Thus, the recovery of the RCW in the Sandhills is likely to be influenced significantly by the land management decisions of private landowners.

The Service and several other agencies/organizations are working cooperatively to develop an overall conservation strategy for the Sandhills RCW population and the longleaf pine ecosystem. One component of this strategy is a habitat conservation plan that will implement the proposed "safe harbor" program. The Service recognizes that landowners presently have no legal or economic incentive to undertake proactive management actions, such as hardwood midstory removal, prescribed burning, or protecting future cavity trees, that will benefit and help recover the RCW. Indeed, landowners actually have a disincentive to undertake these actions because of land use limitations that could result if their management activities attract RCWs. However, some Sandhills landowners may be willing to take or permit actions that would benefit the RCW on their property if the possibility of future land use limitations could be reduced or eliminated.

Thus, the Service is proposing the "safe harbor" program, which is designed to encourage voluntary RCW habitat restoration or enhancement activities by relieving a landowner who enters into a cooperative agreement with the Service from any additional responsibility under the Act beyond that which exists at the time he or she enters into the agreement; i.e., to provide a "safe harbor." The cooperative agreement will identify any existing RCW clusters and will describe the actions that the landowner commits to take (e.g., hardwood midstory removal, cavity provisioning, etc.) or allows to be taken to improve RCW habitat on the property and the time period within which those actions are to be taken and maintained. Participating landowners who enter into cooperative agreements with the Service will be included within the scope of the incidental take permit by Certificates of Inclusion. A participating landowner must maintain the baseline habitat requirements on his/her property (i.e., any existing RCW groups and associated habitat) but will be allowed to incidentally take RCWs at some point in the future on other habitat on the property if they are attracted to the site by the proactive management measures undertaken by the landowner. No incidental taking of any existing RCW group is permitted under this program except under the special circumstances that are described in the HCP. Further details about this program are found in the HCP.

The EA considers the environmental consequences of three alternatives, including the preferred alternative—to implement the "Safe Harbor" program. The likely effects of the no-action alternative are the continued decline of the Sandhills RCW population on private land and the continued lack of management of many of the longleaf pine stands that remain in the Sandhills. The third alternative involves offering interested landowners financial, rather than regulatory, incentives to undertake the desired land management activities for RCWs. This alternative is not being pursued because the Service is presently unable at present to fund such a program. The proposed action alternative is the issuance of an incidental take permit and implementation of the "Safe Harbor" program.

Dated: February 16, 1995.

Noreen Clough,

Acting Regional Director.

[FR Doc. 95–4543 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–55–P

Extension of the Public Comment Period—Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit from Mr. D. Gregory Luce, in Baldwin County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of the public comment period.

SUMMARY: The Fish and Wildlife Service gives notice that the pubilc comment period on the environmental assessment/habitat conservation plan for Mr. D. Gregory Luce's (Applicant) application for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) is being extended. The Applicant has been assigned permit number PRT–797979. The original 30-day comment period closed on February 8, 1995 (**Federal Register** 60:2400–2401). During the original comment period, numerous public commentors requested an extension to more fully address the potential impacts to the Bon Secour National Wildlife Refuge.

DATES: The public comment period for this proposal, which originally closed on February 8, 1995, is now extended until March 10, 1995.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–797979 in such comments.

Regional Permit Coordinator (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345, (telephone 404/679–7110, FAX 404/679–7280)

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Will McDearman at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: The Alabama Beach Mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys have not been conducted on the Applicant's property. The ABM occupied adjacent and nearby dunes of the Bon Secour National Wildlife Refuge. Suitable habitat in the form of secondary and scrub dunes exist on the Applicant's property. These habitats are likely to be occupied by ABM. None of the Applicant's property resides in designated critical habitat for the ABM. Construction of the single family residence on about 0.1–0.2 acres of the Applicant's property may result in the death of, or injury to, ABM. Habitat alterations due to house placement and its subsequent use may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of three alternatives. The proposed action alternative is the issuance of the incidental take permit. This provided for restrictions that include house placement landward of the frontal crest of the scrub dune line, establishment of a walkover structure across that scrub dune, a prohibition against housing or keeping pet cats, scavenger-proof garbage containers, no landscaping, and the minimization and control of outdoor lighting. The HCP provides a funding source for these mitigation measures.

Dated: February 16, 1995.

Noreen K. Clough,

Acting Regional Director.

[FR Doc. 95–4542 Filed 2–23–95; 8:45 am]

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Bureau of Land Management Alaska; Alaska Native Claims Selection

[AK-062-1410-00-P]
[AA-8098-03]

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue a reserved minerals conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for 919.79 acres. The lands involved are in the vicinity of Icy Bay, Alaska.

U.S. Survey No. 8967, Alaska;
U.S. Survey No. 8966, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 27, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,
Chief, Branch of Gulf Rim Adjudication.
[FR Doc. 95-4572 Filed 2-23-95; 8:45 am]
BILLING CODE 5-00183-4310-JA-P

[AZ-050-0-1430-00: AZA 25147]

Arizona: Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Mohave County, AZ

AGENCY: Bureau of Land Management.
ACTION: Notice of realty action—Recreation and Public Purposes (R&PP) Act classification; Mohave County, AZ.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Mohave Mental Health Clinic, Inc. under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Mohave Mental Health Clinic proposes to use the following lands for a mental health clinic.

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Sec. 20, SW¼SW¼SE¼NW¼ (within).
Containing 1.296 acre, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for Mohave County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, AZ 86406.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for the mental health clinic. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a mental health clinic.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, BLM Havasu Resource Area Office, (602) 855-8017.

Dated: February 17, 1995.
Judith I. Reed,
District Manager.
[FR Doc. 95-4568 Filed 2-23-95; 8:45 am]
BILLING CODE 4310-32-P

[UT-930-05-1220-00]

Supplementary Rule; Prohibition of Persons Under 21 Years of Age from Possessing Alcoholic Beverages on Public Land Within the State of Utah

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Establishment of a Supplementary Rule Prohibiting Persons Under 21 Years of Age from Possessing Alcoholic Beverages on Public Land within the State of Utah.

SUMMARY: Underage drinking is a growing problem on the public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands and can result in the destruction of natural resources. This action will allow BLM officers to restrict the possession of alcoholic beverages by minors in a manner consistent with Utah State law. This supplementary restriction is issued under the authority of 43 CFR 8355.1-6. Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0-7.

EFFECTIVE DATE: This restriction will go into effect on February 24, 1995, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: State Special Agent in Charge, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, (801) 539-4011.

G. William Lamb,
Acting State Director
[FR Doc. 95-4479 Filed 2-23-95; 8:45 am]
BILLING CODE 4310-DQ-P

[ID-040-4610-00]

Amendment to Notice of Intent to Initiate a Resource Management Plan and Prepare an Environmental Impact Statement for the Challis Reource Area

ACTION: Amendment to Notice of Intent (NOI) to initiate a Resource Management Plan (RMP) and prepare an Environmental Impact Statement (EIS) for the Challis Resource Area in Lemhi and Custer Counties, Idaho and invitation to participate in the identification of issues (scoping).

SUMMARY: Original notice was published in the Federal Register November 25, 1991. Original notice is hereby amended to also include approximately 2,000 acres adjoining the Challis Resource Area, but presently managed by the Big Butte Resources Area, Idaho Falls District. The purpose of amending the Notice is to notify the public that we are now considering an Area of Critical Environmental Concern (ACEC) designation, which is managed under the Little Lost-Birch Creek Management Framework Plan (MFP) (June 1981). If the decision following the Challis EIS is to designate the area as an ACEC, then that decision would amend the existing Little Lost-Birch Creek MFP.

DATES: Dates and locations for future meetings will be announced in the local media and through a mailing list, as appropriate.

ADDRESSES: Comments should be sent to: Challis Resource Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, Challis Resource Area Manager, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467, or telephone (208) 756-5420.

SUPPLEMENTARY INFORMATION: The Challis Resource Area Draft RMP and Draft EIS will examine alternative recommendations regarding Areas of Critical Environmental Concern (ACEC). At least one such alternative is expected to affect lands managed by the Big Butte Resource Area in the Donkey Hills area near the Lemhi County/Butte County line in Idaho. These lands adjoin lands managed by the Challis Resource Area and collectively comprise an area with important resource values. If a recommendation for designation of this area as an ACEC is included in the proposed RMP and final EIS, the subsequent record of decision would amend the existing Little Lost-Birch Creek Management Framework Plan (June 1981).

Public participation will continue throughout the remainder of the planning process. The next step of the planning process in which the public will be specifically invited to participate will be review of the Draft RMP/EIS, followed by a review of the Proposed RMP/Final EIS.

Dated: February 13, 1995.
Fritz U. Rennebaum,
Ecsystem Manager.
[FR Doc. 95-4571 Filed 2-23-95; 8:45 am]
BILLING CODE 4310-GG-M

[ID-942-04-1420-00]

Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., February 16, 1995.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and subdivision of sections 19, 20, 29, and 30, T. 15 S., R. 45 E., of the Boise Meridian, Idaho, Group No. 891, was accepted, February 13, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of the west boundary, subdivisional lines, subdivision of sections 19 and 20, certain tracts, and the 1912 meanders of the right bank of the Kootenai River, a metes-and-bounds survey and meanders of the 1994 right bank of the Kootenai River, T. 62 N., R. 1 E., Boise Meridian, Idaho, Group No. 905, was accepted, February 14, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: February 16, 1995.
Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.
[FR Doc. 95-4575 Filed 2-23-95; 8:45 am]
BILLING CODE 4310-GG-M

[ES-960-4730-12; ES-047148, Group 150, Wisconsin]

Notice of Filing of Plat of Survey; Wisconsin

The plat of the survey of an island in Peshtigo Harbor, Green Bay, Township 29 North, Range 23 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 31, 1995.

The survey was executed in response to an application for the survey of an unsurveyed island submitted by Kathleen M. Ptacek, Assistant Attorney General, Department of Justice, State of Wisconsin.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m. March 31, 1995.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: February 15, 1995.
Stephen G. Kopach,
Chief Cadastral Surveyor.
[FR Doc. 95-4481 Filed 2-23-95; 8:45 am]
BILLING CODE 4310-GJ-M

[UT-942-1340-00; U-010084]

Proposed Continuation of Withdrawals; Utah; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 95-2127 beginning on page 5696 in the issue of Monday, January 30, 1995, make the following correction:

On page 5696 in the third column, under the heading Bear Valley Administrative Site, the legal description which reads T.36 S., R. 7 W., should be changed to T. 33 S., R. 7 W.

Dated: February 14, 1995.
Terry Catlin,
Chief, Branch of Lands and Minerals Operations.
[FR Doc. 95-4480 Filed 2-23-95; 8:45 am]
BILLING CODE 4210-GG-M

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Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Union Pacific Resources, NORM Disposal Operations, SEA No. NORM 94–122.	High Island Area, Blocks A–71 and A–72, Leases OCS–G 9098 and 9099, 52 miles southeast of Galveston County, Texas.	07/27/94
Union Corporation, NORM Disposal Operations, SEA No. NORM 94–123.	Vermilion Area, Block 34, Lease OCS–G 13876, 5 miles south of Vermilion Parish, Louisiana.	07/29/94
Unocal Corporation, NORM Disposal Operations, SEA No. NORM 94–126.	Ship Shoal Area, Block 208, Lease OCS–G 1228, 33 miles south of the Isles Dernieres of Terrebonne Parish, Louisiana.	10/28/94
Vastar Resources, Inc., NORM Disposal Operations, SEA No. NORM 94–127.	Mustang Island Area, Block 786, Lease OCS–G 10149, 28 miles east of Nueces County, Texas.	07/21/94
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM 94–131.	Eugene Island Area, Block 119, Lease OCS 049, 20 miles southwest of Terrebonne Parish, Louisiana.	10/11/94
Amerada Hess Corporation, NORM Disposal Operations, SEA No. NORM 94–132.	Ship Shoal Area, Block 368, Lease OCS–G 10814, 71 miles south of Terrebonne Parish, Louisiana.	10/06/94
Chevron U.S.A., NORM Disposal Operations, SEA No. NORM 94–133.	West Delta Area, Block 24, Lease OCS 0691, 4 miles west of Plaquemines Parish, Louisiana.	10/20/94
Chevron U.S.A., NORM Disposal Operations, SEA No. NORM 94–135.	South Timbalier Area, Block 23, Lease OCS 0166, 4 miles south of Lafourche Parish, Louisiana.	10/21/94
Mesa Petroleum, NORM Disposal Operations, SEA No. NORM 94–136.	South Pelto Area, Block 13, Lease OCS–G 3171, 8 miles south of the Isles Dernieres of Terrebonne Parish, Louisiana.	10/28/94
Exxon Company, U.S.A., Structure-Removal Operations, SEA No. ES/SR 90–070A.	Grand Isle Area, Block 22, Lease OCS 031, 9 miles south of Lafourche Parish, Louisiana.	10/27/94
The Louisiana Land and Exploration Company, Structure-Removal Operations, SEA No. ES/SR 93–001A.	Vermilion Area, Block 171, Lease OCS–G 1130, 32 miles south of Vermilion Parish, Louisiana.	10/04/94
Gulfstream Resources, Inc., Structure-Removal Operations, SEA Nos. ES/SR 93–137A and 94–085A.	Eugene Island Area Blocks 89 and 93, Leases OCS 044 and 0228, 10–22 miles southwest of St. Mary Parish, Louisiana.	09/23/94
Pennzoil Petroleum Company, Structure-Removal Operations, SEA No. ES/SR 94–072.	West Cameron Area, Block 292, Lease OCS–G 6581, 20 miles south of Cameron Parish, Louisiana.	08/05/94
Energy Resource Technology, Inc., Structure-Removal Operations, SEA No. ES/SR 94–075.	High Island Area, Block 175, Lease OCS–G 7281, 25 miles southeast of Galveston County, Texas.	07/26/94
Apache Corporation, Structure-Removal Operations, SEA No. ES/SR 94–076.	East Cameron Area, South Addition, Block 347, Lease OCS–G 2566, 101 miles south of Cameron Parish, Louisiana.	08/26/94
The Louisiana Land and Exploration Company, Structure-Removal Operations, SEA No. ES/SR 94–077 and 94–078.	Vermilion Area, Blocks 103 and 104, Lease OCS–G 1954 and OCS 570, 38 miles south of Vermilion Parish, Louisiana.	09/15/94
Delmar Operating, Inc., Structure-Removal Operations, SEA No. ES/SR 94–079.	South Timbalier Area, Block 146, Lease OCS–G 3176, 47 miles south-southwest of Leesville, Louisiana.	07/25/94
BT Operating Company, Structure-Removal Operations, SEA Nos. ES/SR 94–80 94–81.	Chandeleur Area, Block 18, Lease OCS–G 6838, 8 miles east of Breton National Wildlife Refuge and Wilderness Area.	08/24/94
Zilkha Energy Company, Structure-Removal Operations, SEA No. ES/SR 94–082.	West Cameron Area, Block 360, Lease OCS–G 8632, 56 miles south of Cameron Parish, Louisiana.	08/05/94
Gulfstream Resources, Inc., Structure-Removal Operations, SEA No. ES/SR 94–085.	Eugene Island Area, Block 93, Lease OCS 0228, 22 miles southwest of Amelia, Louisiana.	09/16/94
Union Pacific Resources Company, Structure-Removal Operations, SEA No. ES/SR 94–086.	High Island Area, Block A–71, Lease OCS–G 9098 49 miles south of Jefferson County, Texas.	09/07/94
Walter Oil & Gas Corporation, Structure-Removal Operations, SEA No. ES/SR 94–088.	West Cameron Area, Block 574, Lease OCS–G 9428, 118 miles southeast of Galveston, Texas.	09/09/94
Phillips Petroleum Company, Structure-Removal Operations, SEA No. ES/SR 94–089.	Ship Shoal Area, Block 26, Lease OCS–G 5530, 4 miles south of Terrebonne Parish, Louisiana.	08/25/94
Kerr-McGee Corporation, Structure-Removal Operations, SEA No. ES/SR 94–090.	West Cameron Area, Block 100, Lease OCS–G 6569, 14 miles south of Cameron Parish, Louisiana.	09/22/94
Exxon Company U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–91.	West Delta Area, Block 32, Lease OCS 0367, 5 miles south of Plaquemines Parish, Louisiana.	11/23/94
Apache Corporation, Structure-Removal Operations, SEA No. ES/SR 94–092.	Main Pass Area, Block 208, Lease OCS–G 5716, 40 miles northeast of Plaquemines Parish, Louisiana.	10/17/94
Walter Oil and Gas Corporation, Structure-Removal Operations, SEA No. ES/SR 94–093.	South Marsh Island Area, Block 123, Lease OCS–G 9543, 104 miles south-southwest of Morgan City Louisiana.	09/16/94
Exxon Company, U.S.A., Structure-Removal Operations, SEA No. ES/SR 94–094.	West Delta Area, Block 32, Lease OCS 0367, 4 miles south of Plaquemines Parish, Louisiana.	09/16/94
Marathon Oil Company, Structure-Removal Operations, SEA No. ES/SR 94–095.	West Cameron Area, Block 540, Lease OCS–G 2553, 97 miles south of Cameron Parish, Louisiana.	09/22/94
Quintana Petroleum Corporation, Structure-Removal Operations, SEA No. ES/SR 94–096.	East Cameron Area, Block 2, Lease OCS–G 10605, 4 miles south of Cameron Parish, Louisiana.	09/27/94

Activity/operator	Location	Date
Kerr-McGee Corporation, Structure-Removal Operations, SEA No. ES/SR 94–097.	Ship Shoal Area, Block 27, Lease OCS 0347, 5 miles south of Terrebonne Parish, Louisiana.	10/12/94
Koch Exploration Company, Structure-Removal Operations, SEA No. ES/SR 94–098.	East Cameron Area, Block 233, Lease OCS–G 9460, 90 miles south-southeast of Cameron Parish, Louisiana.	10/07/94
Aquila Energy Resources Corporation, Structure-Removal Operations, SEA No. ES/SR 94–099.	Vermilion Area, Block 122, Lease OCS–G 3807, 33 miles south of Vermilion Parish, Louisiana.	10/11/94
Unocal Corporation, Structure-Removal Operations, SEA No. ES/SR 95–001.	West Cameron Area, Block 280, Lease OCS–G 0911, 60 miles south of Cameron Parish, Louisiana.	11/03/94
BP Exploration Inc., Structure-Removal Operations, SEA No. ES/SR 95–002 and 95–003.	West Cameron Area, Block 43, Lease OCS–G 7597, 3 miles south of Cameron Parish, Louisiana.	11/09/94
The Louisiana Land and Exploration Company, Structure-Removal Operations, SEA No. ES/SR 95–004 and 95–005.	West Cameron Area, Block 40, Lease OCS 0224, 10 miles south of Cameron Parish, Louisiana.	11/23/94

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: February 14, 1995.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 95–4476 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0112), Washington, D.C. 20503, telephone 202–395–3470.

Title: Gas Well Data—Survey of Helium-Bearing Natural Gas

OMB approval number: 1032–0112

Abstract: Respondents supply information which will be used by the U.S. Bureau of Mines, Division of Helium Field Operations, to evaluate the helium resources of the United States. This evaluation helps assure a continued supply of the valuable natural resource to meet essential Government needs. Results of the gas analyses, along with the data supplied, are published to provide valuable information to industry and to the public when those data are released by the supplier.

Bureau form number: 6–1579–A

Frequency: Annually

Description of respondents: Owners and operators of helium-bearing natural gas wells and transmission lines.

Estimated completion time: 15 minutes

Annual responses: 200

Annual burden hours: 50

Bureau clearance officer: Alice J. Wissman (202) 501–9569.

Dated: February 3, 1995.

Reah L. Graham,

Director, U.S. Bureau of Mines.

[FR Doc. 95–4569 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–53–M

Bureau of Reclamation

Navajo Unit, Colorado River Storage Project, Colorado-New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of environmental scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act and agency policy, the Bureau of Reclamation, in coordination with the Biology Committee for the San Juan River Recovery Implementation Program, will hold three environmental scoping meetings in March. The purpose of the meetings is to obtain public comment on a proposal to reduce winter flow releases from Navajo Dam. The Biology Committee has recommended that winter (November 1 through February 28) flow releases be reduced from 500 cubic feet per second (cfs) to 250 cfs, beginning in the winter of 1995. This reduced flow reflects average winter flows prior to the construction of Navajo Dam (1931–1962). This flow reduction is expected to result in a 600–650 cfs flow at Bluff, Utah. If unusually dry conditions occur, river flows would not be allowed to go below 500 cfs at that point in the river. The reduction in wintertime flows will allow more water to be stored during winter periods, provide a greater potential for the occurrence of spring spills, and a longer duration of those spills. These seasonal flood events are assumed to be beneficial to the maintenance of downstream endangered fish populations.

DATES: The scoping meetings will be held on:

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- March 1, 1995, from 6:00 to 8:30 p.m., in Shiprock, New Mexico.
- March 2, 1995, from 6:00 to 8:30 p.m., in Farmington, New Mexico.
- March 3, 1995, from 6:00 to 8:30 p.m., in Bluff, Utah.

At each location, an informational open house will be held from 6:00 to 7:00 p.m., followed by a presentation on the proposed action and an open discussion of points of interest. The public is invited. The Bureau of Reclamation assures meeting accessibility to persons with disabilities. To request special assistance prior to the meetings, please contact Errol Jensen in the Durango Office at (303) 385–6570 3 days prior to the March meetings.

ADDRESSES: The meetings will be held at the following locations:

- Central Consolidated School Administration Office Boardroom, Shiprock, New Mexico
- City Council Chambers, 800 Municipal Drive, Farmington, New Mexico
- Recapture Lodge, Highway 191, Bluff, Utah

FOR FURTHER INFORMATION CONTACT: The contact person for the environmental scoping effort is Errol Jensen, Bureau of Reclamation, Durango Office, PO Box 640, Durango CO 81302, telephone (303) 385–6570. Written comments regarding the proposed action, and requests to be included on a mailing list may be sent to this address.

SUPPLEMENTARY INFORMATION: A variety of downstream resources and entities which may be potentially affected by this reduction in releases would be assessed and, if needed, monitored during the winter. Possible effects on the downstream tailwater trout fishery, native fish populations, downstream water right holders, wintering bald eagles, waterfowl populations, crop depredation, livestock trespass, streamside wetland/riparian habitats, and dilution of contaminants are issues which have been initially identified. To the extent possible, flow-related effects on downstream endangered fishes (Colorado squawfish and razorback sucker) will also be assessed.

Dated: February 16, 1995.

Charles A. Calhoun,

Regional Director.

[FR Doc. 95–4606 Filed 2–23–95; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed action.

SUMMARY: The Commission proposes to adopt its estimate of railroad productivity change for 1993 and incorporate it, along with previously calculated data, into a 1989–1993 (5-year) average. Estimated average productivity growth is 1.097 for 1993. Estimated annual productivity for the 5-year 1989–1993 period is 1.059 or 5.9% per year. Because the methodology for calculating the productivity adjustment and the length of the averaging period have already been adopted, comments are limited to data and computational errors.

DATES: Comments are due March 6, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. (TDD for the hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: The Rail Cost Adjustment Factor is a quarterly index that measures changes in railroad expenses. A productivity adjustment is used to adjust the quarterly Rail Cost Adjustment Factor for productivity improvements.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave., NW., Washington DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD Services at (202) 275–1721).

Decided: February 9, 1995

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4579 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32662]

Consolidated Rail Corporation—Trackage Rights Exemption—Missouri Pacific Railroad Co.

Missouri Pacific Railroad Company (MP) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) over approximately 33.28 miles of rail line of its St. Louis Division, Chicago Subdivision main line from milepost 220.82 (at the connection between MP and Conrail at approximately milepost 154.1 of Conrail's St. Louis line), at St Elmo, IL, continuing over MP's main line to milepost 254.10, at Salem, IL, and certain tracks located within the Common Yard owned by MP at Salem, as designated from time to time by MP Conrail's trackage rights will provide it with access to the Common Yard, which will be established at MP's Salem Yard, to receive and deliver bridge traffic between Conrail and MP. The trackage rights were to become effective on or after February 10, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 2001 Market Street, 16A, P.O. Box 41416, Philadelphia, PA 19101–1416.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4580 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32561]

Escanaba & Lake Superior Railroad Co.—Acquisition and Operation Exemption—Line of Chicago and Northwestern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the acquisition and operation by the Escanaba & Lake Superior Railroad Company of the 5.45-mile line of the Chicago and Northwestern Railway Company between milepost 46.1, near Stiles Junction, and milepost 40.65, near Oconto Falls, in Wisconsin, subject to the labor protective conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), as clarified in Wilmington Term. RR. Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C.2d 799 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

DATES: This exemption will be effective on March 26, 1995. Petitions for stay must be filed by March 13, 1995 and petitions to reopen must be filed by March 21, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32561 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Larry H. Mitchell, 4th Floor, 1920 L Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. (TDD for the hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4581 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

[No. 41506]

Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a/ METRA—Exemption—Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a METRA's rail commuter service within the State of Illinois and between Chicago, IL, and Kenosha, WI, from the tariff filing requirements of Subtitle IV of Title 49.

DATES: This exemption is effective on February 24, 1995. Petitions to reopen must be filed by March 16, 1995.

ADDRESSES: Send pleadings referring to No. 41506 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioners' representative: Andrew M. Ray, 888 Sixteenth St. NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 8, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4578 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32476]

Northern Nevada Railroad Corporation—Construction and Operation Exemption—White Pine County, NV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 Northern Nevada Railroad Corporation's proposed construction and operation of approximately 3.14 miles of track between Keystone and Riepetown in White Pine County, NV. The decision and exemption will become effective, if appropriate, only upon completion of the Commission's environmental review concerning construction and operation of the proposed rail line and issuance of a further decision.

DATES: Petitions to reopen must be filed by March 15, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32476 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave. NW., Washington, DC 20423; and (2) Petitioner's representative: Louis E. Gitomer, 1101 Pennsylvania Ave. NW., Suite 1035, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave. NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4582 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 181X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Santa Clara County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the Southern Pacific Transportation Company's abandonment of a 1.45-mile line of railroad, known as the Moffett Drill Track, which extends from milepost 36.89, near the Mountain View rail station at Mountain View, CA, to approximately milepost 38.34, near the Moffett Federal Airfield (formerly the Moffett Field Naval Air Station) in Santa Clara County, CA. The transaction also is exempted from the offer of financial assistance and public use procedures of 49 U.S.C. 10905 and 10906, respectively.

DATES: This exemption will be effective on February 24, 1995. Petitions to reopen must be filed by March 21, 1995

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 181X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave.

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NW., Washington, DC 20423, and (2) petitioner's representative: Louis E. Gitomer, 1101 Pennsylvania Ave. NW., Suite 1035, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave. NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4583 Filed 2–23–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Adflex Corporation, et al.*, Civ. No. 95–CV–0012, was lodged on January 6, 1995, in the United States District Court for the Western District of New York. The consent decree settles an action commenced in a complaint filed January 6, 1995, under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607(a). The Complaint seeks recovery of response costs incurred by EPA in performing a removal action at the Envirotek I Superfund Site (the "Site"), located at 153 Fillmore Avenue, Tonawanda, New York. The Site was formerly a paint and asphalt manufacturing facility and consists of twelve buildings in various states of disrepair on approximately two acres of land at 153 Fillmore Avenue, Tonawanda, New York. The removal action included the sorting, segregating and disposal of approximately 500 drums containing raw and waste materials classified as flammable, combustible, corrosive and otherwise hazardous materials under RCRA; 1700 containers of 10 gallons or less in size; 15 tanks and vats; 2 underground tanks; 6 electrical transformers containing PCBs; approximately two dozen pallets of bagged pigments and resins, including 20 bags of asbestos; and assorted powders and liquids spilled onto the floors of various buildings. The defendants are parties who are alleged to have arranged for the disposal or treatment of hazardous substances that were disposed of at the Site.

The Consent Decree provides for payment by the defendants of $1,098,771.37. The Consent Decree also resolves the liability of the United States Department of Energy in connection with a federal facility whose wastes may have been sent to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Adflex Corporation, et al.*, DOJ Ref. #90–11–2–465A.

The proposed consent decree may be examined at the office of the United States Attorney, Federal Center, 138 Delaware Avenue, Buffalo, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $19.25 (25 cents per page reproduction costs).

Joel M. Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–4565 Filed 2–23–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on December 20, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: Cray Communications, Watford Hertforshire, UNITED KINGDOM; Cabletron Systems, Inc., Rochester, NH; BT, Reston, VA; General Instrument, Hatboro, PA; Telefonica de Espana, Madrid, SPAIN; Tellabs Ltd., Shannon County Clare, IRELAND; and Unisource Business Network, Stockholm, SWEDEN.

Wellfleet Communications, a member of FRF, has changed its name to Bay Networks.

No other changes have been made in either the membership or planned activities of FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on September 21, 1994. This notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4566 Filed 2–23–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Products Stewardship Council

Notice is hereby given that, on December 30, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Products Stewardship Council ("the Council") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: BP America, Inc., Cleveland, OH; Texaco, Inc.; Beacon, NY; Mobil Oil Corporation, Princeton, NJ; Chevron, Richmond, CA; Amoco Corporation, Chicago, IL; Unocal Corporation, Los Angeles, CA; Atlantic-Richfield Corporation, Los Angeles, CA.

The objective of the venture is to evaluate toxicological testing needs for North American refinery products; to sponsor or conduct such toxicological testing as appropriate; to share results of such testing with the Members of the Council in order to promote product stewardship and to enhance their understanding of those products or product blending streams; to cooperate with other national and international organizations having similar objectives; and to comply with all applicable government laws and regulations regarding the reporting of test data or other applicable provisions.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4567 Filed 2–23–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting by Teleconference

Summary: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–262, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce an open meeting of the Commission for Wednesday, March 8, 1995 from 12 pm. to 1 pm E.S.T. The meeting will be conducted by telephone teleconference. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and Place: The meeting will be held by teleconference, Wednesday, March 8, 1995 (Eastern Standard Time) in the Department of Labor 2nd Floor Room C2313. The meeting is open to the public, and will be held from 12 pm to 1 pm EST. This meeting will take the place of an earlier February 13th and February 1st meeting which had to be postponed.

The Commission will meet to discuss the status of the activities and tasks of the Commission. The agenda for the meeting include: Review of Report.

Individuals with disabilities should contact Ms. René A. Redwood at (202) 219–7342 no later than March 3, 1995 if special accommodations are needed.

Due to scheduling difficulties, we are providing less than 15 days of advance notice of this meeting.

For Further Information Contact: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 22nd day of February 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–4735 Filed 2–23–95; 8:45 am]

BILLING CODE 4510–23–M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under Section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on March 14 and 15 in Rooms S4215 A, B, and C at the Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. The meeting on Tuesday, March 14, will be from approximately 9:00 AM to 4:00 PM, and on Wednesday, March 15, will be from approximately 8:30 AM to Noon.

Written comments are welcome and may be submitted by addressing them to: Mr. Thomas S. Keefe, Special Assistant, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of minutes of previous meeting.
- Report from the Task Forces—

—Rewrite of the Dictionary of Occupational Titles
—Employee Unions Not Recognizing Military Training
—Women Veterans' Issues
—Minority and Low Income (homeless and dislocated workers)
—Overview of All Training Programs That Exist
—Standards Indicators Used by the Department of Labor
—JTPA Titles II and III information breakdown

- Any other business.

The meeting will be open to the public.

Persons with disabilities, needing special accommodations, should contact Thomas S. Keefe at telephone number 202–219–9116 no later than Friday, March 10.

Signed at Washington, D.C. this 21st day of February, 1995.

Preston M. Taylor Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 95–4605 Filed 2–23–95; 8:45 am]

BILLING CODE 4510–79–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act.

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The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and sueprsedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

Correction

The **Federal Register**, as published on February 10, 1995, contained references to general wage decisions not issued on that date. The notice with regard to the general wage decisions listed by volume and state below should be considered withdrawn.

Volume II

Virginia
VA94–45 (Feb. 11, 1994) (VA95–45)

Volume IV

Michigan
MI94–62 (Feb. 11, 1994) (MI95–62)

Volume VI

North Dakota
ND94–54 (Apr. 01, 1994) (ND95–54)
ND94–55 (Apr. 29, 1994) (ND95–55)
ND94–56 (Apr. 29, 1994) (ND95–56)
ND94–57 (Apr. 29, 1994) (ND95–57)

The **Federal Register**, as published on February 10, 1995 failed to contain references to general wage decisions issued on that date. This notice should be considered to include those general wage decisions, as listed below by volume and state, which were inadvertently omitted.

Volume III

Alabama
AL94–30 (Feb. 11, 1994) (AL95–30)
AL94–37 (Mar. 25, 1994) (AL95–30)
Georgia
GA94–26 (Feb. 11, 1994) (GA95–26)
Tennessee
TN94–57 (Jun. 10, 1994) (TN95–21)
TN94–58 (Jun. 10, 1994) (TN95–37)

Volume IV

Ohio
OH94–20 (Feb. 11, 1994) (OH95–20)

Volume VI

Nevada
NV94–4 (Feb. 11, 1994) (NV95–4)
NV94–6 (Feb. 11, 1994) (NV95–6)

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume II

West Virginia
WV950018 (Feb. 24, 1994)
WV950019 (Feb. 24, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

District of Columbia
DC950001 (Feb. 10, 1995)
Maryland
MD950048 (Feb. 10, 1995)
Virginia
VA950003 (Feb. 10, 1995)
VA950018 (Feb. 10, 1995)
VA950039 (Feb. 10, 1995)
VA950046 (Feb. 10, 1995)
VA950069 (Feb. 10, 1995)
VA950084 (Feb. 10, 1995)
VA950104 (Feb. 10, 1995)
VA950113 (Feb. 10, 1995)
West Virginia
WV950001 (Feb. 10, 1005)

Volume III

Alabama
AL950009 (Feb. 10, 1995)
AL950043 (Feb. 10, 1995)
AL950052 (Feb. 10, 1995)
Tennessee
TN950005 (Feb. 10, 1995)

Volume IV

None

Volume V

None

Volume VI

Oregon
OR950001 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of February 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–4485 Filed 2–23–95; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

Date: March 10, 1995.
Time: 9:00 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Centers for Advanced Study and International Research Organizations Program, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 95–4601 Filed 2–23–95; 8:45 am]

BILLING CODE 7536–01–M

Music Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training/Career Development Section) to the National Council on the Arts will be held on March 29–30, 1995, from 9:00 a.m. to 5:30 p.m., in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5:30 p.m. on March 30 for policy discussion and guideline review.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on March 29 and from 9:00 a.m. to 3:30 p.m. on March 30 for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: February 17, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–4525 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–M

Music Arts Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Recording Section) to the National Council on the Arts will be held on March 14–15, 1995 from 9:00 a.m. to 5:30 p.m. in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:30 p.m. on March 15 for a policy discussion.

The remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on March 14 and from 9:00 a.m. to 4:30 p.m. on March 15 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: February 17, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–4524 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–M

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Theater Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a planning meeting for the Professional Theater Companies Section of the Theater Advisory Panel will be held on February 27, 1995 from 9:30 a.m. until business is completed, in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: February 17, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowments for the Arts.

[FR Doc. 95–4526 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts

Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies Panel B Section) to the National Council on the Arts will be held on March 27–31, 1995. The panel will meet from 9:30 a.m. to 9:00 p.m. on March 27; from 9:00 a.m. to 9:00 p.m. on March 28–30; and from 9:00 a.m. to 8:00 p.m. on March 31 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 27 from 9:30 a.m. to 10:30 a.m. for opening remarks and a discussion of procedural issues and review criteria for the Professional Theater Companies category and from 5:00 p.m. to 8:00 p.m. on March 31 for a discussion of guidelines, policy, and procedural issues.

The remaining portions of this meeting from 10:30 a.m. to 9:00 p.m. on March 27; from 9:00 a.m. to 9:00 p.m. on March 28–30; and from 9:00 a.m. to 5:00 p.m. on March 31 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4)(6), and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: February 21, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–4627 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–P

Announcement of Meeting of Public Partnership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Public Partnership Advisory Panel (State & Regional Section) to the National Council on the Arts will be held on March 20–21, 1995. The panel will meet from 9:00 a.m. to 5:30 p.m. on March 20 and from 9:30 a.m. to 4:00 p.m. on March 21 in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis for review of applications and a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: February 26, 1995.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 95–4626 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual-Artists Public Projects Section) to the National Council on the Arts will be held on March 28–31, 1995 from 9:00 a.m. to 7:00 p.m. on March 28–30 and from 9:30 a.m. to 3:30 p.m. on March 31. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 1:30 p.m. to 3:30 p.m. on March 31 for a policy and guidelines discussion.

The remaining portions of this meeting from 9:00 a.m. to 7:00 p.m. on March 28–30 and from 9:30 a.m. to 1:30 p.m. on March 31 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC., 20506, or call 202/682–5433.

Dated: February 17, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–4527 Filed 2–23–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by March 17, 1995. Copies of materials may be obtained at the NSF address or telephone shown below.

Agency Clearance Officer: Herman G. Fleming, Division of Contracts, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may be submitted to:

OMB Desk Officer: Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey of Course & Curriculum Development Program Principal Investigators and unsuccessful Applicants.

Affected Public: Individuals.

Respondents/Reporting Burden: 530 respondents: average 13 minutes per response.

Abstract: NSF will use data from two mails surveys to improve its undergraduate Course & Curriculum Development program. One asks Principal Investigators about the nature of, products developed by, and impact of their projects. The other asks unsuccessful applicants about the experience and consequences of undergoing the proposal process.

Dated: February 17, 1995.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 95–4523 Filed 2–23–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

10 CFR Part 70—Domestic Licensing of special Nuclear Material. Draft Regulatory Guide DG–3008—Nuclear Criticality Safety Training.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Renewal applications are submitted every five years. Applications for renewal for certain major fuel cycle facilities are submitted every ten years, with updates of the safety demonstration section submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions. Nuclear criticality safety training program information pursuant to DG–3008 is submitted with the application or renewal.

5. Who will required or asked to report: Applicants for and holders of specific NBC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

6. An estimate of the number of annual responses: 1,241

7. An estimate of the total number of hours needed annually to complete the requirement or request: 82,885 (an average of approximately 62.5 hours per response for applications and reports, plus approximately 25.4 hours annually per recordkeeper).

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. Draft Regulatory Guide DG–3008 provides guidance on an acceptable nuclear criticality safety training program. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects an increase in burden primarily because of the addition of requirements for uranium enrichment facilities, decommissioning funding requirements, financial assurance self-guarantee provisions, and documentation additions for decommissioning and license termination.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0009), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Bethesda, Maryland, this 15th day of February, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–4590 Filed 2–23–95; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 182 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance, to be implemented within 30 days.

The amendment revises Technical Specification 3/4.4.9, "Pressure/Temperature Limits, Reactor Coolant System," Figures 3.4–3, 4, and 5 and the associated Bases section. The amendment replaces these TS figures as a result of reanalyses in response to NRC Information Notice 93–58, "Nonconservatism in Low Temperature Overpressurization Protection for Pressurized Water Reactors."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 16, 1994 (59 FR 25507). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (60 FR 7588).

For further details with respect to the action see (1) the application for amendment dated April 7, 1994, as supplemented November 4, 1994, (2) Amendment No. 182 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 16th day of February 1995.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4591 Filed 2–23–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Notice of Commission Visits

February 17, 1995.

Notice is hereby given that members of the Commission staff will visit the following U.S. Postal Service mail processing facilities:

Richmond, VA to view BRMAS processing and rating, February 24, 1995, 4:00 am Largo, MD GMF/BMC to observe mail processing, February 28, 1995, 6:00 pm Merrifield, VA and an associated local facility to view delivery point barcoding and integration into carrier sequence, March 6, 1995, 6:00 am.

Reports of these visits will be placed on file in the Commission's Docket Room. For further information contact Margaret P. Crenshaw, Secretary of the Commission, (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 95–4533 Filed 2–23–95; 8:45 am]

BILLING CODE 7710–FW–P

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Port Adventure, Trinity County, TX, Pinwah Pines, Polk County, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Port Adventure, located near the City of Sebastopol, Trinity County, Texas, and Pinwah Pines, located near the City of Livingston, Polk County, Texas, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until May 25, 1995.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Steven Reid, Resolution Trust Corporation, Dallas Field Office, 3500 Maple Avenue, Reverchon Plaza, Suite 300, Dallas, TX 75219, (214) 443–4738; Fax (214) 443–6574.

SUPPLEMENTARY INFORMATION: The Port Adventure property is located on Route 2, two miles east of Sebastopol, Texas, and accessible on the southern side from FM 356. The site consists of approximately 284.8 acres of mostly undeveloped land with a campground and community activity facilities. The Port Adventure property contains habitat for Federally-listed endangered species and the western portion of the site is adjacent to a small inlet of Lake Livingston which is managed by the Trinity River Authority for natural resource conservation and recreational purposes.

The Pinwah Pines property is located southeast of Onalaska and northwest of Livingston on US–190, Polk County, Texas. The site consists of approximately 97 acres of undeveloped land with rolling terrain and water frontage on the northeast side of Lake Livingston. The Pinwah Pines property contains habitat for Federally-listed endangered species and the site is contiguous with Lake Livingston which is managed by the Trinity River Authority for natural resource conservation and recreational purposes. These properties are covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Title to the Pinwah Pines property is vested in First Texas Equities, Inc., a subsidiary of Jasper Federal Savings and Loan, in Receivership, and is subject to claims asserted in that matter styled "First Texas Equities, Inc. v. Neil Chain," pending under Cause No. 11,933 in the 258th Judicial District Court of Polk County, Texas, and that notice of Lis Pendens regarding said matter, dated May 24, 1991, and recorded May 28, 1991, in Volume 807, Page 653 of the Official Records of Polk County, Texas.

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before May 25, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: [insert name of property]

Federal Register Publication Date: _____ [insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection

Dated: February 17, 1995.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–4477 Filed 2–23–95; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35392; International Series Release No. 786; File No. SR–ISCC–94–6]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to the Global Clearance Networking System

February 16, 1995.

On December 17, 1994, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The Commission published notice of the proposed rule change in the **Federal Register** on January 18, 1995.[2] No comments have been received on the notice. As discussed below, the Commission is approving the proposed rule change.

I. Description

Pursuant to ISCC's Rule 50, ISCC has established a foreign clearing, settlement, and custody service known as the Global Clearance Networking ("GCN") service. Currently, Citibank, N.A. is the sole provider of GCN services. The proposed rule change adds two additional GCN service providers: Standard Bank of South Africa ("Standard") and Westpac Custodian Nominees Limited of Australia ("Westpac").[3] Standard will offer to ISCC members clearance, settlement, and custody services in South Africa.[4] Westpac will offer to ISCC members clearance, settlement, and custody services in Australia.[5] In order to obtain access to Standard's services or Westpac's services, ISCC members will need to enter into individual agreements with Standard or Westpac.

Both Standard and Westpac have entered into an agreement with ISCC pursuant to which they agree to provide access to clearing, settlement, and custody services to eligible GCN participants at reduced prices. ISCC has not provided any volume guarantees to either of these banks, and each of the banks are responsible for collection of fees directly from the participants. The agreements may be terminated by mutual agreement of the parties with ninety days prior notice.

The proposed rule change also modifies the procedures for using the GCN service contained in Addendum E to ISCC's rules. Currently, participants can submit data to ISCC through their office computer's central processing unit ("CPU") or any personal computer ("PC") connection using an ISCC universal trade record ("UTR") format. The proposal allows ISCC also to accept data submitted via S.W.I.F.T.[6] and to accept data in ISO 7775 format.[7] If the data is not received in ISO 7775 format, ISCC will convert the data into this format for transmission to the service provider.

Data submitted via PC or CPU is routed through ISCC's Datatrak system to validate the sender's identity against ISCC's masterfile prior to the validation and edit process.[8] Data submitted via S.W.I.F.T. will go directly to the validation and edit process.[9] Information that does not pass the validation or edit process will be rejected, and the participant will be required to resubmit the data.

Data will be routed to the service provider using the method required by the service provider. In general, ISCC will receive confirmation that the data has been received by the service provider. If the data is sent using S.W.I.F.T., ISCC only will receive confirmation that the data was transmitted.[10] If the service provider is unable to process the data, the service provider will contact the participant directly. Each day, the service provider will provide reports on behalf of the participants' accounts to ISCC which ISCC will retransmit to the participants

II. Discussion

The Commission believes the proposed rule change is consistent with Section 17A of the Act and, therefore, is

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35212, International Series Release No. 767 (January 10, 1995), 60 FR 3687).

[3] A steering committee of GCN participants working with ISCC selected Standard and Westpac to become GCN service providers.

[4] Standard was established in 1862. Standard's Securities Services Division provides comprehensive services to over three hundred foreign banks, stockbrokers, and custodian accounts. Standard also is positioned through their subsidiary, Stanbic Bank, to provide clearance and settlement services in other southern and central African countries. ISCC has informed the Commission that Standard meets the requirements under Rule 17f–5 under the Investment Company Act of 1940 to be an eligible foreign custodian. Standard currently manages in excess of 30 billion in U.S. dollars.

[5] Westpac was established in 1944. Westpac currently provides custodial and securities settlement services to over 500 local and international clients. ISCC has informed the Commission that Westpac is qualified as an eligible foreign custodian under Rule 17f–5 under the Investment Company Act of 1940. Westpac manages over 50.2 billion in Australian dollars in assets under custody.

[6] The Society for Worldwide Interbank Financial Telecommunication ("S.W.I.F.T.") operates a secure data communication and processing system which enables thousands of financial institutions in more than 100 countries to communicate with each other 24 hours a day and facilitates the sending in excess of 500 million messages annually.

[7] The International Organization for Standardization ("ISO") was founded in 1949 to promote standards worldwide. ISO 7775, the standard for international securities messages, was developed in close cooperation with S.W.I.F.T. It was first published in 1984. S.W.I.F.T. has assumed responsibility for maintenance of the standard.

[8] Currently, participants receive a confirmation that ISCC has received the data. The proposal eliminates the sending of the confirmation.

[9] S.W.I.F.T. automatically verifies the identity of the sending party.

[10] Additionally, S.W.I.F.T., instead of ISCC, will verify the number of records transmitted.

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approving the proposal. Specifically, the Commission believes the proposal is consistent with Section 17A(b)(3)(F)[11] of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

In the initial order granting ISCC temporary registration as a clearing agency, the Commission stated that the development of efficient and comparable automated national and international clearance, settlement, and payment systems is one of the more important international goals.[12] The Commission noted that without established international systems, broker-dealers and their institutional customers often are forced to devote substantial resources to each task related to trade settlement and must deliver securities by physical means.

The GCN service offers participating ISCC members advantages in securities processing including central access for processing trades, standardized operating procedures, receipt of uniform reports on their trades, and reduced prices due to economies of scale. The addition of Westpac and Standard as GCN providers gives ISCC participants access to settlement services in areas not currently covered by the GCN service and thus increases the utility of the GCN service. The Commission also believes that revising the GCN procedures to permit the use of the ISO format is beneficial as another step in the standardization of the international clearance of trades. By accepting trade data through S.W.I.F.T., ISCC may provide enhanced access to the system.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–ISCC–94–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4516 Filed 2–23–95; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] Securities Exchange Act Release 26812 (May 12, 1989), 54 FR 21691.

[Release No. 34–35390; File No. SR–MBS–95–02]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for the Electronic Pool Notification Service

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 8, 1995, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–95–02) as described in Items I, II, and III below, which Items have been prepared primarily by MBS. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes fees for the Electronic Pool Notification ("EPN") service (attached as *Exhibit A*) and makes certain technical changes to the EPN procedures to accommodate the establishment of EPN fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBS included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBS has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees for the EPN service and make certain technical changes to the EPN procedures to accommodate the establishment of EPN fees. Specifically, MBS is establishing three separate types of fees for EPN users: message processing fees, access fees, and telecommunication circuit charges. EPN users will be charged for EPN services in accordance with the EPN Schedule of Charges effective February 9, 1995, which is the Public Securities Association Class A pool notification day. The fees are payable monthly on the appropriate PSA Class Settlement Date as determined by MBS from time to time.

MBS believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[2] and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBS advised EPN users of the proposed rule change at a meeting held on January 25, 1995. No written comments have been received. MBS will notify the Commission of any written comments received by MBS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and pursuant to Rule 19b–4(e)(2) promulgated thereunder[4] because the proposed rule change establishes a due, fee, or other charge imposed by MBS. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e)(2) (1994).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–95–02 and should be submitted by March 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—MBS–EPN SCHEDULE OF CHARGES

Message Processing Fees	
Account Maintenance.	$250.00/month (per account).
ON Send or Receive.	0.75/million Current Face.
DK Send or Receive.	No Charge.
Cancel Send or Receive.	No Charge.
Retransmission Request.	No Charge.
AutoLink Request	No Charge.
Access Fees	
CTCI SNA LU6.2	71.00/month (per circuit to MetroTech).
CTCI TCP/IP via Wellfleet (MBSCC).	120.00/month (per circuit to MetroTech).
CTCI TCP/IP via Cisco (MBSCC).	190.00/month (per circuit to MetroTech).
EPN Terminal Service.	No Charge (first 9.6 Kbps connection).
EPN Terminal Service.	12.75/month (each additional connection).
EPN Dial-up Terminal Service.	12.75/month (each 9.6 Kbps connection).

In addition to the above, telecommunication circuit charges from Sector (or your vendor of choice) will apply.

* * * * *

[FR Doc. 95–4517 Filed 2–23–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR § 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2169]

United States International Telecommunications Advisory Committee (ITAC) Standardization Sector U.S. Study Group A and U.S. ITAC–T Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) Study Group A and the U.S. Study Group for ITAC–T (formerly the USNC) will meet on the following dates and times at the U.S. Department of State, 2201 C Street NW. Washington, DC. 20520:

Study Group A, March 9, 1995, 930–1230, Dean Acheson Auditorium
ITAC–T National Group, March 9, 1995, 130–500, Dean Achenson
Study Group A, March 27, 1995, 930–3P, Room 1107
Study Group A, April 26, 1995, 930–2P, Room 1205
Study Group A, May 23, 1995, 930–3P, Room 1105.

The meeting of U.S. SG A on March 9 will deal primarily with preparations for the upcoming Meetings of the two working parties of ITU–T Study Group 2, scheduled for April 3–7, Geneva, and April 20–26, Tokyo; initial preparatory activity covering ITU–T Study Groups 1 and 3, scheduled to meet in Geneva in May and June, respectively; and a debrief of the CITEL PCC–I meeting held in Tegucigalpa, Honduras, February 20–24, 1995.

The meeting of the ITAC–T Group on the afternoon of March 9 will include a debrief of the January 23–27 Geneva meeting of the Telecommunications Standardization Advisory Group (TSAG) and the initial preparations for the September 1995 TSAG and its working party meetings.

The meetings of Study Group A scheduled for March, April and May indicated above, will continue the work to prepare U.S. Delegations of the various Study Groups meeting that are scheduled to meet in Tokyo and Geneva, as indicated. More extensive agendas will be available as necessary prior to those meetings.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Standardization Sector Study Group or Study Group A, and wish to attend please call 202–647–0201 not later than 5 days before the scheduled meetings. Enter from the "C" Street Main Lobby. A picture ID will be required for admittance.

Dated: February 9, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–4478 Filed 2–23–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Regional Liaison Outreach and Services Program (LOSP); Announcement of Request for Proposal (RFP); Correction

AGENCY: Office of the Secretary, DOT

ACTION: Correction.

SUMMARY: On February 3, 1995, the U.S. Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization published a request for proposals (RFP), Notice on the Regional Liaison Outreach and Services Program (L.O.S.P.) at 60 FR 6751). The RFP inadvertently omitted the States of Rhode Island and Vermont at 60 FR (6753). This notice makes correction to the RFP. In FR DOC 95–2494 at 60 FR 6753, 2nd Column, para 2, make the following correction:

"Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont"

Dated: February 21, 1995.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 95–4620 Filed 2–21–95; 2:49 pm]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Tioga County, PA, and Steuben County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed highway project in Tioga County, Pennsylvania and Steuben County, New York.

FOR FURTHER INFORMATION CONTACT: Bradley D. Keazer, District Engineer, Federal Highway Administration, 228

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Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: 717–782–4422, or Russell E. Campbell, Project Manager, Pennsylvania Department of Transportation, District 3–0, 715 Jordan Avenue, Montoursville, Pennsylvania 17754–0218, Telephone: 717–368–4380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation and the New York State Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the safety and capacity on U.S. Route 15 in Tioga County, Pennsylvania, and Steuben County, New York. The approximate length of the study area is 12 miles (6 miles in each state).

In Pennsylvania, the project begins just south of the U.S. Route 15 and PA 287 intersection and continues north to the PA/NY state line. The New York section begins at the state line and continues north to the project terminus just south of Presho, where the existing two lane roadway becomes a four-lane, limited access highway.

This 12-mile section of U.S. Route 15 was programmed because of several transportation considerations. It is a direct tie between the major economic areas of Williamsport and Corning. This is the last section of U.S. Route 15 between these two cities to come under consideration for upgrade (all other sections of U.S. Route 15 are either under design, construction, or studies are being activated). The upgrade would improve access to nearby recreational areas and would sustain the existing economy of the area by providing improved access. A facility constructed to present design standards would improve safety.

A two-phased study approach will be used to identify and evaluate alternatives. The initial phase is for scoping and needs assessment. The study will then involve the development of potential alternatives through the study area. Each of the alternatives will be developed such that a means of comparison can be made along with the No-Build Alternative. Upgrade of the existing facility and new alignments may be considered.

Concurrent with the development of the alternatives, various types of data will be gathered which will describe the study area as it relates to the alternatives. The following environmental areas will be investigated for EIS preparation: Traffic, air quality, noise and vibration; surface water resources; aquatic environmental; floodplains; groundwaters; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste; historic and archaeological structures and sites; Section 4(f) evaluation; and wild and scenic rivers. The above information will be utilized to refine the alternatives or eliminate a particular alternative from further considerations because of the potential for negative socioeconomic, environmental, or engineering impacts.

The second phase will utilize the alternatives selected in the initial phase and perform a detailed analysis on each. These alternatives will be the basis for the detailed environmental and engineering studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which meets the needs of traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public feedback.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal agencies as well as State and local agencies in New York and Pennsylvania, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public and agency meetings will be held throughout the development of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Pennsylvania Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding ingovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 15, 1995.

Manuel A. Marks,

Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 95–4564 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Florida East Coast Railway Company; Public Hearing

[RS&I–AP–No. 1094]

The Florida East Coast Railway Company (FEC) has petitioned the Federal Railroad Administration (FRA) seeking relief from the requirements of the Rules, Standards and Instructions, title 49 CFR, part 236, § 236.566, to the extent that FEC be permitted to operate foreign line nonequipped locomotives, in automatic train control (ATC) territory, in accordance with Centralized Traffic Control System rules as defined by FEC Operating Rules and title 49 CFR, part 236, § 236.567

This proceeding is identified as FRA Rules, Standards and Instructions Application (RS&I–AP) Number 1094.

The FRA has issued a public notice seeking comments of interested parties and has conducted a field investigation in this matter After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Thursday, April 27, 1995, in the Saint Johns County Auditorium, located at 420 Lewis Speedway, Saint Augustine, Florida. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (title 49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on February 15, 1995.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–4624 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

[Preemption Determination No. PD–7(R); Docket No. PDA–12(R)]

Determination That Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances Are Preempted by Federal Hazardous Material Transportation Law; Decision on Petition for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT

ACTION: Decision on petition for reconsideration of RSPA's administrative determination that Maryland certification requirements for transporters of oil or controlled hazardous substances are preempted by the Federal Hazardous Material Transportation Law.

Petitioners: Maryland Department of the Environment (MDE).

State Laws Affected: Code of Maryland Regulations (COMAR) 26.10.01.16.D and 26.13.04.01.F.

Applicable Federal Requirements: 49 U.S.C. 5101 et seq. (previously the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq.), and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Highway.

SUMMARY: The Maryland Department of the Environment petition requests reconsideration of a RSPA determination that Federal hazardous material transportation law preempts Maryland regulations requiring certification of non-domiciled operators of motor vehicles loading or unloading certain hazardous materials in Maryland. The petition is denied.

FOR FURTHER INFORMATION CONTACT: Charles B. Holtman, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001, telephone number (202) 366–4400.

I. Background

On June 3, 1994, RSPA published in the **Federal Register** the determination that Maryland certification requirements, applicable to operators of motor vehicles loading or unloading oil or "controlled hazardous substances" (CHS) in Maryland, are preempted by the Federal hazardous material transportation law (Federal hazmat law), to the extent that they apply to the loading or unloading of oil or CHS that is a hazardous material. 59 FR 28913. RSPA found that these requirements are training requirements, and that the requirements, as enforced and applied, are stricter than HMR training requirements at 49 CFR 172.700–.704.

Specifically, COMAR 26.10.01.16.D, which applies to operators of oil cargo tanks, requires the operator to take and pass a test administered by MDE at five in-state locations and at out of-state business locations approved by MDE. COMAR 26.13.04.01.F, which applies to operators of vehicles transporting CHS, requires "[t]raining in the requirements necessary to transport hazardous waste," which include requirements promulgated by, and specific to, Maryland. In addition, the instructor must meet an experience criterion, and MDE may require the operator to pass an approved written examination. These elements of the certification requirements, RSPA found, are more strict than the HMR. 59 FR 28919.

To the extent that the requirements are more strict than the HMR, they violate 49 CFR 172.701, which permits States to apply training requirements to non-domiciled vehicle operators only if the requirements are no more strict than those of the HMR. Accordingly, RSPA reasoned, each of the two requirements is "an obstacle to accomplishing and carrying out" Federal hazmat law. 49 U.S.C. 5125(a)(2); *see* 59 FR 28919.

Within the 20-day time period provided in 49 CFR 107.211(a), MDE filed a petition for reconsideration of the determination. It certified that, in accordance with 49 CFR 107.211(c), it had mailed copies of the petition to CWTI/NTTC and to all others who had submitted comments, with a statement that each person, within 20 days, could submit comments on the petition. RSPA has received no comments on the MDE petition.

II. Petition for Reconsideration

In its June 20, 1994 petition, MDE first states that the three elements that RSPA found to be more strict than the HMR do not apply to both the oil and CHS vehicle operator certification requirements. It notes that only COMAR 26.10.01.16.D (oil) requires that the operator pass a State-administered examination; under COMAR 26.13.04.01.F (CHS), the examination requirement is at the discretion of MDE. Similarly, only COMAR 26.13.04.01.F specifies required areas of training and instructor experience requirements.

MDE concedes that its CHS vehicle operator certification provisions specifying required areas of training and instructor experience criteria are "training requirements" within the meaning of 49 CFR 172.701. On the other hand, it contests the RSPA finding that the examination requirement, and the general requirement to obtain a certificate, are training requirements. It suggests, instead, that they "are intended to demonstrate that the training received by the drivers is adequate to insure the safe transportation and transfer of hazardous materials in Maryland." Because they are not training requirements, MDE then argues, RSPA cannot find them to be obstacles simply because they violate 49 CFR 172.701. Rather, MDE contends, RSPA must factually analyze whether they are obstacles as enforced and applied. MDE contends that CWTI/NTTC has not submitted specific evidence sufficient to allow RSPA to find the requirements to be obstacles. As an example, it notes, it does not in fact require a CHS vehicle operator to take an examination, but merely to submit a statement from the operator's employer that approved training has been completed.

MDE does not dispute that its rules specifying areas of training for CHS vehicle operators are training requirements, but argues that they are not more strict than the HMR. It submits that the rules generally are consistent with HMR requirements, differing only in requiring knowledge of Maryland requirements for transporting and handling hazardous wastes. In this latter respect, it contends that operator familiarity with the laws of States of operation should be deemed to be part of required HMR training, and therefore that the Maryland rules should not be found to be more strict.

MDE concedes that the instructor experience criterion is more strict than the HMR. It argues that preemption of this provision nevertheless should not invalidate the entire CHS vehicle operator certification program.

Finally, in their application CWTI/NTTC represented that Maryland applies the CHS vehicle operator certification requirement only to those loading or unloading RCRA hazardous waste, and not to other materials meeting the definition of CHS. Although MDE did not take issue with that representation in its comments, it now indicates that it applies the certification requirement to other CHS, including PCB-contaminated wastes, certain wastes associated with the production

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of military chemical warfare agents, certain wastes generated in the production of phthalate esters, and certain other organic chemical industry wastes not regulated under RCRA. It notes that this fact may simply correct the record, and may not affect the preemption determination.

MDE asks that RSPA reverse its preemption determination or at least reconsider the decision with respect to the examination and certification requirements by examining whether those requirements, as applied and enforced, in fact are obstacles to achieving the goals of the HMR

III. Discussion

The examination requirements, specification of training subjects, and instructor experience criterion under COMAR 26.01.10.16.D and 26.13.04.01.F, as well as the certification requirements themselves, are training requirements within the meaning of 49 CFR 172.700(b). Under that section, "training" is defined as:

[A] systematic program that ensures a hazmat employee has familiarity with the general provisions of [the HMR], is able to recognize and identify hazardous materials, has knowledge of specific requirements of [the HMR] applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures

The term "training," then, particularly as it extends to "ensuring" hazmat employee knowledge in the specified areas, encompasses more than the subject matter that hazmat employees are required to learn. It also includes the means by which hazmat employees are instructed and by which the enforcing governmental body may determine that instruction has been successful. Accordingly, "training requirements" include not only provisions that specify the subject matter of training, but also those that, for instance, prescribe how instruction is to be conducted and documented.

That the term should be read broadly is evidenced by 49 CFR 172.701, which states: "This subpart * * * prescribe[s] minimum *training requirements* for the transportation of hazardous materials" (emphasis added). Thus, under section 172.701, the requirements of the subpart, 49 CFR 172.700–.704, including examination requirements, 49 CFR 172.702(d), and training documentation requirements, 49 CFR 172.704(d), all are "training requirements." As to the Maryland certification requirements, the sole criterion for issuance of the operator certificate under COMAR 26.01.10.17 and 26.13.04.01.F is satisfactory completion of prescribed training (an applicant under COMAR 26.13.04.01.F also must submit a $20 fee, presumably for processing). The certificate, therefore, is no more and no less than a documentation of training, and the certification requirement is a training requirement.

This reading is consistent with the basis of 49 CFR 172.701. As discussed in the determination, this section, which permits a State to apply motor vehicle operator training requirements more strict than the HMR only to those domiciled in the State, balances competing interests. On the one hand, it "recognizes the traditional regulation by States of their own resident drivers." 59 FR 28919 (quoting 57 FR 20944, 20947 (May 15, 1992)). On the other, it recognizes that:

Were States permitted to impose stricter requirements on non-resident operators, operators potentially would be subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens

59 FR 28919.

Confusion, cost and paperwork burdens would result not only from States specifying different subject matters in which non-domiciled vehicle operators must be instructed, but just as much from disparate examination, documentation and certification requirements. In Inconsistency Ruling (IR–) 26, 54 FR 16314 (Apr. 21, 1989), California required non-resident motor vehicle operators to have a Non-Resident Special Certificate or an employer's certification on a State approved form before entering the State. RSPA found this to be a training requirement preempted by the HMR. 54 FR at 16323–24. We found that

documentary prerequisites for the transportation of hazardous materials" imposed on non-domiciled operators would cause unnecessary delays in the transportation of hazardous materials in commerce. 54 FR 16323. Section 172.701 closely adopts the rationale of IR–26. *See* 57 FR 20947.

Furthermore, MDE states in its petition, again, that its examination and certification requirements are "to demonstrate that the training received by the drivers is adequate to insure the safe transportation and transfer of hazardous materials in Maryland." As thus characterized, these are training requirements within the § 172.700(b) definition. More directly, MDE asserted in its June 23, 1993 comments on the CWTI/NTTC application.

Subpart H [49 CFR 172.700(b)] defines training to mean "a systematic program that ensures a hazmat employee * * * is able to recognize and identify hazardous materials * * * and has knowledge of emergency response information, self protection measures and accident prevention methods and procedures." These are exactly the issues addressed by the State's training requirements.

MDE's characterization at that time is diametrically opposed to the position it now takes. For the reasons discussed, RSPA agreed with MDE's earlier characterization, and is not now persuaded to the contrary

Whether the specific requirement to obtain a certificate of training from the State fails the obstacle test was not explicitly addressed in the determination. As MDE directly raises the issue in its petition, this decision will address it. Because the certification requirements are training requirements, to determine whether they are an "obstacle to accomplishing and carrying out" Federal hazmat law, 49 U.S.C 5125(a)(2), it is necessary only to determine whether they violate 49 CFR 172.701. A training requirement that violates 49 CFR 172.701 is an obstacle as a matter of law. *See* 59 FR 28919. The HMR do not require an operator to obtain a certificate of training from a governmental body; therefore, the MDE requirement to do so is more strict than the HMR, and is preempted as an obstacle. *See* IR–26, 54 FR at 16323 (discussed above)

MDE is correct that if the requirements in issue were not training requirements, then 49 CFR 172.701 would not apply. If 49 CFR 172.701 did not apply, RSPA could not find that merely because the requirements as applied to non-domiciled operators are stricter than the HMR, they violate the obstacle test. Rather, RSPA would need to analyze whether these particular requirements *in fact* create an obstacle.

MDE supposes wrongly, however, that if the certification requirements are training requirements, it is not necessary to examine them "as applied or enforced." 49 U.S.C. 5125(a)(2). Section 172.701 simply establishes, as a matter of law, when non-Federal motor vehicle operator training requirements are an obstacle to accomplishing the goals of the HMR. Under the obstacle test, however, the non-Federal requirements to be considered are those that are applied or enforced. For one, this ensures that RSPA does not expend resources considering hypothetical preemption issues.

Absent contrary evidence in the record, RSPA presumes that a State rule is applied and enforced by its clear terms. In this case, MDE does not dispute that the operator of an oil cargo tank subject to COMAR 26.10.01.16.D must appear at a place designated by MDE and demonstrate, by passing an examination, that he or she has knowledge of procedures for handling oil. MDE does not dispute that the training received by an operator of a CHS transport vehicle subject to COMAR 26.13.04.01.F must include instruction in certain Maryland requirements and must be administered by an instructor meeting certain experience requirements. Finally, MDE does not dispute that a cargo tank motor vehicle carrying oil or a vehicle carrying CHS may not be operated in Maryland for the purpose of loading or unloading within the State, unless the operator has applied to the MDE and received the required certificate.

As to how the provisions in question are enforced or applied, MDE disputes only RSPA's characterization of the CHS operator's examination requirement. It states that an examination is not required, but that a statement from the operator's employer that approved training has been completed may suffice. See *also* 58 FR 29322–23 & n. 5 (CWTI/NTTC agreement with this characterization). COMAR 26.13.04.01.F(6) provides that MDE *may* require an applicant for a certificate to pass an administered written examination; MDE does not say unambiguously that it *never* so requires. Regardless, if, as MDE applies and enforces its rules, there is no examination requirement under COMAR 26.13.04.01.F, then no preemption of an examination requirement is found. It remains, however, that the requirement that CHS vehicle operators apply for and obtain a certificate is preempted as more strict than the HMR.

MDE requires operator training in Maryland hazardous waste regulations, and concedes that the HMR do not require this. It claims that its requirement nevertheless is not more strict than the HMR because the HMR should be deemed to require operator training in the laws of States of operation. That the MDE believes the HMR *should* require operator training in the laws of States of operation, however, does not mean that the HMR actually *do* require that type of training.

The HMR do not prohibit an employer from training its employees in the requirements of the various States. Indeed, because an employer likely would be liable for an operator's violation of State law, the employer would be wise to instruct its employees on the laws of the States in which they operate. Nonetheless, the HMR do not require it. Operator training that did not include instruction in Maryland hazardous waste law would not for that reason violate the HMR; it would, however, violate COMAR 26.13.04.01.F(4). This suffices to show that the Maryland requirement, in this respect, is more strict than the HMR.

MDE correctly surmises that its enforcement of the certificate requirement against operators of vehicles loading or unloading CHS other than RCRA hazardous waste does not affect the preemption determination. If the CHS that is not RCRA hazardous waste otherwise qualifies as a hazardous material under the HMR, then the determination applies to operators of vehicles loading or unloading that material to the same extent as it applies to operators loading or unloading RCRA hazardous waste. If that CHS is not a hazardous material, the preemption determination does not apply. Training requirements for operators of vehicles not transporting hazardous materials are not preempted by the HMR.

Finally, the MDE petition suggests some confusion about the effect of a RSPA preemption determination that rules unfavorably on some, but not all, elements of a State rule. The Maryland rules are preempted only to the extent that they are an obstacle to accomplishing the purposes of Federal hazmat law. *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978). Accordingly, to the extent the rules are applied and enforced against non-domiciled operators without the offending elements, namely the requirement to pass an MDE-administered examination, the requirement for training in Maryland laws, the instructor experience criterion and the certification requirement, they are not preempted.

IV. Ruling

For the reasons stated above, the MDE petition for reconsideration is denied. This decision incorporates and reaffirms the determination, set forth at 59 FR 28920, that 49 U.S.C. 5125:

Preempts Maryland regulations COMAR 26.10.01.16.D and COMAR 26.13.04.01.F, requiring certification of operators of motor vehicles loading or unloading hazardous materials in Maryland, as they apply to vehicle operators not domiciled in Maryland. Specifically, these requirements are stricter than Federal operator training requirements and therefore are obstacles to accomplishing the full purposes and objectives of [Federal hazmat law]. As applied to vehicle operators domiciled in Maryland, the requirements are not preempted.

V. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on the April 19, 1993 CWTI/NTTC application for a determination of preemption as to the above-specified Maryland requirements. Any party to this proceeding may seek review of this determination "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 U.S.C. 5125

Issued in Washington, DC on February 17 1995.

Alan I. Roberts.

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–4625 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 17, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980 Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0065
Form Number: CF 7501 and CF 7501A
Type of Review: Extension
Title: Entry Summary (7501) and Entry Continuation Sheet (7501A)
Description: Customs Form 7501 is used by Customs as a record of the impact transaction, to collect the proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,675
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3,454,852 hours
Clearance Officer: Laverne Williams, (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229

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OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–4576 Filed 2–23–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 17, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New
Form Number: IRS Form 8498
Type of Review: New collection
Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents
Description: This information relates to the approval of continuing professional education programs for individuals enrolled to practice before the Internal Revenue Service (enrolled agents).
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Respondent: 36 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 300 hours

OMB Number: 1545–0735
Regulation ID Number: LR–189–80 (T.D. 7927) Final
Type of Review: Extension
Title: Amortization of Reforestation Expenditures
Description: Section 194 of the Internal Revenue Code allows taxpayers to elect amortize certain reforestation expenditures meet certain requirements. The regulations implement this election provision and allow the Service to determine if the election is proper and allowable.
Respondents: Individuals or households, Business or other for-profit, Farms
Estimated Number of Respondents: 12,002
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 6,001 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–4577 Filed 2–23–95; 8:45 am]

BILLING CODE 4830–01–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Use of Lands Acquired for the Columbia Dam Component of the Duck River Project

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), the Tennessee Valley Authority (TVA), in cooperation with the Tennessee Duck River Development Agency, will prepare an Environmental Impact Statement (EIS) on alternative uses of lands acquired as part of the Columbia Dam component of the Duck River Project. The project cannot be completed as a dam and reservoir due to the presence of endangered species. The EIS will consider the environmental impacts of a range of alternative uses of TVA-owned project lands, including the protection of resident endangered species and potential development of a recreational waterway between Iron Bridge Road boat ramp to Carpenter's Bridge (River Mile 137 to River Mile 165). With this notice, TVA is inviting comments on the scope of the EIS.

DATES: Comments must be received on or before May 22, 1995.

ADDRESSES: Comments should be sent to Dale V. Wilhelm, NEPA Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Jack L. Davis, Manager, Water Resource Projects, Tennessee Valley Authority, WT 10C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, phone 615/632–4678.

SUPPLEMENTARY INFORMATION: TVA and local entities began a cooperative effort in 1964 to advance economic growth and provide an adequate and dependable water supply in the Duck River watershed (in Maury, Marshall, Bedford, and Coffee Counties, middle Tennessee). While the state-chartered Tennessee Duck River Development Agency worked to develop a water supply system to connect the five largest cities in the watershed, TVA was requested to investigate water resource development. In 1965, TVA concluded that multipurpose reservoir development on the Duck River mainstem offered the best potential for meeting the area's needs. The construction of dams on the river would control flooding, create water supply sources, and provide opportunities for water-based recreation. Eventually, two dam sites were identified: a downstream dam proposed to be built at Duck River Mile 136.7, near Columbia, and an upstream dam to be built at River Mile 248.6, near Normandy. After further study, these two dam and reservoir projects were presented in a 1968 planning report as components of a combined Duck River Project.

Following the enactment of NEPA, TVA issued a draft EIS on the project in June 1971. A public hearing on the proposed project was held in August 1971 and a final EIS on the Duck River Project (TVA–OHES–EIS–72–5) was issued in April 1972. This EIS was supplemented in June 1974 to correct identified deficiencies. Construction of the 3,230-acre Normandy Dam and Reservoir component was completed in 1976 and is currently in operation.

Construction of the 12,600-acre Columbia Dam and Reservoir component of the project began in 1973. Completion of this component was slowed and, in 1983, halted because consultation with the U.S. Fish and Wildlife Service indicated that the reservoir could jeopardize the continued existence of two endangered species. These two species, the birdwing pearly mussel and the Cumberland monkeyface pearly mussel, had been listed as endangered in 1975 under provisions of the 1973 Endangered Species Act (ESA). Subsequent fieldwork and ESA listings have indicated that two additional endangered mussel species (tan riffleshell and pale lilliput pearly mussel) and an endangered plant (leafy prairie clover) also occur in the project area. Other species known to occur in the area have been proposed for endangered status or are identified

candidates for possible ESA listing. Under the ESA, the presence of several endangered species in the project reach of the Duck River will prevent TVA from being able to complete this component of the project as a dam and reservoir.

The purpose of this Notice is to solicit comments on the scope of the EIS. TVA anticipates the range of alternatives will include no action (retaining project lands in their current condition and use) and one or more options using some project lands for protective corridor and recreational development along the river accompanied by the disposal of other land tracts. Potentially important issues likely to be discussed in the EIS include:

1. Impacts on terrestrial and aquatic life, including endangered and threatened species;
2. Impacts on recreation and other land uses;
3. Impacts on water quality and quantity;
4 Impacts on public water supplies;
5. Impacts on floodplains, wetlands, and prime farm land;
6. Impacts on archaeological and historical resources;
7. Socioeconomic and cultural effects.

This list is not intended to be all-inclusive, nor is it intended to be a predetermination of impacts. As preparation of the EIS proceeds, other issues may be revealed which will warrant detailed analysis.

The Tennessee Duck River Development Agency has agreed to participate in this EIS as a cooperating agency. Other agencies, such as the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, also may become cooperating agencies.

TVA invites interested persons and agencies to comment on the scope of this EIS. TVA also requests comments on environmental issues which should not be viewed as important and which should not be discussed in detail in the EIS. A public meeting will be held in the Duck River area on April 18, 1995 at 7:00 CDT at the Culleoka School, Culleoka, Tennessee to receive oral comments about the scope of this EIS. Details about this meeting will be announced later in area newspapers. Comments received at the meeting will be accorded the same weight as written comments.

After the scoping process and the initial environmental analysis are completed, TVA will prepare a draft EIS on this proposed action. A Notice of Availability of this draft will be published in the **Federal Register** and area newspapers. Public comments on the draft EIS will be solicited. Those persons who choose not to comment on the scope of the EIS but wish to receive a copy of the draft for their review and comment should send their names and addresses to Dale V. Wilhelm at the address presented above. TVA anticipates releasing a final EIS on this project in August 1996.

Dated: February 17, 1995.

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 95–4558 Filed 2–23–95; 8:45 am]

BILLING CODE 8120–01–M

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 37
Friday, February 24, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 12:00 noon–1:00 p.m.

PLACE: ADF Headquarters.

DATES: Tuesday, 28 February 1995.

STATUS: Open.

AGENDA

12:00—The Mitchell Group
12:15—Action Memoranda: Burundi, Sierra Leone, ADB
12:30—Executive Session

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,
President.
[FR Doc. 95–4676 Filed 2–22–95; 9:50 am]
BILLING CODE 6116–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on technical issues underlying the Board's Recommendation 94–1.

TIME AND DATE: 8:30 a.m. March 6, 1995.

PLACE: Ramada Inn, 8773 Yates Drive, Westminster, Colorado 80030.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Safety issues of storing unstable plutonium residues and available processing technologies.
2. Current practices for storing plutonium.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Board repeatedly expressed the view that the Department of Energy needs to accelerate its current schedule for converting certain unstable nuclear defense-related materials to forms suitable for safe storage. The Board's most recent effort to address this potential threat to the public health and safety was expressed in its Recommendation 94–1, dated May 26, 1994. In that recommendation we stated, among other things, that:

The halt in production of nuclear weapons and materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unmediated. The Board has concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected.

We are especially concerned about specific liquids and solids containing fissile material and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture.

It is not clear at this juncture how fissile materials produced for defense purposes will eventually be dealt with long term. What is clear is that the extant fissile materials and related materials require treatment on an accelerated basis to convert them to forms more suitable for safe interim storage.

Recommendation 94–1 in its entirety is on file at DOE's Public Reading Room, Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80020, and at the Defense Nuclear Facilities Safety Board's Washington office. It is also set forth in the **Federal Register** at 59 FR 28848.

In accord with the powers granted to the Board, a public hearing will be conducted by the Board in an open meeting. The board has invited recognized experts in the field of plutonium treatment and storage to testify at this hearing in order to assist the Board and to inform the public as to proper treatment of plutonium residuals. The experts are expected to answer Board questions based on their experience and technical knowledge and to provide additional documents as necessary. This hearing is an information-gathering function. Examination of those appearing before us will be limited to the questions put to them by the Board. An opportunity will be available for comments by members of the interested public at the conclusion of testimony by the experts.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Public Reading Room, Front Range Community College, 3645 West 112 Avenue, Westminster, CO 80020.

The Board intends further meetings and hearings on these matters. The Board will announce these by separate Federal Register notice.

The Board reserves its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 22, 1995.

John T. Conway,
Chairman.
[FR Doc. 95–4676 Filed 2–22–95; 8:45 am]
BILLING CODE 3670–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, February 21, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Tigert Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(b), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(a)(II), (c)(9)(b), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 21, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,
Acting Deputy Executive Secretary.
[FR Doc. 95–4687 Filed 2–22–95; 10:30 am]
BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 1, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 22, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4700 Filed 2–22–95; 10:50 am]
BILLING CODE 6210–01–P

AGENCY HOLDING THE MEETING: BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 1, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed modifications to daylight overdraft fees.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 22, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4701 Filed 2–22–95; 10:50 am]
BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 1:30 p.m., Wednesday, March 1, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING: 1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Amendments to Part 722, NCUA's Rules and Regulations, Appraisals.
3. Final Rule: Part 708a, NCUA's Rules and Regulation, Mergers or Conversions of Federally-Insured Credit Unions to Non-Credit Union Status.

TIME AND DATE: 11:00 a.m., Wednesday, March 1, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Field of Membership Expansion Request. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Action under Section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

RECESS: 1:00 p.m.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

[FR Doc. 95–4793 Filed 2–22–95; 3:11 pm]
BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 60, No. 30/Tuesday, February 14, 1995.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, February 21, 1995.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required amending the agenda as follows and that no earlier announcement was possible:

Adding to the agenda

6528 Letters of Recommendation: Enhanced Flight Data Recorder Requirements.
6354A Opinion and Order: Administrator v. Bielecki, et al, Dockets SE–9244–9249; disposition of respondents' appeals.

Deleting from the agenda

6527 Aviation Accident Report: Controlled Collision with Terrain, Transportes Aereos Ejecutivos, S.A. (TAESA), Learjet 25D, XA–BBA, Dulles International Airport, Chantilly, Virginia, June 18, 1994.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 22, 1995.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 95–4677 Filed 2–22–95; 9:50 am]
BILLING CODE 7533–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on February 14, 1995, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its March 6, 1995, meeting, closed to public observation, consideration of new international mail rates and services. (See 60 FR 9078, February 16, 1995).

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information which is specifically exempted from disclosure by section 410(c)(2) of title 39, United States Code.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

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In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) of Title 5, and section 410(c)(2) of title 39, United States Code; and section 7.3(c) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–4791 Filed 2–22–95; 2:59 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Notification of Meeting

The Railroad Retirement Board hereby gives notice that the Board will meet at 9:30 a.m. (CST), February 21, 1995, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. The Board, by recorded vote, has determined that agency business requires the scheduling of this meeting with less than one week notice. The subject to be addressed at this meeting is the posting for purposes of filling two positions: Chief Information Officer and Director of Programs.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: February 17, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–4688 Filed 2–22–95; 9:58 am]

BILLING CODE 7905–01–M

Corrections

Federal Register

Vol. 60, No. 37

Friday, February 24, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-94-302]

Bermuda-Granex-Grano Type Onions and Onions (Other than Bermuda-Granex-Grano and Creole Type); Grade Standards

Correction

In proposed rule document 95–3787 beginning on page 8973 in the issue of Thursday, February 16, 1995, make the following correction:

§ 51.3199 [Corrected]

On page 8979, in the third column, in the table for § 51.3199, underneath the heading "Minimum diameter" and at the bottom row of the subheading "millimeters", "95.3 (²)" should read "95.3" and "(²)" should appear one column over to the right, in the bottom row, underneath the subheading "Inches"

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

[Docket No. R-94-1731; FR-3611-F-02]

RIN 2501-AB72

Consolidated Submission for Community Planning and Development Programs

Correction

In rule document 94–32150 beginning on page 1878 in the issue of Thursday, January 5, 1995 make the following corrections:

§ 91.105 [Corrected]

(1) On page 1899, in §91.105(a)(1):

(a) In the first column, in the seventh line "March" should read "February".

(b) In the second column, in the first line "March" should read "February".

§ 91.402 [Corrected]

(3) On page 1911, in §91.402(b)(1), in the third column:

(a) In the second line "March" should read "February".

(b) In the sixth line "March" should read "February".

BILLING CODE 1505–01–DS4734

OFFICE OF PERSONNEL MANAGEMENT

January 1995 Pay Adjustments

Correction

In notice document 95–2819 beginning on page 7336 in the issue of Tuesday, February 7, 1995, make the following corrections:

1. On page 7341, in the heading for Salary Table No. 95-IND", in the first line, "2.00 Percent" should read "2.00 %".

2. On the same page, in the heading for Salary Table No. 95-LA, in the second line, "Reverside" should read "Riverside".

3. On page 7342, in the heading for Salary Table No. 95-LA, in the second line, "Reverside" should read "Riverside".

4. On the same page, in the heading for Salary Table No. 95-NY, in the second line, "JN" should read "NJ".

5. On page 7348, in the heading for Salary Table No. 95-CIN, in the second line, "GA-3" should read "GS-3".

6. On page 7349, in the heading for Salary Table No. 95-COL, in the third line, "15.30%" should read "5.30%"

7. On page 7350, in the heading for Salary Table No. 95-DEN, in the second line, the word "Schedule" following the word "General" should be removed.

8. On page 7351, in the heading for Salary Table No. 95-HNT, in the third line, "8.53%" should read "4.39%".

9. On page 7353, in the heading for Salary Table No. 95-LA (LEO 2), in the first line, the "T4" following "(LEO's)" should be removed.

10. On page 7354, in the heading for Salary Table No. 95-POR, in the first line an "—" should be added following "(LEO)".

11. On page 7355, in the heading for Salary Table No. 95-POR (continued from the previous page), an "—" should be added following "(LEO)".

BILLING CODE 1505–01–D

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Economic Development Initiative; Funding Availability and Program Guidelines; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–3878; FR 3874–N–01]

Notice of Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

SUMMARY: This NOFA announces the availability of funds for grants under Section 108(q) of the Housing and Community Development Act of 1974, as amended. HUD reserves the right to award grants under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, HUD intends to award up to $50 million in EDI funds.

Communities that are authorized to obtain Section 108 loan guarantee commitments to carry out qualifying projects may also be eligible under this NOFA to receive EDI grants. EDI grants are used to enhance the security of the Section 108 guaranteed loan or to improve the feasibility of proposed projects through techniques such as interest rate subsidies, loan loss reserves, etc. The NOFA sets out program guidelines that will govern the application, application review, and award process for this round of EDI grants.

DATES: Applications are due in HUD Headquarters at the address stated below under "Addresses," by April 28, 1995 (the "deadline date"). HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission. Applications that are mailed prior to the deadline date but not received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no later than April 25, 1995. Overnight delivery items received after the deadline date will be deemed to have been received by that date upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than April 27, 1995.

ADDRESSES: On and prior to the deadline date, completed applications will be accepted at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, Attention: EDI Grant. At close of business on the deadline date, completed applications will also be received in the South lobby of the Department of Housing and Urban Development at the above address (inquire at the security guard desk). However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by the deadline date will be accepted.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7178, Washington, DC 20410. Telephone (202) 708–1871. The TDD number is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned the approval number 2506–0153.

I. Purpose and Substantive Description

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (the "Act"); 24 CFR part 570.

(B) *Definitions.*

CDBG funds means, in addition to those funds specified at § 570.3(e), grant funds received pursuant to Section 108(q).

Economic Development Initiative (EDI) means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (P.L. 103–233) (the "1994 Act").

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR § 570.703, and that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization.

Empowerment Zone or Enterprise Community means an urban area so designated by the Secretary pursuant to 24 CFR part 597 (see January 12, 1995 final rule, 60 FR 3034).

Qualifying Empowerment Zone or Enterprise Community area means an urban area designated as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597 or nominated by one or more local governments and the State or States in which it is located for consideration of designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597. The area need not have been designated an Empowerment Zone or Enterprise Community by the Secretary to be a qualifying empowerment zone or enterprise community area, but if it was not so designated it must meet the eligibility requirements for a nominated area pursuant to 24 CFR part 597, subpart B

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR Part 597.

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this NOFA shall have the respective meanings given thereto in that part.

(C) *Background.*

EDI is intended to complement and enhance the Section 108 Loan Guarantee program (see 24 CFR §§ 570.700–710 for regulations governing the Section 108 program). This provision of the Community Development Block Grant (CDBG) program provides communities with a source of financing for economic development, housing rehabilitation, and large scale physical development projects. HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities and non-entitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M.

The Section 108 program is authorized at $2.054 billion in loan guarantee authority in Fiscal Year 1995. Under this program communities (and States, if applicable) pledge future years' CDBG allocations as security for loans guaranteed by HUD. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. The Section 108 program, however, does *not* require CDBG funds to be escrowed for loan repayment. This means that a community can continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment. The purpose of EDI grant funds is to further minimize the potential loss of future CDBG allocations:

(1) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan),

(2) By directly enhancing the security of the guaranteed loan, or

(3) Through a combination of these or other risk mitigation techniques.

HUD envisions that the following project structures could be typical:

Funding reserves—The cash flow generated by an economic development project may be expected to be relatively "thin" in the early stages of the project. The EDI grant can make it possible for debt service or operating reserves to be established in a way that does not jeopardize the economic feasibility of the project.

An example is a supermarket or neighborhood shopping center that is designed to provide basic services and jobs for residents in a distressed neighborhood. The public entity must be prepared for the Section 108 loan repayments required during the time period after completion of construction and during the lease-up phase when the shopping center is not fully leased and generating sufficient revenues to support the Section 108 loan repayments. It may therefore require the developer to establish with a trustee a reserve account (or accounts) that would be available to cover operating expenses and/or debt service during this lease-up period. While such reserves are commonplace, their cost may be so high as to make an already risky neighborhood shopping center project economically infeasible. The increased cost resulting from establishing such reserves may be defrayed by the EDI grant. As with the letter of credit example below, such reserves protect the CDBG program against the risk that CDBG funds will have to be used to cover shortfalls in the intended source for repayment of the Section 108 loan.

Another example would be a community that used EDI grant funds and Section 108 loan funds to create an economic development loan fund administered by a community based development organization, such as a community development financial institution (CDFI) when eligible to undertake the proposed Section 108/EDI eligible activities. Under this example, a CDFI could use EDI grant funds together with Section 108 funds to capitalize the CDFI to make community economic development loans, and/or the EDI grant could serve as security for any defaults in loans made with the Section 108 proceeds.

Over-collateralizing the Section 108 loan—The use of EDI grant funds may be structured in appropriate cases so as to improve the chances that cash flow will be sufficient to cover debt service on the Section 108 loan and directly to enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

An example is the creation of a loan pool made up of Section 108 and EDI grant funds. The community would make loans to various businesses at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan. If the total loan repayments from the loan fund were twice the amount of the debt service on the Section 108 loan, the community could accumulate a loan loss reserve that would mitigate virtually any risk to future CDBG funds.

Direct enhancement of the security of the Section 108 loan—The EDI grant can be used to cover the cost of providing enhanced security. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

Provision of financing to for-profit businesses at a below market interest rate—While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely economically distressed neighborhoods. The EDI grant can be used to make Section 108 financing affordable.

For example, a community's strategic plan to stabilize the economic viability of a severely distressed neighborhood may include providing loan assistance to both new and existing businesses at very low interest rates for some period of time until each business has reached a stabilized and profitable level of operation. EDI grant funds could serve to "buy down" the interest rate up front, or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial/retail project in a distressed neighborhood to act as a catalyst for other development in the area. The use of EDI/Section 108 funds for financing the commercial/retail project along with providing financial assistance to neighboring new or existing businesses within the target area would create complementary economic activity and enhance the financial viability of all assisted activities.

A combination of these techniques—An applicant could employ a combination of these or other techniques in order to implement a strategy that carries out an economic development project.

Additionally, assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). Section 3 requires that to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance be directed to low- and very-low income persons. The eligible activities for which funding is provided under this NOFA are consistent with the objectives of section 3. Public entities awarded funds under this NOFA and that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements of the interim regulations published on June 30, 1994.

(D) *Timing of Grant Awards.*

To the extent a full Section 108 application is submitted with the EDI grant application, the Section 108 application will be evaluated concurrently with the request for EDI grant funds. Note that EDI grant assistance cannot be used to support a Section 108 loan guarantee approved prior to the date of the publication of this NOFA. (See II.B. of this NOFA.) However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act. HUD notification to the grantee of the amount and conditions (if any) of EDI funds awarded based upon review of the EDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement.

(E) *Limitations on Grant Amounts.*

HUD expects to approve EDI grant amounts for approvable applications at a range of ratios of EDI grant funds awarded to new Section 108 loan

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guarantee commitments. For example, an applicant could request an EDI grant of $1 million and propose to leverage $10 million in new Section 108 loan guarantee commitments. Other applicants could request an EDI grant of $1 million and propose to only leverage $1 million in new Section 108 loan guarantee commitments. However, in no event will HUD make an award in which the amount of EDI funds awarded exceeds the amount of new Section 108 commitments. Of course, even in the first example above, applicants remain free to propose a greater leverage ratio of new Section 108 to EDI grant funds, for example $12 million of new Section 108 to $1 million of EDI grant funds. Those requesting the higher ratios of EDI grant funds to new Section 108 loan guarantee commitments should indicate in their application why the higher ratio is necessary for their proposed project. This explanation will be considered as part of the rating for need under the selection criterion at paragraph II.(C)((2).

HUD reserves the right to determine a minimum and a maximum amount of any EDI award or 108 award per applicant, application or project and to modify requests accordingly. In the case of an applicant that has received a prior EDI grant award, the Department reserves the right to consider the amount of the previous EDI award and the grant amount requested in response to this NOFA and to adjust the amount of an EDI award under this NOFA, including, if appropriate, not making an award.

In the event the applicant is awarded an EDI grant that has been reduced below the original request, the applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement. HUD reserves the right to reduce or de-obligate the EDI award if approvable Section 108 loan guarantee applications are not submitted by the grantee in the required amounts on a timely basis. Any requested modifications must be within the scope of the original EDI application. If any additional EDI grant monies from this or previous EDI NOFAs become available, HUD may fund additional applicants in accordance with this NOFA during Fiscal Year 1995 or may add any deobligated funds to funds available for any future EDI competitions.

In the case of requested amendments to an approved Section 108 loan guarantee commitment (as further discussed in paragraph II.B.), the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(F) *Eligibility to apply for grant assistance.*

Any public entity eligible to apply for Section 108 loan guarantee assistance pursuant to § 570.702 may apply for grant assistance under Section 108(q). ELIGIBLE APPLICANTS ARE CDBG ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT AND NON-ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT ELIGIBLE TO RECEIVE LOAN GUARANTEES UNDER § 570.702. Note that effective January 25, 1995, non-entitlement communities in the states of New York and Hawaii were authorized to apply to HUD for Section 108 loans (see 59 FR 47,510, published December 27, 1994). Thus non-entitlement communities in all 50 states are now eligible to participate in the Section 108 and EDI programs.

(G) *Eligible activities.*

EDI grant funds may be used for:

(1) Activities listed at § 570.703, provided such activities are carried out as part of an economic development project. If the applicant is awarded points for activities and projects under selection criterion II.(C)(6)(b) (Proposals Addressing Special Need), the applicant is required to continue to use any funds awarded for such activities and projects under this NOFA and Program Guidelines to benefit the Qualifying Empowerment Zone or Enterprise Community area.

(2) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by § 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes.

(3) The payment of principal or interest due (including such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed pursuant to the Section 108 loan guarantee program.

(H) *Catalogue of Federal Domestic Assistance (CFDA).* The EDI program has not been assigned a CFDA number as of the date of this NOFA. Please insert the letters "EDI" on the SF 424 as appropriate.

II. The Application Process

Public entities seeking EDI assistance must make a specific request for that assistance, in accordance with this NOFA. The EDI application shall be accompanied by a request for a Section 108 loan guarantee commitment, as further described in Section II.B. of this NOFA below. Application guidelines for the Section 108 program are found at § 570.704.

(A) *Timing of submission.*

Applications for EDI assistance shall be received at HUD Headquarters in the manner described under "Dates" and "Addresses" above.

(B) *Submission requirements.*

(1) The EDI application (an original and two copies) shall be accompanied by a request for loan guarantee assistance under Section 108. The request for Section 108 loan guarantee can be either one or more of the following:

(a) A formal application for Section 108 loan guarantee(s), including the documents listed at § 570.704(b);

(b) A brief description (not to exceed three pages) of a Section 108 loan guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of EDI selection (EDI awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this NOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment (analogous to subparagraph (a) or (b) above) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved *before* the date of this NOFA is not eligible to be used in conjunction with an EDI grant under this NOFA. Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this NOFA, is not eligible for an EDI award under this NOFA. For example, if a community has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the community had previously been awarded an EDI grant of $1 million and had certified that it will submit a Section 108 loan application for $10 million in support of that EDI grant, the community's application under this NOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(2) In addition, an application for EDI grant funds shall include the following:

(a) SF 424, Application for Federal Assistance.

(b) The certification regarding lobbying required under 24 CFR part 87 (Appendix A). The applicant may use the lobbying certification published with this NOFA.

(c) A narrative statement describing the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the criteria in paragraph II.(C) below. The narrative statement shall not exceed two 8.5" by 11" pages for the description of the activities to be carried out with the EDI grant funds and one page for each of the listed selection criteria.

(3) Where relevant, applications shall be deemed to include a copy of the strategic plan for community revitalization previously submitted to HUD as part of a Federal Empowerment Zone or Enterprise Community application pursuant to a Notice inviting applications, published on January 18, 1994 at 59 FR 2711.

(C) *Selection Criteria.*

All applications will be considered for selection based on the following criteria that demonstrate the quality of the proposed project or activities, and the applicant's creativity, capacity and commitment to obtain maximum benefit from the EDI funds, in accordance with the purposes of the Act.

(1) Distress—(up to 20 points). In evaluating this criterion, HUD will consider the level of distress in the immediate community to be served by the project and the jurisdiction applying for assistance. Note that in the first EDI competition in September 1994, the poverty rate was often considered the best indicator of distress levels, although the applicant may demonstrate the level of distress with other factors indicative of distress such as income, unemployment, drug use, homelessness and other indicators of distress.

(2) Extent of need for EDI assistance to financially support the Section 108 loan and the project— (up to 15 points). In evaluating this criterion, HUD will consider the extent to which the applicant's response demonstrates the financial need and feasibility of the project and the leverage ratio of EDI grant funds to Section 108 loan proceeds. Additionally, the score may be increased within this criterion to the extent other funds (public or private) are leveraged. This may include factors such as:

(i) Project costs and financial requirements.

(ii) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project.

(iii) The reasonableness of the costs of any credit enhancement paid with EDI grant funds.

(iv) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan.

(v) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate).

(vi) Underwriting guidelines used (or expected to be used) in determining project feasibility.

(vii) The extent to which federal funds provided as a result of the Federal Empowerment Zone/Enterprise Community designation process may be utilized for the proposed EDI project.

(viii) The extent to which the EDI grant is proposed to leverage the proposed Section 108 loan guarantee commitments and other economic development activities. Applicants that use their EDI grant to leverage more 108 commitments are expected to receive more points under this subcriterion (viii).

(ix) Other relevant information.

Note that if the applicant proposes a generic loan fund to assist a certain category of project or businesses, the applicant should demonstrate why the use of Section 108 loans to assist such businesses would not be financially feasible without EDI grant assistance.

(3) The extent to which the proposed activities effectively support important National interests— (up to 15 points). These activities include:

(i) The provision of jobs for low- and moderate-income individuals with special consideration for participants in any of the following programs: Jobs Training Partnership Act (JTPA), Jobs Opportunities for Basic Skills (JOBS), or Aid to Families with Dependent Children (AFDC);

(ii) The provision of jobs for participants in Unemployment Insurance programs;

(iii) The provision of jobs for residents of Public and Indian Housing or other assisted housing units;

(iv) The provision of jobs for homeless persons;

(v) The provision of jobs that provide clear opportunities for promotion for low- and moderate-income individuals, such as through the provision of training;

(vi) The establishment, stabilization, or expansion of microenterprises that employ low- and moderate-income individuals;

(vii) The stabilization or revitalization of a neighborhood that is predominantly low- and moderate-income;

(viii) The provision of assistance to a community development financial institution whose service area is predominantly low- and moderate-income;

(ix) The provision of assistance to a neighborhood-based nonprofit organization serving a neighborhood that is predominantly low- and moderate-income;

(x) The provision of employment opportunities that are an integral component of a community's strategy to promote spatial deconcentration of low- and moderate-income and minority families;

(xi) The provision of assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty; or

(xii) Other innovative approaches that provide substantial benefit to low- and moderate-income persons.

(4) Quality of the plan—(up to 60 points). HUD will consider the quality of the applicant's plan for the use of EDI funds and Section 108 loans, including the extent to which the applicant's proposed plan for the effective use of EDI grant/Section 108 loan guarantee will address its described need in the applicant's immediate community and/or its jurisdiction, and the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose.

(5) The capacity or potential of the public entity to successfully carry out the plan—(up to 15 points). This may include factors such as the applicant's performance in the administration of its CDBG program; its previous experience, if any, in administering a section 108 loan guarantee; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; its capacity to manage and service loans made with the guaranteed loan funds or EDI grant funds; and, if applicable, its capacity to manage projects under this NOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation.

(6) Applicants will be rated on both criteria (a) and (b) (if applicable) below, but will receive points for only the higher rated criterion of the two, but not both.

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(a) The extent to which the proposed plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the public entity and furthers neighborhood revitalization—(up to 20 points).

OR

(b) Proposals Addressing Special Need —(Applicants to which this criterion does not apply need not respond thereto.) (up to 20 points). Of the 20 points under this factor, one point will be awarded to applicants that received a federal urban Empowerment Zone or Enterprise Community designation and up to 19 additional points will be awarded to applicants that propose EDI and Section 108 loan assisted activities that will benefit the applicant's Qualifying Empowerment Zone or Enterprise Community area and are consistent with the applicant's Strategic Plan; and

(7) Innovation and creativity—(up to 20 points). The extent to which the applicant incorporated innovation and/or creativity in the design and proposed implementation of the proposed activities carried out with Section 108/EDI funds.

Selection Process—Once scores are assigned, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order, however, HUD, in its sole discretion, may choose to award EDI assistance to a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of grants approved under this part. As discussed in paragraph I.E. above, HUD reserves the right to determine a minimum and a maximum amount of any EDI award or Section 108 commitment per applicant, application or project and to modify requests accordingly. In addition, if HUD determines that an application rated, ranked and fundable could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination.

HUD may decide not to award the full amount of EDI grant funds available under this NOFA and may make any remaining amounts available under a future NOFA.

Timing of grant awards—To the extent full Section 108 applications are submitted concurrently with the EDI grant application, HUD's approval of the related Section 108 loan guarantee commitment will in most cases be granted contemporaneously with EDI grant approval. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act. EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

III. Technical Assistance

To the extent permitted by law, HUD may advise applicants of technical deficiencies in the EDI applications after submission and permit them to be corrected. Technical deficiencies relate only to items, such as a failure to submit or sign a required certification, that would not improve the substantive quality of the application relative to the selection criteria . Applicants will have 14 calendar days from the date HUD notifies the applicant of any such technical deficiency to submit the appropriate information in writing to HUD. At any time during the selection process, which began with preparation of this NOFA, HUD staff is limited in the assistance it is permitted to provide regarding applications for EDI grants, due to the requirements of the HUD Reform Act. The assistance and advice that can be provided includes such activities as explaining and responding to questions about program regulations, identification of those parts of an application that need substantive improvement, the dates by which decisions will be made and the procedures that are required to be performed to process an application. The term "technical assistance" however, does not include advising the applicant how to make substantive improvements in its application that will affect ratings.

In addition, any information published in the **Federal Register** and in this NOFA, and any information that has been made public through a means other than the **Federal Register** or NOFA, may be discussed.

HUD staff will be available throughout the EDI application period to provide extensive advice and assistance, as is currently provided, to develop 108 loan applications since the 108 program is not subject to the HUD Reform Act. Staff providing such assistance may provide technical advice to the EDI selection panel but *in no case* will such staff participate in the panel's voting process for EDI awards under this NOFA.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA offers financial assistance to units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable

certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

Dated: February 16, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed: _____

Date: _____

_____

(Print name and title)

24 CFR Part 87, Appendix A

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

John Heinz Neighborhood Development Program; Funding Availability; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-95-3877; FR-3855-N-01]

NOFA for the John Heinz Neighborhood Development Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for Fiscal Year 1995.

SUMMARY: This NOFA announces the availability of $4,750,000 in funding for the FY 1995 John Heinz Neighborhood Development Program. Interested persons should apply for FY 1995 program funds according to the procedures and requirements set out in this NOFA.

In the body of this NOFA is information concerning:

(1) This year's round of funding for this program;

(2) The purposes and objectives of the program;

(3) The method of allocation and distribution of funds;

(4) Eligibility requirements for neighborhood development organizations;

(5) Eligible neighborhood development activities;

(6) Selection criteria for the award of funds;

(7) Application requirements for the funds;

(8) Grantee reporting requirements; and

(9) Other applicable administrative requirements associated with the program.

DATES: Applicetions may be requested beginning February 24, 1995. Completed applications must be submitted no later than 4:30 p.m. (Eastern Time), by the date specified in the application kit. The application deadline will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, call: American Communities at 1-800-998-9999, or fax your request to: (301) 251-5747 (this is not a toll-free number). Speech- or hearing-impaired persons may request an application by contacting the TDD number: (202) 708-2565 (not a toll-free number), as listed under the **FOR FURTHER INFORMATION CONTACT** heading in this NOFA. Faxed requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to FR-3855. Completed applications may not be submitted by fax.

FOR FURTHER INFORMATION CONTACT: Ophelia Wilson or Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7218, 451 Seventh Street, S.W., Washington, D.C. 20410; telephone number (202) 708-1189 and (202) 708-2565 (TDD). (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535-0084.

I. Purpose and Substantive Description

A. Authority

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note) (Section 123) authorized the John Heinz Neighborhood Development Program. For Fiscal Year 1995, a total of $5 million has been appropriated for this program under the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1995 (Pub. L. 103-327, approved September 28, 1994).

Section 123(e)(6)(D) permits the Secretary of Housing and Urban Development (Secretary) to use no more than five percent of the funds appropriated for administrative or other expenses in connection with the program. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, neighborhood development funding organizations, and nonprofit or other organizations located within established neighborhood boundaries. For purposes of this NOFA the term "neighborhood development funding organization" means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Credit Union Act, and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in section 3(w) of the Federal Deposit Insurance Act) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

The purpose of the program is to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote neighborhood development initiatives and to encourage neighborhood organizations to become more self-sufficient in their development activities. Not more than 50 percent of the 1995 awards may be to previous grantees in the program; the remaining awards will be made to organizations selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria that reflect the program purposes and priorities and are contained in this notice.

The objectives of the Neighborhood Development Program are:

—To help neighborhood development organizations increase their capacities to carry out larger or more complex activities, in cooperation with private and public institutions; and

—To assist neighborhood development organizations to achieve long-term financial support for their activities. The activities must benefit low-income persons within the neighborhood.

B. Allocation Amounts

The Department will make grants, in the form of matching funds, to eligible neighborhood development organizations. Under Section 123(e)(3), a grantee organization may receive no more than $75,000 in Federal matching funds in a single program year. HUD reserves the right to make grants for less than the maximum amount. When the amount of funds requested is greater than the amount of funds appropriated, HUD also reserves the right to consider the degree an applicant has previously been funded under the John Heinz Program, and greater consideration may be given to those organizations which have received the least amount of funding under this program.

The amount of Federal matching funds that an applicant receives during the program year will depend in part upon the amount of monetary

contributions raised in the preceding quarter of the program year from individuals, businesses, neighborhood development funding organizations, and nonprofit and other organizations located within established neighborhood boundaries. Contributions attributable to organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. These contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a one- to three-year period.

A Federal matching ratio will be established for each participating applicant in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the greatest degree of economic distress. Subject to the statutory maximum of $75,000, the Federal match for this program year will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered and the matching ratios will be determined in accordance with this criterion. The Department also reserves the right to fund applications, in other than rank order, on the basis of achieving geographic balance.

Any application selected for the award of Federal funds that proposed a matching funds ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment to an applicant will be governed by the amount of verified, qualifying monetary contributions received from local sources in the preceding quarter, multiplied by the matching funds ratio established for the neighborhood. Ten percent of the total grant award will be held pending receipt of the final report and close-out documentation.

C. Eligibility

1. Eligible Applicants—Definition

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following statutory requirements:

(a) The applicant must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(b) The applicant must be responsible through a governing body to the residents of the neighborhood it serves. Not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(c) The applicant must have conducted business for at least one year before the date of its application;

(d) The applicant must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974 (Urban Development Action Grants);

(ii) The area is designated as an empowerment zone or an enterprise community under Federal law;

(iii) The area is designated as an enterprise zone under State law, and is recognized by the Secretary as a State enterprise zone for purposes of this section; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991; and

(e) The applicant must have conducted one or more eligible neighborhood development activities that primarily benefit low-income persons, as defined in section 102(a)(20) of the Housing and Community Development Act of 1974. (In general, low-income residents means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved.)

2. Eligible Applicants—Other Threshold Requirements

In addition, an applicant must:

(a) Specify a business/management plan for accomplishing one or more of the activities listed in Section I.C(3), Eligible Activities, of this NOFA;

(b) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization. An applicant that is otherwise eligible will be deemed to have the full benefit of the cooperation of a neighborhood development funding organization if the eligible applicant:

(i) Is located in an area described in paragraph (d) of Section I.C(1) of this NOFA (Eligible Applicants—Definition) that does not contain a neighborhood development funding organization; or

(ii) Demonstrates that it has been unable to obtain the cooperation of any neighborhood development funding organization in the area despite having made a good faith effort to obtain such cooperation; and

(c) Specifies a strategy for increasing the capacity of the applicant.

3. Eligible Activities

Eligible activities include the following, but are not limited to the examples given:

(a) Developing economic development activities that include:

(i) Creating permanent jobs in the neighborhood; and

(ii) Establishing or expanding businesses within the neighborhood (such as a business incubator);

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood. Examples include fair housing counseling services, child care centers, youth training, and health services; or

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts, such as, but not limited to:

(i) Fstablishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, and establishing an on-going street and alley cleanup program;

(ii) Strategic planning to integrate housing, economic development, essential services, the remediation of hazards (such as brownfields), and neighborhood urban design activities; and

(iii) Integrating neighborhood strategic planning or community-based projects into city- and metropolitan-wide planning or service delivery, as a means of establishing linkages with city and metropolitan planning, job markets, and service delivery mechanisms in other areas within the metropolitan region.

D. Selection Criteria/Ranking Factors

Applications will be evaluated on the basis of the following factors. In addition, two (2) bonus points will be added in determining the final score for an application submitted by an

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applicant that is located in a Federal Empowerment Zone or Enterprise Community. Every applicant is encouraged to demonstrate how its program activities will enhance citizen involvement in the development of the locality's Consolidated Plan. Further, HUD is interested in supporting activities of applicants that have demonstrated capacity to engage citizens in planning and program implementation initiatives that benefit neighborhoods, but have not previously participated in this program.

(1) The degree of economic distress within the neighborhood served by the applicant and the extent to which the proposed activities will benefit persons of low-income residing in the neighborhood. The degree of economic distress is based on the percentage of poverty within the neighborhood area, as determined from the 1990 U.S. Census data. Applicants with the highest poverty level relative to their population will be given higher points. (25 points)

(2) The record of past performance and staff capability in carrying out one or more of the activities specified under Section I.C(3), Eligible Activities, of this NOFA, and in promoting fair housing, equal employment opportunity, and minority-owned business entrepreneurial opportunities. (20 points)

(3) The quality of the management/business plan submitted for accomplishing the activities proposed by the applicant, including the budget and budget narrative, fundraising plan and matching ratio, and evidence of a sound financial management system. (25 points)

(4) The extent of neighborhood residents' participation in the activities of the applicant; the level of coordination with local governments, which may be evidenced through a certification from the Chief Executive Officer of the unit of local government; and the extent of participation of a neighborhood development funding organization in the proposed activities. (20 points)

(5) The extent to which the applicant has developed a strategy to increase its capacity to carry out larger or more complex project activities and to address its long-term financial and organizational development needs. (10 points)

E. Determination of Ratio for Federal Contribution

The Secretary will determine the ratio by which Federal funds will be used to match monetary contributions made to each eligible applicant that is selected for funding under this NOFA. The ratio will be based on the degree of economic distress. Neighborhoods indicating the greatest degree of economic distress will be assigned higher ratios under this factor than those with lesser degrees of economic distress.

F. Environmental Reviews

HUD will conduct the appropriate environmental review and comply with all the environmental requirements in 24 CFR Part 50 before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

II. Application Submissions Process

A. Obtaining Application

For an application kit, call: American Communities at 1–800–998–9999 or fax your request to (301) 251–5747. (This is not a toll-free number). Speech- or hearing-impaired persons may request an application by contacting the TDD number: (202) 708–2565 (not a toll-free number), as listed under the "For Further Information Contact" heading in this NOFA.

Faxed requests for application kits must include the applicant's name, mailing address (including zip code), and telephone number (including area code), and must refer to FR–3855. The RFGA contains the application, forms, and other information regarding the application process and the administration of the program, including relevant provisions from OMB Circulars A–110 and A–122. (This NOFA summarizes major provisions of the RFGA.)

B. Application Submission

An original and three copies of an application must be submitted to: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7255, Washington, DC 20410. HUD will accept only one application per neighborhood organization. Responses to the application kit must be limited to 50 pages, single-spaced, exclusive of the following required forms: Cover Page, Standard Form-424, Assurance Form SF–424B, Applicant/Recipient Disclosure Update Report HUD–2880, Drug-Free Workplace Certification, Articles of Incorporation and Bylaws, Audit Report and Miscellaneous Materials. All pages and attachments must be numbered consecutively, in arabic numbers. Reviewers are not required to read beyond the 50-page maximum.

C. Application Deadline

Applications may be requested beginning February 24, 1995. Applications must be submitted no later than 4:30 p.m. (Eastern Time), by the date specified in the application kit. The application deadline will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

III. Checklist of Application Submission Requirements

A. Preapplication Determination of Eligibility

Before preparing an application, the applicant should carefully check the eligibility requirements described in Section I.C, Eligibility, of this NOFA. Applicants that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties were potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult the following two notices published by the Department in the **Federal Register**: (1) "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987); and (2) "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Any applicant that needs additional help in determining its eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). If assistance is needed, the city or county community development office serving a neighborhood organization should be able to provide an applicant with the HUD Field Office contact number. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708–2186, or contact the TDD number: (202) 708–0564. (These are not toll free numbers.)

B. Application Checklist

Each application must contain the following, as required by the RFGA.

(1) A signed copy of Standard Form SF–424;

(2) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(3) A completed fact sheet that lists neighborhood and organizational characteristics;

(4) Evidence that the applicant meets eligibility criteria and provides the following data:

(a) A city map, with street names, delineating the applicant's neighborhood boundaries and indicating where project activities will take place;

(b) Census tract, block, or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

(c) Census data on the size of the neighborhood population, including the number of low-income persons and the size of the minority population, broken down by ethnic, racial, and gender composition;

(d) A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

(e) A list of the names of the neighborhood governing board members and their addresses (with zip codes) to show that at least 51% reside in the neighborhood. Indicate those who reside in the neighborhood separately from those who conduct business in the neighborhood;

(f) Identification of the applicant organization's past and current neighborhood projects, including those projects that are eligible neighborhood development activities as defined in Section I.C(3), Eligible Activities, of this NOFA;

(g) A description of the means by which the governing board members account to residents of the neighborhood, including the method and frequency of selection of members of the governing board, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (i.e., a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

(h) Evidence of the applicant's sound financial management system, determined from its financial statements or audits;

(i) A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are consistent with the Consolidated Plan of the jurisdiction to be served.

(j) Evidence of cooperation with a neighborhood development funding organization. In lieu of this participation, evidence may be presented that the applicant:

(i) Has no neighborhood development funding organization within the applicable boundaries; or

(ii) Has been unsuccessful, despite having made a good faith effort, in obtaining this participation.

(k) A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(l) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(m) A project management plan, including a schedule of tasks for both fund raising and project implementation;

(n) A project budget and budget narrative; and

(o) A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F; and

(5) *Equal Opportunity Requirements* The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, Subpart M; and Executive Order 11063 (Equal Opportunity Housing implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u and implementing regulations at 24 CFR part 135; and

(d) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309).

(f) The requirement of the Americans with Disabilities Act (42 U.S.C. 12181–12189) and implementing regulations at 28 CFR part 36, as applicable.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

Examples of deficiencies that may be cured are:

—Omitted or improper signatures;
—Omitted certifications or assurances; and
—Omitted financial statements or audits.

V. Other Matters

A. Reporting Requirements

In addition to complying with relevant provisions of OMB Circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the program, such as changes in any of the following: the governing board membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of

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matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. Ten (10) percent of the total grant amount will be held until a final report and close-out documents are received from the grantee. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the program, and a report on successful projects that will be distributed to other neighborhood organizations.

B. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth in Section III.B(4) of this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Flood insurance.* No building proposed for acquisition, construction, reconstruction, repair, or improvement to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program (implemented in regulations at 44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards, and the grantee ensures that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.).

(3) *Lead-based paint.* The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and implementing regulations at 24 CFR part 35.

(4) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

(5) *Relocation and Real Property Acquisition.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, apply to the acquisition of real property for an assisted project and the displacement of any person (households, business, nonprofit organization, or farm) as a direct result of acquisition, rehabilitation, or demolition for the HUD-assisted project.

(6) *Certifications.* In the absence of independent evidence that tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

C. National Environmental Policy Act

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice announces incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

F. Section 102 HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

G. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

H. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 has been implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: 42 U.S.C. 5318 note and 3535(d).

Dated: February 17, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4449 Filed 2–21–95; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

HOPE for Homeownership of Single Family Homes Program (HOPE 3), Funding Availability; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-95-3888; FR-3886-N-01]

HOPE for Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This NOFA announces the availability of approximately $22 million in funding for implementation grants for the HOPE for Homeownership of Single Family Homes Program (HOPE 3). The Notice contains information concerning eligible applicants, funding available for implementation grants, and application requirements and procedures. The NOFA is issued under the final rule for the HOPE 3 Program published July 7, 1993 (58 FR 36518) and codified at 24 CFR part 572. The rule contains detailed programmatic information and the requirements for the HOPE 3 program. Applicants are advised to consult the regulation in order to prepare an application in compliance with the requirements of the final rule, many of which are not repeated in this NOFA. Failure to follow the rule will result in applications being rejected by HUD.

DATES: Applications for implementation grants for the HOPE 3 program must be physically received in the appropriate HUD Field Office by 4:30 p.m. local time on April 25, 1995. Applications may be hand delivered to the appropriate HUD Field Office no later than 4:30 p.m. local time on the deadline date. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this deadline for actual submission for any reason. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this policy into account and consider early submission to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality or areas in which the proposed program is located. Applications should be addressed to the attention of: Director, Community Planning and Development Division. A list of HUD Field Offices appears at the end of this NOFA. Applicants must submit their applications to the CPD Division in the correct Field Office, including applicants in States with more than one Field Office. For applications submitted by Indian tribes and IHAs, the correct Field Office is the CPD Division in the office listed at the end of the NOFA with jurisdiction over the geographic area covered by the application. Indian tribes and IHAs should not submit their applications to the Office of Native American Programs. Applicants should contact their local office to confirm the appropriate place for submission. Failure to submit an application to the correct Field Office in accordance with the above procedures will result in disqualification of the application.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7168, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-3226; (TDD (202) 708-2565). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and have been assigned OMB control number 2506-0128.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by title IV of the National Affordable Housing Act (42 U.S.C. 12891-12898), which created the HOPE 3 Program. The final rule for the program, published in the **Federal Register** on July 7, 1993, is codified at 24 CFR part 572. If there is any conflict between this NOFA and the regulation, the regulation shall be controlling. HUD may also issue additional issuances containing more detailed policy with respect to various aspects of the program, application processing instructions for Field Offices, operation of the Cash and Management Information System, obtaining environmental clearance, and similar matters, which shall be subject to the regulations and will be available to the public upon request to the applicable Field Office.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of approximately $22 million in funds for implementation grants, appropriated by the HUD Appropriations Act for Fiscal Year 1995 (Pub. L. 103-327, approved September 28, 1994). The amount made available for implementation grants has been allocated to each of the 10 HUD geographical areas (formerly Regions) by a formula described in the final rule (24 CFR 572.210(b)). However, no former Region has been allocated less than $1.0 million in order to ensure that national geographic diversity is maintained. The formula results in the following allocations based upon 1993 data. Should more recent data become available during the application solicitation period, revised allocations will be published in the **Federal Register**. (The numbered geographical areas correspond to the number of the former HUD Region: e.g. 1=former Region I).

1. $1,018,000
2. $1,934,000
3. $1,989,000
4. $4,311,000
5. $3,171,000
6. $3,084,000
7. $1,000,000
8. $1,000,000
9. $3,493,000
10. $1,000,000

C. Reallocation of Funds

If funds remain after HUD has approved all approvable implementation grant applications in a HUD geographical area (formerly Region) or if any funds become available due to deobligation of grant amounts, the remaining amounts from each former Region may be combined and HUD may use them in accordance with § 572.310(f) of the regulation.

D. Implementation Grant Cap

1. For FY 1995, the maximum total grant amount for a single application is $1.0 million. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than $1.0 million.

2. Applicants should refer to 24 CFR 572.210(c) for overall limitations on implementation grants.

E. Eligible Applicants

An eligible applicant is a private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, Indian tribe or an agency or instrumentality of a public body) in cooperation with a private nonprofit organization, all as further defined in the regulations.

II. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including SF 424, other forms, and instructions for preparing applications, are available from HUD's Processing and Control Unit (PCU). Applicants should FAX their written requests for an application to the PCU at (202) 708-3363. The request should include the name and address of the applicant, the name of the competition (HOPE 3), and the **Federal Register** number of this NOFA. Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received no later than 4:30 p.m. on the deadline (see **DATES** at the beginning of this NOFA) at the appropriate HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile (FAX) will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact their HUD Field Office for information and guidance from HUD about program requirements and for the time and place of any workshops or training sessions to be held within the Field Office's jurisdiction. If an application is being submitted by an organization that is a current HOPE 3 grant recipient, the applicant may submit information from the previous year's application as long as the information is still current and accurate.

C. Consolidated Plan/Comprehensive Housing Affordability Strategy

On January 5, 1995, the final consolidated plan regulation (to be codified in 24 CFR part 91) was published. The consolidated plan combines into a single plan the requirements of the comprehensive housing affordability strategy, the community development plan required for the Community Development Block Grant program, and the submission requirements for the Community Development Block Grant, HOME, Emergency Shelter Grant, and Housing Opportunities for Persons with AIDS formula programs. Changes to the HOPE 3 program regulations to substitute "consolidated plan" for "comprehensive housing affordability strategy" will be published shortly.

As provided in § 572.400, the application must contain a certification from the State or local government that the proposed activities are consistent with the HUD-approved comprehensive housing affordability strategy of the applicable state or local government. During FY 1995, jurisdictions will be making the transition from the comprehensive housing affordability strategies to the consolidated plans. If the jurisdiction has an approved consolidated plan, the certification of consistency must be made with respect to the consolidated plan. If the jurisdiction still has a comprehensive housing affordability strategy in effect, the certification of consistency must be made with respect to the comprehensive housing affordability strategy. The requirements in § 572.400 regarding the various types of applicants and the timing for submission of the certification of consistency remain in effect.

D. Selection Process

The selection process for implementation grants under the HOPE 3 Program consists of a screening review, and then, for those applications meeting all screening requirements, rating and ranking under substantive rating criteria. Rating and ranking will only occur if there are more applications that meet screening requirements than funds available in that former Region.

E. Screening Process/Corrections to Deficient Applications

(1) HUD will screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, contains correct computations, and complies will all requirements of this NOFA and the regulation. In addition, HUD will determine whether there appear to be a sufficient number of suitable, available properties in the general locations identified in the application for the proposed activities. For this purpose, at least ten suitable units in eligible properties must be currently available or have been available in the 12-month period prior to application submission. Where HUD determines that an application as initially submitted is fundamentally incomplete or would require substantial revisions, it will not consider the application further.

(2) Where HUD determines an application is deficient in one or more of the areas in paragraph (E)(1) of this section but is not fundamentally incomplete and does not require substantial revisions, it will notify the applicant in writing and give it an opportunity to correct the technical deficiencies in its application. HUD will not notify the applicant of any deficiencies that relate solely to the rating of the application.

(3) The notification will require the applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than 4:30 p.m. local time on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. After review of all additional or corrected materials, HUD will not consider further any applications that do not comply with the requirements of the NOFA and the regulation.

F. Rating Criteria

All applications meeting screening requirements will be selected for funding if sufficient funds are available within the allocation to each HUD geographical area (formerly Region). If there are more applications that meet screening requirements than funds available in that former Region, all applications meeting the screening requirements will be rated and ranked, using the following substantive rating criteria:

1. Capability of the Applicant—up to 25 points.
2. Demonstrated Public/Private Support—up to 20 points.
3. Quality of Program Design—up to 30 points.
4. Efficiency—up to 10 points.
5. Inventory—up to 5 points.
6. Minority Business Enterprise/Women-owned Business Enterprise—up to 5 points.
7. Fair Housing Choice—up to 5 points.

Further description of the rating of applications and of the factors considered under each rating criterion may be found in § 572.320 of the final rule.

G. Ranking and Selection

After assigning points under the selection criteria, HUD will rank applications within the former Regions. HUD shall examine the rankings and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for

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applications to qualify to be selected for funding.

HUD shall select for funding in rank order all fundable applications. Further description of the procedure for selection is contained in § 572.310 of the regulation.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for the program regulations in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Section 102 of the HUD Reform Act—Accountability in the Provision of HUD Assistance

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) in HUD's implementing regulations at 24 CFR part 15. In addition, HUD publish a **Federal Register** notice of all recipients awarded assistance under this NOFA. (See 24 CFR part 12 for further information on these documentation and public access requirements.)

Section 103 of the HUD Reform Act—Prohibition against Advance Information on Funding Decisions

Section 103 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act) proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulations implementing section 103 are at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics at the address or telephone number in the following paragraph.

Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence this award or assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented at 24 CFR part 86. Appendix A of the rule contains example of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) ("Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: February 17, 1995.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

Appendix: List of HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–

TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—John D. Harmon, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 290–7645; TDD (205) 290–7624.

Alaska—Dean Zinck, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–3669; TDD (907) 271–4328.

Arizona—Lou Kislin, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

Delaware—John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

District of Columbia—James H. McDaniel, 820 First St., NE,Washington, DC (and MD and VA suburbs) 20002; (202) 275–0994; TDD (202) 275–0772.

Florida—James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 791–1241.

Georgia—John Perry, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii (and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 522–8180; TDD (808) 541–1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Illinois—Jim Barnes, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5484; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394; TDD (502) 582–5139.

Louisiana—Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3116; TDD (410) 962–0106.

Massachusetts—Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

Michigan—Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343; TDD * via 1–800–877–8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TDD (314) 539–6331.

(Western) William Rotert, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–54843; TDD (913) 551–6972.

Montana—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Lou Kislin, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

(Remainder of State) Steve Sachs, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900; TDD (201) 645–3298.

New Mexico—Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768; TDD * via 1–800–877–8339.

(Downstate) Jack Johnson, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4005; TDD (910) 547–4055.

North Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—Ted Allen, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

(Eastern) Joyce Gaskins, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Frank Del Vecchio, Thomas P O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4396; TDD (615) 545–4559.

Texas—(Northern) Katie Worsham, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

(Southern) John T Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Notice of Fund Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3870; FR–3798–N–01]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability for Fiscal Year 1995.

SUMMARY: This Notice of Fund Availability (NOFA) announces HUD's funding for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (hereafter referred to as the ICDBG Program) for Fiscal Year 1995. In the body of this document is information concerning the following:

(a) The purpose of the NOFA, and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications must be received by the appropriate field office of the HUD Office of Native American Programs (ONAP) no later than 3:00 P.M. *May 14, 1995.* Application materials will be available from each field office. General program questions may be directed to the field office serving your area or by contacting Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW, Washington, DC 20410. Telephone (202) 755–0068. The Telecommunications Device for the Deaf (TDD) number is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2506–0043.

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I. Purpose and Substantive Description

(a) Authority

Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 953.

(b) Funding

Amendments to Title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. The interim regulation containing the selection criteria was issued July 27, 1994, and is published in the **Federal Register** at 59 FR 38326. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR Part 953.

Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24

CFR part 15. (See 24 CFR part 12 subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

1. Allocations. The requirements for allocating funds to field offices responsible for program administration are found at 24 CFR 953.101. Following these requirements, the allocation for FY 1995 is as follows:

Eastern Woodlands	$3,577,545
Southern Plains	8,322,000
Northern Plains	7,028,048
Southwest	19,008,484
Northwest	2,751,491
Alaska	3,812,432
Total	44,500,000

The total FY 1995 ICDBG allocation is $46,000,000. As indicated in Section I(b)3 below, $1,500,000 has been retained to fund Imminent Threat grants.

2. Grant Ceilings. The authority to establish grant ceilings is found at 24 CFR 953.100(b)(1). Grant ceilings are established for FY 1995 funding at the following levels:

Field offices	Population	Ceiling
Eastern Woodlands	ALL	$300,000
Southern Plains	ALL	750,000
Northern Plains	ALL	800,000
Southwest	50,001+	5,000,000
	10,501–50,000	2,500,000
	9,001–10,000	2,000,000
	7,501–9,000	1,500,000
	6,001–7,500	1,000,000
	4,501–6,000	750,000
	3,001–4,500	650,000
	1,501–3,000	550,000
	1–1,500	450,000
Northwest	ALL	320,000
Alaska	ALL	500,000

3. Imminent Threats

• The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 953, subpart E. In accordance with the provisions of that subpart, $1,500,000 is being retained to meet the funding needs of imminent threat applications submitted to any of the field offices. The grant ceiling for imminent threat applications for FY 1995 is 350,000. This ceiling is established pursuant to the requirements of 24 CFR 953.100(c).

(c) Eligibility of Activities

Activities that are eligible for ICDBG funds are identified at 24 CFR part 570 subpart C, as modified by 24 CFR part 953 subpart C. Both the National Affordable Housing Act (NAHA) (P.L. 101–625) and the Housing and Community Development Act of 1992 (the 1992 Act) (P.L. 102–550) amended Title I of the Housing and Community Development Act of 1974 (HCD Act). Various amendments made by these two acts are applicable.

(d) Applicant Eligibility

To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska Native Village (or as a tribal organization) by the application submission date.

Tribal organizations are permitted to submit applications under 24 CFR 953.5(b) on behalf of eligible tribes or villages when one or more eligible tribe(s) or village(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under Title I of the Indian Self-Determination and Education Assistance Act.

If a tribe or tribal organization claims that it is a successor to an eligible entity, the field office must review the documentation to determine whether it is in fact the successor entity.

Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 953.5, a Village Corporation, Regional Corporation or Tribal Organization which submits an application for activities in the jurisdiction of one or more eligible tribes or villages, must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation and the Regional Corporation.

On October 21, 1993, the Bureau of Indian Affairs (BIA) published a **Federal Register** Notice entitled "Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs". This Notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR 83. Additionally, pursuant to Title I of the Indian Self-Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska field office prior to the deadline for submitting an application. (See 24 CFR 953.5 for a complete description of eligible applicants.)

(e) Screening for Acceptance

Each field office will initially screen applications for single purpose grants. Applications failing this initial screening shall be rejected and returned to the applicants unrated. Field offices will accept applications if all the criteria listed below as items 1. through 6. are met:

1. The application is received by the appropriate field office no later than 3:00 p.m. on the deadline date.
2. The applicant is eligible;
3. The proposed activities are eligible;
4. The application contains substantially all the components specified in Section III of this notice; and
5. At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of 24 CFR 953.201(a).

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6. The application is for an amount which does not exceed the grant ceilings that are established by the NOFA.

(f) Application Review Process Description

1. Threshold review. The field office will review each application that passes the initial screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 953.302(a), as implemented by this NOFA. *If an applicant fails to meet any of the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or applicable project-specific thresholds will not be considered for funding.*

2. All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by a field office rating team of at least three voting members. The field office will examine each project to determine in which one of the three rating categories set forth in 24 CFR 953.303 through 24 CFR 953.305 the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total of points for a rating component is 100, which is the maximum any project can receive.

3. Public service projects. Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the application's other project(s). If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

4. Corrections to deficient applications and supplemental information. HUD will not accept unsolicited information regarding the application after the application deadline has passed. The field office will advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency is an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. HUD will notify applicants in writing of any curable technical deficiencies in applications.

The field office also may, at its discretion, request supplemental information to resolve inconsistencies or ambiguities in the application or information that may help clarify an application that, in the field office's view, contains information that is inconsistent with known facts or data. *Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the technical deficiency or provide the requested supplemental information. If the technical deficiency is not corrected within this time period, HUD will reject the application as incomplete. If the supplemental information is not provided in this time period and, as a consequence, the field office determines that the applicant has failed to establish compliance with the requirements of 24 CFR part 953, the application will be returned, unrated.*

Applicants may not submit information that would enhance a project's rating, and a new project may not be substituted for one included in the application.

5. Final ranking. All projects will be ranked against each other according to the point totals they receive, regardless of the rating category or component under which the points were received. Projects will be selected for funding based on this final ranking, to the extent that funds are available. Individual grant amounts will be determined in a manner consistent with the considerations set forth in 24 CFR 953.100(b)(2). If the field office determines that an insufficient amount of money is available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. HUD may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

6. Tiebreakers. When rating results in a tie among projects and insufficient resources remain to fund all tied projects, field offices shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors should be used in the order listed to resolve the tie:

A. *Eastern Woodlands Office.*

(1) The project that would benefit the highest percentage of low and moderate income persons.

(2) The project that would benefit the most low and moderate income persons.

B. *Southern Plains Office.*

(1) The project that would benefit the highest percentage of low and moderate income persons.

(2) The applicant with the fewest active grants.

(3) The project that would benefit the most low and moderate income persons.

C. *Northern Plains Office.*

(1) The project that would benefit the highest percentage of low and moderate income persons.

(2) The project that would benefit the most low and moderate income persons.

D. *Southwest Office.*

(1) The applicant with the fewest active grants.

(2) The applicant that has not received an ICDBG grant over the longest period of time.

(3) The project that would benefit the highest percentage of low and moderate income persons.

E. *Northwest Office.*

(1) The applicant that has not received an ICDBG grant over the longest period of time.

(2) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(3) The project that would benefit the highest percentage of low and moderate income persons.

F. *Alaska Office.*

(1) The applicant that has not received an ICDBG grant over the longest period of time.

(2) The project that would benefit the highest percentage of low and moderate income persons.

(3) The project that would benefit the most low and moderate income persons.

(g) Overall Thresholds

Two types of general thresholds are set forth in 24 CFR 953.302(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds will be addressed within the pertinent project selection criteria categories.

Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project, and on its past performance in the ICDBG and Housing programs. An applicant that has previously participated in the ICDBG program must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting an ICDBG application to HUD.

In order to rate and rank a project contained in an application that has passed the screening tests outlined in

Section III of this NOFA, field offices must determine that the proposed project meets the community development appropriateness thresholds, i.e., the project has costs that are reasonable; the project is appropriate for the intended use; and the project is usable or achievable in a timely manner, generally within two years of grant award.

1. Applicant-Specific Thresholds—Capacity and Performance

A. *Capacity.* The field office will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project. The application should address who will administer the project and how the applicant plans to handle the technical aspects of executing the project. If the field office determines, based on substantial evidence, that the applicant does not have or cannot obtain the capacity to undertake the proposed project, the application will not receive further consideration.

B. *Performance.*

(1) *Community Development.* If an applicant has previously participated in the ICDBG Program, the field office shall determine whether the applicant has performed adequately in grant administration and management. Where an applicant was found to be performing inadequately, the field office shall determine whether the applicant is following a schedule to correct performance to which the applicant and the field office have agreed. In cases of previously documented deficient performance, the field office must determine that the applicant has taken appropriate corrective action to improve its performance. The applicant is presumed to be performing adequately unless the field office makes a performance determination to the contrary during periodic monitoring.

(2) *Housing assistance.* The applicant is presumed not to have taken actions to impede the provision of housing assistance for low and moderate income members of the tribe or village. Any action taken by the applicant to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant. If an applicant has established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, the applicant's compliance with the obligations and responsibilities to the IHA set forth in the tribal ordinance which was the basis for the establishment or joining of the IHA will be a performance consideration.

An applicant will not be held accountable for the poor performance of its IHA unless this inadequate performance is found to be a direct result of the applicant's action or inaction. If this is true, the application will be removed from further consideration. Applicants which are members of "umbrella" IHAs will be judged only on their individual performance and will not be held accountable for the poor performance of other tribes that are members of the IHA.

If an applicant has received ICDBG funds for the provision of new housing through a subrecipient, the field office will consider the following in making its determination regarding housing assistance performance: a. whether the proposed units were constructed; b. whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not; c. whether the applicant followed the provisions of its housing plan and procedures; and d. whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

(3) *Audits.* This threshold requires the applicant to meet the following performance criteria:

a. The applicant cannot have an outstanding ICDBG obligation to HUD or a ICDBG program that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

b. The applicant cannot have an overdue or unsatisfactory response to an audit finding. If there is an overdue or unsatisfactory response to an audit finding, the applicant will be disqualified from current and subsequent competition until the applicant has taken final action necessary to close the audit finding. The field office administrator may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding. An exception may be granted when funds are due HUD or an ICDBG program as a result of a finding only when a satisfactory arrangement for repayment of the debt has been made and payments are current.

2. Community Development Appropriateness. The following criteria must be met by each project:

A. Costs are reasonable. The project must be described in sufficient detail so that the field office can determine: (1) that costs are reasonable; and (2) that the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

B. The project is appropriate for the intended use.

C. The project is usable or achievable in a timely manner, generally within a two year period. The applicant must include its timetable for project implementation and completion. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond the applicant's control.

(h) General Definitions

Adopt. To approve by formal tribal resolution, as defined at 24 CFR part 953.4.

Assure. To comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document. To supply supporting written information and/or data in the application, which satisfies the NOFA requirement.

Leverage. Resources the grantee will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to: tribal trust funds, loans from individuals or organizations, state or Federal loans or guarantees, other grants, as well as noncash contributions and donated services. *Written verification of an application or request for the leveraged resources which would be provided by an entity other than the applicant must be included in the application for ICDBG funds.* To be considered in the award of points, resources to be provided by the applicant must be verified by a tribal council resolution which identifies and commits these resources. A copy of this resolution must be included in the application. With respect to resources to be provided by an entity other than the applicant, to be considered in the award of points, the following requirements apply:

—For grants or other contributed resources from a public agency, foundation, or other private party, a *written commitment* which may be contingent on approval of the ICDBG award must be *received* by the field

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office no later than *30 days* after the application deadline. This commitment must specifically identify or indicate: the dollar amount committed (or dollar value of the noncash resource and the basis for the valuation); that the resources are currently available or will be available when necessary for successful project implementation; and the project. If delays in the Federal funding process preclude an agency from making a firm funding commitment in this timeframe, such resources will be considered in the award of points if the Federal entity issues a written statement indicating that it is extremely likely that the applicant will be funded within six months of the anticipated date of grant approval notification from HUD. This statement must be received by the field office no later than *30 days* after the application deadline.

With respect to the contribution of land as a leveraged resource, the value of the land to be contributed will only be considered when the use of the land and the land area are integral to the development of the project. To be considered for point award, the value of the land must be verified by any of the following means or methods and this documentation and a written confirmation of the proposed contribution *must be included in the application*:

—A site specific appraisal no more than two years old;
—An appraisal of a near-by comparable site also no more than two years old;
—A reasonable extrapolation of land value based on current area realtors value guides.

Donated goods and services will be considered for point award if the applicable requirements listed above are met; if the items or services are demonstrated and determined necessary to the actual development of the project; and comparable cost and/or time estimates are submitted which support the donation.

Project Cost. The total cost to implement the project. Project cost includes both ICDBG and non ICDBG funds and resources.

Section 8 standards. Housing quality standards contained in the Section 8 Housing Assistance Payments Program Existing Housing (24 CFR 882.109).

Standard Housing/Standard Condition. Housing which meets the housing quality standards (HQS) adopted by the applicant. The adopted standards must provide for the following:

—That the house is safe, in a physically sound condition with all systems performing their intended design functions;
—A livable home environment;
—An energy efficient building and systems which incorporate energy conservation measures;
—Adequate space and privacy for all intended household members. The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the field office approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible. Applicants may submit their request for the approval of standards less stringent than Section 8 standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval by the field office.

Tribe. Indian Tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos and Alaska Native Villages.

(i) Project Definitions, Thresholds and Selection Criteria

1. *Housing.*

A. General Threshold for Housing Category Projects Households that have been evicted from HUD assisted housing within the past five years may not be assisted, except in emergency situations. The field office administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

B. Rehabilitation.

(1) Thresholds.

a. All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application. *These standards and policies must be submitted with the application.*

b. Any units to be rehabilitated must be the permanent non-seasonal residence of the occupant(s). The resident(s) must live in the unit at least nine months per year.

c. Housing units slated for eventual replacement may only receive repairs essential for the health and safety of the occupants.

d. The applicant shall provide an assurance that it will use project funds to rehabilitate HUD assisted units only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. In emergency situations the field office administrator may grant exceptions to this requirement on a case-by-case basis.

e. Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years cannot be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(2) Grant limits. Rehabilitation grant limits for each field office jurisdiction are as follows:

a. Eastern Woodlands—$15,000
b. Southern Plains—$15,000
c. Northern Plains—$33,500
d. Southwest—$25,000
e. Northwest—$18,000
f. Alaska—Lesser of $45/ sq.ft. or $35,000

(3) Selection Criteria.

a. Project Need and Design. (45 points)

(i) The percentage of ICDBG funds committed to bring the housing up to a standard condition as defined by the applicant. Administrative, planning and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring housing up to a standard condition. The percentage of ICDBG funds not used to bring housing up to a standard condition must be used for emergency repairs, demolition of substandard units or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG Funds Committed to bring housing up to a standard condition:

91–100%—20 points
81–90.9%—15 points
80.9 and less—0 points

(ii) The applicant's selection criteria give first priority to the neediest households. "Neediest" is defined as households whose current residences are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

YES 10 points
NO 0 points

(iii) Documentation of project need with a housing survey of all of the units to be rehabilitated with ICDBG funds. This survey should include standard housing data on each unit surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each unit. A definition of "suitable for rehabilitation" must be included. At a minimum, this definition must not include units that need only minor repairs, or units that need such major repairs that rehabilitation is structurally or financially infeasible.

Submission of acceptable survey of units to be assisted.

The application contains all the required survey data. (15 points)

The application does not contain all the survey data, but does contain sufficient data to enable the project to proceed effectively. (10 points)

The application does not contain survey data *Or* the survey data it does contain is not sufficient to enable the project to proceed effectively. (0 points)

b. Planning and Implementation. (50 points)

(i) Rehabilitation Policies including:

a Adopted rehabilitation standards. The rehabilitation standards adopted by the applicant will ensure that after rehabilitation the units assisted will be in a standard condition.

YES 5 points
NO 0 points

b Rehabilitation selection criteria. Rehabilitation selection criteria include property selection standards, cost limits, type of financing (e.g., loan or grant), homeowner costs and responsibilities, procedures for selecting households to be assisted, and income verification procedures.

The application contains all the selection criteria listed above. (10 points)

The application does not contain all the selection criteria listed above, but contains sufficient data to enable the project to proceed effectively *Or* the application contains all the selection criteria listed above, but in insufficient detail. (5 points)

The application does not contain the selection criteria listed above *Or* if it does contain selection criteria, they are not sufficient to enable the project to proceed effectively. (0 points)

c Project planning documents and applicable policies and procedures. These policies and procedures must include a description of the following items:

—The qualifications which will be required of the inspector
—The inspection procedures to be used
—The procedures to be used to select the contractor or contractors
—The manner in which the households to be assisted will be involved in the rehabilitation process
—How disputes between the households to be assisted, the contractors and the applicant will be resolved
—If applicable, the repayment provisions which will be required if sale of the assisted unit occurs prior to 5 years after the rehabilitation work has been completed

The application contains all the policies and procedures listed above, and they will enable the project to be effectively implemented. (10 points)

The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. (5 points)

The application does not contain the policies and procedures listed above. (0 points)

(ii) Post rehabilitation maintenance policies, including counseling and training assisted households on maintenance.

The policy contains a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and handicapped).

The policy includes follow-up inspections after rehabilitation is completed to ensure the unit is being maintained. (5 points)

The policy contains a well-planned home maintenance training and counseling program. (3 points)

The application does not contain a well-planned home maintenance and counseling program. (0 points)

(iii) Quality of cost estimates. Cost estimates have been prepared by a qualified individual. (Qualifications of the estimator must be included in the application).

Costs of rehabilitation are documented on a per unit basis and are supported by a work write-up for each unit to be assisted. The work write-ups are based upon making those repairs necessary to bring the units to a standard condition in a manner consistent with adopted construction codes and requirements. The write-ups must be submitted with the application. If national standards, e.g.,the Uniform Building Code, have been locally adopted as the construction codes and requirements, they must be referenced. If locally developed and adopted codes and requirements are used, they must be submitted. (15 points)

Cost estimates have been prepared for each dwelling unit to be rehabilitated to determine the total rehabilitation cost. The cost estimates are included in the application. Costs to rehabilitate each unit are documented by a deficiency list. (10 points)

Cost estimates have been prepared and are included in the application but the estimates are based on surveys and not on individual unit deficiency lists. (5 points)

Cost estimates are not included in the application *Or* the basis for the cost estimates included is inappropriate or not provided. (0 points)

(iv) Cost effectiveness of the rehabilitation program. This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the units to be assisted to a standard condition in an efficient and cost effective manner.

Rehabilitation project is cost effective. (5 points)

Rehabilitation project is not cost effective. (0 points)

c. Leveraging. (5 points)

Points under this component will be awarded in a manner consistent with the definition of "Leverage' included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

C. Land to Support New Housing.

(1) Thresholds.

a. There must be a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households with documented housing needs.

b. Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels and the condition of current housing or an IHA approved waiting list. *The survey or waiting list must be submitted with the application.*

(2) Selection Criteria.

a. Project Need. (40 Points).

The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. (40 points)

The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. (30 points)

The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. (25 points)

The applicant will be acquiring land for the construction of amenities for existing housing. (15 points)

The reason for the land acquisition does not meet any of the criteria listed above. (0 points)

b. Planning and Implementation. (60 points)

(i) Suitability of land to be acquired. A preliminary investigation has been

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conducted by a qualified entity independent of the applicant. Based on this investigation *(which must be submitted with the application)*, the land appears to meet all applicable requirements:

—Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.
—The land has adequate:
—Availability of drinking water;
—Access to utilities;
—Vehicular access;
—Drainage.
—The land appears to comply with environmental requirements.
—Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

YES 20 points
NO 0 points

(ii) Housing resources. Evidence of a conditional commitment for the housing units to be built on the land proposed for acquisition or evidence that an approvable application for these units has been submitted has been included in the application. (10 points)

The evidence required for the award of 10 points has not been included in the application. (0 points)

(iii) Availability/accessibility of supportive services and employment opportunities. Documentation is provided in the application to indicate that upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

YES 5 points
NO 0 points

(iv) Commitment that households will move into the new housing.

Documented commitment from households that they will move into the new housing to be built on the land to be acquired is included in the application.

YES 5 points
NO 0 points

(v) Land can be taken into trust and provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust. The applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant which indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

Documentation from the BIA that land can be taken into trust and the required governing body resolution are included in the application. (5 points)

Either the assurance or the resolution (or both) are missing from the application or they are inadequate. (0 points)

(vi) A plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

Financial commitments for all necessary infrastructure have been included in the application or documentation is included which demonstrates that all necessary infrastructure is in place. (10 points)

A plan for the provision of all necessary infrastructure is included in the application but all financial commitments required to implement the plan have not been submitted. (5 points)

Neither a financial commitment or plan are included in the application. (0 points)

(vii) The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced. The application includes documentation which indicates that the applicant has examined and assessed the appropriateness of alternative sites and which demonstrates that the site proposed for acquisition best meets the documented housing needs of tribal households. The applicant must submit comparable sales data which shows that the cost of the land proposed for acquisition is reasonable.

Yes 5 points
No 0 points

D. New Housing Construction/Direct Home Ownership Assistance.

Unless otherwise indicated, the following thresholds and selection criteria apply to new housing construction to be implemented through a subrecipient as provided for under 24 CFR 570.204 and direct homeownership assistance activities authorized under Section 105(a)(20) of Title I of the Housing and Community Development Act of 1974 as amended by the National Affordable Housing Act (P.L. 101–625).

Please note that all households to be assisted under a new housing construction project or direct homeownership assistance activities must be of low or moderate income status.

(1) Thresholds.

a. New housing construction can only be implemented through a nonprofit organization that is eligible under 24 CFR 953.202 or a nonprofit organization serving the development needs of the communities of nonentitlement areas or as otherwise eligible under 24 CFR 570.207(b)(3). *(This threshold does not apply to Direct Homeownership Activities).*

b. *Documentation which supports the following determinations must be included in the application:*

—No other housing is available in the immediate reservation area that is suitable for the households to be assisted;
—No other funding sources can meet the needs of the household(s) to be served.
—The unit occupied by the household to be assisted is not in standard condition and rehabilitation of the unit is not economically feasible, or the household is currently in an overcrowded unit [sharing unit with other household(s)], or the household to be assisted has no current residence.

c. All applicants for new housing construction projects shall adopt construction standards and construction policies, prior to submitting an application. Applicants must identify the building code they will comply with when constructing the units. The building code may be a locally adopted tribal building code or a nationally recognized model code. If the code is a locally adopted code, it must regulate all of the areas and sub-areas identified in 24 CFR 200.925(b), and it must be reviewed and approved by the field office. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c). *(This threshold does not apply to Direct Homeownership Activities).*

d. Any unit to be constructed must be the permanent non-seasonal residence of the household to be assisted. This household must live in the unit at least nine months per year.

(2) Selection Criteria.

a. Project Need and Design. (45 points)

(i) The applicant either is not served by an IHA, or if it is a member of an umbrella IHA, this IHA has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction assistance in a substantial period of time due to limited HUD appropriations. The period of time during which the IHA serving the applicant does not receive funding for inadequate or poor performance by the applicant does not count towards the period of time that no assistance has been provided by HUD.

No assistance from IHA for 10 years or longer—15 points
No assistance from IHA for 6–9.9 years—10 points
No assistance from IHA for 0–5.9 years—0 points

(ii) Adopted housing construction policies and plan. The plan must include a description of the proposed subrecipient and its relationship to the applicant. In addition, the policies and plan must include:

—A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.
—A system effectively addressing long-term maintenance of the constructed units.
—Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance and other normal maintenance costs.
—Policies governing ownership of the units, including the status of the land.
—Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.
—Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated when a replacement unit is provided.

Acceptable policies and plan—20 points
Unacceptable policies and plan—0 points

(iii) Beneficiary identification. Households to be assisted are identified in the application and their income eligibility is documented. (10 points)

Households to be assisted not identified or, if identified, their income eligibility is not documented. (0 points)

b. Planning and Implementation. (45 points)

(i) Occupancy Standards. The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). *The standards must be submitted with the application.*

Applicant has adopted reasonable occupancy standards which are included in the application. (10 points)

Applicant has not adopted reasonable occupancy standards or the standards were not included in the application. (0 points)

(ii) Site Acceptability. The applicant (or the proposed beneficiary household) has control of the land upon which the units will be built. The applicant has provided documentation from the BIA that all housing sites are in trust (or will be taken into trust within one year of the date of the ICDBG approval notification). If the sites are not in trust by the date of ICDBG approval notification, documentation that they are in trust must be provided to the field office before ICDBG funds may be obligated for construction.

A preliminary investigation of the site(s) has been conducted by a qualified entity independent of the applicant. Based on this investigation (*which must be included in the application*) the site(s) appear to meet all applicable requirements:

—Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified;
—Each site has adequate:
—Availability of drinking water
—Access to utilities
—Vehicular access
—Drainage.

YES 15 points
NO 0 points

(iii) Energy Conservation Design. The proposed housing units have been designed in a manner which will ensure that energy use will be no greater than that for comparable units in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Any special design features, materials, or construction techniques which enhance energy conservation must be described.

YES 5 points
NO 0 points

(iv) Housing Survey. The applicant has completed a survey of housing conditions and housing needs of its tribal members. This survey was completed within the twelve month period prior to the application submission deadline (or if an earlier survey, it was updated during this time period). *The survey must be submitted with the application.* The following descriptive data is included for each household surveyed:

—Size of the household, inc. age and gender of any children
—Is the household occupying permanent housing or is it homeless?
—Annual household income
—Owner or renter
—Number of habitable rooms and number of sleeping rooms
—Physical condition of the unit—standard/substandard. If substandard, is it suitable for rehabilitation? A definition of "suitable for rehabilitation" must be included.
—Number of distinct households occupying the unit/degree of overcrowding
—If there is a need for a replacement unit, what are the housing preferences of the household, e.g. ownership or rental; location; manufactured or stick-built.

An acceptable survey was submitted. (10 points)

The survey submitted was not acceptable or no survey was submitted. (0 points)

(v) Cost Effectiveness of New Housing Construction. This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner.

The applicant has demonstrated that the proposed activities are cost effective. (5 points)

The applicant has not demonstrated that the proposed activities are cost effective. (0 points)

c. Leveraging. (10 points)

Points under this component will be awarded in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

2. *Community Facilities.*

A. *Infrastructure.*

(1) Selection Criteria.

a. Project Need and Design. (60 points)

(i) The proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

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The proposed project will fulfill a function which is critical to the continued existence or orderly development of the community. (20 points)

The proposed project will fulfill a function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) The proposed project benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

More than 85 percent of the beneficiaries are low and moderate income. (15 points)

Between 75–84.9 percent of the beneficiaries are low and moderate income. (10 points)

Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) The proposed project will provide infrastructure that does not currently exist for the area to be served *Or* it will eliminate or substantially reduce a health or safety threat or problem *Or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

The infrastructure does not exist *Or* the existing infrastructure no longer functions *Or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. (25 points)

The existing infrastructure no longer functions adequately to meet current needs *Or* is unreliable. (20 points)

The proposed project will replace or supplement existing infrastructure which is adequate for current needs but which will not meet acknowledged future needs. (12 points)

The proposed project will replace or supplement existing infrastructure which is adequate to meet current needs and future needs have not been acknowledged or documented. (0 points)

If the project is intended to address a health or safety threat or problem, the applicant must provide documentation consisting of a signed study or letter from a qualified independent authority which verifies that:

—A threat to health or safety (or a health or safety problem) exists which has caused or has the potential to cause serious illness, injury, disease, or death; and,

—The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

b. Planning and Implementation. (30 points)

(i) A viable plan for maintenance and operation. If the applicant is to assume responsibility for maintenance and operation of the proposed facility, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and operating responsibilities and resources. *This plan and the adopting resolution must be included in the application.* The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

If an entity other than the applicant commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

The plan, resolution or the commitment letter have not been included in the application or if included they are not acceptable. (0 points)

c. An appropriate and effective design, scale and cost. The application includes information which demonstrates that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that the use of existing facilities and resources, and alternatives, including method of implementation and cost, have been considered. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

The required information is included in the application. (15 points)

The required information is not included in the application or, if included, it is unacceptable. (0 points)

d. Leveraging. (10 points)

Points under this component will be awarded in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown.

Non-ICDBG percent of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

B. *Buildings.*

(1) Threshold. An applicant proposing a facility which would provide health care services must include in its application a letter from the Indian Health Service (IHS) which indicates that the proposed facility meets IHS requirements.

(2) Selection Criteria.

a. Project Need and Design. (60 points)

(i) The proposed building meets an essential community development need by providing space so that a service or function which is critical to the continued existence or orderly development of the community can be provided.

The proposed building will provide space for a service or function which is essential to the continued existence or orderly development of the community. (20 points)

The proposed building will provide space for a service or function which is not critical to the continued existence or orderly development of the community. (0 points)

(ii) The proposed project benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

More than 85 percent of the beneficiaries are low and moderate income. (10 points)

Between 75–84.9 percent of the beneficiaries are low and moderate income. (8 points)

Between 55–74.9 percent of the beneficiaries are low and moderate income. (5 points)

Less than 55 percent of the beneficiaries are low and moderate income. (0 points)

(iii) The proposed building will be used to provide services or functions which are not provided to service area beneficiaries *Or* it will replace a building currently used to provide the service or function which does not meet health or safety standards *Or* it will replace a building which is no longer able to provide the space or amenities to meet the current need for the services or functions.

The services or functions to be provided in the proposed building do not exist for the service area population *Or* the building currently being used does not meet health or safety standards. (25 points)

The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. (20 points)

The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. (10 points)

The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. (0 points)

(If the proposed building is intended to replace an existing building which does not meet health or safety standards, the application must include documentation consisting of a signed letter from a qualified independent authority which specifically identifies the standard or standards which are not being met by the existing building.)

(iv) Provides multiple uses or multiple benefits, or has services available 24 hours a day. The application must show that the proposed building will house more than one broad category of activity. "Broad category" means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. *A written commitment for the use of the space must be included in the application.* Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

The proposed building will provide multiple uses or benefits or will have services available 24 hours/day and a commitment for the use of the space is included in the application. (5 points)

The proposed building will not provide multiple benefits or services or will not have services available 24 hours a day or the application does not include a commitment for the use of the space. (0 points)

b. Planning and Implementation. (30 points)

(i) A viable plan for maintenance and operation. If the applicant is to assume responsibility for the maintenance and operation of the proposed building, the applicant must adopt a maintenance and operation plan which addresses maintenance, repair and replacement of items not covered by insurance, and operating responsibilities and resources. *This plan and the adopting resolution must be included in the application.* The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount the applicant will commit.

If an entity other than the Tribal Council commits to pay for maintenance and operation, a letter of commitment which identifies the responsibilities the entity will assume must be included in the application; submission of a maintenance and operation plan is not required. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

An acceptable maintenance and operation plan and adopting resolution (or letter of commitment) are included in the application. (15 points)

The plan, resolution or the commitment letter have not been included in the application, or if included, they are not acceptable. (0 points)

(ii) An appropriate and effective design, scale and cost. The application includes information which demonstrates that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that the use of existing facilities and resources and alternatives including method of implementation and cost have been considered. If only one approach is feasible (there are no alternatives to the proposed building), the application must include an explanation.

The required information is included in the application. (15 points)

The required information is not included in the application or, if included, it is unacceptable. (0 points)

c. Leveraging. (10 points).

Points under this component will be awarded based on the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

3. *Economic Development.*

A. Thresholds.

(1) Economic development assistance may be provided only when a financial analysis is done which shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project.

(2) All economic development projects must meet one of the national objectives. A general claim of cash flow or benefit to the tribe as a whole does not demonstrate benefit to low and moderate income persons.

B. Selection Criteria.

(1) Organization (8 points)

The application contains all of the following three elements:

—The applicant has an established organization system for operation of a business, (e.g., adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

—Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

—The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted. (8 points)

The application contains all of the first element listed above, and some of the items in the second and third elements. The business should be able to operate effectively; *OR*, the application contains all of the elements listed above, but in insufficient detail. (5 points)

The application does not contain any of the elements listed above. (0 points)

(2) Project Success (45 points)

The project will be rated on the adequacy and quality of the following subparts: *ANY PROJECT NOT RECEIVING AT LEAST MODERATE POINTS IN EACH OF THE FOLLOWING THREE RATING FACTORS WILL NOT BE CONSIDERED FOR FUNDING.*

a. Market analysis.

A feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market. *The analysis must be submitted with the application*

MAXIMUM 15 points

Feasibility/Market Analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market. *The analysis must be submitted with the application.*

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MODERATE 10 points

The submission does not meet the criteria for the award of moderate points.

UNSATISFACTORY 0 points

b. Management capacity.

A management team with qualifying specialized training or technical/managerial experience in the operation of a similar business has been identified. *Job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team must be submitted with the application.*

MAXIMUM 15 points

A management team with qualifying general business training or experience will be hired if the grant is approved. *Job descriptions of key management positions must be submitted with the application.*

MODERATE 12 points

The submission does not meet the criteria for the award of moderate points.

UNSATISFACTORY 0 points

c. Financial Analysis of the Business (including microenterprises). The financial viability of an economic development project will be determined by an analysis of financial and other project related information. Components of the financial analysis are: costs, sources of funds, cash flow projections and financial statements. *A detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections; and business financial statements for the most recent three year period for the project if it is for expansion of an existing business, must be submitted with the application For start-up businesses that are not owned by the grantee, current financial or net worth statements on principal business owners or officers must be submitted with the application.* Financial statements include the balance sheet, income statement and statement of retained earnings.

The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financial viable, the field office will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used. *If one of these standards is cited, the appropriate data must be submitted with the application.*

Based on the analysis, the project has an excellent chance of achieving financial success.

MAXIMUM 15 points

The project has an average chance of achieving financial success.

MODERATE 8 points

The project has a minimal prospect of achieving financial success.

UNSATISFACTORY 0 points

(3) Leveraging.

Points under this component will be awarded in a manner consistent with the definition of "Leverage" included in this NOFA and the following breakdown:

Non-ICDBG percent of project cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
Less than 10%	0

(4) Permanent Full-Time Equivalent Job Creation and Training (20 points)

The total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions and skill requirements must be submitted with the application. The number and kind(s) of jobs expected to be available to low and moderate income persons must be identified.

a. ICDBG cost per job:

$20,000 or less—15 points
$20,001–30,000—12 points
$30,001–35,000—8 points
$35,001+—0 points

b. Quality of jobs and/or training targeted to low and moderate income persons

—The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *OR*

—The employer commits to provide training opportunities. *A description of the planned training program must be submitted with the application.*

YES 5 points
NO 0 points

(5) Additional Considerations (15 points) A project must meet three of the following criteria to receive 15 points. Maximum 15 points.

—Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences (e.g., technical expertise in electronic assembly; making traditional native crafts).

YES 5 points
NO 0 points

—Provide spin-off benefits beyond the initial economic development benefits to employees or to the community.

YES 5 points
NO 0 points

—Provide special opportunities for residents of federally-assisted housing.

YES 5 points
NO 0 points

—Provide benefits to other businesses owned by Indians or Alaska natives.

YES 5 points
NO 0 points

—Loan Repayment/Reuse of ICDBG funds. If the business is not tribal-owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribal-owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribal-owned business.

YES 5 points
NO 0 points

4. Selection System Criteria and Point Award Summary

	Maximum points
A. Housing:	
(1) Rehabilitation:	
a. Project Need and Design:	
(i) % of funds for standard rehab	20
(ii) applicant's selection criteria	10

	Maximum points
(iii) housing survey	15
b. Planning and Implementation:	
(i) rehabilitation policies:	
a rehabilitation standards	5
b selection criteria	10
c project planning documents, etc	10
(ii) post rehabilitation maintenance	5
(iii) cost estimates	15
(iv) cost effectiveness	5
Total points	100
(2) Land to Support New Housing:	
a. Project Need	40
b. Planning and Implementation:	
(i) suitability of the land	20
(ii) housing resources	10
(iii) supportive services	10
(iv) commitment of households	5
(v) land to trust status	5
(vi) infrastructure commitment	5
(vii) land meets need and is reasonably priced	10
	5
Total points	100
(3) New Housing Construction/Direct Homeownership Assistance:	
a. Project Need and Design:	
(i) IHA member/assistance	15
(ii) housing policies and plan	20
(iii) beneficiary identification	10
b. Planning and Implementation:	
(i) occupancy standards	10
(ii) site acceptability	15
(iii) energy conservation design	5
(iv) housing survey	10
(v) cost effectiveness	5
c. Leveraging	10
Total points	100
B. Community Facilities:	
(1) Infrastructure:	
a. Project Need and Design:	
(i) meets an essential need	20
(ii) benefits the neediest	15
(iii) provides infrastructure/health and safety	25
b. Planning and Implementation:	
(i) maintenance and operation plan	15
(ii) appropriate and effective design scale and cost	15
c. Leveraging	10
Total Points	100
(2) Buildings:	
a. Project Need and Design:	
(i) meets an essential need	20
(ii) benefits the neediest	10
(iii) provides building/health and safety	25
(iv) multi-use/multi-benefit	5
b. Planning and Implementation:	
(i) maintenance and operation plan	15
(ii) appropriate and effective design scale and cost	15
Total points	100
C. Economic Development:	
(1) Organization	8
(2) Project Success:	
a. market analysis	15
b. management capacity	15
c. financial analysis	15
(3) Leveraging	12
(4) Jobs:	
a. ICDBG cost/job	15
b. quality of jobs/training	5
(5) Additional considerations	15
Total poin's	100

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II. Application Process

(a) An application package may be obtained from the field office in the following geographic locations:

Eastern Woodland Office of Native American Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604–3507, Telephone: (312) 353–1282, (all states east of the Mississippi River, plus Iowa and Minnesota)

Southern Plains Office of Native American Programs, CPD Branch, Murrah Federal Bldg., 200 N.W. 5th Street, Oklahoma City, OK 73102–3202, Telephone: (405) 231–4101, (Louisiana, Kansas, Oklahoma, and Texas, except West Texas)

Northern Plains Office of Native American Programs, Housing and Community Development Division, CPD Staff, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, Telephone: (303) 672–5462, (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)

Southwest Office of Native American Programs, Region IX, CPD Division, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361, Telephone: (602) 379–4156, (Arizona, New Mexico, Southern California, West Texas)

Office of Native American Programs, CPD Division, Program Management Team, (San Francisco), Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448, Telephone: (415) 556–9200, (Northern California and Nevada)

Northwest Office of Native American Programs, CPD Division, Federal Office Building, 909 First Avenue, Suite 300, Seattle, WA 98104–1000, Telephone: (206) 220–5185, (Idaho, Oregon, Washington)

Alaska Office of Native American Programs, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399, Telephone: (907) 271–4633 (Alaska)

(b) Completed applications must be submitted to the appropriate field office, listed above, from which application information and packages were obtained.

The Telecommunications Device for the Deaf (TDD) number is (202) 708–2565. (This is not a toll-free number.)

(c) Applications must be received by the appropriate field office no later than the 3:00 P.M. on the deadline date, *May 14, 1995.*

III. Application Submission Requirements and Checklist

(a) *General.* An applicant shall submit only one application. The ICDBG grant amount requested shall not total more than the grant ceiling. An application may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within an application will be rated separately.

(b) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

1. Generally available, published data are substantially inaccurate or incomplete;

2. Data provided have been collected systematically and are statistically reliable;

3. Data are, to the greatest extent feasible, independently verifiable; and

4. Data differentiate between reservation and BIA service area populations, when applicable.

(c) *Publication of community development statement.* Applicants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of 24 CFR 953.604.

(d) *Application Submission.* Applicants shall submit an application to the appropriate field office. The application shall include:

1. Standard Form 424;

2. Community Development Statement which includes:

A. Components that address the relevant selection criteria;

B. A brief description or an updated description of community development needs;

C. A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing the project.

D. A schedule for implementing the project (form HUD–4125);

E. Cost information for each separate project, including specific activity costs, administration, planning, and technical assistance, total HUD share (form HUD–4123);

3. Certifications (form HUD 4126)

4. Applicant/Recipient Disclosure/Update Report (form HUD 2880), as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

5. A map showing project location, if appropriate;

6. If the proposed project will result in displacement or temporary relocation, include a statement that identifies A. the number of persons (families, individuals, businesses and nonprofit organizations occupying the property on the date of the submission of the application (or date of initial site control, if later); B. the number to be displaced or temporarily relocated; C. the estimated cost of relocation payments and other services; D. the source of funds for relocation; and E. the organization that will carry out the relocation activities;

(e) *Pre-award requirements.* 1. Successful applicants may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will normally be given no less than thirty (30) calendar days, to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the field office may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The field offices shall require supporting documentation in those instances where:

A. Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

B. The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

2. Grant amounts allocated for applicants unable to meet pre-award requirements will be awarded in accordance with Part I (f) 5 of this NOFA.

3. New projects may not be substituted for those originally proposed in the application.

4. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

IV. Procedural Error and Appeals

With respect to any claims of procedural error that may be made by unsuccessful applicants, please note that a procedural error is, by definition, an error in process. An example is a point calculation error which would, if corrected, raise the total point award for a project over the cut-off point for funding. Rating panel judgements made within the provisions of this NOFA and the program regulations (24 CFR part 953) are not subject to claims of procedural error. If a field office makes a procedural error in the application review and rating process which, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the field office may fund that project in the next funding round without further competition. *All appeals must be submitted to the appropriate field office within 90 days after the applicant is notified in writing of a funding decision.*

V. Other Matters

(a) *Environmental Statement.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

(b) *Federalism Executive Order.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaska native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

(c) *Family Executive Order.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus is not subject to review under the Order.

(d) *Registration of Consultants.* Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912), and is codified as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the statute described above should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) *Prohibition of Advance Disclosure of Funding Decisions.* HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) *Economic Opportunities for Low and Very Low Income Persons.* All applicants are herein notified that the provisions of section 3 of the Housing and Urban Development Act of 1968, as amended, and the regulations in 24 CFR part 135 are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. Tribes that receive HUD assistance described in this part shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)).

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 953.

Dated: February 8, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–4451 Filed 2–23–95; 8:45 am]

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Part VI

Department of Justice

Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Coalition for Juvenile Justice Meeting; Notice

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) No. 1042]

Notice of Meeting of the Coalition for Juvenile Justice

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I), the Office of Juvenile Justice and Delinquency Prevention announces the meeting of the Coalition for Juvenile Justice. This conference will begin at 1 p.m. on March 30, 1995, and end at 5 p.m. on April 4, 1995. This advisory committee, chartered as the Coalition for Juvenile Justice, will meet at the Ramada Renaissance Techworld, 999 9th Street NW, Washington, DC 20001. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President and the Congress about State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention.

This meeting will be open to the public.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–4482 Filed 2–23–95; 8:45 am]

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Part VII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Quileute, State of Washington; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approval for Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact For Regulation of Class III Gaming Between the Quileute Tribe and the State of Washington, which was executed on July 27, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 13, 1995

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–4586 Filed 2–23–95; 8:45 am]

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Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Klamath Tribe, State of Oregon; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact Between the Klamath Tribes and the State of Oregon, which was executed on December 16, 1994.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240. (202) 219–4068.

Dated: February 13, 1995

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–4587 Filed 2–23–95; 8:45 am]

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Part IX

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 225
Oil and Gas, Solid Mineral, and Geothermal Minerals Agreements; Correction; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 225

RIN 1076–AD00

Oil and Gas, Solid Mineral, and Geothermal Minerals Agreements; Correction

February 13, 1995.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations, which were published Wednesday, March 30, 1994 (59 FR 14960). The regulations relate to oil and gas, solid mineral, and geothermal minerals agreements contained in 25 CFR part 225.

EFFECTIVE DATE: February 24, 1995.

FOR FURTHER INFORMATION CONTACT: M.L. Millgate (303) 231–5070.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction, supersede § 225.30(d) on the effective date and affect persons holding letters of credit payable on demand to the Bureau of Indian Affairs in accordance with § 225.30, paragraph (d)(5)(ii). Section 225.30(d) was promulgated in accordance with section 8 of the Indian Mineral Development Act of 1982 (Pub. L. 97–382, 96 Stat. 1938) 25 U.S.C. 2107

Need for Correction

As published, the final regulations contain an error of preposition which may prove to be misleading and is in need of correction for purposes of clarification.

Correction of Publication

Accordingly, the publication on March 30, 1994 of the final regulations (25 CFR part 225) which were the subject of FR Doc. 94–7315, is corrected as follows:

§ 225.30 [Corrected]

Paragraph 1. On page 14975, in the third column, in § 225.30, paragraph (d), subparagraph (5)(ii), "by the Secretary" is amended to read "from the Secretary."

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–4585 Filed 2–23–95; 8:45 am]

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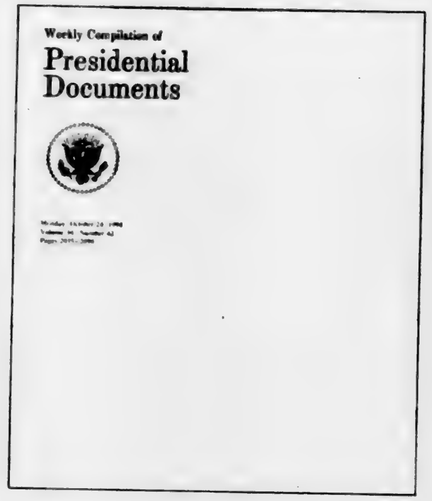

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Executive Order 12950 of February 22, 1995

Establishing an Emergency Board To Investigate a Dispute Between Metro North Commuter Railroad and Its Employees Represented by Certain Labor Organizations

Disputes exist between Metro North Commuter Railroad and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of the Board.* There is established effective February 22, 1995, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.

William J. Clinton

THE WHITE HOUSE,
February 22, 1995.

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LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Engineers—American Train Dispatchers Division
Brotherhood of Railroad Signalmen
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers
International Association of Machinists & Aerospace Workers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
Transportation Communications International Union—ARASA
Sheet Metal Workers International Union
Transport Workers Union of America
United Transportation Union

[FR Doc. 95–4908
Filed 2–23–95; 3:09 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6771 of February 23, 1995

Irish-American Heritage Month, 1995

By the President of the United States of America

A Proclamation

America's bounty—the abundance of the fields, the beauty of the landscape the richness of our opportunities—has always attracted people who are in search of a better life for themselves and their children. Our democracy owes its success in great part to the countless immigrants who have made their way to our shores and to the tremendous diversity this Nation has been blessed with since its beginnings.

In March, when communities all across the country celebrate St. Patrick's Day, our Nation honors the rich heritage of the millions of Americans who trace their lineage to Ireland. Coming to this land even before our Nation was founded, sons and daughters of Erin undertook the perilous journey to make their home in a place of hope and promise. They made inestimable contributions to their new country, both during the struggle for independence and in the founding of the Republic. Nine of the people who signed our Declaration of Independence were of Irish origin, and nineteen Presidents of the United States proudly claim Irish heritage—including our first President, George Washington.

The largest wave of Irish immigrants came in the late 1840s, when the Great Famine ravaging Ireland caused 2 million people to emigrate, mostly to American soil. These immigrants transformed our largest cities and helped to build them into dynamic centers of commerce and industry, and their contributions to our smaller cities and towns are evident today in the cultural, economic, and spiritual makeup of the communities. Throughout the country, they faced callous discrimination: "No Irish Need Apply" signs were ugly reminders of the prejudice that disfigured our society. But with indomitable spirit and unshakable determination, they persevered. They took jobs as laborers, built railroads, canals, and schools, and committed themselves to creating a brighter future for their families and their new country.

Today, millions of Americans of Irish ancestry continue to enrich all aspects of life in the United States. Irish Americans are proud to recall their heritage and their struggle for well-deserved recognition in all walks of American life. Throughout their history, they have held tightly to their religious faith, their love of family, and their belief in the importance of education. The values they brought with them from the Emerald Isle have flourished in America—and in turn these values have helped America to flourish.

In tribute to all Irish Americans, the Congress, by Public Law 103–379 has designated March 1995 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1995 as Irish-American Heritage Month.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 95-4909
Filed 2-23-95; 3:11 pm]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 60, No. 38
Monday, February 27, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV94-959-1FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. This final rule further increases authorized expenses. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994-95 fiscal period, which began August 1, 1994, and ends July 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural Service firms are defined as those whose receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994-95 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule August 12, 1994 (59 FR 41382). That interim final rule added § 959.235, authorizing expenses for the Committee, and provided that interested persons could file comments through September 12, 1994. No comments were filed.

The Committee subsequently met on November 8, 1994, and unanimously recommended increases of $8,900 for personnel expenses, $2,300 for office expenses, and $126,000 for compliance activities in the recently approved 1994-95 budget. The compliance increase provided funds to operate road

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guard stations surrounding the production area. The Committee also unanimously recommended $164,450 in market development activities and $88,028 in production research. Budget items for 1994–95 which increased compared to those budgeted for 1993–94 (in parentheses) were: Office salaries, $22,000 ($15,600), insurance, $6,250 ($5,250), accounting and audit, $2,600 ($2,300), rent and utilities, $5,000 ($4,000), field travel, $6,000 ($5,000), onion breeding research, $88,028 ($88,000), and $4,450 for Canadian onion promotion for which no funding was budgeted last year. Items which decreased compared to the amount budgeted for 1993–94 (in parentheses) were: Market development program, $150,000 ($200,000) and ($7,000) for screening for resistance and tolerance to purple blotch, ($2,000) for leaf wetness, ($2,600) for variety evaluation, ($4,000) for thrips monitoring and control, and ($2,000) for the Integrated Pest Management program, for which no funding was budgeted this year. All other items were budgeted at last year's amounts.

The initial 1994–95 budget, published on August 12, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.04 per 50-pound container or equivalent of onions, $0.06 less than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $200,000 in assessment income, which, along with $269,678 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1994, were $607,767, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the **Federal Register** on December 15, 1994 (59 FR 64557). That interim final rule amended § 959.235 to increase the level of authorized expenses to $469,678 and establish an assessment rate of $0.04 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 17, 1995. No comments were received.

The Committee, in a telephone vote completed January 16, 1995, unanimously recommended an increase of $50,000 in the funding for the market development program, increasing expenditures from $150,000 to $200,000. This increase is necessary to cover additional expenses that will be incurred in conducting the program, and will result in total promotion expenses of $214,250 and a total budget of $519,678. There are adequate funds in the Committee's reserve to cover this additional expenditure, so no increase in the assessment rate was recommended.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994–95 fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an amended interim final rule. No comments were received concerning that amended interim final rule, which is being adopted as a final rule, with appropriate changes.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (59 FR 64557) on December 15, 1994, is adopted as a final rule with the following change:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.235 is revised to read as follows:

§ 959.235 Expenses and assessment rate.

Expenses of $519,678 by the South Texas Onion Committee are authorized and an assessment rate of $0.04 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: February 21, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–4739 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Replacement and Modification Parts; Enhanced Enforcement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy on enforcement.

SUMMARY: This is a notice of the FAA's policy to enforce full compliance with certain regulations on producing modification or replacement parts for sale for installation on type certificated products.

DATES: Preliminary applications for parts manufacturer approvals must be submitted by May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Production and Airworthiness Certification Division, AIR–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8361.

Background

In the past few years, there has been increased awareness of, and concern about, the use of unapproved parts on aircraft. It is not acceptable for persons to produce parts without complying with Federal Aviation Regulations (14 CFR 21.3030(a)). It is the FAA's intention to ensure that all persons who produce parts for sale for installation on type certificated products comply with the regulations. The FAA recognizes that some producers may have relied on previous FAA statements and practices regarding enforcement of the rule.

Therefore, the FAA is publishing this notice to ensure industry-wide awareness of the agency's intent to enforce the regulations governing all persons who produce modification or replacement parts for sale for installation on type certificated products.

Section 21.303(a) of the Federal Aviation Regulations provides that no person may produce a modification or replacement part for sale for installation on a type certificated product unless it is produced pursuant to a parts manufacturer approval (PMA). Section 21.303(b) provides exceptions to this requirement, including parts produced under a type or production certificate (TC or PC), parts produced by an owner or operator for maintaining his own product, parts produced under an FAA technical standard order (TSO), and standard parts (such as bolts and nuts) conforming to established industry or U.S. specifications. A person who holds a PMA, TSO authorization, or PC, or who holds a TC and produces under that TC, often is referred to as a production approval holder (PAH).

Under the regulations, a PAH may engage another company (commonly called a supplier) to manufacture all or a portion of the part. In the case of fabrication of complete parts, the PAH must implement procedures to ensure that the parts are fabricated and inspected using the PAH's FAA-approved quality control system. The completed parts fabricated for the PAH by the supplier are produced "under" the PAH's approval. The PAH may authorize the supplier to ship parts directly from the supplier to the customer. This commonly is referred to as "direct ship" or "drop ship" authority.

In some cases, such suppliers have been producing additional parts without the direction of the PAH, and selling them directly to others in the aviation industry. In such cases, because the PAH has not exercised the required control over the fabrication of the parts, the parts are not produced "under" the production approval.

There appears to be a widespread misconception that *any* production of a party by a supplier (of that part) to a PAH is not a violation of § 21.303(a). Historically, the FAA did not vigorously enforce compliance with § 21.303(a) in these circumstances. Thus, the FAA has been attempting to promote full industry compliance with the rules, but has so far met with only limited success.

By Notice 8110.44, dated September 25, 1992, the FAA chartered the Parts Approval Action Team (PAAT) to develop policies and procedures to facilitate approval of PMA applications by suppliers to PAHs. Under PAAT Phase I, the FAA issued Notice 8110.45, dated September 25, 1992. That notice provided simplified procedures for the issuance of PMAs to suppliers who showed evidence of a licensing agreement with a PAH. Under Phase II, the FAA issued Notice 8110.51, dated May 13, 1994. That notice provided procedures for the issuance of PMAs to suppliers who could show that their product design was identical to that of a part produced under a TC.

The intent of Phases I and II was to ensure compliance with § 21.303 by suppliers who were shipping directly to customers outside of the PAH's approval, but who could demonstrate that they were producing a part whose design and quality control already had been approved by the FAA. Unfortunately, there has been insufficient response from the suppliers, and there continues to be suppliers producing placement and modification parts for sale for installation on type certificated products without a PMA and without direct or drop ship authority from a PAH.

Inaction by the FAA as well as statements made by agency officials may have contributed to this fact. Shortly after Phase I was issued in October 1992, the then—Director of the Aircraft Certification Service, anticipating a significant transition period in approving many parts produced by suppliers, advised FAA field offices to refrain from directing such suppliers to cease shipment of such parts, and to encourage them to apply for PMAs. This direction was widely circulated within the industry.

Further, there are other persons (not suppliers to a PAH) who may be producing parts for sale for installation on type certificated products and who also do not hold a PMA.

The overall purpose of this new policy is to make clear that the FAA will undertake enhanced enforcement of § 21.303(a). This policy makes provisions for a 90-day period during which persons may begin application for a PMA without the information in the application being used to initiate enforcement. During this period and immediately thereafter, the agency will, of necessity, devote the bulk of available FAA resources to securing compliance through processing the anticipated new applications. Accordingly, enforcement for this brief period may be constrained by the availability of resources, and will be focused on immediate safety concerns. Thereafter, agency resources will be freed to effect a balanced enforcement posture across the board.

Note that the policy in this notice applies only to persons who produce parts. It does not affect the responsibility of persons who maintain aircraft. Under § 43.13(b), each person maintaining or altering, or performing preventive maintenance shall do that work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition with regard to qualities affecting airworthiness. Persons installing parts on aircraft continue to be responsible for ensuring that the product will meet the appropriate airworthiness standards.

Compliance Policy

1. Each person who produces modification or replacement parts for sale for installation on type certificated products, must comply with § 21.303(a), and is subject to enforcement action by the FAA for failure to do so.

2. If a person who produces parts not in compliance with § 21.303(a) applies for a PMA as described below, neither the fact that the application for a PMA is filed under paragraph 3 nor the information contained in such application will be used by the FAA to initiate, or be used as evidence in, any FAA enforcement investigation for a violation of § 21.303(a), except as provided in this policy.

3. The person must submit at least a preliminary application for PMA no later than May 30, 1995. All such applications should be submitted as soon as possible to enable the FAA to evaluate them, and where they qualify, issue the PMAs as soon as possible. If the applicant fails to pursue the PMA in a timely manner, the FAA may determine that the application should be denied. If the FAA determines that no approval can be issued for the production of the part, the applicant may not produce the part for sale for installation in type certificated products, and the applicant would be subject to enforcement action if the part is thereafter produced.

4. The preliminary application under paragraph 2 must include at least the part number and nomenclature, the name and address of the manufacturing facilities at which the parts are manufactured, and the holder of the production approval to whom the applicant currently supplies the parts or has supplied the parts in the past (if applicable). The preliminary applications should be submitted to the appropriate geographic certification directorate. Complete applications in accordance with § 21.303(c) must be

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submitted by July 27, 1995. The geographic certification directorates are:

Federal Aviation Administration, New England Region, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, (617) 238–7100

Federal Aviation Administration, Central Region, Small Airplane Directorate, 601 East 12th Street, Kansas City, MO 64106, (816) 426–6937

Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056, (206) 227–2159

Federal Aviation Administration, Southwest Region, Rotorcraft Directorate, 2601 Meacham Boulevard, Ft. Worth, TX 76137–4298, (817) 222–5100

5. If the FAA is informed through a source other than an application, as discussed in paragraph 2, that an applicant may be producing parts in violation of § 21.303(a), the FAA will investigate and take action as necessary and appropriate to enforce and ensure future compliance with the rule.

6. Nothing in this policy precludes the FAA from taking action for violations of regulations or laws other than § 21.303(a), or referral to another government agency for appropriate action.

Issued in Washington, DC, on February 17, 1995.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 95–4760 Filed 2–23–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 25

[Docket No. NM–107; Special Conditions No. 25–ANM–95]

Special Conditions; Modified Cessna 550 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc. of Moline Illinois. These airplanes are equipped with digital head-up display (HUD) systems that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is February 13, 1995. Comments must be received on or before April 13, 1995.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–107, 1601 Lind Avenue SW., Renton, WA 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM–107. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Zielinski, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2279.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to docket No. NM–107." The postcard will be date stamped and returned to the commenter.

Background

On October 25, 1994, Elliott Aviation Technical Products Development, Inc. of Moline, Illinois, applied for a supplemental type certificate to modify Cessna 550 series airplanes. The Cessna 550 is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and up to 11 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 43,000 feet. The proposed modification incorporates the installation of digital avionics consisting of a head-up display (HUD) system that is potentially vulnerable to HIRF external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Elliott Aviation Technical Products Development, Inc. must show that the modified Cessna 550 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A22CE include the following: Part 25 of the Federal Aviation Regulations (FAR), dated February 1, 1965, including Amendments 25–1 through 25–17. In addition the following sections of the FAR apply to the HUD installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna 550 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they

are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that address protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Cessna 550 series airplanes that would require that new technology electrical and electronic systems, such as the HUD, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HUD, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz– 2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to Cessna 550 series airplanes, modified by Elliott Aviation Technical Products Development, Inc. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc. of Moline, Illinois. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on modified Cessna 550 series airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the supplemental type certification basis for Cessna 550 series airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 13, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–4772 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 25

[Docket No. NM–103; Special Conditions No. 25–ANM–94]

Special Conditions: Dassault Aviation Model Falcon 2000 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 2000 airplane. This new airplane will have an unusual design feature associated with an Automatic Takeoff Thrust Control System (ATTCS), for which the applicable airworthiness regulations do not contain appropriate safety standards for approach climb

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performance using an ATTCS. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2797.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1989, Dassault Aviation, B.P. 24, 33701 Mérignac Cédex, France, applied for a new type certificate in the transport airplane category for the Model Falcon 2000 airplane. The Dassault Aviation Model Falcon 2000 is a medium-sized transcontinental business jet powered by two General Electric/Garrett CFE 738 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 5,600 lbs. thrust. The airplane will be capable of operation with two flight crewmembers and eight passengers.

The Model Falcon 2000 will incorporate an unusual design feature, the Automatic Takeoff Thrust Control System (ATTCS), referred to by Dassault as Automatic Power Reserve or APR, to show compliance with the approach climb requirements of § 25.121(d). Appendix I to part 25 limits the application of performance credit for ATTCS to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Dassault Aviation must show that the Falcon 2000 meets the applicable provisions or part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–69. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Falcon 2000 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Model Falcon 2000 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Falcon 2000 will incorporate an unusual design feature, the ATTCS (referred to by Dassault as the Automatic Power Reserve or APR), to show compliance with the approach climb requirements of § 25.121(d). The FALCON 2000 is a twin-turbofan-powered airplane equipped with Full Authority Digital Engine Controls (FADECs) that, in part, protect against exceeding engine limits. Further, the FALCON 2000 incorporates a non-moving throttle system that functions by placing the throttle levers in detents for the takeoff and climb phases of flight, allowing the FADEC to schedule power setting based on flight phase. With the throttle levers placed in either of the two forward detents (takeoff/go-around and climb), if an engine failure (RPM (N1)) difference of greater than 10 percent between engines is sensed, power is automatically advanced on the remaining engine to the APR power level associated with the detent. The system is permanently armed and will function any time the throttle levers are in either of the two forward detents and an engine failure is sensed. Additionally, as in the case of an APR failure, or in an all-engines mode, the crew can select APR by placing the throttle levers in either of the two forward detents and manually activating the system using an instrument panel-mounted override switch.

APR power levels manifest themselves as an increase in the engine flat-rating temperature for the operating altitude, and, in general, result in higher thrust levels than those associated with the throttle detents alone. Dassault also makes reference in the APR logic description to thrust increase being armed for a throttle lever angle above 27 degrees (max cruise position), but does not make it clear in the system description if the APR system functions when the throttle is not in a detent. Further discussions with Dassault make it clear that when the throttle is between two detents, the FADEC makes a linear interpolation between the related tables of corrected N_1; i.e., an almost linear thrust change. As function outside of a detent is possible, then a throttle angle of 28 degrees (arming angle + 1 degree) would produce almost no additional thrust when APR is activated, while 1 degree before the next detent (max cruise/max continuous) would produce almost the same thrust increase as when the throttle is in that detent. Logic for the max climb/max continuous detents is the same. From a practical point of view, throttle positions between the detents are not used.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. As stated in the preamble to Amendment 25–62:

> "In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.122(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (52 FR 43153, November 9, 1987)

The ATTCS incorporated on the FALCON 2000 allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent.

Since the ATTCS is permanently armed, it will function automatically following an engine failure, and advance the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to Amendment 25–62. Accordingly, these special conditions require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–94–4–NM for the Dassault Aviation Model Falcon 2000 airplane was published in the **Federal Register** on December 16, 1994 (59 FR 64869). No comments were received, and the special conditions are adopted as proposed.

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 2000. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Falcon 2000 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 2000 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g)

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 2000 airplane.

(a) *General.* An ATTCS is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

(b) *Automatic takeoff thrust control system (ATTCS).* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements:

(1) *Performance and System Reliability Requirements.* The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(2) *Thrust Setting.* The initial takeoff thrust set on each engine at the beginning of the takeoff roll or go-around may not be less than:

(i) Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(ii) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(iii) That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust or power to the maximum approved takeoff thrust or power.

(3) *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(i) Apply thrust or power on the operating engine(s), following any one engine failure during takeoff or go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(ii) Provide a means to verify to the flightcrew before takeoff and before beginning an approach for landing that the ATTCS is in a condition to operate.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, Section I25.2(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

(i) The critical time interval *begins* at a point on a 2 5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the Part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the Part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the Part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2 5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

(3) The critical time interval is illustrated in the following figure:

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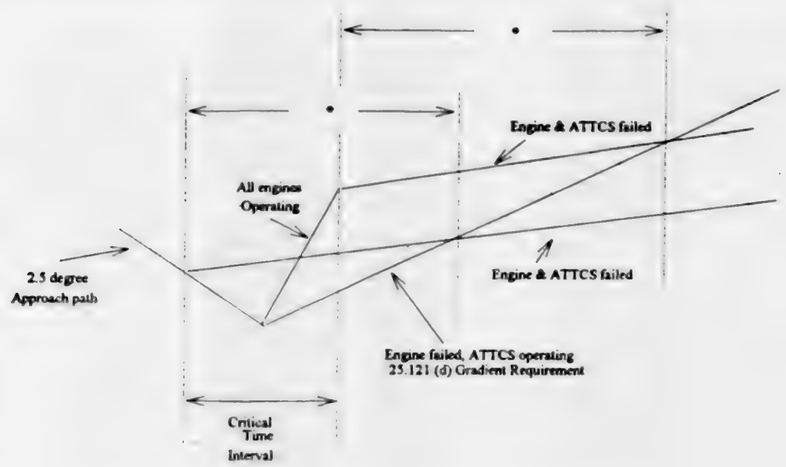

* The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with 125.2(b) for ATTCS use during takeoff.

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Issued in Renton, Washington, on February 3, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, NAM-101.

[FR Doc. 95-4774 Filed 2-24-95; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 25

[Docket No. NM-108; Special Conditions No. 25-ANM-96]

Special Conditions: Modified Gulfstream American Corporation Model G-IV Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream American Corporation (GAC) Model G-IV airplane modified by Duncan Aviation, Inc., of Lincoln, Nebraska. This airplane will be equipped with a Flight Visions Corporation, FV-2000 Head-Up Display System (HUD) that will perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the HUD from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by this system are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is February 13, 1995. Comments must be received on or before April 13, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-108, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM-108." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-108." The postcard will be date stamped and returned to the commenter.

Background

On August 16, 1994, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the Gulfstream American Corporation (GAC) Model G-IV airplane. The GAC Model G-IV airplane is a business jet with two aft-mounted turbofan engines. The airplane can carry two pilots and 19 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 45,000 feet. The proposed modification incorporates the installation of a digital avionics system that will present critical functions on the Head-up Display System (HUD), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Duncan Aviation, Inc., must show that the altered GAC Model G-IV airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A12EU include the following for the GAC Model G-IV airplanes: § 21.29 of 14 CFR part 21 and 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25-1 through 25-26. In addition, under § 21.101(b)(1), the following sections of the FAR apply to the HUD installation: § 25.1322, as amended by Amendment 25-38; and §§ 25.1309, 25.1321(a)(b) (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25-41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the GAC Model G-IV airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified GAC Model G-IV airplanes that would require that the HUD be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HUD, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplanes will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated:

Frequency	Peak (V/M)	Average (V/M)
10 KHz-100 KHz	50	50
100 KHz-500 KHz	60	60
500 KHz-2000 KHz	70	70
2 MHz-30 MHz	200	200
30 MHz-70 MHz	30	30
70 MHz-100 MHz	30	30
100 MHz-200 MHz	150	33
200 MHz-400 MHz	70	70
400 MHz-700 MHz	4,020	935
700 MHz-1000 MHz	1,700	170
1 GHz-2 GHz	5,000	990
2 GHz-4 GHz	6,680	840
4 GHz-6 GHz	6,850	310
6 GHz-8 GHz	3,600	670
8 GHz-12 GHz	3,500	1,270
12 GHz-18 GHz	3,500	360
18 GHz-40 GHz	2,100	750

As discussed above, these special conditions are applicable to the GAC Model G-IV airplane, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EU to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on GAC Model G-IV airplanes modified by Duncan Aviation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on this airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment

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would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the GAC Model G–IV airplane, as modified by Duncan Aviation:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 13, 1995.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–101.

[FR Doc. 95–4773 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–31]

Modification of Class D Airspace; Cleveland, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Cleveland, Burke Lakefront, OH by adjusting the lower vertical limits of the Class D area up to but not including the base altitude of the overlying Class B airspace area. Associated with airspace reclassification, guidelines have been established for depicting Class D airspace areas that underlie Class B airspace areas. The intent of this action is to eliminate confusion to pilots by appropriately identifying controlled airspace areas at Cleveland, Burke Lakefront, OH.

EFFECTIVE DATE: 0901 UTC, May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Cibic, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

History

On December 23, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace area at Cleveland, Burke Lakefront, OH (59 FR 246).

Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "control zone" and replaced it with the designation "Class D" airspace. Subsequent to and associated with airspace reclassification, new guidelines have been established for depicting Class D airspace areas that underlie Class B airspace areas. The base altitude of the higher class airspace, in this case Class B airspace, supersedes the vertical limits of the Class D airspace area. Therefore, this action adjusts the lower vertical limits of the Class D area up to but not including the base of the overlying Class B airspace area. The intent of this action is to eliminate confusion to pilots by appropriately identifying the controlled airspace areas at Cleveland, Burke Lakefront Airport, OH. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class D airspace at Cleveland, Burke Lakefront Airport, OH to coincide with the guidelines for depicting Class D airspace areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows

Authority: 49 U.S.C. app 1348(a), 1354(a) 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

AGL OH D Cleveland, Burke Lakefront Airport, OH [Revised]

(Lat. 41°31'03"N., Long. 81°41'00"W.)

That airspace extending upward from the surface to but not including 3000 feet MSL within a 4.1-mile radius of Burke Lakefront Airport, excluding that airspace within the Cleveland, OH, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on February 15, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–4778 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No 9050206037–5037–01]

RIN 0691–AA23

Direct Investment Surveys: Raising Exemption Level for Quarterly Report Form BE–577

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on direct investment surveys to raise the exemption level for filing quarterly Form BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. The BE–577 is a mandatory survey of U.S. direct investment abroad conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. Under this final rule, the exemption level for the survey—the level below which reports are not required—is raised from $15 million to $20 million. This change will reduce the number of respondents that otherwise must report in the survey.

EFFECTIVE DATE: This rule will be effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the December 12, 1994 **Federal Register**, 59 FR 63941, BEA published a notice of proposed rulemaking that would increase the exemption level for filing the BE–577, Direct Transactions of U.S. Reporter With Foreign Affiliate. No comments on the proposed rule itself were received. (As noted below, one comment on changes to the survey forms that did not require rule changes was received.) Thus, this final rule is the same as the proposed rule.

The quarterly BE–577 is part of BEA's regular data collection program for U.S. direct investment abroad. The survey is mandatory and is conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended).

The exemption level is set in terms of the size of a U.S. company's foreign affiliates. Under this final rule, the exemption level for the BE–577 survey is raised from $15 million to $20 million. Thus, if an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than $20 million (positive or negative), it will have to be reported. If the affiliate does not meet these criteria, a report is not required. The last time the exemption level was raised was May 1, 1986.

Raising the exemption level lowers the number of reports that otherwise must be filed, thus reducing the reporting and processing burdens. The changes in exemption level will be implemented beginning with the reports for the first quarter of 1995.

BEA has made changes to the BE–577 survey form in addition to the raising of the exemption level. These changes, however, did not require rule changes and are not reflected in the final rule. They are a result of changes made to the related BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994. They include the combination of two items that appeared on the 1994 BE–577 survey and the addition of other items that are on the 1994 BE–10 but were not on the 1994 BE–577. Added to the form are items, to be completed annually, on services transactions between U.S. Reporters and their foreign affiliates by type and an item, to be completed quarterly by affiliates classified in banking, on the U.S. Reporter's share of the affiliate's provision for loan losses. Also, changes in the survey instructions are being made primarily for purposes of clarification and to reflect the combination or addition of items.

In response to the notice of proposed rulemaking, one letter of comment was received. It expressed concern that the new items on services transactions would impose additional burden by requiring modification of information systems and more time to complete the survey forms. The new items must be completed only annually, and the first time they will need to be completed will not be until the second quarter following the end of affiliates' fiscal year 1995, which in most cases will be mid-1996. This will give companies at least a year to implement program changes necessary to report this information.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by OMB (OMB No. 0608–0004).

The public reporting burden for this collection of information is estimated to be 1.15 hours per response (form). The burden on the U.S. Reporter will vary depending on the number of forms that must be submitted in a given reporting period; this ranges from 1 to 225 forms. The estimated burden of 1.15 hours per form includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C 606(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. Because it raises the exemption level for filing the survey, it will actually reduce the reporting requirements of smaller entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investments in United States, Penalties, Reporting and

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recordkeeping requirements, United States investments abroad.

Dated: February 2, 1995.

Carol S. Carson,

Director, Bureau of Economic Analysis

For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 is revised to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

§ 806.14 [Amended]

2. Section 806.14(e) is amended by removing "$15,000,000" and adding "$20,000,000" in its place.

[FR Doc. 95–4631 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–EA–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1117

Interpretative Regulations for Reporting Choking Incidents to the Consumer Product Safety Commission Pursuant to the Child Safety Protection Act

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Final rule.

SUMMARY: The "Child Safety Protection Act" requires manufacturers, distributors, retailers, and importers of marbles, small balls, latex balloons, and toys or games that contain such items or other small parts, to report to the Commission when they learn of choking incidents involving such products. The Commission is issuing a rule to implement this reporting requirement.

DATES: This regulation becomes effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Office of Compliance and Enforcement, CPSC, 4440 East West Highway, Bethesda, MD 20814 (Mailing address: Washington, D.C. 20207), telephone (301) 504–0626 extension 1350.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102 of the Child Safety Protection Act, (Pub. L. No. 103–267 (June 17, 1994) ("the Act" or the "the CSPA") requires:

Each manufacturer, distributor, retailer and importer of marble, small ball, or latex balloon, or a toy or game that contains a marble, small ball, latex balloon or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that—

(A) an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball; latex balloon, or other small part contained in such toy or game and

(B) as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

A failure to report is a prohibited act under section 19(a)(3) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2068(a)(3), punishable by civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. The Act provides a high degree of confidentiality for choking reports. Reports shall not be interpreted as admissions of liability or of the truth of the information in the reports.

On July 1, 1994, the Commission proposed a rule to define several terms and resolve ambiguities and uncertainties in the statutory reporting scheme. (59 F.R. 33927) The Commission received over 200 comments from consumer groups, medical professionals, and individual consumers. Generally, these comments supported the proposed rule. Manufacturers, trade associations, testing labs, attorneys and others commented on behalf of industry. Generally, these groups sought to limit the reporting requirements and allow firms more time and discretion. In all, over 260 comments were received and analyzed.

B. Consideration of the Comments

1. Substantive Versus Interpretative

Several manufacturers, trade associations and industry consultants objected to this rule being issued as a substantive rule. Generally, these commenters believed interpretative rules were more appropriate. Consumers and consumer groups supported issuance of substantive rules.

The business commenters argued (1) a substantive rule would be binding and would eliminate the opportunity to challenge the Commission's interpretation of the reporting requirement on a case-by-case basis; (2) the Commission did not issue other reporting rules under section 15(b) or 37 of the CPSA as substantive rules; (3) since, unlike the provisions of section 101(c) of the Child Safety Protection Act, Congress did not grant the Commission specific authority to issue this rule, the Commission should limit itself to an interpretative rule; (4) section 16(b) of the CPSA is a recordkeeping and inspection provision and was not intended to be used for reporting rules except those limited to inspections; and (5) given the tight timeframes for reporting, the rule should be interpretative.

Section 102(a)(2) of the Child Safety Protection Act provides that "[f]or purposes of section 19(a)(3) of the Consumer Product Safety Act [15 U.S.C. 2068(a)(3), describing prohibited acts], the requirement to report information under this subsection is deemed to be a requirement under such Act." While the Act does not explicitly require the Commission to issue rules to implement it, the Commission believes that Congress intended the entire reporting section to be considered part of the CPSA. The Commission believes its general authority under section 16(b) to issue rules concerning reporting applies

Section 102 left unanswered several questions about reporting procedures and the contents of the report. The Commission has an obligation to further define the reporting obligation outlined in the statute through rulemaking and it has the authority to do so.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to require manufacturers, private labelers and distributors to "make such reports * * * as the Commission may, by rule, reasonably require for the purposes of implementing this Act." A failure to make reports or provide information under section 16(b) of the CPSA (15 U.S.C. 2065(b)) is a prohibited act under section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)). The Commission proposed this rule under section 102 of the Act and section 16(b) of the CPSA (15 U.S.C. 2065(b)).

Although section 16(b) falls within a section titled "Inspection and Recordkeeping," the language of the provision does not by its terms limit reporting solely to an inspectional context. The Commission has consistently taken this "plain language view of section 16(b). The Commission cited section 16 as part of the authority for the section 15(b) reporting regulations codified in 16 CFR Part 1115. In addition , the Commission has relied on section 16(b) for authority to require reports in the certification process for child resistant cigarette lighters (16 CFR Part 1210, Subpart B).

The Commission carefully weighed the policy concerns raised by the commenters. A substantive rule would require firms to report the specified information and firms would be judged solely on whether they met the reporting requirements.

An interpretative rule should provide adequate guidance to firms as to what should be reported and the timeframes for reporting. Since reports cannot be used against firms, there are few disincentives to reporting under the CSPA than under section 15(b) of the CPSA. Assembling the limited information to report should pose only minimal burden on reporting firms. The Commission, therefore, concludes that while a substantive rule could be legally justified, it is unnecessary for policy reasons.

2. Section-by-Section Analysis of the Comments

(a) Section 1117.2—Definitions

Several industry commenters suggested that the Commission exempt from the choking hazard reporting requirement any products that are exempted from the small parts regulations at 16 CFR 1501.3 and small parts intended for adult assembly. Various consumer commenters opposed such changes. The Commission exempted certain items from the small parts ban because it believed that the risk of injury posed by the product was outweighed by some functional benefit of the product. Balloons, books, writing materials, clothing and other items were exempted.

Unlike a ban, the requirement to report hazards does not interfere with the sale of the exempt product, and the choking hazard report does not place an extraordinary burden on the reporting firm. Congress did not limit the reporting obligation to only those products subject to the small parts regulation. In fact, it specifically included categories of products that were subject to the exceptions or not covered by the small parts ban at 16 CFR Part 1501 (balloons, toys and games intended for use by the children 3 and older). With the exception of balloons which are specifically mentioned in the reporting provision, the Commissioners could not agree as to whether the choking hazard reporting provision applies to products that would have been exempt from the small parts requirements. Accordingly, that issue will remain unresolved until such time as a majority of the Commission concurs on its resolution. Pending that resolution, reporting on these products exempt under section 1501.3 of Title 16 is not required.

(b) Section 1117.2(b)—Small Balls

One comment suggested that manufacturers of items with inaccessible small balls, such as pinball machines, should not have to report choking hazards with those balls. The Commission disagrees. Since the purpose of this provision is to inform the agency of choking hazards, the only salient factor is whether someone choked on a ball. If the ball is incorporated in a pinball machine but somehow got out and caused a choking, that is the very kind of information firms should be reporting to the Commission. If a ball is truly inaccessible, then there will be no choking incidents to report.

The Commission made a minor change to section 1117.2(b) spelling out the procedure for identifying small balls in this section rather than incorporating it by reference.

(c) Section 1117.2—Choked

Several commenters suggested changes in the definition of the word "choked." Some manufacturers thought the definition of "choked" in the regulation as "obstruction of the airways" was too vague. Some suggested that under this provision a momentary cessation of breathing might be considered a choking. Another suggested that the definition be changed to the Red Cross description in *First Aid & Safety*, (American Red Cross 1993, pp. 44, 91). Various consumer groups supported the proposed definition.

As Congress did not define the word "choked," the Commission proposal gave a dictionary definition of "choked" that is commonly understood by the public and health professionals. The definition of "choked" does not provide all the diagnostic guidance in the Red Cross document cited by one manufacturer. That document suggests "[i]f a child is coughing weakly or is making a high-pitched sound or if the child cannot speak, breathe, or cough, *the airway is completely blocked.*" [Emphasis added.] This statement recognizes that the blockage of the airway is the essence of choking. While this Red Cross diagnostic guidance may be useful to firms in determining whether an airway was in fact obstructed, it is not a definition of choking.

Other commenters suggest that hiccuping or swallowing might be interpreted as obstructing the airway. The Commission does not intend that the definition cover such natural phenomena. "Choked" in this context refers only to obstruction of an airway by a small part, balloon, small ball or marble, not to a natural functions such as swallowing.

(d) Section 1117.2(f)—Serious injury

The proposal included a definition of serious injury drawn from the Commission's Substantial Product Hazard rule, 16 CFR at 1115.6(c). Although none of the commenters pointed it out, that definition includes various harms such as lacerations and fractures not likely to directly result from choking. The Commission has decided to amend the definition of serious injury to delete references to such inquries.

(e) Section 1117.3—Reportable Information

Section 1117.3 of the proposed rule emphasizes that subject firms must report whenever they obtain sufficient information to put a reasonable firm on notice of a reportable choking incident. The reporting provision originated in the Senate, and the Report of the Senate Committee on Commerce, Science and Transportation states this provision requires subject firms to "report to the CPSC any information obtained that supports the conclusion that an incident occurred in which a child, regardless of age, choked on such a product *and*, as a result of such choking incident, the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional." [Emphasis added. (S. Rep. No. 195, 103d Cong., 2d Sess. 10 (1993).] Under the proposed rule, if the allegations received by the firm meet the statutory test (choking on one of the specified products or small parts leading to a cessation of breathing or other specified effects) then no further inquiry is necessary.

Several industry commenters wanted time to investigate choking incidents. Many suggested 10 days. Essentially, they argue they should not be forced to take at face value the word of parents, physicians, attorneys, and others about an incident. They contend the Commission might be burdened with unreliable reports. They also argued that this provision could require them to report a choking incident involving someone else's product and objected to having to do so. Finally, at least one firm objected to the term "ceased breathing for any length of time" since it might require the report of a momentary cessation of breathing Consumer group commenters approved of this provision, noting that it relieves firms of the obligation to investigate and

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determine whether the incident was real. They contend this provision will lead to quicker reports. The consumer groups also argued that firms under-report under section 15(b) of the CPSA and argued against giving firms leeway to avoid reporting under this provision.

The Commission is skeptical about how much additional information a firm might obtain in even a ten day period. If the person notifying the firm of an incident is unreliable, it is difficult to see how the firm would obtain useful information within that timeframe. Sometimes, firms do not learn the full details of such incidents until months or years later and then, only after extensive discovery in litigation. An additional 10 days is not likely to greatly assist a firm in determining whether the statement made to it by a parent, attorney, physician, or other person is true.

Based on its experience with section 15(b) of the CPSA, the Commission believes an immediate report may save lives. As a report involves a minimal burden on the reporting firm and cannot be used against the firm as an admission, there is little reason not to provide an immediate report. Since this statutory reporting provision went into effect in June 1994, the Commission has received only a handful of reports. After examining these reports, the Commission does not share the concern of some industry commenters that the Commission will be deluged with spurious reports.

This provision does not require manufacturers, distributors and retailers to report incidents which they know were not caused by their product. However, if they are informed of an incident which allegedly involved their product they should report unless a reasonable person would conclude their product was not involved. While it is conceivable a parent, attorney, physician or other party might mistakenly notify a firm that its product caused a reportable choking incident, that is not likely to be a common event. Moreover, if a firm's product is so similar to the object that caused the choking incident that it is mistakenly identified, it may present the same risk. The public benefits if firms err on the side of reporting. For the reasons enumerated above, the Commission has not changed this provision.

Section 102 of the CSPA states that reports are due if the child choked and "ceased breathing for *any length of time*." [Emphasis added.] This language suggests that whether the cessation of breathing was momentary or prolonged, a report must be filed. Whether a parent or child succeeds in dislodging the time within a second, a minute, or never, the incident is still reportable. The Commission staff has received questions about whether this requires firms to report a child swallowing something, sneezing, or hiccuping. As noted earlier, the intent of this provision is to obtain reports of choking incidents, not incidents where a child swallowed something, or hiccuped. The Commission believes the words "ceased breathing for any length of time" are unambiguous. It sees no reason to provide further definition than is provided by the statute.

(f) Sections 1117.3 and 1117.4—Time for Filing a Report

A number of manufacturers, Members of Congress, trade associations, and industry consultants suggested the Commission give firms 10 days to route choking information to an appropriate corporate official, conduct a reasonable investigation, and assemble the information that must be reported. They point to the 10 day period for investigation of death and grievous bodily injury under 16 CFR 1115.12(d) and 1115.14(d) and the 30 days for law suit reporting allowed by section 37 of the CPSA as precedents. They also note that the statute did not specify a timeframe for reporting and, therefore, left the Commission with discretion to allow a longer time period. Many consumer groups and consumers supported the proposal's 24 hour requirement as an important lifesaving requirement.

If Congress did not expect immediate reporting it could have specified a time frame, such as the 30 days it provided in section 37 of the CPSA. It did not do so. Therefore, the Commission believes the legislative intent was to require immediate reporting. In the Commission's experience, immediate reporting may prevent additional choking incidents or deaths.

The 24 hour reporting requirement in this rule is consistent with the 24 hour requirement in the Commission's section 15(b) rules. The section 15(b) rules require firms to immediately report once they have obtained reportable information. Firms are given ten days to analyze whether an obligation to report exists under section 15(b) only when the obligation to report *is not immediately clear*. (Firms must report a death allegedly caused by a defect in their product if they cannot within a reasonably expeditious—usually 10 day—investigation determine the defect that caused the death does not trip the "could create a substantial hazard" reporting trigger of Section 15(b).) Section 15(b) requires firms to evaluate a wide range of information to determine whether the product contains a defect which could create a substantial risk or presents an unreasonable risk of serious injury or death. In contrast, the CSPA's choking reporting requirement is simple. A firm has either learned of an incident that meets the statutory criteria, or it hasn't. In addition, the content of a choking hazard report is limited compared to a "full report" under section 15(b) of the CPSA. For the reasons set forth above, the Commission declines to change the twenty four hour requirement.

In the event a firm obtains information indicating that a child choked, without any allegation of cessation of breathing, death or other triggering event, or without clear allegations that a small part, balloon, marble, or small ball was involved, the firm may investigate to determine whether a reportable incident has occurred. The firm does not have an obligation to report until it has learned that the choking incident did cause a death, cessation of breathing or other triggering incident.

The Commission has modified the final rule to adopt an imputation of knowledge provision identical to the one in its section 15 rules. This new provision is found at section 1117.4(b). In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. Section 1117.4(b) notes the Commission believes this process should usually occur within five days. However, if firms are capable of transmitting choking hazard data to a responsible official within a shorter timeframe, they should not wait five days.

(g) Section 1117.5—Content of Reports

Proposed section 1117.5 describes the information that firms must report. The Commission proposal attempted to limit the reporting requirements to information necessary to give the Commission staff sufficient information to understand the nature and content of the choking incident and to determine whether corrective measures may be necessary. Nevertheless, several manufacturers and trade associations had questions or concerns about the information that must be submitted.

At the outset, it should be noted that much of the information that must be reported under section 1117.5(b) will be contained in the letter or other record of contact with the person notifying the firm of the choking incident. A retailer or distributor may have no information other than the name and a sample of the product, its own distribution information, and the choking complaint. The rule has been modified to make it clear a retailer or distributor is not under any obligation to seek additional information from its supplier to complete a report. Section 1117.5(c). A manufacturer (including an importer) may have more information about the design iterations of the product and any corrective action taken.

Several commenters stated that if their product was not involved in the choking incident it would be pointless to submit some of the information such as corrective action measures. Firms have no obligation to report on design changes or corrective action measures if none were undertaken. Therefore, these provisions pose no burden on firms.

A trade association expressed uncertainty about the obligation in section 1117.5(b)(7) to report changes made in the design of the product and whether changes made before or after the incident need be reported. The Commission intentionally made this provision broad to include all changes made to address choking incidents similar to the one reported, whether made before or after the reported choking occurred.

Several commenters expressed concern that the 24 hour reporting obligation would make supplemental reports necessary. They suggested that some timeframe be supplied for supplemental reports. The Commission agrees and has added language to subsection (c) of 1117.5 requiring supplemental reports be submitted within ten days. Firms do not have to file a supplemental report if they have already provided all the information required by subsection (b) of section 1117.5.

Section 1117.6 of the proposed rule explains this reporting provision is in addition to, but is not a substitute for, the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Even if a report of a choking hazard is not required by the proposed rule, a report may be necessary under section 15(b) of the CPSA (15 U.S.C. 2064(b)) and 16 CFR Part 1115. Several consumer groups said the agency should vigorously enforce the section 15(b) reporting obligation. The Commission plans to do so.

The remaining provisions of the regulation set forth the confidentiality, liability and penalty provisions that would apply to reporting in accordance with the proposed regulation published below. These provisions were not controversial.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities if issued on a final basis. Any obligations imposed upon such entities arise under the express provisions of section 102 of the Child Protection Safety Act, Pub. L. 103–267, June 17, 1994. The regulation simply implements the obligations imposed by that law. The regulation itself will not have a significant economic impact or small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

D. Environmental Considerations

The rule falls within the provisions of 16 CFR 1021.5(c), which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule issued below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

E. Effective Date

This regulation will become effective 30 days after publication of the final regulation in the **Federal Register.** Subject firms should be aware, however, that the Child Safety Protection Act required reporting as of June 17, 1994.

List of Subjects in 16 CFR Part 1117

Administrative practice and procedure, Business and industry, Consumer protection, Toy safety, Penalties, Reporting and recordkeeping requirements, Small parts.

Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act (Pub. L. 103–267), section 16(b) of the CPSA (15 U.S.C. 2065(b)) and 5 U.S.C. 553, the CPSC amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter B by adding a new Part 1117 to read as follows:

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS

1117.1 Purpose.
1117.2 Definitions.
1117.3 Reportable information.
1117.4 Time for filing a report.
1117.5 Information that must be reported and to whom.
1117.6 Relation to section 15(b) of the CPSA.
1117.7 Confidentiality of reports.
1117.8 Effect of reports on liability.
1117.9 Prohibited acts and sanctions.

Authority: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267), section 16(b), 15 U.S.C. 2065(b) and 5 U.S.C. 553

§ 1117.1 Purpose.

The purpose of this part is to set forth the Commission's interpretative regulations for reporting of choking incidents required by the Child Safety Protection Act. The statute requires that each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or a game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

§ 1117.2 Definitions.

(a) *Small part* means any component of a toy or game which, when tested in accordance with the procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR part 1501.

(b) *Small ball* means any ball that under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template .25 inches (6 mm.) thick. For purposes of this designation, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced, and is either not permanently attached to another toy or article, or is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term "ball" includes any multi-sided object formed by connecting planes into a generally

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spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(c) *Choked* means suffered an obstruction of the airways.

(d) A *latex balloon* is a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities, such as rafts, water wings, life rings, etc.

(e) A *marble* is a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker.

(f) *Serious injury* includes not only the concept of "grievous bodily injury" defined in the Commission's rule for Substantial Hazard Reports at 16 CFR 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred.

(g) *Subject firm* means any manufacturer, distributor, retailer or importer of marbles, small balls, latex balloons, or a toy or game that contains a marble, small ball, latex balloon, or other small part.

§ 1117.3 Reportable information.

A subject firm shall report any information it obtains which reasonably supports the conclusion that a reportable incident occurred. Generally, firms should report any information provided to the company, orally or in writing, which states that a child choked on a marble, small ball, latex balloon, or on a marble, small ball, latex balloon or other small part contained in a toy or game *and*, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Subject firms must not wait until they have investigated the incident or conclusively resolved whether the information is accurate or whether their product was involved in the incident. Firms shall not wait to determine conclusively the cause of the death, injury, cessation of breathing or necessity for treatment. An allegation that such a result followed the choking incident is sufficient to require a report.

§ 1117.4 Time for filing a report.

(a) A subject firm must report within 24 hours of obtaining information which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in a toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Section 1117.5 of this part sets forth the information that must be reported.

(b) The Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. Under ordinary circumstances, 5 days shall be the maximum reasonable time for information to reach such an employee, the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 102 of the Child Safety Protection Act.

§ 1117.5 Information that must be reported and to whom.

(a) Reports shall be directed to the Division of Corrective Actions, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20815 (Mailing Address: Washington, D.C. 20207) (Phone: 301–504–0608, facsimile: 301–504–0359).

(b) Subject firms must report as much of the following information as is known when the report is made:

(1) The name, address, and title of the person submitting the report to the Commission,

(2) The name and address of the subject firm,

(3) The name and address of the child who choked and the person(s) who notified the subject firm of the choking incident,

(4) Identification of the product involved including the date(s) of distribution, model or style number, a description of the product (including any labeling and warnings), a description of the marble, small ball, latex balloon or other small part involved, and pictures or sample if available,

(5) A description of the choking incident and any injuries that resulted or medical treatment that was necessary,

(6) Copies of any information obtained about the choking incident,

(7) Any information about changes made to the product or its labeling or warnings with the intention of avoiding such choking incidents, including, but not limited to, the date(s) of the change and its implementation, and a description of the change. Copies of any engineering drawings or product and label samples that depict the change(s).

(8) The details of any public notice or other corrective action planned by the firm,

(9) Such other information as appropriate.

(c) Retailers or distributors should supply as much of the information required in paragraph (b) of this section as is available to them but are not required to obtain information about product design changes or recall activities from the product manufacturer.

(d) Within ten days of their initial report, subject firms must supplement their reports to supply any of the information required by paragraph (b) of this section that was not available at the time of the initial report.

§ 1117.6 Relation to section 15(b) of the CPSA.

Section 15(b) of the CPSA requires subject firms to report when they obtain information which reasonably supports the conclusion that products they distributed in commerce fail to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. The Commission's rules interpreting this provision are set forth at 16 CFR part 1115. The requirements of section 102 of the CSPA and this part are in addition to, but not to the exclusion of the requirements in section 15(b) and part 1115. To comply with section 15(b) subject firms must continue to evaluate safety information they obtain about their products. Subject firms may have an obligation to report under section 15(b) of the CPSA whether or not they obtain information about choking incidents. Firms must also comply with the lawsuit-reporting provisions of section 37 of the CPSA, interpreted at 16 CFR part 1116.

§ 1117.7 Confidentiality of reports.

The confidentiality provisions of section 6 of the CPSA, 15 U.S.C. 2055, apply to reports submitted under this part. The Commission shall afford information submitted under this part the protection afforded to information submitted under section 15(b), in accordance with section 6(b)(5) of the CPSA and subpart G of part 1101 of title 16 of the CFR.

§ 1117.8 Effect of reports on liability.

A report by a manufacturer, distributor, retailer, or importer under this part shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

§ 1117.9 Prohibited acts and sanctions.

(a) Whoever knowingly and willfully falsifies or conceals a material fact in a report submitted under this part is subject to criminal penalties under 18 U.S.C. 1001.

(b) A failure to report to the Commission in a timely fashion as required by this part is a prohibited act under section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3).

(c) A subject firm that knowingly fails to report is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. "Knowing" means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Section 20(d) of the CPSA, 15 U.S.C. 2069(d).

(d) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission may be subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

Dated: February 17, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–4483 Filed 2–24–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93C–0380]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone to form contact lenses. This action is in response to a petition filed by Bausch & Lomb, Inc.

DATES: Effective on March 30, 1995, except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by March 29, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3092.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of November 3, 1993 (58 FR 58699), FDA announced that a color additive petition (CAP 3C0242) had been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692–0450. The petition proposed that the color additive regulations be amended in § 73.3106 *1,4-Bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymers* (21 CFR 73.3106) to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with *N*-vinyl pyrrolidone and 3[tris(trimethylsiloxy)silyl] propyl vinyl carbamate to form contact lenses. The filing notice erroneously indicated that the petition was filed under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(b)(5)). The correct section of the act is 721(d)(1) (21 U.S.C. 379e(d)(1)).

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes in direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). The use of the reaction product of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymerized with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate and *N*-vinyl pyrrolidone as a color additive in manufacturing contact lenses is subject to this listing requirement. The color additive is formed into contact lenses in such a way that at least some of the color additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. Identity

The color additive, when used to color contact lenses, is produced by copolymerizing the dye 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888–69–5) with 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone monomers. The dye 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone covalently bonds through two methacrylate groups to the polymer matrix during polymerization. The resulting copolymeric product is formed into a contact lens.

IV. Safety Evaluation

The agency believes that because 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone has a significantly lower molecular weight than the *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate/1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymer, it would be more readily absorbed into the body than the copolymeric color additive and would thus be expected to show a greater toxic effect. Therefore, the safety evaluation of the subject color additive focused primarily on 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

FDA concludes, from the data submitted in the petition and from other relevant information, that the maximum daily exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from this petitioned use in contact lenses would be no greater than 0.08 micrograms per person per day (μg/p/d). The agency-calculated upper limit was based on two factors. First, the maximum use level anticipated by the petitioner is 300 parts per million (ppm) of the lens material or 15 μg of 1,4-bis[4-(2-methacryloxyethyl)

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phenylamino]anthraquinone per lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) The user will replace lenses tinted with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone at the maximum use level once each year with a new pair of identical lenses; and (2) one hundred percent of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst-case estimates, exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone from its use in coloring *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate contact lenses is likely to be far less than 0.08 µg/p/d (Ref. 1).

To establish the safety of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone for coloring *N*-vinyl pyrrolidone/3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate contact lenses, the petitioner conducted toxicity studies with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, colored lenses, and colored lens extracts. The studies included five in vitro cytotoxicity studies, three by the agar overlay method (with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone and lens) and two by the direct-contact method (with 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone and lens extract). The maximum noncytotoxic concentration for 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone was determined to be 1,810 µg/milliliter (mL) by the direct-contact method using mouse fibroblast cells. Both the lenses and lens extracts were found to be noncytotoxic to mouse fibroblast cells. A 21-day ocular irritation study with contact lenses in rabbits and a guinea pig maximization (Kligman) study with lens extracts were also conducted. These studies demonstrated no evidence of ocular irritation or an allergic response in the test animals.

To relate the 1,810 µg/mL no-effect level, established in the direct-contact cytotoxicity study for the dye, to the 0.08 µg/p/d exposure from wearing the colored lenses, the agency calculated the maximum concentration level of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone in each eye that would result from the use of the contact lens. The agency estimated that the daily exposure to 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone in each eye would be 0.04 µg and that this would be diluted by the average daily tear film of 1.2 mL produced in each eye. This concentration is equal to a maximum daily concentration in the tear flow of the eye of 0.04 µg dye/mL. This concentration represents a more than a 45,000 fold safety factor for this proposed use of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone.

Based upon the available toxicity data, the small amount of 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone used to form the color additive in the contact lenses, and the agency's exposure calculation for 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone, FDA finds that the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with *N*-vinyl pyrrolidone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate is safe for use as a color additive in contact lenses. FDA further concludes that the safety margin is sufficiently large that no limitation is required beyond the usual limitation that the reactants may be used in amounts not to exceed the minimum reasonably required to accomplish the intended technical effect. Batch certification is not required to ensure safety.

V. Conclusions

Based on data contained in the petition and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of the reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone with *N*-vinyl pyrrolidone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate to form colored contact lenses, and that the color additive is safe and suitable for its intended use.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 29, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch to the Indirect Additives Branch, "CAP 3C0242 (MATS# 741)–Bausch & Lomb. Reactive Blue 246 for coloring contact lenses, copolymerized with *N*-vinyl pyrrolidinone and 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate. Submission dated 9–10–93," dated February 22, 1994.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.3106 is amended by revising paragraph (a) to read as follows:

§ 73.3106 1,4-Bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone copolymers.

(a) *Identity.* The color additive is 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (CAS Reg. No. 121888–69–5), copolymerized with hydroxyethyl methacrylate monomer, or a blend of hydroxyethyl methacrylate and *N*-vinyl pyrrolidone monomers, or a blend of 3-[tris(trimethylsiloxy)silyl]propyl vinyl carbamate (CAS Reg. No. 134072–99–4) and *N*-vinyl pyrrolidone monomers to form the contact lens material.

* * * * *

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy

[FR Doc. 95–4767 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2171]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: Legislation over the last several years has created several new nonimmigrant visa categories. This rule provides a new table of nonimmigrant visa symbols at § 41.12 which reflects these changes. Minor editorial changes have also been made throughout.

EFFECTIVE DATE: This rule takes effect on February 27, 1995.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, D.C. 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: The passage of the Violent Crime Control and Law Enforcement Act of 1994 and the enactment of the North American Free Trade Agreement Implementation Act, which implemented the North American Free Trade Agreement (NAFTA), resulted in the creation of new nonimmigrant visa categories. The visa symbols for these nonimmigrant categories, S–1 and S–2 and TN and TD, are added to the list of nonimmigrant visa symbols at § 41.12.

Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise

On September 13, 1994, the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322). Section 130001 of this Act amends the Immigration and Nationality Act (INA)(by adding a new subparagraph (S) at INA 101(a)(15), thus establishing a new nonimmigrant (S) classification ("S–1" and "S–2") for these aliens and their dependents.

NAFTA Professionals

In December 1993, the United States concluded the North American Free Trade Agreement (NAFTA) with Canada and Mexico. The North American Free Trade Agreement Implementation Act (Pub. L. 103–182) implementing the NAFTA agreement was signed by the President on December 8, 1993 and took effect January 1, 1994. Section 341 of the Implementation Act provided for certain professionals entering the United States under this agreement to be treated as if classified as nonimmigrants under INA 101(a)(15). The symbols TN and TD have been designated for these professionals and their dependents.

Final Rule

This rule adds the S–1 and S–2 and TN and TD symbols to the list of nonimmigrant symbols at 22 CFR 41.12. This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 41

Classification of nonimmigrants, Classification symbols, Visas.

Accordingly, part 41 to 22 of the Code of Federal Regulations is amended to read as indicated below:

PART 41—[AMENDED]

1. The authority citation for Part 41 is revised to read as follows:

Authority: 8 U.S.C. 1101 and 1104; 19 U.S.C. 3401.

2. Section 41.12 is revised to read as follows:

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided in the visa stamp The following visa symbols shall be used:

NONIMMIGRANTS

Symbol	Class	Section of law
A–1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family	101(a)(15)(A)(i).
A–2	Other Foreign Government Official or Employee, or Immediate Family	101(a)(15)(A)(ii).
A–3	Attendant, Servant, or Personal Employee of A–1 or A–2, or Immediate Family	101(a)(15)(A)(iii).
B–1	Temporary Visitor for Business	101(a)(15)(B).

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NONIMMIGRANTS—Continued

Symbol	Class	Section of law
B–2	Temporary Visitor for Pleasure	101(a)(15)(B).
B–1/B–2	Temporary Visitor for Business & Pleasure	101(a)(15)(B).
C–1	Alien in Transit	101(a)(15)(C).
C–2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	101(a)(15)(C).
C–3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit	212(d)(8).
D	Crewmember (Sea or Air)	101(a)(15)(D).
E–1	Treaty Trader, Spouse or Child	101(a)(15)(E)(i).
E–2	Treaty Investor, Spouse or Child	101(a)(15)(E)(ii).
F–1	Student	101(a)(15)(F)(i).
F–2	Spouse or Child of F–1	101(a)(15)(F)(ii).
G–1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	101(a)(15)(G)(i).
G–2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	101(a)(15)(G)(ii).
G–3	Representative of Nonrecognized Nonmember Foreign Government to International Organization, or Immediate Family.	101(a)(15)(G)(iii).
G–4	International Organization Officer or Employee, or Immediate Family	101(a)(15)(G)(iv).
G–5	Attendant, Servant, or Personal Employee of G–1 through G–4 or Immediate Family	101(a)(15)(G)(v).
H–1A	Registered Nurse	101(a)(15)(H)(i)(a).
H–1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H–2A	Temporary Worker Performing Agricultural Services Unavailable in the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(a).
H–2B	Temporary Worker Performing Other Services Unavailable in the United States (Petition filed on or After June 1, 1987).	101(a)(15)(H)(ii)(b).
H–3	Trainee	101(a)(15)(H)(iii).
H–4	Spouse or Child of Alien Classified H–1A/B, H2A/B, or H–3	101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	101(a)(15)(I).
J–1	Exchange Visitor	101(a)(15)(J).
J–2	Spouse or Child of J–1	101(a)(15)(J).
K–1	Fiance(e) of United States Citizen	101(a)(15)(K).
K–2	Child of Fiance(e) of U.S. Citizen	101(a)(15)(K).
L–1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation.	101(a)(15)(L).
L–2	Spouse or Child of Intracompany Transferee	101(a)(15)(L).
M–1	Vocational Student or Other Nonacademic Student	101(a)(15)(M).
M–2	Spouse or Child of M–1	101(a)(15)(M).
N–8	Parent of an Alien Classified SK–3 Special Immigrant	101(a)(15)(N)(i).
N–9	Child of N–8 or of an SK–1, SK–2, or SK–4 Special Immigrant	101(a)(15)(N)(ii).
NATO–1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretary General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO–2	Other Representative of member state to NATO (including any of Subsidiary Bodies) including Representatives, its Advisers and Technical Experts of Delegations, Members of Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794.
NATO–3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies) or Immediate Family.	Art. 14, 5 UST 1096
NATO–4	Official of NATO (Other Than Those Classifiable as NATO–1) or Immediate Family	Art. 18, 5 UST 1098
NATO–5	Expert, Other Than NATO Officials Classifiable Under the NATO–4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100
NATO–6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877
NATO–7	Attendant, Servant, or Personal Employee of NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, and NATO–6 Classes, or Immediate Family.	Art. 12–20; 5 UST 1094–1098.
O–1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics	101(a)(15)(O)(i).
O–2	Accompanying Alien	101(a)(15)(O)(ii).
O–3	Spouse or Child of O–1 or O–2	101(a)(15)(O)(iii).
P–1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group	101(a)(15)(P)(i).
P–2	Artist or Entertainer in a Reciprocal Exchange Program	101(a)(15)(P)(ii).
P–3	Artist or Entertainer in a Culturally Unique Program	101(a)(15)(P)(iii).
P–4	Spouse or Child of P–1, P–2, or P–3	101(a)(15)(P)(iv)
Q–1	Participant in an International Cultural Exchange Program	101(a)(15)(Q).
R–1	Alien in a Religious Occupation	101(a)(15)(R).
R–2	Spouse or Child of R–1	101(a)(15)(R).
S–1	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise	101(a)(15)(S)(i).
S–2	Certain Aliens Supplying Critical Information Relating to Terrorism	101(a)(15)(S)(ii)

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
TN	NAFTA Professional	214(e)(2).
TD	Spouse or Child of NAFTA Professional	214(e)(2).

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 95–4588 Filed 2–24–95; 8:45 am]

BILLING CODE 4710–06–M

22 CFR Part 42

[Public Notice 2170]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: Legislation over the last several years has created several new immigrant visa categories. In addition, the passage of time has resulted in the lapsing of other transitional categories. This rule provides a new table of immigrant visa symbols at § 42.11 which reflects these changes. Minor editorial changes have been made throughout.

EFFECTIVE DATE: This rule takes effect on February 27, 1995.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, DC 20522–1013.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION: Several amendments to the Immigration and Nationality Act (INA) over the last several years have resulted in the creation of new immigrant visa categories. The new visa symbols for these immigrant categories IW2, ES1, SM1 through SM5, R51 through R53, and I51 through I53 are added to the list of immigrant visa symbols at § 42.11. This rule also removes from the list the visa symbols LB1 and LB2 and DT1 through DT3, used for transitional categories which have expired.

Section 42.11 Classification Symbols

Section 219 of the Immigration Technical Corrections Act of 1994 (Pub. L. 103–416, Oct. 25 1994) amended INA 201(b) to include the children of widows/widowers of U.S. citizens who qualify for immediate relative status. The new immigrant visa symbol IW2 is added to the list. This category is scheduled to expire on October 24, 1996.

Section 4 of the Soviet Scientists Immigration Act of 1992 (Pub. L. 102–509, October 24, 1992) provided for the admission of certain scientists from the independent states of the former Soviet Union and the Baltic states who possess exceptional scientific ability. These scientists have been accorded the ES1 symbol.

Section 2(a)(3) of the Armed Forces Immigration Adjustment Act of 1991 (Pub. L. 102–110, October 1, 1991) amended INA 101(a) by adding a new paragraph (K) which confers special immigrant status on certain active members and certain honorably separated former members of the U.S. Armed Forces. These special immigrants and their derivative spouses and children have been designated SM1 through SM5.

Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395, October 6, 1992) provided for an immigrant investor pilot program to implement the provisions of INA 203(b)(5), the permanent immigrant investor category. This pilot program sets aside immigrant visa numbers annually over a five-year period for aliens who make qualifying investments in commercial enterprises located within regional centers in the United States. These investors have been designated R51 through R53 if investing in a non-targeted area, and I51 through I53 if investing in a targeted area.

This rule also removes from the list at § 42.11 two immigrant categories created by the Immigration Act of 1990 (IMMACT 90) which were transitional: (1) the LB categories, created by section 112, for spouses and children of legalized aliens, and (2) the DT categories, created by section 134, for displaced Tibetans, their spouses and children.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 42

Classification of immigrants, Classification symbols, Visas.

Accordingly, part 42 to title 22 of the Code of Federal Regulations is amended as indicated below:

PART 42—[AMENDED]

1. The authority citation for Part 42 is revised to read as follows:

Authority: 8 U.S.C. 1101 note, 1103 note, 1104, 1153 note.

2. Section 42.11 is revised to read as follows:

§ 42.11 Classification symbols.

A visa issued to an immigrant alien within one of the classes described below shall bear an appropriate visa symbol to show the classification of the alien.

IMMIGRANTS

Symbol	Class	Section of law
	Immediate Relatives	
IRI	Spouse of U.S. Citizen	201(b).
CRI	Spouse of U.S. Citizen (Conditional Status	201(b) & 216(a)(1).
IW1	Certain Spouses of Deceased U.S. Citizens	201(b).
IW2	Child of IW1	201(b).

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IMMIGRANTS—Continued

Symbol	Class	Section of law
IR2	Child of U.S. Citizen	201(b).
CR2	Child of U.S. Citizen (Conditional Status)	201(b) & 216.
IR3	Orphan Adopted Abroad by U.S. Citizen	201(b).
IR4	Orphan to be Adopted In the United States by U.S. Citizen	201(b).
IR5	Parent of U.S. Citizen at Least 21 Years of Age	201(b).
V15	Parent of U.S. Citizen Who Acquired Permanent Resident Status Under the Virgin Islands Nonimmigrant Alien Adjustment Act.	201(b) & sec. 2 of the Virgin Islands Nonimmigrant Alien Adjustment Act (P.L. 97–271).
	Vietnam Amerasian Immigrants	
AM1	Vietnam Amerasian Principal	584(b)(1)(A).
AM2	Spouse or Child of AM1	584(b)(1)(B).
AM3	Natural Mother of Unmarried AM1 (and Spouse or Child of Such Mother), or Person Who has Acted in Effect as the Mother, Father, or Next-of-Kin of Unmarried AM1 (and Spouse or Child of Such Person).	584(b)(1)(C) of the Foreign Operations, Export Financing, and Related Programs, Appropriations Act, 1988 (As Contained in sec. 101(e) of P.L. 101(e) of P.L. 100–202) as amended.
	Special Immigrants	
SB1	Returning Resident	101(a)(27)(A).
SC1	Person Who Lost U.S. Citizenship by Marriage	101(a)(27)(B) & 324(a).
SC2	Person Who Lost U.S. Citizenship by Serving in Foreign Armed Forces	101(a)(27)(B) & 327.
	Family-Sponsored Preferences	
	Family 1st Preference	
F11	Unmarried Son or Daughter of U.S. Citizen	203(a)(1).
F12	Child of F11	203(d).
	Family 2nd Preference (Subject to County Limitations)	
F21	Spouse of Alien Resident	203(a)(2)(A).
C21	Spouse of Alien Resident (Conditional)	203(a)(2)(A) & 216.
F22	Child of Alien Resident	203(a)(2)(A).
C22	Child of Alien Resident (Conditional)	202(a)(2)(A) & 216.
F23	Child of F21 or F22	203(d).
C23	Child of C21&22 (Conditional)	203(d) & 216.
F24	Unmarried Son or Daughter of Alien Resident	203(a)(2)(B).
C24	Unmarried Son or Daughter of Alien Resident (Conditional)	203(a)(2)(B) & 216.
F25	Child of F24	203(d).
C25	Child of F24 (Conditional)	203(d) & 216.
	Family 2nd Preference (Exempt from Country Limitations)	
FX1	Spouse of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
CX1	Spouse of Alien Resident (Conditional)	202(a)(4)(A) & 216.
FX2	Child of Alien Resident	202(a)(4)(A) & 203(a)(2)(A).
CX2	Child of Alien Resident (Conditional)	202(a)(4)(A) & 216.
FX3	Child of FX1 and FX2	202(a)(4)(A) & 203(d).
CX3	Child of CX1 & CX2 (Conditional)	202(a)(4)(A) & 203(d) & 216.
	Family 3rd Preference	
F31	Married Son or Daughter of U.S. Citizen	203(a)(3).
C31	Married Son or Daughter of U.S. Citizen (Conditional)	216(a)(1).
F32	Spouse of F31	203(d).
C32	Spouse of C31 (Conditional)	203(d) & 216.
F33	Child of F31	203(d).
C33	Child of C31 (Conditional)	203(d) & 216.
	Family 4th Preference	
F41	Brother or Sister of U.S. Citizen	203(a)(4).
F42	Spouse of F41	203(d).
F43	Child of F41	203(d).

IMMIGRANTS—Continued

Symbol	Class	Section of law
	Employment-Based Preferences	
	Employment 1st Preference (Priority Workers)	
E11	Alien with Extraordinary Ability	203(b)(1)(A).
E12	Outstanding Professor or Researcher	203(b)(1)(B).
E13	Multinational Executive or Manager	203(b)(1)(C).
E14	Spouse of E11, E12, or E13	203(d).
E15	Child of E11, E12, or E13	203(d).
	Employment 2nd Preference (Professionals Holding Advanced Degrees or Persons of Exceptional Ability)	
E21	Professional Holding Advanced Degree or of Exceptional Ability	203(b)(2).
E22	Spouse of E21	203(d).
E23	Child of E21	203(d).
ES1	Soviet Scientist (Prinicipal) Qualified for Status Under Pub. L. 102–509	203(b)(2) and sec. 4 of the Soviet Scientists Immigration.
	Employment 3rd Preference (Skilled Workers, Professionals, and Other Workers)	
E31	Skilled Worker	203(b)(3)(A)(i).
E32	Professional Holding Baccalaureate Degree	203(b)(3)(A)(ii).
E34	Spouse of E31 or E32	203(d)
E35	Child of E31 or E32	203(d).
EW3	Other Worker (Subgroup Numerical Limit)	203(b)(3)(A)(iii).
EW4	Spouse of EW3	203(d).
EW5	Child of EW3	203(d).
	Employment 4th Preference (Certain Special Immigrants)	
SD1	Minister of Religion	101(a)(27)(C) & 203(b)(4).
SD2	Spouse of SD1	101(a)(27)(C) & 203(b)(4).
SD3	Child of SD1	101(a)(27)(C) & 203(b)(4).
SE1	Certain Employees or Former Employees of the U.S. Government Abroad	101(a)(27)(D).
SE2	Spouse of SE1	101(a)(27)(D).
SE3	Child of SE1	101(a)(27)(D).
SEH	Employee of the Mission in Hong Kong or Immediate Family	101(a)(27)(D) & Section 152 of the Immigration Act of 1990.
SF1	Certain Former Employees of the Panama Canal Company or Canal Zone Government	101(a)(27)(E).
SF2	Spouse or Child of SF1	101(a)(27)(E).
SG1	Certain Former Employees of the U.S. Government in the Panama Canal Zone	101(a)(27)(F).
SG2	Spouse or Child of SG1	101(a)(27)(F).
SH1	Certain Former Employees of the Panama Canal Company or Canal Zone Government on April 1, 1979.	101(a)(27)(G).
SH2	Spouse or Child of SH1	101(a)(27)(G).
SJ1	Certain Foreign Medical Graduates (Adjustments Only)	101(a)(27)(H).
SJ2	Accompanying Spouse or Child of SJ1	101(a)(27)(H).
SK1	Certain Retired International Organization Employees	101(a)(27)(I)(iii).
SK2	Spouse SK1	101(a)(27)(I)(iv).
SK3	Certain Unmarried Son or Daughter of International Organization Employee	101(a)(27)(I)(i).
SK4	Certain Surviving Spouses of Deceased International Organization Employee	101(a)(27)(I)(ii).
SL1	Juvenile Court Dependent	101(a)(27)(J).
SM1	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible After the Date of Enactment)..	101(a)(27)(K).
SM2	Spouse of SM1	101(a)(27)(K).
SM3	Child of SM1	101(a)(27)(K).
SM4	Alien Recruited Outside the United States Who Has Served or is Enlisted to Serve in the U.S. Armed Forces for 12 Years (Became Eligible As of the Date of Enactment).	101(a)(27)(K).
SM5	Spouse or Child of SM4	101(a)(27)(K).
SR1	Certain Religious Workers	101(a)(27)(C)(ii)(II) & (III).
SR2	Spouse of SR1	101(a)(27)(C)(ii)(II) & (III).
SR3	Child of SR1	101(a)(27)(C)(ii)(II) & (III).
	Employment 5th Preference (Employment Reaction Conditional Status)	
C51	Employment Creation *OUTSIDE* Targeted Areas	203(b)(5)(A).
C52	Spouse of C51	203(d).
C53	Child of C51	203(d).
T51	Employment Creation *IN* Targeted Rural/High Unemployment Area	203(b)(5)(B).
T52	Spouse of T51	203(d).
T53	Child of T51	203(d).

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IMMIGRANTS—Continued

Symbol	Class	Section of law
R51	Investor Pilot Program, Not in Targeted Area	203(b)(5) & Sec. 610 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1993 (P.L. 102–395)
	Other Numerically Limited Categories	
	Diversity Immigrants (Beginning in FY 1995)	
DV1	Diversity Immigrant	Section 203(c).
DV2	Spouse of DV1	Section 203(c).
DV3	Child of DV1	Section 203(c).
	Transition for Employees of Certain U.S. Businesses in Hong Kong (Fiscal Years 1991–1993)*	
HK1	Employee of U.S. Business in Hong Kong	Section 124 of the Immigration Act of 1990.
HK2	Spouse of HK1	Section 124 of the Immigration Act of 1990.
HK3	Child of HK1	Section 124 of the Immigration Act of 1990.
	Diversity Transition for Natives of Certain Adversely Affected Foreign States (Fiscal Years 1992–1995)	
AA1	Diversity Transition Immigration	Section 132 of the Immigration Act of 1990.
AA2	Spouse of AA1	Section 132 of the Immigration Act of 1990.
AA3	Child of AA1	Section 132 of the Immigration Act of 1990.

* Although these visas may no longer be issued, some HK visas remain valid through January 1, 2002.

Mary A. Ryan,
Assistant Secretary for Consular Affairs.
[FR Doc. 95–4589 Filed 2–24–95; 8:45 am]
BILLING CODE 4710-06-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG91

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: We are, with changes, adopting as a final rule the provisions of an interim final rule promulgated pursuant to The Homeless Veterans Comprehensive Service Programs Act of 1992. The Act authorizes the Department of Veterans Affairs to assist public or nonprofit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The Act also authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or service centers providing supportive services. This rule contains criteria and requirements relating to the awarding of grants and relating to per diem payments. Accordingly, this rule is necessary so that grants can be awarded and per diem payments can be made.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Casey, Program Manager, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420; (202) 535–7311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

In a document published in the **Federal Register** on June 1, 1994 (59 FR 28264–28275), we established an interim final rule to implement provisions of the "Homeless Veterans Comprehensive Service Programs Act of 1992." We solicited comments concerning the interim final rule for 60 days ending August 1, 1994. We received comments from three commenters: the Missouri Veterans Leadership Program, Vietnam Veterans Of America, Inc., and the State of New Jersey Department of Military and Veterans' Affairs. We have carefully considered all of the comments, and they are discussed below.

Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule, with changes as discussed in this document. This final rule also affirms the information contained in the interim final rule concerning Executive Order 12866 and the Regulatory Flexibility Act.

It was commented that VA "restore some of the original funding earmarked for technical assistance" in preparing grant applications. No changes are made based on this comment. The appropriation for the grant and per diem program did not earmark funding for technical assistance.

In addition, with respect to the two-phase application process for obtaining grants, it was commented that "any requirements for professional consultation or the need for expenditures be reserved for the second phase when there is some hope that these costs will be reimbursed." No changes are made based on this comment. The rule does not require use of professional consultation or any large expenditures for the initial phase of the application process.

It was also suggested that VA make specific allocation of funds to the per diem and grant components of the program. No changes are made based on this comment. Instead of predetermining amounts, it is our view that the amounts should be allocated on an ad hoc basis based on need and availability of funds. Even so, we agree that funding should provide for both per diem and grant awards, and we will ensure that both receive portions of allocations.

The writer also commented that the rating criteria should award additional points to "veteran-run programs." No changes are made based on this comment. The grant and per diem program as authorized under Pub. L. 102–590 does not address this issue, and there does not appear to be a basis for giving preference to veteran-run programs.

Another comment stated that the point system used for rating grants should include points for targeting homeless veterans discharged from VA medical centers. No changes are made based on this comment, since the rule already includes this concept (see 38 CFR 17.711 (d)(2)).

This commenter also disagreed with the statement in the Preamble to the interim final rule that the "vast majority of homeless veterans are single". No changes are made based on this comment. We believe that such statement is correct. The statement is consistent with the Executive Summary of the 1990 Annual Report of the Interagency Council on the Homeless, which states that "Over three-quarters of homeless adults are unattached single men, (and) 8% are unattached single women" (page 24); and that the "characteristics of homeless veterans appear to roughly parallel those of other homeless persons of the same sex" (page 33).

It was also asserted that the grant program should not prohibit use of grant funding to construct, expand, remodel or acquire buildings located on VA owned property. Except as provided for in 38 U.S.C. 8122 or 40 U.S.C. 484, such VA property may not be purchased. In essence, applicants could only "acquire" these VA owned properties by lease, and lease payments are operational costs. Pub. L. 102–590 section 3(c) prohibits use of grant funds to support operational costs.

Furthermore, the interim final rule limited uses of grant funding to acquisition, expansion and rehabilitation of structures owned by the applicant, or held by the applicant under a capital lease, in order to ensure long-term use of such structures to benefit homeless veterans. However, we are amending § 17.700 by revising the last sentence of paragraph (a) to permit use of grant funding to construct, expand or remodel buildings located on VA medical center grounds. A corresponding change is made in § 17.731(a)(1) to allow such leases to be used to demonstrate site control. We believe that these changes are consistent with the Congressional intent. In this regard, Congress stated:

> The Committee views the bill as a catalyst to spark linkages both between programs within VA as well as between VA and community-based programs. * * * The bill not only seeks to encourage new partnerships between VA programs and those serving in the same communities, but to provide seed money to start up new programs which would work in concert with VA efforts. (138 Cong. Rec. House Report No. 102–721 (July 24, 1992) reprinted in 1992 U.S.C.C.A.N. 4318).

The amendment would provide a means to enhance VA partnerships with community-based programs, and would allow for better and more immediate access to health and other benefits at VA medical centers. Moreover, if a grant recipient whose program was funded on VA medical center grounds ceased to operate the program, VA could seek another community-based organization to occupy the site and conduct a program for homeless veterans that carries out the purposes of the Act.

It was also asserted that the per diem program should not be restricted to new programs established after November 10, 1992. No change to the rule is made based on this comment since this a requirement of Pub. L. No. 102–590 (see section 4(a)).

Two of the commenters asserted that recipients of grants should be able to obtain a grant by providing less than 35 percent of the total project costs. No changes are made based on this comment. VA has no choice in this matter, since Pub. L. 102–590 section 3(c) provides that the amount of a grant "may not exceed 65 percent of the estimated cost * * *."

Three commenters asserted that grants should provide for operating costs. No changes are made based on these comments. VA has no choice in this matter since Pub. L. 102–590 section 3(c) states that a grant may not be used to support operational costs. However, it is noted that even though operational costs are not allowed under the grant component, payments under the per diem component necessarily include operational costs.

Several comments were based on incorrect assumptions. It was commented incorrectly that the rule limits funding for remodeling or renovating VA foreclosures acquired under the McKinney Act. The rule does not contain such limitation on the use of funds for remodeling or renovating VA foreclosed properties, and the McKinney Act does not pertain to VA foreclosed properties. It was also incorrectly stated that grant funds were not available to make necessary and reasonable improvements to accommodate access for disabled veterans. The rule contains no such prohibition. In addition, it was incorrectly stated that the rule excludes applicants if they are not United Way member organizations. The rule does not require United Way membership as a condition of eligibility to apply for grants or per diem payments.

Changes are made in the final rule to more clearly set forth the Congressional intent with respect to the meaning of "new program/new component of existing program". In this regard Congress stated that:

> The intent of the grant program is to assist in the establishment of new programs, or new components of existing programs, that will provide needed services to homeless veterans. In this regard both newly established organizations and existing organizations would be eligible for grant support for the furnishing of specified assistance that is needed in the area or community so long as, in the case of existing organizations, they are not already providing that kind of assistance in such area or community. (138 Cong. Rec. S. 17185 (Oct. 7, 1992) reprinted in 1992 U.S.C.C.A.N. 4335, 4336).

The final rule is amended to better reflect this Congressional intent. We are adding a definition of "area or community" because it is relevant for determining whether or not the proposed project constitutes a new program or new component of an existing program. In this regard, the "new program/new component of an existing program" must be both needed and not already provided by the applicant in the "area or community". Since it was intended that organizations be prohibited from receiving grants for the same kind of assistance they already have been providing in an area or community, it is necessary to specify at what point they would be in a different area or community and therefore eligible to receive a grant, assuming all other applicable conditions are met. To better reflect Congressional intent, the

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term "area or community" is defined to mean "a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans." Accordingly, changes are made to the rule to better reflect this Congressional intent.

Changes are made to the "rating criteria for applications" section of the rule (§ 17.711) to clarify that grants may be awarded only for new programs or new components of existing programs.

This final rule, which essentially affirms the provisions of the interim final rule, is made effective upon publication. The substantive changes made by this final rule relieve restrictions.

Executive Order 12866: This rule has been reviewed as a "significant regulatory action" under E.O. 12866 by the Office of Management and Budget.

List of Subjects in 38 CFR Part 17

Community action programs, Community development, Homeless veterans, Government contracts, Grant programs—Health, Grant programs—homeless veterans, Grant programs—housing and community development, Grant programs—social programs, Grant programs—transportation, Health, Health care, Health facilities, Housing, Intergovernmental relations, Low and moderate income housing, Manpower training programs, Mental health centers, Mental health programs, Motor carriers, Motor vehicles, Public housing, Rent subsidies, Supportive housing, Supportive services, Veterans, Vocational education, Vocational rehabilitation, Work Incentive Programs.

Approved: February 15, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR part 17 which was published at 59 FR 28625, June 1, 1994, is adopted as final with the following changes:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721 note, unless otherwise noted.

2. Section 17.700 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 17.700 Purpose and scope.

(a) * * * This program does not provide for funding to acquire buildings located on VA-owned property. The program does provide for grant funds to be used to construct, expand or remodel buildings located on VA-owned property.

* * * * *

3. Section 17.701 is amended by adding the definition of "area or community", and by revising the definition of "new program/new component of an existing program" to read as follows:

§ 17.701 Definitions.

* * * * *

Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

* * * * *

New program/new component of an existing program means a proposed program of supportive services, or a proposed addition of supportive services to an existing program, which services are not currently being provided by the entity proposing it, and for which there is a demonstrated need in the area or community served by that entity.

* * * * *

4. Section 17.710 is amended by revising paragraph (a)(7) to read as follows:

§ 17.710 Application requirements.

(a) * * *

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

* * * * *

5. Section 17.711 is amended by revising paragraphs (b)(4) and the first sentence in (d)(4) to read as follows:

§ 17.711 Rating criteria for applications.

* * * * *

(b) * * *

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part (e.g., new programs or new components of existing programs).

* * * * *

(d) * * *

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served in the specified area or community. * * *

* * * * *

6. Section 17.731 is amended by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 17.731 Site control.

(a) * * *

(1) * * * A lease other than a capital lease does not demonstrate site control except for a VA lease as described in § 17.700(a) of this part.

* * * * *

[FR Doc. 95–4654 Filed 2–24–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 110–1–6172a; FRL–5143–9]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee Chapter on Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) which were submitted on May 18, 1993, by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), and contained revisions to chapter 1200–3–18 "Volatile Organic Compounds (VOC)." Due to the significance of the revisions, this revised chapter was submitted to replace the current chapter 1200–3–18. These revisions were made to satisfy the VOC Reasonably Available Control Technology (RACT) "Catch-Up" requirements contained in the amended Clean Air Act (CAA). EPA is granting conditional approval, full approval or disapproval of the revisions as explained in detail in the Supplementary Information section of this document.

DATES: This final rule will be effective April 28, 1995 unless adverse or critical comments are received by March 29, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William Denman Stationary Source Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 x4208. Reference file TN110–1–6172.

SUPPLEMENTARY INFORMATION: On May 18, 1993, Tennessee submitted revisions to chapter 1200–3–18 "Volatile Organic Compounds" of their SIP to meet the requirements of the 1990 amendments to the CAA. These requirements are commonly referenced as the "VOC RACT Catch-Ups." Due to the significance of the revisions, this revised chapter was submitted to replace the current chapter 1200–3–18 which had been recently revised to meet the "VOC RACT Fix-Up" requirements and was acted on by EPA by publishing a final rulemaking in the **Federal Register** on April 18, 1994. (see 59 FR 18310) EPA is approving the replacement of the previously federally approved chapter 1200–3–18 except for the following exceptions.

Tennessee failed to submit a rule for the VOC control of perchloroethylene dry cleaners in the VOC RACT Catch-Up submittal of May 18, 1993. However, a rule for the control of VOCs from perchloroethylene dry cleaners was federally approved in 59 FR 18310 on April 18, 1994. Therefore, the federally approved rule 1200–3–18–.28 "Perchloroethylene Dry Cleaning" will remain in effect until Tennessee submits a chapter for incorporation into their revised chapter 1200–3–18. Tennessee currently has a rule which regulates toxic emissions from perchloroethylene dry cleaners.

Otherwise, EPA is granting full approval of the submitted revisions with the exception of section 1200–3–18–.24 "Gasoline Dispensing Facilities—Stage I and Stage II Vapor Recovery" which will be acted on in a separate document and the following exceptions which are being granted conditional approval or are being disapproved. The approach taken for each of the submitted revisions is described below.

Conditional Approvals

EPA is conditionally approving the following revisions to the Tennessee SIP based upon Tennessee's commitment, in letters dated October 7, 1994, and December 16, 1994. To make the necessary revisions to correct the deficiencies identified below by January 1, 1996, Tennessee held public hearings on its committed revisions on October 19, 1994, and November 21, 1994. At the time of this document, the revisions committed to by Tennessee have been board approved. The conditional approval approach has been chosen to allow Tennessee the necessary time for the revisions to become State effective. If Tennessee fails to meet its commitment on or before January 1, 1996, the conditional approval will convert to a disapproval.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, EPA notified the State of Tennessee that EPA had made a finding of failure to submit required programs for the nonattainment area. The revised chapter 1200–3–18 "Volatile Organic Compounds" was submitted on May 18, 1993, to satisfy the VOC RACT Catch-Up requirement. The complete submittal stopped the sanctions clock which was started on January 15, 1993, and this conditional approval of the submittal will temporarily stop the Federal Implementation Plan (FIP) clock which was also started on January 15, 1993. The FIP clock will stop permanently if the State fulfills its commitment and the EPA takes final action fully approving the plan. The clock will resume where it stopped and a new sanctions clock will start if any of the following occurs where the conditional approval converts to a disapproval. One, if the State of Tennessee fails to submit anything to meet its commitment, the clock will resume on the date the letter from the EPA to the State finding that it had failed to meet its commitment and that the conditional approval has now been converted to a disapproval. Two, if the State of Tennessee submits an incomplete SIP submittal to meet its commitment, the FIP clock will resume on the date that the EPA sends a letter of incompleteness to the State. Three, if the State submits a SIP submittal for which the EPA takes a final disapproval action, the clock resumes on the effective date of the final action. Additional information on conditional approvals and their effect on sanctions and FIP clocks can be found in a memorandum entitled, "Impact of Conditional Approvals on Sanction and Federal Implementation Plan (FIP) Clocks", dated July 14, 1993, from D. Kent Berry, Acting Director, Air Quality Management Division (MD–15) to the EPA Regional Air Directors.

Rule 1200–3–18–.01(1) "Definitions": The definition of "volatile organic compound" lists perchloroethylene as one of the exempt compounds which have been determined to have negligible photochemical reactivity. While EPA has proposed to revise the federal definition of VOC to exclude perchloroethylene, 57 FR 48490 (October 26, 1992), EPA has not taken final action to do so. Therefore, the State must continue to regulate perchloroethylene as a VOC until EPA takes final action to exclude perchloroethylene as a VOC. EPA is conditionally approving the VOC definition due to the commitment letter referenced above. If Tennessee fails to delete perchloroethylene from the list of exempt compounds and EPA has not approved it as an exempt compound after the commitment date, EPA will disapprove the definition of VOC and the previously federally approved definition of VOC will become effective.

Rule 1200–3–18–.02 "General Provisions and Applicability": Tennessee's emission statement, given in paragraph (8), does not fully meet the requirements of section 182(a)(3)(B) of the CAA. If either VOC or NO_x is emitted at or above the minimum required reporting level, the other pollutant must be included in the emissions statement even if it is emitted at levels below the specified cutoffs. Also, in the last sentence of paragraph (8), it is required that the owner or operator certify the reports. The EPA requirement is that an "official" of the company certify the reports and since not all operators are officials, Tennessee must change "owner or operator" to "official." EPA is conditionally approving the emissions statement due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.06 "Handling, Storage, and Disposal of Volatile Organic Compounds (VOC's)": The phrase "minimum reasonably attainable" used in paragraph (1) must be defined in the general definitions section. EPA is conditionally approving this revision due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter.

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the conditional approval will convert to a disapproval.

Rule 1200–3–18–.33 "Manufacture of Synthesized Pharmaceutical Products": This rule was the subject of a public hearing on March 18, 1993, and was amended by the State after being officially submitted to EPA. The amended rule was to replace the rule 1200–3–18–.33, officially submitted on May 18, 1993, in its entirety. To date, EPA has not received the amended rule 1200–3–18–.33. EPA is granting conditional approval of rule 1200–3–18–.33 submitted on March 18, 1993, due to the commitment letter referenced above. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.38 "Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment": In paragraph (2) of this rule, the definition of "(In) light liquid service," sets the level of the concentration of pure component at 20%. This level must be set at 10% to be consistent with the CTG. EPA is granting conditional approval of this rule based on Tennessee's commitment to correct this deficiency. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.39 "Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins": The conversion factor K_1 in the equation in subparagraph (5)(a)(2) is not correct in the form expressed in English units. The correct conversion factor is 2.595×10^{-9} lb-mole/dscf. EPA is conditionally approving this revision due to the commitment letter referenced above which states that Tennessee will correct the deficiency and will use the correct conversion factor in the interim. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Rule 1200–3–18–.86 "Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons": The conversion factor of 8.638×10^{-4} that was included in the equation in subparagraph (11)(c) is incorrect and will result in a low bias in total hydrocarbon emission rates. If the stack flow rate is expressed in cubic feet per second, the conversion factor K_1 shall be 5.183×10^{-2}. EPA is conditionally approving this revision due to the commitment letter referenced above which states that Tennessee will correct the deficiency. If Tennessee fails to meet its commitment on or before the date in its commitment letter, the conditional approval will convert to a disapproval.

Disapprovals

EPA is disapproving the following revisions to chapter 1200–3–18 of the Tennessee SIP. Section 110(l) of the CAA provides that EPA shall not approve a SIP revision if the revision interferes with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the CAA. Section 110(k) of the CAA addresses the situation in which an entire submittal, or a separable portion of a submittal, meets all applicable requirements of the CAA. In the case where a separable portion of the submittal meets all of the applicable requirements, partial approval may be used to approve that part of the submittal and disapprove the remainder. Tennessee has begun rulemaking to correct these deficiencies. In the meantime, the rules are disapproved as described below.

Rule 1200–3–18–.03 "Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources": As stated in comment #17 in a letter dated December 14, 1993, from EPA to Tennessee, subparagraph (2)(b) must state that the alternate longer period be approved by EPA in addition to the Technical Secretary. Since Tennessee did not correct this deficiency, EPA is disapproving the proposed rule. Therefore, the federally enforceable version of this rule will continue to be the last federally approved rule which is 1200–3–18–.01(5) as approved in 59 FR 18310 on April 18, 1994.

Rules 1200–3–18–.20 "Coating of Miscellaneous Metal Parts"; 1200–3–18–.79 "Other Facilities that Emit Volatile Organic Compounds (VOC)": The exemption in subparagraphs 1200–3–18–.20(1)(b)(2)(vii) and 1200–3–18–.79(1)(d) is not consistent with EPA's guidance on final repair (see Control of Volatile Organic Emissions from Stationary Sources, Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA 450/2–77–008, May 1977), which recommends a maximum VOC emission rate of 4.8 lbs/gal. Usage of 4.0 gal/day of air-drying materials, as specified in the State rule, corresponds with a VOC emission rate of approximately 25 lbs/day, which is more than five times EPA's recommended rate. Therefore, EPA is disapproving subsections 1200–3–18–.20(1)(b)(2)(vii) and 1200–3–18–.79(1)(d).

Approvals

Except as noted above, EPA is approving the following revisions to Tennessee chapter 1200–3–18 "Volatile Organic Compounds."

1200–3–18–.01 Definitions: Tennessee consolidated definitions previously contained throughout the chapter and arranged all definitions in alphabetical order.

1200–3–18–.02 General Provisions and Applicability: This section was revised by moving the compliance certification and recordkeeping requirements to sections 1200–3–18–.03 and .04, adding additional provisions consistent with the EPA's draft VOC Model Rule and adding the emission statement for VOC's.

1200–3–18–.03 Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources and 1200–3–18–.04 Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating and Non-Printing Sources: These sections were added to describe in detail the compliance certification, recordkeeping and/or reporting requirements that had previously been contained in General Provisions and Applicability.

1200–3–18–.06 Handling, Storage, and Disposal of Volatile Organic Compounds (VOC's): This section was added to the VOC Chapter to provide a regulation for the handling, storage, and disposal of VOC's.

1200–3–18–.07 Source Specific Compliance Schedules: This section was added to give provisions by which an owner or operator of an existing source can petition for a source-specific compliance schedule.

1200–3–18–.08–.10 These sections were revised to read "reserved."

1200–3–18–.22 Bulk Gasoline Plants: This rule was amended to be consistent with EPA's draft VOC Model Rule and expanded applicability to the entire Nashville nonattainment area.

1200–3–18–.23 Bulk Gasoline Terminals: This rule was revised to be consistent with EPA's draft VOC Model Rule which modified the test methods and procedures and extended the applicability to all counties in the Nashville nonattainment area.

1200–3–18–.25 Leaks from Gasoline Tank Trucks: This rule was revised to be consistent with EPA's draft VOC Model Rule which extended the applicability from trucks loaded or unloaded in Davidson and Shelby County to any gasoline truck equipped for gasoline vapor collection.

1200–3–18–.26 Petroleum Refinery Sources & 1200–3–18–.27 Leaks from Petroleum Refinery Equipment: These rules were revised to be consistent with EPA's draft VOC Model Rule which clarified the applicability.

1200–3–18–.28 Petroleum Liquid Storage in External Floating Roof Tanks & 1200–3–18–.29 Petroleum Liquid Storage in Fixed Roof Tanks: These rules were revised to be consistent with EPA's draft VOC Model Rule which clarified the recordkeeping requirements.

1200–3–18–.31 Solvent Metal Cleaning: This rule was revised to be consistent with EPA's draft VOC Model Rule which lowered the applicability threshold and clarified the compliance requirements.

1200–3–18–.32 Cutback and Emulsified Asphalt: This rule was revised to eliminate any exemptions to this rule.

1200–3–18–.35 Graphic Arts Systems: This rule was revised to include weighted average limitations and to clarify recordkeeping and reporting requirements.

1200–3–18–.79 Other Facilities that Emit Volatile Organic Compounds (VOC): This rule applies to all VOC sources in the Nashville nonattainment that have the potential to emit 100 tons or more per year.

The following rules were added to the VOC chapter to provide regulations for additional source categories.

1200–3–18–.11 Automobile and Light-Duty Truck Coating Operations
1200–3–18–.30 Leaks from Natural Gas/Gasoline Processing Equipment
1200–3–18–.34 Pneumatic Rubber Tire Manufacturing
1200–3–18–.36 Petroleum Solvent Dry Cleaning
1200–3–18–.38 Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment
1200–3–18–.39 Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins
1200–3–18–.40 Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry
1200–3–18–.86 Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons
1200–3–18–.87 Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS)

The following rules were revised consistent with the EPA's draft VOC Model Rule. The applicability thresholds were changed from sources having the potential to emit 25 tons per year or greater in Davidson, Hamilton, and Shelby Counties, and 100 tons per year or greater in other counties to those whose maximum theoretical emissions of 10 tons per year or greater in the five-county Nashville nonattainment area, 25 tons per year or above in Hamilton or Shelby County and 100 tons per year or greater in all other counties.

1200–3–18–.12 Can Coating
1200–3–18–.13 Coil Coating
1200–3–18–.14 Paper and Related Coating
1200–3–18–.15 Fabric Coating
1200–3–18–.16 Vinyl Coating
1200–3–18–.17 Coating of Metal Furniture
1200–3–18–.18 Coating of Large Appliances
1200–3–18–.19 Coating of Magnet Wire
1200–3–18–.20 Coating of Miscellaneous Metal Parts
1200–3–18–.21 Coating of Flat Wood Paneling

Sections 1200–3–18–.05, 1200–31–18–.37, 1200–3–18–.41 through .78 and 1200–3–18–.88 through .99 are reserved.

The following rules were added to provide for test methods and compliance procedures.

1200–3–18–.80 Test Methods and Compliance Procedures: General Provisions
1200–3–18–.81 Test Methods and Compliance Procedures: Determining the VOC Content of Coatings and Inks
1200–3–18–.82 Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.
1200–3–18–.83 Test Methods and Compliance Procedures: Emissions Capture and Destruction or Removal Efficiency and Monitoring Requirements
1200–3–18–.84 Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device
1200–3–18–.85 Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOC)

Final Action

EPA is approving the submitted revisions to the Tennessee SIP with the exception of those rules discussed in the Supplementary section of the notice which are either conditionally approved or disapproved. The revised chapter 1200–3–18 "Volatile Organic Compounds" provides essentially the same requirements as the previous chapter 1200–3–18 with some sections being more stringent as described above. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 28, 1995, unless, by March 29, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 28, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA

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forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing.

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2219 is revised to read as follows:

§ 52.2219 Identification of plan—conditional approval.

(a) EPA is conditionally approving the following revisions to the Tennessee SIP contingent on the State of Tennessee meeting the schedule to correct deficiencies associated with the following rules which was committed to in letters dated October 7, 1994, and December 16, 1994, from the State of Tennessee to EPA Region IV.

(1) Rule 1200–3–18–.01 Definitions: Subparagraph (1), the definition of "volatile organic compound," effective April 22, 1993.

(2) Rule 1200–3–18–.02 General Provisions and Applicability: Paragraph (8) effective April 22, 1993.

(3) Rule 1200–3–18–.06 Handling, Storage and Disposal of Volatile Organic Compounds (VOC's): Paragraph (1) effective April 22, 1993.

(4) Rule 1200–3–18–.39 Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins: Subparagraph (5)(a)(2) effective April 22, 1993.

(5) Rule 1200–3–18–.86 Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons: Subparagraph (11)(c) effective April 22, 1993.

(b) [Reserved]

(c) [Reserved]

3. Section 52.2220 is amended by adding paragraph (c)(123) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(123) A revised chapter 1200–3–18 "Volatile Organic Compounds" was submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on May 18, 1993, to replace the current chapter 1200–3–18 in the Tennessee SIP. This chapter had been revised to meet the requirements of the 1990 Clean Air Act Amendments commonly referred to as the "VOC RACT Catch-Up" requirements. Rule 1200–3–18–.28 "Perchloroethylene Dry Cleaners" which was federally approved in 59 FR 18310 on April 18, 1994, will remain effective.

(i) Incorporation by reference.

(A) Revisions to the State of Tennessee regulations which were effective on April 22, 1993.

(1) Chapter 1200–3–18 "Volatile Organic Compounds," except for subchapter 1200–3–18–.24, subparagraph 1200–3–18–.03 (2)(b), subparagraph 1200–3–18–.20 (1)(b)(2)(vii), and subparagraphs 1200–3–18–.79 (1)(a)(3), (1)(c), and (1)(d).

(ii) Other material. None.

* * * * *

4. Section 52.2225 is amended by revising paragraph (b) to read as follows:

§ 52.2225 VOC rule deficiency correction.

* * * * *

(b) Revisions to chapter 1200–3–18 "Volatile Organic Compounds" were submitted by Tennessee on May 18, 1993, to meet the requirements added by the 1990 Clean Air Act Amendments (CAAA) commonly referred to as the "VOC RACT Catch-up " requirements. The following deficiencies remain in Tennessee chapter 1200–3–18 and must be corrected.

(1) Rule 1200–3–18–.01 (1): The definition of "volatile organic compound" must be revised to delete perchloroethylene from the list of compounds that have negligible photochemical reactivity.

(2) Rule 1200–3–18–.02 (8): Tennessee must revise this paragraph to provide that an official of the company certify the reports instead of the owner or operator. This paragraph must also be amended to require NO_x emissions to be reported.

(3) Rule 1200–3–18–.06 (1): The term "minimum reasonably attainable" must be explained or defined.

(4) Rule 1200–3–18–.33: This rule for the manufacture of synthesized pharmaceutical products has been amended by the State since the official submittal. The State of Tennessee has committed to submit the revised rule to EPA by January 1, 1996.

(5) Rule 1200–3–18–.38: This rule for leaks from synthetic organic chemical, polymer, and resin manufacturing equipment sets the level of concentration of pure component at 20%. This level must be changed to 10%.

(6) Rules 1200–3–18–.39 (5)(a)(2) and 1200–3–18–.86 (11)(c): The conversion factors must be corrected.

* * * * *

[FR Doc. 95–4539 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–39

[FIRMR Amendment 4]

RIN 3090–AF17

Amendment of FIRMR To Remove Provisions for Using GSA Nonmandatory Schedule Contracts for FIP Resources

AGENCY: Information Technology Service, GSA.

ACTION: Final rule.

SUMMARY: This rule revises Federal Information Resources Management Regulation (FIRMR) provisions regarding Federal Information Processing (FIP) multiple award schedule (MAS) contract orders. Specifically, the rule removes the requirement to synopsize orders in excess of $50,000 placed against MAS contracts and incorporates the new guiding principles for FIP MAS orders, including a $2,500 "micro-purchase" threshold. The micro-purchase procedures will speed up the acquisition process for low dollar, low risk FIP acquisitions. These changes are examples of GSA's ongoing efforts to improve the MAS program and streamline the procurement process. GSA strongly encourages agencies to use the schedules program as a proven method to purchase commercial goods in a manner that is both time and cost effective.

DATES: This rule is effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Steele, FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking was published in the **Federal Register** on February 23, 1994. This notice removed all provisions for using GSA nonmandatory schedule contracts for FIP resources from the FIRMR. Thirty-four (34) comments were received on the proposed rule. All comments were considered, and, where possible, incorporated into the final rule. For example, several respondents requested that the FIP MAS procedures remain in the FIRMR to ensure that all ordering activities and schedule vendors would know where to find them. Respondents also suggested incorporation of the MAS "guiding principles" into the FIRMR procedures. This rule has been revised to reflect their concerns.

(2) To address recurring issues of concern to GSA customer agencies, the General Accounting Office (GAO), and MAS contractors, GSA initiated a MAS Improvement Project in October 1990. GSA prepared a uniform set of "guiding principles" to simplify and expedite the ordering process for all types of MAS buys. According to a recent GAO report, agencies state that a reason for failing to comply with the MAS ordering procedures is that it is too time-consuming and difficult. One major objective of the MAS Improvement Project consistent with those concerns was to streamline and unify the procedures for ordering products and services provided under the MAS program. In line with this objective, this rule removes the FIRMR requirement that agencies synopsize orders valued at $50,000 or higher that are placed against FIP MAS contracts. Since the FIP MAS contracts are now indefinite delivery/indefinite quantity contracts, there is no longer a legal requirement to synopsize these orders.

GAO has also previously suggested that the ordering procedures for low dollar value items be less stringent than the procedures which apply to high dollar value orders. A micropurchase threshold of $2,500 is incorporated in the guiding principles which will alleviate that situation. Below the $2,500 threshold, agencies are allowed to place an order to any FIP schedule contractor without seeking competition. Above $2,500, agencies must consider reasonably available information about products offered under MAS contracts to ensure that the selection meets the agency's needs at the lowest overall cost. The guiding principles also reflect that MAS contractors no longer are required to pass on a price reduction extended to only one agency for a specific order to all MAS users. This rule incorporates GSA's guiding principles for MAS acquisitions.

(3) Explanation of the specific changes being made by this issuance are shown below:

(a) Subpart 201–39.5 is removed to delete the synopsizing requirements related to the FIP MAS contracts.

(b) Section 201–39.601–2 is removed since synopsizing is no longer required.

(c) Section 201–39.803–3 is revised to add the MAS "guiding principles" which streamline and simplify the procedures for using the FIP MAS contracts.

(d) The FIRMR Index reference is revised to change the phrase "GSA nonmandatory schedule contract" to "GSA nonmandatory FIP schedule contract" to differentiate the FIP MAS contracts from the newly nonmandatory FSS MAS contract programs.

(4) This rule was submitted to, and approved by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review. The rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (U.S.C. 601 et seq.).

(5) The Paperwork Reduction Act does not apply because the FIRMR changes do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

For the reasons set forth in the preamble, GSA is amending 41 CFR Part 201 as follows:

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

Subpart 201–39.5—[Reserved]

2. Subpart 201–39.5 is removed and reserved.

§ 201–39.601–2 [Removed and reserved]

3. Section 201–39.601–2 is removed and reserved.

4. Section 201–39.803–3 is revised to read as follows:

§ 201–39.803–3 Procedures.

(a) Prior to selecting a GSA nonmandatory FIP schedule contract and placing an order, the agency shall justify any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment).

(b) Ordering activities can place orders of $2,500 or less with any GSA nonmandatory FIP schedule contractor. GSA has already determined the prices of items under these contracts to be fair and reasonable.

(c) To reasonably ensure that a selection represents the best value and meets the agency's needs at the lowest overall cost alternative, before placing a MAS order of more than $2,500, an ordering activity should—

(1) Consider reasonably available information about products offered under Multiple Award Schedule contracts; this standard is met if the ordering activity does the following:

(i) Considers products and prices contained in any GSA MAS automated information system (e.g., Information Resources Management—On-line Schedules System); or

(ii) If automated information is not available, reviews at least three (3) price lists.

(2) In selecting the best value item at the lowest overall cost (the price of the item plus administrative costs), the ordering activity may consider such factors as—

(i) Special features of one item not provided by comparable items which are required in effective program performance;

(ii) Trade-in considerations;

(iii) Probable life of the item selected as compared with that of a comparable item;

(iv) Warranty conditions; and

(v) Maintenance availability.

(3) Give preference to the items of small business concerns when two or more items at the same delivered price will meet an ordering activity's needs.

(d) MAS contractors will not be required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order. There may be circumstances where an ordering activity finds it advantageous to request a price reduction, such as where the ordering activity finds that a schedule product is available elsewhere at a lower price, or where the quantity of an individual order clearly indicates the potential for obtaining a reduced price.

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(e) Ordering activities should document orders of $2,500 or less by identifying the contractor the item was purchased from, the item purchased, and the amount paid. For orders over $2,500, MAS ordering files should be documented in accordance with internal agency practices. Agencies are encouraged to keep documentation to a minimum.

(f) Requirements or orders shall not be fragmented in order to circumvent the applicable MOL.

5. The reference to "GSA nonmandatory schedule contract" in the FIRMR Index is revised to "GSA nonmandatory FIP schedule contract."

Dated: January 19, 1995.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95-4270 Filed 2-24-95; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7612]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA, Energy.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646-3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Connecticut:				
Darien, town of, Fairfield County	090005	January 19, 1973, Emerg.; January 2, 1981, Reg.; March 2, 1995, Susp.	3-2-95	March 2, 1995.
Ellington, town of, Tolland County	090158	July 29, 1975, Emerg.; March 15, 1982, Reg.; March 2, 1995, Susp.	3-2-95	Do.
Killingly, town of, Windham County	090136	September 5, 1975, Emerg.; January 3, 1985, Reg.; March 2, 1995, Susp.	3-2-95	Do.
New Britain, city of, Hartford County	090032	August 22, 1973, Emerg.; July 16, 1981, Reg.; March 2, 1995, Susp.	3-2-95	Do.
Suffield, town of, Hartford County	090038	June 28, 1978, Emerg.; August 15, 1979, Reg.; March 2, 1995, Susp.; October 28, 1983, Rein.; March 16, 1995, Susp.	3-2-95	Do.
Region VI				
Louisiana:				
Grand Isle, city of, Jefferson Parish	225197	August 28, 1970, Emerg.; October 30, 1970, Reg.; March 23, 1995, Susp.	3-23-95	March 23, 1995.
Gretna, city of, Jefferson Parish	225198	August 14, 1970, Emerg.; June 18, 1971, Reg.; March 23, 1995, Susp.	3-23-95	Do.
Harahan, city of, Jefferson Parish	225200	April 19, 1973, Emerg.; June 15, 1973, Reg.; March 23, 1995, Susp.	3-23-95	Do.
Jean Lafitte, town of, Jefferson Parish	220371	October 1, 1971, Reg.; March 23, 1995, Susp	3-23-95	Do.
Jefferson Parish, unincorporated areas	225199	July 10, 1970, Emerg.; October 1, 1971, Reg.; March 23, 1995, Susp.	3-23-95	Do.
Kenner, city of, Jefferson Parish	225201	November 13, 1970, Emerg.; June 25, 1971, Reg.; March 23, 1995, Susp.	3-23-95	Do.
Westwego, city of, Jefferson Parish	220094	April 27, 1973, Emerg.; June 28, 1976, Reg.; March 23, 1995, Susp.	3-23-95	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 21, 1995.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95-4758 Filed 2-24-95; 8:45 am]

BILLING CODE 6718-21-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 73, and 74

[MM Docket No. 92-168]

Broadcast Services; Low Power Television, and Television and FM Radio Translator License Renewal

AGENCY: Federal Communications Commission.

ACTION: Final rule; confirmation of effective date.

SUMMARY: In the Report and Order in MM Docket No. 92-168 (59 FR 63049, December 7, 1994, Column three, FR Doc 94-28768) the Commission adjusted the renewal schedule of low power television, FM radio translator, and television translator stations to correspond with that of full service radio or television stations operating in the same State, eliminated FCC Form 348, and modified FCC Form 303-S. The instant document announces that necessary Office of Management and Budget approval for these amendments was received on December 20, 1994, and the actions taken in the Report and Order thus became effective on that date.

EFFECTIVE DATES: The regulation amending 47 CFR parts 1, 73 and 74, published at 59 FR 63049, December 7, 1994, is effective on December 20, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, 202-776-1648, or Rita McDonald, Mass Media Bureau, 202-739-0753.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95-4555 Filed 2-24-95; 8:45 am]

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47 CFR Part 73

[MM Docket No. 90–139; RM–7149 and 7484]

Radio Broadcasting Services; Oshkosh, Winneconne and Townsend, Wisconsin and Menominee, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C3 for Channel 280A at Oshkosh, Wisconsin, modifies the license for Station WMGV(FM) and changes the community of license from Oshkosh to Winneconne, Wisconsin, substitutes Channel 279C3 for Channel 280A at Menominee, Michigan, and modifies the license for Station WHYB to specify operation on the higher class channel, in response to a petition filed by Value Radio Corp and CJL Broadcasting, Inc. *See* 55 FR 11412, March 28, 1990. The coordinates for Channel 280C3, Winneconne, are 44–15–09 and 88–44–48. Canadian concurrence has been obtained for Channel 279C3 at Menominee at coordinates 45–06–21 and 87–46–43. The counterproposal filed by Independence Broadcasting Wisconsin Corp. requesting allotment of Channel 278C3 to Townsend, Wisconsin, has been withdrawn. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 7, 1995.

FOR FURTHER INFORMATION CONTACT: . Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 90–139, adopted February 10, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 280A, Oshkosh, and by adding Winneconne, Channel 280C3.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 280A and adding Channel 279C3, Menominee.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4694 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 76

[MM Docket 92–266; FCC 95–43]

Cable Television Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On its own motion, the Federal Communication Commission (the "Commission") has adopted a Ninth Order on Reconsideration in order to allow small cable operators and low-price systems that have been provided with transition relief to adjust their transition rates to reflect increases in inflation. Between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. In the future, all transition relief systems may join other operators by making inflation adjustments on an annual basis, no earlier than October 1, of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Cable Services Bureau (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Ninth Order on Reconsideration in MM Docket No. 92–266, FCC 95–43, adopted February 3, 1995 and released February 6, 1995.

The complete text of this Ninth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS, Inc.") at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of the Ninth Order on Reconsideration

A. Background

In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266 ("Rate Order"), 58 FR 29736 (May 21, 1993), the Commission developed a benchmark formula for the purpose of establishing initial rates for regulated services. Under the benchmark approach, regulated cable systems were required to calculate an applicable benchmark, an estimate of the rate that a cable system with similar characteristics, but subject to effective competition, would be permitted to charge. Cable systems whose rates exceeded the applicable benchmark were generally required to reduce their rates either to the benchmark or by 10%, whichever reduction was less. This 10% "competitive differential" represented the average difference that the Commission determined existed between the rates of competitive and noncompetitive systems.

In the Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking ("Second Reconsideration Order"), 59 FR 17943 (April 15, 1994), the Commission refined the econometric model, recalculated the competitive differential, and concluded that a competitive differential of 17% more accurately estimates the difference between effectively competitive and noncompetitive cable rates. Accordingly, the Commission required most systems with rates above the benchmark to either reduce their regulated rates to a level that represented their September 30, 1992 regulated revenues, reduced by 17% (mitigated by annual inflation increases, changes in external costs and changes in the number of programming channels) or to submit a cost-of-service showing supporting higher rates.

The Commission granted two classes of cable operators transition relief, by not requiring them to implement the full 17% reduction rate. The first category of systems that were provided with transition relief is systems owned by "small operators," defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator. Systems owned by small operators were not required to reduce rates by 17%. Rather these operators were allowed to use the permitted rate charged on March 31, 1994 to establish initial restructured rates, and adjust accordingly to reflect external costs until the Commission completed its study of prices and costs experienced by small operators.

The second category of systems that were provided with transition relief is systems that charge relatively low prices for regulated services. Low-price systems are defined as systems (1) whose March 31, 1994 rates were below the benchmark rate, or (2) whose March 31, 1994 rates were above their March 31, 1994 benchmark rates, but whose March 31, 1994 full reduction rates are below their March 31, 1994 benchmark rates as determined under FCC Form 1200. During the transition period, systems whose March 31, 1994 rates were below the benchmark rate had their rates capped at March 31, 1994 levels. Systems whose March 31, 1994 rates were above the benchmark, but whose full reduction rates were below the benchmark were only required to reduce their rates to, but not below, the benchmark.

The Commission stated that it would not require small cable operators and low-price systems that were provided with transition relief to make full competitive rate reductions until the Commission collected and analyzed data about such operators' prices and costs, and determined whether the competitive rate reduction was appropriate.

Systems entitled to transition relief have been permitted to increase their rates to reflect increases in external costs and a per channel adjustment when increasing the number of channels. The Commission decided not to allow such systems, however, to increase their transition rates to reflect increases in inflation until the transition rate equals their full reduction rate. The Commission determined that because the full reduction rate rises with inflation, as well as with changes in external costs and channel changes, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided, therefore, that if a system's transition rate and the full reduction rate became equal, that system would be entitled to take advantage of inflation adjustments.

The Commission also stated that after it has determined whether it should require transition relief operators to reduce their rates in accordance with an appropriate competitive differential, those systems will be entitled to an aggregate inflation adjustment equal to the GNP–PI inflation adjustments for the period beginning October 1, 1992 through the most recent June 30. For those systems that have already received some inflation adjustment, because their hypothetical full reduction rate exceeded their transition rate, the Commission stated that the system will receive the net of the aggregate inflation adjustment minus any inflation adjustment already received. The Commission found that such systems will be eligible for additional inflation adjustments on an annual basis, but no earlier than September 30 of each year to reflect the final GNP–PI through June 30 of the applicable year.

B. Discussion

On its own motion, the Commission found that low-price systems and small operators that have been provided with transition relief should no longer be prevented from adjusting their rates to reflect changes in inflation. In the Second Order on Reconsideration, 59 FR 17943 (April 15, 1994), the Commission decided to defer implementing the inflation adjustment for transition relief systems because it was not yet requiring them to reduce their rates by the competitive differential. The Commission decided that it would provide transition relief systems with the opportunity to make inflation adjustments after it developed a better picture of the price/cost profiles of these systems and determined the appropriate competitive differential for such systems. In making the decision, the Commission stated that it expected to complete the collection of cost/price data within nine months.

Because the Commission has not yet completed the collection of this data and nearly ten months have passed since the Commission released the Second Order on Reconsideration, the Commission finds that it would be unfair to further delay implementation of inflation adjustments for transition relief systems. The Commission is concerned that a further delay in permitting transition relief systems to make inflation adjustments could be particularly burdensome on small operators because many small operators may not have the financial resources to withstand the impact of not being able to make inflation adjustments.

The Commission also finds that low-price systems should not be required to experience any further delays in implementing inflation adjustments. In the Second Order on Reconsideration, the Commission found that because their prices are significantly lower than those charged by most noncompetitive systems, low price systems may face unusual demand, costs or other influences that were not captured in the Commission's analysis. A further delay in allowing low-price systems to make inflation adjustments may, therefore, impose a substantial burden upon those operators.

Accordingly, between April 1, 1995 and August 31, 1995, cable operators that have been afforded transition relief may adjust their rates to reflect the net of a 5.21% inflation adjustment, minus any inflation adjustments they have already received. This adjustment accounts for the 3% inflation that regulated cable operators were permitted to recover for the September 30, 1992 to September 30, 1993 period, and the 2.15% inflation factor that operators were permitted to recover between October 1, 1994 and August 31, 1995 for the October 1, 1993 to June 30, 1994 period.

With one exception, however, transition relief systems will not receive the full 5.21% inflation adjustment because, under the old rules, they received an inflation adjustment from September 30, 1992 to the date they were subject to regulation for the purpose of establishing their initial rates prior to May 15, 1994. The exception is for most low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark. When these systems set their rates for the period after May 15, 1994, they lost the inflation adjustment they received prior to May 15, 1994, because they were required to reduce their rates to the benchmark. Therefore, they will be permitted to adjust their rates to reflect the full 5.21% inflation factor. If, however, their actual post-May 15, 1994 rate reduction was less than their earlier inflation adjustment, they will be permitted to receive the 5.21% inflation adjustment minus the difference between their inflation adjustment and their actual post-May 15, 1994 rate reduction.

The Commission determined in the Second Order on Reconsideration that, because the full reduction rate rises with inflation, a transition rate system's hypothetical full reduction rate may eventually exceed the transition rate. The Commission decided that a transition rate system will be entitled to take an inflation adjustment once the hypothetical full reduction rate and transition rate become equal. Therefore, those transition relief systems that have already received this inflation adjustment, because their hypothetical full reduction rate exceeded their transition rate, will only be allowed to receive the net of the aggregate inflation adjustment minus any inflation adjustment already received.

With the inflation adjustment they received prior to May 15, 1994 and the inflation adjustment the Commission is

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granting them now, transition relief systems will be able to adjust their rates to reflect the same inflation adjustment that the Commission has granted all other operators. Moreover, in the future, all transition relief systems may join other cable operators in making inflation adjustments on an annual basis, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's final analysis with respect to the Ninth Order on Reconsideration is as follows:

Need and purpose of this action. The Commission, in compliance with section 3 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. 543 (1992), pertaining to rate regulation, adopts revised rules and procedures intended to ensure that cable services are offered at reasonable rates with minimum regulatory and administrative burdens on cable entities.

Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Report and Order and Further Notice of Proposed Rulemaking.

Significant alternatives considered and rejected. In the course of this proceeding, petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission has attempted to accommodate the concerns expressed by these parties. In this order, the Commission is providing relief to small systems and low-price systems by permitting them to adjust their transition rates with an inflation adjustment.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and are found to impose a new information collection requirement on the public. Implementation of the new requirement will be subject to approval by the Office of Management and Budget.

Ordering Clauses

Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Ninth Order on Reconsideration, are adopted and part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below.

It is further ordered that the Secretary shall send a copy of this Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

It is further ordered that the requirements and regulations established in this decision shall become effective on April 1, 1995.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Title 47, Part 76 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (d)(2) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming service tiers.

* * * * *

(d) * * *

(2) *Inflation Adjustments.* The residual component of a system's permitted charge may be adjusted annually for inflation. The annual inflation adjustment shall be based on inflation occurring from June 30 of the previous year to June 30 of the year in which the inflation adjustment is made, except that the first annual inflation adjustment shall cover inflation from September 30, 1993 until June 30 of the year in which the inflation adjustment is made. The adjustment may be made after September 30, but no later than August 31, of the next calendar year. Adjustments shall be based on changes in the Gross National Product Price Index as published by the Bureau of Economic Analysis of the United States Department of Commerce. Cable systems that establish a transition rate pursuant to paragraph (b)(4) of this section may not begin adjusting rates on account of inflation before April 1, 1995. Between April 1, 1995 and August 31, 1995 cable systems that established a transition rate may adjust their rates to reflect the net of a 5.21% inflation adjustment minus any inflation adjustments they have already received. Low price systems that had their March 31, 1994 rates above the benchmark, but their full reduction rate below the benchmark will be permitted to adjust their rates to reflect the full 5.21% inflation factor unless the rate reduction was less than the inflation adjustment received on an FCC Form 393 for rates established prior to May 15, 1994. If the rate reduction established by a low price system that reduced its rate to the benchmark was less than the inflation adjustment received on an FCC Form 393, the system will be permitted to receive the 5.21% inflation adjustment minus the difference between the rate reduction and the inflation adjustment the system made on its FCC Form 393. Cable systems that established a transition rate may make future inflation adjustments on an annual basis with all other cable operators, no earlier than October 1 of each year and no later than August 31 of the following year to reflect the final GNP–PI through June 30 of the applicable year.

* * * * * *

[FR Doc. 95–4554 Filed 2–24–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4292; I.D. 022195E]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: February 22, 1995, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear. The quota for vessels using hook-and-line gear was reached and the commercial fishery for vessels using such gear was closed December 20, 1994 (59 FR 66276, December 23, 1994). On February 1, 1995, the fishery was reopened by an emergency interim rule (60 FR 7134, February 7, 1995) that revised the 1994–95 fishing year commercial quota to 732,500 lb (332,256 kg) for vessels using hook-and-line gear and imposed a daily possession/landing limit of 125 king mackerel for such vessels.

Under the provisions of the emergency interim rule (50 CFR 642.32(c)), NMFS is required to close the commercial fishery for king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone when the revised quota is reached, or is projected to be reached, by publishing notification in the **Federal Register**. NMFS has determined that the revised commercial quota of 732,500 lb (332,256 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the Florida west coast sub-zone was reached on February 21, 1995. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 12:01 a.m., local time, February 22, 1995, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to (1) the Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48″ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994 (59 FR 49356, September 28, 1994). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on February 3, 1995 (60 FR 7716, February 9, 1995). Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast sub-zone through June 30, 1995.

Except for a person aboard a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ Gulf group king mackerel from the closed zones. A person aboard a charter vessel may continue to fish for king mackerel in the closed zones under the bag limit set forth in § 642.24(a)(1)(i), provided the vessel is under charter and the vessel has an annual charter vessel permit, as specified in § 642.4(a)(2). A charter vessel with a permit to fish on a commercial allocation is under charter when it carries a passenger who fishes for a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 642.32(c) and is exempt from under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4651 Filed 2–21–95; 5:02 pm]

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Proposed Rules

Federal Register

Vol. 60, No. 38

Monday, February 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV–95–955–1]

Vidalia Onions Grown in Georgia; Order Directing That a Referendum be Conducted

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of Vidalia onions to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from March 1 through March 31, 1995. To vote in this referendum, growers must have been producing Vidalia onions during the period January 1 through August 15, 1994.

ADDRESSES: Copies of the marketing order may obtained from the office of the referendum agent at P.O. Box 2276, Winter Haven, Florida, 33883–2276, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: William J. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, Florida, 33881–2276; telephone: (813) 299–4770, or Shoshana Avrishon, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 955 [7 CFR Part 955], hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted during the period March 1 through March 31, 1995, among Vidalia onion producers in the production area. Only producers that were engaged in the production of Vidalia onions during the period of January 1 through August 15, 1994, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of Vidalia onions represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider other relevant information concerning the operation of the order; the order's relative benefits and disadvantages to producers, handlers, and consumers; and whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0160 for Vidalia onions. It has been estimated that it will take an average of 10 minutes for each of the approximately 250 producers of Vidalia onions to cast a ballot. Participation is voluntary. Ballots postmarked after March 31, 1995, will not be included in the vote tabulation.

William J. Pimental and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: February 21, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–4740 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 310, 318, 320, 325, 326, 327, and 381

[Docket No. 95–005N]

Information Briefings: Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Announcement of outreach activities.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing a series of public outreach activities to provide information on the proposed rule titled "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" that was published on February 3, 1995. These activities consist of six briefings on the proposal; three scientific/technical conferences; and one two-day public hearing. These activities are intended to assist the public in understanding the proposed rule and in providing comments on the proposed rule.

DATES: See Supplementary Information for dates of hearings.

ADDRESSES: See Supplementary Information for locations of hearings.

FOR FURTHER INFORMATION CONTACT: Dan Vitiello, Director, Planning and Analysis, Planning Office, Policy, Evaluation and Planning Staff, FSIS, USDA, Room 6904 Franklin Court, Washington, DC 20250, (202) 501–7138.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule titled "Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems" (60 FR 6774). The proposal provides a number of requirements applicable to Federal and State-inspected meat and poultry establishments. The proposed requirements are designed to reduce the occurrence and numbers of pathogenic organisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

Information Briefings

To assist the public in understanding the proposal, FSIS is holding six briefings as follows. Each briefing will run from 1:00 p.m. to 5:00 p.m. Any person who wishes to attend any of the information briefings should contact the FSIS Planning Office at (202) 501–7138.

Date	City/state	Location	Contact
Mar. 7	San Francisco, Oakland, CA	Henry J. Kaiser Convention Center, 10 Tenth Street, Oakland, CA 94607.	Linda Russell, (202) 501–7138.
Mar. 14	Dallas, TX	Dallas Grand Hotel, 1914 Commerce St., Dallas, TX 75201, (214) 747–7000; 1–800–421–0011.	Dan Vitiello (202) 501–7138.
Mar. 16	Chicago, IL	Holiday Inn O'Hare Airport, 5440 North River Rd., Rosemont, IL 60018, (708) 671–6350.	Ken Elane, (202) 501–7138.
Mar. 21	Atlanta, GA	Richard Russell Federal Building, 75 Spring St., SW., Atlanta, GA 30303.	Ron Niemeyer, (202) 501–7138.
Mar. 23	New York, NY	Federal Building, 26 Federal Plaza, Room 305, New York, NY 10278.	Ken Elane, (202) 501–7138.
Mar. 30	Washington, DC	Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418–1234.	Linda Russell (202) 501–7138.

The format for each briefing will be the same:

1. A panel of subject matter specialists will explain various aspects of the proposal.
2. Attendees will submit any questions they have, in writing.
3. Panelists will answer the questions.

Scientific/Technical Conferences

FSIS also plans to hold three conferences, each addressing a specific scientific/technical issue. Information on each specific conference will be published separately at a later date.

The three conferences are scheduled to be held as follows:

Issue: "New Technology to Improve Food Safety"

April 12–13, Chicago, IL, Holiday Inn O'Hare Airport, 5440 North River Road, Rosemont, IL 60018, (708) 671–6350

Issue: "The Role of Microbiological Testing in Verifying Food Safety"

May 1–2, Philadelphia, PA, Holiday Inn-Independence Mall, Fourth and Arch Streets, Philadelphia, PA 19106, (215) 923–8860

Issue: "An Evaluation of the Role of Microbiological Criteria in Establishing Food Safety Performance Standards in Meat and Poultry Products"

May 18–19, Washington, DC, Georgetown University, Conference Center, 3800 Reservoir Road, Washington, DC 20007, (202) 687–3200

Public Hearing

Lastly, FSIS is planning to hold a two-day public hearing for those commenters who wish to submit oral comments in response to the proposed rule. (Oral comments may also be provided to FSIS by contacting the persons listed in the proposed rule). The public hearing will be held:

May 30–31, Washington, DC, Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20007, (202) 687–3200

Done at Washington, DC, on: February 17, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–4498 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 94N–0421]

RIN 0905–AE63

Current Good Manufacturing Practice for Finished Pharmaceuticals; Positron Emission Tomography

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to permit manufacturers of positron emission tomography (PET) radiopharmaceuticals to apply to the agency for approval of an exception or alternative to the requirements of the current good manufacturing practice (CGMP) regulations. This action is intended to relieve PET manufacturers, nearly all of whom are small entities, from regulations that might result in unsafe handling of PET radiopharmaceuticals, that are inapplicable or inappropriate, or that otherwise do not enhance safety or quality in the manufacture of PET radiopharmaceuticals.

DATES: Written comments by March 29, 1995. FDA proposes that any final rule that may issue based on this proposal become effective on its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION:

I. Introduction

PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon

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the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues where glucose metabolism is the predominant energy source (epileptic foci, acute vascular insufficiency states).

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated by a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is compounded and filled. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical.

PET manufacturing procedures differ in a number of important ways from those associated with the manufacture of conventional drug products:

- Because of the short half-lives of PET radiopharmaceuticals (some of which are only minutes long), PET facilities generally manufacture the products in response to daily demand for a relatively small number of patients.
- Manufacturing is typically done on a small scale and only a few lots are produced each day. Thus, the daily production of a PET facility is normally handled by few employees, sometimes by one production operator and a part-time support person.
- PET radiopharmaceuticals must be administered to patients in a short period of time because of the brief half-lives of the products. Any prolonged manufacturing time or testing or release delays would reduce the useful clinical life of the product.
- Unlike most pharmaceuticals, PET radiopharmaceuticals usually do not enter a general drug distribution chain. An entire lot (one vial) is usually distributed directly from the PET facility to a single medical department, to a physician for administration to patients, to a radiopharmacy for dispensing, or to another site close to the PET facility. The receiving facilities are in a geographic proximity that will allow for receipt and use within the product's half-life parameters.

The agency believes that there are fundamental principles of the CGMP regulations that need to be applied to drug manufacturing processes, including those for PET radiopharmaceuticals, to ensure the safety and efficacy of the finished products. However, as just noted, certain features are unique to the manufacture of PET products. Part 211 (21 CFR part 211), which is primarily directed to the regulation of conventional drug products, contains requirements and specific language which might result in unsafe handling of PET radiopharmaceuticals, are inapplicable or inappropriate, or which otherwise do not enhance drug product quality in the manufacture of PET radiopharmaceuticals.

FDA is therefore proposing to amend its regulations to permit manufacturers of PET radiopharmaceuticals to apply to the agency for approval of an exception or alternative to the requirements of part 211 as they apply to the manufacture of PET radiopharmaceuticals. A request for an exception or alternative must contain either an explanation why compliance with a particular requirement of the CGMP regulations is unnecessary or cannot be achieved, or a description of alternative procedures or controls that satisfy the purpose of the CGMP requirement. Both of these must include all necessary supporting data. Alternatively, the request may include other information justifying an exception or alternative. The request for an exception or alternative may be approved by the agency if it is determined that the requestor's compliance with the CGMP requirement is unnecessary to provide suitable assurance that the drug meets the requirements of the act as to safety and it has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess, or if compliance with the requirement cannot be achieved. In addition, the request for an exception or alternative may be approved if the requestor's alternative procedures or controls satisfy the purpose of the CGMP requirement, or if the requestor's submission otherwise justifies an exception or alternative. The agency may withdraw approval of an exception or alternative if it finds, on the basis of new information, that the criteria for approval are no longer met. Such withdrawal will be accomplished by providing written notice, and the reasons for the action, to the original requestor.

The agency will also periodically provide guidance to the industry on the application of the CGMP regulations to PET radiopharmaceuticals.

Elsewhere in this issue of the **Federal Register**, FDA is publishing: (1) A notice of availability of a draft guideline to assist persons in determining whether certain manufacturing practices, procedures, and facilities used for PET radiopharmaceuticals are in compliance with FDA's CGMP regulations; and (2) a notice of a public workshop and FDA guidance on the regulation of PET radiopharmaceuticals.

FDA is requesting written comments within 30 days after the date of publication of this proposed rule. In addition, FDA is proposing that any final rule that may publish as a result of this proposal become effective on its date of publication in the **Federal Register**. The proposed rule would permit manufacturers of PET radiopharmaceuticals to apply to FDA for approval of an exception or alternative to the requirements of the CGMP regulations. Accordingly, the proposed rule, if finalized, is a substantive rule which, in the discretion of the agency, grants or recognizes an exemption or relieves a restriction. (See 5 U.S.C. 553(d)(1) and 21 CFR 10.40(c)(4)(i).) In addition, the Commissioner of Food and Drugs finds good cause under 21 CFR 10.40(a)(2) for providing 30 days for comments instead of 60 days and under 5 U.S.C. 553(d)(3) and 21 CFR 10.40(c)(4)(ii) for making a final rule based on this proposal effective upon its publication in the **Federal Register**. The manufacturing process for PET radiopharmaceuticals is sufficiently different from that of other regulated products that application of certain CGMP requirements to PET radiopharmaceuticals is impractical. Because PET radiopharmaceuticals are already in use, a longer comment period or a later effective date may delay FDA approval or hinder appropriate application of CGMP regulations to PET radiopharmaceuticals, that are necessary to protect the integrity of the drug manufacturing process.

II. Request for Comments

Interested persons may, on or before March 29, 1995, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that the proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

For the reasons explained above, FDA proposes that any final rule based on this proposal become effective on the date of publication in the **Federal Register**.

V. Paperwork Reduction Act of 1980

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden.

ESTIMATED ANNUAL REPORTING BURDEN:

Section	Number of Respondents	No. of Responses Per Respondents	Total Annual Responses	Hours Per Response	Total Hours
21 CFR 211.1(d)	60	1	60	4	240

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503.

Title: Current Good Manufacturing Practice for Finished Pharmaceuticals: Positron Emission Tomography

Description: The proposal would permit manufacturers of PET products to apply to the agency for approval of an exception or alternative to the requirements of the CGMP regulations. The regulation is intended to relieve PET manufacturers, nearly all of whom are small entities, from regulations that might result in unsafe handling of PET radiopharmaceuticals, that are inapplicable or inappropriate, or that otherwise do not enhance safety or quality in the manufacture of PET radiopharmaceuticals.

Description of Respondents: Businesses; small businesses.

Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 211 be amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 211.1 is amended by adding new paragraph (d) to read as follows:

§ 211.1 Scope.

* * * * *

(d) The Director of the Center for Drug Evaluation and Research or the Director of the Office of Compliance, Center for Drug Evaluation and Research, may approve an exception or alternative to any application of this part to the manufacture of positron emission tomography (PET) radiopharmaceuticals. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in certain circumstances, such requests may be made orally and permission may be granted orally. Oral requests and oral approvals must be followed by written requests and written approvals. Approval of a request for an exception or alternative must be obtained from either specified Director prior to the use of any affected PET radiopharmaceutical.

(1) A request for an exception or alternative is required to contain one of the following:

(i) An explanation, with supporting data as necessary, why compliance with a particular requirement of this part is unnecessary or cannot be achieved;

(ii) A description, with supporting data as necessary, of alternative procedures or controls that satisfy the purpose of the requirement; or

(iii) Other information justifying an exception or alternative.

(2) The Director may approve a request for an exception or alternative if the Director finds one of the following:

(i) The requestor's compliance with the requirement is unnecessary to provide suitable assurance that the drug meets the requirements of the act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess, or compliance with the requirement cannot be achieved;

(ii) The requestor's alternative procedures or controls satisfy the purpose of the requirement; or

(iii) The requestor's submission otherwise justifies an exception or alternative.

(3) The Director may withdraw approval of an exception or alternative if the Director finds, on the basis of new information, that the criteria for approval in paragraph (d)(2) of this section are no longer met. Withdrawal of approval shall be accomplished by providing written notice of such

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withdrawal, and the reasons for the withdrawal, to the original requestor.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4690 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed program amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Alaska permanent regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) (SMCRA). The proposed amendment consists of revisions to rules pertaining to fees, adoption by reference, general permitting requirements, permit application information requirements, environmental resource information requirements, reclamation and operation plan, processing of permit applications, permitting for special categories of mining, exploration, small operator assistance program, bonding, performance standards, inspection and enforcement, and general provisions. The amendment is intended to revise the Alaska program to be consistent with the corresponding Federal regulations, clarify ambiguities, and improve operational efficiency. The amendment consists of proposed changes to the Alaska program as required by Part 902.16 of the Code of Federal Regulations and program deficiency letters dated November 1, 1989, February 7, 1990, and January 15, 1993.

DATES: Written comments must be received by 4:00 p.m., m.s.t. March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 14, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contracting OSM's Casper Field Office.

Guy Padgett, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, (307) 261–5776

Mr. Jules Tileston, Director, Division of Mining and Water Resources, Alaska Department of Natural Resources, 3601 C Street, Suite 800, Anchorage, Alaska 99503–5935, (907) 762–5163

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program as administered by the Alaska Department of Natural Resources. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

II. Proposed Amendment

By letter dated January 26, 1995 and FAX transmittals dated February 13 and 14, 1994 (Administrative Record No. AK IV–01), Alaska submitted proposed Amendment IV to its permanent program pursuant to SMCRA (SPATS AK–004–FOR). Alaska's proposed Amendment IV consists of: changes to the Alaska program as required by 30 CFR Part 902.16; changes in response to program deficiency letters from OSM dated November 1, 1989, February 7, 1990, and January 15, 1993; and changes to Alaska's own initiative. The provisions of the Alaska Administrative Code (AAC) that Alaska proposes to revise are: 11 AAC 05.010(a)(9) and 11 AAC 90.011, fees; 11 AAC 90.001, adoption of rules by reference; 11 AAC 90.002, responsibilities; 11 AAC 90.003, interim permits; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.025, authority to enter and ownership information; 11 AAC 90.045(a), geology description; 11 AAC 90.049, surface water information; 11 AAC 90.083(b), reclamation plan requirements, roads; 11 AAC 90.097, transportation facilities; 11 AAC 90.099, placement of coal mine waste in underground workings; 11 AAC 90.117, processing of permit applications; 11 AAC 90.125, commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149, alluvial valley floors; 11 AAC 90.163, exploration that substantially disturbs or is conducted in areas designated unsuitable for mining; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.321, hydrologic balance; 11 AAC 90.323, water quality standards; 11 AAC 90.325, diversions and conveyance of flow; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.337, impoundment inspection; 11 AAC 90.341, underground mine discharges; 11 AAC 90.345, surface and ground water monitoring; 11 AAC 90.375, public notice of blasting; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.401, coal mine waste, refuse piles; 11 AAC 90.407, coal mine waste, dams and embankments; 11 AAC 90.409, coal mine waste, return to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, Revegetation success standards; 11 AAC 90.491, construction and maintenance of roads and other transportation and support facilities; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders, 11 AAC 90.901, applicability; 11 AAC 90.902, exception for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions.

Specifically, Alaska proposes to:

—Revise 11 AAC 05.010(a)(9) and 90.011 to move the regulatory requirements for permit fees to the fee provisions for the whole department, and to set a fee for incidental boundary revisions;

—Revise 11 AAC 90.002 and delete 90.003, to eliminate provisions for continued operation or exploration under interim permits;

—Repeal and readopt 11 AAC 90.023 to clarify and add requirements for identification of ownership and control interests and compliance histories;

—Revise 11 AAC 90.025 to require ownership information for owners, lessees, and purchasers of record of the surface and coal to be affected and owners of record of surface and mineral estates contiguous to the proposed permit area;

—Revise 11 AAC 90.045 to clarify the geologic strata for which permit application information is required.

—Revise 11 AC 90.049 to add "alkalinity" as a parameter required in surface water information;

—Revise 11 AAC 90.083 to require plans and schedule for road reclamation;

—Revise 11 AAC 90.097 to require descriptions of temporary fords and low water crossings;

—Revise 11 AAC 90.117(b) to clarify conditional permit issuance when unabated violations are under appeal;

—Revise 11 AAC 90.125 to add written findings regarding unabated violations for application approval or permit issuance;

—Add a new rule at 11 AAC 90.126 regarding permits subsequently found to have been improvidently issued due to unabated violations, including requirements for abatement plans or permit suspension or revocation;

—Revise 11 AAC 90.127 to require updates of ownership and control information when certain cessation orders are issued;

—Repeal and readopt 11 AAC 90.129 to add additional application requirements and procedures for major revisions, to revise the time schedules for processing of revisions, and to clarify that revisions are processed separately from associated renewal applications;

—Revise 11 AAC 90.149 to require that permit application information for alluvial valley floors include factors contributing to the collection and storage of water, regulation of flow of ground or surface waters, and water availability;

—Revise 11 AAC 90.163 to require a permit application for exploration in areas designated unsuitable for mining, for removal of more than 250 tons of coal under an exploration permit to require that coal testing is necessary for development of a surface coal mining operation for which a permit will soon be submitted, and to require that the demonstration must evidence that the entire reserve will not be removed and that other means of exploration are not adequate;

—Revise 11 AAC 90.173 to alter the proportions of coal produced by other operations that would be attributed to an applicant for small operator assistance under various ownership and control scenarios;

—Add at 11 AAC 90.207 new requirements for self-bonding;

—Revise 11 AAC 90.321, 90.325, 90.327, and 90.341 to replace the phrases "water treatment facility(ies)," "treatment facilities," and "erosion control structures" with the phrase "siltation structures;"

—Revise 11 AAC 90.336 to require spillways for a 100-year, 6-hour storm event for impoundments meeting the criteria of 30 CFR 77.216(a), and for a 25-year, 6-hour storm event for impoundments not meeting those criteria;

—Add a new requirement at 11 AAC 90.337 that all impoundments be inspected quarterly for structural weakness or other hazardous conditions;

—Revise 11 AAC 90.345 to require that surface water monitoring be conducted at both upstream and downstream monitoring sites in all receiving water bodies;

—Revise 11 AAC 90.391 to allow coal mine waste to be placed in excess spoil fills under certain circumstances, and to add requirements for slope protection and revegetation or other surface protection;

—Revise 11 AAC 90.401 to grant the commissioner discretion in allowing less than four feet of cover on refuse piles;

—Revise 11 AAC 90.407 to provide spillway design and operation for dams and embankments of coal mine waste that meet the criteria of 30 CFR 77.216(a);

—Revise 11 AAC 90.423 to require reports of state-listed or federally-listed species, to add consultation requirements for determining whether the operation may proceed, and to add requirements for, on request, informing the U.S. Fish and Wildlife Service of certain resource information;

—Revise 11 AAC 90.443 to require that all spoil generated and all reasonably available spoil be used to backfill remining operations, and to allow for use of spoil for blending in non-steep slope areas;

—Revise 11 AAC 90.457 to require, for some land uses, consultation with state agencies in specifying stocking and planting requirements, to add utility and time-in-place requirements for woody species to be counted, and to specify normal husbandry practices;

—Revise 11 AAC 90.491 to add design, construction, maintenance, and reclamation requirements for roads and facilities;

—Revise 11 AAC 90.601 by adding new requirements allowing the commission to establish inspection frequency on certain abandoned sites;

—Revise 11 AAC 90.603 by adding new requirements for updating ownership and control information after issuance of a cessation order;

—Revise 11 AAC 90.901 by adding provisions allowing for termination of jurisdiction and reassertion of jurisdiction in specified circumstances;

—Add a new rule at 11 AAC 90.902 specifying the requirements for exemption from regulation for coal extraction incidental to the extraction of other minerals;

—Revise 11 AAC 90.907 to allow for provision of documents to the public by mail in some instances, and to require the availability of documents for five years after bond release;

—Repeal and readopt 11 AAC 90.911 (definitions), including revision or addition of the definitions of "alluvial valley floor," "applicant," "best technology currently available," "coal," "collateral bond," "commissioner," "compaction," "cumulative measurement period," "cumulative production," "cumulative revenue," "current assets," "current liabilities," "department," "existing structure," "fixed assets," "fragile land," "historic land," "imminent danger to the health and safety of the public," "incidental boundary revision," "intermittent stream," "irreparable damage to the environment," "liabilities," "major revision," "mining area," "natural hazard land," "net worth," "operation," "operator," "other minerals," "ownership or control," "parent corporation," "perennial stream," "performing any function or duty under this Act," "permanent," "permit," "permit area," "permittee," "person," "previously mined area," "reclamation plan," "significant imminent environmental harm to land, air, or water resources," "siltation structure," "soil horizons," "soil survey," "surface coal mining and reclamation operation," "surface coal mining operations," "[SMCRA]," "tangible net worth," "topsoil," and "unwarranted failure to comply"; and

—In the above and in other rules, make minor editorial and codification revisions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable

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program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 21, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–4683 Filed 2–24–95; 8:45 am]

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30 CFR Part 913

[IL–089]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter referred to as the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to 23 parts of Title 62 of the Illinois Administrative Code (IAC) pertaining to permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the recently revised Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., [C.S.T.], March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to speak at the hearing must be received by 4:00 p.m., [C.S.T.], on March 14, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Springfield Field Office.

James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Director, Springfield Filed Office, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16(s), (t), and (u), and at its own initiative. The provisions of the 23 parts of Title 62 of the IAC that Illinois proposes to amend are discussed below.

A. 62 IAC 1700—General

Illinois proposes the following revisions to Illinois §§ 1700.11 and 1700.16.

1. Section 1700.11—Applicability

Illinois is adding new subsections (f)(1) and (f)(2) pertaining to termination of jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation. These amendments mirror Federal regulations at 30 CFR 1700.11 (d)(1) and (d)(2). Subsection (f)(1) specifies under what circumstances the Department may terminate its jurisdiction under the initial program and the permanent program. Subsection (f)(2) specifies under what circumstances the Department shall reassert jurisdiction under the regulatory program. Statutory and regulatory citations were proposed to be updated through the section.

2. Section 1700.16—Fees and Forfeitures

Illinois is amending subsection (a) by requiring that fees collected under the provision of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) be deposited in the Coal Mining Regulatory Fund, rather than the general revenue fund. This proposed amendment reflects recent statutory changes to the State Act at 225 ILCS 720/9.07.

B. 62 IAC 1701. Appendix A—Definitions

Illinois proposes adding definitions for Applicant Violator System, Federal violation notice, land eligible for remining, ownership or control link, State violation notice, and wetland. It is also revising the definitions for historic lands, substantially disturb, and violation notice.

"Applicant Violator System or AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.

A reference to Illinois' regulations at 62 IAC 1762 and 1764 was added to the "Historic lands" definition.

"Land eligible for remining" means those lands that would otherwise be eligible for expenditures for section 402(g)(4) or section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(4), 1234).

"Ownership or control link" means any relationship included in the definition of owned or controlled or owns or controls at 62 IAC 1773.5(a) and (b) or in the violations review provisions of 62 IAC 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" unless such presumption has been successfully rebutted under the provisions of 62 IAC 1773.24 and 1773.25.

"State violation notice" means a violation notice issued by a State regulatory authority or by another agency or instrumentality of State government.

The definition of substantially disturb, for purposes of coal exploration, is revised to exclude impact to air by blasting.

"Violation notice" means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of violation of the Act; any Federal regulation promulgated pursuant thereto: a State program; or any Federal or State law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

"Wetland" means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.

C. 62 IAC 1761.11—Areas Where Mining is Prohibited or Limited

At subsection (d)(2), Illinois is proposing to delete the phrase "including surface areas by planned subsidence."

D. 62 IAC 1772—Requirements for Coal Exploration

Illinois is proposing to revise the following sections of part 1772.

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1. Section 1772.11—Notice of Requirements for Exploration Removing 250 Tons of Coal or Less

Subsection (b)(5) is proposed to be amended in order to clarify that the referenced forms are required to be submitted with a coal exploration notice only if such forms are required by the Department's Oil and Gas Division.

2. Section 1772.12—Permit Requirements for Exploration Removing More than 250 Tons of Coal

Subsection (d)(2) is proposed to be amended by replacing the word "operation" with the word "permit."

Subsection (d)(2)(C) is proposed to be amended by replacing the reference "agency with jurisdiction over State Historic Preservation" with "Illinois Historic Preservation Agency."

E. 62 IAC 1773—Requirements for Permits and Permit Processing

Illinois is proposing to revise or add the following sections of part 1773, with the exception of section 1773.15(a)(1), consistent with changes made to the Federal regulations at 30 CFR 773 on October 28, 1994 (59 FR 54306).

1. Section 1773.15—Review of Permit Applications

Illinois is proposing to revise subsection (a)(1) by removing reference to its informal conference at § 1773.13(c) and adding a reference to its public hearing at § 1773.14.

Illinois is proposing to revise subsection (b)(1) to assure a decision with respect to permit issuance or denial is based upon complete information relating to ownership, control, and violations by requiring its review to include information obtained pursuant to §§ 1773.22, 1773.23, 1778,13, and 1778.14.

Illinois is proposing to revise subsection (b)(2) to read as follows. "(2) Any permit that is issued on the basis of a presumption supported by certification under 62 IAC 1778.14 that a violation is in the process of being corrected, on the basis of proof submitted under subsection (b)(1)(A) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B) of this section, shall be conditionally issued."

2. Section 1773.20—Improvidently Issued Permits: General Procedures

Subsection (b)(2)(B) is proposed to be revised to read as follows. "(B) Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and * * *."

Existing subsection (b)(3) is proposed to be redesignated (b)(2)(C). New subsection (b)(3) is proposed to be added to read as follows. "(3) The provisions of § 1773.25 shall apply when the Department determines: (A) Whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal; and (B) whether any ownership or control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists, or has been severed."

The proposed revision to subsection (c)(4) read as follows. "(4) Rescind the permit. If the Department decides to rescind the permit, it shall give at least 30 days written notice to the permittee. If the Department decides to rescind the permit, it shall issue a notice in accordance with § 1773.21. In either case, the permittee shall be given the opportunity to request review of the notice under 62 IAC 1847.3. The Department's decision shall remain in effect during the pendency of the review, unless temporary relief is granted under 62 IAC 1847.3(k)."

3. Section 1773.21—Improvidently Issued Permits: Rescission Procedures

At subsection (a), Illinois proposes to add the phrase "consistent with the provisions of section 1773.25" after the words "and the Department finds."

Subsection (c) is proposed to be deleted.

4. Section 1773.22—Vertification of Ownership or Control Application Information

New § 1773.22 requires the Department, prior to the issuance of a permit, to verify ownership or control information through manual data sources and through automated data sources, including the Applicant Violator System. Upon completion of the review, the Department shall update all ownership or control information on the Applicant Violator System.

5. Section 1773.23—Review of Ownership or Control and Violation Information

New § 1773.23 requires the Department to review all reasonably available information concerning violation notices connected with ownership or control links. The Department shall not approve the application unless and until it determines that violations have been corrected or are in the process of being corrected. Following the Department's decision on the application, the Department shall enter all relevant information related to such decision or withdrawal into the Applicant Violator System.

6. Section 1773.24—Procedures for Challenging Ownership or Control Shown in the applicant Violator System

New § 1773.24 establishes the procedures to be followed if a person wishes to challenge an ownership or control link between a person and any other person shown in the Applicant Violator System. The section provides procedures for direct appeals of such links to OSM by persons who have been so linked. The section also provides for challenges concerning the status of violations to which persons shown on the Applicant Violation System have been linked. The section further provides information on the challengers right for appeal of OSM's decision to the Department of the Interior's Office of Hearings and Appeals and the opportunity for those persons making a challenge to obtain a temporary relief from any adverse use of the challenged link or violation information during the pendency of such challenge.

7. Section 1773.25—Standards for Challenging Ownership or Control Links and the Status of Violations

New § 1773.25 establishes standards for challenges to ownership or control links and for challenges to the status of violations. The section allocates responsibilities between OSM and State regulatory authorities for resolving issues related to ownership and control and provides the standards for evidence to resolve such issues.

F. 62 IAC 1774.13—Permit Revisions

At subsection (b)(2)(E), a significant revision shall be required for land use changes involving greater than 5 percent of the "total permit acreage" instead of the "original total permit acreage."

Exceptions to the 5 percent cumulative total limit were added at new subsections (b)(2)(E)(i) and (ii). The proposed addition of subsection (b)(2)(E)(i) would allow the accumulation of the 5 percent limit to restart upon issuance of a significant revision that addresses all previous land use changes approved via insignificant revisions. The proposed addition of subsection (b)(2)(E)(ii) would allow acreage added by incidental boundary revisions to be included in the total permit acreage used to determine the 5 percent limit if the acreage has been addressed previously in a significant revision.

New subsection (d)(6) provides for public notice of and a ten-day comment period for incidental boundary revision applications which propose new surface acreage or planned subsidence shadow area to the original permit.

G. 62 IAC 1778.15—Right of Entry Information

At subsection (a), Illinois is proposing to eliminate the requirement for underground coal mining applications to contain a description of the documents upon which the applicant bases his or her legal right to enter and mine for underground mining areas (shadow areas), including the right to subside within the shadow area. Right of entry information would still be required for the permitted surface areas at underground mines.

At subsection (e), Illinois is proposing to add the phrase "including planned subsidence operations."

Illinois is proposing to add new subsection (f) to require applications for additions to the underground mining areas (shadow areas) to contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining.

H. 62 IAC 1779—Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Illinois is proposing to revise the following sections of part 1779 for consistency with changes made to the Federal regulations at 30 CFR 779 on May 27, 1994 (59 FR 27932).

1. Section 1779.22—Land Use Information

Section 1779.22 pertains to surface mining permit application requirements for pre-mining land use information. Illinois is proposing to delete § 1779.22 and to reorganize the repealed provisions at subsection (a) into 62 IAC 1780.23(a).

2. Section 1779.25—Cross Sections, Maps and Plans

Subsections (a)(11) (A), (B), and (C) are proposed to be deleted. Subsection (a)(11)(D) is proposed to be deleted from this section and relocated to 62 IAC 1780.23(a)(3).

Statutory citations in subsection (b) are updated.

I. 62 IAC 1780.23—Reclamation Plan: Pre-Mining and Post-Mining Information

Illinois is revising this section for consistency with changes made to the Federal regulations at 30 CFR 780 on May 27, 1994 (59 FR 27932). The section title is changed from "Reclamation Plan: Post-mining Land Uses" to "Reclamation Plan: Pre-Mining and Post-Mining Information."

New subsections (a), (a)(1), and (a)(2) contain the pre-mining land use information provisions of existing 62 IAC 1779.22(a) with one addition. At new subsection (a)(1), one new provision was added which requires that in the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

New subsection (a)(3) contains the soil map provision of existing 62 IAC 1779.25(a)(11)(D). The substantive provisions of existing subsections (a), (a)(1), (a)(3), and (a)(4) are redesignated new subsections (b), (b)(1), (b)(2), and (b)(3). Existing subsection (a)(2) pertaining to detailed management plans for a post-mining use of grazing is deleted.

Existing subsection (b) is redesignated new subsection (c).

J. 62 IAC 1783—Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources

Illinois is proposing to revise the following sections of part 1783 for consistency with changes made to the Federal regulations at 30 CFR 783 on May 27, 1994 (59 FR 27932).

1. Section 1783.22—Land Use Information

Section 1783.22 pertains to underground mining permit application requirements for pre-mining land use information. Illinois is proposing to delete § 1783.22 and to reorganize the repealed provisions at subsection (a) into 62 IAC 1784.15(a).

2. Section 1783.25—Cross Sections, Maps and Plans

Subsections (a)(11) (A), (B), and (C) are proposed to be deleted. Subsection (a)(11)(D) is proposed to be deleted from this section and relocated to 62 IAC 1784.15(a)(3).

Statutory citations in subsection (b) are updated.

K. 62 IAC 1784.15—Reclamation Plan: Pre-Mining and Post-Mining Information

Illinois is proposing to revise this section for consistency with changes made to the Federal regulations at 30 CFR 784 on May 27, 1994 (59 FR 27932). The section title is changed from "Reclamation Plan: Post-Mining Land Uses" to "Reclamation Plan: Pre-Mining and Post-Mining Information."

New subsections (a), (a)(1), and (a)(2) contain the substantive pre-mining land use information provisions of existing 62 IAC 1783.22(a) with one addition. At new subsection (a)(1), one new provision was added which requires that in the case of previously mined land, the use of the land prior to any mining shall also be described to the extent such information is available.

New subsection (a)(3) contains the soil map provision of existing 62 IAC 1783.25(a)(11)(D). The substantive provisions of existing subsections (a), (a)(1), (a)(2), and (a)(3) are redesignated new subsections (b), (b)(1), (b)(2), and (b)(3).

Existing subsection (b) is redesignated new subsection (c).

L. 62 IAC 1785—Requirements for Permits for Special Categories of Mining

Illinois is proposing to revise the following sections of part 1785.

1. Section 1785.17—Prime Farmlands

At subsection (a), Illinois is proposing to delete the following language: "Nothing in this section shall apply to any permit issued prior to the date of enactment of the Federal Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Federal Act, as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after September 29, 1981."

Existing subsections (a)(5) and (6) pertaining to an acreage limitation on the amount of exempted prime farmland are deleted. Existing subsection (a)(7)(A) was redesignated subsection (a)(5). Existing subsection (a)(7)(B) pertaining to a preliminary exemption review is deleted.

At subsection (d)(1), the sentence "The State recognizes that the permit cannot be issued without the required consultation with USDA" is deleted.

2. Section 1785.23—Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

Illinois proposes to revise subsection (d)(3) by requiring written comments be filed within the public comment period.

The revision to subsection (e)(1) requires the Department to make its final decision to approve, deny, or modify the complete application for a permit within 20 days following the close of the public comment period.

Subsection (g)(1) is proposed to be amended to require the Department to notify persons who filed comments or

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objections to the application of its final decision, to replace the word "disapprove" with the word "deny" for consistency with other sections of the regulations dealing with approval and denial of application, and to delete the requirement that it publish a public notice of its final action. The regulatory citation in subsection (g)(2) is corrected.

M. 62 IAC 1795—Small Operator Assistance

Illinois is proposing to revise the following sections of part 1795 to implement recently amended sections of the State Act at 225 ILCS 720/2.02 and 3.15 and for consistency with revisions made to the Federal regulations at 30 CFR 795 on May 31, 1994 (59 FR 28136).

1. Section 1795.1—Scope and Purpose

Illinois proposes to amend the purpose statement at subsection (b) to read as follows. "The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences including the engineering analysis and designs necessary for the determination; cross-sections, maps and plans; geologic drilling and statement of results of test borings and samplings; archaeological and historical information collection and relevant plan preparation; pre-blast surveys and pre-blast survey reports; and site specific resource information collection and relevant plan preparation which are required components of the permit application under 62 IAC 1772 through 1785."

2. Section 1795.4—Definitions

At subsection (b) the definition of qualified laboratory is revised by deleting the language "statement of results of test borings or core samples under the Small Operator Assistance Program and which meets the standards of section 1795.10" and adding the language "or other studies and/or reports or plans under the Small Operator Assistance Program which meet the standards of section 1795.10."

3. Subsection 1779.6—Eligibility for Assistance

At subsection (a), the statute citation is updated.

At subsection (b), the criteria for eligibility for assistance is revised to read as follows. "Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation operations permit will not exceed 300,000 tons.

At subsection (b)(1) and (b)(2), Illinois proposes changing the percentage of ownership of applicant from 5 percent to 10 percent with respect to the baseline above which ownership will play a role in determining attributed coal production.

5. Section 1795.9—Program Services and Data Requirements

Illinois proposes to revise subsection (a) by adding studies, reports, and plans to the types of services referenced in subsection (b) that are available to eligible operators.

Subsection (b) lists the specific technical services authorized for the Small Operator Assistance Program (SOAP). At subsection (b)(1), Illinois proposes to include engineering analysis and designs necessary for the determination of probable hydrologic consequences. At subsection (b)(2), Illinois proposes to add drilling as an authorized SOAP service. Illinois proposes to add new subsection (b)(3) which provides for cross-sections, maps and plans required by 62 IAC 1779.25 and 1783.25. New subsection (b)(4) provides for collection of archaeological and historical information and related plans required by 62 IAC 1779.12(b), 1780.31, 1783.12(b) and 1784.17, and any other archaeological and historical information required by the Department. New subsection (b)(5) provides for preblast surveys and reports pursuant to the provisions of 62 IAC 1816.62. New subsection (b)(6) provides for site specific resource information and protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under 62 IAC 1779.19, 1780.16, 1783.19, and 1784.21, and information and plans for any other environmental values required by the Department under the State Act.

6. Section 1795.12—Applicant Liability

At subsection (a)(1), the word "report" is replaced by the word "reports."

At subsection (a)(2), the applicant shall reimburse the Department if the program administrator finds that the applicant's actual and attributed production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

At subsection (a)(3), the applicant and its successor shall reimburse the Department if the permit is sold, transferred, or assigned to another person and the original permittee's and transferee's total actual and attributed production exceeds 300,000 tons during the 12 months immediately following the date on which the permit was originally issued. If the permit is transferred during the 12-month period immediately following the permit issuance date, the determination of adherence to the 12-month, 300,000 ton limit shall be performed by combining the actual and attributed production of both parties for the 12-month period immediately following the date of original permit issuance.

At subsection (b), the definition of good faith is deleted.

N. 62 IAC 1800—Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

1. Section 1800.5—Definitions

Subsection (b)(4) is revised to allow Illinois to accept letters of credit from banks organized or authorized in other states and from banks organized or authorized in the United States by national charter provided that if the bank does not have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois.

2. Section 1800.20—Surety Bonds

Subsections (b)(2) through (b)(5), which contained surety bond conditions, are deleted.

3. Section 1800.21—Collateral Bonds

Subsection (b)(1) is revised to allow Illinois to accept letters of credit from banks organized or authorized to do business in Illinois, in other States, and from banks organized or authorized in the United States by national charter provided that if the bank does not have an office for collection in Illinois, there shall be a confirming bank designated with an office in Illinois.

O. 62 IAC 1816—Permanent Program Performance Standards—Surface Mining Activities and 62 IAC 1817 Permanent Program Performance Standards—Underground Mining Activities

Illinois proposed revisions to the following sections. Regulatory citations were updated, as necessary, throughout the sections. Since most of the surface mining and underground mining regulations in these sections are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

1. Section 1816.13—Casing and Sealing of Drilled Holes: General Requirements; Section 1817.13—Casing and Sealing of Exposed Underground Openings: General Requirements

Illinois is proposing to require that exposed underground openings be backfilled. The references to "cased, sealed, or otherwise managed" and "closed" are replaced with the reference to "backfilled."

2. Section 1816.15—Casing and Sealing of Drilled Holes: Permanent; Section 1816.15—Casing and Sealing of Underground Openings: Permanent

Illinois is proposing to require that exposed underground openings be backfilled. The references to "capped, sealed, backfilled, or otherwise properly managed" are replaced with the reference to "backfilled."

3. Sections 1816.22/1817.22—Topsoil and Subsoil

Illinois is proposing to delete subsection (b)(2) to eliminate the acreage restriction on topsoil substitutes that may be approved through the insignificant permit revision process. Therefore, existing subsection (b)(1) is redesignated subsection (b).

4. Sections 1816.41/1817.41—Hydrologic Balance Protection

Illinois proposes to revise subsection (c)(2) by specifying that ground water monitoring reports shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule.

Illinois proposes to revise subsection (e)(2) by removing the requirement to send National Pollutant Discharge Elimination System (NPDES) reports to the Department concurrently with those sent to the Illinois Environmental Protection Agency and adding the requirement that NPDES reports are to be sent to the Department by the first day of the second month following the reporting period.

5. Sections 1816.46/1817.46—Hydrologic Balance: Siltation Structures

The introductory sentence in subsection (e) is being changed to read "Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if * * *." Subsection (e) is proposed to be revised to provide for a second exemption. The exemption provided by new subsection (e)(2)(A) will allow the use of the alternative sediment control measures described in § 1816.45(b) in lieu of siltation structures. The permittee will have to demonstrate that these measures are the best technology currently available (BTCA) to meet the effluent limitations and water quality standards for the receiving waters set forth in § 1816.42. Existing subsection (e)(2) is redesignated as (e)(2)(B).

6. Section 1816.79—Protection of Underground Mining

Section 1816.79 is reorganized. The word "coal" is proposed to be removed from existing subsection (a), and the subsection reference is removed. Existing subsection (a)(1) is redesignated subsection (b), and existing subsection (a)(2) is redesignated subsection (a).

7. Sections 1816.97/1817.97—Protection of Fish, Wildlife, and Related Environmental Values

Illinois is proposing to delete the reference to the Illinois Endangered Species Protection Act at subsection (b).

8. Sections 1816.116/1817.116—Revegetation: Standards for Success

The State Act was recently amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining. Sections 1816/1817.116(a)(2)(B) are proposed to be amended to implement this statute by adding the phrase "except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two (2) full years."

Existing § 1816/1817.116(a)(2)(F), concerning augmentation requirements for high capability cropland areas, are proposed to be deleted and replaced with new provisions pertaining to wetlands augmentation. New §§ 1816/1817.116(a)(2)(F) specify that wetlands shall be considered augmented when significant alterations are made to the size or character of the watershed, pumping is used to maintain water levels, or neutralizing agents, chemical treatments or fertilizers are applied to the wetland area. Water level management using permanent water control structures is considered a normal husbandry practice.

Sections 1816/1817.116(a)(3)(E) are proposed to be amended to clarify that pasture and/or hayland or grazing land on non-previously disturbed areas are subject to a 90 percent ground cover standard for a minimum of any 2 years of a 10-year period prior to the release of the performance bond, except the first year of the 5-year extended responsibility period. The 1-year attempt limit for substituting corn productivity for 1 year of hay productivity is proposed to be removed from subsection (a)(3)(E). Sections 1816/1817.116(a)(3)(E) are also being revised to allow 1 year substitution of crops in lieu of hay on limited capability land, provided the Department determines that the practice is proper management.

New §§ 1816/1817.116(a)(3)(F) specify that small isolated areas which were disturbed from activities such as, but not limited to, signs, boreholes and power poles, shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, the soil has been returned to its original capability, and the area is supporting its approved post-mining land use at the end of the responsibility period.

Section 1816.116(a)(4)(A)(ii) is proposed to be amended to allow the Department to approve a field to represent small isolated areas of the same capability if it determines that the field is representative of reclamation of such areas. The small isolated areas shall maintain a successful ground cover as determined by subsection (a)(3)(E). Productivity results on the field shall be applicable to the small isolated areas.

New §§ 1816/1817.116(a)(5)(A) specify that wetland revegetation criteria shall be deemed successful when the wetland vegetation criteria in the Corps of Engineers Wetlands Delineation Manual have been achieved following sampling procedures specified in that manual. New §§ 1816/1817.116(a)(5)(B) further specify that areas designed to support vegetation in the approved plan shall have a minimum aerial coverage of 30 percent. The testing procedure in §§ 1816/1817.117(d)(1) through (3) shall be used to evaluate the extent of cover. Aerial cover shall be determined to be present if any approved wetland species is measured at the increment. The percentage of aerial cover shall be established for the area tested by taking the total number of measurements where aerial cover was determined to be present.

New §§ 1816/1817.116(c) are proposed to be added to provide for the use of reference areas to establish target yields in lieu of the Agricultural Lands Productivity Formula (ALPF) for cropland and hayland. Other requirements and procedures of 62 IAC 1816.116(a)(4) shall be applicable. Reference areas used to establish success standards must meet the requirements in paragraphs (1) through (8).

Paragraph (1) requires that if the fields to be represented contain in total 800 acres or more, the reference area shall contain at least 40 acres. If the field(s)

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to be represented is smaller than 800 acres, the reference area shall be the greater of 5 percent of the field(s) to be represented or 1 acre.

Paragraph (2) requires that each reference area be representative of the soils of the field(s) to be represented. The permittee shall provide adequate documentation of the soils and soil quality present in the reference area.

Paragraph (3) requires that each year the permitted provide a statement by a Federation of Certifying Boards in Agriculture, Biology, Earth and Environmental Sciences-certified professional or a certified agronomist that the management of the reference area is equivalent to the field(s) to be represented. The permittee shall describe the proposed management of the reference area in a proposal.

Paragraph (4) requires that reference areas be located within six miles of the field(s) to be represented.

Paragraph (5) requires right-of-entry on the reference area for authorized representatives of the Department and the Illinois Department of Agriculture be secured by written agreement or consent for the entire time period in which the reference area will be used.

Paragraph (6) requires that proposed reference areas be submitted for Department approval no later than February 15 of the year in which they are proposed to be used.

Paragraph (7) requires that the reference areas have yields established by whole field harvest and shall be documented by the Illinois Department of Agriculture. Paragraph (8) requires that yields determined for the reference area be those used for determination of success of revegetation unless the Department determines that management practices have not been equivalent during the course of the year or the Department determines that growing conditions have not been representative of the fields to be tested.

9. Sections 1816.117/1817.117—Revegetation: Tree and Shrub Vegetation

The State Act was amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining. Sections 1816/1817.117(a)(1) are proposed to be amended to implement this statute by requiring that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two full years for trees and shrubs. Also, until September 30, 2004, on lands eligible for remining, trees and shrubs need not have been in place for three years; however, such trees and shrubs shall not be counted in determining success during the same calendar year in which they were planted.

Sections 1816/1817.117(a)(3) are proposed to be amended to clarify that erosion control structures, including pond embankments, shall not require the planting of trees and shrubs.

Sections 1816/1817.117(b) are proposed to be amended to clarify that planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity and edge effect within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas.

Sections 1816/1817.117(c)(1) are proposed to be revised by replacing the word "area" with the word "field." These sections are also revised by adding a requirement that once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with 62 IAC 1774.13.

10. Section 1817.121—Subsidence Control

Illinois proposes to add new subsection (c)(3) to require operators to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

11. Section 1817.131—Cessation of Operations: Temporary

At subsection (b), three typographical errors were corrected. The word "conduct" was changed to "conducts" in the first sentence. The word "affected" was added and the word "are" was corrected to the word "area" in the second sentence.

12. Sections 1816.133/1817.133—Post-Mining Land Capability

At subsection (a)(2)(C) a typographical error was corrected by replacing the word "bound" by the word "found."

13. Sections 1816.151/1817.151—Primary Roads

At subsection (a), Illinois proposes to specify that the certification shall be submitted within 30 days after completion of construction. Illinois also defines completion of construction to mean that the road is being used for its intended purpose as determined by the Department.

14. Section 1817.182—Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

At subsection (a), Illinois corrected a typographical error by replacing the word "is" with the word "if."

At subsection (d)(4), Illinois corrected a typographical error by replacing the word "existing" with the word "restore."

At subsection (l), Illinois corrected the regulatory citation by replacing "1817.103" with "1817.102."

15. Sections 1816.190/1817.190—Affected Acreage Map

At subsection (a), Illinois is proposing to delete the phrase "and to the county clerk."

At subsection (b), Illinois is requiring the permittee to submit an additional copy of the affected acreage report, which the Department will then forward to the county clerk. Illinois is also requiring that one of the copies contain the original signature of a company official. Also, statutory citations are being updated in subsection (b).

16. Section 1816.Appendix A—Agricultural Lands Productivity Formula—Permit Specifics Yield Standard

Illinois proposed several changes for the "Permit Specifics Yield Standard" section. The two existing paragraphs are amended and reorganized into subsections (a) and (b), respectively, and new provisions were added at subsections (c) through (f).

Language is added at redesignated subsection (a) to clarify that ALPF target calculation procedures are applicable to limited capability lands and that targets are to be based on the soils which are disturbed within the permit area.

The existing provisions in redesignated subsection (b) are now subject to the provisions of subsections (c) through (f).

New subsection (c) specifies that the Department shall provide for establishment of specific yield standards for the individual capability groups to be weighted for an individual pit (geographically distinct mining area) if multiple permits are adjacent and confined to a single continuous pit, or multiple pits are not adjacent but are within an individual permit.

New subsection (d) specifies that if an individual mining pit is present in more than one county, annual target yield adjustments shall be based on the county with the greater permit acreage.

New subsection (e) specifies that after mining operations have ceased and at the request of the permittee, the Department shall recalculate the yield standards for the permit (pit) based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity, after approval of the recalculation. Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated.

New subsection (f) specifies that at the request of the permittee, the Department shall consolidate prime farmland and high capability targets, provided the Department determines that the soil reconstruction of the high capability land is equal to or better than the prime farmland.

17. Section 1816.Appendix A—Agricultural Lands Productivity Formula—Agricultural Lands Productivity Formula Sampling Method

Illinois proposed changes for the "Agricultural Lands Productivity Formula Sampling Method" section. In the last paragraph of this section, a revision was made to require the Department and the Illinois Department of Agriculture to jointly request the operator to verify yields by harvest weight. Reason Number 3 for this verification request was deleted.

P. 62 IAC 1825.14—High Capability Lands: Soil Replacement

At subsection (e), Illinois proposes adding the title of "Compaction."

Subsection (e)(1) is revised by adding the word "above" after the regulatory citation "Section 1825.14(a). Illinois added new subsection (e)(1)(E) to specify that excessive compaction is also indicated by other diagnostic methods approved by the Department, in consultation with the Illinois Department of Agriculture and the U.S. Department of Agriculture, Soil Conservation Service.

At subsection (e)(2), Illinois is proposing an additional method for the Department to evaluate excessive compaction. The permittee will have a choice between the existing provision and the new provision which specifies that compaction alleviation is required unless the permittee can demonstrate that the requirements of 62 IAC 1816.116 or 1816.117, as applicable, have been met without compaction alleviation on areas reclaimed in a similar manner. A second new provision in subsection (e)(2) requires the Department to retain sufficient bond at the time of Phase II bond release if it determines that compaction alleviation may be needed to achieve the revegetation success requirements.

Q. 62 IAC 1840—Department Inspections

1. Section 1840.11—Inspections by the Department

At subsection (d) the heading "Aerial inspections" was added.

Illinois proposed new subsections (g) and (h) to address inspections at sites which have been abandoned without completion of reclamation or abatement of violations. The proposed amendments are consistent with 30 CFR 840.11 (g) and (h), as amended on November 28, 1994 (59 FR 60876).

New subsection (g) contains the criteria required for classifying a site as abandoned. Before a site can qualify for a change in inspection frequency, Illinois must make a written finding that the site meets the abandoned site definition criteria.

New subsection (h) contains the criteria for selecting an alternate inspection frequency commensurate with the public health and safety and environmental considerations present at each specific site. Illinois must conduct a complete inspection of the abandoned site and provide public notice of its findings. A written finding, which addresses all the criteria contained in this section, justifying the alternative inspection frequency selected must be prepared and maintained for public review.

2. Section 1840.17—Review of Decision Not to Inspect or Enforce

Subsection (a) is proposed to be revised by requiring the request for review to be submitted within 30 days from the date the citizen is notified of the decision. Failure to file a request for informal review within this time period shall result in a waiver of the right to such review.

Subsection (c) is proposed to be amended to reference 62 IAC 1847.3 of the regulations for formal review of the Department's decision not to inspect or enforce, rather than section 8.07 of the State Act.

R. 62 IAC 1843—State Enforcement

Illinois proposes revisions to the following sections of part 1843.

1. Section 1843.13—Suspension or Revocation of Permits

At subsection (a)(1), the phrase "Except as provided in subsection (b) below" is deleted.

At subsection (a)(3), the existing provisions are deleted. New provisions were added which specify that the Department shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Federal Act, the State Act, 62 IAC 1700 through 1850 or the permit during 3 or more State inspections of the permit area within any 12-month period. If after such review, the Department determines that a pattern of violations exists or has existed, an order to show cause as provided in subsection (a)(1) shall be issued.

Existing subsection (b) was deleted, and existing subsection (c), (d), (e), and (f) were redesignated as (b), (c), (d), and (e), respectively.

2. Section 1843.23—Enforcement Actions at Abandoned Sites

This new section specifies that the Department may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in 62 IAC 1840.11(g), if abatement of the violation is required under any previously issued notice or order.

S. 62 IAC 1845.12—When Penalty Will be Assessed

Illinois is proposing to amend subsection (d) by adding a requirement that the Department take into account the factors set forth in § 1845.13 in determining whether to assess a penalty below $1,100. Illinois is also codifying its long-standing policy of assessing a penalty below $1,100 if it is the permittee's second or more related violation within a 12-month period.

T. 62 IAC 1847—Administrative and Judicial Review

Illinois proposes revisions to the following sections of part 1847.

1. Section 1847.3—Hearings

The section heading is changed from "Permit Hearings" to "Hearings."

At subsection (a), Illinois is specifying that administrative review under this section also applies to decisions not to inspect or enforce under 62 IAC 1840.17 and permit decisions issued pursuant to 62 IAC 1785.23.

At subsection (i), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (j), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

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At subsection (l)(2), Illinois is adding the provision that judicial review may be requested if the Department also failed to act within specified time limits.

2. Section 1847.4—Citation Hearings

At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

3. Section 1847.5—Civil Penalty Assessment Hearings

At subsection (m), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (n), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

4. Section 1847.6—Show Cause Hearings

At subsection (k), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (l), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

5. Section 1847.7—Bond Forfeiture Hearings

At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director.

At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed.

U. 62 IAC 1848.5—Notice of Hearing

Proposed new subsection (f) implements a July 7, 1993, amendment to § 2.11 of the State Act pertaining to permit hearing notices. If the hearing concerns review of a permit decision under 62 IAC 1847.3, a notice containing the information set forth in subsection (a) and (b) shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than 14 days nor less than 7 days prior to the date of the hearing. The notice shall be no less than ⅛ page in size, and the smallest type used shall be 12 point and shall be enclosed in a black border no less than ¼ inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement or continuance of the hearing, nor will such errors necessitate that the notice be republished.

V. 62 IAC 1850—Training, Examination and Certification of Blasters

Illinois proposes revisions to the following sections of part 1850.

1. Section 1850.13—Training

At subsection (a), a typographical error was corrected by replacing the word "person" with the word "persons."

At subsection (b)(14), various regulation and statute citations were corrected.

2. Section 1850.14—Examination

Illinois proposed to amend subsection (a) by removing the requirement that notification of a scheduled examination be made in writing.

Illinois proposed to amend subsection (b) by removing the requirement that notification of a scheduled reexamination be made by letter.

3. Section 1850.15—Application and Certification

Subsection (a) is proposed to be amended by shortening the deadline for receipt of applications from 45 days to 30 days and by shortening the deadline for review of applications from 30 to 15 days.

4. Section 1850.16—Denial, Issuance of Notice of Infraction, Suspension, Revocation, and other Administrative Actions

Subsection (b) is proposed to be entitled "Notice of Infraction." At subsections (b)(1)(A) and (b)(1)(D), various regulatory and statute citations are corrected. Subsection (b)(3) is revised by requiring the blaster to file a request for review with the Department and removing the existing forwarding provision. The requirement to include specified information in the request was removed. The hearing regulation reference was corrected. The hearing is proposed to be held at one of the Department's offices, and the existing location provision is removed.

Subsection (c) is proposed to be entitled "Notice of Show Cause." At subsection (c)(2), the word "public" was deleted, and the hearing regulation citation was corrected. At subsection (c)(3), the hearing regulation citation was corrected.

5. Section 1850.17—Judicial Review

This section is proposed to be repealed as the provision for judicial review is contained elsewhere in Illinois' regulations.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [C.S.T.], on March 14, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 16, 1995.

Richard Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95–4681 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, SMCRA). The proposed amendment consists of revisions to rules pertaining to civil penalties. The amendment is intended to revise Utah's rules to be consistent with recently promulgated revisions to the Utah Coal Reclamation Act of 1979 (Utah Administrative Code (UCA) 40–10 *et seq.*).

DATES: Written comments must be received by 4:00 p.m., m.s.t., March 29, 1995. If requested, a public hearing on the proposed amendment will be held on March 24, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on March 14, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for pubic review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program,

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including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated February 10, 1995, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–1019). Utah submitted the proposed amendment at its own initiative. The provisions of Utah Coal Maining Rules that Utah proposes to revise are: Utah Administrative Rules (Utah Adm. R.) 645–401–100, 400, 700, 800, and 900, concerning civil penalties, and Utah Admin. R. 645–402–100 and 400, concerning individual civil penalties.

Specifically, Utah proposes to revise Utah Admin. R. 645–401–120, 645–401–410, 645–401–721, 645–401–723.100, 645–401–742, 645–401–910, 645–402–120, 645–402–420, and 645–402–422 by replacing the term "Board" with the term "Division," so that the responsibilities for procedures involving the assessment of civil penalties, informal assessment conferences, and lien waivers are shifted from the Utah Board of Oil, Gas, and Mining to the Utah Division of Oil, Gas, and Mining; Utah Admin. R. 645–401–430 by adding the acronym "UCA" prior to references to UCA 40–10 *et seq.*; Utah Admin. R. 645–401–810 by adding the phrase "of receipt" in order to clarify that a permittee may contest a proposed civil penalty or fact of violation within 30 days of receipt of the proposed assessment or reassessment; Utah Admin. R. 645–401–830 by stating that the formal review of the violation fact or penalty will be conducted by the Board under the provisions of the procedural rules of the Board; and Utah Admin. R. 645–401–910 by clarifying that, if the permittee fails to request a formal hearing, the penalty assessed will become due and payable after, among other things, the Division fulfills its responsibilities under UCA 40–10–20(3)(e);

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on March 14, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMRCA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 21, 1995.

Peter A. Rutledge,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–4682 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 110–1–6172b; FRL–5144–1]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee Chapter on Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Tennessee for the purpose of establishing regulations for the control of Volatile Organic Compounds (VOC) which meet the requirements of section 182(b)(2) of the 1990 amendments to the Clean Air Act (CAA). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 29, 1995.

ADDRESSES: Written comments should be addressed to William Denman at the Region 4 address below. Copies of the material submitted by the State of Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: William Denman, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Environmental Protection Agency Region 4, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4208. Reference file TN110–01–6172.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–4540 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3470, and 3480

[WO–300–4120–02–24 1A]

RIN: 1004–AC15

Logical Mining Units (LMU's) in General; LMU Application Procedures; LMU Approval Criteria; LMU Diligence; and Administration of LMU Operations: Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: A proposed rule amending the regulations relating to logical mining units (LMU's) for coal mining operations was published in the **Federal Register** on Wednesday, December 28, 1994 (59 FR 66874), with a 60-day comment period expiring February 27, 1995. The comment period is being extended for 30 days in response to public request.

DATES: The period for the submission of comments is hereby extended until March 29, 1995. Comments postmarked after this date will not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESSES: Comments should be sent to the Regulatory Management Team (120), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William Radden-Lesage, (202) 452–0350.

Dated: February 21, 1995.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 95–4679 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–25, RM–8588]

Radio Broadcasting Services; Waldport, Oregon

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jarvis Communications, Inc., seeking the allotment of Channel 288A to Waldport, OR, as the community's first local FM service. Channel 288A can be allotted to Waldport in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) northwest, at coordinates 44–32–17 North Latitude and 124–03–37 West Longitude, to avoid a short-spacing to vacant but applied-for Channel 288A at Cottage Grove, OR.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Matt Jarvis, Jarvis Communications, Inc., Radio Station KORC-AM, P.O. Box 1419, Waldport, OR 97394 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

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SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–25, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

FEDERAL COMMUNICATIONS COMMISSION.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4696 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–24, RM–8583]

Radio Broadcasting Services; Clarendon, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by ROHO Broadcasting proposing the allotment of Channel 257C2 to Clarendon, Texas, as the community's first local aural transmission service. Channel 257C2 can be allotted to Clarendon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 257C2 at Clarendon are 34–56–16 and 100–53–16.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith Hodo, ROHO Broadcasting, P.O. Box 1090, Clarendon, Texas 79226 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–24, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4692 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–30, RM–8578]

Radio Broadcasting Services; Madisonville, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Leon Hunt, d/b/a Hunt Broadcasting, proposing the allotment of Channel 272A to Madisonville, Texas, as the community's second local commercial FM service. Channel 272A can be allotted to Madisonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.3 miles) northwest to avoid a short-spacing conflict with the licensed site of Station KMJQ(FM), Channel 271C, Houston, Texas. The coordinates for Channel 272A are 31–00–25 and 95–56–30.

DATES: Comments must be filed on or before April 14, 1995, and reply comments on or before May 1, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christopher D. Imlay, Esq., Booth, Freret and Imlay, 1233–20th Street, NW, Suite 204, Washington, D.C. 20554 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–30, adopted February 9, 1995, and released February 21, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4695 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–5161–1]

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Extension of comments on proposed rule.

SUMMARY: This document extends the due date for comments by 30 days for the proposed revision to the EPA Acquisition Regulation (EPAAR) coverage on cost-plus-award fee (CPAF) contracts (60 FR 5888, January 31, 1995).

DATES: Written comments on this proposed rule must be received on or before April 3, 1995.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW, Washington, DC 20460, Attn: Louise Senzel (202) 260–6204.

Dated: February 13, 1995.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 95–4593 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Dakota Skipper as Endangered or Threatened

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Dakota skipper (Hesperia dacotae Skinner) under the Endangered Species Act of 1973, as amended. The Service finds that the petition does not present substantial scientific or commercial information indicating that the listing may be warranted at this time.

DATES: The finding announced in this document was made on February 16, 1995.

ADDRESSES: Comments, or questions concerning this petition should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Shumate, Invertebrate Species Coordinator, Division of Endangered Species, at the above address (612/725–3276).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

On January 21, 1994, The Service received a petition dated January 15, 1994, from Brendan McManus of the Biodiversity Legal Foundation, to list the Dakota skipper (*Hesperia dacotae*) as endangered or threatened and designate critical habitat. The Service made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on July 28, 1994 (59 FR 38424). A status review of the species was continued.

The Dakota skipper was designated a category 2 candidate species in the May 22, 1984, Notice of Review (49 FR 21664) and has remained in category 2 to date (January 6, 1989, 54 FR 572; November 21, 1991, 56 FR 58830; and November 15, 1994, 59 FR 59020). A category 2 candidate is a species for which information in the Service's possession indicates that listing is possibly appropriate, but for which insufficient information on biological vulnerability and threats is not currently available to support a proposal for listing under the Act.

The Service has reviewed the petition, literature cited in the petition, information presented by various parties in response to the 90-day finding, other available literature and information, and has consulted with biologists and researchers familiar with the Dakota skipper. On the basis of the best scientific and commercial information available, the Service finds listing is not warranted at this time. The review concludes that there is not persuasive evidence that elevation of the species to category 1 is appropriate and, therefore, the species will be retained in category 2.

The Dakota skipper is a small to medium-sized butterfly found in mid- and tall grass prairie. Information on current status can be summarized as follows. Dakota skippers are reported in Iowa, Minnesota, North and South Dakota, and Manitoba, Canada. The species was formerly found in Illinois. The species is currently known in 12 counties (19 population sites) in Minnesota, 17 counties (32 population sites) in North Dakota, and seven counties (18 population sites) in South Dakota, and in one county (one population site) in Iowa (Royer and Marrone 1992; Ronald Royer, Minot, North Dakota, State University, *in litt.* 1994; Robert Dana, Minnesota Department of Natural Resources, *in litt.* 1994). Unknown Dakota skipper populations may exist; nine of the fifteen respondents to the 90-day notice indicated that additional areas need to be surveyed, including areas of North Dakota, Minnesota, and Iowa.

The Dakota skipper faces loss and degradation of its prairie habitat due to certain harmful burning, haying, grazing and pesticide use practices. Invasion of prairie by alien plants, natural succession, and habitat loss through physical conversion of prairie to other purposes are also negative factors. The Dakota skipper (and its habitat) are in long-term decline, but the demise of the species does not appear imminent. The Service believes additional information is required concerning the species and its threats before making the determination that the species is endangered or threatened within the definition of the Act. Timely protection and appropriate prairie management might eliminate the need to list the species.

Further details regarding the biological status of the species are contained in the administrative finding. Interested persons may obtain a copy of the finding by contacting the office indicated in the **ADDRESSES** section of this notice.

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References Cited

Royer, R.A., and G.M. Marrone. 1992. Conservation status of the Dakota skipper (*Hesperia dacotae*) in North and South Dakota. Report to U.S. Fish and Wildlife Svc., Denver, CO. 44 pp.

Author

The primary author of this document is Charles G. Kjos, U.S. Fish and Wildlife Service, Twin Cities Field Office, Bloomington, MN 55425–1665, telephone 612/725–3548.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 16, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–4780 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 021595A]

Reef Fish Fishery of the Gulf of Mexico; Regulatory Amendment Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on a draft proposed Regulatory Amendment to the regulations implementing the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. The draft proposed Regulatory Amendment, developed under an FMP framework procedure for adjusting management measures, would decrease the current 20 inch minimum size for red grouper to 18 inches for both commercial and recreational fisheries. A reduction of the current five fish daily bag limit for red grouper in the recreational fishery (five fish for all grouper species combined) may also be considered along with the proposed minimum size limit change. A final Regulatory Amendment to reduce the minimum size limit for red grouper to 18 inches was previously submitted to NMFS for review, approval, and implementation. NMFS subsequently informed the Council that it should consider new fishery information regarding the impacts of the proposed regulatory changes which became available to the Council. Also, NMFS requested that the Council evaluate more completely the expected biological and regulatory impacts of the proposed measures. At the public hearings, the Council will make available for public review and comment the draft proposed Regulatory Amendment and other available information. Based on the public hearing testimony and on a consideration of the new fishery information, the Council intends to make the appropriate changes in the Regulatory Amendment and resubmit it to NMFS.

DATES: Written comments on the draft proposed Regulatory Amendment or on the additional fishery information from NMFS will be accepted until March 10, 1995. The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Thursday, March 9, 1995, in Tampa, FL; and
2. Thursday, March 9, 1995, in Sarasota, FL

ADDRESSES: Copies of the draft proposed Regulatory Amendment are available from, Mr. Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; FAX: 813–225–7015. Written comments on this document should be addressed to the same individual.

The hearings will be held at the following locations:

1. Tampa, FL—Ramada Airport Hotel, 5303 West Kennedy Boulevard, Tampa, FL 33609
2. Sarasota, FL—Holiday Inn Lido Beach, 233 Ben Franklin Drive, Sarasota, FL 34236

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Populations Dynamics Statistician, 813–228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) by March 1, 1995.

Additional opportunity for public testimony on this issue will be scheduled at the Council meeting in New Orleans on Wednesday, March 15, beginning at 8:45 a.m. Persons testifying at this meeting must turn in registration cards before the start of the testimony.

Dated: February 21, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4646 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 38

Monday, February 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–95–07]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 6, 1995.

Time: 1:00 p.m.

Place: United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Division, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: Review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan, III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: February 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4738 Filed 2–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 95–011–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for corn designated as "Glufosinate Resistant Corn Transformation Events T14 and T25" genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn presents a plant pest risk.

DATES: Written comments must be received on or before April 28, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–011–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–011–01. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7601.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 23, 1994, APHIS received a petition (APHIS Petition No. 94–357–01p) from AgrEvo Company USA (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for herbicide-tolerant corn designed as "Gulfosinate Resistant Corn (GRC) Transformation Events T14 and T25." As described in the petition, GRC Events T14 and T25 are yellow dent corn plants genetically engineered with a stably integrated gene that encodes the enzyme phosphinothricin-N-aceyltransferase (PAT). The PAT enzyme catalyzes the conversion of L-phosphinothricin, the active ingredient in gulfosinate-ammonium, to an inactive form, thereby conferring resistance to herbicides in the phosphinothricin class. The *PAT* gene in GRC Events T14 and T25 is a synthetic version of the gene isolated from the bacterium *Streptomyces viridochromogenes*. Expression of the *pat* gene is regulated by the 35S promoter and the 35S terminator derived from the plant pathogen cauliflower mosaic virus.

The subject of corn is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences (promoters, and terminators) derived from a plant pathogen. GRC Events T14 and T25

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were evaluated in field trials conducted under APHIS permits in 1992 and 1993, and under APHIS notifications in 1993 and 1994. In the process of reviewing the applications for those field trials, APHIS determined that these plants would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insect, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Several issues associated with GRC Events T14 and T25 are also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by regulation. Plants that have been genetically modified for tolerance or resistant to herbicides are not regulated under FIFRA because the plants themselves are not themselves considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug, and Cosmetic Act (FEDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA publishes a statement of policy on foods derived from new plant varities in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varities, including those developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the "**ADDRESSES**" section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's GRC Events T14 and T25 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 21st day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4741 Filed 2–24–95; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–813]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Penelope Naas or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 or 482–2239, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from France are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register** on October 4, 1994 (59 FR 50565), the following events have occurred:

On October 5, 1994, pursuant to § 353.20(b)(1) of the Department's regulations, interfit, S.A. ("Interfit"), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the **Federal Register** a notice postponing the publication of the final determination in this case no later than February 16, 1995 (59 FR 56461).

From October 10 through October 14, 1994, we verified the responses of Interfit at its offices in Maubeuge, France and Starval in Marly La Ville, France, respectively. On October 17, 1994, we conducted a verification of related party and certain other issues at Vallourec Group Headquarters in Boulogne-Bilancourt, France. During the period of December 20 to 21, 1994, we verified the responses of Interfit, Starval and Vallourec Inc. in Houston, Texas. From December 12 to December 16, 1994, we verified Interfit's cost of production data at its offices in Maubeuge.

On January 23, 1995, and on January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department. On February 1, 1995, the Department held a public hearing in this investigation.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Fair Value Comparisons

To determine whether Interfit's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Regarding level of trade, Interfit reported that it sells only to distributors in the United States and the home market.

We made revisions to Interfit's reported data, where appropriate, based on findings at verification.

United States Price

Because Interfit's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Interfit's USP sales based on packed, c.i.f., duty paid, landed prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, marine insurance, ocean freight, U.S. brokerage, U.S. duties, and rebates. Reported U.S. duties were adjusted based on information collected at verification.

We made an adjustment to USP for value-added tax ("VAT") assessed on comparison sales in France in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al. v. United States*, 834 F. Supp. 1391. *See, Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan* (59 FR 16177, 16179, April 6, 1994), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

In its May 13, 1994, response, Interfit reported that all home market sales were made to distributors, three of which were related to Interfit. Based on information verified in this investigation, we do not consider Interfit's indirect minority interest in Hardy-Tortaux ("H-T") and Trouvay & Cauvin ("T&C") to be a sufficient basis to determine that the parties are "related," as defined in section 771(13) of the Act and 19 CFR 353.45(b). *See*, the Department's concurrence memorandum from the preliminary determination (September 26, 1994, at page 3). However, with respect to the third related distributor, Starval, we determined that its relationship to Interfit (*e.g.*, 100 percent common ownership) satisfies the definition of a related party.

Therefore, we compared Interfit's prices to Starval with Interfit's prices to unrelated parties using the arm's length test as set forth in Appendix II to *Final Determination of Sales at Less than Fair Value: Certain Cold-rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1994), and determined that the sales made to Starval were not at arm's length. Accordingly, we requested and received Starval's sales to unrelated customers in the home market. While verifying Starval's sales response, we found that several sales had been reported a number of times. This rendered Starval's home market database unusable for purposes of the final determination. Thus, we have disregarded a small portion of Interfit's home market sales and used sales made by Interfit directly to unrelated parties.

Cost of Production

Petitioner alleged that Interfit made home market sales during the POI at prices below the cost of production ("COP"). Based on petitioner's allegation, we concluded that we had reasonable grounds to believe or suspect that sales were made below COP. In the course of this investigation, we gathered and verified data on production costs.

For purposes of the preliminary determination, because Interfit's cost data was incomplete and submitted too late for consideration, as best information available ("BIA"), we made an adverse assumption that all home market sales were below the COP and based foreign market value on constructed value ("CV"). We then calculated the CV using Vallourec's transfer prices. We stated that we would verify whether those prices were at arm's length.

For the final determination, however, we have reviewed and analyzed respondents COP data. In accordance with our standard practice, we asked Interfit to provide cost data for inputs produced by related parties. Interfit failed to provide data on the cost of pipe, a major input, produced by its related supplier, Vallourec. Therefore, we have valued the input on the basis of BIA and used the resulting COP to test home market sale prices. As BIA we adjusted the transfer prices for the input upward by the average difference between petitioner's acquisition cost of pipe, as reported in the petition, and the transfer price Interfit pays to its supplier.

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of Interfit's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses, rebates and selling expenses. We made changes, where appropriate, to submitted COP data, as

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discussed above and in the *Interested Party Comments* section of this notice, below.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we disregarded from the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, we disregarded all sales of that product.

In order to determine whether below-cost sales had been made over an extended period of time, in accordance with section 773(b)(1) of the Act, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 10, 1993).

Interfit provided no indication that its below cost sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See*, section 773(b)(2); 19 U.S.C. 1677b(b)(2)).

Constructed Value

Where all home market sales of a product were disregarded, we based FMV on CV. We calculated CV based on the sum of the adjusted cost of materials, fabrication, general expenses, U.S. packing costs and profit. We adjusted the cost of materials as discussed in the *Interested Party Comments* section of this notice, below. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we (1) included the greater of Interfit's reported general expenses or the statutory minimum of ten percent of the cost of manufacture ("COM"), as appropriate, and (2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. We deducted rebates, where appropriate. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement V. United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department can no longer deduct home market movement charges from FMV pursuant to the Department's inherent power to fill in gaps in the antidumping statute. Instead, we adjust for direct movement expenses under the circumstance-of-sale provision of 19 CFR 353.56(a). Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight and insurance.

For both price-to-price comparisons and comparisons to CV, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the respondent's cost of borrowing in U.S. dollars during the POI. In instances where Interfit had not reported a shipment and/or payment date, we recalculated Interfit's reported credit expense.

We have not made a deduction for direct selling expenses reported by respondent because we determined that these expenses (product liability and inventory carrying costs) are, in fact, indirect selling expenses. However, we have deducted indirect selling expenses, capped by the commissions paid to Vallourec Inc., a related party in the U.S. market. For the preliminary determination, we did not recognize these commissions because we did not have an appropriate benchmark against which to test whether the commission arrangement was at arm's length. However, we verified that Interfit pays the same commissions to both related and unrelated parties, with the exception of a single unrelated party that receives a higher rate. In *LMI–La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455, 459 (Fed. Cir. 1990) (*LMI*), the CAFC indicated that related party commissions can and should be adjusted for if the commissions are at arm's length and are directly related to the sales under review. Because the vast majority of commissions to related and unrelated parties are at a single rate, we find these conditions are met in this case. Therefore, we deducted indirect expenses incurred for home market sales up to the amount of the U.S. commission. We then added the U.S. commission to the FMV or CV, as appropriate.

We adjusted for VAT in the home market in accordance with our practice. (*See* the *United States Price* section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See 19* CFR 353.60.

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from France. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegation using the Department's standard methodology. Because no additional information has been submitted since the preliminary determination, the Department performed the same analysis as explained in its preliminary finding. Based on this analysis, the Department determines, in accordance with section 735(a)(3) of the Act, that critical circumstances do not exist with respect to imports of certain carbon steel butt-weld pipe fittings from France.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation. The public versions of the January 10, 1995, verification reports are available in the Central Unit located in room B–99 of the Department's main building, the Herbert C. Hoover building.

Interested Party Comments

Comment 1

Petitioner contends that Interfit willfully refused, on four separate occasions, to provide from its related party, Vallourec Industries ("Vallourec"), the actual cost of producing carbon steel pipe, a major input in the production of the subject merchandise. Petitioner argues that by repeatedly refusing to respond to the Department's requests for this information, Interfit has not allowed the Department to properly conduct this investigation. Therefore, the Department should apply adverse best information available ("BIA") in the final determination. Petitioner notes that the BIA approach employed at the preliminary determination (*i.e.*, the assumption that all home market sales are below COP) rewards Interfit for its failure to cooperate. Accordingly, as BIA, the Department should use the margin reported for France in the petition or, in the alternative, the highest non-aberrational margin calculated for Interfit in the preliminary determination.

Interfit argues that it informed the Department that it was willing to accept the consequences of not supplying the cost information, as this task would have required Interfit to provide cost information from four separate related manufacturing units. Thus, Interfit is prepared to accept a BIA finding that all home market sales were below COP.

DOC Position

In light of Interfit's cooperation in this investigation, we disagree with petitioner's argument that the Department should use total BIA in the form of the margin reported for France in the petition, or the highest non-aberrant margin calculated for Interfit in the preliminary determination. Our use of partial BIA is adequate because it allows us to draw an adverse assumption only with respect to the information that Interfit failed to provide. Because we were able to perform a BIA cost test, we have adequately ensured that Interfit does not benefit from its failure to provide information. Therefore, total BIA is unnecessary.

Comment 2

Regarding the constructed value, petitioner contends that the prices from Vallourec to Interfit for carbon steel pipe do not satisfy the statutory requirements outlined in section 773(e)(2). According to petitioner, section 773(e)(2) requires Interfit to demonstrate that: (1) It has sales to unrelated customers in the market under consideration (*i.e.*, France); (2) the prices to those unrelated customers are for pipe that was "identical or demonstrably comparable to the pipe used by Interfit;" and (3) the prices that Interfit pays Vallourec are at arm's length. By its own admission, Interfit cannot satisfy the first two elements of the statute, because it concedes that "Vallourec sells no similar pipe to unrelated customers in France." With respect to the third element, according to petitioner, the Department's verification of the prices charged by Vallourec to Interfit and to other unrelated customers demonstrate that the prices to Interfit are preferential.

Thus, petitioner argues that the Department should disregard the transfer prices and use the actual cost of producing the input supplied by Vallourec (carbon steel pipe). However, because Interfit repeatedly refused to provide Vallourec's actual cost of producing carbon steel pipe, the Department is prevented from determining CV and conducting a complete investigation. Therefore, the Department should apply best information available ("BIA") in the final determination. In particular, the Department should use the margin reported for France in the petition or, in the alternative, the highest non-aberrational margin calculated for Interfit in the preliminary determination.

Lastly, Petitioner argues that even if the Department determines that transfer prices between Vallourec and Interfit are at arm's length, the Department has "reasonable grounds to believe or suspect" that the transfer price of the carbon steel pipe is less than the cost of producing the pipe. Petitioner contends that several factors in this investigation provide the Department with "reasonable grounds to believe or suspect" that Interfit purchased the pipe from Vallourec at less than the COP. Most notably, petitioner claims Interfit did not provide evidence that Vallourec's price for the pipe was above the cost of producing such pipe, even though the information was requested by the Department numerous times.

Petitioner thus argues that, because the Department has "reasonable grounds to believe or suspect" that pipe is being sold at less than COP, even if the transfer prices are accepted under section 773(e)(2), those prices cannot be used in determining CV. Rather, the Department should apply adverse BIA in the final determination, as detailed above.

Interfit claims that the prices it pays to Vallourec reflect the market value (*i.e.*, they are arm's length prices) and therefore, in accordance with section 773(e)(2), should be used for purposes of calculating constructed value. To substantiate its claim that the transfer prices between Vallourec and Interfit are arm's length, Interfit has provided the Department with prices of similar pipe sold to unrelated customers in the European Union ("E.U."). Interfit argues that, because "the E.U. is a fully integrated market, with no barriers to trade between its members," these sales are, in fact, in the same market (*i.e.*, the market under consideration). Interfit also contends that the term "merchandise under consideration" includes both similar and identical merchandise, not only identical merchandise. With respect to the arm's length nature of these sales, Interfit argues that information submitted in this investigation demonstrates that the prices Vallourec charges Interfit are comparable to the prices charged to unrelated customers for almost identical pipe. Moreover, the pipe sold to Vallourec's unrelated customers includes additional processing costs which are not included in the pipe sold to Interfit. These additional costs would more than account for the difference in price. Thus, pursuant to section 773(e)(2), Interfit claims that the Department should use the transfer prices in calculating CV.

With respect to section 773(e)(3), Interfit claims that this section contains a presumption that transfer prices are valid for purposes of calculating CV unless the Department has "reasonable grounds to believe or suspect" that they are below COP. To support its claim, Interfit cites *Al Tech Specialty Steel Corporation* v. *United States*, 575 F.Supp. 1277, 1282 (C.I.T. 1983); *FMC Corp.* v. *United States*, 3 F.3d 424 (CAFC 1993); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19020, Comment 4 (1989). Therefore, where constructed value is concerned, petitioner, not respondent, must first provide evidence that the transfer prices are below COP; a simple allegation by petitioner is not sufficient. Interfit also argues that its failure to provide evidence that the transfer prices were

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above COP does not imply that they were below cost.

Interfit claims that the concurrence memorandum from the preliminary determination (September 26, 1994, at page 3) and a November 15, 1994 letter from the Department to the counsel for Interfit, led the company to believe that the transfer prices would be used so long as they were determined to be at arm's length. Interfit assumed that if the Department had at that time "reasonable grounds" to believe that the pipe was sold to Interfit at less than the COP, the Department would have stated that cost was an issue.

DOC Position

The fact that Interfit failed to provide evidence that Vallourec's price for the input pipe was above the cost of producing the pipe, despite numerous requests from the Department for this information, provides the Department with "reasonable grounds to believe or suspect" that the transfer prices paid by Interfit were less than Vallourec's cost of production. Therefore, in computing the CV, we have valued the pipe on the basis of the BIA used to calculate COP for the home market sales below cost test. Because the transfer prices have been disregarded in accordance with section 773(e)(3) of the Act, we do not need to address the issue of whether the transfer prices satisfy the criteria under section 773(e)(2). The Department's preliminary determination expressly noted that whether the transfer prices were at arm's length would be examined at verification. In addition, the Department continued to pursue data that would confirm that the transfer prices are above COP. *See*, Supplemental/Deficiency Section D Questionnaire (November 15, 1994), Section D Verification Agenda (December 5, 1994), Fax to Counsel for Interfit (December 8, 1994), and Section D Verification Report (January 12, 1995). Therefore, contrary to Interfit's claims, the question of cost remained an issue.

Suspension of Liquidation

In accordance with section 735(c)(4) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from France, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by Interfit and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Interfit, S.A.	32.58
All Others	32.58

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4724 Filed 2–24–95; 8:45 am]

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[A–508–807]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 and 482–2239, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from Israel are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register** on October 4, 1994 (59 FR 50568), the following events have occurred:

On October 5, 1994, pursuant to section 353.20(b)(1) of the Department's regulations (19 CFR 353.20(b)(1)(1994), Pipe Fittings Carmiel, Inc. ("Carmiel") requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the **Federal Register** a notice postponing the publication of the final determination in this case until not later than February 16, 1995 (59 FR 56461).

On October 20, 1994, Carmiel filed a second supplemental/deficiency response, which included a revised home market sales listing. On November 27, November 28, and December 4, 1994, we verified Carmiel's sales information at its offices in Tel Aviv, Israel. On January 23, 1995, and on January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Product Comparisons

Carmiel sold identical products in both Israel and the United States during the POI. Therefore, in making our fair value comparisons, we compared sales of merchandise identical in all respects.

Fair Value Comparisons

To determine whether Carmiel's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade.

We made revisions to Carmiel's reported data, where appropriate, based on verification findings.

United States Price

Because Carmiel's U.S. sales were made to unrelated purchasers in the United States prior to importation, and because the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated Carmiel's USP based on packed C.I.F. prices to unrelated customers in the United States. We made deductions, where appropriate, for marine insurance, ocean freight, foreign inland freight, port fees, and customs agents fees and expenses.

We made an adjustment to U.S. price for the value-added tax ("VAT") paid on the comparison sales in Israel, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States*, Slip Op. 93–194 (CIT October 7, 1993). (*See Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136, March 25, 1994).

Foreign Market Value

In order to determine whether the sales in the home market are an adequate basis for the FMV, the Department generally compares the quantity of such or similar merchandise sold in the home market during the POI to the quantity sold for exportation to third countries. In this case, Carmiel made sales only to the United States and Israel during the POI. Based on the substantial quantity of home market sales in relation to its U.S. sales, we determined that the home market was viable.

In our preliminary determination, we stated that the appropriate date of sale is the date of the first written document which sets the price and quantity for the sale (*see Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 12240, 12241; March 16, 1994) and *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From France, et al.*, (58 FR 39729, 39783; July 26, 1993)). Accordingly, on October 20, 1994, respondent submitted a new home market sales listing using the invoice date as the date of sale. We confirmed at verification that the invoice date is the first written document setting the terms of sale in the home market and is, thus, the appropriate date of sale.

We have calculated FMV using the delivered prices reported by Carmiel in its October 20, 1994 home market sales listing. We adjusted the prices for certain discounts offered to home market customers. Also, in light of the decision of the Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, 13#F.3d 398 (Fed. Cir., 1994), we adjusted for post-sale home market movement charges under the circumstances-of-sale provision of the Act (Section 773(a)(4)(B)). This adjustment included home market inland freight.

We also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In calculating U.S. credit expense, we used the interest rate paid by Carmiel for short-term New Israeli Shekel ("NIS") loans linked to the dollar. In calculating the home market credit expense, we used Carmiel's borrowing rate for unlinked short-term NIS loans.

We adjusted for VAT in accordance with our standard practice. (*See* the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales, as published in the International Monetary Fund's International Financial Statistics (*see* 19 CFR 353.60).

Final Negative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from Israel. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegation using the Department's standard methodology. Because the information on which our analysis was based has not changed, we have performed the same analysis as explained in the preliminary finding. Based on this analysis, the Department determines, in accordance with section 735(a)(3) of the Act, that critical circumstances do not exist with respect to imports of certain carbon steel butt-weld pipe fittings from Israel.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1

Carmiel argues that U.S. sales relating to the September 22, 1993, invoice are outside the period of investigation. The company claims that the terms of these sales were set in the purchase order, which is dated March 25, 1993. Carmiel argues that while the actual quantity shipped changed slightly before the shipment date, this change was very small and resulted from limitations imposed by the size of the shipping containers.

DOC Position

We agree with respondent. Carmiel appropriately excluded these sales from its U.S. sales listing because the terms of the sales were set well before the POI. We agree that the change in quantity was minor and does not constitute a change in the basic terms of the sale.

Comment 2

At verification, Carmiel officials notified the Department that they had not reported an additional home market discount which was given to customers who made prompt payments. The information pertaining to these discounts was submitted to the Department after the verification was completed, and the Department returned the information as untimely. Carmiel argues that the Department should accept the information and make an adjustment for this discount. According to Carmiel, these discounts were inadvertently omitted from the company's response because the response was prepared by an outside consultant using data that was not computerized. Furthermore, Carmiel argues that the information should be considered verified, regardless of when

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it was submitted, because the team verified the actual prices paid on home market sales.

Petitioner argues that the Department should deny Carmiel the adjustment because the information was submitted after the deadline for submission of factual information. Petitioner notes that Carmiel chose not to report this information on a timely basis.

DOC Position

We agree with petitioner. Section 353.31(a)(i) of the Department's regulations states that the last date factual information can be submitted for consideration in a final determination is "seven days before the scheduled date on which the verification is to commence." This information was not submitted prior to the start of verification and, therefore, it is untimely. It also is unclear that the information was "inadvertently" omitted as Carmiel claims. At verification, Carmiel officials stated that they had chosen not to report this discount because the value of the discount was insignificant compared to the amount of work involved. Thus, even if the Department were to consider inadvertency as an excuse, it has not been established in this instance. Finally, while the Department's verifiers did examine several home market sales, they saw no documentation regarding these discounts and thus, there is no basis for considering these discounts to have been verified.

Comment 3

Carmiel argues that the Department should calculate the home market credit expense using a higher interest rate than that used for the preliminary determination. Carmiel points out that, at verification, the team saw evidence of company borrowing at a much higher interest rate, indicating that the company's home market credit costs were actually higher than reported. Using the lower rate to make the credit adjustment would understate the company's expenses. Therefore, the Department should use either the higher rate, or an average of the reported rate and the higher rate.

Petitioner claims that there is no verified information indicating the extent of Carmiel's borrowing which is taken out at the higher interest rate. While officials stated that the majority of Carmiel's short-term financing was at the higher rate, this claim was not substantiated. Additionally, petitioner argues, rational economic behavior suggests that the majority of Carmiel's financing would be at the lower rates. Moreover, the Department does not possess enough verified information to appropriately weight the two rates in order to calculate an average. Finally, petitioner points out that Carmiel chose to report the lower, more conservative rate.

DOC Position

Carmiel reported the lower rate in its response, and we verified this rate. While we also verified that Carmiel received some financing at the higher rate, we do not have verified information regarding the total amount of Carmiel's borrowings at this rate. We agree with petitioner that without knowing what portion of Carmiel's short-term financing is at the higher rate, it is not possible to calculate a relevant average of the two rates. Therefore, we have used the lower interest rate reported by respondents in making the home market credit adjustment.

Comment 4

Carmiel states that the Department's adjustments for VAT in this case are a misapplication of the statute because Carmiel reported its home market sales "net" of VAT. Carmiel recognizes that this adjustment was made as a result of the CIT decision in *Federal-Mogul Corp v. United States*, 15 ITRD 1127 (CIT 1993); however, Carmiel argues that the court also misinterpreted the statute. According to Carmiel, the statute only requires the Department to adjust for VAT when it is included in or added to the home market prices reported. Thus, when the tax is not included in or added to the prices reported, the Department should not then add the tax to FMV. Carmiel claims that adding VAT to both FMV and USP, as was done in the preliminary determination, resulted in significant distortions to Carmiel's margin.

Petitioner argues that the Department appropriately adjusted for VAT by adding the tax to both FMV and USP and that this adjustment did not distort Carmiel's margins. Petitioner cites *Calcium Aluminate Coment, Cement Clinker and Flux from France*, 59 FR 14136, 14138 25, 1994) in support of the argument that the Department must include an adjustment for VAT in the USP to account for VAT in the home market. Because respondent has reported home market sales values excluding VAT, the Department should add VAT to the net FMV and USP.

DOC Postition

The statute provides for dumping determinations to be made on a tax inclusive basis. Section 772(d)(1)(c) of the Act provides for an offsetting adjustment to U.S. price, based on the presumption that home market prices include VAT. Accordingly, the Department has insisted that HM prices be reported on a VAT inclusive basis (*see Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from The Federal Republic of Germany*, 54 FR 18992, May 3, 1989). Allowing respondents to choose whether to report HM prices net of taxes would allow them to partially determine their own dumping margins. Because respondent reported its home market sales net of VAT, we have added the VAT back onto the home market price and adjusted the USP accordingly.

Comment 5

Petitioner argues that two companies, Keshta Ltd. ("Keshta") and Keshet Steel Import/Export Company ("Keshet"), are so closely related to Carmiel that the three companies should be treated as one for the purposes of the final determination.

Carmiel states that since it reported the sales of both Keshet and Keshta, the companies are essentially being treated as one company. Furthermore, since Carmiel is the only exporter, Keshet and Keshta would be subject to the all others rate (Carmiel's rate) if they did begin to export to the United States.

DOC Position

We verified that neither Keshet nor Keshta made sales to the United States during the POI. Moreover, we verified that the sales of both Keshet and Keshta were included in Carmiel's home market sales response. Therefore, the three companies have been treated as one company for purposes of this determination.

Comment 6

Petitioner argues that certain of Carmiel's movement expenses are most likely incurred by value and, thus, should have been allocated by value rather than by weight.

Carmiel argues that the results of allocating by value versus allocating by weight will be virtually the same given the small amounts in question and the fact that the price and weight of the elbows in question rise proportionately. Furthermore, Carmiel states that the costs were allocated according to the Department's instructions. Therefore, the Department should continue to use the costs as allocated by Carmiel and as verified by the Department.

DOC Position

We agree with petitioner that marine insurance and agents fees should have been allocated by value, rather than weight. In response to Carmiel's assertion that it followed the Department's instructions, we note that the Department's August 3, 1994 deficiency questionnaire, at page 4, instructed respondent to allocate expenses on the basis that they are incurred. Since these expenses are incurred by value, they should be allocated on such basis. Accordingly, we have reallocated marine insurance and agents fees by value.

Comment 7

Petitioner states that the payment date for one home market invoice should be corrected based on findings at verification.

Carmiel notes that, while several payment dates were found to be incorrect at verification, the payment date problems were minor and resulted from the fact that its records are not computerized. Therefore, correcting the payment dates will not have a significant effect. Nonetheless, respondent states that all of the verified payment dates should be corrected.

DOC Position

We agree with both petitioner and respondent. It would be inappropriate to use payment dates which we know to be incorrect for the final determination. Therefore, we have corrected the misreported payment dates on the verified sales. We have used these corrected payment dates to calculate the home market credit adjustment.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Israel, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by Carmiel and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Pipe Fittings Carmiel, Inc.	8.84
All Others	8.84

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the final affirmative determination in the concurrent countervailing duty investigation of certain carbon steel butt-weld pipe fittings from Israel, which was 2.26 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 6.58 percent for Carmiel and a deposit rate of 6.58 percent for all others.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-4725 Filed 2-24-95; 8:45 am]

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[A-533-811]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1442.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from India are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register** on October 4, 1994 (59 FR 50562), the following events have occurred:

On October 5, 1994, Sivanandha Pipe Fittings Ltd. (Sivanandha) and Karmen Steels of India (Karmen), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the **Federal Register** a notice postponing the publication of the final determination in this case until February 16, 1995 (59 FR 56461).

From October 31 to November 5, 1994, we verified Sivanandha's and Karmen's sales information in Madras, India.

We received case and rebuttal briefs on January 23 and January 30, 1995, respectively, from petitioner and respondents.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is

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provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Karmen's Exports of Refurbished Pipe Fittings

Karmen reported that it has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and sends them to the Singaporean company's U.S. customer. Petitioner and Karmen agree with the Department's preliminary determination that these "sales" of refurbished pipe fittings are not subject to this investigation.

For purposes of this final determination, we are continuing to treat these "sales" as outside the scope of our investigation and, hence, not subject to any potential antidumping order on butt-weld pipe fittings from India. Karmen essentially performs a tolling service for its Singaporean customer. Moreover, Karmen does not "substantially transform" these pipe fittings.

Substantial transformation generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured. See Cold-Rolled Steel from Argentina, 58 FR 37062, 37065 (1993) (Appendix I). Commerce makes these determinations on a case-by-case-basis. See, e.g., Certain Fresh Cut Flowers from Colombia, 55 FR 20291, 20299 (1990); Limousines from Canada, 55 FR 11036, 11040 (1990).

In determining whether Karmen substantially transformed these pipe fittings, we examined whether the degree of processing or manufacturing resulted in a new and different article. Karmen receives rusty pipe fittings from Singapore, it removes the rust, paints the fitting, and forwards it to the Singaporean company's customer. We do not consider this refurbishing process as substantially transforming the subject merchandise because it remains a pipe fitting after refurbishment. Therefore, because Karmen does not substantially transform the merchandise, we do not consider it as falling within the scope of this proceeding.

Period of Investigation

The period of investigation (POI) is September 1, 1993 through February 28, 1994, for Sivanandha and August 1, 1993 through February 28, 1994, for Karmen. The preliminary determination in this investigation provides an explanation regarding the different POIs for each company.

Such or Similar Comparisons

For Sivanandha, in making our fair value comparisons, we first compared merchandise identical in all respects in accordance with the Department's standard methodology. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire (Appendix V) (on file in Room B–099 of the main building of the Department of Commerce (Public File)). For the U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Karmen did not make home market or third country sales of the subject merchandise. Therefore, we based foreign market value (FMV) on constructed value (CV), in accordance with section 773(a)(2) of the Act.

Fair Value Comparisons

To determine whether Sivanandha's and Karmen's sales for export to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We made revisions to Sivanandha's and Karmen's reported data, where appropriate, based on verification findings.

United States Price

Because Sivanandha's and Karmen's U.S. sales of subject merchandise were made to unrelated purchasers prior to importation into the United States, and exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price (PP) sales methodology in accordance with section 772(b) of the Act.

We calculated Sivanandha's USP based on packed, CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance.

We recalculated Sivanandha's marine insurance expense, so it is allocated on a value basis instead of a weight basis.

For Sivanandha, in accordance with Section 772(d)(1)(B) of the Act, we added the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

We also made an adjustment for taxes paid on the comparison sales in India, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in Federal-Mogul, et al v. United States, 834 F. Supp. 1993. See, Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179, April 6, 1994 for an explanation of this tax methodology.

We calculated Karmen's USP based on packed, CIF prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, containerization, ocean freight, and marine insurance. We recalculated Karmen's marine insurance expense, so it is allocated on a value basis instead of a weight basis.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating Sivanandha's FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that Sivanandha's home market was viable.

For Sivanandha, we calculated FMV based on delivered prices, inclusive of packing to home market customers. From these prices, we deducted commission, where appropriate.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F. 3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale (COS) provision of 19 CFR 353.56(a). Accordingly, in the present case, we adjusted for post-sale home market movement charges under the COS provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For Sivanandha, we also made COS adjustments for differences in quality inspection charges, and credit. In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission. Finally, we deducted home market packing expenses and added U.S. packing expenses to Sivanandha's FMV, in accordance with section 773(a)(1) of the Act.

For Karmen, because it sells the subject merchandise only in the United States, we used CV, pursuant to section 773(e) of the Act. We calculated CV as the sum of the cost of materials, fabrication, general expenses, U.S. packing costs, and profit. We relied upon the submitted CV data but made the following changes where we determined costs were not appropriately quantified or valued: (1) We adjusted the cost of manufacturing to include the cost of excluded electricity expenses; (2) we recalculated finance expense on an annual basis as a percentage of cost of goods sold; (3) we increased SG&A expenses for excluded partner's salary, audit fees and bank charges and recalculated SG&A expense on an annual basis as a percentage of fabrication cost of goods sold; (4) we reduced the manufactured fittings per unit of fabrication cost for amounts that relate to the refurbished fittings; and (5) we reduced the submitted indirect selling expense for the verified overstated amounts. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we: (1) Included the greater of either Karmen's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate; and (2) used the statutory minimum of eight percent of the sum of COM and general expenses for profit because actual profit was less than eight percent.

In our preliminary determination, we were unable to properly allocate labor and variable manufacturing overhead costs between refurbished pipe fittings and new pipe fittings. However, based on verified information, we are now able to allocate the labor and variable manufacturing overhead costs between refurbished and new pipe fittings. Therefore, for purposes of this final determination, Karmen's CV includes only those costs allocable to new pipe fittings.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation.

Interested Party Comments

Comment 1: Karmen and Sivanandha argue that they are not related parties for purposes of this antidumping duty investigation. They contend that, although one individual has a common interest in both companies, in all other respects the two companies are separate.

Petitioner disagrees with respondents' argument. It states that, although the Department verified that Karmen and Sivanandha are separate legal entities, the relationship between the two companies satisfies many of the criteria considered by the Department when deciding whether to "collapse" companies.

DOC's Position: We agree with respondents. In general, Commerce will not consider parties related where the ownership interest is less than five percent. *See, e.g.*, Certain Forged Steel Crankshafts from Japan, 52 FR 36984 (1987). This is consistent with Commerce's "general practice not to collapse related parties except in certain relatively unusual situations, where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation." Antifriction Bearings (Other Than Tapered Roller Bearings: and Parts Thereof from Germany, 54 FR 18992, 19089 (1989). Based on Karmen's supplemental response and our analysis at verification, we confirmed that the ownership between Karmen and Sivanandha is insignificant and that no other factors suggested a strong possibility of price manipulation. (*See* the February 16, 1995, Memorandum from Team to Barbara Stafford for a full discussion of our analysis of this subject.)

Comment 2: Karmen argues that it should be allowed to reduce its cost of manufacturing for the POI to account for the advance import license it purchased from the Indian government. Karmen notes that it originally purchased the license in order to import steel pipe for pipe fittings at duty-free prices. Karmen maintains that it did not use the import license but, instead, produced and exported the subject merchandise using higher-priced domestic pipe inputs. Because it can still import duty-free pipe under the license, Karmen argues that it should be allowed to reduce its production costs by an amount representing the estimated future savings on imported pipe used to manufacture pipe fittings.

Petitioner argues that we should not reduce Karmen's production costs by the potential savings on future duty free imports. Petitioner states that in calculating constructed value, the Department uses the cost of materials incurred at a time preceding the date of exportation of the subject merchandise. Also, the Department's CV questionnaire clearly states that the respondent is to report costs incurred during the POI for purposes of constructed value. Petitioner further claims that the advance license held by Karmen was not used during the POI and, therefore, the future potential savings, if they are realized, will affect costs after the date of exportation of the subject merchandise. Finally, petitioner argues that if the license is used in the future, the effect of the license on Karmen's costs of manufacturing would be taken into account in a future administrative review.

DOC's Position: We believe that the advance import license provides a benefit to Karmen which accrued to the company during the POI due to the fact that it met its export commitment under the license through the use of domestically-purchased pipe inputs. In this case, the benefit from the license relates directly to production and sale of the subject fittings during the POI. Thus, in order to achieve an appropriate matching of production costs and sales revenues for the subject merchandise, we have offset material costs by an amount representing the benefit obtained from the unused import license.

Comment 3: Petitioner argues that the Department should not adjust Karmen's material costs by the income generated by sales of scrap, because subcontractors to Karmen retain the scrap and presumably lower their prices to Karmen to reflect the value of the scrap.

DOC's Position: The Department verified that Karmen permits its subcontractors to keep all scrap generated from the production processes they perform. Hence, Karmen did not sell any scrap during the POI and is not entitled to the scrap adjustment it claimed. We agree with petitioner that the value of the scrap is likely accounted for in the price the subcontractors charge Karmen. Therefore, allowing the adjustment claimed by Karmen would double count the value of scrap.

Comment 4: Regarding the salary of its director, Karmen argues that since the director is an owner, his income is a partner's draw and should not be included in Karmen's total salary expense. Respondent also contends that if the Department determines that the draw must be included in SG&A costs, the Department should only include the amount of the draw that would be comparable to a reasonable salary for management.

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Petitioner argues that the director's entire salary should be included as a cost because it is treated as a cost by Karmen in its financial statements and in calculating taxable income. Also, petitioner contends that there is no factual basis by which the Department can establish an amount that would be reasonable salary for management.

DOC's Position: We agree with petitioner. During verification, we discovered that Karmen did not include its director's salary in its reported costs. Karmen's director is not a passive investor; he takes an active role in the company's management. Moreover, the payments made to him during the POI were classified as salary in Karmen's books and records. There is no evidence on the record to indicate that these payments were for anything other than salary. Accordingly, we included the full amount paid to the director in SG&A costs for purposes of the final determination.

Comment 5: Karmen argues that the Department should use verified information to allocate Karmen's labor and variable overhead costs between the pipe fittings it refurbishes and the pipe fittings it manufactures. Respondent further contends that the Department should allocate certain other costs, such as grinding and painting, to both types of fittings since these costs were incurred on both types of pipe fittings.

Petitioner agrees that allocation of a portion of verified costs to refurbished fittings may be appropriate. However, petitioner disagrees that the Department should allocate any expenses for grinding to refurbished pipe fittings because Karmen has not previously indicated that any grinding is involved in the refurbishing process. Petitioner contends that grinding is associated with the beveling process, which is a production step performed before Karmen acquires the rusty pipe fittings.

DOC's Position: The Department verified that shotblasting, punching, painting and grinding costs were incurred by Karmen to refurbish certain of its pipe fittings. Therefore, the Department has allocated a portion of these expenses to the cost of the refurbished fittings.

Comment 6: Karmen argues that SG&A should be allocated to refurbished and manufactured pipe fittings on the basis of weight. Since there are no material costs associated with the refurbished pipe, an allocation based on cost of goods sold would assign too great an amount to manufactured pipe fittings.

Petitioner argues that the Department should deny Karmen's request to allocate SG&A costs by weight instead of cost. Petitioner contends that it is the Department's practice to calculate SG&A costs as a percentage of cost of sales. Petitioner further contends that with respect to the refurbished fittings, Karmen does not manufacture or "sell" these fittings. Because Karmen contributes so little value to the refurbished fittings, using product weight to allocate SG&A is plainly distorting.

DOC's Position: We have determined that SG&A expenses should be allocated based on cost of sales rather than on the weight of finished pipe fittings. However, since there are no material costs associated with the refurbished fittings and hence, no material costs were reflected in these "sales", we removed material costs related to the manufactured fittings from cost of sales in order to establish an equitable allocation.

Comment 7: Karmen claims that, although not mentioned in the CV verification report, company officials demonstrated at verification that certain indirect selling expenses had been overstated in the CV calculations. Correct amounts were provided and verified.

Petitioner claims that there is no evidence of this on record, and that the original amount should be used.

DOC's Position: Although we did not address this issue in our verification report, respondent is correct in stating that we verified Karmen's actual amount of indirect selling expenses for the POI. Additionally, there is information on the record of this investigation which supports Karmen's verified indirect selling expenses. The source document supporting this expense is in Exhibit 10 of the CV verification report.

Comment 8: Petitioner argues that the Department should use the verified packing cost information for Karmen instead of the reported amount for the final determination. Petitioner also argues that the Department should use the best information available (BIA) for Karmen's foreign inland freight expenses, since Karmen did not provide the supporting documentation requested by the Department.

Karmen argues that although it did not produce supporting documentation for its foreign inland freight expense, the Department should not resort to BIA. Respondent contends that, because the general accuracy of Karmen's responses was established at verification, the Department should use the data ascertained at verification.

DOC's Position: As stated in the Fair Value Comparisons section of this notice, we made revisions to Karmen's data, where appropriate, based on verification findings. Therefore, we have adjusted Karmen's data for packing costs based on verification.

Because Karmen did not provide source documentation for its foreign inland freight expense, we have used as BIA, the highest Indian truck freight rates as provided in a cable from the U.S. embassy in Bombay dated August 3, 1993.

Comment 9: Petitioner claims that we should apply total BIA to Sivanandha because the Department's verification revealed numerous discrepancies in Sivanandha's responses. (The specific discrepancies raised by petitioner are addressed in comments 10 through 17, below.)

Sivanandha refutes each of the discrepancies listed by petitioner and argues that total BIA is inappropriate. (*See*, comments 10 through 17 for Sivanandha's counter arguments.)

DOC's Position: We have determined to accept Sivanandha's verified information because the discrepancies discovered were minor in nature. Overall, Sivanandha's responses were accurate and presented a true picture of its manufacturing and selling processes.

Comment 10: Petitioner argues that certain home market sales reported by Sivanandha as subject merchandise (*i.e.*, seamless carbon steel butt-weld pipe fittings), were sales of welded pipe fittings, which are outside of the scope of this investigation. Petitioner contends that sales of welded pipe fittings that were actually filled with pipe fittings made of seamless pipe cannot be considered as occurring in the ordinary course of trade.

Sivanandha argues that these sales were within the ordinary course of trade and that it correctly reported all sales of the subject merchandise.

DOC's Position: We verified that all of Sivanandha's home market sales were produced using seamless carbon steel. Therefore, we agree with Sivanandha that these sales are properly included in the home market database. Although customers requested welded pipe, the orders were filled with seamless pipe. Since we are investigating sales of seamless pipe to the United States, the home market sales in question should be included for comparison purposes. While we are authorized to exclude sales not in the ordinary course of trade (*e.g.*, trial sales or sales of samples), there is no basis for treating Sivanandha's seamless pipe sales as outside the ordinary course of trade.

Comment 11: Petitioner claims that the product weights were not verified because Sivanandha used standard weights instead of actual weights. Petitioner argues that the standard weights were not acceptable because the correlation between standard and actual weights was no better than 93 percent.

Sivanandha argues that it was appropriate to use standard weights because most invoices did not list actual weights. According to Sivanandha the 93 percent correlation between actual and standard weights derived at verification supports, rather than undermines, the use of standard weights.

DOC's Position: We disagree with petitioner that Sivanandha's use of standard weights was unreasonable. The 93 percent correlation between actual and standard weights demonstrates the reasonableness. Moreover, even if we were to adjust for the seven percent "discrepancy" it would have no effect on the amounts allocated to each size of pipe fitting because Sivanandha used the same methodology for both its home market and U.S. sales.

Comment 12: Petitioner states that Sivanandha did not provide documentation for the cost of gunny bags. Therefore, petitioner argues that packing was not verified. Petitioner also states that Sivanandha did not report any labor costs for packing pipe fittings sold in the home market.

Sivanandha claims that the cost of gunny bags was verified. It also contends that the failure to report the cost of labor for packing home market sales is to its detriment. As a practical matter, Sivanandha points out that there is virtually no labor cost for home market packing since there is no crating on home market sales.

DOC's Position: Normally, the Department applies BIA whenever respondents are unable to support at verification the information provided in their responses. Although Sivanandha failed to provide at verification documentation supporting the cost of gunny bags, the Department is not compelled to apply BIA because the company's overall responses were accurate and verified, and the plausible cost of such bags is very low. Absent alternative publicly available information with respect to the cost of gunny bags, the Department has used the price reported by Sivanandha.

Comment 13: Petitioner lists the following problems with the difference in merchandise adjustment submitted by Sivanandha: incorrect product codes, standard versus actual weight of steel, average price for steel versus price for specific grades of steel, discrepancies in the manner in which Sivanandha reported its labor and variable overhead expenses. Petitioner argues that these problems led the Department to request that Sivanandha resubmit its home market and U.S. sales databases.

Sivanandha admits that it originally did not understand the Department's methodology regarding this adjustment. However, Sivanandha argues that the information was corrected at verification. Therefore, Sivanandha argues that the Department should accept these new verified databases.

DOC's Position: At verification, we discovered that the Sivanandha had not understood the Department's adjustment for differences in merchandise. However, the information required to correct Sivanandha's adjustment was readily available and we verified it. Sivanandha submitted new section B and C databases after verification, and we confirmed that they were identical to the information verified. Therefore, we are accepting Sivanandha's corrected databases.

Comment 14: Petitioner describes other discrepancies pertaining to adjustments for inland freight, credit, bank guarantees, ocean freight, marine insurance, foreign inland freight, and containerization.

Sivanandha claims that many of the costs were estimated because Sivanandha had not yet exported the merchandise to the United States. Also, certain of the discrepancies listed by petitioner were minute fractions of a cent, due to rounding errors. Sivanandha argues that company officials made every effort to supply the verification team with accurate information.

DOC's Position: We view the discrepancies described by petitioner as minor and are using the verified information. We agree with Sivanandha that the company cooperated fully with the Department's investigation and verification.

Comment 15: Petitioner claims that the sum of material, labor, and variable overhead is incorrect in Sivanandha's database, and is concerned that there are additional problems with the November 29, 1994 databases. Therefore, petitioner argues that these databases should not be used and that the Department should use BIA.

DOC's Position: The Department noted that the data was correct, but the program was missing one formula. The Department entered the correct formula, and the spreadsheet is accurate. The Department is accepting these databases for the final determination because we have checked that they match the data we verified.

Comment 16: The petitioner claims that by using the new submission the difference in merchandise adjustment for several sales exceed the 20 percent rule. Hence, for these sales, constructed value should be used.

Sivanandha believes that the petitioner's claim is incorrect. Moreover, according to Sivanandha, petitioner's allegation that the Department should use CV in these sales is untimely.

DOC's Position: Using the November 29, 1994 databases, we have determined that no difference in merchandise adjustments exceeded 20 percent. This issue is therefore moot.

Comment 17: Petitioner claims that the circumstance of sale adjustment for advertising in the home market should not be allowed because the advertising is aimed at Sivanandha's customers, not the customers' customer. Petitioner also argues that the adjustment for quality inspections should not be allowed because, even though the charge appears on the invoice, it is separate from the cost of the merchandise and, therefore, not embedded in the price.

Sivanandha claims that it would be inappropriate to ignore these adjustments because these costs were incurred solely on the home market sales and, therefore, increased the price of the home market sales. Additionally, Sivanandha claims that the quality inspections are performed only if the customer requests the services. The price charged is higher because the cost of the inspection is included in the price reported by Sivanandha.

DOC's Position: We agree with the petitioner that we should not adjust Sivanandha's home market sales for advertising expenses because the costs were not directed to the customers' customer. However, we agree with Sivanandha that we should make an adjustment to its home market prices for technical services when the inspection was performed by a third party because we verified that these costs were included in Sivanandha's price.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from India, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market values of the subject merchandise exceed the United States prices as shown below. The suspension of liquidation will remain in effect until

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further notice. The weighted-average dumping margins are as follows:

Manufacturer/ producer/ex-porter	Margin (percent)	Deposit (percent)
Karmen Steels of India	1.69	1.69
Sivanandha Pipe Fittings, Ltd	13.99	10.83
All Other	7.84	6.26

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly in this investigation, because Sivanandha's FMV is based on home market sales, the antidumping margin must be adjusted. In the concurrent Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from India, we determined that Sivanandha's export subsidy was 3.16 percent *ad valorem*, which will be subtracted from the margins for cash deposit or bonding purposes. This results in a deposit rate of 10.83 percent for Sivanandha. Since Karmen only has U.S. sales, its FMV is based on CV which reflects export subsidies. Because the export subsidies were reflected in both USP and FMV, the subsidies did not affect the margin calculations using CV.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations.

[FR Doc. 95-4723 Filed 2-24-95; 8:45 am]

BILLING CODE 3510-DS-P

(A-557-808)

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-5055.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings ("pipe fittings") from Malaysia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accomodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through February 28, 1994.

Case History

Since the announcement of the preliminary determination on September 27, 1994, the following events have occurred.

On October 4, 1994, we published the notice of preliminary determination in the **Federal Register** (59 FR 50560). On October 20, 1994, White & Case submitted a notice of appearance on behalf of the Government of Malaysia.

On November 14, 1994, we published the postponement of final determination in the **Federal Register** (59 FR 56461).

Petitioner was the only interested party to file a case brief in this investigation. Petitioner did so on January 23, 1995.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for Malaysia Mining Corporation Pipe & Fitting Sdn Bhd (MMCPNF), the Malaysian company identified by both petitioner and the U.S. Embassy in Malaysia (by cable to the Department) as the primary exporter of the subject merchandise to the U.S during the POI. Given that MMCPNF did not respond to the Department's questionnaire, we find the company has not cooperated in this investigation.

Our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning the highest margin among the margins alleged in the petition, adjusted for methodological errors as explained in the Department's initiation notice. *See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19033, May 3, 1989). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. (*See Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993)); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)).

Critical Circumstances

Petitioner has alleged that critical circumstances exist with respect to imports of the subject merchandise from Malaysia. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A)(i) There is a history of dumping in the U.S. or elsewhere of the class or kind of merchandise which is the subject of this investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of this investigation over a relatively short period.

Since MMCPNF did not respond to our August 12, 1994, letter requesting export shipment information, we determine, as BIA, pursuant to section 776(c) of the Act, that critical circumstances exist with respect to imports of pipe fittings from Malaysia.

Suspension of Liquidation

In accordance with section 735(d)(1) of the Act (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipe fittings from Malaysia, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after July 6, 1994, (*i.e.*, 90 days prior to the date of publication of our preliminary determination in the **Federal Register**). The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted average margin percent
All Companies	194.70

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on pipe fittings from Malaysia entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-4720 Filed 2-24-95; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE.

International Trade Administration

[A-580-824]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-0588.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings ("pipe fittings") from South Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-Weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accomodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is September 1, 1994, through February 28, 1994.

Case History

Since the announcement of the preliminary determination on September 27, 1994, the following events have occurred.

On October 4, 1994, we published the notice of preliminary determination in the **Federal Register** (59 FR 50560).

On October 13, 1994, pursuant to section 353.20(b)(1) of the Department's regulations, the Embassy of the Republic of Korea, on behalf of the South Korean producers and exporters of pipe fittings, requested that the final determination in this case be postponed. On November 14, 1994, we published the postponement of final determination in the **Federal Register** (59 FR 56461).

Petitioner was the only interested party to file a case brief in this investigation. Petitioner did so on January 23, 1995.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the

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use of best information available (BIA) is appropriate for Taekwang Bend Ind. Co., Inc. (Taekwang), the South Korean company which accounts for more than 60 percent of all exports of the subject merchandise to the U.S. during the POI. Because Taekwang did not respond to the Department's questionnaire, we find that it did not cooperate in this investigation.

Our BIA methodology for uncooperative respondents is to assign the higher of the highest margin alleged in the petition or the highest rate calculated for another respondent. Accordingly, as BIA, we are assigning the highest margin among the margins alleged in the petition and subsequent amendments to the petition, adjusted for methodological errors as explained in the Department's initiation notice. *See Final Determination of Sales At Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany* (54 FR 18992, 19033, May 3, 1989). The Department's methodology for assigning BIA has been upheld by the U.S. Court of Appeals of the Federal Circuit. (*see Allied Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993)); *see also Krupp Stahl, AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993)). The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, (19 U.S.C. 1673b(d)(1)), we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of pipe fittings from South Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted average margin percent
All Companies	207.89

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on pipe fittings from South Korea entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4719 Filed 2–24–95; 8:45 am]

BILLING CODE 3510-DS-P

[A–549–809]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2815 or 482–0167, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings exported by Awaji Sangyo (Thailand) Co., Ltd. (AST), from Thailand are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register** on October 4, 1994 (59 FR 50568), the following events have occurred:

On November 14, 1994, we published in the **Federal Register** a notice postponing the publication of the final determination in this case until February 16, 1995 (59 FR 56461). From October 20 to October 26, 1994, we verified the sales information of AST at its offices in Samutprakarn, Thailand. From December 2 to December 6, 1994, we verified AST's cost of production and constructed value data. On January 23 and January 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department. A public hearing in this investigation was held on February 6, 1995.

We note that all other producers and exporters of the subject merchandise in Thailand, which export to the United States, are subject to an antidumping duty order currently in effect for this merchandise. (See 57 FR 29702, July 6, 1992.) AST was excluded from this order because in the previous investigation, the Department found its margin of sales at less than fair value at that time to be *de minimis*.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed of forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology and section 771(16) of the Act, we first compared sales of merchandise identical in all respects. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B–099 of the main building of the Department of Commerce ("Public File")).

Fair Value Comparisons

To determine whether AST's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. For those U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57 (1994), for physical differences in the merchandise. Regarding level of trade, AST reported that it sells to an importer/distributor in the United States and directly to distributors, end users, and a commissionaire agent in Thailand. AST negotiates prices on a sale-by-sale basis and states that it is unable to discern any correlation between selling prices and customer categories. Further, AST states that its selling expenses do not vary by customer category. We examined this issue at verification and found no evidence that AST's prices or conditions of sale differed on the basis of level of trade. Therefore, in keeping with established practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709–11; July 11, 1991) and Import Administration Policy Bulletin 92/1, Matching at Levels of Trade, issued on July 29, 1992), and in accordance with 19 CFR 353.58, we have compared AST's U.S. sales to its home market sales to all customers.

We made revisions to AST's reported data, where appropriate, based on findings at verification.

United States Price

Because AST's U.S. sales of certain carbon steel butt-weld pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated PP based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions from the U.S. price for foreign brokerage, foreign inland freight, ocean freight and marine insurance.

We made an adjustment to U.S. price for the consumption tax paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade (CIT) decision in *Federal-Mogul, et al v. United States*, 834 F. Supp. 1391. *See Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan*, 59 FR 16177, 16179, April 6, 1994, for an explanation of this tax methodology. In accordance with section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States. (See Comment 2, below.)

Upon exportation of finished pipe fittings, AST receives a drawback of import duties, which is greater than the import duties that would have been assessed had the fittings been sold for home consumption. In our calculation of USP, we limited the addition for drawback to the amount of duties that would have been assessed had the goods been sold in the home market. This approach is consistent with section 772(d)(1)(B) of the Act, which provides that the USP shall be increased by the drawback of any import duties "imposed in the country of exportation which have been rebated or not collected by reason of exportation of the merchandise to the United States." Therefore, we have capped the amount added to USP at the level of the import duties imposed in the country of exportation.

For U.S. sales which had not been shipped and for which payment had not been received, we based AST's credit expense on the average number of days outstanding between shipment and payment for AST's U.S. sales with reported shipment and payment dates. For a discussion of the Department's treatment of the appropriate interest rate to use in the calculation of credit in this investigation, see *Memorandum from Barbara R. Stafford to Susan G. Esserman* (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. On this basis, we determined that the home market was viable.

For purposes of calculating FMV, we used AST's sales to its home market customers and constructed value (CV), as described below.

Cost of Production

Petitioner alleged that AST made home market sales during the POI at prices below the cost of production (COP). Based on petitioner's allegation and other information on the record, we concluded that we had the requisite reasonable grounds to believe or suspect that sales were made below COP. Thus, in accordance with section 773(b), we initiated a cost investigation.

In order to determine whether home market prices were below COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of AST's cost of materials, direct labor, variable and fixed factory overhead, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses and commissions.

With the following exceptions, we relied on submitted and verified COP information. Material costs were modified to reflect only the cost of seamless pipe used in manufacturing the subject merchandise, rather than a pipe cost which included not only seamless pipe for fittings within the scope, but also for fittings outside the scope, and for welded pipe fittings. Also, we used an interest cost based on the combined interest cost of AST and

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its parent, ASK, rather than one based on AST's interest costs alone.

Section 773(b) of the Act requires us to examine whether below cost sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below COP, we disregarded those home market sales which were priced below COP for purposes of calculating FMV, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below COP, and such sales were over an extended period of time, we disregarded all sales of that product for purposes of calculating FMV.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in fewer than three months during the POI, we did not exclude sales unless there were below cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POI.

If sales below cost occurred in three or more months of the POI, they are considered to be made over an extended period of time. When items are sold in just two or three months of the POI, we would consider below cost sales of these items to be over an extended period of time, if they occurred in at least two months of the three months. When items are sold in just one month of the POI, we would consider any below cost sales of these items to be over an extended period of time. (*See Final Determination of Sales at Less Than Fair Value: Saccharin from Korea* (59 FR 58826, November 15, 1994); and *Preliminary Results and Partial Termination of Antidumping Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof* (58 FR 69336, 69338, December 10, 1993)). AST provided no evidence that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See*, Section 773(b)(2).

Constructed Value

In accordance with section 773(e), we calculated CV based on the sum of the cost of materials (with adjustments as described in the "Cost of Production" section of this notice), fabrication, general expenses, U.S. packing costs and profit. The cost of materials included import duties paid on imported seamless pipe used to produce the pipe fittings. The amount of import duties included in CV was equivalent to the duties that would have been imposed had the fittings been sold for home consumption. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we: 1) included the greater of AST's reported general expenses or the statutory minimum of ten percent of the cost of manufacture (COM), as appropriate; and 2) for profit, we used the statutory minimum of eight percent of the sum of COM and general expenses because actual profit was less than the statutory minimum.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on packed, ex-factory or delivered prices to home market customers. From these prices, we deducted commission, where appropriate. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement V. United States*, 13 F.3d 398 (Fed. Cir., January 5, 1994), the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2). In accordance with 19 CFR 353.56(b)(1), we added U.S. indirect selling expenses as an offset to the home market commission, but capped this addition by the amount of the home market commission.

We adjusted for a consumption tax collected in the Thai home market. (*See* the United States Price section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See* 19 C.F.R. 353.60.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation. The public versions of the November 29, 1994, and the January , 1995 verification reports are available for review in the Central Records Unit located in room B–099 of the Department's main building, the Herbert C. Hover Building.

Interested Party Comments

Comment 1

Petitioner observes that according to AST's response, it did not commence integrated production of tees in Thailand until after the POI. However, tees were shipped during the POI. Petitioner claims that these tees must be of Chinese origin because AST identified certain other tees sold during the POI as being of Chinese origin. Petitioner argues that, because the tees in question could not have been produced by AST, the Department should exclude sales of these tees from the investigation.

AST maintains that it has correctly identified all of the Chinese tees which it sold in the home market during the POI. Moreover, AST points out that it indicated in its response that it began a lengthy testing of its integrated production of tees during the POI. AST claims that a limited quantity of tees was produced from these test runs and was sold in the home market. Therefore, AST argues that it properly included these sales in its home market sales listing.

DOC Position

While there are statements in AST's response that would support petitioner's conclusion, AST's Section D response does refer to a lengthy testing period commencing during the POI. In addition, AST's July 25, 1994, supplemental response in Exhibit 1 specifically identifies certain tees as Chinese tees and the remaining as tees being produced by AST, including certain tees which were shipped during the POI. Because AST identified the Chinese tees in Exhibit 1 of its July 25 response and because the quantity of tees shipped during the POI is commensurate with production over a prolonged test run, we have accepted these tees as tees produced by AST and have included them in the home market data base.

Comment 2

Petitioner claims that the duty drawback amount added to purchase price was greater than the drawback amount included in the constructed value, because the drawback amount added to purchase price included both import duty and value added tax (VAT) paid on purchases of imported pipe, whereas the drawback added to constructed value included only the import duty.

AST maintains that the Department properly excluded the VAT on component material from the constructed value, because AST received a rebate of this VAT upon exportation of the finished product. Section 773(e)(1)(A) of the Act states, in part, that constructed value shall include the cost of materials exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials were used. Therefore, AST contends that the VAT on component materials was properly excluded in the calculation of CV.

DOC Position

In accordance with the section 773(e)(1)(A) of the Act, our practice is to exclude indirect taxes on component materials from CV, if the taxes are rebated upon export. Once we have excluded the VAT on component materials from the constructed value, we must also exclude it from the USP because section 772(d)(1)(C) the Act requires that we add internal taxes to USP but only to the extent that these taxes are included in the FMV. When FMV is based on CV, no VAT is included in CV and we are, thus, precluded from adding VAT to the USP.

Comment 3

AST states that following the rationale of section 773(e)(1)(A), the Department should also not include the import duties on component materials in constructed value because this duty is also either refunded upon export or an exemption of the duty is granted by reason of exportation of the merchandise.

DOC Position

Section 773(e)(1)(A) directs the Department to exclude from constructed value internal taxes applicable in the country of exportation but rebated upon export. We do not consider import duties to be internal taxes. The courts also have recognized that the term "internal tax" denotes taxes other than import duties. *See Serampore Indus. Pvt. Ltd. v. United States Dep't of Commerce, Int'l Trade Admin.*, 675 F. Supp. 1354, 1357 (CIT 1987). Therefore, in accordance with past practice (*see, e.g., Offshore Platform Jackets and Piles from the Republic of Korea*, 51 FR 11,795, 11,796 (April 7, 1986)), we have included the import duties on component materials as part of the cost of materials in our calculation of constructed value.

Comment 4

AST states that in July 1992, it was excluded from the July 6, 1992 antidumping duty order on pipe fittings from Thailand (57 FR 29702) because its less than fair value margins were *de minimis*. In view of this fact, AST maintains that the Department should have applied a more rigorous standard in determining whether to initiate an investigation in this case and that, had it done so, the case never would have been initiated. Contrary to suggestions in the petition, AST argues that there was no basis to assume that AST's costs had increased by 100 percent in two years, or that U.S. prices showed significant movement during that time. Therefore, the Department should re-examine its initiation and terminate the instant proceeding.

Petitioner maintains that nothing in the statute bars the filing of an antidumping petition against a specific exporter merely because other exporters of the same product from the same country are already subject to an antidumping duty order, nor does the statute impose a higher burden on petitioner in such circumstances. Because the proceeding was lawfully initiated, no basis exists for questioning the Department's decision to initiate.

DOC Position

The fact that a petition on the same merchandise was filed in 1991 and AST was excluded from the subsequent antidumping duty order was not taken into account in our decision to initiate the current case. A finding at one point in time that a company is not dumping does not create a presumption that the company will not dump in the future. Lacking such a presumption, there is no basis for applying a higher initiation threshold for later filed cases on the same merchandise.

Comment 5

AST claims that the Department should apply the sales-below-cost test to all sales of such or similar merchandise on a combined basis, before applying it on a model-specific basis. This was the approach used in the prior investigation of the subject merchandise (*Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 57 FR 21065, 21070, May 18, 1992).

AST points out that the viability test required by section 773(a) of the Act is done on a such or similar category basis. AST maintains that section 773(b) of the Act, in discussing sales below cost, makes reference to section 773(a). Therefore, the test for below cost sales should also be done on a such or similar category basis.

Further, the language in section 773(b) suggests that the cost test be applied on a such or similar category basis rather than on a model-specific basis. Section 773(b) requires the Department to determine whether "sales were made at less than the cost of producing the merchandise." Because the term "merchandise" has a broader connotation than the term "model" or "product, the cost test must be done on a such or similar category basis.

AST claims that the Department's Policy Bulletin 92/3, dated December 15, 1992, on the 10/90/10 test for below cost sales does not provide any basis for performing the cost test solely on a model-specific basis and bypassing the test on a such or similar category basis.

In addition, AST maintains that the legislative history of section 773(b) indicates that Congress intended that the Department consider the rationality of exporter's pricing practices, specifically by giving allowances for model-specific below cost sales at the end of a model year.

Finally, AST points out that it was excluded from the original antidumping duty order on butt-weld pipe fittings from Thailand, because its overall margin of sales at less than fair value

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was *de minimis*. During the original investigation, the Department applied the two-tiered cost test and AST has continued to use this test to avoid the possibility of dumping margins. For the Department to apply a new test in this investigation is unfair.

Petitioner asserts that the Department's model-specific cost test is in full accord with the requirements and purpose of Section 773(b) of the Act because this test is the first step to be taken in determining FMV, which is based on sales of particular models or products.

Petitioner adds that the need for a model-specific cost test is particularly evident for a product like pipe fittings. Despite the fact that pipe fittings come in a wide range of sizes, only about 20 percent of the sizes account for about 80 percent of the fittings sold. Below cost sales of low-volume items in the home market might not be screened out by a cost test applied on a such or similar category basis. If these sales happen to be compared to high volume items sold for export to the United States, many less than fair value sales would go undetected. Clearly, the purpose of the cost test would be defeated by such an outcome.

DOC Position

In our final determination, we have adhered to the Department's Policy Bulletin 92/3, which provides that the cost test be done on a model-specific basis. Policy Bulletin 92/3 is in complete accordance with the statute and has been consistently applied by the Department for over two years. The Policy Bulletin states that the cost test is intended to avoid basing FMV on below cost sales. Because FMV is determined on a model-specific basis, the Department has chosen to apply the cost test on a model-specific basis, as well. Otherwise, for certain models, FMV would likely be calculated on below cost sales.

AST claims that because 773(b) of the Act contains a reference to 773(a), the Department is required to conduct the below cost sales test on the same basis as the market viability test. The such or similar viability test is a general test to determine the level of sales activity to determine the efficacy of spending resources in examination of those home market sales. The cost test, on the other hand, is designed to determine which market sales may be used for comparison purposes. Nothing in the statute, the regulations, or the legislative history suggests that tests for general home market activity and for sales below cost must be on the same basis. Because the purposes of the two tests are different and because the reference in section 773(b) to section 773(a) clearly does not compel the Department to use the same procedure for these tests, we followed Department policy and used the model-specific cost test.

AST's claim that use of the term "merchandise" in section 773(b) requires the Department to apply the cost test broadly is erroneous. The term "merchandise" is used throughout the statute, in some cases with a broad connotation and in others, in a narrower sense. For example, when the statute refers to "the same general class or kind of merchandise," the connotation is broad and includes the entire class or kind of merchandise under investigation. However, when the statute defines "such or similar merchandise," the connotation is narrow, referring to the particular model sold in the home market which is identical, or most similar to, a particular model sold for export to the United States. The fact that section 773(b) of the Act uses the term "merchandise" with respect to the cost test does not require us to apply the cost test on a broad basis.

AST claims that Policy Bulletin 92/3 does not provide any basis for "bypassing" a cost test using such or similar categories. The Department formulated Policy Bulletin 92/3 as a statement of its intent to implement uniformly a cost test methodology. The Policy Bulletin itself states that the Department's practice will be to apply the model-specific cost test in all future investigations and reviews. The Policy Bulletin need not explain "bypassing" the such-or-similar cost test because, to the extent that the such-or-similar test had been used in prior cases, it was no longer Department practice when the Department adopted the model-specific test advocated in the Policy Bulletin.

The Department uniformly has applied the model-specific cost test in both investigations and reviews since the bulletin was released. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela*, 58 FR 27522, 27533 (May 10, 1993); *Final Results of Antidumping Administrative Review: Sweaters, Wholly or Chiefly of Man Made Fiber, from Korea*, 59 FR 17513, 17515 (April 13, 1994)). Given these circumstances, AST had adequate notice as to Policy Bulletin 92/3's contents and that the Department would apply the model-specific cost test for all future investigations and administrative reviews.

Regarding the legislative history's reference to below-cost end-of-model-year sales, we note that this reference concerns whether below-cost sales are made over an extended period of time. The end-of-model-year sales are not relevant to a discussion of whether or not the cost test can be applied on a model-specific basis.

Comment 6

When AST imports seamless pipe under bond, it becomes liable for the normal duty of 15 percent, plus an additional surcharge of 3 percent, because the import is made under bond. AST states that it receives a rebate or an exemption upon export of finished pipe fittings of the surcharge, as well as the normal duty. Therefore, AST claims that, in accordance with section 772(d)(1)(B) of the Act, both duty and surcharge should be added to the USP.

Petitioner claims that AST has acknowledged that the three percent surcharge is not imposed on seamless pipe used to produce pipe fittings for home consumption. Section 772(D)(1)(c) provides for an increase in USP for taxes rebated upon export but only to the extent that such taxes are added to or included in the home market price. Because the surcharge is not imposed in the home market, the rebate of the surcharge on export should not be added to USP. In the alternative, if the Department determines that the three percent surcharge is imposed on imported pipe used to produce for home consumption, then it should include the full 18 percent duty in the COP.

DOC Position

During verification, we established that the three percent surcharge was imposed on seamless pipe used in the production of home market fittings, in addition to the normal 15 percent duty. Therefore, because both duty and surcharge are assessed on pipe used for home market production and because both are exempted on pipe used for export production, it is appropriate to include both the duty and the surcharge in the drawback amount added to USP. In addition, because both duty and surcharge are clearly a part of the cost of home market pipe fittings, we included both in our calculation of the cost of production.

Comment 7

AST maintains that the Department should not recompute AST's submitted COP and CV interest expense to account for the financing costs of its Japanese parent, Awaji Sangyo K.K. ("ASK"). According to AST, under Japanese generally accepted accounting principles ("GAAP"), only publicly-held companies are required to prepare consolidated financial statements that include the operating results of their subsidiaries. Because ASK is a privately-held Japanese company and not required to prepare consolidated financial data under Japanese GAAP, AST argues that the Department should base COP and CV interest solely upon AST's audited (unconsolidated) financial statement information.

AST notes that the Department has a long-standing practice of accepting home-country GAAP for purposes of computing COP and CV, unless it can be shown that those practices distort production costs. In this case, AST maintains that use of a consolidated interest calculation would violate ASK's normal GAAP and produce distorted results since AST receives no loans from ASK and did not receive any new investment from its parent during the POI.

AST further asserts that despite ASK's ownership interest in AST, the parent company does not exert "control" over its subsidiary's operations. Instead, AST maintains that it operates independently from its parent and does not rely on ASK for its production, sales (other than export sales), engineering, financing, research and development, or management activities.

Lastly, AST argues that the premise underlying the Department's policy of using consolidated interest expense in computing COP and CV (*i.e.*, the fungible nature of invested capital) does not apply in this case. AST asserts that the presumption of easy transfer (fungibility) of money between parent and related affiliate is vitiated by the fact that ASK and AST are located in different countries, whose currency regulation requirements significantly impede the free flow of money between countries.

Petitioner alleges that AST has understated its COP and CV by excluding ASK's financing expense. Petitioner states that, because capital is fungible, the Department requires consolidated interest expense when the parent company maintains control over the subsidiary. ASK maintained control over AST's operations and, for this reason, the financing expenses of ASK and AST were combined in the Department's prior antidumping investigation involving AST. (*Final Determination of Sales at LTFV: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 57 F.R. 21065–69 May 18,1992) Petitioner asserts that there is no reason for the Department to deviate from its approach in the previous determination.

DOC Position

We agree with petitioner and have based our calculation of AST's interest expense for COP and CV on the consolidated operations of AST and ASK. This methodology is consistent with our long-standing practice for computing interest expense in cases involving parent-subsidiary corporate relationships. This methodology has been upheld by the CIT in *Camargo Correa Metals, S.A. v. U.S.*, Consol. Ct. No. 91–09–00641, Slip Op. 93–163, at 14 (CIT August 13, 1993).

As petitioner has pointed out, AST has not provided us with any additional information that would lead us to change our determination, from the 1992 LTFV investigation of *Butt-Weld Pipe Fittings from Thailand*, that the company's interest should be computed based on the consolidated operations of AST and its parent, ASK. AST's argument that ASK is not required under Japanese GAAP to prepare consolidated financial statements ignores the fact that, as a privately-held corporation, ASK is not subject to the same set of accounting principles as publicly-held entities in Japan. As in most countries, one of the major objectives of Japanese GAAP is to ensure consistency in the accounting principles practiced by publicly-held corporations so that investors may make informed decisions as to how they invest their capital. There is no such objective under the Japanese Commercial Code which governs the accounting practices of privately-held companies like ASK. It should be noted, however, that were ASK a public company, certain information submitted by AST indicates that ASK would be required under Japanese GAAP to consolidate the operations of AST in its financial statements.

ASK's ownership interest in AST places the parent in a position to influence AST's financial borrowing and overall capital structure. We note that, contrary to AST's assertions that AST is an independent company and not "controlled" by its parent, the two companies share common directors and other corporate officials. In fact, according to AST, the two companies share the same managing director. ASK also acts as the selling agent for AST's export sales and provided the technology, equipment, training, engineers, and capital to establish AST. Based on this information, it is difficult to see how AST's operations are independent of its parent to such an extent that we should ignore our normal practice of computing interest expense on the basis of the consolidated parent and subsidiary.

Regarding AST's claim that it received no intercompany loans or additional capital investment from its parent during the POI, we note that this argument fails to take into consideration any borrowing costs associated with ASK's initial capital investment in the company. AST maintains that all interest expense incurred by ASK pertains solely to the parent's operations. Under this principle, AST would have us accept that its parent funds its own operations largely through borrowing while, at the same time, funding its initial investment in AST solely through equity capital. Such a principle ignores the fact that ASK's capital structure is comprised of both debt and equity and, as such, it is neither possible nor appropriate in our analysis for the company to pick and chose which portions of its parent's operations should incur the additional interest costs associated with borrowed funds.

Lastly, with regard to AST's claim that transfers between AST and its parent are not "fungible" due to currency fluctuations and restrictions on currency flows between Thailand and Japan, we note that this argument misrepresents the fungibility principle underlying the Department's practice regarding consolidated interest expense for COP and CV. As noted above, ASK has already purchased a controlling capital interest in AST. ASK's capital structure is comprised of both debt and equity. These monies are fungible. That is, one cannot reasonably know which portion of ASK's capital was used for a specific activity. AST would have us believe that ASK's debt-based capital was used to fund the company's production of nonsubject merchandise, while its less costly equity-based capital was used to establish AST's operations. This ignores the fact that the parent company's capital is used to fund all of its operations and cannot be segmented and apportioned to specific operations in any justifiable manner. Thus, it is the fungibility of the controlling parent's capital structure that is at issue and not, as AST argues, the parent's future ability to transfer funds to its subsidiary.

Comment 8

Petitioner contends that all subject fittings sold in the United States and the home market were made from seamless pipe. AST's submitted pipe costs, however, included welded pipe and pipe used to produce pipe fittings outside the scope of the investigation. Petitioner states that for purposes of the final determination, AST's raw material

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costs should reflect only those costs attributable to seamless pipe used in manufacturing the subject merchandise.

AST states that its pipe consumption was calculated based on its normal accounting inventory subledgers which do not track welded and seamless pipe separately. Furthermore, the Department verified that welded pipe accounted for a small percentage of total pipe costs and the price of seamless pipe was not always higher than welded pipe. Therefore, AST argues that excluding welded pipe would not materially alter the weighted average cost of pipe used to produce the subject merchandise.

DOC Position

In computing COP and CV, it is the Departments's practice to include only those costs incurred in manufacturing the subject merchandise. Therefore, we adjusted AST's reported material costs to exclude the costs incurred for welded pipe and pipe inputs that were used to produce merchandise outside the scope of this investigation.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Thailand, as defined in the "Scope of Investigation" section of this notice, that are produced and sold by AST and that are entered, or withdrawn from warehouse, for consumption on or after October 4, 1994.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of AST's subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margin is as follows:

Manufacturer/Producer/ Exporter	Margin percent	Deposit percent
Awaji Sangyo (Thailand) Co., Ltd.	38.41	37.67

Adjustment of Deposit Rate for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation for dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Because antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the most recent administrative review of the countervailing duty order, *Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Countervailing Duty Administrative Review* (57 FR 5248, February 13, 1992), which was 0.74 percent, will be subtracted from the margin for cash deposit or bonding purposes. This results in a deposit rate of 37.67 percent for AST. We did not determine an "all others" rate in this investigation, because all other producers and exporters of butt-weld pipe fittings from Thailand are already subject to an antidumping duty order on this merchandise, which was published in the **Federal Register** on July 6, 1992 (57 FR 29702).

ITC Notification

In accordance with section 735(b) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-4727 Filed 2-24-95; 8:45 am]

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[A-412-816]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482-0167 or 482-1276, respectively.

Final Determination

We determine that certain carbon steel butt-weld pipe fittings from the United Kingdom are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register** on October 4, 1994 (59 FR 50571), the following events have occurred:

On October 3, 1994, pursuant to the Department's regulations (19 CFR 353.20(b)(1) (1994)), BKL Fittings, Ltd. ("BKL"), requested that the final determination in this case be postponed. On November 14, 1994, the Department published in the **Federal Register** a notice postponing the final determination in this case until February 16, 1995 (59 FR 56461). From November 21 through 23, and November 29 and 30, 1994, we verified the further manufacturing operations and exporter's sales price information of BKL's related entity in Union, New Jersey. From December 12 through 23, 1994, we verified BKL's responses to the Department's antidumping duty questionnaire at company headquarters in Redditch, England. On January 23 and 30, 1995, petitioner and respondent submitted case and rebuttal briefs to the Department. The Department held a public hearing in this investigation on February 2, 1995.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which includes "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

In making our fair value comparisons, we first compared sales of merchandise identical in all respects, in accordance with the Department's standard methodology. If no identical merchandise was sold, we compared sales of the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B-099 of the main building of the Department of Commerce ("Public File")).

Fair Value Comparisons

To determine whether BKL's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. For those U.S. sales compared to sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in the merchandise.

We compared U.S. sales, where possible, with sales in the home market at the same level of trade, in accordance with 19 CFR 353.58.

We made revisions to BKL's reported data, where appropriate, based on verification findings.

United States Price

Where BKL's U.S. sales of pipe fittings were made to an unrelated distributor in the United States prior to importation, and the exporter's sales price ("ESP") methodology was not indicated by other circumstances, we based USP on the purchase price sales methodology in accordance with section 772(b) of the Act.

We calculated purchase price based on packed, c.i.f. import prices to an unrelated customer in the United States. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and U.S. duty.

Where sales to the first unrelated purchaser took place after importation of the subject merchandise into the United States, we calculated USP using the ESP methodology, in accordance with section 772(c) of the Act.

For ESP sales, we made deductions, where appropriate, for discounts, foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, and U.S. brokerage and handling. In addition, we deducted credit expense, indirect selling expense, inventory carrying costs, and commissions to an unrelated agent.

We made an adjustment to USP for value-added tax ("VAT") assessed on comparison sales in the U.K. in accordance with our practice, pursuant to the Court of International Trade ("CIT") decision in *Federal-Mogul, et al v. United States*, 834 F. Supp. 1391. See *Preliminary Antidumping Duty Determination: Color Negative Photographic Paper and Chemical Components from Japan*, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this methodology.

For pipe fittings that were further manufactured in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the cost of fabrication and general expenses associated with the further manufacturing operations, as well as a proportional amount of profit or loss attributable to the further manufacture. (*See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125 (July 9, 1993).) We calculated profit or loss by deducting from the sales price of the further manufactured merchandise the related production costs and selling expense incurred by the company in both the U.K. and the United States. We then allocated total profit or loss proportionately to all components of cost. We included only the profit or loss allocated to the further manufacturing portion of total cost in our calculation of value added. We adjusted BKL's allocation of general and administrative ("G&A") expenses for further manufactured sales to an allocation based on cost of sales rather than weight.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. BKL's volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, we determined that the home market constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48(a).

For purposes of calculating FMV, we used BKL's sales to its home market customers and constructed value ("CV"), as described below. We excluded from the home market database any sales of fittings not manufactured by BKL.

Cost of Production

Petitioner alleged that BKL made home market sales during the POI at prices below the cost of production ("COP"). In the course of this investigation, we gathered and verified data on production costs.

In order to determine whether home market prices were below the COP within the meaning of section 773(b) of the Act, we performed a product-specific cost test, in which we examined whether each product sold in the home market during the POI was priced below the COP of that product. We calculated COP based on the sum of BKL's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). For each product, we compared this sum to the home market unit price, net of movement expenses and rebates. We made changes, where appropriate, to submitted COP data, as discussed in the "Interested Party Comments" section of this notice, below.

In accordance with section 773(b) of the Act, we also examined whether the home market sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each product where less than ten percent, by quantity, of the home market sales during the POI were made at prices below the COP, we included all sales of that model for the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales during the POI were priced below the COP, we did not include in the calculation of FMV those home market sales which were priced below the COP, provided that the below-cost sales of

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that product were made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, and such sales were over an extended period of time, in accordance with section 773(b) of the Act, we disregarded all sales of that product and instead based FMV on CV.

In order to determine whether below-cost sales had been made over an extended period of time, in accordance with section 773(b)(1) of the Act, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month.

BKL provided no evidence that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade. (*See* Section 773(b)(2); 19 U.S.C. 1677b(b)(2).)

Constructed Value

We calculated CV based on the sum of the cost of materials, fabrication, general expenses, U.S. packing costs and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we: (1) included the greater of BKL's reported general expenses or the statutory minimum of ten percent of the cost of manufacture ("COM"), as appropriate; and (2) used the greater of BKL's actual profit on sales in the home market or the statutory minimum profit of eight percent of the sum of COM and general expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated FMV based on ex-factory or delivered prices, inclusive of packing to home market customers. We deducted rebates, where appropriate, on home market sales. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made adjustments, where appropriate, for differences in the physical characteristics of the merchandise in accordance with section 773(a)(1) of the Act.

In light of the Court of Appeals for the Federal Circuit's decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir., January 5, 1994), the Department can no longer deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a) and the exporter's sales price offset provision of 19 CFR 353.56(b)(2), as appropriate. Accordingly, in the present case, we deducted post-sale home market movement charges from the FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). This adjustment included home market inland freight.

For both price-to-price comparisons and comparisons to CV, we also made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, pursuant to 19 CFR 353.56(a)(2).

We adjusted for VAT in the home market in accordance with our practice. (*See* the "United States Price" section of this notice, above.)

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York (19 CFR 353.60).

Final Affirmative Determination of Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of pipe fittings from the U.K. In our preliminary determination, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology. Because no additional information has been submitted since the preliminary determination, the Department is using the same analysis as explained in its preliminary determination and finds, in accordance with section 735(a)(3) of the Act, that critical circumstances exist with respect to imports of certain carbon steel butt-weld pipe fittings from the U.K.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation. Our verification results are outlined in detail in the public version of the verification report (Public File).

Interested Party Comments

Comment 1: BKL contends that the methodology used for the preliminary determination where sales made below the cost of production were excluded in calculating profit for CV is not in accordance with law. According to BKL, Section 773(e)(1)(B) of the Tariff Act of 1930, as amended, provides that profit will be "equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade***" BKL claims that the statute neither explicitly nor implicitly authorizes CV profit to be calculated solely upon above-cost sales. Further, BKL cites to *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28374 (June 24, 1992) ("*AFBs from France*") where the Department rejected the argument that the calculation of profit should be based only on sales at prices above the cost of production. BKL contends that excluding below-cost sales would be contrary to law because the Department would be excluding a portion of sales "of the same class or kind of merchandise."

Petitioner maintains that the law leaves the decision of whether to include below-cost home market sales in calculating the profit element of CV to the discretion of the Department. While the statute does state that profit is to be calculated based on home market sales of the same general class or kind of merchandise, it also states that such sales must be made "in the ordinary course of trade." According to petitioner, it is entirely consistent with the purpose of the statutory provision to determine that below-cost sales are made outside the ordinary course of trade. Petitioner asserts that this approach advances the statute's purpose by preventing a foreign exporter from indirectly reducing FMV through below cost sales. Finally, petitioner argues that the fact that Commerce has included below-cost sales in the profit calculations in other proceedings does not dictate that the Department must do so in this investigation.

Department's Position: We agree with respondent. The Department's practice has been to calculate profit for constructed value using above- and below-cost home market sales. (*See AFBs from France.*) Therefore, we have included below-cost sales in our calculation of profit for constructed value in the final determination, and used the greater of the average profit on both above- and below-cost sales or the statutory eight percent minimum profit.

Comment 2: BKL maintains that sales made below cost in one month of the POI do not constitute sales made below cost over an extended period of time. BKL cites to *Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 4960, 4965 (February 11, 1992) ("*TRBs from Japan*") where the Department stated: "[W]e use a period of three months to define extended period of time since three months is commonly used to measure corporate, financial, and economic performance." According to BKL, this rationale is inconsistent with defining a single month as an "extended period of time."

In addition, BKL contends that the Department's position that a single month comprises an "extended period of time" is inconsistent with the Department's definition of the term "relatively short period" in connection with critical circumstances. BKL argues that for critical circumstances the Department defines the term "relatively short period" as covering at least three months.

BKL also contends that if the frequency of below-cost sales is limited to one month of the period of investigation, then that is *prima facie* evidence of sporadic or possibly seasonal sales. Hence, according to the legislative history of the COP provision, these sales should not be disregarded.

Petitioner maintains that the Department's position is clear that if sales are made in less than three months of the POI, then an extended period is the number of months in which sales occur. In support of this argument, petitioner also cites to *TRBs from Japan*. In addition, petitioner argues that respondent has provided no evidence that the sales that occurred in only one month of the POI involved obsolete products or end-of-year sales.

Department's Position: In determining whether sales below cost were made over an extended period of time in accordance with section 773(b)(1) of the Act, the Department has consistently considered an extended period of time to be the lesser of the number of months during the POI in which sales occur or three months for the reason stated in *TRBs from Japan:* "[T]he use of only a three month time measurement is incomplete since it excludes models that were only sold in one or two months of the review period."

BKL's contention that the Department is inconsistent in defining a "relatively short period" is misguided. It ignores the Department's rationale of needing to preserve the possibility of disregarding below-cost sales in cases where such sales have occurred in only one or two months. This is not a consideration that applies to critical circumstances.

Comment 3: Petitioner contends that by not reporting a portion of its parent's G&A, BKL has understated its total G&A expense for the subject merchandise. Additionally, petitioner argues that the Department should adjust reported G&A expense for the further manufacturing operations to include the other operating expenses which are related to the activities of the company as a whole.

BKL disagrees that any of the G&A expense of its parent company should be allocated to BKL because BKL's entire manufacturing, sales, and R&D activities are conducted without assistance from its parent. The parent company receives periodic operational reports from BKL only for the purpose of evaluating its investment in its capacity as a shareholder. BKL states that allocating its parent company's G&A to subsidiaries when the books and records are not consolidated is inconsistent with the Department's professed policy of relying upon respondent's cost and financial records in COP investigations.

Department's Position: We agree with petitioner that a portion of the G&A expense of BKL's parent company should be allocated to BKL. It is clear from the information on the record of this case that BKL's parent company's involvement in BKL is more than that of a passive investor. The parent company's Overseas Department monitors the operations of BKL through monthly reports from BKL and provides strategic planning and management services to BKL. Accordingly, we have allocated to BKL a proportionate share of the expenses from the Overseas Department of the parent company based on the cost of sales of its overseas affiliates.

Additionally, we have increased the further manufacturing G&A cost to include other operating expenses incurred that had not been included in the reported costs.

Comment 4: Petitioner maintains that the Department should allocate total G&A for the further manufacturing operations based on cost of sales rather than weight of finished fittings because an allocation of G&A based on weight is contrary to the Department's long-standing practice.

Department's Position: For calculations used in our final determination, we have allocated G&A expense based on cost of sales rather than weight. Allocating the G&A costs of the further manufacturing operations based on weight of finished fittings produces a less representative result than allocating based on cost. The weight of fittings varies markedly for fittings of different thicknesses, but the process of finishing the fittings does not vary proportionately to weight. (*See Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan*, 54 FR 4864, 4867 (January 31, 1989).)

Comment 5: Petitioner claims that BKL understated its costs through incorrect reporting of its financing expenses. According to petitioner, the finance expense ratios reported by BKL understate the total cost of subject merchandise because, where BKL combined its interest expense with its parent, it did not reduce the cost of sales for the combined group by the intercompany transactions. As a result, the denominator of the calculation (total cost of sales) was inflated. Similarly, petitioner contends that the Department should adjust respondent's financing costs to include its other borrowing not reported, and that interest expense for the further manufacturing operations should be allocated on the basis of cost of sales rather than weight.

BKL claims it has correctly calculated financing expense by combining BKL's financing expense with that of its parent company and dividing by the combined cost of sales. BKL suggests that for purposes of computing net interest expense for CV, the Department should adjust the parent company's interest expense to account for finished goods inventory and trade accounts receivable.

Department's Position: We agree with petitioner that combining the financing expense and cost of sales of BKL and its parent creates a distorted financial expense ratio unless intercompany transactions are eliminated from the calculation. The Department generally calculates net financing expense from the financial statements of the consolidated entity because of the fungible nature of capital. (*See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 57 FR 21065, 21069 (May 18, 1992).) In this investigation, however, the parent company and its subsidiaries do not prepare consolidated financial statements. Additionally, we cannot consolidate the financial data of BKL and its parent company because we are unable to quantify all intercompany

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transactions. Since the parent company ultimately controls the capital of all affiliates in which it holds a controlling interest, and due to the nature of certain intercompany transactions, we have used the parent company's financing expense rate as a reasonable surrogate for purposes of our final determination.

We have also adjusted the parent company's CV financing expense rate to allow an offset for credit expenses and inventory carrying cost as is our normal practice.

For purposes of our final determination, we have allocated financing expense of the further manufacturing operations based on cost of sales rather than weight. (*See Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*, 54 FR 18992, 19076, May 3, 1989.)

Comment 6: Petitioner contends that BKL understated total cost through the incorrect reporting of pension costs. Petitioner argues that BKL excluded certain pension costs in reporting its cost for the subject merchandise, claiming that the pension costs do not reflect the actual costs that will be incurred. According to petitioner, because generally accepted accounting principles ("GAAP") in the U.K. required BKL to include an additional amount for pension costs in its audited financial statements, such costs must be included in the COP and CV of subject merchandise in order to accurately reflect BKL's fully absorbed cost for subject merchandise.

Department's Position: We agree with petitioner, and have adjusted labor costs to reflect pension expense in conformity with U.K. GAAP for purposes of our final determination. To be in conformity with U.K. GAAP, an entity is required to perform an annual recalculation of pension expense to account for fluctuations in investment performance. The purpose of this recalculation is to more accurately reflect an entity's year-end pension liability. Not adjusting the pension liability to conform with U.K. GAAP would result in an understatement of per-unit costs of production. (*See Calculation Memorandum* from Theresa L. Caherty and Peter S. Scholl to Christian B. Marsh, dated February 9, 1995, ("Proprietary Document").)

Comment 7: Petitioner states that the Department may not have properly adjusted FMV to account for VAT for any calculations where FMV is based on CV. As a result, petitioner maintains that USP was overstated and BKL's dumping margin was understated.

Respondent cites to *Federal-Mogul Corp. v. U.S.*, 813 F. Supp 856 (CIT 1993), stating the Department is authorized to "add only the amount of tax actually paid on each home market sale." Respondent states that CV is not associated with an amount of VAT actually paid, because CV is not based on actual sales. Thus, an imputed amount for VAT cannot be included in CV.

Department's Position: In accordance with the statute, our practice is to exclude indirect taxes on component materials from CV if the taxes are rebated upon export. Once we have excluded the VAT on component materials from the constructed value, we cannot add the VAT to USP because section 772(d)(1)(C) of the Act requires that we add internal taxes to USP only to the extent that those taxes are included in the FMV.

Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from the U.K., as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after July 6, 1994, the date 90 days prior to the date of publication of our preliminary determination, pursuant to section 735(c)(4)(A) of the Act.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
BKL Industries, Ltd	48.85
All other producers/exporters	48.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S. C. 1671(d)).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-4726 Filed 2-24-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-307-812]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482-1442.

Final Determination

The Department of Commerce (the Department) determines that certain carbon steel butt-weld pipe fittings (pipe fittings) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of the Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff

Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is September 1, 1993, through February 28, 1994.

Case History

Since our preliminary determination (50 FR 50561, October 4, 1994) the following events have occurred. On October 14, 1994 the respondents requested a postponement of the final determination. This request was granted (59 FR 56461, November 14, 1994), and the final was postponed by the Department until no later than February 16, 1995. On January 23, 1995, both parties submitted case briefs. On January 23, 1995 petitioner submitted its rebuttal brief.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for all companies. Given that neither of the two named companies responded to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

The Department's usual practice under these circumstances would be to assign respondents the highest margin alleged in the petition as BIA. See Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 19033, May 3, 1989). In this case, however, a fundamental flaw in the petition calculation methodology has led the Department to reject the use of the highest margin alleged in the petition as BIA. Unlike the other Certain Carbon Steel Butt-Weld Pipe Fittings investigations, petitioner was unable to obtain U.S. price quotes for purposes of the initiation. Rather, U.S. price was based upon an average of U.S. Customs import statistics which did not take into account the relationship between the size of the fitting and its value per pound. Moreover, there is no record information which would allow us to make this adjustment to USP. Therefore, we have weight averaged the FMVs of all size fittings in the petition, and compared that average FMV to the average customs U.S. import value in the petition. This yields a single margin for use as BIA of 203.63%. This margin will be assigned to each of the respondents. (*See*, Memorandum on File Dated: February 16, 1995).

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain carbon butt-weld pipe fittings from Venezuela, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
All Companies	203.63

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

If the ITC determines that material injury or threat of material injury does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain carbon steel butt-weld pipe fittings from Venezuela entered or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95-4722 Filed 2-24-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-821-807]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Ferrovanadium and Nitrided Vanadium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Louis Apple or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone (202) 482-1769 or (202) 482-4136.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 57 FR 1131 (January 10, 1992) (Proposed Regulations), are provided solely for further explanation of the Department's AD practice with respect to amended preliminary determinations. Although, the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Scope of Investigation

This investigation covers ferrovanadium and nitrided vanadium The scope is fully described in the preliminary determination.

Case History

On December 27, 1994, the Department of Commerce (the Department) made its affirmative

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preliminary determination of sales at less than fair value in the above-cited investigation (60 FR 438, January 4, 1995).

On January 11, 1995, the petitioner alleged that the Department made a significant ministerial error in the preliminary determination in the above-mentioned investigation and requested that the Department correct this ministerial error accordingly.

In its submission, the petitioner alleged that the Department made a ministerial error in its calculation of the foreign market value (FMV) for SC Vanadium-Tulachermet (Tulachermet). This FMV was used for comparison to sales made by both Tulachermet and Odermet, Ltd. The petitioner's allegation deals with the valuation of vanadium slag, the principal raw material used to produce the subject merchandise.

On January 19, 1995, the Department received comments from Odermet, Ltd. and Tulachermet in response to the petitioner's January 11, 1995 letter regarding a ministerial error. Odermet submitted additional comments on January 26, 1995. However, standard Department practice with respect to preliminary determinations, does "not permit parties to comment on another party's allegations of significant ministerial errors". (See the Department's Proposed Rules 57 FR 1133 (January 10, 1992). Any party objecting to the Department's amendment, will have the opportunity to present its arguments in its administrative case briefs and at the hearing.

On January 23, 1995, the Department determined that the petitioner's allegation regarding the ministerial error in our calculation of FMV for Tulachermet, requires correction in an amended preliminary determination (See January 23, 1995, Memorandum from Gary Taverman to Barbara R. Stafford).

Amendment of Preliminary Determination

The Department does not normally amend preliminary determinations since these determinations are only estimated margins subject to verification and may change for the final determination. It is, however, the Department's practice to amend preliminary determinations in those instances involving a significant ministerial error. (See Amendment to Preliminary Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Columbia, 59 FR 51554, 51555 (October 12, 1994) (Roses); and Amendment to Preliminary Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 FR 19289–90 (May 9, 1990)).

The Department has defined "significant ministerial errors" as those unintentional errors which result in a change of the estimated margin of at least 5 absolute percentage points but not less than 25 percent of the calculated margin. See Roses. In this case, these criteria have been met.

In its questionnaire response, Tulachermet reported its consumption of vanadium slag, the principal input used to produce the intermediate product vanadium pentoxide, on the basis of net vanadium content. The Department used as a surrogate value a price quote for vanadium slag expressed in terms of net vanadium pentoxide content. The petitioner alleges that the Department made a significant ministerial error in not converting the consumption factor or surrogate value to reflect the different basis of the surrogate value to the factor consumed.

The Department agrees with petitioner that the reported factor should have been adjusted to a vanadium pentoxide basis. The Department did not intend to apply a surrogate value to consumption factor expressed in an incompatible unit of measure. Furthermore, correcting this ministerial error will result in a change in the estimated margin of greater than 5 absolute percentage points and greater than 25 percent of the original estimated margin. Therefore, pursuant to the Department's practice, the error constitutes a significant ministerial error and the Department is amending the preliminary determination accordingly. The calculations have been corrected by applying the methodology from the petition for converting the consumption factor for vanadium slag from units of net vanadium content to units of net vanadium pentoxide content. The recalculation affects the margin percentage for Tulachermet, Odermet, and the all others rate for non-Russian exporters.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to continue to require cash deposit or posting of bond on all entries of subject merchandise from the Russian Federation at the newly calculated rates, that are entered, or withdrawn from warehouse, for consumption on or after the date of the original preliminary determination publication notice in the **Federal Register** (60 FR 438, January 4, 1995). The suspension-of-liquidation will remain in effect until further notice.

The revised estimated margins are as follows:

Manufacturer/Producer/Exporter	Weighted average margin percent
All exporters located in Russia including SC Vanadium-Tulachermet	94.92
Galt Alloys, Inc.	40.46
Gesellschaft für Elektrometallurgie m.b.H./Shieldalloy Metallurgical Corporation/Metallurg, Inc.	49.18
Marc Rich Co., AG/Glencore International AG	108.00
Odermet, Ltd.	60.09
Wogan Resources, Ltd.	108.00
All others not located in Russia	82.29

ITC Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of the amended preliminary determination. If our final determination is affirmative, the ITC will determine whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry, before the later of 120 days after the date of the original preliminary determination (December 27, 1995) or 45 days after our final determination.

Public Comment

Public hearings in this proceeding will be held to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The tentative schedule for the case briefs, rebuttal briefs, and hearings for this proceeding is described in the preliminary determination. We will make our final determination by May 19, 1995.

Dated: February 17, 1995

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4728 Filed 2–24–95; 8:45 am]

BILLING CODE 3510-DS-P

[C–533–812]

Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Susan M. Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1442.

Final Determination

The Department of Commerce ("the Department") determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in India of certain carbon steel butt-weld pipe fittings. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the preliminary determination in the **Federal Register**, 59 FR 28337 (June 1, 1994), the following events have occurred.

On June 27, 1994, at petitioner's request, we extended the final determination in this investigation to coincide with the final determination in the companion antidumping investigation (59 FR 32955).

On June 30, 1994, petitioner requested that the Department postpone its preliminary determination in the antidumping investigation. Therefore, on July 26, 1994, the Department published in the **Federal Register** a notice postponing the preliminary antidumping determination and, therefore, also the final countervailing duty determination (59 FR 37961).

On October 5, 1994, respondents requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 14, 1994, the Department published in the **Federal Register** a notice postponing the final antidumping and countervailing duty determinations until no later than February 16, 1995 (59 FR 56461).

We conducted verification of the responses submitted on behalf of the Government of India (GOI), Karmen Steels of India (Karmen) and Sivanandha Pipe Fittings Ltd. (Sivanandha) from November 4 through November 7, 1994. We received case briefs on January 24 from petitioner and respondents, and received rebuttal briefs from petitioner on January 31, 1995.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees," "caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statue and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's CVD practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (January 3, 1995).

Injury Test

Because India is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of pipe fittings from India materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from India of the subject merchandise (59 FR 18825).

Period of Investigation

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation ("POI")) is the respondents' fiscal year: April 1, 1993 to March 31, 1994.

Non-Responding Company

Since Tata did not respond to our countervailing duty questionnaire, we have used best information available ("BIA") in accordance with section 355.37(a) of the Department's regulations. As BIA, we have used information provided in the petition except where we have calculated a rate for a given program in a previous countervailing duty investigation or administrative review for India which is higher than that provided in the petition. We did not include in the BIA subsidy rate for Tata programs for which we have no basis to calculate a benefit (*i.e.*, programs for which rates are not calculated in the petition, programs not previously investigated, or programs previously found not used). Based on this approach, we calculated a BIA rate for Tata of 61.56 percent *ad valorem*.

Calculation of Country-Wide Rate

In determining the benefits to the subject merchandise from the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the ad valorem benefit received by each firm weighted by each firm's share of exports of the subject merchandise to the United States. The program rates were then added together to arrive at the country-wide rate.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, we compared the total ad valorem benefit received by each firm to the country-wide rate for all programs. The rates for Karmen, Sivanandha and Tata were significantly different from the country-wide rate. Therefore, all three companies received company-specific rates. The country-wide rate will be assigned to all other manufacturers, producers and exporters.

Karmen's Exports of Refurbished Pipe Fittings

Karmen has an arrangement with a Singaporean company, under which the Singaporean company supplies Karmen with rusty pipe fittings. Karmen reconditions and refurbishes these pipe fittings and ships them directly to the Singaporean company's U.S. customer. For purposes of the preliminary determination, we considered this refurbished merchandise to be covered by this proceeding. However, we stated

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that we would seek additional information concerning: (1) The nature and extent of the processing operation, and (2) the extent to which the refurbished pipe fittings are being subsidized.

For purposes of this final determination, we are treating the "sales" of Singaporean pipe as outside of the scope of our investigation and, hence, not subject to any potential countervailing duty order on butt-weld pipe fittings from India. Karmen essentially performs a tolling service for its Singaporean customer. Moreover, Karmen does not "substantially transform" these pipe fittings. Substantial transformation generally refers to a degree of processing or manufacturing resulting in a new and different article. Through that transformation, the new article becomes a product of the country in which it was processed or manufactured. See Cold-Rolled Steel from Argentina, 58 FR 37062, 37065 (1993) (Appendix I). The Department makes these determinations on a case-by-case-basis. See, e.g., Certain Fresh Cut Flowers from Colombia, 55 FR 20491, 20299 (1990); Limousines from Canada, 55 FR 11036, 11040 (1990).

In determining whether Karmen substantially transformed these pipe fittings, we examined whether the degree of processing or manufacturing resulted in a new and different article. Karmen receives rusty pipe fittings from Singapore, it removes the rust, paints the fitting, and forwards it to the Singaporean company's customer. We do not consider this refurbishing process as substantially transforming the subject merchandise because it remains a pipe fitting after refurbishment. Therefore, because Karmen does not substantially transform the merchandise, we do not consider it as falling within the scope of this investigation.

However, we have also determined that the benefits received by Karmen under two of the countervailable export subsidy programs discussed below (pre-shipment financing and income tax deductions under 80HHC) cannot be limited exclusively to Karmen's export sales of new pipe fittings (*i.e.*, all Karmen's export sales excluding the Singaporean transactions). In neither instance is there any indication that Karmen is precluded from receiving these benefits on its refurbishing operations. Therefore, we have included the fee Karmen receives for refurbishing the Singaporean pipe fittings as part of the denominator for calculating the *ad valorem* subsidy rate. This is consistent with past practice. When we cannot specifically tie the receipt of an export subsidy to a subset of export sales, such as exports of the subject merchandise, we divide the total value of the export subsidy received by the total value of exports. (*See, e.g.*, Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India, 56 FR 52521, (October 21, 1991), Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763, 24767 (June 30, 1988) (Redraw Rod)). (For a further discussion of this issue, please refer to the Interested Party Comments section of this notice).

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, verification and comments made by interested parties, we determine the following:

A. Programs Determined To Be Countervailable

1. Preferential Pre-Shipment Financing

Pre-shipment financing is extended to exporters prior to shipment as working capital for purchasing raw materials, processing, packing, warehousing, transporting and shipping. Any exporter showing a confirmed export order or a letter of credit is eligible for this program. Generally, the loans are extended for 180 days. We verified that both Karmen and Sivanandha had loans on which interest was paid during the POI under this program.

Because only exporters are eligible for loans under this program, we determine that they are countervailable to the extent they are provided at a preferential interest rate. *See, e.g.*, Redraw Rod. As our commercial benchmark interest rate, we used 16.50 percent, which is the rate reported by the GOI as the annual average commercial interest rate on short-term financing during the POI. We compared this benchmark rate to the interest rate charged on pre-shipment loans and found that the interest rate charged was lower than the benchmark rate. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the Subsidies Appendix accompanying Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 49 FR 18006 (April 26, 1984); see also, *Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT 1985).

We compared the amount of interest paid during the POI to the amount of interest that would have been paid at the benchmark rate. The difference between these two amounts is the benefit. We then divided the benefit by total exports. On this basis, we determine the estimated net subsidy from this program to be 0.47 percent *ad valorem* for Karmen, 0.44 percent *ad valorem* for Sivanandha and 5.27 percent *ad valorem* for Tata.

2. Income Tax Deductions Under Section 80HHC

Income tax benefits are available to exporters in India under Section 80HHC of the Income Tax Act of 1961. This program allows exporters to reduce their taxable income by the profits or export subsidies earned on exports. Both Karmen and Sivanandha claimed deductions under this program on their income tax returns filed in the POI.

Since tax deductions under Section 80HHC are available only to exporters, we determine that this program is countervailable. To calculate the benefit, we multiplied the amount of the deduction claimed by each company by the corporate income tax rate and divided the result by total exports. On this basis, we determine the estimated net subsidy from this program to be 2.10 percent *ad valorem* for Karmen, 2.73 percent *ad valorem* Sivanandha and 15.82 percent *ad valorem* for Tata.

3. International Price Reimbursement Scheme

The International Price Reimbursement Scheme ("IPRS") was established to compensate Indian exporters for the difference between the domestic price of inputs and their world market price. We verified that, as of April 1, 1993, the input product used in the production of pipe fittings (seamless carbon steel pipe), was no longer eligible for IPRS benefits. However, residual benefits could be received after that date and, in fact, Karmen received residual benefits under this program during the POI for exports of pipe fittings shipped prior to the POI.

Respondents maintain that the IPRS program is permissible within the framework of Item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on the Interpretation and Application of Article VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), (1979). Pursuant to the remand determination in *Final Results of Redetermination Pursuant to Court Remand, Creswell Trading Company, Inc., et al v. United States*, Slip. Op. 94–65 (Creswell Trading), the IPRS program must be examined in light of Item (d).

To conduct the analysis with respect to Item (d) of the Illustrative List, we examined whether the IPRS program involves a consistently applied calculation methodology for determining the difference between the higher domestic and lower international price of a product available to exporters and whether the pricing and other data used in this methodology are regularly updated to reflect accurately the price differential at the time of the purchase of the product.

We verified that India's IPRS program utilizes a clearly defined and consistently applied methodology for calculating the difference between the higher domestic and lower international price of seamless carbon steel pipe available to their exporters. We also verified that the price schedules for both domestic and international prices are updated periodically. Therefore, we determine that the basic terms and conditions of the provision of carbon steel pipe under the IPRS program are not "more favourable than those commercially available on world markets" to Indian exporters. However, we have also determined that the IPRS rebate is "excessive," because the government failed to include ocean freight in its calculation of the world market price.

Item (d) is concerned with the government's provision of goods to exporters on terms more favorable than those "commercially available on world markets to their exporters." Indian exporters who purchase seamless carbon steel pipe on the world market would necessarily also incur the cost of delivering the pipe to India. Therefore, the commercially available alternative is the price of seamless carbon steel pipe itself, from sources outside of India, plus a delivery charge to India.

The international prices used by the GOI in its calculations of IPRS rebates are stated in F.O.B. (port of origination) terms and, thus, do not reflect the delivery of foreign seamless carbon steel pipe to India. Consequently, we added delivery costs to the price of foreign-sourced seamless carbon steel pipe and compared the delivered domestic price to a delivered world market price. On this basis, we determine that the IPRS rebates received by the Indian pipe fittings producers are excessive in the amount of the delivery charges necessary to transport carbon steel pipe to India. The excess amount is a countervailable subsidy because the rebate enabled the pipe fittings exporters to pay a lower price for carbon steel pipe than that commercially available on world markets.

To calculate Karmen's benefit, we divided the amount of ocean freight necessary to ship seamless carbon steel pipe to India by Karmen's total exports of pipe fittings. We did not include in the denominator the fees Karmen receives for refurbishing Singaporean pipe because refurbished pipe fittings are not eligible for the IPRS. On this basis, we determine the estimated net subsidy from this program to be 7.05 percent *ad valorem* for Karmen, 0.00 percent *ad valorem* for Sivanandha and 32.66 percent *ad valorem* for Tata.

B. Programs Determined not to Provide Benefits During the POI Advance Licenses and Advance Customs Clearance Permits ("ACCP's")

Under the GOI's Duty Exemption Scheme, inputs used in the production of exports may enter the country duty-free. Two mechanisms under the Duty Exemption Scheme are Advance Licenses and Advance Custom Clearance Permits ("ACCPs"). Sivanandha used Advance Licenses to import seamless carbon steel pipes in the POI. Advance Licenses permit the importation of goods duty free provided that the imports are used in the production of merchandise subsequently exported.

Karmen used ACCPs during the POI. ACCPs allow exporters to import merchandise duty free for the purpose of jobbing, restoration, reconditioning and other servicing, provided that such merchandise is re-exported. Karmen used its ACCPs to import the aforementioned pipe fittings from Singapore.

We consider the use of Advance Licenses and ACCP's to be the equivalent of a duty-drawback program (see Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46292 (September 11, 1991)). Under § 355.44(i)(4)(1) of the Department's proposed regulations (see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989), the non-excessive drawback of import duties is not countervailable if the imported products are physically incorporated into exported products. According to the questionnaire responses and verification, the products imported under Advance Licenses are physically incorporated into pipe fittings which are subsequently re-exported. The products imported under the ACCP's were refurbished and also re-exported. Therefore, we determine that Advance Licenses and ACCP's did not provide a countervailable benefit in the POI.

C. Programs Determined To Be Not Used

We established at verification that the following programs were not used during the POI.

A. Preferential Post-Shipment Financing
B. Additional and Replenishment Licenses
C. Market Development Assistance
D. Export Promotion, Capital Goods Scheme
E. Benefits for 100 Percent Export-Oriented Units
F. Benefits Provided to Export Processing Zones

Interested Party Comments

Comment 1: Karmen argues that it would be inappropriate to subtract the fees received for its refurbishing operations from the denominator but to leave the subsidies resulting from the refurbishing in the numerator. Karmen argues that the job-working fees received for the Singaporean transactions must be included in the denominator to calculate its subsidy rate. Karmen contends that the benefits from the two subsidies we preliminarily found countervailable, the 80HHC tax program and the pre-shipment export financing, resulted significantly from the transactions involving Singaporean pipe.

Petitioner argues that the transactions involving the refurbished pipe fittings do not constitute a sale for the purposes of this investigation. Furthermore, petitioner disagrees that the refurbished pipe fittings contributed to Karmen's benefits under either of the above-mentioned programs.

DOC's Position: As noted above, we have determined that the benefits from the pre-shipment export financing and 80HHC programs cannot be tied solely to Karmen's export sales, exclusive of the income received for refurbishing Singaporean pipe. During verification, we were told by Karmen officials that they did not use pre-shipment export financing for shipments of refurbished pipe fittings, but based on our analysis of the information submitted regarding this program, there is no reason to believe that Karmen could not have used the financing for these shipments. We do not typically narrow our export subsidy denominator to less than total exports unless the benefits provided can be exclusively linked to a smaller subset of export sales. Therefore, consistent with our past practice, we divided the benefit amount by the value of Karmen's total exports, including the fees it received for refurbishing.

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With respect to the 80HHC program, our past practice has been to divide the value of the benefits by total exports in the POI. Pursuant to our general tax methodology, we consider tax benefits to be "received" when a company files the return. Consequently, the benefit used in our calculation usually relates to sales activity in the year prior to the POI. As a result, the sales denominator we use in our subsidy calculation is rarely, if ever, the sales from the same fiscal year covered by the tax return. The only basis to exclude sales from the denominator is to determine that they are incapable of generating the tax benefit in question. The only issue then, in this investigation, is whether the fees Karmen receives for its refurbishing operations can generate 80HHC benefits.

The 80HHC benefits Karmen claimed on the tax return filed during the POI (covering a pre-POI period) were not generated by Karmen's refurbishing operations because Karmen did not refurbish any Singaporean pipe during the fiscal year covered by the tax return. However, we verified that the fees received by Karmen for its refurbishing operations during the POI did generate 80HHC benefits on the tax return which covers the POI. It is clear that the refurbishing fees received by Karmen qualify for 80HHC benefits. The only reason 80HHC benefits generated by the refurbishing operations are not in the 80HHC subsidy calculation in this investigation is the Department's tax methodology which mandates the use of the tax return filed during the POI.

Comment 2: Respondents argue that the benchmark interest rate of 16.5 percent used in the Department's preliminary determination is the appropriate benchmark rate and should also be used in the Department's final determination. They state that this interest rate is the national average commercial rate for comparable loans. They contend that the 18.75 percent interest rate listed in the Department's verification reports is a company-specific rate and therefore should not be used. They further state that the 18.75 percent interest rate is for a loan that has a one year term while pre-shipment financing has a much shorter term. Finally, they argue that pre-shipment export financing is a low risk form of credit because the exporter has to show a purchase order prior to receiving financing.

DOC's Position: We agree that the 18.75 percent interest rate is a company-specific rate. When selecting a short-term interest rate benchmark the Department's first choice is a national average rate rather than a company-specific rate. *See,* Subsidies Appendix. The questionnaire response of the GOI stated that the annual average interest rate on short-term financing in India during the POI was 16.5 percent. According to the Reserve Bank of India, the minimum commercial short-term rate on loans above 200,000 rupees in India during the POI was 15.00 percent. Information from the May 1994 edition of International Financial Statistics indicates that the average short- and medium-term interest rate in India during the POI was approximately 15.59 percent. Given the information on the record, we used as our benchmark the rate provided by the GOI.

Comment 3: Respondents argue that the Department should uphold its preliminary finding that the IPRS program is non-countervailable.

DOC's Position: Based on verification and the recent remand determination in Creswell Trading, we have determined that the IPRS program provided a countervailable benefit during the POI.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–99 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of butt-weld pipe fittings from India, which were entered or withdrawn from warehouse for consumption, on or after June 1, 1994, the date our preliminary determination was published in the **Federal Register**.

After the preliminary determination, this final countervailing duty determination was aligned with the final antidumping duty determination on certain carbon steel butt-weld pipe fittings from India, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the *Subsidies Code*, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise on or after September 30, 1994, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between June 1, 1994, and September 29, 1994. We will reinstate the suspension of liquidation, under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties in the amounts indicated below:

Karmen Steels of India: 9.62 percent *ad valorem*
Sivanandha Pipe Fittings Ltd.: 3.16 percent *ad valorem*
Tata Iron & Steel Limited: 61.56 percent *ad valorem*
All-Others: 29.40 percent *ad valorem*

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, pursuant to section 705(c) we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on butt-weld pipe fittings from India.

Return of Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: February 16, 1995.

Barbara S. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4721 Filed 2–24–95; 8:45 am]
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[C–508–808]

Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Jennifer Yeske, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2239 or 482–0189, respectively.

Final Determination

The Department of Commerce ("the Department") determines that benefits which constitute subsidies within the meaning of Section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Israel of certain carbon steel butt-weld pipe fittings ("pipe fittings"). For information on the estimated net subsidy, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of the preliminary determination in the **Federal Register** (59 FR 28340, June 1, 1994), the following events have occurred.

On June 1, 1994, petitioner requested that the final determination in this investigation be postponed and aligned with the date for the final determination in the companion antidumping investigation of the same subject merchandise from Israel. On June 27, 1994, the Department published in the **Federal Register** a notice postponing and aligning the publication of the final determination in this investigation (59 FR 32955).

On October 5, 1994, Pipe Fittings Carmiel, Ltd. ("Carmiel"), the sole company respondent, requested that the Department postpone the final antidumping and countervailing duty determinations. Therefore, on November 14, 1994, the Department published in the **Federal Register** a notice postponing the final antidumping and countervailing duty determinations until no later than February 16, 1995 (59 FR 56461).

We conducted verification of the responses submitted by the Government of Israel ("GOI") and Carmiel from November 27 through December 4, 1994. Both respondents and petitioner submitted case and rebuttal briefs on January 24 and January 31, 1995, respectively.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows," "tees,""caps," and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the *Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's CVD practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (January 3, 1995).

Injury Test

Because Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC published its preliminarily determination that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reasons of imports from Israel of the subject merchandise (59 FR 18825).

Period of Investigation

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (the "POI")) is calendar year 1993.

Analysis of Programs

Based upon our analysis of the petition, responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

I. Programs Determined To Be Countervailable

A. Grants under the Encouragement of Capital Investments Law of 1959 ("ECIL")

The ECIL program was established to develop the production capacity of the Israeli economy by providing investment grants for industrial projects. In order to be eligible to receive benefits under the ECIL, an applicant first must obtain "Approved Enterprise" status, which is granted by the Investment Center of the Israeli Ministry of Industry and Trade.

Among the benefits provided under ECIL are investment grants. The amount of an investment grant is calculated as a percentage of the total approved investment in fixed assets, and this percentage depends on the geographic location of the enterprise. For purposes of the ECIL program, Israel is divided into three zones—the Central Zone, Development Zone A and Development Zone B. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. Companies in the Central Zone could not receive grants under this program at all in 1988, and only at a much lower rate than companies in Development Zones A and B in 1983, with Development Zone A companies receiving a higher level of funding than those in Development Zone B.

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In the *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel ("IPA")* (52 FR 25447; July 7, 1987), the Department found the investment grants program under the ECIL to be *de jure* specific and, therefore, countervailable because the grants are limited to enterprises located in specific regions (*i.e.*, Development Zones A and B). In the course of this proceeding, the GOI provided no new information indicating that the grants are not limited to particular regions. Therefore, we are continuing to find ECIL grants to be *de jure* specific.

Carmiel's production facility is located in Development Zone A. According to the responses and verification, the company received approval, in 1983 and 1988, for grants for two projects related to the production of subject merchandise. These grants were disbursed over the period 1983–1993.

At verification, we noted that for certain of the grant disbursements, the Israeli Ministry of Finance subtracted a small "computer commission." Consistent with section 771(6) of the Act and section 355.46 of *Countervailing Duties; Notice of Proposed Regulations and Request for Public Comments*, 54 FR 23366 (May 31, 1989) ("Proposed Regulations"), we have determined that this commission constitutes an allowable offset. Therefore, we have subtracted the commission in those instances in which Carmiel was able to document that a commission was subtracted from a grant amount.

It is our policy to allocate non-recurring grants over a period equal to the average useful life of assets in the industry, unless the sum of grants provided under a program in a particular year is less than 0.50 percent of a firm's total sales in that year. See Section 355.49(a) of the Department's Proposed Regulations and the General Issues Appendix to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria*, 58 FR 37217, July 9, 1993. In this instance, Carmiel has not provided sales information for years prior to 1989. Therefore, we have no reason to believe that grants made before 1989 were less than 0.50 percent of sales in the year of receipt for these years and, therefore, have determined that the yearly disbursements should be allocated over time. In 1990, the sum of grants disbursed under the ECIL program accounted for less than 0.5 percent of Carmiel's total sales in that year. Therefore, benefits for 1990 were allocated to that year and are not included in our calculations. For all other years after 1989, the sum of the grants disbursed under the ECIL program accounted for more than 0.5 percent of Carmiel's total sales each year. Therefore, these benefits were allocated over time.

For ECIL grants allocated over time, we used a twelve year allocation period (the average useful life of assets with respect to the manufacture of fabricated metal products, as determined by the U.S. Internal Revenue Service Asset Depreciation Range System). The formula described in Section 355.49(b)(3) of the Proposed Regulations for allocating grants relies on a fixed discount rate, which is based on the cost of long-term, fixed-rate debt of the firm or generally in the country under investigation. However, we confirmed at verification that no long-term loans with fixed interest rates (or other long-term fixed-rate debt) were available in Israel during the years 1983–1993. Instead, the only long-term loans (or other long-term debt) available to companies in Israel utilized variable interest rates, *i.e.*, a fixed real interest rate added to the Consumer Price Index (CPI) or the dollar/shekel exchange rate.

Therefore, we have determined to adapt the grant allocation method described in our proposed regulations to use variable rather than fixed interest rates as the discount rate, given the absence of long-term fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms (*i.e.*, that long-term financing was only available through variable rate loans) and also ensures that the net present value of amounts countervailed in the year of receipt does not exceed the face value of the grant.

In this determination, we have used as the discount rate the rate of return on CPI-indexed commercial bonds (the real rate of return, as published in the Bank of Israel Annual Reports, plus the CPI), as no actual borrowing rates for Carmiel were available.

We divided the benefit allocated to 1993 by Carmiel's 1993 total sales. On this basis, we determine the estimated net subsidy for this program to be 2.31 percent *ad valorem* for the POI.

B. Long-Term Industrial Development Loans

Prior to July 1985, companies in Israel were eligible to receive long-term industrial development loans funded by the GOI. This program was used in conjunction with ECIL; however, a company was not required to be an Approved Enterprise in order to receive a development loan.

We confirmed, as the GOI reported, that loans under this program were provided to a number of different industries in Israel. However, we also confirmed that the interest rates on these loans varied depending on the location of the borrower. The interest rates on loans to borrowers in Development Zone A were lowest, while those on loans to borrowers in the Central Zone were highest. In previous cases, the Department has found long-term industrial development loans in Israel to be regional subsidies and countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone (see *IPA*). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel received loans for a project located in Zone A. These loans were received between the year 1983–1989. Under the terms of the program, the interest rates on these loans have two components—a fixed real interest rate and a variable interest rate, the latter of which is based on either the CPI or the dollar/shekel exchange rate. We confirmed at verification that Carmiel received some loans that were linked to the CPI and others linked to the dollar-shekel exchange rate.

Because the CPI and dollar-shekel exchange rate vary from year-to-year, we cannot calculate *a priori* the payments that will be made over the life of these loans and, hence, we cannot calculate the "grant equivalent" of the loans. Accordingly, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Carmiel during the POI (see Section 355.49(d)(1) of the Proposed Regulations). We divided the interest savings by Carmiel's total sales in 1993.

On this basis, we determine the net subsidy from this program to be 0.36 percent *ad valorem* during the POI.

C. Exchange Rate Risk Insurance Scheme

Introduced in 1981, the Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Insurance Corporation Inc. (IFTRIC), was designed to allow exporters to insure themselves against the risk of losses which might occur when the rate of devaluation of the Israeli shekel lagged behind the rate of inflation. The EIS was optional and open to exporters willing to pay a premium to IFTRIC.

Under this program, if the rate of inflation was greater than the rate of devaluation, the exporter was compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation was higher than the change in the domestic price index, however, the exporter was required to compensate IFTRIC. Companies using EIS paid a premium, calculated for each exporter as a percentage of the insured value of exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. See Section 355.44(d) of the Proposed Regulations and *IPA*. We have reviewed EIS data in this investigation which showed that EIS operated at a loss from 1981 through 1991. We believe that this 11 year history is more than adequate to establish that the premiums and other charges are "manifestly inadequate" to cover the long-term operating costs and losses of the program. The Department's determination that this program is countervailable is consistent with our determination in *IPA*.

We confirmed at verification that this program was terminated during our POI by the GOI. However, we also found at verification that the GOI will continue to honor outstanding claims for exports made prior to the date of termination, August 31, 1993, as long as the claims are made within three years of the date of export. Because of the possibility of residual benefits, we have not adjusted the cash deposit rate to reflect the termination of this program.

We have calculated the benefit during the POI as the net amount of compensation (compensation received less compensation and fees paid) Carmiel received during that period expressly for pipe fittings exported to the United States. We confirmed by reviewing company records that a certain portion of the total benefit reported by Carmiel as having been received during the POI was actually received by the company in 1992. Therefore, we have not included this amount in our calculations for purposes of this determination.

We divided the resulting net compensation amount by the value of the company's exports of pipe fittings to the United States during the POI. On this basis, we determine the estimated net subsidy from this program to be 0.19 percent *ad valorem* during the POI.

D. Exemption From Wharfage Fee

The Ports and Trains Authority administers all import/export operations and the train system in Israel. Wharfage fees represent 45–50 percent of the revenues of the Authority to cover its infrastructure and overhead costs.

We confirmed at verification that during the POI, importers were obligated to pay wharfage fees equal to 1.5 percent *ad valorem* of import value and exporters 0.2 percent *ad valorem* of export value. However, we also found that, during the POI, exporters were exempted by a Ports and Trains Authority decision from paying the wharfage fee altogether. The exemption of this fee does not relate to the imported input (see the *Rebate of Wharfage Fees* section below), but rather to the finished product. Government officials explained that an exemption for exporters was made possible by the Authority's sound financial position.

We determine that the exemption from the wharfage fee provides an export subsidy insofar as export are allowed an exemption (unlike the other users of the port, *i.e.*, importers) solely due to their status as exporters. *Cf. Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada*, 51 FR 10041 (Mar. 24, 1986).

In order to calculate the benefit resulting from this program, which provides recurring benefits, we multiplied the total value of the company's exports during the POI by the 1.5 percent *ad valorem* coefficient and divided this amount by the total value of the company's exports.

On this basis, we determined the estimated net subsidy from this program to be 1.50 percent *ad valorem* during the POI.

E. Rebate of Wharfage Fees

We confirmed at verification that an additional program allows exporters, upon export of the finished product, rebates of the wharfage fees paid on imports of physically incorporated inputs. We were informed at verification that since the Israeli Customs Service administers the drawback system, the GOI asked it to take responsibility for rebating wharfage fee under this program. Under the rebate program, a company can receive a rebate for up to 80 percent of the wharfage fees paid on imported inputs that are physically incorporated into exported products.

This program provides preferential treatment for exporters and does not qualify for non-countervailable treatment under section 355.44(i) of the *Proposed Regulations*, as wharfage fees do not constitute indirect taxes or import charges. (*See DOC Position to Comment 3* below.)

To calculate the benefit provided by this program, which provides recurring benefits, we divided the total amount of rebate received during the POI by the total value of the company's exports during the same period.

On this basis, we determine the estimated net subsidy from this program to be 0.34 percent *ad valorem*.

F. Fund for the Promotion of Marketing Abroad

During verification we learned that Carmiel received benefits in 1992 under the Fund for the Promotion of Marketing Abroad. GOI officials explained that under the Fund, companies apply for three-year financing for overseas market research projects. The company is obligated to repay the financing (in part) based on export earnings. We also learned that Carmiel has been informed that the funds approved in 1992 have been cancelled because the company did not timely submit its implementation report. Consequently, the Fund Director has asked the company to repay the previously received amount. As of the time of verification, Carmiel had not yet made any repayments.

Given the information we have received, we determine that this program provides benefits solely to exporters. Consequently, we determine that the assistance provided to Carmiel constitutes an export subsidy. Moreover, although Carmiel has been asked to repay the funds, the company has yet to repay anything. Consequently, we are treating the amount as a short-term, interest-free loan still outstanding as of the end of our POI.

In order to calculate the benefit received by Carmiel, we have used the 1992 rate for short-term financing as outlined in a Bank of Israel Annual Report on the record of this proceeding. We have divided the interest savings by Carmiel's total export sales in 1993.

On this basis, we determine the net subsidy from this program to be 0.23 percent *ad valorem* during the POI.

II. Programs Determined Not To Be Countervailable

A. Rebate of Peace of Galilee Levy

We confirmed that the Peace of Galilee (Shlom-Hagalil) Levy was instituted on imports to help the balance of payments problem in Israel caused by incessant war with its neighbors. We confirmed that since at least 1986 the GOI has allowed rebates on this levy in a manner similar to that on the Rebate of Wharfage Fee program. Under the rebate program, a company can receive a rebate for 100 percent of the levies paid on imported inputs that are physically incorporated into exported products.

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We confirmed that the company is tasked to provide information to the GOI regarding which inputs are physically incorporated into its exported products, and this information does not give rise to an excessive rebate. We also found that the Customs Authority is tasked with verifying the claims made by companies such as Carmiel. Consequently, we find this program to provide a nonexcessive rebate of the levies. See *Proposed Regulations* at Section 355.44(i). Therefore, we have found this program to be not countervailable.

III. Programs Determined Not To Be Used

We determine that Carmiel did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. *Additional Incentives under the ECIL*
   1. *Preferential Accelerated Depreciation*
   2. *Tax Benefits*
   3. *Preferential Loans*
   4. *Industry Subsidy Payments*
B. *Labor Training Grants*
C. *Encouragement of Industrial Research and Development (EIRD) Grants*
D. Special Export Financing Loans
E. *Provision of Funds for Transportation to Eilat Harbor*

Interested Party Comments

Comment 1: With respect to the Exchange Rate Risk Insurance Scheme, petitioner argues that Carmiel originally reported that it received a certain amount during the POI based on IFTRIC records. At verification, however Carmiel claimed that the original figure incorrectly included a payment received in 1992. Petitioner argues that according to IFTRIC records verified by the Department, the disputed payment was received by Carmiel during the POI. Therefore, the Department should use the figure originally reported by Carmiel.

Carmiel notes that the disputed amount was actually received by the company in 1992. According to Carmiel, it is the date of receipt by the *company* that is controlling; hence, the benefit from the EIS should be adjusted to reflect only the amount received during the POI.

DOC Position

We agree with Carmiel. We confirmed at the verification of Carmiel that the company actually received the disputed amount in 1992, not during the POI. It is unclear why IFTRIC recorded a later date of payment. Nevertheless, we have countervailed only the amount received by the company under this program during the POI.

Comment 2: Carmiel argues that since the Department verified that the Exchange Rate Risk Insurance Scheme was terminated during the POI, the deposit rate should be set at zero.

Petitioner argues that the Department should reject Carmiel's claim. Petitioner notes that the Department found that, although this program was terminated during the POI, the GOI will continue to honor outstanding claims as long as they are made within three years of the date of export. Therefore, residual benefits from the program will continue to be available after the POI.

DOC Position

We agree with petitioner. The Department's practice, as outlined in Section 355.50(d)(1)(2) of the Proposed Regulations, is not to adjust the cash deposit rate when it determines that residual benefits may continue to be bestowed under a terminated program. As we verified that residual benefits are possible under this program, we have not made an adjustment to the cash deposit rate.

Comment 3: According to petitioner, the Department verified that wharfage fees, assessed in order to finance the Ports and Trains Authority, differ for importers and exporters, even though the costs associated with both activities do not differ. Moreover, for the last ten years, exporters have been exempt from paying a fee altogether. Since the Department was unable to verify the value of the wharfage fee exemption to Carmiel, it should as best information available ("BIA") establish a 1.5 percent *ad valorem* countervailing duty for this program. Petitioner further argues that the record does not indicate that these fees cover costs that have nothing to do with the services suggested by the term "wharfage," and, therefore, do not operate as a tax.

Respondent counters that the wharfage fee is, in fact, a general levy intended to cover myriad government activities that have nothing to do with the services suggested by the term "wharfage." The fee is paid to a government agency and is not tied to any specific cost or service. It is a tax, and more particularly an indirect tax on exports. Therefore, it should not be considered a countervailable subsidy.

DOC Position

We agree with petitioner that wharfage fees represent fees rather than indirect taxes. Consistent with the concept of a fee, the wharfage fees here are paid only by users of the port facilities, and the funds raised are used to pay for the costs incurred by the Port Authority and the maintenance of those facilities.

We note that we have not used BIA, as petitioner suggests, to calculate the countervailable benefit provided by this program. Rather, as noted above, for the exemption of the fee, we have determined that the correct method by which to calculate the benefit received by Carmiel is to multiply the 1.5 percent exemption by total export sales during the POI, and divide the resulting amount by the same total export sales value.

Comment 4: Petitioner notes that, with respect to the Rebate of the Peace of Galilee Levy Program, the record does not provide enough information to determine the extent to which the rebate provided to Carmiel is excessive. Although remission of import duties for imports consumed as "normal waste" may not be excessive, the Israeli Customs has made no effort to identify "normal waste" in the production of butt-weld pipe fittings. Therefore, petitioner submits that, as BIA, the entire amount rebated under this program should be treated as a countervailable subsidy. Petitioner notes that in *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649; January 15, 1987) *("OCTG")*, the Department found that this program did not provide an excessive rebate of duties paid on imported inputs physically incorporated into the exported product. However, in this investigation, unlike *OCTG*, Customs indicated that it makes no attempt to determine a value for the carbon steel pipe wasted in producing subject merchandise.

Respondent argues that this program does not provide a countervailable subsidy in that it is an indirect tax on items physically incorporated into the final exported product. In fact, in *OCTG*, the Department found this program to be not countervailable. Respondent also argues that there is absolutely nothing in the record of this case to suggest that, while the rebate was "nonexcessive" in *OCTG*, the rebate to Carmiel is excessive. Petitioner's attempt to make the rebate appear excessive by focusing on the Custom's official's statement about wastage is misplaced. Such percentages are not determined as they are not relevant to the payments. The rebate is based on the proportion of export sales to home market sales. No calculation for wastage is necessary; Customs simply compares the tonnage of finished product exported to the tonnage sold in the Israeli market.

DOC Position

We agree with respondent that this program is not countervailable because it provides a non-excessive rebate of the levies on imported inputs that are used in the production of subsequently exported finished products. We confirmed at the Israeli Customs Department that its personnel monitor company reports regarding which imports are physically incorporated into the end product and the total amount of levies paid on such inputs. We also note that a rebate is only given on physically incorporated inputs. Consequently, waste is not an issue here. For this reason, we do not find anything in the remarks of the Customs official at verification that is inconsistent with our finding here, or in *OCTG*.

Comment 5: With respect to the Fund for the Promotion of Marketing Abroad, Carmiel states that the record is clear that it received funds for this program in 1992 (which is outside the POI), and that the company must refund the money to the government since it did not fulfill its obligations under the program. Accordingly, Carmiel maintains the money it received does not constitute a countervailable subsidy during the POI.

DOC Position

We confirmed at verification that the company is obligated to repay the benefit, has not yet done so. Therefore, during the POI, Carmiel had use of money to which it would not have otherwise had access. Consequently, we have found that this amount constituted a countervailable interest-free loan during the POI.

Comment 6: Petitioner notes that according to the verification report, Carmiel receives "certain advantages" if 90 percent of its sales represent its own production. The exact nature of these advantages is not, unfortunately, further explained in the verification report. However, the fact that these otherwise undefined advantages are only available to a specific class of sellers in Israel demonstrates that the "advantages" are not generally available within the country.

Respondent argues that, as outlined in the verification report, producing companies in Israel are eligible for certain benefits while trading companies are not. Hence, in order to preserve its status as a producing company, Carmiel formed a trading company. There are, however, no additional subsidies available to production companies other than the ones already investigated in this case.

DOC Position

We agree with respondent. We found no evidence at verification to suggest that Carmiel received any additional benefits than those already noted above. The company explained that it formed a trading company in order to preserve its "producing company status." Consequently, we find no reason to pursue this issue any further.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of carbon steel butt-weld pipe fittings from Israel, which were entered or withdrawn from warehouse for consumption, on or after June 1, 1994, the date our preliminary determination was published in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determination of certain carbon steel butt-weld pipe fittings from Israel, pursuant to section 705(a)(1) of the Act.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning September 30, 1994, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from June 1 through September 29, 1994. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

Certain Carbon Steel Butt-Weld Pipe Fittings

Country-Wide *Ad Valorem* Rate: 4.93 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on carbon steel butt-weld pipe fittings from Israel.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4718 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: By a decision dated February 13, 1995, the Binational Panel reviewing the final affirmative injury determination made by the Canadian

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International Trade Tribunal (CITT) respecting Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America (Secretariat File No. CDA–93–1904–11) affirmed the determination of the CITT. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). The Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedures for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

PANEL DECISION: In the February 13, 1995 decision, the Binational Panel affirmed the investigating authority's determination respecting Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America made by the Canadian International Trade Tribunal.

A Notice of Final Panel Action will be issued on the eleventh (11) day following the issuance of the decision (February 24, 1995).

Dated: February 21, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–4751 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Alaska

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 8636 in the issue dated Wednesday, February 15, 1995, third column, first paragraph, the award number is corrected to read, "10–10–95005–01".

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4729 Filed 2–4–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Portland, Oregon

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: On page 8633 in the issue dated Wednesday, February 15, 1995, third column, second paragraph, the award number is corrected to read, "10–10–95013–01".

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4833 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Seattle, WA

AGENCY: Minority Business Development Agency.

ACTION: Correction.

SUMMARY: On page 8641 in the issue dated Wednesday, February 15, 1995, second column, second paragraph, the award number is corrected to read, "10–10–95014–01".

FOR FURTHER INFORMATION, CONTACT: Steven Saho at (415) 744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: February 22, 1995

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–4832 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[Docket No. 950210047–5047–01; I.D. 011195B]

RIN 0648–XX08

Atlantic Monkfish Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of control date for entry into the Atlantic monkfish fishery.

SUMMARY: This notice announces that anyone entering the Atlantic monkfish fishery after February 27, 1995 (control date), will not be assured of future access to the Atlantic monkfish resource in Federal waters if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to the Atlantic monkfish resource and to discourage new entries into this fishery based on economic speculation, while the New England and Mid-Atlantic Fishery Management Councils (Councils) contemplate whether and how access to the Atlantic monkfish fishery should be controlled. The potential eligibility criteria may be based on historical participation, defined as any number of trips having any documented amount of monkfish landings. This announcement, therefore, gives the public notice that they should locate and preserve records that substantiate and verify their participation in the monkfish fishery.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422, David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 302–674–2331 or Paul H. Jones, Fishery Policy Analyst, NMFS Northeast Regional Office, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Monkfish (*Lophius americanus*, also known as goosefish or anglerfish) are widely distributed in the northwest Atlantic Ocean from the northern Gulf of St. Lawrence to Cape Hatteras, NC. This species is found from the tideline to depths as great as 840 m (2,756 ft). They reach 48 cm (19 in) in length by age 4, when most monkfish are mature. The maximum observed age has been 9 and 11 years for males and females, respectively.

Landings of monkfish tails have increased markedly since the mid-1970's, from 600 metric tons (mt) in 1975 to 2,300 mt in 1980 and then to 4,300 mt in 1989. Landings for 1993 (tails) totalled 6,600 mt; total live weight landed including tails, livers, and other body parts and monkfish landed round totalled 18,600 mt. This continued increase reflects both increased effort in other fisheries (primarily for groundfish and sea scallops) in which monkfish are taken as bycatch and increasing levels of directed effort towards this species. Since 1990, increased directed effort has occurred from vessels employing trawls, scallop dredges and sink gillnets, generally in deeper waters, and this component of the fishery now accounts for nearly 30 percent of the total landings. Interest in fishing for monkfish is being fueled by increasing value of monkfish livers and increasing market acceptance of small tails. This trend is likely to continue as fishermen seek alternatives to the traditional scallop and groundfish fisheries, which are severely depleted and intensively regulated

Developing markets for monkfish tails and livers allowed fishermen to fish more profitably and land increasingly smaller monkfish over the past several years. Because of this trend, several Atlantic coast states recently implemented minimum fish size requirements for monkfish. Monkfish liver prices are now at or near all time highs, and some dealers have reportedly been unable to fill market demand for small tails, since many coastal states have imposed minimum size limits. Landings of excessively small monkfish with tails as small as 9 inches (22.9 cm), and occasionally as small as 5 inches (12.7 cm), are of major concern.

Abundance, as measured by research vessel surveys, has declined to near record lows, and average sizes of monkfish in commercial landings and in research vessel surveys have declined to record lows in recent years. A steady decline in proportion of mature fish in the population has also been noted (to 25% or less in the Gulf of Maine, the lowest observed percentage in the time series) with potential adverse effects on future recruitment.

Recent increases in landings of monkfish to record high levels, declines in abundance and biomass to at or near record lows, and the declining proportion of mature individuals in the population all indicate that this resource is overfished and in a deteriorating condition; and if current fishery trends continue, recovery of this resource will become increasingly problematical. Guidelines Relating to Intent of the Councils in Establishing a Control Date for the Management of Monkfish

1. The Councils are currently considering that, in the event that a system of assigning fishing rights is developed as part of an FMP for monkfish, such assignments shall be based upon historical levels of participation in the fishery prior to February 27, 1995, with the following considerations for recent investment.

2. The current intent of the Councils is that newly constructed vessels will be given consideration in the assignment of fishing rights if they were under construction as of February 27, 1995, as evidenced by written construction contracts.

3. The public is further notified that it is the current intent of the Councils that historical participation will transfer with a vessel, for transfers made after February 27, 1995, unless such transfers are accompanied by a written document indicating the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred via sale, lease, or any other means of conveyance. Any such transfers or explicit retention of fishing rights may only be executed with any and all fishing rights presently assigned to said vessel or which may be assigned based on that vessel's prior participation in any other fishery. This potential restriction may mean, for example, that no transfers or explicit retention of monkfish fishing rights may be made without also transferring or retaining the vessel's or the former owner's right to fish for groundfish, scallops, or another regulated species.

If a vessel's fishing rights were transferred to a new owner prior to February 27, 1995, the new owner may have the option of excluding the previous owner's history of participation when qualifying for a limited access fishery. If a vessel is transferred with its fishing rights to a new owner after February 27, 1995, the entire history of fishing for monkfish may be required when determining eligibility.

4. The Councils' current intent is that if fishing rights are explicitly retained by a previous owner as described above, or a qualifying vessel is lost or destroyed, the owner of said vessel or its rights may qualify for a limited access fishery for monkfish without having title to a replacement vessel. Upgrades or replacements of vessels after February 27, 1995 that are inconsistent with the Multispecies, Scallop, or Summer Flounder Fishery Management Plans may disqualify the vessel from the limited access monkfish fishery.

5. Further, the Councils currently intend that any system of assigning fishing rights may consider the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

a. Extent of past participation in the Atlantic monkfish fishery;

b. Demonstration of intent prior to February 27, 1995 to re-enter the Atlantic monkfish fishery with a different vessel.

c. Requirement that a vessel's history may be applied such that no more than one vessel may rely on that history to qualify for the limited access fishery.

The Councils intend to address whether and how to limit entry of commercial vessels into this fishery in a Monkfish FMP. The Councils' intent in making this announcement is to discourage speculative entry into the commercial monkfish fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from speculative entrants to the fishery. Although fishermen are notified that entering the fishery after the control date will not assure them of future access to the monkfish resource on the grounds of previous participation, additional and/or other qualifying criteria also may be applied.

The Councils may choose different and variably weighted methods to qualify fishermen based on the type and length of participation in the fishery or on the quantity of landings. The

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qualification criteria may be structured such that vessels fishing for other species and having incidental catches of monkfish would be able to continue to do so without qualifying for a limited access permit.

This notice hereby establishes February 27, 1995 for potential use in determining historical or traditional participation in a monkfish fishery. This action does not commit the Councils to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Councils may choose a different control date, or may choose a management program that does not make use of such a date. The Councils may choose also to take no further action to control entry or access to the fishery. Any action by the Councils will be taken pursuant to the requirement for FMP development established under the Magnuson Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 17, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–4652 Filed 2–24–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting; Amendment.

SUMMARY: This notice amends the notice that was published in the **Federal Register** issue of Thursday, February 9, 1995, 60 FR 7759. This amended notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance.

DATES AND TIMES: February 27, 1995, beginning at 9:00 a.m. and ending at 5:00 p.m.; and February 28, 1995, beginning at 8:30 a.m. and ending at 12:00 noon, but closed from 8:30 a.m. to 9:30 a.m.

ADDRESSES: Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582, (202) 708–7439

SUPPLEMENTARY INFORMATION: The Advisory Committee will meet in Washington, D.C. on February 27, 1995, from 9:00 a.m. to 5:00 p.m., and on February 28, from 8:30 a.m. to 12:00 noon. The meeting will be closed to the public on February 28, from 8:30 a.m. to 9:30 a.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days of the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: February 17, 1995.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 95–4636 Filed 2–24–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

Name: Hydrogen Technical Advisory Panel.

Date and Time: Monday, March 6, 1995, 9:00 a.m.–5:30 p.m., Tuesday, March 7, 1995, 9:00 a.m.–12:00 p.m.

Place: Mark Center Raddison Hotel, 5000 Seminary Road, Alexandria, Virginia, Telephone: 703–845–1010.

FOR FURTHER INFROMATION CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue SW, Washington, DC 20585, Telephone: (202) 586–1506.

SUPPLEMENTARY INFORMATION:

Purpose: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) the implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Monday 6, 1995

9:00 a.m.—Introductions and Opening Comments: P. Takahashi
9:10 a.m.—Hydrogen Programs within OUT: K. Rabago
9:30 a.m.—Hydrogen Programs within OTT: T. Gross
9:50 a.m.—Report from the U.S. DOE: R. Eaton
10:10 a.m.—Report on Hydrogen Program: N. Rossmeissl
10:30 a.m.—Report on NREL Program: G. Gregoire
10:45 a.m.—Break
11:00 a.m.—International Activities: R. Eaton
11:15 a.m.—Report on Congressional Activities: Rep. R. Walker M. Wiggins
12:00 p.m.—Lunch
1:00 p.m.—Industry/Public Outreach: D. Nahmias
1:30 p.m.—Status Reports from HTAP Committees
5:30 p.m.—Wrap-up: P. Takahashi

Tuesday, March 7, 1995

9:00 a.m.—Future Plans of HTAP Committee Chairmen
10:00 a.m.—Roundtable Discussion: Panel
11:00 a.m.—Public Comments: All

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (E.S.T.) Monday, March 6, 1995, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide

15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication. Written comments can be sent to the address above on or before March 14, 1995.

Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on February 22, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 95–4763 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

National Electric and Magnetic Fields Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), notice is hereby given of a meeting of the National Electric and Magnetic Fields Advisory Committee.

DATES: Tuesday, March 14, 1995: 9:00 a.m.–4:00 p.m., Wednesday, March 15, 1995: 9:00 a.m.–12:00 p.m.

ADDRESSES: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, D.C. 20007, (202) 338–4600.

FOR FURTHER INFORMATION CONTACT: Roland George, Program Manager, Utility Systems Division, EE–141, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9398.

SUPPLEMENTARY INFORMATION: The National Electric and Magnetic Fields Advisory Committee advises the Department of Energy and the National Institute of Environmental Health Sciences on the design and implementation of a five-year, national electric and magnetic fields research and public information dissemination program. The Secretary of Energy, pursuant to Section 2118 of the Energy Policy Act of 1992, P.L. 102–486, has overall responsibility for establishing the national program which includes health effects research, development of technologies to mitigate any adverse human health effects, and dissemination of information.

Tentative Agenda

Tuesday, March 14, 1995

9:00 a.m.—Welcome and Review of minutes
9:30 a.m.—FY 95 funding status/options
10:00 a.m.—FY 96 funding
10:45 a.m.—Break
11:15 a.m.—FY 96 funding priorities and options
12:00 noon—Lunch
1:00 p.m.—Annual Report for FY 94
1:15 p.m.—Report on FY 95 activities (National Institute of Environmental Health Sciences (NIEHS), DOE)
2:30 p.m.—Response to recent solicitations for proposals
2:50 p.m.—Break
3:15 p.m.—Review of proposed work, FY 95, FY 96
3:45 p.m.—Administrative issues
4:00 p.m.—Adjourn

Wednesday, March 15, 1995

9:00 a.m.—Report from Interagency Working Group
9:30 a.m.—Interagency Committee Progress Report to Congress
10:30 a.m.—Break
11:00 a.m.—Public comments
12:00 noon—Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Roland George at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday expect Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, D.C. on February 22, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 95–4762 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP93–728–001, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

February 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP93–728–001]

Take notice that on February 9, 1995, Northwest Pipeline Corporation (Applicant), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP93–728–001 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for approval to change the design of authorized facilities, located at the new Maple Heights Meter Station in King County, Washington,[1] to reflect the elimination of one of the originally authorized meters from the design of the facilities actually installed, under blanket certificate issued in Docket No. CP82–433–000,[2] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant states that it was authorized to construct and operate the Maple Heights Meter Station consisting of two 3-inch taps, one 2-inch rotary meter, one 4-inch turbine meter, two 1-inch Mooney regulators and appurtenances, with a maximum design delivery capacity of approximately 5,250 Dth per day at 200 psig to provide service to Washington Natural Gas Company (Washington Natural). Applicant states that prior to construction Washington Natural determined that a capacity of 750 Dth per day would be sufficient to meet its requirements at this delivery point and requested that the authorized meter station be downsized. Accordingly, Applicant modified the Maple Heights Meter Station design by eliminating the authorized 4-inch turbine meter thus reducing the design capacity to

[1] See, Prior Notice in Docket No. CP93–728–000 (dated September 21, 1993), effective November 6, 1993.

[2] See, 20 FERC ¶ 62,412 (1982).

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approximately 750 Dth per day. Applicant states that the revised cost of the downsized meter station was $396,239 which was reimbursed by Washington Natural.

Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[1] Applicant states that there is no significant impact on Applicant's system peak day deliveries resulted from the redesigned facilities since Applicant's total firm obligation for deliveries to Washington Natural remains unchanged. Applicant states that construction of the proposed delivery point is not prohibited by its existing tariff, and that the requirements to be served via this meter station will result in no significant increase in annual throughput on Applicant's system.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

Docket No. CP95–201–000

Take notice that on February 13, 1995, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP95–201–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to convert existing exempt facilities, installed and operated under 18 CFR 157.53 to Natural Gas Act § 7(c) delivery point facilities and operate same as fully certificated transmission facilities under Questar Pipeline's blanket certificate issued in Docket No. CP82–491–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar Pipeline proposes to convert facilities in Uinta County, Wyoming. These facilities consist of one four-inch tap, one two-inch Daniel Senior meter run, approximately 400 feet of four-inch buried pipeline, electronic flow-measurement and telemetry equipment, and minor yard and station piping.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. K N Interstate Gas Transmission Company

[Docket No. CP95–203–000]

Take notice that on February 14, 1995, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP95–203–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish three new delivery taps for its affiliate, K N Energy, Inc., (K N), a local distribution company, for ultimate sale to various retail customers, under K N Interstate's blanket certificate issued in Docket Nos. CP83–140–000 and CP83–140–001 and Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N Interstate proposes new delivery taps to be located in Phelps, Fillmore, and Howard Counties, Nebraska. K N Interstate states that the proposed taps will deliver twenty-two, eighteen, and thirty-six Mcf on a peak day, respectively, and 710, 590, and 360 Mcf annually, respectively. K N Interstate estimates that the Phelps County tap and the Fillmore County tap will both cost $850 to construct. K N Interstate further estimates that the Howard County tap will cost $1,150 to construct. K N Interstate indicates that the proposed facilities will not have an adverse impact on its existing customers.

K N Interstate advises that the volumes of gas which will be delivered at each of these proposed delivery taps will be within the current maximum daily transportation quantity set forth in K N Interstate's transportation service agreement with K N. K N Interstate further advises that the addition of the delivery taps is not prohibited by its existing tariff.

Comment date: April 3, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4674 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–P

[1] See, 42 FERC ¶ 61,019 (1988).

[Docket No. EG95–31–000 et al.]

CNG Power Services Corporation, et al. Electric Rate and Corporate Regulation Filings

February 17, 1995.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. EG95–31–000]

On February 10, 1995, CNG Power Services Corporation (CNGPS), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15222, filed with the Federal Energy Regulatory Commission (Commission) an application for a new determination of exempt wholesale generator status, due to changed circumstances resulting from certain proposed transactions, pursuant to part 365 of the Commission's regulations. The application states that the Commission previously determined that CNGPS is an exempt wholesale generator. *See* CNG Power Services Corporation, 69 FERC ¶ 61,002 (1994).

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Catex Vitol Electric Inc.

[Docket No. ER94–155–005]

Take notice that on February 3, 1995, Catex Vitol Electric Inc. (Catex) filed information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000. Copies of Catex's filing are on file with the Commission and are available for public inspection.

3. PSI Energy, Inc.

[Docket No. ER95–323–000]

Take notice that on February 8, 1995, PSI Energy, Inc. (PSI), tendered for filing an amendment to filing it made in this docket on December 22, 1994. The amendment consists of two parts. First, PSI has filed Exhibits AEE and G of the Transmission and Local Facilities Ownership, Operation and Maintenance Agreement (T&LF Agreement) among PSI, Wabash Valley Power Association (WVPA) and the Indiana Municipal Power Agency (IMPA). Second, PSI has provided further explanation regarding section 7.4.3 of the T&LP Agreement.

Copies of this filing have been served on the Indiana Utility Regulatory Commission, WVPA, IMPA, the Public Utility Commission of Ohio and the Public Service Commission of the State of Kentucky.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER95–556–000]

Take notice that on February 6, 1995, Southern California Edison Company (Edison), tendered for filing Firm Transmission Service Agreement (FTS Agreement):

Firm Transmission Service Agreement (Victorville-Lugo/Midway) Between Southern California Edison Company And M–S–R Public Power Agency

The FTS Agreement sets forth the terms and conditions under which Edison has agreed to provide M–S–R with 150 megawatts (MW) of firm transmission service from the midpoint of the Victorville-Lugo transmission line (Victorville-Lugo Midpoint) to the Midway Substation and 150 MW of interruptible transmission service from Midway Substation to the Victorville-Lugo Midpoint. Edison requests the Commission to assign to the FTS Agreement an effective date of May 1, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER95–557–000]

Take notice that on February 6, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an amendment to the Purchase and Sale Agreement between GPU and Niagara Mohawk Power Corporation, dated as of July 1, 1969, as amended. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER95–558–000]

Take notice that on February 6, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an amendment to the GPU Power Pooling Agreement. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER95–559–000]

Take notice that on February 6, 1995, Wisconsin Electric Power Company (Wisconsin Electric or the Company), tendered for filing revisions to its coordination rate schedules between itself and a number of present and prospective wholesale energy purchasers. The revisions would allow Wisconsin Electric to recoup the cost of sulphur dioxide emission allowances associated with the production of energy under these agreements and rate schedules. Under the federal Clean Air Act (42 U.S.C. Section 7401 *et seq.*), Wisconsin Electric would assume liability for the costs of procurement of these emission allowances. The rate revisions would allow reimbursement, in cash or in kind, up to 100% of the replacement cost in all service schedules using incremental costs. Energy purchasers would be allowed to defer reimbursement of emission allowances until such time as the Company must surrender emission allowances to the federal Environmental Protection Agency.

The filing designates the Cantor Fitzgerald Environmental Brokerage Service as the Company's monthly market index to be used in instances where the energy purchaser decides to reimburse Wisconsin Electric in cash. The submittal also explains Wisconsin Electric's least cost plan that incorporates the Clean Air Act's reduced utilization provisions for Phase 1 affected units may cause the Company's cost recovery to be less than total replacement cost.

Wisconsin Electric respectfully requests an effective date of April 1 1995.

Copies of the filing have been served on all affected wholesale purchasers, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–560–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendatory Agreement No. 2 to the PNW AC Intertie Capacity Ownership Agreement between PacifiCorp and Bonneville Power Administration (Bonneville) which was previously filed in this Docket.

PacifiCorp requests a waiver of prior notice and that an effective date of January 1, 1995 be assigned to Amendatory Agreement No. 2.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER95–561–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a supplemental filing to PacifiCorp's Rate Schedule FERC No. 164.

Copies of this filing were supplied to the City of Redding, California, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95–562–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Amendatory Agreement No. 1 to the South Idaho Exchange Agreement, Contract No. DE–MS79–89BP92524, between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp Rate Schedule FERC No. 256

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Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER95–563–000]

Take notice that on February 7, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 1 to Exhibit C of the AC Intertie Transmission Agreement, Contract No. DE–MS79–94BP94285, (Agreement) between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp Rate Schedule FERC No. 370.

PacifiCorp requests a waiver of prior notice and that an effective date of January 1, 1995 be assigned to Revision No. 1 to Exhibit C of the Agreement.

Copies of this filing were supplied to Bonneville, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Interconnection Agreement Between CEI and the PJM Group

[Docket No. ER95–564–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between CEI and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Interconnection Agreement Between The NYPP Group and the PJM Group

[Docket No. ER95–565–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 5.02 of the Interconnection Agreement Between the NYPP Group and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Interconnection Agreement Between The APS Group and the PJM Group

[Docket No. ER95–566–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between the APS Group and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Interconnection Agreement Between Virginia Power and the PJM Group

[Docket No. ER95–567–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Interconnection Agreement Exhibit A of Schedule 6.02 of the Interconnection Agreement Between Virginia Power and the PJM Group. The purpose of this abbreviated filing is to provide an explanation of the PJM Group's treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER95–568–000]

Take notice that on February 7, 1995, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Agreement Exhibit A of Schedule 6.01 of the PJM Interconnection Agreement. The purpose of this abbreviated filing is to provide an explanation of the treatment of the cost of emission allowances.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Montana Power Company

[Docket No. ER95–569–000]

Take notice that on February 7, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a "Unit Contingent Capacity and Associated Energy Sales Agreement Between The Montana Power Company and Associated Power Services, Inc."; Montana requests that the Commission: (i) Accept the Agreement for filing, to be effective on February 8, 1995; and (ii) grant waiver of notice to allow filing of the Agreement less than 60 days prior to commencement of service.

A copy of the filing was served upon Associated Power Services, Inc.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Company

[Docket No. ER95–575–000]

Take notice that on February 9, 1995, Tampa Electric Company (Tampa Electric) tendered for filing a Service Schedule J (Negotiated Interchange Service) and a Letter of Commitment with the City of Gainesville, Florida. The Service Schedule J and Letter of Commitment supplement the existing agreement for interchange service between Tampa Electric and Gainesville.

Tampa Electric proposes an effective date of April 30, 1995, for the Service Schedule J and Letter of Commitment.

Copies of the filing have been served on Gainesville and the Florida Public Service Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER95–576–000]

Take notice that Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin on February 8, 1995, tendered for filing revisions to its coordination rate schedules to provide for the recovery of the costs of SO_2 emission allowances. WPSC has asked the Commission to permit a January 1, 1995 effective date for these revisions.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's regulations.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER95–577–000]

Take notice that on February 9, 1995, Tampa Electric Company (Tampa Electric) tendered for filing new and revised tariff sheets for inclusion in its FERC Electric Tariff, First Revised Volume No. 1 (AR–1 Tariff) and a request for waiver of the Commission's fuel adjustment clause regulations.

Tampa Electric proposes to modify the fuel adjustment clause in the AR–1 Tariff to allow for the recovery of a share of the buy-out costs that it incurred to terminate a long-term coal supply agreement. Tampa Electric states that its purchase of replacement coal at more favorable prices will provide cumulative savings to its customers in excess of the cumulative buy-out costs that Tampa Electric proposes to recover through its fuel adjustment clause.

Tampa Electric proposes an effective date of April 1, 1995 for the tendered tariff sheets, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on each of Tampa Electric's AR–1 Tariff customers and the Florida Public Service Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Madison Gas and Electric Company

[Docket No. ER95–578–000]

Take notice that on February 9, 1995, Madison Gas and Electric Company (MGE) tendered for filing a service agreement with Heartland Energy Services, Inc., under MGE's Power Sales Tariff. In addition, MGE and Heartland request cancellation of previous agreements between the parties since the new service agreement replaces the need for the earlier agreements. MGE requests a cancellation date of February 1, 1995.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Arizona Public Service Company

[Docket No. ER95–579–000]

Take notice that on February 8, 1995 Arizona Public Service Company (APS) tendered for filing revised estimated load Exhibits applicable under the following rate schedules:

APS–FPC/FERC No.	Customer name	Exhibit
141	Aguila Irrigation District	Exhibit "II"
126	Electrical District No. 6	Exhibit "II"
158	Roosevelt Irrigation District	Exhibit "II"
168	Maricopa Water District	Exhibit "II"
155	Buckeye Water Conservation and Drainage District	Exhibit "II"
142	McMullen Valley Water Conservation and Drainage District	Exhibit "II"
140	Electrical District No. 8	Exhibit "II"
153	Harquahala Valley Power District	Exhibit "II"

Current Rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Kentucky Utilities Company

[Docket No. ER95–580–000]

Take notice that on February 10, 1995, Kentucky Utilities Company (KU) tendered for filing a Transmission Agreement between KU and East Kentucky Power Cooperative, Inc.

Comment date: March 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. York County Energy Partners, L.P.

[Docket No. QF95–229–000]

On January 31, 1995, York County Energy Partners, L.P., (applicant), c/o York County Energy Partners (I), 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195–1501, submitted for filing an application for certification of a facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in York County, Pennsylvania and will consist of a single circulating fluidized boiler and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by the P.H. Glatefelter Company, which manufactures high quality specialty papers, such as books, postage stamps, maps, and disposable surgical gowns. The primary energy source will be bituminous coal. The maximum net electric power production capacity will be 227 MW. The facility is expected to begin commercial operation in January 1998.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 95–4671 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF95–220–000]

Central Wayne Energy Recovery, Limited Partnership; Notice of Supplement to Filing

February 21, 1995

On February 14, 1995, Central Wayne Energy Recovery, Limited Partnership (Applicant) tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the small power production facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by March 14, 1995, and must be served on the applicant. Protests will be considered by the Commission in

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determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4671 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Notice of Informal Settlement Conference

February 21, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on February 28, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4672 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–205–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

February 21, 1995.

Take notice that on February 14, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 61048, filed a request with the Commission in Docket No. CP95–205–000 pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for permission to abandon a delivery tap, authorized in blanket certificate issued in Docket No. CP82–402–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to abandon a 2-inch sidetap, located on Natural's 24-inch Calumet No. 2 pipeline in Will County, Illinois. Natural states that Northern Illinois Gas Company, the only customer to receive gas through delivery tap proposed to be abandoned, has consented to its abandonment by Natural. Natural further states that no deliveries have been made through the subject facility since 1975.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4670 Filed 2–24–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 95–08–NG]

BC Gas Utility Ltd.; Order Granting Authorization to Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting BC Gas Utility Ltd. (BC Gas) five-year authorization to import near Sumas, Washington, up to 12.6 Bcf of Canadian gas for injection into storage in Dagget County, Utah, and later to export up to 12.0 Bcf of this gas back to Canada after withdrawal from storage. The term of this authorization is from May 1, 1995, through April 30, 2000. In addition, BC Gas is authorized to sell some of the stored gas in the Untied States under spot and short-term arrangements.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 14, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–4771 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 95–08–NG]

Wickford Energy Marketing, L.C.; Order Granting Blanket Authorization to Import and Export Natural Gas From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wickford Energy Marketing, L.C. (WEM, L.C.) blanket authorization to import up to 73 Bcf of natural gas from Canada and up to 73 Bcf of natural gas from Mexico. In addition, WEM, L.C. is authorized to export up to 73 Bcf of natural gas to Canada and up to 73 Bcf of natural gas to Mexico. This import and export authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 10, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy

[FR Doc. 95–4770 Filed 2–24–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5157–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 29, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Storage Vessels for Petroleum Liquids (Subpart Ka), EPA ICR #1050.05; OMB #2060–0121). This ICR requests renewal of the existing clearance.

Abstract: This New Source Performance Standard (NSPS) regulates volatile emissions from petroleum liquid storage vessels. EPA will use the information to direct monitoring, inspection, and compliance efforts, thereby ensuring compliance with the NSPS. Owners and operators of all affected facilities must report to EPA any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. All facilities must also maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) measurements of maximum true vapor pressure for each storage vessel; (3) period of storage for the petroleum liquid; (4) emissions data; (5) design specifications; and (6) an operation and maintenance plan for any vapor recovery and return or disposal system. In addition, owners and operators of facilities that use a floating roof must report any excessive gaps in tank seals, and notify the EPA when the seal gaps will be measured. These facilities must maintain records related to compliance for 2 years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information. Public recordkeeping burden for this collection of information is estimated to average 113 hours per respondent.

Respondents: Owners or operators of petroleum storage vessels with a storage capacity exceeding 40,000 gallons and which commenced construction, reconstruction, or modification after May 18, 1978 and prior to July 23,1984.

Estimated Number of Respondents: 180.

Estimated Total Annual Burden on Respondents: 21,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: February 17, 1995.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 95–4754 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–00166; FRL–4934–4]

Grants to Develop and Carry Out Authorized State Accreditation and Certification Programs for Lead-Based Paint Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability; solicitation of applications for financial assistance.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with states and territories and federally recognized Indian governing bodies which provide financial assistance for purposes of developing and carrying out authorized accreditation and certification programs for professionals engaged in lead-based paint activities pursuant to the Toxic Substances Control Act (TSCA), as amended by section 404(g) of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The notice describes eligible activities, application procedures and requirements, and funding criteria. EPA anticipates that $12,500,000 will be available during federal fiscal year 1995 (FY95) for awards to eligible recipients. There are no matching share requirements for this assistance and this is the second year funding is being made available for these grants. Subject to future budget limitations, EPA plans to provide this support on a continuing multi-year or program basis. All cooperative agreements will be administered by the appropriate EPA regional office.

DATES: In order to be considered for funding during the FY95 award cycle, all applications must be received by the appropriate EPA regional office on or before March 31, 1995. EPA will make its award decisions and execute its FY95 cooperative agreements by September 30, 1995.

FOR FURTHER INFORMATION CONTACT: For general information, contact: James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit VI of this notice.

SUPPLEMENTARY INFORMATION: TSCA section 404(g) authorizes EPA to award non-matching grants to states, territories, and federally-recognized Indian governing bodies to develop and carry out authorized programs for the training of individuals engaged in lead-based paint activities, the accreditation of training programs for these individuals, and the certification of contractors engaged in lead-based paint activities. To achieve authorization under Title IV of TSCA, programs must: (1) Be as protective of human health and the environment as the federal program established under TSCA section 402 or 406, or both, and (2) provide adequate enforcement. For states and territories that fail to obtain authorization within 2 years following promulgation of TSCA section 402 or 406 regulations, EPA must, by such date, administer and enforce a program for TSCA section 402 or 406.

Pursuant to Title IV of TSCA, EPA encourages states, territories, and federally-recognized Indian governing bodies to seek authorization of their own training, accreditation, and certification programs for lead-based paint activities. EPA therefore recommends that eligible parties seek funding through the TSCA section 404(g) assistance program, which is now being implemented to help achieve these ends. EPA further recommends that eligible parties plan to utilize this grant support in a way that complements any related financial assistance they may receive from other federal sources. EPA will, however, seek to ensure that all federally-funded lead activities are undertaken in a coordinated fashion.

EPA will work with prospective applicants to develop cooperative agreements which promote a variety of objectives deemed critical to the success of its national lead program. These include: (1) Permitting flexible

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approaches to reducing lead hazards, (2) developing a nationwide pool of qualified lead abatement professionals, (3) encouraging pollution prevention in lead-based paint activities, (4) promoting environmental justice in the reduction of lead exposures and the prevention of lead poisoning, (5) fostering the establishment of comprehensive and integrated lead management programs by states, territories and Indian governing bodies, and (6) promoting reciprocity among authorized programs in the training and certification of lead abatement professionals.

I. Eligibility

All states are eligible to apply for and receive assistance under section 404(g) of TSCA. The term "state," for purposes of eligibility, refers broadly to any state of the United States, the District of Columbia, any federally-recognized Indian governing body, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

II. Authority

The "TSCA Title IV State Lead Grants Program" is a financial assistance program administered by EPA under authority of TSCA section 404(g). Each of EPA's 10 regional administrators will be delegated the authority to enter into cooperative agreements with eligible "states." However, because EPA's authority to award 404(g) funding to Indian governing bodies is contingent upon final promulgation of the forthcoming regulations mandated under sections 402 and 404 of TSCA, EPA plans to award all funds to Indian governing bodies under authority of TSCA section 10(a) during this award cycle (FY95). Further, all references in this notice to Indian governing bodies being treated as states is contingent upon EPA's final promulgation of the regulations mandated under TSCA sections 402 and 404.

EPA recognizes that when TSCA Title IV was enacted on October 28, 1992, states had widely varying capabilities for addressing lead hazards. Individual states currently fall within one of three broad categories of program development: (1) States without lead programs, (2) states with programs that qualify for authorization that may need assistance in carrying out these programs, and (3) states with lead programs that will require modification before qualifying for authorization. Each state's need for assistance will vary, in part, according to the level of lead program development the state has attained. The type of program activity a given state seeks to pursue may also vary in a corresponding manner.

Although EPA generally supports all state activities aimed at developing or carrying out authorized state lead programs, the Agency does recognize certain priorities. Because few states presently have adequate lead program capabilities, as measured against TSCA sections 402 and 406, EPA's highest priority will be to support the development of new state programs. A second priority will be to support the continued implementation of authorized state programs. A third priority will be to support the implementation of existing state programs which do not presently qualify for authorization but which are otherwise willing to work toward timely authorization. Although these priorities do not constitute the Agency's criteria for award determinations, EPA will consider these items in its cooperative agreement negotiations with applicants.

EPA has established three general funding categories that reflect the different status, or levels, of state lead program development. They are not mutually exclusive, and it is permissible for a state's work plan to combine elements from two or more categories. Numerous examples of activities considered to be eligible for funding are described in a separate EPA publication entitled "State and Tribal Cooperative Agreement Guidance for FY 1995 (January 1995). Copies of the grant guidance may be obtained through any of EPA's ten regional offices at the addresses listed under unit VI. of this notice. It is important to note, however, that the examples presented in the guidance are not exhaustive, and applicants are not limited in their proposals to the listed tasks. Individual state program innovations are eligible and encouraged, so long as the proposed tasks relate to the purposes set forth in TSCA section 404(g) and fit within one or more of the three general funding categories.

III. Selection Criteria

During the FY95 award cycle, EPA expects a total of $12,500,000 to be available for distribution to eligible applicants. The Agency will use a two-tiered system to allocate these funds. This system is aimed at achieving the broadest possible state participation, while at the same time, targeting areas with the greatest potential lead hazard and risk. It accomplishes this by providing for a tier-one distribution of "base funding," followed by a tier-two distribution of "formula funding," where additional funds are distributed based upon the relative lead burden estimated to exist within a state.

Each state and the District of Columbia (excluding territories and federally-recognized Indian governing bodies) that submits a qualifying proposal will be entitled to a base funding allotment of $100,000. In addition, base funding of up to $50,000 will be reserved for each of the four "territories" (used generically in this context) that have been administratively assigned to an EPA regional office and that have historically participated in EPA toxics cooperative agreement programs. These "base" territories include the U.S. Virgin Islands (Region 2), the Commonwealth of Puerto Rico (Region 2), Guam (Region 9), and American Samoa (Region 9). The two remaining "non-base" territories, the Canal Zone and the Northern Mariana Islands, are also eligible to apply for funding up to $50,000 apiece, but are not considered in determining the base funding allotments. Base allotments are primarily intended to ensure that those states and base territories wishing to pursue authorization under TSCA section 404 will be guaranteed a minimum level of funding for this purpose. Any unsubscribed base funding will be added to the formula funds pool.

Once base funding allotments have been reserved for all eligible applicants, remaining funds will be treated as "formula funds." Before applying the lead burden formula, however, EPA will set-aside an amount not to exceed $1,500,000 for Federally recognized Indian governing bodies. Indian governing body will be given funding based upon tribal population and if an Indian governing body received funding in the FY 1994 grant process, they will be supported to the same extent in FY95 process. EPA cannot reliably predict the level of participation from Indian governing bodies and non-base territories; therefore, where these eligible parties do apply for funds, they will be assigned to an appropriate regional office for administrative oversight, and that regional office will become responsible for determining the appropriate level of funding. These parties, however, will not receive a formula ranking, and will not be eligible to compete for additional formula allocations based upon lead burden calculations.

As a third step, states and base territories with funding requirements exceeding their base allotments will then be apportioned additional sums based upon their relative lead burden In calculating lead burden for the

formula rankings, EPA used readily available data derived from the 1990 Census of Population and Housing, together with other data from the U.S. Department of Housing and Urban Development (HUD). The formula uses four factors to generate an estimate of the potential lead problem, or "lead burden," in each state. Two of these factors, the number of housing units with lead-based paint and the number of children under age 7, express the potential magnitude of the lead problem. The remaining two factors, the fraction of young children in poverty and the fraction of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each state and base territory is scored independently for each factor, and the four individual factor scores for the state or base territory are then summed to obtain an overall score for that state or base territory (a combined factor score). The combined factor scores of all states and base territories applying for formula funds (or amounts in excess of their base allotment) are then summed, and the percentage of the total sum represented by the individual state's or base territory's score is then identified. When the total formula funding available is then multiplied by the percentage score of an individual state or territory, the state's or base territory's ceiling formula allotment can be obtained. For example, assume that: (1) All 50 states but none of the base territories apply for formula allotments, (2) state X has a percentage score of 2 percent, and (3) a total of $4,000,000 in formula funding is available. In determining how much money to allot to state X, EPA would multiply $4,000,000 by .02. The product, $80,000, represents the maximum additional funding that could be awarded to state X to supplement its base allocation. State X would then qualify for up to $180,000 in total funding for the fiscal year ($100,000 in base funding + $80,000 in formula funding).

In general, the maximum, or ceiling, formula allotments will fluctuate inversely with the number of applicants. The greater the number of applicants, the lower the ceiling will tend to be, and vice versa. Formula allotments will be determined only after the annual application deadline has passed and EPA has full knowledge of the total amount of funds requested. If one or more states or base territories request formula fund amounts below their ceiling allotments, residual formula funds will be available Where this situation develops, if there are still other states or base territories with unfunded needs, the formula will be run again. This procedure can be repeated until all formula funds have been fully allotted.

IV. Submission Requirements

To be considered for funding, each application must include, at a minimum, the following forms and certifications which are contained in EPA's "Application Kit for Assistance": (1) Standard Form 424 (Application for Federal Assistance), (2) EPA Form 5700–48 (Procurement Certification), (3) Drug-Free Workplace Certification, (4) Debarment and Suspension Certification, (5) Disclosure of Lobbying Activities, and (6) a return mailing address. In addition to these standard forms, each application must also include a work program, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, and a schedule for their completion. Work programs are to be negotiated between applicants and their EPA regional offices to ensure that both EPA and state priorities can be addressed. In addition, any application from a state, territory or Indian governing body without an authorized program must demonstrate how the proposed activities will lead to that state's pursuit of authorization. Finally, any applicant proposing the collection of environmentally related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. These requirements are more specifically outlined in the "Guidance Document for the Preparation of Quality Assurance Project Plans" (May 1993) published by EPA's Office of Pollution Prevention and Toxics. This document, as well as the application kits referred to above, may be obtained from EPA's regional offices.

V. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA regional office in duplicate; one copy to the regional lead program branch and the other to the regional grants management branch. Early consultations are recommended between prospective applicants and their EPA regional offices. Because TSCA Title IV cooperative agreements will be administered at the regional level, these consultations can be critical to the ultimate success of a state's project or program.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA regional office. The mailing addresses and contact telephone numbers for these offices are listed below.

Region I: (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565–3836 (Jim Bryson)
Region II: (New York, New Jersey, Puerto Rico, Virgin Islands), Building 5 SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837–3679. Telephone: (908) 321–6671 (Lou Bevilacqua)
Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107 Telephone: (215) 597–2450 (Geralyn Valls)
Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., NE, Atlanta, GA 30365 Telephone: (404) 347–3555, ext. 6927 (Connie Landers-Roberts)
Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), SP–14J, 77 W Jackson St., Chicago, IL 60604. Telephone: (312) 886–7836 (David Turpin)
Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 12th Floor Suite 2000, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 655–7577 (Jeb Robinson)
Region VII: (Iowa, Kansas, Missouri, Nebraska), TOPE/TSC, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551–7518 (Mazzie Talley)
Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 293–1442 (David Combs)
Region IX: (Arizona, California, Hawaii Nevada, American Samoa, Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1121 (Larry Biland)
Region X: (Alaska, Idaho, Oregon, Washington), Toxics Section, 1200 Sixth Ave., Seattle, WA 98101 Telephone: (206) 553–1985 (Barbara Ross)

The deadline for EPA's receipt of final FY95 applications is March 31, 1995 Once the application deadline has passed, EPA will process the formula funding calculations and determine the initial formula ceiling allocations. Final negotiations for the award of cooperative agreements can then proceed, but all FY95 agreements must be executed no later than September 30 1995.

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List of Subjects

Environmental protection, Grants, Lead, Training and accreditation.

Dated: February 16, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–4756 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5159–2]

Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC) on October 17, 1994 to provide independent advice and counsel to EPA on environmental issues associated with the petroleum refining industry and other industrial sectors. The charter for the CSIC was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA). The Petroleum Refining Sector (PRS) Subcommittee operates as a subcommittee of the CSIC.

OPEN MEETING NOTICE: Notice is hereby given that the CSIC–PRS Subcommittee will hold an open meeting on Friday March 10, 1995, from 8 a.m to 3 p.m. at the Radisson Inn Hotel, 2150 Veterans Blvd., Kenner, LA 70062, (1–800–333–3333 or 504–467–3111). The purpose of the meeting is to further define areas on which the CSIC–PRS will focus. The Subcommittee will also convene in working groups to begin identifying specific issues. Seating will be available on a first come, first served basis.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the topics above will be publicly available at the meeting. Thereafter, these documents, together with the CSIC-PRS meeting minutes, will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION: Anyone who would like further information should contact the Common Sense Initiative Program Staff office by phone on (202) 260–417, or by FAX on (202) 260–766. Members of the public may submit written comments of any length prior to the meeting. One hour of meeting time will be set aside for oral presentations. Each individual or group making an oral presentation will be limited to a total of five minutes. Attendees should provide their names and telephone numbers to the Common Sense Initiative Program Staff so that the Agency can advise them of any schedule changes.

Date: February 16, 1995.

Prudence Goforth,

CSIC/Designated Federal Officer.

[FR Doc. 95–4752 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5162–2]

Science Advisory Board Environmental Engineering Committee and Subcommittee; Open Meetings

March 8–10, 1995.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the OSWER Exposure Model Subcommittee of the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will meet Wednesday March 8 and that the full Committee (EEC) will meet Thursday and Friday March 9–10, 1995. The meetings will begin each day at 8:30 a.m. The meetings will be held at the One Washington Circle Hotel, Washington Circle, NW., Washington, DC (Hotel telephone is 202/872–1680 or 800/424–9671). The meetings are open to the public and seating will be on a first come basis.

OSWER Exposure Model Subcommittee Meeting

On March 8 the Subcommittee will review the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) and the Finite Source Methodology. Copies of the documents to be reviewed are *not* available from the SAB; they can be obtained from Dr. Zubair Saleem, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202/260–4767). The tentative charge to this subcommittee is as follows:

(a) EPACMTP is the latest and most advanced of the OSW subsurface fate and transport models designed to be computationally efficient for usage in monte carlo analysis for national rulemaking. The question of interest to EPA is the mathematical formulation in EPACMTP of the subsurface fate and transport of daughter products from degrading organic chemical constituents, and the appropriateness for EPA's use of this approach in establishing nation-wide exit levels for hazardous waste in future regulations.

(b) The Office of Solid Waste (OSW) has been using a national monte carlo procedure in which national distributions of parameters are used as input to the model. OSW has developed a regional site-based approach in which hydrogeologic parameters are selected from hydrogeologic regions and in general have cross-correlations. They are used as input to the model. Is this site-based approach better or should OSW continue to use the approach based on national distributions of input parameters?

(c) The OSW's most recently-used approach is based on an infinite source steady-state model. EPA has developed a finite-source approach for use with EPACMTP. OSW would like SAB comments on the adequacy of the approach for regulatory purposes.

(d) MINTEQ (metal speciation model) was developed by EPA. EPA has recently developed the linkage of the output of the model with EPACMTP to assess the subsurface fate and transport of metals. EPA would like SAB comments on the appropriateness of the use of this linkage for metals in EPA's national rulemaking efforts.

Environmental Engineering Committee Meeting

On March 9–10, the EEC will discuss its final draft report on the review of the Use Cluster Scoring System (UCSS) of the Office of Pollution Prevention and Toxics; receive briefings from the Agency on various programs; and plan the remainder of its FY95 activities. Copies of the EEC's draft UCSS report are available from Mrs. Dorothy Clark, address below.

Any member of the public wishing further information, such as a proposed agenda on either meeting should contact Mrs. Dorothy Clark, Secretary, Science Advisory Board (1400F), U.S. EPA, Washington, DC 20460, at 202/260–6552 or 202/260–7118 (fax). Written comments of any length may be provided up until the meetings, but 35 copies must be supplied. Members of the public who wish to make a brief oral presentation should contact Mrs. Kathleen Conway by phone 202/260–2558, or internet CONWAY.KATHLEEN@epamail.epa.gov no later than noon (eastern time) Wednesday March 1 in order to have time reserved on the agenda.

Dated: February 10, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board

[FR Doc. 95–4755 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5161–2]

The Chemical Manufacturing Association/Environmental Protection Agency (CMA/EPA) Boilers & Industrial Furnaces (BIF) Workshop Edited Transcript

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the CMA/EPA BIF Workshop Transcript.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of an edited transcript of the Boiler & Industrial Furnace Rule and Compliance Workshop presented by EPA for members of the Chemical Manufacturing Association (CMA) in March 1994. This workshop was held in Washington D.C. on March 29–30, 1994, and approximately 145 CMA members attended the workshop. The workshop was requested by CMA members for EPA to address their specific questions regarding the BIF regulations. The BIF rule was promulgated in the **Federal Register** on February 21, 1991. This rule expanded the regulated universe of the Resource Conservation and Recovery Act (RCRA) by regulating boilers and industrial furnaces that burn hazardous wastes as fuel. Since some of these BIF facilities are regulated by RCRA for the first time, they needed special assistance from EPA to comply with the BIF regulations. This edited transcript contains clarification of and guidance on the existing BIF regulations. This transcript captures the presentations and discussions on all but two introductory sessions. The transcript was then edited for clarification and readability.

DATES: This transcript will be available to the public on or after March 1995.

ADDRESSES: Copies of the CMA/EPA BIF workshop Edited Transcript EPA/530/R–94/046 may be obtained free of charge by calling the RCRA Hotline. The phone numbers for the RCRA Hotline are (800) 424–9346 toll-free or (703) 920–9810 locally.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline. For information on specific aspects of the edited transcript, contact Emily Chow at (202) 564–7071, Chemical, Commercial Services and Municipal Division (2224–A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Dated: February 10, 1995.

Elaine G. Stanley,

Director.

[FR Doc. 95–4753 Filed 2–24–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted toOffice of Management and Budget for Review

February 17, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214 or via internet at JBoley@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: N/A.

Title: Amateur Station Vanity Call Sign Request.

Action: New information collection.

Respondents: Individuals or households.

Frequency of Response: On occasion.

Estimated Annual Burden: 150,00 responses; 20 minutes burden per response; 49,500 hours total annual burden.

Needs and Uses: FCC rules require that applicants file FCC Form 610–v to apply for a vanity (special) call sign in lieu of a systematically issued call sign. Commission personnel use the data to determine eligibility for the radio station authorization and issue a radio station/operator license. Data is used by Compliance personnel in conjunction with the field engineers for enforcement and interference purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–4693 Filed 2–24–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 C.F.R. 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington D.C. 20551 (202-452-3829)

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: 1995 Survey of Consumer Finances.

Agency form number: FR 3059.

OMB Docket number: 7100-0276.

Frequency: One time survey.

Reporters: U.S. Families.

Annual reporting hours: 6,133.

Estimated average hours per response: 1.3 hours.

Number of respondents: 4,600.

Small businesses are not affected.

General description of report: This information collection is voluntary and authorized by law [12 U.S.C. 225a, 1828(c), 1842, 1843].

Abstract: The survey, to be conducted between March and November 1995, will collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families. The survey is the only source of representative information on the structure of finances of U.S. families.

Board of Governors of the Federal Reserve System, February 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4708 Filed 2–24–95; 8:45 AM]

Billing Code 6210–01–F

FBD Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

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application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 23, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. FBD Holding Company, Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Dalton (in organization), Dalton, Georgia.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., and its wholly owned subsidiary, CBI-Illinois, both of Kansas City, Missouri; to acquire 100 percent of the voting shares of Chillicothe State Bancorp, Inc., Chillicothe, Illinois, and thereby indirectly acquire Chillicothe State Bank, Chillicothe, Illinois.

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4709 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

Phillip Ray Key, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 13, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Phillip Ray and Connie Lea Key, both of Sulphur, Oklahoma; to acquire an additional 58.55 percent, for a total of 80.85 percent, of the voting shares of Sulphur Community Bancshares, Inc., Sulphur, Oklahoma, and thereby indirectly acquire Sulphur Community Bank, Sulphur, Oklahoma.

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4710 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

Union Bank of Switzerland; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Union Bank of Switzerland, Zurich Switzerland; to acquire Government Pricing Information System, Inc., New York, New York, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases, pursuant to § 225.25(b)(7) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, February 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4711 Filed 2–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Vivian N. Tanner, Cleveland Clinic Foundation: The Division of Research Investigations of the Office of Research Integrity (ORI) conducted an investigation into possible scientific misconduct on the part of Vivian N. Tanner while she was a clinic coordinator for the Collaborative Ocular Melanoma Study (COMS) at the Cleveland Clinic Foundation (CCF). ORI concluded that Ms. Tanner committed scientific misconduct by falsifying and fabricating clinical trial data on research data forms related to a multicenter study on the treatment of choroidal melanoma, a rare form of eye cancer. Due to these falsifications and fabrications, inaccurate clinical data were entered into the clinical trial database. These acts were committed over a period of several years, were material, and, therefore, were potentially detrimental to the study. The CGF COMS project has received U.S. Public Health Service support from 1985 to the present through subcontract funds from a National Eye Institute cooperative agreement award to the COMS Coordinating Center, The Wilmer Ophthalmological Institute, The Johns Hopkins Medical Institutions, Baltimore, Maryland. Because the COMS is an ongoing study, no publications were affected by the falsified or fabricated data, and no clinical treatment has been based on the results of the study.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–4765 Filed 2–24–5; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

[Announcement Number 524]

Injury Control Research Program Project Grants

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for Injury Control Research Program Project Grants (RPPGs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. For ordering a copy of "Healthy People 2000," see the Section Where to Obtain Additional Information.

Authority

This program is authorized under Sections 301 and 391–394 of the Public Health Service Act (42 U.S.C. 241 and 280b-280b-3). Program regulations are set forth in 42 CFR part 52.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution. Special consideration may be given to applicants that emphasize the training of women and minorities. Current recipients of CDC injury control research program project grants are eligible to apply.

Availability of Funds

Approximately $1,000,000 is available in FY 1995 to fund one new and two recompeting RPPG awards. At least one of these three awards will be for a successfully competing RPPG focusing on youth violence. New and recompeting awards will be made for a 12-month budget period within a project period of up to three years. The amount of funding available may vary and is subject to change. Beginning award dates for each submission are shown in the "Receipt and Review Schedule" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

RPPG awards will not exceed $400,000 per year (total direct and indirect costs) with a project period not to exceed three years. Subject to program needs and the availability of funds, supplemental awards to expand/enhance existing projects may be made. Supplemental awards may range from up to $100,000 to up to $200,000 per year (total direct and indirect costs). The range of supplemental funds is dependent upon the degree of comprehensiveness of the RPPG in addressing: research and training or research, training, and demonstration as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels for supplemental awards (subject to program needs and the availability of funds) for successfully competing or recompeting RPPGs will be determined as follows:

RPPG addresses research and training—Up to $100,000

RPPG addresses research, training, and demonstration—Up to $200,000

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: "Healthy People 2000," "Injury Control in the 1990's: A National Plan for Action," "Injury in America," "Injury Prevention: Meeting the Challenge," and "Cost of Injury: A Report to the Congress." Information on these reports may be obtained from the individuals listed in the section.

Where to Obtain Additional Information

B. To support RPPGs as part of CDC's national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of RPPGs to bear on the development and improvement of effective public- and private-sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

Program Requirements

Essential Requirements for RPPGs:

A. Applicants must demonstrate and apply expertise (defined as: conducting ongoing high quality injury research and publication in peer reviewed scientific and technical journals(s) in the phases (prevention, acute care, or rehabilitation) or disciplines (e.g., biomechanics and epidemiology) of injury control which the research program addresses.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director should report to an appropriate institutional official (e.g., dean of a school, vice president of a university, or commissioner of health) The director must have no less than 30% effort devoted solely to this project with an anticipated range of 30% to 50%.

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D. Applicants must demonstrate experience in: conducting, evaluating, and publishing injury control research; developing, conducting, and evaluating injury control training curricula (researcher and/or practitioner) ; and/or designing, implementing, and evaluating injury control demonstration programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the RPPG. These are considered the disciplines and fields for RPPGs.

G. Applicants must specify mechanisms for linking the injury control research findings with public health (i.e. State and local organizations) and other intervention efforts to facilitate rapid translation, dissemination, and application of research findings preferably within three years of inception.

H. Applicants should clearly describe and be able to demonstrate how several proposed multiple research projects interrelate and complement each other. Outcome objectives of the research should be stated such that accomplishments clearly reflect elements of each individual project within the RPPG.

I. Applicants must have the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

J. Applicants involved in training activities must be able to accomplish A-I above and have an established curricula and graduate training programs (researcher and/or practitioner) in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, or economics).

K. Applicants involved in training and demonstration activities must be able to accomplish A-J above and conduct demonstration projects (including description of statistical/epidemiologic methodology and data sources to be used) aimed at determining the effectiveness of interventions, in terms of impact and cost, as part of a national injury prevention and control effort.

For the youth violence RPPG, in addition to research, training, and demonstration activities described in the Essential Requirements for RPPGs, of particular interest are projects designed to: a) develop further understanding of the relationship between social and economic influences (e.g., poverty, joblessness, concentration of poverty) and violent behavior, b) evaluate policies, programs, or interventions for reducing the impact of social and economic factors on violent behavior among youth and c) provide training for youth violence prevention researchers and practitioners.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. (A listing of where these requirements are described and/or documented in the application will facilitate the review process.). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by reviewers from the Injury Research Grants Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization.

Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of RPPG grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. Site visits will be a part of this process for recompeting RPPGs. Site visits may be a part of this process for new applicants.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.
2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.
3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.
4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.
5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.
6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on state and local health departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.
7. Evidence of other public and private financial support.
8. Progress thus far made as detailed in the application if the applicant is submitting a competitive renewal application. Documented success examples include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation/regulation, treatment, or behavior modification interventions.

B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Factors to be considered by ACIPC include:

1. The results of the peer review.
2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.
3. National and programmatic needs and geographic balance.
4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing: the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (e.g., biomechanics and epidemiology).
5. Within budgetary considerations the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

C. Applications for Supplemental Funding

Supplemental grant awards may be made when funds are available, to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;
2. The objectives for the new budget period are realistic, specific, and measurable;
3. The methods described will clearly lead to achievement of these objectives;
4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan; and
5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

Award Priorities

Special consideration will be given to recompeting Injury Control Research Program Projects Grants.

E.O. 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

Application Submission and Deadlines

A. Preapplication Letter of Intent

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than one month prior to the submission deadline (April 1, 1995, for May 1, 1995, submission deadline). The letter should identify the relevant announcement number for the response, indicate the submission deadline which will be met, name the principal investigator, and specify the injury control theme or emphasis of the proposed RPPG (e.g., acute care, biomechanics, epidemiology, prevention, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants should use Form PHS–398 (Rev. 9/91, OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for PHS–398 contained in the Grant Application Kit. The narrative section for each project within an RPPG should not exceed 25 typewritten pages. Refer to section 4, page 10, of PHS–98 instructions for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants should submit an original and five copies to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, in accordance with the submission date shown in the "Receipt and Review Schedule" listed below.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant. Supplemental materials received later than thirty days after the application receipt date are considered late and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement. Consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants are as follows:

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Receipt of new/revised/ supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
May 1, 1995 ..	June ..	July	Aug. 1, 1995.

FUTURE RECEIPT DATES ARE AS FOLLOWS:

Receipt of new/revised/ supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
April	June ..	July	Aug.

Where to Obtain Additional Information

All application procedures and guidelines are contained within this program announcement. Business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Centers for Disease Control and Prevention (CDC), 255 East Paces, Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K58, Atlanta, GA 30341–3724, telephone (404) 488–4265.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: February 21, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–4684 Filed 2–24–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94D–0386]

Revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94). This form replaces the previous edition of FDA Form 3210 (12/88). FDA Form 3210 is used by manufacturers to apply for licensure of a facility for the manufacture of biological products regulated under the Public Health Service Act. The form has been revised because of inadequacies in the previous form that resulted in requests by the agency for supplemental information. The revised form is intended to shorten review time and decrease expenditure of resources for both the agency and industry.

DATES: FDA will continue to accept submissions using the previous Form 3210 (12/88) until August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

ADDRESSES: Submit written requests for single copies of the revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94) to Division of Congressional and Public Affairs (HFM–11), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–1800. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The form may also be obtained by calling the CBER FAX Information System at 301–594–1939 from a FAX machine with a touch tone phone attached or built in. FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94) is available for public examination in the Dockets Managements Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: FDA is making available revised FDA Form 3210 Application for Establishment License for Manufacture of Biological Products (4/94). The form was revised due to inadequacies in the old form which made the application review process cumbersome and difficult for both the agency and industry. In the past, the review process was often significantly lengthened because of requests by the agency for supplemental information from the manufacturer in order to ensure the safety, purity, potency, and efficacy of manufactured biological products. The revised form details more specifically the information that is required for establishment licensure. FDA believes that the revised form will expedite the review process by reducing the need for supplemental information requests and responses.

The revised form solicits information from the manufacturer in the following areas: (1) General information (names and addresses); (2) water systems; (3) heating ventilation and air conditioning systems; (4) raw materials and ancillary facilities; (5) source materials; (6) propagation of host systems; (7) intermediate processing; (8) formulation and final product preparation; (9) computer systems; (10) support areas; (11) quality control areas; (12) animal facilities for testing; (13) animal facilities for production; (14) calibration and validation; and (15) records.

In addition, the revised form also requires the following information to be submitted: A description of the lot numbering system, an organizational chart, an environmental assessment report, written agreements, curriculum vitae for key manufacturing and responsible personnel, and an overview of the current good manufacturing practices (CGMP) training program. A comments section is provided on the revised form for additional information that the manufacturer deems to be appropriate but may not be covered under other sections.

Manufacturers preparing to submit applications for establishment licensure should now utilize the revised (4/94) form. FDA will continue to accept submissions using the previous (12/88) form until August 28, 1995. Because the old form does not address specific questions and issues that are present on the revised form, additional review cycles should be anticipated when using the previous form.

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) all forms requesting a collection of information on identical items from 10 or more public respondents must be approved by the Office of Management and Budget (OMB) and must display a valid OMB control number and expiration date.

In accordance with the Paperwork Reduction Act, in the **Federal Register** of February 4, 1994 (59 FR 5436), a notice announced the proposed revision of FDA Form 3210 Application For Establishment License for Manufacture of Biological Products. OMB approval for the revised FDA Form 3210 was obtained on April 30, 1994, and given OMB approval number 0910–0124; expiration date April 30, 1997.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4766 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0042]

Drug Export; OGEN (Piperazine Oestrone Sulfate) 0.625 Milligram (mg), 1.25 mg, and 2.5 mg Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the human drug OGEN (piperazine oestrone sulfate) 0.625 milligram (mg), 1.25 mg, and 2.5 mg Tablets to Australia.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064–3500, has filed an application requesting approval for the export of the human drug OGEN (piperazine oestrone sulfate) 0.625 mg, 1.25 mg, and 2.5 mg Tablets to Australia. This product is indicated for replacement therapy of oestrogen deficiency in female hypogonadism, amenorrhoea, female castration, primary ovarian failure, and in the management of menopausal syndrome, senile vaginitis, kraurosis vulvae with or without pruritus, and abnormal uterine bleeding due to hormonal imbalance in the absence of organic pathology. The firm has new drug application approval for OGEN (piperazine oestrone sulfate) in the above dosage strengths using a different manufacturing process. The application was received and filed in the Center for Drug Evaluation and Research on October 31, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 9, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 9, 1995.

Edward Miracco,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–4768 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0422]

Draft Guideline on the Manufacture of Positron Emission Tomography Radiopharmaceutical Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products" prepared by FDA's Center for Drug Evaluation and Research (CDER). The draft guideline is intended to assist persons in determining whether certain manufacturing practices, procedures, and facilities used in the small-scale production of liquid injectable radiopharmaceutical drug products used for positron emission tomography (PET radiopharmaceuticals) are in compliance with FDA's current good manufacturing practice (CGMP) regulations for finished pharmaceuticals.

DATES: Written comments by May 30, 1995.

ADDRESSES: Submit written requests for single copies of the draft guideline entitled "Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products" to the CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and

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Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled "Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products." PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues where glucose metabolism is the predominant energy source (epileptic foci, acute vascular insufficiency states).

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated by a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is compounded and filled. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical. Because of their short half-lives, PET radiopharmaceuticals are characteristically manufactured in PET centers in response to daily demand for relatively few patients. PET centers are usually located in medical centers.

PET manufacturing procedures differ in a number of important ways from those associated with the manufacture of conventional drug products, mainly due to the short half-lives involved:

1. A maximum of only a few lots are manufactured per day, with one lot equaling one multiple-dose vial. This is administered to the patient usually within a matter of hours. Prolonged manufacturing time significantly erodes the useful clinical life of PET radiopharmaceuticals.

2. The quantities of radioactive active ingredients contained in each lot of a PET radiopharmaceutical generally vary from nanogram to milligram amounts, depending upon various product parameters.

3. Because one lot equals one multiple-dose vial containing a homogeneous solution of a PET product (e.g., 2-deoxy-2 [^{18}F]fluoro-D-glucose), results from end-product testing of samples drawn from the single vial have the maximum possible probability of being representative of all the doses administered to patients from that vial, barring sampling or testing error.

4. An entire lot may be administered to one or several patients, depending upon the activity remaining in the container at the time of administration. Consequently, the administration of the entire quantity of a lot to a single patient should be anticipated for every lot manufactured. This is an important consideration when establishing the testing limits for certain attributes such as endotoxins and impurities.

5. PET radiopharmaceuticals usually do not enter a general drug distribution chain. Rather, the entire lot (one vial) is usually distributed directly from the PET center either to a single medical department or physician for administration to patients or to a radiopharmacy for dispensing. Distribution may occur to other centers when the geographic proximity will allow for distribution and use within the drug product's half-life parameters.

Conventional compliance with CGMP regulations would be expected where special characteristics such as those listed above do not exist; for example, in large-scale PET operations. Elsewhere in this issue of the **Federal Register**, FDA is publishing (1) A proposed rule that would authorize the Director, CDER, or the Director, Office of Compliance, CDER, to approve exceptions or alternatives to the application of the provisions of 21 CFR part 211 to the manufacture of PET radiopharmaceuticals, and (2) a notice of a public workshop and FDA guidance on the regulation of PET radiopharmaceuticals.

The guideline entitled "Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products" discusses, generally, quality control units, personnel qualifications, staffing, buildings and facilities, equipment, components, containers, closures, production and process controls, packaging and labeling control, holding and distribution, testing and release for distribution, stability testing and expiration dating, reserve samples, yields, second-person checks, and reports and records.

FDA is making this draft guideline available for public comment before issuing a final guideline. If, following the receipt of comments, the agency concludes that the draft guideline will assist persons in determining whether manufacturing practices used in the small-scale production of liquid injectable PET radiopharmaceuticals are in compliance with FDA's CGMP regulations for finished pharmaceuticals, then the agency will prepare a final guideline and will announce its availability in the **Federal Register**.

Guidelines are generally issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, if the agency makes the guideline final, the guideline would not be issued under the authority of current § 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 30, 1995, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4689 Filed 2–24–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0005]

Regulation of Positron Emission TomographyRadiopharmaceutical Drug Products; Guidance; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing guidance on the regulation of positron emission tomography (PET) radiopharmaceutical drug products. FDA has developed this guidance to make clear the regulatory approach designed to help ensure the safe and effective use of these products. The agency is also announcing a public workshop to facilitate an understanding of regulatory requirements regarding these products.

DATES: The public workshop will be held on March 21, 1995, 8:30 a.m. to 4 p.m. Registration will be between 8 a.m. and 8:30 a.m. Due to limited space, interested persons must preregister before March 7, 1995, by telephoning the contact person listed below. Interested persons may submit data, information, or views on this subject to the Dockets Management Branch (address below).

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, Rockville, MD 20857. Written data, information, or views regarding the workshop may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Levchuk, Center for Drug Evaluation and Research (HFD–322), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0095.

SUPPLEMENTARY INFORMATION:

I. Background

PET is a diagnostic imaging modality consisting of onsite production of radionuclides that are usually intravenously injected into patients for diagnostic purposes. The potential usefulness of a PET radiopharmaceutical is based upon the product's interaction with a biochemical process in the body. For example, the product may be substituted for glucose in anaerobic glycolysis, theoretically localizing in ischemic tissues (epileptic foci, acute vascular insufficiency states) where glucose metabolism is the predominant energy source.

The manufacture of PET radiopharmaceuticals consists of a process that takes place within a few hours. A target material is irradiated in a cyclotron; chemical synthesis takes place in a programmed, automated apparatus; and the final solution is prepared. The biological distribution of a PET radiopharmaceutical in the body is monitored by a positron tomograph, or PET scanner, which detects the photons emitted as a result of the radioactive decay of the PET radiopharmaceutical.

Currently, there are two FDA approved PET radiopharmaceuticals: Rubidium-82 (rubidium chloride ([^{82}Rb]RbCl)) and fludeoxyglucose (^{18}-F-FDG). At present, most investigational PET radionuclides are manufactured by cyclotrons at PET facilities, which generally are located at major teaching hospitals or their adjacent universities. Because PET radiopharmaceuticals contain positron emitting isotopes that have relatively short half-lives (minutes to hours), they are manufactured near the site of administration to patients. Products may be distributed t o other institutions when the geographic proximity of these locations will allow for distribution and use within the product's half-life parameters.

The development of PET radiopharmaceuticals has increased considerably over the past several years. As this technology has advanced, questions have been raised about the most appropriate approach to regulation of PET radiopharmaceuticals. FDA held a public hearing on March 5, 1993, to receive information and views on this issue from interested groups and individuals. The docket established for the receipt of comments (Docket No. 93N–0005) remained open for an additional 2 weeks after the hearing.Additionally, FDA has received several citizen petitions on PET radiopharmaceuticals to which it will be directly responding.

Having considered the available information, including that presented to the agency at the hearing and in written materials, FDA has concluded that radiopharmaceuticals should be regulated under the drug provisions of the Federal Food, Drug, and Cosmetic Act (the act). Under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)), drugs are considered adulterated unless manufactured in conformity with current good manufacturing practice (CGMP). Because of unique features of PET radiopharmaceuticals, the applicability of certain requirements in the CGMP regulations for finished pharmaceuticals (part 211 (21 CFR part 211)) to PET radiopharmaceuticals may differ from the applicability of these requirements to drugs produced through traditional manufacturing methods. Consequently, elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule that would authorize the Director of the Center for Drug Evaluation and Research (CDER) or the Director of the Office of Compliance, CDER, to approve exceptions or alternatives to the application of the provisions of part 211 to the manufacture of PET radiopharmaceuticals.

In order to assist manufacturers in complying withapplicable CGMP requirements, FDA has also developed a "Draft Guideline on the Manufacture of Positron Emission Tomographic (PET) Drug Products." A notice of availability of this draft guideline, on which the agency is inviting comments, is also published elsewhere in this issue of the **Federal Register**.

Under section 505 of the act (21 U.S.C. 355), "new drugs," such as radiopharmaceuticals, must be the subjects of approved new drug applications (NDA's) or abbreviated new drug applications (ANDA's) before marketing. In order to be approved, the products must be shown to be safe and effective for their intended uses through adequate and well-controlled studies (21 U.S.C. 355(d)). Investigational use of drug products is governed, in general, by the requirements in part 312 (21 CFR part 312). Special provisions concerning radioactive drugs for certain research uses are contained in FDA regulations at 21 CFR 361.1. Under these special provisions, use of radioactive drug products in human subjects during the course of limited kinds of research projects may occur if the use is approved by a properly constituted Radioactive Drug Research Committee and if other conditions are met.

Section 502 of the act (21 U.S.C. 352) sets forth misbranding provisions applicable to drug products. Among other circumstances, a drug is considered misbranded if the product labeling is false or misleading or if the drug is dangerous to health when used as suggested in the labeling (21 U.S.C. 352(a) and (j)). For prescription drugs, section 502(n) of the act describes certain information that must be included in all advertisements or other printed materials. FDA's regulations also establish labeling and advertising requirements in more detail (21 CFR parts 201 and 202).

Section 510 of the act (21 U.S.C. 360) requires persons who own or operate establishments for the manufacture, preparation, propagation, compounding, or processing of drugs (with certain exceptions) to register the establishments with FDA. Individuals who must register their establishments under section 510 of the act must also file a list of all the drugs being made or processed at the establishment. Drug registration and listing regulations are codified at part 207 (21 CFR part 207).

II. Guidance: Regulation of PET Radiopharmaceuticals

FDA regulates PET radiopharmaceutical drug products used in purely physiologic research, where the results of such research are not used to guide patient management or treatment decisions, as well as in investigational clinical trials and clinical practice. All facilities that manufacture PET radiopharmaceuticals must be registered with FDA in accordance with FDA regulations on the registration and listing of producers of drugs (part 207). Facilities that manufacture PET radiopharmaceuticals are not exempt from registration under §1A207.10 because their activities do not fall within the scope of the regular course of the practice of the profession of pharmacy. This policy statement

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supersedes the "Nuclear Pharmacy Guideline: Criteria for Determining When to Register as a Drug Establishment" issued by FDA in May 1984.

A. Physiological Research

Facilities using PET radiopharmaceuticals for purely physiological research, where the results of such research are not used to guide patient management or treatment decisions, should establish a PET Regulatory Committee (PRC) in accordance with §1A361.1 *Radioactive drugs for certain research uses* (21 CFR 361.1). The PRC will monitor all physiological research of the PET facility. Facilities using PET radiopharmaceuticals for purely physiological research are not required to submit an investigational new drug application (IND) or NDA as long as this research is intended to obtain basic information regarding metabolism or physiology and is not intended to guide or be part of therapeutic, diagnostic, or clinical management plans.

FDA will approve and monitor the PRC, which should consist of at least five individuals. In accordance with §1A361.1(c), each PRC should include: (1) A physician recognized as a specialist in nuclear medicine; (2) a person qualified by training and experience to manufacture PET radiopharmaceuticals; and (3) a person with special competence in radiation safety and radiation dosimetry. The remaining PRC members should include individuals qualified in various disciplines pertaining to the field of nuclear medicine, and should be sufficiently diverse to permit expert review of the technical and scientific aspects of proposals submitted to the committee. In addition to the requirements in §1A361.1(c) and with the exception of the member qualified by training and experience to manufacture PET radiopharmaceuticals, PRC membership should include a representative of a consumer group, and the members should not have scientific, clinical, financial, or administrative conflicts of interest.

The PRC should have three main responsibilities: (1) To approve research protocols; (2) to prepare annual reports; and (3) to determine when purely physiological research has ended.

In approving protocols, the PRC should: (1) Determine if the investigator meets the qualifications specified in the protocol; (2) review the research protocol design; (3) review and monitor the selection of research subjects; (4) ensure that the research subjects have signed informed consent documents; (5) review and monitor the quality of the PET radiopharmaceuticals administered; (6) evaluate all reports of adverse events; and (7) confirm concurrence of Institutional Review Board approval.

The annual report should follow the format and contents prescribed in §1A361.1(c)(3), summarizing the conditions of use, doses, route of administration, protocols, adverse events reported in the safety information, and the chemistry, manufacturing, and control data. The PRC should submit the completed annual report to FDA.

The PRC is also responsible for determining when purely physiological research becomes investigational clinical use. This determination should be based on whether the data obtained will be used in the diagnostic, therapeutic, or clinical management of patients. Once trials are proposed for investigational clinical use, the facility must submit an IND before starting to conduct the trials.

B. Investigational Use

Manufacturers of PET radiopharmaceuticals intended to be used in investigational clinical trials must submit an IND to FDA in accordance with the regulations in part 312. Institutions or investigators working together with the same PET radiopharmaceutical may submit one IND for that drug product, covering studies conducted at more than one site or institution.

C. NDA Approval

Submission of an NDA, in accordance with FDA regulations in part 314 (21 CFR part 314), is required for PET radiopharmaceuticals used in clinical practice. Institutions or investigators working together with the same PET radiopharmaceutical may submit one NDA for that drug product. All sites that produce the same drug product would be covered by the submitted NDA. Once an NDA is approved, other PET facilities with a radiopharmaceutical that is an equivalent finished product, but which did not participate in the NDA or did not submit manufacturing data, could submit an abbreviated new drug application (ANDA) demonstrating that their drug is bioequivalent to the innovator drug, in accordance with FDA regulations in part 314. Alternatively, the NDA holder could submit a supplement to add these other facilities as new manufacturing sites.

PET radiopharmaceuticals are also subject to the adulteration and misbranding provisions of the act. Facilities where PET radiopharmaceuticals are manufactured are subject to inspection by FDA for compliance with CGMP requirements and other drug-related requirements.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95-4691 Filed 2-24-95; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-55-3710; FR-3636-N-03]

Announcement of Funding Awards Public Housing Drug Elimination Technical Assistance Program, FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Public Housing Drug Elimination-Technical Assistance Program. This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Drug Free Neighborhoods Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410, telephone (202) 708-1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Public Housing Drug Elimination-Technical Assistance Program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L. 103-124).

The NOFA published in the **Federal Register** on March 10, 1994 (59 FR 11418) announced the FY 1994 availability of $1,255,175 to fund qualified applicants selected under the FY 1993 NOFA and invited additional applicants for FY 1994. The purpose of the program is to provide short-term technical assistance to public housing agencies, Indian housing authorities, resident management corporations, and incorporated resident councils that are combating abuse of controlled substances in public and Indian housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. Applications were scored and selected for funding for the third and fourth quarter based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names and addresses of the recipients which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: February 21, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF THIRD AND FOURTH QUARTER FUNDING DECISIONS

Name and address	Amount awarded
PROGRAM NAME: Public Housing Drug Elimination Technical Assistance Program **STATUTE:** Public Law 103-124, October 28, 1993.	
MIDTOWN TERRACE RESIDENT COUNCIL, WV, LILLIAN YOUNG, 1447 Peachtree Street, #522, Atlanta, GA 30309	$8,937.00
COLLEGE PARK HOUSING AUTHORITY, GA, ANTHONY RANDOLPH, 1050 Topeka Street Pasadena, CA 91104	9,807.00
MONTICELLO HOUSING AUTHORITY, NY, ROBERT BORGHESE, 21 S. 12th St. Suite 902, Philadelphia, PA 19107	8,686.00
APACHE MANOR RESIDENT COUNCIL, OK, IAN HORNCASTLE, 830 South Woodlawn Ave., Okmulgee, OK 74447	10,000.00
SANDY PARK RESIDENT ASSOCIATION, OK, GLENN MCCURDY, 7942 Park Avenue, Elkins Park, PA 19117	5,741.00
MAKAH INDIAN HOUSING AUTHORITY, WA, GARY LIMING, 19707-44th Ave., W. Suite 212, Lynwood, WA 98036	6,654.00
PONTIAC HOUSING COMMISSION, MI, RONALD SIMPKINS, Commitment To Character, P.O. BOX 157151, Cincinnati, OH 45215	5,444.00
CRESTVIEW HOUSING AUTHORITY, FL, PAUL TANNER, 5618 Shorewood Road, Jacksonville, FL 32210	8,776.00
HOUSING AUTHORITY OF TOWN, OF SOUTH KINGSTOWN, RI, SUSAN BARRY, SYMPATICO INC., 57 Columbia Street, Wakefield, RI 02879	8,425.00
HOUSING AUTHORITY OF THE CITY OF ASHEVILLE, NC, RICHARD MARTIN, P.O. Box 12311, Raleigh, NC 27605	8,737.00
NORTH WILKESBORO DEPT. OF HOUSING, NC, JOHN T. PHILLIPS, 302 North Lee Street, Ayden, NC 28513	5,840.00
TACOMA HOUSING AUTHORITY, WA, EDWIN C. GOODWIN, National Facility Consultants, 1579-F Monroe Dr., NE, Suite 168, Atlanta, GA 30324	9,682.00
MESCALERO APACHE INDIAN HOUSING, AUTHORITY, NM, SUSAN GUYETTE, 97 Moya Rd., Santa Fe, NM 87505	8,618.00
GREENSBORO HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL, 36121	8,510.00
STAMFORD HOUSING AUTHORITY, CT, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813-1072	9,930.00
ERNIE CRAGIN TERRACE RESIDENT COUNCIL, NV, PAUL TURNER, 410 Castello Road, Lafayette, CA 94549	9,915.00
NAVAJO HOUSING AUTHORITY, AZ, THOMAS WICKENDEN AND LAURENCE GISHEY, BOX 4132 Northern Arizona University, Flagstaff, AZ 86011-4132	7,424.00
OPELIKA HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	9,116.00
HOUSING AUTHORITY OF THE TOWN OF LAURINBURG, NC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813-1072	7,407.00
KEY WEST HOUSING AUTHORITY, FL, JOHN DOYLE BANYAN PRODUCTIONS, 3134 Northside Drive, Key West, FL 33040	9,955.00
LITTLE ROCK HOUSING AUTHORITY, AR, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813-1072	9,758.00
SPOKANE HOUSING AUTHORITY, WA, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbara, CA 93105	9,143.00
LUMBERTON HOUSING AUTHORITY, MS, ROBERT TAYLOR, 425 Beasley Road, #B7, Jackson, MS 39286	8,073.00
UNIONTOWN HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	5,864.00
CUMBERLAND PLATEAU REGIONAL HOUSING AUTHORITY, VA, GENEVA O'QUINN, Route 1, Box 601-A, Clintwood, VA 24228	4,725.00
CANTON HOUSING AUTHORITY, MS, ROBERT TAYLOR, 425 Beasley Road, #B7 Jackson, MS 39286	5,967.00
HOUSING AUTHORITY OF BAYTOWN, TX, ROBIN MITCHELL, FREEDOM COMMUNICATIONS, 512 East 11th, Suite 206, Austin, TX 78702	9,545.00
MANAHAN VILLAGE RESIDENT COUNCIL, NJ, WANDA W. STANSBURY, 206 Renfrew Ave., Trenton, NJ 08618	9,981.00
SMITHFIELD HOUSING AUTHORITY, NC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813-1072	7,063.00
MASSENA HOUSING AUTHORITY, NY, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	9,155.00
MONTGOMERY COUNTY HOUSING AUTHORITY, PA, WANDA W. STANSBURY, 206 Renfrew Ave., Trenton, NJ 08618	9,960.00
SOUTH HILLS TERRACE TENANTS ORGANIZATION, PA, DAVID BUCHES, RD 1 Box 735A, Dover, DE 19901	6,306.00
HOUSING AUTHORITY OF LAUREL, MS, ROBERT TAYLOR, 425 Beasley Road, #B7, Jackson, MS 39286	6,525.00
FORT WALTON BEACH HOUSING AUTHORITY, FL, JIM L. MUNRO, 7335 No. Shores Dr., Navarre, FL 32566	5,129.00
INKSTER HOUSING COMMISSION, MI, CURTIS JONES, 6 Lindsey Street, Dorchester, MA 02124	9,307.00
BLACKFEET INDIAN HOUSING AUTHORITY, MT, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbars, CA 93105	8,502.00
TURTLE MOUNTAIN INDIAN HOUSING AUTHORITY, SD, ANNE FALLIS, Rural Route 1, BOX 1845, Rapid City, SD 57702	8,324.00
CHOCTAW NATION INDIAN HOUSING AUTHORITY, OK, RICARDO JASSO, P.O. Box 11615, Casa Grande, AZ 85230	8,624.00
HALL COUNTY HOUSING AUTHORITY, NE, GARY DAVIS, 620 Alum Creek Drive, Columbus, OH 43205	5,629.00
HOUSING AUTHORITY OF THE CITY OF PASCO AND FRANKLIN COUNTY, GWENDOLYN SHEPHERD, GMSS LEARNING SERVICES, 7060 McCormick Woods Dr. SW, Port Orchard, WA 98366-7645	8,900.00
TEMPLE HOUSING AUTHORITY, TX, KAI MARTENSEN, 706 Bridgeman Terrace, Towson, MD 21204	9,786.00
NORTHERN CHEYENNE INDIAN HOUSING AUTHORITY, MT, DEBRA WILLIAMS-HOUSE, Stone Mountain, GA	9,985.00
HOUSING AUTHORITY OF RICHMOND, CA, ROBERT REYNOLDS, 2131-2nd Ave., Los Angeles, CA 90018	9,436.00

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APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING RECIPIENTS OF THIRD AND FOURTH QUARTER FUNDING DECISIONS—Continued

Name and address	Amount awarded
DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING, DC, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	7,805.00
DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING, DC, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
MUCKLESHOOT INDIAN HOUSING AUTHORITY, WA, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
HOUSING AUTHORITY OF BALTIMORE CITY, MD, DAVID ROUEN, TSAILE, INC. (PATH) Box 1827, Carolina Beach, NC 28428	5,496.00
DANBURY HOUSING AUTHORITY, CT, PATRICIA SURPRENANT, 418 Robin Ct., Cheshire, CT 06410	4,836.00
HOUSING AUTHORITY OF WINONA, MS, PAUL TANNER, 5618 Shorewood Rd., Jacksonville, FL 32210	9,018.00
FORT BERTHOLD INDIAN HOUSING AUTHORITY, ND, ANNE FALLIS, Rural Route 1, Box 1845, Rapid City, SD 57702	9,204.00
HATTIESBURG HOUSING AUTHORITY, MS, C. JEAN BENNETT, 207 Valley North Blvd., Jackson, MS 39206	8,084.00
FOREST HOUSING AUTHORITY, MS, C. JEAN BENNETT, 207 Valley North Blvd., Jackson, MS 39206	8,718.00
HOUSING AUTHORITY OF THE CITY OF NEW BERN, NC, LEXIE WILLIAMS, 1177 Dominion Court, Port Orange, FL 32119	7,240.00
HOUSING AUTHORITY OF GRANT COUNTY, WA, ROXANNA NANTO, CC CONSULTING ASSOCIATES, 704 NE Larch Court, Wenatchee, WA 98802	6,613.00
TAYLOR HOUSING AUTHORITY, TX, JAMES GODFREY, GODFREY & ASSOCIATES, P.O. Box 2470, Hot Springs, AR 71914	9,512.00
COLORADO RIVER INDIAN HOUSING AUTHORITY, AZ, SUSAN GUYETTE, 97 Moya Rd., Santa Fe, NM 87505	8,953.00
HOUSING AUTHORITY OF WOONSOCKET, RI, ROBERT BORGHESE, 21 S. 12th St., Suite 902, Philadelphia, PA 19107	9,132.00
ROME HOUSING AUTHORITY, GA, JAMES GODFREY, GODFREY & ASSOCIATES, P.O. Box 2470, Hot Springs, AR 71914	9,787.00
PROVIDENCE HOUSING AUTHORITY, RI, SEVERIN SORENSEN, PO Box 34469, Bethesda, MD 20813–1072	10,000.00
CANTON HOUSING AUTHORITY, NY, LYNN BORRELL, Lynne Borrell & Associates, Suite 402, 1165 North Clarke, Chicago, IL 60610	10,000.00
THE HOUSING AUTHORITIES OF FAIRBURN/UNION CITY, GA, SAUNDRA D. WILLIAMS, D & J CONSULTANTS, 4300 Flat Shoals Road #2606, Union City, GA 30291	9,440.00
MARIANNA HOUSING AUTHORITY, FL, PAUL TANNER, 5618 Shorewood Road, Jacksonville, FL 32210	8,858.00
SCHWARTZ-ROBESON TENANTS ASSOCIATION, NJ, ALEXANDER SUTTON, 1133 Kensington Ave., Plainfield, NJ 07060	10,000.00
HOUSING AUTHORITY OF GALLATIN, TN, KARRIEM SHABAZZ, 3150 Borge Street, Oakton, VA 22124	6,630.00
TRIANA HOUSING AUTHORITY, AL, JOSEPH ALEX, P.O. BOX 210546, 4604 Virginia Loop Road, Montgomery, AL 36121	8,355.00
TENNINGTON COURT TENANTS ASSOCIATION, NJ, GERARD LEE, 810 Belvidere Ave., Plainfield, NJ 07060	10,000.00
HOUSING AUTHORITY OF MERCED, CA, JEFFREY OSHINS, 271 Rosano Park Road, Santa Barbara, CA 93105	7,504.00
WILMINGTON HOUSING AUTHORITY, DE, NANCY LOWE-CONNO, 3406 Wild Cherry Road, Baltimore, MD 21207	9,959.00
SOUTHERN PUGET SOUND INDIAN HOUSING AUTHORITY, WALINDA RINALDI, Seattle, WA	9,786.00
HOUSING AUTHORITY OF JACKSON COUNTY OR ROXANNA NANTO, CC CONSULTING ASSOCIATES, 704 NE Larch Court, Wenatchee, WA 98802	9,441.00
OLNEY HOUSING AUTHORITY, TX, JEFFREY OSHINS, 271 Rosario Park Road, Santa Barbara, CA 93105	7,911.00
Total	595,673.00

[FR Doc. 95–4658 Filed 2–24–95; 8:45 am]
BILLING CODE 4210–33–P

Office of the Secretary

[Docket No. N–95–3892; FR–3864–N–01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers. Request: July 1, 1994 through September 30, 1994.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), the Department (HUD) is required to make public all approval actions taken on waivers of regulations. This notice is the fifteenth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this Notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; (telephone 202–708–3055); TDD: (202) 708–3259. These are not toll-free numbers.) For information concerning a particular waiver action, about which public notice is provided in this document, contact the person whose name and address is set out, for the particular item, in the accompanying list of waiver-grant action.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989, the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by the Department. Section 106 of the Act (Section 7(q)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (q)(3), provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that the Department has approved, by publishing a Notice in the **Federal Register.** These Notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purposes of today's document.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives Issued by HUD (56 FR 16337, April 22, 1991). This is the twelfth Notice of its kind to be published under Section 106. It updates HUD's waiver-grant activity from July 1, 1994 through September 30, 1994. In approximately three months, the Department will publish a similar Notice, providing information about waiver-grant activity for the period from October 1, 1994 through December 31, 1994.

For ease of reference, waiver requests grant by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 24.200 (involving the waiver of a provision in part 24) would come early in the sequence, while waivers in the Section 8 and Section 202 programs (24 CFR Chapter VIII) would be among the last matters listed. Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in Title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 811.105(b) and § 811.107(a) would appear sequentially in the listing under § 811.105(b).) Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should the Department receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occur between October 1, 1994 and December 31, 1994.

Accordingly, information about approved waiver requests pertaining to regulations of the Department is provided in the Appendix that follows this Notice.

Dated: February 14, 1995.

Henry G. Cisneros,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development, July 1, 1994 through September 30, 1994.

Note to Reader: The person to be contacted for additional information about these waiver-grant items in this listing is: James B. Mitchell, Director, Financial Services Division, Office of Housing, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, DC 20024, Phone: (202) 755–7450.

Regulation: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

Project/Activity: Gloucester County (New Jersey) HA refunding of bonds which financed an uninsured Section 8 assisted project, Colonial Park, HUD Project Number NJ16–0029–002.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicholas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: September 16, 1994.

Reasons Waived: The Part 811 regulations cited above prohibited refunding and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1979 Trust Indenture to help pay transaction costs of a McKinney Act Section 8 bond refunding. Issuance of 1994 refunding bonds of $6,755,000 at a yield of 6.10% under Section 103 of the Tax Code will generate Section 8 savings.

Regulation: 24 CFR Sections 811.106(d) and 811.107(d) of 1977 Regulations.

Project/Activity: Akron (Ohio) Metropolitan HA refunding of bonds which financed an uninsured Section 8 assisted project, Mayflower Manor, HUD Project Number OH12–0003–002.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicholas P. Retsinas, Assistant Secretary for Housing—FHA Commissioner.

Dated Granted: September 30, 1994.

Reasons Waived: The Part 811 regulations cited above prohibited refunding and required that excess reserve balances be used for project purposes. The issuer has requested HUD permission to release excess reserve balances from the 1980 Trust Indenture to help pay transaction costs of a McKinney Act Section 8 bond refunding. Issuance of 1994 refunding bonds of $6,005,000 at a yield of 6.54% under Section 103 of the Tax Code will generate Section 8 savings.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Washoe Housing Finance Corporation refunding of bonds which financed a Section 8 assisted project, the Golden II Apartments (FHA No. 125–135094).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing—Federal Housing Commissioner.

Dated Granted: July 21, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on July 6, 1994. Refunding bonds have been priced to an average yield of 6.8%. The tax-exempt refunding bond issue of $2,355,000 at current low-interest rates will save Section 8 subsidy The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.75% at the call date with tax-exempt bonds yielding 6.8%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10% to 7.05%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Housing Finance Corporation of Irvington, New Jersey refunding of bonds which financed a Section 8 assisted project, Berkeley Terrace Apartments (FHA No. 031–35238).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 18, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on February 8, 1994. Refunding bonds have been priced to an average yield of 6.38%. The tax-exempt refunding bond issue of $4,570,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax

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revenue benefits through replacement of outstanding tax-exempt coupons of 10.5% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(2), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Providence, Rhode Island HA refunding of bonds which financed a Section 8 assisted project, the Maplewood Terrace Apartments (FHA No. 016–35076).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 119(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 23, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on June 17, 1994. Refunding bonds have been priced to an average yield of 6.9%. The tax-exempt refunding bond issue of $4,425,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.7%–10.75% at the call date with tax-exempt 6.9% bonds. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.6% to 7.75%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(b)(1), 811.108(b)(3), 811.108(b)(4), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Monroe-McKeen Plaza (Louisiana) HDC refunding of bonds which financed a Section 8 assisted non-insured project, the McKeen Plaza Apartments, (FHA No. LA48–0053–001).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 29, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on July 26, 1994. Refunding bonds have been priced to an average yield of 6.80%. The tax-exempt refunding bond issue of $2,660,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.5%–11.25% at the call date in 1994 with tax-exempt bonds yielding 6.8%. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Town of Babylon, New York refunding of bonds which financed a Section 8 assisted project, Andpress Plaza Apartments (FHA No. 012–35582).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 8, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 2, 1994. Refunding bonds have been priced to an average yield of 6.79%. The tax-exempt refunding bond issue of $2,405,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 9.9% at the call date with tax-exempt bonds yielding 6.79%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 9.9% to 7.2%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(1), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Providence, Rhode Island HDC refunding of bonds which financed a Section 8 assisted project, the Barbara Jordan Apartments (FHA No. 016–57008).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation and authorize call of debentures prior to maturity.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 15, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions. To credit enhance refundings bonds not fully secured by the FHA mortgage amount, HUD also agrees not to exercise its option under 24 CFR Section 207.259(e) to call debentures prior to maturity. This refunding proposal was approved by HUD on June 14, 1994. Refunding bonds have been priced to an average yield of 6.74%. The tax-exempt refunding bond issue of $8,890,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11.8% at the call date with tax-exempt bonds yielding 6.74%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 12% to 6.9%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.107(a)(2), 811.107(b), 811.108(a)(3), 811.114(b)(3), 811.114(d), 811.115(b).

Project/Activity: Regional HDC of Kansas City, Missouri refunding of bonds which financed a Section 8 assisted project, the Lawndale Heights Apartments (FHA No. 084–37229).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 30, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions. This refunding proposal was approved by HUD on August 30, 1994. Refunding bonds have been priced to an average yield of 6.78%. The tax-exempt refunding bond issue of $4,465,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 10.25% at the call date with tax-exempt bonds yielding 6.78%. The refunding will also substantially reduce the FHA mortgage interest rate at expiration of the HAP contract, from 10.375% to 6.93%, thus reducing FHA mortgage insurance risk. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects

will continue to provide housing for low-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117.

Project/Activity: The Housing Authority of Seattle, Washington refunding of bonds which financed a Section 8 assisted project, Market House Elderly Project, No. WA19–8023–005.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 21, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on June 29, 1994. Refunding bonds have been priced to an average yield of 6%. The tax-exempt refunding bond issued of $1,730,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 11% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding services the important public purposes of reducing HUD's Section 8 program costs, improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Section 811.114(d).

Project/Activity: District of Columbia HFA redemption of bonds which financed a Section 8 assisted project in 1979, the Trinity Towers Apartments, FHA No. 000–35240.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: July 27, 1994.

Reasons Waived: The Part 811 regulation cited above requires HUD approval and reduction of Section 8 rents for prepayment of Section 11(b) bonds. The bonds will be redeemed by sale of the FHA mortgage note. Proceeds of the note sale will also finance project repairs. No reduction in project debt service or contract rents will occur. The Treasury also gains long-term tax revenue benefits through prepayment of outstanding tax-exempt bonds. The refunding serves the important public purposes of improving Treasury Tax revenue, (helping reduce the budget deficit), and assuring that the project is maintained in sound physical condition.

Regulation: 24 CFR Sections 811.114(d), 811.115(b), 811.117

Project/Activity: The Housing Authority of Delaware County, Pennsylvania refunding of bonds which financed a Section 8 assisted project, Kinder Park Apartments, FHA No. PA26–0020–001.

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: August 10, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transaction and do not fit the terms of refunding transactions under Section 103 of the Tax Code. This refunding proposal was approved by HUD on March 18, 1994. Refunding bonds have been priced to an average yield of 5.66%. The tax-exempt refunding bond issue of $4,040,000 at current low-interest rates will save Section 8 subsidy. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt coupons of 6.00%–6.40% at the call date in 1994 with tax-exempt bonds at a substantially lower interest rate. The refunding serves the important public purposes of reducing HUD's Section 8 program costs, improving Treasury Tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Regulation: 24 CFR Section 811.114(d).

Project/Activity: Whiteside County, Illinois HA refunding of bonds which financed a Section 8 assisted project, the Civic Plaza II Apartments, HUD No. IL–06–0038–002).

Nature of Requirement: The Regulations set conditions under which HUD may grant a Section 11(b) letter of exemption of multifamily housing revenue bonds from Federal income taxation.

Granted By: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.

Dated Granted: September 26, 1994.

Reasons Waived: The Part 811 regulations cited above were intended for original bond financing transactions and do not fit the terms of refunding bonds to be issued as taxable obligations. Refunding bonds will be issued in an amount sufficient to provide capitalized distributions to the Project Owner entity which agrees to extend low-income occupancy for ten years after expiration of the Section 8 Housing Assistance Payments Contract. The Treasury also gains long-term tax revenue benefits through replacement of outstanding tax-exempt bonds of 9.5% coupons of lower yielding debt. The refunding serves the important public purposes of improving Treasury tax revenues, (helping reduce the budget deficit), and increasing the likelihood that projects will continue to provide housing for lower-income families after subsidies expire, a priority HUD objective.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Robin Prichard, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, S.W.—Room 4116, Washington, DC 20410–5000, (202) 708–1197

14. Regulation: 24 CFR 961.

Project/Activity: Maricopa County Housing Authority, Phoenix, AZ.

Nature of Requirement: 24 CFR 961, allows only one six month extension on each grant awarded beyond the grant period.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P

Date Granted: September 1994.

Reason Waved: The Resident Services Coordinator for MCHD, along with the leadership of the Housing Director, have the contacts, respect and commitment from reputable agencies to carry out the drug elimination program successfully. It is clear that they have identified the most vulnerable complexes needing the services of a drug elimination initiative, which are generally social and economically stressed. Also, it is very clear, that the need for this drug elimination grant extension to be approved can and will have a tremendous affect on the safety of our resident and will be felt throughout MCHD, therefore, we are asking for your approval to grant this extension request.

MCHD is a Troubled Housing Authority, that is in the process of entering into a Memorandum of Agreement and have the staff, commitment and resources, if approved to implement this initiative. All of the programs requested and planned in the revised budgets not only will help make their living environment safer, the programs proposed include self-help programs for low income residents.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: John Comerford Director, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Phone: (202) 708–1872, TDD: (202) 708–0850 (These are not toll-free numbers).

15. Regulation: 24 CFR 990.104.

Project/Activity: Guntersville, AL, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for two units approved for non-dwelling use to promote economic self-sufficiency programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 4, 1994.

Reason Waived: To allow additional subsidy for units approved for non-dwelling use to promote economic self-sufficiency services pending publication of a final rule implementing this change to the regulation

16. Regulation: 24 CFR 990.104.

Project/Activity: Jennings, LA, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for one unit approved for non-dwelling use to promote anti-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for

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units removed from the dwelling rental inventory

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 30, 1994.

Reason Waived: To allow additional subsidy for one unit approved for non-dwelling use to promote anti-drug programs pending publication of a final rule implementing this change to the regulation.

17. Regulation: 24 CFR 990.104.

Project/Activity: Los Angeles, CA, Housing Authority In determining the operating subsidy eligibility, a request was made for funding for units approved for non-dwelling use to promote economic self-sufficiency and anti-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 25, 1994.

Reason Waived: To allow additional subsidy for 29 units approved for non-dwelling use to promote economic self-sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

18. Regulation: 24 CFR 990.104.

Project/Activity: Tusla, OK, Housing Authority. In determining the operating subsidy eligibility, a request was made for funding for units approved for non-dwelling use to promote economic self-sufficiency and ant-drug programs.

Nature of Requirement: The operating subsidy calculation excludes funding for units removed from the dwelling rental inventory.

Granted By: Joseph Shuldiner, Assistant Secretary

Date Granted: July 19, 1994.

Reason Waived: To allow additional subsidy for six units approved for non-dwelling use to promote economic self sufficiency services and anti-drug programs pending publication of a final rule implementing this change to the regulation.

19. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: A request was made by the Allentown, PA Housing Authority to use an occupancy rate of 91% in determining its operating subsidy eligibility for its fiscal year 6/30/95.

Nature of Requirement: A Low Occupancy Public Housing Agency (PHA) without an approved Comprehensive Occupancy Plan (COP) must use a projected occupancy rate of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 11, 1994.

Reason Waived: The vacancy problem being experienced by the Allentown Housing Authority is the result of an accidental gas explosion and fire at an elderly high-rise development which left 147 units uninhabitable. These units are expected to be repaired in approximately nine months. During this period, the elderly residents will be relocated to private-owned housing. Because of the short-term nature of the problem, the Allentown Housing Authority was allowed to use 91% as its occupancy percentage for its fiscal year ending 6/30/95.

20. Regulation: 24 CFR 990.109(b)(3)(iv).

Project/Activity: A request was made by the St. Edward, NE Housing Authority to use its actual occupancy rate of 61% in determining its operating subsidy eligibility for its fiscal year ending (FYE) 12/31/94.

Nature of Requirement: A public housing agency (PHA) that has completed a Comprehensive Occupancy Plan (COP) without achieving a 97% occupancy percentage or having an average of five or fewer vacant units must use a projected occupancy rate of 97%.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 14, 1994.

Reason Waived: The St. Edward Housing Authority is a small PHA of 18 units, primarily elderly. There has been a significant decline in the town's population according to census data, as well as loss of businesses during the past several years. Because the documented lack of demand was basically beyond the control of the Authority and in order to preclude further depletion of its operating reserves, the PHA was allowed to use 61% as its occupancy percentage for its fiscal year ending 12/31/94.

21. Regulation: 24 CFR 990.110 and 990.107.

Project/Activity: Springfield, MA Housing Authority. In determining the operating subsidy eligibility, a request was made to permit the Springfield Housing Authority to retain a refund in excess billing charges for water consumption.

Nature of Requirement: Public Housing Agencies (PHAs) must pay back any savings that result from utility rate decreases as compared to the budgeted amount for that year.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: July 14, 1994.

Reason Waived: The Springfield Housing Authority (SHA) realized in early 1989 that water costs had increased significantly and immediately began to investigate the cause. Both its maintenance and finance departments, over a lengthy period of time, spent considerable effort and expense trying to find the reason for the increased costs. In 1992, the SHA's energy auditor found that the problem was the installation, by the water department, of an improper water register on the water meter.

Based on the SHA's extraordinary efforts to determine the cause of the problem and the resulting savings to HUD, a waiver was granted to permit the SHA to retain the refund from excess billing. This waiver was granted on the basis that the refund be used to implement a water conservation program for several federally funded developments.

22. Regulation: 24 CFR 990.118(h).

Project/Activity: A request was made by the Department of Public and Assisted Housing (DPAH), Washington, DC to use an occupancy rate of 83% for its fiscal year ending (FYE) 9/30/94 and to use 85% for its FYE 9/30/95.

Nature of Requirement: A Public Housing Agency (PHA) with an approved COP must use the projected occupancy rates of the COP. The projected occupancy rate for the last year of the COP, FYE 9/30/94, is 97%.

Granted By: Joseph Shuldiner, Assistant Secretary

Date Granted: July 26, 1994

Reason Waived: The request for a waiver follows a number of meetings with the staff of DPAH. The exchange of views on the vacancy problems faced by DPAH has been productive and a four-year plan has been developed that is project-specific and will serve as a guide for the commitment of funds and staff. In order to be supportive of the efforts and progress made to date, a waiver was granted to permit the use of the 93% as the occupancy percentage for its FYE 9/30/94, and 85% for its FYE 9/30/95. Of the additional funds received by DPAH as a result of this waiver, at least 60% must be used for specific, identifiable actions to increase occupancy.

23. Regulation: 24 CFR 990.118(h).

Project/Activity: A request was made by the Allegheny County, PA Housing Authority to use an occupancy rate of 93% instead of the 97% goal of its Comprehensive Occupancy Plan (COP) in determining its operating subsidy eligibility for its fiscal year ending (FYE) 9/30/94.

Nature of Requirement: A Public Housing Agency (PHA) with an approved COP must use the projected occupancy rates of the COP.

Granted By: Joseph Shuldiner, Assistant Secretary.

Date Granted: August 19, 1994.

Reason Waived: The Allegheny County Housing Authority requested a 4% adjustment based on vacant units that are part of a funded, on-schedule modernization program. The regulations permit a PHA that completes the COP without achieving its occupancy goal to adjust the 97% rate that it otherwise would have to use in subsequent years by vacancies attributable to funded, on schedule modernization work. In order to permit the PHA to receive the same benefits for its units undergoing modernization as do other PHAs that have completed their COPS, a waiver was granted to permit the use of the 93% as the occupancy percentage for its FYE 9/30/94.

Note to Reader: The person to be contacted for additional information about the waiver grant items in this listing, Gary VanBuskirk, Director, Homeownership Division, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 4112, Washington, D.C. 20410. Phone: (202) 708-4233 (This is not a toll-free number).

24. Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Butler Metropolitan Housing Authority (BMHA), Hamilton, Ohio Turnkey III Homeownership Opportunity Program Project OH 15-6 (Concord Green) Conversion to low income rental status.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook define and govern the Turnkey III Homeownership Opportunity Program.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 1, 1994.

Reason Waived: The Butler Metropolitan Housing Authority of Hamilton, Ohio requested the ability to convert certain housing units of the BMHA's project OH 15-6 to low rent public housing status. The Department of Housing and Urban Development has established certain criteria and procedures by which to judge the efficacy of such a conversion on a case by case basis. After investigation of the circumstances, and in an attempt to assist the BMHA to better serve its low income tenants, the Department decided that granting this conversion was in the best interests of all concerned.

The conversion of Turnkey III units to low income rental is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for this conversion.

25. Regulation: 24 CFR 904 Subpart B (Turnkey III Homeownership Opportunity Program) and Corresponding Provisions of the Turnkey III Handbook (7495.3).

Project/Activity: Rockford Housing Authority (RHA), Rockford, Illinois Turnkey III Homeownership Opportunity Program Project IL 06-P022-008. Conversion to low income rental status.

Nature of Requirement: 24 CFR 904 Subpart B and the Turnkey III Handbook define and govern the Turnkey III Homeownership Opportunity Program.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: September 23, 1994.

Reason Waived: The Rockford Housing Authority of Rockford, Illinois requested the ability to convert certain housing units of the RHA's project IL 06-P022-008 to low rent public housing status. The Department of Housing and Urban Development has established certain criteria and procedures by which to judge the efficacy of such a conversion on a case by case basis. After investigation of the circumstances, and in an attempt to assist the RHA to better serve its low income tenants, the Department decided that granting this conversion was in the best interests of all concerned.

The conversion of Turnkey III units to low income rental is implemented according to existing HUD procedures.

The housing authority has shown good cause and demonstrated compliance with all applicable regulatory requirements for this conversion.

26. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Knoxville, Tennessee Housing Authority (KHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its mini-planning grant (IA05HM1190192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The KHA was unable to implement the family self sufficiency segment of the grant on schedule due to a change in staff plans and funding problems. Because the KHA is located in a rural area, it has experienced some difficulty in finding individuals and organizations that can assist in the grant. To complete the remaining tasks under the grant, the KHA has recently issued a request for proposal for the self sufficiency and training components and has begun working with an agency to assist them in these efforts. Further action on the grant was contingent upon this extension being granted.

27. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Meridian, Mississippi Housing Authority (MHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership mini-planning grant (MS26HM10040192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The management of the MHA has been in transition and the current executive director is acting in an interim capacity. The transition interrupted progress implementing the grant; however the MHA continues to desire to complete the remaining tasks under the grant. The MHA wishes to conduct economic development as well as training and technical assistance activities under the grant which would be of benefit to the low income residents participating in the homeownership grant. Further action on the grant was contingent upon the extension being granted.

28. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Hall County, Nebraska Housing Authority (HCHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning under its mini-planning grant (NE26HM10030192).

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 12, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The HCHA noted that it was impeded in carrying out grant activities due to an initial lack of resident interest that has since been rectified. This interrupted early progress made on the grant. The HCHA wished to continue, among other items, resident management council training, development of homeownership plans and financial strategies, production and publication of outreach materials, and training and technical assistance for residents and staff. Further action on this grant was contingent upon the time extension being granted.

29. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Church Community Housing Corporation (CCHC) of Newport, Rhode Island a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Chapel Terrace development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 22, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The CCHC noted that although it has made substantial progress in carrying out the grant the Resident Council of the Newport Public Housing Authority has encountered unexpected delays in hiring a coordinator. The coordinator is now in place and has been working to rebuild the resident involvement in the resident council. The lack of a coordinator interrupted early progress made on the grant but the CCHC desired to move forward with the grant activities. As a result

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of dialogue with the residents of the Chapel Terrace development and the realization that further HOPE funding is unlikely, the CCHC concluded that it needed to come up with viable alternatives which would foster increased resident control. The extension would allow the Resident Council to complete a move to permanent office space and to begin to explore options to enhance resident control of the development. Action on the grant was contingent upon the extension being granted.

30. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini planning grantee, the Housing Authority of the City of Waterbury, Connecticut (HAW) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its Austin Road development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 25, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The HAW noted that although it had made substantial progress in carrying out the grant it encountered unexpected delays in hiring a Resident Initiatives Coordinator. The lack of this coordinator interrupted early progress made on the grant, but the HAW continued to desire to complete the tasks remaining under the grant. As a result of dialogue with the residents of the Austin Road development, the HAW concluded that it needed to focus its efforts under grant in the area of economic development to further prepare residents for homeownership. In working towards that end, the HAW selected a consultant to work on a feasibility study. The successful completion of this grant was contingent upon the extension being granted.

31. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the North Charleston, South Caroline Housing Authority (NCHA) a time extension to carry out the activities specified in its grant agreement. This extension would be of benefit to the residents participating in homeownership planning at its North Park Village development.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement.

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P.

Date Granted: July 25, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

The NCHA noted that although it had made substantial progress in carrying out the grant, the resignation of two members of the Board of Commissioners as well as the Mayor of North Charleston had resulted in unexpected delays in carrying out activities under the grant. The vacancies were in the process of being filled. Although the vacancies interrupted progress made on the grant, the NCHA continued to desire to move forward with the grant activities. The extension requested would permit the Board of Commissioners to authorize contracts for the feasibility studies necessary to complete the development of a formal homeownership strategy. The extension would also allow the NCHA to conduct training and planning for economic development activities in support of future homeownership. The successful completion of the grant was contingent on the extension being granted.

32. Regulation: HOPE for Public and Indian Housing Homeownership (HOPE 1) Program, Guidelines, Section 301(b)(1) as published on January 14, 1992 (57 FR 1522).

Project/Activity: To permit a HOPE 1 mini-planning grantee, the Auburn, Alabama Housing Authority (AHA) a time extension to carry out the activities specified in its five grant agreements. The extension would be of benefit to the residents participating in homeownership planning at its East Park, AL–050–1; East Park, AL–050–3; Ridgecrest, AL–50–6; Sparkman Park, AL–50–8; and East Park, AL–50–5A developments.

Nature of Requirement: Section 301(b)(3) of the HOPE 1 Program Guidelines limit a HOPE 1 mini-planning grantee to carrying out activities funded under its grant within eighteen (18) months of the effective date of the mini-planning grant agreement

Granted By: Joseph Shuldiner, Assistant Secretary for Public and Indian Housing, P

Date Granted: August 3, 1994.

Reason Waived: Pursuant to Section 901 of the HOPE 1 Guidelines, a regulatory provision that is "not otherwise required by law" may be waived by the Assistant Secretary for Public and Indian Housing upon a determination of good cause, and upon documentation of the pertinent facts and grounds supporting the waiver.

Good cause was exhibited as follows:

AHA noted that although it had made substantial progress in carrying out the grants it had encountered unexpected delays due to personnel changes in the housing authority. The personnel changes interrupted progress made on the grants. The AHA desired to complete the remaining tasks under the grants. After taking into consideration the diminished prospects of obtaining future HOPE 1 funding, the AHA concluded that it needed to alter the emphasis of its efforts under the grants to concentrate more on the development of RMCs/RCs than on conducting fesibility studies. Towards that end the AHA requested that it be allowed to revise its budget allocation to conform to the change in emphasis. Successful completion of the grant was contingent upon the extension being granted.

Note to Reader: The person to be contacted for additional information about the waiver-grant items in this listing is: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street, SW., Washington, DC 20410–7000, Telephone: (202) 708–2565.

33. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: Hartford, CT, New Britain, CT, Stanford CT. Waiver of the deadline for submission of a HOME Program description and an Emergency Shelter Grants application.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. Therefore a waiver granting additional time to accomplish the task of coordination was given for good cause.

34. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: City of Fresno, California requested waiver of the deadline for submission of a HOME Program description.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. Therefore a waiver granting additional time to accomplish the task of coordination was given for good cause.

35. Regulation: 24 CFR 92.150(a) & 24 CFR 576.51(a).

Project/Activity: City and County of Honolulu. Waiver of the deadline for submission of a HOME Program description and an Emergency Shelter Grants application.

Nature of Requirement: Subpart D, Section 92.150(a) of the HOME Interim Rule requires that each participating jurisdiction submit its Program Description for a fiscal year to HUD within 45 days of HUD's publication of the HOME formula allocations. For fiscal year 1994, the due date for the Emergency Shelter Grants application is 45 days after the jurisdiction's notification of its grant amount.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The Department found that the existing deadlines hinder the effective coordination of these programs. A waiver granting additional time to accomplish the task of coordination for these two programs was given for cause.

Regulation: 24 CFR 92.214(a)(8).

Project/Activity: The State of West Virginia requested a waiver to allow HOME funds to be used to pay for single owned properties.

Nature of Requirement: The new regulations at 92.214(a)(8) prohibit the use of HOME funds "to pay for the acquisition of property owned by the participating jurisdiction".

Granted by: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 17, 1994.

Reasons Waived: The waiver was granted because the State of West Virginia was in a unique situation. When the regulations at 24 CFR 92.214(a)(8) became effective, the State was in the process of negotiating with fourteen applicants to purchase State-owned properties under a HOME-funded project, an eligible activity under the then current regulations. There was not sufficient time to hold the loan closing prior to the effective date of the regulation. Therefore, the Assistant Secretary determined that the implementation of the regulation would unnecessarily have an impact on the State of West Virginia and the 14 applicants and adversely affect the purpose of the Act.

37. Regulation: 24 CFR 92.222(b).

Project/Activity: The city of Kansas Missouri requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 7, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

38. Regulation: 24 CFR 92.222(b).

Project/Activity: Johnson County, Kansas requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 8, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

39. Regulation: 24 CFR 92.222(b).

Project/Activity: The State of Wisconsin requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 11, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

40. Regulation: 24 CFR 92.222(b).

Project/Activity: The State of Missouri requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 12, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

41. Regulation: 24 CFR 92.222(b).

Project/Activity: The City of Lawrence, Kansas requested that the match reduction made because the area was declared a natural disaster area be extended for Fiscal 1995.

Nature of Requirement: Under the HOME Program, each participating jurisdiction must match its allocation of HOME Program funds. Jurisdictions designated federal "natural disaster areas" are given relief from the match requirements for one year.

Granted by: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 17, 1994.

Reasons Waived: To relieve the jurisdiction of coming up with matching funds that would delay the use of HOME funds in an emergency situation.

42. Regulation: 24 CFR 92.251(a).

Project/Activity: American Samoa and the Commonwealth of the Northern Mariana Islands requested a waiver of regulations to permit emergency repairs as an eligible HOME activity.

Nature of Requirement: Section 92.251(a) provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS), and provides other minimum standards for substantial rehabilitation and new construction.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 14, 1994.

Reasons Waived: The waiver was granted because American Samoa and CNMI have determined that the need in their localities is to provide citizens with assistance which may alleviate a major health hazard. Examples include the installation of a septic tank which will prevent the contamination of drinking water, and the construction of a safety room to provide the family with shelter during typhoons. The waiver would alleviate hardship for American Samoa and CNMI and permitting them to address health hazards.

43. Regulation: 24 CFR 92.251(a).

Project/Activity: The City of Phoenix Arizona requested a waiver of section 92.251(a) to allow the United Methodist Outreach Ministries to use HOME monies for the rehabilitation of 41 units in a transitional housing project.

Nature of Requirement: The regulations provides that housing assisted with HOME funds meet, at a minimum, HUD housing quality standards (HQS) in Section 882.109, and provides other minimum standards for substantial rehabilitation and new construction.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: August 25, 1994.

Reasons Waived: The waiver was granted because using HOME monies for a portion of this project would assist the City and the State in meeting the Department's priority of providing additional housing for homeless families. In addition, not granting the waiver would adversely affect the purposes of the HOME Act, which include expanding the supply of decent, safe, sanitary and affordable housing for low and very low income persons.

44. Regulation: 24 CFR 92.254.

Project/Activity: State of California, San Benito County CPD requested a waiver to CFR 92.254 which limits the value of homes purchased using HOME funds.

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Nature of Requirement: The HOME regulations at 24 CFR 92.254 state that for housing to qualify as affordable housing for homeownership, its purchase price and/or after rehabilitation value cannot exceed 95 percent of the median purchase price for single family housing for the jurisdiction as determined by HUD. If the jurisdiction believes the limits determined by HUD do not accurately reflect 95 percent of the median purchase price, the regulation provides that it may appeal the limits in accordance with 24 CFR 203.28(b).

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: February 22, 1994.

Reason Waived: The HUD Field Office presented data for single family home sales that was determined by the Assistant Secretary to be a reasonable and accurate representation of local market conditions and, therefore, the HOME purchase price/value limits were revised upward for San Benito County.

45. Regulation: 24 CFR 511.11(a).

Nature of Requirement: The City of Phoenix Arizona is requesting to repay its line of credit less than the amount drawn down for the Willow Ridge Apartments. When the project was 50 percent complete, the owners defaulted on the first mortgage which resulted in foreclosure by the lender. The City had drawn down $70,264 and is requesting that HUD accept $60,281.97, the amount in escrow, as the amount that it reimburses its Rental Rehabilitation line of credit for this project.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Date Granted: June 17, 1994.

Reason Waived: HUD accepted the amount on the basis that the rehabilitation was substantially complete, low-income residents of the project and the neighborhood benefited with a relatively minimal amount of Rental Rehabilitation funds. Not waiving this requirement would adversely affect the purposes of the Rental Rehabilitation Program and would place hardship on the city.

46. Regulation: 24 CFR 570.466(c)(3)(i).

Project/Activity: An amendment to the UDAG Grant Agreement awarded to the City of Albuquerque.

Nature of Requirement: Jobs must be created if UDAG monies are used to fund a specific project.

Date Granted: July 8, 1994.

Granted By: Andrew Cuomo, Assistant Secretary for Community Planning & Development.

Reasons Waived: HUD determined that without the waiver to the regulations, the project developer would lose the business rationale for making a partial repayment of the UDAG loan thus causing and perpetuating undue hardship on the pocket of poverty residents, the beneficiaries of these funds.

[FR Doc. 95–4742 Filed 2–24–95; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P and AA–8096–03]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue a reserved minerals conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for 919.79 acres. The lands involved are in the vicinity of Icy Bay, Alaska.

U.S. Survey No. 8967, Alaska;
U.S. Survey No. 8966, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 29, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–4678 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–060–1430–01; FF–84553]

Realty Action: Renewal & Amendment of Airport Lease, Coldfoot, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The State of Alaska Department of Transportation and Public Facilities has requested renewal and amendment of an existing airport lease at Coldfoot, Alaska. The existing lease expires on December 27, 2004. The State has requested renewal for an additional 20 years.

ADDRESSES: Written comments on this notice should be submitted to the District Manager, Bureau of Land Management, Arctic District Office, 1150 University Avenue, Fairbanks, Alaska 99709.

FOR FURTHER INFORMATION CONTACT: Mike Worley, Realty Specialist, at the address given above or at telephone (907) 474–2309 or toll free 800–437–7021.

SUPPLEMENTARY INFORMATION: The following public lands at Coldfoot, Alaska, are being considered for lease to the State of Alaska for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C., Appendix 211–213):

Fairbanks Meridian, Alaska

Township 28 North, Range 12 West, within Tract III, Parcels D, E & F:

Tract III, Parcel D

Commencing at the point of intersection of the westerly boundary of Tract II, Parcel B (left bank of Slate Creek) and the southeastern boundary of Federal Mining Claim "No. 19 Above", designated as Corner #1

Thence S 32° 10′ 09″ W a distance of 147.24 feet to Corner #2;

Thence S 42° 37′ 00″ E a distance of 466.77 feet to Corner #3;

Thence N 32° 10′ 09″ E a distance of 120.00 feet to Corner #4;

Thence S 81° 30′ 00″ E a distance of 550.94 feet to Corner #5 on the left bank of said Slate Creek at the ordinary high water line;

Thence continuing along the meanders of Slate Creek at the line of ordinary high water in a westerly direction, said meanders being generally described by the following predominant courses and distances from the last described point;

N 60° 17′ 46″ W a distance of 177.39 feet to Corner #6;

N 38° 50′ 04″ W a distance of 90.82 feet to Corner #7;

N 05° 11′ 52″ E a distance of 140.72 feet to Corner #8;

N 18° 49′ 27″ E a distance of 134.64 feet to Corner #9;

N 39° 02′ 45″ W a distance of 84.64 feet to Corner #10;

N 79° 58′ 58″ W a distance of 242.72 feet to Corner #11;

S 45° 15′ 07″ W a distance of 91.50 feet to Corner #12;

S 81° 38′ 04″ W a distance of 159.52 feet to Corner #13;

S 89° 32′ 18″ W a distance of 176.46 feet to Corner #1;

Said parcel contains 6.526 acres, more or less and is depicted as Tract III, Parcel D.

Tract III, Parcel E

Commencing at the point of intersection of the southwesterly boundary of Tract I, Parcel B and southerly boundary of Federal Mining Claim "No. 19 Above", designated as Corner #1

S 32° 10′ 09″ W a distance of 114.64 feet to Corner #2;

N 87° 03′ 07″ E (right bank of Slate Creek) a distance of 195.62 feet to Corner #3;

N 53° 08′ 01″ E (right bank of Slate Creek) a distance of 85.33 feet to Corner #4;

Thence departing said meanders, N 79° 58′ 58″ W along the northerly boundary line of Federal Mining Claim "No. 19 Above Association", a distance of 205.72 feet to Corner #1;

Said parcel contains 9.358 acres, more or less, and is depicted as Tract III, Parcel E.

Tract III, Parcel F

Commencing at the point of intersection of the southeast boundary of Tract I, Parcel B and the northeasterly boundary (right bank of meandering Slate Creek at the ordinary high water line) of Tract II, Parcel B, designated as Corner #1

S 00° 54′ 47″ E a distance of 117.41 feet to Corner #2;

S 33° 22′ 53″ W a distance of 63.29 feet to Corner #3;

S 51° 32′ 37″ W a distance of 88.85 feet to Corner #4;

S 12° 14′ 58″ E a distance of 99.92 feet to Corner #5;

S 63° 16′ 24″ E a distance of 159.23 feet to Corner #6;

Thence, departing said meanders, N 32° 10′ 09″ E along the western boundary of Federal Mining Claim "Discovery Slate Creek", a distance of 381.99 feet to Corner #7;

Thence N 57° 10′ 13″ W along the southwesterly boundary of Tract I, Parcel B, a distance of 64.49 feet to Corner #8;

Thence N 79° 58′ 58″ W a distance of 209.54 feet to Corner #1;

Said parcel contains 1.807 acres, more or less, and is depicted as Tract III, Parcel F.

Total acreage of Parcels D, E and F, approximately 8.691 acres.

The above described lands have been, and remain, segregated from all appropriation under the public land laws, including the mining laws but not the mineral leasing laws. The lease would be renewed for an additional 20 years.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit written comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objection, the final determination of the Department of the Interior will be made in accordance with this notice.

Dated: February 14, 1995.

Dee R. Ritchie,

Arctic District Manager.

[FR Doc. 95–4640 Filed 2–24–95; 8:45 am]

BILLING CODE 1430–JA–M

[ID–014–05–1430–01; IDI–20591, IDI–20592, IDI–20593, IDI–28296, IDI–29211, IDI–29212]

Notice of Realty Action, Sale of Public Lands in Boise County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Lands in Boise County.

SUMMARY: The following-described public lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than appraised fair market value. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, Idaho

1. IDI–20591, George Stuchberry

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 3.
Containing 0.78± acre.

2. IDI–20592, Bud St. Joer

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 1.
Containing 0.37± acre.

3. IDI–29211, Robert & Roberta Collins and Richard & Carol Huelskamp

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 2.
Containing 0.08± acre.

4. IDI–29212, Edna Cheny

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 4.
Containing 0.08± acre.

5. IDI–20593, James Hall

T. 10 N., R. 4 E., B.M., Idaho
Section 13; Lot 7.
Containing 0.05± acre.

6. IDI–28296, Robert & Hazel Kite

T. 8 N., R. 3 E., B.M., Idaho
Section 18; Lot 10.
Containing 0.07± acre.

DATES: Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from appropriation under the public land laws, including the mining laws, excepting the sale provision of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Cascade Area Realty Specialist, at the above address or (208) 384–3357.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to the adjacent landowners, who through no fault of their own believed the land to be theirs when they purchased the adjoining private land. Selling these parcels will alleviate encroachment problems and resolve title problems for the landowners. These lands have been inspected and found prospectively valuable for geothermal resources. The geothermal resources have been appraised for a fair market value of $1.50 per acre. Acceptance of the sale offer will constitute an application for conveyance of the mineral estate. A separate non-refundable fee of $50.00 will be required from each of the purchasers, plus $1.50 per acre, for conveyance of the mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Boise District, at the above address. Any adverse comments will be reviewed by the District Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 USC 945).

2. A reservation to the Bureau of Land Management for public access to adjacent public lands, IDI–31114, under the Act of October 21, 1976, (43 USC 1767), through Lots 1 and 2, section 13, T. 10 N., R. 4 E.

Subject to

3. Those rights for transmission line purposes granted to Idaho Power Company, its successors or assigns, by right-of-way no. IDI–30923, under the Act of October 21, 1976, (43 USC 1761), through Lots 1, 2, and 3, section 13, T. 10 N., R. 4 E.

Dated: February 17, 1995.

R.E. Schmitt,

Acting District Manager.

[FR Doc. 95–4641 Filed 2–24–95; 8:45 am]

BILLING CODE 4310–GG–M

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[ID-030-05-1430-01; ID-28900]

Exchange of Public Lands in Clark County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Clark County, ID.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian

T. 10 N., R. 33 E.
Sec. 21, S½N½SE¼SW¼, S½SE¼SW¼,
Sec. 28, E½NW¼, SE¼.

The land described contains 270 acres in Clark County.

In exchange for these lands, the United States will acquire the following described lands from Franklin Sullivan:

Boise Meridian

T. 11 N., R. 34 E.
Sec. 9, S½SE¼,
Sec. 15, NW¼NW¼.

The land described contains 120 acres in Clark County.

DATES: The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. This segregative effect of this notice will terminate upon issuance of patent or in two years, which ever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the BLM, Idaho Falls District office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a one half mile segment of a live stream and its associated wildlife and riparian habitat. The public lands to be exchanged are dry grazing lands adjoining private property. The exchange is consistent with the Bureau of Land management's land use plan. The public interest will be well served by making the exchange. The value of the lands to be exchanged is approximately equal.

The federal lands would be exchanged subject to the following exceptions, reservations and conditions:

—A reservation of all minerals.
—A right-of-way reservation for ditches and canals constructed under the Act of August 30, 1890.
—Subject to powerline right-of-way IDI-2414 held by Utah Power & Light Co.

The private lands would be exchange subject to the following:

—Powerline easement for road purposes recorded May 12, 1919 (Book 1 of Deeds, Page 77), records of Clark County.
—Reservation of mineral rights.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Associate District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 15, 1995.

Gary Bliss,
Associate District Manager

[FR Doc. 95-4642 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-4210-05; N-59066]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Clark County proposes to use the land for a maintenance operations facility.

Mount Diablo Meridian, Nevada

T. 21 S., R. 61 E.
Sec. 31, Lots 21, 26, 27, 28, 30, 35, 36
W½W½NE¼NW¼,
SE¼SW¼NE¼NW¼,
SW¼SE¼NE¼NW¼,
E½SE¼NE¼NW¼.

Containing 38.34 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. Easements in favor of Clark County for roads, public utilities, and flood control purposes.

2. Those rights for an access road and public utility purposes which have been granted to Clark County by Permit No. N-54006 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for flood control purposes which have been granted to Clark County by Permit No. N-59041 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 13, 1995.

Mike Dwyer,
District Manager, Las Vegas, NV

[FR Doc. 95-4643 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-HC-M

[NV-040-1430-02; N-57067]

Realty Action: Recreation and Public Purposes Act, White Pine County, NV

ACTION: Amenmdment to Notice of Realty Action.

SUMMARY: On Monday, August 23, 1993, the BLM Ely District Office issued a Notice of Realty Action to classify as suitable for disposal pursuant to the provision of the Recreation and Public Purposes Act, as amended, 43 U. S. C. 860, et seq., certain public lands in White Pine County, Nevada. The subject land will be used by White Pine County for a non-hazardous solid waste disposal facility.

This segregation was in effect for 18 months. This segregation is hereby extended an additional two years to allow for the completion of the transfer.

Except as amended hereby, the notice published August 31, 1993 stands as written.

Dated: February 9, 1995.

Hal M. Bybee,
Acting District Manager.

[FR Doc. 95-4644 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-HC-P

[AZ-010-95-1610]

Arizona Strip District Resource Management Plan: Intent to Amend

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Arizona Strip District Resource Management Plan, Arizona.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR part 1600) this notice advises the public that the Arizona Strip District, Bureau of Land Management, is proposing to amend the Arizona Strip District Resource Management Plan in order to implement management practices that will help recover the Northeastern Mojave Desert population of desert tortoises. The main issues anticipated in this plan amendment are: (1) recovery of the northeastern Mojave Desert population of desert tortoises, listed by the U.S. Fish and Wildlife Service as threatened; and (2) impacts on existing and future uses of resources on public lands in the Mojave Desert managed by the Arizona Strip District.

This amendment is limited to the area categorized as desert tortoise habitat (Arizona Strip Resource Management Plan, 1991) or designated by the U.S. Fish and Wildlife Service as critical habitat for desert tortoises.

A land use plan amendment and environmental analysis will be prepared for the subject lands by an interdisciplinary team including range, wildlife, recreation, minerals, lands and realty, and cultural resource specialists. The existing land use plans and maps are available for review at the Shivwits Resource Area Office in St. George, Utah.

DATES: Interested parties may submit comments to the District Manager at the address shown below on or before May 5, 1995.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: George Cropper, Area Manager, Shivwits Resource Area, 345 E. Riverside Drive, Suite 103, St. George, Utah 84770, (801) 628-4491 to obtain additional information regarding this plan amendment.

Roger G. Taylor,
District Manager.

[FR Doc. 95-4750 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-32-P

[NV-942-05-1420-00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6541.

SUPPLEMENTARY INFORMATION:

1. The supplemental plats of the following described lands were officially filed at the Nevada State Office, Reno, Nevada on January 20, 1995:

The supplemental plat showing new lottings created by the segregation of Mineral Survey No. 4777 in section 24, T. 12 S., R. 46 E., Mount Diablo Meridian, Nevada, was accepted on January 13, 1995.

The supplemental plat showing amended lottings created by the segregation of Mineral Survey No. 4777 in section 19, T. 12 S., R. 47 E., Mount Diablo Meridian, Nevada, was accepted on January 13, 1995.

These plats were prepared at the request of Mr. Gary Babbitt for R. T. Vanderbilt Co., Inc.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 31, 1995:

The plat representing the dependent resurvey of a portion of the subdivision of section 12, the further subdivision of section 12, and the metes-and-bounds survey of Lot 1, section 12, T. 14 N., R. 19 E., Mount Diablo Meridian, Group No. 746, Nevada, was accepted January 24, 1995.

This survey was executed to meet certain administrative needs of the U. S. Forest Service.

3. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on April 12, 1995:

The plat representing the independent resurvey of the Third Standard Parallel North, through Range 33½ East, and the survey of a portion of the subdivisional lines of T. 16 N., R. 33½ E., Mount Diablo Meridian, Group No. 695, Nevada, was accepted January 19, 1995

The plat, in four sheets, representing the dependent resurvey of a portion of Mineral Survey Nos. 2664 and 3206, an independent resurvey of the Third Standard Parallel North, through a portion of Range 34 East; and the survey of a portion of the subdivisional lines and a portion of the Lahontan Valley Bombing Range Boundary, T. 16 N., R. 34 E., Mount Diablo Meridian, Group No. 695, Nevada, was accepted January 19, 1995.

These surveys were executed to meet certain administrative needs of the U. S. Navy.

4. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, emergency closures, and other segregations of record, those portions of the lands listed for T. 16 N., R. 34 E., under item 3 as "survey" are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to April 12, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

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5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: February 15, 1995

John S. Parrish,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 95-4645 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-HC-P

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of receipt of applications for permits.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 798744

Applicant: Kootenai Tribe of Idaho, Fisheries Program, Bonners Ferry, Idaho

The applicant requests a permit to take (capture, collect, radio tag, mark, and release) the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) in the Kootenai River, Idaho to conduct captive propagation and scientific research to enhance the propagation and survival of the species.

Permit No. 799001

Applicant: University of Hawaii, Department of Zoology, Honolulu, Hawaii

The applicant requests a permit to take (capture, mark, band, take blood, measure, and release) Hawaii akepas (*Loxops coccineus coccineus*), Hawaii creepers (*Oreomystis mana*), akiapolaaus (*Hemignathus munroi*), and Hawaiian hawks (*Buteo solitarius*) on the island of Hawaii for scientific research to enhance the survival of the species. These studies were previously authorized under the Regional Director's permit no. PRT-702631.

DATES: Written comments on the permit applications must be received by March 29, 1995.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents, within 30 days of the date of publication of this notice, to the following office: U.S. Fish and Wildlife Service, Ecological Services, Division of Consultation and Conservation Planning, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. Telephone: 503-231-2063; FAX: 503-231-6243. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 16, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95-4680 Filed 2-24-95; 8:45 am]

BILLING CODE 4310-55-P

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB-32 (Sub-No. 60X) and AB-355 (Sub-No. 12X)]

Boston and Maine Corporation—Abandonment Exemption—in Hillsboro County, NH; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Hillsboro County, NH

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for B&M to abandon and ST to discontinue service over a segment of B&M's line of railroad, known as the Portsmouth Branch (the Line), between milepost 37.10 and milepost 39.68, a distance of approximately 2.58 miles, in Manchester, Hillsboro County, NH.

B&M and ST certify that: (1) No local traffic has moved over the Line for at least 2 years; (2) any overhead traffic on the Line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 29, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 9, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: John R. Nadolny, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

B&M and ST have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 3, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95-4707 Filed 2-24-95; 8:45 am]

BILLING CODE 7035-01-P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of this notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment assistance, at the address shown below, not later than March 9, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 9, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Cannon Shoe/Thurmont Shoe (Wkrs)	Thurmont, MD	2/13/95	12/09/94	30,722	Men's leather dress shoes.
R. Neumann & Co (Wkrs)	Hoboken, NJ	2/13/95	02/01/95	30,723	Leather grips and bookmarks.
Boise Cascade Corp (WCIW	Council, ID	2/13/95	01/30/95	30,724	Raw wood products.
Gerrity Oil & Gas (Wkrs)	Denver, CO	2/13/95	01/31/95	30,725	Oil and gas.
Goldtex, Inc (Wkrs)	Goldsboro, NC	2/13/95	01/30/95	30,726	Childrens apparel.
Takata Fabrication Corp (Wkrs)	Piqua, Ohio	2/13/95	02/01/95	30,727	Automobile seat belts.
Waca Oil & Gas (Wkrs)	Glenville, WV	2/13/95	02/03/95	30,728	Natural gas and crude oil.
Oxford of Belton (Co)	Belton, SC	2/13/95	02/03/95	30,729	Ladies blouses.
Genlyte Group (Wkrs)	Secaucus, NJ	2/13/95	01/29/95	30,730	Model makers.
C&J Clark America (Wkrs)	Franklin, WV	2/13/95	01/30/95	30,731	Men's shoes.
Contract Apparel (Wkrs)	El Paso, TX	2/13/95	01/24/95	30,732	Sewing.
McDonnel Douglas CorpUAW	Monrovia, CA	2/13/95	01/31/95	30,733	Commercial passenger aircraft.
Artex Mfg (Co)	Yates Center, KS	2/13/95	01/30/95	30,734	Sportswear.
Washington Public Power Supply (IBEW)	Richland, WA	2/13/95	01/27/95	30,735	Electrical energy.
Exxon Upstream Technical Computing (Wkr)	Houston, TX	2/13/95	01/31/95	30,736	Oil and gas.
Native Textiles (Wkr)	Dallas, PA	2/13/95	02/02/95	30,737	Knitting fabric.
F and M Hat Company (Co)	Denver, PA	2/13/95	02/06/95	30,738	Wool felt hat bodies.
Control Powers (Wkr)	Ardmore, OK	2/13/95	01/16/95	30,739	Switch gears.

[FR Doc. 95-4713 Filed 2-24-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30, 137]

Diamond Tool and Horseshoe Co; Duluth, MN; Notice of Affirmative Determination Regarding Application for Reconsideration

On February 8, 1995, after being granted a filing extension, the workers and the Diamond Tool Directly Affiliated Labor Union (DALU) Local 18650 AFL-CIO requested administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on November 28, 1994 and published in the Federal Register on December 16, 1994 (59 FR 65076).

The workers submitted an additional list of customers who reported increased imports in the relevant period.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-4733 Filed 2-24-95; 8:45 am]

BILLING CODE 4510-30-M

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[TA–W–27,593 Cody, WY; TA–W–27,593A Bakersfield, CA]

Marathon Oil Co.; Exploration and Production; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 21, 1992, applicable to all workers of the subject firm. The certification was published in the **Federal Register** on November 3, 1992 (57 FR 49722).

At the request of one of the workers and the company, the Department reviewed the certificatioh for workers of the subject firm. New findings show that worker separations occurred at Bakersfield, California.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Marathon Oil Company, Exploration and Production in Cody, Wyoming and in Bakersfield, California who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–27,593 is hereby issued as follows:

"All workers of Marathon Oil Company, Exploration and Production, Cody, Wyoming and Bakersfield, California who became totally or partially separated from employment on or after July 29, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 14th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4717 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,578]

McKay Drilling Co.; Aurora, CO and Operating at Other Sites in the Following States: TA–W–30,578A North Dakota; TA–W–30,578B Wyoming; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 30, 1995, one of the petitioners requested administrative reconsideration of the Department's notice of termination of investigation. The notice was issued on January 13, 1995 and published in the **Federal Register** on January 27, 1995 (60 FR 5440).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that McKay Drilling ceased operations in January, 1986 when all the workers were separated.

Your petition dated December 1, 1994 sought TAA for the McKay Drilling workers. However, the worker separations of more than eight years ago are out of scope for any consideration for trade adjustment assistance. The statute (Trade Act of 1974) at Section 223 specifically states that no certification shall apply to any worker whose separation was more than one year prior to the date of the petition. Accordingly, the investigation was terminated since it would serve no purpose to continue.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4732 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,468]

Pontiac Weaving Corp.; Cumberland, RI; Notice of Affirmative Determination Regarding Application for Reconsideration

On January 13, 1995, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on January 6, 1995 and will soon be published in the **Federal Register**.

New findings show that the parent company of Pontiac Weaving increased its imports in 1994.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4734 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,328, TA–W–30,329, TA–W–30,329A, TA–W–30,329B, TA–W–30,329C]

United Technologies Corporation; Pratt and Whitney, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a certification of Eligibility to Apply for Worker Adjustment Assistance on December 13, 1994, applicable to all workers at United Technologies Corporation, Pratt & Whitney located in North Haven and Southington, Connecticut. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4195).

The Department reviewed the certification for workers of the subject firm. The findings show that production of jet engine parts at Pratt & Whitney facilities in Connecticut, including East Hartford, Middletown, and Rocky Hill is integrated with that of the North Haven and Southington plants.

The intent of the Department's certification is to include all workers of Pratt & Whitney. The amended notice applicable to TA–W–30,328 and TA–W–30,329 is hereby issued as follows:

"All workers of United Technologies Corporation, Pratt & Whitney, North Haven, Connecticut (TA–W–30,328); Southington, Connecticut (TA–W–30,329); East Hartford, Connecticut (TA–W–30,329A); Middletown, Connecticut (TA–W–30,329B); and Rocky Hill, Connecticut (TA–W–30,329C) engaged in employment related to the production of jet engine parts who became totally or partially separated from employment on or after September 7, 1993 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 16th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4714 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,927; NAFTA–00120]

Walker Manufacturing Co.; Hebron, OH; Notice of Revocation of Negative Determination

This notice revokes the Notice of Negative Determination on Reconsideration for petitions TA–W–29,927 and NAFTA–00120 which was published on page 8065 in the **Federal Register** on February 10, 1995 (60 FR 8065) in Document Number FR 95–3404.

This notice is revoked since it was published prematurely.

Signed in Washington, D.C., this 14th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–4716 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00261]

Mahan Western Industries, Inc., Leather and Heel Department A/K/A Miller Manufacturing Leather and Heel Department; El Paso, TX; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 22, 1994, applicable to all workers of the leather and heel department of the subject firm in El Paso, Texas.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Mahan Western Industries, Inc., are being reported under the Unemployment Insurance tax account for Miller Manufacturing, EL Paso, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of Mahan Western Industries, Inc., formerly Miller Manufacturing in El Paso, Texas.

The amended notice applicable to NAFTA–00261 is hereby issued as follows:

"All workers of the Leather and Heel Department of Mahan Western Industries, Inc., a/k/a Miller Manufacturing, Leather and Heel Department, El Paso, Texas who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, DC., this 16th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 95–4715 Filed 2–24–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: March 20, 1995; 3:30pm–6:30pm; March 2, 1995; 8:30am–5:00pm; March 22, 1995; 8:30am–12:00pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230—March 20, 1995; Rooms 365, 370, 375; March 21, 1995; Rooms 365, 375, 380; 390; March 22, 1995; Rooms 365, 370, 380.

Type of Meeting: Closed.

Contact Person: Gilbert B. Devey, Program Director, Biomedical Engineering & Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting. To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–4661 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Dates and Times: March 12, 1995 from 8:00 pm to 10:00 pm; March 13–15, 1995 from 8:00 am to 6:00 pm; March 16, 1995 from 8:30 am until 12:00 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological Instrumentation and Resources (BIR), Room 615 National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF

Agenda: To review and evaluate proposals submitted in response to the Macromolecular Structure Database proposal solicitation (NSF 92–96).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–4665 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis in Biological Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 643, as amended), the National Science Foundation announces the following meeting of the Special Emphasis Panel in Biological Sciences (1754).

Date and Time: March 16, 17, 1995; 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, Conference Room 390.

Type of Meeting: Closed.

Closed: March 16, 17, 1995; 8:30 a.m. to 6:00 p.m.

Contact Persons: Dr. David Capco or Dr Marcia Steinberg, National Science

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Foundation, Room 655 South-Arlington, Virginia 22230, Telephone: 703/306–1442 or 306–1443.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research for women in Molecular and Cellular Buosciences.

Agenda: To review and evaluate Research Planning and Career Advancement proposals for Women Scientists and Engineers as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information; concerning individuals associated with the proposals. These matters are with exemption (4) and (6) of 5 U.S.C. 522(c), Government in the Sunshine Act.

Dated: February 21, 1995.

[FR Doc. 95–4668 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (#1193).

Date and Time: April 4, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 1150, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Harry G. Hedges, Program Director, CISE/CDA, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Minority Institutions Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4660 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation -#1194).

Date and Time: March 15, 1995, 8:30 a.m.-5:00 p.m.

Place: Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Warren DeVries, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Grant Opportunities for Academic Liaison with Industry (GOALI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4667 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569)

Date: March 15, 16 & 17, 1995.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4666 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering.

Date and Time: March 20 and 21, 1995; 8:30 a.m.–5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ken Chong, Program Director, Structural Systems and Construction Process Program, Dr. Priscilla Nelson, Program Director, Geomechanical, Geotechnical and Geo-Environmental Program, or Dr. John Scalzi, Program Director, Large Structural & Building Systems, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: The combined programs of Structures, Geomechanical and Building Systems will convene a Committee of Visitors to review the programs.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act would be improperly disclosed.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–4662 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development #1199.

Date and Time: March 13 & 14, 1995—8:00 a.m.–5:00 p.m.,

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA, Room 380

Type of Meeting: Closed.

Contact Person: Betty Jones & Costello Brown, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate programs for Comprehensive Partnerships for Minority Student Achievement (CPMSA) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–4664 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research.

Date and Time: April 25th and 26th, 1995 @ 8:15 am.

Place: National Science Foundation, Rooms 680, 1020, 1150, 1005, 365, 379, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: G. X. Tessema, and H. Hollis Wickman, DMR, PDs, Room: 1065, Phone: 703–306–1995

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals.

Agenda: To review and evaluate CMP proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Office

[FR Doc. 95–4659 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Materials Research (#1203).

Date and Time: March 13–15, 1995; 8:00 a.m. to 5:00 p.m.

Place: Florida State University, Tallahassee, FL.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Executive Officer, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–182; FAX (703) 306–0515.

Purpose of Meeting: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory

Agenda: To review and evaluate the progress report and proposal for continued funding from the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–4669 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and Time: March 16, 1995 7:30 p.m. to 9:00 p.m.; March 17, 1995; 8:30 a.m. to 5:00 p.m.; March 18, 1995; 8:30 a.m. to 5:00 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Jim Lightbourne, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1667

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda To review and evaluate unsolicited proposals submitted to the Course and Curriculum Development (CCD) Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 21, 1995.

M. Rebecca Winkler,

Committee Management Officer

[FR Doc. 95–4663 Filed 2–24–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Power Co. Palisades Plant; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–20, issued to the Consumers Power Company, the licensee, for operation of the Palisades Nuclear Plant The plant is located at the licensee's site in Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the low temperature over-pressure protection (LTOP) setpoint for the Palisades Plant. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this code case has been incorporated into appendix G of Section XI of the ASME

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Code and published in the 1993 Addenda to Section XI.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allows the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code.

The proposed action is in accordance with the licensee's request for exemption dated February 10, 1995.

The Need for the Proposed Action

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure-relieving devices in the form of power-operated relief valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoing within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Palisades, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Palisades reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Because adequate safety margins will be maintained, the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the proposed action. Denial of the exemption would not reduce environmental impacts associated with the facility.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Palisades Plant, dated June 1972, and its addendum dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Michigan State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for exemption dated February 10, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Van Wylen Library, Hope College, Holland, MI 49423.

Dated at Rockville, Maryland, this 21st day of February, 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4730 Filed 2–24–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75, issued to Public Service Electric and Gas Company, et al. (PSE&G or the licensee) for operation of Salem Nuclear Generating Station (SNGS), Units 1 and 2, located in Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

By letter dated April 16, 1993 (NLR–N83042), PSE&G requested a license amendment to reflect changes to the Updated Final Safety Analysis Report (USFAR) for Salem, Units 1 and 2. The proposed UFSAR change would add an exception to a general statement in the containment isolation system description. The general statement is that automatic containment isolation valves that receive signals to close, fail closed on loss of air or power. The proposed exception would apply to the outboard isolation valves for the control air system. These four valves (11, 12, 21, and 22CA330, collectively identified as CA–330) fail closed on loss of air but fail as-is upon loss of the vital 125 VDC power supply to their solenoid control valves.

Need for Proposed Action

The revision of the licensing basis is needed to exempt the CA–330 valves from the general statement in the USFAR that automatic containment isolation valves that receive signals to close, fail closed on loss of air or power. The staff has examined the design of the isolation system for the control air header piping penetration. With the exception of the failure position for valve CA–330 on loss of its 125 VDC power supply, the design meets all applicable criteria. Failure of the 125 VDC power supply results in a slight degradation in containment isolation reliability. Upon failure of the 125 VDC power supply, the valve will remain in the "as is" position. Since the valve is normally open, this means that the valve will stay open and will not close on an isolation signal or loss of air header pressure. For all other single failures, the valve will automatically close upon either loss of air or an isolation signal.

Environmental Impacts of the Proposed Action

The staff has evaluated the conditions for the "as-is" failure and finds that the reduction in safety margin due to this condition is acceptably small. First of all, there is a check valve in series with the air-operated valve so that containment integrity is maintained at all times. Secondly, the probability of loss of air pressure is quite low since the normal air supply is backed up with a safety grade supply which is activated automatically upon sensing low air pressure. With an operable air supply, the penetration is not a containment leak path since the air pressure is greater than the peak calculated containment pressure.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station, Units 1 and 2, dated April 1973.

Agencies and Person Contacted

In accordance with its stated policy, the staff consulted with the New Jersey State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application for license amendments dated April 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4731 Filed 2–24–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26233]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

February 17, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

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provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 15, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issues in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–8523)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its wholly owned subsidiary, EUA Cogenex Corporation ("Cogenex"), P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43(a) and 45(a) promulgated thereunder.

Cogenex requests authority to acquire a non-associate company, Highland Energy Group, Inc. ("Highland Energy"), in a transaction structured as a statutory merger of Highland Energy with a subsidiary of EUA to be established for the acquisition. Highland Energy is a national energy services company that has extensive experience in the industry of energy efficiency. Highland Energy designs, executes, finances, monitors, maintains, and guarantees energy savings programs for public consumers, such as schools and hospitals, and for private energy consumers, such as office buildings and businesses, under multi-year contracts.

To effect the acquisition, EUA would establish a subsidiary ("Newco") which would acquire the shares of Highland Energy in exchange for shares of EUA. The initial authorized capitalization of would be 200,000 shares of common stock, $.01 par value, of which 10,000 would be issued to EUA for $100. Following the establishment of Newco and its acquisition of the shares of Highland Energy, Newco would change its name to EUA Highland Corporation ("EUA Highland") and Cogenex would acquire all the shares of EUA Highland from EUA for $100.

The consideration for the acquisition by Newco of Highland Energy will be in EUA common shares to be paid at the time Highland Energy shares are transferred to Cogenex ("Closing") plus a contingent earn-out amount, to be paid in EUA common shares at a later time. Any amounts representing fractional shares will be paid in cash. The payment made at the Closing will be worth an estimated $4.2 million ("Closing Amount"), measured by the average closing market price over a 5-day period before the Closing.

The earn-out amount to be paid later in EUA common shares will range from zero to $3.8 million, measured by the average closing market price over a 5-day period before the date the earn-out amount is due. The amount owed at that time will be based on the earnings performance of EUA Highland over the three year period following the Closing. Notwithstanding the foregoing, EUA's obligation to pay the earn-out amount in EUA shares is limited to the number of shares used to pay the Closing Amount. Any excess of the earn-out amount over the value, measured as described in this paragraph, of the number of shares issued by EUA to pay the earn-out amount will be payable in cash. Assuming an EUA common share price of $22.00 per share, up to 363,636 common share of EUA could be issued in the acquisition.

Additionally, Cogenex requests authority through December 31, 1997 to make investments in EUA Highland in any combination of capital contributions or short-term loans not to exceed a combined aggregate amount of $10 million. The terms of such short-term borrowing will be the same terms as those for funds borrowed by Cogenex from EUA under its system lines of credit. Further, Cogenex requests authorization to guarantee performance obligations of EUA Highland in connection with ongoing operations, in amounts that in aggregate will not exceed $10 million.

New England Electric System, et al. (70–8555)

New England Electric System ("NEES"), a registered holding company, and its wholly owned nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI"), both of 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9, 10 and 12(b) of the Act and rule 45 thereunder.

By Commission orders dated September 4, 1992 (HCAR No. 25621) and April 1, 1994 (HCAR No. 26017), NEERI was authorized to provide electrical related and consulting services to nonaffiliates and NEES was authorized to provide financing to NEERI. By Commission order May 25, 1994 (HCAR No. 26057), NEERI was authorized to invest in a company formed to develop, manufacture and market a low harmonic distortion uninterruptible power supply and NEES was authorized to provide additional financing to NEERI.

NEERI now proposes to engage in preliminary research and development activities ("Development Activities") in connection with potential investments in exempt wholesale generators and foreign utility companies. NEES proposes to provide up to $10 million to NEERI from time-to-time through December 31, 1997, through capital contributions and/or non-interest bearing subordinated loans, for NEERI's Development Activities.

Central and South West Corporation, et al. (70–8557)

Central and South West Corporation ("CSW"), a registered holding company its service company subsidiary, Central and South West Services, Inc. ("Services"), both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, CSW's public-utility subsidiary companies, Central Power and Light Company ("CPL"), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156–0001, West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, and a nonutility subsidiary company, Transok, Inc. ("Transok"), 2 West Sixth Street, Tulsa, Oklahoma 74119 (collectively, "Subsidiaries") have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 54 thereunder.

CSW and its Subsidiaries propose to continue, through March 31, 1997, their short-term borrowing program, which includes the sale of commercial paper by CSW to commercial paper dealers and financial institutions and the sale of short-term notes to banks and their trust departments by CSW and the Subsidiaries ("External Program") and the CSW System money pool ("Money Pool"), as previously authorized by orders dated March 31, 1993, September 28, 1993, March 18, 1994, June 15, 1994, and February 1, 1995 (HCAR Nos. 25777, 25897, 26007, 26066 and 26226, respectively) ("Prior Orders"). The External Program would be coordinated through the use of the Money Pool, whereby CSW and its Subsidiaries would make loans to, and the Subsidiaries would borrow from, the Money Pool. Loans to the Subsidiaries through the Money Pool will be made pursuant to open-account advances or loans evidenced by notes.

The External Program and the Money Pool would make funds available to the Subsidiaries for the interim financing of their capital expenditure programs and their other working capital needs, and to CSW to loan and, when approved by the Commission, to make capital contributions to any of the Subsidiaries and in both instances to repay previous borrowings incurred for such purposes. Funds for the Money Pool would be available from surplus funds from the treasuries of CSW and the Subsidiaries, from proceeds from the sale of commercial paper by CSW and bank borrowings by CSW and its Subsidiaries. Funds to be loaned to the Subsidiaries are obtained in the following order of priority: (1) Available surplus funds of the Subsidiaries will be used to satisfy the borrowing needs of other Subsidiaries before any funds of CSW are used; (2) available surplus funds in CSW's treasury; and (3) external borrowings by CSW from the sale of commercial paper and/or bank borrowings. External borrowings by CSW would not be made unless there were no surplus funds in the treasuries of the Subsidiaries or CSW sufficient to meet borrowing needs. However, no loan will be made by CSW or any Subsidiary if the borrowing company could borrow more cheaply directly from banks or through the sale of its own commercial paper. When more than one Subsidiary is borrowing, each borrowing Subsidiary will borrow *pro rata* from each fund source in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Money Pool.

The interest rate applicable on any day to the then outstanding loans through the Money Pool will be the composite weighted average daily effective cost incurred by CSW for short-term borrowings from external sources. If there are no borrowings outstanding then the rate would be the certificate of deposit yield equivalent of the 30-day Federal Reserve "AA" Industrial Commercial Paper Composite Rate ("Composite"), or if no composite is established for that day then the applicable rate will be the Composite for the next preceding day for which the Composite is established.

The aggregate principal amounts of short-term borrowing outstanding at any one time requested by CSW and its Subsidiaries are: (1) CSW—$1.2 billion; (2) CP&L—$300 million; (3) PSO—$125 million; (4) SWEPCO—$150 million; (5) WTU—$65 million; (6) Services—$110 million; and (7) Transok—$200 million. These amounts reflect an increase in borrowing levels from those authorized in the Prior Orders for: (1) CSW of $250 million to accommodate additional investments in CSW International, Inc., CSW Energy, Inc., CSW Communications and new Money Pool and short-term borrowing requirements; (2) PSO of $25 million to provide interim financing for additional capital expenditures and other temporary working capital needs; and (3) WTU of $15 million to provide interim financing for additional capital expenditures and other temporary working capital needs. The aggregate principal amount of outstanding borrowings for CSW and its Subsidiaries together will not exceed $1.2 billion.

To provide funds for the Money Pool, CSW proposes to issue and sell commercial paper ("Commercial Paper"). The Commercial Paper will mature in 270 days or less and will be issued from time-to-time through March 31, 1997 to commercial paper dealers ("Dealers") and certain financial institutions.

The Commercial Paper issued to Dealers will be in the form of either physical or book-entry unsecured promissory notes. Such notes will be issued and sold by CSW directly to Dealers at a rate not to exceed the rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity sold by issuers thereof to Dealers. No commission or fee will be payable in connection with the issuance and sale of the Commercial Paper. The purchasing dealer, however, will reoffer the notes at a rate less than the rate to the issuer and, as principal, will reoffer such notes in such a manner as not to constitute a public offering under the Securities Act of 1933.

Sales of Commercial Paper directly to financial institutions will be undertaken only if the resulting cost of money is equal to or less than that available from Dealers or banks. Terms for directly placed notes would be similar to those of dealer placed notes.

CSW and its Subsidiaries further propose to borrow money from banks, from time-to-time through March 31, 1997, to the extent that the surplus funds of CSW and the Subsidiaries are insufficient to meet the Subsidiaries' requests for short-term loans and subject to the limitations on aggregate principal amounts, above. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's Commercial Paper and, in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of borrowing. The borrowings will be evidenced by promissory notes maturing no later than March 31, 1997 and will be subject to prepayment by the borrower, or under certain circumstances with consent of the lending bank, in whole at any time or in part from time-to-time, without penalty.

Compensation arrangements under lines of credit with banks maintained by CSW and its Subsidiaries are on a balance or fee basis. In general, fees range from 1/10 to 1/8 of 1% per annum on the average unused portion of the commitment and balance arrangements require average balances of 3% of the amount of the commitment. CSW also proposes, from time-to-time through March 31, 1997, to borrow funds managed by the trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

Neither CSW nor the Subsidiaries will use the proceeds from the proposed borrowings to finance the acquisition of an "exempt wholesale generator" or "foreign utility company," as respectively defined in Sections 32 and 33 of the Act, without further Commission authorization.

The Southern Company, et al. (70–8567)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned subsidiary company, Southern Nuclear Operating Company, Inc. ("Southern Nuclear"), 40 Inverness Center Parkway, Birmingham, Alabama 35204, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

Southern Nuclear proposes to borrow, from time to time through March 31, 1998, from Southern or other lenders up to an aggregate principal amount of $10 million at any time outstanding.

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Borrowings from Southern will have maturities not to exceed ten years and will accrue interest at a rate equal to the average effective interest cost of Southern's outstanding obligations for borrowed money on the first day of each month, or if no obligations are outstanding at the time, at a rate equal to the weekly average of the thirty-day certificate of deposit rate (secondary market) as reported in the Federal Reserve statistical release H.15 (519) for the next to the last complete business week of the preceding calendar month. However, this rate will not exceed the prime rate in effect at a nationally recognized bank to be designated by Southern. Loans obtained from lenders other than Southern will have maturities not to exceed ten years and will accrue interest at a rate not to exceed the prime rate plus 2% for variable rate loans and the prime rate at the time of borrowing plus 3% for fixed rate loans. Such loans may be secured or unsecured and may be guaranteed by Southern.

Southern proposes through March 31, 1998, to make up to $5 million in open account advances to Southern Nuclear from time to time, which, at the option of Southern, may be converted into capital contributions or additional shares of common stock of Southern Nuclear. To the extent any such advances are converted to equity, the borrowing authority sought herein shall be reduced by the amount of the advances so converted, so that the total capitalization of Southern Nuclear does not exceed $11.6 million (including its present common equity of $1.6 million). The rate of return on Southern Nuclear's common equity capital will not exceed the average of the most recent rates of return allowed by the Alabama Public Service Commission and the Georgia Public Service Commission.

Southern Nuclear states that the funds will be used by Southern Nuclear in connection with its working capital needs, including the purchase of equipment and office furniture, leasehold improvements and loans to employees for purposes such as residential energy programs, purchases of computers and employee transfer expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4650 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35394; File No. SR–CHX–95–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by Chicago Stock Exchange, Incorporated Relating to Reporting and Disclosure Requirements

February 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1995, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, and on February 16, 1995, filed Amendment No. 1 to the proposed rule change,[1] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX, pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"), proposes to (1) amend Article VI, Rule 5 and add an interpretation thereto to require that members and member organizations maintain *written* procedures to ensure compliance with the securities laws (and SEC regulations promulgated thereunder) and the Rules of Exchange; (2) amend Article XI Rule 4 to provide the Exchange with the authority to require that a member or member organization have an accounting firm audit its books and to clarify that all members and member organizations are required to comply with the disclosure requirements of Rule 17a–5; and (3) add Article XI, Rule 9 to require that floor brokers who do not clear their own trades procure a letter of guarantee prior to trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1 Purpose

The CHX has two purposes for amending Article VI, Rule 5 to require that members and member organizations maintain written supervisory procedures: (1) Requiring written procedures allows the CHX to more easily verify the *existence* of procedures; and (2) such a requirement facilitates the CHX's verification of the *content* of the procedures. The visibility of such written procedures will remind members and member organizations of their obligations to comply with the securities laws, SEC rules, and the Exchange's rules, thus enhancing compliance.

The CHX's purpose for adding Article XI, Rule 4(c) thereto is to clarify that all CHX members and member organizations are required to file monthly and quarterly Focus Reports with the CHX in accordance with SEC Rule 17a–5 unless the member or member organization is exempt

The CHX's purpose for adding Article XI, Rule 9 is to enhance the safety and soundness of the clearing system by ensuring that Floor Brokers have sufficient financial resources to stand behind their trades. As a result, fewer disruptions due to the financial distress of a floor broker are likely to occur. The reliability of the clearing system is thus augmented.

2. Statutory Basis

The proposed rule changes are consistent with Sections 6(b)(1) and 6(b)(5) of the Act in that the proposed rule changes will aid the Exchange in enforcing compliance by its members and member organizations with the securities laws and the Exchange's rules as well as aiding in preventing fraudulent or manipulative acts in the clearing of trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act

[1] Amendment No. 1 made non-substantive, clarifying changes to the proposal. See Letter from Jay O. Wright, Esq., Foley & Lardner, to Elisa Metzger, Senior Counsel, SEC, dated February 14, 1995

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–03 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4648 Filed 2–24–95; 8:45 am]

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[Release No. 34–35397; File No. SR–CBOE–95–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Incorporated, Related to Certain Procedures Regarding Trading Halts, Trading Suspensions, the Reopening of Trading After a Trading Halt or Suspension, and the Shut Down of RAES

February 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The CBOE proposes to amend its rules and Regulatory Circulars RG94–17 and RG93–58 (formerly RG92–40) to conform to existing practice regarding (1) the factors the Exchange considers in deciding whether to halt or suspend trading and (2) the circumstances under which trading is generally halted or suspended by the Exchange. The CBOE also proposes to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the Control Room the authority to turn off the Retail Automatic Execution System ("RAES") with respect to a stock option if the Control Room receives a credible indication that trading in the underlying stock has been halted.

The text of the proposed rule changes is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, CBOE included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries set forth in Sections (A), (B) and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to conform the rules to existing practice both regarding the factors considered in a decision to halt or suspend trading and regarding the circumstances under which trading generally will be halted or suspended, to establish procedures for the resumption of trading after a halt or suspension is lifted, and to grant the Control Room the authority to turn off RAES if the Control Room receives a credible indication that trading has stopped in the underlying stock.

Status of Rotation as Factor Considered in Halt or Suspension

Specifically, the proposal would amend Rules 6.3(a), 6.4(a) and 24.7(a) to include the status of the trading rotation [1] as a factor that may be considered in a decision whether to halt or suspend trading. Although it is not presently explicit in the rules, it is current practice to consider the rotation status in deciding whether to halt or suspend trading. For example, if the rotation is near completion, Floor Officials or the Exchange may decide it is in the interest of a fair and orderly market to complete the rotation before calling a halt or suspension in trading. The proposed amendment to the rules would notify members and the public that, when deciding whether to halt trading, Floor Officials may consider the extent to which the rotation has been completed and other factors regarding the status of the rotation. When deciding whether to suspend trading, the Board of Directors similarly would be able to consider the extent to which the rotation is completed or other factors regarding the status of the rotation.

Regulatory Halt

The proposal would add Interpretation .04 to Rule 6.3 and Interpretation .01 to Rule 6.4 to state the current practice that, in general, trading in a stock option will be halted when a regulatory halt in the underlying stock has occurred in the primary market for that stock. Any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days.

[1] A "trading rotation" is a series of very brief time periods during each of which bids, offers, and transactions in only a single, specified option contract can be made. See CBOE Rule 6.2

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Similiarly, the proposal would state the current practice that, in general, trading in a stock option will be suspended when a regulatory suspension in the underlying stock has occurred in the primary market for that stock. In the case of a regulatory suspension, the Board of Directors is authorized to suspend trading in any security in the interests of a fair and orderly market from an indefinite period.

Rules 6.3 and 6.4 list factors considered in deciding whether to halt or suspend trading. These factors are currently considered in deciding whether to halt trading in the related stock option. Moreover, generally, when a regulatory halt in the underlying stock has been declared in the primary market, the Exchange will decide to halt or suspend trading in the overlying stock option. The Exchange believes that the close relationship between the underlying stock and the pricing of stock options overlying that security typically justify such a result. When a regulatory halt is declared in the underlying stock, it often is because some news is pending regarding the underlying stock and the primary market wants to allow time for the dissemination of such news. For the same reason, it generally is appropriate in that circumstance to halt trading in the overlying stock option. By addition the proposed interpretations to Rules 6.3 and 6.4, CBOE would inform members and the public of the existence of this general practice to halt or suspend trading in a stock option when a regulatory halt in the underlying stock has been declared.

The proposal also would amend Rules 6.3(a)(iii) and 6.4(a)(ii) to clarify that these rules are only applicable in the case of a security other than an option. Securities other than options include, for example, the securities traded at CBOE which are subject to Chapter 30 of the CBOE Rules. Securities presently subject to Chapter 30 are: Stock, warrants (which term includes currency and index warrants except as otherwise expressly provided or as the context otherwise requires), UIT interest, and such other securities instruments, and contracts as the Board of Directors may from time to time declare are subject to Chapter 30. The changes are necessary to clarify that Rules 6.3(a)(iii) and 6.4(a)(ii) do not apply to stock options or any other options traded at CBOE, but only to securities traded at CBOE other than options.

Circuit Breaker Halts

The proposal also would delete Rule 6.3A, which provides for a halt in trading of all equity and index options when there has been a floor-wide New York Stock Exchange halt or suspension as a result of activation of circuit breakers on the New York Stock Exchange. This rule is unnecessary because the only circumstances under which Rule 6.3A could apply are situations that Rule 6.3B already expressly governs. There are only two circuit breakers that lead to a New York Stock Exchange floor-wide halt—when there has been a Dow Jones Industrial Average drop of 250 or more points below its closing value on the previous trading day and when on the same day there is a cumulative drop of 400 or more points from the previous day's closing value. Rule 6.3B already governs trading halts under both of these circumstances. Under Rule 6.3B, the mandatory circuit breaker halt would terminate automatically after the expiration of the applicable one hour or two hour time period.

The proposal would eliminate the requirements contained in Rule 6.3A that, prior to a reopening rotation, (i) an additional determination must be made that a halt or suspension is not in effect in the primary market where the underlying security for each class of options is traded; (ii) a determination must be made, in the case of index options, that a halt or suspension is not in effect in the primary market of the securities constituting 50% or more of the index value; and (iii) two Floor Officials, in consultation with a designated senior executive officer, must conclude in their judgment that the interests of a fair and orderly market are served by a resumption of trading. After a circuit breaker halt, therefore, trading would resume automatically unless the Exchange affirmatively acted to declare a further halt or suspension pursuant to other rules, such as Rules 6.3, 6.4 or 24.7.

CBOE believes that trading should resume after a circuit breaker halt, subject only to these normal rules regarding trading halts and suspensions. Pursuant to Rules 6.3, 6.4 and 24.7, a halt or suspension in the underlying security (to which Rule 6.3A refers) is among the factors considered in the decision to suspend or halt trading, but this factor does not necessarily require a halt or suspension nor limit the Exchange's ability to exercise judgment in these circumstances. CBOE believes that the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to when to halt or suspend trading, without the restrictions on the exercise of that judgment that are contained in Rule 6.3A.

Reopening After Circuit Breaker Halt

The proposal also would eliminate the requirement in Rule 6.3A that, if trading is halted due to activation of circuit breakers, reopening rotations shall be held. Rule 6.3A apparently makes a reopening rotation mandatory and prevents Exchange officials from reopening without a rotation. CBOE believes the interests of a fair and orderly market are better served when the rules allow Exchange officials the discretion to evaluate market conditions and circumstances and to exercise their judgment as to whether to reopen with or without a rotation.

Procedures regarding reopening after a halt triggered by circuit breakers will be added by amending Rule 6.3B, Interpretation .02. The amended Interpretation .02 would require a reopening rotation unless two Floor Officials, or an Order Book Official acting on authorization from a senior Exchange official, conclude it is appropriate under the circumstances to employ a different method of reopening including but not limited to, no rotation an abbreviated rotation, or a variation in the manner of the rotation. The purpose of amended Interpretation .02 to Rule 6.3B is to grant Floor Officials the discretion to deviate from a typical reopening rotation after the expiration of a circuit breaker halt. Order Book Officials would also have this discretion, but only if a senior Exchange official authorized such discretion. This could be accomplished by the senior Exchange official making a general announcement to all Order Book Officials.

The CBOE believes it is reasonable to presume that a reopening rotation will be held after a circuit breaker halt because, after a floor-wide halt, it is physically difficult to have two Floor Officials available at each trading post to make a decision regarding the resumption of trading. The presumption allows for a universal treatment of the reopening after a circuit breaker halt yet still permits appropriate Exchange officials to exercise judgment to deviate from this presumed course of action when a different method of reopening is appropriate.

Corresponding Amendments to Regulatory Circulars

Regulatory Circular RG94–17

The proposal would amend Regulatory Circular RG94–17, which addresses inter-exchange procedures in volatile markets, to make it consistent with the proposed amended Interpretation .02 to Rule 6.3B. Regulatory Circular RG94–17 discusses CBOE's procedures during a halt in options trading due to a Dow Jones Industrial Average drop of 250 or more points below its closing value on the previous trading day or a cumulative drop of 400 points in the Dow Jones Industrial Average on the same day. Pursuant to the proposed change to Interpretation .02 to Rule 6.3B, after the expiration of the one hour or two hour period set forth in Rule 6.3B, a reopening rotation would be held in each class of options unless two Floor Officials (or an Order Book Official acting upon authorization from a senior Exchange official) conclude a different method of reopening is appropriate. Additionally, RG94–17 would be amended to delete the requirements contained in Rule 6.3A that, before reopening after a circuit breaker halt, the Exchange must verify that (1) there is no halt or suspension in effect in the primary market where the underlying stock is traded and (2) with respect to an index option, there is no halt or suspension in the primary market of the securities constituting 50% of the index.

Regulatory Circular RG93–58

The proposal would amend Regulatory Circular RG93–58 (RG93–58 is a reprint of Regulatory Circular RG92–40 dated, July 8, 1992), which addresses trading halt policy regarding options on individual equity securities, to make the circular consistent with the proposed amendment to Rule 6.3. Regulatory Circular RG93–58 would be further amended to state that it does not address the Exchange's trading halt policy when a halt has been declared as a result of the operation of a circuit breaker pursuant to Rule 6.3B, due to a 250 or 400 point intra-day drop of the Dow Jones Industrial Average.

Consistent with Rule 6.3, RG93–58 would be amended so that two Floor Officials may exercise judgment regarding trading halts and so that the concurrence of a senior Exchange staff official would not be required. Presently, Rule 6.3 provides that a decision as to whether to halt trading may be made by any "two Floor Officials," so this amendment to RG93–58 would make the guidelines in RG93–58 consistent with Rule 6.3. Furthermore, Floor Officials need to be able to exercise their judgment without obtaining the concurrence of a senior Exchange staff official, because it may be physically difficult for a senior Exchange staff official to be present at all trading posts during circumstance where a trading halt may be simultaneously necessary in multiple options classes.

Regulatory Circular RE93–58 provides Floor Officials with non-mandatory guidelines to assist them in their decision regarding a trading halt. Pursuant to Rule 6.3, "[a]ny two Floor Officials may halt trading in any security in the interests of a fair and orderly market." Floor Officials are free to exercise judgment and discretion in deciding whether to halt trading. The language of Rule 6.3 is discretionary and does not require that Floor Officials declare a trading halt, so proposed amendments to various paragraphs of RG93–58 delete language which would limit Floor Officials' discretion by imposing mandatory criteria.

The proposal would further amend RG93–58 to reflect CBOE's general practice, as set forth in the proposed interpretation to Rule 6.3, to halt trading in an overlying stock option when a regulatory halt in the underlying stock has been declared in the primary market for that stock.

RG93–58 would be further amended to delete the requirement that, in connection with a halt due to no last sale and/or quotation dissemination either by the Exchange or to the Options Price Reporting Authority ("OPRA"),[2] trading may only resume 15 minutes after notification to the news wire services. The guidelines provide that the news wire services will be notified of the dissemination difficulty. However, under such circumstances, since trading presumably would have been proceeding in other markets, it is important for the options market to resume trading as soon as practical after the dissemination difficulty which led to the halt is no longer present. CBOE believes that waiting 15 minutes to resume trading would be inordinately long and may be contrary to the interests of a fair and orderly market. Nonetheless, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11A3–2, Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

OPRA provides for the collection and dissemination of last sale and quotation information on options that are traded on the five exchanges participating in the plan. The exchanges include the CBOE, the Philadelphia Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, and the New York Stock Exchange.

The OPRA plan was implanted in response to directives of the SEC that provisions be made for the Consolidated reporting of transactions in eligible options contracts listed and traded on national securities exchanges.

The language in paragraph one of RG93–58 would be further amended to clarify that there is a preference, but not a requirement, to halt trading if two Floor Officials believe that the dissemination problem will last more than 15 minutes. The language would be further amended to clarify that, if the two Floor Officials believe that the dissemination problem will be resolved within the next 15 minutes, then there is no preference for a halt—even if that expectation proves to be incorrect. The present language would be further amended to clarify that trading ordinarily will continue if two Floor Officials believe it is likely the dissemination problem will be resolved in less than 15 minutes. THe present language appears to require trading to continue under such circumstances. Again, these guidelines should not limit Floor Officials' discretion, since Rule 6.3 provides for discretion in such circumstances. If a systems problem prevented CBOE or OPRA from disseminating CBOE's last sale or quote data, this would be an unusual market condition and, pursuant to Rule 6.3, two Floor Officials may halt trading.

The proposed amendments would delete the requirement in paragraph four of RG93–58 that, in connection with a primary market floor-wide trading halt and despite the determination by two Floor Officials that sufficient markets will support trading other than at the primary market, trading may resume only upon a one hour notification to the news wire services. Again, since trading of the underlying stock is continuing at an exchange other than the primary exchange, the CBOE believes that waiting one hour to resume options trading at the CBOE could be inordinately long and might be contrary to the interests of a fair and orderly market. Instead, paragraphs one and six of RG93–58 would be amended so that the guidelines for the resumption of trading would be consistent with Rule 6.3(b), which provides that trading in a security that has been the subject of a halt may resume upon a determination by two Floor Officials that the conditions which led to the halt are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. However, the proposed amendments would specifically state CBOE's general practice to notify member firms and news wire services before the resumption of trading.

RAES

Finally, the proposal would add Interpretation .05 to Rule 6.3 to grant authority to the senior person then in

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charge of the Exchange's Control Room to turn off RAES with respect to a stock option if that senior person confirms that the Control Room has received a credible indication (including, but not limited to, information from the trading crowd) [3] that trading in the underlying stock has been halted or suspended. After exercising such authority, that senior person would need to immediately seek confirmation of this decision from two Floor Officials. The purpose of this interpretation is to prevent orders from being placed on RAES during the interval after the trading in the underlying stocks has been halted or suspended but before two Floor Officials have declared a trading halt pursuant to Rule. 6.3(a) or before a Post Director or Order Book Official has suspended trading pursuant to Interpretation .01 to Rule 6.3. This interpretation is necessary because, when a stock halts due to pending news, the direction of the effect of the news may be anticipated and, while Floor Officials are being called to a post to decide whether to halt trading, firms could place an order on RAES which could be detrimental to the market makers signed onto the system. Under the current Interpretations to Rule 6.3, the Post Director or Order Book Official must turn off RAES concurrently with any suspension of trading. If an "ST" symbol (for an exchange listed security) or an "H" symbol (for a security traded primarily in the over-the-counter market) is displayed on the Class Display Screen that displays current market information for the underlying security, the Order Book Official or Post Director may suspend trading in the related equity option for a period not to exceed five minutes and concurrently shall turn off RAES applicable to the affected options class or classes.[4] The Control Room, however, may receive information that trading has stopped in the underlying stock before the Post Director or Order Book Official sees the "ST" symbol or "H" symbol on the Class Display Screen for the underlying stock. Consequently, it is important for the Control Room to have authority to turn off RAES without being required to wait for the "ST" or "H" symbol to appear on the class display screen or for the Post Director or Order Book Official to act.

The proposal would provide that the Post Director, Order Book Official, or their representative will re-start RAES after the trading halt or suspension has ceased. This would be consistent with Rules 6.8(f) and 24.15(f), which provide that each day RAES is available, a Post Director or his representative will start RAES.

Conclusion

CBOE believes that the proposed rule changes are consistent with and further the objectives of Section 6(b)(5) of the Act, in that the rule changes are designed to perfect the mechanism of a free and open market and to protect investors and the public interest by enabling Floor Officials to evaluate and consider market conditions and circumstances in determining whether to halt or suspend trading and in deciding on a method to reopen trading after a halt or suspension. CBOE believes that the proposed rule change regarding the authority of the Control Room to turn off RAES with respect to a stock option upon credible information that trading in the underlying stock has been halted is also consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competitions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 80 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submission should refer to file number SR–CBOE–95–05 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 95–4705 Filed 2–24–95; 8:45 am]

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[3] BOE represents that if information of an impending halts or suspension comes from the trading crowed or from a source other than hard information in the Control Room, the senior person in charge of the Control Room would first verify it before turning off RAES. To verify the existence of a trading halt or suspension, the senior person would rely upon hard information in the Control Room including (1) the quote of the underlying security being pulled from the Class Display Screen, (2) an ST or H appearing on the Class Display Screen via the Consolidated Tape Association, (3) a print-out in the Control Room confirming the halt or suspension of trading in the underlying security, and (4) notification of the trading halt or suspension via the "Hoot and Holler" system. The Hoot and Holler system is a voice linkage between all of the exchanges and the Commission. Telephone conversation between Edward Joyce, CBOE, and John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, on Thursday, February 16, 1995.

[4] See Securities Exchange Act Release No. 34126 (May 27, 1994), 59 FR 29309 (June 6, 1994) (Approval Order giving the Order Book Officials or the Post Director the authority to suspend trading, and to turn off RAES for the affected options class or class whenever trading in the underlying security is halted).

[5] 17 CFR 200.30–3(a)(12) (1994)

[Release No. 34–35393; File No. SR–NASD–95–7]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To a Query-Based Vendor Fee for Distribution of Certain Market Information

Feburary 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 3, 1995 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change to establish a vendor fee of $.01/query for delivery of certain market information, on a non-continuous basis, to the vendor's subscribers. In this context, the term "vendor" may include an NASD member firm, or a non-member engaged in the business of supplying financial data. The information being distributed would be real-time market data consisting of inside bid/ask and last sale information for securities listed on The Nasdaq Stock market ("Nasdaq"), various Nasdaq indices, and similar quotation and transaction information on over-the-counter ("OTC") equity securities.[2] The proposed fee would take effect within 90 days of the Commission's approval of this rule change, and be incorporated into Schedule D to the NASD By-Laws, Part VIII, Section C. The full text of the proposed rule change is set forth below New language is italicized.

PART VIII—Schedule of NASD Charges for Services and Equipment

. . . . . .

C. Special Options

1—4. No Change

5. *Non-Continuous Access to Nasdaq Level 1 and Last Sale Information.*	*Permits vendor to process and distribute Nasdaq Level 1 and Last Sale information to its subscribers on a non-continuous or query-response basis.*	*$.01/query*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The next of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The sole purpose of this rule change is to establish a single fee for vendors wishing to provide basic, real-time market data to low volume users. In recent years, the NASD has been approached by several member firms that wished to provide retail customers with a cost-effective alternative to calling their brokers for current market information. Advances in telecommunications and personal computers ("PCs") have prompted firms to offer "snapshots" of real-time information through (i) telephonic, voice-responsive services, (ii) dial-up PC services, (iii) display phones, and (iv) pagers. The typical users of such services are individual investors who may be monitoring the value of a portfolio, tracking intra-day activity in a given stock to facilitate an investment decision, or observing a market trend based on periodic queries for the current level of a popular stock index. In some instances, the member firm will levy a modest charge on its customers who elect to access current market information through these devices. In sum, the market data needs of the target users do not warrant their subscription to a bundled service offered by a commercial vendor which service frequently includes analytic information, ticker displays, and dynamically-updated quotation and transaction information.

To date, the parties most interested in providing basic market data directly to investors have been NASD members with a large base of retail clients. This proposal is intended to accommodate the business needs of such firms at a price that should prove attractive to many small investors. Nevertheless, any commercial data vendors that might wish to offer this type of service will also be accommodated. The service covered by this proposal would be limited to "snapshots" of real-time information furnished in response to a discrete query by the end user. The information provided through the query-response process would not be dynamically updated. Hence, the end user would have to make individual queries to obtain, for example, the most current quotation/last sale information on his/her portfolio of securities at various times during the trading day This characteristic differentiates the instant service from most vendor offerings, which provide a continuous broadcast of real-time information with dynamic updating to authorized display devices. On the other hand, the instant service does not require the end user to have a costly piece of hardware to obtain current quotation/transaction prices on a given Nasdaq stock.

Interested vendors would provide the service pursuant to a contract with NSMI. Under this contract, the vendor would be responsible for monitoring query traffic and paying the appropriate amount to NSMI. The contract would permit periodic audits by NSMI to ensure payment of all monies due.

The NASD believes that the proposed rule change is consistent with the requirements of Sections 11A(a)(1) [3] and 15A(b)(5) [4] of the Act. Section 11A(a)(1) contains the Congressional findings and objectives respecting a national market system. Among other things, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The computer facilities that support the operations of Nasdaq are owned and operated by The Nasdaq Stock Market, Inc. ("NSMI"), a wholly-owned subsidiary of the NASD. Among other things, NSMI is responsible for the collection, processing, and the distribution of real-time quotation and transaction data originated by broker dealer participants in Nasdaq and the OTC Bulletin Board ("OTCBB") service.

[3] 15 U.S.C. 78k–1(a)(1).

[4] *Id.* 78o–3(b)(5).

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Congress advocated the application of new technologies to effect the widespread dissemination of quotation and transaction information to investors. Section 15A(b)(5) requires the equitable allocation of reasonable dues, fees, or other charges among persons using any facility or system which the NASD operates or controls.

The proposed service and fee are specifically designed to accommodate the information needs of individual investors, particularly small investors who do not require the breadth of market data and analytic information that an institutional investor or market maker would need. This initiative would enable any end user to receive selected, real-time market data for a fee of $.01/query (payable by the vendor to NSMI) without the user having to acquire an expensive piece of hardware. Although the NASD (through NSMI) already has a non-professional subscriber fee of $4/month/interrogation device for receipt of inside bid/ask and last sale prices,[5] the cost of vendor supplied equipment and the fixed level of these fees ($13 for access to information from all markets) tends to discourage subscription by low-volume users. Some of these end users instead choose to pay (to the vendor only) for electronic access to delayed market data; Nasdaq does not charge for delayed information. The instant proposal would provide a superior option to small investors wishing to access current market information, on demand, for either Nasdaq or OTC equities. Accordingly, the NASD posits that this proposal will facilitate broader dissemination of Nasdaq and OTC market data to retail investors.

Further, the NASD submits that the proposal is consistent with the requirements of Section 15A(b)(5) in that $.01/query fee is believed to be readily affordable to small investors, the most likely end users. As noted above, some of these individuals may now pay a fee to vendors to access delayed market data via telephonic voice response systems. The proposed fee is structured to strike a balance between affordability and the provision of real-time market data in response to discrete queries by end users. Based on these factors, the NASD reiterates the belief that this proposal is consistent with the requirements of Section 15A(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–95–7 and should be submitted by March 20, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[5] *NASD Manual*, Schedules to the By-Laws, Schedule D, Part VIII, Sec. A(8)(a), (CCH ¶ 1850).

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35395; File No. SR–PSE–95–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating To Establishing New Listing Fees Applicable to Small Corporate Offering Registration ("SCOR") Securities

February 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 13, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to establish new fees applicable to Small Corporate Offering Registration ("SCOR") securities.[1]

SCOR Marketplace—Listing Fee Schedule

Original Listings

The Original Listing fees are fixed fees and issues are not charged by the number of shares being listed.

Common Stock	$5,000.00
Preferred Stock	5,000.00

Processing Fee

Per Original Listing Application*	$500.00
Name change	250.00
Change in Par Value	250.00

*This is a fixed charge for the review of potential listings and is non-refundable Issues approved for listing may have this charge credited toward the original listing fee.

Substitution of Original Listing

Per Application.....Fixed charge of $750.00

Substitution may occur as a result of a change in state of incorporation, reincorporation under laws of same state, a reverse stock split, recapitalizations, or similar events.

Listing of Additional Shares

Per Application:
$.0025 per share
Minimum charge of $500.00
Maximum charge of $2,500.00

[1] The PSE's proposal for the listing and trading of SCOR securities is currently pending Commission approval. The proposal was published for public comment in Securities Exchange Act Release No. 35140 (December 22, 1994), 60 FR 159 (January 3 1995) (File No. SR–PSE–94–31).

Maximum charge of $5,000.00 per annum

Annual Maintenance Fee

For one issue	$1,000.00
For each additional issue	500.00

Payable January of each year following listing.

Conversion Fee

Conversion from the SCOR Market place to Tiers I or II.

Common Stock	$15,000.00

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add the following fees, relating to the Exchange's SCOR Marketplace program, to the exchange's Listing Fee Schedule. The Exchange is proposing to establish original listing fees of $5,000 for common stock and $5,000 for preferred stock. The Exchange is also proposing to adopt the following processing fees: $500 per original listing application; $250 per name change; and $250 per change in par value. In addition, the Exchange is proposing to set a fixed charge of $750 per application for a substitution of original listing which may occur as a result of a change in state of incorporation, reverse stock split, recapitalization, or similar events. With respect to the listing of additional shares, the Exchange is proposing to establish the following fees per application: $.0025 per share, with a minimum charge of $500, a maximum charge of $2,500, and in the case of multiple applications, a maximum charge of $5,000 per annum. The Exchange is also proposing to adopt an annual maintenance fee of $1,000 per issue, plus $500 for each additional issue. Finally, the Exchange is proposing to establish a conversion fee (for conversion from listing within the SCOR Market place to the regular listing) of $15,000 for common stock.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4) of the Act in that it is intended to provide for the equitable allocation of reasonable fees and charges among persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–03 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4706 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License #05/05–0130]

Federated Capital Corporation; License Surrender

Notice is hereby given that Federated Capital Corporation ("FCC"), 30955 Northwestern Highway, Farmington Hills, Michigan 48334, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). *FCC* was licensed by the Small Business Administration on November 14, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 1, 1995, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 16, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–4769 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

[Delegation of Authority No. 1–A; Rev. 20]

Delegation of Authority; Notice

Delegation of Authority No. 1–A (Revision 20) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act of 1958, 72 Stat. 384, as amended, authority is hereby delegated to the following officials in the following order:

1. Deputy Administrator.
2. General Counsel.
3. Chief of Staff.
4. Counselor to the Administrator
5. Associate Deputy Administrator for Economic Development.
6. Associate Deputy Administrator for Government Contracting and Minority Enterprise Development to perform, in event of the absence or incapacity of the

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Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under section 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting on any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

EFFECTIVE DATE: February 10, 1995.

Dated: February 10, 1995

Philip Lader,

Administrator

[FR Doc. 95–4657 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000123]

Prospect Street NYC Discovery Fund, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1994)) by Prospect Street NYC Discovery Fund, L.P. at 250 Park Avenue, 17th Floor, New York, New York 10177, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the rules and regulations promulgated thereunder. The applicant's principal area of operation will be the New York City metropolitan area and, on a selected basis, it may consider making investments outside such area within the United States.

Prospect Street NYC Discovery Fund, L.P., a Delaware limited partnership, will be managed by Prospect Street NYC Discovery Fund, Inc., a Delaware Corporation and sole general partner of the Partnership. The officers and directors of Prospect Street NYC Discovery Fund, Inc. are: Richard E. Omohundro, Jr., C.F.A. (Chief Executive Officer), John F. Barry III (Executive Vice President), and Ronald D. Celmer (Secretary and Treasurer). Additional individuals assisting in the management of the applicant will include John A. Frabotta, Preston I. Carnes, Jr., Kevin F. Littlejohn and Dana Erikson.

The following limited partners will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
NYC Economic Development Corporation, 110 William Street, New York, New York 10038	33.00
Brooklyn Union Gas, One MetroTech Center, Brooklyn, NY 11201–3850	33.00
Consolidated Edison, 4 Irving Place, New York, New York 10003	33.00

The New York City Economic Development Corporation (EDC) is a quasi-independent agency responsible for improving New York City's business climate and providing help to local communities. EDC is a substantial limited partner to the applicant and will provide a unique source of investment opportunities by directing inquiries from entrepreneurs to the applicant.

The applicant will begin operations with Regulatory Capital of $15.0 million and will be a source of start up, early and middle stage equity investments in small growth companies located in the New York metropolitan area which are developing, producing or commercializing advance technologies.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York City, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: February 21, 1995.

Robert D. Stillman,

Assistant Administrator for Investment.

[FR Doc. 95–4656 Filed 2–24–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–16]

Extension of Inspectorate America Corporation's Customs Gauger Approval to the Sites Located in Virginia Beach, Virginia and Searsport, Maine

AGENCY: Customs Service, Treasury

ACTION: Notice of the extension of Inspectorate America Corporation's Customs gauger approval to include its Virginia Beach, VA and Searsport, ME gauging facilities.

SUMMARY: Inspectorate America Corporation of Houston, Texas, a Customs approved gauger and accredited laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval to include the Virginia Beach, VA and Searsport, ME sites. Specifically, the extension includes both sites' Customs approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils.

SUPPLEMENTARY INFORMATION:

Background

Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Inspectorate America Corporation, a Customs commercial approved gauger and accredited laboratory, has applied to Customs to extend its Customs gauger approval to its Virginia Beach, VA and Searsport, ME facilities. Review of the qualifications of both sites shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATES: January 19, 1995

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: January 21, 1995

A.W. Tennant,

Director, Office of Laboratories and Scientific Service.

[FR Doc. 95–4639 Filed 2–24–95; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 95–17]

Customs Approval of P.G.S. Enterprises, Inc., as a Commercial Gauger

AGENCY: Customs Service, Treasury.

ACTION: Notice of approval of P.G.S. Enterprises, Inc., as a commercial gauger.

SUMMARY: P.G.S. Enterprises, Inc., of Houston, Texas has applied to U.S. Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under part 151.13 of the Customs Regulations (19 CFR 151.13) at their Houston, Texas and Arroyo, Puerto Rico facilities. Customs has determined that both offices meet all of the requirements for approval as a commercial gauger. Therefore, in accordance with part 151.13(f) of the Customs Regulations, P.G.S. Enterprises, Inc., Houston, Texas and Arroyo, Puerto Rico facilities are approved to gauge the products named above in all Customs districts.

LOCATION: P.G.S. Enterprises' approved sites are located at: 1122 Mabry Mill Road, Houston, Texas 77062; and Condominio Mar del Sur 16–D, Arroyo, Puerto Rico.

EFFECTIVE DATE: February 10, 1995.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229 at (202) 927–1060.

Dated: February 13, 1995.

A.W. Tennant,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 95–4638 Filed 2–24–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–95–9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 1995.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 22, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28078.

Petitioner: The Boeing Company.

Sections of the FAR Affected: 14 CFR 25.810(a)(1)(iv) and 25.1309(a).

Description of Relief Sought: To allow the Boeing Company temporary relief from the requirements mandated by close proximity of door 2 escape slides to engine inlets that slides successfully deploy in 25 knot winds with engines running at idle. This request is for the Boeing 777–200 airplane.

[FR Doc. 95–4779 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on March 7, 1995, at 9:00 a.m.

ADDRESSES: The meeting will be held at the Air Transport Association, 1301 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vennillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 7, 1995, at the Air Transport Association, 1301 Pennsylvania Ave., NW., Washington, DC. The agenda for this meeting will include status reports on the All Weather Operations Working Group and the Single Engine Operations Working Group and a discussion of a new working group on Fatigue Countermeasures and Alertness Management Techniques. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT**."

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on February 17, 1995.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–4776 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–13–M

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Research and Special Programs Administration

[Docket No. P-93-2W; Notice 2]

Grant of Waiver: Repair of Gas Transmission Lines

Summary. The Research and Special Programs Administration (RSPA) waives certain maintenance regulations to permit various gas pipeline operators to repair steel transmission lines with Clock Spring® wrap. The waiver, which is subject to conditions and future performance evaluations, advances the use of new technology.

Background. Twenty-eight companies and their subsidiaries,[1] all gas pipeline operators, requested that RSPA waive the safety standards in 49 CFR 192.713(a) and 192.485 for gas transmission lines operating at 40 percent or more of specified minimum yield strength (SMYS). The operators requested the waiver to get permission to repair the lines with Clock Spring® wrap.[2] The request came in a November 22, 1993, petition submitted by the Interstate Natural Gas Association of America (INGAA), a gas pipeline trade association.[3]

Under § 192.713(a), each imperfection or damage that impairs the serviceability of a segment of transmission line operating at 40 percent or more of SMYS must be repaired. If it is feasible to remove the line from service, pipe containing the imperfection or damage must be replaced. Otherwise, a full encirclement welded split sleeve must be installed over the imperfection or damage. The waiver request asks permission to use Clock Spring® wrap for repairs instead of the methods prescribed by § 192.713(a).

Section 192.485(a) requires replacement of transmission line pipe that is generally corroded to the extent that wall thickness is unsafe, unless operating pressure is reduced appropriately or, if the area of general corrosion is small, the corroded pipe is repaired. A similar requirement applies under § 192.485(b) to transmission lines with unsafe localized corrosion pitting, except that repair is not limited to small areas. The waiver request asks permission to use Clock Spring® wrap to repair large areas of general corrosion as an alternative to pipe replacement or pressure reduction under § 192.485(a).[4]

In an earlier waiver of § 192.713(a), RSPA allowed Panhandle Eastern Corporation (Panhandle) to use Clock Spring® wrap to repair six locations on its Line # 2 in Fayette County, Ohio (58 FR 13823; March 15, 1993). The waiver was subject to the conditions that Panhandle: (1) Install the wrap using the procedures described in documents supporting its petition; (2) perform the inspections described in its petition;[5] (3) promptly report to RSPA the results of the inspections and any unfavorable performance of the wrap, and (4) determine and report to RSPA the cause of any unfavorable performance. In addition, Panhandle advised that it would determine the need to repair generally corroded areas by using ASME B31G, "Manual for Determining the Remaining Strength of Corroded Pipelines." Also, Panhandle said it would determine whether Clock Spring® wrap would provide a reliable repair in particular instances by using a computer program developed by the Gas Research Institute (GRI) based on laboratory and field tests of pipe repaired with the wrap.

In the present waiver request, the operators offered to conform to the Panhandle waiver, except that they would: (1) Use an enhanced program, GRI WRAP, to determine whether Clock Spring® wrap would provide a reliable repair in particular instances; (2) use either the ASME B31G procedure or RSTRENG[6] to determine if corroded areas require repair under § 192.485; (3) coordinate Clock Spring® wrap installations with GRI (to establish a representative data base to support a possible rule change), and within 2 years, with GRI's assistance, excavate and evaluate a statistical sampling of sites,[7] record the results, and give the results to RSPA upon request; (4) report Clock Spring® wrap repairs to RSPA or its state agent within 30 days of repair; (5) use personnel to install Clock Spring® wrap who have been trained and certified by Clock Spring Company; and (6) record installations of Clock Spring® wrap under § 192.709.[8]

Comments on Proposed Waiver. In Notice 1 of this proceeding (59 FR 49739; September 29, 1994), RSPA proposed to grant the present waiver request for the safety and economic reasons stated in the notice. However, we proposed to restrict the waiver to repairs no more than 10 feet long. We felt this restriction was needed because the pipeline industry has had no experience in repairing large areas of generally corroded pipe other than by pipe replacement. At the same time, we specifically requested comments on the aspect of the waiver request that would allow unlimited areas of general corrosion to be repaired with Clock Spring® wrap. In addition, regarding the offer to report Clock Spring® wrap repairs, we proposed that reports be sent both to RSPA and to the state agent. We also proposed that the reports be sent before the time of installation to give RSPA or the state agent a chance to inspect the installation process. As to the offer concerning personnel qualification, we proposed that initial training and certification be supplemented by periodic refresher training and recertification. Finally, we said we would review the performance evaluations of Clock Spring® wrap repairs, and consider terminating the waiver 3 years after it is granted.

RSPA received written comments on the proposed waiver from eight entities: INGAA, Enron Operations Corp. (Enron), Southern Natural Gas (Southern), Coastal Corporation (Coastal), Bay State Gas Company (Bay State), Columbia Gas Transmission Corporation, Natural Gas Pipeline Company of America (Natural), and Panhandle. The comments are discussed below according to the issues presented. All the commenters supported the proposed waiver, although some commenters requested changes in the proposed conditions under which the waiver could be applied.

Reporting Repairs. INGAA, Enron, Natural, and Panhandle advised that 30 days' advance notification would not be in the public interest when repairs are needed quickly. Coastal wanted RSPA to accept the original proposal to report Clock Spring® wrap repairs within 30 days after installation. INGAA and Natural suggested the waiver allow operators to give notice when they decide to use Clock Spring® wrap to repair a damaged pipeline. The operators, said INGAA, Coastal, and Natural, should then be allowed to proceed immediately with repairs, unless, INGAA and Natural said, the appropriate agency tells the operator it wants to view the installation. Panhandle opposed this latter condition because it would make pipeline maintenance subject to agency schedules.

Given the importance of repairing unsafe conditions as soon as practicable, requiring notification of Clock Spring® wrap repairs at least 30 days beforehand could discourage use of the wrap. Although we agree operators should not have to conform their repair plans to government work schedules, RSPA or state agents need some period of advance notification to prepare to inspect wrap installations. Therefore, as a condition of the waiver, we are requiring that operators report scheduled Clock Spring® wrap repairs a reasonable time in advance of installation to allow for government inspection. Under this condition, which does not apply to emergency installations, deciding when to install Clock Spring® wrap after giving notice must take into account the reasonable travel time of government inspectors. But operators would not have to delay installation to conform to government work schedules apart from reasonable travel time.

Personnel Training. INGAA, Coastal, and Natural suggested the waiver allow installation personnel who have been trained and certified by the Clock Spring Company to train and certify other personnel. Also, INGAA suggested refresher training and recertification should be required only for personnel who infrequently install Clock Spring® wrap. Enron recommended that certified installers maintain their qualifications under RSPA's proposed qualification of personnel rules.[9]

Our concern about Clock Spring® wrap installers is that they be qualified. The suggestion that persons who have received initial training and certification from the Clock Spring Company be allowed to train and certify others is reasonable and would satisfy this concern. As for refresher training, installers would be subject to the refresher training requirements of the proposed qualification rules. Because we probably will issue final qualification rules before installers need refresher training, it is not now necessary to make refresher training part of this waiver. However, when we consider the performance evaluations of Clock Spring® wrap, we will reexamine the refresher training issue if final qualification rules have not been published.

Waiver Termination. Enron asked us not to include a termination date in the waiver. Instead, Enron recommended the waiver remain in effect until it is revoked or becomes unnecessary because of a change in the regulations. Southern advised the waiver should be extended after 3 years if the performance evaluations are favorable.

By saying we would consider terminating the waiver within 3 years after it is granted, we meant the waiver might be revoked after 3 years if the performance of Clock Spring® wrap repairs is generally unfavorable. We did not intend for the waiver to last only 3 years. If the initial evaluations are favorable, the waiver would continue in effect, unless new information causes us to revoke the waiver or a rule change makes the waiver no longer necessary.

Repair Length. Southern requested that we clarify that the proposed 10-foot restriction applies to corroded pipe under § 192.485(a), and not to imperfections or damage under § 192.713(a). Coastal asked that we eliminate the proposed restriction entirely, saying there is no practical limit to repairs using Clock Spring® wrap. Bay State said the 10-foot limit was arbitrary, since Clock Spring® wrap has been shown to be an effective alternative to pipe replacement. Panhandle felt the 10-foot limit was unnecessary and artificial.

As stated above, RSPA specifically asked for comments on the merits of allowing unlimited areas of general corrosion to be repaired with Clock Spring® wrap. None of the commenters expressed concern about the safety of using Clock Spring® wrap beyond the 10-foot range. Indeed, a few commenters pointed out there is no engineering basis for imposing a 10-foot limit. Accordingly, in the absence of an engineering basis, and considering the sound GRI test results and the plans to evaluate Clock Spring® wrap installations, we believe the waiver may be applied safely without a limit on the length of repair.

Role of GRI. Panhandle requested clarification of GRI's role in carrying out the waiver. The operator did not welcome assistance from GRI in any capacity other than as a record keeper.

Because Clock Spring® wrap is new technology, a major purpose of this waiver is to provide an opportunity to evaluate the performance of the wrap under various operating conditions. Long range, if the results are favorable, we would use the collected data as a basis to change the safety standards that, in certain instances, prohibit the use of Clock Spring® wrap as a pipeline repair method. As mentioned above, GRI has agreed to assist operators in this data collection effort by assuring the data are representative. GRI also will assist operators to evaluate the wrap in a statistical sampling of sites, record the results, and provide the results to RSPA. GRI's participation will add uniformity and reliability to evaluations that might otherwise vary among operators. Thus, we believe GRI's participation is an integral part of this waiver. Any operator who is unwilling to cooperate with GRI in the data collection aspect of this waiver is not entitled to apply the waiver.

Grant of Waiver. Therefore, for the reasons stated in Notice 1 of this proceeding, RSPA, by this order, finds that the requested waiver is not inconsistent with pipeline safety. The petition for waiver of §§ 192.485 and

[1] ANR Pipeline Co.; Arkla Energy Resources Co. (including Mississippi River Transmission Co.); CNG Transmission Corp.; Colorado Interstate Gas Co. (including Wyoming Interstate Co., Ltd. and Young Gas Storage Co., LTD.); Columbia Gas Transmission Corp.; Columbia Gulf Transmission Co.; El Paso Natural Gas Co.; Enron Corp. (including Florida Gas Transmission Co., Houston Pipe Line Co., Intratex Gas Company, Northern Border Pipeline Co., Northern Natural Gas Company, Oasis Pipeline Co., and Transwestern Pipeline Co.); Granite State Gas Transmission Company; Great Lakes Gas Transmission Co.; Kern River Gas Transmission Co.; KN Energy, Inc.; Koch Industries, Inc. and all subsidiaries; Michigan Consolidated Gas Co.; Mid Louisiana Gas Co.; Natural Gas Pipeline Company of America and all subsidiaries; Michigan Consolidated Gas Co.; Mid Louisiana Gas Co.; Natural Gas Pipeline Company of America and all subsidiaries; Northwest Pipeline Corp.; Pacific Gas & Electric Co.; Pacific Gas Transmission Co.; Panhandle Eastern Corp. (including Panhandle Eastern Pipeline Co., Texas Eastern Transmission Co., Trunkline Gas Co., and Algonquin Gas Transmission Co.); Questar Pipeline Co.; Southern California Gas Co.; Southern Natural Gas (including Southern Natural Gas Co., South Georgia Natural Gas Co., Sea Robin Pipeline Co., Sonat Intrastate-Alabama Inc., and Bear Creek Storage Co.); Tennoco Gas Transportation Co. (including Tennessee Gas Pipeline Co. East Tennessee Natural Gas Co., Midwestern Gas Transmission Co., and Channel Gas Transmission Co.); Texas Gas Transmission Corp.; Transcontinental Gas Pipe Line Corp.; Williams Natural Gas Co.; and Williston Basin Interstate Pipeline Co.

[2] Clock Spring® wrap, manufactured by the Clock Spring Company of North America, is a composite material of polyester resin reinforced by glass filament. On installation, it is tightly wound and adhesively bonded to damaged pipe.

[3] By letter dated March 22, 1994, INGAA added Granite State Gas Transmission Company to the original list of companies seeking a waiver.

[4] Section 192.485(a) does not preclude the use of Clock Spring® wrap to repair small areas of general corrosion, nor does § 192.485(b) preclude the use of Clock Spring® wrap to repair localized corrosion pitting. However, if these defects are on transmission lines operating at 40 percent or more of SMYS, § 192.713(a) precludes their repair with Clock Spring® wrap.

[5] The inspections include examination and measurement of Clock Spring® wrap repairs and samples of wrap buried next to the repairs. Two repairs are to be evaluated at intervals of 2, 4, and 8 years. Measurements include strain gage readings of two repairs at 6-month intervals to verify the absence of wrap and adhesive creep.

[6] RSTRENG is a computer program developed to carry out the procedure called "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe." This procedure was developed by Battelle for the American GAs Association as an alternative to the ASME B31G procedures. Both B31G and RSTRENG may be used to comply with § 192.485.

[7] The INGAA petition defined a site to include multiple repairs on a single pipeline in the same area or multiple pipelines in the same right-of-way in the same area.

[8] Section 192.709 requires pipeline operators to keep a record of each repair to a transmission line for as long as the line is in service. This requirement applies to all transmission line repairs, and would apply to Clock Spring® wrap repairs regardless of the offer to comply with the regulation.

[9] RSPA proposed qualification standards for persons who perform, or supervise the performance of, operation, maintenance, or emergency-response functions regulated under 49 CFR Part 192 or 195 (59 FR 39506; Aug. 3, 1994). To maintain qualifications, refresher training was proposed to occur at 24-month intervals after certification.

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192.713(a), allowing the use of Clock Spring® wrap to repair large areas of general corrosion or other imperfections or damage on transmission lines operating at 40 percent or more of SMYS, is granted to the 28 companies and their subsidiaries, subject to the following conditions:

(1) Clock Spring® wrap must be installed using procedures recommended by the manufacturer;

(2) Clock Spring® wrap must be installed consistent with the program, GRI WRAP;

(3) Clock Spring® wrap must be installed consistent with a GRI plan, including, at 2-year intervals, excavating and evaluating a statistical sample of sites, recording the results, and sending the results to RSPA;

(4) To allow inspection by RSPA and state agencies serving as interstate enforcement agents, scheduled non-emergency installations of Clock Spring® wrap must be reported (by phone, fax, or mail) a reasonable time before installation to the RSPA pipeline regional office and state agent with authority over the repair; and

(5) Persons installing Clock Spring® wrap must have been trained and certified in installation procedures either by the Clock Spring Company or by persons the Clock Spring Company has trained and certified.

Authority: 49 U.S.C. § 60118(c)

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–4704 Filed 2–24–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Veterans Health Administration, VA.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under VA's Homeless Providers Grant and Per Diem program. This Notice contains information concerning the program, application process and amount of funding available.

DATES: An original completed grant application (plus three copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health and Behavioral Sciences Service in Washington, DC by 5:30 p.m. Eastern Time on April 28, 1995. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: For a copy of the application package contact Veterans Industries, 10770 N. 46th Street (A 400), Tampa, FL, 33617; (813) 228–2871 between the hours of 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday (this is not a toll-free call). For documents relating to the VA Homeless Providers Grant and Per Diem Program see the final rule codified at 38 CFR 17.700 published elsewhere in this Federal Register (*see* also 59 FR 28284). Funds made available through this Notice are subject to those regulations.

ADDRESSES: An original completed grant application (plus three copies) must be submitted to the following address: Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, Attention: Roger J. Casey. Applications must be *received* in Mental Health and Behavioral Sciences Service by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger J. Casey, Program Manager, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 535–7313 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem program. This program is authorized by Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. Funding applied for under this Notice may be used for: (1) Expansion, remodeling or alteration of existing buildings; (2) acquisition of buildings, and acquisition and rehabilitation of buildings; (3) new construction; and (4) procurement of vans. Applicants must have established supportive housing or supportive services programs after November 10, 1992. Applicants may apply for more than one type of assistance.

Those applicants interested in applying for per diem payments, or in-kind assistance through VA in lieu of per diem payments, need only submit Request for Recognition of Eligibility. Requirements for receiving per diem payments are specified at 38 CFR 17.715—17.723.

Grant applicants may not receive assistance to replace funds provided by any state or local government to assist homeless persons. For existing projects, VA will fund only the portion of the project that will expand the program. A proposal for an existing project that seeks to shift its focus by changing the population to be served or the precise mix of services to be offered is not eligible for consideration. Not more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

Authority

VA's Homeless Providers Grant and Per Diem Program is authorized by sections 3 and 4 of Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992; 38 USC 7721 note. The Program is implemented by the final rule codified at 38 CFR 17.700 published elsewhere in this **Federal Register**. The funds made available under this Notice are subject to the requirements of those regulations.

Allocation

A total of $6.0 million is available for the grant and per diem components of this program. A maximum of one award will be made for the procurement of a van or vans as Pub. L. 102–590 limits the number of such grants to twenty and VA made nineteen such awards last year. Such award, like all others, will be contingent upon the applicant achieving the requisite score.

Application Requirements

The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have one month to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other components of the grant and per diem program.

Dated: February 15, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–4653 Filed 2–24–95; 8:45 am]

BILLING CODE 8320–01–P

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Sunshine Act Meetings

Federal Register
Vol. 60, No. 38
Monday, February 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, March 6, 1995, and at 8:30 a.m. on Tuesday, March 7, and Wednesday, March 8, 1995, in Washington, D.C.

The March 6 meeting is closed to the public. (See 60 FR 9078, February 16, 1995.) The March 8 meeting is also closed to the public and will consist entirely of briefings. The March 7 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

March 6–1:00 p.m. (Closed)

1. Consideration of Mail Reclassification Case Filing with the Postal Rate Commission. (Gail G. Sonnenberg, Vice President, Marketing Systems, and Charles C. McBride, Manager, Reclassification.)
2. Consideration of International Mail Rates and Services. (Mary S. Elcano, Senior Vice President and General Counsel.)

Tuesday Session

March 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 6–7, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon.)
3. Status Report on Washington, D.C., Mail Service. (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations.)
4. Capital Investment.
   a. Washington-National Airport Mail Center (final decision). (Henry A. Pankey, Vice President, Mid-Atlantic Area Operations).
5. Tentative Agenda for the April 3–4, 1995, meeting in Washington, D.C.

David F. Harris,
Secretary.
[FR Doc. 95–4931 Filed 2–23–95; 3:56 pm]
BILLING CODE 7710–12–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, February 21, 1995, and at 9:30 a.m. on Wednesday, February 22, 1995, a quorum of the members of the Merit Systems Protection Board met in open session. The purpose of the meeting was to discuss and vote upon proposals to restructure the Board in accordance with the National Performance Review

In calling the meeting, a majority of the Board members determined that Board business required its consideration of this matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting was held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 22, 1995.

Mark Kelleher,
Chief Counsel to the Board Member
[FR Doc. 95–4938 Filed 2–23–95; 3:50 am]
BILLING CODE 7400–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. § 2286b to gather additional information on technical issues underlying the Board's Recommendation 94–1

TIME AND DATE: 9:30 a.m., March 22, 1995.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Experience with and available technologies for stabilizing transplutonium solutions at the Savannah River Site.
2. Storage conditions of spent nuclear fuel at the Hanford, Idaho and Savannah River Sites.
3. Available technologies for stabilizing spent nuclear fuel for interim storage at Hanford, Idaho and Savannah River Sites.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board repeatedly expressed the view that the Department of Energy needs to accelerate its current schedule for converting certain unstable nuclear defense-related materials to forms suitable for safe storage. The Board's most recent effort to address this potential threat to the public health and safety was expressed in its Recommendation 94–1, dated May 26, 1994. In that recommendation we stated, among other things, that:

> The halt in production of nuclear weapons and materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unremediated. The Board has concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected.
>
> We are especially concerned about specific liquids and solids containing fissile material and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture.
>
> It is not clear at this junction how fissile materials produced for defense purposes will eventually be dealt with long term. What is clear is that the extant fissile materials and related materials require treatment on an accelerated basis to convert them to forms more suitable for safe interim storage.

Recommendation 94–1 in its entirety is on file at DOE's Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801, and at the Defense Nuclear Facilities Safety Board's Washington office. It is also set forth in the **Federal Register** at 59 FR 28848.

In accordance with the powers granted to the Board, a public hearing will be conducted by the Board in an open meeting. The Board has invited recognized experts in the fields of the treatment and storage of spent nuclear fuel and special nuclear materials to testify at this hearing in order to assist the Board and to inform the public as to proper treatment of these materials. The experts are expected to answer Board questions based on their experience and technical knowledge and to provide additional documents as necessary. This hearing is an information-gathering function. Examination of those appearing before us will be limited to the questions put to them by the Board. An opportunity will be available for comments by members of the interested public at the conclusion of testimony by the experts.

A transcript of this proceeding will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's Public Reading Room, Gregg-Graniteville Library, 171 University Parkway, University of South Carolina, Aiken, SC 29801.

The Board intends further meetings and hearings on these matters. The Board will announce these by separate **Federal Register** notice.

The Board reserves its right to further schedule and otherwise regulate the course of these meetings and hearings, to recess, reconvene, postpone or adjourn the meeting and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: February 23, 1995.

John T. Conway,
Chairman.
[FR Doc. 95–4876 Filed 2–23–95; 2:32 pm]
BILLING CODE 3670–01–M

MERIT SYSTEMS PROTECTION BOARD

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Tuesday, February 28, 1995, a quorum of the members of the Merit Systems Protection Board will meet in open session. The purpose of the meeting is to discuss and vote upon proposals to restructure the Board in accordance with the National Performance Review, and in preparation for the Board's hearing on appropriations scheduled for March 2, 1995.

In calling the meeting, a majority of the Board members has determined that Board business requires its consideration of this matter on less than seven days' notice to the public and that no earlier notice of the meeting was practicable.

The meeting will be held in the Board's conference room at Board headquarters at 1120 Vermont Avenue, N.W., Washington, DC 20419.

Dated: February 22, 1995.

Mark Kelleher,
Chief Counsel to the Board Member
[FR Doc. 95–4939 Filed 2–23–95; 3:50 pm]
BILLING CODE 7400–01–M

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Corrections

Federal Register
Vol. 60, No. 38
Monday, February 27, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Hotel and Motel Fire Safety Act National Master List, 1994

Correction

In notice document 94–29217 beginning on page 61932 in the issue of Friday, December 2, 1994, make the following corrections:

1. On page 61949, in the table, insert the following entries for California BEFORE the seventh entry from the bottom:

CA1095 RESIDENCE INN LIVERMORE/PLEASANTON.		1000 AIRWAY BLVD	LIVERMORE CA 94550–	(510)373–1800
CA0885 COMFORT INN		118 N. CHEROKEE LN	LODI CA 95240–	(209)367–4848
CA0891 COMFORT INN		118 N. CHEROKEE LN	LODI CA 95240–	(209)367–4848
CA0016 BEST WESTERN ELDORADO INN.		2037 PACIFIC COAST HWY	LOMITA CA 90717–	(310)534–0700
CA0054 EMBASSY SUITES HOTEL		1117 N. H ST	LOMPOC CA 93436–	(805)735–8311
CA0074 INN OF LOMPOC		1122 N. H ST	LOMPOC CA 93436–	(805)735–7744
CA1200 MOTEL 6, #1365		1521 N. H ST	LOMPOC CA 93436–	(805)735–7631
CA0929 QUALITY INN & EXECUTIVE SUITES		1621 N. H ST	LOMPOC CA 93436–	(805)735–8555
CA0185 BEST WESTERN GOLDEN SAILS HOTEL.		6285 E. PACIFIC COAST HWY	LONG BEACH CA 90803–	(310)596–1631
CA1119 COMFORT INN LONG BEACH.		3201 E. PACIFIC COAST HWY	LONG BEACH CA 90804–	(310)597–3374
CA0228 FRIENDSHIP INN		50 ATLANTIC AVE	LONG BEACH CA 90802–	(310)435–8369
CA0784 HOLIDAY INN CONVENTION WORLD TRADE CENTER.		500 E. FIRST ST	LONG BEACH CA 90802–	(310)435–8511
CA1256 HOWARD JOHNSON PLAZA HOTEL.		1133 ATLANTIC AVE	LONG BEACH CA 90813–	(310)590–8858
CA0453 HYATT REGENCY LONG BEACH.		200 S. PINE AVE	LONG BEACH CA 90802–4553	(310)491–1234
CA0565 LONG BEACH AIRPORT MARRIOTT.		4700 AIRPORT PLAZA DR	LONG BEACH CA 90815–	(310)425–5210
CA0420 LONG BEACH HILTON		TWO WORLD TRADE CTR	LONG BEACH CA 90831–3102	(310)983–3400
CA1376 MOTEL 6		5665 E. 7TH ST	LONG BEACH CA 90804–	(310)597–1311
CA1023 RENAISSANCE HOTEL LONG BEACH.		111 E. OCEAN BLVD	LONG BEACH CA 90802–	(310)437–5900
CA1000 RESIDENCE INN BY MARRIOTT LONG BEACH.		4111 E. WILLOW ST	LONG BEACH CA 90815–	(310)595–0909
CA0003 SANDPIPER INN		3624 E. PACIFIC COAST HWY	LONG BEACH CA 90804–	(310)498–7544
CA0695 SEA PORT MARINA HOTEL		6400 E. PACIFIC COAST HWY	LONG BEACH CA 90803–	(310)434–8451
CA0450 SHERATON LONG BEACH HOTEL.		[illegible] E. OCEAN BLVD	LONG BEACH CA 90802–	(310)436–3000
CA1260 BEST WESTERN DRAGON GATE INN.		818 N. HILL ST	LOS ANGELES CA 90012–	(213)617–3077
CA0882 BEST WESTERN THE MAYFAIR.		1256 W. SEVENTH ST	LOS ANGELES CA 90017–2315	(213)484–9789
CA1269 BEST WESTERN WESTWOOD PACIFIC HOTEL.		11250 SANTA MONICA BLVD	LOS ANGELES CA 90025–	(310)478–1400
CA0839 BEVONSHIRE LODGE MOTEL.		7575 BEVERLY BLVD	LOS ANGELES CA 90036–	(213)936–6154
CA0618 BRENTWOOD SUITES HOTEL.		199 N. CHURCH LN	LOS ANGELES CA 90049–	(310)476–6255
CA1004 CARLYLE INN		1119 S. ROBERTSON BLVD	LOS ANGELES CA 90035–	(310)275–4415
CA0497 CENTURY PLAZA HOTEL AND TOWER.		2025 AVE. OF THE STARS	LOS ANGELES CA 90067–	(310)277–2000
CA0694 CLAREMONT HOTEL		1044 TIVERTON AVE	LOS ANGELES CA 90024–	(310)208–5957

CA0058 CLARK PLAZA HOTEL		141 S. CLARK DR	LOS ANGELES CA 90048–	(310)278–9310
CA0805 COMFORT INN EAGLE ROCK.		2300 W. COLORADO BLVD	LOS ANGELES CA 90041–1145	(213)256–1199
CA1122 COMFORT INN TOWNE		4122 S. WESTERN AVE	LOS ANGELES CA 90062–	(213)294–5200
CA0846 COURTYARD BY MARRIOTT CENTURY CITY.		10320 W. OLYMPIC BLVD	LOS ANGELES CA 90064–	(310)556–2777
CA1121 ECONO LODGE		11933 WASHINGTON BLVD	LOS ANGELES CA 90066–	(310)398–1651
CA0436 EMBASSY SUITES		9801 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)215–1000
CA0072 FIGUEROA HOTEL		939 S. FIGUEROA ST	LOS ANGELES CA 90015–	(213)627–8971
CA0372 FOUR SEASONS HOTEL		300 S. DOHENY DR	LOS ANGELES CA 90048–	(310)273–2222
CA1307 FRIENDSHIP INN HOLLYWOOD PREMIERE MOTEL.		5333 HOLLYWOOD BLVD	LOS ANGELES CA 90027–	(213)466–1691
CA0465 GRAND MOTEL		1479 S. LA CIENAGA BLVD	LOS ANGELES CA 90035–	(310)652–3644
CA0441 HOLIDAY INN CROWNE PLAZA LOS ANGELES AIRPORT.		5985 W. CENTURY BLVD	LOS ANGELES CA 90045–5463	(310)642–7500
CA0682 HOLIDAY INN LOS ANGELES CONVENTION CENTER.		1020 S. FIGUEROA ST	LOS ANGELES CA 90015–	(213)748–1291
CA0531 HOLLYWOOD METROPOLITAN HOTEL.		5825 SUNSET BLVD	LOS ANGELES CA 90028–	(213)962–5800
CA0924 HOTEL INTER CONTINENTAL LOS ANGELES.		251 S. OLIVE ST	LOS ANGELES CA 90012–	(213)617–3300
CA0285 HOTEL NIKKO AT BEVERLY HILLS.		465 S. LA CIENEGA BLVD	LOS ANGELES CA 90048–	(310)247–0400
CA1287 HYATT LAX HOTEL		6225 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)337–1234
CA1062 HYATT REGENCY LOS ANGELES.		711 S. HOPE ST	LOS ANGELES CA 90017–	(213)683–1234
CA0566 J.W. MARRIOTT CENTURY CITY		2151 AVE. OF THE STARS	LOS ANGELES CA 90067–	(213)277–2777
CA0655 JERRY'S MOTEL		285 S. LUCAS AVE	LOS ANGELES CA 90026–	(213)481–0321
CA0435 LOS ANGELES AIRPORT HILTON & TOWERS.		5711 W. CENTURY BLVD	LOS ANGELES CA 90045–5631	(310)410–4000
CA0729 LOS ANGELES AIRPORT MARRIOTT HOTEL.		5855 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)641–5700
CA0137 LOS ANGELES ATHLETIC CLUB.		431 W. SEVENTH ST	LOS ANGELES CA 90014–	(213)895–0707
CA0445 LOS ANGELES HILTON AND TOWERS.		930 WILSHIRE BLVD	LOS ANGELES CA 90017–	(213)629–4321
CA1279 LOS ANGELES WEST TRAVELODGE.		10740 SANTA MONICA BLVD	LOS ANGELES CA 90025–	(310)474–4576
CA0344 ORCHID HOTEL		819 S. FLOWER ST	LOS ANGELES CA 90017–	(213)624–5855
CA0269 ORCHID SUITES HOTEL		1753 N. ORCHID AVE	LOS ANGELES CA 90028–	(213)461–7260
CA0352 PARK PLAZA HOTEL		607 S. PARK VIEW ST	LOS ANGELES CA 90057–	(213)384–5281
CA0931 QUALITY HOTEL LOS ANGELES AIRPORT		5249 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)645–2200
CA0482 RAMADA RENAISSANCE HOTEL LOS ANGELES AIRPORT.		9620 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)337–2800
CA0251 SHERATON GRANDE HOTEL.		333 S. FIGUEROA ST	LOS ANGELES CA 90071–	(213)617–1133
CA0336 SHERATON LOS ANGELES AIRPORT HOTEL.		6101 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)642–1111
CA0668 SKYWAYS AIRPORT HOTEL		9250 AIRPORT BLVD	LOS ANGELES CA 90045–	(310)670–2900
CA0270 STOUFFER CONCOURSE HOTEL.		5400 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)216–5858
CA0283 THE BEVERLY PLAZA HOTEL.		8384 W. THIRD ST	LOS ANGELES CA 90048–	(213)656–6600
CA0362 THE BILTMORE LOS ANGELES		506 S. GRAND AVE	LOS ANGELES CA 90071–	(213)624–1011
CA0980 THE KAWADA HOTEL		200 S. HILL ST	LOS ANGELES CA 90012–	(213)621–4455
CA0249 THE NEW OTANI HOTEL & GARDEN.		120 S. LOS ANGELES ST	LOS ANGELES CA 90012–	(213)629–1200
CA0677 THE WESTIN BONAVENTURE.		404 S. FIGUEROA ST	LOS ANGELES CA 90071–	(213)624–1000
CA0989 TRAVELODGE HOTEL AT LAX.		5547 W. CENTURY BLVD	LOS ANGELES CA 90045–	(310)649–4000
CA0981 UNIVERSITY HILTON LOS ANGELES.		3540 S. FIGUEROA ST	LOS ANGELES CA 90007–	(213)748–4141
CA0321 WILSHIRE CREST INN		6301 ORANGE ST	LOS ANGELES CA 90048–	(213)936–5131
CA0774 WILSHIRE MOTEL		12023 WILSHIRE BLVD	LOS ANGELES CA 90025–	(310)478–3345
CA1255 WYNDHAM CHECKERS HOTEL.		535 SO. GRAND	LOS ANGELES CA 90071–	(213)624–0000
CA1120 HILGARD HOUSE HOTEL		927 HILGARD AVE	LOS ANGELES CA 90024–	(310)[illegible]3945
CA0222 LODGE AT VILLA FELICE		15350 S. WINCHESTER BLVD	LOS GATOS CA 95030–	(408)395–6710
CA1251 MOTEL 6, #274		14685 WARREN ST	LOS HILLS CA 93249–	(805)797–2246
CA0843 BLUE HERON		1899 9TH ST	LOS OSOS CA 93401–	(805)528–1495
CA0636 ECONOMY MOTELS OF AMERICA.		14684 ALOMA ST	LOST HILLS CA 93249–	(805)797–[illegible]
CA0031 TRAVELODGE CENTURY FREEWAY		11401 LONG BEACH BLVD	LYNWOOD CA 90262–	(310)763–4029
CA0637 ECONOMY MOTELS OF AMERICA.		1855 W. CLEVELAND AVE	MADERA CA 93637–	(209)661–1131
CA0551 MAMMOTH LAKES SHILO INN.		2963 MAIN ST	MAMMOTH LAKES CA 93546–2179	(503)611–[illegible]
CA1436 MOTEL 6		3372 MAIN ST	MAMMOTH LAKES CA 93546–	(619)[illegible]
CA0792 BARNABEY'S HOTEL		3501 SEPULVEDA BLVD	MANHATTAN BEACH CA 90266–	(310)545–8466
CA1308 COMFORT INN		850 N. SEPULVEDA BLVD	MANHATTAN BEACH CA 90266–	(310)[illegible]

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CA0401	RADISSON PLAZA HOTEL & GOLF COURSE.		1400 PARKVIEW AVE	MANHATTAN BEACH CA 90266– (310)546–7511
CA0877	RESIDENCE INN BY MARRIOTT MANHATTAN BEACH LAX.		1700 N. SEPULVEDA	MANHATTAN BEACH CA 90266– (310)546–7627
CA0229	BEST WESTERN INN OF MANTECA.		1415 E. YOSEMITE AVE	MANTECA CA 95336– (209)825–1415
CA0858	MANTECA INN		150 NORTHWOODS AVE	MANTECA CA 95336– (209)239–1291
CA1057	INNCAL		3280 DUNES DR	MARINA CA 93933– (408)384–1800
CA0403	DOUBLETREE HOTEL MARINA DEL REY.		4100 ADMIRALTY WAY	MARINA DEL REY CA 90292– (310)301–3000
CA1005	MARINA INTERNATIONAL HOTEL.		4200 ADMIRALTY WAY	MARINA DEL REY CA 90292– (310)301–2000
CA0386	MARINA SUITES HOTEL		737 WASHINGTON BLVD	MARINA DEL REY CA 90292– (310)821–4455
CA0434	RITZ CARLTON HOTEL MARINA DEL REY.		4375 ADMIRALTY WAY	MARINA DEL REY CA 90292– (310)823–1700
CA0530	THE MANSION INN		327 WASHINGTON ST	MARINA DEL REY CA 90291– (310)821–2557
CA0286	MARIPOSA LODGE	PO BOX 733	1052 HWY. 140	MARIPOSA CA 95338– (209)966–3607
CA0001	THE MINERS INN MOTEL	PO BOX 246	5155 HWY. 140	MARIPOSA CA 95338– (209)742–7777
CA0310	WOODFORDS INN	PO BOX 426		MARKLEVILLE CA 96120– (916)694–2410
CA1339	ECONO LODGE		721 10TH ST	MARYSVILLE CA 95901– (916)742–8586
CA0015	OXBOW MOTEL		1078 N. BEALE RD	MARYSVILLE CA 95901– (916)742–8238
CA0960	MENLO PARK INN		1315 EL CAMINO REAL	MENLO PARK CA 94025– (415)326–7530
CA0085	MERMAID INN MOTEL		727 EL CAMINO REAL	MENLO PARK CA 94025– (415)323–9481
CA0998	RIVIERA MOTOR LODGE		15 EL CAMINO REAL	MENLO PARK CA 94025– (415)321–8772
CA0082	STANFORD PARK HOTEL		100 EL CAMINO REAL	MENLO PARK CA 94025– (415)322–1234
CA1364	MOTEL 6		1215 R ST	MERCED CA 95340– (209)722–2737
CA1202	MOTEL 6, #1029		1410 V ST	MERCED CA 95340– (209)384–2181
CA1201	MOTEL 6, #23		1983 E. CHILDS AVE	MERCED CA 95340– (209)384–3702
CA0378	PARKWAY INN		1199 MOTEL DR	MERCED CA 95340– (209)722–2726
CA0200	BEST WESTERN EL RANCHO INN & EXECUTIVE SUITES.		1100 EL CAMINO REAL	MILLBRAE CA 94030– (415)588–2912
CA0232	CLARION HOTEL SAN FRANCISCO AIRPORT.		401 E. MILLBRAE AVE	MILLBRAE CA 94030– (415)692–6363
CA1309	COMFORT INN AIRPORT WEST.		1390 EL CAMINO REAL	MILLBRAE CA 94030– (415)952–3200
CA0765	MILLWOOD INN		1375 EL CAMINO REAL	MILLBRAE CA 94030– (415)583–3935
CA0203	WESTIN HOTEL SAN FRANCISCO AIRPORT.		1 OLD BAYSHORE HWY	MILLBRAE CA 94030– (415)692–3500
CA0281	COMFORT INN		66 S. MAIN ST	MILPITAS CA 95035– (408)262–7666
CA0090	CROWN STERLING SUITES HOTEL.		901 E. CALAVERAS BLVD	MILPITAS CA 95035– (408)942–0400
CA0638	ECONOMY INNS OF AMERICA.		270 S. ABBOTT AVE	MILPITAS CA 95035– (408)946–8869
CA0909	HOLIDAY INN SAN JOSE NORTH.		777 BELLEW DR	MILPITAS CA 95035– (408)321–9500
CA1061	INNCAL		95 DEMPSEY RD	MILPITAS CA 95035– (408)942–1798
CA1123	MILPITAS COMFORT INN		66 S. MAIN STREET	MILPITAS CA 95035– ( ) –
CA1206	MILPITAS SUPER 8 MOTEL		485 SOUTH MAIN ST	MILPITAS CA 95035– (408)946–1615
CA0196	MILPITAS TRAVELODGE		378 W. CALAVERAS BLVD	MILPITAS CA 95035– (408)263–0500
CA0724	SHERATON SAN JOSE HOTEL.		1801 BARBER LN	MILPITAS CA 95035– (408)943–0600
CA0256	HAMPTON INN		26328 OSO PKWY	MISSION VIEJO CA 92691– (714)582–7100
CA0422	BEST WESTERN MALLARDS INN.		1720 SISK RD	MODESTO CA 95350– (209)577–3825
CA0541	EL CAPITAN MOTEL		1121 NEEDHAM ST	MODESTO CA 95354– (209)522–1021
CA0391	HOLIDAY INN MODESTO		1612 SISK RD	MODESTO CA 95350–2589 (209)521–1612
CA1368	MOTEL 6		1920 W. ORANGEBURG AVE	MODESTO CA 95350– (209)522–7271
CA1390	MOTEL 6		722 KANSAS AVE	MODESTO CA 95351– (209)524–3000
CA0726	RAMADA INN MODESTO		2001 W. ORANGEBURG AVE	MODESTO CA 95350– (209)521–9000
CA0768	RED LION HOTEL MODESTO		1150 9TH ST	MODESTO CA 95354– (209)526–6000
CA1426	MOTEL 6		16958 ST. RTE. 58	MOJAVE CA 93501– (805)824–4571
CA0075	HOLIDAY INN MONROVIA		924 W. HUNTINGTON DR	MONROVIA CA 91016– (818)357–1900
CA0047	HOWARD JOHNSON HOTEL		700 W. HUNTINGTON DR	MONROVIA CA 91016– (818)357–5211
CA0692	ARBOR INN		1058 MUNRAS AVE	MONTEREY CA 93940– (800)351–8811
CA0389	BAY PARK HOTEL		1425 MUNRAS AVE	MONTEREY CA 93940– (408)649–1020
CA1124	COMFORT INN DEL MONTE BEACH.		2401 DEL MONTE AVE	MONTEREY CA 93540– (408)373–7100
CA0416	DOUBLETREE HOTEL AT FISHERMAN'S WHARF.		2 PORTOLA PLAZA	MONTEREY CA 93940– (408)649–4511
CA0800	HOLIDAY INN RESORT		1000 AQUAJITO RD	MONTEREY CA 93940– (408)373–6141
CA0684	HYATT REGENCY MONTEREY.		ONE OLD GOLF COURSE RD	MONTEREY CA 93940– (408)372–1234
CA0374	MONTEREY BAY INN		242 CANNERY ROW	MONTEREY CA 93940– (408)373–6242
CA0970	MONTEREY CARMEL TRAVELODGE AT FAIRGROUNDS.		2030 N. FREMONT ST	MONTEREY CA 93940– (408)373–3381
CA0161	MONTEREY DOWNTOWN TRAVELODGE.		675 MUNRAS AVE	MONTEREY CA 93940– (408)373–1876
CA0561	MONTEREY MARRIOTT		350 CALLE PRINCIPAL	MONTEREY CA 93940– (408)649–4234
CA1330	MONTEREY MOTOR LODGE		55 CAMINO AQUIJITO	MONTEREY CA 93940– (800)558–1900
CA1203	MOTEL 6, #1026		100 RESERVATION ROAD	MONTEREY CA 93933– (408)384–1000
CA0178	SAND DOLLAR INN		755 ABREGO ST	MONTEREY CA 93940– (408)372–7551
CA0376	SPINDRIFT INN		652 CANNERY ROW	MONTEREY CA 93940– (408)646–8900
CA0300	THE MARIPOSA INN		1386 MUNRAS AVE	MONTEREY CA 93940– (408)649–1414
CA0299	THE MONTEREY HOTEL		406 ALVARADO ST	MONTEREY CA 93940– (408)375–3184

CA0375	VICTORIAN INN		487 FOAM ST	MONTEREY CA 93950– (408)373–8000
CA1348	MOTEL 6		2124 N. FREMONT ST	MONTEREY CA 93940– (408)646–8585
CA0742	BEST WESTERN IMAGE SUITES.		24840 ELDER AVE	MORENO VALLEY CA 92557– (714)924–4546
CA1397	MOTEL 6		23581 ALESSANDRO BLVD	MORENO VALLEY CA 92553– (909)656–4451
CA1204	MOTEL 6, #1072		24630 SUNNYMEAD BLVD	MORENO VALLEY CA 92553– (909)243–0075
CA0021	RODEWAY INN RIVERSIDE MORENO VALLEY.		23330 SUNNYMEAD BLVD	MORENO VALLEY CA 92388– (714)242–0699
CA0325	BAY VIEW LODGE		225 HARBOR ST	MORRO BAY CA 93442– (805)772–2771
CA1276	BEST WESTERN SAN MARCOS MOTOR INN.		250 PACIFIC ST	MORRO BAY CA 93442– (805)772–2248
CA0617	BLUE SAIL INN		851 MARKET AVE	MORRO BAY CA 93442– (805)772–7132
CA0879	ECONO LODGE		1100 MAIN ST	MORRO BAY CA 93442– (805)772–5609
CA1158	EL RANCH BEST WESTERN		2460 MAIN ST	MORRO BAY CA 93442– (805)772–2212
CA0280	EMBARCADERO INN		456 EMBARCADERO	MORRO BAY CA 93442– (805)772–2700
CA1347	MOTEL 6		298 ATASCADERO RD	MORRO BAY CA 93442– (805)772–5641
CA1205	MOTEL 6, #004		4301 EL CAMINO REAL	MORRO BAY CA 94306– (415)949–0833
CA0051	THE INN AT MORRO BAY		19 COUNTRY CLUB RD	MORRO BAY CA 93442– (805)772–5651
CA1286	SISKIYOU LAKE GOLF RESORT.		1000 SISKIYOU LAKE BLVD	MOUNT SHASTA CITY CA 96067–9482 (916)926–3030
CA0545	BEST WESTERN INN		93 EL CAMINO REAL W	MOUNTAIN VIEW CA 94040– (415)967–6957
CA0243	COMFORT INN		1561 W. EL CAMINO REAL	MOUNTAIN VIEW CA 94040– (415)967–7888
CA0093	COUNTY INN		850 LEONG DR	MOUNTAIN VIEW CA 94043– (415)961–1131
CA0155	RESIDENCE INN BY MARRIOTT MOUNTAIN VIEW.		1854 EL CAMINO REAL W	MOUNTAIN VIEW CA 94040– (415)940–1300
CA0282	RODEWAY INN		55 FAIRCHILD DR	MOUNTAIN VIEW CA 94043– (415)967–6856
CA1125	RODEWAY INN		55 FAIRCHILD DRIVE	MOUNTAIN VIEW CA 94043– (415)967–6856
CA1058	TRAVELODGE		4325 WATT AVE	N. HIGHLANDS CA 95660– (916)971–9440
CA1171	MOTEL 6, #1262			N. PALM SPRINGS CA 92258– (619)251–1425
CA0190	CHABLIS LODGE		3360 SOLANO AVE	NAPA CA 94558– (707)257–1944
CA0477	CHURCHILL MANOR BED & BREAKFAST.		485 BROWN ST	NAPA CA 94559– (707)253–7733
CA0091	JOHN MUIR INN		1998 TROWER AVE	NAPA CA 94558– (707)257–7220
CA0201	LA RESIDENCE COUNTRY INN.		4066 ST. HELENA HWY	NAPA CA 94558– (707)253–0337
CA0245	NAPA VALLEY TRAVELODGE.		853 COOMBS ST	NAPA CA 94559– (707)226–1871
CA1028	SHERATON INN NAPA VALLEY.		3425 SOLANO AVE	NAPA CA 94558– (707)253–7433
CA0866	STEELE PARK RESORT INC		1605 STEELE CANYON RD	NAPA CA 94558– (707)966–2123
CA0158	THE CHATEAU HOTEL		4195 SOLANO AVE	NAPA CA 94558– (707)253–9300
CA0355	THE INN AT NAPA VALLEY CROWN STERLING SUITES.		1075 CALIFORNIA BLVD	NAPA CA 94559– (707)253–9540
CA0754	E Z 8 MOTELS INC		607 ROOSEVELT AVE	NATIONAL CITY CA 91950– (619)474–7502
CA0772	E Z 8 MOTELS INC		1700 PLAZA BLVD	NATIONAL CITY CA 91950– (619)474–6491
CA0263	RADISSON INN & SUITES NATIONAL CITY.		700 NATIONAL CITY BLVD	NATIONAL CITY CA 91950– (619)336–1100
CA1352	MOTEL 6		1215 HOSPITALITY LN	NEEDLES CA 92363– (619)326–5131
CA1383	MOTEL 6		1420 J ST	NEEDLES CA 92363– (619)326–3399
CA0371	TRAVELERS INN		1195 3RD ST. HILL	NEEDLES CA 92362– (619)326–4900
CA0737	E Z 8 MOTELS INC		5555 CEDAR ST	NEWARK CA 94560– (510)794–7775
CA1428	MOTEL 6		5600 CEDAR ST	NEWARK CA 94560– (510)791–5900
CA0087	NEWARK FREMONT HILTON		39900 BALENTINE DR	NEWARK CA 94560– (510)490–8390
CA1332	PARK INN		5977 MOWRY AVE	NEWARK CA 94560– (510)795–7995
CA0499	WOODFIN SUITE HOTEL		39150 CEDAR BLVD	NEWARK CA 94560– (510)795–1200
CA0732	E Z 8 MOTELS INC		2434 W. HILLCREST DR	NEWBURY PARK CA 91320– (805)499–0755
CA1399	MOTEL 6		2850 CAMINO DOS RIOS	NEWBURY PARK CA 91320– (805)499–0585
CA0342	FOUR SEASONS HOTEL NEWPORT BEACH.		690 NEWPORT CENTER DR	NEWPORT BEACH CA 92660– (714)759–0808
CA0568	NEWPORT BEACH MARRIOTT HOTEL.		900 NEWPORT CENTER DR	NEWPORT BEACH CA 92660– (714)640–4000
CA0569	NEWPORT BEACH MARRIOTT SUITES.		500 BAYVIEW CIR	NEWPORT BEACH CA 92660– (714)854–4500
CA1067	SHERATON NEWPORT BEACH HOTEL.		4545 MAC ARTHUR BLVD	NEWPORT BEACH CA 92660– (714)833–0570
CA1411	MOTEL 6		4600 WATT AVE	NORTH HIGHLANDS CA 95660– (916)973–8637
CA1310	COMFORT INN		8647 SEPULVEDA BLVD	NORTH HILLS CA 91343– (818)893–3776
CA0036	MIKADO BEST WESTERN HOTEL.		12600 RIVERSIDE DR	NORTH HOLLYWOOD CA 91607–3496 (818)763–9141
CA1141	BEST WESTERN NORWALK INN.		10902 FIRESTONE BLVD	NORWALK CA 90650– (310)929–8831
CA0363	COMFORT INN NORWALK		12512 PIONEER BLVD	NORWALK CA 90650– (310)868–3453
CA1326	ECONO LODGE		12225 FIRESTONE BLVD	NORWALK CA 90650–4323 (310)868–0791
CA1377	MOTEL 6		10646 E. ROSECRANS AVE	NORWALK CA 90650– (310)864–2567
CA0250	NORWALK SHERATON HOTEL.		13111 SYCAMORE DR	NORWALK CA 90650– (310)863–6666
CA0934	QUALITY INN MARIN		215 ALAMEDA DEL PRADO	NOVATO CA 94949– (415)883–4400
CA1044	RAMADA INN		825 EAST F ST	OAKDALE CA 95361– (209)847–8181
CA0077	BEST WESTERN YOSEMITE GATEWAY INN.		40530 HWY. 41	OAKHURST CA 93644– (209)683–2378
CA0550	OAKHURST SHILO INN		40644 HWY. 41	OAKHURST CA 93644–9621 (503)641–6565
CA1099	BEST WESTERN PARK PLAZA HOTEL.		150 HEGENBERGER RD	OAKLAND CA 94621– (510)635–5300
CA0736	E Z 8 MOTELS INC		8471 ENTERPRISE WAY	OAKLAND CA 94621– (510)562–48[illegible]

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CA0824	EXECUTIVE INN EMBARCADERO COVE.		1755 EMBARCADERO	OAKLAND CA 94606–	(510)536–6633
CA0680	HAMPTON INN OAKLAND AIRPORT.		8465 ENTERPRISE WAY	OAKLAND CA 94621–	(510)632–8900
CA0919	HOLIDAY INN OAKLAND AIRPORT.		500 HEGENBERGER RD	OAKLAND CA 94621–	(510)562–5311
CA1199	MOTEL 6, #1015		8480 EDES AVE	OAKLAND CA 94621–	(510)638–1160
CA1198	MOTEL 6, #1080		1801 EMBARCADERO	OAKLAND CA 94606–	(510)436–0103
CA0140	OAKLAND AIRPORT HILTON HOTEL.		1 HEGENBERGER RD	OAKLAND CA 94621–	(510)635–5000
CA0996	PARC OAKLAND HOTEL		1001 BROADWAY	OAKLAND CA 94607–	(510)451–4000
CA0427	WASHINGTON INN		495 10TH ST	OAKLAND CA 94607–	(510)452–1776
CA1328	WATERFRONT PLAZA HOTEL.		10 WASHINGTON ST	OAKLAND CA 94607–	(510)836–3800
CA1165	BEST WESTERN OCEANSIDE INN.		1680 OCEANSIDE BLVD	OCEANSIDE CA 92054–	(619)722–1821
CA1387	MOTEL 6		1403 MISSION AVE	OCEANSIDE CA 92054–	(619)721–6662
CA1215	MOTEL 6, #679		3708 PLAZA DR	OCEANSIDE CA 92056–	(619)941–1011
CA0143	VILLA MARINA SUITES HOTEL.		2008 HARBOR DR. N	OCEANSIDE CA 92054–	(619)722–1561
CA0557	BEST WESTERN CASA OJAI		1302 E. OJAI AVE	OJAI CA 93023–	(805)646–8175
CA0247	POINT REYES SEASHORE LODGE.	PO BOX 39	10021 COASTAL HWY. 1	OLEMA CA 94950–	(415)663–9000
CA1126	COMFORT INN AIRPORT S		2301 S. EUCLID AVE	ONTARIO CA 91762–	(909)986–3556
CA0777	COUNTRY SUITES BY CARLSON.		231 N. VINEYARD AVE	ONTARIO CA 91764–	(714)983–8484
CA0480	DOUBLETREE CLUB HOTEL		429 N. VINEYARD AVE	ONTARIO CA 91764–	(714)391–6411
CA0603	FAIRFIELD INN BY MARRIOTT ONTARIO.		3201 E. CENTERLAKE DR	ONTARIO CA 91761–	(714)395–9300
CA1319	HOLIDAY INN EXPRESS—ONTARIO.		1818 E. HOLT BLVD	ONTARIO CA 91761–	(909)988–8466
CA0951	HOLIDAY INN ONTARIO INTERNATIONAL AIRPORT.		1801 E. G ST	ONTARIO CA 91764–	(909)983–3604
CA1401	MOTEL 6		1515 N. MOUNTAIN	ONTARIO CA 91762–	(909)986–6632
CA1252	MOTEL 6, #1009		1560 E. FOURTH ST	ONTARIO CA 91764–	(909)984–2424
CA0165	ONTARIO AIRPORT HILTON		700 N. HAVEN	ONTARIO CA 91764–	(714)980–0400
CA0560	ONTARIO AIRPORT MARRIOTT.		2200 E. HOLT BLVD	ONTARIO CA 91761–	(714)986–8811
CA1094	RESIDENCE INN ONTARIO AIRPORT.		2025 E. D ST	ONTARIO CA 91764–	(909)983–6788
CA0338	ANAHEIM ORANGE HILTON SUITES.		400 N. STATE COLLEGE BLVD	ORANGE CA 92668–	(714)938–1111
CA0649	DAYS INN		279 S. MAIN ST	ORANGE CA 92668–	(714)771–6704
CA1029	DOUBLETREE HOTEL		100 THE CITY DR	ORANGE CA 92668–	(714)634–4500
CA1242	MOTEL 6, #1004		2920 W. CHAPMAN	ORANGE CA 92668–	(714)634–2441
CA1068	RESIDENCE INN ORANGE		201 N STATE COLLEGE BLVD	ORANGE CA 92668–	(714)978–7700
CA0485	WASHINGTON SUITES HOTEL.		720 THE CITY DR. S	ORANGE CA 92668–	(714)740–2700
CA1267	BEST WESTERN GRAND MANOR INN.		1470 FEATHER RIVER BLVD	OROVILLE CA 95965–	(916)533–9675
CA0607	GRAND MANOR INN #36		1470 FEATHER RIVER BLVD	OROVILLE CA 95965–	(916)553–9673
CA1434	MOTEL 6		505 MONTGOMERY ST	OROVILLE CA 95965–	(916)532–9400
CA0620	CASA SIRENA MARINA RESORT.		3605 PENINSULA RD	OXNARD CA 93035–	(805)985–6311
CA0089	FINANCIAL PLAZA HILTON		600 ESPLANADE DR	OXNARD CA 93030–	(805)485–9666
CA1152	MANDALAY BEACH RESORT.		2101 MANDALAY BEACH ROAD	OXNARD CA 93035–	(805)984–2500
CA0164	ASILOMAR CONFERENCE CENTER.	PO BOX 537	800 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)372–8016
CA0151	PACIFIC GARDENS INN		701 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)646–9414
CA0829	QUALITY INN PACIFIC GROVE.		1111 LIGHTHOUSE AVE	PACIFIC GROVE CA 93950–	(408)646–8885
CA0859	ROSEDALE INN		775 ASILOMAR BLVD	PACIFIC GROVE CA 93950–	(408)655–1000
CA0343	THE MARTINE INN		255 OCEANVIEW BLVD	PACIFIC GROVE CA 93950–	(408)373–3388
CA1336	LIGHTHOUSE HOTEL		105 ROCKAWAY BEACH AVE	PACIFICA CA 94044–	(415)355–6300
CA0723	EMBASSY SUITES PALM DESERT.		74700 HWY. 111	PALM DESERT CA 92260–	(619)340–6600
CA0753	HOLIDAY INN EXPRESS		74675 HWY. 111	PALM DESERT CA 92260–	(619)340–4303
CA0570	MARRIOTT DESERT SPRINGS RESORT.		74855 COUNTRY CLUB DR	PALM DESERT CA 92260–	(619)341–2211
CA0369	TRAVELERS INN		72322 HWY. 111	PALM DESERT CA 92260–	(619)341–9100
CA0761	BEST WESTERN HOST HOTEL.		1633 S. PALM CANYON	PALM SPRINGS CA 92264–	(619)325–9177
CA0619	CASA CODY BED AND BREAKFAST COUNTRY INN.		175 S. CAHUILLA RD	PALM SPRINGS CA 92262–	(619)320–9346
CA0586	COURTYARD BY MARRIOTT PALM SPRINGS.		1300 TAHQUITZ CANYON WAY	PALM SPRINGS CA 92262–	(619)322–6100
CA0207	GOLDEN PALM VILLA		601 GRENFALL RD	PALM SPRINGS CA 92264–	(619)327–1408
CA0253	HOLIDAY INN PALM MOUNTAIN RESORT.		155 S. BELARDO	PALM SPRINGS CA 92262–	(619)325–1301
CA0238	HYATT REGENCY SUITES PALM SPRINGS.		285 N. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)322–9000
CA1212	MOTEL 6, #009		595 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)325–6129
CA1216	MOTEL 6, #689		660 S. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)327–4200
CA0346	ORCHID TREE INN		261 S. BELARDO RD	PALM SPRINGS CA 92262–6386	(619)325–2791

CA0259	PALM SPRINGS HILTON		400 E. TAHQUITZ CANYON	PALM SPRINGS CA 92262–	(619)320–6868
CA0549	PALM SPRINGS SHILO INN		1875 N. PALM CANYON DR	PALM SPRINGS CA 92261–2913	(503)641–6565
CA0556	QUALITY INN PALM SPRINGS.		1269 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)323–2775
CA0128	RACQUET CLUB RESORT HOTEL.		2743 N. INDIAN CANYON DR	PALM SPRINGS CA 92262–	(619)325–1281
CA0799	RAMADA HOTEL RESORT		1800 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)323–1711
CA0275	SUPER 8 LODGE		1900 N. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)322–3757
CA0109	TRAVELODGE PALM SPRINGS.		333 E. PALM CANYON DR	PALM SPRINGS CA 92264–	(619)327–1211
CA0468	VAGABOND INN		1699 S. PALM CANYON DR	PALM SPRINGS CA 92262–	(619)325–7211
CA0209	WYNDHAM PALM SPRINGS HOTEL.		888 E. TAHQUITZ CANYON WAY	PALM SPRINGS CA 92262–	(619)322–6000
CA0785	E Z 8 MOTELS INC		430 W. PALMDALE BLVD	PALMDALE CA 93551–	(805)273–6400
CA0683	HOLIDAY INN PALMDALE		38630 5TH ST. W	PALMDALE CA 93550–	(805)947–8055
CA1214	MOTEL 6, #292		407 W. PALMDALE BLVD	PALMDALE CA 93550–	(805)272–0660
CA0651	HOTEL CALIFORNIA		2431 ASH ST	PALO ALTO CA 94306–	(415)322–7666
CA0709	HYATT HOTEL PALO ALTO		4219 EL CAMINO REAL	PALO ALTO CA 94306–	(415)493–8000
CA1172	MOTEL 6, #41		4301 EL CAMINO REAL	PALO ALTO CA 94306–	(415)949–0833
CA0832	LANTERN MOTEL		5799 WILDWOOD LN	PARADISE CA 95969–	(916)877–5553
CA0415	PONDEROSA GARDENS MOTEL INC.		7010 SKYWAY	PARADISE CA 95969–	(916)872–9094
CA0469	BEST WESTERN COLORADO INN.		2156 E. COLORADO BLVD	PASADENA CA 91107–	(818)793–9339
CA0234	BEST WESTERN PASADENA INN.		3570 E. COLORADO BLVD	PASADENA CA 91107–	(818)796–9100
CA0235	BEST WESTERN PASADENA ROYALE.		3600 E. COLORADO BLVD	PASADENA CA 91107–	(818)793–0950
CA0132	COMFORT INN PASADENA EAST.		2462 E. COLORADO BLVD	PASADENA CA 91107–	(818)405–0811
CA0359	DOUBLETREE HOTEL PASADENA.		191 N. LOS ROBLES AVE	PASADENA CA 91101–	(818)792–2727
CA0174	PASADENA HILTON		150 S. LOS ROBLES AVE	PASADENA CA 91101–	(818)577–1000
CA0454	THE RITZ CARLTON HUNTINGTON HOTEL.		1401 S. OAK KNOLL AVE	PASADENA CA 91106–	(818)568–3900
CA0612	ADELAIDE MOTOR INN		1215 YSABELL AVE	PASO ROBLES CA 93446–	(805)238–2770
CA0782	BEST WESTERN BLACK OAK MOTOR LODGE.		1135 24TH ST	PASO ROBLES CA 93446–	(805)238–4740
CA0014	TRAVELODGE PASO ROBLES.		2701 SPRING ST	PASO ROBLES CA 93446–	(805)238–0078
CA1238	MOTEL 6, #1372		1134 BLACK OAK DR	PASO ROYALES CA 93446–	(805)239–9090
CA0146	THE INN AT SPANISH BAY		2700 17-MILE DR	PEBBLE BEACH CA 93953–	(408)647–7500
CA0686	THE LODGE AT PEBBLE BEACH.		SEVENTEEN MILE DR	PEBBLE BEACH CA 93953–	(408)624–3811
CA0013	BEST WESTERN PETALUMA INN.		200 S. MCDOWELL BLVD	PETALUMA CA 94954–	(707)763–0994
CA0657	MOTEL 6		5135 MONTERO WAY	PETALUMA CA 94954–	(707)664–9090
CA1239	MOTEL 6, #1369		#1369 1368 N. MCDOWELL BLVD	PETALUMA CA 94952–	(707)765–0333
CA0935	QUALITY INN		5100 MONTERO WAY	PETALUMA CA 94954–	(707)664–1155
CA1311	ECONO LODGE		8477 TELEGRAPH ROAD	PICO RIVERA CA 90660–	(310)869–9588
CA0043	TRAVELODGE PICO RIVERA		7222 ROSEMEAD BLVD	PICO RIVERA CA 90660–	(310)949–6648
CA1240	MOTEL 6, #1049		1501 FITZGERALD DR	PINOLE CA 94561–	(510)222–8174

2. On page 62109, in the table, the 19th entry from the top and the following entries for New Mexico, Nevada and New York should appear immediately thereafter as follows:

NM0068	HOLIDAY INN OF DEMING	PO BOX 1138		DEMING NM 88031–	(505)546–2661
NM0069	BEST WESTERN JICARILLA INN.	PO BOX 233		DULCE NM 87528–	(505)759–3663
NM0070	BEST WESTERN THE INN		700 SCOTT AVE	FARMINGTON NM 87401–	(505)327–5221
NM0071	BLUFFVIEW MOTEL		3700 BLOOMFIELD HWY	FARMINGTON NM 87401–	(505)327–6231
NM0072	COMFORT INN		555 SCOTT AVE	FARMINGTON NM 87401–	(505)325–2626
NM0073	HOLIDAY INN		600 E. BROADWAY	FARMINGTON NM 87499–	(505)327–9811
NM0074	LA QUINTA MOTOR INN		675 SCOTT AVE	FARMINGTON NM 87401–	(505)327–4706
NM0075	BEST WESTERN THE INN		3009 W. 66	GALLUP NM 87301–	(505)722–2221
NM0006	COMFORT INN		3208 W. HWY. 66	GALLUP NM 87301–	(505)722–0982
NM0076	DAYS INN WEST		3201 W. HWY. 66	GALLUP NM 87301–	(505)863–6889
NM0007	RODEWAY INN		2003 W. HWY. 66	GALLUP NM 87301–	(505)863–9385
NM0077	TRAVELERS INN		3304 W. HWY. 66	GALLUP NM 87301–	(505)722–7765
NM0078	BEST WESTERN THE INN		1501 E. SANTA FE AVE	GRANTS NM 87020–	(505)287–7901
NM0003	GRANTS SUPER 8 MOTEL		1604 E. SANTA AVE	GRANTS NM 87020–	(505)287–8811
NM0079	SANDS MOTEL		112 MCARTHUR DR	GRANTS NM 87020–	(505)287–2996
NM0008	INNKEEPERS OF NEW MEXICO.		309 N. MARLAND BLVD	HOBBS NM 88240–	(505)397–7171
NM0080	PECOS RIVER CONFERENCE.		STAR RT	ILFELD NM 87538–	(505)421–7018
NM0081	A DAY'S END LODGE		755 N. VALLEY DR	LAS CRUCES NM 88005–	(505)524–7753
NM0082	DAYS INN		2600 S. VALLEY DR	LAS CRUCES NM 88001–	(505)526–4441
NM0083	HAMPTON INN	PO BOX 2736		LAS CRUCES NM 88004–	(505)526–8311
NM0084	LA QUINTA MOTOR INN		790 AVENIDA DE MESILLA	LAS CRUCES NM 88005–	(505)524–0331
NM0085	LAS CRUCES HILTON		705 S. TELSHOR BLVD	LAS CRUCES NM 88001–	(505)522–4300
NM0086	PLAZA SUITES		301 E. UNIVERSITY BLVD	LAS CRUCES NM 88004–	(505)525–5500
NM0087	ROYAL HOST MOTEL		2146 W. PICACHO	LAS CRUCES NM 88001–	(505)524–8566

NM0088	SUPER 8 MOTEL EAST		4411 N. MAIN	LAS CRUCES NM 88001–	(505)382–1490
NM0089	LAS VEGAS SUPER 8 MOTEL.		2029 N. HWY. 85	LAS VEGAS NM 87701–	(505)425–5268
NM0090	PLAZA HOTEL		230 OLD TOWN PLAZA	LAS VEGAS NM 87701–	(505)425–3591
NM0091	REGAL MOTEL		1809 N. GRAND AVE	LAS VEGAS NM 87701–	(505)454–1456
NM0092	BEST WESTERN SKIES MOTOR INN.		1303 S. MAIN	LORDSBURG NM 88045–	(505)542–8807
NM0093	HILLTOP HOUSE HOTEL	PO BOX 250		LOS ALAMOS NM 87544–	(505)662–2441
NM0094	LOS ALAMOS INN		2201 TRINITY DR	LOS ALAMOS NM 87544–	(505)662–7211
NM0095	LOS LUNAS COMFORT INN		1711 MAIN ST. SW	LOS LUNAS NM 87031–	(505)865–5100
NM0096	INN OF THE MOUNTAIN GODS.		CARRIZO CANYON RD	MESCALERO NM 88340–	(505)257–5141
NM0009	MESON DE MESILLA	PO BOX 1212		MESILLA NM 88046–	(505)525–9212
NM0097	SUPER 8 MOTEL		1805 W. 2ND ST	PORTALES NM 88130–	(505)356–8518
NM0098	MELODY LANE & TRAVELHOST MOTEL.		136 CANYON RD	RATON NM 87740–	(505)445–3655
NM0099	CARIBEL CONDOMINIUMS.	PO BOX 590		RED RIVER NM 87558–	(505)754–2313
NM0100	LIFTS WEST CONDOMINIUM RESORT HOTEL.	PO BOX 318		RED RIVER NM 87558–	(505)754–2778
NM0101	PONDEROSA LODGE	PO BOX 526		RED RIVER NM 87558–	(505)754–2988
NM0102	RODE INN MOTEL	PO BOX 167		RESERVE NM 87830–	(505)533–6496
NM0103	BEST WESTERN INN AT RIO RANCHO.		1465 RIO RANCHO DR	RIO RANCHO NM 87124–	(505)892–1700
NM0105	BELMONT MOTEL		2100 WEST 2ND	ROSWELL NM 88201–	(505)623–4522
NM0015	BEST WESTERN EL RANCHO PALACIO MOTEL.		2205 N. MAIN	ROSWELL NM 88201–	(505)622–2721
NM0104	BEST WESTERN SALLY PORT INN.		2000 N. MAIN ST	ROSWELL NM 88201–	(505)622–6430
NM0106	BUDGET INN WEST		2200 W. 2ND	ROSWELL NM 88201–	(505)623–3811
NM0107	COMFORT INN		2803 W. 2ND ST	ROSWELL NM 88201–	(505)623–9440
NM0016	DAYS INN		1310 N. MAIN ST	ROSWELL NM 88201–	(505)623–4021
NM0108	FRONTIER MOTEL		3010 N. MAIN ST	ROSWELL NM 88201–	(505)622–1400
NM0109	BEST WESTERN SWISS CHALET INN.		1451 MECHEM DR	RUIDOSO NM 88345–	(505)258–3333
NM0017	CARRIZO LODGE	PO DRAWER A		RUIDOSO NM 88345–	(505)257–9131
NM0110	SUPER 8 MOTEL	PO BOX 2600		RUIDOSO NM 88345–	(505)378–8180
NM0111	ALEXANDER'S INN		529 E. PALACE AVE	SANTA FE NM 87501–	(505)986–1431
NM0112	BEST WESTERN INN AT LORETTO.		211 OLD SANTA FE TRAIL	SANTA FE NM 87501–	(505)988–5531
NM0113	CACTUS LODGE MOTEL		2864 CERRILLOS RD	SANTA FE NM 87501–	(505)471–7699
NM0114	EL PARADERO BED & BREAKFAST.		220 W. MANHATTAN	SANTA FE NM 87501–	(505)988–1177
NM0115	ELDORADO HOTEL		309 W. SAN FRANCISCO ST	SANTA FE NM 87501–	(505)988–4455
NM0116	FORT MARCY COMPOUND CONDOMINIUMS.		320 ARTIST RD	SANTA FE NM 87501–	(505)982–9480
NM0117	HILTON OF SANTA FE	PO BOX 2387		SANTA FE NM 87504–	(505)988–2811
NM0118	HOTEL PLAZA REAL		125 WASHINGTON AVE	SANTA FE NM 87501–	(505)988–4900
NM0119	HOTEL SANTA FE		1501 PASEO DE PERALTA	SANTA FE NM 87501–	(505)982–1200
NM0010	INN OF THE ANASAZI		113 WASHINGTON AVE	SANTA FE NM 87501–	(505)988–3030
NM0120	LA QUINTA MOTOR INN		4298 CERRILLOS RD	SANTA FE NM 87501–	(505)471–1142
NM0121	LUXURY INN		3752 CERRILLOS RD	SANTA FE NM 87501–	(505)473–0567
NM0122	PARK INN LIMITED		2900 CERILLOS RD	SANTA FE NM 87501–	(505)473–4281
NM0123	RAMADA INN		2907 CERRILLOS RD	SANTA FE NM 87501–	(505)471–3000
NM0124	RANCHO ENCANTADO	RT 4 BOX 57C		SANTA FE NM 87501–	(505)982–3537
NM0011	RESIDENCE INN BY MARRIOTT.	PO BOX 5248		SANTA FE NM 87502–	(505)988–7300
NM0125	SANTA FE BUDGET INN		725 CERRILLOS RD	SANTA FE NM 87501–	(505)982–5952
NM0126	TERRITORIAL INN		215 WASHINGTON AVE	SANTA FE NM 87501–	(505)989–7737
NM0139	THE BISHOP'S LODGE	PO BOX 2367		SANTA FE NM 87501–	(505)983–6377
NM0127	SAN MIGUEL MOTEL		916 CALIFORNIA AVE. NE	SOCORRO NM 87801–	(505)835–0211
NM0128	SUPER 8 MOTEL		1121 FRONTAGE RD. NW	SOCORRO NM 87801–	(505)835–4626
NM0129	HOLIDAY INN DON FERNANDO DE TAOS.	PO BOX V		TAOS NM 87571–	(505)758–4444
NM0130	QUALITY INN OF TAOS	PO BOX 2319		TAOS NM 87571–	(505)758–2200
NM0131	RANCHO RAMADA TAOS	PO BOX 6257		TAOS NM 87571–	(505)758–2900
NM0132	SAGEBRUSH INN	PO BOX 557		TAOS NM 87571–	(505)758–2254
NM0133	SONTERRA CONDOMINIUMS.	PO BOX 5244		TAOS NM 87571–	(505)758–7989
NM0134	TAOS SUPER 8 MOTEL	PO BOX 6008	1347 S. SANTA FE RD	TAOS NM 87571–	(505)758–1088
NM0135	BEST WESTERN HOT SPRINGS MOTOR INN.		2270 N. DATE ST	TRUTH OR CONSEQ. NM 87901–	(505)894–6665
NM0136	BANDELIER INN	PO BOX 250	STATE ROAD 4	WHITE ROCK NM 87544–	(505)672–3838
NM0137	BEST WESTERN CAVERN INN.	PO BOX 128		WHITE'S CITY NM 88268–	(505)785–2291
NV0018	MEADOW LANE MOTEL		US HWY. #93	ALAMO NV 89001–	(702)725–3371
NV0032	HOLIDAY INN EXPRESS		521 E. FRONT ST	BATTLE MOUNTAIN NV 89820–	(702)635–5880
NV0033	BURRO INN		HWY. 95 S	BEATTY NV 89003–	(702)553–2445
NV0021	EXCHANGE CLUB OF BEATTY.	PO BOX 97	604 MAIN ST	BEATTY NV 89003–	(702)553–2333
NV0108	STAGECOACH HOTEL/CASINO.	P O BOX 836		BEATTY NV 89003–	(702)553–2419
NV0003	STARVIEW MOTEL		1017 NV HWY	BOULDER CITY NV 89005–	(702)293–1858
NV0105	BEST WESTERN TRAILSIDE INN.		1300 NORTH CARSON STREET	CARSON CITY NV 89701–	(702)883–7300
NV0001	CARSON MOTOR LODGE		1421 N. CARSON	CARSON CITY NV 89701–	(702)882–3572

NV0034	CARSON STATION HOTEL CASINO.		900 S. CARSON ST	CARSON CITY NV 89701–	(702)883–0900
NV0035	DAYS INN CARSON CITY		3103 N. CARSON HWY	CARSON CITY NV 89406–	(702)423–7859
NV0115	MOTEL 6		2749 S CARSON ST	CARSON CITY NV 89701–	(702)885–7710
NV0091	CAL NEVA LODGE RESORT HOTEL SPA & CASINO.	PO BOX 368	#2 STATELINE RD	CRYSTAL BAY NV 39402–	(702)832–4000
NV0024	GOLD HILL HOTEL	PO BOX 304	HWY. 342 MAIN ST	DOUG MCQUIDE NV 89440–	(702)847–0111
NV0106	BEST WESTERN AMERITEL INN.		1930 IDAHO STREET	ELKO NV 89801–	(702)738–8787
NV0103	BEST WESTERN AMERITEL INN EXPRESS.		837 IDAHO STREET	ELKO NV 89801–	(702)738–7261
NV0116	MOTEL 6		3021 IDAHO ST	ELKO NV 89801–	(702)738–4337
NV0014	RODEWAY INN		1349 IDAHO ST	ELKO NV 89801–	(702)738–7000
NV0114	SHILO INN		2401 MOUNTAIN CITY HIGHWAY	ELKO NV 89801–	(503)641–6565
NV0098	BEST WESTERN PARK VUE MOTEL.		930 AULTMAN STREET	ELY NV 89301–	(702)289–4497
NV0036	COOPER QUEEN HOTEL AND CASINO.		805 E. 7TH ST	ELY NV 89301–	(702)289–4884
NV0117	MOTEL 6		PIOCHE HIWAY & AVENUE O	ELY NV 89301–	(702)289–8671
NV0015	SUNDOWN LODGE INC	PO BOX 324	MAIN ST	EUREKA NV 89316–	(702)237–5334
NV0109	COMFORT INN		1830 WEST WILLIAMS AVE	FALLON NV 89406–	(702)423–5554
NV0037	MAY INN FALLON		60 ALLEN RD	FALLON NV 89406–	(702)423–7859
NV0038	TOPAZ LODGE & CASINO		1979 US 395 S	GARDNERVILLE NV 89410–	(702)266–3338
NV0039	GOLD HILL HOTEL		HWY. 342 MAIN ST	GOLD HILL NV 89440–	(702)847–0111
NV0040	HYATT REGENCY LAKE TAHOE.		111 COUNTRY CLUB	INCLINE VILLAGE NV 89850–3239	(702)832–1243
NV0027	INN AT INCLINE CONDOMINIUMS.		1003 LAKE BLUE	INCLINE VILLAGE NV 89451–	(702)831–1052
NV0041	PRIMADONNA RESORT AND CASINO.	PO BOX 19129	I–15 S	JEAN NV 89109–	(702)382–1212
NV0002	WHISKEY PETE'S HOTEL AND CASINO.	PO BOX 19129	I–15 S	JEAN NV 89109–	(702)382–1212
NV0029	AIRPORT INN		5100 PARADISE RD	LAS VEGAS NV 89119–	(702)798–2777
NV0006	BARCELONA HOTEL CASINO.		5011 E. CRAIG RD	LAS VEGAS NV 89115–	(702)644–6300
NV0042	BEST WESTERN MARDI GRAS INN.		3500 PARADISE ROAD	LAS VEGAS NV 89109–	(702)731–2020
NV0007	BEST WESTERN MCCARRAN INN.		4970 PARADISE RD	LAS VEGAS NV 89119–	(702)798–5530
NV0043	BLAIR HOUSE HOTEL		344 E. DESERT INN RD	LAS VEGAS NV 89109–	(702)792–2222
NV0044	CAL DAN PRTNRS LTD PRNTR. DBA TOWN HALL HOTEL.		4155 KOVAL LN	LAS VEGAS NV 89109–	(702)731–2111
NV0045	CALIFORNIA HOTEL & CASINO.		12 ODEN	LAS VEGAS NV 89101–	(702)385–1222
NV0031	CAESAR'S PALACE		3570 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)731–7368
NV0094	CIRCUS CIRCUS MANOR		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0092	CIRCUS CIRCUS SKYRISE		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0093	CIRCUS CIRCUS TOWERS		2880 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)734–0410
NV0110	COMFORT INN SOUTH		5075 KOVAL LANE	LAS VEGAS NV 89109–	(702)736–3600
NV0030	CONVENTION INN HOTEL		735 E. DESERT INN RD	LAS VEGAS NV 89109–	(702)737–1555
NV0046	COURTYARD BY MARRIOTT LAS VEGAS.		3275 PARADISE RD	LAS VEGAS NV 89109–	(702)791–3600
NV0048	FAIRFIELD INN BY MARRIOTT.		3850 PARADISE RD	LAS VEGAS NV 89109–	(702)791–0899
NV0049	FITZGERALDS CASINO HOTEL.		301 E. FREMONT ST	LAS VEGAS NV 89101–	(702)386–2400
NV0050	FLAMINGO HILTON LAS VEGAS.		3555 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)733–3320
NV0051	FOUR QUEENS HOTEL CASINO.		202 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–4011
NV0010	GLASS POOL INN		4613 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)739–6636
NV0052	GOLDEN NUGGET HOTEL AND CASINO.		129 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–7111
NV0096	HARRAH'S LAS VEGAS CASINO HOTEL.		3475 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)369–5000
NV0047	HOLIDAY INN		325 E. FLAMINGO RD	LAS VEGAS NV 89109–	(702)732–9100
NV0053	HOLIDAY INN EXPRESS		5265 INDUSTRIAL	LAS VEGAS NV 89118–	(702)369–1988
NV0054	HOWARD JOHNSON PLAZA SUITE HOTEL.		4255 S. PARADISE RD	LAS VEGAS NV 89109–	(702)369–4400
NV0055	IMPERIAL PALACE HOTEL & CASINO.		3535 LAS BLVD. S	LAS VEGAS NV 89109–	(702)731–3311
NV0012	LA QUINTA MOTOR INN 4536.		3782 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)739–7457
NV0056	LAS VEGAS CLUB HOTEL & CASINO.		18 E. FREMONT ST	LAS VEGAS NV 89101–	(702)385–1664
NV0057	LAS VEGAS HILTON		3000 PARADISE RD	LAS VEGAS NV 89109–	(702)732–5111
NV0112	LAS VEGAS INN TRAVELODGE.		1501 W SAHARA AVENUE	LAS VEGAS NV 89102–	(702)733–0001
NV0121	MOTEL 6		4125 BOULDER HIGHWAY	LAS VEGAS NV 89121–	(702)457–8051
NV0122	MOTEL 6		5085 S INDUSTRIAL ROAD	LAS VEGAS NV 89118–	(702)739–6747
NV0058	RAMADA HOTEL SAN REMO		115 E. TROPICANA AVE	LAS VEGAS NV 89109–7304	(702)739–9000
NV0059	RESIDENCE INN BY MARRIOTT LAS VEGAS.		3225 PARADISE RD	LAS VEGAS NV 89109–	(702)796–9300
NV0060	RIO SUITE HOTEL & CASINO.		3700 W. FLAMINGO RD	LAS VEGAS NV 89103–	(702)252–7777

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NV0006 SHEFFIELD INN		3970 PARADISE RD	LAS VEGAS NV 89109–	(702)796–9000
NV0113 SHERATON DESERT INN		3145 LAS VEGAS BLVD SOUTH	LAS VEGAS NV 89109–	(702)733–4444
NV0009 SILVER SANDS MOTEL		4617 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)736–2545
NV0061 SOMERSET HOUSE MOTEL		294 CONVENTION CENTER DR	LAS VEGAS NV 89109–	(370)735–4411
NV0062 SPORTSMANS MANOR		5660 BOULDES HWY	LAS VEGAS NV 89122–	(702)458–7071
NV0101 SUNRISE SUITES		4575 BOULDER HIGHWAY	LAS VEGAS NV 89121–	(702)434–0848
NV0011 SUPER 8 MOTEL		4435 LAS VEGAS BLVD. N	LAS VEGAS NV 89115–	(702)644–5666
NV0063 THE MIRAGE		3400 LAS VEGAS BLVD. S	LAS VEGAS NV 89109–	(702)791–7111
NV0005 WARREN MOTEL APTS		3965 LAS VEGAS BLVD. S	LAS VEGAS NV 89119–	(702)736–6235
NV0064 COLORADO BELLE HOTEL & CASINO.		2100 S. CASINO DR	LAUGHLIN NV 89028–	(702)298–4000
NV0065 EDGEWATER HOTEL AND CASINO.		2020 CASINO DR	LAUGHLIN NV 89029–	(702)298–2453
NV0066 FLAMINGO HILTON LAUGHLIN.		1900 S. CASINO DR	LAUGHLIN NV 89028–	(702)298–5111
NV0067 GOLD RIVER GAMBLING HALL RESORT.		2700 S. CASINO DR	LAUGHLIN NV 89029–	(782)298–2242
NV0068 HARRAH'S CASINO HOTEL LAUGHLIN.	PO BOX 10097		LAUGHLIN NV 89028–	(702)298–6826
NV0069 RAMADA EXPRESS HOTEL & CASINO.		2121 CASINO DR	LAUGHLIN NV 89029–	(702)298–4200
NV0104 RIVERSIDE RESORT HOTEL AND CASINO.		1650 CASINO DRIVE	LAUGHLIN NV 89029–	(702)298–2535
NV0022 BEST WESTERN STURGEON'S MOTEL REST & CASINO.	PO BOX 56	1420 CORNELL AVE	LOVELOCK NV 89419–	(702)273–2971
NV0023 SUPER 10 MOTEL	PO BOX 819	1390 CORNELL AVE	LOVELOCK NV 89419–	(702)273–2224
NV0004 PEPPERMILL RESORT HOTEL AND CASINO.		1134 MESQUITE BLVD	MESQUITE NV 89024–	(702)346–5232
NV0095 VIRGIN RIVER HOTEL & CASINO.		I–15 AND N. MESQUITE BLVD	MESQUITE NV 89024–	(702)346–7777
NV0070 CARSON VALLEY INN		1627 HWY. 395	MINDEN NV 89423–	(702)782–9711
NV0071 MINDEN BEST WESTERN		1795 IRON WOOD	MINDEN NV 89423–	( ) –
NV0072 PAHRUMP STATION DAYS INN.	PO BOX 38	2021 E. LOOP RD	PAHRUMP NV 89041–	(702)727–5100
NV0099 BEST WESTERN AIRPORT PLAZA MOTEL.		1981 TERMINAL WAY	RENO NV 89502–	(702)348–6370
NV0102 BEST WESTERN CONTINENTAL LODGE.		1885 SOUTH VIRGINIA	RENO NV 89502–	(702)329–1001
NV0089 CIRCUS CIRCUS HOTEL CASINO.		516 WEST ST	RENO NV 89503–	(702)329–0711
NV0090 CIRCUS CIRCUS HOTEL CASINO.		500 N. SIERRA ST	RENO NV 89503–	(702)329–0711
NV0097 CLARION HOTEL CASINO		3800 S. VIRGINIA ST	RENO NV 89502–	(702)825–4700
NV0073 FLAMINGO HILTON RENO		255 N. SIERRA ST	RENO NV 89501–	(702)785–7020
NV0075 HOLIDAY INN CONVENTION CENTER.		5851 S. VIRGINIA ST	RENO NV 89502–	(702)825–2940
NV0076 HOLIDAY INN DOWNTOWN RENO.		1000 E. 6TH ST	RENO NV 89512–	(702)786–5151
NV0026 JUNIPER COURT HOTEL		320 EVANS AVE	RENO NV 89501–	(702)329–7002
NV0026 LA QUINTA MOTOR INN		4001 MARKET ST	RENO NV 89502–	(702)348–6100
NV0119 MOTEL 6		866 N. WELLS AVE	RENO NV 89512–	(702)786–9852
NV0123 MOTEL 6		666 N. WELLS AVENUE	RENO NV 89512–	(702)329–8681
NV0100 MOTEL 6 #198		1400 STARDUST ST	RENO NV 89503–	(702)747–7390
NV0077 PEPPERMILL HOTEL & CASINO.		2707 S. VIRGINIA	RENO NV 89502–	(702)826–2121
NV0078 RENO HILTON		2500 E. SECOND ST	RENO NV 89595–	(702)789–2000
NV0079 RENO RAMADA HOTEL CASINO.		200 E. 6TH ST	RENO NV 89512–	(702)788–2000
NV0080 RODEWAY INN		2050 MARKET ST	RENO NV 89502–	(702)786–2500
NV0081 SANDS REGENCY HOTEL & CASINO.		345 N. ARLINGTON AVE	RENO NV 89501–	(702)348–2200
NV0082 VIRGINIAN HOTEL & CASINO.		140 N. VIRGINIA ST	RENO NV 89501–	(702)329–4664
NV0083 EL REY LODGE		430 S. HOBSON AT HWY. 95	SEARCHLIGHT NV 89046–	(702)297–1144
NV0120 MOTEL 6		2405 'B' ST	SPARKS NV 89431–	(702)358–1080
NV0084 SILVER CLUB HOTEL CASINO.		1040 C ST	SPARKS NV 89431–	(702)358–4771
NV0085 WESTERN VILLAGE INN & CASINO.		815 NICHOLS	SPARKS NV 89431–	(702)331–1069
NV0013 LAKE TAHOE HORIZON CASINO RESORT.		HWY. 50	STATELINE NV 89449–	(702)588–6211
NV0020 JIM BUTLER MOTEL INC		100 S. MAIN ST	TONOPAH NV 89049–	(702)482–3577
NV0086 THE STATION HOUSE AND CASINO.	PO BOX 1351	1100 ERIE MAIN ST	TONOPAH NV 89049–	(702)482–9777
NV0025 CHOLLAR MANSON	PO BOX 880		VIRGINIA CITY NV 89440–	( ) –
NV0118 MOTEL 6		US 40 AND US 93	WELLS NV 89835–	(702)752–2116
NV0087 SILVER SMITH CASINO RESORT.		100 WENDOVER BLVD	WENDOVER NV 89883–	(702)664–2231
NV0107 BEST WESTERN GOLD COUNTRY INN.		921 WEST WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–6999
NV0016 LAVILLA MOTEL		244 W. 4TH ST	WINNEMUCCA NV 89445–	(702)623–2334
NV0088 MODEL T MOTEL		1122 WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–0222
NV0017 MOTEL 6 #213		1600 W. WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–1180
NV0111 VAL–U INN		125 E WINNEMUCCA BLVD	WINNEMUCCA NV 89445–	(702)623–5248
NV0019 CASINO WEST MOTEL		11 N. MAIN ST	YERINGTON NV 89447–	(702)463–3144

NY0029 ALBANY INN		1579 CENTRAL AVE	ALBANY NY 12205–	(518)869–8471
NY0030 ALBANY MARRIOTT		189 WOLF RD	ALBANY NY 12205–	(518)458–8444
NY0033 AMBASSADOR MOTOR INN		1600 CENTRAL AVE	ALBANY NY 12205–	(518)456–8982
NY0420 BEST WESTERN ALBANY AIRPORT INN.		200 WOLF RD	ALBANY NY 12205–	(518)458–1000
NY0559 COMFORT INN – ALBANY		1606 CENTRAL AVENUE	ALBANY NY 12205–	(518)869–5327
NY0020 ECONO LODGE		1632 CENTRAL AVE	ALBANY NY 12205–	(518)456–8811
NY0199 HAMPTON INN		10 ULENSKI DR	ALBANY NY 12205–	(518)438–2822
NY0525 HOLIDAY INN TURF ON WOLF ROAD.		205 WOLF RD	ALBANY NY 12205–	(518)456–7250
NY0248 HOWARD JOHNSON HOTEL		1614 CENTRAL AVE	ALBANY NY 12205–	(518)869–0281
NY0251 HOWARD JOHNSON LODGE		416 SOUTHERN BLVD	ALBANY NY 12209–	(518)462–6555
NY0577 MOTEL 6 (#1227)		100 WATERVLIET AVE	ALBANY NY 12206–	(518)438–7447
NY0332 NORTHWAY INN		1517 CENTRAL AVE	ALBANY NY 12205–	(518)869–0277
NY0585 OMNI ALBANY HOTEL		STATE AND LODGE STREETS	ALBANY NY 12207–	(518)462–6611
NY0383 RED ROOF #112		188 WOLF RD	ALBANY NY 12205–	(518)459–1971
NY0145 DOLLINGER'S MOTEL		213 S. MAIN ST	ALBION NY 14411–	(716)589–5541
NY0326 NEWPORT LANDING MOTEL		438 W. AVE	ALBION NY 14411–	(716)589–6308
NY0331 NORTH STAR MOTEL	PO BOX 605	RT 12	ALEXANDRIA BAY NY 13607–	(315)482–9332
NY0345 OTTER CREEK INN		2 CROSSMON ST. EXTENSION	ALEXANDRIA BAY NY 13607–	(315)482–5248
NY0396 RIVEREDGE RESORT HOTEL.		17 HOLLAND ST	ALEXANDRIA BAY NY 13607–	(315)482–9917
NY0409 SAXON INN		ONE PARK ST	ALFRED NY 14802–	(607)871–2600
NY0211 HERMITAGE AT NAPEAGUE		MONTAUK HWY. AND NAVAJO LN	AMAGANSETT NY 11930–	(516)267–6151
NY0316 MILL GARTH COUNTRY INN		23 WINDMILL LN	AMAGANSETT NY 11930–	(516)264–3757
NY0336 OCEAN DUNES		BLUFF RD	AMAGANSETT NY 11930–	(516)267–8121
NY0547 WINWARD SHORES		MONTAUK HWY	AMAGANSETT NY 11930–	(516)267–8600
NY0490 TROUTBECK		40 SPINGARN RD	AMENIA NY 12501–	(914)372–9681
NY0516 WILLOWS MOTEL		RT. 343	AMENIA NY 12501–	(914)373–8090
NY8071 BUFFALO MARRIOTT		1340 MILLERSPORT HWY	AMHERST NY 14221–	(716)689–6900
NY0202 HAMPTON INN BUFFALO AMHERST.		10 FLINT RD	AMHERST NY 14226–	(716)689–4414
NY0221 HOLIDAY INN BUFFALO AMHERST.		1881 NIAGARA FALLS BLVD	AMHERST NY 14228–	(716)691–8181
NY0382 RED ROOF #104		42 FLINT RD	AMHERST NY 14226–	(716)689–7474
NY0449 SUPER 8 MOTEL OF AMHERST.		1 FLINT RD	AMHERST NY 14226–	(716)688–0811
NY0447 SUPER 8 MOTEL		RT. 30 S	AMSTERDAM NY 12010–	(518)843–5888
NY0148 DREAMERS COVE MOTEL		PECONIC BAY BLVD. & BAY AVE	AQUEBOGUE NY 11931–	(516)727–3212
NY0037 ARDEN HOMESTEAD			ARDEN NY 10910–	(914)351–5181
NY0126 DAYS INN AUBURN		37 WILLIAM ST	AUBURN NY 13021–	(315)252–7567
NY0450 SUPER 8 MOTEL OF AUBURN.		9 MCMASTER ST	AUBURN NY 13021–	(315)253–8886
NY0040 AVON INN		55 E. MAIN ST	AVON NY 14414–	(716)226–8181
NY0092 COCCA'S MOTEL		2624 RT. 9	BALLSTON SPA NY 12020–	(518)581–1033
NY0589 FRIENDSHIP INN		8212 PARK ROAD	BATAVIA NY 14020–	(716)343–2311
NY0419 SHERATON INN		8250 PARK RD	BATAVIA NY 14020–	(716)344–2100
NY0489 TREADWAY INN OF BATAVIA.		8204 PARK RD	BATAVIA NY 14020–	(716)343–1000
NY0337 OLD NATIONAL HOTEL		13 E. STEUBEN ST	BATH NY 14810–	(607)776–4104
NY0451 SUPER 8 MOTEL OF BATH		333 W. MORRIS ST	BATH NY 14810–	(607)776–2187
NY0472 SWISS CHALET MOTEL		12 W. WASHINGTON ST	BATH NY 14810–	(607)776–7800
NY8076 CAPRI BAYSHORE MOTOR INN.		300 BAYSHORE RD	BAYSHORE NY 11706–	(516)666–7275
NY0551 FIRE ISLAND HOTEL AND RESORT.		20 WEST MAIN STREET	BAYSHORE NY 11706–	(516)583–8000
NY0281 LAKE CHAUTAUQUA LUTHERAN CAMP RETREAT CNTR.	PO BOX 260	RD. # 1	BEMUS POINT NY 14712–	(716)386–4125
NY0044 BANNER MOTEL		1169 FRONT ST	BINGHAMTON NY 13905–	(607)723–8211
NY0057 BINGHAMTON REGENCY BEST WESTERN.		225 WATER ST. 1 SURBURBAN	BINGHAMTON NY 13901–	(607)722–7575
NY0058 BINGHAMTON SUPER 8 MOTEL.		650 FRONT ST	BINGHAMTON NY 13905–	(607)773–8111
NY0537 BROOME COUNTY YMCA		61 SUSQUEHANNA ST	BINGHAMTON NY 13901–	(607)772–0560
NY0590 COMFORT INN		1156 FRONT STREET	BINGHAMTON NY 13905–	(607)722–5353
NY0128 DAYS INN BINGHAMTON		1000 FRONT ST	BINGHAMTON NY 13905–	(607)724–3297
NY0560 ECONO LODGE		RT. 11, UPPER COURT STREET	BINGHAMTON NY 13904–	(607)775–3443
NY0179 FOOTHILLS MOTEL		591 UPPER COURT ST	BINGHAMTON NY 13904–	(607)775–1515
NY0213 HOJO INN BINGHAMTON		700 FRONT ST	BINGHAMTON NY 13905–	(607)724–1341
NY0581 MOTEL 6 (#1222)		1012 FRONT STREET	BINGHAMTON NY 13905–	(607)771–0400
NY0373 RAMADA INN		65 FRONT ST	BINGHAMTON NY 13905–	(607)724–2412
NY0484 THRU WAY MOTEL		399 COURT ST	BINGHAMTON NY 13904–	(607)724–2401
NY0192 GLEASON'S GATE II MOTEL	PO BOX 348E	RD #1	BLACK RIVER NY 13612–	(315)773–4135
NY0072 ECONO LODGE SOUTH		4344 MILESTRIP RD	BLASDELL NY 14219–	(716)825–7530
NY0308 MCKINLEY PARK INN		S. 3950 MCKINLEY PKWY	BLASDELL NY 14219–	(716)648–5700
NY0149 EAGLE'S NEST			BLOOMINGBURG NY 12721–	(914)733–4561
NY0340 OMNI SAGAMORE RESORT		SAGAMORE RD	BOLTON LANDING NY 12814–	(518)644–9400
NY0536 SAGAMORE RESORT HOTEL		SAGAMORE RD	BOLTON LANDING NY 12814–	(518)644–9400
NY0385 RED ROOF INN		146 MAPLE DR	BOWMANSVILLE NY 14026–	(716)633–1100
NY0047 BEL AIR MOTEL		8961 RT. 11	BREWERTON NY 13029–	(315)699–5991
NY0070 BUFFALO HILTON		120 CHURCH ST	BUFFALO NY 14202–	(716)845–5100
NY0108 COMFORT SUITES		901 DICK RD	BUFFALO NY 14225–	(716)633–6000
NY0133 DAYS INN OF BUFFALO		4345 GENESEE ST	BUFFALO NY 14225–	(716)631–0800

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NY0222 HOLIDAY INN BUFFALO DOWNTOWN.		620 DELAWARE AVE	BUFFALO NY 14202–	(716)886–2121
NY0223 HOLIDAY INN BUFFALO GATEWAY.		601 DINGEMS ST	BUFFALO NY 14206–	(716)869–2900
NY0265 HYATT REGENCY BUFFALO		2 FOUNTAIN PLAZA	BUFFALO NY 14202–	(716)856–1234
NY0554 JOURNEY'S END SUITES		601 MAIN STREET	BUFFALO NY 14203–	(716)854–5500
NY0550 LORD AMHERST MOTOR HOTEL.		5000 MAIN STREET	BUFFALO NY 14226–	(716)839–2200
NY0361 QUALITY INN		4217 GENESEE ST	BUFFALO NY 14225–	(716)633–5500
NY0422 SHERATON INN BUFFALO AIRPORT.		2040 WALDEN AVE	BUFFALO NY 14225–	(716)681–2400
NY0507 WELLESLEY INN		4630 GENESEE ST	BUFFALO NY 14225–	(716)631–8966
NY0578 MOTEL 6 (#1226)		4400 MAPLE ROAD	BUFFALO–AMHERST NY 14226–	(716)834–2231
NY0173 ESSEX MICROTEL LERAY		8000 VIRGINIA SMITH DR	CALCIUM NY 13616–	(315)629–5000
NY0068 BUDGET LODGE HERITAGE MOTOR INN.		4360 LAKESHORE DR	CANANDAIGUA NY 14424–	(716)394–2800
NY0074 CAMPUS LODGE MOTOR INN.		4341 LAKESHORE DR	CANANDAIGUA NY 14424–	(716)394–1250
NY0185 ECONO LODGE MUAR LAKES.		170 EASTERN BLVD	CANANDAIGUA NY 14424–	(716)394–9000
NY0341 ONANDA PARK		W. LAKE RD	CANANDAIGUA NY 14424–	(716)396–2252
NY0417 THE INN ON THE LAKE		770 S. MAIN ST	CANANDAIGUA NY 14424–	(716)394–7800
NY0075 CANASTOTA DAYSTOP		N. PETERBORO ST	CANASTOTA NY 13032–	(315)697–3309
NY0315 MIDWAY MOTEL	PO BOX 44	RT. 5	CANASTOTA NY 13032–	(516)697–7928
NY0190 GLEN IRIS INN		7 LETCHWORTH STATE PARK	CASTILE NY 14427–	(716)493–2622
NY0080 CATSKILL MOTOR LODGE		RT. 23 B	CATSKILL NY 12414–	(518)943–5800
NY0183 FRIAR TUCK INN	PO BOX 184	RD #1	CATSKILL NY 12414–	(518)678–2271
NY0064 BRAE LOCH INN		5 ALBANY ST	CAZENOVIA NY 13035–	(315)655–3431
NY0538 CAZENOVIA MOTEL		2364–2392 RT. 20 E	CAZENOVIA NY 13035–	(315)655–9101
NY0083 CHALET MOTOR INN		23 CENTERSHORE RD. & RT. 25A	CENTERPORT NY 11721–	(516)757–4600
NY0123 CRABTREE'S KITTLE HOUSE.		11 KITTLE RD	CHAPPAQUA NY 10514–	(914)666–8044
NY0302 MAPLE INN	PO BOX 46	8 BOWMAN AVE	CHAUTAUQUA NY 14722–	(716)357–4583
NY0441 SUMMER HOUSE INN	PO BOX 43	22 PECK ST	CHAUTAUQUA NY 14722–	(716)357–2101
NY0494 UNITED METHODIST MISSIONARY VACATION HOME.	PO BOX 997	S. LAKE DR	CHAUTAUQUA NY 14722–	(716)357–9544
NY0069 BUFFALO AIRPORT HOLIDAY INN.		4600 GENESEE ST	CHEEKTOWAGA NY 14225–	(716)634–6969
NY0042 BALSAM HOUSE		ATATEKA DR. FRIENDS LAKE	CHESTERTOWN NY 12817–	(518)494–2828
NY0184 FRIENDS LAKE INN		FRIENDS LAKE RD	CHESTERTOWN NY 12817–	(518)494–7840
NY0297 LODGE MOTEL		RT. 5 & 13	CHITTENANGO NY 13037–	(315)687–5009
NY0591 BEAR ROAD FRIENDSHIP INN.		901 SOUTH BAY ROAD	CICERO NY 13039–	(315)458–3510
NY0185 FROST VALLEY YMCA		HC 55 FROST VALLEY RD	CLARYVILLE NY 12725–	(914)985–2291
NY0049 BERTRAND'S MOTEL		229 JAMES ST	CLAYTON NY 13624–	(315)686–3641
NY0575 BEST WESTERN–CLIFTON PARK.	PO BOX 2070	RTE. 146 AND PLANK RD	CLIFTON PARK NY 12065–	(518)371–1811
NY0561 CLIFTON PARK COMFORT INN.		41 FIRE RD. OLD RT. 146	CLIFTON PARK NY 12065–	(518)373–0222
NY0573 BEST WESTERN INN OF COBLESKILL.		ROUTE 7	COBLESKILL NY 12043–	(518)234–4321
NY0201 HAMPTON INN ALBANY LATHAM.		981 NEW LOUDON RD	COHOES NY 12047–	(518)785–0000
NY0545 ALL SEASONS MOTOR LODGE.		1126 JERICHO TNPK	COMMACK NY 11725–	(516)864–3500
NY0200 HAMPTON INN		680 COMMACK RD	COMMACK NY 11725–	(516)462–5700
NY0110 COOPER INN		MAIN AND CHESTNUT ST	COOPERSTOWN NY 13326–	(607)547–9931
NY0112 COOPERSTOWN MOTEL		CHESTNUT AND BEAVER ST	COOPERSTOWN NY 13326–	(607)547–2301
NY0282 LAKE FRONT MOTEL		10 FAIR ST	COOPERSTOWN NY 13326–	(607)547–9511
NY0284 LAKE N PINES MOTEL INC	PO BOX 784	RD. #2	COOPERSTOWN NY 13326–	(607)547–2790

3. On page 62131, in the table, insert the following entries for Pennsylvania and Puerto Rico AFTER the first entry at the top:

PA.				
PA0128 COMFORT INN		1129 E. PITTSBURGH ST	GREENSBURG PA 15601–	(412)832–2600
PA0129 KNIGHTS INN		1215 S. MAIN ST	GREENSBURG PA 15601–	(412)836–7100
PA0130 SHERATON INN GREENSBURG.	RT. 30 E	100 SHERATON DR	GREENSBURG PA 15601–	(412)836–6060
PA0132 COLONIAL BRICK MOTEL	PO BOX AD	RT. 11	HALLSTEAD PA 18822–	(717)879–2162
PA0007 AMERICAN INN		495 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)561–1885
PA0140 BEST WESTERN HOTEL CROWN PARK.		765 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)558–9500
PA0133 BUDGETEL HARRISBURG HERSHEY.		200 N. MOUNTAIN RD	HARRISBURG PA 17112–	(717)540–9339
PA0134 BUDGETEL INN		990 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)939–8000
PA0135 COMFORT INN HARRISBURG EAST.		4021 UNION DEPOSIT RD	HARRISBURG PA 17109–	(717)561–8100
PA0136 ECONO LODGE		150 NATIONWIDE DR	HARRISBURG PA 17110–	(717)545–9089
PA0137 HARRISBURG HILTON & TOWERS.		ONE N. 2ND ST	HARRISBURG PA 17101–	(717)233–6000
PA0138 HARRISBURG MARRIOTT		4650 LINDLE RD	HARRISBURG PA 17111–	(717)564–5511
PA0139 HOLIDAY INN HARRISBURG EAST.		4751 LINDLE RD	HARRISBURG PA 17111–	(717)939–7841

PA0389 HOWARD JOHNSON MOTOR LODGE.		473 S. EISENHOWER BLVD	HARRISBURG PA 17111–	(717)564–4730
PA0412 QUALITY INN RIVERFRONT		525 S. FRONT ST	HARRISBURG PA 17104–	(717)233–1611
PA0141 RED ROOF INN		950 EISENHOWER BLVD	HARRISBURG PA 17111–	(717)939–1331
PA0142 RED ROOF INN		400 CORPORATE CIR	HARRISBURG PA 17110–	(717)657–1445
PA0143 RESIDENCE INN		4480 LEWIS RD	HARRISBURG PA 17111–	(717)561–1900
PA0145 SHERATON INN HARRISBURG.		800 E. PARK DR	HARRISBURG PA 17102–	(717)561–2800
PA0422 SLEEP INN MOTEL		7930 LINGLESTOWN RD	HARRISBURG PA 17112–9390	(717)540–9100
PA0146 SUPER 8 MOTEL		4131 EXECUTIVE PARK DR	HARRISBURG PA 17111–	(717)564–7790
PA0147 DAYS INN BARKEYVILLE		RT. 8 & I–80 EXIT 3 GIBB RD	HARRISVILLE PA 16038–	(814)786–7901
PA0148 GRESHAM'S LAKEVIEW MOTEL.	PO BOX 6150	HC 6	HAWLEY PA 18428–	(717)226–4621
PA0131 SETTLERS INN LTD		FOUR MAIN AVE	HAWLEY PA 18428–	(717)226–2993
PA0149 SILVER BIRCHES	PO BOX 6275	HC 6	HAWLEY PA 18428–	(717)226–4388
PA0150 BEST WESTERN INN	PO BOX 250	32ND & N. CHURCH ST	HAZLETON PA 18201–	(717)454–2494
PA0151 HOLIDAY INN		RT. 309	HAZLETON PA 18201–	(717)455–2061
PA0152 HOLIDAY INN		3200 S. HERMITAGE RD	HERMITAGE PA 16159–	(412)981–1530
PA0015 ECONO LODGE HERSHEY	PO BOX 737	115 LUCY AVE	HERSHEY PA 17033–	(717)533–2515
PA0153 FRIENDSHIP INN HERSHEY		43 W. AREBA AVE	HERSHEY PA 17033–	(717)533–7054
PA0154 PINEHURST INN BED & BREAKFAST.		50 NORTHEAST DR	HERSHEY PA 17033–	(717)533–2603
PA0155 THE HERSHEY LODGE & CONV CENTER.	PO BOX 446	W. CHOCOLATE AVE & UNIVERSITY	HERSHEY PA 17033–	(717)543–3006
PA0155 THE HERSHEY LODGE & CONV CENTER.	PO BOX 446	W. CHOCOLATE AVE/UNIVERSITY DR.	HERSHEY PA 17033–	(717)543–3006
PA0156 TRIANGLE MOTEL		1518 E. CHOCOLATE AVE	HERSHEY PA 17033–	(717)533–2384
PA0157 FIFE & DRUM MOTOR INN		100 TERRACE ST	HONESDALE PA 18431–	(717)253–1392
PA0158 RESIDENCE INN BY MARRIOTT.		3 WALNUT GROVE DR	HORSHAM PA 19044–	(215)443–7330
PA0419 COMFORT INN HERSHEY		1200 MAE ST	HUMMELSTOWN PA 17036–	(717)566–2050
PA0159 DAYS INN HUNTINGDON	PO BOX 353	4TH ST. & US RT. 22	HUNTINGDON PA 16652–	(814)643–3934
PA0160 HOLIDAY INN		1395 WAYNE AVE	INDIANA PA 15701–	(412)463–3561
PA0161 INN TOWNER MOTEL		REAR 886 WAYNE AVE	INDIANA PA 15701–	(412)463–8726
PA0162 HARVEST DRIVE FAMILY MOTEL.		3370 HARVEST DR	INTERCOURSE PA 17534–	(717)768–7186
PA0163 TRAVELERS REST MOTEL	PO BOX 128	3701 OLD PHILADELPHIA PIKE	INTERCOURSE PA 17534–	(717)768–8731
PA0164 KNIGHTS COURT OF IRWIN	PO BOX 365	7990 RT. 30	IRWIN PA 15642–	(412)863–2600
PA0002 HARRY PACKER MANSION INN.	PO BOX 458	PACKER HILL	JIM THORPE PA 18229–	(717)325–8566
PA0165 INN AT JIM THORPE		24 BROADWAY	JIM THORPE PA 18229–	(717)325–2599
PA0166 COMFORT INN		455 THEATER DR	JOHNSTOWN PA 15904–	(814)266–3678
PA0167 MURPHY INN		3203 PENMAR LN	JOHNSTOWN PA 15904–	(814)266–4800
PA0168 SUPER 8 MOTEL		1440 SCALP AVE	JOHNSTOWN PA 15904–	(814)266–8789
PA0169 LONGWOOD INN		815 E. BALTIMORE PIKE	KENNETT SQUARE PA 19348–	(215)444–3515
PA0170 COMFORT INN		550 W. DEKALB PIKE	KING OF PRUSSIA PA 19406–	(610)962–0700
PA0395 ECONO LODGE AT VALLEY FORGE.		815 W. DEKALB PIKE	KING OF PRUSSIA PA 19406–	(215)265–7200
PA0171 HOWARD JOHNSON	RT. 202 N	127 S. GULPH RD	KING OF PRUSSIA PA 19406–	(215)265–4500
PA0426 MCINTOSH INN		260 N. GULPH RD	KING OF PRUSSIA PA 19406–	(610)768–9500
PA0172 SHERATON PLAZA HOTEL		1210 FIRST AVE	KING OF PRUSSIA PA 19406–1341	(610)265–1500
PA0173 STOUFFER VALLEY FORGE HOTEL.		480 N. GULPH RD	KING OF PRUSSIA PA 19403–	(215)337–1800
PA0174 VALLEY FORGE HILTON		251 W. DE KALB PIKE	KING OF PRUSSIA PA 19406–	(215)337–1200
PA0020 VALLEY FORGE SHERATON HOTEL.		1150 FIRST AVE	KING OF PRUSSIA PA 19406–	(215)337–2000
PA0411 FRIENDSHIP INN—KITTANNING.	RD 6	FRIENDSHIP PLAZA	KITTANNING PA 16201–	(412)543–1100
PA0175 QUALITY INN		405 BUTLER RD	KITTANNING PA 16201–	(412)543–1159
PA0176 LAHASKA HOTEL	PO BOX 500	5775 YORK RD	LAHASKA PA 18931–	(215)794–0440
PA0177 COMFORT INN LAKE ARIEL	RD #5	I–84 EXIT 5 & PA 191	LAKE ARIEL PA 18436–	(717)689–4148
PA0178 CANADIANA MOTEL		2390 LINCOLN HWY. E	LANCASTER PA 17602–	(717)397–6531
PA0179 CONTINENTAL INN		2285 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–0421
PA0180 ECONO LODGE NORTH		2165 US HWY. 30 E	LANCASTER PA 17602–	(717)299–6900
PA0181 ECONO LODGE SOUTH		2140 US HIGHWAY 30 EAST	LANCASTER PA 17602–	(717)397–1900
PA0181 ECONO LODGE SOUTH		2140 US HWY 30 EAST	LANCASTER PA 17602–	(717)397–1900
PA0182 EDEN RESORT INN		222 EDEN RD	LANCASTER PA 17601–	(717)569–6444
PA0187 FRIENDSHIP INN ITALIAN VILLA.		2331 LINCOLN HWY. EAST	LANCASTER PA 17602–	(717)397–4973
PA0183 FULTON STEAMBOAT INN	PO BOX 333	RT. 30 E. & RT. 896	LANCASTER PA 17602–	(717)299–9999
PA0184 HAMPTON INN		545 GREENFIELD RD	LANCASTER PA 17601–	(717)299–1200
PA0185 HOLIDAY INN NORTH		1492 LITITZ PIKE	LANCASTER PA 17601–	(717)393–0771
PA0186 HOWARD JOHNSON		2100 LINCOLN HWY. E	LANCASTER PA 17602–	(717)397–7781
PA0188 LANCASTER HILTON GARDEN INN.		101 GRANITE RUN DR	LANCASTER PA 17601–	(717)560–0880
PA0189 LANCASTER HOST RESORT		2300 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–5500
PA0190 MCINTOSH INN		2307 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–9700
PA0190 MCINTOSH INN	RT. 30	2307 LINCOLN HWY. E	LANCASTER PA 17602–	(717)299–9700
PA0191 OLDE HICKORY INN		600 OLDE HICKORY RD	LANCASTER PA 17601–	(717)569–0477
PA0192 ROCKVALE VILLAGE INN		24 S. WILLOWDALE DR	LANCASTER PA 17602–	(717)293–9500
PA0193 SUPER 8 MOTEL		2129 LINCOLN HWY. E	LANCASTER PA 17602–	(717)393–8888
PA0194 TRAVELODGE LANCASTER		2101 COLUMBIA AVE	LANCASTER PA 17603–	(717)397–4201
PA0195 WESTFIELD MOTOR INN		2929 HEMPLAND RD	LANCASTER PA 17601–	(717)397–9300
PA0196 YOUR PLACE COUNTRY INN.		2133 LINCOLN HWY. E	LANCASTER PA 17602–	(717)393–3413

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PA0197	RED ROOF INN		3100 CABOT BLVD. W	LANGHORNE PA 19047–	(215)750–6200
PA0198	SHERATON BUCKS COUNTY HOTEL.		400 OXFORD VALLEY RD	LANGHORNE PA 19047–	(215)547–4100
PA0199	HOLIDAY INN CONF CENTER.	PO BOX 22226	7736 ADRIENNE DR	LEHIGH VALLEY PA 18002–	(215)391–1001
PA0200	RADISSON HOTEL PHILADELPHIA AIRPORT.		500 STEVENS DR	LESTER PA 19113–	(215)521–5900
PA0397	COMFORT INN		6401 BRISTOL PIKE	LEVITTOWN PA 19057–	(215)547–5000
PA0201	BEST WESTERN COUNTRY CUPBOARD INN.	PO BOX 46	ROUTE 15 NORTH	LEWISBURG PA 17837–	(717)524–5500
PA0201	BEST WESTERN COUNTRY CUPBOARD INN.	PO BOX 46	RT. 15 N	LEWISBURG PA 17837–	(717)524–5500
PA0202	A B C MOTEL	PO BOX 434	RT. 30 E	LIGONIER PA 15658–	(412)238–9541
PA0204	DESMOND GREAT VALLEY		ONE LIBERTY BLVD	MALVERN PA 19355–	(215)296–9800
PA0203	GENERAL WARREN INNE		9 VILLAGE WAY	MALVERN PA 19355–	(215)296–3637
PA0205	MCINTOSH INN		ONE MOREHALL RD	MALVERN PA 19355–	(610)279–6000
PA0206	COMFORT INN MANSFIELD		300 GATEWAY DR	MANSFIELD PA 16933–	(717)662–3000
PA0207	MANSFIELD MOTOR INN		26 S. MAIN ST	MANSFIELD PA 16933–	(717)662–2136
PA0208	KELLY HOTEL	PO BOX 330	102 S. FOREST ST	MARIENVILLE PA 16239–	(814)927–6652
PA0209	MARCO'S MOTOR INN	PO BOX 183	HWY. 441 & BANK ST	MARIETTA PA 17547–	(717)426–1354
PA0210	FAIRFIELD INN BY MARRIOTT.		30 SAINT FRANCIS WAY	MARS PA 16046–	(412)772–0600
PA0388	RED ROOF INN		20009 RT. 19	MARS PA 16046–	(412)776–5670
PA0211	SHERATON		910 SHERATON DR	MARS PA 16046–	(412)776–6900
PA0212	JOHNNIE'S MOTEL		709 LINCOLNWAY E	MCCONNELLSBURG PA 17233–	(717)485–3116
PA0213	SUPER 8 MOTEL		845 CONNEAUT LAKE RD	MEADVILLE PA 16335–	(814)333–8883
PA0012	COMFORT INN WEST		6325 CARLISLE PIKE RT. 11	MECHANICSBURG PA 17055–	(717)790–0924
PA0427	MCINTOSH INN		US RT. 1 & RT. 352 S	MEDIA PA 19063–	(610)565–5800
PA0214	FAIRVILLE INN	PO BOX 219	RT. 52 KENNETT PIKE	MENDENHALL PA 19357–	(215)388–5900
PA0215	MENDENHALL HOTEL		RT. 52	MENDENHALL PA 19357–	(215)388–1181
PA0216	HOWARD JOHNSON		RT. 19 & I–80 RD. #6	MERCER PA 16137–	(412)748–3308
PA0217	DAYS INN AIRPORT HARRISBURG.		815 EISENHOWER BLVD	MIDDLETOWN PA 17057–	(717)939–1600
PA0218	RODEWAY INN AIRPORT		800 EISENHOWER BLVD	MIDDLETOWN PA 17057–	(717)939–4147
PA0234	MIFFLINBURG HOTEL MOTEL		264 CHESTNUT ST	MIFFLINBURG PA 17844–	(717)966–3003
PA0219	ECONO LODGE	PO BOX 202		MIFFLINTOWN PA 17059–	(717)436–8941
PA0406	ECONO LODGE		US 322/22 AND PA 35	MIFFLINTOWN PA 17059–0202	(717)436–5981
PA0220	SUPER 8 MOTEL	PO BOX E	I–80 EXIT 37	MIFFLINVILLE PA 18631–	(717)752–2452
PA0221	CLIFF PARK INN	PO BOX 7200	CLIFF PARK RD	MILFORD PA 18337–	(717)296–6491
PA0222	HILLTOP MOTEL	PO BOX 576	RT. 6	MILFORD PA 18337–	(717)296–9444
PA0223	A COUNTRY INN		330 E. WYOMISSING AVE	MOHNTON PA 19540–	(215)484–4242
PA0224	RED ROOF INN		2729 MOSSIDE BLVD	MONROEVILLE PA 15146–	(412)856–4738
PA0225	BEST WESTERN MONTGOMERYVILLE.		969 BETHLEHEM PIKE	MONTGOMERYVILLE PA 18936–	(215)699–8800
PA0226	COMFORT INN MONTGOMERYVILLE.		678 BETHLEHEM PIKE	MONTGOMERYVILLE PA 18936–	(215)361–3500
PA0227	SUPER 8 MOTEL		2815 OLD MONTOURSVILLE RD	MONTOURSVILLE PA 17754–	(717)368–6111
PA0228	INN AMERICA	PO BOX D	GROW AVE	MONTROSE PA 18801–	(717)278–9284
PA0229	HOLIDAY INN		EXIT 22 PA TNPK	MORGANTOWN PA 19543–	(215)286–3000
PA0230	PENN HOTEL	PO BOX 75		MORRIS PA 16938–	(717)724–2478
PA0231	COUNTRY HOUSE MOTEL		US RT. 1 S	MORRISVILLE PA 19067–	(215)295–7331
PA0232	PINE BURR INN		RT. 61 ATLAS	MT CARMEL PA 17851–	(717)339–3870
PA0233	VISINTAINER'S MOTEL		50 W. FOURTH ST	MT CARMEL PA 17851–	(717)339–1262
PA0235	LANTERN MOTOR LODGE		RT. 209 & RT. 93	NESQUEHONING PA 18240–	(717)669–9433
PA0236	COMFORT INN		1740 NEW BUTLER RD	NEW CASTLE PA 16101–	(412)658–7700
PA0237	COMFORT INN NEW COLUMBIA.	PO BOX 62	I–80 AT US 15	NEW COLUMBIA PA 17856–	(717)568–8000
PA0238	DAYS INN		353 LEWISBERRY RD	NEW CUMBERLAND PA 17070–	(717)774–4156
PA0239	FAIRFIELD INN MARRIOTT		175 BEACON HILL BLVD	NEW CUMBERLAND PA 17070–	(717)774–6200
PA0413	HARRISBURG SOUTH KNIGHTS INN.		300 COMMERCE DR	NEW CUMBERLAND PA 17070–2400	(717)774–5990
PA0240	MCINTOSH INN		130 LIMEKILN RD	NEW CUMBERLAND PA 17070–	(717)774–8888
PA0241	MOTEL 6		200 COMMERCE AVE	NEW CUMBERLAND PA 17070–	(717)774–8910
PA0398	COMFORT INN		624 W. MAIN ST	NEW HOLLAND PA 17557–	(717)355–9900
PA0242	DAYS INN NEW STANTON		127 W. BYERS AVE	NEW STANTON PA 15672–	(412)925–3591
PA0243	HOWARD JOHNSON	PO BOX 214	112 W. BYERS AVE	NEW STANTON PA 15672–	(412)925–3511
PA0244	KNIGHTS COURT	PO BOX 747	110 N. MAIN ST	NEW STANTON PA 15672–	(412)925–6755
PA0245	SUMMERSON'S FOUR SEASONS.	PO BOX 73	RT. 120	NORTH BEND PA 17760–	(717)923–1398
PA0246	COMFORT INN		7011 STEUBENVILLE PIKE	OAKDALE PA 15071–	(412)787–2600
PA0247	HOWARD JOHNSON		2101 MONTOUR CHURCH RD	OAKDALE PA 15071–	(412)923–2244
PA0248	PALMYRA MOTEL		1071 E. MAIN ST	PALMYRA PA 17078–	(717)838–1324
PA0249	KEYSTONE MOTEL	PO BOX 325	RT. 30 RD. 2	PARKESBURG PA 19365–	(717)442–8800
PA0250	ATOP THE BELLEVUE		1415 CHANCELLOR CT	PHILADELPHIA PA 19102–	(215)893–1776
PA0260	ECST WESTERM INDEPENDENCE PARK HOTEL.		235 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)922–4443
PA0251	BEST WESTERN HOTEL PHILADELPHIA NE.		11580 ROOSEVELT BLVD	PHILADELPHIA PA 19116–	(215)464–9500
PA0260	BEST WESTERN INDEPENDENCE PARK HOTEL.		235 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)922–4443
PA0009	CHESTNUT HILL HOTEL		8229 GERMANTOWN AVE	PHILADELPHIA PA 19118–	(215)242–5905
PA0252	COMFORT INN PENN'S LANDING.		100 N. CHRISTOPHER COLUMBUS BL.	PHILADELPHIA PA 19106–	(215)627–7900

PA0253	COURTYARD PHILADELPHIA.		8900 BARTRAM AVE	PHILADELPHIA PA 19153–	(215)365–2200
PA0254	DAYS INN		4200 ROOSEVELT BLVD	PHILADELPHIA PA 19124–	(215)289–9200
PA0266	DOUBLETREE HOTEL		BROAD & LOCUST ST	PHILADELPHIA PA 19107–	(215)893–1600
PA0255	EMBASSY SUITES HOTEL		9000 BARTRAM AVE	PHILADELPHIA PA 19153–	(215)365–4500
PA0256	FOUR SEASON'S HOTEL		1810–34 RACE ST	PHILADELPHIA PA 19103–	(215)963–1500
PA0257	GUEST QUARTERS SUITE HOTEL.		4101 ISLAND AVE	PHILADELPHIA PA 19153–	(215)365–6600
PA0258	HOLIDAY INN		440 ARCH ST	PHILADELPHIA PA 19106–	(215)923–8660
PA0393	HOLIDAY INN CITY CENTRE		1800 MARKET ST	PHILADELPHIA PA 19103–	(215)561–7500
PA0391	HOLIDAY INN CITY LINE—PHILADELPHIA.		4100 PRESIDENTIAL BLVD	PHILADELPHIA PA 19131–	(215)477–0200
PA0259	HOLIDAY INN INDEPENDENCE MALL.		400 ARCH ST	PHILADELPHIA PA 19106–	(215)923–8660
PA0265	HOLIDAY INN PHILADELPHIA STADIUM.		10TH ST. & PACKER AVE	PHILADELPHIA PA 19148–	(215)755–9500
PA0261	KORMAN SUITES HOTEL		2001 HAMILTON ST	PHILADELPHIA PA 19130–	(215)569–7000
PA0262	OMNI HOTEL		401 CHESTNUT ST	PHILADELPHIA PA 19106–	(215)925–0000
PA0263	PENN'S VIEW INN		14 N. FRONT ST	PHILADELPHIA PA 19106–	(215)922–7600
PA0264	PHILADELPHIA AIRPORT HILTON.		4509 ISLAND AVE	PHILADELPHIA PA 19153–	(215)365–4150
PA0267	QUALITY INN		1010 RACE ST	PHILADELPHIA PA 19107–	(215)922–1730
PA0390	RESIDENCE INN BY MARRIOTT—PHILA AIRPORT.		4630 ISLAND AVENUE	PHILADELPHIA PA 19153–	(215)492–1611
PA0390	RESIDENCE INN BY MARRIOTT—PHILA AIRPORT.		4630 ISLAND AVE	PHILADELPHIA PA 19153–	(215)492–1611
PA0268	RITZ CARLTON HOTEL		17TH & CHESTNUT	PHILADELPHIA PA 19103–	(215)563–8215
PA0269	SHERATON INN NORTHEAST.		9461 ROOSEVELT BLVD	PHILADELPHIA PA 19114–	(215)671–9600
PA0270	SHERATON SOCIETY HILL HOTEL.		ONE DOCK ST	PHILADELPHIA PA 19106–	(215)238–6000
PA0271	SHERATON UNIVERSITY CITY.		36TH & CHESTNUT ST	PHILADELPHIA PA 19104–	(215)387–8000
PA0272	THE HUB MOTOR LODGE INC.		7605 ROOSEVELT BLVD	PHILADELPHIA PA 19152–	(215)332–4300
PA0273	THE R.TTENHOUSE		210 W. RITTENHOUSE SQUARE	PHILADELPHIA PA 19103–	(215)546–9000
PA0274	WYNDHAM FRANKLIN PLAZA.		TWO FRANKLIN PLAZA	PHILADELPHIA PA 19103–	(215)448–2000
PA0429	EMBASSY SUITES		1776 BENJAMIN FRANKLIN PKWY	PHILADELPHIA PA 19103–	(215)561–1776
PA0275	COLONY PARK MOTOR INN	PO BOX 585	R D #1	PINE GROVE PA 17963–	(717)345–8095
PA0010	COMFORT INN		I–81 RR 443	PINE GROVE PA 17963–	(717)345–8031
PA0276	ECONO LODGE	PO BOX 581	RR 1	PINE GROVE PA 17963–	(717)345–4099
PA0277	FORGE B&B	PO BOX 438	RR 1	PINE GROVE PA 17963–	(717)345–8349
PA0278	AVALON MOTEL	RT. 65	512 OHIO RIVER BLVD	PITTSBURGH PA 15202–	(412)761–4212
PA0279	CLUBHOUSE INN		5311 CAMPBELLS RUN RD	PITTSBURGH PA 15205–	(412)788–8400
PA0280	DAYS INN		SIX LANDINGS DR	PITTSBURGH PA 15238–	(412)828–5400
PA0281	DAYS INN PITTSBURGH		100 KISOW DR	PITTSBURGH PA 15205–	( ) –
PA0282	HARLEY HOTEL OF PITTSBURGH.		699 RODI RD	PITTSBURGH PA 15235–	(412)244–1600
PA0019	HAWTHORN SUITES HOTEL		700 MANSFIELD AVE	PITTSBURGH PA 15205–	(412)279–6300
PA0283	HOLIDAY INN		100 LYTTON AVE	PITTSBURGH PA 15213–	(412)682–6200
PA0284	MOTEL 6		211 BEECHAM DR	PITTSBURGH PA 15205–	(412)922–9400
PA0285	PARKWAY CENTER INN		875 GREENTREE RD	PITTSBURGH PA 15220–	(412)992–7070
PA0286	PITTSBURGH HILTON & TOWERS.		600 COMMONWEALTH PL	PITTSBURGH PA 15230–	(412)594–5141
PA0287	PITTSBURGH MOTEL		4270 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)922–1618
PA0409	PITTSBURGH WEST ECONO LODGE.		4800 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)922–6900
PA0288	RED ROOF INN		6404 STEUBENVILLE PIKE	PITTSBURGH PA 15205–	(412)787–7870
PA0289	SHERATON HOTEL		7 STATION SQUARE DR	PITTSBURGH PA 15219–	(412)261–2000
PA0290	SHERATON SOUTH HILLS		164 FORT COUCH RD	PITTSBURGH PA 15241–	(412)343–4600
PA0291	VISTA HOTEL PITTSBURGH		1000 PENN AVE	PITTSBURGH PA 15222–	(412)281–3700
PA0292	HOWARD JOHNSON		5300 CLAIRTON BLVD	PLEASANT HILLS PA 15236–	(412)884–6000
PA0293	GUEST QUARTER'S HOTEL		640 W. GERMANTOWN PIKE	PLYMOUTH MEETING PA 19462–	(215)834–8300
PA0294	PARKWAY MOTEL	PO BOX 516	R D 1	PORTAGE PA 15946–	(814)736–3378
PA0011	COMFORT INN		RT. 100 & SHOEMAKER RD	POTTSTOWN PA 19464–	(215)326–5000
PA0295	HOLIDAY INN EXPRESS		1600 INDUSTRIAL HWY	POTTSTOWN PA 19464–	(215)970–7863
PA0296	RAMADA INN		RT. 100 & KING ST	POTTSTOWN PA 19464–	(215)326–6545
PA0375	PATIO COURT MOTEL		720 N. WESTEND BLVD	QUAKERTOWN PA 18951–	(215)536–7000
PA0297	QUAKERTOWN MOTEL		1920 RT. 663	QUAKERTOWN PA 18951–	(215)536–7600
PA0298	COMFORT INN		2200 STACY DR	READING PA 19605–	(215)371–0500
PA0299	DUTCH COLONY MOTOR INN.		4635 PERKIOMEN AVE	READING PA 19606–	(215)779–2345
PA0407	ECONO LODGE		2310 FRAVER DR	READING PA 19605–	(215)378–1145
PA0300	HOLIDAY INN		2545 N. 5TH ST. HWY	READING PA 19605–	(215)929–4741
PA0301	INN AT READING		1040 PARK RD	READING PA 19610–	(215)372–7811
PA0302	RIVEREDGE INCORPORATED.		2017 BERNVILLE RD	READING PA 19601–	(215)376–6711
PA0387	WELLESLEY INN READING		910 WOODLAND AVE	READING PA 19610–	(215)374–1500
PA0303	KEYSTONE HOTEL		400 ERIE AVE	RENOVO PA 17764–	(717)923–2329
PA0304	SPORTSMAN HOTEL		FARWELL AVE	RENOVO PA 17764–	(717)923–9968
PA0305	CHERRY LANE MOTOR INN		84 N. RONKS RD	RONKS PA 17572–	(717)687–7646
PA0306	HERSHEY FARM MOTOR INN.	PO BOX 89	240 HARTMAN BRIDGE RD	RONKS PA 17579–	(717)687–9635
PA0307	OLDE AMISH INN		33 E. BROOK RD	RONKS PA 17572–	(717)393–3100

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PA0308	BEST WESTERN GUTHRIE INN.	PO BOX 400	255 SPRING ST	SAYRE PA 18840–	(717)888–7711
PA0309	LACKAWANNA STATION HOTEL.		700 LACKAWANNA AVE	SCRANTON PA 18503–	(717)342–8300
PA0310	APPLEBUTTER INN		152 APPLEWOOD LN	SLIPPER ROCK PA 16057–	(412)794–1844
PA0311	DAYS INN		200 WATERWORKS RD	SOMERSET PA 15501–	(814)445–9200
PA0312	HIGHLANDER MOTEL		799 N. CENTER AVE	SOMERSET PA 15501–	(814)445–7988
PA0313	KNIGHTS INN		I–70 76 AT EXIT 10	SOMERSET PA 15501–	(814)445–8933
PA0314	R & W MOTEL OF SOMERSET.	PO BOX 191	202 SHAFFER ST	SOMERSET PA 15501–	(814)445–9611
PA0315	ALPINE INN MOTOR LODGE		650 BALTIMORE PIKE	SPRINGFIELD PA 19064–	(215)544–4700
PA0316	EXECUTIVE MOTOR INN		675 BALTIMORE PIKE	SPRINGFIELD PA 19064–	(215)543–0555
PA0414	RADNOR HOTEL		591 E. LANCASTER AVE	ST. DAVIDS PA 19087–	(610)688–5800
PA0008	ATHERTON HILTON		125 S. ATHERTON ST	STATE COLLEGE PA 16801–	(814)231–2100
PA0415	BEST WESTERN STATE COLLEGE INN.		1663 S. ATHERTON ST	STATE COLLEGE PA 16801–	(814)237–8005
PA0317	HAMPTON INN		1101 E. COLLEGE AVE	STATE COLLEGE PA 16801–	(814)231–1590
PA0318	NITTANY BUDGET MOTEL		1274 N. ATHERTON ST	STATE COLLEGE PA 16803–	(814)237–7638
PA0319	TOFTREES HOTEL RESORT		ONE COUNTRY CLUB LN	STATE COLLEGE PA 16803–	(814)234–8000
PA0396	SHANNON INN	RR5 BOX 5202	I–80 EXIT 52	STROUDSBURG PA 18301–	(717)424–1951
PA0320	SHERATON POCONO INN		1220 W. MAIN ST	STROUDSBURG PA 18360–	(717)424–1930
PA0321	HOJO INN POCONO		RT. 715	TANNERSVILLE PA 18372–	(717)629–4100
PA0322	CROSS CREEK RESORT	PO BOX 432	RT. 8 S	TITUSVILLE PA 16354–	(814)827–9611
PA0323	LOPSIDED INN		RT. 196	TOBYHANNA PA 18466–	(717)839–8421
PA0324	HOLIDAY INN BUCKS COUNTY.		4700 STREET RD	TREVOSE PA 19053–	(215)364–2000
PA0325	HOWARD JOHNSON		2779 RT. 1 N	TREVOSE PA 19053–	(215)638–4554
PA0326	PENN MOTEL		2921 LINCOLN HWY	TREVOSE PA 19047–	(215)639–5200
PA0327	RAMADA HOTEL & CONF CENTER.		2400 OLD LINCOLN HWY	TREVOSE PA 19053–	(215)638–8300
PA0328	RED ROOF INN		3100 LINCOLN HWY	TREVOSE PA 19053–	(215)244–9422
PA0329	FOREST INN	PO BOX 98	HC 64	TROUT RUN PA 17771–	(717)995–9330
PA0330	SHADOWBROOK RESORT	PO BOX 133	RT. 6 E	TUNKHANNOCK PA 18657–	(717)836–5417
PA0331	CANADOHTA LAKE MOTEL	PO BOX 2554	R.D. 2	UNION CITY PA 16438–	(814)694–3219
PA0017	HOLIDAY INN		700 W. MAIN ST	UNIONTOWN PA 15401–	(412)437–2816
PA0332	M G MOTEL	PO BOX 130	RD 6	UNIONTOWN PA 15401–	(412)437–0506
PA0333	BRIDGETON HOUSE	PO BOX 167	RIVER RD	UPPER BLACK EDDY PA 18972–	(215)982–5856
PA0334	DAYS INN		RD #2	WARFORDSBURG PA 17267–	(814)735–4347
PA0335	REGENCY 265 MOTOR INN		265 E. STREET RD	WARMINSTER PA 18974–	(215)674–2200
PA0336	PENN LAUREL INN		706 PENN AVE. W	WARREN PA 16365–	(814)723–8300
PA0337	SUPER 8 MOTEL		204 STRUTHERS ST	WARREN PA 16365–	(814)723–8881
PA0338	DAYS INN		909 SHERATON DR	WARRENDALE PA 15086–	(412)772–2700
PA0339	WARRINGTON MOTOR LODGE.		701 EASTON RD	WARRINGTON PA 18976–	(215)343–0373
PA0340	INTERSTATE HOTEL		1396 W. CHESTNUT ST	WASHINGTON PA 15301–	(412)225–9900
PA0341	RED ROOF INN		1399 W. CHESTNUT ST	WASHINGTON PA 15301–	(412)228–5750
PA0342	PINE CREEK VALLEY LODGE.	PO BOX 123	RT. 44 N	WATERVILLE PA 17776–	(717)753–3254
PA0343	WATSON INN		100 MAIN ST	WATSONTOWN PA 17777–	(717)538–1832
PA0344	COURTYARD BY MARRIOTT		1100 DRUMMERS LN	WAYNE PA 19087–	(215)687–6700
PA0345	DEVON COURTYARD BY MARRIOTT.		762 W. LANCASTER AVE	WAYNE PA 19087–	(215)687–6833
PA0346	GUEST QUARTER'S HOTEL		888 CHESTERBROOK BLVD	WAYNE PA 19087–	(215)647–6700
PA0347	BEST WESTERN INN		239 W. MAIN ST	WAYNESBORO PA 17268–	(717)762–9113
PA0348	ECONO LODGE OF WAYNESBURG.		350 MILLER LN	WAYNESBURG PA 15370–	(412)627–6544
PA0349	TRIANGLE HOTEL		120 BILL GEORGE DR	WAYNESBURG PA 15370–	(412)627–3150
PA0350	CANYON MOTEL		18 E. AVE	WELLSBORO PA 16901–	(717)724–1681
PA0351	PENN WELLS HOTEL		62 MAIN ST	WELLSBORO PA 16901–	(717)724–2111
PA0352	PENN WELLS LODGE		FOUR MAIN ST	WELLSBORO PA 16901–	(717)724–2111
PA0353	SHERWOOD MOTEL		2 MAIN ST	WELLSBORO PA 16901–	(717)724–3424
PA0354	WEST CHESTER INN		943 S. HIGH ST	WEST CHESTER PA 19382–	(215)692–1900
PA0355	PHILADELPHIA MARRIOTT WEST.		111 CRAWFORD AVE	WEST CONSHOHOCKEN PA 19428–	(215)941–5600
PA0356	COMFORT INN	PO BOX 301	RT. 93 & KIWANIS BLVD. RR #1	WEST HAZLETON PA 18201–	(717)455–9300
PA0357	PENN VIEW MOTEL		250 PENN AVE	WEST READING PA 19611–	(215)378–8011
PA0358	BUCKTAIL LODGE	PO BOX 83	RT. 120 W	WESTPORT PA 17778–	(717)923–2472
PA0359	ECONO LODGE		107 VIP DR	WEXFORD PA 15090–	(412)935–1000
PA0360	MOUNTAIN LAUREL RESORT EAST.	PO BOX 126	I–80 AND PA TNPK	WHITE HAVEN PA 18661–	(717)443–8411
PA0361	MOUNTAIN LAUREL RESORT WEST.	PO BOX 126	I–80 & PA TNPK	WHITE HAVEN PA 18661–	(717)443–8411
PA0362	RAMADA INN		1500 MACARTHUR RD	WHITEHALL PA 18052–	(215)439–1037
PA0363	BEST WESTERN EAST MOUNTAIN INN.		2400 E. END BLVD	WILKES-BARRE PA 18702–	(717)822–1011
PA0364	FOX RIDGE INN		1145 RT. 315	WILKES-BARRE PA 18702–	(717)825–3477
PA0365	HAMPTON INN WILKES-BARRE.		1063 HWY. 315	WILKES-BARRE PA 18702–	(717)825–3838
PA0392	RAMADA HOTEL ON THE SQUARE.		20 PUBLIC SQUARE	WILKES-BARRE PA 18702–	(717)824–7100
PA0366	RED ROOF INN		1035 HWY. 315	WILKES-BARRE PA 18702–	(717)829–6422
PA0367	COLONIAL MOTOR LODGE		1959 E. THIRD ST	WILLIAMSPORT PA 17701–	(717)322–6161
PA0368	FARR'S MOTEL		2295 LYCOMING CREEK RD	WILLIAMSPORT PA 17701–	(717)323–8591
PA0018	QUALITY INN		234 ROUTE 15	WILLIAMSPORT PA 17701–	(717)323–9801
PA0018	QUALITY INN		234 RT. 15	WILLIAMSPORT PA 17701–	(717)323–9801

PA0369	RIDGEMONT MOTEL	PO BOX 536	RD 4	WILLIAMSPORT PA 17701–	(717)321–5300
PA0370	SHERATON INN		100 PINE ST	WILLIAMSPORT PA 17701–	(717)327–8231
PA0371	COURTYARD BY MARRIOTT	RT. 611	2350 EASTON RD	WILLOW GROVE PA 19090–	(215)830–0550
PA0001	FIESTA MOTOR INN		1130 N. EASTON RD	WILLOW GROVE PA 19090–	(215)659–9300
PA0372	HAMPTON INN WILLOW GROVE.		1500 EASTON RD	WILLOW GROVE PA 19090–	(215)659–3535
PA0373	VICKI & HANK'S HOTEL		1412 GRAHAM AVE	WINDBER PA 15963–	(814)467–7859
PA0374	TRAVEL INN OF WINDY GAP.	PO BOX 163	RT. 33 & RT. 512	WINDGAP PA 18091–	(215)863–4146
PA0376	SHERATON		VAN REED & WOODLAND RD	WYOMISSING PA 19610–	(215)376–3811
PA0377	CHATEAU MOTEL		3951 E. MARKET ST	YORK PA 17402–	(717)757–1714
PA0402	COMFORT INN OF YORK		140 LEADER HEIGHTS RD	YORK PA 17403–	(717)741–1000
PA0378	DAYS INN		1415 KENNETH RD	YORK PA 17404–	(717)767–6931
PA0006	HOLIDAY INN		334 ARSENAL RD	YORK PA 17402–	(717)845–5671
PA0379	HOLIDAY INN		2000 LOUCKS RD	YORK PA 17404–	(717)846–9500
PA0380	HOLIDAY INN EAST MARKET.		2600 E. MARKET ST	YORK PA 17402–	(717)755–1966
PA0381	HOWARD JOHNSON	I–83 & US 30	ARSENAL RD	YORK PA 17402–	(717)843–9971
PA0382	RED ROOF INN		323 ARSENAL RD	YORK PA 17402–	(717)843–8181
PA0383	SPIRIT OF 76 MOTEL		1162 HAINES RD	YORK PA 17402–	(717)755–1068
PA0384	SUPER 8 MOTEL		40 ARSENAL RD	YORK PA 17404–	(717)852–8686
PA0385	YORK TRAVELODGE MOTEL.		132–140 N. GEORGE ST	YORK PA 17401–	(717)843–8974
PR0016	HOTEL PLAZA	PO BOX 2210	DE DIEGO AVE	ARECIBO PR 00613–	(809)878–2295
PR0029	ADAMARIS APARTMENTS	PO BOX 588	DE DIEGO & GIL BOUGET	BOQUERON PR 00622–	(809)851–6850
PR0019	EDWIN'S HOTEL	PO BOX 849	RD. 101 INT.BALNEARIO BOQUERON	CABO ROJO PR 00623–	(809)851–7110
PR0014	HOTEL LA BAHIA	HC 02–21118	RD. 101 KM. 17 HM. 1	CABO ROJO PR 00680–	(809)832–0499
PR0008	HOLIDAY INN CROWNE PLAZA.	PO BOX 38079	RD. 187 KM. 1 HM. 5	CAROLINA PR 00937–8079	(809)253–2929
PR0006	SANDS HOTEL & CASINO	PO BOX 6676	RD. 187 ISLA VERDE	CAROLINA PR 00914–	(809)791–6100
PR0003	HOTEL PARADOR BANOS DE COAMO.	PO BOX 540	RT. 546 KM. 1 HM. 6	COAMO PR 00769–	(809)825–2239
PR0013	HYATT REGENCY CERROMAR.		RD. 693	DORADO PR 00646–	(809)796–1234
PR0015	THE HYATT DORADO BEACH.	RT. 693		DORADO PR 00646–	(809)796–1234
PR0009	POSADA GUAYAMA	PO BOX 2393	RD. 3 KM. 138.5 SECTOR VIVES	GUAYAMA PR 00785–	(809)866–1515
PR0017	PICHIS HOTEL & CONVENTION CENTER.	PO BOX 115	RD. 2 KM. 204 HM. 6	GUAYANILLA PR 00656–	(809)835–3335

4. On the same page, in the table, in the second entry, insert "PR0021" before "PAN AMERICAN MOTEL, INC".

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Federal Register

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Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-5150-9]

RIN 2060-AC62

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Medical Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed standards and guidelines, and notice of public hearing.

SUMMARY: Today, EPA is proposing standards and guidelines for new and existing medical waste incinerators (MWI's) that will reduce air pollution from MWI's. Once implemented, these standards and guidelines will protect public health by reducing exposure to air pollution.

This proposal would add subparts Ec and Cc to 40 CFR part 60. Subpart Ec would limit emissions from new and modified MWI's. The proposed standards would implement sections 111(b) and 129 of the Clean Air Act (Act) as amended in 1990, and would require new MWI's to control emissions of air pollutants to levels that reflect the degree of emission reduction based on maximum achievable control technology (MACT). In addition, this notice includes proposed standards for fugitive fly ash/bottom ash emissions, MWI operator training and qualification, siting, and permitting.

Subpart Cc would establish emission guidelines and compliance schedules for use by States in developing State regulations to control emissions from existing MWI's. The proposed emission guidelines implement sections 111(d) and 129 of the Act, and would initiate State action to develop State regulations. These State regulations would control air pollutant emissions from existing MWI's to levels that reflect the degree of emission reduction based on MACT. In addition, this notice includes proposed guidelines for fugitive fly ash/bottom ash emissions, equipment inspections, training and qualification of MWI operators and permitting.

DATES: Comments. Comments must be received on or before April 28, 1995.

Public Hearing. The EPA will hold at least one public hearing in Washington, D.C. in mid- to late-March 1995. Additional hearings may also be held. A **Federal Register** notice will be published within the next 2 weeks to announce the details of the hearing(s) and to confirm the date(s) and location(s) for the hearing(s).

ADDRESSES: *Comments.* Comments on the proposal should be submitted (in duplicate, if possible) to: The Air and Radiation Docket and Information Center, ATTN: Docket No. A-91-61, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Rick Copland, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Manager, 411 W. Chapel Hill Street, Room 944, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

Background Information Documents. Two "Fact Sheets" are available that succinctly summarize the proposed standards and guidelines. The Fact Sheets are suggested reading for persons requiring an overview of the proposal. The Fact Sheets can be obtained by (1) calling Ms. Julia Latta at (919) 541-5578 or (2) accessing the EPA's Technology Transfer Network (TTN) electronic bulletin board. See SUPPLEMENTARY INFORMATION for instructions on accessing the TTN (electronic bulletin board). The background information documents (BID's) for the proposed standards and guidelines may be obtained from the docket; from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777; or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487-4650. See **SUPPLEMENTARY INFORMATION** for a listing of these documents.

Docket. Docket No. A-91-61, containing supporting information used in developing the proposed standards and guidelines, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 telephone (202) 260-7548, fax (202) 260-4000. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr Rick Copland at (919) 541-5265 or Mr Fred Porter at (919) 541-5251, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Incineration is a common method of medical waste disposal in the United States and around the world. However while it is a very effective method of medical waste treatment with regard to rendering waste non-infectious, incineration results in the production of air pollutants. The EPA estimates that there are about 3,700 MWI's currently in operation in the United States. While these incinerators are small in size relative to municipal waste combustors, their large number makes MWI's a significant source of air pollution. The EPA recently released a draft report reassessing the health effects of exposure to dioxin. In the draft report, currently undergoing public review, MWI's are identified as a significant source of dioxin emissions. In addition, MWI's emit substantial quantities of hydrogen chloride (HCl), lead (Pb), cadmium (Cd), and mercury (Hg).

Today's proposed standards and guidelines will result in greater than 95 percent reduction in air pollution from MWI's. Once implemented, these standards and guidelines will protect public health by reducing exposure to air pollution.

The EPA, the Sierra Club, and the Natural Resources Defense Council (NRDC) have filed a consent decree with the U.S. District Court for the Eastern District of New York (Nos. CV-92-2093 and CV-93-0284) that requires the EPA Administrator to sign a notice of proposed rulemaking not later than February 1, 1995 and a notice of final rulemaking not later than April 15, 1996.

The EPA will hold at least one public hearing to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposal. Additional hearings may also be held (see discussion of public hearing above).

The EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analysis should accompany all comments to allow the EPA to adequately respond to the comments.

The key documents used to develop the proposed standards and guidelines include:

1. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Industry Profile Report for New and Existing Facilities," EPA-453/R-94-042a, July 1994;
2. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Process Description Report for New and Existing Facilities," EPA-453/R-94-043a, July 1994;
3. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Control Technology Performance Report for New and Existing Facilities," EPA-453/R-94-044a, July 1994;
4. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Model Plant Description and Cost Report for New and Existing Facilities," EPA-453/R-94-045a, July 1994;
5. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Environmental Impacts Report for New and Existing Facilities," EPA-453/R-94-046a, July 1994;
6. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Analysis of Economic Impacts for New Sources," EPA-453/R-94-047a, July 1994 (see also item 9 below);
7. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Analysis of Economic Impacts for Existing Sources," EPA-453/R-94-048a, July 1994 (see also item 9 below);
8. "Medical Waste Incinerators—Background Information for Proposed Standards and Guidelines: Regulatory Impact Analysis for New and Existing Facilities, EPA-453/R-94-063a, July 1994 (see also item 9 below); and
9. B. Strong and S. Shoraka-Blair, MRI, to R. Copland, EPA/ESD. January 30, 1995. Regulatory Impacts of the Proposed New Source Performance Standard (NSPS) and Emission Guidelines (EG) for Medical Waste Incinerators (MWI's). Docket A-91-61, II-B-108.

An electronic copy of the items listed below are available from the EPA's TTN electronic bulletin board. The TTN is accessible 24 hours per day, 7 days per week, except Monday morning from 8:00 a.m. to 12:00 p.m. EST, when the system is updated. The TTN contains 12 electronic bulletin boards, and information relating to this proposal is contained in the Clean Air Act Amendments (CAAA) bulletin board. Instructions for accessing the TTN can be obtained by calling (919) 541-5384.

MWI Items in the Electronic Bulletin Board (TTN/CAAA)

1. Fact Sheet—Proposed subpart Ec Emission Standards for New MWI's.
2. Fact Sheet—Proposed subpart Cc Emission Guidelines for Existing MWI's.
3. This **Federal Register** notice (preamble).
4. Proposed subpart Ec Emission Standards.
5. Proposed subpart Cc Emission Guidelines.

Other technical documents, including the key documents listed under the **SUPPLEMENTARY INFORMATION** section, are contained in Docket No. A-91-61.

The following outline is provided to aid in locating information in this notice (the preamble to the proposed standards and guidelines):

I. Introduction
- A. Overview of this Preamble
- B. New Source Performance Standards (NSPS)—General
- C. NSPS Decision Scheme
- D. Emission Guidelines—General Goals
- E. Additional Requirements Under Section 129

II. Summary of the Standards and Guidelines
- A. Source Category to be Regulated
- B. Pollutants to be Regulated
- C. Affected Facility and Designated Facility
- D. Proposed Standards and Guidelines
- E. Operator Training and Qualification Requirements
- F. Siting Requirements—New MWI's
- G. Inspection Requirements—Existing MWI's
- H. Compliance and Performance Test Methods and Monitoring Requirements
- I. Reporting and Recordkeeping—New MWI's
- J. Reporting and Recordkeeping—Existing MWI's
- K. Compliance Times
- L. Permit Requirements

III. Impacts of the Proposed Standards for New MWI's
- A. Air Impacts
- B. Water and Solid Waste Impacts
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- E. Economic Impacts

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- A. Air Impacts
- B. Water and Solid Waste Impacts
- C. Energy Impacts
- D. Control Cost Impacts
- E. Economic Impacts

V Rationale for the Proposed Standards and Guidelines
- A. Background
- B. Selection of Source Category
- C. Modification of Existing MWI's
- D. Selection of Pollutants
- E. Selection of Affected and Designated Facilities
- F. Selection of Format for the Proposed Standards and Emission Guidelines
- G. Selection of Classes, Types, and Sizes
- H. Performance of Technology
- I. MACT Floor and MACT for New MWI's
- J. MACT Floor and MACT for Existing MWI's
- K. Selection of Fugitive Fly Ash/Bottom Ash Standards and Guidelines
- L. Operator Training and Qualification Requirements
- M. Siting Requirements—New MWI's
- N. Inspection Requirements—Existing MWI's
- O. Compliance and Performance Test Methods and Monitoring Requirements
- P Reporting and Recordkeeping—New MWI's
- Q. Reporting and Recordkeeping—Existing MWI's
- R. Compliance Times
- S. Permit Requirements

VI. Request for Comment
- A. Procedure to Determine MACT
- B. Alternatives to Onsite Incineration
- C. Definition of Medical Waste

VII. Administrative Requirements
- A. Public Hearing
- B. Docket
- C. Clean Air Act Procedural Requirements
- D. Office of Management and Budget Reviews
- E. Regulatory Flexibility Act Compliance

I. Introduction

A. Overview of This Preamble

The 1990 Clean Air Act Amendments reflect growing public concern about the large volume of toxic air pollutants released from numerous categories of emission sources. Title III of the Amendments specifically enumerated 189 hazardous air pollutants and instructed EPA to profect public health by reducing emissions of these pollutants from the sources that release them. The EPA's standards are to be issued in two phases. The first phase standards are designed to bring all sources up to the level of emissions control achieved by those that are already well-controlled, using pollution prevention measures as well as "end-of-pipe" methods. The second phase standards, due approximately a decade later, are to require further emission reductions in any case in which the first phase measures were not by themselves sufficient to fully protect the public health.

In this context, the 1990 Amendments singled out waste incineration for special attention. Congress recognized both a high level of public concern about the incineration of municipal, medical and other wastes, and a number of special management concerns for these types of sources. Consequently, section 129 of the Act directs EPA to apply the two-phase control approach of Title III to various categories of waste incinerators, including medical waste

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incinerators. Today's action proposes standards and guidelines for new and existing MWI's under section 129.

Current methods of medical waste incineration cause the release of a wide array of air pollutants, including several pollutants of particular public health concern. In September of 1994, EPA released a review draft of a report reassessing the health effects associated with dioxin, which suggests that dioxin exposure can result in a number of cancer and noncancer health effects in humans. In the report, MWI's are identified as the largest known source of dioxin emissions, emitting more than municipal waste combustors, hazardous waste incinerators, and cement kilns. Because of this, the reduction of dioxin emissions from all sources is one of the Administrator's highest air quality protection priorities. Consequently, the development of MWI regulations has received increased attention.

In addition to dioxin, MWI's also emit significant quantities of heavy metals including lead, cadmium, and mercury. Once again, MWI's have been identified as the largest known source of mercury emissions, emitting more than municipal waste combustors and coal-fired electric utility boilers. The MWI's also emit nitrogen oxides (a contributor to ozone smog), particulate matter, sulfur dioxide, and other acid gases.

Several States, including New York, California, and Texas, have adopted relatively stringent regulations in the past few years limiting emissions from MWI's. The implementation of these regulations has brought about very large reductions in MWI emissions and the associated risk to public health in those States. It has also significantly reshaped how medical waste is managed in those States. Many facilities have responded to the State regulations by switching to other medical waste treatment and disposal options to avoid the high cost of add-on air pollution control equipment. The two most commonly chosen alternatives have been off-site contract disposal in larger, commercial incinerators dedicated to medical waste, and on-site treatment by other means (e.g., steam autoclaving). Other alternatives include chemical treatment and microwave irradiation. The availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

Today EPA proposes nationally applicable emission standards and guidelines for MWI's that build on the experience of these leading States. Like the State regulations, the standards and guidelines proposed today are based on the use of add-on air pollution control systems.

These standards and guidelines will implement the first phase requirements of section 129, described above.

The commercial medical waste disposal industry has indicated that sufficient commercial medical waste disposal capacity is available to handle the amount of waste that would no longer be treated onsite. In addition, as mentioned earlier, onsite alternatives are available for facilities that choose to treat their medical waste onsite. In fact, even in the absence of Federal regulations, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

As described in detail below, section 129, like section 112, of the Clean Air Act instructs the Agency to set performance standards that challenge industry to meet or exceed the pollution control standards established by better controlled similar facilities. In this way, the overall state of environmental practice is raised for large segments of industry, a basic level of health protection is provided to all communities, situations in which uncertainty about total risk and hazard result in no protection for the exposed public are avoided, and yet the cost of pollution control to industry is constrained to levels already absorbed by similar operations. Eight years later, in a second phase, EPA must evaluate whether the residual public health risk warrants additional control.

For new MWI's, the proposed emissions standards would reduce nationwide emissions of dioxins/furans by 99 percent; PM, CO, HCl, Pb, and Cd by greater than 95 percent; and Hg by 92 percent. In addition, the standards would achieve an emission reduction of about 25 percent for SO_2 and NO_x. Because wastewater, solid waste, and energy requirements associated with implementation of the proposed standards are not significant, adverse water, solid waste, or energy impacts are not anticipated.

The nationwide annual costs associated with the proposed standards for new MWI's will increase by approximately $74.5 million/yr from the regulatory baseline cost of $63.3 million/yr. This results in an increase in the cost of waste incineration per unit of waste treated of approximately $177/Mg ($161/ton) compared to the regulatory baseline cost of $150/Mg ($136/ton).

The results of the economic impacts analyses for new MWI's indicate that no medical waste-generating industry would need to be significantly reconstructed (e.g., through closures or consolidations) as a result of the proposed standards. The market price increase resulting from the standards is relatively small for each industry. The corresponding decreases in output, employment, and revenue were also low, never exceeding 0.05 percent.

With regard to existing MWI's, an estimated 3.4 million tons of waste are produced annually by medical waste generators in the United States. The EPA believes that approximately 3,700 MWI's are currently burning waste generated at health care facilities. The proposed guidelines for existing MWI's would reduce nationwide emissions of dioxins/furans and Pb by 99 percent; PM, CO, and HCl by 98 percent; Cd by 97 percent; and Hg by 94 percent. The guidelines would also achieve an overall emission reduction of 37 percent for both SO_2 and NO_x. Because wastewater, solid waste, and energy requirements associated with implementation of the proposed guidelines are not significant, adverse water, solid waste, or energy impacts are not anticipated.

The nationwide annual costs associated with the proposed guidelines for existing MWI's will increase by approximately $351 million/yr from the regulatory baseline cost of $265 million/yr. This results in an increase in the cost of waste incineration per unit of waste treated of approximately $245/Mg ($222/ton) compared to the regulatory baseline cost of $185/Mg ($168/ton).

The results of the economic impacts analyses for existing MWI's indicate that no medical waste-generating industry would need to be significantly restructured (e.g., through closures or consolidations) as a result of the proposed emission guidelines. The market price increase resulting from the emission guidelines is relatively small for each industry. The corresponding decreases in output, employment, and revenue were also low, never exceeding 1 percent.

Considering the benefits to be gained from the reduction of air pollution from MWI's along with the availability of alternative treatment methods and the clear Congressional intent, these proposed standards and guidelines are considered reasonable.

This preamble will:

1. Summarize the important features of the proposed standards and guidelines;

2. Describe the environmental, energy and economic impacts of these standards and guidelines;

3. Present a rationale for each of the decisions made regarding the proposed standards and guidelines;

4. Request public comment on specific issues; and

5. Discuss administrative requirements relevant to this action.

B. New Source Performance Standards—General

The proposed new source performance standards (NSPS, or standard(s)) for MWI's would implement section 111(b) of the Act. The NSPS are issued for categories of sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions (i.e., sources whose construction or modification begins after a standard is proposed). An NSPS requires these sources to control emissions to the level achievable by the best system of continuous emission reduction, considering costs and other impacts.

C. NSPS Decision Scheme

An NSPS is the end product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements in this decision are generally the following:

1. Source category to be regulated—usually an emission source category, but can be a process or group of processes within an industry.

2. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

3. Pollutants to be regulated—the particular substances emitted by the affected facility that the standards control.

4. Best system of continuous emission reduction—the technology on which the standards will be based, i.e., application of the best system of continuous emission reduction that (taking into consideration the cost of achieving such emission reduction and any nonair-quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)).

5. Format for the standards—the form in which the standards are expressed, i.e., as pollutant concentration emission limits, as a percent reduction in emissions, or as equipment or work practice standards.

6. Actual standards—generally, emission limits based on the level of reduction that the best demonstrated technology (BDT) can achieve. Only in unusual cases do standards require that a specific technology be used. In general, the source owner or operator may select any method for complying with the standards.

7. Other considerations—(in addition to emission limits) NSPS usually include: standards for visible emissions, modification provisions, monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements.

D. Emission Guidelines—General Goals

The Act requires the promulgation of standards of performance under section 111(b) for categories of new sources that may contribute to the endangerment of public health or welfare. When standards of performance are promulgated under section 111(b) for a designated pollutant, the Act requires States under section 111(d) to submit plans that: (1) establish emission standards for this designated pollutant from existing sources and (2) provide for implementation and enforcement of these emission standards. In most cases, this means that control under section 111(d) is appropriate when the pollutant may cause or contribute to endangerment of public health or welfare but is not known to be "hazardous" within the meaning of section 112 and is not controlled under sections 108 through 110 because, for example, it is not emitted from "numerous or diverse" sources as required by section 108.

As specified in 40 CFR part 60.23, States are required to adopt and submit to the Administrator a plan implementing the section 111(d) guidelines within 1 year after the promulgation of the guidelines. The Act further requires that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans (SIP's) under section 110. The Act also provides that the EPA shall prescribe a plan according to procedures similar to those in section 110(c) if a State fails to submit a "satisfactory plan."

E. Additional Requirements Under Section 129

The Amendments of 1990 added section 129, which includes specific requirements for solid waste combustion units. Section 129 requires the EPA, under § 111(b), to establish new source performance standards (NSPS) for new MWI's and, under § 111(d), to establish emission guidelines for existing MWI's.

1. *New Sources* The NSPS must specify numerical emission limitations for the following: Particulate matter (PM), opacity, sulfur dioxide (SO_2), hydrogen chloride (HCl), oxides of nitrogen (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins/furans (CDD/CDF). Section 129 also includes requirements for operator training as well as siting requirements for new MWI's.

Section 129 requires that emission standards reflect the maximum degree of reduction in air emissions that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair-quality health and environmental impacts and energy requirements, determines is achievable. This requirement is referred to as maximum achievable control technology (MACT). The degree of reduction in emissions that is deemed achievable for new MWI's may not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. This requirement that the standards must be no less stringent than certain levels of emission control currently achieved is referred to as the "MACT floor" for new MWI's.

For NSPS, the control technology used to achieve the standards is not specified. Only the emission limits achievable by MACT are included in the standards. Any control technology that can comply with these emission limits may be used.

2. *Existing Sources* Notwithstanding the limitations of setting guidelines for existing sources under section 111(d), section 129 directs EPA to issue guidelines for existing MWI's that specify numerical emission limitations for the same pollutants listed above for new MWI's. Section 129 also includes requirements for operator training.

Section 129 provides that the State plan for existing MWI's be at least as protective as the guidelines.

Section 129 also provides that emission guidelines for existing MWI's reflect MACT, as described above. However, while the guidelines for existing MWI's may be less stringent than the standards for new MWI's, the guidelines may be no less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category. This requirement that the guidelines must be no less stringent than certain levels of emission control currently achieved is referred to as the "MACT floor" for existing MWI's.

For emission guidelines (EG), the control technology used for compliance is not specified. Only the emission limits achievable by MACT are included in the guidelines. Any control

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technology that can comply with these emission limits may be used.

Under section 129, States are required to submit to the Administrator a plan implementing the emission guidelines within 1 year after promulgation of the guidelines. Section 129 also requires that a State plan shall provide that each unit subject to the guidelines shall be in compliance with all requirements of the proposed guidelines within 3 years after the State plan is approved by the Administrator but in no case later that 5 years after promulgation of these guidelines. The compliance schedule in today's proposed emission guidelines would supersede and is more comprehensive than the compliance schedule and timetable specified in section 129.

The proposal requires that a State plan shall provide that each source subject to the guidelines shall be in compliance with all requirements of the guidelines within 1 year after the State plan is approved by the Administrator. The proposal allows two exceptions to this compliance schedule: extensions for facilities planning to install the necessary air pollution equipment and extensions under a petition process for other reasons. State plans that include such provisions may allow designated facilities up to 3 years after the State plan is approved by the Administrator (but no more than 5 years after promulgation of the guidelines) to achieve compliance. The only exception to these compliance times involves the operator training and qualification requirements and the maintenance inspection requirement. The proposed emission guidelines require that a State plan provide that each designated facility shall be in compliance with the operator training and qualification requirements and the maintenance inspection requirements within 1 year after the State plan is approved by the Administrator.

Section 129 specifies that the EPA, in reviewing State plans for any variation from the emission guidelines, must ensure that State plans and their resulting MWI control requirements are at least as protective as the EPA emission guidelines, including incorporation of the compliance schedule requirements established by the guidelines.

II. Summary of the Standards and Guidelines

A. Source Category To Be Regulated

The proposed standards for new MWI's would limit emissions of air pollutants from each MWI for which construction is commenced after today's date, or for which modification is commenced after the effective date of the standards. The effective date of the proposed standards is specified in the Act as the date 6 months after promulgation of the standards. The proposed guidelines for existing MWI's would require States to develop emission standards limiting emissions of air pollutants from each MWI for which construction was commenced on or before today's date. Changes made to an existing MWI solely for the purpose of complying with the emission guidelines would not bring an existing MWI under the NSPS for new MWI's.

The proposed standards and guidelines would require facilities that employ technologies such as pyrolysis/gasification in medical waste destruction to meet the emission limits and all other requirements in today's proposal. The pyrolysis/gasification industry does not object to be covered under today's proposed MWI standards and guidelines and believes that they can meet and exceed the proposed emission limitations. However, the pyrolysis/gasification industry believes that their process is unique enough to warrant a separate category for the purpose of regulations. The agency is requesting comment on whether these units should be regulated as MWI's or as a separate source category. Also, comment is requested on the definitions of medical waste incineration and medical waste pyrolysis/gasification that would differentiate these two categories of waste destruction for the purpose of regulation.

An MWI is defined as any device used to burn medical waste, with or without other fuels or types of waste, including the heat recovery device, if one is present. Medical waste is defined as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in production or testing of biologicals. Biologicals refer to preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, treating, or immunizing humans or animals or in research pertaining thereto. Medical waste includes materials such as sharps, fabrics, plastics, paper, waste chemicals/drugs that are not RCRA hazardous waste, and pathological waste. Medical waste does not include household waste, hazardous waste, or human and animal remains not generated as medical waste.

Most MWI's burn a diverse mixture of medical waste (referred to in this preamble as general medical waste), that may include some pathological waste (human and animal body parts and/or tissue). However, larger amounts of pathological waste require special operating conditions for combustion. Thus, some facilities maintain MWI's designed and operated to burn pathological waste exclusively.

The proposed standards and guidelines focus on regulating emissions from general medical waste incinerators and include very minor requirements for pathological MWI's. Under this proposal, pathological MWI's would only be required to submit quarterly reports of the amount and type of materials charged to the incinerator. Pathological MWI's will be considered in future regulatory action under section 129 in the source category of "other solid waste incinerators."

B. Pollutants To Be Regulated

Section 129 of the Act requires the EPA to establish numerical emission limits for PM, opacity, CO, CDD/CDF, HCl, SO_2, NO_x, Pb, Cd, and Hg. All pollutants to be regulated would be reported as concentrations and are corrected to 7 percent oxygen. Particulate matter and metals (Pb, Cd, and Hg) would be reported as milligrams per dry standard cubic meter (mg/dscm). For Hg, the proposed standards and guidelines would also establish an alternative percent reduction requirement. Carbon monoxide, HCl, SO_2, and NO_x would be reported as parts per million by volume (ppmv), dry basis. As an alternative, the proposed standards and guidelines for HCl would also establish a percent reduction requirement. Emissions of CDD/CDF would be reported in units of total nanograms per dry standard cubic meter (ng/dscm) or ng/dscm toxic equivalency (TEQ). Measurements of TEQ are determined by first measuring the total concentration of CDD/CDF congeners and adjusting the results to account for the varying toxicity of each congener. Opacity is reported on a percentage basis. The proposed standards and guidelines also establish fly ash/bottom ash fugitive emission limitations, reported on a percentage basis.

C. Affected Facility and Designated Facility

The affected facility to which the proposed standards applies is each individual MWI for which construction is commenced after today's date or for which modification is commenced after the effective date of these standards. The effective date of the proposed standards is specified in the Act as the date 6 months after promulgation of the standards.

The designated facility to which the proposed emission guidelines apply is each individual MWI for which construction is commenced on or before today's date.

D. Proposed Standards and Guidelines

Table 1 lists the emission limitations under the proposed standards and guidelines, Tables 2 and 3 list other requirements of the proposed standards and guidelines, and Tables 4 and 5 list the compliance times for the proposed standards and guidelines.

TABLE 1.—SUMMARY OF PROPOSED EMISSION LIMITS FOR NEW AND EXISTING MEDICAL WASTE INCINERATORS

Pollutant	Emissions limits
Particulate matter	30 mg/dscm (0.013 gr/dscf) 12-hour average.
Opacity	5 percent 6-minute average.
Carbon monoxide	50 ppmv 12-hour average.
Dioxins/furans	80 ng/dscm total CDD/CDF (35 gr/10^9 dscf) or 1.9 ng/dscm TEQ (0.83 gr/10^9 dscf) 12-hour average.
Hydrogen chloride	42 ppmv or 97% reduction 9-hour average.
Sulfur dioxide	45 ppmv 12-hour average.
Nitrogen oxides	210 ppmv 12-hour average.
Lead	0.10 mg/dscm (44 gr/10^6 dscf) 12-hour average.
Cadmium	0.05 mg/dscm (22 gr/10^9 dscf) 12-hour average.
Mercury	0.47 mg/dscm (210 gr/10^9 dscf) or 85% reduction 12-hour average.

NOTE: Tables 1 through 5 depict the major provisions of the proposed standards and guidelines and do not attempt to show all requirements. The full text of Subparts Ec and Cc should be relied upon for a full and comprehensive statement of the requirements of the proposed standards and guidelines.

TABLE 2.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE NSPS FOR NEW MEDICAL WASTE INCINERATORS

Additional Requirements
Operator Training and Qualification Requirements:
• Complete MWI operator training course.
• Qualify operators.
• Develop a site-specific operating manual and update annually.
Siting Requirements:
• Prepare a siting analysis.
• Conduct a public meeting at which comment is accepted on the siting analysis.
• Prepare responses to the comments and make them available to the public.
• Include in the initial notification to construct the results of siting analysis and a letter from the State air pollution control office approving the construction and operation of the affected facility.
Compliance and Performance Testing Requirements:
• Conduct an initial and annual performance test to determine compliance with the emission limitations for all pollutants and to establish operating parameters.
• Facilities may conduct performance tests for CDD/CDF, PM, Cd, Pb, and Hg every third year if the previous three MWI performance tests demonstrate that the facility is in compliance with the emission limits.
Continuously monitor emissions and measure and record operating parameters.
• Perform monthly fugitive testing.
Monitoring Requirements:
• Install and maintain equipment to continuously monitor emissions/operating parameters as appropriate.
• Obtain monitoring data at all times during MWI operation.
Reporting and Recordkeeping Requirements:
• Maintain for 5 years records of results from initial performance test and all subsequent performance tests, operating parameters, and any maintenance.
• Maintain for the life of the incinerator records of siting analysis and operator training and qualification.
• Submit the results of the initial performance test and all subsequent performance tests.
• Submit, within 30 days following the end of the quarter of occurrence, reports on emission rates or operating parameters that have not been recorded or that exceeded applicable limits.
• Provide notification of intent to construct, of planned initial start-up date, and of planned waste type(s) to be combusted.

NOTE: Tables 1 and 2 depict the major provisions of the NSPS and do not attempt to show all requirements. The regulatory text of Subpart Ec should be relied upon for a full and comprehensive statement of the requirements of the proposed NSPS.

TABLE 3.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE EG FOR EXISTING MEDICAL WASTE INCINERATORS

Additional Requirements
Operator Training and Qualification Requirements:
• Complete MWI operator training course.
• Qualify operators.
• Develop a site-specific operating manual and update annually.
Inspection Requirements:
• Provide for an annual equipment inspection by an MWI service technician not employed by the owner or operator of the affected facility until source demonstrates compliance with emission limits.
Compliance and Performance Testing Requirements:
• Conduct an initial and annual performance test to determine compliance with the emission limitations for all pollutants and to establish operating parameters.

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TABLE 3.—SUMMARY OF ADDITIONAL REQUIREMENTS UNDER THE EG FOR EXISTING MEDICAL WASTE INCINERATORS—Continued

Additional Requirements
• Facilities may conduct performance tests for CDD/CDF, PM, Cd, Pb, and Hg every third year if the previous three performance tests demonstrate that the facility is in compliance with the emission limits. • Continuously monitor emissions and measure and record operating parameters. • Perform monthly fugitive testing. Monitoring Requirements: • Install and maintain equipment to continuously monitor emissions/operating parameters as appropriate. • Obtain monitoring data at all times during MWI operation. Reporting and Recordkeeping Requirements: • Maintain for 5 years records of: results from initial performance test and all subsequent performance tests, operating parameters, annual inspections, and any maintenance. • Maintain for the life of the incinerator records of operator training and qualification. • Submit the results of the initial performance test and all subsequent performance tests. • Submit, within 30 days following the end of the quarter of occurrence, reports on emission rates or operating parameters that have not been recorded or which exceeded applicable limits.

NOTE: Tables 1 and 3 depict the major provisions of the emission guidelines (EG) and do not attempt to show all requirements. The regulatory text of Subpart Cc should be relied upon for a full and comprehensive statement of the requirements of the proposed guidelines.

TABLE 4.—COMPLIANCE TIMES FOR NEW MWI'S NEW SOURCE PERFORMANCE STANDARDS

Requirement	Compliance Time
Effective date	6 months after promulgation of NSPS.
Operator training and qualification requirements.	On effective date or upon initial start up, whichever is later.
Initial compliance test	On effective date or within 180 days of initial start up, whichever is later.
Performance test	Within 12 months following initial compliance test and annually thereafter.
CEMS and parameter monitoring	Continuously, upon completion of initial compliance test.
Recordkeeping	Continuously, upon completion of initial compliance test.
Reporting	Quarterly, upon completion of initial compliance test.

TABLE 5.—COMPLIANCE TIMES FOR EXISTING MWI'S EMISSION GUIDELINES

Requirement	Compliance Time
State Plan submittal	Within 1 year after promulgation of EPA emission guidelines.
Effective date	Within 1 year after EPA approval of State Plan.
Operator training and qualification requirements.	Within 1 year after EPA approval of State Plan.
Recordkeeping	Continuously, upon completion of initial compliance test.
Initial compliance test	Within 1 year after EPA approval of State plan or up to 3 years after EPA approval of State plan if the source is granted an extension.
Performance test	Within 12 months following initial compliance test and annually thereafter.
CEMS and parameter monitoring	Continuously, upon completion of initial compliance test.
Inspection requirements	Within 1 year after EPA approval of State Plan.
Reporting	Quarterly, upon completion of initial compliance test.

A brief discussion of the emission limitations is presented below. Further discussion of the additional requirements can be found in sections II.E through II.L of this section.

1. *Numerical Emission Limits*

The numerical emission limits in this section are corrected to 7 percent O_2.

Particulate Matter—The proposed emission limitation for PM for both new and existing MWI's is 30 milligrams per dry standard cubic meter (mg/dscm).

Opacity—The proposed emission limitation for stack opacity for both new and existing MWI's is 5 percent (6-minute average).

Carbon Monoxide—The proposed emission limitation for CO for both new and existing MWI's is 50 parts per million by volume (ppmv), dry basis.

Dioxins/Furans—The proposed emission limitation for CDD/CDF for both new and existing MWI's is 80 ng/dscm total CDD/CDF or 1.9 ng/dscm TEQ. This limit would be measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans as determined by Reference Method 23 and converted to TEQ's using the toxic equivalency factors (TEF's) shown in Table 6.

TABLE 6.—TOXIC EQUIVALENCY FACTORS

CDD/CDF congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001

TABLE 6.—TOXIC EQUIVALENCY FACTORS—Continued

CDD/CDF congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

Hydrogen Chloride—The proposed emission limitation for HCl for both new and existing MWI's is 42 ppmv, dry basis (or 97-percent reduction).

Sulfur Dioxide—The proposed emission limitation for SO_2 for both new and existing MWI's is 45 ppmv, dry basis.

Nitrogen Oxides—The proposed emission limitation for NO_X for both new and existing MWI's is 210 ppmv, dry basis.

Lead—The proposed emission limitation for Pb for both new and existing MWI's is 0.10 mg/dscm.

Cadmium—The proposed emission limitation for Cd for both new and existing MWI's is 0.05 mg/dscm.

Mercury—The proposed emission limitation for Hg for both new and existing MWI's is 0.47 mg/dscm (or 85-percent reduction).

2. *Fly Ash/Bottom Ash Emissions*

The proposed standards and guidelines would establish a limit of zero percent opacity of fly ash or bottom ash from any fly ash or bottom ash storage or handling area within the facility's property boundary.

E. Operator Training and Qualification Requirements

The proposed standards and guidelines include operator training and qualification requirements for each MWI operator. For new MWI's, these requirements would become effective six months after promulgation of the NSPS. For existing MWI's, these requirements would become effective one year after approval of the State plan. An acceptable training course would provide the operator with a minimum of: (1) 24 hours of classroom instruction, (2) 4 hours of hands-on training, (3) an examination developed and administered by the course instructor, and (4) a handbook or other documentation covering the subjects presented during the course. To be qualified, an operator must complete the training course and have either a minimum level of experience or satisfy comparable or more stringent criteria that are established by a national professional organization. The proposed standards and guidelines also would require that the owner or operator of the facility develop and annually update a site-specific operating manual. The manual would summarize State emissions regulations, operating procedures, and reporting and recordkeeping requirements in accordance with the proposed standards and guidelines.

F. Siting Requirements—New MWI's

Site selection criteria are being proposed for MWI's that commence construction after the date of promulgation of this rule. The proposed siting requirements would address the impact of the facility on ambient air quality, visibility, soils, vegetation, and other factors that may be relevant in determining that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed as a result of its location and construction. A document presenting the results of the analyses would be prepared and submitted to EPA, State, and local officials and would be made available to the public. Provisions for a public meeting and the preparation of a comment and response document are also included in the proposed siting requirements.

G. Inspection Requirements—Existing MWI's

The proposed emission guidelines include a requirement for an initial equipment inspection of the designated facility. These requirements would become effective 1 year after the EPA approval of the State plan. The inspection must be performed by an MWI service technician not employed by the owner or operator of the designated facility. The proposed guidelines provide minimum requirements for inspection of the designated facility. Following the initial inspection and until compliance with the emission limitations has been demonstrated, facilities are required to conduct annual inspections of the MWI.

H. Compliance and Performance Test Methods and Monitoring Requirements

Testing and monitoring requirements are proposed to demonstrate compliance with the emission limits. The proposed standards and guidelines require that the owner or operator of the facility: (1) conduct initial and annual performance tests to demonstrate compliance with the emission limits and (2) demonstrate continuous compliance with the emission limits following the initial performance test.

The initial and annual performance tests would be conducted using the following EPA-approved methods:

1. Method 1 would be used to select the sampling site and number of traverse points;
2. Method 3 or 3A would be used for gas composition analysis, including measurement of oxygen;
3. Method 5 or Method 29 would be used to measure PM emissions;
4. A continuous emissions monitoring system (CEMS) would be used to measure opacity;
5. A CEMS would be used to measure CO emissions;
6. Method 23 would be used to measure CDD/CDF emissions;
7. Method 26 would be used to measure HCl emissions;
8. Method 29 would be used to measure Pb, Cd, and Hg emissions; and
9. Method 9 would be used to measure opacity of fugitive emissions.

The proposed standards and guidelines include provisions for less frequent testing if the facility consistently demonstrates compliance. These provisions are described in detail in section V of this preamble. Following the initial performance test, the owners or operators must demonstrate continuous compliance with the limits by monitoring the output of a CEMS, where a CEMS is required, and by monitoring site-specific operating parameters where a CEMS is not required. Facilities are required to:

1. Demonstrate continuous compliance with the CO emission limit based on the output from the CO CEMS;
2. Demonstrate continuous compliance with the opacity emission limit based on the output from the opacity CEMS; and
3. Demonstrate compliance with the fugitive emission limit by conducting a performance test using Method 9 at least once per calendar month when ash is removed from the incinerator and when ash is removed from the air pollution control device (APCD).

In addition, facilities equipped with a dry scrubber followed by a fabric filter are required to demonstrate compliance in the following ways:

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1. Demonstrate compliance with the Hg emission limit by continuously monitoring the Hg sorbent flow rate (typically activated carbon) and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to determine compliance with the Hg emission limit. Operation of the facility below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the Hg emission limit.

2. Demonstrate compliance with the CDD/CDF emission limit by continuously monitoring the CDD/CDF sorbent flow rate (typically activated carbon) and the temperature measured at the inlet to the PM control device. The minimum CDD/CDF sorbent flow rate and the maximum PM control device inlet temperature are to be established during the initial performance test to determine compliance with the CDD/CDF emission limit. Operation of the facility below the minimum sorbent flow rate or above the maximum PM control device inlet temperature would constitute a violation of the CDD/CDF emission limit.

3. Demonstrate compliance with the HCl emission limit by continuously monitoring the HCl sorbent flow rate (typically hydrated lime) and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to demonstrate compliance with the emission limit for HCl. Operation of the facility below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the HCl emission limit.

The proposed standards and guidelines require the owner or operator of an MWI using a control device other than a dry scrubber followed by a fabric filter to petition the Administrator for other site-specific operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. These parameters would be established during the initial performance test for these pollutants and would be continuously monitored to demonstrate compliance with the emission limits. As discussed in section VI, the EPA requests comment on appropriate parameters for wet scrubbers and for other control systems that may be used to control emissions from MWI's.

I. Reporting and Recordkeeping—New MWI's

The proposed standards would require owners of affected facilities (i.e., new or modified MWI's) to submit notifications concerning construction and initial startup of the affected facility. Owners and operators are also required to maintain thorough records documenting the results of the initial and annual performance tests, records demonstrating continuous monitoring of site-specific operating parameters, and CEMS output data and quality assurance determinations. These records must be kept on file for at least 5 years.

Additional records must be kept on file for the life of the affected facility. These records are required to document compliance with the siting requirements and the operator training and qualification requirements. The records to be maintained include all documentation produced as a result of the siting requirements and records of the names of the persons who have completed the operator training requirements, the names of the persons who have been qualified as MWI operators, and the names of the persons who have completed review of the site-specific MWI operating manual. All records must also include dates associated with operator training and qualification, and dates associated with review of the operating manual.

Under the proposed standards, owners or operators of affected facilities are required to submit the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the affected facility would be required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed standards must be signed by the facilities manager.

J. Reporting and Recordkeeping—Existing MWI's

The proposed emission guidelines would require owners of designated facilities (i.e., existing MWI's) to maintain thorough records documenting the results of the initial and annual performance tests, records demonstrating continuous monitoring of site-specific operating parameters, CEMS output data and quality assurance determinations, and records of the initial and annual inspections. These records must be kept on file for at least 5 years.

Additional records must be kept on file for the life of the designated facility. These records are required to document compliance with the operator training and qualification requirements and include records of the names of the persons who have completed the operator training requirements, the names of the persons who have been qualified as MWI operators, and the names of the persons who have completed review of the site-specific MWI operating manual. All records must also include dates associated with operator training and qualification, and dates associated with review of the operating manual.

Under the proposed emission guidelines owners or operators are required to submit the results of the initial and annual maintenance inspections and the results of the initial performance test and all subsequent performance tests. Additionally, reports of data on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the designated facility would be required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed emission guidelines must be signed by the facilities manager.

K. Compliance Times

1. New MWI's

The effective date of the standards for new MWI's is the date 6 months after promulgation of the standards.

2. Existing MWI's

In accordance with the proposed guidelines, for approval, a State plan must require that designated facilities comply with all requirements of the guidelines within 1 year after EPA approval of the State plan. The proposal allows two exceptions to this compliance schedule. First, State plans may allow facilities that are planning to install the necessary air pollution control equipment up to three years after EPA approval of the State plan to comply, provided the State plan specifies that the facility submit measurable and legally enforceable incremental steps of progress that will be taken to comply with the State plan. Second, State plans may include provisions for a petition process through which designated facilities could request an extension for other reasons. The proposed guidelines specify minimum requirements to be included in State plans with such provisions. If an extension is granted, compliance must be required within 3 years after EPA approval of the State plan.

Regardless of the status of the State plans, all designated facilities must be in compliance within 5 years after promulgation of the emission guidelines. The proposed emission guidelines require the EPA to develop, implement, and enforce a plan for any State that has not submitted an approvable plan within 2 years after promulgation of the emission guidelines.

The proposed emission guidelines also require that, for approval, a State plan provide that each designated facility must be in compliance with the operator training and qualification requirements and the inspection requirements within 1 year after EPA approval of the State plan. No extension is available for training, qualification, or inspection.

L. Permit Requirements

The proposed standards and guidelines include a requirement that facilities operate pursuant to permits issued under the EPA-approved State operating permit program. Permits would be required beginning 36 months after the date of promulgation of the standards and guidelines, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under Title V of the Act and the implementing regulations under 40 CFR part 70.

III. Impacts of the Proposed Standards for New MWI's

This section presents a description of the air, water, solid waste, energy, control cost, and economic impacts of today's proposed standards for new MWI's. All of the impacts presented are nationwide impacts that are expected to result from the implementation of the NSPS in the fifth year after adoption. As discussed below, it is expected that as many as 80 percent of the projected number of new MWI's will not be constructed to avoid the increased costs associated with installation of control equipment. Therefore, impacts are presented assuming 80 percent of projected new MWI's are not constructed, with the waste being disposed of by other means (i.e., the "switching scenario").

Based on historic sales to date, in the absence of regulation, an estimated 700 new MWI's are expected to be installed over the next 5 years. However, onsite incineration is only one of several medical waste treatment and disposal options. For some MWI's, the equipment necessary to comply with the proposed regulations will make onsite incineration more expensive than other waste treatment and disposal options. Consequently, many facilities that would have chosen onsite incineration are likely to consider less expensive methods of treatment and disposal. The EPA expects that as many as 80 percent of the projected number of new MWI's will not be constructed if the standards are promulgated as proposed. This is referred to in this notice as the "switching scenario" because of the expectation that potential owners of MWI's will switch to another method of waste treatment and disposal.

Recent experience at the State level confirms that switching to lower cost alternatives is a likely impact of the implementation of MWI regulations that require add-on air pollution control. For example, recent regulations adopted by the State of New York require the use of add-on acid gas scrubber systems. As a result, the State estimates that as many as 90 percent of previously existing MWI's in New York have ceased operation. New York's regulations are similar to the proposed EPA standards in that they require the use of add-on air pollution control systems or use of an alternative waste disposal approach. While these State regulations have increased the cost of waste disposal, it appears that the availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

One concern that has recently been raised related to switching away from onsite incineration is the availability of alternatives to onsite incineration. Two common alternatives are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving (steam treatment). Other less common alternatives include onsite chemical treatment and onsite microwave irradiation. The commercial medical waste disposal industry believes that there presently exists sufficient offsite capacity to treat the waste that would no longer be treated onsite. In addition, autoclaves and other onsite waste disposal options are available. In fact, even today in the absence of Federal regulations, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

A second concern regrading a shift away from onsite incineration is the increased transportation and handling of untreated medical waste. However, the Department of Transportation (DOT) has promulgated regulations (49 CFR parts 171, 172, and 173) that address the safe transportation and handling of medical waste. The DOT regulations include provisions for packaging and labeling of medical waste. Also, the Occupational Safety and Health Administration (OSHA) promulgated regulations on December 5, 1991 (29 CFR part 1910) that address occupational exposure to bloodborne pathogens. Using a combination of engineering and work practice controls, personal protective clothing and equipment, training, medical follow-up of exposure incidents, vaccinations (where appropriate) and other provisions, the OSHA regulations minimize or eliminate health risk as a result of occupational exposure to bloodborne pathogens. The Agency believes these DOT and OSHA regulations will provide sufficient protection from potential increases in exposure to these wastes.

A. Air Impacts

As discussed earlier, impacts are presented assuming the more likely "switching scenario." Baseline emissions and emissions under the proposed NSPS based on the switching scenario are presented in Tables 7a and 7b.

TABLE 7a.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER NSPS (WITH SWITCHING)

[Metric Units]

Pollutant	Units	Baseline	After NSPS with switching
PM	Mg/yr	1,670	81 7
CO	Mg/yr	1,630	61 7
CDD/CDF	kg/yr	21.7	0.032
HCl	Mg/yr	10,000	230
SO_2	Mg/yr	192	144
NO_x	Mg/yr	1,240	944
Pb	Mg/yr	19.2	0.29
Cd	Mg/yr	1.38	0.042
Hg	Mg/yr	14.5	1.10

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TABLE 7b.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER NSPS (WITH SWITCHING)

[English Units]

Pollutant	Units	Baseline	After NSPS with switching
PM	Tons/yr	1,850	90.0
CO	Tons/yr	1,790	68.0
CDD/CDF	Lb/yr	47.9	0.070
HCl	Tons/yr	11,100	254
SO_2	Tons/yr	212	159
NO_x	Tons/yr	1,370	1,040
Pb	Tons/yr	21.2	0.32
Cd	Tons/yr	1.52	0.046
Hg	Tons/yr	16.0	1.21

The proposed standards would reduce nationwide emissions of PM by 1,590 megagrams per year (Mg/yr) (1,750 tons per year (tons/yr)) from estimated emission levels under the typical existing control or the "regulatory baseline" of 1,670 Mg/yr (1,850 tons/yr). This reduction represents a decrease of about 95 percent from baseline PM emission levels in the absence of the proposed standards.

Nationwide emissions of CO would be reduced by 1,570 Mg/yr (1,730 tons/yr) from estimated emission levels under the regulatory baseline of 1,630 Mg/yr (1,790 tons/yr). This reduction equates to an overall control level of about 96 percent for CO emissions.

As a result of today's proposal, nationwide emissions of CDD/CDF would be reduced by 21.70 kilograms per year (kg/yr) (47.8 pounds per year (lb/yr)) from estimated emission levels under the regulatory baseline of 21.73 kg/yr (47.9 lb/yr). The CDD/CDF emissions would be reduced by over 99 percent from the regulatory baseline.

The proposed standards would reduce nationwide emissions of HCl by 9,820 Mg/yr (10,800 tons/yr) from estimated emission levels under the regulatory baseline of 10,000 Mg/yr (11,100 tons/yr). This reduction represents a decrease of about 98 percent in HCl emissions.

Nationwide emissions of SO_2 and NO_x would be reduced by 48.1 Mg/yr (53.0 tons/yr) and 300 Mg/yr (331 tons/yr), respectively, from estimated emission levels under the regulatory baseline of 192 Mg/yr (212 tons/yr) for SO_2 and 1,240 Mg/yr (1,370 tons/yr) for NO_x. These reductions equate to an overall emissions decrease of about 25 percent for SO_2 and about 24 percent for NO_x.

As a result of today's proposal, the nationwide emissions of Pb, Cd, and Hg would be reduced by 18.9 Mg/yr (20.9 tons/yr), 1.34 Mg/yr (1.47 tons/yr), and 13.4 Mg/yr (14.8 tons/yr), respectively, from estimated emission levels under the regulatory baseline of 19.2 Mg/yr (21.2 tons/yr) for Pb, 1.38 Mg/yr (1.52 tons/yr) for Cd, and 14.5 Mg/yr (16.0 tons/yr) for Hg. These reductions equate to overall control levels of about 98 percent for Pb, 97 percent for Cd, and 92 percent for Hg.

B. Water and Solid Waste Impacts

Under the proposed NSPS, no significant water pollution impacts are projected because the emission control technologies on which the emission limits are based do not produce a wastewater stream. However, to the extent that wet scrubber systems could be used to comply with the proposed emission limitations, water pollution impacts could be more significant. As discussed in section VI of this preamble, the Agency solicits information regarding water pollution impacts associated with the use of wet scrubber systems.

With regard to solid waste impacts, about 421,000 Mg (464,000 tons) of medical waste are projected to be burned annually in new MWI's in the fifth year after adoption of the NSPS in the absence of Federal regulations (i.e., at the regulatory baseline). This quantity of waste burned would result in about 42,100 Mg/yr (46,400 tons/yr) of solid waste (bottom ash) disposed of in landfills. The addition of acid gas control using dry lime injection, and CDD/CDF and Hg control using activated carbon injection, would increase the quantity of solid waste for final disposal by adding baghouse ash to the amount of bottom ash already generated under the regulatory baseline. In addition, switching to onsite alternatives to incineration will result in an increase in solid waste for final disposal because the nonincineration treatment methods do not reduce the volume of waste as much as incineration.

Under the switching scenario, the amount of solid waste ultimately sent to landfills would increase by about 135,000 Mg/yr (149,000 tons/yr). This includes the increase in ash from the air pollution control devices (APCD's) and the increase in waste that is treated and landfilled without being incinerated. Compared to municipal waste, which is disposed in landfills at an annual rate of over 91 million Mg/yr (100 million tons/yr), the increase in solid waste from the implementation of the MWI standards is insignificant. Therefore, no adverse solid waste impacts are anticipated under the proposed standards.

C. Energy Impacts

The emission control technologies upon which the emission limits are based would require additional energy consumption for all new MWI's. Under the switching scenario, it is not clear whether energy consumption will increase, decrease, or remain the same. Alternatives to incineration require energy to operate. However, information is not available to estimate whether alternatives use more or less energy than MWI's. It is expected that the increase in energy consumption resulting from the switching scenario will be less than the increase under the no-switching scenario.

The estimates of energy impacts assuming all new MWI's are constructed and install air pollution control (no-switching scenario) include additional auxiliary fuel (natural gas) for combustion controls and additional electrical energy for operation of the add-on control devices. In the fifth year after adoption, the proposed standards would increase total national usage of natural gas by about 25 million cubic meters per year (MMm^3/yr) (895 million cubic feet per year (10^6 ft^3/yr)) compared to fuel consumption determined from the regulatory baseline. Total national usage of electrical energy would increase by about 41,400 megawatt hours per year (MW-hr/yr) (141 billion British thermal units per year (10^9 Btu/yr)) of electricity compared to electrical energy consumption determined from the regulatory baseline.

D. Control Cost Impacts

The control cost impacts on individual facilities will vary depending on the cost of compliance with the regulation; the cost of alternative treatment and disposal methods; and other factors such as proximity to an offsite contract disposal facility, liability issues related to the transportation and final disposal of the waste, and State and local medical waste treatment and disposal requirements. In general, facilities requiring a smaller waste treatment capacity will have a greater incentive to use a less expensive treatment and disposal option because their onsite incineration cost (per ton of waste burned) will be higher. Facilities with larger amounts of waste to be treated may have some cost advantages if they use lower cost alternatives, but these advantages are not as significant due to economies of scale.

Under the switching scenario, the nationwide annual costs associated with the NSPS will increase by about 74.5 million/yr (from a baseline cost of 63.3 million/yr). The nationwide annualized cost of waste disposal per unit of medical waste treated would increase by $177/Mg ($161/ton) from the estimated nationwide annualized cost of $150/Mg ($136/ton) under the regulatory baseline.

E. Economic Impacts

The goal of the economic impact analysis was to estimate the market response to the NSPS and to determine whether there would be adverse impacts associated with the proposed standards. The proposed standards would affect five major industry sectors (hospitals, nursing homes, veterinary facilities, commercial research laboratories, and commercial medical waste incineration facilities) within which some facilities operate an onsite MWI. In addition, the proposed standards would affect a number of other industry sectors in which facilities do not typically operate an onsite MWI (e.g., blood banks). The economic impact analysis for new MWI's examined each of these sectors as a whole to determine industrywide impacts.

To assess the industrywide impacts of control costs, the market price increase resulting from the proposed standards was estimated for each regulated industry. The market price increases, presented in Table 8, may be thought of as an average price increase across each industry required to recover control costs within each industry. Table 8 reflects the more likely switching scenario. For example, under the switching scenario, the hospital industry would have to raise prices by an average of about 0.03 percent (over current revenues of about $224 billion/yr) to cover the increased cost of waste disposal. This table shows that the price increase is relatively small for each industry. This result is mainly due to the projection that most facilities do not (or will not, within the next 5 years after adoption of the standards) operate an onsite incinerator.

TABLE 8.—MARKET PRICE INCREASES IN THE MAJOR INDUSTRY SECTORS UNDER THE NSPS—SWITCHING SCENARIO

Industry	Price increase, percent
Hospitals	0.03
Nursing Homes	0.01
Veterinary Facilities	0.01
Commercial Research Laboratories	0.03
Physicians' Offices	0
Dentists' Offices	0
Freestanding Bloodbanks	0.02
Commercial Medical Waste Incineration Facilities	[a] N/A

[a] Industrywide impacts were not calculated for commercial medical waste incineration facilities because estimates of the change in demand for commercial medical waste incineration were not available. However, this industry is expected to be able to recoup all control cost increases through price increases.

Output, employment, and revenue impacts were also estimated. As a result of the low market price increases and/or relatively inelastic demand, the corresponding decreases in output, employment, and revenue were also low, never exceeding 0.05 percent under the more likely switching scenario. This result implies that no medical waste-generating industry would need to be significantly reconstructed (e.g., through closures or consolidations) as a result of the proposed standards.

IV. Impacts of the Proposed Guidelines for Existing MWI's

This section presents a description of the air, water, solid waste, energy, control cost, and economic impacts of today's proposed guidelines. All impacts are nationwide impacts that are expected to result from the implementation of the emission guidelines. As discussed below, it is expected that as many as 80 percent of existing facilities currently using onsite incineration will switch to an alternative method of treatment and disposal to avoid the increased cost of installing air pollution control equipment. Therefore, impacts are presented assuming 80 percent of existing facilities using onsite MWI's will switch to a lower cost alternative treatment and disposal methods (i.e., the "switching scenario").

Onsite incineration is only one of several medical waste treatment and disposal options, and for some MWI's, the cost of the equipment necessary to comply with the proposed emission guidelines will make onsite incineration more expensive than other treatment and disposal options. Consequently, many facilities that currently operate onsite MWI's are likely to switch to a less expensive method of treatment and disposal. The EPA expects that as many as 80 percent of the existing facilities currently using onsite MWI's will switch to a lower cost alternative method of treatment and disposal if the guidelines are promulgated as proposed. This is referred to in this notice as the "switching scenario" because of the expectation that owners of MWI's will switch to another method of waste treatment and disposal.

Recent experience at the State level confirms that switching to lower cost alternatives is a likely impact of the implementation of MWI regulations that require add-on air pollution control. For example, recent regulations adopted by the State of New York require the use of add-on acid gas scrubber systems. As a result, the State estimates that as many as 90 percent of previously existing MWI's in New York have ceased operation. New York's regulations are similar to the proposed EPA guidelines in that they require the use of add-on air pollution control systems or use of an alternative waste disposal approach. While these State regulations have increased the cost of waste disposal, it appears that the availability of alternatives to onsite incineration has mitigated the economic impacts that might have been associated with the State regulations.

One concern that has recently been raised related to switching away from onsite incineration is the availability of alternatives to onsite incineration. Two common alternatives are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving (steam treatment). Other less common alternatives include onsite chemical treatment and onsite microwave irradiation. The commercial medical waste disposal industry believes that there presently exists sufficient offsite capacity to treat the waste that would no longer be treated onsite. In addition, autoclaves and other onsite waste disposal options are available. In fact, even today in the absence of Federal regulation, most facilities that generate medical waste do not operate onsite MWI's. This indicates that there currently are viable alternatives to onsite incineration.

A second concern regarding a shift away from onsite incineration is the increased transportation and handling of untreated medical waste. However, the Department of Transportation (DOT) has promulgated regulations (49 CFR parts 171, 172, and 173) that address the safe transportation and handling of medical waste. The DOT regulations include provisions for packaging and labeling of medical waste. Also, the Occupational Safety and Health Administration (OSHA) has promulgated regulations on December 5, 1991 (29 CFR part 1910) that addr[illegible] occupational exposure to bloodbor[illegible]

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pathogens. Using a combination of engineering and work practice controls, personal protective clothing and equipment, training, medical follow-up of exposure incidents, vaccinations (where appropriate) and other provisions, the OSHA regulations minimize or eliminate health risk as a result of occupational exposure to bloodborne pathogens. The EPA believes these DOT and OSHA regulations will provide sufficient protection from potential increases in exposure to those wastes.

A. Air Impacts

As discussed earlier, impacts are presented assuming the more likely "switching scenario." Baseline emissions and emissions under the proposed EG based on the switching scenario are presented in Tables 9a and 9b.

TABLE 9a.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES (WITH SWITCHING)

[Metric Units]

Pollutant	Units	Baseline	After EG with switching
PM	Mg/yr	11,300	272
CO	Mg/yr	13,100	207
CDD/CDF	kg/yr	285	0.11
HC1	Mg/yr	41,200	777
SO_2	Mg/yr	766	479
No_x	Mg/yr	5,040	3,160
Pb	Mg/yr	77.5	0.97
Cd	Mg/yr	5.62	0.14
Hg	Mg/yr	58.6	3.67

TABLE 9b.—BASELINE EMISSIONS COMPARED WITH EMISSIONS AFTER IMPLEMENTATION OF THE EMISSION GUIDELINES (WITH SWITCHING)

[English Units]

Pollutant	Units	Baseline	After EG with switching
PM	Tons/yr	12,400	300
CO	Tons/yr	14,500	228
CDD/CDF	Lb/yr	628	0.23
HC1	Tons/yr	45,400	857
SO_2	Tons/yr	844	528
NO_x	Tons/yr	5,560	3,490
Pb	Tons/yr	85.5	1.07
Cd	Tons/yr	6.20	0.16
Hg	Tons/yr	64.6	4.05

The proposed guidelines would reduce nationwide emissions of PM by 11,000 megagrams per year (Mg/yr) (12,100 tons per year (tons/yr)) from the estimated emission levels under the typical existing control or the "regulatory baseline" of 11,300 Mg/yr (12,400 tons/yr). This reduction represents an overall decrease of about 98 percent of baseline PM emission levels in the absence of the proposed emission guidelines.

Nationwide emissions of CO would be reduced by 12,900 Mg/yr (14,200 tons/yr) from the estimated emission levels under the regulatory baseline of 13,100 Mg/yr (14,500 tons/yr). This reduction represents an overall control level of about 98 percent for CO emissions

The proposed guidelines would reduce nationwide emissions of dioxins/furans by 284.8 kilograms per year (kg/yr) (627.9 pounds per year (lb/yr)) from the estimated emission levels under the regulatory baseline of 284.9 kg/yr (628.1 lb/yr). Dioxin/furan emissions would be reduced by over 99 percent from the regulatory baseline.

Nationwide emissions of HCl would be reduced by 40,400 Mg/yr (44,600 tons/yr) from the estimated emission levels under the regulatory baseline of 41,200 Mg/yr (45,400 tons/yr). This reduction represents a decrease of about 98 percent in HCl emissions from the regulatory baseline.

Nationwide emissions of SO_2 and NO_X would be reduced by 287 Mg/yr (316 tons/yr) and 1,880 Mg/yr (2,070 tons/yr), respectively, from the estimated emission levels under the regulatory baseline of 766 Mg/yr (844 tons/yr) for SO_2 and 5,040 Mg/yr (5,560 tons/yr) for NO_X. These reductions equate to an overall emissions decrease of about 37 percent for both SO_2 and NO_X.

As a result of today's proposal, nationwide emissions of Pb, Cd, and Hg would be reduced by 76.6 Mg/yr (84.4 tons/yr), 5.48 Mg/yr (6.04 tons/yr), and 54.9 Mg/yr (60.5 tons/yr), respectively, from the estimated emission levels under the regulatory baseline of 77.5 Mg/yr (85.5 tons/yr) for Pb, 5.62 Mg/yr (6.20 tons/yr) for Cd, and 58.6 Mg/yr (64.6 tons/yr) for Hg. These reductions equate to overall control levels of about 99 percent for Pb, 97 percent for Cd, and 94 percent for Hg.

B. Water and Solid Waste Impacts

Under the proposed guidelines, no significant water pollution impacts are projected because the emission control technologies upon which the emission limits are based do not produce a wastewater stream. However, to the extent that wet scrubber systems could be used to comply with the proposed emission limitations, water pollution impacts could be more significant. As discussed in section VI of this notice, the Agency solicits information regarding water pollution impacts associated with the use of wet scrubber systems.

With regard to solid waste impacts, about 1.43 million Mg (1.58 million tons) of medical waste are burned annually in existing MWI's producing about 143,000 Mg/yr (158,000 tons/yr) of solid waste (bottom ash) disposed of in landfills. The addition of acid gas control using dry lime injection, and CDD/CDF and Hg control using activated carbon injection, would increase the quantity of solid waste for final disposal by adding baghouse ash to the amount of bottom ash already generated under the regulatory baseline. In addition, switching to onsite alternatives to incineration would result in an increase in solid waste for final disposal because the nonincineration treatment methods do not reduce the volume of waste as much as incineration.

Under the switching scenario, the amount of solid waste ultimately sent to landfills would increase by about 631,000 Mg/yr (696,000 tons/yr). This quantity includes the increase in ash from the APCD's and the increase in waste that is treated and landfilled without being incinerated. Compared to municipal waste, which is disposed in landfills at a rate of over 91 million Mg/yr (100 million tons/yr), the increase in solid waste from the implementation of the MWI emissions guidelines is insignificant. Therefore, no adverse solid waste impacts are anticipated under the proposed guidelines.

C. Energy Impacts

The emission control technologies upon which the emission limits are based would require additional energy consumption for all existing MWI's. Under the switching scenario, it is not clear whether energy consumption will increase, decrease, or remain the same. Alternatives to incineration require energy to operate. However, information is not available to estimate whether alternatives use more or less energy than MWI's. It is expected that the increase in energy consumption resulting from the switching scenario will be less than the increase under the no-switching scenario.

The estimates of energy impacts assuming all existing MWI's install air pollution control (no-switching scenario) include additional auxiliary fuel for combustion controls and additional electrical energy for operation of the add-on control devices. The proposed guidelines would increase total national usage of natural gas for combustion controls by about 100 million cubic meters per year (MMm^3/yr) (3,490 million cubic feet per year (10^6 ft^3/yr)) compared to fuel consumption determined from the regulatory baseline. Total national usage of electrical energy for the operation of add-on control devices would increase by about 175,000 megawatt hours per year (MW-hr/yr) (599 billion British thermal units per year (10^9 Btu/yr)) of electricity compared to energy consumption determined from the regulatory baseline.

D. Control Cost Impacts

The control cost impacts on individual facilities will vary depending on the cost of compliance with the guidelines; the cost of alternative treatment and disposal methods; and other factors such as proximity to an offsite contract disposal facility, liability issues related to the transportation and final disposal of the waste, and State and local medical waste treatment and disposal requirements. In general, facilities requiring a smaller waste treatment capacity will have a greater incentive to use a less expensive treatment and disposal option because their onsite incineration cost (per ton of waste burned) will be higher. Facilities with larger amounts of waste to be treated may have some cost advantages if they use a lower cost alternative, but these advantages are not as significant due to economies of scale.

Under the switching scenario, the nationwide annual costs associated with the proposed emission guidelines will increase by about $351 million/yr. The nationwide annual cost of waste disposal per unit of medical waste treated would increase by $245/Mg ($222/ton) to a total cost of $430/Mg ($390/ton) from the estimated nationwide annualized cost of $185/Mg ($168/ton) under the regulatory baseline.

E. Economic Impacts

The goal of the economic impact analysis was to estimate the market response to the emission guidelines and determine whether there would be adverse impacts associated with the proposed guidelines. The proposed guidelines would affect five major industry sectors (hospitals, nursing homes, veterinary facilities, commercial research laboratories, and commercial medical waste incineration facilities) within which some facilities operate an onsite MWI. In addition, the proposed guidelines would affect a number of other industry sectors in which facilities do not typically operate an onsite MWI (e.g., bloodbanks). The economic impact analysis for existing MWI's examined each of these sectors as a whole to determine industry wide impacts.

To assess the industrywide impacts of control costs, the market price increase resulting from the proposed guidelines was estimated for each regulated industry. The market price increases, presented in Table 10, may be thought of as an average price increase across each industry required to recover control costs within each industry. Table 10 reflects the more likely switching scenario. For example, under the switching scenario, the hospital industry would have to raise prices by an average of about 0.1 percent (over current revenues of about $224 billion/year) to cover the increased cost of waste disposal. This table shows that the price increase is relatively small for each industry. This result is mainly due to the fact that the majority of the facilities in each industry sector do not operate an onsite incinerator.

TABLE 10.—MARKET PRICE INCREASED IN THE MAJOR INDUSTRY SECTORS UNDER THE EMISSION GUIDELINES—SWITCHING SCENARIO

Industry	Price increase, percent
Hospitals	0.1
Nursing Homes	0.1
Veterinary Facilities	0.6
Commercial Research Laboratories	0.4
Physicians' Offices	0
Dentists' Offices	0
Freestanding Bloodbanks	0.1
Commercial Medical Waste Incineration Facilities	[9] N/A

[9] Industrywide impacts were not calculated for commercial medical waste incineration facilities because estimates of the change in demand for commercial medical waste incineration were not available. However, this industry is expected to be able to recoup all control cost increases through price increases.

Output, employment, and revenue impacts were also estimated. As a result of the low market price increases and/or relatively inelastic demand, the corresponding decreases in output, employment, and revenue were also low, never exceeding 1 percent under the more likely switching scenario. This result implies that no medical waste-generating industry would need to be significantly restructured (e.g., through closures or consolidations) as a result of the proposed emission guidelines.

V. Rationale for the Proposed Standards and Guidelines

A. Background

An estimated 3.4 million tons of waste are produced annually by medical waste generators in the United States. Hospitals are the single largest generator of medical waste, producing over 70 percent of the annual total. Approximately 5,000 MWI's are believed to exist nationwide (3,700 burning general medical waste and 1,300 burning pathological waste). Over 60 percent of these MWI's are found at hospitals. Medical waste incinerators are also found at commercial medical waste disposal facilities, research laboratories, nursing homes, and veterinary facilities. Based on historic sales data, an estimated 700 new MWI's will be installed over the next 5 years.

Medical waste incinerators are subject to State and local regulations that vary widely both in format and scope. A survey in April 1990 showed that in 38 States, regulations or permit guidelines specific to MWI's were either in place or were in the planning stages. The remainder of the States regulate MWI's under general incinerator requirements, which typically are less stringent that those specific to MWI's. The most common State requirements for MWI's are limits for PM, HCl, and secondary chamber temperature and residence time. Some States also regulate metals, CDD/CDF, and CO. About one third of the States require operator training.

On November 1, 1988, the Medical Waste Tracking Act (MWTA) was signed by Congress. The MWTA required EPA to establish a 2-year demonstration program to track medical waste from its origin to its disposal. In early 1989, EPA established this program in 40 CFR 259. The program was in effect from June 22, 1989, to June 22, 1991, and applied to the States of New York, New Jersey, Connecticut, and Rhode Island, and to Puerto Rico. The MWTA required EPA to prepare a series of Reports to Congress on medical waste and the demonstration program. Now that the demonstration program has concluded, Congress will decide if a medical waste tracking program should be implemented nationwide.

The current air emissions standards development effort for MWI's was initiated in 1989. The data-gathering effort was designed to take advantage of information gathered under the auspices of the MWTA. Also, in 1989, an MWI operator training course and manual were developed with recommendations on the proper operation and maintenance of MWI's.

The Amendments of 1990 added section 129 to the Act. Section 129 specifically addresses development of standards for MWI's. Section 129 requires EPA to establish an NSPS for new MWI's and emission guidelines for existing MWI's that combust hospital

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waste, medical waste, and infectious waste. The standards and guidelines must specify numerical emission limitations for the following: PM, opacity, SO_2, HCl, NO_x, CO, Pb, Cd, Hg, and CDD/CDF. Section 129 also includes requirements for operator training as well as siting requirements for new MWI's.

The standards and guidelines must reflect MACT "* * * the maximum degree of reduction in emissions of air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" Section 129 states that "The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best-controlled similar unit * * *" Also section 129 requires that "Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category * * *" The standards and guidelines must be no less stringent than these levels of emission control currently achieved. These levels are referred to as the MACT floor.

B. Selection of Source Category

Section 129 of the Act directs the EPA to issue standards and guidelines pursuant to section 111 for solid waste incineration units combusting hospital waste, medical waste, and infectious waste (i.e., MWI's). An MWI is defined as any device that burns medical waste, with or without other types of waste (e.g., municipal solid waste [MSW]) and with or without heat recovery.

Medical waste is defined pursuant to the Solid Waste Disposal Act as codified in 40 CFR 259 subpart B as any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Medical waste consists of, but is not limited to, the following types of materials:

1. Sharps (e.g., hypodermic and suture needles, scalpel blades, syringes, pipettes, vials, other types of broken or unbroken glassware, etc.);

2. Fabrics (e.g., gauze, garments, bandages, swabs, etc.);

3. Plastics (e.g., trash bags, sharps containers, IV bags, tubes, specimen cups, etc.);

4. Paper (e.g., disposable gowns, sheets, etc.; premoistened towels; paper towels; etc.);

5. Waste chemicals/drugs that are not RCRA hazardous waste (e.g., lab chemicals, leftover and out-of-date drugs, disinfectants, etc.); and

6. Pathological waste (e.g., human and animal body parts and tissue).

Medical waste does not include any hazardous waste identified or listed under 40 CFR 261, or any household waste as defined in 40 CFR 261.4(b)(1). On the other hand, mixtures of medical waste with hazardous waste or household waste would be considered medical waste for the purposes of these proposed standards and guidelines. The definition of household waste includes waste generated at single and multiple residences. Nursing homes or retirement homes with a health care facility could be considered multiple residences. For the purpose of the proposed standards and guidelines, the definition of medical waste includes waste materials that meet the definition of medical waste and are generated by retirement homes/nursing homes.

Medical waste also does not include human and animal remains that are not generated as medical waste. A device that burns solely human or animal remains (and the caskets or containers carrying the remains, or the bedding included with the animal remains) for the purpose of cremation is not an MWI and, therefore, is not subject to the requirements of the standards and guidelines. For example, a facility that burns the remains of animals that have been euthanized at animal shelters and animal hospitals is not an MWI because the remains are not considered medical waste. On the other hand, a facility that burns human and/or animal remains that are generated as medical waste or a facility that burns general medical waste in addition to human and/or animal remains is an MWI and is subject to the standards and guidelines. For example, a facility that burns the remains of research laboratory rats is an MWI because the remains are considered medical waste (they are generated in research pertaining to the diagnosis, treatment, or immunization of human beings or animals or in the production or testing of biologicals).

The range of waste types included in this definition is broader than that defined in the now expired Medical Waste Tracking Act (40 CFR part 259) as Regulated Medical Waste. Regulated Medical Waste consisted of seven categories of medical waste based on potential for infection or aesthetic concerns. The definition of medical waste in this proposal classifies medical waste more broadly based on materials' composition. Consequently, the estimated amount of waste generated by medical waste generators (3.4 million tons/yr) and the estimated amount of waste burned in medical waste incinerators (1.8 million tons/yr) is greater than the Medical Waste Tracking Act estimated amount of Regulated Medical Waste generated (922,000 tons/yr). It has been suggested that EPA's definition of medical waste in this proposal is inappropriate. The EPA specifically requests comment on the definition of medical waste as applied to the regulation of medical waste incinerators.

Most MWI's burn a diverse mixture of medical waste (referred to in this preamble as general medical waste), which may include some pathological waste (human and animal body parts and/or tissue). Most of the materials that make up the general medical waste stream burn readily, and given the proper conditions, will continue to burn once they are ignited. Metal and glass sharps do not burn but also do not greatly impede combustion of other materials. Pathological waste has a very high moisture content and will not support self-sustained combustion but will burn if adequate heat is applied to drive off excess moisture. As a result, larger amounts of pathological waste require special operating conditions for combustion. Thus, some facilities maintain MWI's designed and operated to burn pathological waste exclusively.

Because of differences in waste composition and the combustion process, uncontrolled emissions from pathological MWI's contain significantly lower levels of the pollutants of concern for this source category than uncontrolled emissions from general medical waste incinerators. General medical waste typically contains more metals and chlorine than does pathological waste, resulting in higher emissions of metals and HCl from general medical waste incinerators than from pathological incinerators. For example, typical uncontrolled Hg emissions are about 3.1 mg/dscm for general medical waste incinerators and about 0.05 mg/dscm for pathological MWI's. Overall pollutant emissions from pathological MWI's represent less than 3 percent of the uncontrolled nationwide emissions from MWI's burning general medical waste.

Additionally, onsite alternatives to incineration are available for the treatment of general medical waste, while most of these technologies are not applicable to the treatment of purely pathological waste. As a result, pathological MWI's are more likely to face adverse economic impacts associated with installation of pollution control equipment, while general medical waste incinerators could use available alternatives to incineration. For these reasons, the proposed standards and guidelines focus on regulating emissions from general medical waste incinerators and include very minor requirements for pathological MWI's. Under the proposed standards and guidelines, pathological MWI's would only be required to submit quarterly reports of the amount and type of materials charged to the incinerator.

Finally, in addition to developing standards and guidelines for medical waste incinerators, section 129 of the Act directs the EPA to develop standards and guidelines for municipal waste incinerators, commercial or industrial waste incinerators, and other categories of solid waste incinerators. The Agency intends to consider pathological incinerators (along with crematory incinerators) when evaluating the category of other solid waste incinerators for regulation.

C. Modification of Existing MWI's

Previously, the terms "modification" and "reconstruction" were defined under sections 60.14 and 60.15 of subpart A of part 60. Section 129 of the Act has specified a new definition of "modified" that combines and revises the previous definitions of "modification" and "reconstruction." Specifically, "modified" refers to:

(1) modifications for which the

* * * cumulative costs of the modifications, over the life of the unit, exceed 50 per centum of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs * * *

or (2) modification involving

* * * a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under [section 129] or sections 111 * * *.

A special provision has been included in the proposed NSPS and emission guidelines to address certain modifications to existing facilities. This provision states that if an existing MWI is modified for the purpose of meeting the requirements of the proposed guidelines for existing MWI's or State regulations developed to implement these guidelines, then the MWI would not be considered a "modified" MWI and would not be subject to the NSPS (40 CFR part 60, subpart Ec).

On the other hand, if the existing facility is modified in ways not required to meet the emission guidelines, then the facility could be considered a "modified" MWI and could become subject to the NSPS. For example, if an existing pathological MWI, which was not originally designed to accommodate general medical waste, begins burning general medical waste, then that MWI may be considered a modified MWI and, as a result, will be subject to the NSPS.

D. Selection of Pollutants

Section 129 of the Act requires that the standards and guidelines promulgated under sections 111 and 129 and applicable to all solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: PM (total and fine), opacity, SO_2, HCl, NO_x, CO, Pb, Cd, Hg, and CDD/CDF. For this reason, the MWI standards and guidelines specify numerical emission limits for these pollutants.

E. Selection of Affected and Designated Facilities

As required by section 129 of the Act, the affected facility to which the proposed new source performance standards apply is each individual MWI for which construction is commenced after today's date or for which modification is commenced after the effective date of these standards. The designated facility to which the proposed emission guidelines apply is each existing MWI for which construction commenced on or before today's date. A facility that burns both municipal waste and medical waste could be subject to both the municipal waste combustor standards and guidelines and the medical waste incinerator standards and guidelines.

F. Selection of Format for the Proposed Standards and Emission Guidelines

The format selected for the proposed standards and guidelines is a combination of emission limitations and percent reductions to ensure control of emissions. The specific format of the proposed standards and guidelines and the reasons for selection are discussed below.

As required by section 129 of the Act, the proposed standards and guidelines would establish numerical emission limitations for PM, CO, CDD/CDF, HCl, SO_2, NO_x, Pb, Cd, and Hg. For the purpose of regulating PM and metals (Pb, Cd, and Hg) the format selected is a numerical concentration limit in units of mg/dscm corrected to 7 percent oxygen. For the purpose of regulating i'g an alternative percent reduction is also proposed. The numerical Hg emission limit reflects the emission level that can be achieved based on a fabric filter (FF) system with activated carbon injection. Emissions of Hg can be highly variable and depend on the Hg input level. In cases where Hg levels are temporarily elevated due to variability in the waste feed, the numerical emission limit may not be consistently achievable. However, the control device is capable of achieving 85 percent reduction of elevated Hg levels.

Under the proposed standards and guidelines, CDD/CDF emissions are measured in units of total ng/dscm or ng/dscm toxic equivalency (TEQ). To arrive at the TEQ, measured emissions of each tetra- through octa-CDD and CDF congener are multiplied by the corresponding toxic equivalency factor (TEF) specified in the standards and guidelines (see Table 6). The products are then added to obtain the total concentration of CDD/CDF emitted in terms of TEQ.

For CO, SO_2, NO_x, and HCl, the proposed standards and guidelines are volume concentrations corrected to 7 percent oxygen. For HCl, an alternative percent reduction is also proposed. A percent reduction is generally appropriate for acid gases emissions from MWI's. However, in cases where inlet levels are very low and the specified percent reduction would result in concentrations below the specified volume concentration (42 ppmv, which is a 97 percent reduction from typical uncontrolled emissions), these percent reductions may not be achievable. Therefore, the proposed HCl emission limits would require either a 97 percent reduction or a 42 ppmv HCl outlet concentration, which is based on reduction from typical uncontrolled emission levels, whichever is less stringent. An alternative percent reduction is not proposed for emissions of SO_2 because at the low inlet levels associated with medical waste, EPA emission test data shows that acid gases controls are not effective in reducing SO_2 emissions and as a result, SO_2 limits are based on uncontrolled emissions.

Under the proposed standards and guidelines, emission limits for Hg and HCl include stack concentrations as well as percent reductions. The EPA is requesting comments on the appropriateness of including a percent reduction along with a stack concentration limit in the standards and guidelines for these two pollutants.

G. Selection of Classes, Types, and Sizes

Section 129 states that the Administrator may distinguish among

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classes, types, and sizes of units within a category in establishing the standards and guidelines. In other words, EPA may subcategorize the MWI source category in establishing standards and guidelines. After reviewing the population of MWI's, the EPA believes that, for the purpose of regulatory development and of determining MACT, the MWI population should be divided into three subcategories: (1) continuous MWI's, (2) intermittent MWI's, and (3) batch MWI's. These three subcategories are based on differences in the design of the MWI's as discussed in the following paragraphs.

In each of the design systems, sequential combustion operations typically are carried out in two separate chambers: primary and secondary. In the primary chamber, the waste is loaded and ignited, the volatile organic components driven off, and the nonvolatile materials combusted to ash. The volatile organic components released from the primary chamber are combusted in the secondary chamber. Newer MWI's are typically designed with 1-second (1-sec) residence time secondary chambers; older MWI's were designed with smaller, 0.25-second (0.25 sec) residence time secondary chambers.

While there are similarities in the three design types of MWI's, there are also key design differences that make each type unique. The primary differences between the three design types of MWI's are the methods of charging waste to and removing ash from the primary chamber. These differences cause variations in the way the waste is burned and in the pollutant emission profile for each MWI design type.

Continuous units, which are the largest of the three types, have mechanical ram feeders and continuous ash removal systems. These features allow the unit to operate 24 hours per day for many days at a time. Continuous MWI's achieve steady-state operation in the beginning of their operating cycle and maintain this mode of operation throughout the remainder of the cycle. Waste is charged and ash is removed simultaneously (i.e., on a continuous basis). During operation, waste is burned at the same rate as it is charged into the unit, and pollutant emission rates and primary and secondary chamber temperatures tend to be relatively constant.

Most intermittent MWI's also have mechanical ram feeders that charge waste into the primary chamber at about 5- to 10-minute intervals. However, because there is no means for ash removal during the burning phase of the operating cycle, the unit can only be operated for a limited number of hours before the accumulation of ash in the primary chamber requires the unit to be shut down for ash removal. Intermittent units, which are usually much smaller than continuous units, typically operate on a daily burn cycle of 10 to 14 hours. While these units tend to approach steady-state operation during the middle of their operating cycle, waste is normally being charged faster than it is being burned. Primary chamber temperatures tend to climb throughout the operating cycle until waste is no longer charged into the unit. Because there is a significant accumulation of unburned material in the primary chamber at the end of the charging period, these units are designed with a burndown/cooldown phase. Generally, pollutant emissions continue through this phase, which can continue for several hours after charging has ceased.

The batch operating cycle consists of three phases: low-air, high-air, and cooldown. All of the waste to be burned during a complete cycle is loaded into the primary chamber before the unit begins operation. Once the unit is filled with waste and the burning cycle begins, the charging door is not opened again until the cycle is complete and the unit is cool. This cycle normally takes 1 or 2 days, depending on the size of the unit and the amount of waste charged. During the low-air phase, temperatures in the primary chamber rise slowly because combustion is occurring only on the surface of the waste pile and because combustion air is restricted. When the high-air phase begins, the temperatures climb more rapidly, more volatiles are exposed to the flame front, and the combustion process quickens. Batch MWI's tend to approach steady-state operation at the end of the low-air phase, when the primary chamber temperature reaches the design operating range. Pollutant emission rates also tend to increase in the second half of the low-air phase, then level off, and continue steadily during the high-air and cooldown phases. Pollutant concentrations during the high-air phase of batch MWI's are similar to concentrations during the charging period for continuous and intermittent units.

The differences in typical hours of operation, discussed above, affect the potential for total emissions (on a mass basis) from each MWI type. Continuous MWI's, which can accommodate waste charging for an unrestricted length of time, will have the greatest potential emissions because waste burning and subsequent emissions can occur continuously. Intermittent MWI's, designed to accept waste charges at periodic intervals for between 8 and 14 hours, will be limited in potential emissions by periods of shutdown required to remove ash from the incinerator. The hours of operation, limited by the time required to remove ash, result in less potential emissions from intermittent MWI's than from continuous MWI's. Batch MWI's are designed to burn only one load of waste at a time. The operating cycle normally takes 1 or 2 days, depending on the size of the unit and the amount of waste charged. Potential emissions from batch MWI's are lower than continuous and intermittent MWI's because of the significant difference in the total amount of waste burned over a given period of time.

Typical uncontrolled emission levels for each of the three subcategories are presented in Tables 11a and 11b. Table 11a shows uncontrolled emissions from new MWI's, while Table 11b shows uncontrolled emissions from existing MWI's. These emission levels reflect concentrations when the MWI is operating at steady-state conditions, which include the high-air phase for the batch MWI and the charging period for continuous and intermittent MWI's. As noted elsewhere, the EPA specifically solicits comment on the determination to distinguish between continuous, intermittent, and batch units.

TABLE 11a.—TYPICAL UNCONTROLLED EMISSIONS FROM NEW MWI'S

Pollutant	Continuous	Intermittent	Batch
PM, mg/dscm	300	300	300
CO, ppmv	300	300	300
CDD/CDF, ng/dscm	6,600	6,600	6,600
HCl, ppmv	1,400	1,400	1,400
SO_2, ppmv	16	16	16
NO_x, ppmv	140	140	140

TABLE 11a.—TYPICAL UNCONTROLLED EMISSIONS FROM NEW MWI'S—Continued

Pollutant	Continuous	Intermittent	Batch
Pb, mg/dscm	4.2	4.2	4.2
Cd, mg/dscm	0.29	0.29	0.29
Hg, mg/dscm	3.1	3.1	3.1

TABLE 11b.—TYPICAL UNCONTROLLED EMISSIONS FROM EXISTING MWI'S

Pollutant	Continuous (0.25-sec)	Continuous (1-sec)	Intermittent	Batch
PM, mg/dscm	570	300	570	570
CO, ppmv	690	300	690	690
CDD/CDF, ng/dscm	25,000	6,600	25,000	25,000
HCl, ppmv	1,400	1,400	1,400	1,400
SO_2, ppmv	16	16	16	16
NO_x, ppmv	140	140	140	140
Pb, mg/dscm	4.2	4.2	4.2	4.2
Cd, mg/dscm	0.29	0.29	0.29	0.29
Hg, mg/dscm	3.1	3.1	3.1	3.1

One specific approach which EPA is considering and on which EPA requests comment is that of further subcategorizing batch and intermittent MWI's by size or capacity to burn medical waste. Some have suggested, for example, that EPA examine alternatives, such as subcategorizing these categories into incinerators with capacities of 50 pounds per hour or less, 100 pounds per hour or less, 200 pounds per hour or less, etc. A number of States have already established subcategories based on size which exempt the smallest incinerators or impose less stringent requirements on such incinerators. Current State regulations, therefore, may provide a basis for further subcategorizing the categories of batch and intermittent MWI's.

To fully consider subcategorization by size within the batch and intermittent categories, however, a mechanism must be available to accurately and consistently determine the capacity of an MWI. Only if such a mechanism exists, will enforcement personnel, as well as owners and operators of MWI's, be assured that MWI's are subject to a consistent set of requirements.

The EPA believes this may be a serious problem. It appears there is no common or widely used mechanism or "standard" within the MWI industry for sizing or determining the capacity of an incinerator to burn medical waste. As a result, it seems that one vendor's 50 pound per hour capacity incinerator can be another vendor's 100 pound per hour capacity incinerator. It also appears the same vendor may sell one customer a 50 pound per hour capacity MWI and then sell another customer the same incinerator as a 100 pound per hour MWI. The EPA believes that a manufacturer's or vendor's "nameplate capacity" is not an accurate and reliable means for determining the size or capacity of an MWI.

The EPA recognizes that the composition of medical waste changes across generators, over time, and in response to changes in waste handling or recycling practices in a way that may affect the amount of medical waste a specific incinerator is able to burn. For the purposes of enforcing regulations that may vary by size or capacity, a common mechanism or "standard" to measure or determine the capacity of MWI's is necessary.

Consequently, EPA specifically requests comments on a mechanism or "standard" for accurately and consistently determining the capacity of MWI's in the enforcement of whatever regulation might be adopted. For example, the comments might outline the mechanisms or approaches used by States to ensure all MWI's of the same capacity are subject to the same requirements. Or, the comments may offer alternative measures of capacity that serve as a better basis for identifying small intermittent and/or small batch MWI's. Finally, the manufacturers may choose to develop a voluntary approach providing a consistent measure of rated capacity.

H. Performance of Technology

Medical waste incinerator emissions are mixtures of pollutants including acid gases (HCl and SO_2), NO_x, CO, PM, CDD/CDF, and metals (Pb, Cd, and Hg). There are basically two approaches to controlling these emissions: combustion control and add-on air pollution control. These approaches will be discussed in sections 1. and 2. below.

The first approach, combustion control, can be broken down into three levels that are based on the flue gas residence time in the secondary chamber. These three levels are 0.25-sec combustion, 1-sec combustion, and 2-sec combustion.

The second approach can be further broken down into various add-on control systems, including wet systems, fabric filter systems without activated carbon injection, and fabric filter systems with activated carbon injection. The control of NO_x will also be discussed under add-on control systems.

One additional area that has been suggested for consideration is waste segregation. This topic will be discussed in paragraph 3. of this section.

1. Combustion Control

Combustion control includes the proper design, construction, operation, and maintenance of an MWI to destroy or prevent the formation of air pollutants prior to their release to the atmosphere. Test data indicate that as secondary chamber residence time and temperature increase, emissions decrease. Combustion control is most effective in reducing CDD/CDF, PM, and CO emissions.

The 0.25-sec combustion level includes a minimum secondary chamber temperature of 927 °C (1700 °F) and a 0.25-sec secondary chamber residence time. These combustion conditions are typical of older MWI's.

The 1-sec combustion level includes a minimum secondary chamber temperature of 927°C (1700°F) and residence time of 1-sec. These combustion conditions are typical of newer MWI's. Compared to 0.25-sec combustion, 1-sec combustion will achieve substantial reductions in CDD/CDF and CO emissions, and will

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provide some control of PM, but will not reduce emissions of acid gases (HCl and SO_2), NO_X, or metals (Pb, Cd, and Hg).

The 2-sec combustion level includes a minimum secondary chamber temperature of 1800°F and residence time of 2-sec. These combustion conditions will provide additional control of CDD/CDF, CO, and PM, but will not reduce emissions of acid gases (HCl and SO_2), NO_X, or metals (Pb, Cd, and Hg). The 2-sec combustion conditions are considered to be the best level of combustion control that is applied to MWI's.

2. Add-On Control

Add-on control refers to various add-on air pollution control systems used in addition to 2-sec combustion to capture pollutants as they leave the incinerator. Add-on controls include wet systems, fabric filter systems without activated carbon injection, and fabric filter systems with activated carbon injection. Because Pb and Cd are associated with PM in the flue gas and are removed by PM control devices, these three pollutants are considered as a group when evaluating MACT. Similarly, SO_2 and HCl are considered together because generally, they are both reduced using acid gas controls.

a. *Wet systems.* Wet systems include scrubbing systems such as a venturi scrubber (VS) or a venturi scrubber followed by a packed-bed absorber (VS/PB). Compared to combustion control, wet systems achieve substantial reductions in HCl emissions, provide some control of Pb and Cd, and further reduce PM and CDD/CDF emissions, but do not add to the control of NO_X, CO, or Hg. However, at the low SO_2 levels associated with MWI's, wet systems are not, in EPA's experience, effective in reducing SO_2 emissions. As discussed in section VI, EPA requests comment on the performance an l costs of wet scrubber systems.

b. *Fabric filter systems without carbon injection.* Fabric filter systems include a fabric filter followed by a packed bed absorber (FF/PB), dry sorbent injection followed by a fabric filter (DI/FF), or a spray dryer followed by a fabric filter (SD/FF). The SD/FF and the DI/FF systems have the same performance based on EPA MWI test data. The fabric filter alone was not examined because wet systems achieve greater overall emission reduction at a lower cost.

Compared to wet systems, fabric filter systems generally provide additional control of PM, Pb, and Cd, but do not add to the control of acid gases, NO_X, CO, or Hg. The performance of the three fabric filter systems in reducing CDD/CDF emissions varies significantly. Compared to combustion control, the DI/FF and SD/FF systems provide no additional control of CDD/CDF, while formation of CDD/CDF is a potential problem with the FF/PB system.

Formation of CDD/CDF occurs when there is intimate contact between a gas stream containing CDD/CDF precursors and fly ash, which acts as a catalyst for CDD/CDF formation. The optimum temperature window for fly ash catalyzed CDD/CDF formation is between 300° and 600°F. The formation of CDD/CDF is minimized when using combustion control or wet systems because these options provide: (1) rapid cooling of the gas stream through the temperature window; and/or (2) quick dispersion (or removal in the case of wet systems) of CDD/CDF precursors and fly ash. In DI/FF and SD/FF systems, the presence of an acid gas sorbent (lime, for example) also limits the formation of CDD/CDF. The fabric filter in a FF/PB system, on the other hand, can provide those conditions conducive to CDD/CDF formation. In fact, test data have shown CDD/CDF formation in the FF/PB system.

c. *Fabric filter systems with carbon injection.* Data from a DI/FF system and a SD/FF system show that the injection of activated carbon upstream of the fabric filter results in significant reductions in CDD/CDF and Hg emissions, compared to wet systems and FF systems without carbon. Because no data are available from a FF/PB system with carbon injection, and because CDD/CDF formation occurred in a FF/PB system, it is not known exactly what CDD/CDF emission reductions can be achieved with this system. However, it is expected that the injection of carbon will improve the performance of a FF/PB system in reducing CDD/CDF emissions.

d. *Nitrogen oxides control.* During combustion, NO_X is formed through oxidation of fuel-bound nitrogen (N_2) contained in the medical waste and oxidation of atmospheric N_2 (from the combustion air). Selective noncatalytic reduction (SNCR) add-on technology has been used to control NO_X emissions from municipal waste combustors (MWC's) by reducing NO_X to N_2 without the use of catalysts. Techniques include Thermal DeNO$_X$™, which injects ammonia into the combustor as a reducing agent; the NO$_X$OUT™ process, which injects urea with chemical additives; and a two-stage urea/methanol injection process. Maximum emissions reduction occurs when the reducing agents are injected into a gas stream within a narrow temperature range and the gas is maintained in that range for a sufficient length of time.

A discussion of SNCR NO_X control was presented in the recent proposal preamble for the MWC NSPS (59 FR 181 page 48228). The use of SNCR at MWC's results in NO_X emission reductions of about 45 percent.

There are some concerns about the applicability of SNCR to MWI's. The SNCR technology has never been applied to MWI's, and several factors may complicate the use of SNCR and may reduce its performance level. The periodic charging of waste may cause corresponding temperature fluctuations, and the varying moisture and nonhomogeneous nature of the waste burned. When the temperature rises above the required injection temperature window, the reducing agent is oxidized to NO_X, and NO_X emissions can increase. In the event of low temperatures, unreacted ammonia (NH_3) emissions can occur.

Furthermore, uncertainties exist regarding the injection pattern necessary to achieve adequate mixing and residence time in the operating temperature window and in the design and engineering work necessary to develop equipment that could be used in applications with much smaller gas flow rates than those for MWC's. Consequently, SNCR is not considered a demonstrated control technology for MWI's.

Although SNCR is not considered a demonstrated control technology for MWI's, the EPA specifically solicits comments on the technical feasibility of applying NO_X control to MWI's. Specifically, the EPA solicits information on the performance, including control device inlet and outlet emissions data, costs, applicability, and operating experience associated with specific NO_X control technologies for MWI's.

3. *Waste segregation.* One area that has been suggested for consideration is waste segregation. It has been suggested that removal of batteries would reduce Hg emissions and that removal of chlorinated plastics would result in reductions in HCl and CDD/CDF. The EPA data indicate that these emissions vary from facility to facility which could be a result of differences in the amount of Hg and chlorine found in the waste stream. The types of materials that are sent to the incinerator will vary from facility to facility depending on facility operating practices, which are defined by purchasing decisions, waste handling procedures, and other practices that affect the types of materials incinerated. The EPA has no data on the effect of waste handling practices on emissions

of various pollutants and is requesting comments on the extent to which operating practices could influence emissions. To evaluate the effectiveness of waste segregation programs, the EPA is specifically soliciting detailed descriptions of the programs and results of performance tests conducted to demonstrate pollutant emission levels from the MWI prior to implementation of the program and subsequent to implementation of the program. This information is critical to a thorough evaluation of the effectiveness of the program. In addition, the EPA solicits comments on how such a program could be incorporated into the MWI regulations. Whenever information is submitted relative to Hg emissions, the EPA requests that, if available, Hg emissions data be broken out by various species emitted (for example mercury chloride or elemental mercury).

I. MACT Floor and MACT for New MWI's

Section 129 of the Clean Air Act requires that emission standards reflect MACT. According to section 129, the degree of reduction in emissions that is deemed achievable for new MWI's may not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. As a result, the emission limits selected to reflect MACT for new MWI's must, at a minimum, be as stringent as the emission levels achieved by the best controlled similar unit. This minimum performance level is known as the MACT floor. Beyond the MACT floor, in determining what performance level should be adopted in the standards as MACT, the Administrator is to consider the costs, any nonair-quality health and environmental impacts and energy requirements associated with such emission limits.

The basis for MACT determinations are presented for each subcategory in paragraphs I1, I2, and I3 of this section. The EPA solicits comments on whether test data are available from MWI's that are achieving better control than the systems used as the basis for the MACT determinations. If submitting Hg data, EPA specifically requests that, if available, Hg emission data be broken down by various species emitted (for example, mercury chloride and elemental mercury).

While the paragraphs that follow focus on specific control technologies in determining the MACT floor and MACT for new MWI's, the standards do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the regulation. Any control technology that can comply with the emission limitations may be used.

1. MACT Floor and MACT for New Continuous MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

The MACT floor for continuous MWI's consists of the emission levels that are achievable with DI/FF with carbon injection. The MACT floor is based on these emission levels because DI/FF with carbon injection achieves the lowest emission levels for all pollutants, and it is used to control emissions from at least one existing continuous MWI. While the lowest emission levels for most of the pollutants are achieved by several different control technologies (including DI/FF with carbon injection), the lowest Hg and CDD/CDF emission levels for continuous MWI's are achieved only with DI/FF with carbon injection.

Because the MACT floor is the most effective level of control for continuous units, there are no alternatives beyond the MACT floor to consider. The level of emission control achieved by a DI/FF system with carbon injection is considered MACT for continuous MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

2. MACT Floor and MACT for New Intermittent MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

The MACT floor for intermittent MWI's is based on the emission levels that are achievable with a combination of two control technologies. The VS/PB and DI/FF without carbon injection technologies are each used to control emissions from at least one intermittent MWI. The MACT floor is based on both of these technologies because VS/PB achieves the lowest CDD/CDF emissions, but DI/FF without carbon injection achieves the lowest PM, Pb, and Cd emissions. The MACT floor emission levels for the other pollutants can be achieved with either technology. Therefore, one way to achieve all of the MACT floor emission levels for intermittent MWI's would be to use a combination of both VS/PB and DI/FF without carbon injection.

Another approach, which is less complex and less costly than the above combination of controls, could also be used to achieve the MACT floor emission levels. As noted in the discussion of the MACT floor for continuous MWI's, the CDD/CDF emission levels achievable with the DI/FF with carbon injection are even lower than those achievable with the VS/PB system. Even though this technology is not known to be used with existing intermittent MWI's, it could achieve better performance for a much lower cost than the combination of controls described above, and therefore the MACT floor for new intermittent MWI's is based on these emission levels.

Because the MACT floor is the most effective level of control for intermittent units, there are no alternatives beyond the MACT floor to consider. The level of emission control achieved by a DI/FF system with carbon injection is considered MACT for intermittent MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

3. MACT Floor and MACT for New Batch MWI's

As discussed in section VI, the discussion that follows is based in part on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems.

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Like the MACT floor for intermittent MWI's, the MACT floor for new batch MWI's consists of the emission levels that are achieved with a combination of two control technologies. The 2-sec combustion control is used to control emissions from many existing batch MWI's, and FF/PB is used to control emissions from at least one batch MWI; no other add-on control technologies have been identified on batch units. The FF/PB achieves lower PM, Pb, Cd, and HCl emissions than 2-sec combustion control, but because CDD/CDF formation can occur in a FF/PB system, 2-sec combustion control alone achieves lower CDD/CDF emissions. Equivalent emission levels for other pollutants are achieved with both technologies. The MACT floor for all pollutants can be achieved with the use of another technology: DI/FF without carbon injection. Except for CDD/CDF, this technology achieves the same emission levels as FF/PB, and the CDD/CDF emissions are the same as those for 2-sec combustion control alone. Therefore, the MACT floor for new batch MWI's consists of the emission levels that are achievable with DI/FF without carbon injection.

Unlike continuous and intermittent MWI's, there is a level of control more effective than the MACT floor for batch MWI's. This level of control is achieved by adding carbon to the DI/FF system. The result is further reduction in CDD/CDF emissions along with significant Hg control. The incremental national annual cost of this option is about $740,000, or about $170/ton of waste burned nationwide. The national annual costs increase by only about 3 percent. Therefore, the level of control achieved by the DI/FF system with carbon injection is considered MACT for batch MWI's.

As discussed earlier, NO_X control has not been demonstrated on MWI's and acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT reflects no control of NO_X and SO_2. However, because the Act requires EPA to set numerical emission limits for NO_X and SO_2, the limits are proposed at 210 ppmv for NO_X and 45 ppmv for SO_2, the highest uncontrolled NO_X and SO_2 emission rates measured during the EPA test program. The EPA specifically solicits comments on the emission limits of 45 ppmv set for SO_2 and 210 ppmv set for NO_X and whether these levels accurately reflect uncontrolled emissions of NO_X and SO_2 at MWI's.

J. MACT Floor and MACT for Existing MWI's

1. MACT Floor for Existing MWI's

Section 129 of the Act requires that emission guidelines reflect MACT. According to section 129, the degree of reduction in emissions that is deemed achievable for existing MWI's must not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category. In setting MACT standards, the EPA must establish the MACT floor for a source category because the Act specifies that each standard must be at least as stringent as the floor for the relevant source category. For the MWI source category, the EPA did not have sufficient emissions data to determine the MACT floor. Data was only available from 7 MWI facilities (8 emissions tests), to represent 3,700 existing MWI's. As a result, the EPA examined air quality permits and State regulations to determine the emission limitations achieved by the best-performing 12 percent of units in each subcategory.

Emission limitations were determined for the estimated total MWI population by examining air quality permits where available and by assuming that the estimated population of MWI's for which permits were not available are subject to emission limitations specified by State regulations. It was assumed that all MWI's are either achieving their permit limits or are achieving their State regulatory emission limits.

For each subcategory, the emission limitations for each pollutant were ranked from most stringent to least stringent and the MACT floors for each pollutant were determined by averaging the emission limitations of the top 12 percent of units in that subcategory. In some cases, the number of MWI's subject to specific emission limitations did not comprise 12 percent of the population in a subcategory. Where this occurred, numerical emission limits were established for the MACT floor by including uncontrolled emission values for the additional number of MWI's necessary to make up 12 percent of the existing population.

The MACT floors define the minimum level of emissions control. Beyond these levels, in determining what performance levels should be adopted in the guidelines as MACT, the Administrator is to consider the costs, any nonair-quality health and environmental impacts, and energy requirements associated with such emission limits.

An estimated 338 continuous, 3,018 intermittent, and 336 batch MWI's exist nationwide. For each of these subcategories, the MACT floor emission levels for each pollutant are calculated as the averages of the emission limitations reported by the top 12 percent of units in that subcategory. The top 12 percent of units in each subcategory is represented by the 41 continuous, 363 intermittent, and 41 batch MWI's with the most stringent permit or state regulation limitations. The MACT floor emission levels for each pollutant in each subcategory are presented in Table 12.

TABLE 12.—MACT FLOOR EMISSION LEVELS FOR EXISTING MWI'S

Pollutant	MWI type		
	Continuous	Intermittent	Batch
PM, mg/dscm	46	69	69
CO, ppmv	76	90	91
CDD/CDF, ng/dscm	1,619	12,906	14,606
HCl, ppmv	43	115	911
SO_2, ppmv	284	414	1,166
NO_X, ppmv	257	216	220
Pb, mg/dscm	8.7	11.8	23.1
Cd, mg/dscm	0.56	1.8	3.4
Hg, mg/dscm	4.0	15.6	18.5

As noted above, EPA is also considering further subcategorizing batch and intermittent MWI's by size or capacity to burn medical waste. Specifically, some have suggested EPA consider alternatives, such as subcategorizing these categories into incinerators with capacities of 50 pounds per hour or less, 100 pounds per hour or less, 200 pounds per hour or less, etc. A number of States have regulations which exempt the smallest medical waste incinerators or impose less stringent requirements on such incinerators.

Subcategorization of the batch and intermittent MWI categories could find that the MACT floor for small intermittent and/or small batch incinerators is less stringent than the MACT floor for larger incinerators in these categories. The MACT floor for small intermittent and/or small batch MWI's within these categories, for example, could be much less stringent than the MACT floor of 69 mg/dscm identified above for both batch and intermittent incinerators.

2. MACT for Existing Continuous MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing continuous MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Uncontrolled PM emissions typically are 570 mg/dscm for MWI's with 0.25-sec combustion and 300 mg/dscm for MWI's with 1-sec combustion. The MACT floor for PM is 46 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. The FF system is capable of achieving PM emission levels of as low as 30 mg/dscm.

Typical uncontrolled Pb and Cd emission are 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floors for Pb and Cd are 8.65 mg/dscm and 0.56 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the fabric filter system that would be needed to meet the MACT floor emission level for PM, would reduce Pb and Cd emissions to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Additional control beyond the FF system has not been demonstrated for any of these pollutants. As a result, the proposed MACT for PM, Pb, and Cd for continuous MWI's are the levels achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at continuous MWI's are 690 ppmv for units with 0.25-sec combustion and 300 ppmv for units with 1-sec combustion. As discussed earlier, the MACT floor for CO is 76 ppmv. Two-second combustion control is necessary to meet the MACT floor level for CO and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable by 2-sec combustion.

c. *MACT for Dioxins and Furans.* Typical uncontrolled emissions of dioxins and furans (CDD/CDF) are 25,000 ng/dscm for MWI's with 0.25-sec combustion and 6,600 ng/dscm for MWI's with 1-sec combustion. The MACT floor for CDD/CDF is 1,619 ng/dscm. Two-second combustion control is necessary to meet the MACT floor level for CDD/CDF and is capable of achieving CDD/CDF levels of 1,500 ng/dscm, at no additional cost.

As discussed earlier, an FF system is needed to achieve the MACT floor for PM. Control of CDD/CDF beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting activated carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system because the FF system is already needed to meet the MACT floor level for PM. By injecting carbon into the FF system, CDD/CDF emissions could be reduced to about 80 ng/dscm and Hg emissions could substantially be reduced. The nationwide incremental annual cost of carbon injection is about $9.4 million/yr, or about $12/ton of waste burned in continuous MWI's. This incremental cost represents an increase of only about 5.8 percent over the cost of the FF system without carbon injection. As a result, MACT for CDD/CDF is the level of control achievable with an FF system with carbon injection, 80 ng/dscm total CDD/CDF, or 1.9 ng/dscm TEQ. To arrive at the TEQ, measured emissions of each tetra- through octa- CDD and CDF congener are multiplied by the corresponding toxic equivalency factor (TEF) specified in § 60.36c of the proposed emission guidelines. The products are then added to obtain the concentration of CDD/CDF emitted in terms of TEQ.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are 3.1 mg/dscm. The MACT floor for Hg is 4.04 mg/dscm. No control of Hg is necessary to meet the MACT floor emission level.

The only control system capable of consistently reducing Hg emissions is the FF system with carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $9.4 million/yr, or about $12/ton of waste burned. This additional cost represents an increase of only about 5.8 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for acid gases (HCl and SO_2).* Typical uncontrolled emissions of HCl and SO_2 from continuous MWI's are 1,400 ppmv for HCl and 16 ppmv for SO_2. In general, acid gases controls are capable of reducing emissions of both HCl and SO_2. However, in EPA's experience, acid gases controls are not effective in reducing emissions of SO_2 from MWI's because of the low SO_2 inlet levels associated with the incineration of medical waste. The emissions of HCl from MWI's, on the other hand, are reduced by acid gas controls. As discussed earlier, the MACT floor for HCl is 43 ppmv. A reduction of 97 percent from uncontrolled levels is necessary to achieve the MACT floor for HCl. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. Therefore, MACT for HCl is 42 ppmv or 97 percent reduction.

Typical uncontrolled emissions of SO_2 are 16 ppmv, but can range as high as 45 ppmv. The MACT floor for SO_2 is 284 ppmv, and can be achieved at uncontrolled levels. Consequently, the MACT floor requires no control of SO_2. As discussed earlier, acid gas controls are not effective in reducing SO_2 emissions from MWI's. Therefore, MACT also reflects no control of SO_2.

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However, because the Act requires the EPA to set a numerical emission limit for SO_2, the limit is proposed at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2 and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 257 ppmv, and can be achieved at uncontrolled levels. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT also reflects no control of NO_X. However, because the Act requires the EPA to establish a numerical emission limit for NO_X, the limit is proposed as 210 ppmv, the highest NO_X emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

3. MACT for Existing Intermittent MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing intermittent MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Typical uncontrolled emissions of PM from intermittent MWI's are about 570 mg/dscm. The MACT floor for PM emissions from intermittent MWI's is 69 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. In fact, the FF system can reduce PM emissions even further, to 30 mg/dscm, at no additional cost.

Uncontrolled emissions of Pb and Cd are 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floors for Pb and Cd are 11.78 mg/dscm and 1.76 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the FF system necessary to meet the MACT floor level for PM would also reduce emissions of Pb and Cd to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Further reduction of Pb and Cd has not been demonstrated. Therefore, the proposed MACT for intermittent MWI's is the level of control achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at intermittent MWI's are about 690 ppmv. The MACT floor is 90 ppmv. Two-second combustion control is necessary to meet the MACT floor level and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable with 2-sec combustion.

c. *MACT for Dioxins and Furans.* Uncontrolled levels of dioxins and furans (CDD/CDF) are typically about 25,000 ng/dscm. The MACT floor for CDD/CDF is 12,906 ng/dscm. One-second combustion control is necessary to achieve the MACT floor emission level and is capable of reducing CDD/CDF emissions to 7,000 ng/dscm. However, 2-second combustion control is already needed to achieve the MACT floor emission level for CO and would reduce CDD/CDF emissions even further, to about 1,500 ng/dscm, at no additional cost.

The level of control associated with the FF system is already needed to meet the MACT floor for PM. Further reduction in CDD/CDF emissions beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system that is already needed to meet the MACT floor level for PM. An FF system with carbon injection can reduce CDD/CDF emissions to about 80 ng/dscm and can substantially reduce Hg emissions. The nationwide incremental annual cost of carbon injection is about $24.4 million/yr, or about $31/ton of waste burned in intermittent MWI's. This incremental cost represents an increase of only about 3.6 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are about 3.1 mg/dscm. The MACT floor for Hg is 15.56 mg/dscm, and can be achieved at uncontrolled levels. The only control system capable of consistently reducing Hg emissions is the FF system with activated carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor emission level for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $24.4 million, or about $31/ton of waste burned. This additional cost represents an increase of only about 3.6 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for Acid Gases (HCl and SO_2).* Uncontrolled levels of HCl and SO_2 from MWI's are 1,400 ppmv and 16 ppmv, respectively. As discussed previously, acid gases controls are not effective in reducing emissions of SO_2 from MWI's. The MACT floor for HCl is 115 ppmv and requires a reduction of 92 percent from uncontrolled levels. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. The FF system is already needed to meet the MACT floor emission levels for PM. The costs associated with reducing emissions of HCl from the MACT floor level (92 percent reduction) to the level of control achievable with the FF system (97 percent reduction) include costs for additional lime and ash disposal costs. These additional costs are negligible compared to the total cost of the system. Therefore, the proposed MACT for HCl is 42 ppmv or 97 percent reduction.

The MACT floor for SO_2 is 414 ppmv and can be achieved at uncontrolled emission levels. As discussed earlier, no controls have been demonstrated to consistently reduce SO_2 emissions from MWI's. Therefore, the proposed MACT for SO_2 is also based on uncontrolled emissions. Analyses of test data from MWI's show that typical uncontrolled emissions of SO_2 are about 16 ppmv, but can range as high as 45 ppmv. Because the Act requires the EPA to set numerical emission limit for SO_2, MACT for SO_2 is set at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2 and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 216 ppmv and requires no control of NO_X. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT is also based on no control. However, because the Act requires the EPA to set a numerical emission limit for NO_X, the NO_X limit is proposed to be 210 ppmv, the highest uncontrolled NO_X level measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

4. MACT for Existing Batch MWI's

As discussed in section VI, the discussion that follows is based on limited test data on wet scrubber systems. The EPA requests comment on the performance and costs of wet scrubber systems. Also, while the paragraphs that follow focus on specific control technologies in determining MACT for existing batch MWI's, the guidelines do not require the use of any specific technology. The Agency's assessment of the performance of specific technologies is used to develop emission limitations, which appear in the guidelines. Any control technology that can comply with the emission limitations may be used.

a. *MACT for PM, Pb, and Cd.* Typical uncontrolled PM emissions from batch MWI's are about 570 mg/dscm. The MACT floor for PM emissions from batch MWI's is 69 mg/dscm. A fabric filter system is necessary to meet the MACT floor level. In fact, the FF system can reduce PM emissions even further, to 30 mg/dscm, at no additional cost.

Uncontrolled emissions of Pb and Cd from batch MWI's are about 4.2 mg/dscm and 0.29 mg/dscm, respectively. The MACT floor emission levels for Pb and Cd are 23.10 mg/dscm and 3.44 mg/dscm, respectively. Although no control is necessary to achieve the MACT floor levels for Pb and Cd, the FF system necessary to meet the MACT floor level for PM would also reduce emissions of Pb and Cd to 0.10 mg/dscm and 0.05 mg/dscm, respectively. Because this system is already necessary to meet the MACT floor level for PM, there is no cost associated with reducing emissions of Pb and Cd from the uncontrolled MACT floor levels to the level of control achieved by the FF system. Further reduction of Pb and Cd has not been demonstrated. Therefore, the proposed MACT for batch MWI's is the level of control achievable with the FF system: 30 mg/dscm for PM, 0.10 mg/dscm for Pb, and 0.05 mg/dscm for Cd.

b. *MACT for Carbon Monoxide.* Typical uncontrolled emissions of CO at batch MWI's are about 690 ppmv. The MACT floor is 91 ppmv. Two-second combustion control is necessary to meet the MACT floor level and is capable of achieving CO levels as low as 50 ppmv at no additional cost. Further reduction of CO emissions has not been demonstrated. Therefore, the proposed MACT for CO is 50 ppmv, the level achievable with 2-sec combustion.

c. *MACT for Dioxins and Furans.* Uncontrolled levels of dioxins and furans (CDD/CDF) are typically about 25,000 ng/dscm. The MACT floor for CDD/CDF is 14,606 ng/dscm. One-second combustion control is necessary to achieve the MACT floor emission level and is capable of reducing CDD/CDF emissions to 7,000 ng/dscm. However, 2-second combustion control is already needed to achieve the MACT floor emission level for CO and would reduce CDD/CDF emissions even further, to about 1,500 ng/dscm, at no additional cost.

The level of control associated with the FF system is already needed to meet the MACT floor for PM. Further reduction in CDD/CDF emissions beyond the level of emissions achievable with 2-sec combustion control can be attained either by adding a wet system or by injecting carbon into the FF system. Although the wet system is capable of reducing CDD/CDF emissions, the less expensive approach would be to inject carbon into the FF system that is already needed to meet the MACT floor level for PM. An FF system with carbon injection can reduce CDD/CDF emissions to about 80 ng/dscm and can substantially reduce Hg emissions. The nationwide incremental annual cost of carbon injection is about $1.5 million/yr, or about $170/ton of waste burned in batch MWI's. This incremental cost represents an increase of only about 2.7 percent over the cost of the FF system without carbon injection. As a result, MACT for CDD/CDF is the level of control achievable with an FF system with carbon injection, 80 ng/dscm, or 1.9 ng/dscm TEQ.

d. *MACT for Mercury.* Typical uncontrolled Hg emissions are about 3.1 mg/dscm. The MACT floor for Hg is 18.54 mg/dscm, and can be achieved at uncontrolled levels. The only control system capable of consistently reducing Hg emissions is the FF system with carbon injection, which can achieve emissions of 0.47 mg/dscm Hg or 85 percent reduction from uncontrolled emissions. The FF system without carbon injection is necessary to meet the MACT floor emission level for PM and the injection of carbon is necessary to meet the proposed MACT emission level for CDD/CDF. As mentioned above in the discussion on CDD/CDF, the nationwide incremental annual cost of injecting carbon is about $1.5 million/yr, or about $170/ton of waste burned. This additional cost represents an increase of only about 2.7 percent over the cost of the FF system without carbon injection. Therefore, the proposed MACT for Hg is 0.47 mg/dscm or 85 percent reduction.

e. *MACT for Acid Gases (HCl and SO_2).* Uncontrolled levels of HCl and SO_2 from MWI's are 1,400 ppmv and 16 ppmv, respectively. As discussed earlier, acid gases controls are not effective in reducing emissions of SO_2 from MWI's. The MACT floor for HCl is 911 ppmv and requires a reduction of 35 percent from uncontrolled levels. Wet systems and FF systems are each capable of reducing HCl emissions to 42 ppmv or by 97 percent from uncontrolled levels. The FF system is already needed to meet the MACT floor emission levels for PM. The costs associated with reducing emissions of HCl from the MACT floor level (35 percent reduction) to the level of control achievable with the FF system (97 percent reduction) include costs for additional lime and ash disposal costs. These additional costs are negligible compared to the total cost of the system. Therefore, the proposed MACT for HCl is 42 ppmv or 97 percent reduction.

The MACT floor for SO_2 is 1,166 ppmv and can be achieved at uncontrolled emission levels. As discussed earlier, no controls have been demonstrated to consistently reduce SO_2 emissions from MWI's. Therefore, the proposed MACT for SO_2 is also based on uncontrolled emissions. Analyses of test data from MWI's show that typical uncontrolled emissions of SO_2 are about 16 ppmv, but can range as high as 45 ppmv. Because the Act requires the EPA to set numerical emission limit for SO_2, MACT for SO_2 is set at 45 ppmv, the highest SO_2 emission rate measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 45 ppmv set for SO_2 and whether this level accurately reflects uncontrolled emissions of SO_2 at MWI's.

f. *MACT for Nitrogen Oxides.* Typical uncontrolled emissions of NO_X are 140 ppmv but range as high as 210 ppmv. The MACT floor for NO_X is 220 ppmv and can be achieved at uncontrolled

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emission levels. As discussed earlier, NO_X control has not been demonstrated on MWI's. Therefore, MACT is also based on no control. However, because the Act requires the EPA to set a numerical emission limit for NO_X, the NO_X limit is proposed to be 210 ppmv, the highest uncontrolled NO_X level measured during the EPA test program. The EPA specifically solicits comments on the emission limit of 210 ppmv set for NO_X and whether this level accurately reflects uncontrolled emissions of NO_X at MWI's.

K. Selection of Fugitive Fly Ash/Bottom Ash Standards and Guidelines

Combusting medical waste in an incinerator creates noncombustible ash in the primary chamber of the incinerator. This "bottom" ash is removed from the primary chamber either periodically (intermittent and batch MWI's) or continuously (continuous MWI's). While removing ash, airborne fugitive emissions may be created.

Another potential source of fugitive emissions from MWI's is the collected fly ash that is removed from the exhaust gas stream by fabric filters. Facilities that use fabric filters as part of an air pollution control system must remove the collected fly ash periodically. Fugitive emissions of this fly ash can occur during the removal and disposal process.

While there is a potential for fugitive emissions from MWI's, precautions can be taken that virtually eliminate these emissions. The proposed 0 percent opacity limit can be achieved by employing measures such as wetting or covering the dry ash, providing covers for ash containers, and providing wind screens around outdoor sites. The following sections describe the different types of MWI operations that may release fugitive emissions.

1. *Continuous MWI's.* For an MWI to operate continuously, the combustor must be designed so that accumulated bottom ash can be removed while the unit operates. All designs incorporate a stepped, solid grate with internal ash rams or a moving hearth to move ash toward the discharge point at the end of the primary chamber opposite the waste charging door. At the discharge point, the ash falls off the hearth into a wet sump or a dry collection hopper. Because these units either quench the bottom ash (in a wet sump) or confine the ash in a close-fitting hopper (dry collection), there is virtually no potential for fugitive emissions during normal operation. With the wet sump arrangement, there are no fugitive emissions when the ash is conveyed to the disposal container, usually a dumpster. With dry ash, the transfer from the collection hopper to the dumpster may be a source of fugitive emissions, but normal precautions such as covering the ash or wetting it down can effectively eliminate fugitive emissions.

2. *Intermittent and Batch MWI's.* Intermittent and batch MWI's are allowed to cool before the bottom ash is removed, usually on a daily basis. Few of these units use any automated mechanism to assist in the removal of bottom ash. The ash is simply shoveled or raked from the primary chamber manually through the ash door.

Some larger units have an ash ram that is used to push bottom ash toward the ash door. With this type of system, the ash may be allowed to fall from the primary chamber into a collection bin as the ram pushes it out of the unit. Mechanical rams are usually somewhat ineffective at removing the ash because the ram face is considerably narrower than the primary chamber. Ash that is not in the path of the ram must be raked or shoveled out manually.

Removing the bottom ash from these MWI's is a potential source of fugitive emissions. Applying a water spray to the ash as it is removed from the MWI, reducing the distance the ash falls or is conveyed, and providing wind screens for outdoor sites are ways in which fugitive emissions may be eliminated.

3. *Collected Fly Ash from Control Devices.* Facilities utilizing fabric filters as part of their air pollution control system must use precautions to avoid fugitive emissions resulting from the removal of collected fly ash from the fabric filter collection hopper. In most cases, the collection hopper discharges from the bottom directly into a disposal bin. By including a flexible "sleeve" to connect the collection hopper to the disposal bin (often a 55-gallon drum) and a close-fitting cover over the disposal bin, fugitive emissions can be eliminated. Likewise, a wind screen around this operation is helpful for outdoor installations. Once the disposal bin is filled, it should be sealed for transport to the ultimate disposal site. If the disposal bin is emptied onsite into a dumpster, the transfer must be performed in a manner to avoid creating fugitive emissions. Wetting the fly ash in the disposal bin prior to dumping it or performing the transfer in a covered enclosure are effective ways to eliminate fugitive emissions.

L. Operator Training and Qualification Requirements

Section 129 of the Act requires the EPA to develop and promote a model program for the training and qualification of MWI operators. Section 129 specifies that "any person with control over processes affecting emissions from a unit * * *" must successfully complete an acceptable training program. For new MWI's, the proposed standards require that an affected facility be operated by a trained and qualified operator or by an individual under the direct supervision of a trained and qualified operator. For existing MWI's, the proposed emission guidelines would require that 1 year after approval of the State plan, designated facilities be operated by a trained and qualified operator or by an individual under the direct supervision of a trained and qualified operator. The 3-year option for complying with all other requirements of the emission guidelines is not provided for the training and qualification requirements. The accelerated compliance schedule proposed for the operator training and qualification requirements will assist in preparing the operators to properly operate the MWI and associated air pollution control equipment before the initial compliance test.

The proposed standards and guidelines also would require that each owner or operator of an MWI develop and update, on an annual basis, a site-specific operating manual to be reviewed by all qualified operators annually. The standards and guidelines include minimum criteria for the training course, the qualification program, and the contents of the manual.

1. Training Requirements

The owner or operator of an MWI would be responsible for ensuring that one or more operators receive training by an instructor not employed by the owner or operator that provides, at a minimum, the following: (1) 24 hours of classroom instruction, (2) 4 hours of hands-on training, (3) an examination developed and administered by the course instructor, and (4) a handbook or other documentation covering the subjects presented during the course

The classroom training would be required to cover, at a minimum, the following subjects:

1. Environmental concerns, including pathogen destruction and types of emissions;
2. Basic combustion principles, including products of combustion;
3. Types of incinerator designs and components of MWI's;
4. Incinerator operation, including startup and shutdown procedures;
5. Combustion controls and monitoring;

6. Types of air pollution control equipment;
7. Operation of air pollution control equipment and factors affecting performance;
8. Methods to monitor pollutants (CEM's) and equipment calibration procedures;
9. Inspection and maintenance of the MWI, APCD, and CEM's;
10. Actions to correct malfunctions or upsets;
11. Bottom and fly ash characteristics and handling procedures;
12. Applicable Federal, State, and local regulations; and
13. Work safety procedures.

Hands-on training would be required on either an intermittent or continuous MWI that is similar, but not necessarily identical, to the unit(s) that the operator(s) would be operating. The MWI used in hands-on training also must have an APCD. Material to be covered during the hands-on training must include: (1) prestartup inspections, (2) proper startup, waste charging, and shutdown procedures; (3) monitoring operating conditions (visually and with automated equipment), (4) responses to upset conditions, and (5) recordkeeping. The instruction also must identify differences between the MWI used for the hands-on training and other types of MWI's (i.e., batch, intermittent, and continuous) and APCD's (i.e., wet scrubbers and dry scrubbers).

An examination would be required for the operator to demonstrate an understanding of the material presented. A handbook covering the subjects discussed during the course would give the operator a reference to supplement more detailed literature from the manufacturer that is specific for the equipment being operated at the facility.

2. Qualification Procedures

The owner or operator of an MWI would be responsible for ensuring that one or more operators at the facility are qualified. Under the proposed standards and guidelines, operators would be qualified by one of two methods, designated option 1 and option 2.

a. *Option 1.* To be qualified under option 1, operators would be required to complete a training course that satisfies the criteria described above and have one of the following levels of experience: (1) at least 6 months experience (1,040 hours) as an MWI operator, (2) at least 6 months experience as the direct supervisor of MWI operators, or (3) experience performing a minimum of two burn cycles under the observation of two qualified operators. The experience must be on either the MWI at the operator's facility or an MWI of the same type (i.e., batch, intermittent, or continuous).

Qualification would be valid from the date the training examination is passed or the date on which the experience requirements are met, whichever is later. The owner or operator of the MWI would be required to demonstrate to enforcement personnel that the operator has the necessary training and experience.

To maintain qualification, the operator would be required to complete an annual review or refresher course administered by an instructor not employed by the owner or operator and pass the examination administered by the instructor at the end of the course. An acceptable review course would provide at least 4 hours of classroom training and cover, at a minimum, the following subjects: (1) update of regulations; (2) incinerator operation, including startup and shutdown procedures; (3) inspection and maintenance; (4) responses to upset conditions; and (5) discussion of operating problems encountered by the attendees.

A lapsed qualification may be renewed by one of two methods, depending on the length of the lapse. For a lapse of less than 3 years, the operator would be required to complete and pass a standard review course, as described above in this section. For a lapse of 3 years or more, the operator would be required to complete and pass a training course that meets the criteria described earlier.

b. *Option 2.* Option 2 would allow qualification by national professional organizations. The same initial and annual training described under option 1 would be required. National organizations would be able to specify criteria that are at least as stringent as those under option 1. Qualification programs developed by national organizations also would specify procedures to maintain and renew qualifications.

3. Operating Manual

The proposed standards and guidelines also would require that each owner or operator of an MWI develop and update, on an annual basis, a site-specific operating manual to be reviewed by all qualified operators annually. The manual would summarize State regulations, operating procedures, and reporting and recordkeeping requirements in accordance with the proposed standards and guidelines.

4. Request for Comments

The EPA solicits comments on whether and to what extent EPA should allow States or certain specific national professional organizations (e.g., the American Hospital Association or the American Society of Mechanical Engineers) to pre-approve training courses and qualification programs that meet the above criteria. Commenters should identify by name any national organizations that they believe should be granted this authority.

An advantage of allowing States or national organizations to preapprove courses is that the burden of demonstrating that the course is in compliance with the criteria would be removed from the owner or operator. An additional advantage of allowing national organizations to pre-approve courses is that the training would be valid in all States, whereas a State-approved course would only be valid in the State that approved it. As a result, all operators in a company with facilities in several States could take the same course, and operators would not need to take another training course if they move from one State to another.

M. Siting Requirements—New MWI's

Section 129 of the Act states that performance standards for MWI's must incorporate siting requirements that minimize, on a site-specific basis and to the maximum extent practicable, potential risks to public health or the environment. In accordance with section 129, site selection criteria are being proposed for MWI's that commence construction after the date of promulgation of this rule. The siting requirements would not apply to existing or modified MWI's.

1. Options Considered for Siting Requirements

The EPA considered three approaches in the development of proposed siting requirements. These approaches are summarized below.

The first approach would be a regulatory review approach. Under this approach, the MWI owner/operator would prepare a document listing all current Federal, State, and local regulatory requirements and permit conditions that apply to the proposed MWI, along with a discussion of the equipment, construction practices, operating practices, and other conditions used to comply with each requirement. The document would be submitted to the EPA and to State and local officials and would be made available to the public. This approach also includes provisions for a public

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meeting and the preparation of a comment/response document that would be made available to the public. This approach addresses relevant siting issues and would not require duplicate analyses of health or environmental impacts that may already be required under other authorities (e.g., New Source Review (NSR) air permits; National Pollution Discharge Elimination System [NPDES] water discharge permits; stormwater permits; wetland permits; State solid waste permits; or local zoning permits).

The second approach would require that an environmental assessment (EA) be conducted, patterned after requirements under the National Environmental Policy Act (NEPA). This approach would require an examination of impacts in all media (i.e., air, water, solid waste, energy, and land use). Also, a description of alternatives to the proposed project, including alternative sites, technologies, or designs necessary to determine a finding of no significant impact (FNSI) would be required. The EA and the description of alternatives to the proposed project would be documented and submitted to the EPA and to State and local officials and would be made available to the public.

The third approach sets forth general siting requirements patterned after the Prevention of Significant Deterioration (PSD) requirements within the New Source Review (NSR) program. This approach requires comprehensive air quality analyses in regard to National Ambient Air Quality Standards (NAAQS) and PSD increments. An impacts analysis, which studies the potential effect of air, solid waste, and water pollution on visibility, soils, and vegetation also would be required. This approach also includes provisions for a public meeting and the preparation of a comment/response document that would be made available to the public.

2. Proposed Siting Requirements

The third approach is being proposed as the basis for the siting requirements for MWI's. Under the proposed approach, MWI owners would be required to conduct analyses of the impacts of the proposed facility on ambient air quality, visibility, soils, and vegetation. A document presenting the results of the analyses would be prepared and submitted to the EPA and State and local officials. This document would also be made available to the public. The proposed siting requirements include provisions for a public meeting (chaired by EPA or a delegated enforcement agency) where comments on the proposed MWI siting analyses would be accepted. At least 30 days prior to the public meeting, the owner of the affected facility is required to announce the public meeting in newspapers of general circulation that serve the communities located within the area where the affected facility is to be located. The public meeting would be conducted in the county in which the affected facility is to be located and would be scheduled to occur 30 days or more after making the siting analyses available to the public. A comment/response document, summarizing and responding to the comments received at the public meeting, would then be prepared and would be made available to attendees of the public meeting, the State air pollution control board, and the EPA.

The siting requirements would apply to any MWI that commences construction after the date of promulgation of this rule. The siting requirements would not apply to existing or modified MWI's. The siting information required above would be submitted to EPA sufficiently in advance of the intent to commence construction of the facility. Construction would be allowed to commence only after approval by EPA and the appropriate State/local agency. The Agency invites comments regarding the proposed siting requirements, including suggestions of alternative approaches.

N. Inspection Requirements—Existing MWI's

The proposed emission guidelines include a requirement for an initial equipment inspection of the designated facility. The purpose of the equipment inspection is to ensure that the MWI is in good working order until emission control equipment is installed and compliance with emission limits is demonstrated. A poorly maintained MWI will likely have higher emissions than a well-maintained MWI.

These requirements would become effective 1 year after approval of the State plan. Installation of air pollution control equipment may take up to 3 years (as discussed elsewhere in today's notice). Until the time that the source demonstrates compliance with the emission limits, the facility would be required to perform the equipment inspection annually. The inspection service would have to be performed by an MWI service technician not employed by the owner or operator of the designated facility.

The minimum requirements for an inspection include:

1. Inspecting all burners, pilot assemblies, and pilot sensing devices for proper operation and cleaning as necessary;
2. Adjusting primary and secondary chamber combustion air;
3. Inspecting hinges and door latches;
4. Inspecting dampers, fans, and blowers for proper operation;
5. Inspecting door and door gaskets for proper sealing;
6. Inspecting motors for proper operation;
7. Inspecting primary chamber refractory lining and cleaning/repairing as necessary;
8. Inspecting incinerator shell for corrosion and/or hot spots;
9. Inspecting secondary/tertiary chamber and stack and cleaning as necessary;
10. Inspecting mechanical loader, if applicable;
11. Visually inspecting waste bed, as appropriate;
12. Test burning the incinerator with typical waste to make any necessary adjustments;
13. Inspecting air pollution control devices for proper operation, if applicable; and
14. Generally ensuring that the equipment is maintained in proper operating condition.

If any problems that affect emissions are uncovered during the inspection, the owner or operator of the designated facility would be required to take corrective action within 10 operating days. All records of any inspection services and any subsequent maintenance services would have to be maintained at the facility for a period of at least 5 years.

O. Compliance and Performance Test Methods and Monitoring Requirements

Section 129(c) of the Act requires the Administrator to promulgate regulations that include monitoring requirements as necessary to protect public health and the environment. The regulations must also include provisions for recordkeeping and reporting of such monitoring. This section discusses the proposed requirements to satisfy section 129(c).

As discussed in section VI, the requirements of the proposed standards and guidelines are based primarily on the use of dry scrubber systems to comply with the proposed emission limitations. As a result, the proposed testing and monitoring requirements discussed below are structured around the use of dry scrubber systems. To accommodate MWI's using an APCD other than a dry scrubber system, the proposed standards and guidelines include provisions for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance

with the emission limits. Petitions for alternative operating parameter monitoring would be approved on a case-by-case basis. This procedure could become an awkward and lengthy one. To the extent that wet scrubber systems could be used to comply with the proposed emission limitations, the Agency is soliciting information from wet scrubber vendors regarding the operation of wet scrubber systems. Specifically, the Agency solicits information on a set of operating parameters that could be included as a means of demonstrating continuous compliance with the emission limitations for PM, CDD/CDF, HCl, opacity, and metals, including information on how the proposed parameters to be monitored would be established. The EPA envisions the final standards and guidelines would be structured in such a way to provide specific operating parameter monitoring requirements for wet scrubber systems as well as for dry scrubber systems directly in the regulation. To accommodate MWI's using an APCD other than a dry scrubber system or a wet scrubber system, provisions would be included for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance with the emission limits.

The performance testing and monitoring requirements included in the proposed standards and guidelines would apply to all MWI's subject to the standards and guidelines. As stated in the part 60 general provisions (40 CFR 60.8), performance tests must, unless otherwise specified in the regulation, consist of three separate valid runs using the applicable test method, and the arithmetic mean of the three runs shall be used to determine compliance. All emission limits for MWI's are corrected to 7 percent oxygen (dry basis).

Testing and monitoring requirements are proposed to demonstrate compliance with the emission limits. The proposed standards and guidelines require that the owner or operator of an MWI conduct initial and annual performance tests to demonstrate compliance with the emission limits. Also, following the initial performance test, the owner or operator of each MWI is required to demonstrate continuous compliance with the emission limits.

1 Initial and Annual Performance Testing

To demonstrate initial compliance with the emission limits for each pollutant, all facilities must conduct an initial performance test. Except as noted below, the minimum sample time for each test run would be 4 hours. This minimum time is required to allow enough sample to be collected and to account for the heterogeneity of medical waste. The following test methods and procedures would be used to measure pollutant emissions.

Particulate Matter—The performance test for PM would be conducted in accordance with Method 5. Method 1 would be used to determine the number and location of sampling points. Method 3 or 3A would be used simultaneously with each Method 5 run for flue gas analysis.

Opacity—A CEMS would be used to measure opacity;

Carbon Monoxide—A CEMS would be used to measure CO emissions;

Dioxins/Furans—Method 23 would be used to measure dioxin/furan emissions;

Hydrogen Chloride—Method 26 would be used to measure HCl emissions;

Metals (lead, cadmium, and mercury)—The performance test to determine compliance with the emission limits for Pb, Cd, and Hg would be conducted in accordance with Method 29. Method 3 or 3A would be used simultaneously with each Method 5 run for flue gas analysis.

Fugitive emissions—Method 9 would be used to measure the opacity of fugitive emissions.

Following the initial performance tests for all pollutants, subsequent annual performance tests would be required to demonstrate compliance with the emission limits. The test methods and procedures used for the annual testing are identical to those proposed for the initial tests.

Under the proposed standards and guidelines, if three consecutive annual compliance tests indicate compliance with the emission limit for a pollutant, the owner of the MWI would be allowed to wait 3 years before retesting for that pollutant. If the next test conducted in the third year shows compliance with the emission limit for the pollutant, then the facility could again wait 3 years to test for that pollutant. If noncompliance with the emission limit for the pollutant occurs, corrective action would be required and the annual testing requirement would resume until 3 consecutive years of compliance with the emission limit is demonstrated. At a minimum, performance tests for all pollutants must be conducted once every 3 years (no more than 36 months following the date of the previous performance test). This provision is included to minimize costs while still retaining periodic testing to ensure compliance.

2. Methods to Demonstrate Continuous Compliance

Following the initial performance test, the owners or operators of MWI's are required to demonstrate continuous compliance with the emission limitations. Section 702(b) of the Clean Air Act Amendments of 1990 added section 114(a)(3) to the Act, which states:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this Act.

Section 114(a)(3) requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications must state whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emissions limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring requirements in these proposed standards and guidelines satisfy the requirements of enhanced monitoring, except as noted below.

The most direct means of ensuring compliance with the emission limits on a continuous basis is the use of a CEMS to measure emissions of each pollutant. However, a CEMS for specific pollutants is not always available because of technology constraints. Where a CEMS for specific pollutants is not available, the next best option is to use a CEMS to measure surrogate pollutants whose emission profiles closely parallel those of the pollutants of concern. Continuous emissions monitoring systems for surrogate pollutants are also not always available. Where a CEMS is not available for surrogate pollutants, the next best option is to monitor MWI and/or APCD operating parameters that affect emissions of the pollutants of concern

Where a CEMS is not available and a correlation has been demonstrated

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between MWI and/or APCD operating parameters and emissions, the proposed standards and guidelines include MWI and/or APCD operating parameters to be monitored. Maximum or, in some cases, minimum values for these parameters are established during the initial performance test to demonstrate compliance with the emission limits. Once these values are established, a facility operating outside of these values is considered to be in violation of the emission limits. The following paragraphs discuss methods available to demonstrate continuous compliance with emission limits for each pollutant.

a. *HCl, CO, Opacity.* Continuous emission monitoring systems measuring HCl, CO, and opacity are available to determine continuous compliance with the emission limits for these pollutants. Opacity and CO CEMS's are widely used. On the other hand, a CEMS for HCl is not widely used and has not been commercially proven to be economically and technically feasible for MWI's. Also, Federal performance specifications for a HCl CEMS have not been established to date. The EPA test data from facilities equipped with a dry scrubber system followed by a fabric filter show a direct relationship between HCl sorbent (lime) flow rate and HCl removal efficiency. A decrease in the sorbent flow rate results in a decrease in HCl removal efficiency and therefore higher HCl emissions. Also, for a given amount of chlorine content in the waste stream, the amount of waste charged to the incinerator could be directly related to the amount of HCl emitted. An increase in the amount of waste charged would result in higher HCl emissions. For facilities equipped with a dry scrubber followed by a fabric filter, the minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate would be established during the initial performance test for HCl and would be monitored to demonstrate continuous compliance with the emission limit for HCl.

While the proposed standards and guidelines do not require a CEMS for monitoring HCl emissions, the EPA specifically solicits further information on the availability, reliability, accuracy, status of development, and costs for continuous HCl monitors.

b. *Dioxins and Furans.* Currently CDD/CDF emissions cannot be measured using a CEMS. While CO is occasionally mentioned as a surrogate for CDD/CDF emissions, it is not a precise indicator of CDD/CDF emissions. However, good combustion conditions minimize CDD/CDF formation and lower CO emissions indicate that good combustion is occurring. Therefore, continuous compliance with the emission limit for CO based on the CO CEMS output would ensure good combustion conditions and minimized CDD/CDF formation.

As discussed elsewhere, the proposed standards and guidelines for CDD/CDF are based on add-on air pollution control, which reduces CDD/CDF emissions even more than good combustion. Air pollution control system operating parameters have been correlated with CDD/CDF emissions. For MWI's using a dry scrubber system followed by a fabric filter, the operating parameters correlated with CDD/CDF emissions are CDD/CDF sorbent flow rate and temperature measured at the inlet to the PM control device. The EPA test data on a DI/FF system with carbon injection show a direct relationship between carbon flow rate and CDD/CDF removal efficiency. A decrease in the sorbent flow rate results in a decrease in CDD/CDF removal efficiency and therefore higher CDD/CDF emissions. It has been shown that the optimum temperature window for fly ash catalyzed CDD/CDF formation is between 300° and 600°F. Available data indicate that cooling flue gases and operating the PM control device below the temperature window where formation may occur minimizes formation of CDD/CDF in the flue gas. A minimum value for the CDD/CDF sorbent flow rate and a maximum value for the temperature measured at the inlet to the PM control device would be established during the initial performance test for CDD/CDF and would be monitored to demonstrate continuous compliance with the emission limit for CDD/CDF.

c. *Mercury.* Mercury emissions cannot be measured using a CEMS. The EPA test data from facilities equipped with a dry scrubber followed by a fabric filter show a direct relationship between Hg sorbent (activated carbon) flow rate and Hg removal efficiency. A decrease in the sorbent flow rate results in a decrease in Hg removal efficiency and therefore higher Hg emissions. Also, depending on the presence of Hg in the waste stream, the amount of waste charged could be directly related to the amount of Hg emitted. An increase in the amount of waste charged could result in higher Hg emissions. For facilities equipped with a dry scrubber followed by a fabric filter, the minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate would be established during the initial performance test for Hg and monitored to demonstrate continuous compliance with the emission limit for Hg.

While the proposed standards and guidelines do not require a CEMS for monitoring Hg emissions, the EPA specifically solicits further information on the availability, reliability, accuracy, status of development, and costs for continuous Hg monitors. The EPA is requesting data that could be used to determine whether Hg monitors measure all Hg or just certain species of Hg and if only certain species of Hg are measured, how such a monitor could be used in determining compliance with the Hg emission limit.

d. *PM, Pb, and Cd.* Particulate matter Pb, and Cd emissions cannot currently be measured using a CEMS. The EPA has not, to date, identified surrogate pollutants or MWI/APCD operating parameters that could be monitored to measure compliance. The Agency is currently working to develop applicable MWI/APCD operating parameters for lead, cadmium, and PM that are sufficiently representative, accurate, precise, reliable, frequent, and timely to determine whether a deviation from the proposed emission limits has occurred, thus enabling owners and operators to certify whether compliance with the proposed emission limits is continuous or intermittent. The Agency will include operating parameters for the pollutants lead, cadmium, and PM in the final rule. Today the Agency is requesting comment on appropriate operating parameters for lead, cadmium, and PM that will satisfy the requirements of enhanced monitoring and also requests any associated supporting data.

e. SO_2 and NO_x. No monitoring requirements are proposed for SO_2 and NO_x because the emission limits are based on uncontrolled emission levels.

f. *Fugitive Emissions.* Continuous compliance with the emission limits for fugitive emissions would be demonstrated by conducting a performance test using Method 9 at least once per month when bottom ash is removed from the incinerator and when fly ash is removed from the add-on air pollution control device.

g. *Other Air Pollution Control Systems.* To accommodate MWI's using an APCD other than a dry scrubber followed by a fabric filter, provisions are included in the standards and guidelines for petitioning the Administrator to allow monitoring of alternative operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. The petition must include a discussion illustrating the relationship between the alternative operating parameters and emissions of CDD/CDF, Hg, HCl, and/or opacity. The petition must also describe by what means and how often the parameters would be monitored and must specify the recommended minimum/maximum values of the parameters that are not to be exceeded. Petitions for alternative operating parameter monitoring would be approved on a case-by-case basis.

3. Continuous Compliance Requirements

To demonstrate continuous compliance following the initial performance test, facilities are required to:

a. Demonstrate compliance with the CO emission limit based on the output from the CO CEMS;

b. Demonstrate compliance with the opacity emission limit based on the output from the opacity CEMS; and

c. Demonstrate compliance with the fugitive emission limit by conducting a performance test using Method 9 at least once per calendar month when ash is removed from the incinerator and when ash is removed from the APCD.

In addition, facilities equipped with a dry scrubber followed by a fabric filter are required to:

d. Demonstrate compliance with the Hg emission limit by continuously monitoring the Hg sorbent flow rate, the charge weight, and the hourly charge rate. The minimum Hg sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to determine compliance with the Hg emission limit. Operation of the MWI below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the Hg emission limit.

e. Demonstrate compliance with the CDD/CDF emission limit by continuously monitoring the CDD/CDF sorbent flow rate and the temperature measured at the inlet to the PM control device. The minimum CDD/CDF sorbent flow rate and the maximum PM control device inlet temperature are to be established during the initial performance test to determine compliance with the CDD/CDF emission limit. Operation of the MWI below the minimum sorbent flow rate or above the maximum PM control device inlet temperature would constitute a violation of the CDD/CDF emission limit.

f. Demonstrate compliance with the HCl emission limit by continuously monitoring the HCl sorbent flow rate and continuously measuring the weight and time of each load of waste charged to the incinerator. The minimum HCl sorbent flow rate, the maximum charge weight, and the maximum hourly charge rate are to be established during the initial performance test to demonstrate compliance with the emission limit for HCl. Operation of the MWI below the minimum sorbent flow rate, or above the maximum charge weight or maximum hourly charge rate would constitute a violation of the HCl emission limit.

The proposed standards and guidelines require the owner or operator of an MWI using a control device other than a dry scrubber followed by a fabric filter to petition the Administrator for other site-specific operating parameters to demonstrate continuous compliance with the emission limits for CDD/CDF, Hg, HCl, and/or opacity. These parameters would be established during the initial performance test for these pollutants and would be continuously monitored to demonstrate compliance with the emission limits.

P. Reporting and Recordkeeping—New MWI's

The proposed standards would require owners of affected facilities to submit notifications concerning construction and initial startup of the affected facility. The information to be submitted includes: (1) a statement of intent to construct along with the date of commencement of construction, (2) the anticipated date of startup, (3) a statement of the type of waste to be burned, (4) the letter from the State air pollution agency approving the construction and operation of the affected facility, and (5) all documentation produced as a result of the siting requirements.

The proposed standards also require that the owner or operator of an affected facility maintain the following information for a period of at least 5 years: (1) the results of the initial, annual, and any subsequent performance tests; (2) data demonstrating continuous monitoring of site-specific operating parameters; (3) CEMS output data; and (4) results of CEMS quality assurance determinations.

Additional records must be kept on file for the life of the facility. These records include: (1) all documentation produced as a result of the siting requirements, (2) the letter from the State air pollution agency approving the construction and operation of the affected facility, (3) records showing the names of the persons who have completed the requirements for MWI operator training and dates of training (along with documentation of the training program completed), (4) records showing the names of those who have completed review of the site-specific MWI operating manual and dates of review, and (5) records showing the names of the qualified MWI operators and dates of qualification.

The proposed standards require that certain documentation be submitted to the Administrator. Owners or operators are required to submit the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the affected facility is required to submit a letter stating so. All reports submitted to comply with the requirements of the proposed standards must be signed by the facilities manager—the individual responsible for purchasing, maintaining, and, in many cases, operating the MWI. This individual is likely to have different titles at different facilities, for example, director of facilities or vice president of support services.

The reporting and recordkeeping requirements in the proposed standards are necessary to inform enforcement personnel of the compliance status of new MWI's. In addition, they would provide the data and information necessary to ensure continued compliance of these MWI's with the proposed standards. At the same time, these requirements would not impose an unreasonable burden on MWI owners or operators.

Q. Reporting and Recordkeeping—Existing MWI's

The proposed emission guidelines would require owners or operators of MWI's to maintain the following information for a period of at least 5 years: (1) the results of the initial and annual performance tests, (2) data demonstrating continuous monitoring of site-specific operating parameters, (3) CEMS output data, (4) results of CEMS quality assurance determinations, and (5) results of the initial and annual inspections.

Additional records must be kept on file for the life of the facility. These records include: (1) records showing the names of the persons who have completed the requirements for MWI operator training and dates of training (along with documentation that the training program was completed), (2) records showing the names of those who have completed review of the site-specific MWI operating manual and dates of review, and (3) records showing

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the names of the qualified MWI operators and dates of qualification.

Under the proposed emission guidelines owners or operators are required to submit the results of the initial maintenance inspection and any subsequent inspections completed prior to demonstrating initial compliance with the emission limits. This documentation must include a discussion of any repairs performed in response to the inspection and when the repairs occurred. Additionally, MWI owners or operators are required to submit to the Administrator the results of the initial performance test and all subsequent performance tests. Also, reports on emission rates or operating parameters that have not been obtained or that exceed applicable limits must be submitted within 30 days after the end of the quarter of occurrence. If no exceedances occur during a quarter, the owner of the designated facility is required to submit a letter stating so. All reports submitted to comply with the requirements of the emission guidelines must be signed by the facilities manager—the individual responsible for purchasing, maintaining, and, in many cases, operating the MWI. This individual is likely to have different titles at different facilities, for example, director of facilities or vice president of support services.

The reporting and recordkeeping requirements in the proposed guidelines are necessary to inform enforcement personnel of the compliance status of existing MWI's. In addition, they would provide the data and information necessary to ensure continued compliance of these MWI's with the proposed guidelines. At the same time, these requirements would not impose an unreasonable burden on MWI owners or operators.

B. Compliance Times

1. New MWI's

As stated in section 129, the effective date of standards for new MWI's is to be the date 6 months after promulgation of the standards. Consequently, while any MWI for which construction is commenced after today's date will be subject to the standards, they will not be subject to the standards until the effective date of the standards.

2. Existing MWI's

Under section 129, States are required to submit to the Administrator a plan implementing the emission guidelines within 1 year after promulgation of the guidelines. Section 129 also requires that a State plan shall provide that each unit subject to the guidelines shall be in compliance with all requirements of the proposed guidelines within 3 years after the State plan is approved by the EPA but in no case later than 5 years after promulgation of the emission guidelines. The compliance schedule in today's proposal would supersede and is more comprehensive than the compliance schedule specified in section 129.

The proposal requires that a State plan shall provide that each source subject to the emission guidelines shall be in compliance with all requirements of the guidelines within 1 year after EPA approval of the State plan. The proposal allows two exceptions to this compliance schedule. First, State plans may allow facilities that are planning to install the necessary air pollution control equipment up to three years after EPA approval of the State plan (but not later than 5 years after promulgation of the guidelines) to comply if the State plan specifies that the facility submit measurable and legally enforceable incremental steps of progress towards compliance. Suggested incremental steps of progress to be included in the State plans are specified in the emission guidelines.

Second, State plans may include provisions allowing designated facilities to petition the State for extensions for compliance. Under the proposed emission guidelines, State plans that include such provisions must require that the designated facility requesting an extension submit information to assist the State in deciding whether to grant or deny the extension. The schedule for submittal of this information must allow the State sufficient time to grant or deny the extension within one year after EPA approval of the State plan.

This information must include documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to 3 years after EPA approval of the State plan is sufficient time to comply with the State plan while one year after EPA approval of the State plan is not sufficient time to comply. The documentation must also include an evaluation of the option to send the waste offsite to a commercial medical waste treatment and disposal facility, either in the interim, while the facility is taking steps towards achieving compliance, or on a permanent basis.

State plans that allow extensions must also include procedures for granting or denying an extension. Under the proposed guidelines, if an extension is granted, compliance shall be required within 3 years after EPA approval of the State plan, but not later than 5 years after the date of promulgation of the emission guidelines.

While the EPA expects that States will grant extensions for facilities planning to install the necessary air pollution control equipment, the Agency does not expect many extensions will be granted for facilities planning to switch to an alternative method of treatment and disposal. Alternatives to onsite incineration include either offsite contract treatment and disposal or onsite alternative treatment technologies, such as autoclaves

It is expected that facilities choosing to switch to an alternative could do so within the 1 year following EPA approval of the State plan. The commercial waste disposal industry has indicated that sufficient excess capacity currently exists to handle the amount of waste that would no longer be treated onsite and that commercial facilities are located such that most areas could be served by this excess capacity. Also, they have indicated that short term contracts are available.

As a result, if a facility chooses to install an alternative onsite treatment technology and the installation takes longer than the time allowed for compliance, offsite contract disposal could be used as a temporary means of compliance while the alternative technology is installed and made operational. The provision for extensions is included only to address cases where absolutely no other options are available and is not intended to allow up to three years for any facility that requests an extension

Regardless of the status of the State plans, all designated facilities must be in compliance within 5 years after promulgation of the emission guidelines. To ensure that each designated facility is in compliance with the provisions of the emission guidelines within 5 years, the EPA will develop, implement, and enforce a plan for any State that has not submitted an approvable plan within 2 years after promulgation of the emission guidelines.

The proposed emission guidelines also require that, for approval, a State plan provide that each designated facility must be in compliance with the operator training and qualification requirements and the inspection requirements within 1 year after EPA approval of the State plan. The rationale for not granting extensions for these requirements is presented in sections V.L and V.N

S. Permit Requirements

Section 129 of the Act requires MWI's subject to the standards and guidelines

to be operated pursuant to a permit issued under the EPA-approved State operating permit program. In accordance with section 129, under the proposed standards and guidelines, a permit would be required on the date 36 months after the date of promulgation, or on the effective date of an EPA-approved operating permit program in the State in which the facility is located, whichever date is later. The operating permit programs are developed under Title V of the Act and the implementing regulations under 40 CFR part 70.

VI. Request for Comment

This section is included in this notice to request public comment on certain issues raised during the development of these proposed standards and guidelines. As mentioned at the beginning of this notice, the EPA seeks full public participation in arriving at its final decisions and strongly encourages comments on all aspects of this proposal from all interested parties.

A. Procedure To Determine MACT

Section 129 of the Act establishes specific criteria that must be analyzed in developing standards and guidelines for solid waste combustion units. In general, this involves: (1) determining appropriate subcategories within a source category; (2) determining the MACT "floor" for each subcategory; (3) assessing available air pollution control technology with regard to achievable emission limitations and costs; and (4) examining the cost, nonair-quality health and environmental impacts, and energy requirements associated with standards and guidelines more stringent than the MACT floor. The details of how this process was applied to the MWI source category are described in section V.

In the process of developing the proposed standards and guidelines, the EPA met with representatives from environmental groups, States, MWI and air pollution control equipment vendors, commercial waste disposal companies, and trade associations that represent owners or operators of MWI's to discuss the proposed standards and guidelines. During these discussions, various groups have called into question some of the conclusions reached in developing the proposed standards and guidelines.

Specifically, questions were raised about: (1) appropriate methods for subcategorizing the source category, (2) information and assumptions used in determining the MACT floor, (3) conclusions drawn regarding the performance of air pollution control technology, and (4) decisions made regarding MACT for MWI's. This section describes the regulatory development process in general terms and requests public comments on the information used and assumptions made in drawing conclusions. Following proposal, a reassessment of the four criteria listed above will be made that may result in the establishment of standards and guidelines that are different from this proposal.

1. Subcategorization

Section 129 of the Act enables EPA to distinguish among classes, types, and sizes within categories of new and existing sources in establishing standards and guidelines. The Agency has determined that subcategorizing the source category by type of unit is appropriate because of distinct technical differences among three types of MWI's. Therefore, three subcategories based on MWI type have been identified for the purpose of regulating MWI's: batch, intermittent, and continuous. While these subcategories were selected because of technical differences between the three types of units, as described in section V.G, they also generally follow differences in size within the source category. Typically, continuous units are large capacity MWI's and batch units are small capacity MWI's. Intermittent units tend to fall between the continuous and batch units in size. The EPA specifically solicits comment on its determination to distinguish between continuous, intermittent, and batch units.

It has been suggested that subcategories could have been identified according to size or capacity: small capacity, medium capacity, and large capacity, or that EPA might establish a subcategory of small intermittent and/or small batch MWI's in addition to establishing subcategories on the basis of continuous, intermittent, and batch units. Such a distinction by size, or tiering, is currently used by many State air pollution control agencies. Current State regulations, therefore, may provide a basis for subcategorization by size in establishing the standards and guidelines. The Agency is considering subcategorization by size and specifically solicits comment on the basis for subcategorization by size.

The EPA recognizes that there may be a relatively large number of very small incinerators within the categories of batch and intermittent. If so, further subcategorizing batch and intermittent incinerators by size or capacity could provide an alternative for consideration which might significantly reduce the cost of today's proposed standards and guidelines. If the MACT floor is less stringent for small intermittent and or small batch MWI's, the EPA could consider less stringent requirements for these incinerators. Also, if these incinerators contribute little to total national medical waste incineration capacity, adoption of less stringent requirements for them could result in little loss in the environmental benefits associated with today's proposal. This alternative, therefore, could have substantial merit and the EPA requests comment on such an approach.

To fully consider subcategorization by size, however, a mechanism must be available to accurately and consistently determine the capacity of an MWI. Only if such a mechanism exists, will enforcement personnel, as well as owners and operators of MWI's, be assured that MWI's are subject to a consistent set of requirements.

The EPA believes this may be a serious problem. It appears there is no common or widely used mechanism or "standard" within the MWI industry for sizing or determining the capacity of an incinerator to burn medical waste. As a result, it seems that one vendor's 50 pound per hour capacity incinerator can be another vendor's 100 pound per hour capacity incinerator. It also appears the same vendor may sell one customer a 50 pound per hour capacity MWI and then sell another customer the same incinerator as a 100 pound per hour MWI. The EPA believes that a manufacturer's or vendor's "nameplate capacity" is not an accurate and reliable means for determining the size or capacity of an MWI.

The EPA recognizes that the composition of medical waste changes across generators, over time, and in response to changes in waste handling or recycling practices in a way that may affect the amount of medical waste a specific incinerator is able to burn. For the purposes of enforcing regulations that may vary by size or capacity, a common mechanism or "standard" to measure or determine the capacity of MWI's is necessary.

Consequently, EPA specifically requests comments on a mechanism or "standard" for accurately and consistently determining the capacity of MWI's in the enforcement of whatever regulation might be adopted. For example, the comments might outline the mechanisms or approaches used by States to ensure all MWI's of the same capacity are subject to the same requirements. Or, the comments may offer alternative measures of capacity that serve as a better basis for identifying small intermittent and/or small batch MWI's. Finally, the

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manufacturers may choose to develop a voluntary approach providing a consistent measure of rated capacity.

It has also been suggested that subcategories could be identified according to the geographic location of the MWI. Facilities located in isolated, rural areas may be different than facilities located in urban areas based on their economic environment. For example, alternatives to onsite incineration (e.g., commercial medical waste treatment services) may be more limited and/or more expensive in isolated locations. The Agency specifically solicits comment on the advantages and disadvantages of subcategorizing by geographic location.

2. MACT Floor

The MACT floor refers to the minimum level of control required by the Act. For new units, the standards must not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit. The MACT floors for the proposed standards were determined by evaluating the performance of control technologies and identifying MWI's that currently use what is considered to be the best control technology for each pollutant within each subcategory, as described in section V.I. Comments are requested on the Agency's conclusions regarding the MACT floors for new MWI's in each subcategory.

For existing units, the guidelines must not be less stringent than the average emission limitation achieved by the best performing 12 percent of units. The MACT floors for the proposed guidelines were determined by examining emission limitations found in air quality permits and State regulations, as described in section V.J. Because of widely varying formats used from State to State to regulate MWI's, many assumptions are necessary to standardize the regulations to a common basis. As a result, State regulations are subject to different interpretations depending on the assumptions made in standardizing them for comparison. Comments are requested on the basis for the Agency's conclusions on the MACT floors for existing MWI's in each subcategory.

Subcategorization based on size rather than, or in addition to, MWI type (as discussed above) could result in different MACT floors. For example, the MACT floor level for particulate matter emissions for a subcategory including small intermittent and/or small batch MWI's may be much less stringent than the 69 mg/dscm MACT floor identified above for intermittent and batch MWI's. If the MACT floors are found to be significantly different than those under today's proposal, the Agency will determine if MACT levels more stringent than the MACT floors are achievable considering cost, any nonair quality health and environmental impacts, and energy requirements. The MACT floors will be reassessed following proposal.

3. Performance of Technology

While the standards and guidelines are required to reflect MACT, the Agency establishes emission limitations, rather than equipment specifications, to encourage competition and further the development of technology. Individual facilities have the flexibility of selecting the method of control used to comply with the established pollutant emission limitations. The benefits of this approach include increased competition among vendors of control devices, further development and refinement of control technologies, and lower costs, as competing control device vendors strive to meet or exceed the required performance levels at lower costs than their competitors. Competition among vendors of air pollution control equipment will ensure that the benefits of emission reduction are realized at the lowest possible costs to MWI users and to society.

In developing the proposed standards and guidelines, the EPA concluded that dry scrubbers are the only technology capable of achieving the MACT floor levels. Consequently, the proposed emission limitations have been established at levels reflecting dry scrubber performance. Once again, this does not mean that MWI's are required to use dry scrubbers. Any technology that can achieve the emission limitations may be used. On the other hand, the EPA conclusion about the performance capabilities of wet scrubbers is based on emissions data from only one MWI facility using a wet scrubber system. Vendors of wet scrubber systems believe that the wet scrubber tested by EPA is not reflective of current wet scrubber technology. They believe that current wet scrubber technologies are not only capable of achieving the MACT floor levels, but may also be capable of achieving the proposed emission limitations for all pollutants. As a result, while the preamble assumes the use of a dry scrubber system to comply with the proposed emission limits, it appears that high efficiency wet scrubber systems as well as dry scrubber systems may be capable of achieving the proposed emission limits.

In addition, vendors of wet scrubber systems believe that wet scrubber systems are able to achieve the proposed emission limitations at about half the estimated total annual costs of dry scrubber systems. Wet scrubber vendors also claim that wet scrubber systems currently not capable of complying with the proposed emission limitations could be retrofitted to do so at a reasonable cost. Users of MWI's that have already installed less efficient wet scrubber systems to comply with State and/or local regulations may be able to upgrade their existing wet scrubber system to comply with the proposed emission limits. The Agency is interested in this alternative in part because a number of facilities have installed wet scrubber controls in recent years in an effort to meet State standards. If the alternative is not available, these facilities may have to remove their wet scrubbers and replace them with more expensive dry scrubbers. The Agency is interested in data on the number of facilities that have installed wet scrubbers and the likely cost of replacing the wet scrubbers with dry scrubber technology.

While upgrading an existing wet scrubber system may result in lower total annual costs than installing a new dry scrubber system, most facilities may still find that alternative disposal options, such as offsite contract disposal or onsite autoclaving, are less expensive. Consequently, the EPA believes that the use of wet scrubber systems to comply with the proposed standards and guidelines will have essentially the same impact on shifts away from onsite incineration as the use of dry scrubber systems. In fact, the use of any add-on control system will increase the costs of onsite incineration such that alternatives to onsite incineration become more economical.

Because the issue of wet scrubber performance is important to MWI users, EPA specifically solicits further information on wet scrubber systems. The EPA is requesting emissions data that could be used to evaluate the performance of wet scrubber systems and to determine the capability of these systems in achieving the MACT floor levels and/or the proposed emission limitations. Sufficient data are available on emissions of CO, opacity, NO_x, SO_2, and HCl for use in developing the proposed standards and guidelines. The Agency specifically solicits data on PM, Pb, Cd, Hg, and CDD/CDF emissions.

If new data on wet scrubber performance shows that wet scrubbers are capable of achieving the MACT floor levels, then EPA would have to review the decision to base the emission limitations on dry scrubbers by examining the additional costs and emission reductions achieved by dry scrubbers relative to wet scrubbers. In this case, the EPA may conclude that the additional costs associated with dry scrubber limits are unreasonable relative to the emission reductions achieved. On the other hand, if new data on wet scrubber performance shows that wet scrubbers are capable of achieving the proposed emission limitations, then it is likely that the emission limitations will remain unchanged. In this case, the emission limitations would reflect the use of either wet scrubbers or dry scrubbers.

The performance of air pollution control equipment can best be established when both APCD inlet and APCD outlet concentration data are measured and compared. Several pollutants are waste related. The EPA test program identified significant variations in the uncontrolled concentrations of these pollutants from source to source, which could be a result of differences in the types and amounts of various materials included in the waste stream. Therefore, the Agency solicits APCD inlet concentration data, to the extent available, wherever outlet concentration data are provided.

Additionally, the Agency solicits comments on the technical feasibility of injecting activated carbon into wet scrubber systems to control CDD/CDF and Hg emissions. Specifically, the Agency is requesting information on whether carbon injection is necessary to reduce CDD/CDF and Hg using wet scrubbers and if so, what problems are associated with the injection of carbon into a wet system or what other means of using the carbon adsorption mechanism are available to reduce emissions of these pollutants. If carbon injection is not necessary to reduce emissions of CDD/CDF and Hg, the EPA is soliciting information on what wet scrubber mechanisms reduce emissions of CDD/CDF and Hg. The EPA specifically requests that, if available, Hg emissions data be broken down by various species emitted (e.g., Hg chloride versus elemental Hg).

In addition to performance data, the EPA is requesting information on the costs associated with the installation of new higher efficiency wet scrubber systems and with the retrofit of existing wet scrubber systems to achieve the same performance capabilities of the higher efficiency wet scrubber systems. The Agency also solicits information on the performance and cost of dry scrubber systems, as well as information on whether there are technical limitations associated with the application of air pollution control systems to various sizes and types of MWI's.

There is some concern about the impacts on other media from the use of wet scrubber systems—specifically, the fate of metals transferred from the stack gas to the scrubber water with subsequent disposal to a sewer system. Wastewater pretreatment may be necessary to remove these metals. As a result, the Agency is soliciting information on pretreatment techniques that are, or could be, used to remove metals from the scrubber effluent prior to discharge to a sewer system and on the costs associated with these techniques. The additional costs of scrubber effluent pretreatment may increase the total annual costs associated with wet scrubber systems to a level that is more comparable to the use of a dry scrubber system. Because the Act directs the Agency to consider all media in developing regulations, the final standards and guidelines may include requirements that address the pretreatment of MWI wastewater to ensure that water quality is not compromised.

4. Determining MACT for MWI's

While section 129 of the Act requires that the standards and guidelines be no *less* stringent than the MACT floor, it does provide EPA with the authority to establish emission limitations that are *more* restrictive than the MACT floor. In deciding whether the standards and guidelines should be more restrictive than the MACT floor, section 129 requires the Administrator to consider the cost, any nonair quality health and environmental impacts, and energy requirements associated with the more restrictive standards and guidelines.

As described in section V of this notice, EPA has concluded that dry scrubbers are the only technology available to meet the MACT floor. Furthermore, dry scrubbers achieve substantially lower emissions than the MACT floor for little, if any, additional cost. Consequently, EPA was faced with two options: (1) propose more restrictive emission limitations that reflect the performance of the technology needed to meet the MACT floor (i.e., scrubber limits); or (2) propose less restrictive emission limitations that reflect the MACT floor (i.e., floor limits). On one hand, there is essentially no cost associated with the scrubber limits relative to the floor limits because the dry scrubber would be installed to meet the floor limits. On the other hand, the installation of a dry scrubber will result in the lower emissions associated with a dry scrubber. Therefore, it can be argued that there is also no environmental benefit associated with the more restrictive emission limits.

The EPA specifically requests comment on the advantages and disadvantages of MACT floor-based emission limits versus dry scrubber-based emission limits. The Agency has chosen the more restrictive dry scrubber-based emission limits for the following reasons. First, as discussed above, the EPA believes that a dry scrubber is the only technology capable of meeting the MACT floor. In addition, activated carbon can be injected into a dry scrubber to further reduce dioxin and Hg emissions for a relatively small cost. Other technologies have not been identified that are able to incorporate carbon injection for dioxin and Hg removal. Incineration of medical waste has been identified as the largest known source of dioxin and Hg emissions. The additional reduction of dioxin and Hg emissions achieved by the injection of activated carbon is discussed earlier in this preamble. The EPA believes that the benefits of activated carbon injection outweigh the costs.

Secondly, by setting emission limitations rather than control equipment specifications, EPA encourages and promotes the development of new emission control technologies that can meet the emission limits at lower costs. If the Agency proposes the MACT floor emission limits, it will promote new technologies that are only capable of meeting the floor. In this case, the use of new technologies capable of meeting the MACT floor may result in higher emissions than current technologies (i.e., dry scrubbers). The Agency believes that new technologies should be promoted and encouraged, but that the dry scrubber based emission limits are the more appropriate target for these new technologies. Therefore, today's proposal has set dry scrubber emission limits as the target for new technologies. The Agency specifically requests comment on the appropriate target emission limits for developing technologies.

As noted above, however, vendors of wet scrubbers believe that current wet scrubber technologies are not only capable of achieving the MACT floor levels, but may also be capable of achieving more stringent control levels. If EPA receives additional data that confirms this level of performance, then EPA would have to review the decision to base the emission limits on dry scrubbers. Thus, EPA would consider the potential incremental emission reductions and the potential gains from technology development with the

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differential retrofit costs of these two alternative control technologies.

In addition, as noted above, EPA is considering further subcategorization by size. If EPA decides to establish a subcategory of "very small MWI's" in the final rule, it is possible that one or more additional control approaches (in addition to fabric filters) would be able to achieve (or exceed) the MACT floor levels for this subcategory. The Agency would then undertake a careful review of the alternative control approaches available for this category of "very small MWI's" by considering the incremental emission reductions of the more stringent control options with the differences in retrofit cost across alternatives.

The Agency requests comment on the appropriate emission limits under these alternative options.

B. Alternatives to Onsite Incineration

As discussed in sections III and IV of this notice, in evaluating costs associated with MACT for each MWI, it was determined that many facilities would have the option of using an alternative method of treatment and disposal that would be less expensive than onsite incineration under the proposed standards and guidelines. The most common alternatives to onsite incineration are offsite contract disposal (most commonly commercial medical waste incineration) and onsite autoclaving. While data are available to estimate costs for these two alternatives and to estimate emissions from commercial medical waste incineration, data are not available to quantify emissions or energy requirements from onsite autoclaving of medical waste. The EPA solicits emissions data, energy use data, and cost information on the use of autoclaves and other nonincineration methods to treat and dispose of medical waste.

Several concerns related to the use of alternatives to onsite incineration have been raised. One concern is the ability of alternative technology manufacturers to meet the increased demand for installations. Also, questions have been raised about the general stability in the alternative technology marketplace. Specifically, questions have been raised about whether vendors of alternative technologies will be able to service the equipment that has been installed over the life of that equipment. To respond to these concerns, the EPA solicits information on the number of companies that currently manufacture alternatives to onsite incineration, the number of U.S. installations, the number of installations the individual companies are capable of on an annual basis, and the number of years the individual companies have been in business.

Concerns about environmental impacts associated with the use of these alternatives have also been raised. Specifically, questions have been raised about air and water pollution impacts. As discussed earlier, data are not available to quantify air emissions from the use of alternative technologies. Data are also not available to quantify other environmental impacts resulting from the use of alternatives. In addition to air emissions data (requested earlier), the EPA solicits data related to other media impacts, including water pollution impacts, resulting from the use of alternative technologies.

C. Definition of Medical Waste

As discussed above, the definition of medical waste included in today's proposed regulations is very broad. Medical waste is any solid waste generated in the treatment, diagnosis, or immunization of humans or animals, or research pertaining thereto, or in the production or testing of biologicals.

Section 129 of the Clean Air Act directs the EPA to adopt regulations for solid waste incineration units burning medical waste. This section also states that "* * * "solid waste" and "medical waste" shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act."

The Solid Waste Disposal Act was amended extensively and, for all practical purposes replaced, by the Resource Conservation and Recovery Act (RCRA) in 1976. The RCRA, in turn, was amended in 1984 and, as it pertains to medical waste, was amended again in 1988 by the Medical Waste Tracking Act (MWTA). The MWTA included a definition of medical waste, which was added to the RCRA. In implementing the amendments to the RCRA, this statutory definition of medical waste was adopted by the Administrator. The definition of medical waste included in today's proposal, therefore, is in EPA's opinion the definition of this term established by the Administrator pursuant to the Solid Waste Disposal Act.

As mentioned above, some have suggested the definition of medical waste included in today's proposal is inappropriate and the EPA requests comment on this definition. It appears the basis for this suggestion stems from the following concern. If the impact of today's regulation is as widespread as the EPA believes, in terms of the large number of medical waste generators who may decide to switch from the use of onsite incineration to the use of alternative waste disposal techniques, there may not be enough medical waste disposal capacity currently available to safely and properly dispose of this medical waste.

To reduce the amount of medical waste covered by today's proposed regulations, some have suggested that the EPA narrow the definition of medical waste. Various definitions have been offered, such as "regulated medical waste" (a term used by the EPA in implementing the MWTA amendments to the RCRA), "red bag medical waste" "infectious medical waste", etc. These wastes are included under the broad definition of medical waste, but are generally viewed as constituting only about 15 to 20 percent of the total quantity of medical waste. If today's proposal covered only these types of medical wastes, as opposed to all types of medical wastes, the amount of medical waste which might be displaced from onsite incineration at medical waste generators to alternative waste disposal techniques would be much less and, as a result, more easily handled by these alternative techniques.

It appears to the EPA, however, that there are several reasons to believe there is or would be sufficient capacity available to safely and properly treat and dispose of all the medical waste that might be displaced from onsite incineration at medical waste generators as a result of today's proposed regulations. Since this issue concerns medical waste presently being treated by onsite medical waste incinerators at medical waste generators, it concerns existing incinerators, not new incinerators. Thus, the focus of this issue is today's proposed emission guidelines, not the proposed new source performance standards.

Today's proposed emission guidelines provide time for medical waste generators currently using onsite medical waste incinerators to consider alternatives for treating and disposing of their medical waste. The guidelines will not be adopted by the EPA for at least 1 year (the EPA is under Court Order to adopt final regulations by April 15, 1996). States are provided 1 year by the Clean Air Act to adopt plans for implementing the guidelines and to submit these plans to the EPA for approval. The Act then provides EPA 180 days to review and approve these State plans. Finally, today's proposed guidelines provide 1 year following EPA approval of the State plan for existing medical waste incinerators to comply with the proposed emission limits.

Medical waste generators currently operating onsite incinerators, therefore, have about 3½ years from today's date to consider how to treat and dispose of their medical waste in the future. In addition, today's proposed emission guidelines include provisions to permit an extension of up to 3 years following EPA approval of the state plan for individual medical waste generators currently operating medical waste incinerators to comply with the proposed emission limits. Consequently, where circumstances dictate the need for additional time, medical waste generators currently operating medical waste incinerators could have up to 5½ years from today's date to consider how to treat and dispose of their medical waste.

Turning to the alternatives, the EPA believes medical waste generators currently operating medical waste incinerators have three choices to consider. These are: (1) continued operation of their onsite incinerator and compliance with the proposed emission limits; (2) installation of an alternative medical waste treatment technology onsite, such as autoclaving, microwaving, macrowaving, chemical treatment, etc.; or (3) contracting with a commercial medical waste disposal service for offsite treatment and disposal of medical waste.

As discussed above, the EPA believes many medical waste generators currently operating onsite medical waste incinerators will select the second or third choice in response to today's proposed emission guidelines. With regard to the second choice, installation of an alternative medical waste treatment technology onsite, several manufacturers and vendors of autoclave, microwave, macrowave, and chemical treatment systems have indicated informally that 3½ to 5½ years is more than enough time to purchase and install one of these alternative treatment systems. In fact, some manufacturers and vendors have indicated informally that they could supply their equipment within months for installation.

These informal comments have led the EPA to conclude that today's proposed emission guidelines provide ample time for medical waste generators currently operating onsite medical waste incinerators, who may select the second choice, to purchase and install the appropriate equipment. The EPA, however, specifically requests manufacturers and vendors of these alternative treatment systems to comment formally on the time necessary for a medical waste generator to obtain the necessary permits to install and operate their systems, the time necessary to obtain and install their systems, and their ability to respond to increased orders for their systems over the next 3 to 6 years, as a result of today's proposal.

Based on a survey of current practices regarding landfill disposal of medical waste, the EPA believes that medical waste may be disposed of in most landfills provided it has been properly treated to destroy infectious agents and is not recognizable as medical waste. It appears the first criteria is met through the use of these alternative treatment systems. The second criteria is met by grinding and/or shredding the waste, which is common practice where these alternative treatment systems are in operation today. If this belief is correct, it would seem clear that there is more than enough landfill capacity available in the United States for disposal of medical waste treated by these alternative waste treatment disposal systems.

With regard to the third choice, contracting with a commercial medical waste disposal service, representatives and operators of these services have indicated informally that their industry is currently operating at very low capacity. They have indicated informally that the industry currently treats and disposes of about 20 percent of the medical waste generated in the United States and that the industry has the capacity today to treat and dispose of possibly as much as 40 percent of the medical waste generated. Finally, given the time frame of 3½ to 5½ years provided in the proposed emission guidelines for medical waste generators currently operating medical waste incinerators to decide how to dispose of their medical waste in the future, the commercial medical waste disposal industry has indicated informally that sufficient additional capacity could be permitted, constructed, and brought on line by the industry to service all those medical waste generators who may select this third choice.

It appears, therefore, the commercial medical waste disposal industry has a great deal of capacity today and could add substantial capacity in the near future to meet any increase in the need for their services which may result. The EPA, however, specifically requests that the representatives and operators of commercial medical waste disposal services comment formally on the capacity within their industry today to dispose of medical waste, the current utilization of this capacity, and their ability to permit, construct, and bring on line major additions to this capacity in the next 3 to 6 years.

Finally, while not related to questions of the capacity of alternatives to treat and dispose of medical waste displaced by medical waste generators which currently use onsite medical waste incinerators, there are other reasons EPA believes all medical waste should be covered by today's proposed regulations. The suggestions to narrow the applicability of today's proposal would basically narrow the proposal to cover "red bag" medical wastes. Testing during the EPA test program to examine differences in emissions between red-bag medical waste and general medical waste showed no significant difference in emissions of air pollutants, such as hydrogen chloride (HCl), dioxins, lead, mercury, etc.

The EPA believes, therefore, that there is no significant difference between red-bag medical waste and general medical waste in emissions of those air pollutants which section 129 of the Clean Air Act directs the EPA to regulate. In addition, there appears to be no significant difference in the applicability, performance, or cost of various technologies to reduce these emissions from medical waste incinerators burning red-bag medical waste or general medical waste. There is, therefore, no compelling reason EPA sees for narrowing the definition of medical waste included in today's proposed regulations.

VII. Administrative Requirements

A. Public Hearing

The EPA will hold at least one public hearing to provide interested parties an opportunity for oral presentation of data, views, or arguments concerning the proposal. Additional hearings may also be held. A **Federal Register** document will be published within the next 2 weeks to announce the details of the heading(s). At the public hearing(s) the proposed standards and guidelines will be discussed in accordance with section 307(d)(5). Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Air and Radiation Docket and Information Center at the address given in the *ADDRESSES* section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information

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submitted to or otherwise considered in the development of the proposed standards and guidelines. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review material [section 307(d)(7)(A)]). The docket number for this rulemaking is A–91–61

C Clean Air Act Procedural Requirements

1 Administrator Listing—Section 111, Section 129 of the Act

Section 129 of the Act calls for the Administrator to promulgate standards for new MWI's and guidelines for existing MWI's pursuant to section 111 and 129

2 Periodic Review—Section 111 and Section 129 of the Act

Section 111 and section 129 of the Act require that the standards and guidelines be reviewed not later than 5 years following the initial promulgation. At that time and at 5-year intervals thereafter, the Administrator is to review the standards and guidelines and make revisions if necessary. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3 External Participation—Section 117 of the Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposal, including economic and technological issues

4 Economic Impact Assessment—Section 317 of the Act

Section 317 of the Act requires the EPA to prepare an economic impact assessment for any emission standards and guidelines promulgated under section 111 of the Act. An economic impact assessment was prepared for the proposed standards and guidelines. In the manner described above under the discussions of the impacts of, and rationale for, the proposed standards and guidelines, the EPA considered all aspects of the assessment in proposing the standards and guidelines. The economic impact assessment is included in the docket listed at the beginning of today's notice under **SUPPLEMENTARY INFORMATION.**

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1730.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 260–2740.

This collection of information is estimated to have an average annual reporting burden of 0.01 person years per pathological MWI and an average of about 2.4 person years for MWI's burning general medical waste. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

2. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the proposed regulatory action is "significant" and therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed standards and guidelines are "significant" because the annual effect on the economy will exceed $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

3. Executive Order 12875

Under Executive Order 12875, the EPA is required to consult with representatives of affected State, local, and tribal governments, and keep these affected parties informed about the content and effect of the proposed standards and guidelines. The following discussion provides a brief summary of the content, need for, and cost of the proposed standards and guidelines, as well as the actions that the EPA has taken to communicate and consult with the affected parties.

a. Summary of the Proposed Standards and Guidelines

The proposed standards and guidelines would establish emission limitations for new and existing MWI's. The proposed standards and guidelines do not specify which type of air pollution control equipment must be used at MWI's to meet the proposed emission limitations. However, the EPA expects that, to meet the proposed emission limitations, most MWI's would use dry scrubbing systems (DI/FF) with activated carbon injection for dioxins/furans, metals, and acid gas control. Refer to section II of this preamble for a more detailed discussion of the proposed standards and guidelines.

b. Need for the Proposed Standards and Guidelines

Under the Act Amendments of 1990 section 129 includes a schedule that requires the EPA to develop standards and guidelines for MWI's by November 1992. The EPA did not comply with that schedule and is now under court order to propose the standards and guidelines by February 1, 1995 and promulgate the standards and guidelines by April 15, 1996. As required by section 129, the proposed standards and guidelines would establish emission limitations for PM, opacity, CO, CDD/CDF, HCl, SO_2, NO_x, Pb, Cd, and Hg. See section I of this preamble for further discussion of the regulatory history and general goals of the proposed standards and guidelines.

c. Cost of the Proposal

The nationwide annual costs associated with the proposed standards for new MWI's would increase by approximately $74.5 million/yr from the regulatory baseline cost of $63.3 million/yr. The cost of compliance with the proposed standards for an individual facility will vary depending on the method chosen to comply with the proposed emission limitations. Of the projected number of new MWI's, some will be constructed with air pollution control equipment to comply with the proposed emission limitations. However, as discussed in Section III of this preamble, the EPA expects that, to avoid the increased costs associated with the installation of control equipment, as many as 80 percent of the projected number of new MWI's will not be constructed. Instead, these facilities are likely to consider less expensive methods of treatment and disposal.

Under the proposed standards, the average annualized cost of incineration for a typical small MWI would be about $326 thousand per year. The two most common alternatives to onsite incineration include offsite contract disposal and onsite steam sterilization. Instead of installing an MWI with air pollution control equipment, the facility may choose to use offsite contract disposal at an estimated average annualized cost of $98.8 thousand per year, or onsite steam sterilization at an estimated average annualized cost of $65.6 thousand per year. Either of these alternatives is considerably less expensive than onsite incineration under the proposed standards.

Under the proposed standards, the average annualized cost of incineration for a typical large MWI would be about $520 thousand per year. The cost to dispose of the same amount of waste using offsite contract disposal is estimated at about $1.01 million per year, which is considerably higher than the costs of onsite incineration. Onsite steam sterilization of the same amount of waste would cost about $158 thousand per year. Instead of installing an MWI with air pollution control equipment, the facility may choose to use onsite steam sterilization at a much lower cost. A more complete summary of the cost and economic impacts of the proposed standards are presented in Section III of this preamble.

The nationwide annual costs associated with the proposed guidelines for existing MWI's would increase by approximately $351 million/yr from the regulatory baseline cost of $265 million/yr. As with new MWI's, the cost of compliance with the proposed guidelines for an individual facility will vary depending on the method chosen to comply with the proposed emission limitations. Some facilities may choose to keep their incinerator and install air pollution control equipment to comply with the proposed emission limitations. However, as discussed in Section IV of this preamble, the EPA expects that as many as 80 percent of existing facilities currently using onsite incineration will switch to an alterative method of treatment and disposal to avoid the increased cost of installing air pollution control equipment.

For a typical small MWI, the installation of control equipment would increase the average annualized cost of incineration to about $329 thousand per year. Instead of installing air pollution control equipment, the facility may choose to use offsite contract disposal at an estimated average annualized cost of $98.8 thousand per year, or onsite steam sterilization at an estimated average annualized cost of $65.6 thousand per year. The costs for either of these alternatives is considerably less than the costs for installing control equipment to meet the proposed emission limitations.

The average annualized cost of incineration for a typical large MWI would increase to about $533 thousand per year. The cost to dispose of the same amount of waste using offsite contract disposal is estimated at about $1.01 million per year, which is substantially higher than the estimated costs of onsite incineration. Onsite steam sterilization of the same amount of waste would cost about $158 thousand per year. Instead of installing air pollution control equipment to meet the proposed emission limitations, the facility may choose to use onsite steam sterilization at a much lower cost. A more complete summary of the cost and economic impacts of the proposed guidelines are presented in Section IV of this preamble.

d. Communication With Affected Parties

As previously mentioned, Executive Order 12875 requires the EPA to consult with representatives of affected State, local, and tribal governments, and prior to promulgation of final standards, summarize concerns of the governmental entities and respond to their comments. The EPA has already initiated consultations with numerous governmental entities including, but not limited to, the U.S. Conference of Mayors, the National Association of City and County Health Officials, the National Association of Counties, the National Association of Public Hospitals, and the National Governors Association. These groups have been informed of the content of the proposal and the estimated impacts. In drafting the proposal, the EPA has considered the concerns expressed by these groups, and discussions with these groups will continue following proposal. The EPA awaits comments from these groups on the proposal and will respond to their comments.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Act.

If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. In the case of the proposed standards and guidelines, the results of the economic analysis indicate that the standards and guidelines will not have a significant impact on a substantial number of small entities. Less than 20 percent of "small" government jurisdictions are expected to be significantly impacted. In addition, although some small medical waste generators would be significantly impacted by the regulation's control requirements, the majority of these impacts could be avoided by switching to less expensive alternatives for medical waste disposal. Therefore, it is expected that the number of facilities that are significantly impacted will not be "substantial."

List of Subjects in 40 CFR Part 60

Air Pollution control, Incorporation by reference, Intergovernmental relations, Medical waste, Reporting and recordkeeping.

Dated: February 1, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–3045 Filed 2–24–95; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species: Southwestern Willow Flycatcher; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AB97

Endangered and Threatened Wildlife and Plants; Final Rule Determining Endangered Status for the Southwestern Willow Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the southwestern willow flycatcher (*Empidonax traillii extimus*) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). The breeding range of this bird includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and extreme northwestern Mexico. Within this region, the species is restricted to dense riparian associations of willow, cottonwood, buttonbush, and other deciduous shrubs and trees. This habitat was historically rare and sparsely distributed and is currently more rare owing to extensive destruction and modification. The southwestern willow flycatcher is endangered by extensive loss of habitat, brood parasitism, and lack of adequate protective regulations. This rule implements Federal protection provided by the Act for the southwestern willow flycatcher. Designation of critical habitat for the southwestern willow flycatcher is deferred while the Service gathers further comments and reconsiders the prudence of designation and the appropriate boundaries of any area to be designated.

DATES: The listing of the southwestern willow flycatcher is effective March 29, 1995. Comments on the designation of critical habitat may be submitted until April 28, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at Ecological Services State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Sam E. Spiller or Robert M. Marshall at the above address (Telephone 602/640–2720).

SUPPLEMENTARY INFORMATION:

Background

The southwestern willow flycatcher is a small bird, approximately 15 centimeters (cm) (5.75 inches) long. It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly. Two wingbars are visible; the eye ring is faint or absent. The upper mandible is dark, the lower is light. The song is a sneezy "fitz-bew" or "fit-za-bew," the call a repeated "whitt."

The southwestern willow flycatcher occurs in riparian habitats along rivers, streams, or other wetlands, where dense growths of willows (*Salix* sp.), *Baccharis*, arrowweed (*Pluchea* sp.), buttonbush (*Cephalanthus* sp.), tamarisk (*Tamarix* sp.), Russian olive (*Eleagnus* sp.) or other plants are present, often with a scattered overstory of cottonwood (*Populus* sp.) (Grinnell and Miller 1944, Phillips 1948, Phillips *et al.* 1964, Whitmore 1977, Hubbard 1987, Unitt 1987, Whitfield 1990, Brown and Trosset 1989, Brown 1991, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Throughout the range of *E. t. extimus*, these riparian habitats tend to be rare, widely separated, small and/or linear locales, separated by vast expanses of arid lands. The southwestern willow flycatcher has experienced extensive loss and modification of this habitat and is also endangered by other factors, including brood parasitism by the brown-headed cowbird (*Molothrus ater*) (Unitt 1987, Ehrlich *et al.* 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

The southwestern willow flycatcher (Order Passeriformes; Family Tyrannidae) is a subspecies of one of the ten North American flycatchers in the genus *Empidonax*. The willow flycatcher and alder flycatcher (*E. alnorum*) were once considered a single species, the Traill's flycatcher (*E traillii*). Some sources [American Ornithologists' Union (AOU) 1983, McCabe 1991] treat *E. traillii* and *E. alnorum*, and all their subspecies as a superspecies, the "*traillii* complex" However, the two species are distinguishable by morphology (Aldrich 1951), song type, habitat use, structure and placement of nests (Aldrich 1953), eggs (Walkinshaw 1966), ecological separation (Barlow and McGillivray 1983), and genetic distinctness (Seutin and Simon 1988). The breeding range of the alder flycatcher generally occurs north of the willow flycatcher's range.

The southwestern willow flycatcher is one of five subspecies of the willow flycatcher currently recognized (Hubbard 1987, Unitt 1987, Browning 1993) (Figure 1.). The breeding ranges of the widely distributed *E. t. traillii* and *E. t. campestris* extend across the northern United States and southern Canada, from New England and Nova Scotia west, through northern Wyoming and Montana, and into British Columbia. Hubbard (1987) and Unitt (1987) treated *E. t. campestris* as synonymous with *E. t. traillii*, but Browning (1993) considered them separate subspecies (Figure 1.). The subspecies *E. t. adastus* breeds from Colorado west of the plains, west through the Great Basin States and into the eastern portions of California, Oregon and Washington. The breeding range of *E. t. brewsteri* extends from the central California coast north, through western Oregon and Washington to Vancouver Island. The breeding range of the southwestern willow flycatcher (*E. t extimus*) includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, and western Texas (Hubbard 1987, Unitt 1987, Browning 1993). It may also breed in southwestern Colorado, but nesting records are lacking. Records of probable breeding *E. t. extimus* in Mexico are few and are restricted to extreme northern Baja California del Norte and Sonora (Unitt 1987, Wilbur 1987).

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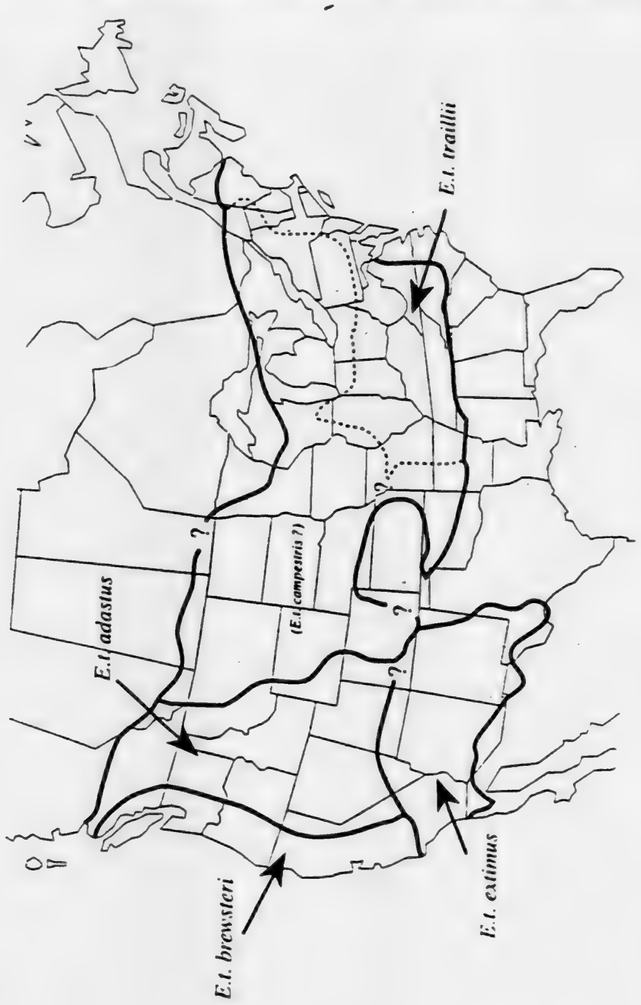

Figure 1. Approximate breeding ranges of the races of the willow flycatcher. Adaptation of Unitt (1987) and Browning (1993), from Tibbitts et al. 1994.

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The willow flycatcher subspecies are distinguished primarily by subtle differences in color and morphology. Unitt (1987) noted that these differences "* * * are minor, but differ little in magnitude from those distinguishing the species *E. traillii* from *E. alnorum*. In *Empidonax*, small differences in morphology may mask large differences in biology."

The subspecies *E. t. extimus* was described by A.R. Phillips (1948) from a collection by G. Monson from the lower San Pedro River in southeastern Arizona. The taxonomy of *E. t. extimus* was critically reviewed by Hubbard (1987), Unitt (1987), and Browning (1993). Hubbard (1987) gave a qualified endorsement of the validity of *E. t. extimus*, recommending continued examination of the taxonomy. Unitt (1987) found that *E. t. extimus* was distinguishable from other willow flycatchers by color, being paler, and morphology (primarily wing formula) but not overall size. Browning (1993) also found that *E. t. extimus* was distinguishable as a more pale-colored subspecies. The song dialect of *E. t. extimus* may also be distinguishable from other willow flycatchers. Rather than the crisp, sneezy "fitz-bew" of the northerly subspecies, *E. t. extimus* sings a more protracted, slurred "fit-za-bew," with a burry "bew" syllable (recordings by M. Sogge and J. Travis). The subspecies *E. t. extimus* is accepted by most authors (*e.g.*, Aldrich 1951, Behle and Higgins 1959, Phillips *et al.* 1964, Bailey and Niedrach 1965, Oberholser 1974, Monson and Phillips 1981, Harris *et al.* 1987, Schlorff 1990, Harris 1991). Section 3(15) of the Act and regulations at 50 CFR 424.02(k) defines the term "species" as any subspecies of fish or wildlife or plants, and any distinct population segment of any vertebrate species which interbreeds when mature. Based on the above information, the Service has determined that *E. t. extimus* is eligible for protection under the Act.

The southwestern willow flycatcher nests in thickets of trees and shrubs approximately 4–7 meters (m) (13–23 feet) or more in height, with dense foliage from approximately 0–4 m (13 feet) above ground, and often a high canopy cover percentage. The diversity of nest site plant species may be low (*e.g.*, willows) or comparatively high (*e.g.*, mixtures of willow, buttonbush, cottonwood, boxelder, Russian olive, *Baccharis*, and tamarisk). Nest site vegetation may be even- or uneven-aged, but is usually dense and structurally homogeneous (Brown 1988, Whitfield 1990, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Historically, *E. t. extimus* nested primarily in willows, buttonbush, and *Baccharis*, with a scattered overstory of cottonwood (Grinnell and Miller 1944, Phillips 1948, Whitmore 1977, Unitt 1987). Following modern changes in riparian plant communities, *E. t. extimus* still nests in native vegetation where available, but has been known to nest in thickets dominated by tamarisk and Russian olive (Hubbard 1987, Brown 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Sedgwick and Knopf (1992) found that sites selected as song perches by male willow flycatchers (*E. t. traillii/campestris*) exhibited higher variability in shrub size than did nest sites and often included large central shrubs. Habitats not selected for either nesting or singing were narrower riparian zones, with greater distances between willow patches and individual willow plants. Nesting willow flycatchers of all subspecies generally prefer areas with surface water nearby (Bent 1960, Stafford and Valentine 1985, Harris *et al.* 1987), but *E. t. extimus* virtually always nests near surface water or saturated soil (Phillips *et al.* 1964, Muiznieks *et al.* 1994). At some nest sites surface water may be present early in the breeding season but only damp soil is present by late June or early July (Muiznieks *et al.* 1994, M. Whitfield, Kern River Research Center, *in litt.*-1993, J. and J. Griffith, Griffith Wildlife Biology, *in litt.*-1993). Ultimately, a water table close enough to the surface to support riparian vegetation is necessary.

Defining a minimum habitat patch size required to support a nesting pair of *E. t. extimus* is difficult. Throughout its range, determining the capability of habitat patches to support southwestern willow flycatchers is confused by the species' rarity, unstable populations, variations in habitat types, and other factors. However, the available information indicates that habitat patches as small as 0.5 hectare (ha) (1.23 acres) can support one or two nesting pairs. Sogge *et al.* (1993) found territorial flycatchers in habitat patches ranging from 0.5 to 1.2 ha (1.23 to 2.96 acres). Two habitat patches of 0.5 and 0.9 ha (1.23 and 2.2 acres) each supported two territories. Muiznieks *et al.* (1994) also reported groups of territorial *E. t. extimus* in habitat patches of approximately one to several hectares.

The nest is a compact cup of fiber, bark, and grass, typically with feathers on the rim, lined with a layer of grass or other fine, silky plant material, and often has plant material dangling from the bottom (Harrison 1979). It is constructed in a fork or on a horizontal branch, approximately 1–4.5 m (3.2–15 feet) above ground in a medium-sized bush or small tree, with dense vegetation above and around the nest (Brown 1988, Whitfield 1990, Muiznieks *et al.* 1994).

The southwestern willow flycatcher is present and singing on breeding territories by mid-May, although its presence and status is often confused by the migrating individuals of northern subspecies passing through *E. t. extimus* breeding habitat [D. Kreuper, Bureau of Land Management (BLM), unpubl. data] The southwestern willow flycatcher builds nests and lays eggs in late May and early June and fledges young in early to mid-July (Willard 1912, Ligon 1961, Brown 1988, Whitfield 1990, Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Some variation in these dates has been observed (Carothers and Johnson 1975, Brown 1988, Muiznieks *et al.* 1994) and may be related to altitude, latitude, and renesting.

The southwestern willow flycatcher is an insectivore. It forages within and above dense riparian vegetation, taking insects on the wing or gleaning them from foliage (Wheelock 1912, Bent 1960). It also forages in areas adjacent to nest sites, which may be more open (M. Sogge, National Biological Survey, pers. comm. 1993). No information is available on specific prey species.

The migration routes and wintering grounds of *E. t. extimus* are not well known. *Empidonax* flycatchers rarely sing during fall migration, so that a means of distinguishing subspecies is not available (Blake 1953, Peterson and Chalif 1973). However, willow flycatchers have been reported to sing and defend winter territories in Mexico and Central America (Gorski 1969, McCabe 1991). The southwestern willow flycatcher most likely winters in Mexico, Central America, and perhaps northern South America (Phillips 1948, Peterson 1990). However, the habitats it uses on wintering grounds are unknown. Tropical deforestation may restrict wintering habitat for this and other neotropical migratory birds (Finch 1991, Sherry and Holmes 1993).

Breeding bird survey data for 1965 through 1979 combined the willow and alder flycatchers into a "Traill's flycatcher superspecies", because of taxonomic uncertainty during the 15-year reporting period. These data showed fairly stable numbers in central and eastern North America but strong declines in the West, the region including the range of the southwestern willow flycatcher, and where the alder flycatcher is absent (Robbins *et al.* 1986).

Unitt (1987) reviewed historical and contemporary records of *E. t. extimus* throughout its range, determining that it had "declined precipitously," and that "although the data reveal no trend in the past few years, the population is clearly much smaller now than 50 years ago, and no change in the factors responsible for the decline seem likely." Data are now available that indicate continued declines, poor reproductive performance, and/or continued threats for most remaining populations (Brown 1991, Whitfield and Laymon, Kern River Research Center, *in litt.* 1993, Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

Previous Federal Actions

The Service included the southwestern willow flycatcher on its Animal Notice of Review as a category 2 candidate species on January 6, 1989 (54 FR 554). A category 2 species is one for which listing may be appropriate but for which additional biological information is needed. After soliciting and reviewing additional information, the Service elevated *E. t. extimus* to category 1 candidate status on November 21, 1991 (56 FR 58804). A category 1 species is one for which the Service has on file substantial information to support listing, but for which a proposal to list has not been issued because it is precluded at present by other listing activity.

On January 25, 1992, a coalition of conservation organizations (Suckling *et al.* 1992) petitioned the Service, requesting listing of *E. t. extimus* as an endangered species under the Act. The petitioners also requested emergency listing and designation of critical habitat. On September 1, 1992, the Service published a finding (57 FR 39664) that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species. On July 23, 1993, the Service published a proposal (58 FR 39495) to list *E. t. extimus* as endangered with critical habitat, and again requested public comments and biological data on the southwestern willow flycatcher.

Summary of Comments and Recommendations

In the July 23, 1993, proposed rule (58 FR 39495) and associated notifications, all interested parties were requested to submit comments or information that might bear on whether to list the southwestern willow flycatcher. The comment period was originally scheduled to close October 21, 1993, then was extended to November 30, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: In California, *Los Angeles Times, L.A. Watts Times, Kern Valley Sun,* and *San Diego Union-Tribune;* in Arizona, *Arizona Daily Sun, Arizona Republic, Tucson Daily Citizen, White Mountain Independent,* and *Arizona Daily Star;* in New Mexico, *Albuquerque Journal, Albuquerque Tribune, Santa Fe New Mexican, Carlsbad Current-Argus, Silver City Daily Press;* in Nevada, *Las Vegas Sun;* in Colorado, *Durango Herald;* in Utah, *Daily Spectrum;* and in Texas, *El Paso Times*. The inclusive dates of publications were August 31 through September 13, 1993, for the initial comment period and October 28 through November 5, 1993, for the public hearings and extension of public comment period.

The Service held six public hearings. Because of anticipated interest in the proposed rule, the Service announced its intention to hold at least three public hearings. In response to requests from the public, three additional hearings were scheduled. A notice of the hearing dates and locations was published in the **Federal Register** on October 18, 1993 (58 FR 53702). Approximately 424 people attended the hearings. About 17 people attended the hearing in Tucson, Arizona; 27 in Flagstaff, Arizona; 10 in Las Cruces, New Mexico; 12 in Albuquerque, New Mexico; 350 in Lake Isabella, California; and 8 in San Diego, California. Transcripts of these hearings are available for inspection (see **ADDRESSES**).

A total of 3,102 written comment letters were received at the Service's Ecological Services State Office in Arizona: 264 supported the proposed listing; 2,650 opposed the proposed listing; and 188 expressed neither support nor opposition, but either commented on information in the proposed rule, provided additional information, or were non-substantive or irrelevant to the proposed listing.

Oral or written comments were received from 62 parties at the hearings: 8 supported the proposed listing; 40 opposed the proposed listing; and 14 expressed neither support nor opposition but provided additional information, or were non-substantive or irrelevant to the proposed listing.

In total, oral or written comments were received from 31 Federal and State agencies and officials, 17 local officials, and 3,116 private organizations, companies, and individuals. All comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues.

Issue 1: The American Ornithologists' Union (AOU) did not list *E. t. extimus* in its latest Checklist of North American Birds; Unitt (1987) could not distinguish *E. t. extimus* by color or morphology; genetic analysis is necessary to distinguish subspecies; significant disagreement exists among scientists regarding taxonomy, for example, McCabe (1991) did not recognize *E. t. extimus;* the willow flycatcher subspecies, in fact the North American *Empidonax* flycatcher species are too difficult to distinguish to make it reasonable to list subspecies of those species; hybridization of the willow flycatcher subspecies occurs; subspecies are not worth listing; *E. t. extimus* is a subspecies of a very common species; *E. t. extimus* is not worth listing because it is one of nine common species in the genus *Empidonax;* this subspecies and subspecies in general are of minor ecological value; their loss would be unimportant; there is little value in preserving rare species/subspecies; and historical taxonomic questions may confuse population trend information.

Service Response: The Service has determined that *E. t. extimus* is a valid taxon. The Service relies on the most current and authoritative data available in making decisions regarding the validity of species, subspecies, or distinct vertebrate population segments. These data include articles published in professional journals, agency reports, and other unpublished data provided by researchers. For the southwestern willow flycatcher, the Service reviewed this information and found a majority opinion that *E. t. extimus* is a valid subspecies. Authorities who critically examined the taxonomy of *E. traillii* and recognized *E. t. extimus* include Phillips (1948), Aldrich (1951), Hubbard (1987), Unitt (1987), and Browning (1993). Other authorities accepting the subspecies include Behle and Higgins (1959), Phillips *et al.* (1964), Bailey and Niedrach (1965), Oberholser (1974), Monson and Phillips (1981), Harris *et al.* (1987), Schlorff (1990), Whitfield (1990), Brown (1991), Harris (1991), Western Foundation for Vertebrate Zoology *in litt.* 1993, University of California *in litt.* 1993. The AOU (1983) did not list subspecies of any bird, including the willow flycatcher, in its 1983 Checklist of North America Birds. However, this does not indicate a lack of recognition of *E. t. extimus*, or for the concept of subspecies. The preface to the 1983 Checklist states "The Committee

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strongly endorses the concept of the subspecies * * * and we wish to make it clear that the omission of separate listings of subspecies in this edition is not a rejection of the validity or utility of this systematic category * * *."

The Service noted McCabe's (1991) consideration of the willow and alder (*E. alnorum*) flycatchers as a single species, and his reluctance to recognize willow flycatcher subspecies. McCabe (1991) provides a thorough review of the history of *E. alnorum* and *E. traillii* taxonomy, and the questions of ecological, morphological, and song-type distinction on which this taxonomic evaluation has been based. However, the Service agrees with Sedgwick's (1993) comments and McCabe's own observation that McCabe (1991) contrasts with the majority opinion regarding taxonomy of the willow and alder flycatchers.

After examining 305 study skins, Unitt (1987) found that while four subspecies (*E. t. traillii, E. t. adastus, E. t. brewsteri,* and *E. t. extimus*) could be tentatively separated by the "75 percent rule" using overall size (wing and tail lengths and their ratios to one another), these criteria were not satisfactorily conclusive. However, he found that the subspecies could be satisfactorily distinguished, under the "75 percent rule," using color, wing formula (relative lengths of primary wing feathers), or both. Browning (1993) examined 270 specimens and found that all four subspecies, and a fifth (*E. t. campestris*) were distinguishable by color.

The Service acknowledges that taxonomy of *E. traillii* races continues to pose questions and may be revised in the future. The Service has determined that *E. t. extimus* is a sufficiently distinct entity to be listed under the Act at the very least as a distinct vertebrate population [50 CFR § 424.02(k)]. However, the Service accepts the majority opinion that *E. t. extimus* is a valid subspecies and lists it as such.

The Service considers taxonomic distinctness in assigning priorities for species listings, but not in determining whether or not to list species. The Act authorizes listing of species, subspecies, or distinct population segments, all of which have ecological significance.

Issue 2: The southwestern willow flycatcher is not a riparian obligate species. It also occurs in open prairie woodlots, dry and brushy pastures, and brushy fields or slopes. No surveys of dry habitats have been done to prove riparian obligacy. The southwestern willow flycatcher does not "invariably" nest near surface water.

Service Response: The Service is unaware of any study, report, or species account that describes *E. t. extimus* as anything but a riparian obligate. No commenter provided data, studies, or reports indicating that *E. t. extimus* nests outside riparian habitats. Several commenters cited field guides which describe the willow flycatcher (all subspecies) as occurring "* * * in drier situations (than the alder flycatcher) * * *" (Peterson 1990), "* * * on brushy slopes * * *" (Robbins *et al.* 1983), and "* * * dry, brushy upland pastures * * *" (National Geographic Society 1990). The Service believes that field guide species accounts do not constitute the best available scientific information on biology, ecology or habitat requirements. Field guide accounts tend to be brief and generalized, and in this case represent habitat use of other willow flycatcher subspecies, which occur in more mesic regions. Similarly, Barlow and McGillivray's (1983) description of willow flycatchers *(E. t. campestris/traillii)* selecting "* * * a more xeric upland habitat * * *" in Ontario, Canada, is not considered relevant to habitat selection of *E. t. extimus* in the desert Southwest. In the wetter climates of the north, upper midwest, and northeast, habitat conditions of moist soil or surface water, supporting thickets of deciduous shrubs and trees, are not restricted to riparian areas. However, in the arid Southwest where *E. t. extimus* occurs, these conditions are limited to riparian areas, usually in profound contrast to the adjacent and prevailing desert conditions. Various authors (*e.g.*, King 1955) have noted that while willow flycatchers may nest away from riparian areas in the north and east, in arid regions (the ranges of *E. t. brewsteri* and *E. t. extimus* particularly) the species is restricted to riparian habitats. Regarding the presence of surface water during the breeding season, new information was provided indicating that some nest sites have surface water in close proximity early in the breeding season, which recedes underground by the end of the breeding season. At these sites, the water table remains at least high enough to sustain riparian vegetation. The Service is unaware of any surveys performed in non-riparian habitats specifically to verify the absence of nesting *E. t. extimus*. However, the Service relied on local, State, and regional species accounts of distribution and habitat use, none of which describe occurrence outside of riparian habitats.

Issue 3: The loss and modification of southwestern riparian habitat is overstated, poorly documented, and does not constitute a threat to the flycatcher; the statement that 90 percent loss of riparian habitat has occurred is inaccurate and an exaggeration; riparian habitat has not decreased, but increased as a result of diversions, irrigation, etc; habitat has increased, not decreased, in local area(s) over the past 20 years; riparian regeneration is approaching 1,000 percent in southeastern Arizona; Hastings and Turner (1965) show that cottonwood riparian habitat has increased in southeastern Arizona; the upper San Pedro River is recovered, not "unsuitable and unoccupied" as the Service claimed; because tamarisk has increased, and *E. t. extimus* uses tamarisk, tamarisk invasion does not constitute modification of habitat, but expansion of habitat; population declines in the past 20 years are concurrent with improved riparian habitats, so no correlation exists between trends in habitat and populations; the proposal fails to support claims that urban development, agriculture, and livestock grazing are harmful to the flycatcher.

Service Response: The Service has determined that the documentation of loss and modification of southwestern riparian habitats, cited in this final rule, is adequate. Regarding the "90 percent loss and modification" statement, the proposed rule stated that "* * * *as much as* 90 percent * * *" (emphasis added) has been lost or modified. The actual percentage lost or modified is not expected to be consistent across the region, but should vary with elevation, rainfall, geographic area, relative size of drainage system, and severity of impacts. Loss and modification may be lesser at higher elevations, where precipitation is greater and evaporation less. In most major lower elevation desert riparian systems, loss or modification may in fact be near 100 percent, *e.g.*, the lower Colorado, lower Gila, lower Rio Grande, and lower Salt Rivers. Because "modification" includes alterations in flow regimes, channel confinement, changes in water quality, and floristic makeup of riparian systems, the Service believes it is not a misrepresentation to state that up to 90 percent of southwestern riparian ecosystems have been lost or modified.

Commenters stating that riparian habitat has not decreased, but increased as a result of diversions and irrigation, presented no supporting information. The Service recognizes that some diversions, particularly unmaintained irrigation ditches, sometimes support riparian vegetation. However, the Service believes diversion and irrigation result in a net loss of riparian habitat.

Where riparian vegetation becomes established along irrigation systems, it is often cleared away at regular intervals. Where it is not, it is sometimes because an artificially created riparian/wetland habitat is being maintained as mitigation or compensation for loss of natural riparian habitat elsewhere.

The Service recognizes that in some local areas in recent decades, riparian habitat has been rehabilitated or increased, not decreased. However, the Service accepts the consensus of literature cited in this rule that the overall trend continues to be one of habitat loss.

Hastings and Turner (1965) and Bahre (1991) noted that riparian habitats were already significantly altered by the turn of the last century. Hastings and Turner (1965) also noted that all major watercourses in southern Arizona suffered entrenchment and became more ephemeral in flow in approximately 1890. Land use practices that had already affected riparian habitats in this Arizona-Mexico border region included livestock grazing, woodcutting, and water diversion; climatic changes may also have contributed. The differences between the historic and more recent photographs show some riparian recovery, concurrent with reductions in livestock stocking levels from their highs in the late 1800's. No data, or elaboration, were presented to support statements that riparian regeneration is approaching 1000 percent in southeastern Arizona.

As this final rules discusses, *E. t. extimus* sometimes nests in tamarisk, but does so at lower densities, and apparently at lower success rates than in native vegetation (Hunter *et al.* 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). Therefore, tamarisk invasion likely represents replacement of native habitat with lower-quality habitat, rather than an increase in habitat availability. Only in a few unique situations does tamarisk truly represent "new" habitat. For example, in the Grand Canyon flycatchers nest in a "new" riparian habitat, dominated by tamarisk (Carothers and Brown 1991). This new riparian habitat became established in the historic flood-scour zone of the Colorado River, after construction of Glen Canyon Dam eliminated annual scouring floods. However, flycatchers nest in this area in low numbers (Brown 1991, Sogge and Tibbitts 1992, Sogge *et al.* 1993) and have low nesting success. It is noteworthy that by forming Lake Powell, Glen Canyon Dam also inundated habitat in Glen Canyon. The southwestern willow flycatcher was described as a common nester in Glen Canyon prior to inundation (Behle and Higgins 1959, Behle 1985), indicating that this historic habitat was of higher quality than the new habitat in Grand Canyon.

Issue 4: The flycatcher has always been a rare bird, so its rarity now is no change from historical situations; historical specimens are few, indicating the bird was always rare; population data are insufficient to show decline; population data are suspect, developed by parties with agendas of land control/acquisition; the flycatcher is not declining in all areas; historical taxonomic questions may confuse population trend information; accuracy or existence of population trend data for the last 50 years is questionable; population sampling techniques were not discussed; these could bias trend studies; population data are incomplete; the proposal relies on data reflecting loss of habitat rather than comprehensive population trend analysis; there are no recent collections of *E. t. extimus* from southern Arizona riparian areas.

Service Response: The Service agrees that the flycatcher has probably always been sparsely distributed, as a function of the sparse distribution of its wetland habitat in a predominantly xeric region. However, sparse distribution and rarity are not necessarily equivalent. At individual locales the flycatcher may occur in considerable numbers, as indicated by Herbert Brown's collection of 36 nests near Yuma in 1902, and the persistence of several populations of considerable numbers (30–40 pairs) in relatively small areas like the Kern River Preserve in California (Harris *et al.* 1986, Whitfield 1990). Although *E. t. extimus* habitat is rare, where it is present nesting pairs may occur in relatively high densities. This phenomenon has caused some authors to describe *E. t. extimus* as something of a colonial nester (*e.g.*, Unitt 1987).

Regarding the lack of historic or recent specimens available from various parts of the bird's range, the Service notes that specimen collection is largely a function of collecting activity, not simple presence of the subject.

The Service agrees that, as with many non-game species, population trend data are incomplete. No wide scale, and few local studies have been funded or undertaken to track this species through time. Comprehensive, long-term population data are not necessarily required for making listing determinations. Rather, these decisions often rest upon data on loss and modification of habitat and other threats, which are reasonably assumed to result in population declines. In many cases, population declines are inferred from decline in habitat availability. However, in this and other listing determinations, the Service seeks to measure such inference against whatever population trend data are available. Regarding concerns over sources of these data, the Service endeavors to verify accuracy and credibility of data. The reports published by government agencies, academic institutions, and professional journals on which this determination is based are accepted as credible. To interpret population trends in the light of changing taxonomic status, the Service considered all information for willow flycatchers in the current range of *E. t. extimus* to be relevant.

Issue 5: Livestock grazing is not a threat to *E. t. extimus* or its habitat: Montgomery *et al.* (1985) found 53 singing birds in a grazed area in New Mexico; on Marine Corps Base Camp Pendleton, *E. t. extimus* is increasing where sheep graze; nest disturbance by cattle is unsubstantiated; southwestern flora evolved with large grazing ungulates; the proposed rule lacks examples of flycatcher status improving with reduction in livestock or improved livestock management; *E. t. extimus* is not improving in areas with no grazing; the proposed rule equates any livestock grazing with overgrazing, and fails to distinguish between overgrazing and well-managed grazing; proper livestock management is compatible with healthy riparian habitat; some level of livestock grazing is compatible with/necessary for healthy riparian ecosystems; willows are brush, which cattle don't eat, but cattle are blamed for both brush encroachment and brush destruction; cattle trample stream banks, which allows water to escape, creating more riparian habitat; livestock grazing prevents urbanization of land, which would have a greater impact on riparian habitats.

Service Response: The proposed and final rules discuss overuse by livestock as a threat to *E. t. extimus*, through impacts on riparian habitat. The Service recognizes that what constitutes "overuse" varies with differing riparian ecosystems, elevation, type of livestock, seasonality of use, and other factors. The Service believes that some livestock grazing regimes are likely to be found compatible with rehabilitation and maintenance of *E. t. extimus* habitat.

Montgomery *et al.* (1985) did not determine whether the willow flycatchers they detected on grazed land were resident *E. t. extimus* or migrating individuals of other subspecies. Further, neither grazing intensity nor nesting

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success were quantified, so that no correlations can be made. On Camp Pendleton, increases in *E. t. extimus* were concurrent with livestock (sheep) grazing but also with an extensive cowbird trapping program (Griffith and Griffith 1993). Finally, as discussed in this rule, examples exist of *E. t. extimus* (and other *E. traillii* subspecies) numbers and habitat increasing as a result of grazing reductions or other improvements in livestock management.

The Service recognizes that southwestern riparian ecosystems evolved with native grazing ungulates (e.g., deer and elk). However, domestic livestock do not forage, herd or move in the same manner as native species. Further, elk occur at higher elevations of the Southwest, and are absent from the lowland river systems that constitute the majority of *E. t. extimus* habitat.

Issue 6: Timber harvesting is not a threat to the flycatcher's riparian habitat.

Service Response: The proposed rule noted that the petitioners claimed timber harvest caused watershed changes which could result in damage to riparian habitats through increasing intensity and frequency of floods. The petitioners presented no specific information on this claim. A number of experimental treatments on Southwestern forested watersheds have demonstrated increased peak and flood flows as a result of timber harvest (Tecle 1991). The degree to which timber harvesting has affected riparian habitats inhabited by the willow flycatcher, however, has not been quantified and is unknown. The Service did not implicate timber harvesting in the proposed rule as a major cause of riparian habitat loss. Rather, it pointed to that activity as one of many factors potentially responsible for riparian habitat loss and modification. Pending new information demonstrating otherwise, the Service still considers timber harvesting a potential threat to riparian habitat through loss and modification. However, the Service does not believe that this threat exists rangewide, nor does it believe that timber harvesting alone is responsible for riparian habitat loss or the endangered status of the southwestern willow flycatcher.

All causal factors will be addressed in the recovery planning process, and through the Act's section 7 consultation process, through which Federal agencies will be responsible for evaluating the effects of activities such as timber harvest on the flycatcher's riparian habitat.

Issue 7: Water impoundments have been beneficial, not detrimental; fluctuating flows below dams are not detrimental, in fact have increased riparian habitat (Glen Canyon Dam resulted in creation of riparian habitat in Grand Canyon); impoundments protect habitat by preventing catastrophic floods; the proposal had inadequate discussion of water impoundments as threat.

Service Response: As discussed elsewhere in this final rule, water impoundments have a variety of effects on riparian habitats. The Service has determined that, with respect to *E. t. extimus*, the net effect of these influences is negative. For example, Glen Canyon Dam eliminated massive annual scouring floods in the Grand Canyon. This resulted in the development of a new riparian zone dominated by tamarisk (Carothers and Brown 1991). However, flycatchers nest there in very low numbers and with low nesting success (Brown 1991, Sogge and Tibbitts 1992, Sogge *et al.* 1993). In contrast, *E. t. extimus* was described as a common nester in Glen Canyon (Behle and Higgins 1959, Behle 1985), prior to its inundation by Lake Powell.

Issue 8: Comments concerning the ecology of cowbirds and cowbird parasitism included the following: Breeding Bird Survey (BBS) data indicate that cowbirds have declined, not increased; the claim that cowbirds are associated with livestock is not supported; cowbirds are associated with deer and elk, not cows; the cowbird threat is a natural one; there is inconclusive evidence that cowbird increases are directly connected with livestock grazing; cowbird parasitism of *E. t. extimus* is known in areas without livestock grazing (e.g., Grand Canyon, Kern River); there is no correlation between livestock grazing in riparian areas and cowbird parasitism; Taylor (1986) showed that cowbirds were most abundant in areas with long-term livestock exclusion; because flycatchers and cowbirds are positively associated (they tend to occur together), flycatchers can coexist with cowbirds; there is inconclusive evidence that cowbird parasitism is responsible for declines in nesting success; cowbirds have increased as a result of increases in bird feeders, campgrounds, etc. and increases in wintering food/habitat; the proposed rule cited no studies that documented cowbird parasitism of *E. t. extimus*; citations regarding parasitism of other species are irrelevant. Section 4(a)(1)(E) of the Act allows listing species because of "* * * natural or manmade factors affecting its continued existence * * *."

Service Response: Cowbird numbers appear to be declining only in the northeastern United States and southeastern Canada. Through the 27 years of the BBS, cowbird populations have remained fairly stable, with a small increase in the 1970's, small decrease in the 1980's, and slight increase in recent years; however, the West has experienced a marked population increase over the last five years (Wiedenfeld 1993).

The association of cowbirds with domestic livestock is detailed in the sources cited in this final rule. The Service has neither found nor been provided information indicating that cowbirds are associated with deer or elk. Other factors, including habitat fragmentation and urban/suburban feeding, are likely to have contributed to increases in cowbirds. These causal factors will be important to address in the section 7 consultation process and the development of recovery actions. However, it is the threat of parasitism, regardless of cause, that in part necessitates listing.

Where high parasitism rates are found in *E. t. extimus* nesting locations in areas with no livestock grazing at the nest site, there have been livestock nearby that provide feeding sites in close enough proximity to facilitate cowbird parasitism. Cowbirds may disperse up to 7 kilometers (km) from their daily feeding/roosting sites to areas with host species (Rothstein *et al.* 1984). At the Kern River Preserve, the riparian habitat supporting *E. t. extimus* is not grazed, but the immediately adjacent lands are. Similarly, although livestock grazing does not occur in Grand Canyon National Park, open range grazing and an introduced bison herd occur on adjacent lands. Further, cowbirds concentrate at pack animal corrals at various points within the National Park (Johnson and Sogge 1993). Thus, flycatcher habitat may be ungrazed but still be affected by cowbirds, by having livestock concentrations nearby to serve as cowbird feeding sites.

Cowbirds and *E. t. extimus* are positively associated because cowbirds require, and therefore associate with, prospective hosts. The Service finds that extensive information indicates cowbird parasitism negatively affects the southwestern willow flycatcher. This information includes specific examples of parasitism of *E. t. extimus*, cited in this rule, and examples of the effects of cowbird parasitism on other rare species of limited habitat. Recent information continues to document high parasitism rates for *E. t. extimus* (Sogge *et al.* 1993, Muiznieks *et al.* 1994), and increases in flycatcher reproduction or populations, concurrent with reductions in cowbird numbers (Griffith and Griffith 1993, M. Whitfield *in litt.*—1993).

Issue 9: Tamarisk is not an invader species, but a successional stage, becoming established on recently-scoured areas; livestock do eat tamarisk for its salt content; the Service needs to clarify the positive and negative characteristics of tamarisk; tamarisk increases habitat availability, in fact provides high-quality bird habitat.

Service Response: The Service found no information, and was not provided any information by commenters, indicating that tamarisk is primarily a successional stage vegetation type, rather than an invasive exotic. This final rule presents an updated discussion of tamarisk ecology, supported by additional literature references. The Service concurs with the consensus among published authorities that tamarisk is an invasive, usually dominant exotic plant, not a successional species. Commenters that stated livestock eat tamarisk for its salt content provided no supporting information. The Service's understanding of the literature is that cattle prefer native species over tamarisk for forage.

As discussed in this rule, *E. t. extimus* has been documented nesting in tamarisk at elevations above approximately 625 m (2000 feet). Rather than attempt to present criteria here for when tamarisk eradication presents a threat or a positive recovery action, the Service will address this issue on a case-by-case basis through the section 7 consultation process with other Federal agencies. This will allow Federal agencies the flexibility to consider individual cases in the light of the specific circumstances surrounding each one.

Although Brown and Trosset (1989) suggested that tamarisk provided an "ecological equivalent" to native vegetation, they qualified this statement. They noted that their study involved small sample sizes, and that their methods differed from Whitmore's (1975, 1977), which was their basis for comparison with native riparian habitats. Further, Brown and Trosset (1989) noted that this "ecological equivalent" function may be most significant where tamarisk became established where no native riparian vegetation existed previously (e.g., the Colorado River in Grand Canyon).

Issue 10: Herbert Brown's collection of 36 nests with eggs from the lower Colorado River, in 1900 and 1902, indicates overcollection for science may have caused declines.

Service Response: The effects of Brown's collections on populations over 90 years ago are unknown. These effects may have been significant. However, Brown's collections themselves may suggest that populations at that time could sustain such collecting pressure. The origin of Brown's collections from several specific locales suggests that *E. t. extimus* was an abundant nesting bird in the area of the confluence of the Gila and Colorado rivers. Collection of 36 nests would have impacted reproduction alone, only for 1902, when all but one of the nests was collected. Considering continued habitat loss, and increasing cowbird populations since 1902, the Service does not believe that Brown's collection of 36 nests with eggs in 1900 and 1902 significantly affects *E. t. extimus* populations in 1995. However, the Service believes that current flycatcher populations are unlikely to be able to sustain collecting pressures like Brown's activities of 1902. In 1993, extensive surveys of the region of Brown's collections located only four to five territories (Muiznieks *et al.* 1994).

Issue 11: Drought has impacted habitat.

Service Response: The Service recognizes that extended droughts are likely to have impacted *E. t. extimus* through habitat reduction. This natural phenomenon and human-induced habitat impacts may exacerbate one another's effects on *E. t. extimus* habitat.

Issue 12: Predators such as snakes, hawks, ravens, grackles, and domestic cats are threats to *E. t. extimus*.

Service Response: The Service agrees that these constitute potential predators of songbirds, including *E. t. extimus*. While predation would not normally be expected to be a major threat to the flycatcher, its populations may be so low currently that they cannot withstand normal predation. Further, several of these types of predation may be facilitated by habitat alteration or other human actions. Therefore, the Service will address predation in recovery planning, and other Federal agencies should consider the effects of their actions on some of these forms of predation.

Issue 13: Hikers, elk, deer, and beaver are threats to flycatcher nests and habitat; listing would cause restrictions on fishing and water recreation.

Service Response: No information was provided to support statements that hikers constitute a threat to *E. t. extimus*. This rule briefly discusses possible impacts of recreation on *E. t. extimus* and its habitat. These impacts are expected to be primarily effects on vegetation through soil compaction, clearing vegetation, and creating trails. Because *E. t. extimus* is not a timid species, disturbance is expected to be an impact only when continuous intrusive activities take place near habitat, or when recreation takes place within or adjacent to the nest stand. Because nest stands tend to be very dense, virtually impenetrable thickets, often with swampy conditions, recreational impacts are not expected to occur often.

Elk and deer use riparian habitats for foraging, but generally behave differently than domestic livestock. They tend not to occur in large concentrations and remain in riparian areas for long periods like domestic cattle. The Service is aware that elk can impact riparian systems when their numbers reach high levels. However, elk are lacking from the majority of southwestern willow flycatcher habitats, because these riparian areas occur at lower elevations than elk. Beaver cut and use willow and cottonwood, but may also be important in creating quiet-water riparian habitats by damming smaller and steeper creeks.

Issue 14: The presence of unoccupied habitat indicates that *E. t. extimus* is not currently habitat limited.

Service Response: As discussed in this rule, the Service has determined that *E. t. extimus* has suffered extensive habitat loss, which is complicated by the current low number of flycatchers, and reduction of reproductive output due to brood parasitism by brown-headed cowbirds. The current existence of apparently suitable habitat that is not occupied by *E. t. extimus* more likely indicates that its numbers are too low to fill all available habitat. Further, habitat exists in isolated, fragmented patches. With low population numbers and inhibited reproduction, *E. t. extimus* may be unable to maintain local populations, much less be able to disperse and colonize unoccupied locales.

Issue 15: Cowbird parasitism is the main threat to *E. t. extimus*, not habitat loss; cowbird control is the primary recovery need, not habitat protection; cowbird trapping would eliminate the need for designating critical habitat; the Service should implement and fund cowbird control programs instead of listing.

Service Response: The Service has determined that cowbird parasitism is one of several primary threats to *E. t. extimus*, which also includes the loss and modification of habitat. Cowbird parasitism and loss and modification of habitat are interrelated. Cowbird parasitism is a function not just of cowbird abundance, but also habitat quality. Potential host species in degraded, fragmented habitat are more susceptible to nest parasitism than those nesting in larger tracts of dense, contiguous habitat. Cowbird parasitism

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will probably remain an imminent threat until habitat rehabilitation is accomplished. The Service acknowledges that cowbird control should be an immediate, high priority recovery action. However, cowbird control is a "stop-gap" action. Rehabilitating riparian habitat to make *E. t. extimus* and other riparian birds less susceptible to cowbird parasitism will be necessary for a long-term solution. Ultimately, the ranking of threats in order of severity is not relevant to the listing question. It is because a number of often interdependent threats exist that listing *E. t. extimus* is necessary. Ranking threats in order of severity and addressing them accordingly will be part of the recovery process.

Issue 16: Willow flycatchers nesting in the northern States, Alaska, and Canada are subspecies other than *E. t. extimus*. The boundaries of the breeding range of *E. t. extimus* should be expanded to include the Santa Ynez River in California, and the Green and Colorado River systems in west-central Utah; *E. t. extimus* does not occur in Utah, Colorado, or the Carson National Forest in northern New Mexico; the willow flycatcher is common in the northern States, Alaska, Canada, most of the U.S., Mexico and Panama; caution should be exercised in defining range limits of the subspecies, including elevational limits.

Service Response: Two primary authorities (Unitt 1987, Browning 1993) provide the range limits of *E. t. extimus* identified in this rule (see Figure 1). The Service also considered other information, such as historical nesting records, habitat characteristics, and proximity to neighboring populations of *E. t. extimus* or other willow flycatcher subspecies. Using this information, the Service provisionally defines the northwestern limit of the subspecies' range to be the Santa Ynez River in California. Willow flycatchers nesting along the Santa Ynez River occupy lowland riparian habitat similar to other coastal California locations of *E. t. extimus*, and few willow flycatcher (i.e., *E. t. brewsteri*) nesting locales are known in coastal California for a considerable distance north of the Santa Ynez River.

Browning (1993) found no evidence of intergrades between *E. t. extimus* and *E. t. adastus* in Utah. The northern limit of *E. t. extimus* in Utah is believed to correspond closely to the area comprising the following counties: Garfield, Kane, San Juan, Washington, and Wayne. This area takes in stretches of riverine riparian habitat in southern Utah that have historical records of flycatchers and that still have potential willow flycatcher habitat.

The Service recognizes that taxonomic questions may arise concerning flycatchers occupying some high-elevation locales within the range of *E. t. extimus*. Because the genetic relatedness of willow flycatchers breeding at some high elevation areas, such as the White Mountains of Arizona, may be substantial, willow flycatchers in those locales should be considered *E. t. extimus* until further research demonstrates otherwise. Protection of these breeding groups could be critical for population recovery, immigration, and exchange of genetic material within a highly-fragmented landscape.

Issue 17: It is inappropriate to use data from *E. t. brewsteri* and *E. t. adastus* to support listing *E. t. extimus;* information cited on livestock damaging nests comes from other subspecies.

Service Response: The Service carefully considered the propriety of using information on other willow flycatcher subspecies in evaluating the listing question for *E. t. extimus*. In applying such information, the Service considered ecological similarities and dissimilarities between the subspecies. The Service believes that data from other subspecies are applicable in some cases, but not others. The Service has identified which subspecies provided data sources throughout the proposed and final rules. The phenomenon of livestock damaging nests and/or contents through physical contact is known for willow flycatcher subspecies other than *E. t. extimus*. This threat was noted to recognize that the potential exists, where nests occur low enough in vegetation or in other vulnerable locations, that livestock, humans, or other animals may contact them or the nest plant.

Issue 18: Habitat in California was lost to urbanization, not livestock; the proposed rule had inadequate discussion of urban and suburban development as a threat; urban development is not a threat to some populations.

Service Response: Loss and modification of the riparian habitat of *E. t. extimus* is the result of numerous factors, discussed in depth in this rule. Not all these factors have affected all riparian habitats, and some rare habitats remain unaffected. Further, the degree to which these factors influence riparian habitat varies across the landscape. Urban and suburban development has certainly impacted some *E. t. extimus* habitats. These impacts may result from direct encroachment and channelization of riparian habitats, as in coastal southern California and central Arizona. Urban and suburban development also increase demands on river systems for water and hydropower. Thus, expanding urban centers can result in dewatering or alteration of riparian systems tens or hundreds of miles away. For example, the water and power demands of Los Angeles, Phoenix and Las Vegas result in effects on the Colorado River hundreds of miles from any of these cities.

Issue 19: The primary threat to *E. t. extimus* is loss of wintering habitat in Central and South America, or other factors along migration routes; the proposed rule contained insufficient information on migration studies; protecting breeding grounds is not logical, because *E. t. extimus* spends eight months of the year in migration or on wintering grounds.

Service Response: Although tropical deforestation possibly may restrict wintering habitat of the willow flycatcher, the best available current information on the subject suggests otherwise. The limited data on willow flycatcher wintering habitat indicates that this species uses "* * * brushy savannah edges and second growth" in Costa Rica (Stiles and Skutch 1989); in Panama it has been documented in "shrubby areas" (Ridgely 1981); and in South America it has been documented in "* * * shrubby clearings, pastures, and lighter woodland" or "* * * on islands with early successional growth" (Ridgely and Tudor 1994). Given existing land use practices in Central and South America, which are characterized by conversion of old-growth forested habitat to agricultural and second-growth habitats, few if any of the winter habitat types in which willow flycatchers have been documented should currently be in jeopardy.

Issue 20: The Service cannot define nesting habitat; habitat requirements are poorly understood; the proposed rule's description of nesting habitat is flawed and inadequate to direct management; the minimum patch size necessary to support a nesting pair of *E. t. extimus* is 1 to 1.5 hectares.

Service Response: The Service believes the proposed rule and this final rule accurately compile and summarize the existing information on *E. t. extimus* nesting habitat, and that information is sufficient to identify, conserve, and recover the riparian ecosystem of which *E. t. extimus* is a part. Habitat patches occupied by *E. t. extimus* vary somewhat in size, floristic composition, vegetation structure, and type of wetland. Therefore, the Service believes it is inappropriate and inaccurate to narrowly define suitable habitat in terms of plants per unit area, vegetation density, specific plant community composition, type and volume of surface water, and patch size. The Service has no information to indicate inaccuracy or inadequacy of the habitat description presented in this rule. Specifically regarding patch sizes, one to two *E. t. extimus* pairs have been observed nesting in habitat patches of 0.5 ha (Sogge *et al.* 1993, Sogge *et al.* unpubl. 1994 data); therefore 1.0 to 1.5 ha is not an accurate estimate of the minimum patch size needed to support a single nesting pair.

Issue 21: Habitats used by nesting pairs differ from those used by single, unmated, wandering, or migrant flycatchers; the latter face minimal threats and are not essential to conservation of the species.

Service Response: The commenters provided no data supporting the statement that habitats used by unpaired *E. t. extimus* differ from nesting habitat, and the Service found no indication of this in the available literature. Unmated, resident *E. t. extimus* have been found in habitats identical to nearby habitats occupied by nesting pairs (Sogge and Tibbitts 1992, Sogge *et al.* 1993). The Service believes that single, unmated *E. t. extimus* also face threats of habitat loss, and that conservation of these individuals is essential to the conservation of the species, particularly at the low current numbers of flycatchers.

Issue 22: Listing constitutes single-species management that will damage other species; *E. t. extimus* habitat is incompatible with habitat needs of other listed and sensitive species, particularly the spikedace and loach minnow.

Service Response: The purposes of the Act are to provide a program for the conservation of threatened and endangered species and to conserve the ecosystems upon which threatened and endangered species depend. The Service believes that managing for *E. t. extimus* and other listed riparian and aquatic species accomplishes this purpose, to the mutual benefit of listed and nonlisted species alike. The intent of this listing is to conserve and recover *E. t. extimus* and the riparian and aquatic ecosystems of which it is a part.

The primary constituent elements of critical habitat described for the spikedace (59 FR 10906) and loach minnow (59 FR 10898) are not in conflict with the habitat requirements for the southwestern willow flycatcher, and are not in conflict with the primary constituent elements of its proposed critical habitat (58 FR 39495). The fishes require "a healthy, intact riparian community," which will also benefit *E. t. extimus* and other riparian and aquatic species. The spikedace, loach minnow, and *E. t. extimus* all require surface water and/or a high water table, a low to moderate stream gradient, and periodic flooding. The fishes specifically require a "natural, unregulated hydrograph," which the Service believes would also benefit the flycatcher. These fish also require moderate to high bank stability; maintenance of the riparian vegetation on which *E. t. extimus* depends will provide such bank stability. The Service does not view management for *E. t. extimus*, spikedace, and loach minnow as mutually exclusive, but as mutually beneficial.

Issue 23: Floods regenerate habitat, they do not destroy it; floods destroy habitat; floods, not livestock, caused much of riparian degradation; the proposed rule is confusing and contradictory on the role of floods as a threat or necessary ecological function.

Service Response: The proposed rule stated that "Its habitat rarity, and small, isolated populations make the remaining *E. t. extimus* increasingly susceptible to local extirpation through stochastic events such as floods * * *. In early 1993, catastrophic floods in southern California and Arizona damaged or destroyed much of the remaining occupied or potential breeding habitat. Historically, these floods have always destroyed habitat but were also important events in regenerating cottonwood-willow communities."

It is important to note that *E. t. extimus* is threatened by stochastic events like floods because of its current rarity and isolated nature of populations. If the species existed at healthy population levels, and if its riparian habitat were not greatly reduced, these natural stochastic events would not constitute threats. The 1993 flood events referred to were extraordinary in nature, described regionally as 500-year floods. Therefore, they do not typify flood events in the river systems involved. Further, while natural flood events are expected to destroy some flycatcher habitat, they are also crucial for regenerating natural riparian nesting habitat. In a healthy system where riparian vegetation is abundant and the stream channel is not eroded or destabilized, destruction and regeneration are balanced and habitat is generally available. Only when riparian vegetation is severely reduced and the stream channel and watershed are destabilized are riparian and aquatic species threatened by the natural, short-term habitat losses resulting from flooding.

Issue 24: To manage for *E. t. extimus*, the Service will enforce or has proposed a fenced livestock-free corridor.

Service Response: The Service has neither proposed nor been consulted regarding a fenced, livestock-free corridor established along riparian areas on State, Federal, or private lands.

Issue 25: Beneficial land management practices should be recognized and discussed; the proposed rule fails to acknowledge that some habitats are protected from urban development.

Service Response: The Service recognizes that some management practices are beneficial. Some practices have protected or improved habitat, resulted in expanded populations, and/or improved reproduction. The Service will look to these beneficial land management practices as important examples in the recovery planning process. However, in making a listing determination the Service must consider the situation across the species' entire range. It is this overall perspective that drives the listing decision. Although some nesting groups of *E. t. extimus* may be safe, stable, or perhaps even increasing, the Service has determined that overall the species is endangered.

Issue 26: Existing regulatory mechanisms are adequate, including: the Migratory Bird Treaty Act (MBTA); State listings for Arizona, New Mexico, and California; section 404 of the Clean Water Act; Bureau of Land Management and Forest Service policies; Executive Orders 11988 and 11990; protection of riparian habitat due to presence of other listed species; private and/or cooperative management plans at local areas.

Service Response: The Service considered these regulatory mechanisms and management plans, and determines that overall existing regulatory mechanisms are insufficient to conserve and recover *E. t. extimus* in the face of the primary threats of loss and modification of habitat and cowbird parasitism. A full discussion of Federal and State protection is found in this document under Factor D: "*Inadequacy of existing regulatory mechanisms*".

The Service recognizes that some local management plans benefit and conserve *E. t. extimus* and its habitat. Examples include management of the Bureau of Land Management's San Pedro Riparian National Conservation Area (SPRNCA) in Arizona, where six years of livestock exclusion have resulted in significant restoration of riparian habitats and increases in birds associated with habitats similar to *E. t. extimus* (Krueper 1993). Willow

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flycatchers have not yet returned to their historical locations on the SPRNCA but may soon. Habitat protection and cowbird management at The Nature Conservancy's Kern River Preserve and on Marine Corps Base Camp Pendleton in California have improved habitat and reduced brood parasitism pressures for resident *E. t. extimus* (Griffith and Griffith 1993). Wetland management at Bosque del Apache National Wildlife Refuge in New Mexico is apparently sustaining a small population of flycatchers. While these actions are beneficial, they provide for *E. t. extimus* only at several locales. Further, long-term continuation of these management actions is not assured.

Provisions of section 404 of the Clean Water Act do not specifically protect *E. t. extimus* or its habitat, but do provide some protection to the aquatic and riparian ecosystems of which it is a part. Section 404 of the Clean Water Act also provides for mitigation of destruction of these habitats, however, allowing even temporary destruction of riparian habitat is not consistent with the immediate conservation needs of *E. t. extimus*.

Issue 27: The Service did not use the best available scientific or commercial information in making this determination; the Service presented insufficient and inconclusive information to support listing; the proposed rule used information which was general, incomplete, and originated with other flycatcher subspecies; the proposed rule was premature; the Service did not adequately solicit information and public input; scientific, economic, biological, hydrological and botanical data must support listing; how does the Service know the scientific information supporting listing was right?

Service Response: The Service canvassed the published literature regarding the taxonomy, ecology, and biology of the southwestern willow flycatcher, and the threats to it and its habitat. Because numerous and complex phenomena and processes were involved, this information ranged from general (e.g., wide scale trends in riparian habitat) to very specific (status of nesting groups). The Service believes it used the best available information, and has determined that this information is adequate to support listing. The Service evaluates sources before using or discounting information. In general, the Service expects that publications in peer-reviewed scientific journals, reports from land and resource management agencies, and dissertations or reports from academic or research institutions have undergone technical review. Other information sources are considered more anecdotal, and the Service seeks to confirm such information before using it.

Issue 28: The Service should comply with the National Environmental Policy Act (NEPA) by completing an Environmental Impact Statement (EIS), and comply with 40 CFR 1506 to reduce duplication between NEPA and State and local requirements; the Service should comply with 40 CFR 1508.20 to compensate for producing substitute resources or environments; the Service should engage in joint planning with local governments under NEPA regulations.

Service Response: As noted in this final rule, the Service has determined that an Environmental Assessment, as defined under the authority of NEPA, need not be prepared for listing actions. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Because of this determination, an EIS also need not be prepared. Also because of this determination, reduction of duplication between the NEPA process and State and local agencies, and joint planning between those agencies and the NEPA process, are rendered moot.

Issue 29: The proposed rule violates the Regulatory Flexibility Act; no Regulatory Impact Analysis/Assessment as required under Executive Orders 12291 and 12866 was completed; it also may be inconsistent with the mandates of other agencies.

Service Response: Decisions on listing and reclassification under the Act are made based on five factors defined in section 4(a)(1) of the Act. These five factors are discussed in this rule, as they relate to *E. t. extimus*. The Act requires the Service to consider only scientific and commercial information relating to these five factors in making listing determinations, not economic information. Economic information is considered in designating critical habitat, which is not part of this rule. Therefore, compliance with the Regulatory Flexibility Act and Executive Orders 12291 and 12866 is not an issue for this action, but will be addressed if a critical habitat designation is made (H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 20 (1982); *accord*, S. Rep. No. 418, 97th Cong., 2d Sess. 4 (1982)).

Where conservation and recovery of threatened and endangered species is inconsistent with other mandates of Federal agencies, processes under section 7 of the Act serve to evaluate projects arising from those mandates, with regard to protection of listed species. However, section 2(c) of the Act requires all Federal departments and agencies to conserve listed species and further the purposes of the Act.

Issue 30: The Service should complete a Takings Implications Assessment prior to listing/designating critical habitat.

Service Response: The Service will complete a takings analysis for any final designation of critical habitat in compliance with Executive Order 12630 and the Attorney General's supplemental guidelines issued June 30, 1988. In accordance with those guidelines and Interior Department policy, this analysis will be completed after listing, not as part of consideration of the listing determination itself.

Issue 31: Requests were received for local public hearings.

Service Response: The proposed rule stated that three public hearings would be held. Because of many requests for additional hearings, a total of six public hearings were held. Regulations at 50 CFR 424.16(c)(3) require the Service to hold one public hearing if requested.

Issue 32: The time allowed for public comments was inadequate; the proposal should have been subjected to peer review.

Service Response: The Service is required to accept public comments for at least 60 days regarding proposals to list and/or designate critical habitat (50 CFR 424.16(c)(2)). In this case the Service initially announced a 90-day public comment period, then extended that another 40 days for a total of 130 days (July 23, 1993 through November 30, 1993). Public comment periods and public hearings are the mechanisms by which the Service receives input from all interested parties, including scientific peer review.

Issue 33: Listing would require private property owners to consult with the Service on their actions; listing and/or designating critical habitat constitute take of private property rights; adverse modification of critical habitat would be prohibited on private lands; the Service failed to notify the affected public of the consequences of adverse modification of critical habitat; listing and/or designating critical habitat may affect civil rights.

Service Response: Listing does not require private property owners to consult with the Service on actions which may affect a listed species. However, section 7 of the Act does require Federal agencies to consult on actions which they fund, permit, or carry out if those actions may affect a listed species or adversely modify critical habitat. Any potential take of private property will be analyzed in compliance with Executive Order 12630 (see Issue 30). As discussed later (Issue 35), because critical habitat is not being designated with this rule, comments regarding critical habitat will be addressed during subsequent actions regarding critical habitat.

Issue 34: Requests were received to be on a mailing list for all actions relating to this issue or to be provided personal notification of a final decision.

Service Response: The Service tries to maintain mailing lists for specific issues whenever possible. However, when large numbers of parties request to be on such lists, it becomes logistically and financially unfeasible to mail information to each party. This issue is one of those, and the Service must rely to some degree on mass communication forums like news releases, public notices in newspapers, and publications in the **Federal Register**.

Issue 35: Numerous comments were received regarding critical habitat.

Service Response: Critical habitat for *E. t. extimus* is not being designated with this rule; therefore, the above issues are not addressed here. Designation of critical habitat is being deferred while the Service further considers the extent to which designation is appropriate. Issues pertaining to this designation will be addressed when a final decision is made with regard to the critical habitat proposal.

Issue 36: Numerous comments were received regarding recovery of *E. t. extimus*, including: the Service has no recovery plan for *E. t. extimus*; the proposed rule failed to identify recovery goals for habitat, flycatcher numbers, and flycatcher distribution; the proposed rule failed to identify what actions will be used to achieve recovery; a recovery plan should address control of cowbird parasitism, nest damage by livestock, tamarisk eradication, wintering habitat, monitoring populations, protection of public and private lands from fire; cowbird parasitism cannot be addressed by listing and designating critical habitat; cowbirds are not easily controlled without sacrificing flycatchers and/or impacting habitat; the proposed rule contained no livestock managing strategy; rotating livestock will allow habitat enhancement/recovery; the factors affecting riparian habitats are numerous and complex; failure to address all could be futile or have damaging effects.

Service Response: Section 4(f) of the Act authorizes the Service to develop and implement recovery plans for listed species, not species that are proposed for listing. For *E. t. extimus*, this process therefore begins with the effective date of listing. In accordance with section 4(f)(B) of the Act the recovery plan process will address actions necessary to achieve conservation and recovery of *E. t. extimus*, will identify measurable criteria by which recovery (*i.e.*, the point at which protection under the Act is no longer necessary) can be gauged, and will identify the time and costs required to achieve recovery. The specific issues identified above will be considered in developing a recovery plan, and that plan will be available for public review and comment prior to adoption. Monitoring species is frequently an element of recovery plans, and is also required by section 4(g) of the Act for any species deemed to be recovered.

Issue 37: Several commenters questioned the motivations of the petitioners in requesting the listing, and others apparently believed the petitioners authored the listing proposal. Several commenters noted that the petition contained inaccuracies, and therefore no listing proposal should have resulted.

Service Response: The Service cannot speak for the petitioners' motivations in requesting listing of *E. t. extimus*: The Service judged the petition solely on the scientific information it contained. Inaccuracies were found in the petition, but on the whole the Service determined that it presented substantial information indicating that listing may be warranted. The listing proposal was authored by the Service, not the petitioners. The Service developed its proposal not from the petition, but from information gained from journal publications, agency reports, and the general public's responses to several information solicitations. This status review process had resulted in the Service designating *E. t. extimus* a category 1 candidate species prior to the petition being received. That designation indicated that the Service had sufficient information to support a listing proposal but did not publish a proposal immediately because it was dealing with listing actions of higher priority. Information presented by the petitioners that the Service did not already possess was checked for accuracy; information that could not be confirmed, or was found to be inaccurate, was not used.

Issue 38: The Service is required to purchase interest in land or water for implementation of the Act; this violates the U.S. Constitution.

Service Response: Section 5 of the Act directs the Secretary to use land acquisition and other authorities of the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate. The Secretary is authorized, but not required, to acquire interest in land or water to conserve threatened and endangered species. The Service does not carry out these authorities in violation of the U.S. Constitution. The Service does not acquire all lands designated as critical habitat for a listed species, and does not develop critical habitat designations based on land ownership or interest of landowners in purchasing or selling properties. It is the Service's policy to acquire property only on a voluntary basis from willing sellers.

Issue 39: Land use outside occupied/critical habitat will be adversely impacted.

Service Response: Federal actions that take place outside occupied habitat or critical habitat, but that may affect *E. t extimus*, will be subject to consultation between the action agency and the Service in accordance with section 7 of the Act. Exclusively private actions are unaffected by listing and/or designation of critical habitat, provided they do not result in violation of section 9 of the Act (*e.g.*, take of the species).

Issue 40: Listing (regardless of critical habitat) will have adverse impacts on local economy; economic impacts of listing were not addressed; the Act requires the Service to consider impacts on other wildlife species and social and economic impacts prior to listing.

Service Response: Consideration of economic effects is required for designation of critical habitat. The Act requires that species listing decisions be based solely on the best scientific and commercial information available, which precludes consideration of social or cultural impacts or impacts on other species. (See section 4(b)(1)(A) of the Act). The Service anticipates no significant impacts on other native wildlife species as a result of listing, with the probable exception of the brown-headed cowbird.

Issue 41: Who initiated, performed, and paid for studies along the Kern River?

Service Response: Reports on studies done on the Kern River were published by Harris *et al.* (1986), Harris *et al.* (1987), Whitfield (1990), and Harris (1991). Specific information on project participants, funding sources, and cooperators can be found in those sources. The Service understands that monitoring and cowbird control are being continued by the Kern River Research Center and The Nature Conservancy, with funding assistance from the State of California and the Service.

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Issue 42: The Service should perform additional surveys before listing.

Service Response: The Service is supporting continuing surveys to detect additional *E. t. extimus*, to monitor known nest sites, and to evaluate habitat presence, quality, and distribution. The Service supports these surveys with funding to States in accordance with section 6 of the Act, and through logistical and technical assistance to other agencies and parties. Extensive surveys in New Mexico and Arizona in 1993 located *E. t. extimus* in numbers that do not significantly change the total population estimates made in the proposed rule. These surveys also confirmed high levels of brood parasitism by cowbirds. With low estimates of total flycatcher numbers being validated by continuing surveys, the Service has determined that sufficient information exists on the threats of habitat loss and cowbird parasitism to justify listing.

Issue 43: The Service failed to consult adequately with private interests, State, Federal, and local agencies prior to publishing the proposed rule.

Service Response: The Service published public requests for information on the status of *E. t. extimus* in the **Federal Register** when it was designated a category 2 candidate species in January 1989, and when it was designated a category 1 species in November 1991. The Service supplemented these requests with general mailings soliciting information, and information solicitations in professional publications. Beyond these mechanisms, the Service is constrained by funding limitations and citizens' suits such as *Environmental Defense Center, Inc. vs. Babbitt et al.* IV 93–1848–R (C.D. Calif.), which was brought to compel the Service to propose listing and designation of critical habitat for the species, that preclude individually contacting every interested party.

Issue 44: The parties who petitioned for listing should pay for studies supporting their request.

Service Response: Regulations implementing section 4 of the Act, specifically the petition process [50 CFR 424.14], do not require petitioners to fund studies supporting their request. Listing determinations are made if existing information is deemed sufficient to make a determination. This information typically originates from a variety of sources.

Issue 45: The southwestern willow flycatcher is abundant. There is no need to list.

Service Response: The Service has determined that *E. t. extimus* is rare, not abundant, faces serious threats to its continued existence, and warrants listing as endangered. See discussion under Factor A: *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Issue 46: The "little" willow flycatcher (*E. t. brewsteri*) is the most common subspecies observed and collected in the Southwest.

Service Response: The abundance of collections of *E. t. brewsteri* from within the breeding range of *E. t. extimus* is because *E. t. brewsteri* migrates through the Southwest between its Pacific coastal breeding range and wintering grounds in Central America. *E. t. brewsteri* passes through riparian habitats in the breeding range of *E. t. extimus* in spring and fall, but does not breed there.

Issue 47: There is no need to list *E. t. extimus* in areas where it is doing well.

Service Response: The Service has determined that *E. t. extimus* is endangered; local areas where the bird is relatively stable could only be excluded from listing or classified as threatened if they constituted distinct population segments [50 CFR 424.02(k)]. The Service has not identified any distinct population segments of *E. t. extimus*. Further, because the Service determines *E. t. extimus* to be endangered, all existing habitat and local nesting concentrations are deemed to be essential to the conservation and recovery of the species. Protection of locales where the bird is doing relatively well may be especially important for the conservation and recovery of *E. t. extimus*.

Issue 48: Prey availability may be a limiting factor.

Service Response: The Service recognizes that food availability is always a potential limiting factor in wildlife populations. It is possible that reduction of riparian habitats not only reduced vegetation for nesting, but reduced or altered the arthropod fauna associated with surface water and extensive vegetation. Also, as noted in this rule, some speculation exists that tamarisk provides a substandard nesting habitat because it supports a significantly different insect fauna than native vegetation. However, no information was available to evaluate this factor directly for *E. t. extimus*.

Issue 49: Several comments were received that pertained to the Service's management of the 90-day petition finding, including that the 90-day petition finding was late; that it is not the Service's role to conduct a status review if information in a petition is lacking; and that a 30-day comment period on the 90-day petition finding was insufficient.

Service Response: The Service acknowledges that its finding on the listing petition was published after 90 days, however, the Act (section 4(b)(3)(A) states that the [Service] shall, *to the maximum extent practicable*, make a petition finding within 90 days (emphasis added). Because the petition was found to present substantial information indicating that the petitioned action may have been warranted, the Service continued a status review after this finding, in accordance with 50 CFR 424.14(b)(3). There are no requirements for the Service to open a formal comment period regarding a 90-day petition finding. The Service did so in this case to solicit additional information on *E. t. extimus*. In reaching its 12-month petition finding, the Service considered all information received within the 30-day period identified, and information received for several months thereafter.

Issue 50: E. t. extimus should be listed as threatened, not endangered.

Service Response: The Service carefully evaluated the status of *E. t. extimus* and has determined that it meets the definition of an endangered species, not a threatened species. As stated in the proposed rule, (58 FR 39495) threatened status would not be appropriate because the large historic habitat loss already has caused extirpation throughout a significant portion of the species' range. Population numbers are extremely low, and a variety of threats are serious and imminent.

Issue 51: Restrictions on rural livestock grazing will cause ranching to become nonviable, and the land will be converted by suburban development, which is a greater threat to *E. t. extimus* than overgrazing.

Service Response: The conversion of lands from livestock grazing to suburban development is hypothetical and therefore cannot drive the Service's determination on this issue. Much of the livestock grazing that may be affected by this rule takes place on Federal lands.

Therefore, conversion to suburban development would require land exchanges or sales. These actions, if they were determined to affect *E. t. extimus*, would require consultation under section 7 of the Act. Regardless, prioritization of threats should be undertaken in the recovery, rather than listing, process.

Issue 52: The proposed rule fails to consider changing ecological factors: drought, migration patterns, nesting habits, and climatic changes.

Service Response: The Service recognizes that populations of *E. t. extimus* are likely to fluctuate naturally in response to various ecological factors. However, the Service believes that declines in habitat availability and increased exposure to cowbird parasitism have caused population reductions beyond the scale of natural fluctuations. Fluctuations in response to nonanthropogenic phenomena are likely to continue, but the current population levels are so low that these natural phenomena may be sufficient to cause local extirpations.

Issue 53: Restrictions associated with listing would be in conflict with Kern County's General Plan.

Service Response: Under section 4 of the Act, the Service considers only scientific and commercial information relating to the five listing factors outlined in section 4(a)(1) and discussed with respect to *E. t. extimus* in this rule. Therefore, conflicts with local plans were not considered in making this determination. However, the Service strives to pursue conservation and recovery of listed species in cooperation with State and local authorities, and seeks to minimize conflicts.

Issue 54: Listing and critical habitat designations will adversely affect flood control measures, some authorized by the Federal Emergency Management Agency and other Federal and State regulations; the proposed rule failed to consider flood accommodation needs, channelization, and clearing vegetation.

Service Response: Flood control measures virtually always involve a Federal agency, through funding, permitting, and/or other action. Therefore, flood control measures that may affect *E. t. extimus* would undergo consultation under section 7 of the Act. Section 7 and its implementing regulations have provisions for emergency consultations, and for actions within presidentially declared disaster areas.

Issue 55: Government agencies are responsible for many impacts to riparian areas; campgrounds, fish hatcheries, and some district offices are located in riparian areas.

Service Response: The Service acknowledges that some Federal actions are in part responsible for the threats facing *E. t. extimus*. As a result of listing, those Federal actions will be subject to consultation under section 7 of the Act to evaluate and minimize the effects of those actions.

Issue 56: The Service does not acknowledge receipt of comments on listing, and probably does not read them.

Service Response: The Service does not routinely acknowledge receipt of each letter commenting on listing proposals. The number of letters in this case made it logistically and financially impossible to acknowledge each one. However, all letters were read, and their issues addressed either here or elsewhere in this final rule. All comment letters and transcripts of public hearings are retained in the permanent file on this species and are available for public inspection.

Issue 57: Protecting flycatcher habitat may restrict mosquito control, which is important for control of encephalitis and other mosquito-borne diseases.

Service Response: Where such control involves a Federal action, mosquito and disease control actions may be subject to consultation under section 7(a)(2) of the Act, which would evaluate but not necessarily restrict or significantly modify the project. Ultimately, section 7(e) of the Act allows exemptions to the requirements of section 7(a)(2).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the southwestern willow flycatcher should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southwestern willow flycatcher (*Empidonax traillii extimus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Large scale losses of southwestern wetlands have occurred, particularly the cottonwood-willow riparian habitats of the southwestern willow flycatcher (Phillips *et al.* 1964, Carothers 1977, Rea 1983, Johnson and Haight 1984, Katibah 1984, Johnson *et al.* 1987, Unitt 1987, General Accounting Office (GAO) 1988, Bowler 1989, Szaro 1989, Dahl 1990, State of Arizona 1990, Howe and Knopf 1991). Changes in riparian plant communities have resulted in the reduction, degradation, and elimination of nesting habitat for the willow flycatcher, curtailing the ranges, distributions, and numbers of western subspecies, including *E. t. extimus* (Gaines 1974, Serena 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, Taylor 1986, Unitt 1987, Schlorff 1990, Ehrlich *et al.* 1992).

Dahl (1990) reviewed estimated losses of wetlands between 1780 and the 1980's in the Southwest: California is estimated to have lost 91 percent, Nevada 52 percent, Utah 30 percent, Arizona 36 percent, New Mexico 33 percent, and Texas 52 percent. As much as 90 percent of major lowland riparian habitat has been lost or modified in Arizona (State of Arizona 1990). Franzreb (1987) noted that "[B]ottomland riparian forests are the most highly modified of natural landscapes in California."

Loss and modification of southwestern riparian habitats have occurred from urban and agricultural development, water diversion and impoundment, channelization, livestock grazing, off-road vehicle and other recreational uses, and hydrological changes resulting from these and other land uses. Rosenberg *et al.* (1991) noted that "it is the cottonwood-willow plant community that has declined most with modern river management." Loss of the cottonwood-willow riparian forests has had widespread impact on the distribution and abundance of bird species associated with that forest type (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the western United States. These effects include changes in plant community structure and species composition, and relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology (Rea 1983, General Accounting Office 1988) and directly affect the habitat characteristics critical to *E. t. extimus*. Livestock grazing in riparian habitats typically results in reduction of plant species diversity and density, especially of palatable broadleaf plants like willows and cottonwood saplings, and is one of the most common causes of riparian degradation (Carothers 1977, USDA Forest Service 1979, Rickard and Cushing 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, GAO 1988, Clary and Webster 1989, Schultz and Leininger 1990).

Increases in abundance of riparian bird species have followed reduction, modification, or removal of cattle grazing. Krueper (1993) found the following increases in birds associated with cottonwood-willow habitat on Arizona's San Pedro River four years after the removal of livestock: yellow warbler, 606 percent; common yellow-throat, 2,128 percent; yellow-breasted

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chat, 423 percent. Bock *et al.* (1993) found that 40 percent of the riparian bird species they examined, including the willow flycatcher (various subspecies), were negatively affected by livestock grazing. Increases in willow flycatcher numbers (various subspecies) have followed reduction, modification, or removal of cattle grazing. Taylor (1986) found a negative correlation between recent cattle grazing and abundance of numerous riparian birds, including the Great Basin willow flycatcher (*E. t. adastus*). In an area ungrazed since 1940, his bird counts were five to seven times higher than comparable plots where grazing was terminated in 1980. Taylor and Littlefield (1986) found higher numbers of Great Basin willow flycatchers correlated with minimal or nonexistent livestock grazing. Klebenow and Oakleaf (1984) listed the Great Basin willow flycatcher among bird species that declined from abundant to absent in riparian habitats degraded in part by overgrazing. Schlorff reported willow flycatchers returning to Modoc County, California, several years after removal of livestock grazing (pers. comm. cited in Valentine *et al.* 1988). Knopf *et al.* (1988) found that, during the summer, Great Basin willow flycatchers were present on winter-grazed pastures, but were virtually absent from summer-grazed pastures.

The Service believes that documentation of livestock impacts on other willow flycatcher subspecies is relevant to *E. t. extimus*, because linear riparian habitats in the arid range of *E. t. extimus* are especially vulnerable to fragmentation and destruction by livestock. As shady, cool, wet areas providing abundant forage, they are disproportionately preferred by livestock over the surrounding xeric uplands (Ames 1977, Valentine *et al.* 1988, A. Johnson 1989). Harris *et al.* (1987) believed that termination of grazing along portions of the South Fork of the Kern River in California was responsible for increases in riparian vegetation and, consequently, nesting *E. t. extimus*. Suckling *et al.* (1992) noted that most of the areas still known to support *E. t. extimus* have low or nonexistent levels of livestock grazing. More recent surveys (Muiznieks *et al.* 1994) have found *E. t. extimus* in areas with livestock grazing; however, these occur in widely dispersed, small groups whose nesting success is largely unknown, and where livestock grazing intensity and seasonality are also unknown.

Another likely factor in the loss and modification of southwestern willow flycatcher habitat is invasion by the exotic tamarisk. Tamarisk (also called saltcedar) was introduced into western North America from the Middle East in the late 1800's as an ornamental windbreak and for erosion control. It has spread rapidly along southwestern watercourses, typically at the expense of native riparian vegetation, especially cottonwood/willow communities. Although tamarisk is present in nearly every southwestern riparian community, its dominance varies. It has replaced some communities entirely, but occurs at a low frequency in others.

The spread and persistence of tamarisk has resulted in significant changes in riparian plant communities. In monotypic tamarisk stands, the most striking change is the loss of community structure. The multilayered community of herbaceous understory, small shrubs, middle-layer willows, and overstory deciduous trees is often replaced by one monotonous layer. Plant species diversity has declined in many areas, and relative species abundance has shifted in others. Other effects include changes in percent cover, total biomass, fire cycles, thermal regimes, and perhaps insect fauna (Kerpez and Smith 1987, Carothers and Brown 1991, Rosenberg *et al.* 1991, Busch and Smith 1993).

Disturbance regimes imposed by man (e.g., grazing, water diversion, flood control, woodcutting, and vegetation clearing) have facilitated the spread of tamarisk (Behle and Higgins 1959, Kerpez and Smith 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991). Cattle find tamarisk unpalatable. However, they eat the shoots and seedlings of cottonwood and willow, acting as a selective agent to shift the relative abundance of these species (Kerpez and Smith 1987). Degradation and, in some cases, loss of native riparian vegetation lowered the water table and resulted in the loss of perennial flows in some streams. With its deep root system and adaptive reproductive strategy, tamarisk thrives or persists where surface flow has been reduced or lost. Further, tamarisk establishment often results in a self-perpetuating regime of periodic fires, which were uncommon in native riparian woodlands (Busch and Smith 1993).

Manipulation of perennial rivers and streams has resulted in habitats that tend to allow tamarisk to outcompete native vegetation. Construction of dams created impoundments that destroyed native riparian communities. Dams also eliminated or changed flood regimes, which were essential in maintaining native riparian ecosystems. Changing (usually eliminating) flood regimes provided a competitive edge to tamarisk. In contrast to native phreatophytes, tamarisk does not need floods and is intolerant of submersion when young. Diversion of water caused the lowering of near-surface groundwater and reduced the relative success of native species in becoming established. Irrigation water containing high levels of dissolved salts also favors tamarisk, which is more tolerant of high salt levels than most native species (Kerpez and Smith 1987, Busch and Smith 1993).

The rapid spread of tamarisk has coincided with the decline of the southwestern willow flycatcher. Although *E. t. extimus* has been documented nesting in tamarisk, it is not known whether, over the long term, reproductive success of southwestern willow flycatchers nesting in tamarisk has differed from the success of flycatchers nesting in native vegetation. Studies in Arizona have documented low breeding densities and low reproductive success for southwestern willow flycatchers nesting in tamarisk (Hunter *et al.* 1988, Muiznieks *et al.* 1994). These data, coupled with a possible decrease in the arthropod prey base and thermal protection for nests provided by tamarisk, suggest that tamarisk may provide poor quality nesting habitat. However, more extensive comparative studies are needed to determine the overall impact on the southwestern willow flycatcher of the conversion of native broadleaf-dominated riparian habitat to tamarisk-dominated habitat.

Other studies of riparian bird communities have documented changes in bird species diversity, corresponding with invasion by tamarisk.

Conversion to tamarisk typically coincides with reduction or complete loss of bird species strongly associated with cottonwood-willow habitats. These include the yellow-billed cuckoo (*Coccyzus americanus*), summer tanager (*Piranga rubra*), northern oriole (*Icterus galbula*), and the southwestern willow flycatcher (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991). While Brown and Trosset (1989) believed tamarisk may serve as an "ecological equivalent" to native vegetation, they noted that their study occurred where a tamarisk community became established where no native equivalent existed before.

Some authors believe tamarisk may not provide the thermal protection that native broadleaf species do (Hunter *et al.* 1987, Hunter *et al.* 1988). This could be important at lower elevations in the Southwest, where extreme high temperatures are common during the bird's midsummer breeding season. It is also possible that tamarisk affects *E. t. extimus* by altering the riparian insect fauna (Carothers and Brown 1991). Some sources also speculated that nests in tamarisk stands may be more easily located by brown-headed cowbirds (see cowbird discussion below). Hunter *et al.* (1987) reported the willow flycatcher as one of seven midsummer-breeding builders of open nests that were found in tamarisk at higher elevations but not lower elevations. Nesting *E. t. extimus* have been found in tamarisk at middle elevations (610–1200 m (2000–3500 feet)) (Hundertmark 1978, Hubbard 1987, Hunter *et al.* 1987, Brown 1988, Sogge *et al.* 1993, Muiznieks *et al.* 1994). However, nest success in tamarisk at these elevations appears to be low (Sogge and Tibbitts 1992, Sogge *et al.* 1993, Muiznieks *et al.* 1994). The species is essentially absent from tamarisk-dominated habitats below 610 m (2000 feet). On the lower Colorado River (approximately 25 m (80 feet)) where tamarisk is widely dominant, the only territories found in recent decades were in relict stands dominated by willow, cottonwood, and other native vegetation (Muiznieks *et al.* 1994). Unitt (1987) speculated that at higher elevations and in the eastern portion of its range, some *E. t. extimus* populations may be adapting to tamarisk.

Water developments also likely reduced and modified southwestern willow flycatcher habitat. The series of dams along most major southwestern rivers (Colorado, Gila, Salt, Verde, Rio Grande, Kern, San Diegito, and Mojave) have altered riparian habitats downstream of dams through hydrological changes, vegetational changes, and inundated habitats upstream. New habitat is sometimes created along the shoreline of reservoirs, but this habitat (often tamarisk) is often unstable because of fluctuating levels of regulated reservoirs (Grinnell 1914, Phillips *et al.* 1964, Rosenberg *et al.* 1991). Construction of Glen Canyon Dam on the Colorado River allowed establishment of a tamarisk riparian community downstream in the Grand Canyon, where a small population of *E. t. extimus* exists, with poor reproduction (Brown 1991, Sogge *et al.* 1993). However, Lake Powell, formed upstream of the dam, inundated what was apparently superior habitat, with *E t. extimus* considered common (Behle and Higgins 1959).

Diversion and channelization of natural watercourses are also likely to have reduced *E. t. extimus* habitat. Diversion results in diminished surface flows and increased salinity of residual flows. Consequent reductions and composition changes in riparian vegetation are likely. Channelization often alters stream banks and fluvial dynamics necessary to maintain native riparian vegetation.

Suckling *et al.* (1992) suggested that logging in the upper watersheds of southwestern rivers may constitute another potential threat to the southwestern willow flycatcher. They stated that logging increases the likelihood of damaging floods in southwestern willow flycatcher nesting habitat.

Finally, the willow flycatcher (all subspecies) is listed among neotropical migratory birds that may be impacted by alteration of wintering habitat, as through tropical deforestation (Finch 1991, Sherry and Holmes 1993).

Population Trends for Each State Are Discussed Briefly Below

California. All three resident subspecies of the willow flycatcher (*E. t. extimus*, *E. t. brewsteri*, and *E. t. adastus*) were once considered widely distributed and common in California, wherever suitable habitat existed (Wheelock 1912, Willett 1912, Grinnell and Miller 1944). The historic range of *E. t. extimus* in California apparently included all lowland riparian areas of the southern third of the State. Unitt (1984, 1987) concluded that it was once fairly common in the Los Angeles basin, the San Bernardino/Riverside area, and San Diego County. Willett (1912, 1933) considered the bird to be a common breeder in coastal southern California. Nest and egg collections indicate the bird was a common breeder along the lower Colorado River near Yuma in 1902 (T. Huels, University of Arizona *in litt.*, transcripts of H. Brown's field notes).

All three willow flycatcher subspecies breeding in California have declined, with declines most critical in *E. t. extimus*, which remains only in small, disjunct nesting groups (Unitt 1984 and 1987, Gaines 1988, Schlorff 1990, Service unpubl. data). Only two nesting groups have been stable or increasing in recent years. One is on private land where habitat impacts from livestock grazing have been virtually eliminated (Harris *et al.* 1987, Whitfield 1990). This group on the South Fork of the Kern River experienced numerical declines in 1991 and 1992, but increases in nesting success were realized in 1992 and 1993, attributed to shaking (killing) or removing cowbird eggs or nestlings found in flycatcher nests, and trapping cowbirds (Whitfield and Laymon, Kern River Research Center, *in litt.* 1993). The other apparently stable nesting group is along the Santa Margarita River on Marine Corps Base Camp Pendleton, where cowbird numbers have also been reduced by trapping (Griffith and Griffith 1993). Approximately eight other nesting groups are known in southern California, all of which consisted of six or fewer nesting pairs in recent years (Unitt 1987, Schlorff 1990, Service, unpubl. data). Using the most recent information for all areas, approximately 70 pairs and 8 single southwestern willow flycatchers are known to exist in California. Where information on population trends since the mid-1980's is available, most areas show declines. Three recent status reviews considered extirpation from California to be possible, even likely, in the foreseeable future (Garrett and Dunn 1981, Harris *et al.* 1986, Schlorff 1990). The State of California classifies the willow flycatcher as endangered [California Department of Fish and Game (CDFG) 1992].

Arizona. Records indicate that the former range of the southwestern willow flycatcher in Arizona included portions of all major watersheds (Colorado, Salt, Verde, Gila, Santa Cruz, and San Pedro). Historical records exist from the Colorado River near Lee's Ferry and near the Little Colorado River confluence (Phillips, pers. comm., cited in Unitt 1987), and along the Arizona-California border (Phillips 1948, Unitt 1987), the Santa Cruz River near Tucson (Swarth 1914, Phillips 1948), the Verde River at Camp Verde (Phillips 1948), the Gila River at Fort Thomas (W.C. Hunter, pers. comm., cited in Unitt 1987), the White River at Whiteriver, the upper and lower San Pedro River (Willard 1912, Phillips 1948), and the Little Colorado River headwaters area (Phillips 1948).

The southwestern willow flycatcher has declined throughout Arizona. The subspecies was apparently abundant on the lower Colorado River in 1902 (T. Huels *in litt.*, transcripts of H. Brown's field notes), but only four to five territories were located in 1993 (Muiznieks *et al.* 1994). Elsewhere in the State, *E. t. extimus* persists only in several small, widely scattered locations. In the Grand Canyon, several groups of nesting birds have fluctuated from a high of 11 singing males in 1986 (Brown 1988) to two pairs and three single birds in 1992 (Sogge and Tibbitts 1992). Grand Canyon surveys in 1993 located 13 birds; six unpaired individuals, two pairs, and what appeared to be one male with two females. No nesting attempts were successful (Sogge *et al.* 1993). Although Brown (*et al.* 1987) noted *E. t. extimus* as nesting in Havasu Canyon, in 1993 none were located there and cowbirds were abundant (Sogge *et al.* 1993). A

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location on the lower San Pedro River apparently supported relatively large numbers of *E. t. extimus* in the 1940's (G. Monson, private individual, *in litt.* 1993 and pers. comm. 1993), but only a single pair in 1978 and 1979, and none in 1986 (Unitt 1987). Following habitat improvements at this locale, six to seven singing males were present in 1993, and a total of 11 singing males were located at two other locations on the lower San Pedro in 1993 (Muiznieks *et al.* 1994).

Historically occupied habitat on the upper San Pedro River is in the process of rehabilitation, but remains unoccupied by nesting *E. t. extimus* (Krueper and Corman 1988, D. Krueper unpubl. data). Two small groups at high elevations in the White Mountains, comprising approximately five singing males each, have remained relatively stable numerically from 1985 to 1993 (Muiznieks *et al.* 1994, Arizona Game and Fish Department (AGFD), unpubl. data). At a site on the Verde River in central Arizona where R. Ohmart (unpubl. data) observed four nesting pairs in 1992, one pair and one single male were present in 1993. The single nest produced only a cowbird young. Of 13 river reaches in Arizona studied by Hunter *et al.* (1987), nesting *E. t. extimus* were extirpated from eight, declining in two, and present in stable numbers in three.

Statewide surveys in 1993 located between 42 and 56 territorial males, and all nest sites were considered vulnerable to habitat loss and cowbird parasitism (Muiznieks *et al.* 1994). Preliminary data from 1994 surveys indicate that approximately 70 to 80 breeding pairs were found at a total of 12 locations in the State. This included the discovery of a group of flycatchers at one location consisting of approximately 15 breeding pairs. Brood parasitism by cowbirds was documented at at least six (50%) of those 12 sites. Brown-headed cowbirds were documented at all 12 breeding locations (Arizona Game and Fish Department, *in prep.*).

Where information on population trends since the mid-1980's is available, most areas show declines and/or high rates of cowbird parasitism. In early 1993, catastrophic flooding on the Verde, Gila, and San Pedro Rivers temporarily damaged many sites inhabited since the mid-1980's, and much potential habitat. Unitt (1987) concluded that "Probably the steepest decline in the population levels of *E. t. extimus* has occurred in Arizona * * * *E. t.* extimus has been extirpated from much of the area from which it was originally described, the riparian woodlands of southern Arizona." The State of Arizona classifies the willow flycatcher as endangered (AGFD 1988).

New Mexico. Bailey (1928) classified breeding willow flycatchers in New Mexico as *E. t. brewsteri*, according to Oberholser's (1918) taxonomy of that time. Because of few records at that time, she believed that either the bird was rare or was overlooked by most observers and collectors. More recently, Hubbard (1987) reviewed and summarized the flycatcher's status in New Mexico. He classified breeding birds in the State as *E. t. extimus* and reported breeding locations that were generally confined to the regions west of the Rio Grande, with records from the Rio Grande, Chama, Zuni, San Francisco, and Gila drainages (See also Hubbard 1982). However, he provisionally assigned all willow flycatchers nesting in New Mexico to *E. t. extimus*, noting records from the Pecos River and Penasco Creek in the southeast and from near Las Vegas in the northeast.

Both Hubbard (1987) and Unitt (1987) believed that the overall range of *E. t. extimus* had not been reduced in New Mexico, but that habitat and numbers had declined. Unitt (1987) believed the majority of all remaining nesting birds may occur in New Mexico. Areas with 19 and 53 singing flycatchers, not distinguished as nesting or migrants, were found on the upper Gila River (Montgomery *et al.* 1985, cited in Suckling *et al.* 1992). Preliminary data from 1994 surveys indicate that this breeding group is still present. However, the breeding status of flycatchers and trend over time have not been determined (S.O. Williams, New Mexico Department of Game and Fish—pers. comm.)

Hubbard (1987) noted that data were lacking for trends of most nesting areas. However, where data were available, they indicated loss of a group of 15 breeding pairs by the rising waters of Elephant Butte Reservoir. The willow flycatcher was considered fairly common in this area on the middle Rio Grande in the late 1970's (Hundertmark 1978). Hubbard hypothesized that some of these birds could have moved upstream, to new shoreline habitat created by the impoundment. Between 1987 and 1990, bird surveys along the Rio Grande Valley State Park in Albuquerque found a single singing willow flycatcher during the breeding season (Hoffman 1990). Current trends in New Mexico are not being extensively monitored. However, in 1992, 71 transects along the Rio Grande were surveyed for breeding birds, but not specifically targeting willow flycatcher habitat. A single willow flycatcher was located near Espanola (Leal, Meyer and Thompson, unpubl. data). In 1993, surveys of 52 locations found 31 pairs or singing males at 15 of those locations (S.O. Williams III, New Mexico Department of Game and Fish (NMDGF), *in litt.* 1993). Hubbard (1987) estimated that the State population may total 100 pairs; that estimate has not been revised. Hubbard (1987) found that "the conclusion is virtually inescapable * * * a decrease has occurred in the population of breeding willow flycatchers in New Mexico over historic time," resulting from habitat loss. The State of New Mexico classifies the willow flycatcher as endangered (NMDGF 1988).

Texas. The eastern limit of the southwestern willow flycatcher's breeding range is in western Texas (Unitt 1987). Collections have been made at Fort Hancock on the Rio Grande (Phillips 1948), in the Guadalupe Mountains (Phillips, pers. comm., cited in Unitt 1987), the Davis Mountains (Oberholser 1974), and from unspecified locales in Brewster County (Wolfe 1956). Wauer (1973 and 1985) considered *E. t. extimus* a rare summer resident in Big Bend National Park. Data are lacking on current population levels and trends in Texas. Loss and modification of habitat may have reduced populations on the Rio Grande and Pecos Rivers.

Utah. The north-central limit of breeding southwestern willow flycatchers is in southern Utah. Behle (1985) and Unitt (1987) believed a clinal gradation between *E. t. extimus* and *E. t. adastus* existed, but Browning (1993) disagreed, identifying a range boundary at approximately the 38th north parallel. Southern Utah is characterized by extreme topographic relief. In this region, subspecific separation may be a function of elevation, with *E. t. extimus* at lower elevations (e.g., Virgin and Colorado Rivers) and *E. t. adastus* higher (e.g., Sevier River, wet meadows of mountains and high plateaus). Records that are likely to represent *E. t. extimus* are from the Virgin River (Phillips 1948, Wauer and Carter 1965, Whitmore 1975), Kanab Creek, and along the San Juan and Colorado Rivers (Behle *et al.* 1958, cited in Unitt 1987; Behle and Higgins 1959, Behle 1985; see also Browning 1993). Other reports document the subspecies being present along the Virgin, Colorado, San Juan, and perhaps Paria Rivers (BLM, unpubl. data). Although Behle believed *E. t. extimus* was always rare in southern Utah overall (pers. comm. cited in Unitt 1987), he considered it a locally common breeding resident where habitat existed along the Colorado River and its tributaries in southeastern Utah (Behle and Higgins 1959).

Few data are available on population trends in southern Utah. However, loss and modification of habitat is likely to have reduced populations on the Virgin, Colorado, and San Juan Rivers. These losses have been due to suburban expansion and habitat changes along the Virgin River, inundation by Lake Powell on the Colorado and San Juan Rivers, and encroachment of tamarisk throughout the region (Unitt 1987, BLM unpublished data).

Nevada. Unitt (1987) reported only three records for Nevada, all made before 1962. Unitt (1987), Hubbard (1987), and Browning (1993) all considered southern Nevada (approximately south of 38° north parallel) to be within the range of *E. t. extimus*. However, no recent data are available on population levels or trends. Habitat may remain along the lower Virgin River and at the inflow of the Virgin River into Lake Mead. However, loss and modification of habitat is likely to have reduced populations on the Virgin and Colorado Rivers.

Colorado. Whether or not the southwestern willow flycatcher breeds in Colorado is unclear. Hubbard (1987) believed the subspecies ranged into extreme southwestern Colorado. Browning (1993) was noncommittal, and Unitt (1987) tentatively used the New Mexico-Colorado border as the boundary between *E. t. extimus* and *E. t. adastus*. Several specimens taken in late summer have been identified as *E. t. extimus*, but nesting was not confirmed (Bailey and Niedrach 1965). Phillips (1948) cautioned that willow flycatchers in this region displayed considerable individual variation and may represent intergrades between *E. t. extimus* and *E. t. adastus*. No recent data are available on occurrence, population levels, or trends in this area.

Mexico. Six specimens from Baja California del Norte and two from Sonora were discussed by Unitt (1987). He and Phillips (pers. comm., cited in Unitt 1987) believed *E. t. extimus* was not common in northwestern Mexico. Wilbur (1987) was skeptical of its presence as a breeder in Baja California. In the more general treatments of field guides, the willow flycatcher is described as breeding in extreme northwestern Mexico, including northern Baja California del Norte (Blake 1953, Peterson 1973). No recent data are available on current population levels or trends.

Using the most recent censuses and estimates for all areas, the estimated total of all southwestern willow flycatchers is approximately 300 to 500 nesting pairs. Unitt (1987) believed the total was "well under" 1000 pairs, more likely 500. The regional estimates and information on which these total estimates are based generally date from the late 1980's to 1993 (e.g., Hubbard 1987, T. Johnson 1989). Virtually all nesting groups monitored since that time have continued to decline (Whitfield 1990, Brown 1991, Sogge *et al.* 1993, Whitfield and Laymon, unpubl. data).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service is unaware of threats resulting from overutilization.

C. Disease or Predation

The Service is unaware of any disease that constitutes a significant threat to *E. t. extimus*. Boland *et al.* (1989) found only one case of larval parasites in willow flycatcher nestlings in California.

Predation of southwestern willow flycatchers may constitute a significant threat and may be increasing with habitat fragmentation. Where *E. t. extimus* has been extirpated in the lower Colorado River valley, Rosenberg *et al.* (1991) found increases in the great-tailed grackle (*Quiscalus mexicanus*), which preys on the eggs and young of other birds (Bent 1965). Whitfield (1990) found predation on *E. t. extimus* nests to be significant. Predation increased with decreasing distance from nests to thicket edges, suggesting that habitat fragmentation may increase the threat of predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The Migratory Bird Treaty Act (MBTA)(16 U.S.C. § 703–712) is the only current Federal protection provided for the southwestern willow flycatcher. The MBTA prohibits "take" of any migratory bird, which is defined as: "* * * to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect * * *" However, unlike the Act, there are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of active nests occurs.

The majority of the southwestern willow flycatcher's range lies within California, Arizona, and New Mexico (Phillips 1948, Hubbard 1987, Unitt 1987). All of those States classify the willow flycatcher as endangered (AGFD 1988, NMDGF 1988, CDFG 1992). The State listings in New Mexico and Arizona do not convey habitat protection or protection of individuals beyond existing regulations on capture, handling, transportation, and take of native wildlife. The California Endangered Species Act (CESA) prohibits unpermitted possession, purchase, sale, or take of listed species. However, the CESA definition of take does not include harm, which under the Act can include destruction of habitat that actually kills or injures wildlife by significantly impairing essential behavioral patterns (50 CFR 17.3). However, CESA requires consultation between the CDFG and other State agencies to ensure that activities of State agencies will not jeopardize the continued existence of State-listed species (E. Toffoli, State of California, *in litt.* 1992). The Service believes that this and other regulatory mechanisms are inadequate to ensure the continued existence of the southwestern willow flycatcher.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The riparian habitat of the southwestern willow flycatcher has always been rare and has become more so. Its habitat rarity and small, isolated populations make the remaining *E. t. extimus* increasingly susceptible to local extirpation through stochastic events such as floods, fire, brood parasitism, predation, depredation, and land development. In early 1993, catastrophic floods in southern California and Arizona impacted much of the remaining occupied or potential breeding habitat. Historically, these floods have always destroyed habitat but were also important events in regenerating cottonwood-willow communities. However, with little southwestern willow flycatcher habitat remaining, widespread events like those of 1993 could destroy virtually all remaining habitat throughout all or a significant portion of the subspecies range. Further, regeneration with natural vegetation after floods may be inhibited if the area is subjected to overgrazing by domestic livestock.

The disjunct nature of habitats and small breeding populations impede the flow of genetic material and reduce the chance of demographic rescue from migration from adjacent populations. The resulting constraints on the gene pool intensify the external threats to the species.

Brood parasitism by the brown-headed cowbird also threatens the southwestern willow flycatcher. Cowbirds lay their eggs in the nests of other, usually smaller, songbirds. The cowbird often removes a number of the host's eggs and replaces them with an equal number of cowbird eggs. The host

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species then incubates the cowbird eggs, which typically hatch prior to the host's own eggs. Cowbird eggs require a relatively short incubation period of 10 to 12 days. Thus, the young cowbirds have several advantages over the host's young; they hatch earlier, they are larger, and they are also more aggressive than the host's young. Cowbird nestlings typically outcompete those of the host species for parental care, and, as a result, the host species' own reproduction is reduced or eliminated (Bent 1965, McGeen 1972, Mayfield 1977a, Harrison 1979, Brittingham and Temple 1983).

The brown-headed cowbird commonly preys on insects stirred up by grazing ungulates, and was originally restricted to the Great Plains, where it was strongly associated with American bison (*Bison bison*). As North America was settled, cowbirds became associated with livestock and human agriculture because of the food sources they provided (Bent 1965, Flett and Sanders 1987, Valentine *et al.* 1988). The expansion of agriculture, livestock grazing, and wide scale human activities in general caused opening and fragmenting of forest and woodland habitats. Habitat fragmentation and agriculture are strongly correlated with increased rates of brood parasitism by brown-headed cowbirds (Rothstein *et al.* 1980, Brittingham and Temple 1983, Airola 1986, Robinson *et al.* 1993). Some species are likely to have adapted to parasitism over time, particularly prairie nesters in the original range of the cowbird. However, the cowbird's rapid expansion now brings it into contact with forest and woodland species not adapted to deal with brood parasitism, significantly impacting those species (Hill 1976, Mayfield 1977a, Robinson *et al.* 1993).

The brown-headed cowbird was apparently an uncommon bird within the range of *E. t. extimus*, until the late 1800's. Since then, the species has greatly expanded in numbers and distribution throughout the region (Laymon 1987, Rothstein *in prep.*). Increases in cowbirds in the San Bernardino Valley between 1918 and 1928 caused Hanna (1928) "considerable alarm." Although Friedmann *et al.* (1977) reported relatively low rates of parasitism of willow flycatchers in the western United States, this was apparently owing to their data (egg sets) being collected prior to the major incursions of cowbirds into Pacific coast riparian habitats (L. Kiff, Western Foundation for Vertebrate Zoology, *in litt.* 1993). Brood parasitism of several subspecies of the willow flycatcher, including *E. t. extimus*, by brown-headed cowbirds is well documented (Hanna 1928, Rowley 1930, Willett 1933, Hicks 1934, King 1954, Holcomb 1972, Friedmann *et al.* 1977, Garret and Dunn 1981, Harris *et al.* 1987, Brown 1988, 1991, Sedgewick and Knopf 1988, Whitfield 1990, Harris 1991, Sogge *et al.* 1993, Muiznieks *et al.* 1994).

The increases in cowbirds in the Southwest and parasitism of *E. t. extimus* and other birds are generally attributed to the following scenario: The introduction of modern human settlements, livestock grazing, and other agricultural developments resulted in habitat fragmentation. Simultaneously, livestock grazing and other agricultural developments served as vectors for cowbirds by providing feeding areas near host species' nesting habitats (Hanna 1928, Gaines 1974, Mayfield 1977a). Cowbirds may travel almost 7 kilometers (4.2 miles) from feeding sites where livestock congregate to areas where host species are parasitized (Rothstein *et al.* 1984). These factors increased both the vulnerability of *E. t. extimus* and the likelihood of encounters with cowbirds. Finally, the high edge-to-interior ratio of linear riparian habitats like those used by *E. t. extimus* renders birds nesting there particularly vulnerable to parasitism (Airola 1986, Laymon 1987, Harris 1991). Linear riparian habitats are also especially vulnerable to fragmentation by grazing, which further increases both the edge-to-interior ratio and the threat of parasitism.

The effects of parasitism by brown-headed cowbirds on willow flycatchers include reducing nest success rate and egg-to-fledging rate, and delaying successful fledging (because of renesting attempts) (Harris 1991). A common response to parasitism is abandonment of the nest (Holcomb 1972). Willow flycatchers may also respond to parasitism by ejecting cowbird eggs, by burying them with nesting material and renesting on top of them, or by renesting in another nest (Harris *et al.* 1991). However, the success rate of renesting is often reduced, because these attempts produce fledglings several weeks later than normal, which may not allow them adequate time to prepare for migration (Harris 1991). Renesting also usually consists of smaller clutches, further reducing overall reproductive potential (Holcomb 1974).

McCabe (1991) downplayed the significance of cowbird parasitism as a threat to any species except Kirtland's warbler (*Dendroica kirtlandii*). McCabe's monograph focussed on the combined "Traill's flycatcher" superspecies, comprised of *E. t. traillii* and *E. alnorum* in marshy habitats in the upper Midwest, where parasitism rates ranged from 3 percent to 19 percent. However, perhaps reflecting his regional perspective, he characterized the high parasitism rates on willow flycatchers reported by Trautman (1940, cited in McCabe 1991) and Sedgwick and Knopf (1988) as aberrant (56 percent and 41 percent, respectively). McCabe considered the high rates the result of the "* * * linear configuration of the habitat * * * [c]owbirds lay eggs in songbird nests closest to cover edge." The vast majority of southwestern willow flycatcher habitat is very linear and may experience higher rates of parasitism than other willow flycatcher subspecies.

Brittingham and Temple (1983) considered "high" parasitism rates (percent of nests parasitized) to be 24 percent, with some as high as 72 percent. Mayfield (1977a) thought a species (or population) might be able to survive a 24 percent parasitism rate, but that losses much higher than that "would be alarming." Parasitism rates of 72 percent to 83 percent on Kirtland's warbler (Mayfield 1977b) resulted in a precipitous population decline. Where parasitism rates are known for *E. t. extimus*, they are comparable to rates for Kirtland's warbler and are capable of causing similar declines. In California, parasitism rates ranged from 50 percent to 80 percent between 1987 and 1992, when an estimated population size decreased from 44 to 28 nesting pairs (Whitfield 1990, Harris *et al.* 1991, Whitfield and Laymon, unpubl. data). These parasitism rates were considered minimum measures, because several nests were abandoned each year due to unknown causes, which could have been parasitism. Brown (1988) reported an average 50 percent parasitism rate in the Grand Canyon between 1982 and 1987. Although his estimated population increased from two pairs to 11 during that period, it has since decreased back as low as two nesting pairs (Brown 1991, Sogge and Tibbitts 1992). In 1993, parasitism reached 100 percent in the Grand Canyon, and no *E t. extimus* were fledged (Sogge *et al.* 1993). Harris *et al.* (1991) believed that the parasitism rates observed on the Kern River in 1987 (68 percent of all nests, 88 percent of all nest territories) were high enough to prevent *E. t. extimus* from recolonizing lowland riparian habitat, even if it were restored

Rothstein *et al.* (1980), Stafford and Valentine (1985), and Harris (1991) believed parasitism may be correlated with elevation, being more severe at lower elevations. Coupled with greater loss of lowland (desert) riparian habitat, the effects of habitat loss and parasitism are compounded. However, cowbirds now appear to be increasing at higher elevations (Hanka 1985).

In addition to causing habitat degradation and facilitating brood parasitism, livestock grazing in and near riparian areas may also threaten *E. t. extimus* through direct mortality. Livestock in riparian habitats sometimes make physical contact with nests or supporting branches, resulting in destruction of nests and spillage of eggs or nestlings. All known documentation of this threat involves *E. t. brewsteri*, perhaps because virtually all known remaining populations of *E. t. extimus* are in ungrazed habitats (Serena 1982, Harris *et al.* 1987, Whitfield and Laymon, unpubl. data). Valentine *et al.* (1988) studied willow flycatchers in California from 1983 through 1987, when 11 of their 20 recorded nesting attempts failed. They found that "Prior to reduction of grazing intensity in 1987, livestock accounted for 36 percent of the failed nests or 20 percent of all nesting attempts. In addition, livestock destroyed four successful nests shortly after the young had fledged." Stafford and Valentine (1985) reported that three of eight (37.5 percent) willow flycatcher nests in their study site were probably destroyed by cattle. Flett and Sanders (1987) documented no nest upsets due to livestock but noted the vulnerability of nests to upset, due to their placement low in willow clumps (see also Serena 1982). Livestock grazing may affect *E. t. extimus* similarly.

The southwestern willow flycatcher's preference for, and former abundance in, floodplain areas that are now largely agricultural may indicate a potential threat from pesticides. Where flycatcher populations remain, they are sometimes in proximity to agricultural areas, with the associated pesticides and herbicides. Without appropriate precautions, these agents may potentially affect the southwestern willow flycatcher through direct toxicity or effects on their insect food base. No quantitative data on this potential threat are known at this time.

Recreation that is focused on riparian areas, particularly during warm summer breeding months, may also constitute a threat to *E. t. extimus*. Taylor (1986) found a possible correlation between recreational activities and decreased riparian bird abundance. Blakesley and Reese (1988) reported the willow flycatcher (probably *E. t. adastus*) as one of seven species negatively associated with campgrounds in riparian areas in northern Utah. It is unknown whether these possible effects involve impacts to habitat or disturbance of nesting birds.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the southwestern willow flycatcher as endangered. A decision regarding designation of critical habitat for this species is being deferred, and a final decision regarding the designation will be made by July 23, 1995. Critical habitat for this species is not now determinable.

Critical Habitat

Critical Habitat is defined in section 3 of the Act as (i) the specific areas within the area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to a point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was proposed to be designated for the flycatcher at the time it was proposed for listing as endangered to encompass approximately 640 miles (1000 km) of riparian zones in the States of California, Arizona, and New Mexico.

After reviewing comments submitted during the public comment period the Service is deferring the designation of critical habitat for this endangered species. The Service received numerous comments on the proposed rule, including many recommendations for additions and deletions to proposed critical habitat. The Service is reviewing these comments as well as survey data collected in 1994. These sources included more complete information on the primary constituent elements of flycatcher habitat and on the distribution of that habitat across the bird's range. Substantial disagreement has also been found among scientists knowledgeable about the species regarding the proposed designations. Further, written comments submitted by State agencies recommended substantial changes in proposed critical habitat areas.

The Service is presently reconsidering the prudence of critical habitat designation for this species, the need for special management considerations or protection of habitat within the species' range, and the proper boundaries of any areas that might be designated as critical habitat. Issues raised in public comments, new information, and the lack of the economic information necessary to perform the required economic analysis cause the Service to conclude that critical habitat is not now determinable and to invoke an extension until July 23, 1995, pursuant to 16 U.S.C. § 1533(b)(6)(C) for reaching a final decision on the proposal of critical habitat for the flycatcher. The Service has determined that this is in compliance with provisions of 50 CFR 424.12(a) and § 424.17, regarding delaying final rules on proposed critical habitat designations, and with provisions for addressing State agencies that disagree in whole or part with a proposed rule (50 CFR 424.18(c)). In order to assist in its deliberation, the Service is reopening comment on the proposal to designate critical habitat for a period of 60 days. Comments are particularly sought on the following topics:

1. The need for special management of areas within the range of the flycatcher, including those proposed as critical habitat as well as other areas.
2. The net benefit to the flycatcher in addition to the protection provided by its listing as endangered likely to accrue from a designation of critical habitat, and
3. Any indication that areas should be added to or excluded from those proposed for designation.

Comments already received that address the above topics will be considered in reaching a final decision regarding critical habitat designation, and need not be resubmitted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies

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and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

No conservation plans or habitat restoration projects specific to the southwestern willow flycatcher exist on lands managed by the U.S. Forest Service (USFS), BLM, U.S. Bureau of Reclamation (Reclamation), Indian Nations, State agencies, or the Service. The USFS and BLM have focussed some attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. As mitigation for other projects impacting riparian habitats, Reclamation is engaged in riparian habitat restoration projects in several areas in the range of *E. t. extimus*, including some historical nesting locations. The BLM currently manages approximately 40 miles of the upper San Pedro River in Arizona (including historic nest sites), as a Riparian National Conservation Area. Riparian habitat rehabilitation is also underway at several National Wildlife Refuges in the breeding range of *E. t. extimus*, which are managed by the Service. The Nature Conservancy manages one of the largest remaining flycatcher populations, as well as several other areas with high recovery potential. The U.S. Marines have maintained a cowbird control program near the Santa Margarita River to benefit the least Bell's vireo. This program has benefitted nesting southwestern willow flycatchers there. Grand Canyon National Park has instituted a seasonal recreation closure at the remaining site with nesting willow flycatchers in the Grand Canyon, and has begun a cowbird monitoring program.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9:

(1) Dispersed recreational activities near willow flycatcher breeding areas that do not disrupt normal flycatcher breeding activities and behavior, attract avian and mammalian predators, nor result in the trampling or destruction of riparian breeding habitat;

(2) Federally-approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.)—when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; and

(3) Livestock grazing that does not attract the brood parasitic brown-headed cowbird or result in the destruction of riparian habitat or the disturbance of breeding flycatchers.

Activities that the Service believes could potentially harm the southwestern willow flycatcher and result in "take," include, but are not limited to:

(1) Unauthorized handling or collecting of the species;

(2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Livestock grazing that results in direct or indirect destruction of riparian habitat;

(4) Activities such as continued presence of cattle and fragmentation of flycatcher habitat that facilitate brood parasitism by the brown-headed cowbird; and

(5) Pesticide applications in violation of label restrictions.

Questions as to whether specific activities will constitute a violation of section 9 should be directed to Sam F Spiller or Robert M. Marshall at the Service's Ecological Services State Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021 (Telephone 602/640–2720)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Supervisor, Ecological Services State Office in Arizona (see **ADDRESSES** above).

Author

The primary author of this rule is Robert M. Marshall, Ecological Services State Office in Arizona (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
BIRDS							
.	.	.	.	.	.	.	.
Flycatcher, southwestern willow.	*Empidonax traillii extimus.*	U.S.A. (AZ, CA, CO, NM, NV, TX, UT).	Entire	E	577	NA	NA
.	.	.	.	.	.	.	.

Dated: February 16, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–4531 Filed 2–24–95; 8:45 am]

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Part IV

Department of Health and Human Services

Public Health Service

42 CFR Part 63
Traineeships; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 63

RIN 0905–AD28

Traineeships

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: This final rule revises regulations governing National Institutes of Health (NIH) research traineeship awards in their entirety. The regulations are obsolete and require revision. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to the NIH research mission.

EFFECTIVE DATE: This final rule is effective March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 1B25, 31 Center DR MSC, 9000 Rockville Pike, Bethesda, Maryland 20892–2075, telephone (301) 496–4606 (not a toll-free number). For information concerning the program contact the Office of Education, National Institutes of Health, Building 10, Room 1C129, 9000 Rockville Pike, Bethesda, Maryland 20892–0001, telephone (301) 496–2427 (not a toll-free number).

SUPPLEMENTAL INFORMATION: On August 6, 1993 (58 FR 42039), NIH published a notice of proposed rulemaking in the **Federal Register** announcing its intention to revise in their entirety the regulations at 42 CFR part 63 governing traineeships to cover traineeships awarded under sections 404E(d)(2), 405(b)(1)(C), 472, and 484 of the Public Health Service (PHS) Act, as amended.

Traineeships under part 63 are designed to provide research training for which fellowship support is not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. The traineeships provide opportunities for developmental training and practical research experience in the labs of NIH, and are available to postdoctoral scientists at the beginning stages of their professional research careers, and to high school, college, graduate and professional (e.g. medical, dental, and other health fields) school students pursuing studies in academic disciplines related to biomedical research and in medical library science and related fields.

NIH received no comments concerning the NPRM. However, enactment of the NIH Revitalization Act of 1993, Public Law 103–43, necessitated making several technical changes to the proposed regulations to conform the regulations to Public Law 103–43. More specifically, Public Law 103–43 redesignated the National Center for Nursing Research as the National Institute of Nursing Research. Accordingly, references to the National Center for Nursing Research in paragraph (a) of § 63.1 and in the definition for the term "Director" in § 63.2 were deleted. This redesignation also eliminated the need for the reference to PHS Act section 484. Accordingly, references to section 484 were deleted from the authority citation, paragraph (a) of § 63.1, and the definitions for the terms "Award," "Awardee" and "Traineeship" in § 63.2.

Public Law 103–43 also set forth new traineeship authority for the Director of the National Center for Human Genome Research (NCHGR) in PHS Act section 485B and the Director of the Office of Alternative Medicine (OAM) in PHS Act section 404E(d)(2). Accordingly, references to the NCHGR and OAM authorities were added to paragraph (a) of § 63.1 and to the definition for the term "Director" in § 63.2. In addition, references to PHS Act section 485B and 404E were added to the authority citation, paragraph (a) of § 63.1, and to the definitions for the terms "Award," "Awardee," and "Traineeship" in § 63.2.

Additionally, Public Law 103–43 required NIH to establish guidelines on the inclusion of women and minorities and their subpopulations in research involving human subjects, including clinical trails, supported by NIH. These guidelines, which were originally published in the **Federal Register** on March 9, 1994 (59 FR 1146), were republished on March 28, 1994 (59 FR 14508) because of typesetting problems. Section 63.10 of the regulations was modified to include a reference for these guidelines.

In accordance with section 553 of title 5 of the United States Code, NIH finds that good cause exists for waiving another NPRM. Delay of this rule would be contrary to the public interest and unnecessary given the technical nature of these changes.

Further, PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, the Secretary does not believe this rule is economically significant nor does the Secretary believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This proposed rule merely codifies internal policies and procedures of the Federal government currently used to administer traineeship awards. The program does not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this rule will only affect those few highly qualified health professionals who are interested in participating in the program, subject to the normal accountability requirements for program participation. No individual is obligated to participate in the program. For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Title: National Institutes of Health Research Traineeships.

Description: The information collected is used by NIH to determine an applicant's eligibility to apply for a traineeship, ensures that an awardee agrees to comply with the terms and conditions of the traineeship and that an awardee shows good cause for not reimbursing PHS for any overpayment of stipends or other allowances because of early termination of the traineeship or for any other reason.

Respondent Description: Individuals or households.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
Reporting: § 63.6(b)				
Summer Fellowship Applicants	3,000	1	1	3,000
Predoctoral & Postdoctoral Applicants	400	1	1	400
Summer Fellowship References	6,000	1	.33	2,000
Predoctoral & Postdoctoral References	1,200	1	.33	400
Subtotal	10,600	1	.55	[1]5,800
§ 63.8(c)	100	1	.25	25
§ 63.9(a)	100	1	.25	25
Total	.....	.....	.....	50

[1] This burden is approved under OMB Approval Number 0925–0299 (expires April 30, 1997).

The information collection in § 63.6(b) regarding application materials and the associated burden are approved under OMB Approval Number 0925–0299 (expires April 30, 1997). The information collection in § 63.8(c) and § 63.9(a), and the associated burden have been reported to OMB for review and approval under OMB Approval Number 0925–0299.

Catalog of Federal Domestic Assistance

Catalog of Federal Domestic Assistance program numbers affected by this rule are: 93.140 and 93.172.

List of Subjects in Part 63

Grant programs—health; Health; Medical research.

Dated: December 16, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: February 16, 1995.

Donna E. Shalala,

Secretary.

Accordingly, part 63 of title 42 of the Code of Federal Regulations is revised to read as set forth below.

PART 63—TRAINEESHIPS

Sec.

63.1 To what programs do these regulations apply?
63.2 Definitions.
63.3 What is the purpose of traineeships?
63.4 What are the minimum qualifications for awards?
63.5 How will NIH make awards?
63.6 How to apply.
63.7 What are the benefits of awards?
63.8 What are the terms and conditions of awards?
63.9 How may NIH terminate awards?
63.10 Other HHS regulations and policies that apply.

Authority: 42 U.S.C. 216, 283g(d), 284(b)(1)(C), 286b-3, 287c(b).

§ 63.1 To what programs do these regulations apply?

(a) The regulations in this part apply to research traineeships awarded by each Director of a national research institute of NIH, the Director of the National Library of Medicine (NLM), the Director of the National Center for Human Genome Research (NCHGR), the Director of the Office of Alternative Medicine, or designees pursuant to sections 404E(d)(2), 405(b)(1)(C), 472, and 485B of the Public Health Service Act, as amended.

(b) The regulations of this part do not apply to research training which is part of the National Research Service Award Program provided under 42 CFR part 66, the Mental Health Traineeship Program provided under 42 CFR part 64a, or residency training of physicians or other health professionals.

§ 63.2 Definitions.

As used in this part:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

"Award" means an award of funds under sections 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act which authorize research training or traineeships.

"Awardee" means an individual awarded a traineeship under sections 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act which authorize research training or traineeships.

"Director" means the director of one of the national research institutes of NIH specified in section 401(b)(1) of the Act, the Director of the National Library of Medicine, the Director of the National Center for Human Genome Research, the Director of the Office of Alternative Medicine, or any official of NIH to whom the authority involved has been delegated.

"HHS" means the Department of Health and Human Services.

"NIH" means the National Institutes of Health.

"PHS" means the Public Health Service.

"Traineeship" means an award of funds under section 404E(d)(2), 405(b)(1)(C), 472, or 485B of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

§ 63.3 What is the purpose of traineeships?

The purpose of an NIH research traineeship is to provide support for financial subsistence to an individual during a period in which the awardee is acquiring training in:

(a) Basic and/or clinical biomedical or behavioral research relating to human health, including extending healthy life and reducing the burdens of illness, or

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(b) Medical library science or related fields pertaining to sciences related to health or the communication of health sciences information.

Traineeships are intended to make available in the United States an increased number of persons having special competence in these research fields through developmental training and practical research experience in the facilities of NIH, with supplemental training at other qualified institutions (see § 63.8(a)).

§ 63.4 What are the minimum qualifications for awards?

Minimum qualifications for any traineeship shall be established by the Director and shall be uniformly applicable to all applicants in each traineeship program. These minimum qualifications may include requirements as to citizenship, medical standards, academic degrees, professional or other training or experience, and other factors as may be necessary to the fulfillment of the purpose of the traineeship. The Director may, as a matter of general policy or, in individual cases, waive compliance with any minimum qualification so established to the extent that the applicant or applicants have substantially equivalent qualifications or have such special training, experience or opportunity for service as to make an award particularly appropriate, and to the extent the Director finds it is consistent with the fulfillment of the purpose of the traineeship.

§ 63.5 How will NIH make awards?

Subject to the regulations of this part, the Director may award traineeships to those qualified applicants who are best able in that official's judgment to carry out the purpose of the traineeships. These awards may be made for a period of one (1) year or other period, including extensions or renewals, as may be specified.

§ 63.6 How to apply.

(a) Application for a traineeship shall be made in writing as prescribed by the Director.

(b) In addition to other pertinent information, the Director may require each applicant to submit the following information:

(1) Certification of the applicant's citizenship status;

(2) The applicant's educational background and other qualifications and experience, including previous academic and professional degrees, if any; and

(3) The subject area of the proposed training.

(c) By applying, eligible individuals agree to abide by HHS, PHS, and NIH regulations, and the terms and conditions of the traineeship award which may require compliance with policies and procedures that apply to the proper conduct of research, such as research involving human and animal subjects, patient care, hospital and laboratory procedures, handling of confidential information, and outside employment.

§ 63.7 What are the benefits of awards?

(a) Subject to the availability of funds, each individual awarded a traineeship may receive a stipend fixed in an amount determined by the Director.

(b) Additional allowances and benefits may be authorized by and at the discretion of the Director, taking into account the cost of living and other factors such as the requirements of the training program and availability of discretionary funds. Discretionary allowances and benefits may include: health benefits coverage; dependents' allowance; travel to pre-award interviews, to first duty station, and return to the place of origin upon conclusion of the traineeship; tuition and institution fees; and other specific costs as may be necessary to fulfill the purpose of the training program.

§ 63.8 What are the terms and conditions of awards?

All traineeships shall be subject to the following terms and conditions:

(a) Training must be carried out at a facility of the NIH, but may be supplemented by additional training acquired at another institution which is found by the Director to be directly related to the purpose of the traineeship and necessary to its successful completion.

(b) Payments shall be made to the awardee or to the institution for payment to the awardee in accordance with payment schedules as prescribed by the Director for each traineeship program.

(c) The awardee shall reimburse NIH for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason, unless waived for good cause shown by the awardee.

(d) The Director may establish procedures and requirements applicable to traineeship awards, consistent with the regulations in this part, regarding: (1) The proper conduct of research investigations, including research involving human and animal subjects; (2) patient care; (3) hospital and laboratory procedures; (4) handling of confidential information; (5) outside employment; and (6) additional conditions the Director finds necessary to fulfill the purpose of the traineeship.

(e) The awardee shall sign an agreement to comply with the terms and conditions of the traineeship.

§ 63.9 How may NIH terminate awards?

The Director may terminate a traineeship at any time:

(a) Upon written request of the awardee; or

(b) If it is determined that the awardee is ineligible, has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which it was made.

§ 63.10 Other HHS regulations and policies that apply.

Several other policies and regulations apply to awards under this part. These include, but are not necessarily limited to:

45 CFR part 46—Protection of human subjects

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of title VI of the Civil Rights Act of 1964

45 CFR part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

51 FR 16958 (May 7, 1986)—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986)

59 FR 14508 (March 28, 1994)—NIH Guidelines on the Inclusion of Women and Minorities as Subjects in Clinical Research

[FR Doc. 95–4637 Filed 2–24–95; 8:45 am]
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Part V

Department of Justice

Bureau of Prisons

28 CFR Part 524

Inmate Control at Independent Camps: Progress Reports; Final Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP-1037-F]

RIN 1120-AA32

Progress Reports

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is amending its regulations on progress reports to require that progress reports be prepared for inmates at independent camps at least once every 24 or 36 months. The purpose of this change is to streamline operations at Bureau facilities while continuing to provide appropriate program services to inmates.

EFFECTIVE DATE: February 27, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Progress Reports. A final rule on this subject was published in the **Federal Register** on December 3, 1990 (55 FR 49977), and was amended on February 11, 1994 (59 FR 6856).

Current policy requires that a progress report be prepared on each federal inmate at least once every 24 months, if for no other reason than to update report information. With this amendment, inmates at independent camps would be given progress reports at least once every 24 or 36 months, dependent upon institution resources. Progress reports are used to maintain current information on an inmate such as his/her institutional adjustment, program participation, and readiness for release. Inmates at independent camps have demonstrated the necessary responsibility to serve their term of incarceration in the least restrictive environment. Because inmates in this environment do not need the same level of program opportunities as inmates at higher security institutions, program opportunities at camps are more limited. Release readiness for such inmates is monitored regularly through unit team review as part of the institution's release preparation program. Consequently, the need for frequent progress reports is greatly diminished. This amendment makes no change to the provisions in § 524.41(f) which allows for preparation for any other reason. This amendment, therefore, will not negatively impact inmates at independent camps. This change will give the Bureau the flexibility to streamline operations at independent camps in accordance with staff resources.

The Bureau has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director of the Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Because these changes allow the Bureau to allocate staff resources in a more efficient manner and do not impose further restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521-3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

2. In § 524.41, paragraph (e) is revised to read as follows:

§ 524.41 Types of progress reports.

* * * * *

(e) Biennial Report—except for inmates at independent camps, a progress report shall be completed on each designated inmate at least once every 24 months if not previously generated for another reason required by this section. Dependent upon institution resources, progress reports for inmates housed at independent camps shall be updated at least once every 24 or 36 months.

* * * * *

[FR Doc. 95-4655 Filed 2-24-95; 8:45 am]

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Securities and Exchange Commission

17 CFR Part 228, et al.

Prospectus Delivery, Securities Transactions Settlement; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, and 240

Release No. 33–7141; 34–35396; IC–20903
File No. S7–7–95

RIN 3235–AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its rules and forms and a new rule under the Securities Act of 1933 in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. The proposals are based on recommendations submitted by representatives of financial intermediaries. In addition, the Commission is proposing to amend an exemption from T+3 clearance and settlement for purchases and sales of securities pursuant to a firm commitment offering. Such exemption is proposed to be limited to offerings of asset-backed securities and structured securities and would provide an extended settlement time frame to firm commitment offerings under certain conditions.

DATES: Comments should be received on or before March 31, 1995.

ADDRESSES: Comment letters should refer to File Number S7–7–95 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–1, Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Michael Mitchell or Joseph Babits, (202) 942–2900, Division of Corporation Finance; and, with regard to questions concerning the T+3 settlement proposals, Jerry W. Carpenter or Christine Sibille, (202) 942–4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2–8 proposals, Alexander Dill, (202) 942–4892, Division of Market Regulation; and, with regard to questions concerning the application of the proposal to investment companies, Kathleen Clarke, (202) 942–0721, Division of Investment Management, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Under the Securities Act of 1933 (the "Securities Act"),[1] a prospectus used after a registration statement has been filed must meet the disclosure requirements of Section 10 of the Securities Act.[2] The term "prospectus" is defined broadly to include any written communication that "offers a security for sale or confirms the sale of any security."[3] Because information generally contained in a confirmation typically does not satisfy the disclosure requirements of Section 10, a prospectus meeting Section 10(a) requirements must be sent or given prior to or at the same time with the confirmation.[4] In addition, the Securities Act prohibits persons from sending securities through interstate commerce "for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements" of Section 10(a).[5]

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Securities Exchange Act of 1934 (the "Exchange Act")[6] to establish three business days after trade (hereinafter, "T+3") as the standard settlement time frame for most broker-dealer trades.[7] Rule 15c6–1 covers all securities other than exempted securities, government securities, municipal securities,[8] commercial paper, bankers' acceptances, or commercial bills. That Rule is scheduled to become effective on June 7, 1995.[9]

When Rule 15c6–1 was proposed in February 1993, it provided that public offerings of debt and equity securities would have to be settled by T+3. Commentators on the proposal raised concerns that new issues of securities[10] could not be settled by T+3 because the prospectus could not be printed prior to the trade date (the date on which the securities are priced) and therefore the prospectus printing and delivery process could not be completed within a T+3 time frame. To address those concerns, Rule 15c6–1 was modified upon adoption to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings registered under the Securities Act.[11] Accordingly, an underwriter can set any settlement period for such offerings. Resales of such securities, other than the sale to an initial purchaser by a broker-dealer participating in such offering, remain subject to the T+3 time frame.

Since the adoption of Rule 15c6–1, members of the brokerage community have suggested that the Commission eliminate this exemption from T+3 and ease the problems associated with prospectus delivery within T+3 by other means. The primary reasons expressed for requiring T+3 settlement of such offerings are: (i) the secondary market for a new issue may be subject to greater price fluctuations or instability, which in turn may expose underwriters, dealers and investors to disproportionate credit and market risk; and (ii) the bifurcated settlement cycle created for initial sales and resales of new issues would be disruptive to broker-dealer operations and to the clearance and settlement system. In particular, it has been noted that if a purchaser of a new issue sells on the first or second day after pricing, the purchaser's broker will not be able to settle with the buyer's broker on a T+3 schedule because the securities will not yet be available for settlement purposes. As a result, all such trades by the purchasers would "fail" and result in expense, inefficiencies and greater settlement risk for all participants.[12] A bifurcated settlement cycle also may require the maintenance of separate computer systems and additional internal procedures.

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 77j. *See also* Section 5(b)(1) of the Securities Act, 15 U.S.C. § 77e(b)(1).

[3] *See* Section 2(10) of the Securities Act, 15 U.S.C. 77b(10).

[4] The Securities Act provides that "a communication provided after the effective date of the registration statement * * * shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of" Section 10(a) is provided. *See* Section 2(10)(a) of the Securities Act, 15 U.S.C. 77b(10)(a).

A written confirmation must be sent to a purchaser prior to settlement pursuant to Rule 10b–10 under the Securities Exchange Act of 1934, 17 CFR 240.10b–10.

[5] *See* Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2).

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 240.15c6–1. *See* Exchange Act Release No. 33023 (Oct. 6, 1993) [58 FR 52891].

[8] The Commission has published notice of a proposed rule change of the Municipal Securities Rulemaking Board that will require transactions in municipal securities to settle by T+3. Exchange Act Release No. 34541 (Aug. 17, 1994) [59 FR 43603].

[9] The effective date was changed from June 1, 1995 to June 7, 1995 in Exchange Act Release No. 34952 (Nov. 9, 1994) [59 FR 59137].

[10] The term "new issues" is used herein to refer to both initial public offerings by issuers and offerings of additional securities by reporting companies.

[11] Rule 15c6–1 also contains a specific exemption for sales of unlisted limited partnership interests.

[12] A system for when-issued trading could be developed to help alleviate such failed transactions, but commentators have suggested that when-issued trading would not be a solution since, among other reasons, many institutional customers are unable to engage in when-issued trading. *See* letter from Joseph McLaughlin, *infra* footnote 15.

According to the brokerage community, the primary reason that settlement within T+3 currently is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses. Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on electronic delivery of materials. In recognition of that development, the Commission staff has recently issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements.[13] Until the markets create systems that make electronic delivery the method of choice, and most investors have the means to accept electronic delivery, however, the Commission must address delivery of prospectuses in paper form.[14]

While multiple recommendations have been made that the Commission eliminate the existing T+3 exemption and facilitate the prospectus delivery process, members of the brokerage community are not in unanimity as to how the prospectus delivery process could best be expedited. Two proposals by members of the brokerage community have been presented for Commission consideration.[15] Those proposals recommend markedly different solutions to accomplishing prospectus delivery in a T+3 time frame.[16]

The approaches reflected in the two proposals are not mutually exclusive methods of expediting prospectus delivery. The Commission therefore is proposing amendments to its rules that would accomplish both proposals. Comment is sought regarding which alternative should be implemented or whether the Commission should implement both proposals and thereby allow market participants a choice as to which approach to use in any given offering. Alternatively, would some other combination of the proposals best expedite prospectus delivery? Comment also is solicited with respect to whether there is a need for any Commission action with respect to prospectus delivery to accommodate T+3 clearance and settlement.

II. The Prospectus Delivery Proposals

A. The Four Firms Proposal and Related Commission Proposals

The first proposal to facilitate T+3 settlement was made by a group of four firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (hereinafter, the "Four Firms Proposal"). The Four Firms Proposal is premised on the view that the process of preparation and delivery of prospectuses in new issues can be accelerated sufficiently to comply with T+3 if six steps are taken by the Commission. According to the proponents, these steps would modify the registration process in ways that would facilitate the printing of a significant portion of the final prospectus prior to pricing, and therefore accommodate compliance with T+3. Certain aspects of the Four Firms Proposal also are proposed to apply to offerings of investment company shares. Comment is requested on whether some or all of those aspects of the Four Firms Proposal should apply to investment companies.

1. Re-ordering of Prospectuses

The Four Firms Proposal first suggests that the contents of prospectuses could be re-ordered so that all portions likely to be subject to change at the time of pricing are placed together at the front. The Four Firms Proposal indicates that this change would expedite printing of the prospectus because the bulk of it is unlikely to change as a result of pricing and, therefore, could be printed in advance of pricing.

In practice, prospectus information has been organized roughly in the order in which the Commission forms set forth the required items of disclosure. While information contained in a prospectus need not follow the order of the items in the form,[17] some Commission rules currently require that certain information is to be included in a specified part of the prospectus, or in a specified order.[18]

Under the proposal, the Commission would not raise objections if a prospectus is re-ordered to place the sections likely to change at the front in order to expedite the printing process.[19] provided that the cover pages of the prospectus continue to contain the information currently specified by Commission rules.[20] In addition, any

[13] *See* Brown & Wood (Feb. 17, 1995). An earlier no-action letter granted relief in connection with the use of electronic means to transmit confirmations. *See* Thomson Financial Services, Inc. (Oct. 8, 1993).

[14] The Division of Corporation Finance staff, in addition to issuing the Brown & Wood letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (*e.g.*, audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

[15] *See* letter from Robin Shelby, CS First Boston Corporation; Goldman Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. *See also* letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW, Washington, D.C. 20549, File Number S7–7–95.

[16] Today's proposal is not the first time the Commission has addressed concerns that the settlement schedule is difficult to meet in connection with firm commitment offerings of securities for cash. In 1987, the Commission issued a release, in response to industry requests, making alternative proposals to expedite the prospectus delivery process. *See* Securities Act Release No. 6727 (July 31, 1987) [52 FR 29206]. Those proposals engendered opposition from commentators and were not adopted by the Commission.

[17] *See* Rule 421(a) under the Securities Act, 17 CFR 230.421(a). Rule 421(a) does require that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

[18] Rules specifying information required on the cover pages of the prospectus are: (i) Item 501(c) of Regulation S–K, 17 CFR 229.501(c) (information that must be contained on the outside front cover page of the prospectus); and (ii) Item 502 of Regulation S–K, 17 CFR 229.502 (information that must be contained on the inside front cover page and the outside back cover page). *See also* Item 501 and Item 502 of Regulation S–B, 17 CFR 228.501 and 228.502.

Rules specifying information required in the forepart of the prospectus are: (i) Item 503(b) of Regulation S–K, 17 CFR 229.503(b) (mailing address and telephone number of the registrant's executive offices); and (ii) Item 503(c) of Regulation S–K, 17 CFR 229.503(c) (a discussion of the principal risk factors related to the offering). *See also* Item 503(b) and Item 503(c) of Regulation S–B, 17 CFR 228.503(b) and 228.503(c).

Other rules, certain Securities Act Industry Guides, and a Commission release, which are applicable only to limited categories of transactions, specify location or order of prospectus information: (i) Items 903(a) and 904(a) of Regulation S–K, 17 CFR 229.903(a) and 229.904(a) specify, respectively, that a summary of a roll-up transaction be included in the forepart of the disclosure document and that, immediately following the summary, a reasonably detailed description of each material risk and effect of the roll-up transaction be included; (ii) Securities Act Industry Guide 4, 17 CFR 229.801(d), for oil and gas programs, specifies that disclosure throughout the prospectus should appear in the sequence indicated; (iii) Securities Act Industry Guide 5, 17 CFR 229.801(e), relating to interests in real estate limited partnerships, specifies that suitability standards, if any, to be utilized by the registrant should be described immediately following the cover page; (iv) Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979], relating to limited partnerships, requires that the forepart of the prospectus begin with a cover page, a table of contents, a summary, disclosure of risk factors and suitability standards, and requires that a glossary be located in the back of the prospectus.

[19] Of course, the information set forth in the prospectus must nevertheless be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act 17 CFR 230.421(b). *See also* Rule 421(a), *supra* footnote 17.

[20] *But see* proposed revision to Item 502(f) of Regulation S–K, 17 CFR 229.502(f).

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summary section, which logically can appear only near the front of the prospectus, and the discussion of risk factors must remain in the forepart of the prospectus, although those sections may immediately follow a "pricing information" section which would include disclosure likely to be subject to change at pricing, such as: use of proceeds, the plan of distribution and capitalization.[21] Accordingly, certain Commission rules that specify the location of other information in the forepart of the prospectus, or in a specified order within the prospectus, are proposed to be eliminated.[22] No revision to the remaining order and location rules, which relate to specific and limited classes of transactions, are proposed at this time.[23] Comment is requested as to whether the Commission should require that the summary and risk factors disclosure immediately follow the cover page of the prospectus. In addition, should other rules that would continue to specify order or location also be revised to accommodate expedited printing of prospectuses?

2. Extension of Pricing Period

Under Rule 430A under the Securities Act,[24] if a prospectus supplement containing pricing and other information omitted from a registration statement is not filed by the later of five business days after the effective date of the registration statement or any post-effective amendment thereto, the information omitted must be filed in a post-effective amendment rather than under Rule 424(b). Unlike a filing under Rule 424(b), a post-effective amendment must be declared effective prior to any sale of the securities. The second modification suggested by the Four Firms Proposal is a revision to Rule 430A to extend, from five business days to ten business days, the period during which an offering in reliance on that rule may be priced and a supplement filed. According to the Four Firms Proposal, issuers delay the time at which they seek to have registration statements effective, and therefore printing of the prospectus, because they have only five days thereafter in which to price and file the required pricing supplement. By extending the time in which to file the pricing supplement, the Commission would encourage issuers to have their filings become effective earlier, and consequently start the printing earlier.

The principal purpose of the five business day limitation was to ensure that delays in pricing securities under Rule 430A would not permit delayed offerings to be made by persons that do not meet the criteria for use of shelf registration.[25] An extension of the five-day period would not appear to defeat the purpose of that limitation. The Commission therefore proposes to extend the period during which the pricing supplement may be filed from five business days to ten business days after the effective date of the registration statement. Comment is requested as to whether any problems could arise from the extension, and whether such extension would in fact encourage earlier printing of all or a portion of the prospectus. Comment also is requested as to whether a longer period, such as 15, 25 or 30 business days, would provide additional flexibility and further expedite prospectus delivery for purposes of complying with T+3.

3. Changes in Offering Size and Estimated Price Range

The Four Firms Proposal also states that delays in printing prospectuses in 430A offerings arise because a post-effective amendment must be filed if there is a material decrease in the amount of securities offered or the pricing of the securities falls outside the range estimated in the effective registration statement. Printing and sales are delayed until such amendment is declared effective. Similarly, where participants decide to increase the size of the offering, a new registration statement to register the additional securities must be filed and declared effective.[26] The Four Firms Proposal suggests that no filing with the Commission be required if the size of the offering is increased or decreased up to 20% or the price deviates from the estimated price range by up to 20%.

a. *Increases in Offering Size.* Where a registrant wishes to offer and sell more securities than were included in the registration statement at the time it became effective, the Securities Act requires that it register the additional securities.[27] The Commission understands that the determination of offering size, particularly in certain market climates, can change at the time when prospectus printing is imminent. In light of the timing difficulties presented by that situation, the Commission is proposing changes to facilitate expedited registration in a Rule 430A offering if it is done solely for the purpose of increasing an offering size by up to 20%.

Under the proposal, a short-form version of such a registration statement would be accepted.[28] Such registration would consist of: the facing page, a statement incorporating the contents of the earlier registration statement relating to the offering, all required consents and opinions, the signature page, and any information required in the new registration statement that is not in the earlier registration statement.[29] To ensure that no delay would result from Commission processing, such registration statements would be made effective automatically upon filing.[30] Such a short-form registration statement would be deemed to be a part of the earlier registration statement relating to the offering.[31]

To expedite preparation of such registration statements, the Commission also would provide that duplicated or facsimile versions of manual signatures could be included on the signature page of such registration statements, rather than the manual signatures currently required.[32] In addition, opinions and consents required in such registration statements could be incorporated by reference to the extent that the opinions and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to the 20% threshold.[33] Where consents cannot be incorporated, duplicated or facsimile versions of manual signatures would be accepted in the new consents required to be filed.[34] Comment is requested with regard to whether some or all of these changes to facilitate expedited registration to increase a Rule 430A offering should be extended to all registered offerings.

The Commission also is proposing to increase registrants' flexibility with respect to the amount of securities registered in Rule 430A offerings and thereby minimize the instances in which an increase in offering size results in the need to file a new registration statement. Such offerings would be permitted to be registered by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price in the "Calculation of Registration Fee" section.[35] The amount of securities to be registered and the proposed maximum offering price per unit would no longer be required to be set forth.[36]

Under the proposal, an issuer would register a specified dollar amount of a class of securities, such as $50 million of common stock, and would not be required to register more if the number of shares to be offered was increased, unless the aggregate amount of the offering would exceed the total dollar amount registered. If registrants register a dollar amount greater than what is used for the offering, Rule 429 under the Securities Act could be used to save any amount of the registration fee paid to the Commission for the remaining dollar amount. Under Rule 429, the registrant, in a new registration statement filed in the future for another offering of that class of securities, could simply indicate that part of the registration fee had been paid previously in connection with the earlier registration. Comment is requested with regard to whether the flexibility provided by specifying the dollar amount of the class of securities registered should be extended to all registered offerings.

b. *Changes in Offering Size; Deviation from Price Range.* The Commission also is proposing to address the concerns raised in the Four Firms Proposal with respect to filings resulting from a 20% decrease of the offering size or a 20% deviation from the estimated price range. Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or a price chosen that is outside the disclosed estimated price range, unless the volume decrease or price change would materially change the disclosure included in the registration statement at the time of effectiveness.[37]

The proposal would provide that a post-effective amendment need not be filed if there is a decrease in the offering size of up to 20% or a deviation in price from the estimated price range of up to 20%.[38] In addition, the proposal would provide that, where an increase of up to 20% in the offering size would not require additional securities to be registered, such an increase also would not result in the need to file a post-effective amendment.[39] Comment is requested with respect to whether lower thresholds, such as 15%, or higher thresholds, such as 25%, should be used. Commenters also should consider whether this proposal would facilitate non-Rule 430A offerings and should be extended to those offerings as well. While the proposal contemplates that no post-effective amendment need be filed, issuers would continue to be responsible for evaluating the effect of such a volume change or price deviation on the accuracy and completeness of disclosure made to investors, including disclosure regarding the use of offering proceeds, dilution and debt coverage.

4. Immediate Takedowns from a Shelf Registration

The Four Firms Proposal also requests that the Commission permit immediate takedowns after a shelf registration statement becomes effective. Immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, the shelf registration statement must accurately reflect all information known. If an offering of securities is certain at the time the registration statement becomes effective, the relevant information (*e.g.*, description of securities, plan of distribution and use of proceeds) must be disclosed and the Rule 430A undertakings should be included, if the issuer wants Rule 430A pricing flexibility. Accordingly, no rule amendments are required to address this request.

5. Acceleration of Effectiveness

The Four Firms Proposal also recommends that requests to accelerate effectiveness of registration statements be accepted by fax transmission. Rule revisions are proposed to allow such transmissions.[40] The Four Firms Proposal also suggests that the Commission accept oral acceleration requests. Rule revisions also are proposed to permit oral requests for acceleration to be made, provided that a version of the registration statement filed with the Commission is accompanied by a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.[41] Comment is requested regarding whether oral acceleration requests present greater risks of being transmitted by persons without the authority to do so, or being transmitted without the knowledge of all participants in the offering. If so, should written requests continue to be required?

6. Four-Day Settlement Period

Finally, the Four Firms Proposal suggests that Rule 15c6–1 be amended to provide that, if the offering is priced after the close of the market, payment of funds and delivery of securities may occur not later than the fourth business day thereafter ("T+4"). When such securities are priced late in the day, it is difficult to print the final prospectus for delivery by T+3. Further, the majority of secondary trading in the securities generally does not begin until

[21] See proposed revisions to Item 503(c) of Regulation S–K, 17 CFR 229.503(c) and Item 503(c) of Regulation S–B, 17 CFR 228.503(c).

[22] See proposed revisions to Item 503(b) of Regulation S–K, 17 CFR 229.503(b), Item 503(b) of Regulation S–B, 17 CFR 228.503(b) and Securities Act Industry Guide 4, 17 CFR 229.801(d).

[23] The requirements not proposed to be changed are those set forth *supra* footnote 18 other than the rules set forth *supra* footnotes 21 and 22.

[24] 17 CFR 230.430A.

[25] See Securities Act Release No. 6714 (May 27, 1987) [52 FR 21252].

[26] These increases are most common in the context of an initial public offering, since the lack of an existing market makes it difficult to estimate market demand and the appropriate price for such securities.

[27] See Section 6 of the Securities Act, 15 U.S.C. 77f, and Rule 413 under the Securities Act, 17 CFR 230.413.

[28] See proposed revisions to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[29] Information regarding the effect of the increase in offering size may be required in the new registration statement and would not have been contained in the earlier registration statement.

A similar short-form procedure was adopted by the Commission for registration of additional securities for employee benefit plans. See General Instruction E to Form S–8.

[30] See proposed Rule 462(b), 17 CFR 230.462(b). This registration statement would be required to be filed within two business days of the pricing of the securities registered on the earlier registration statement. While indications of interest may exceed the amount of securities registered in the earlier registration statement, no offers would be permitted prior to the filing of the registration statement with respect to the additional 20% and no sales of the additional 20% would be permitted prior to the effectiveness thereof.

[31] See newly proposed Rule 430A(b), 17 CFR 230.430A(b).

[32] See proposed revisions to Rule 402 under the Securities Act, 17 CFR 230.402. In addition, Items 601(b)(24) of Regulations S–K and S–B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are proposed to be revised so that a power of attorney included in the earlier registration statement relating to the offering may also relate to the short-form registration statement filed to register the additional securities.

[33] See Rule 411(c) under the Securities Act, 17 CFR 230.411(c), proposed Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and proposed changes to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

[34] See proposed changes to Rules 402 and 439 under the Securities Act, 17 CFR 230.402 and 230.439.

[35] See proposed revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). Such flexibility already is provided in connection with unallocated shelf registration statements.

[36] In most non-shelf offerings, such information currently is required to be included on the cover page of the registration statement. See, *e.g.*, the "Calculation of Registration Fee" section in Form S–1. The registrant would continue to be required in Rule 430A offerings to specify in the prospectus, however, the amount of securities offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price.

[37] See Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970] for a discussion of the materiality standard as it applies to these changes.

[38] See proposed revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A. As proposed, a change or deviation beyond the 20% threshold would continue to require a post-effective amendment only if it materially changes the previous disclosure.

[39] *Id.*

[40] See Securities Act Rule 461(a), 17 CFR 230.461(a). The facsimile or duplicate version need not be followed by transmission of the manually signed version to the Commission.

[41] See Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a), is based upon the registration statement at the time it becomes effective.

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the opening of the market on the next business day. Thus, for these offerings there is less concern about an increase in failed transactions from secondary market trading or the need for special systems to accommodate two days of when-issued trading in order to effect delivery of securities in secondary market trades. The Four Firms are of the view that only minor systems modifications would be needed to accommodate a T+4 cycle, so the concerns previously expressed by the industry about the costs of maintaining systems for T+3 for all purposes except firm commitment offerings is reduced substantially

The Commission is proposing to revise Rule 15c6–1 to establish T+4 as the standard settlement cycle for sales in connection with firm commitment offerings priced after the market closed and invites comment as to whether such a T+4 settlement period is workable. Specifically, would this period create confusion in the marketplace?

Some industry participants may believe that a T+4 requirement for firm commitment offerings is not sufficiently flexible. As an alternative, the Commission is publishing for comment a provision that would permit the settlement cycle for a firm commitment offering to be set for any period equal to or less than T+5.[42] Rule 15c6–1(a) contains an override provision that permits the parties to a contract to establish an alternate settlement time frame if expressly agreed to at the time of the transaction. In the release adopting the Rule 15c6–1, the Commission stated that this provision was not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will settle in a time frame other than T+3.

If a situation occurs that requires more time for settlement of a firm commitment offering, it may be onerous for every broker-dealer in the offering to expressly set an alternate time frame for each individual trade. The Commission invites comment as to whether it would be appropriate to expand the override provision to allow the managing underwriter to establish T+3, T+4, or T+5 as the settlement time frame for the entire offering.[43] The underwriter would be required to provide notice of its intent to set an alternate time frame by sending written notice to prospective purchasers on or before the date the securities are priced and by providing notice of the alternate time frame to an exchange where the securities are listed or a registered securities association through which quotations are disseminated. Additionally, broker-dealers participating in the offering would retain their ability to use the specific trade override provision. Commenters are requested to provide comments on the benefits and drawbacks to this approach, including whether such an amendment would create uncertainty in the marketplace.

What are the relative benefits and drawbacks of the proposal establishing T+4 as the standard settlement cycle for offerings priced after the close of the market and the proposal giving underwriters the ability to select an alternate trade date? Would adoption of the first proposal make it unnecessary to adopt the second proposal? Should T+3 or T+4 be the standard for offerings that are priced after the close of the market?

B. The SIA Proposal and Related Commission Proposals

In the other proposal received by the Commission, the Securities Industry Association has recommended that the Commission adopt a rule allowing prospectus information to be delivered without the use of the traditional final prospectus (hereinafter, the "SIA Proposal"). Where short-form registration[44] is not used, the SIA Proposal would provide that all required prospectus information be delivered to investors in the preliminary prospectus traditionally disseminated and, if necessary, a supplementing memorandum.[45] This supplementing memorandum would either set forth or summarize: (i) previously undisclosed information describing the registered securities (other than certain price-related information contained in the confirmation);[46] and (ii) previously undisclosed actual or anticipated changes between the preliminary prospectus circulated to investors and the final prospectus filed with the Commission.[47]

For securities offerings that use short-form registration, the SIA Proposal contemplates different methods of delivery depending upon whether or not shelf registration is used.[48] For shelf offerings, the SIA Proposal would require delivery of the base prospectus[49] contained in the registration statement at the time it is declared effective and an abbreviated supplementing memorandum.[50] The abbreviated supplementing memorandum in that case would set forth or summarize only a description of the material changes in the registrant's affairs pursuant to Item 11 of Form S–3 or Form F–3 ("Item 11 information") that have not been disclosed in its Exchange Act reports. For non-shelf offerings using short-form registration, the SIA Proposal would require delivery of only an abbreviated supplementing memorandum describing Item 11 information. A preliminary prospectus would be delivered only at the issuer's discretion. Supplementing memoranda and abbreviated supplementing memoranda used under the SIA Proposal would be required to be filed with the Commission within two business days after first being sent to investors.

The Commission's proposal varies from the rule proposed by the SIA. Like the SIA Proposal, however, proposed Rule 434 under the Securities Act[51] would permit issuers to convey prospectus information in more than one document and allow such documents to be delivered to investors at separate intervals and in varying manners.[52]

The rule would provide that, in the aggregate, all required information be disclosed to investors on a timely basis

[42] See proposed Rule 15c6–1(e), 17 CFR 240.15c6–1(e).

[43] This provision will be available for firm commitment offerings subject to a T+3 settlement time frame under paragraph (a) of Rule 15c6–1, 17 CFR 240.15c6–1(a), and for firm commitment offerings subject to a T+4 settlement time frame under paragraph (d) of Rule 15c6–1, 17 CFR 240.15c6–1(d).

[44] Short-form registration is used herein to refer to registration on Commission Forms S–3 or F–3.

[45] "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospectus filed in accordance with Rule 430A(a), 17 CFR 230.430A(a), which omits specified price-related information.

[46] This price-related information may be omitted from the registration statement at the time it is declared effective pursuant to Rule 430A under the Securities Act. The description of securities would be made in accordance with Item 202 of Regulation S–K, 17 CFR 229.202, or be a summary of such information.

[47] The final prospectus filed with the Commission would be the prospectus contained in the registration statement at the time it becomes effective, as modified subsequently by any prospectus filed pursuant to Rule 424(b), 17 CFR 230.424(b).

[48] "Shelf registration" is used herein to refer to registration of a delayed offering pursuant to Rule 415(a)(1)(x) under the Securities Act, 17 CFR 230.415(a)(1)(x).

[49] "Base prospectus" is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness that omits information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

[50] For medium-term note programs, however, any program supplement also would be delivered under the SIA proposal.

[51] 17 CFR 230.434.

[52] The Commission provided analogous treatment with respect to prospectus delivery in connection with employee benefit plans when it adopted revisions to Form S–8 in 1990. See Securities Act Release No. 6867 (June 13, 1990) [55 FR 23909].

(*i.e.*, prior to or at the same time as a confirmation is sent). Reliance upon this rule would allow participants in a firm commitment underwritten offering of securities for cash (hereinafter, an "eligible offering") to forego last-minute mass printing, shipping and mailing of a traditional final prospectus, which is generally undertaken only after pricing of the offering. The proposed rule sets forth two methods for delivering prospectus information: one that is available for eligible offerings not using shelf registration, and one that is available for eligible offerings using short-form registration.

1. *Prospectus Delivery Method for Offerings Not Made Using Short-Form Registration*

In all eligible offerings not made using short-form registration, persons could comply with their prospectus delivery obligations by delivering a preliminary prospectus, a confirmation and, as needed, a supplementing memorandum. A supplementing memorandum would be required to be delivered only if information material to investors with respect to the offering is not disclosed in the preliminary prospectus or the confirmation. This method of delivery differs from traditional prospectus delivery primarily in that it is accomplished in more than one document. Investors would be delivered information comparable to that which is currently required to be delivered.

a. *Rule 430A Offerings.* In Rule 430A offerings, a preliminary prospectus omitting the price-related information specified in the rule would be delivered in addition to a supplementing memorandum that contains such price-related information (to the extent not contained in the confirmation). The supplementing memorandum also would contain any other necessary material disclosure missing from the preliminary prospectus. Together, the preliminary prospectus and the supplementing memorandum would contain information comparable to the traditional final prospectus.[53]

b. *Offerings Not Made in Reliance on Rule 430A.* In offerings not proceeding under Rule 430A, a preliminary prospectus containing price-related information alone could be delivered to investors. Unlike in Rule 430A offerings, the price-related information could be included in the preliminary prospectus. If such information is included in the preliminary prospectus, a supplementing memorandum would not have to be delivered unless material changes or material additions to the information in the preliminary prospectus must be disclosed. In all cases, the preliminary prospectus and any supplementing memorandum, together, would contain information comparable to the traditional final prospectus, which currently reflects the information set forth in the registration statement at the time it goes effective.

c. *Use of Incremental Disclosure.* As the SIA Proposal notes, the use of a preliminary prospectus and a separate supplementing memorandum may not be feasible in all offerings. Whether the latter document, which is anticipated to be brief, can convey clearly the missing or changed information will depend upon the nature and magnitude of the disclosure differences between the preliminary prospectus and the prospectus contained in the effective registration statement (as modified by post-effective amendments). In some cases, the disclosure that would have to be contained in the supplementing memorandum may not be able to be described in isolation from other disclosure in the preliminary prospectus. Where disclosure in many parts of the preliminary prospectus has changed, participants may find the option of preparing a supplementing memorandum is not of great benefit.

Comment is requested as to whether the proposal should be limited either with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the supplementing memorandum, or with respect to the magnitude of changes that a supplementing memorandum could contain. If the latter, how would the acceptable magnitude be defined?

d. *Filing and Review of Registration Statements.* Although the method of delivering prospectus information would change under the proposed rule, neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, would be altered.[54] The proposed rule would require that the preliminary prospectus and the supplementing memorandum, taken together, not materially differ from the disclosure filed with the Commission in connection with the registration statement.[55] This provision would preserve the integrity of the Commission's review process and ensure that the delivered prospectus disclosure is comparable to that contained in the registration statement.

Under the proposed rule, a supplementing memorandum would be filed with the Commission pursuant to Rule 424(b)(1) under the Securities Act within two business days after the earlier of pricing and first use. Thus, the Commission staff generally would not review supplementing memoranda prior to use.[56] Comment is requested as to whether the proposal should require that the supplementing memorandum be filed prior to use and, therefore, be subject to staff review.

e. *Comparison With SIA Proposal.* The proposed method of prospectus delivery applicable to non-short form offerings departs from the SIA Proposal in one significant respect. While the SIA Proposal contemplates that a supplementing memorandum could summarize previously undisclosed information, the proposed rule would require full disclosure of material changes or material additions. Comment is requested regarding whether a summary version of material information should be permitted under the proposed rule.

2. *Prospectus Delivery Method for Offerings Using Short-Form Registration*

As in the case of non-short-form offerings, the proposed delivery method for offerings using short-form registration would allow the disclosure to be contained in more than one document delivered at different times. In addition, delivery would have to occur prior to or with a confirmation. Unlike the proposed delivery method for other offerings, however, the proposal for offerings using short-form registration relies upon delivery of certain prospectus information by publication with the Commission.

Currently, in recognition of the market following that exists for issuers

[53] The traditional final prospectus currently reflects the information set forth in the registration statement at the time of effectiveness, any post-effective amendment and the pricing supplement. Post-effective amendments, however, are unlikely to be filed unless the pricing date exceeds the five business day limitation allowing for use of a pricing supplement.

[54] Thus, investors that wish to acquire a traditional final prospectus would have access to one through the Commission, where the issuer would continue to file all required prospectus disclosure in the traditional, integrated format. Comment is requested as to whether access to a final prospectus in traditional, integrated format should be ensured other than through the Commission's facilities, such as through the issuer or underwriter(s)' facilities. *See also* proposed Rule 434(c)(4), 17 CFR 230.434(c)(4), with regard to short-form registrants.

[55] The delivered documents could not materially differ from the prospectus disclosure in the registration statement at the effective date, in any post-effective amendment thereto and in the pricing supplement.

[56] As under the current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors. *See* Rules 460 and 461(b) of Regulation S–K, 17 CFR 230.460 and 230.461(b)

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using short-form registration, physical delivery of most issuer-specific information is not required for offerings by such persons.[57] Instead, such information is incorporated by reference into the prospectus from the issuer's Exchange Act reports. Delivery of such information is therefore accomplished by publication of such information through filing with the Commission. Thus, the traditional final prospectus that is physically delivered by short-form issuers contains primarily "offering-specific" information as to which the efficient market theory generally has not been applied, including a description of: the terms of the securities offered, risk factors specific to the registered transaction, the intended use of offering proceeds, and the plan of distribution for the securities. The balance between information physically delivered to investors and information published would be altered by the proposed rule.

a. *Short-Form, Non-Shelf Registration.* The proposed rule would permit participants in non-shelf offerings using short-form registration to comply with their delivery obligations by distributing a preliminary prospectus and an abbreviated supplementing memorandum. The abbreviated supplementing memorandum would be required to contain: (i) a fair and accurate summary of the description of securities; [58] and (ii) Item 11 information, to the extent not disclosed in the preliminary prospectus or the registrant's Exchange Act reports.[59]

Under the proposed rule, it is likely that the preliminary prospectus would contain the bulk of offering-specific disclosure that would have been physically delivered in a traditional final prospectus.[60] Thus, offering-specific information physically delivered would continue to surpass offering-specific information published in those offerings. Where Rule 430A is relied upon, certain price-related information that may be excluded at effectiveness also would not be in the preliminary prospectus. Such information generally would not be included in the abbreviated supplementing memorandum, but it would be on file with the Commission prior to the time confirmations are sent. The price itself will be set forth in the confirmation.

b. *Short-Form Delayed Shelf Registration.* The proposed rule would permit participants in delayed shelf offerings using short-form registration to comply with their delivery obligations by distributing a base prospectus and an abbreviated supplementing memorandum. As in the case of non-shelf offerings, the abbreviated supplementing memorandum would be required to contain: (i) a fair and accurate summary of the description of securities; and (ii) Item 11 information, to the extent not disclosed in the base prospectus or the registrant's Exchange Act reports.[61]

Traditionally, the final prospectus delivered to investors in delayed shelf offerings would include information set forth in both the base prospectus and a prospectus supplement.[62] Information in the prospectus supplement would no longer be delivered physically to investors, except to the extent it is disclosed pursuant to the abbreviated supplementing memorandum. For example, use of proceeds, syndicate and plan of distribution information and a full description of securities need not be included in the abbreviated supplementing memorandum. The proposal would require, however, that the prospectus supplement in such offerings be filed with the Commission by the time any confirmation is sent or given to investors.[63] In addition, such prospectus supplement would be deemed a part of the registration statement upon filing with the Commission.

As proposed, Rule 434 would not apply to offerings pursuant to the Commission's shelf registration rules other than delayed shelf offerings made by persons using short-form registration.[64] It appears that other types of shelf offerings would not be contemplated within the parameters of firm commitment underwritten offerings for cash. Comment is requested, however, with respect to whether any other type of shelf offerings, including secondary offerings,[65] could take place in connection with a firm commitment underwritten offering for cash. If so, should the proposed rule be extended to such offerings?

c. *Variations from the SIA Proposal.* Under the SIA Proposal, in the case of short-form delayed shelf offerings, publication of prospectus information would only occur after the time confirmations had been sent, since the prospectus supplement would not be required to be filed with the Commission until two business days after the earlier of pricing or first use. The proposed rule does not incorporate this aspect of the SIA Proposal because delaying the availability of disclosure to a time after delivery of the confirmation appears inconsistent with Sections 5(b) and 2(10)(a) of the Securities Act and may not be particularly useful to investors.

For non-shelf offerings using short-form registration, the proposed rule also diverges from the SIA Proposal in that it would require delivery of a preliminary prospectus, rather than just an abbreviated supplementing memorandum. Under the SIA Proposal, the abbreviated supplementing memorandum would include only a summary of Item 11 information. Thus, the SIA Proposal essentially would not require physical delivery of offering-specific information. The proposed rule would require physical delivery of certain offering-specific disclosure.

Comment is requested with respect to whether the proposed rule strikes the

[57] To be eligible to use short-form registration for a primary offering, an issuer must have a public float of $75 million and must have been reporting with the Commission for one year. *See* General Instructions I.A.3. and I.B.1. to Form S–3 and General Instructions I.A.1. and I.B.1. to Form F–3.

[58] This disclosure would be a fair and accurate summary of that which is required under Item 202 of Regulation S–K, 17 CFR 229.202.

[59] The abbreviated supplementing memorandum would be required to be filed with the Commission pursuant to Rule 424(b)(1) under the Securities Act, 17 CFR 230.424(b)(1) (or, if the disclosure represents a fundamental change in the information contained in the registration statement, in a post-effective amendment declared effective prior to the time a confirmation is sent or given). Pursuant to Rule 430A, the abbreviated supplementing memorandum would be deemed to be a part of the registration statement at the time it became effective.

[60] The information currently required to be physically delivered in a short-form final prospectus would consist of disclosure required by Items 501–510 and 202 of Regulation S–K, 17 CFR 229.502–229.510 and 229.202, as well as Item 11 information.

Section 5(b)(1) of the Securities Act, 15 U.S.C. § 77e(b)(1), prohibits transmission of any prospectus relating to any security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act, 15 U.S.C. 77j.

[61] As proposed, an abbreviated supplementing memorandum would be filed with the Commission in accordance with Rule 424(b)(1), 17 CFR 230.424(b)(1), and would be deemed a part of the registration statement pursuant to Rule 430A. If the disclosure represents a fundamental change in the information contained in the registration statement, however, a post-effective amendment rather than a filing pursuant to Rule 424(b)(1) would be required. *See* proposed Rule 434(c)(3), 17 CFR 230.434(c)(3).

[62] The base prospectus omits information that is not yet known with respect to the terms of a specific securities offering. The omitted information is included in the prospectus supplement filed after the effective date of the registration statement. The base prospectus and prospectus supplement, which are physically delivered together, comprise the final prospectus.

[63] *See* proposed Rule 424(e), 17 CFR 230.424(e). Prospectus supplements for shelf offerings generally are required to be filed with the Commission two or more business days after the earlier of pricing or first use. *See* Rule 424(b)(2), 17 CFR 230.424(b)(2).

[64] *See* proposed Rule 434(b) and (c), 17 CFR 230.434(b) and (c).

[65] These offerings are described in Rule 415(a)(1)(i) under the Securities Act, 17 CFR 230.415(a)(1)(i).

appropriate balance between physical delivery of prospectus information and publication by filing. Should the full description of securities required by Item 202 of Regulation S–K be required to be physically delivered? If so, would such description cause the abbreviated supplementing memorandum to become so lengthy that the timing difficulties associated with prospectus delivery would not be surmounted? Should the proposed rule require physical delivery of other offering-specific information, such as disclosure of risk factors?

Offerings registered through short-form registration currently proceed frequently with delivery of only a final prospectus, although a preliminary or base prospectus is prepared for filing with the Commission.[66] Those offerings could proceed under the proposed rule only if a preliminary or base prospectus is delivered. Although base prospectuses are commonly prepared well in advance of a takedown from the delayed shelf, comment is requested with respect to whether a preliminary prospectus could be prepared and delivered sufficiently in advance of pricing in such offerings to warrant adoption of the proposed rule as it relates to non-shelf offerings made in short-form registration. If not, what alternative document should be allowed to be used to convey the required information? On the other hand, commenters should address whether physical delivery of all offering-specific information should be required for offerings using short-form registration.

3. *Conforming Changes to Rule 15c2–8*

Although the delivery of a prospectus to investors in advance of the final prospectus is not required by the Securities Act, paragraph (b) of Rule 15c2–8 under the Exchange Act[67] requires broker-dealers, in the case of certain initial public offerings, to deliver a copy of the preliminary prospectus at least 48 hours prior to the mailing of the confirmation.[68] Other provisions of Rule 15c2–8 govern the furnishing of the prospectus to broker-dealers participating in the offering to ensure that they have the latest available information when they solicit investors.

The Commission is proposing amendments to Rule 15c2–8 to reflect the provisions of proposed Rule 434 and new means of disseminating confirmations and prospectuses. The proposed revisions would add new paragraph (j) that states that, for purposes of Rule 15c2–8, the terms "preliminary prospectus" and "final prospectus" include the terms "prospectus subject to completion" and "Section 10(a) prospectus," respectively, as such terms are used in proposed Rule 434. Also, the proposals substitute the term "sending" for the term "mailing." These proposed revisions are not intended to make substantive changes to Rule 15c2–8. Commenters are requested to provide their views on whether these proposals are appropriate in light of proposed Rule 434, and whether any other changes to Rule 15c2–8 are necessary in light of Securities Act rule revisions proposed herein.

4. *Scope of the Proposed Rule*

a. *Exchange Offers and Business Combinations; Best Efforts Offerings.* Proposed Rule 434 extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations would not be included. In those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery intended to be minimized by the proposal should not be associated with those offerings.

The proposed rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters. The SIA Proposal would cover agency transactions in securities registered on a delayed shelf registration statement. In a firm commitment underwriting, the underwriter(s) agree to purchase the securities from the issuer for a fixed price and then resells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities. According to the SIA Proposal, the prospectus delivery pressures appear to be greatest in such firm commitment offerings where the underwriter must make payment of its own funds to the issuer on a specified date, whether or not its customers have paid for the securities. In contrast, in a best efforts offering,[69] the broker-dealer is required to pay customers' funds promptly to the issuer (or to a separate bank or escrow account in the case of a contingency) upon receipt. In that case, a broker-dealer would not pay out funds that it has not received, or use its own funds to pay for securities that have not been sold.

Comment is requested as to whether there are other types of offerings with comparable timing pressures to which the proposed rule ought to be expanded. Should the proposal be extended to some or all agency transactions in delayed-shelf-registered securities? Are such transactions subject to particular timing pressures in connection with settlement that are absent in best efforts offerings? Are such transactions sold to such a large number of investors that mass printing and delivery is required?

b. *Offerings of Asset-backed Securities.* The SIA Proposal recommends including firm commitment underwritten offerings of asset-backed securities ("ABS") within the scope of the proposed rule. The Commission, however, has determined to exclude ABS offerings from proposed Rule 434 for several reasons.[70] First, it appears that settlement in connection with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. The existing settlement schedule is the result primarily of factors unique to these offerings, which include: (i) the distinctive structuring process for most ABS offerings; (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of assembling the prospectus (or prospectus supplement), which describes all material features of the collateral and the transaction's structure, shortly before sale of the ABS. Furthermore, concerns relating to a bifurcated settlement cycle do not appear to be a pressing problem in the ABS market.

The SIA Proposal treats ABS offerings the same as other offerings using short-form registration. Unlike other issuers using short-form registration, however, the special purpose ABS issuer is not required to have a history of filing Exchange Act reports to use such forms. In fact, these special purpose issuers typically are newly created with each securities offering. Investors in ABS offerings have recourse only to the special purpose issuer's assets as the

[66] Offerings of novel or complex securities, even when done through short-form registration, are sometimes sold through use of a preliminary prospectus.

[67] 17 CFR 240.15c2–8(b).

[68] Any person who is expected to receive a confirmation must have been sent a preliminary prospectus at least 48 hours prior to the sending of the confirmation. This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery

[69] In a best efforts offering, the underwriter acts as an agent for the issuer and agrees to use its best efforts to sell the securities on behalf of the issuer.

[70] "Asset-backed security" is defined for purposes of this release the same way it is defined in General Instruction I.B.5. of Form S–3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders.

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source of payment on their ABS.[71] The Commission's treatment of short-form issuers under proposed Rule 434 is predicated, in part, on the fact that significant issuer-specific information is available through Exchange Act reports. There is no equivalent source of information about the special-purpose issuer in ABS offerings.

In addition, most ABS offerings are registered as delayed offerings under the Commission's shelf registration rule. While the base prospectus includes a general description of the securities that may be offered from time to time, the terms of a specific ABS offering are included in the prospectus supplement. Such supplement details the characteristics of specific pool assets and the structure of the transaction, and is of significant length and complexity. The Commission's proposed rule would provide that only a summary of such information be physically delivered in short-form delayed shelf offerings. In the case of ABS offerings, a summary of such terms would not serve as an adequate substitute for the complete description in the prospectus supplement.

Treating ABS offerings the same as non-short-form offerings under the proposed rule, and thereby requiring use of a preliminary prospectus, also would not be appropriate. Offerings of ABS differ significantly from conventional offerings of corporate securities. The principal focus in ABS offerings is on the structure of the transaction and the nature of the collateral generating the payment streams supporting the ABS. As a particular offering evolves, a variety of structures may be considered as the sponsor attempts to meet investors' needs by adjusting the impact of, *e.g.*, prepayment rate and cash flow variables on particular classes within the structure. The process of developing a satisfactory structure typically extends almost to the time when the security is priced. Consequently, a preliminary prospectus (or, in the case of a delayed shelf offering, a preliminary prospectus supplement) is virtually never utilized.

Finally, even in the rare instance when an ABS offering may employ a preliminary prospectus, the complexity of the disclosure and the structural modifications occurring during the course of the offering do not lend themselves to incremental delivery of prospectus information. Nevertheless, comment is requested regarding whether any ABS offerings could be accomplished within the strictures of the proposed rule while maintaining the present quality of prospectus disclosure.

c. *Offerings of Structured Securities.* As in the case of asset-backed securities, the SIA Proposal would extend relief to structured securities. The Commission's proposed Rule 434, however, would exclude offerings of such securities. These securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (*e.g.*, coupon, principal, redemption payments). Structured securities often are designed with specific market risks in mind, as well as risks relating to the issuer. Consequently, a structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated.

The incremental distribution of information proposed under the rule, when combined with the complex nature of these securities, may result in material disclosure not being readily accessible to investors. Additionally, issuers of securities with complex terms or formulas for the calculation of payment obligations may not be able to develop a summary description (as contemplated by the rule for short-form offerings) that is an adequate substitute for the complete description presently delivered to investors. A complete description of offering-specific information is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities.

Comment is solicited regarding the exclusion or inclusion of these securities with respect to the proposed rule. Comment is requested as to whether the proposed incremental delivery procedure would impede an investor's ability to consider and evaluate material information about structured securities. Can structured securities be adequately summarized? Also, are there additional concerns that further warrant the exclusion of structured securities? Comment also is solicited regarding whether "structured securities" as used in proposed Rule 434 should be defined. If so, how should such securities be defined? For example, should such definition conform to the proposed definition in Rule 15c6–1(c)(2) discussed below?

d. *Investment Companies.* The proposed rule provides that it does not apply to the offering of any security of any company registered or required to be registered under the Investment Company Act of 1940[72] or any company that is treated as a business development company under that Act.

In making its proposal, the SIA did not specifically address the applicability to registered investment companies. The Commission understands that open-end investment company (mutual fund) initial offerings typically do not raise the prospectus delivery logistical concerns that have led to these proposals. Mutual fund shares are normally offered on a continuous basis, and a preliminary prospectus is not generally printed. Moreover, the Commission has concerns that separate delivery of a document that supplements and modifies a prospectus may be inconsistent with efforts to simplify investment company prospectuses.

Comment is requested on whether adoption of a T+3 settlement period will raise prospectus delivery concerns with respect to initial offerings of closed-end funds and unit investment trusts. Commenters favoring the application of proposed Rule 434 to investment companies should address the effects of the proposal on retail investors' ability to understand their investment in these types of companies, as well as the specific investment company-related rules that would require modification.

5. *Feasibility of the Proposal*

A number of concerns have been raised about the feasibility of the SIA Proposal for issuers and underwriters and the utility of the disclosure to investors.[73] Comment is requested with respect to each of the issues raised under the following captions.

a. *Investor Confusion and Resistance.* Investors may be obliged to read multiple documents to ascertain the required information about the transaction and securities. While prospectuses included in short-form registrations currently are not self-contained, given the incorporation by reference of issuer-specific information, would investors expect and require an integrated disclosure document for other offerings, *e.g.*, initial public offerings?

Because a supplementing memorandum could reflect additions to, or changes from, the disclosure contained in a preliminary prospectus, thereby modifying or superseding such information, would investors be confused and frustrated in attempting to determine the important and relevant information? Is this process further exacerbated when a preliminary prospectus is distributed before staff comments on the document are resolved and multiple changes to the document are reflected in the supplementing memorandum? Are concerns that investors might not be shown all changes made in response to staff comments appropriate? Is the purported function of the supplementing memorandum inconsistent with its anticipated brevity?

Investors also may be required to examine multiple documents in order to obtain price-related information. Purchasers in secondary trades may receive prospectus information that does not disclose pricing information included only in the confirmations in connection with the primary offering. Would such delivery be adequate with respect to secondary market trading transactions effected during the prospectus delivery period specified in Securities Act Section 4(3) and Rule 174 thereunder?[74]

Investors who receive a supplementing memorandum may not have retained, or may have difficulty locating, a copy of the preliminary prospectus previously sent. Does this possibility compromise the utility of this proposed method for prospectus delivery?

Is there a risk that investors who receive more than one preliminary prospectus will be unwilling to be responsible for matching related supplementing memoranda to such preliminary prospectuses? How significant are concerns relating to investor confusion from mismatches or the inability to match related documents?

Will investors require the delivery of a traditional final prospectus (even if delivered after the confirmation) for convenience of reference or for other reasons?

b. *Monitoring Delivery.* Because prospectus information would be delivered incrementally, would participants in the offering require re-delivery of the preliminary prospectus at the time any supplementing memorandum is delivered? If so, to what extent would this negate the intended benefits of the modified delivery method? Would new recordkeeping burdens be incurred in connection with recording the delivery of the prospectus where delivery is effected incrementally? Would other variables exist under this delivery scheme that would impose substantial additional monitoring and recordkeeping burdens on underwriters? In the event an issuer delivers more than one version of the preliminary prospectus, would recordkeeping regarding which investors received which versions be burdensome? Commenters also should consider whether broker-dealers will be able to comply with Rule 15c2–8 and, if not, specifically discuss why compliance would not be feasible.

c. *Third Parties' Opinions.* Would issuers' and underwriters' counsel have difficulty giving opinions as to the adequacy of disclosure in the supplementing memorandum and preliminary prospectus, particularly if the supplementing memorandum only summarizes certain changes fully set forth in the filing declared effective? Auditors also may be expected to perform additional work. The additional work required by third parties may result in higher legal and accounting costs to issuers. How likely is it that disagreements, or the time required to reach agreement, among the parties about the content of a supplementing memorandum will negate the purported benefits of the proposal?

III. Revision of the Rule 15C6–1 Exemption

Because the difficulties associated with prospectus delivery within a T+3 time frame were the principal reason for the current exemption for firm commitment offerings in Rule 15c6–1, the Commission believes that the necessity for such exemption should be reconsidered in light of the proposals to alleviate those timing difficulties. It is consistent with the purposes of Rule 15c6–1 to establish T+3 as the standard settlement cycle for firm commitment offerings. It has been estimated that approximately $20 billion in new issues may be subject to settlement risk in any given day.[75] Rule 15c6–1 was intended to reduce the credit and market risk inherent in the settlement of securities transactions. Thus, by including these trades within a T+3 settlement time frame, the goal of risk reduction will be greatly enhanced. Moreover, by revising the exemption, the Commission believes that it will provide certainty to the industry in the form of a written standard.

As discussed above in connection with the SIA Proposal, offerings of asset-backed securities raise concerns different from other offerings, and it does not appear that settlement of such offerings typically will occur within a T+3 time frame. The Commission therefore preliminarily believes that it would be appropriate to continue to exempt from T+3 settlement sales of asset-backed securities sold pursuant to a firm commitment offering.

The release adopting Rule 15c6–1 includes an interpretation with respect to the treatment of a type of asset-backed security, mortgage pass-throughs in the to-be-announced market. With respect to the purchase or sale of such securities, the Commission interprets Rule 15c6–1 to permit settlement to occur within three days after the date a specific pool of mortgages is identified as collateral for the securities for purposes of the sales agreement with the customer. The Commission invites comment as to whether a similar interpretation should be applied to all asset-backed securities. If such an interpretation is provided, is an express exemption still needed for offerings of asset-backed securities?

While it appears that offerings of structured securities[76] currently settle within a T+5 settlement cycle, it may be difficult to settle offerings of structured securities by T+3 because of the time difficulties associated with prospectus delivery. As proposed, Rule 434 would not apply to such securities. The revisions contemplated in connection with the Four Firms Proposal, however, would provide the same benefits with respect to prospectus delivery in offerings of structured securities as to other offerings. Although an exemption for offerings of structured securities may create problems in secondary market trading as described above, the Commission currently believes that it is preferable that the exemption for firm commitment offerings be continued for offerings of structured securities because of the possible difficulties of settling such instruments within a T+3 time frame. The Commission invites comment as to the feasibility of this approach. In addition, the Commission invites comment as to the proposed Rule 15c6–1 definition of structured securities. Does the definition provide sufficient guidance as to the class of securities included?

The Commission invites commenters to address the merits of the proposed Rule 15c6–1 amendments. Assuming the adoption of the proposals relating to prospectus delivery, should the exemption for firm commitment

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[71] While the sponsor/depositor associated with the offering may be a seasoned, reporting company, the reporting history of the sponsor/depositor usually is not relevant because there is no recourse to the sponsor/depositor.

[72] 15 U.S.C. § 80a–1 *et seq.*

[73] See the Four Firms letter, *supra* note 15.

[74] 15 U.S.C. § 77d(3); 17 CFR 230.174.

[75] See letter from Joseph McLaughlin, *supra* footnote 15, page 4.

[76] For purposes of Rule 15c6–1, a structured security is proposed to be defined as a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows. See proposed Rule 15c6–1(c)(2), 17 CFR 240.15c6–1(c)(2).

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offerings be modified? Comment is specifically requested on the treatment of asset-backed securities and structured securities and particularly whether any exemption from the requirements of Rule 15c6–1 is needed for offerings of such securities. Would any exemption be needed if managing underwriters are given the ability to set alternate settlement time frames as previously discussed? Further, the Commission also invites comment on whether offerings of any other classes of securities pursuant to a firm commitment underwriting may need to be exempted from the scope of Rule 15c6–1.

IV. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposals, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated with such proposals. The proposals are expected to benefit issuers and other participants in certain offerings by lowering the transaction costs associated with the printing and delivery of prospectuses, and by providing them additional flexibility in reacting to changes in market conditions and in clearance and settlement of trades. For example, mass printing and delivery of a supplementing memorandum or abbreviated supplementing memorandum, due to its expected brevity, would be expected to consume far less time and be less expensive for issuers to undertake than would production of a traditional final prospectus. Furthermore, the proposals are not expected to diminish investor protection; rather, investors would be expected to benefit from the proposals since offering participants would be required to settle certain underwritten offerings in T+3 as opposed to T+5.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[77] regarding the proposed rule and amendments to existing regulations. The IRFA notes that the proposed rule and amendments are intended to provide entities with, and reflect the availability of, greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6–1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the proposed rule and amendments to Securities Act regulations are anticipated to decrease costs associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The proposed amendments to Exchange Act regulations are not anticipated to have any significant economic impact on entities. The proposed rule could impose minimal additional reporting, recordkeeping or compliance requirements, while the proposed amendments would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

It is expected that the overall effect of the proposed rule and amendments will provide entities increased efficiency in raising capital from the public securities markets. The proposal to provide for the incremental delivery of prospectus information, if adopted, would apply to any entity engaged in a public distribution with respect to an eligible offering. The proposed amendments to Securities Act regulations are intended to streamline the registration process and thereby facilitate compliance with prospectus delivery within T+3 and would apply to any entity engaged in a public offering of securities. The proposed amendments to Exchange Act regulations are intended to reflect the availability of expedited delivery of prospectus information provided by the proposed new rule and amendments to the Securities Act regulations.

Commenters are encouraged to comment on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rule and amendments are adopted. A copy of the IRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549, (202) 942–2900.

VI. General Request for Comments

Any interested person wishing to submit written comments on any aspect of the proposed rule and amendments to the rules and forms, as well as on other matters that might have an impact on the proposals contained herein, is requested to do so. In addition, the Commission requests comment on whether any further changes to the rules and forms are necessary or appropriate to facilitate T+3 at this time. Comment is requested specifically from investors, broker-dealers, underwriters, issuers, analysts and other persons that rely on the information provided in the prospectus supplement. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–7–95.

VII. Statutory Bases

The proposed rule and the amendments to the Commission's rules and forms under the Securities Act are being proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended. The proposed revisions to the Commission's rules under the Exchange Act are being proposed pursuant to sections 3, 10, 12, 15 and 23 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Parts 228, 229, 230, 239, and 240

Brokers, Investment companies, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By revising paragraph (b) and paragraph (c) of § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and Risk Factors.

* * * * *

(b) *Address and telephone number.* Include in the prospectus the complete mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Risk factors.* Small business issuers discuss, on the page immediately following the cover page of the prospectus (or following the summary, if included), or on the page immediately following a section containing pricing information where such section immediately follows the cover page (or following the summary, if included), any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) includes disclosure required by Items 504 and 508 of Regulation S–B (§ 228.504 and § 228.508) and information regarding the small business issuer's capitalization.

3. By amending § 228.601 to revise the third sentence of paragraph (b)(24) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

5. By revising the last sentence of the introductory text of paragraph (f) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(f) * * * Such disclosure need not be included on the inside front cover page of the prospectus, if it is included, under appropriate caption, elsewhere in the prospectus.

* * * * *

6. By revising paragraph (b) and paragraph (c) of § 229.503 to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(b) *Address and telephone number.* Registrants shall include in the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) *Risk factors.* Registrants, where appropriate, shall set forth, on the page immediately following the cover page of the prospectus (or following the summary, if included), or on the page immediately following a section containing pricing information where such section immediately follows the cover page (or following the summary, if included), under an appropriate caption, a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) includes disclosure required by Items 504 and 508 of Regulation S–K (§ 229.504 and § 229.508) and information regarding the registrant's capitalization.

* * * * *

7. By amending § 229.601 to revise the fourth sentence of paragraph (b)(24) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

8. Guide 4 (referenced in § 229.801(d)) is amended by removing the first sentence of the Guide.

Note: The text of Guide 4 does not and the amendments will not appear in the Code of Federal Regulations.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

9. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

10. By amending § 230.402(a) to add a sentence between the fourth and fifth sentences to read as follows:

§ 230.402 Number of copies; binding; signatures.

(a) * * * Registration statements filed pursuant to Rule 462(b) under the Act (§ 230.462(b)), however, may include duplicated or facsimile versions of manual signatures of persons required to sign, and such signatures shall be considered manual signatures for purposes of the Act and rules and regulations thereunder. * * *

* * * * *

11. By amending § 230.424 by redesignating paragraphs (e) and (f), respectively, as paragraphs (f) and (g) and by adding paragraph (e) to read as follows:

§ 230.424 Filing of prospectuses; number of copies.

* * * * *

(e) Ten copies of each form of prospectus which, but for the application of Rule 434 under the Act (§ 230.434) would be filed pursuant to paragraphs (b)(2) or (b)(5) of this section, shall be filed pursuant to this paragraph with the Commission on or prior to the date on which a confirmation is sent or given.

* * * * *

12. By amending § 230.430A by removing the word "five" and adding, in each place it appears, the word "ten" in paragraph (a)(3); by adding a sentence at the end of Instruction to paragraph (a); by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) and by adding paragraph (c) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to paragraph (a): * * * Notwithstanding the foregoing, any increase or decrease in volume up to 20% or deviation in the price range of up to 20% may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) or Rule 497(h) (§ 230.497(h)), provided that in the case of a volume increase no form of prospectus filed pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) may be used if the total dollar value of securities offered exceeds that which was registered.

* * * * *

(c) Where a registration statement is filed to increase the amount of securities in a Rule 430A (§ 230.430A) offering and it is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)),

[77] 5 U.S.C. 603 (1988)

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such registration statement upon its effectiveness shall be deemed part of the earlier filed registration statement with respect to such offering.

* * * * *

13. By adding § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where securities, other than asset-backed securities and structured securities, are offered for cash in a firm commitment underwritten offering and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied:

(1) The prospectus subject to completion and the supplementing memorandum described in paragraphs (b)(1) and (b)(2) of this section, taken together, and the prospectus subject to completion and the supplementing memorandum described in paragraphs (c)(1) and (c)(2) of this section, taken together, shall constitute prospectuses that meet the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of Section 5(b)(2) and Section 2(10)(a) of the Act (15 U.S.C. 77e(b)(2) and 77b(10)(a)); and

(2) Such Section 10(a) prospectuses shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of Section 2(10)(a) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purposes of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) With respect to offerings of securities (other than offerings pursuant to Rule 415 under the Act (§ 230.415)) that are registered on any form other than Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) under the Act the following conditions are satisfied:

(1) A prospectus subject to completion and any supplementing memorandum described in paragraph (b)(3) of this section are sent or given prior to or at the same time with the confirmation;

(2) Except for information omitted from the prospectus in a registration statement at the time of effectiveness in accordance with Rule 430A (§ 230.430A), such prospectus subject to completion and supplementing memorandum, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or post-effective amendment thereto at the time of its effectiveness; and

(3) A supplementing memorandum setting forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)).

(c) With respect to offerings of securities (other than offerings pursuant to Rule 415(a)(1)(i)–(ix) and (xi) (§ 230.415(a)(1)(i)–(ix) and (xi)) that are registered on Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter) the following conditions are satisfied:

(1) A prospectus subject to completion and the abbreviated supplementing memorandum described in paragraph (c)(2) of this section are sent or given prior to or at the same time with the confirmation;

(2) The abbreviated supplementing memorandum delivered to investors sets forth:

(i) If not disclosed in the prospectus subject to completion, a description of securities required to be disclosed pursuant to Item 202 of Regulation S–K (17 CFR 229.202 of this chapter), or a fair and accurate summary thereof; and

(ii) If not disclosed in the registrant's Exchange Act reports or the prospectus subject to completion, all material changes in the registrant's affairs required to be disclosed pursuant to Item 11 of Form S–3 or Form F–3 (§§ 239.13 and 239.33 of this chapter), as applicable;

(3) The abbreviated supplementing memorandum described in paragraph (c)(2) of this section is filed with the Commission pursuant to Rule 424(b)(1) under the Act (§ 230.424(b)(1)) or, if the disclosure represents a fundamental change in the information set forth in the prospectus filed as part of the registration statement declared effective or any post-effective amendment thereto, is filed in a post-effective amendment to the registration statement that is declared effective prior to the time any confirmation is sent or given;

(4) In an offering made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a form of prospectus is filed pursuant to Rule 424(e) under the Act (§ 230.424(e)), and in an offering not made pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), a prospectus meeting the requirements of Section 10(a) of the Act other than by virtue of paragraph (a)(1) of this section is filed with the Commission prior to the effective date of the registration statement; and

(d) The information contained in any form of prospectus filed with the Commission pursuant to Rule 424(e) under the Act (§ 230.424(e)) shall be deemed to be a part of the registration statement as of the time such information is filed with the Commission.

(e) For purposes of this section, *asset-backed securities* shall mean asset-backed securities as defined in General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter).

(f) For purposes of this section, *prospectus subject to completion* shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus filed in accordance with Rule 430A(a) (§ 230.430A(a)), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) under the Act (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness.

(g) Notwithstanding paragraphs (a) through (f) of this section, this section shall not apply to the offering of any security of any company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*, as amended) or any company that is exempt from the requirement to register under that Act through filing either a notification of election or a notice of intent to file a notification of election to be treated as a business development company under that Act.

14. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

(a) * * *

(b) In a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)), any required consent may be incorporated by reference into the registration statement from a previously filed registration statement relating to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually signed for purposes of the Act and the rules thereunder.

15. By amending § 230.457 to revise paragraph (o) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer is offering securities pursuant to Rule 430A under the Act (§ 230.430A) or where an issuer eligible to use Form S–3 (§ 239.13 of this chapter) is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S–3 to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x) under the Act (§ 230.415(a)(1)(x)), or pursuant to General Instruction H. to Form S–4 (§ 239.25 of this chapter) in connection with a business combination transaction pursuant to Rule 415(a)(1)(viii) under the Act (§ 230.415(a)(1)(viii)), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table.

16. By revising the first sentence of paragraph (a) and adding two new sentences immediately after the first sentence of paragraph (a) to § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. Such requests may be made in writing or orally, provided that, if oral requests are to be made, a letter indicating that fact and stating that the registrant and the managing or principal underwriters are aware of their obligations under the Act must accompany the filing of the registration statement with the Commission. Written requests may be sent to the Commission by facsimile transmission. * * *

* * * * *

17. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 230.462 to read as follows:

§ 230.462 Effective date of certain registration statements.

(a) * * *

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for the sole purpose of registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering filed pursuant to Rule 430A under the Act (§ 230.430A) and declared effective by the Commission;

(2) The new registration statement is filed within two business days of the pricing of the earlier registration statement; and

(3) The new registration statement registers no more than 20% of the amount of such class(es) of securities that were registered in the earlier registration statement.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

18. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

19. By amending Form SB–1 (referenced in § 239.9) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding a Note to appear immediately after the Calculation of Registration Fee table, and by adding paragraph H to General Instructions to read as follows:

Note: The text of Form SB–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Calculation of Registration Fee

* * * * *

Note: For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

H. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

20. By amending Form SB–2 (referenced in § 239.10) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph C to General Instructions to read as follows:

Note: The text of Form SB–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

C. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required

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in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

21. By amending Form S–1 (referenced in § 239.11) by adding one check box to the cover page immediately before "Calculation of Registration Fee," and by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V to General Instructions to read as follows:

Note: The text of Form S–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

22. By amending Form S–2 (referenced in § 239.12) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph III to General Instructions to read as follows:

Note: The text of Form S–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offering and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

III. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

23. By amending Form S–3 (referenced in § 239.13) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

24. By amending Form S–11 (referenced in § 239.18) by adding paragraph G to General Instructions, by adding one check box to the cover page immediately before "Calculation of Registration Fee" and by adding two sentences to the end of the Note following the Calculation of Registration Fee table to read as follows:

Note: The text of Form S–11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S–11

For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

G. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

Form S–11

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

25. By amending Form F–1 (referenced in § 239.31) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V to General Instructions to read as follows:

Note: The text of Form F–1 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–1

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

26. By amending Form F–2 (referenced in § 239.32) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

27. By amending Form F–3 (referenced in § 239.33) by adding one check box to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV to General Instructions to read as follows:

Note: The text of Form F–3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is registering additional securities pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [ ] 33–_____

* * * * *

Note: * * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered,

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the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV Registration of Additional Securities

With respect to offerings registered pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

28. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

29. Section 240.15c2–8(b) is amended by revising the phrase "mailing" to read "sending".

30. Section 240.15c2–8(c) is amended by revising the phrase "mail" to read "send".

31. Section 240.15c2–8(d) is amended by revising the phrase "mail" to read "send".

32. Section 240.15c2–8 is amended by adding paragraph (j) to read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(f), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(f).

33. Amend § 240.15c6–1 by revising the phrase "paragraph (b)" contained in paragraph (a) to read "paragraphs (b), (d), and (e)"; by revising the phrase "Paragraph (a)" contained in the introductory text of paragraph (b) to read "Paragraphs (a) and (d)"; by revising the phrase "the sale for cash of securities" contained in paragraph (b)(2) to read "the sale for cash of asset-backed securities or structured securities"; and by adding paragraphs (c), (d), and (e) to read as follows:

§ 240.15c6–1 Settlement cycle.

* * * * *

(c) For purposes of this section:

(1) *Asset-backed security* means an asset-backed security as defined in General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter); and

(2) *Structured security* means a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(d) Paragraph (a) of this section shall not apply to securities that are sold pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 and that are priced after 4:30 p.m. Eastern time on the date such securities are priced, provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(e) For purposes of paragraphs (a) and (d) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering registered under the Securities Act of 1933 if:

(1) The alternate date is no later than the fifth business day after the date of the contract;

(2) The managing underwriter has selected such date for all securities sold pursuant to such offering;

(3) Information disclosing the alternate date is contained in a written notice sent or given to all prospective purchasers on or before the date the securities which are sold pursuant to such offering are priced;

(4) The managing underwriter provides written notification to all exchanges on which the securities are listed and all registered securities associations through which quotations for such securities are disseminated prior to the date the securities which are sold pursuant to such offering are priced; and

(5) The parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

Dated: February 21, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4647 Filed 2–24–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Monday
February 27, 1995

Part VII

Consumer Product Safety Commission

16 CFR Part 1500

Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labelling of Certain Toys and Games; Final Rule

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Final Rule to Ban Small Balls Intended for Children Younger Than Three Years of Age and To Require Labeling of Certain Toys and Games

AGENCY: Consumer Product Safety Commission.

ACTION: Final Rule.

SUMMARY: The Child Safety Protection Act of 1994 (CSPA) amended the Federal Hazardous Substances Act (FHSA) by adding a new section 24 which, *inter alia*, imposes labeling requirements on certain balls, balloons, marbles, and certain toys and games intended for use by children three years of age and older. The amendment also bans certain balls intended for use by children younger than three years of age. Although the requirements imposed by the amendments are generally self-executing, the Commission is publishing this regulation to incorporate the requirements of the CSPA into the Code of Federal Regulations (CFR) and to interpret or clarify certain provisions of that legislation.

DATES: This regulation becomes effective on August 28, 1995 for products manufactured or imported into the United States.

FOR FURTHER INFORMATION CONTACT: Francis Krivda, Compliance Officer, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0400, ext. 1372.

SUPPLEMENTARY INFORMATION:

A. Background

1. Previous Commission Actions

In 1979, the Commission issued regulations to ban toys and other articles which are intended for use by children younger than three years of age and which present an aspiration, ingestion, or choking hazard because of small parts. The small parts regulations are codified at 16 CFR 1500.18(a)(9) and Part 1501. Toys and children's articles subject to the regulations must be placed in a truncated cylinder with a diameter of 1.25 inches (31.7 mm.) and a depth ranging from 1 to 2.25 inches (25.4 mm to 57.1 mm). If the product or any independent or detachable component of the product fits entirely within the cylinder, it is banned. Additionally, a toy or children's article is banned if any component or piece of such a product becomes detached during "use and abuse" testing. The "use and abuse" tests are codified at 16 CFR 1500.50–1500.53.

The small parts regulations apply only to toys and articles intended for use by children younger than three years of age. Some products, including balloons, are excluded from the scope of these regulations because they cannot be manufactured to function as intended and still comply with the requirements of the regulations.

Previously, the Commission received information indicating that an average of seven children a year choke to death on balloons or parts of balloons. The agency also received reports of children younger than three choking on small toys or games, or the parts of such products, which were intended for children three years of age and older. For example, small balls and marbles are generally considered to be intended for such older children, but have been associated with choking fatalities involving children under three.

In some cases, choking incidents involving children younger than three years of age occurred after an adult purchased a product labeled to indicate that the article was suitable for children three years and older, but gave the article to a child younger than three. In such cases, it is possible that the purchaser believed that the labeling statement was not a safety message, but instead referred to the age at which the child could use or enjoy the product.

The origins of the CSPA rest in rulemaking activities in which the Commission engaged between 1988 and 1992. In 1988, the Commission published an advance notice of proposed rulemaking (ANPR) to initiate regulatory action to enlarge the dimensions of the cylinder used to evaluate whether toys or other articles intended for children under three contain small parts that could present a choking hazard. In 1990, the Commission terminated that proceeding. It determined that the use of the test cylinder specified in the existing small parts regulation had been effective in preventing choking deaths and injuries to children under three associated with toys intended for that age group. At the same time, however, the Commission published four ANPRs that, *inter alia*, solicited preliminary comment on proposals to require labeling on small balls, balloons, marbles, and toys and other articles with small parts intended for children aged three to approximately six. In 1991, after analyzing the comments received in response to the ANPRs, the Commission staff recommended that the Commission propose rules prescribing labeling under the FHSA for the products that later became the subject of the CSPA. The Commission, however, terminated all four proceedings because it felt that it could not make the findings required by the FHSA.

2. The Child Safety Protection Act

On June 16, 1994, Congress enacted the CSPA. The legislation establishes substantially the same labeling requirements for balloons, marbles, small balls, and toys and games containing small parts that the staff recommended in 1991. The primary purpose of the legislation is to warn purchasers of the potential hazards for children under three that products intended for older children may present. The CSPA prescribes labeling statements for balloons, for balls with a diameter of 1.75 inches or less ("small balls") and marbles intended for children three years or over, and for toys or games that contain such items. The law also requires labeling for toys or games that contain small parts and that are intended for children at least three years old but not older than six. Under the CSPA, small balls intended for children under three are banned. The statute specifies the text of the required label statement for each of the enumerated products and requires that labeling appear on the principal display panel of product packages. For unpackaged, unlabeled items sold in bulk, any bin in which they are displayed, and any container for retail display or vending machine from which they are sold or dispensed must bear the required labeling. The law also directs the Commission to promulgate regulations to implement the statutory requirements.

On July 1, 1994, the Commission published in the **Federal Register** a proposed rule (59 FR 33932). The proposed rule clarified and interpreted certain provisions of the CSPA. It included definitions of terms such as "ball," "small part," and "descriptive material," and established criteria for determining the age of children for which a game or toy is intended. It also clarified the applicability of the type size and conspicuousness requirements of the regulation codified at 16 C.F.R. 1500.121 to the products that are subject to the CSPA. It further contained provisions to assure that labeling statements would appear prominently on product packages.

B. Response to Comments

In response to the proposed rule, the Commission received almost 300 comments, most from individual consumers. Major consumer groups supported many of the provisions of the rule as written and recommended strengthening others. Many individual members of those organizations submitted comments supporting the rule as drafted. Approximately twenty manufacturers, trade associations, and firms that test toys commented on the proposed labeling requirements for toys and games, while other commenters addressed issues such as the applicability of the CSPA to writing and art materials and to balloons distributed by individual performers or sold individually. Other comments raised issues relating to labeling for unpackaged products sold or distributed in bulk or requested clarification of specific technical requirements established by the act or the proposed regulation. Comments on specific parts of the rule and the Commission's responses to the comments are discussed in the following paragraphs.

1. Relationship of the CSPA to Other Standards

Representatives of foreign toy manufacturers commented generally on the complications the legislation presents with regard to standardized labeling statements under the European toy safety directive and to the development and use of a graphic symbol to identify products that are hazardous to children under three. Inasmuch as Congress mandated in the CSPA the precise labeling requirements that products in the U.S. market must meet, the Commission has little ability to address these concerns. Thus, no changes have been made to the final rule concerning these issues.

2. Existing Policies With Respect to Labeling and Toys

A recurring question throughout the comments is the extent to which the Commission, in administering the CSPA, intends to apply its existing policies and interpretations with respect to labeling and toys generally. For example, commenters inquired whether they can combine the warning statements required for marbles and for games with small parts, if they produce a game that contains both items.

Under the general labeling provisions of 16 CFR 1500.127, the Commission permits information relating to a specific hazard associated with a hazardous substance to be combined with information relating to additional hazards if the resulting statement contains all the information needed to deal with each respective hazard. If the Commission followed its existing policies, the labeling for the game could be condensed to reflect the hazard associated with the small parts and the marble in one statement.

Similarly, under the Commission's small parts testing regulations, toys reasonably intended to be assembled by an adult and not intended to be taken apart by a child are tested only in the assembled state, if the shelf package and assembly instructions prominently indicate that the article is intended to be assembled only by an adult. The effect of this exception is to exempt from the small parts test the hardware used to assemble the toy. If the Commission follows this policy with respect to the labeling required by the CSPA, products containing such hardware would also be exempt from the labeling requirements.

The majority of the Commission's policies applicable to toys have evolved over the last ten to fifteen years, while many of the labeling policies are twenty to thirty years old. All of the policies provide standardized points of reference, both for regulated industries as well as the Commission staff, and take into account the requirements of the law, the objective of protecting the public, and the practical realities of the commercial world.

To avoid the confusion associated with establishing differing requirements for similar toys and labels, in administering the labeling provisions of the CSPA, the Commission will generally apply its existing policies with respect to children's articles and hazardous substances labeling. This general rule will apply unless such a policy (1) conflicts with the express provisions of the CSPA; (2) is overridden by a policy decision of the Commission as expressed in the final rule or in subsequent guidance to the staff of the Commission; (3) is impractical in its application; or (4) could result in a diminution of the protection envisioned by the law. The Commission believes it unlikely, however, that either of the latter two exceptions will occur.

3. Upper Age Limit

a. Toys and Games

The CSPA establishes labeling requirements for any toy or game that includes a small part and that is intended for use by children who are at least three years old but not older than six. The law permits the Commission to establish an alternative age to the upper limit of six years, but that alternative limit "may not be less than five years of age." 15 U.S.C. 1278(a)(1). In the proposed rule, the Commission declined to establish an alternative upper age limit. As explained below, the final rule adopts an upper age limit of less than six years.

Consumer advocates supported maintaining the upper age limit at six years, arguing that, in the absence of compelling evidence to the contrary, the upper age limit specified in the statute should control. Several industry commenters, however, objected to applying the labeling requirements to toys or games intended for use by children under seven years of age (i.e while they are six years old). These commenters argued that this upper age limit departed from the original 1991 staff recommendation that the Commission require labeling on toys or games intended for children aged from 36 months up to, but not including, 60 months. Most of these commenters suggested that the Commission select an alternative upper age limit of not more than five years, although some suggested that the Commission adopt the upper age limit in the original staff recommendation.

Other commenters argued that the upper age limit of six is inconsistent with the Commissions's Guidelines for Relating Children's Ages to Toy Characteristics which the Commission uses to evaluate toys or other articles intended for use by children. According to these commenters, the inconsistency arises because the guidelines differentiate products intended for children aged 37 through 72 months from those intended for children 73 through 96 months old. The commenters contended that, if manufacturers complied with the labeling requirements and also followed the guidelines, the practical effect of applying the labeling to products intended for children under the age of seven would be to require labeling for products intended for children between the ages of 73 and 96 months.

At the outset, neither the CSPA nor its legislative history contain an explanation of the reason for the statutory upper age limit of six years or for the floor of five years on the alternative age limit. The text of the legislation, however, expressly forecloses using the original staff recommendation to label toys and games intended for children up to, but not including, 60 months of age as the alternative upper age limit. Similarly, any alleged inconsistency between the Commission age grading guidelines and the labeling requirements of the CSPA arises because the statute itself establishes a presumptive upper age limit of six years for labeling that does not coincide with the age divisions in the guidelines. The Commission is, of

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course, bound to follow the requirements of the law.

The original staff recommendation did not suggest labeling products for children five years of age or older because available data did not support the need to extend the labeling requirements to products intended for that age group. That recommendation therefore does not itself provide a basis for specifying a specific alternative upper age between five and seven years. However, the Commission believes that the rationale for the original proposal—that the products most likely to present a threat to children under three are toys and games intended for three and four year olds, and that the skills, levels of development and play interests of children five years of age and older differ significantly from those of such younger children—is valid. Thus, the Commission believes that establishing an upper age limit lower than six would not significantly compromise the safety of children under three.

An upper age limit of 5 years (e.g., under 60 months and one day) would most closely approximate the objectives of the original staff recommendation. However, since there is no clearly defined line between toys intended for four year olds and those intended for five years olds, drawing a distinction in the rule in effect based on the day after a child reaches his or her fifth year could create problems for manufacturers in complying with the law. In contrast, an upper age limit of less than 6 years (less than 73 months) would be consistent with the Commission's Guidelines for Relating Children's Ages to Toy Characteristics. Those established guidelines recognize a break between toys and games intended for children 37 months through 72 months old (less than 6 years old), and those intended for children 73 (6 years old) through 96 months.

The Commission has therefore lowered the upper age limit to apply to toys or games intended for use by children who are less than six years old. In addition to the reasons discussed above, the Commission believes that limiting the scope of the labeling requirement will more closely focus prospective purchasers on the potential hazards of those toys and games intended for older children that are most likely to be purchased for younger children. Moreover, many toys intended for children six years of age are also intended for children seven and eight years of age. While the great majority of these products are unlikely to be purchased for children under three, labeling all of these products could dilute the effectiveness of the labeling on products intended for children from three up to six years of age that are most likely to be purchased for younger children.

b. "Younger Than Seven Years"

The preamble to the proposed rule points out that products intended for children of a specific age are generally recognized by consumers as being suitable for all children of that age. Thus, a toy labeled for use by children six years old is typically viewed as being appropriate for use by children who have just turned six, as well as for use by those approaching their seventh birthday. The proposed rule interpreted the term "intended for use by children who are * * * not older than six years" in the CSPA to mean that the labeling requirements apply to toys or games intended for children under seven years of age.

Several commenters disagreed with this approach. Some contended it was inconsistent with the Commission's age grading guidelines. Others, relying on the statutory upper age limit of six years, suggested that the interpretation in the proposed rule would lead manufacturers who currently label products for children age six and up in accordance with industry standard practice to revise the age recommendations to seven and up.

None of the commenters provided a basis for changing the interpretation. This approach is the same as that of the Commission's small parts regulation which applies to products intended for children under three years of age. Moreover, applying the labeling requirements to products intended for use by children who have not yet reached a specific age—in this case, six—is consistent with the analytical approach of the Commission's age grading guidelines. For example, a child does not attain the age of six years until the completion of the last day of his or her seventy-second month (i.e., is beginning the seventy-third month). Thus, the upper end of 72 months in the age grouping of 37 to 72 months specified in the guidelines, in effect, applies to articles intended for children who are in the midst of their fifth year but have not yet reached their sixth year, i.e. are under six years of age. The Commission, therefore, declines to modify the final rule in the manner requested by the commenters.

4. Prominence and Conspicuousness of Labeling

Under the CSPA, precautionary labeling statements must be displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed material on a product package, on any accompanying descriptive material, on any bin or container for retail display from which the product is sold, and on any vending machine from which it is dispensed. The act also requires that the labeling statements be displayed "in a manner consistent with part 1500 of title 16, Code of Federal Regulations." 15 U.S.C. 1278(c)(1)(B). Title 16, Part 1500.121, contains the Commission's policies and interpretations implementing section 2(p)(2) of the FHSA which requires that precautionary labeling for hazardous substances appear prominently and conspicuously. The proposed rule incorporated by reference those policies and interpretations, with modifications designed to accommodate specific provisions of the CSPA and the general differences between toy labels and hazardous substance labels.

No commenter objected to incorporating the provisions of 16 CFR 1500.121 by reference in the proposed rule. Consumer advocates favored publishing the proposed requirements in final without change. Several industry commenters, however, objected to specific provisions in the proposed rule modifying 16 CFR 1500.121. Those objections and the Commission's response are discussed below.

a. "Color-Blocking"

To assure that the labeling statements required by the CSPA appear prominently and conspicuously, the proposed rule solicited comments on the desirability of "color-blocking" those statements. Color-blocking would require the statements to appear on a background different from the color of the background of the area of the package on which it appears, from the color of any printed matter in proximity to the required statements, and, if the package were a see-through package, from the color of the article contained in the package. As the proposed rule explained, the packages of products subject to the CSPA generally contain many visual messages, some in printed product descriptions and depictions, others in see-through features that display actual products. All of these features have the potential to obscure labeling statements which, if they generally followed the provisions of 16 CFR 1500.121, would otherwise be regarded as conspicuous.

Several commenters objected to the "color-blocking" proposal, contending that it is more stringent than the current conspicuousness requirements contained in 16 CFR 1500.121. They also contended that requiring color-blocking would unnecessarily increase the size of blister packaging used for small products and hinder tri-lingual labeling under the North American Free Trade Agreement (NAFTA). The commenters argued that applying the existing provisions of 16 CFR 1500.121 to products subject to CSPA labeling would be adequate to assure that the labels are conspicuous.

The CSPA requires that the labels it prescribes must be displayed conspicuously in a manner consistent with part 1500 of title 16 of the Code of Federal Regulations. The law does not require that the conspicuousness requirements for the labels of toys and games be identical to any similar requirement in the existing regulations. Accordingly, while the proposed regulation incorporated certain provisions of 16 CFR 1500.121, it also contained variations that take into account the requirements of the legislation itself and the lithography and design features of packages for toys and games. The "color-blocking" proposal was one variation.

The conspicuousness of a labeling statement depends on a variety of factors, including the location of the statement on the package and the types of printed material in proximity to it. While "color-blocking" is one technique to assure that labeling is conspicuous, the Commission believes that the use of this method in all cases may be unnecessary to accomplish the objectives of the CSPA. As is discussed below, two provisions of the existing conspicuousness regulations provide adequate assurance that labels required by the CSPA will be conspicuous without requiring the use of color-blocking.

The Commission's existing policy in 16 CFR 1500.121(b)(2)(ii) requires that labeling statements that appear on a principal display panel be blocked together within a square or rectangular area with or without a border. The statements must be separated on all sides from other printed or graphic matter by a space no smaller than the minimum allowable height of the type size for precautionary labeling other than signal words and statements of principal hazard (e.g. the statement "Not for children under three yrs." in the CSPA). If not separated by that distance, the labeling statements must be surrounded by a border line. With regard to other cautionary material, 16 CFR 1500.121(d)(2) specifies that the label design, the use of vignettes, or the proximity of other labeling or lettering shall not be such that any cautionary labeling statement is obscured or rendered inconspicuous.

The Commission has revised the final regulation to eliminate the requirement for color-blocking. Instead, the labeling must also conform to the spacing/borderline requirements of 16 CFR 1500.121(b)(2)(ii) for principal display panel labeling. This means that, if a border line is used, it must be rectangular or square in shape. If no border line is used, other printed or graphic material should be separated from the cautionary labeling statements in a manner that makes the precautionary statements appear in a square or rectangular area. If other printed or graphic material appears on less than four sides of the cautionary material, the other printed or graphic material on any side should be laid out in a manner that creates the appearance of a vertical or horizontal line of separation, as appropriate, between that material and the cautionary labeling.

The Commission believes that the latter measures will adequately assure the conspicuousness of labeling for almost every product subject to the CSPA. Recognizing, however, that it is impossible to anticipate the design or lithography of every package, the final regulation includes a provision similar to that of 16 CFR 1500.121(d)(2) relating to interference with precautionary labeling by label design, the proximity of other labeling, or vignettes. The practical effect of this provision is that all labeling mandated by the CSPA must appear on a solid background, although the color of that background need not differ from the background color of the rest of the package label as long as the precautionary statements appear conspicuously. The inclusion of this provision will also permit the Commission to take action, should the spacing/borderline provisions be inadequate in a specific case to make the labeling required by the CSPA conspicuous.

b. Principal Display Panel/Multiple Type Sizes

The proposed rule established minimum type sizes for the various labeling statements required by the CSPA based upon the area of the display panel upon which those statements appear. For smaller packages with display panels of less than 100 square inches, the regulation followed the type size charts of Table 1 of 16 CFR 1500.121(c)(2) which generally apply to the labels of hazardous substances packaged in containers up to one gallon in volume. For larger packages, the regulation followed the minimum lettering heights of 16 CFR 1505.3(d)(2) which apply to labels on packages for electrically operated toys.

1. *See-Through Features:* Several commenters requested clarification of the definition and the measurement of the area of principal display panels. A number argued that the measurement of the area of the principal display panel should exclude the area of see-through features, contending that including this area in the measurement would result in labels that are too large. The Commission declines to accept this recommendation.

The Commission's existing policies require that the area of a see-through feature be included in measuring the area of a principal display panel. This is because see-through features are incorporated into packages to permit consumers to see the item for sale in conjunction with the labeling that accompanies the item. Such a feature often includes background graphics designed to promote specific attributes of the item that is visible through the feature or to show the item in an action setting. Like written descriptions or printed depictions of the products that generally appear on the packages of toys or games, see-through features communicate to prospective purchasers details about the products contained therein. Accordingly, the Commission views see-through features as functioning as part of the label of the product. To assure that the precautionary statements required by the CSPA are conspicuous and that a see-through feature does not direct a prospective purchaser's attention away from those statements, the area of the see-through feature is included in computing the area of the principal display panel to determine the proper type size.

The Commission, however, distinguishes packages with see-through features from peg-board packages consisting of a cardboard header with an attached plastic bag containing the item for sale. In the latter instance, all of the graphic material typically appears on the cardboard header separated from the item, making the header the principal display panel of the package. If a manufacturer chooses to place precautionary labeling on the header, the area of the surface of the header designed to face outward at retail controls the type size of the labeling. If, however, a manufacturer chooses to place precautionary labeling on the plastic bag, the bag itself becomes part of the principal display panel and its area is included along with that of the header in determining the appropriate type size. For peg board packages consisting of a header and a plastic bag which contains multiple individually packaged products, some of which may

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require labeling, labeling each individual package that contains a product requiring labeling is sufficient to comply with the law, as long as the label is visible through the outer bag and is conspicuous. The type size of the statement would be based on the area of the individual bag containing the item, rather than on the area of the outer plastic bag.

2. *Vending Machine Display Panels:* Representatives of vending machine interests questioned what the principal display panel of a vending machine is, noting that, generally, labeling may appear either on the glass or clear plastic container of the machine or on a display card intended to be inserted in a holder in the machine. The commenters suggested that, if the machine has a display card that contains graphic material, the card itself constitutes the principal display panel. In the absence of such a card, the front of the container would be the principal display panel. The type size of the required labeling statements would depend on the area of the surface treated as the principal display panel. The Commission agrees that this approach is appropriate and has revised the final regulation accordingly.

3. *Type Size for Large Packages:* Some commenters objected to the use of letter sizes specified in the electrical toy regulation for large packages. The commenters contended that the type sizes prescribed for packages with an area in excess of 30 square inches (approximately the size of a gallon container) in 16 CFR 1500.121(c)(2) are adequate for larger packages, including those with an area in excess of 400 square inches. One commenter argued that the larger type sizes prescribed in the proposed regulation are inappropriate for products subject to the CSPA which, unlike electrical toys, do not present a hazard to the intended user. That commenter also submitted mock-up labels which purported to represent how the labels would actually appear if they complied with the larger type size requirements of the proposed regulation. It also submitted other mock-up labels purporting to demonstrate that the use of smaller type size on large packages could still result in conspicuous labels. As was argued with color-blocking, other commenters contended that the use of larger type sizes would increase the size of blister packaging for small products and would hinder tri-lingual labeling under NAFTA.

The Commission believes that the commenters' objections and concerns are unfounded and has adopted the proposed type size requirements in the final rule. Labeling cannot be effective unless it attracts the attention of consumers. Both 16 CFR 1500.121 and the labeling provisions of the electrical toy regulation follow the established principle that scaling the size of type to the display panel area on which it appears is essential to accomplish this objective. The type size requirements of 16 CFR 1500.121 are designed to accommodate the relatively small packages used for products such as household cleaners. The electrical toy regulation, which has been in effect for over twenty years, expressly addresses the issue of the size of labeling for larger packages similar to those in which many products covered by the CSPA are marketed. The commenters did not adequately explain why the Commission should accede to smaller type sizes for products in large packages which could, in many cases, make labeling statements required by the CSPA inconspicuous. The Commission notes that the commenters' attempt to distinguish the electrical toy labeling requirements from those required by the CSPA on the basis of hazard to the intended user is not persuasive. The labeling required by the electrical toy regulation states in part "CAUTION—ELECTRIC TOY: Not recommended for children under _____ years of age * * *", a statement which has substantially the same purpose as the labels prescribed by the CSPA.

With respect to the "mock-up" labels submitted by one commenter, the proposed regulation only specified the minimum height of the letters in a precautionary labeling statement. However, the conspicuousness of a label statement also depends on the style of type used, as well on the ratio of the height of the letters in the statement to their width and the spacing between the letters. The "mock-up" labels that the commenter submitted to demonstrate that the type size in the proposed rule for packages with a display panel in excess of 100 square inches was "too large" used a heavy, bold-faced type, with an approximate two-to-one height-to-width ratio for the letters, and normal spacing between the letters. In contrast, the labeling requirements of 16 CFR 1500.121(c)(3), incorporated by reference in the proposed rule, only require that the height-to-width ratio not exceed three to one, and are silent on type style and letter spacing. Thus, while a manufacturer is free to use a label similar to the "mock-up" labels presented by the commenter, the regulation does not require it, nor would following the provisions of the proposed rule with respect to large packages necessarily produce the result displayed by the mock-up labels that the commenter viewed as undesirable.

The same commenter also submitted other mock-up labels purporting to demonstrate that the use of smaller type size on large packages could still result in conspicuous labels. Again, in addition to letter height, type style, height-to-width ratio, and spacing all play a major role in making labels conspicuous. The Commission agrees that certain combinations of these factors coupled with sharply contrasting colors may tend to make smaller type more conspicuous. However, in the absence of requirements in the regulations specifying type style, spacing, etc., there is no assurance that the use of smaller type will result in a conspicuous label.

With respect to the allegation that the type sizes specified in the rule for large packages will require that the size of blister packaging for small products be increased, those type sizes have, for years, been accepted as striking a reasonable balance to assure that warnings are conspicuous while providing ample space for other graphic material. In the Commission's view, while changes in lithography may be required to meet the requirements of the CSPA, there is no evidence that compliance will require increasing package sizes.

4. *Blister Cards:* One commenter suggested that the Commission permit blister cards to be labeled either on the front of the card or the back, reasoning that parents are just as likely to read the information on the back of the card as they are the information on the front. The Commission declines to accept this suggestion. The law requires that the principal display panel—the front of a blister card—be labeled. Moreover, the intent of the CSPA is to provide point-of-purchase warnings. There is no evidence that parents will read the back of a blister card prior to purchase. Moreover, in the case of articles like dolls or toy cars which are generally not accompanied by instructions, the Commission believes it unlikely that purchasers will read the back of the card at all.

c. *Multiple Label Statements*

Several commenters expressed concern that the proposed rule would require a toy or game that contained multiple articles subject to the labeling requirements of the CSPA to bear the complete text of each label specified in the act addressing the hazard associated with each article. The proposed regulation did not address this issue. For clarity, the Commission has revised the final regulation to incorporate a provision similar to 16 CFR 1500.127(b) which permits labeling information relating to multiple hazards to be condensed as long as the resulting statement contains all of the information necessary to deal with the specific hazard presented by each article. The Commission notes, however, that the message contained in the balloon label specified in the CSPA differs substantially from those in the labels for balls, marbles, and toys and games with small parts. Therefore, the label of a package that contains a balloon and another item subject to the CSPA may only have a combined signal word and statement of hazard. The remaining statements required by the act with respect to each of the products in the package must appear on the label of the package.

d. *Label Justification, Layout and Spacing*

The proposed rule required that labels required by the CSPA appear in the same format and layout as that prescribed in the legislation itself. Several commenters objected to this requirement, noting the Senate Report on the legislation would have permitted labels to vary from the precise format specified in the law. One commenter questioned whether the statutory format requirements included margin justification.

The requirement in the proposed rule was based on the precision with which the law identifies the text and format of the various labeling statements. The rule construed that precision as an express indication of how Congress intended those statements to appear on package labels. However, when taken in conjunction with the Congressional mandate that the Commission's regulations for the conspicuousness of labeling required by the CSPA be consistent with 16 CFR 1500.121, the Commission believes that a more valid reading of the legislation would treat the format and layout of the various labeling statements in the law as exemplary, rather than mandatory.

While the label format set forth in the law is more than adequate to meet the Commission's existing conspicuousness regulations, it does not take into account variations in packaging design and lithography that the Commission can expect to encounter for products subject to the CSPA. On balance, the existing policies implementing the labeling requirements of the FHSA have proven adequate to ensure that labels are prominent and conspicuous. Thus, the Commission has revised the proposed rule to delete the requirement that manufacturers follow the precise format in the statute and instead will follow its existing labeling policies with respect to format and layout. The Commission however notes that one existing policy states that labeling statements shall appear blocked together within a square or rectangular area. This means that the labeling statements required by the act must appear on at least two lines. Since the resolution of the overall issue of format also resolves the question of margin justification, no response to that comment is necessary.

5. Descriptive Material

The CSPA requires the statutory warnings to appear on descriptive material accompanying a product that requires labeling under the act. The proposed regulation defined the term "descriptive material" as "any instruction (whether written or otherwise) for the use of the product, any depiction of the product, and any promotional material, advertisement, or other written literature that describes any function, use, warnings, user population, or other characteristic of the product, including its suitability for use with or relationship to other games, products, or toys." The proposed regulation also noted that descriptive material "accompanies" a product when it is packaged with the product or is intended to be distributed with the product at the time of sale or delivery to the purchaser. As is discussed below, the final rule retains much of the definition, but clarifies that catalogs and marketing materials that describe products other than a regulated product generally need not be labeled.

a. Meaning of "Accompanies"

Several commenters expressed concern that the definition of the term "descriptive material" in the proposed regulation might require multiple labels on product packages such as blister cards that, for example, contain instructions for use or recommended age labeling on the back of the cards. As the discussion of the term "accompanies" in the proposed rule indicates, the Commission believes that Congress intended labeling requirements for descriptive material to apply to material separate from the package of the article itself, such as an instruction sheet. The final regulation clarifies this point.

Another commenter questioned whether material such as mail order catalogs or newspaper advertisements depicting items subject to the CSPA are required to bear the required warning statements. The act only requires descriptive material which accompanies a regulated product to be labeled. According to the proposed regulation, descriptive material "accompanies" a product when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser. A catalog or advertisement that does not meet either of these criteria would not require labeling.

b. Instructions for Use

Several commenters contended that the definition of the term "descriptive material" in the proposed rule was too expansive. Some requested that the definition be limited to material containing instructions for use.

Section 2(n)(2) of the FHSA expressly requires that labeling required by the act appear "* * * on all accompanying literature where there are instructions for use, written or otherwise." Inasmuch as the CSPA follows the general labeling scheme of the FHSA, the Commission believes that the use of the term "descriptive material" without the limitation contained in section 2(n) indicates a Congressional intention that CSPA labeling not be limited to material containing instructions for use. Accordingly, the Commission declines to adopt the revision requested by the commenter to limit the labeling requirements to written material containing instructions for use.

The Commission notes that the great majority of material that accompanies the products subject to the CSPA contains instructions for use, either with or without other descriptions. Moreover, each discrete piece of material accompanying a regulated product need only have one label. Thus, if a piece of accompanying literature contained, for example, instructions for use, a statement of the age of the children for whom an item is intended, and a depiction of the product, only one precautionary statement would be required. Therefore, the Commission believes that defining the term "descriptive material" broadly to include the variety of ways that accompanying material can describe or depict a regulated product should have little practical effect.

c. Catalogs and Marketing Materials

Many industry commenters contended that catalogs and marketing materials depicting other products, as well as the regulated products that such materials accompany, should be exempt from the labeling requirements. Under their rationale, the purpose of such catalogs is to focus the attention of the purchaser on the other products rather

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than on the regulated product he or she has just purchased.

First, the law only applies to descriptive material that accompanies a product that requires labeling. A catalog that accompanies an unregulated product need not bear any labeling, even though the packages of other products described in the catalog might require labeling.

The status under the CSPA of a marketing material such as a catalog that depicts or advertises other items *in addition to* the regulated product that the catalog accompanies is a question of interpretation. Although a depiction of a regulated product in a catalog would appear to meet the plain meaning of the term "descriptive material," the Commission believes that requiring labeling in such a circumstance will do little to increase the protection provided by the point-of-purchase warning on the product's label. Accordingly, the Commission has excluded such catalogs and similar marketing materials from the definition of "descriptive material," unless they contain additional information, such as instructions for use of the regulated product it accompanies or a list of accessories intended to be used solely with that product.

d. Descriptive Material Intended for Use by Children

Some commenters recommended that descriptive material intended for use by children not require precautionary labeling, if the warnings are included on a separate package insert intended for adults. The commenters, citing the Senate report, reasoned that the statutory warnings are intended for adult purchasers and that young children would be unable to understand and appreciate the hazards. Consumer advocates, however, favored requiring that such material be labeled, noting that the material is often read by adults even though it is intended for children and that many children are capable of reading and understanding the warnings.

The Commission believes that the inclusion of a properly labeled insert in addition to instructions for children is adequate to satisfy the objectives of the legislation without compromising safety. The final rule exempts from the labeling requirements descriptive material intended solely for use by children, provided that the package of the product also contains a properly labeled insert intended for adults that is prominently identified as a warning for parents.

6. Definition of Package

The proposed regulation defined the term "package" as the immediate package in which a product subject to labeling is sold or is intended to be stored, as well as to any outer container or wrapping. Commenters expressed concern that this definition could require labeling to appear on shrink wrap or cellophane applied over an immediate package, as well as on components of toys such as doll houses, toy medical bags, etc. that are themselves used to store other components. One commenter also suggested that the labeling requirements not apply to containers used to ship packaged products to retailers because consumers generally do not see or read information on such containers.

In response to the latter comment, the Commission notes that the CSPA only applies to retail packages intended to be distributed to consumers or to containers used to display bulk unpackaged and unlabeled items at retail. The Commission also notes that, for unpackaged, unlabeled products sold in bulk, unlabeled shrink wrap film intended to keep a toy clean or plastic "eggs" designed to permit toys to be dispensed from vending machines is not "packaging" which would require labeling under the CSPA.

With respect to the other comments, the reference to the outer container or wrapper of a product in the proposed rule tracks section 2(n) of the FHSA which requires that any labeling required under that act shall appear on the outside container or wrapper of a hazardous substance, unless the labeling is easily legible through the outside container or wrapper. This provision is equally applicable to the labeling required by the CSPA. With respect to functional components of toys that are used to store other components, the CSPA only requires that packaging intended for retail inspection must bear labeling. Thus, while cardboard boxes for games may require labeling if they have a surface that functions as a principal display panel, the Commission believes that Congress did not intend labeling to be applied directly to toys or components of toys that already bear labeling on their packaging or that are not part of the retail display. However, if such items are displayed at retail without any packaging, the items themselves would have to bear a hang tag containing the required labeling. The final regulation has been revised to clarify both of these issues.

7. Definition of "Toy or Game"

The proposed rule did not include a definition of "toy" or "game." However, commenters requested that the Commission clarify the scope of these terms, questioning whether arts and crafts materials, such as paint sets or bead stringing kits, are subject to the labeling requirements. Representatives of the Art and Creative Materials Institute cited a decision of the United States Court of Appeals for the Second Circuit to support the proposition that art materials are not necessarily included in the definition of a toy. This decision, however, addressed the issue of whether a flammable children's article was an educational material that was exempt from the banning requirements of the FHSA.

Past Commission actions have generally addressed the hazards associated with articles intended for use by children, including toys and games. The agency, therefore, has not previously undertaken to define either term. In the absence of a regulatory definition, however, the Commission generally looks to common dictionary definitions of terms for guidance. For example, a toy is "an object for children to play with; especially something made for the amusement of a child or for his use in play." A game is "an article for use in a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other." * * *" (In the Commission's view, the latter definition also includes games in which children compete with an item itself rather than other children.) The Commission has elected not to include definitions of the terms "toy" and "game" in the final rule, but will continue to draw upon on common dictionary definitions of these terms for guidance in administering the CSPA.

With respect to the specific applicability of the term "toy" to arts and crafts sets intended for children three to five, these products are primarily intended for use in play and for the amusement of such children. The Commission therefore considers them to be "toys." Such items would require labeling under the CSPA, even though a child, in the course of play, might produce a "functional" item for display or use. However, items such as pens and pencils for general use which might incidentally be used in play would not be considered toys.

The Commission has also received inquiries concerning the status of "hybrid" items, such as children's toiletries which include toys or other items subject to the CSPA. If any part of such an item is an article subject to the CSPA, the package of the item requires labeling.

8. Educational Materials and Mail Order Sales

a. Sales to Educational Institutions

One commenter questioned whether packages of toys or games sold exclusively to schools through catalogs require labeling. The primary purpose of the CSPA is to provide a point-of-purchase warning of the hazards that products intended for older children present to children under three. Inasmuch as children under three are not typically present in a traditional school setting, requiring labeling on toys and games sold by mail *solely* to educational institutions such as kindergartens and elementary schools for use *exclusively* in those institutions would not accomplish the purposes of the CSPA. Accordingly, such items are excluded from the scope of the regulation, as long as the items are intended for children five and up. This age limitation is specified because products intended for three and four year old children may be sent to pre-schools or institutions such as day care centers where children under three may be present.

b. Mail Order Sales

A few commenters questioned whether the CSPA applies to products distributed to consumers through the mail, and, if so, whether it is sufficient to label just the mailing wrapper or whether both the product package and outer wrapper require labeling. Products exclusively distributed by mail are subject to the CSPA. Since the CSPA contemplates point-of-purchase inspection, firms can comply with the law by conspicuously labeling either the immediate product package or the outer wrapper. Such labeling need not be lithographed or printed on the wrapper. The use of a stamped label will suffice. The Commission notes that, if a product sold by mail is also sold in retail outlets, the retail package itself must be labeled.

9. Practices Under the Small Parts Regulation

The Commission's regulations addressing the choking hazards associated with toys and articles intended for children under three that contain small parts establish tests to determine whether such products will emit small parts under reasonably foreseeable conditions of use or abuse. They also exempt from the banning provisions specific items including writing materials (such as crayons, chalk, pencils and pens), books and other articles made of paper, modeling clay, and finger paints, watercolors, and other paint sets. Commenters questioned whether these policies apply to items regulated under the CSPA.

a. Use and Abuse Testing

The proposed rule did not include a requirement for "use and abuse" testing of toys and games. The rule noted that the Commission lacked sufficient information to establish the need to apply use and abuse tests to toys and games intended for children between three and six years of age, or on the costs associated with imposing such requirements. In addition, the decision not to require use and abuse testing was based on the language of the CSPA which referred to toys or games that "include" a small part.

Commenters split on the issue of applying use and abuse tests to toys and games. Consumer advocates favored requiring such tests, arguing that the failure to do so might mislead parents into believing a product without labeling is safe, even though small parts might detach from the product during play. Industry commenters, arguing against the requirement, contended that hazard and injury data do not support the need to impose such testing.

Given the absence of data relating to the costs of imposing such requirements and any potential benefits, the final rule retains the position expressed in the proposed rule and does not require use and abuse testing. Moreover, the Commission continues to believe that a reasonable reading of the phrase "includes a small part" provides a basis for concluding that Congress did not intend to require use and abuse testing.

The Commission notes that commenters exhibited confusion about the applicability of use and abuse tests to solid items that are intended to be removed or separated from toys or games during play or use, such as accessories for action figures and battery covers that are not screwed shut, or to items such as strip magnets that are designed to be divided into individual components. Under the Commission's existing policies, such items are evaluated by detaching them without applying use and abuse testing and placing them in the test cylinder. Similarly, if, as is discussed *infra.*, the Commission decides that products that are currently exempt from the small parts regulation require labeling, items such as modeling clay and play dough, which separate into multiple pieces of varying sizes during use, will be evaluated without compression in the form and shape in which they are sold at retail.

b. Exempt Products

The proposed rule was silent on the applicability of the CSPA to products that are exempt from the small parts regulation under 16 CFR 1501.3. Furthermore, there is no express reference in the CSPA or its legislative history to the status of products that are exempt from the small parts requirements. Commenters argued that the inclusion of balloons, which are expressly exempt from the small parts regulation, in the CSPA could be construed as an indication that Congress knew how to include exempt products within the scope of the statute when it wanted to. Since Congress only singled out balloons for coverage, other exempt products would not require labeling. Others contended that requiring products exempt from small parts testing to be labeled would also create an apparent inconsistency. For example, a felt tip marker intended for children between three and six years of age with a cap that is a small part would require labeling (assuming, of course, that the item is a toy), but the same item would require neither labeling nor compliance with the small parts regulation if it were intended for children under three.

Other commenters noted that the purpose of the exemptions to the small parts regulation was to avoid banning functional products which could not be produced in compliance with the small parts requirements. These commenters argued that labeling provides a reasonable alternative to alert parents purchasing toys and games for older children to the potential hazards such products may present to younger children. Furthermore, unlike the small parts performance requirements, labeling such items would not affect their ability to be produced and sold.

In its vote on the final rule, the Commission divided on the issue of whether toys and games that are exempt from the small parts regulation, if they are intended for children under three, require labeling under the CSPA, if they are intended for children three through five years of age. Accordingly, that issue will remain unresolved until such time as a majority of the Commission concurs on its resolution. Pending that resolution, toys and games that are exempted from the requirements of the small parts regulation by 16 CFR 1501.3 are not required to bear labeling under the act. However, even if the Commission elects to require labeling for exempt products, paper punch-out toys and games will still be exempt from the labeling requirements, since there is

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no data to indicate that such items present a risk to children under three.

10. Bulk Sales

The CSPA requires that labeling appear not only on retail packages, but also on bins from which unpackaged and unlabeled regulated products are sold in bulk, containers for the retail display of such items, and vending machines from which they are dispensed. The labels must appear conspicuously. Administering labeling requirements of this nature is a matter of first impression for the Commission, since the FHSA and its regulations require an unpackaged hazardous substance to bear a label on the item itself or on a hang tag attached to the item.

a. Obligation to Apply Labels

One commenter questioned whether retailers are required to label store displays of items subject to the CSPA which are sold in bulk and without packaging. The CSPA requires labeling on bins, containers for retail display, and vending machines from which unpackaged items subject to the act are sold or dispensed. A retailer who fails to comply with these requirements may be subject to penalties for violating section 4(c) of the FHSA. To assist retailers in complying with the CSPA, the Commission suggests that manufacturers include, in the shipping containers for bulk products, labels for the retailer to post. For example, an 7" × 5" card containing the required labeling in the type size specified by 16 CFR 1500.121 would generally suffice to assure that large bins are conspicuously labeled. Smaller cards, e.g. 3" × 5", 2" × 4" would generally be adequate for smaller containers for bulk display. To provide an incentive for displaying the cards, such cards could include an area for displaying the price of the item. As an alternative to providing such labels, the invoice that accompanies bulk products or the shipping container of such products could contain a clear statement of the requirements of the law.

b. Definition of Bin or Container for Retail Display

The applicability of the CSPA to traditional dump display bins, gold fish bowls, and similar containers that contain loose merchandise to be inspected and selected by purchasers themselves is clear. However, many commenters questioned whether the law applies to a showcase or counter at which items are displayed for inspection by purchasers but are selected by a clerk or sales person at the direction of the purchasers. Examples include arcades in which premiums are redeemed for coupons, carnival booths, and fast food outlets.

In the absence of any clear indication in the legislation or its history that Congress intended to cover display cases and similar counters, the Commission interprets the CSPA as requiring labeling only for those bins and containers from which consumers select items displayed in bulk. The final rule reflects this determination.

11. Small Balls and Marbles

a. Implied Upper Age Limit—Small Balls and Marbles

The CSPA requires that packages of small balls and marbles intended for children three years of age or older, and of toys and games containing such balls and marbles, bear precautionary labeling. The proposed rule tracked the statutory language. Several commenters requested that the Commission establish an upper age limit for the purposes of labeling such products. Some suggested that an upper age limit of eight years (96 months) would be consistent with the provisions of 16 CFR 1500.53 which establishes use-and-abuse testing requirements for toys intended for children in this age group. Another comment recommended twelve or fourteen years as the upper limit, based on the age at which children reach puberty.

Individual small balls or marbles are generally used in play by children of all ages—that is, they are as likely to be used by five to seven year olds as they are by nine to eleven year olds. Because there is no distinction between the ages of the children who will use them, all such products require labeling under the CSPA.

The Commission, however, distinguishes balls and marbles contained in toys and games from those intended for general use. The former are often intended for children of a specified age based on the level of intellectual or physical development of children in that age group. Even in the absence of precautionary labeling, the Commission believes it highly unlikely that a parent would consider purchasing a toy or game containing a small ball or marble intended for a child over eight years of age for a child under three. For example, as the Commission's age grading guidelines recognize, nine to twelve year olds have developed sufficient fine motor coordination for labyrinth or maze games that require maneuvering a marble along a pathway and for games requiring careful shooting or aiming of markers. Such games, however, would have virtually no play value for children under three. The final rule therefore only requires labeling for toys and games containing a small ball or marble that are intended for children under 8 years of age. This age limit also follows the maximum age limit specified in the Commission's regulations prescribing tests to determine whether a children's article presents a hazard during reasonably foreseeable use or abuse.

b. Balls for General Use in Sports

One commenter questioned whether ping pong balls and golf balls require labeling under the CSPA, reasoning that, since children utilize such products, the products qualify as a toy or game intended for children under seven years of age. The commenter, however, did not address the issue of status of these items as small balls under the CSPA.

The Commission believes that the CSPA was not designed to cover balls generally intended for use in sports such as golf or ping pong which might incidentally be used by children over three. If, however, such a ball is labeled or marketed as being intended for children or is part of toy, game, or equipment set specifically intended for children over three years of age but less than eight years old, the labeling requirements apply.

c. Definition of Ball

The proposed rule defined a "ball" as a spheroid, ovoid, or elliptical object that is designed or intended to be thrown, hit, kicked, rolled, or bounced. One commenter requested that the definition of the term "ball" be expanded to include items that are dropped, commenting that some toys or games incorporate such a feature. The Commission believes that this comment has merit and has revised the final rule accordingly. Another commenter questioned whether tethered balls are subject to the CSPA only if they fail use and abuse testing. Unlike small parts which only present a hazard when they detach during use or abuse, small balls present a choking hazard even when tethered. Thus, tethered balls are subject to the labeling requirements, regardless of whether they pass use or abuse tests. A third commenter questioned how to determine whether a ball is permanently enclosed in a maze. As discussed previously, the rule does not require use or abuse testing to determine whether small parts are present for the purposes of CSPA labeling. However, the final rule does reflect a limited exception to this determination. The determination of whether a ball is permanently enclosed in a maze or similar container is made by subjecting the container to the appropriate test in 16 CFR 1500.52 or 53 simulating the use and abuse of a toy or article intended for use by children under three, in the case of banned small balls, or three or over for labeling purposes.

d. Marbles

Since marbles are primarily intended for use by children, the labeling requirements generally apply to all packages, games, or toys containing marbles. Marbles that are not intended for children include collectors' marbles and marbles for ornamental or industrial use. In addition, the Commission has excepted from the labeling requirements marbles that are permanently enclosed in a game or toy. As is the case with small balls, the determination of accessibility can be made by applying the tests of 16 CFR 1500.53.

e. Template for Testing Balls

The proposed regulation bans any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, through a circular hole with a diameter of 1.75 inches in a rigid template. One commenter questioned whether the template must have the same dimensions as the template used to test rattles. The pacifier regulation, 16 CFR 1511 provides a better point of reference for testing than the rattle regulation, since the procedure for testing pacifiers is similar to that used to test small balls. While the final rule does not incorporate all of the external dimensions of the pacifier test fixture, to assure that the template is rigid, the rule indicates that the depth of the template for testing small balls must be at least ¼ inch (6mm.), consistent with that of the pacifier test fixture.

12. Balloons

The CSPA requires that the packaging of any latex balloon and any descriptive material which accompanies such a balloon bear specific labeling statements warning that uninflated balloons or pieces of balloons can choke or suffocate children under eight years of age. In the case of bulk sales of balloons, the bin, container for retail display, or vending machine from which the balloons are sold or dispensed must bear the required labeling statements.

a. Unpackaged Balloons Distributed Individually

One commenter expressed concern that the CSPA may require performers, such as professional magicians, who distribute individual unpackaged balloons to members of their audiences either to label the individual balloons or wear a tag or sign containing the required warnings. The law imposes neither requirement feared by the commenter.

Packages of balloons must bear precautionary labeling. However, the bulk sale requirements of the law are designed to require labeling on containers in which multiple products are held for retail sale. The Commission does not believe that Congress intended these provisions to extend to individuals who distribute unpackaged balloons that are not held in some form of container for retail display. Thus, unpackaged individual balloons distributed as part of a professional performance are not subject to the requirement. The same is true for balloons used in commercial birthday programs which are blown up prior to arrival of the children and are used to decorate the table and party area, even though individual balloons may be given to the children as they leave.

If, however, a performer receives packages of balloons that are unlabeled and distributes the packages to the public, the performer must take steps to assure that the packages are properly labeled. A performer can comply with these requirements by purchasing packages of balloons that are properly labeled or by placing a sticker label containing the required labeling on unlabeled balloon packages prior to distributing them to the public.

b. Books and Videos

The same commenter questioned the applicability of the labeling requirements to books and videos describing balloon sculpture. Descriptive material such as a book or videotape would only require precautionary labeling when that material is packaged with a package of balloons or when the material is intended to be distributed at the same time such a package is sold or delivered to a purchaser. The fact that a consumer who receives an instructional videotape or book may subsequently purchase balloons does not bring the tape or book within the ambit of the law. If an individual or company packages or distributes to the public a package of balloons together with a videotape, instruction sheet, or book that is classified as descriptive material, that individual or company has the obligation to assure that the descriptive material is properly labeled.

13. Exports

Some commenters questioned whether the CSPA requirements apply to products manufactured in the United States exclusively for export. Products intended for export that are labeled in accordance with the specifications of the foreign purchaser and with the laws of the country to which they are to be exported do not require labeling under the CSPA, as long as the shipping container is clearly marked that the product is for export and the product is, in fact, exported. 15 U.S.C. 1264(b)(3). However, under existing Commission policy, the manufacturer or exporter of the product must comply with the export notification requirements of 15 U.S.C. 1273(d) and 16 C.F.R. 1019.

14. Products Manufactured Outside the United States

The CSPA includes an alternative to labeling descriptive materials for products manufactured outside the United States and shipped directly to consumers. Under the alternative, if the shipping container contains other accompanying material that is labeled conspicuously, the descriptive material need not be labeled. One commenter requested clarification that products packaged abroad and shipped to a U.S. affiliate for shipment to consumers be included in the scope of this exception. The commenter noted that the Senate Report contemplated this type of arrangement. The Commission accepts this suggestion and has revised the final regulation accordingly.

15. Effective Date

Several commenters requested that the Commission delay the effective date of the final rule to permit package labels to be redesigned and printed. Some suggested a delay of six months, while others requested a year. However, no commenter provided a detailed breakdown of the time frames involved.

Based on its experience with administering the prominence and conspicuousness requirements of 16 CFR 1500.121, the Commission agrees that a delayed effective date is appropriate. Accordingly, the final regulation becomes effective with respect to products manufactured in or imported into the United States six months after publication of the final rule. However, since the effective date of the law was January 1, 1995, the labeling statements required by the act must appear on the principal display panel of product packages in advance of publication of the final rule. In recognition of this fact, packages with labels lithographed or printed before the effective date of the rule may be used for a period of up to six months after the effective date if they display the specific statements prescribed in the statute on the principal display panel in a manner

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that is generally conspicuous. This approach will permit packages containing labeling that may not meet some of the more technical aspects of the rule, but are in substantial compliance with the requirements of the law, to be exhausted. It will also save the unnecessary expense associated with destroying such packaging, without compromising safety.

C. Impact on Small Businesses

In accordance with section 3(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Any obligations imposed upon such entities arise under the express provisions of section 24 of the FHSA. This regulation simply clarifies the obligations imposed by that law on certain toys, games, balloons, marbles, and balls. The regulation itself, therefore, will have no significant economic impact on small businesses, either beneficial or negative, beyond that which results from the statutory provisions.

D. Environmental Considerations

The proposed rule falls within the provisions of 16 C.F.R. 1021.5(c) which designates categories of actions conducted by the Consumer Product Safety Commission that normally have little or no potential for affecting the human environment. The Commission does not believe that the rule contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstance in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1500

Business and industry, Consumer protection, Hazardous materials, Infants and children, Labeling, Packaging and containers.

E. Conclusion

Therefore, pursuant to the authority of the Child Safety Protection Act of 1994 (Pub. L. 103–267), sections 10(a) and 24(c) of the Federal Hazardous Substances Act, (15 U.S.C. 1269(a) and 1278(c)), and 5 U.S.C. 553, the Consumer Product Safety Commission amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter C, Part 1500 as set forth below.

Part 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for Part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261–1278, 2079.

2. Section 1500.18 is amended by revising paragraph (a) introductory text and adding paragraph (a)(17) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other articles presenting mechanical hazards.* Under the authority of sections 2(f)(1)(D) and 24 of the act and pursuant to the provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(17) Any ball intended for children under three years of age that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (44.4 mm.) in a rigid template ¼ inches (6 mm.) thick. In testing to evaluate compliance with this paragraph, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (44.4 mm.).

(i) For the purposes of this paragraph, the term "ball" includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(ii) The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.52, the ball is not removed from the outer container.

(iii) In determining whether such a ball is intended for use by children under three years of age, the criteria specified in 16 CFR 1501.2(b) and the enforcement procedure established by 16 CFR 1501.5 shall apply.

* * * * *

3. A new section 1500.19 is added, to read as follows:

§ 1500.19 Misbranded toys and other articles intended for use by children.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply.

(1) *Ball* means a spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of a string, elastic cord, or similar tether. The term "ball" also includes any multi-sided object formed by connecting planes into a generally, spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball. The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the outer container

(2) *Small ball* means a ball that, under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1 75 inches (44.4 mm.) in a rigid template ¼ inches (6 mm.) thick. In testing to evaluate compliance with this regulation, the diameter of opening in the Commission's test template shall be no greater than 1.75 inches (44.4 mm.)

(3) *Latex balloon* means a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities such as rafts, water wings, swim rings, or other similar items.

(4) *Marble* means a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker. The term "marble" does not include a marble permanently enclosed in a toy or game. A marble is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the toy or game

(5) *Small part* means any object which, when tested in accordance with the procedures contained in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR part 1501. The use and abuse testing provisions of 16 CFR 1500.51 through 1500.53 and 1501.4(b)(2) do not apply to this definition.

(6) *Package* or packaging refers to the immediate package in which a product subject to labeling under section 24 of the act is sold, as well as to any outer container or wrapping for that package.

(7) *Descriptive material* means any discrete piece of written material separate from the label of the package that contains an instruction (whether written or otherwise) for the use of a product subject to these labeling requirements, any depiction of the product, and any written material that specifically describes any function, use, warnings, user population, design or material specification, or other characteristic of the product. A catalog or other marketing material or advertisement that depicts other products in addition to the product it accompanies is not "descriptive material" unless it contains additional information, such as instructions for use of the product it accompanies or lists of accessories exclusively for use with that product, that are designed to focus the purchaser's attention on the product. Descriptive material "accompanies" a product subject to the labeling requirements when it is packaged with the product or when it is intended to be distributed with the product at the time of sale or delivery to the purchaser. "Descriptive material" does not include statements that appear on the package of a product subject to the labeling requirements. "Descriptive material" does not include material intended solely for use by children if the package it accompanies contains a separate package insert prominently identified as a warning for parents that contains the required precautionary statements.

(8) *Bin* and *container for retail display* mean containers in which multiple unpackaged and unlabeled items are held for direct selection by and sale to consumers.

(b) *Misbranded toys and children's articles.* Pursuant to sections 2(p) and 24 of the FHSA, the following articles are misbranded hazardous substances if their packaging, any descriptive material that accompanies them, and, if unpackaged and unlabeled, any bin in which they are held for sale, any container in which they are held for retail display, or any vending machine from which they are dispensed, fails to bear the labeling statements required in paragraphs (b) (1) through (4) and paragraph (f)(3) of this section, or if such labeling statements fail to comply with the prominence and conspicuousness requirements of paragraph (d) of this section.

(1) With the exception of paper products such as punch-out games and similar items, any toy or game that is intended for use by children who are at least three years old but less than six years of age shall bear or contain the following cautionary statement if the toy or game includes a small part:

BILLING CODE 6355–01–P

⚠ WARNING:

CHOKING HAZARD--Small parts
Not for children under 3 yrs.

BILLING CODE 6355–01–C

(2) Any latex balloon, or toy or game that contains a latex balloon, shall bear the following cautionary statement:

BILLING CODE 6355–01–P

⚠ WARNING:

CHOKING HAZARD--Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

Keep uninflated balloons from children.
Discard broken balloons at once.

(3)(I) Any small ball intended for children three years of age or older shall bear the following cautionary statement:

BILLING CODE 6355–01–P

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⚠ WARNING:

CHOKING HAZARD--This toy is a small ball.
Not for children under 3 yrs.

BILLING CODE 6355-01-P

(ii) Any toy or game intended for children who are at least three years old but less than eight years of age that contains a small ball shall bear the following cautionary statement:

BILLING CODE 6355-01-P

⚠ WARNING:

CHOKING HAZARD--Toy contains a small ball.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(4)(i) Any marble intended for children three years of age or older shall bear the following cautionary statement:

BILLING CODE 6355-01-P

⚠ WARNING:

CHOKING HAZARD--This toy is a marble.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(ii) Any toy or game intended for children who are at least three years old but less than eight years of age that contains a marble shall bear the following cautionary statement:

BILLING CODE 6355-01-P

⚠ WARNING:

CHOKING HAZARD--Toy contains a marble.
Not for children under 3 yrs.

BILLING CODE 6355-01-C

(c) *Age of intended user.* In determining the ages of the children for which any toy or article subject to this section is intended, the following factors are relevant: the manufacturer's stated intent (such as the age stated on a label) if it is reasonable; the advertising, marketing, and promotion of the article; and whether the article is commonly recognized as being intended for children in this age group. In enforcing this provision, the Commission will follow the procedures set forth in 16 CFR 1501.5.

(d) *Prominence and conspicuousness of labeling statements.* The requirements of 16 CFR 1500.121 relating to the prominence and conspicuousness of precautionary labeling statements for hazardous substances shall apply to any labeling statement required under § 1500.19(b) and (f), with the following clarifications and modifications.

(1) All labeling statements required by § 1500.19(b) and (f) shall be in the English language. The statements required by paragraph (b) need not appear in the format and layout depicted in paragraph (b). The statements required by 16 CFR 1500.19(b) and (f) shall be blocked together within a square or rectangular area, with or without a border. This means that the statements must appear on at least two lines. The statements shall be separated from all other graphic material by a space no smaller than the minimum allowable height of the type size for other cautionary material (e.g., the phrase "Not for children under 3 yrs."). If not separated by that distance, the labeling statements must be surrounded by a border line. Label design, the use of vignettes, or the proximity of other labeling or lettering shall not obscure or render inconspicuous any labeling statement required under § 1500.19(b) and (f). This means that such statements shall appear on a solid background, which need not differ from the background color or any other color on the package label.

(2) The words "WARNING" or "SAFETY WARNING" required by section 24 of the FHSA shall be regarded as signal words.

(3) The statement "CHOKING HAZARD" shall be regarded as a statement of the principal hazard associated with the products subject to this section.

(4) All other remaining statements required by this section shall be regarded as "other cautionary material" as that term is defined in 16 CFR 1500.121(a)(2)(viii).

(5) The principal display panel for a bin, container for retail display, or vending machine shall be the side or surface designed to be most prominently displayed, shown, or presented to, or examined by, prospective purchasers. In the case of bins or containers for retail display, the cautionary material may be placed on a display card of a reasonable size in relationship to the surface area of the bin or container. The area of the display card shall constitute the area of the principal display panel. In the case of vending machines that contain a display card, the cautionary label may be placed either on the display card, on the coinage indicator decal, or on the glass or clear plastic of the machine. If there is no display card inside a vending machine, the size of the principal display panel will be calculated in accordance with 16 CFR 1500.121(c) based on the size of the front of the container from which items are dispensed, exclusive of the area of metal attachments, coin inserts, bases, etc. Any other side or surface of such a bin, container for retail sale, or vending machine that bears information, such as price or product description, for examination by purchasers shall be deemed to be a principal display panel, excluding any side or surface with information that only identifies the company that owns or operates a vending machine.

(6) All of the labeling statements required by this section, including those classified as "other cautionary material," must appear on the principal display panel of the product, except as provided for by § 1500.19(f). Any signal word shall appear on the same line and in close proximity to the triangle required by section 24 of the act. Multiple messages should be provided with sufficient space between them, when feasible, to prevent them from visually blending together.

(7) All labeling statements required by this section shall comply with the following type size requirements. 16 CFR 1500.121(c)(1) explains how to compute the area of the principal display panel and letter height.

Area sq. in	0–2	+2–5	+5–10	+10–15	+15–30	+30–100	+100–400	+400
Type Size								
Sig. Wd	3/64"	1/16"	3/32"	7/64"	1/8"	5/32"	1/4"	1/2"
St. Haz	3/64"	3/64"	1/16"	3/32"	1/32"	7/64"	5/32"	1/4"
Oth. Mat	1/32"	1/64"	1/16"	1/16"	5/64"	1/32"	7/64"	5/32"

(8) Labeling required by this section that appears on a bin, container for retail display, or vending machine shall be in reasonable proximity to any pricing or product information contained on the principal display

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panel, or, if such information is not present, in close proximity to the article that is subject to the labeling requirements.

(9) Descriptive material that accompanies a product subject to the labeling requirements, including accompanying material subject to the alternative allowed by § 1500.19(f), shall comply with the requirements of 16 CFR 1500.121(c)(6) relating to literature containing instructions for use which accompanies a hazardous substance. If the descriptive material contains instructions for use, the required precautionary labeling shall be in reasonable proximity to such instructions or directions and shall be placed together within the same general area (see 16 CFR 1500.121(c)(6)).

(10) In the case of any alternative labeling statement permitted under § 1500.19(e), the requirements of 16 CFR 1500.121(b)(3) and 1500.121(c)(2)(iii) shall apply to statements or indicators on the principal display panel directing attention to the complete cautionary labeling that appears on another display panel.

(11) Any triangle required by this section shall be an equilateral triangle. The height of such a triangle shall be equal to or exceed the height of the letters of the signal word "WARNING". The height of the exclamation point inside the triangle shall be at least half the height of the triangle, and the exclamation point shall be centered vertically in the triangle. The triangle shall be separated from the signal word by a distance at least equal to the space occupied by the first letter of the signal word. In all other respects, triangles with exclamation points shall conform generally to the provisions of 16 CFR 1500.121 relating to signal words.

(e) *Combination of labeling statements.* The labels of products that contain more than one item subject to the requirements of this section may combine information relating to each of the respective hazards, if the resulting condensed statement contains all of the information necessary to describe the hazard presented by each article. However, in the case of a product that contains a balloon and another item subject to the labeling requirements, only the signal word and statement of hazard may be combined.

(f) *Alternative labeling statements for small packages.* Any cautionary statement required by section 1500.19(b) may be displayed on a display panel of the package of a product subject to the labeling requirement other than the principal display panel only if:

(1) The package has a principal display panel of 15 square inches or less,

(2) The full labeling statement required by paragraph (b) of this section is displayed in three or more languages on another display panel of the package of the product, and

(3)(i) In the case of a toy or game subject to § 1500.19(b)(1), a small ball subject to § 1500.19(b)(3), a marble subject to § 1500.19(b)(4), or a toy or game containing such a ball or marble, the principal display panel of the package bears the statement:

BILLING CODE 6355-01-P

⚠ SAFETY WARNING

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears, or

(ii) In the case of a balloon subject to § 1500.19(b)(2) or a toy or game containing such a balloon, the principal display panel bears the statement:

BILLING CODE 6355-01-P

⚠ WARNING--CHOKING HAZARD

BILLING CODE 6355-01-C

and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears.

(g) *Alternative for products manufactured outside the United States.* In the case of a product subject to the labeling requirements of § 1500.19(b) which is manufactured outside the United States and is shipped directly from the manufacturer to the consumer by United States mail or other delivery service in an immediate package that contains descriptive material, the descriptive material inside the immediate package of the product need not bear the required labeling statement only if the shipping container of the product contains other accompanying material that bears the required statements displayed in a prominent and conspicuous manner. Products shipped from abroad to a U.S. affiliate for shipment to consumers are included within the scope of this exception.

(h) *Preemption.* Section 101(e) of the Child Safety Protection Act of 1994 prohibits any state or political subdivision of a state from enacting or enforcing any requirement relating to cautionary labeling addressing small parts hazards or choking hazards associated with any toy, game, marble, small ball, or balloon intended or suitable for use by children unless the state or local requirement is identical to a requirement established by section 24 of the FHSA or by 16 CFR 1500.19. Section 101(e) allows a state or political subdivision of a state to enforce a non-identical requirement relating to cautionary labeling warning of small parts hazards or choking hazards associated with any toy subject to the provisions of section 24 of FHSA until January 1, 1995, if the non-identical requirement was in effect on October 2, 1993.

Dated: February 17, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95-4484 Filed 2-24-95; 8:45 am]

BILLING CODE 6355-01-P

federal register

Monday
February 27, 1995

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Section 111(a) of Housing and Community Development Act of 1974; Interpretive Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–95–1773; FR–3787–I–01]

RIN 2506–AB70

Section 111(a) of Housing and Community Development Act of 1974; Interpretive Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule sets forth HUD's interpretation of section 111(a) of the Housing and Community Development Act of 1974 (the HCDA of 1974), as to whether this section's procedural protections apply when HUD terminates a city's Urban Development Action Grant (UDAG) agreement prior to final approval and funds disbursement. The United States Court of Appeals for the District of Columbia Circuit instructed HUD to provide a reasonable construction of this statute. HUD determines that section 111(a) does not mandate procedural protections when a UDAG grant is terminated prior to final approval and funds disbursement.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roy O. Priest, Director of the Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2290. The TDD number is (202) 708–2565. (These are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION:

Background

The Urban Development Action Grant (UDAG) program, which was enacted in 1977 under a Congressional amendment to the Housing and Community Development Act of 1974 (HCDA of 1974), was designed to encourage new or increased private investment in cities and urban counties experiencing severe economic distress. The availability of UDAG funds permitted local officials to capitalize on opportunities to stimulate economic development activity to aid in economic recovery. UDAG funds, awarded on a competitive basis, were available to carry out projects in support of a wide variety of economic development activities that involved the private sector. UDAG grants could be used in the form of equity funding, loans, interest subsidy, or other forms of necessary financing. Although Congress has not appropriated any new funds for the UDAG program since Fiscal Year 1988, many grants preliminarily approved by HUD pursuant to—or even prior to—the last funding competition still have not reached the final close-out stage. The termination of the grant agreements of recipients who fail to submit acceptable evidentiary materials or amendments to their grant agreements will be subject to the determination set forth herein regarding the opportunity for a formal hearing under section 111(a) of the HCDA of 1974.

Section 111 of the HCDA of 1974 is entitled "Remedies for Noncompliance," and applies both to the Community Development Block Grant program created in 1974 and the subsequently created UDAG program. Section 111(a) provides as follows:

> If the Secretary finds after reasonable notice and opportunity for hearing that a recipient of assistance under this title has failed to comply substantially with any provision of this title, the Secretary, until he is satisfied that there is no longer any such failure to comply, shall—
>
> (1) terminate payments to the recipient under this title, or
>
> (2) reduce payments to the recipient under this title by an amount equal to the amount of such payments which were not expended in accordance with this title, or
>
> (3) limit the availability of payments under this title to programs, projects, or activities not affected by such failure to comply.

(This provision is codified at 42 U.S.C. 5311(a), and applicable regulations are contained in 24 CFR 570.913, which also describe the notice and hearing proceedings.)

The United States Court of Appeals for the District of Columbia Circuit found that section 111(a) of the HCDA of 1974 is unclear and ambiguous as to whether HUD, before such time as any grant funds have been disbursed, must provide an opportunity for a formal hearing to a city or urban county that has a grant agreement with HUD under the UDAG program, when HUD has decided to terminate the grant agreement due to failure to comply substantially with the HCDA of 1974, applicable regulations, or the grant agreement itself. *City of Kansas City, Missouri* v. *HUD*, 923 F.2d 188, 191 (D.C. Cir. 1991). The court also found that the HCDA of 1974 contains an implicit delegation of authority to HUD to interpret the applicability of section 111 under these circumstances. *Id.* at 191–92.

The Interpretive Rule

Under its implied interpretive authority as delegated by the HCDA of 1974, HUD interprets section 111(a) of the HCDA of 1974 as not requiring HUD to provide an opportunity for a hearing to a recipient under the UDAG program pertaining to the recipient's failure to comply substantially with any provisions of the HCDA of 1974, the regulations, or the grant agreement, which results in the termination of a grant agreement by HUD before final grant approval and payment of the grant funds to a recipient under its line of credit.

HUD has consistently maintained this interpretation of this section since the inception of the UDAG program in 1977. Accordingly, HUD has not voluntarily offered an opportunity for a formal section 111(a) hearing under the HCDA of 1974 to any recipient before acting to terminate a grant agreement. By judicial direction, HUD has now reconsidered the reasonableness of its construction of the HCDA of 1974, and has concluded that its long-standing interpretation remains correct and reasonable.

It is HUD's position that the reference in the HCDA of 1974 to HUD's "terminat[ion of] payments" to the recipient due to the recipient's failure to comply substantially with the provisions of Title I of the HCDA of 1974 means that the opportunity for a hearing before HUD acts to terminate a UDAG grant agreement shall be given to a recipient only after such time as funding has been finally approved and released (i.e., after payments have been made) to a recipient under its line of credit. In other words, the actual language of the statute has been interpreted by HUD not to require a formal hearing in order to effectuate HUD's termination of a grant agreement prior to such time as the recipient obtains from HUD an increase in the amount of money available under its line of credit. The primary basis for this position is the simple logic that HUD cannot possibly "terminate payments" that HUD has not yet made. Since entitlement to the use of grant funds is dependent upon satisfactory performance by the recipient in providing HUD with legally binding commitments that comply with the requirements of the grant agreement, there is no need to impose the procedural burden of a formal hearing upon HUD in order to terminate a grant agreement when the recipient, due to its failure to submit acceptable and timely legally binding commitments, has not become entitled to the funds by having its line of credit increased.

The use of the word "recipient" in the HCDA of 1974 and the UDAG regulations, beginning at 24 CFR 570.460(c), does not endow a grant applicant who receives preliminary grant approval with an unconditional entitlement to payment of the grant funds. Rather, the term "recipient" is intended merely to describe cities and urban counties that have entered into a grant agreement with HUD under the UDAG program. The term does not signify any absolute right to, let alone actual receipt of, the grant funds; it merely evidences conditional authority for the funds. Indeed, the regulations specifically provide at § 570.460(c)(5) that:

> Preliminary approval does not become final until legally binding commitments between the recipient and the private and public participating parties have been submitted and approved by HUD. Release of grant funds is contingent upon the recipient's meeting each and every condition set forth in the grant agreement.

Approved legally binding commitments, as required by the regulations and the grant agreement, are the touchstone that the project is fully financed and has met all conditions necessary for it to move forward to completion with the assistance of the grant funds. In other words, the recipient has no authority or right to receive any grant money until and unless it submits on a timely basis acceptable legally binding commitments that HUD approves.

Also supporting HUD's position is the fact that recipients knowingly invest in a UDAG project at their peril with regard to receiving federal grant funds until legally binding commitments are approved and their line of credit is funded. Each recipient is afforded every opportunity to know that its investment in the project in connection with an activity to be paid for, in whole or in part, with grant funds may not be recoverable if the recipient incurs costs before HUD's approval of the legally binding commitments and the funding of the recipient's line of credit. The regulations at 24 CFR 570.462(b) specifically state that:

> The recipient and participating parties may voluntarily, at their own risk, and upon their own credit and expense, incur costs as authorized in paragraph (a) of this section, but their authority to reimburse or to be reimbursed out of grant funds shall be governed by the provisions of the grant agreement applicable to the payment of costs and the release of funds by the Secretary.

The regulations, as well as the grant agreement, thus make it clear that any authorized costs incurred by a recipient or by a participating party to the project that is the subject of the grant shall be incurred at the risk of the recipient or other party, without any assurance of reimbursement out of grant funds. Accordingly, every reasonable effort should be made by a recipient to submit acceptable evidentiary materials in order that the grant funds contingently set aside at the time of preliminary approval of the grant may expeditiously be provided to the project and not remain dormant and unavailable for use by HUD. HUD's experience clearly indicates that the primary cause of recipients' failure to comply with the provisions of the HCDA of 1974, the regulations, and the grant agreement has been their failure to submit satisfactory legally binding commitments to HUD within the time agreed under their grant agreements.

The fact that termination of grants is more likely to occur before disbursement of the funds, rather than after, does not serve to alter HUD's determination in this interpretive rule. A potential practical effect cannot undo HUD's reasonable interpretation of Congress' chosen statutory language, made in light of the overall program operation discussed above. Moreover, even as to practical considerations, there have been, to date, more than 263 terminations of grants for cause before the legally binding commitments have been approved and the recipient's line of credit funded. Requiring a formal hearing prior to termination would thus be extremely burdensome upon HUD's limited resources.

While HUD determines that recipients lack a formal hearing right under section 111(a) prior to final approval of the grant, it is significant that HUD nevertheless provides extensive notice and opportunities to resolve the problems. HUD consistently makes every effort to resolve problems that a recipient is experiencing in its attempt to comply with requirements of the HCDA of 1974, the regulations, or the grant agreement before giving final notice of termination to the recipient. Efforts include an invitation to the recipient's representatives to meet with HUD officials to discuss the issues and attempt to correct the problems that may be causing noncompliance. It has been HUD's practice to afford a recipient every reasonable opportunity to comply substantially with the requirements of the HCDA of 1974, the regulations, and the grant agreement. Only after HUD has exhausted all available means to resolve the issues has it been compelled to advise the recipient that its failure to correct the default may result in termination of a grant agreement by HUD. Often a recipient has responded favorably to HUD's efforts to assist in clearing the noncompliance and the project has been timely funded.

If HUD's attempts to work with the recipient to resolve the issues ultimately do not succeed, HUD will provide the recipient a written notice of its intention to terminate the grant agreement at least 35 days before taking action to terminate the grant agreement. Often this period of time is extended by HUD to provide additional opportunities to the recipient to remedy the noncompliance. Thus, recipients are not, in fact, deprived of procedural protection at the stage when, according to the U.S. Court of Appeals for the District of Columbia Circuit, it is arguably most needed. *City of Kansas City, Missouri* v. *HUD*, 923 F.2d 188, 193 (D.C. Cir. 1991). To the contrary, HUD provides extensive notice and opportunities to resolve the dispute, albeit not through a formal hearing.

Accordingly, this interpretive rule sets forth HUD's determination that, before such time as the UDAG grant has received final approval by HUD and the grant funds have been paid to the recipient under its line of credit, the HCDA of 1974 does not require that a UDAG recipient be entitled to an opportunity for a hearing concerning the recipient's failure to comply substantially with any provision of the HCDA of 1974, the regulations, or the grant agreement that HUD has decided to terminate. In addition, it has been determined that an opportunity for a hearing will be available to a recipient with regard to the termination of a grant that has been partially funded, but only with regard to the grant funds covered by legally binding commitments that HUD approved before the termination of a grant (or part of a grant) due to the failure of a recipient to comply substantially with any provision of the HCDA of 1974, the regulations, or the grant agreement.

This interpretive rule shall not apply to recipients who have received grants in states under the jurisdiction of the U.S. Court of Appeals for the First Circuit. In *City of Boston* v. *HUD*, 898 F.2d 828 (1st Cir. 1990), the court held that the recipient City of Boston was entitled to notice and opportunity for a hearing prior to termination of its UDAG grant, even though the City of Boston had not received final approval by HUD for its grant, let alone received any disbursement of funds.

Authority: 42 U.S.C. 3535(d).

Dated: February 17, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–4745 Filed 2–24–95; 8:45 am]

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Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act; Business Purpose Loans; Interpretive Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–95–1774:FR–3805–I–01]

Real Estate Settlement Procedures Act; Business Purpose Loans; RESPA Interpretive Rule 1995–1

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interpretive rule 1995–1.

SUMMARY: This interpretive rule sets forth the Department's interpretation regarding Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 which amended the Real Estate Settlement Procedures Act (RESPA) by adding a new Section 7.

EFFECTIVE DATE: February 27, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement Staff, Room 5241, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–4560. Hearing or speech-impaired individuals may call (202) 708–9300 (TDD) or 1–800–877–8339 (Federal Information Relay Service TDD). (Other than the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (Pub. L. 103–324, 108 Stat. 2160, approved September 23, 1994) (the 1994 Act) added a new Section 7 to the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*) which states in relevant part: "This Act [RESPA] does not apply to credit transactions involving extensions of credit—(1) primarily for business, commercial, or agricultural purposes. * * * * *"

The legislative background of the amendment states:

The language of the amendment is modeled after § 226.3 of Regulation Z, the Truth in Lending Act regulation. The Conferees intend the Department of Housing and Urban Development, the agency responsible for RESPA regulation, to use the Truth in Lending Act as a basis for its regulations but also to retain discretion to define what constitutes a transaction "primarily for a business, commercial or agriculture purpose." House Report 103–652, to accompany H.R. 3474, August 2, 1994, at page 172.

On February 10, 1994, the Department published an amendment to Regulation X (59 FR 6505, revised on March 30, 1994, 59 FR 14748) (the 1994 amendments) which implemented the Housing and Community Development Act of1992, and also created certain exemptions from coverage of RESPA. Under § 3500.5 of that rule the exemption for business purpose loans is described as follows:

(2) An extension of credit primarily for a business, commercial, or agricultural purpose. The definition of such an extension of credit for purposes of this exemption generally parallels Regulation Z, 12 CFR 226.3(a)(1), and persons may rely on Regulation Z in determining whether the exemption applies. Notwithstanding the foregoing, the exemption in this section for business purpose loans does not include any loan to one or more persons acting in an individual capacity (natural persons) to acquire, refinance, improve, or maintain 1- to 4-family residential property used, or to be used, to rent to other persons. An individual who voluntarily chooses to act as a sole proprietorship is not considered to be acting in an individual capacity for purposes of this part.

Thus, the Department has already adopted the business, commercial and agricultural exemptions of RESPA as required by the new Section 7, with the exception of an "individual" undertaking financing transactions regarding 1–4 family residential rental properties. The RESPA statute and regulations had always covered 1 to 4 family residential properties, and presumably the second, third or fourth units were predominately used for rental purposes. In revising the RESPA rule in February 1994, the Department concluded that all 1 to 4 family investment transactions by individuals, whether or not for owner-occupied properties, were substantially similar in character to the purchase or refinance transactions of individuals for occupancy purposes. Therefore, the Department determined that the RESPA protections ordinarily should be afforded to individual consumers (natural persons) in transactions involving 1 to 4 family residential mortgage loans. However, if an individual applies for the loan in the name of a sole proprietorship, and the lender will allow the loan to be closed in such name, the transaction is a business purpose loan and exempt from RESPA coverage

Accordingly, the Department is issuing Interpretive Rule–1995–1, to read as follows:

Section 3500.5(b)(2) Coverage of RESPA

After consideration of Section 312 of the Riegle Community Development and Regulatory Reform Act of 1994 (September 23, 1994), the Department reaffirms the determination set forth in its RESPA rule published on February 10, 1994, and amended on March 30, 1994, effective August 9, 1994, that transactions by individuals involving 1–4 family residential rental properties are covered by RESPA. The Department concludes that this position as set forth in § 3500.5(b)(2) is consistent with Section 7 of RESPA and its legislative history

Authority: 42 U.S.C. 3535(d)

Dated: February 14, 1995

Nicolas Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner

[FR Doc. 95–4744 Filed 2–24–95; 8:45 am]

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Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Grants and Cooperative Agreements; Notice of Funding Availability for Service Coordinators for Public Housing Agencies for Elderly and Non-Elderly Disabled Residents; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3854; FR–3785–N–01]

Notice of Funding Availability for Service Coordinators for Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1994 and Fiscal Year (FY) 1995.

SUMMARY: This NOFA announces the availability of up to $46.043 million in funding for service coordinators and supportive services for elderly and non-elderly disabled residents in public housing. The service coordinators in public housing program is a comprehensive effort to ensure that elderly and non-elderly disabled residents have access to the services they need to enhance the quality of life, to live independently, and to avoid premature or unnecessary institutionalization.

In this NOFA, a new and streamlined grant application/award process is implemented. HUD headquarters will conduct a national lottery competition for public housing agencies (PHAs) to determine funding awards. In this lottery competition, eligible PHAs must submit an application with a minimum amount of documentation to pass screening and selection criteria for inclusion in the lottery competition.

In the body of this NOFA is information concerning:

(1) The principal objectives of the competition, the funding available, eligible applicants, and screening and selection criteria;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: The due date for submission of applications in response to this NOFA is April 28, 1995. Applications must be postmarked by midnight, or hand-delivered to the local HUD Office by 3:00 p.m. on April 28, 1995. A Fax copy is not acceptable. The above-stated application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Community Relations and Involvement, Department of Housing and Urban Development (HUD), 451 7th Street, SW., Room 4112, Washington, DC 20410; telephone (202) 708–4214, Ext. 282. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (USC 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

No person may be subjected to a penalty for failure to comply with the information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden for the collection of information requirements is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may submit comments on the paperwork burden proposals to Joseph F. Lackey, Jr. OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

I. Purpose and Substantive Description

(A)(1) Authority

This program is authorized by section 673 of the Housing and Community Development Act of 1992 (codified at 42 USC 13631; hereafter referred to as "1992 HCD Act").

(A)(2) 24 CFR Part 135

Section 3 of the Housing and Urban Development Act of 1968 and the regulations at 24 CFR part 135 (see June 30, 1994 Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(B) Background

The service coordinators in public housing program is a comprehensive effort to ensure that elderly and non-elderly disabled residents have access to the services they need to live independently, regardless of the type of unit in which they reside in the public housing development, and to prevent placement in nursing homes or institutions.

A service coordinator is hired by a public housing authority (PHA) and is responsible for assuring that the elderly and disabled residents are linked to needed supportive services. Service coordination may be performed by: An on-site staff person hired by the PHA for a project or shared between PHA projects; an on-site staff person hired from a third party agency, and contracted to one or more projects; an on-site staff person hired by a third party agency, and contracted to one or more PHA projects; or a staff person hired by a third party agency hired by the PHA, who provides case management and services coordination for a PHA resident in concert with the distribution of that agency or another agency's funding.

The major functions of the service coordinator are:

—To provide general case management and referral services to all residents needing such assistance;
—To establish linkage with all agencies and service providers in the community;
—To set out a directory of providers for use by both PHA staff and residents;
—To refer and link the residents of the PHA to service providers in the general community;
—To educate residents on service availability, application, procedures, client rights;
—To develop case plans in coordination with assessment services in the community or with a Professional Assessment Committee (as defined in § 802(e)(3)(B) of the National Affordable Housing Act, codified at 42 U.S.C. 8011);
—To monitor the ongoing provision of services from community agencies and to keep the case management and provider agency current with the progress of the individual;
—To set up volunteer support programs with service organizations in the community;

—To help the residents build support networks with other residents, family and friends;
—To provide training to PHA residents in the obligation of tenancy or coordinate such training;
—To educate other staff on the management team on issues related to aging in place and service coordination, to help them to better work with and assist residents.

Each service coordinator shall be trained in the aging process, elder services, disability services, eligibility for and procedures of Federal and applicable State entitlement programs, legal liability issues relating to providing service coordination, drug and alcohol use and abuse by the elderly, and mental health issues.

In accordance with section 673 of the Housing and Community Development Act Amendments of 1992, the grant may include funding for up to 15 percent of the costs of eligible supportive services, in addition to the costs specifically associated with the service coordinator. The PHA will be required to show that at least 85 percent of the costs of related supported services will be paid with non-grant funds.

Eligible supportive services include health-related services, mental health services, services for non-medical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, and other appropriate services.

Finally, in accordance with section 673 of the 1992 HCD Act, supportive services funded by this competition may not be provided to any person receiving assistance under the Congregate Housing Services Act of 1978 or Section 802 of the Cranston-Gonzalez National Affordable Housing Act.

(C) Allocation Amounts

For FY 1994, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, Approved October 28, 1993) made $30 million available for the service coordinators in public housing program. For FY 1995, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) made $30 million available for the service coordinators in public housing program. Together these two appropriations bills make approximately $60 million available to PHAs for service coordinators in public housing. However, since some of the appropriated funds are to be derived from carryover funds or the recapture of prior year obligations, the actual amount available is $46.043 million.

In this competition, an eligible PHA may apply for a three year grant. The funding level is based on the number of elderly and disabled families in the PHA's occupied units:

Elderly/disabled families in PHA occupied units	Maximum dollars per PHA
250 to 499	90,000
500 to 999	150,000
1,000 to 9,999	675,000
10,000 +	1,875,000

The funds are to be used for: (1) The cost of employing or otherwise retaining the services of one or more service coordinators to coordinate the provision of supportive services for residents who are elderly families and disabled families; and (2) the expenses for the provision of services for such residents of the PHA. In addition, not more than 15 percent of the cost of providing supportive services is eligible for funding under this grant; however, the 15 percent cost for the provision of supportive services is an optional feature of this grant.

The amounts allocated under this NOFA will be awarded based on a national lottery for selection from all PHAs that pass both the screening and selection criteria. The Department reserves the right to award grants less than the amount requested by the PHA, as described below.

As PHAs are selected, the costs of funding the applications will be counted against the total funds available under this NOFA. Applications will be funded in full in accordance with this NOFA. However, when the remaining funds are insufficient to fund the last PHA application in full, HUD Headquarters may fund that application to the extent of the funding available and the PHA's willingness to accept a reduced award amount. PHAs that do not wish to have the size of their award reduced may indicate in their "Letter of Intent" (described below) that they do not wish to be considered for a reduced award of funds. HUD Headquarters will skip over these PHAs if assigning the remaining funding would result in a reduced funding level.

After the lottery, Headquarters will award grants to the local HUD offices under that jurisdiction by fund assignment for the total number of PHAs approved in the competition. Within the limits of available federal funds, HUD will make grant awards consistent with the statute and the requirements in this NOFA.

(D) Eligibility

(1) Eligible Applicants

(a) Eligible applicants are PHAs operating low-rent conventional public housing with at least 250 or more elderly, or disabled families. However two or more PHAs, in the same geographical area with fewer than 250 elderly or disabled families, may submit a joint application.

(b) To be an eligible applicant, the PHA(s) must also have a good record of maintaining and operating public housing as determined by the Public Housing Management Assessment Program (PHMAP) (see 24 CFR Part 901). In this NOFA, a PHA can establish a "good record of maintaining and operating public housing" if (1) the PHA has earned a PHMAP score of 60 or more points; (2) the PHA has instituted an Improvement Plan that is acceptable to the local HUD Office; or (3) the PHA is operating under a Memorandum of Agreement (MOA). Local HUD Offices will verify that the PHA has complied with all requirements, including verification of a passing PHMAP score, or an Improvement Plan that is satisfactory to the local HUD Office or a MOA, and an explanation of the PHA's ability to implement the elderly service coordinator project as noted above.

(2) Ineligible Applicants

Ineligible applicants are PHAs for which:

(a) The Department of Justice has brought a civil rights suit against the applicant PHA, and the suit is pending;

(b) There has been an adjudication of a civil rights violation in a civil action brought against the PHA by a private individual, unless the PHA is operating in compliance with court order, or implementing a HUD approved tenant selection and assignment plan or compliance agreement designed to correct the areas of noncompliance;

(c) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(d) HUD has deferred application processing by HUD under title VI of the

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Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57); or

(e) There are serious unaddressed Inspector General Audit findings, Fair Housing and Equal Opportunity monitoring review findings, or local HUD office management review findings.

II. Application Process

(A) Application Deadline

The due date for submission of applications in response to this NOFA is April 28, 1995. Applications must be postmarked by midnight, or hand-delivered to the local HUD Office by 3:00 P.M. on April 28, 1995. A Fax is not acceptable. (See Appendix A for a listing of local HUD Offices.) The above-stated application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

(B) Screening Criteria

All PHAs will automatically be notified by the local HUD Office of the receipt of their letter and accompanying documentation and will be informed if they pass the screening criteria. To ensure minimum standards of equity and fairness, the local HUD Office will screen all PHA applications for completeness to determine conformity to the requirements of this announcement. PHAs which do not pass the screening criteria will receive no further consideration for the lottery. PHAs that fail to submit any of the documents accompanying the "Letter of Intent" will not be eligible to participate in the lottery.

The screening criteria are as follows:

(i) The PHA submits an application package consisting of a "Letter of Intent," and all required accompanying documentation set forth in section III(A) in a timely fashion in accordance with section II(A) of this NOFA;

(ii) The PHA meets the eligibility requirements set forth in section I(D) of this NOFA.

(C) Selection Criteria

PHAs that meet the eligibility requirements outlined in this NOFA, and submit all of the required information will pass the screening criteria. PHAs passing the screening criteria will be further reviewed by an independent review panel of at least two individuals in each local HUD Office to give each application a "pass" or "fail" determination in the following criteria:

(i) Proposed funding amount. The Standard Form 424—Applicatjon for Federal Assistance requests an amount of funds not to exceed the amount specified in the funding categories for PHAs in section I(C) of this NOFA; and Standard Form 424A—Budget Information—Non-Construction Programs.

(ii) Evidence of Need for Assistance. The PHA provides:

(a) Documentation evidencing the number of elderly/disabled families residing in the PHA that will be served by the grant;

(b) Documentation briefly describing key problem(s)/condition(s) relevant to the need for the grant;

(c) If optional supportive services will be provided in the grant, verification of access to pertinent supportive services to address the needs of the residents; and a discussion of the relevant supportive services that will be provided, and the PHA's ability to acquire other sources of funds to assist in the procurement of needed supportive services. (Other sources of funds may be "in-kind" services or other volunteer-type services from the community.)

(iii) Verification of PHMAP Score. Supporting documentation evidencing either a PHMAP score of at least 60 points, an approved Improvement Plan or MOA;

(iv) Forms. Submission of the following forms:

(1) Drug-Free Workplace Certification,

(2) Assurances—Non-Construction Programs—Standard Form SF–424B,

(3) Applicant/Recipient Disclosure/ Update Report—Form HUD–2880, and

(4) Disclosure of Lobbying Activities—(SF-LLL Form), if applicable (see Section V.G of this NOFA).

(D) Selection Process

Headquarters will select all eligible PHAs to be funded based on a lottery. All PHAs identified by the local HUD Offices as passing the screening and selection criteria identified in this NOFA will be eligible for the national lottery selection process. Local HUD Offices will submit a memorandum with the amount of the grant, name and other basic information of eligible PHAs passing the screening and selection criteria to HUD Headquarters, Office of Public and Indian Housing, Office of Community Relations and Involvement Room 4112, Attention: Bertha Jones. HUD will hold the lottery in the Office of Public and Indian Housing at HUD Headquarters, 451 7th street, S.W., Washington, DC 20410, upon receipt of the names of all "passing" PHAs. After Headquarters conducts the lottery, Headquarters will notify the local HUD Offices of the results of the lottery. Local HUD Offices will then notify the PHAs of the results of the Lottery.

III. Checklist of Application Submission Requirements

(A) Application Requirements.

Applicants must complete and submit applications in accordance with instructions contained in this NOFA. Each applicant may submit only one application under this announcement. If two or more PHAs are jointly making a request for funds and plan to share a service coordinator, one applicant must act as the "lead PHA" and submit a transmittal letter covering all requests, which must be submitted to HUD together. This insures that all multiple requests are reviewed as one package.

The following is a checklist of the application contents. Interested PHAs must submit a "Letter of Intent" to compete in the lottery. The "Letter of Intent" and supporting documentation described below should not exceed 15 pages, and must be arranged and identified in the application in the order in which it appears below.

Section I—Proposed funding amount.

(a) The Standard Form 424—Application for Federal Assistance should include the amount of funds being requested not to exceed the amount specified in the funding categories for PHAs in section I(C) of this NOFA.

(b) Standard Form SF–424A—Budget Information—Non-Construction Programs should also be included in Section I.

Section II—Evidence of need for assistance.

(a) Documentation providing evidence of the number of elderly/disabled families residing in the PHA that are eligible to be served by this grant. Documentation briefly describing key problem(s)/condition(s) relevant to the needs of the elderly and non-elderly disabled residents;

(b) Description of any optional supportive services that will be provided including the costs associated with providing the supportive services. Applicants should note that a PHA is not required to use any portion of the grant to cover the costs of the supportive services. However, the grant may not be used to cover more than 15 percent of the costs of supportive services (i.e. if the PHA elects to provide supportive services for its eligible residents, then the PHA must provide or obtain other sources of funds to cover at least 85 percent of the costs of supportive services).

(c) If the PHA elects to use the grant to cover up to 15 percent of the costs of supportive services, then the PHA must also submit written commitments, contracts or letters of agreement evidencing: (1) The total costs of the proposed supportive services; (2) the availability of non-grant funds to cover at least 85% of the costs of the supportive services. (However "in-kind" services or other volunteer-type services from the community may be used in lieu of non-grant funds.) The written commitments, contracts or letters of agreement must be executed by an authorized individual on behalf of the organization or entity providing either the non-grant funding or the "in-kind" services.

Section III—Verification of passing PHMAP score or appropriate explanation.

If the housing authority received a PHMAP score of less than 60, it should include appropriate documentation of its Improvement Plan or MOA, and its ability to implement the elderly services coordinator project.

Section IV—Certifications, Assurances and Forms.

(a) Certification of compliance with all applicable civil rights laws and requirements;

(b) Drug-Free Workplace Certification;

(c) Assurances—Non-Construction Programs—Standard Form SF–424B;

(d) Applicant/Recipient Disclosure/ Update Report—Form HUD–2880; and

(e) Disclosure of Lobbying Activities—(SF–LLL Form), if applicable (see Section V.G of this NOFA).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the local HUD Office no later than the application deadline date and time specified in this NOFA. The local HUD Office will screen all applications and notify PHAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, such as a missing signature on a certification or a missing page from a required document. (However, failure to submit a required document will constitute a "failure" of the screening criteria, and the application will be rejected as incomplete.)

All PHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

V. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o)(4) of the HUD regulations, the policies and procedures contained in this NOFA relate only to the provision of supportive services, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA makes funds available to PHAs to employ or otherwise retain the services of service coordinators, and to provide for supportive services for elderly or disabled residents of the PHA. As such, there are no direct implications on the relationship between the Federal government and the states or on the distribution of power and responsibilities among various levels of government.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA will not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

D. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the assistant general counsel for the geographical region or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the

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influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). The final rule is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112. These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 1437g(a)(1)(B).

Dated: February 17, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A

Names, Addresses and Telephone Numbers of Local HUD Offices Accepting Applications in Response to This NOFA

New England

Boston, Massachusetts Office

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Hartford, Connecticut Office

Public Housing Division, 330 Main St. First Floor, Hartford, Connecticut 06106–1860, (203) 240–4522

Manchester, New Hampshire Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681

Providence, Rhode Island Office

Public Housing Division, 330 John O. Pastore Federal Building & U.S., Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351

New York/New Jersey

New York, New York Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500

Buffalo, New York Office

Public Housing Division, 465 Main Street, Lafayette Court, 5th Fl., Buffalo, New York 14203–1780, (716) 846–5755

Newark, New Jersey Office

Public Housing Division, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662

Mid-Atlantic

Washington, D.C. Office

Public Housing Division, 820 First St. N.E., Suite 300, Washington, D.C. 20002–4502, (202) 275–9200

Philadelphia, Pennsylvania Office

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392

Baltimore, Maryland Office

Public Housing Division, City Crescent Building, 10 South Howard St., 5th Floor, Baltimore, Maryland 21202–2505, (410) 962–2520

Pittsburgh, Pennsylvania Office

Public Housing Division, Old Post Office Courthouse Building, 700 Grant St., Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428

Richmond, Virginia Office

Public Housing Division, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507

Charleston, West Virginia Office

Public Housing Division, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Southeast/Caribbean

Atlanta, Georgia Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Birmingham, Alabama Office

Public Housing Division, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617

Louisville, Kentucky Office

Public Housing Division, P.O. Box 1044, 601 W. Broadway, Louisville, Kentucky 40201–1044, (502) 582–5251

Jackson, Mississippi Office

Public Housing Division, Dr. A.H. McCoy Federal Building, 100 West Capitol St., Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308

Greensboro, North Carolina Office

Public Housing Division, 2306 W. Meadowview Rd., Greensboro, North Carolina 27407, (919) 547–4000

Caribbean Office

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–6121

Columbia, South Carolina Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592

Knoxville, Tennessee Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust St. 3rd Floor, Knoxville, Tennessee 37902–2526, (615) 549–4384

Nashville, Tennessee Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213

Jacksonville, Florida Office

Public Housing Division, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626

Midwest

Chicago, Illinois Office

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507 (312) 353–5680

Detroit, Michigan Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900

Indianapolis, Indiana Office

Public Housing Division, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303

Grand Rapids, Michigan Office

Public Housing Division, 2922 Fuller Ave., N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100

Minneapolis-St.Paul, Minnesota Office

Public Housing Division, 220 2nd St. South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000

Cincinnati, Ohio Office

Public Housing Division, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884

Cleveland, Ohio Office

Public Housing Division, Renaissance Building, 1350 Euclid Ave., 5th Floor, Cleveland, Ohio 44115–1815, (216) 522–4058

Columbus, Ohio Office

Public Housing Division, 200 North High Street, Columbus, Ohio 44115–1815, (216) 522–4058

Milwaukee, Wisconsin Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214

Forth Worth, Texas Office

Public Housing Division, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston, Texas Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274

San Antonio, Texas Office

Public Housing Division, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (210) 229–6800

Southwest

Little Rock, Arkansas Office

Public Housing Division, TCBY Tower, 425 West Capitol Ave., Little Rock, Arkansas 72201–3488, (501) 324–5931

New Orleans, Louisiana Office

Public Housing Division, Fisk Federal Building, 1661 Canal St., Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7200

Albuquerque, New Mexico Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463

Omaha, Nebraska Office

Public Housing Division, 10909 Mill Valley Rd., Omaha, Nebraska 68154–3955, (402) 492–3100

St. Louis, Missouri Office

Public Housing Division, 1222 Spruce St. Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas City Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Great Plains

Des Moines, Iowa Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Rocky Mountains

Denver, Colorado Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5448

Pacific Hawaii

San Francisco, California Office

Public Housing Division, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Honolulu, Hawaii Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 541–1323

Los Angeles, California Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Phoenix, Arizona Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Portland, Oregon Office

Public Housing Division, Cascade Building, 520 Southwest Sixth Ave., Portland, Oregon 97204–1596, (503) 326–2561

Northwest Alaska

Seattle, Washington Office

Public Housing Division, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101

Anchorage, Alaska Office

Public Housing Division, University Plaza Building, 949 E. 36th Ave., Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170

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Part XI

Department of Transportation

Office of the Secretary

Study on Interstate Commerce Commission Functions; Notice

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Study on Interstate Commerce Commission Functions

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: Section 210(b) of the "Trucking Industry Regulatory Reform Act of 1994," (Act) requires the Secretary of Transportation to study possible organizational changes to the Interstate Commerce Commission (ICC), including some specified in the Act, that lead to government, transportation, or public interest efficiencies. A draft report to the Congress on this matter has been completed and the Department is presently seeking public comment on its recommendations.

DATES: Comments are due by March 13, 1995.

ADDRESSES: Comments may be mailed to Docket 49848, Office of Documentary Services (C–55), U.S. Department of Transportation, Plaza Level, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. To expedite consideration of the Docket, please submit an original and five copies. The DOT study of ICC functions referenced in this notice may be obtained from the Documentary Services Division, U.S. Department of Transportation, Room PL–401, 400 7th Street, S.W., Washington, D.C. 20590, 202–366–9322. The Report is available on the World Wide Web Server as gopher.dot.gov/11/general/iccreprt.wp5. For the convenience of those without access to the computer network, the executive summary of the report is included herein.

FOR FURTHER INFORMATION CONTACT: Edward Rastatter, 202–366–4420; Robert Stein, 202–366–4846; or Paul Smith, 202–366–9285.

SUPPLEMENTARY INFORMATION: Section 210(b) of the Act requires DOT to study the feasibility and efficiency of merging the ICC into the DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that lead to government, transportation, or public interest efficiencies. DOT has already conducted extensive outreach effort beginning with a Federal Register notice of November 1, 1994, seeking comment on the ICC's report, required in Section 210(a) of the Act, and continuing with numerous meetings with carriers, shippers, and trade associations. This study by DOT considers the cost savings that might be achieved, the efficient allocation of resources, the elimination of unnecessary functions, and responsibility for regulatory functions. DOT must submit its findings for public comments, and then submit the results of its study, together with any recommendations to the Congress. Consequently, the Department is presently seeking public comment on its draft recommendations.

In order to make sure our report is most useful to the Congressional Committees, we expect to make a legislative proposal available to them on an expedited basis. Any changes resulting from the public comment period would be incorporated in our final report and modifications to our legislative proposal.

Executive Summary

Background

This report examines a range of policy issues dealing with the economic regulation of surface transportation service (primarily freight) in the United States.

Freight transportation represents a core element of our national economy. It provides U.S. manufacturers and consumers with access to domestic as well as global markets and has a dramatic impact on economic growth and on our international competitiveness.

The surface freight transportation industry includes many different sectors—trucking, railroads, barges, pipelines, buses, and intermediaries such as freight forwarders and brokers. The structure and performance of each sector have been considered in discussing options for economic regulation.

The industry has changed dramatically in the past several decades. Regulatory policy has both led and responded to these changes. A new regulatory principle, recognizing competition as the best regulator of transportation, has been embodied in bipartisan legislation enacted in each of the past three decades. Federal economic regulation has increasingly been reserved for glaring instances of market failure or as a tool to pursue broader social purposes.

Deregulation has resulted in more efficient operations for carriers and better service at lower rates for shippers. As a result of the Staggers Rail Act of 1980, the railroad industry—which teetered on the brink of financial failure in the late 1970's—has been revitalized and is now a viable competitive sector of the economy. Deregulation of air cargo, trucking, and "piggyback" traffic has led to spectacular growth in intermodal traffic.

The trucking industry has also been transformed. Many new firms have entered the industry, and both new and existing carriers have been given greater flexibility to meet customers' needs. Improvements in the reliability of trucking service have enabled manufacturers to enhance productivity by placing greater reliance on just-in-time manufacturing techniques.

The principal rationale for the remaining regulatory structure is to protect competition and the interests of shippers. However, ongoing changes in the nature of the transportation industry clearly indicate that the current level of Federal economic regulation of surface freight transportation burdens the public interest. Further reductions in regulation are needed.

The Process

This report is mandated by the Trucking Industry Regulatory Reform Act of 1994, P.L. 103–311 (TIRRA), which requires that the Interstate Commerce Commission (ICC) and the Department of Transportation (DOT) conduct studies to be used as the basis for considering further policy changes related to the regulation of surface transportation.

Section 210(a) of TIRRA requires the ICC to examine its functions and responsibilities and to report within 60 days of enactment recommendations on which of these functions should be continued, modified, or eliminated. The ICC report (completed on October 25, 1994), provides a detailed treatment and analysis of the full panoply of existing functions and responsibilities of the agency. Section 210(b) requires DOT to study the feasibility and efficiency of merging the ICC into DOT as an independent agency, combining it with other Federal agencies, retaining the ICC in its present form, eliminating the agency and transferring all or some of its functions to DOT or other Federal agencies, and other organizational changes that would be expected to lead to government, transportation, or public interest efficiencies.

The Department has given serious consideration to the recommendations of the Commission in assessing the merits of eliminating or restructuring the current functions and responsibilities of the ICC. This report reflects a different view from that taken by the ICC and generally concludes that government should retain fewer functions.

DOT's approach to conducting this study ensured full participation by all affected parties including carriers,

shippers, intermediaries, labor, the insurance industry, and government agencies identified as potential locations for necessary ICC functions. The Department solicited comment from the public on the ICC's study and held outreach meetings with all sectors of the industry, as well as government agencies.

DOT also sponsored a conference on the transportation industry of the future. The focus of this conference, which was open to the public, was to discuss the likely evolution of the transportation industry over the next fifteen years (1995–2010) and to identify and evaluate options for regulatory policies that would enable the industry to operate efficiently, as well as provide sufficient protection to the shipping public.

DOT Recommendations

Antitrust Immunity

Federal economic regulation of transportation predates the antitrust laws and has its roots in the late nineteenth century, when railroads had a virtual monopoly for most freight. Although the "public utility" model of regulation was subsequently applied to all of the other modes subject to the Interstate Commerce Commission's jurisdiction, it is now limited primarily to regulation of "captive" rail traffic.

The trucking, rail freight, household goods, intercity bus, water carrier, and other surface transportation industries still subject to economic regulation by the ICC and FMC are competitive (either entirely or with respect to most of the markets they serve). Over the past two decades, recognition of the intrinsic competitive nature of these industries has resulted in bipartisan legislative efforts to reduce regulation of surface transportation, including the number of activities that are accorded immunity from the antitrust laws by the ICC.

Because of the existence of competition between and within these industries, they bear little resemblance to utilities having local franchise monopolies. Even the freight railroads face vigorous competition, often from other modes, in the majority of the markets they serve. Accordingly, it is appropriate to rely on the antitrust laws rather than burdensome and unnecessary regulation to police these industries.

There are two categories of arrangements among firms to which the antitrust laws normally apply. The first is the cartel-type arrangement to fix prices or allocate markets, which has no redeeming value. Such activity should never be permitted to occur. The second category includes arrangements that can have beneficial aspects that may enhance competition. The legality of the latter type is evaluated under a "Rule of Reason" inquiry that weighs all its relevant effects. If the activity is, on balance, beneficial, it is not illegal and does not need immunity from the antitrust laws; if it is, on balance, beneficial, the antitrust laws will not prohibit it. Accordingly, we recommend *eliminating all antitrust immunity* for these industries.

Following are some examples of how certain types of transportation activities would be analyzed under the antitrust laws.

- *Rate setting.* A rate bureau agreement to impose a general rate increase on shippers is a classic horizontal price-fixing arrangement, a "naked restraint" on competition. There is no legitimate reason to continue to permit such *per se* unlawful collective activity.
- *Joint ventures.* Joint rate agreements between two or more firms providing similar services in different geographic markets do not generally, if ever, violate the antitrust laws: antitrust immunity is not needed in order for the activity to occur. As far as household goods van lines and their agents are concerned, as long as there are a sufficient number of other firms capable of performing the services in question, joint ventures between the van lines and their agents should not significantly lessen competition and should not violate the antitrust laws. Therefore their agreements do not need antitrust immunity.
- *Other joint operating activity.* The "Rule of Reason" standard used by the Department of Justice in analyzing most kinds of joint activity under the antitrust laws is not significantly different from the "public interest" standard used by the ICC. For example, the Commission may approve pooling arrangements among common carriers only where they are demonstrated to promote better service or efficiencies and will not "unreasonably" or "unduly" restrain competition. Arrangements that meet this test do not need antitrust immunity.
- *Industry guides and standards.* Compilations such as mileage guides can provide useful information to both shippers and carriers. On the other hand, collective agreement to adhere to such schedules could have anticompetitive effects. Such arrangements should be subject to the antitrust laws and deemed unlawful if their beneficial effects are outweighed by any anticompetitive effects. Activities that are no more restrictive than necessary to achieve the desired results are not likely to be challenged by the Department of Justice under the antitrust laws.
- *Information gathering and dissemination.* Carriers can use common entities to gather and publish information about demand, capacity, and unilaterally-established rates, without competitors agreeing on specific actions that would violate the antitrust laws.

Railroads

The Staggers Act of 1980 has transformed the railroads from a declining industry poised on the brink of financial ruin to a healthy one that provides excellent service to shippers at rates that are, on average, well below those of 25 years ago. The legislation introduced significant rate deregulation, allowing pricing flexibility where competition is effective to protect shippers from abuse. It also retained significant protections for shippers in situations where competition is either absent or weak. The critical freedoms of the Staggers Act must be maintained if the rail industry is to remain financially successful. Equally important, the basic shipper protections that were incorporated in 1980 are still needed today to ensure that rates and services for captive traffic are reasonable. However, there are many aspects of the rail regulatory system that can be revised, modified or even eliminated in light of today's, and tomorrow's, competitive realities. DOT believes that the following regulations are either outdated or unnecessary to accomplish the Staggers Act's objectives, and should be *eliminated:*

- *Antitrust immunity for industry agreements.* The antitrust laws provide sufficient flexibility to ensure smooth and efficient intercarrier operations.
- *Rail-shipper contract requirements.* Rail contracts should be treated in the same manner as contracts for other modes of transportation.
- *Rate discrimination regulation.* These restrictions are a holdover from the era of collective ratemaking, and are no longer necessary in today's competitive market.
- *Commodities clause.* This prohibition on carriers transporting their own commodities is an impediment to shipper ownership of short line carriers.
- *Rail car supply and interchange practices.* These practices can be established without antitrust immunity However, the existing rules phasing-in car hire deregulation should be continued until deregulation is complete.

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• *Oversight of rail financial practices such as interlocking directorates, issuance of securities, etc.* Regulations covering financial practices of railroads should be the same as those applied to other industries.

• *Rate caps on recyclables.* It is not equitable to require special treatment for particular classes of shippers.

• *Rail merger standards, line sales, transfers and trackage rights under the Interstate Commerce Act.* As with transactions in other US industries, these rail-related consolidations and sales should be reviewed by the Department of Justice, under the Standards of the Clayton Act.

The following rail function would, unless otherwise noted, be *retained and transferred to DOT:*

• *Maximum rate regulation* as provided by the Staggers Act.

• *Exemption authority* has been extremely useful for removing rail traffic from regulation.

• *Line construction authority* for new lines crossing another railroad.

• *Competitive access* provisions for captive shippers.

• *Labor protection* provisions would be administered by the Department of Labor.

• *Line sales* of non-carriers (determination of carrier/noncarrier status).

• *Reasonable practices* in cases where rate regulation is retained.

• *Abandonment* regulations, feeder-line development program, and financial assistance to facilitate purchases or subsidy agreements for lines proposed for abandonment.

• *Dispute resolution* between passenger and freight railroads.

• *Rails-to-trails* program for abandoned rail lines.

• *Preemption* of state regulation of rail rates, routes, and services.

• *Recordation of liens* would be continued, but administered differently.

Motor Carriers

Trucking. The interstate trucking reforms of 1980 have provided billions of dollars in annual savings and enhanced U.S. competitiveness in world markets. Another significant barrier to further efficiencies in the trucking industry was removed beginning in January 1995, as a result of Public Law 103–305, which prohibits the states from imposing economic regulation of trucking.

Most of the remaining trucking regulations administered by the ICC are needless and burdensome requirements that have no place in today's competitive, cost-conscious environment. Although TIRRA substantially reduced the requirements for entry into the business of hauling regulated commodities and removed the requirement that motor common carriers file their independently-set rates with the ICC, it stopped short of doing away with these requirements altogether.

Our reviews have found no useful function served by the remaining economic regulation of trucking by the ICC, and we recommend that it all be *eliminated*, except for those functions enumerated below. In particular, we recommend an end to all antitrust immunity, all filing of tariffs and rate regulation, all distinctions between common and contract carriers, and control over mergers and transfers.

We recommend that only the following regulations be *retained:*

• *Motor carrier licensing.* All interstate private and for-hire carriers would be subject to the same safety and insurance requirements, administered by DOT/FHWA.

• *Mexican carriers.* DOT, in conjunction with the states, would monitor Mexican carriers' safety and insurance compliance, as well as their access to U.S. markets, as NAFTA is phased in.

• *Undercharge resolution.* Adjudication of existing undercharge claims under the Negotiated Rates Act of 1993 (NRA) would be continued over a transition period until the issue ceases to exist. We also recommend that the NRA be amended to designate claims for undercharging as an "unreasonable practice," as long as any tariff filing is required.

• *Household goods, household goods freight forwarders, and transporters of personally-owned automobiles.* Existing ICC consumer protection authority would be transferred to the Federal Trade Commission (FTC). FTC would not become involved routinely in individual cases, but would be able to monitor the industry and take action if there should be a pattern of abuses, as it does in other industries.

• *Owner-operator leasing rules.* These rules would also be transferred to the FTC, but there would be no agency involvement in adjudicating individual claims between carriers and owner-operators. There would be general FTC oversight, and owner operators would be given a right of private action to enforce the rules and the opportunity to collect treble damages in case of violations.

• *Loss and damage claims.* Convert the Carmack amendment into a Federal liability regime with a statutory liability limit, and eliminate ICC dispute settlement functions. Issues would be resolved privately, as with any other contract dispute.

Intercity Buses. Although the charter and tour sector of the bus industry has grown, the financial condition of the regular route carriers is marginal, reflecting intense competition with the airlines, the private automobile, and Amtrak. Continued regulation by either the ICC or state regulatory bodies can hurt, but cannot help this industry. We recommend that all ICC economic regulation of the intercity bus industry be eliminated. DOT/FHWA would be responsible for monitoring bus safety and insurance (with state enforcement authority), and the existing procedure for ICC preemption of state bus regulation would be amended to provide outright preemption, such as that provided for motor carriers of property by P.L. 103–305.

Transportation Intermediaries

Freight forwarders and brokers are only two types of a wide panoply of transportation intermediaries, including ocean freight forwarders and non-vessel operating common carriers (NVOCCs). This is an important segment of the industry that creates value for both shippers and carriers. The rather minimal regulation of all types of transportation intermediaries should be harmonized. We recommend that all regulation of surface freight forwarders and brokers be eliminated and that they be treated the same as air freight forwarders, which are free of any regulation of their rates, routes, or services, subject only to cargo liability rules—to the extent they are considered carriers.

Pipelines

ICC has authority to regulate transportation by pipelines of commodities such as coal and fertilizer. However, there is significant intermodal competition for such traffic and there have been virtually no complaints concerning competitive problems. We recommend that ICC regulation of pipelines be eliminated and any competitive problems be handled under the antitrust laws.

Intermodal Transportation

The ICC has the authority to prohibit the acquisition of a water carrier or a motor carrier by a rail carrier. ICC may also prescribe joint rates and through routes on intermodal rail-water movements. The deregulation legislation of 1977–80 has resulted in an enormous increase in intermodal traffic. However, there are still some remaining hindrances that could impede intermodal acquisitions. There is no longer any economic rationale for these restrictions. We recommend elimination of all restrictions against intermodal ownership and removal of Federal jurisdiction over intermodal rates, routes, and practices.

Domestic Water Carriers

The ICC has authority to regulate water carriage both within the contiguous states and between the continental U.S. and its possessions (the domestic offshore trades). Most of the water traffic within the contiguous states is already exempt from regulation, and competition is sufficient to prevent abuses. We recommend an end to all ICC regulation of such traffic.

Regulatory authority over the domestic offshore trades is already shared between the ICC and the Federal Maritime Commission (FMC). When an offshore movement is intermodal and employs a joint through rate, ICC regulation applies, but is minimal. Other types of movements are regulated by the FMC. This bifurcation makes no sense. We recommend eliminating all economic regulation (including tariff filing) by both the ICC and the FMC in the contiguous states and in the domestic offshore trades. The provisions of the Intercoastal Shipping Act, 1933, should also be repealed. Any continuing jurisdiction over non-tariff-related malpractices in the domestic trades, such as boycotts of shippers by carriers, would be transferred to DOT.

Federal vs. State Interests

Surface transportation in the U.S. is a national system. The "Commerce Clause" of the Constitution of the United States (Article 1, Section 8, Paragraph 3) grants the power to Congress "to regulate commerce with foreign nations and among the several States." This provisions allows Congress to regulate a huge volume of trade moved via land, water, and air. The recommendations outlined above would reduce or eliminate Federal oversight by repealing Federal laws that constrict the efficient and competitive operation of the surface freight transportation system. It is also essential to preclude conflicting state laws or procedures that could overturn the benefits of Federal deregulation, as has been done in previous legislation affecting the airline industry in 1978 and the trucking industry in 1994.

Administration of Remaining ICC Functions

TIRRA identified a wide range of organizational choices for relocating ICC functions. These included retaining the ICC in its current form, merging the ICC into DOT as an independent agency, merging ICC into DOT but not as an independent agency, eliminating the ICC and transferring all or some of its functions to DOT or other Federal agencies, and combining the ICC with other Federal agencies (e.g., the Federal Maritime Commission). Each of these alternatives was extensively examined in the Department's study.

Given the dramatic reductions in regulatory authority recommended in this report, it is clear that there is no longer any need to maintain the ICC as an independent agency. Further, given that the functions to be retained are quite diverse (e.g., motor carrier leasing, railroad rate oversight), we do not believe that it makes sense to consolidate these functions, either in a separate agency or in a discrete agency within DOT. It may be appropriate to house them in a new rail regulatory unit within the organizational structure of DOT, with labor protection at the Department of Labor.

However, there is no need for such an office to remain completely independent. Most of the remnant regulatory functions are similar to activities currently administered by DOT (or other agencies) without any independent or insulated staff. For those few functions where there is a special need for "insulated" decision-making (such as resolution of disputes between passenger and freight railroads), administrative procedures can be readily established.

Careful planning of the transition of functions is important. This includes examination of staffing requirements, workload and workflow, space and other physical resources, and processes for performing specific functions within the new organizational framework. It is critical to the transportation industry, shippers, and the economy that transition plans maintain continuity and integrity for any remaining regulatory functions. The Administration proposes that the transition occur during FY 1996.

Dated: February 22, 1995.

John N. Lieber,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 95–4834 Filed 2–24–95; 8:45 am]

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Monday
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Part XII

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 29, 1995.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated:

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST

[02/17/95 Update]

Index and property name	PO Box/Rt No	Street address	City, State/Zip	Telephone
Additions				
CA				
CA1443 BEST WESTERN IMPERIAL VALLEY INN.		1093 AIRPORT BLVD	IMPERIAL, CA 92251	(619) 355–4500
CA1442 BEST WESTERN CAPISTRANO INN		27174 ORTEGA HWY	SAN JUAN CAPISTRANO, CA 92675	(714) 493–5661
CA1444 WINDHAM BEL AGE		1020 N. SAN VICENTE BLVD	WEST HOLLYWOOD, CA 90069	(310) 854–1111
IL				
IL0541 REID'S INN BEST WESTERN		2150 STATE ST	CHESTER, IL 62233	(618) 826–3034
IL0542 COMFORT INN DOWNERS GROVE		3010 FINLEY ROAD	DOWNERS GROVE, IL 60515	(708) 515–1500
KS				
KS0154 CLUBHOUSE INN	10610	MARTY	OVERLAND PARK, KS 66212–0000	(913) 648–5555
KS0155 WICHITA AIRPORT HILTON/CONFERENCE CENTER.		2098 AIRPORT ROAD	WICHITA, KS 67209–0000	(316) 945–5272
MD				
MD0281 FRIENDSHIP INN		107 HISSEY RD	GRASONVILLE, MD 21638	(410) 827–7272
MD0280 HARBOURTOWNE GOLF RESORT & CONFERENCE CENTER.	PO BOX 126	RT. 33 AT MARTINGHAM DR	ST MICHAELS, MD 21663	(410) 745–9066
MI				
MI0312 HAMPTON INN—BATTLE CREEK		1150 RIVERSIDE DR	BATTLE CREEK, MI 49017	(616) 979–5577
MI0314 HOLIDAY INN—GATEWAY CENTRE		5353 GATEWAY CENTRE	FLINT, MI 48507	(810) 232–5300
MI0313 ECONO LODGE—MANISTIQUE		E. LAKESHORE DR	MANISTIQUE, MI 49854	(906) 341–6014
MO				
MO0293 THE HOTEL DE VILLE (FORMALLY PARK INN).		319 W. MILLER	JEFFERSON CITY, MO 65101	(314) 636–5231
NC				
NC0357 SLEEP INN		102 SLEEPY DRIVE	SPRING LAKE, NC 28390	(910) 436–6700
NY:				
NY0607 COMFORT INN		ONE CANISTEO SQUARE	HORNELL, NY 14843	(607) 324–4300
OK				
OK0099 MERIDIAN PLAZA HOTEL		2101 S. MERIDIAN AVENUE	OKLAHOMA CITY, OK 73108	(405) 685–4000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST—Continued

[02/17/95 Update]

Index and property name	PO Box/Rt No.	Street address	City, State/Zip	Telephone
PA:				
PA0431 HORSHAM DAYS INN		245 EASTON ROAD	HORSHAM, PA 19044	(215) 674–2500
PA0430 ADAM'S MARK HOTEL		4100 CITY AVENUE	PHILADELPHIA, PA 19131	(215) 581–5000
PR:				
PR0030 BEST WESTERN HOTEL PIERRE	PO BOX 12038	105 AVENIDA DE DIEGO	SAN JUAN, PR 00902	(809) 721–1200
PR0031 HOTEL EXCELSIOR		801 PONCE DE LEON AVE	SAN JUAN, PR 00907	(809) 721–7400
TN:				
TN0267 COMFORT HOTEL		7737 KINGSTON PK	KNOXVILLE, TN 37919	(615) 690–0034
TX:				
TX0628 ADOLPHUS HOTEL		1321 COMMERCE ST	DALLAS, TX 75202	(214) 742–8200
TX0630 HAWTHORNE SUITES HOTEL		7900 BROOKRIVER DRIVE	DALLAS, TX 75247	(214) 688–1010
TX0629 RESIDENCE INN BY MARRIOTT BY THE GALLERIAA.		2500 MCCUE	HOUSTON, TX 77056	(713) 840–9757
UT:				
UT0088 SLEEP INN OGDEN		1155 S. 1700 W	OGDEN, UT 84404	(801) 731–6500
VA:				
VA0601 HOLIDAY INN TYSONS CORNER		1960 CHAIN BRIDGE ROAD	MCLEAN, VA 22102–0000	(703) 893–2100
VA0600 COMFORT INN EXECUTIVE CENTER		7201 WEST BROAD ST	RICHMOND, VA 23294–0000	(804) 672–1108
WA:				
WA0287 RED LION—PASCO		2525 NE 20TH	PASCO, WA 99301	(509) 547–0701
WA0288 RED LION—RICHLAND/HANFORD HOUSE.		802 GEORGE WASHINGTON WAY.	RICHLAND, WA 99352	(509) 946–7611
WA0289 RED LION—SEA TAC		18740 PACIFIC HIGHWAY SOUTH.	SEATTLE, WA 98188	(206) 246–8600
Corrections/changes				
AZ:				
AZ0057 CROWNE PLAZA		100 N. 1ST STREET	PHOENIX, AZ 85004	(602) 257–1525
AZ0004 WYNDHAM METROCENTER		10220 N. METRO PKWY. E	PHOENIX, AZ 85051	(602) 997–5900
CT:				
CT0109 COMFORT INN		48 WHITEHALL AVE	MYSTIC, CT 06355	(203) 572–8531
CT0243 QUALITY INN WATERBURY		88 UNION ST	WATERBURY, CT 06706	(203) 575–1500
LA:				
LA00009 RADISSON		4728 CONSTITUTION AVE	BATON ROUGE, LA 70808	(504) 925–2244
LA0083 QUALITY INN HOUMA		1400 W. TUNNEL BLVD	HOUMA, LA 70360	(504) 879–4871
MD:				
MD0043 COMFORT INN BALTIMORE WEST		6700 SECURITY BLVD	BALTIMORE, MD 21207	(410) 281–1800
MD0117 ECONO LODGE GAITHERSBURG		18715 N. FREDERICK AVE	GAITHERSBURG, MD 20879	(301) 963–3840
MO:				
MO0252 STUDIO PLUS AT THE AIRPORT		155 CHAPEL RIDGE RD	HAZELWOOD, MO 63042	(314) 731–2707
MO0060 BEST WESTERN WESTPORT PARK		2434 OLD DORSETT	MARYLAND HEIGHTS, MO 63043.	(314) 291–8700
MO0125 INN AT GRAND GLAIZE	PO BOX 969		OSAGE BEACH, MO 65065	(314) 348–4731
MO0172 ST. CLAIR SUPER 8		1010 S. OUTER RD	SAINT CLAIR, MO 63077	(314) 629–8080
MO0129 SEDALIA KNIGHTS COURT		3501 W. BROADWAY	SEDALIA, MO 65301	(816) 826–8400
MO0099 EMBASSY SUITES		901 N. FIRST ST	ST. LOUIS, MO 63102	(314) 241–4200
NC:				
NC0047 ECONO LODGE SUGAR CREEK		1415 TOM HUNTER RD. EXIT 41.	CHARLOTTE, NC 28214	(704) 597–0470
NY:				
NY0157 ECONO LODGE		1339 RT. 64	ELMIRA, NY 14830	(607) 739–2000
NY0371 MELVILLE MARRIOT		1350 OLD WALT WHITMAN RD	MELVILLE, NY 11747	(516) 423–1600
VA:				
VA0492 EXECUTIVE CLUB SUITES		610 BASHFORD LANE	ALEXANDRIA, VA 22314	(703) 739–2582
VA0329 DOUBLETREE CLUB HOTEL—NORFOLK AIRPORT.		880 N MILITARY HIGHWAY	NORFOLK, VA 23502–0000	(804) 461–9192
VA0477 RODEWAY INN		7969 SHORE DRIVE	NORFOLK, VA 23518	(804) 588–3600
Deletions				
None				

[FR Doc. 95–4759 Filed 2–24–95; 8:45 am]

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Part XIII

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

Commerce in Firearms and Ammunition: Handgun Control (Implementation of the Brady Handgun Violence Prevention Act); Federal Firearms License Reform; Final Rule

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–361; Ref: T.D. ATF–354 and Notice No. 789]

RIN: 1512–AB23

Implementation of Public Law 103–159, Including the Brady Handgun Violence Prevention Act (93F–057P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule implements the provisions of Public Law 103–159, including the Brady Handgun Violence Prevention Act. These regulations implement the law by imposing a waiting period of 5 days before a licensed firearms importer, licensed manufacturer, or licensed dealer may transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. Regulations are also prescribed with regard to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, theft of firearms from firearms licensees, and increased license fees for dealers in firearms.

Unless otherwise indicated, the temporary regulations published in the **Federal Register** on February 14, 1994 (T.D. ATF–354), are made permanent upon the effective date of this final rule.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Legislative Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103–159, the "Brady Handgun Violence Prevention Act" (hereinafter, "Brady" or "Brady law"), provides for a national waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision), and for the establishment of a permanent national instant criminal background check system to be queried by firearms licensees before transferring any firearm to nonlicensed individuals. The law requires that the permanent system be established not later than November 30, 1998. Violations of either the interim or permanent provision are punishable by a fine and/or imprisonment for not more than 1 year.

Titles II and III of Pub. L. 103–159 relate to reporting requirements for multiple handgun sales, labeling of packages containing a firearm, thefts of firearms from licensed firearms dealers, and increased license fees for dealers in firearms.

On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322 (108 Stat. 1796) was enacted. Title XXXII of Pub. L. 103–322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received.

Waiting Period (Interim Provision)

The Brady law provides that the waiting period provisions of the law were effective on February 28, 1994, and cease to apply on November 30, 1998. Brady imposes a waiting period of 5 business days (defined in the statute as days on which State offices are open) before a licensee may sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to a nonlicensed individual. As defined in the Brady law, the term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

Basically, the waiting period provision makes it unlawful for any licensed firearms importer, manufacturer, or dealer to sell, deliver, or transfer a handgun to a nonlicensed individual (transferee), unless the licensee—

(1) obtains a statement of the transferee's intent to obtain a handgun containing the transferee's name, address, and date of birth appearing on a valid photo identification, a description of the identification document, a statement that the transferee is not a felon, under indictment, or otherwise prohibited from receiving or possessing the handgun under Federal law, and the date the statement is made;

(2) verifies the identity of the transferee by examining the identification document presented;

(3) within 1 day after the transferee furnishes the statement, contacts the chief law enforcement officer (CLEO) of the place of residence of the transferee and advises such officer of the contents of the statement;

(4) within 1 day after the transferee furnishes the statement, transmits a copy of the statement to the CLEO of the place of residence of the transferee; and

(5) waits 5 business days from the date the licensee furnished notice of the contents of the statement to the CLEO before transferring the handgun to the transferee (during which period the licensee has not received information from the CLEO that receipt or possession of the handgun by the transferee would be in violation of law); or receives notice from the CLEO of the place of residence of the transferee that the officer has no information that the transferee's receipt or possession of the handgun would violate the law.

Subsequent to the sale or transfer of the handgun, the law requires a licensee who receives a report from a CLEO containing information that receipt or possession of the handgun by the transferee would violate Federal, State, or local law to communicate within 1 day any information the licensee has concerning the transfer to the CLEO of the place of business of the licensee and to the CLEO of the place of residence of the transferee.

As provided in Brady, the term "chief law enforcement officer" means "the chief of police, the sheriff, or an equivalent officer or the designee of any such individual." The law requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the transferee is prohibited by law from receiving or possessing the handgun sought to be purchased. Except for records relating to a proposed handgun sale that would violate the law, CLEOs are required to destroy within 20 days the purchaser's statement, any record containing information derived from the statement, and any record created as a result of the notice referred to in (3) above. Furthermore, these records may only be used to carry out the purposes of the Brady law, and no information in the records may be conveyed to any person for purposes other than complying with the Brady law.

Brady also provides that an individual who is determined to be ineligible to purchase a handgun under the waiting period provision may request that the CLEO who made the determination provide reasons for that determination. The officer must provide such reasons to the individual in writing within 20 business days after receipt of the request.

Alternatives to the Waiting Period

The statute provides the following alternatives to the waiting period provision:

(1) The transferee provides a written statement issued within the last 10 days by the CLEO of the transferee's place of residence that the transferee requires a handgun because of a threat to the life of the transferee or any member of the transferee's household;

(2) The transferee presents to the licensee a permit issued by the State within the past 5 years to possess a handgun and the law of the State requires verification that the transferee is not prohibited by law from possessing the handgun;

(3) Purchases in States which require that, before any licensee transfers a handgun to an individual, an authorized government official has verified that possession of the handgun by the transferee would not violate the law (e.g., a background check);

(4) Purchases of handguns which are subject to the National Firearms Act and which have been approved for transfer under 27 CFR Part 179 (Machine Guns, Destructive Devices, and Certain Other Firearms);

(5) Purchases of handguns for which the Secretary has certified that compliance with the 5-day waiting period procedure is impracticable because the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025 (i.e., 25 officers per 10,000 square miles), the premises of the licensee are remote in relation to the CLEO of the area, and there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

Additional Provisions of Pub. L. 103–159

Titles II and III of Pub. L. 103–159 provide additional amendments to the GCA. These provisions, which became effective on November 30, 1993, are as follows:

(1) *Multiple sales reports.* In addition to furnishing reports of multiple handgun sales to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."

(2) *Common carriers.* Common or contract carriers are prohibited from requiring or causing any label or other written notice to be placed on the outside of any package, luggage, or other container indicating that such package contains a firearm. In addition, common or contract carriers who deliver firearms in interstate or foreign commerce are required to obtain written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(3) *Theft of firearms.* It is unlawful for any person to steal from the person or premises of a Federal firearms licensee any firearm in the licensee's business inventory which has been shipped or transported in interstate or foreign commerce.

(4) *License fees.* License fees for all dealers in firearms (other than destructive devices), including pawnbrokers, have been increased to $200 for 3 years, except that the fee for renewal of a license is $90 for 3 years.

Temporary Rule and Notice of Proposed Rulemaking

On February 14, 1994, ATF published in the **Federal Register** a temporary rule (T.D. ATF–354, 59 FR 7110) implementing the provisions of Public L. 103–159, including the Brady Handgun Violence Prevention Act. The temporary rule provided immediate guidance to Federal firearms licensees concerning their obligations under the Brady law.

On February 14, 1994, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 789, 59 FR 7115). The comment period for Notice No. 789 closed on May 16, 1994.

Analysis of Comments

ATF received 105 comments in response to Notice No. 789. Comments were submitted by Federal firearms licensees, nonlicensees, industry trade groups and other organizations (e.g., Collateral Loan & Secondhand Dealers Association of California, Handgun Control, Inc., and the National Rifle Association of America), members of Congress, law enforcement officials, one Federal agency, and one State Government.

Forty-five commenters, representing 43 percent of the total comments received, expressed opposition to the Brady law and urged its repeal. To accomplish this, however, legislative action would be necessary. Several other commenters requested changes that would also require legislative action. These include reducing or eliminating the license fees for gunsmiths, eliminating the provision of law with respect to the theft of firearms from a licensee, exempting police officers from the waiting period requirement when purchasing a handgun for other than official use, eliminating the requirement that the licensee forward to the CLEO a copy of the transferee's statement of intent to obtain a handgun, and eliminating the 5-year limitation for permits in States that have a permit-to-purchase system. Other issues addressed in the comments will be discussed in the following paragraphs.

Pawn Transactions—Public Law 103–322

Twenty-five commenters disagree with ATF's interpretation that the Brady law applies to the redemption of a pawned handgun. They argue that the law was not intended to apply to pawn transactions where a handgun is redeemed by the owner.

Subsequent to publication of the temporary regulations, on September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994 was enacted as Pub. L. 103–322 (108 Stat. 1796). Title XXXII of Pub. L. 103–322 amended the GCA by eliminating the Federal 5-day waiting period requirement imposed by Brady with respect to a licensee's return of a handgun to the person from whom it was received. Consequently, effective September 13, 1994, the Federal waiting period no longer applies to the redemption of a pawned handgun by the person from whom it was received. Accordingly, § 178.102(a) of the final regulations has been amended to include this exception to the requirements of the Brady law.

Background Check Fees

Several commenters, including licensees and nonlicensees, oppose the imposition of fees by law enforcement officials for background records checks. They argue that there is nothing in the Brady law or temporary regulations which allow CLEOs to charge a fee for such checks.

The Brady law is silent with respect to the imposition of fees for State and local officials performing records checks. It neither authorizes nor prohibits CLEOs from imposing such a fee. Consequently, such fees may be imposed pursuant to State or local law. Therefore, the final rule does not address such fees.

Form 5300.35

Some commenters suggested that Form 5300.35 and Form 4473 be combined into one form. This suggestion was not adopted. While the forms contain duplicative information, they serve distinct purposes and are executed at different times. Form

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5300.35 is executed at the time the prospective purchaser informs the licensee of an intent to acquire a handgun. Form 4473 is executed when the handgun is delivered. A considerable lapse of time may separate the two events. Consequently, the purchaser's certification on Form 5300.35 that he or she is not within a category of persons prohibited from receiving or possessing firearms must be made again on Form 4473 when the firearm is delivered to the purchaser. During the period between execution of the two forms, the purchaser may have been indicted, convicted of a felony, or otherwise fallen within one of the categories of persons who are prohibited by law from receiving or possessing firearms. In addition, it is impractical to use a combined form as the Form 4473 contains information that may not be provided to the CLEO, including a description of the handgun to be purchased. The Brady law expressly limits the information that may be required on Form 5300.35. Finally, a combination of the two forms would be overly complicated and confusing to licensees and handgun purchasers.

Two commenters requested that the regulations be revised to include as optional information on Form 5300.35 the transferee's race in order to assist law enforcement officials in verifying the transferee's eligibility to possess a handgun. ATF agrees with the commenters that race would be helpful in identifying the transferee. However, ATF believes that the other information on the form, including social security number and date of birth, is adequate for law enforcement officials to conduct a criminal records check. Accordingly, ATF is not amending the regulations and the form to include the transferee's race.

Another modification to Form 5300.35 was requested by the Immigration and Naturalization Service (INS) of the Department of Justice. In order to provide assistance to CLEOs in identifying ineligible applicants for handguns, the INS has suggested that a transferee who is a lawful permanent resident alien of the United States include his or her alien registration number (Alien #A _____) on Form 5300.35 (Item 5g, "Are you illegally in the United States?"). The registration number will enable INS to conduct computer checks. Without this information, it would be impossible for INS to grant the assistance requested by CLEOs. In light of INS's request, ATF is amending § 178.130(a)(2) to include the alien registration number on Form 5300.35 as optional information.

Some commenters suggested that the regulations prescribe a maximum time period between the completion of Form 5300.35 and delivery of the handgun. The Brady law is silent on this issue. It requires licensees to execute Form 5300.35 after the most recent proposal of transfer by the transferee and before transferring the handgun. The law would not prohibit a licensee from transferring a handgun even though there is a long lapse of time between execution of the form and delivery of the firearm. However, ATF is encouraging licensees to have the form executed as close in time to the delivery of the handgun as possible, so that any records check performed will be recent.

Another commenter requested that § 178.130(c), which requires licensees to retain all executed original Forms 5300.35 even when a transfer does not occur, be eliminated. One commenter also recommended that the final regulations clarify how long licensees must retain these forms.

ATF is not amending § 178.130(c). The retention of executed Forms 5300.35 is necessary to ensure compliance with the Brady law which requires that the form be completed at the time the buyer expresses an intent to acquire a handgun from a licensee.

With respect to retention of Form 5300.35, § 178.129(b) provides that licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain a handgun was forwarded to the chief law enforcement officer.

Recordkeeping Requirements

One commenter requested an amendment of § 178.131(a)(3), concerning recordkeeping requirements for handgun transactions in States that have a permit/license-to-purchase background check system. This section provides that the licensee shall retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun. The commenter contends that this requirement places an unnecessary and expensive burden on licensees, particularly for those licensees who cannot afford, or do not have access to, a photocopier.

Rather than making a copy of the purchaser's permit or license, the commenter suggests that the licensee make a record of the information contained on the permit. ATF believes that recording this information on Form 4473 sufficiently demonstrates that a handgun transfer has been made under the State permit system. Accordingly, this final rule amends § 178.131(a)(3) to require licensees to either retain a copy of the purchaser's permit or license and attach it to the Form 4473 or record certain minimal information contained on such permit or license on the Form 4473, including any identifying number, the date of issuance and the expiration date (if provided).

The same commenter requested an amendment of § 178.131(a)(4). This section requires licensees in alternative States with "instant check" systems to retain with the Form 4473 a statement showing the date of verification, any identifying number, and the name, location, and title of the authorized government official who did the background check. According to the commenter, "[i]n virtually all instances, the person actually checking the status of the transferee will not be an 'authorized government official' personally known to the licensee who will conduct the appropriate records check."

Since the agency responsible for determining the status of the purchaser will have verifiable information that the background check was completed, the commenter has suggested that the regulations be amended to require the name of the agency responsible for conducting the records check rather than the name of the Government official who made the check.

In response, ATF is revising § 178.131(a)(4) to require licensees in alternative States with "instant check" systems to retain with the Form 4473 a statement indicating the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

Common and Contract Carriers

Section 922(f)(2) of the GCA and its implementing regulation in § 178.31(d) impose a new requirement on common or contract carriers to obtain a written receipt upon delivery of a package or other container in which there is a firearm. Two commenters raised concerns regarding the application of § 178.31(d) which they believe need to be addressed in the final regulations.

One commenter, a trade association of the moving industry, noted that some customers who are relocating do not reveal to the mover that a firearm is included in the household goods being shipped. The firearm may, for example, be in a dresser or other piece of furniture. Since the mover has no knowledge that there is a firearm included in the shipment, the commenter contends that the carrier should not be held accountable for

failing to obtain proof of delivery of the firearm from the recipient.

Pursuant to section 924 of the GCA, whoever "knowingly" violates the provisions of section 922(f) shall be subject to certain penalties, including a fine, imprisonment, or both. If the carrier has no knowledge that a firearm is being transported in the shipment, no violation would occur. For clarification, ATF is amending § 178.31(d) in the final regulations to add the requisite knowledge element.

The second commenter, a trade and service organization of the larger U.S. airlines, also expressed some concerns regarding the application of § 178.31(d). First, the commenter asked whether the regulation requires an airline to obtain a written receipt from a passenger when baggage, containing a declared firearm that accompanies the passenger, is delivered at the destination airport. ATF interprets section 922(f) as not requiring carriers to obtain a written acknowledgement of receipt upon return of a firearm to a passenger who places a firearm in the carrier's custody for the duration of the trip. ATF is amending § 178.31(d) in the final regulations to clarify this point.

The commenter also inquired as to whether an electronic signature satisfies the receipt requirement of § 178.31(d). According to the commenter, small cargo package services utilize electronic notebooks that enable a consignee to sign electronically, rather than in ink, for a shipment. Hard copies of the delivery records, including the signature of the recipients, can be printed out. The records are retrievable from the database by the name of the consignee or consignor.

ATF finds that an electronic signature is a "written acknowledgement of receipt" which would satisfy the requirements of § 178.31(d), provided the signature is that of the individual who received the package. However, ATF believes it is unnecessary to amend the regulations to specifically address this particular type of receipt.

Finally, the commenter requested a clarification of § 178.31 with respect to the handling of firearms shipped on commercial air carriers on behalf of governmental entities, specifically, military personnel. In the case of firearms shipped as cargo on behalf of military personnel, § 925(a)(1) of the GCA provides that the provisions of the Act do not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of governmental entities. Thus, the provisions of § 178.31 are not applicable to firearms being shipped or transported on behalf of governmental entities, including the Armed Forces.

Since there are existing regulations which implement the provisions of § 925(a)(1), i.e., § 178.141, ATF has determined that amendment of § 178.31 is unnecessary.

Chief Law Enforcement Officers

Two commenters suggested that the final regulations provide guidance for law enforcement officers with respect to their responsibilities and duties in implementing the provisions of Brady. This includes a clarification of who is a CLEO and who may designate a CLEO; a clarification that CLEOs have no authority to impose a "temporary hold" on the transfer of a handgun to a transferee who is not prohibited by law from purchasing a handgun; guidance to CLEOs regarding what constitutes "reasonable effort" when conducting background checks on purchasers; and guidance regarding the destruction of Brady related records by law enforcement officers.

ATF has not included the commenters' suggestions in the final rule, since the regulations address the responsibilities of Federal firearms licensees. ATF has given actual notice to CLEOs of their responsibilities under the Brady law.

Finally, the temporary regulations, § 178.102(a)(3), provide that the notice licensees are required to give CLEOs shall be actual notice and shall be given in a manner acceptable to the CLEO. For clarification, ATF is amending § 178.102(a)(3) to provide that licensees in jurisdictions where CLEOs have specified hand-delivery as the only means of delivering notice will satisfy their legal obligation under the Brady law if they provide notice to the CLEO by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt. This section has been redesignated as § 178.102(b).

Identification of Transferee

The temporary regulations, § 178.102(a)(1)(ii), require licensees to verify the identity of the transferee by examining the identification document presented. The term "identification document" is defined in Brady and the regulations as "a document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State . . ." A question was raised in the comments with respect to acceptable identification documents in the case of military personnel.

In the case of military personnel, the purchaser's military identification card and official orders showing that his permanent duty station is within the State where the licensed premises is located will suffice for purposes of the identification requirement of Brady.

ATF was also asked if a licensee could accept an identification document from a transferee who has an incorrect address. A transferee who presents a driver's license with an address that is not a current residence would not present a proper "identification document" as that term is defined in the law and the regulations. However, if the individual presents a combination of documents, all issued by a governmental entity, containing all the information required by Brady, the combination of documents would satisfy the identification requirements of the law.

ATF believes the preceding discussion sufficiently clarifies the application of § 178.102(a)(1)(ii), and an amendment of the regulations is unnecessary. This section has been redesignated as § 178.102(a)(2) in the final regulations.

Miscellaneous

One commenter suggested that the final regulations specify that the waiting period provisions of Brady do not apply to licensed collectors of curios and relics. ATF is not adopting this suggestion, since Brady applies to certain handgun transactions by licensed collectors. The law and regulations make it clear that the waiting period provisions of Brady apply to transfers of handguns by licensed IMPORTERS, licensed MANUFACTURERS, and licensed DEALERS to individuals who are not licensed under section 923. Thus, it is apparent that transfers of handguns BY licensed collectors are not subject to the provisions of Brady. As for transfers of handguns by licensed importers, licensed manufacturers, and licensed dealers TO licensed collectors, such transfers are subject to Brady unless the collector is purchasing a handgun designated as a curio or relic. A collector's license authorizes the licensee to engage only in transactions in firearms designated as curios or relics and would not enable the licensed collector to avoid the requirements of the GCA, including the Brady law, for firearms other than curios or relics.

One commenter recommended that the final regulations include a provision that requires licensees to obtain a transferee's fingerprints to resolve

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appeals involving positive identification. ATF is not adopting this suggestion. The Brady law does not involve licensees in the appeals process. If a CLEO determines that a prospective buyer is ineligible to receive a firearm and the handgun purchase is denied, Brady provides that the individual can request from the CLEO the reason for such determination. Thus, the licensee is no longer involved and the matter will be resolved by the prospective buyer and the CLEO. In situations where the denial is based on inconclusive identification of the transferee, it is incumbent upon the prospective buyer to provide the CLEO with whatever additional identifying information is needed, including fingerprints, to establish positive identification.

Finally, this Treasury decision makes some technical amendments to the temporary regulations. Specifically, the temporary regulations redesignated § 178.150 as § 178.151. Section 178.150 should have been redesignated as § 178.152. In addition, § 178.126a has been amended to clarify that licensees retain a copy of Form 3310.4, consistent with the instructions on the form. Section 178.129 provides that licensees shall retain such copies of Form 3310.4 for a period of not less than 5 years. Lastly, the definition of the term "chief law enforcement officer" has been moved from § 178.11 to § 178.102(c).

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action because the economic effects flow directly from the underlying statute and not from this final rule. Accordingly, this final rule is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512–0520. The estimated average annual burden associated with the collection of information in this regulation is 2.52 hours per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 and to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the temporary rule, the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

27 CFR Part 178 is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

§ 178.11 [Amended]

Par. 2. Section 178.11 is amended by removing the definition for "chief law enforcement officer."

Par. 3. Section 178.31 is amended by revising paragraph (d) to read as follows:

§ 178.31 Delivery by common or contract carrier.

* * * * *

(d) No common or contract carrier shall knowingly deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm: *Provided*, That this paragraph shall not apply with respect to the return of a firearm to a passenger who places firearms in the carrier's custody for the duration of the trip.

Par. 4. Section 178.102 is revised to read as follows:

§ 178.102 Sales or deliveries of handguns after February 27, 1994, and before November 30, 1998.

(a) *Waiting period.* Except as provided in paragraph (d), a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to any individual who is not licensed under this part unless the licensee:

(1) Receives from the transferee a statement of intent to obtain a handgun on Form 5300.35 in accordance with § 178.130;

(2) Verifies the identity of the transferee by examining the identification document presented, and noting on Form 5300.35 the type of identification used;

(3) Within 1 day after the transferee furnishes the statement, provides notice of the contents of the statement on Form 5300.35, in the manner prescribed by paragraph (b) of this section, to the chief law enforcement officer of the place of residence of the transferee;

(4) Within 1 day after the transferee furnishes the statement to the licensee, transmits a copy of Form 5300.35 to the chief law enforcement officer of the place of residence of the transferee; and

(5)(i) Five business days (meaning days on which State offices are open) have elapsed from the date the licensee furnished actual notice of the contents of the statement to the chief law enforcement officer, during which period the licensee has not received information from such officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(ii) The licensee has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law.

Example 1. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Tuesday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Tuesday. The licensee may deliver the handgun on the next day, Wednesday.

Example 2. A licensee furnishes actual notice of the contents of the statement to the chief law enforcement officer on Saturday. If State offices are not open on Saturday and Sunday, 5 business days would have elapsed on the following Friday. The licensee may deliver the handgun on the next day, Saturday.

(b) *Form of notice.* The notice required by paragraph (a)(3) of this section shall be actual notice and shall be given in a manner acceptable to such officer. For example, if the chief law enforcement officer will only accept notice in writing and not by telephone, notice shall be given by the licensee to the chief law enforcement officer in writing. In that case, the 5-day waiting period prescribed by paragraph (a)(5)(i) of this section begins at the time such written notice is received by the chief law enforcement officer. If the licensee sends notice to such officer by mail, the licensee shall send the notice by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt: Provided, That where the chief law enforcement officer will only accept notice by hand delivery, notice may be sent in writing by the licensee to the chief law enforcement officer by certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt.

(c) *Chief law enforcement officer.* The law requires that notice of the contents of the transferee's statement of intent to obtain a handgun and the statement be provided by the licensee to the chief law enforcement officer of the place of residence of the transferee. For purposes of this section, § 178.130, and § 178.131, the "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive the notice and statement specified in paragraphs (a) (3) and (4) of this section, the licensee shall provide the information to that designated official.

(d) *Alternatives to waiting period.* The provisions of paragraph (a) of this section shall not apply if—

(1) The transferee has presented to the licensee a written statement, issued by the chief law enforcement officer of the transferee's place of residence, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee. The written statement must have been issued by the chief law enforcement officer during the 10-day period ending on the date that the transferee has informed the licensee of the transferee's intention to obtain a handgun. The written statement shall be on a letter bearing the letterhead of the chief law enforcement officer and shall be signed by the officer and dated;

(2) The transferee has presented to the licensee a permit or license that—

(i) Allows the transferee to possess or acquire a handgun;

(ii) Was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(iii) The law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of Federal, State, or local law;

(3) The law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under this part, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(4) The handgun is subject to the provisions of the National Firearms Act and has been approved for transfer under 27 CFR Part 179; or

(5) On application of the licensee, in accordance with the provisions of § 178.150, the Director has certified that compliance with paragraph (a) of this section is impracticable.

(6) The documents referred to in paragraphs (d)(1) and (2) of this section shall be retained in the records of the licensee in accordance with the provisions of § 178.131.

(e) *Disclosure of information.* (1) Any licensed importer, licensed manufacturer, or licensed dealer who, after the transfer of a handgun to a nonlicensee, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day (meaning a day on which State offices are open) after receipt of the report, communicate any information the licensee has concerning the transfer and the transferee, including a copy of Form 4473 required by § 178.124, to the chief law enforcement officer of the place of business of the licensee and to the chief law enforcement officer of the place of residence of the transferee. The licensee may also provide this information to the local ATF office.

(2) Any licensed importer, licensed manufacturer, or licensed dealer who receives information from a chief law enforcement officer regarding the transfer of a handgun to a nonlicensee, not otherwise available to the public, shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(Approved by the Office of Management and Budget under control number 1512–0520)

Par. 5. Section 178.126a is amended by adding a fifth sentence to the text preceding Example 1 to read as follows.

§ 178.126a Reporting multiple sales or other disposition of pistols and revolvers.

* * * The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473 executed upon delivery of the pistols or revolvers.

* * * * *

Par. 6. Section 178.129(b) and the parenthetical text at the end of the section are revised to read as follows.

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record, statement of intent to obtain a handgun, and reports of multiple sales or other disposition of pistols and revolvers.* Licensees shall retain each Form 4473 and Form 4473(LV) for a period of not less than 20 years after the date of sale or disposition. Licensees shall retain each Form 5300.35 for a period of not less than 5 years after notice of the intent to obtain the handgun was forwarded to the chief law enforcement officer. Licensees shall retain each copy of Form 3310.4 for a period of not less than 5 years after the date of sale or other disposition.

* * * * *

(Paragraph (b) approved by the Office of Management and Budget under control numbers 1512–0520 and 1512–0006; all other recordkeeping approved by the Office of Management and Budget under control number 1512–0129.)

Par. 7. Section 178.130 is amended by revising paragraphs (a) and (e) to read as follows:

§ 178.130 Statement of intent to obtain a handgun after February 27, 1994, and before November 30, 1998.

(a)(1) Except as provided in §§ 178.102(d) and 178.131, a licensed importer, licensed manufacturer, or licensed dealer shall not sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) unless the licensee has received from the transferee a statement of intent to obtain a handgun on Form 5300.35 in duplicate. The statement shall contain the transferee's name, address, and date of birth. The transferee must date and execute the sworn statement contained on the form showing that the transferee

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is not under indictment for a crime punishable by imprisonment for a term exceeding 1 year; has not been convicted in any court of such a crime; is not a fugitive from justice; is not an unlawful user of or addicted to any controlled substance; has not been adjudicated as a mental defective or been committed to a mental institution; is not an alien who is illegally or unlawfully in the United States; has not been discharged from the Armed Forces under dishonorable conditions; and is not a person who, having been a citizen of the United States, has renounced such citizenship.

(2) In order to facilitate the transfer of a handgun and enable the chief law enforcement officer to verify the identity of the person acquiring the handgun, Form 5300.35 requests certain additional optional information. This information includes the social security number, height, weight, sex, alien registration number, and place of birth of the transferee. Such information may help avoid the possibility of the transferee being misidentified as a felon or other prohibited person.

* * * * *

(e) A licensee may obtain, upon request, an emergency supply of Forms 5300.35 from any regional director (compliance) or local ATF office (compliance).

* * * * *

Par. 8. Section 178.131 is revised to read as follows:

§ 178.131 Handgun transactions not subject to the waiting period.

(a)(1) A licensed importer, licensed manufacturer, or licensed dealer whose sale, delivery, or transfer of a handgun is made pursuant to the alternative provisions of § 178.102(d) and is not subject to the waiting period prescribed by § 178.102(a) shall maintain the records required by this paragraph.

(2) If the transfer is pursuant to a written statement of the chief law enforcement officer in accordance with § 178.102(d)(1), the licensee shall retain such statement and attach it to the firearms transaction record, Form 4473, executed upon delivery of the handgun.

(3) If the transfer is pursuant to a permit or license in accordance with § 178.102(d)(2), the licensee shall either retain a copy of the purchaser's permit or license and attach it to the firearms transaction record, Form 4473, or record on the firearms transaction record, Form 4473, any identifying number, the date of issuance, and the expiration date (if provided) from the permit or license.

(4) If the transfer is pursuant to a verification of eligibility to possess a handgun (e.g., an instant record check) by a government official in accordance with § 178.102(d)(3), the licensee shall attach to the firearms transaction record, Form 4473, executed upon delivery of the handgun, a statement showing the date of verification and any identifying number assigned to the transaction by the agency responsible for conducting the verification of eligibility.

(5) If the transfer is pursuant to a certification by ATF in accordance with §§ 178.102(d)(5) and 178.150, the licensee shall maintain the certification as part of the records required to be kept under this subpart and for the period prescribed for the retention of Form 5300.35 in § 178.129(b).

(b) The requirements of this section shall be in addition to any other recordkeeping requirements contained in this part. (Approved by the Office of Management and Budget under control number 1512–0520)

Par. 9. Section 178.150 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 178.150 Alternative to handgun waiting period in certain geographical locations.

(a) The provisions of § 178.102(d)(5) shall be applicable when the Director has certified that compliance with the waiting period provisions of § 178.102(a) is impracticable because:

* * * * *

Par. 10. In Subpart I, § 178.151, Seizure and forfeiture, is redesignated as § 178.152.

Signed: December 6, 1994.

Daniel R. Black,

Acting Director.

Approved: December 27, 1994.

John P. Simpson,

Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 95–4886 Filed 2–24–95; 8:45 am]

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1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
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[2] The July 1 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984 containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

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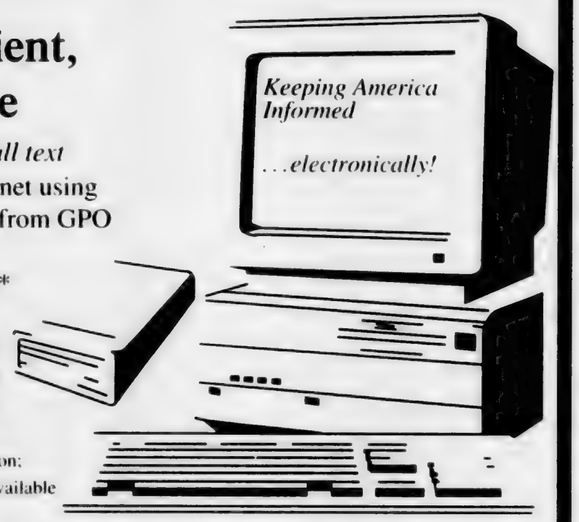

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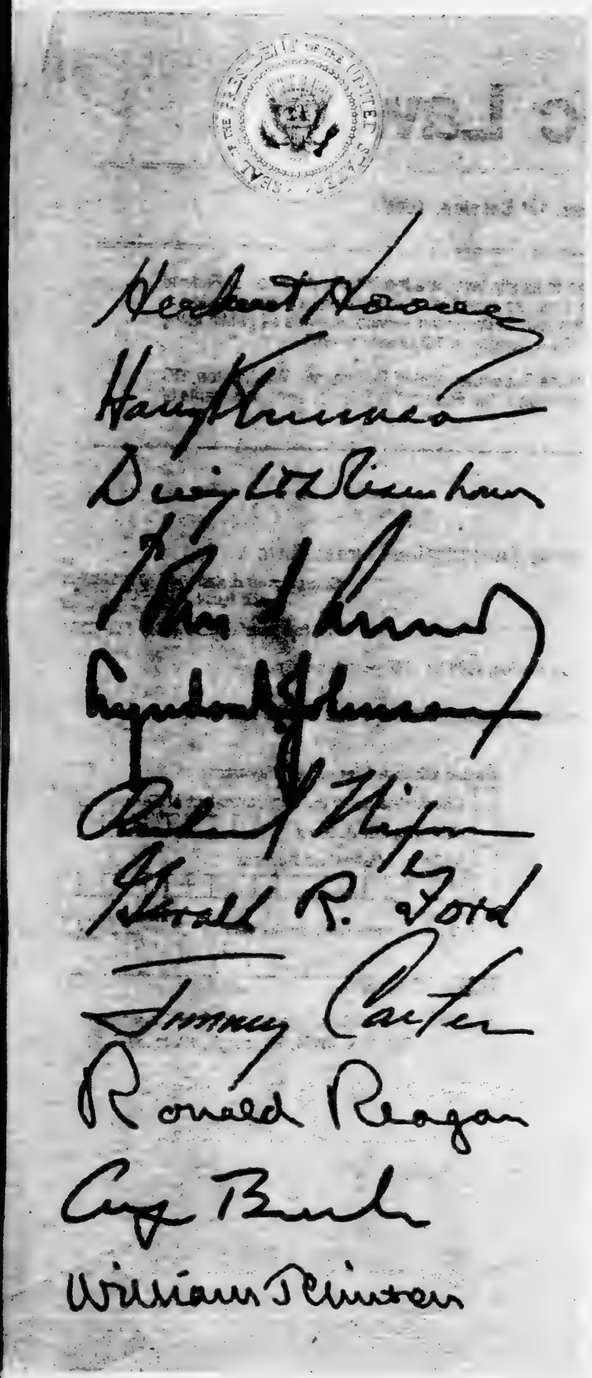

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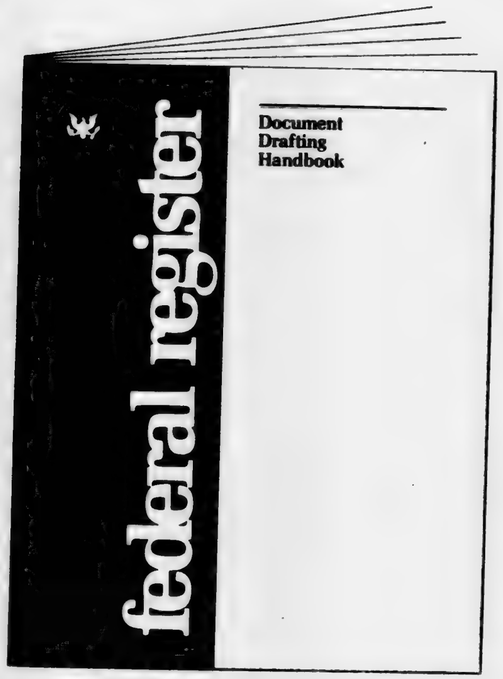

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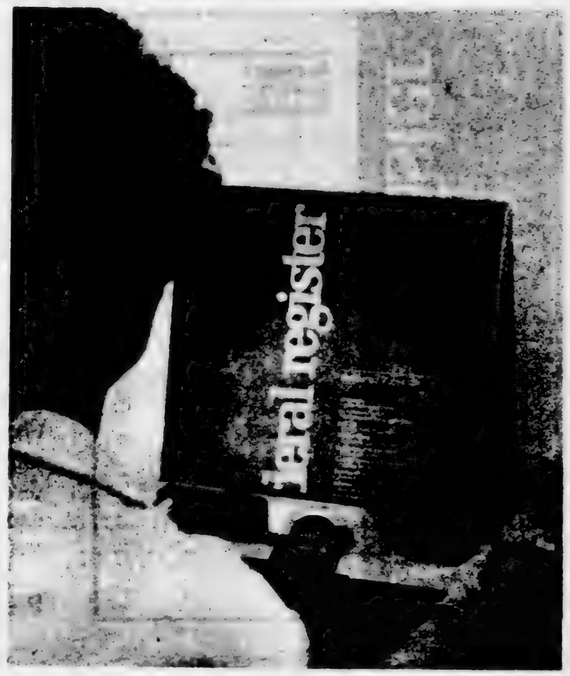

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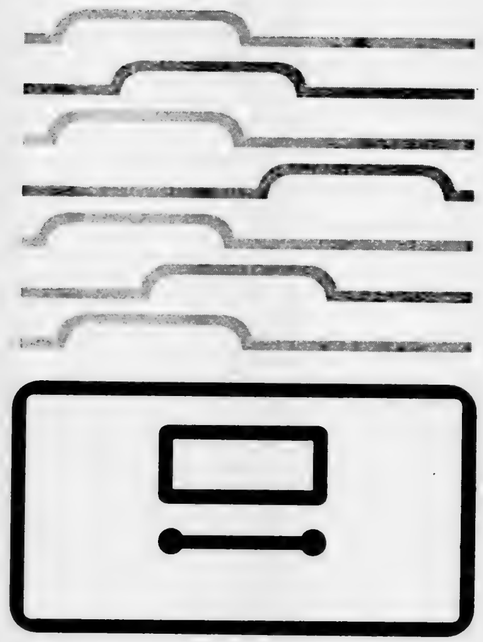

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Presidential Documents

Title 3—

The President

Executive Order 12951 of February 22, 1995

Release of Imagery Acquired by Space-Based National Intelligence Reconnaissance Systems

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to release certain scientif ically or environmentally useful imagery acquired by space-based national intelligence reconnaissance systems, consistent with the national security it is hereby ordered as follows:

Section 1. *Public Release of Historical Intelligence Imagery.* Imagery acquired by the space-based national intelligence reconnaissance systems known as the Corona, Argon, and Lanyard missions shall, within 18 months of the date of this order, be declassified and transferred to the National Archives and Records Administration with a copy sent to the United States Geological Survey of the Department of the Interior consistent with procedures approved by the Director of Central Intelligence and the Archivist of the United States. Upon transfer, such imagery shall be deemed declassified and shall be made available to the public.

Sec. 2. *Review for Future Public Release of Intelligence Imagery.* (a) All information that meets the criteria in section 2(b) of this order shall be kept secret in the interests of national defense and foreign policy until deemed otherwise by the Director of Central Intelligence. In consultation with the Secretaries of State and Defense, the Director of Central Intelligence shall establish a comprehensive program for the periodic review of imagery from systems other than the Corona, Argon, and Lanyard missions, with the objective of making available to the public as much imagery as possible consistent with the interests of national defense and foreign policy. For imagery from obsolete broad-area film-return systems other than Corona, Argon, and Lanyard missions, this review shall be completed within 5 years of the date of this order. Review of imagery from any other system that the Director of Central Intelligence deems to be obsolete shall be accomplished according to a timetable established by the Director of Central Intelligence. The Director of Central Intelligence shall report annually to the President on the implementation of this order.

(b) The criteria referred to in section 2(a) of this order consist of the following: imagery acquired by a space-based national intelligence reconnaissance system other than the Corona, Argon, and Lanyard missions.

Sec. 3. *General Provisions.* (a) This order prescribes a comprehensive and exclusive system for the public release of imagery acquired by space-based national intelligence reconnaissance systems. This order is the exclusive Executive order governing the public release of imagery for purposes of section 552(b)(1) of the Freedom of Information Act.

(b) Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

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Sec. 4. *Definition.* As used herein, "imagery" means the product acquired by space-based national intelligence reconnaissance systems that provides a likeness or representation of any natural or man-made feature or related objective or activities and satellite positional data acquired at the same time the likeness or representation was acquired.

William J. Clinton

THE WHITE HOUSE,
February 22, 1995

[FR Doc. 95-5050
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Billing code 3195-01-P

Presidential Documents

Memorandum of February 15, 1995

Delegation of Responsibilities Under Section 1205(d) and 1207(c) of Title XII of Public Law 103–337

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the authorities and duties vested in the President under sections 1205(d) and 1207(c) of Title XII of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337), to be exercised in consultation with the Secretary of Defense.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 15, 1995.

[FR Doc. 95-5075
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Presidential Documents

Memorandum of February 16, 1995

Delegation of Certain Presidential Authorities Under the Foreign Assistance Act of 1961 and Related Appropriations Legislation

Memorandum for the Secretary of State [and] the Administrator of the Agency for International Development

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate as follows certain authorities vested in the President:

(A) the functions under section 607 of the Foreign Assistance Act of 1961, as amended (FAA), to the Secretary of State and to the Administrator of the Agency for International Development, respectively, for matters within their respective areas of responsibility; and

(B) the functions in the first proviso under the heading "Population Development Assistance," contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306), and in comparable provisions in successor legislation, to the Secretary of State relating to those organizations and programs for which the Secretary of State has funding responsibility.

The delegations of authority described in subparagraph (A) are in addition to other delegations of such authority to the International Development Cooperation Agency.

The delegation of authority described above in subparagraph (B) shall be exercised in lieu of the delegation of the comparable authority to the Administrator of the Agency for International Development by section 1–102(a)(7) of Executive Order No. 12163, as amended.

Any reference in this memorandum to any Act, order, determination, or delegation of authority shall be deemed to be a reference to such Act, order, determination, or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State or the Agency for International Development, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 16, 1995.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–93–706FR-A]

RIN 0581–AB21

Watermelon Research and Promotion Plan; Amendments to the Plan, Rules and Regulations, and Rules of Practice for Petitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Watermelon Research and Promotion Plan (Plan) to: eliminate the refund provision of the Plan; assess watermelon importers and add importer member(s) to the Plan; exempt from assessments producers with less than 10 acres of watermelons rather than 5 acres and importers of less than 150,000 pounds; cover all 50 States by the Plan; and revise the criteria for determining the eligibility of producers to serve on the Board. In addition, conforming changes would be made to the rules and regulations issued under the Plan and the rules of practice for petitions.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This final rule amends the Watermelon Research and Promotion Plan [7 CFR part 1210], hereinafter referred as the Plan. The Plan is effective under the Watermelon Research and Promotion Act, as amended by the Watermelon Research and Promotion Improvement Act of 1993, [7 U.S.C. 4901–4916] hereinafter referred as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 750 watermelon handlers and 5,000 watermelon producers in the United States who are subject to the Plan. There are approximately 140 importers of watermelons. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5 million and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers, producers, and importers may be classified as small entities.

The changes in the Plan, rules and regulations, and rules of practice for petitions reflect amendments to the Act. The overall economic impact of these changes is not expected to be significant. Including all 50 States and the District of Columbia under the Plan will have little impact. The producer exemption from assessments is being increased from 5 acres to 10 acres. This change will benefit small producers because it will increase the exemption level, and small producers will not have to pay the assessment. The eligibility criteria for determining if a person is a handler or a producer will not have any economic impact. The elimination of refunds may have some impact on a small amount of producers and handlers who are currently entitled to refunds. There will also be a new burden on importers caused by the assessment of imports, but importers are currently benefiting from the activities which promote watermelons without paying assessments. The research and promotion program is expected to continue to benefit producers, handlers, and importers subject to the Plan by expanding and maintaining new and existing markets. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 [40 U.S.C. Chapter 35], the information collection requirements contained in the Plan have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093. There will be a new reporting burden on importers, but the burden has been already approved by the OMB and assigned OMB control number 0581–0093. This action adds no additional reporting burden.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for domestic watermelons. In the past, this program was financed by assessments

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on all producers, except those persons engaged in the growing of less than five acres of watermelons, and handlers of watermelons. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting.

U.S. production of watermelons is estimated through the use of U.S. shipment statistics. Shipments of U.S.-produced watermelons totaled about 1,895.6 million pounds in 1993, 7 percent less than in 1992. Imports of watermelons in 1993 totalled 343.5 million pounds, an increase of 12 percent. Therefore, domestic production is about six times as great as the volume of imports.

A referendum was conducted in 1989 to determine if majority of watermelon growers and handlers favored the passage of an industry funded research and promotion program for watermelons. The Plan was intended to collect assessments for research and promotion of watermelons. At that time, any individual not favoring the program could request a refund of the assessments paid by that individual. Procedures to request a refund of assessments were explained in the Plan.

A proposed rule was published in the **Federal Register** on April 14, 1994 [59 FR 17739]. That rule contained the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and referendum procedures. In order to have the referendum procedures in place for the referendum, the Department decided to separately make final the referendum procedures. A final rule was published in the **Federal Register** on August 30, 1994 [59 FR 44613] containing the referendum procedures. A proposed rule containing the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and ordering that a referendum be conducted was published separately on August 30, 1994 [59 FR 44646].

The deadline for comments on the proposed amendments published on April 14 was May 16, 1994. Twenty-one comments were received. The comments were addressed in the rules published on August 30, 1994.

A referendum was conducted in November 1994 among watermelon producers, handlers, and importers to determine whether they favor: (1) eliminating the provisions for assessment refunds and (2) implementing assessments on imported watermelons and adding importer member(s) to the Board.

The voting period was from November 1 through November 30, 1994. Ballots were mailed to all known eligible watermelon producers, handlers, and importers on October 14, 1994.

Sonia N. Jimenez and Martha B. Ransom were designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan were used to conduct the referendum.

The results of the referendum indicate that 61 percent of those who voted in the referendum favor elimination of refunds of assessments under the program and that 81 percent of those who voted in the referendum favor assessing watermelon imports and adding watermelon importers to the Board.

A simple majority of votes was required to approve each of the two changes.

The amendments to the Act authorize an assessment on watermelons imported into the United States and the addition of importer members to the Board. Watermelon imports enter the country primarily during the winter season. Imports of watermelons in 1993 totalled 343.5 million pounds. The assessment rate for imports will be the combined total assessment rate paid by producers and handlers of domestic watermelons. The current assessment rate for producers is 2 cents per hundredweight and for handlers is 2 cents per hundredweight. The combined assessment rate for importers, therefore, will be 4 cents per hundredweight. Assessments will be paid at the time the watermelons enter the country. The collection of assessments on imported watermelons will be expected to generate an additional $137,400 per year in revenue to the Board. In order to make these changes, this rule amends sections 1210.305, 1210.320, 1210.321, 1210.328, 1210.341, 1210.350, 1210.351, 1210.352, 1210.363, and 1210.364 of the Plan; sections 1210.402 and 1210.405 of the nomination procedures; and sections 1210.515, 1210.518, 1210.519, 1210.521, 1210.530, 1210.531, and 1210.532 of the rules and regulations. In addition, a new section 1210.314 will be added to the Plan.

To facilitate the collection of assessments on imported watermelons, the Secretary proposes that the Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collecting these watermelon assessments. An agreement between the USDA and the Customs Service will be entered into to implement this action. In order to make this change, this rule would amend section 1210.518 of the Rules and Regulations.

The importer representation on the Board will be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers will serve on the Board if importers are subject to the Plan. This representation will enable importers to participate in developing the Board's programs, plans, and projects, and express their views and concerns on how Board funds are used if imports are assessed under the Plan. Importers will nominate individuals to serve as importer members on the Board, and as required for other members of the Board, two nominees would be submitted to the Secretary for each vacancy. The Act requires the number of importers members to be proportionate to the assessments paid by importers. It is necessary to calculate the number of initial importer members on the volume of imports because imports are not currently being assessed. There are currently 14 producers and 14 handlers on the Board. This is the equivalent of one domestic industry member for every 67.7 million pounds of domestic production. Based on the average annual volume of imports during the last 3-year period (323.1 hundredweight), four importers would be added to the current Board. In order to make this change, this rule would amend sections 1210.320, 1210.321, and 1210.401.

The Act provides for the elimination of refunds of assessments after passed in the referendum. The refund provision has been in effect since the beginning of the program. Refunds have been increasing every year from 9 percent in 1990 to almost 29 percent in 1993. The elimination of the refund provision from the Plan is estimated to provide the Board with additional $250,000 per year for research and promotion activities. In order to make this change, this rule amends sections 1210.343 and 1210.520.

The Act increases the acreage for exempt producers from "less than 5 acres" to "less than 10 acres" of watermelons. Importers of less than 150,000 pounds of watermelons per year will be entitled to apply for a refund which will be the producer equivalent of the import assessments. The 150,000 pound exemption level for importers is the level determined to be equivalent to 10 acres of watermelons for domestic producers. In addition, the Act provides that the Board has the authority to establish rules for producers to certify whether they are exempt from the assessments. In order to make these changes, this rule amends sections 1210.341, 1210.342, 1210.518, and 1210.521.

The Act also increases applicability of the law from the 48 contiguous States to the 50 States and the District of Columbia. This amendment would expand the Plan to cover producers, handlers, and importers in Hawaii, Alaska, and the District of Columbia. In order to make these changes, this rule amends section 1210.305 and would add a new section 1210.315.

Section 1647(f) of the Act permits changes in the assessment rate through notice and comment rulemaking. No change to the Plan is necessary to implement this amendment to the Act because section 1210.341 of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act.

The Act provides that a producer is eligible to serve on the Board as a representative of handlers (1) if a producer purchases watermelons from other producers in a combined total volume that is equal to 25 percent or more of the producer's own production or (2) if the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. This provision facilitates the eligibility of producers and handlers to serve on the Board as representatives of their specific group. In order to make these changes, this rule amends sections 1210.321, 1210.363, 1210.368, and 1210.402.

The Act also provides that all future promulgation and amendment referenda do not have to be conducted at Extension Service county offices. This procedure proved to be expensive and difficult to administer. The Act now allows referenda to be conducted by mail ballot which reduces the costs involved in conducting referenda and facilitates a more timely tabulation of the results. In order to make this change, this rule amends section 1210.363.

In addition, the Act changes the criteria for determining the outcome of referenda. The Act previously provided that the Plan should not be effective unless approved by not less than two-thirds of the producers and handlers voting in the referendum, or producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in the referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum. The Act now specifies that the determination of the results of a referendum should be on the basis of a simple majority of the producers, handlers, and importers voting in the referendum. In order to make this change, this rule amends section 1210.363.

Furthermore, section 1210.252 will be revised to correct a wording error made during the promulgation of the Plan and section 1210.322 will be revised to delete obsolete language.

In addition, section 1210.325 will be changed to reflect a change in the number of Board members that constitute a majority. This revision reflects the addition of importer members to the Board.

Section 1210.505 will be amended to reflect the fact that the Department issues user fee bills to the Board monthly rather than quarterly.

In addition, miscellaneous conforming changes will be made to sections 1210.251, 1210.302, 1210.328, 1210.340, and 1210.362.

Minor changes are made in this final rule for the purpose of clarity.

After consideration of all relevant material presented, it is found that this regulation, as set forth herein, tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule amends the Plan and the Rules and Regulations issued thereunder, in accordance with the provisions of the Act as amended by the Watermelon Research and Promotion Improvement Act of 1993; (2) watermelon producers, handlers, and importers voted in November 1994 to implement two of the major changes; and (3) no useful purpose will be served in delaying the effective date until 30 days after publication of this final rule. Therefore, this final rule will be effective on the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

§ 1210.251 [Amended]

2. In Section 1210.251, paragraph (a) is amended by removing ";" and adding in its place ", as amended;"

§ 1210.252 [Amended]

3. In Section 1210.252, paragraph (b)(3) is amended by removing the word "order" and adding in its place "Plan"

Subpart—Watermelon Research and Promotion Plan

§ 1210.302 [Amended]

4. Section 1210.302 is amended by adding ", as amended" at the end of the sentence.

5. Section 1210.305 is revised to read as follows:

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

§ 1210.306 [Amended]

6. Section 1210.306 is amended by removing the word "five" and adding in its place "10"

7. A new § 1210.314 is added to read as follows:

§ 1210.314 Importer.

"Importer" means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

8. A new section 1210.315 is added to read as follows:

§ 1210.315 United States.

"United States" means each of the several States and the District of Columbia.

9. Section 1210.320 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board." The

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Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

* * * * *

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

10. Section 1210.321 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c), and (e) respectively; redesignating paragraph (d) as paragraph (f); removing new paragraph (f)(1) and redesignating new paragraphs (f)(2) and (f)(3) as paragraphs (f)(1) and (f)(2); revising new paragraphs (b) introductory text, (b)(1), (b)(4), (e), (f) introductory text, and (f)(1); removing in new paragraph (c) the word "positions" and adding in its place the phrase "producer and handler positions", and adding new paragraphs (a) and (d) to read as follows:

§ 1210.321 Nominations and selection.

* * * * *

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

* * * * *

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

* * * * *

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided*, That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: *Provided*, That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

* * * * *

11. Section 1210.322 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years

(b) Except in the case of mid term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

* * * * *

(d) No person shall serve more than two successive terms of office

12. Section 1210.325 is amended by revising paragraph (a) to read as follows

§ 1210.325 Procedure.

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

* * * * *

§ 1210.328 [Amended]

13. Section 1210.328 is amended by removing in paragraphs (d) and (g) the word "collected" and adding in its place "received"; removing in paragraphs (g), (i), and (m) the phrase "and handlers" and adding in its place ", handlers, and importers"; removing in paragraph (k) the phrase "or handler" and adding in its place ", handler or importer"; and removing in paragraph (n) the word "handlers" and adding in its place "handlers, importers,"

§ 1210.340 [Amended]

14. Section 1210.340 is amended by removing in paragraph (b) the word "collected" and adding in its place "received"

15. Section 1210.341 is amended by revising paragraphs (a), and (b); redesignating paragraphs (d) through (i) as (e) through (j); revising redesignated paragraph (e); adding a new paragraph (d); removing in redesignated paragraphs (f) and (g) the word "handler" wherever it appears and adding in its place "handler or importer"; removing in redesignated paragraph (h) the word "handlers" wherever it appears and adding in its place "handlers and importers", and removing redesignated in paragraph (f) the letter "(d)" and adding in its place "(e)" to read as follows.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all

watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

* * * * *

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

* * * * *

16. Section 1210.342 is amended by designating the existing text as paragraph (a) and adding new paragraphs (b), (c), and (d) to read as follows:

§ 1210.342 Exemption from assessment.

* * * * *

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying whether a person meets the definition of a producer under section 1210.306.

§ 1210.343 [Removed and Reserved]

17 Section 1210.343 is removed and reserved.

18. Section 1210.350 is amended by redesignating paragraphs (a) through (d) as (a) (1) through (4); designating the introductory paragraph as paragraph (a) introductory text; and adding new paragraphs (b) and (c) to read as follows:

§ 1210.350 Reports.

* * * * *

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) the total quantity of watermelons imported into the United States that are included under the terms of this Plan,

(2) the total quantity of watermelons that are exempt from the Plan, and

(3) such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

§ 1210.351 [Amended]

19. Section 1210.351 is amended by removing the word "handler" and adding in its place "handler and importer" and removing the word "two" and adding in its place "2"

§ 1210.352 [Amended]

20. Section 1210.352 is amended by removing in paragraph (a)(1) the word "handlers" and adding in its place "handlers or importers".

§ 1210.362 [Amended]

21. Section 1210.362 is amended by removing the word "collected" and adding in its place "received"; and removing the word "plan" and adding in its place "Plan".

22. Section 1210.363 is amended by revising paragraph (b) to read as follows:

§ 1210.363 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production, or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

§ 1210.364 [Amended]

23. Section 1210.364 is amended by removing in paragraph (d) the phrase "and handlers" and adding in its place ", handlers and importers"

24. The subpart heading "Subpart—Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board" is revised; and a new undesignated center heading is added to read as follows:

Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

Producer and Handler Members

25. In Section 1210.401, paragraph (b) is revised to read as follows:

§ 1210.401 District conventions.

* * * * *

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in § 1210.501, is entitled to two producer and two handler members on the Board.

* * * * *

26. Section 1210.402 is amended by revising paragraph (a); removing in paragraph (b) the phrase "or first handling" and adding in its place ", first handling or importing"; and removing

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in paragraph (b) the phrase "§ 1210.403" and adding in its place "§ 1210.403 and § 1210.404" to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

* * * * *

27. A new undesignated center heading and section 1210.404 are added to read as follows:

Importer Members

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

§ 1210.503 [Redesignated as § 1210.405]

28. Section 1210.503 is redesignated as § 1210.405, the first sentence of paragraph (a) is revised, and a new undesignated center heading is added to read as follows:

Public Member

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. * * *

* * * * *

Subpart—Rules and Regulations

§ 1210.505 [Amended]

29. Section 1210.505 is amended by removing the word "quarterly" and adding in its place "monthly".

30. Section 1210.515 is amended by revising paragraph (a); redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of four cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.10.30007 and 0807.10.40005 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

31. Section 1210.518 is amended by revising paragraphs (a) and (b); removing in paragraph (c)(1) the letter "(e)" and adding in its place "(b) and (e)" and removing the word "handler" and adding in its place "handler and importer"; removing in paragraph (c)(2)(viii) the word "five" and adding in its place "10"; and removing in paragraph (d)(1) the word "handler" wherever it appears and adding in its place "handler and importer" to read as follows:

§ 1210.518 Payment of assessments.

(a) Time of payment. The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) Responsibility for payment.

(1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

* * * * *

§ 1210.519 [Amended]

32. Section 1210.519 is amended by removing in the introductory paragraph the word "handler" and adding in its place "handler and importer"; by removing in paragraph (a) the word "handler's" and adding in its place "handler's and importer's"; and removing the word "Watermelon" from the introductory paragraph and paragraphs (a) and (b).

33. Section 1210.520 is revised to read as follows:

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) Application form. The Board shall make available to all importers a refund application form.

(b) Submission of refund application to the Board. The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) Proof of payment of assessment. Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) Payment of refund. Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

34. Section 1210.521 is revised to read as follows:

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

§ 1210.530 [Amended]

35. Section 1210.530 is amended by removing the word "handler" from the introductory text and adding in its place "handler and importer".

§ 1210.531 [Amended]

36. Section 1210.531 is amended by removing the word "handler" and adding in its place "handler and importer".

37. Section 1210.532 is revised to read as follows:

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Dated: February 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4736 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–128–AD; Amendment 39–9146; AD 95–03–09]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker F28 Mark 0100 series airplanes, that requires inspecting the teleflex cable of the landing gear to detect corrosion, moisture, or improper greasing, and replacing discrepant teleflex cables with serviceable parts. This amendment is prompted by reports of difficulties with the operation of the selector handle of the landing gear when "gear down" is selected, due to improper greasing of the teleflex cable of the landing gear during production. The actions specified by this AD are intended to prevent moisture from accumulating on the teleflex cable, which could result in corrosion of the teleflex cable that could inhibit operation of the selector handle of the landing gear.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on October 18, 1994 (59 FR 52479). That action proposed to require removing the teleflex cable of the landing gear, part number D76351–001, and inspecting it to detect corrosion, moisture, or improper greasing. If no discrepancies are detected, the cable would be cleaned, greased, and reassembled. If any discrepancy is detected, the cable would be replaced with a serviceable part.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the applicability of the final rule has been revised to clarify that only airplanes equipped with a teleflex cable of the landing gear, having part number D76351–001, are applicable to the requirements of the AD.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 119 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10.9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $77,826, or $654 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–09 Fokker: Amendment 39–9146. Docket 94–NM–128–AD.

Applicability: Model F28 Mark 0100 series airplanes; equipped with a teleflex cable of the landing gear, having part number D76351–001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture from accumulating on the teleflex cable, which could result in corrosion of the teleflex cable that could inhibit operation of the selector handle of the landing gear, accomplish the following:

(a) Within 4 months after the effective date of this AD, remove the teleflex cable of the landing gear, part number D76351–001, and perform an inspection of it to detect corrosion, moisture, or improper greasing, in accordance with Fokker Service Bulletin SBF100–32–071, dated June 22, 1993.

(1) If no discrepancies are found, prior to further flight, clean, grease, and reinstall the teleflex cable, in accordance with the service bulletin.

(2) If any discrepancy is found, prior to further flight, replace the teleflex cable with a serviceable part in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–071, dated June 22, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3357 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–ANE–81; Amendment 39–9091; AD 94–25–07]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires repetitive ultrasonic inspections of a combustion chamber outer case (CCOC) weld, but also allows visual inspection or fluorescent magnetic penetrant inspection (FMPI) of certain CCOC's under specified conditions. This amendment allows ultrasonic inspections only. This amendment is prompted by the greater availability of ultrasonic inspection equipment, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. The actions specified by this AD are intended to prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On March 1, 1989, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (AD) T89–05–52, applicable to Pratt & Whitney (PW) JT8D series turbofan engines, which requires repetitive ultrasonic inspections for cracks in the combustion chamber outer case (CCOC). In addition, that telegraphic AD allowed operators who did not have ultrasonic inspection capability to perform visual inspections and fluorescent magnetic penetrant inspections (FMPI) of CCOC's. That action was prompted by reports of two CCOC's, both part number (P/N) 796761, which were found in service with severe cracking and distress at the weld which joins the forward case detail to the rear flange detail. These cracks initiated from an area of incomplete weld created during the manufacturing process and were not detected during the final inspection process. Another CCOC, P/N 806675, is manufactured using a similar process and has the same potential for incomplete welds, but to date have not been found cracked. That condition, if not corrected, could result in rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

Since the issuance of that telegraphic AD, the FAA has received reports that most operators now have the capability to perform ultrasonic inspections, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. In telegraphic AD T89–05–52, reinspection of all CCOC's is required, including reinspection of those CCOC's that exhibited minimal ultrasonic indications during initial inspection. The FAA has determined analytically that CCOC's that exhibit maximum signal amplitudes of less than 40 percent are not life limited at the defined weld area. Therefore, CCOC's that meet this signal criteria for two consecutive ultrasonic inspections may be marked with a new P/N, provided the second ultrasonic inspection is accomplished at least 2,500 cycles in service (CIS) after the first inspection and the second inspection is performed in accordance with Appendix C of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

Finally, the FAA has determined that certain CCOC's, P/N 806675, were ultrasonically inspected by PW during the manufacturing process, and therefore do not need to be inspected again until they are accessible in the shop.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding telegraphic AD T89–05–52 was published in the **Federal Register** on January 27, 1994 (59 FR 3797). That action proposed to require repetitive ultrasonic inspections of CCOC's for cracks. The proposed AD would also allow CCOC's that meet certain signal criteria for two consecutive ultrasonic inspections to be marked with a new P/N. Once remarked, those CCOC's would not need to meet the repetitive ultrasonic inspection requirements of this AD. Finally, the proposed AD would require ultrasonic inspections on certain CCOC's, P/N 806675, identified by serial number, that were ultrasonically inspected by PW during the manufacturing process, when they are accessible in the shop.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that operators should be exempt from the initial 10 days or 75 cycles in service (CIS) after the effective date of this AD, whichever occurs later, ultrasonic inspection if they have already accomplished the inspection in accordance with telegraphic AD T89–05–52. The FAA concurs and paragraphs (a) and (b) of the compliance section of this final rule have been revised in accordance with this comment.

Three commenters state that they agree with eliminating visual inspections and only allowing

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ultrasonic inspections. The FAA concurs.

One commenter states that the proposed rule will have negligible effect on operations and maintenance. The FAA concurs.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,000 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $110,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive, Amendment 39–9091, to read as follows:

94–25–07 Pratt & Whitney: Amendment 39–9091. Docket 93–ANE–81. Supersedes telegraphic airworthiness directive (AD) T89–05–52.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC), Part Number (P/N) 796761 or 806675. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage, accomplish the following:

(a) Except for CCOC's cited in paragraph (c) of this airworthiness directive (AD), ultrasonically inspect CCOC's installed in engines that have not previously been ultrasonically inspected in accordance with telegraphic AD T89–05–52 for cracks within 10 days or 75 cycles in service (CIS) after the effective date of this AD, whichever occurs later, in accordance with paragraph 2.A.(3) and Appendix B of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

(b) For CCOC's not installed in engines and not cited in paragraph (c) of this AD, and that have not previously been ultrasonically inspected in accordance with telegraphic AD T89–05–52, ultrasonically inspect for cracks prior to returning the CCOC's to service in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(c) For CCOC's, P/N 806675, listed by serial number in Table 1 and paragraph 2.A.(10) of PW ASB No. 5842, Revision 3, dated October 10, 1990, accomplish the following:

(1) At the next removal of the CCOC from the engine after the effective date of this AD, ultrasonically inspect CCOC's for cracks in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(2) Remove from service or reinspect CCOC's in accordance with paragraphs (d) and (e), respectively, of this AD.

(3) Mark CCOC's with new part numbers in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that:

(i) have accumulated at least 2,500 CIS since new; and

(ii) exhibit a maximum ultrasonic signal amplitude of less than 40% during the inspection conducted subsequent to 2,500 CIS since new.

(d) Remove from service and replace with a serviceable part CCOC's with maximum ultrasonic signal amplitude determined as follows:

(1) CCOC's with greater than or equal to 360%, prior to further flight, with no ferry flight permitted in accordance with paragraph (i) of this AD below.

(2) CCOC's with less than 360%, but greater than or equal to 240%, prior to further flight, with ferry flight permitted, in accordance with paragraph (i) of this AD below.

(e) Thereafter, ultrasonically inspect CCOC's, P/N's 796761 and 806675, for cracks at intervals determined by maximum ultrasonic signal amplitude, in accordance with paragraph 2.A.(3) and Appendix B of PW ASB No. 5842, Revision 3, dated October 10, 1990, for installed CCOC's; or paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990, for uninstalled CCOC's; as applicable, as follows:

(1) For those CCOC's that meet the criteria described in paragraph (d) of this AD, remove from service and replace with a serviceable part.

(2) For those CCOC's with less than 240%, but greater than or equal to 100%, at intervals of 1,000 CIS since last inspection.

(3) For those CCOC's with less than 100%, but greater than or equal to 40%, at intervals of 2,500 CIS since last inspection.

(4) For those CCOC's with less than 40%, inspect at the next removal of the CCOC from the engine since last inspection.

(f) Mark CCOC's with new P/N's, in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that meet the following criteria:

(1) At least two consecutive ultrasonic inspections have been performed on the CCOC; and

(2) The second inspection was performed in accordance with paragraph (b) of this AD; and

(3) Have accumulated at least 2,500 CIS since the first ultrasonic inspection; and

(4) That exhibit a maximum ultrasonic signal amplitude of less than 40% in both inspections.

(g) Remarking of CCOC's with a new P/N in accordance with paragraph (f) of this AD constitutes terminating action to the inspection requirements of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(j) The actions required by this AD shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
PW ASB No. 5842	1–17	3	Oct. 10, 1990.
Appendix A	1–2	Original	May 26, 1989.
Appendix B	1–23	3	Oct. 10, 1990.
Appendix C	1–7	Original	May 26, 1989.
Total pages: 49.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on March 30, 1995.

Issued in Burlington, Massachusetts, on January 26, 1995.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–2693 Filed 2–27–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–84–AD; Amendment 39–9145; AD 95–03–08]

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, that requires an inspection to determine the model and orientation of certain flight control rods, and replacement with modified rods, if necessary. This amendment is prompted by reports of corrosion found on the pitch trim and rudder trim rods. The actions specified by this AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Effective on March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 series airplanes was published in the **Federal Register** on July 21, 1994 (59 FR 37182). That action proposed to require an inspection to determine the orientation of the end of rudder trim and elevator trim fail-safe rods, and replacement of those rods having upwards-oriented ends.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, Aerospatiale, requests that the compliance time specified in proposed paragraph (a)(1) for replacement of SARMA-type rods be extended to 18 months. The proposed rule would require that these rods be replaced prior to further flight after they are identified during the proposed inspection. The commenter considers this replacement requirement to be too restrictive. The FAA does not concur. The rule provides for a compliance time of 18 months for accomplishing the one-time inspection to determine if these types of rods are installed on the airplane. The FAA finds no justification for providing an additional time thereafter for replacement of the discrepant rods. The FAA does not consider the 18-month compliance time to be overly restrictive, since it provides ample time for operators to schedule the inspection during regularly scheduled maintenance and to acquire necessary parts for replacement. However, under the provisions of paragraph (b) of the final rule, if an operator were to find itself in a situation in which replacement parts were not immediately available, it could request approval for the use of an alternative method of compliance until parts became available.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 128 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4

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work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,720, or $240 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a "worst case scenario" (both subject rods needing replacement), the cost of parts would be approximately $6,000 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 54 to 87 work hours, at an average labor rate of $60 per work hour.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-03-08 Aerospatiale: Amendment 39-9145. Docket 94-NM-84-AD.

Applicability: Model ATR42-300 and -320 series airplanes on which Aerospatiale Modification 02723 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

(a) Within 18 months after the effective date of this AD, visually inspect the elevator trim and rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Aerospatiale Service Bulletin ATR42-27-0071, dated February 23, 1994.

(1) If a SARMA-type rod is installed at either of these locations, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR42-27-0049, Revision 2, dated May 16, 1991.

(2) If a TAC-type rod is installed at either of these locations, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR42-27-0048, Revision 2, dated May 16, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with the following Aerospatiale Service Bulletins, which contain the specified effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
ATR42-27-0071, Feb. 23, 1994	1-8	Original	Feb. 23, 1994.
ATR42-27-0048	1, 2, 4-6	2	May 16, 1991.
Revision 2	3, 8, 9	Original	June 22, 1990.
May 16, 1991	7	1	Nov. 21, 1990.
ATR42-27-0049	1, 2, 4	2	May 16, 1991.
Revision 2	3, 5, 6, 8, 11	Original	Sept. 14, 1990.
May 16, 1991	7, 9, 10	1	Nov. 21, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-3355 Filed 2-27-95; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-83-AD; Amendment 39-9144; AD 95-03-07]

Airworthiness Directives; Aerospatiale Model ATR72-101, -102, -201, and -202 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires an inspection to determine the model and orientation of certain flight control rods, and replacement of the rods with modified rods, if necessary. This amendment is prompted by reports of corrosion found on the pitch and rudder trim and rudder travel limiter fail-safe rods. The actions specified by this AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on July 27, 1994 (59 FR 38139). That action proposed to require an inspection to determine the model and orientation of certain flight control rods, and replacement of the rods with modified rods, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effects of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,080, or $360 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts will vary according to the type of replacement accomplished. In a "worst case scenario" (all subject rods needing replacement), the cost of parts will be approximately $8,200 per airplane. Labor necessary to accomplish replacement of a rod(s) will vary from 2 work hours to 10 work hours, at an average labor rate of $60 per work hour.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95-03-07 Aerospatiale: Amendment 39-9144. Docket 94-NM-83-AD.

Applicability: Model ATR72-101, -102, -201, and -202 series airplanes; as listed in Aerospatiale Service Bulletin ATR72-27-1033, dated February 23, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

Note 2: Rods replaced and installed in accordance with the instructions of any version of Aerospatiale Service Bulletin ATR72-27-1010 prior to the effective date of this AD are not affected by the requirements of this AD.

(a) For airplanes having Manufacturer's Serial Numbers (MSN) 126 through 183, inclusive: Within 18 months after the effective date of this AD, visually inspect the elevator trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part A of Aerospatiale Service Bulletin ATR72-27-1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72-27-1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72-27-1010, Revision 4, dated February 23, 1994.

(b) For airplanes having MSN's 126 through 198 inclusive, 204, and 207: Within 18 months after the effective date of this AD, visually inspect the rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part B of Aerospatiale Service Bulletin ATR72-27-1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72-27-1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72-27-1010, Revision 4, dated February 23, 1994.

(c) For airplanes having MSN's 198, and 126 through 237 inclusive: Within 18 months after the effective date of this AD, visually inspect the rudder travel limitation unit fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part C of Aerospatiale Service Bulletin ATR72-27-1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a new rod in accordance with Aerospatiale Service Bulletin ATR72-27-1027, dated July 28, 1993.

(2) If a TAC-type rod is installed at the rudder travel limitation rod location, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, inspect that rod in accordance with Aerospatiale Service Bulletin ATR72-27-1027, dated July 28, 1993.

(i) If no crack(s), deformation, or corrosion of the rod is found, prior to further flight, reinstall the rod so that the open end is oriented downwards, in accordance with the service bulletin.

(ii) If any crack(s), deformation, or corrosion of the rod is found, prior to further flight, replace the rod with a modified rod in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, replacements, reverse installations, and reinstallation shall be done in accordance with the following Aerospatiale service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR72-27-1012, Revision 3, October 7, 1991	1	3	Oct. 7, 1991.
	2, 4, 6, 9	Original	Oct. 29, 1990.
	5, 7, 8	1	Nov. 21, 1990.
ATR72-27-1033 Original Issue, February 23, 1994	3	2	May 16, 1991
	1-10	Original	Feb. 23, 1994
ATR72-27-1027, Original Issue, July 28, 1993	1-11	Original	July 28, 1993.
ATR72-27-1010, Revision 4, February 23, 1994	1, 3	4	Feb. 23, 1994.
	2, 7	Original	June 22, 1990.
	4	2	Jan. 10, 1991.
	5, 6	1	Nov. 21, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95-3356 Filed 2-27-95; 8:45 am]

BILLING CODE 4910-13-U

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE, Washington, D.C. 20002-4250; 202-336-8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines.

Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Community Services Administration to the Department of Health and Human Services. The revised figures for 1995 set out below are equivalent to 125% of the current official Poverty Guidelines as set out at 60 FR 7772 (Feb. 9, 1995).

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611.is revised to read as follows:

APPENDIX A OF PART 1611.—LEGAL SERVICES CORPORATION 1995 POVERTY GUIDELINES*

Size of family unit	All states but Alaska and Hawaii[1]	Alaska[2]	Hawaii[3]
1	$9,338	$11,675	$10,763
2	12,538	15,675	14,438
3	15,738	19,675	18,113
4	18,938	23,675	21,788
5	22,138	27,675	25,463
6	25,338	31,675	29,138
7	28,538	35,675	32,813
8	31,738	39,675	36,488

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,200 for each additional member in a family.

[2] For family units with more than eight members, add $4,000 for each additional member in a family.

[3] For family units with more than eight members, add $3,675 for each additional member in a family.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95-4837 Filed 2-27-95; 8:45 am]

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Proposed Rules

Federal Register
Vol. 60, No. 39
Tuesday, February 28, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93-076-4]

RIN 0579-AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the establishment of standards for "swim-with-the-dolphin" interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 93-076-2 that are received on or before March 9, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 93-076-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February 1995. Telephone: (301) 436-7833 (Hyattsville); (301) 734-8699 (Riverdale).

SUPPLEMENTARY INFORMATION: On January 23, 1995, we published in the **Federal Register** (60 FR 4383-4389, Docket No. 93-076-2) a proposal to amend the Animal Welfare regulations to establish standards for "swim-with-the-dolphin" interactive programs.

Comments regarding the proposed rule were required to be received on or before February 22, 1995. During the comment period, we received a request that we extend the comment period beyond February 22. The requestor, a marine mammal industry association, stated that additional time is necessary to allow its members to meet and to formulate comments.

In response to this request, we are extending the comment period for Docket No. 93-076-2 through March 9, 1995. This will allow time for the requestor and other interested persons to develop comments on the proposed rule.

Authority: 7 U.S.C. 2131-2159; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 22nd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95-4881 Filed 2-27-95; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52 and 100

RIN 3150-AD93

Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition From Free Environment, Inc., et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 17, 1994, the NRC published (59 FR 52255) for public comment a proposed revision of 10 CFR parts 50, 52, and 100 to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The comment period was to expire on February 14, 1995.

On February 8, 1995, the Commission stated (60 FR 7467) that it intended to extend the comment period to allow interested persons adequate time to provide comments on staff guidance documents consisting of five draft regulatory guides and three standard review plan sections that were to accompany the proposed rule, but were delayed in issuance. The Commission stated that it would extend the comment period 75 days after the staff guidance documents became available.

Availability of the above staff guidance documents is being announced in the Notices section of this issue of the **Federal Register**. The comment period for the proposed rule is hereby extended to May 12, 1995.

DATES: Comment period now expires May 12, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FEDWORLD. The bulletin board may be accessed with a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Certain background documents on the rulemaking are also available for downloading and viewing.

With a personal computer and modem, the NRC rulemaking subsystem can be accessed on FEDWORLD, toll free, by directly dialing 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FEDWORLD, consult the "Help/Information Center" from the "NRC Main Menu." Users may also find the "FEDWORLD Online User's Guides" helpful.

The NRC subsystem on FEDWORLD also may be accessed directly by dialing 703-321-8020 for the main FEDWORLD BBS, or by using Telnet via Internet: fedworld.gov. If 703-321-8020 is dialed, the NRC subsystem can be accessed from the main FEDWORLD menu first by selecting "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." A menu will display an option "U.S. Nuclear Regulatory Commission" that will lead to the NRC Online main menu. The NRC Online area also may be accessed directly by typing "/go nrc" at a FEDWORLD command line. If NRC is accessed from FEDWORLD's main menu, one may return to FEDWORLD by selecting the "Return to FEDWORLD" option from the NRC Online Main Menu. If NRC at FEDWORLD is accessed via NRC's toll-free number, full access will be available to all NRC systems, but there will be no access to the main FEDWORLD system.

If FEDWORLD is contacted using Telnet, the NRC area and menus will be available, including the Rules Menu. While documents may be downloaded and messages left, it is not possible to write comments or upload files (comments). If FEDWORLD is contacted using FTP, all files can be accessed and downloaded but uploads are not possible; a list of files without their descriptions (normal Gopher look) will be seen. An index file listing all files within a subdirectory, with descriptions, is available. There is a 15 minute time limit for FTP access.

Although FEDWORLD also may be accessed through the World Wide Web, this only provides access to download files and does not display the NRC Rules Menu.

For more information on NRC bulletin oards call Mr. Arthur Davis, Systems ntegration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov

Single copies of the proposed rule may be obtained by written request or telefax (301-504-2260) from. Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated above.

FOR FURTHER INFORMATION CONTACT: Dr Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6010, concerning the seismic and earthquake engineering aspects, and Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6574, concerning other siting aspects.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of February 1995.

For the Nuclear Regulatory Commission

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 95-4872 Filed 2-27-95; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-ANE-56]

Airworthiness Directives; Textron Lycoming ALF502L Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502L series turbofan engines. This proposal would establish reduced retirement life limits for stage 1 and stage 3-7 compressor disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. This proposal is prompted by new life analyses of these components. The actions specified by the proposed AD are intended to prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage.

DATES: Comments must be received by May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-56, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; telephone (203) 385-1470. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7148, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-ANE-56." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-ANE-56, 12 New England Executive Park, Burlington, MA 01803-5299.

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Discussion

Textron Lycoming conducted new life analyses for various components in ALF502L series turbofan engines. Textron Lycoming has determined that stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks require reduced retirement life limits. No failures have occurred in service on the ALF502L series engines, but inspections of these components from ALF502R series engines have found cracks prior to attaining current service retirement lives. This condition, if not corrected, could result in disk failure, which could result in an inflight engine shutdown and extensive engine damage.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the ALF502L series engines has not occurred. However, the service bulletins (SB) issued for these engines now bear the title, "AlliedSignal Engines." The Federal Aviation Administration (FAA) has reviewed and approved the technical contents of AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994, that describes reduced retirement lives for affected components; and AlliedSignal Engines SB No. ALF502L 72–281, dated November 30, 1994, that describes a drawdown schedule for disks already beyond the reduced retirement life limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would establish reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 184 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that the prorated reduced service life cost based on the cost of a new disk would be approximately $16,400 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $820,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Docket No. 94–ANE–56.

Applicability: Textron Lycoming ALF502L, L–2, L–2A, L–2C, and L–3 turbofan engines installed on but not limited to Canadair Challenger CL600 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage, accomplish the following:

(a) Remove from service stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with the drawdown schedule and procedures described in AlliedSignal Engines Service Bulletin (SB) No. ALF502L 72–281, dated November 30, 1994.

(b) This AD establishes new, reduced retirement life limits for stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Issued in Burlington, Massachusetts, on February 16, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4852 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950222055–5055–01]

RIN 0648–AH92

Restricting or Prohibiting Attracting Sharks by Chum or Other Means in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to restrict or prohibit the attracting of sharks by the use of chum or other means in the MBNMS. This advance notice of proposed rulemaking (ANPR) discusses the reasons SRD is considering restricting or prohibiting this activity in the MBNMS. Any restrictions or prohibitions SRD places on attracting sharks by the use of chum or other means would be to ensure that Sanctuary resources or qualities would not be adversely impacted and/or to avoid conflict among various users of the Sanctuary. SRD is issuing this ANPR specifically to inform the public of the issue and course of action under consideration by SRD, and to invite submission of written information, advice, recommendations and other comments.

DATES: Comments must be received by March 30, 1995.

ADDRESSES: Comments should be sent to Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same address and at the Monterey Bay National Marine Sanctuary office at 299 Foam Street, Suite D, Monterey, California, 93940.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

In January of 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS, during the time of year white sharks come to feed. While California state law generally makes it unlawful to "take" (e.g., catch, capture, or kill) white sharks in state waters, it does not appear to address attracting sharks for other purposes, nor does it prohibit the taking of sharks in those portions of the MBNMS outside of state waters. SRD has also received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS.

There is currently no MBNMS regulation specifically addressing the attracting of sharks in the MBNMS. There is a general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary. 15 CFR 944.5(a)(2). The discharge and deposit prohibition contains an exemption for, *inter alia*, the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary". While fishing activities in the Sanctuary are subject to various Federal and state regulations, traditional fishing activities are not regulated as part of the Sanctuary regulatory regime. Sanctuary regulations that could indirectly regulate traditional fishing operations were specifically crafted to avoid doing so. Thus, while fishing vessels are subject to the general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary, the exemption for the discharge or deposit of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" was designed to prevent the prohibition from indirectly regulating the conduct of traditional fishing operations. However, an argument has been raised that the phrase in the regulatory exemption "used in or resulting from" could be interpreted to allow the discharge or deposit of "fish, fish parts, chumming materials or bait" at any time or in conjunction with any activity, as long as the discharge or deposit is of the same material used by or generated during traditional fishing operations in the Sanctuary. As one option, SRD could amend the exemption for the discharge of "fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary" to clarify that it applies only to such discharges if they are incidental to and during the conduct of traditional fishing operations.

SRD, with input from its MBNMS Advisory Council, and a number of interested parties, has identified a number of concerns regarding the issue of attracting sharks within the MBNMS: (1) Attracting sharks by chum or other means may cause behavioral changes in the attracted species (e.g., feeding, migration); (2) attracting sharks by chum or other means may cause behavioral changes in the attracted species resulting in increased predation on prey or non-prey marine species; and (3) attracting sharks by chum or other means may increase the risk of attack to other Sanctuary users, or otherwise create user conflict in the area of the activity. Consequently, along with considering amending the regulatory exemption to the discharge and deposit prohibition as discussed above, SRD is considering specifically restricting or prohibiting attracting sharks in the Sanctuary.

The Designation Document for the MBNMS, the constitution for the Sanctuary, contains a list of activities subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area. Included as an activity subject to regulation is the following:

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of a marine mammal, sea turtle, seabird, historical resource *or other Sanctuary resource.*

See 57 FR 43310, 43316 (September 18, 1992) (emphasis added). Therefore, amending the Sanctuary regulations to restrict or prohibit the taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of sharks within the MBNMS, or attempt thereto, is authorized by the Designation Document. "Take or taking" is defined broadly in the Sanctuary regulations (15 CFR 944.3), and includes harassment of the species it currently addresses (marine mammals, seabirds and sea turtles).

To amend the regulations, SRD must follow the appropriate procedures of notice and comment rulemaking under the Administrative Procedure Act. Further, SRD is required by the National Marine Sanctuaries Act at 16 U.S.C. 1434(a)(5) to consult with the appropriate Regional Fishery Management Council before it issues any Sanctuary regulations "for fishing". SRD has sent a letter to the Pacific Fishery Management Council for its input regarding the issues identified in this ANPR.

This ANPR is an optional preliminary step to notice and comment rulemaking. SRD is issuing this ANPR specifically to inform the public of the issue and that it is considering restricting or prohibiting attracting sharks within the MBNMS, and to invite submission of written information, advice, recommendations and other comments. In particular, SRD requests comments on:

(1) What methods are used to attract sharks in the MBNMS;

(2) What methods are used to attract sharks in other areas;

(3) Whether attracting sharks by chum or other means is necessary if they are known to be naturally present in a given area;

(4) Whether attracting sharks by chum or other means causes short- or long-term behavioral changes in the attracted species or associated species that are disruptive to their normal behavior (e.g., feeding, migration, predation);

(5) Whether attracting sharks by chum or other means has adverse impacts on other MBNMS resources;

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(6) Whether attracting sharks by chum or other means in nearshore areas creates a risk to other users of those areas (e.g., surfers, swimmers, SCUBA divers, snorklers, fishermen, boaters);

(7) Whether other Sanctuary users (e.g., surfers, swimmers, SCUBA divers, snorklers, fishermen, boaters) actively avoid areas where attracting sharks occurs;

(8) Whether there are other impacts, risks or concerns resulting from attracting sharks by chum or other means in the MBNMS;

(9) Whether a restriction or prohibition against attracting sharks by chum or other means should be Sanctuary-wide or only in the nearshore areas of the MBNMS (and if the latter, what should constitute nearshore); and

(10) Any other information that may be pertinent to this issue.

During the comment period of this ANPR, SRD will hold a public meeting allowing the public to provide written or oral comments. Notice of the date, time and location of the meeting will appear in the **Federal Register**.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Authority: 16 U.S.C. 1431 *et seq.*

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: February 15, 1995.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–4854 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA No. 128P]

RIN 1117–AA26

Records, Reports, and Exports of Listed Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes to include methyl isobutyl ketone (MIBK) as a List II Chemical under the Controlled Substances Act (CSA) for the purpose of imposing controls on exports which may be destined for cocaine producing regions. This proposed action by the DEA Deputy Administrator is based on substantial evidence that MIBK is increasingly being used as a solvent in the production of cocaine hydrochloride during the conversion of cocaine base to cocaine hydrochloride. The recent steps by the Government of Colombia (GOC) to control MIBK further support this proposed action.

This proposed action will only effect export transactions; international transactions in which a U.S. broker or trader participates; and transshipments through the U.S., which are greater than 500 gallons or 1523 kilograms of MIBK destined for countries in the Western Hemisphere (with the exception of transactions destined for Canada).

DATES: Written comments and objections must be received on or before March 30, 1995.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA), specifically 21 U.S.C. section 802, provides the Attorney General with the authority to specify by regulation, additional precursor and essential chemicals as "listed chemicals" if they are used in the illicit manufacture of controlled substances. Section 802(39) also provides the Attorney General with authority to establish a threshold amount for "listed chemicals" if the Attorney General so elects. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (subpart R) appendix sec. 12.

While methyl ethyl ketone (MEK) has become the solvent of choice in the processing of cocaine base to cocaine hydrochloride, recent regulatory and enforcement efforts in Latin America have resulted in a reduced availability of MEK. Information available to DEA indicates that in response to this shortfall of MEK, cocaine laboratory operators have moved to the utilization of MIBK for the processing of cocaine base to cocaine hydrochloride. Due to information regarding the use of MIBK for cocaine processing, the dramatic increase in MIBK importation, and the importation of MIBK by some firms that the Government of Colombia (GOC) considers suspect, the GOC has recently taken steps to control the sale and distribution of MIBK.

In making the determination regarding the possible control of MIBK under the CSA, the DEA considered the following:

(1) The chemistry of the compound
(2) The legitimate use and commerce of the compound
(3) Evidence of illicit use

An examination of the chemistry of MIBK shows that it appears to be ideally suited for the conversion of cocaine base to cocaine hydrochloride. MIBK possesses the correct solubility characteristics, is partially miscible with water and is relatively volatile.

The U.S. is a major producer of MIBK and exports this chemical to Latin America. The major commercial application for MIBK is as a solvent for vinyl, epoxy and acrylic resins, for natural resins, for nitrocellulose and for dyes in the printing industry. It is also a versatile extracting agent, e.g. for the production of antibiotics, or the removal of paraffins from mineral oil for the production of lubricating oils. MIBK's uses are similar to those of MEK. There is a legitimate need for these chemicals in Colombia.

Although Colombian imports of MEK have decreased, U.S. firms believe that the legitimate need for MEK is being met. In contrast, however, importations into Colombia of MIBK have increased dramatically in 1994 following regulatory and enforcement actions taken by the GOC and other countries against MEK. No significant increase in the legitimate need for MIBK has been identified. The amount of MIBK imported into Colombia in the second quarter of 1994 exceeded the total quantity imported over the preceding 15 months. Some of these importations were to firms which the GOC considers suspect.

The use of MIBK in cocaine hydrochloride production has recently been scientifically confirmed via the identification of MIBK in seized cocaine hydrochloride. While MEK is the most frequently seen solvent appearing in cocaine hydrochloride, MIBK has also been identified in seized material. Recent samples show an increased incidence of MIBK in seized cocaine hydrochloride. During the fourth quarter

of 1994, 54 percent of the cocaine hydrochloride exhibits received under DEA's solvent analysis program contained MIBK. The recent increase in the incidence of MIBK in seized cocaine hydrochloride is consistent with the timing of initial reports regarding its illicit use.

Given these factors, DEA has determined that the control of MIBK as a List II Chemical is warranted. Since the illicit use of MIBK for cocaine processing occurs in Latin America, the DEA proposes that MIBK shipments exported from the U.S., shipments transshipped or transferred through the U.S., and international transactions in which a U.S. broker or trader participates, be considered regulated transactions if destined for any country in the Western Hemisphere (with the exception of transactions destined for Canada) 21 U.S.C. section 802(39)(A)(iii). In addition, the DEA proposes that a threshold similar to that of MEK be established for MIBK. DEA proposes that a threshold of 500 gallons (by volume) or 1523 kilograms (by weight) be established for MIBK. Therefore, this proposed action will only effect (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S., which are greater than 500 gallons or 1523 kilograms of MIBK destined for designated countries. Import transactions of MIBK into the U.S. (not destined for transshipment or transfer to designated countries), and domestic transactions of MIBK are excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d).

The Deputy Administrator hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. A review of maritime shipments of MIBK reveals that during a two year period, there were less than 100 above-threshold export transactions destined for designated countries. This proposed rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Durg traffic control, reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1310 be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by adding a new paragraph (b)(10) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) * * *

(10) Methyl Isobutyl Ketone (MIBK)

* * * * *

3. Section 1310.04 is proposed to be amended by adding new paragraph (f)(2)(v) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(v) Export and International Transactions to Designated Countries, and Importations for Transshipment or Transfer to Designated Countries.

Chemical	Treshold by volume	Threshold by weight
(A) Methyl Isobutyl Ketone (MIBK)	500 gallons	1523 kilograms.
(B) Reserved		

4. Section 1310.08 is proposed to be amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(c) Domestic transactions of Methyl Isobutyl Ketone (MIBK).

(d) Import transactions of Methyl Isobutyl Ketone (MIBK) destined for the United States.

(e) Export transactions, international transactions, and import transactions for transshipment or transfer of Methyl Isobutyl Ketone (MIBK) destined for Canada or any country outside of the Western Hemisphere.

Dated: February 16, 1995.

Stepehn G. Greene,

Deputy Administrator.

[FR Doc. 95–4795 Filed 2–27–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–95–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations governing the Padanaram Bridge at mile 1.0 over the Apponagansett River in Dartmouth, Massachusetts. This proposal will allow the Pandanaram Bridge to open on signal from May 1 through October 31 once an hour on the hour, between 9 a.m. and 8 p.m. instead of twice an hour on the hour and half hour. This change should help relieve traffic congestion created by bridge openings while still providing for the needs of navigation.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, or may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this

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rulemaking (CGD01–95–008), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½" by 11", suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Padanaram Bridge at mile 1.0 over the Apponagansett River between Dartmouth and South Dartmouth, MA, has a vertical clearance of 9' above mean high water (MHW) and 12' above mean low water (MLW).

The current operating regulations require the bridge to open on signal on the hour and half hour, 5 a.m. to 9 p.m. May 1, through October 31. At all other times at least six hours advance notice must be given.

In the spring of 1993, the Town of Dartmouth requested a change from the operating regulations to permit openings once an hour rather than twice an hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth during the traffic delays caused by the bridge opening every half hour. The Town of Dartmouth requested that the bridge be required to open only once an hour between 5 a.m. and 9 p.m., for a test period of 60 days, to evaluate the effects on vehicular and marine traffic. This request was approved and the first deviation from the permanent regulations, published in the **Federal Register** (58 FR 38056; July 15, 1993), was effective from July 1, 1993 through August 29, 1993. It provided an opportunity to evaluate the effects of the hourly openings on marine and vehicular traffic. The Coast Guard implemented a second deviation, published in the **Federal Register** (58 FR 47067; September 7, 1993), for a thirty-two day period to evaluate an alternative opening time period for the Padanaram Bridge. This second deviation added two time periods when the bridge could still open on the hour and half hour: between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m. The Coast Guard received 29 letters commenting on the two deviations. Twenty were in favor of hourly openings and nine were opposed to any change. Most of the comments in opposition to any change were based on the concern over the lack of facilities to tie up vessels while awaiting openings.

After the two deviation periods expired, the Town of Dartmouth installed traffic signals, automatic traffic gates, navigational lights and clearance gauges at the bridge. The Coast Guard subsequently authorized a third deviation for a period of 90 to evaluate the effects of these improvements to the bridge. This third deviation, published in the **Federal Register** (59 FR 31931; July 21, 1994), was effective from June 3, 1994 through August 31, 1994. It allowed the Padanaram Bridge to open on signal on the hour and half hour between 5 a.m. and 9 a.m. between 8 p.m. and 9 p.m., and once an hour on the hour between 9 a.m. and 8 p.m. The Coast Guard received two letters commenting on the third deviation. One letter favored the hourly openings and one letter was opposed to the hourly openings.

Discussion of Proposed Amendments

The Town of Dartmouth has requested that the Coast Guard make a permanent change to the operating regulations for the Padanaram Bridge to allow the draw to open on signal from May 1 through October 31, on the hour and half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m., and on the hour between 9 a.m. and 8 p.m. At all other times a four hour advance notice would be required for bridge openings. The drawtenders will be on call to open the draw when the advance notice is given.

As part of this action, the bridge owner would be required to keep, in good legible condition, clearance gauges for each draw with figures not less than twelve inches high designed, installed and maintained according to the provisions of 33 CFR 118.160.

The provision for the passage of emergency vessels at any time is published at 33 CFR 117.31 for all bridges and is no longer required to be published for each waterway.

Appendix A to part 117 would be amended to add the Apponagansett River entry under the State of Massachusetts subheading to advise mariners that a marine radio is installed at the bridge for opening requests.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the bridge. It will require only that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.587 is revised to read as follows:

§ 117.587 Apponagansett River.

The Padanaram Bridge, mile 1.0 at Dartmouth, shall operate as follows:

(a) From May 1 through October 31, the bridge shall open on signal:

(1) Twice an hour, on the hour and the half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m.;

(2) Once an hour, on the hour between 9 a.m. and 8 p.m.

(b) At all other times the bridge shall open if at least four (4) hours advance notice is given.

(c) Mooring facilities shall be maintained for vessels to make fast while waiting for the bridge to open.

(d) The owners of this bridge shall provide, and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

3. Appendix A to part 117 is amended by adding the Apponagansett River entry in alphabetical order under the State of Massachusetts subheading to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call signs	Calling channel	Working channel
Massachusetts						
Apponagansett River	1.0	Dartmouth	Padanaram, Town of Dartmouth		13	13

Dated: February 6, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–4906 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–95–001]

RIN 2115–AE47

Drawbridge Operation Regulations; Lagoon Pond, Tisbury, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the Lagoon Pond Bridge over Lagoon Pond at mile 0.0 in Tisbury, Massachusetts. The special operating regulations formerly published at 33 CFR 117.79 were deleted in error. The bridge has not been operating in accordance with the existing general regulations. This proposal is being considered to correct the deletion error and republish the operating regulations for the bridge.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, or may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–001), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½" by 11", suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant

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Commander Samuel R. Watkins. Project Counsel, District Legal Office.

Background and Purpose

The Lagoon Pond Bridge over Lagoon Pond in Tisbury, Massachusetts, has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MLW). Through an error, the previous special operating regulations for this bridge were deleted from 33 CFR 117.79. Therefore, the bridge currently is required to open on signal at all times under the general operating regulations for drawbridges. Regulations published in the **Federal Register** of October 7, 1982 (47 FR 44258) required that the draw:

(a) Open on signal from September 16 through May 14 provided 24 hours advance notice is given.

(b) From May 15 through September 15, open on signal only from 8:15 a.m. to 8:45 a.m., 10:15 a.m. to 11 a.m., 3:15 p.m. to 4 p.m., 5 p.m. to 5:45 p.m., and 7:30 p.m. to 8 p.m. Throughout the remainder of this period, the draw was required to open for the passage of vessels if 4 (four) hours advance notice is given.

(c) Open at any time for public vessels of the United States, any vessels of state or municipal governments used for public safety, and in case of emergency or during severe storm conditions.

The bridge owner, the Massachusetts Highway Department (MHD), has been operating the bridge in accordance with the deleted regulations on an unofficial basis. The Coast Guard is proposing to publish regulations that reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Proposed Amendments

The MHD, after being advised of the deletion of the regulations covering the Lagoon Pond Bridge, requested that operating hours for the bridge be published to read as follows:

(a) The draw shall open on signal from May 15 through September 15, from 8:15 a.m. to 8:45 a.m., from 10:15 a.m. to 11 a.m., from 3:15 p.m. to 4 p.m., from 5 p.m. to 5:45 p.m., and from 7:30 p.m. to 8 p.m. At all other times the draw will open for the passage of vessels if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) The draw shall open on signal from September 16 through May 14, if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide, and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Under the proposed rule, Appendix A to Part 117 also will be amended to add the Lagoon Pond Bridge (under the Massachusetts subheading) to advise mariners that a marine radio is installed at the bridge for requesting openings.

The public vessel/emergency opening provisions of the deleted rule will not be incorporated into the proposed new rule. Those provisions are now contained in 33 CFR 117.31, a general regulation applicable to all drawbridges.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Lagoon Pond Bridge. It will require only that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.600 is added to read as follows:

§ 117.600 Lagoon Pond.

The draw of the Lagoon Pond Bridge, mile 0.0, in Tisbury, Massachusetts, shall operate as follows:

(a) The draw shall open on signal from May 15 through September 15, from 8:15 a.m. to 8:45 a.m., from 10:15 a.m. to 11 a.m., from 3:15 p.m. to 4 p.m., from 5 p.m. to 5:45 p.m., and from 7:30 p.m. to 8 p.m. At all other times the draw will open from the passage of vessels if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) The draw shall open on signal from September 16 through May 14 if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

3. Appendix A to part 117 is amended by adding an entry in alphabetical order under the heading "Massachusetts" for Lagoon Pond to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
Massachusetts.						
Lagoon Pond	0.0	Tisbury	Lagoon Pond	MHD	13	13

Dated: January 11, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–4905 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–5162–5]

Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting; Negotiated rulemaking on small nonroad engine regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. The purpose of the meeting is to continue identification and discussion of issues, discuss interests of committee members, and hear reports from task groups.

DATES: The committee will meet on March 21 and 22, 1995 from 10 a.m. to 6 p.m.

ADDRESSES: The location of the meeting will be the Holiday Inn East, 3750 Washtenaw, Ann Arbor, MI 48104, (313) 971–2000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical and substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor Michigan 48105, (313) 668–4344. Persons needing further information on committee procedes should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or the Committee's facilitator, Lucy More or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico 87501, (505) 982–9805.

Dated: February 23, 1995.

Deborah Dalton,

Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 95–4892 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–60–M

40 CFR Part 52

[CA 78–2–6824; FRL–5162–4]

Approval and Promulgation of Implementation Plans; California Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to conditionally approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions using an emissions-limiting economic incentives program, the NO_X and SO_X Regional Clean Air Incentives Market (NO_X and SO_X RECLAIM). This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the South Coast Air Quality Management District (SCAQMD) with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an economic incentive program (EIP) in order to reduce emissions at a significantly lower cost.

The intended effect of proposing approval of Regulation XX is to regulate emissions of NO_X and SO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate this regulation into the federally approved SIP. EPA has evaluated this regulation and is proposing to conditionally approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. The EPA's final conditional approval is contingent on the SCAQMD providing the Agency with an enforceable commitment which addresses and cures all of the deficiencies associated with NO_X and SO_X RECLAIM within 12 months of the publication of the proposed conditional approval. In the event that SCAQMD fails to provide EPA with such a commitment, then EPA will publish a final rule to approve NO_X and SO_X RECLAIM in the form of a limited approval/limited disapproval action. Both the conditional approval action and the limited approval/limited disapproval action are discussed in this NPRM.

DATES: Comments must be received on or before March 30, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the new regulation and EPA's evaluation report of the regulation are available for public inspection at EPA's Region 9 office (address above) during normal business hours. Copies of the submitted regulation are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Kenneth Israels, Rulemaking Section (A–5–3), Air and Toxics Division,

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Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1194.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this proposal by reference.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls by May 31, 1995, for those sources where installation by that date is practicable. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme,[1] therefore this area was subject to the RACT requirements of section 182(b)(2), cited above, and the November 15, 1992 deadline.[2]

On April 7, 1994, EPA published a final rule concerning EIPs entitled "Economic Incentive Program Rules," (EIP Rules) in order to fulfill the requirements of section 182(g)(4)(A) of the Act (see 59 FR 16690). The EIP Rules establish several requirements which State programs must meet.

These requirements are:

- *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.
- *Program scope.* This element shall contain a clear definition of the sources affected by the program.
- *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's reasonable further progress (RFP) plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the State or local EIP.
- *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally-sound, shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development.
- *Source requirements.* This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable.
- *Projected results and audit/reconciliation procedures.* This program element includes a commitment to ensure the timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements. (see 40 CFR 51.493(f)(3)(i))
- *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design.
- *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.
- *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and enforceable by both the State and EPA. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

The EIP Rule should be referred to for further information on the EIP requirements and is incorporated into this proposal by reference.

The State of California submitted the regulation being acted on in this document on March 21, 1994. This document addresses EPA's proposed action for SCAQMD, Regulation XX, NO_X and SO_X RECLAIM. SCAQMD adopted Regulation XX on October 15, 1993. This submitted regulation was found to be complete on April 11, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V,[3] and is being proposed for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. The regulation was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this regulation.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X regulation, EPA must evaluate the regulation for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4 of this notice. Among these provisions is the requirement that an EIP rule must, at a minimum, be consistent with attainment and RFP requirements found in the CAA.

For the purpose of assisting state and local agencies in developing rules which incorporate economic incentive strategies, EPA prepared the EIP Rules, cited above (59 FR 16690). In the EIP Rules, EPA provides guidance on how EIPs can be designed to be consistent with the attainment and RFP requirements of the CAA. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted EIPs meet federal requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD's Regulation XX, NO_X and SO_X RECLAIM, is a new rule which was adopted to control NO_X and SO_X emissions using an emissions-limiting economic incentives program applicable to facilities with four or more tons of NO_X or SO_X emissions per year. Facilities with NO_X or SO_X emissions from permitted equipment participate in a pollutant-specific market in order to reduce emissions at a significantly lower cost. The program subsumes fourteen SCAQMD Air Quality Management Plan (AQMP) control measures and is projected to reduce emissions by an equivalent amount.

The regulation discussed below is being proposed for conditional approval under Section 110(k)(4) of the CAA because it strengthens the SIP and EPA is optimistic that the SCAQMD will provide EPA a commitment within 12 months of the publication of this proposal and prior to the publication of the final rule. Such a commitment must obligate the SCAQMD to revise Regulation XX to correct the identified Appendix D deficiencies, within one year after the date of publication of the final rule. The conditional approval shall be treated as a disapproval if the SCAQMD fails to comply with the submitted commitment.

The NO_X and SO_X RECLAIM program strengthens the SIP by placing a declining emissions cap on subject facilities. The declining cap is based on the application of RACT (or requirements more stringent than RACT) at the facility and is reduced to overall emissions below RACT levels in order to bring the South Coast Air Basin into attainment of the ozone NAAQS. Regulation XX is comprised of 12 rules and 2 associated appendices which are described below:

- Rule 2000—General. This rule provides the program's objective, its purpose, and applicable definitions;
- Rule 2001—Applicability. This rule provides the criteria for inclusion in NO_X and SO_X RECLAIM, requirements for sources electing to enter NO_X and SO_X RECLAIM and identifies provisions in SCAQMD rules and regulations that do not apply to NO_X and SO_X RECLAIM sources;
- Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X). This rule establishes the methodology for calculating initial facility allocations for NO_X and SO_X RECLAIM;
- Rule 2004—Requirements. This rule establishes requirements for operating under the NO_X and SO_X RECLAIM program. The rule includes provisions pertaining to permits, allocations, reporting, variances, penalties, and breakdowns;
- Rule 2005—New Source Review (NSR) for RECLAIM. This rule sets forth pre-construction review requirements for new facilities subject to the requirements of the NO_X and SO_X RECLAIM program and for modifications to existing NO_X and SO_X RECLAIM facilities;
- Rule 2006—Permits. This rule sets forth procedures for issuing and amending NO_X and SO_X RECLAIM facility permits;
- Rule 2007—Trading Requirements. This rule defines the NO_X and SO_X RECLAIM trading credit (RTC) and establishes the trading requirements for NO_X and SO_X RECLAIM;
- Rule 2008—Mobile Source Credits. This rule establishes criteria for and requirements on utilizing emission reductions generated from SCAQMD 1600 series rules as RTCs;
- Rule 2010—Administrative Remedies and Sanctions. This rule specifies provisions to ensure that NO_X and SO_X RECLAIM facilities which exceed their allocation provide compensating emission reductions. This rule also provides for administrative penalties for NO_X and SO_X RECLAIM rule violations;
- Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur Emissions. This rule and its appendix (Appendix A) establish the monitoring, reporting, and recordkeeping requirements for SO_X emissions under the NO_X and SO_X RECLAIM program;
- Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen Emissions. This rule and its appendix (Appendix A) establish the monitoring, reporting, and recordkeeping

[1] The Los Angeles-South Coast Air Basin was designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA made a finding of nonsubmittal for NO_X RACT in SCAQMD on April 21, 1993. NO_X RECLAIM in combination with other measures satisfy this requirement. On October 21, 1994, EPA found that SCAQMD had submitted measures satisfying the NO_X RACT requirements.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

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requirements for NO_X emissions under the NO_X and SO_X RECLAIM program; and

• Rule 2015—Backstop Provisions. This rule specifies NO_X and SO_X RECLAIM program auditing requirements and actions that the SCAQMD will take in the event that the environmental goals of RECLAIM program are not achieved.

• Although the approval of Regulation XX will strengthen the SIP, the regulation still contains deficiencies, identified below and in the associated technical support document (TSD), which are required to be corrected pursuant to section 182(b)(2) of the CAA. The NO_X and SO_X RECLAIM program contains the following deficiencies:

• The program allows the use of variances to avoid compliance with program requirements; this results in the program failing to meet the requirements of section 110(i) of the Act,

• The program does not meet certain new source review requirements of the Act and Part D,

• The program allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provisions; this results in the program failing to meet the requirements of section 110(i) of the Act,

• The program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) is inconsistent with section 110(i) of the Act, and

• The submittal does not provide all of the necessary demonstrations to ensure that the requirements of EPA's EIP Rules are being met.

A detailed discussion of the rule deficiencies can be found in the TSD for Regulation XX (January 5, 1995), which is available from the U.S. EPA, Region 9 office. Because SCAQMD is not using Regulation XX as a means to achieve or maintain attainment of the SO_2 NAAQS,[5] the PM_{10} NAAQS,[6] or the NO_2 NAAQS, EPA does not believe that Regulation XX will interfere with SCAQMD's ability to meet the requirements necessary in the Act for achieving or maintaining these standards. EPA believes that the penalty provisions found in RECLAIM Rule 2004 will be adequate for enforcement of the RECLAIM program. However, EPA does not believe that such penalty provisions would necessarily be adequate for other program designs. EPA will evaluate the penalty provisions of each program design on an individual basis, paying particular attention to the program elements found in the EIP rule (see 40 CFR 51.493(i) and 59 FR 16700–16701 dated April 7, 1994) where applicable.

Because of the above deficiencies, EPA cannot grant approval of this regulation under section 110(k)(3), section 110(a)(2), section 169A, and Parts C and D of the Act. Also, because the submitted regulation is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the regulation under section 110(k)(3). However, EPA may grant a conditional approval under section 110(k)(4) based on a commitment by the SCAQMD to revise the regulation to correct the identified deficiencies within one year of the Notice of Final Rulemaking of the conditional approval. EPA is optimistic that the SCAQMD will commit to adopt a regulation correcting the deficiencies within the required timeframe. The commitment letter must contain a schedule of interim steps (with dates) for the regulation. The State of California must submit the commitment letter to EPA. Therefore, EPA is proposing to give conditional approval to submitted Regulation XX under section 110(k)(4) of the CAA.

Under section 110(k)(4), the conditional approval shall be treated as a disapproval of a rule if the SCAQMD fails to adopt rules correcting the deficiencies within the time allowed. Under 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD.

In the event that SCAQMD is unable to provide EPA with a commitment which addresses all of the deficiencies identified by EPA within 12 months of the publication of this NPRM, then EPA will publish a final rule which finalizes a limited approval/limited disapproval action on the NO_X and SO_X RECLAIM program in lieu of publishing a final rule which finalizes a conditional approval action on the NO_X and SO_X RECLAIM program. In the instance in which SCAQMD fails to provide the commitment within 12 months of the publication of the NPRM, the limited approval/limited disapproval would be finalized based on the same deficiencies noted elsewhere in this document and the associated TSD. As noted above, because of the noted deficiencies, EPA cannot grant approval or partial approval of this regulation under section 110(k)(3) and part D. However, EPA may grant a limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In the instance where a commitment from SCAQMD is not submitted within 12 months of the publication of the NPRM, in order to strengthen the SIP, EPA will finalize a limited approval of SCAQMD's submitted Regulation XX under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA will also finalize a limited disapproval of this regulation because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the regulation does not fully meet the requirements of part D of the Act. As noted above, if the identified deficiencies are not corrected within 18 months of EPA's final limited disapproval, the sanctions described in section 179 of the CAA will be applied. It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's final limited disapproval action in this NPRM will not prevent the SCAQMD or the EPA from enforcing this regulation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

[5] SCAQMD is presently in attainment of the SO_2 NAAQS.

[6] In this instance, SCAQMD is not asserting and EPA is not finding that SO_X RECLAIM is designed to be used as a means to identify or implement best available control measures (BACM) for PM_{10} in the South Coast Air Basin. If at some point in the future SCAQMD decides to use SO_X RECLAIM as a means of fulfilling this requirement, an additional SIP submittal must be made at which time EPA will apply the appropriate review criteria.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2). This discussion applies in the case where EPA finalizes a limited approval/limited disapproval action as well.

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the submitted commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it impose any new federal requirements.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds, Nitrogen dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 15, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–4891 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR PART 52

[IL97–1–6575; FRL–5158–6]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on July 8, 1994, for the purpose of establishing an Employee Commute Options Program (ECO Program) in the Chicago area, including the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County. The rationale for the proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before March 30, 1995.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, (AR–18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the ECO Program SIP revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

(It is recommended that you telephone Jessica Radolf at (312) 886–3198 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Regulation Development Section, Regulation Development Branch, (AR–18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–3198.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (amended Act), requires employers with 100 or more employees in the counties of Cook, Lake, Dupage, McHenry, Kane, and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County to participate in a trip reduction program. The concerns that lead to the inclusion of this Employee Commute Options (ECO) provision in the amended Act are that more people are driving and they are driving longer distances. The increase in the number of drivers and the increase in the number of vehicle miles traveled (VMT) currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision outlines the requirements for a program designed to minimize the use of single occupancy vehicles in commuting trips in order to gain emissions reductions beyond what can be and will be obtained through stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the amended Act requires that employers in severe and extreme ozone and carbon monoxide (CO) nonattainment areas submit their compliance plans to the State two years after the SIP is submitted to USEPA. These compliance plans developed by employers must be designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must convincingly demonstrate that the employers will meet the target no later than 4 years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

Section 110(k) of the amended Act contains provisions governing USEPA's action on SIP submittals. The USEPA can take one of three actions on ECO Program SIP submittals. If the submittal satisfactorily addresses all of the required ECO Program elements, the USEPA shall grant full approval. If the submittal contains approvable commitments to implement all required ECO Program elements, but the State does not yet have all of the necessary

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regulatory authority to do so, the USEPA may grant conditional approval. Finally, if the submittal fails to adequately address one or more of the mandatory ECO Program elements, the USEPA shall issue a disapproval.

On July 8, 1994, the State of Illinois submitted a SIP revision request including Title 92 of the Illinois Administrative Code Part 600: Employee Commute Options to USEPA in order to satisfy the requirements of section 182(d)(1)(B) of the amended Act in the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County, Illinois. The USEPA issued a finding of completeness on this submittal on July 14, 1994.

In order to gain approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ECO Program that includes a process for compliance demonstration; and, (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The USEPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December, 1992). A copy of this guidance has been included in this rulemaking docket.

II. Analysis

The State has met the requirements of section 182(d)(1)(B) of the amended Act by submitting a SIP revision that implements all required ECO Program elements as discussed below.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by establishing an AVO for the entire Chicago severe ozone nonattainment area. The AVO was determined to be 1.092 based on the most recent census data and was included as part of the Illinois SIP on July 8, 1994. Illinois has affirmed that this AVO is representative of the AVO at the time of submittal as required by section 182(d)(1)(B).

The Chicago area AVO was calculated using a methodology that did not include transit ridership in the numerator of the AVO calculation, resulting in a lower AVO than if transit riders had been included. Transit ridership is, however, included in the APO calculation. USEPA staff had informed Illinois on November 19, 1992, that USEPA could approve a definition of AVO that did not include transit. Final ECO guidance was issued on December 17, 1992, that would not allow for this type of AVO calculation.

Illinois' position is that including transit ridership in the AVO calculation would require a 25 percent increase above the average vehicle occupancy over existing conditions, which already relies very heavily on transit ridership, and this would penalize the Chicago area for having invested heavily in an extensive public transit infrastructure.

The State points out that the Illinois program has the support of affected employers that feel that the Illinois AVO target is attainable. It is the State's position that adoption of a transit oriented definition, with a much higher target, would be perceived by employers as unattainable and would erode their support.

In a June 10, 1994, letter from Administrator Carol M. Browner to Senator Frank R. Lautenberg, USEPA affirmed that "our continuing effort here at EPA is to make the ECO Program work in ways that make sense at the local level." USEPA believes that Illinois' calculation of the AVO baseline without transit ridership reflects local concerns, recognizes the already significant investment in local and Federal dollars to develop and operate an existing major public transit infrastructure, and is approvable because it is consistent with Clean Air Act section 182 (d)(1)(B) language that allows for average vehicle occupancy rates, "* * * reflecting existing occupancy rates and the availability of high occupancy modes." Illinois correctly points out that if transit ridership is included in the AVO baseline then cities like Chicago will have a much higher target AVO than some other cities simply because there is an efficient rail system already in place.

In light of USEPA's prior indication to Illinois that it could approve the AVO calculation, and the agency expressed desire to allow flexibility in implementing the ECO program, USEPA proposes to approve the AVO calculation.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. Illinois has met this requirement by setting the target APO at 1.36 which is 25 percent above the AVO of 1.092.

3. ECO Program

State or local law must establish ECO Program requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Program Guidance issued December 1992, USEPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO Program requirements.

State and/or local laws must require that initial compliance plans convincingly demonstrate prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the Act's requirement that initial compliance plans convincingly demonstrate compliance will be met. This demonstration can have any of four forms or any combination of these.

One option is for the State to include in the SIP evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and that plans that are not convincing will be rejected.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by USEPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by USEPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include financial penalties for employers who fail to meet the target APO, and/or compliance incentives that are large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own.

Illinois has met these requirements by providing evidence in the SIP that Illinois Department of Transportation resources are available to implement the first option. Illinois has contracted with several consulting firms to administer and monitor the program, to develop a training program for employers, and to prepare informational and educational materials.

Illinois will begin to notify the approximately 5,400 employers in the Chicago area with 100 or more employees in three staggered groups. Beginning in January 1995, registration packages were to be sent to the largest 250 employers representing approximately one third of all affected employees. Registration packages will be mailed to the second and third groups of employers in April 1995, and July 1995, respectively. Registration packages will include a complete guidance document, all necessary forms, information regarding training and information regarding how to withdraw from the program if the number of employees at the worksite falls below 100. Registration, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet.

Each affected employer will receive program guidance that explains the requirements of the program and provides guidelines for developing approvable compliance plans for two phases of the program. In Phase 1—Start-Up (1994 to 1996) employers have the option of developing initial compliance plans using one of 14 start-up packages or the option of utilizing the value-added system. In Phase 2—Compliance (1996 to 1998) employers that have implemented their initial compliance plan for two years, must develop a renewal compliance plan using the value-added approach.

Phase 1—Start-Up (1994 to 1996)

Option A, ECO Start-up packages, allows employers to choose one of 14 start-up packages, each of which contains a fixed set of support measures that must be implemented. The required measures are minimum requirements and employers may supplement these packages by implementing additional strategies.

The start-up packages include: (1) Rideshare with Support; (2) Ride-share with Guaranteed Ride Home; (3) Rideshare with On-Site Amenities; (4) Rideshare with Vanpool Support; (5) Transit with Guaranteed Ride Home; (6) Transit with On-Site Transit Pass/Token Sales; (7) Transit with Transit Check Participation; (8) Transit with Shuttle Service; (9) Bicycle/Walk Program; (10) Telecommuting; (11) Compressed Work Week; (12) Parking Cash Out; (13) Transportation Allowance; and, (14) Episodic Program. Each of these packages requires that a trained employee transportation coordinator be hired by the employer to develop and implement the package. USEPA believes that initial employer compliance plans that include any of thes start-up packages could convincingly demonstrate compliance during the first four years of the program.

Option B, the Value-Added System, would allow employers to develop an initial compliance plan that is customized to the worksite. Employers would work through a series of steps for building up the value of a compliance plan to a level that will ensure compliance by selecting from a menu of trip reduction strategies that each has a designated vehicle reduction value. These steps include: (1) Work hour programs (telecommuting and compressed work week); (2) trip reduction support functions for carpool, vanpool, transit, bicycle, and walk programs; and (3) use of financial incentives and disincentives. Vehicle reduction estimates were developed for each support function and financial incentive and disincentive for three APO ranges and three transportation environments. These values are applied using a series of worksheets to estimate both the singular and additive effects of the proposed trip reduction strategies.

Phase 2—Compliance (1996–1998)

After employers have implemented their initial compliance plan for two years, they must develop and implement a renewal compliance plan based on the value-added approach that is designed to attain the target APO.

The Illinois Department of Transportation shall within 90 days of a plan submittal evaluate the compliance plan. An employer whose compliance plan is not approved will be required to submit a revised plan within 60 days of notification.

USEPA proposes to accept the Illinois program as a viable ECO Program that will reduce vehicle miles traveled (VMT) in the Chicago severe ozone nonattainment area. The June 10, 1994, letter from Administrator Carol Browner to Senator Frank R. Lautenberg stresses USEPA's commitment to policies that demonstrate ongoing flexibility in the ECO Program. USEPA will allow "states to grant employers credit for any measure that reduces employee commute vehicle trips in gasoline-fueled vehicles." Further, the letter provides that States may approve employer plans that include seasonal components if the plans will achieve the trip reduction goal as determined by the State.

USEPA believes approval of the Illinois' episodic Start-up package provides full flexibility in establishing a viable, longterm ECO Program in Illinois. The Illinois Episodic Start-up package is a temporary, seasonal option in a program that phases-in increasingly stringent requirements in which employers must achieve the State's trip reduction goals four years after the SIP submittal. Employer's may implement the episodic start-up package only during the first two years of the ECO Program. After which, all employers must switch to the value-added approach and be in compliance by July 8, 1998. For these reasons the episodic start-up package is being proposed for approval as part of Phase 1 of the Illinois ECO Program. During the Phase 1 period USEPA expects the episodic start-up package to serve as a demonstration project and for the purpose of collecting information on its effectiveness. The episodic strategy is not being proposed for approval for the period after the first two years of the ECO Program and all employers must meet the requirements associated with the value-added approach.

4. Enforcement Procedures

States and local jurisdictions need to include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and no less than the expected cost of compliance.

Illinois' ECO SIP has met this requirement by including in its ECO legislation substantial penalties for failure to comply with any provision of the regulation. A violator may be subject to a fine of up to $10,000 and up to $1000 per day for each violation. Violations include: (1) Knowingly failing to register or to submit a survey, or a compliance plan for an affected worksite; (2) knowingly falsifying or misrepresenting information provided in an employer survey or compliance plan; (3) failing to make a good faith effort to implement a compliance plan. Affected employers who make a good faith effort to implement their approved compliance plans, but fail to achieve the target APO will not be subject to penalties.

III. Proposed Rulemaking Action and Solicitation of Comments

The USEPA proposes to approve the ECO SIP revision submitted by the State of Illinois. The State of Illinois has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the amended Act. The SIP includes a verifiable estimate of the areawide AVO

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at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less than 25 percent above the areawide AVO for all such trips. Employer notification was scheduled to begin in January 1995. Registration forms, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet. Mailing of renewal notices will begin in January 1997.

Substantial penalties that will provide an adequate incentive for employers to comply and are no less than the expected cost of compliance are included in the regulation. USEPA is, therefore, proposing to approve this submittal. Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received by March 30, 1995 will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–4789 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–27, RM–8582]

Radio Broadcasting Services; Yazoo City, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mississippi College, licensee of Station WHJT(FM), Channel 228A, Clinton, Mississippi, proposing the deletion of vacant Channel 229A at Yazoo City, Mississippi. Any party wishing to express an interest in Channel 229A Yazoo City, Mississippi, should file their expression of interest by the initial comment deadline specified herein.

DATES: Comments must be filed on or before April 17, 1995, and reply comments on or before May 2, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Smithwick & Belediuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–27, adopted February 9, 1995, and released February 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–4846 Filed 2–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5416

DLA Acquisition Regulation; Type of Contracts

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency proposes to add coverage by adding a new part to 48 CFR Chapter 54, the Defense Logistics Acquisition Regulation (DLAR) Part 5416. The proposed coverage affects regulations on the use of solicitation provisions and contract clauses for Economic Price Adjustments (EPA). Comments are hereby requested on the proposed rule. The proposed DLAR coverage expands the use of EPA based on established prices to encompass industry-wide and geographically based market price references, expands the use of EPA based on indexes to encompass indexes for commercial products or services which are identical or similar to the end products to be provided under the contract, and authorizes the development and use, subject to established agency review and approval procedures, of clauses using EPA references described above. The proposed coverage is being published because it is expected to have an effect beyond the internal operating procedures of DLA and to provide an opportunity for public participation and comment.

DATES: Comments on the proposed DLAR rule must be submitted in writing to the address shown below on or before May 1, 1995, to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22304–6100 FAX: (703) 274–0310.

FOR FURTHER INFORMATION CONTACT: Melody Reardon, Defense Logistics Agency, AQPLL, (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Fuel Supply Center, a major contracting activity of DLA, has historically utilized a method of price adjustment in the bulk petroleum area using price indexes for the same or similar end products (most recently, actual monthly sales price averages published by the Department of Energy in the Petroleum Marketing Monthly) and using market price assessments for commercial products published in industry trade journals. For the past few years, these EPA clauses have either been approved by the Director, Defense Procurement, or authorized under individual deviations granted by the Executive Director, Procurement, DLA. Deviations were requested because the types of EPA references used in these clause are not specifically recognized under the three general types of EPA references at FAR 16.203. Currently, FAR 16.203–1(a) and its related coverage and clauses, recognize EPA references based on established market or catalog prices of the individual contractor only. The proposed DLAR coverage will expand this to include industry-wide and geographically specific market price assessments and authorize the development and use of clauses on that basis. FAR 16.203–1(c) and its related coverage recognize EPA references based only on indexes for labor or materials. The proposed DLAR coverage would expand this to include indexes for the same or similar commercial end products and authorize the development and use of clauses on that basis.

None of the three EPA types currently encompassed by the FAR are appropriate for many of the competitive procurements of commercial products undertaken by DFSC and other DLA contracting offices. The use of an EPA reference based on an individual contractor's established price or cost of materials is impractical for procurements under which indefinite quantity contracts will be issued. Unique EPA references for each offeror engender relative price variations during the delivery period, making it impossible to determine the most favorable offer at time of award. This creates a significant price risk for the Government and undermines the competitive process. Use of an index based on raw material cost ignores the effect of market conditions which affect producer margins. This creates a price risk for the Government in periods where margins are contracting and for the contractors in periods where the margins are expanding. Such fluctuations can be significant in petroleum markets. Given the need for a common EPA reference, a reference that more closely follows market prices for the end item reduces price risk for both the Government and the contractor. Such references are also more in conformance with commercial practice.

B. Regulatory Flexibility Act

The proposed change is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The primary user of the new DLAR coverage will be the Defense Fuel Supply Center, which has been utilizing these types of EPA references since the early 1980s. The proposed rule will therefore not represent a change for small entities doing business with the DFSC. Flexibility is also limited by the need to establish a common EPA reference for competing offerors, as discussed above. Given this need, establishing the reference based on the same or similar end products as being provided under the contract, as opposed to labor or material costs, minimizes the price risk experienced by small entities. An initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments will also be considered concerning the effect of the proposed rule on small entities in accordance with section 612 of the Act. Such comments must be submitted separately and cite this case in correspondence.

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5416

Government procurement.

Therefore, it is proposed that 48 CFR Chapter 54, as proposed in the **Federal Register** (59 FR 21954, April 28, 1994) be amended by adding part 5416 to read as follows:

PART 5416—TYPES OF CONTRACTS

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed-Price Contracts with Economic Price Adjustment
5416.203–1 Description
5416.203–3 Limitations
5416.203–4 Contract Clauses

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR Part 1, subpart 1.3 and 48 CFR Part 201, subpart 201.3.

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed Price Contracts with Economic Price Adjustment

5416.203–1 Description.

(a)(S–90) *Adjustments based on established prices.* Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S–90) *Adjustments based on cost indexes of labor or materials.* These price adjustments may also be based on increases or decreases in indexes for commodity groups specific supplies or services, or contract end items.

5416.203–3 Limitations.

(S–90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

5416.203–4 Contract clauses.

(S–90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203–1 (a)(S–90) or (c)(S–90). Established prices in such clauses need not be verifiable using the criteria in 48 CFR (FAR) 15.804–3. Established prices

and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

Dated: February 15, 1995.

Margaret J. Janes,

Assistant Executive Director (Procurement Policy).

[FR Doc. 95–4574 Filed 2–27–95; 8:45 am]

BILLING CODE 6820–34–M

Notices

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–009–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance and renewal of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance and renewal of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–284–01	University of Chicago	1–06–95	*Arabidopsis thaliana* plants genetically engineered to express tolerance to the herbicide chlorsulfuron.	Illinois.
94–326–01	University of Chicago	1–06–95	Rapeseed plants genetically engineered to express either a gene from *Bacillus thurin-giensis* subsp. *kurstaki* for resistance to lepidopteran insects or a gene from potato plants for resistance to chewing insects.	Illinois.
94–306–01	Union Camp Corporation	1–26–95	American sweetgum trees genetically engineered to express a gene for tolerance to the herbicide 2, 4–D.	Georgia.
94–326–03, renewal of permit 94–055–01, issued on 4–13–94.	Upjohn Company	1–26–95	Tomato plants genetically engineered for resistance to tomato spotted wilt virus.	Georgia.
94–326–04, renewal of permit 94–055–02, issued on 6–16–94.	Upjohn Company	1–26–95	Cucumber plants genetically engineered for resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Michigan.

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The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 22nd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4882 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–34–M

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Government Sponsored Chemical Weapons Convention (CWC); Seminars for the Chemical and Related Industry

AGENCIES: Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC).

ACTION: ACDA and DOC will sponsor regional one-day seminars to explain the CWC and its significance for U.S. industry.

SUMMARY: The Chemical Weapons Convention (CWC) will directly affect a significant number of private sector chemical producers, consumers and processors. The CWC imposes requirements on certain industrial facilities. Depending on the specific chemical, the CWC requires:

- Detailed reports of the quantities produced, processed, or consumed in your facilities;
- Detailed production plans and site (plant) information;
- Short-notice on-site inspections of industry facilities and records by international inspection teams.

The key issues for U.S. chemical and related industry managers:

- Compliance with CWC Requirements;
- Protection of confidential/proprietary business information;
- Prevention of adverse publicity/controversy;
- Prevention of unnecessary costs/production disruptions;
- Inspection readiness;
- Schedule for implementation.

The U.S. Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC) are sponsoring regional one-day seminars to explain the CWC, the domestic draft implementation legislation that is currently being reviewed by the Senate, and their significance to U.S. industry. You are invited to attend one of the following:

Atlanta, GA	April 6, 1995.
Oakland, CA	April 20, 1995.
Newark, NJ	April 26, 1995.
Washington, DC	May 2, 1995.
Houston, TX	May 11, 1995.
Detroit, MI	May 18, 1995.

FOR FURTHER INFORMATION CONTACT: For registration materials and more information on how the CWC affects your company, contact: Naomi Lopez, EAI Corporation, 2111 Eisenhower Avenue, Suite 302, Alexandria, VA 22314–4679, Telephone: (800) 528–1041 or (703) 739–1033, Fax: (703) 739–1525.

Cathleen E. Lawrence,

Director of Administration.

[FR Doc. 95–3562 Filed 2–27–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/19/95–02/15/95

Firm name	Address	Date petition accepted	Product
Ball Variometers, Inc	6595 Odell Place, Suite C, Boulder, CO 80301.	12/20/94	Variometers—Electrical Instruments for Aeronautical use.
Kashier Specialties DBA Redford Coffee	5302 E. Harbor Rd., P.O. Box 1430, Freeland, WA 98249.	01/12/95	Textile Filters.
Binder Brothers Incorporated	663 Grand Avenue, Ridgefield, NJ 07657	01/25/95	Jewelry.
Electro Plasma, Inc	4400 Martin-Moline Road, Millbury, OH 43447.	01/26/95	Information display panels which can be used as a replacement for CRT's.
Silver Cloud, Inc	2417 Baylor, Southeast, Albuquerque, NM 87106.	02/01/95	Jewelry.
Water & Power Technologies, Inc	3740 West 1987 South, Salt Lake City, UT 84127–0836.	02/02/95	Reverse osmosis equipment for the purpose of filtrating and dionizing water for purification.
Interplex Electronics, Inc	70 Fulton Terrace, New Haven, CT 06512.	02/06/95	Breadboards, Electronic Trainers and Custom Electronic Trainers.
Orscheln Co. (including Elisha Technologies Co.).	1177 N. Morley, Moberly, MO 65270	02/08/95	Levers, Cables, Fittings and Plating.
Jilarous, Inc	35 West 36th Street, New York, NY 10018–7906.	02/10/95	Jewelry—Earrings.
Geophysical Survey Systems, Inc	13 Klein Drive, North Salem, NH 03073	02/13/95	Subsurface Interface Radar Systems.
Harrington Mold/California Pony Cars	1906 Quaker Ridge, Ontario, CA 91761	02/13/95	Production Molds and Auto Parts—Mirrors, Horns, Bracket, Insignia, etc.
Nulco Manufacturing Corporation	30 Beecher St., Pawtucket, RI 02862	02/15/95	Chandeliers.
Klein Bicycle Corporation	118 Klein Road, Chehalis, WA 98532	02/17/95	Bicycle Frames.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease is sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 15, 1995.

Lewis R. Podolske,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95–4899 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–201–806]

Steel Wire Rope From Mexico; Affirmative Final Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of affirmative final determination of circumvention of antidumping duty order.

SUMMARY: On June 3, 1994, the Department of Commerce (the Department) preliminarily determined that imports into the United States of steel wire strand from Mexico, which are assembled in the United States into steel wire rope for sale in the United States, were circumventing the antidumping duty order on steel wire rope from Mexico. The inquiry into the possible circumvention of this order covers one Mexican manufacturer/exporter of the subject merchandise, and a related party in the United States. This inquiry covers the period October 1, 1992, through September 30, 1993. Interested parties were invited to comment on the preliminary affirmative determination of circumvention. We received comments from only one party, supporting the Department's preliminary affirmative determination of circumvention. The findings of the preliminary determination remain unchanged; as a result, we have determined that the respondent, Grupo Camesa S.A. de C.V. and its United States affiliate, Camesa Inc. (collectively, Camesa), are circumventing the order and that steel wire strand produced in Mexico by Camesa and imported into the United States for use in the production of steel wire rope falls within the scope of the antidumping duty order on steel wire rope from Mexico.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1994, the Department published in the **Federal Register** (59 FR 29176) a preliminary affirmative determination that imports into the United States of steel wire strand from Mexico were circumventing the order on steel wire rope within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 353.29(e), and a subsequent finding that the imported product subject to the inquiry, steel wire strand manufactured in Mexico, fell within the order. Pursuant to this determination, the Department instructed the U.S. Customs Service (Customs) to suspend liquidation of, and require cash deposits on entries of, the imported product, steel wire strand, manufactured in Mexico. Interested parties were invited to comment on this preliminary determination. We received comments from the petitioner, the Committee on Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), on July 5, 1994, supporting the Department's preliminary affirmative determination of circumvention. No other party submitted comments.

In accordance with section 781(e) of the Tariff Act, the Department also notified the International Trade Commission (ITC) of its preliminary determination that the imported product fell within the scope of the order. In response, the ITC notified the Department that consultations between the Department and the ITC regarding the Department's preliminary determination were unnecessary.

The Department has now completed this inquiry in accordance with section 781(a) of the Tariff Act.

Scope of Antidumping Duty Order

The product covered by the order is steel wire rope, which is defined in the Department's antidumping duty order on steel wire rope from Mexico as: "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire."

During the period of this inquiry (POI), such merchandise was classifiable under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and for Customs purposes. The Department's written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiry

Products subject to this circumvention inquiry are entries of strand, which are defined as stranded wire having a lay or twist of not more than one revolution for a length equal to the strand diameter multiplied by 8.5. During the inquiry, such merchandise was classifiable under subheading 7312.10.3020 of the HTS. The HTS subheading is provided for convenience and for Customs purposes. The Department's written description of the scope of the inquiry remains dispositive.

Nature of the Circumvention Inquiry

As set forth in our preliminary determination, we examined whether (A) steel wire rope sold in the United States is of the same class or kind as merchandise that is subject to the order; (B) such steel wire rope sold in the United States is completed or assembled in the United States from parts or components (*i.e.*, steel wire strand) produced in Mexico, the foreign country with respect to which such order applies; and (C) the difference between the value of such steel wire strand reffered to in (B) above, is small. Section 781(a)(2) of the Tariff Act further provides that, in determining whether to includes parts or components in an antidumping duty order, the Department shall take into account such factors as (A) pattern of trade; (B) whether the manufacturer or exporter of the parts or components is related to the

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person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after issuance of such order.

I. Statutory Criteria

Class or Kind, U.S. Assembly From Components Produced in the Foreign Country, and Difference In Value

Neither the Committee nor Camesa challenged our preliminary determination that the steel wire rope sold in the United States was of the same class or kind of merchandise as that subject to the order and that the subject steel wire rope was processed in the United States from steel wire strand produced in Mexico, the country to which the antidumping duty order applies. In addition, neither the Committee nor Camesa challenged our preliminary determination, based on the best information available (BIA), that the difference between the value of the wire strand produced in Mexico and the value of the steel wire rope sold in the United States is small within the meaning of section 781(a) of the Tariff Act. Therefore, we affirm our preliminary determination regarding these three criteria.

II. Factors

Subsequent to our preliminary determination, we did not request additional information regarding the pattern of trade, the relationship between the parties, and the volume of imports of steel wire strand. Neither party challenged our preliminary determination regarding these factors. Based on our analysis of these factors, we affirm our preliminary determinations that (A) the data on the pattern of trade indicate a shift from sales in the United States of steel wire rope produced in Mexico toward sales of steel wire rope processed in the United States from steel wire strand produced in Mexico; (B) respondents are related parties; and (C) imports of steel wire strand into the United States increased subsequent to the issuance of the antidumping duty order.

Final Affirmative Determination of Circumvention

Based on the foregoing analysis, we determine that the respondent, Camesa, is circumventing the antidumping duty order on steel wire rope from Mexico. The merchandise produced in the United States, steel wire rope, is of the same class or kind of merchandise as that subject to the order, and is completed from an intermediate product produced in Mexico, the country to which the order applies. Further, based on BIA, we determine that the difference in value between the imported and finished products is small. We also determine that the pattern of trade, increase in imports of the intermediate product, and relationship between Grupo Camesa and Camesa Inc., are consistent with an affirmative determination of circumvention. We note that our analysis of the difference in value and resulting determination of "small" in this case are not necessarily synonymous with such determinations that the Department will formulate in future circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis.

Based on this final affirmative determination of circumvention, we have determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. We will inform Customs of this decision, and will instruct it to continue to suspend liquidation of, and require cash deposits, at the applicable rate, on entries of steel wire strand manufactured in Mexico by Camesa.

No suspension of liquidation or collection of cash deposits is required for steel wire strand produced by other manufacturers in Mexico. In addition, no suspension of liquidation or collection of cash deposits is required for steel wire strand produced by Camesa in Mexico that enters with an end-use certificate certifying that the steel wire strand will not be used for processing into steel wire rope. However, if this documentation is not presented at the time of entry, the merchandise produced by Camesa should be subject to the applicable cash deposit requirement.

Interested parties should be advised that data and statements supporting the exclusion of steel wire strand from this antidumping duty order are subject to verification by the United States Government.

Interested parties may request disclosure within five days of the date of publication of this notice.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This final affirmative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)) and 19 CFR 353.29(e).

Dated: February 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4900 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 950124027–5027–01]

RIN 0693–AB38

Intent To Develop a Federal Information Processing Standard (FIPS) for a Data Standard for Record Description Records—Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: NIST is considering the development of a Federal Information Processing Standard (FIPS) for the data elements which, when taken together, will describe information objects of many different kinds, both electronic and non-electronic. The standard would apply to a wide range of information-creating software products. It would apply also to document management and object repository software products. Federal agencies would use the standard in specifying many software products used to create documents or information objects (e.g., electronic mail systems), and also when specifying document or object storage and management software products. This notice uses the word "record" as a broadly-encompassing term to include "documents" and "objects," regardless of media or application.

The framework for this proposed FIPS was developed by a working group of the interagency Integrated Services Panel, under the Federal Information Resources Management Policy Council. NIST solicits comments on the scope, purpose, background, and rationale for the proposed standard, and on certain technical issues. After analyzing the comments, NIST may propose a FIPS for review and comment.

DATES: Comments on this effort must be received on or before May 30, 1995.

ADDRESSES: Written comments should be sent to: Director, Computer Systems Laboratory, ATTN: Data Standard for Records Description, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Inspection Facility, Room 5020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Mr. Bruce K. Rosen, National Institute of Standards and Technology, Technology Building, Room A–266, Gaithersburg, MD 20899, (301) 975–3246, Internet mail brosen@nist.gov.

SUPPLEMENTARY INFORMATION: The Computer Systems Laboratory of the National Institute of Standards and Technology is considering the development of a Federal Information Processing Standard (FIPS) for the data elements—their identification, representation, arrangement, and object binding—to describe information objects. Such objects include but are not limited to electronic mail messages, word processing documents, spreadsheets, forms, voice-mail messages, images, and publications. This notice refers to all such objects with the single term "record" as a generic term to encompass documents, messages, and information objects of all kinds.

The set of data elements will constitute a Record Description Record (RDR). The RDR will be created whenever e-mail messages, word processing documents, image documents, spreadsheet documents, voice-mail messages, etc., are created, using either commercial-off-the-shelf (COTS) software products or non-COTS software. It will accompany those information objects when they are passed to a document management (storage and retrieval) or object repository product (either COTS or non-COTS), or when they are passed to some other software being used to store and retrieve them.

By applying the standard to document management or object repository software products, it will become possible to use these products to manage non-electronic records stored externally in addition to the electronic information objects stored in and under the control of the document management or repository products.

Terminology

1. Record

The computer industry is developing a new class of information technology products designed to organize, store, retrieve, and manage such electronic expressions of information as textual memos and reports, sound recordings, scanned images, and computer software. As a group, the information expressions are called "documents," or "objects." The latter tends to be a broader term, to include computer software. Both my include sound recordings, images, and what are being called "compound documents" and "multimedia" documents or objects. The products being developed are usually called object repositories or document repositories or document management systems or document storage and retrieval systems.

2. Record Management System

Throughout this notice, the term "record management system" is used broadly to include all software products intended to store, retrieve, and manage electronic documents and information objects. It is intended to encompass such products as those that are called "object repository," "document repository," "document manager," and "document storage and retrieval system." These products may be stand-alone or they may be integrated with other products in an office suite. They may have their own directory, or they may share directory services with other software products with which they are integrated. What distinguishes them is their functionality of receiving documents or information objects—what this notice calls "records", storing them for future retrieval, use, and disposition, and also managing their integrity, access, and life-cycles.

Background, Purpose and Rationale

Like many private sector enterprises, Federal Government agencies are re-engineering their programs, missions and administrative activities to perform them faster, better, and at less cost. In general, this means replacing paper-based processes with electronic, computer-based workflows. Examples include the electronic commerce programs, and electronic submission of regulatory reports and filings.

As activities are migrated from paper to electronic workflows, transactions, and submissions, information objects pass between different software environments. Those records must be identified and described not only to support search and retrieval, but also to substantiate their trustworthiness in legal proceedings and support their transfer to the National Archives should such transfer be required.

Federal Government agencies will be procuring record management products, both COTS and non-COTS, some of which will be stand-alone and some of which will be integrated with such creation software as word processing, e-mail, and workgroup computing. Thus, the possible interfaces between the software used to create records and the software used to store and retrieve them can very from many different packages bought from many different vendors in many different procurements, to a single integrated suite of software bought at one time in one procurement from one contractor.

This proposed standard would enable Federal agencies to avoid reinventing in every procurement or system installation the identification data for messages, letters, images, etc., and the way that data is recorded and arranged. It will avoid the necessity for suppliers of software products to customize their products differently for different Federal agencies, or for Federal agencies to engage individually in complex integration efforts and to develop agency-unique solutions to a requirement common to all.

Issues

1. Basic Architecture and Applicability

The Record Description Record (RDR) is a set of descriptive attribute that are identified, arrange, and bound in a prescribed manner to whatever is being described. The attributes are sometimes referred to as metadata, because they identify and describe the record, and may or may not be a part of it. The RDR is itself called a record because it a logically-related set of discrete data elements.

Whenever a record is created using a computer, the creating software would be expected to generate a corresponding RDR. That RDR would be passed to a record management system along with the record itself. For records created and stored outside the computer environment, e.g., non-electronic records or electronic records stored "off-line," the RDR information may be entered manually into a record management system, thereby using the system to manage records in general, without restriction as to the record media. In essence, the FIPS would be specifying a standard record to be used to describe other records of many different kinds.

The RDR is envisioned as comprising three sets of data elements. The first is a small set that wou8ld be mandatory in

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all RDRs and would apply universally to all records, regardless of their nature or content. The second is a small set that would be mandatory for certain classes of records, or conditions that apply to them. An example would be records sent electronically from one party to another, as contrasted with those that are printed and communicated by hand, mail, messenger, or facsimile. The third is a potentially large set of optional data elements to be specified by individual agencies.

This approach would yield a single RDR standard that would prescribe how the data elements are identified, arranged, and represented, and how the RDR for an electronic record is to be bound to the record it describes. It presents two issues on which public comment is desired. One is whether it is reasonable to establish a single RDR standard for all applications, e.g., word processing, e-mail, voice-mail, groupware, etc. The second is whether the three-level specification of data elements is appropriate.

2. RDR Binding

There must be some binding between an electronic record and the RDR that describes it. Because of the different ways in which record management systems work, the actual RDR contents are likely to be handled differently, stored differently, and used differently in the various proprietary products. The RDR contains the kind of descriptive data that these systems put in their directories, if they have directories. To a great degree, the RDR may be viewed as being a support to or enhancement of the directory functions of those record management systems that have directories.

Record management systems need to know how the RDRs for electronic records will be delivered to them—whether they will come as physically separate records, as headers, or as trailers. If this aspect is not standardized, then software products that create records would be free to create the corresponding RDRs in any way whatsoever. A standard approach could be established by which an RDR is bound to what it describes, so that record management system products can accept records from any source and understand their accompanying RDRs.

The RDR standard is seen as essential to support a Federal agency's mix-and-match of software products from different vendors. However, in the case of integrated office suites where the passing of a record from the creating software to the storing/retrieving software is handled internally or where the record is created and stored in just one place, a standard for data element identification and arrangement and for object binding may not be needed, and when adopted might not necessarily apply. However, the RDR information content would still be necessary. When a record is transferred out of a record management system, to either another record management system or to the National Archives, the accompanying RDR would have to be bound according to the standard.

Both implementors of software products that create records and implementors of record management system software products are asked to comment on how binding should be accomplished, and why. Prospective implementors are invited to propose specification language.

3. E-Mail Receipt Data

Just the conduct of electronic commerce and regulatory activities—let alone intra-agency and inter-agency communications—requires that agencies keep data about the origin and receipt of electronic transactions and submissions. Much of that data is generated internally by e-mail software packages.

The treatment of e-mail receipt data poses a special binding case. An e-mail message may be sent to one or more receivers, who may receive it at different times, or not at all. At some point, the e-mail system may transfer the message and its accompanying data from its own message store to a record management system. If some receipt data for that message is generated in the e-mail system after the message to which it applies has been transferred out, there is a question about what the e-mail system should do with that subsequent receipt data. It could, of course, be purged by the e-mail system. Alternatively, it could be put into an RDR and passed out to the record management system. If put into an RDR and passed out, the record management system would need to link it to the message to which it applies, and for which one or more RDRs already exist.

Both implementors of e-mail software and implementors of a record storage software are asked to comment on how this issue might be resolved, and are invited to propose specification language to address it.

4. Data Element Identification

The RDR will be a set of data elements. A standard mechanism must be established to identify the elements that are present, because the record will be a combination of mandatory and optional data elements. If a record management system is receiving records from e-mail, word processing, voice-mail, electronic commerce, etc., it will be receiving different RDRs depending on which package created the record, and perhaps also on the kind of record being stored. Thus, the format of the RDR must be standardized in a fashion analogous to a message header or a file label. Because there are many possible ways of formatting RDRs, the lack of a standard format would result in the creating software packages putting out RDRs that record management systems might not understand.

Comments are desired on how the RDR should be formatted, and how data elements should be identified and represented, and why. Prospective implementors are invited to propose specification language.

5. Universal Mandatory Elements

In general, these elements will address the questions of (a) what kind of record it is, or what software was used to create it; (b) which individual or organization created it; (c) when it was created; (d) what it deals with; and (e) what unique identifier(s) has been given to it. With respect to these and all other data elements, relevant existing FIPS for data element representations would be expected to be used. Representation standards would be established only for those elements for which such Federal standards do not presently exist.

Comments are solicited on the specific data elements that should be considered to be universal and mandatory. Their selection criteria are (1) their importance in record identification and description, and (2) their applicability across the broad spectrum of software used to create records of different kinds.

6. Conditional Mandatory Elements

Conditional mandatory elements are those that would be prescribed for records based on such characteristics as their application of origin, their storage media or location, or some statutory or regulatory requirement. The condition of greatest immediate concern is electronic communication, where the process of communication adds its own dimensions of time and place. Examples would be electronic mail, file transfer, and the many other applications that exist at the application layer of a multi-layer data communications reference model.

As mentioned above, electronic commerce and electronic submission of regulatory reports and filings necessitate the inclusion of "transmission" data in the RDR for an electronic mail message. It is expected that these activities will necessitate a comparable requirement in such other communications-based applications as file transfers and electronic data interchange transactions. Thus far, all that is reasonably certain is that some data that is generated internally by e-mail systems or created by message originators—e.g., the identities of message originators, identities of receivers, the date and time of origination, and/or the date and time of receipt—must be bound to the message in the RDR. That is a relatively small set of data elements. However, two important questions surround it. The first is which of those elements should be mandatory and which optional, and the second is whether those mandatory elements should apply to all applications.

Comments are desired on both of these questions, as well as on the mandatory descriptive elements that should apply to voice-mail, scanned image documents, compound documents, and multimedia documents.

7. Optional Elements

Optional elements may be associated with records such as e-mail messages that are common across many Federal agencies, or they may be associated with common descriptive characteristics such as case number or client number, or they may be unique to a particular agency. Some common elements may be candidates for standardization, but that is not an issue in this context.

What is of principal concern with respect to the RDR is the production of optional elements by the information creation software, and their acceptance by the record management system. The data element identification standard discussed above should cover the aspect of identifying each optional element that is present in an RDR, but questions remain concerning the number of optional elements that a record management system must be able to accept, and what specifications should apply to information creation software for the creation of the optional elements.

Comments are solicited on these, and any other aspects of optional data elements in RDRs.

Dated: February 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4855 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–CN–M

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Tuesday, March 14, 1995, from 10:45 a.m. to 5:00 p.m., and on Wednesday, March 15, 1995, from 8:30 a.m. to 10:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On Tuesday, March 14, 1995, presentations will be given on the Board on Assessment of NIST Programs' annual report; the Applied Technology Program focus report on Materials Processing for Heavy Manufacturing; the National Quality Award's pilot programs in healthcare and education; and national and international standards. A discussion on the Institute's budget, including funding of the Applied Technology Program and staffing of management positions at NIST, scheduled to begin at 10:45 a.m. and to end at 11:45 a.m. on March 14, 1995, will be closed. On Wednesday, March 15, 1995, the committee members will tour the molecular measurement laboratory.

DATES: The meeting will convene March 14, 1995, at 8:30 a.m. and will adjourn at 10:00 a.m. on March 15, 1995.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 7, 1995, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: February 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4856 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 021495C]

New Bedford Harbor Trustee Council; Scoping Meetings

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Office of Environmental Policy and Compliance, U.S. Department of the Interior (DOI).

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS, acting as Administrative Trustee, and DOI announce the intention of the New Bedford Harbor Trustee Council (Council) to prepare an EIS for a proposed plan to address the restoration of natural resources that have been injured by the release of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor environment. The Council also announces its initiation of a public process to determine the scope of issues under consideration. The purpose of this notice is to inform the public of this process and of the opportunity to participate in the development of the restoration plan/EIS. All persons affected by, or otherwise interested in, the proposed restoration plan are invited to participate in determining the scope of significant issues to be considered in the EIS by submitting written comments or by attending scoping meetings. The scoping process will identify and prioritize alternatives for potential restoration activities.

DATES: The Council will hold scoping meetings in each of the affected communities within the New Bedford Harbor environment. The scoping meetings are scheduled as follows:

1. February 28, 1995, 6:30 p.m.–9 p.m., New Bedford, MA

2. March 1, 1995, 6:30 p.m.–9 p.m., North Dartmouth, MA

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3. March 8, 1995, 6:30 p.m.–9 p.m., Acushnet, MA

4. March 9, 1995, 6:30 p.m.–9 p.m., Fairhaven, MA

ADDRESSES: The meetings will be held at the following locations:

1. New Bedford—New Bedford Whaling Museum, 18 Johnny Cake Hill, New Bedford, MA 02740

2. North Dartmouth—University of Massachusetts/Dartmouth, Old Westport Road, North Dartmouth, MA 02714

3. Acushnet— Acushnet Elementary School, 80 Middle Road, Acushnet, MA 02743

4. Fairhaven—Hastings Middle School, 30 School Street, Fairhaven, MA 02719

Additional meetings will be announced as they are scheduled. Public hearings will be scheduled upon completion of the Draft EIS. Send written comments on the scoping process and scope of the EIS to Jack Terrill, Coordinator, New Bedford Harbor Trustee Council, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930–2298, or fax number 508–281–9301.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 508–281–9136.

SUPPLEMENTARY INFORMATION:

New Bedford Harbor is an urban tidal estuary on the western shore of Buzzards Bay, MA, situated between the City of New Bedford on the west and the towns of Fairhaven and Acushnet on the east, with the Acushnet River flowing into the harbor from the north. The area contains approximately 6 square miles (15.54 square kilometers) of open water, tidal creeks and salt marshes.

New Bedford Harbor is an active port frequented by both commercial and recreational fishing vessels, as well as merchant vessels delivering produce for distribution throughout the Northeast. For many years, the commercial landings of predominantly scallops and groundfish species resulted in either the highest or second highest value of any port in the country. Historically, approximately 300 to 400 commercial fishing vessels have landed in the port each year. Located along the shores of the harbor are support services for the fishing industry (ice, fuel, provisions, etc.) and manufacturing facilities, as well as residential neighborhoods.

Also situated along the shore were electronic manufacturers which were major users of PCBs from the time their operations commenced in the late 1940's until 1977, when the Environmental Protection Agency (EPA) banned the use and manufacture of PCBs. These industries discharged wastewaters containing PCBs directly into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system.

PCBs are considered to be human carcinogens that can be introduced through the eating of contaminated fish and shellfish. PCBs found at high concentration may be released into the air for further deposit on surfaces affecting vegetation. PCBs are concentrated in fish and shellfish through the process of biomagnification in which fish and shellfish eat smaller organisms such as plankton, and the PCBs within the smaller organisms are retained in the tissue of the larger organism. Subsequent exposure further accumulates the PCBs in these tissues.

PCBs can also have adverse effects on natural resources particularly birds and higher mammals. Birds exposed to PCBs have exhibited reproductive failure and birth defects. Some shellfish species will die after exposure to even small concentrations of PCBs. Some fish species can have relatively high concentrations without serious effect but pose a danger when eaten by other natural resources such as birds.

Between 1974 and 1982, a number of environmental studies were conducted to assess the magnitude and extent of contamination by PCBs and heavy metals in New Bedford Harbor. These studies showed PCB contamination in marine sediment over a 985–acre area to range from a few parts per million (ppm) to over 100,000 ppm. Portions of western Buzzards Bay are also contaminated with sediment PCB concentrations in excess of 50 ppm. Water-column concentrations were found in excess of Federal ambient water quality criteria (0.030 ppm based on chronic impacts to marine organisms). Fish and shellfish PCB concentrations were found in excess of the U.S. Food and Drug Administration tolerance limit (2 ppm for edible tissue).

To reduce the potential for human exposure to PCBs, the Massachusetts Department of Public Health closed much of the New Bedford Harbor area to fishing or fishing for selected species with the establishment of three closure areas on September 25, 1979. New Bedford Harbor was added to EPA's Superfund National Priorities List in July 1982 and was simultaneously identified as the Commonwealth of Massachusetts' priority Superfund site.

Executive Order 12580 and the National Contingency Plan, which is the implementing regulation for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), designates the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to be Federal Trustees for natural resources. Federal Trustees are designated because of their statutory responsibilities for protection and/or management of natural resources, or management of federally owned land. In addition, the governors of each state are required to designate a state Trustee. The Trustees' responsibilities include assessing damages from the release of hazardous substances, pursuing recoveries of both damages and costs, and using the sums to restore, replace, or acquire the equivalent of the resources that were injured by the release.

In 1983, the Federal and state trustees filed complaints in Federal District Court in Boston alleging causes of action under CERCLA against the electronics manufacturers for injuries to natural resources under their trusteeship that had resulted from releases of hazardous substances, including PCBs. The eventual outcome of the complaints was monetary settlement agreements with defendants to: (1) Fund the cleanup of the harbor by EPA, (2) restore the natural resources by the Trustees, and (3) reimburse the governments for funds expended.

The Council was created as a result of the settlement agreements. There are three natural resource trustees on the Council representing Commerce, DOI, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated trustee responsibility to NOAA, with NMFS having responsibility for restoration. The Secretary of the Interior has delegated trustee responsibility to the Regional Office of Policy and Compliance. The Governor of Massachusetts has delegated trustee responsibility to the Executive Office of Environmental Affairs. These are the only Trustees having identified trust responsibilities for natural resources present in the New Bedford Harbor environment.

The Trustees are required to develop a restoration plan before settlement money can be spent on restoration projects. Such a plan will include a range of projects including near-term restoration efforts though restoration may continue for 10 to 15 years or more. The Trustees primary task is to determine how best to restore the injured natural resources and the Trustees are seeking the assistance of the public in this process. There are many projects that can be done to restore the injured natural resources but there are also limited funds with which to accomplish this. By incorporating the public in the process and by developing a formal restoration plan, there is greater likelihood of success and acceptance.

Federal actions require adherence to the National Environmental Policy Act. This Act requires the development of an environmental assessment or an EIS which analyzes the effects of the proposed Federal action(s) on the environment. This notice initiates the process of developing an EIS. Alternatives developed though this process will be included in the EIS as well as an analysis of their potential impacts on the environment.

The Trustees have scheduled four meetings to initiate this process. The purpose of these meetings is to introduce the public to the Trustee Council, define the Council's role and responsibilities, explain what restoration means and the legal requirements that must be followed: Describe and seek comment on the Trustee Council's goals, objectives, and project selection criteria; and provide guidance and receive comment on how restoration projects should be presented for consideration.

These meetings are the first step in the restoration plan/EIS development process. Meetings of the Trustee Council are open to the public and the public is invited to attend and participate. The Trustees will be seeking public participation through citizen advisors who can play a continuing role in restoration plan development. Once a draft restoration plan/EIS is developed, public hearings will be held on the content before any such plan is finalized.

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: February 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–4847 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021795E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meetings on March 13 through 16, 1995 at the Holiday Inn Downtown-Superdome, 330 Loyola Street, New Orleans, LA; telephone: 504–581–1600.

Council Meetings:

March 15, 1995

The Council will convene at 8:30 a.m. and recess at 5:30 p.m., 8:45 a.m. to 4:00 p.m.—Receive public testimony on the red grouper size limit and the harvest of "live rock" off Florida (*NOTE*: Testimony cards must be turned in to staff *before* the start of public testimony);

4:00 p.m. to 5:30 p.m.—Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs.

March 16, 1995

8:30 a.m. to 9:30 a.m.—Receive reports of the Mackerel Management Committee;

9:30 a.m. to 11:30 a.m.—Receive reports of the Reef Fish Management Committee;

11:30 a.m. to 2:00 p.m.—Receive the ICCAT Meeting Report, SAFMC Liaison Report, Enforcement Reports, Directors' Reports and Other Business;

(CLOSED SESSION—2:00 p.m. to 8:00 p.m.)—Consider appointment of Scientific and Statistical Committee (SSC) members; and

(CLOSED SESSION—3:00 p.m. to 5:00 p.m.)—Consider appointment of Advisory Panel (AP) members.

Committee Meetings:

March 13, 1995

(CLOSED SESSION—10:00 a.m. to 5:30 p.m.)—Meetings of the AP Selection Committee, the SSC Selection Committee, and the Coral Management Committee.

March 14, 1995

8:00 a.m. to 5:00 p.m.—Meetings of the Mackerel Management Committee and Reef Fish Management Committee.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, Florida 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the address above by March 6, 1995.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4848 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022195B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee, Information and Education Committee, and Coastal Migratory Committee will hold public meetings on March 14–16, 1995, at the Holiday Inn City Centre, 1800 Market Street, Philadelphia, PA 19103; telephone 215–561–7500. On March 14, the Demersal Species Committee will meet from 10:00 a.m. to 4:00 p.m. and the Information and Education Committee will meet from 4:00 to 5:00 p.m. On March 15, the Council will meet from 8:30 a.m. to 2:00 p.m. and the Coastal Migratory Committee will meet from 2:00 to 5:00 p.m. On March 16, the Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

1. Recreational fishery measures for summer flounder for 1995;

2. Discuss the Information and Education Committee's itinerary for the remainder of 1995;

3. Possible adoption of Amendment 5 for Squid, Mackerel, and Butterfish;

4. Review Bluefish Fishery Management Plan Amendment 1 scoping/informational process; and

5. Other fishery management matters.

The Council agenda may be revised, and the meeting lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4850 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

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[I.D. 022195A]

North Pacific Fishery Management Council; Team Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: A joint meeting of the Bering Sea/Aleutian Islands groundfish and crab plan teams will be held between 8:30 a.m. and 5:00 p.m., March 21–22, 1995, in Rooms A and B, Building 9, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA. The teams will discuss the sources of crab mortality and habitat considerations relative to development of a rebuilding plan for depressed crab stocks. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen on (907) 271–2809, at least 5 days prior to the meeting date.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4849 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021495D]

Pacific Coast Groundfish Fishery; Experimental Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of experimental fishing permit applications; request for comments.

SUMMARY: NMFS has received applications from the states of Washington, Oregon, and California for experimental fishing permits (EFPs) for vessels participating in bycatch observation programs. The purpose of the observation programs is to enumerate the bycatch of non-target species in the groundfish fishery. If granted, the EFPs would allow designated vessels operating in the groundfish fishery in the exclusive economic zone off the coasts of Washington, Oregon, and California to delay sorting, until offloading, of prohibited species and groundfish catch in excess of trip limits. The California program would allow participating vessels with observers to retain Pacific whiting in excess of the nearshore trip limit in the Eureka subarea. These activities would otherwise be prohibited by Federal regulations.

DATES: Comments must be received by February 27, 1995.

ADDRESSES: Comments should be addressed to and copies of the EFP applications are available from William Stelle, Jr., Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200,

Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Management Plan and implementing regulations (50 CFR 663), which specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are found at 50 CFR 663.10.

At the October 1994 meeting of the Pacific Fishery Management Council (Council), three EFP applications were received from the States of Oregon, California, and Washington (WOC) for vessels participating in observation programs.

The first application is from the State of Washington and is for the continuation of the observation program in which information is collected on the bycatch of salmon and other prohibited species in Pacific whiting harvests delivered to shoreside processing plants. This application differs from previous years in that there would be no observer coverage; all observer coverage would occur onshore after the catch is landed.

Under the second EFP application, submitted by California Department of Fish and Game, the focus is on shore-based whiting operations inside the 100 fathom contour in the Eureka subarea (from 43°00'00" N. lat. to 40°30'00" N. lat.), where large-scale whiting operations are currently prohibited in order to minimize the impacts on salmon (50 CFR 663.23(b)(3)(iii)). The California EFP application is for the collection of data on the relative incidental catch rates of salmon inside and outside 100 fathoms in the Eureka subarea. The applicant requests that vessels be allowed to fish for and retain Pacific whiting in excess of the nearshore 10,000–lb (4,536 kg) trip limit if an observer is on board at all times, even when the vessel operates outside the area.

The third EFP application, submitted by Oregon Department of Fish and Wildlife would allow the landing of unsorted catches taken in accordance with the proposed Oregon Trawl Commission data collection program that is planned to begin in 1995. The intent is to obtain representative bycatch and discard rates for groundfish and prohibited species. Observers would gather biological data on species' age, length, weight, sex, maturity, viability and mortality rates. The Oregon program would be similar to the whiting observer program that has been in effect for three seasons. Groundfish regulations at 50 CFR 663.7(b) stipulate that prohibited species must be returned to sea as soon as practicable with a minimum of injury when caught and brought aboard. Groundfish trip limits restrict the amount of certain groundfish species that may be landed by a vessel (50 CFR 663.7(f)).

The EFPs, if granted, would authorize vessels participating in the observation program to land unsorted Pacific whiting at designated shoreside processing plants where the incidence of salmon and other bycatch species can be monitored, on the condition that the prohibited species and groundfish trip limit overages are turned over to the state of landing for disposition. The states anticipate that about 30 vessels may participate in the experimental fisheries from March 1, 1995, to December 31, 1995. Under the EFPs, unsorted Pacific whiting catch could be delivered to shoreside processing plants in Newport, Hammond, Charleston, and Warrenton, OR; Crescent City, CA; and Westport and Ilwaco, WA. State port samplers would monitor the offloading of unsorted Pacific whiting, collect biological information on salmon and other bycatch, and arrange for the disposal of salmon. Prohibited species taken could not be sold; disposal options, to be determined by the states, would include donation to charitable organizations or reduction to fish meal.

If 71,360 metric tons (mt) of Pacific whiting were landed under the EFPs, it is estimated that about 414 salmon would be caught incidentally, based on the observed salmon bycatch rate of 0.0058 salmon per mt of whiting observed in 1994 (the salmon bycatch rate was 0.0110 in 1993). The continuing shoreside monitoring program is being pursued by the states at the request of the Council. Similar EFPs were issued to 21 vessels in 1993 and 31 vessels in 1994 (58 FR 64296, December 6, 1993).

The Director, Northwest Region, NMFS, Regional Director has made a preliminary determination that the applications contain all of the required information and constitute a valid experimental program appropriate for further consideration.

At the October meeting of the Council, the Regional Director consulted with the Council and the directors of the state fishery management agencies concerning the applications for permits. The Council recommended that all three EFP applications be approved with terms and conditions similar to those applied to the EFPs in 1994. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendation and comments received from the public.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4794 Filed 2–22–95; 3:38 pm]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Spectrum Planning and Policy Advisory Committee (SPAC); Meeting

AGENCY: National Telecommunications and Information Administration, DOC.

ACTION: Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC).

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on March 24, 1995 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) National Spectrum Projections and Trends Report;

(2) NTIA Automated Spectrum Monitoring System;

(3) APCO Projects 25 and 31;

(4) FLEWUG Activity Report;

(5) CITEL Activities/Proposals;

(6) ITU Plenipot Update.

The meeting will be open to public observations. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before March 4, 1995. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIRS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 1617M–7, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–4487.

Dated: February 21, 1995.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 95–4830 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Registration for Scientific and Technical Information Services; DD Form 1540; OMB Control Number 0704–0264.

Type of Request: Reinstatement.

Average Burden Hours Per Response: 25 minutes.

Responses Per Respondent: 1.

Number of Respondents: 500.

Annual Burden Hours: 208 hours.

Annual Responses: 500.

Needs and Uses: The information collected hereby, is utilized to register Federal Government agencies and their contractor community to access Defense-related information services from the Defense Technical Information Center (DTIC). The collected information is retained in an automated system at DTIC as the ongoing authority to release information against each year's certification.

Affected Public: State or local governments; Businesses or other for profit; Non-profit institutions; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 95–4788 Filed 2–27–95; 8:45 am]

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Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces. The Commission will meet in closed session from 9:00 a.m. until approximately 12:00 p.m., in open session from 1:00 p.m. until approximately 2:30 p.m., and in closed session from approximately 2:45 p.m. until 5:00 p.m.

During the open part of the meeting, the Commission will consider medical readiness and central logistics issues. During the closed portions of the meeting, the Commission will address topics that require the disclosure of classified information, including Department of Defense decisionmaking processes and other classified issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that these portions of the Commission on Roles and Missions meeting concern matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meeting will be closed to the public during these times.

DATES: March 8, 1995, 9:00 a.m. until 5:00 p.m.

ADDRESSES: Hyatt Regency Arlington, 1325 Wilson Boulevard, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION:

Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Seating will be available on a first-come, first-served basis. Members of the press who wish to reserve seating should contact Commander Gregg Hartung, Director of Public Affairs, in advance at (703) 696–4250.

Dated: February 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4787 Filed 2–27–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Office of Environmental Management; Proposed Site Treatment Plans

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy's (DOE) is delaying submission of the Proposed Site Treatment Plans (Proposed Plans) for developing treatment capacity and technologies for mixed radioactive and hazardous waste required by the Federal Facility Compliance Act (FFCAct or Act). DOE expects to submit the Proposed Plans to the State or the U.S. Environmental Protection Agency (EPA), as appropriate, at the end of March 1995, but in any event no later than April 6, 1995. Originally scheduled for submission in February 1995, DOE is revising the submission date for the Proposed Plans with the support of the affected States and EPA to allow additional time for further discussions on schedules for developing treatment capacity in light of anticipated funding limitations. This revised date still provides the States and EPA the six months allowed by the FFCAct to solicit public comments and approve the Site Treatment Plans, and to issue compliance orders by October 6, 1995.

ADDRESSES: Additional information on the Site Treatment Plan development process and related activities can be obtained from the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282).

SUPPLEMENTARY INFORMATION:

I. Background

The Resource Conservation and Recovery Act (RCRA), as amended by the FFCAct, requires DOE to prepare Site Treatment Plans for developing treatment capacities and technologies for treating mixed waste for each site at which DOE stores or generates mixed waste (section 3021 (b)). Mixed waste is defined by the FFCAct as waste containing both hazardous waste subject to RCRA, and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. Site Treatment Plans are being prepared for approximately 48 sites located in 22 States.

DOE must submit the Site Treatment Plan to the State or EPA, as appropriate, for approval, disapproval, or approval with modification. The FFCAct provides six months for the regulatory agency to review the Plan and make it publicly available. Upon approval, the agency is to issue an Order requiring compliance with the approved Plan. Sites that are in compliance with approved Plans and Orders by October 1995 will not be subject to fines and penalties related to the storage prohibitions under section 3004(j) of RCRA.

After consultation with affected States and EPA, DOE issued a **Federal Register** Notice on April 6, 1993 (58 FR 17875), which set a schedule for submission of the Site Treatment Plans in three stages. The first stage, the Conceptual Site Treatment Plans, were submitted in October 1993 and described a wide range of possible treatment alternatives for each mixed waste stream. The Draft Plans were submitted in August 1994, and included one or two options identified by the site, with input from the State, as the preferred treatment for each mixed waste stream. After further analysis of the preferred options for the DOE complex as a whole, discussions among the States, and consideration of public comments, DOE planned to submit Proposed Site Treatment Plans in February 1995 to the appropriate regulatory agency (i.e., the State or EPA).

II. Rescheduling of Proposed Plan Submittal Date

DOE has worked closely with the States and EPA, which will approve and enforce the final Plans, throughout the Site Treatment Plan development process. The National Governors Association (NGA) is facilitating interactions among the States at the national level under a cooperative agreement with DOE. At an NGA-sponsored meeting early in December 1994 that included affected States, EPA, and Tribal governments, several States asked DOE to consider delaying submission of the Proposed Site Treatment Plans to allow additional time for discussions on funding availability and the potential impacts of current and future budgetary constraints on schedules for constructing new mixed waste treatment facilities. After NGA confirmed with the other States involved in the FFCAct process that such a delay was acceptable, DOE postponed submittal of the Proposed Plans.

DOE expects to submit the Proposed Plans to the appropriate regulatory agencies for approval at the end of March 1995, but in any event no later than April 6, 1995. This will still allow the States and EPA the six months provided by the Act to review the Proposed Plans and make them available to the public, and to issue Compliance Orders by October 6, 1995. Sites that are in compliance with approved Plans and Compliance Orders after October 6, 1995, are not subject to fines and penalties related to the RCRA storage prohibitions for their mixed waste.

III. Activities in Progress

During January and February 1995, DOE site offices met with representatives of the States that host the largest DOE facilities to provide information on the overall Environmental Management budget for their sites, and the work in progress and work that needs to be accomplished within that budget.[1] These general discussions were supplemented by specific discussions on the activities and associated schedules to be proposed in the Site Treatment Plans, along with potential funding impacts on those activities. The smaller DOE sites were also encouraged to hold discussions with their States during this period on their proposed schedules and funding situation.

In addition, in February 1995, DOE, the affected States, EPA, and Tribal representatives again met collectively to discuss funding issues related to all of DOE's environmental management activities as well as to Site Treatment Plan activities, and to discuss strategies for working cooperatively to address anticipated funding limitations.

DOE believes that communication with, and the involvement of affected States, EPA, Tribal representatives, and other interested parties is essential in developing Proposed Plans that are acceptable to the regulatory agency and the public. However, DOE does not expect that all concerns or questions about the schedules for new facilities, particularly for large and costly facilities, will be resolved before the Proposed Plans are submitted. DOE, like many other Federal agencies, will face increasingly limited funding in the future. Accordingly, DOE anticipates that discussions will continue with regulatory agencies and the public after the Proposed Plans are submitted on the relative priority of mixed waste treatment and other environmental management activities at each site and across the DOE complex before the Plans and schedules are approved.

IV. For Further Information

Additional information on the development process for the Site Treatment Plans, a list of facilities preparing Plans and their locations, and related activities can be obtained from the DOE Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282), or through the Internet at address http://www.em.doe.gov/ffcabb/ffcamain.html.

Issued in Washington DC on February 22, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Office of Environmental Management.

[FR Doc. 95–4877 Filed 2–27–95; 8:45 am]

BILLING CODE 6450–01–P

[1] The host States are Colorado, Idaho, Nevada, New Mexico, Ohio, South Carolina, Tennessee, and Washington.

Federal Energy Regulatory Commission

[Project No. 11058 Massachusetts]

A.L.L. Natural Resources, Inc.; Notice of Availability of Final Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Fitchburg Paper Mill Dam #4 Hydroelectric Project located on the North Nashua River in the City of Fitchburg, Worcester County, Massachusetts, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4824 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2308–016–VT]

Citizens Utilities Companies; Notice of Intent to Hold a Public Meeting in Newport, Vermont, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for the Clyde River Hydroelectric Project

February 22, 1995.

On February 3, 1995, the Commission staff mailed the Clyde River DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of operating the applicant's existing 6.5-megawatt (MW) hydroelectric project, located on the Clyde River in northern Vermont, near the town of Newport.

The applicant proposes to: (1) Operate run-of-river at the Seymore Lake, Echo Pond, and West Charleston developments; (2) limit pond fluctuations at the Newport 1,2,3 development; provide minimum flows in the bypassed reaches of West Charleston and Newport No. 11 developments and the lower bypass reach of the Newport 1,2,3 development; provide a fish passage flow and various enhancements for recreation and other environmental resources.

The subject DEIS also evaluates the environmental effects of: (1) The project as proposed; (2) the proposed project with additional modifications and enhancements;(3) removal of Newport No. 11 dam with and without repowering the Newport No. 11 powerhouse; and (4) the no action alternative.

The public meetings on the Clyde River Project will be recorded by an official stenographer. The meeting will be held from 7:00 P.M. to 11:00 P.M. on Tuesday, March 14, 1995, at the North Country Union High School on Veterans Avenue in Newport, Vermont.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the Clyde River DEIS for the Commission's public record.

For further information, please contact Kathleen Sherman, at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4825 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2551–004–MI and 2579–010–IN]

Indiana Michigan Power Company; Notice of Availability of Draft Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No.

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486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for two existing licensed hydropower projects on the St. Joseph River owned and operated by the Indiana Michigan Power Company: the Buchanan Project, No. 2551, located in Berrien County, Michigan; and the Twin Branch Project, No. 2579, located in St. Joseph County, Indiana. Subsequently, the Commission's staff prepared one Draft Environmental Assessment (DEA) that discusses the relicensing of the two projects.

In the DEA, staff evaluates the potential environmental impacts that would result from the continued operation of the projects. Staff concludes that relicensing the projects with appropriate enhancement measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project Nos. 2551 and 2579 to the first page of all comments.

For further information, please contact Jim Haimes, Environmental Coordinator, at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4826 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11285–001 California]

Lake Casitas Municipal Water District; Notice of Availability of Final Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original, minor license for the Lake Casitas Power Recovery Facility (project), and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on the Bureau of Reclamation's existing pipeline between its Casitas dam Venture, in Ventura County, California.

In the FEA, the Commission's staff has analyzed the potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4827 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–207–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

February 22, 1995.

Take notice that on February 17, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–207–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for authorization to establish a new delivery point for its firm transportation customer, Sevier County Utility District (Sevier County) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point for Sevier County on its 3300 Mainline System at M.P. 3302–1+6.28 located in Sevier County, Tennessee. East Tennessee states that a 4-inch hot tap assembly and approximately 40-feet of 4-inch interconnecting pipe will be installed on its existing right-of-way; and that the measurement facilities will be located on property provided by Sevier County located immediately adjacent to East Tennessee's right-of-way.

East Tennessee estimates that the cost for the construction of this new facility will be $68,596, which will be fully reimbursed by Sevier County. East Tennessee states that the purpose of this installation is to provide Sevier County with delivery point flexibility.

East Tennessee asserts that the total quantities to be delivered to Sevier County after installation of the new delivery point will not exceed the total quantities currently authorized to be delivered. East Tennessee notes that the installation of this new delivery point is not prohibited by its existing tariff. Further, East Tennessee states that it has sufficient capacity to accomplish the delivery of natural gas without detriment or disadvantage to its other customers. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4810 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–182–007; RP95–103–000]

Florida Gas Transmission Company; Notice on Technical Conference

February 22, 1995.

On January 31, 1995, the Commission issued an order in the captioned proceeding requiring, among other things, a technical conference on the Florida Gas Transmission Company's proposed changes to its operating conditions. The conference will be held 10:00 a.m., March 22, 1995, at 810 First Street NE., Washington, D.C., in a room to be designated at that time. Any questions concerning the conference should be directed to John M. Robinson (202) 208–0808, or Kerry Noone (202) 208–0285.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4809 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–30–002]

Great Lakes Gas Transmission Co.; Notice of Filing

February 22, 1995.

Take notice that on February 10, 1995, Great Lakes Gas Transmission Company (Great Lakes) filed revised standards of conduct governing the business relationship between Great Lakes and its marketing/brokering affiliates.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4811 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

Notice

February 22, 1995.

Notice is hereby given that the five members of the Federal Energy Regulatory Commission (FERC) will attend a meeting sponsored by the National Association of Regulatory Utility Commissioners' Committee on Electricity on Tuesday, February 28, 1995, in Washington, D.C. The topic to be discussed is: NARUC/FERC—Working Together in the Changing World.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4806 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

[Docket No. RP95–120–000]

NorAm Gas Transmission Company; Notice of Change in Date of Technical Conference

February 22, 1995.

Take notice that the technical conference originally scheduled to be held on Tuesday, February 28, 1995, at 10:00 a.m., will now be held on Thursday, March 9, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4813 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–53–000]

NorAm Gas Transmission Company; Notice of Change in Date of Technical Conference

February 22, 1995.

Take notice that the technical conference originally scheduled to be held on Tuesday, February 28, 1995, at 2:00 p.m., will now be held on Thursday, March 9, 1995, at 2:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4812 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–72–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's order issued December 30, 1994, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Friday, March 24, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4814 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–416–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's order issued February 15, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Thursday, March 23, 1995, at 2:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4807 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–65–000 and RP95–69–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's orders issued December 30, 1994, the Commission held that the filings in the above captioned proceedings raise issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Thursday, March 23, 1995, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4808 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–165–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

February 22, 1995.

Take notice that on February 17, 1995, Pacific Gas Transmission Company (PGT) tendered for filing certain revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1 and requested that they be made effective March 19, 1995.

PGT states that the tariff sheets which it is submitting eliminate an ambiguity in calculating the Reservation Charge credit mechanism for Rate Schedules T–

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3 and FTS–1. In addition, PGT is correcting minor typographical errors to the table of contents of the Transportation Terms and Conditions of its First Revised Volume No. 1–A.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4815 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–262–030 and RP88–88–006]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

February 22, 1995.

Take notice that on February 17, 1995, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing its Refund Report made pursuant to Article II, Section 2 of the Stipulation and Agreement (Settlement) dated September 26, 1994 in the above docket. Such Settlement was approved by the Commission on December 7, 1994.

Panhandle states that the Summary of Settlement Refund Amounts by Customer filed herewith sets forth Panhandle's refund obligation for Sponsoring Parties and Subject Parties for the Docket No. RP88–262–000 Rate Period (April 1, 1989 through March 31, 1992) and that payments to Sponsoring Parties and Subject Parties were made on February 3, 1995.

Panhandle states that a copy of the information filed with its report has previously been sent to affected customers and respective state regulatory agencies and that each customer has received its detail of interest calculations. Panhandle also states that a copy of the transmittal letter and summary of Settlement Refund Amounts submitted with this filing have been served on all affected customers and respective State Regulatory Commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4816 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–189–003 and RP94–38–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 22, 1995.

Take notice that on February 17, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 23

Texas Gas states that the revised tariff sheets are being filed to implement Article IV of the Stipulation and Agreement of Partial Settlement (Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure filed on September 20, 1994. The Settlement was intended to resolve all issues in Texas Gas's pending Order No. 528 cost recovery filing in the dockets referenced above. The Settlement contained pro forma tariff sheets in Appendix B. The revised tariff sheets listed above are identical to such pro forma tariff sheets and are to be effective January 20, 1995, the effective date of the Settlement, as described in Article IV.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and those appearing on the official service lists of Docket Nos. RP93–189 and RP94–38.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4817 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–17–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 22, 1995.

Take notice that on February 16, 1995, Transcontinental Gas Pipe Line Corporation (TPGL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twentieth Revised Sixth Revised Sheet No. 28, which tariff sheet is proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to track a rate change attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of TGPL's Volume No. 1 Tariff.

Included in Appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised S–2 rates.

TGPL states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4818 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–5–000]

Viking Gas Transmission Company; Notice of Filing

February 22, 1995.

Take notice that on February 15, 1995, Viking Gas Transmission Company (Viking) filed revised standards of conduct to reflect changes mandated by Order Nos. 566 and 566–A.[1]

Viking states that copies of its filing were mailed to each of Viking's customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4819 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

[Docket No. CP93–541–004]

Young Gas Storage Company, Ltd.; Notice of Petition To Amend

February 22, 1995.

Take notice that on February 17, 1995, Young Gas Storage Company, Ltd. (Young), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–541–004 an application to amend the Order issued on June 22, 1994, in Docket Nos. CP93–541–000 and CP93–541–001 by deleting two tracts of land totaling 240 acres that were previously included as protective acreage and observation wells #4 and #6 located on the subject 240 acres, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Young states that upon further study, it has determined that the storage reservoir does not extend as far east as originally thought and, accordingly, the 240 acres specified as protective acreage and the two above-mentioned observation wells located on the acreage may be deleted. Young indicates that the deletion of the acreage would help to resolve certain disputes with an affected landowner. Additionally, Young states that the originally proposed injection/withdrawal wells #26, #28, and #31 will not be injection/withdrawal wells. Instead, Young states that wells #26 and #28 will be observation wells and well #31 will be a saltwater disposal well. Young claims that the deletion of the protective acreage will allow it to proceed with the development of the Storage Field and to perform the service that was authorized by the Commission in Docket Nos. CP93–541–000 and CP93–541–001.

Young finally asserts that there would be a possibility that as the project develops that further facts could arise which would require Young to revise its present judgment and to conclude that acquisition of the subject acreage is necessary to fulfill its duties under its certificate. Young states that if this would occur then it would request that the Commission authorize Young to acquire the acreage. Young states that it reserves the right to make that filing should it prove necessary.

Any person desiring to be heard or to make any protests with reference to said petition to amend should on or before March 15, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4820 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 26 Through December 30, 1994

During the week of December 26 through December 30, 1994 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Farm, Fuel & Feed, 12/30/94, LEE–0164

Farm, Fuel & Feed filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on November 14, 1994, the DOE issued a Proposed Decision and Order tentatively determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Farm, Fuel & Feed's Application for Exception.

Farmers Union Coop Oil Co., 12/27/94, LEE–0162

Farmers Union Coop Oil Co. (Farmers) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B. The "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm

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was not suffering gross inequity or serious hardship. Accordingly, the DOE denied Farmers' exception request.

Galaxie Oil Ltd., 12/30/94, LEE–0110

Galaxie Oil Ltd. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On August 1, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Galaxie's Application for Exception.

Hood River Supply Association, 12/30/94, LEE–0134

Hood River Supply Association (Hood River) of Hood River, Oregon, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On November 14, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearing and Appeals of the DOE within the prescribed time period. Therefore, on the DOE issued the Proposed Decision and Order in final form, denying Hood River's Application for Exception.

Quint Cities Petroleum Co., 12/30/94, LEE–0154

Quint Cities Petroleum Company filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Quint Cities' request, the DOE found that the firm was not experiencing a serious hardship or gross inequity. According, exception relief was denied.

Refund Applications

Gulf Oil Corporation/Wayne F. Johnson, Inc., 12/30/94, RF300–606

The DOE issued a Decision and Order concerning an Application for Refund filed by Wayne F. Johnson, Inc. in the Gulf Oil Corporation refund proceeding. The DOE found that the firm had failed to submit sufficient information to support a full volumetric refund beyond the presumptive injury level. The DOE also found that the firm's volume information was scant. Nevertheless, the DOE determined that in view of the length of time the case had been pending and the good faith efforts by the claimant to submit corroborative evidence, the claimant should receive a refund based on the evidence currently in the file. The DOE found that there was sufficient information available to grant the firm a refund at the small claims presumptive level. Accordingly, the firm was granted a refund of $5,000, plus $4,609 in interest.

Texaco Inc./Bituminous Materials, Inc., 12/27/94, RR321–173

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by William L. Walton in the Texaco Inc. Subpart V special refund proceeding on behalf of Bituminous Materials, Inc. (Bituminous). The DOE had previously rescinded a refund granted to Bituminous because a different firm was eligible to receive the refund based on Bituminous' Texaco purchases. The Motion for Reconsideration requested that the DOE vacate its determination to assess interest on the rescinded refund amount. The DOE determined that in the absence of a compelling reason not to assess interest, it should adhere to its usual practice in the Texaco refund proceeding of restoring the Texaco escrow account to its correct level. Accordingly, the Motion was denied.

Texaco Inc./Hank Texaco & Towing, Lee Paradise Texaco, Lee's Texaco, 12/27/94, RF321–20237, RF321–21046, RF321–21056

The Department of Energy (DOE) issued a Decision and Order granting a refund to Hank Metevier and rescinding a refund that had been granted to Lee Paradise and Mary J. Paradise in the Texaco special refund proceeding. In that Decision, the DOE found that Mr. Metevier was the Texaco retailer at one of the locations for which Mr. & Mrs. Paradise received a refund. Accordingly, Lee Paradise and the Estate of Mary Paradise were each directed to remit $221 to the DOE.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Wehah Farms, Inc. et al	RF304–14640	12/28/94
Gulf Oil Corporation/City of North Olmsted	RF300–20425	12/30/94
Gulf Oil Corporation/Lazy 8, Inc	RF300–21816	12/30/94
J. Laurance Nicholson & Son, Inc. et al	RF272–91001	12/28/94
Northrop Corporation	RF272–92554	12/30/94
Suburban Transfer Service, Inc	RF272–93035	12/30/94
Texaco Inc./Major Oils	RR321–321	12/30/94

Dismissals

The following submissions were dismissed:

Name	Case No.
B&B Texaco	RF321–9046
Braswell Sand & Gravel Co., Inc	RF300–16531
Ethyl Petroleum Additives, Inc	RF272–93279
Ganado Unified School District #20	RF272–90142
Olin Corporation	RF272–93307
Prospect Heights School #23	RF272–82565
State of Louisiana	RF272–98927
Super Service Oil Co	RF321–7456

Name	Case No.
Syd Smith	RF321–14088
Vitamilk Dairy	RF272–90917

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 21, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4878 Filed 2–27–95; 8:45 am]

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Issuance of Decisions and Orders During the Week of January 2 Through January 6, 1995

During the week of January 2 through January 6, 1995 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Howard W. Spaletta, 01/04/95, LWA–0010

Howard W. Spaletta filed a whistleblower complaint against EG&G Idaho, Inc. in which he alleged that the contractor retaliated against him for making health and safety disclosures. After investigating the complaint, the Office of Contractor Employee Protection found that Spaletta had made protected disclosures and that thereafter the contractor had retaliated against him by referring fewer work assignments to him and by reducing his annual merit pay increases. At the same time OCEP also found that Spaletta had not shown that the contractor had retaliated against him by failing to assign him important and meaningful work, by requiring him to solicit work, or by requiring him to take unpaid leave during a Christmas holiday curtailment of work. Spaletta requested a hearing to challenge OCEP's finding and conclusions.

Subsequent to the hearing, an OHA Hearing Officer issued an Initial Agency Decision, setting forth his findings. As explained below, in the Initial Agency Decision, the OHA Hearing Officer found that some of Spaletta's claims were meritorious.

The OHA Hearing Officer found that Spaletta's disclosures were protected by the DOE's contractor employee protection program. In that regard, the Hearing Officer found that Spaletta made his disclosures with a good faith belief that a final report concerning the evaluation of welds at the Tennessee Valley Authority's Watts Bar nuclear power plant did not disclose that the evaluation used a weld inspection code that was not mentioned in the plant's Final Safety Analysis Report (FSAR) and, as a consequence, evaluated employee weld safety concerns against a standard different from the standard contained in the FSAR. The Hearing Officer also found that Spaletta believed that these conditions impacted on safety at the Watts Bar plant.

The Hearing Officer also found that the contractor retaliated against Spaletta by referring fewer work assignments to him and by reducing his annual merit pay increases for a three-year period. The Hearing Officer rejected Spaletta's claims (i) that the contractor retaliated against him by requiring him to take leave during a Christmas holiday curtailment of work and (ii) that Spaletta was constructively terminated. The Hearing Officer also rejected Spaletta's request that the Hearing Officer order the contractor to withdraw the report in question. Finally, the Hearing Officer directed the parties to submit additional information concerning the amount of back pay, attorney's fees, and costs that should be awarded in the case.

Refund Application

Standard Oil Company (Indiana) et al./Oklahoma, 01/04/95, RM21–277 et al.

The DOE issued a Decision and Order granting a Motion for Modification (Motion) filed by the State of Oklahoma in the Standard Oil Company (Indiana), Belridge Oil Company, Palo Pinto Oil & Gas, OKC Corporation, and Vickers Energy Corporation refund proceedings. In its Motion, Oklahoma proposed to reallocate $21,080 in interest from funds which the State received for other second-stage refund plans to provide a transportation service for individuals departing from three self-help organizations in downtown Oklahoma City and traveling to jobs outside the inner city. The vehicle to be used is a 15-passenger compressed natural gas (CNG) van. In accordance with prior Decisions, where we have noted the benefits of alternative fuel vehicles and the increased use of public transportation, the DOE approved Oklahoma's Motion.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Edmonds Arco	RF304–13881	01/06/95
Florence Car Wash	RF304–13908	
Smith Motor Sales	RF304–13998	
Enron Corp./Nixon Company	RF340–74	01/04/95
Pioneer Energy, Inc	RF340–88	
Bonesteel Oil Company	RF340–117	
Gulf Oil Corporation/Vic's Gulf Service et al	RF300–21603	01/06/95
Shellabarger Chevrolet	RF272–94629	01/03/95
Texaco Inc./Norm's Texaco et al	RF321–20582	01/04/95
Texaco Inc./Rommel's Holiday Inn Texaco et al	RF321–11298	01/04/95
Texaco Inc./Von's Texaco Service et al	RF321–20610	01/06/95
Town of Oelwein et al	RF272–96608	01/06/95

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Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Texaco	RF321–19630
Les Texaco	RF321–19705
Marathon Letourneau Company	RF272–95057

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 21, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4879 Filed 2–27–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5161–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 30, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: California Pilot Program: Vehicle Credit Program EPA ICR #1590.02; OMB #2060–0229). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers who sell more clean-fuel vehicles in California than the law requires or who sell vehicles in California which are cleaner than the law requires may earn credits which may be banked and applied to future years' sales requirements or traded to other manufacturers. These manufacturers will submit annual reports containing information on vehicle sales in California and the number of credits created, banked, traded and/or used. EPA will use the information to determine compliance with the sales requirements and the credit program.

Burden Statement: Public reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Respondents: Manufacturers of clean-fueled vehicles sold in California.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden on Respondents: 10 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: February 22, 1995.

Paul Lapsley,

Director, Regulation Management Division.

[FR Doc. 95–4895 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5162–6]

Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended Notice of Meeting—Common Sense Initiative Council, Petroleum Refining Sector Subcommittee.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC) on October 17, 1994, to provide independent advice and counsel to EPA on environmental issues associated with the petroleum refining industry and other industrial sectors. The charter for the CSIC was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA). The Petroleum Refining Sector (PRS) Subcommittee operates as a subcommittee of the CSIC.

AMENDED OPEN MEETING NOTICE: Notice is hereby given of a change in dates for the upcoming CSIC-PRS Subcommittee meeting from a one day meeting, March 10, 1995, to a two day meeting to be held March 9 and 10, 1995. The meeting was previously noticed in the **Federal Register** for a one day meeting on Friday, March 10, 1995, from 9:00 a.m. to 5:30 p.m. at the Radisson Inn Hotel, 2150 Veterans Blvd., Kenner, LA 70062 (1–800–333–3333 or 504–467–3111). The meeting is now scheduled for two days, March 9 and 10 in the same location. An additional day is needed to conduct the full range of committee business and to convene in workgroups that will begin identifying specific issues and formulating a CSIC-PRS subcommittee workplan. Seating will be available on a first come, first served basis.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the topics above will be publicly available at the meeting. Thereafter, these documents, together with the CSIC-PRS meeting minutes, will be available for public inspection in Room 2417M of EPA Headquarters, 401 M Street, SW., Washington, D.C., Mail Code 6101, phone (202) 260–7417.

FOR FURTHER INFORMATION CONTACT: Anyone who would like further information should contact the Common Sense Initiative Program Staff office by phone on (202) 260–7417, or by FAX on (202) 260–9766. Members of the public may submit written comments of any length prior to the meeting. One hour of meeting time each day will be set aside for oral presentations. Each individual or group making an oral presentation will be limited to a total of five minutes. Attendees should provide their names and telephone numbers to the Common Sense Initiative Program Staff so that the Agency can advise them of any schedule changes.

Dated: February 22, 1995.

Prudence Goforth,

Acting, Designated Federal Officer.

[FR Doc. 95–4893 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5162–3]

Ozone Transport Commission for the Northeast United States; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Winter meeting of the Ozone Transport Commission to be held on February 28, 1995.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on February 28, 1995 from 10:00 a.m. to 4:00 p.m.

PLACE: The meeting will be held at: The Hotel du Pont, 11th and Market Streets, Wilmington, DE 19801.

FOR FURTHER INFORMATION CONTACT:

EPA

Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383

THE STATE CONTACT:

Host Agency:

Carol Brown, Delaware Department of Natural Resources and Environmental Control, P.O. Box 1401, 89 Kings Highway, Dover, DE 19903, (302) 739–4403

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 28, 1995. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 on Monday, February 20, 1995. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, consider the development of market-based programs in the region, and to discuss ozone State Implementation Plans.

Dated: February 16, 1995.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 95–4896 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5163–2]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Metamora Landfill

AGENCY: Environmental Protection Agency ("U.S. EPA").

ACTION: Proposal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Metamora Landfill.

SUMMARY: U.S. EPA proposes to address the potential liability of U.S. Chemical Company (hereinafter referred to as "the Settling Party") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99–499, for response costs incurred at the Metamora Landfill Site ("the Site"). The U.S. EPA proposes to address the potential liability of the Settling Party by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement ("AOC") prepared pursuant to 42 U.S.C. Section 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) the Settling Party agrees to pay U.S. EPA $332,256.00; (2) the Settling Party agrees to assign to EPA all payments and rights to receive payments from and including March 1, 1995 pursuant to its Land Contract Receivable and its Asset Purchase and Sale Agreement; (3) the Settling Party agrees to waive all claims against the United States that arise out of response activities conducted at the Site; and (4) U.S. EPA affords the Settling Party a covenant not to sue for all response costs incurred and to be incurred at the Site upon satisfactory completion of obligations under the Settlement. The Site is on the NPL and is currently being remediated pursuant to the terms of a Consent Decree entered by the United States District Court for the Eastern District of Michigan Southern Division—Flint on March 17, 1993.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before March 30, 1995.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Connie Puchalski at (312) 886–6719, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Connie Puchalski, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Connie Puchalski at (312) 886–6719, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Robert Springer,

Acting Regional Administrator, Environmental Protection Agency, Region 5

[FR Doc. 95–4999 Filed 2–27–95; 8:45 am]

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[OPPTS–82145; FRL–4937–4]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective February 28, 1995, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 28, 1995, directory, which supersedes the version released on November 30, 1994, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA-NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, Maryland 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: Feburary 16, 1995.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–4600 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Intent to Cancel Tariffs of Common Carriers by Water and To Suspend Licenses of Ocean Freight Forwarders for Failure To File Anti-Rebate Certifications

Notice is given that the Federal Maritime Commission ("Commission") intends to cancel the tariffs of certain common carriers and suspend the licenses of certain licensed ocean freight forwarders who have failed to file the Anti-Rebate Certification required by section 15 of the Shipping Act of 1984. 46 U.S.C. app. 1714. The common carriers by water and ocean freight forwarders shown in Parts A, B and C respectively on the attached lists have not timely filed with the Commission the Anti-Rebate Certification which was due on or before December 31, 1994. The Commission's regulations at 46 CFR 582.1(a) and 582.3(a) require every common carrier by water and ocean freight forwarder in the foreign commerce of the United States to file an Anti-Rebate Certification by December 31 of each even numbered calendar year.

The firms listed in Parts A, B and C were notified by certified mail dated and mailed on February 21, 1995, that, if within 45 days of the date of such notice, they have not either filed an Anti-Rebate Certification or established that it had been filed, their tariffs would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C) and their licenses would be suspended in accordance with 46 CFR 510.16(a)(6). The license suspension shall remain in effect until such time as the license is reinstated by the Commission after an Anti-Rebate Certification is filed.

Firms filing the Anti-Rebate Certification during the 45-day notice period will not have their tariffs cancelled or licenses suspended, however these firms may be subject to a civil penalty of up to $5,000 for each day the firm is in violation.

Newton J. Frank,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

Part A: Common Carriers by Water in the Foreign Commerce of the United States that Have Not Filed Anti-Rebate Certifications

Acronym: A.A. Freight Forwarding, Inc.
Organization No.: 002518
Acronym: A.L.S. Associazione Logistica Spedizionieri
Organization No.: 012259
Acronym: A.M.Z. International Shipping Co.
Organization No.: 012328
Acronym: AA Forwarding Inc.
Organization No.: 009386
Acronym: ABCO International Freight (H.K.), Ltd.
Organization No.: 012754
Acronym: Ace Shipping Corp.
Organization No.: 002158
Acronym: Active Cargo Services Limited
Organization No.: 010553
Acronym: AFS Freight Management (USA) Inc.
Organization No.: 012403
Acronym: Air Market Express Limited
Organization No.: 012720
Acronym: Air Tiger Express (U.S.A.), Inc.
Organization No.: 007319
Acronym: Airfreight Master Limited, The
Organization No.: 010629
Acronym: Airtrade Express, Inc.
Organization No.: 010967
Acronym: Airtruk/Seatruk, Inc.
Organization No.: 012827
Acronym: Alfons Koster
Organization No.: 010619
Acronym: All Shipping Company, Inc.
Organization No.: 012901
Acronym: Allegro International Service
Organization No.: 010608
Acronym: Aloyd International, Corp.
Organization No.: 011242
Acronym: Amco Shipping International Limited
Organization No.: 012523
Acronym: Amerasa Rapid Transport USA, Inc.

Organization No.: 012831
Acronym: America First International, Inc.
Organization No.: 007266
Acronym: American Caribbean Express Shipping Co., Inc.
Organization No.: 013140
Acronym: American Liner System, Inc.
Organization No.: 013231
Acronym: American Rate, Inc.
Organization No.: 012251
Acronym: American Ship Management, Inc.
Organization No.: 012847
Acronym: American Tri-Net Express, Inc.
Organization No.: 005862
Acronym: Amership, Inc.
Organization No.: 005871
Acronym: Amexcaribe, Inc.
Organization No.: 009678
Acronym: Amzone International, Inc.
Organization No.: 008795
Acronym: Arctic Shipping Management S.A.
Organization No.: 011292
Acronym: Armada Anz Parcel Service B.V.
Organization No.: 011990
Acronym: Arms Ocean Systems, Inc.
Organization No.: 013257
Acronym: Arrow Shipping Limited
Organization No.: 011413
Acronym: Asia Fortune Shipping, Inc.
Organization No.: 012115
Acronym: Asia Pacific Shipping, Inc.
Organization No.: 011996
Acronym: Asia Top Shipping Limited
Organization No.: 011997
Acronym: Asia Transportation Co., Ltd.
Organization No.: 012481
Acronym: Asiamerica Lines
Organization No.: 012220
Acronym: Asian Shipping, Ltd.
Organization No.: 008492
Acronym: Atlas Freight Consolidators, Inc.
Organization No.: 011991
Acronym: Atlas Intermodal Services, Inc.
Organization No.: 012373
Acronym: Aton Shipping Corporation
Organization No.: 012291
Acronym: Aust-Asia Worldwide Shipping Pty., Ltd.
Organization No.: 010650
Acronym: Australian Freight Services, Ltd.
Organization No.: 011722
Acronym: Babun Shipping Corporation
Organization No.: 011570
Acronym: Bank Line East Africa Limited
Organization No.: 008549
Acronym: Basle Line Nigeria Limited
Organization No.: 012560
Acronym: Bekins Moving & Storage
Organization No.: 005328
Acronym: Benemerito, Lisenio R.
Organization No.: 013151
Acronym: Bering Orient, Inc.
Organization No.: 013002
Acronym: Best Air & Sea Services (HK), Ltd.
Organization No.: 013010
Acronym: Bogo Shipping Co., Ltd.
Organization No.: 010439
Acronym: Bolivian Intermodal Containers Lines S.R.L.
Organization No.: 011947
Acronym: Bosco Atlantic Lines, Inc.
Organization No.: 012228
Acronym: Brazil Consolidating Services, Inc.
Organization No.: 012574
Acronym: Brazilian Overseas Shipping Services, Ltd.
Organization No.: 009604
Acronym: Brighten Ocean Forwarding, Ltd.
Organization No.: 010582
Acronym: C & T International N.V.
Organization No.: 013207
Acronym: C.A. Venezolana De Navegacion
Organization No.: 000010
Acronym: Caicos Seafreight, Ltd.
Organization No.: 012898
Acronym: Calberson International Paris Nord II
Organization No.: 008856
Acronym: Cargo Co-Ordinators Shipping (H.K.), Ltd.
Organization No.: 012836
Acronym: Cargo Trader, Inc., The
Organization No.: 011378
Acronym: Cargo Transport Lines, Inc.
Organization No.: 012292
Acronym: Caribbean Express Line, Inc.
Organization No.: 012221
Acronym: Caribe Basin Services, Inc.
Organization No.: 006284
Acronym: Caribe U.S.A., Inc.
Organization No.: 010864
Acronym: Carpe Air & Sea Shipping, Inc.
Organization No.: 008655
Acronym: Catcor Services, Inc.
Organization No.: 012581
Acronym: CCAL (Canada), Inc.
Organization No.: 000754
Acronym: CCCA/FNC
Organization No.: 012551
Acronym: Central America Shippers L.L.C.
Organization No.: 012849
Acronym: Central American Container Line, S.A.
Organization No.: 010790
Acronym: Central States Transport Ltd.
Organization No.: 010627
Acronym: Chat, Inc.
Organization No.: 011260
Acronym: Chavez, Ninfa V.
Organization No.: 012343
Acronym: Cheng Ho Forwarding Co., Ltd.
Organization No.: 011103
Acronym: China Express Forwarders Co., Ltd.
Organization No.: 011245
Acronym: China National Foreign Trade Transportation C
Organization No.: 000747
Acronym: China Trading Service USA Inc.
Organization No.: 013152
Acronym: Choice Container Corp.
Organization No.: 011060
Acronym: City Cargo International
Organization No.: 011388
Acronym: Clare Freight International Inc.
Organization No.: 011999
Acronym: Clear Link Shipping Company Inc.
Organization No.: 012329
Acronym: Clipper Shipping Ltd.
Organization No.: 011636
Acronym: Club Prestige Antilles N.V.
Organization No.: 012199
Acronym: CMB Transport NV
Organization No.: 011178
Acronym: CMS International Co.
Organization No.: 007321
Acronym: Colex Ltd.
Organization No.: 001811
Acronym: Colombia Transport Line, Incorporated
Organization No.: 011240
Acronym: Colombo Marine Cargo, Inc.
Organization No.: 012000
Acronym: Commodity Forwarders, Inc.
Organization No.: 004682
Acronym: Commonwealth Shipping Ltd.
Organization No.: 009587
Acronym: Compagnie Nationale Algerienne De Navigation
Organization No.: 000787
Acronym: Companhia De Navegacao Maritima Neutumar
Organization No.: 001537
Acronym: Complete Cargo Services, Inc.
Organization No.: 012453
Acronym: Con-Carriers GMBH
Organization No.: 010482
Acronym: Conship Maritime Agency, Inc.
Organization No.: 007590
Acronym: Consorcio Naviero Del Occidente, C.A.
Organization No.: 007527
Acronym: Container Development Group Corporation
Organization No.: 012120
Acronym: Conterm Consolidation Services (USA) Inc.
Organization No.: 007913
Acronym: Conti-Lines N.V.
Organization No.: 00189
Acronym: Continental Container Lines Ltd.
Organization No.: 012818
Acronym: Continental Seacorp Shipping, Ltd.
Organization No.: 007318
Acronym: Continental World Movers, Inc.

Organization No.: 002700
Acronym: Corporate World Relocation International, Inc.
Organization No.: 012121
Acronym: Covenant Container Line, Inc.
Organization No.: 009624
Acronym: Croatia Line
Organization No.: 011097
Acronym: Cross Ocean International, Inc.
Organization No.: 008941
Acronym: CTL Maritime (USA) Inc.
Organization No.: 012105
Acronym: D.T. Gruelle Company
Organization No.: 012187
Acronym: Dammers Chartering N.V.
Organization No.: 011642
Acronym: Danfast Freight Limited
Organization No.: 011862
Acronym: Dantransport (UK) Limited
Organization No.: 011167
Acronym: Dart Express (Los Angeles) Inc.
Organization No.: 008448
Acronym: Deckwell Sky Express Ltd.
Organization No.: 013164
Acronym: Deep-Sea Consolidation AB
Organization No.: 012862
Acronym: Dennis Shipping & Photography Co.
Organization No.: 012293
Acronym: Devoted Cargo Services (H.K.) Ltd.
Organization No.: 011059
Acronym: DSR/Senator Joint Service
Organization No.: 009934
Acronym: Dynasty Express Co., Ltd.
Organization No.: 012695
Acronym: East Indies Shipping Company
Organization No.: 011132
Acronym: Eastern Mediterranean Shipping Corp.
Organization No.: 013236
Acronym: Eastern Worldwide Company, Limited
Organization No.: 007780
Acronym: Eastop Shipping Ltd.
Organization No.: 011246
Acronym: Econolines Ltd.
Organization No.: 012674
Acronym: Ecuadorian Line, Inc.
Organization No.: 001775
Acronym: EES Shipping (Australia) Pty Ltd.
Organization No.: 010227
Acronym: Egyptian Navigation Company
Organization No.: 001228
Acronym: Empremar/CTE Agreement No. 207–011397
Organization No.: 011358
Acronym: Empremar/MSC Agreement
Organization No.: 011013
Acronym: Empresa Mocambicana De Navegacao Internaciona
Organization No.: 009333
Acronym: Empresa Naviera Andina S.A.
Organization No.: 012223
Acronym: Empresa Naviera Santa Ltd.
Organization No.: 009405
Acronym: Encinal Terminals
Organization No.: 001929
Acronym: EOS/McArthur (Belgium) BVBA
Organization No.: 012122
Acronym: Esbo Shipping Inc.
Organization No.: 011959
Acronym: Euro Trans International, Inc.
Organization No.: 011944
Acronym: Euro-Link Cargo Service Ltd.
Organization No.: 008863
Acronym: Ever Concord Ltd.
Organization No.: 010805
Acronym: Exx-Ortz International, Inc.
Organization No.: 012038
Acronym: FC Wright International Ltd.
Organization No.: 011496
Acronym: F.S. Cargo, Inc.
Organization No.: 012599
Acronym: Falcon Freight International Limited
Organization No.: 010347
Acronym: Far Eastern Shipping Company
Organization No.: 010823
Acronym: Fast Forward Container Line
Organization No.: 008862
Acronym: Filipinas Cargo Forwarders
Organization No.: 012104
Acronym: First Maritime Company, Inc.
Organization No.: 005731
Acronym: Fordson Shipping Limited
Organization No.: 011280
Acronym: Formerica Consolidation Service, Inc.
Organization No.: 011336
Acronym: Foss Maritime Company
Organization No.: 010863
Acronym: Franco Vago International Inc.
Organization No.: 013029
Acronym: Freight Liner SA
Organization No.: 012455
Acronym: Freightlink International Inc.
Organization No.: 013112
Acronym: French International Movers, Inc.
Organization No.: 013178
Acronym: Freshtainer Operations Limited
Organization No.: 012025
Acronym: Frontier Liner Services Inc.
Organization No.: 010779
Acronym: Fuchuen Transportation Company Limited
Organization No.: 011864
Acronym: Fuji Unyu Co., Ltd.
Organization No.: 008464
Acronym: Fund on Shipping Limited
Organization No.: 011692
Acronym: Fushiki Kairiku Unso Co., Ltd.
Organization No.: 010715
Acronym: Gateway Express Co., Inc.
Organization No.: 007078
Acronym: GFI Express Corp.
Organization No.: 012717
Acronym: Global Container Lines Limited
Organization No.: 012227
Acronym: Global Forwarding Ltd.
Organization No.: 012552
Acronym: Global International Forwarding Ltd.
Organization No.: 010392
Acronym: Global Worldwide, Inc.
Organization No.: 007842
Acronym: Global Cargo, Inc.
Organization No.: 012086
Acronym: Globus International Packing, Shipping & Movi
Organization No.: 012912
Acronym: Glorious Shipping
Organization No.: 009697
Acronym: Goldline Limited
Organization No.: 012555
Acronym: Graybar Navigation Inc.
Organization No.: 008850
Acronym: Green Sail Ltd.
Organization No.: 011364
Acronym: Gruenhut International Ltd.
Organization No.: 010375
Acronym: Guardship America, Inc.
Organization No.: 008016
Acronym: Gulf and Eastern Steamship & Chartering Corp.
Organization No.: 008901
Acronym: Gulf Coast Shipping
Organization No.: 011383
Acronym: Gulf-Atlantic Refrigerated Line, Inc.
Organization No.: 011573
Acronym: H. Schumacher Associates
Organization No.: 009867
Acronym: Haewoo Air & Shipping Co., Ltd.
Organization No.: 009837
Acronym: Hallmark Transport (Taiwan) Co., Ltd.
Organization No.: 010807
Acronym: Hamda International Freight Ltd.
Organization No.: 011363
Acronym: Han Maritime Limited
Organization No.: 011150
Acronym: Hanshin Air Cargo USA Inc.
Organization No.: 010633
Acronym: Helka Expresss International Ltd.
Organization No.: 008783
Acronym: Henriques, Beverly
Organization No.: 012708
Acronym: Hintex International Limited
Organization No.: 012534
Acronym: Horizon Steamship Line Ltd.
Organization No.: 013100
Acronym: Hudson Int'l Transport (Taiwan) Corp.
Organization No.: 012522
Acronym: Hudson Shipping (Hong Kong) Ltd.
Organization No.: 012624
Acronym: Hyaline Shipping (H.K.) Co., Ltd.
Organization No.: 010663
Acronym: Hycob Maritime, Inc.

Organization No.: 011563
Acronym: Imex Trans Line Inc.
Organization No.: 012535
Acronym: Inchcape Shipping Services (HK) Ltd.
Organization No.: 011414
Acronym: Industrial Maritime Carriers, Inc.
Organization No.: 009370
Acronym: Inteks, Inc.
Organization No.: 010587
Acronym: Interamericana Shipping Line, Inc.
Organization No.: 013131
Acronym: International Caribbean Shipping (USA) Inc.
Organization No.: 005833
Acronym: International Express Consolidators Co.
Organization No.: 013168
Acronym: International Express Shipping Co., Ltd.
Organization No.: 012701
Acronym: International Tomas Consolidated Ltd.
Organization No.: 008971
Acronym: International Transport Systems
Organization No.: 012336
Acronym: International Transportation and Cargo Service
Organization No.: 008220
Acronym: Isabella Shipping Company Limited (Bermuda)
Organization No.: 012071
Acronym: J-Mar Overseas Transport, Inc.
Organization No.: 007861
Acronym: J.R.C. Corp.
Organization No.: 012691
Acronym: Jardine Shoushan Int'l Co., Ltd.
Organization No.: 011495
Acronym: Jasper Freight Inc.
Organization No.: 012834
Acronym: Jefferson Shipping Ltd.
Organization No.: 013088
Acronym: Jet Compania Naviera S.A.
Organization No.: 011151
Acronym: Jet-Speed Sea Freight Ltd.
Organization No.: 011014
Acronym: Jeuro Incorporation.
Organization No.: 010519
Acronym: Jiangsu Commercial Transportation (HK) Co. Ltd.
Organization No.: 012053
Acronym: JMS International Services
Organization No.: 012444
Acronym: K.S. Shipping Line
Organization No.: 011952
Acronym: Kaitone Shipping Co., Ltd.
Organization No.: 006938
Acronym: Kam International Line
Organization No.: 006585
Acronym: Kawanishi Shipping Service (H.K.) Ltd.
Organization No.: 010564
Acronym: Khana Enterprise Co., Ltd.
Organization No.: 010595
Acronym: Kintetsu Intermodal (Taiwan) Inc.
Organization No.: 009664
Acronym: Kunyoung Shipping Co., Ltd.
Organization No.: 010192
Acronym: KWE-Kintetsu World Express (S) Pte Ltd.
Organization No.: 009661
Acronym: L.C. Shipping, Inc.
Organization No.: 008397
Acronym: Latin Freight Corporation
Organization No.: 013122
Acronym: Latinmar, Inc.
Organization No.: 012673
Acronym: Leader Ocean Freight Forwarder, Inc.
Organization No.: 010651
Acronym: Leadway Express Co., Ltd.
Organization No.: 010880
Acronym: Lextrans Co.
Organization No.: 013165
Acronym: Lianfeng Shipping Co. Ltd.
Organization No.: 010923
Acronym: Lineas Agromar S.A.
Organization No.: 001608
Acronym: Ling Bridge Transport Incorporation
Organization No.: 008546
Acronym: Lockson Services Limited
Organization No.: 012020
Acronym: Logistics International Management Services
Organization No.: 009696
Acronym: Lonkon Investments Limited
Organization No.: 012564
Acronym: Lucky Accord Co. Ltd.
Organization No.: 011571
Acronym: Lucky Ocean Shipping Limited
Organization No.: 011973
Acronym: M. I. International, Inc.
Organization No.: 013093
Acronym: Macs Maritime Carrier Shipping Gmbh & Company
Organization No.: 001639
Acronym: Magenta Overseas Limited
Organization No.: 012826
Acronym: Magnus International
Organization No.: 009382
Acronym: Main Chain, America Corporation
Organization No.: 011974
Acronym: Mares Transport.
Organization No.: 012128
Acronym: Marine Cargo Containers
Organization No.: 012485
Acronym: Marine Shipping Lines, Inc.
Organization No.: 012536
Acronym: Marlin Marine Services, Inc.
Organization No.: 001678
Acronym: Marmex Line, S.A.
Organization No.: 011498
Acronym: Marquez, Rolando L.
Organization No.: 012245
Acronym: Masco International Inc.
Organization No.: 011341
Acronym: Massan Shipping Industries, Inc.
Organization No.: 009468
Acronym: Massworld Maritime Ltd.
Organization No.: 009742
Acronym: Master Air Cargo, Inc.
Organization No.: 011296
Acronym: Master Freight Ltd.
Organization No.: 009507
Acronym: Max Gruenhut Gmbh
Organization No.: 010493
Acronym: Max International Freight Service Ltd.
Organization No.: 010855
Acronym: Maxcaribe, Inc.
Organization No.: 011352
Acronym: Maxfine Shipping Limited
Organization No.: 011695
Acronym: MCC (Mercantile Europe) Gmbh
Organization No.: 010418
Acronym: MCC Distribution AB
Organization No.: 010386
Acronym: Meng Horng Shipping Pte Ltd.
Organization No.: 009789
Acronym: Merks Southern Star Line Ltd.
Organization No.: 011968
Acronym: Mexus Ro/Ro Line, Inc.
Organization No.: 012821
Acronym: Miller Intermodal Logistics Services
Organization No.: 012539
Acronym: MM Lines Inc.
Organization No.: 011228
Acronym: Modern Line Service, Inc.
Organization No.: 012746
Acronym: Mondial Freight (HK) Limited
Organization No.: 012068
Acronym: Morex Line Corp.
Organization No.: 011177
Acronym: MSS Maritime Shipping Services, Ltd.
Organization No.: 012300
Acronym: Multimodal Services (NY) Inc.
Organization No.: 011326
Acronym: Multimodal Shipping Company, Inc.
Organization No.: 011953
Acronym: Myers Maritime International Ltd.
Organization No.: 002226
Acronym: N.G.K., Inc.
Organization No.: 012398
Acronym: National Container Line (H.K.) Limited
Organization No.: 011375
Acronym: National Shipping Company of Saudi Arabia, TH
Organization No.: 001497
Acronym: Naviera Comercial Naylamp S.A.
Organization No.: 012229
Acronym: Naviera Interamericana "Navicana", S.A.
Organization No.: 006809
Acronym: Navimar Lines, C.A.
Organization No.: 011046
Acronym: Net Ocean, Inc.
Organization No.: 001536

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Acronym: New Zealand Van Lines Ltd.
Organization No.: 010584
Acronym: Noble Shipping Corporation
Organization No.: 012410
Acronym: Norstar Shipping Agency, Inc.
Organization No.: 012457
Acronym: Norte/Sur Americana Logistics.
Organization No.: 012264
Acronym: North Star Airlines, Inc.
Organization No.: 013141
Acronym: North Star Ocean Services, Inc.
Organization No.: 008337
Acronym: Norvanco International, Inc.
Organization No.: 011038
Acronym: Ocean Conco Line, Inc.
Organization No.: 012757
Acronym: Ocean Focus Int'l (USA) Inc.
Organization No.: 009571
Acronym: Ocean Horizon Shipping Co.
Organization No.: 010612
Acronym: Ocean Marine Line
Organization No.: 007088
Acronym: (Oceangate Container Line
Organization No.: 002789
Acronym: (Oceanic Comp. Ltd.
Organization No.: 012413
Acronym: Oceanic Lloyd Limited
Organization No.: 011192
Acronym: Oceanlink Forwarder Co., Ltd.
Organization No.: 010226
Acronym: Omni-Express International Inc.
Organization No:: 011054
Acronym: Orient Freight International, Inc.
Organization No.: 010507
Acronym: Orient Overseas Container Line Ltd.
Organization No.: 011398
Acronym: Orient Star Trading & Shipping, Inc.
Organization No.: 007802
Acronym: Orion Express Line
Organization No.: 010961
Acronym: Overseas International Corporation
Organization No.: 009618
Acronym: Overseas Transportation Corporation
Organization No.: 013074
Acronym: P&O Swire Containers Ltd.
Organization No.: 012648
Acronym: P.O.L. (HK) Ltd.
Organization No.: 012333
Acronym: Pacific Ameritrans Shipping Corporation
Organization No.: 012683
Acronym: Pacific Champion Express Co., Ltd.
Organization No.: 011283
Acronym: Pacific Glory Shipping Limited
Organization No.: 012281
Acronym: Pakistan National Shipping Corporation
Organization No.: 000977
Acronym: Pan Trans International Freight Service Co., L
Organization No.: 010407
Acronym: Panama Line, Inc.
Organization No.: 009474
Acronym: Pangaea Enterprises
Organization No.: 011036
Acronym: Pantainer Ltd.
Organization No.: 008092
Acronym: Pearcy Marine, Inc.
Organization No.: 006584
Acronym: Peltransport Ltd.
Organization No.: 010573
Acronym: Peninsula Navigation Corporation
Organization No.: 011420
Acronym: Piff Shipping Ltd.
Organization No.: 013142
Acronym: Polamer, Inc.
Organization No.: 010526
Acronym: Polar Steamship and Commerce Company Inc
Organization No.: 011090
Acronym: Poseidon Freight Forwarding Co., Ltd.
Organization No.: 010972
Acronym: PPS Enterprise
Organization No.: 008604
Acronym: Professional Cargo Services Int'l Inc.
Organization No.: 013015
Acronym: Protexa Burlington International-Bahamas, Ltd
Organization No.: 011306
Acronym: Puma International Forwarding Service
Organization No.: 011148
Acronym: R. T. Shipping Limited
Organization No.: 013027
Acronym: R.F.S. International, Corp.
Organization No.: 013139
Acronym: Rae Cargo Services
Organization No.: 011693
Acronym: Raf International Forwarding Inc.
Organization No.: 009854
Acronym: Rainbow World Transport, Inc.
Organization No.: 013250
Acronym: Rambaud International
Organization No.: 010611
Acronym: Rapid Transport Ltd.
Organization No.: 011683
Acronym: Red Oak Industries, Inc.
Organization No.: 011318
Acronym: Rennies Group Limited
Organization No.: 010422
Acronym: Riva International Freight Management Ltd.
Organization No.: 008594
Acronym: Rockwood International Freight Limited
Organization No.: 010710
Acronym: Rong-Shang International Corp.
Organization No.: 013150
Acronym: Rusflot Shipping Line N.V.
Organization No.: 011301
Acronym: S.A.F.E. Shipping USA, Inc.
Organization No.: 011625
Acronym: Safco International Freight Corp.
Organization No.: 010545
Acronym: Sampaguita Group, The
Organization No.: 013028
Acronym: Samson Transport Company (UK) Ltd.
Organization No.: 010732
Acronym: Samson Transport Company A/S
Organization No.: 010400
Acronym: Sanko Steamship Co. Ltd., The
Organization No.: 001070
Acronym: Savino Del Bene (Texas) Ind.
Organization No.: 013191
Acronym: Scanam Transport (USA) Inc.
Organization No.: 013087
Acronym: Scanfreight Limited
Organization No.: 012080
Acronym: SCN Container Line, Inc.
Organization No.: 012577
Acronym: SDV Management Services, Inc.
Organization No.: 011682
Acronym: Sea Star Marine Corporation
Organization No.: 012222
Acronym: Seabridge Transport (HK) Ltd.
Organization No.: 011308
Acronym: Seajet Express, Inc.
Organization No.: 008514
Acronym: Seamar Shipping Corporation
Organization No.: 010718
Acronym: Seanav International, Ltd.
Organization No.: 007564
Acronym: Seawinds Freight Services, Inc.
Organization No.: 011365
Acronym: Sesko Marine Trailers, Inc.
Organization No.: 001133
Acronym: Seven Seas Steamship Line, Inc.
Organization No.: 012385
Acronym: Sextans S.A. Cia. Argentina De Navegacion
Organization No.: 012584
Acronym: Sharp Base Shipping and Transport Ltd.
Organization No.: 007634
Acronym: Shipair Express (HK) Limited
Organization No.: 011668
Acronym: Shui Nam Navigation (H.K.) Ltd.
Organization No.: 012602
Acronym: Siam Paetra International Co., Ltd.
Organization No.: 013102
Acronym: Sino Ocean Shipping (HK) Co.
Organization No.: 010788
Acronym: Sino-American Corporation
Organization No.: 006365
Acronym: Societe Nationale Malgache De Transports Mari
Organization No.: 007982
Acronym: Sofrana Holding Limited
Organization No.: 012011

Acronym: Sotbi Trading Inc.
Organization No.: 012670
Acronym: South Atlantic Cargo Shipping NV
Organization No.: 005769
Acronym: Southern Caribbean Shipping, Inc.
Organization No.: 011107
Acronym: Southern Oceans Container Line Limited
Organization No.: 011376
Acronym: Speedtrans (Int'l) Consolidator Co., Ltd.
Organization No.: 008310
Acronym: Speedy Freight Systems Inc.
Organization No.: 012419
Acronym: Stalwart Shipping, Inc.
Organization No.: 011272
Acronym: Star Ocean Shipping Company
Organization No.: 009844
Acronym: Sunlex Shipping Limited
Organization No.: 011961
Acronym: Sunrise Agency Ltd.
Organization No.: 010654
Acronym: Sunshine Shipping Ltd.
Organization No.: 011562
Acronym: T.V.L. Shipping (H.K.) Co., Ltd.
Organization No.: 012379
Acronym: Taehwa Aerosea Forwarders Inc.
Organization No.: 011639
Acronym: Taiwan Consolidation Co., Ltd.
Organization No.: 010331
Acronym: Taiwan Dispatch Forwarding Inc.
Organization No.: 008922
Acronym: Tak Shing Transportation Co., Ltd.
Organization No.: 009516
Acronym: TBI Limited
Organization No.: 005775
Acronym: TDY Freight Services, Ltd.
Organization No.: 000512
Acronym: Tellux Shipping Ltd.
Organization No.: 011704
Acronym: Tetramaris Agencies, S.A.
Organization No.: 013156
Acronym: Texas American Shipping Corp.
Organization No.: 005781
Acronym: Thompson Express Co.
Organization No.: 010896
Acronym: Tientsin Marine Shipping Company
Organization No.: 002337
Acronym: Tigerline Inc.
Organization No.: 012422
Acronym: Tokyo Container Lines Co., Ltd.
Organization No.: 007779
Acronym: Top Freight Systems, Inc.
Organization No.: 011142
Acronym: Topocean Consolidation Service Ltd.
Organization No.: 012067
Acronym: Tormont Shipping Inc.
Organization No.: 011754
Acronym: Trade Air, Inc.
Organization No.: 010846
Acronym: Traders Freight Systems (U.S.A.) Inc.
Organization No.: 010577
Acronym: Trans Am Sea Freight (HK) Ltd.
Organization No.: 009790
Acronym: Trans Power International Forwarder Corp.
Organization No.: 008414
Acronym: Trans-World Shipping APS
Organization No.: 013149
Acronym: Transcontinental Maritime Ltd.
Organization No.: 009681
Acronym: Transglobal Forwarding Co., Ltd.
Organization No.: 012655
Acronym: Translink Navigation S.A.
Organization No.: 012486
Acronym: Transnation Freight Services, Inc.
Organization No.: 010857
Acronym: Transportacion Maritime Mexicana, S.A. De C.V.
Organization No.: 000604
Acronym: Transtec Ocean Express Inc.
Organization No.: 011607
Acronym: Transway International Co., Ltd.
Organization No.: 013174
Acronym: Transworld Freight Services, Inc.
Organization No.: 007881
Acronym: Transworld Transportation Co., Ltd.
Organization No.: 008972
Acronym: Travima S.A.
Organization No.: 010330
Acronym: Treasure Coast Transport Company, Inc.
Organization No.: 012843
Acronym: Tri-Star Industries, Inc.
Organization No.: 012218
Acronym: Tri-Star Marine, Inc.
Organization No.: 011756
Acronym: Trinity Shipping Line, Inc.
Organization No.: 011330
Acronym: Triple Freight Marine Corp.
Organization No.: 010903
Acronym: Turbo Express Int'l Corp.
Organization No.: 010716
Acronym: U.C.S. Group Inc.
Organization No.: 010574
Acronym: U.C.T. International, Inc.
Organization No.: 011338
Acronym: U.S. Atlantic Freight Lines, Inc.
Organization No.: 007785
Acronym: U.S. Brokers, Inc.
Organization No.: 011476
Acronym: U.S. Intermodal Maritime Ltd.
Organization No.: 013190
Acronym: UAL Universal Africa (USA) Lines N.V. (N.A.)
Organization No.: 007781
Acronym: UCI Consolidator Ltd.
Organization No.: 009777
Acronym: UKL Shipping Company Limited
Organization No.: 011387 .
Acronym: Ultra Cargo Lines, Inc.
Organization No.: 012364
Acronym: Uni-Sea & Air Freight Co., Ltd.
Organization No.: 010728
Acronym: Unifreight Forwarder Inc.
Organization No.: 011251
Acronym: Union Marine International Co., Ltd.
Organization No.: 011304
Acronym: Union Star Line Limited
Organization No.: 009883
Acronym: Unipac Shipping Inc.
Organization No.: 002766
Acronym: Unishipping
Organization No.: 013052
Acronym: Unison Shipping Co., Ltd.
Organization No.: 007059
Acronym: Unitainer System Forwarder Inc.
Organization No.: 009870
Acronym: United American Consolidators Corp.
Organization No.: 007836
Acronym: United Distributors Service (Far East) Ltd.
Organization No.: 006161
Acronym: United Intermodal Line
Organization No.: 000056
Acronym: Unitrans Shipping & Air Cargo Limited
Organization No.: 012567
Acronym: Universal Maritima S.L.
Organization No.: 013095
Acronym: UTS International Forwarding Ltd.
Organization No.: 010892
Acronym: Van Ommeren Bulk Shipping BV
Organization No.: 005685
Acronym: Vav Universal Shipping
Organization No.: 007627
Acronym: Vector International Freight (HK) Ltd.
Organization No.: 012640
Acronym: Venconav USA Ltd.
Organization No.: 012424
Acronym: Venezuelan Container Line, C.A.
Organization No.: 007292
Acronym: Venture Shipping Inc.
Organization No.: 012357
Acronym: Vicon Shipping Corp.
Organization No.: 012589
Acronym: Votainer Europe B.V.
Organization No.: 010951
Acronym: W.B.E. International Ltd.
Organization No.: 012269
Acronym: Wah Shun Shipping Co., Ltd.
Organization No.: 010221
Acronym: Waterway Maritime Co., Ltd.
Organization No.: 012845
Acronym: Weita International Corporation

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Organization No.: 010211
Acronym: West Coast Line, Inc.
Organization No.: 011565
Acronym: Western Bulk Carriers A/S
Organization No.: 006375
Acronym: Westwind Africa Line Limited
Organization No.: 001791
Acronym: Wide Tech Shipping Limited
Organization No.: 011984
Acronym: Williams Shipping & Delivery Services, Inc.
Organization No.: 012545
Acronym: Wilson (F.E.) Ltd.
Organization No.: 011428
Acronym: Windward Supplies Limited
Organization No.: 012515
Acronym: Winspeed Shipping Ltd.
Organization No.: 012315
Acronym: Woo Shin International Transport Co., Ltd.
Organization No.: 010373
Acronym: Woodlands International Transport Company Lim.
Organization No.: 012139
Acronym: World Cargo Corporation
Organization No.: 013129
Acronym: World Express Co., Ltd.
Organization No.: 011631
Acronym: Worldwide Ocean & Air Shipping Lines Inc.
Organization No.: 012678
Acronym: Y.K. Shipping International (USA), Inc.
Organization No.: 009346
Acronym: Yamato Transport (HK) Ltd.
Organization No.: 009339
Acronym: Yatari Express Co., Ltd.
Organization No.: 010887
Acronym: Yetion Shipping Ltd.
Organization No.: 012353
Acronym: Zonn Agency
Organization No.: 009709

Part B: Licensed Ocean Freight Forwarders That Have Not Filed Anti-Rebate Certifications

Acronym: A & M International Service Corp.
Organization No.: 012470
Acronym: A.J. Gugliatto
Organization No.: 005160
Acronym: Action Cargo International, Inc.
Organization No.: 013097
Acronym: Advance Brokers, Ltd.
Organization No.: 004030
Acronym: Air-Mar Shipping, Inc.
Organization No.: 004758
Acronym: All State International Freight Inc.
Organization No.: 012887
Acronym: Alpha Cargo Services, Inc.
Organization No.: 011440
Acronym: Alternative Freight Services, Inc.
Organization No.: 008709
Acronym: American Vanpac Carriers, Inc.
Organization No.: 013119
Acronym: Ameripack Freight Systems
Organization No.: 012172
Acronym: Ameritrans Express, Inc.
Organization No.: 007461
Acronym: Apollo International Forwarders Inc.
Organization No.: 006385
Acronym: Arrow Freight Services, Inc.
Organization No.: 012554
Acronym: ASG Forwarding, Inc.
Organization No.: 004622
Acronym: Atlantic International Freight Forwarders Inc.
Organization No.: 008033
Acronym: Automated Freight Systems, Inc.
Organization No.: 012184
Acronym: Bahl, Vandana C.
Organization No.: 013116
Acronym: Barnes, Robert Field
Organization No.: 004697
Acronym: Barry, Christopher Kevin
Organization No.: 012839
Acronym: Bench, Julia G.
Organization No.: 012863
Acronym: Best Freight Forwarding Inc.
Organization No.: 012796
Acronym: Bill Polkinhorn, Inc.
Organization No.: 004360
Acronym: C Port Miami Corporation
Organization No.: 011008
Acronym: C. J. Swift & Co., Inc.
Organization No.: 004679
Acronym: Camota, Virgilio A.
Organization No.: 010909
Acronym: Cargonauts, Inc.
Organization No.: 012195
Acronym: Cari World International, Inc.
Organization No.: 005649
Acronym: Caribbean Freight Forwarders, Inc.
Organization No.: 012626
Acronym: Carnisco International Custom House Brokers
Organization No.: 009766
Acronym: Charles A. Redden, Inc.
Organization No.: 004345
Acronym: Chicago Cargo Corporation
Organization No.: 005191
Acronym: Cole Forwarding, Inc.
Organization No.: 006487
Acronym: Colombo Service, Inc.
Organization No.: 004718
Acronym: Condor Shipping Company, Inc.
Organization No.: 005484
Acronym: Dean Forwarding Company, Inc.
Organization No.: 000920
Acronym: Dependable Freight Forwarding, Inc.
Organization No.: 004931
Acronym: E.R.A. Freight Forwarding Inc.
Organization No.: 013135
Acronym: Eagle Warehousing, Inc.
Organization No.: 011163
Acronym: Enterprise Forwarders, Inc.
Organization No.: 007464
Acronym: Express Service International, Inc.
Organization No.: 006170
Acronym: F.P. International Corporation
Organization No.: 013001
Acronym: Fabian Forwarding Company, Inc.
Organization No.: 005288
Acronym: Falcon Forwarding, Inc.
Organization No.: 012327
Acronym: Farag, Nabil M.
Organization No.: 007465
Acronym: Fari International, Inc.
Organization No.: 011187
Acronym: Florida Worldwide Citrus Products Group, Inc.
Organization No.: 007541
Acronym: Fontana International, Inc.
Organization No.: 009467
Acronym: Frama Forwarding Corp.
Organization No.: 011469
Acronym: Freight Connections International, Ltd.
Organization No.: 008346
Acronym: G & G International, Inc.
Organization No.: 013133
Acronym: Gayo International Forwarders, Inc.
Organization No.: 005169
Acronym: GCI Forwarding Company, Incorporated
Organization No.: 013098
Acronym: Guerra, Rosendo H.
Organization No.: 004558
Acronym: Gulf-Ocean Shipping Corporation
Organization No.: 012325
Acronym: H. G. Ollendorff, Inc.
Organization No.: 004172
Acronym: H. P. Blanchard & Co.
Organization No.: 010799
Acronym: Harvey Yaffe Forwarding, Inc.
Organization No.: 011583
Acronym: Hip Forwarding Co., Inc.
Organization No.: 006454
Acronym: Ideal Cargo Service, Inc.
Organization No.: 005349
Acronym: Imperial Freight Brokers, Inc.
Organization No.: 004652
Acronym: Independent Cargo Services, Inc.
Organization No.: 004626
Acronym: Inexco Corporation
Organization No.: 004818
Acronym: Integrated Traffic Systems, Incorporated
Organization No.: 008923
Acronym: Inter-American Moving Services, Inc.
Organization No.: 002770
Acronym: Inter-Orient Corporation
Organization No.: 004011
Acronym: Interamerican World Transport Corporation
Organization No.: 002402
Acronym: Intercarga U.S.A. Corporation
Organization No.: 012627
Acronym: Intercontinental Cargo Express, Ltd.

Organization No.: 011115
Acronym: International Consolidators & Freight Forward
Organization No.: 005114
Acronym: International Freight Agency
Organization No.: 011500
Acronym: International Transportation Network, Inc.
Organization No.: 012867
Acronym: Irwin Brown Company, The
Organization No.: 004543
Acronym: J.B. Fong & Co., Inc.
Organization No.: 004728
Acronym: J.R. Michels, Inc.
Organization No.: 004364
Acronym: J.G. International Freight Forwarding, Inc.
Organization No.: 012239
Acronym: Jamar Shipping, Inc.
Organization No.: 012509
Acronym: Jones, Richard L.
Organization No.: 004680
Acronym: K Line Air Service (U.S.A.), Inc.
Organization No.: 012671
Acronym: Keegan, Arthur
Organization No.: 004263
Acronym: Kenehan, John W.
Organization No.: 005012
Acronym: Kim, Young S.
Organization No.: 005464
Acronym: KNL International, Inc.
Organization No.: 011677
Acronym: Konoike Hayakawa Forwarding, Inc.
Organization No.: 005091
Acronym: Laufer Shipping Co., Inc.
Organization No.: 004268
Acronym: Leading Export Service Corp.
Organization No.: 004467
Acronym: Lee, Johnson
Organization No.: 011589
Acronym: Lewis, Leslie David
Organization No.: 005247
Acronym: Logistics Services Incorporated
Organization No.: 013113
Acronym: Maarten Intermodal Expeditors
Organization No.: 005532
Acronym: Manufacturers Export Service, Inc.
Organization No.: 005494
Acronym: Mara Shipping, Inc.
Organization No.: 004698
Acronym: Marco Forwarding International Co.
Organization No.: 012351
Acronym: Maritime Connections Corp.
Organization No.: 005475
Acronym: Martinez, Miriam
Organization No.: 005528
Acronym: Maust Corporation, The
Organization No.: 002001
Acronym: Maverick Distribution Services, Inc.
Organization No.: 013085
Acronym: Meiko America, Inc.
Organization No.: 005240
Acronym: Meteor Air Freight, Inc.
Organization No.: 006489
Acronym: Milton Snedeker Corporation
Organization No.: 004139
Acronym: Mountain Air Delivery
Organization No.: 010991
Acronym: Naimoli, Anthony
Organization No.: 012875
Acronym: Nettles & Co., Inc.
Organization No.: 004522
Acronym: New England Household International
Organization No.: 004920
Acronym: Newport Cargo Consolidated, Inc.
Organization No.: 012787
Acronym: Newport Cargo Consolidators, Inc.
Organization No.: 008685
Acronym: O'Hanneson Worldwide
Organization No.: 004477
Acronym: Oakland Van & Storage, Inc.
Organization No.: 004873
Acronym: Oceangate Forwarding, Inc.
Organization No.: 007381
Acronym: Olympic International Freight Forwarders, Inc.
Organization No.: 004809
Acronym: Omega Shipping, Inc.
Organization No.: 011680
Acronym: Page International, Inc.
Organization No.: 012726
Acronym: Palm Beach Forwarding International, Inc.
Organization No.: 007964
Acronym: Partec Forwarding Corporation
Organization No.: 013086
Acronym: Pasha International, Inc.
Organization No.: 006643
Acronym: Phil Thomas & Son International Co.
Organization No.: 004505
Acronym: Poseidon Forwarding Company, Inc.
Organization No.: 007965
Acronym: Posey International, Inc.
Organization No.: 004801
Acronym: Reedy Forwarding Co., Inc.
Organization No.: 004228
Acronym: Reliable International, Inc.
Organization No.: 004824
Acronym: Resolution, Inc.
Organization No.: 004164
Acronym: Rewico America, Inc.
Organization No.: 008347
Acronym: Roger Baum International, Inc.
Organization No.: 004861
Acronym: Rome International Freight Consultants, Inc.
Organization No.: 004969
Acronym: Ryan Freight Services, Inc.
Organization No.: 012784
Acronym: S. Swartz Co.
Organization No.: 004489
Acronym: S.A.I.M.A. America, Inc.
Organization No.: 004174
Acronym: S.J. Stile Associates, Ltd.
Organization No.: 012346
Acronym: San Diego Freight Services, Inc.
Organization No.: 011522
Acronym: Sankyu U.S.A., Incorporated
Organization No.: 007821
Acronym: Saudinvest Transportation & Traffic Services
Organization No.: 005125
Acronym: SCAC (USA), Inc.
Organization No.: 009858
Acronym: Schick Moving & Storage Company
Organization No.: 004578
Acronym: Sea Link Corporation
Organization No.: 012797
Acronym: Shippers, Inc.
Organization No.: 013175
Acronym: Solano, John J.
Organization No.: 005108
Acronym: Southern Steamship Agency
Organization No.: 004323
Acronym: Struyk, Carrie D.
Organization No.: 006554
Acronym: T C International Marketing Network, Inc.
Organization No.: 012505
Acronym: Thomas Hudson Enterprises, Inc.
Organization No.: 005648
Acronym: Total Transport, Inc.
Organization No.: 011438
Acronym: Traders of Miami, Inc.
Organization No.: 012672
Acronym: Trans-Global Expeditors Forwarding, Inc.
Organization No.: 013195
Acronym: Treset Corporation
Organization No.: 013115
Acronym: Triple Freight Corp.
Organization No.: 011544
Acronym: Trust Forwarding International, Inc.
Organization No.: 012800
Acronym: U.S.A. Shipping Corporation
Organization No.: 004930
Acronym: US International Transport, Inc.
Organization No.: 012155
Acronym: Vantage International Shipping, Inc.
Organization No.: 012185
Acronym: Vialoma Trading Corporation
Organization No.: 011585
Acronym: Victory Van Lines, Inc.
Organization No.: 009770
Acronym: Viking Sea Freight Inc.
Organization No.: 005341
Acronym: Walker, Alicia Seneca
Organization No.: 011175
Acronym: Westwind Overseas Limited
Organization No.: 004888
Acronym: World Destinations, Inc.
Organization No.: 011147
Acronym: Worldlink International, Inc.
Organization No.: 011467
Acronym: Worldwide Shipping Inc.
Organization No.: 006551
Acronym: Wu, Yvonne (Yihong)

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Organization No.: 013146
Acronym: Yoon, In Joong
Organization No.: 011459
Acronym: Zappola, Denise
Organization No.: 007358

Part C: Common Carriers by Water in the Foreign Commerce of the United States and Licensed Ocean Freight Forwarders That Have Not Filed Anti-Rebate Certifications

Acronym: Alpine Express Corporation
Organization No.: 008556
Acronym: Bravo, Mario C.
Organization No.: 011074
Acronym: Chemical Leaman Tank Lines, Inc.
Organization No.: 008681
Acronym: Dateline Forwarding Services, Inc.
Organization No.: 008497
Acronym: Express Line Corporation
Organization No.: 006930
Acronym: Fast Cargo U.S. (LA), Inc.
Organization No.: 008607
Acronym: Inter-Continental Corporation
Organization No.: 004509
Acronym: Intermar Steamship Corp.
Organization No.: 001352
Acronym: Intersped Inc.
Organization No.: 001377
Acronym: Jagro Customs Brokers & International Freight
Organization No.: 001403
Acronym: John Cassidy & Sons, Inc.
Organization No.: 000727
Acronym: Kurz-Allen, Inc.
Organization No.: 011555
Acronym: Lancer International Corp.
Organization No.: 010938
Acronym: Latin American Express Corp.
Organization No.: 004904
Acronym: Nedrac Incorporated
Organization No.: 007561
Acronym: Premier Shipping Company, Inc.
Organization No.: 004388
Acronym: Ralex International Corp.
Organization No.: 011675
Acronym: Suntrans International, Inc.
Organization No.: 008622
Acronym: Total Cargo International, Inc.
Organization No.: 005214

[FR Doc. 95–4790 Filed 2–27–95; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 23, 1995. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on the implementation of the interagency proposal to revise regulations implementing the Community Reinvestment Act.

Consumer Leasing Disclosures. Discussion led by the Consumer Credit Committee on whether and how the Board should amend Regulation M (Consumer Leasing) to address technological and other developments in the leasing industry and to simplify compliance and reduce burdens without diminishing consumer protections.

Regulatory Coverage for Stored-Value Cards. Discussion led by the Depository and Delivery Systems Committee on whether and how the Board should amend Regulation E (Electronic Fund Transfers) to govern technologically advanced electronic products, such as smart cards, prepaid cards, and electronic purses.

Waiver of Consumer's Right of Rescission for Certain Loans. Update by the Consumer Credit Committee on its work in providing timely Council input to the Board on the issue of consumer waivers of the right to rescind certain mortgage transactions under Regulation Z (Truth in Lending). (This issue will be the subject of a March 1995 Board report to the Congress.)

Sale of Uninsured Investment Vehicles by Depository Institutions. Discussion led by the Depository and Delivery Systems Committee of nonregulatory actions by the Board to address consumers' information needs about uninsured investment products offered by depository institutions.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether there is a strong focus on lending in the inner cities).

Committee Reports. Reports from Council committees on their work and plans for 1995.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Wednesday, March 15, 1995, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ann Marie Bray, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System,February 22, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4844 Filed 2–27–95; 8:45am]
BILLING CODE 6210–01–F

Robert Lee & Beverly Sue Martin; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Robert Lee & Beverly Sue Martin, Jefferson, Wisconsin; to acquire an additional 1.6 percent for a total of 18.6 percent of the voting shares of Jefferson County Bancorp, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Jefferson County Bank, Jefferson, Wisconsin.

Board of Governors of the Federal Reserve System, February 22, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4840 Filed 2–27–95; 8:45 am]
BILLING CODE 6210–01–F

New Era Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New Era Bancorporation, Inc., Fredericktown, Missouri; to acquire up to 9.9 percent of St. Francois County Financial Corp., Farmington, Missouri, and thereby acquire St. Francois County Savings and Loan Association, Fredericktown, Missouri, and thereby engage in operating a thrift institution, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4841 Filed 2–27–95; 8:45 am]
BILLING CODE 6210–01–F

Ogle County Bancshares; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ogle County Bancshares, Rochelle, Illinois; to engage *de novo* in making and servicing loans, pursuant to §225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–4842 Filed 2–27–95; 8:45 am]
BILLING CODE 6210–01–F

Peoples Independent Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Peoples Independent Bancshares, Inc., Boaz, Alabama; to merge with Randolph Bancshares, Inc., Roanoke, Alabama, and thereby indirectly acquire First Bank, Wadley, Alabama.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancshares, Inc., Neosho, Missouri; to acquire 100 percent of the voting shares of Seneca

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Management Company, Seneca, Missouri, and thereby indirectly acquire State Bank of Seneca, Seneca, Missouri.

Board of Governors of the Federal Reserve System, February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4843 Filed 2–27–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–2456]

Amerada Hess Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: This order reopens a 1973 consent order—which required that the Clarco Pipe Line be divested and prohibited Amerada, VGS Corporation and Clarco Pipe Line Company from acquiring assets related to the transportation or refining of crude oil produced in either Mississippi or Alabama without prior Commission approval—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest require setting aside competition orders in effect for more than 30 years.

DATES: Consent order issued September 18, 1973. Set aside order issued January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Amerada Hess Corporation, et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Reopening Proceeding and Setting Aside Order

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

On September 12, 1994, Amerada Hess Corporation ("Amerada Hess") filed a Request to Reopen and Vacate Order ("Request") in this matter.[1] Amerada Hess requests that the Commission set aside the 1978 consent order in this matter, pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Commission's July 22, 1994, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment with Respect to Duration of Consumer Protection Orders ("Sunset Policy Statement").[2]

Leon Hess, also a respondent in this matter, joined in Amerada Hess's Request, by letter dated September 21, 1994. Southland Oil Company, successor to respondent VGS Corporation, filed a Statement in Support of Request to Reopen and Vacate Order on October 21, 1994. In addition, on October 20, 1994, Hunt Refining Company, the purchaser of assets from respondent Clarco Pipe Line Company, filed a petition requesting, among other things, that the Commission reopen the proceeding and vacate the order as to Hunt ("Petition"). Amerada Hess's Request, Hunt's Petition and the information supplied by Leon Hess and Southland Oil Company were placed on the public record pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51.[3] No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."[4]

The Commission's order in Docket No. C–2456 was issued on September 18, 1973, and has been in effect for more than twenty-one years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–2456.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. C–2456 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4861 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[1] See Amerada Hess Corp., 83 F.T.C. 487 (1973).

[2] The Sunset Policy Statement is published at 59 FR 45,286 (Sept. 1, 1994).

[3] The fifth respondent named in the order died in 1989.

[4] Sunset Policy Statement, 59 FR at 45,289.

[Dkt. C–3553]

Baby Furniture Plus Association, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Alabama-based buying cooperative and trade association from taking any action on behalf of its members, or encouraging them to take any action, that interferes with a juvenile product manufacturer's decision as to how or to whom to distribute its products. The consent order also prohibits the respondent from coercing—by means of actual or threatened refusals to deal—any juvenile products manufacturer to abandon or adopt—or to refrain from abandoning or adopting—any marketing method for its products.

DATES: Complaint and Order issued January 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: On Tuesday, November 1, 1994, there was published in the **Federal Register**, 59 FR 54601, a proposed consent agreement with analysis In the Matter of Baby Furniture Plus Association, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4862 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3550]

Bee-Sweet, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a North Carolina corporation and its officer from representing that bee pollen products are effective as a cure or in mitigating certain conditions and physical ailments, and from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. In addition, the consent order requires the respondents to notify all sellers of the products, for the last 12 months, about the settlement with the Commission.

DATES: Complaint and Order issued January 17, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Waldman, FTC/New York Regional, 150 William St., Suite 1300, New York, NY 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Tuesday, November 8, 1994, there was published in the **Federal Register**, 59 FR 55665, a proposed consent agreement with analysis In the Matter of Bee-Sweet, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–4863 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3558]

Charter Medical Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Charter Medical Corporation (Charter), a Georgia-based chain of psychiatric hospitals, to modify its agreement to purchase certain National Medical Enterprises (NME) facilities to rescind Charter's acquisitions of NME psychiatric facilities in four specified localities. In addition, the consent order requires Charter, for ten years, to secure Commission approval before acquiring or divesting psychiatric facilities in those localities.

DATES: Complaint and Order issued February 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Robert W. Doyle, Jr. or Ronald B. Rowe, FTC/S–2105, Washington, DC 20580, (202) 326–2819 or 326–2610.

SUPPLEMENTARY INFORMATION: On Monday, November 28, 1994, there was published in the **Federal Register**, 59 FR 60804, a proposed consent agreement with analysis In the Matter of Charter Medical Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–4864 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3286]

Felson Builders, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, three California firms and an officer to comply with the full disclosure requirements of the Truth in Lending Act and Regulation Z, its implementing regulation, in advertising credit terms.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc. File No. 932–3286.

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The Federal Trade Commission having initiated an investigation of certain acts and practices of Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P. a limited partnership, dba Elmhurst Funding; Joseph L. Felson, individually and as an officer of Felson Builders, Inc., and it now appearing that Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Felson Builders, Inc., by its duly authorized officer; Diamond Crossing Associates, L.P., by its duly authorized officer; Elmhurst Partners, L.P., by its duly authorized officer; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., and their attorneys, and counsel for the Federal Trade Commission that:

1. (a) Proposed respondent Felson Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

(b) Proposed respondent Diamond Crossing Associates, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California.

(c) Proposed respondent Elmhurst Partners, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California,.

(d) Each of the above proposed respondents has its principal place of business at 1290 B Street, Suite 210, Hayward, California 94541.

(e) Proposed respondent Joseph L. Felson is an officer of proposed respondents Felson Builders, Inc. He formulates, directs and controls the acts and practices of said proposed respondent, and his principal place of business is the same as that of said proposed respondent.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) all claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Felson Builders, Inc., a corporation, its successors and assigns, and its officers; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding, its successors and assigns, and its offices; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding, its successors and assigns, and its officers; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division , or other device, in connection with any extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR part 226) to the Truth in Lending Act ("TILA") (15 U.S.C. 1601–1667e, as amended) do forthwith cease and desist from:

1. Failing to furnish consumers with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by §§ 226.17(a) and 226.18 of Regulation Z, 12 CFR 226.17(a) and 226.18.

2. Failing to furnish consumers prior to the consummation of a consumer credit transaction with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by §§ 226.17(b) and 226.18 of Regulation Z, 12 CFR 226.17(b) and 226.18.

3. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment,

(2) The terms of repayment, including the amount of any balloon payment, and

(3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 236.24(c) of Regulation Z, 12 CFR 226.24(c))

4. Stating a rate of finance charge without stating the rate as an "annual percentage rate," using that term or the abbreviation "APR," as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with , but not more conspicuously than, the annual percentage rate.

(Sec. 144 of the TILA, 15 U.S.C. 1664, and § 226.24(b) of Regulation Z, 12 CFR 226.24(b))

5. Failing to comply in any other respect with the Truth in Lending Act, 15 U.S.C. 1601–1667e, as amended, or its implementing regulation, Regulation Z, 12 CFR part 226, as amended.

II

It is further ordered that respondents distribute a copy of this order to all their operating divisions, if any, and to all present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

III

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in any respondent which is a corporation or limited partnership, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or limited partnership, the creation or dissolution of subsidiaries, or any other change in the corporation or limited partnership which may affect compliance obligations arising out of the order.

IV

It is further ordered that, for a period of five (5) years following service upon him of this order, the individual respondent named herein shall notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment involved in the advertising and/or extension of "consumer credit," as that term is defined in the Truth in Lending Act and its implementing Regulation Z, no later than thirty (30) days after such discontinuance and affiliation has occurred. Such notice shall include the respondent's current business address and telephone number and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities and financial interest in the business.

V

It is further ordered that for five (5) years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI

It is further ordered that the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Felson Builders, Inc., a California corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The complaint alleges that respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P. have failed to furnish consumers the disclosures required by Regulation Z, the implementing regulation of the Truth in Lending Act, in violation of §§ 226.17(a) and 226.18 of Regulation Z, and that respondents' practice constitutes an unfair and deceptive act or practice in violation of section 5 of the Federal Trade Commission Act.

The complaint also alleges that respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., have disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, but fail to state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, including the amount of any balloon payment, and the annual percentage rate, using that term or the abbreviation "APR." The complaint alleges this practice to be in violation of §§ 226.24(c) of Regulation Z, and that it constitutes an unfair and deceptive act or practice in violation of section 5 of the Federal Trade Commission Act.

Finally, the complaint alleges that respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., have disseminated or caused to be disseminated advertisements that failed to state the rate of a finance charge as an "annual percentage rate," using that term or the abbreviation "APR," as required by Regulation Z, in violation of § 226.24(b) of Regulation Z.

The proposed order requires respondents to furnish consumers with the disclosures required by Regulation Z, in connection with respondents' extension of consumer credit.

The proposed order also requires respondents to furnish consumers, prior to the consummation of a consumer credit transaction, with the disclosures required by Regulation Z, in connection with respondents' extension of consumer credit.

Finally, the proposed order requires respondents in any advertisements to promote any extension of consumer credit, whenever the amount or percentage of the downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge is stated, to state clearly and conspicuously, all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, including the amount of any balloon payment, and the "annual percentage rate," using that term or the abbreviation "APR."

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of

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the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–4865 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3554]

Medical Staff of Good Samaritan Regional Medical Center; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

DATES: Complaint and Order issued February 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Friday, September 23, 1994, there was published in the **Federal Register**, 59 FR 48889, a proposed consent agreement with analysis In the Matter of Medical Staff of Good Samaritan Regional Medical Center, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4866 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3552]

New England Juvenile Retailers Association, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent order also requires the dissolution of the association within sixty days and requires the association to send a letter, acknowledging the consent order with the Commission and outlining its terms, to the manufacturers it allegedly threatened to boycott.

DATES: Complaint and Order issued January 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: On Tuesday, November 1, 1994, there was published in the **Federal Register**, 59 FR 54604, a proposed consent agreement with analysis In the Matter of New England Juvenile Retailers Association, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4867 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3555]

Oerlikon-Buhrle Holding AG; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, a Switzerland-based corporation to acquire Leybold AG, a German firm, but requires the respondent to divest both the Leybold compact disc metallizer business and the Balzers-Pfeiffer turbomolecular pump business, within 12 months, to Commission approved entities. If the divestitures are not completed within 12 months, the Commission is permitted to appoint trustees to complete them. In addition, the respondent is required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

DATES: Complaint and Order issued February 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester or Michael Moiseyev, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Friday, November 18, 1994, there was published in the **Federal Register**, 59 FR 59780, a proposed consent agreement with analysis In the Matter of Oerlikon-Buhrle Holding AG, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings, and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–4868 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3556]

Olsen Laboratories, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two Kansas-based firms and an official from making false claims for Eez-Away, an arthritis pain treatment, or similar products. The consent order requires the respondents to possess competent and reliable scientific evidence before making any health or medical benefit claim for any personal or household product or service they market in the future; requires them to clearly identify any future infomerical they disseminate as paid advertising; and prohibits them from misusing endorsements.

DATES: Complaint and Order issued February 6, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Lesley Fair, FTC/S–4002, Washington, DC, 20580. (202) 326–3081.

SUPPLEMENTARY INFORMATION: On Thursday, December 1, 1994, there was published in the **Federal Register**, 59 FR 61622, a proposed consent agreement with analysis In the Matter of Olsen Laboratories, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–4869 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold two public meetings for Federal, State and local government agencies, and others interested in an overview and demonstration of the Government Printing Office's online service GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40).

Two sessions are available on Tuesday, March 14, 1995, from 9 a.m. to 10:30 a.m. and from 11 a.m. to 12:30 p.m. Both sessions will be held at the U.S. Government Printing Office, Carl Hayden Room (eighth floor), 732 North Capitol Street NW., Washington, DC 20401.

The online **Federal Register** service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills, Public Laws; and U.S. Code.

Individuals interested in attending either session should contact the GPO's Office of Electronic Information Dissemination Services, John Berger, Product Manager, on 202–512–1525; (FAX) 202–512–1262; or by Internet e-mail at help@eids05.eids.gpo.gov.

Seating reservations will be accepted through Friday, March 10, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–4835 Filed 2–27–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 51 FR 8032, March 7, 1986) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

FDA is revising the substructure of the Office of Public Affairs within the Office of External Affairs. The purpose of the revisions is to establish a new Broadcast Media Staff to manage broadcast media activities. The broadcast media functions will be transferred to the new staff from the Press Relations Staff, which will continue to have print media functions.

Under Section HF–B, Organization

1. Delete subparagraph (e–1) Press Relations Staff (HFAJA) in its entirety and insert new subparagraphs (e–1) Press Relations Staff (HFAJA) and (e–6) Broadcast Media Staff (HFAJG) under paragraph Office of Public Affairs (HFAJ) under Office of External Affairs (HFAQ) reading as follows:

Press Relations Staff (HFAJA)

Advises and assists top level Agency officials on print press matters involving mass media communications.

Plans, develops, and implements Agencywide print media strategies for disseminating regulatory and educational materials to the public through the mass media.

Serves as the Agency focal point for preparing, clearing, and disseminating press releases and other print media statements representing Agency policy and responding to print media inquiries; maintains liaison with news media and pertinent publications.

Establishes policy for and coordinates all print media information activities, including news interviews and responses to inquiries; prepares position

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and policy statements for use by Agency employees in responding to print media questions; tracks issues of potential interest to the media.

Coordinates the research and drafting of major public statements by the Commissioner, including transmittal documents and supportive statements for use in transactions with the Department, other agencies, and the White House; provides editorial consultation and review for manuscripts, articles, and speeches written by the staff offices serving the Commissioner to ensure consistency of information and policy interpretation and maintains mailing lists for these documents.

Compiles, publishes, and distributes the weekly FDA Enforcement Report and the FDA Public Calendar; maintains the FDA Daily Clipping Service and FDA's electronic bulletin board; and coordinates the Daily Media Report.

Broadcast Media Staff (HFAJG)

Advises and assists top level Agency officials on electronic media matters involving mass media communications.

Plans, develops, and implements Agencywide broadcast media strategies for disseminating regulatory and educational materials to the public through the mass media.

Serves as the Agency focal point for preparing, clearing, and disseminating electronic media requests representing Agency policy and responding to electronic media inquiries; maintains liaison with broadcast media contacts.

Establishes policy for and coordinates all braodcast media information activities, including on-camera interviews and responses to media inquiries; prepares position and policy statements for use by Agency employees in responding to broadcast media questions; tracks issues of potential interest to the media.

Plans and coordinates all broadcast media training for the Agency.

Under Section HF–D, Delegation of Authority

Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the Office of Public Affairs in effect prior to this date shall continue in effect in them or their successors.

Dated: February 10, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–4796 Filed 2–27–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Consensus Development Conference on Cochlear Implants in Adults and Children

Notice is hereby given of the NIH Consensus Development Conference on "Cochlear Implants in Adults and Children," which will be held May 15–17, 1995, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on May 15, at 8 a.m. on May 16, and at 9 a.m. on May 17.

Cochlear implants are effective options in habilitation and rehabilitation of individuals with profound hearing impairment. The vast majority of adults who are deaf and have cochlear implants derive substantial benefit from them when they are used in conjunction with speechreading, and a considerable number of implanted individuals can understand speech without visual clues. Benefits have also been observed in children including those who lost their hearing prelingually.

The NIH sponsored a Consensus Development Conference on Cochlear Implants in 1988. Since then, implant technology has been continually improved. Questions unanswered at this time have now been resolved. However, new issues have emerged that must be addressed. For example, the performance of some severely to profoundly hearing-impaired adults using hearing aids is poorer than that of even more severely hearing-impaired individuals using cochlear implants with advanced speech processing strategies. Therefore, the criteria for implantation should be re-examined. Prediction of implant efficacy in a specific individual remains a problem, and agreement does not exist on the definition of a successful implant user. Surgical and other risks and possible long-term effects of cochlear implants require evaluation.

Implantation of individuals with multiple disabilities, the elderly, and children, particularly children who are prelingually deaf, engender special questions. What educational setting is best for the development of speech and language in children who are deaf and have a cochlear implant? Are cochlear implants efficacious in children who are prelingually deaf?

This conference will bring together specialists in auditory anatomy and physiology, otolaryngology, audiology, aural rehabilitation, education, speech and language pathology and other related disciplines as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

* What factors affect the auditory performance of cochlear implant recipients?
* What are the benefits and limitations of cochlear implantation?
* What are the technical and safety considerations of cochlear implantation?
* Who is a candidate for cochlear implantation?
* What are the directions for future research on cochlear implantation?

The primary sponsors for this conference are the National Institute on Deafness and Other Communication Disorders and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute on Aging, the National Institute of Child Health and Human Development, and the National Institute of Neurological Disorders and Stroke. This is the 100th Consensus Development Conference held by NIH since the establishment of the Consensus Development Program in 1977.

On the second day of the conference, time has been allocated for 5-minute formal oral presentations by concerned individuals or organizations. Those individuals or groups wishing to send a representative to contribute during this session must contact Ms. Elsa Bray by 5 p.m. eastern time, May 1, 1995 at: Office of Medical Applications of Research, National Institutes of Health, Federal Building, Room 618, 7550 Wisconsin Avenue MSC9120, Bethesda, Maryland 20892–9120, phone (301) 496–1144. If the number of requests exceeds the slots available, presenters will be chosen by lot, and those selected will be notified by May 5, 1995.

Advance information on the conference program and conference registration materials may be obtained from: Ann Besignano, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning May 17, 1995 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: February 9, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–4823 Filed 2–27–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Grant to the Farm Resource Center

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Planned single-source award to support mental health outreach to coal miners, farmers, and their families.

SUMMARY: This notice is to provide information to the public concerning a planned single-source award by the CMHS/SAMHSA to the Farm Resource Center (FRC) of Cairo, Illinois, to fund the "MH Outreach to Coal Miners, Farmers, and Families" project. Upon receipt of a satisfactory grant application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council, approximately $600,000 in Federal funds will be made available to the FRC to carry out a 1-year project.

This is not a formal request for applications. Grant funds will be provided only to the FRC.

Authority/Justification: This grant will be made under the authority of Section 520A of the Public Health Service Act (42 USC 290bb-32).

An award is being made on a single-source basis in response to House and Senate Appropriation Subcommittees language contained in H.R. Report 103–553 and S. Report 103–318 instructing the agency to provide funding for two pilot projects to provide outreach counseling services to families of coal miners. A grant is the appropriate mechanism to fund this activity since support will be provided for a public purpose and agency involvement in the actual conduct of the activity is not required.

The FRC has provided mental health and substance abuse outreach services in rural Illinois since 1986. FRC has provided counseling to farmers, coal miners and their families, established a statewide hotline, and utilized outreach counselors to work with rural families in their homes to address problems such as depression, financial stress, alcoholism, and domestic violence.

The FRC is uniquely qualified to carry out the aims of this project in that it has the distinction of being the only organization with extensive experience in linking coal miners, farmers, and their families with mental health services. Further, because of their years of experience and organizational readiness, the project can be implemented with a minimal start-up time. The FRC has in place mechanisms to recruit, train, and dispatch volunteers to provide outreach and counseling to the target population. Moreover, FRC's trained staff have a long history of working closely with State or regional associations of the United Mine Workers of America, Association of Public Health Administrators, the Easter Seal Society, and the Association of Community Mental Health Agencies.

Background: A significant portion of the adult population in the United States reports experiencing personal or emotional problems in the course of a year. Half of these people say they are unable to solve their problems, and approximately one-third report they are unable to do anything to make their problems more bearable. Yet relatively few seek help. Thus, outreach services are important to engage more persons into appropriate services. Outreach, when carried out aggressively, can engage and empower coal miners, farmers, and their families by giving them access to needed mental health services.

The effects of economic stress are pervasive in rural areas, and coal miners, farmers, and their families have been particularly hard hit. Unemployment and underemployment have resulted in a high incidence of problems including alcohol/drug abuse, family violence, depression, suicides, and other stress-related symptoms.

This grant is intended to address the mental health needs of a wide range of rural population groups including the poor, the elderly, the disabled, women (particularly those of child bearing age), and minority populations in Illinois and West Virginia. It will enhance effective service utilization in five areas by:

(1) Expanding the mental health service capacity in communities to serve persons in the target population;

(2) Increasing access to existing mental health and related support services;

(3) Increasing utilization of existing mental health and related support services;

(4) Developing effective public education efforts to address mental health and substance abuse issues; and

(5) Providing family-centered outreach in the cultural context that is most appropriate for the client and family involved.

The proposed project will serve as a national demonstration site on the development and implementation of outreach to rural families who are experiencing mental illnesses or are at-risk of developing mental illnesses.

Dated: February 21, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4845 Filed 2–27–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–05–1430–01; IDI–31091]

Intent To Prepare a Plan Amendment to the Medicine Lodge Resource Management Plan (RMP); Proposed Sale of Public Land in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Plan Amendment to the Medicine Lodge Resource Management Plan (RMP); Proposed Sale of Public Land in Jefferson County, Idaho.

SUMMARY: Pursuant to 43 CFR part 1600, the Idaho Falls office of the Bureau of Land Management proposes to amend the Medicine Lodge RMP to identify a portion of the following described public land as suitable for disposal. The land, located in Jefferson County, Idaho, will be examined for possible disposal by direct sale to the City of Mud Lake.

Boise Meridian, Idaho

T. 6 N., R. 34 E., BM
Sec. 18, lot 10, NE¼.

The land being considered for sale is approximately 40 to 50 acres. A Cadastral survey would be required to determine the exact acreage and legal description.

DATES: Comments concerning the plan amendment must be received no later March 30, 1995.

ADDRESSES: Written comments concerning the plan amendment may be sent to the BLM Associate District Manager, 940 Lincoln Road, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by contacting Bruce Bash, Realty Specialist, at the above address, or by calling 208–524–7521.

SUPPLEMENTARY INFORMATION: The amendment would change the land designation, of about 40–50 acres, from retention status to transfer status. The following resources would be considered in preparation of the

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amendment: lands, wildlife, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff members representing each resource will be consulted during preparation of the environmental document.

The primary issue to be addressed is the change in land designation from retention to transfer status. The amendment is not expected to be controversial as the City of Mud Lake currently holds an airport lease on the same land. No public meetings are scheduled; however, written comments may be submitted after each of two public notices.

Prepared documents will be available at the BLM Idaho Falls office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: February 16, 1995.

Gary L. Bliss,

Associate District Manager.

[FR Doc. 95–4801 Filed 2–27–95; 8:45 am]

BILLING CODE 4315–GG–M

Fish and Wildlife Service

Marine Mammals; Polar Bear Habitat Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Availability of a draft Habitat Conservation Strategy for Polar Bears in Alaska; request for comments.

SUMMARY: Final Fish and Wildlife Service (Service) regulations published in the **Federal Register** on November 16, 1993, authorized and governed the incidental, unintentional take of small numbers of polar bear and walrus during oil and gas industry operations year-round in the Beaufort Sea and adjacent northern coast of Alaska. Those regulations contained provisions requiring the Service by June 15, 1995, to develop and being implementing a strategy for the identification and protection of important polar bear habitats. The Service has developed a draft Habitat Conservation Strategy for Polar Bears in Alaska (Strategy), announces its availability, and solicits public comments.

DATES: Comments on the draft Strategy must be received by May 1, 1995.

ADDRESSES: Copies of the draft Strategy are available by contacting the Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; Telephone: 907/786–3800; FAX: 907/786–3816.

Written comments should be submitted either by mail or FAX to David McGillivary, Supervisor, Office of Marine Mammals Management at the above identified address, telephone, or FAX numbers.

FOR FURTHER INFORMATION CONTACT: David McGillivary in Anchorage, Alaska, at 907/786–3800.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 (Act) vested authority for management and conservation of polar bears in the United States (i.e., Alaska) with the Service. Provisions in section 101(a)(5) of the Act authorize the incidental, unintentional take by U.S. citizens of small numbers of marine mammals (e.g., polar bear) in specified activities other than commercial fishing. As defined in section 3 of the Act, the term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

While the Act authorizes these incidental takes, section 2(6) of the Act states that:

> Marine mammals * * * should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.

In this regard, section 112(a) of the Act authorizes the Secretary of the Interior to prescribe regulations that are necessary and appropriate to carry out the purposes of the Act.

In addition to its responsibilities under the Act, the Service has further responsibilities under the 1973 International Agreement on the Conservation of Polar Bears (International Agreement). Article II of this International Agreement states that:

> Each Contracting Party [i.e., Canada, Denmark, Norway, Russia, and the U.S.] shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns * * *

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of 14 other oil and gas related companies operating in Alaska, petitioned the Service to promulgate regulations pursuant to section 101(a)(5) of the Act to allow for the incidental, unintentional take of small numbers of polar bears and walrus during year-round oil and gas activities (i.e., exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska. Culminating a two-year process, the Service ultimately published a final rule in the **Federal Register** on November 16, 1993 (58 FR 60402), with final regulations initially effective beginning on December 16, 1993, for an 18-month period through June 16, 1995.

Consistent with the intent of the International Agreement, the final rule contains provisions that require the Service to develop and begin implementing a strategy, as part of our management plan process pursuant to section 115 of the Act, for the identification and protection of important polar bear habitats. Development of a strategy, as well as the initiation of steps to implement it, is necessary for the Beaufort Sea final regulations to be extended beyond their initial 18 month effective period (now set to expire on June 16, 1995) for a total 5-year period (through December 15, 1998) as authorized by the Act.

Initiating efforts to develop this draft Strategy, the Service on December 28, 1993, published a "Notice of intent to prepare a polar bear habitat protection strategy, conduct public meetings, and request [for] information," in the **Federal Register** (58 FR 68659). Public meetings were held in Anchorage and Barrow, Alaska, on January 20 and 25, 1994, respectively, in order to provide background information and our proposed plan for development of a Strategy, and to solicit input from those in attendance. The formal public comment period associated with the Notice closed on February 11, 1994. Additional meetings subsequently were held in coastal Alaska communities and discussions have been conducted with Alaskan Native hunters to collect knowledge on polar bear habitat use. The Service has also consulted with the Marine Mammal Commission, signatories to the International Agreement, the Department of State, the State of Alaska, the oil and gas industry, conservation organizations, and academia. Information obtained during these various efforts has been incorporated into the draft Strategy.

The objective of this Strategy is to identify and enhance protection of important polar bear habitats in Alaska. This will enable the United States to address the ecosystem protection provisions of the Act and the Agreement, and to ensure oil and gas activities are conducted in a manner that minimizes adverse impacts on polar bears, their habitat, and on their availability for subsistence uses. Its goal is to maintain the integrity of the ecosystem upon which polar bears depend and to maintain polar bear populations at optimum sustainable population levels. The Service hereby announces the availability of its draft Strategy. Public review and comment is solicited.

The Service has prepared a draft Environmental Assessment (EA) in conjunction with the draft Strategy. A copy of the draft EA may be obtained from the Service's Office of Marine Mammal Management identified above in the **ADDRESSES** section.

Dated: February 17, 1995.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–4903 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of Sub-committee on Design Competition Package.

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Sub-Committee producing the Design Competition Package. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Thursday, March 2, 1995, 1:30—5:00 pm.; and Friday, March 3, 1995, 8:00—12:00 a.m., and 1:30—5:00 p.m.

ADDRESSES: American Institute of Architects (AIA), Denver Chapter Office, 1526 15th Street, Denver, Colorado 80202: (303) 446–2266.

THE AGENDA OF THIS MEETING WILL BE: Continue work begun by the Indian Memorial Advisory Committee and the National Park Service Support Team to produce a package that establishes the structure, rules, processes that will guide an upcoming national design competition for the creation of a memorial to the Indian participants in the 1876 conflict at Little Bighorn Battlefield National Monument, located at Crow Agency, Montana. This meeting will incorporate help from a select group of four architects under the sponsorship of the AIA. The architects will provide professional insight into formulating and managing design competitions and will help steer the final decisions of the sub-committee. The components of the meeting will consist of a review of project progress to date and discussion/decisions about; competition staging; advertising and promotional strategies; applicant registration, rules, and fees; design competition language; design criteria; base data needs and format; evaluation criteria; jury composition and scoring/selection alternatives; stipends for finalists; awards and commendations (amounts and categories); competition and design development schedule; and transforming the final design into a finished product.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and "* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable."

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator and Indian Advisory Committee Liaison, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287 (303) 969–2511.

Dated: February 9, 1995.

Gerard Baker,

Superintendent, Little Bighorn Battlefield National Monument, Designated Federal Official, National Park Service.

[FR Doc. 95–4805 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

Pea Ridge National Military Park Advisory Team; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 6:00 p.m., on Thursday, March 16, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matter to be discussed at this meeting includes:

—Boundary Study

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: February 21, 1995.

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–4803 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

Trail of Tears National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held March 30–31, 1995, at 8:30 a.m., at the Comfort Hotel River Plaza, 407 Chestnut Street, Chattanooga, Tennessee.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan Implementation Status

—Trail Association Status

—Cooperative Agreements Negotiation

—Fundraising

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the office of the Superintendent, located in Room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

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Dated: February 21, 1995.

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–4802 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 18, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 15, 1995.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Manatee County

Cortez Historic District, Bounded by Cortez Rd., 119th St. W. Sarasota Bay and 124th St. Ct. W. Tallahassee, 95000250

Monroe County

Florida Keys Memorial, US 1 at Mile Marker 81.5, Islamorada, 95000238

MONTANA

Missoula County

Christie, Thomas J., House, 401 McLeod Ave., Missoula, 95000251

OKLAHOMA

Caddo County

Caddo County Medicine Creek Archaeological District, Address Restricted, Binger vicinity, 95000235

Stevens Rock Shelter, Address Restricted, Gracemont vicinity, 95000237

Greer County

Manqum Community Building, 201 W. Lincoln, Mangum, 95000236

VIRGINIA

Amherst County

Sweet Briar College Historic District, Sweet Briar Dr., 5 mi. W of US 29, Amherst vicinity, 95000240

Chesterfield County

Falling Creek Ironworks Archaeological Site, Address Restricted, Richmond vicinity, 95000242

Clarke County

Glendale Farm, Jct. of VA 761 and VA 632, N side, Berryville vicinity, 95000244

Wickliffe Church, VA 608, E side, .5 mi. S of VA–WV line, Berryville vicinity, 95000241

King and Queen County

Farmington, 1.5 mi. SE of jct. of VA 14 and US 360, S side, St. Stephens Church vicinity, 95000243

Northumberland County

Anchorage, The, 1 mi. W of jct. of VA 605 and VA 669, N side, Kilmarnock vicinity, 95000245

Coan Baptist Church, VA 638, E of jct. with VA 612, Heathsville vicinity, 95000239

Richmond Independent City

Belle Isle, James R. at US1/301, Richmond (Independent City), 95000246

WASHINGTON

Asotin County

Grande Ronde River Bridge (Bridges of Washington State MPS), WA 129 over the Grande Ronde R., Asotin vicinity, 95000262

Cowlitz County

Jim Creek Bridge (Bridges of Washington State MPS), WA 503 over Jim Cr., Woodland vicinity, 95000258

Ferry County

Barstow Bridge (Bridges of Washington State MPS), US 395 and Co. Rd. 4061 over the Kettle R., Kettle Falls vicinity, 95000263

Columbia River Bridge at Kettle Falls (Bridges of Washington State MPS), US 395 over the Columbia R., Kettle Falls vicinity, 95000260

Lincoln County

Spokane River Bridge at Fort Spokane (Bridges of Washington State MPS), WA 25 over the Spokane R., Hunters vicinity, 95000261

Pierce County

Winnifred Street Bridge (Bridges of Washington State MPS), Winnifred St. over the Burlington Northern RR tracks, Ruston vicinity, 95000259

WEST VIRGINIA

Braxton County

Burnsville Bridge, Old Bridge St. over the Little Kanawha R., Burnsville, 95000254

Fayette County

Oak Hill Railroad Depot, Jct. of Virginia Ave. and Central Ave., Oak Hill, 95000255

Hancock County

People's Bank, 3383 Main St., Weirton, 95000253

Marshall County

Moundsville Commercial Historic District, Roughly, Jefferson Ave. from Second to Seventh Sts., Seventh from Jefferson to Lafayette Ave. and Lafayette S of Seventh, Moundsville, 95000252

WISCONSIN

Columbia County

Portage Industrial Waterfront Historic District, Jct. of E. Mullet and Dodge Sts., Portage, 95000257

Sheboygan County

Blackstock, Thomas M. and Bridget, House, 507 Washington Ct., Sheboygan, 95000256

Waukesha County

Merten, Charles, House, 929 Rosemary St., Waukesha, 95000248

Northwestern Hotel, 322 Williams St., Waukesha, 95000249

Winnebago County

First Methodist Church, 502 N. Main St., Oshkosh, 95000247

[FR Doc. 95–4804 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32607]

WFEC Railroad Company—Construction and Operation Exemption—Choctaw and McCurtain Counties, OK

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by the WFEC Railroad Company of a 14-mile line of railroad in Choctaw and McCurtain Counties, OK, subject to the results of our environmental review and further decision. The line will extend north from the Western Farmers Electric Cooperative's Hugo Generating Station loop track, cross a line of the Kiamichi Railroad Company, and then extend east to connect with a line of the Texas, Oklahoma & Eastern Railroad Company near Valliant, OK.

DATES: The exemption cannot become effective until after the environmental process has been completed. At that time, the Commission will issue a further decision addressing the environmental matters and establishing an exemption effective date, if appropriate. Petitions to reopen must be filed by March 20, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32607 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: John H. LeSeur, Slover & Loftus, 1224 Seventeenth St., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in

the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 10, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4914 Filed 2–27–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1144X)]

Consolidated Rail Corporation—Abandonment Exemption—In Cumberland and Dauphin Counties, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1-mile line of railroad (the Cumberland Valley Railroad Bridge) spanning the Susquehanna River, between Harrisburg and Lemoyne, PA, located on a portion of track known as the Shippensburg Secondary, between milepost 0.5 and milepost 1.5, in Cumberland and Dauphin Counties, PA.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 30, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 10, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 1995,[4] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 3, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4874 Filed 2–27–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[4] Conrail indicates that, subject to the abandonment, they have contracted to sell the bridge to Capital Area Transit for the purpose of preserving it as a historical structure and for possible future public use.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Association of Retail Travel Agents: Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Association of Retail Travel Agents*, Civil Action No. 94–2305 (PF), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC. 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States' Response to Public Comments

Introduction

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Association of Retail Travel Agents, Defendant. [Civil No: 94–2305 (PF).]

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(d), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on October 25, 1994, when the United States filed a Complaint alleging that the Association of Retail Travel Agents (hereinafter "ARTA") had entered into a contract, combination or conspiracy in restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. 1). The Complaint alleges that ARTA, a trade association, all of whose members are

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travel agents, and its members agreed on commission levels and other terms of trade on which to transact business with providers of travel services, and encouraged and participated in a group boycott with the intent to induce certain providers of travel services to agree to certain commission levels and practices. The Complaint seeks an order enjoining ARTA from inviting or encouraging such concerted action by travel agents.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS") and a Stipulation signed by ARTA for entry of the proposed Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the Complaint by enjoining ARTA from inviting or encouraging travel agents to deal with travel providers only on agreed terms. This prohibition includes any agreements on Specified commission levels. The proposed Final Judgment also prohibits ARTA from adopting or disseminating any rules, policies, or statements that have the purpose or effect of advocating or encouraging such a concerted refusal to deal. Finally, the proposed Final Judgment requires ARTA periodically to inform its members, officers and board members on the requirements of the proposed Final Judgments and the antitrust laws.

As required by the APPA, on December 8, 1994, ARTA filed with this Court a description of written and oral communications on its behalf within the reporting requirements of section 15(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal were published in the Washington Post for seven consecutive days beginning November 13, 1994. The proposed Final Judgment and CIS were published in the **Federal Register** on November 17, 1994, 59 FR 59422 (1994).

The 60-day period for public comments commenced on November 18, 1994 and expired on January 16, 1995. The United States has received one comment on the proposed Final Judgment, from the Independent Travel Agencies of America Association, Inc. ("ITAA"). That comment is being filed with the Court along with this response.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirement of the Tunney Act are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to information from the widest spectrum of persons with knowledge of the issues bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. *Hearings on H.R. 9703, H.R. 9947, and S. 782, Consumer Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee*, 93rd Cong. 1st Sess. 40 (1977) (hereinafter "Hearings") (Statement of Senator Tunney.) *See also United States* v. *Western Electric Co.*, 993 F.2d 1572 (D.C. (Cir.), cert. denied, 114 S. Ct. 487 (1993); *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The issue in a Tunney Act proceeding is whether the relief provided by the decree adequately protects the public interest. Although the Tunney Act requires the Court to make an independent determination that a decree is in the public interest, the Court's role is limited. Congress intended to preserve the viability of the consent decree process by avoiding lengthy and protracted judicial proceedings, and therefore, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

The Court's public interest inquiry must be conducted in light of the "violations set forth in the complaint." 15 U.S.C. 16(b). The enforcement agency's decision about what charges to bring in its complaint is a matter generally "committed to the agency's absolute discretion." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).

II. Public Comments

ITAA states that the proposed Final Judgment should be modified to require ARTA to agree (a) not to lobby or "foster legislation" that would discriminate against travel agencies that are not members of ARTA, and (b) not to use the press to discriminate, or to cause travel suppliers to discriminate, against non-ARTA travel agencies. ITAA's comment does not discuss how such remedies are related to, or would cure, the violations alleged in the Complaint, nor explain why the proposed remedies would otherwise be appropriate.

Upon careful consideration, the government does not believe there is any reason to modify the proposed Final Judgment. As noted, the Complaint in this case alleges a boycott by ARTA to induce travel suppliers to agree to commission rates and other terms. It does not allege any activity directed toward or utilizing legislation or the press. Nor does it allege any activity involving or directed toward travel agents activity involving or directed toward travel agents that are not ARTA members. Moreover, it does not appear that the relief proposed by ITAA would prevent or mollify the violations that are alleged in the complaint. The lack of a connection between ITAA's proposed relief and any alleged antitrust violation is particularly apparent here because attempts to petition a legislature, standing alone, are normally not subject to the antitrust laws. *See Eastern Railroads Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

III. Conclusion

The decree provides relief entirely adequate to redress the harm caused by defendant's conduct. Entry of the decree is in the public interest. ITAA's comment and this response will be published in the **Federal Register**.

Dated: February 14, 1995.

Anne K. Bingaman,
Assistant Attorney General.
Robert E. Litan,
Deputy Assistant Attorney General.

Respectfully submitted,

Roger W. Fones,
Donna N. Kooperstein,
Robert D. Young,
Nina B. Hale,
Attorneys, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served upon Alexander Anolik, 693 Sutter St., 6th Floor, San Francisco, CA 94102 by first class mail, postage prepaid.

Dated: February 14, 1995.

Robert D. Young,
Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice.

November 1,1994.

Mr. Roger Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW, Rm 9104, Washington, DC 20001

Re: United States of America v. Association of Retail Travel Agents Case Number 1:94CVO2305

Dear Mr. Fones: I am General Counsel of the Independent Travel Agencies of America Association. We represent in excess of 5000 independent travel agencies across the country. We at ITAA and many of our members have read with great interest your release of Tuesday October 25, 1994, "Travel Agent Trade Association Agrees To End Anticompetitive Practices" as well as the "Complaint" the "Stipulation" the proposed "Final Judgment" and the "Competitive Impact Statement".

In accordance with the Section V of the Competitive Impact Statement on behalf of this association and our members we would like to register our comments as the Final Judgment when implemented will have a great effect upon many, if not all, of our members.

The Final judgment should be modified as follows:

1. ARTA should agree not to lobby or foster legislation in any state that would discriminate in any way against non-ARTA travel agencies.
2. ARTA should agree not to use the press to discriminate against non-ARTA travel agencies.
3. ARTA should agree not to use the press to cause suppliers of travel not to want to work with non-ARTA travel agencies.

Thank you for your time and trouble and if you have any questions with regard to these proposed modifications please contact me directly.

Sincerely,

Alan A. Benjamin

[FR Doc. 95–4800 Filed 2–27–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, subpart D, and 29 CFR part 504 (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 14th day of February 1995.

John M. Robinson,
Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS
[FORM ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA REGION 1 01/02/95 TO 01/08/95		
Maria Lapid, Abbott Manor Convalescent Center, 810 Central Ave., Plainfield, NJ 07060, 201–757–0696 ..... ETA CONTROL NUMBER—1/216641 ACTION—ACCEPTED	NJ	01/05/95
Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Park East, Cranford, NJ 07016, 908–276–7100 ..... ETA CONTROL NUMBER—1/216771 ACTION—ACCEPTED	NJ	01/06/95
Maria Lapid, Green Acres Manor, 1931 Lakewood Road (Route 9), Toms River, NJ 08755, 201–286–2323	NJ	01/06/95

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DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA-9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—1/216639 ACTION—ACCEPTED		
Thomas Bejgrowicz, Harbor View Health Care Center, 178–198 Ogden Avenue, Jersey City, NJ 07307, 201–963–1800.	NJ	01/05/95
ETA CONTROL NUMBER—1/216596 ACTION—ACCEPTED		
Karen Lentine, Maple Glen/Fair Lawn Nursing Ctr., 105 Saddle River Road, Fair Lawn, NJ 07410, 201–797–9522	NJ	01/05/95
ETA CONTROL NUMBER—1/216598 ACTION—ACCEPTED		
Isaac Schwartz, B&H Staffing, Inc., 239 Havemeyer Street, Brooklyn, NY 11211, 718–599–2227	NY	01/05/95
ETA CONTROL NUMBER—1/216612 ACTION—ACCEPTED		
Gilbert Preira, Daughters of Jacob Geriatric Ctr., 1160 Teller Avenue, Bronx, NY 10456, 718–293–1500	NY	01/05/95
ETA CONTROL NUMBER—1/216637 ACTION—ACCEPTED		
ETA REGION 1 01/16/95 TO 01/22/95		
Marnya P. Borgstrom, Yale New Haven Hospital, Inc., Human Res., Recruitment & Staffing, 20 York Street, New Haven, CT 06504, 203–785–2291.	CT	01/19/95
ETA CONTROL NUMBER—1/217030 ACTION—ACCEPTED		
Lee Hoffman, All Care Visiting Nurses of Lynn, 16 City Hall Square, Lynn, MA 01901, 598–2454	MA	01/19/95
ETA CONTROL NUMBER—1/216837 ACTION—ACCEPTED		
Trifonia Floro, HPN Staffing Services, Inc., 95–20 63rd Road, Suite 12, Rego Park, NY 11374, 718–997–1080	NY	01/19/95
ETA CONTROL NUMBER—1/216920 ACTION—ACCEPTED		
Rhetta Felton, Kings Highway Surgi-Center, 3131 Kings Highway, Brooklyn, NY 11234, 718–258–6777	NY	01/19/95
ETA CONTROL NUMBER—1/217031 ACTION—ACCEPTED		
Krishin Bhatia, Victory Memorial Hospital, 699 92nd Street, Brooklyn, NY 11228–3625, 718–567–1286	NY	01/19/95
ETA CONTROL NUMBER—1/216852 ACTION—ACCEPTED		
ETA REGION 10 01/02/95 TO 01/08/95		
Marietta F. Subbert, Nurses 'R' Special, 3400 W. 6th Street Suite 302, Los Angeles, CA 90020, 213–383–7384	CA	01/06/95
ETA CONTROL NUMBER—10/206032 ACTION—ACCEPTED		
Robert E. Murray, Robert E. Murray, 13962 Holt Avenue, Santa Ana, CA 82705, 714–567–7140	CA	01/05/95
ETA CONTROL NUMBER—10/206112 ACTION—ACCEPTED		
ETA REGION 5 01/09/95 TO 01/15/95		
Herman Katz, Heritage Nursing Center, Inc., P.O. Box 6179 1315 Curt Drive, Champaign, IL 61826–6179, 217–352–5707.	IL	01/13/95
ETA CONTROL NUMBER—5/235713 ACTION—ACCEPTED		
Mary Niederhauser, Westside Community Hospital, Inc., d/b/a Sacred Heart Hospital 3240, West Franklin Boulevard, Chicago, IL 60624, 312–722–3020.	IL	01/13/95
ETA CONTROL NUMBER—5/235717 ACTION—ACCEPTED		
ETA REGION 5 01/16/95 TO 01/22/95		
Patricia H. Decker, Medical Express, Inc. 1650 38th Street, Boulder, CO 80301, 303–449–7470	CO	01/17/95
ETA CONTROL NUMBER—5/235737 ACTION—ACCEPTED		
Joseph Liberman, Westwood Manor, Inc., 2444 W. Touhy, Chicago, IL 60645, 312–274–7705	IL	01/17/95
ETA CONTROL NUMBER—5/235733 ACTION—ACCEPTED		
ETA REGION 5 01/23/95 TO 01/29/95		
Sheila Bogen, Amboy Rehabilitation & Nursing Ctr., 15 Wasson Road, Amboy, IL 61310, 815–857–2550	IL	01/25/95
ETA CONTROL NUMBER—5/236440 ACTION—ACCEPTED		
Lois Rubon, Brentwood North Nursing & Rehab., ATTN: Sheldon Novoselsky 3705, Deerfield Road, Riverwoods, IL 60015, 708–459–1200.	IL	01/23/95
ETA CONTROL NUMBER—5/236421 ACTION—ACCEPTED		
Sheila Bogen, Carrington Care Center, LTD., 759 Kane Street, South Elgin, IL 60177, 708–697–3310	IL	01/25/95
ETA CONTROL NUMBER—5/236442 ACTION—ACCEPTED		
Judy Pitzele, Glenview Terrace Nursing Center, ATTN: Mark Hollander 1511, Greenwood Road, Glenview, IL 60025, 708–729–9090.	IL	01/23/95
ETA CONTROL NUMBER—5/236403 ACTION—ACCEPTED		
R. Bryan Livings, Lake Park Center, 919 Washington Park, Waukegan, IL 60085, 708–623–9100	IL	01/23/95
ETA CONTROL NUMBER—5/236417 ACTION—ACCEPTED		
James Samatas, Lexington Hlth Care of Lake Zurich, 900 S. Rand Road, Lake Zurich, IL 60047, 708–726–1200	IL	01/23/95
ETA CONTROL NUMBER—5/236420 ACTION—ACCEPTED		
Susan Simonsen, Lydia Healthcare Center, 13901 South Lydia, Robbins, IL 60472, 708–385–8700	IL	01/23/95
ETA CONTROL NUMBER—5/236405 ACTION—ACCEPTED		
James Samatas, Merit Home Health Care, Inc., d/b/a Merit Private Care Services, 1300 S. Main Street, Lombard, IL 60148, 708–620–2644.	IL	01/25/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA-9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—5/236444 ACTION—ACCEPTED		
James Samatas, Merit Home Health Care, Inc., d/b/a Merit Private Care Services, 1300 S. Main Street, Lombard, IL 60148, 708–620–2644.	IL	01/25/95
ETA CONTROL NUMBER—5/236446 ACTION—ACCEPTED		
Sheila Bogen, Ottawa Pavilion Ltd., 800 E. Center Street, Ottawa, IL 61350, 815–434–7144	IL	01/25/95
ETA CONTROL NUMBER—5/236441 ACTION—ACCEPTED		
Tamara Abell, Plum Grove of Palatine, Limited, 24 South Plum Grove Road, Palatine, IL 60067, 708–358–0311	IL	01/23/95
ETA CONTROL NUMBER—5/236404 ACTION—ACCEPTED		
Mrs. Samuel Brandman, Village Nursing Home, 9000 S. Lavergne Avenue, Skokie, IL 60077, 708–679–2322	IL	01/23/95
ETA CONTROL NUMBER—5/236406 ACTION—ACCEPTED		
Carmen Colandrea, Bryant Woods Inn, Inc., 10461 Waterfowl Terrace, Columbia, MD 21044–2463, 410–995–1100	MD	01/25/95
ETA CONTROL NUMBER—5/236448 ACTION—ACCEPTED		
Carrie Maurer, Presbyterian Village Redford, 17383 Garfield, Redford, MI 48240, 313–531–6874	MI	01/23/95
ETA CONTROL NUMBER—5/236419 ACTION—ACCEPTED		
John Quirk, General Healthcare Resouces, Inc., 525 Plymouth Road Suite 308, Plymouth Meeting, PA 19462, 610–834–1122.	PA	01/25/95
ETA CONTROL NUMBER—5/236447 ACTION—ACCEPTED		
ETA REGION 6 01/02/95 TO 01/08/95		
Ms. Ross Hooper, Crittenden Memorial Hospital, 200 Tyler St. P.O. Box 2248, West Memphis, AR 72301, 501–732–7740.	AR	01/04/95
ETA CONTROL NUMBER—6/223878 ACTION—ACCEPTED		
Ms. Debra Turiciano, National Medical Care, Inc., 641 Harkle Road, Santa Fe, NM 87501, 505–982–9427	NM	01/04/95
ETA CONTROL NUMBER—6/223893 ACTION—ACCEPTED		
Mr. Joseph Oddis, Spartanburg Reg. Medical Center, 101 East Wood Street, Spartanburg, SC 29303, 803–560–6937.	SC	01/05/95
ETA CONTROL NUMBER—6/224032 ACTION—ACCEPTED		
Arel Malixi, Bellaire Physical Therapy Center, 8282 Bellaire, Ste. 124, Houston, TX 77036, 713–981–5200	TX	01/04/95
ETA CONTROL NUMBER—6/224001 ACTION—ACCEPTED		
Mr. J. Lindsey Bradley, Sr., Mother Frances Hospital, 800 East Dawson, Tyler, TX 75701, 903–531–4476	TX	01/05/95
ETA CONTROL NUMBER—6/224004 ACTION—ACCEPTED		
W. Taft Martin, Reitement Care Center of Hempstead, 1111 San Antonio Street, Hempstead, TX 77445, 409–826–3382.	TX	01/04/95
ETA CONTROL NUMBER—6/223894 ACTION—ACCEPTED		
Mr. David W. Cottey, Silsbee Doctors Hospital, P.O. Box 1208 Hwy 418, Silsbee, TX 77656, 409–385–1531	TX	01/05/95
ETA CONTROL NUMBER—6/224118 ACTION—ACCEPTED		
Ms. Judi H. Guthrie, Warm Springs Rehab Hosp., P. O. Box 58, Gonzales, TX 78629, 210–672–6592	TX	01/05/95
ETA CONTROL NUMBER—6/224150 ACTION—ACCEPTED		
ETA REGION 6 01/09/95 TO 01/15/95		
Mr. Jeff Mukamal, Brookshire Nursing Center, 300 Meadow Land Drive, Hillsborough, NC 27278, 919–644–6714	NC	01/10/95
ETA CONTROL NUMBER—6/224242 ACTION—ACCEPTED		
Ms. Magdeline Ulrich Allen, Always Caring Home Care, 1302 Montana, Suite A, El Paso, TX 79902, 915–545–4663	TX	01/10/95
ETA CONTROL NUMBER—6/224247 ACTION—ACCEPTED		
Mr. Gary L. Whatley, Memorial Medical Ctr of East TX, P.O. Box 1447 1201 Frank, Lufkin, TX 75902–1447, 409–639–7789.	TX	01/10/95
ETA CONTROL NUMBER—6/224243 ACTION—ACCEPTED		
ETA REGION 6 01/16/95 TO 01/22/95		
Dr. Marion G.L. Faldas, AVHFHE Biomedical Research, 400 NE 100 St, Miami Shores, FL 33137, 305–751–1811	FL	01/19/95
ETA CONTROL NUMBER—6/224378 ACTION—ACCEPTED		
Mr. John Hymans, Eagle Crest, 2802 Parental Home Road, Jacksonville, FL 32216, 904–721–0088	FL	01/19/95
ETA CONTROL NUMBER—6/224377 ACTION—ACCEPTED		
Ms. Alice Dessasau, The Ambrosia Home, 1709 Taliaferro Avenue, Tampa, FL 33602, 813–223–4623	FL	01/19/95
ETA CONTROL NUMBER—6/224423 ACTION—ACCEPTED		
H.J. Blessitt, South Sunflower County Hospital, 121 East Baker Street, Indianola, MS 38751, 601–887–5235	MS	01/19/95
ETA CONTROL NUMBER—6/224564 ACTION—ACCEPTED		
Mr. Robert B. Evans, East Texas Medical Center, 1000 S. Beckham, Tyler, TX 75701, 903–531–8016	TX	01/20/95
ETA CONTROL NUMBER—6/224565 ACTION—ACCEPTED		
Mr. Alan D. Holmes, Frio Hospital, 320 Berry Ranch Road, Pearsall, TX 78061, 210–334–3617	TX	01/20/95
ETA CONTROL NUMBER—6/225017 ACTION—ACCEPTED		
Mr. Stephen Cutshaw, MeadowGreen Restorative Care Cntr., 8383 Meadow Road, Dallas, TX 75231, 214–369–7811.	TX	01/20/95

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DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
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CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—6/224424 ACTION—ACCEPTED		
ETA REGION 6 01/23/95 TO 01/29/95		
Ms. Nori-Ann de la Cruz, Argus Home Health Care, Inc., P.O. Box 280213, Tampa, FL 33682–0213, 813–971–9416 ETA CONTROL NUMBER—6/224686 ACTION—ACCEPTED	FL	01/26/95
Ms. Margaret Brock, Calhoun Liberty Hospital Assoc., 424 Burns Avenue, Blountstown, FL 32424, 904–674–5411 ... ETA CONTROL NUMBER—6/224785 ACTION—ACCEPTED	FL	01/26/95
Ms. Barbara Dotson, De Bary Manor, 60 North Highway 1792 P.O. Box 248, De Bary, FL 32713, 407–668–4426 ..... ETA CONTROL NUMBER—6/224683 ACTION—ACCEPTED	FL	01/26/95
Mr. Patrick T. DeBellis, DeBellis Associates, Inc., 400 S. Federal Highway Suite 411, Boynton Beach, FL 33435, 407–735–3706. ETA CONTROL NUMBER—6/224584 ACTION—ACCEPTED	FL	01/25/95
Ms. Samira K. Beckwith, Hope Hospice, 8290 College Pky., Fort Myers, FL 33919, 813–482–4673 ..... ETA CONTROL NUMBER—6/224728 ACTION—ACCEPTED	FL	01/26/95
Ms. Rosemary Wedderspoon, IHS at Greenbriar, 9820 N. Kendall Drive, Miami, FL 33176, 305–271–6311 ..... ETA CONTROL NUMBER—6/224682 ACTION—ACCEPTED	FL	01/26/95
Mr. Victor J. Maya, Kendall Regional Medical Center, 11750 Bird Road, Miami, FL 33175, 305–233–3000 ..... ETA CONTROL NUMBER—6/224681 ACTION—ACCEPTED	FL	01/26/95
Jackie Dykes, Landmark Health Care, Inc., 1510 Crozier Street, Blountstown, FL 32424, 904–674–5464 ..... ETA CONTROL NUMBER—6/224729 ACTION—ACCEPTED	FL	01/26/95
Ms. Lynette Goux, Pontchartrain Health Care, 1401 Highway 190 P.O. Box 338, Mandeville, LA 70470–0338, 504–626–8581. ETA CONTROL NUMBER—6/224656 ACTION—ACCEPTED	LA	01/26/95
Corazon Aquino, Clover Health Resources, Inc., 601 North Oak Avenue, Ruleville, MS 38771, 601–756–2748 ..... ETA CONTROL NUMBER—6/224653 ACTION—ACCEPTED	MS	01/26/95
Mr. Robert Greer, Heritage House Nursing Center, 3103 Wisconsin Ave., Vicksburg, MS 39180, 601–638–1514 ..... ETA CONTROL NUMBER—6/224684 ACTION—ACCEPTED	MS	01/26/95
Ms. Marsha W. Kaufman, Aston Park Health Care Center, Inc., 163 Stratford Court HSI: Attn: Bea, Harford, Winston-Salem, NC 27103, 704–253–4437. ETA CONTROL NUMBER—6/224652 ACTION—ACCEPTED	NC	01/26/95
Mr. Nedro G. Parker, Allied Health Network, Inc., 4506 La Branch, Houston, TX 77004–4925, 713–522–6661 ..... ETA CONTROL NUMBER—6/224621 ACTION—ACCEPTED	TX	01/25/95
Sister Electa, Bethania Regional Health Care Ctr., 1600 11th Street, Wichita Falls, TX 76301, 817–720–0268 ..... ETA CONTROL NUMBER—6/224563 ACTION—ACCEPTED	TX	01/25/95
Mr. Tim Schnider, Denton Good Samaritan Village, 2500 Hinkle Drive, Denton, TX 75201, 817–383–2651 ..... ETA CONTROL NUMBER—6/224655 ACTION—ACCEPTED	TX	01/26/95
Ms. Connie Biffle, Gracy Woods Nursing Center, 12021 Metric Blvd., Austin, TX 78758, 512–339–7587 ..... ETA CONTROL NUMBER—6/224786 ACTION—ACCEPTED	TX	01/26/95
Mr. Gary Light, JF Medical, 1401 9th Street, Lubbock, TX 79401, 806–747–7445 ..... ETA CONTROL NUMBER—6/224620 ACTION—ACCEPTED	TX	01/25/95
Mr. Steve Rush, The Traymore Nursing Center, 7500 Lemmon Ave., Dallas, TX 75209, 214–358–3131 ..... ETA CONTROL NUMBER—6/224787 ACTION—ACCEPTED	TX	01/26/95
Ms. Emeline C. Gonzales, US 59 PT Specialist, Inc., 6776 SW Freeway, Ste. 557, Houston, TX 77074, 713–783–8484. ETA CONTROL NUMBER—6/224590 ACTION—ACCEPTED	TX	01/25/95
ETA REGION 6 01/30/95 TO 02/05/95		
Ms. Lottie Tennant, Healthy Lifestyles, Inc., 1304 N. 18th Street, Monroe, LA 71201, 318–387–4878 ..... ETA CONTROL NUMBER—6/224949 ACTION—ACCEPTED	LA	02/01/95
Ms. Julia George, Starmount Villa, 109 South Holden Road, Greensboro, NC 27407, 910–292–5390 ..... ETA CONTROL NUMBER—6/224788 ACTION—ACCEPTED	NC	02/01/95
Mr. Ray White, P.H.E.O. Medical Center, Inc., 1400 18th Avenue South, Nashville, TN 37212–2893, 615–383–4715 ETA CONTROL NUMBER—6/224843 ACTION—ACCEPTED	TN	02/01/95
Kendall Turton, St. Joseph Hospital, 2801 Franciscan Drive, Bryan, TX 77802, 409–776–2515 ..... ETA CONTROL NUMBER—6/224879 ACTION—ACCEPTED	TX	02/01/95

[FR Doc. 95–4887 Filed 2–27–95; 8:45 am]
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Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743, et al.]

Grant of Individual Exemptions; Sammons Enterprises, Inc. Employee Stock Ownership Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Sammons Enterprises, Inc., Employee Stock Ownership Trust (the Trust), Located in Dallas, TX; [Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by certain accounts (the Prior Plan Accounts) in the Trust of certain limited partnership interests (the Limited Partnership Interests) and an undivided interest in certain real property (the Property Interest; collectively, the Interests) to Otter, Inc., a party in interest with respect to the Trust.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Prior Plan Accounts as those obtainable in an arm's length transaction; (2) the Sale is a one-time cash transaction; (3) the Prior Plan Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Prior Plan Accounts receive a sales price equal to the greater of: (a) the fair market value of the Interests as determined by qualified, independent appraisers; or (b) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests; (5) Churchill Management Corporation (Churchill) determines that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries; (6) the Prior Plan Accounts, prior to the Sale, obtain the written consent of the general partner of each of the limited partnerships involved with respect to the sale of the Limited Partnership Interests; and (7) the other partners of such limited partnerships, as per the limited partnership agreements, are given the right of first refusal with respect to the Limited Partnership Interests.

Written Comments: In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within forty-five days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by January 12, 1995. The Department received two written comments and no requests for a hearing.

The first comment was submitted on behalf of Texas Commerce Bank, N.A., the trustee of the Trust (the Trustee). The Trustee states that Churchill is the investment manager with respect to the assets of the Prior Plan Accounts. As such, the Trustee does not have the sole investment discretion with respect to the assets of the Prior Plan Accounts. As a result, the following changes must be made to the Notice:

(1) The references to "the trustee of the Trust" or "Trustee" found in Condition #5 of the Notice, the entire second paragraph of Representation #3 and subsection (e) of Representation #7 of the Summary of Facts and Representations (the Summary) should be replaced with "Churchill."

(2) The third sentence of Representation #2 of the Summary is stricken and replaced with "Churchill, as investment manager, has discretion with respect to the assets of the Prior Plan Accounts. The Trustee has investment discretion with respect to all remaining assets of the Trust."

The Department concurs with the proposed modifications and, accordingly, amends the language of the Notice.

The second comment was submitted on behalf of the applicants. The issues addressed in the comment and the Department's responses are summarized as follows:

(1) The first sentence of Representation #1 of the Summary names the sponsored plan as the "Sammons Employee Stock Ownership Plan." The correct name of such plan is the "Sammons Enterprises, Inc. Employee Stock Ownership Plan."

(2) The third sentence of the first paragraph of Representation #3 of the Summary states that, effective 1991, the TMIS Plan merged into the Plan. The correct year of such merger is 1989.

(3) The first sentence of the first paragraph of Representation #4 of the Summary states that the Plan has a 14.5 percent Class B interest in Sunbelt City, Ltd. The correct name of such partnership is "Sunbelt Oklahoma City, Ltd."

(4) The first sentence of the third paragraph of Representation #4 should be revised as follows: "Annual valuations of interests in both partnerships are furnished to investors by Churchill Management Corporation (Churchill), the investment adviser to the Prior Plan Accounts and for most of

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the other limited partners of the Limited Partnerships."

(5) The last sentence in the fourth paragraph of Representation #5 states that the Liabilities increased by $350,000 to $842,000. The correct amount of the increase in the Liabilities was $225,000 to $842,000.

The changes described above are hereby incorporated into the exemption as granted. After consideration of the entire record, including the comments, the Department has determined to grant the exemption. In this regard, the comments have been included as part of the public record for the exemption application. The complete application file is made available for public inspection in the Public Documents Room of the Pensions and Welfare Benefits Administration, room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 28, 1994 at 59 FR 60839

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

American Express Incentive Savings Plan (the Plan) Located in New York, NY; [Prohibited Transaction Exemption 95–15; Exemption Application No. D–09813]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit (the Loans) to the Plan by American Express Company (the Employer), the sponsor of the Plan, with respect to two guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest and/or expenses are paid by the Plan in connection with the transactions;

(C) The proceeds of the Loans are used solely in lieu of payments due from Confederation with respect to the GICs;

(D) Repayment of the Loans will be restricted to the GIC Proceeds, defined as the cash proceeds obtained by the Plan from or on behalf of Confederation with respect to the GICs;

(E) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(F) In any sale of he GICs to the Employer, the Plan will receive a purchase price which is no less than the fair market value of the GICs as of the sale date, and no less than the GICs' accumulated book value, defined as the total principal deposits plus accrued interest at the rates guaranteed by the GICs, less previous withdrawals and any Loans made pursuant to this exemption, as of the sale date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65397

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan), Located in Circle Pines, MN; [Prohibited Transaction Exemption 95–16; Application No. D–09826]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the series of loans (the Loans), originated within a five year period, by the Plan to Bermo, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The total amount of outstanding Loans shall not exceed 25 percent of the Plan's total assets at any time during the transaction;

(b) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) Each loan will be: (1) For a maximum term of forty-eight months fully amortized and payable in equal monthly installments of principal and interest, (2) the Loan proceeds shall be used exclusively by the Employer to purchase new equipment (the Equipment) used by the Employer in the course of its business, (3) collateralized by the Equipment and other assets owned by the Employer such that at all times each Loan will be collateralized in an amount equal to at least 200% of the outstanding balance of such Loan, (4) equal to no more than 80% of the purchase price of the Equipment financed, and (5) guaranteed personally by Fred Berdass, the principal shareholder of the Employer.

(d) The value of the collateral offered by the Employer will be determined by a qualified independent appraiser;

(e) Prior to the granting of each Loan, an independent qualified fiduciary determines, on behalf of the Plan, that each Loan is feasible and in the best interests of the Plan and protective of the Plan and its participants and beneficiaries;

(f) The independent fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 25 percent of the Plan asset maximum total Loan amount prior to approving each disbursement under the Loan agreement;

(g) The independent fiduciary will monitor the terms and conditions of the exemption and the Loans; and

(h) The independent fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to this exemption.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from February 28, 1995. Subsequent to the expiration of this exemption, the Plan may hold any Loans originated during this five year period until the Loans are repaid or otherwise terminated.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65398.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams of the Department, telephone (202) 219–8971.

Jerome Companies Profit Sharing Plan and Trust (the Plan), Located in Barron, WI [Prohibited Transaction Exemption 95–17; Exemption Application No. D–09829]

Exemption

The restrictions on sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of the Guaranteed Investment Contract #62043 (the GIC) issued by Confederation Life Insurance Company (Confederation), a Canadian insurance corporation, by the Plan to Jerome Food, Inc. (the Employer), a Wisconsin corporation, the sponsoring employer and a party in interest with respect to the Plan: provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or the principal amount of $500,000 plus simple interest accrued at the rate of 9.03 percent per annum on the principal amount of the GIC for the period from January 25, 1994, to the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 487.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. (the Plan), Located in Wyomissing, PA [Prohibited Transaction Exemption 95–18; Exemption Application No. D–09893]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall apply to the cash sale (the Sale) of the Guaranteed Investment Company Contract No. 62580 (the GIC), issued by Confederation Life Insurance of Atlanta, Georgia (Confederation), by the Plan to VF Corporation, a Pennsylvania corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan when acquiring the GIC, plus all interest accruing under the terms of the GIC until date of Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 491.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Savings Plan of Bassett-Walker, Inc., Located in Martinsville, VA [Prohibited Transaction Exemption 95–19; Exemption Application No. D–09894]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of the Guaranteed Investment Contract No. 62012 (the GIC), issued by Confederation Life Insurance Company of Atlanta, Georgia (Confederation), by the plan to VF Corporation, a Pennsylvania corporation, a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or $1.5 million, the principal amount of the GIC, plus simple interest accrued at the rate of 8.7 percent per annum on the principal amount of the GIC for the period from April 4, 1994, to the date of the Sale.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 489.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately described all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of February, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–4888 Filed 2–27–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Friday, March 31, 1995. The meeting will be held from 9:00 a.m. to 3:00 p.m. on Friday, March 31, 1995, in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

The agenda for the meeting will be:

1. Charters of Freedom monitoring program

2. Review of Charters' encasement system

3. Condition of encasement glass

4. Risk analysis and options

This meeting is open to the public. For further information, contact Alan Calmes on (301) 713–7403.

Dated: February 15, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–4799 Filed 2–27–95; 8:45 am]

BILLING CODE 7515–01–M

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NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides and Standard Review Plan Sections; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of five guides planned for its Regulatory Guide Series along with drafts of three sections of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants." The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

These draft guides and draft standard review plans are in support of proposed amendments to 10 CFR parts 50, 52, and 100 (59 FR 52255) that were proposed to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The draft guides are intended for Division 1, 'Power Reactors," and Division 4, 'Environmental and Siting."

DG–1032, "Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion," is being developed to provide general guidance on procedures acceptable to the NRC staff on conducting geological, geophysical, seismological, and geotechnical investigations; identifying and characterizing seismic sources; conducting probabilistic seismic hazard analyses; and determining the safe shutdown earthquake ground motion for a nuclear power plant.

DG–1033, the Third Proposed Revision 2 to Regulatory Guide 1.12, "Nuclear Power Plant Instrumentation for Earthquakes," is being developed to describe seismic instrumention type, location, operability, and characteristics that is acceptable to the NRC staff for satisfying the requirements of the Commission's regulations.

DG–1034, "Pre-Earthquake Planning and Immediate Nuclear Power Plant Operator Postearthquake Actions," is being developed to provide guidance acceptable to the NRC staff for a timely evaluation after an earthquake of the recorded seismic instrumentation data and to determine whether plant shutdown is required.

DG–1035, "Restart of Nuclear Power Plant Shut Down by a Seismic Event," is being developed to provide guidance acceptable to the NRC staff for performing inspections and tests of nuclear power plant equipment and structures prior to restart of a plant that has been shut down by a seismic event

DG–4004, the Second Proposed Revision 2 to Regulatory Guide 4.7, "General Site Suitability Criteria for Nuclear Power Stations," is being developed to provide guidance on the major site characteristics related to the public health and safety and environmental issues that the NRC staff considers in determining the suitability of sites for nuclear power stations.

Proposed Revision 3 of Draft Standard Review Plan Section 2.5.1, "Basic Geologic and Seismic Information," is being developed to describe the kinds of basic geological, seismological, and geophysical information and review procedures necessary to evaluate a nuclear power station site.

The Second Proposed Revision 3 of Draft Standard Review Plan Section 2.5.2, "Vibratory Ground Motion," is being developed to describe procedures to assess the ground motion potential of seismic sources at the site and to assess the safe shutdown earthquake.

The Proposed Revision 3 of Draft Standard Review Plan Section 2.5.3, "Surface Faulting," is being developed to describe the geosciences information and review procedures needed to assess the significance of faults to the suitability of the site.

These drafts are being issued to involve the public in the early stages of the development of regulatory positions in these areas. These drafts have not received complete staff review and do not represent official NRC staff positions.

Public comments are being solicited on these drafts. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules and Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by May 12, 1995

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number 1–800–303–9672. Communications software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystems can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help/Information Center" option that is tailored to the particular subsystem

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS 703–321–8020; Telnet via Internet fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact Fedworld, the NRC subsystem will be addressed from the main Fedworld menu by selecting the "F—Regulatory, Government Administration and State Systems," then selecting "A—Regulatory Information Mall." At that point, a menu will be displayed that has an option "A—U S Nuclear Regulatory Commission" that will take you to the NRC Online main menu You can also go directly to the NRC Online area by typing "/go nrc" at a FedWorld Command line If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu However, if you access NRC at Fedworld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555 telephone (301) 415–5780; e-mail AXD3@nrc.gov

Although a time limit is given for comments on these drafts, comments and suggestions in connection with items for inclusion in guides or standard review plan sections or improvements in all published documents are encouraged at any time.

Regulatory guides and the Standard Review Plan are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft documents (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific division should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides and standard review plans are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13 day of February 1995.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–4873 Filed 2–27–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Energy Operations, Inc. et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 120 to Facility Operating License No. NPF–29 issued to Energy Operations, Inc. (the licensee), which revised the Technical Specifications for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance.

The amendment modified the technical specifications by replacing the existing technical specifications in their entirety with a new set of technical specifications based on NUREG–1434, "Improved BWR–6 Technical Specifications," dated September 1992. This amendment was based on the licensees submittal of October 15, 1993, as supplemented by letters dated April 15, and November 10, 1994, and February 10 and 14, 1995

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 12, 1994, (59 FR 17404) and April 21, 1994, (59 FR 19031). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (60 FR 8739, dated February 15, 1995).

For further details with respect to the action see (1) the application for amendment dated October 15, 1993, and supplemented by letters dated April 15, and November 10, 1994, and February 10 and 14, 1995, (2) Amendment No. 120 to License No. NPF–29, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Judge George W Armstrong Library, P.O. Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Dated at Rockville, Maryland, this 21st day of February 1995

For the Nuclear Regulatory Commission

William D. Beckner,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4871 Filed 2–27–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity To Apply For Nomination to the World Trade Organization Dispute Settlement Rosters of Panel Candidates

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to apply for nomination by the United States to indicative lists of non-governmental panelist candidates provided for in Article 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and in the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

SUMMARY: The DSU provides a mechanism for the settlement of disputes among members of the WTO. A three-person panel conducts each dispute settlement proceeding and issues a report for consideration by the Dispute Settlement Body (DSB) in which representatives of all WTO members participate.

Section 123(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–405, provides that the Trade Representative shall seek to ensure that persons appointed to the WTO roster are well-qualified and that the roster includes persons with expertise in all of the subject matters covered by the Uruguay Round Agreements. USTR invites citizens of the United States with appropriate qualifications to apply for consideration as a nominee to the roster

DATES: Eligible citizens are encouraged to apply by April 10, 1995 to be considered for nomination to the roster in 1995.

FOR FURTHER INFORMATION CONTACT: For information concerning the form of the application, contact Sybia Harrison, Legal Assistant, Office of the General Counsel, (202) 395–3432. For information concerning WTO procedures or the duties involved, contact Catherine Field, Associate General Counsel, (202) 395–3432, or Mark Linscott, Office of GATT/WTO Affairs, (202) 395–3063 For information relating to the GATS, contact Vanessa Sciarra, Assistant General Counsel, (202) 395–7305 or Richard Self, Deputy Assistant USTR for Services, (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Article 8 of the DSU, the WTO Secretariat is to maintain an indicative list of well-qualifed governmental and non-governmental individuals, including persons who have served on or presented a case to a panel, taught or published on international trade law or policy, or served as a senior trade policy official of a WTO member country The indicative list will be used to assist in the selection of panelists for dispute settlement proceedings. Panel members are to be selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience.

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USTR currently seeks nominations related to the list of non-governmental individuals. The existing roster of non-governmental individuals needs to be expanded to encompass new subject areas covered by the WTO, such as intellectual property and services, and to prepare for a potential increase in the number of dispute settlement panels established under the DSU. Members of the WTO may periodically nominate persons to be included on the roster, subject to DSB approval. Inclusion of a name on the roster, however, does not necessarily mean that the individual will be selected for service on a panel U.S. citizens, for example, are not permitted to serve on panels in which the United States is a party unless the other party to the dispute agrees.

The Decision on Certain Dispute Settlement Procedures for the GATS requires that panels for GATS disputes include specific expertise on individual sectors. GATS disputes could involve the following eleven sectors: (1) Professional and related technical services, including, for example, legal, accounting, auditing and bookkeeping, taxation, medical, dental and veterinary services, engineering, architectural, urban planning services, computer and related services, research and development services, real estate services, rental and leasing services, advertising and management services; (2) communication services; (3) construction and related engineering services; (4) distribution services; (5) educational services; (6) environmental services; (7) financial services, including insurance and insurance-related services, banking and securities services; (8) health-related and social services; (9) tourism and travel-related services; (10) recreational, cultural and sporting services (other than audiovisual services); and (11) transport services.

Panels for GATS disputes are to be composed of well-qualified governmental and non-governmental individuals who have experience in issues related to GATS and/or trade in services, including associated regulatory matters. Dispute settlement panels concerning sectoral matters under the GATS must have expertise relevant to the specific service sector to which the dispute relates.

WTO dispute settlement panels consist of three persons, unless the parties agree to have five panelists, whose function is to make an objective assessment of the matter under dispute, including an objective assessment of the facts of the case, the applicability of the relevant WTO agreements and the conformity of the measure under consideration with the obligations of those agreements. In addition, panels are to make such other findings as will assist the DSB in making the recommendations provided for in the WTO agreements.

Panelists must act in strict conformity with the provisions of the WTO agreements, including application of the appropriate standard of review. Panels are responsible for providing a report to the DSB, including recommendations if necessary, on the conformity of the matter under dispute with WTO obligations. Panelists must also comply with rules relating to conflicts of interest and conduct as a panelist.

Procedures for Application

Non-governmental U.S. citizens (i.e., individuals not currently employed full-time by the U.S. Federal government or a state or local government) possessing expertise in international trade, services, intellectual property rights or other matters covered by the WTO agreements are invited to file an application for nomination to the roster.

Applications must be typewritten and submitted along with five copies to Sybia Harrison, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. Applicants are to provide the following information to the extent applicable:

1. Name of the applicant
2. Business address, telephone number and, if available, fax number
3. Citizenship(s)
4. Current employment, including title, description of responsibilities, and name and address of employer
5. Relevant education and professional training, including particular service-sector expertise, if any
6. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities
7. Relevant professional affiliations and certifications
8. List of publications and speeches, including a copy of speeches and publications relevant to the subject matter of the WTO agreements or service sector
9. List of international trade proceedings or domestic proceedings relating to international trade (WTO) matters in which the person has provided advice or otherwise participated, including judicial or administrative proceedings over which that person has presided
10. A short statement of qualifications, including information relevant to the applicant's familiarity with international trade, services or other issues covered by the WTO agreements, and availability for service
11. Names, addresses, telephone and, if available, fax numbers of three individuals authorized to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws and other areas of expertise, character, reliability and judgment

Information provided by applicants will be used by USTR for the purpose of selecting candidates for nomination to the WTO roster. Further information concerning potential conflicts may be requested from individuals and the possibility of significant conflicts will be taken into consideration in evaluating applicants.

USTR will contact applicants that qualify for further consideration as nominees regarding any additional information that may be required.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee

[FR Doc. 95-4897 Filed 2-27-95, 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35404; File No. SR-BSE-95-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Requesting Permanent Approval of Its Competing Specialist Initiative

February 22, 1995

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1995, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks permanent approval of its Competing Specialist Initiative. Specifically, the rules proposed for adoption are: Additions are *italicized* and deletions are [bracketed].

Chapter XV—Specialists

* * * * *

Sec. 17.

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Procedures for Competing Specialists

Sec. 18. Any specialist can apply to the Exchange to function as a competing specialist pursuant to these procedures:

1. Applications to compete must be directed to the Market Performance Committee in writing and must list in order of preference the stock(s) in which the applicant intends to compete. The Market Performance Committee will use the following guidelines in reviewing an application:

- *overall performance evaluation results of the applicant*
- *financial capability*
- *adequacy of manpower on the floor*
- *objection by the regular specialist in a stock, with or without cause*

2. Any objection[1] by the regular specialist to permit competition in one or more of such specialist's stocks must be in writing and filed with the Exchange within 48 hours[2] of notice[3] of the competing specialist's application. The objection will be considered by the Market Performance Committee in reviewing the application, and its decision may be appealed to the Executive Committee.

3. All applicants must be registered with the Exchange as specialists and must meet the current minimum requirements for specialists set forth in Chapter XV, the minimum capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange. A competing specialist will be subject to all of the rules and policies applicable to a regular specialist.

4. All applicant organizations, existing or newly created, must satisfy the Market Performance Committee that they have sufficient manpower to fulfill the functions of a specialist as set forth in Chapter XV in all of the stocks in which the applicant will be registered either as a regular or a competing specialist.

5. The regular specialist will receive all orderflow not specifically directed to a competitor.

6. The receiving specialist is responsible for all orders directed to him/her.

7. In any competitive situation, if either the regular specialist to whom a stock was originally assigned or the specialist organization which subsequently received approval to compete with the regular specialist desires to terminate the competition by requesting that it be relieved of the stock that is the subject of competition, it should so notify the Market Performance Committee at least 3 business days prior to the desired effective date of such withdrawal. When the regular specialist requests to be relieved of a stock, the stock shall be posted for reallocation by the Stock Allocation Committee. In the interim, if the Market Performance Committee is satisfied that the competing specialist can continue to maintain a fair and orderly market in such stock, the competing specialist shall serve as the regular specialist until the stock has been reallocated.[4] Where there is more than one competing specialist in the stock, Exchange staff shall place the stock with a caretaker until reallocation.

8. Any competing specialist who withdraws his/her registration in a stock will be barred from applying to compete in that same stock for a period of ninety (90) days following the effective date of withdrawal.

9. Notwithstanding the existence of competing specialist situations, there is only one Exchange market in a security subject to competition. Due to the ease of communications on the Floor via the Stentofon System, it will not be necessary to locate competing specialists adjacent to each other. However, the regular specialist will be responsible for updating quotations; thus all competitors must communicate their markets to the regular specialist and be responsible for their portion of the published bid and/or offer. Also, competitors must cooperate with the regular specialist regarding openings and reopenings to ensure that they are unitary.

10. Limit orders entrusted to each competing specialist are to be represented and executed strictly according to time priority as to receipt of the order in the BEACON System.

11. Competing specialists must keep each other informed and communicate to inquiring Floor brokers the full size of any executable "all-or-none" orders in their possession since all-or-none orders cannot be represented in the published quote. The competing specialists are expected to represent such orders on a "best efforts" basis to ensure the execution of the entire order at a single price or prices, or not at all.

12. The registration of any competing specialist may be suspended or terminated by the Market Performance Committee upon a determination of any substantial or continued failure by such competing specialist to engage in dealings in accordance with the Constitution and Rules of the Exchange.

13. Competing Specialists shall be allowed to execute their customer orderflow which is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average ("DJIA") declines by fifty points or more from the previous day's closing value. Such requirement shall remain in effect for the remainder of the trading day once it has been activated, except that the requirement shall no longer apply where the DJIA moves back to a value which is twenty-five points or less from the previous day's closing value. "Index arbitrage" is defined as an arbitrage trading strategy involving the purchase or sale of a group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups or options on any such futures contracts, in an attempt to profit from the price difference between the group of stocks and the derivative index products.

The Specialist's Book

Sec. 6. The Specialist's book is the book, file or record in which all orders entrusted to the Specialist in a particular issue must be kept. It shall be closed at all times and the information therein contained shall not be divulged or permitted to come to the knowledge of anyone except the Specialist or relief Specialist for that book, or to the Board of Governors, a committee of the Exchange, or the Chairman or Officer designated by him, except that a Specialist may disclose information contained in his/*her* book [;]:

(i) for the purpose of demonstrating the methods of trading to visitors to the Floor; [or]

(ii) to other market centers in order to facilitate the operation of ITS or any other Application of the System provided, in either case, that at the same time he makes the information disclosed available to all members [.]; *or*

(iii) to competing specialists in his/her stocks on a summary basis as provided for in the "Procedures for Competing Specialists".

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

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[1] *Only the regular specialist can object to competition in his/her stocks.*

[2] *Unless the regular specialist is unavailable, in which case within 48 hours of becoming available.*

[3] *Once an application is received by the Exchange, a written notification will be issued to the regular specialist(s) in whose stocks competition is being sought.*

[4] *Once the stock has been reallocated to a regular specialist, that specialist shall not be permitted to object to competition in such stock.*

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statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to seek permanent approval of the Exchange's Competing Specialist Initiative ("CSI") pilot program which is scheduled to expire on May 18, 1995. CSI permits competing specialists on the floor of the Exchange in the form of one regular specialist and one or more competing specialists. Orders are directed to either specialist based on each customer's independent decision, but all orders in a stock are executed in accordance with strict time priority. Once all limit orders at a price level are depleted, each specialist is responsible for the market orders directed to them.

The regular specialist is responsible for updating quotations and coordinating openings and reopenings to ensure they are unitary. All ITS activity must be cleared through the regular specialist. To all other markets in the National Market System, there is only one Boston market. Trading halts are coordinated through the regular specialist and apply to all competitors in a stock.

In addition, all competitors will be evaluated on competing stocks in the Exchange's Specialist Performance Evaluation Program.

2. Statutory Basis

The BSE believes that the statutory basis for this proposal is Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–02 and should be submitted by March 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4857 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35403; File No. SR–CBOE–94–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Obligations to Furnish Information

February 22, 1995.

On November 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 15.9, "Regulatory Cooperation,"[3] to delineate the obligation of CBOE members and persons associated with CBOE members to furnish information in connection with inquiries arising from regulatory agreements that the Exchange has entered into with other regulatory and market institutions even in cases where the Exchange has not otherwise initiated an investigation.

In addition, the CBOE proposes to amend CBOE Rule 17.2, "Complaint and Investigation," to expand the set of circumstances under which members or persons associated with members are obligated, upon request by the Exchange, to appear and testify, respond in writing to interrogatories and furnish documentary materials and other information.

The proposal was published for comment in the **Federal Register** on December 8, 1994.[4] No comments were received on the proposed rule change.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] CBOE Rule 15.9(a) allows the Exchange to "enter into agreements with domestic and foreign self-regulatory organizations, associations and contract markets and the regulators of such markets which provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes."

[4] See Securities Exchange Act Release No. 35035 (December 1, 1994), 59 FR 63397 (December 8, 1994).

[5] On February 15, 1995, the CBOE amended its proposal to clarify that when the Exchange requests information from a member pursuant to CBOE Rule 15.9(b), the member has the same rights and procedural protections in responding to the request as the member would have in the case of any other request for information initiated by the CBOE pursuant to CBOE Rule 17.2(b). In addition, the CBOE notes that the proposal authorizes the CBOE to request information and compel testimony from its members or associated persons whenever the CBOE deems such a request to be appropriate and consistent with its agreements to cooperate with other regulatory organizations. The CBOE notes, further, that when the CBOE requests any such information or testimony on behalf of another regulatory body, the CBOE continues to be the requesting regulatory body in relation to the CBOE member and all such requests are subject to the CBOE's rules. See Letter from James R. McDaniel, Schiff Hardin & Waite, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated February 15, 1995 ("Amendment No. 1").

[6] *Id.*

The CBOE proposes to amend CBOE Rule 15.9 to provide that as long as a CBOE member or person associated with a CBOE member is subject to the CBOE's jurisdiction, the CBOE member or person associated with a CBOE member is obligated to furnish testimony, documentary evidence or other information to the full extent provided in CBOE Rule 17.2(b), "Conduct of Investigation," whether or not the Exchange has initiated the investigation, if the information is requested by the Exchange in connection with any inquiry resulting from an agreement entered into by the Exchange with a domestic or foreign self-regulatory organization or regulator pursuant to CBOE Rule 15.9. A CBOE member or person associated with a CBOE member from whom such information is requested possesses the same procedural protections which would apply to a request made pursuant to an investigation initiated by the CBOE.[6]

According to the Exchange, the amendments to CBOE Rule 15.9 are designed to clarify the CBOE's existing rules, which do not clearly delineate the obligation of CBOE members or persons associated with CBOE members to furnish information when the provision of information is required in connection with regulatory agreements where the CBOE has not itself initiated an investigation.

In addition, the CBOE proposes to amend CBOE Rule 17.2 to state clearly that each CBOE member and person associated with a CBOE member is obligated, upon the Exchange's request, to testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17 or an inquiry resulting from an agreement entered into by the Exchange pursuant to CBOE 15.9.

The CBOE also proposes to amend CBOE Rule 17.2, Interpretation and Policy .01 to provide that the failure to furnish testimony, documentary evidence, or other information requested by the CBOE in the course of an Exchange inquiry within the time period specified by the Exchange shall be deemed to be a violation of CBOE Rule 17.2.

The Exchange states that the amendments to CBOE Rule 17.2 delineate clearly the obligation of CBOE members and persons associated with CBOE members to furnish information in connection with an investigation initiated by the CBOE itself, including information requested in connection with a hearing or appeal or the Exchange's preparation for a hearing or appeal. The amendments to CBOE Rule 17.2 are designed to set forth the CBOE's longstanding interpretation of existing CBOE rules.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5)[7] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Commission believes that the proposed amendment to CBOE Rule 15.9 will strengthen CBOE Rule 15.9 and enhance the CBOE's disciplinary system by indicating clearly that the Exchange may require CBOE members and persons associated with CBOE members to furnish testimony, documentary evidence or other information pursuant to regulatory agreements entered into pursuant to CBOE Rule 15.9(a). At the same time, the Commission believes that the proposal maintains procedural safeguards for CBOE members by providing that members from whom such information is requested possess the same procedural protections that would apply to a request made pursuant to an investigation initiated by the CBOE.[8]

By clarifying the obligation of CBOE members to furnish testimony and other information in connection with such investigations, the Commission believes that the proposal will facilitate investigations commenced pursuant to CBOE Rule 15.9, thereby furthering the protection of investors and the public interest by helping to ensure the prompt investigation of possible trading violations and other regulatory improprieties. In addition, the Commission believes that the proposal will help the Exchange to coordinate with domestic and foreign self-regulatory organizations in implementing a surveillance system appropriate to today's increasingly linked and globalized markets.[9] In addition, the Commission believes that the proposed amendments to CBOE Rule 17.2(b) will clarify the obligation of members to appear and testify, respond in writing to interrogatories and furnish information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17, or an inquiry resulting from an agreement entered into by the Exchange pursuant to CBOE Rule 15.9. The Commission believes that the amendments to CBOE Rule 17.2(b) and Interpretation and Policy .01 should protect investors and the public interest by facilitating the prompt resolution of disciplinary matters.

Specifically, by clearly stating members' obligation to testify and to provide information requested by the Exchange, and by making noncompliance with such requests a violation of CBOE Rule 17.2, the Commission believes that the proposal will encourage CBOE members to comply fully with CBOE requests for information and will enhance the Exchange's ability to conduct investigations in a timely manner, without burdening the members being investigated. The Commission believes that the CBOE must have the ability to obtain such information so that the Exchange will have access to all relevant facts necessary for the Exchange to act on a fully informed basis when making decisions concerning the disciplining of members.

At the same time, the Commission believes that the proposal is consistent with the CBOE's maintenance of a fair disciplinary process for its members. In this regard, the Commission notes that all existing due process safeguards relating to CBOE disciplinary proceedings remain in place.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because Amendment No. 1 clarifies the proposal and helps to safeguard the procedural

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] See Amendment No. 1, *supra* note 5.

[9] See Securities Exchange Act Release No. 28498 (October 1, 1990), 55 FR 41286 (October 10, 1990) (order approving File No. SR–CBOE–90–23).

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rights of members from whom the Exchange requests information pursuant to CBOE Rule 15.9(b). Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–94–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4858 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35401; File No. SR–NASD–95–04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to the Examination Specifications and Content Outline for the General Securities Registered Representative (Series 7) Examination

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 13, 1995,[2] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the examination specifications and study outline for the General Securities Registered Representative ("Series 7") qualification examination. The amendments revise materials pertaining to recently enacted federal and self-regulatory organization ("SRO") rules and regulations, new products and changes in industry practices. The number of questions per examination and the examination time are unaffected by the amendments.

The amendments described above do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is required under rules of the SROs for persons who are engaged in the solicitation, purchase and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 exam specifications detail the ares covered by the examination and break down the number of examination questions drawn from each area. The Series 7 content outline details the subject coverage and question allocation of the examination.

Revision of the Series 7 examination, specifications and content outline was initiated in April 1993 by an industry committee of self-regulatory organizations and broker-dealer representatives in order to update the examination in view of changes in the securities industry including changes in relevant rules and regulations, the development of new securities products and changes in the job of the registered representative as firms offer an increasingly wide range of financial services. The specifications and content outline for the Series 7 examination have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness, drafted statements of tasks expected to be performed by entry-level registered representatives, and conformed the existing content outline to the task statements. The content outline reflects the revised content of the examination. The total number of questions in the Series 7 examination will remain 250. The revised examination will cover all financial product areas covered on the present Series 7 examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity participation securities ("LEAPS") and CAPS,[3] with reduced emphasis on direct participation programs.

The Commission recently approved two parallel filings of the New York Stock Exchange ("NYSE").[4] No comments were received on either filing.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Act in that the proposed changes to the examination are to ensure persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments of the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–04 and should be submitted by March 21, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Sections 15(b)(7), 15A(b)(6), and 15A(g)(3) of the Act.[5] Section 15(b)(7) states that a registered broker or dealer may not effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and all those associated with such broker or dealer meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. Section 15A(b)(6) requires, in relevant part, that the rules of a registered securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(g)(3) provides that a registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer does not meet the requisite levels of knowledge and competence.

The Commission believes that revising the Series 7 exam, specifications, and content outline should help to ensure that only those securities representatives with a comprehensive knowledge of current NASD rules, as well as an understanding of the Act, will be able to solicit, purchase or sell securities for the accounts of customers. The Commission believes that the revised topics covered by the Series 7 examination, specifications and content outline are appropriate and include a sufficiently broad range of subject matter to ensure an appropriate level of expertise by general securities registered representatives. The revised examination focuses on relevant subject matter in view of changes in applicable laws, rules, regulations, products, and industry practices. By ensuring this requisite level of knowledge, the Commission anticipates that general securities registered representatives will demonstrate an acceptable level of securities knowledge to carry out their responsibilities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate given the recent approval of two parallel and substantively identical filings by the NYSE,[6] and the importance of industry-wide implementation of the revised content outline and Series 7 examination as soon as practicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change SR–NASD–95–04 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4798 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35400; SR–PHLX–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of DIVS, ZIPS and SPECS

February 21, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 5, 1995, the Philadelphia Stock Exchange Inc. ("PHLX"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, hereby proposes to list for trading "DIVS" (Dividend Value of Stock), "ZIPS" (Zero Income Principal of Stock) and "SPECS" (Speculative Equity Component Stock) (collectively hereinafter referred to as the "Products"), which are new hybrid options developed by Americus Stock Process Corp. ("ASPC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to list a new product developed by and licensed to the PHLX by ASPC that allows the purchase or sale of any of three economic interests inherent in a share of common stock. Each of these new instruments, called DIVS, ZIPS and SPECS, will be traded separately on the PHLX's equity options floor. The Exchange believes that the Products, combined, will have all the characteristics of a share of the underlying common stock, including voting rights, and that the ability to trade the Products as separate component instruments will provide new hedge, arbitrage, speculation and investment opportunities.

The Products will be regulated, except as described herein, by the rules governing standardized options. Position limits of 1 million DIVS, ZIPS and SPECS respectively shall be established respecting any particular stock. *See* Rule 1001C. The sales practice rules applicable to options (Rules 1024 through 1029) will also be applicable to sales of DIVS, ZIPS and SPECS. (*See* Rule 1000C(a)). The

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. Section 78s(b)(1).

[2] The proposed rule change was originally filed on January 26, 1995. In the amendment, filed on February 13, 1995, the NASD provided both the amended examination specifications and content outline for the Series 7 exam. The examination specifications were filed pursuant to a request by the NASD for confidential treatment.

[3] OEX CAPS and SPX CAPS are new securities based on the S&P 100 (OEX) and the S&P 500 (SPX) that give investors the right to participate to a predetermined level in upward or downward movements in either index.

[4] *See* Securities Exchange Act Release No. 34853 (October 18, 1994), 59 FR 53694 (October 25, 1994) (File Nos. SR–NYSE–94–26 (revised exam and exam specifications for Series 7 exam), and SR–NYSE–94–27 (revised content outline for Series 7 exam)).

[5] 15 U.S.C. Sections 78s(b)(7), 78o–3(b)(6), 78o–3(g)(3).

[6] *See* note 4, *supra*

[7] 15 U.S.C. Section 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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Options Clearing Corp. ("OCC") will be the exclusive issuer of the Products which the Exchange proposes to issue in accordance with the disclosure scheme provided for under Rule 9b–1 of the Act ("Rule 9b–1"). The Products will be issued in separate series with each series having its own distinct CUSIP number and trading symbol. The Products will be issued in book-entry form. DIVS, ZIPS and SPECS will be created when opening buy and sell orders are executed, and the additional execution of such orders will increase the open interest. Quotations and transaction reporting will occur through the facilities of the Options Price Reporting Authority.

The criteria for underlying common stocks upon which the Products will be based are the same criteria as utilized for standardized equity options listed on the PHLX under PHLX Rule 1009. Additionally, only the top 250 capitalized stocks traded on a national securities exchange or the NASDAQ national market will be considered for listing (*See* Rule 1009C). DIVS, ZIPS and SPECS of a particular series will all be issued for the same length of time, currently proposed to be up to 60 months, and therefore all components of the same series will possess the same termination date ("Termination Date"), as defined in PHLX Rule 1000C(b)(5). The Products will have a European-style [1] settlement similar to standardized options.

ZIPS and SPECS of the same series also will have a coordinate termination claim ("Termination Claim"), as defined in PHLX Rule 1000C(b)(4). The Termination Claim is a preset price established at the time of the issuance of a new series of SPECS and ZIPS and is used to determine these instruments' payout on their Termination Date. In accordance with the PHLX Rule 1004C, Termination Claims will be set at the underlying stock price reflecting the most recent business day's consolidated closing value rounded up to the nearest $2.50 increment for stocks priced at or below $25.00 or to the nearest $5.00 increment for stocks priced above $25.00. The PHLX may list new series of DIVS, ZIPS and SPECS annually, or at more frequent intervals, depending on market conditions. No new series will be opened nor opening transactions be permitted if open interest in DIVS, ZIPS and SPECS represent more than 10 percent of the outstanding shares of any related underlying stock. *See* Rule 1012C.

[1] A European-style option may only be exercised during a limited period of time before the option expires.

The PHLX anticipates that the sum of the market prices of DIVS, ZIPS and SPECS on the same underlying security with the same Termination Date and Termination Claim will approximate the actual market price for the related underlying security. Because DIVS, ZIPS and SPECS are each economic interests in a single underlying share, if the combined price of a DIVS, ZIPS and SPECS diverges from that of the underlying security, the Exchange believes that arbitrage opportunities would tend to remove the pricing disparity.

As discussed below, the Products confer voting rights to their purchasers. The voting rights are allocated among the three components, as discussed below. In this regard, sellers of the Products are obligated to deliver the voting rights to the purchasers.

For customer margin purposes, DIVS, ZIPS and SPECS are contemplated to be margined as equity securities pursuant to Regulation T for initial margin and PHLX Rule 722 for maintenance margin.[2]

Characteristics of Individual Components DIVS

The basic characteristic of DIVS will be the right to receive substitute payments in the same amount (and at the same time) as regular dividends declared and paid on the underlying shares of common stock for all record dates that precede the Termination Date of the particular series of DIVS.

On each ex-dividend date, OCC will notify clearing members of debits they have incurred on OCC's books for any net short DIVS positions. These debits will be charged to such clearing members' accounts at OCC on payment date. Ex dates and payment dates will coincide with that of the underlying common stock. Hence, DIVS sellers assume the obligation to fund the substitute dividend payments with respect to DIVS as they arise. On the Termination Date for a particular series of DIVS, DIVS holders' rights will cease except as to rights to unpaid dividends declared as of a record date occurring prior to the Termination Date.

ZIPS

Each ZIPS will confer the right to receive on the Termination Date that number of underlying common shares to which the ZIPS relate having an aggregate value (determined soley by reference to the market price) equal to the lesser of (i) the Termination Claim for that class of ZIPS or (ii) the market price of the common shares on the Termination Date.[3]

For example, if the Termination Claim for a class of ZIPS is $50, and on the Termination Date of the ZIPS the market price of the related underlying common stock is $80, a holder of 100 ZIPS would be entitled to receive that number of common shares with an aggregate market value of 100×$50=$5,000. $5,000/$80 equals 62.5 shares, so that an owner would be entitled to 62 whole shares and a payment of cash in lieu of the fractional share of $40.[4] Brokers holding short component positions for clients would make delivery of the shares and cash for any fractional shares. Brokers holding long component positions for their clients would receive the shares and cash for any fractional shares, which they will forward to their clients.

SPECS

SPECS will reflect the appreciation in value above the Termination Claim for that series of SPECS. Specifically, SPECS will constitute the right to receive on the Termination Date that number of related common shares having a market value equal to the amount, if any, by which the market price of the related common shares exceeds the Termination Claim.

From the example given in the discussion above of ZIPS, an owner of 100 SPECS with respect to the same series of ZIPS would be entitled to receive the following number of common shares:
100×($80−$50)=$3,000. $3,000/$80 equals 37.5 common shares, so the owner of the 100 SPECS would be entitled to 37 whole shares and a cash payment in lieu of the fractional share of $40.[5]

On the Termination Date for a class of ZIPS or SPECS, OCC will instruct delivery, based on information provided by the brokers. Shares of the underlying stock will be delivered from the accounts of investors short the ZIPS or SPECS to satisfy the entitlements of those investors long the ZIPS and SPECS.

[2] The PHLX and counsel for ASPC are currently seeking agreement and confirmation of this treatment from the staff of the Board of Governors of the Federal Reserve System.

[3] All references to market price are to the last sale price on the relevant day as set forth on the appropriate consolidated tape, or if there is no such last sale price, the mean of the closing bid and ask price or as otherwise approved by the Commission prior to the commencement of trading in a series.

[4] If the market price of a share of the related common stock on the Termination Date had been $50 or less, the owner of the 100 ZIPS would have received 100 shares of the underlying common stock. Exercise procedures in accordance with OCC guidelines would be followed on Termination Date.

[5] If the market price of a common share had been less than $50 (the Termination Claim), the SPECS would expire worthless.

Voting Rights

The vote to which the underlying common share is entitled will be allocated among the three components of the same series with the same Termination Date and Termination Claim in proposition to their relative market prices as of the record date for the meeting, consent or authorization.

For example, if there are outstanding DIVS, ZIPS and SPECS with the following market values, each would have the indicated vote percentage:

Security	Market price	Percentage vote
DIVS term 12/31/99 ..	$20.25	18.75
ZIPS term 12/31/99 ..	78.75	72.92
SPECS term 12/31/99	9.00	8.33
Combined Value	108.00	100.00

If a DIVS, ZIPS or SPECS is sold uncovered, the underlying stock must be bought or borrowed by record date in order to enable the original naked seller to deliver the appropriate percentage of the vote to the DIVS, ZIPS or SPECS purchaser.

Holders will receive proxy materials and be able to tender proxies for their respective shares of the vote to any broker or bank carrying their account, and that such broker or bank representing the sellers or shorts will surrender its proxy for the appropriate number of votes representing the components that were sold. Proxy materials will be provided through the mechanisms that banks, brokerage firms and clearing agencies have developed to comply with the requirements of Rules 14a–13, 14b–1 and 14b–2 under the Act. Costs for delivering the proxy materials will probably be borne by DIVS, ZIPS & SPECS holders.

SPECS

Adjustments for Stock Splits or Stock Dividends

With respect to stock splits or stock dividends declared on the related underlying shares, DIVS, ZIPS, and SPECS will be adjusted proportionally, and, in the case of ZIPS and SPECS, the Termination Claim will also be adjusted proportionally on the record date for such event. For example, if a company has a two for one stock split, an owner of 100 DIVS would become the owner of 200 DIVS with the same Termination Date; an owner of 100 ZIPS would become the owner of 200 ZIPS with the same Termination Date and one-half the Termination Claim; and an owner of 100 SPECS would become the owner of 200 SPECS with the same Termination Date and one-half the Termination Claim on such record date.

If the related underlying company declares a stock dividend, the Products will be adjusted proportionally. For example, in the case of a declared 5% stock dividend, DIVS and ZIPS and SPECS with a Termination Claim of $50 would be adjusted as follows: an owner of 100 DIVS would become the owner of 105 DIVS; an owner of 100 ZIPS would become the owner of 105 ZIPS with a Termination Claim of $47.62; and an owner of 100 SPECS would become the owner of 105 SPECS with a Termination Claim of $47.62.

Liquidating, Special or Partial Liquidating Dividends

With regard to full liquidating dividends to shareholders, payments would be allocated among owners of DIVS, ZIPS and SPECS of the same class as follows:

—DIVS would receive the discounted present value at the date of distribution of the liquidating dividend of an imputed dividend stream. It would be assumed that the most recent four quarterly dividends (unless the issuer of the related common stock has announced a change in its dividend policy, in which case assumed dividends complying with the policy would be used) of the issuer would continue through the latest record date preceding the Termination Date. That cash stream would be discounted to present value assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.
—The remaining amount would be allocated between ZIPS and SPECS of the same series, based upon an adjusted Termination Claim. The Termination Claim would be adjusted by discounting the Termination Claim to its present value at the date of distribution of the liquidating dividend. The discount rate used would be the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date. ZIPS will receive the amount of the distribution up to the adjusted Termination Claim (less the amount allocated to DIVS), with any excess going to the SPECS.

Any adjustments made to the terms of the contract, as a result of any of these "triggering" events, would be handled for these instruments in the same manner as standardized options and would be in accordance with any applicable OCC rules.

Transmission of money to beneficial owners would be accomplished through OCC and its participants in the same manner in which the substitute dividends would be transmitted from short DIVS to long DIVS.

For purposes of allocating distributions among DIVS, ZIPS and SPECS, special dividends are those dividends which are declared as such by the issuer of the common shares, if that issuer does not also declare that it is changing its dividend policy by reducing or increasing the amount of its regular dividends. Special dividends would be allocated among DIVS, ZIPS and SPECS as follows:

—DIVS would be allocated and receive that portion of the special dividend equal to the quotient of (a) the annual dividend divided by (b) the last sale price [6] of the stock on the day prior to the ex-distribution date reduced by the amount of the special dividend which quotient is multiplied by (c) the amount of the special dividend.
—If the remaining portion of the special dividend were less than the present value of the Termination Claim for ZIPS and SPECS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the special dividend. All determinations of present value and future value are computed using the maximum potential internal rate of return ("IRR") for ZIPS. The maximum potential IRR for ZIPS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the special dividend and receipt of the Termination Claim on the Termination Date (such discount rate being hereinafter the "maximum potential IRR for ZIPS").
—The remaining portion would be allocated and paid to the ZIPS.
—If the remaining portion of the special dividend equals or exceeds the present value of the Termination Claim, ZIPS would receive that portion of the special dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the special dividend would be allocated and paid to the SPECS. Any further liquidating, special or partial liquidating dividends would be allocated between DIVS and SPECS; the ZIPS having received in full an adjusted Termination Claim.

For purposes of allocating distributions made by the issuer of the related common shares among DIVS, ZIPS and SPECS, partial liquidating dividends are all dividends other than regular dividends, liquidating dividends and special dividends. It is assumed that partial liquidating dividends would be accompanied by an announcement of a reduction in the regular dividends paid by the issuer.

Partial liquidating dividends would be split among the three components as follows:

—DIVS would be allocated and receive that portion of the partial liquidating dividend equal to the discounted present value of

[6] If there is no last sale price, the mean of the closing bid and ask prices will be used.

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the amount of the reduction in the quarterly dividend as stated in the newly announced policy of the issuer. This computation would be made assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.

—If the remaining portion of the partial liquidating dividend were less than the present value of the Termination Claim, the Termination Claim for ZIPS and SPECS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the partial liquidating dividend. The determination of present value and future value for ZIPS will be computed using the maximum potential IRR for ZIPS. In this case, the maximum potential IRR for ZIPS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the partial liquidating dividend and receipt of the Termination Claim on the Termination Date.

—That remaining portion would be allocated and paid to the ZIPS.

—If the remaining portion of the partial liquidating dividend equals or exceeds the present value of the Termination Claim, ZIPS would receive that portion of the liquidating dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the partial liquidating dividend would be allocated and paid to the SPECS. Any further liquidating or partial liquidating dividends would be allocated between DIVS and SPECS; the ZIPS having received in full an adjusted Termination Claim.

Spin-offs and Split-ups

In the case of spin-off or split-up transactions, each DIVS, ZIPS and SPECS holder would become the owner of two issues of DIVS, ZIPS and SPECS—one for each company and each having the same number of such securities with the same Termination Date. The Termination Claim would be allocated between the two issues of ZIPS and the two issues of SPECS based upon the ratio of the prices of the two issues (*i.e.*, the underlying common shares and the spun-off company) at the opening of trading on the effective date of the spin-off or split-up transactions.

Mergers

If the company that issued the common shares from which the DIVS, ZIPS and SPECS were created were to be the surviving company, there would be no adjustment to the terms of the DIVS, ZIPS and SPECS unless, as part of such transaction, there was a stock split, stock dividend, partial liquidating dividend or other corporate transaction that would require adjustment. If the issuer were not the surviving entity, each owner of DIVS, ZIPS and SPECS would vote his interest in accordance with his voting rights, and, if the merger was approved, he would receive his share of the compensation given for each common share as if a liquidating dividend was paid or an exchange offer was made, as appropriate.

Rights Offerings

If the issuer of stock from which DIVS, ZIPS and SPECS were created were to make a rights offering, the rights would be allocated to the ZIPS and the Termination Claim would be reduced by the future value of the rights calculated to the Termination Date. The future value would be computed using as the interest rate, the maximum potential IRR for ZIPS and using the average closing sale price for the first 10 days of trading in the rights.

Exchange or Tender Offers

If there were an exchange or tender offer for the common shares to which DIVS, ZIPS and SPECS related, OCC's existing option procedures and practices would apply.

These particularized procedures for adjusting the contract specifications of any open interest in any particular DIVS, ZIPS and SPECS series will be well documented in the eventual disclosure document to be published by the issuer, OCC.

The PHLX believes the proposed rule change is consistent with Section 6(b)(5) of the Act which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. all submissions should refer to the file number in the caption above and should be submitted by March 21, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4859 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20910; 811–4376]

State Street Fund for Foundations and Endowments; Notice of Application

February 22, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: State Street Fund for Foundations and Endowments.

RELEVANT ACT SECTION: Order requested under section 8(f).

[7] 17 CFR 200.30–3(a)(12) (1994).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on November 21, 1994 and amended on January 11, 1995 and February 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 20, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered, open-end, diversified, management investment company under the Act and is organized as a business trust under the laws of the Commonwealth of Massachusetts. On August 8, 1985, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on April 17, 1986, and applicant's initial public offering commenced on or about that date.

2. Applicant consists of one series: the Fixed Income Portfolio (the "Portfolio"). Share of beneficial interest were offered, without sales charge, only to tax-exempt charitable foundations and endowment funds.

3. Applicant's declaration of trust provides that applicant may be terminated by this shareholders upon the redemption of all of their shares at a price equal to the net asset value per share of the Portfolio. On June 23, 1994, applicant has two shareholders: Metropolitan Life Insurance Company, the ultimate parent of State Street Research & Management Company, applicant's investment adviser (the "Adviser"), and the Felician Sisters, O.S.F. of Livonia. On that date, the shareholders redeemed all of their shares in order to reinvest the proceeds in another similar fund recently organized. The redemptions were coordinated to assure equal treatment of both shareholders. A total of 62,565.298 shares having an aggregate and per share net asset value of $6,186,252.28 and $98.88, respectively, were redeemed.

4. On August 3, 1994, applicant's Board of Trustees (the "Trustees") determined that it was advisable that applicant terminate because applicant's shareholders had redeemed all of their shares. The Trustees were not required to seek shareholder approval because applicant has had no shareholders or operations since June 23, 1994.

5. All expenses incurred in connection with applicant's liquidation were borne by the adviser. Such expenses, totalling approximately $3,500, were for legal fees.

6. As of the date of the application, applicant had no assets, debts, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file its notification of termination as a business trust under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4860 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting on Thursday, March 23, 1995 at 12:00 noon, at the Decathlon Athletic Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

(The meeting scheduled for March 31, 1995 has been canceled).

For further information, write or call Mr. Edward A. Daum, Director, U.S. Small Business Administration, 610-Butler Square, 100 North Sixth street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: February 21, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–4821 Filed 2–27–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000161]

United Partners, Inc.; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by UBS Partners, Inc. at 299 Park Avenue, New York, NY 10171, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder. Its area of operation will be throughout the United States.

UBS Partners, Inc. is a wholly owned subsidiary of UBS, Inc. UBS Partners, Inc. has three officers: Justin S. Maccarone, President; Jeffrey Keenan, Vice-President and Secretary; and, Michael Greene, Vice-President and Treasurer. The Officers, who will be employed by the parent and other affiliates, have extensive banking and senior management experience, advanced academic training in business management, and multiple investment experiences in varied companies and industries.

The applicant will begin operations with Regulatory Capital of $2.6 million and will be a source of equity and subordinated debt for companies with annual sales of $5 million, as well as, startup small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the

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date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: February 22, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–4822 Filed 2–27–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 17, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50132
Date filed: February 16, 1995
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/387 dated February 15, 1995, Expedited Resos, r-1—810 r-2—810c r-3—810g r-4—824c
Proposed Effective Date: May 1, 1995

Docket Number: 50133
Date filed: February 16, 1995
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 728, Reso 010f—Passenger Currency Adjustment
Proposed Effective Date: April 1, 1995

Myrna F. Adams,

Acting Chief, Documentary Services Division

[FR Doc. 95–4838 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 17, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50126
Date filed: February 13, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 1995
Description: Application of Aerovias de Honduras, S.A. de C.V., pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in scheduled air transportation of persons, property and mail between points in Honduras, on the one hand, and points in the United States, on the other hand, via intermediate points in Belize and beyond.

Docket Number: 50131
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Arrow Air, Inc., pursuant to 49 U.S.C., Part 302 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to permit it to engage in foreign air transportation of property and mail between Miami, FL, on the one hand, and Lima, Peru, on the other hand. Arrow requests that either its Certificate for Route 343F be amended or a separate Certificate be issued. Arrow also requests the allocation of three weekly round trip scheduled frequencies.

Docket Number: 50135
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, requests a Certificate of Public Convenience and Necessity for authority to offer scheduled foreign air transportation of persons, property and mail between Miami, Florida, and Lima, Peru. United also requests the allocation of 4.5 weekly narrow-body frequencies consistent with the U.S./Peru bilateral Exchange of Notes, dated January 13, 1995.

Docket Number: 50136
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Carnival Air Lines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Carnival to provide scheduled foreign air transportation of persons, property and mail between Miami, Florida and Lima, Peru.

Docket Number: 50137
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Fine Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail between Miami, Florida, and Lima, Peru and for the allocation to it of the three new, weekly, all-cargo frequencies available to U.S. carriers under the 1986 U.S.-Peru Air Transport Agreement and a January 13, 1995 Exchange of Notes.

Docket Number: 50139
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Challenge Air Cargo, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations for amendment of its certificate of public convenience and necessity for Route 353 to permit it to operate scheduled all-cargo service between the United States and Peru.

Docket Number: 50140
Date filed: February 17, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Millon Air, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity, authorizing Millon Air to perform scheduled all-cargo service between Miami, Florida on the one hand, and Iquitos and Lima, Peru on the other hand. Millon Air also requests designation by the United States pursuant to the bilateral air transport services agreement between the U.S. and Peru for operation of three weekly scheduled round trip all-cargo frequencies along the routing Miami-Iquitos/Lima.

Docket Number: 50141
Date filed: February 17, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 17, 1995
Description: Application of Liberty Airlines Limited, pursuant to 49 U.S.C. Section 41301, and Subpart Q of the Regulations, applies for a foreign air carrier permit to operate scheduled, non-scheduled and charter air services, carrying passengers cargo and mail, between points in Dominica, West Indies and other states within the Organization of Eastern Caribbean States and points in the United States.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–4839 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

[Docket No. P–94–1W; Notice 1]

Columbia Gulf Transmission Company; Petition for Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of petition for waiver.

SUMMARY: Columbia Gulf Transmission Company (Columbia Gulf) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

DATES: Comments must be received on or before March 30, 1995.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. All comments and docket material may be reviewed in the Dockets Branch, room 8426, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice of proposed rulemaking, or the Dockets Unit, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

SUPPLEMENTARY INFORMATION: During a DOT required survey Columbia Gulf discovered a 260 foot portion of 36-inch Bluewater Mainline 200 did not meet the 12-inch depth of cover requirements of 49 CFR 192.612. At the point where coverage is not sufficient, Columbia Gulf's pipeline crosses over a Trunkline Gas Company 16-inch pipeline and an Amoco Production Company abandoned 4-inch pipeline. Therefore, Columbia Gulf cannot comply with the lowering requirement without first lowering or crossing below the Trunkline and Amoco pipelines. This coincidental lowering would present the potential for damage to these lines which could cause environmental pollution.

A waiver would allow Columbia Gulf to cover 813 feet along the subject pipeline segment with a concrete mesh blanket alternative to the 36-inch depth of cover requirement. The waiver would also extend the time limitation required for compliance with section 192.612.

A "concrete mesh blanket" unit is an 8′ × 20′ section constructed from 160 individually cast 17″ × 17″ × 9″ beveled concrete briquettes inter-connected with ¾″ polypropelene UV stabilized line. A total of 41 (8′ × 20′ × 9″) units of "concrete mesh blanket" will be required to cover the 813′ of affected pipeline. Each of the 41 units will be hydrojetted flush with the seabed and permanently anchored with six screw anchors.

The top of the 12 inch pipeline the mesh blanket is intended to cover is presently buried 6 inches below unconsolidated bottom in the Gulf of Mexico from Lat. 29°30′21.46″, Long. 92°22′54.08″ to Lat. 29°30′13.4″, Long. 92°22′53.98; Block 15, Vermillion area, approximately 8 miles South of Pecan Island, LA. The pipeline is coated with concrete.

The application of the proposed blanket would effectively cover the pipeline to 15 inches (9″ mattress + 6″ cover). The required reburial is to 36 inches below the bottom or 18 inches below a rock bottom.

RSPA proposes to grant the waiver with the provision that Columbia Gulf also install a rock shield over the pipeline before installation of the blanket. The rock shield must be of at least ⅜ inches of thickness constructed of an appropriate material, such as "Tuff N Nuff" manufactured by Submar. With the addition of the rock shield RSPA believes there is no reason to anticipate a lesser level of safety than would be achieved by a 36″ pipeline burial. In view of these reasons and those stated in the foregoing discussion, it appears that a waiver of compliance with § 192.612(c)(3) would not be inconsistent with pipeline safety, and as a consequence, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed concrete mat to reduce the hazard to navigation posed by the exposed pipeline and on any impact the mat may have on fishing vessel operations. Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, Room 8417, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

All comments received before April 14, 1995 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in Room 8419 between the hours of 8:30 A.M. and 5:00 P.M. Monday through Friday, except federal holidays before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Richard D. Huriax,

Director, Regulatory Programs, Office of Pipeline Safety.

[FR Doc. 95–4907 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

February 20, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–030.
Form Number: OTS Forms 1344 and 1561.
Type of Review: Revision.
Title: Application for Issuance of Subordinated Debt Securities.
Description: The information provided to OTS is used to determine if the proposed issuance of subordinated debt or preferred stock will benefit the thrift institution or create an unreasonable risk to the Savings Association Insurance Fund.

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Respondents: Savings and Loan Associations and Savings Banks.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 49 Hrs. Avg.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 246 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,
Director of Administration.
[FR Doc. 95–4828 Filed 2–27–95; 8:45 am]
BILLING CODE 8720–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 20,1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–023.
Form Number: OTS Forms 1313 and 1568.
Type of Review: Revision.
Title: Thrift Financial Report.
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of personal savings of the general public. The OTS monitors the financial positions and interest-rate risk so that adverse conditions can be remedied promptly.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1546.
Estimated Burden Hours Per Response: 13.25 Hrs.
Frequency of Response: Monthly
Estimated Total Reporting Burden: 245,842 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,
Director of Administration.
[FR Doc. 95–4829 Filed 2–27–95; 8:45 am]
BILLING CODE 8720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Art and Empire: Treasures from Assyria in the British Museum" (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York City from on or about April 24, 1995 through August 13, 1995 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 22, 1995.

Les Jin,
General Counsel.
[FR Doc. 95–4898 Filed 2–27–95; 8:45 am]
BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.
By direction of the Secretary.

Ronald C. Taylor,
Management Analyst.

Reinstatement

1. Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.
2. This form is used by nonsupervised lenders to request approval to close loans on an automatic basis. The information is used to determine whether applicants meet standards of acceptability.
3. Business or other for-profit.
4. 42 hours.
5. 25 minutes.
6. On occasion.
7. 100 respondents.

[FR Doc. 95–4784 Filed 2–27–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Verification of Deposit, VA Form 26–8497a

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 820 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.
By direction of the Secretary.

Ronald C. Taylor,
Management Analyst.

Extension

1. Request for Verification of Deposit, VA Form 26–8497a
2. The information collected is used by VA to determine whether the veteran qualifies as a prospective mortgagor for mortgage insurance or guaranty or as a borrower for a rehabilitation loan under VA programs.
3. Business or other for-profit.
4. 26,000 hours.
5. 5 minutes.
6. On occasion.
7. 312,000 respondents.

[FR Doc. 95–4782 Filed 2–27–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Reinstatement, VA Form 29–352

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.
By direction of the Secretary.

Ronald C. Taylor,
Management Analyst.

Reinstatement

1. Application for Reinstatement, VA Form 29–352
2. This form is used by veterans applying for reinstatement of their Government Life Insurance or Total Disability Income Provision which has lapsed for more than six months. The information is used by VA to determine eligibility for reinstatement.
3. Individuals or households.
4. 500 hours.
5. 20 minutes.
6. On occasion.
7. 1,500 respondents.

[FR Doc. 95–4781 Filed 2–27–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Holder or Servicer of Veteran's Loan, VA Form Letter 26–559

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.
By direction of the Secretary

Ronald C. Taylor,
Management Analyst.

Extension

1. Statement of Holder or Servicer of Veteran's Loan, VA Form Letter 26–559
2. This form letter is completed by holders or servicers of guaranteed or insured home loans from which obligors may be released from liability and/or substitution entitlement. Information collected is used to determine that the loan is current
3. Business or other for profit
4. 2,500 hours.
5. 10 minutes.
6. On occasion.
7. 15,000 respondents.

[FR Doc. 95–4785 Filed 2–27–95; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Status of Loan Account—Foreclosure or Other Liquidation, VA Form 26–567

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C

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Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Status of Loan Account—Foreclosure or Other Liquidation, VA Form Letter 26–567.

2. This form letter is used by VA to obtain information from holders concerning the status of a loan account at the time of foreclosure or other liquidation action.

3. Businesses or other for-profit.

4. 12,664 hours.

5. 30 minutes.

6. On occasion.

7. 25,328 respondents.

[FR Doc. 95–4783 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring matching program. This will match personnel records of the Department of Defense with VA records of benefit receipts under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, service members and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill—Active Duty and the Montgomery GI Bill—Selected Reserve.

DATES: This match will commence on March 30, 1995. The departments may renew the agreement for another 12 months at that time.

FOR FURTHER INFORMATION CONTACT: John L. Fox (224), Assistant Director for Procedures and Systems, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 273–7182.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 6c of the Guidelines on the Conduct of Matching Programs issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 59 FR 37906 (1994). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget. The matching program is subject to their review.

a. *Names of participating agencies:* Department of Veterans Affairs and Department of Defense.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the Montgomery GI Bill—Active Duty or the Montgomery GI Bill—Selected Reserve, and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from the Department of Defense personnel files and benefit records which VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22 entitled: Compensation, Pension, Education and Rehabilitation Records—VA, last published in the **Federal Register** at 55 FR 28508.

e. *Date of the matching program:* The match will begin on March 30, 1995.

f. *Address for receipt of public inquiries or comments:* Members of the public who wish to submit written comments or inquiries may write to: R. J. Vogel, Under Secretary for Benefits (22), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Approved: February 9, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–4786 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 3, 1995.

PLACE: 2033 K. St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 95–5069 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, March 6, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 95–5070 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 10, 1995.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5071 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 17, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5072 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 24, 1995.

PLACE: 2033K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5073 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 31, 1995.

PLACE: 2033K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 95–5074 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, March 7, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6527—Aviation Accident Report: Controlled Collision with Terrain, Transportes Aereos Ejectivos, S.A. (TAESA), Learjet 25D, XA-BBA, Dulles International Airport, Chantilly, Virginia, June 18, 1994.

6354A—Opinion and Order: Administrator v. Bielecki, et al. Dockets SE–9244–9249; disposition of respondents' appeals.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 24, 1995.

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 95–4966 Filed 2–24–95; 10:39 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 27, March 6, 13, and 20, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 27

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301–415–5972)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
* (Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Curators of the University of Missouri—Appeal of LBP–91–31 and LBP–91–34 (Tentative)
(Contact: Roland Frye, 301–415–3505)

2:00 p.m.
Discussion of Management Issues (Closed—Ex 2 and 6)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301–415–7266)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 13—Tentative

Tuesday, March 14

10:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

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Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301–415/7322)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tenative

Wednesday, March 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: John Hickey, 301–415–7192)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: William Hill—(301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: February 24, 1995.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–5051 Filed 2–24–95; 3:01 pm]
BILLING CODE 7590–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: March 3, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–684–685 (Final) (Fresh Cut Roses from Colombia and Ecuador)—briefing and vote.
5. Inv. No. 731–TA–718 (Final) (Glycine from China)—briefing and vote.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 24, 1995.
By order of the Commission.

Donna R. Koehnke,
Secretary

[FR Doc. 95–5077 Filed 2–24–95; 4:01 pm]
BILLING CODE 7020–02–P

federal register

Tuesday
February 28, 1995

Part II

Department of Commerce

International Trade Administration

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-801, A-428-801, A-588-804, A-559-801, A-401-801, A-549-801, A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, as described in more detail below. The reviews cover 29 manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled "Final Results of Review."

The Department also is revoking the antidumping duty orders with respect to the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4733.

France

Jacqueline Arrowsmith (SKF, SNR), Kris Campbell (SNFA), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Germany

Jacqueline Arrowsmith (SKF), Kris Campbell (FAG), Carlo Cavagna (NTN Kugellagerfabrik), Davina Friedmann (INA), Charles Riggle (Fichtel & Sachs, GMN), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Japan

Carlo Cavagna (Honda, Nachi, NTN), William Czajkowski (Takeshita), J. David Dirstine (NSK, Koyo), Joseph Fargo (Nankai Seiko), Michael Panfeld (IKS, NPBS), or Richard Rimlinger.

Singapore

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

Sweden

Matthew Rosenbaum (SKF), or Michael Rill.

Thailand

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

United Kingdom

Jacqueline Arrowsmith (RHP/NSK), Kris Campbell (Barden/FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to all countries on March 28, 1994, and hearings on case-specific issues as follows: Germany on March 29, 1994; and Japan on March 30, 1994.

We are terminating the administrative reviews initiated for General Bearing Corp., SST Bearing Corp., and Peer International (Peer) with respect to subject merchandise from Japan. General Bearing Corp. and SST Bearing Corp. informed us that they neither produced AFBs in Japan nor exported Japanese-produced bearings to the United States. Peer informed us that although it is a reseller of Japanese-made bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, Peer is not a reseller as defined in 19 CFR 353.2(s) because its sales cannot be used to calculate U.S. price (USP).

Revocations In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty orders covering the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

All of the above firms have submitted, in accordance with 19 CFR 353.25(b), requests for revocation of the orders with respect to their sales of the merchandise in question. They have also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and have submitted the required certifications. All of these firms have agreed in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that they will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the orders with respect to the indicated companies.

Scope of Reviews

The products covered by these reviews are AFBs, and constitute the following "classes or kinds" of merchandise: Ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" which is appended to this notice of final results.

Best Information Available

In accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act), we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our application of BIA, see the "Best Information Available" section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs, SPBs.
	SNR	BBs, CRBs.
Germany	FAG	BBs, CRBs.
	INA	BBs, CRBs.
	SKF	BBs, CRBs, SPBs.
Japan	Koyo	BBs, CRBs.
	Nachi	BBs, CRBs.
	NPBS	BBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
Singapore	NMB/Pelmec.	BBs.
Sweden	SKF	BBs, CRBs.
Thailand	NMB/Pelmec.	BBs.
United Kingdom	RHP	BBs, CRBs.
	Barden/FAG.	BBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- Pursuant to the decision of the United States Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (CAFC 1994) (*Ad Hoc Comm.*), we have allowed a deduction for pre-sale inland freight in the calculation of foreign market value only as an indirect selling expense under 19 CFR 353.56(b), except where such expenses have been shown to be directly related to sales.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these 15 concurrent administrative reviews of AFBs are addressed in the "Issues Appendix" which is appended to this notice of final results.

Final Results of Reviews

We determine the following percentage weighted-average margins to exist for the period May 1, 1992, through April 30, 1993:

Company	BBs	CRBs	SPBs
France			
Franke & Heydrich	66.42	[2]	[2]
Hoesch Rothe Erde	[1]	[2]	[2]
Rollix Defontaine	[1]	[2]	[2]
SKF	3.45	[1]	0.00
SNFA	66.42	18.37	[2]
SNR	1.91	2.58	[2]
Germany			
FAG	11.80	19.64	18.79
Fichtel & Sachs	14.83	[2]	[2]
Franke & Heydrich	132.25	[2]	[2]
GMN	35.43	[2]	[2]
Hoesch Rothe Erde	[1]	[2]	[2]
INA	29.80	10.88	[2]
NTN	8.41	[1]	[1]
Rollix Defontaine	[1]	[2]	[2]
SKF	15.53	11.16	22.44
Japan			
Honda	0.37	0.01	0.01
IKS	8.72	[2]	[2]
Koyo	39.56	3.55	[1]
Nachi	12.46	1.03	[2]
Nankai Seiko	1.08	[2]	[2]
NPBS	18.00	[2]	[2]
NSK	10.47	9.10	[1]
NTN	13.90	13.71	4.97
Takeshita	14.58	[2]	[2]
Singapore			
NMB/Pelmec	4.84		
Sweden			
SKF	16.41	13.02	
Thialand			
NMB/Pelmec	0.01		
United Kingdom			
Barden/FAG	4.86	8.22	
RHP/NSK	14.57	19.71	

[1] No U.S. sales during the review period.
[2] No review requested.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the USP of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both PP and ESP sales by the combined total USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit

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rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, July 26, 1993). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to PP sales for these final results, we divided the total dumping margins (calculated as the difference between FMV and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (POR) is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

In the case of companies which did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (e.g., insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, are included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Further Manufacturing and the "Roller Chain" Rule in the Issues Appendix.)

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 31, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV)*, 54 FR 19006, 19019 (May 3, 1989):

Products covered:

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination. See *International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom*, 54 FR 21488 (May 18, 1989).
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990. See *Scope Rulings*, 55 FR 42750 (October 23, 1990):

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990. See *Scope Rulings*, 55 FR 43020 (October 25, 1990):

Products covered:

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991, and June 30, 1991. See *Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991):

Products excluded:

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I)*, 56 FR 31692, 31696 (July 11, 1991):

Products covered:

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991, and September 30, 1991. See *Scope Rulings*, 56 FR 57320 (November 8, 1991):

Products covered:

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991. See *Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992):

Products covered:

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers

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- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992. See *Scope Rulings*, 57 FR 19602 (May 7, 1992):

Products covered:

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992. See *Scope Rulings*, 57 FR 32973 (July 24, 1992):

Products excluded:

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992. See *Scope Rulings*, 57 FR 57420 (December 4, 1992).

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992. See *Scope Rulings*, 58 FR 11209 (February 24, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993. See *Scope Rulings*, 58 FR 27542 (May 10, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993. See *Scope Rulings*, 58 FR 47124 (September 7, 1993).

Products covered:

- Certain series of INA bearings

Products excluded:

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993. See *Scope Rulings*, 59 FR 8910 (February 24, 1994).

Products excluded:

- Certain textile machinery components

Scope rulings completed after March 31, 1994.

Products excluded:

- Certain textile machinery components

Issues Appendix

Company Abbreviations

Barden—The Barden Corporation (U.K.) Ltd.; The Barden Corporation
FAG-Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG-UK—FAG (UK) Ltd.
Federal-Mogul—Federal-Mogul Corporation
Fichtel & Sachs—Fichtel & Sachs AG; Sachs Automotive Products Co.
GMN—Georg Muller Nurnberg AG; Georg Muller of America
Hoesch—Hoesch Rothe Erde AG
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
IKS—Izumoto Seiko Co., Ltd.
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America, Inc.; Nachi Technology Inc.
Nankai—Nankai Seiko Co., Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.; NMB Thai, Ltd.; Pelmec Thai, Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-Europe—NSK Bearings Europe, Ltd.
NTN-Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Peer Int'l—Peer International, Ltd.
RHP—RHP Bearings; RHP Bearings, Inc.
Rollix—Rollix Defontaine, S.A.
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A (Clamart); ADR; SARMA
SKF-Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF-UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-Sweden; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR—SNR Roulements; SNR Bearings USA, Inc.
Takeshita—Takeshita Seiko Company
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
HMP—Home Market Price
OEM—Original Equipment Manufacturer
POR—Period of Review
PP—Purchase Price
USP—United States Price
DOC—Department of Commerce

AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989)

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)

AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)

1. Annual POR Averaging

Comment 1: NSK contends that, when comparing annual average FMVs with PP transactions, the Department should include in such FMVs only those HM models that match to PP sales, rather than HM models that match to both PP and ESP sales. That is, the Department should calculate two separate annual average FMVs, one based only on HM models that match to PP sales, and one based only on HM models that match to ESP sales. This would involve conducting a separate price stability test on HM models that match to PP transactions. NSK notes that the Department treats PP transactions differently than ESP transactions, that FMVs are computed separately for ESP and PP sales, and that different COS adjustments are made depending on whether FMV is matched to PP or ESP transactions. NSK requests that, if the Department is unwilling to conduct a separate price stability test on all HM models matched to PP transactions, the Department should use the monthly, rather than annual, weighted-average FMVs for PP matches.

Department's Position: We disagree. The HM price stability test, which allows for limited price fluctuations on a model-by-model basis, measures the overall stability of HM prices for the class or kind of merchandise under consideration over the POR (see *AFBs III* at 39734). The test is designed for determining whether HM sales prices during the POR are stable enough to allow the use of annual average, rather than monthly average, HM prices as the basis of FMV. There is no reason to take into consideration whether particular HM models are matched to PP or ESP transactions as the type of U.S. sale is not relevant to the question of whether HM prices are stable. Furthermore, the fact that PP sales are distinguishable from ESP sales, that ESP sales may be sampled while PP sales are not, and that different COS adjustments are made when comparing to PP and ESP sales are not relevant to whether the HM prices underlying FMVs are stable. In deciding whether to calculate POR weighted-averaged FMVs we performed the tests outlined in our preliminary results on HM sales databases to determine whether: (1) There was a minimal variance between monthly and POR weighted-average prices; and (2) there was any significant correlation between fluctuations in price and time. Thus, we conclude that our price stability test, performed on a class or kind basis, does not need to be modified to distinguish between HM models matched to PP sales and those matched to ESP sales.

2. Assessment and Duty Deposits

Comment 1: The FAG Group (Barden, FAG-Germany, and FAG–UK) and NSK contend that the Department's assessment rate methodology is flawed, and state that the Department acted contrary to law in basing assessment rates on the Customs entered values of those sales reviewed by the Department for the POR, because the sales actually reviewed by the Department for the POR may have involved merchandise entered before the POR. Instead, respondents claim that the Department should base assessment rates on the Customs entered values of merchandise actually entered during the POR, as submitted by respondents. Respondents maintain that the Department should determine assessment rates by dividing total antidumping duties due (calculated as the difference between statutory FMV and statutory USP for the sales reported for the POR) by the entered values of the merchandise actually entered during the POR (not by the entered values of the merchandise actually sold during the POR). Respondents argue that the Department's current methodology can lead to a substantial overcollection of dumping duties.

Both Torrington and Federal-Mogul argue that the Department's methodology is valid. Torrington notes that the Department concluded that the current methodology is reasonable and that it constitutes an appropriate use of the Department's discretion to implement sampling and averaging techniques as provided for in section 777A of the Tariff Act. See *AFBs I* at 31694. Torrington states that since the U.S. sales used to calculate the dumping margins are only a sample of the total U.S. sales during the POR, application of FAG's proposed methodology would lead to substantial undercollection of antidumping duties, unless the Department adjusts that methodology to take into account all U.S. sales during the POR.

Torrington also states that both the Department's current methodology and FAG's proposed methodology are deficient in that neither method "ties entries to sales." Torrington proposes two methods for dealing with the problem of reviewed sales that do not match to particular entries during the POR. First, Torrington suggests that the Department review entries rather than sales. Torrington points out that this method is not ideal because it could place the Department in the position of reviewing entries made during the POR that contained merchandise that was sold after the POR. Second, Torrington proposes that the Department require respondents to submit adequate information to trace each entry directly to the sale in the United States. Torrington observes that at present this method would be impossible because the administrative record in this review does not permit tracing each sale to the entry.

Federal-Mogul states that the Department's methodology is logical because it establishes a link between the values calculated on the basis of the sales analyzed and the actual assessment values over time and, therefore, avoids the distortions that FAG's alternative would engender.

Department's Position: We disagree with the FAG Group and NSK. As stated in *AFBs III* (at 39737), section 751 of the Tariff Act requires that the Department calculate the amount by which the FMV exceeds the USP and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences for each importer divided by the total number of units sold to that importer. Therefore, each importer is only liable for the duties related to its entries. In ESP cases, we generally cannot tie sales to specific entries. In addition, the calculation of specific antidumping duties for every entry made during the POR is impossible where dumping margins have been based on sampling, even if all sales could be tied to specific entries. Hence, for ESP sales, in order to obtain an accurate assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (ad valorem rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the POR.

This approach is equivalent to dividing the aggregate dumping margins, *i.e.*, the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales. While we are aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

Comment 2: Federal-Mogul and Torrington object to the Department's policy of calculating the cash deposit rate as a percentage of statutory USP. They claim that this practice results in a systematic undercollection of duty deposits. Federal-Mogul and Torrington propose that the Department base its deposit rate methodology on Customs entered values because duty deposit rates are applied to entered value. Torrington states that the legislative

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history requires that the estimated antidumping duty deposit rate be as accurate and as close to actual duties as possible, given the information available. Hence, if the Department has the entered value data available for calculating the assessment rates, it should use this data.

Torrington contends that it is important to focus on the difference between the entered value used by Customs to collect duties and the ESP calculated by Commerce. Entered value is different from ESP because ESP includes expenses, such as the value added tax, that are excluded from entered value.

RHP, Koyo, FAG, NTN, NSK, and SKF disagree with Torrington and Federal-Mogul. Respondents argue that it has been the Department's consistent practice to use USP as the denominator in calculating the cash deposit rate and to apply this rate to the entered value of future imports of the subject merchandise. In support of this argument, NTN notes that the Court has repeatedly upheld the Department's methodology as reasonable and in accordance with the antidumping statute. NTN cites *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 866–67 (CIT 1993) (*Federal-Mogul*), in which the Court ruled that the antidumping statute does not specify that the same method should be used for calculating both assessment rates and cash deposit rates, and that the Department's methodology is "reasonable and in accordance with the law." Thus, NSK states that the Department should adhere to its established practice and calculate separate assessment and deposit rates.

Respondents contend that Torrington's and Federal-Mogul's arguments fail to adequately take into account that, under any method of calculating cash deposit rates, cash deposits are unlikely to equal the amount by which FMV exceeds USP. Furthermore, if any difference between the deposit rate and the ultimate antidumping liability results, the Department will instruct the Customs Service to collect or to refund the difference with interest.

Respondents assert that Torrington has failed to demonstrate that its methodology would result in a more accurate estimation of the duty. Torrington's claim is premised on the assumption that the information on the record will remain constant from review to review. Respondents hold that this is incorrect because even the record for a single POR reveals fluctuations in pricing and expenses and, therefore, in margin calculations. For example, indirect selling expense factors during the POR can and have changed significantly from the first part of the period to the second part. SKF claims the CIT recognized this situation in upholding the Department's methodology in *Federal-Mogul; Zenith Electronics Corp.* v. *United States*, 770 F. Supp. 648 (CIT 1991) and *Daewoo Electronics Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989).

SKF argues that Torrington's illustration that ESP will always be greater than entered value is speculative. SKF points out that while ESP includes additions for elements which are not included in entered value, certain expenses are subtracted from ESP which are included in entered value.

Department's Position: We disagree with Torrington and Federal-Mogul. First, as we stated in the final results of *AFBs I* and *AFBs III*, we do not accept the argument that the deposit rate must be calculated in exactly the same manner as the assessment rate. Section 751 of the Tariff Act merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential. Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which FMV exceeds USP. Duty deposits are merely estimates of future dumping liability. If the amount of the deposit is less than the amount ultimately assessed, the Department will instruct the U.S. Customs Service to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act and 19 CFR 353.24.

Comment 3: Torrington and Federal-Mogul contend that the Department should deduct from ESP any antidumping duties "effectively" reimbursed by foreign producers to their U.S. affiliates. Torrington argues that in past administrative reviews it has identified and reviewed evidence of reimbursement of antidumping duties. Torrington argues that the Department's decision not to deduct antidumping duties from ESP in the previous review was contrary to the regulations and the law. Torrington finds justification for removing antidumping duties from ESP under 19 CFR 353.26, the Department's reimbursement regulation, stating that by its own terms, it applies generally "[i]n calculating the United States price." Torrington maintains that if the reimbursement regulation is not applicable in ESP situations, a foreign producer can reimburse its related U.S. subsidiary for duties and continue dumping in the United States.

Torrington and Federal-Mogul also argue that the amount of antidumping duties assessed on imports of subject merchandise constitutes "additional costs, charges, and expenses, * * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States," as provided in section 772(d)(2)(A) of the Tariff Act. Furthermore, Torrington and Federal-Mogul contend, the Department's regulations recognize that such duties, when reimbursed by a foreign producer or exporter, constitute a selling expense that must be deducted from USP.

NTN, RHP, SKF, and the FAG Group contend that Torrington and Federal-Mogul have not provided credible arguments as to why the Department should alter its position on this issue. The FAG Group states that the reimbursement regulation cannot apply to ESP sales because in an ESP situation the importer is the exporter. Hence, one cannot reimburse oneself. The FAG Group also states that Torrington's and Federal-Mogul's arguments are premature at best because respondents have not yet been assessed with actual antidumping duties—liquidation of all entries from November 1988 to date has remained suspended, and the only payments made so far have been of estimated antidumping duties. Thus, none of the reported ESP sales made by FAG (or any other principal respondent) could have included in the resale price amounts for assessed antidumping duties.

Koyo, NTN, and the FAG Group argue that there is no legal basis for Torrington's and Federal-Mogul's argument that the Department should treat antidumping duties as selling expenses to be deducted from USP. Furthermore, respondents state that a deduction of antidumping duties paid would violate Department and judicial precedent. FAG notes that, in *Federal-Mogul* v. *United States*, Slip Op. 93–17 at 40 (CIT 1993), the Court held that deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of "normal import duties."

FAG and NSK contend that it is clear that, in accordance with 19 USC 1673, which states that the purpose of antidumping law is to measure the amount by which FMV exceeds USP, antidumping duties should not be deducted from USP. Respondents claim that making an additional deduction from USP for the same antidumping duties that correct discrimination between the price of comparable goods in the U.S. and the foreign markets would result in double-counting.

FAG argues that, if the Department agrees with Torrington's position, it should, to preserve comparability, add to USP the amount of any antidumping duties, plus interest, that are refunded to respondents.

Department's Position: We disagree with Torrington and Federal-Mogul that the Department should deduct from ESP antidumping duties allegedly reimbursed by foreign producers to their U.S. affiliates. In this administrative review neither party has identified record evidence that there was reimbursement of antidumping duties. Evidence of reimbursement is necessary before we can make an adjustment to USP. This has been our consistent interpretation of 19 CFR 353.26, the reimbursement regulation, and was upheld by the Court in *Otokumpu Copper Rolled Products AB* v. *United States*, 829 F.Supp. 1371 (CIT 1993).

As stated in *AFBs II* (at 28371) and *AFBs III* (at 39736), the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Therefore, the Department does not make adjustments to USP based upon intracompany transfers of any kind.

We also disagree with Torrington and Federal-Mogul that the amount of antidumping duties assessed on imports of subject merchandise constitutes a selling expense and, therefore, should be deducted from ESP. Our position was upheld in *Federal-Mogul* v. *United States*, Slip Op. 93–17 at 40 (CIT 1993).

We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

3. Best Information Available

Section 776(c) of the Tariff Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department regulations provide that the Department may take into account whether a party refuses to provide requested information. See 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what is the BIA.

For the purposes of these final results of review, in cases where we have determined to use total BIA we applied two tiers of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. When a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's proceedings, we assigned that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company has substantially cooperated with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assigned that company second-tier BIA, which is the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin. See *Allied-Signal Aerospace Co.* v. *United States*, Slip Op. 93–1049 (June 22, 1993 CAFC). We applied this methodology to the companies discussed below for certain classes or kinds of merchandise.

Results Based on Total BIA

(1) Franke & Heydrich (Ball Bearings from France and Germany): We used first-tier BIA because Franke & Heydrich failed to respond to the Department's questionnaire. In this case, the rate used was the highest rate in the LTFV investigation, which was the highest rate ever found for each relevant class or kind of merchandise in the country of origin.

(2) SNFA: We used first-tier BIA because SNFA failed to respond to the Department's questionnaire. The rate used was the highest rate in the LTFV investigation which was the highest rate ever found for each relevant class or kind or merchandise in the country of origin.

(3) GMN: Because GMN had substantially cooperated with our requests for information, but was unable to complete verification, we used second-tier BIA. The rate used was GMN's highest previous rate, which in this case was the rate from the LTFV investigation.

Partial BIA

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. The following is a general description of the Department's methodology for certain situations.

In cases where the overall integrity of the questionnaire response warrants a calculated rate, but a firm failed to provide certain FMV information (*i.e.*, corresponding HM sales within the contemporaneous window or CV data for a few U.S. sales), we applied the second-tier BIA rate (see above) and limited its application to the particular transactions involved. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 58 FR 39729, 39739 (July 26, 1993).

Where any deductions to HM prices or CV, such as freight or differences in merchandise, were not reported or were reported incorrectly, we have assigned a value of zero. For comparisons of similar merchandise, if adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the second-tier BIA rate to determine the margins for these particular transactions. If other U.S. adjustment information such as freight charges was missing, we used other transactional information in the response for these expenses (*i.e.*, freight charges for other sales transactions). Where respondents did not establish that expenses were either indirect in the U.S. market or direct in the HM, we generally treated them as direct in the U.S. market and indirect in the HM. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 58 FR 39729, 39739 (July 26, 1993).

We received the following comments concerning BIA issues:

Comment 1: GMN asserts that use of "second-tier" BIA for GMN is not supported by substantial evidence and is contrary to law.

GMN states that it promptly filed its questionnaire responses, thoroughly answered all supplemental questions.

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and passed the HM sales verification because no discrepancies were found in any of the items verified. GMN asserts that only a small number of items were not verified, mainly due to GMN's manpower shortage and the absences of certain key personnel during portions of the verification. It claims that because it could not complete the sales verification, the Department cancelled the cost verification. GMN believes it is being penalized for the Department's decision not to conduct a cost verification. GMN argues that as a worst case analysis, the Department should calculate a margin by applying partial BIA only to those items which were not verified.

Department's Position: We disagree with GMN. GMN did substantially cooperate with our requests for information. However, we were not able to complete sales and cost verifications of GMN's response successfully. As stated by GMN, "the company made every attempt to complete this review and has * * * now found that its resources are so diminished * * * that it is unable to proceed further in the sales verification or to prepare for and conduct the cost verification." See GMN letter dated January 13, 1994: *Withdrawal of Request for Review.* Consequently, we were unable to satisfactorily verify GMN's response, and therefore we have used second-tier BIA. The second-tier BIA rate was GMN's highest previous rate, which was from the LTFV investigation.

Comment 2: Torrington asserts that NPBS failed verification, and as such, the Department should apply a first-tier BIA rate to the entire NPBS response. Specifically, Torrington cites the NPBS Sales Verification Report dated March 1, 1994, and claims that, taken as a whole, the following seven deficiencies represent failure of verification: (1) Failure to report certain HM sales, which the Department has referred to as "zero-priced sales" (*NPBS Sales Verification Report*), (2) failure to report HM billing adjustments, (3) a slight overstatement of domestic inland freight expenses, (4) a discrepancy between its reported interest rate and its verified discount rate, (5) an overstatement of indirect advertising and sales promotion expenses, (6) an overstatement of export selling expenses for U.S. sales, and (7) an overstatement of other indirect selling expenses. Additionally, Torrington asserts that NPBS's actions in this review are egregious, given that they failed to report all HM sales in the second administrative review.

NPBS argues that deficiencies three through seven are of the types of discrepancies which typically arise at verification. As for the unreported billing adjustments and unreporting of certain HM sales, NPBS asserts that their effect is insignificant and that the Department disregarded these in the previous review. Furthermore, NPBS asserts that its omission of HM sales (which caused a failure of verification) in the second administrative review is under appeal and is not relevant to the facts in this case.

Furthermore, NPBS asserts that the Department should consider the unreported billing adjustments to be insignificant under 19 CFR 353.59 and to disregard these. At the least, NPBS argues, the Department should disregard those unreported billing adjustments for which the *ad valorem* effect is less than 0.33 percent. As for the unreported sales, NPBS contends that, had the sales been reported, the net effect would have been to lower FMV for all but two of the models. Therefore, the Department should disregard these sales.

In response to NPBS, Torrington argues that since the billing adjustments were never reported, there is no basis for determining their insignificance. Furthermore, the *ad valorem* effect is above 0.33% for a significant number of models. As for the omission of "zero-priced" sales (*i.e.*, certain HM sales), Torrington contends that the Department cannot allow NPBS to customize its HM database by not reporting sales and then manually changing the price.

Federal-Mogul states that the Department correctly and reasonably applied a second-tier BIA to those affected transactions in light of the seriousness of the omissions.

Department's Position: We disagree with Torrington that we should reject NPBS' response and use BIA for all U.S. sales. Although we did find a number of deficiencies at verification, as a whole, those deficiencies do not warrant the application of total BIA. Instead, for deficiencies three through seven, we have adjusted the data accordingly. For those U.S. sales whose matching FMV was based on transactions affected by either the unreported billing adjustments or the unreported "zero-priced" sales, we applied a second-tier BIA rate of 45.83%. The full extent of the "zero-price" sales, which does not significantly impact the overall integrity of the response, is documented on the record. As for the unreported billing adjustments, we agree with Torrington in that these should not be considered separately in terms of their *ad valorem* effect, but rather their effect taken as a whole. NPBS cooperated fully with all aspects of the verification. Although NPBS neglected to report the billing and quantity adjustments due to the labor intensive task of matching them to a sale, its response was otherwise useable.

Comment 3: NSK claims that because it fully cooperated with the Department's requests for information, the Department should not apply a punitive BIA to a few unmatched transactions that were incorrectly reported.

Torrington contends that the Department reasonably invoked an adverse presumption that the margins on these few unmatched sales would have been higher than the margin on remaining sales or the prior margin, and should continue to apply the current BIA margin for the final results.

Department's Position: We agree with Torrington. Since NSK did not provide the correct information to match the U.S. and the HM transactions, we have applied a second-tier BIA rate to those few unmatched sales in calculating the final dumping margin. We have made the adverse assumption that the margins on unmatched sales would have been higher than the margin on the remaining sales and have therefore applied a partial BIA to these unmatched transactions.

4. Circumstance-of-Sale Adjustments

4A. Advertising and Promotional Expenses

Comment 1: Torrington states that NMB/Pelmec failed to demonstrate that its reported U.S. advertising and sales promotion expenses were indirect in nature. Torrington believes that the Department should reclassify certain of the reported expenses as direct selling expenses. In rebuttal, NMB/Pelmec argues that at verification it provided the Department with sample advertisements demonstrating that they were indirect in nature.

Department's Position: We agree with NMB/Pelmec. At the U.S. verification, NMB/Pelmec provided samples of its U.S. advertisements and sales promotions and demonstrated that they were not product specific or directed at a specific customer.

Comment 2: Torrington alleges that Koyo failed to demonstrate that all of its reported U.S. advertising and promotion expenses were indirect in nature. Torrington cites *Timken Company* v. *United States*, 673 F. Supp. 495, 512–13 (CIT 1987), to argue that the burden is on respondents to demonstrate that U.S. expenses were indirect and to support Torrington's position that the Department should treat Koyo's U.S. advertising expenses as direct selling expenses.

In rebuttal, Koyo argues that the Department explicitly verified Koyo's

advertising expenses, and the verifier considered not only the amount of the expenses incurred, but also their indirect nature.

Department's Position: At verification, we examined examples of Koyo's advertising and sales promotions, and conclude that these expenses were institutional in nature and correctly classified as indirect.

Comment 3: Torrington argues that the Department should reclassify Nachi's U.S. advertising expenses as direct expenses because Nachi has not demonstrated that its U.S. advertising was indirect in nature. Torrington states that, according to a Court decision (See *Timken*, 673 F. Supp., at 513), if respondents do not explain the exact nature of U.S. advertising expenses, the Department must treat them as direct.

Nachi argues that it submitted sample advertisements that satisfy the definition of indirect advertising in that they were general advertisements aimed at promoting the Nachi brand name as opposed to specific bearing products.

Department's Position: We agree with Nachi. The sample advertisements submitted by Nachi promote the Nachi brand name in trade publications and not specific bearing products. See Nachi Section B response, at attachment 20 (September 21, 1993). Therefore, we have treated Nachi's U.S. advertising expenses as indirect selling expenses.

Comment 4: Torrington maintains that the Department should reclassify NPBS' U.S. indirect advertising expenses as direct selling expenses. NPBS argues that it has documented its indirect selling expenses and that it has complied fully with all reporting requirements. NPBS argues that the Department should continue treating these expenses as indirect.

Department's Position: We agree with NPBS. NPBS has fully complied with all reporting requirements and has separated its direct and indirect advertising and promotional expenses. Furthermore, at verification we specifically examined NPBS' export selling expenses and verified their indirect nature. See *Nippon Pillow Block Verification Report*, at 10 (March 1, 1994).

Comment 5: Torrington argues that NTN-Germany improperly failed to report direct advertising expenses in the United States. According to Torrington, NTN-Germany's statement that most of its U.S. advertising expenses were indirect expenses implies that some of these expenses are directly related to the sales subject to this review. Therefore, Torrington concludes that the Department should draw an adverse inference and reclassify all of NTN-Germany's U.S. advertising expenses as direct selling expenses for the final results.

NTN-Germany refutes Torrington's arguments on the grounds that it provided evidence demonstrating that NTN-Germany's U.S. advertising expenses are indirect selling expenses. According to NTN-Germany, the sample advertisements that it submitted promote the company in general, rather than specific products. NTN-Germany further argues that under identical factual circumstances, the Department refuted Torrington's arguments in the final results of *AFBs III*. Accordingly, NTN-Germany concludes that the Department should treat NTN-Germany's U.S. advertising expenses as indirect selling expenses for the final results of this review.

Department's Position: We agree with Torrington. In stating that most of its U.S. advertising expenses were indirect in nature, NTN-Germany tacitly acknowledged that it incurred direct advertising expenses in the United States. Nonetheless, NTN-Germany chose not to provide data on its direct advertising expenses. Because NTN-Germany elected not to provide information that it possessed regarding direct advertising expenses, we have drawn the appropriate adverse inference and treated all NTN-Germany's reported U.S. advertising expenses as direct selling expenses for these final results.

Comment 6: Torrington argues that Koyo's HM advertising expenses must have been incurred on behalf of purchasers of the merchandise to be permitted as an adjustment for differences in COS, citing 19 CFR 353.56(a)(2). Torrington contends that Koyo should segregate such expenses between sales to OEMs and sales to the aftermarket. Torrington argues that it is implausible that a purchaser of an automobile or an appliance would be the target of an advertisement of Koyo's bearings and that only properly substantiated advertising expenses incurred with respect to aftermarket sales should be permitted as a COS adjustment.

In rebuttal, Koyo argues that the regulation cited by Torrington to support its argument governs direct expenses under the COS provision. Because the HM advertising expenses reported by Koyo are indirect, the Department properly deducts these expenses under the ESP offset provision, 19 CFR 353.56(b)(2), which contains no requirement that the expenses be incurred on behalf of the purchaser.

Department's Position: We agree with Koyo that the advertising expenses in question were indirect in nature because the sample advertisements submitted by Koyo appeared in trade publications and were designed to promote the Koyo name. Therefore, because these expenses were used only to offset indirect selling expenses deducted from ESP transactions, there is no requirement that they be incurred on behalf of a customer.

Comment 7: Torrington states that the Department should not accept NMB/Pelmec Singapore's reported indirect sales promotion expenses because they were incurred in order to promote future sales. Torrington argues that expenses associated with future sales are not expenses incurred with respect to sales of subject merchandise during the POR and should not be accepted as an adjustment to FMV.

NMB/Pelmec Singapore argues that the expenses in question were incurred in bringing certain OEM clients from Singapore to Thailand on a tour of Minebea's facilities. NMB/Pelmec argues that these clients could have made additional purchases during the POR. Therefore, NMB/Pelmec concludes that its sales promotions did not relate exclusively to future sales.

Department's Position: We agree with NMB/Pelmec. Advertising and promotional expenses which are incurred during the POR are, by Department practice, associated with POR sales because they cannot be directly linked to particular sales. Also, as NMB/Pelmec explains, the expenses were incurred in promoting local sales and did relate to sales of subject merchandise during the POR. As a result, we have not changed our preliminary determination to make an adjustment to FMV for NMB/Pelmec Singapore's reported indirect sales promotion expenses.

Comment 8: Torrington argues that the Department failed to deduct from USP advertising expenses that INA incurred in Germany for export sales. Torrington notes that, in addition to U.S. advertising expenses, INA also identified certain indirect advertising expenses, incurred in Germany, that related to both domestic and export sales. Torrington states that the Department should allocate to U.S. sales a portion of the advertising expenses that INA incurred in Germany and deduct them from USP for the final results.

INA responds that deducting the advertising expenses at issue from ESP would result in an overstatement of INA's advertising expenses. INA contends that it incurs the HM advertising expenses at issue for selling merchandise to customers for whom it

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has direct selling responsibility. Furthermore, INA asserts that its U.S. subsidiary incurs similar advertising expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur advertising expenses in making sales to their unrelated customers, INA argues that the HM advertising expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we confirmed that the subsidiary incurred advertising expenses for U.S. sales. Conversely, we found no evidence during our verification of advertising expenses at INA's headquarters in Germany that INA incurred any expenses for advertising directed toward customers in the United States. Therefore, we have not deducted these expenses from INA's USP for these final results.

4B. Technical Services and Warranty Expenses

Comment 9: Torrington argues that Koyo should reallocate U.S. technical service expenses over only non-aftermarket sales because service expenses are normally not incurred in the after-market. Torrington claims that Koyo allocated service expenses over total American Koyo Corporation sales, which would include both OEM and aftermarket sales. Furthermore, Torrington contends that, because Koyo failed to segregate service expenses into direct and indirect components, the Department should continue its preliminary treatment of considering all such expenses as direct expenses.

In rebuttal, Koyo argues that it allocated its service expenses over all of its sales, including sales to both aftermarket and OEM customers, because the services it provides to its aftermarket customers are essentially the same as those it provides to its OEM customers.

Department's Position: As set forth in *AFBs II* (at 28408) and AFBs III (at 39743), we have accepted Koyo's allocation methodology because Koyo provided the same technical services to all customers that requested them, including aftermarket customers. Also, based on our review of Koyo's response, we are satisfied that Koyo properly separated its direct and indirect expenses.

Comment 10: Torrington argues that the Department should not accept Koyo's reported HM direct warranties, guarantees, and servicing expenses because Koyo calculated its expense factor by dividing total warranty claims expenses by total bearing sales instead of quantifying expenses on the basis of class or kind of merchandise or by customer.

Koyo responds that the Department has verified and accepted its warranty expense methodology in previous reviews of both AFBs and TRBs and that the Department should continue to treat Koyo's direct warranty expenses as it did in the preliminary results and in all prior AFB reviews.

Department's Position: Although Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, there is no evidence on the record that the calculated warranty expense factor would vary by class or kind of bearing or by customer. Therefore, as in *AFBs III* (at 39743), where Koyo used the same allocation methodology, we find that Koyo reasonably allocated direct warranty expenses, and we have accepted them for the final results.

Comment 11: RHP argues that the Department should not have treated RHP's U.S. technical service expenses as direct expenses, because they were reported as indirect expenses in both the U.S. and home markets. RHP states that the Department treats technical service expenses as direct selling expenses only when such expenses are directly related to sales under review.

RHP claims that it does not maintain records that tie the expenses of its technical service engineers located in the United Kingdom directly to particular products, customers or markets. Therefore, RHP allocated the expenses over its total sales volume. RHP argues that while the Department requested a breakdown of fixed and variable costs, RHP could not have provided such information, and that the Federal Circuit has disallowed the Department's use of BIA when the respondent could not have provided the information requested under any circumstances.

Torrington argues that some of RHP's reported technical service expenses, such as expenses for vehicle leasing and travel, are clearly direct and should have been reported as such. Torrington claims that the Department requires respondents to separate technical services into direct and indirect portions. Torrington claims that when respondents fail to separate these expenses, the Department treats the entire expense as direct in the case of U.S. sales and indirect in the case of HM sales. Similar to Torrington, Federal-Mogul agrees that the Department's treatment of RHP's technical service expenses is correct and should not be changed for the final results.

Department's Position: We agree with Torrington and Federal-Mogul. Our questionnaire specifically requests respondents to separate fixed and variable portions of technical service expenses because we treat fixed servicing costs as indirect expenses and variable servicing costs as direct expenses. Based on RHP's questionnaire response, we determine that RHP reasonably could have separated direct and indirect technical service expenses. As RHP stated in its questionnaire, "[t]he costs in question include such items as salaries, travel expenses, vehicle leasing, etc." See RHP's Section B Response at 56 (September 21, 1993). Generally, we consider salaries fixed expenses because they are costs that would have been incurred whether or not sales were made. By contrast we generally consider travel expenses to be directly related to sales, because technicians are visiting customers to help them with specific problems. See *Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review and Partial Termination*, 57 FR 6810 (February 28, 1992) (*Roller Chain*).

Because RHP described both direct and indirect technical servicing costs in its questionnaire response, RHP should have reported each type of expense separately. The statute and the Department have a preference for respondents to provide actual expense information as opposed to allocated expense information. Because RHP did not distinguish between the direct and indirect portions of its technical service expenses in either market, we made an adverse inference and considered the entire U.S. technical service expense as direct and the entire HM technical service expense as indirect. Allocated expenses in the U.S. market are treated as direct expenses because direct expenses will be deducted from all USP transactions and will, therefore, reduce USP and potentially increase dumping margins. If these expenses were treated as indirect expenses, they would only be deducted from USP in ESP situations and would, therefore, reduce USP and potentially increase dumping margins only in ESP situations. Treatment of these expenses as indirect expenses would remove any incentive a respondent has to provide the Department with actual expense information. See *The Torrington Company* v. *United States*, 832 F. Supp. 365, 376 (CIT 1993); and *Timken* v. *United States*, 673 F. Supp. 495, 512–13 (CIT 1987). The fact that RHP chooses to keep its financial records in such a way as to not tie its technical service expenses to specific sales does not relieve it of its responsibility to provide the Department with actual expenses information. See also *AFBs II* (at 28408) and *AFBs III* (at 39742).

Comment 12: Federal-Mogul argues that the Department incorrectly treated SNR's reported U.S. warranty costs as an indirect expense because SNR did not support its claim that warranty costs were fixed, and thus should be treated as an indirect expense. As respondents have an incentive to report U.S. expenses as indirect in nature, Federal-Mogul argues that they bear the burden of proving that U.S. expenses are indirect. Federal-Mogul concludes that because SNR has failed to show that its warranty expenses were indirect in nature, the Department should deduct the expenses directly from USP.

SNR responds that it reported its total U.S. warranty costs as indirect in nature because the cost "relates to in-house service, rather than outside contractors." SNR further stated that the expense was clearly indirect because it could not be tied to specific sales.

Department's Position: We agree with Federal-Mogul that SNR failed to demonstrate the indirect nature of all its U.S. warranty costs. The fact that SNR's warranty services were performed in-house does not preclude direct expenses from being incurred. SNR did not separate its warranty costs into fixed and variable portions, as required by the questionnaire. Therefore, for these final results, we have reclassified SNR's U.S. warranty costs as a direct expense, and we have deducted them directly from USP. See also *Department's Position* to *Comment 11*, above.

Comment 13: Torrington contends that because SKF-France did not separate SARMA's U.S. technical service expenses into direct and indirect portions, the Department acted improperly by classifying the expenses as indirect. Torrington notes that it is the Department's policy to classify as direct any U.S. expenses that the respondent has not separated into direct and indirect portions. Torrington notes that in prior reviews SKF reported SARMA's technical service expenses in the same manner and the Department responded by substituting SARMA's reported technical service expenses with SKF-USA's direct technical service expenses as BIA. Torrington contends that the Department's response should remain consistent with prior reviews.

SKF-France notes that its U.S. sales response explained that SARMA provides the U.S. market with only general design and quality control advice for future bearing development. SKF-France contends that since such expenses do not constitute direct technical assistance, the Department properly treated the expenses as indirect.

Department's Position: We agree with Torrington that when respondents fail to report technical service expenses in direct and indirect portions, it is our practice to treat the expenses as direct in the United States. See *Department's Position* to *Comment 11*, above, and *AFBs III* (at 39742). However, for this particular company the issue is moot because the technical service expenses SARMA reported as indirect export selling expenses have been reclassified as research and development expenses. In its response SARMA classified all technical service expenses as indirect selling expenses and allocated these expenses across HM and export sales. However, verification of SKF-France's COP response revealed that SARMA's technical service expenses should have been classified as research and development expenses. For the preliminary results we included all technical service expenses reported by SARMA in the calculation of general and administrative expenses for the purposes of calculating COP and CV. However, we only removed from SARMA's reported selling expenses those technical service expenses SARMA classified as HM indirect selling expenses. We inadvertently failed to remove those technical service expenses incurred on behalf of U.S. sales that SARMA classified as indirect export selling expenses. Therefore, in order to avoid double counting expenses, we have removed technical service expenses from the indirect export selling expense adjustment because they are included in the calculation of COP for these final results.

Comment 14: SKF-Germany asserts that the Department made a programming error in its analysis. SKF contends that the Department treated U.S. technical service expenses as indirect selling expenses in the analysis memorandum, but treated them as direct selling expenses in the computer programming. Federal-Mogul and Torrington state that SKF's reported technical expenses are properly treated as direct selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. The computer program correctly deducted these expenses from USP as direct selling expenses. However, there was a discrepancy between the preliminary analysis memorandum and the computer program due to a clerical error: The analysis memorandum incorrectly indicated that the expenses in question were indirect.

Comment 15: Torrington contends that INA improperly reported its indirect warranty, guarantee, and servicing expenses in the home market. According to Torrington, the amount reported by INA includes both actual expenses paid and accrued expenses. Because accrued expenses will also be reflected among actual expenses paid, Torrington asserts that INA's claim is overstated. Accordingly, Torrington requests that for the final results, the Department limit INA's claimed indirect warranty, guarantee, and servicing expenses to amounts actually paid.

According to INA, the amounts that it reported for these expenses were the total amounts recorded in the relevant expense accounts. These amounts represent neither cash payments of warranty claims nor accruals of contingent liability. Because INA reported the amounts that it recorded as expenses during the review period, INA rejects Torrington's claim that it double-counted its indirect warranty expenses.

Department's Position: We agree with INA. The record contains no evidence that INA failed to report accurately and completely the data recorded in its warranty expense accounts. We verified that INA reported its indirect warranty expenses and found no evidence of double-counting. Accordingly, we have treated INA's reported indirect warranty, guarantee, and servicing expenses as indirect selling expenses for the final results.

4C. Inventory Carrying Costs

Comment 16: Torrington argues that the Department should abandon the practice of calculating inventory carrying costs (ICCs) and instead impute credit costs on ESP transactions starting from the point of shipment. Torrington contends that prices should be compared on an "f.o.b. origin" basis and neither HM or PP sales require a deduction of pre-sale ICCs to arrive at f.o.b. origin prices. In ESP sales, so-called ICCs should be viewed as a financing cost assumed by the exporter on behalf of the related importer, which must be deducted, while no comparable expense exists in the HM.

Torrington contends that adjustment to FMV for ICCs misconstrues the statutory scheme and the nature of price comparisons in ESP calculations. According to Torrington, the Department has misinterpreted the purpose for deducting financing charges from ESP and makes an offsetting deduction from FMV that is not permitted by the statute. Also, the fact that the foreign manufacturer and U.S.

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importer are related is irrelevant to the requirement under 19 USC 1677(e)(2) that expenses incurred for the account of the importer by the manufacturer must be identified and deducted from ESP.

Finally, even if a comparable HM ICCs expense is incurred, Torrington argues no adjustment should be made to FMV. In contrast to its treatment of ESP, the statute provides no parallel adjustment in calculating FMV. Where the statutory scheme is clear, the Department may not create adjustments in misguided attempts to make "apples-to-apples" comparisons. Torrington claims that, just as in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States*, No. 93–1239, Slip Op. (Fed. Cir. Jan 5, 1994) (*Ad Hoc Committee*), in which the CAFC reversed the Department's allowance of a deduction of pre-sale inland freight expenses in calculating FMV, the statute does not provide a basis for making an ICC adjustment to FMV.

Respondents argue that the Department should again reject Torrington's argument that ICCs should not be calculated in the HM and that imputed credit costs on ESP transactions should start from the point of shipment. NSK argues that the most obvious reason for calculating ICCs from the date of production, rather than the date of shipment, is that ICCs are incurred from the date of production forward. See *Certain Internal Combustion Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988). Moreover, because ICCs represent the "opportunity cost of holding inventory," NSK holds that it is appropriate to calculate such costs from the time a product is placed in inventory—the date of production. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28369, 28410 (June 24, 1992). In addition, respondents argue that the Department's adjustment of FMV for ICCs is reasonable and supported by the antidumping statute. RHP argues that the *Ad Hoc Committee* case referenced by Torrington is not on point and that Torrington has not provided a new reason for the Department to stop recognizing ICCs in the HM. Nachi argues that the Department has consistently applied this practice in all of the administrative reviews of the antidumping duty orders against AFBs in order to make fair "apples-to-apples" price comparisons. This practice also has been upheld by the CIT. See *The Torrington Company v. United States*, 818 F. Supp. 1563, 1577 (CIT 1993) (*Torrington I*).

Department's Position: We disagree with Torrington. We calculate ICCs from the date of production because the date of production, not the date of shipment, is when the item becomes a part of the company's inventory. Merchandise destined for the United States and merchandise destined for the HM are not necessarily held in inventory from the date of production to the date of shipment for equal lengths of time. Therefore, in general, an accurate accounting of ICCs in each market requires beginning at the date on which production is completed. See AFBs III. The Department's practice in this regard has been upheld by the CIT: "Given its new point of reference for measuring ICCs, the Department was correct to include home market ICCs incurred after the time of production of the merchandise as part of the pool of indirect selling expenses for which adjustment to FMV can be made subject to 19 CFR 353.56(b)(2) in those situations where AFBs produced for the home market were held in inventory." See Torrington I, 818 F. Supp. at 1577.

Furthermore, with respect to adjustments to FMV for imputed ICCs, the CIT has supported the Department's methodology in calculating ICCs in both the United States and the HM. In *Torrington I*, the CIT found that "the Department's adjustment to FMV for imputed ICCs pursuant to 19 CFR 353.56(b)(2) was a reasonable exercise of the Department's discretion in implementing the antidumping duty statute and is affirmed." *Id.* As stated in the original investigation and the first three reviews of this proceeding, in order for comparisons to be fair, it is necessary to make ICC adjustments to both FMV and USP. See *AFB LTFV Investigation*, 54 FR 19050 (May 3, 1989); *AFBs I* and *AFBs II*. That the foreign seller chooses to sell from inventory in the HM is no different from the seller's decision to undertake ESP transactions in the United States. The Department imputes ICCs because the actual financial cost of holding inventory after production is not recorded in the financial records of the company.

Moreover, the Department's treatment of ICCs complies with *Ad Hoc Committee*. There, the CAFC held that an adjustment may not be made to FMV if the statute explicitly provides for such an adjustment to USP, but not to FMV. Because the statute explicitly provides for an adjustment to USP for pre-sale movement expenses but not for an adjustment to FMV, the CAFC held that the Department cannot adjust FMV for the pre-sale movement expenses without any other authority. *Id.* Unlike the situation with movement expenses, however, the statute does not contain a specific provision for deducting imputed ICCs for either USP or FMV. Rather, the Department's authority to deduct imputed ICCs derives from the Department's authority to deduct indirect selling expenses. This authority stems from the general language contained in section 772(e)(2) of the Tariff Act, which authorizes the Department to deduct selling expenses in ESP transactions, and from the Department's authority to make fair comparisons between USP and FMV, which allows the Department to deduct indirect selling expenses from FMV pursuant to the ESP offset. See *Smith-Corona*, 713 F.2d at 1578–79.

Finally, as recognized by the CIT in *Torrington I*, the intent of the antidumping statute and the Department's practice with respect to ICCs is to remove certain expenses from FMV and ESP in order to derive an FMV and ESP at a comparable point in the stream of commerce to achieve the so-called "apples-to-apples" price comparison. The Department properly carried out that intent by adjusting FMV pursuant to the ESP offset in those situations in which AFBs produced for the HM were held in inventory. The nature of the expense incurred for ICCs holds true regardless of whether the expense was incurred in the U.S. market or in the HM. Because the seller incurred the opportunity cost of holding inventory in both markets, the Department properly adjusted for the cost in the U.S. market as well as in the HM.

Comment 17: Federal-Mogul claims that the Department's approach to calculating ICCs is biased in favor of respondents and presents respondents with an opportunity to manipulate and distort these expenses. First, the calculation of the adjustment relies upon transfer pricing. Transfer pricing between related parties is inherently suspect and was the reason that provisions for ESP were written into the antidumping law. Second, there is no relation between the price at which the merchandise is sold and the theoretical cost of holding such merchandise prior to sale. Thus, the only reliable means by which ICCs can be quantified is on the basis of costs, rather than prices. Since not all firms submitted the data necessary to do this, however, the Department should at least ensure that the sales prices used are reliable and consistent for both markets, and prices used should only be derived from sales made to unrelated purchasers. Finally, the Department should eliminate variations in the adjustments due to the interest rates employed, and should recognize that a firm is likely to borrow in the market where it can obtain the lowest interest rate. Because these costs are imputed and speculative, a uniform interest rate should be applied. Federal-Mogul cites *LMI-La Metalli Industriale, S.p.A v. United States*, 912 F.2d 455 (Fed. Cir. 1990) (LMI), in which the Federal Circuit noted that in *LMI-La Metalli* "the ITA presumed that LMI would borrow in Italy to finance its United States receivables, no matter how unfavorable the rate and whatever the available alternatives. Such a presumption does not withstand scrutiny."

In response to Federal-Mogul, Nachi argues that transfer price is a reliable price that is reported to and accepted by the United States Customs Service in valuing imports. Nachi claims that the Customs Service would require a different price, or cost, for its valuation purposes if transfer prices were subject to "unchecked manipulation." RHP notes that the Customs Service can investigate transfer prices to determine whether such prices are too low. Furthermore, in response to Federal-Mogul's argument that the Department should use uniform interest rates, Koyo notes that the Department used actual, reported interest rates in calculating ICCs, and argues that it is absurd to suggest that the Department should reject such evidence of actual borrowing expenses (and the associated interest rates) and use instead a fictional rate (the "most favorable rate available to a respondent in either market").

Department's Position: ICCs measure the imputed cost incurred by a firm for storing AFBs in inventory. As the Department stated in the third review, the transfer price reflects the cost of the merchandise as it is entered into inventory and therefore is an accurate basis upon which to calculate the cost to the subsidiary of holding inventory prior to the sale to an unrelated U.S. customer. See *AFBs III* (at 39744); see also *Portable Electric Typewriters From Japan: Final Results of Antidumping Duty Administrative Review*, 53 FR 40926, (October 19, 1988). Furthermore, Federal-Mogul has not shown that any prices used in the calculation of ICCs are unreliable and inconsistent, nor that any transfer prices used are distortive.

We cannot calculate actual ICCs because these costs are not found in the books of respondents. Thus, we must impute the financing cost of holding inventory. The cost to a company of holding inventory is best measured by the time it must finance such inventory and its actual short-term borrowing rate. Accordingly, in calculating such an expense, we use the appropriate interest rate actually realized by the entity financing the inventory (*i.e.*, the HM interest rate for the HM entity and the U.S. interest rate for the U.S. affiliate). This means that the same interest rate is used to calculate HM ICCs and U.S. ICCs to the extent that the same company is financing the investment in inventory. When a U.S. affiliate finances the investment in inventory, its actual short-term borrowing rate is used because that reflects the cost to the company. *LMI* is not relevant to the calculation of ICCs in these cases, because only actual short-term borrowing rates have been used. In *LMI*, the respondent had no short-term borrowings and the CAFC found it improper to choose a higher rate over a lower rate. However, when there exist actual borrowings by a company, it would be unreasonable to conclude that a company would borrow at a rate other than its actual rate. Moreover, the actual rate at which a company obtains short-term funds depends on many factors, of which available rates is only one. The conditions of available loans may compel a company to choose a loan at a higher rate than another at a lower rate. Therefore, we impute financing costs based on each company's actual borrowings where possible. If a company did not have actual short-term borrowings, financing costs are imputed using the lowest rate the company demonstrates was available to it during the POR.

Comment 18: NSK claims that because the Department lowered NSK's short-term borrowing rate at verification to take into account short-term commercial paper borrowings, the Department must also reflect this change in the U.S. ICCs.

Torrington agrees with NSK's proposed modification but states that the Department must apply the revised home market rate only to the correct portion of the inventory period.

Department's Position: We agree with Torrington. We have amended the HM ICCs and the HM portion of U.S. ICCs to reflect the short-term interest rate determined at verification.

Comment 19: Torrington argues that if the Department decides to allow an adjustment to NSK's FMVs for ICCs, then a recalculation is necessary, because NSK provided in its section C response an example of one shipment in which the actual time in inventory varied from the reported average time in inventory.

NSK argues that the Department discovered nothing at verification to undermine NSK's claim regarding the average time spent in the HM inventory.

Department's Position: We disagree with Torrington. During verification we found NSK's ICC averages to be reasonable and adequate.

Comment 20: Torrington contends that INA improperly calculated per-unit ICCs incurred in Germany. Torrington alleges that INA allocated ICCs incurred in Germany over a sales amount that included the resale prices of INA's U.S. subsidiary, and then understated the per-unit expense by multiplying the resulting adjustment factor by the reported per-unit Customs value rather than the resale price. For the final results, Torrington requests that the Department revise the calculation of INA's per-unit German ICCs by multiplying the reported adjustment factor by the price to the first unrelated party in the United States.

INA rejects Torrington's argument, arguing that the sales values it used in calculating its allocation factors did not include resales by INA-USA. Rather, the U.S. sales included were INA's sales to its U.S. subsidiary at transfer prices. Therefore, INA concludes that it properly multiplied the adjustment factor for ICCs by the transfer price to calculate per-unit ICCs.

Department's Position: We agree with INA. During verification, we examined the total HM sales values that INA used to allocate various charges and expenses. We were able to desegregate the total HM sales values into their constituent elements and trace these elements to the audited financial statements of the various INA entities subject to this review. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we determine that the total sales value that INA used to allocate its ICCs included only INA's transfer prices to its U.S. subsidiary. As a result, we have accepted INA's use of transfer prices to calculate per-unit ICCs for these final results.

4D. Post-Sale Warehousing

Comment 21: Torrington contends that the Department should treat Nachi's claimed post-sale warehousing expenses as indirect selling expenses. Torrington argues that these warehousing expenses are not direct because they were incurred prior to date of shipment, which Nachi has identified as being the same as date of sale. Torrington states that warehousing expenses are allowed

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as direct adjustments only when the expenses are incurred after the sale.

Nachi contends that this issue has been considered by the Department in the past three reviews and decided in Nachi's favor. Nachi argues that the circumstances under which it incurs warehousing expenses have not changed and that the expenses are incurred after the sale took place. Nachi contends that the warehousing expenses were direct because they were incurred only on sales to specific customers and would not have been incurred if the sales had not taken place.

Department's Position: We agree with Nachi that the Department has already evaluated this issue in the past three reviews and determined the expenses to be direct expenses. See *AFBs I* (at 31692); *AFBs II* (at 28415); and *AFBs III* (at 39745). Nachi's section C response and the verification report clearly show that the expenses in question were incurred directly on sales to specific customers. See *Nachi Section C Response*, at 35–36 (September 28, 1993) and *Nachi-Fujikoshi Home Market Sales Verification Report*, at 9–10 (February 28, 1994). In particular, the verification report states that "[o]nce quantity is confirmed, the warehouse delivers the desired quantity immediately to the customer and collects a fee from Nachi for its services." See *Verification Report*, at 9. Although the verification report shows that merchandise is shipped and stored in the warehouse before ordered quantities are confirmed, merchandise is sent to the warehouse only after customers have entered into a formal agreement to purchase bearings from Nachi, after they have provided Nachi with estimates of the quantities they will order, and after sales prices are confirmed. The warehouse also delivers the bearings on Nachi's behalf, and thus, the incurred expenses include post-sale movement charges. Because Nachi is charged for the warehouse's services only if, and after, a bearing is sold, Nachi incurs no expenses unless a sale takes place. Therefore, we conclude that the expenses in question varied directly with sales volume to specific customers and would not have been incurred if sales had not taken place. As a result, we have continued to treat the expenses as a direct adjustment to FMV.

4E. Commissions

Comment 22: Torrington asserts that at verification the Department learned that one of NMB/Pelmec's salesmen stopped receiving commissions after August 22, 1992. Therefore, Torrington claims the Department should not accept the reported commission rates and should apply partial BIA.

According to NMB/Pelmec, the Department officials "verified the accounts payable and the sales commissions paid for this salesman and tied this amount to the G/L (General Ledger)." NMB/Pelmec concludes that because the Department verified all financial data related to commissions, there is no basis to apply partial BIA.

Department's Position: We agree with NMB/Pelmec. We verified commissions in the United States, including the fact that no commissions were paid to this salesman after August 22, 1992. Since there were no discrepancies in the information we verified, we have no basis for using a BIA rate for NMB/Pelmec's U.S. commissions. See *ESP Verification Report for NMB/Pelmec*, February 10, 1994.

Comment 23: Torrington states that the Department should disallow Koyo's HM adjustment for commissions paid to purchasing agents acting on behalf of Koyo's customers because such payments do not affect the HM price obtained by Koyo. Torrington argues that, although Koyo claims that it enters into contracts with these agents, no contracts were submitted on the record. Torrington also argues that Koyo failed to demonstrate how these commissions differ from rebates paid to unrelated customers. Further, Torrington asserts that, since Koyo has not tied such payments to specific sales of merchandise, the payments should at least be reclassified as indirect selling expenses.

In rebuttal, Koyo states that the purchasing agents of Koyo's customers are not the customers themselves, nor do they act in any capacity other than as the representatives of Koyo's customers. Also, the contracts into which Koyo enters with these agents specify the payment of commissions.

Department's Position: We disagree with Torrington. Consistent with the three previous administrative reviews, we have accepted Koyo's commissions, including commissions paid by Koyo to purchasing agents that act on behalf of its customers, as direct selling expenses. See *AFBs I* (at 31719); *AFBs II* (at 28407); and *AFBs III* (at 39746). As we stated in the third administrative review, since Koyo pays commissions to purchasing agents that act on behalf of its customers, Koyo's HM sales qualify for the commission adjustment submitted. Koyo's commissions are distinct from rebates because they are paid to intermediaries for providing services. We consider rebates to be discounts which are granted to the purchaser after the delivery of merchandise to the customer.

Comment 24: Torrington states that with respect to RHP the Department failed to deduct related-party commissions on the U.S. side in the preliminary results. Torrington claims that the Department has generally treated such commissions as direct expenses, citing *AFBs III*, and concludes that the Department should classify all of RHP's U.S. commissions as direct expenses.

RHP claims that the Department failed to deduct related-party commissions in both the U.S. and home markets, but did not provide an explanation for this treatment. RHP states that the Department adjusts for related-party commissions when they are determined to be directly related to the sales in question and at arm's length. RHP states that its sales data showed that commissions were directly related to the sales on which they were paid. RHP further contends that it submitted additional information, including information on unrelated-party commissions in the United States, to support its claim that related-party commissions in the United States were negotiated at arm's length. RHP argues that the Department should conclude that the commissions it paid to related parties were negotiated at arm's length in both the U.S. and home markets.

RHP contends that, because the situations in both markets are similar, the Department can only justify making an adjustment for related-party commissions in one market if it makes an adjustment for such commissions in the other market. Accordingly, if the Department decides to treat related-party commissions as direct selling expenses in the U.S. market, related-party commissions in the HM should be treated the same way.

Torrington counters that the Department should not deduct commissions paid to NSK Europe by RHP in the HM because the commission payments were made between related parties, and the Department determined that RHP did not demonstrate the arm's-length nature of these transactions. Torrington states that because RHP did not provide a factual basis for the Department to reverse its decision, the Department is justified in disregarding the commissions RHP paid to NSK Europe.

Department's Position: In the home market RHP paid commissions to employees of NSK Europe, an affiliated company which the Department considers part of the same entity as RHP for purposes of these administrative reviews. In the U.S. market RHP paid

commissions to its employees and independent sales agents. The commissions RHP paid both to independent agents and to employees were expenses directly tied to sales. Therefore, for these final results, we treated these expenses as direct selling expenses by deducting commissions from both the FMV and the USP. See *Final Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cookware From Mexico*, 58 FR 43330 (August 16, 1993). See also *Final Determination of Sales at Less Than Fair Value; Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988) and *Final Results of Administrative Review of Antidumping Finding; Drycleaning Machinery from West Germany*, 50 FR 32154 (August 8, 1985).

Comment 25: Torrington argues that the Department erred in treating NTN's commissions on HM sales as direct selling expenses. According to Torrington, NTN's method of calculating commission rates by allocating total commissions paid to a commission agent over total sales by that agent provides no indication that the reported commissions are directly related to HM sales of subject merchandise. As a result, Torrington requests that the Department either deny an adjustment to FMV for NTN's HM commissions, or treat them as indirect selling expenses for the final results.

NTN responds that it reported commissions by applying a specific rate for each commissionaire to sales that NTN made through that commissionaire. NTN further argues that the Department confirmed at verification that NTN reported commissions only on sales of subject merchandise. Therefore, NTN argues that the Department should continue to treat NTN's reported HM commissions as direct selling expenses for these final results.

Department's Position: We agree with NTN. At verification, we examined documents that confirmed that NTN paid commissions on sales of subject merchandise and that NTN's method of reporting commissions reflected the commissions that NTN actually paid. Accordingly, we have treated NTN's reported HM commissions as direct selling expenses for the final results of this review.

Comment 26: Torrington and Federal-Mogul argue that certain expenses that NTN classified as related-party U.S. commissions appear to be directly related to PP sales to one U.S. customer. Citing *LMI-La Metalli Industriale S.p.A. v United States*, 912 F.2d 455, 459 (Fed. Cir. 1990), Torrington and Federal-Mogul contend that the Department must examine the circumstances surrounding related-party commissions before determining that they should not be used in the Department's analysis. In this regard, Torrington states that NTN incurred the expenses at issue for activities similar to those made by unrelated commission agents, and that the rates NTN paid to related agents are comparable to the rates that NTN paid to unrelated U.S. commission agents. Accordingly, Torrington and Federal-Mogul conclude that the Department should consider these expenses to be direct selling expenses in the U.S. market. Federal-Mogul further contends that, because NTN failed to report commission rates paid to the related party, the Department should resort to BIA in determining the commission amount to be deducted.

NTN responds that there are no facts that distinguish this review from the three previous reviews of this case in which the Department rejected Torrington's and Federal-Mogul's arguments concerning related-party commissions in the United States. NTN further argues that Torrington overstated the alleged commission rate that NTN paid to a related company in the United States. Accordingly, NTN supports the Department's preliminary determination that the expenses are not direct selling expenses for PP sales.

Department's Position: We disagree with Torrington and Federal-Mogul. NTN stated that it made commission payments to its U.S. subsidiary, NTN Bearing Company of America (NBCA), for expenses that NBCA incurred with respect to sales to a specific PP customer. In its questionnaire responses, NTN provided specific data on the expenses that NBCA incurred with respect to the sales in question. Accordingly, rather than use the commission, which is the transfer payment between NTN and NBCA, we have used the actual expenses incurred by NBCA with respect to these sales. Further, an examination of the specific types of expenses that NBCA incurred with respect to the sales in question shows that the expenses are those that we typically consider to be indirect expenses incurred by sales organizations. Therefore, we have used the actual expenses that NBCA incurred with respect to the sales in question in our analysis, and have treated them as indirect selling expenses.

4F. Credit

Comment 27: Torrington notes that at verification the Department discovered that Nachi did not report actual dates of payment for its HM sales, but had estimated dates of payment based on each customer's terms of payment. Therefore, Torrington asserts that Nachi's calculation of HM credit expenses is not based on actual credit experience. As a result, Torrington argues that Nachi's HM credit expenses claim should be denied.

Nachi responds that although it does not keep invoice-specific records of when it receives payment, its credit expenses were calculated on an average customer-specific credit period derived from actual experience. Therefore, Nachi concludes the Department should continue to deduct HM credit expenses from FMV.

Department's Position: At verification, the Department discovered that Nachi did use estimated dates of payment based on each customer's terms of payment. However, the payment records reviewed suggested that Nachi was understating its HM credit period in most cases, which resulted in a higher FMV. Therefore, the Department accepted the payment dates submitted by Nachi and will continue to do so for the final results, and has deducted HM credit expenses from FMV. See *Nachi-Fujikoshi Home Market Sales Verification Report*, at 10–11 (February 28, 1994).

Comment 28: Torrington argues that the Department should not accept NPBS's credit expense methodology because NPBS reported payment dates based on the maturity date of the promissory notes, not the actual payment date per transaction. Torrington further argues that the Department should reject credit expenses that are not based on actual payment dates or on average customer-specific credit periods, and that NPBS's credit expenses should be rejected because it failed to report its short-term interest rate accurately.

NPBS responds that its credit expenses are properly reported and suggests that sampling error could account for a discrepancy between the reported interest rate and the discounted rate for a few sales. NPBS notes that it inadvertently included two long-term loans in the calculation of short-term interest. These loans were later deleted and short-term interest was recalculated. Finally, NPBS argues that the firm's short-term interest rate provides the best estimate of the discount rate. The exact discount rate is nearly impossible to calculate since each NPBS branch discounts numerous notes each week at varying rates.

Department's Position: The Department agrees with NPBS. The Department verified NPBS' credit

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methodology and found only minor discrepancies in the application of its payment date formula. We did not find that these minor discrepancies resulted in either a systematic over- or under-reporting of the credit period for PP sales. Furthermore, NPBS' discount rate was lower than the reported interest rate. This minor discrepancy has been corrected by the Department.

Comment 29: Torrington claims that NTN-Germany improperly calculated its U.S. credit expenses. According to Torrington, NTN-Germany determined U.S. credit expenses using interest rates that appear to have been determined on borrowings made outside of the United States. Because NTN-Germany has submitted no evidence that it finances its accounts receivable using funds borrowed outside the United States, Torrington urges the Department to reject NTN-Germany's reported interest rate and use the highest U.S. interest rate reported by a German respondent to calculate NTN-Germany's U.S. credit expenses.

NTN-Germany responds that Torrington's argument appears to be based on the fact that many of the banks from which NTN-Germany borrowed money during the POR have foreign names. NTN-Germany states that it determined the U.S. interest rate that it submitted in its questionnaire response based on its short-term borrowing. As a result, NTN-Germany urges the Department to disregard Torrington's arguments.

Department's Position: We agree with NTN-Germany. The record contains no evidence to suggest that NTN-Germany calculated its U.S. interest rate based on borrowing outside the United States. Therefore, for these final results we have used the U.S. interest rate that NTN-Germany reported in its questionnaire response to calculate credit expenses for U.S. sales.

Comment 30: NTN-Germany states that its reported U.S. credit expense was reasonable because it was based on customer-specific information. Accordingly, NTN-Germany contests the Department's recalculation of the firm's reported U.S. credit expenses. If the Department determines not to use NTN-Germany's reported U.S. credit expenses, however, NTN-Germany asserts that the Department should correctly calculate the credit period. According to NTN-Germany, the Department determined the credit period as the number of days between the sale date and the payment date. NTN-Germany requests that, if the Department continues to calculate sale-specific credit periods, the Department calculate the credit period as the number of days between shipment and payment, as specified in the Department's questionnaire.

Torrington responds that NTN-Germany's concerns are unclear because of the manner in which NTN-Germany determined shipment and sale dates for its U.S. sales. Torrington further argues that NTN-Germany has provided no evidence that the Department's method of calculating the credit period for NTN-Germany's U.S. sales is unreasonable. Accordingly, Torrington concludes that the Department should not amend its calculation of NTN-Germany's U.S. credit expenses for these final results.

Department's Position: We agree in part with NTN-Germany. Based on a comparison of NTN-Germany's reported terms of payment, the actual number of days between shipment and payment for U.S. sales and the credit period reported by NTN-Germany in its questionnaire response, we have determined that NTN-Germany's reported credit period does not accurately reflect the credit that NTN-Germany granted on the U.S. sales subject to this review. Specifically, NTN-Germany's reported credit period does not comport with its stated terms of payment or with the sale-specific credit period calculated using actual shipment and payment dates for each sale. Because NTN-Germany's reporting method is not representative of the actual credit period for its U.S. sales, and because our questionnaire specified the actual, sale-specific credit period as preferential to an aggregate credit period for each customer, we have imputed the actual credit period for NTN-Germany's U.S. sales for these final results. We agree with NTN-Germany, however, that we should calculate the sale-specific credit period according to our longstanding practice of using the shipment date, rather than the sale date, as the beginning of the credit period, and have revised our calculations accordingly for these final results.

Comment 31: Federal-Mogul claims that the Department should not allow SARMA to apply a late payment factor to each customer's terms of payment to establish a payment date for HM sales. Furthermore, Federal-Mogul argues that the Department should disallow any additional credit expenses attributed to late payments made by SARMA (SKF-France) HM customers. Citing *Federal-Mogul Corp.* v. *United States*, 824 F. Supp. 223 (1993), Federal-Mogul argues that, since COS adjustments are only allowed for those factors which affect price or value, additional credit expenses incurred from a purchaser's unexpected failure to pay within the agreed-upon period cannot affect the price which was set specifically in contemplation of payment being made at the end of the agreed-upon credit period.

SKF-France contends that its credit expense calculations, which are based on the actual payment date, are consistent with Departmental policy. SKF-France cites the Department's position in *Final Results of Antidumping Administrative Review; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 55 FR 42230, 42231 (1990), and *Final Determination of Sales at Less than Fair Value; Certain Tapered Journal Roller Bearings and Parts Thereof From Italy*, 49 FR 2278, 2279–80 (1984), to support its position. SKF-France states that Federal-Mogul's reference to a recent Department redetermination on remand is inapposite (see *Federal-Mogul Corp.* v. *United States*, 824 F. Supp. 223 (1993)). Additionally, SKF-France contends that it updated SARMA's payment dates and recalculated credit expenses using actual dates of payment.

Department's Position: The Department disagrees with Federal-Mogul. Consistent with Departmental policy, we adjust for credit expenses based on sale-specific reporting of actual shipment and payment dates. See *Final Results of Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Republic of Germany*, 56 FR 31724 (July 11, 1991). This policy recognizes the fact that all customers do not always pay according to the agreed terms of payment and that respondent is aware of this fact when setting its price. Therefore, it would be inappropriate to make a COS adjustment for credit based entirely on the agreed terms of payment, since it would not take into account all of the circumstances surrounding a sale. Furthermore, the Department agrees with SKF-France that SARMA reported its actual payment dates in its supplemental response.

4G. Indirect Selling Expenses

Comment 32: Torrington argues that Koyo incorrectly included among its total indirect selling expenses amounts charged to a reserve account established for doubtful debt. Torrington states that Koyo conceded in its deficiency response that this reserve allowance was not an expense, but a provision for future expenses. As a result, Torrington maintains that the Department should exclude this allowance from Koyo's pool of indirect selling expenses for the final results.

Citing *AOC Int'l.* v. *United States*, 721 F. Supp. 314 (CIT 1989) and *Daewoo Electric Co.* v. *United States*, 712 F. Supp. 931 (CIT 1989), Koyo responds that the Department should allow Koyo's reported allowance for doubtful debt as a HM indirect selling expense. Alternatively, Koyo maintains that if this expense is excluded from Koyo's pool of HM indirect selling expenses, then the Department should exclude it from the calculation of USP as well in order to ensure an apples-to-apples comparison of FMV and USP.

Department's Position: We agree in part with Koyo. As stated in *AFBs II* (at 28412), the Department considers bad debt that is actually written off during the POR to be either a direct or an indirect selling expense depending on the relationship between the bad debt expense and the sale. In *AOC* and *Daewoo*, respondents reported data on bad debts actually written off during the relevant review periods. In contrast, although Koyo claimed as an expense an amount set aside in reserve in the event that its customers fail to pay outstanding charges in the future, Koyo failed to demonstrate that it actually wrote off any bad debts during the review period. In the absence of data on actual bad debt that Koyo wrote off during the review period, we cannot conclude that there is a relationship between Koyo's reported doubtful debt reserve and actual sales. Therefore, for these final results we have disallowed Koyo's reported doubtful debt reserve as a HM indirect selling expense.

Because we do not consider Koyo's doubtful debt reserve to be an actual HM selling expense, we agree in principle with Koyo that doubtful debt reserves should not be treated as U.S. selling expenses either. After examining Koyo's financial statements, however, we found that Koyo did not quantify its doubtful debt reserve for U.S. sales. Accordingly, for these final results we were not able to exclude doubtful debt reserves from Koyo's pool of U.S. indirect selling expenses.

Comment 33: Koyo maintains that the Department's computer program contains an error that sets the value of HM indirect selling expenses to zero whenever the Department resorts to CV as the basis for FMV. Koyo asserts that because it reported indirect selling expenses for CV, the Department should revise its computer program to deduct these expenses from CV for these final results.

Torrington rejects Koyo's argument because deducting indirect selling expenses in certain instances would yield distorted results. Torrington further argues that Koyo has not alleged or demonstrated that the Department committed a clerical error in making adjustments to CV. Therefore, Torrington concludes that the Department should not adopt Koyo's proposed revision to the Department's computer program for these final results.

Department's Position: We agree with Koyo. When we created new cost and expense variables to recalculate COP pursuant to our verification findings, we inadvertently did not include the variable for indirect selling expenses in the margin section of the computer program. Because we verified the data that Koyo provided on indirect selling expenses for CV, we have revised our computer program to deduct these expenses from CV for these final results.

Comment 34: Torrington believes that the Department should disallow Nachi's claim for indirect selling expenses that were incurred by NFC on HM sales made through NBC. Citing AFBs I (at 31720), Torrington states that the Department consistently has rejected claims for selling expenses incurred by parent companies on sales made by subsidiaries. Furthermore, Torrington argues that there is no evidence on the record that shows that the expenses claimed by NFC were incurred exclusively to support NBC sales and asserts that it is reasonable to assume that NFC's selling expense were incurred to support all aspects of sales.

Nachi contends that the Department thoroughly verified the fact that NFC incurred indirect selling expenses to support sales made by NBC and that Torrington has not presented any evidence to contradict the Department's findings. Accordingly, Nachi concludes that the Department should allow Nachi's claimed indirect selling expenses for these final results.

Department's Position: We disagree with Torrington. In *AFBs I*, we denied as HM indirect selling expenses the parent company's selling expenses because it did not incur the expenses in question specifically on sales to its HM subsidiary. In contrast, in this review we verified that NFC incurred the indirect selling expenses in question on behalf of NBC and that these expenses supported NBC's sales to its HM customers. Accordingly, we have allowed NFC's reported selling expenses for its sales to NBC as HM indirect selling expenses for these final results.

Comment 35: Nachi argues that in recalculating Nachi's export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as being reported in U.S. dollars despite the fact that Nachi reported certain transfer prices in yen. Therefore, Nachi requests that the Department make the necessary exchange rate conversions for those transfer prices reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department should confirm that Nachi reported transfer prices in both dollars and yen.

Department's Position: We agree with Nachi. We confirmed that Nachi reported transfer prices in dollars for sales made through certain channels and in yen for sales made through other channels. Accordingly, we have made the appropriate exchange rate conversions to Nachi's yen-denominated transfer prices for these final results.

Comment 36: Torrington argues that the Department failed to deduct from USP all export selling expenses that INA incurred in Germany. Torrington notes that, in addition to export selling expenses that INA incurred specifically for U.S. sales, INA also reported and identified certain expenses related to all export sales, and certain other expenses related to both domestic and export sales. Torrington requests that the Department deduct these additional export selling expenses from USP for the final results.

INA objects to Torrington's request on the grounds that deducting the indirect selling expenses at issue from ESP would result in an overstatement of INA's U.S. indirect selling expenses. INA contends that it incurs the HM indirect selling expenses at issue for selling the merchandise to customers for whom INA has direct selling responsibility. INA further contends that its U.S. subsidiary incurs similar expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur indirect selling expenses in making sales to their unrelated customers, INA asserts that the HM indirect selling expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's headquarters in Germany, we found that INA properly reported all expenses that it incurs specifically for export sales to its U.S. subsidiary. Further, we found no evidence that INA incurred the indirect selling expenses at issue to support sales to unrelated customers in the United States; rather, INA incurs these expenses in Germany in making sales to customers outside the United States. Therefore, we conclude that the indirect selling expenses in question are not related to U.S. sales. Accordingly,

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we have not deducted these expenses from INA's USP for these final results.

Comment 37: NTN and NTN-Germany contest the Department's rejection of NTN's claimed reduction to NTN's reported total U.S. indirect interest expenses for that portion of the total interest expenses attributable to cash deposits of estimated antidumping duties. NTN and NTN-Germany argue that the Department's failure to provide an explanation for its decision to deny their claimed reduction to U.S. interest expenses violated the Department's regulations by prohibiting NTN and NTN-Germany from effectively commenting on the methods that the Department used to calculate NTN's and NTN-Germany's preliminary dumping margins. NTN and NTN-Germany further argue that the Department's denial of this adjustment contravenes the Department's established practice of permitting this adjustment in previous reviews of the antidumping duty orders on both AFBs and tapered roller bearings. Citing *Shikoku Chemicals Corp.* v. *United States*, 795 F. Supp. 417 (CIT 1992), NTN and NTN-Germany assert that it has the right to rely on the Department's established practice in preparing its questionnaire responses. Accordingly, NTN and NTN-Germany conclude that the Department's failure to adhere to its regulations and its violation of judicial precedent in not allowing NTN and NTN-Germany to rely on established calculation methods require the Department to allow NTN's and NTN-Germany's claimed reduction to total U.S. interest expenses.

Torrington and Federal-Mogul support the Department's rejection of NTN and NTN-Germany's claim. Federal-Mogul contends that because the Department considers cash deposits of estimated antidumping duties to be provisional in nature, any interest expenses that NTN and NTN-Germany incurred on money borrowed to make cash deposits of estimated duties are also provisional in nature, and could ultimately be offset by interest received on refunded cash deposits. Torrington adds that interest expenses, including any incurred on financing cash deposits, are related to all NTN and NTN-Germany's U.S. sales and, therefore, should be treated like other types of indirect selling expenses. Torrington further argues that even if NTN and NTN-Germany's claimed offsets were permissible, they failed to demonstrate that they actually incurred interest expenses on borrowing to finance cash deposits of estimated antidumping duties. Finally, Torrington and Federal-Mogul reject NTN and NTN-Germany's procedural arguments. Torrington states that the Department always amends its calculation methods when existing methods are found to be inaccurate, while Federal-Mogul states that the Department has not denied NTN's and NTN-Germany's right to participate in the proceeding because they may still seek judicial review of the Department's final results. Accordingly, Torrington and Federal-Mogul conclude that the Department properly denied NTN's and NTN-Germany's claimed adjustment to U.S. indirect selling expenses for interest paid on borrowing to finance cash deposits of estimated antidumping duties.

Department's Position: We disagree with NTN and NTN-Germany. Cash deposits of estimated antidumping duties are provisional in nature, because they may be refunded, with interest, to respondents at some future date. Because the cash deposits are provisional in nature, so too are any interest expenses that respondents may incur on borrowing to finance cash deposits. To the extent that respondents receive refunds with interest on cash deposits, the interest that respondents receive on the refunded deposits will offset any interest expenses that respondents may have incurred in financing the cash deposits. Therefore, we did not allow NTN's and NTN-Germany's claimed offsets to reported interest expenses in the United States to account for that portion of the interest expenses that respondents estimate to be related to payment of antidumping duties.

Further, we reject NTN's and NTN-Germany's arguments that we cannot deny their claimed adjustment because we deprived them of their right to participate in this proceeding. The Department has the authority to revise the methods that it uses to calculate dumping margins when it determines that existing methods yield inaccurate results. In addition, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their claimed offsets in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Therefore, we are not constrained by prior practice to grant NTN's and NTN-Germany's claimed adjustment to U.S. interest expenses for interest incurred to finance cash deposits of antidumping duties, and have rejected the claim for these final results.

Comment 38: Torrington objects to NTN's claimed reductions to U.S. indirect selling expenses. According to Torrington, NTN has provided no evidence that the expenses that it has excluded from its reported U.S. indirect selling expenses are not related to sales of subject merchandise. Accordingly, Torrington requests that the Department deny NTN's claimed reductions to U.S. indirect selling expenses for the final results.

In response to Torrington's arguments, NTN states that the Department has verified NTN's method of reporting these adjustments in previous reviews, and has accepted NTN's claimed adjustments in each of the previous reviews of AFBs. NTN further argues that the record supports its contention that the expenses in question are not related to sales of subject merchandise. Accordingly, NTN concludes that the Department should grant NTN's reported adjustments to U.S. indirect selling expenses for these final results.

Department's Position: We agree with NTN. The record contains no evidence to refute NTN's claims that NTN incurs the expenses in question almost exclusively for sales of non-subject merchandise, and that any such expenses that NTN may incur on sales of subject merchandise are insignificant. Therefore, we have permitted NTN to deduct these expenses from its total pool of U.S. indirect selling expenses for these final results.

Comment 39: NTN and NTN-Germany object to the Department's determination to re-allocate their reported U.S. selling expenses using their resale prices to the first unrelated customer. NTN and NTN-Germany argue that because the Department failed to articulate reasons for its rejection of their allocation method, the Department deprived them of the opportunity to comment on the Department's determination. NTN and NTN-Germany further argue that the Department violated judicial precedent by abandoning the method of allocating U.S. selling expenses that it used in the three previous reviews of AFBs. Moreover, NTN and NTN-Germany claim that there is no evidence that the Department's method of allocating U.S. selling expenses over resale prices is more accurate than NTN's and NTN-Germany's allocation of these expenses over transfer prices. Accordingly, NTN and NTN-Germany request that the Department use in its analysis NTN's and NTN-Germany's U.S. selling expenses as they reported them in their questionnaire responses for these final results.

In response, Torrington and Federal-Mogul state that transfer pricing is suspect because it is completely within the control of respondents and, therefore, subject to manipulation. Torrington further argues that the

Department's reallocation is rational because there is no correlation between the selling expenses in question and NTN's transfer prices. As a result, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices to the first unrelated customer in the United States.

Department's Position: We agree with Torrington and Federal-Mogul. First, we disagree with NTN's and NTN-Germany's arguments that we denied them the opportunity to comment on our rejection of their allocation method and violated judicial precedent in reallocating the expenses in question. As stated above, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their allocation methods in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Further, as stated above, we have the authority to revise our calculation methods when we determine that existing methods yield inaccurate results.

When allocating expenses over sales value, we attempt to use the most accurate measure of that value. Although in certain instances we permit respondents to allocate certain types of expenses using transfer prices, we prefer to allocate expenses using resale prices to unrelated parties because such prices are not completely under respondents' control and, therefore, provide a more reliable measure of value that is not subject to potential manipulation by respondents. Thus, although we have no evidence that NTN systematically manipulated its transfer prices, our allocation of the specific expenses in question using resale prices provides a more reliable measure of per-unit expenses than does an allocation using transfer prices. Further, the allocation of the expenses in question using resale prices to unrelated customers is appropriate in this instance because the U.S. affiliate of NTN and NTN-Germany incurred these expenses in the United States making U.S. sales to unrelated customers. It is not appropriate to allocate these expenses on the basis of the U.S. affiliate's purchase costs; rather, the expenses should be allocated over its sales. Because we prefer to allocate expenses using resale prices, and because the expenses in question are attributable to U.S. sales to unrelated customers, we have allocated the expenses in question over resale prices for these final results.

Comment 40: Torrington asserts that the Department erred in failing to reallocate expenses that NTN and NTN-Germany incurred on U.S. sales prior to importation on the basis of resale prices to the first unrelated U.S. customer. According to Torrington, because respondents control transfer pricing, allocation of expenses based on transfer prices affords respondents the opportunity to manipulate the Department's analysis by shifting expenses away from certain U.S. products. In this context, Torrington states that its own analysis of NTN's and NTN-Germany's transfer prices and production costs suggests that their transfer prices may not be reasonable. Therefore, Torrington requests that the Department reallocate the remainder of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices for the final results.

In rebuttal, NTN and NTN-Germany assert that Torrington's analysis fails to demonstrate that their transfer prices are unreasonable. NTN further argues that the pre-sale expenses that it incurred in Japan are attributable to sales by NTN to its U.S. subsidiary. Therefore, NTN and NTN-Germany assert that the Department should accept its allocation of these expenses using transfer prices for these final results.

Department's Position: We agree with NTN and NTN-Germany. Although we prefer to allocate expenses using resale prices to unrelated parties, we may permit respondents to allocate expenses using transfer prices when it is reasonable to do so. In this instance, such an allocation is reasonable because the expenses at issue are movement charges that NTN and NTN-Germany incurred on sales, made at transfer prices, to a related party in the United States. Further, because Torrington's analysis does not focus on the transfer prices and costs of specific products, we find that the analysis fails to demonstrate that NTN's and NTN-Germany's transfer prices are unreasonable or that they systematically manipulated their transfer prices to shift expenses away from certain U.S. sales. Therefore, we have not reallocated the expenses in question for these final results.

Comment 41: Torrington challenges the method that NTN used to allocate to U.S. sales the export selling expenses that NTN incurred in Japan. According to Torrington, NTN's method of allocating these expenses according to salaries of export department personnel appears to understate the amount of export selling expenses attributable to U.S. sales. Specifically, the allocation ratio that NTN developed using salaries is significantly less than the ratio that would be derived by comparing U.S. export sales to total export sales. Because the record contains no evidence explaining or supporting the difference between the allocation ratios, Torrington suggests that the Department consider for the final results allocating the export selling expenses incurred in Japan to U.S. sales using a ratio based on sales.

NTN rejects Torrington's argument, stating that the Department verified the accuracy of NTN's reported export selling expenses, and that the Department has accepted NTN's allocation method in each of the previous AFB reviews. Therefore, NTN concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NTN. Torrington's analysis is suspect because it appears to be based on sales of only one class or kind of merchandise and on NTN's U.S. resale prices rather than the value of NTN's exports to the United States. Further, Torrington has provided no evidence that its proposed allocation method yields a more accurate measure of the amount of NTN's export selling expenses that are attributable to U.S. sales. Because NTN is able to identify specific employees who are responsible for export sales to NTN's U.S. subsidiary, NTN's allocation method yields a reasonable measure of the export selling expenses attributable to U.S. sales. Therefore, in the absence of evidence that the salary data that NTN used in its allocation are inaccurate, we have accepted NTN's allocation method for these final results.

Comment 42: Federal-Mogul questions NTN's classification of "warehouse expenses" and "miscellaneous expenses" incurred in the United States as indirect selling expenses. Federal-Mogul argues that, although warehouse and miscellaneous expenses may be indirect selling expenses, NTN failed to provide any evidence to substantiate its claim that these expenses were not directly related to U.S. sales. Accordingly, Federal-Mogul requests that the Department treat these expenses as direct selling expenses for the final results of this review.

NTN responds that it provided detailed explanations of all its expenses in its questionnaire responses, and that the Department has accepted NTN's classification of miscellaneous and warehouse expenses as indirect selling expenses in each of the previous AFB reviews. Therefore, NTN concludes that the Department should continue to treat miscellaneous and warehouse expenses as indirect selling expenses for these final results.

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Department's Position: We agree with NTN. The record contains no evidence that these expenses are directly related to specific U.S. sales. Therefore, we have continued to treat them as indirect selling expenses for these final results.

Comment 43: Torrington maintains that NPBS' allocation of export selling expenses based on the number of personnel responsible for export sales is unreliable. Torrington argues that the Department should reallocate these expenses based on the relative value of U.S. sales to total export sales, as it did in the final results of *AFBs III* (at 39749).

NPBS responds that its allocation method is reasonable. According to NPBS, it allocates expenses incurred in Japan to all export sales based on the number of personnel responsible for export sales, and then allocates the export selling expenses to U.S. sales based on the ratio of U.S. sales to total export sales. Therefore, NPBS contends that its allocation method is reasonable and consistent with the Department's position in the final results of *AFBs III*. As a result, NPBS concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NPBS. To the extent that NPBS is able to identify specific employees who are responsible for export sales, it is acceptable for NPBS to determine that portion of its total pool of indirect selling expenses attributable to export sales based on the ratio of export-related employees to total employees because it provides a reasonable measure of the selling effort that NPBS devotes to export sales. Further, because NPBS used the ratio of U.S. export sales to total export sales to allocate export selling expenses to U.S. sales, we find that NPBS' allocation method is reasonable and consistent with *AFBs III*. Therefore, we have used NPBS' reported export selling expenses in our calculations for these final results.

Comment 44: Federal-Mogul questions NSK's classification of "warehouse expenses" incurred in the United States as indirect selling expenses. Citing *Nihon Cement Co., Ltd.* v. *United States*, Slip. Op. 93–80 (May 25, 1993), Federal-Mogul contends that warehouse expenses may be movement expenses under certain circumstances. In this context, Federal-Mogul argues that although warehouse expenses may be indirect selling expenses, NSK failed to provide any evidence to substantiate its claim that these expenses were not movement expenses. Accordingly, Federal-Mogul requests that the Department treat these expenses as movement expenses for the final results of this review.

NSK responds that the Department has no obligation to presume that warehouse expenses are movement expenses. NSK further argues that the Department never challenged NSK's claim that the warehouse expenses at issue were indirect selling expenses. Therefore, NSK concludes that the Department should continue to treat warehouse expenses as indirect selling expenses for these final results.

Department's Position: We agree with NSK. The record contains no evidence that NSK incurred the warehouse expenses in question for storage of merchandise in transit from one location to another, as was the case in *Nihon*. Moreover, Federal-Mogul has provided no evidence that any other circumstances are present that would warrant treating the warehouse expenses in question as movement expenses. As a result, we cannot conclude that these expenses are movement expenses. Accordingly, we have continued to treat them as indirect selling expenses for these final results.

Comment 45: Torrington challenges two aspects of NSK's claimed HM indirect selling expenses. First, Torrington argues that NSK improperly claimed deductions from FMV for indirect selling expenses incurred by NSK's HM subsidiaries as well as by NSK. Citing *AFBs I*, Torrington argues that the Department previously has rejected respondents' attempts to claim deductions from FMV for indirect expenses incurred by both the parent company and its sales subsidiary. Torrington further argues that NSK has not demonstrated that the research and development (R&D) expenses that comprise a significant portion of NSK's HM indirect selling expenses are actually related to NSK's selling functions. Therefore, Torrington concludes that the Department should eliminate R&D expenses from NSK's claimed HM indirect selling expenses or, at a minimum, allow as a HM indirect selling expense only that portion of R&D expenses attributable to HM sales.

NSK responds that because the Department considers NSK and its related distributors to be one entity, the indirect selling expenses of both NSK and its related distributors are properly attributed to the HM sales subject to this review. NSK further argues that the Department has accepted NSK's method of reporting indirect selling expenses in previous AFB reviews, and that the Department verified NSK's reported indirect selling expense data in this review. Moreover, NSK argues that it reported its general R&D expenses in accordance with the statute and the Department's instructions. According to NSK, it incurs general R&D expenses in analyzing domestic customers' intended uses of bearings or in assisting them in identifying the appropriate product for a particular application; because of the need to work directly with customers in providing general R&D services, NSK states that it does not provide such services to export customers. Thus, because NSK incurs general R&D expenses for domestic customers only, and because the expenses are related to NSK's selling function, NSK concludes that the Department should deduct them as indirect selling expenses from FMV for these final results.

Department's Position: We agree with NSK. We consider NSK and its related distributors to be one company for purposes of this review and, therefore, consider all indirect selling expenses incurred by NSK and its related distributors for the distributors' sales to unrelated customers to be related to these sales. Further, we verified that NSK incurs general R&D expenses to support NSK's overall sales and marketing efforts, and that NSK does not incur general R&D expenditures for export customers. Accordingly, we have included all expenses that NSK incurred in making sales to its related sales companies in Japan, and all of NSK's claimed general R&D expenses, among NSK's HM indirect selling expenses for these final results.

Comment 46: Torrington asserts that NSK should not allocate indirect selling expenses and G&A expenses for ESP sales on the basis of resale prices. According to Torrington, NSK's reallocation was not in compliance with the Department's instructions in its supplemental questionnaire to NSK. Torrington further argues that NSK's allocation method distorts the Department's calculations by assigning the highest deductions for such expenses to sales with the highest per-unit resale prices. Therefore, Torrington believes that the Department should use the highest amount deducted for any U.S. sale to make these adjustments for all U.S. sales. Alternatively, Torrington argues that the Department should reallocate indirect selling expenses and G&A over the cost of goods sold, in order to ensure that the expenses in question are allocated to each part number without distortion.

Citing *Nacco Materials Handling Group, Inc.* v. *U.S.*, Slip Op. 94–34 (March 1, 1994), NSK argues that the Department should continue to accept its method of reporting these expenses because, as explained in NSK's supplemental questionnaire response, it is accurate and reliable. NSK further argues that the Department accepted NSK's allocation method in previous AFB reviews, and verified the expenses in question in this review. Therefore, NSK concludes that the Department should not reallocate NSK's indirect selling expenses and G&A for these final results.

Department Position: We agree with NSK. In its response to our supplemental questionnaire, NSK explained in full the sales price-based method that it used to allocate the expenses in question. As in previous reviews, we find that NSK's allocation method is reasonable. Further, there is no evidence that an allocation of indirect selling expenses based on cost of goods sold, as proposed by Torrington, is any more accurate or reasonable than a sales price-based allocation. Therefore, consistent with past AFB reviews, for these final results we have accepted NSK's indirect selling expenses as NSK reported them in its questionnaire responses.

4H. Miscellaneous Charges

Comment 47: RHP contends that the Department erred in using Federal Reserve exchange rates rather than RHP's reported exchange rate in recalculating RHP's claimed currency hedging adjustment. RHP states it provided all the information that the Department requested regarding RHP's hedging adjustment, and that RHP's reported exchange rates accurately reflect the rates that RHP received. RHP further argues that the Department provided no justification for its determination not to use RHP's actual exchange rates. Therefore, RHP asserts that the Department should use the data that RHP submitted concerning its actual corporate exchange rates to calculate its currency hedging adjustment for these final results.

Torrington and Federal-Mogul argue in rebuttal that the Department must apply the exchange rate specified by the Department's regulations. Torrington continues that it is the respondents' burden to demonstrate their entitlement to an adjustment. In this context, Torrington argues that the Department did not verify RHP's corporate exchange rates, and that RHP did not explain how its reported corporate rates would result in a more precise adjustment than those that the Department used in its calculations. Therefore, Torrington and Federal-Mogul conclude that the Department should not modify its calculation of RHP's currency hedging adjustment for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. The Department is required by 19 CFR 353.60 to make currency conversions in accordance with Customs procedures established by section 522 of the Tariff Act. This section states that "(t)he Federal Reserve Bank of New York shall decide the buying rate and certify the rate to the Secretary (of the Treasury)." Therefore, we have used the Federal Reserve Bank's exchange rates as the basis for RHP's currency hedging adjustment for these final results.

5. Cost of Production and Constructed Value

5A. Research and Development

Comment 1: Torrington contends that, although RHP treated all R&D as G&A expenses, these expenses were at least in part product-specific. Torrington references two response exhibits listing product R&D expenses for new products to support its view that the Department should reject RHP's argument that it was unable to report product-specific R&D. Torrington notes that developing new products is clearly a product-specific activity and should have been reported as such. Torrington concludes that the Department should reclassify all R&D expenses and include them in the total for the COM for the final results.

RHP explains that while its R&D facility was responsible for developing new products, no new products were sold during the POR, and thus, there is no basis for adjusting RHP's reported R&D costs.

Department's Position: We disagree with Torrington. The exhibits in RHP's cost section show general areas of R&D directed at the development of new bearings and general improvements to certain aspects of all bearings. The exhibits do not indicate that R&D costs were incurred for any specific bearing.

Comment 2: NMB/Pelmec argues that the R&D expenses that are not related to the subject merchandise should not be added to the COP and CV. In its Section D response to the Department's questionnaire, NMB/Pelmec explained that R&D expenses were reported as part of factory overhead. The only R&D activities noted in the 1992 Minebea Co.'s annual report relate to "Rod-End, Spherical and Journal Bearings." These types of bearings are manufactured at facilities in the United Kingdom, the United States and Japan, and are not manufactured by the same facilities that produce the subject merchandise. Therefore, these expenses should not be included in the COP and CV.

Torrington rebuts NMB/Pelmec's argument by stating that R&D expenses incurred by the parent company in Japan should be allocated to the Thai operations. According to Torrington, there is no merit to NMB/Pelmec's argument that the R&D expenses identified by the Department at verification are not related to the subject merchandise and should not be added to COP and CV. The record does not support NMB/Pelmec's contention that the unreported R&D costs were incurred solely for rod-end, spherical and journal bearings.

Torrington further contends that, even if NMB/Pelmec's unsubstantiated factual contention were correct, it is irrelevant whether or not these types of bearings are presently being manufactured in the Thai facilities. It is recognized that the same basic technology and production processes are utilized for the various types of bearings. For the final results, Torrington argues that the Department should include the allocated portion of the R&D expenses in question.

Department's Position: The Department agrees with Torrington's argument that the respondent failed to demonstrate that the benefits of Minebea Japan's R&D efforts are limited to nonsubject merchandise. NMB/Pelmec's argument that the financial report only discusses R&D that relates to nonsubject products is flawed. The same report discusses how the Minebea Group developed a new washing system for ball bearings that it intends to have installed in all their plants worldwide by the end of March 1993. Furthermore, we find irrelevant NMB/Pelmec's argument that the list of current R&D projects that the Department reviewed did not contain R&D specifically related to bearings. We verified through Minebea Japan's financial statements that it amortizes the cost of its R&D over a 5-year period. Accordingly, the current list of R&D projects does not reflect the capitalized costs of prior year projects currently being expended as an operating cost. Therefore, it is appropriate to allocate R&D costs to NMB/Pelmec and we have included these expenses in the COP and CV.

5B. Profit for Constructed Value

Comment 3: Torrington argues that sales to related parties that are not at arm's length should be excluded for purposes of calculating statutory profits. Torrington cites *Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Wire Rods from France*, 58 FR 68865 (December 29, 1993), where the Department held that "all home market sales to related parties that fail the arm's-length test" should be excluded from the profit calculation.

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Torrington claims that the change in approach was prompted by the fact that related-party sales are excluded when FMV is based on HM sales. Torrington also cites *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products from Korea*, 58 FR 37176 (July 9, 1993), as a recent example of this practice. Finally, Torrington contends that this exclusion is in accordance with 19 U.S.C. 1677b(e)(2).

Respondents assert that sales to related parties which are not at arm's length are in the ordinary course of trade and should be included in the calculation of the profit component of CV. They also contend that the Department has consistently rejected Torrington's argument in prior AFB reviews. FAG argues that, although the Department has reconsidered this issue in *Certain Stainless Steel Wire Rods from France* and declined to include such related-party sales in the profit component of CV, such change in policy is unwarranted given the lack of any statutory mandate to disregard related-party sales that are in the ordinary course of trade. FAG argues that should the Department reject such related-party sales, the Department should then perform the equivalent of a "10–90–10 test," as it does in disregarding below-cost sales where FMV is based on price.

Department's Position: We agree in part with Torrington. Contrary to Torrington's contention, there is no basis for *automatically* excluding, for the purposes of calculating profit for CV, sales to related parties that fail the arm's-length test.

Section 773(e)(2) of the Tariff Act provides that a transaction between related parties may be "disregarded if, in the case of an element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration." The arm's-length test, which is conducted on a class or kind basis, determines whether sales prices to related parties are equal to or higher than sales prices to unrelated parties in the same market. This test, therefore, is not dispositive of whether *the element of profit* on related party sales is somehow not reflective of the amount usually reflected in sales of the merchandise under consideration. However, related-party sales that fail the arm's-length test do give rise to the possibility that certain elements of value, such as profit, may not fairly reflect an amount usually reflected in sales of the merchandise. We considered whether the amount for *profit* on sales to related parties was reflective of an amount for profit usually reflected on sales of the merchandise. To do so, we compared profit on sales to related parties that failed the arm's-length test to profit on sales to unrelated parties. If the profit on sales to related parties varied significantly from the profit on sales to unrelated parties, we disregarded related-party sales for the purposes of calculating profit for CV.

We first calculated profit on sales to unrelated parties on a class or kind basis. If the profit on these sales was less than the statutory minimum of eight percent, we used the eight percent statutory minimum in the calculation of CV. If the profit on these sales was equal to or greater than the eight percent statutory minimum, we calculated profit on the sales to related parties that failed the arm's-length test and compared it to the profit on sales to unrelated parties as described above. Based on this methodology, we found only one instance in which the profit on sales to unrelated parties was greater than eight percent—specifically, sales of CRBs by INA.

Profit on INA's sales of CRBs to unrelated parties varied significantly in comparison to profit on its sales of CRBs to related parties. Therefore, we conclude that the profit on INA's sales to related parties did not fairly reflect the amount usually reflected on HM sales of this merchandise. Accordingly, we used INA's profit on sales to unrelated parties in the calculation of profit in determining CV for CRBs.

With regard to FAG's contention that the Department should apply a 10–90–10 test in this situation, we note that the 10–90–10 test is a practice we established to implement the statutory requirement, as provided in section 773(b) of the Tariff Act, that HM sales at less than COP be disregarded if, among other things, they have been made in substantial quantities. The 10–90–10 test is not germane to the issue of whether the element of profit fairly reflects the amount usually reflected in sales in the market under consideration, which is provided for under section 773(e) of the Tariff Act. Furthermore, we have not based our determination to disregard related-party sales that fail the arm's-length test for the purposes of calculating CV on whether such sales are in the ordinary course of trade. Rather, as discussed above, our decision to disregard such sales is based on whether, pursuant to section 773(e)(2) of the Tariff Act, the amount for profit on such sales was reflective of an amount for profit usually reflected on sales of the merchandise.

Comment 4: Torrington contends that below-cost sales should be excluded for purposes of calculating statutory profits. Torrington argues that the same rationale for the decision in *Certain Stainless Steel Wire Rods from France* applies equally to below-cost sales that are disregarded under 19 U.S.C. 1677b(b) and contends that if sales below cost are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV.

Torrington also argues that below-cost sales excluded under 19 U.S.C. 1677b(b) are not in the ordinary course of trade. The petitioner contends that the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade. 19 U.S.C. 1677b(e)(1)(B). Thus, below-cost sales, when made in substantial quantities over an extended period of time, must be disregarded in calculating CV profit.

Torrington further points out that the United States has taken the position that disregarded below-cost sales are not to be considered sales in the normal course of trade as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Torrington maintains that its view of ordinary course of trade conforms to international practice and is supported by the Final Act of the Uruguay Round, dated December 15, 1993, in which parties to the negotiation agreed to the principle that CV should incorporate actual profits earned on sales in the ordinary course of trade.

Respondents maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of CV because such action is not supported by a proper reading of the statute. Furthermore, respondents maintain that the international agreement cited by Torrington is not relevant to the administration of current U.S. antidumping law. Respondents claim that the statute and Departmental practice implicitly recognize that sales below cost are in the ordinary course of trade and should be included in calculating profit for CV.

Department's Position: We disagree with Torrington's contention that the calculation of profit should be based only on sales that are priced above the COP. Section 773(e)(1)(B) of the Tariff Act specifically imposes a variety of requirements on the calculation of profit in determining CV. Namely, the profit should be equal to that usually reflected in sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities; and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this sub-section suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for CV would be explicitly included in this provision. Accordingly, it would be inappropriate for the Department to read such a requirement into the statute. See *AFBs III* (at 39752).

Furthermore, contrary to Torrington's assertions, under current law, as expressed in section 771(15) of the Tariff Act, the definition of "ordinary course of trade" does not exclude or even mention sales below-cost. Until the changes resulting from the GATT 1994 agreements are implemented by the United States, we must follow the above section of the Tariff Act.

Consequently, we have used the greater of the rate of profit provided in the response or the statutory minimum of eight percent unless we applied a different profit rate resulting from calculations in those situations where HM related-party sales were found not to be at arm's length. See *Comment 3*.

Comment 5: Torrington argues that since the Department requested profit data for total sales made during the POR and for the sample sales, it should compute respondents' profits on the basis of the sample sales reported or the average profit on all sales, whichever is greater. Torrington states that given that the Department has relieved respondents of reporting all sales for the period through the use of sampling, it is appropriate to use the higher of the two available rates. However, Torrington argues that if a single rate is adopted, it should be the sample sales profit rate since this rate is a representative profit tailored to the U.S. sample weeks.

Torrington further contends that for respondents that withheld data, the Department should apply the highest profit rate earned by any other respondent during the POR. For respondents that did not provide data, Torrington believes the Department should apply 19 U.S.C. 1677e(c) to supply the missing information. Alternatively, Torrington argues that for all sales that would otherwise be compared with CV, the Department should apply the dumping margin calculated in the original LTFV investigation as BIA.

Respondents maintain that profit on any sample of sales, including sales of such or similar merchandise, is not representative of profit on a general class or kind of merchandise and, therefore, should not be used as profit for CV.

Department's Position: With the exception of those firms which had related-party sales at prices which were less than arm's-length prices, we disagree with Torrington's contention that profit should be computed on the basis of the sample sales reported or the average profit rate of all sales, whichever is greater. We requested information only on sales of such or similar merchandise. Because the profit on the sales of such or similar merchandise may not be representative of the profit for the general class or kind of merchandise, we requested profit information based on the class or kind of merchandise.

In the case of firms which needed profit adjustments to eliminate sales made to related parties which were not at arm's length, we found it necessary to make the adjustment based on the reported HM sales, which was the only information available.

With respect to Torrington's proposed BIA applications for firms that withheld profit data in this review, we found no cases where respondents withheld such data.

5C. Related-Party Inputs

Comment 6: NSK and Koyo claim that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK argues that the Department must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below that supplier's costs before the Department can collect cost data from that party. Citing 19 USC 1677b(e)(3), NSK claims that the Department violated the antidumping law by not establishing "reasonable grounds to believe or suspect" that the transfer price paid to related-party suppliers was below cost. NSK claims that the quoted language of this provision matches 19 USC 1677b(b), which grants the Department the authority to conduct cost investigations. On this premise NSK argues that the "same threshold standard must be applicable to both provisions." Koyo argues that not only did the Department not have any statutory authority to request COP information for inputs that it purchased from related suppliers, but also that there have been no allegations by petitioners in this review, or in any prior AFBs proceeding, that such parts were purchased at less than COP. NSK and Koyo claim that since the Department has violated the antidumping law, all cost data for parts purchased from related suppliers must be removed from the administrative record. NSK further requests that counsel for Torrington and for Federal-Mogul return this information to counsel for NSK.

Torrington and Federal-Mogul argue that the Department properly applied 19 U.S.C. 1677b(e)(3) by collecting cost data from related-party suppliers. Torrington and Federal-Mogul maintain that because respondents engaged in below-cost sales, the Department had reasonable grounds upon which to collect cost data from related suppliers. Torrington argues that given that the foreign producers do sell below cost, it is reasonable to infer that their losses are passed back to related-party suppliers, who are forced to transfer materials and components at a loss. Torrington argues that 19 U.S.C. 1677b(b), which provides the standard for analyzing below-cost sales, does not imply that any particular party has to submit the evidence of below-cost transfer prices of inputs and, therefore, does not suggest that the burden of proof should be placed upon the petitioner, as suggested by NSK. Federal-Mogul and Torrington claim that the best evidence concerning related-party production cost is not accessible to domestic parties and that the burden to submit the evidence should be placed upon the respondents. Torrington and Federal-Mogul maintain that NSK's position would essentially nullify 19 U.S.C. 1677b(e)(3).

Department's Position: We disagree with NSK and Koyo that the Department violated the antidumping law by requesting cost data from related suppliers. In calculating CV, the Department does not necessarily accept the transfer prices paid by the respondent to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than

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the market value of the input, we may value the input using the best evidence available, which may be the COP.

NSK provided no information regarding prices between unrelated parties for inputs it purchased from related suppliers. Therefore, in accordance with section 773(e)(2) of the Tariff Act, we required the actual COP of those inputs to determine whether the transfer prices between NSK and its related suppliers reflected the market value of the inputs. Where the transfer prices were less than the COP (*i.e.*, market value), we used the COP as the best evidence available for valuing the input. Similarly, Koyo did not provide information regarding prices between unrelated parties for some inputs it purchased from related suppliers. In those instances we also required the actual COP of those inputs tp determine whether the transfer prices reflected the market value of the inputs. Where the transfer prices were less than the COP, we used the COP as the best evidence available for valuing the input.

Under section 773(e)(3) of the Tariff Act, if the Department has reason to believe or suspect that the price paid to a related party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the related supplier's COP for that input, we may use the actual COP as the value for that input.

We found in the previous review that both companies had purchased major inputs from related parties at prices below COP. Therefore, in accordance with normal practice, we determined that we had reasonable grounds to believe or suspect that both NSK and Koyo purchased major inputs from related suppliers at prices below the COP of those inputs during this review period. See *AFBs III* (at 39754).

Comment 7: NSK argues that the Department should use NSK's purchase price for parts purchased by NSK from each related supplier. NSK claims that, according to section 773(e)(2) of the Tariff Act, the Department should reject prices for parts purchased from related suppliers only when it appears that these prices have been manipulated and that "* * * the amount representing that element does not fairly reflect the amount usually reflected in sales in the home market under consideration." Given the discretionary language of section 773(e)(2), NSK contends that the Department should not reject every transaction that simply falls below an unrelated supplier's price, but instead should accept all transactions between related parties when the business pattern demonstrates a competitive relationship.

Alternatively, if the Department concludes that it may determine the market value at which parts should be purchased from related suppliers simply on price-to-price comparisons, then NSK argues that it cannot be penalized to the extent that its related supplier costs exceed an unrelated supplier's price. Under section 773(e)(2) of the Tariff Act, the Department cannot require that a related supplier's price be above its COP if the fair market value established by an unrelated supplier's price is below the related supplier's COP. Therefore, under those circumstances in which both the related and unrelated suppliers' prices fall below the related supplier's costs, the Department should adjust the related party's price only to the extent it falls below fair market value measured by the unrelated supplier's price.

NSK further argues that if the Department determines market value at which parts should be purchased from related suppliers on a price-to-cost comparison when price-to-price comparisons do not exist, then the Department should adjust NSK's costs for only those parts purchased at prices below the COP. In these instances, NSK claims that the Department's current adjustment is too broad and that the Department should use the related supplier's actual COP submitted to the Department. Finally, NSK contends that if the Department continues to disregard the related supplier's cost data, the Department should amend its adjustment to exclude finished bearings purchased from other suppliers from the adjustment equation.

Department's Position: Under section 773(e)(2) of the Tariff Act, the Department is directed to disregard a transaction between related parties "if the amount representing an element of value, required to be considered in the calculation of CV, does not fairly reflect the amount usually reflected in sales in the market under consideration." Given this requirement, we disagree with NSK that we should not reject every transaction in which the prices from the related supplier do not reflect the amounts usually reflected in sales between unrelated parties. Although competitive factors may temporarily force related suppliers to sell below market value, this does not relieve us of our responsibility to capture the full market value usually reflected in sales of the input. Lacking information as to what the market value is, we rely on the related supplier's cost as a measure of the commercial value of that input. In the case of major inputs, section 773(e)(3) of the Tariff Act requires the Department to use the COP of that input if such cost is greater than the amount that would be determined for such input under section 773(e)(2).

We agree with NSK that, under section 773(e)(2) of the Tariff Act, the Department should only adjust related suppliers' prices in situations in which there were no arm's-length prices available and the price-to-cost comparisons (in lieu of price-to-price comparisons) reveal that the suppliers' costs exceed its prices. NSK did not provide any comparable arm's-length prices. Therefore, for these final results, we have compared the reported transfer price of complete bearings and components purchased from related suppliers with the actual COP and used the higher of the two for CV.

Comment 8: Torrington alleges that NMB/Pelmec Singapore has not demonstrated that arm's-length prices were paid to Minebea Japan for the equipment used by NMB/Pelmec Singapore. Therefore, the Department should not use the prices reported by NMB/Pelmec for the final results.

NMB/Pelmec Singapore states that it reported in the supplemental Section D response that machinery manufactured by Minebea Japan is purchased at market value, and gave an example of how the price for one of the machines was determined. NMB/Pelmec Singapore claims that there is no reason to reject the prices paid by NMB/Pelmec Singapore for the machinery from Minebea Japan.

Department's Position: NMB/Pelmec Singapore was unable to provide prices between related parties for sales of identical equipment. As an alternative, it submitted with its response to the Department's Section D supplemental questionnaire copies of documents illustrating the COP and sales information on the transfer of five inner-ring raceway grinding machines to Pelmec Singapore. The information submitted indicates that the machines were transferred from Minebea Japan to NMB/Pelmec Singapore at a mark-up in addition to COP. Therefore, the Department has concluded that NMB/Pelmec Singapore's related-party equipment purchases can be considered arm's-length transactions.

Comment 9: NMB/Pelmec Thailand states that the Department's conclusion that transfer prices for bearings components are below cost is based on numerous errors. The Department stated in its analysis memorandum for the preliminary results dated February 28, 1994, that, based on a sample of four

bearing components, it determined that related-party transfer prices "may not be reflective of fair value." As such, the Department increased NMB/Pelmec's COP and CV data by the amount by which it determined that the bearings component transfer prices were below cost. NMB/Pelmec Thailand argues that before comparing transfer prices to costs, the Department increased the reported costs for four items: interest, R&D, headquarters expense, and Karuizawa's G&A expenses.

NMB/Pelmec Thailand argues that its Karuizawa plant's G&A costs and its Minebea headquarters expenses should not be added to the component costs because these expenses have already been taken into account. Since the Department adds the headquarters expenses when calculating CV value, a downward adjustment needs to be made at this stage to account for the fact that some of the component costs have already been increased by this amount. Similarly, NMB/Pelmec Thailand argues that if the Karuizawa plant's G&A expenses are added to component costs, then the markup should be deducted from the reported costs. NMB/Pelmec further argues that since the Department increased the reported costs for bearing components by the amount of Minebea Japan's consolidated interest costs, the Department has double-counted this expense because these costs were already included in the reported CV figures. Finally, NMB/Pelmec states that R&D has also been double-counted since these costs were included in CV.

Torrington states that the Department properly concluded that transfer prices for NMB/Pelmec's bearing components are below cost. Torrington states that there is no merit to NMB/Pelmec's contention that the Department committed numerous errors. The verification team determined that as Kuruizawa is involved with these purchases, its G&A costs must be included in the COP along with the additional general expenses incurred by Minebea. According to Torrington, the respondents failed to provide calculations to illustrate that the Department's methodology results in double-counting and that adding R&D expenses was unjustified.

Department's Position: We found at verification that related parties supply the majority of materials used by NMB/Pelmec Thailand in its production of the subject merchandise. It was also shown at verification that a sample of related-party transfers either did not match the price from an unrelated party or were below the COP. Additionally, Minebea Japan purchases NMB/Pelmec Thailand's finished bearings for sale to the United States. As a consequence of the Minebea Group's practice of purchasing and reselling materials and bearings for the benefit of NMB/Pelmec Thailand, Minebea's reported sales and cost of sales account for the cost of these related-party material purchases twice. When Minebea Japan sells component parts to NMB/Pelmec Thailand, it records a sale and cost of sale in its financial statements. Then, correspondingly, when Minebea Japan repurchases and sells the finished bearings which include the previously transferred components, it records a sale and cost of sale in its financial statement. This sequence of events constitutes double-counting in Minebea Japan's own financial statements, *i.e.*, sales of compqnents and finished bearings. Such double-counting occurs because Minebea Japan does not consolidate its financial statements with those of NMB/Pelmec Thailand. Therefore, the Department has adopted a similar methodology in applying its adjustments to rectify the transfer price deficiencies it found during verification.

Comment 10: Torrington argues that certain related-party transfer prices that NTN reported in its CV questionnaire response do not constitute a permissible basis for calculating CV. For the final results, Torrington urges the Department to calculate "arm's-length" prices for certain inputs using information that NTN provided or, if the Department is unable to do so, to reject NTN's CV data in favor of BIA.

NTN responds that it provided all the information that the Department requested regarding related-party inputs, and that it indicated the products that contained inputs purchased from parties related to NTN. Therefore, NTN concludes that the Department should not use BIA to determine the dumping margins for any U.S. sales that are matched to CV for these final results.

Department's Position: We agree with NTN. NTN provided the data that we requested for related-party inputs and the information necessary to make any adjustments to related-party prices. Further, we find that adjustments to NTN's related-party prices are unnecessary. Although certain purchases that NTN made from related-parties were not at arm's-length prices, these inputs represent a small fraction of NTN's total inputs and, therefore, have an insignificant effect on the submitted CV data. As a result, we have used NTN's related-party prices in our CV calculations for these final results.

5D. Inventory Write-Off

Comment 11: Torrington states that RHP had write-offs and write-downs during the POR, and that the company charged these costs tp all RHP stock instead of to the particular models involved. Torrington suggests that write-offs and write-downs of ball bearing models may have been charged to non-scope merchandise. Torrington notes that write-downs and write-offs are by nature model-specific and should be charged to specific models. Torrington argues that the Department should reallocate these costs by charging all costs to the bearing model with the highest sales revenue in the United States during the POR for which CV serves as FMV.

RHP agrees with Torrington that inventory write-offs and write-downs occurred during the POR. RHP states, however, that it acceptably charged these write-offs and write-downs against a reserve on its financial reports.

Department's Position: We agree with RHP. RHP accounted for the write-downs and write-offs in accordance with GAAP in the United Kingdom. GAAP does not require that companies write down or write off inventory on a model-specific basis. RHP appropriately off-set the reserve rather than recognize an additional expense. In addition, RHP realized a miscellaneous gain due to an overaccrual for write-downs and write-offs in previous periods.

5E. Interest Expense Offset

Comment 12: Federal-Mogul argues that SNR's claim for an interest income offset to financing expenses in the CV and COP calculations should be disallowed because SNR failed to distinguish between interest income from bearing manufacturing and interest income from investments. In this respect, Federal-Mogul argues that SNR's interest earned from "late payment for goods" is properly classified as "interest revenue" and should thus be used to adjust sales price upwards or to offset credit expenses. Further, Federal-Mogul asserts that SNR's claim for interest on advance payments to suppliers is not interest earned from bearing manufacturing operations.

SNR responds that its reported interest income was all derived from operations, specifically short-term deposits, interest on late payment for bearings, and interest on advance payments to suppliers. SNR states that it did not derive any of its interest income from non-operational activities such as the sale of land or negotiable securities. Accordingly, SNR claims

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there is no basis to deny its reported offset.

Department's Position: We agree with SNR. The interest earned on short-term deposits, on advance payments to suppliers and on late payments is derived from manufacturing and sales operations. The Department's practice is to accept a reduction of total interest expense by such short-term interest income because such income is earned from working capital, which by definition is related to manufacturing and sales operations. Therefore, we accepted the interest offset as reported by SNR.

Comment 13: Federal-Mogul claims SKF's interest income offset should be disallowed because the source of this offset was not provided. Federal-Mogul asserts that the interest income qualifying as an offset to interest expense must be derived from bearing manufacturing operations.

SKF argues that total interest expense was reduced by interest income earned solely on short-term investments (cash and marketable securities). In addition, SKF argues that it illustrated its interest calculation and the details were verified by the Department. SKF asserts the Department's practice is to require a respondent to show that interest income used to offset interest expense in the calculation of COP relates to a firm's general operations, and that this practice was affirmed by the CIT in *The Timken Co.* v. *United States*, Slip Op. 94–1 at 12–20 (January 3, 1994).

Department's Position: We agree with SKF. The Department verified that the interest income offset was attributed to short-term investments of its working capital. Therefore, interest expense was appropriately reduced by this amount.

Comment 14: Torrington observes that NPBS reported interest expenses for COP net of interest income. Torrington claims, however, that NPBS failed to demonstrate that the interest income in question was derived from short-term investments directly related to production of merchandise. Accordingly, Torrington asserts that the Department should recalculate NPBS' interest-expense factor without including interest income.

NPBS responds that its interest income offset includes income derived from short-term investments related to the production of subject merchandise and income from investments of working capital. Accordingly, NPBS argues that its offset is properly supported.

Department's Position: We agree with NPBS. NPBS reported that it has investments in several types of securities and real estate, but has not reported any interest income from these activities. Therefore, we are satisfied that the interest income is related to production activities and the investment of working capital.

5F. Other Issues

Comment 15: NMB/Pelmec Thailand argues that the Department improperly recalculated the G&A expenses portion of the reported COP and CV data to include additional Minebea Japan headquarters expenses. According to NMB/Pelmec, some of these expenses were unrelated to the production of the subject merchandise. Accordingly, these expenses should not be included in the COP and CV calculations.

Torrington rebuts NMB/Pelmec's argument by stating that the Department found at verification that Minebea Japan's G&A expenses incurred were not fully allocated to the Thai operations. Torrington asserts that the evidence on the record does not support NMB/Pelmec's contention and that the Department has improperly allocated G&A expenses to the Thai operations.

Department's Position: It is appropriate to allocate a portion of the total headquarters expenses to NMB/Pelmec Thailand. NMB/Pelmec lists headquarters expense as a general expense, which are period costs that relate to the operation as a whole. We agree with Torrington that the record evidence does not support the respondent's contention that some of the accounts that make up headquarters expense should not be allocated to the Thai operations.

Comment 16: NMB/Pelmec Thailand argues that the Department incorrectly adjusted G&A expenses for certain extraordinary expenses which were unrelated to the ordinary operations and should not be included in the COP and CV calculations. According to NMB/Pelmec, these extraordinary expenses consisted primarily of expenses related to the company's 10th anniversary celebrations in Thailand and should not have been added.

Torrington asserts that NMB/Pelmec's argument that the firm's 10th anniversary celebration was an extraordinary loss is incorrect since by the nature of the expense, it will recur in the future. In addition, such events are typically an occasion to promote products and develop customer relationships. Thus, this expense does not constitute an extraordinary item and, at the very least, should be deemed a selling cost.

Department's Position: We agree with Torrington that these expenses are not extraordinary expenses. We find no merit to NMB/Pelmec's arguments that these expenses do not relate to the ordinary operations of the company. Since such activities and related expenses at a minimum promote NMB/Pelmec's name, we have revised NMB/Pelmec's calculation of G&A expenses to include these costs.

Comment 17: Torrington argues that the Department found at verification that certain expenses, *i.e.*, bonus for directors, bonus for auditors, exchange loss and miscellaneous expenses, were not included in the costs submitted by Koyo. Torrington contends that the Department should make the appropriate adjustments to COP and CV for the final results.

Koyo argues that the Department improperly reclassified its non-operating expenses and payments out of retained earnings as production expenses. Specifically, the Department incorrectly reclassified bonus payments to auditors and directors paid out of retained earnings, exchange losses, and all expenses booked as "miscellaneous non-operating." The reclassification of bonuses for directors and auditors contradicts prior Department treatment of these expenses. Koyo states that the Department in four previous tapered roller bearing (TRB) reviews found that bonuses for directors and statutory auditors' fees were similar to a dividend payment and, accordingly, not a production cost. Koyo also argues that the Department erroneously reclassified the exchange losses included in Koyo's non-operating expense account as production costs. Koyo contends that its exchange losses are related to international sales operations, not domestic production. Since all production expenses are incurred and paid in yen, there can be no production-related exchange losses.

Department's Position: During verification, Koyo's management provided explanations of the costs that were included as certain non-operating expenses on the financial statements. Based on the discussions, we found that certain general expenses were not included in the submission. These costs included miscellaneous expenses and bonuses for the board of directors and auditors which are normal costs incurred by companies. With respect to foreign exchange losses, these costs were also considered to be a general expense because they did not relate to sales.

Comment 18: Torrington argues that the Department noted at verification that Koyo under-reported certain other expenses when it individually adjusted factory overhead expenses allocated through its cost centers based on an efficiency variance. Torrington contends that the Department's verification team observed that the efficiency variance had a direct effect on the specific product costs that are processed through Koyo's cost centers and that application of this favorable variance resulted in lower factory overhead expenses allocated to the subject merchandise. Torrington argues that the Department should make the appropriate adjustments to COP and CV in the final results.

Koyo argues that the Department erred in inflating Koyo's COP because of the existence of efficiency variances in Koyo's basic labor cost. Koyo contends that the Department's decision to adjust its reported costs is the result of a misunderstanding of the manner in which Koyo's basic cost is calculated and the role of the efficiency variance in those calculations. Koyo explains that its basic cost system employs a two-step process to determine as accurately as possible the actual labor hours used to produce a given product in a given period. First, Koyo's production engineers determine the amount of time, *i.e.*, the "basic hours" theoretically required to perform each process at each cost center on the basis of time and motion studies. Second, at the end of a given period, Koyo's cost accountants compare the number of hours theoretically necessary to operate a particular cost center, based on that period's "basic hours," to the number of hours actually required to operate that cost center during that period. The ratio of actual to basic hours is the so-called "efficiency variance," which is used to calculate the labor cost element of the model-specific basic costs for the next period. Koyo explains that dividing the previous period's basic hours by the efficiency variance simply derives the number of actual hours incurred in the previous period, which is then used to calculate the labor cost for the next period. Koyo maintains that its method of updating its models' basic cost has been repeatedly verified by the Department without any suggestion that its method of capturing and updating the costs at its cost centers fails to identify accurately the actual costs incurred at those cost centers. Accordingly, there is no justification for modifying this calculation in the review.

Koyo further argues that the Department's position that the efficiency variances adjust a model-specific standard by an overall rate which may or may not accurately state the individual model's standard cost is wrong. The efficiency variances are not an "overall rate"—to the contrary, they are specific rates for groups of cost centers that are used to calculate the basic cost of individual models produced at those cost centers.

Koyo further contends that because the manufacturing variance is used to adjust for the difference between the basic costs of the models produced at a given plant and the actual costs incurred there, if the Department decides to reject one element in the calculation of the basic costs (in this case, the adjustment to reflect the difference between standard and actual labor hours), then that element must be included instead in the calculation of the manufacturing variance. In summary, Koyo argues that the fact that a variance calculated on a plant-wide basis was used to adjust expenses for individual models does not support rejection of the manufacturing variance and that the Department should eliminate its revision of Koyo's reported costs of production.

Department's Position: We agree with Koyo. As this efficiency adjustment attempts to determine more accurately the amount of labor costs associated with individual cost centers based on actual experience, we find that Koyo's adjustment was reasonable. Accordingly, the Department accepted Koyo's submitted data with respect to the labor efficiency adjustment.

Comment 19: Federal-Mogul claims that F&S failed to respond adequately to requests for HM cost data. When the Department requested COP data following Federal-Mogul's allegation of below-cost sales, F&S did not provide adequate COP data for all sales. Federal-Mogul states that, as partial BIA, the Department treats sales with missing COP data as sales below cost. However, Federal-Mogul contends that F&S' failure to provide adequate COP data at the Department's request warrants application of total BIA.

F&S argues that, with regard to HM cost data, it provided COP and CV information for all models sold in the U.S. market. F&S claims that it has been responsive to all requests by the Department for information.

Department's Position: We disagree with Federal-Mogul. F&S has provided sufficient and complete COP data. There were identical HM model matches for all U.S. sales. Because F&S provided COP data for all HM models used for comparison purposes, and we had no need for COP data for other models sold in the HM which were not used for comparison, we accepted F&S' response.

Comment 20: Torrington contends that the Department found at verification that expenses for training personnel in the use of certain testing machinery should have been included in technical service expenses, but that Koyo included this expense in SG&A expenses. Torrington argues that the Department should reclassify this expense as a technical service expense.

Department's Position: We disagree with Torrington. Since the training of personnel cannot be tied directly to sales, it was appropriately included as part of SG&A.

Comment 21 Torrington argues that the questionnaire requires respondents to report a weighted-average manufacturing cost when the subject merchandise is produced at more than one facility. Torrington contends that since Koyo deviated from the questionnaire instructions, the Department should apply the highest prior margin to all sales of those part numbers manufactured by more than one supplier

Koyo claims that it reported the weighted-average COM for all of the models in its responses. Koyo also states that all of the information requested by the Department has been provided and that there is no basis upon which to apply BIA

Department's Position. We agree with Koyo that it reported its weighted-average COM for all of the models in its supplemental response.

Comment 22: Torrington argues that the Department should reject FAG-Germany's cost data because FAG only provided costs for completed bearings and not for the individual material elements as required by the questionnaire. Torrington further argues that FAG/Barden did not provide cost data for all models sold in the HM. Torrington argues that while CV data were provided for Barden-made models sold in the United States, COP data for Barden's HM sales were not provided. Torrington argues that since the Department initiated a COP investigation regarding FAG, it should have included its affiliate Barden.

FAG argues that its cost responses were accurate and acceptable as reported because its model-specific COPs and CVs were correctly reported in accordance with Departmental precedent. Also, FAG argues that no below-cost allegation has been made against Barden, and the Department did not request COP data from Barden.

Department's Position. We agree with respondents. We have accepted FAG's cost data in the format provided for this review, because we were reasonably able to use the data for our analytical purposes in this review Also, petitioner has provided no other basis for the Department to reject FAG's cost responses.

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With respect to Torrington's argument concerning a below-cost test for products produced by Barden, the Department did not formally request the COP data from Barden. The original below-cost allegation was made before the companies were collapsed for the purposes of these reviews, and only involved products produced by an unrelated company and sold by FAG U.K. The Barden HM sales are distinct in that they are sales of self-produced merchandise, not resales of purchased products. Furthermore, none of the products purchased by FAG is similar to those produced by Barden. Accordingly, if sales by FAG U.K. were disregarded because they were sold below cost, there is no possibility that HM sales of Barden-made products will be matched to a U.S. sale in place of the product purchased and resold by FAG.

Comment 23: NTN objects to the Department's preliminary decision to increase NTN's reported COM. NTN argues that the Department's analysis memorandum contains certain factual errors and misinterprets certain information in the record. Specifically, NTN contends that: (1) The Department's findings are based on information that does not pertain to the COM data subject to this review; (2) the Department relied on general information when more specific information was available; (3) the Department applied findings based on data from one factory to all of NTN's other factories; (4) the Department's conclusions regarding standard costs for subject and non-subject merchandise are not supported by record evidence; and (5) the non-subject merchandise that the Department examined at verification does not represent a significant portion of NTN's costs. For these reasons, NTN asserts that the Department should not make any adjustments to its reported COM.

NTN further argues that in the event that the Department determines to adjust NTN's reported COM, it should revise the methodology that it used in the preliminary results. NTN contends that the Department's revision artificially increases the adjustment to NTN's reported COM because the Department reallocated certain costs as a percentage of non-subject merchandise only, rather than as a percentage of all products. NTN further contends that the evidence in the record does not warrant the Department's adjusting NTN's total reported COM, because the Department's verification report and exhibits demonstrate the accuracy of certain portions of NTN's reported COM. As a result, NTN requests that the Department revise its adjustment to NTN's COM by reallocating certain costs to all products, and by adjusting only certain portions of NTN's reported COM.

Torrington responds that NTN is improperly attempting to revise the Department's verification report and to raise issues that the Department did not examine at verification. Torrington further argues that the Department's verification report identifies significant flaws in NTN's reporting methods, and concludes that these methods do not accurately capture cost differences across NTN's product lines. Finally, Torrington argues that the Department would be justified in rejecting NTN's COP and CV responses if they contained the factual errors that the Department found at verification. Given the Department's verification findings, Torrington rejects NTN's arguments and supports the Department's revisions to NTN's reported COP and CV.

Department's Position: We disagree with NTN. First, the COM information that NTN challenges does pertain to cost information which is subject to this review. NTN argues that the information used to support the adjustment to COM was from outside the POR. The information referred to by NTN supports the standard costs used during the POR and is the underlying data for certain aspects of the submitted costs. Therefore it is relevant to this review. NTN relied on pre-POR costs as the basis for revisions to its standard costs. NTN revised certain elements of its standard costs for certain product types during the POR, but not for all product types. The majority of standard costs that remained unchanged were for non-subject merchandise. Since standard cost revisions are based on pre-POR costs, we tested selected non-subject costs versus actual costs for the pre-POR period. We found that the non-subject standard costs were overstated when compared to actual costs. NTN applied a non-product-specific plant-wide variance to all products. The application of a plant-wide variance shifts costs between products. We adjusted the submitted costs for subject merchandise to account for the inaccurate standard costs of non-subject merchandise.

Second, NTN's allegation that we ignored specific information in favor of more general information is unfounded. We found at verification that NTN routinely calculates actual costs in a more specific manner than that used to calculate costs in its questionnaire responses. Because we prefer to use the most specific information possible to determine a respondent's costs, our use of NTN's own method of calculating actual costs, as examined at verification, to calculate COP and CV for these final results is appropriate and supported by substantial evidence.

Third, our limited resources prohibit verification of all the data submitted by respondents. Verification is intended to provide an examination of representative data rather than a complete review of all submitted data. Therefore, it is our longstanding practice to verify selected information and draw general conclusions regarding all respondents' data based on our verification findings. We followed this longstanding practice in conducting our COP and CV verification at one of NTN's factories. Moreover, NTN has failed to provide any evidence to suggest that the data obtained from this factory is not representative of manufacturing costs at NTN's other plants. In the absence of such evidence, we conclude that our verification findings from the selected NTN factory provide a reasonable basis for reaching conclusions regarding NTN's COP and CV data.

Fourth, NTN misrepresents our findings regarding standard rates. Our findings relate to the input factors used in the standards, not the rates applied to the input factors. Although NTN has revised some input factor amounts associated with the production of subject merchandise, we found at verification that NTN has not revised these amounts for the majority of the inputs used for the subject merchandise, while it has revised the input amounts for non-subject merchandise. As demonstrated by our verification findings, the practice of revising input amounts for only certain parts creates distortion when allocating costs. Accordingly, we have adjusted NTN's submitted data to eliminate these distortions.

Fifth, although the non-subject merchandise in question may only represent an insignificant portion of NTN's costs at the selected plant, our verification findings regarding non-subject merchandise are relevant because they reveal two flaws in the methods that NTN used to calculate COP and CV. As described above, our examination of subject and non-subject merchandise revealed that NTN had available cost information that was more accurate and specific than the information that NTN elected to submit to the Department. Our comparison of subject and non-subject merchandise also revealed that NTN's standard costs contain distortions because NTN has updated only portions of the standard input amounts. The relative significance of the costs that NTN incurred for the non-subject merchandise at issue does not obscure the significance of the distortions that we found in NTN's method of reporting costs for subject and non-subject merchandise. Based on these findings, we conclude that an adjustment to NTN's reported COP and CV is warranted for these final results.

Finally, we disagree with NTN's contention that our adjustment to COP and CV is excessive. As described above, we determined that it was appropriate to adjust NTN's reported COP and CV to correct a misallocation of costs between subject and non-subject merchandise. Further, our calculation of the adjustment reflects the methods that we used in conducting our verification and is based on data obtained from NTN during verification. Accordingly, we find no basis for revising our calculation of the adjustment to NTN's reported COP and CV for these final results.

Comment 24: NSK contends that the Department departed from well-established agency practice by revising NSK's reported net financing expense. NSK claims that the allocation methodology used to determine its reported net financing expense conforms to the methodology used to calculate NSK's net financing expense as outlined in a memorandum issued by the Office of Accounting for the final results of the 1990–1991 AFBs administrative review. NSK also cites *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review*, 56 FR 34,180, 34,184 (July 26, 1991) and *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32,095, 32,100 (June 8, 1993).

Federal-Mogul contends that NSK failed to substantiate its short-term interest income offset claim. Therefore, the Department's decision to revise NSK's net finance expense claim is reasonable and consistent with past Department practice in AFBs reviews. See *AFBs III* (at 39756–57).

Department's Position: The Department has not departed from its well-established practice of determining financing costs. NSK constructed short-term interest income by calculating a ratio based on consolidated short-term investments to total investments and applying the resultant percentage to interest income. This methodology may not reflect actual short-term interest income, because the interest rates earned on short-term investments may differ from those earned on long-term investments. Additionally, NSK did not demonstrate that the reported short-term interest income was derived from business operations. We therefore used total interest expense as a percentage of cost of sales in our calculations.

6. Discounts, Rebates and Price Adjustments

As a general matter, the Department only accepts claims for discounts, rebates, and price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Thus, discounts, rebates, or price adjustments based on allocations are not allowable as direct adjustments to price. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Thus, they have the effect of partially averaging prices. Just as we do not normally allow respondents to report average prices, we do not allow average direct additions or subtractions to price. Although we usually average FMVs on a monthly basis, we require individual prices to be reported for each sale.

Therefore, we have made direct adjustments for reported HM discounts, rebates, and price adjustments if (a) they were reported on a transaction-specific basis and were not based on allocations, or (b) they were granted as a fixed and constant percentage of sales on all transactions for which they are reported. If these adjustments were not fixed and constant but were allocated on a customer-specific or a product-specific basis, we treated them as if they were indirect selling expenses. We did not accept as direct deductions discount or rebate amounts based on allocations unless the allocations calculate the actual amounts for each individual sale, as in the case with a fixed percentage rebate program. This is consistent with the policy we established and followed in the second and third reviews. See *AFBs II* (at 28400) and *AFBs III* (at 39759). In addition, the Department does not accept a methodology which allows for the inclusion of discounts, rebates, and price adjustments paid on out-of-scope merchandise in calculating adjustments to FMV. See *Torrington I*, at 1579.

For USP adjustments, we deducted all U.S. discounts, rebates, or price adjustments if actual amounts were reported on a transaction-specific basis. If these expenses were not reported on a transaction-specific basis, we used BIA for the adjustment and treated the adjustment as a direct deduction from USP.

Comment 1: Torrington alleges that NMB/Pelmec Singapore and Thailand did not fully report HM billing adjustments. Adjustments were only reported up until June 1993 due to time constraints. Torrington states that the Department should apply a partial BIA rate, *i.e.*, the Department should not adjust FMV for the reported price "decreases."

NMB/Pelmec Singapore and Thailand argue that they reported billing adjustments up until June 1993 since the deadline for Section A of the questionnaire was August 10, 1993, and the response had to be prepared prior to that date. The respondent states that it was unlikely that any significant quantity or billing adjustments relating to sales during the POR after June 1993 occurred. In addition, even if there were such adjustments, they could have served as decreases or increases to the overall margin. In sum, NMB/Pelmec argues that their method for reporting quantity and billing adjustments was reasonable and accurate.

Department's Position: We agree with respondent. The reporting of all HM billing adjustments during the POR was not possible because the billing adjustments had not yet occurred by the deadline for filing the response. We verified NMB/Pelmec Singapore's reported billing adjustments and found them to be reported in accordance with our questionnaire instructions, and therefore have accepted the billing adjustments as reported.

Comment 2: Torrington argues that NMB/Pelmec's quantity and billing adjustments for the United States should not be accepted for purposes of the final results. Torrington states that since sales adjustments were only reported through June 1993, a partial BIA rate should be applied. In addition, at verification, the Department discovered a "special billing which did not reflect total purchases and was not offset by a billing adjustment credit memo."

NMB/Pelmec states that for the same reasons BIA is not justified with regard to the calculation of FMV, it is not justified with respect to USP. This special billing involved a relatively small amount, and there is no justification for applying the BIA rate as proposed by Torrington.

Department's Position: We verified quantity and billing adjustments in the United States. We found that quantity and billing adjustments were properly reported, with one exception. At verification, we discovered a discrepancy regarding a relatively small billing adjustment. However, because the discrepancy involved was an isolated incident, we have accepted NMB/Pelmec's quantity and billing adjustments as reported. See *NMB/*

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Pelmec ESP Verification Report, February 10, 1994.

Comment 3: Torrington asserts that NMB/Pelmec was unable to trace early payment discounts to particular sales invoices for its ESP sales, because these discounts were unknown at the time of sale (*i.e.*, NMB/Pelmec did not know which customers were going to pay early and thus receive this discount) and were credited to the customer's accounts receivable balance only at the time payment was received. Since early payment discounts should be tied to each specific invoice, Torrington argues that they should not be allowed. Torrington also believes that NMB/Pelmec may have allocated early payment discounts on out-of-scope merchandise. Therefore, the Department should apply a partial BIA rate to all U.S. sales for which an allocated discount was reported.

NMB/Pelmec claims that the record does not support Torrington's statement. The ESP verification report demonstrates that the Department officials examined the early payment discounts and determined that they were properly allocated to scope merchandise.

Department's Position: We agree with NMB/Pelmec. We verified early payment discounts and determined that NMB/Pelmec accurately reported and properly tied the discounts to particular invoices and to in-scope merchandise. See *NMB/Pelmec ESP Verification Report*, February 10, 1994. Therefore, we have adjusted ESP for early payment discounts.

Comment 4: Torrington contends that RHP stated that it sometimes paid "incentive rebates"—rebates for sales lower than the prearranged targets on HM sales. Referencing the Department's Antidumping Manual, Torrington states that to qualify for an adjustment, rebates "must be contemplated at the time of sale." Torrington argues that RHP did not demonstrate that these rebates met this standard. Torrington suggests that the Department identify these rebates and disallow any adjustment. If the Department is unable to identify these rebates, Torrington suggests that the Department should reject "all home-market incentive type rebates," because it was an error to report the "uncontemplated amounts" without distinguishing them from the "allowable amounts."

In its rebuttal brief RHP offers a clarification of its rebate program: "In the U.K. home market, RHP pays 'incentive rebates' to distributors that meet agreed sales targets. These 'incentive rebates' are calculated on an annual basis. On occasion, rebates are paid out for sales lower than prearranged targets if it is considered essential to maintain the customer relationship."

RHP notes that for the POR, all but one distributor met its sales targets in the United Kingdom. RHP states that this distributor just missed its target, and that RHP decided to pay an "incentive rebate" anyway. RHP suggests that the "radical adjustments" proposed by Torrington are inappropriate given the fact that the amount RHP paid to this one distributor is a *de minimis* amount of the total "incentive rebate" paid.

Department's Position: We agree with RHP. As required, RHP reported transaction-specific rebates. Torrington's allegation that the "incentive rebate" that RHP paid for one distributor who just missed its sales target was not "contemplated at the time of sale" is not accurate. Our general policy is to allow rebates only when the terms of sale are predetermined. This is to prevent respondents, after they realize that their sales will be subject to administrative review, from granting rebates in order to lower the dumping margins on particular sales. We are satisfied that RHP is not engaged in this practice. First, RHP establishes the terms of the rebates for each distributor that is eligible for this type of rebate before the sales are made. Second, all but one customer met their sales targets, while one customer very nearly met its sales target. Third, as RHP explains, competitive pressure drives the rebate program, which explains why RHP's rebated policy is that "[r]ebates are paid out for sales lower than the prearranged targets if it is considered essential to maintain the customer relationship." See RHP's Supplemental Questionnaire Response to Sections A–C at 10 (December 17, 1993). RHP granted this customer a rebate as part of its normal business practice, because this customer had virtually met the pre-established sales target and because of the competitive pressure of the industry. Thus, we are allowing this adjustment for the final results.

Comment 5: Torrington contends that RHP claimed adjustments to price for certain post-sale price adjustments which the Department should not have allowed as direct adjustments for the preliminary results. Torrington considers these adjustments to be rebates and notes that all rebates in the HM must be contemplated at the time of sale. Torrington contends that RHP did not demonstrate that these post-sale price adjustments were "contemplated at the time of sale," and thus should not be allowed. Torrington further states that post-sale price adjustments must be tied to in-scope merchandise as determined by the CIT. See *Torrington I*. Torrington argues that RHP did not demonstrate these rebates pertained to in-scope merchandise. Torrington concludes that the Department should disallow all downward billing adjustments because the record is not clear.

RHP responds that it reported all billing adjustments as requested by the Department. RHP reiterates its assertion that billing adjustments occur for a variety of reasons, and that billing adjustments are generally corrections of data input errors. RHP also states that they can "reflect retroactive price adjustments in response to market conditions." RHP claims that these price adjustments were compatible with its continuous negotiations with HM customers. RHP concludes that since all of the price adjustments were made in the normal course of trade, and incorporated in RHP's response on a transaction-specific basis, the Department should not question RHP's billing adjustments.

Department's Position: We agree with RHP and have allowed the claimed billing adjustments. First, RHP reported both positive and negative billing adjustments on a transaction-specific basis and on in-scope merchandise only. Second, most of these billing adjustments reflect corrections of data input errors, not post-sale discounts or rebates. Finally, the remaining billing adjustments reflect RHP's normal business practice of conducting ongoing price negotiations with its HM customers.

Comment 6: Torrington states that RHP claimed HM discounts in the OTHDISH field that were actually rebates, because these "discounts" were negotiated subsequent to shipment. Torrington notes that the Department did not make a deduction for these alleged "discounts" in the preliminary determination. Torrington further states that the Department was correct in denying this adjustment, because HM rebates must be "contemplated and quantifiable" at the time of sale, and RHP's alleged HM discounts were not.

RHP states that only zeros appear in OTHDISH field, and therefore, that no adjustment was warranted.

Department's Position: We agree with RHP that no adjustment is warranted because no values were reported in this field.

Comment 7: Torrington argues that since Koyo's HM billing adjustments are directly related to particular invoices and specific models, and Koyo failed to report these adjustments on an invoice-

and product-specific basis, and because Koyo's reporting did not permit the Department to determine whether the billing adjustments related solely to subject merchandise, the Department should deny these adjustments entirely instead of allowing them as indirect selling expenses.

Koyo responds that it reported its post-sale price adjustments as indirect selling expenses in accordance with the Department's policy as explained in the final results for the fourth administrative review.

Department's Position: We agree with Torrington and have disallowed Koyo's post-sale price adjustments because Koyo did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I*. Although we verified that Koyo's billing adjustments were reported on a customer-specific basis, Koyo provided no means of identifying and segregating price adjustments paid to those customers on out-of-scope merchandise.

Comment 8: Torrington argues that the Department should disallow several of Nachi's HM rebate claims, classified as rebates 3, 5, 6, and 7, because the Department cannot use rebates paid on out-of-scope merchandise to adjust FMV. Torrington contends that it is not clear from Nachi's responses or from the Department's verification report that these rebates were calculated only on the basis of sales of in-scope merchandise.

Nachi responds that it reported all rebates on a customer-specific basis for eligible products only. Furthermore, Nachi contends that the Department thoroughly verified all Nachi's HM rebate programs and found no discrepancies. Therefore, Nachi concludes that, as in past reviews, the Department should continue to allow Nachi's rebate claims.

Department's Position: We agree with Nachi with respect to rebates 3, 6, and 7. We thoroughly verified each of these rebate programs. Rebate 3 was granted as a fixed percentage of price and reported on a transaction-specific basis. Rebates 6 and 7 were granted as fixed percentages of price. We found no rebates reported on sales that did not incur rebates, and no rebates incurred on sales of out-of-scope merchandise allocated to sales of scope products. See *Nachi-Fujikoshi Home Market Sales Verification Report*, February 28, 1994.

We agree with Torrington with respect to Rebate 5. This rebate was reported on a monthly- and customer-specific basis (rather than a transaction-specific basis) by dividing the total amount of that customer's rebate by the total customer-specific shipments, including shipments of out-of-scope merchandise. Therefore, we have disallowed this rebate. See *Torrington I*.

Comment 9: Torrington argues that if the Department allows Nachi's rebates 3, 6, and 7 as adjustments to FMV, then the Department should at least treat these rebates as indirect expenses. In addition, Torrington asserts that the Department should treat rebate 4 as an indirect expense. Torrington states that the Department only treats rebates as direct adjustments to price if they were calculated on a transaction-specific basis or if they were granted as a fixed percentage of sales on all transactions for which they were reported. Torrington contends that rebates 3, 4, 6, and 7 do not meet the Department's standards for direct adjustments to FMV. Finally, Torrington notes that the Department treated rebates 3, 6, and 7 as indirect expenses in the previous review.

Nachi argues that the Department correctly treated rebates 3, 4, 6, and 7 as direct adjustments to price. With regard to rebate 3, Nachi points out that the Department's verification report described the rebate as "a fixed percentage of price and * * * reported on a transaction-specific basis." See *Nachi Verification Report*, at 7 (February 28, 1994). With regard to rebate 4, Nachi states that the rebate was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. Nachi claims that it had to perform this minor allocation because there was no way to determine which particular sales of a specific model were subject to the rebate. However, the rebate was not allocated across different models, different customers, or different months. Therefore, Nachi argues that, at a minimum, if rebate 4 does not qualify as direct adjustment to price, it should qualify as a direct selling expense because it was directly related to sales.

With regard to rebate 6, Nachi argues that the Department has verified that the rebate was granted as a contractually fixed percentage of sales covered by the agreement. With regard to rebate 7, Nachi also argues that it was granted as a fixed percentage of invoice price. Therefore, Nachi believes that the Department should continue to classify all four rebate programs as direct adjustments to price.

Department's Position: We agree with Nachi that rebates 3, 6, and 7 were reported, as they were granted, either on a transaction-specific basis, or as a fixed percentage of price. We verified that rebate 4 was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. The rebate was not allocated across different models, different customers, or different months. We have accepted this rebate as a direct adjustment to price because the limited allocation Nachi performed has no distortive effect on FMV because HM prices are weight-averaged by month and model.

Comment 10: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM billing adjustment number two, which is "not associated with a specific transaction." While it was proper, according to Torrington, for the Department not to treat the adjustment as direct, Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise. Torrington maintains that SKF has had ample opportunity to demonstrate the sale-specific nature of this claimed adjustment, yet has failed to do so. Alternatively, Torrington asserts that if the Department treats billing adjustment number two as an indirect selling expense, the Department should reduce the pool of the billing adjustments by a factor representing the ratio of in-scope to out-of-scope merchandise during the POR.

SKF-Germany holds that its HM billing adjustment number two should be treated as a direct adjustment to price. If the Department does not agree with this categorization, SKF-Germany argues that HM billing adjustment number two should be treated as an indirect selling expense, as the Department has done in the preliminary results of this review and in the final results of the past two administrative reviews.

SKF specifically argues that Torrington's arguments are contradictory. Having acknowledged that billing adjustment number two captures adjustments concerning multiple invoices, Torrington then complains that SKF-Germany has not reported this adjustment on a sale-specific basis. SKF-Germany, as it has held since the inception of this review, argues that it cannot report this adjustment on a sale-specific basis, and has therefore reported it on a customer-specific basis. SKF-Germany states also that the Department verified this adjustment to its satisfaction and found no discrepancies. SKF-Germany concludes that Torrington's arguments ignore *Koyo Seiko Co.* v. *United States*, 796 F. Supp. 1526 (CIT 1992) (*Koyo Seiko*), in which the CIT specifically affirmed the Department's methodology of including customer-specific

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adjustments in indirect selling expenses.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment number two claim because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* SKF provided no means of identifying and segregating billing adjustments paid on non-scope merchandise.

SKF's reliance on *Koyo Seiko* is misplaced. In that case the CIT upheld the Department's treatment of certain allocations as indirect selling expenses. The CIT in *Koyo Seiko* was not presented with and did not address the issue of the proper treatment of allocations which may include out-of-scope merchandise. The CIT in *Torrington I* did address this issue and held that the Department could not properly use a methodology which included discounts, rebates, and price adjustments "on out of scope merchandise in calculating adjustments to FMV and ultimately the dumping margins."

Comment 11: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM early-payment cash discounts because they were not reported on a transaction-specific basis. Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise.

SKF-Germany maintains that the Department should treat the HM cash discount as a direct adjustment to price. Alternatively, SKF-Germany argues that the Department, in accordance with *Koyo Seiko*, should continue to treat these cash discounts as indirect selling expenses. SKF-Germany states that, as noted in the Department's verification report, HM cash discounts were reported on a customer-specific, not sale-specific, basis.

Department's Position: We agree with Torrington and have disallowed SKF's cash discounts because SKF did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 12: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM rebate number two because this rebate is neither transaction-specific nor product-specific but customer-specific, and may thus include amounts associated with non-subject merchandise. Alternatively, Torrington argues that the Department should treat this adjustment as an indirect selling expense, rather than a direct selling expense.

SKF-Germany argues that in the preliminary results of this review the Department properly treated SKF's HM rebate number two as a direct adjustment to price, just as in each of the three prior reviews. SKF-Germany contends that no new evidence exists which would cause the Department to depart from its established practice. SKF-Germany maintains that rebate two, which guarantees a specific reseller profit, is paid on the basis of the resale performance of SKF-Germany's customers. Because rebate two, as verified by the Department, is paid as a fixed percentage of all resales by SKF-Germany's customers, SKF-Germany calculated customer-specific factors for each rebate to a customer by allocating actual rebates paid over SKF-Germany's sales to its customer.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment two because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 13: Federal-Mogul urges the Department to apply BIA to SKF-France's HM billing adjustments. Federal-Mogul notes that SKF-France considered any billing adjustments which amounted to less than five percent of the gross unit price or 1000 French francs to be insignificant and did not report such adjustments. Federal-Mogul argues that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. Federal-Mogul suggests that a proper BIA would be to increase FMV by 4.99 percent of the HM price.

SKF-France contends that based on the verified record, neither an adjustment to SKF's prices nor use of BIA is warranted. SKF-France argues that according to Departmental regulations insignificant adjustments which have an *ad valorem* effect of less than 0.33 percent may be disregarded (19 CFR 353.59(a)). SKF-France asserts that the Department verified that unreported billing adjustments are insignificant, and in fact *de minimis*, under the Department's regulations. Additionally, SKF-France notes that since all unreported billing adjustments represent credit memos to the customer, the unreported adjustments had a detrimental rather than beneficial effect on SKF-France's margin calculations. Therefore, SKF-France contends that the Department should continue to accept its billing adjustments for these final results.

Department's Position: We agree with Federal-Mogul that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. However, at verification we confirmed that the billing adjustments in question represent decreases to FMV. Therefore, we agree with SKF-France that the omission of these billing adjustments had a detrimental affect rather than beneficial effect on its margin calculations. Thus, we have accepted SKF-France's billing adjustments for these final results.

Comment 14: Torrington argues that the Department's preliminary decision to deny FAG-Germany an adjustment for 1993 HM rebates based on the fact that FAG failed to report either actual or estimated 1993 U.S. corporate rebates is insufficient. Torrington argues that FAG's failure to report 1993 corporate rebates is a fundamental deficiency which calls for the application of a "second-tier" BIA to those U.S. transactions in which FAG failed to properly report a corporate rebate. Torrington contends that the Department's preliminary response may reward FAG for its failure to report 1993 U.S. corporate rebates if the HM rebates denied do not apply to the same types of sales as those found in the U.S. market or are not of the same magnitude as the U.S. corporate rebates which went unreported. FAG-Germany granted HM rebates to only a small number of customers and generally at lower rates than the U.S. corporate rebates. Finally, Torrington asserts that when deciding what BIA approach to use for the final results, the Department should also consider the fact the FAG never clearly stated in its responses that it had not reported estimated 1993 corporate rebates.

FAG-Germany asserts that its rebates were accurately reported given the nature of the rebate programs in each market and that the use of BIA is unwarranted. The companies reported estimated 1993 rebates differently for the HM and U.S. market because clear differences exist between their HM and U.S. rebate programs. Therefore, the Department erred in denying rebate adjustments in the HM on 1993 sales in order to remain consistent with FAG-US' methodology of not reporting 1993 rebates.

Department's Position: We agree with Torrington that disallowing an adjustment for FAG-Germany's estimated 1993 HM rebates is not the most appropriate means to account for respondents' failure to report estimated

1993 U.S. rebates. Accordingly, as BIA for these final results we used the highest 1992 U.S. corporate rebate rate to calculate corporate rebates for 1993 U.S. sales to customers that received rebates in 1992. We also made adjustments to FMV for estimated 1993 HM rebates as reported by respondents.

Comment 15: FAG-Germany argues that the Department improperly treated certain HM expenses which FAG had reported on a customer-specific basis—namely third-party payments, early payment discounts and negative billing adjustments—as indirect selling expenses. FAG-Germany maintains that it calculated and reported these expenses in the same manner that it did in previous reviews and the LTFV investigation and that its allocations are reasonable and accurate. The Department has a longstanding policy of allowing a respondent to report expenses using a reasonable allocation methodology when the respondent does not maintain records enabling it to conform with preferred Departmental methodologies and the methods employed are rational. The Department's treatment of billing adjustments is particularly unjust in that only negative billing adjustments were treated as indirect selling expenses while positive billing adjustments were left as direct adjustments to price.

Torrington maintains that the Department acted properly in treating these expenses as indirect selling expenses because FAG reported them on a customer-specific basis only.

Department's Position: We disagree with FAG-Germany. FAG-Germany does not dispute the fact that these expenses were allocated and reported on a customer-specific basis. The rationale for the treatment of customer-specific allocations as indirect adjustments was set forth in *AFBs III* (at 39759), and reiterated in the statement of our policy at the beginning of this section. This rationale applies to third-party payments as well as discounts and billing adjustments.

We note that FAG-Germany originally did not describe its methodology for reporting HM billing adjustments. See *FAG section C response.* When asked about the HM billing adjustment reporting methodology in the supplemental questionnaire, FAG-Germany inaccurately responded that "[b]illing adjustments were reported on a transaction-specific basis." See *FAG section A–C supplemental response* (at 49). The fact that the majority of HM billing adjustments were not reported on a transaction-specific basis but were instead reported using customer-specific allocations was not discovered until verification. See *FAG KGS Germany verification report* (at 7). Since we cannot distinguish which billing adjustments were reported on a transaction-specific basis, we treated all negative billing adjustments as indirect expenses.

With respect to FAG-Germany's additional arguments concerning differences in the treatment of positive and negative billing adjustments, we disagree that both must be treated in the same manner. The treatment of positive billing adjustments as direct adjustments is appropriate, because treating these adjustments as indirect would provide an incentive to report positive billing adjustments on a customer-specific basis in order to minimize their effect on the margin calculations. That is, by treating positive billing adjustments, which would be upward adjustments to FMV, as indirect expenses, there may be no upward adjustment to FMV. Consequently, respondents would have no incentive to report these adjustments as requested (*i.e.*, on a transaction-specific basis)

Comment 16: FAG argues that the Department erroneously excluded 1993 rebates granted in the HM from the margin calculation and that these rebates should be included in total indirect selling expenses.

Federal-Mogul and Torrington assert that the Department was correct in disregarding FAG-Germany's HM rebates because, as FAG-Germany has itself acknowledged, FAG-Germany did not report estimated corporate rebates for 1993 U.S. sales. Torrington and Federal-Mogul assert that the Department should in fact resort to second-tier BIA margins for 1993 transactions.

Department's Position: For these final results, we have made adjustments for FAG's 1993 HM rebates. See response to *Comment 14.*

Comment 17: Torrington maintains that the NPBS case-by-case (CBC) rebate is not directly tied to a sale and, as such, should be reclassified as an indirect expense.

NPBS rebuts that the results of the last review should stand as precedent, and that the Department should continue to classify these rebates as direct expenses.

Department's Position: We agree with Torrington. Although NPBS and its customers agree on an absolute amount for the CBC rebate *before* the sale (which is the numerator in their formula), neither knows the exact amount of sales that will be made that month (the denominator) until after the fact. As such, the rebate is an allocated amount and not directly tied to a particular sale. Although this adjustment was erroneously treated as a direct deduction to FMV in the previous review, we have reclassified NPBS' CBC rebate as a HM indirect selling expense.

Comment 18: Torrington argues that INA calculated improperly several of its adjustments to HM price. According to Torrington, although INA calculated adjustment factors for certain expenses by dividing the total expense by a total sales value that was net of discounts and rebates, INA then multiplied this adjustment factor by a price that was not net of discounts and rebates to calculate per-unit expenses. Because the sales amounts used to calculate expense adjustment factors do reflect discounts and rebates, Torrington concludes that multiplying the adjustment factor by a price which does not reflect discounts and rebates overstates the per-unit adjustments to HM price. Accordingly, Torrington requests that the Department recalculate per-unit amounts for the expenses in question by multiplying the adjustment factors by a price net of all discounts and rebates.

INA responds that Torrington's argument is based on the incorrect assumption that the sales figures that INA records in its accounting system are net of all discounts, rebates, and price adjustments. According to INA, the sales amounts that it records in its accounting system are not net of cash discounts and rebates, which are recorded separately from sales in different accounts. INA states that it used the sales amounts from its accounting system to allocate the expenses at issue. Because these sales amounts are not net of cash discounts and rebates, INA concludes that its calculation of per-unit expenses using net invoice prices, which are not reduced by amounts for cash discounts and rebates, is appropriate.

Department's Position: We agree with INA. At verification, we confirmed that INA records in its accounting system sales values that are not reduced by cash discounts and rebates. Cash discounts and rebates are recorded separately in INA's accounting system. Therefore, we determine that the sales values that INA used in its allocations capture HM prices that are not reduced by discounts and rebates. Accordingly, we determine that INA properly calculated per-unit expenses by multiplying its reported allocation ratios by sales prices that are not reduced by cash discounts and rebates.

Comment 19: Torrington asserts that the Department should revise NTN-Germany's reported HM rebates. Torrington argues that the Department should recalculate NTN-Germany's rebates, based on the Department's

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finding at verification that NTN-Germany's method of calculating rebates results in rebate percentages that differed from those stipulated in NTN-Germany's rebate agreements. Torrington further argues that the Department should deny NTN-Germany's claimed rebates for 1993, because the Department found at verification that certain customers would not qualify for the reported rebates based on 1993 sales.

NTN-Germany replies that its reported rebates are reasonable, because it calculated rebate percentages based on information available in its accounting records at the time that it prepared its questionnaire response. NTN-Germany further argues that the Department was able to verify the additional data on rebates that NTN-Germany did not have at the time that it prepared its questionnaire responses. As a result, NTN-Germany argues that even if the Department does not accept NTN-Germany's reported HM rebates for these final results, the Department should revise NTN-Germany's calculations rather than reject NTN-Germany's claim in its entirety.

Department's Position: We agree with NTN-Germany. We verified that NTN-Germany's reported data on HM sales and rebates were accurate, complete and contemplated at the time of sale. Further, because NTN-Germany did not have data on calendar year 1993 sales and rebates at the time that it prepared its questionnaire response, we find that the method that it used to report its HM rebates was reasonable. Accordingly, for these final results we have used in our analysis the data that NTN-Germany reported for rebates on HM sales.

Comment 20: Torrington argues that the Department should revise its treatment of NTN-Germany's HM discounts, because NTN-Germany improperly calculated its discounts. According to Torrington, NTN-Germany's calculation of average discounts per-customer is inappropriate, given the Department's finding at verification that NTN-Germany paid discounts on an invoice-specific basis. As a result, Torrington requests that the Department deny entirely NTN-Germany's claim for HM discounts or, at a minimum, treat them as indirect selling expenses for the final results.

Department's Position: Because we verified the accuracy and completeness of the customer-specific data that NTN-Germany used to calculate its reported HM discounts and because the discounts pertain to subject merchandise only, it would be inappropriate to deny the adjustment to NTN-Germany's HM prices for discounts. In the preliminary determination we treated these discounts as indirect selling expenses. In accordance with our discount and rebate policy discussed at the beginning of this section, we have continued to treat NTN-Germany's HM discounts as indirect selling expenses for the final results of these reviews.

Comment 21: NTN asserts that the Department erred in classifying NTN's HM discounts as indirect selling expenses. According to NTN, it did not report its discounts by aggregating discounts granted on specific sales and then allocating them over all sales to a particular customer. Rather, NTN states that it reported its discounts on both a product- and customer-specific basis. As a result, NTN requests that the Department treat its reported discounts as direct adjustments to price for the final results of this review.

Torrington and Federal-Mogul reply that NTN's method of reporting HM discounts does not satisfy the Department's criteria for considering discounts to be direct adjustments to price. Torrington states that the Department's verification report indicates that NTN allocates discounts to AFBs and non-subject merchandise. Similarly, Federal-Mogul asserts that NTN did not report discounts on a transaction-specific basis, and provided no evidence that it granted discounts as a fixed percentage of all HM sales. As a result, Federal-Mogul claims that NTN may have overstated its reported HM discounts for certain sales. Because NTN's method of reporting home market discounts was not sufficiently specific, Torrington and Federal-Mogul conclude that the Department properly treated NTN's HM discounts as indirect selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. According to the policy stated above and in previous reviews in these cases, we will treat discounts as direct adjustments to price only if they are reported on a sale-specific basis or if they are granted as a fixed and constant percentage of all sales. Because NTN's reported HM discounts are reported on a product- and customer-specific basis, and pertain only to scope merchandise, we have treated them as indirect selling expenses for the final results of these reviews.

Comment 22: NTN argues that the Department made a clerical error in failing to consider billing adjustments when calculating per-unit U.S. and HM selling expenses. According to NTN, the sales amounts over which the Department allocated certain U.S. and HM selling expenses were net of billing adjustments. Accordingly, NTN requests that the Department calculate per-unit U.S. or HM selling expenses by deducting billing adjustments from the sales prices that it uses to calculate per-unit expenses.

Torrington responds that the record does not specifically demonstrate that the U.S. and HM sales amounts used in the Department's allocations are net of billing adjustments. Therefore, Torrington requests that the Department modify its calculations as requested by NTN only if the Department is able to determine that the sales amounts at issue are net of billing adjustments.

Department's Position: We agree with Torrington. There is no evidence in the record of this review that describes the manner in which NTN recorded billing adjustments in its accounting system. In the absence of such information, we cannot confirm that the sales values that NTN used to allocate its expenses were net of billing adjustments. As a result, we have not deducted billing adjustments from the sales prices that we used to calculate per-unit expenses for these final results.

Comment 23: Torrington argues that NTN-Japan failed to report all HM billing adjustments on a transaction-specific basis. Citing *Torrington I* at 1579, Torrington contends that adjustments to FMV must be tied to sales of subject merchandise, rather than merely allocated over all sales. Because NTN-Japan used an aggregate method of reporting some billing adjustments, Torrington concludes that the Department should deny NTN's claims for HM billing adjustments or should, at a minimum, treat billing adjustments as indirect selling expenses.

NTN responds that it complied, to the extent possible, with the Department's instructions for reporting billing adjustments, and that there is no evidence that any deviations from this reporting method had any impact on the Department's calculation of NTN's dumping margins. NTN further argues that it did not report any billing adjustments made for sales of non-subject merchandise. Therefore, NTN concludes that the Department should continue to treat NTN's reported billing adjustments as direct adjustments to price for these final results.

Department's Position: We agree with NTN. During our verification of NTN's HM sales, we found no discrepancies in NTN's reporting of billing adjustments to home market sales. Thus, we have no reason to believe or suspect that NTN failed to report accurately or completely its HM billing adjustments, or that NTN's method of reporting may have included billing adjustments made on sales of non-subject merchandise. Accordingly, we have treated NTN's reported HM billing adjustments as direct adjustments to price for these final results.

Comment 24: NSK claims that certain rebate, discount and commission programs should be treated as direct expenses and not as indirect expenses because they either meet the Department's definition of a direct expense of the sales in question (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, 39759 (July 26, 1993)) or they meet the "reasonable relationship" requirement for a deduction in price in calculating FMV (see *Smith-Corona Group, SCM Corporation* v. *United States*, 713F.2d 1568 (Fed. Cir. 1983)). These adjustments should be accepted as direct adjustments to price for the following reasons: (1) Post-sale price adjustments (PSPAs), reported as REBATEH3, are reported on a part-number and customer-specific basis; (2) lump sum post-sale adjustments (REBATEH4) are reported on a customer-specific basis and adjustment rates have been demonstrated to be the same for scope and non-scope merchandise; (3) early payment discounts (OTHDISE) are reported on a distributor-specific basis, and each customer that receives the discount typically pays within the same number of days each month. Therefore, the discount is equally applicable to both scope and non-scope products throughout the POR. (4) Stock transfer commissions (COMMH2) are reported on a distributor-specific basis and the commission rate is a fixed percentage for all products and all customers.

Torrington contends that: (1) PSPAs reported as REBATEH3 are not reported on a transaction-specific basis and therefore do not qualify as a direct adjustment to price (see *Antifriction Bearings*, 58 Fed. Reg. at 39,759), and that because of certain reporting errors by NSK, the Department should not make any adjustment for REBATEH3; (2) although NSK claims that customers receiving lump-sum PSPA rebates, reported as REBATEH4, purchase virtually the same proportion of scope merchandise to total purchases, NSK has not provided any evidence that lump sum rebates are related to in-scope products. Therefore, the Department should make no adjustment for REBATEH4; (3) the Department has neither the assurance that the amounts claimed for OTHDISH are related to sales of in-scope merchandise or specific invoices that were paid early, nor the basis that the transactions uniformly involved sales of in-scope merchandise; (4) because NSK allocated stock transfer commissions (COMMH2) over all sales, the Department has no assurance that the commissions paid with respect to non-scope merchandise are not allocated to subject sales; therefore, this adjustment should not be treated as a direct expense. Federal-Mogul argues further that the Department should treat NSK's reported return rebates (REBATEH1) and distributor incentive rebates (REBATEH2) not as direct adjustments to FMV, but rather, as indirect selling expenses because they were not reported on a transaction-specific basis.

Department's Position: We agree with Torrington with respect to REBATEH4, COMMH2, and OTHDISH and have disallowed these adjustments because we do not accept adjustments to FMV which include discounts, rebates, or commissions paid on out-of-scope merchandise. See *Torrington I*. See also *Comment 10*. Although NSK supplied information in its December 16, 1993, Supplemental Response, at 7–8, demonstrating that early payment discounts (OTHDISH) granted for four distributors had remained relatively stable during the POR, NSK did not demonstrate that early payment discount percentages were stable for all customers for which an early payment discount was reported. Similarly, with respect to lump-sum rebates (REBATEH4), NSK submitted information in its December 16, 1993, Supplemental Response, at 14–16, indicating that the percentage of scope merchandise sales to total sales for five customers remained stable during the POR and, therefore, lump-sum rebates have been reasonably allocated to scope merchandise. However, an analysis of five customers' sales does not sufficiently demonstrate that all customers for which lump sum rebates were reported had stable purchasing histories with respect to scope and non-scope merchandise.

With respect to Torrington's claim that PSPAs, reported as REBATEH3, should be rejected because of reporting errors, we determined at verification that the value of unreported PSPAs which were unfavorable to NSK (a reduction of FMV) was more than 50 percent greater than unreported price increases. Furthermore, the value of the unreported price increases was an insignificant percentage of total bearings sold in the HM during the POR. Because this error in computer logic used to compile PSPA data affected an insignificant portion of total HM sales, we have accepted NSK's REBATEH3. REBATEH3 has been treated as an indirect selling expense because it was not reported on a transaction-specific basis.

We agree with Federal-Mogul's claim that REBATEH1 and REBATEH2 should not be considered as direct adjustments to HM price. Because REBATEH2 was reported as a customer-specific allocation of all distributor incentive rebates paid on all sales, NSK has not demonstrated that the reported REBATEH2 does not include rebates paid on non-scope merchandise. Therefore, we have disallowed this adjustment. REBATE1H was reported on a product- and customer-specific basis, not on a transaction-specific basis. Therefore, we have treated this rebate as an indirect adjustment to HM price.

Comment 25: Petitioner claims that NSK's method for estimating after-sale rebates for 1993 U.S. sales fails to account for the fact that customers purchase a greater volume of merchandise during the final months of a program year to qualify for a sales-volume rebate. Petitioner contends that NSK should have compared data for the eight months of 1992 to the data for the same eight months of 1993, or alternatively, could have reported full-year 1993 actual rebates. With this in mind, Torrington holds that the Department should assume that all eligible customers qualified for 1993 rebates and should make adjustments to all U.S. sales.

NSK contends it properly reported U.S. rebates. Torrington cites no support for its statement that "customers often purchase a greater volume of merchandise during the final months of a program year in order to obtain a sales volume rebate." NSK claims there is not support on the record for this statement. Additionally, NSK notes the Department has a regulation prohibiting the voluntary submission of new information following verification. See 19 CFR 353.31(ii). NSK Corp., was verified on December 7 through December 9, 1993, and could not submit new information following the preliminary determination.

Department's Position: We agree with NSK. Torrington has provided no evidence on the record that supports its claim that customers purchase a greater volume of merchandise during the final months of a program year. We have accepted NSK's estimation methodology for 1993 rebates as reasonable and accurate.

7. Families, Model Match and Differences in Merchandise

Comment 1: Federal-Mogul states that, after finding that the most similar HM model was sold below cost in more

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than 90 percent of the HM sales of that model, and over an extended period of time, the Department may not resort to CV without first determining whether there are other similar models to serve as a price-based comparison. This position results from the fact that the statute expresses a preference for price-based comparisons over CV.

Department's Position: We disagree with Federal-Mogul. Although section 773(a) of the Tariff Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales of a particular model or family are inadequate as the basis of FMV. Contrary to Federal-Mogul's assertions, therefore, the statute does not require the exhaustion of all possible family matches (similar merchandise) before resorting to CV. See *AFBs III* (at 39765).

8. Further Manufacturing and Roller Chain

Comment 1: Torrington contends that the Department should reconsider and discontinue the practice, known as the "Roller Chain" rule, whereby antidumping duties are not assessed on U.S. imports of subject merchandise used by a related party as a minor component (less than one percent) in a further manufactured article which is then sold to an unrelated party. See *Roller Chain, Other Than Bicycle, from Japan*, 48 FR 51801 (November 14, 1983). Torrington argues that whether or not a significant percentage of the finished product is accounted for by the subject import, a USP can reasonably be determined from the transfer price or by other means (*e.g.*, the ESP on sales to other customers, or the lowest export price to any U.S. customer). Additionally, Torrington contends that Congress did not intend to limit the antidumping law to imports accounting for a "significant percentage" of the value of the completed product.

Torrington argues that the Department has broad authority, under the antidumping statute, to ensure that imports of bearings incorporated into further processed articles in the United States do not escape the imposition of antidumping duties. According to Torrington, the "Roller Chain" rule has created a substantial vehicle for circumvention of the antidumping duty order and should be abandoned.

Torrington argues that, assuming the Department continues to apply the "Roller Chain" test, it should change the methodology used for applying the one-percent test to avoid illogical and improper comparisons between the entered value of the bearings and related party transfer prices. Torrington contends that, instead, the value of imported bearings should be based upon the ESP or PP of such or similar bearings sold at arm's length. This value would then be compared to the resale price of the finished merchandise, which is not subject to manipulation by related parties. Where the importer does not resell bearings, or resells only a small quantity, the U.S. prices for the model in question should be based on sales by another manufacturer or the manufacturer who produced the model in question.

Koyo argues that the Department should reject Torrington's arguments. Koyo contends that Congress recognized that there would be situations in which the value added in the United States would be so great that it would be inappropriate to apply the further-processing provision of the antidumping law (19 USC 1677a(e)(3)). This exception is clearly authorized by the legislative history of the antidumping statute, and there is no evidence on the record to demonstrate that the Department's application of the "Roller Chain" rule in this review is improper.

Koyo also disagrees with Torrington's argument that the Department should not use the entered value of the subject merchandise in applying the "Roller Chain" test. The entered value (rather than the resale value of the bearings in the United States, as suggested by Torrington) provides the correct basis for the one-percent test because the purpose of that test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States.

FAG argues that, contrary to Torrington's opinion, imports of subject merchandise do not escape the antidumping duty order. Full antidumping duties are deposited on the full value of the entered (subject) merchandise. This differs significantly from exempting a respondent from reporting sales of such merchandise. FAG contends that the only time a respondent might not pay antidumping duties on imported merchandise further processed in the United States occurs when certain operations are undertaken in an FTZ, which does not apply to FAG.

NSK argues that the Department cannot arbitrarily adopt a numerical standard for evaluating whether an imported component in a further manufactured product is significant. NSK claims the Department must analyze all relevant factors before determining whether an imported part is significant for purposes of 19 USC 1677a(e)(3). NSK states that if the Department wishes to use a rigid quantitative test to determine whether the imported content is significant, then it must publish, for public comment, a proposed rule to that effect. Until such a rule is properly adopted, the Department must analyze, prior to performing a section 772 analysis, all relevant factors to determine whether the imported amount contained in non-scope and in-scope finished products is significant. NSK further argues that where the finished product is merchandise of the type covered by the order, the Department should use the weighted-average margin for the imported finished product as the margin for insignificant imported parts.

NMB/Pelmec argues that Torrington is missing the point of the Department's one-percent test and its use of the entered value and the resale price. NMB argues that the Department established the one-percent test as a "bright-line" standard for determining whether the further-manufactured product contains more than an "insignificant amount" of the imported in-scope merchandise. NMB contends that using a different value, other than entered value, would not increase the accuracy of the one-percent test. NMB further asserts that if the Department should change the threshold, it should increase it from one percent to a more realistic level.

Department's Position: Section 772 (e)(3) of the Tariff Act requires that, where subject merchandise is imported by a related party and further processed before being sold to an unrelated party in the United States, we reduce ESP by any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation but before its sale to an unrelated party. In ESP transactions, therefore, we typically back out any U.S. value added to arrive at a USP for the subject merchandise. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea*, 54 FR 53141, 53143 (December 27, 1989).

The legislative history of this provision suggests that the practice of subtracting the value added by the further processing operations in the United States should be employed only where the manufactured or assembled product contains more than an insignificant amount by quantity or value of the imported product. See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7310. Conversely, when the quantity or value of the imported product is insignificant in comparison to that of the finished product, we are not required to calculate a USP for the imported merchandise. Therefore, we conclude that Congress did not intend that a USP be calculated in these situations and hence that no dumping duties are due. See H. Rep. No. 571, 93d Cong. 1st. Sess. 70 (1973).

Based on section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) and the applicable legislative history, we developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise imported by a related party and further processed where the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States. See *AFBs III* (at 39732, 39737). See *Roller Chain I* at 51804. In situations such as this one, in which the statute provides general guidance and leaves the application of a particular methodology to the administering authority, we are given significant discretion in determining the precise methodology to be applied in each case. Inasmuch as our statutory interpretation is not an unalterable rule, it does not constitute rule-making without compliance with the Administrative Procedure Act. See *Zenith Elec. Corp.* v. *United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993). The application of a one-percent threshold, based on a comparison of entered value of the imported product to the sale price of the finished product, constitutes such a use of the Department's discretion.

We disagree with Torrington's assertion that the "Roller Chain" rule has created a vehicle for circumvention of the antidumping duty order. The antidumping statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold in the United States, then there is no dumping to offset and, therefore, antidumping duties are not appropriate. Furthermore, the "Roller Chain" principle acts only to exclude subject merchandise from assessment of antidumping duties during the POR. We continue to require cash deposits of estimated antidumping duties for all future entries, including entries of bearings potentially excludable from assessment under the "Roller Chain" principle. This is because we have no way of knowing at the time of entry whether the "Roller Chain" principle will operate to exclude any particular entry from assessment of antidumping duties. Any decision to exclude subject merchandise from assessment of antidumping duties based on a "Roller Chain" analysis is made on a case-by-case basis during administrative reviews. See *AFBs I* (at 31703).

In order to apply the "Roller Chain" principle, we must examine ESP transactions involving subject merchandise during the POR to determine whether the amount of the subject merchandise is an insignificant part of the amount of the finished product sold to the first unrelated customer in the United States. We agree with Koyo that the entered value, rather than the resale value of the bearings as suggested by Torrington, provides a more appropriate basis for the one-percent test. Although resale prices of identical models sold to unrelated parties could be used in some instances in the numerator in place of entered value, such prices are not always available for each model, nor for all companies. In those instances where no resale price is available, we would have to rely on entered values anyway.

Moreover, we formulated the one-percent "Roller Chain" threshold based on the ratio of the entered value to the resale price of the further-manufactured item. If we had chosen to use the resale price in calculating this ratio, we might have chose a ratio higher than one-percent. This is because the resale price will normally be higher than the entered value, as it would include the mark-up of the related importer. Regarding Torrington's claim that the transfer price can be manipulated, we note that the U.S. Customs Service must ensure that such price represents a reasonable commercial value. Thus, we conclude that our use of entered value in the "Roller Chain" ratio is reasonable.

Comment 2: Torrington argues that NMB/Pelmec-Singapore and NMB/Pelmec-Thailand's (NMB/Pelmec) "Roller Chain" sales databases are inaccurate. Torrington states that the U.S. sales verification report indicates that "the invoice does not always show the correct country of origin." See *NMB/Pelmec ESP verification report*, February 10, 1994. Furthermore, Torrington alleges that the Department discovered at verification that a bearing manufactured in Singapore was incorrectly reported in the Thai response. Torrington argues that during the POR, NMB/Pelmec had only one "Roller Chain" sale of the subject merchandise. Therefore, the evidence on record, as indicated by the transaction randomly selected at verification, reveals that NMB/Pelmec's "Roller Chain" database is inaccurate.

The NMB/Pelmec refutes Torrington's argument by stating that it provided the Department with all the information necessary to perform the appropriate dumping comparison for further-manufactured sales. In addition, the Department did not "discover that a bearing manufactured in Singapore was incorrectly reported in the Thai response."

Department's Position: We agree with respondent. Although the invoice did not always show the correct country of origin, the shipping document did. We verified country of origin during the ESP verification and found it to be correctly reported. In addition, contrary to Torrington's allegations, we did *not* discover that a bearing manufactured in Singapore was incorrectly reported in the Thailand response. See *NMB/Pelmec ESP verification report*, February 10, 1994.

Comment 3: Torrington argues that by manipulating transfer prices, NMB/Pelmec could create exclusions from the antidumping duty order based on the "Roller Chain" analysis. Torrington contends that it is inappropriate to use entered value as the basis for valuation of subject merchandise. Instead, the value should be derived from the ESP, less any value added. 19 USC 1677a(e)(3). Torrington states that the Department should use the average ESP by part number for purposes of the one-percent "Roller Chain" test.

NMB/Pelmec argues that using a value other than the entered value would not make the one-percent "Roller Chain" test any more accurate.

Department's Position: We disagree with Torrington. The use of entered value is appropriate because it is the best indication of the imported value of subject merchandise included in the finished product, and the purpose of the "Roller Chain" test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States. See *comment 1*. In addition, Torrington's concerns about manipulation of transfer prices are unfounded. The U.S. Customs Service will not accept transfer prices as entered value if these prices do not reflect the commercial value of the merchandise.

Comment 4: Torrington argues that the Department should reject Koyo's request for exclusion under *Roller Chain I* since the company reported estimated resale prices of finished and further processed products without providing supporting documentation. Torrington further contends that Koyo used weighted-average entered values for its "Roller Chain" calculations without

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demonstrating that the use of weighted-average values is reasonable. Also Koyo did not indicate that only in-scope merchandise was included in its calculations.

In rebuttal, Koyo contends that it provided in its submission of November 23, 1993, a detailed explanation of its methodology for determining whether the weighted-average entered values of Koyo's in-scope products that were incorporated into non-scope products by its affiliates exceeded one percent of the sales value of the non-scope merchandise.

Department's Position: We agree with respondent. Koyo provided sufficient information in its letter of November 23, 1993, to demonstrate the applicability of the "Roller Chain" rule to certain identified sales. Notably, Koyo submitted examples of all calculations necessary to determine the one-percent threshold. Furthermore, there is no evidence on the record to indicate that the estimated resale prices submitted by Koyo are unreliable. In addition, while the best evidence of the value of the finished product sold to an unrelated party is the actual price, an estimated price is suitable if verified, as was done in this instance. See *AFBs III* (at 39766).

Comment 5: Torrington claims that Koyo reported only those imported in-scope products that were further-processed into merchandise within the scope of the order and that Koyo did not report any sales of products further processed into non-scope merchandise. Torrington contends that the Department should continue to apply a partial BIA rate for any model that exceeds the one-percent "Roller Chain" rule, as well as apply the highest margin calculated for Koyo in the LTFV or prior reviews for any sale that has not been reported.

Department's Position: We disagree. There is no evidence on the record to suggest that Koyo has failed to report any sales of in-scope merchandise further-processed into non-scope merchandise.

Comment 6: Torrington objects to the fact that the Department has excluded the vast majority of Honda's imports based on the "Roller Chain" rule. Torrington states that, in Honda's case, the dumping law is not ensuring that Japanese-origin AFBs used in U.S. automobile production are sold at fair value. Instead, Torrington contends that the order is merely guaranteeing that Honda's "aftermarket" spare parts sales in Japan and the United States are made at comparable prices since spare parts are the only non-"Roller Chain" sales made by Honda. As a result, Torrington claims that the Department is not effectively administering the antidumping duty order with respect to Honda.

Honda states that Torrington has not offered any specific data to support its contention and that Torrington's arguments have been previously rejected by the Department. Honda argues that an antidumping duty order is clearly not meant to apply to parts imported by a company for use in its own manufacturing operations unless the imported parts constitute a significant amount of the value of the products manufactured in the United States.

Department's Position: We agree with Honda. The majority of Honda's imports constituted less than one percent of the value of the finished product sold to the first unrelated customer in the United States. The "Roller Chain" standard is clearly established (see *Comment 1* of this section) and, by this standard, the majority of Honda's imports will not be assessed antidumping duties for entries during the POR. Furthermore, Torrington has provided no specific evidence demonstrating that circumvention is occurring.

Comment 7: NMB/Pelmec-Thailand states that the Department should not use BIA for its further-manufactured sales. NMB/Pelmec sold a small number of bearings to a related company, which were further manufactured. The companies reported CV data for the bearings that were further manufactured and, therefore, the Department should not use BIA.

Torrington argues that respondents did not submit complete and accurate information, and, as such, it is irrelevant whether or not CV was provided for the further-manufactured models. In light of the evidence on record, the Department should not accept the contentions of NMB/Pelmec for purposes of the final results.

Department's Position: We agree with respondent. For our preliminary results, we incorrectly assigned a BIA margin to two further-manufactured sales due to a program error. For the final results, we corrected the margin program. Since NMB/Pelmec properly reported CV data for the bearings that were further manufactured, we did not use BIA for these transactions.

Comment 8: NPBS requests that the Department correct the omission of variable COPFM (home market cost of production) used in allocating profit to further-manufactured bearing units by modifying several lines of the computer program. NPBS states that, due to differing product codes, the margin program failed to recognize this variable in the further-manufactured data file.

Torrington argues that, although NPBS' suggested correction seems reasonable, they have failed to demonstrate that the data are comparable. Instead, Torrington offers an example demonstrating that the CV and COP data are not comparable.

Department's Position: We agree with Torrington. Although Torrington cites an example allegedly showing that the CV data and COP data are not comparable, Torrington fails to realize that the example is based on data from the wrong files and is cited from the wrong submission (October 19, 1993, versus corrected data from December 30, 1993). Notwithstanding these facts, Torrington is correct in asserting that the data are not compatible without modification. See NPBS Final Analysis memo, June 2, 1994.

These modifications, made for the final results, are necessary to account for a difference in interest expenses and the exclusion of packing expenses. The difference in interest expenses can be corrected by multiplying it by a certain ratio. The exclusion of packing expenses cannot be corrected but, since it results in a lower COPFM, it increases the dumping margin. This is to the detriment of NPBS. Therefore, we are satisfied that modifying the CV data in the aforementioned manner will result in an acceptable surrogate for COPFM.

Comment 9: Torrington explains that NSK used a FIFO system to link imported bearing parts to finished bearings. Thus, imported parts could be matched to a finished bearing that was sold even before the parts were imported. This created a situation whereby imported parts were assigned resale prices and an ESP was calculated regardless of whether those parts were actually consumed during the POR.

Torrington notes that the only solution to this problem is to trace parts directly to finished bearings or to take account of the entire inventory of parts from all sources, applying the FIFO method to parts inventory until all of the parts are used up. The prices for finished bearings should be based upon the BIA, which is the lowest USP for each relevant part number.

NSK states it formulated its methodology for reporting Section E data in conjunction with the Department's Office of Accounting. This methodology was fully disclosed in the second, third, and present reviews. NSK notes that the Department has accepted as reasonable and proper NSK's assumptions and methodology in the second and third reviews. See *AFBs III*, 58 FR 39766.

Department's Position: We have concluded that NSK's FIFO methodology used for reporting Section E data is in accordance with the U.S. GAAP, and thus, an appropriate method of valuation. This methodology was reviewed during the further-manufacturing verification of NSK's Section E response and was found to be acceptable.

Comment 10: NSK contends that the Department should have based the dumping margin for imported parts "further manufactured" in the United States on the margin for imported finished bearings of the same class or kind. NSK states the imported content contained in the bearings sold in the United States does not justify requiring NSK to respond to Section E of the Department's questionnaire, nor does it support the Department's calculating margins for these imported parts.

NSK asserts that the Department's use of an arbitrary one-percent threshold for analyzing further manufactured products is unlawful rulemaking. The Department may only reduce ESP by the value of further-manufacturing performed in the United States if "the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of the imported product." See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7310. In most cases, the imported content is a very small percentage of the total manufacturing cost, and thus NSK believes the imported portion of its U.S.-produced bearing is insignificant.

NSK maintains the Department has not provided guidance as to the standards that it follows when determining whether the imported content is significant in the context of further manufactured in-scope products. NSK claims that since the Department has not lawfully promulgated a rule codifying the "Roller Chain" principle, it must examine each factual situation on a case-by-case basis. NSK further argues that in this review the Department has not addressed any qualitative or quantitative factors to support its decision to compute margins on NSK's further-manufactured product.

NSK states that the Department should not perform a further-manufactured analysis of imported parts that are not subject to a process of further-manufacturing in the United States. Section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) only authorizes a further manufacturing analysis where "a process of manufacture or assembly is performed on the imported merchandise" in the United States. Many of the parts imported by NSK are merely "applied" or "attached" to finished parts and are not subject to a process of further manufacturing in the United States. Therefore, NSK contends that the Department should use the weighted-average margin for complete imported bearings to determine the margin for these parts.

Torrington responds that the Administrative Procedure Act permits agencies to promulgate "interpretative roles" without formal rulemaking, citing 5 USC 553(b). Because the "Roller Chain" test is clearly an interpretative rule, there is no prohibition against applying the one-percent test on a case-by-case basis in this proceeding.

Department's Position: We disagree with NSK that the Department should not calculate dumping margins for merchandise further manufactured in the United States by NSK. As explained in previous reviews (see *AFBs II* at 28360 and *AFBs III* at 39737), the Department disregards antidumping duties on those parts and bearings that comprise less than one percent of the value of the finished product sold to the first unrelated customer in the United States. However, NSK's data indicate that the subject merchandise sold to its related party in the United States comprises more than one percent of the value of the finished good produced by the related party. Because this imported merchandise is subject to antidumping duties, the Department cannot disregard sales of this merchandise in its analysis or the adjustments to USP provided for in section 772(e)(3) of the Tariff Act. Thus, we reject NSK's claim that NSK's imported parts and bearings should not be subject to further-manufacturing analysis, or any analysis at all. We also disagree with NSK's argument that the one-percent threshold is arbitrary and that it represents unlawful rule-making. See *Comment 1*.

We further disagree with NSK's argument that the imported parts are not subject to a process of assembly or manufacture. Because the addition of a part to an otherwise unfinished bearing constitutes a process of assembly, we have adjusted ESP sales prices by the amount of value added, in accordance with section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)).

Comment 11: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France*, 58 FR 68865 (December 29, 1993). Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

Comment 12: Torrington notes that changes to FAG-Germany's packing labor and material expense factors outlined in the analysis memo were not included in the margin program used to calculate the preliminary results. In addition, Torrington contends that the exchange rate factor was applied twice to the adjustment for marine insurance.

FAG-Germany contends that the preliminary computer program does contain the appropriate adjustment factors for FAG's U.S. packing labor and material expenses. Additionally, FAG-Germany notes that the double application of the exchange rate to the adjustment for marine insurance was necessary to correct a conversion error committed by FAG in its computer response.

Department's Position: We agree with FAG-Germany. We included in the margin program the necessary corrections to FAG-Germany's packing expenses. In addition, we intentionally applied the exchange rate to the marine insurance adjustment twice to compensate for an exchange rate error committed in FAG-Germany's submitted data.

9. Level of Trade

Comment 1: NTN and NTN-Germany argue that the Department incorrectly reallocated their reported U.S. selling expenses to all U.S. sales without regard to level of trade. NTN further argues that the Department's reallocation of HM selling expenses without regard to level of trade was erroneous. According to NTN and NTN-Germany, certain expenses that are incurred only for sales to specific customer categories are not applicable to all sales. As a result, NTN and NTN-Germany contend that the Department's reallocation of these expenses across all levels of trade improperly allocates certain expenses to sales for which NTN and NTN-Germany did not incur such expenses. Therefore, NTN and NTN-Germany request that the

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Department abandon its reallocation and use instead, in its final analysis, the expenses as reported by NTN and NTN-Germany in their questionnaire responses.

In rebuttal, Torrington and Federal-Mogul respond that NTN and NTN-Germany failed to provide any evidence to justify their method of allocating expenses according to levels of trade. According to Torrington, NTN and NTN-Germany should have justified their method because it differs from the Department's customary practice and appears to shift expenses away from sales at certain levels of trade. This reallocation of U.S. expenses also conflicts with NTN's failure to allocate its HM expenses according to levels of trade. Federal-Mogul argues that the U.S. expenses that NTN allocated were indirect selling expenses that apply equally to all sales. Federal-Mogul further argues that the Department's verification report indicates that NTN's identification of certain HM indirect selling expenses with sales to certain levels of trade may be inaccurate. Accordingly, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses, and NTN's HM selling expenses, without regard to level of trade.

Department's Position: We agree with Torrington and Federal-Mogul. The methods that NTN and NTN-Germany used to allocate the expenses in question bear no relationship to the manner in which they incur them. Such expenses are fixed period costs that do not vary according to sales value or the number of employees who allegedly sell each type of merchandise. Further, we find NTN's and NTN-Germany's allocations according to levels of trade to be misplaced because the types of expenses that they allocated are indirect selling expenses that typically relate to all sales. In this context, NTN and NTN-Germany failed to demonstrate that they incur any specific types of expenses that are unique to a particular level of trade. Further, as stated in the verification report, certain Japanese indirect selling expenses that NTN claimed apply to sales to a specific level of trade apply to other sales as well. Because we have no evidence that NTN and NTN-Germany incur different selling expenses for different levels of trade, we have not revised our reallocations of their selling expenses for these final results.

Comment 2: NTN argues that the Department should compare U.S. and HM sales at the same level of trade. According to NTN, comparing sales at different levels of trade distorts the calculation of dumping margins because prices differ significantly for each level of trade. NTN further argues that if the Department decides to compare sales across levels of trade for the final results, then the Department should alleviate the distortions caused by such comparisons by making a level-of-trade adjustment based on differences in prices or, alternatively, differences in indirect selling expenses for each level of trade, as set forth by NTN in its questionnaire responses.

In rebuttal, Torrington and Federal-Mogul assert that the CIT has upheld in numerous instances the Department's selection of the most similar merchandise without regard to levels of trade. Torrington and Federal-Mogul further argue that NTN has no basis for its claim for a level-of-trade adjustment. Federal-Mogul contends that NTN has not demonstrated that it is entitled to a level-of-trade adjustment because it has failed to establish that price differentials are due to differences in levels of trade. Federal-Mogul further contends that NTN's methods of quantifying level-of-trade adjustments are inappropriate because NTN cannot determine the amount of price differentials or selling expenses attributable to differences in levels of trade. Torrington adds that the manner in which NTN reported its HM indirect selling expenses nullifies the effect of any level-of-trade adjustment. As a result, Torrington and Federal-Mogul conclude that the Department's comparison of sales across levels of trade and denial of NTN's request for a level-of-trade adjustment are reasonable.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in *AFBs III* (at 39767), we are required by 19 CFR 353.58 to compare merchandise at different levels of trade if sales at the same commercial level of trade do not permit an adequate comparison. Accordingly, when we were unable to compare NTN's U.S. sales to HM sales at the same level of trade, we attempted to find matches at the next most similar level of trade.

We also reject NTN's request for a level-of-trade adjustment. In order for the Department to make a level-of-trade adjustment, respondents must quantify any price differences that are attributable to differences in levels of trade. NTN has failed to demonstrate what portion, if any, of those price differences is attributable to differences in levels of trade. Further, we reject NTN's claim that we should use differences in indirect selling expenses to make a level-of-trade adjustment. NTN allocated a common pool of expenses to all sales, irrespective of levels of trade, using relative sales values. This demonstrates that such expenses were not unique to, nor disproportionally attributable to, any level of trade. Because NTN failed to adequately quantify its claim for a level-of-trade adjustment, we have not made any such adjustment for these final results.

Comment 3: Torrington objects to NTN's claim that "aftermarket" customers constitute a distinct level of trade. First, Torrington argues that NTN's selling expenses do not vary across levels of trade. Torrington further argues that the results of the Department's comparison of weighted-average prices at different levels of trade is insufficient to conclude that NTN makes sales to customers at three distinct levels of trade, and that NTN has failed to provide any evidence demonstrating a correlation between prices and selling expenses. Finally, Torrington argues that because of the limited number of U.S. aftermarket sales, the majority of NTN's HM aftermarket sales are not matched to U.S. sales. As a result, Torrington concludes that the Department should reject NTN's classification of certain sales as aftermarket sales, and should reclassify these sales as either OEM or distributor sales for the final results.

NTN responds that the Department examines the function of the class of customer in reaching conclusions regarding a respondent's identification of levels of trade. According to NTN, Torrington provided no evidence regarding customer function or other factors that would preclude the Department from accepting NTN's classification of certain customers as aftermarket customers. NTN further argues that the number of sales made to customers at a particular level of trade is irrelevant in identifying levels of trade because the Department's regulations mandate comparisons of sales made at the same level of trade.

Department's Position: We agree with NTN. As we stated in the final results of the previous administrative review of this case, we initially base our level-of-trade classifications on the function of the class of customer reported by respondents. See *AFBs III* (at 39767). These classifications may be rebutted by such other factors as differences in prices that discredit a respondent's classifications. NTN submitted information in its questionnaire responses for this review that explained the differences in the function of its OEM, distributor and aftermarket customers. Torrington offered no evidence that NTN's aftermarket customers did not perform functions distinct from those of NTN's other classes of customers, or that NTN's prices to aftermarket customers did not differ from NTN's prices to other classes of customers. Further, because we examine customer function and other factors in determining levels of trade, we agree with NTN that the number of sales to customers at a given level of trade is irrelevant to rendering determinations regarding the existence of distinct levels of trade. Therefore, we conclude that NTN's aftermarket customers constitute a distinct level of trade and have compared aftermarket sales in the United States first to aftermarket sales of such or similar merchandise in Japan.

Comment 4: NSK argues that the Department incorrectly classified customer category 4 sales—sales through distributors to OEMs for OEM use—as sales to the aftermarket level-of-trade. According to NSK, category 4 sales should be matched to OEM level of trade sales under either of the methods of analysis used by the Department: (1) Correlation of price to level of trade; or (2) function of the first unrelated customer. NSK contends that these distributors act as purchasing agents for large OEM corporations and purchase bearings for immediate resale to OEMs, and in some cases NSK ships directly to the OEM. In addition, NSK claims that the price to level of trade comparison submitted in the Section C response confirms that category 4 sales are at the OEM level of trade. Finally, NSK argues that, in the TRB reviews, the Department correctly recognized that category 4 sales were at the OEM level of trade and accordingly matched them to OEM U.S. sales.

Torrington contends that NSK's sales designated as category 4 meet neither of the two tests cited by NSK as relevant. Torrington claims that the Department requested that NSK substantiate its claim that it sells at four different levels of trade and that pricing is reflective of the different levels of trade. According to Torrington, NSK submitted an analysis which collapsed the four levels of trade into two levels, but did not demonstrate that pricing and selling practices differed among four individual levels of trade. Furthermore, Torrington contends that the Department should retain the level-of-trade classifications from the preliminary results because NSK failed to demonstrate the first unrelated customer in category 4 sales is the OEM customer.

Department's Position: We agree with NSK. We initially consider customer function to determine our level-of-trade classification. In its section C response, NSK provided an analysis of quantities and weighted-average prices by customer category and model and by customer category and class (BBs and CRBs). This analysis revealed that the quantities and weighted-average prices for sales to customer category 1 (sales directly between NSK and OEM customers) are similar to sales to customer category 4 (sales to distributors for resale to OEMs) but significantly different from the quantities and weighted-average prices of sales to aftermarket customers and distributors (customer category 2 and 3, respectively). Therefore, based on this data, we have collapsed sales to customer categories 2 and 3, and collapsed categories 1 and 4, to form two levels of trade for HM sales.

10. Packing and Movement Expenses

Comment 1: Torrington and Federal-Mogul argue that FMV should not be adjusted for pre-sale inland freight costs, whether compared to PP sales or to ESP sales. Torrington contends that movement expenses should be deducted from FMV only if they are directly related to home market sales. Torrington claims that the Department has begun to allow home market deductions for all inland freight expenses without distinguishing between pre- and post-sale expenses. Therefore, Torrington concludes that the Department's approach is without statutory basis and has been found unlawful by the U.S. Court of Appeals for the Federal Circuit (CAFC).

Torrington and Federal-Mogul also maintain that there is no basis for treating pre-sale inland freight differently when FMV is compared to ESP than when FMV is compared to PP. They point out that the CAFC has disallowed deduction of pre-sale transportation costs from FMV in PP comparisons, and they argue that the Court's decision also applies to ESP comparisons because the statute does not provide for an adjustment to FMV in ESP comparisons that would distinguish the rationale applied in *Ad Hoc Committee*. Furthermore, Federal-Mogul argues that pre-sale transportation costs cannot be linked to particular sales, and that the Department lacks the authority to adjust FMV for such expenses under the ESP offset provision.

Nachi, Koyo, NSK, SKF, NPBS, and NMB/Pelmec argue that the Department should continue its practice of treating pre-sale inland freight charges as a direct adjustment to FMV in ESP comparisons. They contend that the Federal Circuit's opinion in *Ad Hoc Committee* does not apply when FMV is compared to ESP transactions because the CAFC made only a limited ruling on the Department's authority to adjust for pre-sale inland freight in PP situations. In support, Nachi cites *The Torrington Company* v. *United States*, No. 94–38, Slip Op. at 8 (March 4, 1994), where the CIT held that in *Ad Hoc Committee*, the CAFC "limited its decision to the calculation of FMV in purchase price situations only." In addition, Nachi notes that *Ad Hoc Committee* leaves undisturbed the Department's previous practice of treating pre-sale inland freight charges as indirect selling expenses. Therefore, Nachi states that if the Department incorrectly determines that pre-sale inland freight should not be directly deducted from FMV, the Department should at least treat this expense as an indirect selling expense.

FAG also contends that the Department properly adjusted FMV for pre-sale inland freight. FAG points out that while the CAFC held that the Department improperly rationalized its adjustment to FMV for pre-sale freight on its inherent authority to fill gaps in the statute, the CAFC in *Ad Hoc Committee* did not rule as to whether the Department could have justified its deduction to FMV under some other statutory authority or whether the statute permitted an adjustment to FMV for pre-sale freight where USP was based on ESP. FAG argues that the CIT has also rejected Torrington's contention that pre-sale freight expenses are neither selling expenses nor indirect expenses. In addition, FAG maintains that if the Department decides in Torrington's favor on this issue, then the Department should also exclude pre-sale movement charges as an adjustment to USP. SKF argues that the Department must maintain its practice of deducting HM pre-sale inland freight from FMV when USP is based on ESP, which has similarly been reduced by pre-sale inland freight.

FAG, NTN, and NMB/Pelmec state that the Department's decision to adjust FMV to account for pre-sale inland freight costs is supported by the recent CIT decision in *Federal-Mogul* v. *United States*, 17 CIT _____, Slip Op. 94–40 (March 7, 1994). Given the Department's broad authority to make circumstance of sale (COS) adjustments, FAG, NTN, NSK, and NMB/Pelmec argue that the Department may legitimately make COS adjustments to FMV to account for pre-sale inland freight costs. NSK adds that the Department's regulations do not require that all adjustments to FMV be related to particular sales. See 19 CFR 353.56(a)(1).

Department's Position: We have determined that, in light of the CAFC's decision in *Ad Hoc Committee*, the Department no longer can deduct home market pre-sale movement charges from

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FMV pursuant to its inherent authority to apply reasonable interpretations in areas where the antidumping law is silent. Instead we will adjust for those expenses under the COS provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below.

When USP is based on PP, we will only adjust for home market movement charges through the COS provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration. Moreover, in order to determine whether pre-sale movement expenses are direct, the Department will examine each respondent's pre-sale warehousing expenses, because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in moving the merchandise to the warehouse must also be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.

When USP is based on ESP, the Department uses the COS in the same manner as in PP situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we will adjust for any pre-sale movement charges found to be indirect selling expenses.

We have followed the above methodology for these final results. However, in the case of NPBS, pre- and post-sale inland freight expenses were not distinguished. Rather, NPBS reported both expenses as post-sale inland freight. Therefore, for the final results, we have treated all of NPBS' inland freight expenses as pre-sale movement charges.

Comment 2: Torrington asserts that NMB/Pelmec Thailand and NMB/Pelmec Singapore failed to report air and ocean freight expenses on a product- and invoice-specific basis for ESP transactions. In addition, Torrington contends that NMB/Pelmec failed to separate air freight expenses from ocean freight expenses. Therefore, Torrington argues that the Department should resort to BIA by applying the highest U.S. movement expenses reported by respondents.

NMB/Pelmec states that it is not possible to link specific air and ocean shipments to individual U.S. transactions because all merchandise goes into U.S. inventory before it is sold.

Department's Position: We agree with NMB/Pelmec Thailand and Singapore. In the case of ESP transactions made by NMB/Pelmec, there is often no direct link between shipments and resales. Therefore, because we verified NMB/Pelmec's air and ocean freight expenses and found them to have been reasonably allocated, we have accepted NMB/Pelmec's freight expense calculations.

Comment 3: Torrington states that the Department's verification report confirms that NMB/Pelmec Thailand reported movement expenses incurred on bearings shipped to Singapore and re-entered in Thailand (termed "Route B" sales in the response). Torrington argues that freight expenses incurred in transporting bearings to Singapore and then back to Thailand should not be allowed as an adjustment to FMV because such transportation expenses are by definition "pre-sale" freight costs. Torrington also contends that the "Route B" sales should be excluded from the home market database.

NMB/Pelmec Thailand responds that only part of the freight expenses incurred on "Route B" sales are pre-sale expenses because freight charges incurred for shipping merchandise back to Thailand are incurred after sales are made. Furthermore, NMB/Pelmec Thailand argues that the *Ad Hoc Committee* decision does not preclude the deduction of pre-sale freight expenses. See *Comment 1* above.

Department's Position: We agree with NMB/Pelmec Thailand. As we found in *AFBs II* (at 39770), "Route B" sales (*i.e.*, bearings shipped to Singapore and then back to Thailand) are home market sales made in the normal course of trade. As verified by the Department in this review, "Route B" sales incur both pre-sale freight expenses (to ship the merchandise to Singapore) and post-sale freight expenses (to return the merchandise to Thailand). Therefore, we have deducted NMB/Pelmec's post-sale movement expenses from FMV for the final results. For our treatment of pre-sale freight expenses, please see the *Department's Position* to *Comment 1*, above.

Comment 4: Torrington states that RHP reported a single amount for domestic inland insurance, marine insurance, and U.S. inland insurance. Torrington notes that RHP allocated aggregate amounts across RHP's sales on the basis of value and contends that RHP allocated marine insurance and U.S. inland insurance to home market sales. Torrington argues that this allocation decreases home market prices while increasing USP. Torrington recalls that its October 1, 1993 comments noted this deficiency and that RHP failed to correct its error. Torrington asserts that this failure alone justifies the use of BIA. Torrington suggests two possible applications of BIA: the Department could use the amounts reported by another U.K. respondent, or the entire amount could be allocated to U.S. sales. Torrington justifies the second alternative by stating that it would be fair to allocate nothing to home market sales as the home market expenses were overstated because marine insurance was included.

RHP responds that it purchases a single freight insurance policy that covers its shipments world-wide, regardless of destination, and that this insurance covers all production and acquisitions until the time of delivery. RHP notes that while Torrington argues that RHP should not have allocated the fixed insurance expense based on its sales turnover, the Department has verified and accepted RHP's practice in the past three administrative reviews. RHP concludes that there is no reason to modify well-established practice.

Department's Position: We have accepted RHP's reported freight insurance expenses—which cover domestic inland insurance, marine insurance, and U.S. inland insurance—for the final results. Because RHP purchased a single policy that covers all shipments world-wide, RHP allocated the expense over all of its sales activities, based on sales value. We find RHP's allocation methodology to be reasonable.

Comment 5: Torrington argues that the Department incorrectly made adjustments for Koyo's ocean freight and U.S. inland freight from port to warehouse because Koyo reported these expenses on a customer-specific basis rather than tying them to specific transactions.

Department's Position: We accepted Koyo's allocation of these expenses as reasonable. We verified these expenses and found no evidence that Koyo's allocation methodology is unrepresentative of its actual

experience. In the case of ESP transactions, there is often no direct link between shipments and resales. See the *Department's Position* to *Comment 2*, above.

Comment 6: Torrington argues that since Koyo allocated air freight expenses over all bearings shipped from Japan rather than reporting them on a per-unit and transaction-specific basis, the Department should apply a partial BIA rate, *i.e.*, the highest movement expenses reported by Japanese respondents.

In rebuttal, Koyo argues that the Department has accepted its allocation of air freight expense in prior reviews. Koyo maintains that the Department accepted these expenses because there was no evidence on the record to suggest that Koyo's allocation methodology was not representative of its actual experience.

Department's Position: We disagree with Torrington. As stated in the *Department's Position* to *Comment 2*, above, there is often no direct link between shipments and resales in the case of ESP transactions. The expenses in question were verified by the Department and were found to have been reasonably allocated.

Comment 7: Torrington argues that the Department should disallow Nachi's home market "other direct expenses," which the Department has treated as indirect expenses for the preliminary results. Torrington claims that Nachi's reported expense, the cost of operating the fleet of vans owned by Nachi's national sales subsidiary, Nachi Bearing Company (NBC), is a part of general overhead that Nachi has not shown relates entirely to customer deliveries. Furthermore, Torrington states that Nachi has not identified which NBC sales were shipped via the van fleet, or even demonstrated that any bearings at all were shipped via the van fleet. Finally, Torrington argues that Nachi has failed to segregate the expenses incurred on shipments of subject merchandise and those incurred on non-subject merchandise.

Federal-Mogul argues that Nachi has double-counted home market inland freight expenses because "other direct expenses" (which include the cost of customer deliveries made with NBC's van fleet) and ordinary inland freight charges are both reported for several transactions. Therefore, Federal-Mogul asserts that Nachi's home market freight claims should be denied.

Nachi states that the Department verified that its "other direct selling expenses" consist of the cost incurred by NBC in renting vans and purchasing gasoline for deliveries of bearings to certain customers. Therefore, Nachi asserts that the cost in question is clearly a selling expense. Furthermore, Nachi contends that by dividing NBC's total expenses by total NBC sales, only that portion of NBC's expenses attributable to deliveries of subject merchandise was allocated to sales of subject merchandise. With regard to Federal-Mogul's argument, Nachi argues that it has not double-counted NBC's van expenses because they were not reported elsewhere in Nachi's response and because they were pulled out of Nachi's indirect selling expense calculation along with other freight charges.

Department's Position: Although we disagree with Torrington and Federal-Mogul's reasoning, we agree that Nachi's "other direct selling expenses" should be disallowed. NBC's van fleet expenses, which Nachi has categorized as "other direct selling expenses," are more accurately described as home market freight expenses. Even though they are in-house freight costs rather than movement services purchased from an independent contractor, they are nonetheless movement expenses. Thus, Nachi has categorized its home market freight expenses as either "other direct selling expenses" or domestic inland freight expenses. Both categories of transportation expenses were incurred on NBC sales.

Because NBC is unable to identify which particular sales were transported by van and which were transported by contractors, Nachi has allocated each category of expenses over total NBC sales and applied the resulting factors to each reported NBC sale. Normally, this would be no different from the net effect that would have resulted if Nachi had pooled all NBC movement charges under the same category of expenses. However, Nachi allocated its van fleet expenses over NBC sales by sales value rather than by bearing weights. In the case of movement charges that cannot be traced on a transaction-specific basis, the proper way to allocate the expenses between shipments of subject and of non-subject merchandise is by the weight of the merchandise, unless a respondent can show that the expenses were incurred on a different basis. Because Nachi allocated home market inland freight charges based on bearing weights, we have accepted Nachi's reported home market inland freight charges. However, Nachi's allocation of NBC's van fleet expenses based on sales value distorts the actual amount of expense incurred on each transaction. Therefore, we have not adjusted FMV for Nachi's reported "other direct selling expenses" for the final results.

Comment 8: Federal-Mogul claims that the Department erroneously deducted packing from SNR's home market sales. Federal-Mogul asserts that SNR's General Conditions of Sale stated that terms of sale were ex-factory, packing excluded, except by special agreement. Federal-Mogul further states that the Department should not deduct packing costs, material or labor, from SNR's home market prices. Federal-Mogul argues that SNR did not describe any special agreements which would demonstrate that packing was included.

SNR responds that the General Conditions of Sale referenced by Federal-Mogul were only basic terms and conditions, and that SNR has allocated its packing costs only across sales where packing was included, as in previous reviews. Thus the Department's calculation, which deducted home market packing, was correct and the Department should not make any changes for the final results.

Department's Position: We disagree with Federal-Mogul that packing was erroneously deducted from SNR's sales. Although SNR's General Conditions of Sale state that prices were ex-works and that packing was not included, this is not inconsistent with SNR's reported terms of sale. SNR reported two categories of home market terms of sale in both the narrative response and the computer database. For the first category, SNR stated that its customers pay for packing. For the second category, SNR stated that it incurs the packing costs. See SNR's *Section C Response* (September 21, 1993). Because there is no evidence on the record to indicate that SNR's reported terms of sale are not reflective of the actual terms of its sales, we are continuing to deduct HM packing for the final results.

Comment 9: Torrington argues that the Department should resort to BIA because RHP failed to report all relevant packing expenses in its questionnaire response. Torrington notes that the amounts RHP reported in its supplemental questionnaire response were estimates and appear to be standard costs. Torrington contends that standard costs are not acceptable for dumping calculations. Torrington concludes that the Department should apply BIA to RHP's U.S. packing expenses.

RHP responds that contrary to Torrington's allegations, the packing costs reported in its supplemental response were actual costs, and thus, no adjustments to RHP's packing expenses are warranted.

Department's Position: While we agree with Torrington that there were gaps in RHP's original questionnaire

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response, RHP provided a full explanation and quantification of its packing material and labor costs in the supplemental questionnaire response. See *RHP Section B Response* (September 21, 1993) and *RHP Supplemental Questionnaire Response* (December 16, 1993). We agree with RHP that it reported its actual packing materials and labor costs. Torrington has not provided any support for its allegation that RHP reported standard costs and not actual costs. Therefore, there is no need to apply BIA to RHP's packing expenses.

Comment 10: Torrington and Federal-Mogul argue that INA's method of calculating per-unit ocean freight, U.S. inland freight, and U.S. brokerage and handling charges understates the per-unit amounts incurred for each expense. Specifically, Federal-Mogul contends that INA's calculation of per-unit expenses using a simple average obscures the fact that INA must have incurred significantly higher per-unit expenses for air shipments than for sea shipments. Torrington states that INA's method of calculating average charges is based on shipments that are not representative of all INA's sales, and understates per-unit charges by giving disproportionate weight to high value shipments with low per-unit freight costs. In order to account for this disparity, Federal-Mogul requests that the Department revise INA's calculation of per-unit amounts for these expenses by using a single weighted average derived from the per-unit amounts for air shipments and for sea shipments, respectively. Alternatively, Torrington requests that the Department revise INA's reported per-unit movement charges by calculating a simple average of the per-unit charges for each shipment in INA's sample.

INA responds that the Department has accepted in each previous review the method used in this review to calculate the per-unit movement charges at issue. INA further argues that the Department concluded that INA's reporting method yielded representative results after conducting two separate tests at verification to determine whether INA's methodology was reasonable. Finally, INA contends that Federal-Mogul has not demonstrated that the methodology that it proposes would yield more accurate results than the methodology used by INA, and that Torrington's method of calculating a simple average would result in a per-unit expense that, when multiplied by the weight of the shipments, would yield total charges far in excess of those actually incurred. Therefore, INA concludes that the Department should not modify INA's method of calculating the per-unit movement charges at issue for these final results.

Department's Position: We agree with INA. At verification, we conducted two separate tests of INA's method of reporting per-unit movement charges on U.S. sales, and determined that INA's method yielded representative results. Further, neither Torrington nor Federal-Mogul has demonstrated that its proposed calculation method would yield more accurate results than INA's method. Accordingly, we have used the per-unit charges reported by INA in our calculations for these final results.

Comment 11: Torrington objects to the method used by INA to calculate per-unit amounts for packing material and packing labor expenses incurred in Germany. Torrington states that the record does not clearly indicate whether the sales amount over which these expenses were allocated includes INA's prices to its U.S. subsidiary or the U.S. subsidiary's resale prices. If the sales amount includes the subsidiary's resale prices, then Torrington argues that INA improperly calculated per-unit expenses using its transfer prices to its U.S. subsidiary. If the sales amount includes transfer prices, then Torrington challenges INA's calculations on the grounds that transfer prices are subject to manipulation and, therefore, do not form an appropriate basis for the allocation of expenses. In either case, Torrington requests that the Department revise INA's calculations of per-unit packing materials and labor expenses for the final results.

INA responds that the sales amount used to allocate the packing expenses in question included INA's sales to its U.S. subsidiary at transfer prices. INA further asserts that its allocation of expenses over its total sales value represents a quantifiable and verifiable basis for allocating the expenses in question. As a result, INA concludes that the Department should accept the packing material and packing labor expenses as reported.

Department's Position: We agree with INA. At verification we examined the total home market sales values that were used to allocate various charges and expenses. We were able to disaggregate the total home market sales values into their constituent elements and trace these elements to audited financial statements. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we have determined that the total sales value used to allocate its packing costs included INA's transfer prices to its U.S. subsidiary. Further, Torrington failed to demonstrate that INA's transfer prices were unreasonable or that INA systematically manipulated its transfer prices to shift expenses away from certain U.S. sales. In the absence of such evidence, INA's allocation of packing expenses over transfer prices is reasonable. As a result, we have accepted INA's use of transfer prices to calculate per-unit packing material and labor expenses incurred in Germany.

Comment 12: Federal-Mogul contends that NTN improperly calculated charges for shipping merchandise from Japan to the United States. According to Federal-Mogul, NTN combined ocean freight and air freight expenses that it incurred for shipments to the U.S., and allocated these expenses over all U.S. sales. Federal-Mogul states that because air freight is more expensive than ocean freight, NTN's calculation method understates the shipping charges for certain U.S. sales. Therefore, Federal-Mogul concludes that the Department should separate ocean freight and air freight charges and allocate them to the respective sales to which they apply.

NTN rejects Federal-Mogul's argument on the grounds that it is impossible to trace specific ESP sales to specific air or sea shipments from Japan. As a result, NTN concludes that the Department has no basis for revising NTN's reported air and ocean freight charges for ESP sales for these final results.

Department's Position: We agree with NTN. Because we do not require respondents to tie individual ESP sales to specific shipments, we also do not require respondents to report sale-specific air or ocean freight expenses for individual ESP sales. In the absence of the information required to tie air freight charges to specific U.S. sales, we have accepted for these final results the air and ocean freight charges as reported by NTN.

Comment 13: Torrington argues that NSK repackaging expenses were improperly allocated to all sales because NSK has admitted that repackaging does not occur on all orders. NSK Supplemental Response, at 6 (December 3, 1993). Citing *Timken*, 673 F. Supp. at 512–513, Torrington asserts that the Department should not permit respondents to achieve a reduction of USP if they have withheld data. Therefore, Torrington contends that the Department should allocate repacking expenses over sales at the distributor level for the final results.

NSK maintains it properly allocated repackaging expenses to all U.S. sales.

NSK reported that "the expenses accumulated * * * included bar code labels, shrinkwrap and other materials generally consumed in NSK's warehouses for both OEM and distributor orders." NSK's Supplemental Section B Response, at 6. NSK states all sales receive some sort of repackaging. However, NSK states that if the Department finds that NSK's repackaging expenses were not properly allocated to all sales, NSK would not object to the Department yielding to Torrington's request that such expenses be allocated only to aftermarket sales.

Department's Position: The repackaging expenses reported by NSK include materials consumed in the repackaging of both OEM and aftermarket sales. Therefore, we consider NSK's allocation of such expenses as reasonable and accurate and have accepted them as reported.

Comment 14: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France*, 58 FR 68865 (December 29, 1993).

Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

11 Related Parties

Comment 1: Torrington states that at verification of NMB/Pelmec Thailand the Department determined that there was not a sufficient basis to test whether HM related-party sales were made at arm's length. Therefore, Torrington argues, because the Department must rely on a small portion of reported HM sales, *i.e.*, sales to unrelated parties, as the basis of FMV, the Department should use third-country sales for determining NMB/Pelmec Thailand's FMV.

NMB/Pelmec Thailand does not dispute Torrington's allegations that there was not a sufficient basis to test whether HM related-party sales were at arm's length. However, NMB/Pelmec Thailand rebuts Torrington's argument that the Department should have used third-country sales as the basis for FMV. NMB/Pelmec explains that HM viability was accurately calculated on a weight-basis for complete bearings and bearing parts as instructed by the Department's questionnaire.

Department's Position: We agree with Torrington that NMB/Pelmec Thailand's related-party sales in the HM should not be used in the calculation of FMV. However, we do not agree with Torrington that NMB/Pelmec Thailand did not have a viable home market and that we should therefore use third-country sales as the basis for FMV.

NMB/Pelmec Thailand properly reported that its HM was viable using sales to both related and unrelated parties as requested in our questionnaire. See the Department's questionnaire at 104. Although certain HM sales may ultimately be determined to be unusable for comparison purposes, such as when sales made to related parties are not made at arm's-length prices, the arm's-length test is separate from the HM viability test. That we cannot use NMB/Pelmec Thailand's related-party sales does not change the fact that the HM was viable. We establish viability once at the beginning of our analysis, before the arm's-length test for related-party sales, based on the response to Section A of the questionnaire. If we establish that the HM is viable, we instruct respondent to furnish HM sales.

It would be administratively infeasible to reestablish the appropriate market for purposes of calculating FMV each time we determine a group of HM sales to be unsuitable for comparison. If we were to retest for viability after determining that certain related-party sales were unsuitable, we would cause undue delays in the completion of the review. This problem would be exacerbated when we consider other reasons that HM sales may be unsuitable for comparison, such as when there are models sold below cost or when the adjustment for differences in merchandise (difmer) exceeds the 20-percent cap. The determinations of whether models are sold below cost or whether they exceed the 20-percent difmer cap are made at a more advanced stage of our analysis than the HM viability test. Thus, we have no basis to disregard NMB/Pelmec's HM sales, and, accordingly, for these final results we used NMB/Pelmec's HM as the basis for the calculation of FMV.

Comment 2: RHP contends that the Department should not have collapsed RHP and NSK Europe during the POR and that the use of BIA with respect to the U.S. sales of NSK Europe products was not appropriate. RHP argues that the Department has been unwilling to collapse companies in the past except where the relationship is considered so significant that price manipulation may exist. RHP notes that the Department will not generally collapse entities which have separate manufacturing facilities and sales operations. RHP contends that since it became affiliated with NSK Europe in 1990, RHP has maintained the arm's-length relationship that they had before they became affiliated. RHP notes that during the POR, RHP and NSK Europe were "separately managed and administered, maintained separate facilities and operations and did not share significant pricing information or marketing strategies." RHP maintains that both RHP and NSK Europe have remained independent despite common parentage, which is why RHP contends that this situation does not present "a strong possibility of price manipulation." RHP argues that it is a common practice within the bearing industry for manufacturers to purchase products from other manufacturers to expand their product line. RHP contends that its purchases of bearings from NSK Europe is not inconsistent with their separateness, because these dealings were at arm's length.

Torrington states that RHP essentially has restated the same arguments that the Department rejected in prior reviews and has not provided "new" information to refute the Department's previous findings. Torrington contends that RHP and NSK Europe should continue to be collapsed for the final results. Torrington further argues that the Department was justified in imposing BIA on RHP's sales of NSK Europe products in the United States, because both RHP and NSK Europe possess information crucial to the analysis of these transactions, and NSK Europe failed to provide section C and D information for this administrative review.

Department's Position: We agree with Torrington. As we have stated in both *AFBs II* and *AFBs III*, our usual practice is "to collapse related parties if the nature of their relationship allows the possibility of price and cost manipulation." See *AFBs III* at 39772. RHP has provided no new information in this review to suggest that the nature of its relationship with NSK Europe has

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changed. Therefore, we have determined that RHP and NSK Europe have a significant financial relationship, and that the nature of their relationship with their parent company, NSK-Japan, permits the price and cost manipulation that requires that we consider these companies as a consolidated entity. See *AFBs II* (at 28393) and *AFBs III* (at 39772).

Because NSK Europe did not provide the sales and cost information (Sections C and D) necessary for this review, we were unable to properly calculate the FMVs for particular RHP U.S. sales. Because we know that RHP reported the entire universe of U.S. sales, we applied BIA to those U.S. sales for which the FMVs were potentially affected by the lack of information concerning NSK Europe's HM sales and cost. See *AFBs III* (at 39773). As the BIA rate we applied RHP's highest rate for each class or kind: 48.14 percent for BBs, which was RHP's BB margin from the third administrative review, and 48.29 for CRBs, which was RHP's CRB margin from the second administrative review.

Comment 3: SKF-Sweden argues that the Department eliminated a number of HM transactions based on the erroneous conclusion that such transactions reflected preferential prices to related parties. SKF asserts that there is no direct or indirect ownership or control between the companies, and that the relationship between the parties noted by the Department at verification has no influence on price. SKF also states that the Department's comparison of average prices is insufficient to test the arm's-length nature of the transactions because the Department included companies with no common ownership interests and companies with ownership interests of less than 20 percent, did not individually analyze the companies involved, and did not consider the relative quantities involved.

Torrington maintains that the Department will use sales to related parties as a basis for FMV only if it is satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to unrelated parties, and that the only valid criterion in this determination is price. Torrington argues that there is a regulatory presumption that related-party sales should be excluded in a calculation of FMV. Federal-Mogul and Torrington state that the burden is on the respondent, not the Department, to overcome this presumption by demonstrating affirmatively that related-party transaction prices are comparable to prices to unrelated parties.

Torrington also asserts that SKF has failed to submit any data demonstrating that its prices to related and unrelated parties are comparable and thus has not met its burden. Torrington and Federal-Mogul further point out that SKF has provided no evidence on the record regarding any particular related-party sales or the price comparability of its related-party sales.

Department's Position: We disagree with SKF. 19 CFR 353.45 provides that the Department ordinarily will include related-party sales in the calculation of FMV only if it is satisfied that the sales were made at arm's-length prices, *i.e.*, that the prices of such sales are comparable to the prices at which the seller sold such or similar merchandise to unrelated parties. For purposes of applying this provision, § 353.45 also refers to section 771(13) of the Tariff Act for the definition of related parties. We preliminarily determined that SKF-Sweden made HM sales to customers related to it as described in section 771(13)(D) of the Tariff Act. Accordingly, we conducted an analysis to determine whether these sales were made at arm's-length prices. Because we determined that these sales were not made at arm's-length prices, we excluded them from our calculations of FMV. (We note that SKF-Germany also made HM sales to related parties, but that we determined these sales were made at arm's-length prices. Therefore, we did not exclude them from our calculation of FMV for SKF-Germany.)

On reexamination of the evidence on the record, however, we determined that one of these HM customers in fact did not meet the definition of a related party as specified in section 771(13) of the Tariff Act. Therefore, for these final results we retained sales to this customer by SKF-Sweden in calculating FMVs and did not include these sales in our arm's-length analysis for related-party sales.

In determining whether prices to related parties are in fact arm's-length prices, we rely on a comparison of average unrelated-party prices for each model to average related-party prices for the same models. When average prices to unrelated parties are predominantly higher than average prices to related parties for the class or kind of merchandise, we disregard sales to related parties for that class or kind. Because SKF has provided no evidence to refute our findings that the average prices of certain models sold to related parties are not comparable to the average prices of these models sold to unrelated parties, other than reference to statements by company personnel at verification that these companies were not related, we have continued to exclude these sales for the final results. See *SKF Sverige AB Verification Report*, February 23, 1994, and *Rhone Poulenc Inc. v. United States* 899 F. 2d 1185 (Fed Cir. 1990).

Comment 4: NTN challenges the Department's decision to exclude from its analysis certain HM sales to related parties. According to NTN, the Department excluded related-party sales from its analysis without having first articulated any standard for determining whether sales prices to related parties were comparable to sales prices to unrelated parties. NTN also objects to the Department's use of weighted-averages in its comparison of sales prices to related and unrelated parties because weighted-average prices to related and unrelated parties can differ even if the per-unit invoice prices are identical. Finally, NTN argues that the Department failed to account for the impact of different payment terms and differences in sales quantities on sales prices to related and unrelated parties. As a result, NTN concludes that the Department should revise its test for determining whether related party prices are comparable to unrelated party prices for the final results.

Torrington and Federal-Mogul claim that NTN has failed to meet its burden of proving that sales prices to related parties are comparable to those to unrelated parties. Torrington further argues that the Department's method of comparing weighted-average prices to related and unrelated parties is a reasonable and efficient method of comparing prices given the large number of respondents and HM sales transactions. Moreover, Torrington asserts that NTN failed to demonstrate that payment and quantity terms would have any effect on the Department's analysis, while Federal-Mogul argues that the Department's arm's-length test accounts for the additional factors cited by NTN. As a result, Torrington and Federal-Mogul request that the Department continue to exclude HM sales of BBs and CRBs to related parties from its analysis for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. Because we deduct credit and conduct our analysis by level of trade, our arm's-length test accounts for differences in payment terms and, to the extent that they are reflected in sales to different levels of trade, differences in quantities of sale. Further, our use of weighted averages in our comparisons of sales prices to related and unrelated parties is warranted because it provides the most accurate means of measuring, for each model, NTN's preponderant pricing practices for related and unrelated customers. The failure to weight our test by quantity would give disproportionate weight to sales of small quantities, which would result in distortions. Therefore, we have not revised our arm's-length test for these final results.

Finally, we reject NTN's arguments that we have not established any standard for assessing the comparability of sales prices to related and unrelated parties. As discussed in *Comment 3* above, our longstanding practice has been to exclude related-party sales from our analysis if the sales prices to related parties are lower than those to unrelated parties. See *AFBs III*. Because NTN's sales prices to related parties for BBs and CRBs were lower than sales prices to unrelated parties, we have excluded sales of these products to related parties from our calculation of FMV for these final results.

12. Samples, Prototypes, and Ordinary Courses of Trade

Comment 1: NTN argues that the Department should not use sample sales or sporadic, small quantity sales of certain products in its calculation of FMV. NTN states that these sales are not in the ordinary course of trade. NTN further states that the Department verified NTN's recording of sample sales in its accounting system, and the sales data that NTN used to classify certain other sales as being outside the ordinary course of trade. Because the Department excluded sample sales and sporadic, small-quantity sales from its analysis in *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, 57 FR 4960 (February 11, 1992), NTN urges the Department to exclude such sales from its analysis in the final results of this review.

Torrington and Federal-Mogul reject NTN's argument regarding sample sales because NTN has provided no evidence regarding the circumstances surrounding the sample sales in question. In the absence of such evidence, Torrington and Federal-Mogul assert that NTN has failed to meet its burden of proof in demonstrating that such sales fall outside the ordinary course of trade. Similarly, Torrington and Federal-Mogul assert that a pattern of infrequent sales of small quantities of specific products is insufficient to establish that such sales fall outside the ordinary course of trade. In this context, Torrington and Federal-Mogul note that the Department's verification of NTN's claims focused solely on the method that NTN used to prepare its response rather than NTN's sales practices. Accordingly, Torrington and Federal-Mogul support the Department's exclusion from its calculation of FMV of NTN's sample sales and sporadic, small-quantity sales.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in the final results of the previous review, the fact that NTN identified sales as sample sales does not necessarily render them outside the ordinary course of trade. Thus, our verification of the designation of certain sales as samples merely demonstrates that NTN recorded such sales as samples in its own records. This designation, however, does not indicate that NTN made such sales outside the ordinary course of trade. We also reject NTN's claim that small quantity sales of products with sporadic sales histories fall outside the ordinary course of trade. Infrequent sales of small quantities of certain models is insufficient evidence to establish that NTN made these sales outside its ordinary course of trade because such sales histories are typical of certain types of products. Therefore, because NTN failed to demonstrate that samples and sporadic, small-quantity sales fall outside the ordinary course of trade, we have included them in our analysis for these final results.

Comment 2: FAG-Germany and FAG-UK contend that the Department improperly used zero-priced U.S. sample and prototype sales in the calculation of USP because such sales are not made in the ordinary course of trade and are therefore similar to the type of sales the statute permits the Department to exclude in the HM. Additionally, FAG claims the Department is not required to review each and every U.S. sale.

Alternatively, FAG argues that if the Department compares the U.S. zero-price sample sales to HM sales in which value was received, the Department should make a COS adjustment to account for the different circumstances under which the sales were made. FAG argues that the Department should adjust FMV in the amount of the expenses directly associated with the U.S. sample sale and suggests reducing FMV by the amount of the COP of the U.S. sample sale.

Federal-Mogul and Torrington contend that, in order to assure the validity of the Department's sample, the Department must not drop these U.S. sample and prototype sales from its analysis. Federal-Mogul and Torrington further maintain that the arguments regarding the ordinary course of trade are completely irrelevant because the ordinary course of trade provision applies only to the calculation of FMV, not USP. Section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires the Department to calculate the amount of duty payable on "each entry of merchandise" into the United States. Torrington states that this provision should be compared with section 773(a)(1)(A) of the Tariff Act (19 USC 1677b(a)(1)(A)), which requires FMV to be calculated on the basis of sales in the "ordinary course of trade."

Federal-Mogul also rejects the idea of a COS adjustment, arguing that the cost to produce the merchandise cannot reasonably be used to quantify any difference between a sample sale and a sale with a price because the cost to produce the merchandise remains the same whether the producer sells it at a profit, seils it at a dumped price, or gives it away.

Department's Position: The Department agrees with Federal-Mogul and Torrington. As set forth in *AFBs II* (at 28395), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The Department must examine all U.S. sales within the POR. See *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea*, 56 FR 12701, 12709 (March 27, 1991).

Although we have made COS adjustments as required by section 773 of the Tariff Act and 19 CFR 353.56, we disagree with FAG's argument that a further COS adjustment should be made if the U.S. sample sales are not excluded from the analysis. This adjustment is not warranted under sections 772 and 773 of the Tariff Act. FAG's argument that a COS adjustment should be made when a zero-price U.S. sale is compared either to HM sales in which value was received or to CV, which includes profit, suggests that a COS adjustment should be made because of the marked difference in the prices of the U.S. sale ($0) and the comparable HM sale. However, differences in prices do not constitute a *bona fide* difference in the circumstances of sale. Furthermore, it would clearly be contrary to the purpose of the dumping law to make a COS adjustment in order to compensate for price discrimination. Moreover, we do not deduct expenses directly related to U.S. sales from FMV either in PP or ESP comparisons. In making COS adjustments in PP comparisons, U.S selling expenses are *added to* FMV, while in ESP comparisons U.S. selling expenses are neither added to nor deducted from FMV, they are deducted from USP. Finally, regarding FAG's argument that we should use the COP of U.S. merchandise (SAMPCOPE) as the basis for such an adjustment, the difmer

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methodology accounts for appropriate differences in merchandise.

Comment 3: NSK asserts that zero-price samples and prototype sales should be excluded from the U.S. sales database because the record demonstrates that the provision of these samples are not sales but rather promotional expenses. NSK contends that the "ordinary course-of trade" analysis has been applied by the Department to exclude certain U.S. sales from its analysis, citing *Ipsco, Inc. v. United States*, 714 F. Supp. 1211, 1217 (CIT 1989). NSK contends that if the Department does not exclude zero-price samples from the U.S. sales database, then the Department should deduct the cost of these samples from NSK's indirect selling and G&A expenses.

Torrington argues that the statute requires analysis of each U.S. entry in the context of administrative reviews. Section 1675(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) and the *IPSCO* decision, which NSK cites to support its claim, did not exclude all sales from USP which are made outside the ordinary course of trade. Federal-Mogul argues that the Department should continue to reject exclusion of NSK's zero-value U.S. transactions as it has done in the last two AFBs administrative reviews. Torrington also contends that the Department should not deduct the cost of these samples from NSK's indirect selling and G&A expenses because NSK has not provided support on the record for the amounts that it claims should be deducted.

Department's Position: As set forth in *AFBs II* (at 28395) and *AFBs III* (58 FR at 39744), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The statute requires the Department to analyze all U.S. sales within the POR. See 19 USC 1675(a)(2)(A). See also *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea*, 56 FR 12701, 12709 (March 27, 1991). The Department agrees with Torrington that *Ipsco* is inapplicable to this case because that case concerns a LTFV investigation in which the Department has the discretion to eliminate unusual U.S. sales, as opposed to an administrative review in which section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires analysis of "each U.S. entry" except in cases where the agency utilizes "averages or generally recognized sampling techniques" pursuant to section 777A of the Tariff Act (19 USC 1677f–l). As a result, we have not excluded any of NSK's U.S. sales. However, the Department also agrees with NSK that the costs of these samples should not be included as part of NSK's indirect selling expenses because we are considering these transactions as sales and are comparing them to FMV. Therefore, we have deducted the costs of samples from NSK's indirect selling expenses.

13. Taxes, Duties and Drawback

Comment 1: Federal-Mogul maintains that the Department's new tax methodology is still legally flawed in that it fails to "cap" the amount of tax added to USP at the amount of tax added to or included in the price of the foreign market comparison model. Federal-Mogul cites 19 USC 1677 (d)(1)(C), which requires that forgiven taxes be added to USP "but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation," and claims that this provision explicitly requires such a cap. Federal-Mogul further argues that if the addition to USP is not capped by the amount of tax paid on HM sales, a situation could arise where the tax added to USP exceeds the actual taxes paid on HM sales.

FAG, SKF, and RHP contend that if the Department were to add the actual amount of taxes paid on HM sales to the net U.S. invoice price, a "cap" would not be necessary. SKF further argues that under the Department's current method of accounting for taxes, the tax added to USP exceeds that added to FMV only when USP itself is higher than FMV. Therefore, SKF concludes that capping is unnecessary because the Department's method does not reduce dumping margins. Finally, Koyo argues that if the Department accepts Federal-Mogul's argument that the tax added to USP should be capped, the Department also should cap the amount of tax attributed to the adjustments to USP.

Department's Position: We disagree with Federal-Mogul. The Department's methodology consists of applying the home market tax rate to the U.S. price at the same point in the chain of distribution at which the home market tax base is determined and then reducing the tax in each market by that portion of the tax attributable to expenses which are deducted from each price. For example, because we deduct ocean freight from U.S. price, ocean freight is also eliminated from the U.S. tax base. This is consistent with the decision of the CIT in *Federal-Mogul v. United States*, 834 F. Supp. 1391 (CIT 1993). The effect of these adjustments is the same as initially calculating the tax in each market on the basis of adjusted prices.

The "cap" was devised at a time when the Department was not effectively calculating the tax in each market on the basis of adjusted prices. It was intended to keep differences in expenses which were eliminated through adjustments to the price in each market from continuing to affect the dumping margin by remaining in the basis upon which the tax in each market was determined. The Department's current practice of effectively using adjusted prices in each market as the tax base automatically achieves this purpose. The imputed U.S. tax will exceed the tax on the home market sales to which they are compared only where the adjusted U.S. price is higher than the adjusted home market price—that is, for non-dumped sales. A tax cap is irrelevant for such sales, because no duties are assessed upon them. Consequently, the absolute margins obtained under the Department's current approach are identical to those which would be obtained after imposing a tax cap.

Although applying a tax cap may affect weighted-average margins, and hence deposit rates, we decline to re-apply the tax cap solely to achieve this additional purpose. The Department includes U.S. prices that exceed foreign market prices in the denominator of the deposit rate equation. It would be inconsistent to include that portion of the U.S. price that exceeds the home market price in that denominator, but to remove the tax on this amount. Just as we treat the tax on ocean freight consistently with ocean freight itself, where we include the full adjusted U.S. price in the denominator of the deposit rate equation, we must also leave the tax on that full U.S. price in that denominator.

Comment 2: FAG, SNR, SKF, RHP, NSK, and Koyo contend that the method that the Department used to account for VAT in the preliminary results of this review is improper.

FAG argues that the Department's methodology violates statutory and judicial requirements because the VAT rate is not applied to USP and FMV where the HM tax authorities apply the VAT to home market sales. FAG claims that all laws governing the assessment of the VAT require that the tax be applied to the net invoice price of goods sold in the HM. Therefore, FAG contends that the Department should apply the VAT amount collected in the foreign market to a net U.S. invoice price instead of applying VAT to an ex-factory price in both the U.S. and home markets. U.S. invoice price is at the same point in the stream of commerce as the price to which VAT is applied in the HM.

SKF, RHP, SNR, Koyo, and FAG claim that the current methodology is flawed because it results in the so-called "multiplier effect" through which absolute dumping margins are increased solely because USP is adjusted by the rate of the VAT tax instead of the amount. Thus, respondents propose that the Department adjust USP by the amount of the VAT applicable to the relevant HM sales and then add this amount to both FMV and USP, as instructed by the CIT in *Hyster Co., a.k.a. Nacco Handling Group Inc., et. al. v. United States, 848 F. Supp. 178 (CIT 1994) (Hyster)*.

NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the HM, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes whether FMV is based on HM price, third-country sales, or CV. NSK argues that the "plain language" of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute at a minimum would have defined third-country prices and CV to include such taxes.

Federal-Mogul and Torrington contend that the Department's current method of accounting for VAT is lawful. Federal-Mogul maintains that respondents have not provided any basis for the Department to change its position on this issue. According to Federal-Mogul, the CIT ruled unequivocally in *Federal-Mogul Corp. v. United States*, 834 F. Supp. 1391 (CIT 1993), *appeals docketed*, Nos. 94–1497, 1104 (Fed. Cir. 1994), that the Department may not make the statutory tax adjustment by adding the foreign market tax amount to USP. Federal-Mogul further argues that the CIT found that any suggestion to the contrary in footnote 4 of *Zenith Electronics Corp. v. United States*, 988 F.2d 1573 (CIT 1993) (*Zenith*) "was *dicta* and was at odds with both the body of the appellate court's opinion and with the statute."

Torrington states the Department should not adjust for VAT by adding the amount of the foreign market VAT to USP. Torrington contends that the Department has correctly applied the VAT that would have been applied to a HM sale, by determining what tax rate would be applied to an f.o.b origin, ex-factory price. Torrington maintains that the Department's methodology is consistent with section 1677a(d)(1)(C). In this context, Torrington argues that *Hyster* does not require the Department to add actual amounts of foreign market taxes to USP. According to Torrington, the CIT in *Hyster* simply instructed the Department to "consider" adjusting USP for taxes in a manner "consistent with *Zenith* and title 19." Therefore, Torrington concludes that the method that the Department used to account for taxes in the preliminary results of these reviews is consistent with judicial precedent.

Department's Position: We disagree with respondents' contentions that we violated current administrative practice and recent judicial precedent by failing to apply the VAT rate to USP and FMV at the same point in the chain of commerce. We made an addition to USP for VAT in accordance with section 772(d)(1)(C) of the Tariff Act. In making this adjustment, we followed the instructions that the CIT issued in *Federal-Mogul*. Specifically, we added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

Contrary to respondents' claim that we did not apply the foreign VAT rate to the USP at the same point in the stream of commerce as applied by the foreign market authority, we in fact did apply the tax rate to USP at the same point in the chain of commerce, that is, the invoice price net of price adjustments such as discounts and rebates. We also adjusted the tax amount calculated for USP and the amount of tax included in FMV Specifically, we deducted those portions of the foreign market tax and the hypothetical U.S. tax that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and in the USP used to calculate the U.S. tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales. By making these adjustments to the taxes added to USP and included in FMV, margins are not dependent on differences in expenses.

We agree with petitioner that *Hyster* does not order the Department to adjust for VAT by applying the absolute amount of the HM VAT to USP. Rather, *Hyster* states that *Zenith* "permits Commerce to adjust USP by the amount of the *ad valorem* tax," and directs the Department to "consider any further adjustments to USP consistent with *Zenith* and title 19." The CAFC in *Zenith* held that "[b]y engaging in dumping, the exporters themselves are responsible for the multiplier effect. The multiplier effect does not create a dumping margin where one does not already exist." See *Zenith Electronics Corp. v. United States*, 988 F2d at 1581–82 (1993). Furthermore, in *Federal-Mogul Corp. v. United States*, 834 F Supp. 1391 (October 7, 1993), the CIT held that *Zenith* made clear that tax neutrality is irrelevant to the proper application of the statute. Therefore, the Department is under no obligation either to adjust for VAT by the absolute amount of VAT that is assessed in the HM or to make the VAT adjustment tax neutral.

We determine that our calculation of the amount of tax added to USP is appropriate. Applying the rate to USP simply calculates the amount of tax that would be applied in the HM if the product were sold in the HM at the same price as it is in the United States. The "multiplier effect" only occurs if FMV is higher than USP. We are under no obligation to change our method of adjusting for VAT in order to account for a firm's pricing practices when they differ between the HM and the United States.

We disagree with NSK's argument that the Department should not add taxes to FMV or otherwise calculate FMV so as to include taxes when FMV is based on HM price. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only "added" when reference is made to a tax-exclusive price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. This direction can only imply that taxes would be included in the prices used by the Department in its calculation of FMV. For the foregoing reasons, we have not amended our treatment of U.S. and HM taxes for these final results.

Comment 3: FAG-Germany contends that the Department improperly applied a VAT rate of 14 percent, instead of 15 percent, for 1993 sales.

Department's Position: We disagree with FAG. We correctly applied the 15 percent VAT rate for 1993 sales in the preliminary calculations. See FAG KGS preliminary margin program at lines 1370–1372.

Comment 4: Torrington alleges that NMB/Pelmec made "Route B" and bonded warehouse sales in order to avoid the payment of import duties on

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imported raw materials. Torrington argues that to the extent that the Department relied on bonded warehouse or "Route B" sales, no adjustment should be made to USP for duty drawback. In addition, even with respect to actual local sales, Torrington asserts that the Department should disallow NMB/Pelmec's claimed adjustment since NMB/Pelmec failed to demonstrate that: (1) It imported sufficient inputs to account for the alleged rebates of import duties that it received; (2) it actually paid, and received rebates of, import duties on these inputs, and (3) it actually paid import duties on merchandise sold in the HM and passed the duties on to customers in the form of increased HM prices during the POR. Therefore, Torrington concludes that the Department should disallow NMB/Pelmec's claim for a duty drawback adjustment to USP.

NMB/Pelmec states that it did not claim a duty drawback adjustment for those U.S. sales that were compared to bonded warehouse or "Route B" HM sales. With respect to direct HM sales, NMB/Pelmec asserts that the Department verified that NMB/Pelmec made duty payments on imported components used to manufacture merchandise sold in the HM. Therefore, NMB/Pelmec concludes that the Department should allow NMB/Pelmec's claimed adjustment to USP for duty drawback for these final results.

Department's Position: We disagree with Torrington. We apply a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. In accordance with section 1677a(d)(1)(B) of the statute, a duty drawback adjustment will be made if the Department determines (1) import duties and rebates are directly linked to and dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The CIT consistently has accepted this application of the law. See *Far Eastern Machinery*, 688 F. Supp. at 612, *aff'd. on remand*, 699 F. Supp. at 311; *Carlisle Tire & Rubber Co.* v. *United States*, 657 F. Supp. 1287, 1289 (1987); *Huffy Corp.* v. *United States*, 10 CIT 215–216, 632 F Supp. (*Huffy*).

The Department's two-pronged test meets the requirements of the statute. The first prong of the test requires the Department "to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties." *Far East Machinery*, 699 F. Supp. at 311. This ensures that a rebate is received by the manufacturer only if import duties were paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.* Under this prong, the duty drawback adjustment to USP is limited to the amount of duty actually paid.

At verification, we determined that NMB/Pelmec satisfied both prongs of our test. Specifically, we verified (1) that Thailand's duty drawback system makes rebates of import duties dependent upon payment of these duties, and (2) that NMB/Pelmec paid import duties on materials incorporated into subject merchandise, and that it imported a sufficient amount of raw materials to account for the amount of duty drawback claimed.

Further, in *Huffy*, the CIT held that section 1677a(d)(1)(B) allows the Department to presume that HM prices include the cost of import duties. See *Avesta Sheffield* v. *United States*, Slip Op. 93–217 (CIT 1993). Therefore, when, as in this case, the record demonstrates that import duties were paid on raw materials, the Department is not required to determine whether duties were passed on to customers in the form of increased HM prices.

Finally, NMB/Pelmec did not claim an addition to USP for duty drawback for those U.S. sales that were compared to FMV based on HM "Route B" sales or bonded warehouse sales. Therefore, we have allowed NMB/Pelmec's claim for a duty drawback adjustment to USP for these final results.

14. U.S. Price Methodology

Comment 1: Torrington asserts that resale profits should be deducted from ESP. Torrington contends that the intent of exporter's sales price is to determine the net amount returned to the foreign exporter. Torrington asserts that, under the Department's interpretation of ESP, related parties receive special advantageous treatment that is contrary to Congressional objectives and purpose. For example, in the case of an unrelated reseller, the Department deducts the full commissions paid, which must cover the agent's expenses and a reasonable profit. However, in the case of a related reseller, the Department deducts the selling expenses associated with the resale, but not a reasonable profit earned on the transaction.

RHP points out that partly due to Torrington's efforts, several bills have been introduced in Congress in recent years to amend the antidumping law to provide for the deduction of resale profits from ESP sales. However, not one has become law. RHP feels this is an issue of fundamental importance and should only be modified by statutory amendment.

Koyo, NTN, and FAG argue that Torrington's claim that the Department should deduct resale profits from ESP must be rejected. The three respondents point out that the CIT has already repeatedly rejected the argument, noting that the Department's practice of refusing to deduct profits from ESP is in accordance with the antidumping law. *See Timken Co.* v. *United States*, 673 F. Supp. 495, 518–21 (1987). Additionally, the same arguments were rejected in previous reviews by the Department. FAG also states that in *Federal-Mogul* v. *United States*, 19 CIT, Slip Op. 93–17 at 23, the CIT stated, "It is well established that profit is correctly a part of the ITA's calculation of USP." Thus, FAG argues that these judicial decisions do not give the Department the discretion to deduct resale profits from ESP.

NSK contends that the Department appropriately declined to deduct profit on resale transactions in calculating ESP. NSK asserts that the literal language of the statute does not permit the deduction of so-called resale profit. NSK also holds that retention of so-called profit in calculating ESP leads to a fair result. Even if the Department disregarded both the statute and case law, NSK claims strong reasons remain for not deducting purported resale profit from ESP. Profit is included in the FMV side of the antidumping equation. To deduct profit from the USP side would lead to a disequilibrium and result in a false comparison as the CIT recently observed. *See Federal-Mogul Corp.* v *United States*, 813 F. Supp. 856, 866 (CIT 1993).

SKF argues that resale profits should not be deducted from USP on ESP sales, and that Torrington's argument has been consistently rejected by the Department, the CIT, and Congress. SKF maintains that the relevant section of the Act does not include an adjustment for resale profits, and that Congress has recently specifically rejected an attempt to provide for such a deduction. See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 629, *reprinted in* 1988 U.S.C.C.A.N. 1547, 1662. Therefore, one cannot infer that Congress intended to include this provision in the statute.

SKF also claims that there is no evidence supporting Torrington's theory that resale profits must be deducted in order to equalize PP and ESP. SKF contends that such a deduction would penalize importers who raise their prices in order to eliminate dumping. SKF holds that the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States*, 813 F Supp. 856, 866 (1993).

Department's Position: As stated in *AFBs III* (at 39777), we disagree with Torrington that resale profits should be deducted from ESP. We find no statutory authority for making this adjustment. Furthermore, the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 866 (1993).

Comment 2: Koyo, RHP, SNR, NSK, and FAG claim that the Department's practice of deducting U.S. direct selling expenses from USP, in ESP situations, instead of adding them to FMV is unlawful. Respondents cite judicial precedent in support of their position that direct selling expenses should be added to FMV. For example, NSK maintains that the Department's methodology violates the ruling of the CIT in *NSK Ltd.* v. *United States*, Slip Op 93–216 (CIT 1993). Respondents claim that the Department should treat direct selling expenses as COS adjustments to be added to FMV in order to comply with recent CIT rulings.

Department's Position: The CAFC has upheld the Department's practice of deducting U.S. direct selling expenses from USP in ESP situations. See *Koyo Seiko Co.* v. *United States*, 36 F.3d 1565 (Fed. Cir. 1994). Therefore, we have continued to deduct direct selling expenses from ESP in these reviews.

Comment 3: Koyo contends that the Department's failure to average USPs in the same manner as it averaged FMV was an abuse of discretion and contrary to law. Koyo argues that the Department has distorted the dumping margins through its comparison of single transaction prices in the United States with average prices weighted over the entire review period in the home market. Koyo maintains the "inequity" of this methodology is largely attributable to the Department's practice of not crediting manufacturers with negative dumping margins on U.S. sales at prices "above those in the foreign market." Koyo states that pursuant to 19 U.S.C. 1677(f)(1) the Department is required to use averaging to establish both USP and FMV when such averaging techniques yield fair and representative results. Koyo notes that the Department used weighted-averaged U.S. prices in *Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico*, 55 FR 12696, 12697 (April 5, 1990). Koyo requests that the Department use its annual average methodology for both USP and FMV in order to achieve representative results as required by the antidumping law.

Torrington and Federal-Mogul disagree with Koyo's argument that comparing weighted-average USPs with a weighted-averaged FMV is reasonable and in accordance with Departmental precedent and the law. Torrington's reasoning is that averaging U.S. price would "encourage and reward price discrimination, the very practice that antidumping law is designed to combat." In response to Koyo's argument that the Department should credit foreign manufacturers for "negative dumping margins," Torrington argues that this "would allow dumping to continue so long as other sales were made at prices sufficiently high to mask dumped sales." In support of this position Torrington cites the ruling in *Serampore Industries Pvt., Ltd. et al.* v. *United States*, 11 CIT 866, 874, 675 F Supp. 1354, 1360–61 (1987). Torrington also maintains that the Department generally only averages USPs in the case of perishable products or other merchandise characterized by price volatility. Torrington notes that AFBs are not perishable; therefore, Koyo's citation to the Fresh Cut Flowers from Mexico case, a precedent with respect to perishable goods, is inappropriate. Federal-Mogul maintains that the Department should not average USP in this review because it has rejected Koyo's request to do so in the past and Koyo's arguments have not changed.

Department's Position: As stated in *AFBs III* (at 39779), we disagree with Koyo's assertion that we must average USPs on the same basis as FMV to ensure an "apples-to-apples" comparison. In addition, we agree with Torrington that averaging USP is unacceptable in most cases because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. For example, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin while still dumping.

Except in limited instances in which we have conducted reviews of seasonal merchandise with very significant price fluctuations due to perishability (see, *e.g., Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico*, 55 FR 12696, 12697 (April 5, 1990)), we have not averaged U.S. prices. See *Final Results of Antidumping Administrative Review; Pressure Sensitive Plastic Tape from Italy*, 54 FR 13091 (March 30, 1989). Since the merchandise under review is not a perishable product, there is no reason to change our current methodology, which has been upheld by the Court of Appeals. See *Koyo Seiko* v *United States*, 20 F.3d 1156 (Fed. Cir 1994).

Comment 4 Torrington argues that the Department should reclassify Honda's sales to the United States as PP transactions, rather than treating Honda as a reseller of AFBs. Although Torrington acknowledges that the Department found no evidence at verification that Honda's suppliers were aware of the ultimate destinations of their merchandise, Torrington asserts that Honda's Japanese suppliers must have known that Honda had substantial manufacturing activities in the United States and that, therefore, many of their AFBs were destined for the United States.

Honda responds that it is a reseller of AFBs, rather than a manufacturer, and that Honda's suppliers in Japan did not know, or have reason to know, that specific AFBs were ultimately destined for the U.S. market. According to Honda, no AFBs were ordered directly by any of its U.S. affiliates from its Japanese suppliers. Furthermore, Honda states that its orders of AFBs from its suppliers did not indicate, by way of timing of shipments or orders, the terms of sale, or any other factors, the ultimate destination of the AFBs. Honda also contends that these conclusions were fully verified by the Department and confirmed in the Department's verification reports.

Honda notes that Torrington does not dispute Honda's statements or the Department's findings. Honda further points out that the standard for suppliers' knowledge concerning the ultimate destination of merchandise "is high." See *Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping Administrative Review*, 58 FR 11216 (February 24, 1993). As a result, Honda states that the fact that Honda's suppliers were aware that some AFBs would be exported to the United States because Honda has U.S. manufacturing operations is insufficient to justify reclassifying Honda's sales as PP transactions.

Department's Position. We agree with Honda that it should be treated as a reseller. This issue was examined extensively at verification. See *Honda Motors Verification Report* at 3 and 4, March 4, 1994. The standard for the "knowledge test" is high. See *Television Receivers, Monochrome and Color, from Japan: Final Results of Antidumping*

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Administrative Review, 58 FR 11216 (February 24, 1993). Based on this standard, we concluded that Honda's suppliers did not have reason to know that their sales to Honda would be exported to the United States. Therefore, we continue to classify Honda as a reseller

15. Accuracy of the Home Market Database

Comment 1: Torrington argues that all reported HM sales destined for export should be purged from respondents' HM sales listings. Citing 19 U.S.C. 1677a(b), (section 772(b) of the Tariff Act), Torrington claims that sales by foreign manufacturers or producers that result in exports to the United States are by definition PP transactions and that there is no requirement in the statute that the foreign manufacturer knew, or should have known, that the sale was an export sale. The statute only refers to the knowledge of a manufacturer or producer in the context of sales to a "reseller" for exportation to an intermediate country. In addition to identifying reported HM sales which were destined for the United States, Torrington holds that it is equally important to ensure that FMV is based only on sales for consumption in the HM. Therefore, where there is evidence that particular sales were not for HM consumption, such sales should be purged from the HM sales listing even if there is insufficient evidence to suggest that the sales were for export to the United States. Torrington further argues that, at the least, the Department should adopt presumptions that shift the burden of establishing whether sales are for exportation from the Department to respondents.

Torrington argues in particular that all reported HM sales which were made to known German wholesalers/exporters, also referred to as "indirect exporters," should be disregarded in calculating FMV. Torrington claims it has made a substantial effort to demonstrate to the Department a pattern whereby German producers sell bearings at lower prices to German resellers who are exporters. The inclusion of such sales in the HM database tends to lower FMV. Furthermore, the Department should assume the questionable sales were actually sales to the United States.

Torrington claims that FAG was uncooperative in this proceeding or may have even impeded the Department's search for truth in this matter, and urges the Department to apply BIA to FAG's entire response. Torrington contends that FAG continued to claim a complete lack of knowledge of sales to exporters until just several days before the preliminary results were issued. Torrington cites evidence discovered by the Department at verification, such as the fact that FAG sold to one exporter from its export, rather than domestic, price list, and other information provided for the record by the petitioner that implies that the inclusion of these sales in the HM database would be improper. Torrington further argues, however, that if the Department declines to reject FAG's response and use punitive BIA, the Department should at least reclassify as U.S. sales all FAG HM sales to customers fairly known to export AFBs.

Torrington also argues that the Department acted properly in excluding certain FAG sales to such HM customers. Torrington contends that the Department has a statutory basis for this action and that the Department established the validity of its factual findings at verification. See *FAG Verification Report*, February 23, 1994. Torrington maintains that the preliminary results call into question all sales to German wholesalers/exporters and contends that the Department should presume all sales to such customers are destined for export, adding that the Department has the discretion to exclude all questionable sales.

FAG maintains that the Department unlawfully removed sales to two HM customers from FAG's HM database, and that FAG properly reported all HM sales. FAG argues that the Department's test for determining whether FAG should have known that such sales were for export, and not for HM consumption, was arbitrary and capricious. This test involved telephone interviews with customers to determine whether FAG had knowledge that the merchandise sold to those customers would be exported. FAG contends that HM sales can be excluded only under section 772(b) of the Tariff Act (19 USC 1677 a(b)). Under that provision, the Department must first establish that the respondent had knowledge at the time of the sale that the merchandise was intended for export, then must determine that the United States was the destination of the export sale. FAG further argues that the Department has consistently maintained that the standard for imputed knowledge is high. FAG cites *Fuel Ethanol From Brazil: Final Determination of Sales at Less Than Fair Value*, 51 FR 5572 (February 14, 1986) (*Fuel Ethanol*), in which the Department imputed knowledge to the supplier that exports were destined for the United States because the reseller did not sell in the HM and the United States accounted for 100 percent of the export market for the in-scope product.

FAG notes that, where the Department cannot say with objective certainty that 100 percent of a reseller's goods go to a known destination, the Department has not determined that the supplier "should have known" the disposition of the goods. FAG argues that even beyond having a high standard for imputing knowledge, the Department requires objective information that can be corroborated by the administrative record, citing *Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Administrative Review*, 58 FR 11211 (February 24, 1993) (*Television Receivers*) and *Oil Country Tubular Goods From Canada: Final Results of Antidumping Duty Administrative Review*, 55 FR 50739 (December 10, 1990) (*OCTG*). FAG claims that the Department cannot satisfy the high burden of proof for imputing knowledge by means of telephone calls to customers. FAG maintains that the information gathered from these phone calls amounts to hearsay, and that the information cannot be corroborated by the administrative record.

FAG contends that its test for determining whether a sale should be classified as a HM sale, which involves checking whether VAT was charged and paid on the sale, is the most objective method for making such a determination, and is the best indication of what FAG knew at the point of sale regarding the destination of the merchandise. FAG argues that the Department verified that all HM sales reported by FAG included VAT.

FAG also argues that the term "exporter" has been so loosely used as to have no meaning, and further argues that, even if sales to these alleged exporters can be isolated, it is unclear whether all such sales were actually exported. FAG maintains that the method proposed by Torrington, as well as the one utilized by the Department, is subjective and unverifiable.

SKF argues that its data have been thoroughly verified and that there is no compelling evidence on the record to indicate that any of its HM sales were made at low prices to German resellers known to export.

INA noted that HM sales which it claimed as export sales were made to companies that were known by INA to be exporters and were classified as such in INA's records. INA states that the Department verified that such sales were not included among INA's reported HM sales. INA noted, however, that two customers classified as exporters also resell within Germany

All sales to these two customers were reported as HM sales because INA had no way of knowing which particular bearings were resold in Germany and which were exported.

Department's Position: In accordance with section 772(b) of the Tariff Act, transactions in which the merchandise was "purchased * * * for exportation to the United States" must be reported as U.S. sales in an antidumping proceeding. However, we have not found in this review sufficient evidence to conclude reasonably that any alleged HM sales are in fact U.S. sales under section 772(b). Therefore, we have not reclassified any respondent's HM sales as U.S. sales in these reviews.

Section 773(a) of the Tariff Act provides that FMV be based on sales "for home consumption." Therefore, sales which are not for home consumption, even if they are not classifiable as U.S. sales under section 772(b), are not appropriately classified as HM sales for antidumping purposes. In these reviews, except for certain sales reported as HM sales by one company, we did not find sufficient evidence to conclude reasonably that reported HM sales were not "for home consumption" as required by section 773(a).

With respect to German wholesalers/exporters specifically, at verification we determined that, except for certain FAG sales, there were no distinguishing characteristics by which to differentiate sales by German manufacturers to alleged exporters from other HM sales, and we found insufficient evidence to indicate that respondents' HM sales to customers that Torrington alleges to be wholesalers/exporters were destined for export.

We do not agree with Torrington's argument that all sales made to so-called wholesalers/exporters should be treated as U.S. sales, because we do not have sufficient reason to conclude that such sales were for export to the United States, nor even that they were for export at all. We also do not agree that rejection of FAG's response and use of BIA is warranted. However, we do agree that there is sufficient evidence to conclude that certain sales reported by FAG as home market sales were in fact export sales.

With respect to FAG, for these final results we excluded reported HM sales to two customers. For these sales, the evidence indicates that the merchandise in question was destined for export and thus not for home consumption. We found at verification that FAG referred to these customers as "indirect exporters" and that FAG excluded sales to other "indirect exporters" based on its conclusion that these were export sales. In addition, one FAG subsidiary sold to one of these two "indirect exporters" from its export, rather than domestic, price list. We also visited and interviewed one of these resellers and found that it only sells in export markets. This reseller claimed that its suppliers, including FAG, know that it does not resell within Germany. For these reasons, we conclude that these sales were for export and not for domestic consumption. Therefore, these sales cannot be included in FAG's HM sales.

We do not agree with FAG's assertion that the collection of VAT is confirmation that a sale is for HM consumption. Collection of VAT on the sale between FAG and its customer does not preclude the customer from reselling the merchandise for exportation and ultimately receiving a VAT rebate on the resale of the merchandise. Thus, collection of VAT by FAG is not a determinant of the ultimate destination of the merchandise.

FAG's reference to *Fuel Ethanol* is only relevant to the question of whether certain sales should be regarded as U.S. sales. We agree with FAG that there is not sufficient evidence to reclassify any of its reported HM sales as U.S. sales. However, this does not mean that such sales are automatically sales "for home consumption" as required by section 773(a) of the Tariff Act. Furthermore, *Television Receivers* and *OCTG* also concerned the issue of whether certain sales should be regarded as U.S. sales, not whether certain sales should be regarded as sales for home consumption.

In *Television Receivers* and *OCTG*, the unrelated reseller sold the product in both Canada and the United States. Therefore, the producer did not know the ultimate destination of the merchandise at the time of sale to the unrelated reseller. *OCTG* at 50740. In this case, where unrelated German resellers both export and resell within Germany, we determined that the manufacturer did not know the ultimate destination of the merchandise. Such sales were retained in the HM database.

Therefore, based on the above circumstances, no further changes have been made to either the HM or the U.S. databases with regard to HM sales to alleged wholesalers/exporters.

Comment 2: Torrington argues that U.S. dollar- or Singapore dollar-denominated HM sales in Singapore and/or Thailand should be excluded from the HM database, because such sales are not HM sales.

The NMB/Pelmec companies rebut Torrington's argument by stating that it is not unusual for multinational companies in developing countries sometimes to conduct business in foreign currencies. Further, the NMB/Pelmec companies claim that nothing has changed since *AFBs III* (at 39783), when the Department determined that there was no evidence that the NMB/Pelmec companies had any reason to know that U.S. dollar-denominated sales, or sales to Thai affiliates of U.S. companies, consisted of merchandise destined for the United States. In addition, the NMB/Pelmec companies note that where they knew that a sale to a domestic customer was actually destined for export, the Department verified that such sale was excluded from the HM database.

Department's Position: We agree with the NMB/Pelmec companies. We verified sales made in U.S. dollars and Singapore dollars, and found no evidence to indicate that the NMB/Pelmec companies had any reason to know or to believe that its U.S. dollar- or Singapore dollar-denominated transactions were destined for the United States.

Comment 3: Torrington claims that NMB Pelmec/Thai's bonded warehouse sales and Route B sales of AFBs should be excluded from the HM sales listing because the Department determined in the original investigation that such sales properly represented third country sales. Torrington states that due to the exemption of VAT and import duties, it can be inferred that all such sales are ultimately being exported. Finally, Torrington argues that such sales are not in the ordinary course of trade.

NMB/Pelmec Thai states that the Department has consistently treated bonded warehouse sales as HM sales since *AFBs I*. Further, NMB/Pelmec asserts that the Department has treated Route B sales as HM sales in the past three administrative reviews. It claims that such sales fit the statutory definition of sales made in the ordinary course of trade. NMB/Pelmec also claims that Torrington has not offered any new evidence as to why the Department should treat Route B sales differently than it has in the past.

Department's Position: We agree with NMB/Pelmec Thai. We have treated such sales as HM sales consistently in the past three reviews, and find the facts in this review to be the same. With respect to the sales in question, we find that the first sale to an unrelated party occurred in Thailand. Route B sales are sales made through NMB/Pelmec Thai's related selling agent, Minebea Singapore Branch (MSB). We verified that MSB's sales, which represent the first sale to an unrelated party, are to customers in Thailand. Therefore, we conclude that

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they are properly classified as HM sales. See *AFBs II* (at 28422) and *AFBs III* (at 39783). We also verified NMB/Pelmec Thai's reported home market sales and find that such sales were in the ordinary course of trade. See verification reports for NMB/Pelmec Singapore and Thailand.

Comment 4: Referring to Nachi's supplemental questionnaire response (at 4), Torrington notes that Nachi has admitted to assisting certain customers in obtaining Japan Bearing Institute (JBI) Inspection certificates for a portion of Nachi's HM sales. Torrington claims that JBI inspection certificates are prepared for merchandise destined for export. Thus, all sales for which JBI inspection certificates were completed should be deleted from the HM database. Further, Torrington asserts that JBI certificates may identify destinations which would serve as additional evidence that JBI inspected-merchandise is destined for export.

Nachi contends that simply because merchandise is JBI inspected does not necessarily mean it is destined for export, and that Nachi has no way of knowing which, if any, JBI-inspected bearings were exported.

Departn ent's Position: We agree with Nachi. We previously determined that JBI inspection certificates merely attest to the quality of the inspected merchandise. See *Final Results of Redetermination Pursuant to Court Remand, Federal-Mogul Corp. and the Torrington Company* v. *United States*, Slip Op. 93–180 (September 14, 1993). We thoroughly examined the Japanese laws that mandated which information was to be included on the certificates. Reporting the final destination was only required for certain commodities for which quality standards are applied based on destination. AFBs were not included among such commodities. The certificates are not country-specific nor sale-specific. Inspection certificates indicate brand, model number and quantity inspected, but are of no help in determining whether sales reported as HM sales were destined for export. Torrington has presented no new evidence to indicate that respondents knew, or should have known, that reported HM sales were destined for export because JBI inspection certificates were completed.

Comment 5: Torrington asserts that INA's HM sales database is incomplete. Torrington states that the Department found at verification that HM models for which INA failed to report dynamic load ratings (DLRs) were not reported in their proper families and were deleted from the HM sales listing. Torrington further alleges that the Department's verification report demonstrates that the HM models for which INA failed to provide DLRs not only belonged to the same family, but were, in fact, identical to the bearings for which INA reported DLRs. Finally, Torrington asserts that the Department's verification findings support Torrington's allegations that INA reported models whose characteristics are not listed in INA's catalogs and that do not appear to be logical. For these reasons, Torrington concludes that INA deliberately attempted to manipulate the Department's analysis and, therefore, that the Department should determine INA's dumping margins using first-tier BIA for these final results.

INA acknowledges that it improperly created certain bearing families as a result of a computer programming error. According to INA, however, this error has an insignificant impact on the Department's calculations. First, INA asserts that the matches for the specific models that the Department examined at verification were not affected by missing load ratings, because the Department made identical rather than family matches for one of the products at issue, and because INA made no sales of the other product during the sample weeks. INA further argues that its own analysis demonstrates that only a handful of U.S. sales were matched to HM families for which INA failed to report certain bearings. Finally, INA provides explanations of each product for which Torrington challenged INA's reporting of physical characteristics. For these reasons, INA contests Torrington's request that the Department reject INA's reported HM sales and use BIA to determine INA's dumping margins for this review.

Department's Position: We agree in part with Torrington. At verification, we found that INA failed to report DLRs for certain bearings that it sold in the HM. INA subsequently acknowledged that it improperly created certain bearing families in responding to the HM sales portion of our questionnaire. Accordingly, we have identified the bearing families that INA created incorrectly by matching models reported without DLRs in INA's summary HM sales database with models reported in INA's HM sales database that we determined to be in the same family based on family characteristics excluding DLRs, and used BIA to determine the dumping margins for those U.S. sales that we compared to those families. There is no evidence in the record, however, to support Torrington's arguments that other aspects of INA's reporting of physical characteristics are erroneous and that INA deliberately manipulated its reporting of the physical characteristics of its bearings in order to lower its dumping margins. Accordingly, we have not rejected INA's reported HM sales database for these final results.

16. Miscellaneous Issues

16A. Verification

Comment 1: Federal-Mogul challenges the Department's statement that it found no discrepancies during the verification that it conducted at INA's U.S. subsidiary. According to Federal-Mogul certain data contained in the verification exhibits do not correspond with those contained in INA's questionnaire responses. Specifically, Federal-Mogul states that: (1) The Deutsche mark values of certain shipments differ from those in the responses; (2) the gross and net weights of one shipment differ from those in the responses; and (3) the per-unit freight charge for the one sea shipment that INA included among the sample used to calculate per-unit movement expenses during the verification is less than the per-unit amount that INA reported in its questionnaire response for the same shipment. As a result, Federal-Mogul requests that the Department increase INA's reported ocean freight expenses by the percentage difference between the ocean freight charge contained in the verification exhibit and that contained in INA's questionnaire response.

INA explains that differences in the Deutsche mark values reported in the verification exhibits and the questionnaire responses are the result of rounding, and are insignificant. In explaining the discrepancy between the gross and net weights reported in the verification exhibits and the questionnaire responses, INA acknowledges that it incorrectly calculated the total gross and net weights reported in the verification exhibits. According to INA, however, the weights reported for this shipment in the questionnaire response are accurate. Finally, INA explains that the difference between the freight charges reported in the verification exhibits and the questionnaire responses is the result of the fact that the charges shown in the verification exhibit include harbor maintenance and merchandise processing fees, which are not included in the freight charge reported in the response. Because the information reported in INA's responses is accurate, INA concludes that the Department is not required to make any adjustments to INA's reported freight charges.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we examined numerous documents relating to INA's reported movement charges, and found no discrepancies between the source documents and the information reported in INA's questionnaire responses. Further, although there may be minor discrepancies between the source documents and the worksheets that INA prepared for us at verification, the worksheets are merely prepared for the verifier's convenience. As the actual source documents and the questionnaire responses were in agreement, errors in the worksheets are irrelevant to the adequate verification of INA's movement expenses. Further, regarding the differences in Deutsche mark values, we note that the difference is small and the result of rounding. Finally, with respect to the freight charge at issue, we verified that the difference was due to harbor maintenance and merchandise processing fees which were included in the verification exhibit. These fees were not included in the freight charges reported to the Department, but rather were broken out and reported separately. As a result, we have not made any adjustments to INA's reported freight charges for these final results.

16B. Database Problems

Comment 2: Nachi argues that in the Department's recalculation of its export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as U.S. dollar values when certain transfer prices were reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department must determine which transfer prices were reported in dollars and which transfer prices were reported in yen.

Department's Position: We agree with Nachi that some transfer prices were not properly treated. We have been able to determine which transfer prices were reported in dollars and which were reported in yen by using the codes reported in Nachi's currency variable field on the computer tape. We have made the appropriate corrections for these final results.

Comment 3: Koyo maintains that after reviewing the preliminary results of review, it found that it had made a clerical error in reporting the family name for one cylindrical roller bearing (CRB) transaction. The other seven transactions of this CRB model correctly list the family name.

Torrington argues that Koyo's proposal constitutes untimely, new information, which should be rejected. The Department should not correct the alleged error unless it is apparent from the record that it existed prior to the preliminary results.

Department's Position: The Department agrees with Koyo. We reviewed the record and found that the typographical error was in the database at the time of its submission. Therefore, the error has been corrected for these final results.

Comment 4: FAG-Germany requests that the Department exclude from the final margin calculations U.S. sales to related customers which they inadvertently reported. FAG-Germany identified the sales in question and noted that information already on the record supports its position that these sales are to related U.S. customers and therefore should not be included in the Department's final margin calculations.

Torrington contends that such revisions are allowable only where the underlying data have been verified and the changes are small.

Department's Position: The customer codes already submitted on the record by FAG-Germany support the position that these sales were made to related U.S. customers. While the specific sales in question were not examined at verification, we did verify randomly chosen sales made by FAG-Germany and found no discrepancies which would undermine our confidence in the accuracy of the reported customer codes. We also note that FAG-Germany properly reported all subject resales made by related customers in the U.S. during the POR.

We note that the CIT has upheld the Department's authority to permit corrections to a respondent's submission where the error is obvious from the record, and the Department can determine that the new information is correct. See *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992). Adopting Torrington's argument would amount to a rule that such corrections can never be made after verification. This is clearly inconsistent with our practice and the holdings of the CIT.

FAG-Germany's errors were obvious from the record once brought to our attention. It is in accordance with our longstanding practice to exclude U.S. sales to related customers in favor of resales by such customers to unrelated parties. Therefore, we have removed FAG-Germany's sales to related U.S. customers from the margin calculations for these final results.

Comment 5: Torrington argues that NSK's response indicates that "almost all" bearings that meet the ITA's definition of CRBs were produced by a certain company related to NSK, and were not sold in the U.S. market during sample weeks. Torrington alleges the database used by the Department and the entries suspended by Customs may be unreliable if NSK identified something less than all CRBs. Also, Torrington claims NSK was required to report all sales of CRBs and to implement a reporting methodology that systematically identifies and tracks those entries.

Torrington contends that because of the alleged misreporting, the ITA should base its final determination on BIA. The best information should be the highest rate calculated for NSK in any prior review or the original LTFV determination.

NSK argues that Torrington has misquoted NSK's response. NSK's response actually states that almost all bearings classified as CRBs, but which NSK considers needle roller bearings, were produced by the related party in question. NSK asserts that it properly reported all U.S. sales of CRBs with a ratio of length to diameter of less than four to one.

Department's Position: We agree with NSK. NSK's response does not give any indication that its reporting of CRB sales in the United States was incomplete. Moreover, the Department verified the completeness of NSK's U.S. database, and is satisfied with the reliability and completeness of the database.

16C. Home Market Viability

Comment 6: Torrington states that the Department discovered at verification that NMB/Pelmec Singapore and NMB/Pelmec Thailand submitted sales in third countries rather than to third countries. For purposes of the final results, ITA should ensure that the HM is viable based on NMB's revised data.

NMB/Pelmec argues that it reported sales in third countries rather than to third countries due to the Department's instructions in prior reviews.

Department's Position: We determined at verification that both NMB/Pelmec Singapore and NMB/Pelmec Thailand reported sales in third countries rather than to third countries due to prior instructions from the Department. We verified that there was only a minor difference in the number of sales made to third countries versus in third countries and ensured that the HM was viable in both Singapore and Thailand based on the revised data.

Comment 7: Torrington alleges that NMB/Pelmec Thailand's questionnaire response reveals that the ratio of total HM sales quantity of AFBs to the total number of AFBs sold in third countries only shows a viable HM when sales of

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parts are excluded. In addition, it is less than the five percent threshold if parts are included. Torrington states that the Department should separately calculate the viability for ball bearing parts.

NMB/Pelmec states that their HM is viable according to the methodology which was outlined in the Department's questionnaire. In the supplemental questionnaire, NMB/Pelmec was instructed by the Department to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. Following the Department's instructions, NMB/Pelmec reported a viable HM using this calculation methodology.

Department's Position: We agree with NMB/Pelmec. NMB/Pelmec was instructed by the Department in the supplemental questionnaire to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. NMB/Pelmec reported a viable HM using this calculation methodology. Moreover, we verified the information used in this calculation. See *NMB/Pelmec Thailand Verification Report*, February 10, 1994. Thus, Torrington's allegation that NMB/Pelmec Thailand did not demonstrate that the HM is viable is inaccurate. We determined that the HM was viable based on a weight basis, since using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts.

We note that our methodology implements the ruling of the CIT in *NMB Singapore Ltd.* v. *United States*, 780 F. Supp. 823, 826 (CIT 1992). The CIT held that the Department must take into account the difference between complete bearings and bearing parts in determining viability. The CIT noted that while bearings of different sizes are comparable, bearing parts are not similar to complete bearings of any size (*Id.* at n.2). The Department implements this decision by basing viability on weight where sales of parts are sufficient to affect viability.

16D. Scope Ruling

Comment 8: Torrington argues that individual components of disassembled bearings, such as locking collars and housings, are within the scope of the antidumping duty order. However, petitioner asserts that prior scope rulings have created a situation wherein bearing accessories, when imported separately from a bearing, are excluded from the order, while those same accessories are included in the order when imported attached to a bearing. Thus, when accessories are imported separately, the antidumping duty is applied only to the value of the bearing, and not to the value of the entirety as it is sold in the U.S. market. Torrington notes that SKF in particular takes advantage of this distinction by importing housed bearing units in disassembled form. Torrington also specifically points out NPBS as one of the companies importing housings and ball bearing inserts separate from its bearings in order to evade the order.

Torrington makes the point that by simply changing the packaging of the shipment, and assembling the various accessories on the bearing after entry, SKF avoided the antidumping duty order insofar as it applies to housed bearings. Torrington claims that when such parts are imported together, the clear implication is that the importer is attempting to evade the antidumping duty order. The CAFC sanctioned a comprehensive construction of the "class or kind" subject to an antidumping duty order in *Mitsubishi Elec. Corp.* v. *United States*, 898 F.2d 1577, 1582 (Fed. Cir. 1990), to avoid attempts to evade the antidumping duty order.

Torrington concludes that where the imported accessories and parts arrive together with the bearings, housings, and other parts, the Department should instruct Customs to suspend liquidation and collect antidumping duty deposits and duties with respect to the entirety. The mere repackaging of a housed bearing with locking collar or sleeves and with other accessories should not serve to exempt all of the accessories from the antidumping duty order.

SKF argues that it has already been determined that pillow blocks and accessories are not covered by the scope of the order and the fact that they may be used in AFB applications upon importation is irrelevant.

NPBS responds that the housings are imported separately and as such are not included in the scope of the order. Furthermore, there is no avoidance issue since the price of the completed bearing is reduced by the costs of the imported housing, as well as by further-manufacturing costs incurred in the United States and an allocated share of profit.

Department's Position: Locking collars, adaptor sleeves, housings and such accessories to antifriction bearings, when not assembled to those bearings, are not within the scope of the orders. The orders apply only to "ball bearings, mounted or unmounted, and parts thereof * * * cylindrical roller bearings, mounted or unmounted, and parts thereof * * * (and) spherical plain bearings, mounted or unmounted, and parts thereof." See *Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan*, 54 FR 19102 (May 3, 1989). The language makes no specific statement that housings and like accessories were considered during the LTFV investigation, nor were such accessories specifically included in the orders.

In a scope ruling in this case, the Department determined that "eccentric collars are not integral parts of a bearing and are * * * outside the scope of the antidumping duty orders." Furthermore, the Department found that eccentric collars were not "constituent part(s) of completed bearing(s) which are irreplaceable in their function," that "(a)n eccentric collar is an attachment to the bearing, not a part of a completed bearing," and that "the function of locking a bearing to the shaft (could) be performed by other accessories such as concentric collars, sleeves, or set-screws." Based on this evidence, the Department determined that an "eccentric collar," when imported unattached, is an accessory to a bearing, not a bearing part, and is, therefore, outside the scope of the antidumping duty orders." See memorandum dated May 14, 1993, "Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other Than Tapered Roller Bearings) from Japan."

When such accessories are assembled with an antifriction bearing and imported into the United States, we treat them as one unit because they are imported as one unit, and because addition of the accessory does not remove the bearing from the class or kind of merchandise. This does not mean that such accessories are, in and of themselves, subject to the orders. The housings, collars, and sleeves that are mentioned by the petitioner, like eccentric collars, are attachments to the bearings that are not essential to the antifriction property of the bearings; thus, they do not constitute either bearings or bearing parts by themselves. Therefore they are not subject to the order. Based on the foregoing argument, we conclude that importing such items not attached to the bearing is not, as petitioner contends, an evasion of the order.

Comment 9: FAG-Germany argues that the Department improperly included in its preliminary margin calculations U.S. sales of needle roller bearings with roller length-to-diameter ratios between three to one and four to one. FAG states that although the Department made a scope determination on December 23, 1991 in another case establishing this standard, it was not until September 2, 1992, four months into the fourth period of review, that the Department formally notified parties that the four to one standard would be applied in all circumstances for distinguishing needle roller bearings from CRBs. Hence, FAG claims that it was not forewarned that such merchandise would become part of the margin calculation and standards of due process of law were violated.

Torrington holds that the Department properly included all CRBs, including those with roller length-to-diameter ratios equal to or less than four to one. Torrington states that the respondents were aware of the scope determination 10 months before they received the questionnaire for the fourth review.

Department's Position: We agree with Torrington. In several prior scope rulings, including one requested by FAG, the Department stated that "the ratio of 4 to 1 is the common industry standard to distinguish a needle roller bearing from a cylindrical roller bearing. Accordingly, we have determined for purposes of this scope proceeding that the ratio of 4 to 1, as selected by the ITC in its final determination, is the dispositive ratio in defining the physical characteristics of a needle roller bearing." See memorandum dated December 23, 1991, "Final Determination on the Request by FAG for Exclusion of Certain Engine Crank Shaft and Engine Main Shaft Pilot Bearings from the Scope of *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany.*" Conversely, those roller bearings with roller length-to-diameter ratios of less than 4 to 1 are properly classified as cylindrical roller bearings and are therefore subject to the antidumping duty orders, as was stated in a later memorandum. See memorandum dated June 1, 1993, "Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other than Tapered Roller Bearings) from Germany: INA Walzlager." This determination has been upheld by the CIT. See *Koyo Seiko Co. Ltd.* v. *United States*, Slip. Op. 93–191 (CIT 1993).

Additionally, the Department's scope ruling issued in December of 1991 to FAG clearly adopted an industry standard which was applicable to all cylindrical roller bearings. This occurred well before the POR. Moreover, the September 2, 1992, clarification was issued long before FAG's questionnaire responses were due. Therefore, there was no ambiguity regarding the fact that the Department would consider CRBs with roller length-to-diameter ratios of less than four to one to be covered in this review.

16E. Pre-Final Reviews

Comment 10: RHP, SNR, IKS, and FAG request that the Department authorize and implement pre-final disclosure of computer programs and printouts. Respondents claim that in prior administrative reviews the correction of clerical errors has been delayed until many months after the final determination. Respondents maintain that the delay occurred because an action was filed in the CIT depriving the Department of jurisdiction to correct the relevant errors. RHP proposes that the Department either delay publication pending analysis or publish tentative final results so that clerical errors can be corrected.

Department's Position: As noted in the previous review (see *AFBs III* (at 39786)), in the interest of issuing the final results in a timely manner, the Department cannot implement this step. Furthermore, it is unnecessary. Because there were few changes made between the preliminary results and the final results, the Department finds that granting this request would cause unnecessary delay in the release of the final results.

Comment 11: SNR and FAG request that upon final disclosure the Department give parties a complete printout of all positive margin sales used by the Department in its final determination. SNR and FAG maintain that prompt release of complete printouts is essential for their analysis of the Department's results.

Department's Position: In response to SNR and FAG's request that additional data be printed out for final disclosure, we must decline to change our procedure. It is not practical to print out every bit of data that might be generated by our computer programs. Therefore, we have chosen to print out as much data as is necessary to ensure that the programs are functioning as intended. While FAG and SNR may wish to examine certain additional data, other interested parties may wish to examine still other data. In that printing out additional data is not needed to ensure the accuracy of our results and it is burdensome to the Department to tailor printouts for individual parties, we must decline requests that additional data be printed. Furthermore, we note that all parties have access to the same original data used by the Department and complete copies of our computer programs. Therefore, parties have the ability to duplicate the Department's results and generate any additional data they wish.

16F. Termination Requests

Comment 12: GMN argues that the Department's rejection of GMN's termination request is unreasonable and constitutes an abuse of agency discretion. GMN admits that it made a late request to withdraw its request for review and to terminate this review. This review was requested by GMN in order to obtain revocation of the order against it. GMN declared bankruptcy on December 1, 1993, but still tried to complete the review and the sales verification during the week of January 10, 1994. The only domestic competitor, Torrington, did not object to GMN's request. Federal-Mogul, an interested party although not a competitor, filed an objection. GMN responded to this objection, but Federal-Mogul did not respond to GMN's rebuttal. According to GMN, the use of the BIA rate is in no way reflective of GMN's recent history. GMN notes that because the request for review was made by GMN itself, and its existing deposit rate was zero percent, its late request for withdrawal from the review could only be motivated by the bankruptcy. By allowing Federal-Mogul "veto power" over GMN's request, the Department abdicated its statutory right to exercise discretion in such matters.

If the Department rejects GMN's request to withdraw, and if the Department maintains that it cannot calculate a margin for GMN without further verification, GMN suggests that we sever GMN's review and place it on a separate schedule.

Department's Position: The Department has determined that it would be inappropriate to terminate this review for GMN. Our decision is based on the fact that GMN's request to terminate the review was submitted during the verification process, an advanced stage of the review process, and that we were unable to complete sales and cost verifications successfully. Moreover, GMN was aware that it would be unable to complete verification, and thus that its margin would probably be based on BIA when it requested the termination. We also note that Federal-Mogul objected to termination of the review.

Although GMN substantially cooperated with our review, we consider the inability of a respondent to complete a verification in progress to be a serious matter. Though GMN's pending bankruptcy may have played a role in GMN's inability to complete the verifications, we cannot determine what other factors may have hindered the verifications. We note that, at the

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hearing, GMN's counsel acknowledged that GMN was aware of its financial troubles long before the verification. Respondents should not be given incentive to request reviews and then withdraw their requests if verifications appear to be going poorly. This is one of the reasons why 19 CFR 353.22(a)(5) generally requires that review requests be withdrawn no later than 90 days after the date of publication of the initiation notice. Federal-Mogul's objection only indicates that other parties have an interest in the outcome of an administrative review, which supports the Department's decision not to terminate this proceeding.

16G. Programming

Comment 13: Torrington argues that RHP's the Department's preliminary SAS programs for RHP improperly assigned a zero margin to sales with a USP of less than zero. Torrington continues that it is possible to have a U.S. sale with a value of less than zero. Torrington asserts that the Department should calculate margins on all U.S. sales including those with a value less than zero.

RHP states that it has no objection to the Department adjusting the program so that sales with an adjusted price of less than zero are included.

Department's Position: Torrington misunderstood our program. The lines of the program which are quoted in its case brief do not improperly assign all sales with a negative USP a zero margin. Generally, margins were calculated for such sales as appropriate. However, for certain U.S. sales RHP provided no FMV information and, accordingly, we determined BIA dumping margins for such sales by applying the appropriate BIA rate to the USP of each of those sales. For these sales, negative margins would be generated by applying the BIA rate to a negative USP. Therefore, the lines of the program in question merely set to zero the margins for any U.S. sales to which a BIA rate should be applied but which have a negative USP.

Comment 14: Torrington contends that while RHP's program should assign a BIA rate to RHP's U.S. sales of models that would be matched with HM sales by NSK Europe, it appears that there are errors in the treatment of NSK's sales which prevented the application of BIA to those U.S. sales. Torrington argues that the program did not properly classify these NSK sales in the RHP preliminary program.

RHP states that it attempted to find the alleged errors, but has been unable to do so. RHP argues that because it did not find any errors and Torrington has not identified specific errors, the Department should not change the treatment of NSK sales.

Department's Position: We agree with Torrington that there was a flaw in RHP's preliminary program. However, the flaw merely created duplicate listings of NSK Europe models and was not the reason that no RHP U.S. sales matched to HM sales by NSK Europe. Rather, no sales were matched because there were no comparable families of bearings, *i.e.*, similar merchandise, sold by NSK Europe. In response, we modified the program to match NSK Europe's sales with RHP's U.S. sales by model instead of by family. The fact that no NSK Europe models matched with RHP models further demonstrates that RHP and NSK did not sell comparable merchandise.

Comment 15: FAG UK/Barden alleges that the Department incorrectly identified domestic brokerage and handling expenses (DBROKHE) using the variable name for domestic presale inland freight (DPRSFRE).

Department's Position: We disagree with FAG UK/Barden. Our analysis of the firm's response, including its format sheets, leads us to conclude that FAG reported its brokerage and handling expenses in the field DPRSFRE. Therefore, we have deducted brokerage and handling expenses as DPRSFRE.

Comment 16: Torrington asserts that a clerical error occurs at line 990 in FAG UK's program where the margin is set to zero whenever USP is less than zero.

FAG UK argues that there is no clerical error at line 990 of the program, and that the setting of PCTMARG equal to zero where USP is less than zero, in any event, has no impact on the margin.

Department's Position: We disagree with Torrington that there is a clerical error. Without this line of the program, U.S. sales with dumping margins and negative U.S. prices would show a negative percentage margin. This programming eliminates this anomaly. The setting of the PCTMARG variable at line 990 has no effect on the calculation of the dumping margin.

Comment 17: Torrington states that, in PP transactions, the UNTCUSE variable (customs value) in the program for FAG-Germany is defined as UNITPRE—OCNFRE—MARNINE, and that UNITPRE was modified to include an amount representing VAT, to allow comparison with a VAT-inclusive FMV. Torrington argues that the VAT amount should be removed from UNTCUSE.

Department's Position: We disagree with Torrington that any change is necessary. This variable is not used for PP sales in either the margin calculation or in the calculation of assessment rates. The UNTCUSE variable is only used when calculating *ad valorem* assessment rates. However, purchase price sales are assessed on a per-unit, not *ad valorem*, basis.

16I. Revocation

Comment 18: Torrington asserts that the Department should deny SKF-France's request to revoke the antidumping duty orders spherical plain bearings (SPBs). Torrington notes that revocation is permissible only if the requesting company is unlikely to sell below FMV in the future. Torrington contends the circumstances indicate that this is doubtful, since SKF-France is part of a larger multinational organization which has preliminarily received dumping margins for SPBs in other countries.

SKF responds that Torrington has presented no legal basis on which to deny revocation. SKF argues that since neither the antidumping law nor the Department's regulations mandate a different standard for revocation for multinational corporations, Torrington's argument concerning SKF's multinational activity for purposes of revocation is irrelevant.

Department's Position: Under 19 CFR 353.25(a)(2)(i), the Department may revoke an order in part if it finds sales at not less than FMV for a period of at least three consecutive years. The results in this review, combined with the results in the two prior reviews, satisfies this requirement for SKF-France in the antidumping duty proceeding SPBs. Additionally, respondent has agreed, pursuant to 19 CFR 353.25(a)(2)(iii), to the immediate reinstatement of the order if circumstances develop indicating that they have resumed dumping the subject merchandise. We are satisfied that the respondents is not likely to sell the merchandise in the future at less than FMV, and we agree with respondents that the requirements for revocation have been met.

16J. No Sales During Period of Review

Comment 19: Kaydon, a U.S. producer of ball bearing products, urges the Department to reconsider its preliminary finding that Hoesch and Rollix had no U.S. sales of subject merchandise during the review period. Kaydon asserts that it has provided evidence to the Department which indicates that the respondents sell merchandise in the U.S. market which are properly characterized as bearings subject to the order rather than slewing rings. According to Kaydon, sales of these products, or substantially similar products, may have taken place during the POR but remain unreported due to the respondents insistence that the merchandise are slewing rings and therefore fall outside the scope of the orders. Kaydon argues that if the Department concludes that these products are bearings, not slewing rings, and if respondent made sales of these products during the POR, the Department should consider Hoesch and Rollix's responses as inadequate and should seek further information regarding the merchandise sold by these respondents during the POR.

Hoesch and Rollix believe that Kaydon's request is not appropriate. Respondents claim that a scope determination rather than an administrative review is the proper context for considering scope issues. According to the respondents any scope questions Kaydon had with respect to the merchandise in question should have been raised within the context of a scope determination request. Therefore, respondents claim that Hoesch and Rotek's (a related affiliate in the United States) filing of its own scope determination request preclude consideration of the same issues in these final results. Furthermore respondents claim that the evidence Kaydon presented to support its allegations fails to justify any investigation by the Department of unreported sales.

Department's Position: We have confirmed through the U.S. Customs service that neither Hoesch nor Rollix have entered subject merchandise into the U.S. market during the POR. Furthermore, there is no information on the record to support Kaydon's assertion that these respondents, or related affiliates in the United States, have made sales of subject merchandise during the POR. Finally, we agree with respondents that a scope determination rather than an administrative review is the proper context for considering scope issues. Therefore, we will address the scope issues raised by Kaydon through the process of a scope inquiry which has been requested by both Kaydon and Hoesch.

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[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping duty order.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof and cylindrical roller bearings and parts thereof. The reviews cover three manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled "Final Results of Review."

The Department also is revoking the antidumping duty order on cylindrical roller bearings from Italy with respect to SKF.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733. Charles Riggle (Meter), Jacqueline Arrowsmith (SKF), Michael Rausher (FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to the reviews of the orders covering AFBs from all countries on March 28, 1994.

Revocation In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty order covering cylindrical roller bearings from Italy with respect to SKF.

SKF has submitted, in accordance with 19 CFR 353.25(b), a request for revocation of the order with respect to its sales of the merchandise in question. SKF has also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and has submitted the required certifications. It has agreed in writing to its immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that SKF will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the order on cylindrical roller bearings from Italy with respect to SKF.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix" to "Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore Sweden, Thailand, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders," which is published in this issue of the **Federal Register**

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Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
Italy	FAG	BBs.
	SKF	BBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- Pursuant to the decision of the United States Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (CAFC 1994) (Ad Hoc Comm.), we have allowed a deduction for pre-sale inland freight in the calculation of foreign market value only as an indirect selling expense under 19 CFR 353.56(b), except where such expenses have been shown to be directly related to sales.

Analysis of Comments Received

All issues raised in the country-specific case and rebuttal briefs by parties to these administrative reviews are addressed in the "Issues Appendix" which is appended to this notice of final results. General issues pertaining to these and all other reviews of the orders covering AFBs from various countries may be found in the "Issues Appendix" to "Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders," which is published in this issue of the **Federal Register**.

Final Results of Reviews

We determine the following percentage weighted-average margins to exist for the period May 1, 1992, through April 30, 1993:

Company	BBs	CRBs
FAG	2.74	(1)
Meter	6.02	(1)
SKF	3.79	0.00

[1] No U.S. sales during the review period.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the USP of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both PP and ESP sales by the combined total USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis*, the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729, July 26, 1993). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to PP sales for these final results, we divided the total dumping margins (calculated as the difference between FMV and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (POR) is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

In the case of companies which did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the "Roller Chain" rule, are included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Further Manufacturing and the "Roller Chain" Rule in the Issues Appendix to "Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders," which is published in this issue of the **Federal Register**.)

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 1, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

Issues Appendix

- Abbreviations
- Comments and Response

Company Abbreviations

FAG-Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Federal-Mogul—Federal-Mogul Corporation
Meter—Meter S.p.A.
SKF—Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
POR—Period of Review
PP—Purchase Price
USP—United States Price
AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)
AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)
AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)

Comments and Responses

Comment 1: Meter noted in its Section B questionnaire response that it did not incur any warranty expense during the POR, yet the Department improperly deducted warranty expenses.

Federal-Mogul responds that, while Meter claimed to have incurred no warranty expenses during this POR, Meter's historical U.S. warranty experience suggests that the absence of warranty expenses is improbable. Given the fact that Meter claimed to have incurred such expenses in 1988, 1989, 1990, 1991, and the first four months of 1992, as well as after the POR, Federal-Mogul urges the Department to resort to extra-period warranty expenses as BIA Furthermore, Federal-Mogul argues that the assignment and use of U.S. warranty expenses as an adjustment to CV appears to represent a reasonable application of BIA for purposes of quantifying a known, but unreported selling expense directly related to Meter's U.S. sales.

Department's Position: The adjustment for warranty expenses included in our preliminary calculation was a clerical error. Meter reported no warranty expenses on U.S. sales during this POR, and there is no evidence that such expenses were incurred during the POR. Therefore, we have not imputed warranty expenses and have not deducted these expenses for the final results.

Comment 2: Federal-Mogul notes that Meter limited its reported direct selling expense (DSE) for CV to its imputed credit expense, which Meter calculated by applying to the COM a percentage factor based on its short-term interest rate and the average number of days from shipment to payment. Federal-Mogul claims that this methodology understates the expense because the percentage factor should be multiplied by the sale price, *i.e.*, the value on which credit would be extended in the HM. Federal-Mogul adds that by understating this portion of the general expense element of CV, it also understates the profit element, which Meter quantified as eight percent of materials, labor and general expenses. Federal-Mogul argues that the Department should increase Meter's reported DSE by the ratio of Meter's total sales to its cost of goods sold (COGS). The revised DSE should then be combined with the revised G&A expense amounts and the other elements of Meter's general expenses for CV, and Meter's statutory profit should also be recalculated accordingly.

Department's Position: We agree with Federal-Mogul that Meter's methodology for calculating its imputed credit expense for CV was flawed, and that the percentage factor should be multiplied by the sale price. In the absence of HM sale prices, we calculated a ratio of Meter's total sales to its COGS from Meter's 1992 financial statements, and multiplied that ratio by Meter's reported DSE. We used the revised DSE to recalculate G&A expenses and Meter's profit.

Comment 3: Federal-Mogul argues that in quantifying its reported G&A expenses for CV, Meter netted out negative expense amounts for "Net Gain on Foreign Exchange" and "Customs Reimbursement." These amounts are attributable only to purchases by foreign

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customers and merchandise exported by Meter. Since the statute requires that the general expenses included in CV be those "usually reflected in sales which are made by producers in the country of exportation," no reduction in Meter's G&A expenses may be made for gains on foreign exchange or for customs reimbursement.

Meter argues that reported G&A expenses were taken directly from its audited financial statements and allocated based on cost of sales. Meter contends that it is standard Department practice not to eliminate certain expenses from G&A that are unrelated to subject merchandise or a particular market. Instead, the Department treats G&A as general expenses of the company as a whole.

Department's Position: We agree in part with Federal-Mogul. Meter's "Foreign Exchange Gain or Loss" relates to trade accounts receivable on export sales transactions. At verification we found that the "Customs Reimbursement" related to returned merchandise. Accordingly both of the above items are directly related to the company's sales revenues, not G&A expenses, and therefore were excluded from the G&A calculation.

Comment 4: Federal-Mogul argues that Meter understated its factory overhead cost for CV as outlined in the cost verification report. Therefore, the Department must adjust Meter's submitted fixed overhead costs in order to accurately compute CV for subject merchandise.

Meter argues that the methodology it used to report factory overhead expenses was the same methodology the Department directed Meter to use in the second review. The Department should not penalize Meter for using an incorrect allocation methodology which the Department suggested in the first place. Therefore, resorting to BIA, as suggested by Federal-Mogul, would be unreasonable.

Department's Position: It was not Meter's fixed overhead costs but rather Meter's submitted variable overhead costs that were understated. Variable costs were understated due to the fact that Meter inappropriately allocated these costs on the basis of total hours incurred to produce all subject merchandise rather than the hours incurred to produce only the U.S. merchandise. Therefore, we adjusted Meter's submitted variable overhead costs in order to appropriately capture all costs.

Comment 5: Federal-Mogul notes that during the POR, Meter relocated its production facilities. Federal-Mogul contends that Meter should have submitted separate manufacturing costs for each facility that produced subject merchandise during the POR. Petitioner argues that since Meter did not submit facility-specific manufacturing costs, the Department should reject submitted weighted-average grinding and assembly labor rates and, as BIA, use the higher of the grinding and assembly rates experienced at each facility.

Meter argues that the Department did not ask for separate CV data for its labor rates in the old and new facilities. Furthermore, Meter argues that it complied with the Department's regulations in submitting weighted-average costs to account for different production facilities being used in the same POR.

Department's Position: We agree with Meter. It is our policy that if a respondent produces subject merchandise at more than one facility, the reported COM should be the weighted-average manufacturing costs from all facilities. The costs reported by Meter properly reflect the costs of both facilities.

Comment 6: Federal-Mogul contests Meter's claim that each of Meter's model numbers reported in the company's HM database represents a unique product. According to Federal-Mogul, certain models in Meter's HM database are reported to be in different families, but the models are identical in all family criteria, and therefore, these models should be in the same family. In addition, Federal-Mogul states that two other HM models vary insignificantly from reported U.S. models in one criterion. For these reasons, Federal-Mogul argues, the Department should not accept Meter's claim that there are no HM matches for any U.S. sales.

Meter claims that it correctly utilized the matching methodology prescribed by the Department and such methodology accurately reflects Meter's business and production processes.

Department's Position: We disagree with Federal-Mogul. When we reviewed Meter's family designations we found two U.S. models with identical family characteristics that had been assigned different family designations. Likewise, we found two HM models which should have been given the same family designation but were not. However, in no instance were any HM models identical or similar to U.S. models based on our criteria for determining such or similar merchandise. Therefore, these errors did not affect these results.

We also disagree with Federal-Mogul's argument that "insignificant" variations in family matching characteristics, between HM and U.S. models, should have been disregarded. The U.S. and HM models in question were not identical in all characteristics. Furthermore, we consider a bearing sold in the HM to be similar to a U.S. model when the eight characteristics outlined in our questionnaire are identical. Because these eight characteristics were not identical for these bearings, we do not consider these bearings to be identical or similar matches.

Comment 7: FAG-Italy contends that the Department's assessment rate methodology is flawed, and states that the Department acted contrary to law in basing assessment rates on the Customs entered values of those sales reviewed by the Department for the POR, because the sales actually reviewed by the Department for the POR may have involved merchandise entered before the POR. Instead, FAG-Italy claims that the Department should base assessment rates on the Customs entered values of merchandise actually entered during the POR, as submitted by respondent. FAG-Italy maintains that the Department should determine assessment rates by dividing total antidumping duties due (calculated as the difference between statutory FMV and statutory USP for the sales reported for the POR) by the entered values of the merchandise actually entered during the POR (not by the entered values of the merchandise actually sold during the POR). FAG-Italy argues that the Department's current methodology can lead to a substantial overcollection of dumping duties.

Both Torrington and Federal-Mogul argue that the Department's methodology is valid. Torrington notes that the Department concluded that the current methodology is reasonable and that it constitutes an appropriate use of the Department's discretion to implement sampling and averaging techniques as provided for in section 777A of the Tariff Act. See AFBs I at 31694. Torrington states that since the U.S. sales used to calculate the dumping margins are only a sample of the total U.S. sales during the POR, application of FAG-Italy's proposed methodology would lead to substantial undercollection of antidumping duties, unless the Department adjusts that methodology to take into account all U.S. sales during the POR.

Torrington also states that both the Department's current methodology and FAG-Italy's proposed methodology are deficient in that neither method "ties entries to sales." Torrington proposes two methods for dealing with the problem of reviewed sales that do not match to particular entries during the POR. First, Torrington suggests that the Department review entries rather than sales. Torrington points out that this method is not ideal because it could place the Department in the position of reviewing entries made during the POR that contained merchandise that was sold after the POR. Second, Torrington proposes that the Department require respondents to submit adequate information to trace each entry directly to the sale in the United States. Torrington observes that at present this method would be impossible because the administrative record in this review does not permit tracing each sale to the entry.

Federal-Mogul states that the Department's methodology is logical because it establishes a link between the values calculated on the basis of the sales analyzed and the actual assessment values over time and, therefore, avoids the distortions that FAG's alternative would engender.

Department's Position: We disagree with the FAG-Italy. As stated in AFBs III (at 39737), section 751 of the Tariff Act requires that the Department calculate the amount by which the FMV exceeds the USP and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences for each importer divided by the total number of units sold to that importer. Therefore, each importer is only liable for the duties related to its entries. In ESP cases, we generally cannot tie sales to specific entries. In addition, the calculation of specific antidumping duties for every entry made during the POR is impossible where dumping margins have been based on sampling, even if all sales could be tied to specific entries. Hence, for ESP sales, in order to obtain an accurate assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (*ad valorem* rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the POR.

This approach is equivalent to dividing the aggregate dumping margins, *i.e.*, the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales. While we are aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

Comment 8: Federal-Mogul argues that the Department should disallow any additional credit expenses attributed to late payments made by SKF-Italy's HM customers. Citing *Federal-Mogul Corp.* v. *United States*, 824 F. Supp. 223 (1993), Federal-Mogul argues that, since COS adjustments are only allowed for those factors which affect price or value, additional credit expenses incurred from a purchaser's unexpected failure to pay within the agreed-upon period cannot affect the price which was set specifically in contemplation of payment being made at the end of the agreed-upon credit period. While Federal-Mogul acknowledges that SKF-Italy submitted an upward adjustment to FMV which reflects interest revenue collected from customers due to late payments, it asserts that this does not properly offset the late payment credit expenses since the interest revenue was calculated using an allocation while the additional credit expenses are transaction specific.

SKF-Italy contends that its credit expense calculations, which are based on the actual payment date, are consistent with Departmental policy. SKF-Italy cites the Department's position in Final Results of Antidumping Administrative Review; Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 55 FR 42230, 42231 (1990), and Final Determination of Sales at Less than Fair Value; Certain Tapered Journal Roller Bearings and Parts Thereof From Italy, 49 FR 2278, 2279–80 (1984), to support its position. SKF-Italy states that interest revenue is a separate COS which has been verified and accepted by the Department in each of the three prior administrative reviews.

Department's Position: The Department disagrees with Federal-Mogul. Consistent with Departmental policy, we adjust for credit expenses based on sale-specific reporting of actual shipment and payment dates. See AFBs I at 31724. This policy recognizes the fact that all customers do not always pay according to the agreed terms of payment and that respondent is aware of this fact when setting its price. Therefore, it would be inappropriate to make a COS adjustment for credit based entirely on the agreed terms of payment, since it would not take into account all of the circumstances surrounding a sale.

Comment 9: Torrington contends that, in the recalculation of COP for SKF-Italy, the Department inadvertently excluded research and development (R&D) expenses.

According to SKF-Italy, R&D expenses were included in the recalculated general and administrative (G&A) expenses.

Department's Position: We agree with SKF-Italy that its R&D expenses were included in the revised G&A expenses included in the recalculation of COP.

Comment 10: Torrington argues that the Department should reject FAG-Italy's cost data because FAG-Italy provided costs for only completed bearings and not for the individual material elements as required by the questionnaire.

FAG-Italy argues that its cost responses were accurate and acceptable as reported because its model-specific COPs and CVs were correctly reported in accordance with Departmental precedent.

Department's Position: We agree with respondent. We have accepted FAG-Italy's cost data in this format for this review. Also, petitioners have provided no basis for the Department to reject FAG-Italy's cost responses.

Comment 11: Torrington argues that the Department's decision to treat SKF-Italy's early payment cash discounts as a direct expense is inconsistent with Departmental practice and is an error as a matter of law. Torrington notes that verification of SKF-Italy's cash discounts revealed that, for at least one sale examined, certain discounts did not fall within the range of discounts SKF submitted in its original response describing its early payment cash discount program. Torrington contends that the Department's practice is to require that discounts be part of a respondents standard business practice and not intended to avoid potential antidumping duty liability. Torrington argues that if the discounts offered in the HM are not made pursuant to specified terms contemplated at the time of sale, they should be disallowed because they could be designed to reduce the HM price and dumping margins found. Torrington asserts that, based on the findings at verification, the Department should reject SKF-Italy's HM cash discounts offered on the basis of terms of payment since they cannot be deemed reliable. At the very least, Torrington maintains, the Department

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should eliminate any discounts granted to customers which are greater than the range of discounts described by SKF-Italy in its original response.

SKF-Italy maintains that the Department satisfactorily verified that customers received discounts as specified in the payment terms set forth in SKF-Italy's invoices. According to SKF-Italy, Torrington's statements pertain to the Department's verification of one of its sales traces. SKF-Italy asserts that a complete examination of this sale reveals that, consistent with its reporting methodology, SKF-Italy did not claim a cash discount for this HM transaction. Accordingly, SKF-Italy asserts that Torrington's discussion of this issue is pointless. Furthermore, SKF-Italy contends that Torrington is incorrect in arguing that only cash discounts granted according to specified terms contemplated at the date of sale are allowed. SKF-Italy claims that by reporting only actual cash discounts in both the HM and the United States, it has remained consistent with Departmental practice as outlined in the questionnaire.

Department's Position: We agree with petitioner that discounts should be part of a respondent's standard business practice and are not intended to avoid potential antidumping duty liability. However, our HM verification findings do not support petitioner's conclusions that SKF-Italy's reported cash discounts were not made pursuant to the discount program outlined in its response.

While verifying SKF-Italy's HM sales response, we found one sale in which SKF-Italy had booked the difference between the amount due and the amount paid by the customer as a cash discount. This occurred despite the fact that, pursuant to SKF-Italy's cash discount program, the customer did not qualify for a cash discount. However, in accordance with its reporting methodology for its discount program, SKF-Italy did not claim a cash discount on this sale in the response submitted to the Department. Our further examination of SKF-Italy's cash discounts confirmed that SKF-Italy's reported cash discounts were made pursuant to the terms listed on the sales invoice. Furthermore, we examined SKF-Italy's entire HM sales listing and found no cash discounts that exceeded the discount program outlined in the response. Therefore, we have accepted SKF-Italy's cash discounts for these final results.

Comment 12: Torrington argues that the Department's preliminary decision to deny FAG-Italy an adjustment for 1993 HM rebates based on the fact that FAG-Italy failed to report either actual or estimated 1993 U.S. corporate rebates is insufficient. Torrington argues that FAG-Italy's failure to report 1993 corporate rebates is a fundamental deficiency which calls for the application of a "second-tier" BIA to those U.S. transactions in which FAG-Italy failed to properly report a corporate rebate. Torrington contends that the Department's preliminary response may reward FAG-Italy for its failure to report 1993 U.S. corporate rebates if the HM rebates denied do not apply to the same types of sales as those found in the U.S. market or are not of the same magnitude as the U.S. corporate rebates which went unreported. Torrington argues that, according to FAG-Italy's responses, the discount program in the HM more closely resembles U.S. corporate rebates than the HM rebates denied by the Department. Finally, Torrington asserts that when deciding what BIA approach to use for the final results, the Department should also consider the fact the FAG never clearly stated in its responses that it had not reported estimated 1993 corporate rebates.

FAG-Italy asserts that its rebates were accurately reported given the nature of the rebate programs in each market and that the use of BIA is unwarranted. The companies reported estimated 1993 rebates differently for the HM and U.S. markets because clear differences exist between their HM and U.S. rebate programs. Therefore, the Department erred in denying rebate adjustments in the HM on 1993 sales in order to remain consistent with FAG-US' methodology of not reporting 1993 rebates.

Department's Position: We agree with Torrington that disallowing an adjustment for FAG-Italy's estimated 1993 HM rebates is not the most appropriate means to account for respondent's failure to report estimated 1993 U.S. rebates. Accordingly, as BIA for these final results we used the highest 1992 U.S. corporate rebate rate to calculate corporate rebates for 1993 U.S. sales to customers that received rebates in 1992. We also made adjustments to FMV for estimated 1993 HM rebates as reported by respondents.

Comment 13: Torrington notes that changes to FAG-Italy's packing labor and material expense factors outlined in the analysis memo were not included in the margin program used to calculate the preliminary results. In addition, Torrington contends that the exchange rate factor was applied twice to the adjustment for marine insurance.

FAG-Italy contends that the preliminary computer program does contain the appropriate adjustment factors for its U.S. packing labor and material expenses. Additionally, FAG-Italy notes that the double application of the exchange rate to the adjustment for marine insurance was necessary to correct a conversion error committed by FAG-Italy in its computer response.

Department's Position: We agree with FAG-Italy. We included in the margin program the necessary corrections to FAG-Italy's packing expenses. In addition, we intentionally applied the exchange rate to the marine insurance adjustment twice to compensate for an exchange rate error committed in FAG-Italy's submitted data.

Comment 14: Federal-Mogul asserts that the Department should consider the expenses associated with a bonded warehouse maintained by SKF-Italy to accommodate sales to one U.S. customer as movement expenses and remove the expenses directly from the U.S. price. Federal-Mogul disagrees with the position taken by the Department in earlier reviews that characterized SKF-Italy's bonded warehouse expenses as indirect selling expenses because they were incurred prior to the date of sale. Federal-Mogul maintains that according to the CIT decision in *Nihon Cement Co., Ltd.* v. *United States*, 17 CIT_____, Slip Op. 93–80 at 40 (1993), these warehousing expenses should be considered movement expenses because the subject merchandise is merely residing in the warehouse incident to bringing them from Italy to SKF-Italy's U.S. customer. Citing Carbon Steel Wire Rod from Trinidad and Tobago (48 FR 43206, 43208), and *NTN Bearing Corporation of America* v. *United States*, 14 CIT 623, 747 F. Supp. 726 (1990), Federal-Mogul argues that since the pre-sale warehousing expenses are directly related to sales to the one customer served by the warehouse they qualify as movement expenses and should be removed directly from the U.S. price.

SKF-Italy notes that the Department rejected a similar argument in a prior review (see AFBs II at 28398) and contends that no valid reason has been presented to support a different result. SKF-Italy maintains that according to the CIT's definition of warehousing expense in the *Nihon Cement* case cited by Federal-Mogul ("expenses associated with putting aside merchandise in a structure or room for use when needed"), the expenses associated with SKF's FTZ bonded warehouse constitute warehousing expenses and not movement expenses. SKF-Italy further argues that the number of customers served by a warehouse does not in any way transform the expenses into movement expenses.

Department's Position: We disagree with Federal-Mogul. SKF-Italy's decision to position its merchandise in an SKF warehouse in close proximity to a customer does not necessarily indicate that the warehousing expense is directly related to sales. Unlike the situation in Carbon Steel Wire Rod, where merchandise was shipped pursuant to specific orders, the record indicates that SKF-Italy stores its merchandise in the bonded warehouse in anticipation of future sales. See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Republic of Korea, 51 FR 40833 (November 10, 1986). Although SKF-Italy sells to only one customer from its bonded warehouse, the warehousing expenses are incurred prior to date of sale and regardless of whether the anticipated sales are made. As a result, the warehousing expenses are not directly related to individual sales, and the warehousing costs are properly classified as an indirect expense. Therefore, in accordance with our decision in AFBs II (at 28398), we have determined that SKF-Italy's bonded warehousing expenses are properly treated as indirect selling expenses (see also Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, 52 FR 30700 (August 17, 1990); *NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., and NTN Toyo Bearing Co., Ltd.* v. *U.S. and Timken Co.*, 747 F. Supp. 726 (CIT 1990)).

Comment 15: SKF-Italy argues that the Department eliminated a number of HM transactions based on the erroneous conclusion that such transactions reflected preferential prices to related parties. SKF-Italy asserts that there is no direct or indirect ownership or control between the companies, and that the relationship between the parties noted by the Department at verification has no influence on price. SKF-Italy also states that the Department's comparison of average prices is insufficient to test the arm's-length nature of the transactions because the Department included companies with no common ownership interests and companies with ownership interests of less than 20 percent, did not individually analyze the companies involved, and did not consider the relative quantities involved.

Torrington maintains that the Department will use sales to related parties as a basis for FMV only if it is satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to unrelated parties, and that the only valid criterion in this determination is price. Torrington argues that there is a regulatory presumption that related-party sales should be excluded in a calculation of FMV. Federal-Mogul and Torrington state that the burden is on the respondent, not the Department, to overcome this presumption by demonstrating affirmatively that related-party transaction prices are comparable to prices to unrelated parties.

Torrington also asserts that SKF-Italy has failed to submit any data demonstrating that its prices to related and unrelated parties are comparable and thus has not met its burden. Torrington and Federal-Mogul further point out that SKF-Italy has provided no evidence on the record regarding any particular related-party sales or the price comparability of its related-party sales.

Department's Position: We disagree with SKF-Italy. 19 CFR 353.45 provides that the Department ordinarily will include related-party sales in the calculation of FMV only if it is satisfied that the sales were made at arm's-length prices, *i.e.*, that the prices of such sales are comparable to the prices at which the seller sold such or similar merchandise to unrelated parties. For purposes of applying this provision, section 353.45 also refers to section 771(13) of the Tariff Act for the definition of related parties. We preliminarily determined that SKF-Italy made HM sales to customers related to them as described in section 771(13)(D) of the Tariff Act. Accordingly, we conducted an analysis to determine whether these sales were made at arm's-length prices. Because we determined that these sales were not made at arm's-length prices, we excluded them from our calculations of FMV.

On reexamination of the evidence on the record, however, we determined that one of these HM customers in fact did not meet the definition of a related party as specified in section 771(13) of the Tariff Act. Therefore, for these final results we retained sales to this customer SKF-Italy in calculating FMVs and did not include these sales in our arm's-length analysis for related-party sales.

In determining whether prices to related parties are in fact arm's-length prices, we rely on a comparison of average unrelated-party prices for each model to average related-party prices for the same models. When average prices to unrelated parties are predominantly higher than average prices to related parties for the class or kind of merchandise, we disregard sales to related parties for that class or kind. Because SKF has provided no evidence to refute our findings that the average prices of certain models sold to related parties are not comparable to the average prices of these models sold to unrelated parties, other than reference to statements by company personnel at verification that these companies were not related, we have continued to exclude these sales for the final results. See SKF Sverige AB Verification Report, February 23, 1994, and *Rhone Poulenc Inc.* v. *United States*, 899 F. 2d 1185 (Fed Cir. 1990).

Comment 16: FAG-Italy contends that the Department improperly used zero-priced U.S. sample and prototype sales in the calculation of USP because such sales are not made in the ordinary course of trade and are therefore similar to the type of sales the statute permits the Department to exclude in the HM. Additionally, FAG-Italy claims the Department is not required to review each and every U.S. sale.

Alternatively, FAG-Italy argues that if the Department compares the U.S. zero-price sample sales to HM sales in which value was received, the Department should make a COS adjustment to account for the different circumstances under which the sales were made. FAG-Italy argues that the Department should adjust FMV in the amount of the expenses directly associated with the U.S. sample sale and suggests reducing FMV by the amount of the COP of the U.S. sample sale.

SKF-Italy contends that the Department should have excluded from its margin analysis, as outside the ordinary course of trade, two Italian prototype products sold into the U.S. market. SKF-Italy claims that, based on the commercial, sales and cost data provided in response to the Department's questionnaire, SKF-Italy's claim for exclusion should be allowed.

Federal-Mogul and Torrington contend that, in order to assure the validity of the Department's sample, the Department must not drop these U.S. sample and prototype sales from its analysis. Federal-Mogul and Torrington further maintain that the arguments regarding the ordinary course of trade are completely irrelevant because the ordinary course of trade provision applies only to the calculation of FMV, not USP. Petitioners claim that section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires the Department to calculate the amount of duty payable on "each entry of merchandise" into the United States. Torrington states that this provision should be compared with section 773(a)(1)(A) of the Tariff Act (19 USC 1677b(a)(1)(A)), which requires

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FMV to be calculated on the basis of sales in the "ordinary course of trade."

Federal-Mogul also rejects the idea of a COS adjustment, arguing that the cost to produce the merchandise cannot reasonably be used to quantify any difference between a sample sale and a sale with a price because the cost to produce the merchandise remains the same whether the producer sells it at a profit, sells it at a dumped price, or gives it away.

Department's Position: The Department agrees with Federal-Mogul and Torrington. As set forth in AFBs II (at 28395), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The Department must examine all U.S. sales within the POR. See Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea, 56 FR 12701, 12709 (March 27, 1991).

Although we have made COS adjustments as required by section 773 of the Tariff Act and 19 CFR 353.56, we disagree with FAG-Italy's argument that a further COS adjustment should be made if the U.S. sample sales are not excluded from the analysis. This adjustment is not warranted under sections 772 and 773 of the Tariff Act. FAG-Italy's argument that a COS adjustment should be made when a zero-price U.S. sale is compared either to HM sales in which value was received or to CV, which includes profit, suggests that a COS adjustment should be made because of the marked difference in the prices of the U.S. sale ($0) and the comparable HM sale. However, differences in prices do not constitute a *bona fide* difference in the circumstances of sale.

Furthermore, it would clearly be contrary to the purpose of the dumping law to make a COS adjustment in order to compensate for price discrimination. Moreover, we do not deduct expenses directly related to U.S. sales from FMV either in PP or ESP comparisons. In making COS adjustments in PP comparisons, U.S. selling expenses are added to FMV, while in ESP comparisons U.S. selling expenses are neither added to nor deducted from FMV; they are deducted from USP. Finally, regarding FAG-Italy's argument that we should use the COP of U.S. merchandise (SAMPCOPE) as the basis for such an adjustment, the difmer methodology accounts for appropriate differences in merchandise.

Comment 17: Federal-Mogul asserts that the Department should reject SKF-Italy's claim for an upward adjustment to USP for duty drawback. First, Federal-Mogul argues that the record contains no evidence that SKF-Italy's claimed duty drawback relates to actual import duties paid on the contents of exported merchandise. Specifically, Federal-Mogul contends that SKF-Italy has provided no evidence to substantiate a link between the amount of import duties paid and the amount of duty drawback claimed, and that the amount of claimed duty drawback exceeds the amount of import duties that SKF-Italy actually paid. In this context, Federal-Mogul further contends that SKF-Italy's claimed duty drawback adjustment includes not only refunded import duties, but also refunded internal taxes, which are not properly included in a duty drawback adjustment.

Furthermore, Federal-Mogul argues that the Department should not accept this claim even under its authority to adjust USP for rebated or uncollected taxes. According to Federal-Mogul, 19 USC 1677a(d)(1)(C) permits an adjustment to USP only for taxes imposed directly upon the merchandise. Federal-Mogul asserts, however, that SKF-Italy's claimed adjustment includes amounts for taxes imposed both directly and indirectly upon the exported merchandise. Therefore, Federal-Mogul concludes that SKF-Italy does not qualify for any upward adjustment to USP even if its "duty drawback" is considered to be a refund of taxes by reason of exportation.

SKF-Italy claims that the duty drawback adjustment it submitted in this review remains consistent with its submissions in the previous three administrative reviews and the LTFV investigation. Additionally, SKF-Italy notes that the Department verified its duty drawback adjustment methodology in the second review. According to SKF-Italy, the Department should continue to reject Federal-Mogul's argument since it lacks any persuasive reasoning which would make the Department conclude that its reasoning in prior reviews is not applicable for these final results.

Department's Position: We disagree with Federal-Mogul. As discussed in response to the previous comment, we apply a two-pronged test to determine whether to grant a respondent's claimed adjustment to USP for duty drawback. We applied this test in addressing the issue of SKF-Italy's claimed duty drawback adjustment in *AFBs II*. In that review, we verified SKF-Italy's duty drawback adjustment and, based on those verification findings, accepted the adjustment for the final results (see AFBs II at 28420). Thus, we previously have determined that under the Italian duty drawback system, a sufficient link exists between the amount of duties paid and the amount of duty drawback claimed. We again accepted SKF-Italy's reported duty drawback adjustment in AFBs III. Because SKF-Italy used the same method to report duty drawback in this review as it did in the previous reviews, and in the absence of evidence to the contrary, we conclude that SKF-Italy's duty drawback claim for this review satisfies both prongs of our test.

Further, Federal-Mogul's assertion that SKF-Italy's duty drawback claim includes amounts for indirect taxes is unsubstantiated. Although Federal-Mogul cited the Italian duty drawback statute in support of its assertion, it provided no specific evidence that SKF-Italy's duty drawback claim included any indirect taxes. Therefore, consistent with AFBs I, AFBs II and AFBs III, we have accepted SKF-Italy's duty drawback adjustment for these final results.

Comment 18: FAG-Italy requests that the Department exclude from the final margin calculations U.S. sales to related customers which they inadvertently reported. FAG-Italy identified the sales in question and noted that information already on the record supports its position that these sales are to related U.S. customers and therefore should not be included in the Department's final margin calculations.

Torrington contends that such revisions are allowable only where the underlying data have been verified and the changes are small. Since the modifications have not been verified, Torrington opposes the modifications requested by FAG-Italy.

Department's Position: The customer codes already submitted on the record by FAG-Italy support the position that these sales were made to related U.S. customers. While the specific sales in question were not examined at verification, we did verify randomly-chosen sales made by FAG-Italy and found no discrepancies which would undermine our confidence in the accuracy of the reported customer codes. We also note that FAG-Italy properly reported all subject resales made by related customers in the U.S. during the POR.

We note that the CIT has upheld the Department's authority to permit corrections to a respondent's submission where the error is obvious from the record, and the Department can determine that the new information is correct. See *NSK Ltd.* v. *United States*, 798 F. Supp. 721 (CIT 1992). Adopting Torrington's argument would amount to a rule that such corrections can never be made after verification. This is clearly inconsistent with our practice and the holdings of the CIT.

FAG-Italy's errors were obvious from the record once brought to our attention. It is in accordance with our longstanding practice to exclude U.S. sales to related customers in favor of resales by such customers to unrelated parties. Therefore, we have removed FAG-Italy's sales to related U.S. customers from the margin calculations for these final results.

Comment 19: Torrington asserts that the Department should deny SKF-Italy's request to revoke the antidumping duty order regarding CRBs. Torrington notes that revocation is permissible only if the requesting company is unlikely to sell below FMV in the future. Torrington contends the circumstances indicate that this is doubtful, since SKF-Italy is part of a larger multinational organization which has preliminarily received dumping margins for CRBs in other countries. Furthermore, Torrington contends that the minuscule amount of CRBs sold in the U.S. market by SKF-Italy during the POR is not sufficient to show a pattern of continued fair pricing and may even indicate a fictitious market.

SKF responds that Torrington has presented no legal basis on which to deny revocation. SKF argues that since neither the antidumping law nor the Department's regulations mandate a different standard for revocation for multinational corporations, Torrington's argument concerning SKF's multinational activity for purposes of revocation is irrelevant.

SKF-Italy also contends that even if SKF-Italy's sales could be considered minimal, there is nothing in the Department's regulations to indicate that minimal sales in a given year would preclude revocation. Moreover, SKF-Italy argues that since the level of sales at issue in this review is significantly greater than the quantity of sales upon which the Department made its initial LTFV determination, and upon which the order was based, it should be considered an acceptable level on which to base revocation.

Department's Position: Under 19 CFR 353.25(a)(2)(i), the Department may revoke an order in part if it finds sales at not less than FMV for a period of at least three consecutive years. The results in this review, combined with the results in the two prior reviews, satisfies this requirement for SKF-Italy in the antidumping duty proceeding for CRBs. Additionally, the respondent has agreed, pursuant to 19 CFR 353.25(a)(2)(iii), to the immediate reinstatement of the order if circumstances develop indicating that it has resumed dumping the subject merchandise. Furthermore, the record, including our verification findings, in the past three reviews does not indicate that SKF-Italy's U.S. market for CRBs is fictitious. We also find that Torrington's argument fails to make the case that SKF-Italy is likely to sell below FMV in the future merely because SKF is a multinational corporation. Torrington's argument merely points to a possibility of evasion by SKF-Italy in the future, and does not present any evidence that SKF-Italy is likely to engage in such behavior. If we find evidence of evasion, we will take appropriate action. Finally, since Torrington has made no other arguments indicating that SKF-Italy is likely to resume dumping, we are satisfied that the respondent is not likely to sell the merchandise in the future at less than FMV, and we agree with respondent that the requirements for revocation have been met.

[FR Doc. 95-4616 Filed 2-27-95; 8:45 am]

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[A-588-804, A-428-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan and Germany; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On February 3, 1995, the Department of Commerce (the Department) issued the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 29 manufacturers/exporters and the period May 1, 1992, through April 30, 1993. Based on corrections to the calculation of cost of production (COP) and constructed value (CV), we are amending the final results with respect to Japanese ball bearings and cylindrical roller bearings sold by one company, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. (collectively Koyo). We are also amending our final results to indicate that we disregarded sales below cost with respect to sales of AFBs from Germany by two companies.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1995, the Department issued the final results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The notice of these final results is published in this issue of the **Federal Register**. The classes or kinds of merchandise covered by these reviews were BBs, CRBs, and SPBs. The reviews covered 29 manufacturers/exporters and the period May 1, 1992, through April 30, 1993.

Subsequent to the issuance of our final results, Koyo alleged a clerical error per its letter of February 7, 1995. We determined there was a ministerial error in the calculation of COP and CV in the final results for AFBs from Japan sold by Koyo. Specifically, in those instances where Koyo reported finished or semi-finished bearings purchased from other suppliers, we included both the total cost of manufacturing (COM) and the acquisition cost of such bearings in the calculation of COP and CV. This effectively doubled the COM for these purchased bearings since Koyo's acquisition cost is its COM for these bearings. We have therefore corrected our calculation of Koyo's COP and CV.

Sales Below Cost in the Home Market—Germany

With respect to AFBs from Germany, the final results issued on February 3, 1995, and published in this issue of the **Federal Register** inadvertently failed to indicate that we disregarded certain sales below cost in the home market. Those omitted were sales of SPBs by FAG and BBs by Fichtel & Sachs.

Concerning AFBs from Germany, the Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
Germany	FAG	BBs, CRBs, SPBs.
	INA	BBs, CRBs.

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Country	Company	Class or kind of merchandise
	SKF	BBs, CRBs, SPBs.
	Fichtel & Sachs	BBs.

Amended Final Results of Reviews

As a result of our corrections, we have determined the following percentage weighted-average margins to exist for the period May 1, 1992 through April 30, 1993:

Company	BBs	CRBs
Koyo	14.28	3.54

Based on these results, we will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: February 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 95-4617 Filed 2-27-95; 8:45 am]

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federal register

Tuesday
February 28, 1995

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

Alternative Fuel Transportation Program; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Department of Energy today proposes rules required by the Energy Policy Act of 1992 in order to implement statutorily-imposed alternative fueled vehicle acquisition requirements that become effective by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements apply to certain alternative fuel providers and some State government vehicle fleets. The proposed rules principally cover: (1) Required interpretations necessary for affected entities to determine whether and to what extent the statutory requirements apply; (2) required procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward whose who voluntarily acquire vehicles in excess of mandated requirements or before the requirements take effect, and to allow use of such credits in order to demonstrate compliance with those requirements.

DATES: Written comments (8 copies and, if possible, a computer disk) on the proposed rule must be received by the Department on or before May 1, 1995.

Oral views, data, and arguments may be presented at public hearings which are scheduled as follows:

1. March 23, 1995, beginning at 9:30 a.m. in Chicago, Illinois.
2. March 30, 1995, beginning at 9:30 a.m. in Berkeley, California.
3. April 4, 1995, beginning at 9:30 a.m. in Washington, DC.

Requests to speak at a hearing should be submitted to the Department no later than 4 p.m. on:

1. March 20, 1995 for the March 23, 1995 Chicago, Illinois, hearing.
2. March 27, 1995 for the March 30 1995 Berkeley, California, hearing.
3. March 30, 1995 for the April 4, 1995 Washington, DC, hearing.

The length of each oral presentation is limited to 10 minutes.

ADDRESSES: Written comments (8 copies) and requests to speak at a public hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket Number EE–RM–95–110, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–3012. The public hearings will be held at the following locations:

1. Chicago—University of Illinois at Chicago, Chicago Circle Center Building (Student Union), Room 605 (6th floor), 750 S. Halsted Street, Chicago, IL.
2. Berkeley—Lawrence Berkeley Laboratory, 1 Cyclotron Road, Building 50 Auditorium, Berkeley, CA 94720.

The Lawrence Berkeley Laboratory (LBL) Shuttle stops at Center Street and Shattuck Street as well as the BART station and downtown public parking lots.

3. Washington, DC—U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of transcripts from hearings and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E–190, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section found in the Supplementary Information section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6116. Josephine B. Patton, Esq., U.S. Department of Energy, Office of General Counsel (GC–72), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507

For information concerning the public hearings and submitting written comments: Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Section-By-Section Analysis
III. Opportunity for Public Comment
IV. Review Under Executive Order 12612
V. Review Under Executive Order 12778
VI. Review Under Executive Order 12866
VII. Review Under the Regulatory Flexibility Act
VIII. Review Under the Paperwork Reduction Act
IX. Review Under the National Environmental Policy Act
X. Impact on State Governments

I. Introduction

Pursuant to title V of the Energy Policy Act of 1992 (Act) (Pub. L. 102–486), the Department of Energy (Department or DOE) today proposes rules required by law to implement statutorily-imposed alternative fueled vehicle acquisition requirements that take effect by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements establish that specified percentages of vehicles acquired by covered fleets must be alternative fueled vehicles. These requirements apply to certain alternative fuel providers and some State government fleets. The statutory percentages for model year 1996 are 30 percent for affected alternative fuel providers and 10 percent for affected State government fleets, and these percentages increase over time. This notice of proposed rulemaking principally covers: (1) Required interpretations of statutory provisions essential for affected entities to determine whether and to what extent the mandatory vehicle acquisition requirements apply; (2) procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward voluntary acquisition of alternative fueled vehicles in excess of mandatory requirements or before the requirements take effect, and to allow use of such credits as an alternative means of compliance. This notice also summarizes, and is accompanied by, a detailed cost impact analysis for public review.

A. Background

A primary goal of the Energy Policy Act of 1992 (the Act) (Pub. L. 102–486) is to enact a comprehensive national energy policy that strengthens U.S. energy security by reducing dependence on imported oil. Currently, the United States consumes seven million barrels of oil more per day than it produces. Section 502 of the Act (42 U.S.C. 13252) provides goals of a 10 percent displacement in U.S. motor fuel consumption by the year 2000 and a 30 percent displacement in U.S. motor fuel consumption by the year 2010 through the production and increased use of replacement fuels. Section 504 of the Act (42 U.S.C. 13254) allows the Secretary to revise these goals downward. According to the latest projections by the Energy Information Administration, the transportation sector will consume 13.1 million barrels per day of petroleum in 2010. Of this total, about 7.4 million barrels per day of petroleum are projected to be used by light duty vehicles. The Energy Information Administration also estimates that 65 percent of our total petroleum demand will be imported in 2010.

The greatest gains in displacing petroleum motor fuel consumption by the year 2010 are expected to occur by replacing gasoline with alternative fuels such as electricity, ethanol, hydrogen, methanol, natural gas and propane, in a portion of the U.S. car and truck population, which is projected to be in excess of 200 million vehicles in the year 2010. Currently, alternative fueled vehicles comprise a small fraction of the total U.S. vehicle stock. According to the Energy Information Administration, of the 180 million light duty vehicles registered in 1992, 250,000 were alternative fueled vehicles. Of this total, about 221,000 were fueled by liquified petroleum gas (propane), about 24,000 were fueled by compressed natural gas, and about 3,400 were fueled by methanol or ethanol. The remaining quantity of vehicles was comprised of electric vehicles and vehicles fueled by liquified natural gas. In 1994, it is expected that 300,000 alternative fueled vehicles will be registered in the U.S. and that the proportion of vehicles operating on each fuel will be approximately the same. (Alternatives to Traditional Transportation Fuels: An Overview, DOE/EIA–0585/0, 1994)

To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options.

B. Description of the Energy Policy Act Alternative Fuel Transportation Program's Basic Provisions

1. General structure. Titles III, IV, V, and VI of the Act contain the basic provisions for regulatory mandates and authorities, as well as various financial incentives, all of which are aimed at displacing substantial quantities of oil consumed by motor vehicles. Title III contains general definitions which set forth legislatively mandated policy essential to understanding: (1) What constitutes an alternative fueled vehicle; (2) who must comply with regulatory mandates to acquire such vehicles; and (3) the extent to which a regulated entity's inventory of vehicles is subject to mandates to acquire alternative fueled vehicles. Title III also sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993.

Title IV includes a financial incentive program for states, a public information program, and a program for certifying alternative fuel technician training programs.

Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to: (1) Alternative fuel providers; (2) State government fleets; and (3) private and municipal fleets. These mandates set forth annual percentages of new light duty motor vehicle acquisitions which must be alternative fueled vehicles. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. The acquisition schedules for alternative fuel providers and State governments automatically take effect at the beginning of model year 1996. The acquisition schedule for private and municipal fleets in section 507(a) is a tentative schedule which may only take effect if confirmed in a DOE rulemaking. Such a rulemaking could conclude that imposition of a vehicle acquisition mandate on private and municipal fleets is not appropriate.

Title V also allows for credits for new light duty alternative fueled motor vehicles acquired beyond what is legally required. These credits may be sold and used by other persons or fleets subject to a vehicle acquisition mandate. Finally, title V contains investigative and enforcement authorities including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations.

Title VI of the Act contains a variety of authorities to promote development and utilization of electric motor vehicles. More specifically, subtitle A provides for a commercial demonstration program, and subtitle B provides for an infrastructure and support systems development program.

This notice of proposed rulemaking focuses principally on: (1) The general definitions of title III applicable to alternative fuel providers, state governments, and private and municipal fleets; (2) procedures for obtaining interpretive rulings applying the regulations to particular facts; (3) the title V vehicle acquisition mandates applicable to alternative fuel providers and to state governments; (4) the credit program applicable to alternative fuel providers, state governments, and private and municipal fleets; and (5) the investigative and enforcement authorities which also apply to alternative fuel providers, state governments, and private and municipal fleets. In a separate notice, the Department will be proposing rules for the financial incentive program for States under section 409 of the Act, 42 U.S.C. 13235.

As provided by section 507, DOE will be initiating a statutorily required rulemaking to determine whether a fleet requirement program is necessary for private and municipal fleets, 42 U.S.C. 13257. Section 507 contains complex requirements for making such a determination, and it is not clear at this time what determination will be made. Nevertheless, private persons (other than alternative fuel providers) and municipal authorities may be interested in reviewing and commenting on the proposed rules in the general subpart A and subpart F (credit program) of this notice which could apply to private and municipal fleet owners if the Department were to issue rules for a private and municipal fleet requirement program.

With respect to alternative fuel providers, there is discretion in section 501(b) of the Act to reduce the acquisition percentage requirements to as low as 20 percent for model years 1997 and beyond, and to extend the time to comply for up to two years. 42 U.S.C. 13251(b). The Department currently does not intend to exercise its discretion under section 501(b). The Department seeks comment on the conditions under which it should propose a rule to reduce the percentage requirements. There is no similar provision in section 507 authorizing modifications to the vehicle acquisition mandate on state governments. See 42 U.S.C. 13257(h), (o).

2. Who must comply and which vehicles are covered. The vehicle acquisition mandate applicable to alternative fuel providers is set forth in section 501 of the Act, 42 U.S.C. 13251. There are a series of subsections in section 501 which, when read in conjunction with certain definitions in section 301 of the Act, make the task of determining who must comply and to what extent the vehicle inventory is affected a complex matter.

The vehicle acquisition mandate applicable to states in section 507(o) of the Act, 42 U.S.C. 13257, also has to be read in conjunction with the definitions in section 301. While it is clear that the mandate in section 507(o) applies to state governments as distinguished from municipal governments, determining the extent to which a State's vehicle

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inventory is subject to the mandate is also a complex matter.

The beginning of an understanding of who must comply with the regulatory mandates in title V, and of which vehicles are in the base number against which the acquisition percentages are applied, lies in the partially overlapping statutory definitions of the terms "fleet" and "covered person." The statutory definition of "fleet," in section 301(9), provides that the term "fleet" means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased or otherwise controlled by a governmental entity or other person who owns, operates, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night.

In the section-by-section analysis in part II of this Supplementary Information, DOE explains proposed regulatory provisions related to the above-quoted statutory definition of "fleet." Among other things, DOE: (1) Lists all of the relevant metropolitan statistical areas and consolidated metropolitan statistical areas; (2) defines "centrally fueled" and "capable of being centrally fueled"; (3) discusses in some detail how the provisions for aggregating vehicles are interpreted; and (4) provides interpretive regulatory language for some of the exclusions.

The word "fleet," with all its complexities, is embedded in the definition of the term "covered person" at section 301(5) which provides that "covered person" means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States.

The term "fleet" is used for making determinations with regard to who must comply, and to what extent, with the vehicle acquisition mandates in section 507 on state governments, private persons, and municipal governments. The term "covered person" is used for making such determinations with regard to the vehicle acquisition mandate on alternative fuel providers in section 501 of the Act.

Under section 507, only a "fleet" is obligated to comply. Congress appears to have used the word "fleet" rather than "covered person" to limit the affected portion of the vehicle inventory to the vehicles in the "fleet." By contrast, under section 501(a), certain "covered persons" are obligated to comply, and consequently, the section 501 vehicle acquisition mandate potentially applies to all vehicles in the inventory throughout the United States and not just those vehicles in a "fleet" of a "covered person" who is subject to the mandate. 42 U.S.C. 13251. However, the potentially broad impact of section 501(a) is heavily qualified by the succeeding subsections of section 501, which limit the sweeping impact of section 501(a) both with regard to who must comply and the extent of the affected vehicle inventory.

Paragraph (a)(2) of section 501 limits application of the vehicle acquisition mandate to a subset of covered persons consisting of:

(A) A covered person, whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) A non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is production of alternative fuels * * *

Paragraph (a)(2) appears to be a description of alternative fuel providers subject to the vehicle acquisition mandate. The proposed regulations interpret the underscored phrase "principal business."

The statutory refinement of which "covered persons" must comply and to what extent continues in subsection (a)(3) of section 501 which provides that:

(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

(i) transforming alternative fuels into a product that is not an alternative fuel, or

(ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel shall be subject to this subsection.

Paragraph (a)(3) of section 501 has two effects. First, it limits the vehicle acquisition mandate of paragraph (a)(1) to the vehicles owned, operated, leased, or otherwise controlled by certain affiliates, divisions or other business of major energy producing corporations. Second, it excludes from coverage those covered persons, affiliates, divisions, or other business units that use an alternative fuel to create a product other than an alternative fuel. It is possible when the definitions of "affiliate" and "covered person" are applied to an entity, it may be both. However, merely being an affiliate does not necessarily mean that an entity must also be a covered person.

Section 501(a)(5) provides for petitions for exemption in certain circumstances for alternative fuel providers who otherwise would have to comply. The exemptions are available for those alternative fuel providers who can show that alternative fuels are not available in the operating area or that alternative fueled vehicles are not reasonably available.

There is a parallel exemption provision applicable to State governments in section 507(i). 42 U.S.C. 13257(i). That provision also makes "financial hardship" a ground for exemption. However, section 507 does not define "financial hardship," and the legislative history is devoid of any guidance as to what circumstances would constitute "financial hardship." The Department would welcome comments from States making

recommendations as to how to interpret and apply the term "financial hardship" in practice.

In the section-by-section analysis in part II of this Supplementary Information, the Department systematically distinguishes between proposed regulatory text that tracks the statutory language and proposed regulatory text that represents what the Department is proposing to add, such as, proposed procedures and interpretations. Members of the public are particularly encouraged to comment on the proposed regulations in the latter category. Members of the public are reminded that many of the details of the complex program described in this proposal are specified in the statute, and thus are not within the Department's discretion to change.

3. Comparison to Environmental Protection Agency (EPA) Fleet Requirement Program. As many State and local officials and members of the public are undoubtedly aware, there is a fleet requirement program under the provisions of the Clean Air Act, (42 U.S.C. 7401 et seq.), that is somewhat similar to those in the Energy Policy Act of 1992. Section 246 of the Clean Air Act requires each State in which there is located all or part of an ozone non-attainment area classified as extreme, severe, or serious under the Clean Air Act, or a carbon monoxide non-attainment area with a design value at or above 16.0 parts per million, to submit a state implementation plan revision establishing a clean fuel vehicle program providing that, beginning in model year 1998, certain percentages of covered fleet vehicles be clean fuel vehicles operating on clean alternative fuels. 42 U.S.C. 7586. Section 241 of the Clean Air Act contains definitions for the terms "clean alternative fuel," "covered fleet," and "covered fleet vehicle" that contain some phrases later used in the definitions in section 301 of the Energy Policy Act of 1992. Compare 42 U.S.C. 7581 with 42 U.S.C. 13211. For example, the definition of "covered fleet vehicle" in section 241 refers to motor vehicles "* * * in a covered fleet which are centrally fueled (or capable of being centrally fueled). * * *" [Emphasis added.] 42 U.S.C. 7581(6). That phraseology is similar to the definitions of "fleet" and "covered person" in section 301 of the Energy Policy Act of 1992 which refer to motor vehicles "* * * that are centrally fueled or capable of being centrally fueled * * *." 42 U.S.C. 13211(5)(A), 13211(9).

While such similarities in statutory text are significant and should not be ignored in formulating regulations, the differences between the two pieces of legislation are more important. The critical differences are: (1) The primary goal of the EPA program is to significantly improve air quality through reduced emissions of pollutants and the primary goal of the DOE program is to strengthen national energy security by reducing dependence on imported oil; (2) the lists of fuels enumerated in the definitions of "clean alternative fuel" under section 241 of the Clean Air Act and of "alternative fuel" under section 301 of the Energy Policy Act of 1992 are not identical, and the Department's rulemaking discretion to add to the section 301 list is limited by stringent statutory standards; (3) the EPA program applies to fleets as small as 10 vehicles while 20 is the minimum number of vehicles for a fleet as defined by section 301; (4) the EPA program applies to light duty motor vehicles (up to 8,500 gross vehicle weight rating) and heavy duty motor vehicles (up to 26,000 gross vehicle weight rating) while the DOE program applies only to light duty motor vehicles; (5) the States will administer the EPA program while DOE will directly administer the Energy Policy Act program; and (6) the EPA program applies only to fleets in 22 ozone or carbon monoxide nonattainment areas while the DOE program applies to fleets in approximately 121 areas including both nonattainment and attainment areas.

The Department recognizes that fleet owners and operators who are subject to the EPA and the DOE fleet requirement programs would like to use the same vehicles and fuels to comply with both. In order to minimize differences, the Department has reviewed EPA's rulemaking notice implementing its statutory provisions, 40 CFR part 88; 58 FR 64679 (December 9, 1993), and followed EPA's lead where legally permissible and consistent with the Act's policy goals. Nevertheless, there are some unavoidable differences that will constrain the options of those fleet owners and operators interested in using the same vehicles and fuels to comply simultaneously with both statutory requirements. Where relevant, the Department identifies the basis for those differences in parts of the Supplementary Information that follow hereafter. Members of the public are invited to comment on ways the Department could lawfully make it easier to comply with both statutory requirements.

4. Reformulated gasoline. Although percentages can vary to a small degree, it is the Department's understanding that reformulated gasoline is comprised of over 90 percent petroleum on an energy equivalent basis. Reformulated gasoline is an enumerated "clean alternative fuel" in section 241 of the Clean Air Act, 42 U.S.C. 7581. It is not mentioned at all in the definition of "alternative fuel" in section 301 of the Energy Policy Act of 1992. Section 301(2) provides that the term "alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline, or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Each of the above-underscored phrases sets forth limited authority for the Department to add fuels to the definition of "alternative fuel." Under either authority, the Department must undertake notice and comment rulemaking under the Administrative Procedure Act, 5 U.S.C. § 553, to add a fuel to the statutory list. The Department did not include in today's proposal a provision adding reformulated gasoline to the definition of "alternative fuel." The percentage of petroleum in reformulated gasoline, at least 90 percent of the total volume, is too large to warrant proposing to make any of the necessary substantive determinations described above. To the extent that reformulated gasoline is an alcohol/gasoline mixture, it does not meet the minimum 70 percent alcohol volume requirement described above. To the extent that reformulated gasoline is some other kind of mixture, the 90 percent petroleum volume precludes a determination that the mixture is "substantially not petroleum" and would "substantially enhance energy security."

Members of the public are invited to comment on the Department's determination not to propose a rule that would include reformulated gasoline as an "alternative fuel" under section 301.

II. Section-By-Section Analysis

This part of the Supplementary Information discusses those provisions of the proposed regulations that are not self-explanatory.

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A. Subpart A—General Subpart

Definition of "Fleet"

In order to promote easier understanding, DOE has divided the statutory definition into two parts. The main paragraph in the statutory definition appears in proposed § 490.2 under the word "fleet." This proposed regulatory definition of "fleet" cross references proposed § 490.3, that describes the categories of vehicles excluded from the definition.

In the proposed definition of "fleet," there is a cross reference to proposed appendix A to subpart A which sets forth a list of metropolitan statistical areas (MSAs) and consolidated metropolitan statistical areas (CMSAs), as defined by the Bureau of the Census, with the requisite 250,000 population as of the 1980 census. The statutory definition of "fleet" does not state whether the list must be updated in light of changes in the geographic areas designated by the Bureau of the Census as MSAs and CMSAs which meet the 1980 population requirement of the Act. The proposed rule allows DOE to update the list, but DOE may delete this provision in the final rule to eliminate uncertainty. Members of the public are invited to comment on this choice.

Consistent with the statutory language, the proposed definition requires that there be a minimum of 20 light duty motor vehicles "used primarily" in a relevant statistical area DOE is proposing to interpret those words to mean that the majority of the vehicles' total miles are accumulated within a covered statistical area.

With regard to fleet fueling characteristics, the statutory and proposed regulatory definition of "fleet" provide that the vehicles be "centrally fueled or capable of being centrally fueled." Proposed § 490.2 defines the term "centrally fueled" as meaning that a vehicle is fueled 75 percent of the time at a location that is owned, operated, or controlled by a fleet or covered person or is under contract with the fleet or covered person.

It should be noted that simply because a fleet vehicle is not centrally fueled does not mean it is exempt from counting, because the statutory requirement covers those vehicles that are centrally fueled or are *capable of being centrally fueled*. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Therefore, an organization which has determined that its vehicles are not centrally fueled must still determine if the vehicles are capable of being centrally fueled. If the vehicles are, then the total of these vehicles, i.e., those vehicles either centrally fueled or capable of being centrally fueled, may result in a "fleet" or "covered person" that is subject to the acquisition requirements of the Act.

In determining whether 20 or more light duty motor vehicles within a MSA or CMSA are centrally fueled or capable of being centrally fueled, the organization must also consider situations where vehicles that are centrally fueled or capable of being centrally fueled are present in more than one location within the MSA or CMSA. The number of vehicles at all locations that are centrally fueled or capable of being centrally fueled must be totaled. For example, if a fleet or covered person has 12 vehicles at location A that are centrally fueled or capable of being centrally fueled and 10 vehicles at location B that are also centrally fueled or capable of being centrally fueled, the organization has 22 vehicles in a MSA or CMSA that are centrally fueled or capable of being centrally fueled.

In providing that contract fueling is a method of being centrally fueled, retail credit card purchases by themselves are not considered to be a contractual refueling agreement. However, commercial fleet credit cards are considered to be a contractual refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone. The intent of DOE's definition is to ensure that only those fleet-based agreements which provide special fleet refueling benefits at a particular facility or group of facilities would qualify as central fueling. DOE does not intend the definition of "centrally fueled" to pertain to fleet service card agreements which include a wide network of fuel providers, unless the service card agreement effectively operates as a commercial refueling arrangement between a circumscribed subset of such refueling facilities and a given fleet operator.

Proposed § 490.2 defines the term "capable of being centrally fueled" as meaning a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person. One method that DOE is proposing for determining central fueling capability is whether 75 percent of a vehicle's total miles traveled are derived from trips that are less than the operational range of the vehicle. As defined by EPA, in its December 9, 1993, **Federal Register** notice on the final rule for the definitions and general provisions for the Clean Fuel Fleet Program, 58 FR 64684, the operational range is the distance a vehicle is able to travel on a round trip with a single refueling. The operational range should be no less than 50 percent of the average range of the existing fleet and in no instance should be less than 300 miles. It is important to note that the fuel in question is the fuel that the vehicle currently operates on. DOE believes that this proposed definition will allow fleets and covered persons to easily determine which vehicles are "capable of being centrally fueled." DOE requests comment on this definition of operational range, and on the operational range of alternative fueled vehicles which may be required to comply with this program.

In defining the same phrase in 40 CFR 88.302–94, EPA provided that the presence of one or more nonconforming vehicles in a fleet does not exempt an entire fleet from the requirements of this program; those vehicles that are capable of being centrally fueled will count towards the 20-vehicle minimum fleet size. DOE agrees, but does not find a need to include a phrase to this effect in the definition of "capable of being centrally fueled."

The DOE proposed definition differs from the EPA definition of "capable of being centrally fueled," at 40 CFR 88.302–94, because the DOE proposed definition does not require that vehicles covered must be capable of being centrally fueled 100 percent of the time. In developing its definition, EPA had to consider the fueling characteristics of both light duty and heavy duty vehicles. EPA amended its proposed definition to reflect the 100 percent fueling requirement based on the comments of heavy duty engine manufacturers, who argued that vehicles purchased by heavy duty vehicle fleet operators in order to comply with the Clean Fuel Fleet Program would have to be dedicated to a single fuel that may not be widely available. It appears that if the heavy duty vehicles had not been involved in the program that EPA would have settled on the 75 percent figure. DOE did not take these comments into consideration when developing the proposed definition because the Act has no requirement for fleets to acquire heavy duty vehicles. Thus, separate heavy duty vehicle fueling characteristics do not have to be considered. DOE requests comment on whether the 75 percent level is appropriate.

DOE's proposed definition of "capable of being centrally fueled" is based on EPA's work. However, DOE requests comment as to whether further editing is necessary to clarify the meaning of this phrase.

The statutory definition of "fleet" requires that a minimum of 20 vehicles be "owned, operated, leased, or otherwise controlled by a governmental entity or other person." The proposed regulatory definition of "fleet" substantially tracks this language. However, there is also a definition of "lease" in proposed § 490.2 that excludes rental agreements of less than 120 days. This provision is consistent with the EPA regulations. As EPA explained, a person does not have the same level of control over a vehicle lease for a short period of time, and the 120-day period takes into account short term variations in fleet operations and the number of fleet vehicles that ought not to trigger the vehicle acquisition mandates. 58 FR at 64687. DOE shares this view.

The proposed regulatory definition of "fleet" further tracks the statutory definition by requiring that a person controls 50-light duty motor vehicles regardless of where they are located. The proposed definition of "fleet" uses the concept of "control" to establish the guidelines for attributing vehicles to a "fleet" for the purposes of determining whether the 50-vehicle minimum is satisfied. The concept is used with regard to: (1) Control of vehicles; (2) control by another person; (3) control of another person; and (4) being subject to common control together with another person.

There is similar language in the definition of "covered fleet" which applies to the EPA fleet program requirement. EPA has promulgated an elaborate definition of "control" in 40 CFR § 88.302–94 which reflects the various ways in which the concept of "control" is used in the definition of "covered fleet." The explanation of that definition appears at 58 FR 64686–7. DOE is proposing to adopt EPA's definition of "control."

Other Definitions

Proposed § 490.2 defines the term "after-market converted vehicle" as a new or used conventional fuel Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuel by an after-market converter. This converter must be in compliance with all Federal, state, and local laws at the time of conversion. After-market converted vehicles differ from Original Equipment Manufacturer converted vehicles with respect to which company warranties the conversion and its components. In the case of an Original Equipment Manufacturer converted vehicle, the vehicle is converted prior to first sale by a manufacturer-authorized conversion company under contract to the manufacturer to convert Original Equipment Manufacturer vehicles, and is then offered by the Original Equipment Manufacturer, with warranty coverage through the Original Equipment Manufacturer, for sale to the general public. In the case of an after-market converted vehicle, the conversion is performed by an after-market converter, who provides the warranty for the vehicle conversion and the conversion kit.

Proposed § 490.2 defines the term "alternative fuel" consistent with the definition for that term in section 301 of the Act. The text of the statutory definition of "alternative fuel" was quoted earlier in this Supplementary Information section in a discussion of reformulated gasoline. The terms of that definition do not restrict "alternative fuels" to fuels used only for transportation purposes. However, section 501(a)(3)(B) of the Act specifically exempts certain businesses that do not use "alternative fuels" for transportation purposes. That provision is reflected in proposed § 490.303(b) which is discussed in detail below in this section-by-section analysis.

Proposed § 490.2 defines the term "covered person" consistent with the definition for that term in section 301 of the Act.

"Dealer demonstration vehicles" are excluded from the definition of "fleet." Proposed § 490.2 follows the EPA definition for the term "dealer demonstration vehicle" found at 40 CFR § 88.302–94 which defines "dealer demonstration vehicle" as meaning any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation. The intent of this definition is to exempt the vehicles held on the lot of a motor vehicle dealer as stock from which potential purchasers or lessees can choose. Vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles are not exempt, unless they are also offered for retail sale as part of the dealer stock or are rotated through the fleet back to the dealer stock.

As required by section 301(8) of the Act, proposed § 490.2 defines the term "dual fueled vehicle," consistent with section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2013, as a motor vehicle that is capable of operating on alternative fuel and on gasoline or diesel fuel. These include flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel, and bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel. The intent of this definition is to include all vehicles that are capable of operating on an alternative fuel and a petroleum-based fuel, regardless of what terminology is used to describe the vehicle. The Department is aware that the terms "bi-fuel" and "dual-fuel" are being used interchangeably to describe the same motor vehicle and does not wish to further confuse the situation.

"Emergency vehicles" are excluded from the definition of "fleet." Proposed § 490.2 adopts EPA's definition for the term "emergency vehicle" in 40 CFR § 88.302–94 which defines "emergency vehicle" as meaning any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance. These vehicles normally have red and/or blue flashing lights and sirens. DOE is relying on the speed limit criterion because this is the way that many states define "emergency vehicles." The requirement for legal authorization to exceed the speed limit may be problematic, however, for localities that authorize certain utility vehicles to exceed the speed limit in special circumstances. However, those vehicles are not normally considered emergency vehicles in that their primary function does not include exceeding the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property. Their response to an emergency does not usually require them to exceed the speed limit, and they are not usually equipped with red and/or blue flashing lights and sirens for use when exceeding the speed limit. Therefore, those vehicle types are not considered excluded from the definition of "fleet" unless, on a vehicle-by-vehicle basis, they are specifically and legally authorized by a governmental authority to respond to emergencies as described above.

"Law enforcement vehicles" are excluded from the definition of "fleet." Proposed § 490.2 adopts EPA's definition of the term "law enforcement vehicle" found at 40 CFR § 88.302–94 which defines "law enforcement vehicle" as meaning any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement

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Administration, or other law enforcement agencies of the Federal Government, or by state highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. This definition is intended to clarify the difference between law enforcement vehicles and vehicles used for other security purposes. Under this definition, a vehicle is considered to be a law enforcement vehicle and is exempt by virtue of its use for official law enforcement purposes, as conveyed by local, state or federal government mandate. Security vehicles do not usually comply with this definition, and as such are not excluded from the definition of "fleet" unless they are contracted by a law enforcement agency for the purposes described above.

Proposed § 490.2 defines the term "lease" to mean use of a vehicle for transportation purposes pursuant to a rental contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle. This definition closely tracks EPA's definition of "owned or operated, leased or otherwise controlled by such person," found at 40 CFR § 88.302–94. The intent of this definition is to include, for compliance purposes, any vehicles controlled by a covered person, whether by ownership or lease. The 120-day period is slightly longer than a calendar season, and is intended to reflect the fact that the leasing of vehicles can occur for short periods of time, including seasonal uses, and that such short term, temporary leases should not be subject to the conditions of the program. However, fleets and covered persons leasing or renting a vehicle for more than 120 days must include this vehicle in the company's total count of new light duty motor vehicles acquired for the respective model year.

Proposed § 490.2 defines the term "model year" for the purposes of vehicle acquisition requirements as September 1 of the previous calendar year through August 31. This definition closely tracks EPA's definition of "model year," found at 40 CFR § 88.302–94. For purposes of compliance, covered persons should compute their vehicle acquisitions during the period beginning September 1 of each year through August 31. This definition of model year coincides with the period in which most automobile manufacturers introduce their new annual models, which should facilitate compliance since fleets can make their acquisition plans regarding alternative fueled vehicles when they make plans for acquiring new model year vehicles. This definition is intended to clarify which vehicles count toward the required annual acquisitions under the program. This definition is also intended to ensure that all fleets and covered persons acquire vehicles based on the same annual period, which is important to facilitate enforcement of the programs. Thus, any new vehicles that are acquired by a fleet or covered person between September 1 and August 31 are counted and used as the basis for determining the acquisition requirement of the same year, and are considered of the same model year as the January that falls between them.

"Motor vehicles held for lease or rental to the general public" are excluded from the definition of "fleet." Proposed § 490.3 follows EPA's definition of this phrase found at 40 CFR § 88.302–94 which defines "motor vehicles held for lease or rental to the general public" as meaning a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract. According to this definition, the vehicles must be owned primarily for the purpose of renting or leasing them without a driver, effectively granting someone else control over them in exchange for money or other compensation. In addition, this exchange must be based on a contract. Thus, a firm cannot be found to "lease" its vehicles to its employees unless the vehicles are owned primarily for leasing them to the general public and they are leased pursuant to formal contracts which give control of the vehicle to the lessee.

"Motor vehicles used for motor vehicle manufacturer product evaluations and test" are also excluded from the definition of "fleet." Proposed § 490.3 follows EPA's definition of the phrase "vehicle used for motor vehicle manufacturer product evaluations and tests" at 40 CFR § 88.302–94. There the phrase is defined to mean vehicles that are owned and operated by a motor vehicle manufacturer, or motor vehicle component manufacturer, or owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons. It is the intent of this provision to exclude vehicles which are part of a "fleet" used by an Original Equipment Manufacturer for production control or quality control reasons.

"Motor vehicles which under normal operations are garaged at personal residences at night" is another category of vehicles excluded from the definition of "fleet." Proposed § 490.2 tracks the language of section 301(h) of the Act.

Proposed § 490.2 defines the term "Original Equipment Manufacturer Vehicle" as meaning a vehicle engineered, designed and produced by an Original Equipment Manufacturer. This term applies to conventionally fueled Original Equipment Manufacturer vehicles as well as to alternative fueled vehicles. Included in this definition are vehicles that were conventionally fueled Original Equipment Manufacturer vehicles, but were converted prior to sale by the Original Equipment Manufacturer, through a contract with a conversion company, to operate on an alternative fuel and which are covered under the Original Equipment Manufacturer warranty.

Proposed Section 490.3 Excluded Vehicles

Proposed § 490.3 sets forth the vehicles which may be excluded when counting to determine whether there are a sufficient number of vehicles to constitute a "fleet" as defined in proposed § 490.2. Some of the exclusions are categories capsulized in a term such as "dealer demonstration vehicle," "emergency vehicle," and "law enforcement vehicle." Those terms are defined in proposed § 490.2 and are discussed above.

Proposed Section 490.4 General Information Inquiries

In other regulatory programs, DOE has learned that on occasion representatives of regulated persons make informal inquiries, usually by telephone, and need a quick response from the program office even if the response is not binding on DOE. Proposed § 490.4 would make this device for obtaining information available to those who are subject to regulation under part 490.

Proposed Section 490.5 Requests for an Interpretive Ruling

For those who want a more authoritative answer as to how the Department intends to construe and apply its regulations to particular factual situations, and for whom other procedures such as petitions for exemption are irrelevant, proposed § 490.5 would provide a useful option. The uncertainties related to the complex provisions applicable to determining who must comply and the extent of

affected vehicle inventories prompted DOE to devise proposed § 490.5. Any interpretive ruling that the Department issues would apply only to the person who requested it. However, the Department will make copies of these rulings available for inspection and copying in a public file in its Freedom of Information Reading Room in the Forrestal Building at 1000 Independence Ave., SW, Washington, DC 20585.

Proposed Section 490.6 Petitions for Generally Applicable Rulemaking

Proposed § 490.6 sets forth procedures for petitioning the Department to issue new or amended rules of general applicability for part 490. These procedures implement rights available to members of the public under the Administrative Procedure Act. 5 U.S.C. 553(e).

Proposed Section 490.7 Relationship to Other Law

Proposed § 490.7 makes a declaratory statement to avoid arguments that provisions of part 490, by their silence, authorize acquisition of vehicles or conversion of vehicles in a manner that does not comply with other laws and regulations at the Federal, state, or local level.

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

Proposed Section 490.201 Alternative Fueled Vehicle Acquisition Mandate Schedule

Proposed § 490.201 sets forth the requirements, subject to some exemptions, for the percentage of new light duty motor vehicles for State fleets that must be alternative fueled vehicles when acquired under the Mandatory State Fleet Program. Beginning with the 1996 model year, September 1, 1995, any state fleet that is covered under this subpart must comply with these requirements, unless otherwise provided in this subpart.

In cases where acquisition percentages result in something less than a whole number, DOE is proposing that these fractions be rounded up to the next whole number.

Proposed Section 490.202 Acquisitions Satisfying the Mandate

Proposed § 490.202 provides in substance that an acquisition of an alternative fueled vehicle, regardless of the year of manufacture, counts toward satisfaction of the vehicle acquisition mandate. Such a vehicle would be new to the fleet operator. Credits acquired under subpart F also count toward satisfaction of the mandate.

Proposed Section 490.203 Light Duty Alternative Fueled Vehicle Plan

The Act provides an alternative means of compliance for States. In lieu of a State meeting the acquisition requirements proposed by § 490.201 solely through acquisition of new State-owned vehicles, a State may comply with a Light Duty Alternative Fueled Vehicle Plan submitted by the State and approved by DOE. The Plan must demonstrate that there will be a sufficient number of light duty motor vehicles by State, local and private fleets, which in aggregate meet or exceed the applicable vehicle percentage for any given year.

DOE is proposing that any acquisition or conversion of light duty alternative fueled vehicles for a State may be part of the Plan, irrespective of whether the vehicles are in the excluded categories of vehicles in the definition of "fleet" as enumerated in proposed § 490.3. This allows for law enforcement vehicles, or other vehicles otherwise excluded from the definition of "fleet" to be part of a Light Duty Alternative Fueled Vehicle Plan.

DOE is proposing that, until a Plan is approved or unless DOE grants an exemption, a State is subject to the fleet percentage requirements in proposed § 490.201. This will be equally true in instances where a State plan participant (such as a municipality) fails to fulfill its commitments under the Plan. However, if the State is able to find a substitute participant, then the State may submit to DOE for approval an amendment to the Plan.

DOE is proposing in paragraph (b) of this section to require States to monitor and verify on an ongoing basis the implementation of its Plan. This is to ensure that all participants in the Plan are indeed in compliance, and that at the end of the model year, all requirements will have been met. If for whatever reasons a participant is unable to fulfill its commitments, the State should be able to find a substitute participant before the end of the year.

Paragraph (c) proposes to require a State to submit to DOE, for approval, its Light Duty Alternative Fueled Vehicle Plan no later than the June 1 prior to the model year covered by the Plan. A State should know by this deadline the number of light duty motor vehicles it plans to acquire during the upcoming model year. DOE would like to receive comments as to whether it is reasonable to require all Plans be submitted by the June 1 prior to the model year.

Proposed Section 490.204 Process for Granting Exemptions

Section 507 (i)(1) of the Act provides three categories under which a State may seek exemptions in whole or in part from the annual acquisition percentages. A State may seek exemption if it can demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

Category 1 tracks section 507(i)(1) of the Act. Category 2 is based on section 507(i)(1) and would preclude arguments that the physical unavailability in a state is not a valid reason for exemption when a vehicle can be ordered from somewhere else in the United States. Time delays in delivery of alternative fueled vehicles are generally not acceptable as an excuse. States must be cognizant of the possible irregular manufacturer production schedules and considerably longer lead times involved in the acquisition of alternative fueled vehicles compared with conventional vehicles. It is the responsibility of the state to plan and schedule its ordering and acquisitions of alternative fueled vehicles so as to comply with the acquisition requirements for each model year. Regarding category 3, section 507(i)(1) allows only States, not alternative fuel providers, the right to seek an exemption based on financial hardship. Proposed paragraph (d)(3) describes the few items of information that a State must submit to DOE when requesting an exemption based on financial hardship. (Earlier in this Supplementary Information, States were invited to comment on how DOE should interpret and apply the term "financial hardship.")

Proposed paragraph (g) provides that the Assistant Secretary for Energy Efficiency and Renewable Energy may grant a request for exemption. In order to keep the procedures simple, the Assistant Secretary may act finally for the Department, and there is no requirement to obtain the specific approval of the Secretary. If the Assistant Secretary denies the request for exemption, proposed paragraph (g)

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further provides for a State right to appeal to the Department's Office of Hearings and Appeals, whose decision would be final for the purpose of judicial review. Further discussion on the exemption process is found in section-by-section analysis for the Alternative Fuel Provider Vehicle Acquisition Mandate.

The Act requires that the exemption process be reasonable and simple. The DOE invites comments on the proposed process for States to request exemptions, in whole or in part.

Proposed Section 490.205 Reporting Requirements

Proposed § 490.205 will require each state that is subject to the vehicle acquisition mandate to submit to DOE an annual report. This report will assist DOE in determining if a state has met the requirements of this subpart as well as to determine how successfully the goals and requirements of this subpart are being met. For further discussion on reporting requirements, see proposed section 490.309. DOE invites comment as to the reasonableness of these reporting requirements, as well as recommendations for additional, substitute or reduced requirements which would achieve the desired results.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

I. Background

The Alternative Fuel Provider Vehicle Acquisition Mandate is intended to cover a broad range of alternative fuel providers in a flexible, workable program that will allow for compliance in the most economical fashion possible. The program allows alternative fuel providers flexibility in the acquisition of new alternative fuel vehicles via purchase, lease, or conversion, and in the geographical placement of alternative fuel vehicles. It also provides a minimum of restrictions on how the alternative fueled vehicles are to be used.

The program specifies the criteria for determining whether an alternative fuel provider is covered and under what circumstances exemptions from the program will be granted. Only those alternative fuel providers who are classified as "covered persons" are subject to the requirements of this proposed regulation and only that affiliate, division, or other business unit which is substantially engaged in the alternative fuels business may be subject to the acquisition mandate requirements of the Act.

Proposed Section 490.300 Purpose and Scope

Proposed § 490.300 defines the purpose and scope of part 490 Subpart D as implementing the statutory requirements of section 501 of the Energy Policy Act of 1992, which sets forth a mandate for those alternative fuel providers, who are classified as covered persons, to acquire alternative fuel vehicles at an escalating percentage of their new vehicle acquisitions.

Proposed Section 490.301 Definitions

Proposed § 490.301 sets forth the definitions for part 490, Subpart D.

Proposed § 490.301 defines the term "alternative fuels business" as meaning an activity undertaken to derive revenue from: (1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or (2) generating, transmitting, importing, or selling at wholesale or retail electricity. This definition tracks the language of section 501(a)(2).

Proposed § 490.301 provides definitions for the terms "affiliate," "division," and "business unit" which are used in section 501 of the Act and proposed §§ 490.303 and 490.304. The first two are dictionary definitions. "Business unit" is defined to make clear the grouping of business activities must be similar in autonomy to affiliates and divisions.

Proposed § 490.301 defines the term "normal requirements and practices" as meaning the operating business practices and required conditions under which the principal business of the covered person operates. In a request for an interpretive ruling or in a civil penalty proceeding, the burden would be on the fuel provider to show that actions to acquire alternative fuel vehicles and/or obtain alternative fuel are outside the normal practices of the covered person's principal business.

Proposed § 490.301 defines the term "principal business" as meaning the largest sales-related gross revenue producing activity. If an organization derives a plurality of gross revenue from sales-related alternative fuels activity then the organization's principal business is alternative fuels. As it is used above, plurality does not require that over 50 percent of an organization's sales-related gross revenue be based on activities related to alternative fuels. Sales-related in this context means that the gross revenue does not come from investments such as corporate stocks.

In determining whether an organization's principal business is alternative fuels, the important criterion to look at is what is the organization's single largest source of sales-related gross revenue. For example, if an organization derives 35 percent of its sales-related gross revenue from alternative fuels and the next largest single source of sales-related gross revenue comprises 25 percent of the organization's gross revenue, the organization's principal business is alternative fuels.

Proposed § 490.301 defines the term "substantially engaged" to mean that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business. To determine whether a covered person or affiliate, division, or other business unit thereof is "substantially engaged" in the alternative fuels business, it is important to look at the involvement the covered person, affiliate, division, or other business unit has with the alternative fuels business. Thus, only that affiliate, division, or business unit that meets the substantially engaged criteria, as defined above, is subject to the acquisition requirements of this program.

The covered person is responsible for clearly defining the specific affiliate, division, or other business unit that is substantially engaged and is therefore subject to the acquisition requirements of this rule. If this designation is not made or is not made clearly, DOE will assume that the entire organization is subject to the acquisition requirements of this rule and will enforce it as such.

Proposed § 490.301 defines the term "substantial portion" to mean that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. Alternative fuel is as defined in proposed § 490.2. This proposed definition was formulated using reliable data compiled by the Energy Information Administration and published in its Petroleum Supply Annual 1993, Volume 1 (DOE/EIA–0340(93)/1). Table 19 provides aggregate data on refinery yield for the Petroleum Administration for Defense districts and can be readily verified.

The 2% threshold was chosen because it represents the average yield for the production of alternative fuel by petroleum refiners as reported by the Energy Information Administration. DOE believes that the use of this percentage in the definition of "substantial portion" allows for the initial identification of that group of covered persons described in Sec. 501(a)(2)(c) of the Act and provides a sound basis for identifying those

affiliates, divisions, or other business units of such covered persons which are substantially engaged in the alternative fuel business.

The Department considered including some measure of the gross revenue attributed to the production of alternative fuels as an alternative in the definition of "substantial portion." The first measure that was considered was setting a minimum level of gross revenue from the sale of alternative fuels that an organization would have to equal or exceed to be classified as an alternative fuel provider. The second measure that was considered was establishing a minimum percentage, that reflects the percent of total gross revenue attributed to the sale of alternative fuels, that an organization would have to equal or exceed to be classified as an alternative fuel provider. Unfortunately, the information available on these measures is too fragmented to be the basis for proposed regulatory language. DOE seeks comment on whether reliable information exists that would allow establishment of a monetary measure (or any measure apart from the measure in the proposed rule) for determining whether alternative fuels production comprises a substantial portion of a company's business. DOE also seeks comment recommending any other alternative definitions for "substantial portion."

Proposed Section 490.302 Vehicle Acquisition Mandate Schedule

Proposed § 490.302 describes the vehicle acquisition schedule that alternative fuel providers must comply with if they are classified as covered persons. Proposed paragraph (a) requires that of the new light duty motor vehicles acquired by alternative fuel providers, the following percentages shall be alternative fueled vehicles for the following model years:

(A) 30 percent for model year 1996.
(B) 50 percent for model year 1997.
(C) 70 percent for model year 1998.
(D) 90 percent for model year 1999 and thereafter. For example, if an alternative fuel provider purchases or leases 50 light duty motor vehicles in model year 1996, 30 percent, or 15, of the vehicles have to be alternative fueled vehicles.

Proposed paragraph (b) states that, except as provided by § 490.304, these requirements apply to all new light duty vehicles acquired by a "covered person," not just those vehicles acquired for the fleets which initially qualified the alternative fuel provider as a "covered person." These requirements also apply regardless of where the new vehicles are to be located. For example, if an alternative fuel provider, which is a covered person, is acquiring new light duty motor vehicles for a location that is not in a subject MSA or CMSA, the required percentage of these vehicles must be alternative fueled vehicles. The MSA/CMSA requirement is used for classifying "covered persons," not for determining how many light duty vehicles must be alternative fueled vehicles. The provisions of proposed § 490.302(b) are not discretionary because they follow the wording of section 501(a)(1) of the Act. 42 U.S.C. 13251(a)(1).

Proposed paragraph (c) provides for rounding off to the next higher number if application of a percent to the base number of new light duty vehicles acquired results in a requirement to acquire a fraction of a vehicle. This procedure is consistent with the statutory objective of promoting the acquisition of alternative fuel vehicles.

Proposed paragraph (d) states that only acquisitions satisfying the mandate, as described in proposed § 490.305, and/or Alternative Fueled Vehicle credits will be counted toward compliance with the acquisition schedule in proposed paragraph (a).

Proposed Section 490.303 Who Must Comply

Proposed § 490.303 gives an answer to the question: who is a covered person that must comply? This proposed section tracks section 501(a)(2) of the Act. There are two components to this determination. The first component involves determining whether the organization fits the profile of an alternative fuel provider as provided by section 501(a)(2) of the Act. The second component eliminates from coverage those alternative fuel providers whose principal business uses alternative fuel to create a product that is not an alternative fuel.

Types of companies likely to be covered persons subject to the alternative fuel providers mandate include, but are not limited to, private and public electric and natural gas utilities; natural gas distribution companies; pipeline companies; petroleum companies; propane producers, distributors, and suppliers; methanol providers; ethanol providers; and fuel transport companies.

Municipal utilities possessing the required fleet size, fueling characteristics, and located within the specified geographical areas are classified as alternative fuel providers under section 501(a)(2)(B). Therefore, they are expected to comply with the requirements of the mandate under § 490.302 and will not be subject to any future municipal fleet mandate imposed by rule under section 507 of the Act.

If an organization produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum, and regularly derives gross revenue from the production of alternative fuels, that organization has a "substantial portion" of its business in alternative fuels. To determine whether an organization has a substantial portion of its business in alternative fuels it is important to look at the organization's involvement in the alternative fuels business, not just the amount of gross revenue from alternative fuels production or the level of investment in alternative fuels production. DOE's determination of whether an organization has a substantial portion of its business in alternative fuels will be made on a case-by-case basis. Comment is invited as to what criteria might be used in making this determination.

Paragraph (b) of proposed § 490.303 deals with covered persons who are excluded from having to comply with this subpart. This section tracks the language of section 501(a)(3)(B) of the Act. Two types of covered persons may be excluded from the requirements of this regulation: (1) Those who transform alternative fuels into a product that is not an alternative fuel; and (2) those who consume alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

An example of an excluded person described in paragraph (b)(1) would be a manufacturer of windshield washer fluid. The manufacturer would be classified as an excluded person because it blends an alternative fuel, methanol, in producing windshield washer fluid, which is not an alternative fuel.

An example of an excluded person described in paragraph (b)(2) would be a company that burns natural gas to provide a heat source for a manufacturing operation.

An example of an excluded person under paragraphs (b)(1) and (b)(2) would be an entity whose principal business is the production of alcoholic beverages.

Proposed Section 490.304 Which New Light Duty Motor Vehicles Are Covered

Under section 501(a)(3)(A) of the Act, if the covered person has more than one affiliate, division, or other business unit, only the vehicles of an affiliate, division, or business unit that is "substantially engaged in the alternative fuels business" are subject to the vehicle acquisition mandate. Proposed § 490.304 reflects the provisions of

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section 501(a)(3)(A), and should be read in conjunction with the proposed definitions of "affiliate," "division," and "business unit" in § 490.301.

Proposed Section 490.305 Acquisitions Satisfying the Mandate

Proposed § 490.305 deals with the three types of acquired vehicles that will count toward compliance with proposed § 490.302, in addition to alternative fueled vehicle credits under Subpart F. These categories provide flexibility for organizations in acquiring vehicles to meet this regulation. An alternative fueled light duty motor vehicle shall be considered newly acquired, regardless of model year, if:

(a) The vehicle is an Original Equipment Manufacturer vehicle capable of operating on alternative fuels and was not previously under the control of the covered person; or

(b) The vehicle is an after-market converted vehicle and was not previously under the control of the covered person; or

(c) The vehicle is an Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuels prior to the vehicle's first use in service.

A vehicle that meets the description of paragraph (a) is one that is manufactured by an Original Equipment Manufacturer to be capable of operating on alternative fuels. For example, if a covered person acquires a 1993 flex-fuel light duty motor vehicle during model year 1996, this vehicle is classified as being a new acquisition for that organization.

A vehicle that meets the description of paragraph (b) is one that has been converted by a licensed converter to be capable of operating on alternative fuels. A vehicle that meets the description of paragraph (c) is a vehicle that upon acquisition by the organization is taken to a licensed converter for conversion to an alternative fueled vehicle and is never intended to be operated solely on petroleum-based fuel. It is important to note that section 507(j) of the Act states that no fleet owner shall be required to acquire converted vehicles in order to meet compliance with this or any fleet acquisition requirement.

Proposed Section 490.306 Vehicle Operation Requirements

Proposed § 490.306 largely tracks the provisions of section 501(a)(4), which requires that all alternative fueled vehicles acquired pursuant to section 501 be operated solely on alternative fuels, except when these vehicles are operating in an area where alternative fuel is not available.

Proposed Section 490.307 Option for Electric Utilities

Proposed § 490.307 deals with the statutory option for electric utilities. Proposed paragraph (a) tracks the provisions of section 501(c) of the Act, which provides that a covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the alternative fuel vehicle acquisition schedule in section 501(a) of the Act until January 1, 1998, if that covered person intends to comply with this regulation by acquiring electric motor vehicles. DOE considered delaying the date that electric utilities would have to start acquiring vehicles until the beginning of model year 1999 which starts on September 1, 1998. But given that the California Air Resources Board requires that 2 percent of all vehicles sold in California by major auto producers be Zero Emission Vehicles, (emission level currently only achievable by electric vehicles) starting September 1, 1997, DOE decided not to propose a delay in the effective date of the 30 percent alternative fueled vehicle acquisition requirement. Also, the States of New York and Massachusetts have enacted laws which adopt California standards and timetables.

Proposed paragraph (b) provides the date (January 1, 1996) by which notification must be received by DOE for an electric utility to be eligible for this delayed schedule. That date is dictated by section 501(c) of the Act. This notification should be in letter format and must explain the utility's commitment to electric vehicles.

Proposed paragraph (c) describes the acquisition schedule that an electric utility must comply with if the electric utility notifies the Secretary by the required date.

Proposed Section 490.308 Process for Granting Exemptions

Proposed § 490.308 deals with the requirements of section 501(a)(5) of the Act which provides for a simple and reasonable exemption process for those covered persons seeking exemptions either because alternative fuel is not available or alternative fueled vehicles are not reasonably available. Proposed paragraph (a) describes the procedure that a covered person needs to complete to receive an exemption. The first category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fuels that meet the normal requirements and practices of that person are not available in the area where the vehicles are to be operated. The second category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in the United States. These exemptions would be granted for one model year only. To receive exemptions for additional model years, alternative fuel providers must re-apply to the Secretary each year. Criteria for granting exemptions will be based on documentation that specifically relates to the availability of alternative fuels and alternative fueled vehicles.

To determine whether alternative fuel is "not available," an alternative fuel provider must map out the operating area and base of operations for its fleet of vehicles. Next it must locate on the map the alternative fueling facilities within its MSA or CMSA. Then, for each vehicle, it must determine whether any location providing alternative fuel is in the area in which the vehicle is operated. If there is any location providing alternative fuel within the vehicle's operating area, alternative fuel is available. If there are no locations providing alternative fuel, for *any* alternative fuel that meets the normal requirements and practices of the covered person's principal business, within the vehicle's operating area, then alternative fuel is "not available."

The Act requires that the exemption process be reasonable and simple. DOE invites comment on the proposed process for exemptions, in whole or in part.

It is anticipated that alternative fuel will be available and accessible for almost all alternative fuel providers, and that it will be difficult for fuel providers to prove that alternative fuel is not available. Since alternative fuel providers stand to benefit greatly from the expanded use of alternative fuels and the proliferation of alternative fueled vehicles, it is also anticipated that they will help accelerate the establishment of the alternative fuels infrastructure and be less likely to seek exemptions based on alternative fuels being "not available."

To receive an exemption based on the criteria in subparagraph (a)(2) a covered person must show that there are no alternative fueled vehicles available for commercial acquisition on reasonable terms and conditions in any State. The covered person also must show good faith effort in attempting to obtain these vehicles. DOE requests comment on the extent to which vehicle cost, either initial cost or life-cycle cost, should be considered in determining whether vehicles are available on "reasonable terms."

If a covered person normally and historically acquires vehicles from one automobile dealer or from one automobile manufacturer, but is unable to acquire alternative fueled vehicles of the model type needed from these same sources, this is not sufficient to qualify for an exemption under subparagraph (a)(2) if appropriate alternative fueled vehicles are available from other dealers or manufacturers. Having to use another dealer or manufacturer is not classified as outside the normal requirements and practices of the covered person, because the same procedures that are currently being employed by the covered person to obtain these vehicles can be used to obtain them from different sources.

Having to wait slightly longer for delivery of alternative fueled vehicles than for conventionally fueled vehicles is not a sufficient reason for granting an exemption. If, however, the time delay will result in a covered person violating the regulation, DOE will consider the covered person to be in compliance with this regulation if the delivery delay was through no fault of its own. Thus, if alternative fueled vehicles are ordered during the model year with expectations that they will be delivered by the end of the model year, but are not delivered until the next model year, the covered person will be deemed to be in compliance if it can provide DOE with proof of order date and anticipated delivery schedule. On the other hand, if a covered person orders alternative fueled vehicles and knows, at the time of the order, that it will not be receiving these alternative fueled vehicles by the end of the model year, it will be deemed to be in noncompliance and no exemption will be granted.

Additionally, in determining whether alternative fueled vehicles are reasonably available, a covered person must examine whether alternative fueled vehicles of the appropriate type are available in any alternative fuel configuration. Thus, the availability of the type of vehicle a covered person needs that operates on the fuel that the covered person provides is not the appropriate test for determining whether alternative fueled vehicles are "not reasonably available." The test for determining whether alternative fueled vehicles are "not reasonably available" is whether there are alternative fueled vehicles available that operate on *any* alternative fuel and meet the normal requirements and practices of the business, including the vehicle performance requirements of the business.

Proposed paragraph (b) sets forth the types of documentation in support of exemption requests that should be provided to DOE.

Proposed paragraph (e) states that exemption determinations are letter rulings binding for the covered person only and cannot be used to establish a precedent for other exemption requests. DOE will review each exemption request on a case-by-case basis.

In proposed paragraphs (f) and (g) DOE is proposing an administrative remedy for those aggrieved by the initial decision of the DOE Deciding Official, who will be the Assistant Secretary for Energy Efficiency and Renewable Energy. In order to exhaust administrative remedies, it will be necessary to appeal to DOE's Office of Hearings and Appeals. This procedure has two virtues. It would be less expensive than pursuing a judicial remedy immediately. It would also ensure that DOE has made a record which is appropriate for judicial review in the event a petition for review is filed in a Federal court.

Proposed Section 490.309 Annual Reporting Requirements

Proposed § 490.309 sets forth annual reporting requirements. An annual report to verify regulation compliance is required of all alternative fuel providers. Proposed paragraph (a) sets forth where and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory; however, several of them deserve discussion for clarification purposes.

Proposed subparagraph (b)(2) would require covered persons to calculate the number of new light duty alternative fueled vehicles that they are required to acquire. To determine this number, a covered person would multiply the number entered for proposed subparagraph (b)(1), by the acquisition percentage from § 490.302 or § 490.307 that applies for that model year. For example, in model year 1996, if the number of new light duty motor vehicles acquired is 50, the number of new light duty vehicles that are required to be acquired is 30 percent of 50, or 15 (50×.3=15). The number of new light duty alternative fueled vehicles acquired, added to the number of alternative fueled vehicle credits applied, from proposed subparagraph (b)(5), should be greater than or equal to the number calculated for proposed subparagraph (b)(2).

Proposed paragraph (c) sets forth the procedure that a covered person must follow if it is applying alternative fueled vehicle credits against its acquisition requirements.

Consistent with the requirements of 5 CFR Part 1320.6(f), proposed paragraph (d) would require that records related to this reporting requirement be maintained and retained for a period of three years.

DOE seeks comment on the reporting requirements, especially relating to the information that is requested to be included in the report.

Subpart F—Alternative Fueled Vehicle Credit Program

Background

Section 508 of the Act requires DOE to establish an alternative fueled vehicle credit program that will allocate alternative fueled vehicle credits to a fleet or covered person that is required to acquire alternative fueled vehicles under Title V of the Act if that fleet or covered person acquires alternative fueled vehicles in excess of the number that fleet or covered person is required to acquire or acquires alternative fueled vehicles prior to the date that fleet or covered person is required to acquire alternative fueled vehicles. An alternative fueled vehicle credit may be used to comply with alternative fuel provider or fleet program requirements in a later year, or may be traded or sold for use to another fleet or covered person who is required to acquire alternative fueled vehicles by Part 490.

The purpose of establishing a credit program is to provide purchasing flexibility for the regulated fleet operators without sacrificing the program's energy security goals. The general concept is that some fleet operators may, at times, find it attractive to buy more alternative fueled vehicles than required, if in doing so they can get credit against future acquisition requirements, or can sell or transfer the credits to another party. If the credits program is properly implemented and managed, there will be no decrease in energy security compared to a program based strictly on compliance through acquisitions.

Both section 246(f) of the Clean Air Act (42 U.S.C. 7586(f)) and section 508 of the Act (42 U.S.C. 13258) allow for awarding credits to entities that initiate clean fuel vehicle or alternative fueled vehicle programs sooner or in greater numbers than required. But the laws differ in their goals: the goal of the Clean Air Act Amendments is to improve air quality while the goal of the Act is energy security. Thus, the credit

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programs and implementing regulations emanating from these acts also have different goals and objectives.

The EPA has a program called the Clean Fuel Fleet Credit Program (40 CFR § 88.304–94) that may be confused with the Department's Alternative Fueled Vehicle Credit program. In the Clean Fuel Fleet Credit program, a fleet owner obtains credits by implementing clean fuel vehicles earlier, in greater numbers, or which meet more stringent emission standards than those established by EPA. Clean Fuel Fleet credits can also be obtained for Clean Fuel Vehicle purchases in vehicle categories that are excluded from the Energy Policy Act definition of "fleet". These credits are awarded based on a formula that compares the clean fuel vehicle emissions with conventional vehicle emissions. By contrast, under section 508 of the Energy Policy Act, one credit is allocated for each alternative fueled vehicle acquired in excess of the required number. Also, the Energy Policy allocates one credit for each year the alternative fueled vehicle is acquired before the required date.

Another area of difference between the two statutes is where they allow credits to be traded. Under the Clean Air Act, credit trading is only allowable within the same non-attainment area. For example, fleet operators in the Baltimore non-attainment area can only buy, sell, or trade credits with other fleet operators in the Baltimore area. Congress appears to have concluded that it was not logical for non-attainment areas to trade credits with other areas, because the air quality in the area where credits were purchased and used would not be improved as a result of this transaction. On the other hand, the Energy Policy Act credits can be traded freely among those organizations that are required to acquire alternative fueled vehicles, which are located within the United States. However, there is an exception to this trading provision, based upon the last sentence of section 508(d) of the Act, which provides that vehicles representing credits generated or transferred to alternative fuel providers operate solely on alternative fuel. (42 U.S.C. 13258). This requirement is discussed under § 490.506 of this Supplementary Information. Because one of the major goals of the Act is the reduction of our Nation's foreign oil dependency, it makes little difference where in the United States this reduction takes place.

Proposed Section 490.500 Purpose and Scope

Proposed § 490.500 defines the purpose and scope of part 490 subpart F as implementing the statutory requirements of Section 508 of the Act, which instructs the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number required, or obtain alternative fueled vehicles prior to the date when they are required to acquire alternative fueled vehicles.

Proposed Section 490.501 Applicability

Proposed § 490.501 deals with the applicability of the credit program to fleets and covered persons.

Proposed Section 490.502 Creditable Actions

Proposed § 490.502 describes the actions associated with allocation of alternative fueled vehicle credits by DOE. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which authorizes the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number they are required to acquire, or acquire alternative fueled vehicles in advance of the date they are required to. Once a fleet or covered person is required to acquire alternative fueled vehicles the only way credits can be generated is by exceeding their required acquisition number. For example, an alternative fueled vehicle acquired in excess of the number required in model year 1996 cannot be claimed to be an early alternative fueled vehicle acquisition for model year 1999. The excess alternative fueled vehicle will generate 1 alternative fueled vehicle credit only, not 3 credits because it was acquired 3 years in advance.

Additionally, DOE is proposing that one credit be allocated for the acquisition of a light duty alternative fueled vehicle in a category listed in proposed § 490.3, such as motor vehicles held for lease or rental to the general public, law enforcement vehicles, etc. Section 508(b) provides the statutory basis for this proposal because it refers to the allocation of credits for the acquisition of alternative fueled vehicles in excess of the number required. Therefore, the acquisition of light duty alternative fueled vehicles in the excluded categories constitutes the acquisition of alternative fueled vehicles in excess of the number required qualifies for the allocation of credits. Because these excluded vehicles are not required to be acquired they are not eligible to earn credits for early acquisition which results in multiple credits. Thus, DOE is proposing that the acquisition of these vehicles in excess of the required number will generate only one credit per vehicle.

It is reasonable to expect that any requirements placed on alternative fueled vehicles which are acquired to comply with alternative fuel provider or fleet program requirements would also apply to vehicles that generate credits. For example, the Act requires that alternative fuel providers operate their alternative fueled vehicles solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable. A net loss to energy security goals would occur if a credit-generating vehicle, such as an alternative fueled vehicle bought a year earlier than required by an alternative fuel provider, did not also operate solely on alternative fuel. This requirement applies only to those alternative fueled vehicles that generate credits to be used by covered persons who are alternative fuel providers. The Department is unaware of any possible requirements which would apply to vehicles purchased to demonstrate compliance and not to vehicles purchased for credits. Therefore, DOE is proposing that any such requirements apply equally to both types of vehicles.

The Department considered whether to allow the acquisition of medium duty and heavy duty alternative fueled vehicles (those alternative fueled vehicles with gross vehicle weight ratings of greater than 8,500 lbs.), by covered persons and fleets, to generate credits. Many medium duty and heavy duty vehicles are predominantly urban use vehicles, such as transit buses and delivery trucks, and could take advantage of the anticipated fueling infrastructure within these urban areas. These vehicles possess larger capacity engines, which consume significantly more fuel than light duty vehicles and result in increased displacement of petroleum-based fuel. However, paragraph (b) of section 508 provides that credits can only be allocated for the acquisition of the same type of vehicles that are required under the fleet mandates of Title V of the Act. The only type of vehicles that are required to be acquired in Title V are light duty vehicles. Thus, credits cannot be awarded for the acquisition of medium duty and heavy duty vehicles because the Act does not require any fleet or covered person to acquire them.

Proposed Section 490.503 Credit Allocation

Proposed § 490.503 deals with alternative fueled vehicle credit allocation. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which describes how credits are to be allocated. Before alternative fueled vehicle credits are allocated they must be applied for using the procedure described in proposed § 490.507.

Proposed paragraph (a) provides for the allocation of one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire. If a fleet or covered person is required to acquire 10 alternative fueled vehicles in a model year and they acquire 15 alternative fueled vehicles, they can apply for allocation of five alternative fueled vehicle credits.

Proposed paragraph (b) provides for the allocation of one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired in advance of the date the fleet or covered person is required to acquire alternative fueled vehicles. These credits cannot be allocated until the date that a fleet is required to acquire alternative fueled vehicles. Thus, only covered persons and State fleets are presently eligible for credit allocation. Until such time as private and municipal fleets are required to acquire alternative fueled vehicles, they cannot be allotted credits for early acquisition. At that time, all alternative fueled vehicles acquired between October 24, 1992, and the start date of the private and municipal fleet mandate would be eligible for credit allocation.

Proposed paragraph (c) provides for the allocation of credits to alternative fuel providers and State governments for alternative fueled vehicles acquired from October 24, 1992, the date the Energy Policy Act was enacted.

Credit allocation is best explained by the following examples. In the first example a covered person acquires 10 alternative fueled vehicles in model year 1994 and 15 alternative fueled vehicles in model year 1995. Because the covered person is not required to acquire alternative fueled vehicles until model year 1996, each alternative fueled vehicle acquired in model year 1994 will generate 2 credits and each alternative fueled vehicle acquired in model year 1995 will generate 1 credit. Thus, the covered person generates 35 credits [(10×2)+(15×1)=35], which can be used against future alternative fueled vehicle acquisition requirements or can be traded.

In the second example a state fleet acquires 50 alternative fueled vehicles in model year 1995 and 15 alternative fueled vehicles in excess of their required acquisition number in model year 1996. The state generates 50 credits for acquiring alternative fueled vehicles early and 15 credits for acquiring alternative fueled vehicles in excess of their required number. If the state doesn't trade away or use any credits, it will have 65 credits that it can use against future acquisitions or can trade.

A database will be established that will keep a record of credit allocations, trades and credit balances.

Proposed Section 490.504 Use of Alternative Fueled Vehicle Credits

Consistent with the language of section 508(c) of the Act, proposed § 490.504 states that a credit shall be treated as the acquisition of a light duty alternative fueled vehicle. Each alternative fueled vehicle credit will represent one light duty alternative fueled vehicle and can be applied against the required alternative fueled vehicle acquisition number for one model year only, designated by a fleet or covered person, in lieu of the acquisition of a light duty alternative fueled vehicle during that model year.

Proposed Section 490.505 Credit Accounts

Proposed § 490.505 deals with Alternative Fueled Vehicle Credit accounts. Proposed paragraph (a) states that DOE will establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

Proposed paragraph (b) states that each fleet or covered person will receive an annual credit account balance statement after the receipt and recording of its annual activity report. This statement will reflect the credit account activity that occurred in the previous model year and can be used as proof of the credit balance for an account.

DOE is considering whether to provide updated credit account balance statements to fleets and covered persons upon request during the year and is also considering whether to charge a nominal fee for this service. These updated credit account balance statements would provide written proof of a fleet or covered person's credit account balance as of the date they are printed. These updated credit account balance statements may be required of a credit seller by a credit purchaser before proceeding with the credit transfer. Thus, the credit seller can use this updated credit account balance statement to gain independent private benefit.

The charging of a fee for this service is authorized under 31 U.S.C. 9701, which provides that each Federal government agency may establish a charge for a service of a thing of value provided by the agency if this service results in independent private benefit. This charge must be fair and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. DOE asks for comments related to the desirability of providing updated credit account balance statements and what value a fleet or covered person would place on this service.

Proposed Section 490.506 Alternative Fuel Vehicle Credit Transfers

Proposed § 490.506 deals with the transfer of alternative fueled vehicle credits. Proposed paragraph (a)(1) states that any fleet may transfer an alternative fueled vehicle credit to any other fleet, which is required to acquire alternative fueled vehicles. In contrast, proposed paragraph (a)(2) states that any fleet may transfer an alternative fueled vehicle credit to an alternative fuel provider, who is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel. This restriction on the transfer of credits from a fleet to an alternative fuel provider, who is a covered person, is necessary because of the vehicle operational requirement placed on alternative fuel provider vehicles. 42 U.S.C. 13251(a)(4). Section 508(d) of the Energy Policy Act permits alternative fuel providers to use credits only if these operational requirements are met. 42 U.S.C. 13258(d).

Proposed paragraph (c) states that proof of credit transfer should be provided to DOE within seven days of the transfer date, and provides for the use of a DOE form, or other written documentation containing the dated signatures of the transferor and transferee. This provision allows for the maintenance and verification of credit transfer activity.

Proposed Section 490.507 Credit Activity Reporting Requirements

Proposed § 490.507 describes the credit program's activity reporting requirements. An annual report is required of all fleets or covered persons who have generated or traded alternative fueled vehicle credits to record and track their credit activity. Proposed paragraph (a) sets forth where

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and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory, however, subparagraph (b)(4) deserves discussion for clarification purposes.

Proposed subparagraph (b)(4) would only allow a fleet or covered person to report either the number of alternative fueled vehicles acquired in excess of acquisition requirements or the number of alternative fueled vehicles acquired in advance of the start date of the acquisition requirements, not both of them. Once the first model year in which acquisition requirements apply has begun, credits can no longer be earned for early acquisition of alternative fueled vehicles.

Subpart G—Investigations and Enforcement

Proposed Section 490.601 Powers of the Secretary

Proposed § 490.601 sets forth the powers of the Secretary provided specifically by section 513 of the Act. Some of these powers (e.g., subpoenas for witnesses or documents) can be used either in a investigative effort begun with orders to show cause or in connection with a civil penalty proceeding.

Proposed Section 490.602 Special Orders

Proposed § 490.602 tracks the provisions of section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2005(b)(1). Those provisions are applicable under part 490 because section 505(b)(1) is cross referenced in section 513 of the Act. Orders under this section could be used to deal with a wide variety of circumstances. One example would be the failure to submit a required report. Another would be an order to show cause why civil penalty proceedings should not be initiated for failure to comply with subparts C, D, or F.

Proposed Section 490.603 Prohibited Acts

This proposed regulation tracks the language of section 511 of the Act, 42 U.S.C. 13261.

Proposed Section 490.604 Penalties and Fines

This proposed regulation follows section 512 of the Act, 42 U.S.C. § 13262. The text reflects DOE conclusions with regard to which of the subsections of section 512 provide for civil penalties and which provide for criminal fines.

Proposed Section 490.605 Statement of Enforcement Policy

In rare instances, DOE may initiate enforcement with the object of ensuring compliance and deterring future violations. This proposed section indicates that DOE will not proceed with enforcement if there is a satisfactory compliance agreement.

Proposed Section 490.606 Proposed Assessments and Orders

This proposed section provides for issuance of proposed assessments of civil penalty and an order to pay which becomes a final order for the Department if the recipient fails to appeal on a timely basis to the Office of Hearings and Appeals.

Proposed Section 490.607 Appeals

This proposed section provides for administrative due process if the recipient of a proposed assessment and order to pay wishes to contest the basis therefore. The appeal must be filed in the Office of Hearings and Appeals on or before 30 days from the date of the issuance of a proposed assessment and order. Most of the applicable procedures for the Office of Hearings and Appeals are in subpart H of 10 CFR part 205. In addition, paragraph (b) of proposed § 490.607 provides that the appellant has the ultimate burden of persuasion which is appropriate because the appellant will in most cases have unequal access to the relevant evidence (its own records). Paragraph (b) also provides that a trial-type hearing on contested issues of fact may occur only if the hearing officer concludes that cross examination will materially assist in determining the facts in addition to the evidence available in documentary form. There should not be extended hearings in order to fill the record with evidence which is largely repetitious.

III. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, states or other government entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this notice. Comments relating to the energy security, environmental, or economic effects that might result from the adoption of the proposals contained in this notice are specifically invited and desired. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "Alternative Fuel Provider Vehicle Acquisition Mandate and Alternative Fuel Vehicle Credit Program, NOPR, Docket Number EE–RM–95–110" and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide eight copies, alternative arrangements can be made in advance by calling Andi Kasarsky at (202) 586–3012. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect 5.1 for DOS.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in DOE's Freedom of Information Reading Room both before and after the closing date for comments. In addition, a transcript of the proceedings of the public hearings will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11 any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy will make its own determination of any such claim and treat it according to its determination.

C. Public Hearing Procedures

The time and place of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice.

be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring ten copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with Andi Kasarsky, (202) 586–3012.

The DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A Department official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 501 of the Department of Energy Organization Act. 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on states, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

This proposed rule establishes an Alternative Fueled Vehicle Credit Program under which states may generate credits if they obtain alternative fueled vehicles in excess of their required quantity or if they obtain alternative fueled vehicles prior to the date when they are required and establishes a mandate for state fleets to acquire alternative fuel vehicles. The allocation of credits is based on the measurable actions of obtaining alternative fueled vehicles and is available to fleets, that meet the requirements, throughout the United States.

The granting of credits to states will be handled in the same manner as the granting of credits to any other fleet operator. The enforcement of the state fleet mandate will be handled in the same manner as other mandate programs. States can also apply for a hardship exemption which would exempt them from acquiring alternative fuel vehicles in any given year.

The Department has determined that since states are treated the same as any other fleet operator in the allocation of credits and in the administration and enforcement of the fleet mandate, the proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States. In addition, the provision for hardship exemptions included in the state fleet mandate precludes any possible violation in the authority that the Federal government has over States. Thus, preparation of a federalism assessment is therefore unnecessary.

V. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2 (a) and (b)(2) of Executive Order 12778.

VI. Review Under Executive Order 12866

This regulatory action has been determined to be a significant regulatory action under Executive order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). DOE concluded that the proposed rule would not result in (1) an annual effect on the economy of $100 million or more or (2) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. OIRA requested that DOE prepare a cost analysis. In this section of the Supplementary Information, DOE describes the assumptions and main conclusions of that cost analysis. A copy of that cost analysis is available for public inspection in the administrative record on file in DOE's Freedom of Information Reading Room. DOE has also placed in that file a copy of the notice of proposed rulemaking as transmitted to OIRA, as well as exchanges of correspondence between DOE and OIRA showing changes in the notice agreed to by the two agencies.

The cost analysis spans a 25-year time frame, from 1995 to 2020, which included the incremental vehicle purchase cost and the cost differential between alternative fuels and gasoline under five different scenarios. The analysis examines the effects the proposed rule will have on the acquisition of alternative fueled vehicles by fuel providers and State fleets, exclusive of the effects of non-mandated acquisition of vehicles by these and other fleets. In doing so it assumes that no alternative fueled vehicles will be acquired by these fleets prior to model year 1996. In actuality, these fleets currently are acquiring alternative fueled vehicles—either because of economics, State laws or business strategies—and will probably continue to do so in the future. This assumption focuses the analysis on the estimated costs to fuel providers and State fleets in complying with the proposed regulation without distorting it in any substantial way. Assumptions about the number of vehicles acquired, the operating characteristics of those vehicles, fleet vehicle replacement rates current and future alternative fueled vehicle incremental costs, and current and future retail fuel costs were based on previous analyses undertaken by the Department.

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The costs to fuel providers and State fleets in complying with the proposed rule varies depending upon vehicle type, fuel type and fuel consumption, but in no case are the annual costs estimated to exceed $61 million per year. More typically, the estimated annual costs are approximately $25 million, decreasing to $10 million per year in later years. In reaching these conclusions, the Department took into account the fact that some alternative fuel providers may not operate vehicles solely on the fuel they provide and may have to purchase other alternative fuels at retail prices. Retail fuel prices for all alternative fuels were used in the analysis. These prices have three main components: (1) The wholesale fuel cost; (2) the cost of transporting the fuel from production points to retail outlets; and (3) the retail outlet mark-ups.

In one scenario, the annual costs to State fleets decreased to a point where it is estimated that these fleets would incur savings as a result of complying with the proposed rule. This scenario assumes that the most popular alternative fueled vehicles will be flexible-fuel vehicles that can operate on gasoline and/or methanol. Because the proposed rule does not impose a fuel use requirement on State fleets, it is logical to assume that States will choose to operate these vehicles on the fuel which costs less at a certain point in time; currently that fuel is gasoline. It is expected that the nominal incremental cost for these vehicles, together with the fact that their operation and refueling is identical to a gasoline-only version, should make them very attractive to State fleet managers. The expected popularity of these vehicles, combined with estimates that show methanol prices falling below gasoline by model year 2001, result in annual cost savings to State fleets, starting with model year 2005, in the range of $400,000 to $1 million.

In order to provide commenters with a better understanding of the effects of this proposal, the Department plans to make revisions and improvements to its analysis before the close of the comment period. To aid in this effort, the Department seeks comments on all aspects of its analysis. In particular, the Department is interested in comment on the following elements of the analysis: the retail and net-of-excise-tax future price projections for gasoline and alternative fuels; the assumption that alternative fueled vehicle purchases, that would result in apparent life-cycle cost savings, would not occur in the absence of this rule; and the assumption that the cost per gallon of gasoline displaced falls as the amount of gasoline displaced increases. The Department would also be interested in data that would aid in estimating the extra refueling costs for "covered persons" whose fleets use fuels other than the one they themselves provide, e.g., a natural gas pipeline company whose alternative fueled vehicles operate on methanol or ethanol.

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. In instances where significant impacts are possible on a substantial number of entities, agencies are required to perform a regulatory flexibility analysis.

DOE has determined that this proposed rule will not have a significant negative impact on a substantial number of small entities. To be covered by this rulemaking, an organization must own, operate or control at least 50 light duty motor vehicles, of which at least 20 light duty motor vehicles used primarily within a single MSA or CMSA must be capable of being centrally fueled. An organization that fits this description is usually not a small organization, but one of medium size or larger.

VIII. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. The information DOE proposes to collect as reporting requirements is necessary to determine whether an organization is in compliance with the proposed regulation and whether they are eligible for the allocation of alternative fueled vehicle credits. The frequency of the information collection is annually and is due four months after the end of the compliance period. It is estimated the number of organizations submitting reports will be approximately 1000 for the years 1996 through 1999. The estimated number of organizations who will be submitting reports after that date has not been determined and is subject to the DOE decision on future rulemakings.

The public reporting burden is estimated to average 12 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this proposed rule is considered the least burdensome for the Department of Energy functions to comply with the legal requirements and achieve program objectives. However, comments are requested concerning the accuracy of the estimated paperwork reporting burden.

IX. Review Under the National Environmental Policy Act

The provisions of this proposed rule would establish procedures for the implementation of an Alternative Fuel Transportation Program to assist in and monitor the progress of State fleet and certain alternative fuel providers compliance activity. The proposed rule provides for reporting procedures to demonstrate compliance with the alternative fueled vehicle acquisition mandates as specified by Title V of the Energy Policy Act of 1992, and includes proposed procedures for interpretive rulings, exemption, appeals, and the approval process for State plans.

The proposed rule would also establish and define the parameters for who must comply, the parts of a vehicle inventory which are affected by the acquisition mandates, the allocation of credits for voluntary acquisitions, the investigation and enforcement in the assessment of civil penalties, and the contents of a State's light duty alternative fueled vehicle plan. Because of the foregoing non-procedural parts of the proposed rule, the Department has determined that preparation of an Environmental Assessment (EA) is appropriate. The Department will complete the EA and any further analysis found to be required prior to the issuance of a final rule.

X. Impact on State Governments

Section 1(b)(9) of Executive Order 12866 ("Regulatory Planning and Review"), 58 FR 51735 (September 30, 1993) established the following principle for agencies to follow in rulemakings: "Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving

regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated state, local and tribal regulatory and other governmental functions." Executive Order 12875 ("Enhancing Intergovernmental Partnership"), 58 FR 58093 (October 26, 1993) provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local, and tribal governments of unfunded Federal mandates not required by statute.

Section 507(o) of the Act explicitly prescribes the alternative fueled vehicle acquisition mandate which is reflected in subpart C of today's proposed regulations, but does not specifically authorize appropriation of funds to defray the costs of compliance. However, it is important to observe that the effect of the mandate is mitigated in terms of its impacts and costs in a number of respects.

First, section 507(o) authorizes approval of acceptable alternative State plans to comply with the acquisition mandate by enlisting the voluntary commitments from other fleet operators with fleets that are not subject to vehicle acquisition requirements under the Energy Policy Act of 1992. Second, section 507(i) authorizes the Department to grant exemptions from vehicle acquisition requirements for States in cases of financial hardship. Third, Congress has authorized and appropriated some fiscal year 1994 and fiscal year 1995 funds for financial assistance to State alternative fuel transportation programs some of which may include plans to fund the incremental costs of acquiring alternative fueled vehicles. Section 409 of the Act specifically authorizes financial assistance to States for this purpose. However, the funds, even if exclusively used to pay for such incremental costs, may not be sufficient to fund all such costs incurred by each State annually.

The Department preliminarily estimates that, in the aggregate, the costs to States in model year 1996 will be between $3.3 million and $7.4 million. The annual aggregate costs should never exceed $13 million in FY 1995 dollars. A copy of the analysis which includes these figures is in the public file in the DOE Freedom of Information Reading Room and is available upon request from the information contact identified at the outset of this notice. The Department does not have estimates for each State. The Department would welcome comments from State financial officials knowledgeable about near term State plans for replacing existing vehicles so that DOE can refine its estimates of incremental costs attributable solely to the section 507(o) mandate.

In developing today's notice of proposed rulemaking, the Department consulted with a focus group of State officials from the National Association of State Energy Officials which represents energy offices in 53 States, territories and the District of Columbia. The principal concern expressed by some of these officials was conflict between the DOE program and similar programs operating under EPA or State regulations. With respect to EPA, DOE has attempted to avoid unnecessary differences between its proposed regulations and those already promulgated by EPA. When asked for comments on a draft of today's notice, EPA did not suggest any changes to eliminate or mitigate unnecessary differences.

Earlier in this notice, DOE noted that the overlap between the proposed regulations and the EPA regulations is limited because the DOE program would apply in MSAs and CMSAs with a 1980 Bureau of Census population of 250,000 or more and the EPA program applies only in non-attainment areas. EPA has published a table, 59 FR 50043, listing the 22 non-attainment areas as follows:

STATES AND AREAS AFFECTED BY THE CLEAN FUEL FLEET PROGRAM

Affected area	State(s)
1. Atlanta	Georgia.
2. Baltimore	Maryland.
3. Baton Rouge	Louisiana.
4. Beaumont-Port Arthur	Texas.
5. Boston-Lawrence-Worcester (Eastern Massachusetts).	Massachusetts, New Hampshire.
6. Chicago-Gary-Lake County.	Illinois, Indiana.
7. Denver-Boulder	Colorado.
8. El Paso	Texas.
9. Greater Connecticut	Connecticut.
10. Houston-Galveston-Brazoria.	Texas.
11. Los Angeles-South Coast Air Basin.	California.
12. Milwaukee-Racine	Wisconsin.
13. New York-Northern New Jersey-Long Island.	Connecticut, New Jersey, New York.
14. Philadelphia-Wilmington-Trenton.	Delaware, Maryland, New Jersey, Pennsylvania.
15. Providence (All Rhode Island).	Rhode Island.
16. Sacramento Metro	California.
17. San Diego	California.
18. San Joaquin Valley	California.
19. Southeast Desert Modified AQMA.	California.
20. Springfield (Western Massachusetts).	Massachusetts.
21. Ventura County	California.
22. Washington (District of Columbia).	Maryland, Virginia.

As indicated above, 11 of these 22 areas have applications to opt out of the EPA Clean Fuel Fleet Program which are still pending as of the date of publication of this notice.

With respect to the State programs, DOE is unaware of any that would be in conflict with the program proposed today. If DOE has overlooked any such conflicts, State officials are invited to submit comments explaining the conflicts.

List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and Reporting requirements, and Utilities.

Issued in Washington, D.C. on February 2, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Title 10, Chapter II, Subchapter D, of the Code of Federal Regulations is proposed to be amended by adding a new Part 490 as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

Subpart A—General Provision

Sec.

§ 490.1 Purpose and Scope.
§ 490.2 Definitions.
§ 490.3 Excluded vehicles.
§ 490.4 General information inquiries.
§ 490.5 Requests for an interpretive ruling.
§ 490.6 Petitions for general applicable rulemaking.
§ 490.7 Relationship to other law.

Appendix A to Subpart A of Part 490—Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas with 1980 Populations of 250,000 or More

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.
§ 490.201 Alternative fueled vehicle acquisition mandate schedule.
§ 490.202 Acquisitions satisfying the mandate.
§ 490.203 Light Duty Alternative Fueled Vehicle plan.
§ 490.204 Process for granting exemptions.
§ 490.205 Reporting requirements.
§ 490.206 Violations.

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Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

§ 490.300 Purpose and scope.
§ 490.301 Definitions.
§ 490.302 Vehicle acquisition mandate schedule.
§ 490.303 Who must comply.
§ 490.304 Which new light duty motor vehicles are covered.
§ 490.305 Acquisitions satisfying the mandate.
§ 490.306 Vehicle operation requirements.
§ 490.307 Option for electric utilities.
§ 490.308 Process for granting exemptions.
§ 490.309 Annual reporting requirements.
§ 490.310 Violations.

Subpart E—[Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

§ 490.500 Purpose and scope.
§ 490.501 Applicability.
§ 490.502 Creditable actions.
§ 490.503 Credit allocation.
§ 490.504 Use of alternative fueled vehicle credits.
§ 490.505 Credit accounts.
§ 490.506 Alternative Fueled Vehicle Credit transfers.
§ 490.507 Credit activity reporting requirements.

Subpart G—Investigations and Enforcement.

§ 490.600 Purpose and scope.
§ 490.601 Powers of the Secretary.
§ 490.602 Special orders.
§ 490.603 Prohibited acts.
§ 490.604 Penalties and fines.
§ 490.605 Statement of enforcement policy.
§ 490.606 Proposed assessments and orders.
§ 490.607 Appeals.

Authority: 42 U.S.C. 7191, 13235, 13251, 13257, 13258, 13260–3.

Subpart A—General Provisions

§ 490.1 Purpose and Scope.

(a) The provisions of this part implement the alternative fuel transportation program under titles III, IV, V, and VI of the Energy Policy Act of 1992. (Pub. L. 102–486)

(b) The provisions of this subpart cover the definitions applicable throughout this part and procedures to obtain an interpretive ruling and to petition for a generally applicable rule to amend this part.

§ 490.2 Definitions.

The following definitions apply to this part—

Act means the Energy Policy Act of 1992 (Pub. L. 102–486) and any amendments thereof.

After-Market Converted Vehicle means an Original Equipment Manufacturer vehicle that is reconfigured by a conversion company, which is not under contract to the Original Equipment Manufacturer, to operate on an alternative fuel and whose conversion kit components are under warranty of the conversion company.

Alternative Fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; and electricity (including electricity from solar energy).

Alternative Fueled Vehicle means a dedicated vehicle or a dual fueled vehicle.

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any other DOE official to whom the Assistant Secretary's duties under this part may be redelegated by the Secretary.

Capable of Being Centrally Fueled means a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

Centrally Fueled means that the vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

Control means—

(1) When it is used in the context determining whether one person controls another or whether two persons are under common control, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two firms; or

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) One firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

(3) When it used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.

Covered Person means a person that owns, operates, leases, or otherwise controls—

(1) A fleet, as defined by this section, that contains at least 20 light duty motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more as set forth in Appendix A to this subpart or in a **Federal Register** notice; and

(2) at least 50 light duty motor vehicles within the United States, as defined by this section.

Dealer Demonstration Vehicle means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation.

Dedicated Vehicle means—

(1) A dedicated automobile as defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013(h)(1)(C)); or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.

DOE means the Department of Energy

Dual Fueled Vehicle means—

(1) A dual fueled automobile which is capable of operating on alternative fuel and on gasoline or diesel fuel and as defined in section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2013(h)(1)(D)); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel including flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel or bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel.

Electric-hybrid Vehicle means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells or other sources of electric current and also relies on a non-electric source of power.

Electric Motor Vehicle means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle.

Emergency motor vehicle means any vehicle that is legally authorized by a government authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance.

Fleet means, except as provided by § 490.3, a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this Subpart or in an annual notice in the **Federal Register**), that are centrally fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; and

(4) By any person under common control with such person.

Law Enforcement Motor Vehicle means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the Federal government, or by state highway patrols, municipal law enforcement, or other similar enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

Lease means the use and control of a motor vehicle for transportation purposes pursuant to a rental contract or similar arrangement with a term of 120 days or more.

Light Duty Motor Vehicle means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. § 7550(7)), having a gross vehicle weight rating of 8,500 pounds or less.

Model Year means the period from September 1 of the previous calendar year through August 31.

Motor Vehicle has the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).

Original Equipment Manufacturer means a manufacturer that provides the original design and materials for assembly and manufacture of its product.

Original Equipment Manufacturer Vehicle means a vehicle engineered, designed and produced by an Original Equipment Manufacturer.

Person means any individual, partnership, corporation, voluntary association, joint stock company, business trust, Governmental entity, or other legal entity in the United States except United States Government entities.

Public Building means any closed structure owned, leased, or controlled by a state, or any instrumentality of a state.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

§ 490.3 Excluded vehicles.

When counting light duty motor vehicles for the purpose of determining under this part whether a person has a fleet or whether acquisitions are for addition to a fleet, the following vehicles are excluded—

(a) Motor vehicles held for lease or rental to the general public, including vehicles that are owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract;

(b) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(c) Motor vehicles used for motor vehicle manufacturer product evaluations or tests, including but not limited to, light duty motor vehicles owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development or quality control reasons;

(d) Law enforcement vehicles;

(e) Emergency motor vehicles;

(f) Motor vehicles acquired and used for purposes that the Secretary of Defense has certified to DOE must be exempt for national security reasons;

(g) Nonroad vehicles, including farm and construction motor vehicles; and

(h) Motor vehicles which under normal operations are garaged at personal residences at night.

§ 490.4 General information inquiries.

DOE responses to inquiries with regard to the provisions of this part that are not filed in compliance with §§ 490.5 or 490.6 of this part constitute general information and the responses provided shall not be binding on DOE.

§ 490.5 Requests for an interpretive ruling.

(a) *Right to file.* Any person who is or may be subject to this part shall have the right to file a request for an interpretive ruling on a question with regard to how the regulations apply to particular facts and circumstances.

(b) *How to file.* A request for an interpretive ruling shall be filed—

(1) With the Assistant Secretary,

(2) In an envelope labeled "Request for Interpretive Ruling under 10 CFR Part 490;" and

(3) By messenger or mail at the Office of Energy Efficiency and Renewable Energy, EE–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or at such other address as DOE may provide by notice in the **Federal Register**.

(c) *Content of request for interpretive ruling.* At a minimum, a request under this section shall—

(1) Be in writing;

(2) Be labeled "Request for Interpretive Ruling Under 10 CFR Part 490;"

(3) Identify the name, address, telephone number, and any designated representative of the person requesting the interpretive ruling;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents, if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought with regard to the relevant facts and circumstances; and

(7) Contain any arguments in support of the terms of an interpretation the requester is seeking.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and invite public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity for any person who requested an interpretive ruling to respond to public comments.

(f) *Other sources of information.* DOE may—

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings dealing with the same or a related issue.

(g) *Informal conference.* DOE, on its own initiative, may convene an informal conference with the person requesting an interpretive ruling.

(h) *Effect of an interpretive ruling.* The authority of an interpretive ruling shall be limited to the person requesting

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such ruling and shall depend on the accuracy and completeness of the facts and circumstances on which the interpretive ruling is based. An interpretive ruling by the Assistant Secretary shall be final for DOE.

(i) *Reliance on an interpretive ruling.* No person who obtains an interpretive ruling under this section shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified, judicially invalidated, or its prospective effect is overruled by statute or regulation.

(j) *Denials of requests for an interpretive ruling.* DOE shall deny a request for an interpretive ruling if DOE determines that—

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The questions posed should be treated in a general notice of proposed rulemaking under 42 U.S.C. 7191 and 5 U.S.C. 553(e);

(3) There is an adequate procedure elsewhere in this part for addressing the question posed, such as a petition for exemption; or

(4) For other good cause.

(k) *Public file.* From time to time, DOE may file a copy of an interpretive ruling in a public file labeled "Interpretive Rulings Under 10 CFR Part 490" which shall be available during normal business hours for public inspection at the DOE Freedom of Information Reading Room at 1000 Independence Avenue, SW, Washington, DC 20585, or at such other addresses as DOE may announce in a **Federal Register** notice.

§ 490.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Pursuant to 42 U.S.C. 7191 and 5 U.S.C. 553(e), any person may file a petition for generally applicable rulemaking under titles III, IV, and V of the Act with the DOE General Counsel.

(b) *How to file.* a petition for generally applicable rulemaking under this section shall be filed by mail or messenger in an envelope address to the Office of General Counsel, GC–1, U.S. Department of Energy, 1000 Independence Avenue, S.W , Washington, D.C. 20585.

(c) *Content of rulemaking petitions.* A petition under this section must—

(1) Be labeled "Petition for Rulemaking Under 10 CFR Part 490",

(2) Describe with particularity the terms of the rule being sought;

(3) Identify the provisions of law that direct, authorize, or affect the issuance of the rules being sought; and

(4) Explain why DOE should not choose to make policy by precedent through interpretive rulings, petitions for exemption, or other adjudications.

(d) *Determination upon rulemaking petitions.* After considering the petition and other information deemed to be appropriate, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought—

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy that should be left to case-by-case determinations;

(3) Would establish a policy inconsistent with the underlying statutory purposes; or

(4) For other good cause.

§ 490.7 Relationship to other law.

Nothing in this part shall be construed to require or authorize acquisition of, or conversion to, light duty alternative fueled motor vehicles in violation of applicable regulations of the U.S. Environmental Protection Agency, U.S. Department of Transportation, or any State or local government agency.

Appendix A To Subpart A of Part 490

Metropolitan Statistical Areas/ Consolidated Metropolitan Statistical Areas With 1980 Populations of 250,000 or more
Albany-Schenectady-Troy MSA NY
Albuquerque MSA NM
Allentown-Bethlehem-Easton MSA PA
Appleton-Oshkosh-Neenah MSA WI
Atlanta MSA GA
Augusta-Aiken MSA GA-SC
Austin-San Marcos MSA TX
Bakersfield MSA CA
Baton Rouge MSA LA
Beaumont-Port Arthur MSA TX
Binghamton MSA NY
Birmingham MSA AL
Boise City MSA ID
Boston-Worcester-Lawrence CMSA MA-NH-ME-CT
Buffalo-Niagara Falls MSA NY
Canton-Massillon MSA OH
Charleston MSA SC
Charleston MSA WV
Charlotte-Gastonia-Rock Hill MSA NC-SC
Chattanooga MSA TN-GA
Chicago-Gary-Kenosha CMSA IL-IN-WI
Cincinnati-Hamilton CMSA OH-KY-IN
Cleveland-Akron CMSA OH
Colorado Springs MSA CO
Columbia MSA SC
Columbus MSA OH
Columbus MSA SC-GA-AL
Corpus Christi MSA TX
Dallas-Fort Worth CMSA TX
Davenport-Moline-Rock Island MSA IA-IL
Dayton-Springfield MSA OH
Daytona Beach MSA FL
Denver-Boulder-Greeley CMSA CO
Des Moines MSA IA
Detroit-Ann Arbor-Flint CMSA MI
El Paso MSA TX
Erie MSA PA
Eugene-Springfield MSA OR
Evansville-Henderson MSA IN-KY
Fort Wayne MSA IN
Fresno MSA CA
Grand Rapids-Muskegon-Holland MSA MI
Greensboro-Winston Salem-High Point MSA NC
Greenville-Spartanburg-Anderson MSA SC
Harrisburg-Lebanon-Carlisle MSA PA
Hartford MSA CT
Hickory-Morganton MSA NC
Honolulu MSA HI
Houston-Galveston-Brazoria CMSA TX
Huntington-Ashland MSA WV-KY-OH
Indianapolis MSA IN
Jackson MSA MS
Jacksonville MSA FL
Johnson City-Kingsport-Bristol MSA TN-VA
Kansas City MSA MO-KS
Knoxville MSA TN
Lakeland-Winter Haven MSA FL
Lancaster MSA PA
Lansing-East Lansing MSA MI
Las Vegas MSA NV-AZ
Lexington MSA KY
Little Rock-N. Little Rock MSA AR
Los Angeles-Riverside-Orange County CMSA CA
Louisville MSA KY-IN
Macon MSA GA
Madison MSA WI
McAllen-Edinburg-Mission MSA TX
Melbourne-Titusville-Palm Bay MSA FL
Memphis MSA TN-AR-MS
Miami-Fort Lauderdale CMSA FL
Milwaukee-Racine CMSA WI
Minneapolis-St. Paul MSA MN-WI
Mobile MSA AL
Modesto MSA CA
Montgomery MSA AL
Nashville MSA TN
New London-Norwich MSA CT-RI
New Orleans MSA LA
New York-N. New Jersey-Long Island CMSA NY-NJ-CT-PA
Norfolk-Virginia Beach-Newport News MSA VA-NC
Oklahoma City MSA OK
Omaha MSA NE-IA
Orlando MSA FL
Pensacola MSA FL
Peoria-Pekin MSA IL
Philadelphia-Wilmington-Atlantic City CMSA PA-NJ DE-MD
Phoenix-Mesa MSA AZ
Pittsburgh MSA PA
Portland-Salem CMSA OR-WA
Providence-Fall River-Warwick MSA RI-MA
Raleigh-Durham-Chapel Hill MSA NC
Reading MSA PA
Richmond-Petersburg MSA VA
Rochester MSA NY
Rockford MSA IL
Sacramento-Yolo CMSA CA
Saginaw-Bay City-Midland MSA MI
St. Louis MSA MO–IL
Salinas MSA CA
Salt Lake City-Ogden MSA UT
San Antonio MSA TX
San Diego MSA CA
San Francisco-Oakland-San Jose CMSA CA
San Juan MSA PR
Santa Barbara-Santa Maria-Lompoc MSA CA
Scranton-Wilkes Barre-Hazleton MSA PA
Seattle-Tacoma-Bremerton CMSA WA
Shreveport-Bossier City MSA LA
Spokane MSA WA
Springfield MSA MA
Stockton-Lodi MSA CA
Syracuse MSA NY
Tampa-St. Petersburg-Clearwater MSA FL
Toledo MSA OH
Tucson MSA AZ
Tulsa MSA OK
Utica-Rome MSA NY
Washington-Baltimore CMSA DC–MD–VA–WV
West Palm Beach-Boca Raton MSA FL
Wichita MSA KS
York MSA PA
Youngstown-Warren MSA OH

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.

This subpart sets forth rules implementing the provisions of Section 507(o) of the Act which requires, subject to some exemptions, that certain percentages of new light duty motor vehicles acquired for state fleets be alternative fueled vehicles.

§ 490.201 Alternative fueled vehicle acquisition mandate schedule.

(a) Except as otherwise provided in this subpart, beginning with model year 1996, the following percentages of new light duty motor vehicles acquired annually for state government fleets, including agencies thereof but excluding municipal fleets, shall be alternative fueled vehicles;

(1) 10 percent of the vehicles acquired in model year 1996;

(2) 15 percent of the vehicles acquired in model year 1997;

(3) 25 percent of the vehicles acquired in model year 1998;

(4) 50 percent of the vehicles acquired in model year 1999; and

(5) 75 percent of the vehicles acquired in model year 2000 and thereafter.

(b) Each State shall calculate its alternative fueled vehicle acquisition requirements for the state government fleets, including agencies thereof, by applying the alternative fueled vehicle acquisition percentages for each model year to the total number of new light duty motor vehicles to be acquired during that model year for those fleets.

(c) If, when the mandated acquisition percentage of alternative fueled vehicles is applied to the number of light duty motor vehicles to be acquired by a fleet subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment to the acquisition number will be made by rounding the number of vehicles up to the next whole number.

§ 490.202 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within a model year qualify as acquisitions that count toward compliance with the new light duty alternative fueled vehicle mandates by State fleets:

(a) The purchase or lease of an Original Equipment Manufacturer vehicle, (regardless of model year of manufacture), capable of operating on alternative fuels that was not previously in service in the fleet; or

(b) The purchase or lease of an after-market converted vehicle (regardless of model year of manufacture), that was not previously in service in the fleet; or

(c) The conversion of a newly purchased Original Equipment Manufacturer Vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

§ 490.203 Light Duty Alternative Fueled Vehicle Plan.

(a) *General provisions.* (1) In lieu of meeting its acquisition requirements under § 490.201 exclusively through State-owned vehicles, a State may follow a Light Duty Alternative Fueled Vehicle Plan approved by DOE under this section.

(2) Unless a fleet is exempt under § 490.204, a State which does not have an approved plan in effect under this section will be subject to the State fleet acquisition percentage requirements of § 490.201.

(3) In the event that a significant commitment under an approved plan is not met by a participant of a plan, the State shall meet its percentage requirements under § 490.201 or submit to DOE an amendment to the plan for DOE approval.

(4) Only voluntary acquisitions or conversions, or combinations thereof, by state, local, and private fleets may be used to meet the State's alternative fuel vehicle acquisition requirement under the plan.

(5) Any acquisitions or conversions of light duty alternative fueled vehicles by fleets within the State may be included within the plan, irrespective of whether the vehicles are in excluded categories in the definition of fleet set forth in § 490.2 of this part.

(b) *Required elements of a plan.* Each plan must include the following elements:

(1) Certification by the Governor, or the Governor's designee, that the plan meets the requirements of this subpart;

(2) Identification of state, local and private fleets that will participate in the plan;

(3) Number of new alternative fueled vehicles per plan participant, either through conversion or acquisition;

(4) A written statement from each plan participant to assure commitment;

(5) A statement of contingency measures by the State to offset any failure to fulfill significant commitments by plan participants, in order to meet the requirements of § 490.201;

(6) A provision by the State to monitor and verify implementation of the plan;

(7) A provision certifying that all acquisitions and conversions under the plan are voluntary and will meet the requirements of § 247 of the Clean Air Act, as amended (42 U.S.C. § 7587) and all applicable safety requirements.

(c) *When to submit plan.* Beginning with model year 1996, any State wishing to submit a plan under this section must do so no later than June 1 prior to the model year covered by such plan.

(d) *Review and approval.* DOE shall review and approve a plan which meets the requirements of this subpart and is designed to achieve at a minimum, the same number of alternative fueled vehicle acquisitions or conversions as would be required under § 490.201 within 60 days of the date of receipt of the plan by DOE at the address in paragraph (h)(1) of this section.

(e) *Disapproval of plans.* If DOE disapproves or requests a State to submit additional information, the State may revise and resubmit the plan to DOE within a reasonable time. States, however, must comply with § 490.201 until such time as the plan is approved.

(f) *How a State may modify an approved plan.* If a State determines that it cannot successfully implement its plan, it may submit to DOE for approval, at any time, the proposed modifications with adequate justifications. Until the modifications are approved, the State must comply with § 490.201.

(g) *Where to submit plans.* (1) A State shall submit to DOE an original and two copies of the plan and shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585.

(2) Any requests for modifications shall also be sent to the address in paragraph (g)(1) of this section.

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§ 490.204 Process for granting exemptions.

(a) To obtain an exemption, in whole or in part, from the vehicle mandates of this subpart, a State shall submit to DOE a written request for exemption, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the state fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for sale or lease commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

(b) Requests for exemption may be submitted on an ongoing basis and must be accompanied with supporting documentation.

(c) DOE shall grant exemptions for one model year only, and they may be renewed annually if supporting documentation is provided.

(d) If a State is seeking an exemption under—

(1) Paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel; or

(2) Paragraph (a)(2) of this section, the types of documentation that are to accompany the request must include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the State fleet and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles; or

(3) Paragraph (a)(3) of this section, it must submit a statement identifying what portion of the alternative fueled vehicle acquisition requirement should be subject to the exemption and describing the specific nature of the financial hardship that precludes compliance.

(e) Requests for exemption shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or to such other address as DOE may announce in a **Federal Register** notice.

(f) The Assistant Secretary shall provide to the State within 30 days a written determination as to whether the State's request has been granted or denied.

(g) If the Assistant Secretary denies an exemption, in whole or in part, and the State wishes to exhaust administrative remedies, the State must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 205, subpart D, to the Office of Hearings and Appeals, U. S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.205 Reporting requirements.

(a) Any State subject to the requirements of this subpart must submit a report on or before the December 31 after the close of the model year, beginning with model year 1996.

(b) The report shall include the following information:

(1) Number of new light duty motor vehicles acquired by a state during the model year;

(2) Number of new light duty alternative fueled vehicles that must be acquired in the model year;

(3) Number of new light duty alternative fueled vehicles acquired by a State during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from the State during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle identification number;

(7) Number of light duty alternative fueled vehicles acquired by municipal and private fleets during the model year under an approved Light Duty Alternative Fueled Vehicle Plan (if applicable).

(c) If credits are applied against vehicle acquisition requirements, then a credit activity report, as described in subpart F of this part, must be submitted with the report under this section.

(d) Records shall be maintained and retained for a period of three years from the start of this program.

(e) All reports, marked "Annual Report," shall be sent to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC, 20585, or such other address as DOE may provide by notice in the **Federal Register**.

§ 490.206 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

§ 490.300 Purpose and Scope.

This subpart implements section 501 of the Act, which requires, subject to some exemptions, that certain annual percentages of newly acquired light duty motor vehicles acquired by alternative fuel providers must be alternative fueled vehicles.

§ 490.301 Definitions.

In addition to the definitions found in § 490.2, the following definitions apply to this subpart—

Affiliate means a person that, directly or indirectly, controls, is controlled by, or is under common ownership or control of the subject person.

Alternative Fuels Business means activities undertaken to derive revenue from—

(1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or

(2) Generating, transmitting, importing, or selling at wholesale or retail electricity.

Business unit means a semi-autonomous major grouping of activities for administrative purposes and organizational structure within a business entity.

Division means a major administrative unit of an enterprise comprising at least several enterprise units or constituting a complete integrated unit for a specific purpose.

Normal Requirements and Practices means the operating business practices and required conditions under which the principal business of the covered person operates.

Principal Business means the sales-related activity that produces the greatest gross revenue.

Substantial Portion means that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels.

Substantially Engaged means that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business.

§ 490.302 Vehicle acquisition mandate schedule.

(a) Except as provided in § 490.304 of this part, of the light duty motor vehicles newly acquired by a covered person described in § 490.303 of this part, the following percentages shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1996.

(2) 50 percent for model year 1997.

(3) 70 percent for model year 1998.

(4) 90 percent for model year 1999 and thereafter.

(b) Except as provided in § 490.304 of this part, this acquisition schedule applies to all light duty motor vehicles that a covered person newly acquires for use within the United States.

(c) If, when the mandated acquisition percentage of alternative fuel vehicles is applied to the number of new light duty motor vehicles to be acquired by a covered person subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment will be made to the required acquisition number by rounding up the number of vehicles to the next whole number.

(d) Only acquisitions satisfying the mandate, as defined by § 490.305, and use of alternative fueled vehicle credits acquired under subpart F of this part count toward compliance with the acquisition schedule in paragraph (a) of this section.

§ 490.303 Who must comply.

(a) Except as provided by paragraph (b) of this section a covered person must comply with the requirements of this subpart if that person is—

(1) A covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing or selling at wholesale or retail any alternative fuel other than electricity;

(2) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity; or

(3) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

(b) This subpart does not apply to a covered person whose principal business is—

(1) transforming alternative fuels into a product that is not an alternative fuel; or

(2) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.304 Which new light duty motor vehicles are covered.

(a) *General rule.* Except as provided in paragraph (b) of this section, the vehicle acquisition mandate schedule in § 490.302 of this part applies to all new light duty motor vehicles acquired by a covered person described in § 490.303 of this part.

(b) *Exception.* If a covered person has more than one affiliate, division, or other business unit, then § 490.302 of this part only applies to new light duty motor vehicles acquired by an affiliate, division, or other such business unit—

(1) Which is substantially engaged in the alternative fuels business; but

(2) This subpart does not apply to the vehicles of an affiliate, division, or other business unit whose principal business is either transforming alternative fuels into a product that is not an alternative fuel or consumes alternative fuel as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.305 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within the model year qualify as acquisitions for the purpose of compliance with the requirements of § 490.302 of this part—

(a) The purchase or lease of an Original Equipment Manufacturer vehicle (regardless of the model year of manufacture), capable of operating on alternative fuels that was not previously under the control of the covered person; or

(b) The purchase or lease of an after-market converted vehicle (regardless of the model year of manufacture), that was not previously under the control of the covered person; or

(c) The conversion of a newly acquired Original Equipment Manufacturer vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

§ 490.306 Vehicle operation requirements.

The alternative fueled vehicles acquired pursuant to § 490.302 of this part shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.

§ 490.307 Option for electric utilities.

(a) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the vehicle acquisition mandate schedule in § 490.302 until January 1, 1998, if the covered person intends to comply with this regulation by acquiring electric motor vehicles.

(b) *Notification Date.* If an electric utility intends to use the option under this section, the electric utility must notify the Department of its intent to do so. The notification must be postmarked no later than December 31, 1995 and must be sent to the Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or such other addresses as DOE may provide in a **Federal Register** notice.

(c) If a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity has notified the Department by December 31, 1995, of their intent to acquire electric motor vehicles, the following percentages of new light duty motor vehicles acquired shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1998.

(2) 50 percent for model year 1999.

(3) 70 percent for model year 2000.

(4) 90 percent for model year 2001 and thereafter.

§ 490.308 Process for granting exemptions.

(a) To obtain an exemption from the vehicle acquisition mandate in § 490.302 of this part, a covered person, or its affiliate, division, or business unit which is subject to § 490.302 of this part, shall submit a written request for exemption to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not offered for purchase or lease commercially on reasonable terms and conditions in the United States.

(b) Documentation

(1) If a covered person is seeking an exemption under paragraph (a)(1) of this section, the types of documentation that are to accompany the request include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel.

(2) If a covered person is seeking an exemption under paragraph (a)(2) of this section, the types of documentation that are to accompany the request include, but are not limited to, alternative fueled vehicle purchase requests, a listing of

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vehicles that meet the normal practices and requirements of the covered person and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles.

(c) Except as provided by paragraph (e) of this section, exemption determination shall be made in a letter ruling by the Assistant Secretary.

(d) Exemptions are granted for one model year only and may be renewed, if supporting documentation is provided, annually.

(e) Exemption determinations are binding for the covered person only and cannot be used to set precedent for other exemption requests.

(f) If a covered person is denied an exemption and believes that it meets the criteria established in paragraph (a) of this section, that covered person may file a request for relief with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585.

(g) Requests for relief will be processed utilizing the procedures codified at 10 CFR part 205, Subpart D.

§ 490.309 Annual reporting requirements.

(a) If a person is required to comply with the vehicle acquisition mandate schedule in § 490.302 or § 490.307, that person shall file an annual report under this section, on a form obtainable from DOE, with the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, on or before the December 31 after the close of the model year beginning with model year 1996.

(b) This report shall include the following information—

(1) Number of new light duty motor vehicles acquired in the United States during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired;

(3) Number of new light duty alternative fueled vehicles acquired in the United States during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from a covered person during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle Identification Number

(c) If credits are applied against alternative fueled vehicle acquisition requirements, as reported in the annual report, then a credit activity report, as described in subpart F, must be submitted with this report to DOE.

(d) Records shall be maintained and retained for a period of three years.

§ 490.310 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart E [Reserved]

Subpart F—Alternative Fuel Vehicle Credit Program

§ 490.500 Purpose and Scope.

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons who acquire alternative fueled vehicles in excess of the number they are required or obtain alternative fuel vehicles prior to the date when they are required to do so under this part.

§ 490.501 Applicability.

This subpart applies to all fleets and covered persons who are required to acquire alternative fuel vehicles by this Part.

§ 490.502 Creditable actions.

A fleet or covered person becomes entitled to alternative fuel vehicle credits by—

(a) Acquiring alternative fuel vehicles that qualify under § 490.305 and § 490.202, as applicable, in excess of the number that fleet or covered person is required to acquire in a model year when acquisition requirements apply; or

(b) Acquiring alternative fueled vehicles in model years prior to the model year when that fleet or covered person is first required to acquire alternative fueled vehicles.

§ 490.503 Credit allocation.

(a) Based on annual credit activity report information, as described in § 490.507 of this part, DOE shall allocate one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire in a model year when acquisition requirements apply; or

(b) In the event that an alternative fueled vehicle is acquired by a fleet or covered person in a model year prior to the model year when acquisition requirements first apply, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraphs (a) or (b) of this section for alternative fueled vehicles acquired after October 24, 1992.

§ 490.504 Use of alternative fueled vehicle credits.

At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of a light duty alternative fueled vehicle that is counted in determining compliance with specific annual alternative fueled vehicle acquisition requirements of this part.

§ 490.505 Credit accounts.

(a) DOE shall establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet or covered person an annual credit account balance statement after the receipt of its credit activity report under § 490.507

§ 490.506 Alternative fueled vehicle credit transfers.

(a) Any fleet which is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) Any other fleet which is required to acquire alternative fueled vehicles.

(2) An alternative fuel provider which is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Any alternative fuel provider which is a covered person required to acquire alternative fueled vehicles may transfer its alternative fueled vehicle credits to any other fleet or covered person required to acquire alternative fueled vehicles.

(c) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, including dated signatures of the transferor and transferee. The proof should be received by DOE within 7 days of the transfer date to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave, SW, Washington, DC 20585 or such other address as may be provided by notice in the **Federal Register**

§ 490.507 Credit activity reporting requirements.

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by December 31 after the close of a model year to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave, SW, Washington, DC 20585 or other such address as DOE may publish in the **Federal Register**.

(b) Included in this report should be the following information:

(1) Number of new light duty motor vehicles acquired;

(2) Number of new light duty alternative fueled vehicles acquired;

(3) Number of alternative fueled vehicles that are required to be acquired;

(4) Number of alternative fueled vehicle credits requested for:

(i) alternative fueled vehicles acquired in excess of required acquisition number; and

(ii) alternative fueled vehicles acquired in model year prior to model year in which alternative fueled vehicle acquisition requirements first apply;

(5) Purchase of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of Purchase;

(6) Sale of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of Sale.

Subpart G—Investigations and Enforcement

§ 490.600 Purpose and scope.

This subpart sets forth the rules applicable to investigations under titles III, IV, V, and VI of the Act and to enforcement of section 501, 503(b), 507 or 508 of the Act, or any regulation issued under such sections.

§ 490.601 Powers of the Secretary.

For the purpose of carrying out titles III, IV, V, and VI of the Act, DOE may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpena the attendance and testimony of such witnesses the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2005(b)(1)).

§ 490.602 Special orders.

(a) DOE may require by general or special orders that any person—

(1) File, in such form as DOE may prescribe, reports or answers in writing to specific questions relating to any function of DOE under this part; and

(2) Provide DOE access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of DOE under this part.

(b) File under oath any reports and answers provided under this section or as otherwise prescribed by DOE, and file such reports and answers with DOE within such reasonable time and at such place as DOE may prescribe.

§ 490.603 Prohibited acts.

It is unlawful for any person to violate any provision of section 501, 503(b), or 507 of the Act, or any regulations issued under such sections.

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) *Willful violations.* Whoever willfully violates § 490.603 of this part shall pay a criminal fine of not more than $10,000 for each violation.

(c) *Repeated violations.* Any person who knowingly and willfully violates § 490.603 of this part, after having been subjected to a civil penalty for a prior violation of § 490.603 shall pay a criminal fine of not more than $50,000 for each violation.

§ 490.605 Statement of enforcement policy.

DOE may agree not to commence an enforcement proceeding, or may agree to settle an enforcement proceeding, if the person agrees to come into compliance in a manner satisfactory to DOE.

§ 490.606 Proposed assessments and orders.

DOE may issue a proposed assessment of, and order to pay, a civil penalty in a written statement setting forth supporting findings of violation of the Act or a relevant regulation of this part. The proposed assessment and order shall be served on the person named therein by certified mail, return-receipt requested, and shall become final for DOE if not timely appealed pursuant to § 490.607 of this part.

§ 490.607 Appeals.

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) Proceedings in the Office of Hearings and Appeals shall be subject to subpart H of 10 CFR part 205 except that—

(1) Appellant shall have the ultimate burden of persuasion;

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will materially assist in determining facts in addition to evidence available in documentary form; and

(3) The Office of Hearings and Appeals may issue such orders as it may deem appropriate on all other procedural matters.

(c) The determination of the Office of Hearings and Appeals shall be final for DOE.

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Part IV

Office of Management and Budget

Standard Occupational Classification Revision Policy Committee; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification Revision Policy Committee Proposal To Revise the SOC

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments.

SUMMARY: Under title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is announcing its process for revising the Standard Occupational Classification (SOC), and is soliciting public comment on its proposal to develop a new occupational classification system based on a unified concept. OMB plans future public comment periods after completion of major milestones in the revision process including: (1) The Standard Occupational Classification Revision Policy Committee's (SOCRPC) recommendations to OMB on the principles and unified conceptual framework to use to guide the revision (fall 1995) and (2) the SOCRPC's recommendations for changes to the existing SOC at the 4-digit level based on the agreed upon principles and unified conceptual framework (fall 1996). The SOC revision is tentatively scheduled for implementation beginning in July, 1997. All Federal agencies that collect occupational data are expected to utilize the new system.

REQUESTS FOR COMMENTS: The Standard Occupational Classification Revision Policy Committee welcomes comments with respect to any topic related to occupational classification, including:

1. The uses of occupational data,
2. The purpose and scope of occupational classification,
3. The principles underlying the current SOC,
4. Conceptual options for the new SOC, and
5. The SOC Revision Policy Committee process.

DATES: To ensure consideration in the development of the principles and unified conceptual framework to guide the revision of the SOC, all comments must be in writing and received on or before March 31, 1995.

ADDRESSES: Please send comments to Thomas J. Plewes, Chairman, Standard Occupational Classification Revision Policy Committee, U.S. Bureau of Labor Statistics, Suite 4945, 2 Massachusetts Avenue, NE., Washington, DC 20212. Interested parties may also send comments via E-mail, to Ross___L:PSB@Cmail.bls.gov.

FOR FURTHER INFORMATION CONTACT: Laura Ross, U.S. Bureau of Labor Statistics, telephone number 202–606–6505.

SUPPLEMENTARY INFORMATION: The following sections of this notice provide a brief history of the SOC and further elaboration of topics on which comments are explicitly sought.

History

The development of a Standard Occupational Classification (SOC) began in December 1966 on the recommendation of the Interagency Committee on Occupational Classification. The Committee's recommendation was based on the results of an inquiry on occupational information circulated to Government agencies in August 1965 by the then Bureau of the Budget. This inquiry asked 28 agencies for their views on the desirability of establishing a Standard Occupational Classification, similar to the Standard Industrial Classification, for general use in classifying occupational data. Most of the agencies favored establishing such a system.

The desirability of establishing a Standard Occupational Classification actually had been recognized many years earlier. At the time of the 1940 Census of Population, a publication, *Convertibility List of Occupations with Conversion Tables and Industrial Classification for Reports from Individuals*, was developed by a joint committee of the Bureau of the Budget and the American Statistical Association. The main purpose of the publication was to develop a bridge between the occupational classification system used in the 1940 Census and that used by the U.S. Employment Service to classify its operating statistics. Subsequent modifications in the Census classification system and publication of the third edition of the Dictionary of Occupational Titles (DOT) rendered the earlier convertibility list obsolete.

The situation when the SOC project began in the mid-1960's was, therefore, essentially the same as it had been in the early 1940's. The two principal systems of occupational classification, those of the Bureau of the Census and of the U.S. Employment Service, needed reconciliation. However, the issue was of even greater concern than in the earlier period because a number of Government agencies had created their own occupational classification systems for specific purposes, thereby compounding the initial problem. In addition, requirements in Federal legislation resulted in increased demands for occupational data on a more comparable basis.

After an initial attempt to produce a Government-wide occupational classification standard in 1977, the *1980 Standard Occupational Classification (SOC) Manual* was prepared through the collaborative efforts of numerous Federal agencies concerned with occupational information. It served as the foundation for the 1980 Census of Population Classified Index of Industries and Occupations as well as for a revised system for the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) program, although neither system fully adopted the SOC. The *1980 SOC Manual* includes descriptions of the content of each occupation together with a list of corresponding occupations from the *1977 Dictionary of Occupational Titles* (DOT). This list of corresponding DOT occupations formed the basis of the current occupational crosswalks used to link various Federal occupational classification systems. When the revised OES system was implemented in 1983, a crosswalk was prepared linking it to the 1980 SOC, the 1977 DOT, and the 1980 Census of Population systems. As each system has added occupations, the original crosswalk has been updated to indicate the equivalent occupations in the other systems.

In the past few years, the BLS and the Employment and Training Administration (ETA) have been working together to organize activities aimed at developing information and new concepts related to classification principles for a new SOC. These activities have included commissioning papers on major occupational classification issues.

In 1993, the Advisory Panel for the Dictionary of Occupational Titles (APDOT) issued a report entitled *The New DOT: A Database of Occupational Titles for the Twenty-First Century.* In this report, the APDOT recommended creating a new database system that would identify and describe the skills, knowledge, and competencies needed in the changing work place.

BLS sponsored an International Occupational Classification Conference, held in June 1993, at which both specially commissioned and numerous other papers were presented. The Conference provided a forum for the discussion of new ideas and alternative approaches to occupational classification issues and served to introduce revision activities for the U.S. SOC. The approximately 100 participants represented statistical agencies from several countries, State-level interests, professional associations, academia, and relevant Federal agencies.

The conference was organized around five modules: (1) Perspectives of current occupational systems; (2) new challenges and alternative approaches to occupational classification; (3) user needs and experiences with different occupational classification systems; (4) possibilities for a unifying classification system; and (5) international perspectives on occupational classification. The proceedings from the conference were published in September 1993.[1] At the conclusion of the conference, there was agreement that work should begin on developing a new SOC.

The changing world of work requires a new approach to statistical classification, such as developing a single system to meet multiple needs or using a single database to develop multiple classifications. Therefore, a revision of the SOC is being undertaken. The Office of Management and Budget has formed the Standard Occupational Classification Revision Policy Committee to coordinate activities leading to a new SOC. The charter for that committee is included near the end of this notice.

Uses of Occupational Data

When devising a data classification system, it is crucial to begin with a clear vision of how the data to be classified will be used in order to structure the classification to maximize the usefulness of the data. The uses of occupational data vary widely. Uses include investigating the supply and demand of labor, planning education and training programs, fostering career choices and facilitating placement, studying labor mobility, analyzing the return on alternative investments in human capital, establishing comparable pay schedules, surveying labor productivity, and assessing employment benefits, stability, and working conditions. Not all of such uses will be equally well-served by any given classification.

Moreover, existing occupational information systems typically have data and information from various sources such as the Census of Population and Housing, the OES surveys, and the DOT. Currently, crosswalks provide bridges from one system to another. In the National Occupational Information Coordinating Committee's Occupational Information System, data from these different sources are presented together through the use of these crosswalks.

Unfortunately, linkages from occupations in one system to another are not always exact. In these cases, the crosswalk uses a "best fit" approach to link the systems. If Federal agencies all used one classification system, an SOC, the need for a crosswalk would be obviated or at least minimized.

Request for Comments

The Committee invites comments from members of the public on their uses of occupational data and the applicability of existing and potential classification systems to those uses. Descriptions of specific strengths and shortcomings users have experienced with data based on the existing occupational classification systems, including experiences related to the need to employ crosswalks, are most welcome.

Purpose and Scope of the SOC

The Standard Occupational Classification provides a mechanism for cross-referencing and aggregating occupation-related data collected by social and economic statistical reporting programs. The system is designed to maximize the analytical utility of statistics on labor force, employment, income, and other occupational data collected for a variety of purposes by various agencies of the United States Government, State agencies, professional associations, labor unions and private research organizations.

The classification covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises where direct remuneration may or may not be made to family members. The SOC may also be used to classify volunteers, but occupations unique to volunteer settings were not included in the 1980 SOC.

The SOC provides a coding system and nomenclature for identifying and classifying occupations within a framework suitable for use in and out of government. However, because of the vast amount of occupational detail that was considered in developing such a system, and the wide variety of uses of occupational data, it was not possible to construct a system that would meet the specific needs of all organizations. The level of detail, for example, may not be sufficient for specialized analytical purposes or for internal organizational management requirements. In such cases, however, approaches generally can be taken that will not conflict with the overall scheme of the system.

Request for Comments

The Committee invites comments on the purpose and scope of the SOC.

Principles Underlying the Current SOC

The principles adopted in the new SOC should be relevant to the existing world of work. The twelve classification principles used in the 1980 SOC are listed below. Following some of the principles are questions designed to facilitate public comment.

1. The classification should realistically reflect the current occupational structure of the United States.

Should the new system attempt to reflect what analysts see as the future occupational structure?

2. An occupation should be classified on the basis of work performed. Skill level, training, education, licensing and credential requirements usually associated with job performance should be considered only when an inaccurate picture of the occupational structure would be presented without such consideration.

Should work performed continue to be the underlying principle of classification in the new SOC, or should skills or something else provide a new basis for classification?

3. Place of work (industry) should be considered in classifying an occupation only when the work setting alters the nature of the work sufficiently to warrant separate classification. For example, cooks in private households and commercial settings were classified in different unit groups because work is significantly dissimilar in their respective work settings.

4. The occupations should be classified in homogeneous groups that can be defined so that the content of each group is well delineated.

What factor(s) should be used to determine what is an occupational group?

5. An occupation that combines two distinct activities should be classified in one group on the basis of the primary activity—the one that accounts for the major portion of the worker's time. However, in cases where one activity requires special skills that are crucial in carrying out the duties of the occupation (although not required for as much time as other activities), that activity should determine the classification of the occupation.

Approximately what percentage of time should a worker in an occupation perform the highest skilled activity in order for the occupation to be classified based on that skill?

6. Each occupation should be assigned to only one group at the most

[1] Copies of the International Occupational Classification Conference proceedings may be obtained by writing to the Occupational Employment Statistics Program, Suite 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212, or calling 202–606–6569.

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detailed level of the classification system (unit group).

7. Large size should not by itself be considered sufficient reason for separate identification of a group.

8. Small size should not by itself be considered sufficient reason for excluding a group from separate identification, although size must be considered, or the system could become too large to be useful.

9. Supervisors should be identified separately from the workers they supervise wherever possible in keeping with the real structure of the world of work.

The 1980 SOC did not separately identify those who supervise professional or technical workers. Should any distinction be made between supervisors and workers in the case of professional or technical workers?

10. Apprentices and trainees should be classified with the occupations for which training is being taken.

11. Helpers should be identified separately when their work is such that they are not in training for the occupation for which they are providing help, or if their work is truly different.

Is there a need to distinguish among these workers according to the type of worker that they assist?

12. The need for comparability to the International Standard Classification of Occupations (ISCO) should be considered in developing the new structure, but it should not be an overriding factor.

Should the ISCO be the anchor for the U.S. system? (Please refer to the description of ISCO 88 below.)

Request for Comments

The Committee invites comments on the principles used in the current SOC. Suggestions for alternative principles are particularly welcomed.

Conceptual Options for the New SOC

The Policy Committee has identified four broad conceptual foundations of occupational classification systems: (1) The type of work performed, for example, the 1980 SOC, the U.S. Bureau of the Census system, the Dictionary of Occupational Titles (DOT) of the Employment and Training Administration, and the Occupational Employment Statistics (OES) system of the U.S. Bureau of Labor Statistics; (2) the International Standard Classification of Occupations (ISCO); (3) a skills-based system, for example, the National Occupational Classification (NOC) of Canada; and (4) an economic-based system.

(1) Type of Work Performed

The two major sources of occupational employment data in the U.S., the Census of Population and the OES survey, are based on the 1980 SOC. Both use classification systems based primarily upon work performed. The Census system, used to collect occupational data from households, consists of 501 occupations;[2] the OES system, used to collect data from establishments, consists of 760 occupations.[3] The DOT, used by the U.S. Employment Service, consists of more than 12,000 titles that also are based primarily on work performed.[4]

(2) The International Standard Classification of Occupations (ISCO–88)

ISCO–88 has a dual framework: The concept of the kind of work performed, or job; and the concept of skill. Job is defined as a set of tasks and duties executed by one person. It is the statistical unit classified by ISCO–88. A set of jobs whose main tasks and duties are characterized by a high degree of similarity constitutes an occupation. Persons are classified by occupation through their relationship to a past, present or future job.

Skill is defined as the ability to carry out the tasks and duties of a given job. It has two dimensions—skill level, which is a function of the complexity and range of the tasks and duties involved, and skill specialization, which is defined by the field of knowledge required, the tools and machinery used, the materials worked on or with, as well as the kinds of goods and services produced.

These were the basis for the delineation and further aggregation of the occupational groups in ISCO–88. In part due to the international properties of the classification, only four broad skill levels were defined, each according to the categories that appear in the International Standard Classification of Education (ISCED). Although there is a direct linkage with educational attainment, it does not follow that the skills necessary to perform the tasks and duties of a given job can be acquired only through formal education. Skills often are acquired through informal training and experience.[5]

There are some obstacles that may limit the desirability of completely adopting ISCO–88 for the U.S. SOC. A major focus of a new SOC would be to meet user needs that center on job placement, career guidance, and program planning; less demand exists for internationally-comparable occupational data. Only four skill levels are identified in ISCO–88, based upon formal education or vocational training, which are the basis for identifying major occupational groups. This leads to major groups that are somewhat divergent, resulting in a classification system that is not markedly different from existing "work content based" occupational classifications.

(3) Skills-Based Systems

Discussions about skills-based occupational classification concepts often are difficult, because the term "skills" means different things to different people. A number of other countries have dealt with this issue in revising their national classification systems, and it is useful to look to their experiences.

The National Occupational Classification of Canada merits study since Canada and the United States have a great deal in common in terms of occupational structure. The two major attributes that were used as classification criteria in developing the NOC were skill level and skill type. Other factors, such as industry and occupational mobility, also were taken into consideration. Skill level is defined as the amount and type of education and training required to enter and perform the duties of an occupation. In determining skill level, the experience required for entry and the complexity of the responsibilities typical of an occupation were also considered. Four skill levels are identified in the NOC: [6]

Skill Level A

—University degree (bachelor's, master's, or other post-graduate)

[2] Information on the Census classification system can be obtained by contacting the Bureau of the Census, HHES, Iverson Mall, Room 416, U.S. Department of Commerce, Washington, DC 20233–3300, or calling 301–763–8574.

[3] Information on the OES classification system can be obtained by writing the Bureau of Labor Statistics, Occupational Employment Statistics Program, Suite 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212, or calling 202–606–6569.

[4] Information on the DOT can be obtained by writing the U.S. Department of Labor, Employment and Training Administration, Room N4470, 200 Constitution Ave., NW., Washington, DC 20210 or by calling 202–219–7161. Copies can be obtained by contacting the U.S. Government Printing Office, 732 North Capitol St., NW., Washington, DC 20401 or calling 202–512–1800.

[5] The ISCO can be obtained by contacting the International Labour Organisation (ILO), International Labour Office, CH–1211 Geneva 22, Switzerland or ILO Publications, 49 Sheridan Avenue, Albany, NY 12210 or by calling 518–436–9686, ext. 123.

[6] The NOC can be obtained by contacting Canada Communication Group—Publishing, Ottawa, Canada K1A 0S9 or by calling 819–956–4802.

Skill Level B

—Two to three years of post-secondary education at community college or institute of technology, or
—Two to four years of apprenticeship training, or
—Three to four years of secondary school and more than two years of on-the-job training, training courses, or specific work experience
—Occupations with supervisory responsibilities
—Occupations with significant health and safety responsibilities

Skill Level C

—One to four years of secondary school education
—Up to two years of on-the-job training, training courses, or specific work experience

Skill Level D

—Up to two years of secondary school and short work demonstration or on-the-job training

Skill type is defined generally as the type of work performed, although other factors related to skill type are also reflected in the NOC. One of these factors is similarity with respect to the education field of study required for entry into an occupation. Another factor is the industry of employment, where experience within an internal job ladder or within an industry is usually a prerequisite for entry. The ten broad occupational categories, based on skill type, identified in the NOC are:

0. Management Occupations
1. Business, Finance, and Administration
2. Natural and Applied Sciences and Related Occupations
3. Health Occupations
4. Occupations in Social Science, Education, Government Service, and Religion
5. Occupations in Art, Culture, Recreation, and Sport
6. Sales and Service
7. Trades, Transport and Equipment Operators, and Related Occupations
8. Occupations Unique to Primary Industry
9. Occupations Unique to Processing, Manufacturing, and Utilities

While the NOC changes the way in which occupations are grouped, it does not change the basic definition of what constitutes an individual occupation. Some advocates of skills-based systems suggest that occupations should be distinguished by their unique combinations of skills. There is no system currently that uses this type of combined skills base to classify individual occupations.

(4) Economic-Based Systems

As has been recognized explicitly in ongoing work by the Economic Classification Policy Committee (ECPC) (1993), classification systems should be designed to facilitate the uses of the information they provide. For example, data on employment and wages classified by occupation are used by researchers and policy makers to analyze a variety of labor market issues. As initially pointed out by Cain, Hansen, and Weisbrod (1967),[7] to be useful for economic analysis, occupational groupings should be relatively homogeneous in the sense that a high degree of substitutability should exist within each group compared to between groups. Two alternative approaches, each based on a consistent economic concept, have been suggested. A demand-based approach would group jobs or workers based on how employers choose to utilize different types of labor. A supply-based approach would group workers based on how individuals choose how much labor to supply and what jobs to enter

A demand-based approach would build on the technological relationship between outputs and inputs that economists term a "production function." Given a production function, together with product prices, wages of different types of labor, and prices of other inputs, firms will choose labor and other inputs so as to maximize profits or minimize costs. A demand-based classification approach would view an occupation essentially as a bundle of worker characteristics or skills that are needed to produce the product (for example, see Welch (1969).[8]

Such a system would be invaluable for analyzing a variety of issues pertaining to labor demand. For example, it would be helpful in studying how the economy's demands for low and high skilled labor are changing over time due to changing technology and increasing globalization. A demand-based system would be of interest to researchers and policy makers, students deciding what types of courses to take, and unemployed workers searching for work. Another attractive feature of a demand-based occupational classification system is that it would be logically consistent with the production-based industrial classification system being developed by the Economic Classification Policy Committee.[9]

A supply-based conceptual approach would group occupations on the basis of considerations workers care about such as their incomes and the consumption aspects of their jobs (see Rosen, 1986).[10] Measurable attributes that are important to workers include the cost of obtaining the requisite skills, the risk of layoff and subsequent unemployment, onerous working conditions, such as risks to life and health and exposure to pollution, and special work-time scheduling and related requirements, including shift work and inflexible work schedules. A supply-based approach would group occupations according to these attributes. The resulting classification system would yield data of interest to both researchers and policy makers.

Both the demand-based and supply-based approaches motivate attention to some measure of skills in a classification system. Seemingly very different functions could require virtually identical skills. For example, a manufacturing firm may have a number of jobs in which workers perform different functions, but which require very little specific training and similar computer skills, motor coordination, interpersonal skills, and amounts of education. Because the workers in these positions will have similar skills and be nearly interchangeable, a demand-based argument would justify their being grouped together. If the positions do not differ in terms of working conditions, scheduling, and so forth, a supply-based argument would also indicate that they should be grouped together. From the research economist's point of view, it is difficult to justify a system that makes detailed distinctions between occupations that require very similar skills and have very similar job attributes. Economic theory also suggests that more detail is required across high skill occupations than across low skill occupations because demand- and supply-based substitution is much more difficult and costly across high skill jobs than across low skill jobs

Request for Comments

The Committee invites comments on any aspect of the alternative classification concepts. Specificity is encouraged particularly in commenting

[7] Cain, Glen, W. Lee Hansen, and Burton A. Weisbrod, "Occupational Classification: An Economic Approach," *Monthly Labor Review*, February 1967, pp. 48–52.

[8] Welch, Finis, "Linear Synthesis of Skill Distribution," *Journal of Human Resources*, Volume 4, 1969, pp. 311–327.

[9] For more information, see the **Federal Register** Vol. 58, No. 60, March 31, 1993, pp. 16980–17004 and Vol. 59, No. 142, July 26, 1993, pp. 38092–98.

[10] Rosen, Sherwin, "The Theory of Equalizing Differences," in Orley Ashenfelter and Richard Layard, eds., *Handbook of Labor Economics*, Volume I, New York: North Holland, 1986, pp. 641–692.

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on either the skills-based or economic-based concepts. This will help ensure that the Committee will interpret the comments properly

Standard Occupational Classification Revision Policy Committee Charter

Background

Concerns with the quality of the U.S. work force, skill formation and training issues, and changes in occupational structures due to new technology, competitive economic pressures, and shifts to forms of "high performance" work organization, have focused attention on the quality of occupational information and statistics. Current occupational data and their underlying classification structures have come under criticism for being fragmented, incompatible, outdated, and lacking in skills information. Many users and producers of occupational data feel that it is time to revise the U.S. Standard Occupational Classification (SOC) system to develop a unified classification structure that meets the occupational statistics and information needs of the twenty-first century.

The 1993 International Occupational Classification Conference provided a forum for the discussion of new ideas and alternative approaches to occupational classification issues. The Conference included many individuals and agencies directly involved with the occupational classification user community, as well as international occupational experts from numerous countries. The papers, discussions, and ideas generated at the conference will serve to inform revision activities for the SOC.

Establishment of the SOC Revision Policy Committee

The Office of Management and Budget (OMB) is hereby establishing a Standard Occupational Classification Revision Policy Committee, chaired by the Bureau of Labor Statistics, with representatives from the Bureau of the Census, the Employment and Training Administration, the Office of Personnel Management, the Defense Manpower Data Center, and, *ex officio*, the National Science Foundation and the Office of Management and Budget.

Charge to the Committee

The Policy Committee is charged with an examination of the Federal Government's various occupational classification systems for statistical and administrative uses, and with providing recommendations to OMB on the structure and implementation of a new SOC. This is a large undertaking with implications for the accuracy and utility of all occupation-related statistical data. The charge to the Committee includes: (1) Identifying the major statistical uses of occupational classifications; (2) identifying and developing new concepts, structures, and methodologies to determine what constitutes an occupation; (3) developing and empirically testing a standard classification system based on these concepts; (4) planning the implementation of the new classification system; and (5) ensuring that there is ample opportunity for widespread public participation in the revision process.

Classification Structure Criteria

The principal use of a revised SOC would be statistical, but it also would serve as a framework for administrative purposes and other occupational classifications. The Policy Committee should evaluate the utility of alternative classification structures in consideration of the following: (1) Ensuring compatibility between the descriptive material of the new Dictionary of Occupational Titles (DOT) and the revised SOC; (2) current public interest in a skills-based classification system; (3) users' needs for historical comparability of data; (4) ability to measure the concept in the context of its uses; (5) the expertise of other countries in revising national classification systems; (6) desirability, but not necessity, of compatibility with international occupational classification systems; and (7) the need for all Federal Government occupational classification systems to be part of the SOC framework.

Committee Process

The Policy Committee should adopt processes that ensure ample opportunity for public participation. These processes should involve all stakeholders, including the range of occupational data users, both government and private, as well as data collectors and data providers. The Policy Committee should consider forming a Consultation Group, composed of Federal agencies not represented on the Policy Committee. Such a group would meet on a flow basis, as necessary, to provide input to the work of the Policy Committee.

Notice of the Policy Committee's work should be widespread and should be published in the **Federal Register** for all interested public and private parties

Interested parties will be given the opportunity to be included on a mailing list

The conceptual framework for the new SOC should be completed prior to July 1995 to allow for testing related to the 2000 Census The completed occupational classification structure should be available by July 1997 to coincide with development of the 2000 Census

Request for Comments

The Committee invites comments on the SOC Revision Policy Committee process Suggestions related to the classification structure criteria particularly are encouraged, as well as suggestions as to other major questions the Committee should be considering besides those mentioned in the charter

Comment Procedure

Interested parties are invited to comment in writing to the Standard Occupational Classification Revision Policy Committee Comments may be in reference to any topic related to occupational classification including the uses of the occupational data, the purpose and scope of an occupational classification system, the principles underlying the current SOC, and conceptual options for the new SOC The Committee particularly solicits comments on present and future uses of data that are produced using occupational classification systems, with emphasis on the strengths and weaknesses of the present systems in meeting user needs Interested parties may also send comments via E-mail, to Ross___L:PSB@Cmail.bls.gov

Availability of Comment Materials

All written comments and materials received in response to this notice will be available throughout 1995 during normal business hours, 8:15 a.m to 4.45 p.m., in Suite 4840, 2 Massachusetts Avenue NE., Washington, DC 20212 Individuals wishing to inspect these materials must call 202–606–6505 to obtain an appointment to enter the suite

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs

[FR Doc 95–4831 Filed 2–27–95, 8:45 am]

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federal register

Tuesday
February 28, 1995

Part V

Department of Education

Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Department of Education.

ACTION: Notice of intent to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee) for the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins) Program regulations.

SUMMARY: The Secretary of Education and the Office of Postsecondary Education announce the intention to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee to create draft proposed rules for borrower defenses in the Direct Loan, FFEL, and Perkins Programs.

DATES AND TIMES: The first meeting of the Committee is expected to be held in late March 1995. The specific time, date, and location will be announced in a subsequent notice prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday

SUPPLEMENTARY INFORMATION: The Secretary has determined that it is necessary and in the public interest to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee. The Department of Education (Department) has retained the services of a professional mediator to serve as a neutral convener and facilitator for the negotiated rulemaking. The Committee will be balanced and represent all parties that will be affected by these rules. The Committee will include representatives of institutions of higher education, higher education organizations, student loan lenders, guaranty agencies, loan servicers, legal aid organizations, students, and the Department. Administrative support for the Committee will be provided by the Office of Postsecondary Education

Issues To Be Negotiated

The issues to be negotiated include which acts or omissions of an institution of higher education a borrower may assert as defenses to a demand for repayment of a loan made under the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, for FFEL Program loans, for the lender and the guaranty agency. The Committee may also negotiate issues regarding whether administrative procedures should be established to adjudicate whether a borrower has a valid defense and the effect the adjudication would have on the rights and liabilities of institutions, lenders, guaranty agencies, and the Secretary.

Agenda for First Meeting

The draft agenda for the first meeting, which will be organizational, follows:

(1) Welcoming remarks.

(2) Introduction of facilitator and participants.

(3) Discussion of procedural ground rules.

(4) General discussion of participants' perspectives on substantive issues.

(5) Development of issue agendas or drafts for subsequent meetings.

Structure of Committee

The ultimate goal of negotiated rulemaking is to reach consensus among all committee members through discussion and negotiation among all interested and affected parties, including the Department. With this in mind, the Department will conduct these negotiations within a structure that is designed to reach this goal fairly and efficiently and give strong consideration to the complex nature of the issues to be negotiated. All members of the Committee will be able to participate in discussion and negotiation. The Office of Postsecondary Education has selected the members because they, and the groups they represent, will be affected by the final rule. Thus, the widest possible variety of interests will be represented in the negotiating process while maintaining the possibility of reaching informed agreement.

The following list of organizations are "full" members of the Committee (some organizations with similar interests have joined as a coalition):

Department of Education
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of private non-profit multi-State guaranty agencies
Consumer Bankers Association
Education Finance Council
Hispanic Association of Colleges and Universities
Legal Services Team (a coalition)
National Association of Independent Colleges and Universities
National Association of State Universities and Land Grant Colleges
National Association of Student Financial Aid Administrators
National Association for Equal Opportunity in Higher Education/ United Negro College Fund (a coalition)
National Council of Higher Education Loan Programs
Sallie Mae
United States Student Association

Requests for Participation

If you feel you represent, or wish to nominate someone who represents, a significantly affected interest that is not included in the above list, please send a request for participation to Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400, no later than 30 days after the publication of this notice.

The Application Must Include

1 Name of the applicant or nominee and a description of the interest or interests to be represented;

2. Evidence that the applicant or nominee is authorized to represent parties related to the interest or interests the person proposes to represent;

3. A written commitment that the applicant or nominee will actively participate in good faith in the development of the rule under consideration; and

4 The reasons that the organizations listed in the notice do not adequately represent the interest or interests of the person or organization submitting the application or nomination.

Please note that participation in the rulemaking process is not limited to members of the Committee. Meetings are open to the public so interested parties may observe the negotiations, and there will be an allotted public comment period at each session for the public to communicate their views There are expected to be a total of three meetings held in the Washington Metropolitan area. In addition, proposed

rules resulting from these negotiations will be published in the **Federal Register** with a comment period. The Department expects to publish these proposed rules by July 1, 1995. A final rule will be published by December 1, 1995.

Dated: February 23, 1995.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–4875 Filed 2–27–95; 8:45 am]

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Part VI

Department of Health and Human Services

Administration on Aging

Turning Resolutions Into Results; Building the Legacy of the 1995 White House Conference on Aging; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

Turning Resolutions Into Results: Building the Legacy of the 1995 White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice; Request for Public Comments.

SUMMARY: The White House Conference on Aging (WHCoA), which will be held May 2–5, 1995 in Washington, D.C., will conclude with the passage of resolutions designed to influence aging policy into the next century. This notice announces two categories of post-conference activities devised to ensure implementation of these resolutions into policy: (1) Follow up meetings recognized by WHCoA and held throughout the country; and (2) submission of public comments.

FOR FURTHER INFORMATION CONTACT: Karen Goldmeier, White House Conference on Aging, 501 School Street, SW, 8th Floor, Washington, DC 20024–2755, phone (202) 245–7116.

SUPPLEMENTARY INFORMATION: As specified in Title II of the Older Americans Act Amendments of 1987 (Pub. L. 100–175, as amended) the 1995 White House Conference on Aging is to work jointly with States, individuals, and public and private organizations to devise a series of resolutions to guide national aging policy into the 21st century. Consistent with this grassroots focus, the WHCoA has solicited information and encouraged participation from a wide range of sources since President Clinton announced the Conference on February 17, 1994. The WHCoA has received input from individuals and organizations across the country, including over 900 responses generated by a proposed WHCoA agenda for public comment published in the October 12, 1994 **Federal Register.** In addition, by the May Conference in Washington D.C., more than 700 activities affiliated with the WHCoA will have been held around the country.

In keeping with this grassroots emphasis, the WHCoA proposes to recognize two avenues for public participation after the close of the Washington Conference. First, the WHCoA is announcing of a series of events to follow the May Conference. These events, described in more detail below, will narrowly focus on strategies to implement the resolutions adopted by the Conference. Second, individuals may submit comments regarding implementation of resolutions independent of these post-Conference events.

These two avenues, along with a final Conference report prepared by the Policy Committee with input by the Advisory Committee and Governors' offices, will help define a blueprint for proposed post-WHCoA implementation activities. This blueprint will provide the framework for immediate and long term actions to implement the Conference's highest priority recommendations. It will also identify areas and tasks in which the public and private sectors, including governmental and nongovernmental organizations and agencies, can play a role in implementing the Conference recommendations. These may include private initiatives as well as the enactment of public policies and laws affecting aging Americans, their families and their communities now and into the 21st century.

I. Post-Conference Events

The 1995 White House Conference on Aging proposes to recognize a final series of events focused on implementing the priority recommendations created in the May Conference. Organizations interested in sponsoring an event under the auspices of the WHCoA must adhere to guidelines similar to those that presently govern pre-conference events. Thus, to qualify for recognition, the activity must: (1) Be a policy-oriented event focusing on one or more of the priority resolutions adopted by the 1995 White House Conference on Aging; (2) guarantee the participation of older persons; (3) produce a written report within 30 days or by October 13, 1995, whichever is earlier; (4) raise funds only to the extent necessary to cover the cost of the event; and (5) be approved by the Executive Director of the WHCoA.

Recognition signifies the WHCoA's acknowledgement of the relevancy of the event to the goals of the WHCoA. It allows the sponsoring organization to publicize that the event has been recognized by the WHCoA and that it will be listed in the final report of the Conference. Recognition does not, however, imply that the WHCoA agrees with or endorses the recommendations.

Sponsoring organizations will be required to file a report of the event. The reports shall be 3–5 pages in length, double spaced, and should summarize recommendations adopted regarding implementation of WHCoA resolutions. These recommendations may address any aspect of implementation, including, but not limited to:

—Issues related to responsibility (federal, state and local government, private and/or foundation sector, individuals/families, or a combination of the above);
—Issues related to cost (reallocation of existing resources, obtaining additional funding if necessary, offsetting costs); and
—Issues related to process (specific legislative or regulatory recommendations, immediate goals and long-term timetables, suggestions to guide interested private sector participants).

These reports will be collected for future dissemination to the most appropriate entity. Some targets for distribution include: (1) The Administration on Aging and other divisions within the U.S. Department of Health and Human Services; (2) U.S. Departments of Housing, Veterans Affairs, and other federal government entities; (3) state and local government entities; (4) Congressional offices; (5) national and state organizations (6) corporations and private sector entities; and (7) nonprofit and grassroots organizations.

Interested organizations should submit a letter of intent asking for WHCoA recognition of the event to the White House Conference on Aging; 501 School Street, SW, 8th floor; Washington, D.C. 20024–2755. The letter must include the name, address, telephone number and contact person of the organization, as well as a brief description of the proposed post-conference event including the theme and/or title. All submissions must be received by May 31, 1995.

II. Public Comments

After the close of conference on May 5, 1995, the White House Conference on Aging will accept public comments from individuals and organizations that address practical aspects of resolution implementation. Like the reports generated from the post WHCoA events, submissions must focus on one or more of the three aspects of resolution implementation listed above and are to be a maximum of five pages long. Comments should be sent to the address listed in section I to be forwarded to the most appropriate entity to oversee implementation. The deadline for WHCoA consideration of these comments is October 13, 1995.

Dated: February 22, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–4851 Filed 2–27–95; 8:45 am]

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federal register

Tuesday
February 28, 1995

Part VII

The President

Executive Order 12952—Amendment to Executive Order No. 12950

Executive Order 12953—Actions Required of all Executive Agencies To Facilitate Payment of Child Support

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Title 3—

The President

Executive Order 12952 of February 24, 1995

Amendment to Executive Order No. 12950

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend Executive Order No. 12950, it is hereby ordered that the list of Labor Organizations attached to and made a part of such order is amended to include the following:

International Brotherhood of Firemen & Oilers

William J. Clinton

THE WHITE HOUSE,
February 24, 1995.

[FR Doc. 95–5129
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Executive Order 12953 of February 27, 1995

Actions Required of all Executive Agencies To Facilitate Payment of Child Support

Children need and deserve the emotional and financial support of both their parents.

The Federal Government requires States and, through them, public and private employers to take actions necessary to ensure that monies in payment of child support obligations are withheld and transferred to the child's caretaker in an efficient and expeditious manner.

The Federal Government, through its civilian employees and Uniformed Services members, is the Nation's largest single employer and as such should set an example of leadership and encouragement in ensuring that all children are properly supported.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

PART I—PURPOSE

Section 101. This executive order: (a) Establishes the executive branch of the Federal Government, through its civilian employees and Uniformed Services members, as a model employer in promoting and facilitating the establishment and enforcement of child support.

(b) Requires all Federal agencies, including the Uniformed Services, to cooperate fully in efforts to establish paternity and child support orders and to enforce the collection of child and medical support in all situations where such actions may be required.

(c) Requires each Federal agency, including the Uniformed Services, to provide information to its employees and members about actions that they should take and services that are available to ensure that their children are provided the support to which they are legally entitled.

PART 2—DEFINITIONS

For purposes of this order:

Sec. 201. "Federal agency" means any authority as defined at 5 U.S.C. 105, including the Uniformed Services, as defined in section 202 of this order.

Sec. 202. "Uniformed Services" means the Army, Navy, Marine Corps, Air Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Public Health Service.

Sec. 203. "Child support enforcement" means any administrative or judicial action by a court or administrative entity of a State necessary to establish paternity or establish a child support order, including a medical support order, and any actions necessary to enforce a child support or medical support order. Child support actions may be brought under the civil or criminal laws of a State and are not limited to actions brought on behalf of the State or individual by State agencies providing services under title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*

Sec. 204. "State" means any of the fifty States, the District of Columbia, the territories, the possessions, and the Commonwealths of Puerto Rico and of the Mariana Islands.

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PART 3—IMMEDIATE ACTIONS TO ENSURE CHILDREN ARE SUPPORTED BY THEIR PARENTS

Sec. 301. *Wage Withholding.* (a) Within 60 days from the date of this order, every Federal agency shall review its procedures for wage withholding under 42 U.S.C. 659 and implementing regulations to ensure that it is in full compliance with the requirements of that section, and shall endeavor, to the extent feasible, to process wage withholding actions consistent with the requirements of 42 U.S.C. 666(b).

(b) Beginning no later than July 1, 1995, the Director of the Office of Personnel Management (OPM) shall publish annually in the **Federal Register** the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees.

Sec. 302. *Service of Legal Process.* Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee's or member's availability for service of process, regardless of the location of the employee's workplace or member's duty station. The OPM shall publish a list of these officials annually in the **Federal Register**, beginning no later than July 1, 1995.

Sec. 303. *Federal Parent Locator.* Every Federal agency shall cooperate with the Federal Parent Locator Service, established under 42 U.S.C. 653, by providing complete, timely and accurate information that will assist in locating noncustodial parents and their employers.

Sec. 304. *Crossmatch for Delinquent Obligors.* (a) The master file of delinquent obligors that each State child support enforcement agency submits to the Internal Revenue Service for Federal income tax refund offset purposes shall be matched at least annually with the payroll or personnel files of Federal agencies in order to determine if there are any Federal employees with child support delinquencies. The list of matches shall be forwarded to the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 5 U.S.C. 552a(o)-(u).

(b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

Sec. 305. *Availability of Service.* All Federal agencies shall advise current and prospective employees of services authorized under title IV-D of the Social Security Act that are available through the States. At a minimum, information shall be provided annually to current employees through the Employee Assistance Program, or similar programs, and to new employees during routine orientation.

Sec. 306. *Report on Actions Taken.* Within 90 days of the date of this order, all Federal agencies shall report to the Director of the Office of Management and Budget (OMB) on the actions they have taken to comply with this order and any statutory, regulatory, and administrative barriers that hinder them from complying with the requirements of part 3 of this order.

PART 4—ADDITIONAL ACTIONS

Sec. 401. *Additional Review for the Uniformed Services.* (a) In addition to the requirements outlined above, the Secretary of the Department of Defense (DOD) will chair a task force, with participation by the Department of Health and Human Services (HHS), the Department of Commerce, and the Department of Transportation, that shall conduct a full review of current policies and practices within the Uniformed Services to ensure that children

of Uniformed Services personnel are provided financial and medical support in the same manner and within the same time frames as is mandated for all other children due such support. This review shall include, but not be limited to, issues related to withholding non-custodial parents' wages, service of legal process, activities to locate parents and their income and assets, release time to attend civil paternity and support proceedings, and health insurance coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). All relevant existing statutes, including the Soldiers and Sailors Civil Relief Act of 1940, the Uniformed Services Former Spouses Protection Act, and the Tax Equity and Fiscal Responsibility Act of 1982, shall be reviewed and appropriate legislative modifications shall be identified.

(b) Within 180 days of the date of this order, DOD shall submit to OMB a report based on this review. The report shall recommend additional policy, regulatory and legislative changes that would improve and enhance the Federal Government's commitment to ensuring parental support for all children.

Sec. 402. *Additional Federal Agency Actions.* (a) OPM and HHS shall jointly study and prepare recommendations concerning additional administrative, regulatory, and legislative improvements in the policies and procedures of Federal agencies affecting child support enforcement. Other agencies shall be included in the development of recommendations for specific items as appropriate. The recommendations shall address, among other things:

(i) any changes that would be needed to ensure that Federal employees comply with child support orders that require them to provide health insurance coverage for their children;

(ii) changes needed to ensure that more accurate and up-to-date data about civilian and uniformed personnel who are being sought in conjunction with State paternity or child support actions can be obtained from Federal agencies and their payroll and personnel records, to improve efforts to locate noncustodial parents and their income and assets;

(iii) changes needed for selecting Federal agencies to test and evaluate new approaches to the establishment and enforcement of child support obligations;

(iv) proposals to improve service of process for civilian employees and members of the Uniformed Services stationed outside the United States, including the possibility of serving process by certified mail in establishment and enforcement cases or of designating an agent for service of process that would have the same effect and bind employees to the same extent as actual service upon the employees;

(v) strategies to facilitate compliance with Federal and State child support requirements by quasi-governmental agencies, advisory groups, and commissions; and

(vi) analysis of whether compliance with support orders should be a factor used in defining suitability for Federal employment.

(b) The recommendations are due within 180 days of the date of this order. The recommendations are to be submitted in writing to the Office of Management and Budget.

Sec. 501. *Internal Management.* This order is intended only to improve the internal management of the executive branch with regard to child support enforcement and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

Sec. 502. *Sovereignty of the United States Government.* This order is intended only to provide that the Federal Government has elected to require Federal agencies to adhere to the same standards as are applicable to all other employers in the Nation and shall not be interpreted as subjecting the Federal Government to any State law or requirement. This order should not be construed as a waiver of the sovereign immunity of the United

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States Government or of any existing statutory or regulatory provisions, including 42 U.S.C. 659, 662, and 665; 5 CFR Part 581; 42 CFR Part 21, Subpart C; 32 CFR Part 54; and 32 CFR Part 81.

Sec. 503. *Defense and Security.*

This order is not intended to require any action that would compromise the defense or national security interest of the United States.

William J. Clinton

THE WHITE HOUSE,
February 27, 1995.

[FR Doc. 95-5146
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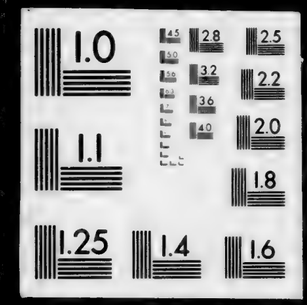

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Rules and Regulations

Federal Register
Vol. 60, No. 40
Wednesday, March 1, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 362

RIN 3206–AG17

Presidential Management Intern Program

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing selection and employment procedures for Presidential Management Intern positions as part of the implementation of Federal Personnel Manual (FPM) sunset. The regulations incorporate certain requirements that existed in the provisionally retained FPM and were abolished on December 31, 1994.

DATES: Effective Date: March 1, 1995. Comments on the interim regulations must be received on or before May 1, 1995.

ADDRESSES: Send or deliver written comments to Assistant Director, Office of Training Operations, HRDG, Suite 800, 1400 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ardrey Harris at 703–807–0321.

SUPPLEMENTARY INFORMATION: These regulations affect selection and appointment to Presidential Management Intern positions. One of the recommendations of the September 1993 Report of the National Performance Review was that the Federal Personnel Manual (FPM) should be "sunset." Following consultation with agencies and other interested parties, the Director of the OPM issued a memorandum abolishing the FPM as of December 31, 1993. Portions of the FPM and FPM supplements, however, were provisionally retained until December 31, 1994. Decisions on what to include in the regulations were based on whether the requirement or authority was necessary to assure uniformity in Presidential Management Intern Program (PMIP) operations, and/or to protect employee rights.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the regulations continue certain requirements and authorities that are currently in the provisionally retained FPM material and that went out of existence as of December 31, 1994, because they are not specified in existing regulations or law. No new requirements would be imposed on agencies under the regulations.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 362

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is adding part 362 of title 5, Code of Federal Regulations as follows:

PART 362—PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Subpart A—Purpose, Definitions

Sec.
362.101 Purpose.
362.102 Definitions.

Subpart B—Program Administration

Sec.
362.201 Appointment.
362.202 Eligibility.
362.203 Extensions and Conversions of Presidential Management Internships.
362.204 Termination.
362.205 Resignation.
362.206 Movement of interns between Agencies.
362.207 Career development.
362.208 Agency duties.

Authority: E.O. 12364

Subpart A—Purpose, Definitions

§ 362.101 Purpose.

The Presidential Management Intern Program (PMIP), established by Executive Order 12008 on August 25, 1977, and reconstituted by Executive Order 12346 on May 24, 1982, is designed to attract to Federal service outstanding men and women from a variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs.

§ 362.102 Definitions.

Presidential Management Interns are individuals appointed in the excepted service, under § 213.3102(ii) of this chapter, in an executive agency or department. Such an individual must be a United States citizen who has completed a graduate course of study at a qualifying college or university, received the nomination of the dean or academic program director, passed on OPM-administered screening process, and been selected by an agency for a 2-year Presidential Management Internship.

Qualifying colleges or universities are accredited United States academic institutions with a graduate program applicable to the management or analysis of public programs and policies.

Subpart B—Program Administration

§ 362.201 Appointment.

(a) The appointment authority for Presidential Management Interns is § 213.3102(ii) of this chapter. Appointments under this authority cannot exceed 2 years unless extended by the Federal department or agency, with the concurrence of the U.S. Office of Personnel Management, for up to one additional year.

(b) Agencies need to assure that all graduate degree requirements have been met at the time of appointment. Interns may not be appointed prior to the *completion of all graduate degree requirements*. Exceptions may be made on an individual basis, but in no case will an intern be allowed to remain in the program if all degree requirements are not completed by August 31 of the year in which interns were selected as finalists.

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(c) Finalists in the PMIP may be appointed following official announcement of their selection as finalists. *Appointments must be made no later than December 31 of the year in which the terms were selected as finalists.* Exceptions may be granted on a case by case basis upon request to the PMIP office no later than December 15.

(d) Initial appointments must be made at the grade GS–9, Step 1 level of the General Schedule. If an intern has had prior higher level Federal Government experience, that individual may be placed at higher step within grade GS–9 of the General Schedule. The appointment authority, § 213.3102(ii) of this chapter, authorizes Presidential Management Intern positions only at grades GS–9 and GS–11 of the General Schedule. Therefore, promotions above grade GS–11 can occur only on or after the date of conversion of the competitive service.

§ 362.202 Eligibility.

(a) *General.* Those eligible to be nominated for the Program are United States citizens completing or expecting to complete an advanced degree focusing on or applicable to the analysis or management of public policies and programs from an accredited United States college or university during the current *academic* year.

(b) *Nomination procedure.* (1) Students must be nominated by their school deans or academic program directors. Individuals who wish to be nominated must be rated by their schools as either qualified or not qualified for nomination and should be notified of their status by their schools. The school is obligated to devise a competitive nomination process which ensures that selection is determined on the basis of relative ability, knowledge and skills after fair and open competition which assures that all receive equal opportunity. All honorably discharged veterans with Federal veterans' preference entitlement who are in the qualified group must be nominated. Schools will need to determine which of the qualified individuals have Federal veterans' preference entitlement in order to ensure their nomination. These individuals must submit verification of their Federal veterans' preference entitlement along with their application to the PMIP Review Committee. Veterans who believe they meet their school's qualification requirements, but who are not nominated, have the right to appeal their non-nomination to the U.S. Office of Personnel Management.

(2) Selection of Program finalists is made by the Presidential Management Intern Selection Committee based on selection process results.

§ 362.203 Extensions and Conversions of Presidential Management Internships.

(a) Federal agencies may request OPM approval for an extension of an internship for up to a 3rd and final year. The primary reason for extending an internship is to provide the intern with additional training and developmental activities.

(b) A written request to extend an internship should be submitted to the PMIP, no later than 60 days prior to the end of the initial 2-year period. This request must be sent to: U.S. Office of Personnel Management; Presidential Management Intern Program; 1400 Wilson Boulevard; Suite 1200, Arlington, VA 22209.

(c) Eligibility for conversion. Employees who have completed Presidential Management Internships are to be converted non-competitively to a career or career-conditional appointment for which they are qualified if all the following criteria are met:

(1) The employee has successfully competed a Presidential Management Internship at the time of conversion;

(2) The employee is recommended for conversion at least 90 calendar days before the completion of the internship. The agency decides whether or not to convert the employee. No recommendation is made to OPM. Agencies are asked to inform the PMIP, U.S. Office of Personnel Management, when an individual will not be converted.

(d) Effective date. Conversions will be effective on the date when the 2-year service requirement is met unless the internship is extended by the Federal department or agency, with the concurrence of the U.S. Office of Personnel Management, for up to one additional year.

(e)(1) Tenure acquired. Upon conversion, the employee becomes a career employee if the service requirements in § 315.708 of this chapter are met; otherwise, the employee becomes a career-conditional employee.

(2) The time-after-competitive-appointment restriction. This restriction, § 330.501 of this chapter, does not apply to conversions under Executive Order 12364.

(f) Probationary period. Employees converted under this section do *not* have to serve a probationary period. Successful completion of the Presidential Management Internship is regarded as completion of the probationary period.

§ 362.204 Termination.

The appointment of a Presidential Management Intern under § 213.3102(ii) of this chapter expires at the end of the 2-year internship period. At that time, the employing agency may, with no break in service, convert the intern to the competitive service or extend the internship with prior approval from OPM. If neither of those actions is taken, the Presidential Management Intern appointment terminates.

§ 362.205 Resignation.

Interns who resign during their internship do not have reinstatement eligibility for competitive service positions and cannot be reinstated to the PMIP.

§ 362.206 Movement of interns between agencies.

If an intern wishes to change his or her employing agency during the internship, it is necessary to resign from the current agency and be rehired by the new employing agency under the PMIP appointment authority without a break in service.

§ 362.207 Career development.

(a) The U.S. Office of Personnel Management will provide career development and training programs for interns during the 2-year internship. The career development component of the PMIP includes an initial orientation seminar, conferences, seminars, periodic opportunities for special briefings and workshops, and a program at the end of the internship.

(b) Interns must participate fully in the PMIP orientation and educational programs, as well as seminars, workshops, and other programs throughout the 2-year internship.

§ 362.208 Agency duties.

Agencies must provide—

(1) An orientation for interns which includes discussion of the agency's plans for interns, provides specific information on the functions and mission of the agency, and makes explicit the agency's expectations of interns;

(2) Individual development planning to ensure the intern gains professional and technical skills to qualify for a target upon conversion;

(3) A series of core assignments targeted to a functional area into which the intern is most likely to be converted.

[FR Doc. 95–4918 Filed 2–28–95;8:45am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service; Rural Business and Cooperative Development Service; Rural Utilities Service; Consolidated Farm Service Agency

7 CFR Part 1942

RIN 0575–AB82

Community Facility Loans and Grants

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The regulations utilized to administer Community Facility Loans and Grants are being amended. This action changes the security requirements for solid waste disposal loans. The change affects the security requirements for loans secured primarily by revenue and the funds used to construct or improve solid waste facilities in rural communities. The effect of changing the security requirements for solid waste facilities is to provide better service to communities seeking to resolve solid waste disposal problems on a regional level.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Utilities Service, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Intergovernmental Review

The programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Disposal Systems For Rural Communities, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It has been determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance with Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0015 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507). This final rule does not revise or impose any new information collection requirement from those approved by OMB.

Background

A change is needed in the security requirements for loans made for construction or improvements to solid waste facilities. The requirements of the Environmental Protection Agency Subtitle D regulations have increased the capital needs of rural communities for disposal of solid waste. The current security requirements for loans on solid waste facilities are too stringent, and this final action will add flexibility that is needed to improve the program. Currently, additional security is required when revenue is the primary security for loans involving solid waste facilities. This change will remove the requirement for additional security.

Comments on Proposed Rule

The Farmers Home Administration published a proposed rule in the **Federal Register** on August 19, 1994, (59 FR 42783) and asked for written comments on or before October 18, 1994. Ten comments were received from the public review process. All ten of the comments received were in relation to the proposed change to incorporate into Community Programs loan and grant regulations the provision contained in Rural Electrification Administration Loan Restructuring Act of 1993, (REA Act). No comments were received regarding the proposed change in the security requirements for loans made for solid waste disposal facilities. Certain provisions of the REA Act prohibits a recipient of the programs from imposing certain conditions on the users of the service provided. The REA Act requires that appropriate measures and sanctions be implemented against any person violating or attempting to violate this prohibition. Based on the comments received, the proposed change relating to the REA Act will not be included in this final rule. Eight of the comments made stated that the proposed rule did not go far enough in implementing the provisions of the REA Act. Another rule will be issued in the future to comply with provisions of the REA Act relating to all the Department's rural development programs.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs-Housing and community development, Loan security, Rural areas, Waste treatment and disposal-Domestic, Water supply-Domestic.

Therefore, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraphs (g)(2)(ii) and (g)(3)(ii) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(g) * * *

(2) * * *

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

* * * * *

(3) * * *

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

* * * * *

3. Section 1942.50 is revised to read as follows:

§ 1942.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB

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control number 0575–0015. Public reporting burden for this collection of information is estimated to vary from five minutes to 15 hours per response, with an average of 2.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0015), Washington, D.C. 20503.

Dated: January 26, 1995.

Bob J. Nash,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–4954 Filed 2–28–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–207–AD; Amendment 39–9143; AD 95–03–06]

Airworthiness Directives; Canadair Model CL–600–1A11, -2A12, and -2B16 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL–600–1A11, –2A12, and –2B16 series airplanes, that requires a functional check and a test of the idle stop function of the engine throttle quadrant; repair or replacement, if necessary; and eventual replacement of the engine throttle quadrant with a new model. This amendment is prompted by reports of unintentional engine shutdown on certain of these airplanes due to problems associated with operation of the engine throttle quadrant. The actions specified by this AD are intended to ensure the proper operation of the throttle quadrant so as to prevent inadvertent shutdown of an engine while the airplane is taxiing or in flight.

DATES: Effective March 31, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond J. O'Neill, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7421; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–1A11, –2A12, and –2B16 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on October 19, 1994 (59 FR 52720). That action proposed to require a functional check and a test of the idle stop function of the engine throttle quadrant; repair or replacement, if necessary; and eventual replacement of the engine throttle quadrant.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 150 airplanes of U.S. registry will be affected by this AD.

The side-loads test of the engine throttle quadrant will take approximately 17 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the side-loads test requirements of this AD on U.S. operators is estimated to be $153,000, or $1,020 per airplane.

The abrupt-movement check of the idle stop function of the throttle quadrant will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the functional check requirements of this AD on U.S. operators is estimated to be $9,000, or $60 per airplane.

The installation of a modified throttle quadrant will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the installation requirement of this AD on U.S. operators is estimated to be $90,000, or $600 per airplane.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators is estimated to be $252,000, or $1,680 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–03–06 Canadair: Amendment 39–9143. Docket 93–NM–207–AD.

Applicability: Model CL–600–1A11 series airplanes, serial numbers 1004 through 1085, inclusive, equipped with throttle quadrant part numbers 600–90601–69, –71, –73, –75, –77, and –79; Model CL–600–2A12 series airplanes, serial numbers 3001 through 3066, inclusive, equipped with throttle quadrant part numbers 600–90601–983, –987, –989, –1013, –1015, –1017, –1019, –1021, –1023, 1025, and –1027; and Model CL–600–2B16 series airplanes, serial numbers 5001 through 5139, inclusive, equipped with throttle quadrant part numbers 600–90601–983, –987, –989, –1013, –1015, –1017, –1019, –1021, –1023, and 1027; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent shutdown of an engine while the airplane is taxiing or in flight, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a test of the engine throttle quadrant to determine if the throttle levers bypass the idle stop into the shut-off position, in accordance with Canadair Alert Service Bulletin A600–0615, dated June 10, 1992 (for Model CL–600–1A11 series airplanes); or Canadair Alert Service Bulletin A601–0374, Revision 1, dated September 30, 1992 (for Models CL–600–2A12 and CL–600–2B16 series airplanes), as applicable.

Note 2: Canadair Alert Service Bulletins A600–0615 and A601–0374 reference Sargent Aerospace Service Bulletins 43058–76–03 (for Model CL–600–1A11 series airplanes) and 43068–76–05 (for Model CL–600–2A12 and –2B16 series airplanes), both dated April 13, 1992, for additional service information.

(b) If the test required by paragraph (a) of this AD indicates that either throttle lever bypasses the idle stop into the shut-off position, prior to further flight, replace the throttle quadrant in accordance with Part B of the Accomplishment Instructions of Canadair Challenger Service Bulletin 600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes); or Canadair Challenger Service Bulletin 601–0410, dated November 1, 1993 (for Models CL–600–2A12 and –2B16 series airplanes); as applicable.

(c) Within 150 hours time-in-service after the effective date of this AD, perform a functional check of the idle stop function of the throttle quadrant in accordance with Part A of the Accomplishment Instructions of Canadair Challenger Service Bulletin 600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes); or Canadair Challenger Service Bulletin 601–0410, dated November 1, 1993 (for Models CL–600–2A12 and –2B16 series airplanes); as applicable.

Note 3: Canadair Challenger Service Bulletins A600–0629 and A601–0410 reference Sargent Aerospace Service Bulletins 43058–76–04 (for Model CL–600–1A11 series airplanes) and 43068–76–06 (for Model CL–600–2A12 and –2B16 series airplanes), both dated March 24, 1993, for additional service information.

(d) If the functional check required by paragraph (c) of this AD indicates that the idle stop function of the throttle quadrant fails, prior to further flight, replace the throttle quadrant in accordance with Part B of the Accomplishment Instructions of Canadair Challenger Service Bulletin 600–0629 or 601–0410, both dated November 1, 1993, as applicable.

(e) Within 4,500 hours time-in-service after the effective date of this AD, replace the throttle quadrant in accordance with Part B of the Accomplishment Instructions of Canadair Challenger Service Bulletin 600–0629, dated November 1, 1993 (for Model CL–600–1A11 series airplanes); or Canadair Challenger Service Bulletin 601–0410, dated November 1, 1993 (for Models CL–600–2A12 and CL–600–2B16 series airplanes); as applicable. Such replacement constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The replacements and check shall be done in accordance with Canadair Challenger Service Bulletin 600–0629, dated November 1, 1993; or Canadair Challenger Service Bulletin 601–0410, dated November 1, 1993; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 31, 1995.

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Issued in Renton, Washington, on February 3, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3246 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–13–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1241

Contract Appeals

AGENCY: National Aeronautics and Space Administration, (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending Title 14 of the Code of Federal Regulations (CFR) by removing Part 1241, "Contract Appeals." The NASA Board of Contract Appeals no longer exists as a separate entity at NASA and its functions were assumed by the Armed Services Board of Contract Appeals. Section 18–33.211 of the NASA Federal Acquisition Regulation (FAR) Supplement adequately advises contracting officers and contractors that the Armed Services Board of Contract Appeals (ASBCA) is now NASA's authorized contract dispute forum.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT:

David P. Forbes, 202 358–2440.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 1241

Board of Contract Appeals, Administrative practice and procedure, Government contracts.

Under the authority, 42 U.S.C. 2473, 14 CFR Part 1241 is amended as follows:

PART 1241—[REMOVED AND RESERVED]

14 CFR Part 1241, consisting of §§ 1241.10 through 1241.234, is removed and reserved.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–5044 Filed 2–28–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 400, 401, 402, 403, 404, 405, and 450

RIN 1505–AA44

Amendments to Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is publishing, as a final rule, amendments to the financial responsibility rules in part 402 and a conforming amendment to a recordkeeping requirement in part 404 of the regulations issued under the Government Securities Act of 1986 ("GSA"). The amendments raise the minimum capital requirements for all government securities brokers and dealers subject to the requirements of § 402.2 and establish a written notification requirement for certain withdrawals of capital. The amendments parallel the Securities and Exchange Commission's ("SEC") final and proposed amendments to the minimum net capital requirements for brokers and dealers subject to the requirements of 17 CFR 240.15c3–1 (Rule 15c3–1) and final rules regarding the withdrawal of capital. The Department is adopting the amendments unchanged from their proposed form.

DATES: Effective date: March 31, 1995. Further dates: see § 402.2e (Appendix E to § 402.2) for the phase-in schedule for the increased minimum capital levels.

FOR FURTHER INFORMATION CONTACT: Don Hammond (Assistant Director) or Kerry Lanham (Government Securities Specialist) at 202–219–3632. (TDD for the hearing impaired: 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background

The amendments to the Department's financial responsibility rules in part 402 raise the minimum capital requirements and establish written notification requirements for certain capital withdrawals for those government securities brokers and dealers subject to the provisions of § 402.2. Additionally, the Department is making a conforming change to the recordkeeping requirements of part 404 which is necessitated by the revisions to the minimum capital levels. The amendments parallel rule amendments adopted or proposed by the SEC. The Department's amendments will increase investor confidence in the financial responsibility of government securities brokers and dealers without overburdening the government securities market.

The SEC published its final capital withdrawal regulations on March 5, 1991,[1] finalized its first change in minimum capital levels on November 24, 1992,[2] but has not yet finalized its second proposal [3] on minimum capital levels for certain introducing firms. It is Treasury's objective, where practical, to have consistency with the SEC capital standard [4] and, ultimately, develop a uniform capital rule for all government securities brokers and dealers registered with the SEC.[5]

The Department first published these amendments in proposed form on June 22, 1994,[6] and the comment period closed on August 22, 1994. In addition, the National Association of Securities Dealers distributed the proposed changes to its potentially affected members. Treasury received no comments in response to the proposal.

II. Analysis

A. Minimum Capital Requirements

The SEC has either increased or proposed increasing the minimum net capital requirements for most brokers and dealers subject to Rule 15c3–1 to an amount ranging up to $250,000, depending on the type of business conducted by the broker or dealer. The Treasury minimum dollar capital levels are based on liquid capital after deducting haircuts, which is comparable to the SEC's calculation of net capital. The Treasury capital rule [7] currently has a $5,000 minimum liquid capital requirement for introducing brokers [8] and a $25,000 minimum liquid capital requirement for all other government securities brokers and dealers [9] subject to the rule. The Department believes that increasing the minimum levels is appropriate in order to provide better protection to investors

[1] Securities Exchange Act Release No. 28927 (February 20, 1991), 56 FR 9124 (March 5, 1991).

[2] Securities Exchange Act Release No. 31511 (November 24, 1992), 57 FR 56973 (December 2, 1992).

[3] Securities Exchange Act Release No. 31512 (November 24, 1992), 57 FR 57027 (December 2, 1992).

[4] 17 CFR 240.15c3–1.

[5] The Treasury would have acted sooner on these amendments but its rulemaking authority under the GSA expired on October 1, 1991, and was not reauthorized until December 17, 1993. (107 Stat. 2344, Pub. L. 103–202).

[6] 59 FR 32155 (June 22, 1994).

[7] 17 CFR 402.2.

[8] 17 CFR 402.2(c).

[9] 17 CFR 402.2(b).

in the event of a government securities broker's or dealer's insolvency and to reflect the current realities of the government securities market. Accordingly, the Department is increasing the minimum capital requirements for all government securities brokers and dealers subject to the provisions of § 402.2. The other capital requirement—that liquid capital be equal to at least 120% of haircuts [10]—is unaffected by this action.

The increases are implemented by creating four minimum capital standards from the two current requirements, reflecting a better differentiation of the risks related to a government securities broker's or dealer's operations based on the type of government securities business it conducts. The four minimum capital requirements being adopted are as follows: (1) Government securities brokers and dealers that carry customer or broker-dealer accounts are subject to a minimum level of $250,000; (2) government securities brokers and dealers that carry customer accounts but that operate under the exemption provided by Rule 15c3–3(k)(2)(i) [11] have a minimum requirement of $100,000; (3) government securities brokers that introduce accounts on a fully disclosed basis and receive but do not hold customer securities are subject to a minimum requirement of $50,000; and (4) introducing firms that never handle customer funds or securities are subject to a minimum requirement of $25,000.

These changes represent increases from the current minimum levels of between $20,000 and $225,000, depending on the type of business conducted by the government securities broker or dealer. The Department is establishing fewer levels than the SEC has proposed since the operations of registered government securities brokers and dealers do not encompass all the activities available to diversified brokers or dealers. The increases that the Department is adopting are modest relative to the size and complexity of the government securities market and the operations of government securities brokers and dealers.

An analysis of the government securities brokers and dealers subject to the provisions of § 402.2 indicates that, as of September 30, 1994, only four, out of a total of 32, would not be in compliance with the fully phased-in minimum capital levels. One of these firms would not be in compliance with the new requirements for introducing firms, two would be out of compliance with the $100,000 requirement and one would not meet the $250,000 level. The aggregate capital shortfall of these four firms is less than $150,000. To ease the compliance burden and to provide a period for the affected government securities brokers and dealers to raise additional capital, if necessary, the Department is adding an Appendix E to § 402.2 which phases in the increases over approximately an 18-month time frame from the effective date. This corresponds to the phase-in time frames that were used by the SEC.

B. Capital Withdrawal Requirements

The SEC promulgated final rules regarding the withdrawal of capital by brokers and dealers.[12] These rules require written notification to the SEC and the broker's or dealer's designated examining authority of certain capital withdrawals, add a restriction on the withdrawal of capital based on the ratio of net capital to securities haircuts, provide additional definitions, and permit the SEC, by order, to prohibit the withdrawal of capital in certain described circumstances. The Department is amending its capital withdrawal provisions [13] to include the notification requirements and certain definitions but has determined not to adopt the other two requirements for the reasons described in the preamble to the proposed rule.

The notification provisions require post-withdrawal notification of certain significant capital withdrawals as well as prior notification for larger withdrawals. The timing of the notification is determined by the aggregate size of total withdrawals relative to the government securities broker's or dealer's excess liquid capital [14] over a 30 calendar day period. Once aggregate withdrawals have exceeded 20 percent of a government securities broker's or dealer's excess liquid capital in a 30 calendar day period, the government securities broker or dealer has two business days thereafter in which to file notification of the withdrawals. Aggregate withdrawals that would result in a government securities broker or dealer exceeding in the aggregate 30 percent of excess liquid capital in any 30 calendar day period require notification two business days prior to such withdrawal.[15] A government securities broker or dealer may use the level of excess liquid capital calculated in its most recent Form G–405, "Report on Finances and Operations of Government Securities Brokers and Dealers (FOGS)" filing,[16] provided the firm assures itself that this amount has not materially changed since that time. A government securities broker or dealer is not required to provide notice to the Department, but instead notice is to be sent to the SEC and to the broker's or dealer's designated examining authority.

Net withdrawals that, in the aggregate, are less than $500,000 in any 30 calendar day period or those that represent securities or commodities transactions between affiliates are excluded from the reporting requirement. The exclusion for securities and commodities transactions requires that the transactions be conducted in the ordinary course of business and settled no later than two business days after the date of the transaction. Forward settling transactions between affiliates are not eligible for this exclusion. Therefore, net losses on forward contracts or net payments on swap agreements, if due an affiliate, could trigger the notice requirement. The Department specifically requested comment about the limitations on this exception. As stated earlier, no comments were received on any aspect of the rule and, therefore, the Department is adopting this provision and the rule as proposed.

The SEC's capital withdrawal rule has a provision giving the SEC authority to prohibit a withdrawal of capital by a broker or dealer, for up to 20 business days, if the withdrawal would exceed 30 percent of excess net capital and is deemed detrimental to the financial integrity of the broker or dealer or may unduly jeopardize the broker's or dealer's ability to repay its creditors.[17] The SEC intends that this provision be used in emergency situations and the rule provides for an expeditious review of the SEC's action. For the reasons discussed in the preamble to the proposed rule and after receiving no comments to the contrary, the Department has determined that a similar provision will not be incorporated in the Treasury capital rule.

The Department's decision not to enact a corresponding order provision is

[10] The Treasury capital rule requires that a government securities broker or dealer maintain a capital level of the greater of (i) 120% of total haircuts; or (ii) the minimum dollar capital amounts, computed by deducting total haircuts from liquid capital, applicable to its business.

[11] 17 CFR 240.15c3–3(k)(2)(i).

[12] *See Supra* note 1.

[13] 17 CFR 402.2(i).

[14] Excess liquid capital is that amount of liquid capital which exceeds the greater of the amount of capital required under (i) § 402.2(a); or (ii) § 402.2 (b) or (c) as applicable.

[15] If prior notification is required, the post-withdrawal notification must also be filed.

[16] 17 CFR 405.2 requires certain government securities brokers and dealers to file monthly and quarterly financial reports.

[17] 17 CFR 240.15c3–1(e)(3).

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supported by the fact that the SEC has existing temporary cease and desist authority. A temporary cease and desist order, while different from a capital withdrawal order, serves a similar purpose. Both are emergency remedies that can be expeditiously applied. Prior to issuing a temporary cease and desist order, the SEC must provide notice and opportunity for a hearing unless the SEC "* * * determines that notice and hearing prior to entry would be impracticable or contrary to the public interest." [18]

The more limited scope of the temporary cease and desist order is not problematic to the Department because the authority provides the SEC with the ability to issue such an order not only if a rule violation has occurred but also if one is threatened. Because the SEC is the appropriate regulatory agency for government securities brokers or dealers subject to § 402.2, an impending violation of a § 402.2 requirement could be cause for the issuance of a temporary cease and desist order. As discussed more fully in the preamble to the proposed rule, the Department believes that, in lieu of developing a separate capital withdrawal order provision, it should rely on the SEC's existing cease and desist order authority.

Consistent with this approach, the Department also is excluding this provision of Rule 15c3–1 from the compliance requirements for those government securities brokers and dealers registered under Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) that are subject to the SEC capital rule (i.e., interdealer brokers operating under § 402.1(e) and futures commission merchants).

In adopting the withdrawal provisions, the Department has restructured certain related definitions of terms into a Miscellaneous Provisions paragraph (i)(3) and has added a description of what constitutes an advance or loan of liquid capital, which is one component of the restricted activities.

C. Conforming Change

Due to the revisions of the minimum capital requirements under both the SEC and Treasury capital rules, a conforming change is required in the recordkeeping provisions of part 404. Specifically, paragraph 404.2(a)(4) contains references to the minimum dollar capital amounts required of government securities clearing brokers and dealers. The Department is revising these references in accordance with the fully phased-in minimum capital level of $250,000 required of clearing firms.

III. Special Analyses

It has been determined that these amendments are not a "significant regulatory action" as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

In the preamble to the proposed rules, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Department certified that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final rules being adopted herein and in light of the fact that no comments were received, the Department has concluded that there is no reason to alter the previous certification.

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1535–0089.

Estimated total annual reporting burden: 5 hours.
Estimated average annual burden per respondent: 1 hour.
Estimated number of respondents: 5.
Estimated annual frequency of response: Twice.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Forms Management Branch, Bureau of the Public Debt, Department of the Treasury, Parkersburg, West Virginia 26106–1328; and to the Office of Management and Budget, Paperwork Reduction Project 1535–0089, Attention: Desk Officer for Department of the Treasury, Washington, DC 20503.

List of Subjects

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR chapter IV is amended as follows:

PART 402—FINANCIAL RESPONSIBILITY

1. The authority citation for part 402 is revised to read as follows:

Authority: 15 U.S.C. 78o–5(b)(1)(A), (b)(4).

2. Section 402.1 is amended by revising paragraphs (d) and (e)(1) to read as follows:

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

* * * * *

(d) *Futures commission merchants.* A futures commission merchant subject to § 1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of § 402.2 but rather to the capital requirement of § 1.17 or § 240.15c3–1, except paragraph (e)(3) thereof, of this title, whichever is greater.

(e) *Government securities interdealer broker.* (1) A government securities interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of § 402.2 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1), except paragraphs (c)(2)(ix) and (e)(3) thereof, and paragraphs (e)(3) through (8) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

* * * * *

3. Section 402.2 is amended by revising paragraphs (b), (c) and (i), and by adding an OMB parenthetical at the end of the section to read as follows:

§ 402.2 Capital requirements for registered government securities brokers or dealers.

* * * * *

(b)(1) *Minimum liquid capital for brokers or dealers that carry customer accounts.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of § 240.15c3–1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than $250,000 (see paragraph (a) of Appendix E to this section, § 402.2e, for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

(2) *Minimum liquid capital for brokers or dealers that carry customer accounts, but do not generally hold customer funds or securities.* Notwithstanding the provisions of paragraphs (a) and (b)(1) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and is exempt from the provisions of § 240.15c3–3 of this title, as made applicable to government securities brokers and dealers by § 403.4 of this chapter, pursuant to paragraph (k)(2)(i) thereof (17 CFR 240.15c3–3(k)(2)(i)), shall have and maintain liquid capital in an amount not less than $100,000 (see paragraph (b) of Appendix E to this section, § 402.2(e), for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

(c)(1) *Minimum liquid capital for introducing brokers that receive securities.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that introduces on a fully disclosed basis transactions and accounts of customers to another registered or noticed government securities broker or dealer but does not receive, directly or indirectly, funds from or for, or owe funds to, customers, and does not carry the accounts of, or for, customers shall have and maintain liquid capital in an amount not less than $50,000 (see paragraph (c) of Appendix E to this section, § 402.2(e), for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section. A government securities broker or dealer operating pursuant to this paragraph (c)(1) may receive, but shall not hold customer or other broker or dealer securities.

(2) *Minimum liquid capital for introducing brokers that do not receive or handle customer funds or securities.* Notwithstanding the provisions of paragraphs (a), (b) and (c)(1) of this section, a government securities broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers, and does not carry accounts of, or for, customers and that effects ten or fewer transactions in securities in any one calendar year for its own investment account shall have and maintain liquid capital in an amount not less than $25,000 (see paragraph (d) of Appendix E to this section, § 402.2(e), for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

* * * * *

(i) *Provisions relating to the withdrawal of equity capital.*

(1) *Notice Provisions.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without providing written notice, given in accordance with paragraph (i)(1)(iv) of this section, when specified in paragraphs (i)(1) (i) and (ii) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the government securities broker's or dealer's excess liquid capital. A government securities broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the government securities broker's or dealer's excess liquid capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its designated examining authority. When a government securities broker or dealer makes a withdrawal with the consent of its designated examining authority, it shall in any event comply with paragraph (i)(1)(ii) of this section; and

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the government securities broker's or dealer's excess liquid capital.

(iii) This paragraph (i)(1) of this section does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a government securities broker or dealer and an affiliate where the government securities broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any such 30 calendar day period, on a net basis, equal $500,000 or less.

(iv) Each required notice shall be effective when received by the Commission in Washington, DC, the regional or district office of the Commission for the area in which the government securities broker or dealer has its principal place of business, and the government securities broker's or dealer's designated examining authority.

(2) *Withdrawal Limitations.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or a partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, Appendix D to SEC Rule 15c3–1, modified as provided in Appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within 180 calendar days following such withdrawal, advance or loan, either:

(i) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(ii) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(iii) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defined in § 240.15c3–1(d).

(3) *Miscellaneous Provisions.* (i) Excess liquid capital is that amount in excess of the amount required by the greater of § 402.2(a) or, §§ 402.2 (b) or (c), as applicable. For the purposes of paragraphs (i)(1) and (i)(2) of this section, a government securities broker or dealer may use the amount of excess liquid capital, liquid capital and total haircuts reported in its most recently required filed Form G–405 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess liquid capital or total haircuts. The government securities broker or dealer must assure itself that the excess liquid capital, liquid capital or the total haircuts reported on the most recently required filed Form G–405 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or

[18] 15 U.S.C. 78u–3(c)(1).

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stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (i)(1) and (i)(2) of this section shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances or loans for purposes of paragraphs (i)(1) and (i)(2) of this section.

(iv) For the purposes of this subsection (i), any transaction between a government securities broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the government securities broker's or dealer's liquid capital shall be deemed to be an advance or loan of liquid capital.

* * * * *

(Approved by the Office of Management and Budget under control number 1535–0089)

4. By adding § 402.2e (Appendix E) as follows:

§ 402.2e Appendix E—Temporary Minimum Requirements.

(a) A government securities broker or dealer that falls within the provisions of paragraph (b)(1) of § 402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of § 402.2(a); or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) $25,000 through June 30, 1995;

(ii) $100,000 from July 1, 1995 through December 31, 1995;

(iii) $175,000 from January 1, 1996 through June 30, 1996; and

(iv) $250,000 from July 1, 1996 and thereafter.

(b) A government securities broker or dealer that falls within the provisions of paragraph (b)(2) of § 402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of § 402.2; or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) $25,000 through June 30, 1995;

(ii) $50,000 from July 1, 1995 through December 31, 1995;

(iii) $75,000 from January 1, 1996 through June 30, 1996; and

(iv) $100,000 from July 1, 1996 and thereafter.

(c) A government securities broker that falls within the provisions of paragraph (c)(1) of § 402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of § 402.2; or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) $5,000 through June 30, 1995;

(ii) $20,000 from July 1, 1995 through December 31, 1995;

(iii) $35,000 from January 1, 1996 through June 30, 1996; and

(iv) $50,000 from July 1, 1996 and thereafter.

(d) A government securities broker that falls within the provisions of paragraph (c)(2) of § 402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of § 402.2; or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) $5,000 through June 30, 1995;

(ii) $11,000 from July 1, 1995 through December 31, 1995;

(iii) $18,000 from January 1, 1996 through June 30, 1996; and

(iv) $25,000 from July 1, 1996 and thereafter.

* * * * *

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

5. The authority citation for Part 404 is revised to read as follows:

Authority: 15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(4).

6. Section 404.2 is amended by revising paragraph (a)(4) to read as follows:

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) * * *

(4) Paragraph 240.17a–3(b)(1) is modified to read as follows:

"(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided*, that the clearing broker or dealer has and maintains net capital of not less than $250,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $250,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof.".

* * * * *

§§ 400.4, 400.5, 401.9, 403.5, 404.2, 404.3, 404.4, 404.5, 405.2, and 450.4 [Amended]

7. For each section indicated in the list above, remove the Office of Management and Budget control number from the parenthetical statement at the end of each section, and add in its place "1535–0089":

Dated: February 15, 1995.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 95–4941 Filed 2–28–95; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 94N–0302]

Antibiotic Drugs; Bleomycin Sulfate; Stay of Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay of regulation.

SUMMARY: The Food and Drug Administration (FDA) is staying a regulation that established standards for an antibiotic drug, bleomycin sulfate bulk drug substance. This action is being taken in response to a petition for stay of action.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1994 (59 FR 50484), FDA published, as a final rule to become effective on November 3, 1994, a new antibiotic regulation setting forth standards for a bleomycin sulfate bulk drug substance (21 CFR 450.10). This new regulation differed from the monograph standards for sterile bleomycin sulfate bulk drug, set forth in 21 CFR 450.10a, in two respects: The new regulation did not require sterility at the bulk stage, and the new regulation did not require testing for pyrogens at the bulk stage.

Bristol-Myers Squibb Co., the manufacturer of the innovator product, filed a petition for stay of action pursuant to 21 CFR 10.35, objecting to FDA's decision to promulgate the new regulation without notice and a prior opportunity for public comment. On November 9, 1994, FDA agreed to stay the effective date of the monograph for bleomycin sulfate bulk drug substance in order to reconsider the manner in which the agency promulgated the new monograph. A copy of FDA's letter notifying Bristol-Myers Squibb Co. of the stay is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

List of Subjects in 21 CFR Part 450

Antibiotics.

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 450.10 [Stayed]

2. Section 450.10 *Bleomycin sulfate* is stayed effective November 9, 1994.

Dated: February 15, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–5058 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for nine new animal drug applications (NADA's) from Agri-Bio Corp. to Hoffman-LaRoche, Inc. This document also corrects an inadvertent error in the animal drug regulations.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Agri-Bio Corp., 966 Dorsey St., Gainesville, GA 30501, has informed FDA that it has transferred the ownership of, and all rights and interests in, the following approved NADA's to Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199:

NADA No.	Ingredient(s)	Trade name(s)
128–686	Salinomycin	Bio-Cox.
132–447	Salinomycin and Roxarsone	Bio-Cox and 3-Nitro.
134–284	Salinomycin and Bambermycins	Bio-Cox and Flavomycins.
134–185	Salinomycin and Roxarsone and Bambermycins	Bio-Cox and 3-Nitro Flavomycin.
135–321	Salinomycin and Roxarsone and Bacitracin-MD	Bio-Cox and 3-Nitro and BMD.
135–746	Salinomycin and Bacitracin-MD	Bio-Cox and BMD.
137–536	Salinomycin and Roxarsone and Bacitracin Zn	Bio-Cox and 3-Nitro and Albac.
137–537	Salinomycin and Lincomycin	Bio-Cox and Lincomix.
140–581	Salinomycin and Roxarsone and Lincomycin	Bio-Cox and 3–Nitro and Lincomix.

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and 558.95(b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) to reflect the change of sponsor.

In the **Federal Register** of January 13, 1995 (60 FR 3079 at 3080), FDA amended § 558.550; this amendment inadvertently failed to reflect a previous amendment published in the **Federal Register** of December 29,1994 (59 FR 67185). The December 29, 1994, document amended § 558.550(a)(1) and (a)(2) to provide for specific levels of Type A articles approved for use for the specified sponsors. The January 13, 1995, document amended § 558.550(a)(2) to add approved referenced uses as stated in § 558.550(b). This document corrects the inadventent error made in the final rule of January 13, 1995.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Agri–Bio Corp." and in the table in paragraph (c)(2) by removing the entry for "042835".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

4. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) by removing "042835" and adding in its place "000004".

5. Section 558.550 is amended in paragraph (a)(1) by removing the number "042835" and adding in its place "000004", and by revising paragraph (a)(2) to read as follows:

§ 558.550 Salinomycin.

(a) * * *

(2) To 012799 for use of 30 and 60 grams per pound as in paragraphs (b)(1)(i), (b)(1)(iii) through (b)(1)(xvi),

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and (b)(3)(i) through (b)(3)(iii) of this section.

* * * * *

Dated: February 9, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–4912 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Melengestrol Acetate and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The supplemental NADA provides for use of single ingredient Type A medicated articles containing melengestrol acetate (MGA) and tylosin to manufacture certain combination drug Type B and Type C medicated feeds for heifers fed in confinement for slaughter. The supplement provides for use of a dry MGA Type A article to make a dry Type B or Type C medicated feed.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 138–995, MGA with Tylan (MGA with tylosin), which provides for use of approved MGA and tylosin Type A medicated articles to make Type B and Type C medicated feeds for heifers being fed in confinement for slaughter. The supplement removes the requirement for making dry pelleted Type B or C medicated feed. Therefore, dry MGA and tylosin Type A articles may be used to make a dry Type B or C medicated feed containing MGA and tylosin.

This supplement is approved as of January 13, 1995. Accordingly, 21 CFR 558.342(c)(4)(ii)(C) is amended by removing the existing reference to a pelleted medicated feed to reflect this approval.

This is a manufacturing supplement to an approved NADA. Approval of this supplement does not require added safety or efficacy data or information. Therefore, a freedom of information summary as provided in part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement for food-producing animals does not qualify for marketing exclusivity because the supplement does not contain new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.342 [Amended]

2. Section 558.342 *Melengestrol acetate* is amended in paragraph (c)(4)(ii)(C) by removing the word "pelleted".

Dated: February 9, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–4913 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8578]

RIN 1545–AP23

Election Out of Subchapter K for Producers of Natural Gas; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This document contains a correction to final regulations [TD 8578] which was published in the **Federal Register** for Friday, December 23, 1994 (59 FR 66181). The final regulations provide that the co-producers under a joint operating agreement must use one of two permissible methods described in the regulations in reporting income from gas sales and certain related deductions and credits.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Grace Kim, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 761 of the Internal Revenue Code.

Need for Correction

As published, TD 8578 contains a typographical error that is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 94–31291, is corrected as follows:

On page 66183, column 2, § 1.761–2, paragraph (d)(2)(i), ninth line from the bottom of the paragraph, regulation section "§ 1.4461(e)(3)" is corrected to read "§ 1.446–1(e)(3)".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–4902 Filed 2–28–95; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5130–5]

State of Tennessee, Metropolitan Government of Nashville and Davidson County; Request for Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Tennessee, Metropolitan Government of Nashville and Davidson County has applied for approval of its Regulation No. 4, Section 4–10, Regulations for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards From Dry Cleaning Facilities under section 112(l) of the Clean Air Act (CAA). The Environmental Protection Agency (EPA) has reviewed the application and has made the decision that it satisfies all of the requirements necessary to qualify as a complete submittal. Thus, the Metropolitan Government of Nashville and Davidson County's Regulation No. 4, Section 4–10, should be implemented and enforced in place of EPA's 40 CFR part 63, subpart M.

DATES: This action will be effective on April 17, 1995, unless adverse or critical comments are received by March 31, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent concurrently to Douglas Neeley, Region 4 EPA, Air Programs Branch, 345 Courtland St. NE., Atlanta, GA 30365, Phone: (404) 347–3555 and to Mr. Paul Bontrager, Bureau of Environmental Health Services, Metropolitan Government of Nashville and Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203, Phone: (615) 340–5653. Copies of Metropolitan Government of Nashville and Davidson County's submittal are available during normal business hours at the following addresses for inspection and copying:

Bureau of Environmental Health Services Metropolitan Government of Nashville and Davidson County, 311 23rd Avenue, North, Nashville, Tennessee;

U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460, Phone: 202/382–5926; and

U.S. EPA Region 4, Regional Library, 345 Courtland St. NE., Atlanta, GA 30365, Phone number: (404) 347–3555, X6050.

FOR FURTHER INFORMATION CONTACT: Anthony Toney, Region 4 EPA, Air Programs Branch, 345 Courtland St. NE., Atlanta, GA 30365, Phone: (404) 347–3555, ext. 4200.

SUPPLEMENTARY INFORMATION:

A. Background

Section 112(l) of the Clean Air Act as amended in 1990, enables the EPA to approve state air toxic programs or rules to operate in place of the Federal air toxic program. Approval is granted by the EPA if the Agency finds that the state program or rule: (1) Is "no less stringent" than the corresponding Federal rule or program, (2) provides adequate authority and resources, (3) schedule for implementation and compliance is sufficiently expeditious, and (4) is otherwise in compliance with Federal guidance.

B. This is an initial request for delegation under the provisions of 40 CFR part 63, subpart E. No previous delegation of rules or regulations pursuant to title III of the Clean Air Act has been approved.

The changes from the federal rule, 40 CFR part 63, subpart M, are: (1) The lowering of a required emission rate; (2) An increase in the frequency of required monitoring; and (3) A decrease in the amount of time allowed for a source to come into compliance. These changes occur in subsections 4–10(b)(23); 4–10(c)(10); and 4–10(a) of the Metropolitan Government of Nashville and Davidson County's Regulation No. 4.

EPA is approving the Metropolitan Government of Nashville and Davidson County's air toxics Regulation No. 4, Section 4–10, as a direct final rule without prior proposal because the Agency views this as a noncontroversial delegation request and anticipates no adverse comments. If no adverse comments are received in response to this direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent action. Any parties interested in commenting on this action should do so at this time.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Title III of the Clean Air Act as amended, 42 U.S.C. 2399.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–5024 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP1F3989, 1F3995/R2109; FRL–4938–3]

RIN 2070–AB78

Pesticide Tolerances for Fenbuconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the fungicide fenbuconazole [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole, in or on the raw agricultural commodities pecans at 0.1 part per million (ppm) and stone fruit crop group (except plums and prunes) at 2.0 ppm. Rohm & Haas Co. submitted petitions requesting this regulation to establish maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective on March 1, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F3989, 1F3995/R2109], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20450. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations

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Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 13, 1991 (56 FR 65080), which announced that Rohm and Haas, Agricultural Chemicals, Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 1F3989 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole (*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile) in or on stone fruit crop group and dried prunes at 2.0 ppm. In the **Federal Register** of March 2, 1994 (59 FR 9985), EPA announced that Rohm and Haas had amended the petition to propose amending 40 CFR part 180 to establish a tolerance of 2.0 ppm in or on stone fruit crop group for fenbuconazole, (*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile), and its metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone.

EPA issued a notice, published in the **Federal Register** of December 13, 1991 (56 FR 65081), which announced that Rohm and Haas had filed pesticide petition (PP) 1F3995 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole (*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1-*H*-1,2,4-triazole)-1-propanenitrile) in or on pecans at 0.1 ppm. In the **Federal Register** of March 2, 1994 (59 FR 9985), EPA announced that Rohm and Haas had amended the petition to propose amending 40 CFR part 180 to establish a tolerance of 0.1 ppm in or on pecans for fenbuconazole (*alpha*-(2-(4-chlorophenyl)-ethyl)-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile), and its metabolites *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, and *alpha*-[2-[4-chlorophenyl)-2-oxoethyl]-*alpha*-phenyl-1*H*-1,2,4-triazole-1-propanenitrile. Rohm and Haas subsequently amended the petition to limit the stone fruit tolerances to stone fruit crop group (except plums and prunes). The Agency is editorially correcting the tolerance expression to read: combined residues of the fungicide, fenbuconazole [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole, in or on the raw agricultural commodities pecans at 0.1 part per million (ppm) and stone fruit crop group (except plums and prunes) at 2.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing.

The scientific data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} greater than 2 grams (g)/kilogram (kg).

2. A 13-week rat feeding study with a no-observed-effect-level (NOEL) of 20 ppm (1.3 milligrams(mg)/kg/day males and 1.5 mg/kg/day females) and a lowest-observed-effect-level (LOEL) of 80 ppm (5.1 mg/kg/day males and 6.3 mg/kg/day females), based on hepatotoxicity.

3. A 3-month mouse feeding study with a NOEL of 20 ppm (3.8 mg/kg/day males and 5.7 mg/kg/day females) and a LOEL of 60 ppm (11.1 mg/kg/day males and 17.6 mg/kg/day females) based on hepatotoxicity.

4. A 3-month dog feeding study with a NOEL of 100 ppm (3.3 mg/kg/day males and 3.5 mg/kg/day females) and LOEL of 400 ppm (13.3 mg/kg/day males and 14.0 mg/kg/day females), based on hepatocellular hypertrophy.

5. A 21-day rabbit dermal study with a NOEL greater than 1,000 mg/kg/day (limit dose).

6. A 78-week dietary carcinogenicity study in mice with a NOEL of 1.43 mg/kg/day and a LOEL of 28.6 mg/kg/day (males) and 92.9 mg/kg/day (females) based on hepatocellular enlargement and a greater incidence and severity of hepatocellular vacuolation. There was evidence of carcinogenicity based on the occurrence of increased trend for malignant liver tumors in males and an increase in benign and malignant liver tumors in females. The carcinogenic effects observed are discussed below.

7. A 24-month rat chronic feeding/carcinogenicity study with a NOEL of 40 ppm (3.03 mg/kg/day for females and 4.02 mg/kg/day for males) for systemic effects and a LEL of 800 ppm (30.62 mg/kg/day for males and 43.07 mg/kg/day for females) based on decreases in body weight gains and hepatocellular enlargement and vacuolization in females, and thyroid weight and histopathological changes in both sexes. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors in males. The carcinogenic effects observed are discussed below.

8. A 24-month male rat chronic feeding/carcinogenicity study with a NOEL of 800 ppm (30.41 mg/kg/day) and a LEL of 1,600 ppm (63.94 mg/kg/day) based on increased liver and thyroid weights and lesions. There was evidence of carcinogenicity based on the increased occurrence of thyroid follicular cell benign and malignant tumors. The carcinogenic effects observed are discussed below.

9. A 1-year dog chronic feeding study with a NOEL of 150 ppm (3.75 mg/kg/day) and the LOEL, based on decreases in body weight gain and increased liver weight, of 1,200 ppm (30 mg/kg/day).

10. A two generation reproduction study in rats with a parental and reproductive NOEL of 4 mg/kg/day (80 ppm) and a LOEL of 40 mg/kg/day (800 ppm), based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid/parathyroid weights.

11. A developmental toxicity study in rabbits with a maternal NOEL of 10 mg/kg/day, and a developmental NOEL of 30 mg/kg/day, and a maternal LOEL of 60 mg/kg/day due to only 1/19 (5%) of the pregnant does producing a viable fetus and no developmental LOEL (greater than 30 mg/kg/day).

12. A developmental toxicity study in rats with a maternal NOEL and developmental NOEL of 30 mg/kg/day and an LEL of 75 mg/kg/day due to decrease in maternal body weight compared to controls and increase in early and late resorption with a decrease in number of live fetuses per dam.

13. No evidence of gene mutation was observed in a test for induction of gene mutation at the HGPRT locus in Chinese hamster ovary cells. No increase in the number of cells with aberrations or observations per cell were noted in an *in vivo* cytogenetics assay using bone marrow from treated rats. No increase in unscheduled DNA synthesis in rat primary hepatocyte study was observed.

14. A rat metabolism study showed that radiolabeled fenbuconazole is rapidly absorbed, distributed, and excreted following oral administration in rats. Biliary excretion data indicated that systemic absorption of fenbuconazole was high for all dosing groups. The feces was the major route of excretion. Tissue distribution and bioaccumulation of fenbuconazole appeared to be minimal.

The Health Effects Division Carcinogenicity Peer Review Committee has concluded that the available data provide limited evidence of the carcinogenicity of fenbuconazole in mice and rats and has classified fenbuconazole as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992, Sept. 24, 1986) and recommended that for the purpose of risk characterization a low-dose extrapolation model applied to the experimental animal tumor data should be used for quantification for human risk ($Q1^*$). This decision was based on the induction of thyroid follicular cell adenomas and/or combined adenomas-carcinomas in male rats in two studies, both by pair-wise comparison with controls and by trend analysis. The studies were combined for the purpose of deriving the $Q1^*$. The $Q1^*$ for fenbuconazole is 1.65×10^{-2} $(mg/kg/day)^{-1}$ in human equivalents.

Based on assumptions that 100 percent of the pecan crop is treated and that residues are at the tolerance level, the upper-bound limit of the dietary carcinogenic risk for pecans is calculated in the range of 1 incidence in 100 million (9.0×10^{-9}). Based on assumption that stone fruit residues (except plums and prunes) are at the tolerance level and the limitation of production of the only fenbuconazole product registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA) for use on stone fruit to 28,500 pounds of active ingredient per year (calculated to be equivalent to treating 12.8% of the total U.S acreage of apricots, cherries, nectarines, and peaches per year), the upper-bound limit of the dietary carcinogenic risk for stone fruit group except plums and prunes is calculated in the range of 1 incidence in 1 million (1×10^{-6}).

Processing studies for pecans and stone fruit other than plums and prunes are not required. Therefore, food/feed additive tolerances are not needed in conjunction with these uses.

Using the NOEL of 3.0 mg/kg/day from the most sensitive species in the rat chronic feeding study with a 100-fold safety factor, the Reference Dose (RfD) for systemic effects is 0.03 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000604 mg/kg/day and utilizes 2 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroups in the population, nonnursing infants (less than 1 year old), the TMRC is 0.00516 mg/kg/day and utilizes 17 percent of the RfD.

The metabolism of fenbuconazole in plants is adequately understood. Due to a chemistry data gap for storage stability of fenbuconazole in other raw agricultural commodities [GLN 171-4(e)], EPA believes it is inappropriate to establish permanent tolerances for the uses of fenbuconazole at this time. However, based on apparent storage stability, EPA believes that the existing data support time-limited tolerances to December 31, 1998.

The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances. An analytical method, gas-liquid chromatography with a thermionic-specific detector with nitrogen selectivity, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-5232).

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action. The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the time-limited tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 15, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding § 180.480, to read as follows:

§ 180.480 Fenbuconazole; tolerances for residues.

(a) Time-limited tolerances, to expire on December 31, 1998, are established for combined residues of the fungicide fenbuconazole [*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, *cis*-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and *trans*-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole, in or on the following raw agricultural commodities:

Commodity	Parts per million
Pecans	0.1
Stone fruit crop group (except plums and prunes)	2.0

(b) Residues in these commodities not in excess of the established tolerance resulting from the uses described in paragraph (a) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the fungicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 95-5019 Filed 2-28-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 4F4351/R2108; FRL-4938-1]

RIN 2070-AB78

Candida Oleophila Isolate I-182; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of the post-harvest biological fungicide *Candida oleophila* isolate I-182. Ecogen, Inc., requested this tolerance exemption.

EFFECTIVE DATE: This regulation becomes effective on March 1, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4351/R2108], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: CS51L6, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8263.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 28, 1994 (59 FR 49396), which announced that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047, had submitted pesticide petition (PP) 4F4351 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosemtic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for residues of *Candida oleophila* isolate I-182 in or on all raw agricultural commodities. Errors in the September 28, 1994 notice of filing were corrected in the **Federal Register** of November 2, 1994 (59 FR 54911), to specify that *C. oleophila* isolate I-182 is a biological fungicide, not an insecticide, and that the area of title 40 of the Code of Federal Regulations (CFR) to be amended is 40 CFR part 180, not 40 CFR 180.1001(c) and (d).

There were no comments received in response to these notices of filing. The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance are summarized as follows:

Rats have been challenged with high doses of the pure preparations of *C. oleophila* by the oral, pulmonary, and interperitoneal routes of exposure. In each of these tests, the test animals survived to the end of the study without visible signs of toxicity or pathogenicity from the presence of *C. oleophila*. The test microbe was not isolated from any organs or tissues on day 3 in the oral and pulmonary studies and on day 7 in the interperitoneal injection study. These findings indicate that the test microbe was recognized by the immune system and cleared from the rats by the normal routes. In addition, the end-product formulation of *C. oleophila* was tested for dermal toxicity/irritation, eye irritation, and acute oral toxicity and showed no mortality or significant signs of toxicity.

Candida oleophila isolate I-182 is a microbial pesticide as defined by 40 CFR 158.65. The toxicity studies provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from the use of the product to control post-harvest decay in citrus and pome fruit.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. Enforcement actions based on the level of residue found in a commodity are not expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. *Candida oleophila* isolate I-182 is considered useful for the purposes for which the exemption from tolerance is sought. Based on the information and data considered, the Agency concludes

that the establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1144, to read as follows:

§ 180.1144 Candida oleophila isolate I-182; exemption from the requirement of a tolerance.

Candida oleophila isolate I-182, when used as a post-harvest biological fungicide, is exempted from the requirement of a tolerance in or on all raw agricultural commodities.

[FR Doc. 95-4599 Filed 2-28-95; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 721

[OPPTS-50620; FRL-4868-4]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is May 1, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on March 15, 1995. If EPA receives notice before March 31, 1995 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the substance for which the notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPPTS-50620 and the name(s) of the chemical substance(s) subject to the comment. All comments should be sent in triplicate to: Environmental Protection Agency, OPPT Document Receipt Officer (7407), 401 M St., SW., Rm. E-G099, Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are

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more fully set out in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the action taken by EPA in the section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart B where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII. of this preamble.

Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI. of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the section 5(e) order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for two PMN substances, P–93–1096 and P–94–138, which are subject to a final 5(e) consent order. The 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the 5(e) order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a Notice of Commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final 5(e) consent order under TSCA.

PMN Number P–93–193

Chemical name: Propanol, [2-(1,1-dimethyl- ethoxy)methylethoxy]-.
CAS number: 132739–31–2.
Effective date of section 5(e) consent order: May 7, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures and environmental release.
Recommended testing: EPA has determined that the results of an Ames assay (with and without activation)(40 CFR 798.5265), an in vivo mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), a one-specie (oral) developmental toxicity test (40 CFR 798.4900), and a 90–day subchronic oral toxicity with functional observation battery (FOB) study, neuropathology, and motor activity (NTIS PB–91–145617 neurotoxicity guideline) would help characterize possible health effects of the substance. EPA has also determined that an inherent biodegradability in soil test (40 CFR 796.3400), a semicontinuous activated sludge test (40 CFR 796.3340), and a soil thin layer chromatography (40 CFR 796.2700) or sediment and soil adsorption isotherm test (40 CFR 796.2750) would help characterize possible environmental effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.8170.

PMN Numbers P–93–313 through 316

Chemical name: (generic) Carboxylic acids, (C6–C9) branched and linear.
CAS number: Not available.
Effective date of section 5(e) consent order: April 16, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concern: Toxicity testing of the PMN substances demonstrated potential chronic toxicity to fish and aquatic organisms.
Recommended testing: The Agency recommends a daphnid chronic toxicity study (40 CFR 797.1330) for P–93–313 and P–93–316 and a fish early life stage toxicity study (40 CFR 797.1600) for P–93–316 to characterize potential environmental effects.
CFR citation: 40 CFR 721.2088.

PMN Number P–93–339

Chemical name: (generic) Methacrylic ester.
CAS number: Not available.
Effective date of section 5(e) consent order: November 4, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: The substance may cause cancer based on toxicity data for similar acrylates which have been shown to cause cancer in test animals.
Recommended testing: EFA has determined that the results of a two-species rodent bioassay (40 CFR 798.3300) would help characterize the carcinogenic effects of the PMN substance. Toxicity data on representative members of the acrylate/methacrylate class of chemical substances being developed by certain acrylate and methacrylate munufacturers may also be useful in evaluating the risk posed by the PMN substance.
CFR citation: 40 CFR 721.3028.

PMN Numbers P–93–374 and P–93–375

Chemical name: (generic) Substituted benzotriazole derivatives.
CAS number: Not available.
Effective date of section 5(e) consent order: January 14, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that these substances may present an unreasonable risk of injury to health.
Toxicity concern: Based on analogy to similar chemicals, the PMN substances may cause systemic or reproductive effects in test animals.
Recommended testing: The Agency has determined that the results of a 90–day subchronic toxicity gavage study in rats (40 CFR 798.1650) would help characterize possible human health effects.
CFR citation: 40 CFR 721.1760.

PMN Number P–93–578

Chemical name: Methylenebisbenzotriazole.
CAS number: Not available.
Effective date of section 5(e) consent order: February 4, 1993.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Similar chemicals have been shown to cause systemic and reproductive toxicity in test animals.
Recommended testing: A 90–day gavage study in rats (40 CFR 798.2650) would help characterize systemic and reproductive effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.1755.

PMN Number P–93–721

Chemical name: Furan, 2-(ethoxymethyl)tetrahydro-.
CAS number: Not available.
Effective date of section 5(e) consent order: May 7, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial human exposures and environmental release.
Recommended testing: EPA has determined that an activated sludge test and an aerobic aquatic biodegradation study (40 CFR 796.3100) would help characterize possible environmental effects of the substance. EPA has determined that the results of an acute oral study (40 CFR 798.1175), an Ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a 28–day repeated dose oral study in rats (OECD Guideline No. 407) would help characterize possible health effects of the substance. The consent order contains two production volume triggers. The PMN submitter has agreed not to exceed the first production volume limit without performing the environmental effects tests. The PMN submitter has agreed not to exceed the second production volume limit without performing the health effects tests.
CFR citation: 40 CFR 721.3815.

PMN Number P–93–1043

Chemical name: (generic) Polysulfide mixture.
CAS number: Not available.
Effective date of section 5(e) consent order: April 15, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i), (ii)(I), and (ii)(II) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment and that this substance is expected to be produced in substantial quantities and that there may be significant or substantial human exposure.
Toxicity concern: Structurally similar chemicals have been shown to cause toxicity to aquatic organisms.
Recommended testing: EPA has determined that an Ames assay (with and without activation) (40 CFR 798.5265); an in vivo mouse micronucleus test (intraperitoneal) (40 CFR 798.5395); an oral LD50 study in rats (40 CFR 798.1175); a 28–day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (NTIS:PB 91–154617), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (NTIS:PB 91-154617); and developmental toxicity testing (40 CFR 798.4900; oral route: one species) would better characterize the potential human health effects. The PMN submitter has agreed not to exceed

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the production volume limit without performing these tests. EPA has determined that a 96–hour bioassay in algae (40 CFR 797.1050); a 48–hour LC50 test in daphnia (40 CFR 797.1300); a 96–hour test in fish (40 CFR 797.1400; a SCAS test (40 CFR 797.3340); an aerobic aquatic biodegradation (40 CFR 797.3100); and an indirect photolysis test (40 CFR 796.3765), would better characterize the potential environmental effects. These tests would be required to evaluate the potential environmental and fate effects which may be caused by the PMN substance if the substance were to be released into the waters of the United States.
CFR citation: 40 CFR 721.9540.

PMN Number P–93–1111

Chemical name: Butanamide, 2,2′-[3,3′-di-chloro[1,1′-biphenyl]-4,4′-diyl]bisazobis[*N*-2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl]-3-oxo-.
CAS number: 78245–94–0.
Effective date of section 5(e) consent order: May 27, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Structurally similar chemicals have been shown to cause carcinogenicity and mutagenicity in test animals and toxicity to aquatic organisms.
Recommended testing: The following data are recommended to help characterize the PMN substance's potential to cause human health and environmental effects: Monitoring data to detect the presence of dichlorobenzidine (DCB) under actual conditions of use; monitoring data to detect airborne concentrations of DCB; monitoring data on releases of DCB to surface waters. (See Agency for guidelines and information on performing monitoring studies.) Also recommended to help determine the PMN substance's potential to cause environmental effects: An anaerobic biodegradation (40 CFR 797.3140).
CFR citation: 40 CFR 721.1907.

PMN Number P–93–1308

Chemical name: (generic) Dialkyl ether.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 180 parts per billion (ppb) of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters resulting in concentrations above 180 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 180 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9505.

PMN Number P–93–1447

Chemical name: (generic) Bis(imidoethylene) benzene.
CAS number: Not available.
Basis for action: The PMN substance will be used as a rubber additive. Based on submitted toxicity testing of the substance, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 2 ppb of the PMN substance in surface waters and that general systemic effects may occur to exposed workers. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters and significant worker exposure would not occur because the substance was not manufactured domestically. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(3)(i).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance. EPA has determined that a 90–day subchronic study (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.1187.

PMN Number P–93–1471

Chemical name: (generic) Allyloxysubstituted heterocycle.
CAS number: Not available.
Basis for action: The PMN substance will be used as an intermediate. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 70 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters resulting in concentrations above 70 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 70 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4110.

PMN Number P–94–34

Chemical name: 2,4-Imidazolidinedione, bromochloro-5,5-dimethyl-.
CAS number: Not available.
Basis for action: The PMN substance will be used as described in the PMN. Based on analogy to a structurally similar compound, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 7 ppb of the PMN substance in surface waters.

EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance will be used as a solid and would not be released to surface waters resulting in concentrations above 10 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 10 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4470.

PMN Numbers P–94–322 and P–94–323

Chemical name: (generic) Polyfluoro-carboxylates.
CAS number: Not available.
Basis for action: The substances will be used as intermediates. Based on analogy to similar chemicals, EPA expects the substances to cause developmental toxicity, systemic toxicity, and acute toxicity as well as toxicity to aquatic organisms at a concentration of 5 ppb of the substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters and the substances would be used as an intermediate which would not result in exposure to workers. EPA has determined that manufacture, processing, and use of the substances other than as a site-limited intermediate could result in releases to surface waters and exposures to workers. Based on this information, the substances meet the concern criteria at § 721.170(b)(4)(ii) and (b)(3)(ii).
Recommended testing: EPA has determined a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600) and a 21–day chronic daphnid toxicity test (40 CFR 797.1350) would help characterize the environmental effects of the substance. EPA has also determined that a 90–day subchronic study (40 CFR 798.2650) and a two-species developmental toxicity study (40 CFR 798.4900) would help characterize the health effects of the substances.
CFR citation: 40 CFR 721.3790.

PMN Numbers P–94–325 through 327

Chemical name: (generic) Alkoxylated alkyldiethylenetriamine, alkyl sulfate salts.
CAS number: Not available.
Basis for action: The PMN substances will be used as cellulose softeners. Based on analogy of the substances to cationic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 4 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that consumer uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.2410.

PMN Number P–94–422

Chemical name: (generic) Branched synthetic fatty acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as an industrial lubricant raw material. Based on analogy to 2-ethylhexanoic acid and valproic acid, the PMN substance may cause liver toxicity and developmental toxicity. EPA has determined that persons exposed to the PMN substance dermally and by inhalation may be at risk for these effects. EPA determined that importation of the substance as an industrial lubricant raw material did not present an unreasonable risk because there were no significant dermal or inhalation exposures. EPA has determined that domestic manufacture, use other than as an intermediate, or nonindustrial use may result in significant dermal and inhalation exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that an oral developmental toxicity study in two species (40 CFR 798.4900) and an oral 90–day subchronic study (40 CFR 798.2650) would help characterize the health effects of the PMN substance.
CFR citation: 40 CFR 721.3627.

PMN Number P–94–499

Chemical name: (generic) Substituted azo metal complex dye.
CAS number: Not available.
Basis for action: The PMN substance will be used as a textile dye. Based on analogy to similar substances, the PMN substance may cause cancer. Based on submitted test data and analogy to similar substances, the PMN substance is toxic to aquatic organisms. EPA has determined that exposed workers may be at risk for cancer and water releases may be toxic to aquatic organisms. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant environmental releases or worker exposures. EPA has determined that environmental releases or water releases during manufacturing may result in significant human or environmental exposures as described in § 721.170(c)(2)(ii). Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(4)(i).
Recommended testing: EPA has determined that a 2–year two-species oral bioassay (40 CFR 798.3300) or other testing to address the bioavailability of metabolites of concern will help characterize the health effects of the PMN substance. EPA has also determined that a daphnid acute toxicity study (40 CFR 797.1300) and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4594.

PMN Number P–94–682

Chemical name: (generic) Hydroxyalkyl-quinoline dioxoindan dialkylcarboxamide.
CAS number: Not available.
Basis for action: The PMN substance will be used as a color component. Based on analogy to phenols, EPA is concerned that chronic toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters at concentrations above 1 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600), and a 21–day chronic daphnid toxicity test (40 CFR 797.1350) would help characterize the environmental effects of the substance.
CFR citation: 40 CFR 721.2085.

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PMN Number P–94–982

Chemical name: (generic) Methylamine esters.
CAS number: Not available.
Basis for action: The PMN substances will be used as an intermediate. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would be used as an intermediate limiting release to surface waters. EPA has determined that other uses of the substances may result in releases to surface water at concentrations above 1 ppb. Based on this information, the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a fish acute toxicity study modified with humic acid (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.3034.

PMN Number P–94–1009

Chemical name: (generic) Trifunctional aliphatic blocked urethane cross-linker.
CAS number: Not available.
Basis for action: The PMN substance will be used as a coating. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substance in surface waters. EPA determined that use of the substance as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters resulting in concentrations above 1 ppb. EPA has determined that other uses of the substance may result in releases to surface water at concentrations above 1 ppb. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a fish acute toxicity study modified with humic acid (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9962.

PMN Number P–94–1039

Chemical name: (generic) Diazo substituted carbomonocyclic metal complex.
CAS number: Not available.
Basis for action: The PMN substance will be used as a leather dye. Based on analogy to similar substances, the PMN substance may cause cancer, developmental toxicity, reproductive toxicity, chronic toxicity to the liver, kidneys, and blood, and environmental toxicity to aquatic organisms. EPA has determined that persons exposed to the PMN substance through inhalation and aquatic organisms exposed to the substance in surface waters may be at risk for these toxic effects. EPA has determined that use of the substance as described in the PMN did not present an unreasonable risk because there were no significant environmental releases or worker exposures from manufacturing. EPA has determined that environmental releases and worker exposures during manufacturing may result in significant exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that a 90–day oral subchronic study (40 CFR 798.2650), a two-generation reproduction study (40 CFR 798.4700), a developmental toxicity study (40 CFR 708.4900), a 2–year two-species oral bioassay (40 CFR 798.3300), and a chronic 60–day fish early life stage toxicity test in rainbow trout (40 CFR 797.1600), would help characterize the toxicity effects of the PMN substance.
CFR citation: 40 CFR 721.4596.

PMN Number P–94–1129

Chemical name: (generic) Alkylcyano substituted pyridazo benzoate.
CAS number: Not available.
Basis for action: The PMN substance will be used as a color component. Based on analogy to esters and neutral organic compounds, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 10 ppb of the PMN substance in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substance would not be released to surface waters. EPA has determined that other uses of the substance may result in releases to surface waters which exceed the concentration. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.8670.

PMN Numbers P–94–1238, 1239, 1241, 1242, and 1243

Chemical name: Propanenitrile, 3-[amino, *N*-tallowalkyl] dipropylenetri- and tripropylene-tri- and propanenitrile, 3-[amino, (C_{14-18} and C_{16-18} unsaturated alkyl)] trimethylenedi-, dipropylenetri-, and tripropylenetetra-.
CAS number: Not available.
Basis for action: The PMN substances will be used as intermediates. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.8155.

PMN Numbers P–94–1244 through 1246

Chemical name: Amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl)] dipropylene-tri-, tripropylenetetra-, and tetrapropylenepenta-.
CAS number: Not available.
Basis for action: The PMN substances will be used as an asphalt emulsion. Based on analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 1 ppb of the PMN substances in surface waters. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal acute toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.642.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that, for 12 of the substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the section 5(e) orders.

In the other 28 cases for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that: EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective on May 1, 1995, unless EPA receives a written notice by March 31, 1995 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30–day comment period. This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests. However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the section 5(e) orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests. SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to

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EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. Section 5(e) orders have been issued for 12 substances and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 27 of the 40 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing. As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the final rule rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50620).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50620). The record includes information considered by EPA in developing this rule. A public version of the record without any CBI is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA NCIC is located in Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities ("also referred to as economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has determined that approximately 10 percent of the parties affected by this rule could be small businesses. However, EPA expects to receive few SNUNs for these substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012. Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: February 16, 1995.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.642 to subpart E to read as follows:

§ 721.642 Amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl)] dipropylene-tri-, tripropylenetetra-, and tetrapropylenepenta-

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances amines, *N*-(C_{14-18} and C_{16-18} unsaturated alkyl)] dipropylenetri-, (PMN P–94–1244), tripropylenetetra- (PMN P–94–1245), and tetrapropylenepenta- (PMN P–94–1246) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.1187 to subpart E to read as follows:

§ 721.1187 Bis(imidoethylene) benzene.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance bis(imidoethylene)benzene (PMN P–93–1447) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

4. By adding new § 721.1755 to subpart E to read as follows:

§ 721.1755 Methylenebisbenzotriazole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance methylenebisbenzotriazole (P–93–578) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* During both manufacture and use of the substance, requirements as specified in § 721.63(a)(4), (a)(6)(i), (b) (concentration set at 1.0 percent) and (c). During manufacture of the PMN substance § 721.63(a)(5)(i); during use of the PMN substance § 721.63(a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), and (a)(5)(vii).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(2)(iii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

5. By adding new § 721.1760 to subpart E to read as follows:

§ 721.1760 Substituted benzotriazole derivatives.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted benzotriazole derivatives (PMNs P–93–374 and P–93–375) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(vi), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g), (v)(1), (w)(1), and (x)(1).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (d), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

6. By adding new § 721.1907 to subpart E to read as follows:

§ 721.1907 Butanamide, 2,2'-[3,3'-dichloro[1,1'-biphenyl]-4,4'-diyl]bisazobis[*N*-2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)-3-oxo-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance butanamide, 2,2'-[3,3'-dichloro[1,1'-biphenyl]-4,4'-diyl]bisazobis[*N*-2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)-3-oxo- (PMN P–93–1111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and processing or use at temperatures above 280 °C.

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(iii) *Release to water.* Requirements as specified in § 721.90(b)(1) and (c)(1). When the substance is processed, or used as a colorant for dyeing plastics, this section does not apply.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.2085 to subpart E to read as follows:

§ 721.2085 Hydroxyalkylquinoline dioxoindandialkylcarboxamide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a hydroxyalkylquinoline dioxoindandialkylcarboxamide (PMN P–94–682) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

8. By adding new § 721.2088 to subpart E to read as follows:

§ 721.2088 Carboxylic acids, (C6–C9) branched and linear.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as carboxylic acids, (C6–C9) branched and linear (PMNs P–93–313, 314, 315, and 316) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(iii) and (g)(5).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 300 ppb for P–93–313, 314, and 315 and N = 50 ppb for P–93–316).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (f), (g), (h), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

9. By adding new § 721.2410 to subpart E to read as follows:

§ 721.2410 Alkoxylated alkyldiethylenetriamine, alkyl sulfate salts.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkoxylated dialkyldiethylenetriamine, alkyl sulfate salts (PMN P–94–325, 326, and 327) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.3028 to subpart E to read as follows:

§ 721.3028 Methacrylic ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a methacrylic ester (PMN P–93–339) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

11. By adding new § 721.3034 to subpart E to read as follows:

§ 721.3034 Methylamine esters.

(a) *Chemical substance and significant new uses subject to reporting* (1) The chemical substance identified generically as methylamine esters (PMN P–94–982) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

12. By adding new § 721.3437 to subpart E to read as follows:

§ 721.3437 Dialkyl ether.

(a) *Chemical substance and significant new uses subject to reporting* (1) The chemical substance identified generically as dialkyl ether (PMN P–93–1308) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 180 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

13. By adding new § 721.3627 to subpart E to read as follows:

§ 721.3627 Branched synthetic fatty acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a branched synthetic fatty acid (PMN P–94–422) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (g), and (l).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

14. By adding new § 721.3790 to subpart E to read as follows:

§ 721.3790 Polyfluorocarboxylates.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as polyfluorocarboxylates (PMNs P–94–322 and P–94–323) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

15. By adding new § 721.3815 to subpart E to read as follows:

§ 721.3815 Furan, 2-(ethoxymethyl)-tetrahydro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance furan, 2-(ethoxymethyl) tetrahydro- (P–93–721) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If, as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

16. By adding new § 721.4110 to subpart E to read as follows:

§ 721.4110 Allyloxysubstituted heterocycle.

(a) *Chemical substance and significant new uses subject to reporting* (1) The chemical substance identified generically as an allyloxysubstituted heterocycle (PMN P–93–1471) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 70 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

17. By adding new § 721.4470 to subpart E to read as follows:

§ 721.4470 2,4-Imidazolidinedione, bromochloro-5,5-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting* (1) The chemical substance 2,4-imidazolidinedione, bromochloro-5,5-dimethyl- (PMN P–94–34) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(3), (w)(3), and (x)(3).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 10 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (i), and (k) are

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applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

18. By adding new § 721.4594 to subpart E to read as follows:

§ 721.4594 Substituted azo metal complex dye.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted azo metal complex dye (PMN P–94–499) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

19. By adding new § 721.4596 to subpart E to read as follows:

§ 721.4596 Diazo substituted carbomonocyclic metal complex.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a diazo substituted carbomonocyclic metal complex (PMN P–94–1039) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

20. By adding new § 721.8155 to subpart E to read as follows:

§ 721.8155 Propanenitrile, 3-[amino, *N*-tallowalkyl] dipropylenetri- and tripropylenetri- and propanenitrile, 3-[amino, (C_{14-18} and C_{16-18} unsaturated alkyl)] trimethylenedi-, dipropylenetri-, and tripropylenetetra-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as propanenitrile, 3-[amino, *N*-tallowalkyl] dipropylenetri- (PMN P-94 1238), propanenitrile, 3-[amino, *N*-tallowalkyl] tripropylenetri- (PMN P–94–1239), propanenitrile, 3-[amino, (C_{14-18} and C_{16-18} unsaturated alkyl)] trimethylenedi- (PMN P–94–1241), propanenitrile, 3-[amino, (C_{14-18} and C_{16-18} unsaturated alkyl)] dipropylenetri- (PMN P–94–1242), and propanenitrile, 3-[amino, (C_{14-18} and C_{16-18} unsaturated alkyl)] tripropylenetetra- (PMN P–94–1243) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

21. By adding new § 721.8170 to subpart E to read as follows:

§ 721.8170 Propanol, [2-(1,1-dimethylethoxy)methylethoxy]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance propanol, [2-(1,1-dimethylethoxy)methylethoxy]- (CAS no. 132739-31-2) (P–93–193) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If, as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

22. By adding new § 721.8670 to subpart E to read as follows:

§ 721.8670 Alkylcyano substituted pyridazo benzoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as an alkylcyano substituted pyridazo benzoate (PMN P–94–1129) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

23. By adding new § 721.9505 to subpart E to read as follows:

§ 721.9505 Silanes substituted macrocycle polyethyl.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as silanes substituted macrocycle polyethyl (PMNs P–93–1423, 1424, 1425, and 1426) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.9540 to subpart E to read as follows:

§ 721.9540 Polysulfide mixture.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a polysulfide mixture (PMN P–93–1043) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows:

(A) If, as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health, or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into the applicable Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received this substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the Company becomes aware of the new information. Requirements as specified in § 721.72(a), (b), (c), (d), (f), and (g)(4)(iii).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (153,000 kg).

(iii) Release to water. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), (f), (g), (h), (i), (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

25. By adding new § 721.9962 to subpart E to read as follows:

§ 721.9962 Trifunctional aliphatic blocked urethane cross-linker.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a trifunctional aliphatic blocked urethane cross-linker (PMN P–94–1009) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 95–5017 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7117

[CO–930–1430–01; COC–48691]

Withdrawal of National Forest System Lands for Vail Ski Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws an additional 4,870 acres of National Forest System lands from mining for protection of recreational resources and facilities at the Vail Ski Area. This withdrawal will protect the lands until 2009, the date the original withdrawal expires. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities at the Vail Ski Area:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 80 W.,
Sec. 25, SW¼ and W½W½SE¼,
Sec. 26, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, SE¼NE¼;
Sec. 32, NE¼, E½NW¼, N½NE¼SW¼, E½SE¼, and N½NW¼SE¼;
Sec. 33;
Sec. 34;

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Sec. 35;
Sec. 36, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 6 S., R. 80 W.,
Sec. 3, lots 5 to 10, inclusive;
Sec. 4, lots 5 to 12, inclusive, and S½N½;
Sec. 5, lots, 5, 6, 11, and 12, and S½NE¼.

The area described aggregates approximately 4,870 acres in Eagle County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire July 5, 2009, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–4921 Filed 2–28–95; 8:45 am]

BILLING CODE 4310–JB–P

43–CFR Public Land Order 7118

[CO–932–1430–01; COC–016678; COC–024153]

Revocation of Public Land Order Nos. 1278, 2018, and 2602; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three public land orders, which withdrew lands for the National Park Service. The lands were later transferred to the Forest Service by special legislation for management, and the National Park Service withdrawals are no longer appropriate. This order affects approximately 9,970 acres of lands within the Arapaho National Recreation Area. The Forest Service has requested this action to allow for better management of the Recreation Area.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order Nos. 1278, 2018, and 2602, which withdrew lands for the National Park Service for the Shadow Mountain Recreation Area, are hereby revoked in their entireties.

This revocation will affect lands located in the Arapaho National Recreation Area, Arapaho National Forest, Sixth Principal Meridian, in Tps. 2 and 3 N., Rs. 75 and 76 W.

The areas described aggregate approximately 9,970 acres of land and reserved minerals in Grand County.

2. At 9:00 a.m. on March 31, 1995 the lands described in the public land orders listed in paragraph 1 will be open to such forms of disposition as may by law be made within the Arapaho National Recreation Area.

Dated: February 16, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–4920 Filed 2–28–95; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No 1; Amdt. 1–266]

Organization and Delegation of Powers and Duties Delegation to the Assistant Secretary for Aviation and International Affairs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule delegates to the Assistant Secretary for Aviation and International Affairs the Secretary of Transportation's authority under the Federal Aviation Administration Authorization Act of 1994, concerning the resolution of airport fee disputes between airport owners or operators and air carriers. The rule is necessary to reflect the delegation in the Code of Federal Regulations.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, United States Department of Transportation, 400 7th Street SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 113 of the Federal Aviation Administration Authorization Act of 1994 (Act) pertains to the resolution of airport-air carrier disputes concerning the imposition of airport fees. Procedural regulations under which these disputes are to be resolved and a policy statement regarding airport rates and charges, both required by section 113(b), were published in the **Federal Register** on February 3, 1995 (60 FR 6905–6930).

Section 113(a) of the Act requires the Secretary of Transportation to issue a determination as to whether a fee imposed upon one or more air carriers by the owner or operator of an airport is reasonable if the Secretary receives: (a) a written request for a determination from the owner or operator; or (b) a written complaint from an affected air carrier within 60 days after the carrier receives written notice of the establishment or increase of the fee. Section 113(c) of the Act contains deadlines for certain decisions that the Secretary must make after an air carrier has filed a written complaint. Section 113(d) concerns the payment of fee increases by the complainant to the airport under protest; it also requires an airport to obtain and provide to the Secretary a letter of credit, surety bond, or other suitable credit facility in order to assure the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the Secretary. That section also provides a guarantee of air carrier access to airport facilities pending the Secretary's issuance of a final order. This rule delegates the Secretary's authority under section 113 of the Act to the Assistant Secretary for Aviation and International Affairs.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective February 22, 1995.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.56a is amended by adding a new paragraph (i) to read as follows:

§ 1.56a Delegation to the Assistant Secretary for Aviation and International Affairs.

* * * * *

(i) Carry out the functions of the Secretary pertaining to a determination of whether a fee imposed upon one or more air carriers by the owner or operator of an airport is reasonable under section 113 of the Federal Aviation Administration Authorization Act of 1994 (August 23, 1994; Pub. L. 103–305; 108 Stat. 1577–1579).

Issued at Washington, DC this 22nd day of February, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–4984 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR–11, Notice No. 4]

RIN 2130—AA77

Protection of Utility Employees Response to Petitions to Reconsider

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule amendments with request for comments.

SUMMARY: On August 16, 1993, FRA published safety standards for utility employees working as temporary members of train and yard crews. FRA now amends a definition, responds to the concerns raised in petitions to reconsider the final rule, issues an amendment on a subject addressed earlier in this rulemaking, and makes technical corrections. The amendment will permit single-person crews to work within the protections provided for train and yard crews.

DATES: These amendments will become effective May 15, 1995. Comments on the amendments must be received by May 1, 1995.

ADDRESSES: Comments on the amendments should be submitted to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Chief, Operating Practices Division, Office of Safety, FRA, RRS–11, Washington, DC 20590 (telephone: 202–366–9252), or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0443).

SUPPLEMENTARY INFORMATION: On August 16, 1993 FRA published a regulation allowing utility crew members to be excluded from the blue signal protection requirements of part 218 while the employee works as a temporary member of a train or yard crew. 58 FR 43287. FRA believed this rule, which provides new protections for utility employees, would allow more efficient use of railroad personnel without compromising the level of safety provided by the pre-amendment regulations.

In response to this regulatory revision, FRA received several petitions for reconsideration of the new rule, including its rationale and specific provisions of its preamble and text.

Basis for the Rule

The preamble to the Final Rule explained the agency's rationale for issuing this regulation. Several petitioners continue to object to the rule, arguing that expanding the original train and yard crew exclusion to cover utility employees will create safety risks because the new rule does not provide adequate protection for temporary crew members.

The petitions FRA received from rail labor question the safety data on which FRA partially relied in this rulemaking. One petitioner cites two specific occurrences in 1987 and anecdotal information regarding similar mishaps involving operating crews that the petitioner argues were preventable had there been no exclusion for train and yard crews. (That exclusion, of course, was in FRA's original rule and directly tracked the statutory provision that required the rule.) FRA does not agree that these limited incidents outweigh the remaining safety data. Our conclusion continues to be that utility employees can function safely without blue signal protection under properly structured Federal regulations and railroad operating rules requiring adequate communication and understanding of the work to be performed. FRA notes that the rule does not prevent railroads from enacting more stringent procedures to address isolated safety problems. The agency continues to believe that according a utility employee the same level of protection historically provided to train and yard crews would not risk the employee's safety. Accordingly, FRA will not withdraw the final rule.

FRA has no evidence on which to conclude that crews are currently experiencing a material risk ascribable to unexpected train movements. FRA believes, however, there may be reason to conduct a future rulemaking on protection for all train and yard crew members, given the issues raised in this rulemaking. Many of the issues raised by participants in this rulemaking were beyond the scope of this proceeding and would be more appropriately addressed in separate agency actions.

Preamble and Text of Final Rule

FRA received petitions from rail labor and management questioning specific portions of the preamble and rule. FRA responds below to each primary objection.

1. *One-Member Crews.* FRA's notice of proposed rulemaking requested comment on the protection needed for a single locomotive engineer performing helper or hostler service. The notice stated:

FRA is also concerned that protection provided for one-person assignments (i.e., hostlers or other unaccompanied engineers) be consistent with safety and efficiency. FRA specifically invites comments on the circumstances under which these engineers acting alone might be permitted to perform functions outside of the area under control of the mechanical forces without complete blue signal protection as provided under §§ 218.25 (main track) or 218.27 (other than main track).

57 FR 41457.

Protecting one-member crews was therefore within the scope of the notice. FRA chose not to address the subject in rule text because no comments were received. In the preamble to the final rule, however, FRA expressed discomfort with one-member crews. It was stated that a lone engineer could not take advantage of the exclusion from blue signal protection unless joined by a utility employee to ensure that the locomotive cab was always occupied. 58 FR 43287.

The Association of American Railroads (AAR) objected to that preamble statement, arguing that the language of the rule did not seem to bar the use of one-person crews. FRA agrees that the rule does not impose such a prohibition on one-member crews. FRA therefore grants this portion of AAR's request.

Although AAR is correct that the utility employee rule did not, on its face, preclude its application to one-member crews, application of utility protection to such crews would not be logical. The utility employee rule presumes the presence of a permanent crew to which the utility crew member becomes temporarily attached for specific purposes. One-person crews either do not join larger crews or do so to perform duties distinct from those assigned a utility employee. FRA remains concerned with the unique risk faced by lone engineers despite the current lack of evidence of a substantial injury record for one-member crews. An

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engineer assigned to helper or hostler service must frequently perform work, such as placing rear end markers or making connections between locomotives, that puts that employee in danger, particularly when this work is performed in congested terminals and rail yards. FRA believes that if single-engineer assignments are not carefully controlled, the industry may risk an entirely avoidable safety problem. Safety can be assured only by providing protection against unexpected movement of equipment equivalent to a crew member occupying the cab. AAR, in its joint submission with the United Transportation Union (UTU) dated March 5, 1993, agreed that crews need to have complete control over the equipment on which they are working. FRA believes this can be achieved and therefore issues a new § 218.24 as an amendment that prohibits an engineer working alone from going on, under, or between rolling equipment to perform inspections, tests, repairs, or servicing without blue signal protection unless all of the following conditions are met:

(1) Each locomotive in the locomotive engineer's charge is either (i) coupled to the train or other railroad rolling equipment to be assisted or (ii) stopped a sufficient distance from the train or rolling equipment to ensure a separation of at least 50 feet; and,

(2) Before a controlling locomotive is left unattended, the one-member crew shall secure the locomotive as follows:

(i) The throttle is in the IDLE position;

(ii) The generator field switch is in the OFF position;

(iii) The reverser handle is removed (if so equipped);

(iv) The isolation switch is in the ISOLATE position;

(v) The locomotive independent (engine) brake valve is fully applied;

(vi) The hand brake on the controlling locomotive is fully applied (if so equipped); and

(vii) A bright orange engineer's tag (a tag that is a minimum of three by eight inches with the words ASSIGNED LOCOMOTIVE—DO NOT OPERATE) is displayed on the control stand of the controlling locomotive.

If the single-engineer crew is working in helper service, safety must also be assured by effective communication between engineers of controlling locomotives to prevent unexpected movement. Single-engineer helper service crews are most commonly found in heavy grade territory on main track routes, where additional locomotives are added to trains to push or pull trains on steep grades.

FRA believes the single engineer is particularly vulnerable while attaching his or her locomotive to, or detaching it from, the train to be assisted. FRA provides protection by requiring that communication be established between engineers of controlling locomotives on a common track or working a common train, and these engineers reach an understanding of the work to be performed before taking advantage of the exclusion for train and yard crews. FRA proposes the following language to achieve that purpose:

When assisting another train or yard crew with the equipment the other crew was assigned to operate, a single engineer must communicate directly, either by radio in compliance with Part 220 of this chapter or by oral telecommunication of equivalent integrity, with the crew of the train to be assisted. The crews of both trains must notify each other in advance of all moves to be made by their respective equipment. Prior to attachment or detachment of the assisting locomotive(s), the crew of the train to be assisted must inform the single engineer that the train is secured against movement. The crew of the train to be assisted must not move the train or permit the train to move until authorized by the single engineer

Use of single-person crews is a relatively recent practice. FRA gave notice in the NPRM of its intent to consider the safety of such crews, but only addressed the issue in the preamble to the final rule. While FRA is not obliged to provide further opportunity to comment, it has decided that soliciting comment is the better course. FRA therefore invites comment on this amendment before it takes effect. FRA will provide a 60-day comment period from the date of publication. At the close of this period, FRA will review the materials received and make necessary adjustments to the amendment.

FRA notes that the contemplated requirements are nearly identical to operating rules of several railroads that currently use single-member crews.

2. *Ranking Crew Member.* Section 218.5 of the Final Rule defined "ranking crew member" as the assigned locomotive engineer, if the person in general charge of the train was not named by the railroad's operating rules. The UTU argued that the definition dilutes the traditional authority of railroad conductors at the expense of safety. In response to these comments, the final rule is modified to permit the designation of the crew member responsible for coordination with the utility employee only by the railroad's operating rules. Accordingly, the last sentence of the definition of "ranking crew member" is deleted, and the term is changed to "designated crew member."

3. *Occupied Locomotive Cab.* Rail management argued that the requirement in § 218.22(b)(2), which requires the locomotive engineer, or another crew member, to be present in the cab of the controlling locomotive in order for the crew to make use of a utility employee, was overly restrictive. FRA believes that a crew member in the controlling locomotive who is aware that others are working on the train can prevent equipment movement that would endanger the crew. This crew member's presence in the cab serves to prevent such events as unexpected couplings when crew members are in jeopardy and is, therefore, an essential element of the exclusion.

4. *Craft lines.* In the Final Rule, at § 218.22(b)(5), FRA clarified the agency's intention not to expand the type of work that could be performed by crews without blue signal protection. In order to accomplish this goal, FRA listed the duties that a utility employee is allowed to perform within the exclusion. This list was intended to be inclusive of all essential and routine duties traditionally performed by crews. Several petitioners objected that the list was incomplete, preventing carriers from making full use of utility employees. FRA disagrees. FRA has, in letters to each petitioner, addressed the duties each has raised. The few specific duties which the petitioners identified as not on the list are in truth parts of jobs listed or jobs which do not require blue signal protection. FRA will not, therefore, amend the list.

A labor union petitioner, the Brotherhood of Railway Carmen (BRC), objected that the list contained duties beyond those traditionally performed by train and yard crews. BRC did not identify the duties to which it objected. The petitioner asserts that the agency therefore acted beyond the scope provided by the notice of proposed rulemaking. FRA disagrees. The Final Rule merely permits utility employees to work like other crew members under specific conditions, which was the expressed intent of the proposed rule.

Rail labor also objected to the preamble explanation that if non-crewmember supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation. This example illustrated FRA's position that blue signal requirements are based on function and not craft. Any title could be used in place of "supervisors." It was not a suggestion that supervisors replace other employees who currently perform

these jobs, as the petitioner seems to fear.

In addition, it should be understood that this rule does not replace existing collective bargaining agreements with respect to assignments of duties. This rule simply defines the limits of the duties a utility employee may perform without traditional blue signal protection. The existence of this rule, however, does not mean that these duties must be assigned to utility employees. But it should be noted that a utility employee must not be assigned responsibilities beyond those listed, without full blue signal protection, regardless of existing labor and management agreements.

5. *Radio Communication.* The rule provides a process for utility employees to join and quit a crew. Integral to this process is communication among crew members, most likely by radio as provided in § 218.22(e). One petitioner, Mr. Alan Thompson, objected to the reliance on radios because of the possibility that radios could malfunction. FRA, however, does not believe it is necessary to amend the communication provisions. A utility employee must not be excluded from blue signal protection unless effective communication is established. If a radio malfunction prevents the required crew notice, then the utility employee must be protected by blue signals unless required communication is achieved by talking in person or other equivalent forms of telecommunications.

6. *Adequate Recordkeeping.* FRA rejects the argument that additional recordkeeping requirements are needed to make the rule enforceable. As noted in the preamble to the Final Rule, railroads are required to maintain hours of service records, accident reports, records of attendance at railroad operating rules classes, and alcohol and drug testing records for all operating personnel, including utility employees. The agency believes these records are sufficient to determine an employee's status for enforcement purposes.

7. *Appendix Examples.* Rail management argued that the examples published in Appendix A to the rule should not include train and yard crews. FRA chose to include all operating employees, as well as utility employees, in the last four examples to highlight the extent of the blue signal regulation. FRA has found that railroads have occasionally utilized operating employees instead of maintenance-of-equipment employees to perform work which requires blue signal protection, under the mistaken impression that the exclusion from blue signal protection for train and yard crews extends to all work assigned to these employees.

The examples contain no new requirements, but simply illustrate existing law. They are therefore not beyond the scope of this proceeding.

8. *Economic Analysis.* One petitioner, BRC, questioned the amount of the economic benefit FRA stated the rule should create. BRC argued that time spent completing required brake tests was improperly counted as time spent installing and removing end-of-train devices. BRC concluded, therefore, that the time FRA believed would be saved by using utility employees would still be spent performing brake tests. BRC argued, therefore, that there would be less cost savings created by the rule than FRA had estimated, because there would not be an improvement in time preparing a train for departure.

FRA based its savings calculations on the best information available to this agency. No participant, including BRC, provided contrary data. Moreover, contrary to BRC's assertion, FRA's economic analysis did not consider time spent on brake tests as an area where benefits could be created. FRA believes that its cost and benefit calculations accurately reflect the true impact of the final rule.

9. *Penalty Amounts.* One petitioner argued that the penalty amounts contained in an appendix to the rule were inadequate to encourage compliance. The penalty amounts are consistent with the civil penalties levied for other violations of federal railroad safety regulations. FRA does not believe that the penalties are insufficient to promote compliance. The penalty schedule makes clear that FRA has the authority to assess even higher amounts where the facts of a particular violation warrant.

FRA's monitoring of industry application of this rule over the next year will provide evidence of carrier compliance. If safety risks are created by the repeated failure to comply with the rule, FRA has other enforcement options, including compliance or emergency orders.

10. *Technical Correction.* The definition of "locomotive servicing track area" was unintentionally deleted from the Final Rule. That definition is now added to the list of definitions provided in § 218.5.

Regulatory Impact Analysis

This amendment to the final rule has been evaluated in accordance with existing policies and procedures and is considered "nonsignificant" under Executive Order 12866. It is not considered to be significant under Department of Transportation policies and procedures. *See* 44 FR 11034. The amendment does not materially affect the benefit/cost analysis provided in the final rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. This amendment will have no new direct or indirect economic impact on small units of government, business, or other organizations.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

There are no new information collection requirements associated with this amendment. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This amendment will not have any identifiable environmental impact.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends Part 218 of Title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority for Part 218 is revised to read as follows:

Authority: 49 U.S.C. 20101 *et seq.*, and 49 CFR 1.49(m).

2. By amending § 218.5 to remove the definition "Ranking crew member" and to add the following definitions in alphabetical order to read as follows:

§ 218.5 Definitions.

* * * * *

Designated crew member means an individual designated under the railroad's operating rules as the point of contact between a train or yard crew

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and a utility employee working with that crew.

* * * * *

Locomotive servicing track area means one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

* * * * *

3. By amending § 218.22 to remove the word "ranking" and add, in its place, the word "designated" in the following places:

a. Section 218.22(c)(3);
b. Section 218.22(c)(4);
c. Section 218.22(d); and
d. Section 218.22(e).

4. Add a new § 218.24 to read as follows:

§ 218.24 One-person crew.

(a) An engineer working alone as a one-person crew shall not perform duties on, under, or between rolling equipment, without blue signal protection that complies with § 218.27 or § 218.29, unless the duties to be performed are listed in § 218.22(c)(5) and the following protections are provided:

(1) Each locomotive in the locomotive engineer's charge is either:

(i) Coupled to the train or other railroad rolling equipment to be assisted; or

(ii) Stopped a sufficient distance from the train or rolling equipment to ensure a separation of at least 50 feet; and

(2) Before a controlling locomotive is left unattended, the one-member crew shall secure the locomotive as follows:

(i) The throttle is in the IDLE position;

(ii) The generator field switch is in the OFF position;

(iii) The reverser handle is removed (if so equipped);

(iv) The isolation switch is in the ISOLATE position;

(v) The locomotive independent (engine) brake valve is fully applied;

(vi) The hand brake on the controlling locomotive is fully applied (if so equipped); and

(vii) A bright orange engineer's tag (a tag that is a minimum of three by eight inches with the words ASSIGNED LOCOMOTIVE—DO NOT OPERATE) is displayed on the control stand of the controlling locomotive.

(b) When assisting another train or yard crew with the equipment the other crew was assigned to operate, a single engineer must communicate directly, either by radio in compliance with Part 220 of this chapter or by oral telecommunication of equivalent integrity, with the crew of the train to be assisted. The crews of both trains must notify each other in advance of all moves to be made by their respective equipment. Prior to attachment or detachment of the assisting locomotive(s), the crew of the train to be assisted must inform the single engineer that the train is secured against movement. The crew of the train to be assisted must not move the train or permit the train to move until authorized by the single engineer.

Appendix A to Part 218 [Amended]

5. In Appendix A to Part 218—Schedule of Civil Penalties, a new entry is added in numerical order under Subpart B to the penalty schedule to read as follows:

Section	Violation	Willful violation
Subpart B—Blue signal protection of workers:		
* * * * *		
218.24 One-person crew:		
(a)(1) equipment not coupled or insufficiently separated	$2,000	$4,000
(a)(2) unoccupied locomotive cab not secured	5,000	7,500
(b) helper service	2,000	4,000
* * * * *		

Issued in Washington, DC, on February 15, 1995.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 95–4761 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 204

[Docket No. 950203036–5036–01; I.D. 012495B]

OMB Control Numbers for NOAA Information Collection Requirements; Revision of Table

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS corrects and updates the table containing Office of Management and Budget (OMB) control numbers for NOAA information collection requirements. The intent is to comply with the requirement of the Paperwork Reduction Act (PRA) that agencies display current OMB control numbers for each agency information collection requirement, and to make this information available to the public.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION: Part 204 of title 50 CFR displays control numbers assigned to NMFS information collection requirements by OMB, pursuant to the PRA, for the public's information. Part 204 fulfills the requirements of sec. 3507(f) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement.

This final rule, technical amendment, brings part 204 up to date and corrects omissions and errors by revising the table in § 204.1(b) to reflect the most current list of OMB control numbers associated with NMFS information collection requirements contained in regulations appearing in title 50. All of the collection-of-information requirements displayed in § 204.1(b) have previously been submitted to OMB for approval during implementation of regulations appearing in the individual parts of title 50; this final rule does not involve any new reporting or recordkeeping requirements.

Classification

Because this rule only corrects omissions and other errors and brings an existing table up to date for the purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and imposes no new requirements or restrictions on the public, NMFS finds good cause to make it immediately effective under 5 U.S.C. 553(d).

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 204

Reporting and recordkeeping requirements.

Dated: February 23, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 is revised to read as follows:

Authority: Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

2. In § 204.1, the table in paragraph (b) is revised to read as follows:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
§ 216.22	–0178.
§ 216.23	–0179.
§ 216.24(b)	–0083.
§ 216.24(c)	–0083.
§ 216.24(d)	–0083, –0084, –0099 and –0217.
§ 216.24(e)	–0040.
§ 216.31	–0084.
§ 216.33	–0084.
§ 216.45	–0084.
§ 222.11–2	–0078.
§ 222.11–8	–0079.
§ 222.12–7	–0078.
§ 222.12–8	–0078.
§ 222.22	–0230.
§ 222.23	–0084.
§ 227.72	–0230 and –0267.
§ 228.4	–0151.
§ 228.6	–0151.
§ 228.14	–0151.
§ 228.25	–0151.
§ 228.37	–0151.
§ 228.55	–0151.
§ 229.5	–0224.
§ 229.6	–0225.
§ 229.7	–0225.
§ 255.4	–0012.
§ 259.30	–0090.
§ 259.35	–0041.
§ 260.103	–0266.
§ 270.3	–0215.
§ 270.8	–0215.
§ 270.11	–0215.
§ 270.12	–0215.
§ 270.13	–0215.
§ 270.19	–0215.
§ 280.10	–0148.
§ 280.50	–0202.
§ 280.51	–0239.
§ 280.53	–0040.
§ 282.3	–0218.
§ 282.5	–0218.
§ 285.7	–0202.
§ 285.8	–0202.
§ 285.21	–0202.
§ 285.28	–0202.
§ 285.29	–0239.
§ 285.53	–0168.
§ 285.54	–0168.
§ 285.151	–0239.
§ 285.202	–0040.
§ 296.5	–0082.
§ 299.3	–0228.
§ 299.4	–0228.
§ 299.5	–0228.
§ 380.4	–0194.
§ 380.5	–0194.
§ 380.6	–0194.
§ 380.8	–0194.
§ 380.20	–0194.
§ 380.24	–0194.
§ 380.28	–0194.
§ 601.37	–0192.
§ 611.3	–0089.
§ 611.4	–0075.

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50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
§611.6	–0075.
§611.8	–0075.
§611.9	–0075.
§611.12	–0075.
§611.50	–0075.
§611.61	–0075.
§611.70	–0075.
§611.80	–0075.
§611.81	–0075.
§611.82	–0075.
§611.90	–0075.
§611.92	–0075.
§611.93	–0075.
§611.94	–0075.
§625.4	–0202.
§625.5	–0202.
§625.6	–0018, –0212 and –0229.
§625.20	–0202.
§625.27	–0202.
§628.4	–0202.
§630.4	–0205.
§630.5	–0013 and –0016.
§630.10	–0016.
§630.31	–0277.
§638.4	–0205.
§638.5	–0016.
§638.27	–0016.
§640.4	–0205.
§641.4	–0205.
§641.5	–0013 and –0016.
§642.4	–0205.
§642.5	–0013 and –0016.
§644.24	–0216.
§645.4	–0205.
§645.6	–0205.
§646.4	–0205.
§646.5	–0013 and –0016.
§646.6	–0205.
§646.10	–0262.
§649.4	–0202.
§649.5	–0202.
§649.6	–0202.
§650.4	–0202.
§650.5	–0202.
§650.6	–0202.
§650.7	–0018, –0212 and –0229.
§650.24	–0202.
§650.25	–0202.
§650.26	–0202.
§650.28	–0202.
§651.4	–0202.
§651.5	–0202.
§651.6	–0202.
§651.7	–0018, –0212 and –0229.
§651.20	–0202.
§651.21	–0202.
§651.22	–0202.
§651.28	–0202.
§651.29	–0202.
§652.4	–0202.
§652.5	–0202.
§652.6	–0212 and –0229.
§652.9	–0202.
§652.20	–0238.
§652.24	–0240.
§653.5	–0013.
§655.4	–0202.
§658.5	–0013.
§661.4	–0222.

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
§661.20	–0222.
§663.4	–0271.
§663.10	–0203.
§663.11	–0203.
§663.33	–0203.
§669.6	–0205.
§672.4	–0206.
§672.5	–0213.
§672.6	–0206.
§674.4	–0206.
§675.4	–0206.
§675.5	–0213.
§675.6	–0206.
§675.27	–0269.
§676.13	–0272.
§676.14	–0272.
§676.17	–0272.
§676.20	–0272.
§676.21	–0272.
§676.25	–0269.
§677.4	–0206.
§677.6	–0280.
§677.10	–0280.
§678.4	–0205.
§678.5	–0013, –0016 and –0229.
§678.10	–0016.
§680.4	–0204.
§680.5	–0214.
§680.10	–0204.
§681.4	–0204.
§681.5	–0214.
§681.10	–0214.
§681.24	–0214.
§681.25	–0214.
§681.30	–0204.
§683.4	–0214.
§683.9	–0204 and –0214.
§683.21	–0204.
§683.25	–0204.
§683.27	–0214.
§683.29	–0214.
§685.4	–0214.
§685.9	–0204.
§685.11	–0214.
§685.13	–0214.
§685.14	–0214.
§685.15	–0204.
§685.24	–0214.
§695.4	–0205.
§695.5	–0016.

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[FR Doc. 95-5033 Filed 2-28-95; 8:45 am]
BILLING CODE 3510-22-W

50 CFR Part 673

[Docket No. 950223058-5058-01; I.D. 022395A]

RIN 0648-AH93

Scallop Fishery Off Alaska; Closure of Federal Waters To Protect Scallop Stocks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS is closing the exclusive economic zone (EEZ) off Alaska to fishing for scallops in response to resource conservation concerns that result from unanticipated fishing for scallops in the EEZ by vessels outside the jurisdiction of Alaska State regulations governing the scallop fishery. This action is necessary to prevent localized overfishing of scallop stocks. This emergency closure is intended to control an unregulated scallop fishery in the EEZ until a Federal fishery management plan (FMP) can be implemented.

DATES: Effective February 23, 1995, through May 30, 1995. Comments must be submitted by March 10, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the Environmental Assessment prepared for the emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for scallops by U.S. vessels off Alaska is managed by the State of Alaska under regulations implemented by the Alaska Department of Fish and Game (ADF&G) at 5 AAC 38.076. These regulations establish guideline harvest levels for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, gear restrictions, and measures to control the processing efficiency of undersized scallops that include a ban on the use of mechanical shucking machines and a limitation on vessel crew size.

Section 306(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) provides that a state may not directly or indirectly regulate a fishing vessel in Federal waters unless the vessel is registered under the law of that state. As a result, regulations implemented by the State of Alaska to manage the scallop fishery only apply in the EEZ off Alaska to vessels registered under the laws of the State. Until now, all vessels fishing in the EEZ have been registered with the State and have been subject to ADF&G fishing regulations at 5 AAC 38.076.

The ADF&G recently became aware of a vessel fishing for scallops in the EEZ that is not registered under the laws of the State. The vessel is fishing for scallops in waters closed to Alaska registered vessels by the ADF&G. The State does not have authority to stop this activity because the vessel is not registered with the State and does not fall under its jurisdiction.

Section 305(c) of the Magnuson Act authorizes NMFS to implement emergency regulations necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided by the Magnuson Act. These emergency regulations may remain in effect for not more than 90 days after publication in the **Federal Register**, with a possible 90-day extension.

The North Pacific Fishery Management Council (Council) convened an emergency teleconference meeting on February 17, 1995, to address the situation of unregistered vessels fishing for scallops in the EEZ outside the management jurisdiction of the State of Alaska. The Council requested NMFS to implement emergency rulemaking to close the EEZ to fishing for scallops to prevent further unregulated and uncontrolled fishing for scallops in Federal waters. Continued fishing for scallops by vessels not registered with the State poses significant conservation and management concerns that can be effectively addressed in a timely manner only through emergency closure of the EEZ. A brief discussion of the State's management program for scallops and the Council's concerns and justification for emergency rule action follow.

Alaska State's Scallop Management Program

The primary pectinid harvested off Alaska is the weathervane scallop (*Patinopecten caurinus*). Since the early 1980's, between 4 and 20 vessels annually have participated in the Alaska scallop fishery. Gross earnings experienced by the fleet during this same period of time has ranged from almost $.9 million in 1983 to over $7 million in 1992.

The ADF&G initiated development of a management plan for the scallop fishery in response to overfishing concerns resulting from recent changes in the weathervane scallop fishery off Alaska. Weathervane scallops possess biological traits (e.g., longevity, low natural mortality rate, and variable recruitment) that render them vulnerable to overfishing. Record landings occurred in the late 1960's (about 1.8 million lbs (816.47 mt) shucked scallop meat), followed by a significant decline in catch through the 1970's and 1980's when landed catch ranged between 0.2 (90.72 mt) and 0.9 million lbs (408.23 mt). The ADF&G believes this decline was due, in part, to reduced abundance of scallop stocks. Landings since 1989 have increased to near record levels. Since 1989, the number of vessels fishing for scallops has not increased (about 10–15 vessels annually), although an increase in fishing power is evidenced by a substantial increase in average vessel length (from 84 ft (25.6 m) registered length in 1981 to 110 ft (33.5 m) in 1991) a predominance of full-time scallop vessels, and an increased number of deliveries. Until 1993, the State did not have a data collection program, although some indication exists that overfishing, or at least localized depletion, may have occurred. Data voluntarily submitted by participants in the scallop fishery during the early 1990's showed that an increase in meat counts per pound has occurred, indicating that smaller scallops now account for a greater proportion of the harvest. These data also suggest that catch-per-unit-of-effort in traditional fishing grounds has decreased.

Limited age data suggest that the scallop stock historically exploited off west Kodiak Island experienced an age-structure shift from predominately age 7 and older scallops in the late 1960's to an age structure predominated by scallops less than age 6 during the early 1970's. This shift indicated that harvest amounts had exceeded sustainable levels. Changes in fleet distribution from historical fishing grounds primarily in State waters to previously unfished grounds in the EEZ compounded management concerns.

In response to these concerns, the ADF&G implemented a management plan for the scallop fishery in 1993 that established a total of eight fishery registration areas corresponding to the Southeastern, Yakutat, Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, Dutch Harbor, and Bering Sea portions of the State. To prevent overfishing and maintain reproductive potential of scallop stocks, ADF&G established a guideline harvest range (GHR) for each of the traditional weathervane scallop fishing areas. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the upper limit of the GHRs is specified as the long-term productivity (catch) from each of the traditional harvest areas. The ADF&G may adjust GHRs based on changes in stock status, such as shifts in population size/age structure coupled to changes in area-specific catch-per-unit-effort.

If a GHR for a registration area is not specified, ADF&G may authorize fishing for weathervane or other scallop species under special use permits that generally include location and duration of harvests, gear limitations and other harvest procedures, periodic reporting or logbook requirements, requirements for on board observers, and scallop catch or crab bycatch limits.

The ADF&G also has implemented king and Tanner crab bycatch limits to constrain the mortality of Tanner crab and king crab incidentally taken by scallop dredge gear. Generally, crab limits are set at 1 percent of total crab population for those management areas where crab stocks are healthy enough to support a commercial fishery. In areas closed to commercial fishing for crab, the crab bycatch limits for the scallop fishery are set at 0.5 percent of the total crab population.

Specified waters are closed to fishing for scallops to prevent scallop dredging in biologically critical habitat areas, such as locations of high bycatch of crab or nursery areas for young fish and shellfish. State regulations also require each vessel to carry an observer at all times to provide timely data for monitoring scallop catches relative to GHRs and for monitoring crab bycatch. Observers also collect scientific data on scallop catch rates, size distribution and age composition. This information is required by ADF&G for potential adjustment of GHRs based on changes in stock in stock status and productivity.

ADF&G regulations establish gear specifications to minimize the catch of undersized scallops and efficiency controls to reduce the economic feasibility of harvesting scallops much smaller than sizes associated with otimum yield. Current efficiency controls include a ban on automatic shucking machines and a crew limit of 12 persons.

The ADF&G has closed all registration areas to fishing for scallops because either the 1995 scallop GHR has been reached or the scallop fishing season has yet to open (Table 1). The fishing vessel currently fishing for scallops in the EEZ outside State jurisdiction is operating in the Yakutat and Prince William Sound registration areas, which the State closed because the GHR for these areas has been harvested. In 1994, vessels fished for scallops in the Bering Sea and Alaska Peninsula registration areas under special-use permits. These areas were closed in late summer due to crab bycatch. The 1994 scallop fisheries in other registration areas generally were closed based on the attainment of the GHR (Table 1).

TABLE 1.—ALASKA STATE SCALLOP REGISTRATION AREAS, UPPER LIMIT OF GHRS (LBS SHUCKED MEAT), 1995 TANNER (TAN) AND KING CRAB BYCATCH LIMITS (NUMBER OF CRAB), 1994 AND 1995 SCALLOP AND CRAB CATCH AMOUNTS (IN PARENTHESIS) AND SEASON OPENING AND CLOSURE DATES

Area	GHR (catch)	Crab limits [1] (catch)	1995 season open—closed dates
Yakutat	250,000	No crab limit	1/10/95–2/14/95
1995 catch	[2] (245,000)		
1994 catch	(236,830)		
Prince William Sound	50,000	Tan—630	1/10/95–1/26/95
1995 catch	[2] (48,000)	[2] (69)	
No 1994 fishery			
Cook Inlet	20,000	King—138	8/15/95–
1994 catch	(20,431)	(42)	
		Tan—18,070	
		(13,300)	
Kodiak	400,000	King—283	7/1/95–
1994 catch	(381,850)	(157)	
		Tan—199,500	
		(69,274)	
Dutch Harbor	170,000	King—45	7/1/95–
1994 catch	(1,931)	(6)	
		Tan—50,500	
		(792)	
Alaska Peninsula	Permit	King—85	7/1/95–
1994 catch	(66,412)	(0)	
		Tan—52,530	
		(26,379)	
Bering Sea	Permit	King—17,000	7/1/95–
1994 catch	(505,439)	(55)	
		Tan—260,000	
		(262,500)	

[1] Crab bycatch limits for Prince William Sound and Cook Inlet are further divided into State management districts.
[2] Scallop catch and crab bycatch amounts do not include unreported amounts taken by the catcher/processor vessel fishing in the management area outside of State jurisdiction.

Continued fishing for scallops by vessels outside the jurisdiction of the State will result in overharvest of the State's GHR's and potential localized overfishing of scallop stocks. The catcher/processor vessel currently

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fishing in the Prince William Sound registration area may have the potential to harvest nearly 65,000 lbs (29.48 mt) of shucked scallop meat per week based on 1995 ADF&G observer data collected from a similar vessel. At this rate of harvest, the Prince William Sound GHR could be overharvested by a significant amount since the fishery was closed on January 26, 1995. Although specific information on the vessel's harvesting activity is not available, the U.S. Coast Guard boarded the vessel on February 21, 1995, and was informed that 54,000 lbs (24.49 mt) of scallop meat was on board. This level of retained catch alone exceeds the Prince William Sound GHR by over 100 percent. The Council is concerned that this or other vessels fishing outside the jurisdiction of the State will continue to severely overharvest other GHRs and result in localized overfishing of scallop stocks.

For the reasons stated above, NMFS concurs with the Council's determination that unregulated and uncontrolled fishing for scallops by vessels outside the jurisdiction of Alaska State regulations poses a serious conservation concern that must be addressed as quickly as possible by emergency rulemaking. Although weathervane scallop is the primary species of commercial interest, NMFS' concern about localized depletion and overfishing extends to all scallop species that may be harvested in the EEZ by unregulated vessels. NMFS further concurs in the Council's determination that immediate closure of the EEZ off Alaska to fishing for scallops is an appropriate action to address the scallop management void in the EEZ and concerns of localized overfishing of scallop stocks.

The Council is considering options for a Federal FMP for scallops. Given the time necessary for the preparation of an FMP and the statutory review and implementation schedule for FMPs set out under sections 303 and 304 of the Magnuson Act, the Council requested NMFS repromulgate the emergency closure of the EEZ for an additional 90 days as authorized under section 305(c)(3)(B) of the Magnuson Act. NMFS agrees that additional time may be necessary for the preparation and implementation of a Federal management program for scallops in Federal waters and will consider promulgating a second emergency rule under the Magnuson Act at the appropriate time.

There are many factors to be considered in determining whether to issue a second emergency rule in that such a rule could have an impact on State-registered vessels that participate in this fishery under the laws of the State of Alaska. Vessels that participate in the Yakutat and Prince William Sound scallop fisheries will not be affected because ADF&G has closed these management areas for the remainder of the year, since the GHR has been harvested. The Cook Inlet fishery is conducted primarily in State waters and will be available to State-registered vessels when the fishery opens in mid-August (Table 1). Scallop fishermen wishing to participate in the westward area scallop fisheries (Kodiak, Dutch Harbor, Alaska Peninsula, and Bering Sea registrations area) when these fisheries open July 1 would be restricted to fishing in State waters under ADF&G management regulations if a second 90-day emergency rule is promulgated in the same form as this emergency rule. If a second emergency rule is issued, ADF&G would make a downward adjustment of the GHRs specified for the westward area to compensate for a scallop fishery constrained to State waters. Given that all the Bering Sea scallop harvest comes from Federal waters, as well as about 70 percent of the scallop harvest from other westward registration areas, and assuming an exvessel price of $6.00 per lb, the potential foregone harvest and revenue could approach 820,574 lbs (372.21 mt) and nearly $5 million. Based on 1994 data, about 12 vessels made landings of scallops harvested in a westward area fishery and could potentially be affected by a second emergency rule action.

Comments on this emergency rule will be accepted by NMFS through March 10, 1995. (See **ADDRESSES**.) NMFS also is soliciting comments on appropriate Federal management measures the Council should consider during its further development of an FMP for the Alaska scallop fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable laws.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is not required to be issued with prior notice and opportunity for prior public comment.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS finds that the immediate need to prevent overfishing and localized depletion of scallops in the EEZ off Alaska, as explained in the preamble to this rule, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to prevent localized overfishing of scallop stocks by vessels fishing outside the jurisdiction of Alaska State law constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

List of Subjects in 50 CFR Part 673

Fisheries.

Dated: February 23, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 673 is added as follows:

1. Part 673 is added to Chapter VI of 50 CFR to read as follows:

PART 673—SCALLOP FISHERY OFF ALASKA

Sec.
673.1 Purpose and scope.
673.2 Definitions.
673.3 Prohibitions.

Authority: 16 U.S.C. 1801 *et seq.*

§ 673.1 Purpose and scope.

(a) These regulations implement Federal authority under the Magnuson Act to manage the scallop fishery in the exclusive economic zone off Alaska.

(b) Regulations in this part govern commercial fishing for scallops in the exclusive economic zone off Alaska.

§ 673.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms in 50 CFR part 673 have the following meanings:

Exclusive Economic Zone (EEZ) (see § 620.2 of this chapter) *Scallop(s)* means any species of the family Pectinidae, including without limitation weathervane scallops (*Patinopecten caurinus*).

§ 673.3 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to take or retain any scallops in the EEZ seaward off Alaska.

[FR Doc. 95–4942 Filed 2–23–95; 5:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 60, No. 40
Wednesday, March 1, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing Unfair Labor Practice Cases From the Filing of a Complaint to the Filing of Exceptions to an Administrative Law Judge's Decision

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file recommendations on improving the manner in which unfair labor practice complaints are processed and modifications to the unfair labor practice regulations.

SUMMARY: The Federal Labor Relations Authority invites all agencies, unions and other interested persons to submit written recommendations concerning mechanisms to improve the manner in which unfair labor practice complaints are processed, including modifications to the related unfair labor practice regulations, and miscellaneous regulations.

The Federal Labor Relations Authority has established a Task Force which will study and evaluate the policies and procedures currently in effect concerning the processing of an unfair labor practice complaint from the issuance of a complaint through the filing of exceptions to an Administrative Law Judge's decision. They study will include an evaluation of whether corresponding modifications to the unfair labor practice regulations should be made. As part of this review, the Task Force intends to identify any portion of these regulations that could be rewritten so it can be more easily understood.

Proposed regulatory and other procedural changes which may result from the review will be published for comment at a later date.

DATES: Recommendations in response to this notice should be submitted by March 31, 1995.

ADDRESSES: Mail recommendations to Carol Waller Pope, Executive Assistant to the General Counsel, Office of the General Counsel, 607 14th Street NW., suite 210, Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Carol Waller Pope, Executive Assistant to the General Counsel, Office of the General Counsel, 607 14th Street NW., Suite 210, Washington, DC 20424. Telephone: (202) 482–6600.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority intends to review and, where appropriate, implement mechanisms to improve the manner in which unfair labor practice complaints are processed and to revise the corresponding unfair labor practice regulations, and related miscellaneous regulations. The Federal Labor Relations Authority has established a Task Force to study this matter. This study pertains to the process beginning with the issuance of an unfair labor practice complaint and ending with the filing of exceptions to an Administrative Law Judge's decision. The unfair labor practice rules and related miscellaneous rules of practice and procedure were last reviewed in a study started in 1990 (55 FR 51115). Any recommendations that were submitted in response to the last notice will be considered along with responses to the current notice.

Part 2423 of chapter XIV of Title 5 of the Code of Federal Regulations (1994) contains, among other things, the current regulations which govern all matters relating to the process beginning with the issuance of an unfair labor practice complaint and ending with the filing of exceptions to an Administrative Law Judge's decision. Part 2429 contains related miscellaneous and general regulatory requirements which also govern these administrative procedures. All of these regulations and rules of practice in addition to other procedural matters and recommendations submitted by the public will be reviewed by the Task Force. The Task Force will make written recommendations to the Federal Labor Relations Authority who will, as determined appropriate, issue proposed amendments to the existing unfair labor practice and miscellaneous regulations. All agencies, unions, and interested persons will be afforded an opportunity to submit further comments on any proposed specific modifications to the existing regulations.

Recommendations which seek to overrule substantive interpretations of the Statute by the Authority and the circuit courts of appeals concerning the rights and obligations of agencies, unions and employees under the terms of the Statute will not be considered.

Format

All submissions should contain separate headings and citations for each section of the existing regulations. An original and (2) copies of each set of comments, with any enclosures, should be submitted only on 8½ by 11-inch paper.

List of Subjects in 5 CFR Ch. XIV

Administrative practice and procedure, Government employees, Labor-management relations.

Dated: February 23, 1995.

For the authority.

Solly Thomas,

Executive Director, for the General Counsel.

David L. Feder,

Deputy General Counsel.

[FR Doc. 95–5002 Filed 2–28–95; 8:45 am]

BILLING CODE 6267-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–52]

Proposed Amendment to Class E Airspace; Various Locations in the FAA Northwest Mountain Region

AGENCY: Federal Aviation Administration [FAA], DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at various locations within the states of Colorado, Utah, and Wyoming. This proposal would provide controlled airspace for civil turbojet aircraft while holding at higher airspeeds, and would provide air traffic control with additional controlled airspace to provide radar vectors to arriving and departing aircraft. The revised airspace would be depicted on aeronautical charts to provide a reference for pilots operating under Visual Flight Rules (VFR).

DATES: Comments must be received on or before April 3, 1995.

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ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–52, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Telephone: (206) 227–2530.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–52, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–52." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace areas at Alamosa, Colorado; Blue Mesa, Colorado; Cortez, Colorado; Denver, Colorado; Grand Junction, Colorado; Trinidad, Colorado; Blanding, Utah; Gillette, Wyoming; and Laramie, Wyoming. This proposal would provide controlled airspace for civil turbojet aircraft while holding at higher airspeeds, and would provide air traffic control with additional controlled airspace to provide radar vectors to arriving and departing aircraft. The areas would be depicted on appropriate aeronautical charts. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM CO E5 Alamosa, CO [Revised]

Alamosa VORTAC
(Lat. 37°20'57" N, long. 105°48'56" W)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and 10.5 miles southwest of Alamosa VORTAC 335° and 155° radials extending from 20.1 miles northwest to 10.5 miles southeast of the VORTAC, and within 1.8 miles northwest and 5.3 miles southeast of the Alamosa VORTAC 200° radial extending from the VORTAC to 14 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 22 miles northeast and 10.5 miles southwest of the Alamosa VORTAC 335° and 155° radials extending from 40 miles northwest to 22 miles southeast of the VORTAC and within 4.3 miles each side of the Alamosa VORTAC 015° radial extending from the VORTAC to 39.2 miles northeast of the VORTAC, and within 4.3 miles each side of the Alamosa VORTAC 065° radial extending from the VORTAC to 32.2 miles northeast of the VORTAC, and within 4.3 miles each side of the Alamosa VORTAC 080° radial extending from the VORTAC to 48.8 miles east of the VORTAC, and within 4.3 miles each side of the Alamosa VORTAC 200° radial extending from the VORTAC to 32.2 miles southwest of the VORTAC; that airspace extending upward from 12,000 feet MSL within 4.3 miles each side of the Alamosa VORTAC 200° radial extending from 32.2 to 47 miles southwest of the VORTAC.

* * * * *

ANM CO E5 Blue Mesa, CO [Revised]

Blue Mesa VORTAC
(Lat. 38°27'08" N, long. 107°02'23" W)

That airspace extending upward from 700 feet above the surface within 8.3 miles northwest and 5.3 miles southeast of the Blue Mesa VORTAC 045° and 225° radials extending from 10.5 miles northeast 16.6 miles southwest of the VORTAC, and within the 14.4 mile radius of the VORTAC clockwise between the 264° and 294° radials; that airspace extending upward from 1,200 feet above the surface within 10.5 miles northwest and 8 miles southeast of the Blue Mesa VORTAC 045° and 225° radials extending from 10.5 miles northeast to 23 miles southwest of the VORTAC.

* * * * *

ANM CO E5 Cortez, CO [Revised]

Cortez-Montezuma County Airport, CO
(Lat. 37°18'11" N, long. 108°37'41" W)
Cortez VOR/DME
(Lat. 37°23'23" N, long. 108°33'42" W)
Dove Creek VORTAC
(Lat. 37°48'31" N, long. 108°55'53" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Cortez-Montezuma County Airport, and within 3.1 miles each side of the Cortez VOR/DME 184° and 004° radials extending from the 6.1-mile radius to 10.1 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface beginning at:

Lat. 37°53'00" N, long. 108°05'00" W; to lat. 37°04'00" N, long. 108°05'00" W; to lat. 37°04'00" N, long. 108°58'00" W; to lat. 37°53'00" N, long. 108°58'00" W; to the point of beginning; excluding that airspace within the Durango, CO Class E airspace that airspace within the Farmington, NM Class E airspace, and that airspace within the Telluride, CO Class E airspace.

* * * * *

ANM CO E5 Denver, CO [Revised]

Denver International Airport, CO
(Lat. 39°51'38" N, long. 104°40'24" W)
Denver VOR
(Lat. 39°48'44" N, long. 104°39'36" W)
Centennial Airport, CO
(Lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from 700 feet above the surface within a 28-mile radius of the Denver VOR and within 3.5 miles west and 8.8 miles east of the 178° bearing from the Centennial Airport extending from the 28-mile radius to 17.8 miles south of the Centennial Airport; and that airspace extending upward from 1,200 feet above the surface on the north beginning at lat. 40°30'00" N, long. 106°00'00" W, thence east along lat. 40°30'00" N, thence north along V–85, thence east along lat 41°00'00" N, thence south along the Colorado-Nebraska State boundary, thence southwest along V–8, thence south along V–169, thence west along lat. 39°00'00" N, thence north along long. 106°00'00" W; to the point of beginning.

* * * * *

ANM CO E5 Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07'21" N, long. 108°31'36" W)
Grand Junction VORTAC
(Lat. 39°03'34" N, long. 108°47'33" W)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.2 miles northeast of the VORTAC, and within 1.8 miles south and 8.7 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast; that airspace extending upward from 1,200 feet above the surface within a 30.5-mile radius of the Grand Junction VORTAC, within 4.3 miles each side of the Grand Junction VORTAC 166° radial extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within an area extending from the 30.5-mile radius to 49.5 miles northwest of the VORTAC clockwise between the 312° and 357° radials.

* * * * *

ANM CO E5 Trinidad, CO [Revised]

Trinidad, Perry Stokes Airport, Co
(Lat. 37°15'36" N, long. 104°20'24" W)
Trinidad NDB
(Lat. 37°18'22" N, long. 104°20'00" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Perry Stokes Airport and within 3.1 miles each side of the 355° bearing from the Trinidad NDB extending from the 6.7-mile radius to 10 miles north of the NDB; that airspace extending upward from 1,200 feet above the surface within 22 miles west and 16.8 miles east of the 355° and 175° bearing from the Trinidad NDB extending from 28 miles north to 19.7 miles south of the NDB.

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, UT
(Lat. 37°34'59" N, long. 109°28'59" W)
Blanding NDB
(Lat. 37°31'03" N, long. 109°29'34" W)
Dove Creek VORTAC
(Lat. 37°48'31" N, long. 108°55'53" W)

That airspace extending upward from 700 feet above the surface within a 5.3-mile radius of the Blanding Municipal Airport, and within 3.1 miles each side of the 188° bearing from the Blanding NDB extending from the 5.3-mile radius to 10.1 miles south of the NDB; that airspace extending upward from 1,200 feet above the surface within 12.5 miles east and 8 miles west of the 188° and 008° bearings from the Blanding NDB extending from 11 miles north to 23 miles south of the NDB, and within 4.3 miles each side of a direct line between the Blanding NDB and the Dove Creek VORTAC.

* * * * *

ANM WY E5 Gillette, WY [Revised]

Gillette-Campbell County Airport, WY
(Lat. 44°20'56" N, long. 105°32'20" W)
Gillette VOR/DME
(Lat. 44°20'52" N, long. 105°32'37" W)

That airspace extending upward from 700 feet above the surface within 6.1 miles east and 8.3 miles west of the Gillette VOR/DME 176° and 356° radials extending from 15.3 miles south to 16.1 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at: Lat. 44°47'00" N, long. 106°22'32" W; to lat. 44°30'00" N, long. 104°41'02" W; to lat. 43°30'00" N, long. 105°00'00" W; to lat. 43°30'00" N, long. 106°38'00" W; to lat. 44°09'44" N, long. 106°38'00" W; to lat. 44°16'15" N, long. 106°22'32" W; to the point of beginning; excluding that airspace within Casper, WY Class E airspace and that airspace within the Buffalo, WY Class E airspace.

* * * * *

ANM WY E5 Laramie, WY [Revised]

Laramie, General Brees Field, WY
(Lat. 41°18'45" N, long. 105°40'28" W)
Laramie VORTAC
(Lat. 41°20'16" N, long. 105°43'15" W)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the General Brees Field, and within 4.8 miles south and 8.3 miles north of Laramie VORTAC 301° radial extending from the 7.9-mile radius to 16.1 miles northwest of the VORTAC; and within 4.3 miles each side of the Laramie VORTAC 126° radial extending from the 7.9-mile radius to 18.3 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Lat. 41°53'00" N, long. 106°05'00" W; to lat. 41°53'00" N, long. 105°08'02" W; to lat. 41°00'00" N, long. 105°08'02" W; to lat. 41°00'00" N, long. 106°05'00" W; to the point of beginning; excluding that airspace within Cheyenne, WY Class E airspace.

* * * * *

Issued in Seattle, Washington, on February 14, 1995.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–4979 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–42–93]

RIN 1545–AS93

Adjustments Required by Changes in Method of Accounting; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the requirements for changes in a taxpayer's method of accounting.

DATES: The public hearing originally scheduled for March 10, 1995, beginning at 10:00 a.m. is cancelled.

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FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 446(e) and 481 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** for Wednesday, December 28, 1994 (59 FR 66825), announced that a public hearing on the proposed regulations would be held on Friday, March 10, 1995, beginning at 10:00 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

The public hearing scheduled for Friday, March 10, 1995, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5066 Filed 2–28–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 1

[CO–993–71]

RIN 1545–AB21

Controlling Corporation's Basis Adjustment in Its Controlled Corporation's Stock Following a Triangular Reorganization; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking [CO–993–71], which was published in the **Federal Register** for Friday, December 23, 1994 (59 FR 66280). The proposed regulations provide rules for adjusting the basis of a controlling corporation in the stock of a controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose L. Williams, (202) 622–7550; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under sections 358, 1032, and 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 94–31287, is corrected as follows:

1. On page 66282, column 2, in the preamble under the paragraph heading "*F. Proposed Effective Dates*", last paragraph in the column, lines 4 and 9, the language "December 23, 1994, in which P and S," is corrected to read "[THE DAY THE FINAL REGULATIONS ARE PUBLISHED IN THE **Federal Register**] in which P and S,".

2. On page 66285, column 2, § 1.1032–2, paragraph (a), line 3, the regulation section "§ 1.358–(6)(b)" is corrected to read "§ 1.358–6(b)".

3. On page 66285, column 2, § 1.1032–2, paragraph (d), paragraph (b) of *Example 1.*, line 5, the regulation section "§ 1.1032–(1)(a)" is corrected to read "§ 1.1032–1(a)".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5067 Filed 2–28–95; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 1

[FI–42–94]

RIN 1545–AS85

Mark to Market for Dealers in Securities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking [FI–42–94], which was published in the **Federal Register** for Wednesday, January 4, 1995 (60 FR 397). The proposed regulations relate to the mark-to-market method of accounting for securities that is required to be used by a dealer in securities.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.475(c)–2(a)(4), Carol A. Schwartz, (202) 622–3920; concerning other sections of the regulations, Robert B. Williams, (202) 622–3960, or JoLynn Ricks, (202) 622–3920; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 475 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains typographical errors that are in need of correction.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 95–13, is corrected as follows:

1. On page 403, column 3, § 1.475(a)–1, paragraph (h), paragraph (ii) of *Example.*, line 7, the word "taxable" is corrected to read "X".

2. On page 405, column 2, § 1.475(c)–2, paragraph (a)(2), line 3, the regulation section "§ 1275–6(b)" is corrected to read "§ 1.1275–6(b)".

3. On page 405, column 3, § 1.475(c)–2, in the paragraph heading of paragraph (d), line 3, the regulation section "*§ 11275–6*" is corrected to read "*§ 1.1275–6*".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–5068 Filed 2–28–95; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

RIN 2060–AE30

[FRL–5162–9]

Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance With Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes—Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearings on proposed rule.

SUMMARY: As required by the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act of 1992 [Pub. L. 102–579], EPA has developed proposed criteria which will be used by the Agency in certifying whether or not the WIPP facility complies with 40 CFR part 191, "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes." These criteria were proposed at 60 FR 5766 and were published in Part II of the **Federal Register** on January 30, 1995. The Agency intends to issue final compliance criteria in February 1996, approximately one year after this proposal.

DATES: EPA will conduct public hearings on the Proposed Compliance Criteria Rule in Carlsbad, NM on March 21, 1995 from noon to 9:00 p.m. Public hearings will be held in Albuquerque, NM on March 22, from noon to 9:00 p.m. Public hearings will be held in Santa Fe, NM on Wednesday, March 23, from noon to 9:00 p.m. and on March 24 from 9:00 a.m. to 12:00 p.m. In all cases, there will be a dinner break from 5:00 p.m. to 6:30 p.m.

For speakers to receive scheduled times to testify, requests to testify must be received on or before March 14, 1995, in order to guarantee an opportunity to testify. Speakers not registered on or before March 14 may register at the door and will be scheduled to testify if time permits.

ADDRESSES: The Proposed Compliance Criteria Rule public hearings will be held March 21, 1995, at the Quality Inn (formerly the Park Inn International), 3706 National Parks Highway, Carlsbad, NM; March 22 at the Albuquerque Convention Center, 401 Second Street NW., Albuquerque, NM; and March 23 and 24 at the High Mesa Inn, 3347 Cerillos Road, Santa Fe, NM.

To register to testify telephone Kelly Rose or Ed Lyons of AST, Inc. at (301) 670–8344 or fax your request directly to AST at (301) 670–4099 to their attention. When registering by phone or fax, please provide the following information: Name, Address, Organizational Affiliation (only if testifying as spokesperson or official representative for the company), desired date, hearing location, times available to testify, and a daytime telephone number. Registrations must be made by March 14, 1995, in order to be guaranteed an opportunity to testify. Testifiers not registered on or before March 14 may register at the door and will be scheduled if time permits.

Individual speakers will be allocated 5 minutes and individuals testifying as the official representative or spokesperson on behalf of groups and organizations will be allocated 10 minutes for an oral presentation exclusive of any time consumed by questions from the government panel and answers to these questions.

Information on EPA's proposed compliance criteria rule (40 CFR Part 194) is listed under Docket No. A–92–56 and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon-Thu, 10–9, Fri-Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon-Thu, 8–9, Fri, 8–5, Sat-Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon-Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9. For purposes of judicial review, EPA's official docket for the compliance criteria rulemaking, Docket No. A–92–56, is located in Washington, DC in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street SW., Washington, DC 20460.

EPA also established separate official dockets for other rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act at the Washington, DC (WDC) location. The following is a list of EPA's radioactive waste dockets: Radioactive Waste (40 CFR Part 191)—Docket No. R–89–01; Compliance Criteria (40 CFR Part 194)—Docket No. A–92–56; Test and Retrieval Plans Review—Docket No. A–92–57; Compliance Determination—Docket No. A–93–02. [**Note:** The dockets in New Mexico only contain major items from the official docket (WDC) plus all those documents added to the official docket since October 1992 when the WIPP Land Withdrawal Act was enacted.]

As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Rafaela Ferguson, Office of Radiation and Indoor Air, (202) 233–9362 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of transuranic (TRU) radioactive waste. TRU wastes are materials containing elements having atomic numbers greater than 92 in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes, with half-lives greater than twenty years, per gram of waste. Most TRU wastes are items that have become associated with the production of nuclear weapons; e.g., rags, equipment, tools, and contaminated organic and inorganic sludges.

On October 30, 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (Pub. L. 102–579) was enacted. Among other things, the law specifies the terms and conditions for the DOE's activities at the WIPP and the regulatory requirements which apply throughout various stages of the repository's development including the requirement that before beginning disposal of radioactive wastes at the WIPP, DOE must demonstrate that the WIPP will comply with the Environmental Protection Agency's (EPA) radioactive wastes disposal standards, e.g., "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes" (40 CFR part 191).

Under the Act, EPA is required to develop criteria for the Administrator's certification of compliance with the 40 CFR part 191 disposal standards. On February 11, 1993, EPA published an Advance Notice of Proposed Rulemaking, 58 FR 8029, in the **Federal Register** requesting information and comments pertinent to the development of the compliance criteria.

On January 11, 1995, EPA Administrator Carol Browner signed the proposed compliance criteria rule. The 90-day public comment period began on January 30, the date the proposed compliance criteria rule notice appeared at 60 FR 5766 in Part II of the **Federal Register**, and ends on May 1, 1995. EPA intends to issue final compliance criteria one year after prosposal in the **Federal Register**. The WIPP Land Withdrawal Act requires the DOE to demonstrate compliance with EPA's disposal standards and to submit an application for certification of WIPP's compliance to the EPA Administrator. In submitting such an application, the DOE must meet the requirements of the EPA compliance criteria because EPA will use these criteria in certifying whether or not the WIPP complies with the disposal standards.

Dated: February 23, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–5026 Filed 2–28–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 950209046–5051–02; I.D. 011295D]

RIN 0648–AG82

Pacific Coast Groundfish Fishery; Modification of Nontrawl Sablefish Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is publishing proposed regulations that would establish a new season structure for the nontrawl sablefish component of the Pacific Coast Groundfish limited entry fishery. The new regular season for the limited entry fishery would begin at noon August 6, each year, and both the limited entry and open-access fisheries would be required to remove all nontrawl gear from the water 72 hours prior to the start of the regular season. This rule is intended to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing an equitable opportunity for different types of nontrawl gear to harvest the limited entry nontrawl allocation for sablefish, to enhance vessel safety by avoiding a winter opening, to keep the fishery within the annual management target, and to minimize gear conflicts.

DATES: Comments must be submitted in writing by April 17, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to this proposed rule is available for public review during business hours at the Office of the Director, Northwest Region, NMFS, and at the Office of the Director, Southwest Region, NMFS. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) can be obtained from the Pacific Fishery Management Council (Council), 2000 SW First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule based on a recommendation of the Council, under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act). At its October 1994 meeting in San Francisco, CA, the Council recommended changes to the management of this fishery that are implemented by this rule. The background and rationale for the Council's recommendations are summarized below. More detail appears in the EA/RIR prepared by the Council for this action.

Background

Sablefish is one of the most valuable species in the groundfish fishery off Washington, Oregon, and California (WOC). Since 1987, the annual sablefish harvest guideline has been allocated between the trawl-gear and nontrawl-gear fisheries. Historically, the trawl fishery has been managed with trip limits, which means the amount of fish that may be harvested during a fishing trip or set time period. Trip limits are imposed primarily in order to extend the fishery throughout most of the year. The nontrawl fishery, in contrast, has taken most of its allocation in an intense, open competition called the "regular season," during which it operates without trip limits, except for limits on small sablefish (in 1995, trip limits are applicable to sablefish less than 22 inches (56 cm) total length). For 72 hours before and after the regular season, it is illegal to take and retain, possess or land groundfish caught with nontrawl gear. In recent years, the nontrawl fleet has operated under very restrictive trip limits (250–500 lb (113–227 kg) per day) outside of the "regular season." The limited entry nontrawl fishery for sablefish involves two main gear types, pot (or trap) and longline, that compete for the nontrawl allocation. Although the pot and longline fisheries are operationally different, they do not have separate allocations.

The first problem addressed by the Council was the increasing competition in the fishery. The sablefish resource is believed to be stable and close to the level that produces maximum sustainable yield (MSY), however, fishing effort, and thus competition, are increasing. The season length off WOC has declined from almost 5 months in 1990 to about 3 weeks in 1993 and 1994, and the industry is concerned about an even shorter season in 1995. Implementation of the limited entry program for groundfish off WOC in 1994 has not diminished the problem of increasing effort, because more vessels currently have limited entry permits than operated in the fishery in 1994. Also, in recent years fishermen have had to choose between concurrent fisheries off Alaska or off WOC. However, with the implementation of an Individual Fishing Quota (IFQ) system off Alaska in 1995, fishermen will be able to fish over a longer period in Alaska, and thus those with a limited entry permit for WOC will be able to operate in both the Alaska and WOC fisheries. Fishermen that operate more slowly than others, generally those with smaller vessels, or that do not also fish in Alaska, fear that they are losing opportunity during such short, intense seasons off WOC. In addition, in 1994, the nontrawl fishery exceeded its limited entry allocation by 28 percent, because of the difficulty of monitoring such an intense fishery during the season. If fishing effort increases as expected, it will be increasingly difficult to project landings accurately and keep them from exceeding the nontrawl allocation.

A second problem is the starting date of the regular season. Under the current regulations (50 CFR 663.23(b)(2)(i)) (temporarily suspended, through September 1, 1995), the opening of the WOC season is linked to the first nontrawl sablefish season opening in the Gulf of Alaska under 50 CFR part 672, which occurs in May. Under the new IFQ program, governed by 50 CFR part 676, the Alaska season could start as early as March 1, 1995, which would cause the WOC fishery to open on February 26, 1995, preceded by a 72-hour closure on February 23. (50 CFR part 672 is expected to be revised to clarify that the nontrawl sablefish opening date in the Gulf of Alaska is governed by part 676.) This early season is unacceptable to the industry for a number of reasons, particularly safety, but also because of price, quality of the fish, and alternative fishing opportunities. By separate rule, NMFS has temporarily amended 50 CFR 663.23(b)(2) to prevent the opening of the regular season in February, pending completion of this rulemaking to establish a new season structure.

A third problem results from competition within the nontrawl fishery, between fishermen using pot and longline gear. Approximately 21 pot vessels and 88 longline vessels operated in the limited entry sablefish fishery in 1994. The proportion of pot landings in the nontrawl sablefish fishery has varied widely in the last 12 years, from over 80 percent in 1983 to only 21 percent in 1992, and back up to about 40 percent in 1994. Increased production by the small pot fleet in recent years has been

caused at least in part by the way the current 72-hour closure before the regular season operates. The preseason closure affects the competing pot and longline operations in the following ways:

1. *Grounds preemption.* The current regulation at 50 CFR 663.23(b)(2)(ii) (temporarily suspended) prohibits taking and retaining, possessing, or landing sablefish during the 72-hour period before the start of the regular season, but does not prohibit leaving gear in the water. Most pot vessels cannot carry all their gear on board at one time without increasing safety risks. Consequently, pots often are stored unbaited in the water for long periods of time to avoid the cost and lost fishing time from making multiple trips to the fishing grounds to deploy gear. When the 72-hour closure was first recommended, the Council felt it was unreasonable to require pot fishermen to pull all their gear out of the water. However, this gave pot fishermen a distinct advantage, because longline gear cannot be set and left for several days without risking extreme tangling. This allowed pot fishermen to preempt the best grounds before longline gear could be deployed.

2. *"Fair Start."* A second issue is the different ability of the two gear types to start fishing before the beginning of the regular season. Baited pots can catch and hold live sablefish until the 72-hour closure has passed. This is legal under the current regulation as long as the pot has not been pulled and the fish retained. Hook-and-line gear, however, cannot be set much in advance of the regular season because sablefish caught with this gear are quickly attacked and destroyed by marine scavengers such as sand fleas. There is no simple solution without one gear type gaining an advantage over the other. According to the EA/RIR, pot vessels are slower in carrying and setting their gear, but thereafter have the potential to harvest more rapidly than most longline operations off WOC. If pot gear can be set and baited before the start of the regular season, however, the best grounds may be preempted and actual fishing started before longline gear can be deployed. If pot gear cannot be set before the start of the regular season, it may be preempted by longline gear that can be set more quickly.

3. *Enforceability.* In the past, the Council felt there was no point in prohibiting baiting gear during the 72-hour closure because there was inadequate at-sea presence to enforce such a restriction. Enforcement of the closure was further complicated by implementation of the limited entry program in 1994, which exempted open-access nontrawl gear from the 72–hour closures. Limited entry vessels could circumvent the intent of the regulation by operating with nontrawl gear for which they had no limited entry endorsement (50 CFR 663.33(a)). Furthermore, enforcement agents could not easily discern by aerial surveillance which vessels and gear were open-access and which were limited entry.

The above-described problems prompted the Council to rethink its approach to nontrawl sablefish management. The Council's recommendations to resolve these problems, and rationale to the solutions are summarized below.

Delaying the Regular Season to August 6

The August 6 date was selected for reasons of safety, price of fish, and alternative fishing opportunities. It was selected primarily for the best weather along the coast (see the EA/RIR). Rough weather in late February makes fishing unsafe along much of the coast. The best time of year varies by location. According to the EA/RIR, late summer is the least windy period coastwide, and perhaps provides the safest fishing conditions. Initially the Council recommended August 15, and then shifted it 1 week earlier to avoid the August 1995 Council meeting. The Council did not select the first of the month in order to avoid gear conflicts with the deepwater trawl fishery (for sablefish, Dover sole, and thornyheads), because trawl effort may be greater at the beginning of that fishery's cumulative monthly period. This delay in the regular season would not reduce effort by vessels able to operate in both the Alaska and WOC fisheries. In fact, an August date may increase effort, because vessels previously discouraged by bad winter weather may be able to operate in the summer. Also, in August larger sablefish would be available to the fishery; larger sablefish generally yield a higher price and therefore are more desirable to the fleet. Neither a late February opening of the regular season during the winter spawning period, nor an opening at any other time of year, would have more than a negligible impact on recruitment of sablefish.

August is also the preferred month from the standpoint of maximizing various fishing opportunities off WOC. Sablefish pot vessels may also participate in the Dungeness crab fishery, which usually occurs from December into March, and the shrimp fishery, which generally begins in April off WOC, and continues at a high level through June or July. Hook-and-line vessels also may participate in salmon fisheries. Salmon fisheries traditionally start in May and peak in June and July; the status of these fisheries in 1995 is not yet known. Albacore fishing, also conducted by hook-and-line vessels, peaks in summer as well, and may coincide with the August regular season. The Pacific halibut fishery, also conducted by hook-and-line vessels, occurs in June/July.

New Season Structure with a "Mop-up" Fishery

Because projecting landings accurately during the regular season will be extremely difficult, particularly if effort increases substantially as expected, the Council recommended that the regular season end when approximately 70 percent of the nontrawl gear allocation has been harvested. The remaining 30 percent would be set aside as a buffer to keep landings from exceeding the nontrawl allocation and the sablefish harvest guideline.

The Council also recommended that about 3 weeks after the end of the regular season, when the amount of the landed catch has been confirmed, the remainder of the nontrawl allocation be released for harvest in a "mop-up" fishery of 1 month or less, with all limited entry vessels subject to the same cumulative trip limit. By applying a cumulative limit, each vessel would have the opportunity to take the same amount and the mop-up fishery would occur at a more orderly and manageable pace. This would make it more likely that the nontrawl allocation would not be exceeded. It also would accommodate those fishermen who prefer to operate at a slower pace without the rush of the "first come, first serve" competition that defines the regular season. Establishing a mop-up fishery is particularly supported by those fishermen who prefer receiving a guaranteed equal share rather than the open competition of the regular season. The reserve could be less than 30 percent of the nontrawl allocation, or the mop-up fishery may not occur at all, if landings during the regular season are higher than expected. Sablefish landings before and after both the regular season and mop-up fishery would be expected to be negligible under the small trip limits recommended by the Council (300 lb or 136 kg per day north of 36°00′ N. lat. and 350 lb or 159 kg per day south of 36°00′ N. lat.) in 1995 (60 FR 2331, January 9, 1995).

The actual level of the cumulative trip limit during the mop-up fishery would be determined in-season by NMFS, in consultation with the Council's

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Groundfish Management Team, primarily by dividing the remainder of the nontrawl allocation by the number of vessels expected to participate. The trip limit and season dates would be announced in the **Federal Register**

Closed Periods Before and After the Regular Season

The Council and its subcommittees considered a wide range of options (described in the EA/RIR) before recommending the following changes to the closed period before the regular season. In recognition of pot gear's ability to hold live sablefish for the 72-hour period, and the difficulty of enforcing a closure if the open-access fishery deploys its gear during this period, the Council recommended that all groundfish nontrawl gear, limited entry and open-access, be out of the water 72 hours before the start of the regular season. Acknowledging the difficulty and cost of transporting and setting pot gear, the Council also recommended that pot gear could legally be deployed, and baited, 24 hours before the regular season. However, as in past years, no sablefish could be retained, possessed, or landed during the 72-hour closure.

The 1995 annual groundfish management measures establish trip limits for groundfish that are incidentally caught in the open-access fishery by vessels using trawl or pot gear to fish for pink shrimp, or spot and ridgeback prawns. These limits are 1,500 pounds (680 kg) of groundfish per day while fishing for pink shrimp (multiplied by the total number of days in the fishing trip), and 1,000 pounds (454 kg) of groundfish per trip while fishing for spot and ridgeback prawns. The proposed rule would prohibit setting nontrawl gear (sablefish pot gear) that is used to take and retain groundfish during a closed period preceding the beginning of the regular sablefish season. As applied to the pink shrimp and spot and ridgeback prawn fisheries, it would permit pot vessels to set their gear provided that no groundfish is retained or landed during the 72-hour period.

Under the new structure the States of Oregon and Washington are expected to continue the practice of inspecting vessel holds prior to the start of the regular season to prevent stockpiling of fish. The State of California would rely on shore inspections and at-sea boardings to accomplish the same, but would not require a hold inspection of all vessels before the regular season in 1995.

The Council also decided that a closed period is no longer needed at the end of the regular season. Initially, it was thought that a 72-hour closure at the end of the season would be needed to tally catch data and to facilitate enforcement. However, experience has shown that catch data cannot be verified in only 72 hours, and the closure has not helped enforcement. Therefore, the end of the regular season would be marked by reimposition of small trip limits. The Council confirmed that, as in other groundfish fisheries, a vessel would have to initiate offloading its catch before the effective time of any closure or reduced trip limit.

The Council also recommended that the regular season end at noon rather than midnight, so that enforcement agents can more easily observe vessel activity and so that processing plants need not be open through the night. The Council was silent as to the starting times of the regular and mop-up fisheries, and the ending time of the mop-up fishery. NMFS has decided to propose noon as the effective time for all these events as well, for the same reasons.

Closed periods are probably not needed before the mop-up fishery, because there would be no particular disadvantage to the fleet if a vessel deployed gear before the fishery began. No vessel could land more than the small daily trip limit until the mop-up fishery started, and the amount that could be taken by each vessel during the mop-up fishery would be controlled by the cumulative trip limit. Grounds preemption by pot gear in the mop-up fishery would not be expected to any great extent, because much less gear would be deployed by high-capacity vessels under a cumulative trip limit. In addition, the grounds would become available as vessels complete their limit. The rush to the grounds should be less intense, because each vessel would have about a month to take its equal share

Biological Impacts

Biological impacts would be expected to be negligible. The sablefish acceptable biological catch (ABC) and harvest guideline would not be affected by this action, except to the extent that catch overages are avoided. Also, a delay of the fishery until August would result in fewer fish being taken to attain the quota, and therefore an increased biomass over time.

Socio-Economic Impacts

The distribution of catch would be expected to shift somewhat from pot to longline landings, because the pot fishermen would get less of a head start on the fishery. Although most of the pot fishery originates in Oregon, Oregon would not necessarily be hurt by this rule because longline fishermen along the coast, including Oregon, would be expected to benefit from the fair start. NMFS has considered costs to the limited entry and open-access fleets and believes that, while the cost is expected to be greatest for pot vessels, overall costs to the longline and pot fleets would be minimal.

Classification

The Assistant Administrator for Fisheries, NOAA, (AA) has initially determined that this action is consistent with the FMP and the national standards and other provisions of the Magnuson Act.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The socio-economic impacts are discussed above and contained in the EA/RIR. In summary, NMFS has considered costs to the limited entry and open-access fleets and believes that, while the costs are expected to be somewhat greater for pot vessels, overall costs to the longline and pot fleets would be minimal. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 23, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.23 paragraph (b)(2) is revised to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(2) *Nontrawl sablefish.* This paragraph (b)(2) applies to vessels using nontrawl gear in the limited entry fishery, except for paragraphs (b)(2)(i) and (v), which also apply to vessels in the open-access fishery. All times are local times.

(i) *Pre-season closure—Open-access and limited entry fisheries.*

(A) Sablefish taken with nontrawl gear in the limited entry or open access fishery in the EEZ may not be retained or landed from noon August 3 through noon August 6.

(B) All nontrawl gear used to take and retain groundfish must be out of EEZ waters from noon August 3 through noon August 6, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after noon on August 5.

(ii) *Regular season—Limited entry fishery.* The regular season for the limited entry nontrawl sablefish fishery begins at 1201 hours on August 6. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

(iii) *Mop-up season—Limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, cumulative trip limits will be imposed. The length of the mop-up season and amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Director in consultation with the Council or its Groundfish Management Team, and will be based primarily on the amount of fish remaining in the allocation and the number of participants anticipated. The Regional Director may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season.

(iv) The dates that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the **Federal Register**, and may be modified.

(v) Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (c) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (c) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (c) of this section.

[FR Doc. 95-5034 Filed 2-28-95; 8:45 am]
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Notices

Federal Register
Vol. 60, No. 40
Wednesday, March 1, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 24, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service
Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida—Marketing Order No. 905
Business or other for-profit; Farms; 1099 responses; 195 hours
Mark Hessel, (202) 720–3923

Agricultural Marketing Service
Report Forms Under Federal Milk Marketing Order Program (From Milk Handlers and Milk Marketing Cooperatives)
DA–24 and DA–25
Business or other for-profit; 28,065 responses; 26,020 hours
William F. Newell, (202) 720–3869.

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 95–5032 Filed 2–28–95; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1995

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This Notice sets forth the determination that 5,000 metric tons of nonfortified nonfat dry milk is available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1995.

FOR FURTHER INFORMATION CONTACT: Glenn D. Whiteman, Assistant Deputy Administrator, Export Credits, FAS, USDA, (202) 720–4274.

Determination

I have determined that a total of 5,000 metric tons of nonfortified nonfat dry milk will be available for donation overseas under Section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1995.

Done at Washington, DC, this 17th day of February, 1995.

Richard E. Rominger,
Acting Secretary of Agriculture.
[FR Doc. 95–4901 Filed 2–28–95; 8:45 am]
BILLING CODE 3410–10–M

Forest Service

Environmental Impact Statement, Bohemia Timber Sale, Tongass National Forest, AL

AGENCY: Forest Service, USDA.
ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will issue a supplemental Draft and Final EIS for the Bohemia Timber Sale, hereafter referred to as the 95 Supplement. The 95 Supplement will reroute Road 6031 around LUD II lands; include additional analysis of Unit 541; and identify management objectives for sensitive species in the Bohemia Project Area. This Notice of Intent (NOI) updates and replaces the March 2, 1992 Notice. The original NOI was published at 55 FR 2123–01 in the 1/22/90 **Federal Register**. The second NOI was published at 57 FR 7363–01 in the 3/2/92 **Federal Register**.

Other than rerouting Road 6031, the proposed action remains the same, to harvest 10–40 million board feet of commercial timber within the Bohemia area and construct the associated road system. The timber would be sold in one or more timber sales beginning in September 1995.

The purpose of this project is to meet the goals of the Forest Plan by providing 10 to 40 million board feet of timber for harvest. Current inventories show that the area could provide this much volume while meeting all existing standards and guidelines for timber harvest and road construction. The Tongass Timber Reform Act directed the Forest Service, through the Secretary of Agriculture, "to the extent consistent with providing for multiple use and sustained use of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) Meets the annual market demand for timber and (2) meets the market demand from such forest for each planning cycle." This project is part of a timber management program designed to meet that direction. A recent timber market assessment (Morse, K. 1994) confirms that there is available capacity and strong market demand for this timber volume.

The study area includes Value Comparison Units 424, 441.1, and 442 on Kupreanof Island in southeast Alaska. This area, encompassing approximately 68,000 acres, has been allocated by the Tongass Land Management Plan to Land Use Designations (LUDs) II and IV. LUD II areas are to be managed in a roadless state except for specifically authorized uses. LUD IV areas are to be managed to emphasize primarily commodity or market resources.

The decision to be made is whether to harvest 10–40 million board feet of timber from the Bohemia Study Area, construct the associated road system, and if so, in which locations and under what conditions. This decision will be made by Abigail R. Kimbell, the Stikine Area Forest Supervisor.

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EFFECTIVE DATE: Public scoping began in January 1990 and has been ongoing since that time. Interested publics are invited to comment. The comment period on the supplemental Draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. The supplemental Draft EIS is scheduled for publication in March 1995 and the Final EIS in May 1995.

FOR FURTHER INFORMATION CONTACT: The Bohemia analysis is being conducted by the Petersburg Ranger District, Stikine Area of the Tongass National Forest. Questions and comments can be directed to Dave Helmick, Forest Service, P.O. Box 309, Petersburg, AK 99833, phone (907) 772–3841.

SUPPLEMENTARY INFORMATION: A public scoping letter was sent to all persons who indicated an interest in the project by responding to the Stikine Area Project Schedule, or who otherwise notified the Stikine Area that they were interested in the Bohemia Timber Sale(s).

Alternatives include the no-action alternative and four action alternatives that would harvest from 10 to 35 million board feet of timber from 339 to 1,381 acres and construct 0.4 to 28 miles of specified road.

The following issues were identified in the previous supplement and will be addressed in the 95 Supplement only to the extent that they are affected by the proposed modifications.

1. Water quality, fisheries, and soils.
2. Wildlife and wildlife habitat.
3. Subsistence resources and users.
4. Recreation resources and users.
5. Wilderness area and associated values.
6. Cultural resources.
7. Scenic quality.
8. Timber sale economics.
9. Transportation.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process, First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 [1978]). Also, environmental objections that could have been raised at the Draft EIS stage may be waived or dismissed by the courts if not raised until after completing the Final EIS. (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Forest Supervisor, Stikine Area of the Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: February 14, 1995.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 95–4929 Filed 2–28–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Indianapolis (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M Hart, telephone 202–720–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 3, 1994, **Federal Register** (59 FR 45258), GIPSA asked persons interested in providing official services in the geographic area assigned to Indianapolis to submit an application for designation. Applications were due by November 1, 1994. Indianapolis, the only applicant, applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the December 2, 1994 **Federal Register** (59 FR 54427). Comments were due by December 30, 1994. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Indianapolis is able to provide official services in the geographic area for which they applied. Effective April 1, 1995, and ending March 31, 1998, Indianapolis is designated to provide official inspection services in the geographic area specified in the October 3, 1994, **Federal Register**.

Interested persons may obtain official services by contacting Indianapolis at 317–782–8938.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 15, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–4884 Filed 2–28–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity To Comment on the Applicant for the Enid (OK) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicant for designation to provide official services in the geographic area currently assigned to Enid Grain Inspection Company, Inc. (Enid).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 31, 1995.

ADDRESSES: Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 3, 1994, **Federal Register** (59 FR 61868), GIPSA asked persons interested in providing official services in the geographic area assigned to Enid to submit an application for designation. Enid, the only applicant, applied for designation to provide official inspection services in the entire area currently assigned to them.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning Enid. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Enid. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 15, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–4885 Filed 2–28–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Fremont (NE) and Titus (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc. (Titus), will end August 31, 1995, according to the Act, and GIPSA is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 31, 1995.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Fremont, main office located in Fremont, Nebraska, and Titus, main office located in West Lafayette, Indiana, to provide official inspection services under the Act on September 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end no later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Fremont and Titus end on August 31, 1995.

The geographic area presently assigned to Fremont, pursuant to Section 7(f)(2) of the Act, in the States of Iowa and Nebraska which will be assigned to the applicant selected for designation is as follows:

Carroll (west of U.S. Route 71); Clay (west of U.S. Route 71); Crawford; Dickinson (west of U.S. Route 71); Harrison (east of State Route 183); O'Brien (north of B24 and east of U.S. Route 59); Osceola (east of U.S. Route 59); and Shelby Counties, Iowa.

In Nebraska:

Bounded on the North by U.S. Route 20 east to the Pierce County line; the eastern Pierce County line; the northern Wayne, Cuming, and Burt County lines east to the Missouri River;

Bounded on the East by the Missouri River south-southeast to State Route 91; State Route 91 west to the Dodge County line; the eastern and southern Dodge County lines west to U.S. Route 77; U.S. Route 77 south to the Saunders County line;

Bounded on the South by the southern Saunders, Butler, and Polk County lines; and

Bounded on the West by the western Polk County line north to the Platte River; the Platte River northeast to the western Platte County line; the western and northern Platte County lines east to U.S. Route 81; U.S. Route 81 north to U.S. Route 20.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska (located inside Omaha Grain Inspection Service, Inc.'s, area).

Fremont's assigned geographic area does not include the following grain elevators inside Fremont's area which have been and will continue to be serviced by the following official agencies:

1. Hastings Grain Inspection, Inc.: Farmers Cooperative Grain Company, Columbus, Platte County, Nebraska; and
2. Omaha Grain Inspection Service, Inc.: Farmers Coop Business Assn., Rising City, Butler County, Nebraska; and Farmers Coop Business Assn. (2 elevators), Shelby, Polk County, Nebraska.

The geographic area presently assigned to Titus, pursuant to Section 7(f)(2) of the Act, in the State of Indiana which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Pulaski County line; Bounded on the East by the eastern and southern Pulaski County lines; the eastern White County line; the eastern Carroll County line south to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded on the South by the southern Tippecanoe County line; the

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eastern and southern Fountain County lines west to U.S. Route 41; and

Bounded on the West by U.S. Route 41 north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the White County line; the western White and Pulaski County lines.

The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Boswell Grain Company, Boswell, Benton County; Dunn Grain, Dunn, Benton County; York Richland Grain Elevator, Inc., Earl Park, Benton County; Raub Grain Company, Raub, Benton County (located inside Champaign-Danville Grain Inspection Departments, Inc.'s, area); and The Andersons, Delphi, Carroll County; Frick Grain, Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County (located inside Frankfort Grain Inspection, Inc.'s, area).

Titus' assigned geographic area does not include the following grain elevators inside Titus' area which have been and will continue to be serviced by the following official agency: Schneider Inspection Service, Inc.: Central Soya, and Farmers Grain, both in Winamac, Pulaski County.

Interested persons, including Fremont and Titus, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1995, and ending no later than August 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 15, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95-4583 Filed 2-28-95; 8:45 am]

BILLING CODE 3410-EN-F

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6-95]

Foreign-Trade Zone 98—Birmingham, AL; Application for Subzone, Mercedes-Benz Project, Inc., Plant (Multi-Purpose Vehicles), Tuscaloosa, Alabama

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Birmingham, Alabama, grantee of FTZ 98, requesting special-purpose subzone status for the vehicle manufacturing plant of the Mercedes-Benz Project, Inc. (MBPI) (subsidiary of Daimler-Benz AG, Germany), located in Tuscaloosa County, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 16, 1995.

The new Mercedes-Benz plant is located at the juncture of Interstate Highway 20/59, Will Walker Road, and U.S. Highway 11, about 10 miles east of the City of Tuscaloosa. The facility (900 acres, 1.67 million sq. ft.), currently under construction, will employ some 1,500 workers to produce up to 80,000 multi-purpose passenger vehicles annually. The application indicates that foreign-sourced parts and materials may represent up to 50 percent of the finished vehicles' material value, including: paint, hydraulic fluids, antifreeze, tires, brake components, mirrors, glass items, items of plastic/rubber, steel tubes/pipes/profiles and wire/cables, articles of aluminum, wiring harnesses, electrical switches, fasteners, steel springs, engines and transmissions (and parts), axles, parts of base metal, pumps, air conditioners, taps/cocks/valves, electric motors, batteries, bearings, lamps, audio equipment, radar detectors, vehicle bodies, fuel tanks, sunroofs, bumpers, electronic gauges, regulators, and instruments (duty rate range: 2.5-13.6%). The finished vehicles would be sold in the U.S. and exported.

Zone procedures would exempt MBPI from Customs duty payments on the foreign items used in production for export. On domestic sales, the company would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign material inputs noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 1, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 15, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Medical Forum Building, 7th Floor, 950 22nd Street North, Birmingham, AL 35203.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: February 21, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95-5052 Filed 2-28-95; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-403-801]

Fresh and Chilled Atlantic Salmon From Norway; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: We are amending our final results of the administrative review of the antidumping duty order on fresh and chilled Atlantic salmon (Atlantic salmon) from Norway. The review covers the period October 3, 1990, through May 31, 1992. We are publishing these amended final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4195 or 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department of Commerce (the Department) published the antidumping duty order on Atlantic salmon from Norway (56 FR 14920). The Department published final results of administrative review of the order on July 14, 1993 (58 FR 37912). The review covered one exporter, Skaarfish A/S, and the period October 3, 1990, through March 31, 1992.

In accordance with § 353.28(c), petitioner and respondent submitted allegations of clerical errors. We were unable to correct these errors and publish amended final results, however, because the petitioner filed a summons with the Court of International Trade (CIT) before we could correct these errors. Subsequently, the CIT granted the Department leave to correct these clerical errors.

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon. It encompasses the species of Atlantic salmon (Salmo salar) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho (silver); Sockeye ("redfish" or "blueback"); Humpback (pink); and Chum (dog). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Amendment of Final Results

We have corrected three ministerial errors in Skaarfish's margin calculation for the period October 3, 1990, through March 31, 1992, as follows:

1. Petitioner argues that the Department erred in allocating general depreciation expenses to processing of Atlantic salmon on the basis of square meters. Furthermore, petitioner contends that the remaining amount for general depreciation which was not allocated to processing of Atlantic salmon was unintentionally not included in the pool of general and administrative expenses.

The Department agrees with the petitioner in part. In its final results of review, the Department allocated depreciation expenses associated with production on the basis of the relative costs incurred for the various production lines. General depreciation was allocated on the basis of square meters. However, the Department erred in not including in the pool of general and administrative expenses those general depreciation expenses not allocated to production. This has been corrected for the amended final results review.

2. Petitioner contends that the Department erred by adding warranty expenses to net U.S. price in its computer program.

The Department agrees that warranty expenses should be subtracted from the net U.S. price, and has corrected its computer program for the amended final results of review.

3. Respondent contends that the Department erred by using a two-digit U.S. dollar/Norwegian kroner exchange rate rather than the six-digit rates used in the preliminary results.

The Department agrees that the six-digit dollar/kroner rate should be used, and has corrected its computer program for the amended final results of review.

Final Results of Review

Based on the corrections of the ministerial errors, the Department has amended our final results of review. The following margin exists for the period October 3, 1990, through March 31, 1992.

Skaarfish A/S; 2.15%

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: February 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-5053 Filed 2-28-95; 8:45 am]

BILLING CODE 3510-DS-M

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of March 1995.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Australia

Canned Bartlett Pears, A-602-039, 38 FR 7566, March 23, 1973, Contact:

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Mathew Rosenbaum at (202) 482–4377

Chile

Standard Carnations, A–337–602, 52 FR 6939, March 20, 1987, Contact: Joe Fargo at (202) 482–5345

France

Brass Sheet & Strip, A–427–602, 52 FR 6995, March 6, 1987, Contact: Chip Hayes at (202) 482–5047

Italy

Brass Fire Protection Equipment, A–475–401, 50 FR 8354, March 1, 1985 Contact: Leon McNeill at (202) 482–4236

The People's Republic of China

Chloropicrin, A–570–002, 49 FR 10691, March 22, 1984, Contact: Andrea Chu at (202) 482–4733

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of March 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: February 15, 1995

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 95–5054 Filed 2–28–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review and Intent To Revoke the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on lamb meat from New Zealand for the period April 1, 1992 through March 31, 1993. We preliminarily determine the total subsidy to be 0.0013 percent *ad valorem* for all firms for the review period. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem is de minimis*.

In addition, we preliminarily determine that the Government of New Zealand (GONZ) has met the requirements for revocation of the countervailing duty order, including undergoing administrative review for three consecutive years during which the Department has determined that there has been no net subsidy on lamb meat and all subsidies on lamb meat have been abolished. If these preliminary results are sustained in the final results of this review and the Department is satisfied that the GONZ is not likely to reinstate or substitute other subsidy programs on lamb meat, we will revoke the countervailing duty order pursuant to 19 CFR 355.25(a)(1). We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1993, the Department published a notice of "Opportunity to Request Administrative Review" (58 FR 47116) for the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). On September 30, 1993, we received a request for review from the New Zealand Meat Producers Board. The GONZ also requested revocation of the countervailing duty order on lamb meat from New Zealand pursuant to 19 CFR 355.25(b) and certified that all countervailable programs for lamb meat had been eliminated and that it will not reinstate those countervailable programs or substitute other countervailable programs. We initiated the review, covering the period April 1, 1992 through March 31, 1993, on October 18, 1993 (58 FR 53710). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The review period is April 1, 1992, through March 31, 1993. The review involves nine companies and five programs.

Revocation of the Order

After carefully examining the September 30, 1993, request for revocation of the order, including the certification, the Department determined that certain modifications with respect to the revocation request were necessary. On May 12, 1994, the GONZ resubmitted its certification that met the minimum threshold requirements to be considered for revocation under 19 CFR 355.25(b).

According to 19 CFR 355.25(b), a government meets the minimum threshold requirement for revocation of an order if, in requesting the third consecutive administrative review of the order, the government submits a certification that the government has abolished all subsidy programs for the subject merchandise for a period of three consecutive years, and that the government will not reinstate the abolished programs or substitute other countervailable programs. Under 19 CFR 355.25(a)(1)(i), the Department must have also found that there was no net subsidy for lamb meat in the two consecutive administrative reviews prior to the year in which the government requests revocation, and in the third consecutive administrative review, the Department must also determine that there is no net subsidy. If the foregoing threshold requirements are met, and the Department determines in the review during which revocation has been requested that the GONZ has eliminated all subsidies on lamb meat for the third consecutive year, and is not likely to substitute or replace formerly countervailable programs with new subsidies, then the Department will revoke the order.

With respect to the countervailing duty order on lamb meat, the GONZ met the minimum threshold requirements for consideration of the order for revocation. The Department verified that all programs that were determined to be countervailable in past administrative reviews of the order have been terminated. The Department has reviewed these programs in three consecutive administrative reviews of this order (including this review). In each of the past two reviews, the Department determined that all countervailable programs have been eliminated and there was no net subsidy on lamb meat. In this review, we preliminarily determine that all countervailable programs on lamb meat have been terminated and have not been replaced with other countervailable programs. We also preliminarily determine that it is not likely that in the future the GONZ will reinstate for lamb meat those programs or substitute other countervailable programs. In addition, we preliminarily determine that the net subsidy during the review period was *de minimis*. Therefore, if the final results of this review remain unchanged from these preliminary results, the Department intends to revoke the order pursuant to 19 CFR 355.25(a)(1).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under item numbers 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000, and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As required under 19 CFR 355.36(a)(ii) of the Department's regulations, we verified the elimination of programs that had been found countervailable in past administrative reviews and examined the countervailability of other programs that may have replaced these programs. We also selected several companies for verification to ensure that there were no net subsidies and that no residual benefits were being provided to lamb meat producers under the terminated programs.

Analysis of Programs

I. Program Preliminarily Determined to Confer Subsidies

(A) Livestock Incentive Scheme

The Livestock Incentive Scheme (LIS) was introduced in 1976 in order to encourage farmers to increase permanently their number of livestock. Under the scheme, a farmer engaged in a stock increase program, for a minimum of one and a maximum of three years, could opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12 for each additional stock unit carried; or (2) a deduction of NZ$24 from taxable income for each additional stock unit carried. If the livestock increase was met, farmers who elected to take out loans wrote the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction could be applied toward tax liability in any of the three years after completion of the development program. Applications to participate in the LIS program were accepted until March 31, 1982. No new loans have been given under this program since 1983, and no tax credits have been authorized since the 1983/84 government fiscal year. The last loan was forgiven in 1988; these forgiven loans are treated by the Department as grants. During the 1991/92 government fiscal year (the review period), we verified that there were no outstanding loans that had not been converted to grants and no tax credits remaining to be claimed by lamb producers.

The Department has previously found this program to be countervailable because benefits under this program are available only to farmers with livestock herds, and, as such, are limited to a specific enterprise on industry, or group of enterprises or industries (See Preliminary Affirmative Countervailing Duty Determination; Lamb Meat From New Zealand (50 FR 28236, June 25, 1985 and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat From New Zealand (50 FR 37708, September 17, 1985)). No new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination.

To calculate the benefit, we treated the loan amounts forgiven in prior years as grants and allocated those amounts over five years, the average useful life of breeding stock. This methodology is described in § 355.49(g) of Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (51 FR 23366, 23385; May 31, 1989). Because the 1988 grant under this program was allocated over five years, we find that a benefit was conferred during the review period; however, this is the last year of the five-year benefit stream and no further benefits will be provided under these forgiven LIS loans. The discount rate chosen was the average interest rate on overdrafts during the year in which the loans were forgiven.

The methodology and discount rate are the same used in previous administrative reviews (see e.g. Lamb Meat from New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991) and Lamb Meat from New Zealand; Final Results of Countervailing Duty Administrative Review (56 FR 38423; August 13, 1991). We added the value of the benefits from the grants and multiplied the results by a factor determined to represent the value of lamb meat as a percentage of the total value of all livestock production. We then divided that result by the total value of lamb meat production during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.0013 percent *ad valorem* for all firms.

II. Programs Preliminarily Determined Not To Confer Subsidies

(A) Regional Development Suspensory Loan Scheme (RDSL)

The GONZ established the Regional Development Assistance Program to encourage utilization of resources in priority regions of New Zealand. Regions designated by the government as non-priority did not qualify for regional development assistance. The RDSL program, one of a variety of regional development programs administered by the Development Finance Corporation (DFC), provided interest-free loans which were later converted to grants if development objectives are met.

The Department previously found this program to be countervailable because it provided government-funded financing to specific regions in New Zealand on terms inconsistent with commercial considerations (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand (50 FR 37708, September 17, 1985)). The RDSL was terminated on April 21, 1986, by the GONZ and the Regional Development Investigation Grants Scheme (RDIGS) was established as its replacement (See Verification Report on Lamb Meat from New Zealand (Public Version) dated April 13, 1988).

In 1988, the Ministry of Commerce (MOC) became the administrator of the RDIGS, and the name of the program was changed to the Business Development Investigation Grant Scheme (BDIGS). Unlike its predecessor, the RDSL, under BDIGS, all New Zealand taxpayers from any region are

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eligible to apply for this program. The criteria for eligible projects under the program are: (1) The project must be a lawful activity, and (2) the activity must be new to the region in that its technical feasibility and/or commercial viability has yet to be established in the region.

The BDIGS assists applicants in assessing the feasibility of a new activity by providing grants to cover expenses such as accountant fees, Ministry of Agriculture and Fisheries (MAF) soil studies, pilot plant costs, marketing consultant fees, and travel costs of visiting a similar operation in another country. These grants may cover up to 50 percent of the costs related to the project feasibility studies. We verified that as of June 1989, there are no regional distinctions made by this program or the government with respect to eligibility for these grants.

Although the lamb meat industry is not a new or unproven activity in any region in New Zealand, the introduction of an advanced technology to the lamb industry could be funded through this scheme. At verification, we examined the use of BDIGS and found that no producers or exporters of lamb meat used the program at any time between early 1991 to June 1994. We found that the program was available to all sectors of the economy and all regions within New Zealand. During the review period, we verified that this program was used in a wide variety of different economic sectors for the development of such projects as tree surgery products, a holiday home exchange program, a plastic bag holder, Mediterranean bread, and an intelligent radio modem and that these projects were conducted across all regions in New Zealand (See Verification of the Countervailing Duty Order on Lamb Meat from New Zealand (Public Version) dated December 13, 1994). Therefore, because this program is not limited to a specific enterprise or industry, or group of enterprises or to companies in specific regions, we find that it is not countervailable.

(B) Expert Assistance Grant Scheme (EAGS)

The EAGS is a program established in 1992 by the MOC to assist small businesses, those with 10 employees or less, in their efforts to become more competitive. Under the EAGS program, grants are provided to small firms in any industry throughout New Zealand. Grants are provided to firms that are hiring "experts" to help improve quality and provide expertise that is not available within the firm.

At verification, we examined the EAGS and found that no producers or exporters of lamb meat used the program at any time between early 1991 to June 1994. We found that the program was available to all sectors of the economy and all regions within New Zealand. During the review period, we verified that this program was used in a wide variety of different economic sectors of the economy including foundries, data systems, and engineering projects and that companies using EAGS were located across all regions of New Zealand (See Verification of the Countervailing Duty Order on Lamb Meat from New Zealand (Public Version) dated December 13, 1994). Therefore, because this program is not limited to a specific enterprise or industry, or group of enterprises or to companies in specific regions, we find that it is not countervailable.

III. Programs Preliminarily Determined To Be Terminated

(A) The Export Market Development Taxation Incentive (EMDTI)

Under the EMDTI, established in the 1979 Amendment to the Income Tax Act of 1976, exporters have received tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures included those incurred principally for seeking and developing new markets, retaining existing markets and obtaining market information. An exporter who took advantage of this tax credit could not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the program was contingent upon exportation, the Department previously found this program to confer a countervailable grant or subsidy (See Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review (56 FR 27243; June 13, 1991) and Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review (56 FR 38423; August 13, 1991).

Effective with the government fiscal year beginning April 1, 1990, the GONZ eliminated the EMDTI tax credit, and all formerly eligible expenditures are subject to the rules for ordinary business expenses in calculating taxable income. Because certain corporate fiscal years do not correspond with the GONZ's fiscal year, some residual benefits were still possible. However, according to the questionnaire response, no exporters of the subject merchandise claimed benefits under this program on their tax return during the review period. Moreover, at verification, we saw no evidence that EMDTI tax credits were given or that they existed during the review period. Furthermore, we verified that there can be no residual benefits after our review period. Accordingly, we preliminarily determine that this program has been terminated and that there are no residual benefits to lamb meat producers or exporters.

(B) Export Suspensory Loan Scheme (ESLS)

The ESLS administered by the Department of Trade & Industry and the DFC, was established in the 1973 budget and modified by Cabinet decision in 1978. The purpose of the program is to provide loans to assist exporters in purchasing equipment needed to expand their production of export goods. The loans covered up to 40 percent of eligible expenditures and were converted to grants if pre-determined export targets were met. If the export targets were not met, the loans could be partially converted to grants or called in full at the DFC's long-term interest rates. The ESLS terminated on March 31, 1985; we have verified that no new loans under this program were granted after that date.

The Department has previously found this program to be countervailable because benefits under this program are contingent on export performance and the program provided loans that: (1) Could be at rates lower than those available from commercial sources, and (2) could be converted to grants (See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand (50 FR 37708, September 17, 1985)).

At verification, we examined this program and found that there were no outstanding ESLS loans during the review period. The final payments on loans under this program were made during the 1990–91 New Zealand Government fiscal year. (See Verification of the Countervailing Duty Order on Lamb Meat from New Zealand (Public Version) dated December 13, 1994.) Furthermore, we saw no evidence that ESLS loans were used by lamb meat exporters during the review period. Accordingly, we preliminarily determine that this program has been terminated and that there are no residual benefits to lamb meat producers or exporters.

(C) Export Programme Grant Scheme (EPGS/Export Programme Suspensory Loan Scheme (EPSLS)

The EPGS was established in the 1979 Budget to encourage marketing research in targeted foreign markets. The grants, amounting to 64 percent of budgeted expenditures, were available for up to three years. In 1982, the grant program was converted to the EPSLS, a suspensory loan program. Loans covering up to 40 percent of eligible expenditures were available to established exporters who increased their net foreign exchanged earnings through the marketing of specific goods or services in a designated foreign market. If a predetermined sales forecast was accomplished, the suspensory loan was converted into a grant; if the forecast was not met, the exporter repaid the loan with interest.

During our administrative review covering the period April 1, 1986, through March 31, 1987, the Department verified the EPSLS program and found that on May 23, 1985, the GONZ terminated the EPSLS. In addition, the GONZ announced that its commitments made under the program prior to that date would be met. (See Verification Report Concerning Lamb Meat From New Zealand (Public Version) dated April 13, 1988, which has been placed on the public record of this proceeding.) No lamb meat exporters were using this program at the time it was terminated. (See Verification Report Concerning Lamb Meat From New Zealand (Public Version) dated April 13, 1988; Lamb Meat From New Zealand; Preliminary Results of Countervailing Duty Administrative Review, (54 FR 1402; January 13, 1989) and Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review, (54 FR 19590; May 8, 1989).) Further, during this review period, we found no evidence that this program was used by lamb meat exporters. Accordingly, we preliminarily determine that this program has been terminated and that there are no residual benefits to lamb meat producers or exporters.

Preliminary Results of Review

As a result of our review, we preliminarily determine that total subsidy to be 0.0013 percent *ad valorem* for all firms during the period April 1, 1992, through March 31, 1993. In accordance with 19 CFR 355.7, any rate less than 0.50 percent is *de minimis* and will be disregarded.

Therefore, as provided for by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service to liquidate, upon publication of the final results of this review in the **Federal Register**, without regard to countervailing duties, all shipments of the subject merchandise from New Zealand exported by all companies on or after April 1, 1992, and on or before March 31, 1993.

The Department also intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of the subject merchandise from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–5056 Filed 2–28–95; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Orders and Terminate Suspended Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty orders and terminate the suspended countervailing duty investigation listed below. Domestic interested parties who object to revocation of any of these orders or to termination of the suspended investigation must submit their comments in writing not later than the last day of March 1995.

EFFECTIVE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Megan Waters, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty orders and to terminate the suspended countervailing duty investigation listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in §§ 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke these orders or terminate this suspended investigation pursuant to this notice, and no interested party (as defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders and suspended countervailing duty investigation are no longer of interest to interested parties and proceed with the revocations. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke or terminate pursuant to this notice, the Department will not revoke the order or terminate the suspended investigation.

Countervailing duty orders

Chile	Standard Carnations. (C–337–601)	03/19/87 52 FR 8635
Iran	Raw Pistachios.	03/11/86

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Israel	(C–507–501) Oil Country Tubular Goods.	51 FR 8344 03/06/87
	(C–508–601)	52 FR 6999
New Zealand	Carbon Steel Wire Rod.	03/07/86
	(C–614–504)	51 FR 7971
Turkey	Welded Carbon Steel Pipes and Tubes.	03/07/86
	(C–489–502)	51 FR 7984
Turkey	Welded Carbon Steel Line Pipe.	03/07/86
	(C–489–502)	51 FR 7984
France	Brass Sheet and Strip.	03/06/87
	(C–427–603)	52 FR 6996
Argentina	Certain Textile Mill Products.	03/12/85
	(C–357–404)	48 FR 9846
Peru	Apparel	03/12/85
	(C–333–402)	48 FR 9871
Peru	Certain Textile Mill Products.	03/12/85
	(C–333–402)	48 FR 9871
Sri Lanka	Certain Textile Mill Products.	03/12/85
	(C–542–401)	48 FR 9826

Suspended countervailing duty investigation

Colombia	Certain Textile Mill Products.	03/12/85
	(C–301–401)	50 FR 9863

Opportunity to Object

Not later than the last day of March 1995, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders or to terminate this suspended investigation. Any submission objecting to the revocation or termination must contain the name and case number of the order or suspension agreement and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

A separate objection must be filed for each order or suspension agreement. In instances where two or more countervailing duty orders share the same case number (e.g., C–489–509 includes carbon steel pipes and tubes and carbon steel line pipe, C–333–402 includes both apparel and certain textile mill products), an objection must be submitted for each separate order, as listed above.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230. This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 23, 1995.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance

[FR Doc. 95–5055 Filed 2–28–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022395B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting via conference call of its Reef Fish Stock Assessment Panel on Wednesday, March 1, 1995, beginning at 10:00 a.m. eastern standard time (EST)/9:00 a.m. central standard time (CST) to review recreational and commercial landings information on red grouper. These data were prepared by NMFS and Council staff, and relate to a draft Regulatory Amendment to the Reef Fish Fishery Management Plan which addresses a change in the size limit for red grouper, and the resulting impacts on the stock and the recreational allocation. A listening phone will be established at NMFS Southeast Regional Office for interested persons to listen to the discussion and participate in the meeting.

ADDRESSES: The listening phone will be located at NMFS Southeast Regional Office, 9721 Executive Center Drive North, St., Petersburg, FL 33702; telephone: (813) 570–5301.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, at the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Additional public testimony on this issue will be received at the Council meeting at the Holiday Inn Downtown - Superdome, 330 Loyola Avenue, New Orleans, LA, on Wednesday, March 15, 1995, beginning at 8:45 a.m. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address.

Dated: February 23, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4940 Filed 2–28–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Office of Administrative Law Judges

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The U.S. Department of Education (the Department) intends to compromise a claim against the Washington State Board for Vocational Education (Washington) now pending before the Office of Administrative Law Judges (OALJ). Docket No. 93–42–R. (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before April 17, 1995.

ADDRESSES: Comments should be addressed to Kathleen Ryan, Office of the General Counsel, U.S. Department of Education, 600 Independence Avenue SW. (Room 5335, FB 10B), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Kathleen Ryan, Esq., Telephone: (202) 401–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of Washington for the fiscal year ending June 30, 1990. The audit was performed by the Washington State Auditor, to fulfill the requirements of Office of Management and Budget Circular A–128. The audit included the evaluation of the internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs.

Among the systems examined were Washington's procedures for reviewing and approving applications from community colleges for funds awarded under section 201 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2331 (1988), for handicapped and disadvantaged vocational education students. Sections 201(c)(1) and (2) of the Perkins Act and the implementing regulations (34 CFR 401.52(a) and 401.53(a)(1)(1990)) provide that funds reserved for the handicapped and disadvantaged may only be used for the Federal share of the costs of providing "supplemental or additional staff, equipment, materials, and services not provided to other individuals in vocational education that are essential for [handicapped and disadvantaged] individuals to participate in vocational education." Under section 201(h)(1) of the Perkins Act (20 U.S.C. 2331(h)(1)) and the implementing regulations (34 CFR 401.58(a)(1)(1990)), these excess costs may include basic skills instruction for handicapped and disadvantaged individuals who are enrolled in vocational education programs.

During the course of the audit, the auditors found that Washington had approved applications from community colleges for unallowable activities under section 201, and that the colleges had improperly charged the costs of these activities to the handicapped and disadvantaged setasides under the Vocational Education Opportunities Program implemented at 34 CFR 401.51–401.58 (1990). The auditors found that the colleges used funds from the setasides to support the costs of services, activities and equipment for handicapped and disadvantaged students not enrolled in vocational education programs, including the provision of basic skills instruction to students not enrolled in vocational education programs. In addition, the auditors found that the colleges used setaside funds to support the costs of activities for students who were not handicapped or disadvantaged.

On March 31, 1993, the U.S. Department of Education's Assistant Secretary for Vocational and Adult Education (Assistant Secretary) issued a program determination letter (PDL) sustaining the auditors' findings and requiring Washington to repay $135,248 in disallowed costs to the Department.

The State filed a timely request for review of the Assistant Secretary's determination with the OALJ. Thereafter, the Administrative Law Judge assigned to the appeal granted the parties' joint motion for a stay of this proceeding for purposes of mediation.

The Department proposes to compromise the $135,248 claim for $50,000. In mediation sessions before the Federal Mediation and Conciliation Service, Washington provided additional information and documentation concerning the numbers of handicapped and disadvantaged vocational education students being served and the types of services, activities and equipment involved. Washington also submitted documentary evidence concerning the necessity of the services, activities and equipment to the participation of the handicapped and disadvantaged students in vocational education, and the non-availability of these services and activities for non-handicapped and non-disadvantaged vocational students.

Given the amount that would be repaid by Washington under the settlement agreement, the additional documentation submitted during mediation, and the litigation risks and costs of proceeding through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Rather, under the authority provided in 20 U.S.C. 1234a(j)(1), the Department has determined that a compromise of this claim for $50,000 would be appropriate.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Kathleen Ryan at the address given at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j).

Dated: February 22, 1995.

Donald R. Wurtz,

Chief Financial Officer.

[FR Doc. 95–5039 Filed 2–28–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Fernald Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald Site.

DATE AND TIME: Saturday, March 11, 1995: 8:30 a.m.–12:30 p.m. (public comment session, 11:45 p.m.–12:00 p.m.).

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Site, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Site message line (513) 648–6478.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda:

8:30 a.m. Task Force Administration (Call to order Approval of Minutes Chair's Remarks)
8:50 a.m. Review of New Information, Budget Discussion
10:00 a.m. Break
10:15 a.m. Discussion and Draft Resolutions
11:45 p.m. Public Comment
12:00 p.m. Vote on Resolutions
12:15 p.m. Wrap Up
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, March 11, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmtic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Site, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on February 24, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5063 Filed 2–28–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice

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is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Hanford Site.

DATE AND TIME: Thursday, March 2, 1995: 9:00 a.m.–5:30 p.m.

ADDRESSES: Executive Inn-Best Western, 200 Taylor North, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, (509) 376–9628.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

March Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to the DOE '96–'97 Budget Concepts, Issues, and Guiding Principles or Priorities and the Proposed Approach to 100 Areas Remediation. The Committee will also receive updates from various Subcommittees, including reports on: the Consortium for Environmental Risk Evaluation (CERE) Process, K Basin and Spent Fuel Update, Tank Safety and Emergency Response, and a report from members attending the National Site Specific Advisory Board Meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)–376–9628.

Issued at Washington, DC on February 24, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5064 Filed 2–28–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, March 1, 1995: 5:30 p.m.–10:00 p.m.

ADDRESSES: Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:
Wednesday, March 1, 1995
7:00 p.m. Call to Order
- Review Agenda
- Minutes Acceptance
- Financial Report
- Correspondence
- Reports from Committees, Delegates and Representatives
- Unfinished Business
- New Business
- Evaluation of Board and Environmental Restoration and Waste Management Programs
- Announcements

10:00 p.m. Adjournment

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details. A final agenda will be available at the meeting Wednesday, March 1, 1995.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on February 24, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–5065 Filed 2–28–95; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration; Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act. The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before March 31, 1995. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–1605 and EIA–1605EZ.
3. N.A.
4. Voluntary Reporting of Greenhouse Gases.
5. New.
6. Annually.
7. Voluntary.
8. Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.
9. 1,000 respondents.
10. 1 response annually.
11. 18.4 hours per response.
12. 18,400 hours respondent burden.
13. EIA–1605 and EIA–1605EZ are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and carbon fixation. In addition to publishing an annual review of the reports submitted, EIA intends to establish a publicly available data base of information reported. Any U.S. legal entity that has reduced greenhouse gas emissions, sequestered carbon, or made a commitment to do either of these may submit a report.

Statutory Authority

Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506(a) and (c)(1).

Issued in Washington, D.C., February 17, 1995.

Yvonne M. Bishop, Ph.D.

Director Office of Statistical Standards Energy Information Administration.

[FR Doc. 95–5048 Filed 2–28–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11163–000–ME]

Consolidated Hydro Maine, Inc.; Notice of Availability of Draft Environmental Assessment

February 23, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the South Berwick Hydroelectric Project, located on the Salmon Falls River in the towns of South Berwick, Maine, and Rollinsford, New Hampshire, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing, unlicensed project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix "South Berwick Hydroelectric Project No. 11163" to all comments. For further information, please contact John Blair at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4949 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 9951–048]

Notice of Application

February 23, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Transfer of License.

b. Project No: 9951–048.

c. Date Filed: February 15, 1995.

d. Applicant: Township of Van Buren, and STS French Landing.

e. Name of Project: French Landing

f. Location: Huron River, Wayne County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: M. Curtis Whittaker, Esq., Two Capital Plaza, P.O Box 1500, Concord, NH 03302–1500. (603) 226–2600.

Mr. Stephen J. Sinclair, STS Hydropower, Ltd., 225 West Wacker Drive, Chicago, IL 60606, (312) 553–2131.

Mr. Michael Long, 46425 Tyler Road, Belleville, MI 48111–1299.

i. FERC Contact: Patricia Massie, (202) 219–2681.

j. Comment Date: March 9, 1995.

k. Description of Transfer: Transfer is from Township of Van Buren, Michigan and STS French Landing, Ltd. to Van Buren and STS Hydropower, Ltd.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

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"RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives

Lois D. Cashell,

Secretary.

[FR Doc. 95–4950 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11410–001 Utah]

Soldier Creek Hydro Associates; Notice of Surrender of Preliminary Permit

February 23, 1995.

Take notice that Soldier Creek Hydro Associates, Permittee for the Soldier Creek Project No. 11410, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11410 was issued October 15, 1993, and would have expired September 30, 1996. The project would have been located on Soldier Creek, in Tooele County, Utah.

The Permittee filed the request on February 15, 1995, and the preliminary permit for Project No. 11410 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4951 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–237–015]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

February 23, 1995.

Take notice that on February 21, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing Eighth Revised Sheet No. 4, as part of its FERC Gas Tariff, Second Revised Volume No. 1, pursuant to the settlement approved by the Commission in its letter order issued on December 30, 1993 in this proceeding. Alabama-Tennessee proposes that the tariff sheet be made effective March 1, 1995.

Alabama-Tennessee has requested such waiver of the Commission's Regulations as may be necessary to accept and approve its filing as proposed.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4943 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–168–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 23, 1995.

Take notice that on February 21, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), filed pursuant to Section 33.2 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of April 1, 1995:

Sub Third Revised Sheet No. 4B

According to Alabama-Tennessee, its filing provides for the recovery of a positive balance in its Account No. 191 as a result of certain refunds and credits made by Alabama-Tennessee to its sales customers. Alabama-Tennessee proposes to collect this balance through a direct bill to each affected customer and is seeking authorization to reflect the entire amount due in the bills to be rendered in May, 1995 for services provided in April, 1995.

In the event that the Commission does not accept and approve its filing, Alabama-Tennessee requests that it be permitted to revise its pre-636 purchased gas cost calculations to eliminate completely the effect of retainage on its PGA.

Alabama-Tennessee has requested that the Commission grant such waivers as may be necessary to accept and approve the filing as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 2, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4944 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ID–2868–000, ER94–1384–002, ER95–78–000, and ER94–1369–000 (not consolidated)]

Frederic V. Salerno, Morgan Stanley Capital Group Inc., Mid-American Resources, Inc., and Public Service Electric and Gas Company; Extension of Time

February 23, 1995.

On February 10, 1995, the Commission issued a Notice of Filing in each of these proceedings as further described below. By this notice, the date for filing motions to intervene or protests is hereby extended to and including March 9, 1995, except for Docket No. ID–2868–000, which is extended to and including March 2, 1995.

1. Frederic V. Salerno

[Docket No. ID–2868–000]

Take notice that on February 3, 1995, Frederic V. Salerno (Applicant), tendered for filing an application under section 305(b) to hold the following positions: Director—Orange and Rockland Utilities, Inc.; Director—The Bear Sterns Companies Inc.

Comment date: March 2, 1995 in accordance with Standard Paragraph E at the end of this notice.

2. Morgan Stanley Capital Group

[Docket No. ER94–1384–002]

Take notice that on January 12, 1995, Morgan Stanley Capital Group Inc. tendered for filing a revised rate schedule in the above-referenced docket.

Comment date: March 9, 1995 in accordance with Standard Paragraph E at the end of this notice.

3. Mid-American Resources, Inc.

[Docket No. ER95–78–000]

Take notice that on January 24, 1995, Mid-American Resources, Inc. tendered for filing supplemental information to its October 27, 1994 filing in the above-referenced docket.

Comment date: March 9, 1995 in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER94–1369–000]

Take notice that on February 8, 1995, Public Service Electric and Gas Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 9, 1995 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4969 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–167–000]

Indicated Shippers v. Sea Robin Pipeline Company; Notice of Complaint and Request for Initiation of Investigation of Transportation Rates of Sea Robin Pipeline Company

February 23, 1995.

Take notice that on February 16, 1995, Amoco Production Company, Amoco Energy Trading Corporation, Exxon Corporation, OXY USA Inc., Phillips Gas Marketing Company and Phillips Petroleum Company (Indicated Shippers) filed a complaint under Section 5 of the Natural Gas Act (NGA) 15 U.S.C. 717d (1988) and Section 5 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1334 (1988) against Sea Robin Pipeline Company (Sea Robin) alleging that the maximum transportation rates currently being charged by Sea Robin are unjust, unreasonable or otherwise unlawful. The Indicated Shippers further request that the Commission immediately institute an investigation to determine whether Sea Robin's rates are unjust, unreasonable or otherwise unlawful, and to determine just and reasonable rates on a prospective basis.

Sea Robin's currently effective rates are based on the January 5, 1990 settlement in Sea Robin's last general Section 4 rate case in Docket No. RP88–181. This settlement was approved by the Commission on April 18, 1990 (51 FERC ¶ 61,046, reh'g. denied 51 FERC ¶ 61,315 (1990)). Since that time, the Indicated Shippers assert, Sea Robin's throughput has increased by approximately 52% and that in the 1991–1993 time period, Sea Robin's annual return on net plant has averaged approximately 50%. The Indicated Shippers estimate that Sea Robin's just and reasonable maximum rates, if based on current throughput and costs, would be at least 30% less than Sea Robin's currently effective rates.

Based largely on data taken from Sea Robin Form 2 reports, the Indicated Shippers claim that Sea Robin's just and reasonable maximum IT rate should not exceed 5.9¢/MMBtu. Consistent with Commission precedent in United Gas Pipe Line Company and ANR Storage Company, 47 FERC ¶ 61,285 (1989), the Commission is requested to order Sea Robin to file a cost and revenue study and other schedules in accordance with 18 CFR 154.63(e)(2) and 154.63(f) as well as other documents sufficient to allow interested parties to fully evaluate Sea Robin's current cost-of-service and to permit the establishment of just and reasonable rates.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before March 27, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4948 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG91–5–002]

Overthrust Pipeline Co.; Notice of Filing

February 23, 1995.

Take notice that on February 14, 1995 Overthrust Pipeline Company (Overthrust) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Overthrust states that it is

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992, 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F 2d 1187 (D.C. Cir. 1992). Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate

Continued

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revising its standards to incorporate the changes required by the Commission's January 20, 1995 Order on Standards of Conduct.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4945 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–166–000]

Pan-Alberta Gas (U.S.) Inc. Complainant v. Pacific Gas and Electric Company and Pacific Gas Transmission Company Respondents; Notice of Complaint

February 23, 1995.

Take notice that on February 16, 1995, Pan-Alberta Gas (U.S.) Inc. (PAG-US), submits for filing a complaint against Pacific Gas and Electric Company (PG&E) and Pacific Gas Transmission Company (PGT) (jointly, Respondents).

PAG-US complains that the terms on which PG&E recently offered to permanently release a "package" of two assignments of FTS–1 capacity on the PGT system (PGT Release Package) are unlawfully discriminatory and anti-competitive.

PAG-US argue that in its PGT Release Package, PG&E offered to permanently release (1) An unspecified quantity of capacity on the PGT System from Kingsgate, British Columbia to Malin, Oregon, and (2) a similarly unspecified quantity of separate, additional capacity on the system from Stanfield, Oregon [1] to Malin. As a condition of the release, PG&E required that, for each unit of Kingsgate to Malin capacity sought by a bidder, that bidder would have to agree to take 3.5 units of additional Stanfield to Malin capacity.

PAG-US argue that PG&E's mandatory bundling of this unrelated PGT capacity (1) Constitutes an unlawful tying arrangement, (2) amount, in effect, to an unlawful attempt by PG&E to collect a rate in excess of the as billed rate for its Kingsgate to Malin capacity, and (3) violates the requirements of Order No. 636 and PGT's tariff that conditions imposed on capacity releases be reasonable and nondiscriminatory.

PAG-US states that the Commission should (1) Set aside any capacity releases that may actually have been consummated on the discriminatory and anti-competitive terms of PG&E's January PGT Release Package, (2) require that, if PG&E still desires to release Kingsgate to Malin and Stanfield to Mailin capacity, it must do so on an unbundled basis, with neither block being mandatorily tied to the other, and (3) provide any additional relief which is deems appropriate in the circumstances.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before March 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before March 27, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4946 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–11–003]

Questar Pipeline Company; Notice of Filing

February 23, 1995.

Take notice that on February 14, 1995, Questar Pipeline Company (Questar) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 and 566–A.[2] Questar states that it is revising its standards to incorporate the changes required by the Commission's January 20, 1995 Order on Standards of Conduct.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4947 Filed 2–28–95; 8:45 am]

BILLING CODE 6717–01–M

Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 13, 1994).

[3] 70 FERC ¶ 61,054 (1995).

[1] Stanfield is an intermediary point on the PGT system approximately halfway between Kingsgate and Malin.

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir No. 94–1745 (December 13, 1994).

[3] 70 FERC ¶ 61,054 (1995).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5161–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 31, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Application Requirements under EPA's Building Air Quality Alliance (EPA No. 1742.01). This is a request for initial approval of an information collection.

Abstract: This information collection supports Title IV of the 1986 Superfund Amendments and Reauthorization Act (SARA), "The Radon Gas and Indoor Air Quality Research Act." Under this ICR, facilities voluntarily entering the Building Air Quality Alliance program must comply with certain reporting, monitoring and recordkeeping requirements.

Under this ICR, owners or operators of volunteer facilities must apply by submitting to EPA: (1) A Building Partner Statement of Commitment; and (2) a Building Partner Checklist. Upon acceptance, an updated version of the application material must be submitted annually. By submitting the Building Partner Statement of Commitment, the building volunteer attests that s/he will follow the Alliance's guiding principles and abide by other applicable provisions of the program. The Building Partner Checklist specifies in detail a set of areas that volunteers must inspect in their buildings, to properly implement indoor air quality procedures. In addition, Building Partner facilities must maintain records on the following: (1) Employees trained in indoor air quality maintenance; (2) indoor air quality course curricula; (3) building information/drawings; (4) communication with tenants/occupants concerning indoor air quality; and (5) building operation procedures.

An estimated 100 facilities will voluntarily enter this program in the first year, 200 in the second year and 275 in the third, with an expected annual renewal rate of 90%. All volunteer facilities must maintain records related to compliance for the entire time that they are participants in this program.

Burden Statement: The annual estimated weighted public burden per facility for this ICR is 6 hours for reporting and 80 hours for recordkeeping. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Estimated No. of Recordkeepers: 100–540

Estimated Total Annual Burden on Recordkeepers: 8,000–37,451 hours.

Frequency of Collection: Upon initial application. If accepted, annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: February 23, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–5025 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5156–7]

Public Water System Supervision Program Revision for the State of Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved State Public Water System Supervision Primacy Program. Florida has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals and Inorganic Chemicals (known as the Phase V Rule of the National Primary Drinking Water Regulations). EPA has determined that the State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted March 31, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made March 31, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Environmental Protection, Drinking Water Program, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR parts 141 and 142 of the National Primary Drinking Water Regulations)

Dated: February 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 95–4466 Filed 2–28–95; 8:45 am]

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[FRL–5157–3]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water System Supervision Primacy Program. South Carolina has adopted drinking water regulations for Volatile Organic Chemicals, Synthetic Organic Chemicals and Inorganic Chemicals (known as the Phase V Rule of the National Primary Drinking Water Regulations). EPA has determined that the State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted March 31, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made March 31, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Philip H. Vorsatz, EPA, Region IV, Drinking Water Section at the Atlanta address given above or telephone (404) 347–2913.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR parts 141 and 142 of the National Primary Drinking Water Regulations)

Dated: February 2, 1995.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 95–4467 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5162–5]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Arkla Hunnewell Compressor Station, Hunnewell, Sumner County, KS

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act ("CERCLA"), notice is hereby given of a proposed settlement to resolve a claim against NorAm Energy Corporation, formerly Arkla, Inc. The proposed settlement concerns the federal government's past response costs at the Arkla Hunnewell Compressor Station Site, Hunnewell, Sumner County, Kansas. The settlement requires the settling party, NorAm Energy Corporation, to pay $130,938.25 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Region VII office at 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Hearing Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7630. Comments should reference the "Arkla Hunnewell Compressor Station Site" and EPA Docket No. VII–95–F–0006 and should be addressed to Ms. Cobbs at the above address.

FOR FURTHER INFORMATION CONTACT: Jonathan Kahn, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7252.

Dated: February 1, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–4894 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5159–8]

Invitation for Proposals; Environmental Education and Training Program

I. Important Application Information

Eligible applicants: U.S. institutions of higher education or not-for-profit institutions or a consortia of such institutions.

Funding: One cooperative agreement of approximately $1.8 million per year for a three year project period (for a total of approximately $5.4 million), subject to performance and the availability of appropriations

Purpose: To operate the Environmental Education and Training Program

Application deadline: Applications (one original and four copies) must be POSTMARKED no later than Friday, April 28, 1995 and mailed to U.S. EPA, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street S.W., Washington, D.C. 20460

Award made: By September 29, 1995

II. Purpose of Notice

A. What is the purpose of this notice?

The purpose of this notice is to invite eligible institutions to submit proposals to operate the Environmental Education and Training Program as authorized under section 5 of the National Environmental Education Act of 1990 (the Act) (Pub.L. 101–619).

B. What is the relationship between the Environmental Education and Training Program and the Environmental Education Grants Program?

This notice applies only to the Environmental Education and Training Program as authorized under section 5 of the Act. This notice does not apply to the Environmental Education Grants Program authorized under section 6 of the Act in which EPA funds approximately 250 individual projects annually. To obtain information on the grants program, please write to George Walker, U.S. EPA, Environmental Education Division (1707), Environmental Education Grants Program, 401 M Street, S.W., Washington, D.C. 20460, or call 202–260–8619.

III. Purpose of Environmental Education and Training Program

C. What is environmental education and training?

The long term goal of environmental education is to increase public awareness and knowledge about environmental issues as well as provide the public with the skills necessary to make informed decisions and the motivation to take responsible actions. Environmental education enhances critical-thinking, problem-solving, and effective decision-making skills. Environmental education engages and motivates individuals, and enables them to weigh various sides of an environmental issue to make informed and responsible decisions. Under this program, training refers to activities such as classes, workshops, or seminars which are designed to prepare education professionals to teach about the environment.

D. What is the goal of the Environmental Education and Training Program?

EPA's broad goal is to increase the public's ability to make responsible environmental decisions. To accomplish this, EPA believes that it is critical to train education professionals who can develop and deliver quality environmental education and training programs. EPA believes that such efforts should, at a minimum, include the following:

(1) supporting and expanding existing quality training efforts;

(2) identifying, evaluating, and disseminating information on "model" education materials, teaching methods, and programs; and

(3) strengthening and expanding partnerships and networks.

E. Who should be targeted for training under this program?

The education professionals, in both formal and non-formal education and in pre-service and in-service programs, who may receive training under this program are:

(1) Teachers, faculty, and administrators with local education agencies (e.g., schools and school districts, K–12th grades), colleges, and universities;

(2) Employees of State, local, or tribal education, environmental protection, and natural resource departments; and

(3) Employees of not-for-profit organizations as well as businesses and their professional trade groups and associations who are involved in environmental education activities and issues.

Training efforts may include a "train-the-trainer" approach or may directly reach the education professionals identified above.

IV. Funding and Project Period

F. How much money is available to fund this program? When will the award be made?

To implement this program over the past three years, EPA awarded $1.6 million in FY 1992, $1.8 million in FY 1993, and $2.0 million in FY 1994, for a total of $5.4 million. EPA expects annual funding for this program to remain relatively constant. For planning purposes, EPA suggests applicants plan for approximately $1.8 million per year for three years. However, funding for this program is subject to annual Congressional appropriations. EPA expects to announce the award by September 29, 1995.

G. How many awards will be made? What is the expected project period for the award?

EPA will award one cooperative agreement per year for a three year project period to the institution (or lead institution in a consortium) which is responsible for managing the implementation of the entire environmental education and training program. By law, EPA must award this cooperative agreement on an annual basis. However, EPA expects to award three consecutive cooperative agreements to the same institution (or the same lead institution in a consortium) over a three year project period, subject to the recipient's ability to meet the goals of the program and the availability of appropriations. Thus, EPA expects to fund this program over a three year project period from approximately October 1, 1995 through September 30, 1998.

H. What is a cooperative agreement? How is a cooperative agreement different from a grant?

Under the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224), both a grant and cooperative agreement are legal instruments in which the Federal government transfers money to a state or local government or other recipient for the benefit of the public. A grant is used when "no substantial involvement" is anticipated between the federal agency and the recipient during the performance of the project. By contrast, a cooperative agreement is used when "substantial involvement" is anticipated between the federal agency and the recipient of the funds.

Because EPA will award a cooperative agreement to fund this training program, applicants should expect EPA to have "substantial involvement" in the recipient's overall implementation of this program to ensure that it meets the goals of this notice. EPA's involvement will include active participation in advisory committee and other planning meetings (in an ex-officio capacity), review and approval of yearly work plans, as well as review of products under development. Specific conditions regarding the relationship of EPA and the recipient will be identified in the award document.

I. If selected, when should proposed activities start and how much time will the selected institution have to complete its activities?

Proposed activities cannot begin before the funds are awarded. Therefore, start dates should not be scheduled to begin before October 1, 1995. Note that during the first quarter following the award, additional planning activities may need to take place along with the development of a final work plan for the first year. The selected institution will have a total of three years to complete the activities specified in three consecutive annual work plans, from about October 1, 1995 through September 30, 1998. Work plans must be submitted to and approved by EPA annually and activities for a given year must be completed before additional funds can be awarded.

J. How will funds be awarded in years two and three of the three year project period?

The institution which received funding for the first year of the program must submit a new application, work plan, and other required forms to obtain funding for each of the two subsequent years of the three year project period. The actual award of funds for years two and three will depend on the institution's ability to meet the goals of the program and the annual appropriation of funds by Congress.

K. Are matching funds required?

Yes, non-federal matching funds of at least 25% of the total cost of the program are required. The matching funds must be from a non-federal source. For planning purposes, you may wish to estimate a matching share of approximately $600,000 per year or $1.8 million for three years. The match may be provided in cash or by in-kind contributions.

L. What cannot be funded under this program?

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As specified by the Act, no funds shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building, the technical training of environmental management professionals, or the support of noneducational research and development.

V. Eligible Institutions

M. What types of institutions are eligible to apply to operate this program?

Only U.S. institutions of higher education or not-for-profit institutions (or a consortia of such institutions) may apply to operate the Environmental Education and Training Program as specified under the Act.

N. What type of institution has the best chance of being selected to operate this program?

EPA strongly encourages institutions to cooperate and, where appropriate, to form a consortium to operate this program. EPA believes that a consortium of institutions would be best suited to operate this training program. Under this scenario, EPA envisions that there would be a lead institution who is responsible for managing the overall implementation of the training program and for ensuring that the training program meets the goals of this notice. The lead institution would select other institutions as partners who would implement specific components of the training program under the overall direction and guidance of the lead institution. Thus, the lead institution and its partners would be working cooperatively to develop and deliver a cohesive training program which benefits both formal and non-formal education professionals in various geographic regions of the country.

EPA believes that a strong consortium must include both not-for-profit environmental and/or education institutions as well as institutions of higher education. Furthermore, EPA believes a strong consortium should include partners that have demonstrated experience in operating training programs, not just academic programs. Consortium partners may also include Federal, state, local, and tribal education, environmental protection, and natural resource agencies as well as private sector businesses and/or training institutions. EPA also strongly encourages cooperation which builds upon existing environmental education and training programs, such as those operated by the National Consortium for Environmental Education and Training (NCEET), the North American Association for Environmental Education (NAAEE), and the Western Regional Environmental Education Council (WREEC) which sponsors Project Wild, Project Learning Tree, and Project WET.

EPA believes that a cooperative approach is important not only because partnerships can help leverage scarce resources, but also because working together can help improve effectiveness and avoid duplication of effort in a field which is highly fragmented. Cooperation is also important to ensure that the program reaches a culturally diverse audience of both formal and non-formal educators in various geographic region of the country.

O. May an institution be part of or submit more than one application?

An educational or not-for-profit institution may appear in more than one application as a member of a consortium. However, an educational or not-for-profit institution may not apply as the sole applicant or as the lead institution in a consortium in more than one application.

P. How has this program been operated since the first award was made in 1992?

EPA awarded the first cooperative agreement in June 1992 to a consortia of institutions led by the University of Michigan. This program, called the National Consortium for Environmental Education and Training (NCEET), supports environmental education in grades K–12 through three primary mechanisms: teacher in-service training, information dissemination, and innovations and assessments. Subsequent cooperative agreements were awarded in 1993 and 1994.

NCEET has developed an "EE Toolbox" which includes workshop resource manuals for in-service teacher trainers, and "EE Link" which provides computerized access to environmental education information and instructional materials through the Internet. NCEET also supports "small experiments" which explore methods of teaching environmental education, and conducts assessments of student environmental literacy and the needs of teachers. For more information, contact: NCEET, School of Natural Resources and Environment, University of Michigan, 430 East University/Dana Building, Ann Arbor, MI 48109–1115, 313–998–6726.

VI. Program Activities

Q. What activities must be carried out under this program?

At a minimum, this program must include:

(1) Support for and dissemination of training for classroom teachers and other education professionals. The goal of training is to ensure that formal and non-formal education professionals in various academic disciplines or curriculum areas and in diverse geographic, ethnic, and cultural regions of the country benefit from this program. Training activities may include classes, workshops, or seminars which prepare education professionals to better utilize new or existing education materials. Training activities should emphasize an investigative approach to learning and should use a "hands-on" process approach to learning that leads to the development of problem-solving and critical-thinking skills. Examples of training activities are:

a. how to integrate environmental problem-solving into existing science, social science, and other curricula areas;

b. how to effectively reach an urban and multicultural audience; and

c. how to use specific methods or practices to teach about the environment.

Special emphasis should be placed on:

d. using existing good quality training programs and networks;

e. ensuring that the needs of diverse ethnic and cultural groups are met;

f. designing classes, workshops, or seminars that can be broadly disseminated; and

g. including opportunities for the international exchange of teachers and other education professionals between the U.S., Canada, and Mexico.

(2) Support for or the development and maintenance of an environmental education resource library. The goal of the resource library is to ensure that good quality education materials, teaching methods, and programs which have already been developed are utilized more fully. New materials, methods, and programs should be developed only if it is determined that they do not exist and are truly needed. Thus, success should be measured in terms of the effective dissemination of existing materials, methods, and programs, not the development of new ones. A process should be established for identifying, evaluating, and disseminating information on existing materials, methods, and programs to identify "model" materials, methods, and programs. An effective program should also use appropriate technology to widely disseminate this information through mechanisms that include hard copy and electronic distribution.

(3) Strengthen and expand existing partnerships and networks. The goal is to improve the effectiveness of the environmental education community by facilitating communication, sharing information, and leveraging scarce resources. Specific activities may include the support for or sponsorship of national, regional, or multi-state leadership conferences or seminars for education professionals. These conferences or seminars should bring together education and environmental education professionals who represent the various sectors of society (e.g., federal agencies; state, local, and tribal governments; non-profit environmental and environmental education organizations; educational institutions such as schools, colleges, universities and their professional associations; as well as businesses and their professional trade groups and associations). Such activities should also emphasize the importance of strengthening the capacity of state governments to provide training programs for education professionals, and integrating environmental education into current education reform efforts in the sciences, social sciences, and other curricula areas. This may include the development of education standards, curriculum frameworks, and assessment strategies.

VII. The Application

R. What must be included in the application?

To qualify for review, the application must include the three components discussed below.

(1) Application for Federal Assistance (SF 424). This form, which requests basic information about proposals such as the name of the project and the amount of money requested, is required for all federal grants. A completed SF 424 must be submitted as part of the application. The SF 424 may be obtained by contacting EPA as discussed under Section VII.S. below.

(2) Budget Information: Non-Construction Programs (SF 424A). This form, which requests budget information by object class categories such as personnel, travel, and supplies, is also required for all federal grants. A completed SF 424A must also be submitted as part of the application. The SF 424A may be obtained by contacting EPA as discussed under Section VII.S. below. Note that additional budget information describing how the funds will be used for all major activities such as workshops or education materials evaluation is also required under the budget section of the work plan as discussed under Section VII.3.e.1. below.

(3) Work Plan. A detailed plan of no more than 20 pages (not including the appendices) which describes how the applicant proposes to design and operate the training program. Note that the recipient of the cooperative agreement will have an opportunity to revise their work plan once the award is made. For example, EPA expects that the recipient may need to revise the implementation or evaluation plans to further clarify the relationship and responsibilities of the lead institution and its partners and to set up and hold advisory committee and other planning meetings. Thus, the recipient may wish to or be asked to submit a revised work plan to EPA at the end of the first quarter if it is determined that additional changes are needed.

Work plans must contain all four sections discussed below, in the format presented. Note that each section of the work plan includes a brief discussion of some of the factors that will be considered in reviewing and scoring applications.

a. Summary: A brief synopsis of no more than two pages stating:

1. the nature of the institution requesting funding and all major partners (if applicable);

2. the key activities of the proposed program and how it will be implemented;

3. the total number of education professionals to be reached and their demographics;

4. the expected results of the project by the end of years one, two, and three; and

5. how the funds will be used.

Scoring: The summary will be scored on its overall clarity and the extent to which all five of the elements identified above are addressed. Maximum Score: 5 points.

b. Mission Statement: A discussion of the goals and objectives of the program and how they will meet the requirements of this notice. Also include a discussion about the needs of the environmental education community and how these needs will be met.

This statement should include a discussion about both the short-term and the long-term goals and objectives of the program. (The short-term refers to the first three years of the program; the long-term refers to the period beyond the three-year project period of this notice. Although EPA funds may be available to support this program beyond the three-year project period, EPA considers funding for this program to be "seed money" to get the program "off-the-ground." All applicants should establish a long-term goal of self-sustainability and demonstrate, in their application, an effective method for achieving it).

Scoring: The mission statement will be scored based upon factors that include its overall clarity as well as the extent to which the applicant demonstrates their capability to meet the goals of the training program identified under Section III.D. and the stated needs of the environmental education community. Maximum Score: 20 points.

c. Management and Implementation Plan: A detailed plan of how the project will be managed and implemented (i.e., what steps will be taken to reach the goals of the program). The plan should identify the target audience as well as key activities and deliverables/products. It should also describe the major responsibilities of the Program Director, key staff, and various partners in the consortium (if applicable).

The plan must include a matrix or table identifying all key activities and deliverables/ products as well as a precise schedule for conducting these activities and completing these deliverables/products. The plan must also include an organizational chart which clearly shows the responsibilities and relationships of the Program Director, key staff, and various partners (if applicable).

Scoring: The management and implementation plan will be scored based upon factors that include its overall clarity as well as the extent to which the applicant demonstrates their capability to:

—deliver training to the broad range of education professionals identified under Section III.E.1–4;

—carry out the specific program activities identified under Section VI.Q.1–3; and

—effectively manage the program, including effectively managing the lead institution's relationship with various partners as discussed under Section V.N. Maximum Score: 20 points

d. Evaluation Plan: A detailed plan of how the effectiveness of the program will be evaluated (i.e., how the applicant will know whether the goals and objectives of the program are being met, the program meets the requirements of this notice, and the program meets the needs of the environmental education community). The evaluation plan must discuss the anticipated strengths and challenges expected in implementing the program.

The evaluation plan must also include a discussion on the approach, mechanisms, and amount of money that will be used to conduct annual evaluations of the program. This evaluation must be conducted by an

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advisory committee established by the recipient to help guide the program. The advisory committee must include representatives from the various sectors involved in environmental education, including teachers, state and local education officials, institutions of higher education, nonprofit organizations, and the private sector. Advisory committee members may not include partners in the consortium (if applicable).

Scoring: The evaluation plan will be scored based upon factors that include its overall clarity as well as the extent to which the proposal demonstrates that an effective evaluation process will be used to strengthen the program and facilitate the realization of the program's goals. Maximum Score: 20 points

e. Appendices: Attachments to the work plan which contain information on the budget, key personnel, and letters of commitment from partners (if applicable).

1. Budget: A statement describing how funds will be used, including budget milestones for each major proposed activity and a timetable showing the month/year of completion. Estimates must include the allocation of funding for all major activities. Budget estimates are for planning and evaluation purposes only, recognizing that neither EPA nor the applicant can predict in advance exactly how much money will be appropriated by Congress for this program. Minor deviations from these amounts are expected. Include estimates of overhead and/or indirect costs as well as a statement on the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services. Note that additional budget information is also requested on the SF 424A which must be submitted as part of the application as discussed under Section VII.R.2. above.

Scoring: The budget will be scored on the extent to which the budget clearly and accurately shows how the funds will be used and whether the budget demonstrates the effective use of public funds. Maximum Score: 20 points

2. Key Personnel and Letters of Commitment: Include resumes of up to three pages for the Program Director as well as each of the key staff and key partners responsible for implementing the project. Resumes should describe the educational, administrative, management, and professional qualifications and experience of the Program Director, key staff, and key partners. Also include one page letters of commitment from each partner with a significant role in the proposed program (if partners will be used to implement the program). Letters of endorsement from individuals or organizations who are not partners will not be considered in evaluating proposals.

Scoring: This section will be scored on the extent to which the Project Director, key staff, and key partners are qualified to manage and implement the program. In demonstrating the capability of key personnel, EPA strongly encourages applicants to provide examples of relevant experience in designing and operating similar programs. In addition, the score will reflect whether letters of commitment are included from key partners and whether a firm commitment is made (if applicable). Maximum Score: 15 points

S. Where may I obtain an application kit and how must the application be submitted?

Institutions may request an application kit by contacting U.S. EPA, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street, S.W., Washington, D.C., 20460, 202–260–3335. The applicant must submit one original and four copies of the application (a signed SF 424, SF 424A, and a work plan). The SF 424 must be signed by a person authorized to receive funds. Applications must be reproducible; do not submit bound copies of applications. They should be on white paper and stapled in the upper left hand corner, and include page numbers.

Work plans must be no more than 20 pages (not including the appendices). A "page" refers to one side of a single-spaced typed page. The pages must be letter sized (8½ × 11 inches), with normal type size (10 or 12 cpi) with at least 1 inch margins. To conserve paper, please provide double-sided copies of the work plan and appendices where possible.

T. When are applications due to EPA and where must they be submitted?

Applications (a signed original and four copies of the SF 424, SF 424A, and work plan) must be mailed to EPA *POSTMARKED no later than Friday, April 28, 1995.* Any application which is postmarked after April 28, 1995 will not be considered for funding. All applications must be mailed to U.S. EPA, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street, S.W., Washington, D.C. 20460. VIII.

VIII. Review and Selection Process

U. What will be the basis for selection and award?

As discussed above, applications will be evaluated on factors that include the extent to which the proposed program meets the goals specified in this notice and the key personnel are qualified to successfully manage and implement the program. This means that applications will be evaluated not only on the strategic planning aspects of the proposal, but on project management, implementation, and evaluation aspects as well. Section VII.R.3 above identifies some of the specific factors which will be used to evaluate the proposals.

V. How will the applications be reviewed and the final selection made?

Applications will be reviewed in three primary phases by federal officials and external environmental education experts. First, EPA will assemble teams of federal environmental and education officials (from EPA and the Department of Education) to review applications and identify approximately ten of the top proposals which best meet the criteria in this notice. Second, EPA will select external reviewers from among the National Environmental Education Advisory Council to review and provide comments on the top proposals. Third, EPA will convene a federal panel with representatives from various federal agencies who implement environmental education programs to further review the top proposals, taking into account the comments provided during the first two phases of the review process. The federal panel will rank the top proposals and provide their recommendations for funding to EPA.

EPA expects to conduct site visits to a small number of the highest ranking proposals. The purpose of the site visits is to provide EPA with an opportunity to ask questions and to discuss the strengths and weaknesses of the proposals. The Administrator of EPA will then select the recipient from among the highest ranking proposals, taking into account the comments and recommendations of the federal panel and the Advisory Council as well as observations made during the site visits.

Section IX. Additional Information

W. Who can I contact to obtain additional information?

To clarify the information provided in this notice, please contact Kathleen MacKinnon at U.S. EPA, Environmental Education Division (1707), Environmental Education and Training Program, 401 M Street, S.W., Washington, D.C., 202–260–3335.

Dated: February 15, 1995.

Loretta M. Ucelli,

Associate Administrator, Office of Communications, Education, and Public Affairs.

[FR Doc. 95–5027 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5163–1]

Ores and Minerals; Additional Data Available on Wastes From Extraction and Beneficiation

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of technical documents issued by the Agency concerning wastes from non-coal extraction and beneficiation. Focused on selected mineral sectors, these documents update and supplement the information contained in the Agency's December 1985, Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale. The documents were developed over the past four years, and take into account public comments received during that time. Therefore, the Agency is not soliciting comments on the information described in this notice, and is not reopening the comment period on the Report to Congress.

ADDRESSES: This information is available on paper at the RCRA docket, EPA Headquarters, Washington, DC and all EPA Regional Libraries. Copies of the documents may also be purchased from the National Technical Information Service at (703) 487–4650 or (800) 553–NTIS.

The RCRA public docket room is located at EPA Headquarters, 401 M Street SW., Washington, D.C., Room M2616, 2nd floor, Waterside Mall and is available for viewing 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. Public review of the docket materials is by appointment only. Call (202) 260–9327. The documents are located under docket number F–95–MTDA–FFFFF.

As part of an interagency "streamlining" initiative, EPA is making this notice and most of the supporting documents available electronically. They can be accessed in electronic format on the Internet System through:

EPA Public Access Gopher Server: Go to: gopher.epa.gov; From the main menu, choose "EPA Offices and Regions"; Next choose "Office of Solid Waste and Emergency Response (OSWER)"; Finally choose "Office of Solid Waste/Other Wastes/Bevill Amendment-Mining Waste."

Through FTP: Go to: ftp.epa.gov; Login: anonymous; Password: Your Internet Address; Files are located in /pub/gopher. All OSW files are in directories beginning with OSW.

Through MOSAIC: Go to: http://www.epa.gov; Choose the EPA Public Access Gopher; From the main (Gopher) menu choose "EPA Office and Regions"; Next choose "Office of Solid Waste and Emergency Response (OSWER)"; Finally, choose "Office of Solid Waste/Other Wastes/Bevill Amendment-Mining Waste."

Through Dial-up Access: Dial 919–558–0334; Choose EPA Public Access Gopher; From the main (Gopher) menu choose "EPA Offices and Regions"; Next choose "Office of Solid Waste and Emergency Response (OSWER)"; Then choose "Office of Solid Waste/Other Wastes/Bevill Amendment-Mining Waste."

EPA is interested in learning whether people have obtained these documents electronically and what their experiences were in doing so. You are encouraged to provide feedback on the electronic availability of these documents by sending E-mail to OSW-Pilot@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346; for technical information contact Bonnie Robinson (5302W), U.S. Environmental Protection Agency SW., Washington, D.C. 20460, (703) 308–8429 or by sending an E-mail to: Robinson.Bonnie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory Activities

RCRA Section 3001(b)(3)(A)(i-iii) ("the Bevill Exemption") exempted among other things solid wastes from the "extraction, beneficiation, and processing of ores and minerals" from regulation under RCRA Subtitle C, pending completion of a Report to Congress and a subsequent regulatory determination of whether such regulation is warranted. In particular, Section 8002 (f) and (p) of RCRA required EPA to conduct a detailed and comprehensive study and submit a Report to Congress on the adverse effects on human health and the environment, if any, of the disposal of these wastes.

EPA published the Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale in December, 1985. This report addresses wastes from the extraction and beneficiation of metallic ores (with special emphasis on copper, gold, iron, lead, silver, and zinc), uranium overburden, and the nonmetals asbestos and phosphate rock. EPA selected these mining industry segments because they generate large quantities of wastes that are potentially hazardous.

On July 3, 1986 (51 FR 24496) EPA published a regulatory determination based on the findings of the Report to Congress. These findings concluded that non-coal extraction and beneficiation mining wastes should be regulated as solid wastes under RCRA Subtitle D, rather than as hazardous wastes under RCRA Subtitle C.

The Agency has also promulgated rules that identify mineral processing wastes that meet the exemption criteria of being high-volume and low-hazard[1]. With the exception of 20 wastes, the majority of the mineral processing wastes do not meet this criteria and are subject to Subtitle C hazardous waste regulations[2]. Today's notice focuses on the release of information concerning non-coal extraction and beneficiation wastes and references no new mineral processing information. For more information on Mineral Processing Wastes, consult the RCRA docket (#F–90–RMPA–FFFF).

B. Non-Regulatory Activities

Since 1985, the Agency has collected information on selected mineral sectors to update and supplement the 1985 Report to Congress. EPA has been working closely with States, public interest groups, and industry to solicit input on waste management approaches and to gather information. Since the Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale was published in 1985, the Agency has conducted site visits and prepared case study reports on waste generation and management practices of operating mines. Additionally, the Agency has compiled reports on the selected mineral sectors and has provided research grants to support continued study of the environmental impacts of non-coal mining, as well as current waste management and engineering practices. This new information is described in today's notice.

[1] See 54 FR 36592 September 1, 1989 and 55 FR 2322 January 23, 1990.

[2] Final Regulatory Determination on Special Wastes from Mineral Processing (56 FR 27300 June 13, 1991).

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II. Description of Information

A complete list of the information described below is available from the RCRA Docket at the address and telephone number listed above. The new data include:

Technical Resource Documents—Mineral Sectors

The Agency has prepared technical resource documents on extraction and beneficiation practices of various mineral sectors. Each of the following documents contains a summary of current literature on waste management practices in the sector and site visit reports of operating mines. These documents have been peer reviewed by state representatives, federal land management agencies, mining companies, and public interest groups. Where appropriate, the reviewers' comments have been incorporated into each document. These documents will be available in Spanish in May 1995: (1) TRD Vol.1: Lead-Zinc (NTIS PB94–170248); (2) TRD Vol.2: Gold (NTIS PB94–170305); (3) TRD Vol.3: Iron (NTIS PB94–195203); (4) TRD Vol.4: Copper (NTIS PB94–200979); (5) TRD Vol.5: Uranium (NTIS PB94–200987); (6) TRD Vol.6: Gold Placer (NTIS PB94–201811); and (7) TRD Vol.7: Phosphate & Molybdenum (NTIS PB94–201001).

Technical Reports—Mining Waste Management and Engineering Practices

These documents discuss current mining waste management and engineering practices. These documents have been peer reviewed by state representatives, federal land management agencies and mining companies. Where appropriate, the reviewers' comments have been incorporated into each document. Additionally, the WASTE database will be available in the RCRA docket and electronically, however, it will be unavailable at NTIS. These documents will be available in Spanish in May 1995: (1) Innovative Methods of Managing Environmental Releases at Mine Sites (NTIS PB94–170255); (2) Design and Evaluation of Tailings Dams (NTIS PB94–201845); (3) Treatment of Cyanide Heap Leaches & Tailings (NTIS PB94–201837); (4) Acid Mine Drainage Prediction (NTIS PB94–201829); and (5) WASTE: An Information Retrieval System for Mill Tailings References (NOT AT NTIS).

Other Mining Documents

The following documents provide historical context for EPA's mine waste activities. The Report to Congress and Strawman II documents are currently not available in electronic format but will be made available at a later date: Report to Congress on Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale (NTIS PB88–162631); Strawman II (NTIS PB91–178418); U.S. EPA Mine Waste Policy Dialogue Committee Meeting Summaries and Supporting Material (NTIS PB95–122529).

The Agency is also developing additional technical reports on waste rock piles, subaqueous disposal of mine tailings, model mines, and phosphogypsum waste piles.

Dated: February 23, 1995.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 95–5023 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30000/48F; FRL–4939–7]

Granular Carbofuran; Final Decision To Deny Reinstatement of the Corn and Sorghum Uses and To Grant Conditional Extension of Phase-Out Period for Use on Rice; Summary of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's decision to deny reinstatement of the use of the granular insecticide carbofuran on corn and sorghum, and to grant a limited extension of use on rice. This Notice also summarizes the public comments received in response to the Agency's proposal of these actions (59 FR 17530, April 13, 1994).

FOR FURTHER INFORMATION CONTACT: By mail: Margaret Rice, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32N4, Crystal Station #1, 2800 Crystal Drive, Arlington, Virginia, (703) 308–8039.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 13, 1994 (59 FR 17530), EPA proposed to deny reinstatement of the use of granular carbofuran on corn and sorghum, to extend the use on rice with restrictions, for a limited time period, and offered incentives for the registration of reduced risk alternatives to control rice water weevil. The Agency's proposal was in response to FMC Corporation and grower groups' requests that the phase-out scheduled for these three uses be extended beyond the limits established in the negotiated settlement agreement that concluded the Special Review of granular carbofuran in 1991.

The Agency's April 1994 notice outlined the arguments put forth by FMC Corp in support of their request, as well as the rationale for EPA's proposed decision, and allowed 90 days for public comment. Readers are referred to the proposed decision (59 FR 17530, April 13, 1994) for a detailed summary of the regulatory history and legal background of the granular carbofuran Special Review and negotiated settlement agreement.

II. EPA's Findings

The following summarizes the Agency's findings regarding the risks and benefits resulting from the use of granular carbofuran. With regard to risks, the Agency finds:

1. Carbofuran is highly acutely toxic to birds.

2. One granule can kill a small bird.

3. Proper agricultural use of carbofuran results in granules available to birds.

4. Birds are directly exposed to carbofuran by picking up and ingesting granules. Predatory and scavenging birds are secondarily exposed when they eat the organisms that were directly exposed.

5. Many birds have been killed by proper use of granular carbofuran. This has been documented in 8 field studies and over 90 separate poisoning incidents, which demonstrate widespread and repeated mortality to many species, including migratory, threatened and endangered species. Incidents of both primary and secondary poisonings have been observed and documented in many different geographic areas, associated with many different use sites, times of year, and under varying environmental conditions.

6. The Agency continues to receive reports of bird kills from granular carbofuran. Twenty three additional wildlife kill incidents have been reported to EPA since the conclusion of the Special Review in 1991. Three were attributed to granular formulations; the other 20 incident reports did not specify which formulation was involved. Species killed include a bald eagle, Canada geese, red-tailed hawks, and numerous other species.

7. Based on available data, carbofuran presents a greater risk to birds than alternative chemical control methods.

8. It has not been demonstrated that there are any conditions under which granular carbofuran can be used without presenting an extremely high risk to birds.

With regard to the benefits, the Agency finds:

1. Efficacious alternatives to granular carbofuran exist for use on corn and sorghum.

2. The absence of granular carbofuran will result in no short- or long-term increases in field corn production costs, nor will it cause significant output or yield losses, based on the current price and availability of pesticidal alternatives.

3. The absence of granular carbofuran for use on sorghum will result in some increased production costs due to the higher cost of alternatives and specialized application equipment, but will not cause significant reduction in yield.

4. No chemical alternatives are currently registered and no applications are pending for use on rice. Only limited data are available to characterize the effectiveness of non-chemical controls.

5. In the absence of granular carbofuran, significant reductions in rice yields may occur.

III. Summary of Public Comment

The complete text of all comments received in response to EPA's proposed decision (59 FR 17530), as well as a memorandum detailing EPA's responses to these comments can be found in the Office of Pesticide Program's public docket (OPP–30000/48E). See Unit VII, below, for more information and the location and hours of the OPP public docket.

EPA received few comments and no data in support of continued use of granular carbofuran on corn.

Several rice growers and rice growers' associations supported the Agency's proposed decision to extend the rice use. Several research institutions advised EPA of ongoing studies related to control of rice pests.

The Agency reviewed approximately 40 letters of a testimonial nature from sorghum growers, and numerous letters from Senators and Congressmen representing sorghum producing areas, supporting the continued use of granular carbofuran on sorghum. The National Grain Sorghum Producers provided some additional efficacy and yield data for carbofuran and its alternatives.

The U.S. Fish and Wildlife Service (FWS) and several environmental organizations commented that, in their opinion, no extensions of granular use were justified and that the Agency should also take action to eliminate use of flowable carbofuran. The Sierra Club Legal Defense Fund, representing a group of environmental organizations, notified the Agency of its intention to sue EPA for violations of the Endangered Species Act and other statutes.

In response to EPA's call for safer alternatives in the April notice, one company, Solvay Duphar B.V., has indicated an interest in pursuing a registration for diflubenzuron on rice. Other companies have made preliminary inquiries.

IV. EPA's Final Decision and Rationale

A. Corn and Sorghum

EPA finds no justification in the comments it has received to alter the Agency's proposed decision not to reinstate the use of granular carbofuran on corn and sorghum. EPA confirms its previous decision that the risks of continued use of granular carbofuran on these sites outweigh the benefits. Therefore, these uses will not be reinstated.

While EPA received many comments related to the sorghum use, none contained persuasive evidence or new data to justify changing the proposed decision. Furthermore, new information supports the Agency's proposed decision. EPA has registered a new alternative pesticide, imidacloprid (trade name GAUCHO), for use on sorghum. The new compound is available as a seed treatment and therefore, is applied at rates much lower than carbofuran. Imidacloprid poses less risk both to pesticide handlers and to birds and wildlife than carbofuran and other alternatives, and the available information indicates that it is as effective as granular carbofuran in controlling moderate chinch bug infestations.

EPA has received additional comparative efficacy and yield data that confirm the Agency's previous determination that the available alternatives, aldicarb and flowable carbofuran, perform as well as granular carbofuran under conditions of high chinch bug infestation.

The state of Nebraska reports that they do currently have a special local needs registration for in-furrow application of flowable carbofuran, thereby reducing the Agency's previous concern that some growers in Nebraska might suffer economic impacts from the cancellation of the granular formulation. FMC has made available to sorghum growers a closed system for applying flowable carbofuran that they believe reduces potential exposure to pesticide handlers. The company is also offering partial rebates to defray the cost to farmers of switching to the new application equipment.

EPA recognizes that there may not be sufficient imidacloprid treated sorghum seed available for the 1995 use season. The Agency also acknowledges that acquiring new application equipment may not be feasible for growers in certain circumstances. In these instances EPA will consider special local needs registrations, FIFRA section 24(c), submitted by states.

B. Rice

EPA has determined that the short-term benefits of using granular carbofuran on rice outweigh the short-term risks to birds, provided the use restrictions and conditions listed below are observed. Neither FMC nor other commenters has provided data to justify the long-term continued use of granular carbofuran on rice. Therefore, EPA is granting a maximum 2–year extension of this use for the sole purpose of providing an orderly transition to alternative controls.

In spite of the Agency's effort to encourage new registrations for alternatives to granular carbofuran for control of rice water weevil, none appears likely before the 1995 use season. EPA's decision to allow a limited extension on rice was also influenced by the Agency's concern that non-chemical control options, specifically draining fields and eliminating vegetation on levees and field edges (clean farming), could impede initiatives that conservation groups have implemented with rice growers to enhance wildlife habitat. EPA notes, however, that no data have been provided to the Agency that quantify the relative risks of continued carbofuran use compared to possible habitat losses from clean farming. Such data would be necessary to support any use of carbofuran on rice beyond that permitted by this Notice. See Unit VI, below.

FMC's granular carbofuran product registrations must be amended to include the following limitations and conditions:

1. The use of granular carbofuran on rice is subject to the overall sales limits as set forth below in Unit V.

2. No production and sales by FMC will be allowed for use on rice during the 1996 growing season if registration of an alternative to control rice water weevil appears imminent at the end of the 1995 growing season. On or before September 1, 1995, EPA will assess the prospect for registration of alternatives to control rice water weevil and advise FMC and other interested parties if

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production and sales of granular carbofuran for use on rice will be allowed for the 1996 growing season. EPA assessment of the prospect for alternatives will include: the product's efficacy in controlling the rice water weevil; the completeness of the data base supporting the product's registration; and the Agency's finding that the product presents less risk to the environment and human health than carbofuran. If EPA determines that registration of an alternative appears imminent, FMC's registration for granular carbofuran use on rice will automatically expire on September 1, 1995, without order or hearing. Otherwise, FMC's registration for this use will expire automatically on September 1, 1996, without order or hearing.

3. The labels of granular carbofuran products sold by FMC in 1995 for use on rice must bear the following statements: "FMC will sell this product in conformity with volume limitations agreed to with EPA," "FMC will not sell or release for shipment this product for use on rice after 8/31/95," and "This product cannot be used on rice after 8/31/96."

4. If no alternatives are registered and the Agency allows sales during 1996, labels of granular carbofuran products sold by FMC for use on rice must bear the following statements: "FMC will sell this product in conformity with volume limitations agreed to with EPA," "FMC will not sell or release for shipment this product for use on rice after 8/31/96," and "This product cannot be used on rice after 8/31/97."

5. Granular carbofuran products sold by FMC in 1995 and 1996 for use on rice must bear the following restrictions to protect the bald eagle, a federally designated threatened species: "Aerial application is prohibited within 1 mile of active bald eagle nests and within 10 miles of eagles congregating in winter roosting or staging areas." "For ground application to unflooded fields, within 1 mile of active bald eagle nests and within 10 miles of eagles congregating in winter roosting or staging areas, granules must be incorporated immediately and flooding must begin within 4 hours unless application is followed by hazing to keep birds out of the fields. If hazing is used, the field must be flooded no longer than 24 hours after application."

In most rice growing areas, eagles vacate wintering areas prior to the time when granular carbofuran is applied to rice. However, the 10 mile restriction may apply to some counties in California from April 1st through April 15th, and to two counties in Texas from March 1st through March 31st.

6. Granular carbofuran products used on rice in California only, must bear labeling prohibiting use in areas occupied by the giant garter snake, a federally designated threatened species, unless FMC or other interested parties can provide data to EPA demonstrating that the toxicity of carbofuran to snakes is sufficiently low to eliminate concern or that the circumstances of use preclude exposure to this species.

Because toxicity data for reptiles in general and snakes in particular are lacking, EPA has used toxicity data for birds in their risk assessment. The Agency recognizes that data on a more closely related species such as the western aquatic garter snake (*Thamnophis couchii*) would be a better indicator of toxicity to the giant garter snake.

In the absence of such data, products must bear the following restriction: "This product may not be used in areas where adverse impact on the giant garter snake is likely. Prior to making applications, the user of this product must determine that no giant garter snakes are located in or immediately adjacent to the area to be treated. If the user is in doubt whether or not the giant garter snake may be affected, he or she should contact either the State Department of Fish and Game, the regional office of the FWS, or the county agricultural commissioner."

Based on the limited information currently available to the Agency, the area potentially affected by this restriction would be the Butte, Colusa, American, and Sutter basins, as well as the Willow Slough and Liberty Farm area of the Yolo basin.

7. In order to protect threatened and endangered aquatic species in California, labels must state: "Flood water must be held on carbofuran treated fields for 28 days following flooding or application before being released into streams, rivers or other surface water bodies." Listed species that potentially could be affected without this measure in California include the Delta smelt and the winter run of Chinook salmon.

In the South (Arkansas, Louisiana, Mississippi, Missouri, and Texas), labels must state: "Permanent flood waters may not be released until 42 days after application. Also, if the water level in flooded rice fields rises due to heavy rainfall, additional flashboards must be put in place to prevent carbofuran-treated water from spilling over levees into public waters." Listed species that potentially could be affected without these measures in the South include numerous mussels.

8. In lieu of the measures specified on product labels to protect threatened and endangered species, growers have the option of developing "landowner agreements" with the appropriate state lead conservation agency. These agreements permit growers to tailor species protection measures to the specific conditions on their land.

9. Granular carbofuran products for use on rice must contain the following application recommendations: "Confine all granular carbofuran applications to field areas. Cut off application equipment to avoid treating adjacent roads, field drains, ditches, banks, and other non-target areas. Apply carbofuran only when weather conditions are calm to prevent misplacement of granules. Ground applications will provide more precise carbofuran placement."

10. Labels must contain the following recommendation for loading: "Ground application equipment should be loaded in areas which will be flooded; each refill should be in a different location in the field. To facilitate clean up, load material only on tarp-covered ground."

11. FMC must provide a toll-free phone number on their product labels to report bird and wildlife kill incidents. FMC must report all incidents reported to it which associate the use of carbofuran with wildlife injury or death to EPA and the appropriate wildlife management agencies within 24 hours, regardless of the circumstances of the incident.

Should substantial avian mortality or incidental take of threatened or endangered species occur, EPA will be forced to consider additional use restrictions.

EPA will make available through the public docket its assessment of the potential risk to the threatened and endangered species associated with the use of carbofuran in rice growing areas. The assessment contains, among other useful information, a listing of counties potentially subject to use restrictions due to nesting or wintering bald eagles.

The measures that EPA is requiring are based on previous Biological Opinions from the FWS. EPA believes that these measures will decrease, but not necessarily eliminate, the likelihood of incidental take of eagles.

V. Sales Limits

Domestic sales of the 2G, 3G, 5G, 10G, and 15G formulations by FMC will be limited to 250,000 pounds of active ingredient (ai) per year for the 1995 and 1996 use seasons for use only on rice and five minor use sites, spinach grown for seed, cucurbits, cranberries, pine

progeny, and bananas. Based on information received from the Puerto Rico Department of Agriculture, EPA acknowledges that Puerto Rico has an existing special local need registration for granular carbofuran use on bananas and plantains. This minor use will now be allowed in both Hawaii and Puerto Rico, subject to the overall sales limitations.

FMC must direct a minimum of 2,500 pounds/ai/year, out of the total 250,000 pounds, or more at their discretion, to areas where the five minor use crops are grown during the 1995 and 1996 use seasons.

For 1997 and subsequent years, sales by FMC will be limited to 2,500 pounds/ai/year for use only on the five minor use sites.

For the purpose of this action, the 1995 "use season" begins September 1, 1994 and ends August 31, 1995. Similarly, the 1996 use season begins September 1, 1995 and ends August 31, 1996.

Existing stocks of the 1995 production in the possession of dealers and growers may be sold, distributed or used until August 31, 1996. Existing stocks of 1996 production in the possession of dealers and growers may be sold, distributed, or used until August 31, 1997.

For each use season during which FMC sells granular carbofuran for domestic use, FMC must submit to EPA a report by October 15 containing FMC's 2G, 3G, 5G, 10G, and 15G carbofuran production and sales totals for domestic use for the immediately preceding use season. FMC must also provide EPA with batch and key numbers for granular carbofuran products produced for the 1995 and 1996 domestic use season.

The production and sales limits in this Notice do not include the 10CR formulation of carbofuran, which FMC markets only for use on canola under FIFRA section 24(c) registrations.

The canola use differs somewhat from other uses because of a lower application rate (0.25 lbs/ai/acre). The 10 CR formulation differs from other granular carbofuran formulations in the use of a corn cob carrier rather than a sand-core granule. The canola use was not included in the Special Review; the Agency is currently evaluating the risks and benefits of this use.

VI. Procedural Matters

In order to effectuate the extension on rice, FMC must submit applications for amended registrations and revised product labels. These amendments will not be accepted by EPA until all the limitations and conditions in this Notice have been satisfied.

The settlement agreement concluding the Special Review of granular carbofuran in 1991 provided for one opportunity for FMC Corp. to present additional information related to the risks and benefits of granular carbofuran use on corn, sorghum and rice. EPA has fulfilled that provision of the agreement. EPA will not consider any additional requests for extensions or reinstatement of use on any site under the provisions of the settlement agreement. By the terms of the amended registration, FMC's registration for use of granular carbofuran on rice will expire no later than September 1, 1996, without order or hearing.

In the settlement agreement with EPA, FMC waived any right it may have to challenge or appeal the Office Director's decision regarding the extension of use of granular carbofuran to an administrative law judge, the EPA Administrator, or the courts. Nothing in this Notice affects that waiver.

Any additional applications to amend any granular carbofuran registration which FMC may submit after the publication date of this Notice may be denied by EPA unless FMC has submitted substantial new evidence which materially changes the Agency's assessment of the risks and benefits of the use of carbofuran and which was not previously available to either EPA or FMC. For the rice use, for example, the new evidence would need to include, at a minimum, site-specific, scientifically sound, wildlife monitoring data, and a quantitative assessment of the relative effect on waterfowl and other wildlife of carbofuran use versus clean farming.

Consistent with the applicable provisions of FIFRA, EPA may consider, on a case-by-case basis, requests for emergency uses of granular carbofuran under FIFRA section 18 and special local needs registrations submitted by states under FIFRA section 24(c).

All provisions of the 1991 settlement agreement not specifically amended by this Notice remain in effect.

VII. Public Record

The Office of Pesticide Programs' public docket is located in room 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Va. The carbofuran docket and index are available for inspection and copying from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

The docket for carbofuran (OPP–30000/48E) contains: the complete text of all comments received in response to 59 FR 17530; a memorandum summarizing the comments and detailing EPA's responses to them; EPA's assessment of the potential risk to threatened and endangered species associated with rice; and other documents and correspondence related to the granular carbofuran Special Review and negotiated settlement agreement.

List of Subjects

Environmental protection, pesticides and pest.

Dated: February 22, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–5020 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00403; FRL–4939–1]

Pesticide Products Used to Disinsect Aircraft; Notice of Availability of Draft Policy and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency has received information which raises questions concerning the potential human health risks associated with the use of insecticide spray products in occupied aircraft cabins. The United States has not required the spraying of aircraft since 1979 and the Agency believes that this policy has not encouraged the spread of any insectborne communicable diseases. EPA is soliciting comments on the Agency's draft Pesticide Regulation (PR) Notice which proposes strict measures to prevent human exposure to any pesticide product (insecticide) used for disinsecting aircraft. The proposed draft PR Notice is entitled, "Pesticide Products Used to Disinsect Aircraft." Interested parties may request a copy of the Agency's proposed policy as set forth in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number [OPP–00403], must be received on or before April 17, 1995.

ADDRESSES: The draft PR Notice is available from Rame' Cromwell, By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703) 308–8377. Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington,

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DC 20460. In person bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed text and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rame' Cromwell (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703) 308–8377.

SUPPLEMENTARY INFORMATION: The draft PR Notice provides explicit label statements prohibiting the use of insecticide products in occupied cabins of aircraft. It also provides registrants with two choices to comply: (1) Registrants of disinsection products with labels that permit use in occupied cabins and who seek to continue that use must generate and submit data to demonstrate that the use in occupied aircraft cabins does not pose unreasonable adverse effects to human health, and (2) registrants of all other disinsection products for use in aircraft should revise their labels in accordance with the instructions contained in the draft PR Notice to clearly prohibit use of their products in occupied aircraft cabins. This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment. If, after reviewing any comments, EPA determines that changes are warranted, the Agency will revise the draft PR Notice prior to release.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 21, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–5018 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50806; FRL–4937–7]

Receipt of an Application for an Experimental Use Permit of a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application (65247–EUP–R) from Calgene, Inc., of Davis, California, requesting an Experimental Use Permit (EUP) to conduct field testing of a transgenic plant pesticide. The first EUP for field testing of a genetically altered cotton plant having pesticidal properties was issued on April 10, 1992. EPA has determined that this permit may be of regional and national significance.

DATES: Written comments must be received on or before March 31, 1995.

ADDRESSES: Comments, in triplicate should bear the docket control number OPP–50806 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Janet L. Andersen, Acting Director, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: CS1 5th floor, 2800 Crystal Drive, Crystal City, VA 22202 (703–308–8712).

SUPPLEMENTARY INFORMATION: An application for an EUP pursuant to EPA's Statement of Policy entitled "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act", published in the **Federal Register** of June 26, 1986 (51 FR 23313), was received on January 17, 1995, from Calgene, Inc. of Davis, California (65247–EUP–R).

Calgene, Inc. proposes to experiment in the field for 1 year, beginning April 1, 1995, with a transgenic insect resistant cotton plant which expresses a *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) cryIA(c) segment within the plant cells. *Bacillus thuringiensis* subsp. *kurstaki* protein will be present at no more than .001 percent of the total weight of the cottonseed. The cryIA(c) gene of *Bacillus thuringiensis* is transferred to cotton via the Ti plasmid of *Agrobacterium tumefaciens*, a vector system which has been used to stably transform many plant pesticides. All transgenic plants to be used in this field trial are upland cotton *Gossypium hirsutum*.

The 1995 Program as proposed by Calgene, Inc. will include four types of field trials. Target lepidopteran pests include: *Helicoverpa zea* (Cotton bollworm); *Pectinophora gossypiella* (Pink bollworm); *Heliothis virescens* (Tobacco budworm); *Spodoptera exigua* (Beet armyworm), *Spodoptera frugiperda* (Fall armyworm) and other lepidopteran insects pest of cotton. A total of 2,460 pounds of transgenic cottonseed will be planted on 0.5 to 20 acre sites for a total of 164 acres. The total amount of active ingredient used for 164 acres will be 11.3 grams, the amount of active ingredient to be tested per state is less than 1.5 gram. Testing will be conducted from April 1, 1995 to December 15, 1995, at research stations or seed production fields in the following states: Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas.

A breeding nursery trial will be conducted to: (1) Evaluate and compare the efficacy of transgenic strains in control of lepidopteran target pests; (2) evaluate and select for agronomic performance of prospective strains for commercialization, and (3) evaluate production of purity blocks to minimize variability of seed within potential strains for commercialization. Strain trials will be conducted to compare advanced *Bacillus thuringiensis* cotton strains to common commercial varieties for agronomic characteristics and fiber quality. There will be a maximum of 0.5 to 1 acre of transgenic planting per site. Research trials will be performed to: (1) Evaluate B.t. trait performance against target pests; (2) formulate plans for resistance management in B.t. cotton, and (3) provide recommendations for integrated pest management utilizing B.t. cotton. There will be a maximum of 0.5 to 2 acres of transgenic planting per site. Seed multiplication trials will be conducted for the purposes of ensuring seed purity for further research and development. There will be a maximum of 15 acres of transgenic planting per site.

Containment procedures will be employed to minimize dissemination via pollen transfer or seed dispersal. A non-transgenic border will be planted and maintained should cotton be present within 1,320 feet of the transgenic trial. Upon completion of the tests, all plants (transgenic, non-transgenic control lines, and non-transgenic buffer) will be destroyed via bush-hog, or shred and disk. Unused seed will be destroyed by incineration, autoclaving, plowed under, or returned to the designated seed company. Monitoring will occur through the next growing season. The occurrence of subsequent cotton volunteers will be destroyed by soil incorporation or herbicide application. Transgenic seed will be stored in marked bags. Equipment will be thoroughly cleaned before and after field trials.

The labeling proposed by Calgene, Inc. that would govern the conduct of the experiment states:

This package contains insect resistant cottonseed expressing a *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) protein. B.t.k. protein is effective in controlling certain lepidopteran insects. For use only at an application site of a cooperator and in accordance with the terms and conditions of the Experimental Use Permit. This labeling must be in the possession of the user at the time of planting. Not for sale to any person other than a participant or cooperator of the EPA approved Experimental Use Permit Program. The contents may only be used according to the approved EUP program. Cooperators must have at least one copy of each applicable protocol prior to initiating any research with the contents.

Following the review of the Calgene, Inc. application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection.

Dated: February 16, 1995.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 95–4757 Filed 2–28–95; 8:45 am]

BILLING CODE 6560–50–F

EXECUTIVE OFFICE OF THE PRESIDENT

Open Meetings of Policy Dialog Advisory Committee To Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

AGENCY: Executive Office of the President.

ACTION: Meetings of policy dialog advisory committee.

SUMMARY: The Executive Office of the President has established a Policy Dialog Advisory Committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles. The seventh meeting of this committee will be held on March 15 and 16, 1995. The eighth meeting will be held on April 12 and 13, 1995. The committee's meetings are open to the public without need for advance registration.

DATES: In March, the committee will meet on March15, 1995 from 9:30 a.m. to 5:30 p.m., and on March 16, 1995 from 8:30 a.m. to 4:30 p.m. In April, the committee will meet on April 12, 1995 from 9:30 a.m. to 5:50 p.m., and on April 13, 1995 from 8:30 a.m. to 4:40 p.m.

ADDRESSES: Both sessions of both the March and April meetings will be held in Room 2230 at the United States Department of Transportation, 400 7th Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive issues to be dealt with by the advisory committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, D.C. 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Council on Environmental Quality, phone (202) 456–6224, fax (202) 456–2710; or Michael Toman, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, phone (202) 260–5495.

Information about the Committee is also available on the Technology Transfer Network of the Office of Air Quality Planning & Standards of the Environmental Protection Agency, which can be accessed electronically by calling (919) 541–5742. Help in accessing the system can be obtained by calling (919) 541–5384 between 1:00 and 5:00 Eastern Standard Time. Neither of these numbers is a toll-free number. The Committee's toll-free information line—1–800–884–9190—provides recorded information about the Committee, including meeting dates and locations. (In the local Washington, DC area, call (202) 366–2373.)

Agenda For The Meetings

At the March meeting, the Committee will:

- Review the revised draft of the interim report, with a view toward agreement on the report so it can be submitted to the President by the March 28 due date;
- Adopt final committee protocols;
- Discuss assumptions in baseline scenarios with a goal of finalizing agreements;
- Hold meetings of ad hoc policy groups on vehicle miles travelled and alternative fuels to further develop policy options and begin analysis and receive reports from the ad hoc policy groups; and
- Discuss fuel economy policy mechanisms.

At the April meeting, the committee will continue policy development and analysis of policy options.

Dated: February 27, 1995.

W. Bowman Cutter,

Deputy Assistant to the President for Economic Policy.

John H. Gibbons,

Director, Office of Science and Technology Policy.

Kathleen A. McGinty,

Chair, Council on Environmental Quality.

[FR Doc. 95–5135 Filed 2–27–95; 11:14 am]

BILLING CODE 3195–01–M

FEDERAL RESERVE SYSTEM

Centura Banks, Inc., et al. ; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval

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under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to merge with First Southern Bancorp, Inc., Asheboro, North Carolina, and thereby indirectly acquire First Southern Savings Bank, Inc., Asheboro, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Habersham Bancorp, Cornelia, Georgia; to merge with Security Bancorp, Inc., Canton, Georgia; and thereby indirectly acquire Security State Bank, Canton, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chambers Bancshares, Inc., Danville, Arkansas; to acquire 82.9 percent of the voting shares of Bank of Atkins, Atkins, Arkansas.

Board of Governors of the Federal Reserve System, February 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-4971 Filed 2-28-95; 8:45 am]

BILLING CODE 6210-01-F

Charles H. Deters; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Charles H. Deters, Walton, Kentucky; to acquire an additional 4.5 percent, for a total of 50 percent, of the voting shares of Commonwealth Trust Bancorp, Inc., Butler, Kentucky, and thereby indirectly acquire Farmers Bank, Butler, Kentucky.

Board of Governors of the Federal Reserve System, February 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-4972 Filed 2-28-95; 8:45 am]

BILLING CODE 6210-01-F

Deutsche Bank AG, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 15, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Deutsche Bank, AG, Frankfurt, Federal Republic of Germany; to acquire ITT Business Services Corporation, Clayton, Missouri, and ITT Commercial Finance Corporation, Hato Rey, Puerto Rico, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to provide data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Castle BancGroup, Inc., DeKalb, Illinois; to acquire through a newly organized subsidiary, Castle Mortgage, Inc. DeKalb, Illinois, Premier Home Financing, Inc., Oak Brook, Illinois, with offices in Arlington, Heights, Illinois, Naperville, Illinois, and Merrillville, Indiana, and thereby engage in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; acting as principal, agent, or broker for credit insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; performing appraisals of real estate and tangible and intangible personal property, pursuant to § 225.25(b)(13); and arranging commercial real estate equity financing, pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-4973 Filed 2-28-95; 8:45 am]

BILLING CODE 6210-01-F

Harrison Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Harrison Bankshares, Inc., Lost Creek, West Virginia; to engage *de novo* through Harrison Mortgages, Inc., Lost Creek, West Virginia; in originating mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-4974 Filed 2-28-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0401]

Revised Bioequivalence Guideline; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Bioequivalence Guideline (Draft) 1994" prepared by the Center for Veterinary Medicine (CVM). The draft guideline, which is a revision of the 1990 version, covers general considerations, blood level studies, pharmacologic end-points, clinical end-points, and human food safety. The draft guideline is intended to assist sponsors of new animal drug applications in the submission of data to support approval of these applications.

DATES: Written comments by May 30, 1995.

ADDRESSES: Submit written requests for single copies of the draft guideline entitled "Bioequivalence Guideline (Draft) 1994" to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1756. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the draft guideline entitled "Bioequivalence Guideline (Draft) 1994." The draft is based on an April 1990 bioequivalence guideline and a consensus of reports from panel presentations at the 1993 Veterinary Drug Bioequivalence Workshop held in Rockville, MD. Major new topics addressed in the draft guideline include: Bioequivalence overdose studies, testing for multiple strength solid oral dosage forms, assay considerations, area under the curve and maximum blood concentration as pivotal parameters, and blood level studies with good laboratory practice tissue residue depletion for generic products for food animals.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, it would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may, on or before May 30, 1995, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered to determine whether further amendments to, or revisions of, the draft guideline are warranted.

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy

[FR Doc. 95-4962 Filed 2-28-95; 8:45 am]

BILLING CODE 4160-01-F

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Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer and industry representatives to serve on certain device panels of the Medical Devices Advisory Committee and on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur through February 28, 1996.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by May 1, 1995.

ADDRESSES: All nominations and curricula vitae for industry representatives shall be submitted in writing to Kathleen L. Walker (address below). All nominations and curricula vitae for consumer representatives shall be submitted in writing to Martha F. Waugh (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding industry representatives: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6932.

Regarding consumer interests: Martha F. Waugh, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the vacancies listed below:

Committee or Panel	Approximate Date Representative is Needed	
	Consumer	Industry
Clinical Chemistry and Clinical Toxicology Devices Panel	NV	February 28, 1996
Dental Products Panel:		
Drugs	NV	October 31, 1995
Cosmetics	NV	October 31, 1995
Ear, Nose, and Throat Devices Panel	October 31, 1995	NV
Gastroenterology and Urology Devices Panel	NV	December 31, 1995
General and Plastic Surgery Devices Panel	NV	August 31, 1995
Hematology and Pathology Devices Panel	February 28, 1996	February 28, 1996
Microbiology Devices Panel	NV	February 28, 1996
Orthopedic and Rehabilitation Devices Panel	August 31, 1995	NV
Radiological Devices Panel	January 31, 1996	NV
National Mammography Quality Assurance Advisory Committee	January 31, 1996	NA

NV = No vacancy
NA = Not applicable

Functions

Medical Device Panels

The functions of the panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the drug panel are to: (1) Evaluate and recommend whether various prescription drug products should be changed to over-the-counter status; (2) evaluate data and make recommendations concerning the approval of new dental drug products for human use; (3) evaluate data and make recommendations concerning drug products that may also be cosmetics; and (4) using the Plaque Subcommittee, review and evaluate data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed dental drug products for human use, and the adequacy of their labeling. The subcommittee will advise on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise the Food and Drug Administration on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities.

The committee will also determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other

requirements on access to the services of such facilities in such areas; and whether there will exist a sufficient number of medical physicists after October 1, 1999, and the costs and benefits of compliance with these requirements.

Consumer and Industry Representation

Medical Device Panels

Section 520(f)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

National Mammography Quality Assurance Advisory Committee

Section 354n of the Public Health Service Act (42 U.S.C. 263b), as amended by the Mammography Quality Standards Act of 1992, provides that at least four of the individuals nominated for membership should be from among national breast cancer or consumer health organizations with expertise in mammography. The committee may include one technically qualified member who is identified with consumer interests.

Nomination Procedures

Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

Industry Representatives

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vitae of each nominee. The term of office is up to 4 years, depending on the appointment date.

Selection Procedures

Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representatives

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: February 21, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–4911 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Voting Members on Public Advisory Panels or Committees in the Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee and on the National Mammography Quality Assurance Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and those vacancies that will or may occur through February 28, 1996.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the panels should be sent to Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

All nominations and curricula vitae for the National Mammography Quality Assurance Advisory Committee should be sent to Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6932.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* One vacancy occurring November 30, 1995; general anesthesiologists, anesthesiologists specializing in regional anesthesia, physicians with expertise in ventilatory support, or nurse anesthetists.

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2. *Circulatory System Devices Panel*: Three vacancies occurring June 30, 1995; interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.

3. *Clinical Chemistry and Clinical Toxicology Devices Panel*: Three vacancies occurring February 28, 1996; doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, clinical laboratory medicine, or oncology.

4. *Dental Products Panel*: Two vacancies occurring October 31, 1995; dentists who have experience with lasers, endosseous implants, and temporomandibular joint implants; or experts in bone physiology relative to the oral and maxillofacial area.

5. *Ear, Nose, and Throat Devices Panel*: One vacancy occurring October 31, 1995; audiologists, otolaryngologists, neurophysiologists, statisticians, or electrical or biomedical engineers.

6. *Gastroenterology and Urology Devices Panel*: Three vacancies occurring December 31, 1995; nephrologists, urologists, and gastroenterologists with expertise in diagnostic and therapeutic management of adult and pediatric patient populations.

7. *Hematology and Pathology Devices Panel*: One vacancy occurring February 28, 1996; cytopathologists and histopathologists; hematologists (blood banking, coagulation, and hemostatis); molecular biologists (nucleic acid amplification techniques), and hematopathologists (oncology).

8. *Immunology Devices Panel*: Two vacancies occurring February 28, 1996; medical or surgical oncologists experienced with tumor markers, or clinical immunologists.

9. *Microbiology Devices Panel*: One vacancy occurring February 28, 1996; infectious disease clinicians; clinical microbiologists with expertise in antimicrobial and antimycobacterial susceptibility testing and chemotherapy; clinical virologists with expertise in diagnosis and assays; clinical oncologists experienced with antitumor resistance and susceptibility; and molecular biologists.

10. *Neurological Devices Panel*: Two vacancies occurring November 30, 1995; neurologists, biomedical engineers, interventional neuroradiologists, neurosurgeons with interest in medical devices, or persons experienced with neurological devices with a strong background in biostatistics.

11. *Obstetrics and Gynecology Devices Panel*: One vacancy occurring January 31, 1996; experts in reproductive endocrinology, endoscopy, electrosurgery, laser surgery, assisted reproductive technologies, and contraception.

12. *Ophthalmic Devices Panel*: Two vacancies occurring October 31, 1995; ophthalmologists specializing in glaucoma, surgical pediatric ophthalmology (experienced in correction of aphakia), retinal diseases or corneal diseases; and optometrists with expertise in contact lenses.

13. *Orthopedic and Rehabilitation Devices Panel*: One vacancy occurring August 31, 1995; orthopedic surgeons experienced with prosthetic ligament devices, joint implants, or spinal instrumentation; physical therapists experienced in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologists; or biomedical engineers.

14. *Radiological Devices Panel*: One vacancy occurring January 31, 1996; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, mammography, thermography, transillumination, hyperthermia, bone densitometry, magnetic resonance, computed tomography, or ultrasound.

15. *National Mammography Quality Assurance Advisory Committee*: Four vacancies occurring January 31, 1996; physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography.

Functions

Medical Device Panels

The functions of the panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the drug panel are to: (1) Evaluate and recommend whether various prescription drug products should be changed to over-the-counter status; (2) evaluate data and make recommendations concerning the approval of new dental drug products for human use; (3) evaluate data and make recommendations concerning drug products that may also be cosmetics; and (4) using a Plaque Subcommittee, review and evaluate data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed dental drug products for human use, and the adequacy of their labeling. The subcommittee will advise on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities.

The committee will also determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other requirements on access to the services of such facilities in such areas; whether there will exist a sufficient number of medical physicists after October 1, 1999, and the costs and benefits of compliance with these requirements.

Qualifications

Medical Device Panels

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practices, research specializations, or professional expertise include a significant focus on mammography. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise. The particular needs for this committee are shown above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or the National Mammography Quality Assurance Advisory Committee. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 21, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95-4910 Filed 2-28-95; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Program Announcement for Contracts for the Disadvantaged Health Professions Faculty Loan Repayment Program for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications for contracts for fiscal year (FY) 1995, for the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) are now being accepted under section 738(a) of the Public Health Service Act (The Act).

In FY 1995, approximately $823,000 is available for competing applications for the Disadvantaged Health Professions Faculty Loan Repayment Program. It is expected that 30 contracts averaging $27,433 ($13,717 per year for two years) will be supported with these funds.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal years 1991, 1992, 1993 and 1994, HRSA entered into a total of 129 contracts under this program, averaging $25,030 ($12,515 per year for 2 years).

Purpose

The purpose of the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) is to attract disadvantaged health professions faculty members for accredited health professions schools. The program provides a financial incentive for degree-trained health professions personnel from disadvantaged backgrounds who will serve as members of the faculties of those schools. The FLRP is directed at those individuals available to serve immediately or within a short time as "new" full-time faculty members. Loan repayment may be provided only for an individual who has *not* been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for a repayment contract (i.e., "new" faculty).

Section 738(b) makes available grants and contracts with schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology and other public or private nonprofit health or educational entities to assist in increasing the number of underrepresented minority faculty. Section 738(b) will be implemented as a separate program.

Eligible Individuals

Individuals from disadvantaged backgrounds are eligible to compete for participation in the FLRP if they:

1. Have degrees in medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, public health or clinical psychology; or
2. Are enrolled in an approved graduate training program in one of the health professions listed above; or
3. Are enrolled as full-time students in the final year of health professions training, leading to a degree from an eligible school.

Established faculty members are not eligible to apply for funds under the FLRP. Only individuals that have not taught in the last 18 (eighteen) months prior to application to the program will be considered.

Statutory Requirements

Prior to submitting an application for a contract for loan repayment, individuals must sign a contract with an eligible school, as prescribed by the Secretary, setting forth the terms and conditions of the FLRP. This contract with the school must require the individual to serve as a full-time member of the faculty, as determined by the school, for not less than 2 years, whereby the school agrees to pay, for each year, a sum (in addition to faculty salary) equal to that paid by the Secretary towards the repayment of principal due on the applicant's health professions educational loans. Additionally, the individual involved may not have been a member of the faculty of any school at any time during the last 18 months prior to application to the program.

Eligible Schools

Eligible schools are public or nonprofit private accredited schools of medicine, nursing, as defined in section 853 of the Act, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine or public health, or schools that offer graduate programs in clinical psychology and which are located in States as provided in section 799 of the Act.

Provisions of the Loan Repayment Program

Section 738(a) authorizes repayment, for any year for which repayments are made, not to exceed 20 percent of the outstanding principal and interest on

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the individual's educational loans. Of the repayment, the Secretary pays half, up to $20,000. The school pays an equal amount, unless the Secretary determines that the repayment will impose an undue financial hardship on the school in which case,the Secretary may pay up to the entire 20 percent.

The school is required, for each such year, to make payments of principal and interest in an amount equal to the amount of payment made by the Secretary for that year. These payments must be in addition to the faculty salary the participant otherwise would receive.

Allowable educational loan repayment expenses include the following:

1. Tuition expenses;

2. All other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant;

3. Reasonable living expenses, as determined by the Secretary; and

4. Partial payments of the increased Federal income tax liability caused by the FLRP's payments and considered to be "other income," if the recipient requests such assistance.

Prior to entering into a contract for repayment of loans, the Secretary requires satisfactory evidence of the existence and reasonableness of the individual's educational loans, including a copy of the original written loan agreement establishing the outstanding educational loan.

Waiver Provision

In the event of undue financial hardship to a school, the school may obtain from the Secretary a waiver of its share of payments while the participant is serving under the terms of the contract. For purposes of this program, "undue financial hardship", as seen by the Secretary, is based on a school's particular financial status as influenced by such circumstances as budget cutbacks. Decisions will be made on a case-by-case basis, and must be supported by the school's documentation of comparative yearly financial allocation of funds; or the most current certified public accounting audit, including the Balance Sheet and Statement of Income and Expenses for the past several years.

If the Secretary waives the school's payment requirement, the amount of the Federal loan repayment may be up to the full 20 percent described above (regardless of the "equal amount" provision described above), but cannot exceed the $20,000 repayment limit. The participant must pay that portion of loan payment due which is not covered.

The following Definitions, Program Requirements, Review Criteria and Funding Preference were established in FY 1991 after public comment dated October 2, 1991, at 56 FR 49896, and the Secretary is extending them in FY 1995.

Definitions

For purposes of the FLRP in FY 1995, an "Individual from a Disadvantaged Background" is defined as in 42 CFR 57.1804, as one who:

1. Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or

2. Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in health professions and nursing programs. The Secretary will periodically publish these income levels in the **Federal Register**. The following income figures determine what constitutes a low income family for purposes of the Faculty Loan Repayment Program for FY 1995.

Size of parents' family [1]	Income level [2]
1	$9,700
2	12,600
3	15,000
4	19,200
5	22,600
6 or more	25,400

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1993 rounded to $100.

The term "Living expenses" means the costs of room and board, transportation and commuting costs, and other costs incurred during an individual's attendance at a health professions school, as estimated each year by the school as part of the school's standard student budget. (National Health Service Corps Loan Repayment Program, 42 CFR part 62.22)

The term "Reasonable educational expenses and living expenses" means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR part 62.22)

The term "Unserved Obligation Penalty" means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act) See "Breach of Contract" section below.

Program Requirements

The following requirements will be applied to the applicant and to the school.

The Applicant

The applicant will be required to do the following:

1. Submit a completed application, including the applicant's contract with an eligible school to serve as a full-time faculty member for not less than 2 years;

2. Provide evidence that the applicant has completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;

3. Certify that the United States does not hold a judgment against the applicant; and

4. Provide documentation to evidence the educational loans and to verify their status.

The School

The school will be required to do the following:

1. Enter into a contractual agreement with the applicant whereby the school is required, for each year for which the participant serves as a faculty member, to make payments of principal and interest in an amount equal to the amount of such quarterly payments made by the Secretary. These payments must be in addition to the faculty salary the participant otherwise would receive.

2. Verify the participant's continuous employment at intervals as prescribed by the Secretary.

The Secretary will pay participants in equal quarterly payments during the period of service.

Effective Date of Contract

After an applicant has been approved for participation in the FLRP, the Director, Division of Disadvantaged Assistance (DDA), will send the applicant a contract with the Secretary. The effective date is either the date work begins at the school as a faculty member or the date the Director, DDA, signs the FLRP contract, whichever is later. Service should begin no later than September 30, 1995.

Breach of Contract

The following areas under Breach of Contract are addressed in the appended contract:

1. If the participant fails to serve his or her period of obligated faculty service (minimum of 2 years) as contracted with the school, he/she is then in breach of contract, and neither the Secretary nor the school is obligated to continue loan repayments as stated in the contract. The participant must then reimburse the Secretary and the participating school for all sums of principal and interest paid on his/her behalf as stated in the contract in addition to any income tax assistance he/she may have received.

2. Regardless of the length of the agreed period of obligated service (2, 3, or more years), a participant who serves less than the time period specified in his/her contract is liable for monetary damages to the United States amounting to the sum of the total of the amounts the Program paid him/her, plus an "unserved obligation penalty" of $1,000 for each month unserved.

3. Any amount which the United States is entitled to recover because of a breach of the FLRP contract must be paid within 1 year from the day the Secretary determines that the participant is in breach of contract. If payment is not received by the payment date, additional interest, penalties and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

Review Criteria

The HRSA will review fiscal year 1995 applications taking into consideration the following criteria:

1. The extent to which the applicant meets the requirements of section 738 of the Act;

2. The completeness, accuracy, and validity of the applicant's responses to application requirements;

3. The submission of the signed contract with the school;

4. An applicant's earliest available date to begin service as a faculty member provided funding is available for that year; and

5. An applicant's availability to enter into a service contract for a longer period than the mandatory 2-year minimum.

Factors to assure equitable distribution (e.g. geographic, discipline) will be considered in determining the funding of completed applications.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Disadvantaged Health Professions Faculty Loan Repayment Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain education, library, day care, health care, and early childhood development services are provided to children.

Application Requests

Requests for application materials and questions regarding program information and business should be directed to: Lafayette Gilchrist, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, Maryland 20857, Telephone: (301) 443–3680 FAX: (301) 443–5242.

Completed applications should be returned to the address listed above. The application deadline date is June 30, 1995. Applications shall be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The application form and instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0150.

The Disadvantaged Health Professions Faculty Loan Repayment Program is listed at 93.923 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: February 23, 1995.

Ciro V. Sumaya,

Administrator.

Contract for the Disadvantaged Health Professions Faculty Loan Repayment Program With U.S. Department of Health and Human Services—Public Health Service; Health Resources and Services Administration; Bureau of Health Professions

Section 738 of the Public Health Service Act ("Act") [42 United States Code 293 et seq.], as added by Pub. L. 102–408, authorizes the Secretary of Health and Human Services ("Secretary") to repay the educational loans of applicants from disadvantaged backgrounds selected to be participants in the Loan Repayment Program Regarding Service on Faculties of Certain Health Professions Schools ("Faculty Loan Repayment Program"). In return for these loan repayments, applicants must agree to provide teaching faculty services at an approved accredited health professions school determined by the Secretary for a designated period of obligated service pursuant to section 738 of the Act.

Section 738(a)(5)&(7) of the Act require applicants to submit with their applications a signed contract with an accredited health professions school and a signed contract which states the terms and conditions of participation in the Faculty Loan Repayment Program. The Secretary shall sign only those contracts submitted by applicants who are selected for participation.

The terms and conditions of participating in the Faculty Loan Repayment Program are set forth below:

Section A—Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United States for the Faculty Loan Repayment Program, the Secretary agrees to:

1. Pay, in the amount provided in paragraph 2 of this section, the undersigned applicant's qualifying educational loans. Qualifying educational loans consist of the principal and interest on educational loans

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received by the applicant for the following expenses of enrollment:

a. tuition expenses;

b. all other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant; or

c. reasonable living expenses as determined by the Secretary.

2. If the applicant agrees to serve 2 or more years:

a. Except as provided in subparagraph b. of this paragraph, pay up to $20,000 of the outstanding principal and interest of a participant's non delinquent educational loans, but not more than half of the 20 percent of the qualified outstanding educational loans for such year for each year of eligible faculty service; or

b. The Secretary's liability will not exceed a cap of $20,000 of principal and interest annually. This would include the 10 percent waived under Sec. 738(a) of the Act for the School's proportionate share of the loan repayment amounts. The applicant must pay that portion not covered.

3. Make loan repayments for a year of obligated service no later than the end of the fiscal year in which the applicant completes such year of service.

4. The effective date of the Contract will be the date it is signed by the Director, Division of Disadvantaged Assistance or the date employment begins as a faculty member of the contracting school whichever is later.

Section B—Obligations of the Participant

1. The applicant agrees to:

a. Continue loan repayments to lenders for the first quarter after which the Secretary will make delayed quarterly payments to applicant for the years stated in paragraph c of this section. Applicant must pay lender(s) these payments.

b. Serve his or her period of obligated faculty service as contracted with the school and as determined by the Secretary to be acceptable.

c. Serve in accordance with paragraph b. of this section for _____ years at _____. The applicant must serve a minimum of two years.

2. If the applicant's eligibility to participate in the Faculty Loan Repayment Program is based on section 738(a)(2) of the Act (i.e. based on his or her enrollment in an accredited health professions school), he or she also agrees to:

a. Maintain full-time enrollment, (as determined by the School), in good academic standing as determined by the School, in the final year of the course of study leading to a degree in medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, nursing, or public health, or schools offering graduate programs in clinical psychology in which the applicant is currently enrolled, until completion of such course of study;

b. Enter into a contract with an accredited school described in subsection (a) of Section 738 to serve as a "new" member of the faculty of the school for not less than 2 years according to the requirements described in subsection (a)(5) of section 738.

c. Begin service obligation as contracted.

Section C—Breach of Written Loan Repayment Contract

1. If the participant fails to comply with section B.1.c. of this contract or is dismissed for disciplinary reasons or voluntarily terminates the contracts, neither the Secretary nor the School is obligated to continue loan repayments as stated in Sec. A of this Contract. The participant shall be liable to the United States and the School for the amounts specified in paragraph 2 of this section.

2. If the applicant agrees to serve as a full-time faculty member for two years or more and fails to serve the 2-year minimum requirement, he or she is liable to pay monetary damages to the United States amounting to the sum of (a) the total amounts specified in Section A.2 of this contract plus (b) an "unserved obligation penalty" of $1,000 for each month unserved as set forth in paragraph 3 of this section plus (c) any tax assistance paid plus (d) interest, penalties and administrative charges for past due payments.

3. The "Unserved Obligation Penalty" means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000 except that in any case in which the individual fails to serve 1 year, the unserved obligated penalty shall be equal to the full period of obligated service multiplied by $1,000.

4. If the applicant agrees to serve more than the 2-year minimum service obligation and has completed the 2-year minimum he or she will be liable for such sums paid for any months that are not a full year beyond the 2-year minimum requirement as agreed to in Section B.1.c of this contract, plus an "unserved obligation penalty" of $1,000 for each month unserved.

5. Any amount the United States is entitled to recover shall be paid within one year of the date the Secretary determines that the applicant is in breach of this written contract. Failure to pay by the due date will incur delinquent charges provided by Federal Law. (45 CFR 30.13).

Section D—Cancellation, Suspension, and Waiver of Obligation

Any service or payment obligation may be canceled, suspended, or waived under certain circumstances described below: (1) In the event of death or permanent and total disability, the Secretary will cancel obligations under this contract. To receive cancellation in the event of death, the executor of the estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, applicant or his/her representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations; (2) Upon receipt of supporting documentation the Secretary may waive or suspend service or payment obligation under this contract if the Secretary determines that: (a) meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and (b) enforcement of the obligations would be unconscionable. (3) Deferment will be granted in the event of long term illness. Supporting documentation should be sent to Division of Disadvantaged Assistance, Room 8A–09 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The Secretary or his/her authorized representative must sign this contract before it becomes effective.

_____
Applicant Name (Please Print)

_____
Applicant Signature * Date

_____
Secretary of Health and Human Services or Dusignee

_____
Date

* Before signing, be sure you have completed section B.1.c. on page 1 of this contract indicating the number of years of service you agree to perform.

[FR Doc. 95–4964 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–15–P

National Practitioner Data Bank: Change in User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing a change in the fee that is charged entities authorized to request information from the National Practitioner Data Bank (Data Bank).

The current user fee of $6.00 for queries submitted by diskette or telecommunications network, with a $4.00 surcharge added for queries submitted on paper, has been in effect since July 1, 1993. Those fees were announced in the **Federal Register** on June 1, 1993 (58 FR 31215). A subsequent change in the fee structure was announced in the **Federal Register** on July 14, 1994 (59 FR 35936), at which time a $1.00 discount from the $6.00 fee was offered for queries who would submit their queries over the telecommunications network *and* who would pay by credit card. That announcement also indicated that the fee charged for authorized queries for information concerning an individual physician, dentist, or other health care practitioner would be reviewed periodically and revised as necessary, based upon experience. Any further changes in the fee, and the effective date of the change, would be announced in the **Federal Register**.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for

the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement.

A reassessment of the full operating costs related to processing requests for disclosure of Data Bank information, as required by the DHHS Appropriations Act of 1994 (title II of Pub. L. 103–112, dated October 21, 1993), as well as the comparative costs of the various methods for filing and paying for queries, has resulted in a decision to offer a further discount to users when they both query pay via the telecommunications network as well as pay query fees by credit card, electronic funds transfer or such other electronic transfer options as may be offered in the future. The options to query and pay user fees by these means facilitate the querying process and make it less costly to both users and the Data Bank than all other available options.

Accordingly, the Department is adjusting the user fee to provide a $2.00 discount from the basic $6.00 fee per name per query submitted and paid via the method described above, with receipt by electronic method. This change is effective immediately.

The criteria set forth in § 60.12(b) of the regulations and allowable costs are required by the Appropriations Act of 1994 were used in determining the amount of this new fee. The criteria include such cost factors as: (1) Electronic data processing time, equipment, materials, computer programmers and operators or other employees; and (2) preparation of reports—materials, photocopying, postage, and administrative personnel.

When a request is for information on one or more physician, dentist, or other health care practitioner, the appropriate total fee will be $6.00 (minus a $2.00 discount for submission and payment as described above; or, plus a $4.00 surcharge for queries filed on paper forms) times the number of individuals about whom information is being requested. For examples, see the table below.

The fee charged will be reviewed periodically, and revised as necessary, based upon experience. Any changes in the fee, and the effective date of the change, will be announced in the Federal Register.

Query method	Fee per name in query, by method of payment	Examples
Paper	$10.00 (irrespective of payment method)	10 names in query. 10×10=$100.00.
Electronic (Diskette)	$6.00 (irrespective of payment method)	10 names in query. 10×$6=$60.00.
Electronic (Telecom network)	$6.00 (if not paid via credit card or other electronic means or if paper response received).	10 names in query. 10×$6.00=$60.00.
Electronic (Telecom network)	$4.00 (if paid electronically via credit card or other electronic means and response received electronically).	10 names in query. 10×$4=$40.00.

Dated: February 23, 1995.

Ciro V. Symaya,

Administrator.

[FR Doc. 95–4963 Filed 2–28–95; 8:45 am]

BILLING CODE 4150–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Assistant Secretary of Health

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Nutrition Monitoring Advisory Council: Notice of Meeting

SUMMARY: The National Nutrition Monitoring Advisory Council will hold its sixth meeting on March 15 from 9 a.m. to 5 p.m. e.s.t., and March 16 from 9 a.m. to 1 p.m. e.s.t., at the Hotel Sofitel, 1914 Connecticut Avenue N.W., Washington, D.C. 20009. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Linda Meyers, HHS Co-Executive Secretary to the Council, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Room 2132, Switzer Building, 330 C Street S.W., Washington, D.C. 20201, (202) 205–9007; or Debra Reed, USDA Co-Executive Secretary to the Council, U.S. Department of Agriculture, Agricultural Research Service, Building 005, Room 215, BARC West, Beltsville, Maryland 20705, (301) 504–6964.

SUPPLEMENTARY INFORMATION: The responsibilities of the National Nutrition Monitoring Advisory Council are to evaluate the scientific and technical quality of the Ten-Year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program and the effectiveness of the coordinated program and to provide guidance to the Secretaries of USDA and HHS. This Council is also required by Public Law 101–445 to prepare annual reports to the Secretaries of USDA and HHS that include recommendations for strengthening the Program.

The Council is chaired by Shiriki K. Kumanyika, Pennsylvania State College of Medicine, Hershey Pennsylvania. Other members are Cutberto Garza, Cornell University, Ithaca, New York; Sue Greig, Manhattan, Kansas; Suzanne Harris, International Life Sciences Institute, Washington, D.C.; Shirley J. Humphrey, Department of Education, Cheyenne, Wyoming; Sheryl Lee, Arizona Department of Health Services, Phoenix, Arizona; Kailash Mathur, South Carolina State University, Orangeburg, South Carolina; Suzanne P. Murphy, University of California, Berkeley, California; and Lynn Parker, Food Research and Action Center, Washington, D.C.

The Council meeting agenda will include updates on progress on the Ten-Year Comprehensive Plan for the National Nutrition Monitoring and Related Research Program, on data release and future plans for the Program's cornerstone surveys—the HHS National Health and Nutrition Examination Surveys and the USDA Continuing Survey of Food Intakes by Individuals, and on related ongoing nutrition monitoring projects.

The public may file statements with the Council before or after the meeting by addressing them to either of the contact persons listed above. Please call Linda Meyers (202/205–9007) by March 5 if you will require a sign language interpreter.

Done at Washington, D.C. this 22d day of February, 1995.

James A. Harrell,

Acting Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 95–4930 Filed 2–28–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D–0002]

Memorandum on the Use of an FDA Cleared or Approved Sterile Connecting Device in Blood Bank Practice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a memorandum dated August 5, 1994, to all registered blood establishments. In the August 5, 1994, memorandum, the Center for Biologics Evaluation and Research (CBER) recommends practices and procedures in the use of sterile connecting devices (STCD's). CBER also advises that certain uses of these devices may create a new product or significantly modify a regulated product, such that approval of a license application or an application supplement is required. This memorandum provides information to registered blood establishments on the use of STCD's.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the memorandum to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Persons with access to INTERNET may request this document from "Mem8—05—94@A1.cber.fda.gov". The document may also be obtained by calling CBER FAX Information System at 301–594–1939 from a FAX machine with a touch tone phone attached or built in. Submit written comments on the memorandum to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The memorandum and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty J. Poindexter, Center for Biologics Evaluation and Research (HFM–335), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–496–2577.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a memorandum to all registered blood establishments on the use of an FDA cleared or approved STCD. STCD's produce sterile welds between two pieces of compatible tubing. This procedure permits sterile connection of a variety of containers and/or needles. This document describes recommended practices and procedures for the use of these devices.

The memorandum provides guidance on the common uses of STCD's as follows: (1) Adding a new or smaller needle to a blood collection set; (2) preparing components; (3) pooling blood products; (4) preparing an aliquot for pediatric use and divided units; (5) connecting additional saline or anticoagulant lines during an automated plasmapheresis procedure; (6) attaching processing solutions; (7) adding an FDA-cleared leukocyte reduction filter; and (8) removing samples from blood product containers for testing.

The memorandum also presents general guidance as well as specific information and examples concerning specifications for submission of applications and application supplements to FDA addressing the use of a STCD. It also includes an appendix with the currently approved dating periods for blood components and source plasma (21 CFR 610.53) and currently recommended dating periods for automated plateletpheresis products (see Revised Guideline for Collection of Platelets, Pheresis (54 FR 3852, January 26, 1989)).

As with other memoranda, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The memorandum is intended to provide information and does not set forth new requirements. The procedures cited in the memorandum are recommendations. FDA anticipates that blood establishments may develop alternative procedures and discuss them with FDA. FDA may find those alternative procedures acceptable. FDA recognizes that advances may continue in the use of STCD's and that this document may become outdated as those advances occur. The memorandum does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for guidance.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the memorandum. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in determining whether further revisions to the memorandum are warranted.

Dated: February 17, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–5061 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0051]

Solvay Pharmaceuticals, Inc., et al.; Withdrawal of Approval of 11 Abbreviated Antibiotic Applications and 11 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 11 abbreviated antibiotic applications (AADA's) and 11 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
60–128	Ampicillin Trihydrate	IBI, Giovanni Lorenzini S.p.A., 20139 Milano, Italy.
60–130	Ampicillin	Do.
61–659	Erythromycin Delayed-Release Tablets, U.S.P., 250 milligrams (mg)	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
61–818	Cephalexin Monohydrate	IBI.
61–923	Amoxicillin Trihydrate	Do.
62–052	Nystatin Ointment, U.S.P.	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
62–430	Bacitracin Zinc and Polymyxin B Sulfate Ophthalmic Ointment, U.S.P.	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
62–449	Cephalothin Sodium	IBI.
62–666	Cephalothin Sodium for Injection, U.S.P., 1 gram (g) and 2 g	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548
62–710	Cephalothin Sodium	IBI.
62–747	Clindamycin Phosphate Injection, U.S.P., 150 mg/milliliters (mL)	Fujusawa USA, Inc.

ANDA No.	Drug	Applicant
80–041	Trisulfapyrimidines Oral Suspension, U.S.P., 0.5 g/5 mL	Solvay Pharmaceuticals, Inc.
80–921	Vitamin A Capsules, U.S.P., 50,000 units	Lemmon Co.
83–993	Phendimetrazine Tartrate Tablets, U.S.P., 35 mg	Solvay Pharmaceuticals, Inc.
84–435	Meprobamate Tablets, U.S.P., 200 mg	Do.
85–897	Phendimetrazine Tartrate Capsules, U.S.P., 35 mg	Do.
87–074	Diatrizoate Meglumine and Diatriozoate Sodium Injectin, U.S.P.	Mallinckrodt Medical, Inc., P.O. Box 5840, St. Louis, MO 63134.
87–113	Triamcinolone Acetonide Cream, U.S.P. 0.1%	Solvay Pharmaceuticals, Inc.
87–210	Reserpine, Hydralazine Hydrochloride, and Hydrochlorothiazide Tablets, U.S.P., 0.1 mg/25 mg/15 mg	Do.
87–833	Prednisone Tablets, U.S.P., 25 mg	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216–6532
88–071	Dexamethasone Sodium Phosphate Ophthalmic Ointment, U.S.P., 0.05%	Pharmafair, Inc.
88–612	Phentermine Hydrochloride Capsules, U.S.P., 30 mg	Lemmon Co.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective March 31, 1995.

Dated: February 16, 1995.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 95–5060 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0050]

Drug Export; Sandostatin (Octreotide Acetate) Lar® Injection; 10-Milligram (mg), 20-mg, and 30-mg Vials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sandoz Pharmaceuticals Corp. has filed an application requesting conditional approval for the export of the human drug Sandostatin (octreotide acetate) LAR® Injection 10-mg, 20-mg, and 30-mg vials to Switzerland for further packaging and marketing.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Sandoz Pharmaceuticals Corp., 59 Route 10, East Hanover, NJ 07936–1080, has filed an application requesting approval for the export of the human drug Sandostatin (octreotide acetate) LAR® Injection 10-mg, 20-mg, and 30-mg vials to Switzerland. This product is a new formulation of octreotide acetate manufactured by a different process which is indicated for aromegaly, malignant carcinoid syndrome, and vipoma. The firm does have approval for Sandostatin Injection. The

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application was received and filed in the Center for Drug Evaluation and Research on December 27, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 13, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 9, 1995.

Edward Miracco,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–5059 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0049]

Drug Export; Zyloprim (Allopurinol Sodium) for Injection Equivalent to 500 Milligrams Allopurinol Sterile Lyophilized Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Burroughs Wellcome Co. has filed an application requesting approval for the export of the human drug Zyloprim (allopurinol sodium) for Injection equivalent to 500 milligrams (mg) allopurinol to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Burroughs Wellcome Co., 3030 Cornwallis Rd., P.O. Box 12700, Research Triangle Park, NC 27709–2700, has filed an application requesting approval for the export of the human drug Zyloprim (allopurinol sodium) for Injection equivalent to 500 mg allopurinol to Canada. This product is primarily indicated for its prophylactic usage in patients with leukemia, lymphomas, or other malignancies, receiving antineoplastic treatment (radiation or cytotoxic drugs) which might induce increased uric acid levels. The firm does have new drug application approval for Zyloprim (allopurinol) Tablets in two dosage strengths. The application was received and filed in the Center for Drug Evaluation and Research on January 25, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 13, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 8, 1995.

Edward Miracco,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–5062 Filed 2–28–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–5101–G014; NMNM93652]

Notice of Intent, and Notice of Scoping Meetings and Comment Period; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent, and notice of scoping meetings with a public comment period.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management is directing the preparation of an environmental document for the construction, operation, and maintenance of a pipeline that would be 12 or 16 inches in diameter and approximately 400 miles in length. The proposed project is known as the Mid-American Pipeline Company Four Corners Loop Project. The environmental document is being prepared as an environmental assessment, but will be advanced to the environmental impact statement level if this is indicated by scoping or by a determination of significant impacts in the environmental assessment. Public meetings will be held for the proposed pipeline project with a public comment period.

DATES: Public scoping meetings are planned in Albuquerque, New Mexico at the Albuquerque Convention Center, San Miguel Room, 401 Second Street, NW., on March 15, 1995 at 3:00 p.m. to 9:00 p.m. and in Roswell, New Mexico at the Roswell Inn, Berrendo Room, 1815 North Main at 3:00 p.m. to 9:00 p.m. on March 16, 1995, respectively. The meeting agenda will be to conduct an open-house to receive interested parties from 3:00 p.m. to 5:30 p.m. with a formal presentation starting at 7:00 p.m., followed by a workshop to receive comments, and ending at 9:00 p.m.

Written comments on the proposed project accepted until March 31, 1995.

ADDRESSES: Any comments should be sent to the Bureau of Land Management, Farmington District Office, Attention: Jerry Crockford, 1235 LaPlata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, (505) 599–6333.

SUPPLEMENTARY INFORMATION: Pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.), as amended by the Act of November 16, 1973 (37 Stat. 567), the Mid-America Pipeline Company has applied for a right-of-way, serial number NMNM93652, for the construction, operation, and maintenance of a pipeline. The proposed project crosses Federal, State, Indian, and private land. The pipeline starts at the Chaco Pump Station approximately 12 miles south of Farmington, New Mexico and ends at the Mid-American Pipeline Company Hobbs Pump Station located in Texas southeast of Hobbs, New Mexico. The proposed project will parallel existing pipelines for most of its length except as dictated by resource conflicts. The pipeline is designed to transport 50,000 barrels of natural gas liquids per day. Maps of the Mid-America Pipeline Company proposed route are available for viewing at the Bureau of Land Management, Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico; Farmington District Office, 1235 LaPlata Highway, Farmington, New Mexico; Roswell District Office, 1717 West Second, Roswell, New Mexico; Carlsbad Resource Area Office, 620 East Greene, Carlsbad, New Mexico.

Dated: February 23, 1995.

Joel E. Farrell,

Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 95–5046 Filed 2–28–95; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: S.O.S. Care, Escondido, CA, PRT–796422

The applicant requests a permit to import and reexport newborn-captive-born tigrina (*Felis tigrina*) from the Conservation Project at the Sao Paulo Zoo, Sao Paulo, Brazil for medical treatment for the purpose of enhancement of survival of the species.

Applicant: Zoological Society of San Diego, San Diego, CA, PRT–799314

The applicant requests a permit to export DNA samples from captive-born lowland tapir (*Tapirus terrestris*), Turkmanian kulan (*Equus hemionus kulan*), Somali wild ass (*Equus africanus somalicus*) and Przewalski's wild horse (*Equus przewalskii*) for the purpose of scientific research.

Applicant: International Crane Foundation, Baraboo, WI, PRT–799313

The applicant requests a permit to export 8 captive-produced eggs of red-crowned crane (*Grus japonensis*) and 8 captive-produced eggs of white-naped crane (*Grus vipio*) to V.A. Andronov, Khinganski Nature Reserve, Amurskaja Reg., Russia for the purpose of enhancement and propagation of the species through rearing and reintroduction to the wild.

Applicant: International Crane Foundation, Baraboo, WI, PRT–799312

The applicant requests a permit to export up to 10 captive-produced eggs of Siberian crane (*Grus leucogeranus*) to Oka State Nature Reserve, Spasski Region, Rjazan Oblast, Russia for the purpose of enhancement and propagation of the species through rearing and reintroduction to the wild.

Applicant: International Fisheries, Inc., Hialeah, FL, PRT–798217

The applicant requests a permit to import up to 2,000 captive-bred Asian bonytongue (*Scleropages formosus*) from the Rainbow Aquarium in Singapore for the purpose of enhancement of survival of the species.

Applicant: National Zoological Park, Washington, D.C., PRT–700309

The applicant requests a permit to take, import, export, reexport and purchase in interstate and foreign commerce, blood, hair and other tissue samples, and salvaged carcasses from any endangered wildlife exotic to the United States for the purpose of scientific research to enhance the survival of endangered species in the wild. Tissues are to be obtained from animals in the wild and in zoos. Tissues collected from animals in the wild are to be collected opportunistically during immobilization of the animals by local wildlife management officials. Wild animals will be immobilized, but not harmed, for collection of tissues.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 24, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–5045 Filed 2–28–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Notice of Intent To Repatriate a Cultural Item in the Possession of the Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate an item in the possession of the Field Museum of Natural History, Chicago, IL, under a compromise of repatriation claim.

The item is a wampum belt consisting of purple and white shell beads woven into a 32" long by 5" wide rectangular panel. The beads are placed to form a series of diamond-shaped figures inside oblongs. The belt is bound with buckskin with buckskin fringe attached at the ends. The belt was purchased by the Field Museum from Walter C. Wyman in December 1900 (FM# 68566). Museum records indicate that the belt was originally purchased by Wyman from the grandson of Chief Skenandoa on May 8, 1898, approximately one year after the chief's death.

Authorized representatives of the Oneida Indian Nation of New York and the Oneida Tribe of Indians of Wisconsin have been provided with copies of museum records and photographs of the belt. In a letter dated February 7, 1994, the Oneida Indian

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Nation of New York has identified the belt as the Six Nations Council belt and has requested its repatriation as an object having ongoing importance central to the tribe itself which could not have been alienated, appropriated, or conveyed by any individual.

Based on the above mentioned information, officials of the Field Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between this belt and the Oneida Indian Nation of New York. Officials of the Field Museum also recognize that the belt is of ongoing importance central to the Oneida Indian Nation but assert that the museum has right of possession of the belt. The Field Museum however, is willing to return the belt under a compromise of repatriation claim.

The Oneida Tribe of Indians of Wisconsin have also claimed this belt in a letter dated October 12, 1994. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Jonathan Haas, MacArthur Curator of North American Anthropology, The Field Museum of Natural History, Roosevelt Road at Lake Shore Drive, Chicago, IL 60605, telephone: (312) 922–9410, extension 641, before March 31, 1995.

Dated: February 23, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 95–5043 Filed 2–28–95; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–287 and 731–TA–378 (Final) (Remand)]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: International Trade Commission.

ACTION: Notice of remand determination.

SUMMARY: The Commission hereby gives notice of a final court decision affirming its final negative determinations, made pursuant to court remand, in the above-identified antidumping and countervailing duty investigations.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436; (202) 205–3105. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION:

In August 1988, the Commission published its determinations that an industry of the United States was threatened with material injury by reason of imports of electrical conductor aluminum redraw rod ("EC rod") from Venezuela which the Department of Commerce ("Commerce") had determined are being subsidized and sold at less than fair value. 53 F.R. 31111 (Aug. 17, 1988); *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, Invs. Nos. 701–TA–287 and 731–TA–378 (Final), USITC Pub. 2103 (Aug. 1988). Suramerica de Aleaciones Laminadas, C.A., a Venezuelan exporter of EC rod, and others, sought review of those final determinations in the Court of International Trade (CIT).

On March 15, 1993, the CIT issued an opinion and order, finding that the Commission's final affirmative threat determinations were unsupported by substantial evidence and otherwise not in accordance with law. The CIT reversed and remanded the Commission's original determinations. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 818 F. Supp. 348 (CIT 1993). In compliance with the CIT's remand order, the Commission, on June 2, 1993, issued final remand determinations finding that an industry in the United States was not threatened with material injury by reason of imports of the subject EC rod. *Certain Electrical Conductor Aluminum Redraw Rod from Venezuela*, Invs. Nos. 701–TA–287 and 731–TA–378 (Final) (Remand), USITC Pub. 2860 (Feb. 1995).

The CIT sustained the remand determinations. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, 841 F. Supp. 1220 (Aug. 4, 1993). Commerce published notice of the CIT's decision, pursuant to 19 U.S.C. 1516a(c)(1), 58 FR 52744 (Oct. 12, 1993). In accordance with *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce stated that it would continue the suspension of liquidation of the subject merchandise. Commerce's notice also indicated that, if the CIT decision was affirmed on appeal, the antidumping and countervailing duty orders would be revoked effective August 14, 1993.

The Commission and petitioner Southwire, Inc. appealed the CIT's decision to the U.S. Court of Appeals for the Federal Circuit. On December 30, 1994, the Court of Appeals affirmed the CIT's final judgment upholding the Commission's negative remand determinations. *Suramerica* v. *United States*, Nos. 93–1579 and 94–1021 (Fed. Cir. Dec. 30, 1994). Southwire filed in the Court of Appeals a petition for rehearing and suggestion for rehearing in banc. On February 13, 1995, the court denied Southwire's petition for rehearing and declined the suggestion for rehearing in banc. On February 17, 1995, the Court of Appeals issued its mandate. The judicial proceedings having ended and the final court decision having been issued, the Commission now, pursuant to 19 U.S.C. 1516a(e), publishes notice of the final court decision affirming its negative remand determinations.

By order of the Commission.

Issued: February 23, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5000 Filed 2–28–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–362 and 731–TA–707 through 709 (Final)]

Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Argentina, Brazil, Germany, and Italy

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–707 through 709 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain seamless carbon and alloy standard, line, and pressure steel pipe[1] from Argentina, Brazil, and Germany.[2] Such imports are provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigation regarding imports of small diameter seamless carbon and alloy standard, line, and pressure steel pipe from Italy (Inv. No. 701–TA–362 (Final)), which the Commission instituted effective November 28, 1994 (60 FR 2984, January 12, 1995). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (59 FR 66296, December 23, 1994).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 27, 1995.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce (60 FR 5348, January 27, 1995) that imports of small diameter seamless carbon and alloy standard, line, and pressure steel pipe from Argentina, Brazil, and Germany are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). Commerce has also extended the date for its final determinations in the investigations from April 12, 1995 to June 12, 1995 (60 FR 9012, February 16, 1995). Therefore, the Commission's schedule in these investigations conforms with Commerce's extended schedule.

The Commission instituted the countervailing duty investigation concerning Italy on November 28, 1994 (60 FR 2984, January 12, 1995). The investigations were requested in a petition filed on June 23, 1994, on behalf of the Gulf States Tube Division of Quanex Corp., Rosenberg, TX.

Participation in the Investigations and Public Service List

Any person having already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on June 7, 1995, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 20, 1995, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 11, 1995. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 13, 1995, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is June 14, 1995. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 28, 1995; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 28, 1995. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

[1] The imports subject to investigation are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. The subject imports are further defined in the U.S. Department of Commerce's notices of preliminary determinations of sales at less than fair value (60 FR 5348, January 27, 1995).

[2] Because Commerce's preliminary antidumping duty determination regarding Italy was negative, the Commission is not instituting a final investigation for Italy (No. 731–TA–710) at this time.

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Issued: February 21, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5001 Filed 2–28–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32617]

CAGY Industries, Inc.—Continuance in Control Exemption—Redmont Railway Co., Inc.

CAGY Industries, Inc. (CAGY), a noncarrier, has filed a notice of exemption to continue in control of Redmont Railway Company, Inc. (Redmont), a wholly owned subsidiary of CAGY, upon Redmont becoming a class III rail carrier.[1]

Redmont, a noncarrier, has concurrently filed a notice of exemption in Redmont Railway Company, Inc.—Lease and Operation Exemption—Certain Lines of Mississippi-Alabama Railroad Authority, Finance Docket No. 32616, to acquire by lease and to operate a 41.5-mile rail line segment owned by Norfolk Southern Railway Company (NS) between milepost IC–529.5 at Corinth, MS, and milepost IC–571.0 at Red Bay, AL.[2] Redmont will also acquire incidental trackage rights to operate over 2.2 miles of NS's track between NS milepost IC–529.5 at Corinth and NS milepost IC–527.3 at NS' Corinth Yard. The parties intended to consummate the proposed transaction on or after February 15, 1995.

CAGY controls two other nonconnecting class III rail carriers: Columbus and Greenville Railway Company (C&G), operating in Mississippi, and the Chattooga & Chickamauga Railway Co. (CCKY), operating in Mississippi, Georgia, and Tennessee.[3]

CAGY states that: (1) Redmont will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect Redmont with any other railroad in its corporate family; and (3) the transaction does not involve a class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Eric M. Hocky, 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5041 Filed 2–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32615]

Mississippi-Alabama Railroad Authority—Acquisition Exemption—Norfolk Southern Railway Company

Mississippi-Alabama Railroad Authority (MARA), a noncarrier, has filed an amended notice of exemption [1] to acquire approximately 41.5 miles of rail line owned by Norfolk Southern Railway Company (NS) between milepost IC–529.5 at Corinth, MS, and milepost IC–571.0 at Red Bay, AL.[2]

Redmont Railway Company, Inc. (Redmont), a noncarrier, concurrently filed a notice of exemption in *Redmont Railway Company, Inc.—Lease and Operation Exemption—Mississippi-Alabama Railroad Authority*, Finance Docket No. 32616, to operate the line under lease from MARA. Additionally, CAGY Industries, Inc., a noncarrier, concurrently filed a notice of exemption in *CAGY Industries, Inc.—Continuance in Control Exemption—Redmont Railway Company, Inc.*, Finance Docket No. 32617, to continue in control of Redmont and two other class III rail carriers, once Redmont becomes a rail carrier. The parties intended to consummate the transaction on or after February 15, 1995.

Any comments must be filed with the Commission and served on: William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, 3426 North Washington Boulevard, Arlington, VA 22210.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5042 Filed 2–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32616]

Redmont Railway Company, Inc.—Lease and Operation Exemption—Certain Lines of Mississippi-Alabama Railroad Authority

Redmont Railway Company, Inc. (Redmont), a noncarrier, has filed a notice of exemption to acquire by lease and to operate a 41.5-mile rail line segment owned by Norfolk Southern Railway Company (NS) between milepost IC–529.5 at Corinth, MS, and milepost IC–571.0 at Red Bay, AL.[1]

[1] CAGY originally filed the notice of exemption on November 15, 1994. By letter filed December 5, 1994, the Mississippi-Alabama Railroad Authority (MARA) requested the Commission to suspend the processing of the notice and the concurrently filed related notices in Finance Docket Nos. 32615 and 32616. MARA states that counsel for CAGY concurred in the request. MARA claimed that it needed to meet State requirements following enactment of enabling legislation by Alabama and Mississippi authorizing the creation of MARA which it states had not been completed at the time the original notice was filed. On February 9, 1995, CAGY filed an amended verified notice of exemption.

[2] In a related notice of exemption in Mississippi-Alabama Railroad Authority—Acquisition Exemption—Norfolk Southern Railway Company, Finance Docket No. 32615, MARA seeks to acquire from NS the 41.5-mile rail line segment. This 41.5-mile rail line segment is embraced within a feeder line application in Sunshine Mills, Inc.—Feeder Line Acquisition—Norfolk Southern Railway Company Line Between Corinth, MS, and Haleyville, AL, Finance Docket No. 32337. NS and MARA state that upon approval of the acquisition transaction, Sunshine is expected to request dismissal of the feeder line application.

[3] The control of these carriers was authorized in CAGY Industries, Inc.—Control Exemption—Chattooga & Chickamauga Railway Co., Finance Docket No. 31422 (ICC served June 12, 1989).

[1] The notice of exemption was originally filed on November 15, 1994. MARA filed a letter, on December 5, 1994, requesting a delay in the publication of this and two related notices of exemption. MARA claimed that it needed to meet state requirements following enactment of enabling legislation by Alabama and Mississippi authorizing the creation of MARA. On February 8, 1995, MARA filed this amended notice of exemption.

[2] The 41.5-mile line segment is within a NS rail line that is the subject of a feeder line application in *Sunshine Mills, Inc.—Feeder Line Acquisition—Norfolk Southern Railway Company Line Between Corinth, MS and Haleyville, AL*, Finance Docket No. 32337. MARA asserts that upon approval of this acquisition exemption, Sunshine Mills, Inc., the feeder line applicant and an active supporter of the instant acquisition, is expected to request dismissal of the pending application.

[1] Redmont originally filed the notice of exemption on November 15, 1994. By letter filed December 5, 1994, the Mississippi-Alabama Railroad Authority (MARA) requested the Commission to suspend the processing of the notice and the concurrently filed related notices in Finance Docket Nos. 32615 and 32617. MARA states that counsel for Redmont concurred in the request. MARA claimed that it needed to meet State requirements following enactment of enabling legislation by Alabama and Mississippi authorizing the creation of MARA which it states had not been completed at the time the original notice was filed. On February 8, 1995, Redmont filed an amended verified notice of exemption.

In a related notice of exemption in Mississippi-Alabama Railroad Authority—Acquisition Exemption—Norfolk Southern Railway Company, Finance Docket No. 32615, MARA seeks to acquire from NS the 41.5-mile rail line segment. This 41.5-mile rail line segment is embraced within a feeder line application in Sunshine Mills, Inc.—Feeder Line Acquisition—Norfolk Southern Railway Company Line Between Corinth, MS, and Haleyville, AL, Finance Docket No. 32337. NS and MARA state that upon approval of the acquisition transaction, Sunshine is expected to request dismissal of the feeder line application.

[2] CAGY Industries, Inc., a noncarrier, owns the majority of the outstanding stock of Columbus and Greenville Railway Company (C&G) and all of the outstanding capital stock of Chattooga & Chickamauga Railway Co. (CCKY). The control of these carriers was authorized in CAGY Industries, Inc.—Control Exemption—Chattooga & Chickamauga Railway Co., Finance Docket No. 31422 (ICC served June 12, 1989).

Redmont will also acquire incidental trackage rights to operate over 2.2 miles of NS's track between NS milepost IC–529.5 at Corinth and NS milepost IC–527.3 at NS' Corinth Yard.

This proceeding is related to CAGY Industries, Inc.—Continuance in Control Exemption—Redmont Railway Company, Inc., Finance Docket No. 32617, wherein CAGY Industries, Inc. (CAGY) has concurrently filed a notice of exemption to continue in control of Redmont, a wholly owned subsidiary of CAGY, upon Redmont becoming a class III rail carrier.[2] The parties intended to consummate the proposed transaction on or after February 15, 1995.

Any comments must be filed with the Commission and served on: Eric M. Hocky, 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–5040 Filed 2–28–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) Who will be asked or required to respond, as well as a brief abstract;
(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(5) An estimate of the total public burden (in hours) associated with the collection; and
(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

New Collection

(1) COPS FAST Community Policing and Budget Summary Form.
(2) COPS 005/01. Office of Community Oriented Policing Services, United States Department of Justice.
(3) Primary = State, Local or Tribal Government, Others = None. The COPS FAST Community Policing and Budget Summary form is to be used by COPS FAST grant recipients to supply information, including a community plan, hiring retention plan, and budget worksheets, relating to the hiring of new police officers to engage in community oriented policing.
(4) 6,660 annual respondents at 4.33 hours per response.
(5) 50,149.80 annual burden hours.
(6) Not applicable under Section 3504(h) of Public Law 96–511.

Dated: February 23, 1995.

Public comment on this item is encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–4915 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–21–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *Allied-Signal, Inc. et al.*, (1;95 CV 085) was lodged on February 16, 1995, with the United States District Court for the Eastern District of Texas.

The United States brought a civil action against Allied-Signal, Inc.; Atlantic Richfield Company; Bridgestone/Firestone, Inc., formerly d/b/a/ Firestone Tire and Rubber Company, Inc.; The Dow Chemical Company; Goodyear Tire & Rubber Company; Mobil Oil Corporation; Olin Corporation; PPG Industries, Inc.; Union Oil Company of California, d/b/a Unocal; and Unocal Corporation pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9606 and 9607. The Complaint, filed concurrently with the lodging of the Consent Decree, alleges that the defendants are liable for injunctive relief necessary to abate a threatened release of hazardous substances and for all costs of removal and/or remedial actions incurred by the United States in responding to releases or threatened releases of hazardous substances at the Bailey Waste Disposal Site. The Bailey Waste Disposal Site encompasses approximately 280 acres located 3 miles southwest of Bridge City in Orange County, Texas. Further, the Complaint alleges that each of the defendants, at times relevant to this action, by contract, agreement, or otherwise arranged for the disposal of hazardous substances at the Site. The Consent Decree provides for reimbursement to the Hazardous Substance Superfund ("the Fund") by the Settling Defendants of the greater of (1) 85.3 percent of 20 percent of those funds expended by the Bailey Task Force in completing its

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remedial action, pursuant to a Consent Decree entered in a related action, *United States* v. *BFI, et al.*, Civil Action No. B–89–00859–CA1 (E.D. Tex.), or (2) $2,600,000.00. If the claims submitted by the Bailey Task Force total less than $2,600,000.00, then the Settling Defendants shall pay the United States 100 percent of the total claims submitted under the Mixed Funding Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allied-Signal, Inc. et. al.*, DOJ. Ref. #90–11–2–390A.

The proposed consent decree may be examined at the office of the United States Attorney, 305 Federal Building, 211 W. Ferguson Street, Tyler Texas 75702; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas Texas 75202; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4922 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on August 16, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: AU-System, Stockholm, SWEDEN; AdvanceNet Systems, Research Triangle Park, NC; CrossComm, Marlboro, MA; Unisource Business Networks, Stockholm, SWEDEN; ATM, Ltd., Cambridge, UNITED KINGDOM; Alantec, San Jose, CA; Cable & Wireless, London, UNITED KINGDOM; EXAR Corporation, San Jose, CA; Furukawa Elec Tech, Santa Clara, CA; General Instrument, Hatboro, PA; Honeywell, Richardson, TX; LANNET Data Communications, Tel-Aviv, ISRAEL; Phillips Semiconductor, Sunnyvale, CA; Raynet, Menlo Park, CA; The RAD Group, Tel Aviv, ISRAEL; Trillium Digital System, Los Angeles, CA; and TriQuint, Beaverton, OR.

No changes have been made in the planned activities of the ATM Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on June 3, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 26, 1994 (59 FR 49083).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4923 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Climatology and Simulation of Eddies Joint Industry Project

Notice is hereby given that, on December 19, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Exxon Production Research Company administered project, titled "Climatology and Simulation of Eddies Joint Industry Project" ("CASE"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional party has become a member of CASE: Deepwater Production Systems, Inc., Houston, TX.

No other changes have been made in either the membership or planned activity of the CASE Project. Membership in this project remains open, and CASE intends to file additional written notification disclosing all changes in membership.

On August 14, 1990, Exxon Production Research Company filed its original notification pursuant to section 6(a) of the Act.

The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 1990 (55 FR 38418).

The last notification was filed with the Department on August 11, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 22, 1994 (59 FR 48645–48646).

Constance K. Robinson,

Director of Operations, Antitrust Division

[FR Doc. 95–4925 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Development of the Face Gear Technology for Industrial and Aerospace Power Transmission Program Team

Notice is hereby given that, on September 21, 1994, pursuant to section 6(b) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), McDonnell Douglas Helicopter Company (doing business as McDonnell Douglas Helicopter Systems) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative arrangement known as the "Development of Face Gear Technology for Industrial and Aerospace Power Transmission Team ("FG/ST")". The notifications were filed for the purpose of invoking the provisions of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are McDonnell Douglas Helicopter Systems, Mesa, AZ; and Lucas Western Incorporated, Park City, UT. The purpose of FG/ST is to pursue a coordinated research and development effort which will support and stimulate advance research and lead to the development of "Face Gear Technology for Industrial and Aerospace Power Transmission".

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4927 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Demonstration of Universal Electric Transportation Subsystems

Notice is hereby given that, on December 29, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Demonstration of Universal Electric Transportation Systems ("DUETS") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: NovaBus of America, Roswell, NM; Honeywell Incorporated, Minneapolis, MN; Kaman Electromagnetics Corporation, Hudson, MA; and Davis Technologies International, Inc., Dallas, TX.

The nature and objectives of the research program performed in accordance with DUETS is to conduct and exchange technology information regarding system engineering that insures regulatory and functional requirements of the transit bus market, to design an alternatively-fueled, hybrid-driven electric propulsion unit, to design a fault tolerant, fiber optic vehicle management system, and to develop an advanced technology, semi-active suspension system.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4924 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on January 10, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lockheed Corporation has terminated its membership with PERF.

No other changes have been made in either the membership or planned activity of PERF. Membership remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on August 23, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 21, 1993 (58 FR 49059).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4928 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Titanium Matrix Composites Turbine Engine Component Consortium

Notice is hereby given that, on October 19, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Electric Company filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Titanium Matrix Composites Turbine Engine Component Consortium ("TMCTECC"). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: General Electric Company, acting by and through its GE Aircraft Engines, Cincinnati, OH; United Technologies Corporation, acting by and through its Pratt & Whitney Government Engines and Space Propulsion Division, West Palm Beach, FL; Textron Specialty Materials, a Division of AVCO Corporation, Lowell, MA; Minnesota Mining & Manufacturing Company, St Paul, MN; Howmet Corporation, Whitehall, MI; and Atlantic Research Corporation, Gainesville, VA. The TMCTECC was formed for the purpose to develop and qualify TMC reinforced parts and components and to establish low cost fibers, TMC's and component manufacturing processes for TMC implementation into production hardware. The TMCTECC shall seek to achieve this objective through development of cost-effective processes to produce TMC reinforced fan blades and frames.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–4926 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated May 6, 1994, and published in the **Federal Register** on May 13, 1994 (59 FR 25126), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: February 21, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–4936 Filed 2–28–95; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 1995, Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement

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Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Morphine (9300)	II

The firm plans to manufacture Tetrahydrocannabinols and a derivative of Morphine for use in diagnostic kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 31, 1995.

Dated: February 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95-4934 Filed 2-28-95; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated April 25, 1994, and published in the **Federal Register** on May 4, 1994, (59 FR 23082), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A written request for a hearing was not received, but a comment was filed by a registered manufacturer. The comment was considered, however, DEA determined that the application should be approved. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95-4937 Filed 2-28-95; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 13, 1994, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501) a basic class of controlled substance listed in Schedule II.

The firm is importing the Phenylacetone to manufacture Dextroamphetamine Sulfate.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 17, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95-4935 Filed 2-28-95; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-30,550]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

Grace Energy Corporation, Dallas, TX and Grace Petroleum Corporation Operating at the Following Locations: TA-W-30,550A Oklahoma, TA-W-30,550B Texas, TA-W-30,550C Alabama, TA-W-30,550D Colorado, TA-W-30,550E Michigan, TA-W-30,550F Montana, TA-W-30,550G Mississippi, TA-W-30,550H New Mexico, TA-W-30,550I Wyoming and TA-W-30,550J Grace Drilling Company, Dallas, TX.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a certification of Eligibility to Apply for Worker Adjustment Assistance on January 27, 1995, applicable to all workers of Grace Energy Corporation, Dallas, Texas, and Grace Petroleum Corporation operating in various locations in the United States. The notice was published in the **Federal Register** on February 14, 1995 (60 FR 8415).

At the request of the workers, the Department reviewed the certification for workers of Grace Energy Corporation and Grace Petroleum Corporation. The investigation findings show that workers of Grace Drilling Company, Dallas, Texas, a subsidiary of Grace Energy Corporation, were inadvertently excluded from the certification.

The intent of the Department's certification is to include all workers of Grace Energy Corporation, Grace Petroleum, and Grace Drilling Company adversely affected by imports.

The amended notice applicable to TA-W-30,550 is hereby issued as follows:

All workers of Grace Petroleum Corporation operating in the States of Oklahoma, Texas, Alabama, Colorado, Michigan, Montana, Mississippi, New Mexico and Wyoming who became totally or partially separated from employment on or after August 21, 1994; for workers of Grace Energy Corporation, Dallas, Texas who became totally or partially separated from employment on or after December 18, 1994; and for workers of Grace Drilling Company, Dallas, Texas who became totally or partially separated from employment on or after February 12, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-5011 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,137]

Diamond Tool and Horseshoe Company, Duluth, Minnesota; Notice of Revised Determination on Reconsideration

On February 14, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The subject plant ceased operations in September, 1994 and all workers were laid off at that time.

U.S. imports of pliers, wrenches, horse and mule shoes increased in 1993 compared to 1992 and in the latest 12-month period ending in August 1994 compared to the same period ending in August 1993.

On reconsideration, the workers submitted a new list of customers who decreased their purchases from the subject firm in the relevant time periods. New findings on reconsideration show that customers accounting for a substantial portion of Diamond Tool's sales decline in 1993 and in the first six months of 1994 compared to their immediate earlier respective periods increased their purchases of imports in the same periods.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of the Diamond Tool and Horseshoe Company in Duluth, Minnesota were adversely affected by increased imports of articles that are like or directly competitive with horseshoes, wrenches and pliers and related equipment.

In accordance with the provisions of the Act, I make the following revised determination for workers of the Diamond Tool and Horseshoe Company in Duluth, Minnesota.

"All workers and former workers of Diamond Tool and Horseshoe Company, Duluth, Minnesota who became totally or partially separated from employment on or after April 14, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 17th day of February, 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-5003 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,895 Las Cruces, New Mexico; TA-W-29,895A EL Paso, Texas]

Keytronic A/K/A Honeywell Keyboard Division; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 13, 1994, applicable to all workers of the subject firm.

The Notice was published in the **Federal Register** on November 1, 1994 (59 FR 54632). The certification was amended on December 8, 1994 to include workers in El Paso, Texas. The amended notice was published in the **Federal Register** on December 16, 1994 (59 FR 65078-9).

At the request of the workers, the Department again reviewed the certification for workers of the subject firm. The investigation findings show that the Honeywell Keyboard Division was purchased by Keytronic in August, 1993. The Honeywell Keyboard Division meets all the criteria for a predecessor-in-interest firm. Many of the workers had unemployment insurance (UI) taxes paid under the former firm.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-29,895 is hereby issued as follows:

"All workers of Keytronic, a/k/a Honeywell Keyboard Division in Las Cruces, New Mexico and El Paso, Texas who became totally or partially separated from employment on or May 7, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 17th day February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 95-5014 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-41

[TA-W-30,444]

Martin Marietta Utica, NY; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 22, 1995, the French Road Lodge 1669 of the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was issued on December 30, 1994 and published in the **Federal Register** on January 20, 1995 (60 FR 4194).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

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(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce printed circuit boards.

The union claims that production is being transferred to Mexico. The union also claims that the production of GD 53s (radar assembles for aircraft) was transferred to Taiwan.

The findings show that the subject firm has been outsourcing a specific type of circuit board production to Mexico since 1992. The workers affected by this shift of assembly work were certified as eligible to apply for TAA on December 4, 1993. The certification (TA–W–27,877) expired on December 4, 1994. No new production has been transferred to Mexico.

Other circuit board production at Utica has been affected by declines and delays in Defense contracts regulating from Defense spending cutbacks. The subject firm has not lost bids to foreign firms.

Also, a Taiwanese contract with the subject firm called for the Utica plant to co-produce with Taiwan and train Taiwanese workers on the production of the radar assembles for the Taiwanese market. This contract actually had a positive employment affect at Utica. After a certain number of radar assemblies were produced, the production was transferred to Taiwan. There were no imports of the radar assemblies. Worker separations resulting from a loss of production or sales to the export market would not form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5015 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,540]

National Ceramics, Inc. a/k/a Ceramic Fashions, Cunningham, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 10, 1995, applicable to all workers of National Ceramics, Inc., in Cunningham, Kentucky. The certification notice was published in the **Federal Register** on February 10, 1995 (60 FR 8062).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages for National Ceramics are being reported under Ceramic Fashions.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of National Ceramics in Cunningham, Kentucky irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA–W–30,540 is hereby issued as follows:

"All workers of National Ceramics, Inc., a/k/a Ceramic Fashions, Cunningham, Kentucky who became totally or partially separated from employment on or after November 17, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 21st day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5004 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,113]

Philips Lighting Richmond, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 21, 1994, applicable to all workers of Philips Lighting in Richmond, Kentucky. The certification notice was published in the **Federal Register** on January 4, 1994 (60 FR 481).

At the request of the workers, the Department reviewed the certification for workers of the subject firm. New findings show that some workers were laid off just prior to the July 8, 1993 impact date set in the certification. The Department can go back to April 1, 1993 in setting its impact date.

Accordingly, the Department is amending the certification by deleting the July 8, 1993 impact date and setting a new impact date of April 1, 1993.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

The amended notice applicable to TA–W–30,113 is hereby issued as follows:

"All workers of Philips Lighting, Richmond, Kentucky who became totally or partially separated from employment on or after April 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C., this 22nd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5008 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 113]

Philips Lighting Company Richmond, KY; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–30–113 which was published in the **Federal Register** on August 8, 1994 (59 FR 40372) in FR Document 94–19240.

This revises the date received and the date of petition on the ninth line of the third and fourth columns in the appendix table on page 40372. The date received and the date of petition should both read "April 1, 1994" in the third and fourth columns on the ninth line of the appendix table.

Signed in Washington, D.C., this 22nd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5010 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,468]

Pontiac Weaving Corporation, Cumberland, RI; Notice of Revised Determination on Reconsideration

On February 14, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The subject plant ceased operations in September 1994 and all production workers were laid off at that time.

New findings on reconsideration show that Pontiac Weaving contracted for a manufacturer who owns a major share of Pontiac Weaving Corporation. The manufacturer increased its company imports in 1994 compared to 1993.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the former workers of the Pontiac Weaving Corporation in Cumberland, Rhode Island were adversely affected by increased imports of articles that are like or directly competitive with those produced at the subject firm.

In accordance with the provisions of the Act, I make the following revised determination for the former workers of the Pontiac Weaving Corporation in Cumberland, Rhode Island.

"All workers and former workers of Pontiac Weaving Corporation in Cumberland, Rhode Island who became totally or partially separated from employment on or after September 21, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 17th day of February 1995.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5007 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–29,802]

Western Geophysical Company, A/K/A Halliburton Company, A/K/A Western Atlas International, Inc., Houston, TX and TA–W–29,802A Alvin, TX and TA–W–29,802B Offshore Marine Operations in the Gulf of Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification was issued on May 31, 1994 and published in the **Federal Register** on June 14, 1994 (59 FR 30618). The certification was amended on June 15, 1994; July 18, 1994 and on November 1, 1994 and the notices were published in the **Federal Register** on June 28, 1994 (59 FR 33306); July 26, 1994 (59 FR 37997); and on November 15, 1995 (59 FR 58859), respectively.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred offshore in the Gulf of Mexico.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The intent of the Department's certification is to include all workers of the Western Geophysical Company, a/k/a a Halliburton Company and Western Atlas International, Inc., Houston, Texas who were adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–29,802 is hereby issued as follows:

"All workers of Western Geophysical Company, Houston, Texas and Alvin, Texas and offshore in the Gulf of Mexico (the successor-in-interest firm to Halliburton Geophysical Services) who had wages reported under Western Atlas International, Inc., Houston, Texas for UI tax account purposes and who had become totally or partially separated from employment on or after April 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 17th day of February, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5012 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,328 Pratt & Whitney, North Haven, Connecticut; TA–W–30,329, Pratt & Whitney, Southington, Connecticut; TA–W–30,329A, Pratt & Whitney, East Hartford, Connecticut; TA–W–30,329B Pratt & Whitney, Middletown, Connecticut; TA–W–30,329C, Pratt & Whitney, Rocky Hill, Connecticut]

United Technologies Corp. Pratt and Whitney; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on February 16, 1994, applicable to all workers at United Technologies Corporation, Pratt & Whitney with locations in North Haven, Southington, East Hartford, Middletown, and Rocky Hill, Connecticut. The notice will soon be published in the **Federal Register**.

It was not the Department's intent to change the termination date of the original certification, and therefore, the term "through two years from the date of certification" is deleted.

The amendment notice applicable to TA–W–30,328, TA–W–30,329, TA–W–30,329A, TA–W–30,329B, and TA–W–30,329C is hereby issued as follows:

"All workers of United Technologies Corporation, Pratt & Whitney, North Haven, Connecticut (TA–W–30,328); Southington, Connecticut (TA–W–30,329); East Hartford, Connecticut (TA–W–30,329A); Middletown, Connecticut; (TA–W–30,329B); and Rocky Hill, Connecticut (TA–W–30,329C) engaged in employment related to the production of jet engine parts who became totally or partially separated from employment on or after September 7, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 22nd day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5009 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February, 1995.

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In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations For Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,643; Uarco, Inc., Adrian, MI

TA–W–30,553; T.E. Dee, Inc., Allentown, PA

TA–W–30,637; Moonlight Mushrooms, Inc., Worthington, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,595 & A; Entergy Corp., Redfield, AR & Newark, AR

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,548; RTVCH Holding, Inc., Paterson, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,547; Yorx Electronics Corp., Totowa, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,555; Xerox Engineering System (XES, Inc), N/K/A Xerox Colorgraft System, Inc., Marlboro, MA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,551, TA–W–30,552; Mac Tools, Inc., Washington Court House, OH and Sabina, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,651; Elbit Ft Worth, Inc., (EFW, Inc), Fort Worth, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,618; Electra-Sound, Inc., Parma, OH

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–30,664; Automobile Specialty Co., North Jackson, OH

The conversion activities formerly performed by workers of Automobile Specialty Co were provided to a signel customer, General Motors. General Motors decided to begin performing this process in-house after the conclusion of the 1994 model year. The Automobile Specialty Co was shutdown at the end of June 1994. Because of this decision, General Motors will perform the process in the United States.

TA–W–30,677; Leland Electrosystems, Inc., Erie Div., Erie, PA

U.S. imports of electric motors and generators for civil aircraft decreased in 1993 compared to 1992 and in the twelve month period ending October 1994 compared to the same period of time a year earlier.

TA–W–30,632; IRM Corp, Beaumont, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,574; 101 Warehouse Corp., Medley, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,730; The Genlyte Group/ Lightolier, Model Shop, Secaucus, NJ

The subject firm terminations in the Model Shop are attributed to a domestic transfer. The models are for internal use only. The subject firm does not import models.

TA–W–30,584; Dorman Roth Foods, Inc., Neptune, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations For Worker Adjustment Assistance

TA–W–30,568; Eutectic Corp., Flushing, NY

A certification was issued covering all workers separated on or after December 7, 1993.

TA–W–30,522; Xerox Corp., US Customers Operations, Rochester, NY

A certification was issued covering all workers separated on or after November 15, 1993.

TA–W–30,593; & A; Pyke Manufacturing Co., Salt Lake City, UT & Manti, UT

A certification was issued covering all workers separated on or after December 13, 1993.

TA–W–30,585; MRC II Fashions, Inc., Paterson, NJ

A certification was issued covering all workers separated on or after December 14, 1993.

TA–W–30,583; Metalist Apparel, Sidney, OH & Operating in the Following Other Locations: A; Reading, PA, B; Hamburg, PA, C; Auburn, PA

A certification was issued covering all workers separated on or after December 8, 1993.

TA–W–30,611; Kane Industries, Morgantown, KY

A certification was issued covering all workers separated on or after December 21, 1993.

TA–W–30,689; Baker Hughes Integ, Houston, TX & Operating in the Following Other Locations: A; AK, B; AR, C; CA, D; CO, E; LA, F; MS, G; OK, H; TX, I; UT, J; Washington, DC.

A certification was issued covering all workers separated on or after January 9, 1994.

TA–W–30,577; Cannon Shoe Co., Hagerstown, MD

TA–W–30,722; Cannon Shoe Co./ Thurmont Shoe Co., Thurmont, MD

A certification was issued covering all workers separated on or after December 9, 1993.

TA–W–30,559; VLSI Technology, Inc., Tempe, AZ

A certification was issued covering all workers separated on or after November 17, 1993.

TA–W–30,582; Tennessee Valley Steel Corp., Harriman/Rockwood, TN

A certification was issued covering all workers separated on or after December 12, 1993.

TA–W–30,569; Beloit Corp., Beloit Lenox Div., Lenox, MA

A certification was issued covering all workers separated on or after November 22, 1993.

TA–W–30,560; Asamera Minerals (US), Inc., Cannon Mine, Wenatchee, WA

A certification was issued covering all workers separated on or after March 29, 1995 and before December 31, 1995.

TA–W–30,620; Woodward Governor Co., Stevens Point, WI

A certification was issued covering all workers separated on or after December 22, 1993.

TA–W–30,622; E. L. Heacock Co., Inc., Gloversville, NY

A certification was issued covering all workers separated on or after December 20, 1993.

TA–W–30,565; H. Grabell & Sons, Inc., Paterson, NJ

A certification was issued covering all workers separated on or after December 6, 1993.

TA–W–30,567; AJ Dress, Inc., Laceyville, PA

A certification was issued covering all workers separated on or after December 7, 1993.

TA–W–30,635; Genicom Corp., Waynesboro, VA

A certification was issued covering all workers separated on or after March 1, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of February, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00339; J.K. Operating Corp., Kulpmont, PA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did J.K. Operating Corp import from Mexico or Canada any articles that are like or directly competitive with women's sleepwear are from countries other than Mexico or Canada.

NAFTA–TAA–00326; Hecla Mining Co., Inc., Republic Unit, Republic, WA

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the subject facility to Mexico or Canada during the period under investigation, nor did the company import gold and silver from Mexico or Canada. Survey results revealed that customer imports of gold and silver from Canada or Mexico did not have an important negative import furing the periods under investigation.

NAFTA–TAA–00327; Digital Equipment Corp., Field Support Unit, Maynard, MA

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00322; Kirkwood Industries, Kepco Manufacturing, Inc., Pittsboro, NC

A certification was issued covering all workers at Kirkwood Industries, Kepco Manufacturing, Inc., Pittsboro, NC separated on or after December 28, 1993.

NAFTA–TAA–00324; Eveready Battery Co., A.K.A., Energizer Power Systems, El Paso, TX

A certification was issued covering all workers of the El Paso Design Center of Eveready Battery Co, a/k/a Energizer Power Systems, El Paso, TX separated on or after January 9, 1994.

NAFTA–TAA–00328; Hubbell-Bell, Inc., Fogelsville, PA

A certification was issued covering all workers engaged in employment related to the production of electrical fittings at Hubbell-Bell, Inc., Fogelsville, PA separated on or after January 12, 1994.

NAFTA–TAA–00335; Mallinckrodt Medical, Inc., Mallinckrodt Anesthesiology, Argyle, NY

A certification was issued covering all workers at Mallinckrodt Medical, Inc., Mallinckrodt Anesthesiology, Argyle, NY separated on or after January 16, 1994.

NAFTA–TAA–00332; Fairchild Aircraft, San Antonio, TX

A certification was issued covering all workers engaged in the production of electrical wire harnesses at Fairchild Aircraft, San Antonio, TX separated on or after January 10, 1994.

The foregoing determination does not apply to the other workers at the subject firm.

I hereby certify that the aforementioned determinations were issued during the months of February, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 21, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–5031 Filed 2–28–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00274]

EFR Corporation, Everett, WA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated January 9, 1995, a former company official requested administrative reconsideration of the subject petition for transitional adjustment assistance (NAFTA–TAA). The denial notice was issued on December 12, 1994 and published in the **Federal Register** on January 3, 1995 (60 FR 149).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake

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in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The findings show that the subject company was set up in February 1994 and harvested logs. The partnership was dissolved in November, 1994.

In 1994 the company cleared land and sold the logs to one customer who did not import logs or lumber.

The Department's denial was based on the fact that there was no shift in production from the workers' firm to Mexico or Canada. The Department's survey also revealed that the customer did not import logs or lumber from Canada or Mexico.

The workers were also denied trade adjustment assistance on reconsideration under petition TA-W-30, 483.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 16th day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-5013 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103-182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this notice. Upon notice from a Governor that a NAFTA-TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of P.L. 103-182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Director of OTAA not later than March 13, 1995.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than March 13, 1995.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C-4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of February, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Genlyte Group; Lightolier (LOL) (IBEW)	Secaucus, NJ	01/31/95	NAFTA-00354	Lamp fixtures; track system devices, fluorescent fixtures, lamp components.
Luken's Medical Corporation (Wkrs)	Rio Rendes, NM	01/17/95	NAFTA-00355	Surgical sutures and bone wax.
Digital Employee's Federal Credit Union; (DCU) (Wkrs).	Albuquerque, NM	02/01/95	NAFTA-00356	Financial services.
Hughes Aircraft; Microelectronics Div. (EST).	Newport Beach, CA	02/02/95	NAFTA-00357	Hybrid microelectronic circuits and assemblies.
Sun Apparel Inc.; Concepcion Plant (Co.)	El Paso, TX	02/02/95	NAFTA-00358	Jeans; men's, women's and junior's.
Contract Apparel (Wkrs)	El Paso, TX	02/02/95	NAFTA-00359	Clothing; baby and women's.
Nestaway; Division of Axia (UAW)	Beaver Dam, KY	02/03/95	NAFTA-00360	Dishwasher baskets.
MASKA U.S. Inc. (Wkrs)	Bradford, VT	02/06/95	NAFTA-00361	Hockey jerseys.
Burcliff Industries, Inc.; Wirekraft Ind., Inc. (Co.).	Marion, OH	02/09/95	NAFTA-00362	Electrical wiring harnesses for clothes dryers.
UDT Sensor, Inc. (Wkrs)	El Paso, TX	02/09/95	NAFTA-00363	Medical equipment.
Gioia Pasta Co.; Bordens (BCT)	Buffalo, NY	02/10/95	NAFTA-00364	Macaroni and noodles.
Nashua Cartridge (Wkrs)	Exeter, NH	02/13/95	NAFTA-00365	Toner cartridges.
Crown Cork & Seal Co., Inc.; Plant #494 (IAM).	Swedesboro, NJ	02/10/95	NAFTA-00366	Metal containers i.e., baby formula cans.
Escod Industries; Colorado Operations (Co.).	Canon City, CO	02/15/95	NAFTA-00367	Cable and wire harnesses for telecommunications equipment.
Essilor of America; Mfg. Div. (Wkrs)	St. Petersburg, FL	02/15/95	NAFTA-00368	Optical lenses.
Kennametal, Inc. (Wkrs)	El Paso, TX	02/16/95	NAFTA-00369	Metal working tools.
Washington South Sound Services; Independent Contractor (Co.).	Olympia, WA	02/16/95	NAFTA-00370	Logging and maintenance.
Fisher-Price; Mattel, Inc. (Wkrs)	Medina, NY	02/16/95	NAFTA-00371	Toys.
Thomas & Betts (IBEW)	Elizabeth, NJ	02/17/95	NAFTA-00372	Electrical conduit fittings; steel and malleable iron.

[FR Doc. 95-5030 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00307]

H. Grabell & Sons, Inc., Paterson, NJ; Notice of Revised Determination on Reopening

On February 21, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm. The initial investigation resulted in a negative determination on January 20, 1995 because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met and there was no shift in production to Mexico or Canada. The denial notice will soon be published in the **Federal Register**.

An investigation for trade adjustment assistance under petition TA-W-30,565 resulted in a certification for workers of H. Grabell & Sons, Inc., in Paterson, New Jersey. The certification was issued on February 11, 1995 and will soon be published in the **Federal Register**. The investigation revealed that the subject firm imported lamp shades and increased its reliance on imported lamp shades while discontinuing lamp shade production at Paterson, New Jersey.

Other findings show that sales and production decreased in the relevant periods and substantial worker separations occurred in 1994.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with lamp shades produced by the subject firm contributed importantly to the decline in production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers and former workers of H. Grabell & Sons, Inc., Paterson, New Jersey who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of February 1995.

Victor J. Trunzo;

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-5006 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

NAFTA—00302; Washington Public Power Supply Systems Nuclear Project; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

NAFTA—00302 WPN-2 Richland, Washington
NAFTA—00302A WPN-1 Richland, Washington
NAFTA—00302B WPN-3 Satsop, Washington

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 13, 1995, applicable to all workers of the Washington Public Power System (WPN-2) in Richland, Washington. The notice will soon be published in the **Federal Register**.

At the request of the company and the workers the Department reviewed the certification for workers of the subject firm. New findings show that the worker group for the Washington Public Power Supply System Nuclear Project, WPN-2 plant, in Richland, Washington should include workers at the WPN-1 in Richland as well as the WPN-3 plant in Satsop, Washington. The workers are rotated among the three plants.

The investigation revealed that sales declined and significant worker separations occurred at all three plants. A Departmental survey of Washington Public Power's customers showed that the respondents decreased their purchases for Washington Public Power and increased their imports of electrical energy from Canada.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include Washington Public Power's plants in Satsop, Washington and Richland, Washington.

The amended notice applicable to NAFTA—00302 is hereby issued as follows:

"All workers of the Washington Public Power Supply System Nuclear Project at the WPN-2 plant in Richland Washington; WPN-1 plant in Richland, Washington and the WPN-3 plant in Satsop, Washington who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C., this 21st day of February 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-5005 Filed 2-28-95; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: March 14, 1995, 10:00 am to 4:00 pm.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 2006. Telephone (202) 632-1500.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of Pub. L. 102-73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from

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the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on March 14, 1995 from 10 am to 4 pm. The meeting of the Board is open to the public. The agenda includes a review of 1994 activities, preliminary discussions of potential 1995–1996 NIFL activities, and a discussion on the status of the reauthorization.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue NW., Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 pm.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 95–4955 Filed 2–28–95; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

By amendment request dated December 22, 1993, CYAPCO has proposed to revise Technical Specification (TS) 3/4.4.10, "Structural Integrity," Surveillance Requirement 4.4.10. The licensee has proposed an alternate Reactor Coolant Pump (RCP) flywheel inspection frequency and examination methods. The staff has extended the RCP flywheel inspection frequency for RCPs 1 and 2 for one refueling outage until the staff can complete the review for a permanent change.

The Need for the Proposed Action

CYAPCO has determined that the existing RCP flywheel inspection program as discussed in Regulatory Guide (RG) 1.14, "Reactor Coolant Pump Flywheel Integrity," can be optimized by revising the RCP flywheel inspection frequency and examination methods. By optimizing the RCP flywheel inspection program, the licensee will alleviate current testing requirements that are overly restrictive for predicting RCP flywheel integrity and gain increased flexibility in utilizing personnel during subsequent RCP flywheel examinations. This TS change reflects the licensee's proposed alternate RCP flywheel inspection frequency and examination methods. The staff has determined additional information is needed to complete this review, however, the staff has concluded that the request has sufficient merit to extend the TS required inspections for RCPs 1 and 2 for one Cycle.

Environmental Impacts of the Proposed Action

The Commission has reviewed the proposed revision to the TS. The staff has concluded that additional information regarding the proposed inservice examination methods, flaw acceptance criteria, and the supporting fracture mechanics analysis are needed to complete the review. However, the staff has concluded that the proposed TS change involving the changes in TS 3/4.4.10, "Structural Integrity," Surveillance Requirement 4.4.10, can be implemented for Cycle 18 refueling outage as the change would only affect one of the five inspection criteria and two of the four RCPs. In particular, the ultrasonic volumetric inspection frequency for the areas of higher stress concentration for RCPs 1 and 2 be extended for one cycle until the staff can complete the review of the licensee's proposed increased inspection frequency and alternative examination methods for the RCP flywheels. These changes will not affect the desired margins of safety for the two affected accidents: (1) RCP locked rotor event, and (2) adequacy of missile protection inside containment and, therefore, the extension of the inspection interval by one refueling cycle is acceptable. This conclusion is based on the flaw history of the RCP flywheels and the likelihood that the most recent inspections would have detected any flaws of structural significance.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated December 22, 1993, which is available for public inspection at the Commission's Public document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public Document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547

Dated at Rockville, Maryland, this 22nd day of February 1995.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4975 Filed 2–28–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–413]

Duke Power Company, et al., Catawba Nuclear Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), Type A Tests, to the Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Unit No. 1, located in York County, South Carolina, in accordance with Facility Operating License No. NFP–35.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of October 18, 1994, as supplemented on February 7, 1995. The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit rescheduling the third containment integrated leak rate test (ILRT) in the first 10-year service period from the end-of-Cycle 8 outage until the end-of-Cycle 9 outage. The requested exemption would also allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection.

The Need for the Proposed Action

The current containment integrated leakage rate (ILRT) requirements for Catawba Units 1 and 2, pursuant to Appendix J, are that, after the preoperational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year period. Also, the third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspection. This is reflected in the Catawba Technical Specifications (TS) as a testing interval of once each 40 months plus or minus 10 months, for a frequency of three times in a 120-month period. To date, for Catawba Unit 1, the preoperational and the first two periodic ILRTs have been conducted. The most recent ILRT was conducted in March 1991, approximately 47 months ago. Thus, in accordance with Appendix J and the current TS, and ILRT would have to be conducted during the refueling outage beginning in February 1995 (the end-of-cycle (EOC) 8 outage).

The licensee has requested an exemption from Appendix J and a corresponding change to the TS that would allow a one-time change to the interval for the Unit 1 ILRT from 40 plus or minus 10 months to 60 plus or minus 10 months (once each 5 years). This would allow the EOC–8 ILRT to be rescheduled for EOC–9. Therefore, the need for the licensee's proposed action is to allow a longer interval between the Catawba Unit 1 second and third periodic Type A ILRTs which will result in a cost savings to the licensee.

Environmental Impacts of the Proposed Action

The proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Catawba Nuclear Station, Unit No. 1. The licensee has provided an acceptable basis for concluding that the proposed one-time extension of the Type A test interval would maintain the containment leakage rates within acceptable limits. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing on the containment. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to this action would be to deny the request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Catawba Nuclear Station Unit No. 1," dated January 1983.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the South Carolina State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated October 18, 1994, as supplemented February 7, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 23rd day of February 1995.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4976 Filed 2–28–95; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pubic Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission on NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the

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Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 3, 1995, through February 16, 1995. The last biweekly notice was published on February 15, 1995 (60 FR 8739).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shale be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled .n the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no

significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take plsce before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)(v) and 2.714(d).

For further details with respect to this section, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 7, 1994.

Description of amendment requests: The proposed amendment would revise the capacity of the ultimate heat sink (UHS) as described in the bases of Technical Specification 3/4.7.5, "Ultimate Heat Sink," from providing a 27-day cooling water supply to providing a 26-day cooling water supply. In addition, the reference to Regulatory Guide 1.27 in the bases of this TS would also be revised to reference the January 1976 revision rather than the March 1974 revision.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The Essential spray pond system and the UHS do not initiate any accidents in Chapters 6 or 15 of the UFSAR [Updated Final Safety Analysis Report]. The justification and basis for the time that the UHS is available is not changed and continues to be consistent with the guidance in Regulatory Guide 1.27. The existing Technical Specification requirements and those components to which they apply are not altered by this Technical Specification amendment. Therefore, the change to the bases for Technical Specification 3/4.7.5 does not increase the probability of occurrence or the consequences of any previously evaluated accident.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The requirements for Technical Specification 3/4.7.5 are not changed. This amendment has no impact on plant maintenance, testing, shutdown equipment, or component qualification. Therefore, the possibility of a new or different kind of accident is not created by this amendment.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

The change to the bases for Technical Specification 3/4.7.5 does not significantly alter existing Technical Specification requirements or those coponments to which they apply. The justification and basis for the time that the UHS is available without makeup is not changed and continues to be consistent with the guidance in Regulatory Guide 1.27. Regulatory Guide 1.27 states that "A capacity less than 30 days may be acceptable if it can be demonstrated that replenishment can be effected to ensure that continuous capability of the sink to perform its safety functions, taking into account the availability of replenishment equipment and limitations that may be imposed on "freedom of movement" following an accident." This change does not effect the continuous capability of the UHS to perform its safety function of providing decay heat removal capability following an accident. The change updates the design basis of the UHS using more realistic conditions based on plant experience. Therefore, the change in the capacity of the UHS without makeup from 27 days to 26 days will not involve a significant reduction in margin of safety for the ultimate heat sink.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Nancy C. Loftin, Esq., Corporation Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: Theodore R. Quay.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 18, 1992, as supplemented December 8, 1992, and revised February 3, 1995.

Description of amendment request: The proposed Technical Specification (TS) amendment adds limiting conditions of operation and surveillance requirements for the pressurizer power-operated relief valves (PORVs) and their associated block valves whenever average temperature (Tavg) is above 350 degrees F or the reactor is critical. Specifications have also been added for low-temperature overpressure protection whenever Tavg is less than 350 degrees F and the reactor coolant system is not vented to the containment. The February 3, 1995, revision made editorial changes to previous TS pages and made changes to conform with an additional provision of the guidance for surveillance testing of the block valves associated with the pressurizer PORVs. In addition, the licensee has requested an editorial change to TS page 3.1.–11 to revise the references to two figures that have been superseded.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The requested revision does not involve a significant increase in the probability or consequences of an accident previously

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evaluated. The proposed revision to our previous Technical Specification (TS) change request dated June 18, 1992, would help assure the availability of the block valves for accident mitigation. The availability of the block valves for accident mitigation has been found to outweigh any negative safety consequences associated with full cycle testing of a block valve isolating a pressurizer power-operated relief valves (PORV) with "excessive" seat leakage. There would be no significant increase in the probability or consequences of an accident previously evaluated since this event is fully bounded by the failing open of a single pressurizer code safety relief valve event which is analyzed in Chapter 15 of the Updated Final Safety Analysis Report. Accordingly, the requested revision will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The requested revision to our previous TS change request does not create the possibility of a new or different kind of accident from any accident previously evaluated. Periodic testing of the block valves in accordance with the requested revision is only intended to assure the functioning and capability of the block valves. The requested revision will only clarify the conditions when block valve surveillance testing is required. The performance of this testing is intended to improve block valve availability and thereby assure the capability of certain accident mitigation strategies identified within Abnormal and Emergency Operating Procedures. Therefore, the requested revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested revision to our previous TS change request does not involve a significant reduction in the margin of safety. The requested revision is intended to help assure block valve availability to support certain accident mitigation strategies. This additional assurance of block valve availability and functioning increases the margin of safety. Accordingly, the requested revision will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William H. Bateman.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 14, 1994.

Description of amendment request: The proposed amendments would revise technical specifications related to allowed outage times (AOT) and surveillance test intervals (STI) for certain actuation instrumentation in the reactor protection system (RPS), primary containment isolation system (PCIS), emergency core cooling system (ECCS), recirculation pump trip, reactor core isolation cooling (RCIC), control rod withdrawal block, monitoring, and feedwater/main turbine trip systems. These changes are generally consistent with General Electric topical reports which have been reviewed and approved by the NRC. The changes also include revising the Feedwater/Main Turbine Trip LCO 3.3.8 action statement to achieve consistency with existing instrumentation LCOs; deleting the surveillance of the APRM Neutron Flux—High, Setdown functional unit in Operational Condition 1; revising the applicability of the provisions of Specification 4.0.4 to several Reactor Protection System and Control Rod Withdrawal Block Instrumentation surveillance requirements; adding the requirement to perform shiftly channel checks for applicable RPS, PCIS, ECCS, and RCIC instrumentation channels equipped with master trip units; and other changes to correct typographical errors and to delete cycle specific footnotes which are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

It has been determined that the changes do not constitute a Significant Hazards Consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. The proposed changes increase the STI and AOT for actuation instrumentation supporting RPS, ECCS, Isolation, CRBF, RCIC, ATWS-RPT, EOC-RPT, Monitoring, and Feedwater/Main Turbine Trip System Actuation functions. There are no changes in instrumentation configuration and function, and no instrumentation setpoints are changed. Because of this there is no change in the probability of occurrence of an accident or the consequences of an accident or the consequences of malfunction of equipment. With respect to the probability of equipment malfunction, topical reports prepared by GE demonstrate that there is a reduction in scram frequency for the RPS, but in the case of the ECCS there is a small increase in the unavailability of the water injection function. This increase in unavailability was judged acceptable by GE. The NRC concurred with this conclusion in its review and approval of the topical reports. The proposed changes are consistent with the Safety Evaluation Reports issued for the topical reports.

b. The changes proposed for the Feedwater/Main Turbine Trip LCO action statements provide actions which are consistent with presently existing instrumentation LCOs. The design and function of the feedwater/main turbine trip instrumentation to trip the feedwater pumps and the main turbine upon detection of a Level 8 event is not altered. The probability and/or consequences of this moderate frequency transient are not increased.

c. The APRM Neutron Flux—High, Setdown scram setting provides adequate thermal margin between the setpoint and the safety limits for operation at low pressure and low flow during a plant startup. This function remains in effect until the mode switch is placed in the Run (Operational Condition 1) position, at which time it is bypassed. Deleting the requirement for the surveillance of the APRM Neutron Flux—High, Setdown functional unit in Operational Condition 1 is appropriate since its function is not applicable in this mode. This deletion serves to achieve consistency between Technical Specification Tables and the Bases section.

d. The changes associated with Specification 4.0.4 are administrative in nature and are intended to provide the plant operators with better guidance for its application. In cases where complete surveillances cannot be achieved, such as during a plant shutdown, then the required surveillances will be performed within 24 hours of entering the Mode or condition in which the surveillance is required. The stabilization of the plant will be of primary consideration. This change does not affect the evaluation for any accident presented in Chapter 15 of the UFSAR. The APRM Fixed Neutron Flux—High quarterly functional tests most of the APRM channel equipment associated with the APRM Neutron Flux—High, Setdown scram.

Additionally, the expected result of the functional tests associated with the SRMs, IRMs, and APRMs is to demonstrate the operability of the instrumentation. Therefore, 24 hours is a reasonable time to permit the surveillances to be performed upon entering the mode or condition in which the surveillance is required.

e. The proposal to include the performance of channel checks as requirements of technical specifications is administrative in nature. Presently, channel checks performed for the applicable analog instrumentation in reactor vessel water level applications is controlled solely by procedure. Adding this requirement to the technical specifications provides for the appropriate controls of the surveillances, above and beyond that presently controlled by procedure.

f. The proposed administrative changes are offered to correct typographical errors and delete cycle specific footnotes which are no longer applicable. The nature of the changes precludes them from impacting previously analyzed accidents.

The proposed changes therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. The proposed changes increase the STI and AOT for certain actuation instrumentation in the RPS, ECCS, Isolation, CRBF, RCIC, ATWS-RPT, EOC-RPT, Monitoring, and Feedwater/Main Turbine Trip systems. There are no changes in instrumentation configuration and function, and no instrumentation setpoints are changed.

b. The changes to the Feedwater/Main Turbine Trip LCO action statements allow the plant operators a maximum degree of operational flexibility, while maintaining the instrumentation and protection needed for terminating the feedwater controller failure transient. The single failure proof criterion of the level sensors is maintained, and the logic of the protective instrumentation is not compromised. The changes to the LCO action statements do not constitute a change to the facility or its operation as described in the Safety Analysis Report.

c. Deleting the requirement for surveilling the APRM Neutron Flux—High, Setdown functional unit in Operating Condition 1 does not degrade thermal margins. The margin accommodates the anticipated maneuvers associated with plant power ascension. During a plant shutdown, rod insertion maneuvers, recirculation flow reduction, and xenon build-in all contribute to negative reactivity insertion which precludes the degradation and violation of thermal margins. The functions of the APRMs required to be OPERABLE in Operational Condition 1 which are in effect remain to ensure that reactor core thermal margins are not compromised.

d. The conduct of neutron instrument functional tests in the plant mode or condition in which the trips are applicable eliminates unnecessary testing during normal plant operations. The expected result of the functional testing is to demonstrate the operability of the instruments. The failure of any single instrument channel will neither cause nor prevent either a reactor scram or a control rod block.

e. Including the performance of channel checks for the applicable analog instrumentation as part of the technical specifications transfers control of the required surveillances from procedure to the technical specifications, as appropriate. The administrative nature of this change does not alter the functions, setpoints, or configuration of the associated instrumentation.

f. The administrative nature of the changes prevents them from affecting the functions, setpoints, or configuration of the associated instrumentation from being affected by the changes.

The proposed changes do not create the possibility for an accident or malfunction of a different type than any previously evaluated in the UFSAR.

(3) Involve a significant reduction in the margin of safety because:

a. Setpoints are based upon the drift occurring during an 18 month calibration interval. The bases in the Technical Specifications either do not discuss STI, or state "* * * one channel may be inoperable for brief intervals to conduct required surveillance." The proposed changes are bounded by the analyses of the topical reports. These analyses, which were prepared by GE and approved by the NRC, examined the effects of extending STI and AOT and found that the proposed changes would not involve a significant reduction in the margin of safety.

b. The proposed changes to the turbine trip LCO action statements do not change any of the settings of the Level 8 setpoints. The single failure criteria of the multiple level sensors which sense and detect the Level 8 setpoint remains intact. The LCO maintains the requirement that no single instrument failure will prevent the feedwater pump turbines and main turbine trip on a valid Level 8 signal. Scram trip signals from the turbine retain the design feature that a single failure will neither initiate nor impede the initiation of a reactor scram (trip).

c. The setting, function, and conditional requirements of the APRM Neutron Flux—High, Setdown function are not altered. This change serves to achieve consistency between two Technical Specifications Tables. This eliminates the need for surveilling a function in a mode which is not applicable. The functions of the APRMs required to be OPERABLE in Operational Condition 1 remain to ensure that reactor core thermal margins are not compromised.

d. The reference to 4.0.4 applicability will assist to ensure consistent interpretation of the technical specifications by the plant operators. This assists in ensuring that the plant is operated within technical specification limitations. This change does not affect trip instrumentation setpoints, and the scram function of the RPS is assured by the weekly functional testing of the Manual Scram.

e. Including the instrumentation channel checks as part of technical specification requirements provides an appropriately regimented method of controlling the conduct of the surveillances. None of the functions, setpoints, or configuration of the associated analog instrumentation is affected by this administrative change.

f. The administrative nature of the changes serves to provide more concise guidance to the plant operating staff, and as such do not impact the safety margin.

The proposed changes do not significantly reduce the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: January 13, 1995.

Description of amendment request: The proposed amendments would revise the pressure alarm setpoint allowable values for the emergency core cooling system (ECCS) and reactor core isolation cooling (RCIC) system "keep filled" pressure instrumentation channels. The purpose of the proposed change is to lower the setpoint allowable values for these parameters to more realistic values based upon calculations performed by the licensee reflecting design changes and system performance. Also, the term "setpoint" is being changed to "setpoint allowable value" to clarify the use of the values. Additionally, two administrative/editorial changes are included to delete technical specification footnotes which are no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated the proposed Technical Specification Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station Units 1 and 2 in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. The proposed change in the technical specification allowable values for the ECCS and RCIC discharge line "keep filled" alarm instrument channels does not change the design bases or function of these systems as described in the technical specifications and UFSAR. An analysis performed by engineering demonstrates that the proposed allowable values are sufficient for verifying that the ECCS and RCIC pump discharge lines are full of water. In addition, setpoint

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calculations have been performed to verify that sufficient margin exists between the recommended calibration setpoints and the analytical limits for these instrument channels to account for all applicable instrument errors. This provides high assurance that the trip setpoints of these instrument channels will not drop below the minimum required value. The "keep filled" instrumentation is not a factor in the assumptions of any accidents, thus, the probability of analyzed accidents is not increased.

b. The proposed technical specification amendment does not revise the configuration of the ECCS and RCIC discharge line "keep filled" instrument channels or sensing lines. The proposed setpoint allowable values and associated calibration setpoints are within the calibration ranges of the existing pressure switches. Thus, implementation of the proposed amendment does not involve any physical alterations to the plant except for the recalibration of the pressure switches to the new calibration setpoints.

c. The ECCS and RCIC discharge line "keep filled" instrument channels only perform a monitoring function. Other than ensuring system readiness they do not perform a function important to safety. Thus, the probability of a ECCS or RCIC failure is not increased since the operation and function of the ECCS and RCIC discharge line fill systems is not affected by this change.

d. The failure of a ECCS or RCIC discharge line fill system will not go undetected by the proposed change, since water leg pump trips are annunciated in the control room. In addition, quarterly surveillances are performed on these pumps to check for degradation.

e. The ECCS and RCIC discharge line fill systems are not used to mitigate the consequences of an accident or transient. These systems are not required after the ECCS and RCIC pumps are activated.

Therefore, the proposed change does not cause an increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because: This technical specification amendment only lowers the trip setpoint allowable values for the ECCS and RCIC discharge line "keep filled" alarm instrumentation channels. As described above, the proposed setpoint allowable values are sufficient for verifying that the ECCS and RCIC discharge lines are full of water. Thus, the probability of a water hammer occurring during system activation for a surveillance test is not increased. In addition, each instrument channel is independent from the other channels so that a failure in one channel will not propagate to another channel. Therefore, the operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety because: The margin of safety is not affected by this amendment, because this change involves monitoring instrumentation only. The purpose of the ECCS and RCIC discharge line "keep filled" alarms is to alert the operators when a ECCS or RCIC system may not be operable due to empty or partially empty discharge lines. The proposed amendment does not alter or degrade this function, since the new setpoint allowable values are adequate for verifying that the discharge lines are full of water. Therefore the operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: January 13, 1995

Description of amendment request: The proposed amendment would modify the required settings, and allowable "as found" and "as left" tolerances for the primary and secondary safety valves. The proposed limits would allow installed primary and secondary valve settings to be within a 3% tolerance of their nominal settings, but would require returning the valve settings to within 1% of the nominal settings if the valves are removed from the piping for maintenance or testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed technical specification change would not:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed change to the Technical Specifications increases the acceptable as found tolerance for the pressurizer safety valves. The most limiting overpressure event, loss of external load, has been analyzed to account for this change. The loss of external load analysis was performed using a conservative 25% steam generator tube plugging and an initial pressurizer level of 67.8% (providing an approximate 10% conservative margin above programmed pressurizer level for full power). Primary and secondary safety valve accumulation was conservatively accounted for and the setpoint tolerance of +3% was assumed. Reactor trip on turbine trip was assumed to be disabled and the atmospheric dump valves were assumed unavailable. The results of the analysis demonstrated primary and secondary system pressures within 110% of design pressures. Therefore, the consequences of overpressurization events will not be significantly increased with a +3% tolerance on the primary safety valve setpoints. The proposed Technical Specifications change will not affect normal plant operation and will not increase the probability of an accident.

A review of all DNB [departure from nucleate boiling] analyses was performed to ensure that predicted pressurizer pressures for those analyses would not be affected by a -3% tolerance on the lowest setpoint valve. The DNB analyses for which significant primary system pressure increases were predicted do not result in pressures high enough to lift the pressurizer safety valves with the proposed tolerance. A conservative DNB analysis that bounds the consequences of inadvertent opening of a pressurizer safety valve has also been previously performed with predicted acceptable results. If a pressurizer safety valve were to stick open, the consequences would be bounded by the small break LOCA [loss-of-coolant accident] analysis. Therefore, the consequences due to a -3% tolerance on the primary safety valve setpoints will not increase the consequences or probability of an accident.

The proposed revision removes the requirement for one operable pressurizer safety valve to be installed whenever the reactor head is on the vessel. Instead, proposed Specification 3.1.7.1 requires all pressurizer safety valves to be operable above cold shutdown, and overpressure protection during cold shutdown is provided by existing Specification 3.1.8.2, Power Operated Relief Valves.

The proposed Technical Specifications change also lists the lift settings for each of the primary and secondary system safety valves. This change will not affect the operation or function of the valves. Therefore, the probability and consequences of previously evaluated accidents will not be increased.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

The proposed changes to Technical Specifications will not affect the manner in which the plant operates. The proposed increase in pressurizer safety valve lift setting tolerance could change the pressure at which the valves open in an overpressurization event, but would not create the possibility of a new or different kind of accident. Since Technical Specification 3.1.8 addresses primary system overpressurization during cold shutdown, the proposed removal of the requirement for an operable pressurizer safety valve to be installed whenever the reactor head is on the vessel will not create the possibility of a new overpressurization event during cold shutdown. The proposed change to list the lift settings for the individual primary and secondary safety valves will have no effect on the safety function of the valves. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

The proposed changes to Technical Specifications do not affect the DNB analyses that have been previously performed. The most limiting overpressurization event, loss of external load, has been conservatively analyzed accounting for the proposed changes and demonstrated that the primary and secondary system pressures remain within 110% of the design pressures. Overpressurization during cold shutdown is addressed by Technical Specification 3.1.8. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan.

Date of amendment request: February 10, 1995.

Description of amendment request: The proposed amendment would modify the Technical Specifications to allow a one time deferral of several 18-month interval surveillance tests until the upcoming scheduled refueling outage to avoid the necessity of imposing a plant shutdown solely for the sake of their performance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed Technical Specifications (TS) would not:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

Deferring surveillance testing will introduce no new operating conditions, change no equipment operating procedures, and change no plant systems or equipment. Therefore, operation of the facility in accordance with the proposed TS would not result in a significant increase in the probability of an accident previously evaluated.

Deferring surveillance testing of snubbers and instrument channels could allow minor degradations of snubber condition or small changes in instrument setpoints or calibration to progress some amount beyond that point which would occur with a shorter surveillance interval. A review of the recent test history for the subject surveillance indicates that no significant snubber degradation or instrument drift was found. It is not expected that, even with the proposed surveillance deferral, snubber conditions or instrument settings will be found to exceed conditions allowable by the Technical Specifications. Therefore, operation of the facility in accordance with the proposed TS would not result in a significant increase in the consequences of an accident previously evaluated.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

Deferring surveillance testing will introduce no new operating conditions, change no equipment operating procedures, and change no plant systems or equipment. Therefore, operation of the facility in accordance with the proposed TS would not create the possibility of a new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

A review of past performance of the subject surveillance tests indicate that the requested deferral of testing would not have a significant effect on the results of the tests when they are performed prior to the startup for cycle 12. Most of the affected instrumentation is monitored each shift by channel checks, which would disclose major failures or significant drift. Therefore, operation of the facility in accordance with the proposed TS would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of amendment request: November 2, 1994.

Description of amendment request: The proposed amendment would delete the content of the Appendix B, Environmental Protection Plan (EPP) and modify License Conditions 2.C.(2) to delete that portion which refers to the EPP. Specifically, the requirements for non-radiological environmental monitoring have been completed. The radiological environmental monitoring requirements have been incorporated into Appendix A (the Technical Specifications). There would be no impact on the continued safety of the McGuire station by deleting Appendix B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Deletion of the Environmental Protection Plan and modifying License Condition 2.C.(2) will have no impact on the probability or consequences of an accident previously evaluated because the changes will not have any impact upon the design or operation of any plant systems or components.

The proposed revision will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative in nature and will not change the types and amounts of effluent that will be released.

The proposed revision will not reduce a margin of safety because it is administrative in nature and will not effect the margin of safety as defined in the basis for any Technical Specifications.

Accordingly, this proposed changes does not involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

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Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 18, 1995.

Description of amendment request: The proposed amendments would relocate the requirements for the seismic instrumentation, meteorological instrumentation, and loose-part detection system from the Technical Specifications to the Selected Licensee Commitment (SCL) Manual. This will allow future changes to these controls to be performed under the provisions of 10 CFR 50.59. No changes are being made to the technical content of the affected Technical Specification pages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Relocation of the affected TS sections to the SLC Manual will have no effect on the probability of any accident occurring. In addition, the consequences of an accident will not be impacted since the above instrumentation will continue to be utilized in the same manner as before. No impact on the plant response to accidents will be created.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of relocating the affected TS requirements to the SLC Manual. Plant operation will not be affected by the proposed amendments and no new failure modes will be created.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any plant safety margins will be created. Relocation of the affected TS requirements to the SLC Manual is consistent with the content of the Westinghouse RSTS [Revised Standard Technical Specifications], as the NRC did not require technical specification controls for the affected instrumentation in the RSTS. The proposed amendments are consistent with the NRC philosophy of encouraging utilities to propose amendments that are consistent with the content of the RSTS.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 18, 1995.

Description of amendment request: The amendments would revise Technical Specification Table 4.3–3 to allow the analog channel operational test interval for radiation monitoring instrumentation to be increased from monthly to quarterly. The proposed amendment changes would be consistent with the guidance in Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Decreasing the frequency of the radiation monitor analog channel operational test from monthly to quarterly will have no impact upon the probability or any accident, since the radiation monitors are not accident initiating equipment. Analysis of the previous test data * * * shows that no significant degradation of performance is to be expected by the decrease in frequency. Therefore, the requested amendments will have no adverse impact upon the consequences of any accident.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the radiation monitors are not accident initiating equipment. No new failure modes can be created from an accident standpoint. The plant will not be operated in a different manner.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. Plant safety margins will be unaffected by the proposed changes. No safety equipment which is taken credit for in accident analyses will be affected by the requested amendments. The availability of the affected radiation monitors will be increased as a result of the proposed amendments because the monitors will not have to be made unavailable for testing as frequently. In addition, radiation monitor operating experience supports the proposed amendments. Finally, the proposed amendments are consistent with the NRC position and guidance set forth in NUREG–1366 and Generic Letter 93–05.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: January 20, 1995.

Description of amendment request: The proposed amendments will relocate the operability requirements for the INCORE DETECTORS (TS 3/4.3.3.2) to the Updated Final Safety Analysis Report, and revise Linear Heat Rate surveillance 4.2.1.4, and Special Test Exceptions surveillances 4.10.2.2, 4.10.4.2 (Unit 2 only), and 4.10.5.2, accordingly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature in that the specifications for

operation and surveillance of the Incore Instrumentation (ICI) System will be relocated from the Technical Specifications to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. Changes to the system will be controlled by 10 CFR 50.59, and the safety analysis report is required to be updated pursuant to 10 CFR 50.71(e). Relocation of these requirements to the UFSAR is consistent with the NRC "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" published in the **Federal Register** (58 FR 39132) dated July 22, 1993.

Incore instrumentation is not an accident initiator nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposed technical specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do the changes alter any assumptions or conditions in any of the plant accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to relocate the existing Technical Specification requirements for the Incore Instrumentation System to the Updated Final Safety Analysis Report will not change the physical plant or the modes of plant operation defined in the Facility License. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature in that operating and surveillance requirements for the Incore Instrumentation System will be relocated from the Technical Specifications to the Updated Final Safety Analysis Report for St. Lucie Unit 1 and Unit 2. The ICI system is not used to actuate safety-related equipment, provide interlocks, or otherwise perform automatic plant control functions. The system is used to monitor core power distribution parameters whose limits do involve a margin of safety; however, the ICI system itself makes no contribution to that margin of safety, and the power distribution limits will not be changed by the proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: David B. Matthews.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: January 17, 1995.

Description of amendment request: The licensee proposes to revise the technical specifications to reference Topical Report NF-TR–95–01 as the documentation of the licensee's proficiency in performing certain reload design calculations once the NRC has evaluated and approved NR–TR–95–01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the reference to FPL [Florida Power and Light Company] topical report which demonstrates FPL's ability to perform certain reload design calculations for Turkey Point Units 3 and 4 is administrative in nature and has no impact on the probability or consequences of any Design Bases Event (DBE) occurrences previously evaluated. The reload design calculations will be performed using methodologies and computer codes approved by the NRC and poses no increase in the probability or consequences of any accident previously evaluated.

The Core Operating Limits Report (COLR) parameters will be evaluated every cycle to ensure proper compliance with the Updated Final Safety Analysis Report (UFSAR). These limits will be evaluated in accordance with 10.CFR [Section] 50.59, which ensures that the reload will not involve an increase in the probability of occurrences or consequences of an accident previously evaluated. Title 10 CFR [Section] 50.59 (2) states that a proposed change involves an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR [Section] 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the reference to FPL topical report which demonstrates FPL's ability to perform certain reload design calculations for Turkey Point Units 3 and 4 is administrative in nature and has no impact, nor does it contribute in any way to the possibility of a new or different kind of accident from any accident previously evaluated. No new accident scenarios, failure mechanisms or limiting single failure events are introduced as a result of the proposed change.

The generation of the Axial Flux Difference, Rod Bank Insertion limits and K(Z) curve will be performed using NRC-approved methodology and are submitted to the NRC, as a revision to the COLR, to allow the NRC staff to trend. The Technical Specifications will continue to require operation within the core operating limits and appropriate actions will be taken if these limits are exceeded.

Title 10 CFR [Section] 50.59 permits a licensee to make changes in the facility as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question. 10 CFR [Section] 50.59 (2) states that a proposed change involves an unreviewed safety question (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR [Section] 50.59, then operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety is not affected by FPL performing the reload design calculations for Turkey Point Units 3 and 4. The supporting Technical Specification values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications. The development of the limits for future reloads will continue to conform to the methodology described in NRC approved documentation. In addition, each future reload will involve a 10 CFR [Section] 50.59

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review to assure that operation of the units within the cycle specific limits will not involve a reduction in a margin of safety. 10 CFR [Section] 50.59 (2) states that a proposed change involves an unreviewed safety question (iii) if the margin of safety as defined in the basis for any technical specification is reduced. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR [Section] 50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. The NRC staff, however, considers that the licensee's statements relative to 10 CFR Section 50.59 evaluations to be performed in the future are not relevant to the proposed no significant hazards determination.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: David B. Matthews.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 28, 1994.

Description of amendment request: The proposed amendment revises the Duane Arnold Energy Center (DAEC) Operating License by deleting a condition of the license that requires a "Plan for Integrating Scheduling of Plant Modifications for the Duane Arnold Energy Center" (the Plan).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is provided below:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes to the facility will occur as a result of this amendment. Work activities will continue to receive the appropriate level of review in accordance with DAEC procedures and practices. The organizational structure that controls and manages these activities remains unchanged and will assure that activities are prioritized and performed in a manner consistent with plant safety. The proposed amendment removes an administrative burden that is no longer required.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No changes to the physical design and/or operation of the plant will occur as a result of this amendment. The processes by which activities are planned, prioritized, and controlled are not affected. The appropriate level of technical review and management oversight continue to be performed in accordance with existing procedures and practices to assure that activities are performed in a manner consistent with plant safety.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. As stated earlier, no changes to the physical design and/or operation of any plant systems will occur as a result of this amendment. Work activities will continue to receive the appropriate technical review and management oversight to assure that activities are prioritized and performed in a manner consistent with plant safety. The amendment removes an administrative burden that is no longer required.

Based on the above, we have determined that the proposed amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis & Bouckins, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Leif J. Norrholm.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: January 24, 1995.

Description of amendment request: The proposed amendment would revise Technical Specification 3.4.1, "Leakage Rate," to reduce the allowable leakage rate of the reactor building from 2000 cubic feet per minute (cfm) to 1600 cfm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Secondary containment and RBEVS [Reactor Building Emergency Ventilation System] are not initiators or precursors to an accident. Secondary containment provides a pressure boundary, with limited in-leakage, for the purpose of preventing a ground level unfiltered release of radioactivity. RBEVS responds to accidents involving release of radioactivity to the secondary containment by maintaining a negative pressure inside secondary containment and by providing an elevated release. Therefore, a change to the Reactor Building leakage rate cannot affect the probability of an accident previously evaluated.

Although the proposed change reduces the Reactor Building leakage rate from 2000 cfm to 1600 cfm consistent with system design, there is no effect on the radiological consequences of any previously analyzed accident since the radiological analysis does not assume exfiltration. Therefore, the Technical Specification change does not significantly increase the consequences of a previously evaluated accident.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Reactor Building leakage rate from 2000 cfm to 1600 cfm does not involve any accident precursors or initiators. During an accident involving a release of radioactivity to the secondary containment, the RBEVS would be operable and provide filtration of containment atmosphere prior to release to the environment. This change does not involve any physical modifications to the system, thus the system will operate as designed. Therefore, the proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change in Reactor Building in-leakage from 2000 cfm to 1600 cfm in Specification 3.4.1 and the associated basis is to be consistent with system design and reflect the leakage rate associated with approximately one building air volume change per day. The resulting accident analysis remains unchanged since the radiological analysis does not assume any exfiltration. Therefore, the proposed change will not involve a significant reduction in the margin of safety as defined in the basis for any Technical Specification.

Therefore, as determined by the above analysis, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: February 1, 1995.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.6.13, "Remote Shutdown Panels." TS 3.6.13 currently requires that if the valve controls or monitoring instrumentation on the Remote Shutdown Panels are inoperable, they must be restored to an operable status within 24 hours or the plant shall be shut down. The proposed change would require inoperable valve control functions be restored to an operable status within 30 days or the plant shall be shut down. The proposed change would also specify that required inoperable monitoring instrumentation functions be restored to an operable status within 30 days or that an alternate method of monitoring the parameter be established within 30 days and the required function be restored to an operable status within 90 days or the plant shall be shut down.

The proposed amendment would also make minor editorial changes to TS Table 3.6.13–1 so that the table entries would be consistent with the proposed revisions to TS 3.6.13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The remote shutdown panel monitoring instruments and controls are not initiators or precursors to an accident. The remote shutdown panels provide the operator with sufficient monitoring instruments and controls to place and maintain the plant in a safe shutdown condition from a location other than the control room. Therefore, the proposed changes to Specification 3.6.13, "Remote Shutdown Panels," cannot affect the probability of a previously evaluated accident.

The proposed changes, in part, require that one channel (on either panel) for each function be operable. This change could potentially avoid an unnecessary plant shutdown without affecting an operator's ability to cope with a control room evacuation. One channel of each function is adequate to assure a safe shutdown. The proposed changes would also allow 30 days to restore an inoperable function to an operable status. As indicated in the ITS [Improved Standard Technical Specifications], the allowed time of 30 days is acceptable based on operating experience and the low probability of an event that would require evacuation of the control room. With one or more monitoring instrument functions inoperable, the proposed change gives an operator an additional option. Specifically, the operator is allowed 30 days to establish an alternate method of monitoring the parameter and 90 days to restore the function to operable status. The use of an alternate method is acceptable since it will provide the operator with indication of the parameter of interest. The remote shutdown panels will not be required to be operable in hot shutdown because the plant is already subcritical and in a condition of reduced reactor coolant inventory energy. Because this Specification no longer applies to hot shutdown and to be consistent with the guidance provided in the ITS, Specification 3.6.13.d will require that the plant be brought to a hot shutdown condition (versus cold shutdown condition) in 12 hours. As indicated in the ITS, the 12-hour completion time is reasonable based on operating experience. The Bases Section to 3.6.13 and 4.6.13 was revised to be consistent with the proposed changes to the Specification. The Bases currently indicates that one remote shutdown panel is required to be operable. As explained above, one channel of each required function is required to maintain remote shutdown operability. In summary, the proposed changes will not affect the ability of the Remote Shutdown System to provide the operator with sufficient instrumentation and controls to place and maintain the plant in a safe shutdown condition from a location other than the control room. Therefore, the consequences of an event requiring a control room evacuation will not significantly increase.

Editorial changes were made to Table 3.6.13–1 to be consistent with the changes made to the Specification. Specifically, the word "INSTRUMENT" was changed to "FUNCTION" and the words "PANEL MONITORING" were changed to the words "PANELS FUNCTIONS." These changes make it clear that one channel of each function, on either panel is acceptable to maintain operability. The emergency condenser condensate return valve control and motor-operated steam supply valves control were relocated from Specification 3.6.13.b to Table 3.6.13–1 to be consistent with the proposed changes.

Based on the above, the consequences of an accident previously evaluated are not significantly increased.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes do not introduce any new accident precursors and do not involve any alterations to plant configurations which could initiate a new or different kind of accident. The proposed changes require that one channel of each function be operable to assure the remote shutdown panels can meet their intended function. No changes have been made which will affect the operation of the remote shutdown panels in a way which would create a new or different kind of accident. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes will not affect the ability of the Remote Shutdown System to provide the operator with sufficient instrumentation and controls to place and maintain the plant in a safe shutdown condition from a location other than the control room. The ability to respond to a control room evacuation is maintained with one channel operable for each required function. The allowed outage time of 30 days is acceptable based on operating experience and the low probability of an event requiring control room evacuation. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Ledyard B. Marsh.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 10, 1995.

Description of amendment request: The proposed amendment request would revise Technical Specifications by deleting the power range, neutron flux, high negative rate trip from Tables 2.2–1, 3.3–1, and 4.3–1, and delete the associated Bases Section 2.0.

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Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes would not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The deletion of the power range, neutron flux, high negative rate trip will not adversely affect plant operations. As has been presented and accepted by the NRC Staff in previous docketed correspondence, the dropped RCCA [rod cluster control assembly] accident analysis does not rely on this trip to safely shut down the plant. The safety analysis of the plant is unaffected by the proposed changes. Since the safety analysis is unaffected, the calculated radiologicalreleases associated with the analysis are not affected. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The reactor trip system is used to mitigate accidents. There have been instances, during calibration of these units, where a single channel has generated a trip signal. Leaving this in place when it is not necessary could, therefore, cause a reactor trip. The deletion of one trip function will, therefore, slightly decease, not increase, this probability.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The reactor trip system is used to mitigate accidents, and the only way that it can initiate an event is by causing the reactor to trip when it is unnecessary. This possibility of the generation of a false trip signal has already been evaluated in the safety analysis. This modification will physically remove or disable the power range, neutron flux trip and will therefore decrease the possibility for the generation of a false trip signal. Therefore, the proposed change cannot create a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change which deletes the power range, neutron flux, high negative rate trip will have no impact on the margin of safety. The current safety analysis for Millstone Unit No. 3 does not credit this trip for any events; therefore, removal of this trip from the technical specifications will not affect the margin of safety for any analyzed events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 23, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by 1) adding a new Section 3/4.5.5 which provides a limiting condition for operation, an action statement, a surveillance requirement, and a corresponding bases section, for the trisodium phosphate (TSP) baskets which will be installed in the next refueling outage; 2) deleting Section 3/4.6.2.3 and Bases 3/4.6.2.3 related to the spray additive system which are no longer needed since the chemical addition tank is being abandoned; and 3) updating Index Pages viii, ix, and xiv to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The plant change affects the chemical composition of the QSS [quench spray system] flow and the method of sump pH control, which are important for containment heat removal/pressure mitigation (MSLB and LOCA) [main steamline break and loss-of coolant accident] and fission product removal (LOCA). However, this change does not affect the probability of occurrence of these accidents. Since the TSP baskets are passive devices located inside the containment, they cannot initiate a transient or affect the probability of occurrence of any previously evaluated accident.

The design change will not adversely affect the radiological doses for the DBA [design basis accident] LOCA at the Exclusion Area Boundary, Low Population Zone, Millstone Unit No. 3 Control Room, Millstone Unit No. 2 Control Room, and the Millstone Technical Support Center. Also, the change will not adversely affect the calculated peak clad temperature (PCT) for the DBA LOCA.

2. Create the Possibility of a New or Different Kind of Accident from any Previously Analyzed.

The change does not create a malfunction that is different from those previously evaluated. The TSP baskets are passive devices that have minimal impact on any other systems except through water chemistry. The change in water chemistry does not adversely affect any safety systems. The installation of the TSP baskets and the abandonment of the CAT [chemical addition tank] will not change the probability of a malfunction of safety-related equipment.

Potential malfunctions relating to the TSP powder, the 12 baskets which hold the TSP powder, the QSS and other systems, and equipment credited in the safety analysis were evaluated and determined not to be adversely affected by the change. Additionally, the transient pH behavior of the spray flow will not adversely affect metals, coatings and elastomers in the containment, and the performance of associated safety functions is not affected.

Finally, the change in the chemical composition of the QSS solution will not affect the operability of this system or its ability for containment heat removal and pressure mitigation.

3. Involve a Significant Reduction in the Margin of Safety.

The design changes do not adversely affect the ability of the QSS to perform the function of containment heat removal, pressure mitigation and fission product (iodine) retention. The design changes do not adversely affect any equipment credited in the safety analysis. Also, the design changes to not increase the calculated peak clad temperature (PCT) or the offsite doses due to the design basis LOCA. Therefore, there is no impact on the margin of safety as specified in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 24, 1995.

Description of amendment request: The amendment request would revise the Technical Specification Section 3.2.3.1.a and Table 2.2–1 to decrease the acceptance criterion for measured reactor coolant system (RCS) flow rate from 387,480 gallons per minute (gpm) to 371,920 gpm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

* * * The proposed changes do not involve an SHC because the changes would not:

1. Involve a Significant Increase in the Probability or Consequence of an Accident Previously Evaluated.

An evaluation of the 4% decrease in the RCS total flow rate limit has shown that the change does not significantly impact the design basis analyses. Therefore, the change will not increase the consequences of an accident previously evaluated.

There are no actual plant changes that will result from this technical specification change. Instead, the technical specification requirement for minimum total RCS flow rate is being changed to provide operational benefit without compromising safety. Since there are no plant changes, there is no effect on the probability of occurrence of previously evaluated accidents.

The change will have a negligible impact on the small break loss of coolant accident (LOCA) and large break LOCA analyses. The PCT [peak cladding temperature] acceptance criteria will continue to be met with the assumption of a 4% reduction in RCS flow rate.

For the steam generator tube rupture event, both the FSAR [Final Safety Analysis Report] offsite dose analysis and the margin of steam generator (SG) overfill were evaluated. It was determined that the 4% reduction in RCS flow rate will not adversely affect the offsite doses or the margin to SG overfill and, therefore, the FSAR conclusions remain unchanged.

In the evaluation of non-LOCA transients, the DNB [departure from nucleate boiling] is the most affected parameter due to a change in flow rate. It was concluded that the 4% reduction in RCS flow was acceptable and there was margin to the DNB limit.

It is concluded that there is sufficient margin to the system pressure, PCT and DNB limits to offset the effect of the 4% flow rate decrease and the calculated radiological releases associated with the analysis are not affected. Therefore, there is no effect on the consequences of previously evaluated accidents.

2. Create the Possibility of a New or Different Kind of Accident from any Previously Analyzed.

The low loop flow trip setpoint specified in Technical Specification Table 2.2–1 is set as a fraction of total flow. The flow fraction is not being changed and no hardware changes are required due to the reduction in minimum flow. Also, the reduction in minimum flow will not change the operation of any plant equipment and it does not modify plant operation.

Therefore, the reduction in minimum flow does not introduce any new failure modes or malfunctions and it does not create the potential for a new unanalyzed accident.

3. Involve a Significant Reduction in the Margin of Safety.

The proposed 4% decrease in the technical specification limit for total RCS flow rate will not adversely affect the results of the FSAR accident analysis, and it is concluded that this change is safe. The change does not adversely affect any equipment credited in the safety analysis, and it does not affect the probability of occurrence of any plant accident. Also, the change has a negligible impact on the PCT, and it does not increase the offsite doses or decrease the DNB below its acceptance limit.

Therefore, the change does not have any significant impact on the protective boundaries, and there is no reduction in the margin of safety as specified in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1995.

Description of amendment request: The proposed amendment to the technical specifications (TSs) would delete requirements for the toxic gas monitoring system (TGMS) as contained in TS 2.22 and TS 3.1, Table 3–3, item 29.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The previously evaluated accidents affected by this change are the on-site and off-site toxic chemical releases. These events have been re-evaluated for this proposed change and have been shown to meet the applicable regulatory screening criteria. The deterministic analyses performed show that the guidelines of Regulatory Guide 1.78 for control room habitability are met for on-site and most off-site chemicals. On-site chemical sources originally present when the toxic gas monitoring system was installed have been removed from site or determined not to exceed the deterministic analysis screening requirements. For those off-site chemical releases which did not meet the deterministic screening criteria a probabilistic analysis was performed. The probabilistic analysis performed in support of this proposed change shows that the probability of an off-site chemical release leading to 10 CFR 100 consequences is orders of magnitude less than the SRP [Standard Review Plan] 2.2.3 guidelines. These results show that there is no significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

Only events involving chemicals for which the TGMS provides an automatic detection/isolation function are affected by this change. As stated above, the potential events involving these chemicals have been re-evaluated using the appropriate regulatory guidance and shown to satisfy either the deterministic screening criteria of RG [Regulatory Guide] 1.78, or to be probabilistically insignificant compared to the guidelines of SRP Section 2.2.3. These results show that the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is defined by the regulatory basis for the existing TGMS, namely NUREG–0737, Item III.D.3.4. The analysis provided to support this proposed change follows the regulatory guidelines of RG 1.78 and SRP Section 2.2.3, as specified in NUREG–0737, Item III.D.3.4. The analysis shows that the applicable regulatory criteria are met and the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut

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Avenue, NW., Washington, DC 20009–5728.

NRC Project Director: Theodore R. Quay.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 6, 1995 (Reference LAR 95–01).

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, to change TS 3/4.9.14.1, "Spent Fuel Assembly Storage," TS 3/4.9.14.2, "Spent Fuel Pool Boron Concentration," TS 5.3.1, "Reactor Core—Fuel Assemblies," and TS 5.6.1, "Fuel Storage—Criticality," and add new TS 3/4.9.14.3, "Spent Fuel Assembly Storage—Spent Fuel Pool Region 1." The specific TS changes proposed are as follows:

(1) The proposed changes to TS 3/4.9.14 are:

(a) TS 3.9.14.1 and Figure 3.9–2 would be revised to allow the storage of spent fuel assemblies with initial enrichments up to 5.0 weight percent uranium-235 (U–235) in Region 2 of the spent fuel pool (SFP). Fuel pellet diameter would be considered in combination with initial enrichment and cumulative burnup.

(b) Editorial corrections to the titles of TS 3/4.9.14.1 and 3/4.9.14.2 would be made for consistency with the TS format.

(2) New TS 3/4.9.14.3 would be added. The new TS would include:

(a) Requirements for acceptable fuel storage in Region 1 of the SFP.

(b) An action statement, similar to that for TS 3.9.14.1, requiring suspension of all fuel movement and crane operations except to move the noncomplying fuel assemblies into an acceptable pattern. The action statement also requires verification of SFP boron concentration at least once per 8 hours.

(c) A requirement, similar to that for TS 4.9.14.1, for an evaluation that considers enrichment, boron content, and cumulative burnup of each fuel assembly before storage in Region 1 of the SFP.

(d) New Figure 3.9–3 for use in determining the acceptability of storing fuel in Region 1 of the SFP.

(3) The proposed changes to TS 5.3.1 are:

(a) The number of fuel rods in each fuel assembly, nominal length of each fuel rod, and maximum fuel enrichment would be removed.

(b) The current allowance for fuel rod substitutions as justified by analysis would be clarified to specify that the analysis be performed using NRC staff-approved methods.

(c) An allowance to use a limited number of lead test assemblies in nonlimiting core locations would be added.

(d) The current specification requiring Zircaloy-4 fuel cladding would be changed to allow Zircaloy-4 or ZIRLO cladding.

(4) The proposed changes to TS 5.6 are:

(a) TS 5.6.1.1 would be renumbered TS 5.6.1 and the word "borated" would be replaced with "unborated."

(b) A new requirement would be added to specify the maximum fuel enrichment allowed to be stored in the fuel racks.

(c) TS 5.6.1.2 would be deleted.

(5) The associated Bases would also be appropriately revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Analyses were performed to verify that an increase in enrichment of the fuel from 4.5 weight percent U–235 to 5.0 weight percent U–235 would not result in an inadvertent criticality event in the new fuel storage racks or the SFP. The analyses indicate that for the new fuel racks, the k_{eff} will remain below 0.95 if flooded with non-borated water, and below 0.98 if flooded with optimum-density aqueous foam. The analyses indicate that for the spent fuel racks, assuming credit for soluble boron in accident scenarios, the k_{eff} will remain below 0.95 as required.

The increase in the fuel enrichment from 4.5 weight percent U–235 to 5.0 weight percent U–235 does not change any of the external dimensional characteristics of the fuel element, the fuel storage racks, or the SFP itself. The accidents originally evaluated considered those events that could lead to fuel damage and release of radioactive material primarily from mechanical means, such as physical impact on the fuel or the SFP. Because the physical design and methods of operation are the same as previously evaluated, there is no change in the probability of occurrence of such events.

The maximum spent fuel gap activity and the resulting offsite dose consequences after a postulated fuel handling accident are primarily dependent on fuel burnup, and are not significantly affected by an increase in fuel enrichment. For up to 5.0 weight percent U–235 and 60,000 MWD/MTU burnup, NUREG/CR–5009 indicates that fuel handling accident offsite doses could increase by a factor of 1.2, which indicates that doses would still remain within 10 CFR Part 100 limits.

The Generic Letter 90–02 Supplement 1 change to TS 5.3.1 clarifies the requirements associated with fuel reconstitution. It does not change the methodology that would be used to reconstitute fuel.

The use of ZIRLO cladding will not increase the probability or consequences of an accident, since it has improved mechanical properties such as a lower corrosion rate and reduced radiation-induced growth.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The physical and mechanical parameters associated with the fuel assemblies and spent fuel racks are the same as previously evaluated. Therefore, any malfunctions related to the physical aspects of fuel storage are the same as previously evaluated.

The conditions for fuel storage in the proposed new TS 3.9.14.3 provide new criteria for locations where a fuel assembly could be incorrectly placed. However, the incorrect placement of a fuel assembly has been analyzed, and would not cause an inadvertent criticality or any other accident.

The change to 5.0 weight percent U–235 does not result in physical alterations or changes to the operation of the plant, or change the method by which any safety-related system performs its function. The use of ZIRLO cladding does not result in a significant change to the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The acceptance criteria of a k_{eff} of 0.95 (or 0.98 for the new fuel rack optimum moderation accident) provides the margin to criticality. Analyses were performed that conclude that the proposed changes to allow up to 5.0 weight percent U–235 in the new and spent fuel racks meet the acceptance criteria. The use of ZIRLO cladding will not reduce the protection of the public health or safety, as indicated in the NRC's revisions to 10 CFR 50.44 and 50.46 (57 FR 39355).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Theodore R. Quay.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: November 23, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications Section VI, "Waste Disposal Systems," regarding radioactive effluent limitations and the conditions for automatically pumping the contents of the reactor caisson sump to the outfall canal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed revisions to the HBPP Technical Specifications remove the ambiguity in the guidelines for directing caisson sump discharges to the outfall canal. Additionally, the proposed revisions will modify Section VI to be consistent with the guidance provided by NRC Draft Generic Letter for 10 CFR 20 Modification to Technical Specifications (58 FR 68171, dated December 23, 1993). These changes in effluent limits are not related to the probability or consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the HBPP Technical Specifications are administrative in nature and do not change the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed revisions to the HBPP Technical Specifications do not affect the margin of safety associated with parameters for any accident analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Attorney for licensee: Christopher J. Warner, Esquire, Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Seymour H. Weiss.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of amendment request: November 23, 1994.

Description of amendment request: The proposed amendment would revise the Technical Specifications Section VII.C, Plant Staff, to decrease the minimum staff requirements for the shift operating organization from five to two persons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability or consequences of an accident previously evaluated will not be affected by the change in plant staffing. The plant staff manning requirements for the shift operating organization are being reduced to reflect the condition of the plant in a SAFSTOR mode. Previously evaluated accidents do not require operator actions to mitigate or reduce the consequences of occurrence. Consequently, the change will not affect the probability or consequences of an accident occurring.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the HBPP Technical Specifications are administrative in nature. Further, there would not be any change in equipment or system function or operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed revisions to the HBPP Technical Specifications do not affect the margin of safety of any accident analysis since they do not affect the parameters for any accident analysis, and they have no effect on the current operating methodologies or actions that govern plant performance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501.

Attorney for licensee: Christopher J. Warner, Esquire, Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Seymour H. Weiss.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: January 13, 1995.

Description of amendment request: The proposed changes revise Tables 3.7.1 and 3.7.4 to reflect a reduction in the number of primary containment power operated outboard valves for the Traversing Incore Probe (TIP) probes, and a redesignation of the containment penetration numbers for the TIP ball, shear, and check valves. The proposed changes are a result of PBAPS Modification P00068.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TIP system does not serve as an initiator or contributor to any accidents previously evaluated. The system provides a means of calibrating the Local Power Range Monitors and supports thermal limit calculations. The new system performs the same function as the old one. It will provide improved reliability and added redundancy by allowing a complete flux mapping if a detector or drive failure were to occur.

Installation of Modification P00068 and its operation will not degrade any active or passive equipment that responds to an accident. These changes do not decrease the

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effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The modification is considered an enhancement to the TIP system and does not serve as an initiator or contributor to any of the accidents previously evaluated. The proposed changes do not introduce a new mode of plant operation. The new system, like the old one, is designed to keep the ball valves closed upon reset of the Primary Containment Isolation System (PCIS) logic. The new TIP control console will respond to a PCIS isolation signal in the same manner as the old system.

Implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Modification P00068 will not impair or prevent safety systems from performing their safety function. It will not make any changes to the design function of the TIP system. The classification of the TIP ball and shear valves and their control circuitry will not change as a result of this modification.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The TIP system does not serve as an initiator or contributor to any accidents evaluated in the SAR [safety analysis report]. Modification P00068 is considered an enhancement to the existing TIP system and does not change its design function. The reduction in the number of containment penetrations from five to three does not represent a reduction in a margin of safety because of additional indexers in the new system. The proposed changes do not adversely affect the assumptions or sequence of events used in any accident analysis.

Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 13, 1994.

Description of amendment request: The proposed change would remove license condition 2.E from the Facility Operating License. License Condition 2.E incorporated the requirements of U.S. Department of Interior publication "Environmental Criteria for Electric Transmission Systems"—1970, which applies to the construction cleanup, restoration, and maintenance of transmission lines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will remove a license condition unrelated to nuclear safety. License condition 2.E incorporated into the Operating License the requirements of U.S. Department of Interior publication "Environmental Criteria for Electric Transmission Systems"—1970. The goal of this standard is to "safeguard aesthetic and environmental values within the constraints imposed by the current state of high-voltage transmission technology." License condition 2.E addresses the preservation of the environment and natural resources. Removing this condition from the Facility Operating License has no bearing on plant safety or the health and safety of the public considering its non-nuclear nature. The transmission line right-of-ways maintained by the [Power] Authority [of the State of New York] are subject to regulation by other State and Federal Agencies. Removal of this license condition will not affect operation of safety related structures, systems or components nor affect the quality assurance program at the FitzPatrick plant. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

License condition 2.E of the James A. FitzPatrick Plant Operating License applies to the construction cleanup, restoration, and maintenance of transmission lines. The Authority's transmission lines are managed under guidelines based on the "Generic Transmission Line Right-of-Way Management" plan requirements. The requirements imposed by the plan on the FitzPatrick transmission line right-of-ways exceed those of the U.S. Department of Interior publication referenced in license condition 2.E in both scope and details. Therefore, implementing the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) involve a significant reduction in a margin of safety.

License condition 2.E of the James A. FitzPatrick Plant Operating License applies to the construction cleanup, restoration, and maintenance of transmission lines. The requirements imposed by this license condition are unrelated to nuclear safety. Continued operation of the plant without Condition 2.E does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Ledyard B. Marsh.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 16, 1994; supplemented February 10, 1995 (TS 94–07).

Description of amendment request: The proposed change would reduce the maximum allowed power levels and more clearly specify the plant conditions allowed by the technical specifications for operation with one or more main steam safety valves inoperable. In addition, the Bases would be revised to reflect these changes and incorporate the revised methodology used to establish the neutron flux setpoints.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change reduces the power level at which the reactor may be operated with one or more main steam safety valves (MSSVs) inoperable, to ensure that the secondary system is not overpressurized during the most severe pressurization transient of the secondary side. Additionally, this change will combine the TS action statements for 3- and 4-loop operation with one or more MSSVs inoperable, revise the mode requirements and times of Action Statement 3.7.1.1.a, and correct a reference in the bases section to Table 3.7–1. Reduction of the high neutron flux (HNF) trip setpoint will continue to be used as the means to ensure that the required reactor power level reductions are met. Mode 3 will be limited to application when the reactor trip breakers (RTB) are closed. Lack of NIS trip setpoint adjustments with the RTB open has no effect on the accident analysis. There is no change to the function of the MSSVs by the proposed change. This change will not alter any accident analysis assumptions or results for SQN. The proposed change will reduce the amount of relief capacity required to mitigate the consequences of the transient by reducing the total amount of energy in the primary system. Therefore, this change will not increase the probability of an accident.

This change is consistent with current SQN accident analysis assumptions for the MSSVs and does not change the containment response for any design basis event. Therefore, no change in the mitigation of an accident will result from this proposed change and no change will occur in the consequences of any accident currently analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Inadvertent opening of a MSSV is currently analyzed as an initiating event for accidental depressurization of the main steam system. The proposed change does not alter the valves or any other plant component. The valves will continue to perform as analyzed in current accident analyses. The proposed change will not create the possibility for any new or different kind of accident.

By retaining the use of the HNF trip setpoint reduction, no change is being proposed in the methodology used to ensure that power reductions are carried out; therefore, this will not create the possibility of placing the plant into any new unanalyzed condition. Not adjusting the Nuclear Instrumentation System trip setpoint with the RTBs open will not create an accident. The existing accident analysis is still bounding.

Combining the separate action statements for 3- and 4-loop operation into a single action does not create the possibility for a new or different kind of accident. Operation with 4 loops will continue to be required in Modes 1 and 2 by TS 3.4.1.1.

Operation with less than 4 loops will continue to be governed by TS 3.4.1.2 in Mode 3 and TS 3.4.1.3 in Mode 4. This change will not place the plant in a configuration not currently bounded by existing accident analysis.

Revising the mode requirements and their associated times, consistent with the requirements in NUREG–1431, will continue to ensure that if the unit is unable to comply with the limiting condition for operation, the unit will begin an orderly shutdown until a mode is reached where the specification is not applicable.

3. Involve a significant reduction in a margin of safety.

The proposed change reduces the total energy of the reactor coolant system that will ensure the ability of the MSSVs to perform their intended function as assumed in current accident analyses. This change has been evaluated on a generic basis for Westinghouse Electric Corporation designed 4-loop nuclear steam supply systems. SQN plant specific features have been evaluated including power limit calculations and the interaction of the reactor protection system trip time delay and the anticipated transient without scram mitigating system actuation circuitry. Correcting this nonconservatism restores the margin of safety to what was originally envisioned. Therefore, the margin of safety assumed in the accident analysis is not reduced by this change.

Combining the separate action statements for 3- and 4-loop operation into a single action has no effect on the margin of safety for 4-loop operation with one or more MSSVs inoperable. Under the revised TS, 3-loop operation with one or more MSSVs inoperable would only be allowed in Mode 3, and 4-loop operation will be required in Modes 1 and 2 in accordance with current TSs 3.4.1.1 and 3.4.1.2.

Revising the mode requirements and their associated times, consistent with the requirements in NUREG–1431, will not reduce the safety margin since the new requirements will continue to place the unit in a mode where the TS is no longer applicable. The new completion times for mode changes are reasonable, based on operating experience, to reach the required unit conditions from full power conditions in an orderly manner without challenging unit systems.

The margin of safety is unaffected by modifying the limits of Mode 3 applicability to require the RTBs to be closed as the intended safety function is already completed when they are open.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: December 9, 1994, and January 27, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement 4.6.1.2.a and its associated Bases. The changes would defer the next scheduled containment integrated leak rate test (CILRT) for one outage, from Refuel 7 (March 1995) to Refuel 8 (scheduled for September 1996).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report.

The Callaway CILRT history provides substantial justification for the proposed test schedule. Three CILRTs have been performed over a seven year period with successful results. The tests indicate that Callaway has a low leakage containment. There are no structural mechanisms which would adversely affect the structural capability of the containment and that would be a factor in extending the CILRT schedule by one refueling outage.

A risk impact assessment was performed, and a determination was made that there is insignificant risk impact as a result of changing the CILRT schedule. Containment leak rate testing is not an initiator of any accident, the proposed interval extension does not affect reactor operations or the accident analysis, and has no radiological consequences. There will be no changes to 10 CFR 100 dose limits or the control room dose limits. Extending the test interval will not, by itself, increase the probability of a malfunction of equipment important to safety. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated in the Safety Analysis Report.

There are no design changes being made that would create a new type of accident or malfunction. The proposed change will not alter the plant or the manner in which it is operated. The change revises the schedule for performing the periodic CILRT. The purpose of the test is to provide periodic verification of the leaktight integrity of the primary reactor containment, and systems and components which penetrate containment. The tests assure that leakage through containment and systems and components penetrating containment will not exceed the allowable leakage rate values associated with

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conditions resulting from an accident. The change in schedule for performing the CILRT will not adversely affect the containment integrity in the event of an accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the schedule for performing the periodic Type A test does not reduce the margin of safety assumed in the accident analysis for any release of radioactive materials or reduce any margin of safety preserved by the technical specifications. The methodology, acceptance criteria, and the technical specification leakage limits for the performance of the Type A tests will not change. The Type A tests will continue to be performed in accordance with 10 CFR 50, Appendix J and the Callaway Technical Specifications. Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: January 24, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 15.6.5, "Review and Audit," and TS Section 15.7.8, "Administrative Controls." The quality assurance audit frequencies would be removed, the section on emergency plan reviews would be removed, and the period for radioactive effluent reporting would be increased to annual. In addition, the references to "Semiannual Monitoring Report" would be changed to "Annual Monitoring Report" throughout TS Section 15.7.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

In accordance with the requirements of 10 CFR 50.91(a), Wisconsin Electric Power Company (Licensee) has evaluated the proposed changes against the standards of 10 CFR 50.92 and has determined that the operation of Point Beach Nuclear Plant, Units 1 and 2, in accordance with the proposed amendments, does not present a significant hazards consideration.

A proposed facility operating license amendment does not present a significant hazards consideration if operation of the facility in accordance with the proposed amendment will not:

1. Create a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not create a significant reduction in a margin of safety.

The proposed changes are administrative in nature. There is no physical change to the facility, its systems, or its operation. Since the changes will allow more flexibility in assigning resources to work on poor or weak performance areas, the plant safety will be enhanced. Operation of PBNP in accordance with the proposed amendments cannot create an increase in the probability or consequences of an accident previously evaluated, create a new or different kind of accident, or result in a significant reduction in a margin of safety. Therefore, the proposed changes do not present a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Leif J. Norrholm.

Previously Published Notices of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: October 18, 1994.

Description of amendment request: The proposed amendment would change Technical Specification 3.6.1.2 to defer the next scheduled containment integrated leak rate test at Catawba Unit 1 for one outage, from the end-of-cycle (EOC) 8 refueling outage (scheduled for February 1995) to EOC 9 (scheduled for June 1996).

Date of publication of individual notice in **Federal Register**: February 6, 1995 (60 FR 7073).

Expiration date of individual notice: March 8, 1995.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Power Company, et al., Docket No. 50–413 Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: November 29, 1994, as supplemented January 12 and 27, 1995.

Description of amendment request: The proposed amendment requested renewal for Catawba Unit 1 Cycle 9 operation of the steam generator tube inspection bobbin probe voltage-based interim plugging criteria that had been previously approved for Cycle 8.

Date of publication of individual notice in **Federal Register**: February 9, 1995 (60 FR 7801).

Expiration date of individual notice: March 13, 1995.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Georgia Power Company, et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia,

Date of amendment request: January 20, 1995.

Description of amendment request: The proposed amendment would revise Technical Specification 6.4.1.2 to provide a more accurate description of the Plant Review Board composition.

Date of publication of individual notice in **Federal Register**: February 6, 1995 (60 FR 7077).

Expiration date of individual notice: March 8, 1995.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 7, 1994, as supplemented by letters dated December 20, 1994, and January 23, 1995.

Brief description of amendment request: The proposed amendments would change the number of diesel generators (emergency power supply) required to be operable during Mode 6 with greater than or equal to 23 feet of water above the reactor vessel flange, from two to one. The amendments would also allow limited substitution of an alternate onsite emergency power source for one of the two required diesel generators, in Mode 5 and in Mode 6 with less than 23 feet of water. In addition, changes to certain system specifications that are affected by the changes for the emergency power supply were also proposed.

Date of individual notice in **Federal Register**: January 30, 1995 (60 FR 5739).

Expiration date of individual notice: March 1, 1995.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: January 27, 1995.

Brief description of amendment request: The amendment modifies the technical specifications (TSs) by eliminating selected response time testing as described in the BWROG topical report NEDO–32291, "System Analyses for Elimination of Selected Response Time Testing Requirements." The affected TSs are TS 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," TS 3.3.5.1, "Emergency Core Cooling System (ECCS) Instrumentation," TS 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," and TS 3.5.1, "ECCS—Operating."

Date of publication of individual notice in **Federal Register**: February 3, 1995 (60 FR 6739).

Expiration date of individual notice: March 6, 1995.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: October 31, 1994, as supplemented by letter dated December 28, 1994.

Brief description of amendments: The amendments revise the refueling machine overload cutoff limit from less than or equal to 1556 pounds to less than or equal to 1600 pounds. The change was requested because design and fabrication improvements have increased the weight of the fuel assembly.

Date of issuance: February 9, 1995.

Effective date: February 9, 1995, to be implemented within 45 days of the date of issuance.

Amendment Nos.: 89, 76, and 60.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 6, 1995 (60 FR 2160). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: November 20, 1992, as supplemented by letters dated October 22, 1993, and November 30, 1994.

Brief description of amendments: The amendments would increase the allowable out-of-service time for the core operating limit supervisory system (COLSS) from 1 hour to 4 hours before the more restrictive limits based on the core protection calculators (CPCs) must be applied.

Date of issuance: February 14, 1995.

Effective date: February 14, 1995.

Amendment Nos.: 90, 77, and 61.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 6, 1993 (58 FR 591) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 14, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 6, 1994.

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Brief description of amendment: The amendment would remove Technical Specification Section 4.5.H.4 which requires the testing and calibration of pressure switches in certain emergency core cooling system lines.

Date of issuance: February 2, 1995.

Effective date: February 2, 1995.

Amendment No.: 157.

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 26, 1994 (59 FR 53838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1994 (59 FR 53838).

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 25, 1994, as supplemented on July 29, 1994, and August 24, 1994.

Brief Description of amendments: The amendments change the Technical Specifications to correct several typographical errors, to incorporate material implicitly contained in a footnote to an applicability statement, to provide detailed labels for items listed in a table, to correct the citation of references, and to remove references to the Rod Sequence Control System that should have been included in a previous change.

Date of issuance: February 1, 1995.

Effective date: February 1, 1995.

Amendment Nos.: 174 and 205.

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27050). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 1, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: December 12, 1994.

Brief description of amendment: The amendment revises the containment spray (CS) nozzle surveillance interval from 5 to 10 years.

Date of issuance: February 10, 1995.

Effective date: February 10, 1995.

Amendment No.: 157.

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: January 4, 1995 (60 FR 497).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 24, 1994.

Brief description of amendments: The amendments revise the Technical Specifications by deleting the containment recirculation sump level from Accident Monitoring Instrumentation Tables 3.8.9-1 and 4.8.9-1.

Date of issuance: February 9, 1995.

Effective date: February 9, 1995.

Amendment Nos.: 160 and 148.

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37066).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut, and Northeast Nuclear Energy Company, Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of application for amendments: June 30, 1994, as supplemented November 18, 1994, and January 12, 1995.

Brief description of amendments: The amendments modify the Administrative Controls Section of the Technical Specifications by replacing the present Nuclear Review Board (NRB) for the Haddam Neck Plant, and the NRB and site Nuclear Review Board for Millstone Station with a Nuclear Safety Assessment Board which will serve Millstone Units 1, 2, and 3, and Haddam Neck.

Date of issuance: February 14, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 181, 79, 184, 104.

Facility Operating License Nos. DPR-61, DPR-21, DPR-65 AND NPF-49. Amendments revised the Technical Specifications.

The November 18, 1994, and January 12, 1995, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Date of initial notice in **Federal Register**: August 31, 1994 (59 FR 45021).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457, for the Haddam Neck Plant, and Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360, for Millstone 1, 2, and 3.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 29, 1994, as supplemented in a letter dated December 13, 1994.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 3/4.4.5 and 3.4.6.2 including associated Bases 3/4.4.5 and 3/4.4.6.2 to allow the implementation of

steam generator tube interim plugging criteria (IPC) for the tube support plate elevations during operating cycle 11. The current TSs require that tubes with imperfections exceeding 40 percent of the nominal tube wall thickness be removed from service. The IPC will allow a test voltage-based criterion of 1.0 volts as determined by a bobbin probe inspection of the tubes. Voltages greater than 1.0 volt will be further examined using a pancake coil probe. Tubes showing flaw indications with a bobbin voltage greater than 3.6 volts will be plugged or repaired.

Date of issuance: February 3, 1995.

Effective date: February 3, 1995.

Amendment No: 184.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 17, 1994 (59 FR 42337). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: November 8, 1994.

Brief description of amendment: The amendment revised the technical specification section that describes the frequency for performing the containment integrated leak rate tests.

Date of issuance: February 6, 1995.

Effective date: February 6, 1995.

Amendment No.: 175.

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 4, 1995, (60 FR 502). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: July 25, 1994.

Brief description of amendment: This amendment will upgrade Technical Specification 3/4.7.1.6 for the Main Feedwater Line Isolation Valves to be consistent with NUREG-1432, Standard Technical Specifications for Combustion Engineering Plants.

Date of Issuance: February 9, 1995.

Effective Date: February 9, 1995.

Amendment No.: 71.

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 31, 1994 (59 FR 45024) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: July 25, 1994.

Brief description of amendments: These amendments implement GL 93-05 Items 5.8, 6.1, 7.1 and 7.5.

Date of Issuance: February 9, 1995.

Effective Date: February 9, 1995.

Amendment Nos.: 133 and 72.

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 31, 1994 (59 FR 45023) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: November 7, 1994.

Brief description of amendments: The amendments permit both containment personnel airlock doors to be open while moving fuel during refueling operations.

Date of issuance: February 2, 1995.

Effective date: February 2, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 69; Unit 2—Amendment No. 58.

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63123). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 8, 1994.

Brief description of amendments: The amendments permit the substitution of an extended range neutron flux monitor for one of the source range neutron flux monitors during refueling operations.

Date of issuance: February 13, 1995.

Effective date: February 13, 1995.

Amendment Nos.: Unit 1—Amendment No. 70; Unit 2—Amendment No. 59.

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63124). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 6, 1994, as supplemented by letters dated November 17, 1994, and December 5, 1994.

Brief description of amendments: The amendments modify Technical

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Specification 3/4.8.1.1, "A.C. Sources" by revising the action statements and surveillance requirements for testing of the standby diesel generators (SDGs). The amendments eliminate excessive and unnecessary testing of the SDGs consistent with the guidance provided in NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements," NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Generic Letter 84–15, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," and Generic Letter 93–05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." The changes include: (1) eliminating the requirement to demonstrate the operability of an operable SDG whenever an offsite AC power source is determined to be inoperable, or whenever a support system or an independently testable component of another SDG is inoperable, (2) eliminating the requirement to load the diesel in 10 minutes during tesfing, (3) replacing the minimum required loading for testing with a load band, (4) relocating some surveillance requirements to the Diesel Fuel Oil Testing Program, and (5) eliminating unnecessary loss-of-offsite power tests.

Date of issuance: February 2, 1995.

Effective date: February 2, 1995, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 68; Unit 2—Amendment No. 57.

Facility Operating License Nos. NPF–76 and NPF–80. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37073). The November 17, 1994, and December 5, 1994, submittals provided clarifying information and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: August 3, 1994.

Brief description of amendments: The amendments relocate the Radiological Effluent Technical Specifications to other controlled documents consistent with NRC Generic Letter 89–01.

Date of issuance: February 10, 1995.

Effective date: February 10, 1995.

Amendment Nos.: 189 and 175.

Facility Operating License Nos. DPR–58 and DPR–74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 9, 1994 (59 FR 55873).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 24, 1994, as supplemented by letter dated December 16, 1994.

Brief description of amendment: This amendment modifies Technical Specifications Table 4.1–3 surveillance requirements for the new emergency feedwater flow instrumentation. Specifically, the currently installed analog feedwater flow transmitters are to be replaced by new, digital-type flow transmitters. The new digital flow emergency feedwater flow transmitters are continuously self-checking and have a recommended calibration interval of 9 years. The licensee will verify flow whenever the system operates and send one transmitter back to the manufacturer for recalibration every refueling outage.

Date of issuance: February 15, 1995.

Effective date: February 15, 1995.

Amendment No.: 147.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 7, 1994 (59 FR 63124). The December 16, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station. Lincoln County, Maine

Date of application for amendment: May 25, 1994, as supplemented September 1, 1994, and January 13, 1995.

Brief description of amendment: This amendment allows (1) entry through an operable personnel air lock hatch to perform surveillance testing, repair an inoperable hatch, or perform other necessary activities inside containment; (2) update plant Technical Specifications to reflect a previous change to the list of containment boundary valves; (3) add a new exception to allow quarterly surveillance testing of the excess flow check valves; (4) add a new exception to allow periodic preventive maintenance on control room ventilation lasting up to 30 minutes per calendar quarter, without a written report of such inoperability; and (5) make related administrative changes to reflect and clarify items 1 through 4 above.

Date of issuance: February 10, 1995.

Effective date: February 10, 1995.

Amendment No.: 146.

Facility Operating License No. DPR–36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 22, 1994 (59 FR 32231). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 3, 1993.

Brief description of amendment: The amendment revises License Condition 2.C.(4), "Turbine System Maintenance Program," and deletes Technical Specification (TS) 3/4.3.8, "Turbine Overspeed Protection System," and its associated Bases. The revision to License Condition 2.C.(4) indicates that the requirements of this license condition have been satisfied. The deletion of TS 3/4.3.8 and its associated Bases provides Niagara Mohawk Power Corporation the flexibility to implement the manufacturer's recommendations for turbine steam valve surveillance test requirements. These test requirements will be contained in the Updated Safety Analysis Report.

Date of issuance: February 14, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 63.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: December 8, 1993 (58 FR 64611). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 25, 1994.

Brief description of amendment: The amendment changes the Technical Specifications concerning four related issues: (1) power-operated relief valve and block valve reliability; (2) low-temperature overpressure protection; (3) boron dilution; and (4) shutdown risk management.

Date of issuance: February 15, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 185.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 25, 1994 (59 FR 27060). The September 21, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 18, 1993, as supplemented by letter dated November 23, 1994.

Description of amendment request: The amendment revises the Appendix A Technical Specifications (TS) relating to the Independent Safety Engineering Group. Specifically, the amendment revises the title of TS 6.2.3 from Independent Safety Engineering Group to Independent Technical Reviews, and replaces the requirements for the five person Independent Safety Engineering Group with requirements relating to a technical review program to perform independent technical reviews.

Date of issuance: February 14, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 35.

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 18, 1993 (58 FR 43927). The licensee's letter dated November 23, 1994, provided a minor revision to the application but does not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: October 21, 1994.

Brief description of amendments: These amendments add a test exception to allow reactor coolant temperatures up to 212 degreos F during hydrostatic or inservice leak testing while in OPERATIONAL CONDITION 4 without entering OPERATIONAL CONDITION 3.

Date of issuance: February 13, 1995.

Effective date: To be implemented within 30 days from the date of issuance.

Amendment Nos.: 142 and 112.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 22, 1994 (59 FR 66057). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: December 9, 1993, as supplemented by letters dated July 5, September 9, October 19, November 15, and December 2, 1994, January 6 and January 23, 1995. The supplemental letters provided clarifying information that did not change the initial no significant hazards consideration determination.

Brief description of amendment: This amendment raises the authorized maximum power level from 3293 MWt to a new limit of 3458 MWt. The amendment also approves changes to the Technical Specifications to implement uprated power operation.

Date of issuance: February 16, 1995.

Effective date: This license amendment is effective as of its date of issuance and is to be implemented prior to startup in Cycle 4.

Amendment No.: 51.

Facility Operating License No. NPF–85. This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: February 16, 1994 (59 FR 7695). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments. October 29, 1993.

Brief description of amendments: These amendments eliminate the main

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steamline radiation monitoring system high radiation trip function for initiating (1) an automatic reactor scram and automatic closure of the main steamline isolation valves, and (2) automatic closure of the main steamline drain valves, main steam and reactor water sample line valves. The amendments also approve the relocation of portions of the information contained in the Bases section.

Date of issuance: February 16, 1995.
Effective date: February 16, 1995.
Amendment Nos. 89 and 52.
Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: January 5, 1994 (59 FR 624). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 16, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: May 13, 1994, as supplemented June 24 and September 27, 1994.
Brief description of amendment: The amendment proposes to amend Appendix A of Operating License DPR–18 to revise Section 6.0 "Administrative Controls" of the Ginna Technical Specifications (TSs) and would change the title of Senior Vice President, Production and Engineering, include a provision to allow future title changes without license amendment, and implement those changes in NUREG–1431 "Standard Technical Specification—Westinghouse Plants," dated September 1992, by relocating to licensee controlled documents those specifications controlled by regulations and the existing review and audit requirements. The remainder of this amendment request will be reviewed at a later date.
Date of issuance: February 6, 1995.
Effective date: February 6, 1995.
Amendment No.: 58.
Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: July 20, 1994 (59 FR 37084). The June 24, 1994, submittal provided information which did not change the initial no significant hazards consideration determination. The licensee's submittal of September 27, 1994, limited, but did not change, the licensee's previously requested TS changes of May 13, 1994.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 30, 1993, as supplemented by letters dated June 3, 1994, August 25, 1994, and January 3, 19, and 30, 1995.
Brief description of amendments: These amendments will revise TS Table 3.3–1, "Reactor Protective Instrumentation," to allow the use of the source range neutron flux monitors in place of safety related excore monitors in Modes 3, 4, and 5, with the reactor trip circuit breakers open or the Control Element Assembly (CEA) Drive System not capable of CEA withdrawal, for the purpose of monitoring core reactive changes.
Date of issuance: February 13, 1995.
Effective date: February 13, 1995.
Amendment Nos.: 115 and 104.
Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: September 28, 1994 (59 FR 49434). The additional information contained in the January 3, 19, and 30, 1995, letters were clarifying in nature, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: July 28, 1994, as supplemented by letters dated January 30 and February 13, 1995.
Brief description of amendments: These amendments propose to revise Technical Specification (TS) 3.9.8.1 "Shutdown Cooling and Coolant Circulation—High Water Level," TS 3.9.8.2 "Shutdown Cooling and Coolant Circulation—Low Water Level," and their Bases to facilitate testing of low-pressure safety injection system components and permit additional flexibility in scheduling maintenance on the shutdown cooling system.
Date of issuance: February 15, 1995.
Effective date: February 15, 1995.
Amendment Nos.: 116 and 105.
Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications on a one-time basis for each unit.
Date of initial notice in **Federal Register**: October 12, 1994 (59 FR 51627). The additional information contained in the supplemental letters dated January 30 and February 13, 1995, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 15, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: October 17, 1994, as supplemented January 30, 1995.
Brief description of amendment: The amendment changes the Technical Specifications to relocate the seismic monitoring instrumentation (SMI) Limiting Condition for Operation (LCO), Surveillance Requirements (SRs), and associated tables and bases contained in Technical Specifications (TS) sections 3.3.3.3 and 4.3.3.3 to the Final Safety Analysis Report (FSAR) or an equivalent controlled document.
Date of issuance: February 15, 1995.
Effective date: February 15, 1995.
Amendment No.: 122.
Facility Operating License No. NPF–12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register**: November 8, 1994 (59 FR 55717). The January 30, 1995, supplement did not affect the staff's finding of no significant hazards consideration.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1995.
No significant hazards consideration comments received: No.
Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 29, 1993.
Brief Description of amendment: The proposed changes revise standards for testing of charcoal used for removal of radioactive iodine in ventilation systems at the Browns Ferry Nuclear Plant.
Date of issuance: February 13, 1995.
Effective Date: February 13, 1995.
Amendment Nos.: 215, 231 and 188.
Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register**: December 22, 1993 (58 FR 67862). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1995.
No significant hazards consideration comments received: None.
Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendment: March 29, 1994.
Brief Description of amendment: The amendment adds requirements for load shedding components being added to ensure that emergency diesel generators are not overloaded during design basis accidents.
Date of issuance: February 14, 1995.
Effective Date: February 14, 1995.
Amendment No.: 189.
Facility Operating License No. DPR–68: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: August 3, 1994 (59 FR 39597). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 14, 1995.
No significant hazards consideration comments received: None.
Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 16, 1994; supplemented January 19, 1995 (TS 94–16).
Brief description of amendments: The amendments remove the 900 rpm emergency diesel generator surveillance test criteria and a requirement that the plant be shutdown for performance of the interdependence diesel generator tests.
Date of issuance: February 9, 1995.
Effective date: February 9, 1995.
Amendment Nos.: 195 and 186.
Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.
Date of initial notice in **Federal Register:** December 29, 1994 (59 FR 67350). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1995.
No significant hazards consideration comments received: None.
Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special-circumstances provision in 10 CFR 51.12(b) and has

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made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director)*: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: January 30, 1995.

Brief description of amendment: The amendment adds a footnote to Technical Specification Table 4.3.1.1–1 to allow a one-time extension of the surveillance interval for the main steam line isolation valve (MSIV) closure reactor protection system channel functional test. This extension averts the need to perform the functional test prior to the start of the upcoming Unit 2 refueling outage.

Date of Issuance: February 15, 1995.

Effective date: Immediately and shall be implemented prior to 2:45 a.m. CST on February 15, 1995.

Amendment No.: 86.

Facility Operating License No. NPF–18: The amendment revised the Technical Specifications.

Press release issued requesting comments as to proposed no siginificant hazards consideration: Yes. February 6, 1995, *Morris Daily Herald; Ottawa Daily Times; and Streator Times-Press.*

Comments received: No. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Illinois and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 14, 1995.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

NRC Project Director: Robert A. Capra.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4870 Filed 2–28–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–245, 50–336, 50–423]

Northeast Utilities; Issuance of Director's Decision Under 10 CFR 2.206

[Millstone Nuclear Power Station] [License Nos. DPR–21, DPR–65, NPF–49]

Notice is hereby given that the Acting Director, Office of Enforcement, has issued a decision concerning the Petitions filed by Ms. Carmela V. Marien and Ms. Marianne W. Nericcio on August 21, 1993. The Petitions requested that the NRC initiate an investigation and accelerated enforcement action against Northeast Utilities (Licensee) for willful violation of the employee protection provisions of 10 CFR 50.7.

After due consideration of Petitioner's assertions, the Acting Director, Office of Enforcement, has denied the Petitions. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–95–04) which is available for public inspection in the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Acting Director, Office of Enforcement.

[FR Doc. 95–4978 Filed 2–28–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corporation; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 177 to Facility Operating License No. NPF–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance, to be implemented within 60 days of issuance.

The amendment revises Technical Specification 2.3.D to change the setpoints "Reactor High Pressure, Relief Valve Initiation" by increasing the setpoint value by 15 psig for each of the Electromatic Relief Valves in the Automatic Depressurization System.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 5, 1994 (59 FR 34453). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 9056).

For further details with respects to the action see (1) The application for amendment dated June 15, 1994, as supplemented September 23, and November 23, 1994, (2) Amendment No. 177 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick, Sr.

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4977 Filed 2–28–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–483]

Union Electric Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway plant, located in Callaway County, Missouri.

The proposed amendment would modify Technical Specification (TS) Section 3/4.9.1 to establish administrative controls to address a possible boron dilution event directly from the reactor makeup water (RMW) system. An unreviewed safety question was involved with the use of RMW to rinse items removed from the refueling pool and to spray down the refueling pool walls during the pool drain evolution. The use of RMW in prior refueling outages during these Mode 6 activities raised the possibility of a different type of accident than any previously evaluated in the Callaway Final Safety Analysis Report (FSAR).

FSAR Section 15.4.6.2 currently states that administrative controls during Mode 6, i.e., closing and locking dilution source manual valves, preclude an inadvertent dilution of the boron concentration of the primary system. Since these valve closures do not preclude the potential dilution scenario described above, different procedural controls are required to ensure that LCO 3.9.1 boron concentration limit of 2000 ppm is met.

NRC Generic Letter 85–05, "Inadvertent Boron Dilution Events," January 1985, and NSAC–183, "Risk of PWR Inadvertent Criticality During Shutdown and Refueling," dated December 1992, documents the technical justification for determining that boron dilution events are self-limiting. Based on the analyses provided in these documents, the staff's acceptance criteria remains valid for the different boron dilution transient (i.e., that gradual boron dilution events are

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self-limiting due to inherent reactivity feedback mechanisms). Given the above, there will be no increase in the consequences of any accident or equipment malfunction.

In a letter dated September 8, 1994, the licensee submitted an application to amend their Technical specifications. In their submittal, the licensee confirmed the applicability of the analyses in GL 85–05 and NSAC–183 to the subject boron dilution event. Pursuant to 10 CFR 50.59(c)(2), the proposed amendment is required since changes are needed to procedural controls as described in the FSAR. These changes involve an unreviewed safety question which require Commission approval prior to implementation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The initiating events are presented in revised FSAR Section 15.4.6.2. The proposed changes affect only the procedural controls applicable for Mode 6.

Overall protection system performance will remain within the bounds of the accident analyses documented in FSAR Chapter 15, WCAP–10961–P, and WCAP–11883 since no hardware changes are proposed.

There will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

This amendment application does not involve any hardware changes. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, there will be no increase in the probability of any accident previously evaluated.

The Technical Specification limits on Mode 6 boron concentration will be met. The conclusions of NRC Generic Letter 85–05 and NSAC–183 will remain valid (i.e., that gradual boron dilution events are self-limiting due to inherent reactivity feedback mechanisms). Given the above, there will be no increase in the consequences of any accident previously evaluated.

(2) As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function.

Administrative controls will limit the volume of unborated water which can be added to the refueling pool for decontamination activities. Administrative controls will also limit the potential for an unborated layer of water from entering the core region during the draining evolution. Technical Specification 3.9.1. will continue to be met.

Given the above and the safety evaluation continued in Attachment 1 to the licensee's September 8, 1994, letter, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) The proposed administrative controls are sufficient to preclude diluting the boron concentration of the refueling pool below 2000 ppm. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection function. There will be no impact on DNBR limits, F_Q, F–delta–H, LOCA PCT, peak local power density, or any other margin of safety.

Based upon the preceding information, it has been determined that the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room 6D22, Two White Flint, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the local public document room located at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 248–5100 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Thomas A. Baxter, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N. Street, N.W., Washington, D.C. 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W. Washington, D.C. 20555, and at the local public document room located at Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 24th day of February 1995.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–5134 Filed 2–28–95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35411; File No. SR–Amex–95–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Membership Structure and Requirements

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 17, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing certain revisions to its Constitution, Rules and Membership Lease Plan regarding membership structure and requirements. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

[1] This filing withdraws and replaces File No. SR–Amex–94–23, which was noticed for comment in Securities Exchange Act Release No. 34968 (November 10, 1994), 59 FR 59804 (November 18, 1994). The prior Amex proposal and the comments received in response thereto are available at the Commission.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange Member Ownership Issues Committee was established in June of 1992 to examine the need for changes and revisions in the Exchange's membership structure and requirements. Following an extensive review, the Committee recommended certain changes in order to update the membership structure and respond to the expressed needs of the membership. These changes, which have been approved by the Exchange's Board of Governors and membership, are described below.

Seat Ownership

Currently, each of the 661 regular memberships and 203 options principal memberships are held in the name of an individual member.[2] Member firms and member corporations may beneficially own these memberships by designating an individual (typically a general partner or employee of a member firm or an officer or employee of a member corporation) nominally to own the seat in their behalf. This is accomplished by either using a lease [3] or an a-b-c agreement.[4] In the case of a lease, a member organization must also place the lease in the name of an individual nominee as lessor.

Individuals are not permitted to own more than one seat. Member organizations, on the other hand, may own multiple seats beneficially, but each seat must be nominally owned by an individual member.

The Exchange proposes to eliminate the requirement that seats be individually owned. The Amex believes that this requirement is outdated and not responsive to the needs of the member community. Several other exchanges permit organizations, as well as individuals, to own memberships (*e.g.*, the Chicago Board Options Exchange ("CBOE"), the New York Futures Exchange and the Pacific Stock Exchange ("PSE")).

Under the proposal, an organization would be able to be both legal and beneficial owner of one or more memberships. The organization would be able to lease a seat to a lessee or to designate an individual as nominee to "operate" the seat. As a general matter, nominees (like lessees) would be deemed to be members of the Exchange and would be subject to all of the obligations and enjoy all the privileges of membership under the Exchange Constitution and Rules, except (1) for purposes of participating in any distribution of Exchange assets or funds upon liquidation, dissolution or winding up of the affairs of the Exchange and (2) ultimate control of the membership would rest with the organization owner.[5] The a-b-c agreement would no longer be required. It would be replaced with another document to authorize the nominee to act on the member organization's behalf in all Exchange matters and to provide that the member organization is responsible for all the nominee's Exchange-related obligations.

The proposal also would permit both individuals and organizations to own multiple memberships. Individuals would be able to lease their additional seats, or to designate nominees to "operate" the seats and act as their employees.

A number of members have indicated that they would be interested in acquiring more than one membership. The Exchange finds no compelling reason to continue to prohibit multiple memberships. In this regard, it should be noted that the CBOE, the PSE, the Philadelphia Stock Exchange ("Phlx") and virtually all commodities exchanges permit multiple ownership.

Leasing

Currently, both the lessor and the lessee of a leased seat must be individuals. Because, under the proposal, organizations would be permitted to own seats directly, as well as beneficially, the member organization may be the lessor. Such member organization would not be required to designate a nominee as the lessor on the seat.

Claims Procedure

Under the current rules, no member may sell or transfer his membership unless he does so pursuant to established Exchange procedures. All transfers must be posted on the Exchange Bulletin Board and published in the *Weekly Bulletin* for at least seven days. During this time, other members and member organizations must file their claims against the seat with the Exchange. The same procedures are used for intrafirm transfers. Before the seat can be transferred to another employee in the firm, the firm is required to satisfy any outstanding claims.

Basically, the same transfer and claims procedures would be utilized under the new membership structure. In addition, the designation of a nominee by a seat owner would be deemed to be a transfer, and the posting and claims procedures would apply.

Subordination of Membership to Trading Losses and Debts

Currently, all memberships are subordinated to (*i.e.*, "stand behind") the trades of the member in whose name the seat is held. In the case of a leased seat, the lessor's seat is at risk for his lessee's's trading losses and other debts incurred in connection with membership. In the case of seats held pursuant to a-b-c agreements, member organizations are responsible for obligations that their a-b-c seatholders incur.[6]

The above requirements would remain the same under the proposal. If an individual or organization owns multiple memberships that are held subject to one or more leases, only the seat used by a given lessee's would stand behind that lessee trades. If, however, an individual or organization owns multiple memberships as to which nominees have been designated, all of the owner's seats would stand behind the trades of any nominee.

Fees

Currently, when a seat is sold, the initiation fee is $2,500 for both a regular and options principal membership. The initiation fee on a nominal transfer (*i.e.*, within a firm pursuant to an a-b-c agreement)[7] is $2,500 for a regular membership and $500 for an options principal membership. When a membership is transferred to a lessee, the initiation fee is $1,500 for a regular membership and $500 for an options principal membership. Dues for all members are $750 per year. Floor facilities fees are $1,400 per year for active members.

The Exchange is proposing to change the fee structure in order to equalize fees between regular and options principal memberships.[8] The initiation fee of $2,500 when a seat is sold would be retained for both regular and options principal memberships. However, all nominal transfers (*i.e.*, intra-firm) and leases would be subject to a $1,500 initiation fee. Changes in nominees would be deemed to be nominal transfers. According to the Exchange, it does not appear to be necessary or appropriate to retain the disparity in initiation fees for nominal and lease transfers of regular and options principal memberships in view of the fact that the administrative expenses (*i.e.*, staff time and paperwork) attributable to the two types of membership are identical.

The Exchange, however, does not believe that it would be appropriate for the initiation fee requirement to deter members from taking advantage of the new alternatives that would be available in structuring ownership of Amex seats. Accordingly, for the ninety-day period, after these changes become effective, no initiation fee would be charged for changes in membership ownership, except for bona fide sales and bona fide changes in leases or nominees. A $250 processing fee would be imposed on transfers where no initiation fee is charged.

Voting

Currently, members subject to an a–b–c agreement sign an irrevocable proxy giving their votes to their member organizations. The organization then designates an individual (typically an employee) who is authorized to vote on behalf of the membership. In the case of leased seats, the vote is negotiable between the lessor and lessee.

Under the new rules, organizations would be entitled to vote all of the memberships that they own (and do not lease out) and would have to designate an individual who is authorized to vote on their behalf. Individuals who own more than one seat would be able to vote on behalf of the seat that they are actively using, as well as the seats of their nominees. With respect to leased seats, the vote would still be negotiable between lessor and lessee. There would be a specific box on the lease itself on which the parties would indicate who is authorized to vote.[9]

Gratuity Fund

Currently, the Exchange Gratuity Fund ("Fund") provides that only families of regular members [10] receive the Gratuity Fund death benefit of $100,000. To fund the death benefit, each regular member contributes $152 to the Fund upon becoming a member and is assessed $152 each time a fellow regular member dies (subject to reduction in the first assessment of the year to reflect income earned by the Fund in the previous year). In the case of leased seats, the lessor is considered the member for purposes of the Gratuity Fund.

A number of changes to the Gratuity Fund are proposed. These changes are intended to achieve two goals: To provide increased benefits and to close "loopholes" which could enable persons to become Participants in the Gratuity Fund under circumstances which would be inappropriate.

Under the proposal, the benefit would be increased to $125,000. The amount of each assessment would fluctuate since, as discussed below, the number of Participants in the Fund would vary based on who is eligible at the time of a member's death and since the extent to which Participants were "phased-in" would vary.[11] As is currently the case, Participants would have to pay both an initial assessment upon becoming a Participant and an assessment each time an eligible individual dies. The first group of persons to become newly eligible for the Gratuity Fund upon the adoption of these changes would be required to pay an initial assessment of $300.[12] Thereafter, persons who become eligible would be required to pay an initial assessment based on the number of Participants in the Fund at that time.

Under the proposal, options principal members and both options principal and regular member lessees (and nominees) would be included in the Gratuity Fund,[13] in additional to regular members and some lessors.[14] In order for a lessor's beneficiaries to be eligible to receive a Gratuity Fund benefit, the lessor must have been "active" on the Floor for at least two continuous years during this career (but after June 10, 1993).[15] "Active" is defined as meeting all Exchange requirements to be active on the Floor,[16] including passing any necessary examinations and being registered as, or associated with, a broker-dealer. "Two continuous years" is defined as two calendar years, meaning a period from one date through the preceding date two years hence (*e.g.*, from May 1, 1995 through April 30, 1997). Lessees and nominees would have to be currently active for their beneficiaries to receive a benefit. Individuals who own seats either would have to be currently active on the Floor or would have to have been active for at least two continuous years during their career (but after June 10, 1993) in order for their beneficiaries to receive a Gratuity Fund benefit.

It should be noted that a person would not have to maintain the same status for the two-year period. For example, a person who is a lessee for one and a half years and who then buys the seat (or another seat) and remains on it for at least six months would satisfy the active requirement. In addition, a person may be off the seat for up to sixty consecutive days during the two-year period without being considered to have

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[2] Both regular members and options principal members are exchange members as defined in Section 3(a)(3) of the Act. A regular member may execute transactions in both equities and derivatives. In contrast, an options principal member is limited to trading as principal in options and other derivative products. For further discussion of types of memberships, *see* Art. IV. Sec. 1 of the Amex Constitution.

[3] As noted below, the lease must be executed by the nominal seat owner, rather than the member organization with which such individual is associated and which is the beneficial owner of the membership.

[4] An a-b-c agreement is an arrangement between the individual who nominally owns a seat and the member organization with which such individual is associated and which is the beneficial owner of the membership. Upon termination of the a-b-c agreement, the individual must either (1) retain the membership and pay the member organization the amount necessary to purchase another membership; (2) sell the membership with the proceeds paid over to the member organization; or (3) transfer the membership to a person designated by the member organization.

[5] As discussed below, *see infra* note 9 and accompanying text, the owner would retain the right to vote seats held by nominees and certain lessees.

[6] A member organization is responsible even if its a-b-c seatholder's obligations exceed the value of the seat.

[7] *See supra*, note 4 and accompanying text.

[8] This proposal would not affect any change to annual dues or other fees.

[9] If no specification is made, the lessee would vote the seat.

[10] *See supra*, note 2.

[11] For further discussion of the "phase-in" schedule for Gratuity Fund Participants, *see infra* note 18 and accompanying text.

[12] The Gratuity Fund currently maintains a reserve of $200,000, the amount necessary to pay two death benefits. If the benefit is increased, the reserve would be increased accordingly. The initial assessment of $300 on new Participants would allow the Fund to achieve this goal, and would place new Participants on a par with existing Participants who, of course, paid an initial assessment when they first became eligible to participate in the Fund.

[13] Options principal members, lessees and nominees would also be eligible to become trustees of the Gratuity Fund.

[14] Lessors (and owners of seats as to which nominees have been designated) could be included in the Gratuity Fund pursuant to the transition arrangements, *see infra* notes 24–28 and accompanying text, or based on their prior active status, *see infra* notes 15–17 and accompanying text.

[15] As noted below, *see infra* note 28 and accompanying text, June 10, 1993 would be the cut-off date for eligibility for the transition arrangements.

[16] *See* Para. 9176 of the Amex Guide ("Membership Requirements and Admissions Procedures").

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interrupted that period. Individuals would lose their right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which the person is not a lessor, lessee, nominee or seat owner.[17] Lessors who lose their prior active status would have to be active for another two continuous years in order to requalify for the Gratuity Fund. Members and nominees would either have to be currently active or active for another two continuous years in order to be eligible for the Gratuity Fund again.

Further, under the proposal, the Exchange would implement, for new Gratuity Fund Participants, a four year "phase-in" schedule based upon the length of time the individual in question had been a Participant.[18] The "phase-in" would operate as follows:

Upon the death of a Participant, a payment would be made based upon the length of time such person had been a Participant, according to the following schedule:

- Less than one year—$25,000 (20% "phase-in").
- One year or more but less than two years—$50,000 (40% "phase-in").
- Two years or more but less than three years—$75,000 (60% "phase-in").
- Three years or more but less than four years—$100,000 (80% "phase-in").
- Four years or more—$125,000 (100% "phase-in").

If a participant who was "phasing-in" ceases to be a Participant for a period of less than five years, and such individual thereafter again becomes a Participant, he would be able to aggregate his periods of participation for purposes of the "phase-in." For example, if an individual is a Participant for one year and then ceases to be a Participant for four years, and if he were again to become a Participant, he would be credited with the amount of time he previously spent as a Participant for purposes of the "phase-in" schedule.

If an individual who was a Participant ceases to be a Participant for a period of five years or more, and such individual thereafter again becomes a Participant, he would not be able to aggregate his periods of participation for purposes of the "phase-in" described above (i.e., regardless of the length of time he had previously been a Participant, the "phase-in" schedule would be applied as if he had never been a Participant in the past).

Each membership would pay at least one assessment, regardless of whether the owner or a lessee or nominee qualifies for the Gratuity Fund.[19] In some instances, there would be one assessment per seat and on others two (i.e., when both lessor and lessee are qualified). Gratuity Fund assessments would be based in all cases on the amount of the benefit payable and would be the same for all memberships assessed, regardless of whether or to what extent a particular Participant being assessed has already "phased-in" to full eligibility.

No member's beneficiaries would be entitled to receive more than one Gratuity Fund benefit upon the member's death by virtue of the deceased member's status as both lessor and lessee, or for any other reason. The family of a member who owns multiple memberships would be able to collect only one benefit. The member would be eligible on only one seat, and must designate that seat to the Exchange. The lessees or nominees of the other seats, of course, would be eligible on those seats.

The individuals who are nominee-lessors on behalf of member organizations would no longer be qualified for the Gratuity Fund under the proposed system (although, as discussed below, there would be a grandfather clause). This is because the member organization itself would be the lessor. Under the proposal, however, the individual who would have been named as lessor most likely would not qualify for the Gratuity Fund anyway, since member organizations typically named an upstairs executive as lessor and such person would not be "active" and may not have been "active" in the past, at least within the last five years.

The trustees of the Gratuity Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.[20]

Pension Trusts

Currently, the Exchange does not permit ownership of seats by trusts.[21] The proposal would permit pension plans (generally comprised of trusts or custodial accounts, including Keoghs and Individual Retirement Accounts) of "active" members (as defined above) to acquire ownership of one or more seats for investment purposes, and either to lease the seat or to designate a nominee to operate it.[22] The intent is to make this available only to pension trusts where the trust sponsor is an active member, or where the sponsor is a member organization and at least fifty percent (50%) of the pension trust beneficiaries are active members and/or Floor employees of the member organization. The trust itself would be the owner of the membership, and the trustee would have to become an approved person.[23] Only the nominee or lessee would be eligible for the Gratuity Fund, provided he or she is not already eligible for the Gratuity Fund with respect to another seat (e.g., as the owner of that seat). As is the case for other member organizations, the trust would be entitled to vote all of the seats that it owns (and does not lease out) and may designate who may vote on its behalf. If the seat is leased, the vote would be negotiable between the trust and the lessee.

Transition Arrangements

The proposal includes a grandfathering provision for the Gratuity Fund revisions.[24] All regular members and existing regular member lessors would be grandfathered with respect to the "active" requirement, that is, they would be deemed to have met it, even if they never were active for a two-year period. The grandfathering provision would include those lessors who are nominee-lessors on seats beneficially owned by an organization. A person grandfathered could lose his right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which he is not a lessor, lessee, nominee or seat owner.[25] As discussed above, for all non-grandfathered individuals, the "active" requirement must be satisfied after June 10, 1993.

Individuals who currently own options principal memberships would have a one-time opportunity to "opt-in" or "opt-out" of the Gratuity Fund. A decision to "opt-out" would be irrevocable for the rest of the person's life (unless the person subsequently buys a regular membership).[26] Options principal members who "opt-in" would be grandfathered with respect to the "active" requirement. Current lessees (both regular and options principal membership) would also have the right to "opt-out" of the Gratuity Fund, but such decisions would be effective only for the duration of their current lease, and new leases would require lessee participation in the Gratuity Fund. Lease renewals by the same two parties would not be considered to be new leases. Any new options principal member seat owner (other than an individual owner who previously chose to "opt-out" irrevocably as discussed above)[27] would be covered by the new rules.

With respect to the "phase-in" requirement, all those who are Participants in the Gratuity Fund on the date these proposals become effective, and all those who become Participants by virtue of these amendments (e.g., lessees and options principal members), would be deemed to be fully "phased-in," regardless of how long such persons have been Participants or Exchange members. All who become Participants thereafter would be subject to the "phase-in" requirements. If a lessee or options principal member "opted out" of the Gratuity Fund, as described above, and on some other basis later becomes a Participant, he would at that time be subject to the "phase-in."

While the foregoing grandfather provisions are appropriate in most cases, there was a concern that some people might attempt to rush through the "loopholes" referred to earlier by becoming lessors prior to the date these proposals finally become effective. Accordingly, notwithstanding the above provisions, an individual who was not a regular member or a regular member lessor as of the date of the Board meeting at which these proposals were approved by the Exchange Board of Governors (June 10, 1993), and subsequently became a regular member lessor after June 10, 1993, would not be grandfathered with respect to the two-year active requirement.[28] Similarly, an individual who was not a regular or options principal member or a regular or options principal lessor as of June 10, 1993, and subsequently became an options principal lessor after June 10, 1993, would not be allowed to "opt-in" to the Gratuity Fund. Such individuals would be covered by the new rules.

Most of the above described changes in membership structure would expand the choices available to persons and organizations in structuring their relationships. However, the proposed changes would eliminate the existing a-b-c agreement, and certain individuals and organizations may find that disruptive. Accordingly, a member organization would be permitted to continue to utilize its existing a-b-c agreements for so long as the respective individual members remain on their seats.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(3), 6(b)(4) and 6(b)(5) in particular in that it assures a fair representation of Exchange members in the administration of its affairs, provides for the equitable allocation of reasonable dues, fees and other charges among members, and is designed to prevent fraudulent and manipulative acts and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–95–08 and should be submitted by March 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4994 Filed 2–28–95; 8:45 am]

BILLING CODE 8010–01–M

[17] This provision would apply to a person who had satisfied the active requirement and thus was eligible for the Gratuity Fund based on prior status and who thereafter disposed of his membership. If, within five years of leaving the Exchange, such person becomes a lessor or other inactive seat owner, he would retain his right to participate in the Gratuity Fund. If, however, more than five years pass, such person would lose his prior active status and would have to requalify for the Gratuity Fund. A person who leaves the Exchange would not be eligible for the Gratuity Fund benefit during any period when he is not a lessor, lessee, nominee or seat owner.

[18] This schedule is similar to that used by the New York Stock Exchange ("NYSE") regarding payments from its Gratuity Fund. *See* Art. XV, Sec. 3 of the NYSE Constitution.

The Amex's proposed "phase-in" schedule would be applied only on a prospective basis and would not be applicable to persons who are already Gratuity Fund Participants or who become Gratuity Fund Participants by virtue of the proposed amendments (e.g., options principal members and lessees) regardless of whether such persons have been Participants or members for four years or more. However, an existing options principal member or lessee who "opts out" of the Gratuity Fund and on some other basis later becomes eligible would at that time be subject to the "phase-in." *See infra* notes 26–27 and accompanying text.

[19] The only exception to this would be in the case of an individual who is both the independent owner of and the user of a particular options principal membership and who "opts-out" of the Gratuity Fund under the transition provisions discussed below. For such a person's "opt-out" to be able to have any practical effect, his options principal seat would have to be exempt entirely from the obligation to pay assessments to the Gratuity Fund for so long as he remains the owner and user of that seat.

[20] For further discussion of rules governing trustees of the Gratuity Fund, *see* Art. IX of the Amex Constitution.

[21] Both the Phlx and the Chicago Mercantile Exchange permit pension trusts to own seats.

[22] The Exchange has been advised that the prohibited transaction provisions of the Employee Retirement Income Security Act and the Internal Revenue Code would preclude a member from being the nominee or lessee of the seat owned by his own pension trust.

[23] *See* Art. I, Sec. 3(g) of the Amex Constitution

[24] For further discussion of the cut-off date for eligibility for the transition arrangements, *see infra* note 28 and accompanying text.

[25] *See supra*, note 17 and accompanying text.

[26] If that person subsequently buys a different options principal membership, the decision to "opt-out" would apply to that seat as well.

[27] *See supra*, note 26.

[28] However, in the event that such an individual dies during the period after June 10, 1993 but before the effective date of the changes, his beneficiaries would receive a Gratuity Fund benefit under existing requirements.

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[Release No. 34–35410; File No. SR–PSE–95–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Earlier Listing of Options on Securities Issued by Companies in Certain Corporate Restructuring Transactions

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 21, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain technical corrections to the text of the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Beth A. Stekler, Attorney, Division of Market Regulation, SEC, dated February 17, 1995 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions ("New Securities"). Currently, certain of the Exchange's rule preclude the listing of options on any security until that security has been actively traded at or above a specific price level for a certain period of time. For example, under PSE Rule 3.6(a)(3), trading volume in an underlying security must be at least 2,400,000 shares during the preceding twelve months (the "Volume Test"). Further, under PSE Rule 3.6(a)(4), the market price for an underlying security must be at least $7.50 for the majority of business days during the three calendar month period preceding the date the security is selected as an underlying security (the "Price Test").

The proposed rule change would facilitate the earlier listing of options on New Securities by permitting the Exchange to determine whether a New Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security (the "Original Security") previously issued by the issuer of the New Security (or an affiliate thereof). Specifically, if (a) the aggregate market value, assets or revenue attributable to a New Security is at least a stated percentage of the same measure attributable to the Original Security and if a stated minimum value of assets or revenues represented by the New Security, as applicable, is satisfied or (b) the aggregate market value of the New Security is not less than $500 million,[2] then the Exchange would be permitted to determine whether a New Security satisfied the Volume Test and Price Test by reference to the trading volume and market price history of the Original Security. Reference may be made to the trading volume and market price history of the Original Security only for trading days occurring prior to the ex-date for the transaction in which the New Security is issued [3] and prior to any trading day for which these tests are determined to be satisfied by reference to the trading volume and market price history of the New Security. If reference is made to either the trading volume or market price history of the Original Security for this purpose for any period of time, then reference must be made to both such criteria in respect of the Original Security for that period.

In addition, if the New Security is to be listed on an exchange or in an automatic quotation system that has an initial listing requirement equivalent to the requirement of PSE Rule 3.6(a)(2) (number of shareholders must be at least 2,000), that requirement would be deemed to be satisfied. Finally, if at least 40 million shares of a New Security will be outstanding in a restructuring, the Exchange may assume that the New Security will satisfy the listing criteria of both PSE Rule 3.6(a)(1) (sufficient public float) and PSE Rule 3.6(a)(2). Before relying on either of the assumptions described above, the Exchange must make a reasonable investigation as to the number of shareholders and public float of the New Security and must not have determined that the requirements of PSE Rules 3.6(a)(1) and 3.6(a)(2) will, in fact, not be satisfied.

[2] The proposed rule change would apply to a New Security if at least one of the following conditions is met:

(1) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 25% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the *inclusion* of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than $50 million, and in the case of the qualification of a New Security under clause (C), the revenues to the business represented by the New Security are not less than $50 million;

(2) Any one or more of (A) the aggregate market value of the New Security, (B) the aggregate book value of the assets attributed to the business represented by the New Security, or (C) the revenues attributed to the business represented by the New Security are at least 33 1/3% of the same measure determined with respect to the Original Security or the business represented by the Original Security, as applicable, calculated in a comparable manner on a basis that reflects the *exclusion* of the business represented by the New Security, provided that in the case of the qualification of a New Security under clause (B), the aggregate book value of the assets attributed to the business represented by the New Security is not less than $50 million, and in the case of the qualification of a New Security under clause (C), the revenues attributed to the business represented by the New Security are not less than $50 million; or

(3) The aggregate market value represented by the New Security is at lease five hundred million dollars ($500,000,000).

[3] Under the proposed rule change, options contracts may not initially be listed for trading in respect of a New Security until such time as shares of the New Security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares.

The proposed rule change also would revise one of the Exchange's guidelines relating to the withdrawal of approval of underlying securities. Currently, under PSE Rule 3.7, Commentaries .01.2 and .01.3, an underlying security will not be deemed to satisfy the Exchange's listing criteria if the trading volume of the underlying security in all markets was less than 1,800,000 shares in the preceding twelve months (the "Maintenance Volume Test") or if the market price of the underlying security closed below $5 on a majority of business days during the preceding six months (the "Market Price Test"). Because New Securities have limited trading history, they may be unable to satisfy the Maintenance Volume Test or the Market Price Test at the time options on such securities are first listed for trading on the Exchange. Accordingly, the proposed rule change would add a new Commentary .01.4 to PSE Rule 3.7 to provide that the Exchange may determine whether a New Security satisfies the Maintenance Volume and Market Price Tests set forth in Commentaries .01.2 and .01.3 of Rule 3.7, as well as the comparable tests set forth in Rule 3.7, Commentary .04, by reference to the trading volume and price history of the Original Security prior to commencement of trading in the New Security, including "when issued" trading.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, by removing impediments to a free and open market in options covering securities issued by companies engaged in corporate restructuring transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–95–04 and should be submitted by March 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4932 Filed 2–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35409; File No. SR–Phlx–95–12]

February 22, 1995.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Adoption of Listing Standards Applicable to Options on Securities Issued in Certain Corporate Restructuring Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on February 13, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On February 21, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to make certain technical corrections to the text of the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Exchange Rule 1009 in order to adopt listing standards applicable to options on securities issued in certain corporate restructuring transactions.[2] The text of the proposed rule change is available at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to amend Exchange Rule 1009 in order to permit the earlier listing of options on securities issued by companies in connection with certain corporate restructuring transactions ("New securities"). Currently, certain of the Exchange's rules preclude the listing of options on any security until that security has been actively traded at or above a specific price level for a certain period of time. For example, under Exchange Rule 1009, Commentary

[1] See letter from Michell R. Weisbaum, Associate General Counsel, Phlx, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated February 21, 1995 ("Amendment No. 1").

[2] This filing withdraws and replaces File No. SR–Phlx–94–43. See letter from Michelle R. Weisbaum, Associate General Counsel, Phlx, to Michael A. Walinskas, Branch Chief, Division of Market Regulation, SEC, dated February 17, 1995.

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.01(3), trading volume in an underlying security must be at least 2,400,000 shares during the preceding twelve months ("volume test"). Further, under Exchange Rule 1009, Commentary .01(4), the market price for an underlying security must be at least $7.50 for the majority of business days during the three calendar month period preceding the date the security is selected as an underlying security ("price test").

The proposed rule change would facilitate the earlier listing of options on New securities by permitting the Exchange to determine whether a New security satisfies the volume and price tests by reference to the trading volume and market price history of an outstanding equity security ("Old security") previously issued by the issuer (or an affiliate thereof) of the New security. Specifically, if (a) the aggregate market value, assets, or revenue attributable to a New security is at least a stated percentage of the same measure attributable to the Old security; or (b) the aggregate market value of the New security is not less than $500 million,[3] then the Exchange would be permitted to determine whether a New security satisfies the volume and price tests by reference to the training volume and market price history of the Old security. Reference may be made to the trading volume and market price history of the Old security only for trading days occurring prior to the ex-date for the transaction in which the New security is issued [4] and prior to any trading day for which these tests are determined to be satisfied by reference to the trading volume and market price history of the New security. If reference is made to either the trading volume or market price history of the Old security for this purpose for any period of time, then reference must be made to both such criteria in respect of the Old security for that period.

Further, should the New security be listed on an exchange or in an automatic quotation system that has an initial listing requirement equivalent to the requirement of paragraph (2) of Commentary .01 under Exchange Rule 1009 (number of shareholders must be at least 2,000), that requirement would be deemed to be satisfied. Finally, if at least 40 million shares of a New security will be outstanding in a restructuring, the Exchange may assume that the New security will satisfy the listing criteria set forth in Exchange Rule 1009, Commentary .01(1) (sufficient public float) and .01(2) (minimum number of security holders). Before relying on either of the assumptions described above, the Exchange must make a reasonable investigation as to the number of shareholders and public float of the New security and must not have determined that the requirements of paragraphs (1) and (2) will, in fact, not be satisfied.

The proposed rule change also would revise one of the Exchange's guidelines relating to the withdrawal of approval of underlying securities. Currently, under Exchange Rule 1010, Commentary .01(3), an underlying security will not be deemed to satisfy the Exchange's listing criteria if the trading volume of the underlying security in all markets was less than 1,800,000 shares in the preceding twelve months ("maintenance volume test") or, under Commentary .01(4), if the market price of the underlying security closed below $5 for a majority of the business days during the preceding six months ("market price test"). Because New securities have limited trading history, they may be unable to satisfy the maintenance volume test or the market price test at the time options on such securities are first listed for trading on the Exchange. Accordingly, the proposed rule change would add a new Commentary .01(7) to Exchange Rule 1010 to provide that the Exchange may determine whether a New security satisfies the maintenance volume and market price tests, as well as the comparable tests set forth in Commentary .05 under Exchange Rule 1010, by reference to the trading volume and price history of the Old security prior to the first day of trading in the New security, including "when issued" trading.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general and, in particular, with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing

[3] The proposed rule change would apply to a New security if at least one of the following conditions is met:

(1) Any one or more of (A) the aggregate market value of the New security, (B) the aggregate market value of the assets attributed to the business represented by the New security, or (C) the revenues attributed to the business represented by the New security are at least 25% of the same measure determined with respect to the Old security or the business represented by the Old security, as applicable, calculated in a comparable manner on a basis that reflects the *inclusion* of the business represented by the New security, provided that in the case of the qualification of a New security under clause (B), the aggregate book value of the assets attributed to the business represented by the New security is not less than $50 million, and in the case of the qualification of a New security under clause (C), the revenues attributed to the business represented by the New security are not less than $50 million;

(2) Any one or more of (A) the aggregate market value of the New security, (B) the aggregate book value of the assets attributed to the business represented by the New security, or (C) the revenues attributed to the business represented by the New security are at least 33⅓% of the same measure determined with respect to the Old security or the business represented by the Old security, as applicable, calculated in a comparable manner on a basis that reflects the *exclusion* of the business represented by the New security, provided that in the case of the qualification of a New security under clause (B), the aggregate book value of the assets attributed to the business represented by the New security is not less than $50 million, and in the case of the qualification of a New security under clause (C), the revenue attributed to the business represented by the New security are not less than $50 million; or

(3) The aggregate market value represented by the New security is at least five hundred million dollars ($500,000,000).

[4] Under the proposed rule change, options contracts may not initially be listed for trading in respect of a New security until such time as shares of the New security are issued and outstanding and are the subject of trading that is not on a "when issued" basis or in any other way contingent on the issuance or distribution of the shares.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–12 and should be submitted by March 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4933 Filed 2–28–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Roadmaster Industries, Inc., Common Stock, $0.01 Par Value, 8% Convertible Subordinated Debentures Due 2003) File No. 1–11996

February 23, 1995.

Roadmaster Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Securities are listed on the New York Stock Exchange, Inc. ("NYSE"). The Securities commenced trading on the NYSE at the opening of business on December 12, 1994 and concurrently therewith the Securities were suspended from trading on the Amex.

In making the decision to withdraw the Securities from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Securities and believes that dual listing would fragment the market for the Securities.

Any interested person may, on or before March 16, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–4995 Filed 2–28–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area #2760; California

The above-numbered Declaration is hereby amended, effective February 21, 1995, to include El Dorado, Madera, and Solano Counties in the State of California as a disaster area due to damages resulting from winter storms causing flooding, landslides, mud and debris flows beginning on January 3, 1995, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Mariposa, Mono, and Tuolumne in the State of California, and Douglas County in the State of Nevada may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 13, 1995, and for economic injury the deadline is October 10, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 23, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–4970 Filed 2–28–95; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Land Between the Lakes Public Use Plan

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: TVA will prepare an Environmental Impact Statement (EIS) on alternatives for public use at the Land Between The Lakes (LBL) national recreation area. A Public Use Plan will be developed to meet the future demands for outdoor recreation and environmental education uses and to strengthen the economic and environmental vitality of the LBL region. The EIS will analyze a range of alternatives that will include innovative financing and operating strategies, including partnership contracts with private and other public entities. Such strategies could be utilized to augment or replace congressional appropriated funding traditionally allocated for developing and managing federal public use areas, including LBL. One alternative will be identified as TVA's preferred alternative and will be described in a separate document which will serve as TVA's Draft Public Use Plan for LBL.

The LBL mission has remained essentially the same since its creation. It is, "To manage the resources of Land Between The Lakes for optimum yield of outdoor recreation and environmental education for the American people. In so doing, to utilize the demonstration assignment to research, test, and demonstrate innovative programs; to help stimulate the development of the surrounding region; and to extend the beneficial results as widely as possible."

The alternative approaches presented in the EIS will be developed through a NEPA scoping process in which the public can provide input on new public use guidelines. The guidelines will consider the balance of economic, environmental and social concerns and the feasibility of optional financing and operating strategies. It is envisioned that the EIS will analyze ways to achieve the mission with new funding and/or operating strategies.

DATES: Comments on the scope of the EIS must be received on or before April 17, 1995. Four public meetings will be

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held in the LBL region to obtain comments on the scope of the EIS. Locations and times for these meetings are announced below. TVA encourages those wishing to provide comments to do so as early as possible.

ADDRESSES: Written comments should be sent to Dale V. Wilhelm, National Environmental Policy Act Liaison, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: John L. Mechler or Tom Christensen at Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, telephone (502) 924–5602.

SUPPLEMENTARY INFORMATION: In 1963, President John F. Kennedy directed TVA to develop an area with limited natural resources into a national demonstration of outdoor recreation, environmental education and resource management that would stimulate economic growth of the western Kentucky and Tennessee region. LBL was envisioned as a site for multiple-use public benefits. It was not to be a national park, a national forest or a national wildlife refuge, but rather a combination of all of these concepts where natural resources would be managed and used for a wide variety of recreation and education purposes.

In 1964, TVA established Land Between The Lakes (LBL) as a 170,000-acre national recreation area bounded by Kentucky Lake to the west and Lake Barkley to the east. The original 10-year concept plan called for LBL to demonstrate ways national recreation providers could meet the mounting outdoor recreation demands of a changing society. The plan included strategies and methods to provide a unique outdoor classroom and laboratory for combining recreation and education. The plan was to be financed principally through congressionally appropriated funding and it was estimated that up to 10 million visitors annually would be attracted. However, the subsequent level of appropriated funding provided for operations and capital projects was not sufficient to develop and support the program that would attract 10 million visitors.

In the next 10 years, from 1974 to 1984, the level of federal funding provided to TVA for developing and managing LBL allowed for constructing and expanding some facilities and enhancing some programs.

Since 1984, only one new facility was constructed while three were expanded and six closed. Most programs have continued, although at less intensive levels than in previous years.

Current federal funding for LBL is not sufficient to operate and maintain the existing public use facilities and programs which, in 1994, attracted 2.4 million visitors. Consequently, no major improvements or expansions can be considered that would require federal appropriated funding.

Proposed Issues to be Addressed

The proposed issues to be addressed in the EIS include elimination, reduction, expansion or retention of existing public uses; consideration of new public programs and facilities; and optional financing and operating strategies for public uses. Other issues include impacts of development and increased levels of visitation on socioeconomic conditions and natural and other resources (e.g. wetlands, cultural resources, aesthetics, endangered and threatened species and sensitive habitat, and water quality).

TVA is interested in exploring partnerships which would decrease TVA's dependency on federal appropriated funds and ensure the long-term viability of LBL's mission. TVA will consider a wide range of options to federal support, including those utilized by other public land management agencies, such as contract partnership arrangements with corporations, agencies and individuals to fund and operate facilities and programs that would benefit the American public. It is envisioned that all partnership arrangements would fit within one or more of six activity categories. These are:

1. Outdoor recreation
2. Environmental education and interpretation
3. Historical and cultural interpretation
4. Visitor hospitality (food and lodging)
5. Information, promotion and visitor relations
6. Other categories that might be added later as appropriate

Scoping Process

TVA is interested in receiving comments on the scope of issues described above and on other suggestions received during scoping. TVA specifically requests comments on.

1. What current and possible new public uses are important to the public at LBL?

2. What alternative operating and financing options should TVA consider to provide public uses at LBL?

3. What environmental or socioeconomic issues, or other aspects of developing a Public Use Plan for LBL should TVA consider?

The scope of the EIS may be modified as a result of public scoping. The EIS will address reasonable public use alternatives and their associated economic, environmental, and social issues and impacts raised during public scoping. Scoping meetings will be held from 7 p.m. to 9:30 p.m. at the following dates and locations:

LBL PUBLIC USE PLAN MEETINGS

City, State	Location	Date
Murray, KY	Murray State University	Tuesday, March 14.
Paducah, KY	Information Age Park	Thursday, March 16.
Clarksville, TN	Austin Peay State University	Tuesday, March 21.
Hopkinsville, KY	Hopkinsville Community College	Thursday, March 23.

Persons interested in attending or receiving more information should call LBL at (502) 924–5602 prior to the meetings to confirm the time and location.

Based on scoping comments and a review of market research data, TVA will develop a range of alternatives for managing public use at LBL. A draft EIS will then be prepared for public review and comment. Notice of the availability of this draft will be announced, comments on the draft solicited, and information about additional public meetings/hearings will be published at a future date.

Dated: February 22, 1995.

Kathryn J. Jackson,

Senior Vice President Resource Group.

[FR Doc. 95–5130 Filed 2–28–95; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: February 22, 1995.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 10202, Washington, DC 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on February 22, 1995:

DOT No.: 4037.
OMB No.: 2120–0036.
Administration: Federal Aviation Administration.
Title: Notice of Landing Area Proposal.
Need for Information: Section 309 of the Federal Aviation Act of 1958, as amended and implemented in 14 CFR Part 157, provides that in order to assure conformity to plans and policies, and allocations of airspace by the FAA Administrator under Section 307 of the Act, no airport or landing area not involving expenditure of Federal funds shall be established or constructed, nor any runway layout substantially altered without providing notice to the FAA.
Proposed Use of Information: The information collected will be used to determine the effect of the proposal on existing airports and on the safe and efficient use of airspace by aircraft; to prescribe air traffic rules and regulations; to provide data for aeronautical charting; and to provide data for a national airport system plan.
Frequency: On occasion.
Burden Estimate: 2,900 hours.
Respondents: Anyone who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway.
Form(s): FAA Form 7480–1.
Average Burden Hours Per Response: 45 minutes reporting.
DOT No.: 4038.
OMB No.: 2125–0526.
Administration: Federal Highway Administration.
Title: Accident Recordkeeping Requirement.
Need for Information: Title 49 CFR Part 390.15(b) requires interstate motor carriers to maintain an accident register for a period of one year after an accident.
Proposed Use of Information: The information will be used to determine if motor carriers are revealing all recent accidents upon request.
Frequency: Recordkeeping 1 year.
Burden Estimate: 2,900 hours.
Respondents: Motor carriers.
Form(s): None.
Average Burden Hours Per Response: 2 minutes.
DOT No.: 4039.
OMB No.: 2133–0010.
Administration: Maritime Administration.
Title: U.S. Merchant Marine Academy Application for Admission and Pre-Candidate Questionnaire.
Need for Information: Title 46 CFR Part 310.57(a) requires applicants to the U.S. Merchant Marine Academy (USMMA) to submit a pre-candidate questionnaire and an application for admission to the Academy's Admissions Office.
Proposed Use of Information: The information will be used by the USMMA admissions staff and its Candidate Evaluation Boards to select the best qualified candidates for admission.
Frequency: One time.
Burden Estimate: 12,500 hours.
Respondents: Applicants for the USMMA.
Form(s): KP 2–65.
Average Burden Hours Per Response: 5 hours reporting.
DOT No.: 4040.
OMB No.: 2133–0007.
Administration: Maritime Administration.
Title: Maintenance and Repair Cumulative Summary.
Need for Information: Title 46 CFR Part 272.22 requires subsidized ship operators to submit Form MA–140 (Maintenance and Repair Cumulative Summary) with attached invoices for review by the Maritime Administration to determine qualification for subsidy.
Proposed Use of Information: The information will be used to determine qualifications for maintenance and repair subsidy for subsidized carriers.
Frequency: Quarterly.
Burden Estimate: 3,000 hours.
Respondents: Subsidized ship operators.
Form(s): MA–140.
Average Burden Hours Per Response: 12 hours reporting.
DOT No.: 4041.
OMB No.: 2138–0018.
Administration: Research and Special Programs Administration.
Title: Report of Passengers Denied Confirmed Space.
Need for Information: Title 14 CFR Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations who are not accommodated because their flight has been oversold.
Proposed Use of Information: The information will be used to monitor air carrier compliance with the regulation and to publish the rate of denied boardings.
Frequency: Quarterly.
Burden Estimate: 2,358 hours.
Respondents: Large certificated air carriers and foreign air carriers.
Form(s): RSPA Form 251.
Average Burden Hours Per Response: 4 hours reporting.
DOT No.: 4042.
OMB No.: 2120–0022.
Administration: Federal Aviation Administration.
Title: Certification: Mechanics, Repairmen, Parachute Riggers—FAR 65.
Need for Information: The Federal Aviation Act of 1958, Section 602 (49

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USC 1422) authorizes the issuance of airmen certificates. Title 14 CFR Part 65 prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations.

Proposed Use of Information: The information collected will be used for evaluation by FAA, which is necessary for issuing a certificate and/or rating. Certification is necessary to ensure qualifications of the applicant.

Frequency: On occasion.

Burden Estimate: 57,809 hours.

Respondents: Individuals.

Form(s): FAA Forms 8610–1 and 8610–2.

Average Burden Hours Per Response: 20 minutes reporting.

Issued in Washington, DC on February 22, 1995.

Paula R. Ewen,

Manager, IRM Strategies Division.

[FR Doc. 95–4985 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Baltimore/Washington International Airport, Baltimore, Maryland; Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised noise exposure maps submitted by the Maryland Aviation Administration (MAA) for the Baltimore/Washington International Airport (BWI) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Region Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK Int'l Airport, Jamaica, NY 11430, (718), 553–0798.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised noise exposure maps submitted for the BWI Airport are in compliance with applicable requirements of FAR part 150, effective February 7, 1995.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps (or revisions thereto) which meet applicable regulations and which depict noncompatible land uses (or new noncompatible land uses) as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

The Maryland Aviation Administration submitted to the FAA on December 23, 1994, supplemental FAR part 150 documentation supporting a recent update of the Noise Exposure Maps (NEM's) at BWI. It was requested that the FAA review this material for compliance with part 150 regarding updates to noise exposure maps, as described in Section 103(a)(2) of the Act.

BWI received notification of FAA acceptance of its NEMs in December 1989, and approval of its Noise Compatibility Program in July 1990. A 1993 update of the BWI Airport Noise Zone has led to a revised set of noise contours. These revised contours also serve as the basis for revised Maps and the Volume V document, with appendices, constitutes supplemental information submitted by MAA to update the NEM's in accordance with FAR part 150 requirements. In addition to complying with requirements for NEM updates, MAA's request for FAA acceptance of the updated NEM's will insure an accurate depiction of noise sensitive land uses included in the NCP approved by the FAA in 1990.

The FAA has completed its review of the updated noise exposure maps and related documentation submitted by MAA in its December 1994 Volume V Supplemental document. The specific maps under consideration are the NEM's: Figure 2.1 Existing Conditions (1991) Noise Exposure Map (page 8) and Figure 2.2 Five Year Forecast (1998) Noise Exposure Map (page 9) of the Volume V Supplement.

The FAA has determined that these updated maps for BWI are in compliance with applicable requirements. This determination is effective on February 7, 1995. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment for future approval of a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure maps submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the updated NEM's associated evaluation material and the Supplemental Document comprising the submittal are available for review at the FAA office listed above and at the administrative offices of the BWI Airport.

Issued in Jamaica, New York, on February 22, 1995.

William DeGraaff,

Manager, Planning & Programming Branch.

[FR Doc. 95–4981 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Revision to the Approved Noise Compatibility Program and Request for Review; San Diego International Airport—Lindbergh Field (SAN), San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the approved Noise Compatibility Program that was submitted by the San Diego Unified Port District for San Diego International Airport—Lindbergh Field (SAN), San Diego, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. This revision was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps, submitted under 14 CFR part 150, were in compliance with applicable requirements effective January 30, 1989. The proposed revision to the approved Noise Compatibility Program will be approved or disapproved on or before August 9, 1995.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the revision to the approved Noise Compatibility Program is February 10, 1995. The public comment period ends April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, (310) 297–1621. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the approved Noise Compatibility Program for San Diego International Airport—Lindbergh Field which will be approved or disapproved on or before August 9, 1995. This notice also announces the availability of the revision for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the revision to the approved Noise Compatibility Program for San Diego International Airport—Lindbergh Field, effective on February 10, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 104(b) of the Act. On June 5, 1991, the FAA approved the Noise Compatibility Program for the San Diego International Airport. An announcement of FAA's approval of the Noise Compatibility Program was published in the **Federal Register** on June 19, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the revision. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 9, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed revision to the approved Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 615, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, AWP–600, P.O. Box 92007 WPC, Los Angeles, California 90009–2007.

Mr. Manuel I. Aceves, Deputy Port Director, Engineering & Development, Port of San Diego and Lindbergh Field Terminal, P.O. Box 488, San Diego, California 92112–0488.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on February 10, 1995.

Ellsworth Chan,

Acting Manager, Airports Division.

[FR Doc. 95–4982 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee renewal.

SUMMARY: Notice is hereby given of the renewal of the Aviation Rulemaking Advisory Committee. The Administrator is the sponsor of the committee, which consists of members appointed by the Administrator as representatives of a broad spectrum of the aviation community. The committee provides the aviation public a means by which to have its interests in aviation safety rulemaking taken into consideration in the development of regulatory actions. The committee provides the FAA with the benefit of obtaining the input of affected parties before a proposal is ever issued, thus enabling the agency to produce better documents. The functions of the committee are solely advisory.

The Secretary of Transportation has determined that the formation and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the committee and executive committee will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Office of Rulemaking (ARM–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone: 202–267–9677

Issued in Washington, D.C., on February 21, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–4980 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–005; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 BMW 520i 4-Door Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that noncomforming 1992 BMW 520i 4-Door passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 BMW 520i 4-Door passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally

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manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 31, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1992 BMW 520i 4-Door passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1992 BMW 525i 4-Door that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren-Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 BMW 520i 4-Door to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the 1992 BMW 520i 4-Door, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1992 BMW 520i 4-Door is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, and 219 Windshield Zone Intrusion.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt symbol on the seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirror: Replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 Theft Protection: Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) installation of a seat belt warning buzzer; (b) installation of a knee bolster to augment the vehicle's air bag based passive restraint system, which otherwise conforms to the standard.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Standard No. 302 Flammability of Interior Materials: Treatment of cloth interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the 1992 BMW 520i 4-Door must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner further states that before the vehicle can be entered into the United States, its VIN must be inscribed on fourteen specified parts and a theft prevention certification label must be installed for the vehicle to comply with the Theft Prevention Standard found in 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 23, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–4986 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–59–M

Research of Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in November 1993 Thru May 1994. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3216–X	DOT–E 3216	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.341(c)	Authorizes the use of a proposed DOT Specification 110A300W tank car tank for transportation of certain compressed gases. (Modes 1, 3).
3630–P	DOT–E 3630	VWR Corporation, West Chester, PA.	49 CFR 173.839(a), 177.839(b).	To become a party to exemption 3630 (Mode 1).
4338–P	DOT–E 4338	Hoechst Celanese Corp, Charlotte, NC.	49 CFR 173.119(m), 173.245a, 173.247, 174.63(b).	To become a party to exemption 4338 (Modes 1, 2, 3).
4453–P	DOT–E 4453	Western Explosive Systems Company (WESCO), Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 175.415, 176.83.	To become a party to exemption 4453 (Modes 1, 3).
4453–P	DOT–E 4453	Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453 (Modes 1, 3).
4803–P	DOT–E 4803	D–H Acquisition, Inc., Dallas, TX.	49 CFR 173.245, 173.248, 173.249, 173.263, 173.272, 173.289, 178.343–5.	To become a party to exemption 4803 (Mode 1).
4850–P	DOT–E 4850	Halliburton Energy Services, Houston, TX.	49 CFR 173.100(cc) 175.3.	To become a party to exemption 4850 (Modes 1, 2, 3, 4).
5206–P	DOT–E 5206	Vet's Explosives, Inc., Torrington, CT.	49 CFR 173.1114a	To become a party to exemption 5206 (Mode 1).
5206–P	DOT–E 5206	Ladshaw Explosives, Inc., New Braunfels, TX.	49 CFR 173.114a	To become a party to exemption 5206 (Mode 1).
5704–X	DOT–E 5704	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62, 173.93(e).	Authorizes the transport of certain Class A and Class B explosives in non-DOT specification steel drums. (Modes 1, 2, 3).
5951–P	DOT–E 5951	Rowell Chemical Corporation, Hinsdale, IL.	49 CFR 173.314(c)	To become a party to exemption 5951 (Modes 1,2).
6610–P	DOT–E 6610	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.225(e)	To become a party to exemption 6610 (Mode 1).
6614–P	DOT–E 6614	Inter Valley Pool Supply, Azusa, CA.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To become a party to exemption 6614 (Mode 1).
6626–P	DOT–E 6626	Portland Welding Supply, Portland, ME.	49 CFR 173.34(e)(15)(i), 173.34(e)(15)(v), 175.3.	To become a party to exemption 6626 (Modes 1, 2, 3, 4, 5).
6691–P	DOT–E 6691	United States Welding, Inc., Denver, CO.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (Modes 1, 2, 3, 4).
6691–P	DOT–E 6691	Southern Welding Supply, Inc., Savannah, GA.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (Modes 1, 2, 3, 4).
6691–P	DOT–E 6691	Trinity Welding Supply, Inc., Dallas, TX.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (Modes 1, 2, 3, 4).
6691–P	DOT–E 6691	George W. Fowler Company, Stuart, FL.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (Modes 1, 2, 3, 4).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6691–P	DOT–E 6691	IWECO, Inc., Houston, TX.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691 (Modes 1, 2, 3, 4).
6810–P	DOT–E 6810	ILL–MO Products Company, Jacksonville, IL.	49 CFR 173.302(a)(1), 173.314(c).	Authorizes the shipment of a nonliquefied, nonflammable compressed gas in seamless steel tanks (tubes) made in compliance with DOT Specification 107A except they are not mounted on a rail car. (Mode 1).
6971–P	DOT–E 6971	Protocol Analytical Supplies, Inc., Middlesex, NJ.	49 CFR Parts 100–199 ..	To become a party to exemption 6971 (Modes 1, 2, 3, 4).
6971–P	DOT–E 6971	SPI Supplies Division of Structure Probe, Inc., West Chester, PA.	49 CFR Parts 100–199 ..	To become a party to exemption 6971 (Modes 1, 2, 3, 4).
7041–P	DOT–E 7041	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.134(a)(6)	To become a party to exemption 7041 (Mode 1).
7616–P	DOT–E 7616	Canadian National Railways, Montreal, Quebec, CN.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616 (Mode 2).
7765–X	DOT–E 7765	Carleton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3.	Authorizes the use of nonrefillable, non-DOT specification cylinders, for transportation of a nonflammable gas. (Modes 1, 2, 4).
7765–X	DOT–E 7765	Carlerton Technologies, Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3.	Authorizes the use of nonrefillable, non-DOT specification cylinders, for transportation of a nonflammable gas. (Modes 1, 2, 4).
7774–P	DOT–E 7774	Directional Wireline Services, Inc., Lake Charles, LA.	49 CFR 173.246, 175.3 .	To become a party to exemption 7774 (Modes 1, 2, 4).
7835–X	DOT–E 7835	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 177.848, Part 107, Appendix (B)(1).	Authorizes the transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1).
7879–P	DOT–E 7879	Halliburton Energy Services, Houston, TX.	49 CFR 173.246, 175.3, 178.42.	To become a party to exemption 7879 (Modes 1, 2, 3, 4).
7887–X	DOT–E 7887	AeroTech, Inc., Las Vegas, NV.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	Authorizes the shipment of packages of toy propellant devices as an ORM–D material and excepted from labeling requirements. (Modes 1, 2, 3, 4).
7887–P	DOT–E 7887	North Coast Operations/ North Coast Rocketry, Inc., Salt Lake City, UT.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To become a party to exemption 7887 (Modes 1, 2, 3, 4).
7887–P	DOT–E 7887	MRED Industries, Inc., Petersburg, NY.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To become a party to exemption 7887 (Modes 1, 2, 3, 4).
7951–P	DOT–E 7951	H.P. Hood, Inc., Boston, MA..	49 CFR 173.306(b)(1), 175.3, 178.33.	To become a party to exemption 7951 (Modes 1, 2, 3, 4, 5).
7991–P	DOT–E 7991	Abbeville & Grimes Railroad, Panama City, FL.	49 CFR Parts 100–177 ..	To become a party to exemption 7991 (Mode 1).
7991–P	DOT–E 7991	Washington Central Railroad Company, Yakima, WA.	49 CFR Parts 100–177 ..	To become a party to exemption 7991 (Mode 1).
7991 P	DOT–E 7991	Southern California Regional Rail Authority, Los Angeles, CA.	49 CFR Parts 100–177 ..	To become a party to exemption 7991 (Mode 1).
8006–P	DOT–E 8006	Daisy Manufacturing Company, Rogers, AR.	49 CFR 172.400(a), 172.504 Table 2.	To become a party to exemption 8006 (Modes 1, 2, 3, 4).
8009–X	DOT–E 8009	CNG Technologies, Inc., Austin, TX.	49 CFR 173.301(d)(2), 173.302(a)(3).	To authorize use of DOT Specification 3AAX cylinders made of 4130X steel, for transportation of a compressed natural gas. (Mode 1).
8009–P	DOT–E 8009	KC Resources, Inc., Cardiff, CA.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009 (Mode1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8009–X	DOT–E 8009	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.301(d)(2), 173.302(a)(3).	Authorizes the use of DOT Specification 3AAX cylinders made of 4130X steel for transportation of a compressed natural gas. (Mode 1).
8196–P	DOT–E 8196	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 173.119, 173.315(a), 178.245.	To become a party to exemption 8196 (Modes 1, 2, 3).
8214–X	DOT–E 8214	Morton International, Inc., Ogden, UT.	49 CFR 171.11 (see paragraph 8.d), 173.153, 173.154, 175.3.	Authorizes the transport of inflators and modules for passive restraint systems for use in automobiles. (Modes 1, 2, 3, 4).
8214–P	DOT–E 8214	Howard Ternes Packaging Company, Redford, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (Modes 1, 2, 3, 4).
8228–P	DOT–E 8228	U.S. Postal Inspection Service, Dulles, VA.	49 CFR 173.100(bb), 173.113(a)(1), 173.86.	To become a party to exemption 8228 (Modes 1, 2, 3).
8278P	DOT–E 8278	CITGO Pipeline Company, Lake Charles, LA.	49 CFR 173.119, 173.304, 173.315.	To become a party to exemption 8278 (Mode 1).
8396–P	DOT–E 8396	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.119, 173.21, 173.221.	To become a party to exemption 8396 (Mode 1).
8445–P	DOT–E 8445	Clean Harbors Environmental Services, Inc., Quincy, MA.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445 (Mode 1).
8450–P	DOT–E 8450	Loral Vought Systems Corporation, Dallas, TX.	49 CFR 173.92	Authorizes the transport of rocket motors, Class B explosives, in non-DOT specification polyethylene containers. (Mode 1).
8451–P	DOT–E 8451	Takata Moses Lake, Inc., Moses Lake, WA.	49 CFR 173.65, 173.86(e) 175.3.	To become a party to exemption 8451 (Mode 1, 2, 3).
8451–P	DOT–E 8451	Magnavox Electronic Systems Company, Fort Wayne, IN.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–P	DOT–E 8451	HITECH, Inc., East Camden, AR.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–X	DOT–E 8451	Hercules Incorporated, Wilmington, DE.	49 CFR 173.65, 173.86(e), 175.3.	Authorizes the transport of not more than 25 grams of high explosives and pyrotechnic materials in a special shipping container. (Modes 1, 2, 3).
8451–P	DOT–E 8451	Halliburton Energy Services, Houston, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–P	DOT–E 8451	Ferranti Technologies, Inc., Lancaster, PA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–P	DOT–E 8451	Chemical Waste Management, Inc., Oakbrook, IL.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–P	DOT–E 8451	MESC Electronic Systems, Inc., Fort Wayne, IN.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8451–P	DOT–E 8451	Physics International Company, San Leandro, CA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451 (Modes 1, 2, 3).
8453–P	DOT–E 8453	OEI, Incorporated, Whitesburg, GA.	49 CFR 173.114a	To become a party to exemption 8453 (Modes 1, 3).
8453–P	DOT–E 8453	DYNO—Alaska, Olympia, WA.	49 CFR 173.114a	To become a party to exemption 8453 (Modes 1, 3).
8453–P	DOT–E 8453	DYNO—Northwest, Olympia, WA.	49 CFR 173.114a	To become a party to exemption 8453 (Modes 1, 3).
8516–P	DOT–E 8516	DYNO—Alaska, Olympia, WA.	49 CFR 176.83(b)	To become a party to exemption 8516 (Mode 3).
8516–P	DOT–E 8516	DYNO—Northwest, Olympia, WA.	49 CFR 176.83(b)	To become a party to exemption 8516 (Mode 3).
8516–P	DOT–E 8516	Pacific Powder Company, Olympia, WA.	49 CFR 176.83(b)	To become a party to exemption 8516 (Mode 3).
8554–P	DOT–E 8554	Brandywine Explosives & Supply, Inc., Paris, KY.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (Modes 1, 3).
8554–P	DOT–E 8554	Western Explosive Systems Company (WESCO), Salt Lake City, UT.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8554–P	DOT–E 8554	Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (Modes 1, 3).
8554–P	DOT–E 8554	DYNO—Alaska, Olympia, WA.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (Modes 1, 3).
8554–P	DOT–E 8554	DYNO—Northwest, Olympia, WA.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (Modes 1, 3).
8554–P	DOT–E 8554	Pacific Powder Company, Olympia, WA.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554 (Modes 1, 3).
8582–P	DOT–E 8582	Toledo, Peoria and Western Railway Corporation, East Peoria, IL.	49 CFR Parts 100.177 ...	To become a party to exemption 8582 (Mode 1582).
8582–P	DOT–E 8582	Southern California Regional Rail Authority, Los Angeles, CA.	49 CFR Parts 100.177 ...	To become a party to exemption 8582 (Mode 1723).
8723–P	DOT–E 8723	Slurry Explosive Corporation, Columbus, KS.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 2).
8723–P	DOT–E 8723	Western Explosive Systems Company (WESCO), Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 2).
8723–P	DOT–E 8723	Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 2).
8723–P	DOT–E 8723	DYNO—Alaska, Olympia, WA.	49 CFR 172.101, 173.1141(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 2).
8723–P	DOT–E 8723	DYNO—Northwest, Olympia, WA.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 2).
8845–P	DOT–E 8845	Halliburton Energy Services, Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845 (Modes 1, 3).
8845–P	DOT–E 8845	Titan Wireline Services, Fort Worth, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845 (Modes 1, 3).
8845–P	DOT–E 8845	Magnum Wireline Services, Inc., Fort Worth, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845 (Modes 1, 3).
8845–P	DOT–E 8845	Black Warrior Wireline Corp., Columbus, MS.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 8845 (Modes 1, 3).
8845–P	DOT–E 8845	Directional Wireline Services, Inc., Lake Charles, LA.	49 CFR 173.110(c)(1), 173.80(b) 173.80(c).	To become a party to exemption 8845 (Modes 1, 3).
8871–P	DOT–E 8871	Chase Packaging, Inc., Newport News, VA.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.366.	To become a party to exemption 8871 (Modes 1, 2, 3).
8877–P	DOT–E 8877	Advanced Chemical Systems International, Inc., Carrollton, TX.	49 CFR 173.119, 173.245.	To become a party to exemption 8877 (Modes 1, 2, 3).
8915–P	DOT–E 8915	Albemarle Corporation, Baton Rouge, LA.	49 CFR 173.301(d), 173.302(a)(3).	To become a party to exemption 8915 (Modes 1, 3).
8932–P	DOT–E 8932	Aztec Peroxides, Inc., Elyria, OH.	49 CFR 173.119(m), 173.221.	To become a party to exemption 8932 (Mode 1).
8958–P	DOT–E 8958	Parks and Son, Inc., Advance, NC.	49 CFR 172.101, 173.60	To become a party to exemption 8958 (Modes 1, 2).
9052–X	DOT–E 9052	Hoover Group, Inc., Beatrice, NE.	49 CFR 173.118a, 173.119, 173.125, 176.340, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, marking and sale of non-DOT specification 225 gallons rotationally molded polyethylene portable tanks for shipment of those corrosive liquids and hydrogen peroxide presently authorized in DOT Specification 34 and certain flammable liquids. (Modes 1, 2, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9157–X	DOT–E 9157	Matheson Gas Products, Secaucus, NJ.	49 CFR 173.314(c), 179.300–7.	Authorizes the use of a non-DOT specification multiunit tank car tank, for transportation of a flammable gas. (Mode 1).
9248–P	DOT–E 9248	Advertising Unlimited, Inc., Red Wing, MN.	49 CFR 173.1200, 173.154a.	To become a party to exemption 9248 (Modes 1, 2).
9262–P	DOT–E 9262	Halliburton Energy Services, Houston, TX.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9262 (Modes 1, 3, 4).
9262–P	DOT–E 9262	Directional Wireline Services, Inc., Lake Charles,LA.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9262 (Modes 1, 3, 4).
9275–P	DOT–E 9275	Sanofi Beaute, Inc., Edison, NJ.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Richard Barrie Fragrances, Inc., Orange, CT.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Lancaster Group USA, Paterson, NJ.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	J. Manheimer, Inc., Long Island City, NY.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Nielsen-Massey Vanillas, Inc., Waukegan, IL.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9275–P	DOT–E 9275	Cosmair Inc., North Brunswick, NJ.	49 CFR 100–199	To become a party to exemption 9275 (Modes 1, 2, 3, 4, 5).
9281–P	DOT–E 9281	Halliburton Energy Services, Houston, TX.	49 CFR 172.101, 173.100.	To become a party to exemption 9281 (Modes 1, 2, 3, 4).
9346–P	DOT–E 9346	Arrow Terminals, Industry, PA.	49 CFR 174.67(a)(2)	To become a party to exemption 9346 (Mode 2).
9347–X	DOT–E 9247	Precision General, Inc., Houston, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non-DOT specification stainless steel cylinders for shipment of flammable and nonflammable gases used for sampling purposes. (Modes 1, 2).
9355–P	DOT–E 9355	Eveready Battery Company, Inc., Westlake, OH.	49 CFR Parts 100–177 ..	To become a party to exemption 9355 (Modes 1, 2, 3, 4).
9372–P	DOT–E 9372	Halliburton Energy Services, Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to exemption 9372 (Modes 1, 3).
9408–P	DOT–E 9408	Albemarle Corporation, Baton Rouge,LA.	49 CFR 173.301(d)(2), 173.302.	To become a party to exemption 9408 (Mode 1).
9507–P	DOT–E 9507	IWECO, Inc., Houston, TX.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To become a party to exemption 9507 (Mode 1).
9549–P	DOT–E 9549	Halliburton Energy Services, Houston, TX.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9549 (Modes 1, 3, 4).
9549–P	DOT–E 9549	Directional Wireline Services, Inc., Lake Charles, LA.	49 CFR 173.100(v), 175.30.	To become a party to exemption 9549 (Modes 1, 3, 4).
9610–P	DOT–E 9610	Blount, Inc., Lewiston, ID	49 CFR 172.203(a), (e), 172.204, 173.29(a), (d), Parts 107, Appendix B(2), (3), Parts 171–189.	To become a party to exemption 9610 (Modes 1, 2).
9617–P	DOT–E 9617	Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK.	49 CFR 176.83(a), 177.835(g), 177.848(f), Part 107, Appendix B(1).	To become a party to exemption 9617 (Modes 1, 3).
9623–P	DOT–E 9623	Buckley Powder Company of Oklahoma, Inc., Mill Creek, OK.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1).
9623–P	DOT–E 9623	DYNO—Alaska, Olympia, WA.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1).
9623–P	DOT–E 9623	DYNO—Northwest, Olympia, WA.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1).
9623–P	DOT–E 9623	Pacific Powder Company, Olympia, WA.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1).
9659–P	DOT–E 9659	Kaiser Compositek, Inc., Brea, CA.	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3, 177.812.	To become a party to exemption 9659 (Modes 1, 2, 3, 4).
9672–P	DOT–E 9672	Albemarle Corporation, Baton Rouge, LA.	49 CFR 178.337 11(c) ...	To become a party to exemption 9672 (Mode 1).

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9723–P	DOT–E 9723	Environmental Enterprises, Inc., Cincinnati, OH.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Environmental Services of America, Inc., Ellington, CT.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Environmental Response, Inc., Hendersonville, TN.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Allwaste Transportation & Remediation, Inc., San Martin, CA.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Dahlen Transport, Inc., Newport, MN.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Rock Transfer & Storage, Inc., Milwaukee, WI.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Marine Shale Processors, Inc., Morgan City, LA.	49 CFR 177.838(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Tri-S Incorporated, Ellington, CT.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Inland Water Pollution Control, Detroit, MI.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	City Environmental, Inc., Detroit, MI.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Universal Waste and Transit, Inc., Tampa, FL.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Smith Systems Transportation, Inc., Scottsbluff, NE.	49 CFR 177.838(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	The Environmental Service Group (NY), Inc., Tonawanda, NY.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9723–P	DOT–E 9723	Midwest Environmental Transport, Inc., Cincinnati, OH.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9758–P	DOT–E 9758	The Coleman Company, Inc., Wichita, KS.	49 CFR 173.304(d)(3)(ii), 178.33.	To become a party to exemption 9758 (Modes 1, 2, 3, 4).
9758–X	DOT–E 9758	Camping Gaz International, Paris, France.	49 CFR 173.304(d)(3)(ii), 178.33.	Authorizes the shipment of certain flammable gases in a nonrefillable, non-DOT inside container conforming with the DOT–2P except for diameter and capacity. (Modes 1, 2, 3, 4).
9758–X	DOT–E 9758	Watson & Company, San Diego, CA.	49 CFR 173.304(d)(3)(ii), 178.33.	Authorizes the shipment of certain flammable gases in a nonrefillable, non-DOT inside container conforming with the DOT–2P except for diameter and capacity. (Modes 1, 2, 3, 4).
9769–P	DOT–E 9769	Chemical Waste Management, Inc., Oak Brook, IL.	49 CFR 176.83, 177.848	To become a party to exemption 9768 (Modes 1, 2, 3).
9769–P	DOT–E 9769	Franklin Environmental Services, Inc., Wrentham, MA.	49 CFR 176.83, 177.848	To become a party to exemption 9769 (Modes 1, 2, 3).
9779–P	DOT–E 9779	Western Unichem, Houston, TX.	49 CFR 173.119, 173.245, 178.253.	To become a party to exemption 9779 (Mode 1).
9781–P	DOT–E 9781	Rowell Chemical Corporation, Hinsdale, IL.	49 CFR 173.304(a)(2), 173.34(d), (e).	To become a party to exemption 9781 (Mode 1).
9880–P	DOT–E 9880	Halliburton Energy Services Houston, TX.	49 CFR 173.302, 173.3	To become a party to exemption 9880 (Modes 1, 2, 3, 4, 5).
9969–P	DOT–E 9969	Mine Safety Appliances Company Pittsburgh, PA.	49 CFR 173.119, 173.121, 173.123, 173.124, 173.141, 173.145, 173.251, 173.252, 173.255, 173.264, 173.276, 173.302, 173.304, 173.328, 173.333, 173.336, 173.337, 173.352.	To become a party to exemption 9969 (Modes 1, 2, 3, 4).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9969–P	DOT–E 9969	Kin-Tek Laboratories, Inc., LaMarque, TX.	49 CFR 173.119, 173.121, 173.123, 173.124, 173.141, 173.145, 173.251, 173.252, 173.255, 173.264, 173.276, 173.302, 173.304, 173.328, 173.333, 173.336, 173.337, 173.352.	To become a party to exemption 9969 (Modes 1, 2, 3, 4).
9977–X	DOT–E 9977	Hercules Incorporated, Wilmington, DE.	49 CFR 173.88(e) (2) (ii), 173.92(a)(i), 173.92(b).	Authorizes the transport of rocket motors in a propulsive state, with igniters installed. (Mode 1).
9977–X	DOT–E 9977	Hercules Aerospeace Company, Magna, UT.	49 CFR 173.88(e) (2) (ii), 173.92(a)(i), 173.92(b).	Authorizes the transport of rocket motors in a propulsive state, with igniters installed. (Mode 1).
10001–P	DOT–E 10001	Airgas, Inc., Mobile, AL	49 CFR 173.316, 173.320.	To become a party to exemption 10001 (Mode 1).
10001–P	DOT–E 10001	Linweld, Lincoln, NE	49 CFR 173.316, 173.320.	To become a party to exemption 10001 (Mode 1).
10048–X	DOT–E 10048	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 173.134, 173.154, 173.28(m).	Authorizes the use of a DOT Specification 17C metal drum with inside non-DOT specification metal containers for shipment of pyrophoric liquids, flammable liquids, and flammable solids. (Modes 1, 3).
10114–P	DOT–E 10114	Northwest Airlines, Inc., St. Paul, MN.	49 CFR 172.200, 175.10(a)(7).	To become a party to exemption 10114 (Mode 4).
10130–X	DOT–E 10130	UF Strainrite, Lewiston, ME.	49 CFR Part 173 Subparts E, F, and H.	Authorizes the manufacture, marking and sale of collapsible, disposable polyethylene-lined woven polypropylene bulk bags for shipment of oxidizers, flammable, corrosive, and poison B solids. (Modes 1, 2, 3).
10130–X	DOT–E 10130	UF Strainrite, Lewiston, ME.	49 CFR Part 173 Subparts E, F, and H.	Authorizes the manufacture, marking and sale of collapsible, disposable polyethylene-lined woven polypropylene bulk bags for shipment of oxidizers, flammable, corrosive, and poison B solids. (Modes 1, 2, 3).
10172–X	DOT–E 10172	Hoover Group, Inc., Beatrice, NE.	49 CFR 178.19, 178.253, Part 173, Subparts D and F, Section 173.266.	Authorizes the manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked high density polyethylene portable tank enclosed within a protective wire frame for the shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2).
10174–P	DOT–E 10174	Albemarle Corporation, Baton Rouge, LA.	49 CFR 173.206	To become a party to exemption 10174 (Mode 2).
10175–P	DOT–E 10175	Letica Corporation, Rochester, MI.	49 CFR 173.119, 178.19, Part 173, Subpart F.	To become a party to exemption 10175 (Modes 1, 2, 3).
10180–X	DOT–E 10180	Convenience Marine Products, Inc., Grand Rapids, MI.	49 CFR 173.304(a)(2), 173.34(d).	Authorizes the manufacture, marking, and sale of DOT Specification 39 cylinders equipped with pressure relief device systems for transportation of nonflammable gases. (Modes 1, 3, 4).
10247–P	DOT–E 10247	Mine Safety Appliances Company Pittsburg, PA.	49 CFR 173.4	To become a party to exemption 10247 (Modes 1, 2, 4).
10247–P	DOT–E 10247	Thermo Analytical, Inc. Waltham, MA.	49 CFR 173.4	To become a party to exemption 10247 (Modes 1, 2, 4).
10278–P	DOT–E 10248	The Coleman Company, Inc. Wichita, KS.	49 CFR 173.304(d), 178.33.	To become a party to exemption 10278 (Modes 1, 2, 3).
10307–P	DOT–E 10307	Boliden Intertrade Inc. Atlanta, GA.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307 (Mode 2).
10307–P	DOT–E 10307	Texasgulf, Inc., Aurora, NC.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307 (Mode 2).

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10307–P	DOT–E 10307	Rhone-Poulenc Basic Chemicals Co., Shelton, CT.	49 CFR 179.200–18, 179.201–1.	To become a party to exemption 10307 (Mode 2).
10365–P	DOT–E 10365	United States Enrichment Corporation (USEC), Bethesda, MD.	49 CFR 178.121–1(b)	To become a party to exemption 10365 (Modes 1, 2, 3).
10429–P	DOT–E 10429	Petrolite Corporation St. Louis, MO.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To become a party to exemption 10429 (Mode 1).
10429–P	DOT–E 10429	Champion Technologies, Inc. Houston, TX.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To become a party to exemption 10429 (Mode 1).
10441–P	DOT–E 10441	J.B. Hunt Special Commodities, Inc. Lowell, AR.	49 CFR 177.848	To become a party to exemption 10441 (Mode 1).
10486–X	DOT–E 10486	Aeropres Corporation, Shreveport, LA.	49 CFR 173.302, 173.304, 173,305, 173.315.	Authorizes the transportation of mixtures of flammable and nonflammable compressed gases in DOT Specification MC 330 and MC 331 cargo tanks. (Mode 1).
10660–P	DOT–E 10660	The Upjohn Company, Kalamazoo, MI.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	To become a party to exemption 10660 (Modes 1, 4).
10755–X	DOT–E 10755	Minnesota Mining and Manufacturing Company, (3M) St. Paul, MN.	49 CFR 172.203, 172.400, 172.402, 172.504, 173.150, 173.151, 173.152, 173.153, 173.154, 173.201, 173.202, 173.203, 173.211, 173.212, 173.25, 173.4 and 173.211, 174.213, 175.25, 175.3, 175.33.	Authorizes manufacture, marking and sale of specially designed combination packaging for shipment of hazardous materials required to bear the POISON, KEEP AWAY FROM FOOD, FLAMMABLE LIQUID, MABLE SOLID OR CORROSIVE labels. (Modes 1, 2, 3, 4, 5).
10795–P	DOT–E 10795	Niagara Mohawk Power Corporation (NM), Syracuse, NY.	49 CFR 173.31(b)(1), 174.67(a)(7).	To become a party to exemption 10795 (Mode 2).
10809–P	DOT–E 10809	Spectrum Packaging Systems, Inc. (SPS), Moonachie, NJ.	49 CFR 173.245b, 173.365.	To become a party to exemption 10809 (Modes 1, 2).
10878–X	DOT–E 10878	Tankcon FRP, Inc., Boisbriand, Que, CN.	49 CFR 178.345, 178.348.	To manufacture, mark and sell non-DOT specification cargo tanks construct of fiberglass reinforced plastic for use in transporting various commodities classed as corrosive material. (Mode 1).
10898–P	DOT–E 10898	Fluid System Components, Inc., Green Bay, WI.	49 CFR 173.302	To become a party to exemption 10898 (Modes 1, 2, 3, 4).
10911–X	DOT–E 10911	The Pallet Reefer Company, Seaford, DE.	49 CFR 173.24(g)	To manufacture, mark and sell a specially designed refrigeration unit equipped with four DOT specification 3AL1800 cylinders, containing carbon dioxide, refrigerated liquid, division 2.2, which are vented during transportation through a controlled release process for cooling purposes. (Modes 1, 4).
10914–X	DOT–E 10914	Allied-Signal Aerospace Company, Tempe, AZ.	49 CFR 178.44	To authorize the manufacture, mark and sell of non-DOT specification welded pressure vessel comparable to a DOT3HT cylinder for use in transporting compressed gas. (Modes 1, 4).
10922–P	DOT–E 10922	UltraTest Corp., Division of FIBA, Westboro, MA.	49 CFR 172.301(c), 173.34(e).	To become a party to exemption 10922 (Modes 1, 2, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10933–P	DOT–E 10933	Advanced Environmental Technology Corporation, Flanders, NJ.	49 CFR 173.12, 174.81, 176.83 AND 177.848.	To become a party to exemption 10933 (Modes 1, 2, 3).
10933–P	DOT–E 10933	California Advanced Environmental Technology Corp, Hayward, CA.	49 CFR 173.12, 174.81, 176.83 and 177.848.	To become a party to exemption 10933 (Modes 1, 2, 3).
10933–P	DOT–E 10933	J.B. Hunt Special Commodities, Inc., Lowell, AR.	49 CFR 173.12, 174.81, 176.83 AND 177.848.	To become a party to exemption 10933 (Modes 1, 2, 3).
10982–P	DOT–E 10982	Appleton Papers, Inc., Appleton, WI.	49 CFR 17174.67(i)+(j)	To become a party to exemption 10982 (Mode 2).
10982–P	DOT–E 10982	Temple-Inland Forest Products Corporation, Diboll, TX.	49 CFR 174.67(i)+(j)	To become a party to exemption 10982 (Mode 2).
10982–P	DOT–E 10982	Appleton Papers, Inc., Appleton, WI.	49 CFR 174.67(i)+(j)	To become a party to exemption 10982 (Mode 2).
11033–P	DOT–E 11033	Engineering Resources, Inc. (ERI), Fayetteville, AR.	49 CFR 173.302(a)(3)	To become a party to exemption 11033 (mode 1).
11041–X	DOT–E 11041	Aerojet Propulsion Division, (APD), Sacramento, CA.	49 CFR 173.124(a)(1)(i)	Authorizes the transportation in commerce of a Class 9 material (aqueous solution containing not more than 12% ammonium perchlorate, 0.5% nitroguandine and 50 ppm of (RDX) in cargo tanks. (Mode 1).
11072–X	DOT–E 11072	U.S. Department of Defense, Falls Church, VA.		To authorize the transportation in commerce of explosive materials containing white phosphorus of Class 1, Compatibility Group H stored in shipborne steel barges instead of stored in steel portable magazines or freight containers. (Mode 3).
11073–X	DOT–E 11073	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.102(c)(3) Special Provision B14 and B74; and, 179.101–1.	To authorize the transportation of chlorosulfonic acid DOT Class 112S tank cars consted of ASTM 204–70, Type 304L stainless steel, equipped with full head shields. (Mode 2).
11119–X	DOT–E 11119	U.S. Chemical and Plastics Co., Inc., Canton, OH.	49 CFR 173.152	To authorize the transportation in commerce of certain organic peroxides, as limited quantities/commodities when the inside containers do not exceed 125 ml for liquids and 500 g for solids. (Modes 1, 2).
11119–P	DOT–E 11119	Marson Corporation, Chelsea, MA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Crater Auto Supply, Inc., Medford, OR.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Fiber Glass Evercoat Co., Inc., Cincinnati, OH.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Akzo Coatings, Inc., Norcross, GA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Oak Distributors, Inc., Ontario, CA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	The C.R.C. Line, Inc., Spencer, MA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Dynatron/Bondo Corporation, Atlanta, GA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	The Norac Company, Inc., Azusa, CA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	Oatey Co., Cleveland, OH.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11119–P	DOT–E 11119	DBF, Inc., Riverview Mi	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2).
11147–X	DOT–E11147	The Boeing Company, Seattle, WA.	49 CFR 173.301(i)	To authorize the transportation in commerce of aircraft safety equipment which utilizes non-DOT specification cylinders containing certain compressed gases, Division 2.2. (Mode 1).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11168–X	DOT–E 11168	Aldrich Chemical Company, Inc., Milmaukee, WI.	49 CFR 173.21(b), 173.54(k), 173.57(a), 173.124(a).	To authorize the transport of small quantities of 1-methy1-3-nitro-1-nitrosoguanidine (MNNG) a thermally unstable material, as Division 4.1, which is forbidden for transportation, in specially designed packaging. (Modes 1, 2).
11189–P	DOT–E 11189	Volkswagen of America, Inc., Auburn Hills, MI.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
11189–P	DOT–E 11189	Ford Motor Company, Dearborn, MI.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
11189–P	DOT–E 11189	TRW Vehicle Safety Systems, Inc., Washington, MI.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
11189–P	DOT–E 11189	Breed Technologies, Inc., Lakeland, FL.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
11189–P	DOT–E 11189	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
11189–P	DOT–E 11189	Morton Bendix, Maryville, TN.	49 CFR 172.101, 173.56, 173.116.	To become a party to exemption 11189 (Modes 1, 2, 3, 4, 5).
NEW EXEMPTIONS				
10603–N	DOT–E 10603	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, England.	49 CFR 173.301(h), 173.302(a)(1), 173.302(c)(3), 173.304(a), 173.305(a)(3), 173.34(a)(1).	To manufacture, mark and sell non-DOT specification seamless steel cylinders comparable to DOT Specification 3AA cylinders to transport commodities classed as flammable and nonflammable gases, liquified and nonflammable gases and mixtures. (Modes 1, 2, 3, 4).
10651–N	DOT–E 10651	Ashland Chemical, Inc., Columbus, OH.	49 CFR 173.34(e)	To eliminate the periodic retest, reinspection and marking requirements for DOT Specification 4BW cylinders authorized for the transportation of flammable liquids. (Mode 1).
10705–N	DOT–E 10705	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 173.122(a)(5)	To authorize the transportation of acrolein in non-DOT specification IMCO Type 5 portable tanks with flammable or corrosive material. (Mode 1).
10753–N	DOT–E 10753	Pestcon System, Inc., Raleigh, NC.	49 CFR 172.500(f), 172.504.	To authorize transportation of aluminum phoshphide, classed as a flammable solid, in private owned pest control vehicles without placards. (Mode 1).
10771–N	DOT–E 10771	Tomco Equipment Company, Loganville, GA.	49 CFR 178.337–6(b)	To authorize the manufacture, mark and sell of non-DOT specification cargo tanks with front head manway mounted on flat-bed truck for use in transporting carbon dioxide, refrigerated liquid. (Mode 1).
10802–N	DOT–E 10802	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(f)	To authorize the transportation of carbon monoxide and carbon monoxide mixture classed as flammable and nonflammable gases in DOT 3AL cylinders with service pressures up to and including 3000 psig. (Modes 1, 2, 4).
10823–N	DOT–E 10823	Comdyne I, Inc., West Liberty, OH.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark and sell non-DOT specification cylinders for use in transportation of certain flammable and nonflammable compressed gases. (Modes 1, 3, 4, 5).
10838–N	DOT–E 10838	Gustafson, Incorporated, Dallas, TX.	49 CFR 173 Subpart F, 173.114(a)(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.353.	To authorize the manufacture, mark and sell of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed with a protective steel frame for shipment of various classes of hazardous materials. (Modes 1, 2, 3).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10840–N	DOT–E 10840	The Chloramone Company, Delaware City, DE.	49 CFR 173.302, 173.304, 173.34.	To authorize the use of a non-DOT specification salvage cylinder for overpacking damaged or leaking cylinders containing sulfur dioxide classed as nonflammable gas. (Mode 1).
10847–N	DOT–E 10847	Brunswick Corporation, Lincoln, NE.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To manufacture, mark and sell composite hooped wrapped aluminum cylinders for use in transporting various gases classed as flammable and nonflammable. (Modes 1, 2, 3).
10867–N	DOT–E 10867	Pacific Scientific, HTL/Kin-Tech Division, Duarte, CA.	49 CFR 173.302, 175.3, 178.44.	To authorize the manufacture, mark and sell of non-DOT specification welded titanium cylinder having 35 cubic inches maximum water capacity and 3,200 psig maximum service pressure for use in transporting nitrogen, with 5% trace of helium gas, classed as nonflammable gas. (Modes 1, 2, 4, 5).
10878–N	DOT–E 10878	Tankcon FRP Inc., Boisbriand, Que, CN.	49 CFR 178.345, 178.348.	To manufacture, mark and sell non-DOT specification cargo tanks constructed of fiberglass reinforced plastic for use in transporting various commodities classed as corrosive material. (Mode 1).
10887–N	DOT–E 10887	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.245	To authorize the transportation of dinitrogen tetroxide liquid, classed as poison gas, inhalation hazardous zone A; oxidizers and other liquid hazardous materials in non-DOT specification portable tanks comparable to the DOT–51 portable tank specification. (Mode 1).
10898–N	DOT–E 10898	HYDAC Corporation, Bethlehem, PA.	49 CFR 173.302	To authorize the transportation of nitrogen, classed as nonflammable gas, in precharged accumulators of various sizes not to exceed 5000 psig designed in accordance with ASME pressure vessel code. (Modes 1, 2, 3, 4).
10913–N	DOT–E 10913	Aco-Ass- mann of Canada Ltd., Pickering, Ontario, Canada.	49 CFR 173.(f), 173.119, 173.125, 178.19, 178.253.	To authorize the manufacture, mark and sale of non-DOT specification rotationally molded, low density polyethylene portable tank enclosed with a protective steel cage for shipment of various classes of hazardous materials. (Modes 1, 2, 3.)
10925–N	DOT–E 10925	Southern Air Transport, Miami, FL.	49 CFR 172.101	To authorize the transportation of dimethylhydrazine, Class 3 in 55-gallon DOT Specification 5C drums and nitrogen tetroxide class 6 in 106A100W or 110A500W tank containers aboard cargo aircraft only. (Mode 4.)
10926–N	DOT–E 10926	Radcal Corporation, Monrovia, CA.	49 CFR 173.34(d)	To manufacture, mark and sell radiation monitors which incorporate a DOT Specification 39 cylinder, without a safety relief device, containing argon, Division 2.2. (Modes 1, 4, 5.)
10949–N	DOT–E 10949	Laidlaw Environmental Services, Inc., Columbia, SC.	49 CFR 177.848(c)	To authorize the transportation of detector units containing cyanide packed in lab pack drums on the same vehicle carrying acids packaged in 55 gallon DOT specification drums separated by nine foot buffer zone. (Mode 2.)
10951–N	DOT–E 10951	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 179.100–15, 179.101–1.	To authorize the transportation of hydrogen chloride, refrigerated liquid, Division 2.3 in DOT-Specification 105A600W tank cars with relief device set to 380 psig and rupture disc at 400 psig. (Mode 2.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10957–N	DOT–E 10957	Rhone-Poulenc Basic Chemicals Co., Shelton, CT.	49 CFR 174.67(a)(2)	To authorize the blocking and braking of the first and last tank car in a series of five tank cars, instead of each individual car, when engaged in unloading sulfuric acid and sulfuric acid, spent, Class 8. (Mode 2.)
10962–N	DOT–E 10962	International Compliance Center (USA), Ltd., Niagara Falls, NY.	49 CFR Part 172, Subpart E & F, Part 177, Subpart C.	To authorize the manufacture, mark and sale of specially designed combination packaging for shipment of limited quantities of various classes of hazardous materials to be shipped with the required hazard labels. (Mode 1.)
10969–N	DOT–E 10969	Brights Associates, Inc., Tonawanda, NY.	49 CFR 173.304(a)(2), 173.34(d) and (e).	To authorize the manufacture, mark and sale of non-DOT specification full open head, steel salvage cylinders for overpacking damaged or leaking chlorine cylinders. (Mode 1.)
10970–N	DOT–E 10970	Luxfer USA Limited, Riverside, CA.	49 CFR 173.302(a)(1), 173.304(a)(d), 175.3.	To authorize the manufacture, mark and sale of a fully overwrapped, aluminum-lined, composite cylinder meeting the design and qualification requirements of DOT FRP–1 standard for use in transporting various commodities classed as Division 2.1 and 2.2. (Modes 1, 2, 3, 4, 5.)
10973–N	DOT–E 10973	Richards-Gregory & Associates, Inc., Bolingbrook, IL.	49 CFR 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.157, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a), CFR 173.	To authorize the manufacture, mark and sale of composite portable tanks with a capacity up to 330 gallons, consisting of a rotationally molded polyethylene inner receptacle within a metal frame outer casing, for the shipment of certain hazardous materials. (Modes 1, 2).
10979–N	DOT–E 10979	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.266(e)	To authorize the transportation of hydrogen peroxide, aqueous solutions, classed as Division 5.1 in polyethylene portable tanks meeting DOT Specification 57 in mixed loads. (Mode 1).
10989–N	DOT–E 10989	Eagle-Picher Ind, Inc., Joplin, MO.	49 CFR 173.159(g)(2)	To authorize the transport of electrolyte acid, or battery fluid alkaline, Class 8, included with storage batteries and filing kits overpacked in sealed steel drums when shipments are made by, for or to the Department of Defense. (Mode 1).
10993–N	DOT–E 10993	Columbia Helicopters, Inc., Portland, OR.	49 CFR 172.101(9)(b), 173.241–243.	To authorize the transportation of bulk quantities of flammable liquids in non-DOT specification seal drums (roltagons) up to 500 gallons capacity. (Mode 4).
11021–N	DOT–E 11021	Union Pacific RR Co. and Missouri Pacific RR Co., Omaha, NE.	49 CFR 173.318	To authorize the transportation of methane, classed in Division 2.1, in DOT–113C120W tank cars. (Mode 2).
11025–N	DOT–E 11025	Mass Systems, Inc., Baldwin Park, CA.	49 CFR 173.302(a)(2), 175.3, 178.44.	To authorize the manufacture, mark and sell of non-DOT specification welded stainless steel cylinders having 200 cubic inches maximum water capacity and 3800 psi maximum service pressure for transporting various Division 2.2 commodities. (Modes 1, 2, 4, 5).
11031–N	DOT–E 11031	Amfuel, Magnolia, AR	49 CFR Part 173, Subpart F.	To authorize the manufacture, mark and sell of specially designed truck mounted cargo tank for use in transporting Class 9 material. (Mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11032–N	DOT–E 11032	L'Air Liquide—D.T.A., Sassenage, France.	49 CFR Part 173, Part 178.	To authorize the manufacture, mark and sell of non-DOT specification ring shaped steel cylinder in emergency breathing equipment for use in transporting compressed oxygen classed in Division 2.2 (Modes 1, 2, 3, 4, 5).
11033–N	DOT–E 11033	Witco Corporation, Houston, TX.	49 CFR 173.302(a)(3)	To authorize the transport of compressed gas, flammable, n.o.s., classed in Division 2.1 in DOT specification 3AAX tube trailers. (Mode 1).
11044–N	DOT–E 11044	Southeastern Fumigants, Inc., Dawson, GA.	49 CFR 173.334	To authorize shipment of 2.2 dichlorovinyl dimethyl phosphate classed as Division 2.3 Zone C in a DOT Specification 4BA240 cylinder with 25 pounds of product. (Mode 1).
11045–N	DOT–E 11045	Sandoz Agro, Inc., Beaumont, TX.	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2).
11050–N	DOT–E 11050	Chevron USA Products Co., Inc., San Francisco, CA.	49 CFR 174.67(i)+(j)	To authorize the unloading of tank cars containing asphalt cement, classed as Class 9, without the physical presence of an unloader (Mode 2).
11054–N	DOT–E 11054	Welker Engineering Company, Sugar Land, TX.	49 CFR 178.36 Subpart C.	To authorize the manufacture, mark and sell of non-DOT specification cylinders conforming to 3A specification for use in shipment of various hazardous materials classed in Class 3, Division 2.1 and 2.3. (Modes 1, 2, 3, 4).
11057–N	DOT–E 11057	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.304	To authorize the manufacture, mark, and sell of welded non-DOT specification nonrefillable stainless steel cylinders conforming to DOT-Specification 39 for use in transporting nitrogen, compressed, classed as Division 2.2. (Modes 1, 4).
11058–N	DOT–E 11058	Spex Industries, Inc., Edison, NJ.	49 CFR 173.158(e)	To authorize the transport of nitric acid and hydrochloric acid, Class 8 material, in combination packaging in 4G fiberboard boxes with inside plastic bottles of not over 2.5 liter capacity. (Mode 1).
11070–N	DOT–E 11070	National Aeronautics & Space Administration, (NASA) Washington, DC.	49 CFR 173.304	To authorize the shipment of anhydrous ammonia, classed as Division 2.2, in non-DOT specification cylinders described as part of a closed loop thermal control system for the space program. (Mode 1).
11090–N	DOT–E 11090	Mobile Ripening Systems, Inc., Jessup, MD.	49 CFR 177.809 and 177.817, Part 107, Subpart B, Appendix B, Part 172, Subparts C, D and E; 173.24(b)(1).	To authorize the controlled release of ethylene, contained in DOT specification cylinders, into a transport vehicle for the purpose of ripening fruits and vegetables. (Mode 1).
11091–N	DOT–E 11091	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.34(e)(15)	To authorize DOT Specification 3A or 3AA cylinders, over 35 years old, used in hydrogen service, to be exempt from certain retest requirements. (Mode 1).
11103–N	DOT–E 11103	Space Systems/Loral, Palo Alto, CA.	49 CFR 107.302, CFR 49.	To authorize the transport of GOES I Satellite containing propellant/pressurant tanks pressurized with nitrogen or helium classed as Division 2.2. (Mode 1).
11105–N	DOT–E 11105	Gulf States Paper Corporation, Demopolis, AL.	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2).
11107–N	DOT–E 11107	Teledyne McCormick Selph, Hollister, CA.	49 CFR 173.56(b)	To authorize the transport of explosive devices, classed as Division 1.1 mounted on aluminum trays with anti-static plastic bags overpacked in UN 4C1 plywood/wood boxes. (Mode 1).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11109–N	DOT–E 11109	Matson Navigation Company, Inc., San Francisco, CA.	49 CFR 176.170(b)	To authorize an exemption from the 11,023 pound weight limit on explosives, classed as Division 1.5, transported in freight containers longer than 20 feet on cargo vessels. (Mode 3).
11110–N	DOT–E 11110	United Parcel Service Company (UPSCO), Louisville, KY.	49 CFR 49 CFR 175.75(a)(2).	To authorize the transportation of certain hazardous materials classed as D Division 1.4, Class 3, Division 6.1 and Class 8 when loaded an inaccessible location aboard an aircraft in quantities exceeding those authorized. (Modes 4, 5).
11111–N	DOT–E 11111	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315	To authorize the transport of hydrogen bromide, anhydrous, classed as Division 2.3, Hazard Zone C material shipped in MC–330 tank with a minimum design pressure of 375 psig. (Mode 1).
11115–N	DOT–E 11115	U.S. Department of Energy, Washington, DC.	49 CFR 173.416	To authorize a one time shipment of a Nordion International Gammacell 220 High Dose Rate Irradiator in a foreign approved Type B(U) package, radioactive material, special form, n.o.s., Cobalt-60, Class 7 consisting of a cylindrical steel-encased lead radiation shield with plywood overpack. (Mode 1).
11131–N	DOT–E 11131	Interstate Navigation Company, New London, CT.	49 CFR CFR 107.101	To authorize the transport of LPG propane gas, classed as Division 2.1, contained in cylinders on passenger ferries. (Mode 3).
11135–N	DOT–E 11135	Enron Clean Fuels Marketing Company, Houston, TX.	49 CFR 173.29(b)(ii)	To authorize the one-time shipment of a DOT Specification 111A100W1 rail car, containing methyl alcohol residue, Class 3. (Mode 2).
11136–N	DOT–E 11136	American Pyrotechnics Association, Chestertown, MD.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320.	To authorize the transport of fireworks, 1.3G explosives which are forbidden for shipment by cargo-only aircraft. (Mode 4).
11168–N	DOT–E 11168	Aldrich Chemical Company, Inc. Milwaukee, WI.	49 CFR 173.21(b), 173.54(k), 173.57(a), 173.124(a).	To authorize the transportation of small quantities of 1-methyl-3-nitro-1-nitrosoguanidine (MNNG) a thermally unstable material, which is forbidden for transportation, to be shipped as a Division 4.1 when contained in specially designed packaging. (Modes 1, 2).
11176–N	DOT–E 11176	K.A. Steel Chemicals, Inc., Lemont, IL.	49 CFR 176.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2).
11179–N	DOT–E 11179	Jones-Hamilton Co., Newark, CA.	49 CFR 173.24(g), 173.29(a).	To authorize the transportation of empty, uncleaned non-DOT specification reusable plastic drums equipped with venting device, comparable to UN 1H1, containing sulfuric acid, Class 8. (Mode 1).
11189–N	DOT–E 11189	Morton International, Inc., Ogden, UT.	49 CFR 172.101, 173.56, 173.116.	To authorize automotive passive restraint inflators and/or modules, which are capable of passing certain UN test criteria, to be shipped as class 9. (Modes 1, 2, 3, 4, 5).
11212–N	DOT–E 11212	Temple-Inland Forest Products Corporation, Diboll, TX.	49 CFR 174.67(i) & (j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11239–N	DOT–E 11239	CO.ME.F Carpenteria s.r.l., Tradate, Italy.	49 CFR 178.245–1(b)	To authorize the transportation of certain liquefied flammable and non-flammable refrigerant gases, Division 2.1 and 2.2, in non-DOT specification steel portable tanks equipped with openings in the shell which are not grouped together. (Modes 1, 2, 3).
11254–N	DOT–E 11254	Halliburton Energy Services, Houston, TX.	49 CFR 173.62(c), 49 CFR, Packing Method US006, Paragraph C and F.2.	To authorize transportation of jet perforating guns, charged, Division 1.4D, NA0124, on specially designed private offshore supply vessels. (Mode 3).
EMERGENCY EXEMPTIONS				
EE 3095–X	DOT–E 3095	Dowell Schlumberger Inc., Houston, TX.	49 CFR 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 173.342–5, 178.343–5.	Authorizes the use of a privately owned and operated steel non-DOT specification cargo tank motor vehicle designed and constructed in full conformance with DOT Specification MC–300, MC–306, MC–307 or MC–311, MC–312 for shipment of corrosive and flammable liquids. (Modes 1, 3).
EE 3095–X	DOT–E 3095	Dowell Schlumberger Inc., Houston, TX.	49 CFR 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 178.342–5, 178.343–5.	Authorizes the use of a privately owned and operated steel non-DOT specification cargo tank motor vehicle designed and constructed in full conformance with DOT Specification MC–300, MC–306, MC–307 or MC–311, MC–312 for shipment of corrosive and flammable liquids. (Modes 1, 3).
EE 4803–P	DOT–E 4803	D–H Acquisition, Inc., Dallas, TX.	49 CFR 173.245, 173.248, 173.249, 173.263, 173.272, 173.289, 178.343–5.	To become a party to exemption 4803. (Mode 1).
EE 5923–X	DOT–E 5923	Parry Corp. (formerly Akron Welding & Spring Co.), North Royalton, OH.	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314.	Authorizes the transport of certain flammable and nonflammable gases in DOT–106A500X and 110A500W multi-unit tank cars. (Modes 1, 2, 3).
EE 6530–X	DOT–E 6530	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.302(c)	Authorizes the shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2).
EE 6530–X	DOT–E 6530	Parry Corp. (formerly Akron Welding & Spring Co.), North Royalton, OH.	49 CFR 173.302(c)	Authorizes the shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1, 2).
EE 6614–X	DOT–E 6614	Auto-Chlor System, Memphis, TN.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	Authorizes the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box for transportation of certain corrosive liquids. (Mode 1).
EE 6691–X	DOT–E 6691	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	Authorizes the use of DOT Specification 3A or 3AA cylinders over 35 years old, which can be retested every 10 years, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4).
EE 6691–X	DOT–E 6691	Parry Corp. (formerly Akron Welding & Spring Co.), North Royalton, OH.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	Authorizes the use of DOT Specification 3A or 3AA cylinders over 35 years old,which can be retested every 10 years, for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4).
EE 6765–X	DOT–E 6765	Nippon Helium, Inc., Yokohama, Japan.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	Authorizes the use of non-DOT specification portable tanks for transportation of a flammable and a nonflammable gas. (Modes 1, 3).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7835–X	DOT–E 7835	Scott Specialty Gases, Inc., Plumsteadville, PA.	49 CFR 177.848, Part 107, Appendix (B)(1).	Authorizes the transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1).
EE 7891–X	DOT–E 7891	Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	Authorizes the transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2).
EE 7943–X	DOT–E 7943	Patterson Laboratories, Inc. (Patterson West), Goodyear, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	Authorizes the shipment of corrosive liquids in fiberboard boxes complying with DOT Specification 12B except for handholes in top flaps. (Mode 1).
EE 8156–X	DOT–E 8156	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	Authorizes the shipment of flammable gases in DOT Specification 39 cylinders up to 225 cubic inches in volume. (Modes 1, 2).
EE 8156–X	DOT–E 8156	Parry Corp. (formerly Akron Welding & Spring Co., North Royalton, OH.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	Authorizes the shipment of flammable gases in DOT Specification 39 cylinders up to 225 cubic inches in volume. (Modes 1, 2).
EE 8214–X	DOT–E 8214	Mitsubishi Motor Sales of America, Inc., Cypress, CA.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	Authorizes the shipment of inflators and modules, containing a Class C explosive classed as a flammable solid for passive restraint systems use automobiles. (Modes 1, 2, 3, 4).
EE 8458–X	DOT–E 8458	Weiland Chemical Inc., Newell, PA.	49 CFR 173.31(c) Table 1, 179.202–12(b).	Authorizes the conversion of DOT Specification 105A500W or 112A400W tank cars to a DOT Specification 111A100W2 tank car. (Modes 2).
EE 8582–X	DOT–E 8582	Metro North Commuter Railroad Company, New York, NY.	49 CFR Parts 100–177 ..	Authorizes the transport of railway track torpedoes and fuses packed in metal kits in motor vehicles by railroad maintenance crews as nonregulated all carrier equipment. (Mode 1).
EE 8723–X	DOT–E 8723	Mt. State Bit Service, Inc., Morgantown, WV.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	Authorizes the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2).
EE 9047–X	DOT–E 9047	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	Authorizes the use of copper-bearing (brass) valves in DOT specification cylinders and DOT Specification 5P drums containing ethylene oxide. (Modes 1, 2, 3, 4).
EE 9047–X	DOT–E 9047	Parry Corp. (formerly Akron Welding & Spring Co., North Royalton, OH.	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	Authorizes the use of copper-bearing (brass) valves in DOT specification cylinders and DOT Specification 5P drums containing ethylene oxide. (Modes 1, 2, 3, 4).
EE 9145–X	DOT–E 9145	Exxon Pipeline Company, Houston, TX.	49 CFR 173.119, 173.304, 173.315.	Authorizes the use of a non-DOT specification container, for shipment of flammable gases. (Mode 1).
EE 9162–X	DOT–E 9162	Sun Pipe Line Company, Snyder, TX.	49 CFR 173.119, 173.304, 173.315.	Authorizes the use of a non-DOT specification container, for transportation of flammable liquids or flammable gases. (Mode 1).
EE 9346–X	DOT–E 9346	IMC Fertilizer, Inc., Mulberry, FL.	49 CFR 174.67(a)(2)	Authorizes setting of the brakes and blocking the wheels of the first and last tank cars on up to a 12 tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum. (Mode 2).
EE 9816–X	DOT–E 9816	Amrex Chemical Company, Inc., Binghamton, NY.	49 CFR 173.277(a)(9)	Authorizes the shipment of hypochlorite solution, more than 7 percent available chlorine by weight, in non-DOT specification cargo tanks. (Mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10001–X	DOT–E 10001	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.316, 173.320.	Authorizes the transport of argon containing up to 10 percent oxygen as a refrigerated liquid in DOT Specification 4L cylinder. (Mode 1).
EE 10001–X	DOT–E 10001	Parry Corp. (formerly Akron Welding & Spring Co., North Royalton, OH.	49 CFR 173.316, 173.320.	Authorizes the transport of argon containing up to 10 percent oxygen as a refrigerated liquid in DOT Specification 4L cylinder. (Mode 1).
EE 10184–X	DOT–E 10184	Valley Welding Supply Company, Wheeling, WV.	49 CFR 173.34(e)(10), 173.34(e)(9).	Authorizes the shipment of a specific gas mixture in DOT Specification 4B, 4BA or 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34(e)(9) and (e)(10). (Modes 1, 2, 3).
EE 10184–X	DOT–E 10184	Parry Corp. (formerly Akron Welding & Spring Co., North Royalton, OH.	49 CFR 173.34(e)(10), 173.34(e)(9).	Authorizes the shipment of a specific gas mixture of DOT Specification 4B, 4BA or 4BW cylinders retested in accordance with the provisions of 49 CFR 173.34(e)(9) and (e)(10). (Modes 1, 2, 3).
EE 10553–X	DOT–E 10553	All Pure Chemical Company, Tracy, CA.	49 CFR 176.67(i) & (j) ...	Authorizes the use of tank car tanks loaded with chlorine, which is a nonflammable gas, to remain standing with the unloading connections attached. (Mode 2).
EE 10553–X	DOT–E 10553	All Pure Chemical Company, Tracy, CA.	49 CFR 176.76(i) & (j) ...	Authorizes the use of tank car tanks loaded with chlorine, which is a nonflammable gas, to remain standing with the unloading connections attached. (Mode 2).
EE 10576–X	DOT–E 10576	Simpson Tacoma Kraft Company, Tacoma, WA.	49 CFR 174.67(I), (J)	Authorizes the use of tank cars loaded with chlorine to be remotely monitored and attached to transfer connections during the unloading process. (Mode 2).
EE10660–X	DOT–E 10660	DuPont Merck Pharmaceutical Company, Billerica, MA.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	Authorizes the transportation of packages of hazardous materials that are labeled only for the primary radioactive material hazard class even though the small amount of materials contained in the package also meet the definition of a secondary hazard. (Modes 1, 4).
EE10660–X	DOT–E 10660	E.I. du Pont de Nemours & Company, Inc., Boston, MA.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	Authorizes the transportation of packages of hazardous materials that are labeled only for the primary radioactive material hazard class even though the small amount of materials contained in the package also meet the definition of a secondary hazard. (Modes 1, 4).
EE10693–X	DOT–E 10693	Vertex Chemical Corporation, St. Louis, MO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	Authorizes the use of tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2).
EE10785–X	DOT–E 10785	Kay-Ray/Sensall, Inc., a subsidiary of Rosemount, Mt. Prospect, IL.	49 CFR 173.302, 175.3 .	Authorizes the manufacture, marking and sale of non-DOT specification containers (radiation detection chamber) in certain non-contacting measurement systems. (Modes 1, 2, 3, 4, 5).
EE11011–X	DOT–E 11011	Arco Alaska, Incorporated, Pasadena, CA.	49 CFR 173.31(n), 173.315(h), 173.315(i), 178.245–1, 178.245–4 and 178.245–5.	To authorize the one-time shipment for transportation in commerce of nonflammable liquefied compressed gas in a DOT specification ASME Code "Code U" stamped portable tank. (Mode 3).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE11071–X	DOT–E 11071	Riedel Environmental Services, Inc., Portland, OR.	49 CFR Parts 171, 172, 173 and 177.	To authorize the transportation in commerce of waste hazardous materials in certain non-DOT specification strong leak-proof metal, plastic, or lined wood non-bulk packagings suitable for the liquids or solids to be transported. (Mode 1).
EE11073–X	DOT–E 11073	E.I. du Pont de Nemours and Company, Wilmington, DE.	49 CFR 172.102(c)(3) Special Provision B14 and B74; and, 179.101–1..	To authorize the transportation of chlorosulfonic acid DOT Class 112S tank cars consted of ASTM 204–70, Type 304L stainless steel, equipped with full head shields. (Mode 2).
EE11095–X	DOT–E 11095	Westvaco Corporation, New York, NY.	49 CFR 173.29(c)(2), 173.31(b)(3), 179–100–12(c) and, 179.100–13.	To authorize the shipment of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve and chlorine "C" kit attached (Mode 2).
EE11119–P	DOT–E 11119	Dynatron/Bondo Corporation, Atlanta, GA.	49 CFR 173.152	To become a party to exemption 11119. (Modes 1, 2).
EE 11121–N	DOT–E 11121	U.S. Department of Defense, Washington, DC.	49 CFR 176.83(b) Table, 176.83(f) Table, and 173.136.	To authorize the transportation in commerce of certain hazardous materials on board cargo vessels operated under the U.S. Marine Corps Maritime Prepositioning Force (MPF) program and Military Sealift Command charter utilizing alternative stowage and segregation provision to those specified in 49 CFR Part 176. (Mode 3).
EE 11122–N	DOT–E 11122	Monsanto Chemical Co., St. Louis, MO.	49 CFR 173.32c(c)	To authorize the one time shipment in transportation is commerce of 45 DOT Specification IM 101 portable tanks, overdue for visual inspection, containing chloronitrobenzene, para, solid, for St. Louis, Missouri to Newport, UK. (Modes 1, 2, 3).
EE 11125–X	DOT–E 11125	Rhone-Poulenc Basic Chemical Company, Shelton, CT.	49 CFR 172.103, Special Revision B74.	To authorize the transportation in commerce of a Class 8 material meeting the definition of a poison inhalation material, in certain DOT Specification 105S300W tank cars with a safety relief device rated at 2 percent of the tank test pressure. (Mode 2).
EE 11140–N	DOT–E 11140	Liquid Carbonic Industries Corporation, Oak Brook, IL.	49 CFR 172.101 Table, Column (2).	To authorize the transportation in commerce of a carbon dioxide and ethylene oxide mixture (ethylene oxide 10% by weight or volume) classed as a Division 2.2. instead of Division 2.1 based on the mixture meeting the test criteria for a nonflammable gas. (Mode 1).
EE 11143–N	DOT–E 11143	United States Rail Services, San Francisco, CA.	49 CFR 179.200–25	To authorize the transportation in commerce of certain Class 3 materials in DOT Specification 111A100W1 tank cars equipped with ½" thick full head shields and restenciled to DOT 1¼1S100W3. (Mode 2).
EE 11146–N	DOT–E 11146	Allied Signal Incorporated, Morristown, NJ.	49 CFR 173.31(b)(3), 179.100–12(c), 179.100–13.	To authorize the shipment of a DOT Specification 112S400W tank car, containing a class 8 material, meeting all DOT requirement except that the tank car has a defective safety relief valve and chlorine "C" kit attached. (Mode 2).
EE 11147–N	DOT–E 11147	The Boeing Company, Seattle, WA.	49 CFR 173.301(i)	To authorize the transportation in commerce of aircraft safety equipment which utilizes non-DOT specification cylinders containing certain compressed gases, Division 2.2. (Mode 1).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11149–N	DOT–E 11149	Reactives Management Corporation, Chesapeake, VA.	49 CFR 173.21	To authorize the one time transportation in commerce of four containers of methyl ethyl ketone peroxide (MEKP), for forbidden for transportation, on a public highway fór approximately 1.5 miles under police and fire department escort. (Mode 1).
EE 11150–P	DOT–E 11150	Casco Bay Island Transit District, Portland, ME.	49 CFR 172.101	To authorize the transportation in commerce of liquefied petroleum gas in DOT Specification cylinders, secured to transport vehicles on-passenger ferry vessels, which is not authorized by the regulations. (Mode 3).
EE11152–N	DOT–E 11152	Oriental World, Inc., Portland, OR.	49 CFR Parts 100–199 ..	To authorize the transportation in commerce of certain 1.4G explosives (Snappers and Pull-string trick noise makers) as non-regulated. (Mode 1).
EE11152–N	DOT–E 11152	Oriental World, Inc., Portland, OR.	49 CFR Parts 100–199 ..	To authorize the transportation in commerce of certain 1.4G explosives (Snappers and Pull-string trick noise makers) as non-regulated. (Mode 1).
EE11162–N	DOT–E 11162	Gabriel Chemicals, Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	To authorize the shipment of a class 8 material meeting the definition of a poison inhalation material, in certain DOT Specification 111A60W7 tank cars. (Mode 2).
EE11162–N	DOT–E 11162	Gabriel Chemicals, Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	To authorize the shipment of a class 8 material meeting the definition of a poison inhalation material, in certain DOT Specification 111A60W7 tank cars. (Mode 2).
EE11173–N	DOT–E 11173	Olin Corporation, Stamford, CT.	49 CFR 173.201, 173.226, 173.227, 178.61–5, 178.61–20.	The exemption authorizes the transportation in commerce of certain hazardous materials in stainless steel cylinders conforming in part with the DOT-4BW specification. (Modes 1, 2, 3, 4, 5).
EE11175–N	DOT–E 11175	Gabriel Chemicals, Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	To authorize the tranportation of a Class 8 material, meeting the definition of a material poisonous by inhalation, in certain DOT Specification 111A60W7 tank cars. (Mode 2).
EE11175–N	DOT–E 11175	Gabriel Chemicals Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	To authorize the transporation of a Class 8 material, meeting the definition of a material poisonous by inhalation, in certain DOT Specification 111A60W7 tank cars. (Mode 2).
EE11175–N	DOT–E 11175	Gabriel Chemicals Inc., Houston, TX.	49 CFR 172.102, Special Provision B74 and 173.244(a).	To authorize the transporation of a Class 8 material, meeting the definition of a material poisonous by inhalation, in certain DOT Specification 111A60W7 tank cars. (Mode 2).
EE11200–N	DOT–E 11200	Olin Corporation, Stamford, CT.	49 CFR 173.31(a)(4) and 179.800–15.	To authorizes the transportation in commerce of methylhydrazine in DOT Specification 110A500W multi-unit tank car tanks which are not fitted with a pressure relief device. (Modes 1, 3).
EE11200–N	DOT–E 11200	Olin Corporation, Stamford, CT.	49 CFR 173.31(a)(4) and 179.800–15.	To authorizes the transportation in commerce of methylhydrazine in DOT Specification 110A500W multi-unit tank car tanks which are not fitted with a pressure relief device. (Modes 1, 3).
EE 11201–N	DOT–E 11201	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.29(a), 173.31(a)(1), 179.100–2(c) and 179.100–13(a).	To authorize the transportation in commerce of a DOT Specification 105A500@ tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve which has been equipped with a chlorine "C" kit. (Mode 2).

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11201–X	DOT–E 11201	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.29(a), 173.31(a)(1), 179.100–2(c) and 179.100–13(a).	To authorize the transportation in commerce of a DOT Specification 105A500@ tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective safety relief valve which has been equipped with a chlorine "C" kit. (Mode 2).
EE 11205–N	DOT–E 11205	Olin Corporation, Stamford, CT.	49 CFR 173.314(c)	To authorize the shipment of 38 DOT Specification 105A500W tank cars, containing a Division 2.3 material, meeting all DOT requirements except that the tank cars are overloaded. (Mode 2).
EE 11214–N	DOT–E 11214	Olin Corporation, Stamford, CT.	49 CFR 173.31(b)(3), 179.100–12(c).	To authorize the transportation of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirement except that the tank car has a defective safety relief valve which is equipped with a chlorine "C" kit. (Mode 2).
EE 11215–N	DOT–E 11215	Orbital Sciences Corporation (OSC), Dulles, VA.	49 CFR and 173.62, Part 107, Subpart B, Appendix B; 172.102 note 109, Part 172 Subpart C, D, E, F; Part 173 Subpart E, G.	To authorize the transportation in commerce of certain hazardous materials, contained in a pegasus XL three stage winged solid fuel rocket in captive carry launch (CCL) configuration secured beneath a McDonnell Douglas L–1011 (L–1011) aircraft. The flight of the L–1011 must be in accordance with the range safety procedure of Vandenberg AFB, CA. (Mode 4).
EE 11216–N	DOT–E 11216	Boliden Intertrade Manufacturing, Inc., Copperhill, TN.	49 CFR 173.29(a), 17.31(a)(1), 179.100–129c) and 179.100–13.	To authorize the transportation in commerce of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has two defective liquid eduction valves and a chlorine "C" kit attached. (Mode 2).
EE 11217–N	DOT–E 11217	U.S. Department of Defense, Washington, DC.	49 CFR 173.226(b)	To authorize the one-time transportation, in commerce, of methylhydrazine, a Division 6.1 material, contained in four UN1A1 drums which do not meet all requirements of 49 CFR 173.26 subject to the conditions and limitations specified. (Mode 1).
EE 11223–N	DOT–E 11223	ICI Canada, Incorporated, Montreal, Quebec, CN.	49 CFR 173.226(b)	To authorize the transportation of a DOT Specification 105A500W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car has a defective liquid eduction valve which is equipped with a chlorine "C" kit. (Mode 2.)
EE 11224–N	DOT–E 11224	Olin Corporation, Stamford, CT.	49 CFR 173.29(c)(2) and 173.31.	To authorize the transportation of a DOT Specification 105S400W tank car, containing a Division 2.3 material, meeting all DOT requirements except that the tank car is not equipped on the "A" end with a coupler vertical restraint system and has a damaged head shield and tank head. (Mode 2.)
EE 11225–N	DOT–E 11225	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 174.9(b), 174.67(k).	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a residual amount of a Class 3 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11231–N	DOT–E 11231	The Dow Chemical Company, Midland, MI.	49 CFR 173.314(c)	To authorize the one-time transportation in commerce of a DOT Specification 105A600W tank car, containing a Division 2.3 material, poisonous by inhalation, meeting all DOT requirements except the internal product pressure is greater than 90 psig. (Mode 2.)
EE 11233–N	DOT–E 11233	U.S. Department of Defense, Washington, DC.	49 CFR 172.101, Column 8C, 172.510(a), 173.60, 173.61, 173.62, 174.26(a), 174.81, Subpart E of Part 174, and 176.76(a)(1).	To authorize the transportation of unloaded combat vehicles containing certain Class 1 material (Modes 2, 3.)
EE 11234–N	DOT–E 11234	Olin Corporation, Stamford, CT.	49 CFR 173.31(1)(4) and 179.300–15.	To authorize the transportation in commerce of methylhydrazine in DOT Specification 110A500W multi-tank car tanks which are not fitted with a pressure relief device. (Modes 1, 3.)
EE11235–N	DOT–E 11235	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR 173.31(a)	To authorize the transportation in commerce of a DOT Specification 111A100WI tank car, containing a Class 3 material, meeting all DOT requirements except that the tank car has a ¼" fracture extending approximately 5 feet across the bottom ⅓ of the "A" end tank head. (Mode 2.)
EE 11245–N	DOT–E 11245	IMC Fertilizer, Inc., Mundelein, IL.	49 CFR 173.29(c)(2), 173.31(a).	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a residue of a class B material, which does not fully comply with all DOT requirements. (Mode 2.)
EE 11246–N	DOT–E 11246	CSX Transportation, Incorporated, Jacksonville, FL.	49 CFR 173.31(a)(5)	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing a class 8 material, meeting all DOT requirements except that the tank car is not equipped with a coupler vertical restraint system on the "A" end. (Mode 2).
EE 11247–N	DOT–E 11247	Merichem Company, Houston, TX.	49 CFR 174.9(b) and 174.67(k).	To authorize the transportation in commerce of a DOT Specification 111A100W1 tank car, containing a class 8 material, meeting all DOT requirements except that the tank car has defective interior heater coils. (Mode 2).
EE 11258–N	DOT–E 11258	Elf Atochem North America, Portland, OR.	49 CFR 173.31(b)(3), 179.100–12(c), and 179.100–13.	To authorize the shipment of a DOT Specification 105A500W tank car, containing a division 2.3 material, meeting all DOT requirements except that the tank car has a defective vapor line valve and chlorine "C" kit attached. (Mode).

WITHDRAWAL EXEMPTIONS

4884–X		Scott Specialty Gases, Inc., Plum- steadville, PA.	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	Authorizes the shipment of liquefied and nonliquefied compressed gases and a flammable liquid in stainless steel cylinders complying with DOT Specification 4BS with certain exceptions. (Modes 1, 2, 3, 4).
7076–X		LaMotte Company, Chestertown, MD.	49 CFR 173.286(b)	Authorizes the use of a packaging not authorized for transportation of a certain corrosive liquid and flammable liquid. (Modes 1, 2, 3).
7517–X		Trinity Industries, Inc., Dallas, TX.	49 CFR 173.314(c)	Authorizes the manufacture, marking, and sale of non-DOT specification fusion welded tank car tanks, for transportation of a nonflammable compressed gas. (Modes 1, 2, 3).

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7638–X		Minnesota Valley Engineering, Inc., Canton, GA.	49 CFR 173.316(a), 175.3.	Authorizes the manufacture, marking and sale of DOT Specification 4L cylinders for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4).
7891–X		Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize the transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2).
7891–X		Farchan Laboratories, Inc. Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 713.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	Authorizes the transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2).
7891–X		Farchan Laboratories, Inc. Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 713.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	Authorizes the transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2).
7945–X		HTL—Division of Pacific Scientific Company Duarte, CA.	49 CFR 172.101, 173.301(d)(2), 173.302(a)(3).	Deviate from flattening test, delete use by aircraft only, authorize the attachment of 3 actuating cartridges to cylinders (fire extinguishers) containing bromotrifluoromethane pressurized with nitrogen. (Modes 1, 2, 4).
8141–X		Yardney Technical Products, Inc. Pawcatuck. CT.	49 CFR 172.101, 173.206, 173.247.	Authorizes the transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride. (Modes 1, 3).
8141–X		U.S. Department of Defense Falls Church, VA.	49 CFR 172.101, 173.206, 173.247.	Authorizes the transport of individual cells and modules consisting of three cells containing lithium metal and thionyl chloride. (Modes 1, 3).
8214–P		TRW Vehicle Safety Systems Queen Creek, AZ.	49 CFR 171.11 (see paragraph 8.d), 173.153, 173.154, 175.3.	To become a party to exemption 8214 (Modes 1, 2, 3, 4).
8426–X		Ancon Environmental Services Wilmington, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks comptying with DOT Specification MC–307/312, with certain exceptions for the transport of liquid and semisolid waste materials. (Mode 1).
8518–X		Pacific Petroleum Corporation Orcutt, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semisolids. (Mode 1).
8518–X		Pacific Construction & Maintenance Inc., Santa Paula, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	Authorizes the manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semisolids. (Mode 1).
8723–X		Alaska-Pacific Powder Company, Anchorage, AK.	49CFR 172.101, 173.114a(h) (3), 173.154, 176.415, 176.83.	To authorize the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 2).

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8886–X		Amorex Corporation, Trussville, AL.	49 CFR 173.34(e)(8), (e)(9), 175.3.	Authorizes a longer time period between retests of DOT Specification 4B or 4B240ET cylinders containing a nonflammable gas. (Modes 1, 2, 4).
8886–X		Amerex Corporation, Trussville, AL.	49 CFR 173.34(e)(8), (e)(9), 175.3.	Authorizes a longer time period between retests of DOT Specification 4B or 4B240ET cylinders containing a nonflammable gas. (Modes 1, 2, 4).
8901–X		Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357	Authorizes the shipment of chloropicrin in polyethylene bottles overpacked in non-DOT specification triple-wall, corrugated fiberboard boxes. (Modes 1,3).
8970–X		WR Metals Industries, Inc., Denver, CO.	49 CFR 173.368	To authorize shipment of arsenical dust, in a non-DOT specification cylindrical steel container. (Modes 1, 2).
9346–X		Marsulex Inc., North York, Ontario, Canada.	49 CFR 174.67(a)(2)	Authorizes setting of the brakes and blocking the wheels of the first and last tank cars on up to a 12 tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum. (Mode 2).
9374–X		Poly Processing Co. & Poly Cal Plastics, Monroe, LA.	49 CFR 173.114a(h)(3), 173.119, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	Authorizes the manufacture, marking, and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3).
9491–X		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 173.304.	Authorizes the transport of hexafluoroethane and trifluoromethane in DOT Specification 3AL cylinders. (Modes 1, 2, 3, 4, 5).
9623–P		ICI Explosives USA Inc., Dallas, TX.	49 CFR 177.835(c)(3)	To become a party to exemption 9623 (Mode 1).
9678–X		Rossborough Manufacturing Company, Avon Lake, OH.	49 CFR 173.154	Authorizes the use of dry bulk tank semi-trailers for shipment of magnesium and calcium salt mixtures. (Mode 1).
9723–P		Midwest Environmental Transport, Inc., Cincinnati, OH.	49 CFR 177.848(b)	To become a party to exemption 9723 (Mode 1).
9920–X		Tri-Wall Company Louisville, KY.	49 CFR 173.245b, 173.365.	To authorize rail as an additional mode of transportation. (Modes 1, 2)
10479–N		Premier Air Center, Inc. East Alton, IL.	49 CFR 172.101, 175.3	To authorize the transportation of ammunition for cannon with empty projectile which is forbidden for shipment aboard cargo aircraft. (Mode 4)
10504–X		Solkatronic Chemicals, Inc. Fairfield, NJ.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	Authorizes the use of a non-DOT specification full removable head salvage cylinder of 33 gallons capacity for overpacking damaged or leaking packages of pressurized and nonpressurized hazardous materials. (Mode 1)
10694–X		Polymet Alloys, Inc. Birmingham, AL.	49 CFR 173.178	Authorizes a one-time shipment of calcium silicon, a flammable solid, in non-DOT specification packagings. (Modes 1, 2)
10794–N		LND, Inc. Oceanside, NY	49 CFR 173.302, 175.3	To authorize the use of non-DOT specification containers described as hermetically sealed electron tube device for transporting various nonflammable gases. (Modes 1, 4, 5)
10795–X		Mobil Oil Corporation Fairfax, VA.	49 CFR 173.31(b)(1), 174.67(a)(7).	Authorizes the loading of tank cars coupled in a series with the bottom discharge outlet caps in place on all cars except the first and last, the setting of the hand brake and the blocking of a wheel in both directions on the first and last cars of a series of coupled tank cars prior to unloading. (Mode 2)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10843–N		Gopher Smelting & Refining Co. Eagan, MN.	49 CFR 173.260	To authorize the bulk transportation of wet electric storage batteries in a non-DOT specification container constructed of polyethylene material with a loaded capacity not to exceed 2000 pounds. (Mode 1)
10845–P		ICI Foreste Products Montreal Quebec, CN.	49 CFR 173.29(c)(2) and 173.31(c).	To become a party to exemption 10845 (Mode 2)
10872–N		WASAG USA, Inc. Wilmington, DE.		To authorize the transportation of limited quantities of black powder, class A explosive contained in one pound capacity polyethylene bottles overpack, not to exceed 25 bottles per fiberboard box to be reclassified and shipped as flammable solid. (Modes 1, 2, 3)
10943–X		Worthington Cylinder Corporation Columbus, OH.	49 CFR 173.34(d) and 178.65–10.	To authorize the use of certain DOT Specification 39 cylinder, which may have pressure relief devices not in conformance with the specification requirements, to be filled with helium. (Mode 1)
10988–N		Ensign-Bickford Company Simsbury, CT.	49 CFR 173.62	To authorize the shipment of articles, explosive, n.o.s., Division 1.4D, in interplant shipments on public highway in specifically designed containers (shock tubes). (Mode 1.)
10991–N		3M Company St. Paul, MN.	49 CFR 173.24(c) 173.314.	To authorize the transport of certain non-corrosive, liquefied gas classed as Division 2.2 in non-DOT specification tank, similar to a multi-unit tank car unit, with a water capacity of approximately 1800 pounds. (modes 1, 2, 3)
11053–N		PLM Transportation Equipment Corp. Chicago, IL.	49 CFR 172.102 SPB14	To authorize the transport of methylamine, anhydrous, classed in Division 2, 3, in non-insulated 112J340W and 112J400W tank cars. (Mode 2.)
11064–N		Exxon Chemical Company Linden, NJ.	49 CFR 171.8, 172.101, Appendix B.	To authorize certain products (lubricant additives) which contain small amounts of materials which meet the definition of marine pollutants to be shipped without being identified as marine pollutants. (Modes 1, 2.)
11084–N		Ethyl Corporation Baton Rouge, LA.	49 CFR 173.29(a)(2)	To authorize a one time shipment of two out-of-test DOT Specification 105A300W rail cars, containing motor fuel anti-knock mixtures residue, Division 6.1 (Mode 2.)
11089–N		LCP Chemicals Monmouth, Beach, NJ.	49 CFR 172.102 BP74	To authorize the shipment of chloropicrin and risidual amount of chloropicrin, Division 6.1, inhalation hazard in DOT Specification 105S and 105A tank cars without thermal protection. (Mode 1.)
11119–P		Akzo Coatings, Inc. Norcross, GA.	49 CFR 173.152	To become a party to exemption 11119 (Modes 1, 2.)
11137–N		BioSurface Technology, Inc. Cambridge, MA.	49 CFR 172.101(j), 172.101(k), 173.196(a)(b)(e) and (f), 173.24(e), 173.24(f), 173.24(i), 173.24a(a), 173.27(b), 173.27(c), 173.29(a), 178.609, 49 CFR.	To authorize the transport by courier of human skin grafts classed as infectious substances, Division 6.2 in specifically designed containers in quantities greater than those authorized by CFR. (Modes 1, 3, 5.)
11160–N		Dow Chemical Company Freeport, TX.	49 CFR 173.247	To authorize the bulk transport of molten magnesium, Class 9, in specifically design stainless steel 600 gallon container via specifically built road vehicles on private roads that cross state highways. (Modes 1, 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11177–N		BHP Petroleum Americas Terminals, Inc. Honolulu, HI.	49 CFR 107.503(c)	To authorize an exemption from the R stamp requirements for cargo tank repairs. (Mode 1.)
11198–N		Macsotech, Inc. Los Angeles, CA.	49 CFR 178.42	To manufacture, mark and sell a non-DOT specification seamless aluminum cylinder comparable to a DOT Specification 3E for shipment of those hazardous materials authorized for shipment in a DOT Specification 3AL cylinder. (Modes 1, 2, 3, 4.)

	Denials
8938–X	Request by Cryogenic Services, Inc. Canton, GA to authorize the manufacture, marking, and sale of DOT Specification 4L welded cylinders for transportation of nonflammable gases denied March 22, 1994.
10718–N	Request by Tesco Resources, Inc. Prospect, CT to authorize the manufacture, mark and sell of an emergency collapsible overpack container for use in transporting leaking containers from spill scenes denied December 17, 1993.
10831–N	Request by Trinity Industries, Inc. Dallas, TX to authorize the transportation of non-DOT specification cylinders having welds that are not in conformance with ANSI–14.1–1971 but do comply with ASME Section VIII, Division 1 Standards for transporting uranium hexafluoride, classed as radioactive material denied March 22, 1994.
10941–N	Request by Union Pacific Railroad Company Omaha, NE to authorize a placarded flatcar to be moved in an automated, gravity actuated, freight classification yard (hump yard) over the hump and roll free into various classification tracks using a controlled reduction of momentum computer system denied March 10, 1994.
10961–N	Request by J.B. Hunt Special Commodities, Inc. (JBHSC) Hampton, AR to authorize transport of raffinate sludge, class 7—LSA with radioactivity concentration greater than the limit established, contained in DOT specification MC–312 cargo tanks denied March 25, 1994.

	Denials
11007–N	Request by Noma Outdoor Products Jackson, TN to authorize the shipment of equipment with batteries installed without required markings denied November 9, 1993.
11036–N	Request by Miles, Inc. Pittsburgh, PA to authorize the bulk transportation of thionyl chloride, classed in Division 8.6, UN 1836 in bulk cargo tank denied May 20, 1994.
11081–N	Request by Central Welding Supplies, Inc. Lexington, KY to authorize compressed carbon monoxide, classed as Division 2.3, to be transported in DOT–3AA6000 cylinders at 4800 psi denied December 10, 1993.
11106–N	Request by E.P. Spray System East Hanover, NJ to manufacture mark and sell a specially designed system for use in an aerosol can containing 40 percent compressed air used to spray water base products or other nonflammable liquids to be shipped as essentially nonregulated denied May 20, 1994.
11130–N	Request by Clean Harbors Environmental Services, Inc. Quincy, MA to load, transport and store Division 6.1 liquids in Packing Group 1, Zone A packed in "lab-pack" drums on the same transport vehicle carrying packages containing various classes of hazardous materials denied November 30, 1993.
11181–N	Request by Don Ross d/b/a Canning Air Service Fairbanks, AK to authorize the transportation of gasoline, Class 3, in DOT–34–15 polyethylene drums for carriage in small cargo only aircraft within the state of Alaska denied May 13, 1994.

Issued in Washington, DC, on February 22, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–4792 Filed 2–28–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds: Christinia General Insurance Corporation of New York

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, on page 34148 to reflect this addition:

Christinia General Insurance Corporation of New York

Business Address: 120 White Plains Road, Tarrytown, NY 10591 Telephone No. (914) 631–3636. Underwriting Limitation b/: $8,697,000. Surety Licenses c/: AL, AK, AR, CA, DC, ID, IA, KS, KY, MD, MS, NV, NY, ND, OH, PA, SD, TN, TX, UT, WA, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained for the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the

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Treasury, Hyattsville, MD 20782, Telephone (202 874–6696.

Dated: February 16, 1995.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 95–4919 Filed 2–28–95; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 40

Wednesday, March 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, March 6, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 24, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–5078 Filed 2–27–95; 9:59 am]

BILLING CODE 5210–01–P

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Corrections

Federal Register
Vol. 60, No. 40
Wednesday, March 1, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Childhood Lead Poisoning Prevention Program Grantee Workshop; Notice

Correction

In notice document 95–2785 appearing on page 7062 in the issue of Monday, February 6, 1995, make the following correction:

In the third column, the heading should read as set forth above and in the second paragraph, in the second line "Guarantee" should read "Grantee".

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–95–1688; FR–3255–F–05]

RIN 2502–AF77

Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures

Correction

In final rule document 95–3683 beginning on page 8812 in the issue of Wednesday, February 15, 1995, make the following corrections:

On page 8813, in the third column, in paragraph (i.) the formulas for computing the CPI were inadvertently omitted, and should appear as follows:

(i.) [Page 53904, § 3500.17(c)(7).] How does a servicer compute the Consumer Price Index (CPI) adjustment factor to estimate disbursements?

Answer: This factor is the ratio of the monthly CPI for all urban consumers, all items, reported most recently, to the same monthly CPI reported 12 months earlier; i.e.:

$$\frac{\text{most recent monthly CPI}}{\text{monthly CPI for same month 12 months earlier}}$$

The adjustment is made by multiplying last year's disbursement by this ratio. For example, if last year's school tax bill was $827, the value of the most recent CPI (September 1994) was 149.4, and the value of the CPI in September 1993 was 145.1, then the school tax projection using this technique may not exceed $851.51:

$$\$827 \times \frac{149.4}{145.1} = \$851.51$$

The two CPI numbers must have the same base period and must either both be seasonably adjusted or both be not seasonably adjusted.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos

Correction

In rule document 95–4083 appearing on page 9624 in the issue of Tuesday, February 21, 1995, in the first column, the text under **DATES:** should read as follows: "These amendments take effect on February 21, 1995. For Part 1910-General Industry, for §1910.1001, the start-up dates for compliance for paragraph (d)(2)- initial monitoring, for paragraph (e) - regulated area, for paragraph (f) - methods of compliance, paragraph (g) - respiratory protection, paragraph (i) - hygiene facilities, paragraph (j) - communication of hazards, paragraph (k) - housekeeping and paragraph (l) - medical surveillance are extended to July 10, 1995. For Part 1915 - Shipyards, for §1915.1001, the start-up dates for compliance for paragraph (g) - methods of compliance, for paragraph (h) - respiratory protection, paragraph (j) - hygiene facilities, paragraph (k) - communication of hazards, paragraph (l) housekeeping, paragraph (m) - medical surveillance, and paragraph (o) - competent person are extended to July 10, 1995. For Part 1926 - Construction for §1926.1101, the start-up dates for compliance for paragraph (g) - methods of compliance, paragraph (h) - respiratory protection, paragraph (j) - hygiene facilities, paragraph (k) - communication of hazards, paragraph (l) - housekeeping, paragraph (m) - medical surveillance and paragraph (o) - competent person are extended to July 10, 1995".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

[Docket No. 26192, Amendments Nos. 25-83, 121-247 and 135-55]

RIN 2120-AD28

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

Correction

In rule document 95–2114 beginning on page 6616 in the issue of Thursday, February 2, 1995, make the following corrections:

Appendix F to Part 25 [Corrected]

1. On page 6623, in the third column, in paragraph (b)(5), in the seventh line, "0.18" should read ".018".

2. On page 6624, in the second column, in the sixth line from the top, the heading of paragraph (b)(8)(ii) should read "*Standard Three-Hole Upper Pilot Burner.*"

3. On page 6625, in the second column, in the fifth line from the top"'Zero"' should read "'zero"'.

§ 121.312 [Corrected]

4. On page 6628, in the second column, in paragraph (a)(8), in the eighth line from the top, "(a-1)" should read "(a)(1)"

§ 135.170 [Corrected]

5. On page 6629, in the second column, in paragraph (b)(1)(vii), in the fifth line from the bottom, a "," should be placed following "and".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-42-93]

RIN 1545-AS93

Adjustments Required by Changes in Method of Accounting

Correction

In proposed rule document 94–31531 beginning on page 66825 in the issue of Wednesday, December 28, 1994, make the following correction:

§1.446-1 [Corrected]

On page 66826, §1.446-1(e)(3)(iii), in the third line, "February 27, 1995" should read "December 27, 1994"

BILLING CODE 1505–01–D

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federal register

Wednesday
March 1, 1995

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulation (FAR); Acquisition of Commercial Items and Components: Proposed Rule; and Agency Information Collection Under OMB Review; Notice

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[FAR Case 94–790]

RIN 9000–AG38

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the revised statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before May 1, 1995 to be considered in the formulation of a final rule.

Public Meeting: March 17, 1995, 9:30 a.m. at the following location: General Services Administration, Auditorium, 18th & F Streets, NW., Washington, DC 20405.

Written and Oral Statements: Statements prepared for oral presentation must be sent to the FAR Secretariat at the address given below, not later than March 13, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 94–790 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Item Team Leader, at (703) 695–3858 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–790.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Computer Network (FACNET).

This notice announces FAR revisions developed under FAR case 94–790, Acquisition of Commercial Items, which encourage the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The Commercial Item Drafting Team was organized and tasked with reviewing Title VIII of the Act and preparing implementing language for the FAR. The proposed revisions make changes throughout the FAR to incorporate the provisions of Title VIII. The most significant proposed revisions are in the following FAR parts:

FAR Part 2 has been amended to incorporate the definitions of "commercial item," "component," "commercial component" and "nondevelopmental item" from the Act with only minor revisions for clarification. The clause at 52.202–1, Definitions, has been similarly revised to make the definitions available to prime and subcontractors.

FAR Part 10 has been completely revised to address market research. It contains some language taken from the current FAR Part 11. This new part establishes the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

FAR Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance contained in the Act. The revised Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current FAR Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

FAR Part 12 has been revised to address the acquisition of commercial items. The Team created this entirely new coverage to address in one FAR part both the policies and procedures for the acquisition of commercial items. FAR Part 12 was chosen to reinforce the expected sequence of events in approaching a given acquisition * * * market research (FAR Part 10), description of agency need (FAR Part 11), acquisition of commercial items, if they meet the agency's needs (FAR Part 12); and acquisition of other than commercial items using current FAR procedures (FAR Parts 13, 14 and 15). The Team also believes that moving the policies and procedures for the acquisition of commercial items to FAR Part 12 creates a clean break with past policies and procedures such as the Acquisition and Distribution of Commercial Products (ADCOP) program initiated in 1978 and currently described in FAR Part 11, and the DFARS 211 implementation of Section 824(b) of the 1990–1991 DOD Authorization Act.

—48 CFR Part 12, FAR Subpart 12.1 states that the policies and procedures in the revised FAR Part 12 are applicable to all acquisitions of commercial items above the micro-purchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with FAR Part 12.

—48 CFR Part 12, FAR Subpart 12.2 identifies special requirements for the acquisition of commercial items. These requirements generally reflect the requirements of Title VIII.

—48 CFR Part 12, FAR Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. The Team believes this approach is essential to meet the requirements of the statute and offers contracting officers and industry an easy to use, simplified method for acquiring commercial items. However, the Team also recognizes that it is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the market place for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices. The Act requires that some constraints be placed on this authority to tailor, and that has also been accommodated in this subpart.

—The Team proposes the establishment of a new form, the Standard Form XXXX, Solicitation/Contract/Order for Commercial Items. The proposed SF XXXX combines features of the SF 33, Solicitation, Offer and Award; the SF 1447, Solicitation/Contract; and the DD 1155, Order for Supplies and Services. The most significant element is the addition of acceptance blocks at the bottom of the form (patterned after the DD Form 1155). This will allow suppliers of commercial items to utilize the SF XXXX to document receipt of the supplies or services by the government avoiding the need for preparation of separate receipt/acceptance forms.

—48 CFR Part 12, FAR Subpart 12.4 identifies the applicability of certain laws to the acquisition of commercial items. This subpart is intended to meet the requirements of Section 8003(a) of the Act which requires that the FAR contain a list of laws determined to be inapplicable to prime contracts for commercial items.

—FAR 12.402 contains the list of laws determined to be not applicable to executive agency prime contracts for acquisition of commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to commercial items. In each instance, the specific prescriptive language elsewhere in the FAR has been revised to reflect this modified applicability. FAR 12.402 only includes those laws that apply to prime contracts awarded by both DOD and civilian agencies. Agency unique laws determined to be not applicable to prime contracts are not addressed in this rule and may be addressed separately by the respective agencies.

—FAR 12.403 contains the list of laws determined to be not applicable to subcontracts for commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to subcontracts for commercial items. The list of laws to be included in 12.403 are contained in FAR case 94–791 which is currently under agency review and coordination. The list will be published in the **Federal Register** for public comment upon completion.

—48 CFR Part 12, FAR Subpart 12.6 identifies two streamlined procedures for the solicitation and award of contracts for commercial items. These procedures may be used at the discretion of the contracting officer.

FAR Part 52 has been revised to include several new provisions and clauses to be inserted in all solicitations and contracts for the acquisition of commercial items:

—52.212–1, Instructions to Offerors—Commercial Items, contains solicitation instructions unique to Government procurement and is based upon existing FAR language. The information has been simplified and tailored to meet the requirements of commercial items. For the most part, the simplified paragraphs in the new provision do not contain new concepts.

—52.212–2, Evaluation—Commercial Items, contains evaluation information that has been simplified and tailored to meet the requirements of commercial items. Again, this provision does not contain new concepts and is generally based upon provisions prescribed in FAR Parts 14 and 15. This provision may be used at the discretion of the contracting officer. It requires the contracting officer to establish specific evaluation factors and the order of importance for each acquisition.

—52.212–3, Offeror Representations and Certifications—Commercial Items, includes the certifications required to comply with laws or Executive orders. Instead of using the numerous certifications contained in the FAR, the Team drafted a single provision containing all the requirements that may apply to the acquisition of commercial items.

—52.212–4, Contract Terms and Conditions—Commercial Items, contains the terms and conditions the Team believes are consistent with customary commercial practice by addressing general areas that previous studies have identified as the "core" areas covered by commercial contracts. Several concepts included in the clause at 52.212–4 represent significant changes from standard Government practices to commercial practices.

—52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive orders—Commercial Items, implements provisions of law or executive orders applicable to Government acquisitions of commercial items or commercial components. The Team believes the clause at 52.212–5 represents the minimum number of clauses required to implement statutes. Certain clauses may apply depending upon the circumstances; the contracting officer will indicate which of these clauses apply for the specific acquisition. In addition, this clause provides that the contractor is not required to include any FAR provision or clause in its subcontracts other than those listed in paragraph (d) of the clause. The clauses to be included on this list and flowed down to subcontractors for commercial items are currently under agency review and coordination. The list will be published in the **Federal Register** for public comment once coordination is complete.

—52.244–XX, Subcontracts for Commercial Items and Commercial Components, implements the preference for the acquisition of commercial items or nondevelopmental items other than commercial items as components of items to be supplied under Federal contracts. This clause will be inserted in all solicitations and contracts for supplies and services other than commercial items. It provides that the contractor is not required to include in its subcontracts for commercial items any FAR provision or clause, other than those listed in the clause. The clauses to be included on this list and flowed down to subcontractors for commercial items are contained in FAR case 94–791 which is currently in agency review and coordination. This list will be published in the **Federal Register** for public comment once coordination is complete.

Public Meeting. The FAR Council is interested in an exchange of ideas and opinions on this rule. For that reason, the FAR Council is conducting a series of public meetings. A public meeting will be held on March 17, 1995, to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR. The public is encouraged to furnish its views; the Council anticipates that public comments will be very helpful in formulating final rules.

Persons or organizations wishing to make presentations will be allowed 10 minutes each, provided they notify the FAR Secretariat at (202) 501–4755 and submit written statements of the presentation by March 13, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

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B. Regulatory Flexibility Act

The proposed language will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.* This rule will have this impact as a result of the following:

(1) It establishes a much broader definition of "commercial items" compared to the language of either FAR Part 11 or by including certain modifications to existing items and by including certain commercial services. In both cases, small business is very likely to benefit from this expanded definition;

(2) It establishes a requirement for conducting market research in certain circumstances before issuing solicitations which should benefit small business by ensuring the contracting activity has conducted sufficient research to be aware of the availability of commercial items and the practices used in the commercial market place to acquire them. The rule also cautions contracting officers not to require potential sources to submit more than the minimum information necessary as a part of market research.

(3) It establishes a clear preference for the acquisition of commercial items thereby enabling more small businesses that offer commercial items to participate in Government acquisition;

(4) It establishes a clear preference for stating Government requirements in terms of functions to be performed, performance required, or essential physical characteristics rather than detailed, Government-unique design specifications thereby allowing a broader range of products of small businesses to satisfy the Government need;

(5) It establishes the Government order of precedence for requirements documents emphasizing performance-oriented documents and nongovernment standards rather than Federal/Military-unique standards thereby allowing a broader range of small businesses to participate in Government acquisitions;

(6) It allows contracting officers the flexibility to use either the solicitation, evaluation and award procedures in the revised Part 12 for acquiring commercial items, or the procedures in Part 13, 14 or 15 if they are more streamlined and beneficial thereby allowing maximum flexibility for contracting with small businesses;

(7) It allows the use of the streamlined terms and conditions for acquiring commercial items for every acquisition above the micropurchase threshold thereby allowing the maximum number of small businesses to benefit from these procedures;

(8) It requires that, except in unique circumstances, that the Government utilize the contractor's quality assurance system thereby allowing small businesses to utilize their own quality system when selling commercial items rather than a Government-specified system;

(9) It requires that, when acquiring commercial items, the contracting officer may only use the solicitation provisions and contract clauses specifically established for acquiring commercial items and may only tailor those provisions and clauses when the customary practices in the market dictate the use of other terms and conditions; and

(10) By significantly limiting the flow down of Government-unique terms and conditions to subcontractors at all levels thereby minimizing the burden on a significant number of small businesses.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 94–790), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Acquisition of Commercial Items is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request are invited in a **Federal Register** notice which appears elsewhere in this issue.

List of Subjects in 48 CFR Chapter 1

Government procurement.

Dated: February 17, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:

1. The authority citation for 48 CFR Chapter 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding in alphabetical order the definitions "Commercial component", "Commercial item", "Component", "Market research", and "Nondevelopmental item" to read as follows:

2.101 Definitions.

* * * * *

Commercial component means any component that is a commercial item.

Commercial item means—

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(1) Has been sold, leased, or licensed to the general public; or,

(2) Has been offered for sale, lease, or license to the general public;

(b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(c) Any item that would satisfy a criterion expressed in paragraph (a) or (b) of this definition, but for—

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial market place made to meet Federal Government requirements. Such modifications are considered minor if the change does not significantly alter a commercial item's function or essential physical characteristics. Minor is not defined by the specific dollar value or percentage basis of the change;

(d) Any combination of items meeting the requirements of paragraph (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph (a), (b), (c), or (d) of this definition, and if the source of such services—

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without a fixed catalog price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(h) A nondevelopmental item, if the procuring agency determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Component means any item supplied to the Federal Government as part of an end item or of another component.

* * * * *

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

* * * * *

Nondevelopmental item means—

(a) Any commercial item;

(b) Any previously developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(c) Any item described in paragraphs (a) or (b) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(d) Any item of supply being produced that does not meet the requirements of paragraph (a), (b), or (c) solely because the item is not yet in use.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.404 is amended by removing "or" from the end of paragraph (b)(4); by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5); and by revising paragraph (c) to read as follows:

3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(5) The solicitation is for a commercial item (see parts 2 and 12); or

* * * * *

(c) The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold other than those for commercial items (see parts 2 and 12).

* * * * *

4. Section 3.502–2 is amended by revising the introductory text of paragraph (i) to read as follows:

3.502–2 General.

* * * * *

(i) Requires each contracting agency to include in each prime contract, except contracts for commercial items (see part 12), a requirement that the prime contractor shall—

* * * * *

5. Section 3.502–3 is revised to read as follows:

3.502–3 Contract clause.

The contracting officer shall insert the clause at 52.203–7, Anti-Kickback Procedures, in all solicitations and contracts exceeding the simplified acquisition threshold (see part 13) other than those for commercial items (see part 12).

6. Section 3.503–2 is revised to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in part 13. For procurements of commercial items, the contracting officer shall use the clause with its Alternate I.

PART 5—PUBLICIZING CONTRACT ACTIONS

7. Section 5.203 is amended by revising paragraphs (a), (b), and (c) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) A notice of contract action shall be published in the CBD at least 15 days before issuance of a solicitation except when the combined CBD synopsis/solicitation procedure for acquisition of commercial items is used (see 12.603).

(b) For each contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, or for the acquisition of commercial items, the contracting officer shall establish a response time which will afford potential offerors a reasonable opportunity to respond.

(c) Agencies shall allow at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the contract action is expected to exceed the simplified acquisition threshold or is for other than the acquisition of commercial items (see part 12).

* * * * *

PART 6—COMPETITION REQUIREMENTS

8. Section 6.303–2 is amended by revising paragraph (a)(8) to read as follows:

6.303–2 Content.

(a) * * *

(8) A description of the market research conducted (see part 10) and the results or a statement of the reason market research was not conducted.

* * * * *

9. Section 6.502 is revised to read as follows:

6.502 Duties and responsibilities.

(a) Agency and procuring activity competition advocates are responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(b) Agency competition advocates shall—

(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;

(ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

(iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contracting actions of the agency;

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(2) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase the acquisition of commercial items;

(iii) New initiatives required to increase competition;

(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;

(v) Any barriers to the acquisition of commercial items or competition that remain; and

(vi) Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research.

(3) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

PART 7—ACQUISITION PLANNING

7.101 [Amended]

10. Section 7.101 is amended by removing the definition "Market survey".

11. Section 7.102 is revised to read as follows:

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions in order to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251 *et seq.*); and

(2) Full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)); and

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

12. Section 7.103 is amended by revising paragraph (b); redesignating paragraphs (c) through (l) as (d) through (m) and adding a new paragraph (c); and in newly designated (m) by removing "10.002(c)" and inserting "11.001(b)" to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items other than commercial items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

(c) Promoting and providing for full and open competition with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2305(a)(1)(A) and 41 U.S.C. 253a(a)(1) (see parts 6 and 11).

* * * * *

13. Section 7.105 is amended in paragraph (a)(8)(iii) by revising the parenthetical to read "(see 11.001(d))"; by revising paragraph (b)(1); and by revising paragraph (b)(12)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see part 8). Include considerations of small business and small disadvantaged business concerns (see part 19). Address the extent and results of the market research and indicate their impact on the various elements of the plan.

* * * * *

(12) * * *

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see subpart 7.3) and distribution of commercial items (see part 11);

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

14. Section 9.106–1 is amended by revising paragraph (a) to read as follows:

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

15. Section 9.306 is amended in paragraph (f) introductory text by revising the parenthetical to read "(see 11.404)".

16. Part 10 is revised to read as follows:

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.
10.001 Policy.
10.002 Procedures.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C 264b, and 10 U.S.C. 2377.

10.001 Policy.

(a) The head of an agency shall—

(1) Ensure that, in coordination with customers, legitimate needs are identified and trade-offs evaluated to acquire items which meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost.

(3) Use the results of market research to determine—

(i) If commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(ii) Practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

(iii) Sources capable of satisfying the agency's requirements exist.

(b) When conducting market research, the head of an agency should not require potential sources to submit more than the minimum information necessary.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in general terms sufficient to allow conduct of market research.

(b) Market research is then conducted to ascertain the availability of commercial items, as well as distribution and logistics support to meet those needs, and to identify market practices.

(c) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information such as—

(1) The availability of commercial items suitable as is or that could be modified to meet the agency's requirements;

(2) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(3) Customary practices, including warranty, buyer financing, discounts, etc., under which commercial sales of the products are made;

(4) The requirements of any laws and regulations unique to the item being acquired; and

(5) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates.

(d) Techniques for conducting market research may include any or all of the following:

(1) Contacting experts regarding market capabilities to meet requirements.

(2) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(3) Publishing formal requests for information in appropriate technical and scientific journals.

(4) Querying Government data bases that provide information relevant to agency procurements.

(5) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(6) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(7) Reviewing catalogs and other generally available product literature, much of which are available on-line, published by manufacturers, distributors, and dealers.

(8) Holding presolicitation conferences.

(e) When initial market research indicates commercial or nondevelopmental items other than commercial items might not be available to satisfy agency needs, reevaluate the need and determine whether it can be restated to permit commercial or nondevelopmental items other than commercial items to satisfy the agency's needs.

17. and 18. Sections 11.000 and 11.001 are revised to read as follows:

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs and related considerations of acquisition streamlining.

11.001 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items other than commercial items an opportunity to compete in any procurement to fill such requirements;

(iv) Require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et seq.), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce and it requires that each agency use the metric system of measurement in its procurements, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable, contractors should be involved in recommending application and tailoring of requirements. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

11.002 through 11.007 [Removed]

19. Sections 11.002 through 11.007 are removed.

20. Subparts 11.1 through 11.3 are added to read as follows:

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence.

Agencies may select from existing requirements documents, modify or

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combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(a) Documents mandated for use by law or regulation pursuant to law.

(b) Performance-oriented documents:

(1) Nongovernment standards.

(2) Commercial item descriptions.

(3) Federal specifications and standards.

(4) Military specifications and standards.

(c) Design-based documents:

(1) Nongovernment standards.

(2) Federal specifications and standards.

(3) Military specifications and standards.

(d) Agency-unique standards, specifications and related publications issued by the government outside the military or Federal series for the non-repetitive acquisition of nondevelopmental items.

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and DOD 4120.3–M, Defense Standardization Program Policies and Procedures.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103–355 provides that in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) The criteria to be considered in determining commercial market acceptance include—

(1) The minimum need of the agency concerned; and

(2) The entire relevant commercial market, including small business.

11.104 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to specify a particular brand-name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or can not be modified to meet, the agency's minimum needs; and

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

Subpart 11.2—Using Requirements Documents

11.201 Identification and availability of specifications.

(a) Solicitations citing requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index shall identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Contracting offices will not normally furnish these cited documents with the solicitation, except when—

(1) The requirements document must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the documents in reasonable time to respond to the solicitation; or

(3) A prospective contractor requests a copy of the requirements document.

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. Such documents shall be furnished with the solicitation.

(c) When documents refer to other documents, such references shall: (1) Be restricted to documents, or appropriate portions of documents, that apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other documents and provisions of the solicitation; and (4) identify all applicable first tier references.

(d) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions and DoDISS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

11.202 Acquiring used or reconditioned material, former Government surplus property and residual inventory.

(a) Generally, all contractually furnished supplies and their components, including former Government property, will be new, including recycled (see 48 CFR part 23, FAR subpart 23.4 for policy on recovered materials). However, agencies may acquire used or reconditioned material, former Government surplus property, or residual inventory conforming to the solicitation's requirements, if the contracting officer determines that it is acceptable. When acquiring commercial items, the contracting officer should determine the customary practice in the industry before including a requirement for new materials. When such a determination is made, the solicitation shall clearly identify the supplies or their components that need not be new, along with the necessary details on their acceptability. Offerors wishing to provide such used or reconditioned material, former Government surplus property, or residual inventory shall do so in accordance with the clause at 52.211–5, New Material, or the provision at 52.211–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.211–7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Contracting officers shall consider the following when determining whether used or reconditioned materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(3) Performance requirements.

(4) Availability and cost of new materials and components.

(c) With regard to former Government surplus property, the contracting officer shall ensure that the prices paid for such items are reasonable considering overall cost savings to the Government. When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

11.203 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that (1) are issued by civilian agency contracting offices and (2) cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications Listed in the DOD Index of Specifications and Standards (DoDISS), in solicitations that (1) are issued by DOD contracting offices and (2) cite specifications listed in the DoDISS that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.211–3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at 52.211–4, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

(e)(1) The contracting officer may insert the clause at 52.211–5, New Material, in solicitations and contracts for supplies. The clause shall not be used if it would be contrary to customary commercial practices for the item being acquired.

(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

(f)(1) The contracting officer may insert the provision at 52.211–6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, in solicitations for supplies. The provision shall not be used if it would be contrary to customary commercial practice for the item being acquired.

(2) The contracting officer may insert the provision in solicitations for services that may involve the incidental furnishing of parts.

(g)(1) The contracting officer may insert the clause at 52.211–7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, in solicitations and contracts for supplies. The clause shall not be used if it would be contrary to customary commercial practice for the item being acquired.

(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

Subpart 11.3—Maintenance of Requirements Documents

11.301 Customer satisfaction.

Acquisition organizations shall communicate with customers to determine how well the requirements document reflects the customer's needs and to obtain suggestions for corrective actions. Whenever practicable, the agency may provide affected industry an opportunity to comment on the requirements documents.

11.302 Maintenance of standardization documents.

(a) Agencies shall submit recommendations for changes to standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions to the General Services Administration, Federal Supply Service, Office of Commodity Management, Washington, DC 20406. Agencies shall submit recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

(b) When an agency cites an existing standardization document but modifies it to meet its needs, the agency shall follow the guidance in Federal Standardization Manual and DOD 4120.3–M, Defense Standardization Program Policies and Procedures.

Subpart 11.4 [Redesignated from Subpart 12.1]

21. Subpart 12.1 is redesignated as Subpart 11.4 and sections 12.101 through 12.104 are redesignated as sections 11.401 through 11.404, respectively.

Subpart 11.4 Delivery or Performance Schedules

22. Newly designated section 11.401 is amended in paragraph (a) by revising the last sentence; and in the parenthetical of paragraph (c) by removing "subpart 12.2" and inserting "subpart 11.5". The revised text reads as follows:

11.401 General.

(a) * * * Schedules that are unreasonably tight or difficult to attain (1) tend to restrict competition, (2) are inconsistent with small business policies, and (3) may result in higher contract prices.

* * * * *

23. Newly designated section 11.402 is amended by revising paragraphs (a)(2) and (5) to read as follows:

11.402 Factors to consider in establishing schedules.

(a) * * *

(2) Industry practices;

* * * * *

(5) Production time;

* * * * *

11.404 [Amended]

24. Newly designated section 11.404 is amended in paragraph (a)(2) by removing "52.212–1" and inserting "52.211–8"; in paragraph (a)(3) by removing "52.212–2" and inserting "52.211–9"; and in paragraph (b) by removing "52.211–3" and inserting "52.211–10".

Subpart 11.5 [Redesignated]

25. Subpart 12.2 is redesignated as Subpart 11.5 and sections 11.501 through 11.504 are redesignated from sections 12.201 through 12.204.

11.504 [Amended]

26. Newly designated section 11.504 is amended in paragraph (a) by removing "52.212–4" and inserting "52.211–11"; in paragraph (b) by removing "52.212–5" and inserting "52.211–12"; and in paragraph (c) by removing "52.212–6" and inserting "52.211–13".

Subpart 11.6 [Redesignated from 12.3]

27. Subpart 12.3 is redesignated as Subpart 11.6 and sections 12.300 through 12.304 are redesignated as sections 11.600 through 11.604, respectively.

11.604 [Amended]

28. Newly designated section 11.604 is amended in paragraph (a) by removing "52.212–7" and inserting "52.211–14"; and in paragraph (b) by removing "52.212–8" and inserting "52.211–15".

Subpart 11.7 [Redesignated from 12.4]

29. Subpart 12.4 is redesignated as Subpart 11.7 and sections 12.401 through 12.403 are redesignated as 11.701 through 11.703, respectively.

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11.703 [Amended]

30. Newly designated section 11.703 is amended in paragraph (a) by removing "52.212–9" and inserting "52.211–16"; in paragraph (b) by removing "52.212–10" and inserting "52.211–17"; and in paragraph (c) by removing "52.212–11" and inserting "52.211–18".

31. Subpart 12.5 is redesignated as subpart 42.13 and sections 12.501 through 12.505 are redesignated as sections 42.1301 through 42.1305, respectively.

31a. Part 12 is revised to read as follows:

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.

12.000 Scope of part.
12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.
12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.
12.202 Market research and description of agency need.
12.203 Solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Warranties.
12.210 Contract financing methods.
12.211 Technical data.
12.212 Other customary commercial practices.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.301 Scope of subpart.
12.302 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.303 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 12.4—Applicability of Certain Laws to the Acquisition of Commercial Items

12.400 Scope of subpart.
12.401 Applicability.
12.402 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

Subpart 12.5—Unique Requirements for the Administration of Contracts for Commercial Items

12.501 General.
12.502 Pricing of changes.
12.503 Acceptance.
12.504 Termination.

Subpart 12.6—Streamlined Procedures for Solicitation and Award of Contracts for Commercial Items

12.601 General.
12.602 Streamlined evaluation of offers.
12.603 Streamlined solicitation for commercial items.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) by establishing acquisition policies more closely resembling those of the commercial market place and encouraging the acquisition of commercial items and components at all levels.

12.001 Definition.

Subcontract, as used in this part, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items other than commercial items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items other than commercial items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all levels to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of—

(1) Commercial items; and

(2) Nondevelopmental items other than commercial items, but only when competing with commercial items under the same terms, conditions and evaluation/award criteria (i.e., when at least one offer is received for a commercial item under the same solicitation).

(b) Contracts for the acquisition of commercial items are subject to the requirements in other parts of this chapter. When a requirement in this part is inconsistent with a requirement in another part of this chapter, this part 12 shall take precedence for the acquisition of commercial items.

(c) This part shall not apply to the acquisition of commercial items at or below the micro-purchase threshold (see 48 CFR part 13, FAR subpart 13.6).

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103–355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial market place. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

(a) Market research is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services to offer. Generally, an agency's statement of need for a commercial item will describe the product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's need in these terms allows offerors to propose methods that will best meet the needs of the Government.

12.203 Solicitation, evaluation, and award.

(a) Contracting officers may use the procedures in parts 13, Simplified Acquisition Procedures; 14, Sealed Bidding; or 15, Contracting by Negotiation, as appropriate, for the acquisition of commercial items. However, regardless of the procedures being used, when a requirement in this part is inconsistent with a requirement in another part of this chapter, this part 12 shall take precedence.

(b) Where FACNET is available, it may be used to solicit and award contracts for commercial items (see part 4).

12.204 Solicitation/contract form.

The Standard Form XXXX, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when soliciting offers and awarding contracts for commercial items. This form contains the information necessary for solicitations and contracts as well as documenting receipt, inspection and acceptance of commercial items. Other Standard Forms are not compatible with the policies for the acquisition of commercial items in that they contain references to the Uniform Contract Format and certain FAR clauses that are not applicable to the acquisition of commercial items.

12.205 Offers.

(a) Contracting officers should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall use existing product literature from offerors of commercial items in lieu of requesting unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Contracting officers may allow fewer than 30 days response time for receipt of offers for commercial items. The response time shall afford potential offerors a reasonable opportunity to respond to ensure adequate competition (see 5.203).

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in 48 CFR Part 9, (FAR) subpart 9.1 and 48 CFR Part 15, (FAR) subpart 15.6.

12.207 Contract type.

Firm fixed price contracts or fixed price contracts with economic price adjustment shall be used for the acquisition of commercial items. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Solicitations and contracts for commercial items shall use contractors' existing quality assurance systems as a substitute for Government inspection and testing before tendering for acceptance unless customary market practices for the commercial item being acquired permits in-process inspection.

12.209 Warranties.

(a) To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(b) Agencies shall consider warranties offered in light of established systems for their administration. When necessary, agencies shall establish procedures to permit the effective administration of commercial warranties to include identifying warranted items and warranty periods, facilitating return of warranted commercial items to the contractor for repair or replacement and collection of product performance information.

12.210 Contract financing methods.

Customary industry practice for some commercial items may include a form of buyer financing such as advance (pre-performance) payments or incremental (pre-delivery) payments based on time or specified performance milestones. If market research confirms that buyer financing is the customary industry practice for the commercial item to be acquired, the contracting officer may offer Government financing. Such financing shall be consistent with customary industry practices and the requirements and limitations of part 32.

12.211 Technical data.

Generally, the Government will acquire only the technical data customarily provided to the public. (See part 27.)

12.212 Other customary commercial practices.

Market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them essential to concluding a satisfactory business arrangement, in the Government's best interest, and not otherwise precluded by law or executive order.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.

12.301 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.302 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Pub. L. 103–355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at 52.212–1, Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 26, SF XXXX). The contracting officer is not required to use any other provision. The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.303;

(2) *The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated and streamlined list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. The contracting officer is not required to use any other provision containing a certification or representation. This provision may not be tailored except in accordance with subpart 1.4;

(3) *The clause at 52.212–4, Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 26, SF XXXX). The contracting officer is not required to use any other clause except as provided in 12.302(b)(4). The

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contracting officer may tailor this clause in accordance with 12.303; and

(4) *The clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause includes only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract, and indicate which, if any, of the additional clauses cited in 52.212–5 are applicable to the specific acquisition. When either 15.804–2(b) or the exception at 15.804–1(a)(2) apply, the contracting officer shall include the appropriate clauses prescribed by part 15. The contracting officer is not required to include any other FAR clause in the contract. This clause may not be tailored except in accordance with 48 CFR part 1, subpart 1.4.

(c) The contracting officer may insert the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items (see 12.602). If this provision is not used, a similar provision containing all evaluation factors required by 48 CFR part 14, subpart 14.2 or 48 CFR part 15, subpart 15.6 shall be included in the solicitation as an addendum (see 12.303(c)).

(d) Notwithstanding prescriptions contained elsewhere in the FAR, only the provisions and clauses prescribed in this subpart shall be required for use in solicitations and contracts for the acquisition of commercial items. The provisions and clauses in this part shall be revised by the FAR Council, as necessary, to reflect the applicability of future statutes and executive orders to contracts for the acquisition of commercial items in accordance with Section 34 of the Office of Federal Procurement Policy Act.

(e) Agencies shall supplement these provisions and clauses as necessary to reflect agency unique statutes.

12.303 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, customary commercial market place practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government and the variations in customary commercial practices across the entire market place, contracting officers may, after conducting appropriate market research, tailor the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) Contracting officers shall not tailor the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, or otherwise include any additional terms or conditions in a solicitation or contract for commercial items that are inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the market place, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the government. A waiver may be requested for an individual or class of contracts for that specific item.

(c) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 26 of the SF XXXX if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF XXXX; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF XXXX; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

Subpart 12.4—Applicability of Certain Laws to the Acquisition of Commercial Items

12.400 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that (a) Are not applicable to contracts for the acquisition of commercial items, or (b) are not applicable to subcontracts, at any level, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.401 Applicability.

(a) This subpart applies to any contract or subcontract at any level for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value.

12.402 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 43, Walsh-Healey Act (see 48 CFR part 22, subpart 22.6).

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).

(4) 41 U.S.C. 701 *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 23.105);

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305);

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502);

(4) 41 U.S.C. 423e(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see 3.104–9);

(5) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 23.105);

(6) 49 U.S.C. 40118, Requirement for a certificate and clause Fly American provisions (see 47.405);

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503);

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.804);

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR part 99);

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

12.403 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(b) Certain requirements of the following laws have been eliminated for subcontracts under either a contract for the acquisition of commercial items or subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(c) The applicability of the following laws have been modified in regards to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items: [list of laws to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

Subpart 12.5—Unique Requirements for the Administration of Contracts for Commercial Items

12.501 General.

This subpart outlines selected areas where the administration of contracts for commercial items differs substantially from the administration of other Government contracts.

12.502 Pricing of changes.

When the exceptions at 15.804–1(a) do not apply, the contracting officer shall include the appropriate clauses prescribed by part 15.

12.503 Acceptance.

Acceptance under the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, assumes that the Government will rely on the contractor's assurances that commercial items tendered for acceptance conform to the requirements of the contract. The acceptance provision at 52.212–4 includes patent defects as a reason to revoke finality of acceptance.

12.504 Termination.

(a) The clause at 52.212–4, Contract Terms and Conditions—Commercial Items, contains procedures for termination of contracts for commercial items, either for convenience or for cause, that are consistent with customary commercial practice. The contracting officer should consult with legal counsel prior to terminating any contract for cause.

(b) Contractors are required to notify the Government when there will be an excusable delay. Failure to notify the Government as soon as it is reasonably possible could result in termination for cause.

(c) The remedies available to the Government if a contract is terminated for cause are those available to any buyer in the marketplace and are not limited by part 49. The Government's preferred remedy will be to acquire similar items from another contractor and charge the terminated contractor with any excess reprocurement costs.

Subpart 12.6—Streamlined Procedures for Solicitation and Award of Contracts for Commercial Items

12.601 General.

This subpart provides (a) a streamlined procedure for evaluating offers for commercial items; and (b) a streamlined procedure for soliciting offers for commercial items. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices. While the procedures described in this subpart are appropriate for many commercial items, other methods of evaluation may also be appropriate. The contracting officer may use these procedures for soliciting offers for commercial items in lieu of procedures contained in parts 13, 14 or 15.

12.602 Streamlined evaluation of offers.

(a) The Contracting officer may insert a provision substantially the same as the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items. Paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the tailored criteria contained in the provision at 52.212–2, Evaluation—Commercial Items, and any addenda. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the Agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes its intended use. A technical evaluation would include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in 48 CFR part 15, subpart 15.6. The contracting officer shall ensure the instructions provided in the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212–2, Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

12.603 Streamlined solicitation for commercial items.

(a) To reduce the time required to solicit and award contracts for the acquisition of commercial items, the contracting officer may use this procedure which combines the CBD synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) FAR 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

(2) This combined CBD synopsis/solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1–16;

(2) In item 17, Description, include the following additional information:

(i) A statement that this is a combined synopsis/solicitation for commercial items prepared in accordance with the format in subpart 12.6, as supplemented with additional information included in this notice, and that a written solicitation will not be issued.

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(ii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through FAC _____.

(iii) A notice of small business or other set-aside, if applicable.

(iv) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).

(v) Description of requirements for the items to be acquired.

(vi) Date(s) and place(s) of delivery.

(vii) A statement regarding any addenda to the provision at 52.212–1, Instructions to Offerors—Commercial.

(viii) A statement regarding the applicability of the provision at 52.212–2, Evaluation—Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.

(ix) A statement advising offerors to include a completed copy of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items, with its offer.

(x) A statement regarding any addenda to the clause at 52.212–4, Contract Terms and Conditions—Commercial Items.

(xi) A statement regarding which, if any, of the additional FAR clauses cited in the clause at 52.212–5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders—Commercial Items, are applicable to the acquisition.

(xii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements, warranty requirements or GSA Delegation of Procurement Authority (DPA) case number (see FIRMR 201–39.106–4)) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiii) A statement regarding any applicable Commerce Business Daily numbered notes.

(xiv) The date, time and place offers are due.

(3) Response time for receipt of offers—

(i) Because the CBD synopsis and solicitation are contained in a single document, it is not necessary to publish a separate CBD synopsis 15 days before the issuance of the solicitation; and

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall allow at least 15 days response time (see 5.203(b)).

(4) Post copies of the combined CBD synopsis/solicitation in accordance with 5.101(a)(2).

(5) Amendments to solicitations shall be published in the same manner as the initial synopsis/solicitation.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.501 [Amended]

32. Section 13.501 is amended in paragraph (c) by removing "12.4" and inserting "11.7".

PART 14—SEALED BIDDING

14.201–2 [Amended]

33. 14.201–2 is amended in the parenthetical of paragraph (c) by removing "part 10, Specifications, Standards, and Other Product Descriptions" and inserting "part 11"; and in the parenthetical of paragraph (d) by removing "10.004(e)" and inserting "part 11".

14.404–1 [Amended]

34. Section 14.404–1 is amended in paragraph (b) by removing "10.008" and inserting "11.201".

PART 15—CONTRACTING BY NEGOTIATION

15.406–2 [Amended]

35. Section 15.406–2 is amended in the parenthetical of paragraph (c) by removing "part 10, Specifications, Standards, and Other Product Descriptions" and inserting "part 11"; and in the parenthetical of paragraph (d) by removing "10.004(e)" and inserting "part 11".

36. Section 15.501 is amended by revising the definition "Commercial product offer" to read as follows:

15.501 Definitions.

* * * * *

Commercial item offer means an offer of a commercial item the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

* * * * *

15.503 [Amended]

37. Section 15.503 is amended in paragraph (b) by removing the word "product" and inserting "item".

38. Section 15.704 is amended by revising the second sentence to read as follows:

15.704 Items and work included.

* * * Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. * * *

PART 16—TYPES OF CONTRACTS

39. Section 16.201 is amended by adding a sentence at the end of the paragraph to read as follows:

16.201 General.

* * * The contracting officer shall use firm-fixed price or fixed-price with economic price adjustment contracts when acquiring commercial items.

40. Section 16.202–2 is amended by revising the introductory paragraph to read as follows:

16.202–2 Application.

A firm-fixed price contract is suitable for acquiring commercial items (see parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

* * * * *

41. Section 16.301–3 is amended by redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (a)(3), respectively, designating the introductory text as paragraph (a) introductory text; and adding paragraph (b) to read as follows:

16.301–3 Limitations.

(a) A cost-reimbursement contract may be used only when—

* * * * *

(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see parts 2 and 12).

16.603–2 [Amended]

42. Section 16.603–2 is amended in paragraph (e) by removing "12.304" and inserting "11.604".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

43. Section 22.305 is amended by redesignating paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

22.305 Contract clause.

* * * * *

(h) Contracts for commercial items (see parts 2 and 12).

* * * * *

44. Section 22.604–1 is amended by revising paragraph (a) to read as follows:

22.604–1 Statutory exemptions.

* * * * *

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally (such as commercial items, see part 12); or where a specific purchase is made under the conditions described in 6.302–2 in circumstances where immediate delivery is required by the public exigency.

* * * * *

PART 23—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

45. Section 23.105 is amended at the end of paragraph (b)(2) by removing "or"; by redesignating paragraphs (b)(3) and (4) as (b)(4) and (5), respectively; and adding a new paragraph (b)(3) to read as follows:

23.105 Solicitation provision and contract clause.

* * * * *

(b) * * *

(3) The contract is for other than commercial items; or

* * * * *

46. Section 23.501 is amended by redesignating paragraphs (b) through (d) as (c) through (e) respectively, and adding a new paragraph (b) to read as follows:

23.501 Applicability.

* * * * *

(b) Contracts for the acquisition of commercial items (see part 12);

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.206 [Amended]

47. Section 36.206 is amended by removing "12.202" and inserting "11.502".

36.303 [Amended]

48. Section 36.303 is amended in paragraph (c)(4) by removing "12.1" and inserting "48 CFR part 11, subpart 11.4".

PART 42—CONTRACT ADMINISTRATION

42.1105 [Amended]

49. and 50. Section 42.1105 is amended by removing the reference "subpart 12.3" and inserting "48 CFR part 11, subpart 11.6".

Subpart 42.13 [Redesignated from subpart 12.5]

42.1304 [Amended]

51. Newly designated section 42.1304 (redesignated from 12.504) is amended in paragraph (a) by removing "52.212–15" and inserting "52.242–17".

42.1305 [Amended]

52. Newly designated section 42.1305 (redesignated from 12.505) is amended in paragraph (a) by removing "52.212–12" and inserting "52.242–14"; in paragraph (b)(1) by removing "52.212–13" and inserting "52.242–15"; in paragraph (c) by removing "52.212–14" and inserting "52.242–16"; and in paragraph (d) by removing "52.212–15" and inserting "52.242–17".

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

53. Subpart 44.4, consisting of sections 44.400 through 44.403, is added to read as follows:

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

Sec.
44.400 Scope of subpart.
44.401 Applicability.
44.402 Policy requirements.
44.403 Contract clause.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Pub. L. 103–355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in part 12.

44.402 Policy requirements.

(a) To the maximum extent practicable—

(1) Contractors and subcontractors at all levels shall incorporate commercial items or nondevelopmental items other than commercial items as components of items delivered to the Government; and

(2) Agencies shall not require prime contractors to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244–XX, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244–XX are required to be in subcontracts for commercial items or commercial components.

(c) Agencies shall supplement the clause at 52.244–XX, as necessary to reflect agency unique statutes.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–XX, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

PART 46—QUALITY ASSURANCE

54. Section 46.101 is amended by adding in alphabetical order the definition "Commercial item" to read as follows:

46.101 Definitions.

* * * * *

Commercial item (see 2.101).

* * * * *

55. Section 46.102 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

46.102 Policy.

* * * * *

(f) For the acquisition of commercial items, contractors are permitted to use their existing quality assurance system as a substitute for compliance with Government-specified requirements unless customary market practice for the commercial item being acquired permits in-process inspection (Pub. L. 103–355);

* * * * *

Subpart 46.2—Contract Quality Requirements

46.202 [Amended]

56. Section 46.202 is amended by removing "three" and inserting "four"

57. Sections 46.202–1 through 46.202–3 are redesignated as 46.202–2 through 46.202–4 respectively, and a new 46.202–1 is added to read as follows:

46.202–1 Contracts for commercial items.

When acquiring commercial items (see part 12), the Government shall use contractors' existing quality assurance system as a substitute for Government inspection and testing before tendering for acceptance unless customary market

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practices for the commercial item being acquired permits in-process inspection.

58. Section 46.203 is amended by revising paragraph (a)(1); at the end of paragraph (a)(2) by removing the semicolon and "or" and inserting a period; and by removing paragraph (a)(3). The revised text reads as follows:

46.203 Criteria for use of contract quality requirements.

* * * * *

(a) * * *

(1) Commercial (described in commercial catalogs, drawing, or industrial standards; see part 2); or

* * * * *

46.204 [Removed and reserved]

59. Section 46.204 is removed and reserved.

60. Section 46.709 is revised to read as follows:

46.709 Warranties of commercial items.

The contracting officer should take advantage of commercial warranties, including extended warranties (where appropriate and in the Government's best interests), offered by the contractor for the repair and replacement of commercial items (see part 12).

58. Section 46.710 is amended by revising the first sentence of the introductory paragraph; by removing paragraphs (a)(2)and (b)(2) and redesignating paragraphs (a)(3) through (a)(6) as (a)(2) through (a)(5), and paragraphs (b)(3) through (b)(5) as (b)(2) through (b)(4), respectively. The revised text reads as follows:

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). * * *

* * * * *

61. Section 47.405 is amended by revising the last sentence to read as follows:

47.405 Contract clause.

* * * This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13 or contracts for commercial items (see part 12).

PART 49—TERMINATION OF CONTRACTS

62. Section 49.501 is revised to read as follows:

49.501 General.

This subpart prescribes the principal contract termination clauses. For contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed when it is consistent with the requirements and procedures in the clause at 52.212–4, Contract Terms and Conditions—Commercial Items. In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.607 [Amended]

63. Section 49.607 is amended by removing "12.5" in the introductory text and inserting "48 CFR part 42, subpart 42.13".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

64. Section 52.202–1 is amended by revising the date of the clause; by redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c) and (d) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Date)

* * * * *

(b) *Commercial component* means any component that is a commercial item.

(c) *Commercial item* means

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial market place made to meet Federal Government requirements. Such modifications are considered minor if the change does not significantly alter a commercial item's function or essential physical characteristics. Minor is not defined by the specific dollar value or percentage basis of the change;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without a fixed price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) *Component* means any item supplied to the Federal Government as part of an end item or of another component.

* * * * *

(End of clause)

65. Section 52.203–6 is amended by revising the clause date; and by adding an Alternate I following paragraph (c)(5) to read as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

* * * * *

Restrictions on Subcontractor Sales to the Government (Date)

* * * * *

Alternate I (DATE). As prescribed in 3.503–2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For procurements of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

52.210–1 through 52.210–7 [Redesignated]

66. Sections 52.210–1 through 52.210–7 are redesignated as 52.211–1 through 52.211–7, respectively.

52.212–1 through 52.212–11 [Redesignated]

67. Sections 52.212–1 through 52.212–11 are redesignated as 52.211–8 through 52.211–18, respectively

52.212–12 through 52.212–15 [Redesignated]

68. Sections 52.212–12 through 52.212–15 are redesignated as 52.242–14 through 52.242–17.

69. 52.212–1 through 52.212–5 Added.

52.212—1 through 52.242—15 [Added]

70. Part 52 is amended by adding new sections 52.212–1 through 52.212–5, to read as follows:

Sec.

52.212–1 Instructions to Offerors—Commercial Items.
52.212–2 Evaluation—Commercial Items.
52.212–3 Offeror Representations and Certifications—Commercial Items.
52.212–4 Contract Terms and Conditions—Commercial Items.
52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

52.212–1 Instructions to Offerors—Commercial Items.

As prescribed in 12.302(b)(1), insert the following provision:

Instructions to Offerors—Commercial Items (Date)

Standard Industrial Classification (SIC) Code and Small Business Size Standard. The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF XXXX). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

Submission of Offers. Submit offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF XXXX, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(a) The solicitation number;

(b) The time specified for receipt;

(c) The name and address of the offeror;

(d) A technical description of the items being offered in sufficient detail to determine compliance with the requirements in the solicitation. This may include product literature, warranty provisions, or other documents, if necessary;

(e) Price;

(f) "Remit to" address, if different than mailing address;

(g) A completed copy of the representations and certifications at FAR 52.212–3;

(h) Acknowledgment of Solicitation Amendments;

(i) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references. At a minimum, this should include contract numbers, points of contact with telephone numbers and other relevant information; and

(j) If the offer is not submitted on the SF XXXX, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or take exception to the terms and conditions of the solicitation may be excluded from consideration.

Offered Prices. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

Product Samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

Multiple Offers. Offerors are encouraged to submit multiple offers presenting alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

Late Offers. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

Contract Award. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

Multiple Awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(End of provision)

52.212–2 Evaluation—Commercial Items.

As prescribed in 12.602(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation—Commercial Items (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors *[Contracting Officer insert relative order of importance (see 15.605)]* shall be used to evaluate offers:

[Contracting Officer insert the significant evaluation factors and subfactors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see 15.605)].

Technical and past performance, when combined, are *[Contracting Officer insert relative importance of evaluation factors (see 15.605)].*

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

52.212–3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.302(b)(2), insert the following provision:

Offeror Representations and Certifications—Commercial Items (Date)

(a) *Definitions.* As used in this provision:

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in this solicitation.

Small disadvantaged business concern means a small business concern that—

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals; and

(2) Has its management and daily business controlled by one or more such individuals.

This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR part 124.

Women-owned small business concern means a small business concern at least 51 percent owned by a woman or women or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one

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or more women; and whose management and daily business operations are controlled by one or more women.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer Identification Number (TIN) (26 U.S.C. 6050M).* (1) The offeror's TIN is _____. If the offeror does not have a TIN, provide an explanation with your offer. If the offeror is owned or controlled by a common parent that files its Federal income tax returns on a consolidated basis including the offeror, provide the name and TIN of the common parent—

Name _____ _____

TIN _____ _____

(2) *Type of Business Organization.* The offeror represents—

(i) If the offeror is a U.S. entity, it operates as: _____ a corporation incorporated under the laws of the State of _____ providing medical and health care services, or engaged in the billing and collecting of payments for such services; _____ an other corporate entity; _____ a sole proprietorship; _____ a partnership; _____ a hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(ii) If the offeror is a foreign entity, it operates as: _____ an agency or instrumentality of a foreign government; or agency or instrumentality of a Federal, state or local Government.

(c) Representations required to implement provisions of the Small Business Act (15 U.S.C. 631 *et seq.*):

Note: Offerors must complete this paragraph (c) only if the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(1) *Small Business Concern.* The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *Small Disadvantaged Business Concern.* The offeror represents and certifies that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) *Women-Owned Small Business Concern.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-Owned Business Concern.* The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.

(5) *Priority for Labor Surplus Area Concerns.* Offeror identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

_____

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.]*

(i) *[Complete only for solicitations in the four designated industry groups.]* The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not an emerging small business.

(ii) *[Complete only for solicitations in targeted industry categories expected to result in an award in excess of $25,000.]* Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check this column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Employees	Average annual gross number of revenues
____ 50 or fewer.	____ $1 million or less.
____ 51–100.	____ 1,000,001–2 million.
____ 101–250.	____ 2,000,001–3.5 million.
____ 251–500.	____ 3,500,001–5 million.
____ 501–750.	____ 5,000,001–10 million.
____ 751–1,000.	____ 10,000,001–17 million.
____ Over 1,000.	____ Over 17 million.

(d) Certifications and representations required to implement provisions of Executive Order 11246—

(1) *Certification of Non-segregated Facilities.* (Applies only if the contract amount is expected to exceed $10,000)—

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that—

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It ☐ has, ☐ has not, filed all required compliance reports

(3) *Affirmative Action Compliance.* The offeror represents that—

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR subparts 60–1 and 60–2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed $100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.225–9, Buy American Act—Trade Agreement—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

Line Item No.

Country of Origin

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program":

(Insert line item numbers)

(4) Offers will be evaluated in accordance with part 25 of the Federal Acquisition Regulation.

(g) *Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.225–21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (g)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program" and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(2) Excluded End Products:

Line Item No.

Country of Origin

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(2) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:"

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR part 25.

(h) *Procurement Integrity Certification (41 U.S.C. 423).* (Applies only if the contract is expected to exceed $100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either—

_____ I have no information, or

_____ I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

_____

Signature of the officer or employee responsible for the offer and date.

(End of Certification)

(End of Provision)

52.212–4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.302(b)(3), insert the following clause:

Contract Terms and Conditions—Commercial Items (Date)

Acceptance. The Contractor shall tender to the Government for acceptance only supplies or services that the Contractor has inspected in accordance with its commercial inspection system and found to be in conformity with contract requirements. The Government has the right to inspect or test all supplies or services after they have been tendered for acceptance. Acceptance shall be conclusive except for patent defects, latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract. The Government may require correction or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price, or require an adjustment to the contract price to reflect the reduced value of the nonconforming supplies or services. Revocation of acceptance shall occur (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before substantial change occurs in the condition of the item. This limitation does not apply to changes in condition caused by the defect.

Assignment. The Contractor or its assignee, may, when done in accordance with the provisions of the Assignment of Claims Act (31 U.S.C. 3727), assign its rights to be paid amounts due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency.

Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233–1, Disputes, which is incorporated herein by reference.

Definitions. The clause at FAR 52.202–1, Definitions, is incorporated herein by reference.

Excusable Delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Invoice. The Contractor shall submit an original invoice and three copies to the address designated in the contract to receive invoices. An invoice must include—

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number and, if applicable, the order number;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated office.

Patent Indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

Risk of Loss. Unless the contract specifically provides otherwise, risk of loss or damage shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the item(s) to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the item(s) to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

Termination. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a reasonable termination charge considering the percentage of the contract price reflecting the

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percentage of the work performed prior to the notice of termination, plus actual direct costs that the Contractor can demonstrate have resulted from the termination. The Contractor shall not be paid for any work done after receipt of the termination notice, nor for any costs incurred by the Contractor's suppliers or subcontractors which the Contractor could reasonably have avoided.

Termination for Cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it should be determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon final acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

Warranty. Except as expressly set forth elsewhere in this contract and except for the implied warranty of merchantability, there are no warranties express or implied. In no event will the Contractor be liable to the Government for consequential damages resulting from the seller's breach including—

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

Other Compliances. The Contractor agrees to comply with all applicable Federal, State and local laws, executive orders, and regulations thereunder and amendments thereto, including, without limitation, 15 U.S.C 2601 *et seq.*, the Federal Occupational Safety and Health Act of 1970; 42 U.S.C. 7401 *et seq.*, the Clean Air Act; 15 U.S.C. 2601 *et seq.*, the Toxic Substances Control Act; and 33 U.S.C. 1251 *et seq.*, and the Federal Water Pollution Control Act.

Compliance with Laws Unique to Government Contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracting; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327 *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

Order of Precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (a) addenda to this solicitation or contract; (b) solicitation provisions; (c) contract clauses; (d) Standard Form XXXX; (e) Other documents, exhibits, and attachment; and (f) the specification.

(End of Clause)

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.302(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

(2) 52.222–3, Convict Labor (E.O. 11755)

(3) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759)

(b) The Contractor agrees to comply with the following FAR and FIRMR clauses in this paragraph (b) that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

(2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

(3) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

(4) 52.222–26, Equal Opportunity (E.O. 11246).

(5) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012).

(6) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(7) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012).

(8) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

(9) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

(10) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

(11) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

(12) 52.225–19, European Community Sanctions for Services (E.O. 12849).

(13) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).

(14) 52.247–64, Preference for Privately Owned US Flagged Commercial Vessels (46 U.S.C. 1241).

(15) 201–39.5202–3, Procurement Authority (FIRMR).

(This acquisition is being conducted under ———— delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is ————).

(c) The Contractor agrees to comply with the following FAR clauses in this paragraph (c), applicable to commercial services, that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

(2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

(4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

(5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 *et seq.*).

(d) Notwithstanding the requirements of the clauses in paragraphs (a), (b) or (c) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—[list of clauses to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(End of clause)

71. In the list of newly redesignated sections below, for each clause or provision indicated in the left column, remove the reference listed in the middle column and insert the reference listed in the right column:

Clause/provision	Remove	Insert
52.211–1	10.011(a)	11.203(a)
52.211–2	10.011(b)	11.203(b)
52.211–3	10.011(c)	11.203(c)
52.211–4	10.011(d)	11.203(d)
52.211–5	10.011(e)	11.203(e)
52.211–6	10.011(f)	11.203(f)
52.211–7	10.011(g)	11.203(g)

Clause/provision	Remove	Insert
52.211–8	12.104(a)(2)	11.404(a)(2)
52.211–9	12.104(a)(3)	11.404(a)(3)
52.211–10	12.104(b)	11.404(b)
52.211–11	12.204(a)	11.504(a)
52.211–11	12.202	11.502(b)
52.211–12	12.204(b)	11.504(b)
52.211–13	12.204(c)	11.504(c)
52.211–14	12.304(a)	11.604(a)
52.211–15	12.304(b)	11.604(b)
52.211–16	12.403(a)	11.703(a)
52.211–17	12.403(b)	11.703(b)
52.211–18	12.403(c)	11.703(c)
52.242–14	12.505(a)	42.1305(a)
52.242–15	12.505(b)	42.1305(b)
52.242–16	12.505(c)	42.1305(c)
52.242–17	12.505(d)	42.1305(d)

72. Section 52.244–xx is added to read as follows:

52.244–XX Subcontracts for Commercial Items and Commercial Components

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Items and Commercial Components (Date)

(a) Definition.

Commercial item, as used in this clause, has the meaning contained in the clause at 52.202–1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all levels to incorporate, commercial items or nondevelopmental items other than commercial items, as components of items to be supplied under this contract.

(c) If in awarding a subcontract for commercial items, an exception under 15.804–1(a) does not apply, the subcontractor may be required to submit cost or pricing data and comply with the appropriate clauses prescribed in FAR part 15.

(d) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below and as may be required by paragraph (c) of this clause, in a subcontract for commercial items or commercial components: [list to be published in the **Federal Register** in a future proposed rule under FAR case 94–791]

(e) The Contractor shall include the terms of this clause, including this paragraph (e), in subcontracts awarded under this contract.

(End of clause)

PART 53—FORMS

73. Section 53.212 is added to read as follows:

53.212 Acquisition of commercial items.

SF XXXX (XX/95), Solicitation/Contract/Order for Commercial Items. SF XXXX is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.301 [Amended]

74. Section 53.301–xxxx is added to read as follows:

SF XXXX (xx/95), Solicitation/Contract/Order for Commercial Items.

BILLING CODE 6820–34D–M

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SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 16, 22, 23, & 28.

1. REQUISITION NUMBER				PAGE 1 OF	
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:	A. NAME		B. TELEPHONE NUMBER (No collect calls)	C. OFFER DUE DATE	
8. ISSUED BY	CODE		10. THIS ACQUISITION IS ☐ UNRESTRICTED ☐ SET ASIDE: % FOR ☐ SMALL BUSINESS ☐ SMALL DISADV. BUSINESS ☐ (WA) NAICS: SIZE STANDARD:	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE ☐ 13A. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	12. DISCOUNT TERMS
				13B. RATING	
14. DELIVER TO	CODE		15. ADMINISTERED BY	CODE	
16A. CONTRACTOR/ OFFEROR	CODE	FACILITY CODE	17A. PAYMENT WILL BE MADE BY	CODE	
TELEPHONE NO.					
☐ 16B. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			17B. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 17 UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM		

18. ITEM NO.	19. SCHEDULE OF SUPPLIES/SERVICES	20. QUANTITY	21. UNIT	22. UNIT PRICE	23. AMOUNT
	(Attach Additional Sheets as Necessary)				

24. ACCOUNTING AND APPROPRIATION DATA

25. TOTAL AWARD AMOUNT (For Govt. Use Only)

☐ 26A. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.
☐ 26B. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.

27. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.

28. AWARD OF CONTRACT: REFERENCE ____ OFFER DATED ____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:

29A. SIGNATURE OF OFFEROR/CONTRACTOR		30A. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)	
29B. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	29C. DATE SIGNED	30B. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)	30C. DATE SIGNED

31A. QUANTITY IN COLUMN 20 HAS BEEN	32. SHIP NUMBER	33. GD VOUCHER NUMBER	34. AMOUNT VERIFIED CORRECT FOR
☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED	☐ PARTIAL ☐ FINAL		
31B. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE / 31C. DATE	35. PAYMENT ☐ COMPLETE ☐ PARTIAL ☐ FINAL		36. CHECK NUMBER
	37. S/R ACCOUNT NUMBER	38. S/R VOUCHER NUMBER	39. PAID BY
40A. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	41A. RECEIVED BY (Print)		
40B. SIGNATURE AND TITLE OF CERTIFYING OFFICER / 40C. DATE	41B. RECEIVED AT (Location)		
	41C. DATE RECEIVED (YY/MM/DD)	41D. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 3000X
Prescribed by GSA
FAR (48 CFR) 53.212

[FR Doc. 95–4535 Filed 2–28–95; 8:45 am]
BILLING CODE 6820–34D–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Standard Form XXXX, Solicitation/Contract/Order for Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Standard Form XXXX, Solicitation/Contract/Order for Commercial Items.

DATES: Comments may be submitted on or before May 1, 1995.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

The proposed revisions include a new form, Standard Form XXXX, Solicitation/Contract/order for Commercial Items. The form would replace several existing "cover page" forms on solicitations, orders, and contracts for commercial items and services. It is designed to facilitate the incorporation of the contract clauses required for commercial items in solicitations, orders, and contracts. The new form would substitute for those "cover page" forms on a one-for-one basis, and is not intended to impose any additional burden on firms that do business with the Federal Government. The net effect of the entirety of the proposed revisions (including the new form) is likely to reduce the burden on Government contractors.

Information will be used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 500,000; responses per respondent, 20; total annual responses, 10,000,000; preparation hours per response, .75; and total response burden hours, 7,500,000.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Standard Form XXXX, Solicitation/Contract/Order for Commercial Items, FAR case 94–790, in all correspondence.

Dated: February 17, 1995.
Beverly Fayson,
FAR Secretariat.
[FR Doc. 95–4536 Filed 2–28–95; 8:45 am]
BILLING CODE 6820–34–M

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federal register

Wednesday
March 1, 1995

Part III

Department of Housing and Urban Development

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3847; FR–3828–N–01]

NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1995.

SUMMARY: HUD is announcing the availability of $25 million for Fiscal Year 1995 under the Public and Indian Housing Tenant Opportunities Program (TOP). HUD reinvented resident management and created the TOP to expand the range of the resident-managed activities, so that resident organizations can set priorities based on the needs in their communities. The program provides assistance to Resident Councils (RCs), Resident Management Corporations (RMCs), Resident Organizations (ROs) and National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs), to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. The NOFA discusses eligibility, funding amounts, selection criteria, how to apply for funding, and the selection process.

DATES: Application kits may be requested beginning March 1, 1995. The application deadline will be specified in the application kit, and will be firm as to date and time. Applicants will have at least 60 days from today's publication of the NOFA to prepare and submit their applications.

ADDRESSES: To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR–3828. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410; telephone: (202) 708–3611. All Indian Housing applicants may contact Tracy Outlaw or Charles Bell, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room B–133, Washington, D.C. 20410; telephone: (202) 755–0032. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 for information on the program. (Other than the "800" TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0127.

I. Purpose and Description

A. Authority

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

B. Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–42, approved February 5, 1988) amended the U.S. Housing Act of 1937 (1937 Act) by adding a new section 20. In part, section 20 states as its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] * * * to promote formation and development of resident management entities" (Sec. 20(a)). Under section 20(f)(1):

> (The Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.)

Under section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project. Section 20 is implemented in 24 CFR part 905, subpart O (for Indian housing), and part 964 (for public housing). The rules set forth, among other things, the policies, procedures, and requirements of resident participation and management of public and Indian housing.

In FY 1988, $2.5 million was awarded to 27 resident organizations; in FY 1989, $2.5 million was awarded to 35 resident organizations; in FY 1990, $2.4 million was awarded to 37 resident organizations; in FY 1991, $4.9 million was awarded to 96 organizations; in FY 1992, $4.6 million was awarded to 94 organizations; in FY 1993, $4.7 million was awarded to 94 organizations; and in FY 1994, $24 million was awarded to 257 organizations with $1 million awarded to ten NROs/RROs/SROs. In FY 1995, $25 million is available to Public and Indian Housing RCs/RMCs/ROs, of which $1 million is set-aside for NROs/RROs/SROs to provide technical assistance and training activities under the TOP program.

Today, 640 resident groups throughout the country are in training under this program. HUD supports the tenant opportunities movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian housing residents. The Office of Community Relations and Involvement (formerly called the Office of Resident Initiatives) has been created to deliver a variety of resident initiative programs, with assistance from a network of Community Relations and Involvement Specialists (CRIs) in HUD's field structure. The CRIs are available to provide direct assistance to residents and resident groups interested in resident initiatives programs.

C. Key Features of this NOFA

(1) The TOP Program meets the need in many communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. The program enables resident entities to establish priorities based on the efforts in their public and Indian housing communities that are aimed at furthering economic lift and independence. The authority for the TOP program is found in section 20 of the 1937 Act; section 20(f) authorizes technical assistance and training. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). Technical assistance grants are available for "the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support."

Residents may use TOP technical assistance grants for training related to any TOP initiative. The results from organizations in training have been significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward responsible roles in their communities. The training will aim to enhance the functioning of the resident council as well as develop skills to engage in resident managed activities in its community. TOP will strongly encourage resident entities to develop a partnership with their public housing agency or Indian housing authority (hereafter jointly referred to as "HA"). The Department is committed to building a real partnership among HAs, residents, and HUD.

(2) RCs/RMCs/ROs that have been in existence for several years or that were recently formed may receive up to $100,000.

(3) All applicants that are selected for funding (including NROs/RROs/SROs) will access the grant funds through the Line of Credit Control System (LOCCS), as explained in Section I.D, "Funding," of this NOFA.

(4) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a Work Plan and Budget for activities proposed by the applicant. This process facilitates the expeditious execution of a TOP Technical Assistance Grant (TOP TAG) for those applicants that are selected to receive funding. The kit also includes narratives, certifications, and forms. Included in the application kit this year is a new certification that requires each applicant RC/RMC/RO to certify that it has held a democratic election. The certification must be signed by an authorized representative of the local HA.

(5) The information listed below is regarding all HOPE I grantees:

All HOPE I applicants' applications will be screened. A cross-check will be made against the HOPE I Planning grants and HOPE I Implementation grants, to assure compliance with section 20(f)(4) of the 1937 Act, which states: "The Secretary may not provide financial assistance under this subsection to any resident management corporation or resident council with respect to which assistance for the development or formation of such entity is provided under title III." HOPE I Planning and Implementation grantees were required to propose plans to establish a RC, RMC, or cooperative association where one did not exist for the proposed homeownership site, including the development or formation of that entity. In addition, HOPE I Full Planning and Implementation grant applicants were expected to include in their applications all eligible activities necessary to make their proposed homeownership program feasible (even if some of the proposed activities were to be carried out with non-HOPE 1 funds, such as resident management funds). Consequently, in reviewing Tenant Opportunities Program grant applications, the following rules apply:

Rule 1. An applicant for TOP funds that has received a HOPE 1 Full Planning or Implementation grant (as a lead or joint applicant) may not also receive a TOP grant, unless the applicant proposed in its HOPE 1 application to use resident management funding to carry out those activities.

Rule 2. An applicant for TOP funds that has received a HOPE 1 Mini Planning grant (as a lead or joint applicant) may not receive a TOP grant for any activity proposed for funding in the HOPE 1 grant. Mini Planning grant applicants may apply for a TOP grant if the activities proposed in the TOP application are not duplicative.

(6) All applicants will have an opportunity to correct technical deficiencies in this application submission as provided for in this NOFA.

D. Funding

As noted, $25 million is being made available on a competitive basis under this NOFA to applicants that submit timely applications and are selected for funding. Section 20 provides that not more than an aggregate of $100,000 may be approved with respect to any TOP project.

Of the $25 million total current funds, $1 million will be awarded to National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs), to provide technical assistance to public and Indian housing residents.

With the remaining $24 million, the Department will be providing two types of grants to RCs/RMCs/ROs: (1) Basic Grant; and (2) Additional Grant.

Basic Grants

All RCs/RMCs/ROs that have been in existence for several years and new emerging groups that meet eligibility requirements (see Definitions) may apply for a Basic grant for up to $100,000. All grantees will access the TOP grant funds through a line of credit control system (LOCCS).

To ensure the progress of the grantees, each grantee will be allowed to draw down through LOCCS only the specific amount of funding needed to complete the tasks and subtasks specified in the work plan. The grantee must complete all activities under Phases 1 and 2 in the work plan prior to advancing to Phases 3 through 5 and receiving additional funds, except for those activities that can be reasonably construed as being ongoing, such as technical assistance or training.

The local HUD Field Office will be responsible for approving the work plan and determining the ability of the grantee to access LOCCS.

Additional Grants

Any RC/RMC/RO selected for a Resident Management (RM)/TOP grant in FYs 1988–1994 (including a minigrant for start-up activities) that received less than a total of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000.

To ensure the progress of the grantees, each grantee will be allowed to draw down from LOCCS only the specific amount of funding needed to complete the tasks and subtasks specified in the work plan. Each Additional Grant grantee must provide a progress report that will indicate progress and the activities that are completed. The local HUD Field Office will be responsible for approving the work plan and determining the ability of the grantee to access LOCCS.

Each Additional Grant applicant must demonstrate the need for additional funding by submitting evidence of completing specific activities. An Additional Grant applicant may receive a higher score if most of the activities listed in Section I.L. of this NOFA are completed and documentation is included as evidence.

NROs/SROs/RROs Grant

The purpose of this grant is to provide technical assistance to public and Indian housing residents desiring either to establish a RC/RMC/RO where one does not exist or to organize an inactive RC/RMC/RO. The awards will be competitive, using the Rating Factors in

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Section I.M of this NOFA, and applicants must meet eligibility requirements. The local HUD Field Office will be responsible for approving the work plan and determining the ability of the grantee to access LOCCS.

E. TOP Technical Assistance Grant Agreement

Grant awards will be made through a TOP Technical Assistance Grant Agreement which defines the legal framework for the relationship between HUD and a resident grantee for the proposed activities approved for funding. The grant agreement will contain all applicable requirements, including administrative requirements such as progress reports, a final report, a final audit, accessing the LOCCS to draw down funds, and all the necessary forms needed to execute the grant. No funds can be drawn down by grantees until the grant agreement is executed by the local HUD Field Office.

F. Definitions

The following definitions apply to public housing, as provided in 24 CFR 964.115 and 964.120:

Resident Council (RC). An incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(1) It may represent residents residing in scattered site buildings, in areas of contiguous row houses; or in one or more contiguous buildings; in a development; or in a combination of these buildings or developments;

(2) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing on a regular basis but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(3) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

Resident Management Corporation (RMC). An entity that consists of residents residing in public housing must have each of the following characteristics in order to receive official recognition by the HA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one resident council, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation;

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in public housing represented by the resident management corporation;

(6) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

The following definitions apply to Indian Housing as defined in 24 CFR part 905.962:

Resident Management Corporation (RMC). An entity that proposed to enter into, or enters into a contract to manage IHA property. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It must be approved by the resident organization. If there is no organization, a majority of the households of the project or projects must approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It must consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it must fairly represent residents from each development that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis.

(4) It must have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

The following definitions apply to NRO/RRO/SRO applicants:

National Resident Organization (NRO). An incorporated nonprofit organization or association for public and Indian housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Regional Resident Organization (RRO). An incorporated nonprofit organization or association for public or Indian housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas, including Tribal Areas); and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Statewide Resident Organization (SRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

G. Eligibility

Only organizations that meet the definition of a RC/RMC/RO or a NRO/RRO/SRO, as set forth under the Section I.F, "Definitions," of this NOFA will be eligible for funding under this NOFA. The following considerations also apply:

(1) Only public and Indian housing RCs/RMCs/ROs and NROs/SROs/RROs are eligible to apply for this grant. The local HAs, Section 8 developments, or other federally subsidized housing communities are not eligible to apply.

(2) A RC/RMC/RO will receive consideration for a basic grant based on the rating factors contained in Section I.K. of this NOFA.

(3) A RC/RMC/RO selected for funding in FYs 1988–1994 that received less than the statutory maximum of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000.

(4) A RC/RMC/RO will receive consideration for an Additional Grant based on the rating factors contained in Section I.L. of this NOFA.

(5) Grantees that were awarded the maximum total amount of $100,000 in FYs 1988–1994 are not eligible to apply.

(6) Only one application will be considered for funding from an individual development. If more than one application is received from a development, only the application from the duly elected RC/RMC/RO will be considered. All other applications will be rejected.

(7) A city-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within the city) may represent more than one RC/RMC/RO within an HA. Under some circumstances, a number of the RCs/RMCs/ROs who are members of a city-wide organization may wish to apply jointly for a grant. In that case, a city-wide organization may represent these developments and apply for a grant as a city-wide applicant. The individual developments under the umbrella of the city-wide organization may apply for a separate grant only if the activities that are included in the individual development's application are not the same activities that are included in the city-wide organization's application. All applications will be screened for duplicative activities. In addition, the city-wide organization cannot include an application for funding any individual development that has received RM/TOP technical assistance funding totalling $100,000 in previous years.

(8) A jurisdiction-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within that HA's jurisdiction, other than a city-wide organization making an application in accordance with paragraph (7) in this Section I.G) may be formed for the purpose of advising the HA Board of Commissioners or Executive Directors in all areas of HA operations. In that case, the jurisdiction-wide organization may apply for a grant to carry out jurisdiction-wide programs. These grants will have no impact on the individual RC/RMC/RO funding.

(9) An NRO/SRO/RRO that is organized to provide technical assistance to RCs/RMCs/ROs may receive grants up to $100,000. An NRO/SRO/RRO previously funded for $100,000 may apply for a new TOP grant only if the groups represented in its application are new groups. The local HUD Field Office will screen the application for this purpose.

H. Eligible Activities

Activities for which funding under this NOFA may be provided to an eligible RC/RMC/RO or NRO/RRO/SRO include any combination of, but are not limited to, the following:

(1) Resident Capacity Building:

- Training board members in community organizing, board development, and leadership training; and
- Determining the feasibility of the TOP initiatives for a specific development.

(2) Resident Management:

- Building and strengthening its capacity as an organization (e.g., establishing operating/planning committees and block/building captains to carry out specific organizational tasks, developing by-laws, etc.); developing a cohesive relationship between the residents and the local community; and building a partnership with the HA;
- Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;
- Training of residents with respect to fair housing and equal opportunity requirements;
- Gaining assistance in negotiating management contracts and in related contract monitoring and management procedures, and designing a long-range planning system related to contracts; and
- Assisting in the actual creation of an RC/RMC/RO, such as consulting and acquiring legal assistance to incorporate, prepare by-laws, draft a corporate charter, and apply for nonprofit status.

(3) Resident Management Business Development:

- Economic development training related to resident management and technical assistance for job training and placement in RC/RMC/RO developments;
- Technical assistance and training in business development related to resident management, through feasibility and market studies; development of business plans; affirmative outreach activities; and innovative financing methods, including revolving loan funds; and
- Legal advice in establishing resident management-required business entities.

(4) Partnerships:

- Establishing and providing to residents in each community training related to the Partnership Paradigm Technical Assistance (PPTA)/Technical Assistance Organization (TAO) model. This is an optional partnership that would bring together residents, the HA, and HUD, in an effort to create a community-based process that offers technical assistance and training related to building the partnership between the residents, the HA, and HUD and to oversee and carry out activities in the TOP program. HUD's Office of Community Relations and Involvement (OCRI) may be contacted at the address and telephone number listed at the beginning of this NOFA for additional information, if there is an interest in the PPTA.

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• Other partnerships developed by the local residents/HA in the community.

(5) Social Support Services (such as self-sufficiency and youth initiatives):

• Feasibility studies to determine training and social services needs;

• Coordination of support services;

• Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before- and after-school programs;

• Training programs on health, nutrition, and safety;

• Workshops for youth services, child abuse and neglect prevention, and tutorial services, in partnership with community-based organizations, such as local Boys and Girls Clubs, YMCA/YWCA, Boys/Girls Scouts, Campfire, Big Brothers/Big Sisters, 4–H Clubs, etc.; and

• Training in the development of strategies to implement youth programs successfully. For example, assessing the needs and problems of the youth; improving youth initiatives that are currently active; and training youth, housing authority staff, and RCs/RMCs/ROs on youth initiatives and program activities.

(6) General:

• Required training on HUD regulations and policies governing the operation of low-income public and Indian housing, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project, and property management;

• Training in accessing other funding sources;

• Developing performance standards and assessment procedures to measure the success of the RC/RMC/RO;

• Assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance;

• Assessing potential management functions or tasks that the RC/RMC/RO might undertake;

• Training in resident management-related skills, such as computer and clerical (payroll clerk/records management) skills;

• Resident management-related employment training and counseling;

• Hiring trainers or other experts (resident grantees must ensure that all training is provided by a qualified housing management specialist, a community development specialist, the HA, or other sources knowledgeable about the program). Generally, no more than 50% of the grant funds or $50,000, whichever is less, should be used for any one consultant for this purpose;

• Rental or lease of a car, van, or bus by resident grantees to attend training related to the TOP initiatives; and

• Stipends, as provided in this paragraph. Officers and members of a RC/RMC/RO should not receive stipends for participating in or receiving training under the TOP. If RCs/RMCs/ROs are interested in implementing resident-managed activities, stipends will be approved, subject to the availability of funds, when the officers and members of the resident entity have successfully completed the first stage of training on any TOP initiative, dual management contract with the HA, or a HA-operated career-related training program. Generally, no more than 20% of the grant funds should be used for this purpose.

(7) Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.

(8) Implementation of activities by a RC/RMC/RO associated with the operation and maintenance of the public and Indian housing project. Examples of eligible activities in this category that have not been mentioned previously are:

• Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;

• Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, such as recordkeeping, maintenance, insurance, occupancy, and management information systems; any other recognized functional responsibilities relating to property management, in general, and public and Indian housing management, in particular; and responsibilities relating to any TOP initiative;

• Identifying the social support needs of residents, and the securing of that support by hiring a services coordinator to coordinate and assist in implementing the services needed by the residents, such as health clinics, day care, and security; and

• Assessing potential homeownership opportunities for residents within public and Indian housing or anywhere in the community.

(9) Administrative costs necessary for the implementation of activities outlined in paragraphs (1) through (8) of this Section I.H, "Eligible Activities," of the NOFA. Appropriate administrative costs include, but are not limited to, the following items or activities:

• Telephone, telegraph, printing, and sundry nondwelling equipment (such as office supplies, computer software, and furniture). In addition, a reasonable portion of funds may be applied to the acquisition of equipment, such as computer hardware and copying machines, unless purchase of this equipment can be made from a grantee's operating budget. A grantee must justify the need for this equipment in relationship to its management capability and the level of its management responsibilities;

• HUD-approved travel directly related to activities for the development/training and implementation of resident management or any tenant opportunity initiatives, including conference fees, related per diem for meals, and miscellaneous travel expenses for individual staff or board members of the RC/RMC/RO; and

• Child care expenses for individual staff and board members, in cases where staff or board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than 2 percent of the total grant amount (0.02 times the grant award amount) may be used for expenses to support child care needs.

(10) For NROs/RROs/SROs only: Organizing and establishing democratically elected and effective RCs/RMCs/ROs:

• Identifying existing funded resident organizations in a geographical area that are inactive and providing training and technical assistance to help them become active again;

• Assisting new resident organizations within a geographical area to become a RC, RMC, or RO; and

• Providing local or on-site training and technical assistance to the inactive or newly formed resident organization, to enable it to implement activities included in the Work Plan within the time and budget constraints.

• Providing training and technical assistance to the resident organizations in accomplishing any of the eligible activities related to the TOP initiatives.

I. Ineligible Activities

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel;

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the TOP initiatives, e.g., lead-based paint testing and abatement and operating capital for economic development activities;

(4) Purchase of any vehicle (car, van, bus etc.) or any other property, other than as described under paragraph (9) of Section I.H, "Eligible Activities," of this NOFA, unless approved by HUD Headquarters or the local HUD Field Office;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the TOP grant activities or coordinate on-site social services;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures, upon appropriate determination by an audit by HUD Field Office staff, and HUD will reduce the grantee's grant for the amount expended; and

(9) Any activity otherwise eligible under this NOFA for which funds are being provided from any other source.

J. Selection Process

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, to the local HUD field office and that otherwise meets the requirements of this NOFA, will be evaluated. An application for either a Basic Grant or an Additional Grant must receive a minimum score of 80 points (out of the maximum of 115 points) to be eligible for funding. NROs/RROs/SROs must receive a minimum score of 80 points (out of a maximum of 110) to be eligible for funding. An RC/RMC/RO or NRO/RRO/SRO should submit its application to the appropriate local HUD Field Office (see Appendix to this NOFA). The local Field Office will transfer all RC/RMC/RO applications to a grant review site for processing by a Grants Management Team. Upon completion of the review, all applications will be placed in an overall nationwide ranking order and funded until all funds are exhausted, except that HUD may fund grants out of rank order based on geographical diversity and diversity in size and type of housing development (developments that include family high-rise buildings of five or more stories or those that include only low-rise buildings).

K. Rating Factors—Basic Grants

An application for funding for a Basic Grant will be reviewed based on the following Rating Factors (maximum of 115 points). This 115-point maximum includes *10 Bonus Points* that will be given if the applicant can show evidence of clear and precise measures of performance in carrying out its plan to improve its public and Indian housing communities. Examples of such measures are lowering maintenance costs, reducing local crime, and increasing resident employment by certain percentage points.

(1) Describe the Activities and Goals of the RC/RMC/RO and the Community (Maximum Points: 30):

• A high score (Maximum Points: 30) is received where the RC/RMC/RO identifies activities and describes the goals of the community. The applicant includes a clear and effective plan for addressing the needs and accomplishing the overall goals of the RC/RMC/RO.

• A medium score (Maximum Points: 15) is received where the RC/RMC/RO identifies activities and describes the goals of the community, but the plan to address the needs and accomplish the goals is general.

• A low score (Maximum Points: 5) is received where the RC/RMC/RO does not identify any activities and the plan to address the needs and accomplish the goals of the community is unclear.

• A score of zero (0 points) will be given if the applicant fails to respond to this factor.

(2) Evidence of Support by Development's Residents, and Resident Involvement in the RC's/RMC's/RO's Activities (Maximum Points: 25):

• A high score (Maximum Points: 25) is received where the RC/RMC/RO describes the support by the residents and provides documentation that shows support and how involved the residents are in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition and/or other documentation showing widespread support and involvement, minutes of the RC's/RMC's/RO's latest monthly meeting, and the attendance log.

• A medium score (Maximum Points: 10) is received where the RC/RMC/RO describes the support by the residents and the documentation of support includes minutes of the RC's/RMC's/RO's latest monthly meeting and attendance log, but no petition.

• A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents and no support is mentioned in the narrative.

(3) Evidence That the RC/RMC/RO Has a Partnership With the HA: (Maximum Points: 15):

• A high score (Maximum Points: 15) is received where the RC/RMC/RO provides a letter of support from the local HA that states its support of the RC/RMC/RO, as well as a specific description of what assistance the HA will undertake on behalf of the RC/RMC/RO.

• A medium score (Maximum Points: 10) is received where either: (i) The RC/RMC/RO provides a letter of support from the HA that does not specifically state the activities for which the HA will provide assistance; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) indicating that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.

• A low score (Maximum Points: 5) is received if the applicant mentions HA support or obstacles encountered in attempting to build a partnership with the HA.

• A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain HA support.

(4) Evidence That the RC/RMC/RO Has Support of State/Tribal/Local Government, Community Organizations or Other Public/Private Sector Groups (Maximum Points: 20 + 5 bonus points). Under this factor, 5 Bonus Points will be given if the applicant submits evidence that specific support is provided by Weed and Seed organizations. Otherwise, maximum point value is given where the support letters contain specific commitments, such as financial assistance, technical assistance, on-the-job training, or other tangible support.

• A high score (Maximum Points: 20) is received where the RC/RMC/RO provides copies of letters of support discussing specific assistance from three or more entities (e.g., State/Tribal/local government, community organizations, or other public/private sector groups).

• A medium score (Maximum Points: 12) is received where the RC/RMC/RO provides a letter of support from two entities.

• A low score (Maximum Points: 5) is received where the RC/RMC/RO fails to provide any letters of support, but support of the State/Tribal/local government, community organizations, or other public/private sector groups is mentioned in the narrative.

(5) Capability of RC/RMC/RO in Handling Financial Resources (Maximum Points: 10). This factor can be demonstrated by including previous experience of the RC/RMC/RO or by providing an explanation of how the financial resources will be obtained:

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• A high score (Maximum Points: 10) is received where the RC/RMC/RO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place or provides a plan to partner with the HA or hire a private organization to develop the financial controls.

• A medium score (Maximum Points: 5) is received where the RC/RMC/RO provides evidence of having up to 2 years of experience in handling financial resources, but no accounting procedures are established nor has a plan been provided to partner with the HA or hire a private organization to develop the financial controls.

• A score of zero (0 points) is received where the RC/RMC/RO has no experience in handling financial matters and there is clearly no accounting system or procedures established.

L. Rating Factors—Additional Grants

An application for funding for an Additional Grant will be reviewed based on the following Rating Factors (maximum 115 points). This 115-point maximum includes *10 Bonus Points* that will be given if the applicant can show evidence of clear and precise measures of performance in carrying out its plan to improve its public and Indian housing communities. Examples of such measures are proposing to lower maintenance costs, reduce local crime and increase resident employment by certain percentage points.

(1) Evidence of Need for Additional Funding (Maximum Points: 30):

• A high score (Maximum Points: 30) is received where the RC/RMC/RO provides a copy of evidence showing the completion of all of the activities listed below, therefore demonstrating progress and a need for additional funding:

(a) Developed an active community organization that includes democratically elected officers (example: election certification signed by the local HA or an independent third-party organization and minutes of meetings);

(b) Developed by-laws pursuant to 24 CFR part 905, subpart O, or 24 CFR part 964, whichever is applicable, that govern the operation of the organization (example: a copy of the RC's/RMC's/RO's by-laws);

(c) Developed an organizational structure that consists of floor/block captains or residential community groups and program committees to carry out specific tasks (example: a copy of the RC's/RMC's/RO's organization structure that lists floor/block captains, community groups, and program committees);

(d) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds, or acquired an accounting service to perform this function (example: a certification that the accounting system is developed);

(e) Developed a Memorandum of Understanding (MOU) between the RC/RMC/RO and HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, transportation, etc.) and the activities to be conducted by the RC/RMC/RO (example: a copy of an executed MOU between the RC/RMC/RO and HA);

• A medium score (Maximum Points: 20) is received where the RC/RMC/RO submits evidence of completing 4 of the activities listed under "high score" of this factor.

• A low score (Maximum Points: 10) is received where the RC/RMC/RO submits evidence of completing 2 of the activities listed under "high score" of this factor.

• A score of zero (0 points) is given if the applicant submits no evidence of accomplishing any of the activities listed under "high score" of this factor or it is clear that the applicant has made no progress in the previous activities.

(2) *Evidence of Support by Development's Residents, and Resident Involvement in the RC's/RMC's/RO's Activities* (Maximum Points: 25):

• A high score (Maximum Points: 25) is received where the RC/RMC/RO describes the support by the residents and provides documentation that shows support and how involved are the residents in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition and/or other documentation showing widespread support and involvement, minutes of the RC's/RMC's/RO's latest monthly meeting, and the attendance log.

• A medium score (Maximum Points: 10) is received where the RC/RMC/RO describes the support by the residents and the documentation of support includes minutes of the RC's/RMC's/RO's latest monthly meeting and attendance log, but no petition.

• A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents or does not mention support in the narrative.

(3) *Evidence That the RC/RMC/RO has a Strong Partnership With the HA* (Maximum Points: 25):

• A high score (Maximum Points: 25) is received where the RC/RMC/RO provides a letter of support from the local HA that states its support of the RC/RMC/RO, as well as a specific description of what assistance the HA will undertake on behalf of the RC/RMC/RO (e.g., on-the-job training, technical assistance, equipment, space, transportation, etc.).

• A medium score (Maximum Points: 15) is received where either: (i) the RC/RMC/RO provides a letter of support from the HA that does not specifically state the activities for which the HA will provide assistance; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) showing that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities. Up to 5 points will be awarded if support is mentioned or obstacles encountered in attempting to build a partnership with the HA are mentioned.

• A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain such support.

(4) *Evidence That the RC/RMC/RO has the Support of the State/Tribal/Local Government, Community Organizations, or Other Public/Private Sector Groups* (Maximum Points: 20 + 5 bonus points). Under this factor *5 Bonus Points* will be given if the applicant submits evidence that specific support is provided by Weed and Seed organizations. Otherwise, maximum point value is given where the support letters contain specific commitments, such as financial assistance, technical assistance, on-the-job training, or other tangible support.

• A high score (Maximum Points: 20) is received where the RC/RMC/RO provides copies of letters from three or more entities (e.g., State/Tribal/local government, community organizations, or other public/private sector groups.

• A medium score (Maximum Points: 10) is received where the RC/RMC/RO provides letters of support from two entities.

• A low score (Maximum Points: 5) is received where the RC/RMC/RO provides a letter of support from one entity.

M. Rating Factors—NROs/RROs/SROs

An application for funding will be reviewed based on the following Rating Factors (maximum of 110 points). This 110-point maximum includes *10 Bonus Points* that will be given if the applicant can show evidence of clear and precise measures of performance in carrying out its plan to improve its public and Indian housing communities (e.g., measures proposed for creating new RCs).

(1) *Describe the Goals and Objectives of the NRO/RRO/SRO* (Maximum Points: 35):

• A high score (Maximum Points: 35) is received where the NRO/RRO/SRO provides a detailed plan clearly describing the proposed methods for accomplishing the overall goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives. Applicants should also provide a description of the proposed training, identify selected trainers, and submit support letters from selected trainers.

• A medium score (Maximum Points: 15) is received where the NRO/RRO/SRO provides a general outline of proposed methods for accomplishing the goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives.

• A score of zero (0 points) is received where the NRO/RRO/SRO does not clearly state the goals and objectives of the TOP initiative.

(2) *Evidence of Support by NRO/RRO/SRO Board of Directors and the Local Housing Authority* (Maximum Points: 10):

• A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides documentation that shows support from its board of directors, as evidenced by a board resolution, minutes of meetings, and letters of support. The applicants should also provide a letter of support from each HA where the applicant proposes to train residents.

• A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides documentation of support that is limited to minutes of meetings.

• Low score (Maximum Points: 2) is received where the NRO/RRO/SRO fails to provide documentation of support, but support is mentioned.

(3) *Evidence of Prior Resident Training Experience.* This factor can be demonstrated by the support of the RCs/RMCs/ROs and the local HAs. The letters of support should indicate the success and quality of prior training. (Maximum Points: 30):

• A high score (Maximum Points: 30) is received where the applicant provides documentation that shows support by the residents (i.e., letters of support, board resolutions, and minutes of meetings) and support letters from the HA.

• A medium score (Maximum Points: 15) is received where the applicant provides documentation that is limited to minutes of meetings.

• Low score (Maximum Points: 5) is received where the applicant fails to provide documentation of support by the development's residents and the HA, but support is mentioned.

(4) *Evidence of the Capability to Provide Local Training.* The applicant should demonstrate the ability to sustain the training and technical assistance through provision of local or on-site trainers and to coordinate these activities throughout the grant period. The applicant should also demonstrate that the residents will have access to continued training and technical assistance through the local provider after the completion of the grant period. (Maximum Points: 15):

• A high score (Maximum Points: 15) is received where the applicant provides a detailed plan clearly showing its capability to identify and provide local training and to coordinate activities of the local training provider.

• A medium score (Maximum Points: 5) is received where the applicant provides a general description of its capability to identify and provide local training.

• A score of zero (0 points) is received where the applicant does not clearly state its capability to identify and provide local training.

(5) *Capability of Handling Financial Resources.* This factor can be demonstrated through previous experience, adequate financial control procedures, or similar evidence, or by an explanation of how such capability will be obtained. (Maximum Points: 10):

• A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place.

• A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides evidence of having less than 2 years of experience in handling financial resources or has provided a plan for developing financial controls that are adequate.

• A score of zero (0 points) is received where the NRO/RRO/SRO has no experience in handling financial matters and does not submit evidence that shows that an adequate accounting system is in place or under development.

N. HA Notification

HUD will send a notification to the HAs associated with the applications selected for funding.

II. Application Process

A. Actions Preceding Application Submission

Consistent with this NOFA, HUD may direct a HA to notify its existing RCs/RMCs/ROs, as well as NROs, SROs, and RROs, of this funding opportunity. It is important for residents to be advised that, even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO before applying for funding. If no RC/RMC/RO exists for any of the developments, HUD encourages a HA to post this NOFA in a prominent location within the HA's main office, as well as in each development's office.

B. Application Submission and Development

(1) *Submission.* An application kit is required as the formal submission to apply for funding. The kit includes the overview of the TOP program, application requirements, forms, certifications, assurances, worksheets, selection criteria, workplan and budget information. An application may be obtained by writing the Resident Initiatives Clearinghouse, P.O. Box 6091, Rockville, MD 20850, or by calling the toll-free number: 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), and telephone number (including area code), and should refer to document FR–3828. Applications may be requested beginning March 1, 1995. Each RC/RMC/RO and NRO/RRO/SRO must submit its application to the local HUD Field Office or, in the case of an IHA, to the appropriate HUD Office of Native American Programs, listed in the Appendix to this NOFA.

Each applicant must submit the original and 2 copies of its application. The Appendix lists addresses of HUD Field Offices that will accept a completed application. All applications must be received by the local HUD Field Office no later than 3:00 p.m. (local time) on the deadline date listed in the application kit. In the interest of fairness to all competing applicants, any application that is received after the deadline date and time will be considered ineligible. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, will provide an acknowledgment of receipt. Facsimile

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and telegraphic applications are not authorized and will not be considered.

HUD also encourages an applicant to submit a copy of the application to the HA for the jurisdiction in which the RC/RMC/RO is located.

(2) *Development.* (a) The application must contain the following information:

(i) *For all applicants:* Narrative statements addressing the issues outlined in paragraph (2)(b) of this Section II.B ("Application Submission and Development") of the NOFA.

(ii) *RCs/RMCs/ROs:* Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents (board resolution, charter, articles of incorporation (if incorporated)) and by-laws, narratives for all rating factors (Basic or Additional Grant), support letters, evidence needed for certain rating factors, forms, certifications, assurances, workplan, and budget information. Name and phone number of contact person (in the event further information or clarification is needed during the application review process). Name, address, and phone number of the HA for the applicant's jurisdiction, to which inquiries may be addressed concerning the application.

(iii) *NROs/RROs/SROs:* Name and address of the applicant. Name, title, and telephone number of a contact person (in the event further information or clarification is needed during the application review process). Name and title of the board members and date of last election. A copy of the articles of incorporation and nonprofit documents (i.e., by-laws, tax-exempt status or other organizational documents). Applicants should also include a narrative statement discussing the geographical areas in which the applicant wishes to organize RCs/RMCs/ROs. In addition, the name and address of the HA for any jurisdiction in which the applicant proposes to organize new or inactive RCs/RMCs/ROs, and a proposed schedule of activities.

(b) *The narrative statements* required under paragraph (2)(a)(i) of this Section II.B of the NOFA shall include the following:

(i) *For all applicants:*

- The name of any development for which the funds are proposed to be used;
- A summary of the program proposed in the application. Also include in the summary the proposed length of time, in months, needed to complete TOP activities (i.e., 24 months, 36 months, etc). The maximum length to complete all activities is 5 years;
- The application must be signed by an authorized member of the board of the RC/RMC/RO or NRO/RRO/SRO (not the HA), and must include a resolution from the RC/RMC/RO or NRO/RRO/SRO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR parts 964 (for public housing) and 905 (for Indian housing); and
- Assurances (e.g., board resolution or certificate) that the RC/RMC/RO or NRO/RRO/SRO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(ii) *For Basic Grant applicants:*

- Factor 1: A narrative describing the activities of the RC/RMC/RO and the community and overall group goals for specified TOP initiatives and how the proposed activities will meet the needs of the RC/RMC/RO;
- Factor 2: A narrative describing the extent to which the residents support the proposed activities of the RC/RMC/RO and how active the residents are in the community.
- Factor 3: A narrative describing the partnership with the HA and the extent to which the HA supports the activities outlined in the proposal;
- Factor 4: A narrative describing the extent to which local agencies, community organizations, and the private sector support the activities outlined in the proposal, including the provision of financial resources, technical assistance, or other support; and
- Factor 5: A narrative describing the RC's/RMC's/RO's financial and accounting procedures that have been implemented, or plans to develop these procedures, to ensure that funds are properly spent.

(iii) *For Additional Grant applicants:*

- Factor 1: Provide evidence that certain activities are completed which demonstrates the need for additional funding;
- Factor 2: A narrative describing the extent to which the residents support the proposed activities of the RC/RMC/RO and how active the residents are in the community.
- Factor 3: A narrative describing the extent to which the local HA supports the activities outlined in the proposal; and
- Factor 4: A narrative describing the extent to which local agencies, community organizations, and the private sector support the activities outlined in the proposal, including the provision of financial resources, technical assistance, or other support.

(iv) For NRO/RRO/SRO applicants:

- Factor 1: A narrative describing the activities proposed by the NROs/RROs/SRO and providing a detailed plan that clearly describes the methods for accomplishing the goals and objectives of the TOP initiatives;
- Factor 2: A narrative describing the extent to which the board of the NRO/RRO/SRO and the HA support the proposed activities;
- Factor 3: A narrative describing the applicant's prior experience in training residents, which can be demonstrated by the support of the RCs/RMCs/ROs and the local HAs. The letters of support should indicate the success and quality of training;
- Factor 4: A narrative describing the organization's capability for providing local training; and
- Factor 5: A narrative describing the project's financial and accounting procedures, or plans to develop these procedures to ensure that funds are spent properly.

(3) *HA Support.* (a) HUD is in full support of a cooperative relationship between each RC/RMC/RO and its HA. A resident organization is urged to involve its HA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives and how best to translate these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the HA, indicating to what extent the HA supports the proposed activities listed by the RC/RMC/RO and how the HA will assist the RC/RMC/RO. To foster partnership, HUD encourages NROs/RROs/SROs to obtain letters of acknowledgment from the appropriate HAs regarding the intent to organize residents.

(b) A RC/RMC/RO is encouraged to include an indication of support and assistance by development residents (e.g., RC/RMC/RO Board resolution, copies of minutes, letters, petition, etc.), the neighboring community, and local public or private organizations.

(c) All Additional Grant applicants should include in their applications documentation that demonstrates the need for additional funding, as well as support letters from the HA and local and private organizations.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of all application submission requirements to complete the application process.

A. Training Requirements

(1) RC/RMC/RO grantees are required to have training, and NRO/SRO/RRO grantees are requested to provide training, in the areas listed below, but the amount and scope of training will depend on the resident groups' goals. For example, training required to assume property management is more extensive than training needed to establish a landscaping enterprise. The required training areas are:

(a) HUD regulations and policies governing the operation of low-income housing, which includes the part 900 series of 24 CFR; Section 3 (of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u), implemented in 24 CFR part 135; other Fair Housing Act requirements; and applicable civil rights laws as implemented for public housing (24 CFR part 964) and Indian housing (24 CFR part 905);

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A–110 (and implementing regulations at 24 CFR part 84) and A–122, which contain Federal administrative requirements for grants, and A–133, relating to audit requirements for nonprofit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Based on the goals of the RC/RMC/RO, property management or any TOP activities training that is required.

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant/Trainer), community development specialist, the HA, or other local agencies knowledgeable about the program.

B. OMB Procurement Requirements

(1) The resident grantees must follow 24 CFR part 84, which implements OMB Circular A–110 and prescribes standards and policies essential to the proper execution of procurement transactions, including standards of conduct for resident grantees' employees, officers, or agents engaged in procurement actions, to avoid any conflict of interest.

(2) A grantee may use two methods in obtaining consultant services:

(a) A "full service" approach may be used where the applicant solicits competitive proposals for assisting in the preparation of the application, with inclusion of the consultant work if the applicant is selected to receive a grant. The total allowed for hiring an individual consultant for this purpose shall not exceed 50% or $50,000, whichever is less, of the total award to the grantee. The evaluation criteria in the solicitation must address the qualifications and experience of prospective consultants for all tasks (the contract may stipulate that in the event that the application is not approved, the consultant is not entitled to any payment); and

(b) Separation of application preparation from consultant work to be performed after the award of a grant. This approach allows an applicant to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management Specialist for the development of an application for technical assistance funding. If the applicant is selected for funding, the Consultant-Trainer/Housing Management Specialist must compete along with other prospective Consultant-Trainer/Housing Management Specialists through an open and free procurement process for a training and technical assistance contract. This will eliminate any competitive advantage attained by the Consultant-Trainer/Housing Management Specialist who was awarded a contract for the development of the application/Work Plan and Budget. The total allowed for hiring an individual consultant for this purpose shall not exceed 50% or $50,000, whichever is less, of the total award to the grantee.

IV. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Rating Factors specified in this NOFA. For example, signatures needed on certain forms, certifications, workplan, budget, and other required forms may be considered curable deficiencies. All applicants including NROs/RROs/SROs must submit corrections to the local HUD Field Office (including Native American Program Offices, as appropriate) within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. If corrections are received by the local Field Office after the 14-day timeframe, the applications will be considered incomplete and will not be considered for funding.

After the application due date, applicants will not have an opportunity to submit independently information omitted from the application that directly relates to the evaluation factors contained in the subheading "Rating Factors" of this NOFA, so as to enhance the merits of the application. HUD encourages all applicants to submit all documents with their applications before the due date, so that applicants will not be affected by the technical deficiency period.

V. Other Matters

A. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear earmarking or otherwise, indicate those portions of its application that it believes should not be disclosed. The applicant's views will be used solely to aid the Department in preparing its response to a FOIA request; the Department is required by the FOIA to make an independent evaluation of the information.

HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on

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family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs relate to family concerns.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA will fund technical assistance and activities for resident management and other TOP initiatives of public and Indian housing. It will have no meaningful impact on States or their political subdivisions.

E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Materials will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in a **Federal Register** notice of recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

F. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

G. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 is implemented in 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815 (voice/TDD) (these are not toll-free numbers). Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: February 22, 1995.

Joseph H. Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses, and Telephone Numbers of HUD Field Offices Accepting Applications for Tenant Opportunities Program Technical Assistance

Massachusetts State Office

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Connecticut State Office

Public Housing Division, First Floor, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523

New Hampshire State Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681

Rhode Island State Office

Public Housing Division, Sixth Floor, 10 Weybosset Street, Providence, Rhode Island 02903–3234, (401) 528–5351

New York State Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500

Buffalo Area Office

Public Housing Division, 465 Main Street, Lafayette Court, 5th Floor, Buffalo, New York 14203–1780, (716) 846–5755

New Jersey State Office

Public Housing Division, One Newark Center, Thirteenth Floor, Newark, New Jersey 07102–5260, (201) 622–7900

Washington, D.C. Office

Public Housing Division, 820 First St. N.E., Suite 300, Washington, D.C. 20002–4502, (202) 275–9200

Pennsylvania State Office

Public Housing Division, Liberty Square Building, 105 South Seventh Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560

Maryland State Office

Public Housing Division, City Crescent Building, 10 South Howard St., 5th Floor, Baltimore, Maryland 21202–2505, (410) 962–2520

Pittsburgh Area Office

Public Housing Division, 412 Old Post Office Courthouse, 7th Avenue and Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428

Virginia State Office

Public Housing Division, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507

West Virginia State Office

Public Housing Division, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Georgia State Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Alabama State Office

Public Housing Division, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617

Kentucky State Office

Public Housing Division, P.O. Box 1044, 601 W. Broadway, Louisville, Kentucky 40201–1044, (502) 582–5251

Mississippi State Office

Public Housing Division, Dr. A. H. McCoy Federal Building, 100 West Capitol St., Suite 910, Jackson, Mississippi 39269–1096, (601) 965–5308

North Carolina State Office

Public Housing Division, Koger Building, 2306 W. Meadowview Rd., Greensboro, North Carolina 27407–3707, (910) 547–4001

Caribbean Office

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–6121

South Carolina State Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592

Knoxville Area Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust St., 3rd Floor, Knoxville, Tennessee 37902–2526, (615) 545–4384

Tennessee State Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213

Jacksonville Area Office

Public Housing Division, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626

Illinois State Office

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680

Michigan State Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900

Indiana State Office

Public Housing Division, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303

Grand Rapids Area Office

Public Housing Division, 2922 Fuller Ave., N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100

Minnesota State Office

Public Housing Division, 220 2nd St. South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000

Cincinnati Area Office

Public Housing Division, 525 Vine St., 7th Floor, Cincinnati, Ohio 45202–3188, (513) 684–2884

Cleveland Area Office

Public Housing Division, Renaissance Building, 1350 Euclid Ave., 5th Floor, Cleveland, Ohio 44115–1815, (216) 522–4058

Ohio State Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737

Wisconsin State Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214

Texas State Office

Public Housing Division, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston Area Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 834–3274

San Antonio Area Office

Public Housing Division, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (210) 229–6800

Arkansas State Office

Public Housing Division, TCBY Tower, 425 West Capitol Ave., Little Rock, Arkansas 72201–3488, (501) 324–5931

Louisiana State Office

Public Housing Division, Fisk Federal Building, 1661 Canal St., Suite 3100, New Orleans, Louisiana, 70112–2887 (504) 589–7200

New Mexico State Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6443, (505) 262–6463

Nebraska State Office

Public Housing Division, 10909 Mill Valley Rd., Omaha, Nebraska 68154–3955, (402) 492–3100

St. Louis Area Office

Public Housing Division, Robert A. Young Federal Building, 1222 Spruce St. Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas/Missouri State Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Iowa State Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Colorado State Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5440

California State Office

Public Housing Division, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Hawaii State Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 552–8175

Los Angeles Area Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Arizona State Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Oregon State Office

Public Housing Division, Cascade Building, 520 Southwest Sixth Ave., Portland, Oregon 97204–1596, (503) 326–2561

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Washington State Office

Public Housing Division, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101

Alaska State Office

Public Housing Division, University Plaza Building, 949 E. 36th Ave., Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170

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[FR Doc. 95–4968 Filed 2–24–95; 11:36 am]

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March 1, 1995

Part IV

Federal Emergency Management Agency

44 CFR Part 152
Arson Prevention Act of 1994—State Grants; Final Rule

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 152

RIN 3067–AC31

The Arson Prevention Act of 1994—State Grants

AGENCY: The United States Fire Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule identifies the eligibility criteria and procedures for States or consortia of States to apply for arson related grants, and it details the evaluation criteria and anti-arson goals the awards are targeted to support.

EFFECTIVE DATE: This final rule is effective March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Kuntz, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1271, facsimile (301) 447–1102.

SUPPLEMENTARY INFORMATION: The Arson Prevention Act of 1994 (Pub. L. 103–254) amends the Fire Prevention and Control Act of 1974 (15 U.S.C. 2220) to make available competitive grants to States or consortia of States, for programs relating to arson research, prevention, and control. Accordingly, FEMA is publishing this final rule to indicate how it will administer the grant program.

FEMA published the proposed rule in the **Federal Register** on Tuesday, September 20, 1994, 59 FR 48277. Comments were invited until November 4, 1994. No comments were received. Therefore, FEMA is publishing the final rule as initially proposed, with minor technical changes.

National Environmental Policy Act

This final rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the final rule will relate to the procedures that FEMA will use to administer the statutorily mandated grant program, and will have no direct effect on small business or governmental entities. The final rule will not: (1) Affect adversely the availability of grants to small entities; (2) have significant secondary or incidental effects on a substantial number of small entities; nor (3) create an additional burden on small entities. Accordingly, no regulatory flexibility analysis will be prepared.

Paperwork Reduction Act

This final rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this final rule is required by statute, 15 U.S.C. 2221 et seq., which also specifies the regulatory approach taken in the final rule. To the extent possible under the statutory requirements of 15 U.S.C. 2221, this final rule adheres to the principles of regulation as set forth in this Executive Order. This final rule has not been reviewed by the Office of Management and Budget under the provisions of E.O. 12866.

Executive Order 12612, Federalism

The final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

The final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 152

Administrative practice and procedure, Firefighters, Arson prevention, Grant programs, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 152 is added to read as follows:

PART 152—STATE GRANTS FOR ARSON RESEARCH, PREVENTION, AND CONTROL

Subpart A—Purpose, Scope, Definitions

Sec.

152.1 Purpose.
152.2 Scope.
152.3 Definitions.

Subpart B—Competitive State Grants

152.4 Grant goals.
152.5 State qualification criteria.
152.6 Grant application procedures.
152.7 Available funds and application submission.
152.8 Competitive evaluation criteria.
152.9 Reporting requirements.

Subpart C—Administration

152.10 Extensions.
152.11 Technical assistance.
152.12 Consultation and cooperation.
152.13 Audits.
152.14 Penalties.

Authority: 15 U.S.C. 2221; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Subpart A—Purpose, Scope, Definitions

§ 152.1 Purpose.

This part establishes the uniform administrative rules under which States or consortia of States will request consideration for competitive arson research, prevention and control grant award(s), and details the associated administrative procedures which will be required of applicants and recipients.

§ 152.2 Scope.

This part applies to all States or consortia of States requesting competitive consideration of their respective proposals, and all those States or consortia of States actually awarded arson grants under this authority.

§ 152.3 Definitions.

Administrative costs means those actual expenses incurred by a grantee to oversee and execute the specific administrative provisions of the grant award, including as appropriate the provision of grant related monitoring services and reporting requirements, and the nominal purchase of necessary equipment and expendable supplies to support the administration of the grant.

Administrator means the Administrator of the United States Fire Administration.

Grantee means the State, consortia of States, or State and consortia of States identified as recipients of grant awards under this part.

Prevention and control means the aggressive intervention strategies, methods, and materials developed or relied upon to minimize the occurrence and effects of arson.

Program costs means the actually incurred expenses related to the development, delivery, training, research or other activities proposed and subsequently authorized by the grant award and other appropriate controls.

Reporting methodology is the means by which a jurisdiction provides arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) programs.

Research means the application of conventional scientific and statistical methods to assess a particular issue, application methodology, intervention or mitigation strategy in an effort to advance the collective scientific body of knowledge related to the nation's arson problem.

Resources means tangible capability enhancements including but not limited to the purchase of program related equipment, services, materials, and expendable supplies.

Responsible official means the individual specifically authorized to act as the accountable Agent of the State for purposes of administering the grants awarded under this part.

State means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

State consortia means a cooperative and collective group of more than one State, (or State equivalents as noted above).

Subpart B—Competitive State Grants

§ 152.4 Grant goals.

Grant applications for these grant awards must promote one or more of the following 10 goals:

(a) To improve the training by States leading to professional certification of arson investigators in accordance with nationally recognized certification standards. Certification of arson investigators is to be accomplished in accordance with State guidelines, by appropriate State authorities.

(b) To provide resources for the formulation of arson task forces or interagency organizational arrangements involving police and fire departments and other relevant local agencies, such as a State arson bureau and the office of a fire marshal of a State.

(c) To combat fraud as a cause of arson, and to advance research at the State and local levels on the significance and prevention of fraud as a motive for setting fires.

(d) To provide for the management of arson squads including:

(1) Training courses for fire departments in arson case management including standardization of investigative techniques and reporting methodology;

(2) The preparation of arson unit management guides; and

(3) The development and dissemination of new public education materials relating to the arson problem; proposals should address all three subactivities in support of the management of an arson squad.

(e) To combat civil unrest as a cause of arson, and to advance research at the State and local levels on the prevention and control of arson linked to urban disorders.

(f) To combat juvenile arson, such as juvenile fire setter counseling programs and similar intervention programs, *and* to advance research at the State and local levels on the prevention of juvenile arson.

(g) To combat drug-related arson, and to advance research at the State and local levels on the causes and prevention of drug-related arson.

(h) To combat domestic violence as a cause of arson, and to advance research at the State and local levels on the prevention of arson arising from domestic violence.

(i) To combat arson in rural areas and to improve the capability of firefighters to identify and prevent arson initiated fires in rural areas and public forests.

(j) To improve the capability of firefighters to identify and combat arson through expanded training programs, including:

(1) Training courses at the State fire academies; and

(2) Innovative courses at the National Fire Academy (NFA) and made available to volunteer firefighters through regional delivery methods, including teleconferencing and satellite delivered television programs.

(k) Proposals addressing goals in paragraphs (a), (i), and (j) of this section would be encouraged to rely, at least in part on training course materials and offerings currently available through the NFA. Proposals should specifically identify which training components would be utilized and how they would be delivered. In the event Course content, other than that available from the NFA is proposed, the applicant will include copies of the proposed training materials with the proposal.

(l) In addition, applicants should make specific reference in their proposal(s) as to those efforts being made to provide improved and more widely available arson training courses which demonstrate particular emphasis on the needs of volunteer firefighters.

§ 152.5 State qualification criteria.

Each State or consortium of States will demonstrate by appropriate means and provide such assurances as are deemed adequate by the Administrator that the State, or consortium of States:

(a) Will obtain at least 25 percent of the cost(s) funded by the grant, in cash or in kind, from non-Federal sources.

(1) *State's contribution.* Applicants will identify the source and amount of their respective contribution (in cash or in kind) in the work plan and budget detail sections of the application.

(2) Cash contributions will be sourced or certified by responsible authority to be derived entirely from non-Federal sources.

(3) In kind contributions will be specifically detailed and clearly demonstrate the type, nature, value and quantity of the contribution offered to satisfy this requirement. The applicant(s) may offer current staff in support of the contribution requirement, insofar as the offering would not effect the restriction against decreasing the prior levels of spending detailed in paragraph (b) of this section.

(4) In kind contributions will also be sourced and certified to be derived from non-Federal sources.

(b) Will not as a result of receiving the grant decrease the prior level of spending of funds of the State or consortium from non-federal sources for arson research, prevention, and control programs. The applicant(s) will provide a concise overview of the level of funding dedicated to these areas for each of the two previous fiscal years. This information will be included in the grant file and is subject to post audit reviews. The applicant's responsible official will provide appropriate certification that the recipient is cognizant of this condition of award, and that no diminution of funding is to result in such anti-arson efforts in the event of a grant award. Violation of this grant award condition may subject the recipient to termination of the grant, and forfeiture of unused portions of grant funds, and other applicable administrative or criminal sanctions.

(c) Will use no more than 10 percent of the funds provided under the grant for administrative costs of the programs. Actual administrative cost incurred, not to exceed 10 percent for the funds provided, may be funded through the grant. It is recognized that the administrative costs may exceed the allocation limit, in such cases the additional expense will be born by the recipient. Excess administrative costs will *not* be considered part of the recipients required 'contribution' as noted in paragraph (a) of this section; and

(d) Is making efforts to ensure that all local jurisdictions will provide arson data to the National Fire Incident Reporting System (NFIRS) or the Uniform Crime Reporting (UCR) program.

(1) The State, or consortia of States, will provide, as part of the application process, such information as will describe its current efforts to ensure that all local jurisdictions will provide data to NFIRS or UCR.

(2) This description should include the current level of local jurisdiction participation in each of the respective

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data collection programs. It should detail the State's reporting criteria, and data collection requirements, and statutory reporting mandates, if applicable. It should specifically identify the constructive efforts (both incentives and penalties to local jurisdiction's participation) underway to achieve complete reporting, and identify the actions, if any, to be taken under the proposed grant to achieve the participation target; and

(e) Has a policy to promote actively the training of its firefighters in cardiopulmonary resuscitation (CPR). The applicant(s) may demonstrate their fulfillment of this requirement by providing a true copy of the policy with the proposal, or by such other means as would reasonably attest to the applicant's active promotion of CPR training for all firefighters.

§ 152.6 Grant application procedures.

(a)(1) Applicants, both singly and in consortia, must format their proposals so as to assure the grant goal(s) identified in § 152.4 are clearly addressed and that the work plan descriptions of the level of effort, program activity, and program budgets are specific to each of the selected target goals.

(2) The legislation directs that awards be made in support of each of the ten (10) goals enumerated in § 152.4. The competitive evaluation of the proposals will be done on a goal by goal basis, and the grant awards will be made accordingly. In effect, all of the proposals received that address, for example § 152.4(a), will be reviewed against the competitive evaluation criteria detailed in § 152.8 in relation to achieving that goal. The best overall proposal will be the recipient of the award. Each of the other proposals offered in support of each of the other goals will likewise be assessed. The State or consortia of States may submit proposals addressing more than one of the goals. Applicants must however insure that the proposal detail is separable in its entirety, goal by goal. States, or consortia of States, applying for the competitive grants available under this section will comply with and are bound by all of the applicable provisions of 44 CFR parts 13 and 14 with respect to the Uniform Administrative Requirements for Grants to State Governments, and the Administration of Grants: Audits of State Governments.

(b) The application will identify the requestor's status as a:

(1) State; or

(2) Consortium of States, (detailing each of the States in the consortium).

(c) The application will specifically identify both the responsible State organizational element (e.g., the Office of the State Fire Marshal) and the responsible Official/Individual who will administer the grant in the event of an award. Grant requests from consortia of States will include this information for each of the States, and will identify which one of these responsible Officials will serve as the grant's administrative coordinator with USFA.

(d) The information provided will include the following:

(1) The applicant's complete organizational title;

(2) The applicant's complete mailing address;

(3) The name and title of the State's designated responsible Official;

(4) The responsible Official's complete mailing address; and

(5) The responsible Official's telephone and facsimile numbers.

(e) The application will indicate specifically which of the 10 grant goals in § 152.4 the proposed grant activities are intended to address. Consortia proposals may propose that each of the consortia States address a particular goal or group of goals singularly, or the States may approach the selected goals, in part or in whole, collectively.

(f) The application will provide specific work plans which detail the means by which the applicant(s) intends to pursue the selected goal's attainment through the grant. The work plan will include the overall level of effort envisioned as a result of the proposed grant's implementation, the specific tasks and time lines to be accomplished, the resources both human and material that will be applied to the effort (including the means by which the utilization of these resources will be accounted for), and the means and methods that will be utilized to assess and evaluate the accomplishment of the targeted goals.

(g) Each applicant will submit a detailed grant program budget which addresses, by goal specific reference, how the grant funds, both administrative and programmatic, will be disbursed. The grant proposal budget element will specifically distinguish between "administrative costs" and "program costs" consistent with the requirements noted herein. No more than 10 percent of the funds provided under the grant will be used for the administrative costs of the program. This restriction does not preclude the applicant(s) from proposing a greater level of effort or resource dedication to administrative activity, it simply limits the costs to be supported through the grant funding. Each of the States in a consortium may request support for actual administrative costs of no more than 10 percent of its respective program expenses.

§ 152.7 Available funds and application submission.

(a) Funds may be appropriated in Fiscal Year 1995 to support grant awards addressing the ten (10) goals of § 152.4. No grant awards would be made in Fiscal Year 1995 or future years unless and until funds are appropriated.

(b) Reasonable efforts will be made to award a grant addressing each of the enumerated goals in an expeditious manner. Upon completion of the initial competitive evaluations and the resulting grant awards, any goal(s) yet unattended will be identified and may become the subject of a second round of applications solicitation, consideration and grant award(s). Grant proposals should be formatted to address specifically the incremental use of the currently available (FY 1995) funds, and target the possible use of FY 1996 funds if made available, as logical programmatic extensions or replications of the activities proposed and supported by FY 1995 funds.

(c) Following the comment period and the publishing of the final rule incorporating these procedures, a formal announcement of grant availability will be issued in the **Federal Register**. Applicants will be afforded a period of not less than 30 and not more than 45 days, following the formal announcement, to submit applications. It is anticipated that the initial grant awards will be made during the first quarter of calendar year 1995. In the event awards are not made in support of each of the ten goals, a second Notice of Availability, addressing the unattended goals, may be published in the **Federal Register** and awards will be targeted to occur before September 30, 1995.

§ 152.8 Competitive evaluation criteria.

Each grant application/program proposal received will be competitively assessed against the following criteria:

(a) The degree to which the proposal is seen to address the targeted goal or each goal in a combination of goals;

(b) The scope and effect of the proposed initiative in relation to the proposed program cost;

(c) The degree to which the proposed activity supports a "model program initiative" suitable for replication in other jurisdictions;

(d) The degree to which the proposed activity demonstrates an effective and efficient integration of a variety of program resources;

(e) The degree to which the proposed activity could sustain itself upon the completion of the grant performance period;

(f) The degree to which the proposed activity would target intervention strategies addressing high-risk groups, properties, or specific conditions.

(g) The degree to which the activity proposed would produce a lasting antiarson program, initiative, or other such appropriate outcome;

(h) The degree to which the proposed activity promotes the introduction of new technology, innovative techniques, or nontraditional approaches to reduce the nation's arson problem;

(i) The degree to which the proposed activity relies upon the development of intergovernmental, interorganizational, or community involving "partnerships" to promote goal attainment; and

(j) The degree to which the proposed activity supports the enhanced ability to collect arson data.

§ 152.9 Reporting requirements.

(a) Each State, or consortium of States, which is the recipient of a grant under this authority, by acceptance of the award, agrees to provide to the satisfaction of the Administrator and in timely fashion, any and all such documentation as may be requested or required to detail the methods and amounts of grant funds disbursement and such other record keeping, retention of records and the additional provision of information by the Grantee as may be required by the awarding Agency and applicable regulation.

(b) The reporting requirements will consist of primarily the two following types:

(1) Quarterly progress and financial status reports; and

(2) Final progress report and financial status report. The final progress report will include a summary evaluation of the program related activities under the grant. It will identify the evaluation methodology and the assessment values applied to critique the grant's effectiveness in relation to achieving the targeted goal(s).

Subpart C—Administration

§ 152.10 Extension.

The Administrator has discretionary authority to extend the duration of grants made under this part for one or more additional periods. Grant recipients desiring an extension of the grant performance period, will request such extensions in writing at least sixty (60) days prior to the expiration of the grant period. The request will include the reason for the requested extension, a description of the effect(s) on the program if the extension is not granted, and a statement that no additional federal funds would be necessary to support the grant activities during the extension period. Grant extension requests may not be utilized to request additional funding.

§ 152.11 Technical assistance.

The Administrator shall provide technical assistance to States in carrying out the program(s) funded by grants under the Act. This assistance will consist of providing the customary and usual information on the application process, deadlines, program and financial reporting requirements, and related grant program activities support. This provision is not intended to suggest that USFA will provide other than grant related support and technical assistance. Grant proposals should not suggest or rely upon other program related services, staff support or monies from USFA to be any part of the proposed grant activities, except as provided in this part.

§ 152.12 Consultation and cooperation.

The Administrator would consult and cooperate with other Federal agencies to enhance program effectiveness and avoid duplication of effort, including the conduct of regular meetings initiated by the Administrator with representatives of other Federal agencies concerned with arson and concerned with efforts to develop a more comprehensive profile of the magnitude of the national arson problem.

§ 152.13 Audits.

In accordance with applicable regulations, all the grants awarded under this part and all records of the recipient would be subject to audit by appropriate Federal Emergency Management Agency staff or other responsible authority.

§ 152.14 Penalties.

The recipient designated responsible official or others who provide information or documentation to federal officials in connection with the activities or funds authorized by or expended through these grants are subject to, among other laws, the criminal penalties of 18 U.S.C. 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements. Such actions are punishable by the imposition of a fine not to exceed $10,000.00 or imprisonment for not more than five (5) years, or both. Such a violation may also subject the responsible official to the civil penalties set out in 31 U.S.C. 3729 and 3730.

Dated: February 16, 1995.

Harvey G. Ryland,

Deputy Director.

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Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 51
Blueberries; Grade Standards; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-92-301]

Blueberries; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Blueberries by adding another species of cultivated blueberries, eliminating size as a requirement of the grade, revising tolerances and applications of tolerances to percentages of defective berries, specifying allowable amounts for defects caused by scars and well healed broken skins, redefining terms to more clearly reflect current cultural and marketing practices, and providing a format consistent with other recently revised U.S. grade standards. The Agricultural Marketing Service (AMS), in cooperation with industry and other interested parties, has the responsibility to develop and improve standards of quality, condition, quantity, grade and packaging in order to facilitate efficient marketing of agricultural commodities.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2185.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the U.S. Standards for Grades of Blueberries will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The proposed rule, United States Standards for Grades of Blueberries, was published in the **Federal Register** on November 19, 1993 (58 FR 61033-61035).

The North American Blueberry Council (NABC), which represents the majority of blueberry growers and packers in the United States and Canada, formally requested USDA to revise the United States Standards for Grades of Blueberries which were last revised in June 1966. The NABC requested that the standards be revised in order to bring them into conformity with current cultural, harvesting, and marketing practices. The NABC contends that due to changes in harvesting practices, more growers using mechanical harvesters versus hand picking, and new improved varieties, the changes are necessary.

The comment period ended January 18, 1994, and a total of nineteen comments were received from growers, shippers, receivers, and researchers. In addition, recommendations were received from inspection personnel.

Nine comments were in favor of the proposal in its entirety. These comments agreed that due to changes in current cultural, harvesting, and marketing practices of blueberries, it was necessary to change the standards as proposed.

Three comments suggested eliminating the basic requirement "not wet." They felt that blueberries that are wet from condensation would be scored against this requirement, and perfectly good blueberries would be scored as defects. AMS believes that the definition under the "damage" section clearly states that wet berries are damaged when "the individual berry is wet from juice from crushed, leaking, or decayed berries, but not due to condensation," and thereby good blueberries would not be scored as defects.

Three comments were in favor of the proposal with some changes. All three of the comments expressed the opinion that a minimum size should be specified, or that size should be part of the grade. Two of these comments also stated that the ten percent tolerance for attached stems is too high. One of these comments stated that the tolerances should be based on number of defects and not percentages, with no allowance for "leakers." AMS feels that size should not be part of the grade since blueberries are not packed by size. However, the size classification section should be left in the standards for common marketing terminology. The NABC specifically requested that tolerances be in percentages and that an additional allowance be made for attached stems. Further, tolerances based on percentages rather than number of berries would be more simplistic for inspectors, industry, and other interested parties; a chart of the number of berries allowed for various defects would no longer be needed. Since some varieties of blueberries have stems which adhere more readily to the berry, or growing conditions cause the stems to remain attached, a ten percent allowance for attached stems is needed so as to take into account certain varieties with inherent characteristics. Therefore, AMS believes the tolerances for defects and the allowance for attached stems should remain as they were in the proposal.

Two comments opposed the proposed definition of damage by shriveling, which stated "shriveling when the skin is slightly wrinkled." They were of the opinion that the term "slightly wrinkled" meant that the berries would be observed under close scrutiny and when wrinkling was found to any degree the berries would be scored. The commentors proposed that the definition be changed to "shriveling when the wrinkling is readily noticeable." This would mean that only the wrinkling found upon casual observation would be scored as a defect. One of the commentors also felt that having a definition for "damage by green berries" and a definition for "well colored" was redundant. They felt that the "damage by green berries" should be deleted. AMS agrees with the comments as to "shriveling" and the definition of damage by shriveling will be "when the wrinkling is readily noticeable." In regard to the comment of "damage by green berries" and "well colored," AMS feels that green berries would be considered immature berries and berries that are not well colored may be mature but simply do not meet the color requirements. AMS believes that buyers and sellers would want to know the distinction between these two defects.

One comment from an exporter did not address the provisions of the proposal.

One comment stated the following: "stems should not be counted as defects unless excessive—50 or more per pint; shriveled berries should not be counted as defects unless excessive—20 or more per pint; berries with picking scars or split by excessive rain or moisture, but are not overripe, with healed scars, would not be counted as soft berries; and soft berries are those that are overripe, bleeding, and certain to cause molding within 24 hours." AMS believes that all of these issues have been addressed in the revised standards by; Defining under damage and serious damage how much each blueberry may be affected by a certain defect; in the application of tolerance section defining the percentage of blueberries that may be defective in each sample; and in the tolerance section defining the percentage of defective blueberries which are allowed in a load or lot of blueberries.

One recommendation was made concerning the "definitions for damage and serious damage by scars is too loose." It was suggested that only the scars that are fairly smooth and have no depth be scored as outlined in the proposed standards. AMS believes that scars are too small to distinguish as to their smoothness or depth, and has decided to leave the definition of damage and serious damage by scars as proposed.

One recommendation made several suggestions for changing definitions of various defects. Clusters were proposed to be changed to "3 or more joined capstems with more than one berry attached." Shriveling was proposed to be changed to "more than slightly wrinkled." It was recommended that broken skins, regardless of whether they are well healed or not should be scored as serious damage, except for an allowable area around the stem scar. Also, damage by scars should be changed from 20 percent of the surface to 25 percent of the surface. Mummified berries should include in its definition those berries that are in the process of being mummified. AMS does not believe that these changes are warranted due to the inconsistencies these changes would create with other standards and with the scoring of the above defects. However, as stated previously, the definition of "damage by shriveling" will be applied "when shriveling is readily noticeable."

One recommendation suggested an additional grade for higher quality blueberries should be inserted in the standards. Also, size should be determined by weight, since "cup" could be confusing and is not precise enough. Finally, it was felt that the current size classifications do not allow for loads and/or lots of blueberries that contain both medium and large size berries in the same lot. The NABC made it clear to AMS that it did not want an additional grade in the standards. Also, most commodities are marketed on the basis of U.S. No. 1 and it is felt that other grades would not be necessary. AMS feels that determining size by weight would be more difficult due to the modest size of the berries. AMS did make allowances in the tolerances for "off-size" to allow for blueberries that contain both medium and large size berries in the same lot.

The Agricultural Research Service of the Department stated that it is "not aware of any research data or other information relevant to the possible effect of the 'cosmetic appearance' elements of the proposed rulemaking on pesticide use on blueberries."

AMS develops and improves standards of quality, condition, grade, and packaging in order to facilitate efficient marketing. The provisions of this final rule are the same as those in the proposed rule, except for the changes noted above in response to the comments received, and several minor editorial changes made for clarity.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

Subpart—United States Standards for Grades of Blueberries

2. Sections 51.3475 through 51.3479 and the undesignated center headings are revised to read as follows:

General

§ 51.3475 General.

(a) These standards apply only to selected and hybrid varieties of the highbush (Vaccinium australe Small and Vaccinium corymbosum L.) and rabbiteye (Vaccinium ashei Reade) blueberries produced under cultivation, but not to other species of the genus Vaccinium nor to the true huckleberries of the genus Gaylussacia.

(b) Because of the size differences between varieties and the difference in size preference in various markets, there are no size requirements in the grade. Therefore, size will not be determined unless specifically requested by the applicant. If requested, size may be specified as provided in § 51.3477.

Grade

§ 51.3476 U.S. No. 1.

"U.S. No. 1" consists of blueberries which meet the following requirements:

(a) Basic requirements:
(1) Similar varietal characteristics;
(2) Clean;
(3) Well colored;
(4) Not overripe;
(5) Not crushed, split, or leaking; and
(6) Not wet.
(b) Free from:
(1) Attached stems;
(2) Mold;
(3) Decay;
(4) Insects or when there is visible evidence of the presence of insects;
(5) Mummified berries; and
(6) Clusters.
(c) Free from damage caused by:
(1) Shriveling;
(2) Broken skins;
(3) Scars;
(4) Green berries; and
(5) Other means.
(d) Tolerances as specified in §§ 51.3478 (a) and (b) and applied pursuant to § 51.3479.

Size Classifications

§ 51.3477 Size classifications.

The following size classifications may be used in specifying size of blueberries:

(a) *Extra large.* Less than 90 berries per cup;[1]
(b) *Large.* 90 to 129 berries per cup;[1]
(c) *Medium.* 130 to 189 berries per cup;[1] and,
(d) *Small.* 190 to 250 berries per cup.[1]
(e) For tolerances see § 51.3478.

Tolerances

§ 51.3478 Tolerances.

In order to allow for variations incident to proper grading and handling, based on sample inspection, the following tolerances, by count, shall be allowed:

(a) *For defects at shipping point.*[2] Ten percent for blueberries which have attached stems. Additionally, not more than 8 percent of the blueberries may be below the remaining requirements of the grade: *Provided,* that included in this amount not more than 4 percent shall be allowed for defects causing serious

[1] Cup equals 237 ml, ½ pint, or 2 gills.

[2] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

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damage, including in this latter amount not more than 1 percent for blueberries which are affected by mold or decay.

(b) *For defects en route or at destination.* Ten percent for blueberries which have attached stems. Additionally, not more than 12 percent of the blueberries may be below the remaining requirements of the grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:

(1) 8 percent for blueberries which fail to meet the requirements for this grade because of permanent defects; or,

(2) 6 percent for blueberries which are seriously damaged, including therein not more than 4 percent for blueberries which are seriously damaged by permanent defects and not more than 2 percent for blueberries which are affected by mold or decay.

(c) *Off-size:* When size is designated according to one or more of the size classifications in § 51.3477, not more than 10 percent of the samples in any lot or one sample, whichever is the greater number, may fail to meet the range in count specified.

Application of Tolerances

§ 51.3479 Application of tolerances.

Individual samples are subject to the following limitations: *Provided*, that the averages for the entire lot are within the tolerances specified for the grade:

(a) For a tolerance of 10 percent or more, individual samples may contain not more than one and one-half times the tolerance specified.

(b) For a tolerance of less than 10 percent, individual samples may contain not more than double the tolerance specified.

3. Sections 51.3482 and 51.3483 are revised to read as follows:

§ 51.3482 Well colored.

Well colored means that more than one-half of the surface of the individual berry is blue, bluish-purple, purple, bluish-red, or bluish-black.

§ 51.3483 Overripe.

Overripe means that the individual berry is dead ripe, the flesh is soft and mushy, and past commercial utility.

4. Sections 51.3484 and 51.3485 are removed and § 51.3486 is redesignated 51.3484 and is revised to read as follows:

§ 51.3484 Damage.

Damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as damage:

(a) Wet berries when the individual berry is wet from juice from crushed, leaking, or decayed berries, but not due to condensation;

(b) Clusters when there are three or more joined capstems with at least one berry attached;

(c) Shriveling when the wrinkling is readily noticeable;

(d) Broken skins when not well healed or when well healed and readily noticeable, except for an allowable area within a ⅛ inch (3.2 mm) circle centered at the stem scar;

(e) Scars when affecting more than 20 percent of the surface of the individual berry; and,

(f) Green berries when one-half or more of the berry is green.

5. Section 51.3487 is redesignated 51.3485 and is revised to read as follows:

§ 51.3485 Serious damage.

Serious damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as serious damage:

(a) Decay;

(b) Moldy berries;

(c) Overripe berries;

(d) Crushed, split, or leaking berries;

(e) Mummified berries when the individual berry is dried up, withered or shrunken;

(f) Insects or when there is any visible evidence of the presence of insects, including but not limited to an insect, the insect larva, feeding, webbing or frass;

(g) Broken skins when not well healed; and,

(h) Scars when affecting more than 50 percent of the surface of the individual berry.

Dated: February 23, 1995.

Lon Hatamiya,

Administrator.

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Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Grades of Colby Cheese. The final rule action modifies the standards to recognize differences in cheese characteristics resulting from technological changes in manufacturing practices and to more accurately describe consumer-acceptable product. This action expands the permissible range of open body characteristics to include colby cheese manufactured using automated equipment. The revision was initiated at the request of the National Cheese Institute (NCI) and was developed in cooperation with NCI and other dairy trade associations.

EFFECTIVE DATE: March 31, 1995.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and this action will not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To recognize differences in cheese characteristics resulting from technological changes in the manufacture of colby cheese and to permit the assignment of U.S. grade to cheese manufactured utilizing this technology, USDA is revising the U.S. Standards for Grades of Colby Cheese. The revised standards have received general support from many manufacturers of colby cheese and dairy trade associations representing the cheese industry.

In view of the need for revised standards, the Department published on June 30, 1993 (58 FR 34933) a proposal to revise the United States Standards for Grades of Colby Cheese. Except for minor format changes, the standards contained in this final rule are the same as those set forth in the proposal. The new standards establish the following:

1. Expand body and texture criteria to permit U.S. grade assignment to colby cheese that contains less than numerous mechanical openings.

When the U.S. Standards for Grades of Colby Cheese were established in 1973, production procedures encouraged the formation of numerous small mechanical openings, evenly distributed throughout the cheese. Since then, automated manufacturing processes have been developed which have altered traditional body characteristics. Colby cheese that is produced using automated production technology has resulted in cheese that no longer exhibits numerous mechanical openings. Cheese produced in this manner is readily available and is capturing an increasing share of the Colby cheese market. Changes in body characteristics have not altered the flavor or reduced the useability of the cheese.

Changes in the standards provide for the assignment of U.S. grades to colby cheese that contains less than numerous mechanical openings or that may be completely devoid of mechanical openings. These changes do not disallow mechanical openings in cheese produced using traditional production methods. No additional changes to body and texture characteristics are being made.

2. Delete the requirement that colby cheese be held at a temperature no lower than 35 °F. for 10 days prior to grading.

When the U.S. Standards for Grades of Colby Cheese were established in 1973, the standards included a requisite that the cheese be held at a temperature no lower than 35 °F. during a required 10-day aging period prior to grading. This was the only U.S. grade standard that contains a storage temperature requirement. This revision eliminates the temperature requirement, and provides consistency among U.S. grade standards for various types of cheeses.

3. Modify the permitted flavor characteristics by deleting the provision for "very slight bitter" in U.S. Grade A Colby Cheese.

Bitter flavor in colby cheese is generally found in higher moisture cheese and increases in intensity as the cheese ages. U.S. grade may be assigned to colby cheese once it has reached 10 days of age. Any evidence of a bitter flavor at this time will intensify as the cheese ages. Provisions for slight bitter flavor remain the same for U.S. Grade B Colby Cheese. No additional changes to flavor characteristics have been made.

4. Redefine packaging requirements.

Changes in packaging requirements provide greater clarity and expand the types of packaging methods permitted. The general-type packaging requirements recognize the packaging methods (such as rinded and paraffin-dipped, rindless and wrapped, and rindless and paraffin-dipped) that are used in the cheese industry today and provide latitude for future developments in packaging technology.

5. Update the terminology and format of the standards.

Since the U.S. Standards for Grades of Colby Cheese were last published, changes in terminology and formatting have taken place. This revision updates the standards to provide consistency among the various U.S. grade standards for cheeses.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When colby cheese is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. This action makes minor format changes for purposes of clarity to the section on flavor for U.S. Grade B colby cheese and to Tables I, II, III, and IV to the format that appeared in the proposed rule.

Public Comments

On June 30, 1993, the Department published a proposed rule (58 FR 34933) to revise the United States Standards for Grades of Colby Cheese. The public comment period closed August 30, 1993. Comments were received from two colby cheese manufacturers.

Discussion of Comments

1. Both commenters were concerned that their markets would be negatively affected by allowing the assignment of U.S. grade to colby cheese that does not exhibit numerous mechanical openings.

United States grade standards assist the orderly marketing of dairy products by establishing requirements to describe quality in colby cheese. To be of greatest value, these standards must accurately describe quality in colby cheese available in the market. Changes in manufacturing procedures have resulted in colby cheese that does not exhibit the numerous mechanical openings found in colby cheese produced according to traditional manufacturing procedures. Cheese without numerous mechanical openings is currently available and consumer acceptance is evident by its increasing availability. Changes in the U.S. grade standards will more accurately define quality in consumer-acceptable product and permit the assignment of U.S. grade to more cheese currently available in the market.

2. Both commenters felt that by permitting the assignment of U.S. grade to colby cheese with less than numerous mechanical openings the standards would allow high-moisture cheddar cheese to be substituted for colby cheese.

The compositional requirements for standardized cheeses are provided in the Food and Drug Administration's (FDA) standards of identity. FDA standards define moisture ranges for colby and cheddar cheese whose moisture content must fall within the range specified. The U.S. grade standards include a reference to the FDA standards of identity and do not establish moisture requirements that differ from the FDA standards. U.S. grade can only be assigned to colby cheese that meets the compositional requirements of the FDA standards of identity.

3. One commenter felt that the standards should require that colby cheese only be made using traditional manufacturing procedure.

United States grade standards define quality in the manufactured dairy products and do not detail the procedures used to produce the product. No changes were made to require that traditional manufacturing procedures be used to produce colby cheese eligible for U.S. grade assignment. This action does not preclude U.S. grade assignment to colby cheese produced using traditional manufacturing procedures.

4. One commenter felt that changes in the standards would mislead the consumer because of similarities with colby and cheddar cheeses.

Colby and cheddar cheeses are very similar in composition and salient characteristics. However, compositional differences do exist and are identified in the FDA standards of identity. Accurate labeling of cheese provides the information necessary for the consumer to differentiate between the varieties of cheese. Federal and State regulations exist that require truthful labeling of foods. The U.S. grade standards do not contain labeling requirements. Changes in the standards will not affect the composition or labeling of products available to the consumer.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58, is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627, unless otherwise noted.

2. Subpart J—United States Standards for Grades of Colby Cheese is revised to read as follows:

Subpart J—United States Standards for Grades of Colby Cheese

Definitions

Sec.
58.2475 Colby cheese.
58.2476 Types of surface protection.

U.S. Grades

58.2477 Nomenclature of U.S. grades.
58.2478 Basis for determination of U.S. grade.
58.2479 Specifications for U.S. grades.
58.2480 U.S. grade not assignable.

Explanation of Terms

58.2481 Explanation of terms.

Subpart J—United States Standards for Grades of Colby Cheese[1]

Definitions

§ 58.2475 Colby cheese.

Colby cheese is cheese made by the colby process or by any other procedure which produces a finished cheese having the same organoleptic, physical, and chemical properties as the cheese produced by the colby process. The cheese is made from cow's milk with or without the addition of artificial coloring. It contains added common salt and more than 40 percent moisture, its total solids content is not less than 50 percent milkfat, and it conforms to the applicable provisions of 21 CFR 133.118, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

§ 58.2476 Types of surface protection.

The following are the types of surface protection for colby cheese:

(a) *Rinded and paraffin-dipped.* The cheese that has formed a rind is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. Such coating is a continuous, unbroken, and uniform film adhering tightly to the entire surface of the cheese rind.

(b) *Rindless.*

(1) *Wrapped.* The cheese is properly enveloped in a tight-fitting wrapper or other protective covering, which is sealed with sufficient overlap or satisfactory closure. The wrapper or covering shall not impart color or objectionable taste or odor to the cheese. The wrapper or covering shall be of sufficiently low permeability to air so as to prevent the formation of a rind.

(2) *Paraffin-dipped.* The cheese is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. The paraffin shall be applied so that it is continuous, unbroken, and uniformly adheres tightly to the entire surface. If a wrapper or coating is applied to the cheese prior to paraffin dipping, it shall completely envelop the cheese and not impart color or objectionable taste or odor to the cheese.

U.S. Grades

§ 58.2477 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.
(b) U.S. Grade A.
(c) U.S. Grade B.

§ 58.2478 Basis for determination of U.S. grade.

(a) The cheese shall be graded no sooner than 10 days of age.

(b) The rating of each quality factor shall be established on the basis of characteristics present in any vat of cheese.

(c) The U.S. grades of colby cheese are determined on the basis of rating the following quality factors:

(1) Flavor.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

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(2) Body and texture.
(3) Color.
(4) Finish and appearance.
(d) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

§ 58.2479 Specifications for U.S. grades.

(a) *U.S. Grade AA.* U.S. Grade AA Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a fine and highly pleasing colby cheese flavor which is free from undesirable tastes and odors, or it may be lacking in flavor development. The cheese may possess a very slight feed flavor. See Table I of this section.

(2) *Body and Texture.* A plug drawn from the cheese shall be firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed small mechanical openings or a close body. The cheese shall not possess sweet holes, yeast holes, or other gas holes. The texture may be definitely curdy. See Table II of this section.

(3) *Color.* The color shall be uniform and bright. If colored, the cheese should be a medium yellow-orange. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and be free from unnecessary overlapping and wrinkles, and not burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be smooth, bright, and have a good coating of wax or coating that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese shall be free from high edges, huffing, or lopsidedness, but may possess soiled surface to a very slight degree. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth and properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and shall adequately and securely envelop the cheese, but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed or lopsided. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be smooth, bright, and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese. The cheese shall be free from high edges, huffing, lopsidedness, or mold. The cheese may possess soiled surface to a very slight degree. The wrapper may be wrinkled to a slight degree. See Table IV of this section.

(b) *U.S. Grade A.* U.S. Grade A Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a pleasing colby cheese flavor which is free from undesirable tastes and odors, or it may be lacking in flavor development. The cheese may possess very slight acid flavor or feed flavor to a slight degree. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be reasonably firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed mechanical openings or a close body. The plug shall be free from sweet holes, yeast holes, or other gas holes. The body may be very slightly loosely knit or definitely curdy. See Table II of this section.

(3) *Color.* The color shall be fairly uniform and bright. If colored, the cheese shall be a medium yellow-orange. The cheese may possess waviness to a very slight degree. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and not be burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be practically smooth, bright, and have a good coating of paraffin that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese may possess the following characteristics to a very slight degree: Soiled surface or surface mold; and to a slight degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth, properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and adequately and securely envelop the cheese but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed but may possess to a slight degree: High edges, lopsided, irregular press cloth, or rough surface. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be bright and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese and have a good coating of paraffin that adheres firmly. The cheese may possess soiled surface to a very slight degree. The cheese shall be free from mold, and may possess to a slight degree: High edges, lopsided, irregular press cloth, or rough surface. The wrapper may be wrinkled to a slight degree. See Table IV of this section.

(c) *U.S. Grade B.* U.S. Grade B Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese may possess a fairly pleasing colby cheese flavor, or it may be lacking in flavor development. The cheese may possess the following flavors to a very slight degree: Onion or sour; to a slight degree: Barny, bitter, flat, fruity, malty, old milk, rancid, utensil, weedy, whey-taint, or yeasty; and to a definite degree: Acid or feed. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be moderately firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit mechanical openings or a close body. The cheese may possess the following characteristics to a slight degree: Coarse, corky, crumbly, gassy, loosely knit, mealy, pasty, short, slitty, sweet holes, or weak; and the following to a definite degree: Curdy. See Table II of this section.

(3) *Color.* The cheese may possess the following characteristics to a slight degree: Acid-cut, dull, faded, mottled, salt spots, seamy, unnatural, or wavy. In addition, rindless colby cheese may have a bleached surface to a slight degree. See Table III of this section.

(4) *Finish and appearance.*

(i) *Rinded and paraffin-dipped.* The bandage shall be placed over the entire surface of the cheese and may be uneven and wrinkled, but not burst or torn. The rind shall be reasonably sound and free from soft spots, rind rot, cracks, or openings of any kind. The surface may be rough and unattractive but shall possess a fairly good coating of paraffin. The paraffin may be scaly or blistered, with very slight mold under the bandage or paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Checked rind, defective coating, soiled surface, sour rind, surface mold, or weak rind; and to a definite degree:

High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be unbroken and shall adequately and securely envelop the cheese. The following may be present to a very slight degree: Mold under the wrapper but not entering the cheese; to a slight degree: Soiled surface or surface mold; and to a definite degree: High edges, irregular press cloth, lopsided, rough surface, or wrinkled wrapper or cover. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The wrapper or coating applied prior to paraffin dipping shall adequately and securely envelop the cheese and have a coating of paraffin that adheres firmly to the cheese wrapper or shall be unbroken but may be definitely wrinkled. The paraffin may be scaly or blistered, with very slight mold under the paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Defective coating, soiled surface, or surface mold; and the following to a definite degree: High edges, lopsided, irregular press cloth, or rough surface. See Table IV of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	AA	A	B
Acid	—	VS	D
Barny	—	—	S
Bitter	—	—	S
Feed	VS	S	D
Flat	—	—	S
Fruity	—	S	S
Malty	—	—	S
Old milk	—	—	S
Onion	—	—	VS
Rancid	—	—	S
Sour	—	—	VS
Utensil	—	—	S
Weedy	—	—	S
Whey-taint	—	—	S
Yeasty	—	—	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

TABLE II.—CLASSIFICATION OF BODY AND TEXTURE WITH CORRESPONDING U.S. GRADE

Body and texture characteristics	AA	A	B
Coarse	—	—	S
Corky	—	—	S
Crumbly	—	—	S
Curdy	D	D	D
Gassy	—	—	S
Loosely knit	—	VS	S
Mealy	—	—	S
Pasty	—	—	S
Short	—	—	S
Slitty	—	—	S
Sweet holes	—	—	S
Weak	—	—	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

TABLE III.—CLASSIFICATION OF COLOR WITH CORRESPONDING U.S. GRADE

Color characteristics	AA	A	B
Acid-cut	—	—	S
Bleached surface (rindless)	—	—	S
Dull or faded	—	—	S
Mottled	—	—	S
Salt spots	—	—	S
Seamy	—	—	S
Unnatural	—	—	S
Wavy	—	VS	S

(—) = Not permitted VS = Very Slight S = Slight.

TABLE IV.—CLASSIFICATION OF FINISHED AND APPEARANCE WITH CORRESPONDING U.S. GRADE

Finish and appearance characteristics	AA	A	B
Rindless:			
Defective coating (paraffin-dipped: scaly, blistered, and checked)	—	—	S
High edges	—	S	D

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TABLE IV.—CLASSIFICATION OF FINISHED AND APPEARANCE WITH CORRESPONDING U.S. GRADE—Continued

Finish and appearance characteristics	AA	A	B
Irregular press cloth (uneven, wrinkled, and improper overlapping)	—	S	D
Lopsided	—	S	D
Mold under wrapper or covering	—	—	VS
Rough surface	—	S	D
Soiled surface	—	—	S
Soiled surface (paraffin-dipped)	VS	VS	S
Surface mold	—	—	S
Wrinkled wrapper or covering (paraffin dipped)	S	S	D
Rinded:			
Checked rind	—	—	S
Defective coating (scaly, blistered, and checked)	—	—	S
High edges		S	D
Irregular press cloth (uneven, wrinkled, and improper overlapping)	—	S	D
Lopsided	—	S	D
Mold under paraffin	—	—	VS
Rough surface	—	S	D
Soiled surface	VS	VS	S
Sour rind	—	—	S
Surface mold	—	VS	S
Weak rind	—	—	S

(—) = Not permitted VS = Very Slight S = Slight D = Definite.

58.2480 U.S. grade not assignable.

Colby cheese shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The cheese fails to meet or exceed the requirements for U.S. Grade B.

(b) The cheese is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

Explanation of Terms

58.2481 Explanation of terms.

(a) *With respect to types of surface protection:*

(1) *Paraffin.* Refined paraffin, amorphous wax, microcrystalline wax, or any combination of such or any other suitable substance.

(2) *Paraffin dipped.* Cheese that has been coated with paraffin.

(3) *Rind.* A hard coating caused by the dehydration of the surface of the cheese.

(4) *Rinded.* A protection developed by the formation of a rind.

(5) *Rindless.* Cheese which has not formed a rind due to the impervious type of wrapper, covering or container, enclosing the cheese.

(6) *Wrapped.* Cheese that has been covered with a transparent or opaque material (plastic film type or foil) next to the surface of the cheese.

(7) *Wrapper or covering.* A plastic film or foil material next to the surface of the cheese, used as an enclosure or covering of the cheese.

(b) *With respect to flavor:*

(1) *Very slight.* Detected only upon very critical examination.

(2) *Slight.* Detected only upon critical examination.

(3) *Definite.* Not intense but detectable.

(4) *Undesirable.* Those listed in excess of the intensity permitted or those characterizing flavors not listed.

(5) *Acid.* Sharp and puckery to the taste, characteristic of lactic acid.

(6) *Barny.* A flavor characteristic of the odor of a poorly ventilated cow barn.

(7) *Bitter.* Distasteful, similar to the taste of quinine.

(8) *Feed.* Feed flavors (such as alfalfa, sweetclover, silage, or similar feed) in milk carried through into the cheese.

(9) *Flat.* Insipid, practically devoid of any characteristic colby cheese flavor.

(10) *Fruity.* A fermented, sweet, fruit-like flavor resembling apples.

(11) *Lacking in flavor development.* No undesirable and very little, if any, colby cheese flavor development.

(12) *Malty.* A distinctive, harsh flavor suggestive of malt.

(13) *Old milk.* Lacks freshness.

(14) *Onion.* A flavor recognized by the peculiar taste and aroma suggestive of its name. Present in milk or cheese when the cows have eaten onions, garlic, or leeks.

(15) *Rancid.* A flavor suggestive of rancidity or butyric acid; sometimes associated with bitterness.

(16) *Sour.* An acid, pungent flavor resembling vinegar.

(17) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sterilization of milking machines, utensils, or factory equipment.

(18) *Weedy.* A flavor present in cheese when cows have eaten weedy hay or grazed on weed-infested pasture.

(19) *Whey-taint.* A slightly acid flavor characteristic of fermented whey.

(20) *Yeasty.* A flavor indicating yeasty fermentation.

(c) *With respect to body and texture:*

(1) *Very slight.* Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Coarse.* Feels rough, dry, and sandy.

(5) *Corky.* Hard, tough, over-firm cheese which does not readily break down when rubbed between the thumb and fingers.

(6) *Crumbly.* Tends to fall apart when rubbed between the thumb and fingers.

(7) *Curdy.* Smooth but firm; when worked between the fingers is rubbery and not waxy or broken down.

(8) *Firm.* Feels solid, not soft or weak.

(9) *Gassy.* Gas holes of various sizes and may be scattered.

(10) *Loosely knit.* Curd particles are not well-matted and fused together.

(11) *Mealy.* Short body, does not mold well and looks and feels like corn meal when rubbed between the thumb and fingers.

(12) *Mechanical openings.* Irregular shaped openings that are caused by variations in make procedure and not caused by gas fermentation.

(13) *Pasty.* Is usually a weak body and when the cheese is rubbed between the thumb and fingers becomes sticky and smeary.

(14) *Pinny.* Numerous very small gas holes.

(15) *Reasonably firm.* Somewhat less firm but not to the extent of being weak.

(16) *Short.* No elasticity in the cheese plug and when rubbed between the thumb and fingers, the cheese tends toward mealiness.

(17) *Slitty.* Narrow, elongated slits generally associated with a cheese that is gassy or yeasty. Sometimes referred to as "fish-eyes."

(18) *Sweet holes.* Spherical gas holes which are glossy in appearance and usually about the size of BB shots. These gas holes are sometimes referred to as "shot holes."

(19) *Weak.* The cheese plug is soft but is not necessarily sticky like a pasty cheese and requires little pressure to crush.

(d) *With respect to color:*

(1) *Very slight.* Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

(3) *Acid-cut.* A bleached or faded color which sometimes varies throughout the cheese and appears most often around mechanical openings.

(4) *Bleached surface.* A faded color beginning at the surface and progressing inward.

(5) *Dull or faded.* A color condition lacking in luster or translucency.

(6) *Mottled.* Irregular shaped spots or blotches in which portions are light colored and others are of higher color. Also an unevenness of color due to combining the curd from two different vats, sometimes referred to as "mixed curd."

(7) *Salt spots.* Large light colored spots or areas.

(8) *Seamy.* White thread-like lines that form when the curd is not properly matted or fused.

(9) *Unnatural.* Deep orange or reddish color.

(10) *Uncolored.* Absence of added coloring.

(11) *Wavy.* Unevenness of color which appears as layers or waves.

(e) *With respect to finish and appearance:*

(1) *Very slight.* Detected only upon very critical examination and present to a minute degree.

(2) *Slight.* Barely identifiable and present to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Adequately and securely enveloped.* The wrapper or covering is properly sealed and entirely encloses the cheese with sufficient adherence to the surface of the cheese to protect it from contamination or dehydration.

(5) *Bandage.* Cheese cloth used to wrap cheese prior to dipping in paraffin.

(6) *Bandage evenly placed.* Placement of the bandage so that it completely envelops the cheese and overlaps evenly about one inch.

(7) *Bright surface.* Clean, glossy surface.

(8) *Burst or torn bandage.* A severance of the bandage usually occurring at the side seam; or when the bandage is otherwise snagged or broken.

(9) *Checked rind.* Numerous small cracks or breaks in the rind which sometimes follows the outline of curd particles.

(10) *Defective coating.* A brittle coating of paraffin that breaks and peels off in the form of scales or flakes; flat or raised blisters or bubbles under the surface of the paraffin; checked paraffin, including cracks, breaks or hairline checks in the paraffin or coating of the cheese.

(11) *Firm sound rind.* A rind possessing a firmness and thickness (not easily dented or damaged) consistent with the size of the cheese and which is dry, smooth, and closely knit, sufficient to protect the interior quality from external defects; free from checks, cracks, breaks, or soft spots.

(12) *High edge.* A rim or ridge on the side of the cheese.

(13) *Huffed.* A block of cheese which is swollen because of gas fermentation. The cheese becomes rounded or oval in shape instead of having flat surfaces.

(14) *Irregular press cloth.* Press cloth improperly placed in the hoop resulting in too much press cloth on one end and insufficient on the other causing overlapping; wrinkled and loose fitting.

(15) *Lopsided.* One side of the cheese is higher than the other side.

(16) *Mold under bandage and paraffin.* Mold spots or areas under the paraffin.

(17) *Mold under wrapper or covering.* Mold spots or areas under the wrapper or covering.

(18) *Rind rot.* Soft spots on the rind that have become discolored and are decayed or decomposed.

(19) *Rough surface.* Lacks smoothness.

(20) *Smooth surface.* Not rough or uneven.

(21) *Soft spots.* Areas soft to the touch and which are usually faded and moist.

(22) *Soiled surface.* Milkstone, rust spots, or other discoloration on the surface of the cheese.

(23) *Sour rind.* A fermented rind condition, usually confined to the faces of the cheese.

(24) *Surface mold.* Mold on the exterior of the paraffin or wrapper.

(25) *Wax or paraffin that adheres firmly to the surface of the cheese.* A coating with no cracks, breaks, or loose areas.

(26) *Weak rind.* A thin rind which possesses little or no resistance to pressure.

Dated: February 23, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4953 Filed 2–28–95; 8:45 am]

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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61
Robinson R–22/R–44 Special Training and Experience Requirements; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61
[Docket No. 28095; SFAR No. 73]

RIN 2120-AF66

Robinson R-22/R-44 Special Training and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; Request for comments.

SUMMARY: This Special Federal Aviation Regulation (SFAR) establishes special training and experience requirements for pilots operating the Robinson model R-22 or R-44 helicopters to maintain safe operation of Robinson helicopters. It also establishes special training and experience requirements for certified flight instructors conducting student instruction or flight reviews. The FAA has determined this emergency SFAR is needed to respond to the number of accidents involving the Robinson model R-22 and R-44 helicopters. The intended effect of this emergency action is to increase awareness of and training for the potential hazards of particular flight operations in the Robinson helicopters.

DATES: This final rule is effective March 27, 1995. This final rule expires December 31, 1997. Comments must be received by May 30, 1995.

ADDRESSES: Comments should be submitted in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 28095, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS-820, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-7031.

SUPPLEMENTARY INFORMATION:

Comments Invited

All interested persons are invited to comment on this SFAR by submitting such written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impacts. Communications should identify the regulatory docket or SFAR number, and be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 28095, 800 Independence Ave., Washington, DC 20591. All communications received will be considered by the Administrator. The rules in this SFAR may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 915-G of the FAA Building, 800 Independence Ave., Washington, DC 20591. Persons wishing to have the FAA acknowledge receipt of their comments must submit a self-addressed, stamped postcard with the following statement: "Comments to Docket Number 28095." The postcard will then be dated, time stamped, and returned by the FAA.

Availability of This SFAR

Any person may obtain a copy of this SFAR by submitting a request to the FAA, Office of Public Affairs, ATTN: APA-200, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling the Office of Public Affairs at (202) 267-3484. Persons wanting a copy of this SFAR must identify the SFAR by asking for "Docket No. 28095; Robinson R-22/R-44 Special Training and Experience Requirements Final Rule."

Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA has determined that specific training and experience requirements are necessary for the safe operation of Robinson R-22 and R-44 model helicopters.

The R-22 is a 2-seat, reciprocating engine-powered helicopter that is frequently used as low-cost initial student training aircraft. The R-44 is a 4-seat helicopter with similar operating characteristics and design features of the R-22. The R-22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

Currently, there are 855 registered R-22's and three R-44's in the United States. Since the R-22 was certificated, there have been 339 accidents in the U.S. involving R-22's. The FAA found that the R-22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979; however, the R-22 has had a high number of fatal accidents due to main rotor/airframe contact when compared to other piston powered helicopters. Many of these accidents have been attributed to pilot performance or inexperience, leading to low rotor revolutions per minute (RPM) or low "G" conditions that resulted in mast bumping or main rotor-airframe contact accidents. Its small size and relatively low operating costs result in its use as a training or small utility aircraft, and its operation by a significant population of relatively inexperienced helicopter pilots.

In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to safely operate the R-22 and R-44 helicopters in certain flight conditions. The FAA has determined that additional specific pilot training is necessary for safe operation of these helicopters as part of a comprehensive program that responds to the high number of accidents involving these helicopters. Other elements of this program include addressing design and operational issues, cited by the National Transportation Safety Board (NTSB), that may have been contributing factors in some of the accidents.

In addition to the specific pilot training and experience requirements recommended by a R-22 and R-44 Flight Standardization Board established on January 8, 1995, and the subject of this SFAR, the FAA has taken several other actions to alert pilots and owners to the hazards of these helicopters. Individual notice to every certificated rotorcraft pilot, including all rotorcraft certified flight instructors who instruct in these helicopters, was given by the FAA when it issued the Special Airworthiness Alert No. ASW-95-01 on January 10, 1995. This alert, provided specific guidance in avoiding and dealing with low rotor RPM and low G conditions. This guidance was made mandatory when the FAA issued to all owners of these helicopters Airworthiness Directives Nos. 95-02-03 and 95-02-04 on January 12, 1995, which amended these helicopters' operating envelope by limiting operations in certain atmospheric conditions, such as turbulence, and reduced operating speed in turbulent conditions to avoid the situations described in the Alert. Finally, the FAA is undertaking an aggressive engineering and design review of these helicopters and their operations as well as evaluating potential design improvement for the Robinson helicopters.

Discussion

The FAA has determined, after reviewing the NTSB accident reports of 30 fatal accidents since 1982 in which main rotor/airframe contact occurred, that certain flight maneuvers caused, or contributed to, the accidents. In four recent R-22 and R-44 accidents, main rotor/airframe contact occurred while the helicopters were apparently well within the aircraft's defined operating envelope. Although the pilots assumed to be operating the flight controls at the time of the accidents had little experience, the investigations found no evidence that the pilots were improperly operating the helicopters.

There is a clear relationship between pilot inexperience in the R-22 and R-44 helicopters and main rotor/airframe contact accidents. An analysis of this type of accident, indicates that in 23 of the 30 fatal accidents, the pilot apparently manipulating the controls had less than 200 flight hours in helicopters or less than 50 flight hours in the model of Robinson helicopter they were operating. It appears that pilots with more than a minimal level of experience are more likely to recognize situations that would cause this type of accident. However, the FAA has determined that all pilots, regardless of their level of experience, need to have a greater awareness of the flight conditions that have led to these accidents and a capability to respond appropriately when those conditions are encountered. Accordingly, the agency is initiating a two-fold program, including ground and flight training. For pilots that have 200 flight hours in helicopters and at least 50 hours in either the R22 or R44 Robinson helicopter, as appropriate, flight training would not be required because of their overall experience, and their specific experience in the Robinson helicopter. For rated pilots who do not have this experience and students pilots, there are specific flight training requirements. In both cases, the intent is to ensure that the pilots, either through accumulated experience or flight training, have the skills necessary to avoid, as well as react to, situations that can cause main rotor/airframe contact. While experience is beneficial in avoiding this type of accident, the FAA believes that there is a need for all pilots operating the Robinson helicopters to be aware of certain characteristics associated with the Robinson R22 and R44 helicopter. For this reason, the FAA is imposing an awareness training requirement on all individuals operating Robinson R22 and R44 aircraft.

In addition, the FAA is requiring that any pilot operating a Robinson R22 helicopter, as pilot in command, to complete future flight review requirements of Part 61 in the R22. A separate flight review is required for the R-44. Pilots with less experience (i.e. those with less than 200 flight hours in helicopters and at least 50 hours in the model of Robinson helicopters) are required to complete an annual flight review. Similarly, the pilot in command currency requirements of Part 61 must be met in the particular model Robinson helicopter. The purpose of these provisions is to ensure persons operating Robinson R22 and R44 maintain proficiency and competency over time.

Finally, the SFAR establishes criteria for flight instructor who wish to continue to instruct or conduct flight reviews in a Robinson helicopter. These criteria are established to insure that the instructors are knowledgeable and competent to conduct the awareness and flight training. This SFAR requires that each individual who receives awareness training or flight training obtain an endorsement in that individuals logbook from a CFI who has met the criteria.

The FAA has determined that the provisions of this SFAR for requiring student pilots, pilots, and flight instructors to undergo special awareness training, additional recency of experience requirements, and the additional aeronautical flight experience above the current requirements in Part 61 will provide for safe operation of the Robinson R-22 and R-44 helicopters.

The FAA has determined that prompt action regarding these helicopters is necessary, and therefore that notice and comment concerning this rule is not in the public interest. The additional training prescribed in the rule should be taken as rapidly as possible. Nonetheless, the FAA believes that adherence to the Alert and Airworthiness Directives noted above, together with appropriate caution in operating these aircraft, will provide for safe operations for the next 30 days until this SFAR takes effect. No additional extension of this 30 day period is anticipated, however.

Ongoing FAA Actions

The rule expires on December 31, 1997, but may be terminated sooner or extended through the publication of notice, comment and final rule action if circumstances so warrant. This action is one of several on-going actions related to the Robinson helicopters. The FAA may take additional actions or modify these actions already taken as a result of further study or comments received concerning this rule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect or regulatory changes on small entities. Third, the Office of Management of Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. However, OMB may exempt classes of regulations from the Executive Order's requirements, in addition to those explicitly exempt, such as rules unlikely to involve significant policy issues for which even a brief delay could impose significant costs. In addition, DOT Order 2100.5 "Policies and Procedures for Simplification, Analysis, and Review of Regulations" states that an emergency regulation that overwise would be nonsignificant is excepted from the requirements for any Evaluation. Thus, because of the emergency nature of this SFAR, the FAA has not prepared a full regulatory evaluation.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, provides threshold cost and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. Small entities are independently owned and operated small businesses and small not-for-profit organizations. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to this rule. The FAA has determined that this rule will not result in a significant economic impact, either detrimental or beneficial, on a substantial number of small entities, however, the public is invited to comment on this determination particularly with respect to the number

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of small entities that will be affected and the cost impact on those small entities.

International Trade Impact Assessment

The FAA has determined that this SFAR will not constitute barriers to international trade, including the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

Good Cause Justification for Immediate Adoption

Because of the emergency nature of this rulemaking and because of the reasons stated above, the FAA finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Paperwork Reduction Act

This SFAR contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Federalism Implications

The SFAR adopted herein will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this SFAR does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this SFAR does not conflict with any international agreement of the United States.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. The FAA has determined that this regulation is an emergency regulation that must be issued immediately to address an unsafe condition. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this SFAR will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. By adding Special Federal Aviation Regulation (SFAR) No. 73 to part 61 to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

1. *Applicability.* Under the procedures prescribed herein, this SFAR applies to all persons who seek to manipulate the controls or act as pilot in command of a Robinson model R–22 or R–44 helicopter. The requirements stated in this SFAR are in addition to the current requirements of part 61.

2. *Required training, aeronautical experience, endorsements, and flight review.*

(a) Awareness Training:

(1) Except as provided in paragraph (a)(2) of this section, no person may manipulate the controls of a Robinson model R–22 or R–44 helicopter after March 27, 1995 for the purpose of flight unless the awareness training specified in paragraph (a)(3) of this section is completed and the person's logbook has been endorsed by a certified flight instructor authorized under paragraph (b)(5) of this section.

(2) A person who holds a rotorcraft category and helicopter class rating on their pilot certificate and meets the experience requirements of paragraph (b)(1) or (b)(2) of this section may not manipulate the controls of a Robinson model R–22 or R–44 helicopter for the purpose of flight after April 26, 1995 unless the awareness training specified in paragraph (a)(3) of this section is completed and the person's logbook has been endorsed by a certified flight instructor authorized under paragraph (b)(5) of this section.

(3) Awareness training must be conducted by a certified flight instructor who has been endorsed under paragraph (b)(5) of this section and consists of instruction in the following general subject areas:

(i) energy management;

(ii) mast bumping;

(iii) low rotor RPM (blade stall);

(iv) low G hazards; and

(v) rotor RPM decay.

(4) A person who can show satisfactory completion of the manufacturer's safety course after January 1, 1994, may obtain an endorsement from an FAA aviation safety inspector in lieu of completing the awareness training required in paragraphs (a)(1) and (a)(2) of this section.

(b) Aeronautical Experience:

(1) No person may act as pilot in command of a Robinson model R–22 unless that person:

(i) has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22; or

(ii) has had at least 10 hours dual instruction in the Robinson R–22 and has received an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that the individual has been given the training required by this paragraph and if proficient to act as pilot in command of an R–22. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–22 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

(2) No person may act as pilot in command of a Robinson model R–44 unless that person:

(i) has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44; or

(ii) has had at least 10 hours dual instruction in the Robinson R–44 and has received an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that the individual has been given the training required by this paragraph and is proficient to act as pilot in command of an R–44. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–44 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

(3) A person who does not hold a rotorcraft category and helicopter class rating must have had at least 20 hours of dual instruction in a Robinson R–22 helicopter prior to operating it in solo flight. In addition, the person must obtain an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that instruction has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–22. This endorsement is valid for a period of 90 days. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(i) enhanced training in autorotation procedures,

(ii) engine rotor RPM control without the use of the governor,

(iii) low rotor RPM recognition and recovery, and

(iv) effects of low G maneuvers and proper recovery procedures.

(4) A person who does not hold a rotocraft category and helicopter class rating must have had at least 20 hours of dual instruction in a Robinson R–44 helicopter prior to operating it in solo flight. In addition, the person must obtain an endorsement from a certified flight instructor authorized under paragraph (b)(5) of this section that instruction has been given in those maneuvers and procedures, and the instructor has found the applicant proficient to solo a Robinson R–44. This endorsement is valid for a period of 90 days. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(i) enhanced training in autorotation procedures,

(ii) engine rotor RPM control without the use of the governor,

(iii) low rotor RPM recognition and recovery, and

(iv) effects of low G maneuvers and proper recovery procedures.

(5) No certificated flight instructor may provide instruction or conduct a flight review in a Robinson model R–22 or R–44 unless that instructor:

(i) Completes the awareness training in paragraph 2(a) of this SFAR,

(ii) Meets the experience requirements of paragraphs 2(b)(1)(i) of this SFAR for the R–22, or 2(b)(2)(i) of this SFAR for the R–44,

(iii) Has completed flight training in an R–22, R–44, or both, on the following abnormal and emergency procedures:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

(iv) Been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements and has satisfactorily demonstrated an ability to provide instruction on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

(c) Flight Review:

(1) No flight review completed to satisfy § 61.56 by an individual after becoming eligible to function as pilot in command in a Robinson R–22 helicopter shall be valid for the operation of R–22 helicopter unless that flight review was taken in an R–22.

(2) No flight review completed to satisfy, § 61.56 by individual after becoming eligible to function as pilot in command in a Robinson R–44 helicopter shall be valid for the operation of R–44 helicopter unless that flight review was taken in the R–44.

(3) The flight review will include a review of the awareness training subject areas of paragraph 2(a)(3) of this SFAR and the flight training identified in paragraph 2(b) of this SFAR.

(d) Currency Requirements: No person may act as pilot in command of a Robinson model R–22 or R–44 helicopter carrying passengers unless the pilot in command has met the recency of flight experience requirements of § 61.57 in an R–22 or R–44, as appropriate.

3. *Expiration date.* This SFAR expires December 31, 1997, unless sooner superseded or rescinded.

Issued in Washington, DC, February 23, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–4967 Filed 2–24–95; 12:49 pm]

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Part VIII

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Validation of Analytical Procedures: Definitions and Terminology Availability; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0016]

International Conference on Harmonisation; Guideline on Validation of Analytical Procedures: Definitions and Terminology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Text on Validation of Analytical Procedures." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to present topics that should be considered during the validation of the analytical procedures included as part of registration applications for pharmaceuticals.

DATES: Effective on March 1, 1995. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Roger L. Williams, Center for Drug Evaluation and Research (HFD-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6740.
Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industry Associations; the Japanese Ministry of Health and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of the validation of analytical procedures for pharmaceuticals was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of March 1, 1994 (59 FR 9750), FDA published a draft tripartite guideline entitled "Draft Guideline on Validation of Analytical Procedures." The notice gave interested persons an opportunity to submit comments by May 16, 1994.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted in Europe, Japan, and the United States. The guideline discusses common types of analytical procedures and defines basic terms, such as "analytical procedure," "specificity," and "precision." These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of the European Union, Japan, and the United States.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register.**

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Text on Validation of Analytical Procedures

1. Introduction

This document presents a discussion of the characteristics for consideration during the validation of the analytical procedures included as part of registration applications submitted within the European Union, Japan, and the United States. This document does not necessarily seek to cover the testing that may be required for registration in, or export to, other areas of the world. Furthermore, this text presentation serves as a collection of terms, and their definitions, and is not intended to provide direction on how to accomplish validation. These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of the European Union, Japan, and the United States.

The objective of validation of an analytical procedure is to demonstrate that it is suitable for its intended purpose. A tabular summation of the characteristics applicable to identification, control of impurities, and assay procedures is included. Other analytical procedures may be considered in future additions to this document.

2. Types of Analytical Procedures to be Validated

The discussion of the validation of analytical procedures is directed to the four most common types of analytical procedures:

- Identification tests.
- Quantitative tests for impurities' content.
- Limit tests for the control of impurities.
- Quantitative tests of the active moiety in samples of drug substance or drug product or other selected component(s) in the drug product.

Although there are many other analytical procedures, such as dissolution testing for drug products or particle size determination for drug substance, these have not been addressed in the initial text on validation of analytical procedures. Validation of these additional analytical procedures is equally important to those listed herein and may be addressed in subsequent documents.

A brief description of the types of tests considered in this document is provided below.

- Identification tests are intended to ensure the identity of an analyte in a sample. This is normally achieved by comparison of a property of the sample (e.g., spectrum, chromatographic behavior, chemical reactivity, etc.) to that of a reference standard.
- Testing for impurities can be either a quantitative test or a limit test for the impurity in a sample. Either test is intended to accurately reflect the purity characteristics of the sample. Different validation characteristics are required for a quantitative test than for a limit test.
- Assay procedures are intended to measure the analyte present in a given sample. In the context of this document, the assay represents a quantitative measurement of the major component(s) in the drug substance. For the drug product, similar validation characteristics also apply when assaying for the active or other selected component(s). The same validation characteristics may also apply to assays associated with other analytical procedures (e.g., dissolution).

The objective of the analytical procedure should be clearly understood since this will govern the validation characteristics which need to be evaluated. Typical validation characteristics which should be considered are listed below:
Accuracy;
Precision:
Repeatability;
Intermediate precision;
Specificity;
Detection limit;
Quantitation limit;
Linearity;
Range.

Each of these validation characteristics is defined in the attached Glossary. The table lists those validation characteristics regarded as the most important for the validation of different types of analytical procedures. This list should be considered typical for the analytical procedures cited but occasional exceptions should be dealt with on a case-by-case basis. It should be noted that robustness is not listed in the table but should be considered at an appropriate stage in the development of the analytical procedure.

Furthermore revalidation may be necessary in the following circumstances:

- Changes in the synthesis of the drug substance;
- Changes in the composition of the finished product;
- Changes in the analytical procedure.

The degree of revalidation required depends on the nature of the changes. Certain other changes may require validation as well.

TABLE

Type of analytical procedure; characteristics	Identification	Testing for impurities		Assay; dissolution (measurement) only; content/potency
		Quantitation	Limit	
Accuracy	–	+	–	+
Precision				
Repeatability	–	+	–	+
Intermediate Precision	–	+[1]	–	+[1]
Specificity[2]	+	+	+	+
Detection Limit	–	–[3]	+	–
Quantitation Limit	–	+	–	–
Linearity	–	+	–	+
Range	–	+	–	+

Note–signifies that this characteristic is not normally evaluated; + signifies that this characteristic is normally evaluated.
[1] In cases where reproducibility (see Glossary) has been performed, intermediate precision is not needed.
[2] Lack of specificity of one analytical procedure could be compensated by other supporting analytical procedure(s).
[3] May be needed in some cases.

Glossary

1. Analytical Procedure

The analytical procedure refers to the way of performing the analysis. It should describe in detail the steps necessary to perform each analytical test. This may include but is not limited to: The sample, the reference standard and the reagents preparations, use of the apparatus, generation of the calibration curve, use of the formulae for the calculation, etc.

2. Specificity

Specificity is the ability to assess unequivocally the analyte in the presence of components which may be expected to be present. Typically these might include impurities, degradants, matrix, etc.

Lack of specificity of an individual analytical procedure may be compensated by other supporting analytical procedure(s).

This definition has the following implications:

Identification: To ensure the identity of an analyte.

Purity Tests: To ensure that all the analytical procedures performed allow an accurate statement of the content of impurities of an analyte, i.e., related substances test, heavy metals, residual solvents content, etc.

Assay (content or potency): To provide an exact result which allows an accurate statement on the content or potency of the analyte in a sample.

3. Accuracy

The accuracy of an analytical procedure expresses the closeness of agreement between the value which is accepted either as a conventional true value or an accepted reference value and the value found.

This is sometimes termed trueness.

4. Precision

The precision of an analytical procedure expresses the closeness of agreement (degree of scatter) between a series of measurements obtained from multiple sampling of the same homogeneous sample under the prescribed conditions. Precision may be considered at three levels: Repeatability, intermediate precision and reproducibility.

Precision should be investigated using homogeneous, authentic samples. However, if it is not possible to obtain a homogeneous sample it may be investigated using artificially prepared samples or a sample solution.

The precision of an analytical procedure is usually expressed as the variance, standard deviation, or coefficient of variation of a series of measurements.

4.1. Repeatability

Repeatability expresses the precision under the same operating conditions over a short interval of time. Repeatability is also termed intra-assay precision.

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4.2. Intermediate precision

Intermediate precision expresses within laboratories' variations: Different days, different analysts, different equipment, etc.

4.3. Reproducibility

Reproducibility expresses the precision between laboratories (collaborative studies, usually applied to standardization of methodology).

5. Detection Limit

The detection limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be detected but not necessarily quantitated as an exact value.

6. Quantitation Limit

The quantitation limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be quantitatively determined with suitable precision and accuracy. The quantitation limit is a parameter of quantitative assays for low levels of compounds in sample matrices, and is used particularly for the determination of impurities and/or degradation products.

7. Linearity

The linearity of an analytical procedure is its ability (within a given range) to obtain test results which are directly proportional to the concentration (amount) of analyte in the sample.

8. Range

The range of an analytical procedure is the interval between the upper and lower concentration (amounts) of analyte in the sample (including these concentrations) for which it has been demonstrated that the analytical procedure has a suitable level of precision, accuracy, and linearity.

9. Robustness

The robustness of an analytical procedure is a measure of its capacity to remain unaffected by small, but deliberate, variations in method parameters and provides an indication of its reliability during normal usage.

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–4956 Filed 2–28–95; 8:45 am]

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Part IX

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on the Assessment of Systemic Exposure in Toxicity Studies; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0015]

International Conference on Harmonisation; Guideline on the Assessment of Systemic Exposure in Toxicity Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Toxicokinetics: Guidance on the Assessment of Systemic Exposure in Toxicity Studies." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to help ensure that the assessment of systemic exposure in toxicity studies to support drug registration is carried out according to sound scientific principles.

DATES: Effective on March 1, 1995. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Roger L. Williams, Center for Drug Evaluation and Research (HFD-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6740.
Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industry Associations; the Japanese Ministry of Health and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of the assessment of systemic exposure in toxicity studies was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of March 1, 1994 (59 FR 9755), FDA published a draft tripartite guideline entitled, "Toxicokinetics: A Guidance on the Assessment of Systemic Exposure in Toxicity Studies." The notice gave interested persons an opportunity to submit comments by May 16, 1994.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline discusses toxicokinetics, which is the generation of pharmacokinetic data in nonclinical toxicity studies or ancillary studies to assess exposure. The objectives of toxicokinetics are: (1) To describe the systemic exposure achieved in animals, its relationship to dose level, and the time course of the toxicity study; (2) to relate the exposure achieved in toxicity studies to toxicological findings; (3) to support the choice of species and treatment regimen in nonclinical toxicity studies; and (4) to supply information which, along with the toxicity findings, will contribute to developing additional nonclinical toxicity studies.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Toxicokinetics: Guidance on the Assessment of Systemic Exposure in Toxicity Studies

I. Introduction

This Note for Guidance concerns toxicokinetics only with respect to the development of pharmaceutical products intended for use in human subjects.

In this context, toxicokinetics is defined as the generation of pharmacokinetic data, either as an integral component in the conduct of nonclinical toxicity studies or in specially designed supportive studies, in order to assess systemic exposure. These data may be used in the interpretation of toxicology findings and their relevance to clinical safety issues (see Note 1 for definitions of other terms used in this document).

The Note for Guidance has been developed in order to provide an understanding of the meaning and application of toxicokinetics and to provide guidance on developing test strategies in toxicokinetics. The guidance highlights the need to integrate pharmacokinetics into toxicity testing, which should aid in the interpretation of the toxicology findings and promote rational study design development.

Toxicokinetic measurements are normally integrated within the toxicity studies and as such are described in this document as "concomitant toxicokinetics" (Note 1). Alternatively, data may be generated in other supportive studies conducted by mimicking the conditions of the toxicity studies.

Toxicokinetic procedures may provide a means of obtaining multiple dose pharmacokinetic data in the test species, if appropriate parameters are monitored, thus avoiding duplication of such studies; optimum design in gathering the data will reduce the number of animals required.

Various components of the total nonclinical pharmacokinetics and metabolism program may be of value in contributing to the interpretation of toxicology findings. However, the toxicokinetic data focus on the kinetics of a new therapeutic agent under the conditions of the toxicity studies themselves.

Toxicokinetics is thus an integral part of the nonclinical testing program; it should enhance the value of the toxicological data generated, both in terms of understanding the toxicity tests and in comparison with clinical data as part of the assessment of risk and safety in humans. Due to its integration into toxicity testing and its bridging character between nonclinical and clinical studies, the focus is primarily on the interpretation of toxicity tests and not on characterizing the basic pharmacokinetic parameters of the substance studied.

As the development of a pharmaceutical product is a dynamic process which involves continuous feedback between nonclinical and clinical studies, no rigid detailed procedures for the application of toxicokinetics are recommended. It may not be necessary for toxicokinetic data to be collected in all studies and scientific judgment should dictate when such data may be useful. The need for toxicokinetic data and the extent of exposure assessment in individual toxicity studies should be based on a flexible step-by-step approach and a case-by-case decisionmaking process to provide sufficient information for a risk and safety assessment.

2. The Objectives of Toxicokinetics and the Parameters Which May Be Determined

The primary objective of toxicokinetics is:

- To describe the systemic exposure achieved in animals and its relationship to dose level and the time course of the toxicity study.

Secondary objectives are:

- To relate the exposure achieved in toxicity studies to toxicological findings and contribute to the assessment of the relevance of these findings to clinical safety.
- To support (Note 1) the choice of species and treatment regimen in nonclinical toxicity studies.
- To provide information which, in conjunction with the toxicity findings, contributes to the design of subsequent nonclinical toxicity studies.

These objectives may be achieved by the derivation of one or more pharmacokinetic parameters (Note 2) from measurements made at appropriate time points during the course of the individual studies. These measurements usually consist of plasma (or whole blood or serum) concentrations for the parent compound and/or metabolite(s) and should be selected on a case-by-case basis. Plasma (or whole blood or serum) AUC, C_{max}, and $C_{(time)}$ (Note 2) are the most commonly used parameters in assessing exposure in toxicokinetics studies. For some compounds it will be more appropriate to calculate exposure based on the (plasma protein) unbound concentration.

These data may be obtained from all animals on a toxicity study, in representative subgroups, in satellite groups (see 3.5 and Note 1) or in separate studies.

Toxicity studies which may be usefully supported by toxicokinetic information include single and repeated dose toxicity studies, reproductive, genotoxicity, and carcinogenicity studies. Toxicokinetic information may also be of value in assessing the implications of a proposed change in the clinical route of administration.

3. General Principles to be Considered

3.1 Introduction

In the following paragraphs some general principles are set out which should be taken into consideration in the design of individual studies.

It should be noted that for those toxicity studies whose performance is subject to Good Laboratory Practice (GLP) the concomitant toxicokinetics must also conform to GLP. Toxicokinetic studies retrospectively designed to generate specific sets of data under conditions which closely mimic those of the toxicity studies should also conform to GLP when they are necessary for the evaluation of safety.

3.2 Quantification of exposure

The quantification of systemic exposure provides an assessment of the burden on the test species and assists in the interpretation of similarities and differences in toxicity across species, dose groups, and sexes. The exposure might be represented by plasma (serum or blood) concentrations or the AUC's of parent compound and/or metabolite(s). In some circumstances, studies may be designed to investigate tissue concentrations. When designing the toxicity studies, the exposure and dose-dependence in humans at therapeutic dose levels (either expected or established) should be considered in order to achieve relevant exposure at various dose levels in the animal toxicity studies. The possibility that there may be species differences in the pharmacodynamics of the substance (either qualitative or quantitative) should also be taken into consideration.

Pharmacodynamic effects or toxicity might also give supporting evidence of exposure or even replace pharmacokinetic parameters in some circumstances.

Toxicokinetic monitoring or profiling of toxicity studies should establish what level of exposure has been achieved during the course of the study and may also serve to alert the toxicologist to nonlinear, dose-related changes in exposure (Note 3) that may have occurred. Toxicokinetic information may allow better interspecies comparisons than simple dose/body weight (or surface area) comparisons.

3.3 Justification of time points for sampling

The time points for collecting body fluids in concomitant toxicokinetic studies should be as frequent as is necessary, but not so frequent as to interfere with the normal conduct of the study or to cause undue physiological stress to the animals (Note 4). In each study, the number of time points should be justified on the basis that they are adequate to estimate exposure (see 3.2). The justification should be based on kinetic data gathered from earlier toxicity studies, from pilot or dose range-finding studies, from separate studies in the same animal model, or in other models allowing reliable extrapolation.

3.4 Contribution to the setting of dose levels in order to produce adequate exposure

The setting of dose levels in toxicity studies is largely governed by the toxicology findings and the pharmacodynamic responses of the test species. However, the following toxicokinetic principles may contribute to the setting of the dose levels.

3.4.1 Low dose levels

At the low dose, preferably a no-toxic-effect dose level (Note 5), the exposure in the animals of any toxicity study should ideally equal or just exceed the maximum expected (or known to be attained) in patients. It is recognized that this ideal is not always achievable and that low doses will often need to be determined by considerations of toxicology; nevertheless, systemic exposure should be determined.

3.4.2 Intermediate dose levels

Exposure at intermediate dose levels should normally represent an appropriate multiple (or fraction) of the exposure at lower (or higher) dose levels dependent upon the objectives of the toxicity study.

3.4.3 High dose levels

The high dose levels in toxicity studies will normally be determined by toxicological considerations. However, the exposure achieved at the dose levels used should be assessed.

Where toxicokinetic data indicate that absorption of a compound limits exposure to parent compound and/or metabolite(s) (Note 6), the lowest dose level of the substance producing the maximum exposure should be accepted as the top dose level to be used (when no other dose-limiting constraint applies, Note 7).

Very careful attention should be paid to the interpretation of toxicological findings in toxicity studies (of all kinds) when the dose levels chosen result in nonlinear kinetics (Note 3). However, nonlinear kinetics should not necessarily result in dose limitations in toxicity studies or invalidate the findings; toxicokinetics can be very helpful in assessing the relationship between dose and exposure in this situation.

3.5 Extent of exposure assessment in toxicity studies

In toxicity studies, systemic exposure should be estimated in an appropriate number of animals and dose groups (Note 8) to provide a basis for risk assessment.

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Concomitant toxicokinetics may be performed either in all or a representative proportion of the animals used in the main study or in special satellite groups (Notes 1 and 5). Normally, samples for the generation of toxicokinetic data may be collected from main study animals, where large animals are involved, but satellite groups may be required for the smaller (rodent) species.

The number of animals to be used should be the minimum consistent with generating adequate toxicokinetic data. Where both male and female animals are utilized in the main study it is normal to estimate exposure in animals of both sexes unless some justification can be made for not so doing.

Toxicokinetic data are not necessarily required from studies of different duration if the dosing regimen is essentially unchanged (see also 4.3).

3.6 Complicating factors in exposure interpretation

Although estimating exposure as described above may aid in the interpretation of toxicity studies and in the comparison with human exposure, a few caveats should be noted.

Species differences in protein binding, tissue uptake, receptor properties, and metabolic profile should be considered. For example, it may be more appropriate for highly protein bound compounds to have exposure expressed as the free (unbound) concentrations. In addition, the pharmacological activity of metabolites, the toxicology of metabolites, and antigenicity of biotechnology products may be complicating factors. Furthermore, it should be noted that even at relatively low plasma concentrations, high levels of the administered compound and/or metabolite(s) may occur in specific organs or tissues.

3.7 Route of administration

The toxicokinetic strategy to be adopted for the use of alternative routes of administration, for example, by inhalation, topical, or parenteral delivery, should be based on the pharmacokinetic properties of the substance administered by the intended route.

It sometimes happens that a proposal is made to adopt a new clinical route of administration for a pharmaceutical product; for example, a product initially developed as an oral formulation may subsequently be developed for intravenous administration. In this context, it will be necessary to ascertain whether changing the clinical route will significantly reduce the safety margin.

This process may include a comparison of the systemic exposure to the compound and/or its relevant metabolite(s) (AUC and C_{max}) in humans generated by the existing and proposed routes of administration. If the new route results in increased AUC and or C_{max}, or a change in metabolic profile, the continuing assurance of safety from animal toxicology and kinetics should be reconsidered. If exposure is not substantially greater, or different, by the proposed new route compared to that for the existing route(s) then additional nonclinical toxicity studies may focus on local toxicity.

3.8 Determination of metabolites

A primary objective of toxicokinetics is to describe the systemic exposure to the administered compound achieved in the toxicology species. However, there may be circumstances when measurement of metabolite concentrations in plasma or other body fluids is especially important in the conduct of toxicokinetics (Note 9).

- When the administered compound acts as a "pro-drug" and the delivered metabolite is acknowledged to be the primary active entity.
- When the compound is metabolized to one or more pharmacologically or toxicologically active metabolites which could make a significant contribution to tissue/organ responses.
- When the administered compound is very extensively metabolized and the measurement of plasma or tissue concentrations of a major metabolite is the only practical means of estimating exposure following administration of the compound in toxicity studies (Note 10).

3.9 Statistical evaluation of data

The data should allow a representative assessment of the exposure. However, because large intra- and inter-individual variation of kinetic parameters may occur and small numbers of animals are involved in generating toxicokinetic data, a high level of precision in terms of statistics is not normally needed. Consideration should be given to the calculation of mean or median values and estimates of variability, but, in some cases, the data of individual animals may be more important than a refined statistical analysis of group data.

If data transformation (e.g., logarithmic) is performed, a rationale should be provided.

3.10 Analytical methods

Integration of pharmacokinetics into toxicity testing implies early development of analytical methods for which the choice of analytes and matrices should be continually reviewed as information is gathered on metabolism and species differences.

The analytical methods to be used in toxicokinetic studies should be specific for the entity to be measured and of an adequate accuracy and precision. The limit of quantification should be adequate for the measurement of the range of concentrations anticipated to occur in the generation of the toxicokinetic data.

The choice of analyte and the matrix to be assayed (biological fluids or tissue) should be stated and possible interference by endogenous components in each type of sample (from each species) should be investigated. Plasma, serum, or whole blood are normally the matrices of choice for toxicokinetic studies.

If the drug substance is a racemate or some other mixture of enantiomers, additional justification should be made for the choice of the analyte (racemate or enantiomer(s)).

The analyte and matrix assayed in nonclinical studies should ideally be the same as in clinical studies. If different assay methods are used in non-clinical and clinical studies they should all be suitably validated.

3.11 Reporting

A comprehensive account of the toxicokinetic data generated, together with an evaluation of the results and of the implications for the interpretation of the toxicology findings, should be given.

An outline of the analytical method should be reported or referenced. In addition, a rationale for the choice of the matrix analysed and the analyte measured (see 3.8 and 3.10) should be given.

The positioning of the report within the application will depend upon whether the data are specific to any one toxicity study or is supportive of all toxicity testing.

4. Toxicokinetics in the Various Areas of Toxicity Testing—Specific Aspects

4.1 Introduction

Based on the principles of toxicokinetics outlined above, the following specific considerations refer to individual areas of toxicity testing. The frequency of exposure monitoring or profiling may be extended or reduced where necessary.

It may be appropriate to take samples from some individual animals only, where this may help in the interpretation of the toxicology findings for these animals.

4.2 Single dose toxicity studies

These studies are often performed in a very early phase of development before a bioanalytical method has been developed and toxicokinetic monitoring of these studies is therefore not normally possible. Plasma samples may be taken in such studies and stored for later analysis, if necessary; appropriate stability data for the analyte in the matrix sampled would then be required.

Alternatively, additional toxicokinetic studies may be carried out after completion of a single dose toxicity study in order to respond to specific questions which may arise from the study.

Results from single dose kinetic studies may help in the choice of formulation and in the prediction of rate and duration of exposure during a dosing interval. This may assist in the selection of appropriate dose levels for use in later studies.

4.3 Repeated dose toxicity studies

The treatment regimen (Note 11) and species should be selected whenever possible with regard to pharmacodynamic and pharmacokinetic principles. This may not be achievable for the very first studies, at a time when neither animal nor human pharmacokinetic data are normally available.

Toxicokinetics should be incorporated appropriately into the design of the studies. It may consist of exposure profiling or monitoring (Note 1) at appropriate dose levels at the start and towards the end of the treatment period of the first repeat dose study (Note 12). The procedure adopted for later studies will depend on the results from the first study and on any changes in the proposed treatment regimen. Monitoring or profiling may be extended, reduced, or modified for specific compounds where problems have arisen in the interpretation of earlier toxicity studies.

4.4 Genotoxicity studies

For negative results of in vivo genotoxicity studies, it may be appropriate to have demonstrated systemic exposure in the species used or to have characterized exposure in the indicator tissue.

4.5 Carcinogenicity (Oncogenicity) studies[1]

4.5.1 Sighting or dose-ranging studies

Appropriate monitoring or profiling of these studies should be undertaken in order to generate toxicokinetic data which may assist in the design of the main studies (see 4.5.2.). Particular attention should be paid to species and strains which have not been included in earlier toxicity studies and to the use of routes or methods of administration which are being used for the first time.

Particular attention should be paid to the establishment of appropriate toxicokinetic data when administration is to be in the diet (Note 13).

Toxicokinetic data may assist in the selection of dose levels in the light of information about clinical exposure and in the event that nonlinear kinetics (Note 3) may complicate the interpretation of the study.

In principle, the ideal study design would ensure that dose levels in oncogenicity studies generate a range of systemic exposure values that exceed the maximum therapeutic exposure for humans by varying multiples. However, it is recognized that this idealized selection of dose levels may be confounded by unavoidable species-specific problems. Thus, the emphasis of this guidance is on the need to estimate systemic exposure, to parent compound and/or metabolite(s) at appropriate dose levels and at various stages of an oncogenicity study, so that the findings of the study may be considered in the perspective of comparative exposure for the animal model and humans.

A highest dose based on knowledge of probable systemic exposure in the test species and in humans may be an acceptable end-point in testing for carcinogenic potential. Historically, a toxicity end-point[1] has been often used to select the top dose level.

4.5.2 The main studies

The treatment regimen, species, and strain selection should, as far as is feasible, be determined with regard to the available pharmacokinetic and toxicokinetic information. In practice, the vast majority of these studies is conducted in the rat and mouse.

As mentioned in the "Introduction" to this section, it is recommended that reassurance be sought from monitoring that the exposure in the main study is consistent with profiles of kinetics established in free-standing or specific dose-ranging studies. Such monitoring will be appropriate on a few occasions during the study, but it is not considered essential to continue beyond 6 months.

4.6 Reproductive toxicity studies[2]

4.6.1 Introduction

It is preferable to have some information on pharmacokinetics before initiating reproduction studies since this may suggest the need to adjust the choice of species, study design, and dosing schedules. At this time, the information need not be sophisticated or derived from pregnant or lactating animals. At the time of study evaluation, further information on pharmacokinetics in pregnant or lactating animals may be required depending on the results obtained.

The limitation of exposure in reproductive toxicity is usually governed by maternal toxicity. Thus, while toxicokinetic monitoring in reproductive toxicity studies may be valuable in some instances, especially with compounds with low toxicity, such data are not generally needed for all compounds.

Where adequate systemic exposure might be questioned because of absence of pharmacological response or toxic effects, toxicokinetic principles could usefully be applied to determine the exposures achieved by dosing at different stages of the reproductive process.

A satellite group of female animals may be used to collect the toxicokinetic data.

4.6.2 Fertility studies

The general principles for repeated dose toxicity studies apply (see 4.3). The need to monitor these studies will depend on the dosing regimen used and the information already available from earlier studies in the selected species.

4.6.3 Studies in pregnant and lactating animals

The treatment regimen during the exposure period should be selected on the basis of the toxicological findings and on pharmacokinetic and toxicokinetic principles.

Consideration should be given to the possibility that the kinetics will differ in pregnant and nonpregnant animals.

Toxicokinetics may involve exposure assessment of dams, embryos, fetuses, or newborn at specified days (Note 14). Secretion in milk may be assessed to define its role in the exposure of newborns. In some situations, additional studies may be necessary or appropriate in order to study embryo/fetal transfer and secretion in milk.

Consideration should be given to the interpretation of reproductive toxicity tests in species in which placental transfer of the substance cannot be demonstrated.

5. Supplementary Notes

Note 1: Definitions of expressions appearing in this "Note for Guidance:"

Analyte: The chemical entity assayed in biological samples.

Matrix: Blood, plasma, urine, serum, or other fluid or tissue selected for assay.

Concomitant toxicokinetics: Toxicokinetic measurements performed in the toxicity study, either in all animals or in representative subgroups or in satellite groups.

Exposure: Exposure is represented by pharmacokinetic parameters demonstrating the local and systemic burden on the test species with the test compound and/or its metabolites. The area under the matrix level concentration-time curve (AUC) and/or the measurement of matrix concentrations at the expected peak-concentration time C_{max}, or at some other selected time $C_{(time)}$ are the most commonly used parameters. Other parameters might be more appropriate in particular cases.

Monitor: To take a small number of matrix samples (e.g., 1 to 3) during a dosing interval to estimate $C_{(time)}$ or C_{max}.

Profile: To take (e.g., 4 to 8) matrix samples during a dosing interval to make an estimate of C_{max} and/or $C_{(time)}$ and area under the matrix concentration-time curve (AUC).

Satellite: Groups of animals included in the design and groups: conduct of a toxicity study, treated and housed under conditions identical to those of the main study animals, but used primarily for toxicokinetics.

Support: In the context of a toxicity study—to ratify or confirm the design of a toxicity study with respect to pharmacokinetic and metabolic principles. This process may include two separate steps:

(a) Confirmation using toxicokinetic principles that the animals on a study were exposed to appropriate systemic levels of the administered compound (see 3.4) and/or its metabolite(s).

(b) Confirmation that the metabolic profile in the species used was acceptable; data to support this will normally be derived from metabolism studies in animals and in humans.

Validate: In the context of an analytical method—to establish the accuracy, precision, reproducibility, response function, and the specificity of the analytical method with reference to the biological matrix to be examined and the analyte to be quantified.

Note 2: Symbols and definitions according to "Manual of Symbols, Equations and Definitions in Pharmacokinetics," Committee for Pharmacokinetic Nomenclature of the American College of Clinical Pharmacology, Philadelphia, PA, May 1982:

C_{max}-Maximum (peak) concentration.

$C_{(time)}$-Maximum concentration at a specified time after administration of a given dose.

t_{max}-Time to reach peak or maximum concentration following administration.

$AUC_{(0-t)}$-Area under concentration-time curve from zero to time t. It should be noted that $AUC_{(0-infinity)}$ is a special case of $AUC_{(0-t)}$.

Other measurements, for example, urinary excretion, may be more appropriate for some compounds. Other derived parameters, for example, bioavailability, half-life, fraction of unbound drug, and volume of distribution, may be of value in interpreting toxicokinetic data. Thus, the selection of parameters and time points has to be made on a case-by-case basis considering the general principles as outlined in Section 3.

Note 3: Increases in exposure may arise unexpectedly as a result of nonlinear kinetics due to saturation of a clearance process. Increasing exposure may also occur during the course of a study for those compounds which have a particularly long plasma half-life. Careful attention should also be paid to compounds which achieve high C_{max} values over comparatively short time periods within the dosing interval. Conversely, unexpectedly low exposure may occur during a study as a result of auto-induction of metabolizing enzymes.

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Note 4: If samples are taken from main study animals it should be considered whether samples should be taken from *all* the dosed animals and the controls in order to treat all animals on the study in the same way, or whether samples should be taken from representative subgroups of the same size.

Note 5: In this context, a "no-toxic-effect dose level" (deemed to be the same as "no-observed-adverse-effect dose level") is defined as a dose level at which some pharmacological response may be observed, but at which no adverse effect is found.

Note 6: In these circumstances it should be established that absorption is the rate limiting step and that limitations in exposure to the administered substance are not due to an increased clearance.

Note 7: The limits placed on acceptable volumes which can be administered orally to animals may constrain the dose levels achievable for comparatively non-toxic compounds administered as solutions or suspensions.

Note 8: It is often considered unnecessary to assay samples from control groups. Samples may be collected and then assayed if it is deemed that this may help in the interpretation of the toxicity findings, or in the validation of the assay method.

Note 9: Measurement of metabolite concentrations may be especially important when documentation of exposure to human metabolite(s) is needed in the nonclinical toxicity studies in order to demonstrate adequate toxicity testing of these metabolites.

Note 10: It is recognised that measurement of metabolite(s) as a part of toxicokinetic evaluation serves only to assess exposure and cannot account for possible reactive intermediate metabolites.

Note 11: Treatment regimen encompasses dosage, formulation, route of administration, and dosing frequency.

Note 12: The first repeat dose study incorporating toxicokinetic data for each species is normally of 14 day's duration or longer.

Note 13: Additional studies may be required in order to compare exposure to the compound administered in diet and by gavage or by routes different from the intended clinical route.

Note 14: It should be noted that while it is important to consider the transfer of substances entering the embryo-fetal compartment, fetal exposure is the parameter which is most often assessed in practice in separate studies and expressed as "placental transfer."

6. References (other ICH Guidance)

1. Code S1C "Carcinogenicity: Guidance for Dose Selection Dose Selection for Carcinogenicity Studies of Therapeutics."
2. Code S5A "Detection of Toxicity to Reproduction for Medicinal Products."

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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March 1, 1995

Part X

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Extent of Population Exposure Required to Assess Clinical Safety for Drugs; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0029]

International Conference on Harmonisation; Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "The Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-term Treatment of Non-life-threatening Conditions." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases.

DATES: Effective on March 1, 1995. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Leah Ripper, Center for Drug Evaluation and Research (HFD-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2544.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industry Associations; the Japanese Ministry of Health and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of the safety evaluation of drugs intended for the long-term treatment of non-life-threatening diseases was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of March 1, 1994 (59 FR 9746), FDA published a draft tripartite guideline entitled "Draft Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions." The notice gave interested persons an opportunity to submit comments by May 16, 1994.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline presents an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment of non-life-threatening diseases. The guideline distinguishes between clinical data on adverse drug events (ADE's) derived from studies of shorter duration of exposure and data from studies of longer duration, which frequently include nonconcurrently controlled studies. The principles discussed in the guideline are summarized as follows: (1) Regulatory standards are valuable for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions; however, there are a number of circumstances where harmonized regulatory standards for the clinical safety evaluation may not be applicable; (2) further investigation is needed about the occurrence of ADE's in relation to duration of treatment for different drug classes; (3) because most ADE's first occur within the first 3 to 6 months of drug treatment, many patients should be treated and observed for 6 months at dosage levels intended for clinical use; and (4) because some serious ADE's may occur only after drug treatment for more than 6 months, some patients should be treated with the drug for 12 months.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

The Extent of Population Exposure to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions

The objective of this guideline is to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases. The safety evaluation during clinical drug development is expected to characterize and quantify the safety profile of a drug over a reasonable duration of time consistent with the intended long-term use of the drug. Thus, duration of drug exposure and its relationship to both time and magnitude of occurrence of adverse events are important considerations in determining the size of the data base necessary to achieve such goals.

For the purpose of this guideline, it is useful to distinguish between clinical data on adverse drug events (ADE's) derived from studies of shorter duration of exposure and data from studies of longer duration, which frequently are nonconcurrently controlled studies. It is expected that short-term event rates (cumulative 3-month incidence of about 1 percent) will be well characterized. Events where the rate of occurrence changes over a longer period of time may need to be characterized depending on their severity and importance to the risk-benefit assessment of the drug. The safety evaluation during clinical drug development is not expected to characterize rare adverse events, for example, those occurring in less than 1 in 1,000 patients.

The design of the clinical studies can significantly influence the ability to make causality judgments about the relationships between the drug and adverse events. A placebo-controlled trial allows the adverse event rate in the drug-treated group to be compared directly with the background event rate in the patient population being studied. Although a study with a positive or active control will allow a comparison of adverse event rates to be made between the test drug and the control drug, no direct assessment of the background event rate in the population studied can be made. A study that has no concurrent control group makes it more difficult to assess the causality relationship between adverse events observed and the test drug.

There was general agreement on the following:

1. A harmonized regulatory standard is of value for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions. Although this standard covers many indications and drug classes, there are exceptions.

2. Regulatory standards for the safety evaluation of drugs should be based on previous experience with the occurrence and detection of ADE's, statistical considerations of the probability of detecting specified frequencies of ADE's, and practical considerations.

3. Information about the occurrence of ADE's in relation to duration of treatment for different drug classes is incomplete, and further investigations to obtain this information would be useful.

4. Available information suggests that most ADE's first occur, and are most frequent, within the first few months of drug treatment. The number of patients treated for 6 months at dosage levels intended for clinical use, should be adequate to characterize the pattern of ADE's over time.

To achieve this objective, the cohort of exposed subjects should be large enough to observe whether more frequently occurring events increase or decrease over time as well as to observe delayed events of reasonable frequency (e.g., in the general range of 0.5 percent to 5 percent). Usually 300 to 600 patients should be adequate.

5. There is concern that, although they are likely to be uncommon, some ADE's may increase in frequency or severity with time or that some serious ADE's may occur only after drug treatment for more than 6 months. Therefore, some patients should be treated with the drug for 12 months. In the absence of more information about the relationship of ADE's to treatment duration, selection of a specific number of patients to be followed for 1 year is to a large extent a judgment based on the probability of detecting a given ADE frequency level and practical considerations.

One hundred patients exposed for a minimum of 1 year are considered to be acceptable to include as part of the safety data base. The data should come from prospective studies appropriately designed to provide at least 1-year exposure at dosage levels intended for clinical use. When no serious ADE is observed in a 1-year exposure period, this number of patients can provide reasonable assurance that the true cumulative 1-year incidence is no greater than 3 percent.

6. It is anticipated that the total number of individuals treated with the investigational drug, including short-term exposure, will be about 1,500. Japan currently accepts 500 to 1,500 patients; the potential for a smaller number of patients is due to the postmarketing surveillance requirement, the actual number for a specific drug being determined by the information available on the drug and drug class.

7. There are a number of circumstances where the harmonized general standards for the clinical safety evaluation may not be applicable. Reasons for, and examples of, these exceptions are listed below. It is expected that additional examples may arise. It should also be recognized that the clinical data base required for efficacy testing may be occasionally larger or may require longer patient observation than that suggested by this guideline.

Exceptions:

a. Instances where there is concern that the drug will cause late developing ADE's, or cause ADE's that increase in severity or frequency over time, would require a larger and/or longer-term safety data base. The concern could arise from:

(1) Data from animal studies;

(2) Clinical information from other agents with related chemical structures or from a related pharmacologic class;

(3) Pharmacokinetic or pharmacodynamic properties known to be associated with such ADE's.

b. Situations in which there is a need to quantitate the occurrence rate of an expected specific low frequency ADE will require a greater long-term data base. Examples would include situations where a specific serious ADE has been identified in similar drugs or where a serious event that could represent an alert event is observed in early clinical trials.

c. Larger safety data bases may be needed to make risk/benefit decisions in situations where the benefit from the drug is either: (1) small (e.g., symptomatic improvement in less serious medical conditions), (2) will be experienced by only a fraction of the treated patients (e.g., certain preventive therapies administered to healthy populations), or (3) is of uncertain magnitude (e.g., efficacy determination on a surrogate endpoint).

d. In situations where there is concern that a drug may add to an already significant background rate of morbidity or mortality, clinical trials may need to be designed with a sufficient number of patients to provide adequate statistical power to detect prespecified increases over the baseline morbidity or mortality.

e. In some cases, a smaller number of patients may be acceptable, for example, where the intended treatment population is small.

8. Filing for approval will usually be possible based on the data from patients treated through 6 months. Data on patients treated through 12 months should be submitted as soon as available and prior to approval in the United States and Japan but may be submitted after approval in the European Union. In the United States, the initial submission for those drugs designated as priority drugs should include the 12-month patient data.

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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Part XI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Repeated Dose Tissue Distribution Studies; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0028]

International Conference on Harmonisation; Guideline on Repeated Dose Tissue Distribution Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to provide guidance on the circumstances when nonclinical repeated dose tissue distribution studies to support drug registration should be considered and on the conduct of those studies.

DATES: Effective on March 1, 1995. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Roger L. Williams, Center for Drug Evaluation and Research (HFD-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6740.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industry Associations; the Japanese Ministry of Health and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of repeated dose tissue distribution studies was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of March 1, 1994 (59 FR 9748), FDA published a draft tripartite guideline entitled, "Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies." The notice gave interested persons an opportunity to submit comments by May 16, 1994.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline recommends that repeated dose tissue distribution studies should not be required uniformly for all compounds and should only be conducted when appropriate data cannot be derived from other sources. Repeated dose studies may be appropriate for compounds which have: (1) An apparently long half-life; (2) incomplete elimination; or (3) unanticipated organ toxicity. The guideline provides general guidance on the use of radio labelled compounds, dose and species selection, and duration of studies.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Pharmacokinetics: Guidance For Repeated Dose Tissue Distribution Studies

Introduction

A comprehensive knowledge of the absorption, distribution, metabolism, and elimination of a compound is important for the interpretation of pharmacology and toxicology studies. Tissue distribution studies are essential in providing information on distribution and accumulation of the compound and/or metabolites especially in relation to potential sites of action; this information may be useful for designing toxicology and pharmacology studies and for interpreting the results of these experiments.

In the European Union, United States, and Japan, there has been a general agreement on the need to conduct single dose tissue distribution studies as part of the nonclinical program. These studies often provide sufficient information about tissue distribution.

There has been no consistent requirement for repeated dose tissue distribution studies. However, there may be circumstances when assessments after repeated dosing may yield important information.

This paper provides guidance on circumstances when repeated dose tissue distribution studies should be considered and on the conduct of such studies.

Circumstances Under Which Repeated Dose Tissue Distribution Studies Should Be Considered

1. When single dose tissue distribution studies suggest that the apparent half-life of the test compound (and/or metabolites) in organs or tissues significantly exceeds the apparent half-life of the elimination phase in plasma and is also more than twice the dosing interval in the toxicity studies, repeated dose tissue distribution studies may be appropriate.

2. When steady-state levels of a compound/metabolite in the circulation, determined in repeated dose pharmacokinetic or toxicokinetic studies, are markedly higher than those predicted from single dose kinetic studies, then repeated dose tissue distribution studies should be considered.

3. When histopathological changes, critical for the safety evaluation of the test substances, are observed that would not be predicted from short-term toxicity studies, single dose tissue distribution studies and pharmacological studies, repeated dose tissue distribution studies may aid in the interpretation of these findings. Those organs or tissues which were the site of the lesions should be the focus of such studies.

4. When the pharmaceutical is being developed for site-specific targeted delivery, repeated dose tissue distribution studies may be appropriate.

Design and Conduct of Repeated Dose Tissue Distribution Studies

The objectives of these studies may be achieved using radiolabelled compounds or alternative methods of sufficient sensitivity and specificity.

Dose level(s) and species should be chosen to address the problem that led to the consideration of the repeated dose tissue distribution study.

Information from previous pharmacokinetic and toxicokinetic studies should be used in selecting the duration of dosing in repeated dose tissue distribution studies. One week of dosing is normally considered to be a minimum period. A longer duration should be selected when the blood/plasma concentration of the compound and/or its metabolites does not reach steady state. It is normally considered unnecessary to dose for longer than 3 weeks.

Consideration should be given to measuring unchanged compound and/or metabolites in organs and tissues in which extensive accumulation occurs or if it is believed that such data may clarify mechanisms of organ toxicity.

Summary

Tissue distribution studies are an important component in the nonclinical kinetics program. For most compounds, it is expected that single dose tissue distribution studies with sufficient sensitivity and specificity will provide an adequate assessment of tissue distribution and the potential for accumulation. Thus, repeated dose tissue distribution studies should not be required uniformly for all compounds and should only be conducted when appropriate data cannot be derived from other sources. Repeated dose studies may be appropriate under certain circumstances based on the data from single dose tissue distribution studies, toxicity and toxicokinetic studies. The studies may be most appropriate for compounds which have an apparently long half-life, incomplete elimination or unanticipated organ toxicity. The design and timing of repeated dose tissue distribution studies should be determined on a case-by-case basis.

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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Part XII

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals; Availability; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D-0017]

International Conference on Harmonisation; Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Dose Selection for Carcinogenicity Studies of Pharmaceuticals." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline examines criteria for establishing uniformity among international regulatory agencies for dose selection for carcinogenicity studies of human pharmaceuticals. The guideline is intended to help ensure that dose selection for carcinogenicity studies of pharmaceuticals to support drug registration is carried out according to sound scientific principles.

DATES: Effective (*insert date of publication in the* **Federal Register**). Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Roger L. Williams, Center for Drug Evaluation and Research (HFD–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6740.
Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Association (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of dose selection for carcinogenicity studies of pharmaceuticals was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of March 1, 1994 (59 FR 9752), FDA published a draft tripartite guideline entitled, "Dose Selection for Carcinogenicity Studies of Pharmaceuticals." The notice gave interested persons an opportunity to submit comments by May 16, 1994.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline discusses criteria for high dose selection for carcinogenicity studies of pharmaceuticals. Five generally acceptable criteria are dose limiting pharmacodynamic effects, maximum tolerated dose, a minimum of a 25-fold area under the concentration-time curve (AUC) ratio (rodent:human), saturation of absorption, and maximum feasible dose. The guideline also considers other pharmacodynamic-, pharmacokinetic-, or toxicity-based endpoints in study design based on scientific rationale and individual merits.

FDA offers consultation and concurrence on carcinogenicity study designs and dose selection upon request. Regulatory consultation may be valuable when using any endpoint discussed in the guideline. However, it is considered especially important for sponsors to consult with FDA when planning carcinogenicity studies using pharmacodynamic endpoints and other product-specific designs to ensure their acceptability.

The guideline discusses a new pharmacokinetic endpoint, the 25X AUC ratio, developed specifically for carcinogenicity studies of nongenotoxic pharmaceuticals. The metabolism of the pharmaceutical should be qualitatively similar between humans and rodents to use the AUC ratio approach. Adequate data on comparative systemic exposure, metabolism and protein binding should be provided.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the final guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Dose Selection for Carcinogenicity Studies of Pharmaceuticals

Introduction

Traditionally, carcinogenicity studies for chemical agents have relied upon the maximally tolerated dose (MTD) as the standard method for high dose selection (NOTE 1). The MTD is generally chosen based on data derived from toxicity studies of 3 months' duration.

In the past, the criteria for high dose selection for carcinogenicity studies of human pharmaceuticals have not been uniform among international regulatory agencies. In Europe and Japan, dose selection based on toxicity endpoints or attaining high multiples of the maximum recommended human daily dose (>100X on a milligram per kilogram (mg/kg) basis) have been accepted. However, in the United States, dose selection based on the MTD has traditionally been the only acceptable practice. All regions have used a maximum feasible dose as an acceptable endpoint.

For pharmaceuticals with low rodent toxicity, use of the MTD may result in the administration of very large doses in carcinogenicity studies, often representing high multiples of the clinical dose. The usefulness of an approach developed for genotoxic substances or radiation exposure where a threshold carcinogenic dose is not necessarily definable may not be appropriate for nongenotoxic agents (NOTE 2). For nongenotoxic substances where thresholds may exist and carcinogenicity may result from alterations in normal physiology, linear extrapolations from high dose effects have been questioned. This has led to the concern that exposures in rodents greatly in excess of the intended human exposures may not be relevant to human risk, because they so greatly alter the physiology of the test species, the findings may not reflect what would occur following human exposure.

Ideally, the doses selected for rodent bioassays for nongenotoxic pharmaceuticals should provide an exposure to the agent that (1) allows an adequate margin of safety over the human therapeutic exposure, (2) is tolerated without significant chronic physiological dysfunction and are compatible with good survival, (3) is guided by a comprehensive set of animal and human data that focus broadly on the properties of the agent and the suitability of the animal, and (4) permits data interpretation in the context of clinical use.

In order to achieve international harmonization of requirements for high dose selection for carcinogenicity studies of pharmaceuticals, and to establish a rational basis for high dose selection, the ICH Expert Working Group on Safety initiated a process to arrive at mutually acceptable and scientifically based criteria for high dose selection. Several features of pharmaceutical agents distinguish them from other environmental chemicals and can justify a guideline which may differ in some respects from other guidelines. This should enhance the relevance of the carcinogenicity study for pharmaceuticals. Thus, much knowledge may be available on the pharmacology, pharmacokinetics, and metabolic disposition in humans. In addition, there will usually be information on the patient population, the expected use pattern, the range of exposure, and the toxicity and/or side effects that cannot be tolerated in humans. Diversity of the chemical and pharmacological nature of the substances developed as pharmaceuticals, plus the diversity of nongenotoxic mechanisms of carcinogenesis calls for a flexible approach to dose selection. This document proposes that any one of several approaches may be appropriate and acceptable for dose selection, and should provide for a more rational approach to dose selection for carcinogenicity studies for pharmaceuticals. These include: (1) Toxicity-based endpoints; (2) pharmacokinetic endpoints; (3) saturation of absorption; (4) pharmacodynamic endpoints; (5) maximum feasible dose; (6) additional endpoints.

Consideration of all relevant animal data and integration with available human data is paramount in determining the most appropriate endpoint for selecting the high dose for the carcinogenicity study. Relevant pharmacokinetic, pharmacodynamic, and toxicity data should always be considered in the selection of doses for the carcinogenicity study, regardless of the primary endpoint used for high dose selection.

In the process of defining such a flexible approach, it is recognized that the fundamental mechanisms of carcinogenesis are only poorly understood at the present time. Further, it is also recognized that the use of the rodent to predict human carcinogenic risk has inherent limitations, although this approach is the best available option at this time. Thus, while the use of plasma levels of drug-derived substances represents an important attempt at improving the design of the rodent bioassay, progress in this field will necessitate continuing examination of the best method to detect human risk. This guideline is therefore intended to serve as guidance in this difficult and complex area recognizing the importance of updating the specific provisions outlined below as new data become available.

General Considerations for the Conduct of Dose-Ranging Studies

The considerations involved when undertaking dose-ranging studies to select the high dose for carcinogenicity studies are the same regardless of the final endpoint utilized.

1. In practice, carcinogenicity studies are carried out in a limited number of rat and mouse strains for which there are reasonable information on spontaneous tumor incidence. Ideally, rodent species/strains with metabolic profiles as similar as possible to humans should be studied (NOTE 3).

2. Dose-ranging studies should be conducted for both males and females for all strains and species to be tested in the carcinogenicity bioassay.

3. Dose selection is generally determined from 90-day studies using the route and method of administration that will be used in the bioassay.

4. Selection of an appropriate dosing schedule and regimen should be based on clinical use and exposure patterns, pharmacokinetics, and practical considerations.

5. Ideally, both the toxicity profile and any dose-limiting toxicity should be characterized. Consideration should also be given to general toxicity, the occurrence of preneoplastic lesions and/or tissue-specific proliferative effects, and disturbances in endocrine homeostasis.

6. Changes in metabolite profile or alterations in metabolizing enzyme activities (induction or inhibition) over time, should be understood to allow for appropriate interpretation of studies.

Toxicity Endpoints in High Dose Selection

ICH 1 agreed to evaluate endpoints other than the MTD for the selection of the high dose in carcinogenicity studies. These were to be based on the pharmacological properties and toxicological profile of the test compound. There is no scientific consensus of the use of toxicity endpoints other than the MTD. Therefore, the ICH Expert Working Group on Safety has agreed to continue use of the MTD as an acceptable toxicity-based endpoint for high dose selection for carcinogenicity studies.

The following definition of the MTD is considered consistent with those published previously by international regulatory authorities (NOTE 1): The top dose or maximum tolerated dose is that which is predicted to produce a minimum toxic effect over the course of the carcinogenicity study. Such an effect may be predicted from a 90-day dose range-finding study in which minimal toxicity is observed. Factors to consider are alterations in physiological function which would be predicted to alter the animal's normal life span or interfere with interpretation of the study. Such factors include: No more than 10 percent decrease in body weight gain relative to controls; target organ toxicity; significant alterations in clinical pathological parameters.

Pharmacokinetic Endpoints in High Dose Selection

A systemic exposure representing a large multiple of the human AUC (at the maximum recommended daily dose) may be an appropriate endpoint for dose selection for carcinogenicity studies for nongenotoxic pharmaceuticals (NOTE 2) which have similar metabolic profiles in humans and rodents and low organ toxicity in rodents (high doses are well tolerated in rodents). The level of animal systemic exposure should be sufficiently great, compared to exposure to provide reassurance of an adequate test of carcinogenicity.

It is recognized that the doses administered to different species may not correspond to tissue concentrations because of different metabolic and excretory patterns. Comparability of systemic exposure is better assessed by blood concentrations of parent drug and metabolites than by administered dose. The unbound drug in plasma is thought to be the most relevant indirect measure of tissue concentrations of unbound drug. The AUC is considered the most comprehensive pharmacokinetic endpoint since it takes into account the plasma concentration of the compound and residence time in vivo.

There is as yet, no validated scientific basis for use of comparative drug plasma

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concentrations in animals and humans for the assessment of carcinogenic risk to humans. However, for the present, and based on an analysis of a data base of carcinogenicity studies performed at the MTD, the selection of a high dose for carcinogenicity studies which represents a 25 fold ratio of rodent to human plasma AUC of parent compound and/or metabolites is considered pragmatic (NOTE 4).

Criteria for Comparisons of AUC in Animals and Humans for Use in High Dose Selection

The following criteria are especially applicable for use of a pharmacokinetically-defined exposure for high dose selection.

1. Rodent pharmacokinetic data are derived from the strains used for the carcinogenicity studies using the route of compound administration and dose ranges planned for the carcinogenicity study (NOTES 5, 6, and 7).

2. Pharmacokinetic data are derived from studies of sufficient duration to take into account potential time-dependent changes in pharmacokinetic parameters which may occur during the dose ranging studies.

3. Documentation is provided on the similarity of metabolism between rodents and humans (NOTE 8).

4. In assessing exposure, scientific judgment is used to determine whether the AUC comparison is based on data for the parent, parent and metabolite(s), or metabolite(s). The justification for this decision is provided.

5. Interspecies differences in protein binding are taken into consideration when estimating relative exposure (NOTE 9).

6. Human pharmacokinetic data are derived from studies encompassing the maximum recommended human daily dose (NOTE 10).

Saturation of Absorption in High Dose Selection

High dose selection based on saturation of absorption measured by systemic availability of drug-related substances is acceptable. The mid and low doses selected for the carcinogenicity study should take into account saturation of metabolic and elimination pathways.

Pharmacodynamic Endpoints in High Dose Selection

The utility and safety of many pharmaceuticals depend on their pharmacodynamic receptor selectivity. Pharmacodynamic endpoints for high dose selection will be highly compound-specific and are considered for individual study designs based on scientific merits. The high dose selected should produce a pharmacodynamic response in dosed animals of such magnitude as would preclude further dose escalation. However, the dose should not produce disturbances of physiology or homeostasis which would compromise the validity of the study. Examples include hypotension and inhibition of blood clotting (because of the risk of spontaneous bleeding).

Maximum Feasible Dose

Currently, the maximum feasible dose by dietary administration is considered 5 percent of diet. International regulatory authorities are reevaluating this standard. It is believed that the use of pharmacokinetic endpoints (AUC ratio) for dose selection of low toxicity pharmaceuticals, discussed in this guideline, should significantly decrease the need to select high doses based on feasibility criteria.

When routes other than dietary administration are appropriate, the high dose will be limited based on considerations including practicality and local tolerance.

Additional Endpoints in High Dose Selection

It is recognized that there may be merit in the use of alternative endpoints not specifically defined in this guidance on high dose selection for rodent carcinogenicity studies. Use of these additional endpoints in individual study designs must be based on scientific rationale. Such designs are evaluated based on their individual merits (NOTE 11).

Selection of Middle and Low Doses in Carcinogenicity Studies

Regardless of the method used for the selection of the high dose, the selection of the mid and low doses for the carcinogenicity study should provide information to aid in assessing the relevance of study findings to humans. The doses should be selected following integration of rodent and human pharmacokinetic, pharmacodynamic, and toxicity data. The rationale for the selection of these doses should be provided. While not all encompassing, the following points should be considered in selection of the middle and low doses for rodent carcinogenicity studies:

1. Linearity of pharmacokinetics and saturation of metabolic pathways.
2. Human exposure and therapeutic dose.
3. Pharmacodynamic response in rodents.
4. Alterations in normal rodent physiology.
5. Mechanistic information and potential for threshold effects.
6. The unpredictability of the progression of toxicity observed in short-term studies.

Summary

This guidance outlines five generally acceptable criteria for selection of the high dose for carcinogenicity studies of therapeutics: Maximum tolerated dose, 25 fold AUC ratio (rodent:human), dose-limiting pharmacodynamic effects, saturation of absorption, and maximum feasible dose. The use of other pharmacodynamic-pharmacokinetic- or toxicity-based endpoints in study design is considered based on scientific rationale and individual merits. In all cases, appropriate dose ranging studies need to be conducted. All relevant information should be considered for dose and species/strain selection for the carcinogenicity study. This information should include knowledge of human use, exposure patterns, and metabolism. The availability of multiple acceptable criteria for dose selection will provide greater flexibility in optimizing the design of carcinogenicity studies for therapeutic agents.

NOTE 1

The following are considered equivalent definitions of the toxicity based endpoint describing the maximum tolerated dose:

The U.S. Interagency Staff Group on Carcinogens has defined the MTD as follows:

"The highest dose currently recommended is that which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's normal lifespan due to effects other than carcinogenicity. This dose, sometimes called the maximum tolerated dose (MTD), is determined in a subchronic study (usually 90 days duration) primarily on the basis of mortality, toxicity and pathology criteria. The MTD should not produce morphologic evidence of toxicity of a severity that would interfere with the interpretation of the study. Nor should it comprise so large a fraction of the animal's diet that the nutritional composition of the diet is altered, leading to nutritional imbalance."

"The MTD was initially based on a weight gain decrement observed in the subchronic study; i.e., the highest dose that caused no more than a 10% weight gain decrement. More recent studies and the evaluation of many more bioassays indicate refinement of MTD selection on the basis of a broader range of biological information. Alterations in body and organ weight and clinically significant changes in hematologic, urinary, and clinical chemistry measurements can be useful in conjunction with the usually more definitive toxic, pathologic, or histopathologic endpoints." (Environmental Health Perspectives, Vol. 67, pp. 201–281, 1986.)

The Ministry of Health and Welfare in Japan prescribes the following:

"The dose in the preliminary carcinogenicity study that inhibits body weight gain by less than 10% in comparison with the control and causes neither death due to toxic effects nor remarkable changes in the general signs and laboratory examination findings of the animals is the highest dose to be used in the full-scale carcinogenicity study." (Toxicity test guideline for pharmaceuticals. Chapter 5, p. 127, 1985.)

The Committee on Proprietary Medicinal Products of the European Community prescribes the following:

"The top dose should produce a minimum toxic effect, for example a 10% weight loss or failure of growth, or minimal target organ toxicity. Target organ toxicity will be demonstrated by failure of physiological functions and ultimately by pathological changes." (Rules Governing Medicinal Products in the European Community, Vol. III, 1987.)

NOTE 2

While it is recognized that standard test batteries may not examine all potential genotoxic mechanisms, for the purposes of this guideline, a pharmaceutical is considered nongenotoxic with respect to the use of pharmacokinetic endpoints for dose selection, if it is negative in the standard battery of assays required for pharmaceutical registration.

NOTE 3

This does not imply that all possible rodent strains will be surveyed for metabolic profile. But rather, that standard strains used in carcinogenicity studies will be examined.

NOTE 4

In order to select a multiple of the human AUC that would serve as an acceptable endpoint for dose selection for carcinogenicity studies, a retrospective analysis was performed on data from carcinogenicity studies of therapeutics conducted at the MTD for which there was sufficient human and rodent pharmacokinetic data for comparison of AUC values.

In 35 drug carcinogenicity studies carried out at the MTD for which there were adequate pharmacokinetic data in rats and humans, approximately, 1/3 had a relative systemic exposure ratio less than or equal to 1, another 1/3 had ratios between 1 and 10.

An analysis of the correlation between the relative systemic exposure ratio, the relative dose ratio (rat mg/kg MTD: human mg/kg MRD) and the dose ratio adjusted for body surface area (rat mg/M2 MTD:human mg/M2 MRD), performed in conjunction with the above described data base analysis indicates that the relative systemic exposure corresponds better with dose ratios expressed in terms of body surface area rather than body weight. When 123 compounds in the expanded FDA data base were analyzed by this approach, a similar distribution of relative systemic exposures was observed.

In the selection of a relative systemic exposure ratio (AUC ratio) to apply in high dose selection, consideration was given to a ratio value that would represent an adequate margin of safety, would detect known or probable human carcinogens, and could be attained by a reasonable proportion of compounds.

To address the issue of detection of known or probable human carcinogenic pharmaceuticals, an analysis of exposure and or dose ratios was performed on the International Agency for Research on Cancer (IARC) class 1 and 2A pharmaceuticals with positive rat findings. For phenacetin, sufficient rat and human pharmacokinetic data are available to estimate that a relative systemic exposure ratio of at least 15 is necessary to produce positive findings in a rat carcinogenicity study. For most of 14 IARC 1 and 2A drugs evaluated with positive carcinogenicity findings in rats, there is a lack of adequate pharmacokinetic data for analysis. For these compounds, the body surface area adjusted dose ratio was employed as a surrogate for the relative systemic exposure ratio. The results of this analysis indicated that using doses in the rodent corresponding to body surface area ratios of 10 or more would identify the carcinogenic potential of these pharmaceuticals.

As a result of the evaluations described above, a minimum systemic exposure ratio of 25 is proposed as an acceptable pharmacokinetic endpoint for high dose selection. This value was attained by approximately 25 percent of compounds tested in the FDA data base, is high enough to detect known or probable (IARC 1, 2A) human carcinogenic drugs and represent an adequate margin of safety. Those pharmaceuticals tested using a 25 fold or greater AUC ratio for the high dose will have exposure ratios greater than 75 percent of pharmaceuticals tested previously in carcinogenicity studies performed at the MTD.

NOTE 5

The rodent AUC's and metabolite profiles may be determined from separate steady state kinetic studies, as part of the subchronic toxicity studies, or dose ranging studies.

NOTE 6

AUC values in rodents are usually obtainable using a small number of animals, depending on the route of administration and the availability of data on the pharmacokinetic characteristics of the test compound.

NOTE 7

Equivalent analytical methods of adequate sensitivity and precision are used to determine plasma concentrations of pharmaceuticals in rodents and humans.

NOTE 8

It is recommended that in vivo metabolism be characterized in humans and rodents, if possible. However, in the absence of appropriate in vivo metabolism data, in vitro metabolism data (e.g., from liver slices, uninduced microsomal preparations) may provide adequate support for the similarity of metabolism across species.

NOTE 9

While in vivo determinations of unbound drug may be the best approach, in vitro determinations of protein binding using parent and/or metabolites as appropriate (over the range of concentrations achieved in vivo in rodents and humans) may be used in the estimation of AUC unbound. When protein binding is low in both humans and rodents or when protein binding is high and the unbound fraction of drug is greater in rodents than in humans, the comparison of total plasma concentration of drug is acceptable. When protein binding is high and the unbound fraction is greater in humans than in rodents, the ratio of the unbound concentrations should be used.

NOTE 10

Human systemic exposure data may be derived from pharmacokinetic monitoring in normal volunteers and/or patients. The possibility of extensive inter-individual variation in exposure should be taken into consideration. In the absence of knowledge of the maximum recommended human daily dose, at a minimum, doses producing the desired pharmacodynamic effect in humans are used to derive the pharmacokinetic data.

NOTE 11

Additional pharmaceutical-specific endpoints to select an appropriate high dose are currently under discussion (e.g., additional pharmacodynamic, pharmacokinetic, and toxicity endpoints as well as alternatives to a maximum feasible dose).

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Clinical Safety Data Management; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0203]

International Conference on Harmonisation; Guideline on Clinical Safety Data Management: Definitions and Standards for Expedited Reporting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting." This guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline provides standard definitions and terms for key aspects of clinical safety reporting. The guideline also discusses mechanisms for expedited reporting. This guideline is intended to help harmonize methods for gathering and evaluating clinical safety data.

DATES: Effective March 1, 1995. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of the guideline are available from CDER Executive Secretariat Staff (HFD–8), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–6740.
Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

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The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

Harmonization of clinical safety data management was selected as a priority topic during the early stages of the ICH initiative. In the **Federal Register** of July 9, 1993 (58 FR 37408), FDA published a draft tripartite guideline entitled, "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting." The notice gave interested persons an opportunity to submit comments by August 9, 1993.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held in October 1994.

The guideline defines basic terms, such as "adverse event," "adverse drug reaction," and "unexpected adverse drug reaction." The guideline also provides guidance on determining whether an adverse drug reaction is "expected," and contains standards for expedited reporting, describing what information should be reported, recommending reporting timeframes and the use of the CIOMS-I form for reporting information or, alternatively, suggesting that basic information or data elements be used. The guideline also discusses: Whether and when the blind should be broken for a patient; reporting reactions associated with comparison drug or placebo treatments; products with more than one dosage form, route of administration, or use; and adverse events that occur after the patient has completed the clinical study.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this guideline is not being issued under the authority of § 10.90(b), and it does not create or confer any rights, privileges, or benefits for or on any person, nor does it operate to bind FDA in any way.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

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The text of the guideline follows:

Clinical Safety Data Management: Definitions and Standards for Expedited Reporting

I. Introduction

It is important to harmonize the way to gather and, if necessary, to take action on important clinical safety information arising during clinical development. Thus, agreed definitions and terminology, as well as procedures, will ensure uniform Good Clinical Practice standards in this area. The initiatives already undertaken for marketed medicines through the CIOMS–1 and CIOMS–2 Working Groups on expedited (alert) reports and periodic safety update reporting, respectively, are important precedents and models. However, there are special circumstances involving medicinal products under development, especially in the early stages and before any marketing

experience is available. Conversely, it must be recognized that a medicinal product will be under various stages of development and/or marketing in different countries, and safety data from marketing experience will ordinarily be of interest to regulators in countries where the medicinal product is still under investigational only (Phase 1, 2, or 3) status. For this reason, it is both practical and well-advised to regard premarketing and postmarketing clinical safety reporting concepts and practices as interdependent, while recognizing that responsibility for clinical safety within regulatory bodies and companies may reside with different departments, depending on the status of the product (investigational versus marketed).

There are two issues within the broad subject of clinical safety data management that are appropriate for harmonization at this time:

(1) The development of standard definitions and terminology for key aspects of clinical safety reporting, and

(2) The appropriate mechanism for handling expedited (rapid) reporting, in the investigational (i.e., preapproval) phase.

The provisions of this guideline should be used in conjunction with other ICH Good Clinical Practice guidelines.

II. Definitions and Terminology Associated with Clinical Safety Experience

A. Basic Terms

Definitions for the terms adverse event (or experience), adverse reaction, and unexpected adverse reaction have previously been agreed to by consensus of the more than 30 Collaborating Centers of the WHO International Drug Monitoring Centre (Uppsala, Sweden). (Edwards, I. R., et al., "Harmonisation in Pharmacovigilance," *Drug Safety*, 10(2): 93–102, 1994.) Although those definitions can pertain to situations involving clinical investigations, some minor modifications are necessary, especially to accommodate the preapproval, development environment.

The following definitions, with input from the WHO Collaborative Centre, have been agreed.

1. Adverse Event (or Adverse Experience).

Any untoward medical occurrence in a patient or clinical investigation subject administered a pharmaceutical product and which does not necessarily have to have a causal relationship with this treatment.

An adverse event (AE) can therefore be any unfavorable and unintended sign (including an abnormal laboratory finding, for example), symptom, or disease temporally associated with the use of a medicinal product, whether or not considered related to the medicinal product.

2. Adverse Drug Reaction (ADR).

In the *preapproval clinical experience* with a new medicinal product or its new usages, particularly as the therapeutic dose(s) may not be established:

All noxious and unintended responses to a medicinal product related to any dose should be considered adverse drug reactions.

The phrase "responses to medicinal products" means that a causal relationship between a medicinal product and an adverse event is at least a reasonable possibility, i.e., the relationship cannot be ruled out.

Regarding *marketed medicinal products*, a well-accepted definition of an adverse drug reaction in the postmarketing setting is found in WHO Technical Report 498 (1972) and reads as follows:

"A response to a drug which is noxious and unintended and which occurs at doses normally used in man for prophylaxis, diagnosis, or therapy of disease or for modification of physiological function."

The old term "side effect" has been used in various ways in the past, usually to describe negative (unfavorable) effects, but also positive (favorable) effects. It is recommended that this term no longer be used and particularly should not be regarded as synonymous with adverse event or adverse reaction.

3. Unexpected Adverse Drug Reaction

An adverse reaction, the nature or severity of which is not consistent with the applicable product information (e.g., Investigator's Brochure for an unapproved investigational medicinal product). See III. C.

B. Serious Adverse Event Or Adverse Drug Reaction

During clinical investigations, adverse events may occur which, if suspected to be medicinal product-related (adverse drug reactions), might be significant enough to lead to important changes in the way the medicinal product is developed (e.g., change in dose, population, needed monitoring, consent forms). This is particularly true for reactions which, in their most severe forms, threaten life or function. Such reactions should be reported promptly to regulators.

Therefore, special medical or administrative criteria are needed to define reactions that, either due to their nature ("serious") or due to the significant, unexpected information they provide, justify expedited reporting.

To ensure that no confusion or misunderstanding exist of the difference between the terms "serious" and "severe," which are not synonymous, the following note of clarification is provided:

The term "severe" is often used to describe the intensity (severity) of a specific event (as in mild, moderate, or severe myocardial infarction); the event itself, however, may be of relatively minor medical significance (such as severe headache). This is *not* the same as "serious," which is based on patient/event *outcome or action* criteria usually associated with events that pose a threat to a patient's life or functioning. Seriousness (not severity) serves as a guide for defining regulatory reporting obligations.

After reviewing the various regulatory and other definitions in use or under discussion elsewhere, the following definition is believed to encompass the spirit and meaning of them all:

A serious adverse event (experience) or reaction is any untoward medical occurrence that at any dose:

- Results in death,
- Is life-threatening,

(NOTE: The term "life-threatening" in the definition of "serious" refers to an event in which the patient was at risk of death at the time of the event; it does not refer to an event which hypothetically might have caused death if it were more severe.)

- Requires inpatient hospitalization or prolongation of existing hospitalization,
- Results in persistent or significant disability/incapacity, or
- Is a congenital anomaly/birth defect.

Medical and scientific judgment should be exercised in deciding whether expedited reporting is appropriate in other situations, such as important medical events that may not be immediately life-threatening or result in death or hospitalization but may jeopardize the patient or may require intervention to prevent one of the other outcomes listed in the definition above. These should also usually be considered serious.

Examples of such events are intensive treatment in an emergency room or at home for allergic bronchospasm; blood dyscrasias or convulsions that do not result in hospitalization; or development of drug dependency or drug abuse.

C. Expectedness of an Adverse Drug Reaction

The purpose of expedited reporting is to make regulators, investigators, and other appropriate people aware of new, important information on serious reactions. Therefore, such reporting will generally involve events previously unobserved or undocumented, and a guideline is needed on how to define an event as "unexpected" or "expected" (expected/unexpected from the perspective of previously observed, *not* on the basis of what might be anticipated from the pharmacological properties of a medicinal product).

As stated in the definition (II.A.3.), an "unexpected" adverse reaction is one, the nature or severity of which is not consistent with information in the relevant source document(s). Until source documents are amended, expedited reporting is required for additional occurrences of the reaction.

The following documents or circumstances will be used to determine whether an adverse event/reaction is expected:

1. For a medicinal product not yet approved for marketing in a country, a company's Investigator's Brochure will serve as the source document in that country. See III.F. and ICH Guideline for the Investigator's Brochure.

2. Reports which add significant information on specificity or severity of a known, already documented serious ADR constitute unexpected events. For example, an event more specific or more severe than described in the Investigator's Brochure would be considered "unexpected." Specific examples would be (a) acute renal failure as a labeled ADR with a subsequent new report of interstitial nephritis and (b) hepatitis with a first report of fulminant hepatitis.

III. Standards for Expedited Reporting

A. What Should Be Reported?

1. Single Cases of Serious, Unexpected ADR's

All ADR's that are both serious and unexpected are subject to expedited reporting. This applies to reports from spontaneous sources and from any type of

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clinical or epidemiological investigation, independent of design or purpose. It also applies to cases not reported directly to a sponsor or manufacturer (for example, those found in regulatory authority generated ADR registries or in publications). The source of a report (investigation, spontaneous, other) should always be specified.

Expedited reporting of reactions that are serious but *expected* will ordinarily be inappropriate. Expedited reporting is also inappropriate for serious events from clinical investigations that are considered *not* related to study product, whether the event is expected or not. Similarly, nonserious adverse reactions, whether expected or not, will ordinarily not be subject to *expedited* reporting.

Information obtained by a sponsor or manufacturer on serious, unexpected reports from any source should be submitted on an expedited basis to appropriate regulatory authorities if the minimum criteria for expedited reporting can be met. See section III.B.

Causality assessment is required for clinical investigation cases. All cases judged by either the reporting health care professional or the sponsor as having a reasonable suspected causal relationship to the medicinal product qualify as ADR's. For purposes of reporting, adverse event reports associated with marketed drugs (spontaneous reports) usually imply causality.

Many terms and scales are in use to describe the degree of causality (attributability) between a medicinal product and an event, such as certainly, definitely, probably, possibly, or likely related or not related. Phrases such as "plausible relationship," "suspected causality," or "causal relationship cannot be ruled out" are also invoked to describe cause and effect. However, there is currently no standard international nomenclature. The expression "reasonable causal relationship" is meant to convey in general that there are facts (evidence) or arguments to suggest a causal relationship.

2. Other Observations

There are situations in addition to single case reports of "serious" adverse events or reactions that may necessitate rapid communication to regulatory authorities; appropriate medical and scientific judgment should be applied for each situation. In general, information that might materially influence the benefit-risk assessment of a medicinal product or that would be sufficient to consider changes in medicinal product administration or in the overall conduct of a clinical investigation represents such situations. Examples include:

a. For an "expected, serious ADR, an increase in the rate of occurrence which is judged to be clinically important.

b. A significant hazard to the patient population, such as lack of efficacy with a medicinal product used in treating life-threatening disease.

c. A major safety finding from a newly completed animal study (such as carcinogenicity).

B. Reporting Time Frames

1. Fatal Or Life-Threatening Unexpected ADR's

Certain ADR's may be sufficiently alarming so as to require very rapid notification to regulators in countries where the medicinal product or indication, formulation, or population for the medicinal product are still not approved for marketing, because such reports may lead to consideration of suspension of, or other limitations to, a clinical investigation program. Fatal or life-threatening, unexpected ADR's occurring in clinical investigations qualify for very rapid reporting. Regulatory agencies should be notified (e.g., by telephone, facsimile transmission, or in writing) as soon as possible but no later than 7 calendar days after first knowledge by the sponsor that a case qualifies, followed by as complete a report as possible within 8 additional calendar days. This report should include an assessment of the importance and implication of the findings, including relevant previous experience with the same or similar medicinal products.

2. All Other Serious, Unexpected ADR's

Serious, unexpected reactions (ADR's) that are not fatal or life-threatening should be filed as soon as possible but no later than 15 calendar days after first knowledge by the sponsor that the case meets the minimum criteria for expedited reporting.

3. Minimum Criteria for Reporting

Information for final description and evaluation of a case report may not be available within the required timeframes for reporting outlined above. Nevertheless, for regulatory purposes, initial reports should be submitted within the prescribed time as long as the following minimum criteria are met: An identifiable patient; a suspect medicinal product; an identifiable reporting source; and an event or outcome that can be identified as serious and unexpected, and for which, in clinical investigation cases, there is a reasonable suspected causal relationship. Followup information should be actively sought and submitted as it becomes available.

C. How To Report

The CIOMS-I form has been a widely accepted standard for expedited adverse event reporting. However, no matter what the form or format used, it is important that certain basic information/data elements, when available, be included with any expedited report, whether in a tabular or narrative presentation. The listing in Attachment 1 addresses those data elements regarded as desirable; if all are not available at the time of expedited reporting, efforts should be made to obtain them. See III.B.

All reports must be sent to those regulators or other official parties requiring them (as appropriate for the local situation) in countries where the drug is under development.

D. Managing Blinded Therapy Cases

When the sponsor and investigator are blinded to individual patient treatment (as in a double-blind study), the occurrence of a serious event requires a decision on whether to open (break) the code for the specific patient. If the investigator breaks the blind, then it is assumed the sponsor will also know the assigned treatment for that patient. Although it is advantageous to retain the blind for all patients prior to final study analysis, when a serious adverse reaction is judged reportable on an expedited basis, it is recommended that the blind be broken only for that specific patient by the sponsor even if the investigator has not broken the blind. It is also recommended that, when possible and appropriate, the blind be maintained for those persons, such as biometrics personnel, responsible for analysis and interpretation of results at the study's conclusion.

There are several disadvantages to maintaining the blind under the circumstances described which outweigh the advantages. By retaining the blind, placebo and comparator (usually a marketed product) cases are filed unnecessarily. When the blind is eventually opened, which may be many weeks or months after reporting to regulators, it must be ensured that company and regulatory data bases are revised. If the event is serious, new, and possibly related to the medicinal product, then if the Investigator's Brochure is updated, notifying relevant parties of the new information in a blinded fashion is inappropriate and possibly misleading. Moreover, breaking the blind for a single patient usually has little or no significant implications for the conduct of the clinical investigation or on the analysis of the final clinical investigation data.

However, when a fatal or other "serious" outcome is the primary efficacy endpoint in a clinical investigation, the integrity of the clinical investigation may be compromised if the blind is broken. Under these and similar circumstances, it may be appropriate to reach agreement with regulatory authorities in advance concerning serious events that would be treated as disease-related and not subject to routine expedited reporting.

E. Miscellaneous Issues

1. Reactions Associated With Active Comparator or Placebo Treatment

It is the sponsor's responsibility to decide whether active comparator drug reactions should be reported to the other manufacturer and/or directly to appropriate regulatory agencies. Sponsors should report such events to either the manufacturer of the active control or to appropriate regulatory agencies. Events associated with placebo will usually not satisfy the criteria for an ADR and, therefore, for expedited reporting.

2. Products With More Than One Presentation or Use

To avoid ambiguities and uncertainties, an ADR that qualifies for expedited reporting with one presentation of a product (e.g., a dosage form, formulation, delivery system) or product use (e.g., for an indication or population) should be reported or referenced to regulatory filings across other product presentations and uses.

It is not uncommon that more than one dosage form, formulation, or delivery system (oral, IM, IV, topical, etc.) of the pharmacologically active compound(s) is under study or marketed; for these different presentations there may be some marked differences in the clinical safety profile. The same may apply for a given product used in different indications or populations (single dose versus chronic administration, for example). Thus, "expectedness" may be

product or product-use specific, and separate Investigator's Brochures may be used accordingly. However, such documents are expected to cover ADR information that applies to all affected product presentations and uses. When relevant, separate discussions of pertinent product-specific or use-specific safety information will also be included.

It is recommended that any adverse drug reactions that qualify for expedited reporting observed with one product dosage form or use be cross referenced to regulatory records for all other dosage forms and uses for that product. This may result in a certain amount of overreporting or unnecessary reporting in obvious situations (for example, a report of phlebitis on IV injection sent to authorities in a country where only an oral dosage form is studied or marketed). However, underreporting is completely avoided.

3. Poststudy Events

Although such information is not routinely sought or collected by the sponsor, serious adverse *events* that occurred after the patient had completed a clinical study (including any protocol required posttreatment followup) will possibly be reported by an investigator to the sponsor. Such cases should be regarded for expedited reporting purposes as though they were study reports. Therefore, a causality assessment and determination of expectedness are needed for a decision on whether or not expedited reporting is required.

F. Informing Investigators and Ethics Committees/Institutional Review Boards of New Safety Information

International standards regarding such communication are discussed within the ICH GCP Guidelines, including the addendum on "Guideline for the Investigator's Brochure." In general, the sponsor of a study should amend the Investigator's Brochure as needed, and in accord with any local regulatory requirements, so as to keep the description of safety information updated.

Attachment 1

Key Data Elements for Inclusion in Expedited Reports of Serious Adverse Drug Reactions

The following list of items has its foundation in several established precedents, including those of CIOMS-I, the WHO International Drug Monitoring Centre, and various regulatory authority forms and guidelines. Some items may not be relevant depending on the circumstances. The minimum information required for expedited reporting purposes is: an identifiable patient, the name of a suspect medicinal product, an identifiable reporting source, and an event or outcome that can be identified as serious and unexpected and for which, in clinical investigation cases, there is a reasonable suspected causal relationship. Attempts should be made to obtain followup information on as many other listed items pertinent to the case.

1. Patient Details:

- Initials,
- Other relevant identifier (clinical investigation number, for example),
- Gender,
- Age and/or date of birth,
- Weight,
- Height.

2. Suspected Medicinal Product(s):

- Brand name as reported,
- International Nonproprietary Name (INN),
- Batch number,
- Indication(s) for which suspect medicinal product was prescribed or tested,
- Dosage form and strength,
- Daily dose and regimen (specify units—e.g., mg, mL, mg/kg)
- Route of administration,
- Starting date and time of day,
- Stopping date and time, or duration of treatment.

3. Other Treatment(s):

- For concomitant medicinal products (including nonprescription/OTC medicinal products) and nonmedicinal product therapies, provide the same information as for the suspected product.

4. Details Of Suspected Adverse Drug Reaction(s)

- Full description of reaction(s) including body site and severity, as well as the criterion (or criteria) for regarding the report as serious should be given. In addition to a description of the reported signs and symptoms, whenever possible, attempts should be made to establish a specific diagnosis for the reaction.
- Start date (and time) of onset of reaction,
- Stop date (and time) or duration of reaction,
- Dechallenge and rechallenge information,
- Setting (e.g., hospital, out-patient clinic, home, nursing home),
- Outcome: Information on recovery and any sequelae; what specific tests and/or treatment may have been required and their results; for a fatal outcome, cause of death and a comment on its possible relationship to the suspected reaction should be provided. Any autopsy or other post-mortem findings (including a coroner's report) should also be provided when available. Other information: anything relevant to facilitate assessment of the case, such as medical history, including allergy, drug or alcohol abuse; family history; findings from special investigations.

5. Details on Reporter of Event (Suspected ADR):

- Name,
- Address,
- Telephone number,
- Profession (specialty).

6. Administrative and Sponsor/Company Details:

- Source of report: was it spontaneous, from a clinical investigation (provide details), from the literature (provide copy), other?
- Date event report was first received by sponsor/manufacturer,
- Country in which event occurred,
- Type of report filed to authorities: initial or followup (first, second, etc.).
- Name and address of sponsor/manufacturer/company,
- Name, address, telephone number, and FAX number of contact person in reporting company or institution,
- Identifying regulatory code or number for marketing authorization dossier or clinical investigation process for the suspected product (for example, IND or CTX number, NDA number).
- Sponsor/manufacturer's identification number for the case. (This number should be the same for the initial and followup reports on the same case.)

Dated: February 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

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Part XIV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notices

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment I to the Tribal-State Compact For Regulation of Class III Gaming Between the Confederated Tribes of the Grand Ronde Community of Oregon and the State of Oregon, which was executed on December 29, 1994.

DATES: This action is effective March 1, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–4992 Filed 2–28–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal-State Compact For Regulation of Class III Gaming Between the Coushatta Tribe and the State of Louisiana which was executed on January 12, 1995.

DATES: This action is effective March 1, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: February 21, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–4993 Filed 2–28–95; 8:45 am]

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March 1, 1995

Part XV

Department of Defense

Office of the Secretary

Base Closures and Realignments; Notice

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DEPARTMENT OF DEFENSE

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Office of the Secretary

Base Closure and Realignments

AGENCY: Office of the Secretary of Defense, DoD

ACTION: Notice of Recommended Base Closures and Realignments

SUMMARY: The Secretary of Defense is authorized to recommend military installations inside the United States for closure and realignment in accordance with Title XXIX, Part A of the FY 1991 National Defense Authorization Act, as amended. The Secretary is required to publish his recommendations in the Federal Register by March 1. The recommendations follow.

EFFECTIVE DATE: March 1, 1995

FOR A REPORT ON THE DOD RECOMMENDATIONS CONTACT: The Office of the Assistant to the Secretary of Defense for Public Affairs, Directorate of Public Communication, (703) 697-5737.

L.M. Bynum
Alternate OSD Federal Register
Liason Officer
Department of Defense
February 27, 1995

THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1000

February 28, 1995

Honorable Alan J. Dixon
Chairman
Defense Base Closure and Realignment Commission
1700 North Moore Street, Suite 1425
Arlington, VA 22209

Dear Mr. Chairman:

Under the procedures of Public Law 101-510, as amended, I hereby transmit for your review my recommendations to close or realign 146 installations. Attached to this letter is a summary of the selection process and the description of and justification for each recommendation.

These recommendations were not arrived at easily. We were forced to consider and choose among many excellent facilities. But there is no alternative: if we fail to bring our infrastructure in line with our force structure and budget, we will lack the funds to maintain our readiness and modernization in years to come.

Being Objective and Fair

The base closure process was designed by the Congress to be objective, open and fair. Each potential recommendation is measured by published criteria, which gives priority first to military value, then to cost savings and to the economic and other impacts upon local communities. The data employed have been certified and our procedures have been overseen by the DoD Inspector General and the General Accounting Office. Both, of course, will be reviewed in detail by the public and your Commission.

That process has worked well so far, and we have followed it to the letter.

Within the Department, recommendations were made first by each Military Department and certain Defense Agencies (hereafter, "the Services"). Each Service made its best judgment about the facilities it has and the capacities it needs, applying the published force structure and criteria required by the law. They operated under the guidance of a BRAC Review Group chaired by the Deputy Secretary.

At the beginning of February, the Services made their recommendations to me. Since that time, my staff and the Joint Staff have reviewed the recommendations and underlying analyses to ensure that the law and DoD policies were followed. We particularly looked for concerns or

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effects that the Military Departments might not fully have taken into account, such as the war fighting requirements of the Unified and Specified Commanders, treaty obligations of the United States, and possible economic impacts from independent actions of several Services on a particular locale.

Preserving Military Capabilities

My recommendations are consistent with the force structure plan for the Armed Forces for the six-year period of the Future Years Defense Plan. In Fiscal year 1999, the active Army will have 10 divisions; we will have room to station all of them. The active Navy will have 11 carriers; we will have room to berth them. The active Air Force will have 936 fighters; we will have room to beddown all of them. The active Marine Corps will contain 3 divisions; we will be able to base them. In exercising military judgment, the Services have retained domestic capacity to accommodate their forward deployed forces if need be. I am confident, therefore, that the remaining base structure can accommodate any foreseeable force resizing -- even a significant degree of reconstitution.

The Chairman, Joint Chiefs of Staff concurs in this view and supports these recommendations fully.

Based upon the 1993 BRAC Commission's recommendation and my own view that the support structure of the Department needed to be reduced just as the combat force had been, I designated common support functions as areas of special attention in BRAC 95. Joint Cross Service Groups analyzed the Department's depot, medical, pilot training, laboratory, and test and evaluation facilities. These groups assessed both the functional value and the capacity of these facilities. They compared this to projected needs and suggested to the Services both reduction goals and possible alternatives to meet them. The Services then considered these alternatives in their own review process. In some cases they adopted these suggestions as recommended or in modified form; in other cases they declined to do so because the bases had unique military value to the Services, or for other reasons. Overall, the cross service effort did assist in reducing excess capacity and determining where joint or collocated functions made functional and economic sense. Further, this DoD-wide review of support functions provides a road map for cross-servicing in the future.

In the logistics area, in particular, savings were achieved using several strategies. The Army, Navy, and Defense Logistics Agency (DLA) all proposed closing major depots and/or shipyards. The Air Force, however, proposes to achieve significant savings by consolidating and reducing activity at its five air logistics centers in place, as well as providing consolidation sites for DLA storage activities. Because of the Air Force's unique logistics complexes, this approach proved significantly more cost effective than closures.

These Recommendations Will Save Billions

My recommendations, if approved, will provide very substantial savings to the taxpayers and the Department. Initially, implementing these closures and realignments will require expenditures estimated at $3.8 billion (excepting certain environmental costs). However, even within the 6 year planning period for which we program a budget, this round will provide approximately $4 billion in savings (FY96$) in excess of the costs required for base closure. These savings will continue at the rate of approximately $1.8 billion per year, and over the twenty year period for which we forecast should total some $18 billion (measured on a present value basis in today's dollars).

Net savings, FY 1996-2001	**$ 4.0 billion**
Annual savings thereafter	**$ 1.8 billion**
Total (over 20 years, present value)	**$18.4 billion.**

The 1995 program, coupled with the previously approved closures, will reduce the domestic base structure by about 21 percent (measured by replacement value). All four rounds of closures together, when complete in 2001, will produce about $6.0 billion in annual recurring savings (FY96$) and a total savings over 20 years in present value of almost $57 billion.

Assisting Community Recovery

As we implement these closures, we recognize a special obligation to those men and women -- military and civilian -- who won the Cold War. We will meet that obligation.

In addition to transition programs for DoD personnel, the Department is determined to carry out the President's promise to help base closure communities reshape their economic future. This assistance comes in many forms: technical assistance and planning grants; on site base transition coordinators to provide a focal point for Federal assistance; accelerated property disposal to make surplus property available for civilian reuse; and fast track environmental clean-up in coordination with Federal and State regulators and community reuse authorities.

In some cases, reused bases are now home to more civilian jobs than there were before closure. Many communities have found that base property can be the bedrock for a healthier and more diverse economy. What it requires is strong local leadership and a lot of hard work. We at the Department stand ready to help.

I have sent identical letters, with enclosures, to the Chairmen of the House National Security and Appropriations Committees and the Senate Armed Services and Appropriations Committees, and published this letter, with its enclosures, in the Federal Register.

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In closing, I would like to note the critical role that your Commission plays. Your review is an essential confirmation of the integrity of our procedures and the soundness of our judgments. We know that your review of our recommendations will be as searching, thorough and careful as the process by which we made them. We stand ready to provide any information you require and to discuss any judgment we have made. In the end, we hope you endorse our recommendations in this process that is so critical to our Nation's security.

Sincerely,

William J. Perry

Enclosures

Recommendations of the Secretary of Defense for Closure or Realignment of Military Installations Inside the United States

In developing the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), as amended, Congress provided mechanisms to ensure that the process would be fair, objective, and open. The Act requires that closures and realignments of military installations in the United States must be recommended on the basis of a six-year force structure plan and public selection criteria.

The procedures are continually subject to review by the DoD Inspector General, the General Accounting Office, as well as by the BRAC Commission and the public. This section describes them in detail.

Policy Guidance

The Deputy Secretary established the policy, procedures, authorities and responsibilities for selecting bases for realignment or closure (BRAC) by memorandum dated January 7, 1994. This policy guidance provided the Secretaries of the Military Departments and the Directors of the Defense Agencies with the responsibility to provide the Secretary of Defense with recommendations for closures and realignments. This policy also required the Secretaries of the Military Departments and Defense Agencies to develop recommendations based exclusively upon the force structure plan and final selection criteria; consider all military installations inside the United States (as defined in the law) equally; analyze their base structure using like categories of bases; use objective measures for the selection criteria wherever possible; and allow for the exercise of military judgement in selecting bases for closure and realignment.

The Deputy Secretary also established the BRAC 95 Review Group and the BRAC 95 Steering Group to oversee the entire BRAC process. The BRAC 95 Review Group was composed of senior level representatives from each of the Military Departments, Chairpersons of the BRAC 95 Steering Group and each Joint Cross-Service Group, and other senior officials from the Office of the Secretary of Defense, Joint Staff and Defense Logistics Agency. It provided oversight and policy for the entire BRAC process. The BRAC 95 Steering Group assisted the Review Group in exercising its authorities.

The Assistant Secretary of Defense for Economic Security was given the responsibility to oversee the 1995 process, and was delegated authority to issue additional instructions.

The Chairman of the Joint Chiefs issued the interim force structure plan, as directed by the Deputy Secretary's January 7, 1994 memorandum, on February 7, 1994. The Deputy Secretary issued the final selection criteria on November 2, 1994. The Deputy Secretary provided the final force structure plan on January 11, 1995. This Plan was updated on February 22, 1995, by the Deputy Secretary to reflect budget decisions, and was provided to Congress and the Commission on the same day.

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Joint Cross-Service Functions

The 1993 BRAC Commission recommended that the Department develop procedures for considering potential joint or common activities among the Military Departments. For BRAC 95, the Deputy Secretary directed the creation of Joint Cross-Service Groups (JCSGs) to consider these issues in conjunction with the Military Departments.

As announced in the Deputy Secretary's January 7, 1994, BRAC policy guidance, and further addressed in BRAC Policy Memorandum Number Two, issued on November 2, 1994, a process, involving both Joint Cross-Service Groups (JCSGs) and the individual Military Departments, was established to develop closure and realignment alternatives in situations involving common support functions for five functional areas. The five functional areas were: Depot Maintenance, Military Medical Treatment Facilities, Test and Evaluation, Undergraduate Pilot Training and Laboratories.

Each of the Joint Cross-Service Groups developed excess capacity reduction goals; established data collection procedures and milestone schedules for cross-service analysis of common support functions; and presented alternatives to the Military Departments for their consideration in developing recommendations. The JCSGs issued their alternatives to the Military Departments in November of 1994, and they considered them as part of their ongoing BRAC analysis.

In some instances, the Departments adopted the alternatives and recommended them, as made or modified, to the Secretary of Defense. In other instances, the Services declined to endorse them, because the particular alternative was considered to not be cost effective or for other reasons.

A summary of each of the joint cross-service functional reviews follows:

Depot Maintenance

In depot maintenance, the overall capacity reduction goals were attained, and data has been collected which will facilitate cross-service workload transfers after BRAC. Major cross-service recommendations include the realignment of missile guidance work to Tobyhanna Army Depot, the plating of Naval guns at Watervliet Army Arsenal, and the collocation of DLA storage functions in excess facilities at Air Force logistics centers. The groundwork for at least one future joint depot has also been established. While there was limited cross-servicing directly attributable to JCSG recommendations, the services considered the alternatives presented and have developed what they believe to be more cost effective in-house solutions. Overall results achieved a cost effective reduction in excess capacity, even if cross-servicing was not maximized. The process laid the foundation for further cross-servicing downstream, outside the BRAC process.

Laboratories

There were some significant cross-service actions taken as a result of the JCSG alternatives. The package includes some C4I cross-service consolidation at Fort Monmouth, NJ, as well as medical research consolidation in Washington, DC. Excess capacity was reduced; however, capacity reduction was less than desired by the JCSG. Many of the workload transfers proposed by the JCSG were too small to influence installation decisions and were therefore not considered cost effective by the Military Departments. Since lab consolidations often appear most attractive on installations devoted to testing, lack of joint consolidation in the T&E area affected laboratory recommendations. As with Depots, potential workload consolidation opportunities were identified which may occur in the future outside of BRAC.

Test and Evaluation

Cross-servicing and downsizing of the test and evaluation infrastructure proved to be a considerable challenge. In general, the Military Departments concluded that preservation of core test facilities, which have irreplaceable land, air and water ranges, precluded closures of major facilities and that cross-servicing of T&E functions would not be cost effective. However, there was some success in the closure of a number of small test functions, and consolidations within each Service's technical infrastructure.

Medical Facilities

The Military Medical Treatment Facilities group established and generally achieved its overall cross-service and excess capacity reduction goals. This was in large measure due to the cross-servicing policies already in affect in this function. Since location of military medical facilities is largely dependent on the major military installations which provide their patient load, they generally followed the realignment and closure actions of the Military Departments. As with several of the other groups, the medical JCSG group identified and is planning for future actions for consolidation and downsizing of medical facilities through programmatic actions. BRAC 95 did provide an opportunity to close one major teaching hospital, while rationalizing other graduate medical training. It also provided an avenue to down-size many large, full service hospitals to smaller hospitals or clinics. Cross-servicing will continue in this vital field.

Undergraduate Pilot Training

The JCSG alternatives were incorporated in the work of the Military Departments and provided a basis for carrying out the Department's policies for cross-service flight training. The Air Force and Navy's earlier agreement to consolidate fixed-wing training through a joint syllabus was critical to this group's success. The recommendations developed reduce excess capacity and maintain a capacity buffer to ensure meeting projected requirements during the turmoil associated with multiple base closures and fielding the new JPATS trainers. However,

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there was no agreement on the collocation or consolidation of helicopter training. Like other core activities, this issue needs to be resolved before BRAC real estate alternatives are addressed. Overall, the Military Departments reduced this training infrastructure by three bases.

OSD/JCS Review

Using certified data, the Secretaries of the Military Departments and Directors of the Defense Agencies developed their recommendations based on the approved final criteria and force structure plan, and submitted their base closure and realignment recommendations to the Secretary of Defense for review and approval. As part of the Secretary's review, the Assistant Secretary of Defense for Economic Security provided for Joint Staff and OSD review of the recommendations received from the Military Departments and Defense Agencies.

The Joint Staff reviewed the recommendations from a warfighting perspective to ensure they would not adversely affect the military readiness capabilities of the armed services. The Chairman of the Joint Chiefs of Staff endorsed all the Military Department and Defense Agency recommendations without objection.

Key staff elements of the Office of the Secretary of Defense and the Joint Staff also reviewed the recommendations to ensure they would not sacrifice necessary capabilities and resources. The Assistant Secretary of Defense for Economic Security reviewed the recommendations to ensure all eight selection criteria were considered and the recommendations were consistent with the force structure plan. This review also assured that DoD policies and procedures were followed and that the analyses were objective and rigorous.

The Secretary approved the recommendations of the Military Departments and Defense Agencies and the list of military installations approved by the Secretary of Defense for closure or realignment is herein forwarded, as required, to the 1995 Defense Base Closure and Realignment Commission.

Summaries of the Military Department and Defense Agency selection processes precede their recommendations and justifications.

Economic Impact in the BRAC Process

The Department recognizes that base closure imposes severe strains on local communtities. These economic impacts are recognized and considered in the BRAC process.

For BRAC 95, the Department created the Joint Cross-Service Group on Economic Impact to ensure more consistent application of the economic impact criterion in BRAC 95. This Group included representatives from the Military Departments and the Office of the Secretary of Defense. For a year the Group reviewed methods for analyzing economic impact, established common measures and approaches, and developed a computer-based system to facilitate the analysis of economic impact, including cumulative economic impact.

Under the law, the Department developed its BRAC recommendations based on consistent application of eight final selection criteria and the force structure plan. Under the approved selection criteria, the first four selection criteria pertain to military value and are accorded priority consideration. "The economic impact on communities" is the sixth criterion.

The Department considered cumulative economic impact as part of the economic impact criterion. In response to concerns raised by the 1993 Defense Base Closure and Realignment Commission and the General Accounting Office, DoD analyzed economic impact and cumulative economic impact as relative measures for comparing alternatives. DoD did not establish threshold values above which, for example, it would remove bases from consideration.

Economic impact was considered at two stages in the process. The Military Departments, in developing their recommendations, developed and analyzed data reflecting the economic impacts of prior BRAC rounds as well as that particular Department's actions in BRAC 1995. Once the Service recommendations were made to the Secretary of Defense, the economic impacts were reviewed again, to determine whether there were instances in which separate Service actions might have affected the same locality.

The Department sponsored an independent review of its plans for BRAC 95 economic analysis in May 1994. Six experts from government, academia, and the private sector participated in the review. The reviewers agreed that our proposed measures of economic impact were reasonable and supported our approach to defining economic impact areas. They emphasized that DoD's estimates tend to overstate economic impact, and that the Department should stress this in its presentations to the Defense Base Realignment and Closure Commission, the Congress, and the public. In addition, the Department asked the Bureau of Economic Analysis of the Department of Commerce to review our methodology for estimating indirect jobs. They responded that the method was of "good, sound quality, consistent with good regional economic impact estimation practices."

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1995 List of Military Installations Inside the United States for Closure or Realignment

Part I: Major Base Closures

Army

Fort McClellan, Alabama
Fort Chaffee, Arkansas
Fitzsimons Army Medical Center, Colorado
Price Support Center, Illinois
Savanna Army Depot Activity, Illinois
Fort Ritchie, Maryland
Selfridge Army Garrison, Michigan
Bayonne Military Ocean Terminal, New Jersey
Seneca Army Depot, New York
Fort Indiantown Gap, Pennsylvania
Red River Army Depot, Texas
Fort Pickett, Virginia

Navy

Naval Air Facility, Adak, Alaska
Naval Shipyard, Long Beach, California
Ship Repair Facility, Guam
Naval Air Warfare Center, Aircraft Division, Indianapolis, Indiana
Naval Surface Warfare Center, Crane Division Detachment, Louisville, Kentucky
Naval Surface Warfare Center, Dahlgren Division Detachment, White Oak, Maryland
Naval Air Station, South Weymouth, Massachusetts
Naval Air Station, Meridian, Mississippi
Naval Air Warfare Center, Aircraft Division, Lakehurst, New Jersey
Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania

Air Force

North Highlands Air Guard Station, California
Ontario IAP Air Guard Station, California
Rome Laboratory, Rome, New York
Roslyn Air Guard Station, New York
Springfield-Beckley MAP, Air Guard Station, Ohio
Greater Pittsburgh IAP Air Reserve Station, Pennsylvania
Bergstrom Air Reserve Base, Texas
Brooks Air Force Base, Texas
Reese Air Force Base, Texas

Defense Logistics Agency

Defense Distribution Depot Memphis, Tennessee
Defense Distribution Depot Ogden, Utah

Part II: Major Base Realignments

Army

Fort Greely, Alaska
Fort Hunter Liggett, California
Sierra Army Depot, California
Fort Meade, Maryland
Detroit Arsenal, Michigan
Fort Dix, New Jersey
Fort Hamilton, New York
Charles E. Kelly Support Center, Pennsylvania
Letterkenny Army Depot, Pennsylvania
Fort Buchanan, Puerto Rico
Dugway Proving Ground, Utah
Fort Lee, Virginia

Navy

Naval Air Station, Key West, Florida
Naval Activities, Guam
Naval Air Station, Corpus Christi, Texas
Naval Undersea Warfare Center, Keyport, Washington

Air Force

McClellan Air Force Base, California
Onizuka Air Station, California
Eglin Air Force Base, Florida
Robins Air Force Base, Georgia
Malmstrom Air Force Base, Montana
Kirtland Air Force Base, New Mexico
Grand Forks Air Force Base, North Dakota
Tinker Air Force Base, Oklahoma
Kelly Air Force Base, Texas
Hill Air Force Base, Utah

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Part III: Smaller Base or Activity Closures, Realignments, Disestablishments or Relocations

Army

Branch U.S. Disciplinary Barracks, California
East Fort Baker, California
Rio Vista Army Reserve Center, California
Stratford Army Engine Plant, Connecticut
Big Coppett Key, Florida
Concepts Analysis Agency, Maryland
Publications Distribution Center Baltimore, Maryland
Hingham Cohasset, Massachusetts
Sudbury Training Annex, Massachusetts
Aviation-Troop Command (ATCOM), Missouri
Fort Missoula, Montana
Camp Kilmer, New Jersey
Caven Point Reserve Center, New Jersey
Camp Pedricktown, New Jersey
Bellmore Logistics Activity, New York
Fort Totten, New York
Recreation Center #2, Fayettville, North Carolina
Information Systems Software Command (ISSC), Virginia
Camp Bonneville, Washington
Valley Grove Area Maintenance Support Activity (AMSA), West Virginia

Navy

Naval Command, Control and Ocean Surveillance Center, In-Service Engineering West Coast Division, San Diego, California
Naval Health Research Center, San Diego, California
Naval Personnel Research and Development Center, San Diego, California
Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach, California
Naval Undersea Warfare Center-Newport Division, New London Detachment, New London, Connecticut
Naval Research Laboratory, Underwater Sound Reference Detachment, Orlando, Florida
Fleet and Industrial Supply Center, Guam
Naval Biodynamics Laboratory, New Orleans, Louisiana
Naval Medical Research Institute, Bethesda, Maryland
Naval Surface Warfare Center, Carderock Division Detachment, Annapolis, Maryland
Naval Technical Training Center, Meridian, Mississippi
Naval Aviation Engineering Support Unit, Philadelphia, Pennsylvania
Naval Air Technical Services Facility, Philadelphia, Pennsylvania
Naval Air Warfare Center, Aircraft Division, Open Water Test Facility, Oreland, Pennsylvania

Naval Command, Control and Ocean Surveillance Center, RDT&E Division Detachment, Warminster, Pennsylvania
Fleet and Industrial Supply Center, Charleston, South Carolina
Naval Command, Control and Ocean Surveillance Center, In-Service Engineering East Coast Detachment, Norfolk, Virginia
Naval Information Systems Management Center, Arlington, Virginia
Naval Management Systems Support Office, Chesapeake, Virginia

Navy/Marine Reserve Activities

Naval Reserve Centers at:

Huntsville, Alabama
Stockton, California
Santa Ana, Irvine, California
Pomona, California
Cadillac, Michigan
Staten Island, New York
Laredo, Texas
Sheboygan, Wisconsin

Naval Air Reserve Center at:

Olathe, Kansas

Naval Reserve Readiness Commands at:

New Orleans, Louisiana (Region 10)
Charleston, South Carolina (Region 7)

Air Force

Moffett Federal Airfield AGS, California
Real-Time Digitally Controlled Analyzer Processor Activity, Buffalo, New York
Air Force Electronic Warfare Evaluation Simulator Activity, Fort Worth, Texas

Defense Logistics Agency

Defense Contract Management District South, Marietta, Georgia
Defense Contract Management Command International, Dayton, Ohio
Defense Distribution Depot Columbus, Ohio
Defense Distribution Depot Letterkenny, Pennsylvania
Defense Industrial Supply Center Philadelphia, Pennsylvania
Defense Distribution Depot Red River, Texas

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Defense Investigative Service

Investigations Control and Automation Directorate, Fort Holabird, Maryland

Part IV: Changes to Previously Approved BRAC Recommendations

Army

Army Bio-Medical Research Laboratory, Fort Detrick, Maryland

Navy

Marine Corps Air Station, El Toro, California
Marine Corps Air Station, Tustin, California
Naval Air Station Alameda, California
Naval Recruiting District, San Diego, California
Naval Training Center, San Diego, California
Naval Air Station, Cecil Field, Florida
Naval Aviation Depot, Pensacola, Florida
Navy Nuclear Power Propulsion Training Center, Naval Training Center, Orlando, Florida
Naval Training Center Orlando, Florida
Naval Air Station, Agana, Guam
Naval Air Station, Barbers Point, Hawaii
Naval Air Facility, Detroit, Michigan
Naval Shipyard, Norfolk Detachment, Philadelphia, Pennsylvania
Naval Sea Systems Command, Arlington, Virginia
Office of Naval Research, Arlington, Virginia
Space and Naval Warfare Systems Command, Arlington, Virginia
Naval Recruiting Command, Washington, D.C.
Naval Security Group Command Detachment Potomac, Washington, D.C.

Air Force

Williams AFB, Arizona
Lowry AFB, Colorado
Homestead AFB, Florida (301st Rescue Squadron)
Homestead AFB, Florida (726th Air Control Squadron)
MacDill AFB, Florida
Griffiss AFB, New York (Airfield Support for 10th Infantry (Light) Division)
Griffiss AFB, New York (485th Engineering Installation Group)

Defense Logistics Agency

Defense Contract Management District West, El Segundo, California

Department of the Army Selection Process

Introduction

The Army's efforts to reduce unnecessary infrastructure began with the Defense Secretary's Commission on Base Realignments and Closures in 1988. Since that Commission, the Army has reduced its force of 770,000 active duty soldiers to 540,000 and active divisions from 18 to 12. The Army has closed 77 installations in the U.S. and is in the process of closing six others. Over 500 sites overseas, mostly in Europe, have been returned to their host nation. The Army is planning to return about 150 more. Last December, the Army announced further reductions in end strength to 495,000 personnel and a further restructuring of the active Army to 10 divisions by the end of fiscal year 1996. Available resources have declined with the $90 billion budget of the 1980s dropping to approximately $60 billion, necessitating major reductions in base operating costs. While these latest recommendations were difficult, the Army has kept its sights focused on the future in order to lay a foundation for a smaller, more capable Army, one that is able to project power and support national strategy into the 21st century.

The Selection Process

To provide an operational context for planning and analysis, the Army developed a stationing strategy. Derived from the National Military Strategy, the Army developed guidelines to govern the stationing of forces and influence the types of installations needed for the future. This operational blueprint described parameters for reducing infrastructure without jeopardizing future requirements.

As in previous studies, the Army conducted a comprehensive review of all installations. To facilitate a fair comparison, the Army grouped installations into categories with similar missions, capabilities and characteristics. After developing a set of measurable attributes related to DoD's four selection criteria for military value, the Army then assigned weights to reflect the relative importance of each measure. Next, the Army collected data on its installations and estimated their relative importance, using established quantitative techniques to assemble installation assessments.

Using both the installation assessments and the stationing strategy, the Army determined the military value of each installation. These appraisals represented the Army's best judgment on the relative merit of each installation and were the basis for selecting installations that were studied further for closure or realignment.

Once the list of final study candidates received approval by the Secretary of the Army, a variety of alternatives were examined in an effort to identify the most feasible and cost-effective way to close or realign. Subsequently, the Army reviewed alternatives recommended by DoD's Joint Cross Service Groups and incorporated those that made sense and saved money. The Army applied DoD's remaining four selection criteria by analyzing the financial, economic, community and environmental impacts of each alternative, using DoD's standard models. The Army's senior leaders reviewed the results of these analyses and discontinued studies of alternatives that were financially or operationally infeasible.

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During the course of the study effort, the Army Audit Agency performed independent tests and evaluations to check mathematical computations and ensure the accuracy of data and reasonableness of assumptions throughout every step of analysis. The General Accounting Office monitored the Army's process from the very beginning and met regularly with the Army's auditors as well as officials from The Army Basing Study (TABS).

The Secretary of the Army, with advice from the Chief of Staff, recommended installations for closure or realignment to the Secretary of Defense based upon the DoD Force Structure Plan and the selection criteria established under Public Law 101-510, as amended.

Fort McClellan, Alabama

Recommendation: Close Fort McClellan, except minimum essential land and facilities for a Reserve Component enclave and minimum essential facilities, as necessary, to provide auxiliary support to the chemical demilitarization operation at Anniston Army Depot. Relocate the U. S. Army Chemical and Military Police Schools to Fort Leonard Wood, Missouri, upon receipt of the required permits. Relocate the Defense Polygraph Institute (DODPI) to Fort Jackson, South Carolina. License Pelham Range and current Guard facilities to the Alabama Army National Guard.

Justification: This closure recommendation is based upon the assumption that requisite permits can be granted to allow operation of the Chemical Defense Training Facility at Fort Leonard Wood, Missouri. The Governor of the State of Missouri has indicated that an expeditious review of the permit application can be accomplished.

Collocation allows the Army to focus on the doctrinal and force development requirements of Engineers, Military Police, and the Chemical Corps. The synergistic advantages of training and development programs are: coordination, employment, and removal of obstacles; conduct of river crossing operations; operations in rear areas or along main supply routes; and counter-drug operations. The missions of the three branches will be more effectively integrated.

This recommendation differs from the Army's prior closure recommendations submitted to the 1991 and 1993 Commissions. The Army will relocate the Chemical Defense Training Facility (CDTF) to Fort Leonard Wood, Missouri. By relocating the CDTF, the Army can continue providing live-agent training to all levels of command. The Army is the only Service that conducts live agent training, and it will continue this training at Fort Leonard Wood.

The Army has considered the use of some Fort McClellan assets for support of the chemical demilitarization mission at Anniston Army Depot. The Army will use the best available assets to provide the necessary support to Anniston's demilitarization mission.

Return on Investment: The total one-time cost to implement this recommendation is $259 million. The net of all costs and savings during the implementation period is a cost of $122 million. Annual recurring savings after implementation are $45 million with a return on investment expected in six years. The net present value of the costs and savings over 20 years is a savings of $316 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 10,720 jobs (8,536 direct jobs and 2,184 indirect jobs) over the 1996-to-2001 period in the Anniston, AL Metropolitan Statistical Area, which represents 17.3 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 14.7 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Fort Chaffee, Arkansas

Recommendation: Close Fort Chaffee, except minimum essential buildings, and ranges for Reserve Component (RC) training as an enclave.

Justification: In the past ten years, the Army has significantly reduced its active and reserve forces. The Army must reduce excess infrastructure to meet future requirements.

Fort Chaffee is the former home of the Joint Readiness Training Center (JRTC). In 1991, the Defense Base Closure and Realignment Commission approved the JRTC's relocation to Fort Polk, LA. The transfer was completed in 1992. The post is managed by an Active Component/civilian staff, although it possesses virtually no Active Component tenants.

Fort Chaffee ranked last in military value when compared to other major training area installations. The Army will retain some ranges for use by the RC units stationed in the area. Annual training for Reserve Component units which now use Fort Chaffee can be conducted at other installations in the region, including Fort Polk, Fort Riley and Fort Sill. The Army intends to license required land and facilities to the Army National Guard.

Return on Investment: The total one-time cost to implement this recommendation is $10 million. The net of all costs and savings during the implementation period is a savings of $39 million. Annual recurring savings after implementation are $13 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $167 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 352 jobs (247 direct jobs and 105 indirect jobs) over the 1996-to-2001 period in the Fort Smith, AR-OK Metropolitan Statistical Area, which represents 0.3 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.4 percent of employment in the area. There are no known environmental impediments at the closing or receiving installation.

Fitzsimons Army Medical Center, Colorado

Recommendation: Close Fitzsimons Army Medical Center (FAMC), except for Edgar J. McWhethy Army Reserve Center. Relocate the Medical Equipment and Optical School and Optical Fabrication Laboratory to Fort Sam Houston, TX. Relocate Civilan Health and Medical Program of the Uniformed Services (CHAMPUS) activities to Denver leased space. Relocate other tenants to other installations.

Justification: FAMC is low in military value compared to other medical centers. This recommendation avoids anticipated need for estimated $245 million construction to replace FAMC while preserving health care services through other more cost-effective means. This action will offset any loss of medical services through: phased-in CHAMPUS and Managed Care Support contracts; increased services at Fort Carson and US Air Force Academy; and redistribution of Medical Center patient load from Region Eight to other Medical Centers. FAMC is not collocated with a sizable active component population. Its elimination does not jeopardize the Army's capability to surge to support two near-simultaneous major regional contingencies, or limit the Army's capability to provide wartime medical support in the theater of operations. Closure of this medical center allows redistribution of medical military personnel to other medical centers to absorb the diverted medical center patient load. These realignments avoid a significant cost of continuing to operate and maintain facilities at this stand-alone medical center. DoD's Joint Cross-Service Group for Military Treatment Facilities supports the closure of Fitzsimons.

Return on Investment: The total one-time cost to implement this recommendation is $142 million. The net of all costs and savings during the implementation period is a cost of $39 million. Annual recurring savings after implementation are $34 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $299 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 4,489 jobs (2,903 direct jobs and 1,586 indirect jobs) over the 1996-to-2001 period in the Denver, CO Primary Metropolitan Statistical Area, which represents 0.4 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.8 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Price Support Center, Illinois

Recommendation: Close Charles Melvin Price Support Center, except a small reserve enclave and a storage area.

Justification: Charles Melvin Price Support Center provides area support and military housing to the Army and other Federal activities in the St. Louis, MO, area. It is low in military value compared to similar installations. Its tenants, including a recruiting company and a criminal investigative unit, can easily relocate.

This recommendation is related to the Army's recommendation to relocate Aviation-Troop Command (ATCOM) from St. Louis, MO, to other locations. A reduction in the Army's presence in the area warrants a corresponding reduction in Charles Melvin Price Support Center.

Return on Investment: The total one-time cost to implement this recommendation is $4 million. The net of all costs and savings during the implementation period is a savings of $35 million. Annual recurring savings after implementation are $9 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $116 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 363 jobs (225 direct jobs and 138 indirect jobs) over the 1996-to-2001 period in the St. Louis, MO-IL Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Savanna Army Depot Activity, Illinois

Recommendation: Close Savanna Army Depot Activity (ADA). Relocate the United States Army Defense Ammunition Center and School (USADACS) to McAlester Army Ammunition Plant, Oklahoma.

Justification: This recommendation is supported by the Army's long range operational assessment. The Army has adopted a "tiered" ammunition depot concept to reduce infrastructure, eliminate static non-required ammunition stocks, decrease manpower requirements, increase efficiencies and permit the Army to manage a smaller stockpile. The tiered depot concept reduces the number of active storage sites and makes efficiencies possible:

(1) Tier 1 - Active Core Depots. These installations will support a normal/full-up activity level with a stockage configuration of primarily required stocks and minimal non-required stocks requiring demilitarization. Normal activity includes daily receipts/issues of training stocks, storage of war reserve stocks required in contingency operations and additional war reserve stocks to augment lower level tier installation power projection capabilities. Installations at this activity level will receive requisite levels of storage support, surveillance, inventory, maintenance and demilitarization.

(2) Tier 2 - Cadre Depots. These installations normally will perform static storage of follow-on war reserve requirements. Daily activity will be minimal for receipts/issues. Workload will focus on maintenance, surveillance, inventory and demilitarization operations. These installations will have minimal staffs unless a contingency arises.

(3) Tier 3 - Caretaker Depots. Installations designated as Tier 3 will have minimal staffs and store stocks no longer required until demilitarized or relocated. The Army plans to eliminate its stocks at these sites no later than year 2001. Savanna Army Depot Activity is a Tier 3 depot.

USADACS performs the following basic functions: munitions training, logistics engineering, explosive safety, demilitarization research and development, technical assistance, and career management. Relocation of USADACS to McAlester Army Ammunition Plant (AAP) allows it to collocate with an active ammunition storage and production operation. McAlester AAP, a Tier 1 depot, is the best for providing the needed capabilities.

Return on Investment: The total one-time cost to implement this recommendation is $38 million. The net of all costs and savings during the implementation period is a cost of $12 million. Annual recurring savings after implementation are $13 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $112 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 627 jobs (450 direct jobs and 177 indirect jobs) over the 1996-to-2001 period in the Carroll County, IL, area, which represents 8.2 percent of the area's employment. There are no known environmental impediments at the closing or receiving installations.

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Fort Ritchie, Maryland

Recommendation: Close Fort Ritchie. Relocate the 1111th Signal Battalion and 1108th Signal Brigade to Fort Detrick, MD. Relocate Information Systems Engineering Command elements to Fort Huachuca, AZ.

Justification: This recommendation assumes that base support for Defense Intelligence Agency and other National Military Command Center support elements will be provided by nearby Fort Detrick. Closing Fort Ritchie and transferring support elements of the National Military Command Center to Fort Detrick will: (a) maintain operational mission support to geographically unique Sites R and C (National Military Command Center) for the Joint Chiefs of Staff; (b) capitalize on existing facilities at Site R and C to minimize construction; (c) maintain an active use and continuous surveillance of Site R and Site C facilities to maintain readiness; (d) collocate signal units that were previously separated at two different garrisons; (e) consolidate major portion of Information Systems Engineering Command-CONUS with main headquarters of Information Systems Engineering Command to improve synergy of information system operations; and (f) provide a direct support East Coast Information Systems Engineering Command field element to respond to regional requirements. These relocations, collocations and consolidations allow the elimination of Fort Ritchie's garrison and avoids significant costs associated with the continued operation and maintenance of support facilities at a small installation.

Return on Investment: The total one-time cost to implement this recommendation is $93 million. The net of all costs and savings during the implementation period is a savings of $83 million. Annual recurring savings after implementation are $65 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $712 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,210 jobs (2,344 direct jobs and 866 indirect jobs) over the 1996-to-2001 period in the Hagerstown, MD Primary Metropolitan Statistical Area, which represents 4.8 percent of the area's employment. There are no known environmental impediments at the closing or receiving installations.

Selfridge Army Garrison, Michigan

Recommendation: Close U.S. Army Garrison, Selfridge.

Justification: Closing Selfridge eliminates an installation that exists primarily to provide housing for activities (predominantly Detroit Arsenal) located in the immediate area although such support can be provided through a less costly alternative. Sufficient commercial housing is available on the local economy for military personnel using Variable Housing Allowance/Basic Allowance for Quarters. Closure avoids the cost of continued operation and maintenance of unnecessary support facilities. This recommendation will not degrade local military activities.

Return on Investment: The total one-time cost to implement this recommendation is $5 million. The net of all costs and savings during the implementation period is a savings of $47 million. Annual recurring savings after implementation are $10 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $140 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 867 jobs (536 direct jobs and 331 indirect jobs) over the 1996-to-2001 period in the Detroit, MI Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Bayonne Military Ocean Terminal, New Jersey

Recommendation: Close Bayonne Military Ocean Terminal. Relocate the Military Transportation Management Command (MTMC) Eastern Area Command Headquarters and the traffic management portion of the 1301st Major Port Command to Fort Monmouth, New Jersey. Retain an enclave for the Navy Military Sealift Command, Atlantic, and Navy Resale and Fashion Distribution Center.

Justification: This recommendation is supported by the Army's long range operational assessment. The primary mission of Bayonne is the shipment of general bulk cargo. It has no capability to ship bulk munitions. There are sufficient commercial port facilities on the East and Gulf Coasts to support power projection requirements with a minimal loss to operational capability. Bayonne provides the Army with few military capabilities that cannot be accomplished at commercial ports.

Return on Investment: The total one-time cost to implement this recommendation is $44 million. The net of all costs and savings during the implementation period is a cost of $8 million. Annual recurring savings after implementation are $10 million with a return on investment expected in five years. The net present value of the costs and savings over 20 years is a savings of $90 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,105 jobs (1,367 direct jobs and 738 indirect jobs) over the 1996-to-2001 period in the Jersey City, NJ Primary Metropolitan Statistical Area, which represents 0.8 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.8 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Seneca Army Depot, New York

Recommendation: Close Seneca Army Depot, except an enclave to store hazardous material and ores.

Justification: This recommendation is supported by the Army's long range operational assessment. The Army has adopted a "tiered" ammunition depot concept to reduce infrastructure, eliminate static non-required ammunition stocks, decrease manpower requirements, increase efficiencies and permit the Army to manage a smaller stockpile. The tiered depot concept reduces the number of active storage sites and makes efficiencies possible:

(1) Tier 1 - Active Core Depots. These installations will support a normal/full-up activity level with a stockage configuration of primarily required stocks and minimal non-required stocks requiring demilitarization. Normal activity includes daily receipts/issues of training stocks, storage of war reserve stocks required in contingency operations and additional war reserve stocks to augment lower level tier installation power projection capabilities. Installations at this activity level will receive requisite levels of storage support, surveillance, inventory, maintenance and demilitarization.

(2) Tier 2 - Cadre Depots. These installations normally will perform static storage of follow-on war reserve requirements. Daily activity will be minimal for receipts/issues. Workload will focus on maintenance, surveillance, inventory and demilitarization operations. These installations will have minimal staffs unless a contingency arises.

(3) Tier 3 - Caretaker Depots. Installations designated as Tier 3 will have minimal staffs and store stocks no longer required until demilitarized or relocated. The Army plans to eliminate stocks at these sites no later than year 2001. Seneca Army Depot is a Tier 3 depot.

Return on Investment: The total one-time cost to implement this recommendation is $15 million. The net of all costs and savings during the implementation period is a savings of $34 million. Annual recurring savings after implementation are $21 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $242 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 463 jobs (325 direct jobs and 138 indirect jobs) over the 1996-to-2001 period in the Seneca County, NY, economic area, which represents 3.2 percent of the area's employment. There are no known environmental impediments at the closing or receiving installations.

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Fort Indiantown Gap, Pennsylvania

Recommendation: Close Fort Indiantown Gap, except minimum essential facilities as a Reserve Component enclave.

Justification: In the past ten years, the Army significantly reduced its active and reserve forces. The Army must reduce excess infrastructure to meet future requirements.

Fort Indiantown Gap is low in military value compared to other major training area installations. Although managed by an Active Component garrison, it has virtually no Active Component tenants. Annual training for Reserve Component units which now use Fort Indiantown Gap can be conducted at other installations in the region, including Fort Dix, Fort A.P. Hill and Fort Drum.

Fort Indiantown Gap is owned by the Commonwealth of Pennsylvania and leased by the U.S. Army through 2049 for $1. The government can terminate the lease with one year's written notice. Facilities erected during the duration of the lease are the property of the U.S. and may be disposed of, provided the premises are restored to their natural condition.

Return on Investment: The total one-time cost to implement this recommendation is $13 million. The net of all costs and savings during the implementation period is a savings of $67 million. Annual recurring savings after implementation are $23 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $285 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 789 jobs (521 direct jobs and 268 indirect jobs) over the 1996-to-2001 period in the Harrisburg-Lebanon-Carlisle, PA Metropolitan Statistical Area, which represents 0.2 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential increase equal to 0.2 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Red River Army Depot, Texas

Recommendation: Close Red River Army Depot. Transfer the ammunition storage mission, intern training center, and civilian training education to Lone Star Army Ammunition Plant. Transfer the light combat vehicle maintenance mission to Anniston Army Depot. Transfer the Rubber Production Facility to Lone Star.

Justification: Red River Army Depot is one of the Army's five maintenance depots and one of three ground vehicle maintenance depots. Over time, each of the ground maintenance depots has become increasingly specialized. Anniston performs heavy combat vehicle maintenance and repair. Red River performs similar work on infantry fighting vehicles. Letterkenny Army Depot is responsible for towed and self-propelled artillery as well as DoD tactical missile repair. Like a number of other Army depots, Red River receives, stores, and ships all types of ammunition items. A review of long range operational requirements supports a reduction of Army depots, specifically the consolidation of ground combat workload at a single depot.

The ground maintenance capacity of the three depots currently exceeds programmed work requirements by the equivalent of one to two depots. Without considerable and costly modifications, Red River cannot assume the heavy combat vehicle mission from Anniston. Red River cannot assume the DoD Tactical Missile Consolidation program from Letterkenny without major construction. Available maintenance capacity at Anniston and Tobyhanna makes the realignment of Red River into Anniston the most logical in terms of military value and cost effectiveness. Closure of Red River is consistent with the recommendations of the Joint Cross-Service Group for Depot Maintenance.

Return on Investment: The total one-time cost to implement this recommendation is $60 million. The net of all costs and savings during the implementation period is a savings of $313 million. Annual recurring savings after implementation are $123 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $1,497 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 5,654 jobs (2,901 direct jobs and 2,753 indirect jobs) over the 1996-to-2001 period in the Texarkana, TX-Texarkana, AR Metropolitan Statistical Area, which represents 9.5 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 7.7 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Fort Pickett, Virginia

Recommendation: Close Fort Pickett, except minimum essential training areas and facilities as an enclave for the Reserve Components. Relocate the Petroleum Training Facility to Fort Dix, NJ.

Justification: In the past ten years, the Army has reduced its active and reserve forces considerably. The Army must reduce excess infrastructure to meet the needs of the future.

Fort Pickett is very low in military value compared to other major training area installations. It has virtually no Active Component tenants. Annual training for reserve units that now use Fort Pickett can be conducted easily at other installations in the region, including Fort Bragg, Fort A.P. Hill and Camp Dawson. The Army intends to license required facilities and training areas to the Army National Guard.

Return on Investment: The total one-time cost to implement this recommendation is $25 million. The net of all costs and savings during the implementation period is a savings of $41 million. Annual recurring savings after implementation are $21 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $241 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 362 jobs (254 direct jobs and 108 indirect jobs) over the 1996-to-2001period in the Nottoway & Dinwiddie Counties, VA area, which represents 0.8 percent of the area's employment. There are no known environmental impediments at the closing or receiving installations.

Fort Greely, Alaska

Recommendation: Realign Fort Greely by relocating the Cold Region Test Activity (CRTA) and Northern Warfare Training Center (NWTC) to Fort Wainwright, Alaska.

Justification: Fort Greely currently supports two tenant activities (CRTA and NWTC) and manages training areas for maneuver and range firing. Over 662,000 acres of range and training areas are used by both the Army and the Air Force. These valuable training lands will be retained.

The Army has recently reduced the NWTC by over half its original size and transferred oversight responsibilities to the U.S. Army, Pacific. The garrison staff will reduce in size and continue to support the important testing and training missions. The Army intends to use Fort Wainwright as the base of operations (107 miles away) for these activities, and "safari" them to Fort Greely, as necessary. This allows the Army to reduce its presence at Fort Greely, reduce excess capacity and perform essential missions at a much lower cost. The Army intends to retain facilities at Bolio Lake (for CRTA), Black Rapids (for NWTC), Allen Army Airfield, and minimal necessary garrison facilities to maintain the installation for contingency missions.

Return on Investment: The total one-time cost to implement this recommendation is $23 million. The net of all costs and savings during the implementation period is a savings of $43 million. Annual recurring savings after implementation are $19 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $225 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 969 jobs (724 direct jobs and 245 indirect jobs) over the 1996-to-2001 period in the Southeast Fairbanks Census Area, AK, which represents 36.3 percent of the area's employment. There are no known environmental impediments at the realigning or receiving installations.

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Fort Hunter Liggett, California

Recommendation: Realign Fort Hunter Liggett by relocating the U.S. Army Test and Experimentation Center (TEC) missions and functions to Fort Bliss, Texas. Eliminate the Active Component mission. Retain minimum essential facilities and training area as an enclave to support the Reserve Components (RC).

Justification: Fort Hunter Liggett is low in military value compared to other major training area installations and has few Active Component tenants. Relocation of the Test and Experimentation Center optimizes the unique test capabilities afforded by Fort Bliss and White Sands Missile Range.

Fort Hunter Liggett's maneuver space is key to Reserve Component training requirements. Since it is a primary maneuver area for mechanized units in the western United States, retention of its unique training lands is essential.

Return on Investment: The total one-time cost to implement this recommendation is $6 million. The net of all costs and savings during the implementation period is a savings of $12 million. Annual recurring savings after implementation are $5 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $64 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 686 jobs (478 direct jobs and 208 indirect jobs) over the 1996-to-2001 period in the Salinas, CA Metropolitan Statistical Area, which represents 0.3 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential increase equal to 0.32 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Sierra Army Depot, California

Recommendation: Realign Sierra Army Depot by eliminating the conventional ammunition mission and reducing it to a depot activity. Retain an enclave for the Operational Project Stock mission and the static storage of ores.

Justification: This recommendation is supported by the Army's long range operational assessment. The Army has adopted a "tiered" ammunition depot concept to reduce infrastructure, eliminate static non-required ammunition stocks, decrease manpower requirements, increase efficiencies and permit the Army to manage a smaller stockpile. The tiered depot concept reduces the number of active storage sites and makes efficiencies possible:

(1) Tier 1 - Active Core Depots. These installations will support a normal/full-up activity level with a stockage configuration of primarily required stocks and minimal non-required stocks requiring demilitarization. Normal activity includes daily receipts/issues of training stocks, storage of war reserve stocks required in contingency operations and additional war reserve stocks to augment lower level tier installation power projection capabilities. Installations at this activity level will receive requisite levels of storage support, surveillance, inventory, maintenance and demilitarization.

(2) Tier 2 - Cadre Depots. These installations normally will perform static storage of follow-on war reserve requirements. Daily activity will be minimal for receipts/issues. Workload will focus on maintenance, surveillance, inventory and demilitarization operations. These installations will have minimal staffs unless a contingency arises.

(3) Tier 3 - Caretaker Depots. Installations designated as Tier 3 will have minimal staffs and store stocks no longer required until demilitarized or relocated. The Army plans to eliminate stocks at these sites no later than year 2001. Sierra Army Depot is a Tier 3 Depot.

Complete closure is not possible, since Sierra is the Center of Technical Excellence for Operational Project Stocks. This mission entails the management, processing and maintenance of: Force Provider (550-man tent city), Inland Petroleum Distribution System; and Water Support System. It also stores such stocks as Clam Shelters (mobile maintenance tents), bridging, and landing mats for helicopters. The cost of relocating the Operational Project Stocks is prohibitively expensive. Therefore, the Army will retain minimum essential facilities for storage.

Return on Investment: The total one-time cost to implement this recommendation is $14 million. The net of all costs and savings during the implementation period is a savings of $55 million. Annual recurring savings after implementation are $29 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $333 million.

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Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 839 jobs (592 direct jobs and 247 indirect jobs) over the 1996-to-2001 period in the Lassen County, CA economic area, which represents 7.4 percent of the area's employment. There are no known environmental impediments at the realigning or receiving installations.

Fort Meade, Maryland

Recommendation: Realign Fort Meade by reducing Kimbrough Army Community Hospital to a clinic. Eliminate inpatient services.

Justification: This recommendation, suggested by the Joint Cross-Service Group on Medical Treatment, eliminates excess medical treatment capacity at Fort Meade, MD by eliminating inpatient services at Kimbrough Army Community Hospital. Inpatient care would be provided by other military medical activities and private facilities through Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Return on Investment: The total one-time cost to implement this recommendation is $2 million. The net of all costs and savings during the implementation period is a savings of $16 million. Annual recurring savings after implementation are $4 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $50 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 203 jobs (129 direct jobs and 74 indirect jobs) over the 1996-to-2001 period in the Baltimore, MD Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Detroit Arsenal, Michigan

Recommendation: Realign Detroit Arsenal by closing and disposing of the Detroit Army Tank Plant.

Justification: Detroit Tank Plant, located on Detroit Arsenal, is one of two Army Government-Owned, Contractor-Operated tank production facilities. A second facility is located at Lima, Ohio, (Lima Army Tank Plant). The Detroit plant is not as technologically advanced as the Lima facility and is not configured for the latest tank production. Moreover, retaining the plant as a "rebuild" facility is not practical since Anniston Army Depot is capable of rebuilding and repairing the M1 Tank and its principal components. Accordingly, the Detroit Tank Plant is excess to Army requirements.

Return on Investment: The total one-time cost to implement this recommendation is $1 million. The net of all costs and savings during the implementation period is a savings of $8 million. Annual recurring savings after implementation are $3 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $38 million.

Impacts: This recommendation will not affect any jobs in the Detroit, MI Primary Metropolitan Statistical Area. There are no known environmental impediments at the realigning site.

Fort Dix, New Jersey

Recommendation: Realign Fort Dix by replacing the Active Component garrison with a U.S. Army Reserve garrison. Retain minimum essential ranges, facilities, and training areas required for Reserve Component (RC) training as an enclave.

Justification: In the past ten years, the Army has significantly reduced its active and reserve forces. The Army must reduce excess infrastructure to meet the needs of the future.

This proposal retains facilities and training areas essential to support Army National Guard and U.S. Army Reserve units in the Mid-Atlantic states. However, it reduces base operations and real property maintenance costs by eliminating excess facilities. Additionally, this reshaping will truly move Fort Dix into a preferred role of RC support. It retains an Army Reserve garrison to manage Fort Dix and provides a base to support RC logistical requirements. The Army intends to continue the Army National Guard's current license of buildings.

Various U.S. Army National Guard and U.S. Army Reserve activities regularly train at Fort Dix. The post houses the National Guard High Technology Training Center, a unique facility providing state-of-the-art training devices for guardsmen and reservists in a 12-state area. Fort Dix's geographic proximity to a large portion of the nation's RC forces and the air and seaports of embarkation make it one of the most suitable RC Major Training Areas in the United States. This recommendation is consistent with the decision of the 1991 Commission, but better aligns the operation of the installation with its users.

Return on Investment: The total one-time cost to implement this recommendation is $19 million. The net of all costs and savings during the implementation period is a savings of $112 million. Annual recurring savings after implementation are $38 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $478 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,164 jobs (739 direct jobs and 425 indirect jobs) over the 1996-to-2001 period in the Philadelphia, PA-NJ Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.2 percent of employment in the area. There are no known environmental impediments at the realigning or receiving installations.

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Fort Hamilton, New York

Recommendation: Realign Fort Hamilton. Dispose of all family housing. Retain minimum essential land and facilities for existing Army units and activities. Relocate all Army Reserve units from Caven Point, New Jersey, to Fort Hamilton.

Justification: Fort Hamilton is low in military value compared to the other command and control/administrative support installations. The post has limited capacity for additional growth or military development. No new or additional missions are planned.

This proposal reduces the size of Fort Hamilton by about one-third to support necessary military missions in the most cost effective manner. The New York Area Command, which includes protocol support to the United Nations, will remain at Fort Hamilton. Another installation will assume the area support currently provided to the New York area.

The Armed Forces Reserve Center at Caven Point was built in 1941. Its sole mission is to support reserve component units. The buildings on the 35-acre parcel are in poor condition. Relocating to Fort Hamilton will allow the Army Reserve to eliminate operating expenses in excess of $100 thousand per year.

Return on Investment: The total one-time cost to implement this recommendation is $2 million. The net of all costs and savings during the implementation period is a savings of $3 million. Annual recurring savings after implementation are $7 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $74 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 85 jobs (52 direct jobs and 33 indirect jobs) over the 1996-to-2001 period in the New York, NY, Primary Metropolitan Statistical Area, which represents less than 0.1, percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area. There are no known environmental impediments at the realigning or receiving installations.

Kelly Support Center, Pennsylvania

Recommendation: Realign the Kelly Support Center by consolidating Army Reserve units onto three of its five parcels. Dispose of the remaining two parcels. Relocate the Army Reserve's leased maintenance activity in Valley Grove, WV, to the Kelly Support Center.
Justification: Kelly Support Center, a sub-installation of Fort Drum, NY, provides administrative and logistical support to Army Reserve units in western Pennsylvania. It comprises five separate parcels of property.

The Kelly Support Center is last in military value compared to other command and control/administrative support installations. Reserve usage is limited to monthly weekend drills. It possesses no permanent facilities or mobilization capability.

This proposal eliminates two parcels of property, approximately 232 acres and 500,000 square feet of semi-permanent structures, from the Army's inventory. Since there are no other feasible alternatives, the Army is retaining three small parcels for Army Reserve functions and Readiness Group Pittsburgh.

Relocating the Army's Reserve activity from Valley Grove Area Maintenance Support Activity, WV, to the Kelly Support Center consolidates it with its parent unit and saves $28,000 per year in lease costs.

Return on Investment: The total one-time cost to implement this recommendation is $36 million. The net of all costs and savings during the implementation period is a cost of $22 million. Annual recurring savings after implementation are $5 million with a return on investment expected in six years. The net present value of the costs and savings over 20 years is a savings of $28 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 209 jobs (128 direct jobs and 81 indirect jobs) over the 1996-to-2001 period in the Allegheny, Fayette, Washington, & Westmoreland Counties, PA, area which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area. There are no known environmental impediments at the realigning or receiving installations.

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Letterkenny Army Depot, Pennsylvania

Recommendation: Realign Letterkenny Army Depot by transferring the towed and self-propelled combat vehicle mission to Anniston Army Depot. Retain an enclave for conventional ammunition storage and tactical missile disassembly and storage. Change the 1993 Commission's decision regarding the consolidating of tactical missile maintenance at Letterkenny by transferring missile guidance system workload to Tobyhanna Army Depot.

Justification: Letterkenny Army Depot is one of the Army's five maintenance depots and one of three ground vehicle maintenance depots. Over time, each of the ground maintenance depots has become increasingly specialized. Anniston performs heavy combat vehicle maintenance and repair. Red River performs similar work on infantry fighting vehicles. Letterkenny Army Depot is responsible for towed and self-propelled artillery as well as DoD tactical missile repair. Like a number of other Army depots, Letterkenny receives, stores, and ships all types of ammunition items. A review of long range operational requirements supports a reduction of Army depots, specifically the consolidation of ground combat workload at a single depot.

The ground maintenance capacity of the three depots currently exceeds programmed work requirements by the equivalent of one to two depots. The heavy combat vehicle mission from Anniston cannot be absorbed at Letterkenny without major construction and facility renovations. Available maintenance capacity at Anniston and Tobyhanna makes the realigning Letterkenny to the two depots the most logical in terms of military value and cost effectiveness. Closure of Letterkenny is supported by the Joint Cross-Service Group for Depot Maintenance.

The Army's recommendation to transfer missile workload to Tobyhanna Army Depot preserves Letterkenny's missile disassembly and storage mission. It capitalizes on Tobyhanna's electronics focus and retains DoD missile system repair at a single Army depot.

Return on Investment: The total one-time cost to implement this recommendation is $50 million. The net of all costs and savings during the implementation period is a savings of $207 million. Annual recurring savings after implementation are $78 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $952 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 4,126 jobs (2,090 direct jobs and 2,036 indirect jobs) over the 1996-to-2001 period in the Franklin County, PA area, which represents 6.6 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 8.5 percent of employment in the area. There are no known environmental impediments at the realigning or receiving installations.

Fort Buchanan, Puerto Rico

Recommendation: Realign Fort Buchanan by reducing garrison management functions and disposing of family housing. Retain an enclave for the reserve components, Army and Air Force Exchange Service (AAFES) and the Antilles Consolidated School.

Justification: Fort Buchanan, a sub-installation of Fort McPherson, provides administrative, logistical and mobilization support to Army units and activities in Puerto Rico and the Caribbean region. Tenants include a U.S. Army Reserve headquarters, AAFES and a DoD-operated school complex. Although the post is managed by an active component garrison, it supports relatively few active component tenants. The family housing will close. The activities providing area support will relocate to Roosevelt Roads Navy Base and other sites. The Army intends to license buildings to the Army National Guard, that they currently occupy.

Return on Investment: The total one-time cost to implement this recommendation is $74 million. The net of all costs and savings during the implementation period is a cost of $50 million. Annual recurring savings after implementation are $10 million with a return on investment expected in seven years. The net present value of the costs and savings over 20 years is a savings of $45 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 289 jobs (182 direct jobs and 107 indirect jobs) over the 1996-to-2001 period in the San Juan, PR economic area which represents 0.1 percent of the area's employment. There are no known environmental impediments at the realigning or receiving installations.

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Dugway Proving Ground, Utah

Recommendation: Realign Dugway Proving Ground by relocating the smoke and obscurant mission to Yuma Proving Ground, AZ, and some elements of chemical/biological research to Aberdeen Proving Ground, MD. Dispose of English Village and retain test and experimentation facilities necessary to support Army and DoD missions.

Justification: Dugway is low in military value compared to other proving grounds. Its test facilities conduct both open air and laboratory chemical/biological testing in support of various Army and DoD missions. The testing is important as are associated security and safety requirements. However, this recommendation enables the Army to continue these important missions and also reduce costly overhead at Dugway.

Yuma can assume Dugway's programmed smoke and obscurant testing. Aberdeen Proving Ground can accept the laboratory research and development portion of the chemical/biological mission from Dugway, since it is currently performing chemical and biological research in facilities that carry equivalent bio/safety levels. Open air and simulant testing missions will remain at Dugway.

The State of Utah has expressed an interest in using English Village and associated firing and training ranges at Dugway for the National Guard, including the establishment of an artillery training facility.

Return on Investment: The total one-time cost to implement this recommendation is $25 million. The net of all costs and savings during the implementation period is a savings of $61 million. Annual recurring savings after implementation are $26 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $307 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,715 jobs (1,096 direct jobs and 619 indirect jobs) over the 1996-to-2001 period in the Tooele County, UT economic area, which represents 13.0 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 36.6 percent of employment in the area. There are no known environmental impediments at the realigning or receiving installations.

Fort Lee, Virginia

Recommendation: Realign Fort Lee, by reducing Kenner Army Community Hospital to a clinic. Eliminate inpatient services.

Justification: This recommendation, suggested by the Joint Cross-Service Group on Medical Treatment, eliminates excess medical treatment capacity at Fort Lee, VA by eliminating inpatient services at Kenner Army Community Hospital. Inpatient care would be provided by other nearby military medical activites and private facilities through Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Return on Investment: The total one-time cost to implement this recommendation is $2 million. The net of all costs and savings during the implementation period is a savings of $16 million. Annual recurring savings after implementation are $4 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $51 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 321 jobs (205 direct jobs and 116 indirect jobs) over the 1996-to-2001 period in the Richmond-Petersburg, VA Metropolitan Statistical Area, which represents 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential increase equal to 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Branch U.S. Disciplinary Barracks, Lompoc, California

Recommendation: Close Branch U.S. Disciplinary Barracks (USDB), Lompoc, CA.

Justification: Branch USDB, Lompoc consists of approximately 4,000 acres and 812,000 square feet of detention facilities. It is permitted to and operated by the Federal Bureau of Prisons. There are no Army activities on USDB, Lompoc. Accordingly, it is excess to the Army's requirements.

Return on Investment: There is no one-time cost to implement this recommendation. There are no costs and savings during the implementation period. There are no annual recurring savings after implementation. The net present value of the costs and savings over 20 years is a savings of $0 million.

Impacts: This recommendation will not affect any jobs in the Santa Barbara-Santa Maria-Lompoc, CA economic area. There are no known environmental impediments at the closing site.

East Fort Baker, California

Recommendation: Close East Fort Baker. Relocate all tenants to other installations that meet mission requirements. Return all real property to the Golden Gate National Recreation Area.

Justification: East Fort Baker is at the north end of the Golden Gate Bridge in Marin County, CA. The post consists of approximately 347 acres and 390,000 square feet of facilities. It provides facilities and housing for the Headquarters, 91st Training Division (U.S. Army Reserve) and the 6th Recruiting Brigade, Army Recruiting Command. The 91st Training Division has a requirement to remain in the San Francisco Bay area, while the 6th Recruiting Brigade has a regional mission associated with the western United States. Both the 6th Recruiting Brigade and the 91st Training Division can easily relocate to other installations. The 91st Training Division will relocate to Parks Reserve Forces Training Area, where it better aligns with its training mission. Closing East Fort Baker saves operations and support costs by consolidating tenants to other military installations without major construction.

Return on Investment: The total one-time cost to implement this recommendation is $8 million. The net of all costs and savings during the implementation period is a cost of $1 million. Annual recurring savings after implementation are $2 million with a return on investment expected in five years. The net present value of the costs and savings over 20 years is a savings of $15 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 152 jobs (97 direct jobs and 55 indirect jobs) over the 1996-to-2001 period in the San Francisco, CA Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.5 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Rio Vista Army Reserve Center, California

Recommendation: Close Rio Vista Army Reserve Center.

Justification: Rio Vista Army Reserve Center consists of approximately 28 acres. It formerly supported an Army Reserve watercraft unit. Since Reserve Components no longer use Rio Vista Reserve Center, it is excess to the Army's requirements. Closing Rio Vista will save base operations and maintenance funds and provide reuse opportunities for approximately 28 acres.

Return on Investment: There is no one-time cost to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $1 million. Annual recurring savings after implementation are $0.1 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $2 million.

Impacts: This recommendation will not affect any jobs in the Vallejo-Fairfield-NAPA, CA Primary Metropolitan Statistical Area. There are no known environmental impediments at the closing or receiving sites.

Stratford Army Engine Plant, Connecticut

Recommendation: Close Stratford Army Engine Plant.

Justification: The Stratford facility has produced engines for heavy armor vehicles and rotary wing aircraft. Reduced production requirements and the Army's increased capability for rebuild and repair have eliminated the need for the Stratford Army Engine Plant. There is no requirement for use of the installation by either the Active or Reserve Components.

The Army has an extensive capability to repair engines at Anniston and Corpus Christi Army Depots. The current inventory for these engines meets projected operational requirements. During mobilization, the capability to rebuild engines can be increased at both depots. In the event of an extended national emergency that would deplete stocks, the depots could reconfigure to assemble new engines from parts provided by the manufacturer until mothballed facilities become operational. Prior to closing the facility, the contractor will complete all existing contracts.

Return on Investment: The total one-time cost to implement this recommendation is $2 million. The net of all costs and savings during the implementation period is a savings of $24 million. Annual recurring savings after implementation are $6 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $80 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3 jobs (2 direct jobs and 1 indirect jobs) over the 1996-to-2001 period in the Fairfield County, CT economic area, which represents 0 percent of the area's employment. There are no known environmental impediments at the closing site.

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Big Coppett Key, Florida

Recommendation: Close Big Coppett Key.

Justification: Big Coppett Key, an island near Key West, consists of approximately five acres and 3,000 square feet of facilities. Big Coppett Key formerly provided communications support to United States Army. Since the Army no longer uses Big Coppett Key, it is excess and to Army requirements. Closing Big Coppett Key will save base operations and maintenance funds and provide reuse opportunities.

Return on Investment: There is no one-time cost to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $0.05 million. Annual recurring savings after implementation are $0.01 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $0.1 million.

Impacts: This recommendation will not affect any jobs in the Monroe County, FL economic area. There are no known environmental impediments at the closing site.

Concepts Analysis Agency, Maryland

Recommendation: Close by relocating Concepts Analysis Agency to Fort Belvoir, VA.

Justification: In 1993, the Commission suggested that DoD direct the Services to include a separate category for leased facilities to ensure a bottom-up review of leased space. The Army has conducted a review of activities in leased space to identify opportunities for relocation onto military installations. Because of the cost of leasing, the Army's goal is to minimize leased space when feasible, and maximize the use of government-owned space.

Since Army studies indicate that space is available at Fort Belvoir, the Concepts Analysis Agency can easily relocate with limited renovation. The annual cost of the current lease is $1.5 million.

Return on Investment: The total one-time cost to implement this recommendation is $3.7 million. The net of all costs and savings during the implementation period is a cost of $0.4 million. Annual recurring savings after implementation are $0.8 million with a return on investment expected in five years. The net present value of the costs and savings over 20 years is a savings of $7 million.

Impacts: This recommendation will not result in a change in employment in the Washington, DC-MD-VA-WV Primary Metropolitan Statistical Area because all affected jobs will remain in that area. There are no known environmental impediments at the closing site or receiving installation.

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Publications Distribution Center Baltimore, Maryland

Recommendation: Close by relocating the U.S. Army Publications Distribution Center, Baltimore to the U.S. Army Publications Center St. Louis, Missouri.

Justification: Consolidation of the U.S. Army Publications Distribution Center, Baltimore with the U.S. Army Publications Center, St. Louis, combines the wholesale and retail distribution functions of publication distribution into one location. The consolidation eliminates a manual operation at Baltimore in favor of an automated facility at St. Louis and creates efficiencies in the overall distribution process. This move consolidates two leases into one less costly lease.
Return on Investment: The total one-time cost to implement this recommendation is $6 million. The net of all costs and savings during the implementation period is a savings of $3 million. Annual recurring savings after implementation are $3 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $35 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 213 jobs (131 direct jobs and 82 indirect jobs) over the 1996-to-2001 period in the Baltimore, MD Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Hingham Cohasset, Massachussetts

Recommendation: Close Hingham Cohasset.

Justification: Hingham Cohasset, formerly a U.S. Army Reserve Center, is essentially vacant and is excess to the Army's requirements. The site consists of approximately 125 acres and 150,000 square feet of facilities. Closing Hingham Cohasset will save base operations and maintenance funds and provide reuse opportunities.

Return on Investment: There is no one-time cost to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $1 million. Annual recurring savings after implementation are $0.2 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $2 million.

Impacts: This recommendation will not affect any jobs in the Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH New England County Metropolitan Area. There are no known environmental impediments at the closing site.

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Sudbury Training Annex, Massachusetts

Recommendation: Close Sudbury Training Annex.

Justification: Sudbury Training Annex, outside Boston, consists of approximately 2,000 acres and 200,000 square feet of facilities. The primary mission of Sudbury Training Annex is to provide storage facilities for various Department of Defense activities. Sudbury Training Annex is excess to the Army's requirements. Closing the annex will save base operations and maintenance funds and provide reuse opportunities for approximately 2,000 acres.

Return on Investment: The total one-time cost to implement this recommendation is $1 million. The net of all costs and savings during the implementation period is a cost of $0.1 million. Annual recurring savings after implementation are $0.1 million with a return on investment expected in five years. The net present value of the costs and savings over 20 years is a savings of $1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 21 jobs (13 direct jobs and 8 indirect jobs) over the 1996-to-2001 period in the Essex-Middlesex-Suffolk-Plymouth and Norfolk Counties, MA, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving sites.

Aviation-Troop Command, Missouri

Recommendation: Disestablish Aviation-Troop Command (ATCOM), and close by relocating its missions/functions as follows:

- Relocate Aviation Research, Development & Engineering Center; Aviation Management; and Aviation Program Executive Offices to Redstone Arsenal, Huntsville, AL, to form the Aviation & Missile Command.
- Relocate functions related to soldier systems to Natick Research, Development, Engineering Center, MA, to align with the Soldier Systems Command.
- Relocate functions related to materiel management of communications-electronics to Fort Monmouth, NJ, to align with Communications-Electronics Command.
- Relocate automotive materiel management functions to Detroit Arsenal, MI, to align with Tank-Automotive and Armaments Command.

Justification: In 1993, the Commission suggested that DoD direct the Services to include a separate category for leased facilities to ensure a bottom-up review of leased space. The Army has conducted a review of activities in leased space to identify opportunities for relocation onto military installations. Because of the cost of leasing, the Army's goal is to minimize leased space, when feasible, and maximize the use of government-owned facilities.

In 1991, the Commission approved the merger of Aviation Systems Command and Troop Systems Command (ATCOM). It also recommended that the Army evaluate the relocation of these activities from leased space to government-owned facilities and provide appropriate recommendations to a subsequent Commission. In 1993, the Army studied the possibility of relocating ATCOM to a military installation and concluded it would be too costly. It is evident that restructuring ATCOM now provides a financially attractive opportunity to relocate.

Significant functional efficiencies are also possible by separating aviation and troop support commodities and relocating these functions to military installations. The aviation support functions realign to Redstone Arsenal to form a new Aviation & Missiles Command. The troop support functions realign to Natick, MA to align with the new Soldier Systems Command.

This recommendation preserves crucial research and development functions while optimizing operational efficiencies. Moving elements of ATCOM to Natick and Redstone Arsenal improves the synergistic effect of research, development and engineering, by facilitating the interaction between the medical, academic, and industrial communities already present in these regions. Vacating the St. Louis lease will collocate/consolidate similar life cycle functions at military installations for improved efficiencies and effectiveness.

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Return on Investment: The total one-time cost to implement this recommendation is $146 million. The net of all costs and savings during the implementation period is a savings of $9 million. Annual recurring savings after implementation are $46 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $453 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 7,679 jobs (4,731 direct jobs and 2,948 indirect jobs) over the 1996-to-2001 period in the St. Louis, MO-IL Metropolitan Statistical Area, which represents 0.5 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the area. There are no known environmental impediments at the closing site or receiving installations.

Fort Missoula, Montana

Recommendation: Close Fort Missoula, except an enclave for minimum essential land and facilities to support the Reserve Component units.

Justification: Fort Missoula consists of approximately 35 acres and 180,000 square feet of facilities. It provides administration, supply, training, maintenance, logistics support to Reserve Component forces. The post also provides facilities for the United States Forest Service. Fort Missoula has land and facilities excess to the Army's requirements. Closing Fort Missoula will save base operations and maintenance funds and provide reuse opportunities for approximately 25 acres. The Army intends to continue to license buildings and land currently occupied by the Army National Guard.

Return on Investment: The total one-time cost to implement this recommendation is $0.4 million. The net of all costs and savings during the implementation period is a savings of $0.5 million. Annual recurring savings after implementation are $0.2 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $2 million.

Impacts: This recommendation will not affect any jobs in the Missoula County, MT economic area. There are no known environmental impediments at the closing or receiving installations.

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Camp Kilmer, New Jersey

Recommendation: Close Camp Kilmer, except an enclave for minimum necessary facilities to support the Reserve Components.

Justification: Camp Kilmer consists of approximately 75 acres and 331,000 square feet of facilities. The camp provides administration, supply, training, maintenance, and logistics support to Reserve Component forces. The vast majority of the site is excess to the Army's requirements. Closing Camp Kilmer will save base operations and maintenance funds and provide reuse opportunities for approximately 56 acres.

Return on Investment: The total one-time cost to implement this recommendation is $0.1 million. The net of all costs and savings during the implementation period is a savings of $1 million. Annual recurring savings after implementation are $0.2 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $3 million.

Impacts: This recommendation will not affect any jobs in the Middlesex-Somerset-Hunterdon, NY Metropolitan Statistical Area. There are no known environmental impediments at the closing or receiving installations.

Caven Point Army Reserve Center, New Jersey

Recommendation: Close Caven Point U. S. Army Reserve Center. Relocate its reserve activities to the Fort Hamilton, NY, provided the recommendation to realign Fort Hamilton is approved.

Justification: Caven Point U.S. Army Reserve Center (USARC) is located near Jersey City, NJ, and consists of approximately 45,000 square feet of administrative and maintenance facilities on 35 acres. It is overcrowded and in generally poor condition. The primary mission of Caven Point USARC is to provide administrative, logistics and maintenance support to the Army Reserve. The consolidation of tenants from Caven Point USARC with Reserve Component activities remaining on Fort Hamilton will achieve savings in operations costs.

Return on Investment: The cost and savings information for the closure of Caven Point U.S. Army Reserve Center is included in the recommendation for Fort Hamilton, NY.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 4 jobs (3 direct jobs and 1 indirect job) over the 1996-to-2001 period in the Jersey City, NJ, Primary Metropolitan Statistical Area which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.8 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Camp Pedricktown, New Jersey

Recommendation: Close Camp Pedricktown, except the Sievers-Sandberg Reserve Center.

Justification: Camp Pedricktown consists of approximately 82 acres and 260,000 square feet of facilities. Its primary mission is to provide administration, supply, training, maintenance, and logistics support to Reserve Component forces. The vast majority of Camp Pedricktown's land and facilities are excess to Army requirements. Closing it will save base operations and maintenance funds and provide reuse opportunities for approximately 60 acres.

Return on Investment: The total one-time cost to implement this recommendation is $0.1 million. The net of all costs and savings during the implementation period is a savings of $2 million. Annual recurring savings after implementation are $0.4 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $5 million.

Impacts: This recommendation will not affect any jobs in the Philadelphia, PA-NJ Primary Metropolitan Statistical Area. There are no known environmental impediments at the closing or receiving installations.

Bellmore Logistics Activity, New York

Recommendation: Close Bellmore Logistics Activity.

Justification: Bellmore Logistics Activity, located on Long Island, consists of approximately 17 acres and 180,000 square feet of facilities. It formerly provided maintenance and logistical support to Reserve Component units. Since Reserve Components no longer use Bellmore Logistics Activity, it is excess to the Army's requirements. Closing Bellmore Logistics Activity will save base operations and maintenance funds and provide reuse opportunities.

Return on Investment: There is no one-time cost to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $2 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $5 million.

Impacts: This recommendation will not affect any jobs in the Nassau-Suffolk, NY Primary Metropolitan Statistical Area. There are no known environmental impediments at the closing site.

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Fort Totten, New York

Recommendation: Close Fort Totten, except an enclave for the U. S. Army Reserve. Dispose of family housing.

Justification: Fort Totten, a sub-installation of Fort Hamilton, provides administrative and logistical support to Army Reserve units in the New York City metropolitan area.

Fort Totten is low in military value compared to other command and control/administrative support installations. The post has limited capacity for growth or further military development.

Fort Totten is home to the Ernie Pyle U.S. Army Reserve Center, the largest in the country. Realignment of the Center to nearby Fort Hamilton is not possible since Fort Hamilton has little available space. Therefore, the Army decided to retain this facility as a reserve enclave.

Return on Investment: The total one-time cost to implement this recommendation is $4 million. The net of all costs and savings during the implementation period is a savings of $0.1 million. Annual recurring savings after implementation are $2 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $17 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 69 jobs (43 direct jobs and 26 indirect jobs) over the 1996-to-2001 period in the New York, NY Primary Metropolitan Statistical Area, which represents less than 0.1 percent of the area's employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

Recreation Center #2, North Carolina

Recommendation: Close Recreation Center #2, Fayetteville, NC.

Justification: Recreation Center #2 consists of approximately four acres and 17,000 square feet of community facilities. Recreation Center #2 is currently being leased to the city of Fayetteville, NC, and is excess to the Army's requirements. Closing Recreation Center #2 will provide reuse opportunities.

Return on Investment: There are no costs associated with this recommendation.

Impacts: This recommendation will not affect any jobs in the Fayetteville, NC Metropolitan Statistical Area. There are no known environmental impediments at the closing site.

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Information Systems Software Command (ISSC), Virginia

Recommendation: Close by relocating Information Systems Software Command to Fort Meade, MD.

Justification: In 1993, the Commission suggested DoD direct the Services to include a separate category for leased facilities to ensure a bottom-up review of leased space. The Army has conducted a review of activities in leased space to identify opportunities for relocation onto military installations. Because of the cost of leasing, the Army's goal is to minimize leased space, when feasible, and maximize the use of government-owned facilities.

This activity can relocate easily for a minor cost. The annual cost of the current lease is $2 million.

Return on Investment: The total one-time cost to implement this recommendation is $6 million. The net of all costs and savings during the implementation period is a cost of $2 million. Annual recurring savings after implementation are $1 million with a return on investment expected in six years. The net present value of the costs and savings over 20 years is a savings of $8 million.

Impacts: This recommendation will not result in a change in employment in the Washington, DC-MD-VA-WV Primary Metropolitan Statistical Area because all affected jobs will remain in that area. There are no known environmental impediments at the closing site or receiving installation.

Camp Bonneville, Washington

Recommendation: Close Camp Bonneville.

Justification: Camp Bonneville consists of approximately 4,000 acres and 178,000 square feet of facilities. The primary mission of Camp Bonneville is to provide training facilities for Active and Reserve units. Training currently conducted at Camp Bonneville will be shifted to Fort Lewis, Washington. Accordingly, Camp Bonneville is excess to the Army's requirements. Closing the camp will save base operations and maintenance funds and provide reuse opportunities.

Return on Investment: The total one-time cost to implement this recommendation is $0.04 million. The net of all costs and savings during the implementation period is a savings of $0.8 million. Annual recurring savings after implementation are $0.2 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $2 million.

Impacts: This recommendation will not affect any jobs in the Portland-Vancouver, OR-WA economic area. There are no known environmental impediments at the closing site.

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Valley Grove Area Maintenance Support Activity, West Virginia

Recommendation: Close Valley Grove Area Maintenance Support Activity (AMSA). Relocate reserve activity to the Kelly Support Center, PA, provided the recommendation to realign Kelly Support Center is approved.

Justification: Valley Grove AMSA, located in Valley Grove, WV, consists of approximately 10,000 square feet of leased maintenance facilities. Its primary mission is to provide maintenance support to Army Reserve activities. Consolidating tenants from Valley Grove AMSA with the Reserve Component activities remaining on Kelly Support Center will reduce the cost of operation.

Return on Investment: The cost and savings information for the closure of Valley Grove AMSA is included in the recommendation for Charles E. Kelly Support Center.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 10 jobs (7 direct jobs and 3 indirect jobs) over the 1996-to-2001 period in the Wheeling, WV-OH, Metropolitan Statistical Area, which is less than 0.1 percent of the areas employment. There are no known environmental impediments at the closing or receiving installations.

Tri-Service Project Reliance

Recommendation: Change the recommendation of the 1991 Commission regarding Tri-Service Project Reliance. Upon disestablishment of the U.S. Army Biomedical Research Development Laboratory (USABRDL) at Fort Detrick, MD, do not collocate environmental and occupational toxicology research with the Armstrong Laboratory at Wright-Patterson Air Force Base, OH. Instead relocate the health advisories environmental fate research and military criteria research functions of the Environmental Quality Research Branch to the U.S. Army Environmental Hygiene Agency (AEHA), Aberdeen Proving Ground, MD, and maintain the remaining functions of conducting non-mammalian toxicity assessment models and on-site biomonitoring research of the Research Methods Branch at Fort Detrick as part of Headquarters, U.S. Army Medical Research and Materiel Command.

Justification: There are no operational advantages that accrue by relocating this activity to Wright-Patterson AFB. Substantial resources were expended over the last 15 years to develop this unique laboratory currently used by researchers from across the DoD, other federal agencies and the academic community. No facilities are available at Wright-Patterson to accommodate this unique aquatic research activity, which supports environmental quality R&D initiatives developing cost effective alternatives to the use of mammalian species in toxicity testing. Significant new construction is required at Wright Patterson to duplicate facilities at Fort Detrick to continue this critical research. No construction is required at Aberdeen Proving Ground. Furthermore, the quality of water required for the culture of aquatic animals used in this research is not adequate at Wright-Patterson. This would necessitate additional construction and result in either several years of costly overlapping research in Maryland and Ohio, or the loss of over 10 years experience with the unique lab colonies used at Fort Detrick. The Navy and the Air Force agree that true research synergy is possible without executing the planned relocation.

Return on Investment: The total one-time cost to implement this recommendation is $0.3 million. The net of all costs and savings during the implementation period is a savings of $4 million. There are no annual recurring savings after implementation. The net present value of the costs and savings over 20 years is a savings of $4 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 15 jobs (9 direct jobs and 6 indirect jobs) over the 1996-to-2001 period in the Washington, DC-MD-VA-WV Primary Metropolitan Statistical Area, which is less than 0.1 percent of the areas employment.

The cumulative economic impact of all BRAC 95 recommendations and all prior round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the area. There are no known environmental impediments at the closing or receiving installations.

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Department of the Navy Selection Process

Introduction

Building upon the experience gained during BRAC 93, the Secretary of the Navy established policies, procedures, organizations, and internal controls that ensured that the process in the Department of the Navy (DON) for making base closure and realignment recommendations to the Secretary of the Defense was sound and in compliance with the Base Closure Act. The Secretary of the Navy established a Base Structure Evaluation Committee (BSEC) for the analyses and deliberations required to satisfy the Base Closure Act, and a Base Structure Analysis Team (BSAT) to provide staff support to the BSEC.

The Selection Process

Under the oversight and guidance of the Under Secretary of the Navy, the BSEC had eight members, consisting of senior DON career civilians and Navy flag and Marine Corps general officers who were responsible for developing recommendations for closure and realignment of DON military installations for approval by the Secretary of the Navy. The BSEC was required to evaluate Navy and Marine Corps installations in accordance with the Base Closure Act, to comply with appropriate guidance from higher levels, to ensure audibility by the Comptroller General, and to ensure operational factors were considered. In conducting its evaluation, the BSEC applied the final selection criteria for selecting bases for closure or realignment and based its recommendations on the FY 2001 force structure plan.

The BSAT was composed of military and civilian analysts who were tasked to collect data and to perform analysis for the BSEC. Additionally, the Naval Audit Service and the Office of General Counsel were integrally involved in the process. The Naval Audit Service reviewed the activities of the BSEC and the BSAT to ensure compliance with the approved Internal Control Plan and audited the accuracy and reliability of data provided by DON activities. The Office of the General Counsel provided senior-level legal advice and counsel.

In compliance with the Internal Control Plan, a Base Structure Data Base (BSDB) was developed and contained relevant information on all DON military installations subject to the Base Closure Act. The BSEC used the data base as the baseline for its evaluation of DON military installations, leading to development of recommendations for closure and realignment. Pursuant to the certification policy promulgated by the Secretary of the Navy to comply with the provisions of the Base Closure Act, data which was included in the Base Structure Data Base had to be certified as accurate and complete by the officer or civilian employee who initially generated data in response to the BSEC request for information, and then at each succeeding level of the chain of command. In conjunction with the requirement to keep records of all meetings that were part of the decision making process, the Base Structure Data Base and the certification policy were designed to ensure the accuracy, completeness, and integrity of the information upon which the DON recommendations were based.

The senior leadership of the Navy and Marine Corps was substantially involved in the process. Policy issues and basic principles that affect basing and infrastructure requirements were articulated, and comments were solicited from the major "owner/operators" of Navy and Marine Corps installations on Fleet operations, support, and readiness impacts. Additionally, the relationship between the Military Departments and the Office of the Secretary of Defense (OSD) for BRAC 95 was more formalized and more robust than in prior rounds. The DON was significantly represented on every OSD BRAC 95 group.

In order to comply with the requirements of the Base Closure Act relating to evaluation using the force structure plan and the selection criteria, the first step in the process was to categorize and aggregate installations for analysis. Based on a review of the Secretary of the Navy's responsibilities under Title 10 of the U.S. Code to operate, maintain, train, and support the operating forces within the DON, the BSEC developed five major categories for organizing its military installations for analysis and evaluation: Operational Support, Industrial Support, Technical Centers/Laboratories, Educational/Training, and Personnel Support/Other. These categories were then further divided into 27 subcategories to ensure that like installations were compared to one another and to allow identification of total capacity and military value for an entire category of installations. Within these 27 subcategories were 830 individual Navy or Marine Corps installations or activities, each of which was reviewed during the BRAC 95 process.

Data calls were issued to these installations, tailored to the subcategory in which the activity was grouped, to obtain the relevant certified information relating to capacity and military value. "Conglomerate" activities having more than one significant mission received multiple military value and capacity data calls relating to those missions. The certified responses to these data calls were entered into the Base Structure Data Base and formed the sole basis for BSEC determinations.

Capacity analysis compared the present base structure to the future force structure requirement for each subcategory of installations to determine whether excess base structure capacity existed. The capacity measures were the appropriate "throughput" for each type of installation. If total capacity was greater than the future required capacity, excess capacity was determined to exist, and the military value of each installation in a subcategory was evaluated. If there was no meaningful excess capacity, no further closure or realignment analysis was conducted. Of the 27 subcategories, eight of them demonstrated either little or no excess capacity.

The remaining 19 subcategories underwent military value analysis to assess the relative military value of installations within a subcategory, using a quantitative methodology that was as objective as possible. The foundation of the analysis was the military value criteria, which are the first four of the eight selection criteria issued by the Secretary of Defense. Information from the military value data call responses was displayed in a matrix, scored by the BSEC according to relative importance for a particular subcategory.. A military value score for a particular

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installation is a relative measure of military value only within the context of the subcategory in which that installation was analyzed, in order to compare one installation in a subcategory against another installation in that category.

The results of the capacity analyses and military value analyses were then combined in that stage of the process called configuration analysis. The purpose of configuration analysis was to identify, for each subcategory of installations, sets of installations that best meet the needs of the Navy and Marine Corps, in light of future requirements, while eliminating the most excess capacity. Multiple solutions were generated that would satisfy capacity requirements for the future force structure while maintaining the average military value of the retained installations at a level equal to or greater than the average military value for all of the installations in the subcategory.

The configuration analysis solutions were then used by the BSEC as the starting point for the application of military judgment in the development of potential closure and realignment scenarios to undergo return on investment analysis. Scenario development was an iterative process in which results of COBRA analyses and inputs from the senior Defense leadership were used to generate additional options. The input received from the Fleet CINC's, the major claimants (including the SYSCOM Commanders), and the DON civilian leadership was an integral part of scenario development. The CINCs and major claimants provided input both directly, during meetings, and indirectly, through COBRA scenario data call responses. Additionally, the Joint Cross-Service Groups generated numerous alternatives derived from their analysis of data and information provided by the Military Departments. From alternatives proposing closure or realignment of DON activities, all but one of the Depot Maintenance alternatives, all of the significant Laboratory alternatives, all of the Military Treatment Facilities alternatives, all of the significant Test and Evaluation alternatives, and all of the Undergraduate Pilot Training alternatives resulted in COBRA scenario data calls. As a result of the scenario development portion of the process, the BSEC developed 174 scenarios involving 119 activities.

COBRA analyses were conducted on all of these scenarios, using certified responses to COBRA scenario data calls from the chains of command of affected installations and their tenants. In analyzing these responses, the BSEC aggressively challenged cost estimates to ensure both their consistency with standing policies and procedures and their reasonableness. With reductions in budgets, numbers of programs, and numbers of systems being produced, the BSEC reviewed the data call responses to ensure that outyear requirements were appropriately reduced in terms of personnel, facilities, and capacities of remaining facilities. The BSEC used the COBRA algorithms as a tool to ensure that its recommendations were cost effective. As a result, the estimated upfront costs are the lowest of any round of base closure, and the longest period for return on investment of any recommendation is four years. Most recommendations will obtain an immediate return on investment, with savings offsetting costs of closure within the closure period.

The impact on the local economic area for each DON installation considered for closure or realignment was calculated using the DoD BRAC 95 Economic Impact Data Base. The DON is very concerned about economic impact and has made every effort to fully understand all of the

economic impacts its recommendations might have on local communities. The BSEC also evaluated the ability of the existing local community infrastructure at potential receiving installations to support additional missions and personnel. The impact of increases in base personnel on such infrastructure items as off-base housing availability, public and private schools, public transportation, fire and police protection, health care facilities, and public utilities was assessed. No significant community infrastructure impacts were identified for any of the DON proposed closure or realignment actions.

Once the BSEC had determined the serious candidates for closure or realignment, an environmental summary was prepared which compared the environmental management efforts at losing and gaining sites. Differences in environmental management effort were presented as they relate to such programs as threatened/endangered species, wetlands, cultural resources, land use, air quality, environmental facilities, and installation restoration sites. The environmental impact analysis permitted the BSEC to obtain a comprehensive picture of the potential environmental impacts arising from the recommendations for closure and realignment. No significant environmental impacts were identified for any scenario which would support reconsideration of any recommendation.

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Naval Air Facility, Adak, Alaska

Recommendation: Close Naval Air Facility, Adak, Alaska.

Justification: Despite the large reduction in operational infrastructure accomplished during the 1993 round of base closure and realignment, since DON force structure experiences a reduction of over 10 percent by the year 2001, there continues to be additional excess capacity that must be eliminated. In evaluating operational bases, the goal was to retain only that infrastructure necessary to support the future force structure without impeding operational flexibility for deployment of that force. In the case of Naval Air Facility, Adak, Alaska, the Navy's anti-submarine warfare surveillance mission no longer requires these facilities to base or support its aircraft. Closure of this activity reduces excess capacity by eliminating unnecessary capabilities and can be accomplished with no loss in mission effectiveness.

Return on Investment: The total estimated one-time cost to implement this recommendation is $9.4 million. The net of all costs and savings during the implementation period is a savings of $108 million. Annual recurring savings after implementation are $26 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $354.8 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 894 jobs (678 direct jobs and 216 indirect jobs) over the 1996-to-2001 period in the Aleutians West Census Area economic area, which is 10.4 percent of economic area employment. However, the geography of the Aleutian Islands localizes economic effects, and no loss is anticipated from the closure of NAF Adak beyond the direct job loss.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: The closure of Naval Air Facility, Adak will have a positive effect on the environment in that, even though NAF Adak is in an attainment area for carbon monoxide, ozone, and PM-10, a source of ozone will be removed, further improving already favorable air quality. In an area with few air emission sources present, cessation of air emissions from this facility will enhance the natural state of the western Alaska region. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Shipyard, Long Beach, California

Recommendation: Close the Naval Shipyard Long Beach, California, except retain the sonar dome government-owned, contractor-operated facility and those family housing units needed to fulfill Department of the Navy requirements, particularly those at Naval Weapons Station, Seal Beach, California. Relocate necessary personnel to other naval activities as appropriate, primarily Naval Weapons Station, Seal Beach and naval activities in the San Diego, California, area.

Justification: Despite substantial reductions in depot maintenance capability accomplished in prior base closure evolutions, as force levels continue to decline, there is additional excess capacity that needs to be eliminated. Force structure reductions by the year 2001 eliminate the requirement for the Department of the Navy to retain this facility, including its large-deck drydocking capability. As a result of BRAC 91, the adjoining Naval Station Long Beach was closed, and some of its assets were transferred to the naval shipyard for "ship support functions." Of those transferred assets, only those housing units required to fulfill Department of the Navy requirements in the local commuting area will be retained after closure of the naval shipyard.

Return on Investment: The total estimated one-time cost to implement this recommendation is $74.5 million. The net of all costs and savings during the implementation period is a savings of $725.6 million. Annual recurring savings after implementation are $130.6 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $1,948.6 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 13,261 jobs (4,029 direct jobs and 9,232 indirect jobs) over the 1996-to-2001 period in the Los Angeles-Long Beach, California PMSA economic area, which is 0.3 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.4 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of Long Beach Naval Shipyard will have a positive impact on the local environment. The removal of a major industrial activity from an area that is in non-attainment for carbon monoxide, ozone, and PM-10 will be of substantial benefit to the air quality of this area. Similarly, the workload and small numbers of personnel being relocated to other activities are not expected to adversely impact the environment of geographic areas in which those activities are located. There are no adverse impacts to threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Ship Repair Facility, Guam

Recommendation: Close the Naval Ship Repair Facility (SRF), Guam, except transfer appropriate assets, including the piers, the floating drydock, its typhoon basin anchorage, the recompression chamber, and the floating crane, to Naval Activities, Guam.

Justification: Despite substantial reductions in depot maintenance capability accomplished in prior base closure evolutions, as force levels continue to decline, there is additional excess capacity that needs to be eliminated. While operational and forward basing considerations require access to Guam, a fully functional ship repair facility is not required. The workload of SRF Guam can be entirely met by other Department of the Navy facilities. However, retention of the waterfront assets provides the DON with the ability to meet voyage repair and emergent requirements that may arise in the Western Pacific.

Return on Investment: The total estimated one-time cost to implement this recommendation is $8.4 million. The net of all costs and savings during the implementation period is a savings of $171.9 million. Annual recurring savings after implementation are $37.8 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $529 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,321 jobs (663 direct jobs and 658 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 2.0 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. However, much of this impact involves the inclusion of Military Sealift Command mariners in the job loss statement, which does not reflect the temporary nature of their presence on Guam.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of the Ship Repair Facility Guam will have a generally positive impact on the environment because a significant industrial operation will be closed, including the removal of stationary emission sources associated with this operation. This will be a benefit to an already positive air quality situation on Guam. Further, this closure will not have an adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources.

Naval Air Warfare Center, Aircraft Division, Indianapolis, Indiana

Recommendation: Close the Naval Air Warfare Center (NAWC), Aircraft Division, Indianapolis, Indiana. Relocate necessary functions along with associated personnel, equipment and support to other naval technical activities, primarily Naval Surface Warfare Center, Crane, Indiana; Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland; and Naval Air Warfare Center, Weapons Division, China Lake, California.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. This recommended closure results in the closure of a major technical center and the relocation of its principal functions to three other technical centers, realizing both a reduction in excess capacity and significant economies while raising aggregate military value.

Return on Investment: The return on investment data below applies to the closure of Naval Surface Warfare Center Louisville and the closure of NAWC Indianapolis. The total estimated one-time cost to implement these recommendations is $180 million. The net of all costs and savings during the implementation period is a cost of $26.8 million. Annual recurring savings after implementation are $67.8 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $639.9 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 7,659 jobs (2,841 direct jobs and 4,818 indirect jobs) over the 1996-to-2001 period in the Boone-Hamilton-Hancock-Hendricks-Johnson-Marion-Morgan-Shelby Counties, Indiana, economic area, which is 0.9 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 2.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of NAWC Indianapolis will have a positive effect on the environment because of the movement out of a region that is in marginal non-attainment for ozone. All three of the receiving sites (NSWC Crane, NAWC China Lake, and NAWC Patuxent River) are in areas that are in attainment for carbon monoxide, and the relocation of personnel from Indianapolis is not expected to have a significant effect on base operations at these sites. The utility infrastructure at each of these receiving bases is sufficient to handle these additional personnel, and this closure will not adversely impact threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources.

Naval Surface Warfare Center, Crane Division Detachment, Louisville, Kentucky

Recommendation: Close the Naval Surface Warfare Center, Crane Division Detachment, Louisville, Kentucky. Relocate appropriate functions, personnel, equipment, and support to other naval activities, primarily the Naval Shipyard, Norfolk, Virginia; the Naval Surface Warfare Center, Port Hueneme, California; and the Naval Surface Warfare Center, Crane, Indiana.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Consistent with the Department of the Navy's efforts to remove depot level maintenance workload from technical centers and return it to depot industrial activities, this action consolidates ships' systems (guns) depot and general industrial workload at NSYD Norfolk, which has many of the required facilities in place. The functional distribution of workload in this manner offers an opportunity for cross-servicing part of the gun plating workload to the Watervliet Arsenal in New York. System integration engineering will relocate to NSWC Port Hueneme, with the remainder of the engineering workload and Close-in-Weapons System (CIWS) depot maintenance functions relocating to NSWC Crane. The closure of this activity not only reduces excess capacity, but relocation of functional workload to activities performing similar work will result in additional efficiencies and economies in the management of those functions.

Return on Investment: The return on investment data below applies to the closure of NSWC Louisville and the closure of NAWC Indianapolis. The total estimated one-time cost to implement these recommendations is $180 million. The net of all costs and savings during the implementation period is a cost of $26.8 million. Annual recurring savings after implementation are $67.8 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $639.9 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,791 jobs (1,464 direct jobs and 2,327 indirect jobs) over the 1996-to-2001 period in the Louisville, Kentucky-Indiana MSA economic area, which is 0.7 percent of economic area employment.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of NSWC Louisville will have a generally positive impact on the environment because a major industrial operation will be closing in an area that is in moderate non-attainment for ozone. To the extent the relocations from this recommendation trigger the requirement for a conformity determination to assess the impact on the air quality of the areas in which each of the receiving sites are located, such determinations will be prepared. One of the most significant environmental benefits resulting from this recommendation is the transfer of workload from NSWC Louisville to the Watervliet Arsenal, New York, to accomplish plating operations which the Norfolk Naval Shipyard currently cannot perform. This transfer reduces the DoD-wide facilities required to perform the programmed plating work. There are no impacts on threatened/endangered species, sensitive habitats and wetlands, or cultural resources occasioned by this recommendation.

Naval Surface Warfare Center, Dahlgren Division Detachment, White Oak, Maryland

Recommendation: Close the Naval Surface Warfare Center, Dahlgren Division Detachment, White Oak, Maryland. Relocate the functions, personnel and equipment associated with Ship Magnetic Signature Control R&D Complex to the Naval Surface Warfare Center, Carderock, Maryland, and the functions and personnel associated with reentry body dynamics research and development to the Naval Surface Warfare Center, Dahlgren, Virginia.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Closure of the Naval Surface Warfare Center, Dahlgren Division Detachment, White Oak, Maryland, reduces this excess capacity, and its consolidation with two other major technical centers that already have capability will result in further economies and efficiencies. This closure also eliminates unnecessary capabilities, since a few Navy facilities were left at NSWC White Oak only because Naval Sea Systems Command was relocating there as a result of BRAC 93. However, those facilities can be excessed, and the Naval Sea Systems Command can be easily accommodated at the Washington Navy Yard.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.9 million. The net of all costs and savings during the implementation period is a savings of $28.7 million. Annual recurring savings after implementation are
$6 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $85.9 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 646 jobs (202 direct jobs and 444 indirect jobs) over the 1996-to-2001 period in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of NSWC White Oak Detachment will have a generally positive impact on the environment. A portion of the personnel being relocated will transfer to NSWC Dahlgren, which is in an area that is in attainment for carbon monoxide. As regards personnel movements to NSWC Carderock, a conformity determination may be required to assess any air quality impacts. In each case, however, the personnel relocating, when compared to expected force structure reductions by FY 2001, represent a net decrease in base personnel. There is adequate capacity in the utility infrastructure at the receiving sites to handle additional personnel loading. Likewise, there is sufficient space for rehabilitation or acreage of unrestricted land for expansion for new facilities. There is no adverse impact to threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Station, South Weymouth, Massachusetts

Recommendation: Close Naval Air Station, South Weymouth, Massachusetts. Relocate its aircraft and necessary personnel, equipment and support to Naval Air Station, Brunswick, Maine. Relocate the Marine Corps Reserve support squadrons to another facility in the local area or to NAS Brunswick. Reestablish Naval Reserve Center, Quincy, Massachusetts, and change the receiving site specified by the 1993 Commission (1993 Commission Report, at page 1-64) for consolidation of Navy and Marine Corps Reserve Center, Lawrence, Massachusetts; Naval Reserve Center, Chicopee, Massachusetts; and Naval Reserve Center, Quincy, Massachusetts, from "NAS South Weymouth, Massachusetts" to "Naval Reserve Center, Quincy, Massachusetts."

Justification: As a result of the Base Closure and Realignment Commission's actions in BRAC 93, the Department of the Navy retained several naval air stations north of the major fleet concentration in Norfolk. Despite the large reduction in operational infrastructure accomplished during BRAC 93, the current Force Structure Plan shows a continuing decline in force levels from that governing BRAC 93, and thus there is additional excess capacity that must be eliminated. The major thrust of the evaluation of operational bases was to retain only that infrastructure necessary to support future force levels while, at the same time, not impeding operational flexibility for the deployment of that force. In that latter context, the Commander-in-Chief, U.S. Atlantic Fleet (CINCLANTFLT), expressed an operational desire to have as fully-capable an air station as possible north of Norfolk with the closest geographic proximity to support operational deployments. Satisfaction of these needs both to further reduce excess capacity and to honor CINCLANTFLT's operational imperative can be accomplished best by the retention of the most fully capable air station in this geographic area, Naval Air Station, Brunswick, Maine, in lieu of the reserve air station at South Weymouth. Unlike BRAC 93, where assets from Naval Air Station, South Weymouth were proposed to be relocated to three receiving sites, two of which were geographically quite remote, and where the perceived adverse impact on reserve demographics was considered unacceptable by the Commission, this BRAC 95 recommendation moves all of the assets and supporting personnel and equipment less than 150 miles away, thus providing most acceptable reserve demographics. Further, the consolidation of several reserve centers at the Naval Reserve Center, Quincy, Massachusetts, provides demographics consideration for surface reserve assets. In addition, this recommendation furthers the Departmental preference to collocate active and reserve assets and personnel wherever possible to enhance the readiness of both.

Return on Investment: The total estimated one-time cost to implement this recommendation is $17.3 million. The net of all costs and savings during the implementation period is a savings of $50.8 million. Annual recurring savings after implementation are $27.4 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $315.2 million.

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Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,443 jobs (936 direct jobs and 507 indirect jobs) over the 1996-to-2001 period in the Essex-Middlesex-Suffolk-Plymouth-Norfolk Counties, Massachusetts economic area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NAS South Weymouth will have a positive effect on local air quality in that a source of VOC and NOX emissions will be removed from an area that is in severe non-attainment for ozone. NAS Brunswick is in an area that is in attainment for carbon monoxide and PM-10 but is in moderate non-attainment for ozone, which may require a conformity determination to evaluate air quality impacts. However, it is expected that the additional functions, personnel, and equipment from this closure recommendation will have no significant impact on air quality and airfield operations at NAS Brunswick. Water supply and wastewater treatment services are provided to NAS Brunswick from off-base and are not limited by capacity. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Station, Meridian, Mississippi

Recommendation: Close Naval Air Station, Meridian, Mississippi, except retain the Regional Counterdrug Training Academy facilities which are transferred to the Academy. Relocate the undergraduate strike pilot training function and associated personnel, equipment and support to Naval Air Station, Kingsville, Texas. Its major tenant, the Naval Technical Training Center, will close, and its training functions will be relocated to other training activities, primarily the Navy Supply Corps School, Athens, Georgia, and Naval Education and Training Center, Newport, Rhode Island.

Justification: The 1993 Commission recommended that Naval Air Station, Meridian remain open because it found that the then-current and future pilot training rate (PTR) required that there be two full-strike training bases, Naval Air Station, Kingsville, Texas, and Naval Air Station, Meridian. In the period between 1993 and the present, two factors emerged that required the Department of the Navy again to review the requirement for two such installations. First, the current Force Structure Plan shows a continuing decline in the PTR (particularly in the decline from 11 to 10 carrier air wings) so that Navy strike training could be handled by a single full-strike training base. Second, the consolidation of strike training that follows the closure of NAS Meridian is in the spirit of the policy of the Secretary of Defense that functional pilot training be consolidated. The training conducted at Naval Air Station, Meridian is similar to that conducted at Naval Air Station, Kingsville, which has a higher military value, presently houses T-45 assets (the Department of the Navy's new primary strike training aircraft) and its supporting infrastructure, and has ready access to larger amounts of air space, including over-water air space if such is required. Also, the Undergraduate Pilot Training Joint Cross-Service Group included the closure of Naval Air Station, Meridian in each of its closure/realignment alternatives. The separate recommendation for the consolidation of the Naval Technical Training Center functions at two other major training activities provides improved and more efficient management of these training functions and aligns certain enlisted personnel training to sites where similar training is being provided to officers.

Return on Investment: The return on investment data below applies to the closure of NAS Meridian, the closure of NTTC Meridian, the realignment of NAS Corpus Christi to an NAF, and the NAS Alameda redirect. The total estimated one-time cost to implement these recommendations is $83.4 million. The net of all costs and savings during the implementation period is a savings of $158.8 million. Annual recurring savings after implementation are $33.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $471.2 million.

Impacts:

Economic Impact on Communities: The economic data below applies to the closure of NAS Meridian and the closure of NTTC Meridian. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,324 jobs (2,581 direct jobs and 743 indirect jobs) over the 1996-to-2001 period in the Lauderdale County, Mississippi economic area, which is 8.0 percent of economic area employment.

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Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NAS Meridian will have a generally positive effect on the environment. Undergraduate Pilot Training will be relocated to NAS Kingsville, which is in an air quality control district that is in attainment for carbon monoxide, ozone, and PM-10. Cleanup of the six IR sites at NAS Meridian will continue. No impact was identified for threatened/endangered species, sensitive habitats and wetlands, cultural/historical resources, land/air space use, pollution control, and hazardous material waste requirements. Adequate capacity exists for all utilities at the gaining base, and there is sufficient space for rehabilitation or unrestricted acres available for expansion.

Naval Air Warfare Center, Aircraft Division, Lakehurst, New Jersey

Recommendation: Close Naval Air Warfare Center, Aircraft Division, Lakehurst, New Jersey, except transfer in place certain facilities and equipment to the Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland. Relocate other functions and associated personnel and equipment to the Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland, and the Naval Aviation Depot, Jacksonville, Florida. Relocate the Naval Air Technical Training Center Detachment, Lakehurst, to Naval Air Station, Pensacola, Florida. Relocate Naval Mobile Construction Battalion 21, the U.S. Army CECOM Airborne Engineering Evaluation Support Activity, and the Defense Reutilization and Marketing Office to other government-owned spaces.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The closure and realignment of this activity permits the elimination of the command and support structure of this activity and the consolidation of its most critical functions at a major technical center, allowing synergism with its parent command and more fully utilizing available capabilities at major depot activities. This recommendation retains at Lakehurst only those facilities and personnel essential to conducting catapult and arresting gear testing and fleet support.

Return on Investment: The total estimated one-time cost to implement this recommendation is $96.9 million. The net of all costs and savings during the implementation period is a cost of $5 million. Annual recurring savings after implementation are
$37.2 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $358.7 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 4,126 jobs (1,763 direct jobs and 2,363 indirect jobs) over the 1996-to-2001 period in the Monmouth-Ocean, New Jersey PMSA economic area, which is 1.0 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.1 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of NAWC Lakehurst will have a generally positive impact on the environment because of the relocation of appropriate functions and personnel out of an area that is in severe non-attainment for ozone. NAWC Patuxent River is currently in an attainment area for carbon monoxide, and the additional functions and personnel are not expected to significantly affect this status. While NAS Jacksonville is in an attainment area for carbon monoxide, it is in a transitional area for ozone. The relocation of functions and personnel to NAS Jacksonville are not expected to significantly affect this status. Each of the gaining sites has sufficient capacity in its respective utility infrastructure to handle the additional personnel. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania

Recommendation: Close the Naval Air Warfare Center, Aircraft Division, Warminster, Pennsylvania. Relocate appropriate functions, personnel, equipment, and support to other technical activities, primarily the Naval Air Warfare Center, Aircraft Division, Patuxent River, Maryland.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The closure of this activity reduces excess capacity with the resultant efficiencies and economies in the consolidation of the relocated functions with its parent command at the new receiving site. Additionally, it completes the process of realignment initiated in BRAC 91, based on a clearer understanding of what is now required to be retained in-house. Closure and excessing of the Human Centrifuge/Dynamic Flight Simulator Facility further reduces excess capacity and provides the opportunity for the transfer of this facility to the public educational or commercial sectors, thus maintaining access on an as-needed basis.

Return on Investment: The return on investment data below applies to the closure of NAWC Warminster and the closure of Naval Command, Control and Ocean Surveillance Center (NCCOSC), RDT&E Division Detachment, Warminster. The total estimated one-time cost to implement this recommendation is $8.4 million. The net of all costs and savings during the implementation period is a savings of $33.1 million. Annual recurring savings after implementation are $7.6 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $104.6 million.

Impacts:

Economic Impact on Communities: The economic data below applies to the closure of NAWC Warminster and the closure of NCCOSC Det Warminster. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,080 jobs (348 direct jobs and 732 indirect jobs) over the 1996-to-2001 period in the Philadelphia, Pennsylvania-New Jersey PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of both NAWC Warminster and NCCOSC Det Warminster will have a positive effect on the environment because their appropriate functions and personnel will be relocated out of an area that is in severe non-attainment for ozone and from an activity that is included on the National Priorities List. The personnel being relocated to NAWC Patuxent River represent an increase in personnel of less than 1 percent, which is not considered of sufficient size to adversely impact the environment at that site. However, a conformity determination may be required to determine this impact. The utility infrastructure capacity at NAWC Patuxent River is sufficient to handle the additional loading. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Station, Key West, Florida

Recommendation: Realign Naval Air Station, Key West, Florida, to a Naval Air Facility and dispose of certain portions of Truman Annex and Trumbo Point (including piers, wharfs and buildings).

Justification: Despite the large reduction in operational infrastructure accomplished during the 1993 round of base closure and realignment, since DON force structure experiences a reduction of over 10 percent by the year 2001, there continues to be additional excess capacity that must be eliminated. In evaluating operational bases, the goal was to retain only that infrastructure necessary to support the future force structure without impeding operational flexibility for deployment of that force. In the case of NAS Key West, its key importance derives from its airspace and training ranges, particularly in view of other aviation consolidations. Full access to those can be accomplished by retaining a downsized Naval Air Facility rather than a large naval air station. This realignment disposes of the waterfront assets of this facility and retains both the airspace and the ranges under its control for continued use by the Fleet for operations and training.

Return on Investment: The total estimated one-time cost to implement this recommendation is $0.4 million. The net of all costs and savings during the implementation period is a savings of $8.2 million. Annual recurring savings after implementation are $1.8 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $25.5 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 26 jobs (20 direct jobs and 6 indirect jobs) over the 1996-to-2001 period in the Monroe County, Florida economic area, which is 0.1 percent of economic area employment.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: The realignment of NAS Key West to a Naval Air Facility has a minimal impact on the air quality of the local area, which is in attainment for carbon monoxide, ozone, and PM-10. Since no aviation assets are being moved into or out of this facility, the reduction in personnel and the resultant commuter carbon monoxide emissions will have a positive impact on the environment. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Activities, Guam

Recommendation: Realign Naval Activities Guam. Relocate all ammunition vessels and associated personnel and support to Naval Magazine, Lualualei, Hawaii. Relocate all other combat logistics force ships and associated personnel and support to Naval Station, Pearl Harbor, Hawaii. Relocate Military Sealift Command personnel and Diego Garcia support functions to Naval Station, Pearl Harbor, Hawaii. Disestablish the Naval Pacific Meteorology and Oceanographic Center-WESTPAC, except for the Joint Typhoon Warning Center, which relocates to the Naval Pacific Meteorology and Oceanographic Center, Pearl Harbor, Hawaii. Disestablish the Afloat Training Group-WESTPAC. All other Department of Defense activities that are presently on Guam may remain either as a tenant of Naval Activities, Guam or other appropriate naval activity. Retain waterfront assets for support, mobilization, and contingencies and to support the afloat tender.

Justification: Despite the large reduction in operational infrastructure accomplished during the 1993 round of base closure and realignment, since DON force structure experiences a reduction of over 10 percent by the year 2001, there continues to be additional excess capacity that must be eliminated. In evaluating operational bases, the goal was to retain only that infrastructure necessary to support the future force structure without impeding operational flexibility for deployment of that force. Shifting deployment patterns in the Pacific Fleet reduce the need for a fully functional naval station. Operational and forward basing considerations require access to Guam. However, since no combatant ships are homeported there, elimination of the naval station facilities which are not required to support mobilization and/or contingency operations allows removal of excess capacity while retaining this necessary access.

Return on Investment: The total estimated one-time cost to implement this recommendation is $93.1 million. The net of all costs and savings during the implementation period is a savings of $66.3 million. Annual recurring savings after implementation are $42.5 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $474.3 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,359 jobs (2,421 direct jobs and 938 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 5.0 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. It should be recognized, however, that a major segment of these jobs is attributable to crews of the Military Sealift Command ships, whose presence on the island is sporadic in any given year.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of a portion of Naval Activities, Guam will have a generally positive effect on the environment because of the elimination of permitted stationary sources of air emissions associated with naval operations. In addition, the removal of military activity in areas occupied by threatened/endangered species and wetlands contributes positively to the environment. Sufficient unrestricted land is available for expansion at each of the receiving sites, and adequate capacity exists in their environmental facilities (such as water treatment and wastewater treatment plants) to handle the increases in personnel attendant to this closure.

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Naval Air Station, Corpus Christi, Texas

Recommendation: Realign Naval Air Station, Corpus Christi, Texas, as a Naval Air Facility, and relocate the undergraduate pilot training function and associated personnel, equipment and support to Naval Air Station, Pensacola, Florida, and Naval Air Station, Whiting Field, Florida.

Justification: Reductions in force structure have led to decreases in pilot training rates. This reduction has allowed the Navy to consolidate maritime and primary fixed wing training in the Pensacola-Whiting complex while retaining the airfield and airspace at Corpus Christi to support the consolidation of strike training at the Kingsville-Corpus Christi complex. The Corpus Christi Naval Air Facility is also being retained to accept mine warfare helicopter assets in support of the Mine Warfare Center of Excellence at Naval Station, Ingleside, and to provide the opportunity for the movement of additional aviation assets to the NAF as operational considerations dictate. This NAF will continue to support its current group of DoD and Federal agency tenants and their aviation-intensive needs, as well as other regional Navy air operations as needed.

Return on Investment: The return on investment data below applies to the closure of NAS Meridian, the closure of NTTC Meridian, the realignment of NAS Corpus Christi to an NAF, and the NAS Alameda redirect. The total estimated one-time cost to implement these recommendations is $83.4 million. The net of all costs and savings during the implementation period is a savings of $158.8 million. Annual recurring savings after implementation are $33.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $471.2 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 152 jobs (142 direct jobs and 10 indirect jobs) over the 1996-to-2001 period in the Corpus Christi, Texas MSA economic area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 0.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The realignment of NAS Corpus Christi will have a generally positive effect on the environment. Undergraduate Pilot Training will be relocated to NAS Pensacola and NAS Whiting Field, which are in air quality control districts that are in attainment for carbon monoxide, ozone, and PM-10. A conformity determination for certain air quality areas may be required to assess the impact this realignment (in combination with the closure of NAS Meridian) will have on the air quality status of these areas. Each receiving base was reviewed for the realignment impact on threatened/endangered species, sensitive habitats and

wetlands, cultural/historical resources, land/air space use, pollution control, and hazardous material waste requirements, and no such impact was found. Adequate capacity exists for all utilities at each gaining base. The gaining sites have sufficient space for rehabilitation or unrestricted acres available for expansion.

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Naval Undersea Warfare Center, Keyport, Washington

Recommendation: Realign Naval Undersea Warfare Center, Keyport, Washington, by moving its ships' combat systems console refurbishment depot maintenance and general industrial workload to Naval Shipyard, Puget Sound, Bremerton, Washington.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Consistent with the Department of the Navy's efforts to remove depot level maintenance workload from technical centers and return it to depot industrial activities, this action consolidates ship combat systems workload at NSYD Puget Sound, but retains electronic test and repair equipments at NUWC Keyport, as well as torpedo depot maintenance, thereby removing the need to replicate facilities. The workload redistribution also furthers the Pacific Northwest Regional Maintenance Center initiatives, more fully utilizes the capacity at the shipyard, and will achieve greater productivity efficiencies within the shipyard.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.1 million. The net of all costs and savings during the implementation period is a savings of $9.8 million. Annual recurring savings after implementation are $2.1 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $29.7 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 58 jobs (28 direct jobs and 30 indirect jobs) over the 1996-to-2001 period in the Bremerton, Washington PMSA economic area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 7.3 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: This recommendation involves the transfer of functions and associated personnel between NUWC Keyport and the Puget Sound Naval Shipyard, both of which are in the same air quality region. The reduction of personnel resulting from this transfer will have a generally positive impact on the environment. There are no impacts on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Command, Control and Ocean Surveillance Center, In-Service Engineering West Coast Division, San Diego, California

Recommendation: Disestablish the In-Service Engineering West Coast Division (NISE West), San Diego, California, of the Naval Command, Control and Ocean Surveillance Center (NCCOSC), including the Taylor Street Special Use Area, and consolidate necessary functions and personnel with the Naval Command, Control and Ocean Surveillance Center, RDT&E Division, either in the NCCOSC RDT&E Division spaces at Point Loma, California, or in current NISE West spaces in San Diego, California.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. This action permits the elimination of the command and support structure of the closing activity resulting in improved efficiency, reduced costs, and reduced excess capacity.

Return on Investment: The total estimated one-time cost to implement this recommendation is $1.8 million. The net of all costs and savings during the implementation period is a savings of $19.3 million. Annual recurring savings after implementation are $4.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $60 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 168 jobs (58 direct jobs and 110 indirect jobs) over the 1996-to-2001 period in the San Diego, California MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NISE West San Diego will have no appreciable impact on the environment since all relocation of personnel will be within the local area and within the same air quality district. The gaining sites have sufficient space for rehabilitation and adequate capacity in the utility infrastructure to handle this additional load. There is no impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Health Research Center, San Diego, California

Recommendation: Disestablish the Naval Health Research Center (NHRC), San Diego, California, and relocate necessary functions, personnel and equipment to the Bureau of Naval Personnel (BUPERS) at Memphis, Tennessee.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. This activity performs research and modelling and maintains databases in a number of personnel health and performance areas, and its consolidation with the Bureau of Naval Personnel not only reduces excess capacity but also aligns this activity with the DON's principal organization responsible for military personnel and the primary user of its products. The resulting synergy enhances the discharge of this responsibility while achieving necessary economies.

Return on Investment: The total estimated one-time cost to implement this recommendation is $6.2 million. The net of all costs and savings during the implementation period is a cost of $2 million. Annual recurring savings after implementation are
$1.4 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $11.4 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 423 jobs (154 direct jobs and 269 indirect jobs) over the 1996-to-2001 period in the San Diego, California MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The disestablishment of NHRC San Diego will have a positive impact on the environment in that this activity will be leaving an area that is in moderate non-attainment for carbon monoxide. The additional personnel being relocated to BUPERS Memphis represent a net decrease in personnel by FY 2001, and, accordingly, will not impact the environment at the receiving site, although a conformity determination may be required to assess this impact. There is adequate capacity in the utility infrastructure at the receiving site to handle these relocating personnel. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Personnel Research and Development Center, San Diego, California

Recommendation: Disestablish Naval Personnel Research and Development Center, San Diego, California, and relocate its functions, and appropriate personnel, equipment, and support to the Bureau of Naval Personnel, Memphis, Tennessee, and Naval Air Warfare Center, Training Systems Division, Orlando, Florida.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Disestablishment of this technical center not only eliminates excess capacity but also collocates its functions with the primary user of its products. This recommendation permits the consolidation of appropriate functions at the new headquarters concentration for the Bureau of Naval Personnel in Memphis, Tennessee, and at the technical concentration for training systems and devices in Orlando, producing economies and efficiencies in the management of these functions.

Return on Investment: The total estimated one-time cost to implement this recommendation is $7.9 million. The net of all costs and savings during the implementation period is a cost of $4.3 million. Annual recurring savings after implementation are
$1.9 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $14.9 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 611 jobs (219 direct jobs and 392 indirect jobs) over the 1996-to-2001 period in the San Diego, California MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: Disestablishing NPRDC San Diego will have a generally positive effect on the environment because it will be relocating personnel out of an area currently in severe non-attainment for ozone. These personnel represent less than a 2 percent increase in the personnel at BUPERS Memphis, an area in moderate non-attainment for carbon monoxide, and thus will have a minimal impact on that region, although a conformity determination may be required to assess the impact on air quality from this action. Those personnel that are relocating to NAWCTSD Orlando, an area that is in attainment for carbon monoxide, represent less than a four percent increase in personnel and will not adversely affect that area. There will be no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach, California

Recommendation: Disestablish the Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach, California. Relocate certain functions, personnel and equipment to Supervisor of Shipbuilding, Conversion and Repair, USN, San Diego, California.

Justification: Because of reductions in the FY 2001 Force Structure Plan and resource levels, naval requirements for private sector shipbuilding, conversion, modernization and repair are expected to decrease significantly. The combined capacity of the current thirteen SUPSHIP activities meaningfully exceeds the DON requirement over that Force Structure Plan. Additionally, with the closure of the Long Beach Naval Shipyard, the future requirement for this work in this region is anticipated to be quite nominal. The predicted workload can be efficiently absorbed by SUPSHIP San Diego.

Return on Investment: The total estimated one-time cost to implement this action is $0.3 million. The net of all costs and savings during the implementation period is a savings of $0.8 million. Annual recurring savings after implementation are $0.3 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $3.3 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 30 jobs (19 direct jobs and 11 indirect jobs) over the 1996-to-2001 period in the Los Angeles-Long Beach, California PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.4 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: SUPSHIP Long Beach is a tenant activity and as such does not control or manage real property. Its complete closure will have no appreciable environmental impacts, including impacts on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources. Despite the classification of San Diego, California, as a non-attainment area for ozone, the transfer of a small number of personnel from SUPSHIP Long Beach to San Diego will not adversely impact the air quality of that area.

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Naval Undersea Warfare Center, Newport Division, New London Detachment, New London, Connecticut

Recommendation: Disestablish the Naval Undersea Warfare Center, Newport Division, New London Detachment, New London, Connecticut, and relocate necessary functions with associated personnel, equipment, and support to Naval Undersea Warfare Center, Newport Division, Newport, Rhode Island. Close the NUWC New London facility, except retain Pier 7 which is transferred to the Navy Submarine Base New London. The site presently occupied by the U.S. Coast Guard Station, New London, will be transferred to the U.S. Coast Guard. The Navy Submarine Base, New London, Magnetic Silencing Facility will remain in its present location as a tenant of the U.S. Coast Guard. Naval reserve units will relocate to other naval activities, primarily NUWC Newport, Rhode Island, and Navy Submarine Base, New London, Connecticut.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The closure of this activity completes the undersea warfare center consolidation begun in BRAC 91. It not only reduces excess capacity, but, by consolidating certain functions at NUWC Newport Rhode Island, achieves efficiencies and economies in management, thus reducing costs.

Return on Investment: The total estimated one-time cost to implement this recommendation is $23.4 million. The net of all costs and savings during the implementation period is a savings of $14.3 million. Annual recurring savings after implementation are $8.1 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $91.2 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,365 jobs (627 direct jobs and 738 indirect jobs) over the 1996-to-2001 period in the New London-Norwich, Connecticut NECMA economic area, which is 1.0 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 3.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NUWC New London will have a generally beneficial impact on the environment. New London is in a non-attainment area for ozone, and, accordingly, the closure of this site will have a positive effect on the environment. The movement of personnel to Newport will not impact that area's status of being in attainment for carbon monoxide and PM-10. Adequate capacity exists in NUWC's utility infrastructure to handle these relocating personnel without impact. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources at either the losing or gaining sites occasioned by this recommendation.

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Naval Research Laboratory, Underwater Sound Reference Detachment, Orlando, Florida

Recommendation: Disestablish the Naval Research Laboratory, Underwater Sound Reference Detachment (NRL UWSRD), Orlando, Florida. Relocate the calibration and standards function with associated personnel, equipment, and support to the Naval Undersea Warfare Center, Newport Division, Newport, Rhode Island, except for the Anechoic Tank Facility I, which will be excessed.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and of the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The disestablishment of this laboratory reduces excess capacity by eliminating unnecessarily redundant capability, since requirements can be met by reliance on alternative lakes that exist in the DON inventory. By consolidating necessary functions at NUWC Newport, Rhode Island, this recommendation achieves efficiencies and economies.

Return on Investment: The total estimated one-time cost to implement this recommendation is $8.4 million. The net of all costs and savings during the implementation period is a savings of $3.7 million. Annual recurring savings after implementation are $2.8 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $30.1 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 292 jobs (109 direct jobs and 183 indirect jobs) over the 1996-to-2001 period in the Orange-Osceola-Seminole Counties, Florida economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.9 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NRL UWSRD Orlando generally will have a minor positive impact on the environment. Both Orlando and NUWC Newport are in areas of attainment for carbon monoxide, and the additional personnel relocating to Newport, when compared to force structure reductions by FY 2001, still represent a net decrease in personnel at the Newport site. The utility infrastructure at the receiving site is sufficient to handle the relocating personnel. There is no adverse impact to threatened/endangered species, sensitive habitats and wetlands, and cultural/historical resources occasioned by this recommendation.

Fleet and Industrial Supply Center, Guam

Recommendation: Disestablish the Fleet and Industrial Supply Center, Guam.

Justification: Fleet and Industrial Supply Centers (FISC) are follower activities whose existence depends upon active fleet units in their homeport area. Prior and current BRAC actions closing both Naval Air Station, Guam and a portion of Naval Activities, Guam have significantly reduced this activity's customer base. The remaining workload can efficiently be handled by other activities on Guam or by other FISCs.

Return on Investment: The total estimated one-time cost to implement this recommendation is $18.4 million. The net of all costs and savings during the implementation period is a savings of $143 million. Annual recurring savings after implementation are $31.1 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $437.3 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 580 jobs (413 direct jobs and 167 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 0.9 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. However, much of this impact involves the inclusion of MSC mariners in the job loss statement, which does not reflect the temporary nature of their presence on Guam.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The Guam Air Pollution Control District is in attainment for carbon monoxide, ozone, and PM-10. Closure of this activity will remove POV sources of air emissions, thus enhancing the air quality of Guam. A significant factor further contributing to an overall positive impact on the environment in Guam is the shutdown of fueling facilities at Guam, specifically at Sasa Valley and Tenjo. Not only does this action eliminate the need for continuous monitoring of fuel tanks but it also removes the potential for a fuel spill in an area that has been designated as part of the Guam National Wildlife Refuge. The elimination of military actions in areas occupied by the indigenous endangered species, the Common Moorhen, and in and near wetlands also will contribute positively to the environment in Guam.

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Naval Biodynamics Laboratory, New Orleans, Louisiana

Recommendation: Close the Naval Biodynamics Laboratory, New Orleans, Louisiana, and relocate necessary personnel to Wright-Patterson Air Force Base, Dayton, Ohio, and Naval Aeromedical Research Laboratory, Pensacola, Florida.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Closure of this laboratory reduces this excess capacity and fosters joint synergism. It also provides the opportunity for the transfer of its equipment and facilities to the public educational or commercial sector, thus maintaining access to its capabilities on an as-needed basis.

Return on Investment: The total estimated one-time cost to implement this recommendation is $.6 million. The net of all costs and savings during the implementation period is a savings of $14.1 million. Annual recurring savings after implementation are $2.9 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $41.8 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 126 jobs (54 direct jobs and 72 indirect jobs) over the 1996-to-2001 period in the New Orleans, Louisiana MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of the Biodynamics Lab, New Orleans, will not have an effect on the environment. This closure recommendation only relocates two personnel to Wright-Patterson AFB and one to Pensacola, but leaves all facilities and equipment in place. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, and cultural/historical resources occasioned by this recommendation.

Naval Medical Research Institute, Bethesda, Maryland

Recommendation: Close the Naval Medical Research Institute (NMRI), Bethesda, Maryland. Consolidate the personnel of the Diving Medicine Program with the Experimental Diving Unit, Naval Surface Warfare Center, Dahlgren Division, Coastal Systems Station, Panama City, Florida. Relocate the Infectious Diseases, Combat Casualty Care and Operational Medicine programs along with necessary personnel and equipment to the Walter Reed Army Institute for Research at Forest Glen, Maryland.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and of the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. This closure and realignment achieves a principal objective of the DoD by cross-servicing part of this laboratory's workload and furthers the BRAC 91 Tri-Service Project Reliance Study decision by collocating medical research with the Army. Other portions of that workload can be assumed by another Navy installation with only a transfer of certain personnel, achieving both a reduction in excess capacity and a cost savings by eliminating a redundant capability in the area of diving research.

Return on Investment: The total estimated one-time cost to implement this recommendation is $3.4 million. The net of all costs and savings during the implementation period is a savings of $19 million. Annual recurring savings after implementation are $9.5 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $111 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 226 jobs (146 direct jobs and 80 indirect jobs) over the 1996-to-2001 period in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of NMRI Bethesda will have a minimal impact on the environment. The relocation of personnel to Panama City, Florida, represents a net reduction in FY 2001 compared to current personnel loading. Therefore, these additional personnel will have no significant impact on the environment at that receiving site. The addition of personnel transferring to the Walter Reed Army Institute for Research represents less than a one percent increase in personnel, with insignificant impacts on the environment. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, and cultural/historical resources occasioned by this recommendation.

Naval Surface Warfare Center, Carderock Division Detachment, Annapolis, Maryland

Recommendation: Close the Naval Surface Warfare Center, Carderock Division Detachment, Annapolis, Maryland, including the NIKE Site, Bayhead Road, Annapolis, except transfer the fuel storage/refueling sites and the water treatment facilities to Naval Station, Annapolis to support the U.S. Naval Academy and Navy housing. Relocate appropriate functions, personnel, equipment and support to other technical activities, primarily Naval Surface Warfare Center, Carderock Division Detachment, Philadelphia, Pennsylvania; Naval Surface Weapons Center, Carderock Division, Carderock, Maryland; and the Naval Research Laboratory, Washington, D.C. The Joint Spectrum Center, a DoD cross-service tenant, will be relocated with other components of the Center in the local area as appropriate.

Justification: There is an overall reduction in operational forces and a sharp decline of the Department of the Navy budget through 2001. Specific reductions for technical centers are difficult to determine because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The total closure of this technical center reduces overall excess capacity in this category of installations, as well as excess capacity specific to this particular installation. It results in synergistic efficiencies by eliminating a major site and collocating technical personnel at the two primary remaining sites involved in hull, machinery, and equipment associated with naval vessels. It allows the movement of work to other Navy, DoD, academic and private industry facilities, and the excessing of some facilities not in continuous use. It also collocates RDT&E efforts with the In-Service Engineering work and facilities, to incorporate lessons learned from fleet operations and to increase the technical response pool to solve immediate problems.

Return on Investment: The total estimated one-time cost to implement this recommendation is $25 million. The net of all costs and savings during the implementation period is a savings of $36.7 million. Annual recurring savings after implementation are $14.5 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $175.1 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,512 jobs (522 direct jobs and 990 indirect jobs) over the 1996-to-2001 period in the Baltimore, Maryland PMSA economic area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the economic area.

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Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NSWC Annapolis does not involve the transfer of any industrial-type activities. NSWC Carderock and NRL are currently in moderate non-attainment for carbon monoxide and attainment for PM-10; however, the movement of personnel into those areas will not adversely impact the environment in those areas. NSWC Philadelphia is in a non-attainment area for carbon monoxide. In the case of each receiving site, a conformity determination may be required to assess the impact of this action. At all receiving sites, the utility infrastructure is adequate to handle the additional personnel. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, cultural/historical resources as a result of this recommendation.

Naval Technical Training Center, Meridian, Mississippi

Recommendation: Close the Naval Technical Training Center, Meridian, Mississippi, and relocate the training functions to other training activities, primarily the Navy Supply Corps School, Athens, Georgia, and Naval Education and Training Center, Newport, Rhode Island.

Justification: Projected manpower reductions contained in the DoD Force Structure Plan require a substantial decrease in training-related infrastructure consistent with the policy of collocating training functions at fleet concentration centers when feasible. Consolidation of the Naval Technical Training Center functions at two other major training activities provides improved and more efficient management of the these training functions and aligns certain enlisted personnel training to sites where similar training is being provided to officers.

Return on Investment: The return on investment data below applies to the closure of NAS Meridian, the closure of NTTC Meridian, the realignment of NAS Corpus Christi to an NAF, and the NAS Alameda redirect. The total estimated one-time cost to implement these recommendations is $83.4 million. The net of all costs and savings during the implementation period is a savings of $158.8 million. Annual recurring savings after implementation are $33.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $471.2 million.

Impacts:

Economic Impact on Communities: The economic data below applies to the closure of NAS Meridian and the closure of NTTC Meridian. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,324 jobs (2,581 direct jobs and 743 indirect jobs) over the 1996-to-2001 period in the Lauderdale County, Mississippi economic area, which is 8.0 percent of economic area employment.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NAS Meridian, the host of this activity, will have a generally positive effect on the environment. Undergraduate Pilot Training will be relocated to NAS Kingsville, which is in an air quality control district that is in attainment for carbon monoxide, ozone, and PM-10. Cleanup of the six IR sites at NAS Meridian will continue. No impact was identified for threatened/endangered species, sensitive habitats and wetlands, cultural/historical resources, land/air space use, pollution control, and hazardous material waste requirements. Adequate capacity exists for all utilities at the gaining base, and there is sufficient space for rehabilitation or unrestricted acres available for expansion.

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Naval Aviation Engineering Service Unit, Philadelphia, Pennsylvania

Recommendation: Close the Naval Aviation Engineering Service Unit (NAESU), Philadelphia, Pennsylvania, and consolidate necessary functions, personnel, and equipment with the Naval Aviation Depot (NADEP), North Island, California.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Closure of this facility eliminates excess capacity within the technical center subcategory by using available capacity at NADEP North Island. Additionally, it enables the consolidation of necessary functions with a depot activity performing similar work and results in a reduction of costs.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.5 million. The net of all costs and savings during the implementation period is a savings of $5.9 million. Annual recurring savings after implementation are
$2.5 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $29.5 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 145 jobs (90 direct jobs and 55 indirect jobs) over the 1996-to-2001 period in the Philadelphia, Pennsylvania-New Jersey PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NAESU Philadelphia will have a generally positive impact on the environment because it removes POV air emission sources from an area that is in non-attainment for carbon monoxide. The additional personnel relocating to NADEP North Island represent less than a one percent increase in current base personnel loading, which will not affect the environment. Further, the utility infrastructure capacity at the receiving site is sufficient to handle these additional personnel. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Technical Services Facility, Philadelphia, Pennsylvania

Recommendation: Close the Naval Air Technical Services Facility (NATSF), Philadelphia, Pennsylvania, and consolidate necessary functions, personnel, and equipment with the Naval Aviation Depot, North Island, California.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Closure of this facility eliminates excess capacity within the technical center subcategory by using available capacity at NADEP North Island and achieves the synergy from having the drawings and manuals collocated with an in-service maintenance activity at a major fleet concentration. Additionally, it enables the elimination of the NATSF detachment already at North Island and results in a reduction of costs.

Return on Investment: The total estimated one-time cost to implement this recommendation is $5.7 million. The net of all costs and savings during the implementation period is a savings of $1.5 million. Annual recurring savings after implementation are
$2.2 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $22.7 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 715 jobs (227 direct jobs and 488 indirect jobs) over the 1996-to-2001 period in the Philadelphia, Pennsylvania-New Jersey PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.2 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NATSF Philadelphia will have a generally positive effect on the environment because this activity will be vacating leased space in an area that is in non-attainment for carbon monoxide. The additional personnel being relocated represent less than a one percent increase in base personnel at North Island, and adequate capacity exists in the utility infrastructure to handle this additional personnel loading. There will be no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Air Warfare Center, Aircraft Division, Open Water Test Facility, Oreland, Pennsylvania

Recommendation: Close the Naval Air Warfare Center, Aircraft Division, Open Water Test Facility, Oreland, Pennsylvania.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. Closure of this facility reduces excess capacity by eliminating unnecessarily redundant capability, since requirements can be met by reliance on other lakes that exist in the DON inventory.

Return on Investment: The total estimated one-time cost to implement this recommendation is $50 thousand. The net of all costs and savings during the implementation period is a savings of $33 thousand. Annual recurring savings after implementation are
$15 thousand with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $.2 million.

Impacts:

Economic Impact on Communities: This recommendation will not affect any jobs in the Philadelphia, Pennsylvania-New Jersey PMSA economic area.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: The closure of the NAWC OWTF Oreland will have a beneficial effect on the environment since any impact of military activities on jurisdictional wetlands will be eliminated. Because this closure has no accompanying transfer of functions or personnel, there are no other environmental impacts associated with this closure. There will be no adverse impact on threatened/endangered species, sensitive habitats, or cultural/historical resources occasioned by this recommendation.

Naval Command, Control and Ocean Surveillance Center, RDT&E Division Detachment, Warminster, Pennsylvania

Recommendation: Close the Naval Command, Control and Ocean Surveillance Center, RDT&E Division Detachment, Warminster, Pennsylvania. Relocate appropriate functions, personnel, equipment, and support to other technical activities, primarily the Naval Command, Control and Ocean Surveillance Center, RDT&E Division, San Diego, California; and the Naval Oceanographic Office, Bay St. Louis, Mississippi.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The closure of this activity reduces excess capacity with the resultant efficiencies and economies in the management of the relocated functions at the new receiving sites. Additionally, it completes the process of realignment initiated in BRAC 91, based on a clearer understanding of what is now required to be retained in-house. Closure and excessing of the Inertial Navigational Facility further reduces excess capacity and provides the opportunity for the transfer of these facilities to the public educational or commercial sectors, thus maintaining access on an as-needed basis.

Return on Investment: The return on investment data below applies to the closure of NAWC Warminster and the closure of NCCOSC Det Warminster. The total estimated one-time cost to implement this recommendation is $8.4 million. The net of all costs and savings during the implementation period is a savings of $33.1 million. Annual recurring savings after implementation are $7.6 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $104.6 million.

Impacts:

Economic Impact on Communities: The economic data below applies to the closure of NAWC Warminster and the closure of NCCOSC Det Warminster. Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,080 jobs (348 direct jobs and 732 indirect jobs) over the 1996-to-2001 period in the Philadelphia, Pennsylvania-New Jersey PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.0 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The closure of both NAWC Warminster and NCCOSC Det Warminster will have a positive effect on the environment because their appropriate functions and personnel will be relocated out of an area that is in severe non-attainment for ozone and from an activity that is included on the National Priorities List. The personnel being relocated to NCCOSC San Diego represent an increase in personnel of less than six percent, which is not considered of sufficient size to adversely impact the environment at that sites. However, a conformity determination may be required to determine this impact. At both receiving sites, the utility infrastructure capacity is sufficient to handle the additional loading. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Fleet and Industrial Supply Center, Charleston, South Carolina

Recommendation: Close the Fleet and Industrial Supply Center, Charleston, South Carolina.

Justification: Fleet and Industrial Supply Centers are follower activities whose existence depends upon active fleet units in their homeport area. Prior BRAC actions closed or realigned most of this activity's customer base, and most of its personnel have already transferred to the Naval Command, Control, and Ocean Surveillance Center, In-Service Engineering, East Coast Division, Charleston, South Carolina. Further, in accordance with the FY 2001 Force Structure Plan, force structure reductions through the year 2001 erode the requirement for support of active forces even further. This remaining workload can efficiently be handled by other FISCs or other naval activities.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.3 million. The net of all costs and savings during the implementation period is a savings of $2.3 million. Annual recurring savings after implementation are $0.9 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $10.8 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 12 jobs (8 direct jobs and 4 indirect jobs) over the 1996-to-2001 period in the Charleston-North Charleston, South Carolina MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 8.4 percent of employment in the economic area.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: This activity is located in an area that is in attainment for carbon monoxide, ozone and PM-10. This closure will support the maintenance of this air quality status and will have a further positive impact on the environment in that it eliminates barge movements in and out of the pier area as part of the fueling operations in the FISC complex. An additional positive impact is the elimination of military activities in an area occupied by the Least Tern, an endangered species, and its designated habitat aboard the present FISC Charleston complex. There will be no adverse impact on cultural/historical resources occasioned by this recommendation.

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Naval Command, Control and Ocean Surveillance Center, In-Service Engineering East Coast Detachment, Norfolk, Virginia

Recommendation: Close the In-Service Engineering East Coast Detachment, St. Juliens Creek Annex, Norfolk, Virginia, of the Naval Command, Control and Ocean Surveillance Center, except retain in place the transmit and receive equipment and antennas currently at the St. Juliens Creek Annex. Relocate functions, necessary personnel and equipment to Norfolk Naval Shipyard, Norfolk, Virginia.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON budget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The closure of this activity and the relocation of its principal functions achieves improved efficiencies and a reduction of excess capacity by aligning its functions with other fleet support provided by the shipyard.

Return on Investment: The total estimated one-time cost to implement this recommendation is $4.6 million. The net of all costs and savings during the implementation period is a savings of $0.06 million. Annual recurring savings after implementation are
$2.1 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $20.4 million.

Impacts:

Economic Impact on Communities: This recommendation will not result in a change in employment in the Norfolk-Virginia Beach-Newport News, Virginia-North Carolina MSA economic area because all affected jobs will remain in that economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of NCCOSC ISE East Det Norfolk, St. Juliens Creek Annex, will have no appreciable impact on the environment since all relocation of personnel will be within the local area and within the same air quality region. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Information Systems Management Center, Arlington, Virginia

Recommendation: Relocate the Naval Information Systems Management Center from leased space in Arlington, Virginia, to the Washington Navy Yard, Washington, D.C.

Justification: The resource levels of administrative activities are dependent upon the level of forces they support. The continuing decline in force levels shown in the FY 2001 Force Structure Plan coupled with the effects of the National Performance Review result in further reductions of personnel in administrative activities. This relocation reduces excess capacity and achieves savings by the movement from leased space to government-owned space, and furthers the Department's policy decision to merge this activity with the Information Technology Acquisition Center which is already housed in the Navy Yard.

Return on Investment: The total estimated one-time cost to implement this recommendation is $0.1 million. The net of all costs and savings during the implementation period is a savings of $0.3 million. Annual recurring savings after implementation are
$0.1 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $1.7 million.

Impacts:

Economic Impact on Communities: This recommendation will not result in a change in employment in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area because all affected jobs will remain in that economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of this activity from leased space in the NCR to the Washington Navy Yard will not adversely impact the environment because it is an administrative activity and the relocation concerns only a small number of personnel and office support equipment. There is no adverse impact on threatened/endangered species, sensitive habitat and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Management Systems Support Office, Chesapeake, Virginia

Recommendation: Disestablish the Naval Management Systems Support Office (NAVMASSO), Chesapeake, Virginia, and relocate its functions and necessary personnel and equipment as a detachment of Naval Command, Control and Ocean Surveillance Center, San Diego, California, in government-owned spaces in Norfolk, Virginia.

Justification: There is an overall reduction in operational forces and a sharp decline of the DON bdget through FY 2001. Specific reductions for technical centers are difficult to determine, because these activities are supported through customer orders. However, the level of forces and the budget are reliable indicators of sharp declines in technical center workload through FY 2001, which leads to a recognition of excess capacity in these activities. This excess and the imbalance in force and resource levels dictate closure/realignment or consolidation of activities wherever practicable. The disestablishment of this activity permits the elimination of the command and support structure of this activity and the consolidation of certain functions with a major technical center. This recommendation also provides for the movement out of leased space into government-owned space, a move which had been intended to occur as part of the DON BRAC 93 recommended consolidation of the Naval Electronic Systems Engineering Centers in Portsmouth, which the 1993 Commission disapproved.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.2 million. The net of all costs and savings during the implementation period is a savings of $9 million. Annual recurring savings after implementation are
$2.7 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $34.9 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 50 jobs (21 direct jobs and 29 indirect jobs) over the 1996-to-2001 period in the Norfolk-Virginia Beach-Newport News, Virginia-North Carolina MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.0 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The disestablishment of NAVMASSO will not impact the environment. NAVMASSO is an administrative activity that is currently located in leased space only 18 miles from its gaining site, the Norfolk Naval Station. These additional personnel readily can be handled by the utility infrastructure at the gaining site. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Reserve Centers/Commands

Recommendation:
Close the following Naval Reserve Centers:

Stockton, California
Pomona, California
Santa Ana, Irvine, California
Laredo, Texas
Sheboygan, Wisconsin
Cadillac, Michigan
Staten Island, New York
Huntsville, Alabama

Close the following Naval Air Reserve Center:

Olathe, Kansas

Close the following Naval Reserve Readiness Commands:

Region Seven - Charleston, South Carolina
Region Ten - New Orleans, Louisiana

Justification: Existing capacity in support of the Reserve component continues to be in excess of the force structure requirements for the year 2001. These Reserve Centers scored low in military value, among other things, because there were a fewer number of drilling reservists than the number of billets available (suggesting a lesser demographic pool from which to recruit sailors), or because there was a poor use of facilities (for instance, only one drill weekend per month). Readiness Command (REDCOM) 7 has management responsibility for the fewest number of Reserve Centers of the thirteen REDCOMs, while REDCOM 10 has management responsibility for the fewest number of Selected Reservists. In 1994, nearly three-fourths of the authorized SELRES billets at REDCOM 10 were unfilled, suggesting a demographic shortfall. In addition, both REDCOMs have high ratios of active duty personnel when compared to SELRES supported. The declining Reserve force structure necessitates more effective utilization of resources and therefore justifies closing these two REDCOMs. In arriving at the recommendation to close these Reserve Centers/Commands, specific analysis was conducted to ensure that there was either an alternate location available to accommodate the affected Reserve population or demographic support for purpose of force recruiting in the areas to which units were being relocated. This specific analysis, verified by the COBRA analysis, supports these closures.

Return on Investment: The total estimated one-time cost to implement the closure of NRC Stockton is $45 thousand. The net of all costs and savings during the implementation period is a savings of $2 million. Annual recurring savings after implementation are $0.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $5.4 million.

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The total estimated one-time cost to implement the closure of NRC Pomona is $48 thousand. The net of all costs and savings during the implementation period is a savings of $1.9 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $5.1 million.

The total estimated one-time cost to implement the closure of NRC Santa Ana is $41 thousand. The net of all costs and savings during the implementation period is a savings of $3 million. Annual recurring savings after implementation are $0.5 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $8.1 million.

The total estimated one-time cost to implement the closure of NRF Laredo is $27 thousand. The net of all costs and savings during the implementation period is a savings of $1.4 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $3.8 million.

The total estimated one-time cost to implement the closure of NRC Sheboygan is $31 thousand. The net of all costs and savings during the implementation period is a savings of $1.5 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $4.1 million.

The total estimated one-time cost to implement the closure of NRC Cadillac is $46 thousand. The net of all costs and savings during the implementation period is a savings of $1.8 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $5 million.

The total estimated one-time cost to implement the closure of NRC Staten Island is $43 thousand. The net of all costs and savings during the implementation period is a savings of $4.5 million. Annual recurring savings after implementation are $0.6 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $9.8 million.

The total estimated one-time cost to implement the closure of NRC Huntsville is $51 thousand. The net of all costs and savings during the implementation period is a savings of $2.6 million. Annual recurring savings after implementation are $0.5 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $7.2 million.

The total estimated one-time cost to implement the closure of NARCEN Olathe is $0.2 million. The net of all costs and savings during the implementation period is a savings of $3.9 million. Annual recurring savings after implementation are $0.7 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $10.9 million.

The total estimated one-time cost to implement the closure of NRRC Charleston is $0.5 million. The net of all costs and savings during the implementation period is a savings of $14.4 million. Annual recurring savings after implementation are $2.7 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $39.9 million.

The total estimated one-time cost to implement the closure of NRRC New Orleans is $0.6 million. The net of all costs and savings during the implementation period is a savings of $6 million. Annual recurring savings after implementation are $1.9 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $23.8 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, the closure of NRC Stockton could result in a maximum potential reduction of 10 jobs (7 direct jobs and 3 indirect jobs) over the 1996-to-2001 period in the Stockton-Lodi, California MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 0.6 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRC Pomona could result in a maximum potential reduction of 15 jobs (10 direct jobs and 5 indirect jobs) over the 1996-to-2001 period in the Los Angeles-Long Beach, California PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.4 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRC Santa Ana could result in a maximum potential reduction of 21 jobs (14 direct jobs and 7 indirect jobs) over the 1996-to-2001 period in the Orange County, California PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.1 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRF Laredo could result in a maximum potential reduction of 8 jobs (6 direct jobs and 2 indirect jobs) over the 1996-to-2001 period in the Laredo, Texas MSA economic area, which is less than 0.1 percent of economic area employment.

Assuming no economic recovery, the closure of NRC Sheboygan could result in a maximum potential reduction of 8 jobs (6 direct jobs and 2 indirect jobs) over the 1996-to-2001 period in the Sheboygan, Wisconsin MSA economic area, which is less than 0.1 percent of economic area employment.

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Assuming no economic recovery, the closure of NRC Cadillac could result in a maximum potential reduction of 10 jobs (8 direct jobs and 2 indirect jobs) over the 1996-to-2001 period in the Wexford County, Michigan economic area, which is 0.1 percent of economic area employment.

Assuming no economic recovery, the closure of NRC Staten Island could result in a maximum potential reduction of 21 jobs (14 direct jobs and 7 indirect jobs) over the 1996-to-2001 period in the New York, New York PMSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRC Huntsville could result in a maximum potential reduction of 26 jobs (19 direct jobs and 7 indirect jobs) over the 1996-to-2001 period in the Madison County, Alabama economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 2.7 percent of employment in the economic area.

Assuming no economic recovery, the closure of NARCEN Olathe could result in a maximum potential reduction of 22 jobs (14 direct jobs and 8 indirect jobs) over the 1996-to-2001 period in the Kansas City, Missouri-Kansas MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRRC Charleston could result in a maximum potential reduction of 67 jobs (46 direct jobs and 21 indirect jobs) over the 1996-to-2001 period in the Charleston-North Charleston, South Carolina MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 8.4 percent of employment in the economic area.

Assuming no economic recovery, the closure of NRRC New Orleans could result in a maximum potential reduction of 73 jobs (47 direct jobs and 26 indirect jobs) over the 1996-to-2001 period in the New Orleans, Louisiana MSA economic area, which is less than 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to less than 0.1 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The closure of these Reserve Centers and Readiness Commands generally will have a positive impact on the environment since, with the exception of REDCOM 10, they concern closures with no attendant realignments of personnel or functions. In the case of REDCOM 10, the movement of less than 10 military personnel to REDCOM 11, Dallas, Texas, is not of such a size as to impact the environment. Further, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Marine Corps Air Station, El Toro, California, and Marine Corps Air Station, Tustin, California

Recommendation: Change the receiving sites for "squadrons and related activities at NAS Miramar" specified by the 1993 Commission (1993 Commission Report, at page 1-18) from "NAS Lemoore and NAS Fallon" to "other naval air stations, primarily NAS Oceana, Virginia, NAS North Island, California, and NAS Fallon, Nevada." Change the receiving sites for MCAS Tustin, California, specified by the 1993 Commission from "NAS North Island, NAS Miramar, or MCAS Camp Pendleton" to "other naval air stations, primarily MCAS New River, North Carolina; MCB Hawaii (MCAF Kaneohe Bay); MCAS Camp Pendleton, California; and NAS Miramar, California."

Justification: This recommendation furthers the restructuring initiatives of operational bases commenced in BRAC 93 and also recognizes that the FY 2001 Force Structure Plan further reduced force levels from those in the FY 1999 Force Structure Plan applicable to BRAC 93. These force level reductions required the Department of the Navy not only to eliminate additional excess capacity but to do so in a way that retained only the infrastructure necessary to support future force levels and did not impede operational flexibility for the deployment of that force. Full implementation of the BRAC 93 recommendations relating to operational air stations would require the construction of substantial new capacity at installations on both coasts, which only exacerbates the level of excess capacity in this subcategory of installations. Revising the receiving sites for assets from these installations in this and other air station recommendations eliminates the need for this construction of new capacity, such that the total savings are equivalent to the replacement plant value of an existing tactical aviation naval air station. Further, within the context of the FY 2001 Force Structure Plan, the mix of operational air stations and the assets they support resulting from these recommendations provides substantial operational flexibility. For instance, the single siting of F-14s at Naval Air Station, Oceana, Virginia, fully utilizes that installation's capacity and avoids the need to provide support on both coasts for this aircraft series which is scheduled to leave the active inventory. This recommendation also permits the relocation of Marine Corps helicopter squadrons in the manner best able to meet operational imperatives.

Return on Investment: The total estimated one-time cost to implement this recommendation is $90.2 million. The net of all costs and savings during the implementation period is a savings of $293 million. Annual recurring savings after implementation are $6.9 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $346.8 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in current employment in either the San Diego MSA or the Kings County, California economic areas. However, the anticipated 10.9% increase in the Kings County employment base and the anticipated 0.1% increase in the San Diego employment base will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of Navy and Marine Corps aviation assets in this recommendation generally will have a positive impact on the environment, particularly on the air quality in the areas in which NAS Lemoore and MCAS Miramar are located. The introduction of additional aircraft and personnel to the Norfolk, Virginia, area is not expected to have an adverse impact on the air quality of this area in that the net effect of adding these aircraft and personnel, when compared to force structure reductions by FY 2001, is a reduction from FY 1990 levels. However, a conformity determination will be required that takes into account any impact these actions may have on the air quality of these areas. Further, the utility infrastructure at each receiving site has sufficient capacity to handle these additional personnel. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Air Station, Alameda, California

Recommendation: Change the receiving sites specified by the 1993 Commission for the closure of Naval Air Station, Alameda, California (1993 Commission Report, at page 1-35) for "aircraft along with the dedicated personnel, equipment and support" and "reserve aviation assets" from "NAS North Island" and "NASA Ames/Moffett Field," respectively, to "other naval air stations, primarily the Naval Air Facility, Corpus Christi, Texas, to support the Mine Warfare Center of Excellence, Naval Station, Ingleside, Texas."

Justification: The decision to collocate all mine warfare assets, including air assets, at the Mine Warfare Center of Excellence at Naval Station, Ingleside, Texas, coupled with the lack of existing facilities at Naval Air Station, North Island, support this movement of mine warfare helicopter assets to Texas. With this collocation of assets, the Navy can conduct training and operations with the full spectrum of mine warfare assets from one location, significantly enhancing its mine warfare countermeasures capability. This action is also consistent with the Department's approach for other naval air stations of eliminating capacity by not building new capacity.

Return on Investment: The return on investment data below applies to the closure of NAS Meridian, the closure of NTTC Meridian, the realignment of NAS Corpus Christi to a NAF, and the NAS Alameda redirect. The total estimated one-time cost to implement these recommendations is $83.4 million. The net of all costs and savings during the implementation period is a savings of $158.8 million. Annual recurring savings after implementation are $33.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $471.2 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the San Diego, California MSA economic area. However, the anticipated small increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: This redirection involves only the relocation of the mine warfare helicopter assets (both active and reserve aircraft) to the Naval Air Facility, Corpus Christi, Texas, in support of the Mine Warfare Center of Excellence at Naval Station, Ingleside, Texas, instead of to Naval Air Station, North Island, California. Therefore, this relocation will have a positive impact on the environment. The Corpus Christi area is in attainment for all of the major air pollutants, while the San Diego area is in severe non-attainment for ozone. Theaddition of these assets to the Corpus Christi area is not expected to have an impact on the environment. However, if a conformity determination is required to assess the impact of this move on the local air quality, one will be performed. There are no adverse impacts on threatened/endangered species, sensitive habitats and wetlands, or cultural/historic resources occasioned by this recommendation.

Naval Recruiting District, San Diego, California

Recommendation: Change the receiving site for the Naval Recruiting District, San Diego, California, specified by the 1993 Commission (1993 Commission Report, at page 1-39) from "Naval Air Station North Island" to "other government-owned space in San Diego, California."

Justification: The North Island site is somewhat isolated and not necessarily conducive to the discharge of a recruiting mission. Moving this activity to government-owned space in a more central and accessible location enhances its operations. Additionally, with the additional assets being placed in NAS North Island in this round of closures and realignments, there is a need for the space previously allocated to this activity.

Return on Investment: The total estimated one-time cost to implement this recommendation is $0.3 million. The net of all costs and savings during the implementation period is a savings of $0.1 million. There are no annual recurring savings after implementation, and a return on investment is expected in one year. The net present value of the costs and savings over 20 years is a savings of $89 thousand.

Impacts:

Economic Impact on Communities: This recommendation will not result in a change in employment in the San Diego, California MSA economic area because all affected jobs will remain in that economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of this activity within its local area generally will have a positive impact on the environment because new facilities will not have to be constructed at NAS North Island. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Training Centers

Recommendation: Change the recommendation of the 1993 Commission (1993 Commission Report, at page 1-38) concerning the closure of Naval Training Center, Orlando, Florida, by deleting all references to Service School Command from the list of major tenants. Change the recommendation of the 1993 Commission (1993 Commission Report, at page 1-39) concerning the closure of Naval Training Center, San Diego, California, by deleting all references to Service School Command, including Service School Command (Electronic Warfare) and Service School Command (Surface), from the list of major tenants.

Justification: Service School Command is a major component command reporting directly to the Commanding Officer, Naval Training Center, and, as such, is not a tenant of the Naval Training Center. Its relocation and that of its component courses can and should be accomplished in a manner "consistent with training requirements," as specified by the 1993 Commission recommendation language for the major elements of the Naval Training Centers. For instance, while the command structure of the Service School Command at Naval Training Center, Orlando Florida, is relocating to the Naval Training Center, Great Lakes, Illinois, the Torpedoman "C" School can be relocated to available facilities at the Naval Underwater Weapons Center, Keyport, Washington, and thus be adjacent to the facility that supports the type of weapon that is the subject of the training. Similarly, since the Integrated Voice Communication School at the Naval Training Center, San Diego, California, uses contract instructors, placing it at Fleet Training Center, San Diego, necessitates only the local movement of equipment at a savings in the cost otherwise to be incurred to move such equipment to the Naval Training Center, Great Lakes, Illinois. Likewise, the relocation of the Messman "A" School at Naval Training Center, San Diego, to Lackland Air Force Base results in consolidation of the same type of training for all services at one location, consistent with Department goals, and avoids military construction costs at Naval Air Station, Pensacola.

Return on Investment: The total estimated one-time cost to implement this recommendation is $5.9 million. The net of all costs and savings during the implementation period is a savings of $24.8 million. Annual recurring savings after implementation are
$0.2 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $25.8 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in either the Lake County, Illinois, or the Pensacola, Florida MSA economic areas. However, the anticipated 0.1 percent increase in the Lake County employment base and the anticipated 0.1 percent increase in Pensacola, Florida the employment base will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of individual schools will have a minimal impact on the environment. Each is a tenant command and not a property owner. Each of the receiving sites was reviewed for impact on threatened/endangered species, sensitive habitats and wetlands, and cultural/historic resources, and no adverse impact was found. None of these schools are expected to have an adverse impact on the air quality of the areas to which it is relocating. The receiving sites have adequate capacity in their utility infrastructure to handle the additional personnel relocated by this recommendation.

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Naval Air Station, Cecil Field, Florida

Recommendation: Change the receiving sites specified by the 1993 Commission (1993 Commission Report, at page 1-20) from "Marine Corps Air Station, Cherry Point, North Carolina; Naval Air Station, Oceana, Virginia; and Marine Corps Air Station, Beaufort, South Carolina" to "other naval air stations, primarily Naval Air Station, Oceana, Virginia; Marine Corps Air Station, Beaufort, South Carolina; Naval Air Station, Jacksonville, Florida; and Naval Air Station, Atlanta, Georgia; or other Navy or Marine Corps Air Stations with the necessary capacity and support infrastructure." In addition, add the following: "To support Naval Air Station, Jacksonville, retain OLF Whitehouse, the Pinecastle target complex, and the Yellow Water family housing area."

Justification: Despite the large reduction in operational infrastructure accomplished during the 1993 round of base closure and realignment, since DON force structure experiences a reduction of over 10 percent by the year 2001, there continues to be additional excess capacity that must be eliminated. In evaluating operational bases, the goal was to retain only that infrastructure necessary to support the future force structure without impeding operational flexibility for deployment of that force. This recommended redirect achieves several important aims in furtherance of current Departmental policy and operational needs. First, it avoids the substantial new construction at MCAS Cherry Point that would be required if the F/A-18s from NAS Cecil Field were relocated there, which would add to existing excess capacity, and utilizes existing capacity at NAS Oceana. This avoidance and similar actions taken regarding other air stations are equivalent to the replacement plant value of an existing tactical aviation naval air station. Second, it permits collocation of all fixed wing carrier-based anti-submarine warfare (ASW) air assets in the Atlantic Fleet with the other aviation ASW assets at NAS Jacksonville and NAVSTA Mayport and support for those assets. Third, it permits recognition of the superior demographics for the Navy and Marine Corps reserves by relocation of reserve assets to Atlanta, Georgia.

Return on Investment: The total estimated one-time cost to implement this recommendation is $66.6 million. The net of all costs and savings during the implementation period is a savings of $335.1 million. Annual recurring savings after implementation are $11.5 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $437.8 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in current employment in the Craven and Carteret Counties, North Carolina economic area. However, the anticipated 7.5 percent increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The reallocation of Navy and Marine Corps aviation assets in this recommendation will have a generally positive impact on the environment, particularly on the air quality at Cherry Point, North Carolina, and Jacksonville, Florida. The introduction of additional aircraft and personnel to the Norfolk, Virginia, area is not expected to have an adverse impact on the air quality of that area since the net effect of moving these particular assets, when compared to the force structure reductions by FY 2001, is a reduction of personnel and aircraft from FY 1990 levels at this receiving activity. However, it is expected that conformity determinations will be required for the movements to NAS Oceana and NAS Atlanta. The utility infrastructure at each of the receiving sites is sufficient to handle the additional personnel. At none of the receiving sites will there be an adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Aviation Depot, Pensacola, Florida

Recommendation: Change the recommendation of the 1993 Commission (1993 Commission Report, at pages 1-42/43) by striking the following: "In addition, the Commission recommends that the whirl tower and dynamic components facility be moved to Cherry Point Navy or Corpus Christi Army Depots or the private sector, in lieu of the Navy's plan to retain these operations in a stand-alone facility at NADEP Pensacola."

Justification: Despite substantial reductions in depot maintenance capability accomplished in prior base closure evolutions, as force levels continue to decline, there is additional excess capacity that needs to be eliminated. Naval Aviation Depot, Pensacola, was closed in BRAC 93, except for the whirl tower and dynamic components facility. Subsequent to that decision, no requirement for the facility has been identified within either the Army or the Navy, and insufficient private sector interest in that facility has been expressed. Additionally, the Depot Maintenance Joint Cross-Service Group (JCSG-DM) examined these functions in response to Congressional interest in reexamining the BRAC 93 action. The JCSG-DM determined that the Pensacola facilities could not independently fulfill the entire future DoD requirement, but that the Army facilities at Corpus Christi Army Depot, combined with the Navy facilities at NADEP Cherry Point, could. This recommendation will allow the disposal of the whirl tower and the rehabilitation of the dynamic components facility buildings for use by the Naval Air Technical Training Center.

Return on Investment: The total estimated one-time cost to implement this recommendation is $1.5 million. The net of all costs and savings during the implementation period is a savings of $2.4 million. Annual recurring savings after implementation are $0.2 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $3.8 million.

Impacts:

Economic Impact on Communities: This recommendation will not affect any jobs in the Pensacola, Florida MSA economic area.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: There are no known environmental impacts attendant to the disposal of these assets in place required by this recommendation, including impacts on air quality, threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources.

Navy Nuclear Power Propulsion Training Center, Naval Training Center, Orlando, Florida

Recommendation: Change the receiving site specified by the 1993 Commission (1993 Commission Report, at page 1-38) for the "Nuclear Power School" (or the Navy Nuclear Power Propulsion Training Center) from "the Submarine School at the Naval Submarine Base (NSB), New London" to "Naval Weapons Station, Charleston, South Carolina."

Justification: The decision of the 1993 Commission to retain the submarine piers at Naval Submarine Base New London, Connecticut, meant that some of the facilities designated for occupancy by the Navy Nuclear Power Propulsion Training Center were no longer available. Locating this school with the Nuclear Propulsion Training Unit of the Naval Weapons Station, Charleston achieves an enhanced training capability, provides ready access to the moored training ships now at the Weapons Station, and avoids the significant costs of building and/or renovating facilities at New London.

Return on Investment: The total estimated one-time cost to implement this recommendation is $147.9 million. The net of all costs and savings during the implementation period is a savings of $19.5 million. Annual recurring savings after implementation are $5.3 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $71.1 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the New London-Norwich, Connecticut NECMA economic area. However, the anticipated 2.3 percent increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of the Navy Nuclear Power Propulsion Training Center generally will have a positive impact on the environment. The receiving site is in an air quality district that is in attainment for carbon monoxide, ozone and PM-10, and this relocation is not expected to have an adverse impact on that air quality status. Also, the utility infrastructure of the receiving site is sufficient to handle the additional personnel. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historic resources occasioned by this recommendation.

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Naval Air Station, Agana, Guam

Recommendation: Change the receiving site specified by the 1993 Commission (1993 Commission Report, at page 1-21) for "the aircraft, personnel, and associated equipment" from the closing Naval Air Station, Agana, Guam from "Andersen AFB, Guam" to "other naval or DoD air stations in the Continental United States and Hawaii."

Justification: Other BRAC 95 actions recommended the partial closure of Naval Activities, Guam, with retention of the waterfront assets, and the relocation of all of the vessels currently homeported at Naval Activities, Guam to Hawaii. Among the aircraft at Naval Activities, Guam is a squadron of helicopters performing logistics functions in support of these vessels. This redirect would collocate these helicopters with the vessels they support. Similarly, regarding the other aircraft at the closing Naval Air Station, the Fleet Commander-in-Chief desires operational synergies for his surveillance aircraft, which results in movement away from Guam. This redirect more centrally collocates those aircraft with similar assets in Hawaii and on the West Coast, while avoiding the new construction costs required in order to house these aircraft at Andersen Air Force Base, Guam, consistent with the Department's approach of eliminating capacity by not building new capacity.

Return on Investment: The total estimated one-time cost to implement this recommendation is $43.8 million. The net of all costs and savings during the implementation period is a savings of $213.8 million. Annual recurring savings after implementation are $21.7 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $418 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,641 jobs (1,272 direct jobs and 369 indirect jobs) over the 1996-to-2001 period in the Agana, Guam economic area, which is 2.5 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 10.6 percent of employment in the economic area. However, much of this impact involves the inclusion of MSC mariners in the job loss statement, which does not reflect the temporary nature of their presence on Guam.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The Guam Air Pollution Control District is in attainment for carbon monoxide, ozone, and PM-10. Relocation of these aviation assets will remove a source of air emissions thus enhancing the air quality of Guam. Both NAS Whidbey Island and MCB/MCAF Hawaii are in an attainment area for carbon monoxide, ozone, and PM-10, and thus this relocation will not require a conformity determination. NAS North Island, on the other hand, is in an area which is in moderate non-attainment for carbon monoxide and severe non-attainment

for ozone. Thus, a conformity determination may be required to evaluate the impact on air quality. Plans to disestablish current active squadrons support the ability to obtain a conformity determination. Adequate utility support and undeveloped property for expansion exist at NAS North Island. Similarly, at NAS Whidbey Island, force downsizing over the next six years will be in excess of the additional personnel and aircraft from this action. There will be no adverse impact to threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Air Station, Barbers Point, Hawaii

Recommendation: Change the recommendation of the 1993 Commission regarding items excepted from the closure of Naval Air Station, Barbers Point, Hawaii (1993 Commission, at page 1-19) from "Retain the family housing as needed for multi-service use" to "Retain the family housing as needed for multi-service use, including the following family housing support facilities: commissary facilities, Public Works Center compound with its sanitary landfill, and beach recreational areas, known as Nimitz Beach and White Plains Beach."

Justification: While specific mention was made of retention of family housing in the BRAC 93 recommendation relating to NAS Barbers Point, certain aspects conducive to supporting personnel in family housing were not specifically mentioned, which is required for their retention. Quality of life interests require either that these facilities be retained or that new ones be built to provide these services. Another advantage of retaining these facilities to support multi-service use is the avoidance of the costs of closing the existing landfill and either developing another one on other property on the island of Oahu or incurring the costs of shipping waste to a site off-island.

Return on Investment: The total estimated one-time cost to implement this recommendation is $37 thousand. The net of all costs and savings during the implementation period is a savings of $17.6 million. Annual recurring savings after implementation are $0.1 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $18.4 million.

Impacts:

Economic Impact on Communities: This recommendation will not affect any jobs in the Honolulu, Hawaii MSA economic area.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: The importance of this recommendation from the perspective of environmental impact is the retention of the existing landfill. Without this recommendation, the landfill would have to be closed and capped, and, until a replacement site is established, waste water treatment sludge, for instance, would have to be exported off-island for disposal. Further, by avoiding the need for new construction of facilities for the public works center compound and the commissary, this recommendation will eliminate any air emissions occasioned by such new construction and the need to use scarce real property resources to replace these facilities. Also, there is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Air Facility, Detroit, Michigan

Recommendation: Change the receiving site specified by the 1993 Commission (1993 Commission Report, at page 1-25) for the Mt. Clemons, Michigan Marine Corps Reserve Center, including MWSG-47 and supporting units, from "Marine Corps Reserve Center, Twin Cities, Minnesota" to "Air National Guard Base, Selfridge, Michigan."

Justification: In addition to avoiding the costs of relocating the reserve unit from this reserve center to Minnesota, this redirect maintains a Marine Corps recruiting presence in the Detroit area, which is a demographically rich recruiting area, and realizes a principal objective of the Department of Defense to effect multi-service use of facilities.

Return on Investment: There are no one-time costs to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $9.4 million. There are no annual recurring savings, and an immediate return on investment is obtained. The net present value of the costs and savings over 20 years is a savings of $9.3 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in current employment in the Minneapolis-St. Paul, Minnesota-Wisconsin MSA economic area. However, the anticipated small increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The collocation of MWSG-47 and supporting units to National Guard facilities permits this activity to remain in its present location. Both the Air National Guard Base, Selfridge and the closing Naval Air Facility Detroit are in the same Air Quality Control District. Therefore, there will be no air quality changes on account of this recommendation. The elimination of the transfer of this Reserve Center to NARCEN Twin Cities will have a positive effect on the air quality of the Minneapolis/St. Paul Air Quality Control District.

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Naval Shipyard, Norfolk Detachment, Philadelphia, Pennsylvania

Recommendations: Change the recommendation of the 1991 Commission relating to the closure of the Philadelphia Naval Shipyard (1991 Commission Report, at page 5-28) to delete "and preservation" (line 5) and "for emergent requirements"(lines 6-7).

Justification: Despite substantial reductions in depot maintenance capability accomplished in prior base closure evolutions, as force levels continue to decline, there is additional excess capacity that needs to be eliminated. The contingency seen in 1991 for which the facilities at this closed shipyard were being retained no longer exists, and their continued retention is neither necessary nor consistent with the DON objective to divest itself of unnecessary infrastructure.

Return on Investment: The total estimated one-time cost to implement this recommendation is $32 thousand. The net of all costs and savings during the implementation period is a savings of $51.9 million. Annual recurring savings after implementation are $8.8 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $134.7 million.

Impacts:

Economic Impact on Communities: This recommendation will not affect any jobs in the Philadelphia, Pennsylvania-New Jersey PMSA economic area.

Community Infrastructure Impact: There is no community infrastructure impact since there are no receiving installations for this recommendation.

Environmental Impact: This recommendation completes the closure of the Philadelphia Naval Shipyard which began with BRAC 91. Since this is a closure with no realignment of functions, personnel or workload, there is no impact to threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Sea Systems Command, Arlington, Virginia

Recommendation: Change the receiving sites specified by the 1993 Commission (1993 Commission Report, at page 1-59) for the relocation of the Naval Sea Systems Command, including the Nuclear Propulsion Directorate (SEA 08), the Human Resources Office supporting the Naval Sea Systems Command, and associated PEOs and DRPMs, from "the Navy Annex, Arlington, Virginia; Washington Navy Yard, Washington, D.C.; 3801 Nebraska Avenue, Washington, D.C.; Marine Corps Combat Development Command, Quantico, Virginia; or the White Oak facility, Silver Spring, Maryland" to "the Washington Navy Yard, Washington, D.C. or other government-owned property in the metropolitan Washington, D.C. area."

Justification: The resource levels of administrative activities are dependent upon the level of forces they support. The continuing decline in force levels shown in the FY 2001 Force Structure Plan coupled with the effects of the National Performance Review result in further reductions of personnel in administrative activities. As a result, the capacity at the White Oak facility in Silver Spring, Maryland, or at the Navy Annex, Arlington, Virginia is no longer required to meet DON administrative space needs. This change in receiving sites eliminates substantial expenditures otherwise required to rehabilitate both White Oak and the Navy Annex. The net effect of this and the White Oak recommendation is a decrease of excess administrative space by more than 1,000,000 square feet.

Return on Investment: The total estimated one-time cost to implement this recommendation is $159.7 million. The net of all costs and savings during the implementation period is a savings of $47.6 million. Annual recurring savings after implementation are $9.4 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $144 million.

Impacts:

Economic Impact on Communities: This recommendation will not result in a change in employment in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area because all affected jobs will remain in that economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of NAVSEA from leased space in the NCR to the Washington Navy Yard generally will have a positive impact on the environment, principally due to the avoidance of the construction of new facilities and the rehabilitation of existing facilities at NSWC White Oak, Maryland, which is closing in its entirety. The Washington Navy Yard has sufficient facilities which can be rehabilitated to house these activities, and the utility infrastructure capacity is sufficient to handle the additional personnel. There is no adverse impact on threatened/endangered species, sensitive habitat and wetlands, or cultural/historical resources occasioned by this recommendation.

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Office of Naval Research, Arlington, Virginia

Recommendation: Change the recommendation of the 1993 Commission (1993 Commission Report, at pages 1-59/60) by deleting the Office of Naval Research from the list of National Capital Region activities to relocate from leased space to Government-owned space within the NCR.

Justification: Because of other BRAC 95 actions, space designated for this activity pursuant to the BRAC 93 decision is no longer available. Other Navy-owned space in the NCR would require substantial new construction in order to house this activity. Permitting the Office of Naval Research to remain in its present location not only avoids this new construction, but also realizes the synergy obtained by having the activity located in proximity to the Advanced Research Projects Agency and the National Science Foundation. Further, this action provides the opportunity for future collocation of like activities from the other Military Departments, with the attendant joint synergies which could be realized. While this action results in a recurring cost, the cost is minimal in light of the importance of these two significant opportunities.

Return on Investment: While the annual costs for this activity to remain in leased space are higher than operating costs paid for government-owned space, relocation to government-owned space would require new construction. The cost of that new construction is more than would be saved by this move over a twenty-year period. COBRA analysis of the BRAC 93 recommendation in view of the changed circumstances regarding availability of space in the National Capital Region reveals that relocation of this activity would not result in a reasonable return on investment.

Impacts:

Economic Impact on Communities: This recommendation will not result in a change in employment in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area because all affected jobs will remain in that economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: Locating this activity in Arlington, Virginia, instead of at either the Washington Navy Yard or Nebraska Avenue generally will have a positive impact on the environment because new facilities will not have to be constructed. Both the current site and the sites considered as receivers are in the same air quality district; thus, there will be no impact on air quality. There is no adverse impact on threatened/endangered species, sensitive habitat and wetlands, or cultural/historical resources occasioned by this recommendation.

Space and Naval Warfare Systems Command, Arlington, Virginia

Recommendation: Change the recommendation for the Space and Naval Warfare Systems Command, Arlington, Virginia, specified by the 1993 Commission (Commission Report, at page 1-59) from "[r]elocate...from leased space to Government-owned space within the NCR, to include the Navy Annex, Arlington, Virginia; Washington Navy Yard, Washington, D.C.; 3801 Nebraska Avenue, Washington, D.C.; Marine Corps Combat Development Command, Quantico, Virginia; or the White Oak facility, Silver Spring, Maryland" to "Relocate...from leased space to Government-owned space in San Diego, California, to allow consolidation of the Naval Command, Control and Ocean Surveillance Center, with the Space and Naval Warfare Command headquarters. This relocation does not include SPAWAR Code 40, which is located at NRL, or the Program Executive Officer for Space Communication Sensors and his immediate staff who will remain in Navy-owned space in the National Capital Region."

Justification: The resource levels of administrative activities are dependent upon the level of forces they support. The continuing decline in force levels shown in the FY 2001 Force Structure Plan coupled with the effects of the National Performance Review result in further reductions in administrative activities. Space available in San Diego resulting from personnel changes and work consolidation permits further consolidation of the SPAWAR command structure and the elimination of levels of command structure. This consolidation will achieve not only significant savings from elimination of unnecessary command structure but also efficiencies and economies of operation. In addition, by relocating to San Diego instead of the NCR, there will be sufficient readily available space in the Washington Navy Yard for the Naval Sea Systems Command.

Return on Investment: The total estimated one-time cost to implement this recommendation is $24 million. The net of all costs and savings during the implementation period is a savings of $120 million. Annual recurring savings after implementation are $25.3 million with an immediate return on investment expected. The net present value of the costs and savings over 20 years is a savings of $360 million.

Impacts:

Economic Impact on Communities: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,821 jobs (1,133 direct jobs and 681 indirect jobs) over the 1996-to-2001 period in the Washington, DC-Maryland-Virginia-West Virginia PMSA economic area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.6 percent of employment in the economic area.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

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Environmental Impact: The relocation of this activity from leased space in the NCR to San Diego, California, likely will not have an adverse impact on the environment. Because San Diego is in a moderate non-attainment area for carbon monoxide, a conformity determination may be required to evaluate air quality impacts. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

Naval Recruiting Command, Washington, D.C.

Recommendation: Change the receiving site for the Naval Recruiting Command, Washington, D.C., specified by the 1993 Commission (1993 Commission Report, at page 1-59) from "Naval Training Center, Great Lakes, Illinois" to "Naval Support Activity, Memphis, Tennessee."

Justification: This relocation permits the single-siting of the Department's personnel recruiting and personnel management headquarters-level activities, enhancing their close coordination, and supporting the Department's policy of maximizing the use of government-owned space. It also reduces the requirement to effect new construction, and reduces resulting potential building congestion, at NTC Great Lakes.

Return on Investment: The total estimated one-time cost to implement this recommendation is $6.5 million. The net of all costs and savings during the implementation period is a savings of $1.1 million. There are no annual recurring savings after implementation, and an immediate return on investment is expected. The net present value of the costs and savings over 20 years is a savings of $1.2 million.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the Lake County, Illinois economic area. However, the anticipated
0.2 percent increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The movement of this activity to Naval Support Activity, Memphis generally will have a positive impact on the environment because new facilities will not have to be constructed at NTC Great Lakes, Illinois. The additional personnel are not expected to have an adverse impact on the environment in that the utility infrastructure capacity at the receiving site is sufficient to handle this additional loading. There is no adverse impact on threatened/endangered species, sensitive habitats and wetlands, or cultural/historical resources occasioned by this recommendation.

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Naval Security Group Command Detachment Potomac, Washington, D.C.

Recommendation: Change the receiving site for the Naval Security Group Command Detachment Potomac, Washington, D.C., from "National Security Agency, Ft. Meade, Maryland" specified by the 1993 Commission (1993 Commission Report, at page 1-59) to "Naval Research Laboratory, Washington, D.C."

Justification: The mission of this activity requires that it be collocated with space surveillance hardware. This can most effectively be accomplished by housing this activity at the Naval Research Laboratory. By this redirect, the cost of moving this activity to Fort Meade can be avoided.

Return on Investment: There are no estimated one-time costs to implement this recommendation. The net of all costs and savings during the implementation period is a savings of $4 thousand. There are no annual recurring savings after implementation, and an immediate return on investment is expected. The net present value of the costs and savings over 20 years is a savings of $4 thousand.

Impacts:

Economic Impact on Communities: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in current employment in the Baltimore, Maryland PMSA economic area. However, the anticipated small increase in the employment base in this economic area will not occur.

Community Infrastructure Impact: There is no known community infrastructure impact at any receiving installation.

Environmental Impact: The relocation of this activity from Ft. Meade, Maryland, to the Naval Research Laboratory, Washington, D.C., generally will have a positive impact on the environment. Both the losing site and the gaining site are in the same air quality district; thus, movement of this activity within that district will no impact on air quality. There is no adverse impact on threatened/endangered species, sensitive habitat and wetlands, or cultural/historical resources occasioned by this recommendation.

Department of the Air Force Selection Process

Introduction

The Air Force 1995 selection process shares the fundamental approach used in the 1991 and 1993 Air Force base realignment and closure (BRAC) processes.

The basis for selection of closure and realignment recommendations was the DoD force structure and the final selection criteria. The Secretary of the Air Force appointed a Base Closure Executive Group of six general officers and seven comparable (Senior Executive Service) civilians. Areas of expertise included environment; facilities and construction; finance; law; logistics; programs; operations; personnel and training; reserve components; plus research, development and acquisition. Additionally, an Air Staff-level Base Closure Working Group was formed to provide staff support and additional detailed expertise for the Executive Group. Plans and Programs General Officers from the Major Commands (MAJCOM) met on several occasions with the Executive Group to provide mission specific expertise and greater base-level information. Also, potential sister-service impacts were coordinated by a special inter-service working group.

The Executive Group developed a Base Closure Internal Control Plan that was approved by the Secretary of the Air Force. This plan provides structure and guidance for all participants in the base closure process, including procedures for data gathering and certification.

The Selection Process

The Executive Group reviewed all Active and Air Reserve Component (ARC) installations in the United States that met or exceeded the Section 2687, Title 10 U.S.C. threshold of 300 direct-hire civilians authorized to be employed. Data on all applicable bases was collected via a comprehensive and detailed questionnaire answered at base level with validation by the Major Commands and Air Staff. All data was evaluated and certified in accordance with the Air Force Internal Control Plan. As an additional control measure, the Air Force Audit Agency was tasked to continuously review the Air Force process for consistency with the law and DoD policy and to ensure that the data collection and validation process was adequate. A baseline capacity analysis was also performed that evaluated the physical capability of a base to accommodate additional force structure and other activities (excess capacity) beyond that programmed to be stationed at the base.

The Executive Group occasionally questioned the data, where appropriate, when the information was revised or more detailed data provided. Data determined to be inaccurate was corrected. All data used in the preparation and submission of information and recommendations concerning the closure or realignment of military installations was certified as to its accuracy and completeness by appropriate officials at base, MAJCOM, and headquarters level. In addition, the Executive Group and the Secretary of the Air Force certified that all information contained in the Air Force Detailed Analysis and all supporting data were accurate and complete to the best of their knowledge and belief.

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The Executive Group placed all bases in categories, based on the installation's predominant mission. When considered by category, the results of the baseline capacity analysis represented the maximum potential base closures that could be achieved within each category. The results of the baseline excess capacity analysis were then used in conjunction with the approved DoD force structure plan in determining base structure requirements. Other factors were also considered to determine actual capabilities for base reductions. The capacity analysis was also used to identify cost effective opportunities for the beddown of activities and aircraft dislocated from bases recommended for closure and realignment.

Bases deemed militarily or geographically unique or mission-essential were approved by the Secretary of the Air Force for exclusion from further closure consideration. Capacity was analyzed by category, based on a study of current base capacity and the future requirements imposed by the force structure plan. Categories and subcategories having no excess capacity were recommended to and approved by the Secretary of the Air Force for exclusion from further study.

All non-excluded Active Component bases in the remaining categories were individually examined on the basis of all eight selection criteria established by the Secretary of Defense, with over 250 subelements to the grading criteria. These subelements were developed by the Air Force to provide specific data points for each criterion.

Under Deputy Secretary of Defense direction, the Executive Group and the Secretary of the Air Force considered and analyzed the results of the efforts of Joint Cross-Service Groups in the areas of Depot Maintenance, Laboratories, Test and Evaluation, Undergraduate Pilot Training, and Military Treatment Facilities including Graduate Medical Education. The Joint Cross-Service Groups established data elements, measures of merit, and methods of analysis for their functional areas. The Air Force collected data as requested by the joint groups, following the Air Force's Internal Control Plan. After receiving data provided by each of the Services, the joint groups developed functional values and alternatives for the activities under their consideration. These alternatives were reported to the Military Departments for consideration in their processes. In turn, the Military Departments responded with comments and cost analyses of the alternatives, and engaged in a dialogue with the joint groups regarding potential closure and realignment actions, consistent with the internal analytical processes of each Military Department.

The Air Reserve Component (ARC) category, comprised of Air National Guard and Air Force Reserve bases, warrants further explanation. First, these bases do not readily compete against each other, as ARC units enjoy a special relationship with their respective states and local communities. Under federal law, relocating Guard units across State boundaries is not a practical alternative. In addition, careful consideration must be given to the recruiting needs of these units. However, realignment of ARC units onto active or civilian, or other ARC installations could prove cost effective. Therefore, the ARC category was examined for cost effective relocations to other bases.

Information, base groupings, excess capacity, and options resulting from the Executive Group analysis were presented to the Secretary of the Air Force and Chief of Staff of the Air Force by the Executive Group. Based on the force structure plan and the eight selection criteria, with consideration given to excess capacity, efficiencies in base utilization, and concepts of force structure organization and basing, the Secretary of the Air Force, in consultation with the Air Force Chief of Staff, and using the analysis of the Executive Group, selected the bases recommended for closure and realignment.

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North Highlands Air Guard Station, California

Recommendation: Close North Highlands Air Guard Station (AGS) and relocate the 162nd Combat Communications Group (CCG) and the 149th Combat Communications Squadron (CCS) to McClellan AFB, California.

Justification: Relocation of the 162nd CCG and 149th CCS onto McClellan AFB will provide a more cost-effective basing arrangement than presently exists by avoiding some of the costs associated with maintaining the installation. Because of the very short distance from the unit's present location in North Highlands to McClellan AFB, most of the personnel will remain with the unit.

Return on Investment: The total estimated one-time cost to implement this recommendation is $1.3 million. The net of all costs and savings during the implementation period is a cost of $0.5 million. Annual recurring savings after implementation are
$0.2 million with a return on investment expected in eight years. The net present value of the costs and savings over 20 years is a savings of $1.5 million.

Impacts: This recommendation will not result in a change in the employment in the Sacramento, California Primary Metropolitan Statistical Area because all affected jobs will remain in that economic area. Review of demographic data projects no negative impact on recruiting. This action will have minimal environmental impact.

Ontario International Airport Air Guard Station, California

Recommendation: Close Ontario International Airport Air Guard Station (AGS) and relocate the 148th Combat Communications Squadron (CCS) and the 210th Weather Flight to March ARB, California.

Justification: Relocation of the 148th CCS and the 210th Weather Flight onto March ARB will provide a more cost-effective basing arrangement by avoiding some of the costs associated with maintaining the installation. Because of the short distance from the unit's present location on Ontario International Airport AGS, most of the personnel will remain with the unit.

Return on Investment: The total estimated one-time cost to implement this recommendation is $0.8 million. The net of all costs and savings during the implementation period is a cost of $0.3 million. Annual recurring savings after implementation are
$0.1 million with a return on investment expected in eight years. The net present value of the costs and savings over 20 years is a savings of $0.9 million.

Impacts: This recommendation will not result in a change in the employment in the Riverside-San Bernardino, California Primary Metropolitan Statistical Area because all affected jobs will remain in the economic area. Review of demographic data projects no negative impact on recruiting. Environmental impact from this action is minimal.

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Rome Laboratory, New York

Recommendation: Close Rome Laboratory, Rome, New York. Rome Laboratory activities will relocate to Fort Monmouth, New Jersey, and Hanscom AFB, Massachusetts. Specifically, the Photonics, Electromagnetic & Reliability (except Test Site O&M operations), Computer Systems, Radio Communications and Communications Network activities, with their share of the Rome Lab staff activities, will relocate to Fort Monmouth. The Surveillance, Intelligence & Reconnaissance Software Technology, Advanced C2 Concepts, and Space Communications activities, with their share of the Rome Laboratory staff activities, will relocate to Hanscom AFB. The Test Site (e.g., Stockbridge and Newport) O&M operations will remain at its present location but will report to Hanscom AFB.

Justification: The Air Force has more laboratory capacity than necessary to support current and projected Air Force research requirements. The Laboratory Joint Cross-Service Group analysis recommended the Air Force consider the closure of Rome Laboratory. Collocation of part of the Rome Laboratory with the Army's Communications Electronics Research Development Evaluation Command at Fort Monmouth will reduce excess laboratory capacity and increase inter-Service cooperation and common C3 research. In addition, Fort Monmouth's location near unique civilian research activities offers potential for shared research activities. Those activities relocated to Hanscom AFB will strengthen Air Force C3I RDT&E activities by collocating common research efforts. This action will result in substantial savings and furthers the DoD goal of cross-service utilization of common support assets.

Return on Investment: The total estimated one-time cost to implement this recommendation is $52.8 million. The net of all costs and savings during the implementation period is a cost of $15.1 million. Annual recurring savings after implementation are $11.5 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $98.4 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,345 jobs (1,067 direct jobs and 1,278 indirect jobs) over the 1996-to-2001 period in the Utica-Rome, New York Metropolitan Statistical Area, which is 1.5 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 6.2 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Rome Laboratory and Griffiss AFB will continue.

Roslyn Air Guard Station, New York

Recommendation: Close Roslyn Air Guard Station (AGS) and relocate the 213th Electronic Installation Squadron (ANG) and the 274th Combat Communications Group (ANG) to Stewart International Airport AGS, Newburg, New York. The 722nd Aeromedical Staging Squadron (AFRES) will relocate to suitable leased space within the current recruiting area.

Justification: Relocation of the 213th Electronic Installation Squadron and 274th Combat Communications Group to Stewart International Airport AGS will produce a more efficient and cost-effective basing structure by avoiding some of the costs associated with maintaining the installation.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.4 million. The net of all costs and savings during the implementation period is a savings of $0.7 million. Annual recurring savings after implementation are $0.7 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $7.6 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 71 jobs (44 direct jobs and 27 indirect jobs) over the 1996-to-2001 period in the Nassau-Suffolk, New York Metropolitan Statistical Area, which is less than 0.1 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to less than 0.1 percent of employment in the Nassau-Suffolk, New York Metropolitan Statistical Area. Review of demographic data projects no negative impact on recruiting. Environmental impact from this action is minimal and ongoing restoration will continue.

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Springfield-Beckley Municipal Airport Air Guard Station, Ohio

Recommendation: Close Springfield-Beckley Municipal Airport Air Guard Station (AGS) and relocate the 178th Fighter Group (ANG), the 251st Combat Communications Group (ANG), and the 269th Combat Communications Squadron (ANG) to Wright-Patterson AFB, Ohio.

Justification: The 178th Fighter Group provides crash, fire and rescue, security police, and other base operating support services for ANG activities at Springfield-Beckley Municipal Airport. By relocating to Wright-Patterson AFB, significant manpower and other savings will be realized by avoiding some of the costs associated with the installation.

Return on Investment: The total estimated one-time cost to implement this recommendation is $23.4 million. The net of all costs and savings during the implementation period is a cost of $5.6 million. Annual recurring savings after implementation are
$4.2 million with a return on investment expected in six years. The net present value of the costs and savings over 20 years is a savings of $35.1 million.

Impacts: This recommendation will not result in a change in the employment in the Riverside-Dayton-Springfield, Ohio Metropolitan Statistical Area because all affected jobs will remain in that economic area. Review of demographic data projects no negative impact on recruiting. Environmental impact from this action is minimal.

Greater Pittsburgh IAP Air Reserve Station, Pennsylvania

Recommendation: Close Greater Pittsburgh IAP Air Reserve Station (ARS). The 911th Airlift Wing will inactivate and its C-130 aircraft will be distributed to Air Force Reserve C-130 units at Dobbins ARB, Georgia, and Peterson AFB, Colorado.

Justification: The Air Force Reserve has more C-130 operating locations than necessary to effectively support the Reserve C-130 aircraft in the Department of Defense (DoD) Force Structure Plan. Although Greater Pittsburgh ARS is effective at supporting its mission, its evaluation overall under the eight criteria supports its closure. Its operating costs are the greatest among Air Force Reserve C-130 operations at civilian airfields. In addition, its location near a number of AFRES and Air National Guard units provides opportunities for its personnel to transfer and continue their service without extended travel.

Return On Investment: The total estimated one-time cost to implement this recommendation is $22.3 million. The net of all costs and savings during the implementation period is a savings of $36.3 million. Annual recurring savings after implementation are $13.1 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $161.1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 631 jobs (387 direct jobs and 244 indirect jobs) over the 1996-to-2001 period in the Allegheny, Fayette, Washington, and Westmoreland, Pennsylvania, counties economic area, which is 0.1 percent of economic area employment. Review of demographic data projects no negative impact on recruiting. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the economic area. Environmental impact from this action is minimal, and restoration of the Greater Pittsburgh IAP ARS will continue.

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Bergstrom Air Reserve Base, Texas

Recommendation: Close Bergstrom ARB. The 924th Fighter Wing (AFRES) will inactivate. The Wing's F-16 aircraft will be redistributed or retire. Headquarters, 10th Air Force (AFRES), will relocate to Naval Air Station Fort Worth, Joint Reserve Base, Texas.

Justification: Due to Air Force Reserve fighter force drawdown, the Air Force Reserve has an excess of F-16 fighter locations. The closure of Bergstrom ARB is the most cost effective option for the Air Force Reserve. The relocation of Headquarters, 10th Air Force to NAS Fort Worth will also collocate the unit with one of its major subordinate units.

Return on Investment: The total estimated one-time cost to implement this recommendation is $13.3 million. The net of all costs and savings during the implementation period is a savings of $93.4 million. Annual recurring savings after implementation are $20.9 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $291.4 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 954 jobs (585 direct jobs and 369 indirect jobs) over the 1996-to-2001 period in the Austin, Texas Metropolitan Statistical Area, which is 0.2 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.2 percent of employment in the Austin, Texas Metropolitan Statistical Area. Review of demographic data projects no negative impact on recruiting. Environmental impact from this action is minimal and ongoing restoration of Bergstrom ARB will continue.

Brooks Air Force Base, Texas

Recommendation: Close Brooks AFB. The Human Systems Center, including the School of Aerospace Medicine and Armstrong Laboratory, will relocate to Wright-Patterson AFB, Ohio, however, some portion of the Manpower and Personnel function, and the Air Force Drug Test laboratory, may relocate to other locations. The 68th Intelligence Squadron will relocate to Kelly AFB, Texas. The Air Force Center for Environmental Excellence will relocate to Tyndall AFB, Florida. The 710th Intelligence Flight (AFRES) will relocate to Lackland AFB, Texas. The hyperbaric chamber operation, including associated personnel, will relocate to Lackland AFB, Texas. All activities and facilities at the base including family housing and the medical facility will close.

Justification: The Air Force has more laboratory capacity than necessary to support current and projected Air Force research requirements. When compared to the attributes desirable in laboratory activities, the Armstrong Lab and Human Systems Center operations at Brooks AFB contributed less to Air Force needs as measured by such areas as workload requirements, facilities, and personnel. As an installation, Brooks AFB ranked lower than the other bases in the Laboratory and Product Center subcategory.

Return on Investment: The total estimated one-time cost to implement this recommendation is $185.5 million. The net of all costs and savings during the implementation period is a cost of $138.7 million. Annual recurring savings after implementation are $27.4 million with a return on investment expected in seven years. The net present value of the costs and savings over 20 years is a savings of $142.1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 7,879 jobs (3,759 direct jobs and 4,120 indirect jobs) over the 1996-to-2001 period in the San Antonio, Texas Metropolitan Statistical Area, which is 1.1 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations, including the relocation of some Air Force activities into the San Antonio area, and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.9 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Brooks AFB will continue.

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Reese Air Force Base, Texas

Recommendation: Close Reese AFB. The 64th Flying Training Wing will inactivate and its assigned aircraft will be redistributed or retired. All activities and facilities at the base including family housing and the hospital will close.

Justification: The Air Force has more Undergraduate Flying Training (UFT) bases than necessary to support Air Force pilot training requirements consistent with the Department of Defense (DoD) Force Structure Plan. When all eight criteria are applied to the bases in the UFT category, Reese AFB ranks low relative to the other bases in the category. Reese AFB ranked lower when compared to other UFT bases when evaluated on such factors as weather (e.g., crosswinds, density altitude) and airspace availability (e.g., amount of airspace available for training, distance to training areas). Reese AFB was also recommended for closure in each alternative recommended by the DoD Joint Cross-Service Group for Undergraduate Pilot Training.

Return on Investment: The total estimated one-time cost to implement this recommendation is $37.3 million. The net of all costs and savings during the implementation period is a savings of $51.9 million. Annual recurring savings after implementation are $21.5 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $256.8 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,891 jobs (2,083 direct jobs and 808 indirect jobs) over the 1996-to-2001 period in the Lubbock, Texas Metropolitan Statistical Area, which is 2.2 percent of the economic area's employment. Environmental impact from this action is minimal and ongoing restoration of Reese AFB will continue.

Onizuka Air Station, California

Recommendation: Realign Onizuka AS. The 750th Space Group will inactivate and its functions will relocate to Falcon AFB, Colorado. Detachment 2, Space and Missile Systems Center (AFMC) will relocate to Falcon AFB, Colorado. Some tenants will remain in existing facilities. All activities and facilities associated with the 750th Space Group including family housing and the clinic will close.

Justification: The Air Force has one more satellite control installation than is needed to support projected future Air Force satellite control requirements consistent with the Department of Defense (DoD) Force Structure Plan. When all eight criteria are applied to the bases in the Satellite Control subcategory, Onizuka AS ranked lower than the other base in the subcategory. Among other factors, Falcon AFB has superior protection against current and future electronic encroachment, reduced risks associated with security and mission-disrupting contingencies, and significantly higher closure costs.

Return on Investment: The total estimated one-time cost to implement this recommendation is $124.2 million. The net of all costs and savings during the implementation period is a cost of $125.7 million. Annual recurring savings after implementation are $30.3 million with a return on investment expected in eight years. The net present value of the costs and savings over 20 years is a savings of $181.6 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,969 jobs (1,875 direct jobs and 1,094 indirect jobs) over the 1996-to-2001 period in the San Jose, California, Primary Metropolitan Statistical Area, which is 0.3 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.5 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Onizuka AS will continue.

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Eglin Air Force Base, Florida

Recommendation: Realign Eglin AFB, Florida. The Electromagnetic Test Environment (EMTE), consisting of eight Electronic Combat (EC) threat simulator systems and two EC pod systems will relocate to the Nellis AFB Complex, Nevada. Those emitter-only systems at the Air Force Development Test Center (AFDTC) at Eglin AFB necessary to support Air Force Special Operations Command (AFSOC), the USAF Air Warfare Center, and Air Force Materiel Command Armaments/Weapons Test and Evaluation activities will be retained. All other activities and facilities associated with Eglin will remain open.

Justification: Air Force EC open air range workload requirements can be satisfied by one range. Available capacity exists at the Nellis AFB Complex to absorb EMTE's projected EC workload. To ensure the Air Force retains the capability to effectively test and realistically train in the Armaments/Weapons functional category, necessary emitter-only threat systems will remain at Eglin AFB. This action is consistent with Air Force and DoD efforts to consolidate workload where possible to achieve cost and mission efficiencies.

Return on Investment: The total estimated one-time cost to implement this recommendation is $2.2 million. The net of all costs and savings during the implementation period is a savings of $6.3 million. Annual recurring savings after implementation are
$2.6 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $31.4 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 85 jobs (52 direct jobs and 33 indirect jobs) over the 1996-to-2001 period in the Fort Walton Beach, Florida Metropolitan Statistical Area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations, including the relocation of some Air Force activities into the Fort Walton Beach, Florida Metropolitan Statistical Area, and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential increase equal to 1.3 percent of employment in the economic area. Environmental impact from this action is minimal, and ongoing restoration of Eglin AFB will continue.

Malmstrom Air Force Base, Montana

Recommendation: Realign Malmstrom AFB. The 43rd Air Refueling Group and its KC-135 aircraft will relocate to MacDill AFB, Florida. All fixed-wing aircraft flying operations at Malmstrom AFB will cease and the airfield will be closed. A small airfield operational area will continue to be available to support the helicopter operations of the 40th Rescue Flight which will remain to support missile wing operations. All base activities and facilities associated with the 341st Missile Wing will remain.

Justification: Although the missile field at Malmstrom AFB ranked very high, its airfield resources can efficiently support only a small number of tanker aircraft. Its ability to support other large aircraft missions (bomber and airlift) is limited and closure of the airfield will generate substantial savings.

During the 1995 process, the Air Force analysis highlighted a shortage of refueling aircraft in the southeastern United States. The OSD direction to support the Unified Commands located at MacDill AFB creates an opportunity to relocate a tanker unit from the greater tanker resources of the northwestern United States to the southeast. Movement of the refueling unit from Malmstrom AFB to MacDill AFB will also maximize the cost-effectiveness of that airfield.

Return on Investment: The total estimated one-time cost to implement this recommendation is $17.4 million. The net of all costs and savings during the implementation period is a savings of $5.2 million. Annual recurring savings after implementation are
$5.1 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $54.3 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,013 jobs (779 direct jobs and 234 indirect jobs) over the 1996-to-2001 period in the Great Falls, Montana Metropolitan Statistical Area, which is 2.3 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 2.3 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Malmstrom AFB will continue.

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Kirtland Air Force Base, New Mexico

Recommendation: Realign Kirtland AFB. The 58th Special Operations Wing will relocate to Holloman AFB, New Mexico. The AF Operational Test and Evaluation Center (AFOTEC) will relocate to Eglin AFB, Florida. The AF Office of Security Police (AFOSP) will relocate to Lackland AFB, Texas. The AF Inspection Agency and the AF Safety Agency will relocate to Kelly AFB, Texas. The Defense Nuclear Agency (DNA) will relocate to Kelly AFB, Texas (Field Command) and Nellis AFB, Nevada (High Explosive Testing). Some DNA personnel (Radiation Simulator operations) will remain in place. The Phillips Laboratory and the 898th Munitions Squadron will remain in cantonment. The AFRES and ANG activities will remain in existing facilities. The 377th ABW inactivates and all other activities and facilities at Kirtland AFB, including family housing will close. Air Force medical activities located in the Veterans Administration Hospital will terminate.

Justification: As an installation, Kirtland AFB rated low relative to other bases in the Laboratory and Product Center subcategory when all eight selection criteria were considered. The Laboratory Joint Cross-Service Group, however, gave the Phillips Laboratory operation a high functional value. This realignment will close most of the base, but retain the Phillips Laboratory, which has a high functional value and the 898th Munitions Squadron, which is not practical to relocate. Both of these activities are capable of operating with minimal military support. Also, the Sandia National Laboratory can be cantoned in its present location. This approach reduces infrastructure and produces significant annual savings, while maintaining those activities essential to the Air Force and the Department of Defense.

Return on Investment: The total estimated one-time cost to implement this recommendation is $277.5 million. The net of all costs and savings during the implementation period is a cost of $158.8 million. Annual recurring savings after implementation are $62 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $464.5 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 11,916 jobs (6,850 direct jobs and 5,066 indirect jobs) over the 1996-to-2001 period in the Bernallio County, New Mexico economic area, which is 3.6 percent of the economic area's employment. Environmental impact from this action is minimal and ongoing restoration of Kirtland AFB will continue.

Grand Forks Air Force Base, North Dakota

Recommendation: Realign Grand Forks AFB. The 321st Missile Group will inactivate, unless prior to December 1996, the Secretary of Defense determines that the need to retain ballistic missile defense (BMD) options effectively precludes this action. If the Secretary of Defense makes such a determination, Minot AFB, North Dakota, will be realigned and the 91st Missile Group will inactivate.

If Grand Forks AFB is realigned, the 321st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. A small number of silo launchers at Grand Forks may be retained if required. The 319th Air Refueling Wing will remain in place. All activities and facilities at the base associated with the 319th Air Refueling Wing, including family housing, the hospital, commissary, and base exchange will remain open.

If Minot AFB is realigned, the 91st Missile Group will inactivate. Minuteman III missiles will relocate to Malmstrom AFB, Montana, be maintained at depot facilities, or be retired. The 5th Bomb Wing will remain in place. All activities and facilities at the base associated with the 5th Bomb Wing, including family housing, the hospital, commissary, and base exchange will remain open.

Justification: A reduction in ICBM force structure requires the inactivation of one missile group within the Air Force. The missile field at Grand Forks AFB ranked lowest due to operational concerns resulting from local geographic, geologic, and facility characteristics. Grand Forks AFB also ranked low when all eight criteria are applied to bases in the large aircraft subcategory. The airfield will be retained to satisfy operational requirements and maintain consolidated tanker resources.

If the Secretary of Defense determines that the need to retain BMD options effectively precludes realigning Grand Forks, then Minot AFB will be realigned. The missile field at Minot AFB ranked next lowest due to operational concerns resulting from spacing, ranging and geological characteristics. Minot AFB ranked in the middle tier when all eight criteria are applied to bases in the large aircraft subcategory. The airfield will be retained to satisfy operational requirements.

Return on Investment: For Grand Forks, the total estimated one-time cost to implement this recommendation is $11.9 million. The net of all costs and savings during the implementation period is a savings of $111.8 million. Annual recurring savings after implementation are $35.2 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $447.0 million. Savings associated with the inactivation of a missile field were previously programmed in the Air Force budget.

Return on Investment: If Minot AFB is selected, the total estimated one-time cost to implement this recommendation is $12.0 million. The net of all costs and savings during the implementation period is a savings of $114.8 million. Annual recurring savings after implementation are $36.1 million with an immediate return on investment. The net present value of the costs and savings

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over 20 years is a savings of $458.6 million. Savings associated with the closure of a missile field were previously programmed in the Air Force budget.

Impacts: For Grand Forks AFB, assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,113 jobs (1,625 direct jobs and 488 indirect jobs) over the 1996-to-2001 period in the Grand Forks County, North Dakota economic area, which is 4.7 percent of the economic area's employment. Environmental impact from this action is minimal and ongoing restoration at Grand Forks AFB will continue.

Impacts: If Minot is selected, assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,172 jobs (1,666 direct jobs and 506 indirect jobs) over the 1996-to-2001 period in the Minot County, North Dakota economic area, which is 6.1 percent of the economic area's employment. Environmental impact from this action is minimal and ongoing restoration at Minot AFB will continue.

Hill Air Force Base, Utah

Recommendation: Realign Hill AFB, Utah. The permanent Air Force Materiel Command (AFMC) test range activity at Utah Test and Training Range (UTTR) will be disestablished. Management responsibility for operation of the UTTR will transfer from AFMC to Air Combat Command (ACC). Personnel, equipment and systems required for use by ACC to support the training range will be transferred to ACC. Additional AFMC manpower associated with operation of the range will be eliminated. Some armament/weapons Test and Evaluation (T& E) workload will transfer to the Air Force Development Test Center (AFDTC), Eglin AFB, Florida, and the Air Force Flight Test Center (AFFTC), Edwards AFB, California.

Justification: Most of the current T&E activities can be accomplished at other T&E activities (AFFTC and AFDTC). Disestablishing the AFMC test range activities and transferring the range to ACC will reduce excess T&E capacity within the Air Force. Retaining the range as a training range will preserve the considerable training value offered by the range and is consistent with the current 82 percent training use of the range. Retention of the range as a training facility will also allow large footprint weapons to undergo test and evaluation using mobile equipment.

Return on Investment: The total estimated one-time cost to implement this recommendation is $3.2 million. The net of all costs and savings during the implementation period is a savings of $62.4 million. Annual recurring savings after implementation are $12.4 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $179.9 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 168 jobs (104 direct jobs and 64 indirect jobs) over the 1996-to-2001 period in the Tooele County, Utah economic area, which is 1.3 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 36.6 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of the UTTR will continue.

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Air Logistics Centers

Recommendation: Realign the Air Logistics Centers (ALC) at Hill AFB, Utah; Kelly AFB, Texas; McClellan AFB, California; Robins AFB, Georgia; and Tinker AFB, Oklahoma. Consolidate the followings workloads at the designated receiver locations:

Commodity/Workload	Receiving Locations
Composites and plastics	SM-ALC, McClellan AFB
Hydraulics	SM-ALC, McClellan AFB
Tubing manufacturing	WR-ALC, Robins AFB
Airborne electronic automatic equipment software	WR-ALC, Robins AFB, OC-ALC, Tinker AFB, OO-ALC, Hill AFB
Sheet metal repair and manufacturing	OO-ALC, Hill AFB, WR-ALC, Robins AFB
Machining manufacturing	OC-ALC, Tinker AFB, WR-ALC, Robins AFB
Foundry operations	SA-ALC, Kelly AFB, OO-ALC, Hill AFB
Instruments/displays	SM-ALC, McClellan AFB (some unique work remains at OO-ALC, Hill AFB and WR-ALC, Robins AFB)
Airborne electronics	WR-ALC, Robins AFB, OC-ALC, Tinker AFB, OO-ALC, Hill AFB
Electronic manufacturing (printed wire boards)	WR-ALC, Robins AFB
Electrical/mechanical support equipment	SM-ALC, McClellan AFB
Injection molding	SM-ALC, McClellan AFB
Industrial plant equipment software	SA-ALC, Kelly AFB
Plating	OC-ALC, Tinker AFB, OO-ALC, Hill AFB, SA-ALC, Kelly AFB, WR-ALC, Robins AFB

Move the required equipment and any required personnel to the receiving location. These actions will create or strengthen Technical Repair Centers at the receiving locations in the respective commodities. Minimal workload in each of the commodities may continue to be performed at the other ALCs as required.

Justification: Reductions in force structure have resulted in excess depot maintenance capacity across Air Force depots. The recommended realignments will consolidate production lines and move workload to a minimum number of locations, allowing the reduction of personnel, infrastructure, and other costs. The net effect of the realignments is to transfer approximately 3.5

million direct labor hours and to eliminate 37 product lines across the five depots. These actions will allow the Air Force to demolish or mothball facilities, or to make them available for use by other agencies. These consolidations will reduce excess capacity, enhance efficiencies, and produce substantial cost savings without the extraordinary one-time costs associated with closing a single depot.

This action is part of a broader Air Force effort to downsize, reduce depot capacity and infrastructure, and achieve cost savings in a financially prudent manner consistent with mission requirements. Programmed work reductions, downsizing through contracting or transfer to other Service depots, and the consolidation of workloads recommended above result in the reduction of real property infrastructure equal to 1.5 depots, and a reduction in manhour capacity equivalent to about two depots. The proposed moves also make available over 25 million cubic feet of space to the Defense Logistics Agency for storage and other purposes, plus space to accept part of the Defense Nuclear Agency and other displaced Air Force missions. This approach enhances the cost effectiveness of the overall Department of Defense's closure and realignment recommendations. The downsizing of all depots is consistent with DoD efforts to reduce excess maintenance capacity, reduce cost, improve efficiency of depot management, and increase contractor support for DoD requirements.

Return on Investment: The total estimated one-time cost to implement this recommendation is $183 million. The net of all costs and savings during the implementation period is a savings of $138.7 million. Annual recurring savings after implementation are $89 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $991.2 million.

TINKER

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,040 jobs (1,180 direct jobs and 1,860 indirect jobs) over the 1996-to-2001 period in the Oklahoma City, Oklahoma Metropolitan Statistical Area, which is 0.5 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.3 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Tinker AFB will continue.

ROBINS

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,168 jobs (534 direct jobs and 634 indirect jobs) over the 1996-to-2001 period in the Macon, Georgia Metropolitan Statistical Area, which is 0.7 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.7 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Robins AFB will continue.

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KELLY

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,446 jobs (555 direct jobs and 891 indirect jobs) over the 1996-to-2001 period in the San Antonio, Texas Metropolitan Statistical Area, which is 0.2 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations, including the relocation of some Air Force activities into the San Antonio area, and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.9 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration will continue.

McCLELLAN and HILL

Impacts: The recommendations pertaining to consolidations of workloads at these two centers are not anticipated to result in employment losses or significant environmental impact.

Moffett Federal Airfield Air Guard Station, California

Recommendation: Close Moffett Federal Airfield Air Guard Station. Relocate the 129th Rescue Group and associated aircraft to McClellan AFB, California.

Justification: At Moffett Federal Airfield, the 129th Rescue Group (RQG) provides manpower for the airfield's crash, fire and rescue, air traffic control, and security police services, and pays a portion of the total associated costs. The ANG also pays a share of other base operating support costs. These costs to the ANG have risen significantly since NAS Moffett realigned to Moffett Federal Airfield, and can be avoided if the unit is moved to an active duty airfield.

Return on Investment: The total estimated one-time cost to implement this recommendation is $15.2 million. The net of all costs and savings during the implementation period is a savings of $4.4 million. Annual recurring savings after implementation are $4.8 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $50.1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 507 jobs (318 direct jobs and 189 indirect jobs) over the 1996-to-2001 period in the San Jose, California Primary Metropolitan Statistical Area, which is 0.1 percent of the economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.5 percent of employment in the economic area. Review of demographic data projects no negative impact on recruiting. This action will have minimal environmental impact.

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Real-Time Digitally Controlled Analyzer Processor Activity, Buffalo, New York

Recommendation: Disestablish the Real-Time Digitally Controlled Analyzer Processor activity (REDCAP) at Buffalo, New York. Required test activities and necessary support equipment will be relocated to the Air Force Flight Test Center (AFFTC) at Edwards AFB, California. Any remaining equipment will be disposed of.

Justification: The Test and Evaluation Joint Cross-Service Group (JCSG) recommended that REDCAP's capabilities be relocated to an existing facility at an installation with a Major Range and Test Facility Base (MRTFB) open air range. Projected workload for REDCAP is only 10 percent of its available capacity. AFFTC has capacity sufficient to absorb REDCAP's workload. REDCAP's basic hardware-in-the-loop infrastructure is duplicated at other Air Force T&E facilities. This action achieves significant cost savings and workload consolidation.

Return on Investment: The total estimated one-time cost to implement this recommendation is $1.7 million. The net of all costs and savings during the implementation period is a savings of $1.9 million. Annual recurring savings after implementation are $0.9 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $11.0 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 5 jobs (3 direct jobs and 2 indirect jobs) over the 1996-to-2001 period i the Erie County, New York economic area, which is less than 0.1 percent of economic area employment. This action will have minimal environmental impact.

Air Force Electronic Warfare Evaluation Simulator Activity, Fort Worth, Texas

Recommendation: Disestablish the Air Force Electronic Warfare Evaluation Simulator (AFEWES) activity in Fort Worth. Essential AFEWES capabilities and the required test activities will relocate to the Air Force Flight Test Center (AFFTC), Edwards AFB, California. Workload and selected equipment from AFEWES will be transferred to AFFTC. AFEWES will be disestablished and any remaining equipment will be disposed of.

Justification: The Test and Evaluation Joint Cross-Service Group (JCSG) recommended that AFEWES's capabilities be relocated to an existing facility at an installation possessing a Major Range and Test Facility Base (MRTFB) open air range. Projected workload for AFEWES was only 28 percent of its available capacity. Available capacity at AFFTC is sufficient to absorb AFEWES's workload. AFEWES's basic hardware-in-the-loop infrastructure is duplicated at other Air Force Test and Evaluation facilities. This action achieves significant cost savings and workload consolidation.

Return on Investment: The total estimated one-time cost to implement this recommendation is $5.8 million. The net of all costs and savings during the implementation period is a cost of $2.6 million. Annual recurring savings after implementation are
$0.8 million with a return on investment expected in seven years. The net present value of the costs and savings over 20 years is a savings of $5.8 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 9 jobs (5 direct jobs and 4 indirect jobs) over the 1996-to-2001 period in the Fort Worth-Arlington, Texas Primary Metropolitan Statistical Area, which is less than 0.1 percent of the economic area's employment. This action will have minimal environmental impact.

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Williams Air Force Base, Arizona

Recommendation: Change the recommendation of the 1991 Commission regarding the relocation of Williams AFB's Armstrong Laboratory Aircrew Training Research Facility to Orlando, Florida, as follows: The Armstrong Laboratory Aircrew Training Research Facility at Mesa, Arizona, will remain at its present location as a stand-alone activity.

Justification: The 1991 Defense Base Closure and Realignment Commission recommended that the Armstrong Laboratory Aircrew Training Research Facility located at Williams AFB, Arizona, be relocated to Orlando, Florida. This recommendation, was based on assumptions regarding Navy training activities and the availability of facilities. Subsequent to that Commission's report, it was discovered that the facilities were not available at the estimated cost. In addition, Navy actions in the 1993 BRAC reduced the pilot resources necessary for this facility's work.

In light of these changes, the Air Force recommends the activity remain at its current location. First, it is largely a civilian operation that is well-suited to remain in a stand-alone configuration. It has operated in that capacity since the closure of the rest of Williams AFB in September 1993. Second, its proximity to Luke AFB provides a ready source of fighter aircraft pilots who can support the research activities as consultants and subjects. Third, the present facilities are consolidated and well-suited to the research activities, including a large secure facility. Finally, the activities are consistent with the community's plans for redevelopment of the Williams AFB property, including a university and research park.

Return on Investment: The total estimated one-time cost to implement this recommendation is zero. The net of all costs and savings during the implementation period is a savings of $18.4 million. Annual recurring savings after implementation are $0.3 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $21.0 million.

Impacts: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the Orange, Osceola, and Seminole, Florida counties economic area. As a result of Armstrong Laboratory being retained at Mesa, Arizona, this action results in the retention of 38 direct jobs the Phoenix-Mesa, Arizona Metropolitan Statistical Area.

Lowry Air Force Base, Colorado

Recommendation: Change the recommendation of the 1991 Commission regarding the cantonment of the 1001st Space Support Squadron at the Lowry Support Center as follows: Inactivate the 1001st Space Systems Squadron, now designated Detachment 1, Space Systems Support Group (SSSG). Some Detachment 1 personnel and equipment will relocate to Peterson AFB, Colorado, under the Space Systems Support Group while the remainder of the positions will be eliminated.

Justification: The 1991 Commission recommended that the 1001st Space Systems Squadron, now designated Detachment 1, SSSG, be retained in a cantonment area at the Lowry Support Center. Air Force Materiel Command is consolidating space and warning systems software support at the SSSG at Peterson AFB. The inactivation of Detachment 1, SSSG, and movement of its functions will further consolidate software support at Peterson AFB, and result in the elimination of some personnel positions and cost savings.

Return on Investment: The total estimated one-time cost to implement this recommendation is $1.7 million. The net of all costs and savings during the implementation period is a savings of $10.9 million. Annual recurring savings after implementation are $3.0 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $39.0 million.

Impacts: Assuming no economic recovery, this recommendation could result in a potential reduction of 135 jobs (89 direct jobs and 46 indirect jobs) over the 1996 to 2001 in the Denver, Colorado Primary Metropolitan Statistical Area, which is less than 0.1 percent of economic area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the Denver, Colorado Primary Metropolitan Statistical Area in the 1994 to 2001 period could result in a potential decrease equal to 0.8 percent of employment in the economic area. Environmental impact from this action is minimal and ongoing restoration of Lowry AFB will continue.

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Homestead Air Force Base , Florida
301st Rescue Squadron (AFRES)

Recommendation: Change the recommendation of the 1993 Commission regarding Homestead AFB as follows: Redirect the 301st Rescue Squadron (AFRES) with its associated aircraft to relocate to Patrick AFB, Florida.

Justification: The 301st Rescue Squadron (RQS) is temporarily located at Patrick AFB, pending reconstruction of its facilities at Homestead AFB which were destroyed by Hurricane Andrew. As part of the initiative to have reserve forces assume a greater role in DoD peacetime missions, the 301st RQS has assumed primary responsibility for Space Shuttle support and range clearing operations at Patrick AFB. This reduces mission load on the active duty force structure. Although the 301st RQS could perform this duty from the Homestead Air Reserve Station, doing so would require expensive temporary duty arrangements, extensive scheduling difficulties, and the dislocation of the unit's mission from its beddown site. The redirect will enable the Air Force to perform this mission more efficiently and at less cost, with less disruption to the unit and mission.

Return on Investment: The total estimated one-time cost to implement this recommendation is $4.6 million. The net of all costs and savings during the implementation period is a savings of $1.5 million. Annual recurring savings after implementation are
$1.5 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $15.4 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 341 jobs (214 direct jobs and 127 indirect jobs) over the 1996-to-2001 period in the Miami, Florida Primary Metropolitan Statistical Area, which is less than 0.1 percent of economic area employment. Review of demographic data projects no negative impact on recruiting. There will be minimal environmental impact from this action at Homestead or Patrick Air Force Bases.

Homestead Air Force Base , Florida
726th Air Control Squadron

Recommendation: Change the recommendation of the 1993 Commission regarding the relocation of the 726th Air Control Squadron (ACS) from Homestead AFB to Shaw AFB, South Carolina, as follows: Redirect the 726th ACS to Mountain Home AFB, Idaho.

Justification: The 726th ACS was permanently assigned to Homestead AFB. In the aftermath of Hurricane Andrew, the 726th ACS was temporarily moved to Shaw AFB, as the first available site for that unit. In March 1993, the Secretary of Defense recommended the closure of Homestead AFB and the permanent beddown of the 726th ACS at Shaw AFB. Since the 1993 Commission agreed with that recommendation, experience has shown that Shaw AFB does not provide adequate radar coverage of training airspace needed to support the training mission and sustained combat readiness.

Return on Investment: The total estimated one-time cost to implement this recommendation is $7.4 million. The net of all costs and savings during the implementation period is a savings of $2.3 million. Annual recurring savings after implementation are
$0.23 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $4.6 million.

Impacts: This action affects temporary relocations resulting from prior BRAC recommendations. Assuming no economic recovery, this recommendation could result in a potential reduction of 163 jobs (126 direct jobs and 37 indirect jobs) over the 1996 to 2001 period in the Sumter, South Carolina Metropolitan Statistical Area which is 0.3 percent of the economic area's employment. Environmental impact from this action is minimal and ongoing restoration will continue.

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MacDill Air Force Base, Florida

Recommendation: Change the recommendations of the 1991 and 1993 Commissions regarding the closure and transfer of the MacDill AFB airfield to the Department of Commerce (DoC) as follows: Redirect the retention of the MacDill airfield as part of MacDill AFB. The Air Force will continue to operate the runway and its associated activities. DoC will remain as a tenant.

Justification: Since the 1993 Commission, the Deputy Secretary of Defense and the Chairman of the Joint Chiefs of Staff have validated airfield requirements of the two Unified Commands at MacDill AFB and the Air Force has the responsibility to support those requirements. Studies indicate that Tampa International Airport cannot support the Unified Commands' airfield needs. These validated DoD requirements will constitute approximately 95 percent of the planned airfield operations and associated costs. Given the requirement to support the vast majority of airfield operations, it is more efficient for the Air Force to operate the airfield from the existing active duty support base. Additional cost savings will be achieved when the KC-135 aircraft and associated personnel are relocated from Malmstrom AFB in an associated action.

Return on Investment: The cost and savings data associated with this redirect are reflected in the Malmstrom AFB realignment recommendation. There will be no costs to implement this action, even if the Malmstrom AFB action does not occur, compared to Air Force support of a DoC-owned airfield.

Impacts: There is no economic or environmental impact associated with this action.

Griffiss Air Force Base, New York
Airfield Support for 10th Infantry (Light) Division

Recommendation: Change the recommendation of the 1993 Commission regarding support of the 10th Infantry (Light) Division, Fort Drum, New York, at Griffiss AFB, as follows: Close the minimum essential airfield that was to be maintained by a contractor at Griffiss AFB and provide the mobility/contingency/training support to the 10th Infantry (Light) Division from the Fort Drum airfield. Mission essential equipment from the minimum essential airfield at Griffiss AFB will transfer to Fort Drum.

Justification: Operation of the minimum essential airfield to support Fort Drum operations after the closure of Griffiss AFB has proven to far exceed earlier cost estimates. Significant recurring operations and maintenance savings can be achieved by moving the mobility/contingency/training support for the 10th Infantry (Light) Division to Fort Drum and closing the minimum essential airfield operation at Griffiss. This redirect will permit the Air Force to meet the mobility/contingency/training support requirements of the 10th Infantry (Light) Division at a reduced cost to the Air Force. Having airfield support at its home location will improve 10th Infantry (Light) Division's response capabilities, and will avoid the necessity of traveling significant distances, sometimes during winter weather, to its mobility support location. Support at Fort Drum can be accomplished by improvement of the existing Fort Drum airfield and facilities

Return on Investment: The total estimated one-time cost to implement this recommendation is $51.3 million. The net of all costs and savings during the implementation period is a cost of $12.9 million. Annual recurring savings after implementation are $12.7 million with a return on investment expected in five years. The net present value of the costs and savings over 20 years is a savings of $110.8 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 216 jobs (150 direct jobs and 66 indirect jobs) over the 1996 to 2001 period in the Utica-Rome, New York Metropolitan Statistical Area, which is 0.1 percent of economic area employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the economic area over the 1994 to 2001 period could result in a maximum potential increase equal to 6.2 percent of the employment in the economic area. Environmental impact will be minimal; ongoing restoration will continue.

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Griffiss Air Force Base, New York
485th Engineering Installation Group

Recommendation: Change the recommendation of the 1993 Commission regarding the transfer of the 485th Engineering Installation Group (EIG) from Griffiss AFB, New York, to Hill AFB, Utah, as follows: Inactivate the 485th EIG. Transfer its engineering functions to the 38th EIG at Tinker AFB, Oklahoma. Transfer its installation function to the 838th Electronic Installation Squadron (EIS) at Kelly AFB, Texas, and to the 938th EIS, McClellan AFB, California.

Justification: Reorganization of the installation and engineering functions will achieve additional personnel overhead savings by inactivating the 485th EIG and redistributing the remaining activities to other units. The originally planned receiver site for the 485th EIG at Hill AFB has proven to require costly renovation. This redirect avoids these additional, unforeseen costs while providing a more efficient allocation of work.

Return on Investment: The total estimated one-time cost to implement this recommendation is $0.5 million. The net of all costs and savings during the implementation period is a savings of $26.8 million. Annual recurring savings after implementation are $2.9 million with an immediate return on investment. The net present value of the costs and savings over 20 years is a savings of $53.6 million.

Impacts: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the Salt Lake City-Ogden, Utah, Metropolitan Statistical Area. However, the anticipated 0.2 percent increase in the employment base in this economic area will not occur. There will be no environmental impact from this action at Hill Air Force Base, and minimal environmental impact at Kelly AFB, Tinker AFB, and McClellan AFB.

Defense Logistics Agency Selection Process

Introduction

The Defense Logistics Agency (DLA) 1995 Base Realignment and Closure study process was guided by existing legislation, the DoD Force Structure Plan and by Department of Defense policy. As DLA is not directly identified in the DoD Force Structure Plan, Concepts of Operations were developed to translate the effects of the Force Structure Plan within the Agency's mission planning.

The Director, DLA established a Base Realignment and Closure Executive Group comprised of appropriate senior executives from the Agency's business and staff areas. The Group included both senior level civilian and military personnel, and was chaired by the Principal Deputy Director.

The Executive Group served as senior advisors to direct the 1995 study effort and present activity realignment and closure candidates for the Director's final recommendation to the Secretary of Defense. A BRAC Working Group was also established under the direction of the Executive Group. The Working Group developed analytical tools, collected and analyzed certified data, developed and evaluated alternative scenarios for Executive Group consideration, conducted sensitivity analyses, and compiled documentation to support the final recommendations.

The DLA BRAC analysis process ensured that all of the Agency's activities were evaluated fairly and equitably. Formal charters were developed for the Executive Group and the Working Group, and audit and internal control plans were developed to document the collection and use of accurate certified data.

The Selection Process

The Executive Group aggregated activities into categories and subcategories based on similarity of mission, capabilities, and attributes. From these, the following categories were defined: Distribution Depots, Inventory Control Points, Service/Support, and Command and Control Activities. Subcategories were defined within the categories to ensure that the activities were evaluated in a fair and consistent manner. Where possible, activities were compared to peers of similar function and size. Also, activities identified for closure as a result of previous BRAC decisions were not evaluated.

Collect Data

Comprehensive data calls were designed to support analysis of excess capacity, military value, and economic, environmental and community impacts with certified data. The data call questionnaires were carefully designed to ensure uniform interpretation of questions, level of detail, and documentation requirements. Sources for the data were specified to the greatest extent practical.

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Evaluate Excess Capacity

DLA conducted an excess capacity analysis for each of the BRAC activity categories and subcategories. Where significant amounts of excess capacity were found, these sites could be considered as possible receiver sites in potential realignment recommendations.

Analyze Military Value

The purpose of the military value analysis was to determine the relative ranking of each activity with respect to other activities in the same category or subcategory. OSD provided the Military Departments and the Defense Agencies with a list of selection criteria to be used as part of the military value analysis. The Executive Group determined that more distinctive measures should be developed to assess the military value of DLA activities and developed the Measures of Merit shown below:

Mission Scope (DoD Selection Criteria 1 and 3). The mission assigned to the installation/activity plays an essential role within DoD and additionally benefits non-DoD customers. The functions performed in accomplishing the missions(s) may be unique. The strategic location of the facility and span of control are important to effective mission accomplishment.

Mission Suitability (DoD Selection Criteria 1, 2, 3). The installation/activity supports assigned missions. Suitability includes the age and condition of facilities, quality of life, location, and proximity to transportation links.

Operational Efficiencies (DoD Selection Criteria 2 and 4). The installation/activity's mission is performed economically. Installation/activity operation costs include: transportation, mechanical system, (mechanized material handling equipment, etc.), space utilization, and personnel costs, and facility operating costs.

Expandability (DoD Selection Criteria 1, 2, 3). The installation/activity can accommodate new missions and increased workload, including sustained contingencies. Expandability considerations included requirements for space and infrastructure, community encroachment, and increased workload.

Develop Alternatives

The next step in the analysis sequence was to identify potential realignment or closure candidates and eliminate the remaining activities from further consideration. Military value, in conjunction with military judgment, was the primary consideration in determining prospective realignment or closure candidates. Once an alternative was conceived, it was evaluated for reasonableness and then either refined or abandoned. DLA worked closely with each Military Department during this process to identify and consider potential excess space for joint use, to evaluate the impact of Military Department recommendations on its activities and to ensure that the impact of Military Department recommendations was appropriately factored into the Agency's recommendations.

Analyze Return on Investment

The DLA BRAC Working Group evaluated potential realignment and closure scenarios using the Cost of Base Realignment Actions (COBRA) model. Data for the model consists of DoD standard factors, DLA standard factors, static base data, and scenario-specific data which describes the actions and costs involved in a realignment or closure scenario. DoD standard factors used in the model were developed by a DoD Joint Process Action Team. Agency-wide standard factors were developed from field-certified data and data collected and certified by Headquarters organizations. Activity static information was gathered from field-certified data and OSD policy memo guidance.

Develop Recommendations

After base realignment and closure scenarios were evaluated with the COBRA model, the analysis results were reviewed by the BRAC Working Group and presented to the Executive Group for further consideration.

Each scenario was considered in terms of its overall risk, benefit, and cost to the strategic direction of DLA and the interests of DoD. Based on its review and best military judgment, the Executive Group made individual recommendations to the Director. After the approval of the Director, the recommendations were then returned to the Working Group for economic, community infrastructure, and environmental impact assessments. The Working Group reported its findings to the Executive Group for further consideration as appropriate.

Role of Internal Controls and External Audits

An Internal Control Plan for the collection and analysis of data was developed for the BRAC 95 process. The plan, issued 23 May 1994, was reviewed and approved by the DoD Inspector General (IG) and the General Accounting Office (GAO).

DoDIG personnel were responsible for data validation, and fully participated in the Executive and Working Group meetings and observed the Working Group analysis process.

GAO representatives also participated in the DLA BRAC 95 process and attended Executive Group meetings, observed the Working Group analysis process, and visited selected field activities to observe the data collection and data validation process.

Finalize Recommendations

Upon completion of the impact assessments, recommendations were returned to the Executive Group. The Working Group presented the results of the impact analyses and supported additional Executive Group deliberations. The Executive Group discussed the impact assessments, conducted an extensive review of each recommendation, and approved selected recommendations.

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The final approved recommendations were then prepared for inclusion in this report. Preparation included gathering supporting documentation, writing narrative descriptions of the analysis process, and submission to OSD.

Defense Distribution Depot Memphis, Tennessee (DDMT)

Recommendation: Close Defense Distribution Depot Memphis, Tennessee. Material remaining at DDMT at the time of closure will be relocated to optimum storage space within the DoD Distribution System. As a result of the closure of DDMT, all DLA activity will cease at this location and DDMT will be excess to DLA needs.

Justification: Defense Distribution Depot Memphis, is a Stand-Alone Depot that supports the two large east and west coast depots and is used primarily for storage capability and local area demand. It is also the host for the Memphis complex. The decision to close the Memphis depot was based on declining storage requirements and capacity estimates for FY 01 and on the need to reduce infrastructure within the Agency.

Memphis tied for third place out of the six Stand-Alone Depots in the military value analysis. The higher scores for the Susquehanna and San Joaquin distribution depots in this analysis removed them from further consideration for closure. The variance of only 37 points out of a possible 1,000 between the third and sixth place depots in the military value analysis for this category reinforced the importance of military judgment and compliance with the DLA BRAC 95 Decision Rules in the decision-making process.

A further consideration was the Agency's desire to minimize distribution infrastructure costs. Closure of an entire installation will allow DLA to reduce infrastructure significantly more than disestablishment of a tenant depot (DDCO at Columbus, OH, and DDRV at Richmond, VA). Memphis was rated six out of six in the Installation Military Value analysis. The Columbus installation ranked the highest. The facilities at Richmond are the best maintained of any in DLA. Both Columbus and Richmond take advantage of the synergy of a collocated Inventory Control Point. This closure action conforms to the Decision Rules to maximize the use of shared overhead and make optimum use of retained DLA-operated facilities, while closing an installation.

In addition, the Strategic Analysis of Integrated Logistics Systems (SAILS) model optimized system-wide costs for distribution when the Ogden and Memphis depots were the two Stand-Alone Depots chosen for closure. Sufficient throughput and storage capacity are available in the remaining depots to accommodate projected workload and storage requirements. Closing DDMT is consistent with the DLA BRAC 95 Decision Rules and the Distribution Concept of Operations. Therefore, military judgment determined that it is in the best interest of DLA and DoD to close DDMT.

Return on Investment: The total estimated one-time cost to implement this recommendation is $85.7 million. The net of all costs and savings during the implementation period is a savings of $14.8 million. Annual recurring savings after implementation are $23.8 million with a return on investment expected in three years. The net present value of the costs and savings over 20 years is a savings of $244.3 million.

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Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 3,349 jobs (1,300 direct jobs and 2,049 indirect jobs) over the 1996-to-2001 period in the Memphis, Tennessee-Arkansas-Mississippi Metropolitan Statistical Area, which is 0.6 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.5 percent of employment in the area.

The Executive Group determined that receiving communities could absorb the additional forces, missions, and personnel proposed, and concluded that environmental considerations do not prohibit this recommendation from being implemented.

Defense Distribution Depot Ogden, Utah (DDOU)

Recommendation: Close Defense Distribution Depot Ogden, Utah, except for a 36,000 square foot cantonment for Army Reserve personnel. Material remaining at DDOU at the time of closure will be relocated to optimum storage space within the DoD Distribution System. As a result of the closure of DDOU, all DLA activity will cease at this location and DDOU will be excess to DLA needs.

Justification: The Defense Distribution Depot Ogden is a Stand-Alone Depot that supports the two large east and west coast depots and is used primarily for storage capability and local area demand. It is also the host for the Ogden complex. The decision to close the Ogden depot was based on declining storage requirements and capacity estimates for FY 01 and on the need to reduce infrastructure within the Agency.

Ogden tied for third place out of the six Stand-Alone Depots in the military value analysis. The higher scores for the Susquehanna and San Joaquin distribution depots in this analysis removed them from further consideration for closure. The variance of only 37 points out of a possible 1,000 between the third and sixth place depots in military value ranking for this category reinforced the importance of compliance with the DLA BRAC 95 Decision Rules and military judgment in the decision-making process.

A further consideration was DLA's desire to minimize distribution infrastructure costs. Closure of an entire installation will allow DLA to reduce infrastructure significantly more than disestablishment of a tenant depot (DDCO at Columbus, OH, and DDRV at Richmond, VA). The Ogden depot was rated five of six in the Military Value Installation analysis. The Columbus installation ranked the highest. The facilities at Richmond are the best maintained of any in DLA. Both Columbus and Richmond take advantage of the synergy of a collocated Inventory Control Point. This action conforms to the DLA Decision Rules to maximize the use of shared overhead and make optimum use of retained DLA-operated facilities while closing an installation.

In addition, the Strategic Analysis of Integrated Logistics Systems (SAILS) model optimized system-wide costs for Distribution when Ogden and Memphis were the two Stand-Alone Depots chosen for closure. Sufficient throughput and storage capacity are available in the remaining depots to accommodate projected workload. Closing the Ogden depot is consistent with the DLA BRAC 95 Decision Rules and the Distribution Concept of Operations. Military judgment determined that it is in the best interest of DLA and DoD to close DDOU.

Return on Investment: The total estimated one-time cost to implement this recommendation is $110.8 million. The net of all costs and savings during the implementation period is a cost of $27.8 million. Annual recurring savings after implementation are $21.3 million with a return on investment expected in four years. The net present value of the costs and savings over 20 years is a savings of $180.9 million.

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Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 2,947 jobs (1,113 direct jobs and 1,834 indirect jobs) over the 1996-to-2001 period in the Salt Lake City-Ogden, Utah Metropolitan Statistical Area, which is 0.4 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.3 percent of the employment in the area.

The Executive Group determined that the receiving community could absorb the additional forces, missions, and personnel proposed and that environmental considerations do not prohibit this recommendation from being implemented.

Defense Contract Management District South (DCMDS) Marietta, Georgia

Recommendation: Disestablish DCMD South and relocate missions to DCMD Northeast and DCMD West.

Justification: The Contract Management Districts provide command and control, operational support, and management oversight for 90 Defense Contract Management Area Operations (DCMAOs) and Defense Plant Representative Offices (DPROs) located throughout the continental United States. Due to the impact of the DoD Force Structure drawdown, budget cuts and the resulting decline in acquisition workload, a number of Area Operations Offices and Plant Representative Offices have been disestablished thereby reducing the span of control responsibility at the Districts. As the drawdown continues, the number of Area Operations Offices and Plant Representative Offices is expected to decline even further. Based on the above, the closure of a district and realignment of assigned Area Operations Offices and Plant Representative Offices to the remaining two districts is feasible with only a moderate risk. Although the difference between second and third place was not sufficiently broad to dictate a clear decision by itself, DCMD South received the lowest military value score.

Military judgment determined that a single contract management district presence on each coast is necessary. A west coast district is required because of the high dollar value of contracts and the significant weapon-systems related workload located on the west coast.

There is a higher concentration of workload in the northeast, in terms of span of control, field personnel provided support services, numbers of contractors, and value of contract dollars obligated, than in the south. In addition, the northeast district supports its Area Operations Offices and Plant Representative Offices with a lower ratio of headquarters to field personnel than DCMD South. On the east coast, due to the higher concentration of workload in DCMD Northeast, as well as its significantly higher military value score, there is a clear indication that DCMD South is the disestablishment candidate. As a result, the BRAC Executive Group recommended to the DLA Director, and he approved, the disestablishment of DCMD South.

Return on Investment: The total estimated one-time cost to implement this recommendation is $3.8 million. The net of all costs and savings during the implementation period is a savings of $17.9 million. Annual recurring savings after implementation are $6.1 million with a return on investment expected immediately. The net present value of the costs and savings over 20 years is a savings of $75.8 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 275 jobs (169 direct jobs and 106 indirect jobs) over the 1996-to-2001 period in the Atlanta, Georgia Metropolitan Statistical Area, which is less than 0.1 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential increase equal to less than 0.1 percent of employment in the area.

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The Executive Group concluded that the data did not present any evidence or indication that would preclude the recommended receiving communities from absorbing the additional forces, missions, and personnel proposed in the recommended realignment scenarios. The environmental considerations present at these installations do not prohibit this recommendation from being implemented.

Defense Contract Management Command International (DCMCI) Dayton, Ohio

Recommendation: Realign the DCMCI (Gentile AFS), Dayton, Ohio, and merge its mission into the Defense Contract Management Command Headquarters (DCMC HQ), Ft. Belvoir, Virginia.

Justification: The mission of the DCMCI is to provide command and control, including operational and management control and oversight, for 13 overseas Defense Contract Management Area Operations (DCMAO) offices located outside of the continental United States. The Command's mission could be performed from any locality. Military judgment concluded that merging the mission with the headquarters affords the opportunity to capitalize on operational and management oversight and to maximize use of shared overhead with DCMC. It also affords the opportunity to take advantage of the close proximity to the State Department and the international support infrastructure in Washington, DC, and surrounding areas. This decision is consistent with DLA BRAC 95 Decision Rules, the DCMC Concept of Operations and the Force Structure Plan.

Return on Investment: The total estimated one-time cost to implement this recommendation is $3.1 million. The net of all costs and savings during the implementation period is a savings of $8.7 million. Annual recurring savings after implementation are $3.1 million with a return on investment expected in one year. The net present value of the costs and savings over 20 years is a savings of $38.7 million.

Impacts: Since this action affects unexecuted relocations resulting from prior BRAC recommendations, it causes no net change in employment in the Columbus, Ohio Metropolitan Statistical Area. However, the anticipated employment increase of less than 0.1 percent in the employment base in this area will not occur.

The Executive Group concluded that the data did not present any evidence or indication that would preclude the recommended receiving community from absorbing the additional forces, missions, and personnel proposed in the recommended realignment scenarios. The environmental considerations present at the receiving installations do not prohibit this recommendation from being implemented.

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Defense Distribution Depot Columbus, Ohio (DDCO)

Recommendation: Realign the Defense Distribution Depot Columbus, Ohio, and designate it as a storage site for slow moving/war reserve material. Active material remaining at DDCO at the time of realignment will be attrited. Stock replenishment will be stored in optimum space within the distribution system.

Justification: Defense Distribution Distribution Depot Columbus, is a Stand-Alone Depot that supports the two large east/west coast depots and is used primarily for storage capability and local area demand. The decision to realign the Columbus depot was based on storage requirements and capacity estimates for FY 01 and the need to comply with BRAC 95 Decision Rules. Columbus ranked sixth of six depots in military value for the Stand-Alone Depot category.

The other Stand-Alone Depots were not considered for realignment for the following reasons. The higher military value of both the Susquehanna (DDSC) and San Joaquin (DDJC) depots removed them from consideration for closure or realignment. The Richmond Depot (DDRV) was not selected for realignment because of the large amount of conforming hazardous material storage space, new construction and mechanization, and collocation with supply center, which has the best maintained facilities of any in DLA. Both the Ogden and Memphis distribution depots were selected for closure.

The decision to realign rather than close the Columbus depot was based on the need for inactive storage capacity in the overall system and with the long-range intent of minimizing use of this site as storage requirements decline. Moving highly active stock to San Joaquin and Susquehanna will allow DLA to take advantage of economies of scale from large distribution operations. The decision was also based on the further consideration that Columbus, the highest ranking DLA location in the Installation Military Value analysis, will remain open and most likely expand its operations, thereby allowing DLA to maximize the use of shared overhead and optimize the use of retained DLA-operated facilities. In addition, the Strategic Analysis of Integrated Logistics Systems (SAILS) model favored the retention of Columbus over either Ogden or Memphis. Realigning the Columbus depot is consistent with the DLA BRAC 95 Decision Rules and the Distribution Concept of Operations. Military judgment determined that it is in the best interest of DLA and DoD to realign DDCO.

Return on Investment: The total estimated one-time cost to implement this recommendation is $7.9 million. The net of all costs and savings during the implementation period is a savings of $51.2 million. Annual recurring savings after implementation are $11.6 million with a return on investment expected in the first year. The net present value of the costs and savings over 20 years is a savings of $161.0 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 997 jobs (365 direct jobs and 632 indirect jobs) over the 1996-to-2001 period in the Columbus, Ohio Metropolitan Statistical Area, which is 0.1 percent of the area's

employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area.

The Executive Group determined that the receiving community could absorb the additional forces, missions, and personnel proposed, and concluded that environmental considerations do not prohibit this recommendation from being implemented.

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Defense Distribution Depot Letterkenny, Pennsylvania (DDLP)

Recommendation: Disestablish the Defense Distribution Depot Letterkenny, Pennsylvania. Material remaining at DDLP at the time of disestablishment will be relocated to the Defense Distribution Depot Anniston, Alabama (DDAA) and to optimum storage space within the DoD Distribution System.

Justification: The Defense Distribution Depot Letterkenny is collocated with an Army maintenance depot, its largest customer. While Collocated Depots may support other nearby customers and provide limited world-wide distribution support, Letterkenny's primary function is to provide rapid response in support of the maintenance operation. The Distribution Concept of Operations states that DLA's distribution system will support the size and configuration of the Defense Depot Maintenance System. Thus, if depot maintenance activities are disestablished, Collocated Depots will also be disestablished.

The recommendation to disestablish the Letterkenny depot was driven by the Army recommendation to realign Letterkenny Army Depot, Letterkenny's primary customer, and the Agency's need to reduce infrastructure. The Letterkenny depot was rated 3 of 17 in the Collocated Depot military value matrix. However, that military value ranking was based on support to the maintenance missions. With the realignment of the Army's maintenance mission to the Anniston Army Depot that value decreases significantly. Other customers within the Letterkenny area can be supported from nearby distribution depots. Production and physical space requirements can also be met by fully utilizing other depots in the distribution system.

Disestablishing DDLP is consistent with both the DLA BRAC 95 Decision Rules and the Distribution Concept of Operations. Military judgment determined that it is in the best interest of DLA and DoD to disestablish DDLP.

Return on Investment: The total estimated one-time cost to implement this recommendation is $44.9 million. The net of all costs and savings during the implementation period is a cost of $21.2 million. Annual recurring savings after implementation are $12.4 million with a return on investment expected in three years. The net present value of costs and savings over 20 years is a savings of $102.1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 748 jobs (378 direct jobs and 370 indirect jobs) over the 1996-to-2001 period in the Franklin County, Pennsylvania economic area, which is 1.2 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 8.5 percent of employment in the area.

The DLA Executive Group determined that receiving communities could absorb the additional forces, missions, and personnel proposed, and concluded that environmental considerations do not prohibit this recommendation from being implemented.

Defense Industrial Supply Center (DISC) Philadelphia, Pennsylvania

Recommendation: The Defense Industrial Supply Center is disestablished. Distribute the management of Federal Supply Classes (FSC) within the remaining DLA Inventory Control Points (ICP). Create one ICP for the management of troop and general support items at the Defense Personnel Support Center (DPSC) in Philadelphia, PA. Create two ICPs for the management of weapon system-related FSCs at the Defense Construction Supply Center (DCSC), Columbus, OH and the Defense General Supply Center (DGSC), Richmond, VA.

Justification: Four of the five Inventory Control Points manage differing mixes of weapon system, troop support, and general support items. Troop and general support items largely have different industry and customer bases than weapon system items. They are also more conducive to commercial support, and are thus managed differently than weapon system items. Consolidating management of items by the method of management required will improve oversight, streamline the supply management process, increase internal efficiency, and reduce overhead.

DLA manages nearly five times as many weapon system items as troop and general support items. A single troop and general support ICP is adequate, but two weapon system ICPs are necessary. DPSC is almost entirely a troop support ICP. No other ICP currently manages troop support items. The percentage of general support items at other ICPs is relatively small. Singling-up troop and general support items under DPSC management is the most logical course of action.

DISC had the lowest military value of the three hardware ICPs. The Columbus and Richmond centers are host activities of compounds which house a number of DLA and non-DLA activities, conforming to the DLA decision rules concerning maximizing the use of shared overhead and making optimum use of retained DLA-operated facilities. Both the Richmond and Columbus sites have high installation military value, and take advantage of the synergy of a Collocated Depot. Both also have considerable expansion capability. The facilities at Columbus are the best maintained of any in DLA, and Richmond has several new buildings completed or in progress. DISC is a tenant on a Navy compound. Disestablishing DISC allows the Agency to achieve a substantial cost avoidance by back-filling the space already occupied by DISC and substantially reducing the amount of conversion required to existing warehouse space. Based on the above, military judgment concluded that disestablishing DISC is in the best interest of DLA and DoD.

Return on Investment: The total estimated one-time costs to implement the recommendation is $16.9 million. The net of all costs and savings during the implementation period is a savings of $59.3 million. Annual recurring savings after implementation are $18.4 million, with a return on investment expected immediately. The net present value of the costs and savings over 20 years is a savings of $236.5 million.

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Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,198 jobs (385 direct jobs and 813 indirect jobs) over the 1996-to-2001 period in the Philadelphia, Pennsylvania-New Jersey Metropolitan Statistical Area, which is less than 0.1 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 1.2 percent of employment in the area. Assuming no economic recovery, this recommendation could also result in a maximum potential reduction of 981 jobs (358 direct jobs and 623 indirect jobs) over the 1996-to-2001 period in the Columbus, Ohio Metropolitan Statistical Area, which is
0.1 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.1 percent of employment in the area.

The Executive Group concluded that the data did not present any evidence or indication that would preclude the recommended receiving community from absorbing the additional forces, missions, and personnel proposed in the recommended realignment scenario. The environmental considerations present at the receiving installations do not prohibit this recommendation from being implemented.

Defense Distribution Depot Red River, Texas (DDRT)

Recommendation: Disestablish the Defense Distribution Depot Red River, Texas. Material remaining at DDRT at the time of disestablishment will be relocated to the Defense Distribution Depot Anniston, Alabama, (DDAA) and to optimum storage space within the DoD Distribution System.

Justification: The Defense Distribution Depot Red River is collocated with an Army maintenance depot, its largest customer. While Collocated Depots may support other nearby customers and provide limited world-wide distribution support, Red River's primary function is to provide rapid response in support of the maintenance operation. The Distribution Concept of Operations states that DLA's distribution system will support the size and configuration of the Defense Depot Maintenance System. Thus, if depot maintenance activities are disestablished, Collocated Depots will also be disestablished.

The recommendation to disestablish the Red River depot was driven by the Army recommendation to realign its Red River Army Depot, Red River's primary customer, and the Agency's need to reduce infrastructure. DDRT was rated 5 of 17 in the Collocated Depot military value matrix. However, that military value ranking was based on support to the maintenance missions. With the realignment of the Army's maintenance mission to Anniston, Alabama, that value decreases significantly. Other customers within the DDRT area can be supported from nearby distribution depots. Production and physical space requirements can also be met by fully utilizing other depots in the distribution system.

Disestablishing DDRT is consistent with both the DLA BRAC 95 Decision Rules and the Distribution Concept of Operations. Military judgment determined that it is in the best interest of DLA and DoD to disestablish DDRT.

Return on Investment: The total estimated one-time cost to implement this recommendation is $58.9 million. The net of all costs and savings during the implementation period is a cost of $0.8 million. Annual recurring savings after implementation are
$18.9 million with a return on investment expected in two years. The net present value of the costs and savings over 20 years is a savings of $186.1 million.

Impacts: Assuming no economic recovery, this recommendation could result in a maximum potential reduction of 1,602 jobs (821 direct jobs and 781 indirect jobs) over the 1996-to-2001 period in the Texarkana, Texas-Arkansas Metropolitan Statistical Area, which is
2.7 percent of the area's employment. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in the area over the 1994-to-2001 period could result in a maximum potential decrease equal to 7.7 percent of the employment in the area.

The DLA Executive Group determined that receiving communities could absorb the additional forces, missions, and personnel proposed, and concluded that environmental considerations do not prohibit this recommendation from being implemented.

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Defense Contract Management District West (DCMDW)
El Segundo, California

Recommendation: This is a redirect of the following BRAC 93 Commission recommendation: "Relocate the Defense Contract Management District, El Segundo, California, to Long Beach Naval Shipyard, Los Angeles, California, or space obtained from exchange of land for space between the Navy and the Port Authority/City of Long Beach." The current recommendation is expanded to read: Relocate the DCMD, El Segundo, CA, (a) to Government property in the Los Angeles/Long Beach area, or, (b) to space obtained from exchange of land between the Navy and Port Authority/City of Long Beach, or (c) to a purchased office building, whichever is the most cost-effective for DoD.

Justification: The Defense Contract Management District West is currently located in GSA-leased administrative space in El Segundo, CA. The BRAC 93 Commission found it was cost effective for DCMD West to move from leased space to DoD-owned property. The Navy has been involved in exploratory discussions on behalf of DLA. However, the President's Five-Point Revitalization Plan, which affords communities the opportunity to obtain installations without substantial compensation, has significantly impacted the Navy's ability to consummate a land exchange at Long Beach with the Port Authority/City of Long Beach. The Long Beach Naval Shipyard, another option, has been placed on the BRAC 95 list for closure. In order to attain the significant savings which will result by moving the organization into DoD space, the BRAC 93 recommendation is revised/expanded. This redirect eliminates the cost of a warehouse and reflects the requirement for reduced administrative space. This recommendation is consistent with the DCMC Concept of Operations and the DLA BRAC 95 Decision Rules.

Return on Investment: This is a redirect of a BRAC 93 recommendation. The total estimated one-time cost to implement this recommendation is $10.3 million. The net of all costs and savings during the implementation period is a savings of $10.9 million. Annual recurring savings after implementation are $4.2 million with a return on investment expected immediately. The net present value of the costs and savings over 20 years is a savings of $51.2 million.

Impacts: This recommendation will not result in a change in employment in the Los Angeles-Long Beach, California Primary Metropolitan Statistical Area because all affected jobs will remain in that area. The cumulative economic impact of all BRAC 95 recommendations and all prior-round BRAC actions in this area over the 1994-to-2001 period could result in a maximum potential decrease equal to 0.4 percent of employment in the area.

Defensive Investigative Service Selection Process

Introduction

The 1995 DIS Base Realignment and Closure (BRAC) study process was guided by existing BRAC legislation and guidance provided by the Office of the Secretary of Defense (OSD).

The Director, DIS, established a Base Realignment and Closure Executive Group comprised of appropriate heads of headquarters Principal Staff Elements (PSE), and chaired by the Deputy Director, Resources. The Executive Group acted as senior advisors to direct the analysis effort and present the Director's final recommendations to the Secretary of Defense. A BRAC Working Group was established under the direction of the Executive Group. The Working Group was comprised of four headquarters elements and two Investigations Control and Automation elements. Other specific elements of DIS technical areas were consulted as appropriate. The Working Group adapted the DoD process and procedures to the BRAC effort; collected and analyzed certified data; developed and evaluated recommendations for the Executive Group's consideration, and compiled documentation to support the final recommendation.

In October 1994, GAO began its review of the DIS BRAC 1995 process. The Chairman of the Working Group served as an audit liaison with the GAO representatives throughout the analysis process.

The Selection Process

The process followed the requirements of law and OSD policy guidance to ensure that all data were correctly collected and verified. DIS first developed and implemented a general plan and operating instructions that would guide the efforts of the Executive and Working Groups. An Internal Control Plan was developed to ensure that data was consistent and standardized, accurate and complete, certifiable, verifiable, auditable by external audit and inspection agencies, and replicable using documentation developed during data collection.

The selection process consisted of five steps to gather data and conduct analyses: 1) collect data, 2) analyze military value, 3) develop alternatives, 4) perform COBRA analyses, and 5) determine impacts.

Collect Data

Data elements were identified by the Working Group, and for the most part, collected by the Working Group.

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Analyze Military Value

Military value criteria were given priority consideration. Since the DoD Selection Criteria were designed specifically with the Military Services in mind, the Executive Group developed more distinctive measures to assess the military value of DIS activities. The Measures of Merit used to develop military value were Mission Essentiality, Mission Suitability, Operational Efficiencies, and Expandability.

Develop Alternatives

The Working Group developed three alternatives regarding the DIS activity at Fort Holabird: 1) renovate the existing facility, 2) military construction on available land at Fort Meade, and 3) leased space. The cost and savings implications of these alternatives were then evaluated by COBRA.

Perform COBRA Analysis

DIS used the COBRA model to assess the relative costs, savings, and return on investment of the alternatives. Working Group members gathered the necessary data regarding personnel, construction and renovation.

Determine Impacts

The potential economic impact on communities was evaluated through use of the BRAC 95 Economic Impact Data Base. The ability of the potential losing and receiving locations infrastructure to support each alternative was evaluated by the Executive and Working Groups. Impacts were also evaluated in terms of readiness, effectiveness, and efficiency with regard to DIS' ability to support its customers. The analysis also considered potential environmental impacts at both the losing and gaining sites for each alternative.

COBRA results, community and environmental impacts and supporting rationale were presented to the Executive Group for consideration and selection of the Agency's final recommendation to the Secretary of Defense.

Investigations Control and Automation Directorate (IC&AD), Fort Holabird, Maryland

Recommendation: Relocate the Defense Investigative Service (DIS), Investigations Control and Automation Directorate (IC&AD) from Fort Holabird, Maryland, to a new facility to be built on Fort Meade, Maryland. This proposal is a revision to the 1988 Base Closure Commission's recommendation to retain the Defense Investigative Service at Fort Holabird. Once DIS vacates the building on Fort Holabird, the base will be vacant.

Justification: The IC&AD is located in Building 320, a Korean War-era building. The building is in disrepair and continues to deteriorate costing over $0.3 million in repairs since FY 1991 in addition to the annual Interservice Support Agreement cost of approximately $0.4 million. A recent Corps of Engineers (COE) Building Analysis indicated that the cost to bring the building up to code and to correct the environmental deficiencies would cost DIS approximately $9.1 million based on current space requirements. A military construction project on Fort Meade based on 1998 DIS force structure is estimated to cost $9.4 million.

Return on Investment: The total estimated one-time cost to implement this recommendation is $11 million. The net of all costs and savings during the implementation period is a cost of $0.7 million. Annual recurring savings after the implementation are $0.5 million with a return on investment expected in six years. The net present value of costs and savings over 20 years is a savings of $4 million.

Impacts: Relocating the IC&AD will have no negative impact on the local economy since it is an intra-area move. There is no significant environmental or community infrastructure impact resulting from this relocation.

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A new table will be published in the first issue of each month.

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March 2	March 17	April 3	April 17	May 1	May 31
March 3	March 20	April 3	April 17	May 2	June 1
March 6	March 21	April 5	April 20	May 5	June 5
March 7	March 22	April 6	April 21	May 8	June 6
March 8	March 23	April 7	April 24	May 8	June 6
March 9	March 24	April 10	April 24	May 8	June 7
March 10	March 27	April 10	April 24	May 9	June 8
March 13	March 28	April 12	April 27	May 12	June 12
March 14	March 29	April 13	April 28	May 15	June 12
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March 20	April 4	April 19	May 4	May 19	June 19
March 21	April 5	April 20	May 5	May 22	June 19
March 22	April 6	April 21	May 8	May 22	June 20
March 23	April 7	April 24	May 8	May 22	June 21
March 24	April 10	April 24	May 8	May 23	June 22
March 27	April 11	April 26	May 11	May 26	June 26
March 28	April 12	April 27	May 12	May 30	June 26
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